

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAHRU HAROLD SMITH,

APPELLANT

APPELLATE CASE NO 2018-000505

RECORD ON APPEAL

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SC Court of Appeals

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COUNTY OF GREENVILLE	)	2015-GS-23-02833
	)	2015-GS-23-02834
	)	
	)	2015-GS-23-02823
	)	2015-GS-23-02824
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JAHRU HAROLD SMITH,	)	VOLUME I
BOBBY LEON SMITH,	)	
DEFENDANTS.	)	

March 12 and 13, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE; and a jury.

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Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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THE COURT: Let's call to bar the case of the State v. Jahru Harold Smith and State v. Bobby Leon Smith.

Indictments in each instance for murder, and possession of a weapon during the commission of a violent crime, and armed robbery.

I'll be happy to hear any pending motions -- well, hold on.

Is that the jury out there, or is that just people mulling around in the hall?

THE BAILIFF: No, sir.

THE COURT: Okay. Good enough.

All right. I'll be happy to hear motions.

P R E - T R I A L M O T I O N S

MR. KORNFIELD: Yes, Your Honor.

May it please the Court.

THE COURT: Yes, sir.

MR. KORNFIELD: Alex Kornfeld for Jahru Smith.

I just spoke to my client. And Mr. Smith is being held in the Anderson County Detention Center.

1 THE COURT: Yes, sir.

2 MR. KORNFELD: When he was arrested at that time, his
3 glasses broke. He does not have his glasses. And he
4 receives some disability due to the fact of his blindness.

5 He tells me that he can barely see, and everything
6 looks like a TV screen. And he cannot read. He tells me
7 because of that, he cannot actively assist in his defense
8 in picking the jury. And he requests that he be given
9 glasses at this time so that he can -- can assist in his
10 defense, Your Honor.

11 THE COURT: Well, I don't know that it would serve
12 any useful purpose to give him a pair of glasses that
13 didn't meet his prescription.

14 MR. KORNFELD: Right. I understand, Your Honor.

15 I do know that he does have limited vision. He did
16 have very thick glasses the times I saw him before. I
17 don't know what his prescription is. I did ask him what
18 it was. I don't know how long it would take him to get
19 glasses.

20 THE COURT: Okay. Do you feel -- do you feel that
21 that prejudices him in some way in the jury selection
22 process?

23 MR. KORNFELD: Your Honor, he does. Because he wants
24 to be able to, I guess, confer with me concerning who is
25 selected on his jury.

1 THE COURT: Okay. You've got a -- you've got a
2 written sheet with all of the juror information; correct?

3 MR. KORNFELD: I do, Your Honor.

4 THE COURT: Okay. And you can have conversations
5 with him about all of the substantive portions of those
6 jury lists; right?

7 MR. KORNFELD: I can, yes.

8 THE COURT: Okay. So the only thing that would be
9 left is an inability to see faces clearly; is that
10 correct?

11 MR. KORNFELD: Well, that's correct.

12 And I guess he can't read for himself or ascertain
13 for himself. He's going to be listening to what I tell
14 him about each potential juror.

15 THE COURT: Well, I think -- I think that's okay. I
16 don't think that prejudices --

17 DEFENDANT JAHUR SMITH: No, sir. I must object, sir.

18 THE COURT: Yes, sir.

19 DEFENDANT JAHUR SMITH: I mean, to force me to go
20 through a jury selection visually incompetent is a
21 violation of my right to self-defense. And as I advised
22 my attorney that I would like to participate in every
23 process in defending myself. Because my life is at stake
24 right here; right?

25 And I'm already being subjected to prosecution

1 misconduct. Now, I'm being forced to go through a jury
2 selection in a trial visually incompetent. It seem like
3 to me, sir, your impartiality is being questioned here.

4 Where's the fairness?

5 And the only thing I'm asking for is provide me with
6 my mandate prescription eyeglasses; right? So where I can
7 go over my case with my attorney. And I'll be ready to go
8 to trial with you and the Prosecutor.

9 THE COURT: Okay. Thank you, Mr. Smith.

10 You've been heard on the record. And I appreciate
11 your position.

12 Anything from the State?

13 MR. MORONEY: No, Your Honor.

14 We would agree that, I think, we can proceed, and go
15 ahead and select a jury, and proceed with this case at
16 this time.

17 THE COURT: All right. Anything further from the
18 Defense?

19 MR. KORNFELD: Your Honor, I do have some other
20 motions. I don't know if they're appropriate at this
21 time. They have nothing to do with the jury
22 qualification.

23 THE COURT: Okay. I don't -- I don't --

24 Ms. Troup, I think that Ms. Olson said in 20 minutes
25 they'd be coming up. Have you had any correspondence with

1 her?

2 THE CLERK: She has not said. I'll call her.

3 THE COURT: Okay. Yeah, just call her, if you would.

4 And, Mr. Kornfeld, while we're -- I mean, while we're
5 waiting, let's go ahead and get as much done as we can.

6 MR. KORNFELD: Okay.

7 THE COURT: So I'd be happy to hear from you, your
8 next motion.

9 MR. KORNFELD: Okay. Thank you, Your Honor.

10 I -- I informed my client when I went down there,
11 there has been some discovery that was provided to me in
12 the last couple weeks. One of the discovery -- or one of
13 the things that was provided to me was Ms. -- I believe
14 her name is Mary Louise Smith, who is the -- Jahru's aunt,
15 gave some -- an interview to -- I think it was Officer
16 Newman concerning the case that was relevant.

17 It would be -- I would argue that it would be unduly
18 prejudicial, not timely. He, also, would like me to make
19 the motion that it was an entrapment. Because she was not
20 advised that she did not have to give a statement to
21 police officers.

22 The other motion he would like me to make concerns
23 Tiffany -- I believe her last name is -- his -- he says
24 this is his common-law wife. She, also, gave a statement
25 within the last week or two. I would make the same motion

1 there that it was not timely. It was new evidence. I did
2 not have time to set up a defense.

3 He says that he would like to invoke his right to
4 spousal immunity in this case, even though she was the one
5 that made the statement.

6 THE COURT: Okay. What's the position of the State?

7 MR. MORONEY: Your Honor, with respect to Ms. Mary
8 Louise Smith and both Tiffany Petty, Investigator Newman
9 spoke with each of them last week. And the reason their
10 names came up is that during the investigation, there were
11 call logs that were pulled from the Defendant. And those
12 numbers belong to these two ladies. It came up: And they
13 were identified as Ms. Petty, being a former girlfriend,
14 and Mary Louise Smith being an aunt.

15 With respect to Ms. Smith, it's my understanding that
16 Mr. Newman met with her. And she freely spoke with him
17 and just told her [sic] what she knew about what happened
18 on the night of this incident and the few days afterwards.
19 I don't see that that's improper in anyway, or how that
20 prejudices the Defendant.

21 Furthermore, with respect to Ms. Petty. This is the
22 first we're ever hearing of a common-law marriage
23 designation.

24 But she, again, freely volunteered this information
25 and spoke about what she knew, her personal knowledge.

1 And it's important to note that last week, she showed up
2 with a man who she introduced to Mr. Newman --
3 Investigator Newman as her boyfriend.

4 So we would take issue with the fact that he
5 categorizes himself as common-law married to Ms. Petty.

6 THE COURT: Okay. Mr. Kornfeld, would you like to
7 respond to that, sir?

8 MR. KORNFELD: Well, he says that he has a child in
9 common with her, and that they've lived together, and they
10 hold themselves out as such. I believe the case law would
11 say that she would have to assert that spousal immunity.
12 But I know of no case law saying that he can't assert it,
13 and he would like to. So that is our issue.

14 The other issue, I guess, concerning the -- the new
15 interviews is Mr. Jahru Smith has not heard these
16 interviews. And he says that he wants to hear them.

17 THE COURT: Have they been tape recorded in some way,
18 shape, or form?

19 MR. MORONEY: They have, Your Honor.

20 THE COURT: Okay.

21 MR. MORONEY: And they were provided.

22 THE COURT: All right. Do you intend to call those
23 witnesses to the stand?

24 MR. MORONEY: At this point, we do, Your Honor.

25 THE COURT: Okay. And when do you intend to call

1 them?

2 MR. MORONEY: I believe that they will -- at the
3 earliest would be Tuesday afternoon, possibly into
4 Wednesday.

5 THE COURT: Okay. When -- when you have the
6 opportunity and when you make a definitive decision as to
7 whether you're going to call those witnesses or not, then
8 you can turn over those audio statements to the Defense.
9 whenever you --

10 MR. MORONEY: And they -- they already have been
11 turned over at this point.

12 THE COURT: Okay.

13 MR. MORONEY: They were turned over last week.

14 THE COURT: Okay.

15 MR. KORNFELD: I have them.

16 THE COURT: All right. Good enough. Well, that
17 satisfies that, I believe.

18 And I -- I will tell you that I -- as a -- as a
19 preliminary matter in limine, I'm not going to exclude
20 that testimony. But you can make any contemporaneous
21 objections that -- that you feel are appropriate. You can
22 reiterate those objections that you've made.

23 If there's a question of spousal immunity, then it
24 may be that we need to put her on the stand and proffer,
25 at least, a very small bit of testimony to see what their

1 marital relationship is, if any. Okay.

2 MR. KORNFELD: Okay.

3 (Pause.)

4 MR. KORNFELD: Your Honor, I -- we have another
5 motion. I believe this is a joint motion that
6 Mr. Sullivan is joining me in.

7 MR. SULLIVAN: It is, Your Honor.

8 THE COURT: Okay.

9 MR. KORNFELD: And we would make a motion to
10 sequester, other than the -- the lead -- Officer Newman
11 and -- sequester everybody else, but him and the -- the
12 victim advocate.

13 THE COURT: Okay. Any objection to that from the
14 State?

15 MR. MORONEY: No, Your Honor.

16 THE COURT: All right. Then an order of
17 sequestration is in effect.

18 Gentlemen, what I'll tell you is y'all need to police
19 that order of sequestration. Because I don't -- I don't
20 know who your witnesses are. And they may be walking in
21 the courtroom and seem very, very innocent and I won't
22 know whether they're excluded under the order of
23 sequestration. So y'all will have to police it
24 yourselves. Okay. And you'll just have to advise me if
25 someone comes in the courtroom who -- who is a prospective

1 witness.

2 Yes, Mr. Sullivan.

3 MR. SULLIVAN: Judge, on the sequestration, I think
4 you usually tell them once they testify not to talk to any
5 other witnesses.

6 THE COURT: We can do that.

7 MR. SULLIVAN: Thank you.

8 THE COURT: We can do that. You just -- if you want
9 to do it each and every time someone testifies, then if
10 you want me to tell them that, then you need to remind me
11 to tell them that. Okay.

12 MR. SULLIVAN: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. KORNFELD: I guess I just have questions about
15 the voir dire that you intend to question them about, just
16 witnesses that they know, if they're related to a police
17 officer.

18 Do I need to request these, or do you --

19 THE COURT: No. I have a standard voir dire. And if
20 there's anything specific that you want me to add, then
21 you can always let me know. But it'll be standard. And
22 it will include all of the questions that you're
23 accustomed to. And if there's anything you need, you just
24 need to let me know.

25 MR. KORNFELD: I don't know -- I don't necessarily

1 think this is unique. But I just wanted to add that --
2 the question that you, a family member, a close family
3 friend were a victim of any of the enumerated crimes --
4 the crimes that they're being charged with? And, if so,
5 can they be impartial, if that's the case.

6 THE COURT: Restate the question. I'm sorry. I just
7 don't think I followed it.

8 MR. KORNFELD: The question would be, you, a family
9 member, or a close family friend were a victim of
10 attempted murder. Obviously, that'd be the --

11 THE COURT: Okay. Well, that's fine. I usually make
12 it a little broader and say violent crime.

13 MR. KORNFELD: Okay. That's fine.

14 THE COURT: Okay. Good enough.

15 DEFENDANT JAHUR SMITH: Excuse me, Your Honor. I
16 still --

17 THE COURT: Yes, sir.

18 DEFENDANT JAHUR SMITH: -- got to object to this.
19 Because, one, I can't even go over the jury questionnaire;
20 right? I don't know what to ask my attorney to ask these
21 folks. You know what I'm saying?

22 And -- and, two, right -- I have a right to face my
23 jury of my peers. I can't see them, man. You're going to
24 force me to go through a trial a blind man. And the only
25 thing I'm asking you to do right is to give me a

1 deferment. It won't take no people no more than two and a
2 half weeks to have me some glasses made, if you'd issue an
3 injunction; right?

4 I'd be ready -- I'd be ready to go to trial. As a
5 matter of fact, I'll try the trial myself.

6 THE COURT: Yes, sir.

7 I hear you. And you are protected on the record.
8 Your objection has been preserved for the record. And if
9 you disagree with my decision and you're, ultimately,
10 convicted of the crime, then you can appeal it to the
11 Supreme Court and/or the Court of Appeals --

12 DEFENDANT JAHRU SMITH: No, sir.

13 I don't -- I don't -- I don't want to have to go
14 through that process; right?

15 Because then that'd be primitive damages towards me;
16 right? I want the right to -- I want my right of benefit
17 of the law right now; right?

18 I don't want to wait until after I'm convicted, as
19 you say, and then assert the right. I want to assert the
20 right here and now. Because this matter can be resolved
21 right now; right?

22 The only thing I'm asking is to be provided some eyes
23 so I can see to defend myself. That's the only thing that
24 I'm asking.

25 THE COURT: I understand.

1 DEFENDANT JAHRU SMITH: And, I mean, the -- the
2 Prosecution have waited three years; right? What's --
3 what's a couple more weeks to try this case?

4 THE COURT: I understand, Mr. Smith. And I
5 appreciate your position. Just understand that I'm not
6 convinced that your -- your inability to see well
7 prejudices you legally in this instance.

8 DEFENDANT JAHRU SMITH: Okay. Let me put it to you
9 this way right here then. This is how it prejudices me;
10 right? Because, one, I'm asserting my Sixth Amendment
11 right to defend myself; right?

12 That's how it prejudices me. And I cannot defend
13 myself if I cannot see to read, go over the discovery, or
14 whatever else evidence that the Prosecution might have, or
15 any exculpatory evidence that they might have that's
16 favorable or nonfavorable to me.

17 THE COURT: All right. I understand your position.
18 And again --

19 DEFENDANT JAHRU SMITH: So now you're going to tell
20 me that I've got to get up here and defend myself blind, a
21 blind man got to defend himself not knowing what he -- he
22 defending himself against.

23 THE COURT: Yeah. What I'm telling you is that you
24 have been appointed counsel -- competent counsel --

25 DEFENDANT JAHRU SMITH: And I'm telling you right now

1 I'm asserting my Sixth --

2 THE COURT: Mr. Smith --

3 DEFENDANT JAHRU SMITH: -- Amendment --

4 THE COURT: Mr. Smith --

5 DEFENDANT JAHRU SMITH: -- right --

6 THE COURT: Mr. Smith --

7 DEFENDANT JAHRU SMITH: -- to defend myself.

8 THE COURT: Mr. Smith, if you continue to talk over
9 me, I can assure you it won't profit you in any way.

10 DEFENDANT JAHRU SMITH: It's not profiting me now,
11 sir. And as a matter of fact, what is your name, Your
12 Honor?

13 THE COURT: My name is Rob Stilwell.

14 DEFENDANT JAHRU SMITH: Rob Stilwell, I thought so.
15 Okay.

16 THE COURT: All right. So you have been appointed
17 counsel. So do you want to fire your counsel?

18 DEFENDANT JAHRU SMITH: No. I don't want to fire my
19 counsel. I want -- I want to assert the right to defend
20 myself with the assistance of counsel.

21 THE COURT: What you're saying is legally
22 inconsistent. Okay.

23 DEFENDANT JAHRU SMITH: How is it legally
24 inconsistent?

25 THE COURT: Which suggests to me that you don't know

1 what you're saying.

2 Sir, you have counsel that's been appointed for you.
3 That counsel can assist you in all of the documents that
4 have been provided by the State, and all the documents
5 that have been provided by the Court.

6 Now, your ability to see someone's face does not
7 necessarily compromise your ability to make preemptory
8 challenges.

9 DEFENDANT JAHRU SMITH: Yes, it does.

10 THE COURT: All of your preemptory challenges must be
11 based on race neutral and gender neutral bases.
12 Therefore, I don't understand what it would profit you to
13 see the faces in great detail of the individuals --

14 DEFENDANT JAHRU SMITH: I mean, can't you see faces?

15 THE COURT: To the extent -- to the extent that there
16 is an issue that could be deduced from a facial
17 expression, your attorney, certainly, can see and can tell
18 you if there are issues related to someone's body language
19 or facial expressions.

20 And I'll, also, tell you that you're very, very close
21 to the jury where you're sitting -- where you are now. So
22 if you try real hard, you may be able to see the jurors.
23 Because they're going to be very close to you.

24 DEFENDANT JAHRU SMITH: How can I see? You don't
25 even know my vision -- or I mean ability; right? How you

1 going to tell me I can see when I'm telling you that I'm
2 legally blind, man?

3 Everything that's before me is -- is blurred; right?
4 It's like a TV screen that you can't -- you can't get
5 quite clear; right?

6 THE COURT: It seems to me, Mr. Smith, that if you
7 were sincere and you were making an honest motion before
8 this Court, you would have brought the prescription, and
9 you would have told me what your eyesight is with
10 specificity --

11 DEFENDANT JAHUR SMITH: How can I do that if I'm
12 incarcerated --

13 THE COURT: -- as opposed to just standing up and
14 saying I can't see. You would have armed Mr. Kornfeld --

15 DEFENDANT JAHUR SMITH: Today is my first time seeing
16 my attorney since last year. This is the first time I've
17 seen my attorney since last year; right?

18 He could have -- he could have been here and told you
19 this if he would have come to see me when -- once he found
20 out that a trial date had been set. He knew I was in
21 Anderson County. He could have -- he could have told you
22 this. I tried to call him. I couldn't get in touch with
23 him.

24 THE COURT: Yes, sir, Mr. Kornfeld.

25 MR. KORNFELD: Your Honor, I -- I wrote him. I've

1 got the letters. I've wrote him two or three times. I --

2 DEFENDANT JAHRU SMITH: I only got one letter from
3 him, sir.

4 MR. KORNFELD: I can't say what he got or what he
5 didn't get.

6 THE COURT: Okay.

7 MR. KORNFELD: I can only say what we -- I sent him.
8 I didn't receive a phone call from him. That doesn't
9 necessarily mean he didn't call.

10 THE COURT: Okay. Well, I'm not -- I'm not concerned
11 with all that.

12 MR. KORNFELD: Okay.

13 THE COURT: I'm not concerned with all that --

14 DEFENDANT JAHRU SMITH: Now, you're saying that I --
15 I could have brought you my prescription up in here. I'm
16 saying if I had my prescription and I could have brought
17 it to you, I, certainly, would have done so.

18 THE COURT: Okay. Mr. Smith, I appreciate it. And
19 you've been heard on the record. I respectfully,
20 respectfully and with no animus or ill will towards you, I
21 respectfully deny your motion.

22 DEFENDANT JAHRU SMITH: Well, sir, then in that case
23 then, I want to ask that you recuse yourself from this
24 case. Because I find your impartiality questionable. And
25 that you're using your judgeship for personal gain. It's

1 a vindictive -- it's a vendetta that you're trying to
2 exercise right here.

3 Because what man would take advantage of a blind man?
4 You know what I'm saying? Deny a man that could see --
5 right -- but won't allow him to see.

6 THE COURT: Okay. And I -- again, you are protected
7 on the record in that regard. I hear your motion. I
8 respectfully deny the same.

9 DEFENDANT JAHURU SMITH: I guess you would decide --
10 deny the same. Well, I'm giving you notice of appeal then
11 that -- that I want to file a -- a notice of appeal for
12 you to excuse yourself from this case.

13 THE COURT: All right, sir.

14 Mr. Kornfeld.

15 MR. KORNFELD: Your Honor, I make a motion that the
16 motions be heard from me, not my client going forward.
17 We're not entitled to dual representation.

18 Also, I'm worried about protecting Mr. Smith because
19 I don't know if these motions he's making are being
20 preserved. So to that extent for the ones he's made, I
21 will join in his motion and incorporate it as myself.

22 But moving forward, I need to make these motions.
23 And the representation needs to be from me. Or if he no
24 longer wants me to be his counsel from Mr. Smith, but not
25 both.

1 THE COURT: Okay. I presume that was directed at
2 your client and not me.

3 MR. KORNFELD: That's correct.

4 THE COURT: All right. That's the way I would prefer
5 it. I -- if you are indicating to me that I shouldn't
6 entertain objections or motions from him individually,
7 then I'll do that. I'm trying to be respectful to
8 Mr. Smith is all. That's all I'm trying to do.

9 DEFENDANT JAHRU SMITH: I can't tell it.

10 MR. KORNFELD: Well, let me --

11 DEFENDANT JAHRU SMITH: I really can't tell, because
12 you're being unfair right now.

13 THE COURT: I -- I recognize that's your opinion and
14 that's your perspective. And you're entitled to it.

15 MR. KORNFELD: Your Honor, if my client --

16 THE COURT: Mr. Kornfeld, this is what I'll tell you.
17 I'll hear motions from you. If -- if Mr. Smith wants to
18 extemporaneously stand up in the courtroom and say things
19 in front of the jury that shed a bad light on him, then,
20 you know, I would discourage him from doing so. But, you
21 know, it's his prerogative.

22 But at the point in time when he becomes disruptive,
23 then I won't stop the trial. I'll just remove him from
24 the courtroom. Mr. Smith is -- he's -- he's very adamant
25 about what he says. But I don't see that he's been

1 disruptive --

2 DEFENDANT JAHRU SMITH: Well, Your Honor, I hate to
3 be rude -- right -- and disrespectful; right?

4 THE COURT: Yes, sir.

5 DEFENDANT JAHRU SMITH: But you might as well go
6 ahead and remove me from the courtroom now. Because
7 it's -- it's like I'm not even here. I'm blind, man. I
8 can't fucking see.

9 So you can go ahead and remove me from the courtroom
10 now. And y'all can go ahead and have y'all trial.
11 Because that's what you want to do anyway. You want to
12 railroad me. That's what you want to do. I know -- I
13 know who you are, believe me.

14 THE COURT: Okay.

15 DEFENDANT JAHRU SMITH: You can go ahead and remove
16 me now.

17 THE COURT: Now, I want you to stay, Mr. Smith.

18 Now, if you want to leave, that's entirely, again,
19 your prerogative. I would prefer that you stay. I want
20 you to get a fair trial. And I want --

21 DEFENDANT JAHRU SMITH: How the hell you going to
22 want me to get a fair trial and you won't even postpone
23 this matter for a couple of weeks for me to obtain some
24 prescription eyeglasses -- mandated prescription eye
25 glasses, at that?

1 THE COURT: Thank you, Mr. Smith.

2 I appreciate it.

3 Is the jury out there?

4 DEFENDANT JAHRU SMITH: You can go ahead and take me
5 back to my cell.

6 THE COURTROOM DEPUTY: Have a seat first until he
7 decides what he's going to do.

8 DEFENDANT JAHRU SMITH: He's already done decided
9 what he's going to do.

10 THE COURTROOM DEPUTY: No. He's asked you to stay.

11 THE COURT: I'm not removing you, Mr. Smith. You can
12 stay.

13 DEFENDANT JAHRU SMITH: Why not? I don't want to
14 stay because I'm being denied a fair trial. I don't want
15 to stay here. You're denying me a fair trial.

16 And I hope that if you -- you allow him to remain as
17 my attorney that he filed a motion to the Thirteenth
18 Judicial Circuit for the appellate court about you being
19 removed from this case.

20 THE COURT: Okay. Mr. Kornfeld, do you want to take
21 just a few minutes and talk to Mr. Smith?

22 (WHEREUPON, Defendant Jahru Smith exited the
23 courtroom.)

24 MR. KORNFELD: May we approach?

25 THE COURT: Yes, you may.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Okay. I believe the record is clear with
3 respect to Mr. --

4 Is it pronounced Jahru? Is that how you pronounce
5 it?

6 MR. KORNFELD: That's correct, Your Honor.

7 THE COURT: Mr. Jahru Harold Smith, he's indicated
8 that he does not wish to be present.

9 Just know that I want to keep him here in the
10 Greenville County Courthouse. And Mr. Smith is welcome to
11 participate at any time and at any point in this trial. I
12 am not excluding him from this trial.

13 I think the record reflects very clearly that he
14 elected to leave the courtroom. I think I encouraged him
15 to stay. And I would encourage him to come back as well.

16 So having -- having said that, we are going to
17 proceed with jury selection in this case.

18 So anything additional that we need to put on the
19 record?

20 MR. KORNFELD: Your Honor, we would like -- each like
21 10 strikes. And I don't know if that was ordered by you
22 how many strikes we'd be allowed to. I think we're
23 entitled to it. But I didn't know how many jurors we had.

24 THE COURT: Okay. How many -- how many are on the
25 strike list? Do we have it yet?

1 THE COURT: All right. Any additional motions that
2 we need to put on the record?

3 MR. MORONEY: Not from the State, Your Honor.

4 MR. KORNFELD: None, Your Honor.

5 THE COURT: Any from the Defense?

6 MR. SULLIVAN: None, Your Honor.

7 THE COURT: Okay. Let us just briefly put on the
8 record some of the issues that we discussed in chambers.
9 I know that there is potentially a statement that the --
10 that one of the Defendants may have made to a media
11 outlet. And it may be introduced via videotape. I
12 haven't seen it.

13 Do you have a copy of it?

14 MR. MORONEY: I do, Your Honor.

15 And it's my understanding --

16 And, Mr. Kornfeld, correct me if I'm wrong.

17 -- that there will be a stipulation to the video.

18 THE COURT: Okay.

19 MR. MORONEY: But we do have a copy.

20 THE COURT: All right. And you stipulate to its
21 authenticity; is that correct?

22 MR. KORNFELD: That's correct, Your Honor.

23 THE COURT: Okay.

24 MR. KORNFELD: I, also, understand that it would
25 be -- I guess, briefly, I think we agreed after he's

1 handcuffed that the video will end, I believe.

2 Is that correct?

3 MR. MORONEY: That is correct, Your Honor.

4 THE COURT: All right. If you will mark it as a
5 State's Exhibit. And I will review it to ensure that in
6 keeping with Jackson v. Denno, it is at a threshold freely
7 and voluntarily given, that it's admissible.

8 I, also, understand that there may be testimony from
9 an attorney of Mr. Jahru Smith, who ostensibly or
10 allegedly had contact and communications with law
11 enforcement. And inasmuch as that may be construed to be
12 a statement, I believe what we've determined is before she
13 is put on the stand that, at least, a small portion of her
14 testimony will be proffered so that we can make a
15 determination as to whether it's privileged, and a
16 determination as to whether under Jackson v. Denno it
17 amounts to a statement from the Defendant. And, if so,
18 whether it is, again, at a threshold freely and
19 voluntarily given by the Defendant.

20 Okay. So are there any -- having said that, if
21 you'll mark that. And then if you'll give it to me, I
22 will look at it. And then after we come back on the
23 record after lunch, if there's no other issues that need
24 to be discussed related to that video, I'll make a ruling
25 under Jackson v. Denno.

1 Any other issues we need to discuss?

2 MR. MORONEY: None from the State, Your Honor.

3 I did want to make you aware at the outset, although
4 it's not relevant at this point, that both Defendants in
5 this case have been served with life without parole
6 notice, just for your information.

7 THE COURT: Sure. Okay. And I will under the --
8 under the circumstances, given that we've impanelled the
9 jury, I will revoke the bond, respectfully.

10 Now, Mr. Kornfeld, with respect to Mr. Jahru Smith, I
11 have not excluded him from the courtroom.

12 MR. KORNFELD: I understand.

13 THE COURT: He is welcome to come back any time he
14 wants to, and to lend whatever assistance to you and his
15 defense that he wants to. You're welcome to have a
16 conversation with him over lunch to see if he wants to
17 come back. That's entirely within his discretion.

18 When we come back, I don't know if you want me to
19 give the jury any type of charge, or whether you just want
20 me to ignore it. But I will defer to you in that regard.
21 You tell me what you want me to do. Okay.

22 MR. KORNFELD: Okay.

23 THE COURT: Good enough. I'll see y'all back here at
24 2:00.

25 Yes, sir, Mr. Sullivan.

1 MR. SULLIVAN: Judge, as a matter of housekeeping,
2 could we refer to them as Jahru and Bobby? They're both
3 Mr. Smith, Jahru Smith, Bobby Smith.

4 THE COURT: Sure.

5 Are you comfortable doing that, Mr. Moroney, and,
6 Mr. Weston? Do you think you can keep that straight?

7 MR. MORONEY: I think I can. Is it fine to use
8 their last names as well sometimes, Jahru Smith and Bobby
9 Smith?

10 THE COURT: Yeah.

11 And I don't want to tell you how to talk and present
12 your case. But I think that probably is the better --
13 that is a better practice to identify them with
14 particularity. Because they're going to have to consider
15 the indictments with particularity.

16 So if, at any point in time, there is a question
17 posed or an answer and you don't feel like it identifies
18 either one with particularity, just stand up and ask
19 that -- that whoever has uttered the name, utter it in
20 full. Okay.

21 MR. SULLIVAN: (Mr. Sullivan nodded.)

22 THE COURT: Good enough.

23 Anything else?

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. We'll see y'all at 2:00.

1 (WHEREUPON, State's Exhibit Nos. 44, 45, 46, 47, 48,
2 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,
3 63, 64, 65, 66, 67, 68, and 69 were marked for
4 identification only.)

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: We're back on the record.

7 I did have the opportunity to review the WYFF video
8 identified as State's Exhibit No. 44. After having
9 reviewed the same, I do find that there was not a
10 custodial interrogation. He was not in the custody of law
11 enforcement. And he freely and voluntarily offered the
12 statement to a reporter.

13 Therefore, I think it becomes -- it is outside of the
14 constraints or purview of Jackson v. Denno. And even if
15 under any argument that it were, it is, clearly, offered,
16 freely and voluntarily. So at a threshold, it's
17 admissible.

18 Do we have all our jurors, or are we still waiting on
19 them?

20 THE BAILIFF: She was bringing them up as you came
21 in.

22 THE COURT: All right. Just so you know, I received
23 a phone call from the jury coordinator. And there are
24 some -- there are some juror issues that we're going to
25 have to work through. We'll work through them as we go.

1 Mr. Richardson, who is the second alternate, has an
2 MRI tomorrow morning. So we're going to let him go to his
3 MRI tomorrow morning. So I don't know how long that will
4 take.

5 And then, I think it's Mr. Barbre, if I'm not
6 mistaken, who is Juror #175, has children issues tomorrow
7 afternoon.

8 Now, tomorrow morning, we may have to make a decision
9 as to whether we excuse him. Apparently, he's got to pick
10 up children at 2:30, and needs to be gone for the
11 remainder of the afternoon as his wife is out of town.

12 So we're just going to have to talk through that and
13 determine how we're going to handle that at the
14 appropriate time. I just give you a heads up about that
15 because we may just have to juggle a few jurors. Okay.

16 MR. MORONEY: Yes, Your Honor.

17 THE COURT: Are they here?

18 THE BAILIFF: Everyone is here.

19 MR. KORNFELD: Your Honor.

20 THE COURT: Yes, sir.

21 MR. KORNFELD: I spoke with Jahru Smith, my client,
22 at lunch. And he now says that you misunderstood him, I
23 guess, I concluded. But he wants to represent himself and
24 assert his Sixth Amendment right, and have me act as
25 standby counsel. Those aren't the exact words that he

1 said.

2 THE COURT: All right.

3 MR. KORNFELD: But he, also, brought up the issue
4 concerning his glasses again, and the attempts he's made
5 to try to get a new pair of glasses. But it's probably
6 appropriate to have him tell the Court.

7 THE COURT: Yeah, yeah. Bring him in. Bring him in.
8 (WHEREUPON, Defendant Jahru Smith entered the
9 courtroom.)

10 THE COURT: All right. Mr. Smith, do you have
11 something to address with the Court, sir?

12 DEFENDANT JAHRU SMITH: Yes, sir. As I previously
13 informed the Court that I'd like to assert my Sixth
14 Amendment right to self-representation with the assistance
15 of counsel.

16 THE COURT: Okay. You want Mr. Kornfeld to be
17 standby counsel and assist you in your defense in this
18 case, sir?

19 DEFENDANT JAHRU SMITH: That's right. And I'm going
20 to try the case.

21 THE COURT: Okay. Good enough.

22 Mr. Smith, how far did you go in school, sir?

23 DEFENDANT JAHRU SMITH: I completed my GED.

24 THE COURT: Okay. And how old are you?

25 DEFENDANT JAHRU SMITH: I'm 54 years old.

1 THE COURT: What was your last gainful employment,
2 sir?

3 DEFENDANT JAHRU SMITH: BMW.

4 THE COURT: Okay. Have you ever been diagnosed with
5 any type of mental illness or infirmity, sir?

6 DEFENDANT JAHRU SMITH: No.

7 THE COURT: Okay. And, Mr. Kornfeld, I'll ask you,
8 have you been able to discuss intelligently this case with
9 your client, Mr. Smith?

10 MR. KORNFELD: Yes, Your Honor.

11 THE COURT: And have you noted any mental illness or
12 infirmity that was an impediment to your communications or
13 his ability to understand?

14 MR. KORNFELD: No, Your Honor, not -- not understand,
15 I think his IQ may be average, at best.

16 THE COURT: Okay. And, Mr. Smith, it is, certainly,
17 your Constitutional right to represent yourself. And I'm
18 comfortable with you doing that.

19 But you do understand that if you elect to represent
20 yourself, then you do assume certain risks. Because an
21 attorney can aid you as a consequence of his experience,
22 expertise, and education regarding the law.

23 Do you understand that?

24 DEFENDANT JAHRU SMITH: Yeah. I understand that
25 he -- I can be able -- I might be able to confer with him.

1 THE COURT: Yes, sir.

2 DEFENDANT JAHRU SMITH: And continue trying the case.

3 THE COURT: Yes, sir.

4 DEFENDANT JAHRU SMITH: As I informed you before, it
5 is impossible for me to do that without my mandate
6 prescription eyeglasses. And the fact of the matter is
7 the new evidence that the Prosecution has turned over to
8 my attorney, I have not had the opportunity to review, as
9 well as other material in the case.

10 THE COURT: Okay. You're talking about statements
11 from witness; is that correct?

12 DEFENDANT JAHRU SMITH: Statements from witnesses,
13 recordings, whatever it is.

14 THE COURT: All right. Mr. Smith, I'll allow you to
15 represent yourself. I'm not going to continue the case.
16 Okay. You can -- you can use Mr. Kornfeld to assist you
17 in the review of documents. And we'll take our time.

18 Any document that's turned over --

19 DEFENDANT JAHRU SMITH: No, sir. I must object here,
20 sir, and ask the Court to recognize my objection and note
21 my exception.

22 THE COURT: Yes, sir, I do.

23 DEFENDANT JAHRU SMITH: The Court's impartiality in
24 the matter is questionable. And your judgment is bias and
25 arbitrary. And I believe that you're using your judgeship

1 for personal gain.

2 And with that right there, I declare that this is no
3 fair trial; right? And I don't have the opportunity to
4 rightfully defend myself as a citizen of the United
5 States.

6 THE COURT: Okay.

7 DEFENDANT JAHRU SMITH: Because you're depriving me
8 of that right.

9 THE COURT: I understand your position, sir. And I
10 respect your position.

11 DEFENDANT JAHRU SMITH: And so, therefore, you can
12 proceed on and try me without my representation and
13 without counsel's representation. Because that's what
14 you're doing anyway. You're depriving me of the right to
15 seek.

16 THE COURT: Okay. Are you ready to proceed?

17 DEFENDANT JAHRU SMITH: I'm ready to get up out of
18 here.

19 You come on, too, Mr. Kornfeld.

20 THE COURT: Again, I encourage you to stay,
21 Mr. Smith.

22 DEFENDANT JAHRU SMITH: For what? How am I going to
23 stay? Man, I'm blind. How in the hell you going to allow
24 me to represent myself and I'm blind? But I'm telling you
25 I can see if you allow me time to get my prescription

1 eyeglasses. That's not fair. That is not fair at all.

2 THE COURT: Anything else, Mr. Smith?

3 DEFENDANT JAHRU SMITH: Yes. I'm saying my counsel
4 and me, we're leaving. Y'all go ahead and try the case.
5 That's what you're doing anyway. I ain't got no counsel.

6 THE COURT: I'm directing Mr. Kornfeld to stay and to
7 represent you.

8 DEFENDANT JAHRU SMITH: Well, I'm directing him to
9 not represent me. I'm representing myself.

10 (WHEREUPON, Defendant Jahru Smith exited the
11 courtroom.)

12 THE COURT: Okay. Y'all can shut that door.

13 THE COURTROOM DEPUTY: Yes, sir.

14 THE COURT: All right. Are you ready for the jury?

15 MR. MORONEY: The State is prepared, Your Honor.

16 THE COURT: Okay. Good enough.

17 All right. Just to be very clear about matters, I'm
18 ordering, Mr. Kornfeld, for you to continue to represent
19 Mr. Smith in this proceeding. I recognize that he has
20 made a motion to have you removed as counsel or to
21 represent himself.

22 However, he's elected to leave the courtroom. I
23 don't want him to be prejudiced by that decision any more
24 than is absolutely necessary. I know that you have
25 prepared this case. You've had the opportunity to discuss

1 the same with him. And, inasmuch, he deserves
2 representation, and I'm going to leave you on the case. I
3 think that's appropriate under the circumstances.

4 And I'll state clearly for the record in case I
5 haven't articulated clearly enough, because Mr. Smith,
6 essentially, didn't want to have a discussion or to
7 articulate his position clearly. He says he couldn't see.
8 Well, that may or may not be true. I don't know that. I
9 don't have any type of prescription which would suggest to
10 me that he is blind, that he's legally blind, or that his
11 ability to see is so compromised that he can't function.

12 Now, that very well may be the case. But I don't
13 have anything that demonstrates that, other than his
14 representation. So I -- I don't -- I don't have anything
15 in the record substantively which demonstrates by a
16 preponderance of the evidence, clear and convincing
17 evidence, or beyond a reasonable doubt, or even rises to
18 probable cause that he is legally prejudiced by not having
19 glasses today.

20 And any prejudice that he may suffer individually
21 from having his vision compromised is compensated by
22 having an attorney, an able-bodied attorney, who is able
23 to review documents and conduct the trial of this case.

24 Again, he's elected to excuse himself from the
25 courtroom, which is unfortunate. I wish he wouldn't. I'd

1 rather put up with his antics than have him leave the
2 courtroom. But he made that decision.

3 And I'm not going to continue the case simply because
4 he makes a representation that he can't see. If that were
5 the case, then people with handicaps would never -- they
6 could never go the trial. And I'm not convinced, again,
7 that he suffers from a definable handicap, because he
8 hasn't given me any evidence to convince me of the same.
9 It's simply a bald-faced assertion. It may be true or not
10 be true. But it isn't sufficient in the court of law.

11 Are we ready for the jury?

12 MR. MORONEY: Yes, Your Honor.

13 Briefly, if we may approach?

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Bring the jury in.

17 (WHEREUPON, the jury came into open court at
18 approximately 2:18 p.m.)

19 INTRODUCTORY REMARKS

20 THE COURT: All right. Welcome back, ladies and
21 gentlemen.

22 Thank you for being on time.

23 I do appreciate it.

24 We're about to start the trial of the case. I always
25 find before we start the trial of a case, it's helpful for

1 All right. So, ladies and gentlemen, you know what I
2 know, high 20s. So after talking to the attorneys this
3 morning, we thought that maybe we could be done with the
4 presentation of the evidence by Wednesday. If we're done
5 with the presentation of evidence by Wednesday, I would
6 imagine we'd come back on Thursday and try to get to
7 argument and charge. That's just a wild guess. Okay.
8 Because I don't know how long these witnesses are going to
9 take. But that's kind of what we're shooting for.

10 All right. Good enough.

11 Mr. Moroney, your argument, sir.

12 MR. MORONEY: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 OPENING STATEMENTS

15 MR. MORONEY: Ladies and gentlemen, this case is
16 about Ms. Shameese Nicole Logan, the victim of a violent
17 armed robbery and murder that occurred here in Greenville
18 County. And it was committed by the two Defendants in
19 this case, Mr. Bobby Smith, seated here in this chair with
20 the black jacket on, and Jahru Smith, his brother, who's
21 not in the courtroom at the present time.

22 And let me address this from the outset to get it out
23 there in the open. Ms. Logan, the victim in this case,
24 sold drugs. And that in no way lessens or changes the
25 fact that she was the victim of a violent armed robbery

1 and murder that took place here in Greenville County and
2 was committed by the Defendants in this case.

3 What we intend to prove in this case is that Bobby
4 Smith and Jahru Smith conspired together to rob the victim
5 of her drugs and her money by luring her over there to the
6 residence they were at at the time, their mother's
7 residence, under the guise of her selling them some crack
8 cocaine. But they didn't intend on purchasing any,
9 rather, they intended on robbing her.

10 So on February 3rd, 2015, at about approximately
11 9:40 p.m., Ms. Logan arrives at [REDACTED] Avenue here in
12 Greenville County with the understanding she was about to
13 sell some crack cocaine. When she pulls into the gravel
14 driveway there at [REDACTED] Avenue -- and this is in a
15 residential area, houses in close succession, houses
16 across the street, a normal neighborhood.

17 As she pulls into the gravel driveway, she's met by
18 Bobby Smith and Jahru Smith. However, when she's seated
19 in that driver's seat of her car, Jahru Smith presents a
20 handgun. And during the course of the armed robbery, he
21 fires that handgun at close range five times, striking her
22 all five times. And she dies quickly as a result of those
23 wounds. The driver's side window is shot out of that car
24 as well.

25 And it's at that point that Bobby and Jahru Smith get

1 to work. And they begin robbing her person and the
2 interior of her car of drugs, money, her identification,
3 phone, and her credit card.

4 And after the mission is complete, Jahru Smith drags
5 her body out of the driver's seat onto the driveway. And
6 Jahru, along with the help of Bobby Smith, began dragging
7 her body up to the side of the residence where this just
8 occurred. It's darker over there, more concealed than the
9 foot of the driveway where all this just transpired.

10 And once she's been dragged over there, Jahru Smith
11 then moves the vehicle -- the victim's vehicle right next
12 to her over there in the darkness between [REDACTED]
13 Avenue and [REDACTED] Avenue. And Jahru Smith and Bobby
14 Smith together begin loading her lifeless body in the back
15 right seat of that car, presumed, to get rid of her and
16 the car.

17 However, what they didn't know is the next door
18 neighbor, when they heard five gunshots just 10 yards away
19 from their house, called 911 when they heard those shots.
20 However, they got scared when they called 911 and they
21 hung up the phone.

22 So as far as 911 dispatch knew, all they were seeing
23 was a 911 hang up call, which is a rather mundane and
24 routine call for law enforcement. However, they
25 dispatched some deputies to respond not knowing anything

1 of what was going on with the 911 hang up.

2 So deputies respond to the scene. And as they pull
3 into the neighborhood, they pull up in front of [REDACTED]
4 [REDACTED] Avenue where this violent robbery and murder
5 just took place unbeknownst to them.

6 And as they pull up, they're not focusing on [REDACTED]
7 [REDACTED], they're looking at [REDACTED] about to make
8 contact with that person who dialed 911 and make sure
9 everything is okay. And as they pull up and park, of
10 course, Bobby Smith and Jahru Smith is there in the middle
11 of loading Ms. Logan's body into the car thinking that
12 that deputy is there for other reasons.

13 As a result of that, Jahru takes off running on foot,
14 runs in the backyard and flees with drugs and money,
15 ultimately, stashes the murder weapon in a shed, calls to
16 get a ride, and gets out of there heading to Anderson
17 County, where we don't hear from him for several days.
18 Bobby Smith proceeds to walk inside the house, closes
19 the door. And he's the only one in the house at the
20 time.

21 So the deputy makes contact next door at [REDACTED],
22 still knowing nothing. When he speaks to Kersandra
23 Wright, the neighbor, she tells the deputy, I just heard
24 some gunshots minutes ago. You might need to check that
25 out.

1 He walks over to investigate and finds the crime
2 scene and finds Ms. Logan laying on the ground with her
3 feet partially loaded into the back right side of the car
4 with the back right door open and the driver's door open.
5 And she's lying there having been shot multiple times.
6 And inside the car is, clearly, blood on the driver's
7 seat, multiple bullet holes. And they call for additional
8 deputies and investigators to respond.

9 Folks, we intend to prove all this to you and prove
10 this case to you through the presentation of testimony
11 through witnesses, and multiple articles of evidence,
12 evidence that will include crime scene photos, and
13 physical articles of evidence, crime scene photos that
14 will depict this scene that happened in this driveway area
15 in detail.

16 You will, also, see photos of the inside of [REDACTED]
17 [REDACTED] Avenue. You may wonder why that's relevant.
18 Well, that becomes relevant because, as the investigation
19 begins and law enforcement searches the inside of that
20 house, inside the freezer is Ms. Logan's cell phone in an
21 attempt to hide it. And in the toilet are Ms. Logan's
22 South Carolina driver's license and her credit card in an
23 attempt to be flushed, it was unsuccessful and are
24 floating at the bottom of the bowl.

25 You'll, also, see physical items of evidence from

1 inside that home, articles of clothing that Bobby Smith
2 was wearing that night when this all took place. Those
3 articles of clothing become important because they had
4 blood spots on them that after DNA testing come back to
5 Ms. Shameese Logan.

6 And, finally, with respect to inside the house and on
7 the person of Bobby Smith, you'll see some money, the
8 blood money. And I don't say that for dramatic effect as
9 a prosecutor up here, those words. When the money was
10 removed from his pocket, it, literally, had dried blood on
11 it, which after DNA testing, belonged to the victim,
12 Ms. Shameese Logan.

13 After that, Bobby Smith is charged with murder, armed
14 robbery, and possession of a weapon during a violent
15 crime.

16 Ten days later, Jahru Smith, who's not in the
17 courtroom today, comes back into the picture when he calls
18 a local news station, Channel 4, and on camera admits to
19 shooting the victim, and admits to murder on the video,
20 and says that the reason he's coming forth is because his
21 brother is in jail, his brother didn't, actually, pull the
22 trigger and he wants to come forward. As a result of that
23 admission, he's charged as well with the same charges.

24 And five days later after that admission, he, also,
25 directs law enforcement to another article of evidence

1 that we'll address down the line.

2 Folks, I'll address this very briefly. At the
3 closing of the case, the Judge will charge you on the law.
4 But you may be wondering in a situation where I just told
5 you Jahru admitted that he, actually, fired the weapon,
6 why would Bobby Smith be charged with the same charges?
7 Specifically, there's a theory, the hand of one is the
8 hand of all, that we recognize in South Carolina.

9 And, essentially, if you conspire, say, to rob
10 somebody and you have the same common purpose with intent
11 to rob that person and as a result, they end up dead, the
12 person who didn't pull the trigger is just as guilty.
13 It's just as if their hand was on the gun. It's very
14 simply stated. In case that was crossing your mind, I
15 wanted to address it.

16 As Prosecutors of the State, we're required to prove
17 each element of every charge beyond a reasonable doubt.
18 And I submit to you that at the closing of this case,
19 after having heard all the evidence and testimony, that
20 you'll be firmly convinced of both Bobby Smith and Jahru
21 Smith's guilt with respect to all three charges.

22 And during my closing argument at the end of this
23 trial, I'll be asking you to find both Defendants, Bobby
24 Smith and Jahru Smith, guilty of murder, armed robbery,
25 and possession of a weapon during a violent crime.

1 Thank you.

2 THE COURT: Mr. Kornfeld.

3 MR. KORNFELD: Ladies and gentlemen, my name is Alex
4 Kornfeld. And I represent Jahru Smith. I proudly
5 represent Jahru Smith, who, also, as Mr. Moroney stated,
6 has been charged with murder, armed robbery, and
7 possession of a weapon during the commission of a violent
8 crime.

9 The important question in this case -- or two
10 questions in this case are whether Shameese Nicole Logan
11 was murdered? And if so, by whom she was murdered by?
12 That is the most important questions that we have in this
13 case.

14 On February 3rd, 2015, Shameese Nicole Logan
15 tragically died and was found by an officer that came to
16 the scene. At the scene of the residence, Bobby Smith was
17 inside the home. A Kel-Tec nine-millimeter was found in
18 the vehicle, the Chrysler 300. There was gunshot residue.
19 There was blood, ID in the toilet, and a cell phone in the
20 freezer.

21 And as Mr. Moroney already stated, Jahru Smith went
22 on the news and stated not that he committed murder,
23 that's not what he said. What Jahru Smith said was
24 there's more to this story. I did this. Why in the world
25 would someone call Tim Waller or go on the news? I guess

1 he just went on the news and stated this. It didn't
2 happen.

3 Well, ladies and gentlemen, people say things that
4 they didn't do all the time to try to protect other
5 people. And that's not just something that's said in
6 gest. That's why we have forensics. And that's why we
7 look at everything together and make a decision at the
8 end.

9 I know Judge Stilwell told everybody, wait until the
10 end until we make a decision. But thanks to social media,
11 I know that the court of public opinion doesn't do that,
12 and I'm glad we're not there today. But I really request
13 for the benefit of justice that you wait until the end to
14 discuss the case with one another and deliberate.

15 It's no surprise to me that there's some of you on
16 the jury here probably today that think, why am I here?
17 He's been charged. He's guilty. That's not what we're
18 here to do today. Because you're on the jury, this isn't
19 a jury of public opinion.

20 Now, when you look at things, as he stated, the
21 burden of proof is on the State. The full burden, that
22 doesn't waiver. So if there's questions that you have at
23 the end of this case, which you will, the burden is not on
24 Mr. Jahru Smith.

25 If you think to yourself, well, I didn't quite

1 understand that issue so -- so -- and they didn't tell us
2 about it, meaning the Defense, that is incorrect. The
3 burden is on the State. And they have to prove it beyond
4 a reasonable doubt, meaning that you need to be firmly
5 convinced. If there's reasonable doubt, you think about
6 it, hey, I've got real doubts that Jahru Smith, actually,
7 committed this murder, then you come back with a verdict
8 of not guilty.

9 You'll see that there's different discrepancies in
10 the -- the evidence. And I will submit to you that the
11 most important piece of evidence that the State will have
12 against Jahru is that his -- his statement that he did
13 this to protect.

14 When you look at the video, please, watch it. You'll
15 get it back in your jury room. The thickness of his
16 bottle cap glasses that are broken by the side. His age,
17 look at his speech and his cadence.

18 Ladies and gentlemen, at the end of this case, you
19 won't be firmly convinced that Jahru Smith was the one who
20 pulled the trigger. You won't be convinced that he was
21 the one that committed the murder. Because, ladies and
22 gentlemen, Jahru Smith did not commit this murder.

23 Thank you.

24 THE COURT: Yes, sir.

25 MR. SULLIVAN: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. SULLIVAN: Mr. Moroney.

3 Mr. Weston.

4 They've got me mic'd up because I have a low voice.

5 And I'm trying to work this thing.

6 I'm Tim Sullivan. And I have the privilege of
7 representing Bobby Smith in this case.

8 I'm not going to talk as long as the other guys.
9 They've covered it pretty much. This is going to be a
10 very unusual case. Because at the end, you will hear in
11 their own voices what happened. It's not going to be a
12 guessing match. They're going to have 20 something
13 witnesses. They're aren't going to be but two people who
14 will tell you what happened.

15 If you think about that, you'll find one of the
16 persons guilty of murder and the other guilty probably of
17 accessory after murder. Nobody has mentioned that. There
18 can be a murder -- I have a friend that commits a murder.
19 I'm not involved. He says, help me clean up. If I do
20 that, I'm guilty of accessory after murder.

21 So when you hear the evidence, you'll have several
22 verdicts that you can come back with, not guilty, guilty
23 of various crimes. There's six. They mentioned three on
24 Jahru Smith, and three on Bobby. But there could be a
25 fourth one on Bobby that you'll get to consider. Because,

1 like I say, you will know from the very people there what
2 happened.

3 Thank you.

4 THE COURT: All right. Mr. Moroney, you may call
5 your first witness, sir.

6 MR. MORONEY: Your Honor, the witness issue, I think
7 we'll just address that briefly, make sure the courtroom
8 is cleared of the appropriate witnesses.

9 THE COURT: Yes.

10 MR. MORONEY: The State calls Ms. Anika Carter.

11 THE CLERK: Ms. Carter, if you'll, please, come
12 forward.

13 Pause at the end of the bench.

14 Place your left hand on the Bible and raise your
15 right hand.

16 WHEREUPON,

17 ANIKA RASHON CARTER,

18 after first having been duly sworn, testified as follows:

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you.

21 Please be seated.

22 THE CLERK: Ma'am, will you, please, state your name
23 for the record?

24 THE WITNESS: Anika Rashon Carter.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MORONEY:

Q Hi, Ms. Carter.

And I'm just standing back here so everyone can hear me.

But how did you know Ms. Logan?

A Well, we met each other in, like, a group home in, like, 2005. And ever since that, we been like peanut butter and jelly, so.

Q Would you consider her a very close friend?

A More a sister.

Q And when was the last time that you saw Ms. Logan?

A It might was maybe -- maybe, like, a week before then. Because my mom, she had knee surgery in Greenwood. So I had to go home and make sure she didn't be moving all around, and stuff.

Q And what did you know Ms. Logan to do for a job, or to make money?

A Well, she -- I know she -- she liked to go do rap. She did music. And on the side, she had a little money hustle, which was selling drugs.

Q Was there something in particular that she sold or --

A Well, basically, it was crack cocaine. But her and -- well, Bobby relationship was different, because he was selling her pain pills, too. So it was, like, a trade

1 for trade and -- or, you know.

2 Q So you were familiar -- you had ridden along with
3 Ms. Logan at times when these deals were committed?

4 A For about seven or eight years.

5 Q Had you ever been over to [REDACTED] Avenue before?

6 A A lot of times.

7 Q A lot of times. And what was the reason that she was
8 going over there?

9 A Well, on that particular night, I have no idea. But
10 most of the time, it was because of Bobby would call her
11 cell phone and, you know, told him -- told her that he
12 needed her. And she already knew what -- you know, what
13 the deal was.

14 Q In the course of her work, did you ever know her to
15 protect herself in any way, or carry anything on herself?

16 A Well, to me, she wasn't the type of person that got
17 into all that, you know. So, you know, she -- she did
18 have -- she do have -- I have seen her with a pistol.

19 But, like I said, I don't know -- for that night, I
20 don't know, you know.

21 Q When you had been with her previously, did she ever
22 have a pistol with her?

23 A Yes. But it was in the glove compartment or you
24 really don't see it, unless you go in her glove
25 compartment. It wasn't, oh, I carry my pistol on my hip

1 and show and tell. It was concealed. It was tucked away.

2 Q Did she ever carry it in any other place inside the
3 car that you're aware of?

4 A No.

5 Q Did she ever carry it in the center console of the
6 vehicle?

7 A Yeah. That's what I mean, like, the middle piece.
8 That's what I call the glove compartment in the car.

9 Q And have you ever been with Ms. Logan during some of
10 these transactions where you ever saw a violent streak in
11 her?

12 A No, no.

13 Q And never any time where she had to pull this weapon?

14 A No.

15 Q Did you ever see her use the weapon?

16 A No.

17 Q Did you ever see her do anything with the weapon,
18 other than transport it inside her car?

19 A No.

20 MR. MORONEY: Thank you.

21 Please answer any questions the Defense may have for
22 you.

23 CROSS-EXAMINATION

24 BY MR. KORNFELD:

25 Q Ms. Carter, Ms. Logan didn't tell you as soon as you

1 got in the vehicle, hey, I've got a gun on me?

2 A Yes, sir, she would.

3 Q Every time you got in the vehicle, she'd say, I've
4 got a gun on me?

5 A If we was riding together, I mean, if she get pulled
6 over, it's the hand of one the hands [sic] of all. So she
7 would -- we like sisters. So she would tell me it was
8 there, you know.

9 Q Why would -- did she not have a concealed weapons
10 permit?

11 A No.

12 Q Do you know if she was unable to have a concealed
13 weapons permit?

14 A No.

15 Q You wouldn't know if she didn't tell you and she had
16 her weapon on her, would she -- would you?

17 A No.

18 MR. KORNFIELD: No further questions.

19 CROSS-EXAMINATION

20 BY MR. SULLIVAN:

21 Q You weren't with her every time she made a drug deal,
22 were you?

23 A Not every time.

24 Q So you don't know when she took the gun out or not,
25 do you?

1 A No, sir. Because, like I said, I can't testify for
2 that night.

3 Q Or any night that you weren't with her?

4 A Yes, sir. But he asked me was I in the -- when I'm
5 in the car.

6 Q Okay. But I'm asking you, she made drug deals
7 without you being in the car, didn't she?

8 A Well, sir, then she wouldn't have to tell me if I'm
9 not in the car.

10 Q So you don't know if she had the gun out when you
11 weren't with her?

12 A If -- if I was with her for, say, five days out of
13 seven days and for five days, it's in there, it's kind of
14 skeptical that for those two days that she would just have
15 it out riding around.

16 Q So you're guessing. You guessed that she didn't have
17 it out when you weren't there; right?

18 A Yeah. I said I can't testify about that night, sir.
19 I don't know. I wasn't there. When I'm not there, I
20 don't know. But I just testified from when I was there.

21 Q That's what I asked you. When you weren't there, you
22 don't know?

23 A Nobody knows, sir.

24 MR. SULLIVAN: She did.

25 Thank you.

1 THE COURT: All right. Any redirect, sir?

2 MR. MORONEY: No, Your Honor.

3 THE COURT: All right. Thank you, Ms. Carter.

4 I appreciate it, ma'am. You may step down.

5 And, Ms. Carter, don't discuss your testimony with
6 anyone that has not yet testified.

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 You may call your next witness.

10 MR. MORONEY: Your Honor, the State calls Ms. Teresa
11 Logan.

12 THE CLERK: Ms. Logan, please, come forward.

13 And if you'll, please, pause at the end of the
14 bench.

15 Place your left hand on the Bible and raise your
16 right hand.

17 WHEREUPON,

18 TERESA LANG,

19 after first having been duly sworn, testified as follows:

20 THE CLERK: Thank you.

21 Please be seated.

22 And would you, please, state your name for the
23 record?

24 THE WITNESS: Teresa Lang.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MORONEY:

Q Ms. Lang, could you, please, state your relationship with Shameese Logan?

A We had a good relationship.

Q And, specifically, family-wise, who are you to her?

A I'm her mother.

Q And do you recall the last time you saw your daughter?

A The last time I saw my daughter was February 3rd, 2015, at approximately around, like, 6:00 or 6:30.

Q And can you describe what happened that night?

A She came to the house. And we was joking around about, you know, how she used to act when she was little.

And she was playing with our dog. And she was playing around with him. And we sat in the living room. And she said something about she had to go to some type of celebration of one of her friends that was celebrating something. And she pulled out some cash. And to me, it was, like, around like 700 or 800 bucks. And --

Q Was she counting that money there inside the house?

A Yes. She counted her money, yes, yes, sir.

Q So it would be an estimate. You didn't count along with her. But what you're --

A The way it looked, it looked like it was about, like,

1 700 or 800.

2 Q Okay. And what happened after that?

3 A She got a phone call. I guess it was one of her
4 friends, like, it was -- I think it was Monique Brooks.
5 Because that's who she supposed to be meeting up, you
6 know, celebrating her brother's birthday. And she said,
7 Momma, I talk to you later. I'm going to go.

8 Q And that was the last time that you saw your
9 daughter?

10 A That's the last time I saw my daughter alive, yes.

11 MR. MORONEY: Thank you.

12 Please answer any questions the Defense may have for
13 you.

14 MR. KORNFELD: No questions, Your Honor.

15 THE COURT: Mr. Sullivan?

16 MR. SULLIVAN: No questions.

17 THE COURT: All right. Ms. Lang, thank you for being
18 here.

19 Ma'am, you may step down.

20 Please don't discuss your testimony with anyone who's
21 not yet testified.

22 THE WITNESS: Okay.

23 THE COURT: Okay. Thank you.

24 You may call your next witness.

25 MR. WESTON: Your Honor, the State calls Ms. Brittany

1 Norton.

2 THE CLERK: Ms. Norton, please, come forward.

3 If you would, please, pause at the end of the bench.

4 Place your left hand on the Bible and raise your
5 right hand.

6 WHEREUPON,

7 BRITTANY NORTON,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Would you, please, state your name for the record?

12 THE WITNESS: Brittany Norton.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. WESTON:

16 Q Good afternoon, Ms. Norton.

17 How are you?

18 A I'm good.

19 How are you?

20 Q I'm fine.

21 Thank you.

22 And I want you to speak up, and speak in the
23 microphone so that the last juror down here on this end
24 can hear you. Okay.

25 A Okay.

- 1 Q All right. Where do you live, Ms. Norton?
- 2 A I live in Simpsonville, [REDACTED].
- 3 Q And how old are you?
- 4 A I'm 26.
- 5 Q Are you working?
- 6 A I do.
- 7 Q Where do you work at?
- 8 A I work at Embassy Suites and Sky Lounge.
- 9 Q And just to kind of cut straight to it. You knew
- 10 Ms. Shameese Logan; is that correct?
- 11 A Yes, sir.
- 12 Q How long had you known her?
- 13 A About two years.
- 14 Q And how would you characterize y'all's relationship?
- 15 A We were dating.
- 16 Q Okay. And about how long did y'all date?
- 17 A About a year or so, a little over a year.
- 18 Q So you knew her pretty well?
- 19 A Very well.
- 20 Q Okay. And do you know what Ms. Logan did to earn a
- 21 livelihood?
- 22 A Yes, sir.
- 23 Q What did she do?
- 24 A She sold drugs.
- 25 Q Now, did you approve of that?

1 A No.

2 Q Okay. And it's okay. I mean, that's fine. I want
3 you to be candid. The jury wants you to be candid.

4 Let's go straight to February 3rd, 2015. Do you
5 remember seeing Ms. Logan that evening?

6 A I do.

7 Q When did you first see her that evening? About what
8 time and where?

9 A Well, we lived together, so I saw her that morning.
10 But due to work, she left. And we met back up at a
11 neighborhood bar, Dre's.

12 Q And about what time was that that y'all met up?

13 A After 8:00, 8:30ish.

14 Q And were y'all together driving -- did y'all ride
15 there together, or did you come in separate cars?

16 A We came in separate cars. She arrived before me.

17 Q So she was there when you got there?

18 A Yes.

19 Q And about how long were you with her that evening,
20 just ballpark?

21 A I would say 45 minutes to an hour.

22 Q Could you tell the jury what happened around 9:30, or
23 so?

24 A She received a phone call --

25 Q Excuse me for interrupting. I apologize.

1 A Okay.

2 Q Now, you knew she received a phone call. Were you
3 standing right near her when the phone rang?

4 A I was near her.

5 Q All right. Now, just to be candid, did you hear what
6 was being said on the phone call?

7 A I did not.

8 Q Okay. And how long did she talk on the phone?

9 A Maybe about 30 seconds, if that.

10 Q As soon as she hung up the phone, did she say
11 anything to you?

12 A She just told me that she would want me to wait for
13 her to come right back.

14 Q By that, you meant she thought -- you thought -- how
15 long did you think she would be gone?

16 A Five minutes or so, if that.

17 Q All right. And did she leave after that?

18 A She left.

19 Q And this is about what time again?

20 A This was near, like, 9:30ish.

21 Q And did she ever come back?

22 A She never came back.

23 Q And did you find out later that night -- or morning
24 of the next day that she had been killed?

25 A I did.

1 Q Now, just so the jury will have some idea of what
2 we're talking about here, Dre's is located off of South
3 Augusta Road going towards Donaldson Center; is that
4 correct?

5 A Correct.

6 Q All right. And have you -- the allegation is that
7 the incident occurred at [REDACTED] Avenue in -- here in
8 Greenville. Have you ever -- have you been by that
9 location since this happened?

10 A I have.

11 Q Just to see where it was?

12 A Correct.

13 Q All right. How far is that from Dre's?

14 A About a minute to two minutes.

15 Q Okay. Less than a half mile?

16 A Correct.

17 MR. WESTON: Excuse me one second.

18 (Pause.)

19 MR. WESTON: Thank you, ma'am.

20 THE COURT: Cross?

21 MR. KORNFIELD: No questions, Your Honor.

22 THE COURT: Sir?

23 MR. SULLIVAN: No questions.

24 THE COURT: Thank you, Ms. Norton.

25 I appreciate you being here. You may be excused.

1 Please don't discuss your testimony with any other
2 witness.

3 Okay. Thank you.

4 MR. WESTON: Your Honor, the State would ask that
5 this witness be allowed to be excused. I don't know
6 whether she wants to remain or not. We would like to have
7 her excused from her subpoena in the event she wishes to
8 leave or not come back tomorrow.

9 THE COURT: Okay. I'll allow that.

10 You may be excused.

11 All right. You may call your next witness.

12 MR. WESTON: Your Honor, the State would call
13 Ms. Kersandra Wright.

14 THE CLERK: Ms. Wright, if you'll, please, come
15 forward.

16 And pause at the end of the bench.

17 Please your left hand on the Bible and raise your
18 right hand.

19 WHEREUPON,

20 KERSANDRA WRIGHT,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Would you, please, state your name for the record?

25 THE WITNESS: Kersandra Wright.

1 THE CLERK: Thank you, ma'am.

2 DIRECT EXAMINATION

3 BY MR. WESTON:

4 Q Ms. Wright, where do you live?

5 A [REDACTED] Avenue.

6 Q And is that here in Greenville?

7 A Yes, sir.

8 Q And just for the record, is that in Greenville
9 County?

10 A Yes.

11 MR. WESTON: All right. Excuse me one second.

12 (Pause.)

13 BY MR. WESTON:

14 Q And that is on the southern end of Greenville County;
15 is that correct?

16 A Yes.

17 Q All right. Down near -- going towards Donaldson
18 Center?

19 A Yes.

20 Q Ms. Wright, I'm going to show you what is being used
21 as a demonstrative and is not a valid piece of evidence,
22 but it's a demonstrative aerial map of an area.

23 If I can get it right here. I apologize.

24 I'm going to turn it a little bit more that way. I
25 want to make sure the jury can see it. But I want to make

1 sure you can see it as well. Do you recognize this as
2 Donaldson Road here and Mayflower Avenue?

3 A Yes.

4 Q Now, assuming that's the case, would this be your
5 house here, the [REDACTED]?

6 A Yes.

7 Q And the incident we're here today on occurred at [REDACTED]
8 [REDACTED], is your understanding?

9 A Yes.

10 Q But you live right here at [REDACTED]. And this is
11 Mayflower going in front here; is that correct?

12 A Yes.

13 Q All right. Let me show you what has been premarked
14 as State's Exhibit No. 63, and ask you, do you recognize
15 this picture? You can take a look at it.

16 A (Witness complies.)

17 Q Do you recognize those two houses, especially the
18 house --

19 A Yes.

20 Q -- on your left?

21 A Yes.

22 Q What is that house on your left?

23 A Mine.

24 Q All right. So that's [REDACTED] Avenue?

25 A Uh-huh.

1 Q And the next is [REDACTED] Avenue; is that correct?

2 A Yes.

3 Q That would be a picture, let's say, from here showing
4 the two houses like this. That's what this is?

5 A Yes.

6 Q Is this an accurate depiction of the way your house
7 looked on the night of April the 3rd, 2015?

8 A Yes.

9 Q February 3rd, 2015? I'm sorry.

10 A Yes.

11 MR. WESTON: Your Honor, the State would offer this
12 as State's Exhibit No. 1 -- I mean, 63, excuse me.

13 THE COURT: Okay. Any objections?

14 MR. SULLIVAN: It's State's Exhibit No. 63, Your
15 Honor?

16 MR. KORNFELD: That's correct.

17 No objection.

18 THE COURT: No objections. All right.

19 MR. SULLIVAN: State's Exhibit No. 63, Judge?

20 MR. WESTON: Yes. State's Exhibit No. 63.

21 THE COURT: All right. Without objection, the same
22 is admitted into evidence.

23 (WHEREUPON, State's Exhibit No. 63 was admitted into
24 evidence.)

25 MR. WESTON: Your Honor, permission to publish to the

1 jury.

2 THE COURT: Yes.

3 BY MR. WESTON:

4 Q So that's the front of the houses. And so let's back
5 up a little bit. Are you employed right now, Ms. Wright?

6 A Yes.

7 Q Where do you work?

8 A Charity Start [phonetic].

9 Q And about how long have you been there?

10 A About 25.

11 Q And just so the jury can get some perspective here
12 about you visa vie what's going on. Did you know the
13 victim in this case, Ms. Shamese Logan?

14 A No.

15 Q Okay. As far as you know, you've never met her?

16 A No, sir.

17 Q As far as you know, she's never been to your house?

18 A No, sir.

19 Q And do you know the Defendants in this case, Bobby
20 Smith or Jahru Smith?

21 A No. No, I don't.

22 Q You may have seen them going in and out, or
23 something. But you don't know either one of them
24 personally?

25 A No.

1 Q And you've never been over to their house as far as
2 you know?

3 A No.

4 Q And as far as you can remember, have any of these
5 people ever been to your house?

6 A No.

7 Q Okay. You just happen to live next door?

8 A Yes.

9 Q Okay. And I just wanted to go through all of that so
10 the jury would have some idea of who you are in
11 relationship to what happened. You don't know anything
12 about any of this; do you?

13 A No.

14 Q Okay. Now, on the night of February 3rd, 2015, about
15 9:30, 9:45, what were you doing?

16 A I was watching TV and on the telephone.

17 Q Okay. And you were talking to, I think, your mom, or
18 your kids, or something like that?

19 A I was talking to my mom.

20 Q Okay. And did you hear anybody outside?

21 A I heard some voices.

22 Q Okay. Did you recognize whether they were men or
23 female?

24 A No. I couldn't tell.

25 Q Was it more than one?

1 A Yes.

2 Q And after you heard the voices, what happened -- what
3 did you hear next?

4 A Gunshots.

5 Q And about how many gunshots did you hear, just
6 ballpark?

7 A Four or more.

8 Q Were they altogether like bam, bam, bam, bam?

9 A They were just like one and then just started
10 shooting.

11 Q Okay. And what'd you do, other than be scared, I
12 could imagine?

13 A I hung up the phone and I called 911. And another
14 call was coming in. I got down. I went to the front. I
15 called my kids because they was out. I was telling them I
16 heard gunshots, be careful coming into the house.

17 Q Okay. Your kids, now, that would be Courtney
18 Henderson and Justin Henderson?

19 A Yes.

20 Q Okay. Where were your children at?

21 A Well, they was going to the mall. And they was
22 making another stop, it was told to me.

23 Q Okay. Did you reach them?

24 A Yes.

25 Q When you called them?

1 A Yes.

2 Q And what did you tell them?

3 A To be careful because I heard gunshots and it was
4 close. I didn't know how close. And I didn't know what
5 was going on.

6 Q Okay. And after you talked to your mother and talked
7 to your kids, did you have an occasion to look out the
8 window?

9 A Yes, when my kids came in.

10 Q What did you see?

11 A I saw a car and two people. The back door was open
12 and the front door was open. And they was leaning over in
13 the car.

14 Q All right. Now, I'm going to ask you to -- I'm going
15 to show you what has been put into evidence as State's
16 Exhibit No. 3 [sic].

17 I'm sorry. Obviously, I'm older. I don't work well
18 with technology. I'm going to show you what's already
19 marked as State's Exhibit No. 63. And just kind of just
20 to refresh --

21 MR. WESTON: Do you have a pointer?

22 BY MR. WESTON:

23 Q I'm going to use this pointer. There we go.

24 Now, I'm going to point with the red pointer and ask
25 you again, is this your house?

1 A Yes.

2 Q And this is # [REDACTED] Avenue; is that correct?

3 A That's # [REDACTED].

4 Q That's # [REDACTED]. I'm sorry. And you're # [REDACTED]?

5 A Yes.

6 Q And when you say you looked out a window, when I get
7 to where the window was you was looking out, could you
8 tell me to stop with the red pointer, please?

9 A Stop.

10 Q So you were looking out this window right over here
11 on the side of the house near the front?

12 A Uh-huh.

13 Q And is this where the car was that you said you saw?

14 A Yes.

15 Q And where were the two people that were standing by
16 the car?

17 A On --

18 Q Let me give you the pointer, in fact. Why don't I
19 just do that. I'm sorry. If you just push that top
20 button, the red light will come on. Just point it to
21 wherever you need it to be.

22 A Right there on that side, the driver's side.

23 Q Both of the people were on that side?

24 A One was right there, and one on that side.

25 Q All right. And do you remember whether the doors

1 were open or not to the car?

2 A Yes.

3 Q Which doors were open, as you can remember?

4 A On the driver's side.

5 Q Okay. And did the people appear to be looking into
6 the car?

7 A I guess that's what he was doing.

8 Q I'm sorry?

9 A Yes.

10 Q Okay. Now, you didn't have any conversation with
11 them, I take it?

12 A No.

13 Q All right. And just to be clear, are you saying that
14 the two people that were looking in the car was either
15 Jahru Smith, or Bobby Smith, or do you know?

16 A I don't know.

17 Q Okay. You didn't recognize them?

18 A No.

19 Q Okay. And shortly after you looked at the car and
20 saw -- and I assume your children came home shortly
21 thereafter?

22 A Yes.

23 Q And you wanted them to hurry up and get in the house.
24 And that was pretty much all that you saw that evening?

25 A Yes.

1 Q Now, at some point, did the police come and talk to
2 y'all?

3 A Yes. They entered my house, instead of the house
4 next door.

5 Q Because of why?

6 A I called.

7 Q Because of the 911 call. And you had to break it off
8 because you got another call; is that correct?

9 A Right.

10 Q So it wasn't like you hung up from 911?

11 A Right.

12 Q Okay. And did y'all cooperate with the police, the
13 three of you?

14 A Yes.

15 Q And did you go downtown and give a video statement to
16 the police telling them pretty much what you've told us
17 today?

18 A Yes.

19 Q Is that all you know about this case?

20 A Yes.

21 MR. WESTON: Answer any questions counsel may have
22 for you.

23 Thank you, ma'am.

24 THE COURT: All right. Any cross-examination?

25 MR. KORNFELD: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. KORNFELD:

Q Ms. Wright, when you gave your statement, isn't it true that you stated you heard multiple gunshots, as opposed to today, where you said you heard four, approximately four gunshots?

A It was -- yeah. It was more than, like, one or two. It was probably four, or more.

Q Okay. But you're not definitively saying -- I just want to make clear, you're not definitively saying that it was four, or five, or six?

A Correct.

Q Okay. And when you looked out the window, did I understand you correctly in saying that you were on that -- the -- I guess, the corner lot? You were in bed, weren't you, on the phone watching TV at that time?

A Not when I looked out the window. I was standing up by the window.

Q Okay. When you first heard the shots, isn't it true that you were in bed, though?

A Yes.

Q Okay. And is your bed --

A I was laying on the bed.

Q Okay. And watching TV and talking on the phone; is that correct?

1 A Uh-huh.

2 Q And just so the jury can see this, because I didn't
3 quite get it. It's probably my fault. But is this your
4 bedroom window?

5 A This is my bedroom right here.

6 Q Okay.

7 A This is my house, and this is the window.

8 Q Okay. And do you have two in your bedroom?

9 A It's two on the front, and there's one on the side.
10 And the one right here is to another bedroom.

11 Q All right. When you looked out the window, was the
12 Chrysler already over here where it is here?

13 A Right there.

14 Q All right. And you never saw the Chrysler in any
15 other position; is that correct?

16 A No. When the police brought us out of the house, it
17 was by the street. It was that way.

18 Q Okay. Ms. Wright, about how long did you hear -- I
19 know you said you couldn't tell if it was men or women, or
20 anything like that. But about how long did you hear them
21 speaking outside before you heard gunshots?

22 A It was not long, just...

23 Q A few minutes? Five minutes?

24 A Like a few minutes.

25 MR. KORNFELD: No further questions, Ms. Wright.

1 MR. SULLIVAN: No questions, Your Honor.

2 May I approach?

3 THE COURT: Yes.

4 MR. WESTON: Your Honor, we have no redirect for this
5 witness. We would ask that she be allowed to be released
6 from her subpoena.

7 THE COURT: Thank you, Ms. Wright.

8 You may be released, ma'am. You may be excused.

9 Thank you for being here.

10 I appreciate it. Please don't discuss your testimony
11 with any other witnesses, if you will, please.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: Ladies and gentlemen, we're going to take
14 a very, very short break, very short break, and then we're
15 going to come back in.

16 Please don't discuss the case.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 3:19 p.m.)

19 THE COURT: Okay. We'll be in recess for about five
20 minutes.

21 MR. WESTON: Your Honor, may I say one thing?

22 THE COURT: Yes.

23 MR. WESTON: Ms. Gorton is here, per your
24 instructions this morning. She says she has to be in
25 federal court. And I told her I would -- when we had a

1 break, I would let her speak with you about it.

2 THE COURT: Okay.

3 MS. CASSANDRA GORTON: We have a matter that's been
4 continued several times. And in federal court, they like
5 to sentence all the co-defendants at the same time. This
6 is a rather large case.

7 THE COURT: Okay.

8 MS. CASSANDRA GORTON: It's set for 10:00 a.m. I was
9 told I was supposed to be here today. I can -- I mean,
10 are we starting at 9:00? Can you get me out in time?

11 THE COURT: Well, here's the deal, just talk to
12 Mr. Weston.

13 Do y'all have access to e-mail?

14 And just be here when you can.

15 MS. CASSANDRA GORTON: Okay.

16 THE COURT: I mean, we'll -- just like any trial, I
17 don't know when you're going to be called. And I don't
18 know when we're going to be able to discuss some of the
19 issues, nuance issues related to your testimony, or not.
20 So don't worry about tomorrow morning. Just go and
21 just -- you know, I know you --

22 MS. CASSANDRA GORTON: I'll just check in.

23 THE COURT: I know you know you're supposed to be
24 here at some point in time.

25 MS. CASSANDRA GORTON: Yes.

1 THE COURT: And talk to the State about when it's
2 convenient for you.

3 MS. CASSANDRA GORTON: Okay. Thank you.

4 THE COURT: Yes, ma'am.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Bring the jury in, please.

7 (WHEREUPON, the jury came into open court at
8 approximately 3:34 p.m.)

9 THE COURT: All right. Mr. Moroney, Mr. Weston, you
10 may call your next witness, please.

11 MR. MORONEY: Yes, Your Honor.

12 The State calls Justin Henderson.

13 THE CLERK: Mr. Henderson, please, come forward.

14 If you would, please, pause at the end of the bench.

15 Place your left hand on the Bible and raise your
16 right hand.

17 WHEREUPON,

18 JUSTIN HENDERSON,

19 after first having been duly sworn, testified as follows:

20 THE CLERK: Thank you.

21 Please be seated.

22 All right. Sir, please, state your name for the
23 record.

24 THE WITNESS: Justin Henderson.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MORONEY:

Q Hi, Mr. Henderson.

Where do you live?

A Uh --

Q Here in Greenville County?

A Yes, sir, I do.

Q And how old are you?

A 29.

Q And what is your relationship to Ms. Kersandra Wright?

A That's my mother.

Q Do you know her address?

A Yes, sir.

Q Where is that?

A [REDACTED] Avenue.

Q Do you recall anything out of the ordinary that happened back on February 3rd, 2015?

A Kind of, sort of.

Q Do you remember what led up to --

A Yes, sir.

Q -- like something memorable that happened?

A Yes, sir.

Q What were you doing earlier that evening?

A I was home with my sister, Courtney. We was just

1 leaving to go home. We was shopping around. We was
2 headed to the house.

3 Q So you had finished shopping? You and your sister
4 went shopping?

5 A Yes, sir.

6 Q And then you were headed back to the house?

7 A Yes, sir.

8 Q And is that house at [REDACTED] Avenue?

9 A Yes, sir.

10 Q And what happened, if anything, on the way back to
11 the house?

12 A Nothing out of the ordinary. Just on the way home,
13 we received a phone call. My mother called us and said,
14 Hey, there's been a shooting outside.

15 And by that time, we was coming down -- I forget the
16 name of the road. I think it's Donaldson Road to turn
17 onto Mayflower. So as soon as we got the phone call, we
18 was turning onto the street.

19 Q So when you got the call from your mother, you were
20 very close to the house already --

21 A Right.

22 Q -- when she called?

23 A Right.

24 Q What did she have to say when she called?

25 A She was in a panicked voice. She was like, Y'all be

1 careful coming in the house. It's been -- they're
2 shooting outside. And it sounded like it was right next
3 door. She said, It sounded like it was right next door to
4 the window.

5 Q And what happened next then after she told you that?

6 A We turned onto the street, basically, looking --
7 being alert. We pulled into the driveway trying to get in
8 the house. I was trying to get in the house to check on
9 my mother.

10 Q And did you see anything over at your neighbor's
11 house when you pulled up into the driveway?

12 A Yeah. I seen -- I seen a car parked in front of
13 the -- I mean, in front of their house.

14 Q Okay. I'm going to put this map up here just as a
15 demonstrative exhibit, and show you a map of the area. Do
16 you recognize this area that I'm showing to you?

17 A Yes, sir.

18 Q And what does this depict as you look at?

19 A Excuse me?

20 Q What does this show as you look at it?

21 A Oh, it's my street, my neighborhood.

22 Q Okay. And let me see if I can get this pointer for
23 you. If you could, point out -- it's the top button.

24 Point out what you saw and where you saw it as you pulled
25 in the driveway. Can you describe that?

1 A I seen a car right here, kind of like between our
2 house and this tree right here.

3 Q All right. And what did that car look like? Did you
4 get a look at it?

5 A It was like a silver car. I know what a Chrysler 300
6 is.

7 Q Okay. Did you see anybody around it?

8 A No. I seen some people walking in the house.

9 Q You saw some people walking in the house?

10 A Yes, sir.

11 Q Can you describe what you saw?

12 A A male with a jersey on.

13 Q So you couldn't identify who it was?

14 A No, sir.

15 Q You had no idea who it was?

16 A Right.

17 Q But you said it was a male?

18 A Yeah.

19 Q And it looked like they were wearing a jersey?

20 A Yeah.

21 Q You mean like an athletic jersey of some type?

22 A Yeah, kind of like a football, or something like
23 that.

24 Q And what happened next after you saw that?

25 A Well, my sister, she had got out the car, which is

1 my -- I parked the car in our driveway. And we just went
2 in the house. I looked back out and the car was moved.

3 Q So when you looked out the window, the car was in a
4 different location?

5 A Yeah. I, actually, looked out the door and the car
6 was at the side of the house.

7 Q Can you use that pointer, please, to show where you
8 saw the car?

9 A Yeah. From right here to the side of the house.

10 Q So was that vehicle then parked in between your
11 mother's house and your neighbor's house at that point?

12 A Right.

13 Q And if I may, I think we may check the batteries in
14 that pointer.

15 If you could real quick, just step down.

16 MR. MORONEY: If he could, Your Honor --

17 THE COURT: Sure.

18 MR. MORONEY: -- to point this out.

19 BY MR. MORONEY:

20 Q And just recount briefly what you saw with respect to
21 that vehicle and the movement.

22 A Yeah, first it was here.

23 Q Right.

24 A Between the house. By the time --

25 THE BAILIFF: She can't hear you.

1 THE WITNESS: Oh. The car was here between the house
2 and, like, this tree right here. And by the time I looked
3 back out, it was here. It was kind of, like, in here.

4 BY MR. MORONEY:

5 Q Just to be clear, you can't identify anybody that you
6 saw out there, other than a male party wearing a jersey?

7 A Right.

8 MR. MORONEY: Thank you.

9 You can have a seat.

10 And, please, answer any questions the Defense may
11 have for you.

12 MR. KORNFELD: I don't have any questions, Your
13 Honor.

14 THE COURT: Mr. Sullivan?

15 MR. SULLIVAN: No questions, Your Honor.

16 THE COURT: Okay. Good enough.

17 Thank you, sir.

18 I appreciate you being here, Mr. Henderson. You may
19 step down.

20 MR. MORONEY: Your Honor, the State calls Courtney
21 Henderson.

22 And, Your Honor, just a brief housekeeping. There
23 were two previous witnesses, Anika Carter and Teresa Lang
24 that have testified. We would ask that they be released
25 from their subpoena so they could leave.

1 THE COURT: I presume there's no objection to that?

2 MR. KORNFELD: There's not, Your Honor.

3 THE COURT: They may be released.

4 THE CLERK: If you'll, please, come forward.

5 If you'll, please, pause at the end of the bench.

6 Place your left hand on the Bible and raise your
7 right hand.

8 WHEREUPON,

9 COURTNEY HENDERSON,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 And please state your name for the record.

14 THE WITNESS: Courtney Henderson.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. MORONEY:

18 Q Ms. Henderson, could you, please, state your age?

19 A 32.

20 Q And are you a resident here in Greenville County?

21 A [REDACTED] Avenue.

22 Q Okay. And where do you work? What kind of work do
23 you do?

24 A Manufacturing.

25 Q Do you recall anything out of the ordinary that

1 occurred back on February 3rd, 2015, anything memorable?

2 A Yes, sir.

3 Q Okay. And can you describe what you were doing that
4 night?

5 A Me and my brother was out shopping at -- I got a
6 phone call from my mother.

7 Q Okay.

8 A That she heard gunshots. She told us to come home.
9 And we were, I'd say, about 15, 20 minutes away.

10 Once we pulled up in the driveway, I noticed next
11 door at [REDACTED] Avenue, there was a car, a Chrysler,
12 parked by the tree. On the right-hand side, the back door
13 was opened on that vehicle with two people standing there.

14 As we got out of the car, they kind of looked, like,
15 froze. I got a weird feeling, kind of like you would see
16 if someone was doing something that they had no business
17 doing.

18 Q So just let me back you up real quick. So you got a
19 phone call. Did you arrive, did you say, a short time
20 after?

21 A It was a short time after that phone call.

22 Q And as you pulled up, you immediately first saw what
23 now?

24 A There was a vehicle parked by the tree.

25 Q And if you may, step down.

1 A (Witness complied.)

2 Q There's a map right here. If you could, point out
3 exactly what you saw. It may help to describe the
4 location.

5 A I'm not sure. But there's a tree next door in the
6 front yard.

7 Q If you could speak up just a little louder for the
8 court reporter to hear you, please.

9 A Okay. Next door, there's a big tree in the front
10 yard. At the time that I pulled up, there was a Chrysler
11 parked at that tree with two people on the right-hand side
12 with the back door open. As I got out --

13 Q Could you tell whether they were male or female?

14 A I couldn't really tell, like, stocky body figures.

15 Q Okay.

16 A That back door on that vehicle was open. As I got
17 out, they kind of froze. Like I said, I got a weird
18 feeling. We just got a call about gunshots and you've got
19 two people outside.

20 Q So by their body language, did that give you pause at
21 all? What did you think when you saw that?

22 A By seeing the body language -- which they kind of
23 froze as if they were waiting for me to get out of
24 eyesight.

25 Q Okay.

1 A That's when I proceeded into the house. My mother
2 was telling us to come inside.

3 Q Did your brother come in the house with you?

4 A Yes, sir.

5 Q Then what happened?

6 A As I looked back out, the vehicle had been moved from
7 where it was when we pulled up. Now, it's partially in
8 between the two houses, still with the door open on the
9 right-hand side at the back. The driver's door was not
10 shut.

11 Q You can have a seat.

12 A (Witness complied.)

13 Q Real briefly, I'm going to show you what's State's
14 Exhibit No. 63. And I'll ask you to take a look at this
15 photograph. And where you describe that car being parked
16 after you saw it moved, is that photo an accurate
17 depiction of what you saw that night, where the location
18 of that vehicle would have been?

19 A Yes, sir.

20 MR. MORONEY: Okay. Thank you.

21 Please answer any questions the Defense attorneys may
22 have for you.

23 CROSS-EXAMINATION

24 BY MR. KORNFELD:

25 Q Ms. Henderson, do you remember being interviewed

1 around the time of this incident --

2 A Yes, sir, I do.

3 Q -- by the police?

4 At that time, you failed to tell them that you saw
5 the individuals freeze; is that correct?

6 A I'm not for sure. I know that I did tell them about
7 two individuals.

8 Q Okay. So is that the first time you've told the
9 officers or anybody else that you saw two individuals and
10 it looked like they froze?

11 A Yes, sir.

12 MR. KORNFELD: I don't have any further questions.

13 THE COURT: Mr. Sullivan, any questions?

14 MR. SULLIVAN: Just one.

15 Can y'all hear me?

16 THE COURT: I can hear you.

17 CROSS-EXAMINATION

18 BY MR. SULLIVAN:

19 Q Did you see where the people went? You saw two
20 people after -- did you see them leave?

21 A No, sir, I didn't.

22 Q They were still there when you went back in and you
23 quit looking?

24 A Yes, sir.

25 MR. SULLIVAN: I have nothing further.

1 THE COURT: Any redirect, sir?

2 MR. MORONEY: No, Your Honor.

3 THE COURT: Thank you, Ms. Henderson.

4 You may step down. I appreciate you being here.

5 THE WITNESS: Thank you.

6 MR. MORONEY: And we would just ask that this
7 witness, as well as Mr. Henderson, be released from
8 subpoena.

9 THE COURT: Okay. Fair enough.

10 MR. MORONEY: And, Your Honor, we have a brief matter
11 to approach, if we may?

12 THE COURT: Sure. Come on around.

13 (WHEREUPON, a bench conference was held:)

14 THE COURT: All right. Mr. Moroney, you may call
15 your next witness.

16 MR. MORONEY: The next witness is Brandon Napolitano.

17 THE CLERK: Sir, if you'll, please, come forward.

18 If you'll, please, place your left hand on the Bible
19 and raise your right hand.

20 WHEREUPON,

21 BRANDON NAPOLITANO,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 And if you'll, please, state your name for the

1 record.

2 THE WITNESS: Brandon Napolitano.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. MORONEY:

6 Q Hi, Mr. Napolitano.

7 Are you a resident here in Greenville County?

8 A I am not a resident of Greenville County, no, sir.

9 Q Okay. But you're here locally in the area?

10 A Yes, sir.

11 Q And how old are you?

12 A I'm 30.

13 Q What do you do for a living currently?

14 A I'm in residential real estate.

15 Q Okay. Did you do anything prior to real estate?

16 A Yes, sir. I worked for the Greenville County
17 Sheriff's Office.

18 Q When did you work with the Greenville County
19 Sheriff's Office?

20 A 2011 to 2015.

21 Q Okay. Were you employed with the Greenville County
22 Sheriff's Office on February 3rd, 2015?

23 A Yes, sir.

24 Q Okay. Do you recall an incident that you responded
25 to that occurred at [REDACTED] Avenue on that date?

1 A Yes, sir.

2 Q Could you describe from when you first became
3 involved with that address?

4 A Yes, sir. We, originally, received the call. When I
5 say "we," I had a -- a trainee with me. I was training a
6 new officer.

7 We received a 911 hang up call from dispatch. We
8 were down at Perimeter Road, which is about five minutes
9 away, more or less, from the incident location. And we
10 responded to the call for a 911 hang up call.

11 Q When you respond to 911 hang up calls, is that done
12 with lights and sirens? Can you describe the nature of
13 that?

14 A Right. So without further information on the call,
15 that's just a routine, you know, normal response call. So
16 we wouldn't have responded with our lights and sirens for
17 that.

18 Q Do you recall how you responded, specifically, when
19 you first got on scene?

20 A So we had to turn left off of -- I believe it's -- I
21 forgot the road name.

22 Q And if you'd like, there is a --

23 A Yeah. We turned left off of Donaldson onto
24 Mayflower. And we parked -- for officer safety, we parked
25 one house up from where we received the call. So once we

1 got out of our vehicle, we approached [REDACTED] Avenue
2 with the intention of going to speak to the original
3 complainant at [REDACTED].

4 Q So, at that point, you had no reason to even look or
5 be concerned with [REDACTED] Avenue?

6 A No, sir. I didn't pay any attention to [REDACTED]
7 Avenue.

8 Q And what happened next?

9 A So we made contact with the original complainant at [REDACTED]
10 [REDACTED]. That's when she had explained that she heard
11 some screaming, some gun fight -- gunfire next door. And
12 it was right about that time that my beat partner, Deputy
13 Ahea [phonetic] arrived on scene. And I heard him get on
14 the radio. I could tell he was a little excited in his
15 voice, that he saw a possible deceased victim laying over
16 at [REDACTED] Avenue.

17 Q And when you heard that, what -- how did you respond?

18 A So, at that point, we immediately drew our service
19 weapons and took up a position right on the corner of
20 Mayflower, that front left corner. And that's when I did
21 see the victim laying there. We later identified her as
22 Shamese Logan.

23 Q And, if you could, describe with specificity what
24 exactly you saw, the layout, and any vehicles, or anything
25 like that.

1 A Yeah.. So this was a gray Chrysler 300 --

2 Q And if you'd like to, you can step down and use that
3 map.

4 A Okay. So my patrol vehicle was probably parked right
5 around in this vicinity here, probably just past the
6 driveway. There was a gray Chrysler 300 parked a little
7 bit past the dirt driveway.

8 The victim's feet were laying in the passenger side
9 door frame. The passenger door was open. I took up a
10 position right next to the victim, and so does my trainee.
11 Deputy Ahea was over on this side keeping all corners of
12 the house surrounded as best we could.

13 Q Let me show you this picture here.

14 You can have a seat.

15 A (Witness complied.)

16 Q I think this might be a little more clear for you.

17 A Okay.

18 Q I'm showing you State's Exhibit No. 63. It's in
19 evidence.. Does this look like an accurate depiction of
20 what you saw that night as you pulled up?

21 A Yes, sir.

22 Q And the placement of that vehicle, is that an
23 accurate location there?

24 A Yes, sir.

25 Q And what you're looking at here, is that [REDACTED]

1 Avenue on the right, the residence on the right?

2 A Yes, sir.

3 Q And [REDACTED] Avenue is on the left?

4 A Yes, sir.

5 Q And could you, please, just kind of pick up and
6 describe where you had responded, and where everyone was
7 positioned?

8 A So the victim was laying approximately right in this
9 area right here. The front door was opened. Myself and
10 Deputy Flowers, who was my trainee, were right here
11 around -- right at the head of the victim. The victim's
12 feet, again, were laying in the door frame. The passenger
13 door was open.

14 At the time that we found the victim, her pants were
15 pulled down past her genitalia. And her head was turned
16 to the rear of the residence. Her eyes were open. Her
17 chest was not going up and down. She had no pulse. At
18 that point, it was obvious to me that the victim had been
19 deceased.

20 Q And did you happen to see the interior of the vehicle
21 at all?

22 A Yes, sir.

23 Q Can you describe what you saw there?

24 A Yeah. I saw a good deal of blood, broken glass. It
25 looked like it had been almost rummaged through.

1 MR. MORONEY: May I approach, Your Honor?

2 THE COURT: Yes, sir, you may.

3 BY MR. MORONEY:

4 Q Mr. Napolitano, I'm showing you what's been premarked
5 as State's Exhibit Nos. 1, 2, 3, 45, and 46 for
6 identification purposes. Take your time and take a look
7 at those. Let me know if you recognize those as an
8 accurate depiction of what you're describing that night as
9 you arrived on scene.

10 A Yes, sir.

11 Q And those appear to be exactly what you saw when you
12 responded, and what you just described?

13 A Yes, sir, exactly how I saw it.

14 MR. MORONEY: Your Honor, at this time, the State
15 would move State's Exhibit Nos. 1, 2, 3, 45, and 46 into
16 evidence.

17 THE COURT: Any objections?

18 MR. KORNFELD: No, Your Honor.

19 MR. SULLIVAN: No, Your Honor.

20 THE COURT: All right. Without objection, the same
21 is moved into evidence.

22 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 45, and 46
23 were admitted into evidence.)

24 MR. MORONEY: Permission to publish to the jury, Your
25 Honor.

1 THE COURT: Yes, sir.

2 BY MR. MORONEY:

3 Q Deputy Napolitano, I'm going to show you these
4 pictures and just ask you -- I know you described it
5 without them. If you can just once more explain what
6 we're looking at here as what you saw.

7 A Yes, sir. So that is the feet of the victim. Again,
8 her feet were in -- this would be the bottom of the car
9 right here, the passenger side door frame. And that's
10 where the victim's feet were laying when I found her.

11 Q I'm showing you now what's marked as State's Exhibit
12 No. 2 in evidence.

13 A That's the driver's side of the door. The glass was
14 shattered. And there was, also, glass and blood. You can
15 kind of see the blood on the driver's seat there.

16 Q I'm now showing you State's Exhibit No. 3.

17 A Same thing.

18 Q This is State's Exhibit No. 45.

19 A There's the victim on the top right corner. Like I
20 described earlier, her pants had been almost, like, pulled
21 down past her genitalia, probably to mid-thigh.

22 Q And, finally, State's Exhibit No. 46.

23 A That's exactly how I found the crime scene.

24 Q Immediately after observing this, what did you do
25 next?

1 A So we began to set up a perimeter. We were receiving
2 some conflicting information out on the scene that there
3 was either a second victim, or some sort of second suspect
4 that had ran behind the house. At that point, we
5 contacted dispatch for emergency backup to get more units
6 in the area. We, also, requested that the K9 deputies
7 respond. That would be a lights and siren response for
8 that kind of situation.

9 Once more deputies got on scene, due to the urgency
10 of the circumstance, we made a plan to make entrance into
11 the residence. Me and a couple other deputies came up
12 with our kind of game plan, and how we were going to get
13 in there, and which way everybody was going to go. And it
14 was at that time that -- I believe his name is Bobby,
15 correct? Bobby opened the door.

16 Q And when he opened the door, did he say anything?

17 A Yeah. So as soon as Bobby opened the door, I took
18 ahold of Bobby and started to place him in handcuffs. And
19 he asked me, you know, What's going on? He was really
20 agitated, really animated.

21 And I said, Well, you have a dead woman in your
22 driveway.

23 Do you want me to say exactly what he said?

24 Q Yes, please.

25 A Excuse my language then. He said, I ain't got shit

1 to do with that. Chalk it up to the streets.

2 Q And just for clarity's sake, when you arrive on scene
3 to a call like this, the routine 911 call --

4 A Yes, sir.

5 Q -- or a more serious call, do you radio and
6 communicate with any dispatch? Would you just explain
7 briefly how that works?

8 A Yeah. So whenever we're dispatched on a call, we
9 acknowledge the call by saying, hey, we're on our way,
10 we're en route. Upon my arrival, we get on the radio and
11 say, hey, we're on the scene. We're here.

12 Q And does dispatch keep a record of that then?

13 A Yes, right. Everything is time stamped. So in that
14 specific call -- just about everything we do is time
15 stamped. So from the time I arrive, until the time Deputy
16 Ahea arrived to when he radioed he saw the deceased
17 victim.

18 MR. MORONEY: Thank you.

19 Please answer any questions the Defense attorneys may
20 have for you.

21 THE WITNESS: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. KORNFELD:

24 Q When you arrived on scene, Mr. Napolitano, was anyone
25 else at [REDACTED] Avenue, other than Bobby Smith?

1 A No, sir, not to my knowledge.

2 Q Were you there at the same time that the K9s were
3 there?

4 A I was on scene while the K9s were there.

5 Q All right. And do you have any knowledge as to
6 whether the K9s were able to find any evidence, or a lead,
7 or anything of that nature?

8 A I was not with the K9s while they were conducting
9 their area search or track. I'm not sure.

10 MR. KORNFELD: I don't have any other questions.

11 Thank you.

12 THE WITNESS: Thank you.

13 CROSS-EXAMINATION

14 BY MR. SULLIVAN:

15 Q You say you had information that somebody had fled
16 between # and # towards the back alley?

17 A Yes, sir. I believe that's Augusta Road that it
18 backs up to.

19 Q Where -- at that time, you interviewed two witnesses,
20 I believe, Courtney -- the son and the daughter?

21 A Yes, sir.

22 Q Did one of them tell you they saw one man flee
23 between the houses, and one man go in the house?

24 A Honestly, sir, during that time, there was a lot of
25 commotion going on between radio traffic, and things of

1 that nature. I was focusing on officer safety. So I
2 don't know who exactly told me that. I just heard it.
3 Does that make sense?

4 Q Who else had interviewed them at that time? You were
5 on the scene?

6 A Yes, sir.

7 Q One of the first ones?

8 A Uh-huh.

9 Q You talked to them. Had any other officer talked to
10 them -- you were there in that area securing that corner?

11 A Yes, sir.

12 Q Did you see another officer talk to those people?

13 A No, sir.

14 Q So the information must have come from them for you
15 to know that?

16 A Possibly, yes, sir.

17 Q Well, who else would have told you?

18 A Again, sir, I -- I was paying attention to making
19 sure everything was okay with my trainee and the other
20 officer. I just heard it.

21 Q If another officer never talked to them, you couldn't
22 have gotten it from them?

23 A Well, again, sir, I wasn't focused on what other
24 officers were doing at the time.

25 Q One more time.

1 A Yes, sir.

2 Q You talked to the two children, the neighbors?

3 A Yes, sir. I talked to them.

4 Q And from that conversation, you knew one individual
5 had gone into [REDACTED] Avenue; right? And you went to
6 that door to see Bobby Smith?

7 A Are you talking about my initial contact with them,
8 sir?

9 Q I'm talking about why you went to the door and why
10 somebody went to the field.

11 A We went to the door for a 911 hang up call. Once I
12 arrived at the 911 hang up call, I spoke with the
13 complainant who said she heard shooting and gunfire next
14 door.

15 Q After that, you were on the scene. You were on the
16 corner. Then you said somebody went behind the house
17 possibly, and somebody went in the house of [REDACTED],
18 not # [REDACTED]. This is after you talked to # [REDACTED]?

19 A I understand.

20 Q So somebody told you that some man went into [REDACTED]?

21 MR. KORNFELD: Your Honor, I would object at this
22 time. I think it's asked and answered. And he's trying
23 to elicit hearsay.

24 MR. SULLIVAN: There's no hearsay. I'm not asking
25 for what anybody said.

1 THE COURT: I respectfully overrule the objection.

2 You can ask the question, Mr. Sullivan.

3 BY MR. SULLIVAN:

4 Q You talked to the witnesses. At that point, you had
5 information that someone went between the houses and the
6 field?

7 A Sir, when I took a position on the corner of the
8 house, at that point, that's when we started receiving
9 some conflicting information of what was going on. We
10 weren't sitting there face-to-face speaking at that time.
11 I was focused on the safety of my other officers and
12 myself.

13 Q What other officer talked to the two --

14 A I don't know who else spoke with them, sir.

15 Q Okay. You don't know why people went in the field
16 then?

17 A I -- no, sir. I'm assuming because of the incident
18 that took place.

19 Q And you don't know why you went in the house to see
20 somebody there?

21 A Sir, I went to the house for a 911 hang up call.

22 Q To #. I'm talking about #.

23 A Okay, sir. When we arrived on scene and after I
24 spoke to the original complainant of the 911 hang up call,
25 it was at that point that Deputy Ahea, also, with the

1 sheriff's office, who now works for the California Highway
2 Patrol, he got on the radio and said he saw a deceased
3 victim laying by the car door. It was at that point that
4 I left [REDACTED] and went over to the incident location
5 at [REDACTED] and started my investigation.

6 Q Somebody somewhere indicated a -- one of the suspects
7 fled to the field?

8 A And it was at that point, sir, when I was over at [REDACTED]
9 [REDACTED] that somebody said that out loud. And, again, I
10 can't testify to who that was as I wasn't focused --

11 Q But you saw Bobby Smith in the house?

12 A Yes, sir. Bobby Smith was in the house.

13 MR. SULLIVAN: Okay. Thank you.

14 THE WITNESS: Yes, sir.

15 THE COURT: Any redirect, sir?

16 MR. MORONEY: Your Honor, very briefly.

17 REDIRECT EXAMINATION

18 BY MR. MORONEY:

19 Q Would you describe this as a chaotic scene when you
20 responded to --

21 A Yes, very. I was dealing with three other
22 inexperienced officers.

23 Q And is it common that law enforcement will canvas a
24 neighborhood to start talking to numerous neighbors down
25 the street after a serious incident like this?

1 A Yes.

2 Q And there's a lot going on?

3 A Yes.

4 MR. MORONEY: Thank you.

5 THE COURT: Any recross based on the redirect?

6 MR. KORNFELD: No, Your Honor.

7 THE COURT: Mr. Sullivan?

8 MR. SULLIVAN: I have nothing further of this
9 witness, Your Honor.

10 THE COURT: Okay. Thank you, sir.

11 I appreciate you being here.

12 All right. You may call your next witness.

13 MR. MORONEY: Your Honor the State calls Ms. Tirissa
14 Johnson.

15 THE CLERK: Ma'am, if you'll, please, come forward.

16 If you'd, please, place your left hand on the Bible
17 and raise your right hand.

18 WHEREUPON,

19 TIRISSA JOHNSON,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 Please be seated.

23 Would you, please, state your name for the record?

24 THE WITNESS: Tirissa Johnson.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. WESTON:

Q Ms. Johnson, with whom are you employed?

A The Greenville County Sheriff's Office.

Q All right. And what do you do there?

A My primary job function is pulling recordings of the phone system and radio traffic.

Q All right. And would you say you're a custodian of records?

A Yes. That's correct.

Q All right. And this is not the first time you've testified in a criminal case, is it?

A No, it's not.

Q Okay. And are you familiar with the recordkeeping system of the 911 system, as well as how the sheriff's office keep their phone records?

A Yes, I am.

Q All right. Now, in terms of 911, if 911 gets a call and they hang up before the 911 operator can engage with them, what is the normal protocol?

A So that call is captured through the phone system and is transmitted to the primary answering point. And it shows up as a disconnect with the phone number. And then we make a phone call back.

Q And once you receive a call -- let's say a call comes

1 in to the county 911 system, and it's a 911 hang up, what
2 happens next?

3 A So the next thing is that whoever -- whatever call
4 taker was working at that position that the call came
5 into, they would then make a phone call back to that
6 number.

7 Q Okay. And assuming they didn't did get an answer,
8 let's say, what would be the next step in the protocol?

9 A The next step would be to enter a call for service,
10 that it was a 911 hang up and no answer on call back.

11 Q So the appropriate law enforcement agency would be
12 notified, in this case, the sheriff's office, if it were
13 in Greenville County?

14 A Right. Greenville County would be routed into the
15 sheriff's office. And we would be that answering point.

16 Q And would a sheriff's deputy respond to let you know
17 that they were taking the call?

18 A Yes.

19 Q All right. And once the sheriff's deputy arrived at
20 the call location, would they call to let you know they
21 had arrived on scene?

22 A Yes.

23 Q All right. And just -- I think I skipped a step.
24 When somebody calls 911, when you get a call from a
25 landline, if, like myself -- my landline at my house that

1 I still have, that I still -- that my wife and I still
2 use. If we call 911, what shows up on your screen?

3 A It would show up the address and the name associated
4 to that number.

5 Q So it would say Jeff Weston, [REDACTED] Street,
6 Greenville, South Carolina, my address, and my phone
7 number, and my name?

8 A That's correct.

9 Q All right. Now, if I asked you, could you remember
10 all the records associated with the night of February 3rd
11 of 2015, all the 911 interactions? Do you remember any or
12 all of those interactions?

13 A Not every specific one, no.

14 Q If I show you this document and ask you is this --
15 first of all, ask you if you recognize this document? You
16 don't have to say what it is. I just ask you, do you
17 recognize it?

18 A Yes, I do.

19 Q And does it refresh your recollection as to what
20 happened -- what calls came in around 9:30, 9:45 that
21 night?

22 A Yes, it does.

23 Q Would you tell the jury what call came in around --
24 excuse me, if there was a call from 864-[REDACTED]?

25 A That's correct.

1 Q What time did that call come in?

2 A It is showing at 9:44 p.m.

3 Q And was that a conversation, or was it a hang up?

4 A It does appear that it initiated as a 911 hang up.
5 Because it has a statement in here saying voicemail on
6 call back.

7 Q So that means when somebody called back, it went to
8 voicemail?

9 A That's correct.

10 Q Now, does it, also, show where an officer responded
11 to that location -- the location of that landline
12 telephone, which in this case would be [REDACTED] Avenue?

13 A Yes, it does.

14 Q And who was the officer that responded?

15 A It was Deputy -- and I'm going to mispronounce his
16 last name.

17 Q Napolitano?

18 A Yes, sir. That's it.

19 Q Okay. And what time does it say he arrived?

20 A It is showing at 9:49 p.m.

21 Q So the call came in -- the 911 call came in at what
22 time?

23 A 9:44 p.m.

24 Q And he arrived on -- he notified dispatch that he
25 arrived at what time?

1 A 9:49 p.m.

2 Q Approximately five minutes later?

3 A Yes.

4 MR. WESTON: Thank you, ma'am.

5 That's all I have.

6 THE COURT: Any cross?

7 MR. KORNFIELD: No, Your Honor.

8 THE COURT: Mr. Sullivan?

9 MR. SULLIVAN: None, Your Honor.

10 THE COURT: All right. Thank you, ma'am.

11 I appreciate you being here. You may step down.

12 THE WITNESS: Thank you.

13 MR. WESTON: Your Honor, we would ask that the
14 witness be allowed to be excused from her subpoena.

15 THE COURT: If there are no objections, then,
16 certainly, you may be excused, ma'am.

17 Thank you for being here.

18 THE WITNESS: Thank you so much.

19 MR. WESTON: Your Honor, may we approach?

20 THE COURT: You may.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: Ladies and gentlemen, no secrets. We're
23 talking about scheduling. The State has been clipping
24 along at a very, very rapid pace today. You see all these
25 witnesses. You've already had eight witnesses in this

1 case, which is more than I would have expected. But,
2 sadly, they've exhausted all of the witnesses that they
3 have available today.

4 Now, they do have other witnesses. But they'd have
5 to call them, which means we'd be sitting for 20 minutes
6 to half an hour waiting for them to get here. And I'm not
7 inclined to do that, and I suspect that y'all aren't
8 either. So this is what we're going to do. We're going
9 to break for the evening.

10 Okay. We'll come back tomorrow at 10:00.

11 Now, Mr. Richardson, you've got a 9:00 MRI?

12 JUROR #130, BARRY RICHARDSON: Yes, sir.

13 THE COURT: Show up at 8:30 and tell them the Judge
14 said you need to get in early. If you need me to send a
15 sheriff's deputy over there, I'll send them over there,
16 too.

17 JUROR #130, BARRY RICHARDSON: Sounds good.

18 THE COURT: So we're going to start at 10:00
19 tomorrow. And, you know, I hope that's enough time. If
20 you go a little bit early, maybe you can get in a little
21 bit early. Okay.

22 JUROR #130, BARRY RICHARDSON: Yes, sir.

23 THE COURT: And then, Mr. Barbre, I know you've
24 got -- where are you?

25 There you are. There you are. Hey. You've got to

1 pick your kids up at 2:30.

2 JUROR #175, MICHAEL BARBRE: I have to be at the
3 school at 2:30.

4 THE COURT: Come back tomorrow at 10:00. See if you
5 can find a way to have somebody do that for you. If not,
6 I may -- I just may pull you off the jury and put one of
7 the alternates in your spot. I don't want to do that.
8 But I don't want to -- I don't want to lose three hours
9 tomorrow. Because that's going to push you, perhaps, into
10 Friday. I don't want to do that.

11 So see if you can. And if you can't, maybe I'll
12 replace you.

13 JUROR #175, MICHAEL BARBRE: Okay. Thank you.

14 THE COURT: Okay. No worries.

15 So, ladies and gentlemen, if you will, please, be
16 back tomorrow at 10:00. Don't discuss the case. If your
17 spouse is like my spouse, then he or she will ask you
18 questions and will not be satisfied with one answer. Just
19 resist the temptation. And just come back in tomorrow.
20 And concern yourself with other things tonight.

21 And we'll see you back at 10:00 in the morning.
22 We're still on pace to finish the evidence on Wednesday at
23 some time, and probably argue and charge on Thursday. I
24 don't know that, but we're still on that pace. Because we
25 really did get a lot done today.

1 Okay. Thank you.

2 Hope you have a great evening. I'll see you
3 tomorrow.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 4:19 p.m.)

6 THE COURT: Anything further we need to put on the
7 record this afternoon?

8 MR. MORONEY: Not from the State, Your Honor.

9 THE COURT: Okay. Anything from the Defense?

10 MR. KORNFELD: No, Your Honor.

11 MR. SULLIVAN: No, Your Honor.

12 THE COURT: Okay. I would direct the county to
13 transport Mr. Jahru Smith tomorrow again so that he can
14 participate as he deems fit. I don't want to exclude him
15 from the courthouse.

16 THE COURTROOM DEPUTY: Yes, sir.

17 THE COURT: If some how, some way, we can get him
18 glasses, get him glasses.

19 MR. MORONEY: Your Honor, it's my understanding that
20 Mr. Jahru Smith is under an order, I think already, to
21 remain in Greenville County.

22 THE COURT: Yeah, yeah. I want him to be transported
23 to the courthouse so that, again, he can participate. If
24 he decides at some point during the day that he wants to
25 come into the courtroom, he's perfectly willing -- I just

1 want to make sure it's clear that I'm not excluding him
2 from the courtroom.

3 All right. Gentleman, I'll see you tomorrow. Have a
4 good evening.

5 (WHEREUPON, the proceedings were concluded at
6 approximately 4:20 p.m., to be reconvened on Tuesday,
7 March 13, 2018.)
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1 TUESDAY, MARCH 13, 2018

2 (WHEREUPON, State's Exhibit Nos. 70, 71, 72, 73, 74,
3 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88,
4 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101,
5 102, 103, 104, 105, 106, 107, 108, 109, 110 111, 112,
6 113, 114, 115, 116, 117, 118, 119, and 120 were marked
7 for identification only.)

8 THE COURT: Anything we need to put on the record
9 before the jury comes in?

10 MR. MORONEY: Nothing from the State, Your Honor.

11 THE COURT: Okay. Bring them in, if you will,
12 please.

13 (WHEREUPON, the jury came into open court at
14 approximately 10:23 a.m.)

15 THE COURT: Good morning, everybody. I appreciate
16 you being on time.

17 Mr. Richardson, I'm glad that you made it on time. I
18 hope everything went well today.

19 JUROR #130, BARRY RICHARDSON: I hope so, too.

20 THE COURT: Hope so. You hadn't found out yet? They
21 didn't see a little teeny grinch heart when they looked
22 inside?

23 JUROR #130, BARRY RICHARDSON: No.

24 THE COURT: Okay. Well, I see you're sitting away
25 from everybody. You might suspect you have some radiation

1 or something.

2 JUROR #130, BARRY RICHARDSON: I can move over.

3 THE COURT: It's up to you. You be comfortable.

4 Okay. So Mr. Barbre had some issues with getting his
5 children today and some family matters.

6 So, Ms. Parker, you are on the sitting jury now.

7 Welcome.

8 So, ladies and gentlemen, we'll begin this morning
9 with the State's case. We're a little bit later than
10 10:00. I was in chambers talking with the attorneys about
11 some evidentiary matters. A lot of times when we are
12 patient and take a little time and talk through issues,
13 sometimes we can go more quickly and more efficiently when
14 we, actually, get into the courtroom. And, hopefully,
15 that's what we accomplished in the last 20 minutes.

16 I do want to point one thing out to you.
17 Mr. Sullivan asked me to tell you that he's dressed in his
18 overcoat not because he wants to be a fashion model, but
19 because he's undergoing some medical treatment. And as a
20 consequence of that, he's susceptible to cold and has some
21 chills. So that's why he's wearing his coat. We didn't
22 want you to think he was too conspicuous and just wearing
23 it for no reason.

24 All right. Mr. Moroney, you may begin, sir.

25 MR. WESTON: Your Honor, the State would call Matthew

1 Lovelace.

2 THE CLERK: Sir, if you'll, please, come forward.

3 Please place your left hand on the Bible and raise
4 your right hand.

5 WHEREUPON,

6 MATTHEW LOVELACE,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: Please be seated.

9 If you'll, please, state your name for the record.

10 THE WITNESS: Yes, ma'am. Matthew Lovelace.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. WESTON:

14 Q Officer Lovelace, with whom are you employed?

15 A The Greenville County Sheriff's Office.

16 Q How long have you been with the sheriff's office?

17 A I started in August of 2006.

18 Q Okay. And what is your area of responsibility? What
19 is your rank?

20 A Currently, I'm a masters deputy. And I'm assigned to
21 the K9 unit. And I've been assigned to the K9 unit since
22 2009.

23 Q Basically, that means you are -- you use a dog as a
24 tracker, or that kind of thing?

25 A It pretty much means that exactly.

1 Q I think your dog's name is Echo?

2 A Enzo.

3 Q Enzo. I'm sorry.

4 A He's named after Enzo Ferrari.

5 Q How long have you and Enzo worked together?

6 A He and I got partnered in October of 2009. And we've
7 been together ever since.

8 Q Now, did you have an occasion to respond to [REDACTED]

9 [REDACTED] Avenue here in Greenville on the night of
10 February 3rd, 2015?

11 A Yes, sir, I did.

12 Q And just for the record, is that in Greenville
13 County?

14 A That is in Greenville County.

15 Q All right. And what was the call -- that was -- what
16 was the nature of the call that you received in terms of
17 your reason for responding?

18 A An all-call came out for emergency assistance for a
19 deputy that was on scene. There had been a shots fired
20 call, and the situation was developing. Initially, I was
21 on another channel.

22 So what I knew responding was limited information,
23 other than an officer needed help immediately.

24 Q And when you arrived on scene -- I assume you've got
25 one of those sort of SUV's that has the dog inside, or

1 you've got --

2 A That's correct.

3 Q -- one of those kind of deputy cars?

4 And let me give you this pointer. And I think you
5 push -- I got it right today. You push the laser button.

6 And this has been identified as [REDACTED] Avenue.

7 And this is the incident location at [REDACTED] Avenue.

8 A Yes, sir.

9 Q And this is Donaldson Road and Mayflower Avenue
10 running in front here. Let me give you the pointer and
11 you just push the laser button.

12 A Okay.

13 Q And just point to where you're -- in fact, if you
14 would just step down.

15 A (Witness complied.)

16 Q Let's do it another way. And you can just stand over
17 here. I think it will work better than just using your
18 finger. Would you tell the jury, first, where you --
19 about what time did you arrive? Was it about 9:30, or
20 10:00 or so?

21 A Yes, sir. I -- my arrival time was at 10:04.

22 Q All right, sir. And where did you park?

23 A Initially, the street was very congested with other
24 law enforcement vehicles. So my initial approach was
25 right at the intersection of Donaldson and Mayflower.

1 Q And when you say it was very congested, I assume you
2 mean there were law enforcement cars, forensics, deputies,
3 and what have you?

4 A I'm not certain if forensics had arrived just yet,
5 but there were quite a few deputies that had arrived on
6 scene for the all-call, the emergency call.

7 Q So you parked near the corner of Mayflower and
8 Donaldson Road; is that correct?

9 A That is correct.

10 Q So what did you do?

11 A The first thing I did was went to the front door of
12 # [REDACTED] Avenue where deputies were preparing to make
13 entry to clear the residence. I came up through the
14 stairs and assisted with clearing the residence. And I
15 didn't find anybody. I personally did not come into
16 contact with anybody in the house.

17 Q When you say you came up the stairs, do you mean the
18 front steps?

19 A The front steps, yes, sir.

20 Q Okay. So you only were in the house just for a few
21 seconds, or maybe a minute or two?

22 A Just a brief moment.

23 Q Okay. So once you came back out, then what did you
24 do -- or who did you talk to for direction as to what you
25 needed to do next?

1 A There was information that a possible victim --
2 second victim had been taken into the backyard, and that
3 the suspects had -- the word through the call was that
4 people had dragged somebody into the backyard, or a person
5 had. So we had a unit to cover on scene. There were
6 several deputies providing cover. I instructed them to
7 clear the backyard and look for any innocent persons as I
8 went and got my dog.

9 Q And if you'll use the pointer now. So, basically,
10 you got your dog and began a track?

11 A Correct. We came up with my partner to the corner of
12 the house. I asked -- I have a dog that finds people
13 by -- when he finds them, he bites them. So we don't look
14 for anybody that's innocent or not presumed to be a
15 suspect in a crime. We use conservative tactics.

16 So what I wanted to do was visually clear the yard.
17 So I took the three people that were with me and I said,
18 Hey, go into the yard ahead of me and look, you know. Use
19 your eyes and let's see if anybody else is back here
20 that's injured.

21 Q So your track was designed to try to locate the --
22 the trail of a suspect?

23 A Correct. But, initially, we wanted to make sure that
24 nobody else was back there that was harmed.

25 Q I see, sir.

1 A So we did a visual clear of what the grassy area is
2 you can see here. And then I commanded my partner to
3 track.

4 Q Would you show the jury, generally, which -- well,
5 let's go to the end of this first. Was your track
6 successful in locating a suspect?

7 A No, we were not.

8 Q Okay. Now, let's go through this, generally, and
9 give the jury the idea of where your dog tracked.

10 A Okay. Several K9s responded to the scene at the
11 time. And what we did is we, basically, created the house
12 as if it was a clock. And my partner arrived on scene.
13 And he was to cover this half of the clock down. If 12:00
14 was just north to the house, my partner was to cut in this
15 direction.

16 And, at the same time, I was going to cut the upper
17 portion of the clock. So 9:00 was over here towards four,
18 and three was over toward the side. That was my piece of
19 the pie with my partner.

20 Q And how far did you track?

21 A We were unable to locate a track. And a track would
22 be a -- basically, a trail as you walk or even as you're
23 sitting here, you're dropping scent. So to a dog whose
24 nose is 44 times greater than ours, they have an amazing
25 ability to find things. You just have to provide the

1 right picture for them to follow.

2 Well, I didn't have a scent article to go off of, so
3 what I had to do was tell him to find the freshest scent
4 available. And that's what we were doing. So as we came
5 into the backyard, we were unable to find any
6 distinguished track where his nose goes to the ground.
7 What he was doing was he was keeping his head up as if he
8 was -- what we call air scenting, which means there's
9 still a hot odor in the air. That is common when someone
10 is in an area that's a circle or they're still there.

11 So what we did was we started working a heavy scent
12 pool where the dog was air scenting underneath this tree.
13 And it was over a fence at [REDACTED] Avenue. In order
14 to access that, we, actually, had to come to this
15 residence here, which is at the cul-de-sac at Donaldson,
16 and into the backyard. And there's a shed in the
17 backyard.

18 We could not locate a tract, in other words, locate a
19 trail leaving this location. Everything we had and all
20 the odor we had was concentrated around this shed in this
21 back yard. And we were unable to find anything else.

22 Q Did y'all, actually, go into the shed?

23 A I did not.

24 MR. WESTON: All right. Thank you, sir.

25 You may take your seat.

1 And answer any questions counsel may have for you.

2 THE WITNESS: Thank you.

3 CROSS-EXAMINATION

4 BY MR. KORNFELD:

5 Q Officer Lovelace, you didn't notice any footprints in
6 the backyard, did you?

7 A No.

8 Q Okay. And after the night of February 3rd, 2015, you
9 didn't have any other involvement in this case; is that
10 fair to say?

11 A I'm sorry. Could you just repeat that one?

12 Q Sure. After you were out there on February 3rd,
13 2015, you didn't have any other involvement in this case?

14 A No, I did not. No, sir.

15 Q Okay. And you didn't find anything else in the
16 backyard or anywhere, and neither did your partner?

17 A No, sir. That's correct.

18 MR. KORNFELD: No further questions.

19 THE COURT: Mr. Sullivan.

20 CROSS-EXAMINATION

21 BY MR. SULLIVAN:

22 Q Officer, did you go into [REDACTED] ?

23 A Yes, sir.

24 Q And it was clear?

25 A I apologize, sir. I don't know if I understand your

1 question.

2 Q Well, was anybody in [REDACTED] when you went there?

3 A When I went in?

4 Q Uh-huh.

5 A I did not contact anybody when I went past the front
6 door. The gentleman sitting to your left was at the front
7 door with a deputy.

8 Q So he was in there?

9 A He was at -- on the front steps, yes, sir.

10 Q So you were not looking for him in the backyard?

11 A No. I was looking for anyone else in the backyard.

12 Q He was on the steps of [REDACTED] ?

13 A With another officer, yes, sir.

14 MR. SULLIVAN: Thank you.

15 THE WITNESS: You're welcome.

16 THE COURT: Any redirect, sir?

17 MR. WESTON: No redirect, Your Honor.

18 The State would ask that he be released from his
19 subpoena.

20 THE COURT: Thank you, sir.

21 I appreciate you being here. Have a great day.

22 THE WITNESS: Thank you.

23 MR. WESTON: Your Honor, the State would call Officer
24 David Weiner.

25 THE CLERK: Sir, if you'll, please, come forward.

1 If you would, please, place your left hand on the
2 Bible and raise your right hand.

3 WHEREUPON,

4 DAVID WEINER,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 Please be seated.

8 And would you, please, state your name for the
9 record?

10 THE WITNESS: David Weiner.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. WESTON:

14 Q Officer Weiner, with whom are you employed?

15 A The Greenville County Sheriff's Office.

16 Q And how long have you been with the sheriff's office?

17 A 18 years.

18 Q Okay. And what is your rank?

19 A I'm a lieutenant.

20 Q All right. And did you have an occasion to respond
21 to [REDACTED] Avenue here in Greenville down near
22 Donaldson Center on the night of February 3rd, 2015?

23 A Yes, sir.

24 Q Do you remember about what time you got there?

25 A Without looking at a CAD report, I couldn't tell you,

1 but maybe 11:00, midnight, something like that.

2 Q And when you arrived, what was the nature -- how did
3 you end up going? What was the nature of the call that
4 went out?

5 A It was a death investigation. At the time, I was a
6 sergeant in criminal investigations. And any time they
7 get a suspicious death investigation, the sergeant has to
8 respond.

9 Q And when you arrived on scene, what did -- basically,
10 kind of go through your actions, generally, for the jury
11 what you did. When you first arrived, were there already
12 other deputies that were on scene?

13 A Yes, sir.

14 Q Had the scene been taped off with crime scene tape
15 yet?

16 A Yes, sir.

17 Q And what did you find when you arrived?

18 A From what I can remember --

19 Q Excuse me, sir. Let me hand you this laser pointer.
20 You can just point to the map. If you just hit the laser
21 button and point to the map, generally.

22 A All right.

23 Q You don't have to be exact, but just give the jury
24 some idea about where things were. Where did you park?
25 Do you remember?

1 A Out here on Donaldson Road.

2 Q All right, sir.

3 A And Donaldson Road is not too busy, but -- especially
4 at that time of night, but it's a good-size road. I
5 remember a vehicle being here with the deceased, like,
6 half in the car, half out of the car.

7 Q All right.

8 A Like feet in the car.

9 Q All right. And did -- at this point, is forensics
10 already processing the scene?

11 A Not processing it, but they're there.

12 Q They were sort of staging at that point?

13 A Yes, sir.

14 Q And so once you got there, what happened? What did
15 you do?

16 A It's just my job not to investigate so much as to
17 just make sure they have what they need. I called the
18 fire department. They brought some big scene lights over
19 so we could see.

20 And there was a decent amount of people that had
21 shown up. So I had them erect some tarps and all so we
22 could have some privacy for the victim. And so we could
23 still work the scene without having to move her.

24 Q Did you go into the residence?

25 A Yes, sir.

1 Q And did you find anything of note, or did you observe
2 anything of note inside the residence in the bathroom?
3 Did you go into the bathroom?

4 A I did -- [REDACTED]; correct? That's what we're
5 talking about?

6 Q Yes, sir. I may have said [REDACTED]. I'm sorry.
7 It's [REDACTED], yes, sir.

8 A I did. In the bathroom, I found, like, a South
9 Carolina -- I think it was an identification card. I
10 can't remember if it was an ID or a driver's license that
11 belonged to the victim in the toilet.

12 Q Okay. Did you, also, find a bank card, or some sort
13 of a debit, or --

14 A Yes, sir. There were several cards in the toilet.

15 Q I'm going to show you -- and not necessarily in any
16 particular order, but just starting sort of wide angle to
17 short angle. I'm showing you what's been premarked as
18 State's Exhibit No. 7, and ask you do you recognize that?

19 A Yes, sir.

20 Q What does that picture show?

21 A A toilet in the bathroom of [REDACTED].

22 Q And is that the way it looked when you saw it that
23 evening?

24 A Yes, sir.

25 MR. WESTON: The State would offer this as State's

1 Exhibit No. 7.

2 THE COURT: Objections?

3 MR. KORNFELD: No objection.

4 MR. SULLIVAN: No objection.

5 THE COURT: All right. Without objection, the same
6 is admitted.

7 (WHEREUPON, State's Exhibit No. 7 was admitted into
8 evidence.)

9 MR. WESTON: Permission to publish, Your Honor, to
10 the jury.

11 THE COURT: Yes, sir, you may.

12 MR. WESTON: Thank you, Your Honor.

13 BY MR. WESTON:

14 Q I'm going to show you what's been marked for
15 identification as State's Exhibit No. 8. And ask you, do
16 you recognize that?

17 A Yes, sir.

18 Q What is that?

19 A That is the victim's identification card inside that
20 toilet.

21 Q All right. Is that pretty much -- is that the way it
22 was when you saw it sticking out that way?

23 A Laying just like that, yes, sir.

24 Q Is there water in there, by the way?

25 A Yes, sir.

1 Q Is this the way it was on the night that you walked
2 into that bathroom?

3 A Yes, sir.

4 MR. WESTON: Your Honor, the State would offer this
5 as State's Exhibit No. 8.

6 MR. KORNFELD: No objection, Your Honor.

7 (Pause.)

8 MR. WESTON: I'm sorry, Your Honor. Once again, the
9 State would offer this as State's Exhibit No. 8.

10 THE COURT: It is without objection so admitted.

11 (WHEREUPON, State's Exhibit No. 8 was admitted into
12 evidence.)

13 MR. WESTON: Permission to publish, Your Honor.

14 THE COURT: Yes, sir, you may.

15 MR. WESTON: Thank you.

16 BY MR. WESTON:

17 Q I'm going to show you what's been marked as State's
18 Exhibit Nos. 9, 10, and 11. Because they're the same type
19 of objects. And I'm going to ask you if you would
20 identify them for the jury, please, starting with State's
21 Exhibit No. 9?

22 A Okay. State's Exhibit No. 9 --

23 Q Excuse me. Before you do that, let me ask you this.
24 When you -- were you present when the items were taken
25 from the toilet?

1 A In the house, yes, sir.

2 Q Yes, sir, that's what I mean. Out of the toilet?

3 A Yes, sir.

4 Q How many items did you see in the toilet?

5 A I just saw one.

6 Q Okay. And what was that one?

7 A The identification card.

8 Q Okay. And I'm going to show you what's been marked
9 as State's Exhibit No. 9, and ask you if you recognize
10 that?

11 A Yes, sir.

12 Q Is that the identification card that was in the
13 toilet that you saw?

14 A Yes, sir.

15 Q All right. And would you read the name on that?

16 A Shameese Nicole Logan.

17 Q All right. And I don't know whether you were able to
18 compare that with the victim that was outside. But was it
19 later determined by your office that this was the victim
20 that was found outside?

21 A Yes, sir.

22 MR. WESTON: Your Honor, the State would offer
23 State's Exhibit No. 9, the driver's license -- or
24 identification card of Ms. Shameese Logan.

25 MR. KORNFELD: No objection.

1 MR. SULLIVAN: No objection.

2 THE COURT: All right. Without objection, the same
3 is admitted.

4 (WHEREUPON, State's Exhibit No. 9 was admitted into
5 evidence.)

6 MR. WESTON: Permission to publish, Your Honor.

7 THE COURT: Yes, sir.

8 MR. WESTON: Thank you.

9 BY MR. WESTON:

10 Q Did you go anywhere else in the house? For
11 instance -- let me direct you. Did you go into the
12 kitchen?

13 A Yes, sir.

14 Q Did you open the refrigerator and freezer?

15 A Yes, sir.

16 Q Did you see anything in the freezer of note?

17 A Yes, sir --

18 Q Besides some frozen foods?

19 A Yes, sir.

20 Q What did you see?

21 A A cellar phone.

22 Q All right. I'm going to show you what's been marked
23 as State's Exhibit Nos. 6 and 7. And I would ask you,
24 starting with State's Exhibit No. 6 for identification
25 purposes, if you recognize that?

1 A Yes, sir.

2 Q What is that a picture of?

3 A The refrigerator in the kitchen at [REDACTED].

4 Q Okay. And I'm going to ask you if you recognize --
5 did you open up the freezer?

6 A Yes, sir.

7 Q I'm going to ask you if you recognize what's been
8 marked as State's Exhibit No. 5, and ask you do you
9 recognize what that depicts?

10 A Yes, sir.

11 Q What does it depict, sir?

12 A The interior of the freezer, the refrigerator.

13 Q Were you able to determine what this black item in
14 the middle was?

15 A A cellar phone.

16 Q All right, sir. And is this the way these items --
17 these -- the refrigerator itself and the freezer looked
18 when you looked inside?

19 A Yes, sir.

20 MR. WESTON: Your Honor, the State would offer these
21 as State's Exhibit Nos. 5 and 6. State's Exhibit No. 5
22 being the interior of the refrigerator/freezer. And
23 State's Exhibit No. 6 being the refrigerator itself from
24 the outside.

25 THE COURT: Objections?

1 MR. KORNFELD: No objection.

2 MR. SULLIVAN: No objection.

3 THE COURT: Without objection, the same are admitted.

4 (WHEREUPON, State's Exhibit Nos. 5 and 6 were admitted
5 into evidence.)

6 MR. WESTON: Permission to publish to the jury, Your
7 Honor.

8 THE COURT: Yes, sir.

9 MR. WESTON: Thank you.

10 BY MR. WESTON:

11 Q Now, did you take any of these items out?

12 A No, sir.

13 Q Whose job would that be?

14 A Forensics.

15 Q So you didn't tamper with the items?

16 A No, sir.

17 Q All right. Now, after these items were found and it
18 was determined that they were related to -- in some way to
19 the victim that was found outside, did you instruct any --
20 Investigator McCalmont to -- did you help prepare a search
21 warrant for the entire residence?

22 A I just asked Investigator McCalmont to get a search
23 warrant, yes, sir.

24 Q And other than that, did you have any further
25 involvement in this case?

1 A No, sir.

2 MR. WESTON: That's all I have.

3 Answer any questions counsel may have for you.

4 THE WITNESS: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. KORNFELD:

7 Q Officer, Savannah Harris' ID was in the toilet. Do
8 you remember seeing that?

9 A The only one that I could see was what was facing up
10 down at the bottom of the toilet. And those other ones
11 were, I guess, underneath there, or further in the toilet.
12 So I could only see one.

13 Q And what color was the -- I guess, the top on the one
14 you saw? Green?

15 A Yes, sir.

16 Q Okay. And that was Ms. Logan's ID; is that correct?

17 A Yes, sir.

18 MR. KORNFELD: Okay. No further questions.

19 Thank you.

20 CROSS-EXAMINATION

21 BY MR. SULLIVAN:

22 Q While you were waiting to obtain the search warrant,
23 who stood with these things in the bathroom and in the
24 kitchen?

25 A I didn't understand the who --

1 Q Well, did somebody -- an officer make sure that these
2 things stayed where they were until you had the search
3 warrant?

4 A Correct. Well, the house is empty at this point.

5 Q I understand.

6 A So nobody is standing inside the house with each
7 item. It's just we know the house is vacant. There's no
8 persons in it anymore to tamper with it.

9 Q But nobody, actually, observed these items in the
10 time that it took to get the warrant and get back to them?

11 A Are you asking, like, was somebody standing there
12 with each --

13 Q Yeah.

14 A No, no, no. Like I said, the house was completely
15 empty. And we just secured the house until the search
16 warrant was obtained. So nobody could go inside or
17 anything.

18 MR. SULLIVAN: Okay. Thank you.

19 THE WITNESS: Yes, sir.

20 THE COURT: Any redirect?

21 MR. WESTON: Just one or two questions, Your Honor,
22 just to clarify.

23 REDIRECT EXAMINATION

24 BY MR. WESTON:

25 Q And I think I'm correct on this. I want to be sure.

1 In terms of protocol in these types of situations, there's
2 an initial investigation -- or an initial assessment, and
3 sort of securing the scene, and then forensics comes.

4 Once forensics comes and begins their processing of the
5 scene, what do the officers do?

6 A Just stand out of the way.

7 Q They, basically, have to withdraw and get out of the
8 way, and forensics handles the scene?

9 A Yes, sir.

10 Q So between the time you got there and looked at these
11 items and the time forensics came in and -- and began
12 processing the scene, y'all's job, as deputies, was just
13 to secure the scene and make sure nobody came in and
14 bothered anything?

15 A Correct.

16 Q And that presumes, of course, that none of the
17 deputies are going to stick something in a toilet, or
18 something like that; right?

19 A Correct, sir.

20 MR. WESTON: All right. Thank you, sir.

21 THE COURT: Any recross limited to that redirect?

22 (WHEREUPON, there was no response.)

23 THE COURT: No?

24 MR. KORNFIELD: No, Your Honor.

25 MR. SULLIVAN: No.

1 THE COURT: Thank you.

2 I appreciate you being here. You may step down and
3 be excused.

4 MR. WESTON: Your Honor, the State would ask that
5 this witness be allowed to be excused from his subpoena.

6 THE COURT: Yes, sir.

7 Call your next witness, sir.

8 MR. MORONEY: Your Honor, the State calls Nicholas
9 Downing.

10 THE CLERK: Sir, if you'll, please, come forward.

11 If you'll, please, pause at the end of the bench.

12 Place your left hand on the Bible and raise your
13 right hand.

14 WHEREUPON,

15 NICHOLAS DOWNING,

16 after first having been duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Thank you.

19 Please be seated.

20 Would you, please, state your name for the record?

21 THE WITNESS: Nicholas Downing.

22 THE CLERK: Thank you, sir.

23 DIRECT EXAMINATION

24 BY MR. MORONEY:

25 Q Hi, Mr. Downing.

1 Where's your current place of employment?

2 A I currently work with the Simpsonville Police
3 Department.

4 Q And in what capacity do you work for the Simpsonville
5 Police Department?

6 A I am a patrolman.

7 Q Where did you work before that?

8 A I was an officer with the Greenville County forensics
9 crime scene unit from 2015 to 2017. And prior to that, I
10 was a deputy with Greenville County from 2013 to 2015.

11 Q All right. Were you a deputy with the Greenville
12 County Sheriff's Office on February 3rd, 2015?

13 A I was.

14 Q All right. Do you recall responding to a death
15 investigation that evening?

16 A I do.

17 Q Okay. Could you explain exactly how you responded,
18 or why you responded to that area?

19 A On February 3rd, 2015, while on patrol, I received
20 over the radio a call for other units at [REDACTED]
21 Avenue in Greenville, that they had a gunshot victim in
22 the driveway of a residence. At that time, I responded to
23 the scene. I made contact with other deputies.

24 I stayed outside of the residence to maintain a
25 perimeter, and to set up a perimeter around the crime

1 scene to ensure no one else got inside of it. And during
2 my time there, I pretty much just stayed outside of the
3 residence making sure nobody entered into the crime scene.

4 Q At some point during the night, did you have any
5 interaction with Defendant Bobby Smith?

6 A I did. After Mr. Smith was taken out of the
7 residence, he was placed in the back of my patrol vehicle
8 where he stayed throughout the entire duration of the
9 investigation.

10 Q All right. And at some point in the evening, were
11 you notified by investigators that he was to be placed
12 under arrest?

13 A Yes. After transporting him back to speak with
14 investigators, I was advised by the investigators on scene
15 that he was under arrest. They informed him of that. At
16 that time, I brought him and transported him from the
17 investigation room to the Greenville County Detention
18 Center.

19 While I was at the Greenville County Detention
20 Center, I was going through his pockets and his pants just
21 to see what he had on him to search incident to arrest
22 just to make sure he wasn't wearing anything else into the
23 jail. I found several pieces of cash money that had what
24 appeared to be suspected blood on them.

25 Q And when you saw that money and you saw that

1 suspected blood, did you notify somebody?

2 A I did. I notified Investigator Newman. At which
3 time, I told him what I had. And then I contacted
4 Greenville County forensics. And Sergeant Shaw with
5 Greenville County forensics came to the detention center.
6 I signed the money with suspected blood over to him on our
7 property and evidence sheet.

8 Q And do you recall how much money you found in that
9 pocket?

10 A It was \$107.

11 Q Okay.

12 A It was -- I believe -- give me one second. It was
13 five \$20s, one \$5, and two \$1 bills.

14 Q Okay. And can you describe the appearance you
15 mentioned of the blood that you saw?

16 A It was red in color. It was dried. And I believed
17 it to be suspected blood.

18 Q Was it splatter? Did it appear --

19 A It was in several spots on the money. It wasn't in a
20 pattern, several circular patterns located on the bills.

21 Q Officer Downing, I'm showing you what's been
22 premarked as State's Exhibit Nos. 65 and 66, and ask you
23 to take a look at that and see if you recognize that?

24 A I do recognize this as the money that was taken that
25 night.

1 MR. MORONEY: Your Honor, at this time, the State
2 would offer State's Exhibit Nos. 65 and 66 into evidence.

3 MR. KORNFELD: No objection, Your Honor.

4 MR. SULLIVAN: No objection.

5 THE COURT: All right. Without objection, the same
6 is admitted.

7 (WHEREUPON, State's Exhibit Nos. 65 and 66 were
8 admitted into evidence.)

9 MR. MORONEY: Your Honor, permission to publish to
10 the jury.

11 THE COURT: Yes, sir, you may.

12 BY MR. MORONEY:

13 Q And once Mr. Smith was booked into the jail, did that
14 conclude your involvement in this case?

15 A It did.

16 (WHEREUPON, State's Exhibit Nos. 121, 122, and 123 were
17 marked for identification only.)

18 BY MR. MORONEY:

19 Q Officer, I'm handing you what's been premarked as
20 State's Exhibit No. 122 for identification purposes. Take
21 a look at that, and let me know if you recognize that.

22 A Yes. This appears to be the money that I took from
23 Mr. Smith.

24 Q Okay. And that's in substantially the same condition
25 as you saw it that night when you retrieved it from his

1 pocket?

2 A Yes, it is.

3 MR. MORONEY: Your Honor, at this time, the State
4 would offer State's Exhibit No. 122 into evidence.

5 THE COURT: Objection, sir?

6 MR. KORNFELD: No objection, Your Honor.

7 MR. SULLIVAN: I'd like to know who sealed the
8 envelope, where it's been, and why it's being opened now?

9 Did he seal it? Did the officer seal it?

10 MR. MORONEY: We'll address it with a later witness.

11 MR. SULLIVAN: I'd like to know that before I allow
12 it to come in.

13 THE COURT: Okay.

14 MR. SULLIVAN: To have a chain established.

15 THE COURT: Okay. Well, he's identified it. And, at
16 this point, I'll sustain the objection, provided your
17 testimony will establish the chain of custody.

18 BY MR. MORONEY:

19 Q Officer Downing, I'm, also, handing you State's
20 Exhibit No. 123, and ask you to take a look at that and
21 see if you can identify it?

22 A I identify this as part of the money that was taken
23 as well.

24 Q Okay. And it's in substantially the same condition
25 as you saw it the last time you retrieved it from Bobby

1 Smith's pocket?

2 A Yes.

3 MR. MORONEY: Thank you, Officer Downing.

4 Please answer any questions the Defense may have for
5 you.

6 MR. KORNFELD: No questions, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. SULLIVAN:

9 Q You said that was part of the money you found?

10 A Yes. That was presented as two different State's
11 Exhibits.

12 Q Is that all the money you found?

13 A Yes, it is.

14 Q And it came out of Bobby's pocket?

15 A Yes.

16 Q Do you know where it was before it was put in Bobby's
17 pocket?

18 A No.

19 MR. SULLIVAN: No more questions.

20 THE COURT: Okay. Any redirect, sir?

21 MR. MORONEY: No, Your Honor.

22 THE COURT: Thank you, Officer.

23 I appreciate you being here. You may be excused.

24 THE WITNESS: Thank you.

25 MR. MORONEY: We'd ask to release this officer from

1 the subpoena, Your Honor.

2 THE COURT: Yes, sir.

3 You can call your next witness.

4 MR. WESTON: Your Honor, the State would call
5 Mr. Robert Parker.

6 THE CLERK: Sir, if you'll, please, come forward.

7 Pause at the end of the bench.

8 Please your left hand on the Bible and raise your
9 right hand..

10 WHEREUPON,

11 ROBERT STEVEN PARKER,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 Please be seated.

15 And would you, please, state your name for the
16 record?

17 THE WITNESS: Robert Steven Parker.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. WESTON:

21 Q Mr. Parker, with whom are you employed?

22 A The Greenville County forensics.

23 Q And would you tell the jury -- ladies and gentlemen
24 of the jury what that is, and what y'all do?

25 A In Greenville County forensics, I am with the crime

1 scene unit. My responsibilities with them is to document
2 the crime scene, and to collect and preserve any items of
3 evidentiary value found on scene.

4 Q Do you work -- are you employed in conjunction with
5 or as an auxiliary of the sheriff's department, the City
6 of Greenville, any other municipal law enforcement agency?

7 A No, sir. We just assist all of those agencies. We
8 are our own unit.

9 Q Y'all are an independent agency?

10 A Yes, sir.

11 Q All right. And how long have you been with the crime
12 scene office?

13 A I have been with the crime scene unit for five years.
14 I've been in law enforcement for a total of 11 years.

15 Q And what did you do before that, before the five
16 years there in law enforcement?

17 A I was a patrol officer with Simpsonville.

18 Q I see, sir. All right. And I'd like to acquaint the
19 jury a little bit about what your protocol is. And I
20 assume y'all arrive on cases -- on criminal cases
21 involving robberies, homicides, violent crimes, and things
22 of that nature to investigate -- or to collect evidence in
23 the aftermath of them; is that correct?

24 A Yes, sir.

25 Q Would that be a correct assessment?

1 A Yes, sir.

2 Q Okay. Once y'all are called to a scene, is it
3 usually by the investigating officer, or one of the law
4 enforcement officers on scene?

5 A Yes, sir. With a violent incident like this, it
6 would be the investigator that requested us.

7 Q All right. So once y'all get to a scene, what is the
8 first thing you do?

9 A The first thing when we get on scene, we would get a
10 debriefing from the officers on scene of what they have
11 seen and observed.

12 Q And they sort of give you an assessment of what
13 they've seen, and what they think may have happened?

14 A Yes, sir, they do.

15 Q All right. And I'm assuming the purpose of that is
16 so you'll know what you're looking for?

17 A Yes, sir. It assists us in our observations.

18 Q And some of it -- would you describe some of the
19 things that y'all do, generally? For instance, would
20 y'all take a video of the crime scene?

21 A Yes, sir, we would.

22 Q What about pictures?

23 A We do. When we document, we take digital photographs
24 of the incident location.

25 Q Okay. Do you -- I assume -- I think you mentioned

1 that you collect evidence?

2 A Yes, sir.

3 Q Of things that you -- that may have evidentiary
4 value?

5 A Yes, sir.

6 Q Prior to collecting them, do y'all mark and
7 photograph them, and what have you?

8 A We do. We mark them with evidence placards. And we
9 photograph them when we collect them.

10 Q And before y'all begin your -- when y'all are getting
11 ready to begin your process, are deputies still -- like in
12 this case, it involved a residence with a front yard and
13 then inside of a house; is that correct?

14 A Yes, sir.

15 Q Are the deputies still milling around and moving
16 around when y'all start your process, or are they waved
17 off?

18 A No. They back off. They do perimeter security for
19 us as we do our walk-through and do our observations of
20 the crime scene.

21 Q With the exception of asking them logistical
22 questions, are they a part of your crime scene work? Do
23 y'all work hand in hand? Like, for instance, would the
24 deputy help you pick up things and photograph things?

25 A No, sir. That is strictly us.

1 Q You're acting totally independent of the Greenville
2 County Sheriff's Office?

3 A Yes, sir.

4 Q Let me ask you -- with that backdrop in mind, let me
5 ask you, did you have an occasion to respond to [REDACTED]

6 [REDACTED] Avenue on February 3rd of 2015, in the late
7 night or early morning hours?

8 A Yes, sir.

9 Q And did you along with, I think, Mr. Lendway --
10 Officer Lendway process that scene?

11 A Yes, sir.

12 Q About how long were y'all out there, just generally?

13 A It was for a few hours. I recall that.

14 Q And I assume that you were working most of the time?

15 A Yes, sir.

16 Q Do you remember everything you did out there that
17 night off the top of your head?

18 A No, sir.

19 Q All right. I'm going to show you a document, and ask
20 you if you recognize this document, sir?

21 A Yes, sir. This is a copy of my report.

22 Q All right. Does -- and how many pages is your
23 report?

24 A Four pages, sir.

25 Q And does the document I gave you contain four pages?

1 A Yes, sir, it does.

2 Q Does -- by reviewing that document, will it refresh
3 your recollection as to what you did that night?

4 A Yes, sir, it should.

5 Q Let's start with, does the document indicate what
6 time you arrived?

7 A Yes, sir. I arrived at 23:47 that evening.

8 Q And who did you first meet with when you got there?

9 A When I arrived on scene, I met with Investigator
10 Newman, Sergeant Weiner, and Deputy Coroner Fowler that
11 night.

12 Q And what were you advised concerning what the
13 situation was, as far as what crimes may have been
14 committed?

15 A They advised me that they had responded in reference
16 to a 911 hang up call at that incident location. And upon
17 arrival, the deputies said they had located a victim with
18 suspected gunshot wounds.

19 Q And I assume, at some point, you saw that victim?

20 A Yes, sir.

21 Q And were they -- just to move this along. They were
22 just outside the vehicle to the left of the residence --
23 if you're looking at it from the street, they were in a
24 vehicle to the left of the residence?

25 A Yes, sir.

1 Q Okay. And was the place -- was the area already
2 secured by crime scene tape?

3 A Yes, sir. Deputies already had placed tape up on the
4 perimeter.

5 Q And what did you first notice as you were walking up
6 towards the residence?

7 A When I was first walking up towards the residence, I
8 did observe pieces of glass in the runway -- I'm sorry, in
9 the roadway in front of the residence. And then I noticed
10 more unknown pieces of glass in the gravel driveway
11 leading up to the residence. And I observed some spent
12 cartridge casings as well.

13 Q And how many vehicles did you see at or around the
14 residence?

15 A I observed two vehicles. I observed a Jeep Cherokee
16 that was in front of the residence, and then a Chrysler
17 300 that was in the gravel driveway.

18 Q And, just for the record, did you record the license
19 tag of the Chrysler?

20 A Yes, sir, I did.

21 Q Would you tell the jury what that license tag was?

22 A The vehicle tag on the Chrysler that I did
23 photograph, the tag was LGB 429.

24 Q All right. And what about the Jeep Cherokee, did you
25 record a license tag or serial number belonging to that

1 Cherokee?

2 A The Jeep Cherokee, I recorded the VIN number.

3 Q And what was that VIN number, please?

4 A The VIN number was 1J4FT58SXNL192158.

5 Q All right. And when you -- was -- obviously, the
6 Chrysler had a female's body in or around, coming out of
7 the backseat. Was there anything unusual about the Jeep
8 Cherokee that you saw that caught your attention, or was
9 it just a car sitting in front of the house?

10 A Just a vehicle that was sitting in front of the
11 residence. We like to document all the vehicles we see on
12 scene.

13 Q All right. Now, at this point, have you gone into
14 the house yet, or are you still looking at the exterior of
15 the scene?

16 A Still on the exterior of the scene.

17 Q All right. And, by the way, did you arrive with
18 Officer Lendway, or did y'all come separately?

19 A We arrived separately. He was the on-call supervisor
20 that evening. And I notified him of the call we received.

21 Q All right. Do you know who -- do you remember which
22 one arrived first?

23 A I was the first one.

24 Q Okay. And so, at this point, you noted the two cars
25 in the -- one in front of the house, the Jeep, and the

1 Chrysler 300 to the left of the house with the body. Did
2 you go and observe the car with the body?

3 A Yes, sir, I did.

4 Q And what were your initial observations?

5 A The observation -- the victim was on the -- she was
6 by the passenger side rear door. I noticed her right foot
7 was propped up on the interior of the passenger side rear
8 door frame. And her left foot was propped up on the top
9 of the passenger side rear tire.

10 The victim was wearing blue jean overalls that I did
11 notice had been pulled down to her thighs. And she had on
12 a black long sleeve shirt that had been pulled up exposing
13 her torso.

14 Q All right. And did you take a video -- make a video
15 presentation -- or video recording of the exterior of the
16 crime scene?

17 A Yes, sir, I did.

18 Q All right. I'm going to show you what has been
19 premarked as State's Exhibit No. 68, and ask you do you
20 recognize this?

21 A Yes, sir. Yes, sir. This is the video footage.

22 Q And is this the video footage you took?

23 A Yes, sir.

24 Q And does it have your initials and date on it?

25 A Yes, sir, it does.

1 Q And have you reviewed it as to its accuracy and
2 authenticity?

3 A Yes, sir, I did.

4 Q And is it an accurate depiction of the crime scene on
5 the night that you were there?

6 A Yes, sir.

7 MR. WESTON: Your Honor, the State would offer
8 State's Exhibit No. 68, the crime scene video.

9 BY MR. WESTON:

10 Q Just to be clear, does this crime scene video show
11 everything, or does it leave out the part where the body
12 is shown?

13 A That one does leave out the part where the victim's
14 body is.

15 MR. WESTON: Your Honor, permission -- the State
16 would offer this as State's Exhibit No. 68.

17 THE COURT: Objections?

18 MR. KORNFELD: No objection.

19 MR. SULLIVAN: No objection.

20 THE COURT: All right. Without objection, the same
21 is admitted.

22 (WHEREUPON, State's Exhibit No. 68 was admitted into
23 evidence.)

24 MR. WESTON: Permission to publish, Your Honor.

25 THE COURT: Yes, sir, you may.

1 BY MR. WESTON:

2 Q While we're waiting, how long is the video, just
3 ballpark?

4 A I believe that video right there may just be over a
5 minute long.

6 (WHEREUPON, State's Exhibit No. 68 was played in
7 open court.)

8 BY MR. WESTON:

9 Q Now, is that the Jeep that you were talking about in
10 front of the car -- in front of the house?

11 A Yes, sir, it is.

12 Q All right, sir. And is that the Chrysler 300 that we
13 barely see in between the two houses there?

14 A Yes, sir. That is the Chrysler.

15 (WHEREUPON, State's Exhibit No. 68 continued to be
16 played in open court.)

17 BY MR. WESTON:

18 Q Now, after you were -- and we're still outside the
19 house at this point. After you -- in addition to taking
20 photographs of the -- I mean, a videotape of the crime
21 scene, did you, also, take photographs of the exterior of
22 the crime scene?

23 A Yes, sir, I did.

24 Q I assume you took a lot of pictures?

25 A Yes, sir.

1 Q I am going to go through these photographs with you
2 as quickly as I can without going too fast.

3 A Yes, sir.

4 Q And I'm going to ask you -- I'm going to show you
5 what's been marked as State's Exhibits, and ask if you
6 recognize them as pictures you took that night. I'm going
7 to show you State's Exhibit No. 47. And tell the jury
8 what that is.

9 A Yes, sir. This photograph is a picture of the gravel
10 driveway leading up to the Chrysler. In this photo,
11 suspected blood was observed on the gravel driveway.

12 Q All right. And that's -- that is State's Exhibit
13 No. 47 --

14 MR. WESTON: Your Honor, just to move this along, I'm
15 going to ask that these photos be introduced after he
16 explains what they --

17 THE COURT: Sure.

18 MR. WESTON: After he describes what they are, I'm
19 going to ask that each one be introduced. The Defense
20 counsel has already seen all the photos. And they've
21 indicated they have no objections.

22 THE COURT: Okay.

23 MR. WESTON: So I want to try to move this along as
24 quickly as possible.

25 THE COURT: I'm with you.

1 MR. WESTON: And I would, also, like, Your Honor,
2 permission to publish each one to the jury once they're
3 admitted into evidence.

4 THE COURT: Sure. That's fine. As long as there's
5 no objection to it, that's fine.

6 MR. WESTON: Thank you, Your Honor.

7 BY MR. WESTON:

8 Q So State's Exhibit No. 47 is what again?

9 A Yes, sir. State's Exhibit No. 47, in this photograph
10 is a picture of the gravel driveway leading up to the
11 Chrysler 300. And suspected blood was observed when I
12 photographed this.

13 Q All right. Thank you, sir.

14 I'm going to show you State's Exhibit No. 48, and ask
15 if you recognize that?

16 A Yes, sir. This is a photograph of the same area with
17 the suspected blood leading up to the Chrysler. And you
18 can barely see the victim in the background.

19 MR. WESTON: And, just for the record, I apologize on
20 State's Exhibit No. 47. The State would move State's
21 Exhibit No. 47 into the record. And the State would,
22 also, move to have State's Exhibit No. 48 put into the
23 record.

24 THE COURT: Any objection?

25 MR. WESTON: That's just for the court reporter, Your

1 Honor. My understanding is they have no objection to any
2 of the photos.

3 THE COURT: Tell me then what are the -- what
4 collectively are all the photos that you're going to go
5 through? 47 through?

6 MR. WESTON: I just want to make sure we don't skip
7 any, Your Honor. Your Honor, it is State's Exhibit
8 Nos. 47 through 64, with the exception of State's Exhibit
9 No. 63, which is, I think, a picture that's already been
10 introduced into evidence.

11 THE COURT: All right. So it's my understanding,
12 Defense Counsel, that you have no objections to the
13 introduction of those pictures?

14 MR. KORNFELD: That's correct, Your Honor.

15 THE COURT: Mr. Sullivan?

16 MR. SULLIVAN: No objection, Your Honor.

17 THE COURT: Okay. We'll move them all in
18 collectively by acclimation. If you want to ask him
19 questions about specific pictures, you may.

20 MR. WESTON: Thank you, Your Honor.

21 And I would pass State's Exhibit No. 48 over to the
22 jury.

23 (WHEREUPON, State's Exhibit Nos. 47, 48, 49, 50, 51,
24 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 64 were
25 admitted into evidence.)

1 BY MR. WESTON:

2 Q State's Exhibit No. 49?

3 A Yes, sir. It's going to be the same picture of the
4 suspected blood in the driveway.

5 Q Is that just a closer shot?

6 A Yes, sir, it is.

7 Q And State's Exhibit No. 50?

8 A Yes, sir. This is going to be a photograph of a
9 spent cartridge casing on the gravel driveway, along with
10 some of the unknown pieces of glass I observed as well.

11 Q All right. State's Exhibit No. 51?

12 A Yes, sir. This photograph is going to be another
13 spent cartridge casing observed on the gravel driveway.

14 Q For a non-gun officiant like myself, is the silver
15 thing in the middle the spent cartridge that you're
16 referring to?

17 A Yes, sir, that is.

18 Q And that's State's Exhibit No. 51.

19 And State's Exhibit No. 52?

20 A Yes, sir. This is another photograph of the spent
21 cartridge casing on the gravel driveway.

22 Q All right. And I'm assuming when you say the "gravel
23 driveway," that would be the driveway leading up to the
24 house here?

25 A [REDACTED] Avenue.

1 Q I apologize. Right in here?

2 A Yes, sir.

3 Q And this is, obviously, paved. This is not paved; is
4 that correct? Between -- the driveway where the car was
5 located was not a paved driveway, it's just gravel?

6 A Yes, sir. You're correct.

7 Q All right. I'm going to show you another picture,
8 what's been introduced as State's Exhibit No. 53, and ask
9 you if you recognize -- let says State's Exhibit Nos. 53
10 and 54, do you recognize what those pictures depict?

11 A Yes, sir. It is the affidavit notification of the
12 sale of motor vehicle that was located in the Jeep
13 Cherokee.

14 Q All right. So the Jeep Cherokee that was parked
15 here?

16 A Yes, sir.

17 Q Did you inspect that car -- or that Cherokee? I
18 mean, you took pictures of it, and looked in it, and
19 stuff?

20 A Yes, sir, I did.

21 Q And State's Exhibit No. 54 is -- excuse me. I'm
22 sorry. Is State's Exhibit No. 53 just a close-up picture
23 of State's Exhibit No. 54 that shows the affidavit in
24 greater detail?

25 A Yes, sir. You are correct.

1 Q And do they indicate that -- do the pictures indicate
2 where these items were located?

3 A Yes, sir.

4 Q I mean, they weren't moved and staged to be taken so
5 the pictures could be taken, this is where they were
6 found?

7 A Yes, sir, I believe so.

8 Q All right. And would you look -- this is State's
9 Exhibit No. 54. This is the front seat of which vehicle?

10 A The Jeep Cherokee.

11 Q Now, State's Exhibit No. 53 is a closer picture of
12 that affidavit. Can you make out the name on that
13 affidavit as the owner of the vehicle?

14 A Yes, sir.

15 Q Could you publish it for the jury?

16 A It says to -- if I'm pronouncing this correctly,
17 Jahru Harold Smith.

18 Q Thank you, sir.

19 And this is in the Jeep Cherokee in front of the
20 house?

21 A Yes, sir.

22 Q I'll show you State's Exhibit -- I'm going to do
23 these kind of as a group, State's Exhibit Nos. 55, 56, 57,
24 58, 59, and 60. And would you just tell the jury what
25 they describe, generally, first? And they're different

1 shots. Are they pretty much of the same thing? And when
2 you reference them, please, reference the number at the
3 bottom.

4 A Okay. On State's Exhibit No. 55, in this photograph,
5 this is an evidence placard I laid down near the suspected
6 blood as I did collect a rock that had the suspected blood
7 on it.

8 Q All right. And what's the next number?

9 A State's Exhibit No. 56, in this photograph, I did an
10 overall of the evidence placards I had put down on the
11 gravel driveway.

12 Q And why would those evidence placards be significant
13 like seven -- I think it's four, eight, and three. What
14 would be -- what would they mark?

15 A Number three is marking one of the spent cartridge
16 casings, as well as number four. And then number eight is
17 marking the rock I collected with suspected blood on it.

18 Q All right. Thank you, sir.

19 A Yes, sir.

20 Q What's the next one?

21 A State's Exhibit Nos. 57 and 58 is going to be of the
22 unknown pieces of glass I observed on the gravel driveway.

23 Q All right. And the next two, sir?

24 A State's Exhibit No. 59 is another photograph of a
25 spent cartridge casing, along with some unknown pieces of

1 glass in the gravel driveway prior to marking it with a
2 placard.

3 Q And I'm going to hold this up here so the jury can
4 see. Would you point out where the casing is?

5 A Yes, sir. It's right there.

6 Q All right.

7 A Along with some pieces of glass.

8 Q So it would be right here in the center?

9 A Yes, sir.

10 Q And what's the next one?

11 A State's Exhibit No. 60. In this photograph, it is of
12 the gravel driveway leading up to the Chrysler 300. And
13 you can see the victim in the vehicle.

14 Q All right, sir. We're down to three more. And
15 State's Exhibit No. 62 depicts what?

16 A That's going to be the back of the Jeep Cherokee.

17 Q In front of the home?

18 A Yes, sir, in front of the residence.

19 Q All right. And State's Exhibit No -- that's State's
20 Exhibit No. 62. State's Exhibit No. 64 depicts what?

21 A State's Exhibit No. 64, this is a photograph further
22 back near the roadway depicting the front of the residence
23 where you can see the Jeep Cherokee and the Chrysler.

24 Q And, finally, State's Exhibit No. 61?

25 A State's Exhibit No. 61, in this photograph, you see

1 the Chrysler 300, along with the victim near the vehicle
2 on the side of the residence.

3 Q All right, sir. I'm going to let you catch your
4 breath for a moment there. In addition to taking
5 photographs, and putting placards down, and collecting --
6 and, by the way, did you collect a lot of these items?
7 We're going to get back to that later.

8 A Yes, sir. I did collect those items.

9 Q In addition to those responsibilities, did you and
10 Officer Lendway take any kind of measurements?

11 A Yes, sir. I assisted Lieutenant Lendway in taking
12 digital measurements of the crime scene.

13 Q And without getting into specifics of all the
14 measurements and what you found, I think Officer Lendway
15 will testify a little bit more concerning that. But what
16 types of measurements do y'all take -- or would you have
17 taken in this type of a case?

18 A That one, we would be taking measurements outside the
19 residence of what we observed, where the vehicles --
20 measurements of the evidence to -- we would select two
21 points, I believe I could say. And we use two main points
22 for, basically, showing where the evidence are to those
23 two points so it could be depicted on the diagram.

24 Q I see. And in addition to that, does one of you do a
25 drawing, sort of a scale drawing of the location?

1 A Yes, sir. That's what he did was a detailed diagram
2 of the crime scene.

3 Q All right. Bear with me a moment, sir.

4 All right. Hopefully, this will not take too long.
5 I'm going to show you a number of -- a lot of items.

6 A Yes, sir.

7 Q And I'm going to ask you if you can identify them for
8 the jury, please. I'm going to ask you to open each
9 one -- and don't open the inside item and don't show it to
10 the jury. I just -- let's start with this one, for
11 example. And hold it down below this counter so the jury
12 can't see it.

13 And if you would, just take it out, take a look at
14 it, at the markings on it. And I would ask you if you can
15 identify it?

16 A Yes, sir.

17 Q What is that?

18 A That would be a swab of suspected blood I collected
19 off a clothing item.

20 Q And how is it packaged?

21 A The swab?

22 Q I mean, is it in a cylinder, or is it in a bag?

23 A The swab is, actually, in the sealed capsule. And we
24 seal the top that screws on with evidence tape so as it
25 cannot be opened.

1 Q And do you mark it in some form or fashion?

2 A Yes, sir. I would initial it with my initials.

3 Q And do you give it a designation, like AB-1, or AB-6,
4 or some sort of a designation for that particular item?

5 A Yes, sir.

6 Q And what would it be? What would that one be?

7 A This one would be RSPD-1.

8 Q All right. Is there only one item in there?

9 A Yes, sir.

10 Q All right. I'm going to show you another item, and
11 ask you if you recognize that. Once again, keep it below
12 the vision line of the jurors because it's not come into
13 evidence yet.

14 A Yes, sir.

15 Q What is that item?

16 A This would be a buccal swab recovered from Mr. Bobby
17 Smith.

18 Q All right. And is that -- does that bear your
19 initials?

20 A Yes, sir, it does.

21 Q All right. And does it have a designation?

22 A Yes, sir. This would be RSP-B is the designation for
23 the swab.

24 Q RSP-B. All right, sir. And I'm trying to figure out
25 the easiest way to do this. I'm going to go ahead and

1 sort of jump ahead. How did you come to take a buccal
2 swab from Bobby Smith?

3 A Investigator Newman had requested that I go to the
4 law enforcement center to process Mr. Smith.

5 Q All right. Now, would this have been early into the
6 next morning, after 12:00?

7 A Yes, sir.

8 Q The next morning?

9 A This was after the crime scene.

10 Q And did you handle the actual taking of the buccal
11 swab itself?

12 A Yes, sir, I did.

13 Q And just for the jury, tell the jury what a buccal
14 swab is?

15 A A buccal swab is the easiest way to retrieve DNA from
16 an individual. Just swabbing the inside of their cheek to
17 get some skin cells.

18 Q And are you using something that looks like a Q-Tip?

19 A Yes, sir. That's what the DNA swab looks like.

20 Q Once you get it onto the Q-Tip, you then do what with
21 it?

22 A It's sealed in the capsule.

23 Q And would that be what's in that capsule?

24 A Yes, sir.

25 Q And it's marked -- I think you said it's RS --

1 A RSP-B.

2 Q RSP-D. Okay.

3 A RSP-B.

4 Q RSP-B. I'm sorry. Okay. And I'm going to talk
5 about what you do with all of these things when I get to
6 the end, rather than go through this one at a time. All
7 right. Let me show you -- excuse me one second.

8 I'm going to now show you what is marked as State's
9 Exhibit -- and I forgot to do this before. Let me go
10 back. I'm sorry. I have to maintain the record, Officer.
11 I apologize.

12 A No problem, sir.

13 Q State's Exhibit No. 89, would you tell the jury again
14 what that is, and what the designation is?

15 A State's Exhibit No. 89 is the buccal swab recovered
16 from Mr. Bobby Smith as -- designated as RSP-B.

17 Q All right. And State's Exhibit No. 87, would you
18 tell the jury again what that is? I'm sorry, Officer, to
19 make you go through this. But we have to maintain the
20 record as what exhibits are identified as what items.

21 A State's Exhibit No. 87 is the swab of suspected blood
22 designated as RSPB-1.

23 Q Let me show you what has been marked as State's
24 Exhibit No. 88, and ask you to hold it down below the
25 vision line once again. And tell the jury what that is.

1 A State's Exhibit No. 88 is the other buccal swab that
2 I recovered from Mr. Bobby Smith identified as RSP-A.

3 Q All right. And when was that taken? At the same
4 time?

5 A Yes, sir. That was taken at the same time as the
6 other buccal swab.

7 Q So is it just protocol to do two separate ones just
8 in case something happens to one of them, or something?

9 A Yes, sir.

10 Q And that's State's Exhibit No. what?

11 A That's State's Exhibit No. 88.

12 Q All right, sir. I'm going to show you a lot of
13 little things that look alike. So that way, we can kind
14 of move through these pretty quickly. And I'm going to
15 need you to -- you've got some scissors there?

16 A Yes, sir.

17 Q I'm going to need you to open these for me in the
18 same protocol. Hold it below the eye level, because they
19 have not been introduced into evidence yet.

20 A Yes, sir.

21 Q And I'm going to ask you to look at each one below
22 the eye level and identify it for me. And tell the jury
23 what it is, when and where it was collected, and what, if
24 any, markings you designated to this.

25 This is State's Exhibit No. 82. Cut right above, so

1 we keep the 82.

2 A Okay. State's Exhibit No. 82 is going to be the
3 unknown pieces of glass that I recovered from the roadway.
4 And I designated this item as RSP-1.

5 Q And this would have been collected on the night that
6 you went to the crime scene?

7 A Yes, sir.

8 Q And you only went there once; is that correct?

9 A Yes, sir.

10 Q And that's State's Exhibit No. 82?

11 A Yes, sir.

12 Q All right. Let me show you another one. And let me
13 just ask you, each one of these items that I just gave
14 you, were they, in fact, sealed when you got them just
15 now?

16 A Yes, sir. They were sealed. And my initials are on
17 all the evidence tape.

18 Q All right. What is State's Exhibit No. 86?

19 A State's Exhibit No. 86 is going to be the unknown
20 pieces of glass I recovered from the gravel driveway
21 designated as RSP-2.

22 Q All right. Let me show you State's Exhibit No. 74?

23 A State's Exhibit No. 74 is a cartridge casing I
24 recovered from the gravel driveway designated as RSP-3.

25 Q All right. Thank you.

1 And State's Exhibit No. 75?

2 A State's Exhibit No. 75 is going to be a cartridge
3 casing that I recovered from the gravel driveway as well.
4 I designated it as RSP-4.

5 Q All right. And State's Exhibit No. 76?

6 A State's Exhibit No. 76 is going to be a cartridge
7 casing I recovered from the front yard, designated as
8 RSP-5.

9 Q All right. Excuse me one second, sir.

10 I apologize. State's Exhibit No. 77? We're almost
11 done with these.

12 A State's Exhibit No. 77 is going to be another
13 cartridge casing that was recovered from the front yard,
14 designated as RSP-6..

15 Q And State's Exhibit No. 78?

16 A State's Exhibit No. 78 is going to be the rock with
17 suspected blood on it recovered from the gravel driveway
18 that I designated as RSP-8.

19 Q All right, sir. We've only got four more, I think.
20 I'm sorry. Would you identify that? How is that marked
21 as a State's Exhibit?

22 A This one is State's Exhibit No. 81.

23 Q Thank you, sir.

24 A State's Exhibit No. 81 is the black in color, Ralph
25 Lauren Polo brand baseball cap that was recovered near the

1 victim's vehicle. It's designated as RSP-7.

2 Q All right. Thank you, sir.

3 And would you reference -- after you cut it open,
4 would you reference the exhibit number, and what it is,
5 and where it was recovered?

6 A Yes, sir. State's Exhibit No. 85 is going to be the
7 pair of white socks with suspected blood on them recovered
8 from Mr. Bobby Smith at the law enforcement center. This
9 is designated as RSP-F.

10 Q And just to sort of refresh everybody's recollection.
11 These designations, what does RSP-F --

12 A Well, RSP is my initials to identify that I was the
13 one that collected the item. I just went alphabetical, I
14 guess, numeric when I was collecting items at the law
15 enforcement center, doing A, B, C, D.

16 Q So RSP-F would be the sixth item that you collected
17 at that location?

18 A Yes, sir..

19 Q Okay. They're getting a little bigger here. This is
20 State's Exhibit 83.

21 A State's Exhibit No. 83 is going to be the blue jeans
22 I recovered from Mr. Bobby Smith at the law enforcement
23 center designated as RSP-E.

24 Q All right. And that's State's Exhibit what? I'm
25 sorry.

1 A State's Exhibit No. 83.

2 Q All right, sir. We're in the home stretch.

3 A State's Exhibit No. 84 is going to be the black
4 T-shirt and gray color Starter brand sweater with
5 suspected blood on it recovered from Mr. Bobby Smith at
6 the law enforcement center. This one is designated as
7 RSP-D.

8 Q And while we're at it, the items that you recovered
9 from Bobby Smith, I think white socks, white T-shirt, and
10 blue jeans that we've introduced here, this was done
11 around the same time that the buccal swab was taken?

12 A Yes, sir.

13 Q And how did y'all get his stuff?

14 A We --

15 Q I mean, logistically, what happens? He's wearing
16 white socks, blue jeans, and a black shirt?

17 A Yes, sir.

18 Q And you've now got them in this bag from him at he
19 law enforcement?

20 A Yes, sir.

21 Q How does that -- does he go into a room and change?
22 Do you go with him? How does that work?

23 A Yes, sir. I was with him in the interview room that
24 the investigators had when I collected the clothing from
25 Mr. Bobby Smith.

1 Q Okay. So you would have collected it from him as he
2 took it off?

3 A Yes, sir.

4 Q All right. Let me show you one last item, sir. And,
5 apparently, this has two items inside. And what is the
6 exhibit -- well, the exhibit numbers, they've not been
7 marked yet. So you can cut that partially open at the top
8 there. If you need to cut it a little bit further open,
9 that's fine.

10 A Only one of these is mine.

11 Q I'm sorry. You've got to speak a little louder.

12 A Oh, I was just saying only one of these is mine.

13 Q The one that is yours, would you tell the Court what
14 it is?

15 A Yes. This is going to be a gunshot residue kit that
16 I used on Mr. Bobby Smith at the law enforcement center.
17 And this one is designated as RSP-C.

18 Q And is there any -- can we see it from the outside of
19 that bag? Is it okay to lift it up? We can't see what's
20 inside the bag; right?

21 A No.

22 MR. WESTON: Your Honor, this would be -- the State
23 would have this marked as State's Exhibit No. -- next.

24 (WHEREUPON, State's Exhibit No. 124 was marked for
25 identification only.)

1 BY MR. WESTON:

2 Q It's State's Exhibit No. 124?

3 A Yes. State's Exhibit No. 124.

4 Q And tell the jury again what this is.

5 A It is a gunshot residue kit.

6 Q Okay. That's a mouthful. Tell the jury what a
7 gunshot residue kit is.

8 A The gunshot residue is what we use in an attempt to
9 locate any gunshot residue that could be on the subject's
10 hands. We send it off for testing. And then they would
11 send it back for positive or negative results.

12 Q When you say -- assuming you were doing a gunshot
13 residue kit on me, you have me hold out my hands?

14 A Yes, sir.

15 Q Show the jury what you do. Because I don't know
16 either.

17 A There's little dabbers, that I call them, in the
18 gunshot residue kit.

19 Q Okay.

20 A And I would take the dabbers and I would run them on
21 the back of your hands --

22 Q Using this ink pen as the dabber, let's say.

23 A Yes, sir. If I had your hands, I would be dabbing
24 your palms, getting your fingers, and doing the same thing
25 on the back. Because they give you four dabbers, two for

1 each hand, doing the palm and the back of the hand.

2 Q And once that's done?

3 A It is sealed.

4 Q You take the dabbers and put it in and seal it?

5 A Yes, sir.

6 Q So that's what's sealed?

7 A Yes, sir.

8 Q Now, the other one, just out of curiosity, do you
9 know who took the other one? Whose this would be?

10 A The other officer, I'd have to look at the initials.

11 Q Yeah. That would save us some time so we'd know
12 whose...

13 A The other initials look like it would have been
14 Officer Davis that used to work with us. That looks like
15 the autopsy.

16 Q Okay. Now, we're just about done.

17 A Yes, sir.

18 Q Once -- so your involvement in this case consisted of
19 two separate locations; is that correct, sir?

20 A Yes, sir.

21 Q And one was the incident location from the night
22 of -- or the morning of -- the night of February 3rd,
23 2015, into the morning of February 4th; is that correct?

24 A Yes, sir.

25 Q And then on February 4th, later that morning or day,

1 you interacted with Bobby Smith at the law enforcement
2 center; is that correct?

3 A Yes, sir.

4 Q And you took these items from one of those two
5 places?

6 A Yes, sir.

7 Q Now, once you get these items, what do you do with
8 them?

9 A Once I collected the items, when I do go back to the
10 crime scene office, I will put those items in my secured
11 evidence locker.

12 Q And when -- before you get there, once you collect
13 all of these items -- and there's different types of
14 items. So they have to be collected, obviously, in
15 different types of ways. You wouldn't collect a shell
16 casing in the same way you would, let's say, the T-shirt.
17 Do you seal the packaging of each item that you collect?

18 A Yes, sir.

19 Q When you're on the scene?

20 A Yes, sir. On scene, yes, sir.

21 Q And do you initial it in some form or fashion and
22 label it RF-1, or whatever?

23 A Yes, sir, I do.

24 Q Okay. And when you say you put it in your temporary
25 evidence locker, tell the jury what that is and where it

1 is.

2 A Yes, sir. We have a room in our processing bay that
3 each officer is assigned an evidence locker that we --
4 that only we have a key to. Once we collect our evidence
5 from a scene, it's packaged, and sealed. Say, we want to
6 process it on a later date, we would put it in our
7 evidence locker, and lock it up, and secure it in the
8 processing bay that the evidence lockers are in that are
9 secured as well. Only the crime scene officers have a key
10 card to get into it.

11 Q Okay. And let's assume that you put one or any of
12 these items in your temporary evidence locker. And I'm,
13 also, a forensic technician. And I go in the next day to
14 get some -- to get this out, one of these items out. Do I
15 have to sign off on something?

16 A If I was to go back into my own locker?

17 Q No, no, if I were to go in. You said only the
18 forensics officers have a key card into the locker. Would
19 I have access to your locker?

20 A No, sir.

21 Q Okay. So I could go into my storage bin, but not
22 yours?

23 A Yes, sir.

24 Q And from the time you put it -- well, let me go to
25 the end of this.

1 A Yes, sir.

2 Q At some point -- you may want to refer back to your
3 report there to refresh your recollection. At some point,
4 after you put this in your locker, obviously, they didn't
5 stay there. What did you do with them when you took them
6 out of your locker? What's the next step?

7 A Yes, sir. Once I took them out of my locker, they
8 were packaged. And I did transport them to the property
9 and evidence section.

10 Q All right. And when you take them to property and
11 evidence, where is that?

12 A That is at the law enforcement center.

13 Q And are you responsible -- when you say you take
14 them -- you take them yourself?

15 A Yes, sir.

16 Q Is that something that can be designated to somebody
17 else?

18 A No, sir. We are responsible for our own evidence.

19 Q And when you take it -- so are you saying that each
20 of those items that you referenced this morning, you
21 took -- you put them into your storage locker, which is
22 secured and accessible only by you. When did you take
23 them out of the storage locker to go to P&E?

24 A I took them out on February the 12th, 2015.

25 Q And they are sealed in your storage locker in

1 individual containers of some sort?

2 A Yes, sir, how they are right now.

3 Q Let's assume you came there -- what day did you take
4 it, February 14th?

5 A February 12th.

6 Q Let's assume you looked at them on February 12th,
7 that morning, and was getting ready to take them and one
8 of the item's packaging was broken. What happens? What's
9 the protocol?

10 A If it was broken --

11 Q Or tampered with in any way?

12 A We would have to have an investigation on how it was
13 tampered with.

14 Q And I'm assuming since there's nothing in your report
15 indicating such an investigation, when you went to get
16 these items and take them to P&E, nothing had been
17 tampered with?

18 A No, sir.

19 Q All right. So you take them to P&E -- and we're
20 almost done, I promise. Tell the jury what happens when
21 you get to the P&E office.

22 A When I went down there to property and evidence, it
23 was after hours, so there was no personnel there. So I
24 had to place them in one of the temporary evidence lockers
25 that they have there.

1 When you place it in there, once you lock it and
2 secure it, it will not open. Only the property and
3 evidence personnel have keys to access those lockers.

4 Q And would you have put all these into one locker?
5 Would they all fit in one locker?

6 A Yes, sir. And I put them all in locker #2.

7 Q In addition to the items, obviously, if I work in
8 property and evidence, I come in and see all of this
9 stuff. Is there any paperwork that comes with this?

10 A There may have been some property and evidence forms
11 that I probably could have documented with Mr. Smith. I
12 can't recall. But, normally, these are all bar code
13 labeled and are already entered into the property and
14 evidence system. So when they get them, all they have to
15 do is scan them to know the chain of custody.

16 Q And that's these little bar codes on each one of
17 these things?

18 A Yes, sir.

19 Q Sort of like the grocery store?

20 A You could say that, yes, sir.

21 Q And when you put them in P&E, once again, do you make
22 sure that they're all sealed appropriately?

23 A Yes, sir.

24 Q All right. So when you put these items in property
25 and evidence temporary lockup and close that door, were

1 all of these items sealed properly and in the condition in
2 which you found them at either the residence, the incident
3 location, [REDACTED] Avenue, or at the law enforcement
4 center where you took the items from Bobby Smith?

5 A Yes, sir.

6 MR. WESTON: I think I'm done.

7 THE WITNESS: All right, sir.

8 MR. WESTON: Thank you, sir.

9 Answer any questions they may have for you.

10 THE COURT: How long do you think your
11 cross-examination may be?

12 MR. KORNFELD: Pretty brief.

13 THE COURT: Pretty brief?

14 MR. KORNFELD: Yes.

15 THE COURT: Just trying to determine whether we need
16 to take a bathroom break before or after.

17 THE BAILIFF: Your Honor --

18 THE COURT: A bathroom break before.

19 We'll take a break. And we'll come back in and
20 conclude.

21 Y'all go ahead.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 11:51 a.m.)

24 THE COURT: All right. Officer, you can take a
25 break, too. You just can't discuss your testimony with

1 anyone while on break.

2 THE WITNESS: Yes, sir.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Are you ready?

5 MR. MORONEY: Your Honor, just briefly, for the
6 record, with respect to Mr. Jahru Smith. I know yesterday
7 we were putting on the record that he, certainly, was
8 welcome to join us, but that he was choosing to not join
9 us.

10 THE COURT: Yes, sir.

11 MR. MORONEY: If, again, we could just note for the
12 record that it's my understanding that he is perfectly
13 capable and has been invited to come and join us during
14 this trial, but he has elected not to join us today.

15 THE COURT: Yes, sir.

16 I'll note, for the record, that he has been
17 transported to the Greenville County Courthouse and given
18 the opportunity to dress out and join us and, again, has
19 elected not to do that.

20 I will note there are two questions that the jurors
21 have. One was with respect to the ability to take notes,
22 which I'll address after this witness.

23 And then, also, there was a question from the jury as
24 to why Mr. Jahru Smith is not here.

25 So, again, I have --

1 Mr. Kornfeld, I defer to you as to what you want me
2 to say, and how you want me to address that. I,
3 certainly, will at the conclusion of the case. You just
4 need to tell me whether you want me to do it before then.
5 It's up to you.

6 MR. KORNFELD: Yeah. I'm going to wait. I'm still
7 mulling that over.

8 THE COURT: Okay. Just let me know when you make a
9 decision in that regard. Okay.

10 . MR. KORNFELD: Okay.

11 THE COURT: Have you got your witness, Mr. Weston,
12 some place?

13 MR. WESTON: Yes, sir.

14 THE COURT: While he's gathering up, you want to
15 bring the jury in, please.

16 (WHEREUPON, the jury came into open court at
17 approximately 12:05 p.m.)

18 THE COURT: Okay. Mr. Kornfeld, I believe it's your
19 witness on cross-examination, sir.

20 MR. KORNFELD: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. KORNFELD:

23 Q Officer Parker, the Chrysler, LGB 249, that's the
24 license plate number; correct?

25 A Yes, sir.

1 Q And that's a Mississippi license plate number; isn't
2 that correct?

3 A I believe so. I have the abbreviation as "MS."

4 Q Okay. So it wasn't a South Carolina license plate?

5 A No, sir. It didn't appear so.

6 Q And did you do the GSR kit on Nicole Logan, the
7 deceased in this case?

8 A No, sir. That was another officer that did that at
9 the autopsy.

10 Q Do you happen to know the results from that?

11 A No, sir. The -- the tests are sent out to SLED, but
12 the results do not come back to us. It would be sent back
13 to the investigating officer.

14 Q All right. And there was another forensic officer on
15 scene that collected a lot, I believe with the initials
16 DS. I think you referred to DS earlier; isn't that
17 correct?

18 A Did you say "DS"?

19 Q That's correct.

20 A That would be Sergeant Shaw, I believe.

21 Q And did you notice -- were you in a position to see
22 whether or not he was able to collect a weapon in the
23 deceased's vehicle?

24 A That was not on the day I was working. I believe he
25 was conducting the search warrant on the vehicle when it

1 had been towed back to our processing bay. So I was not
2 present for that.

3 Q Okay. And were you present for any of the fragmented
4 casings that were found that weren't referenced by the
5 Prosecution? Were you present for any of those?

6 A When would those have been collected?

7 Q It just states the incident date was 2/3/15 on the
8 sheet that I have here. And it says the initials DS
9 collected them.

10 A That would still be Sergeant Shaw. That was on
11 another date from the incident I worked.

12 Q And you didn't notice any of these fragments on the
13 scene, other than what you collected -- everything that
14 you collected that day?

15 A Yes, sir.

16 Q There wasn't anything that you saw that day that
17 wasn't collected that was of importance to you. Is that a
18 fair assumption?

19 A Yes, sir. I collected all the items on the exterior,
20 the scene I processed. But any items on the vehicle,
21 those were on another day. Because I sealed the vehicle
22 with evidence tape. And they were waiting to do a search
23 warrant on the vehicle. We could not go inside of it yet.

24 Q Okay. So same question concerning the GSR kit for
25 Bobby Smith. You are not in a position to testify as to

1 what the results of those tests are; correct?

2 A Correct. Because we don't get the results.

3 MR. KORNFELD: I understand.

4 No further questions.

5 CROSS-EXAMINATION

6 BY MR. SULLIVAN:

7 Q What would have collected -- now, Bobby Smith was in
8 custody immediately after this incident?

9 A Yes, sir.

10 Q When would it have been prudent to bag his hands so
11 the GSR could have been tested?

12 A I responded to the law enforcement center to conduct
13 the gunshot residue kit. We try to get it done within an
14 allotted six-hour time period.

15 Q But he was in custody?

16 A Yes, sir.

17 Q Right afterwards. Why couldn't that test have been
18 done sooner?

19 A I believe they had already transported him when I was
20 at the incident location. So he was not present with me.

21 Q Would that not have been very critical to find out
22 who the shooter was to get a GSR kit on Bobby Smith in a
23 quick, prudent manner?

24 A I guess it depends on the incident. I do understand
25 what you're saying. But I guess because of everything

1 going on, the investigator tried to get it in that time
2 period. But since I was already processing the scene, I
3 could not leave the scene.

4 Q Who else could have done a GSR on Bobby, if you
5 weren't there? Were you the only one that could have done
6 it?

7 A The personnel on scene would have been the only ones
8 that would have been able to do it, yes, sir. And we were
9 all at the incident location.

10 Q So if you were out there five or six, 10 hours, you
11 couldn't have done it at all, could you?

12 A No, sir. It would have been outside that time
13 period.

14 Q But wouldn't that be critical?

15 MR. WESTON: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: All right. I'll overrule the objection.

18 You can ask the question.

19 BY MR. SULLIVAN:

20 Q Wouldn't that be -- if you've got somebody that you
21 think shot somebody, wouldn't it be very critical to your
22 investigation to prove or disprove he was not the shooter?
23 Wouldn't that be one of the paramount investigative
24 inquiries?

25 A Yes, sir.

1 Q But it wasn't done in this case?

2 A Not as fast, no, sir.

3 MR. SULLIVAN: Thank you.

4 THE COURT: Any more questions? Is that it?

5 MR. SULLIVAN: None from my side, Your Honor.

6 THE COURT: Any redirect?

7 MR. WESTON: Just a couple questions on redirect.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. WESTON:

11 Q Officer Parker, counsel asked you about the car, and
12 processing of the car, and the matters that Forensic Tech
13 Dar Shaw did. Were you involved in sealing the car before
14 it left the location?

15 A Yes, sir. I was the one that sealed the vehicle
16 before it was towed.

17 Q What does that mean, "sealing" it?

18 A Placing evidence tape on the doors, trunk, hood, any
19 compartment, basically, that could be opened on the
20 exterior of the vehicle.

21 Q And were you present when it was towed, when it was
22 taken away?

23 A Yes, sir. I was there to observe it being towed
24 away.

25 Q And when it's towed, a private tow company, I assume,

1 handles that?

2 A Yes, sir.

3 Q And is there some protocol for someone in your
4 department to follow the tow truck?

5 A Yes, sir.

6 Q In this case, do you know who that would have been?

7 A That was Officer Blankenship, who no longer works
8 with us.

9 Q And he would have followed them where?

10 A She followed --

11 Q She, I'm sorry.

12 A No. She had followed the vehicle back to our
13 processing bay at our office.

14 Q And she would have made sure that it was secured
15 there?

16 A Yes, sir. She would have made sure it was unloaded
17 there in our secure bay.

18 Q And counsel -- Mr. Sullivan asked you questions a
19 moment ago about your investigation. Do you do an
20 investigation at all?

21 A No, sir.

22 MR. WESTON: Thank you, sir.

23 THE COURT: Any redirect -- or recross, excuse me,
24 limited to that redirect?

25 MR. SULLIVAN: None from Bobby Smith, Your Honor.

1 MR. KORNFELD: None, Your Honor.

2 THE COURT: All right. Thank you, Officer.

3 I appreciate you being here, sir. You may be
4 excused.

5 THE WITNESS: Thank you.

6 THE COURT: Yes, sir.

7 MR. WESTON: Your Honor, the State would ask that he
8 be released from his subpoena.

9 THE COURT: He may be.

10 Okay. Let's try to get in, at least, one more
11 witness. Do you have a shorter witness to call?

12 MR. MORONEY: Relatively shorter than Mr. Parker.

13 THE COURT: Okay. Let's call him to the stand,
14 please:

15 MR. MORONEY: The State calls Ronald Lendway.

16 THE CLERK: Sir, come forward.

17 Sir, if you'll, please, place your left hand on the
18 Bible and raise your right hand.

19 WHEREUPON,

20 RONALD DAVID LENDWAY,

21 after first having been duly sworn, testified as follows:

22 THE WITNESS: Yes, I do.

23 THE CLERK: Thank you.

24 Please be seated.

25 Would you, please, state your name for the record?

1 THE WITNESS: Ronald David Lendway.

2 THE CLERK: Thank you, sir.

3 DIRECT EXAMINATION

4 BY MR. MORONEY:

5 Q Mr. Lendway, could you tell us, please, where you
6 work?

7 A The Greenville County Forensics Division.

8 Q And what is your role there in the forensics
9 division?

10 A I'm the lieutenant over the crime scene unit.

11 Q Okay. And could you tell us what that entails, being
12 a lieutenant over the crime scene unit.

13 A In our unit, we have 14 people. We have 11 crime
14 scene officers. We have two sergeants, and myself. What
15 I do is I supervise our crime scene unit, which could be
16 anywhere from responding out to scenes, or approving
17 reports, time sheets, just the whole operation of the
18 crime scene unit.

19 Q Okay. And, generally speaking, as Officer Parker
20 just got into it, with crime scene and forensics, what's
21 your general role in responding to a crime scene?

22 A We go to a wide variety of crime scenes anywhere
23 from, let's say, a larceny, it could be shooting,
24 stabbings, suicides, homicides, bank robberies, or other
25 investigations. We respond to the scene at the request of

1 the agency that requests it, which it could be any agency
2 within Greenville County we'll respond out to.

3 And once we get on scene, we get our initial
4 information from one of the on-scene officers or
5 investigators. And they kind of tell us what they know so
6 far. We'll -- depending on what type of scene, we may do
7 a walk-through, just if there's anything of significance
8 that they need to point out.

9 And then usually after that, they'll go ahead and
10 back out of the scene. And they'll let our crime scene
11 officers kind of take over from there. And we'll go ahead
12 and document the scene. We may use digital photos. We
13 may do video. We'll go ahead and just document overall.

14 We usually start from the outside of the scene, kind
15 of work our way in towards the main focus of the scene.
16 And if there's any evidence collection, we'll go ahead and
17 do that. Or processing for fingerprints, or swabbing for
18 any bodily fluids, we'll go ahead and do that as well.

19 Q And how long, personally, have you been doing this
20 forensics crime scene work?

21 A I've been with the crime scene unit in Greenville for
22 17 years.

23 Q Lieutenant Lendway, do you remember responding to a
24 crime scene on February 3rd, 2015, at [REDACTED] Avenue?

25 A Yes, I do.

1 Q Could you tell me the nature of that call and how
2 that started?

3 A Yes. I first was, initially, at home. I was on-call
4 supervisor that night. I received a call shortly before
5 midnight from Officer Parker, who's one of our officers.
6 He called me and let me know what type of scene that he
7 had. And I came on in. I let him know I would be
8 responding out to the scene. And I arrived there a little
9 while later.

10 Q And upon arrival, what did you learn -- or what did
11 you begin to observe as you started working?

12 A When I first arrived there, I noticed that the scene
13 was secure. There was several deputies out there. There
14 was crime scene tape that was put up. I met with Officer
15 Parker. He kind of gave me a rundown as far as what he
16 knew so far, what items of evidence that he was aware of,
17 and, also, what actions that he'd already done.

18 Q And what was the nature of the call and the crime
19 that had taken place that night?

20 A It was a homicide.

21 Q Okay. And what role, specifically, did you play in
22 forensics processing that night?

23 A When I first got there, Officer Parker, he advised
24 that he had already started on some photographs and video
25 of the scene. And he kind of pointed out where the items

1 of evidence that were located before I got there. And I
2 then went ahead and assisted trying to see if there's any
3 additional shell casings in an area of the driveway.

4 So myself and Officer Blankenship, we got metal
5 detectors. And on the gravel driveway, it was -- it was
6 fairly clear to kind of look and see if there's anything
7 on the gravel driveway. But just off to the side, there
8 was a grassy area where you couldn't really visibly see
9 every nook and cranny. So we used the metal detector over
10 in that area.

11 Q And, particularly, can you describe what you saw
12 outside of the residence at [REDACTED] Avenue at the
13 scene?

14 A Right. There was a little bit of glass in the
15 roadway and in the driveway. I could see what appeared to
16 be blood in the driveway as well, along with a -- it
17 looked -- appeared to be a drag mark several feet long in
18 the driveway.

19 There was a vehicle that was parked just to the left
20 of the residence where the victim was at. The victim was
21 outside of the vehicle with both of her legs elevated
22 resting on the car near the rear passenger door. The rear
23 passenger door and the driver's door, those doors were
24 both open on the vehicle. And the victim's legs were
25 elevated up near towards the inside of the rear passenger

1 door area.

2 There was some shell casings in and around the
3 vehicle, the driveway area. There was some blood in the
4 driveway. There was, also, a ball cap that was a few feet
5 away from the victim as well.

6 Q Did you notice any markings in the dirt or gravel
7 driveway area?

8 A Yes, I did.

9 Q And what did you see there?

10 A Around -- I want to say around the center of the
11 driveway, there appeared to be some blood. And starting
12 from that point towards the vehicle, there appeared to be
13 a drag mark from that distance. I went and measured it.
14 And the distance was approximately 27 feet, four inches.

15 Q Okay. Now, after reviewing the scene, did you
16 document in any kind of way with a drawing, or anything
17 like that?

18 A Yes, I did. Myself and Officer Parker, we took scene
19 measurements for a 2D CAD drawing of the scene. And --
20 where we could go in once we're back at the office, we can
21 kind of place where the driveway was, where the victim
22 was, where the house was located, any types -- any
23 evidence that was collected from the scene, we can go
24 ahead and place it in the diagram as well. And we'll go
25 ahead and do measurements with that scene as well.

1 Q Could you, very basically, just describe what takes
2 place before making that drawing? How are you able to
3 complete the drawing, essentially?

4 A Yeah. We have a measuring device in all of our
5 vehicles. And what we'll do -- we, also, have hundred
6 foot tape measures as well. So, sometimes, we may have to
7 use that.

8 And we'll go ahead and I'll let Parker know that I'll
9 go ahead and do the diagram. And I'll kind of just write
10 down the measurements and sketch. And once we're doing
11 the -- when I'm doing the diagram back at the office, I
12 may have to refer to some of the photographs as well from
13 the scene. But, generally, I'll have that -- those
14 measurements.

15 And when I'm doing the diagram, I'll just put the
16 measurements in there. I'll put the items of evidence
17 that Officer Parker collected out near the driveway and
18 the vehicle, and include those as well.

19 Q Okay. Lieutenant Lendway, I'm going to hand you
20 what's been marked as State's Exhibit No. 79 for
21 identification. If you could take a look at that. And I
22 ask if you recognize it?

23 A Yes. This is the -- this is the drawing I did that
24 night.

25 Q Okay. With respect to your response that night to

1 [REDACTED] Avenue?

2 A Right. Yeah. I did the drawing. It was a few days
3 later. It wasn't, actually, that night. But this is the
4 same.

5 Q And is that drawing an accurate representation of the
6 one that you created, the map that you created?

7 A Yes. Yes, it is.

8 MR. MORONEY: Your Honor, at this time, the State
9 would move for State's Exhibit No. 79 to be admitted into
10 evidence.

11 THE COURT: Any objections?

12 MR. KORNFELD: No, Your Honor.

13 MR. SULLIVAN: No, Your Honor.

14 THE COURT: All right. It's admitted without
15 objection.

16 (WHEREUPON, State's Exhibit No. 79 was admitted into
17 evidence.)

18 MR. MORONEY: Permission to publish to the jury, Your
19 Honor.

20 THE COURT: Yes, sir.

21 BY MR. MORONEY:

22 Q Lieutenant Lendway, I'm going to put this up here.
23 And if you could use this screen to help describe some of
24 the scene you've already detailed, and exactly what you
25 depict in there. If you can kind of walk us through it.

1 A Okay. This right here, this is the left -- the front
2 left corner of # [REDACTED] Avenue where the residence was
3 located at. This is the roadway here on Mayflower. This
4 is going into the top of the driveway. This line right
5 here, it's just a divider. Because right here, it
6 starts -- this is all asphalt.

7 And then once you cross this line going in this
8 direction, it turns to gravel. And the gravel went all
9 the way up through here and, also, kind of curved around
10 towards the front of the residence.

11 These items right here in these bubbles, those are
12 Officer Parker's items of evidence here, here, here. This
13 is glass from the roadway. This is some more broken glass
14 in the driveway. This right here is where Officer Parker
15 collected a rock with some blood on it. And this area
16 right here is where that first area of suspected blood was
17 visible in the driveway.

18 And these lines that are kind of going up through
19 here, this would indicate the drag mark, what appeared to
20 be a drag mark going up to the driveway towards the rear
21 of the vehicle and to where the victim was located at.

22 This item right here is a spent shell casing. Here
23 is another spent shell casing. And then there are two
24 additional spent shell casings located over in this grassy
25 area over here.

1 This is the driver's door. It was -- the vehicle was
2 facing going this way. This is the driver's door that was
3 opened when I arrived. And this is the rear passenger
4 door that was, also, opened when I arrived.

5 The victim was located in this area. And both of the
6 victim's feet, as I mentioned a few minutes ago, were
7 elevated resting on the vehicle right here. This right
8 here is also -- this is a ball cap that was located near
9 the victim. This little square thing is a trash can that
10 was right at the front left corner of the house. And then
11 these are the measurements we took.

12 How we do our diagrams, we'll have a point A and
13 point B so we can reference back to a specific item. So
14 this right here is a telephone pole that was near the top
15 of the driveway. So this was my point A. And then this
16 is point B, which is the front left corner of the
17 residence. So those are the two points that I based both
18 of my measurements off of the items that were measured.

19 And then we have one of the measurements from point A
20 will go to the victim's mid section. The other will go to
21 the victim's head. We'll center those. And then point B
22 is the same thing. We'll go to the victim's head and,
23 also, to the victim's mid section to get those
24 measurements.

25 Q Thank you, Lieutenant.

1 And after processing the exterior of [REDACTED], did
2 you have the opportunity to process the interior of [REDACTED]
3 [REDACTED] Avenue?

4 A Yes. I was requested to go inside the residence to
5 take some photographs as well.

6 Q And, particularly, were you drawn to any areas of
7 interest by investigators on scene that night inside the
8 house?

9 A Yes. There was -- there was two investigators that
10 were inside the residence when I had entered. And when I
11 started going in, when I -- I started taking general
12 photographs, just some overall photographs of each room
13 while I was going through. As I was taking those
14 photographs, I was instructed by Sergeant Weiner that he
15 had located an ID that was in the toilet.

16 Q And what did you do after that, after being notified
17 of that?

18 A When I went over there, I started -- I went to the
19 area where I was. I went to the bathroom, which is just
20 off the hallway. And I then began just doing an overall
21 photograph, initially, of the bathroom and then kind of
22 worked my way in to where the toilet was. I looked down
23 into the toilet where I could see a visible ID that was
24 down in the toilet water. And I took some additional
25 photographs.

1 Q And were you the one that retrieved what was in the
2 toilet?

3 A Yes, I did. I photographed it, initially. And then
4 with each item of evidence I collected, I did put a yellow
5 evidence placard and had a number associated with it next
6 to that. I took an initial photograph and collected the
7 items.

8 Q And do you recall exactly how many or what you pulled
9 out of that toilet?

10 A Yeah. There were, actually, three ID cards in there.
11 One -- it was one ID to the victim. It was a driver's
12 license, South Carolina driver's license. The other one
13 was a bank card with the victim's name on it. And the
14 other was another driver's license to a Savannah Harris.

15 Q And you took photographs of all this and retrieved
16 it?

17 A Yes, I did. Once I retrieved it, I put it on a clean
18 brown paper bag and took another photograph of those
19 items.

20 Q I'm going to hand you what's been premarked as
21 State's Exhibit No. 10 for identification. Do you
22 recognize that?

23 A Yes, I do.

24 Q Okay. And what is that?

25 A This is one of the ID's that was from -- located in

1 the toilet for Savannah Harris, a South Carolina driver's
2 license.

3 Q Okay. And did you take this picture?

4 A Yes, I did.

5 Q I'm, also, handing you State's Exhibit No. 11 for
6 identification purposes. Do you recognize that?

7 A Yes, I do.

8 Q Can you explain what that is?

9 A This is the TD Bank card that I, also, retrieved from
10 the toilet with the victim's name on it.

11 Q And did you take that picture?

12 A Yes, I did.

13 MR. MORONEY: Your Honor, at this time, the State
14 would move for State's Exhibit Nos. 10 and 11 to be
15 admitted into evidence.

16 THE COURT: Any objections?

17 MR. SULLIVAN: No objection.

18 MR. KORNFELD: No, Your Honor.

19 THE COURT: All right. Without objection, the same
20 are admitted.

21 (WHEREUPON, State's Exhibit Nos. 10 and 11 were
22 admitted into evidence.)

23 MR. MORONEY: Your Honor, permission to publish to
24 the jury.

25 THE COURT: Yes, sir, you may.

1 BY MR. MORONEY:

2 Q Lieutenant, other than the bathroom area, did you
3 focus on any other areas of the house, or were you drawn
4 by investigators to another area of focus?

5 A Yes. Once those items were collected, I went and
6 resumed some additional photographs inside the residence.
7 Again, Sergeant Weiner came over. He advised there had
8 been a cell phone located in the kitchen. And the cell
9 phone was, actually, located in the freezer of the
10 refrigerator. It was the freezer section up on the top.

11 Q And when he drew your attention to that, did you
12 collect that? Or what happened next?

13 A Again, I wasn't in that room, initially, when I was
14 photographing. I was on the other side of the residence.
15 But I did go back to the kitchen area. Before I opened
16 the freezer, I took overall photographs of the kitchen
17 area and then of the refrigerator/freezer. When I opened
18 up the freezer, I could see the cell phone that was
19 sitting up on top inside the freezer.

20 Q And did you -- were you the one who, ultimately,
21 collected that?

22 A Yes, I was.

23 Q And after that was collected, what did you do with
24 it?

25 A That night?

1 Q Yes.

2 A Okay. I just put it in one of our bags that we use
3 for evidence collection, and sealed it up, and brought it
4 back to the office.

5 Q Okay. And that's done in a secure fashion to ensure
6 that it's not been tampered with?

7 A Yes, it is.

8 Q Lieutenant Lendway, I'm going to hand you what's been
9 premarked as State's Exhibit No. 70. And there's some
10 scissors there if you would like to open it. And if you
11 could, just keep it low. It's not in evidence at this
12 point. Take a look and let me know if you recognize that.

13 A Yes, I do.

14 Q And what is that?

15 A This is the black cell phone that I collected from
16 the freezer.

17 Q Okay. And is there some way when you looked inside
18 there that you could recognize that as being the phone you
19 collected?

20 A Yeah. In addition to, actually, looking at the
21 physical item, this is a bar code that I created once back
22 at the office. We have a bar code system where we enter
23 all the information, the case number, the date and time,
24 the location where it was collected, who it was collected
25 by.

1 Once we enter that in, it generates a bar code number
2 with that specific item that we're entering. It will
3 print out a label. And then that label is now connected
4 to this piece of evidence.

5 So once I put the evidence in the bag, I put the
6 label on the outside of the package, then seal up the
7 package. And then I'll go ahead and initial over the
8 evidence tape as well.

9 Q Thank you.

10 And with respect to that phone that you retrieved
11 that night, did you do any processing of that phone?

12 A Yes, I did. Once I got back to the office after the
13 scene -- I believe I was out there, I want to say, close
14 to five hours, something like that. Once I got back to
15 the office, I had my evidence out. I did get the cell
16 phone and take it down to our processing room at our
17 office.

18 There, I swabbed the actual cell phone for possible
19 DNA. And I, also, did another swab for possible DNA for
20 the cell phone case. Once I did those two swabs for
21 possible DNA, I then processed it for fingerprints, which
22 I was able to get a fingerprint off of that. And I sent
23 it up to the latent division.

24 Q Lieutenant Lendway, I'm handing you what's been
25 premarked as State's Exhibit No. 71 for identification

1 purposes. If you could open that envelope. And let me
2 know if you recognize what is in there?

3 A Yes, I do.

4 Q And what is that?

5 A This is the -- this is the swab that I, actually,
6 used to swab the face of the phone for possible DNA.

7 Q Okay. And after you swab it, is it stored in some
8 kind of device, or some kind of holder?

9 A Yeah. This is --

10 Q If you would keep it down at this point.

11 A Yeah. It's a plastic container. And when you
12 unscrew the cap to the container, when you pull the cap
13 off, the swab is, actually, adhered to the inside of the
14 cap. So that way, you never have to, actually, touch the
15 swab. And it's far away from the actual tip of it where
16 you would, actually, swab.

17 So you take it, unscrew it, you take the cap off.
18 And you have it protruding out where you could swab the
19 item. And then you put it back in the tube and screw it
20 back. And, like I said, it just keeps you from, actually,
21 touching the actual swab itself.

22 And then once in the container, there again, we put a
23 bar code label across it identifying that specific item to
24 what we collected, and then put evidence tape around
25 the -- where the cap, actually, gets screwed on, and then

1 initial that on top of the tape.

2 Q And that's how you're able to identify that's the
3 exact swab you took?

4 A Yes.

5 Q Okay. Lieutenant Lendway, I'm, also, going to hand
6 you what's been premarked as State's Exhibit No. 72 for
7 identification purposes. If you could open that and take
8 a look at what's inside. And let me know if you recognize
9 it.

10 A Yes, I do.

11 Q And what is that?

12 A These are the ID cards that I retrieved from the
13 toilet.

14 Q Okay. And, again, like the other pieces of evidence,
15 how do you know that those are the exact cards?

16 A This is the -- this is the package I used to put the
17 identification in. There again, we have a bar code label
18 on top which identifies that specific item of evidence.
19 Once it's in there, I'll seal the edges up with the
20 evidence tape, and then initial the outside of the tape.

21 Q With respect to the interior of Mayflower Avenue, did
22 you, also, process any part of the living room, or were
23 you drawn to that area?

24 A Yes, I did.

25 Q Can you describe what brought you there, and what you

1 found?

2 A After the photographs of the interior of the
3 residence -- or the living room, there was some -- I
4 noticed some clothing that was on top of a chair in the
5 living room that was just inside the front door. Upon
6 looking at those clothes, it was different articles of
7 clothing. There was one item that was a pair of sweat
8 pants that appeared to possibly have some blood on there.

9 Officer Parker had a test kit. We have a
10 phenolphthalein presumptive test kit that we use. If
11 there's any substance where we may believe it's blood or
12 just want to confirm that's what it is, we have a test we
13 can use.

14 And Officer Parker tested that and that area of
15 suspected blood, which indicated that it was blood on
16 that. Every item of clothing that was on that chair was
17 collected. I collected each of them individually in their
18 own separate bags and their own separate evidence item
19 numbers.

20 Q And all of that was photographed?

21 A Yes, it was.

22 Q And were those photographs taken by you?

23 A Yes.

24 Q Lieutenant, I'm going to hand you a batch of
25 photographs for efficiencies sake here. They've been

1 premarked as State's Exhibit Nos. 12 through 17. If you
2 could take a look at those, and see if you recognize them
3 as the photos that you took?

4 A Yes, they are.

5 Q And, generally speaking, with that batch, if you
6 could, just describe what you saw and what these pictures
7 depict?

8 A There's photographs of the articles of clothing on
9 the one chair just inside the front door. There's
10 evidence item markers beside the articles of clothing.
11 There's, also, a knit cap, and jacket, and, also, some eye
12 glasses that were collected. And there was, also, a
13 picture in there with a swab. That's, actually, Officer
14 Parker's arm with his swab. And that was the area he was
15 testing for suspected blood.

16 MR. MORONEY: Your Honor, at this time, the State
17 would move State's Exhibit Nos. 12 through 17 to be
18 admitted into evidence.

19 MR. KORNFELD: No objection, Your Honor.

20 MR. SULLIVAN: No objection, Your Honor.

21 THE COURT: All right. Without objection, the same
22 is moved into evidence.

23 (WHEREUPON, State's Exhibit Nos. 12, 13, 14, 15, 16,
24 and 17 were admitted into evidence.)

25 MR. MORONEY: Permission to publish to the jury.

1 THE COURT: Yes, sir, you may.

2 BY MR. MORONEY:

3 Q I'm, also, going to hand you what's been premarked as
4 State's Exhibit No. 80. If you'll open that up and take a
5 look, and let me know if you recognize it.

6 A Yes, I do.

7 Q And what is that?

8 A This is a -- another swab for possible DNA that I
9 took from the cell phone case that was located from the
10 freezer.

11 Q Okay. And that's in the same condition as when you
12 entered it into evidence?

13 A Yes, it is.

14 Q Finally, I'm going to hand you what's been premarked
15 as State's Exhibit No. 73. I ask you to open that, take a
16 look, just holding it down, and see if you recognize that.

17 A Yes, I do.

18 Q And what is that?

19 A This is a pair of sweat pants that was on top of the
20 chair in the living room that Officer Parker tested for
21 suspected blood.

22 Q Okay. And, again, do you recognize that as being the
23 same pair of sweat pants --

24 A Yes, I do.

25 Q -- based on the markings --

1 A This right here, yes. It's got the same paper bag
2 that I used, the same bar code label that I created, and,
3 also, the red evidence tape has my initials on it.

4 MR. MORONEY: Thank you, Lieutenant Lendway.

5 Please answer any questions the Defense may have for
6 you.

7 CROSS-EXAMINATION

8 BY MR. KORNFELD:

9 Q Who in the world is Savannah Harris? Do you have any
10 idea who that is, the lady's ID?

11 A I do not.

12 Q All right. Did you do anything -- investigation
13 further concerning that ID after you collected it?

14 A That's not in the scope of my duties, no.

15 Q So the answer is, no, you didn't?

16 A That's correct.

17 Q All right. The other -- you said it was a driver's
18 license of Ms. Logan. Are you not sure that that was,
19 actually, an identification card? Do you know?

20 A Of?

21 Q Of Ms. Logan, the deceased.

22 A It was a South Carolina ID card.

23 Q Okay. So it wasn't a driver's license; correct?

24 A It -- I believe how I put it in my report was a South
25 Carolina ID card.

1 Q Okay. Did you --

2 A It's a South Carolina driver's license. And I, also,
3 included the driver's license number in my report.

4 Q So your testimony is that it is a driver's license?

5 A They're ID cards. It's a South Carolina ID card.

6 Q Is it an ID card or a driver's license? They're
7 different, Officer.

8 A I would need to refer to the photograph that I took.

9 Q Okay. Concerning the -- the vehicle, the Chrysler
10 300, did you oversee that investigation?

11 A As far as what part of it?

12 Q Did you -- did you see anything that was in the
13 vehicle while you were on scene, or at any other time?

14 A The -- the interior of the vehicle was not processed
15 out at the scene at that time. There -- if you look in
16 the vehicle, yes, I could see some items in the vehicle.
17 Did we go inside and physically process it out at the
18 scene? No, we did not.

19 Once we did the initial photographs and video and
20 once the victim was removed from the scene, Officer Parker
21 did seal up the vehicle with evidence tape. And upon
22 talking with the investigators out at the scene, we --
23 what they requested is if the vehicle could be sealed and
24 towed to our forensics bay, which we have at our office.
25 We have a vehicle bay where we can store vehicles. And

1 once they obtain a search warrant, there would be somebody
2 from our office that would process the vehicle.

3 Q Okay. So did you see a weapon inside of that vehicle
4 on that day?

5 A Yes, I did.

6 Q All right. And what kind of weapon was that?

7 A I do not know.

8 Q All right.

9 A Because, again, we did not process it right there.
10 The sole purpose of us was to document the scene that we
11 had out there. The vehicle was going to be towed and
12 processed at our office once they had a search warrant for
13 it.

14 Q I understand you, Officer. The reason I asked you is
15 because you testified about the other things that you
16 gathered outside the car; correct?

17 A Yes.

18 Q So the reason I was asking is to make it clear you
19 didn't, actually, go inside that vehicle; is that correct?

20 A That's correct.

21 Q But you did --

22 A I didn't go inside, but I did look into the vehicle.

23 Q And you did see a weapon inside the vehicle; correct?

24 A Yes.

25 Q Did you see anything else inside the vehicle?

1 A Yes.

2 Q And what else -- did you see a gin bottle inside the
3 vehicle?

4 A I don't recall a gin bottle, specifically. There was
5 an extensive amount of blood inside the vehicle. There
6 appeared to be some holes in the vehicle that would be
7 consistent with projectile holes.

8 Q Okay. You, also, took a latent print card as well;
9 correct?

10 A Not from the scene.

11 Q Did you supervise anybody that -- where did you take
12 a latent print card from?

13 A Back at our crime scene office.

14 Q Okay. And where did you take that from?

15 A From the cell phone from the freezer.

16 Q Okay. It appears that you took two different latent
17 print cards. Did you just take one or two of the cell
18 phone?

19 A I'm not sure what you're referring to.

20 Q Did you take one latent -- did you have one latent
21 card or two latent cards?

22 A There was a latent card that was sent up to the
23 latent division.

24 Q All right. So there was only one latent card. Is
25 that your testimony?

1 A Yes.

2 MR. KORNFELD: All right. Thank you.

3 No further questions.

4 THE COURT: Mr. Sullivan.

5 MR. SULLIVAN: Just a couple questions.

6 CROSS-EXAMINATION

7 BY MR. SULLIVAN:

8 Q In your duties out there that night, was -- according
9 to Ms. Logan, would you have been responsible for bagging
10 her hands for possible GSR testing?

11 A I did not do that, no. That was -- I believe it was
12 Officer Parker that bagged her hands.

13 Q So Officer Parker bagged her hands that night at the
14 scene before she was removed?

15 A That's correct.

16 Q Do you know when the test was done?

17 A When the --

18 Q The GSR on her hands?

19 A It was not done that night.

20 Q So how many hours would have passed before it would
21 have been done?

22 A On a deceased individual, the time is different than
23 if you were doing a GSR test on somebody that's alive.

24 Q Why would that be?

25 A Because the GSR particles could absorb into the skin

1 on a live person.

2 Q How about on clothing? If you've got a gun in your
3 hand, wouldn't it be on your clothes?

4 A That's possible, yes.

5 Q So you don't know -- you didn't do any of the testing
6 on Bobby Smith or Ms. Logan?

7 A Mr. Smith, you said?

8 Q On Bobby Smith?

9 A I did not get called to that scene.

10 Q Did you do the testing on Ms. Logan?

11 A No. That would have been done at the autopsy, which
12 I did not attend.

13 MR. SULLIVAN: Okay. Thank you.

14 THE WITNESS: Okay.

15 THE COURT: Any redirect?

16 MR. MORONEY: No, Your Honor. No further questions.

17 THE COURT: All right. Good enough.

18 You may step down.

19 Thank you very much.

20 I appreciate you being here.

21 THE WITNESS: Thank you.

22 THE COURT: You may be excused.

23 MR. MORONEY: We'd ask that Lieutenant Lendway be
24 released from his subpoena.

25 THE COURT: He may be.

1 All right. Ladies and gentlemen, we'll go ahead and
2 take a lunch break. Please be back at 2:00, 2:00. And
3 we'll resume testimony:

4 Thank you.

5 Y'all have a good lunch. Don't discuss the case.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 12:48 p.m.)

8 THE COURT: Okay. Anything further before we break
9 for lunch?

10 (WHEREUPON, there was no response.)

11 THE COURT: Okay. Have y'all had -- have you seen
12 Ms. Gorton, or talked to her?

13 MR. MORONEY: I have not.

14 THE COURT: Not yet?

15 MR. MORONEY: I can check and poke my head in the
16 hall real quick, Your Honor.

17 THE COURT: Okay. When would you anticipate calling
18 her, Mr. Weston?

19 MR. WESTON: Well, for purposes of the case in chief,
20 Your Honor, it could be as late as this afternoon, or
21 tomorrow. But in terms of our preliminary matter --

22 THE COURT: I just as soon do it in stride. That is
23 right before she's called to the stand, bring her up and
24 proffer anything that's necessary.

25 MR. WESTON: Yes, sir.

1 THE COURT: That might be the best way to do it.

2 MR. MORONEY: I don't see her, Your Honor.

3 THE COURT: That's fine. We'll do it in stride.

4 Good enough.

5 Well, then I'll see you back at 2:00. Y'all have a
6 good lunch.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: Are you ready for the jury?

9 MR. WESTON: Yes, Your Honor.

10 Your Honor, before we bring the jury in, Ms. Gorton
11 is here. She asked me about leaving and coming back. I
12 told her I couldn't do that until, at least, you got on
13 the bench and --

14 THE COURT: Yeah. She can leave and come back. Just
15 whenever you need her to come, just give her a time and
16 tell her to come up.

17 Bring the jury in, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:09 p.m.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. I know that some of you asked about taking notes,
22 and you've got some note pads. You're welcome to take
23 notes.

24 I just want to caution you in one regard with regard
25 to notes. Sometimes when you take notes and you're

1 interested in capturing things that are being said, you're
2 missing other things. That is, if you're looking at your
3 pad and you're taking notes, you might be missing body
4 language and facial expressions. And you might be focused
5 on what was just said, as opposed to what's being said.
6 So I just caution you in that regard.

7 Also, when you get into your deliberations, a lot of
8 times people will look at their notes and rely on their
9 notes, as opposed to other people's recollections of what
10 was said. Just because something is written down as a
11 note doesn't mean that it's infallible. And it doesn't
12 take priority or precedence over somebody else's
13 recollection of what may have been said during the
14 testimony and presentation of evidence.

15 So I just give you those -- those modest cautions.
16 And with that, you're welcome to take notes to the extent
17 that you need to.

18 So, having said that, ladies and gentlemen, we will
19 proceed with the trial.

20 Mr. Moroney.

21 MR. MORONEY: Yes, Your Honor. The State calls Dar
22 Shaw.

23 THE CLERK: Sir, please, come forward.

24 If you would, please, place your left hand on the
25 Bible and raise your right hand.

1 WHEREUPON,

2 DARWIN SHAW,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 And, please, state your name for the record.

7 THE WITNESS: Darwin Shaw, S-H-A-W.

8 THE CLERK: Thank you, sir.

9 DIRECT EXAMINATION

10 BY MR. MORONEY:

11 Q Mr. Shaw, could you, please, state your current place
12 of employment?

13 A I am currently retired.

14 Q And where are you retired from?

15 A From the Department of Public Safety Forensic
16 Division in Greenville County.

17 Q And how long did you work there, and what dates?

18 A 19 years. December 14th of 2017 was 19 years.

19 Q Okay. So you just ended in 2017 your career?

20 A Correct.

21 Q In what capacity did you work?

22 A As a sergeant.

23 Q And, specifically, what was your area that you
24 focused on?

25 A Well, my job as a supervisor is to supervise other

1 technicians, to do reports, correct their reports, or
2 make -- if changes need to be made. Also, I was a working
3 supervisor where I responded to crime scenes like the
4 other technicians, and worked crime scenes, which included
5 photographs, latent processing, collection of evidence,
6 and then doing a report for court purposes.

7 Q And you've received training in that regard, and
8 certification, and the like?

9 A I have.

10 Q Okay. Do you recall responding to a call on
11 Mayflower Avenue on the night of February 3rd, 2015?

12 A No, I did not.

13 Q Okay. Do you recall being involved in that case and,
14 if so, how?

15 A I was involved three different -- three different
16 times. The first time was I was requested to go to the
17 detention center to photograph some money that had been
18 collected by -- that had been taken off the subject at the
19 detention center.

20 Q Specifically, with that, could you detail how that
21 happened and what took place?

22 A I was contacted by dispatch and was asked to respond
23 to the detention center. When I got there, an
24 investigator was there. And Officer Downing, who used to
25 be with the sheriff's office, was there. There was money

1 laid out on a table. I photographed that money. And I
2 requested Officer Downing to sign a property and evidence
3 sheet signing the money over to me, which he did.

4 Q Okay. Mr. Shaw, I'm handing you what's been
5 premarked as State's Exhibit Nos. 121 and, I believe, 122
6 as well. If you could take a look in there. And just
7 keep it down as you examine it, those items in those two
8 envelopes. And I would ask you if you recognize them?

9 A I do.

10 Q And what is this?

11 A There's a coin envelope that has been sealed that has
12 my initials on the evidence tape indicating the amount of
13 money that I had received from Officer Downing.

14 Q Okay. And is this -- other than being open at this
15 present time, is it substantially in the same condition as
16 when you would have entered it in and put it in that
17 envelope?

18 A The coin envelope is, actually, put in this larger
19 envelope that is sealed and has my initials on the back.
20 And then there are bar codes on the front that coincide
21 with each piece of evidence that was collected.

22 Q Okay. Thank you.

23 You had mentioned that you had processed the vehicle.
24 Could you explain how that came about and the process for
25 that, how you first started the process?

1 A I was advised that there was a search warrant that
2 had been issued for the -- for a vehicle that had been
3 towed to the crime scene office. And I executed the
4 search warrant.

5 Q And as you executed the search warrant, could you
6 describe what you saw on some of the things that you began
7 detailing?

8 A Well, the first thing that I did was photograph the
9 exterior of the vehicle, documented the tag number. I
10 looked for any potential evidence on the outside of the
11 vehicle. Once that was done and the outside was
12 photographed, I opened each door. I photographed the
13 interior and then looked for any possible evidence inside
14 the vehicle.

15 Q And that vehicle, when it arrived to you, was it
16 sealed?

17 A It was. It had evidence tape on each of the doors.

18 Q And do you recall what kind of vehicle that was?

19 A It was a 2006 Chrysler 300.

20 Q And from there, did you process the interior of the
21 vehicle? What was your next step?

22 A Again, the first part was the photographs, looking
23 for any potential evidence. Once I found what I believed
24 might be evidence related to the shooting incident, I then
25 collected pieces of evidence from inside the vehicle

1 related to the shooting.

2 Q And could you describe what evidence you recovered.
3 from inside of the vehicle?

4 A I collected swabs for possible blood. I collected
5 projectiles, projectile fragments, shell casings, swabs
6 for DNA. Those were all particular things that I
7 collected.

8 Q And did anything stand out to you that was notable on
9 the interior of the car and portion of the interior of the
10 car with respect to this investigation?

11 A Well, I noticed that the driver's door, the glass was
12 broken. So it appeared to me that something had occurred
13 to where the glass had been broken.

14 And, again, I saw suspected blood on the inside of
15 the car, especially on the driver's seat. I, also, found
16 what looked like projectile holes in different areas of
17 the driver's seat, the center console, and the passenger
18 seat.

19 Q Did you recover a firearm from inside of that
20 vehicle?

21 A I did. There was a Kel-Tec nine-millimeter that was
22 sitting on the passenger seat.

23 Q Okay. And were there any projectiles and fragments
24 that were recovered as well from the interior of the
25 vehicle?

1 A There were.

2 Q Okay. Did you document all of this with any
3 photographs while you were doing this?

4 A I did. They were photographed. And then as they
5 were being collected, I wrote down the item number. When
6 collecting evidence, we, typically, use our initials.

7 My initials are DS. So I would correspond DS and if
8 it was item number one, then that's what it would
9 correspond to the piece of evidence, DS-1. And then I
10 would continue those numbers up through however many
11 pieces of evidence were recovered.

12 Q You mentioned with respect to the driver's area that
13 you saw some projectile holes in that region or area of
14 the car. Did you do any additional processing with
15 respect to the holes that you saw in the area of that
16 vehicle?

17 A I did.

18 Q And what did that entail?

19 A I used trajectory rods. The trajectory rod is a --
20 some of them are, like, four-foot long, two-foot long.
21 What I did was I used a trajectory rod and placed it in
22 the fabric of the -- on the backseat of the -- back
23 driver's seat where the projectile went through the seat.

24 I located the projectile -- I cut the back of the
25 driver's seat, cut it open, and found a projectile in the

1 plastic inside of the seat. I, also, found a piece of
2 metal on the inside of the seat that had an indentation in
3 it, which is where the projectile struck.

4 I then used the trajectory rod, put it through the
5 hole in the seat, in the fabric, and extended it through
6 so where it met right into the cupped area in the
7 indentation in the metal. And that gave me an indication as
8 to the path that projectile took before it struck the
9 inside of the seat.

10 Q And did you take photographs of that process as well?

11 A I did.

12 Q Mr. Shaw, I'm going to going to hand you what's been
13 premarked as State's Exhibit Nos. 25 through 41 for
14 identification purposes. And, if you could, just leaf
15 through these, and see if you recognize these pictures.

16 A (Witness complied.)

17 Q Do you recognize those picture you just looked at?

18 A I do. These are all photographs that I took of the
19 vehicle during the search of the vehicle.

20 Q Okay. And, generally, I know there was a lot there,
21 but what did they depict?

22 A They depicted potential evidence on the inside to
23 include a shell casing, a cartridge casing found in the
24 vehicle, projectiles that were recovered. And the process
25 of using the trajectory rods in the seat to help identify

1 the direction which those projectiles traveled inside the
2 car.

3 MR. MORONEY: Your Honor, at this time, the State
4 would move that State's Exhibit Nos. 25 through 41 be
5 admitted into evidence.

6 THE COURT: Any objections?

7 MR. KORNFELD: No, Your Honor.

8 MR. SULLIVAN: No, Your Honor.

9 THE COURT: All right. Without objection, the same
10 is admitted into evidence.

11 (WHEREUPON, State's Exhibit Nos. 25, 26, 27, 28, 29,
12 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41 were
13 admitted into evidence.)

14 MR. MORONEY: Permission to publish to the jury, Your
15 Honor.

16 THE COURT: Yes, sir, you may.

17 BY MR. MORONEY:

18 Q Mr. Shaw, I'm going to try to go through this
19 relatively quickly since there's a lot of pictures here.
20 But I'm going to put these up and, if you could, just
21 describe what we're looking at.

22 A This was a photograph of the -- when the driver's
23 door was open, just showing broken glass along the floor
24 mat below the driver's seat.

25 Again, this is just a photograph of the driver's

1 seat. You can't -- may not be able to see it. But below
2 the headrest is where I was looking as far as a projectile
3 hole. It is, basically, just to show the interior of the
4 vehicle, the condition of the driver's seat.

5 This is -- there's a shell casing, a copper jacket.
6 And at the very bottom, this is difficult to see, but
7 there's a lead core that was recovered on the floorboard.
8 I believe it's on the rear passenger floorboard.

9 Q And for us, could you explain briefly the difference
10 between those two terms that you just used?

11 A You -- when you have -- when you buy a box of
12 ammunition, that is considered cartridges. When the end
13 of it, the -- we call it a projectile. But when the
14 weapon is fired, the projectile comes out. And then what
15 you have left is the casing -- or the cartridge casing.

16 Sometimes, the jacket like that copper jacket, it
17 will separate from the lead on the inside. So you'll end
18 up having two pieces, instead of one. I think there may
19 have been one that I collected that had not separated.
20 But that jacket impacted something hard enough to separate
21 so that you have the jacket itself and then the lead core
22 separated and were collected independently.

23 Q I'll show you this. And I've put a pointer up there
24 for you, which maybe can help if you need it.

25 A You see this is DS-17. This was the 17th piece of

1 evidence that was collected. This is the jacket that I
2 was referring to, and this is the lead core. The core
3 goes inside of this jacket. But, at some point, it's
4 separated so that we, actually, have two pieces, instead
5 of just one.

6 This is the photograph I took when opening up the
7 front passenger door. As soon as I opened up the door --
8 and it's hard -- I think there's a better picture. But
9 there was a projectile -- there's a projectile here. And
10 that is -- it's jacketed, so it did not separate.

11 The whole lead core stayed confined inside of the
12 copper jacket. But I could see the damage. There was
13 damage to the front passenger seat. There was, also,
14 damage to this running board, which is just inside the
15 passenger door. And then the projectile was found -- or a
16 projectile was found there on the quarter panel.

17 Again, this is DS-5. That was the piece of evidence
18 that was collected. This is the full jacketed projectile
19 that was found just inside when I opened up the passenger
20 door.

21 This is a -- a -- an aluminum can. I found this on
22 the front passenger floorboard. And I kept -- I saw that
23 there was damage to the can. And later on, while I
24 examined the inside, I saw where a projectile had gone
25 through the plastic part of the center console, went into

1 the cup holder, tore a piece of the can out. And it was
2 stuck inside of the cup holder. And then the projectile
3 went on through and went through the bottom of the front
4 passenger seat.

5 Again, this is just -- this is a projectile that was
6 collected. I'm not sure -- I'd have to look at the number
7 on it. Eight, I believe.

8 All right. DS-8, which was the eighth piece. This
9 particular photograph I took with this projectile in it.
10 As you can see, there's some type of an artifact. There's
11 some damage to this projectile. In another photograph,
12 you'll see another piece that I collected. I collected
13 that as well. It was close enough in proximity.

14 I, also, tried to assemble this piece and put it back
15 together to show that it came from this projectile.
16 Visually, I could see it, but I couldn't do it to where I
17 could photograph it. But I believe that that piece there
18 came off of the projectile and it struck something and
19 sheared a piece of the jacket off.

20 It's kind of blurry, but this is a shell casing that
21 was found on the floorboard behind the passenger seat.

22 And this is just a better, clearer photograph of the
23 cartridge casing. And, again, the weapon had already been
24 fired. And that is what was ejected from the weapon.

25 Q And from your training and experience, can you --

1 does that tell you anything about the distance that it had
2 been fired from the vehicle?

3 A No.

4 Q Okay.

5 A This, again, is just a photograph, DS-10. That was
6 the item that was collected. This was just -- it's hard
7 to see the head stamp on it. But the head stamp, I
8 believe, was a CCI nine-millimeter Luger. And that's what
9 was -- that's what is head stamped around the -- you've
10 got the primer. And then the head stamp is where the
11 manufacturer puts their name on the bottom.

12 This was just some T-shirts that I saw on the
13 backseat. It had an area that looked like blood on the
14 outside of the package.

15 There were, also, what looked like finger marks in --
16 in blood on the seat. However, I could not get any ridge
17 detail to come up to positively say where those came from.
18 But they -- they were in the shape of fingers. And so
19 that's why it was documented.

20 This is just one trajectory rod that I had used.
21 This is the one I put through the back of the driver's
22 seat. And, again, I cut the back of the seat out and
23 found a projectile inside, put the end of the trajectory
24 rod into the cup, the indentation in the middle in the
25 metal. And by doing so, this is well stabilized in that

1 vinyl. And so I got an approximate angle of descent
2 that -- when the projectile was fired. It came in in this
3 angle and then lodged in the back of the seat.

4 All right. This is just another photograph. I
5 found, actually, four what I felt confident to say were
6 impact areas. This is the same one you just looked at.
7 Of course, when you're taking photographs, the camera is
8 going to show what looks like it's a different angle. So
9 it's kind of deceptive as far as how the angle in which it
10 looks. This came in. Again, this is the one that went
11 through the driver's seat.

12 There was a second projectile that came through. It
13 just grazed. You can't see it because of this trajectory
14 rod, but you can see I put a piece of tape there. It tore
15 the fabric right on the edge of the seat. And then the
16 projectile penetrated the passenger seat and then glanced
17 off of the fabric and, I believe, was found on --
18 somewhere inside of the vehicle.

19 This is a trajectory rod that was put in. This is
20 the one that went into the passenger seat, and where the
21 projectile was found underneath the door when the door was
22 opened up.

23 This is the one that was put in that went through the
24 center console, through the cup holder, sheared off the
25 aluminum from the can, and went on to the very bottom of

1 the passenger seat.

2 Q And does this photo accurately represent the angles
3 as you're looking at them, and as you saw them that day?

4 A Yes, as much as they can be documented. Like I say,
5 with photographs, it's hard to tell. Once those
6 trajectory rods were put in place, they were photographed.
7 They were not manipulated at that point.

8 Q Mr. Shaw, did you process the exterior of the vehicle
9 at all, do any processing with respect to that?

10 A I did. I processed the exterior of the vehicle for
11 fingerprints. And then the following day, I, also,
12 processed the interior of the vehicle for any
13 fingerprints.

14 Q Was there any swabs taken for potential DNA testing?

15 A There were.

16 Q Okay.

17 A I swabbed -- the outside, again, it looked like there
18 was some areas of blood on the outside of the car. So I
19 photographed those. I did a phenolphthalein test, which
20 is a presumptive blood test. I confirmed it was blood.

21 I then took a separate swab of separate areas on the
22 outside of the vehicle. I, also, swabbed the steering
23 wheel, as well as the handle for the gear shifter for any
24 possible DNA, which would be touch DNA, not necessarily
25 blood DNA.

1 Q I'm going to try to do this as quickly as I can. I'm
2 going to hand you several exhibits. The first being
3 State's Exhibit No. 98 for identification. I'm going to
4 ask you to open it up, take a look, and see if you can
5 identify it.

6 A I do recognize it.

7 Q And what is that?

8 A This is a swab for possible DNA from the grip of
9 DLS-1. And we have not discussed DLS-1 yet.

10 Q But is that a swab that you took from the interior of
11 that vehicle?

12 A No. This is from a weapon that was recovered.

13 Q I got you. I'm handing you what's been marked as
14 State's Exhibit No. 104 for identification purposes, and
15 ask you to identify that.

16 A This is, also, a swab for possible DNA. But it is --
17 it's associated with the one we just took off from another
18 firearm.

19 Q I'm handing you what's been premarked as State's
20 Exhibit No. 99. See if you can recognize that.

21 A This is a swab of blood, suspected blood from the
22 bumper of the vehicle.

23 Q Okay. And that would have been something you
24 collected and you can recognize you entered into evidence?

25 A I did. I did a bar code and put -- it is labeled

1 DS-1. It, also, has a piece of evidence tape around it
2 with my initials on it.

3 Q I'm handing you what's, also, been premarked as
4 State's Exhibit No. 117 for identification purposes. Can
5 you identify that?

6 A I can. This is a swab of suspected blood taken from
7 the rear driver's door handle, I believe. It's cut off,
8 but I believe that's where it was at. It, also, has been
9 sealed with evidence tape with my initials on the tape.

10 Q I'll hand you what's been marked as State's Exhibit
11 No. 103. If you can take a look at that, and see if you
12 recognize it.

13 A Again, this is a swab of suspected blood labeled
14 DS-4, which was collected from the exterior -- exterior of
15 the door. Again, it has my initials. And it's sealed,
16 with evidence tape.

17 Q I'm handing you State's Exhibit No. 116 for
18 identification. If you'll open that, and see if you
19 recognize that.

20 A Again, this is a swab of suspected blood that I took
21 from the rocker panel of the vehicle on the driver's side.
22 It is labeled DS-3. Again, it's sealed with evidence tape
23 with my initials on it.

24 Q I'm now handing you an exhibit that's been marked as
25 State's Exhibit No. 112 for identification. If you could,

1 take a look at that. And you can open that, if you like.

2 If you will identify it, if you can.

3 A This is a piece of lead, a lead fragment that came
4 off of a -- one of the pieces of lead core that was
5 collected from the front passenger floorboard. And it was
6 collected as DS-6. Again, it was put in a coin envelope,
7 sealed. And it has my initials on it.

8 Q I'm now handing you State's Exhibit No. 105. If
9 you'll open that and see if you can recognize, or identify
10 that.

11 A This is the projectile and the fragment -- the piece
12 that sheared off the projectile. It was labeled DS-8.
13 And the -- so it contains the jacket, as well as a
14 fragment.

15 Q I'm handing you State's Exhibit No. 107. If you
16 could, please, take a look at that, and see if you
17 recognize it.

18 A This is a copper jacket fragment that was from the
19 rear driver's side. And it was labeled as DS-14,
20 collected as DS-14. It was placed in a coin envelope,
21 sealed with evidence tape, and has my initials.

22 Q I'm handing you State's Exhibit No. 108 for
23 identification purposes. See if you can recognize or
24 identify that.

25 A This is a copper jacket from under the driver's seat.

1 It was labeled DS-17, and then sealed in the coin envelope
2 by myself.

3 Q Also, State's Exhibit No. 109 for identification
4 purposes. If you would take a look at that, and see if
5 you can identify that.

6 A Yes. This is a lead core that was recovered from
7 inside of the driver's seat. When I cut the back of the
8 driver's seat open, I found it inside of a piece of
9 plastic within the -- within the seat. It was collected
10 as DS-19, and then placed in the coin envelope and sealed.

11 Q And then State's Exhibit No. 106. If you could, open
12 that and take a look inside and see if you recognize what
13 is in that envelope.

14 A This is a cartridge casing that was on the rear
15 passenger floorboard that I photographed. It has a head
16 stamp of CCI nine-millimeter Luger. It was collected as
17 DS-10 and placed in the coin envelope and sealed.

18 Q Thank you.

19 Going back quickly to an item found inside the
20 vehicle. You, eventually, found a firearm?

21 A I did.

22 Q Could you describe, particularly -- and if you need
23 to reference a report or something, you can, certainly, do
24 that, but the model and make of the gun?

25 A It was a Kel-Tec nine-millimeter. The serial number

1 was SQC 34. That was photographed, collected. As I
2 collected it, I wanted to find out if there were any -- if
3 there was any ammunition in it. I popped the magazine
4 out, and then I pulled the slide back to see if there was
5 one chambered. There was not one in the chamber.

6 However, there were six live cartridges in the magazine.

7 Q And you say there was not one in the chamber, can you
8 explain, basically, what that means?

9 A On a semiautomatic, when a weapon is fired, when it's
10 discharged, it kicks out a casing and automatically
11 reloads a round or cartridge into the chamber. And then,
12 of course, when the last one is fired, the slide stays
13 locked back on a semiautomatic.

14 So, in this case here, there was six live rounds and
15 they were head stamped RP nine-millimeter, which is
16 Remington Peters. It was just different than the one I
17 found in the floorboard. But there were six of them in
18 the magazine. But had the weapon been fired -- unless the
19 magazine had been taken out and had been ejected, if it
20 had been fired, there should have been one in the chamber.

21 Q And did you assign, when you processed that gun, a
22 number and letter to that weapon?

23 A I did. It was collected as DS-9.

24 (WHEREUPON, State's Exhibit No. 125 was marked for
25 identification only.)

1 BY MR. MORONEY:

2 Q Mr. Shaw, I'm handing you what's been premarked as
3 State's Exhibit No. 125 for identification purposes. If
4 you'll take a look at that and let me know if you're able
5 to identify that.

6 A I do.

7 Q Could you, please, tell me what you see there, and
8 how you can identify it?

9 A It's -- it's a Kel-Tec nine-millimeter that has the
10 same serial number, SQC 34, as I have documented in my
11 report. There's, also, a magazine as well as a coin
12 envelope that should contain the six live rounds that were
13 taken out of the magazine.

14 Q And this is in substantially the same condition as
15 you saw it the night when you entered it into evidence?

16 A That's correct.

17 MR. MORONEY: Your Honor, the State would move that
18 State's Exhibit No. 125 be admitted into evidence.

19 THE COURT: Objections, gentlemen?

20 MR. KORNFELD: No, Your Honor.

21 MR. SULLIVAN: No, Your Honor.

22 THE COURT: Without objection, the same is moved into
23 evidence.

24 (WHEREUPON, State's Exhibit No. 125 was admitted into
25 evidence.)

1 BY MR. MORONEY:

2 Q And kind of creating a separation at this point. Did
3 you become involved at a later date in this case again?

4 A I did.

5 Q Could you detail how and when that happened?

6 A On the 18th of February, which was, like, two weeks
7 after this incident happened, I was contacted by
8 Investigator Newman. E requested I respond to an address
9 to photograph and collect a firearm.

10 Q And when you responded to that address, do you recall
11 the address that, specifically, it was?

12 A It was [REDACTED].

13 Q And do you recall if that's in close proximity to [REDACTED]
14 [REDACTED] Avenue?

15 A It is. I believe it's right up the alleyway within a
16 short distance, yes.

17 Q And when you arrived on scene, did you locate that
18 firearm?

19 A I did. It was pointed out. Actually, I was advised
20 by Investigator Newman that this weapon had been found
21 under a lawn mower in a shed. So as soon as I got there,
22 I could see the butt end of the firearm sticking out from
23 under the edge of the lawn mower.

24 Q And did you take pictures to detail this as you
25 arrived on scene and found the item?

1 A I did. I took photographs from the front of the
2 house showing the path I took from the residence and where
3 the shed was located in relation to the residence. I,
4 also, took photographs inside the shed, specifically, of
5 the lawn mower, where it was, as well as the visibility of
6 the butt end of the firearm.

7 Q Mr. Shaw, I'm going to be handing you some items that
8 have been premarked as State's Exhibit Nos. 18 through 24.
9 If you could take your time and look at those, and see if
10 you can identify them.

11 A (Witness complied.)

12 Q Can you identify those pictures?

13 A Yes. These are photographs that I took at [REDACTED]
14 [REDACTED] where the weapon was recovered from.

15 Q And what do those pictures, in summary, detail?

16 A Just photographs from -- showing from the street,
17 going through -- down the driveway and through a fence
18 into the back of the property where, apparently, it looks
19 looked like a garage, but it was some type of outbuilding,
20 a lawn mower and firearm that was just under the edge of
21 the lawn mower.

22 MR. MORONEY: Your Honor, at this time, the State
23 would move that State's Exhibit Nos. 18 through 24 be
24 admitted into evidence.

25 THE COURT: Any objections?

1 MR. KORNFIELD: No objection, Your Honor.

2 MR. SULLIVAN: No objection.

3 THE COURT: All right. Without objection, the same
4 are admitted.

5 (WHEREUPON, State's Exhibit Nos. 18, 19, 20, 21, 22,
6 23, and 24 were admitted into evidence.)

7 MR. MORONEY: Permission to publish to the jury, Your
8 Honor.

9 THE COURT: Sure.

10 BY MR. MORONEY:

11 Q Mr. Shaw, I'm going to show you this succession of
12 photographs. If you could, just explain what we're
13 seeing.

14 A Again, this was a cul-de-sac. And, basically, this
15 photo was to show mainly the address on the mailbox. This
16 is [REDACTED]. It's just kind of an overall
17 photograph from the street showing the residence. And
18 then I proceeded on back to this area to the backyard.

19 Again, this is the same vehicle that was parked in
20 the driveway. I just took 10 or 15 steps and took
21 additional photos in progression leading to the side of
22 the house through the gate. And then this is the
23 outbuilding where the firearm was located.

24 Just a closer photograph showing the items that were
25 in the garage, as well as this lawn mower. It's difficult

1 to see, but the firearm is right under the edge of that
2 lawn mower.

3 Again, this is just a closer photograph showing the
4 lawn mower and showing you could, actually, see the butt
5 end of the firearm sticking out from underneath the edge.

6 The mower was moved. And then I photographed the
7 firearm in the position it was in as it was recovered.

8 Q And, Mr. Shaw, once you recovered that firearm, what
9 did you do with it?

10 A I took it to -- I collected it. I collected it as
11 DLS-1. Again, we, normally, use our initials when
12 collecting evidence. In this case, because of the length
13 of time that had passed, I wasn't sure what the last piece
14 of evidence was that I had collected prior to.

15 So I just put my middle initial in there. So DLS is
16 still my piece of evidence. And it was collected as
17 number one.

18 Q And do you recall the make, model, or serial number
19 of that item?

20 A It was, also, a Kel-Tec nine-millimeter
21 semiautomatic. And the serial number was AHS 60.

22 (WHEREUPON, State's Exhibit No. 126 was marked for
23 identification only.)

24 BY MR. MORONEY:

25 Q Mr. Shaw, I'm showing you what's been marked as

1 State's Exhibit No. 126. I ask you to take a look and see
2 if you recognize it?

3 A It is a Kel-Tec nine-millimeter. The problem with
4 this is it is strapped down to the box. And where the
5 serial number is located is under the strap. There is a
6 tag that has been assigned to it, Kel-Tec model P11,
7 serial number AHS 60, which is the same as what I
8 collected and what's documented in my report.

9 Q Okay. Is there anything else inside that box? And
10 if you need to use scissors --

11 A There is a magazine and there's one live cartridge.
12 I removed the magazine and there was nothing in the
13 magazine. But when I pulled the slide back, one cartridge
14 ejected, which means it had not been fired. One cartridge
15 came out. And the head stamp on that was CCI
16 nine-millimeter Luger.

17 Q And this is the item you retrieved from the shed and
18 entered into evidence subsequently?

19 A Correct.

20 MR. MORONEY: Your Honor, at this time, the State
21 would move that State's Exhibit No. 126 be entered into
22 evidence.

23 MR. KORNFELD: No objection.

24 MR. SULLIVAN: No objection.

25 THE COURT: All right. Without objection, the same

1 is entered into evidence.

2 (WHEREUPON, State's Exhibit No. 126 was admitted into
3 evidence.)

4 BY MR. MORONEY:

5 Q And with respect to that weapon you retrieved from
6 the shed, could you describe the one round that was found
7 with its location compared to the other gun where you said
8 there was no round in the chamber?

9 A There was none in the chamber. This particular --
10 this particular weapon, the unfired cartridge was,
11 actually, in the chamber. So as soon as I pulled the
12 slide back, it ejected that live round out.

13 So there was nothing in the magazine which led me to
14 believe that the one in the chamber was the last one in
15 the magazine. The other ones had been fired. When the
16 last casing was ejected, it loaded that last cartridge
17 into the chamber.

18 Q So as I explained -- as I understand it, if you would
19 have pulled that trigger, would the weapon have fired if
20 it were operational?

21 A It would.

22 Q And, Mr. Shaw, if we could just jump back now briefly
23 to when you processed this vehicle. I'm going to show you
24 one of these pictures you've already described. And I'm
25 going to ask you to focus on this driver's door window

1 area. Can you explain with specificity what you saw as
2 you processed that window area?

3 A One of the things that I found was in this area of
4 the window, there was still glass that was in the track,
5 which led me to believe that the window had to be, at
6 least, up that far in order for the glass to still be
7 there once the weapon was fired.

8 What I did was I had took a tape measure. Now, as a
9 window -- and I did not get the full measurement from top
10 to bottom. But what I did do is -- down inside the door
11 is a track that the glass is attached to. What I did was
12 I took a tape measure and put it on the top of the track
13 and measured the distance from the top of the track up to
14 the very bottom of this window of the ledge. And it was
15 only 12 inches.

16 So that being the case, this distance here is more
17 than 12 inches, which meant that the window had to be
18 partially up in order for that glass to still be in the
19 frame and for the track to only be down 12 inches inside
20 the door.

21 Q And with respect to these numerous items that I
22 showed you previously that you've identified, did you
23 enter them personally all into evidence?

24 A I did.

25 Q Okay. And could you briefly describe that secure

1 procedure as you entered those items in?

2 A Well, all the evidence that's collected gets put into
3 my personal evidence locker, which is locked. I then
4 package the evidence, put bar codes on each piece of
5 evidence, and then transport it to P&E -- or to property
6 and evidence.

7 MR. MORONEY: Thank you, Mr. Shaw.

8 Please answer any questions the Defense attorneys may
9 have for you.

10 CROSS-EXAMINATION

11 BY MR. KORNFELD:

12 Q Mr. Shaw, isn't it true that that Kel-Tec Model PF-9
13 is notorious for jamming?

14 A I am not a firearms examiner. I cannot answer that.

15 Q When you testified earlier on direct, didn't you say
16 what a weapon is supposed to do, that it's supposed to
17 automatically reload in this type of weapon; a
18 semiautomatic weapon was supposed to reload; is that fair?

19 A If it's working properly, yes, it should.

20 Q All right. And you don't have any evidence that it
21 was working properly or not working properly here today;
22 is that fair to say?

23 A That's correct.

24 Q Okay. When you reviewed the scene, I notice they
25 didn't put any other items in there in the car. Isn't it

1 true that there were other items in the vehicle other than
2 the ones the State brought up?

3 A Can you --

4 Q Such as a half bottle of gin. Did you see that?

5 A I did.

6 Q Okay. Were there -- I can't remember -- were there
7 any, I guess, tobacco products with that as well?

8 A I don't recall any tobacco products.

9 Q Okay. Did you do any tests on the bottle of gin, or
10 anything of that nature, or did --

11 A I did. I processed it for fingerprints.

12 Q Okay.

13 A I did not get any results.

14 Q Okay. And when a -- from the casings that are
15 collected -- or that you collected, is there a way to
16 determine from where that jacket is where that gun that
17 shot that casing was shot from?

18 A Are you specifically -- are you talking about the
19 casing itself, or are you talking about the jacket
20 fragments?

21 Q I'm talking about the jacket. There's no way to tell
22 from where the jacket is where that gun was shot, is
23 there?

24 A That's correct.

25 MR. KORNFELD: I don't have any further questions.

1 Thank you, Officer Shaw.

2 THE COURT: Yes, sir, Mr. Sullivan.

3 CROSS-EXAMINATION

4 BY MR. SULLIVAN:

5 Q Can you hear me?

6 A Yes.

7 Q What I refer to is like the shell -- the shell -- not
8 the bullet itself, but the shell, what's left after --
9 what's ejected. What goes out when something is ejected?

10 A I'm sorry. I didn't understand what you were asking.

11 Q You have a bullet?

12 A Yes, sir.

13 Q The projectile goes out the front?

14 A Correct.

15 Q The -- whatever you want to call it, the shell is
16 ejected?

17 A Correct.

18 Q Can you tell on these guns which way, right or
19 left -- is the gun -- is the projectile projected?

20 A There are very few firearms that will eject from the
21 left side. They all kick out to the right.

22 Q The right?

23 A Yes, sir.

24 Q So if somebody were outside this car shooting in,
25 those shell casings would be ejected to the right outside

1 the car?

2 A Unless it ricocheted off of the door post, or
3 something. If it was in close enough proximity, it could
4 still get inside the car.

5 Q Well, they'd have to have it stuck inside the car?

6 A Pretty close, yes.

7 Q If they were shooting from here, it's not going in
8 the car?

9 A From a far distance, no.

10 Q Okay. Did you find some of these shell casings
11 inside the car?

12 A I found one.

13 Q So that means if the gun was fired inside the car,
14 the shell casing would have gone to the right; correct?

15 A It was found on the rear floorboard, which would be
16 correct.

17 Q So if the person in the car shot the gun, that shell
18 casing would have gone back in the back floorboard?

19 A No. If the driver had shot the weapon, it would have
20 been on the front passenger floorboard or, possibly, up on
21 the dash.

22 Q I thought it went out to the right?

23 A It does go out to the right.

24 Q Well, then you're saying it's going to go down?

25 A I'm saying that the projectile -- gravity is going to

1 take --

2 Q No, No. I'm not talking about the projectile. I'm
3 talking about after the bullet leaves the gun, what's left
4 is going to be ejected to the right?

5 A Correct.

6 Q You say you found a -- something projected to the
7 right in the rear right floorboard?

8 A In the rear floorboard.

9 Q So that would have been fired from the gun inside the
10 car?

11 A No, sir.

12 Q Would somebody have had to reach inside to do it?

13 A It would have had to have been close enough -- what
14 I'm saying is, if I'm sitting behind the wheel --

15 Q Yes, sir.

16 A -- and if I'm looking out the driver's window -- if
17 I'm looking out the driver's window, if I'm shooting in
18 this direction, it's going to kick to the right. And it's
19 either going to go up on the dash, or it's going to be on
20 the front floorboard. That casing that I found was in the
21 back floorboard, which means that it probably came from
22 outside, not from inside.

23 Q So you're saying they were gunning the gun?

24 A Not -- I'm not saying that there -- I'm saying there
25 were two guns that were found. One gun was in the vehicle

1 that the head stamps on that weapon matched -- did not
2 match the one that I found on the floorboard.

3 Q It did not match?

4 A Correct.

5 MR. SULLIVAN: That's all I have, Your Honor.

6 THE COURT: All right. Any redirect?

7 MR. MORONEY: No, Your Honor.

8 We ask that we release Mr. Shaw from subpoena.

9 THE COURT: Mr. Shaw, thank you for being here.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: I appreciate it. You may be excused.

12 MR. WESTON: Your Honor, the State would call

13 Ms. Kara Bennick.

14 THE COURT: Okay.

15 THE CLERK: Ma'am, if you'll, please, come forward.

16 If you'll, please, pause at the end of the bench.

17 Place your left hand on the Bible and raise your
18 right hand.

19 WHEREUPON,

20 KARA BENNICK,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please be seated.

24 Please state your name for the record.

25 THE WITNESS: Kara Bennick.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. WESTON:

4 Q Ms. Bennick, where are you employed?

5 A The Greenville County Forensics Unit, but,
6 particularly, the property and evidence room.

7 Q Now, how long have you been in the area of property
8 and evidence?

9 A 15 years.

10 Q What is your title?

11 A I'm the supervisor of the unit.

12 Q And how many employees do you supervise?

13 A There's four under me, five total.

14 Q And would you tell the jury what the purpose of
15 property and evidence is, generally?

16 A It's a secure holding area for all incoming evidence,
17 and any kind of property that's going to come in from the
18 officers that are working patrol.

19 Q And how does -- when you say a "secure" area, how is
20 it secure? Let's talk about that for a moment.

21 A Okay. We have three types of security. One is the
22 lock and key security. We have swipe cards. And we have
23 24-hour camera surveillance.

24 Q So if I were to go in and try to get something out of
25 property and evidence, I'd be on a camera somewhere 24

1 hours a day.

2 A You couldn't get in, but, yes, sir, you would.

3 Q Assuming I was able to get in?

4 A Yes, sir.

5 Q And so -- and who do y'all receive property and
6 evidence items from? Is it every -- every law enforcement
7 jurisdiction in Greenville County?

8 A Multiple law enforcement jurisdictions in Greenville
9 County, yes, sir.

10 Q Does that include the Greenville County Sheriff's
11 Office?

12 A It does.

13 Q And I'm going to hand you a stack of documents, and
14 just ask you if you can just identify -- we're not going
15 to put these into evidence. I just want you to identify
16 them for me.

17 A These are property receipts that we generate. And
18 these are chain of custodies we generate out of our bar
19 code system.

20 Q All right. And I'm going to just use this green
21 magic marker as an example. If I'm a law enforcement
22 officer and I collect this green magic marker as a piece
23 of evidence in a case -- let's say, I work for the
24 sheriff's office. What do y'all require I do with it
25 before I bring it to y'all? How would you receive this?

1 Would you receive, for instance, me just bringing you a
2 magic marker to the window and saying --

3 A No. You would have to generate a property and
4 evidence report, which is an inventory of the item, a
5 description and inventory explaining what it is, how it
6 is, and that it would be submitted.

7 Q Is there any type of packaging that's required?

8 A If it comes in during business hours, we'll go ahead
9 and package for the officer. If it comes in after hours,
10 it must be packaged and placed in a locker or drop box.

11 Q When you say "package," is there a coding system
12 used?

13 A There is --

14 Q Bar code system used?

15 A There is a policy in place for the type of evidence
16 that's coming in and the way it needs to be packaged.

17 Q Okay. And just using one of these as an example
18 here. Does the item -- if it's packaged, does the item
19 have to be sealed?

20 A Depending on what the item is.

21 Q The packaging?

22 A It depends on what type of item it is whether or not
23 it's sealed.

24 Q And what types of items do not require seals?

25 A Just general property that is of no value or anything

1 like that does not require being sealed.

2 Q What about items that are identifiable? Like, let's
3 say, a gun with a serial number, or something that is
4 identifiable as one single item that cannot be duplicated,
5 like a picture?

6 A They do not require seals.

7 Q Okay. Let me show you an item that's been marked as
8 State's Exhibit No. 74. It's not in evidence yet. Would
9 you describe the packaging on here?

10 A This is a sealed package.

11 Q All right. What is the item? If you turn that over,
12 what is --

13 A This is the bar code. We have a bar code system that
14 identifies all evidence.

15 Q Does that, also, describe the item that you were
16 talking about?

17 A Yes.

18 Q And you were talking about earlier I'd have to
19 describe -- the packaging would have to describe the item
20 that I've submitted to y'all?

21 A Yes, sir.

22 Q In the drop box?

23 A Yes, sir.

24 Q And is the bar code generated by me?

25 A If it's a crime scene officer that's submitting it,

1 it is generated by him. If it is not, it's generated by
2 us off the report the officer submits.

3 Q Okay. And once an item is brought into the drop box,
4 how is it collected by your staff?

5 A It -- we've divvied out into schedules. And it just
6 depends on who's collecting from the drop box that day.
7 But that person will collect it from the drop box, and
8 check it in, and then put it in the appropriate location.

9 Q All right. Is the bar code used as part -- as a part
10 of the system?

11 A Yes. We will check -- we will inventory it, based on
12 the property and evidence report. We will put it in the
13 bar code system. And then we will move it to its own
14 location.

15 Q And let's say it's a gun that's put in. And then at
16 some point, it's taken out for testing and then brought
17 back again after the testing. Does your bar code system
18 reflect the initial deposit, the removal, and then the
19 return?

20 A Yes.

21 Q Okay. And then, finally, if it's brought to court,
22 it would reflect that probably as well?

23 A Yes.

24 MR. WESTON: Excuse me one second.

25 (Pause.)

1 THE COURT: Are y'all okay? Y'all got it figured
2 out?

3 MR. WESTON: I think we've got it worked out.

4 THE COURT: I didn't know if the police needed to get
5 up.

6 BY MR. WESTON:

7 Q Ms. Bennick, every item on this table here -- and if
8 you will just agree with me -- has a bar code on it?

9 A Yes, sir.

10 Q Just for purposes of my questioning -- and I think
11 we've got an agreement from counsel. They have been
12 present when each one of the items have been identified by
13 the officers?

14 A Yes, sir.

15 Q If each of these items have a bar code on it similar
16 to this --

17 A Yes, sir.

18 Q -- would they have, at some point, been in property
19 and evidence and then brought to court today?

20 A Yes, sir.

21 Q In the meantime, have they been monitored by your
22 office and your security system?

23 A They have.

24 Q Okay. And so as far as up until today is concerned,
25 if -- and just one more question. If any of them had been

1 tampered with in any way, the packaging, or whatever, does
2 that require that y'all do something -- an investigation
3 take place?

4 A Yes.

5 Q And as far as you know, if any of these items
6 involved have been seen to have possibly been tampered
7 with -- or has there been any investigation regarding any
8 of these items that we're talking about today?

9 A No, sir.

10 Q So as far as you know, all these items were placed
11 into evidence, removed, and returned appropriately?

12 A Yes, sir.

13 (Pause.)

14 MR. KORNFELD: I've got one question, but I'm good on
15 that.

16 MR. WESTON: Answer any questions counsel might have
17 for you.

18 CROSS-EXAMINATION

19 BY MR. KORNFELD:

20 Q What about that big rip in the bottom of that bag?
21 Did you know about that?

22 A I believe we conducted a discovery the other day in
23 our office. And I believe that we were looking at those
24 packages. And I think it just pulled apart when we were
25 moving them around.

1 Q All right. But there was no report on that, or
2 anything else like that. So you just made the decision
3 that it wasn't tampered with. Did it tear in your vision?

4 A No, sir. Upon my checking that property out, this --
5 yesterday morning, this stuff was intact.

6 Q Okay. So you don't know how it was torn?

7 A No, sir.

8 MR. KORNFELD: I don't have any other questions.

9 MR. WESTON: And just to clarify on that.

10 REDIRECT EXAMINATION

11 BY MR. WESTON:

12 Q If it had been torn yesterday morning when you saw
13 it, would you have allowed it to come to court without
14 something -- some investigation having been done?

15 A No. I would have gone ahead and sealed it back up
16 and made a note on it that I was the one who was the
17 sealing party.

18 Q And you sealed all of these, so -- I was going to
19 bring it to you and ask you if there's a note on it. But
20 you know there's no note on here; right?

21 A I don't recall without the log if I opened that stuff
22 the other day when we were looking at it or not.

23 Q I'm just going to let you see.

24 A I'm not the one who sealed this stuff, no.

25 Q I see. I'm going to show you two fresh items, and

1 ask you if you can describe what this is -- or do you
2 recognize this first?

3 A I do.

4 Q As an item -- what is that?

5 A It's identified with our bar code.

6 Q And if you would look through your records here, and
7 tell me if you can identify what -- how your bar code
8 identifies that object.

9 And I apologize for making you go through all of
10 these. And the reason it's taking so long is my fault,
11 not yours, because I didn't direct you to it. I'm sorry.

12 A That's okay.

13 Q What is it -- let's do it this way. What is this
14 referenced as here?

15 A So this is a blood splatter from the coroner's
16 office.

17 Q And would that be in a -- like on a specimen piece of
18 paper, or something?

19 A Contained within here?

20 Q Yes, ma'am.

21 A I couldn't tell you that. It came in sealed.

22 Q So it has not been unsealed?

23 A Well, it was unsealed down here by the DNA lab.

24 Q Okay. If you'll hold on one second. Excuse me one
25 moment.

1 Let's do it this way. Would this indicate when this
2 came into your -- into property and evidence?

3 A This would not, no.

4 Q Okay.

5 A It would have been on the property and evidence
6 report.

7 Q Okay. So we'll have to wait until you locate it?

8 A (Witness nodded.)

9 Q That's fine.

10 A We're looking for this number right here.

11 Q I'm sorry, ma'am.

12 A We're looking for this number right here to match up.
13 And that's why it's taking so long.

14 MR. WESTON: And, Your Honor, I apologize, while
15 she's looking -- Ms. Bennick did not know we were going to
16 ask her about this item. This is my fault, not hers.

17 THE COURT: Okay. I'll blame you.

18 THE WITNESS: I'm sorry.

19 (Pause.)

20 THE WITNESS: Okay. Here we go.

21 BY MR. WESTON:

22 Q And what do your records reflect happened with this
23 item? On what date did it come in, and what were the
24 subsequent chain of events that happened as it relates to
25 property and evidence?

1 A Okay. So it was impounded on February 23rd, 2015, at
2 approximately 11:27 p.m.

3 Q And what was the name on your records as to what it
4 is?

5 A It is LCM1, a blood spot, 15-417 from the coroner.
6 And then it's Logan, Shamese Nicole.

7 Q And what happened next to this item?

8 A Melanie checked it in. Okay. And then it was placed
9 into the home staging.

10 Q And has it been there ever since, or has it come back
11 out prior to today?

12 A It has come back out. It went to DNA staging. And
13 then it went to DNA processing as well. And then it came
14 back in.

15 Q And who checked it out to DNA staging and processing?

16 A It was checked out by me.

17 Q And when you say "DNA staging and processing," where
18 would it have gone to?

19 A It would have been removed from its home location.
20 It would have gone to staging. It would have sat on the
21 DNA shelf waiting to be checked out, because those words
22 "by submitted" on it. It would then have been checked out
23 to one of our analyst for DNA at their request.

24 Q And was it checked out?

25 A It was. It was checked out to Timothy Nafziger.

1 Q And was it then returned to your -- to property and
2 evidence?

3 A It was.

4 Q And what date was it returned?

5 A It was returned on August 7, 2015.

6 Q And is there any other indication it's been checked
7 out or moved since then?

8 A It has been moved since then.

9 Q And where was it moved?

10 A It was moved out to permanent storage.

11 Q And is that where it has remained until being brought
12 to court today?

13 A Besides being brought -- it was brought in for
14 staging for discovery on this case, and then moved to
15 court staging from there.

16 Q And as far as you know, it has not been, otherwise,
17 tampered with, other than the testing that you referred to
18 by DNA?

19 A Correct.

20 MR. WESTON: Your Honor, the State would offer this
21 as State's Exhibit No. 120.

22 THE COURT: Objections?

23 MR. SULLIVAN: No objection, Your Honor.

24 MR. KORNFELD: No, Your Honor.

25 THE COURT: All right. Without objection, the same

1. is admitted.

2. (WHEREUPON, State's Exhibit No. 120 was admitted into
3. evidence.)

4. MR. WESTON: Thank you.

5. BY MR. WESTON:

6. Q Finally, this is a bar code. The reference on it is
7. money, U.S. currency. It's already been identified. Let
8. me ask you, did the -- do the bar code references -- and
9. it has three different bar codes, that would mean it has
10. three different packages inside?

11. A It would mean there's three different items inside.

12. Q And has this item been in P&E until being brought to
13. court staging for discovery, and then brought to court
14. today as far as -- to the best of your knowledge?

15. A It went out to DNA at some point.

16. Q I'm sorry. I take that back. We're going to have to
17. look at this one, too.

18. MR. WESTON: And, once again, Your Honor, my
19. apologies.

20. THE WITNESS: This one is a little easier to find. I
21. checked this one out.

22. Here's the first one. And here's the second one.

23. BY MR. WESTON:

24. Q And just if you'll take a quick look at that to see
25. if all the dates that it's moved are the same dates for

1 all three so we can save a little time.

2 A Yes.

3 Q All right. So when did these items come into
4 property and evidence?

5 A They were received -- they were, actually, impounded
6 on February 4th, 2015, by the officer.

7 Q All right.

8 A They then came into P&E on February 13th, 2015.

9 Q And how -- when did they move again? And I think you
10 testified that they -- whenever one -- one of the three
11 packages of money moved, all three of them moved together?

12 A Yes.

13 Q And when is the next time the three packages of money
14 were moved from P&E?

15 A July 29th, 2015, they were checked out to DNA.

16 Q When were they returned?

17 A They were returned on August 7th, 2015.

18 Q And have they been in DNA since that time up until
19 possibly staging for purposes of this trial?

20 A Yes.

21 Q And have there been -- if there were any problems
22 with the money in terms of the -- the denominations having
23 been changed, or the currency having been changed or been
24 tampered with in any way, would that be reflected in your
25 report?

1 A It would. It would be noted in the note section.

2 Q And is there any notation that any of these items
3 have been altered, other than being checked out and
4 returned as you've already testified?

5 A There is not.

6 MR. WESTON: Thank you, Your Honor.

7 The State would offer these as --

8 Are they marked individually?

9 State's Exhibit No. 121 -- I'm sorry, State's Exhibit
10 Nos. 121 and 122. And I'm going to leave them in this
11 larger envelope because they do contain blood. And
12 State's Exhibit No. 123 -- I'm sorry. State's Exhibit
13 Nos. 121, 122, and 123.

14 THE COURT: All right. Objections?

15 MR. SULLIVAN: I think they've been entered.

16 MR. WESTON: They were identified.

17 MR. SULLIVAN: No objection.

18 MR. KORNFELD: No objection.

19 THE COURT: All right. Good enough. The same is
20 admitted into evidence.

21 (WHEREUPON, State's Exhibit Nos. 121, 122, and 123 were
22 admitted into evidence.)

23 MR. WESTON: No further questions, Your Honor.

24 THE COURT: Cross-examination?

25 MR. KORNFELD: None, Your Honor.

1 MR. SULLIVAN: None, Your Honor.

2 THE COURT: Thank you for being here.

3 I appreciate it. I'm sorry Mr. Weston messed up your
4 testimony like that.

5 MR. WESTON: The State would ask that Ms. Bennick be
6 released from her subpoena.

7 THE COURT: Yes, sir.

8 I know some of us need to take a break. So let's go
9 ahead and take a break. We'll come back in and we'll
10 resume testimony.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 3:29 p.m.)

13 THE COURT: All right. We'll be in recess.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Are we ready for the jury?

16 MR. WESTON: Your Honor, we're ready to do the
17 proffer on Ms. Gorton.

18 THE COURT: Is she here?

19 MR. WESTON: She's outside. We've got the
20 investigator that spoke to her. We were going to call him
21 first and let him testify about the phone call, and-what
22 she told him. And then we would put her up to testify.

23 THE COURT: Okay. Let's do that very quickly.

24 THE CLERK: Sir, please, place your left hand on the
25 Bible and raise your right hand.

1 WHEREUPON,

2 LLOYD NEWMAN,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 Please state your name for the record.

7 THE WITNESS: Sergeant Lloyd Newman, Greenville
8 County Sheriff's Office.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. WESTON:

12 Q Sergeant, you were the lead investigator on the case
13 that we're in court with today; is that correct?

14 A Yes, sir. That's correct.

15 Q And did you have an occasion on February 18th of
16 2015, to have a conversation with Ms. Cass Gorton, the
17 attorney for Mr. Jahru Smith at that time?

18 A I did, sir.

19 Q Would you tell the Court what happened, and what was
20 said?

21 A She contacted me in reference to her client letting
22 her know where the gun was located, specifically, the
23 victim's gun in this incident, and did not want a child to
24 find it. So she wanted to meet with us at that location
25 and be present when that gun was recovered.

1 Q Did she tell you that she was acting on her client's
2 instruction to contact you?

3 A I did get that impression, yes, sir.

4 Q And, as a result of that, you met her at a
5 location -- tell the Court where the location is --
6 basically, just --

7 A [REDACTED], which is the location that Sergeant
8 Shaw spoke of earlier. It's that house at the top middle
9 at the cul-de-sac, the shed located --

10 Q Right here?

11 A Yes, sir.

12 Q Is this the shed here?

13 A That is the shed.

14 Q And the gun was found?

15 A Inside that shed.

16 Q Okay. Now, did she describe it as the murder weapon,
17 or the victim's gun?

18 A She said that it was the victim's gun.

19 MR. WESTON: All right. Your Honor, that's all I
20 have for this witness.

21 THE COURT: Do y'all have any questions you want to
22 ask him with regard -- for purposes of this hearing?

23 CROSS-EXAMINATION

24 BY MR. KORNFELD:

25 Q Officer Newman, you say you got the impression that

1 it was done at the direction of her client, Jahru Smith.

2 But did she articulate that to you, specifically?

3 A I can't say that she did or she didn't. Again, we're
4 talking about 2015. So to recall outside of what I've
5 written in my supplemental -- it was kind of, sort of
6 maybe outside of my purview. I guess that's the best way
7 to put it. We were concerned with collecting the
8 evidence.

9 Q When -- she went out to the scene; correct?

10 A She did.

11 Q And was her -- was Jahru Smith with her at that time?

12 A No, sir.

13 Q All right. And you never had any conversations with
14 Jahru Smith concerning this weapon; correct?

15 A I've never spoken with Jahru.

16 MR. KORNFELD: No further questions.

17 THE COURT: Mr. Sullivan.

18 MR. SULLIVAN: Nothing, Your Honor.

19 THE COURT: All right. Great.

20 Thank you, Officer.

21 I appreciate that.

22 All right. You can call Ms. Gorton in.

23 MR. WESTON: Your Honor, before she comes in, I would
24 like to reiterate our concern that she may go outside the
25 previous attorney-client privilege matters. And we just

1 want to make sure that she confines herself to just the
2 things that have already been said.

3 THE COURT: Sure, sure. Do you want to tell her
4 that, or do you want me to tell her that?

5 MR. WESTON: I think you should tell her, Judge.

6 MR. KORNFELD: Well, Your Honor, it's my client to
7 assert privilege. I just want to put it on the record
8 that he's told me that he wants to assert his privilege.
9 He's asserting his privilege. And I'd instruct Cass, I
10 guess when she comes in here, that he doesn't want her to
11 testify. He believes it's a violation.

12 THE COURT: I understand. And I know it's a very
13 sensitive area, and we'll be sensitive about it.

14 MR. KORNFELD: Okay.

15 THE COURT: The question is, to what extent did he
16 waive his privilege? And I won't know that until she gets
17 on the stand and under oath says whether or not he either
18 told her or authorized her to disclose it. If she says he
19 didn't, well, then maybe there's -- maybe then there's
20 nothing for her to testify to, but we'll see. We'll see.

21 MR. WESTON: And my concern, Your Honor, as I said,
22 is that she does not disclose any new matters.

23 THE COURT: I got you. I understand you.

24 MR. KORNFELD: Your Honor, is there a -- I tried to
25 get Jahru to come in earlier today.

1 THE COURT: Yes, sir.

2 MR. KORNFELD: I guess it was his lunch and he
3 didn't. Is there a possibility -- I don't know where he
4 is -- that maybe I could get him to come in for this and
5 maybe he could testify concerning this? Maybe he wants
6 to, maybe he doesn't.

7 THE COURT: You can, certainly, ask him. Let's go
8 ahead and put Ms. Gorton on the stand. Okay.

9 MR. KORNFELD: Okay.

10 THE COURT: Is he there in the cell, or is he -- he's
11 downstairs?

12 THE COURTROOM DEPUTY: He's downstairs. And he used
13 some profanity about him talking to him at lunchtime.

14 THE COURT: Is that right?

15 MR. KORNFELD: Not to me.

16 THE COURTROOM DEPUTY: Through the officer.

17 THE COURT: I understand. I understand. So what
18 you're suggesting is that they may be a little bit on the
19 outs, at least, from Mr. Smith's perspective.

20 Swear Ms. Gorton in.

21 THE CLERK: Raise your right hand.

22 WHEREUPON,

23 CASSANDRA GORTON,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 Please be seated.

2 THE COURT: All right. Mr. Gorton, just before we
3 get started, I know that the substance of the subject
4 matter of the questions that will be posed to you center
5 on requests that your former client, Mr. Jahru Smith, may
6 have made to you, and specific requests he may have made
7 to you to disclose the whereabouts of a weapon.

8 We're being very careful to make sure that none of
9 the questions that are posed to you require you to divulge
10 any attorney-client privilege information beyond that
11 which your client may have already waived by asking you to
12 disclose or divulge that information.

13 So, inasmuch as the attorneys have been directed not
14 to ask you those questions, I'd ask you as well, and I
15 know you're aware of this, to resist the temptation. And
16 I don't think it's a temptation for you at all. But don't
17 feel compelled to go outside the attorney-client
18 privilege, except to the extent that you feel it's been
19 waived.

20 All right. Yes, sir.

21 MR. KORNFELD: And, Your Honor, I just wanted to put
22 on the record while Ms. Gorton is here that my client has
23 instructed me that he wants Ms. Gorton to assert his legal
24 privilege, which is his, to keep his former attorney from
25 testifying. He asserts his duty to confidentiality

1 pursuant to Rules 1.6 and 1.9, specifically, in this case.

2 THE COURT: All right. And I'm not making -- I'm
3 trying to determine whether the privilege exists right
4 now. This is proffered evidence. This is not for the
5 benefit of jury, at least, not at this point.

6 Okay. So, Mr. Weston, you may proceed, sir.

7 MR. WESTON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. WESTON:

10 Q Ms. Gorton, just for the record, you were
11 representing Jahru Smith back in February of 2015; is that
12 correct?

13 A Yes. I was court appointed to represent him.

14 Q Okay. And Investigator Newman has testified that he
15 received a call from you on February 18th of 2015,
16 concerning the whereabouts of a gun. And subsequently,
17 y'all went and -- you met them there and the gun was found
18 at a location behind the incident location.

19 Could you tell the Court how you came to make the
20 phone call to him and what you -- what your client, if
21 anything, told you or authorized you to do, and what you
22 told Investigator Newman?

23 A I was authorized to not only tell law enforcement
24 where this gun was, it was believed, at that time, that it
25 was the victim's gun. And I was, also, instructed to be

1 present to make sure that the exculpatory evidence, that
2 being the victim's gun, was preserved. It was both found
3 and properly preserved.

4 Q And who authorized you to do that?

5 A Mr. Smith, Jahru Smith.

6 Q When you talked with him, was anybody else present
7 when this authorization took place?

8 A Not at that time. I did have him sign something.
9 But after we went to the scene and I saw Mr. Newman's
10 reaction, it occurred to me that he was a little too
11 excited about something that would be beneficial for the
12 Defense. And this was prior to me having discovery.

13 So I --

14 Q I don't want to get into anything else beyond the
15 first conversation that took you to the scene. We don't
16 want to talk about any other conversations you may have
17 had with the Defendant.

18 A There was somebody who witnessed a subsequent
19 conversation confirming my instructions.

20 Q All right. But prior to calling Investigator Newman,
21 were you authorized by the Defendant to waive the
22 attorney-client privilege, and tell him what your client
23 told you concerning where a gun was located, in this case,
24 he said the victim's gun, but where a gun was located?

25 A Yes.

1 Q Was that specific? Was that a specific instruction?

2 A Yes.

3 Q And I say that and I'll ask you one more question.

4 As opposed to, did he -- he didn't tell you, generally, to
5 act in what you thought was his best interest?

6 A No, sir.

7 Q It was very specific about calling the police and
8 telling them where the gun was?

9 A It was to take law enforcement to the gun.

10 Q And did you carry out those instructions?

11 A Yes.

12 MR. WESTON: Thank you, ma'am.

13 CROSS-EXAMINATION

14 BY MR. KORNFELD:

15 Q Ms. Gorton, you don't have anything in writing from
16 Mr. Jahru Smith authorizing you to disclose this
17 information; is that correct?

18 A That's incorrect. I, actually, do.

19 Q What -- where -- did you bring that with you here
20 today?

21 A I did. I just discovered it last night when I pulled
22 the file.

23 Q Okay. Do you have it with you?

24 A Yes.

25 Q Isn't it true that we've had conversations about this

1 before and you said you didn't have anything in writing?

2 A No. I said that I thought that I had, but I hadn't
3 been able to locate it.

4 Q Okay.

5 A So I couldn't say with certainty that I had something
6 in writing. It felt like I did and that I would have, but
7 that I hadn't located it. And I didn't until last night.

8 Q Okay.

9 A These are copies. And I have the original here.

10 Q Has the Prosecution seen this?

11 A Huh-uh.

12 THE COURT: I just want to make sure, Ms. Jenkins,
13 that that "huh-uh" was a negative response.

14 THE WITNESS: I'm sorry.

15 THE COURT: The Prosecution has not seen it.

16 THE WITNESS: I'm sorry. Now, I'm having trouble
17 finding it again, but I know it's in here.

18 Here it is. This is the original. It's written on
19 the back of another piece of paper. And these are copies.

20 BY MR. KORNFELD:

21 Q All right. And is it fair to say this says, "I give
22 Cass Gorton permission to try to locate the victim's gun
23 with assistance of law enforcement"? Is that what it
24 states?

25 A Yes.

1 Q And is it -- there's an X here with some scribbly
2 marks. What is this?

3 A It's his signature.

4 Q And it's dated 2/18/15; is that correct?

5 A Yes.

6 Q All right. And you found this last night; is that
7 correct?

8 A I found it in my file last night. That's, actually,
9 my writing at the top.

10 Q I understand. Can I have a copy of this?

11 A Absolutely.

12 THE COURT: Let's make that -- show it to the State.
13 We'll make it a Court's Exhibit.

14 (WHEREUPON, Court's Exhibit No. 1 was marked for
15 identification and admitted into evidence.)

16 BY MR. KORNFELD:

17 Q So concerning that, you then, I guess, later on had
18 Karen Garrett -- and Karen Garrett is an investigator;
19 correct?

20 A Correct. She and I returned the next day.

21 Q And you then asked him, again -- after the weapon was
22 found, you sat down with Mr. Smith and had another
23 conversation with him after the weapon was found with
24 Ms. Garrett present this time; correct?

25 A Verifying his instructions, yes.

1 Q All right. And why did you bring Ms. Garrett to that
2 meeting?

3 A Because I was concerned that this was going to
4 happen, and/or that he was going to say that he didn't
5 read or write well and he didn't understand what he
6 signed. So I wanted another witness as to what exactly he
7 authorized me to do.

8 Q Isn't it true that you've told me before that you
9 thought that he may have some diminished capacity, and
10 that he may not have understood necessarily the writing
11 anyway?

12 A I don't think I used the word "diminished capacity."
13 I had concerns about his literacy.

14 Q All right. And what were those concerns,
15 specifically?

16 A That maybe he couldn't read or write.

17 Q All right. And so you didn't -- none of the reasons
18 concerning the confidentiality of information pursuant to
19 the rules of professional responsibility were elicited in
20 this disclosure; is that correct?

21 A I didn't set out rules when I wrote that, no.

22 Q All right. Rule 1.6 says a lawyer shall not reveal
23 information related to the representation of a client,
24 unless the client gives informed consent. The disclosure
25 is impliedly authorized in order to carry out the

1 representation or the disclosure is permitted in paragraph
2 B. It's not one of the paragraph B's.

3 I'm assuming that you're stating that Mr. Jahru Smith
4 gave you informed consent to do this. Is that your
5 testimony?

6 A Yes. We discussed it in length verbally. We
7 discussed options. And we reaffirmed what I told him, and
8 what his options would have been in the presence of Karen
9 Garrett.

10 Q If this were to be the deceased's weapon, you thought
11 that the police would then dismiss this case against him?
12 Was that your reasoning?

13 A No. I didn't think they'd dismiss it. But I
14 thought, ultimately, at trial, it was something that could
15 be used by the Defense. I had no delusions that they were
16 going to dismiss it in light of what he had done on TV.

17 Q You understand that if a lawyer has formerly
18 represented a client in a matter, he should not use that
19 information relating to the representation to the
20 disadvantage of that former client, except as the rules
21 would permit or require with respect to a client? Do you
22 understand that?

23 A Yes.

24 Q Do you not think that testifying in this trial here
25 today will be detrimental to your former client?

1 A I don't know. I'm under subpoena. And it's for the
2 Judge to make a ruling as to what I can and cannot testify
3 to.

4 Q Ms. Gorton, how long have you been a lawyer?

5 A 25 years.

6 Q So in your professional opinion, with the information
7 that you have, were you to testify today be to the
8 disadvantage of your client, Jahru Smith, if you were to
9 testify in front of a jury to where that weapon was?

10 A I don't know. No one has proffered me questions. I
11 don't know what I'm going to be asked. I know that under
12 the rules, part of what I've had to say -- or part of what
13 I would say has been waived with his consent.

14 Q You have spoken to Assistant Solicitor Jeff Weston
15 and Brian Moroney about your testimony that you're going
16 to possibly give here today; correct?

17 A They've told me that I'm going to testify as to why I
18 took law enforcement to the shed. We have not met. We
19 have not discussed anything in their office.

20 Q And your testimony would be confined to that specific
21 set of circumstances; correct?

22 A I should think so.

23 Q So you do know what you're going to testify to later
24 here today, don't you?

25 A Well, absent the Judge ruling otherwise, I'm only

1 going to testify to that which has already been disclosed.

2 Q And you can't say here today whether or not
3 testifying that the weapon that was found that you brought
4 Officer Bubba Newman to is going to be detrimental to
5 Jahru Smith's defense? You can't say that?

6 A I haven't watched any of this trial. I don't know
7 what direction it's going, or what's been said.

8 Q Well -- okay. Let me ask you -- it another way then.
9 The weapon that was found is the alleged murder weapon.
10 Would it be better or worse for Jahru Smith if it wasn't
11 found?

12 A I can't undo what was done.

13 Q Right. That's a fair statement. But would it be
14 better or worse if that gun was not found?

15 A I guess it would be better if it hadn't been found.

16 Q Knowing that Jahru Smith wants you to assert his
17 right to attorney-client privilege, are you going to
18 assert that right on his behalf, or are you going to
19 testify against him?

20 A I'm going to assert that right as to the material
21 that's still covered under the attorney-client privilege
22 and hasn't been waived.

23 Q And you're going to testify to what is extremely
24 detrimental to his case. Is that your testimony?

25 A I have no idea.

1 MR. KORNFIELD: No further questions.

2 THE COURT: Okay. Mr. Sullivan, any questions you'd
3 like to ask her?

4 MR. SULLIVAN: None, Your Honor.

5 THE COURT: Okay. Yes, sir.

6 MR. WESTON: Nothing further from the State, Your
7 Honor.

8 THE COURT: All right. After having heard the
9 proffered testimony, the questioning from Mr. Kornfeld is
10 well taken. I don't take exception to any of the legal
11 propositions that were not necessarily expounded, but
12 any -- that were -- that were questioned.

13 However, the privilege wasn't waived and won't be
14 waived today. The privilege would have been waived at the
15 time when the Defendant instructed Ms. Gorton to have
16 communications with law enforcement.

17 Now, whether that communication inured to his benefit
18 or not was something that remained to be seen. Based on
19 conversations, it sounds like she had with -- with
20 Mr. Smith, there was a hope that finding that weapon would
21 inure to his benefit in defense of his case.

22 Whether, in fact, there was a violation of the rules
23 of ethics is really a subject for another tribunal. What
24 we're dealing with here is privilege and whether that --
25 whether the communication is admissible in the Court of

1 law, not whether she has violated an ethical duty. Those
2 are separate and distinct issues.

3 In this instance, I do find that he expressly waived
4 the lawyer-client privilege by instructing her to have
5 conversations with law enforcement about the present --
6 about locating the -- what he characterized as the
7 victim's weapon. So I'll allow her to testify as to that
8 limited, limited amount of information inasmuch he
9 expressly waived the attorney-client privilege in that
10 matter.

11 Largely, you can look at it as sort of a confession
12 and whether it was freely and voluntarily given. In this
13 instance, the confession wasn't necessarily made by him
14 directly to law enforcement. It was -- it was made to
15 counsel and expressly requested that she convey that
16 information to law enforcement.

17 And, clearly, based on the evidence that I have in
18 front of me, it was freely and voluntarily made. And she
19 did as instructed. I find that's credible not only
20 through her testimony, but I find it's credible through
21 Court's Exhibit No. 1 that has been entered into evidence
22 for purposes of this hearing.

23 I will tell you that I -- I, certainly, wish that he
24 were here to respond and, perhaps, assist in -- in the
25 cross-examination of Ms. Gorton. But he has voluntarily

1 elected to excuse himself from the courtroom. And there's
2 nothing I can do about that.

3 Now, I will tell you that he, certainly, has the
4 opportunity still to come back and to testify to the jury,
5 if he wants to. And he can respond to those allegations
6 as well if he'd like. And we can fashion a charge for the
7 jury to, perhaps, cure any issues that may have arisen
8 during the trial. But that's something we'll have to
9 discuss at the conclusion of the evidence.

10 Okay. So given that ruling, we can proceed.

11 And, Ms. Gorton, you can stand down. And when we
12 call the jury back in, we'll call you back up to the stand
13 and swear you in again.

14 MS.. CASSANDRA GORTON: Judge, I need clarification.

15 THE COURT: Uh-huh.

16 MS. CASSANDRA GORTON: Part of that communication
17 that he made to me and that I made to law enforcement was
18 the urgency of getting to the gun because there were
19 children that lived at the residence. And I had
20 communicated that to Investigator Newman.

21 THE COURT: If that was part of what he expressly
22 authorized you to disclose, then you can -- you can
23 testify to that.

24 MS. CASSANDRA GORTON: Okay. Thank you.

25 THE COURT: I think, ultimately, that has nothing to

1 do with -- it's neither inculpatory or exculpatory.

2 MS. CASSANDRA GORTON: It doesn't, but that was the
3 authorization in its entirety.

4 THE COURT: Okay.

5 MR. WESTON: We'll give her the opportunity to
6 include that in her testimony, Judge.

7 THE COURT: Okay.

8 MR. WESTON: And just for housekeeping, Your Honor,
9 we've got Dr. Ward, who has to be somewhere. So we're
10 going to call him -- because we don't want to break this
11 up --

12 THE COURT: Yes, sir.

13 MR. WESTON: -- we're going to call --

14 MS. CASSANDRA GORTON: I'd appreciate the break
15 anyway.

16 THE COURT: Okay.

17 MR. WESTON: We're going to call Dr. Ward. And then
18 we're going to call Ms. Gorton and get her out. Dr. Ward
19 should be about 15, 20 minutes, at most. And we can call
20 Ms. Gorton and call Investigator Newman.

21 THE COURT: All right. Good enough. Well, let's do
22 it.

23 Will you bring the jury in, please?

24 (WHEREUPON, State's Exhibit No. 127 was marked for
25 identification only.)

1 (WHEREUPON, the jury came into open court at
2 approximately 4:17 p.m.)

3 THE COURT: Okay. You can call your next witness.

4 MR. MORONEY: Your Honor, the State calls Dr. Michael
5 Ward.

6 THE CLERK: Sir, if you'll, please, place your left
7 hand on the Bible and raise your right hand.

8 WHEREUPON,

9 MICHAEL EUGENE WARD, M.D.,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be sated.

13 And please state your name for the record.

14 THE WITNESS: Michael Eugene Ward.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. MORONEY:

18 Q Dr. Ward, what is your current occupation and
19 profession?

20 A I'm a forensic pathologist.

21 Q And are you a duly licensed physician in the State of
22 South Carolina?

23 A Yes, I am.

24 Q How long have you been licensed?

25 A In South Carolina, since 1990, so 28 years.

1 Q Were you licensed in another state before that?

2 A I am, also, licensed in New Mexico.

3 Q Okay. Will you, please, tell us the educational
4 background you have in order to obtain that?

5 A Sure. I received my Bachelor's Degree from the
6 University of Alabama. I have a Master's Degree in
7 Forensic Science from the University of Alabama in
8 Birmingham. I received my medical degree from the
9 University of South Alabama, which is in Mobile.

10 I did a four-year anatomic pathology residency at the
11 Medical University of South Carolina in Charleston, and a
12 forensic fellowship in -- I'm sorry, a fellowship in
13 forensic pathology at the University of New Mexico in
14 Albuquerque. I'm board certified by the America Board of
15 Pathology in both anatomic and forensic pathology.

16 Q And with respect to your experience over the years,
17 what's your professional working experience?

18 A I've been here in Greenville since 1995. I've done
19 well over 5,000 medical legal autopsies. I've testified
20 in court well over a hundred times.

21 Q And are you a member of any professional
22 organizations?

23 A I am a member of the American Medical Society, the
24 College of American Pathologists, the American Academy of
25 Forensic Sciences, and the National Association of Medical

1 Examiners.

2 Q And could you, please, tell the jury what forensic
3 pathology is?

4 A Well, pathology is the study of disease and disease
5 processes and how they affect man. Forensic pathology
6 takes that one step further with interpretation of wounds,
7 wound patterns, determination of cause and manner of
8 death, and the presentation of that information in the
9 courtroom.

10 Q And do you have any training specific to forensic
11 science?

12 A Yes. I have a Master's Degree in Forensic Science.

13 Q And what is the American Board of Pathology?

14 MR. KORNFELD: We'll stipulate to this. I've talked
15 to Mr. Sullivan. And he's qualified to testify.

16 THE COURT: All right.

17 MR. MORONEY: At this time, we would move to qualify
18 Dr. Ward as an expert in the field of forensic pathology.

19 MR. KORNFELD: No objection.

20 MR. SULLIVAN: No objection.

21 THE COURT: All right. Ladies and gentlemen, what
22 that's all about is the Doctor has been offered as an
23 expert witness. Now, a party may introduce or offer a
24 witness as an expert witness because of his or her
25 education, experience, or expertise in a given field.

1 And the reason they may offer that person as an
2 expert witness is because expert witnesses can testify as
3 to opinion evidence that lay witnesses cannot testify to
4 because of their specialty.

5 But understand that when somebody is qualified as an
6 expert witness in any given field, it doesn't mean that
7 their testimony has any greater weight or any preferred
8 value. You take that testimony, that evidence just like
9 you take any other piece of evidence that you receive in
10 the trial of the case. And you decide what weight it has
11 and what value it has. And you decide whether it's
12 credible or not. Again, just like any other piece of
13 witness -- evidence that you receive in a trial.

14 So with that having been said, I will accept the
15 Doctor as an expert witness in the recited field.

16 BY MR. MORONEY:

17 Q Dr. Ward, were you serving as a forensic pathologist
18 for Greenville County on February 4th, 2015?

19 A Yes, I was.

20 Q Did you perform an autopsy on the body of Shameese
21 Nicole Logan?

22 A Yes, I did.

23 Q Generally speaking, how is an autopsy performed?

24 A An autopsy is a detailed physical examination
25 performed on someone who has died. There is an external

1 examination with documentation of injuries. Then an
2 internal examination, again, with documentation of any
3 injuries that may be present or any natural disease that
4 may be present. It includes a histologic examination or a
5 microscopic examination of tissues, as well as a
6 toxicological analysis of blood or body fluids that are
7 removed at autopsy.

8 Q And is an autopsy performed the same way each time?

9 A Yes, it is.

10 Q Who else on February 4th during this autopsy was
11 present along with you?

12 A Greenville County Deputy Coroner Jeff Fowler,
13 Greenville County Sheriff's Detective Ramon Rivera, and an
14 officer of the Greenville County Criminal Justice -- or
15 forensics department, Adam Davis.

16 Q And how is the body presented to you for autopsy by
17 the coroner's office?

18 A Well, the body is received in a clean body bag. Each
19 decedent is sent to us in a clean body bag as they were
20 recovered at the scene. And the -- before the body leaves
21 the scene, they are identified with an identification
22 band. And this identification band was labeled "Logan,
23 Shamese, [REDACTED]," so her name and her birth date.

24 Q And could you, please, give the jury a general
25 overview of the injuries you observed that Ms. Logan

1 sustained to her body?

2 A Ms. Logan had multiple gunshot wounds to the neck,
3 abdomen, and one to the leg. And she had some
4 superficial abrasions on her lower back just above the
5 buttocks.

6 Q During the course of an autopsy, at some point, do
7 you create some sort of diagram to reflect what you find?

8 A Yes, I do.

9 Q Could you describe that?

10 A We have what we call a body diagram. And during the
11 initial portion of the autopsy while I'm examining the
12 external surface of the body, I diagram any injuries that
13 were there, making measurements to locate them on the body
14 so that, eventually, I can translate them or dictate them
15 into the written form.

16 Q Dr. Ward, I'm handing you what's been premarked as
17 State's Exhibit No. 127 for identification purposes. If
18 you could take a look at that. I would ask you if you
19 recognize it?

20 A Yes, I do.

21 Q Could you, please, explain what that is?

22 A This is, basically, a cleaned-up copy of my body
23 diagram. The original diagram was made at autopsy. This
24 one was prepared for trial purposes today. It's labeled
25 with the decedent's name, her original autopsy number.

1 Q And this diagram, is it an accurate representation of
2 the one that you completed as a result of that autopsy?

3 A Yes, it is.

4 MR. MORONEY: Your Honor, at this time, the State
5 would move for State's Exhibit No. 127 to be admitted into
6 evidence.

7 MR. KORNFELD: No objection, Your Honor.

8 MR. SULLIVAN: No objection.

9 THE COURT: Without objection, the same is admitted.

10 (WHEREUPON, State's Exhibit No. 127 was admitted
11 into evidence.)

12 MR. MORONEY: And permission to publish to the jury.

13 THE COURT: Yes, sir.

14 BY MR. MORONEY:

15 Q Dr. Ward, I'm going to put this on the projector.

16 And if you could, please, walk us through what we're
17 looking at here starting at the top.

18 A This is, again, a body diagram of Ms. Logan with the
19 documentation of the entrance and exit gunshot wounds as
20 they were drawn. The gunshot wounds are what we call
21 arbitrarily numbered.

22 So I start at the top and work my way to the bottom,
23 start at the front and work my way to the back. So I
24 don't necessarily know which gunshot wounds were first or
25 second, third, fourth, or fifth, just that I had to assign

1 a number to a wound.

2 So number one is not necessarily first. But the
3 first gunshot wound was described as an entrance gunshot
4 wound here to the left lateral neck, so the left side of
5 the neck. This wound went through the skin musculature of
6 the neck. It traumatized the backside of the trachea or
7 the windpipe. It passed through and disrupted the right
8 internal jugular vein or the large vein that blood returns
9 from the brain to the heart. It impacted the left -- I'm
10 sorry, the right clavicle, in this region.

11 So it deflected backwards and, ultimately, exited the
12 right upper back. So it's going from Ms. Logan's left to
13 her right, slightly backward and downward to exit here.

14 The disruption of the trachea -- or trauma to the
15 trachea or great vein resulted in a large amount of blood
16 being present within the throat and the mouth of
17 Ms. Logan. So she, subsequently, swallowed blood as well
18 as breathed blood or aspirated blood into her lungs.

19 Gunshot wound number two is present here in the left
20 upper quadrant of the abdomen. So here's the left side of
21 the abdomen. Gunshot number two went through the skin and
22 musculature of the abdomen, passing towards the right and
23 backwards to, ultimately, exit here at the right hip.
24 During its course, it passed through the cecum, which is,
25 the first portion of the large intestine.

1 So it perforated her large intestine, went through
2 the muscle, and then exited the right side of her hip. So
3 this is the exit to number two. Entrance number two,
4 exit.. So, again, this one passes from Ms. Logan's left to
5 her right, downward and backward.

6 Gunshot wound number three is in the right lower
7 quadrant of the abdomen just below the umbilicus or belly
8 button. It has, what we call, an eccentric abrasion
9 color. So it hit the skin a little bit first, skidded
10 across the skin before it went into the skin, went into
11 the abdominal cavity where it perforated multiple loops of
12 small intestine. So it passes through several segments of
13 the small intestine and exits out the left hip within this
14 region here.

15 This is a two-dimensional diagram, so it's a little
16 bit difficult to demonstrate. This is, actually, more on
17 the side than what it appears here. So it's, again, from
18 Ms. Logan's right to her left, through the abdominal
19 cavity, downward and backwards to exit the left hip here.

20 Gunshot wound number four is an entrance gunshot
21 wound to the anterior left thigh. So it's the anterior
22 left upper leg. It passes through the muscle. It misses
23 the femur or the big bone in the leg, and exits out her
24 left buttock right here. So it goes from her front to her
25 back and upward to exit here.

1 The fifth gunshot wound is on the inner aspect of the
2 left wrist. It passes through soft tissue to exit the
3 outside of the left wrist in this fashion here. So it
4 goes from -- with her arm in what we call the anatomic
5 position, it goes from her right to her left and slightly
6 forward. I'm sorry. I did that. I don't know how I did
7 that, but I did that.

8 Q It's okay.

9 A I pushed the wrong button.

10 But it missed the bones of her arm. So it did not
11 fracture anything. It just exited through -- passed
12 through soft tissue.

13 Again, I apologize for that.

14 So this is the entrance and exit wound here. There
15 were no projectiles recovered at autopsy.

16 Q Dr. Ward, would any of the gunshot wounds have been
17 severe enough to kill Ms. Logan by themselves?

18 A So gunshot wounds number two and three are
19 potentially fatal gunshot wounds. Without urgent care,
20 taken to the OR, she, certainly, could have died from
21 those wounds. With a perforated intestine, bacterial
22 contents are spilling into the abdomen. She's bleeding
23 into her abdomen. They are, certainly, potentially fatal
24 wounds.

25 Gunshot wound number four likely would not have been

1 a fatal wound. It passed through muscle. I do not
2 believe it hit one of the great vessels of the leg. Any
3 wound is potentially complicating, but I believe this
4 would have been a survivable wound.

5 Certainly, gunshot wound number five to the wrist was
6 a nonfatal gunshot wound.

7 Gunshot wound one to the neck, having traumatized the
8 trachea and the great vessel, the right internal jugular
9 vein, it is a fatal gunshot wound. She's losing a great
10 deal of blood. She's aspirating blood into her lungs so
11 that she cannot breathe. That would be a fatal gunshot
12 wound.

13 Q And, Dr. Ward, based on this particular autopsy and
14 within the bounds of reasonable medical certainty, have
15 you formed an expert opinion with respect to the cause of
16 death for Ms. Logan?

17 A Yes, I have.

18 Q And what is that?

19 A Ms. Logan died as a result of multiple gunshot
20 wounds.

21 Q I'm showing you what's been premarked here as State's
22 Exhibit No. 67 for identification purposes. I would ask
23 if you recognize that?

24 A Yes, I do.

25 Q Could you tell us what it is, and how you recognize

1 it?

2 A This is a photograph taken of Ms. Logan's face during
3 the time of autopsy by the forensic -- or forensic officer
4 that was there. I recognize it because I reviewed my
5 photographs immediately prior to coming here today. And I
6 recognize the photograph of Ms. Logan. It is a photograph
7 of her left cheek.

8 Q And, in particular, does -- is there a reason why
9 there was focus on that area in this picture?

10 A The focus on this area is some punctate or pinpoint
11 abrasions of the skin that are associated with a gunshot
12 wound to her left neck. When a firearm is discharged, we
13 all know that the bullet exits the muzzle of the gun.
14 That's the purpose. Other things, also, come out the
15 muzzle of the gun. First is hot gas. That's what's
16 pushing the bullet out.

17 So as gun powder ignites, it burns. It produces gas.
18 It pushes the bullet down the barrel of the gun. Also,
19 coming -- also, coming out is soot or burned gun powder,
20 which goes for a very short distance. And, also, coming
21 out is unburned gun powder or gun powder that does not
22 ignite.

23 This unburned gun powder will travel for a short
24 distance. And it can impact the skin creating those
25 punctate abrasions on the skin called gun powder

1 stippling. It is that stippling that helps us to
2 determine range of fire in gunshot wounds.

3 MR. MORONEY: Your Honor, at this time, the State
4 offers State's Exhibit No. 67 into evidence.

5 THE COURT: Objections?

6 MR. SULLIVAN: None, Your Honor.

7 THE COURT: All right. The same is admitted.

8 (WHEREUPON, State's Exhibit No. 67 was admitted into
9 evidence.)

10 THE COURT: You may publish it, sir.

11 MR. MORONEY: Thank you, Your Honor.

12 BY MR. MORONEY:

13 Q Dr. Ward, if you could, tell us, specifically, what
14 we're looking at here.

15 A This is the left check of Ms. Logan. And these
16 punctate areas of abrasions, they're all right about the
17 same size. Some may even have little embedded pieces of
18 gun powder in them, these black particles here. This is
19 from the unburned gun powder from the muzzle of the gun
20 striking the skin.

21 Her gunshot wound was to the neck. She was wearing a
22 sweater, which covered this portion of her neck. So it
23 shielded the skin in this region from stippling, although
24 she was not wearing anything over her face, which allowed
25 the stippling to strike her face, but it spared it from

1 the region of the neck. So it was shielded by her
2 clothing. So this is gun powder stippling associated with
3 gunshot wound number one to the left neck.

4 Q And taking a look at this picture, what is your
5 medical opinion with respect to the range of what caused
6 the stippling?

7 A When we have gun powder stippling like this with no
8 other changes, no soot and no hot gas, then my impression
9 is that the range of fire would be less than two to three
10 feet.

11 Q Dr. Ward, were there blood samples taken during the
12 course of this autopsy?

13 A There were.

14 Q And who would they have been given to?

15 A For toxicology purposes?

16 Q Any of the blood samples, once they're taken during
17 the autopsy, would you hold onto them or would you hand
18 them over?

19 A We have different blood samples that are taken. We
20 withdraw some femoral blood for toxicological purposes for
21 analysis. It is sent to National Medical Services for
22 performance of those analyses.

23 We, also, take a blood spot, which is placed on a
24 piece of blotter paper, allowed to dry, and kept in the
25 file in case we need to do DNA analysis. And those are

1 the two types of blood that we recover at autopsy.

2 Q And, particularly, in this case, what was the manner
3 of death?

4 A The manner of death is homicide.

5 Q And did you observe during the autopsy any abrasions
6 in the lower back area?

7 A I did.

8 Q Could you detail that?

9 A I, certainly, can. At the lower back just above the
10 natal cleft or, basically, your crack. Just above your
11 crack -- her crack were some superficial linear abrasions
12 of the skin. And given the fact of the location of those
13 abrasions and the fact that her clothing was pulled down
14 to about mid thigh was indicative that she had been moved
15 or dragged to receive those types of injuries.

16 Q And with respect to the pants being down, was there
17 any evidence of sexual assault in this case at all?

18 A No, there was not.

19 Q And, particularly, you just described the manner of
20 death being homicide. Is it correct to say that that's
21 death at the hands of another?

22 A That is correct.

23 MR. MORONEY: Thank you.

24 Please answer any questions the Defense may have for
25 you.

CROSS-EXAMINATION

BY MR. KORNFELD:

Q Dr. Ward, Ms. Logan, when you examined her, was 176 pounds and about 5'6", or what you have in your report is 68 inches; is that correct?

A Yeah. 68 inches is 5'8".

Q Oh, 5'8"?

A And 176 pounds.

Q Okay. And at the time you examined her, did she have any glass particles in her body at all?

A No.

Q Okay. And did she have any physical impairments that you could see during the autopsy, such as mental incapacities, or any problems with her legs, arms, anything of that nature?

A There was no indication of developmental abnormalities or physical impairment that was apparent at autopsy.

Q Upon when you stated that you concluded that the death was by homicide, you're not making a determination as to whether or not there was an altercation prior to this, or how the death occurred, other than gunshot wound; is that fair to say?

A My statement as to homicide is that these are injuries that Ms. Logan would not have been able to cause

1 to herself, and had to have been at the hands of another,
2 which is the definition of homicide.

3 Q But as far as a homicide, you're not saying -- you
4 can't say from your investigation whether or not this
5 occurred as a self-defense, or because she came at another
6 person first, or anything like that, only that the bullets
7 that went through her body killed her, and she didn't
8 shoot herself; is that correct?

9 A That is correct.

10 MR. KORNFIELD: Okay. No further questions.

11 Thank you, Dr. Ward.

12 THE COURT: Mr. Sullivan.

13 CROSS-EXAMINATION

14 BY MR. SULLIVAN:

15 Q Dr. Ward, when you received her body, was she in the
16 body bag? She had been transported from the scene?

17 A Yes, sir, she was.

18 Q When you opened the bag, were her hands bagged?

19 A (There was no response.)

20 Q I'm talking about like for GSR. Usually, you have
21 the hands bagged for fingernail scrapings, and things like
22 that.

23 A Yes, sir. Each hand was -- well, let's see. I'm
24 sorry.

25 Yes, sir. They were separately bagged. Each hand

1 was separately bagged.

2 Q In your presence, you would have been there from the
3 time she was opened in the bag through the autopsy;
4 correct?

5 A I was present the entire time, yes, sir.

6 Q Did you see anyone from forensics perform any kind of
7 GSR test on the hands?

8 A I do not know if they did or not. I know that the
9 bags were left intact until the go ahead was given by
10 forensics to remove them. I do not personally know if
11 they performed GSR testing or not.

12 Q Did they perform any on her clothing?

13 A Not at the time of autopsy, no.

14 Q In the normal course of a situation like this, would
15 a person's hands have been bagged to have the GSR test
16 performed on them?

17 A In this situation, yes, normally, they would.

18 Q So, in this case, we could assume they did a GSR test
19 on her, perhaps?

20 A Well, I hate to assume.

21 Q Okay.

22 A But, generally speaking, in a homicide involving
23 firearms, a GSR is, generally, performed.

24 Q It should have been done?

25 A That's correct.

1 MR. SULLIVAN: Thank you.

2 THE COURT: Anything on redirect?

3 MR. MORONEY: No, Your Honor.

4 THE COURT: Thank you, Doctor.

5 I appreciate you being here, sir. You may step down.

6 MR. MORONEY: We'd ask that Dr. Ward be excused from
7 his subpoena.

8 THE COURT: All right. So done.

9 You may call your next witness.

10 MR. WESTON: Your Honor, the State would call
11 Ms. Cass Gorton to the stand.

12 THE CLERK: If you'll, please, come forward.

13 If you'll, please, place your left hand on the Bible
14 and raise your right hand.

15 WHEREUPON,

16 CASSANDRA GORTON,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 Please state your name for the record.

21 THE WITNESS: Cassandra Gorton.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. WESTON:

25 Q Ms. Gorton, you're an attorney here in Greenville; is

1 that correct?

2 A Yes.

3 Q And you've been here in Greenville practicing law for
4 a number of years?

5 A Practicing law since 2011.

6 Q Okay. And you represented Mr. Jahru Smith, one of
7 the Defendants in this trial, concerning the incident that
8 brings us here today back in February of 2015; is that
9 correct?

10 A Correct. I was court appointed.

11 Q And you are no longer his lawyer?

12 A Correct.

13 Q All right. On February 15th -- February 18th of
14 2015, did you contact by telephone Investigator Lloyd
15 Newman concerning some evidence in this case?

16 A February 18th?

17 Q Yes, ma'am.

18 A Yes.

19 Q And did you call on behalf of your client, Mr. Jahru
20 Smith?

21 A Yes.

22 Q Did you call as a result of instructions given to you
23 by Mr. Jahru Smith?

24 A Yes.

25 Q And what were those instructions that Mr. Smith told

1 to you, as best you can remember, what he said he wanted
2 you to do?

3 A He wanted me to take law enforcement to a shed to
4 locate what, he said, was the victim's gun. And he wanted
5 me to do so right away because some children lived at the
6 residence where the shed and the gun were located.

7 Q I'm assuming because he was afraid that somebody --
8 he indicated he was afraid one of the children might hurt
9 themselves, or hurt someone?

10 A Exactly.

11 Q Okay. And did you, in fact, pass that information on
12 to Investigator Newman?

13 A Yes. Part of the instruction, too, was that I was to
14 go with law enforcement to make sure that they located
15 this gun and properly preserved it.

16 Q And did you meet law enforcement officials, including
17 Investigator Newman, at that location?

18 A Yes. I believe it was Investigator Newman and Dar
19 Shaw.

20 Q And the shed -- would the shed we're talking about be
21 this shed here? This is Mayflower Avenue. This is
22 Donaldson Road. This is the incident location as
23 described. Would this be the shed we're talking about, or
24 somewhere around here?

25 A I honestly can't say. I just remember the shed. And

1 I know that it was on the property next to the incident
2 property.

3 Q All right. And did you see -- were you present when
4 a gun was found?

5 A Yes.

6 Q And was the gun properly secured and taken care of as
7 your client had instructed you?

8 A Well, I'm not trained in forensics. But it appeared
9 that it was retrieved, and nobody wiped it down.

10 Q All right. Prior to the conversation with your
11 client, did you have any idea where this gun was, this
12 particular gun?

13 A No.

14 Q All right. And was the gun where your client said it
15 was?

16 A It was located in the shed, yes.

17 MR. WESTON: Thank you, ma'am.

18 Answer any questions counsel may have for you.

19 THE COURT: Any cross-examination, sir?

20 MR. KORNFIELD: Yes.

21 CROSS-EXAMINATION

22 BY MR. KORNFIELD:

23 Q Ms. Gorton, when you were speaking to Jahru Smith,
24 after speaking to him, was your -- was it your belief that
25 he really thought that this was the deceased's gun?

1 A Absolutely.

2 MR. WESTON: Objection, Your Honor. Calls for
3 speculation as to what somebody else was thinking.

4 THE COURT: I -- I'll sustain that objection. I
5 don't know -- she can testify what he told her, based on
6 our previous focus. But I don't know she can testify to
7 what was in his head.

8 MR. KORNFELD: Okay.

9 THE COURT: But I don't know.

10 MR. KORNFELD: Okay. That's fine. I'll rephrase the
11 question. That's no problem.

12 BY MR. KORNFELD:

13 Q Ms. Gorton, after speaking with Mr. Jahru Smith, were
14 you convinced that this was likely the victim's gun?

15 A Yes.

16 Q And being his attorney, after speaking with him,
17 since you thought this was likely the victim's gun, you
18 thought by providing this information to Officer Newman
19 this would in the long-term help Mr. Smith?

20 MR. WESTON: Your Honor, I'm going to object as to
21 relevance as to what she thought. She's no longer his
22 lawyer. What she thought whether they were helping him or
23 not is not relevant to the case today.

24 THE COURT: I'll overrule. I'll give you a little
25 latitude with cross-examination.

1 BY MR. KORNFELD:

2 Q Is that -- is that fair to say? Do you need me to
3 repeat the question?

4 A Could you repeat it?

5 Q I sure can, yeah. After your conversations with
6 Jahru Smith, I asked you if you were convinced that this
7 was the deceased's gun. You said "yes"; correct?

8 A Yeah. I probably need to change that answer. I was
9 convinced that he believed it was.

10 Q Okay. And so when you -- when -- and then you
11 contacted Officer Newman; correct?

12 A At Mr. Smith's direction, yes.

13 Q Okay. And you did that because you were representing
14 Mr. Smith at that time, and this was going to help him.
15 Because it showed that the deceased had a weapon; correct?

16 A Well, I don't know --

17 MR. WESTON: Your Honor, I'm going to object. I
18 think this is going to require her to go into new
19 attorney/client privilege matters.

20 THE COURT: Okay. She -- she -- I think that she's
21 still under that privilege. I don't know what the answer
22 is, though. And I don't know whether she would or not.
23 But if it does, then she can, I think, state that on the
24 record.

25 THE WITNESS: Right.

1 THE COURT: And so I'll have to defer to her in that
2 regard.

3 MR. WESTON: Your Honor, if I may, just further. And
4 I know you've ruled, Your Honor, but just so you
5 understand my objection. He is asking her about her legal
6 opinion concerning the status of his case based on one
7 matter, this gun statement. That conclusion has to come
8 from other things he told her as well, Your Honor, and --

9 THE COURT: He's getting close, but he hasn't gotten
10 there yet. The present question that is outstanding is
11 fairly simple. And I think that's did she think it was
12 going to help him or not --

13 MR. KORNFELD: Right.

14 THE COURT: -- at the time.

15 MR. KORNFELD: Right.

16 THE COURT: And you're right. You're not going to go
17 too far beyond that. But, yeah, I think you can ask that
18 question.

19 THE WITNESS: Is that the question?

20 BY MR. KORNFELD:

21 Q Yes, Ms. Gorton, that is the question.

22 A Under the totality of the circumstances, I did
23 believe there was a possibility that locating the gun was
24 going to be beneficial. What I did know was neglecting
25 his instructions would be malpractice had it been the

1 victim's gun.

2 Q And you state -- you were, also, concerned about
3 children in the neighborhood; is that correct?

4 A He was concerned about children who lived at the
5 residence where the shed was located.

6 Q All right. And he did not know -- he wrongfully
7 thought that the gun was someone else's; is that correct?

8 MR. WESTON: Objection, Your Honor, to the
9 characterization. She can't know whether he wrongfully
10 thought or whether he was deliberately deceiving her.

11 THE COURT: I sustain.

12 MR. WESTON: Thank you, Your Honor.

13 MR. KORNFELD: Can I respond, Your Honor?

14 THE COURT: Well, you can. But I would caution you
15 that that's up to the jury to decide. And I'm not certain
16 your argument inures to your benefit.

17 MR. KORNFELD: Well, Your Honor --

18 THE COURT: I just want you to be careful. Okay.

19 MR. KORNFELD: I understand, but --

20 THE COURT: And understand --

21 MR. KORNFELD: -- he's a party to this action.

22 THE COURT: Sure. And he can testify.

23 MR. KORNFELD: But it's a statement that the hearsay
24 rule wouldn't apply to that, Your Honor.

25 THE COURT: I don't know. You're not talking about a

1 statement. You're talking about his state of mind.

2 MR. KORNFELD: Okay. No further questions.

3 THE COURT: Okay. Mr. Sullivan.

4 MR. SULLIVAN: Just one or two.

5 CROSS-EXAMINATION

6 BY MR. SULLIVAN:

7 Q Good afternoon, Cass.

8 I'm trying -- in representing Jahru, you knew this
9 was [REDACTED] Avenue. Can you see it?

10 A I'm just trying to --

11 Q This would be Mayflower Avenue, Donaldson. You take
12 a right and this is the house.

13 A That --

14 Q Did you ever go to the scene?

15 A I did.

16 Q Okay.

17 A And the thing I really remember is the house where
18 the shed was at was up in the cul-de-sac. So, yeah, that
19 looks right.

20 Q This was [REDACTED] Avenue. This was the
21 neighbor's, # [REDACTED]?

22 A Yeah. I don't know. The shed didn't belong to that
23 house.

24 Q It didn't belong to these houses?

25 A Right.

1 Q Was this in the afternoon? Was it daylight when you
2 went?

3 A Oh, yeah. It was daylight. And it was cold.

4 Q There is a cul-de-sac. And this is Pecan Terrace
5 back here. And the house -- you went beside the house and
6 this was the shed?

7 A That's right.

8 Q Did you notice a fence and how far it was from the
9 shed, to here, to Mayflower?

10 A I didn't measure it. We didn't do any of that.
11 There was a fence there.

12 Q A fence somewhere along here?

13 A Along the side of the property.

14 Q This property?

15 A Uh-huh.

16 Q So for somebody to go from here to here, they'd have
17 to climb a fence to get to that shed?

18 A I didn't look at it to see if there were gates, or if
19 the fence was complete. I just remember the fence being
20 there. I wasn't there for the fence. I'm sorry. I don't
21 remember.

22 MR. SULLIVAN: That's all right.

23 Nothing further.

24 THE COURT: Any redirect?

25 MR. WESTON: No, sir.

1 If the Court would allow this witness to be excused
2 from her subpoena.

3 THE COURT: Yes.

4 Ms. Gorton, I appreciate you being here.

5 All right. Let's gauge where we stand, Mr. Moroney.
6 How many additional witness?

7 MR. MORONEY: We were going to defer to you, Your
8 Honor. We were hoping to, at least, get through one more.

9 THE COURT: I'm talking about in total.

10 MR. MORONEY: In total, we're looking at --

11 THE COURT: I appreciate your deference to me in that
12 regard. That's very kind of you.

13 MR. MORONEY: Probably about 10, or so.

14 THE COURT: 10. Okay.

15 MR. MORONEY: Most of whom are much shorter.

16 THE COURT: I understand. And you have one short
17 witness that you can call this afternoon?

18 MR. MORONEY: Yes, Your Honor.

19 THE COURT: Let's go ahead and do that.

20 Any of y'all need to take a break?

21 Are we good?

22 (WHEREUPON, there was no response.)

23 THE COURT: Go ahead and call your next witness.

24 MR. MORONEY: The State calls Investigator Lloyd
25 Newman.

1 THE CLERK: Sir, place your left hand on the Bible
2 and raise your right hand.

3 WHEREUPON,

4 LLOYD NEWMAN,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 Please be seated.

8 Mr. MORONEY: May we approach, Your Honor?

9 THE COURT: Sure.

10 (WHEREUPON, a bench conference was held.)

11 DIRECT EXAMINATION

12 BY MR. MORONEY:

13 Q Investigator Newman, where do you currently work?

14 A The Greenville County Sheriff's Office.

15 Q And what is your position there?

16 A I'm a sergeant over the violent crimes division.

17 Q And how long have you worked in law enforcement?

18 A I started in '96, approximately 11 years in violent
19 crimes.

20 Q And could you detail what the violent crimes unit is
21 responsible for?

22 A I'm over the homicide and robbery unit. At the time
23 of February 3rd, 2015, I was the on-call investigator for
24 the homicide unit, which brought me to my involvement in
25 this case.

1 Q Okay. Could you detail how you, specifically,
2 responded to [REDACTED] Avenue on February 3rd, 2015?

3 A Being that I was on call, I received a phone call
4 from road personnel to include Sergeant Weiner at the time
5 around 10:15 that evening. He stated to me that there was
6 a deceased female at [REDACTED] Avenue. That there was
7 one individual that was at the residence at the time
8 deputies arrived. They made contact with him, which
9 turned out to be Mr. Bobby Smith.

10 I got ready. I left the house. I went to the
11 location. I got there about, you know, just a little bit
12 before 11:00, about 10:57. When I got there, I saw that
13 the perimeter of the property was roped off and it was
14 secured by other deputies. I approached the location. We
15 got a description of the location. As protocol, we
16 obtained a search warrant for that location.

17 Once the search warrant was obtained, we entered the
18 location. I entered on the left-hand side down the
19 driveway. I could see in the distance between the two
20 houses of #4 and #2, there was a grayish silver-colored
21 Chrysler 300 with the rear door open. There was a female
22 laying supine out the rear right passenger door. Her feet
23 was propped inside of the vehicle.

24 On my way making it to that vehicle, I saw a number
25 of things, to include shell casings -- numerous shell

1 casings. There was a puddling of what appeared to be
2 blood several feet from the vehicle itself. And from that
3 point of the puddling, there were drag marks that led to
4 the location of the decedent, who we later identified as
5 Shameese Logan.

6 Q In addition to the vehicle that you just described,
7 did you see any other vehicles on the property at the
8 time?

9 A There was another vehicle. There was a dark in color
10 Jeep Cherokee, which was, also, included in the search
11 warrant.

12 Q And after the search warrant, did you learn any
13 additional information about that Jeep?

14 A I did. Located inside that Jeep, there was
15 paperwork. It was a newly purchased vehicle. The
16 purchase paperwork listed the name Jahru Smith with a
17 proxy of Tiffany Petty's mother. And her name is Deborah
18 Calhoun.

19 Through that process, through witness statements, we
20 discovered that Ms. Calhoun resided in Anderson County.
21 In addition to that, his girlfriend, Tiffany Petty, also,
22 resided in Anderson County.

23 We went through a series of phone records in that
24 process. It showed that there was a track leading from
25 that incident location into the Anderson County area,

1 which led us to Jahru Smith as a person of interest.

2 Inside -- excuse me, inside that vehicle, also, there were
3 a number of receipts for auto parts purchased on that date
4 time stamped for that day in that vehicle.

5 Q And in addition to the search warrant for the home
6 you mentioned, were there any additional search warrants
7 that were obtained during the investigation of this case?

8 A There were a number of search warrants for phone
9 records, the Chrysler 300 itself, the residence, search
10 warrants for individuals.

11 Q And as lead investigator on this case and other
12 similar cases, what is your general role and
13 responsibility as the lead investigator?

14 A It's an effort to maintain and manage the case as
15 best as possible. Unfortunately, one person can't do it
16 all. So they have to get information from other sources
17 and other investigators in that process. So that
18 information comes back to me and I try to compile that
19 information in as sensible way as possible.

20 Q And does part of that management require that some
21 testing be done on items?

22 A Yes, sir.

23 Q Can you explain that, please?

24 A So as information comes in -- let's say, forensics
25 takes swabs from the incident location, which is

1 presumptive of blood. We may want a DNA request. They
2 don't do the DNA without a direct request from us if it
3 even will pertain to the case. So they wait for us to do
4 that, which we performed multiple requests during this
5 investigation.

6 Q And do you know if there was gunshot residue tests or
7 kits performed during this investigation?

8 A There were, yes, sir. There were on both Bobby
9 Smith, as well as Shameese Logan.

10 Q And with respect to the time that Bobby Smith was
11 tested, could you speak to the time or duration of when he
12 was swabbed, generally speaking?

13 A It was several hours. What we have is a protocol.
14 Anything in excess of six hours, SLED will not take that
15 sample. That is where we send our samples when we make
16 our request. We will still do the test and send it off to
17 SLED. SLED looks at the time frame.

18 Part of what happens when you're in one of these
19 investigations, everything is so fluid. You don't know
20 who to test sometimes immediately. In other words, you
21 don't walk up in the first five minutes and say, I need to
22 test that person. It doesn't, generally, work like that.

23 So as time lapses throughout the investigation, we
24 get to a critical point as to whether SLED's going to take
25 that evidence or not. We got to that critical point with

1 Bobby Smith.

2 Ms. Logan, that's different in the respect that she
3 can't come in contact with anything else. She's in a
4 clean bag, her hands are bagged. So there's no
5 possibility of transfer at that point. We can still test
6 those items.

7 Q And with respect to this investigation that night,
8 was Bobby Smith arrested immediately upon law enforcement
9 making contact with him?

10 A He was not.

11 Q Okay. Can you describe that briefly with respect to
12 the gunshot residue kit?

13 A Initially, deputies make contact with -- as you heard
14 in the testimony before, deputies made contact with
15 Mr. Smith, Bobby Smith, trying to get his story as to what
16 he knew about it. And as information came in from
17 witnesses in the community, telephone information, the
18 things that we normally go through to do background checks
19 on people who are known to reside there, who have lived
20 there in the past, that all takes time.

21 So, again, with Bobby Smith, I sat down and spoke
22 with him at the scene as well. So with all that, that
23 takes a bit of time.

24 Q And was Bobby Smith placed under arrest the night of
25 February 3rd?

1 A He was.

2 Q The morning of February 4th?

3 A Going into the 4th, yes, sir.

4 Q And was that a direct result of your investigation
5 that night and what you uncovered that night?

6 A It was. We executed the search warrant inside the
7 residence. And inside the residence, we found multiple
8 items belonging to the victim, of which included her
9 financial cards, her driver's license, telephone. There
10 was money that appeared to be saturated with blood that
11 was in his possession. There was presumptive tests done
12 for the clothing that he was wearing that showed the
13 presence of human blood.

14 With all of that, the totality of that information,
15 being that he's there at the location by himself in the
16 residence locked, it was determined that he was going to
17 be placed under arrest for, of course, what he's charged
18 with, murder, possession of a weapon, and armed robbery.

19 Q And jumping ahead just a few days, on February 18th
20 of 2015, were you contacted by a local attorney, Cass
21 Gorton?

22 A I was, sir.

23 Q And what was the nature of that conversation?

24 A She called to inform me of the location of her then
25 client's firearm -- or she stated that it was the victim's

1 firearm.

2 Q Did she give you a location with respect to that
3 firearm?

4 A A whereabouts, thereabouts kind of location. We had
5 to, actually, physically go there. I think Ms. Gorton
6 wanted to be there at the same time. So I don't believe
7 that there was a desire to divulge it immediately. She
8 wanted to be there and make sure she was there and we
9 didn't go by ourselves.

10 So we got to that general area. And then we all went
11 to that location together.

12 Q And was that general location close to [REDACTED]
13 Avenue?

14 A It was. [REDACTED], it borders the incident
15 location of [REDACTED].

16 Q And was anything found as a result of that meeting?

17 A We got a consent to search from the home owners.
18 They allowed us into their property. We opened up the
19 door to the shed and you could immediately see that there
20 was a firearm, the firearm that was recovered. It was
21 under the lawn mower inside the shed.

22 At that point, we stopped and we waited for forensics
23 to process everything at that point.

24 Q And when the firearm was located, did you request
25 testing to be done with respect to that firearm?

1 A Specifically, ballistics. Of course, we go through
2 all the process of latents and DNA, and make those general
3 requests.

4 Q And were there any other ballistics tests or requests
5 during the course of this investigation as well?

6 A Do you mean on other firearms and projectiles? There
7 were.

8 Q Yes. And could you explain that briefly?

9 A As to how the request is done, is that what you're
10 referring to?

11 Q With respect to which, if any, other testings were
12 done, what weapon would that be in reference to?

13 A That would be in reference to the one that was
14 located in the vehicle.

15 MR. MORONEY: Thank you.

16 Please answer any questions the Defense may have.

17 THE WITNESS: Yes, sir.

18 MR. KORNFIELD: Thank you.

19 CROSS-EXAMINATION

20 BY MR. KORNFIELD:

21 Q Officer Newman, isn't it true that Bobby Smith and
22 his mother lived at [REDACTED] Avenue? Did you -- is
23 that a fair assumption to say?

24 A Yes, sir. And she was in the nursing home at the
25 time. So he was the primary occupant.

1 Q All right. And isn't it true that Ms. Shamese Nicole
2 Logan, the deceased, she, also, lived in Greenville as
3 well? Is that your understanding?

4 A Yes, sir.

5 Q And she drove a -- or it looked like there was a
6 Chrysler there. It had Mississippi tags that belonged to,
7 it looks like, a Jerome Lang. But she was driving that
8 vehicle that night; is that correct?

9 A And that's her stepfather, yes, sir.

10 Q And you know that a Kel-Tec nine-millimeter was found
11 in the Chrysler 300?

12 A Correct.

13 Q With live rounds in the magazine; correct?

14 A Correct.

15 Q And you found evidence in the house -- well,
16 actually, were you on scene for that, the -- the --

17 A I didn't execute the search warrant --

18 Q Okay.

19 A -- inside the residence.

20 Q Okay. So did you see any of that as far as --

21 A See the items?

22 Q Yeah. Did you go in the home at all?

23 A I didn't physically see the majority of those items.
24 I did walk in briefly at the onset of the execution and
25 saw the identifications and the financial card in the

1 toilet.

2 Q Okay. And you did -- a GSR was done, gunshot residue
3 was done on Shameese Nicole Logan, too; correct?

4 A Yes, sir.

5 Q And isn't it true that gunshot primer residue was
6 found on Shameese Nicole Logan?

7 A Yes, sir.

8 Q And did you -- you've never met -- have you ever seen
9 Jahru Smith? Have you ever seen him?

10 A Prior to the incident? Or have I ever seen him? I
11 saw him in court.

12 Q Okay. Do you know --

13 A I'm sorry. I didn't mean to --

14 Q No. That's all right. So you didn't see him that
15 night, and you didn't see him after that time? You've
16 never -- you haven't seen -- you didn't see him --

17 A I've never made physical contact with him, no, sir.

18 Q Okay. And at the incident site, y'all swabbed the
19 crime scene thoroughly as was put into evidence; correct?

20 A Yes, sir, I believe thoroughly.

21 Q And there was no DNA evidence of Mr. Jahru Smith at
22 that time; correct?

23 A Not that I can recall.

24 Q And there's no blood evidence of Jahru Smith;
25 correct?

1 A I believe most of it was Shameese's.

2 Q Okay. And none of Jahru's fingerprints were on
3 Ms. Logan, or her vehicle, or anywhere that were found;
4 correct?

5 A Not that I'm aware of.

6 Q All right. None of his DNA on the -- under her --
7 none of his boots -- or footprints that y'all found on the
8 scene matched any boots of his that you know of; correct?

9 A No, sir. It was several days later that he,
10 actually, turned himself --

11 Q All right. And your testimony is not that -- you're
12 not -- you don't know who shot a weapon in this case;
13 correct?

14 A I can't say 100 percent.

15 Q All right. And you don't know what kind of -- you
16 don't know what happened prior to this shooting either;
17 correct?

18 A Do you mean as to whether there was an altercation,
19 or something?

20 Q Correct.

21 A Is that what you're referring to?

22 Q Yes.

23 A No, sir, I don't.

24 Q And you don't have --

25 MR. KORNFELD: Okay. No further questions.

1 THE COURT: Mr. Sullivan.

2 CROSS-EXAMINATION

3 BY MR. SULLIVAN:

4 Q Officer Newman, in your training as far as gathering
5 evidence, there's not -- what have you been told about
6 getting GSR?

7 A What's my thoughts on GSR?

8 Q Yeah. What is your training as far as obtaining it
9 in a timely fashion?

10 A It's not so much -- it's not so much whether it's
11 going to be present or not from my training. From my
12 understanding, it is the rules set by SLED, who we request
13 to test it.

14 So, in other words, if we were to test it on a
15 machine that we owned, we would set out the guidelines for
16 that. Is that what you're referring to?

17 Q Using what is done now -- SLED does it?

18 A Yes, sir.

19 Q You collect it? To meet that criteria --

20 A Not me personally, but, yes.

21 Q It's got to be collected. To meet their criteria,
22 how soon does it need to be collected?

23 A Like we were saying, within about a six-hour time
24 period.

25 Q Okay. Now, what time was Jahru arrested -- not

1 Jahru, Bobby Smith arrested?

2 A It was -- actually, I believe by the time he was
3 processed, it was closer to -- I want to say maybe 2:00 or
4 3:00 in the morning, somewhere along those lines. It was
5 just over the six-hour time period.

6 Q He was the only one at the house. There's a
7 shooting. He's the only person there. So he is your,
8 basically, primary suspect automatically. You don't know
9 about Jahru at this time?

10 A We're developing information at that time that it is,
11 in fact, Jahru.

12 Q If you had a prime suspect in a shooting, wouldn't it
13 be imperative to bag his hands and get a GSR to see if he
14 has used a gun?

15 A Well, I'll say this. We were trying to approach that
16 as a witness in the beginning. Okay.

17 Q You said he's a witness. He's the only one in the
18 house. You had information that one of the people by the
19 car had gone in the house. You found evidence of her
20 stuff there. He is your prime suspect --

21 A But you have to understand, that's not done
22 immediately. We don't know that those items are in the
23 house until we obtain the search warrant. And it can be a
24 couple hours post that.

25 Q How about gunshot residue to be gotten off of

1 clothes, off of jackets, and things?

2 A Well, you're going to have to speak to forensics
3 directly about that. But I will say, from what I know,
4 they do not -- SLED, for example, usually does not take
5 third items as they refer to it. In other words, like,
6 they don't usually want to take something from the head
7 liner in a vehicle, or door panel, or clothing, and so
8 forth.

9 And part of the reason being is because when you fire
10 a weapon, gunshot residue will affect -- if I was to do it
11 now, it would affect her as well as the Judge right here.

12 Q I understand. But if I'm the shooter, it's affecting
13 me, too, my hands, my clothes?

14 A Correct. Which is what we went with when we're
15 talking about her putting her hands up. And we're within
16 a couple of feet. According to Dr. Ward, she was
17 definitely going to get gunshot residue.

18 Q Again, would I not have some on my clothing if I'm
19 shooting this stuff and it's kicking back?

20 A You would assume so, yes, sir.

21 Q It wouldn't be on the jurors or anybody. It would be
22 on me for sure?

23 A Yes, sir. I can assure you these people in the --

24 Q But you wouldn't test them if they didn't have a gun?

25 A Well, I don't -- part of the reason why you would

1 test somebody is because you knew that they had a gun, or
2 you suspected they had a firearm.

3 Q But this was not done in a timely fashion with Bobby
4 Smith, which could have maybe cleared him or nailed him?

5 A I guess that's one way of looking at it, yes, sir.

6 Q So it was through y'all's untimely fashion that this
7 test was not performed for the benefit of my client?

8 A Well, the test was performed. It's not our rules.
9 It's the rules of SLED. We can only do it in the time --
10 in a time frame that is applicable to our investigation,
11 for one, his cooperation, too.

12 So if I'm going to request a search warrant for
13 someone, I have to pretty much have a very good reason to
14 do so, you know, that -- probable cause to even obtain
15 that sample.

16 Q But he was in the house?

17 A I'd have to get his consent immediately.

18 Q Didn't he ask in your interview to be tested?

19 A I'm sorry. Say that --

20 MR. MORONEY: Objection, Your Honor. We're getting
21 into something that has not been before the Court yet with
22 respect to this interview he's talking about.

23 MR. SULLIVAN: He interviewed him, Judge.

24 THE COURT: Okay.

25 MR. MORONEY: Your Honor, I would say that it's

1 hearsay at this point. If he wants to let his client
2 testify.

3 THE COURT: I sustain. I believe that's self-serving
4 hearsay, Mr. Sullivan.

5 MR. SULLIVAN: You sustain it, Judge?

6 THE COURT: Yes, sir.

7 MR. SULLIVAN: I can't ask it?

8 THE COURT: No, sir.

9 MR. SULLIVAN: Nothing further.

10 THE COURT: Okay. Anything further?

11 MR. MORONEY: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MORONEY:

14 Q Investigator Newman, with respect to the night that
15 law enforcement made contact with Bobby Smith, wasn't he
16 alone in the house for several minutes before they could
17 make contact with him?

18 A He was.

19 Q Is it possible that he could have done numerous
20 washing things --

21 A Washed hands, a multitude of things, yes, sir.

22 Q Does that come into play when you consider the timing
23 of --

24 A Absolutely.

25 Q -- GSR testing?

1 A Absolutely.

2 MR. MORONEY: Thank you.

3 No further questions.

4 THE COURT: Any additional cross-examination -- or
5 recross limited to that direct?

6 MR. KORNFELD: No, Your Honor.

7 THE COURT: Okay.

8 MR. SULLIVAN: No, Your Honor.

9 THE COURT: Okay. Thank you.

10 You may step down. I appreciate it, sir.

11 All right. Ladies and gentlemen, let's go ahead and
12 adjourn for the evening. If you'll be back, please,
13 tomorrow at 9:30. You heard we've got approximately 10
14 witnesses left, maybe a little bit less, maybe a little
15 bit more, depending on what the Defense elects to do. So
16 it sounds to me like we should be done with the
17 presentation of evidence tomorrow.

18 I don't know if we'll go to argument and charge or
19 not. It really depends on when the evidence concludes.
20 If the evidence goes past probably about 3:00, then I
21 probably won't go to argue and charge tomorrow. And the
22 reason for that is we don't go straight to argue and
23 charge. We have to have a discussion. That is, the
24 attorneys, we have to have a charge conference and talk
25 about the law. Then when we go to argue and charge, after

1 that, each party has the opportunity to argue to you.

2 Well, all the arguments are going to take probably as
3 much as an hour. And then I give you the charge, which is
4 going to take about 20, 25 minutes. So if it's after
5 3:00, you understand that we wouldn't be done with
6 argument and charge until after 5:00. And once you get
7 the case, you've got the case. You might have it for 10
8 minutes or you might have it for 10 hours. But you're
9 stuck here until you come to a verdict. And I don't want
10 you to have to stay here into the night tomorrow.

11 So, just to understand, I'm going to be looking at
12 the clock. And we'll decide whether we're going to finish
13 this case or posture it for conclusion tomorrow, based on
14 where we stand. And we probably should have a good idea
15 by lunchtime.

16 Okay. So, please, don't discuss the case. I will
17 see you tomorrow morning. If you'd be here at 9:30,
18 please, at 9:30. We'll begin the case as promptly as
19 possible.

20 Thank you very much.

21 I hope you have a great evening.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 5:21 p.m.)

24 THE COURT: Anything additional to put on the record?

25 MR. SULLIVAN: May I approach?

1 Nothing to do with the case.

2 THE COURT: Anything for the record before we
3 adjourn?

4 MR. MORONEY: No, Your Honor.

5 THE COURT: All right. Good. We'll see you
6 tomorrow.

7 (WHEREUPON, the proceedings were concluded at
8 approximately 5:22 p.m., to be reconvened on
9 Wednesday, March 14, 2018.)

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2015-GS-23-02833
	)	2015-GS-23-02834
	)	
	)	2015-GS-23-02823
	)	2015-GS-23-02824
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JAHRU HAROLD SMITH,	)	VOLUME II
BOBBY LEON SMITH,	)	
DEFENDANTS.	)	

March 14, 15, and 16, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE; and a jury.

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

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Assistant Solicitors

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C. TIMOTHY SULLIVAN, ESQ.
Attorney for Defendant Bobby Leon Smith

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1 THE COURT: Bring the jury in, please.

2 Before we get started, Mr. Kornfeld, I'll ask you, is
3 it your understanding that Mr. Jahru Smith has been
4 transported today as well, sir?

5 MR. KORNFELD: Yes, Your Honor.

6 THE COURT: Okay. So you can convey to him, once
7 again, that he's welcome to participate as he deems fit.

8 MR. KORNFELD: Your Honor, I haven't talked to him
9 this morning. I talked to one of the officers. And he
10 indicated that he didn't want to come up again.

11 THE COURT: Okay. Fair enough. I just wanted to
12 make sure that it's abundantly clear that he can come in
13 any time.

14 MR. KORNFELD: Yes. I understand, Your Honor.

15 MR. WESTON: Your Honor, we talked about the
16 stipulations. And the first item of business this morning
17 will be the jail calls. And there's a stipulation
18 associated with those, I believe.

19 THE COURT: Okay. And is that the one with the
20 female voice on the recorder, the call we're about to hear
21 is Bobby Smith's mother, Hattie Smith?

22 MR. MORONEY: Yes, Your Honor.

23 THE COURT: Is that the one?

24 MR. MORONEY: Yes, Your Honor.

1 And right before -- if we were to get the calls into
2 evidence, we would say that the appropriate time would be
3 right before we play those calls.

4 THE COURT: All right. You just let me know.

5 MR. MORONEY: Yes, Your Honor.

6 (WHEREUPON, the jury came into open court at
7 approximately 9:52 a.m.)

8 THE COURT: Good morning, ladies and gentlemen.
9 I hope you're doing well.

10 We're ready to get started. I've talked to the
11 attorneys today, that's why y'all were waiting. I was,
12 actually, having a discussion with them about where we are
13 today and where we can expect to land.

14 There's several stipulations that they have come to
15 to make the presentation of the remaining evidence more
16 efficient. It may cut down on witnesses that are called
17 to the stand and, also, streamline some of the evidence as
18 well. When we get to a point where the stipulation is
19 appropriate, I'll explain to you, first of all, what a
20 stipulation is, and then I'll tell you what the specifics
21 of the stipulation are as well.

22 So, right now, the State indicates they have 10
23 witnesses. And the Defense may have one witness. So,
24 right now, we're looking at about 11. And I think that
25 the majority of those witnesses may be fairly quick.

1 So we're -- we're at that place where I thought --
2 where I told you we were yesterday, which is, I think,
3 we'll probably finish with the presentation of evidence
4 probably mid afternoon today.

5 Okay. So having said that, ladies and gentlemen,
6 let's go ahead and get started.

7 Mr. Moroney, you may call your next witness, sir.

8 MR. MORONEY: Yes, Your Honor. The State calls
9 Charles Moore.

10 THE CLERK: Mr. Moore, please, come forward.

11 If you would, please, pause at the end of the bench.

12 Place your left hand on the Bible and raise your
13 right.

14 WHEREUPON,

15 CHARLES MOORE,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 And, sir, would you, please, state your name for the
20 record?

21 THE WITNESS: Charles Moore.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MORONEY:

25 Q Good morning, Mr. Moore.

1 A Good morning.

2 Q Can you, please, state your current place of
3 employment?

4 A The Greenville County Detention Center.

5 Q And what is your job title there?

6 A I'm the custodian of records of jail calls.

7 Q Okay. And what exactly does that mean? What do you
8 do?

9 A I manage the Securus Technology system that records
10 the calls going out of the detention center. And I make
11 on-site repairs.

12 Q What is Securus?

13 A Securus Technologies is our current provider for the
14 phone system that inmates use to call out from the
15 detention center. It records the calls. And it allows
16 inmate population to call family and friends.

17 Q So those calls that are made by inmates, are they
18 recorded?

19 A Yes.

20 Q And could you speak to any level of security or
21 authenticity with respect to those calls?

22 A Every inmate is issued an account based upon their
23 booking profile. They receive a six-digit pack number
24 combined with a four-digit PIN number to gain access to
25 the system. It, also, uses their voice recognition to

1 allow access as well.

2 Q And, particularly, what does an inmate have to do?

3 If you could walk us through the procedure to make a call.

4 A When they're, initially, booked, they are given the
5 opportunity to enroll their voice where they have to
6 follow voice prompts and commands so the system can
7 recognize their particular voice pattern. And then from
8 there, they enter their information. And from that point
9 forward, they can place calls.

10 When placing an individual call, they have to enter
11 the 10 digits that they're issued at booking. And then
12 they're given the option to say United States or their
13 first and last name. When the system recognizes them,
14 then they're allowed to place a call.

15 Q When you access these calls, can you explain how
16 you're able to retrieve or monitor calls?

17 A I use their six-digit pack issued at booking for each
18 individual inmate.

19 Q And what is that six digit --

20 A Every inmate is given a six-digit pack number when
21 they're booked in. And it stays with them for the
22 duration of their lives. So if they come back to the
23 facility, they can identify using that six-digit number.
24 And I use that number to identify the inmate on a platform
25 so I can listen to their calls, if needed.

1 Q And do you access this system via Internet? Is it
2 web based?

3 A Yes.

4 Q And explain the process for you, how you would access
5 the system?

6 A I'm issued an account user name and password. I
7 enter my credentials and I log in. And from there,
8 there's a main web page where I can access all the calls
9 leaving from the facility.

10 Q And is it safe to say that all of these are put into
11 place as security and authentication methods?

12 A Yes.

13 Q Mr. Moore, you stated you were the custodian of
14 records. Did you have the opportunity to pull some jail
15 calls from the Defendant, Bobby Smith?

16 A Yes.

17 Q And those records, did they generate a printout when
18 you compiled those records that you pulled?

19 A Yes. You can access a PDF with all the calls on a
20 list.

21 (WHEREUPON, State's Exhibit No. 128 was marked for
22 identification only.)

23 BY MR. MORONEY:

24 Q And these jail calls and the printouts, these are
25 things you keep in the ordinary course of business in

1 performing your duties?

2 A Yes.

3 Q Mr. Moore, I'm handing you what's been premarked as
4 State's Exhibit No. 128. I would ask you to take a look
5 at that, and tell me if you can identify it.

6 A I can.

7 Q What is it?

8 A These are the seven calls that I -- I, actually,
9 pulled this morning. I created this information this
10 morning, printed it out on the Securus system.

11 Q And those are calls with respect to who?

12 A Bobby Smith.

13 Q And were those calls made from the detention center?

14 A Yes.

15 (WHEREUPON, State's Exhibit No. 129 was marked for
16 identification only.)

17 BY MR. MORONEY:

18 Q Did you, also, have the opportunity to listen to some
19 calls before coming into court today?

20 A I listened to some excerpts to verify the validity of
21 it this morning.

22 Q Okay. I'm handing you what's been premarked as
23 State's Exhibit No. 129 for identification purposes. I
24 would have you take a look at that. Do you recognize what
25 that is?

1 A I do. This is the disk I listened to this morning.

2 Q And what is on that disk?

3 A The calls in question that you showed me on that list
4 right there.

5 Q Are those calls exactly how you, initially, pulled
6 them from the system?

7 A I believe these are the redacted versions. Correct.

8 Q Okay. So these have been edited as far as trimming
9 down the length of them?

10 A Yes. The -- the parts on that disk are not edited
11 themselves. They're just shortened from the original
12 calls from the system.

13 Q Okay. So they're not altered in any way?

14 A Right.

15 Q As far as with respect to the information contained
16 on the disk?

17 A Yes.

18 MR. MORONEY: Your Honor, at this time, the State
19 would move that State's Exhibit No. 129 be admitted into
20 evidence.

21 THE COURT: Objections?

22 MR. KORNFIELD: None, Your Honor.

23 MR. SULLIVAN: None, Your Honor.

24 THE COURT: Okay. Without objection, the same is
25 admitted.

1 (WHEREUPON, State's Exhibit No. 129 was admitted into
2 evidence.)

3 MR. MORONEY: Permission to publish to the jury, Your
4 Honor.

5 THE COURT: Yes, sir.

6 MR. MORONEY: At this time, we'd request the
7 stipulation.

8 THE COURT: All right. Ladies and gentlemen, I
9 talked to you a little bit about a stipulation. Now, a
10 stipulation is an agreement between the parties that you
11 can accept as fact. As you know, your role as jurors in
12 the trial of the case is to be the finders of the facts.
13 You hear evidence. And from that evidence, you deduce
14 facts.

15 Now, when the parties come to a stipulation, that
16 means you don't have to do any analysis or deduction. You
17 can accept the stipulation as fact. And, in this
18 instance, ladies and gentlemen, the parties have made a
19 stipulation regarding the voice on the audiotape that
20 you're about to hear.

21 And the stipulation reads, The State and Defense
22 hereby stipulate the following facts: That the female
23 voice on the recorded phone calls you're about to hear is
24 Bobby Smith's mother, Hattie Smith.

25 Ladies and gentlemen, I'm going to take this

1 stipulation. I'm going to make it a joint exhibit that
2 you'll have in your jury room for your review.

3 (WHEREUPON, Joint Exhibit No. 1 was marked for
4 identification and admitted into evidence.)

5 (WHEREUPON, State's Exhibit No. 129 was played in
6 open court.)

7 MR. MORONEY: Thank you, Mr. Moore.

8 Please answer any questions the Defense may have for
9 you.

10 MR. KORNFELD: I have no questions.

11 MR. SULLIVAN: Could I hear the first part of that
12 again?

13 MR. MORONEY: Which one?

14 MR. SULLIVAN: The very first part.

15 MR. MORONEY: The first call?

16 MR. SULLIVAN: Yeah.

17 (WHEREUPON, a portion of State's Exhibit No. 129 was
18 played in open court.)

19 MR. SULLIVAN: That's fine, Judge.

20 THE COURT: Okay.

21 MR. SULLIVAN: I have no further questions.

22 THE COURT: Okay. Good enough.

23 MR. SULLIVAN: I'm sorry.

24 THE COURT: Redirect?

25 MR. MORONEY: No, Your Honor.

1 THE COURT: You can step down.

2 Thank you very much.

3 I appreciate it.

4 MR. MORONEY: Your Honor, the State calls Tiffany
5 Petty.

6 THE COURT: Okay.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: Ladies and gentlemen, there's a matter of
9 law that I need to take up. It's going to be fairly
10 brief. But I'm going to take it up. And we'll come back
11 out and begin the testimony.

12 Please go back to your jury room. And don't discuss
13 the case.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 10:06 a.m.)

16 THE COURT: All right. Ms. Petty --
17 What happened to Ms. Petty?

18 (WHEREUPON, there was no response.)

19 THE COURT: Did she leave?

20 (WHEREUPON, there was no response.)

21 (Pause.)

22 (WHEREUPON, Tiffany Petty entered the courtroom.)

23 THE COURT: Ms. Petty, if you'd come up, please.

24 Place your left hand on the Bible and raise your
25 right hand.

1 WHEREUPON,

2 TIFFANY PETTY,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 Would you, please, state your name for the record?

7 THE WITNESS: Tiffany Petty.

8 MR. MORONEY: And, Your Honor, just to be clear.

9 This is with respect to the issue that Mr. Kornfeld
10 brought up.

11 THE COURT: And we'll -- I'll put it in context for
12 the record. Mr. Jahru Smith is claiming a spousal
13 privilege, and has suggested -- or stated that he and
14 Ms. Petty are married. And that he would assert his
15 privilege.

16 So the threshold question -- and I suppose I can ask
17 this, if there's no objection from the parties.

18 EXAMINATION

19 BY THE COURT:

20 Q Ms. Petty, the question is, are you married to
21 Mr. Jahru Smith?

22 A He my baby daddy.

23 Q But are you married to him?

24 A No.

25 Q Have you ever been married to him?

1 A No.

2 Q Have you ever gotten a marriage license from the
3 probate court?

4 A No.

5 Q Have you ever been through a -- any type of ceremony
6 with a preacher, or a judge, or anything of that sort?

7 A No.

8 Q Have you ever had a joint checking account?

9 A No.

10 Q So your relationship is that he is your child's
11 father?

12 A Yes, sir.

13 Q Okay. And is that the sum total of the relationship?

14 A Yes, sir.

15 Q Okay. Would you, Ms. Petty, assert a spousal
16 immunity in this case? That is, would you take a position
17 that you are married to Mr. Smith and, therefore, you
18 shouldn't have to testify in this case?

19 A Would that mean, I'm married to him?

20 Q Yeah.

21 A Nah.

22 Q You wouldn't assert that privilege?

23 A Huh-uh.

24 THE COURT: All right. Are there any questions that
25 any counsel would like to ask her?

1 MR. MORONEY: None from the State, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. KORNFELD:

4 Q Ms. Petty, has Jahru Smith ever held out to anyone in
5 your presence that you and he are married?

6 A Yes, he has.

7 Q Did you -- did you -- did you say to that person, no,
8 we are not married?

9 A No, sir, I didn't.

10 Q And you and he have had a child together; correct?

11 A Two.

12 Q Two children?

13 A Yes, sir.

14 Q And y'all have been under the -- y'all have
15 cohabitated, at least, at some time under the same roof;
16 correct?

17 A Yes, sir.

18 Q So are you aware that because of that and that he
19 held himself out as married and you didn't contest it,
20 then there's a possibility that you could be common law
21 married?

22 A No. I didn't know that.

23 Q So you didn't know that part?

24 A No.

25 Q Well, it's a possibility that he could say that.

1 It's, also, a possibility that you could say it. Do you
2 understand that?

3 A Okay.

4 Q All right. Now, knowing that, and knowing that you
5 could assert a spousal immunity, would you say that you
6 wanted to? It's your choice. Do you want to assert that
7 spousal immunity and not testify?

8 A If I could, yeah, I'd go ahead and do that.

9 MR. KORNFELD: All right. No further questions.

10 THE COURT: Mr. Sullivan.

11 MR. SULLIVAN: I have no questions, Your Honor.

12 THE COURT: All right. You and I both asked her the
13 same question and got different answers.

14 FURTHER EXAMINATION

15 BY THE COURT:

16 Q And I'm going to ask you this -- ask you this one
17 more time just to clarify for the record. Are you married
18 to Mr. Smith?

19 A No. I'm not married to him.

20 THE COURT: All right. I'll allow her to testify. I
21 find that there's no spousal immunity. I, also, find
22 that, based on her testimony, she's indicated that in one
23 instance that she might want to assert spousal immunity.
24 And in another instance that she hasn't wanted to assert
25 spousal immunity.

1 But it's clear from the record that they are not
2 married. And I have not heard her affirmatively or
3 independently assert a spousal immunity in this case
4 inasmuch as there's been an assertion of a spousal
5 immunity, or request for the protection under the
6 immunity. And inasmuch as there has been clear testimony
7 they are not married, then I will allow the testimony.

8 Okay. So I know --

9 Mr. Moroney, do you have something you need to say?

10 MR. MORONEY: No, Your Honor.

11 THE COURT: Okay. You just looked pregnant with
12 anticipation.

13 Can we bring the jury back in?

14 MR. KORNFELD: Your Honor, can I --

15 THE COURT: Yes, yes.

16 MR. KORNFELD: I just want to note my objection for
17 the record.

18 THE COURT: Sure.

19 MR. KORNFELD: That due to the testimony, I thought
20 that she did want to. I understand what you're saying,
21 but I would just note my objection.

22 THE COURT: Okay. I understand. I understand.

23 MR. KORNFELD: Thank you.

24 THE COURT: Would you bring the jury in?

25 MR. MORONEY: Your Honor, would you like Ms. Petty to

1 come back here?

2 THE COURT: No. We'll just leave her right there.

3 And what we'll do is when the jury comes back in, we'll
4 have her sworn in again in front of the jury and state her
5 name.

6 MR. MORONEY: Thank you, Your Honor.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:14 a.m.)

9 THE COURT: All right. You may swear in the witness.

10 THE CLERK: All right. Ma'am, if you'll, please,
11 stand.

12 Place your left hand on the Bible and raise your
13 right hand.

14 WHEREUPON,

15 TIFFANY PETTY,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 And if you'll, please, state your name for the
20 record.

21 THE WITNESS: Tiffany Petty.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MORONEY:

25 Q Good morning, Ms. Petty.

1 A Good morning.

2 Q Where do you live? What county do you live in?

3 A Anderson.

4 Q Okay. And are you familiar -- or do you know the
5 Defendants in this case, Bobby Smith and Jahru Smith?

6 A Yes, sir.

7 Q How do you know Jahru Smith?

8 A He's my baby daddy.

9 Q What's your current relationship with him?

10 A We're not together.

11 Q Okay. Do you recall what your relationship status
12 would have been with him back on February 3rd, 2015?

13 A We was still together.

14 Q Okay. As boyfriend and girlfriend?

15 A Yes, sir.

16 Q Do you recall an incident that happened back on
17 February 3rd, 2015, involving Jahru Smith?

18 A Yes, sir.

19 Q After that incident, did Jahru Smith ever get in
20 touch with you?

21 A Yes, sir.

22 Q Could you tell us how he got in touch with you?

23 A He called my cell phone that night.

24 Q Okay. And what was said?

25 A He asked me to come pick him up, but I couldn't. So

1 my mother went to pick him up.

2 Q Where did she pick him up from?

3 A She was at Waffle House -- he was at Waffle House on
4 81.

5 Q And is that in Greenville County or Anderson County?

6 A It's Anderson.

7 Q Okay. Do you know where your mother took him after
8 that?

9 A East side, but I'm not sure which street.

10 Q East side. What county is that in?

11 A It's in Anderson.

12 Q Also, in Anderson. Did Mr. Smith speak to you at all
13 about that incident on February 3rd, 2015, after that
14 date?

15 A He called me the day after I seen his face on TV and
16 asked me to come meet him, but I wouldn't go meet him.

17 Q Why wouldn't you go meet him?

18 A Because he was wanted. And I didn't want my kids to
19 be put in that situation, so I didn't go.

20 Q Okay. What did he say to you?

21 A He just told me it was an accident and he didn't do
22 it.

23 Q And jumping back to the night of February 3rd when he
24 got a ride with your mother --

25 A Uh-huh.

1 Q -- what approximate time did you get that call?

2 A I'm not sure. It couldn't have been after 12:00,
3 though. Because if it was after 12:00, she wouldn't have
4 went to pick him up.

5 Q When you say "12:00," is that 12:00 midnight?

6 A Yes, sir.

7 Q On February 3rd, 2015?

8 A Yes, sir.

9 Q After this incident, did you meet with Investigator
10 Lloyd Newman regarding some telephone calls?

11 A Yes, sir.

12 Q Did you have the opportunity to listen to a call?

13 A Yes, sir.

14 Q And who did you hear on that call?

15 A Jay and Bobby.

16 Q Jay and Bobby. Who, particularly, is "Jay"?

17 A Jahru.

18 Q Jahru Smith?

19 A Yes, sir.

20 Q And the other person was Bobby Smith?

21 A Yes, sir.

22 Q Are you familiar with Bobby Smith?

23 A Yes, sir.

24 Q Do you know him pretty well?

25 A Yes, sir.

1 Q Could you speak, generally, to his health status?

2 A Before, he had three toes cut off.

3 Q And, generally speaking, with respect to Jahru Smith,
4 does he have any kind of physical mobility problems?

5 A Not that I'm aware of.

6 MR. MORONEY: Thank you.

7 Please answer any questions the Defense attorneys may
8 have for you.

9 THE WITNESS: Okay.

10 CROSS-EXAMINATION

11 BY MR. KORNFELD:

12 Q Ms. Petty, isn't it true that Jahru Smith had glasses
13 as thick as bottle caps?

14 A Yes, sir. His glasses are real thick. He can't see
15 without them.

16 Q And isn't it true that it's so bad that he -- do you
17 know if he receives any assistance because of that, any
18 disability because of --

19 A Yes, sir. He gets a check every month.

20 Q And that's because of his --

21 A He's legally -- yes, sir.

22 Q He's legally blind?

23 A Yes, sir.

24 Q To a great extent; is that correct?

25 A Yes, sir.

1 Q And Mr. Smith is in his 50s; is that correct?

2 A Sir?

3 Q Isn't Jay -- as you call him "Jay," he's in his 50s;
4 correct?

5 A Yes, sir.

6 Q And I believe you stated that -- did you state that
7 Jahru said it was an accident and he didn't do it?

8 A Yes, sir.

9 MR. KORNFIELD: No further questions.

10 THE COURT: Mr. Sullivan.

11 MR. SULLIVAN: Just a couple.

12 CROSS-EXAMINATION

13 BY MR. SULLIVAN:

14 Q Ms. Petty, you mentioned that Bobby had a disability
15 with toes missing?

16 A Yes, sir.

17 Q Were these toes missing before?

18 A Yes, sir.

19 Q So they've been off -- he had been hobbling for a
20 good while?

21 A Uh-huh.

22 Q Was his mobility lessened a little bit because of
23 that?

24 A Yes, sir. He falls sometimes.

25 MR. SULLIVAN: Okay. Thank you.

1 No further questions.

2 THE COURT: Any redirect?

3 MR. MORONEY: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MORONEY:

6 Q Ms. Petty, when you spoke with Investigator Newman
7 and he interviewed you with respect to the statement that
8 Jahru Smith made to you, didn't he say it was an accident,
9 I didn't mean to?

10 A Yes, sir -- no. He said it was an accident. I
11 didn't do it. I'm sorry, baby. That's exactly what he
12 said.

13 Q You didn't give a statement to law enforcement that
14 said it was an accident, I didn't mean to?

15 A No.

16 MR. MORONEY: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. MORONEY: Judge, may we approach?

20 THE COURT: Sure, you may.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: Ladies and gentlemen, the State --
23 Mr. Moroney wants to ask Ms. Petty a question regarding an
24 audio tape, but he wants to ask her a very, very specific
25 question. And he needs to find on the audiotape a couple

1 of seconds worth of tape, so you don't have to listen to
2 15 minutes.

3 So what I'm going to ask you to do -- I was going to
4 have you just go out into the -- one of the chambers in
5 the hall and look at it. But that would take more time
6 than it's worth. Because he was going to have to
7 disconnect and reconnect and y'all are just going to be
8 sitting here watching.

9 So if you will, just go back to your jury room. Wait
10 for a few minutes. Let him just find it. And we'll bring
11 you back in.

12 Okay. Thank you.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 10:23 a.m.)

15 (WHEREUPON, a break was taken.)

16 MR. MORONEY: Your Honor, I think we have it queued
17 up.

18 THE COURT: Good enough.

19 Let's bring the jury in, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:34 a.m.)

22 THE COURT: All right. Mr. Moroney, your witness.

23 REDIRECT EXAMINATION

24 BY MR. MORONEY:

25 Q Ms. Petty, you just testified that Jahru Smith never

1 said it was an accident, I didn't mean to; correct?

2 A Yes, sir.

3 MR. MORONEY: Your Honor, we're going to be playing
4 the audio at this time.

5 THE COURT: Okay.

6 (WHEREUPON, an unmarked audio was played in open
7 court.)

8 MR. MORONEY: No further questions, Your Honor.

9 THE COURT: Okay. Mr. Kornfeld.

10 RECROSS-EXAMINATION

11 BY MR. KORNFIELD:

12 Q Ms. Petty, you're here under oath today; correct?

13 A Yes, sir.

14 Q And you're here under oath in front of a jury where
15 it's extremely important for you to remember what he said
16 at that time, not what you stated in this interview?

17 A Yes, sir.

18 Q Did he say it was an accident and he didn't do it, or
19 did he say it was an accident and he didn't mean to do it?

20 A I can't remember how he worded it, not entirely.

21 Q Can you -- it's really important for you to try for
22 this jury. You can't remember at all? That's what you're
23 telling us?

24 A If I said that on the tape, then, obviously, that's
25 the way he said it. But I can't remember.

1 Q All right. So -- so your testimony would be that he
2 said it was an accident and he didn't mean to do it, even
3 though you testified before he said it was an accident and
4 he didn't do it; is that right?

5 A Yes, sir.

6 MR. KORNFELD: No further questions.

7 THE COURT: All right. Thank you, ma'am.

8 You can step down. I appreciate you being here.

9 THE WITNESS: Yes, sir.

10 THE COURT: You may call your next witness.

11 MR. MORONEY: I beg the Court's indulgence one
12 moment.

13 (Pause.)

14 MR. MORONEY: Your Honor, may we approach briefly?

15 THE COURT: You may.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: You might want to talk about that
18 stipulation. I think Mr. Sullivan still has a problem
19 with the stipulation, notwithstanding Ms. Petty's
20 testimony. I just want to make sure you're clear on that.

21 Will you call down to security and make sure that
22 Ms. Petty doesn't leave?

23 THE COURTROOM DEPUTY: Ms. Petty, is that the one
24 that just walked out?

25 THE COURT: Yes.

1 Y'all, let's take a break. The Court staff can take
2 a break and I can, too. We'll let the attorneys work
3 through this issue that they're discussing. There's
4 no reason for y'all to have to watch the sausage being
5 made.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 10:41 a.m.)

8 THE COURT: We'll be in recess. Y'all let me know
9 when you're ready.

10 (WHEREUPON, a break was taken.)

11 (WHEREUPON, Joint Exhibit No. 2 was marked for
12 identification and admitted into evidence.)

13 THE COURT: Okay. Bring the jury in, please.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:12 a.m.)

16 THE COURT: Okay. Ladies and gentlemen, we're back
17 on the record. There's another stipulation. So as a
18 result of us taking a break and talking through some
19 things, hopefully, we've saved a little bit of time.

20 Now, the reason why we had a break is because the
21 attorneys thought they had a stipulation. And then the
22 evidence didn't come out quite exactly as they
23 anticipated. So they had to rework and reconsider the
24 stipulation.

25 So after having discussed it, there is a stipulation

1 between the parties. Again, I've told you what a
2 stipulation is. A stipulation is an agreement between the
3 parties that you can accept as fact.

4 So, ladies and gentlemen, this stipulation is, The
5 State and Defense hereby stipulate the following facts:
6 One, that on January 2nd, 2015, and January 7th, 2015, a
7 phone call was made each day to the telephone number (864)
8 [REDACTED]; two, the phone calls were audio recorded and
9 there were only two individuals speaking; three, after
10 listening to each of those calls, Tiffany Petty positively
11 identifies Jahru Smith's voice as the voice answering the
12 calls with respect to the (864) [REDACTED] telephone number;
13 four, the other party speaking on these recorded phone
14 calls was Bobby Smith.

15 Ladies and gentlemen, I've made this Joint Exhibit
16 No. 2 so that you will have it in your jury room when you
17 are reviewing the evidence.

18 Okay. Mr. Moroney, you may proceed, sir.

19 MR. MORONEY: Thank you, Your Honor.

20 The State calls Deborah Calhoun.

21 THE CLERK: Ma'am, if you'll, please, come forward.

22 If you'll, please, pause at the end of the bench.

23 Place your left hand on the Bible and raise your
24 right hand. The other way around. Left hand on the
25 Bible. There you go.

1 WHEREUPON,

2 DEBORAH CALHOUN,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 And would you, please, state your name for the
7 record?

8 THE WITNESS: Deborah Calhoun.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MORONEY:

12 Q Hi, Ms. Calhoun.

13 Do you know Ms. Tiffany Petty?

14 A Yes.

15 Q And who is that?

16 A My daughter.

17 Q Do you know Jahru Smith?

18 A Yes.

19 Q And how do you know Jahru Smith?

20 A My daughter's boyfriend.

21 Q Okay. Do you recall getting a phone call -- or being
22 notified on February 3rd, 2015?

23 A Yes.

24 Q And how were you notified, and what happened that
25 night?

1 A He called and wanted somebody to pick him up at
2 Waffle House on 81.

3 Q And is 81 -- what county is that in?

4 A Anderson.

5 Q Okay. What happened next?

6 A I went and picked him up and took him to Jefferson
7 Avenue.

8 Q Okay. And do you remember the exact intersection
9 where you --

10 A Jefferson and Osborne.

11 MR. MORONEY: I Beg the Court's indulgence.

12 (WHEREUPON, State's Exhibit No. 130 was marked for
13 identification only.)

14 BY MR. MORONEY:

15 Q Ms. Calhoun, I'm handing you what's been premarked as
16 State's Exhibit No. 130 for identification purposes. I
17 would ask you to take a look at that for a minute, and see
18 if you recognize it.

19 A Yes.

20 Q What is that?

21 A A map.

22 Q And what does it show?

23 A It shows Jefferson Avenue and Osborne Avenue.

24 Q And is that, to your recollection, the area where you
25 dropped Mr. Smith off on the night --

1 A Yes.

2 Q -- you talked about? And that was on February 3rd,
3 2015?

4 A Yes.

5 Q Approximately what time would that have been?

6 A It was around, say, 10:00, 10:00 or 11:00.

7 MR. MORONEY: Your Honor, at this time, the State
8 would move that State's Exhibit No. 130 be moved into
9 evidence.

10 MR. SULLIVAN: No objection.

11 MR. KORNFELD: No objection, Your Honor.

12 THE COURT: Without objection, the same is admitted.

13 (WHEREUPON, State's Exhibit No. 130 was admitted into
14 evidence.)

15 MR. MORONEY: Permission to publish to the jury.

16 THE COURT: Yes, sir, you may.

17 MR. MORONEY: No further questions.

18 Please answer any questions the Defense may have.

19 MR. SULLIVAN: No questions for Ms. Calhoun.

20 MR. KORNFELD: No questions, Your Honor.

21 THE COURT: Thank you, Ms. Calhoun.

22 I appreciate you being here, ma'am. You may be
23 excused.

24 MR. MORONEY: We would request that Ms. Calhoun be
25 released from her subpoena.

1 THE COURT: Yes, sir.

2 You may call your next witness.

3 MR. MORONEY: The State calls Mary Louise Smith.

4 THE CLERK: Ms. Smith, if you'll, please, come
5 forward.

6 If you'll, please, pause at the end of the bench.

7 Place your left hand on the Bible and raise your
8 right hand.

9 WHEREUPON,

10 MARY LOUISE CLINKSDALE SMITH,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 Would you, please, state your name for the record?

15 THE WITNESS: Mary Louise Clinksdale Smith.

16 THE CLERK: Thank you, ma'am.

17 DIRECT EXAMINATION

18 BY MR. MORONEY:

19 Q Hi, Ms. Smith.

20 A Hi.

21 Q Do you know Jahru Smith and Bobby Smith?

22 A Yes, I do.

23 Q How do you know them?

24 A They are my nephews by marriage. They're my
25 husband's brother's children.

1 Q But you know them fairly well?

2 A Yes.

3 Q Okay. Do you recall back on February 3rd, 2015,
4 anything particular around that time that may have
5 happened with respect to either of those nephews?

6 A If you're referring to the incident, I don't remember
7 the date, or anything about it.

8 Q So you can't remember the specific date?

9 A No, no.

10 Q Were -- were you contacted, at some point, around
11 that time?

12 A Yeah. Well, excuse me. I have bad allergies. I'm
13 sorry. Jay Harold called me --

14 Q Excuse me. Did you say "Jay Harold"?

15 A Jay Harold called me.

16 Q Is that Jahru Smith?

17 A Yeah, that's Jahru. I'm sorry.

18 Q Okay.

19 A He called me and said he had been calling me. But I
20 don't answer unknown numbers. If I don't have you in my
21 phone with a number -- with a name, I just don't answer
22 them. And then that day, he got ahold of me that day and
23 he said, Auntie, I need some help.

24 And then I said, Jay, whatever it is, the only help I
25 will give you, I will call News 4 and ask Mr. Tim Waller

1 to give you coverage so you won't be shot down like an
2 animal in the street.

3 And he said, Okay, Auntie. I want to turn myself in,
4 but I want to see my momma.

5 I said, Okay, I'll ask him if he'll take you -- let
6 you meet them up there -- his mother was in the nursing
7 home at that time. And he did. That's all I know.

8 Q And before that conversation about WYFF, did he ask
9 you for anything?

10 A No. I cut him off. He said, I need help.

11 And I said, The only thing I will do is to get you
12 some coverage so you won't be shot down like an animal in
13 the street.

14 Nothing else was said. He didn't say nothing else to
15 me. He said, Okay, Auntie. That's what he said.

16 Q Did he ask you about going anywhere?

17 A No.

18 Q Ms. Smith, did you speak with Investigator Newman
19 regarding --

20 A Yeah.

21 Q -- this conversation --

22 A Yeah.

23 Q -- between you and Jahru Smith?

24 A Uh-huh.

25 Q And during that conversation with Investigator

1 Newman, isn't it true that you said that Jahru Smith
2 needed money?

3 A I think he said, I need help or might have said, I
4 need money. Let me back up for a minute.

5 Q Okay.

6 A Me and Jay had a bond to where he would borrow money
7 from me, you know. So it wasn't unusual for him to call
8 me to ask me for money.

9 Q But he said this during the same conversation where
10 he was talking about WYFF and turning himself in?

11 A Yeah.

12 Q And isn't it true that during your conversation with
13 Investigator Newman during that interview, you, also, said
14 he needed to get out of town?

15 A No. I didn't say he needed to get out of town. I
16 said he might have been going to ask me that. That's when
17 I cut him off. And I said, You know me well enough to
18 know the only help I'm going to give you is to get you
19 some coverage so you won't be shot down like a dog.
20 That's it.

21 Q And I understand that's what you said.

22 A Yeah.

23 Q But when he told you that he needed money, didn't you
24 tell Investigator Newman that he said he needed money to
25 get out of town?

1 A No, no. I said I think that's what he was going to
2 ask me. I thought that's what he was going to ask me was
3 for money.

4 And I said, You know me better than that.

5 MR. MORONEY: Your Honor, we have a matter of law to
6 take up.

7 THE COURT: Okay. Ladies and gentlemen, I would ask
8 you to, please, go back to your jury room. We'll have you
9 out in just a few seconds.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 11:23 a.m.)

12 THE COURT: Yes, sir.

13 MR. MORONEY: Your Honor, again, we would be
14 confronting this witness with some audio recorded
15 statements that she gave Investigator Newman. And I
16 assume that we don't want to go through the entire
17 15-minute interview. I want to just get to that pinpoint
18 portion to address that. And then we would confront the
19 witness with that.

20 THE COURT: Any issue with that, gentlemen? Defense?

21 MR. KORNFELD: Well, no. I would ask if we're going
22 to play the -- well, I guess I'll ask questions, too,
23 on -- I may ask her to play some of the video, too, if she
24 can't remember --

25 THE COURT: Some of the audio you mean?

1 MR. KORNFELD: Yeah. But I know where it is. I've
2 got it written down.

3 THE COURT: All right.

4 (WHEREUPON, an unmarked audio recording was played
5 in open court.)

6 THE COURT: Now, Mr. Moroney, another way to handle
7 this as opposed to playing that, now that Ms. Smith has
8 heard that, it may have refreshed her recollection and she
9 may be able to amend her testimony. So it may be that you
10 can just ask her after having had the opportunity to
11 listen to it, does that refresh your recollection?

12 MR. MORONEY: I think that may be the most efficient
13 and easiest way.

14 THE COURT: And I think that's the way you're
15 supposed to do it in accordance with the rules, too.

16 MR. MORONEY: Thank you.

17 THE COURT: So that doesn't mean that you can't play
18 it if you need to, if you're still having an issue.

19 MR. MORONEY: Right.

20 THE COURT: And it doesn't mean, Mr. Kornfeld, that
21 you can't play portions of it during cross-examination.

22 But I think with respect to that specific point that
23 you want to make, she's here. She heard it.

24 Do you want to proceed in that fashion?

25 MR. MORONEY: Yes, Your Honor.

1 THE COURT: Okay. Let's bring the jury back in,
2 please.

3 (WHEREUPON, the jury came into open court at
4 approximately 11:30 a.m.)

5 THE COURT: All right. Mr. Moroney, your witness,
6 sir.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. MORONEY:

9 Q Ms. Smith, did you just have an opportunity to listen
10 to a recording of the discussion between yourself and
11 Investigator Newman?

12 A Yes, sir.

13 Q Did that have an opportunity now to refresh your
14 recollection as to what happened?

15 A Yes, sir.

16 Q So during your conversation with Jahru, did he
17 represent to you that he needed money to get out of town?

18 A Yeah.

19 MR. MORONEY: Thank you.

20 Please answer any questions the Defense may have for
21 you.

22 CROSS-EXAMINATION

23 BY MR. KORNFELD:

24 Q Hello, Ms. Smith.

25 A Hi.

1 Q How are you?

2 A Fine.

3 Q When you were -- the interview you gave, was that the
4 first time that you were approached by a law enforcement
5 officer?

6 A Yes, sir.

7 Q And was that interview given within the last three
8 weeks?

9 A (There was no response.)

10 Q Or about three weeks?

11 A About somewhere around there. I don't remember the
12 date.

13 Q Okay. Were you informed that you were being recorded
14 at that time?

15 A No, sir. No.

16 Q You had no idea?

17 A No, sir. No.

18 Q And it was fairly conversational when you were
19 speaking to the law enforcement officer?

20 A Who was there?

21 Q No. I said it was fairly conversational when you --

22 A Yes, yes. But nobody told me they were taping me,
23 no.

24 Q Okay.

25 A No.

1 Q I understand. And didn't you tell that officer that
2 Jay said, I didn't do it?

3 MR. WESTON: Objection, Your Honor.

4 THE WITNESS: I --

5 THE COURT: Hold on a minute. Let me rule on the
6 objection.

7 THE WITNESS: I can't --

8 THE COURT: Hold on, Ms. Smith. Hold on just a
9 minute. He objected, so I've got to rule on the
10 objection.

11 THE WITNESS: Okay.

12 THE COURT: What's the objection?

13 MR. MORONEY: Again, Your Honor, it's going to be
14 self-serving hearsay. The objection is testifying to
15 something that the Defendant, ultimately, said.

16 THE COURT: Okay. What was the question?

17 MR. KORNFIELD: I said, Didn't you tell the officer
18 that Jay said, I didn't do it?

19 THE COURT: I'm going to allow that. You can ask
20 that question.

21 MR. KORNFIELD: Okay.

22 THE WITNESS: Are you asking me if Jay told me that?

23 BY MR. KORNFIELD:

24 Q Yes. In that -- I guess I'm asking in the interview
25 you gave, I guess, when you thought it was a conversation,

1 you didn't know you were being recorded?

2 A No.

3 Q Did you -- do you remember saying Jay said, I didn't
4 do it?

5 A No. I don't remember that.

6 MR. KORNFELD: May I have a --

7 THE COURT: Yes.

8 MR. KORNFELD: Brian, will you...

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Ladies and gentlemen, I'm going to ask
11 you to exit the courtroom for a few minutes. We'll be
12 right back. You'll come right back out.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 11:33 a.m.)

15 (WHEREUPON, an unmarked audio recording was played in
16 open court.)

17 MR. KORNFELD: Can I ask her about that?

18 THE COURT: Does that refresh your recollection?

19 THE WITNESS: That's me. That's me.

20 MR. KORNFELD: Can I just ask her?

21 THE COURT: Yes. You can just ask her.

22 MR. MORONEY: And Your Honor --

23 THE COURT: Yes, sir.

24 MR. MORONEY: -- if I may briefly. We would object
25 again to this statement coming in. And I say it under

1 hearsay objection for a self-serving hearsay. This is not
2 a statement against interest. And this statement is not
3 in evidence at this point.

4 THE COURT: And I understand. And I made a --
5 sustained an objection to self-serving hearsay because
6 that was an assertion that the Defendant himself made.

7 In this instance, she's just relating what he said
8 based on that -- based on the statement which has already
9 been put at issue in this case. The fact that he's
10 denying that he did it is not news to the jury. And I
11 don't know how that's prejudicial to the State. He,
12 certainly, is denying having done it. He's asking for a
13 jury trial.

14 So the fact that he's denying it isn't a shock to
15 anyone. It's a matter of credibility at this point.

16 MR. MORONEY: Thank you, Your Honor.

17 MR. KORNFIELD: Your Honor, I think --

18 MR. SULLIVAN: I'd like to be heard on this tape. It
19 doesn't effect Bobby very much. But normal procedure, the
20 officer would say, I'm Officer Newman with the sheriff's
21 department. And I'm giving him such and such a date. I'm
22 here with Mary Smith. This has been recorded. Do you
23 understand, Ms. Smith? And then it proceeds.

24 He never told her this was being recorded. And he
25 didn't identify dates, or anything. And I'm not sure it's

1 admissible without her permission.

2 THE COURT: It's not admissible. Are you talking
3 about the tape itself?

4 MR. SULLIVAN: Yes, sir.

5 THE COURT: The tape itself isn't admissible
6 unless -- unless and until you go through the process of
7 Rule 613(b). That -- but y'all haven't made objections
8 with regard to 613(b) in this -- in this case yet.

9 Now, that's one of the reasons when we came out of
10 the record, I asked the State if they just wanted to ask
11 her the question about whether she said it or not.
12 Because that's, essentially, the second step of the
13 process in admitting extrinsic evidence of a prior
14 statement, which is what we're talking about right now.
15 But nobody has admitted that tape.

16 And Mr. Kornfeld's question to her is, after having
17 had the opportunity to refresh your recollection, did you
18 say this? Well, that's not admitting the tape, extrinsic
19 evidence of the tape. All he used it for was outside of
20 the jury's presence, he gave her the opportunity to review
21 it to refresh her recollection.

22 So I've not admitted that tape. And nobody has moved
23 that that tape be admitted.

24 MR. SULLIVAN: Thank you, Judge.

25 THE COURT: Okay. And with respect to -- again, with

1 respect to the issue of her saying that, I recognize the
2 exception that the State takes to it. But it wasn't
3 offered to prove the fact of the matter asserted -- the
4 truth of the matter asserted. It was just -- it was just
5 a question, did you say that to the police? And it goes
6 to the issue not of -- of whether it's truthful. But it
7 goes to the issue of impeachment.

8 Okay. Bring the jury in, please.

9 (WHEREUPON, the jury came into open court at
10 approximately 11:39 a.m.)

11 THE COURT: Mr. Kornfeld, I believe it's your
12 witness, sir.

13 MR. KORNFELD: May it please the Court.

14 CONTINUED CROSS-EXAMINATION

15 BY MR. KORNFELD:

16 Q Hello, Ms. Smith, again. How are you?

17 A Fine.

18 Q After hearing the recording that you didn't know you
19 were being recorded by, now, can you say whether or not
20 you told law enforcement officers that Jay said, I didn't
21 do it?

22 A Sir, to be honest with you, I think that's what he
23 said. And I told the officer that day I thought that's
24 what he was saying. But I can't tell you for sure that
25 that's what he said, not a hundred percent.

1 Q It was a long time ago. Is that what you're saying?

2 A Well, it was a long time ago. I have a lot on my
3 plate.

4 Q I understand, Ms. Smith.

5 A I have a lot on my plate. So I couldn't focus on:
6 that, you know.

7 MR. KORNFELD: I understand.

8 Thank you so much for being here.

9 No further questions.

10 THE COURT: Mr. Sullivan, any questions, sir?

11 MR. SULLIVAN: No questions of this witness, Your
12 Honor.

13 THE COURT: Any redirect?

14 MR. MORONEY: No redirect, Your Honor.

15 THE COURT: Thank you, Ms. Smith.

16 I appreciate you being here, ma'am. You may be
17 excused from your subpoena.

18 MR. MORONEY: Your Honor, at this time, the State
19 would address the stipulation with respect to the news
20 video.

21 THE COURT: Okay. Good enough.

22 So you are about to introduce the WYFF video; is that
23 correct?

24 MR. MORONEY: That is correct.

25 THE COURT: All right. Ladies and gentlemen, there's

1 another stipulation between the parties.

2 And I presume this is for terms of authenticating the
3 video and avoiding having to bring a witness up here?

4 MR. MORONEY: That's correct, Your Honor.

5 THE COURT: They've stipulated to authenticity.
6 Every time somebody introduces a piece of evidence, they
7 have to authenticate it, that is, make a representation
8 that it is what they say it is. In this instance, in
9 order to avoid bringing somebody up here from the news
10 outlet, they've come to a stipulation.

11 And it is as follows: The State and Defense hereby
12 stipulate the following facts: That the events you are
13 about to view on this video are a fair and accurate
14 depiction of what took place and that the individual
15 speaking in the video is the accused, Jahru Smith.

16 Thank you.

17 And I am going to, again, make this Joint Exhibit
18 No. 3 for the record.

19 (WHEREUPON, Joint Exhibit No. 3 was marked for
20 identification and admitted into evidence.)

21 MR. MORONEY: Your Honor, at this time, the State
22 would move for State's Exhibit No. 44 to be introduced
23 into evidence.

24 MR. KORNFELD: With no objection.

25 THE COURT: Hold on. Let the court reporter get up

1 to speed. We're tasking her to do two things at the same
2 time.

3 (Pause.)

4 THE COURT: Without objection, the audio tape is
5 admitted into evidence.

6 (WHEREUPON, State's Exhibit No. 44 was admitted into
7 evidence.)

8 THE COURT: You may proceed.

9 MR. MORONEY: Permission to publish to the jury, Your
10 Honor.

11 THE COURT: Yes, sir, you may.

12 (WHEREUPON, State's Exhibit No. 44 was played in
13 open court.)

14 THE COURT: Okay. You may call your next witness,
15 sir.

16 MR. WESTON: Thank you, Your Honor.

17 The State would call Mr. James Armstrong.

18 THE CLERK: Sir, if you'll, please, come forward.

19 Place your left hand on the Bible and raise your
20 right hand.

21 WHEREUPON,

22 JAMES WILLIAM ARMSTRONG,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 Please be seated.

1 And, please, state your name for the record.

2 THE WITNESS: James William Armstrong.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. WESTON:

6 Q Mr. Armstrong, by whom are you employed?

7 A I'm employed with the Greenville County Department of
8 Public Safety forensics division crime laboratory.

9 Q And what is your area of occupation for the crime
10 lab?

11 A I'm employed as a criminalist where I have dual
12 responsibilities as a forensic drug chemist and a forensic
13 firearm examiner.

14 Q And how long have you been with the crime lab?

15 A Just two weeks short of 22 years.

16 Q All right. And with -- and, today, I'd like to focus
17 on your firearms -- the firearms area. What kind of
18 training have you had in the area of firearms
19 identification and analysis?

20 A I have a Bachelor of Science Degree in Chemistry from
21 Erskine College. I have trained in the area of firearm
22 identification for approximately two years doing an
23 apprenticeship-style training under the direction of a
24 retired firearms examiner from Philadelphia PD.

25 I've attended five different armor schools to learn

1 how to work on various firearms. I've attended 14
2 different manufacturing facilities to learn how the
3 firearms are being manufactured from raw material to the
4 finished product. And I have been through five different
5 ammunition assembly plants to see how the ammunition is
6 manufactured and assembled.

7 And I've testified in federal and state courts, at
8 least, 62 times as an expert in the field of firearm
9 identification.

10 Q In addition to having testified in state and federal
11 court that many times, would you -- how many firearms have
12 you examined during the course of your career? Just
13 ballpark.

14 A Oh, thousands.

15 MR. SULLIVAN: Judge, may it please the Court.

16 We would stipulate that he is an expert in firearms.

17 THE COURT: Okay.

18 MR. WESTON: And we would, specifically, say firearms
19 identification and analysis, Your Honor.

20 MR. KORNFELD: That's correct, Your Honor.

21 MR. SULLIVAN: Yes, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, I told
23 you yesterday what an expert witness is and why someone
24 may want to introduce someone as an expert witness.
25 Mr. Armstrong is being introduced as an expert witness in

1 firearms and firearm identification --

2 Is that correct?

3 MR. WESTON: Yes, sir, Your Honor, and analysis.

4 THE COURT: And analysis. Okay. So I'll -- so I'll
5 accept him as an expert witness.

6 Just remember just because somebody is an expert
7 witness doesn't mean they have any preferred value, or
8 whether the testimony is given any greater weight. You
9 decide what weight it has and what value it is. And you
10 decide whether it's credible, just like any other piece of
11 evidence that you receive.

12 Mr. Weston, you may proceed, sir.

13 MR. WESTON: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. WESTON:

16 Q Mr. Armstrong, just to give the jury a brief overview
17 of how you do what you do, let's assume that there's a
18 case and there's some bullet projectiles found, as well as
19 some shell casings found over -- there's a third item,
20 there is a gun found. And are those items presented to
21 you to determine what --

22 A When I receive the items, if it's a firearm, a fired
23 cartridge casing, a projectile, they ask me to examine the
24 firearm to make sure they're operable. And then from
25 there, I look at the fired cartridge casings. I do

1 comparisons on those and see if they were fired in the
2 same gun, and to identify which firearm it may have come
3 from.

4 The same thing with projectiles, I look at
5 projectiles to determine how many guns were involved in a
6 case. And I then determine which firearm may have fired
7 those projectiles.

8 Q Would you tell the jury how you determine if a
9 shell -- you've got your -- and I'm trying to make this as
10 simple as possible. A gun that's fired, you've got your
11 projectile, the bullet that comes out, and then you've got
12 the shell casing that was housing that bullet that goes --
13 if it's an automatic, it repels to the left, or right, or
14 whatever?

15 A Yes, sir.

16 Q Let's talk about the shell casing for a moment. How
17 do you determine if a shell casing is fired from a
18 particular weapon, aside from the obvious that it's the
19 same caliber?

20 A Well, it, basically, goes back to where the firearm
21 is manufactured. When a firearm is manufactured, it's
22 made by tools. Those tools that make the firearm leave
23 imperfections, or striations, or marks that are left
24 behind in the manufacturing process that during the firing
25 of that cartridge, those imperfections then transfer to

1 that fired cartridge case. That's kind of like a
2 fingerprint of the firearm that is then transferred to
3 that brass or the metal components of the fired cartridge
4 case.

5 Then when we do our own test fires, we generate,
6 basically, a fingerprint -- we do a fingerprint comparison
7 of our known test fires to the unknown from the scene and
8 look at them through a comparison microscope, kind of like
9 putting a puzzle together, do side-by-side comparisons and
10 see if those striations line up.

11 Q With regard to the projectile -- let's assume again.
12 I understand, and I think we all understand that if the
13 bullet that comes out, if it strikes brick, or metal, or
14 something, it may get damaged a little bit, or
15 significantly or totally just blow up.

16 But let's assume you've got a good projectile or
17 bullet that went into, let's say, some dirt and so it's
18 in -- it's in good condition and it's in pretty much the
19 same condition as it was when it left the gun. How do you
20 identify that bullet -- projectile as having come from a
21 particular gun.

22 A It's the same process as with the fired cartridge
23 casings. When we generate our knowns or our test fires,
24 that barrel where the bullet goes down through is, once
25 again, made by tools and leaves imperfections behind and

1 generate fingerprints for the projectiles. And we do
2 side-by-side comparisons with the microscope of those as
3 well.

4 Q All right. Where do you -- do you do this at the --
5 where's the crime lab at?

6 A The crime lab is in the basement of the law
7 enforcement center.

8 Q And what -- how do you do your test firing? Is it
9 out on a range or is it in a controlled building?

10 A It's in a controlled building. The test fires are
11 done inside a controlled area with limited access. And,
12 also, we test fire into a stainless steel tank, which is
13 full of water.

14 Q So there's no damage to the test fired bullet?

15 A That's correct.

16 Q Now, how do you get a case, an assignment?

17 A The cases that come to me, the officers have to fill
18 out what we call lab requests. Once they fill out the lab
19 requests, I then know there is a case to, actually, work.

20 Then once I see the request, I then go to the
21 property and evidence room and receive the evidence for
22 examination.

23 Q All right, sir. Let me just ask you. Did you bring
24 to court, at our request, your report and findings for --
25 regarding a case number 012015-018787?

1 A Yes, sir, I did.

2 Q And the requesting agency was who?

3 A The Greenville County Sheriff's Office.

4 Q And the requesting officer was who?

5 A That was Newman.

6 Q And who was listed as the suspects in that case in
7 the information you got?

8 A The information I received was from a -- the subjects
9 are Jahru Harold Smith and Bobby Leon Smith.

10 Q All right. And just to be clear, you don't -- do you
11 have anything to do with the investigation of the crime?

12 A No, sir.

13 Q Okay. That's pretty much all the information you're
14 given in terms of what -- what you're asked to do?

15 A That's correct.

16 Q Now, in this particular case, how many guns were
17 involved in your analysis?

18 A I received two firearms in this case.

19 Q All right. And let me show you what's already been
20 introduced into evidence as State's Exhibit Nos. 126 and
21 125, and ask you do you recognize them, first? And I
22 guess you can take them out, if you like, if you can.

23 A Yes, sir, I do.

24 Q And what -- would you describe State's Exhibit
25 No. 125, please?

1 A State's Exhibit No. 125 was designated as item number
2 DS-9, which is a Kel-Tec Model PF9 semi-automatic pistol
3 with serial number of SQC34, caliber 9-millimeter Luger.

4 Q And with guns, I'm assuming it's different than with
5 fungible items. Guns have a serial number that remains
6 with them throughout their life; is that correct?

7 A That's correct.

8 Q Okay. And is that the gun that -- one of the guns
9 you were asked to examine?

10 A Yes, sir, it is.

11 Q All right. Would you take a look at the other one?

12 A Yes, sir.

13 Q That's State's Exhibit No. 126, I believe?

14 A Yes, sir.

15 Q All right. And would you tell the jury what that is?

16 A This was designated as item DLS-1. It was a Kel-Tec
17 Model P11, semi-automatic pistol with serial number AHS60,
18 caliber 9-millimeter Luger. And it was submitted with one
19 9-millimeter Luger cartridge.

20 Q Just out of curiosity, what is Kel-Tec? Is that a
21 brand?

22 A Yes.

23 Q Like a Remington or Winchester?

24 A A manufacturer of firearms.

25 Q Let me show you some other items and ask you if you

1 recognize them. And I'll try to go through them as
2 quickly as possible. You may be able to do it from the
3 packaging, but you may need to cut open the envelope
4 itself. There's a pair of scissors right there if you
5 need them. State's Exhibit No. 64 [sic].

6 A Yes, sir.

7 Q What is State's Exhibit No. 64?

8 A State's Exhibit No. 64 is an item number RSP-3 with a
9 caliber 9-millimeter Luger fired cartridge case.

10 Q Okay. And would you hold it up for the jury -- well,
11 don't hold it up yet. Is this the item -- one of the
12 items that you received for purposes of evaluation and
13 analysis in this case?

14 A Yes, sir, it is.

15 Q And how do you know that?

16 A It goes with the case number. And the item number is
17 on a bar code related -- it goes back to my report. It
18 had my initials and date where I had opened and sealed
19 this container. And my initials and item number are,
20 also, on the fired cartridge case.

21 MR. WESTON: Your Honor, the State would offer
22 State's Exhibit No. 74 into evidence.

23 THE COURT: Objections?

24 MR. KORNFELD: No objection.

25 MR. SULLIVAN: No objection.

1 THE COURT: All right. Without objection, the same
2 is admitted.

3 (WHEREUPON, State's Exhibit No. 74 was admitted into
4 evidence.)

5 BY MR. WESTON:

6 Q Would you take it out and just kind of hold it up so
7 the jury can see?

8 A (Witness complied.)

9 Q Now, that is a shell casing; is that correct?

10 A That is a fired cartridge case, yes.

11 Q From a 9-millimeter weapon?

12 A That's correct.

13 Q Just put them back in there. We're not going to
14 necessarily need to reference -- I mean, specifically,
15 look at them. I'll show you State's Exhibit No. 109. And
16 would you tell the jury -- the Court what that is?

17 A State's Exhibit No. 109 is designated as item DS-19,
18 which is a caliber 38/9-millimeter fired bullet core,
19 which it is not suitable for microscopic comparison
20 purposes.

21 Q All right. And is that one of the items that you
22 were asked to look at -- and you can identify it as one of
23 the items that you were asked to evaluate --

24 A Yes.

25 Q -- and perform analysis on in this case?

1 A Yes, sir, I did.

2 Q Now, did all the items -- just to save a lot of time,
3 did all the items that I -- the two items that I've shown
4 you and the items that I'm getting ready to show you, did
5 you go pick all these items up from property and evidence?

6 A Yes, sir, I did.

7 Q You then performed your evaluation and then returned
8 them to property and evidence?

9 A Yes, sir, I did.

10 Q All right. And would you hold that up so the jury
11 can see what it is? And just kind of hold it up as high
12 as you can.

13 A (Witness complied.)

14 Q Now, how do you describe that again? I'm sorry.

15 A This is a caliber 38 or 9-millimeter fired bullet
16 core.

17 Q And you said something about its ability for -- to
18 analyze it?

19 A It's not suitable for microscopic comparison
20 purposes.

21 Q And State's Exhibit No. 97. In fact, while you're
22 doing that, I'm going to give you all the rest of them.
23 And I'm going to let you go through them one at a time.
24 And if you would, just say the State's Exhibit number and
25 then describe what it is. That will save me from going

1 through and interrupting you each time.

2 A State's Exhibit No. 97, my item DS-5, which is a
3 caliber 38 9-millimeter fired bullet specimen.

4 Q And was that bullet suitable for comparison?

5 A Yes, sir, it was.

6 Q And if you would put that one over on the other side.

7 A State's Exhibit No. 75, which is designated as my
8 item number RSP-4, which is a caliber 9-millimeter Luger
9 fired cartridge case.

10 Q And is that -- was that suitable for comparison?

11 A Yes, sir.

12 Q Okay. Would you put it over on the right side, the
13 suitable for comparison ones?

14 A Yes.

15 State's Exhibit No. 76 is designated as my item
16 number RSP-5, caliber 9-millimeter Luger fired cartridge
17 case.

18 Q And was that suitable for comparison?

19 A Yes, it was.

20 Q And when I say "suitable for comparison," I guess I'm
21 asking you, were you able to make specific findings with
22 regard to that bullet or shell casing concerning what
23 weapon may or may not have fired it?

24 A Yes, sir.

25 Q Okay.

1 A State's Exhibit No. 77, it's my item number RSP-6.

2 It's a caliber 9-millimeter Luger fired cartridge case.

3 Q And was that suitable for comparison?

4 A Yes, sir, it was.

5 Q All right.

6 A State's Exhibit No. 112, my item number DS-6. And it
7 is a lead fragment not suitable for microscopic comparison
8 purposes.

9 Q And I guess we just leave that one on this side over
10 here.

11 A State's Exhibit No. 105 is my item number DS-8. And
12 within the DS-8, I had subcategories of DS-8A and DS-8B.

13 Q So are there two items there?

14 A It was in two pieces when I received it. So I wrote
15 them up as two different item numbers.

16 Q And what are each of the items?

17 A The DS-8A, I designated as a fired bullet jacket
18 fragment, which is a small fragment inside the bag. And
19 DS-8B is a caliber 38/9-millimeter fired bullet specimen.

20 Q And it's just to -- I guess to distinguish between
21 the two, were either or both suitable for comparison and
22 analysis?

23 A Yes, sir, they were.

24 Q All right, sir. Please continue.

25 A State's Exhibit No. 106, it's designated as my item

1 number DS-10, which is a caliber 9-millimeter Luger fired
2 cartridge case.

3 Q And was that suitable for comparison?

4 A Yes, sir, it was.

5 Q All right.

6 A State's Exhibit No. 107, it's designated as my item
7 number DS-14. It's a fired bullet jacket fragment.

8 Q And was that suitable for comparison?

9 A Yes, sir, it was.

10 Q All right.

11 A State's Exhibit No. 108, my designated item number
12 DS-17. It is a fired bullet jacket fragment.

13 Q Was it suitable for comparison?

14 A Yes, sir, it was.

15 Q All right. Is that it?

16 A That's it.

17 Q All right. Now, just to be -- I guess I'm going to
18 kind of get out of your way here. Once you got all of
19 these things, what -- just tell the jury what you did with
20 regard to it as it relates to each of these weapons. And
21 we'll get to your findings in a moment. Just tell them
22 what your process is, and what you did.

23 A When I first receive the items, the first thing I do
24 is inventory what all I have. I open up the containers
25 that I'm going through and make notes of what I, actually,

1 have and I inventory it.

2 Once I open up a package and it has a fired cartridge
3 case in, I inscribe with my initials and the item number
4 on the map of the casing so I can identify it later and
5 not get things mixed up later on during the examination.

6 Once I do all that, I then generate -- go to the
7 firearms, make sure they're operable. I go to the test
8 fire room, generate my knowns or test fires for those to
9 then start doing the comparison to compare against the
10 firearms. Once we do the comparison, then we generate the
11 report of our findings.

12 Q And tell the jury how you do the comparisons. You
13 testified to it early on. But just tell them how you did
14 it in this particular case.

15 A When we do the comparisons, the left-hand side of the
16 comparison microscope is where we put our unknowns, or the
17 ones from the crime scenes. The right-hand side, I always
18 put the knowns, or test fires. We then do a side-by-side
19 comparison to try to line up the imperfections or the
20 striations from each other to see if they do overlap and
21 agree.

22 Q All right, sir. And did you do that with all of the
23 different projectiles and casings that you have in this
24 case?

25 A Yes, sir, I did.

1 Q All right. Now, excuse me one second.

2 All right. Now, you referenced I think -- in your
3 report, did you reference the two guns differently than a
4 case number? We talked about the projectiles and bullets,
5 and how you referenced them. What about the guns
6 themselves?

7 A I used the serial number as reference.

8 Q All right. And you -- you say in your report DLS-1
9 pistol. Which pistol would that be?

10 A DLS-1 is serial number AHS60.

11 Q And which one of these would that be? And I'm sorry.

12 A That's going to be the Kel-Tec P11.

13 Q That would be this one?

14 A This one here.

15 Q And let me try to get -- try to make this as quick as
16 possible. Let's talk about the other gun, first, which
17 was -- what you have referenced in your report as what
18 number -- or State's Exhibit No. 125?

19 A State's Exhibit No. 125 is my item number DS-9.

20 Q Did you test fire that weapon?

21 A Yes, sir, I did.

22 Q Did you test fire it against the shell casings, and
23 slugs, and bullets that you had that were able to be
24 analyzed?

25 A I compared the test fired from this item to the

1 unknowns here, yes, sir.

2 Q Were you able to determine if that weapon fired any
3 of those bullets?

4 A This firearm was not used in firing any of the fired
5 cartridge casings. And there's only one of the items that
6 I examined that I could not determine if it came from this
7 firearm or the other one. And that was the item DS-14,
8 which is State's Exhibit No. 107.

9 Q And that was because the -- you're not saying that it
10 was fired by that weapon. You're just saying you can't
11 tell what weapon it would have come from because it was
12 just that mangled, or whatever?

13 A Because this item is a fired bullet jacket fragment
14 and it bears insufficient microscopic marks to permit
15 identification to this pistol.

16 Q Okay. But with the exception of this one here, which
17 you couldn't determine, did any of those others -- were
18 any of those others fired from this gun?

19 A No, sir.

20 Q Now, with regard to this, State's Exhibit No. 126 --
21 now, how did you have that labeled again?

22 A This is item DSL-1 -- or DLS-1. Excuse me.

23 Q Do you know anything about those letters? Does the
24 name Dar Shaw mean anything to you?

25 A Yes, sir, it does.

1 Q And do you know why that says DLS?

2 A I have no idea.

3 Q Would that be Mr. Shaw's initials probably?

4 A I've seen him use DS and DLS as well.

5 Q And tell the jury about your findings with regard to
6 that weapon that Mr. Shaw collected, the DSL-1?

7 A My item numbers RSP-3, RSP-4, RSP-5, RSP-6, and DS-10
8 fired cartridge casings were fired in the item DLS-1
9 pistol.

10 Q So in English, for people like me, that means what
11 now, that this pistol fired --

12 A This pistol fired all of the fired cartridge casings
13 submitted in this case.

14 Q And would you just move -- what about the actual
15 projectiles?

16 A My item numbers DS-5, DS-8B, and DS-17, fired bullet
17 specimens and fired bullet jacket fragments were fired
18 from the item DLS-1 pistol.

19 Q All right. So taking out the one that was unable to
20 be analyzed, you're saying all the rest of the bullet
21 fragments and the shell casings that you analyzed were
22 fired by this gun?

23 A That's correct.

24 Q And can you say that with a reasonable degree of
25 scientific certainty?

1 A Yeah. I'm a hundred percent certain they were fired
2 from this firearm.

3 Q And they definitely were not fired from the other
4 firearm?

5 A That's correct.

6 MR. WESTON: Your Honor, I don't think I've done this
7 before. Just as housekeeping, I want to make sure -- I
8 don't know whether I offered all of these into evidence as
9 he was going through them. But I'm just going to offer
10 State's Exhibit Nos. 108, 107, 105, 97, 109, 75, 76, 77,
11 106, and 112. The State would offer them into evidence at
12 this time.

13 THE COURT: Any objections?

14 MR. KORNFELD: No objection, Your Honor.

15 MR. SULLIVAN: No objection.

16 THE COURT: Without objection, the same is admitted.

17 MR. WESTON: And the guns, as I said, Your Honor, I
18 think are already in evidence.

19 (WHEREUPON, State's Exhibit Nos. 75, 76, 77, 97,
20 105, 106, 107, 108, 109, 112 were admitted into
21 evidence.)

22 MR. WESTON: And I'm going to leave them here in case
23 counsel has any questions for you about them.

24 That's all I have for this witness.

25 Thank you.

1 THE COURT: Mr. Kornfeld.

2 CROSS-EXAMINATION

3 BY MR. KORNFELD:

4 Q Officer Armstrong, you only investigate -- I think
5 you've testified to this. I want to make sure. You only
6 investigate what's brought to you?

7 A That's correct.

8 Q And you never go out to the crime scene; is that
9 correct?

10 A Very seldom do I go to crime scenes. I did not go to
11 this crime scene.

12 Q And you testified, I think, that both of these
13 weapons are Kel-Tec?

14 A Yes, sir.

15 Q And both of them are 9-millimeters?

16 A That's correct.

17 Q And that of what you were brought, that one of the --
18 one of the jackets which you said was DS-8A and B, that
19 one's not suitable for comparison; is that correct?

20 A The item -- no, sir. 8A and B were compared. The
21 only items that were not used for comparison --

22 Q DS-6?

23 A DS-6 and DS-19.

24 Q Okay. And the one Kel-Tec -- I don't know if it's
25 this one. I'm sorry. This one, you admit here that it

1 appears to have some weather or rusting on it right here;
2 correct?

3 A Yes, sir.

4 MR. KORNFELD: Thank you, Mr. Armstrong.

5 No other questions.

6 THE COURT: Mr. Sullivan.

7 MR. SULLIVAN: No, Your Honor. No questions.

8 THE COURT: Redirect?

9 MR. WESTON: Just one question on redirect.

10 THE COURT: Sure.

11 REDIRECT EXAMINATION

12 BY MR. WESTON:

13 Q Counsel asked you about the make and model. And I
14 may have asked you. But you test fired both of these to
15 make sure they were operational, both of these Kel-Tec's;
16 correct?

17 A That's correct.

18 Q And were they operational?

19 A They're both operable, yes.

20 Q And you, also, mentioned -- he didn't ask you this,
21 but you mentioned 38 and 9-millimeter. What does that
22 mean?

23 A 38 and 9, we use it as a caliber class. Because with
24 the projectiles, it's really unknown if it is from a 38
25 Special, a 357, 9-millimeter, some 380s. All of those are

1 the same diameter or -- of a projectile. It falls in that
2 caliber class. So we just say it's a 38/9-millimeter
3 class caliber.

4 MR. WESTON: Thank you, sir.

5 I appreciate the education.

6 THE COURT: Any recross?

7 MR. WESTON: Nothing further from the State, Your
8 Honor.

9 THE COURT: Any recross based on that redirect?

10 MR. KORNFELD: No, Your Honor.

11 THE COURT: Mr. Sullivan?

12 MR. SULLIVAN: No, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Armstrong.

14 You may step down. You may be excused from your
15 subpoena. I appreciate you being here today.

16 THE WITNESS: Thank you.

17 MR. WESTON: Your Honor, the State would ask that he
18 be allowed to be excused from his subpoena.

19 THE COURT: Yes, sir, absolutely.

20 MR. WESTON: Your Honor, the State would call
21 Ms. Morgan Fletcher.

22 THE CLERK: Ma'am, if you'll, please, come forward.

23 If you'll, please, pause at the end of the bench.

24 Place your left hand on the Bible and raise your right
25 hand.

1 WHEREUPON,

2 MEGAN FLETCHER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 Would you, please, state your name for the record?

7 THE WITNESS: It's Megan Fletcher, F-L-E-T-C-H-E-R.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. WESTON:

11 Q Ms. Fletcher, with whom are you employed?

12 A I'm employed by the South Carolina Law Enforcement
13 Division in the forensic services department in the trace
14 evidence laboratory.

15 Q And how long have you been employed with SLED?

16 A About 10 and a half years.

17 Q And you said you were in the trace evidence
18 laboratory. That's kind of a mouthful.

19 A Yes, sir.

20 Q What does that mean?

21 A In the trace evidence laboratory, I analyze different
22 types of evidence, such as fire debris, paint, glass,
23 fibers, explosives, tape, and gunshot primer residue.

24 Q And could you tell the Court and the jury a little
25 bit about your background for doing that kind of work?

1 A I have a Bachelor's Degree from Chatham College in
2 Biochemistry and English. And I, also, have my Master's
3 Degree in Forensic Science from Marshall University,
4 emphasizing in forensic chemistry and computer forensics.

5 Q And how long have you been doing this, you said? I'm
6 sorry.

7 A Ten and a half years.

8 Q All right. And have you testified in court
9 concerning -- and we're talking about gunshot residue this
10 morning. Have you testified in court concerning gunshot
11 residue cases on more than one occasion?

12 A Yes, sir, I have.

13 Q On numerous occasions?

14 A Yes, sir, I have.

15 Q And do you have any specialized training in that area
16 as far as seminars, and what have you?

17 A During my time at SLED when I first started, I
18 underwent about a year-long training program for the
19 analysis of gunshot primer residue. In that time, I
20 was -- I had lectures and tests, both oral and practical
21 examinations to determine my competency in the analysis of
22 gunshot primer residue.

23 MR. WESTON: Your Honor, we would offer this witness
24 as an expert in the field of trace evidence.

25 THE COURT: Okay. Voir dire or exceptions?

1 MR. KORNFELD: I don't have an objection, Your Honor.

2 THE COURT: All right. Mr. Sullivan?

3 MR. SULLIVAN: No objection, Your Honor.

4 THE COURT: All right. She is so qualified.

5 BY MR. WESTON:

6 Q And, once again, we're talking -- trace evidence,
7 there's a lot of different types of trace evidence, I take
8 it?

9 A Yes, sir, there are.

10 Q All right. But we're talking about gunshot residue
11 this morning. Did you have an occasion to examine -- to
12 perform an analysis with regard to gunshot residue on one
13 or more pieces of evidence under your case number
14 115018787?

15 A I, actually, did not analyze the evidence in this
16 particular case. What I did was perform a technical
17 review of an analysis by another examiner. And I was able
18 to confirm her results.

19 Q And just -- and I was going to ask you about peer
20 review. How does that work? And what's the reason for
21 that?

22 A Well, in this particular case, the reason for it was
23 to determine that the analyst followed all of our policies
24 and protocols, and that the data that she obtained was
25 valid and accurate. And if a second examiner is then able

1 to verify all of that and reach the same conclusions as
2 the original analyst, then it's considered to be a valid
3 report.

4 Q And you did -- you did this one as a second examiner?

5 A As a second examiner, I did this.

6 Q And I assume you don't remember all of the results
7 and all the details off the top of your head?

8 A No, sir. I have a case file with me.

9 Q Do you have a report with you?

10 A I have a case file, yes.

11 Q Would that refresh your recollection to review your
12 report as we talk?

13 A Yes, sir.

14 Q All right. And I think I referenced a pretty long
15 case number, or whatever. Is that the case number you
16 have there?

17 A I have L-1510772.

18 Q Yes, ma'am. All right. And how do y'all get --
19 well, let's start with -- tell the jury about gunshot
20 residue.

21 A Okay.

22 Q If you would just kind of give them a perimeter, like
23 you're talking to a high school class, or, in my case,
24 maybe a middle school class of what that means.

25 A Gunshot residue is everything that comes out of a gun

1 when it's fired. What we're, specifically, looking for is
2 gunshot primer residue. So those are particles that are
3 characteristic of the primer from a bullet and from a
4 cartridge. So we're looking for microscopic molten
5 particles that contain the elements, lead, barium, and
6 antimony.

7 Q And I know it's going to be different based on
8 whether -- you know, the circumstances of each firing is
9 going to be a little bit different from another set of
10 circumstances based on wind, and distance, and what have
11 you. But, generally, if I point a gun and shoot it, could
12 you tell us what happens?

13 A When a gun is fired, a bunch of stuff comes out of
14 the muzzle, depending on if it's a revolver or a
15 semi-automatic. It comes out of the eject port, or
16 muzzle, or cylinder. But the majority of gunshot residue
17 comes out of the muzzle of the gun.

18 So the soot, the smoke, flame, the bullet itself, as
19 well as this primer residue, comes out of the muzzle of
20 the gun and travels along with the bullet towards its
21 target or ending location.

22 Q Does -- given -- obviously, a bullet is just going to
23 go straight, and I guess spin, but go straight. Does
24 the -- do the items that you refer to come out and sort of
25 form a mushroom? Do they tend to spread as it goes

1 further?

2 A They can spread a little bit. But there is -- there
3 are a number of studies that show that a lot of the
4 gunshot residue does travel along with the bullet itself.

5 Q And let me ask you this ultimate question. Assuming
6 I've got gunshot residue on me, on my hands even, does
7 that mean I fired a gun?

8 A No, sir. You can get gunshot residue from being in
9 the vicinity of the discharge of a firearm. And that
10 includes sustaining a gunshot wound. You can get it from
11 shooting, or you can get it from touching something that
12 has gunshot residue on it.

13 Q And so assuming you're sitting in a car in the
14 driver's seat there and I fire a gun, maybe at this range
15 towards you four or five times and strike you four or five
16 times, is there a good chance you will have gunshot
17 residue on your clothing or face?

18 A Yes, sir, there is.

19 Q All right. Let's talk about this particular case
20 here. What two items were you asked to examine?

21 A There were two items submitted in this case. One was
22 a GSR kit from Nicole Logan, and one was a GSR kit from
23 Bobby Smith.

24 Q Let's talk about Ms. Logan first. What did you -- how
25 do you examine it?

1 A So samples are collected from, in this case,
2 Ms. Logan's hands. They would have been collected from
3 her right palm, her right back, her left palm, and her
4 left back of her hands. Those samples are then brought to
5 the laboratory and analyzed on a scanning electron
6 microscope with energy dispersive x-ray detector, which
7 is --

8 Q Wait just a second. That's a \$50 word you just said.
9 Would you say that again slowly, please, and tell the jury
10 what that is.

11 A Sure. It's a scanning electron microscope with
12 energy dispersive x-ray detector. Which means that it's a
13 really powerful microscope that allows us to magnify
14 particles down to about a hundred thousand times. And
15 then once we're able to see it, we're, also, able to
16 collect data from it to determine what elements are
17 present.

18 Q And what types of elements are normally going to be
19 present when you do your analysis?

20 A So in gunshot residue, particles that are
21 characteristic of gunshot primer residue, they contain
22 lead, barium, and antimony.

23 Q What was the last one again?

24 A Antimony.

25 Q Okay. Thank you, ma'am.

1 And back to Ms. Logan's kit. What was the item that
2 you had?

3 A It was item 1.

4 Q And what was the type of item?

5 A Oh, it's a gunshot residue kit.

6 Q So you get the -- the sample is taken from the scene
7 in -- in sort of a uniform way, whether it's Columbia,
8 Charleston, or Rock Hill. They would do the same thing
9 and put it in a kit, and then send the kit to y'all?

10 A Yes, sir.

11 Q And they would -- and I'm trying to paraphrase to
12 make sure I'm following you. And the sample is collected
13 by dabbing the front and back of the hands?

14 A Yes, sir, in this particular case.

15 Q And did you examine the kit you received on
16 Ms. Logan?

17 A I did not examine it.

18 Q I'm sorry. Did you review the examination of the kit
19 that was submitted with regard to Ms. Logan?

20 A I did.

21 Q And what were the findings?

22 A In the -- the results for Ms. Logan's kit, particles
23 characteristic of gunshot primer residue were confirmed.
24 Particles characteristic of gunshot primer residue are
25 microscopic molten particles that contain the elements

1 lead, barium, and antimony. Gunshot primer residue can
2 come from being in the vicinity to the discharge of a
3 firearm, to include sustaining a gunshot wound,
4 discharging a firearm, or coming into contact with the
5 surface that has gunshot residue on it.

6 Q So it doesn't necessarily mean she fired a gun?

7 A No, sir.

8 Q All right. Did you, also, have any -- an occasion to
9 review the GSR kit for Bobby Smith?

10 A There was no data associated with the gunshot residue
11 kit from Bobby Smith.

12 Q And why was that?

13 A The reason for that is that the kit was collected
14 after six hours. SLED has a policy of not analyzing any
15 gunshot residue kits collected after six hours. And the
16 primary reason is that gunshot residue is very easily
17 transferred and removed.

18 And after six hours, through testing and through just
19 our field, in general, we have determined we cannot -- or
20 gunshot residue should not be present after six hours.
21 And if any was present, it couldn't be linked to the
22 original incident.

23 Q Just regarding this six-hour thing. If I fire a gun
24 and then I go in the house and wash my hands real good, is
25 there a good chance I'll remove all the gunshot residue?

1 A Yes, sir. Washing your hands is a very good way of
2 removing GSR.

3 Q And does it require lye soap or just, basically,
4 washing your hands with soap, with any kind of soap?

5 A You could just wash your hands with water. You could
6 wipe your hands on your pants. You could just touch
7 things over the course of six hours. You could sweat.
8 It's very easily transferred and removed.

9 MR. WESTON: Thank you, ma'am.

10 That's all I have. Answer any questions counsel may
11 have for you.

12 CROSS-EXAMINATION

13 BY MR. KORNFELD:

14 Q Ms. Fletcher, the GSR -- I think opposing counsel
15 asked, it doesn't mean that she fired a gun. It doesn't
16 mean she didn't fire a gun either, does it?

17 A I can't determine how the gunshot residue was
18 present.

19 MR. KORNFELD: Thank you.

20 No further questions.

21 THE COURT: Mr. Sullivan, do you have any questions?

22 MR. SULLIVAN: Just one.

23 CROSS-EXAMINATION

24 BY MR. SULLIVAN:

25 Q Ms. Fletcher, if I fire a gun, does it kick back up

1 my arm, so to speak?

2 A Yes, sir. The gunshot residue could be present on
3 the shooter as well.

4 Q Now, I understand how it could be diluted from the
5 hand, but how about clothing? Will it stay on the
6 clothing sitting there if it's just normally worn?

7 A Yes. It can stay on clothing indefinitely until it's
8 been removed.

9 Q So if somebody shot a gun and they took part of the
10 clothing and tested that, that would not -- that could be
11 outside of the six hours, could it not?

12 A Clothing does not have a time frame. So, yes, it
13 would be able to be tested.

14 MR. SULLIVAN: Thank you.

15 THE COURT: Redirect?

16 MR. WESTON: No redirect from the State, Your Honor.

17 The State would ask that she be allowed to be excused
18 from her subpoena.

19 THE COURT: Thank you, ma'am.

20 I appreciate you being here.

21 THE WITNESS: Thank you.

22 THE COURT: Do you have one more short witness you'd
23 like to call before lunch? Or do you want to wait?

24 MR. WESTON: Your Honor, can we approach?

25 THE COURT: Yeah.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Ladies and gentlemen, let's go ahead and
3 take a lunch break. If y'all will, please, be back at
4 quarter until 2:00, that's 1:45, and we'll resume
5 testimony in the case.

6 Please have a great lunch. Don't discuss the case.

7 Thank you.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 12:26 p.m.)

10 THE COURT: Anything else we need to put on the
11 record before we break for lunch?

12 MR. MORONEY: Nothing from the State.

13 THE COURT: All right. Y'all have a great lunch.
14 And I'll see you back at a quarter until 2:00.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Are we ready for the jury?
17 Have you got something?

18 MR. KORNFELD: Yes, Your Honor.

19 I spoke with Jahru at lunch. And he has instructed
20 me, again, to do a few things. But, one, he's instructed
21 me to leave the courtroom. He's instructed me that I am
22 no longer his lawyer.

23 And he's instructed me to inform the Court, again,
24 that he asserts his Sixth Amendment right to
25 self-representation. And that he needs the assistance of

1 glasses to legally help him with his case. He cannot
2 have -- he cannot get glasses because he is in the
3 Anderson County Detention Center and has not been provided
4 any.

5 THE COURT: Okay. You are protected on the record in
6 that regard. I'm ordering you to continue representing
7 him in this case. That's entirely in his best interest.
8 I think that is a request that is patently absurd for this
9 case to go forward without him having any type of
10 representation at all and for him to have, also, excused
11 himself and elected not to participate in the trial. I
12 think, perhaps, I'm more concerned with his Constitutional
13 rights and his representation than he is in this matter.

14 With respect to the glasses issue, again, I've heard
15 that and I've ruled on it. And I'll not -- I'll not
16 articulate the Court's position again. The ruling stands.

17 MR. KORNFIELD: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Thank you.

20 I appreciate it.

21 Anything else before we bring the jury in?

22 MR. MORONEY: No, Your Honor.

23 THE COURT: Will you bring them in, please?

24 (WHEREUPON, the jury came into open court at
25 approximately 1:57 p.m.)

1 THE COURT: Welcome back, ladies and gentlemen.

2 Mr. Moroney, Mr. Weston, your case.. You may call
3 your next witness.

4 MR. WESTON: Thank you, Your Honor.

5 The State would call Officer Mike Rainey.

6 THE CLERK: Sir, if you'll, please, come forward.

7 Please place your left hand on the Bible and raise
8 your right hand.

9 WHEREUPON,

10 MICHAEL RAINEY,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 And please state your name for the record.

15 THE WITNESS: Michael Rainey.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. WESTON:

19 Q Mr. Rainey, with whom are you employed?

20 A The Greenville County Sheriff's Office.

21 Q And what is your title?

22 A Sergeant over the computer crimes unit.

23 Q All right. And as a part of your work, do you do
24 what, I think, they call it on TV, telephone dumps?

25 A Yes, sir. Cell phone analysis.

1 Q And so what does that mean? What do you, actually,
2 do when someone brings you a phone?

3 A We extract the information out of a cell phone using
4 software provided to us by different cell phone forensic
5 companies.

6 Q And that information includes phone calls that were
7 made, as well as text messages?

8 A Yes, sir. Incoming, outgoing text messages,
9 pictures, videos. Depending on the make and model of the
10 phone, we get different information.

11 Q Sometime after -- in late February or mid March, did
12 you receive a request to review the phone that is the
13 subject of this DVD?

14 A Yes, sir, I did.

15 Q Is it a CD --

16 A This one is a DVD.

17 Q And did you compile that DVD?

18 A Yes, sir, I did.

19 Q What is -- what's on there, basically?

20 A The program that we used in this report is Mobilized,
21 which is a cell phone extraction tool. We connect the
22 phone to our device, and it extracts the information off
23 of the cell phone and into a report. I generate the
24 report and place the information onto a disk for the lead
25 investigator to examine.

1 Q Is it done -- does the report -- is the report
2 chronological?

3 A Yes, sir. It lists everything in that phone by date
4 and time.

5 Q And from -- let's say, it's my phone. It will show
6 who -- it'll have my number and who I called?

7 A Yes, sir.

8 Q On whatever date and time. And if someone called me,
9 it'll have their number coming into my phone?

10 A Yes.

11 Q Have you reviewed this DVD for purposes of testifying
12 today?

13 A Yes, sir.

14 Q And is the DVD for the black cell phone that was
15 found in the freezer in this particular case?

16 A Yes, sir. This is from an iPhone. I believe it was
17 a 5S.

18 Q Okay. And were you able to determine the phone
19 number of that particular phone?

20 A Yes, sir. It's in this report.

21 Q And what is that phone number?

22 A Area code (864) [REDACTED].

23 MR. WESTON: Thank you, sir.

24 Answer any questions counsel may have for you.

25 THE COURT: Cross-examination.

1 MR. KORNFIELD: Mr. Rainey, I don't have any
2 questions.

3 MR. SULLIVAN: No questions, Your Honor.

4 THE COURT: Good.

5 Thank you, sir.

6 I appreciate you being here.

7 THE WITNESS: Thank you.

8 THE COURT: You may step down.

9 You may call your next witness.

10 MR. WESTON: The State would call Kaitlin Appel.

11 THE CLERK: Ma'am, please come forward.

12 You may set your things down. And please place your
13 left hand on the Bible and raise your right hand.

14 WHEREUPON,

15 KAITLIN APPEL,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please be seated.

19 Please state your name for the record.

20 THE WITNESS: Kaitlin Appel.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. WESTON:

24 Q Good afternoon, Ms. Appel.

25 A Good afternoon.

1 Q With whom are you employed?

2 A I'm employed with the Greenville County Department of
3 Public Safety in the forensic division, specifically, in
4 the DNA lab.

5 Q And what's your title?

6 A I'm a DNA analyst.

7 Q And how long have you been employed here in
8 Greenville as a DNA analyst?

9 A A little over three years.

10 Q Where did you work prior to that?

11 A Prior to working here, I worked at the Georgia Bureau
12 of Investigations, also, in the DNA section.

13 Q And about how long were you there?

14 A Four and a half years.

15 Q All right. And would you tell the jury a little bit
16 about your educational background?

17 A Yes. I received a Bachelor of Science Degree in
18 Biology from the University of Georgia. I, also, received
19 extensive in-house training at the Georgia Bureau of
20 Investigations. And that included background literature
21 review, completion of quizzes and exams, completion of
22 mock samples, observation under their scientists.

23 Q Did it, also, include semen identification, saliva
24 analysis, and DNA annual analysis, generally?

25 A Yes.

1 Q All right. And --

2 MR. SULLIVAN: Judge, we'll stipulate to her
3 qualifications as an expert.

4 MR. KORNFELD: Same, Your Honor.

5 THE COURT: Okay.

6 MR. WESTON: And, Your Honor, the field would be DNA
7 analysis.

8 THE COURT: Without exception or objection, I'll so
9 qualify her as an expert in DNA analysis.

10 Is that what you said?

11 BY MR. WESTON:

12 Q Would that be the correct field?

13 A Yes.

14 MR. WESTON: Yes, sir.

15 THE COURT: All right. So qualified.

16 Thank you.

17 BY MR. WESTON:

18 Q I'm going to step in and kind of step back out.
19 You're here today as a result of a subpoena. And were
20 you -- did you perform DNA analysis on certain items
21 involving the case that brings us to court today?

22 A Yes, I did.

23 Q And just -- and because we're only really concerned
24 about three or four items. But about how many items in
25 this particular matter did you perform analysis on, just

1 generally?

2 A About 22 to 25, or so.

3 Q All right. And let's start with the question that's
4 probably in the minds of everybody. Would you tell the
5 jury what DNA is?

6 A Yes. DNA, it stands for deoxyribonucleic acid. It's
7 a blue print for life. You inherit half from your mother
8 and half from your father. And everyone's DNA is unique,
9 except for identical siblings.

10 Q And how is DNA -- how do you get the -- whatever
11 material you want -- what can you get DNA from to analyze?

12 A You can get it from many sources. You can get it
13 from blood, semen, saliva, so biological fluids. You can
14 get it from hair, bone, new skin cells, et cetera.

15 Q All right. And in the lab, y'all get a request for
16 analysis from different law enforcement agencies
17 throughout the State; is that correct?

18 A Correct.

19 Q Throughout the county, I'm sorry; is that correct?

20 A Correct.

21 Q All right. And I want to talk about the process for
22 a moment, but I don't want to get too complicated. How do
23 you do DNA analysis, generally?

24 A Well, with DNA analysis, there's four main steps.
25 The first step is what we call extraction. And this is

1 where we're taking a small sample of biological material
2 and adding a bunch of chemicals to break up the cells and
3 release the DNA that may be present. And then we purify
4 that.

5 The next step is what we call quantification. And
6 this is the step where we determine how much DNA we were
7 able to extract in our first step, if any at all.

8 The third step is if we have obtained DNA, it's
9 called amplification. This is where we take the DNA
10 that's present and make millions and millions of
11 specific -- copies of specific regions of the DNA.

12 And then our final step is capillary electrophoresis.
13 This is where we're just taking that DNA that we've
14 created multiple copies of and run it through an
15 instrument called the genetic analyzer. This quote,
16 unquote spits out a profile.

17 And from there, we will then compare it to known
18 reference samples where we complete the exact same steps
19 with evidence samples.

20 Q All right. So in this case --

21 MR. WESTON: Excuse me, Your Honor. I need to ask
22 you if we could approach before we go any further?

23 THE COURT: Sure.

24 MR. WESTON: There's a housekeeping matter I
25 neglected to take up prior to her taking the stand. It

1 will only take a moment.

2 (WHEREUPON, a bench conference was held.)

3 MR. WESTON: Thank you, Your Honor.

4 And I apologize.

5 THE COURT: No worries.

6 BY MR. WESTON:

7 Q I'm going to kind of set you up so the Judge can
8 take -- we can take care of a housekeeping matter. So I'm
9 going to kind of digress just a little bit. We've had a
10 lot of talk today about -- from law enforcement officers
11 that collected things, glass, guns, bullets, things like
12 that. You don't do any collection out in the field, do you?

13 A No, I do not.

14 Q Do you, actually, get the items when they come into
15 your lab, initially?

16 A No, I do not.

17 Q Tell the Judge -- tell the Court how you end up --
18 what you get and what you work from?

19 A Okay. I receive small tubes in a coin envelope that
20 our serologist has created from the actual items of
21 evidence. Our serologist will take small samples of
22 whatever evidence he's working with and put it in a tube
23 for the DNA analysts to then take forward from there.

24 Q Thank you, ma'am.

25 And who is the serologist that you worked with in

1. this case?

2 A Tim Nafziger.

3 MR. WESTON: Your Honor, if you would -- I think it
4 would be an appropriate time to read the stipulation.

5 THE COURT: All right. Ladies and gentlemen, there's
6 an additional stipulation that I'll read into the record
7 and make a joint exhibit. And it is as follows: The
8 State and the Defense hereby stipulate the following
9 facts: One, that Timothy Nafziger, a serologist employed
10 with the Greenville County Department of Public Safety is
11 an expert in the field of serology, that is the scientific
12 study of blood and other bodily fluids; two, that Timothy
13 Nafziger received several items of evidence in the present
14 case and positively identified the presence of blood on
15 these items; three, that Tim Nafziger forwarded all items
16 that contained the presence of blood to Kaitlin Appel --

17 Did I pronounce that right?

18 THE WITNESS: Appel.

19 THE COURT: Appel, a DNA analyst with the Greenville
20 County Department of Public Safety, for subsequent DNA
21 analysis.

22 So, ladies and gentlemen, I'll make this Joint
23 Exhibit No. 4, and you can consider it a fact.

24 (WHEREUPON, Joint Exhibit No. 4 was marked for
25 identification and admitted into evidence.)

1 THE COURT: Mr. Weston, you can proceed.

2 MR. WESTON: Thank you, Your Honor.

3 BY MR. WESTON:

4 Q So as the final question, you received the items you
5 did DNA analysis from Mr. Nafziger; is that correct?

6 A Correct.

7 Q And once you get an item, you put it through the
8 four-step process you just told us about?

9 A I do.

10 Q And I want -- you said you analyzed about 20 to 25
11 different items. And I want to talk about two people
12 today. I want to talk about -- what two people -- what
13 people -- what names did you come up -- were you given
14 as -- were you, also, given samples -- I'm sorry. I
15 apologize. Were you, also, given samples to compare the
16 DNA items that you were analyzing against?

17 A Do you mean the reference samples?

18 Q Yes, ma'am. I'm sorry. I forgot to ask you about
19 that. I apologize.

20 A Yes, I did.

21 Q And what were the reference samples that you were
22 given?

23 A I was given a sample of a blood spot from Shameese
24 Nicole Logan, and a sample of a buccal swab of Bobby
25 Smith.

1 Q Okay. So when you're analyzing an item and you are,
2 in its basic elements, comparing it against those, you're
3 looking for a comparison or relationship to those two
4 people?

5 A Correct.

6 Q As opposed to the whole word?

7 A Correct.

8 Q All right. And I'm going to ask you about four
9 items. Did you -- did you have a sample that you
10 collected that had been collected from an iPhone?

11 A Yes, I did.

12 Q And tell the jury what you did in relationship to
13 that?

14 A I performed the exact same four steps that I
15 described earlier, extraction, quantification,
16 amplification, and capillary electrophoresis, and
17 developed a DNA profile from that. And then I compared it
18 to the known samples that I had.

19 Q Okay. And as it relates to Bobby Smith, what were
20 the results?

21 A DNA results obtained from this item contain the
22 partial DNA of a major male individual and a trace
23 contributor present at one location. The major
24 contributor matches the DNA of Bobby Smith at six
25 locations. The probability of finding a person at random

1 with the same allelic distribution of the major
2 contributor at these locations is 1 in 8,000 in the
3 Caucasian population, 1 in 30,000 in the African-American
4 population, and 1 in 20,000 in the Hispanic population.

5 Q And you said there was a major minor?

6 A There was major and a trace of --

7 Q Trace. Okay. And the trace was not related to Bobby
8 Smith; is that correct?

9 A Correct.

10 Q And the Bobby Smith finding was the major finding?

11 A Correct.

12 Q All right. And let's move on. Did you have an
13 occasion to perform DNA analysis on a segment or a sample
14 from some sweatpants?

15 A Yes.

16 Q Would you tell the jury about that? And I assume
17 that was compared against those same two known samples?

18 A Yes, it was.

19 Q All right.

20 A The swab from inside the waist of black with gray
21 striped sweatpants, the results for that item were that it
22 contained the DNA of a major male individual and a trace
23 contributor present at three loci. The major contributor
24 matches the DNA of Bobby Smith, and excluding an identical
25 twin, Bobby Smith is the source of this DNA with a

1 reasonable degree of scientific certainty.

2 Q And when you say "a reasonable degree of scientific
3 certainty," what does that mean in terms of numbers?

4 A That means you wouldn't expect to see this given
5 profile again within the earth's population.

6 Q Again, in the what population?

7 A The earth's population.

8 Q On earth?

9 A Yes.

10 Q I see. Okay. Did you have a sample from anywhere
11 else on the sweatpants?

12 A Yes, two other locations.

13 Q And what was the nature of -- those samples first?

14 A I'm sorry?

15 Q What type of sample was it?

16 A It was a -- blood stain samples.

17 Q All right. And would you tell the jury starting
18 with, I guess, just one and then the other?

19 A Okay.

20 Q Did it say where they're located on the pants?

21 A Yes. There was a swab of reddish-brown material on
22 the lower right leg of the pants. The results for that
23 were it contained the DNA of a major female and a minor
24 male contributor, as well as a trace contributor at one
25 locus.

1 The major contributor matches the DNA of Shameese
2 Nicole Logan. Excluding an identical twin, Shameese Nicole
3 Logan is the source of this DNA to a reasonable degree of
4 scientific certainty.

5 The minor contributor matches the DNA of Bobby Smith.
6 And excluding an identical twin, Bobby Smith is the source
7 of this DNA to a reasonable degree of scientific
8 certainty.

9 Q And what about the third sample from the sweatpants?

10 A This was a swab of reddish-brown stain on the inner
11 seam of the right leg of the pants. The results obtained
12 contained the DNA of a major female individual and a trace
13 male contributor present at five locations.

14 The major contributor matches the DNA of Shameese
15 Nicole Logan. And excluding an identical, Shameese Nicole
16 Logan is the source of this DNA with a reasonable degree
17 of scientific certainty.

18 Q And was this, also, presumptively a blood sample?

19 A Yes.

20 Q Now, let's talk about -- did you have an occasion to
21 perform DNA analysis on a sample that was referred to you
22 as coming from some money?

23 A Yes, I did.

24 Q Would you tell the jury about that?

25 A This was a swab of suspected blood on money. The DNA

1 results obtained from this item contained the DNA of a
2 major female individual and a male trace contributor
3 present at six location. The major contributor matches
4 the DNA of Shameese Nicole Logan. And excluding an
5 identical twin, Shameese Nicole Logan is the source of
6 this DNA with a reasonable degree of scientific
7 certainty.

8 Q And, once again, what was -- how did you characterize
9 the reasonable degree of scientific certainty?

10 A You wouldn't expect to see the given profile again
11 within the earth's population.

12 Q Did you perform DNA analysis on a sample that came
13 from a shirt?

14 A Yes, I did.

15 Q I'll give you a moment to find it. I think I'm
16 throwing you a curve on that one.

17 A Yes.

18 Q Would you tell the jury what the findings were with
19 regard to that as against the two known samples that you
20 had?

21 A Yes. DNA results obtained from the item contained
22 the DNA of three individuals. The major contributor
23 matches the DNA of Shameese Nicole Logan. And excluding an
24 identical twin, Shameese Nicole Logan is the source of this
25 DNA to a reasonable degree of scientific certainty.

1 And due to the complexity of the mixture, no
2 conclusion or determination could be made from the
3 remaining alleles that were present.

4 Q And just to be clear, a reasonable degree of medical
5 certainty means nobody else on earth would fit this
6 profile, except Shameese Logan?

7 A You wouldn't expect to see that given profile again
8 within the earth's population.

9 Q Unless there was a twin?

10 A Correct.

11 Q What was the -- do you have what -- the type of item
12 that was tested, whether it was blood, saliva, or
13 whatever?

14 A The one I just gave the results to?

15 Q Yes, ma'am. The shirt.

16 A Yes. It was a sample of a swab of suspected blood
17 from the shirt from the suspect.

18 Q And the primary DNA found was that of Shameese Logan?

19 A Yes.

20 MR. WESTON: Thank you, sir -- thank you, ma'am.

21 Answer any questions counsel may have.

22 MR. KORNFELD: I don't have any questions, Your
23 Honor.

24 THE COURT: Okay. Mr. Sullivan, cross-examination?

25 MR. SULLIVAN: Just a few.

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q Ms. Appel, you collected the DNA, like on the phone, and that was Ms. Logan's blood. It was Ms. Logan's DNA?

A On the phone, the major contributor was a match to Bobby Smith.

Q Did you find any DNA from Ms. Logan on the phone?

A No, I did not.

Q Just Bobby Smith?

A Correct.

Q And on the pants, you found DNA from Ms. Logan?

A Yes, I did.

Q And Bobby Smith?

A Yes.

Q Blood -- how would -- could the blood on those pants have been transferred from Bobby Smith if he had blood on his hands to those pants?

A It's a possibility.

Q If I'm touching this desk, I just left DNA on this desk, didn't I?

A Probably.

Q If I touch this cup, DNA is -- whatever you touch, it's there for a while; right?

A It depends on how much is there, yes.

Q So on the pants, the sweatpants, that could come from

1 her blood being transferred from him?

2 A It's a possibility. I don't know how the blood was
3 placed there.

4 Q But that is a possibility?

5 A It's possible.

6 Q It could have been either way?

7 A That's correct.

8 Q And then on the money, that was Ms. Logan again;
9 right?

10 A Correct.

11 Q Any trace of Mr. Smith?

12 A No. There -- I couldn't determine -- based on the
13 other alleles that were present and mixture, I couldn't
14 make a determination.

15 Q So could -- again, if the blood had been on Bobby
16 Smith's hands, could it have been transferred to the
17 phone -- to the money?

18 A Yes.

19 Q So it showed up as Ms. Logan on all the items, but it
20 could have been transferred from Bobby Smith?

21 A It's a possibility, yes.

22 MR. SULLIVAN: No further questions.

23 THE COURT: Any redirect, sir?

24 MR. WESTON: No, sir, Your Honor.

25 We'd ask that the witness be allowed to be excused

1 from her subpoena.

2 THE COURT: Yes, sir.

3 I appreciate you being here. You're excused.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: Ms. Petty, you're excused. You can
6 leave, if you'd like to.

7 Thank you for being with us here today, ma'am.

8 Okay. You may call your next witness.

9 MR. MORONEY: Your Honor, the State calls Javockus
10 Latimer.

11 THE CLERK: Sir, if you'll, please, come forward.

12 If you'll, please, pause at the end of the bench.

13 Place your left hand on the Bible and raise your
14 right hand.

15 WHEREUPON,

16 JAVOCKUS LATIMER,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Please be seated.

19 Would you, please, state your name for the record?

20 THE WITNESS: Javockus Latimer.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MORONEY:

24 Q Good afternoon, Mr. Latimer.

25 Do you -- or did you know Ms. Shamese Nicole Logan?

1 A I did.

2 Q Could you explain your relationship?

3 A She was a long-term friend, since -- like, I met her
4 in fifth or sixth grade.

5 Q Okay. So close friends. And were you friends with
6 her up until February 3rd, 2015?

7 A Yes, sir.

8 Q Okay. And did you allow her at any time to use a
9 cell phone?

10 A Yes, sir.

11 Q Okay. Could you explain that, how that came about?

12 A She -- I think something had happened to her phone.

13 I don't know whether it got broken, or stolen, or
14 something. And she was very upset about it. And I know I
15 had a family plan that had, actually, just got approved
16 of. So I told her, You can just jump on my plan.

17 Q What kind of company was the cell phone with?

18 A It was with Sprint.

19 Q Okay. And how did you get that phone, get the
20 number, and all of that? What process did you go through?

21 A It was -- like I said, it was a family plan. I'm not
22 sure --

23 Q Did you go to a store or some kind of place and go
24 ahead and register the account?

25 A Like I said, it was with Sprint. It was my first

1 time doing that with Sprint. They told me I was,
2 actually, available -- I, actually, would be -- I,
3 actually, could add a line. And it would kind of, you
4 know, where it would balance out my payment, you know, and
5 all that good stuff. So I thought it would be something
6 good.

7 Q And the Sprint store, they gave you a phone as a
8 result?

9 A Uh-huh.

10 Q Did they assign you an account number --

11 A Uh-huh.

12 Q -- as a result of that? Was your name on the
13 account?

14 A Yes, sir.

15 Q Was Ms. Logan's name on the account?

16 A No, sir.

17 Q When did you give Ms. Logan that phone to use?

18 A I want to say probably it had to be maybe in the
19 first couple weeks of January.

20 Q Okay. And when you gave it to her, was that a
21 temporary thing, or was that going to be her phone?

22 A Until she was, actually, able to get her own phone
23 online, and all that good stuff.

24 Q But did she have that phone up until February 3rd,
25 2015?

1 A She did.

2 Q Do you recall the phone number associated with that
3 phone?

4 A Yes, sir.

5 Q What was the number on that phone?

6 A (864) [REDACTED].

7 Q And very briefly, Mr. Latimer. When you said in
8 January that you gave her the phone --

9 A Yes, sir.

10 Q -- were you talking about January of 2015 that you
11 gave her the phone?

12 A No. It had to be 2014.

13 Q So it had been a year previous?

14 A It was the month before she passed away.

15 Q So did Ms. Logan pass away on February 3rd, 2015?

16 A I thought it was 2014.

17 Q Okay. But she only had the phone for a month?

18 A Uh-huh.

19 MR. MORONEY: Thank you.

20 Please answer any questions the Defense may have for
21 you.

22 THE WITNESS: Okay.

23 MR. KORNFELD: No questions, Mr. Latimer.

24 MR. SULLIVAN: Can y'all help me find that phone?

25 MR. WESTON: It's on this side over here.

CROSS-EXAMINATION

1
2 BY MR. SULLIVAN:

3 Q Mr. Latimer?

4 A Uh-huh.

5 MR. SULLIVAN: May I approach the witness?

6 THE COURT: Sure. Yes, sir.

7 BY MR. SULLIVAN:

8 Q Is this the phone that you got -- you can pick it up,
9 or a similar phone that looked like that?

10 A Yeah. It definitely was an iPhone. I definitely
11 know that. I definitely didn't get a good look at it
12 because it wasn't my phone. But I definitely know it was
13 an iPhone.

14 Q Would this be similar to what she got?

15 A Yes, sir. It would be similar.

16 Q Now, on the back, there are some slots; correct?

17 A Uh-huh.

18 Q You see back here? Do you know -- do people keep,
19 like, ID, or money, or something in those slots?

20 A Uh-huh.

21 Q So, sometimes, these slots are used to store items?

22 A Uh-huh.

23 MR. SULLIVAN: Okay. Make sure I get this in the
24 right bag, Brian.

25 That's all I have, Your Honor.

1 THE COURT: Okay. Any redirect, sir?

2 MR. MORONEY: Your Honor, at this time, the State
3 would move that State's Exhibit No. 70 be moved into
4 evidence.

5 THE COURT: Any objection?

6 MR. KORNFELD: No objection.

7 MR. SULLIVAN: No objection.

8 THE COURT: All right. Without objection, the same
9 is moved into evidence.

10 (WHEREUPON, State's Exhibit No. 70 was admitted into
11 evidence.)

12 MR. MORONEY: No additional questions.

13 THE COURT: Okay. Mr. Latimer, I appreciate you
14 being here. You may be excused.

15 Okay. You may call your next witness.

16 MR. MORONEY: The State calls Ryan Harger.

17 THE CLERK: Sir, if you'll, please, come forward.

18 If you would, please, pause at the end of the bench.

19 Place your left hand on the Bible and raise your
20 right hand.

21 WHEREUPON,

22 RYAN HARGER,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 Please be seated.

1 Would you, please, state your name for the record?

2 THE WITNESS: My name is Ryan, R-Y-A-N, Harger,
3 H-A-R-G-E-R.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. MORONEY:

7 Q Good afternoon, Mr. Harger.

8 A Good afternoon.

9 Q Where do you currently work?

10 A I'm employed by Sprint.

11 Q Okay. And what is your job title there?

12 A I'm a supervisor in the legal compliance department.

13 Q And can you explain what that entails, what that
14 means?

15 A Certainly. I have two functions. One, I supervise a
16 group of analysts who receive and respond to legal demands
17 from law enforcement and attorneys for customer records.
18 And I, also, come to court and act as a custodian of
19 records and talk about our records.

20 Q And as a custodian of records, what exactly are you
21 keeping there, specifically? What kind of information?

22 A Well, we keep customer information, customer
23 billing-type information. We, also, keep call records
24 so -- about phone calls made on our network.

25 Q And with respect to call logs, what kind of

1 information does that detail?

2 A The to and from numbers, the date and time at which
3 the calls were made or received, and, also, the cell tower
4 that was used when those calls were made.

5 Q Okay. And how are those call logs kept if they're --
6 you generate a report, or something like that?

7 A Yeah. They're stored in one of our billing systems
8 that's used to, actually, generate our monthly bill. And
9 we pull it from that database to generate the call
10 records.

11 Q Okay. And these call logs are kept in the ordinary
12 course of business?

13 A Yes, they are.

14 Q During your performance of duties there? Is this a
15 secure system? Can you speak to that with respect to the
16 accuracy?

17 A The accuracy. I believe they're accurate. Sprint is
18 a company that, obviously, wants to make money. And we
19 make money by billing customers for the amount of network
20 data that they use, and calls that they use. So they're
21 accurate so that we can bill properly.

22 Q Mr. Harger, did you have the opportunity to review
23 and pull some phone records with reference to case number
24 1518787?

25 A Yes, we did.

1 (WHEREUPON, State's Exhibit Nos. 131 and 132 were
2 marked for identification only.)

3 BY MR. MORONEY:

4 Q Mr. Harger, I'm handing you what's been premarked
5 here as State's Exhibit No. 131 for identification
6 purposes. You can take your time to review that. And if
7 you can recognize what it is?

8 A Okay. I do.

9 Q What is that that you're looking at?

10 A This is subscriber information and call detail
11 records for telephone number (864) [REDACTED].

12 Q And these are the records with respect to the case
13 number I just recited to you?

14 A Yes, they are.

15 Q Okay. And these call logs are a fair and accurate
16 representation of the logs that you saw previously?

17 A Yes, they are.

18 MR. MORONEY: Your Honor, the State would move that
19 State's Exhibit No. 131 be admitted into evidence.

20 MR. SULLIVAN: No objection from Bobby Smith.

21 MR. KORNFELD: No objection.

22 THE COURT: Any objection, Mr. Sullivan?

23 MR. SULLIVAN: No objection.

24 THE COURT: All right. Without objection, the same
25 is admitted.

1 (WHEREUPON, State's Exhibit No. 131 was admitted into
2 evidence.)

3 BY MR. MORONEY:

4 Q And Mr. Harger, similarly, I'm handing you State's
5 Exhibit No. 132 for identification purposes. Take your
6 time looking at that. Are you able to identify that?

7 A Yes, I am.

8 Q What is that you're looking at?

9 A This is subscriber information and call detail
10 records for telephone number (864) [REDACTED].

11 Q And are those the records with the same case number I
12 relayed to you recently here?

13 A Yes.

14 Q And they're a fair and accurate representation of
15 what you had reviewed when they were first pulled?

16 A Yes, they are.

17 MR. MORONEY: Thank you.

18 At this time, the State would move State's Exhibit
19 No. 132 into evidence, Your Honor.

20 MR. KORNFIELD: No objection.

21 MR. SULLIVAN: No objection.

22 THE COURT: All right. Without objection, the same
23 is admitted.

24 (WHEREUPON, State's Exhibit No. 132 was admitted into
25 evidence.)

1 BY MR. MORONEY:

2 Q I'd ask you to review State's Exhibit No. 131 first.
3 If you could, explain in detail what you're seeing there?

4 A Certainly. It says the account information, the
5 mailing, billing information for this telephone number
6 (864) [REDACTED].

7 Q And what does that account information say?

8 A The billing name on this is Javockus Latimer with an
9 address # [REDACTED] out of Greenville, South
10 Carolina.

11 Q Okay. And you touched on previously what call logs
12 describe. But could you go through, specifically, what
13 you're seeing there on the call logs?

14 A Again, yes. It's got calling info about the number
15 that made the call, the number that received the call,
16 whether it's an inbound or outbound call, the date and
17 time that the call started, the date and time that the
18 call ended, and, also, what switch carried the call, and
19 what cell tower was used when the call was made or
20 received.

21 MR. MORONEY: Your Honor, permission to publish
22 State's Exhibit No. 131 to the jury.

23 THE COURT: And that's the one that's already been
24 admitted; is that correct?

25 MR. MORONEY: Yes, Your Honor.

1 THE COURT: Okay. You may.

2 BY MR. MORONEY:

3 Q I'm going to place this up on the screen behind you,
4 Mr. Harger. Now that the jury can see it, I know you've
5 explained it a couple of times here. If you could just
6 give us a brief overview of what we're looking at?

7 A Certainly. The first column is marked calling
8 number. And that's the number that started the telephone
9 call. The second -- next column over is the called
10 number. And that's the number being called. The third
11 column is marked dialed digits. And that's, typically,
12 what number is pushed into the handset. The fourth column
13 is marked M underscore R underscore and the pound key or
14 the hash tag symbol. That stands for mobile role,
15 R-O-L-E. And that will tell you if it's an inbound or an
16 outbound telephone call.

17 The next two columns are start date and end date.
18 Excuse me. And that gives you the date and time. And the
19 time is listed in 24-hour or military time that the call
20 began and the call ended. The next column is duration.
21 That's the length of the call listed in seconds.

22 The next two columns NEID and repoll number are a
23 numeric value that tells us what switch carried the
24 telephone call. And the last two columns are first cell,
25 C-E-L-L, and last cell. And that tells us the cell tower

1 that was used to make -- when the call was made or
2 received.

3 Q And I draw your attention, specifically, to the day
4 of February 3rd, 2015, at 18:30 hours. Can you tell us
5 what this call log reflects?

6 A 18:30. And could you give me the seconds?

7 Q 18:30 and 38 seconds.

8 A 38 seconds, yes. That's an inbound call from
9 telephone number (864) [REDACTED] called telephone number
10 (864) [REDACTED]. It lasted approximately 28 seconds.

11 Q I next draw your attention to February 3rd, 2015, at
12 21:34 and 29 seconds. Could you describe what the call
13 log details there?

14 A What was the time again?

15 Q 21:34 and 29 seconds.

16 A Okay. You might have to raise it up.

17 21:24, you said?

18 Q 21:34:29 -- excuse me, excuse me, that is my error.
19 21:33:42. I apologize, Mr. Harger. And here is a laser.

20 A Could you give me the time one more time? I'm sorry.

21 Q Excuse me. 21:33:46. I apologize for the confusion.

22 A So the last column. This is, again, an inbound call.
23 So telephone number (864) [REDACTED] called (864) [REDACTED].
24 And it lasted for 40 seconds -- 44 seconds.

25 MR. MORONEY: I beg the Court's indulgence one

1 moment.

2 THE COURT: Yes, sir.

3 (Pause.)

4 BY MR. MORONEY:

5 Q I'm going to show you, also, what's been entered into
6 evidence here as State's Exhibit No. 132. I draw your
7 attention to the date of February 3rd, 2015, at 18:30
8 hours and 23 seconds.

9 A Okay. So the very first --

10 Q 18:30 and 38 seconds.

11 A Okay. So the second call. That's -- again, that's
12 an outbound call. So telephone number (864) [REDACTED]
13 called telephone number (864) [REDACTED]. And it lasted for
14 30 seconds.

15 Q I next draw your attention to February 3rd, 2015, at
16 21:33 and 42 seconds?

17 A This is, again, another outbound call, telephone
18 number (864) [REDACTED] called (864) [REDACTED]. And it lasted
19 for 47 seconds.

20 Q And, finally, on February 3rd, 2015, at 21:36 hours
21 and 11 seconds?

22 A An inbound call. So telephone number (864) [REDACTED]
23 called telephone number (864) [REDACTED]. And it lasted for
24 72 seconds.

25 Q And I apologize for the confusion, Mr. Harger.

1 That's all on me. I'm going to hand you back what's been
2 marked as State's Exhibit No. 131 and is in evidence
3 currently. And if you could take a look at that and,
4 again, address.-- excuse me. I'm all mixed up here.

5 State's Exhibit No. 132. The last phone call made on
6 this call log here. Take your time.

7 A Regarding telephone number (864) [REDACTED], the last
8 outbound telephone call was made on February 5th, 2015, at
9 7:14 a.m.

10 Q Okay. And what does that call log -- what's the very
11 last call that that call log goes until, the date?

12 A The last record I have is February 13th, 2015, at
13 17:21 hours or 5:21 p.m.

14 Q And based on your review of these two cell phone
15 records, do those call logs match each other at the times
16 those calls are made between the two phones?

17 A Yes.

18 Q Is that a reflection of the accuracy of the records
19 and the billing that you talked about?

20 A Yes.

21 MR. MORONEY: Thank you.

22 Please answer any questions the Defense may have for
23 you.

24 MR. KORNFELD: No questions, Your Honor.

25 MR. SULLIVAN: No questions, Your Honor.

1 THE COURT: All right, sir. Thank you, sir.

2 I appreciate you being here. You may be excused.

3 MR. MORONEY: The State calls Dan Kelly.

4 THE CLERK: Sir, if you'll, please, place your left
5 hand on the Bible and raise your right hand.

6 WHEREUPON,

7 DANIEL PAUL KELLY,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please be seated.

11 Please state your name for the record.

12 THE WITNESS: Daniel Paul Kelly.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. MORONEY:

16 Q Mr. Kelly, could you state your current place of
17 employment?

18 A I work for the Greenville County Sheriff's Office.

19 Q And what is your role there?

20 A I'm a sergeant over the technical services unit.

21 Q Okay. And what does the technical services unit do?

22 A It's probably shorter what we don't do. But we,
23 actually, take care of the -- everything from video
24 analysis to cell site analysis to the web, our website.
25 We manage that. We manage all the programs that are used

1 that are secure for our deputies to use during the course
2 of their investigations. So we, actually, wear quite a
3 few hats.

4 Q And, particularly, what kind of training have you
5 received with respect to the work that you do?

6 A Well, it's on-the-job training every day. But we,
7 also, do online training, and have companies that come
8 using the software that we use travel to Greenville, or we
9 travel to where they are to obtain training from them.

10 Q And, specifically, do you have experience in the cell
11 phone tracking area?

12 A I do.

13 Q Could you speak to that and exactly what cell phone
14 tracking is?

15 A Okay. We use a program called GeoTime. GeoTime has
16 two components to it. The first is the CRT, which is the
17 call records tool. The call records tool will take the
18 data that we receive from the investigators via search
19 warrant from the cell phone companies. And it converts it
20 into a usable format so that we can put it into the other
21 portion of the program, which is GeoTime. GeoTime will,
22 actually, take that data and put it on a map in a
23 geographically pleasing form so that we can, actually,
24 digest the information.

25 So it's kind of like a big coin sorter. Have you

1 ever taken a bunch of coins and thrown them in the top and
2 it sorts them out nice and neat? It does this with a huge
3 amount of data. So it saves us a lot of time and energy.

4 Q How long have you been working in that field?

5 A Since 2012.

6 Q Okay. And are you a member of any professional
7 associations, or perform any additional training with
8 respect to that cell phone tracking?

9 A Just with GeoTime itself.

10 Q Okay. And have you been qualified previously as an
11 expert with respect to cell phone tracking?

12 A In the use of GeoTime software, twice in the Eighth
13 Circuit and once here in the Thirteenth.

14 MR. MORONEY: At this time, Your Honor, the State
15 would move for Sergeant Dan Kelly to be admitted as an
16 expert in the field of cell phone tracking.

17 THE COURT: Any exceptions or voir dire?

18 MR. SULLIVAN: None from Bobby Smith.

19 MR. KORNFELD: Cell phone tracking using GeoTime; is
20 that correct? Is that what you're saying, Officer Kelly?

21 THE WITNESS: Correct.

22 MR. KORNFELD: No objection, Your Honor.

23 THE COURT: All right. Then he's so qualified.
24 You may proceed, sir.

25 MR. MORONEY: Thank you, Your Honor.

1 BY MR. MORONEY:

2 Q Sergeant Kelly, did you have the opportunity in the
3 performance of your duties to become involved in a murder
4 investigation that took place on February 3rd, 2015?

5 A Yes, sir.

6 Q Could you tell us how you became involved in that
7 investigation?

8 A Investigator Newman brought me the records that were
9 obtained from Sprint through a search warrant.

10 Q Okay. And what records, in particular, were brought
11 to your attention?

12 A Well, they were the cell phone records from
13 Mr. Smith.

14 Q Okay. Do you recall the phone number that that was
15 associated with?

16 A I don't know it exactly. I believe it's -- I
17 couldn't even tell you without looking to be sure.

18 Q All right.

19 A We do quite a few of these phones.

20 Q Sure. And as a result of receiving that phone
21 number, what did you do at that point? What was your next
22 step?

23 A I brought it into the call records tool. And then I
24 transferred that data into GeoTime so that we could look
25 at the dates and time in question that the investigators

1 needed.

2 MR. SULLIVAN: Your Honor, could he specify Jahru or
3 Bobby Smith. He said, Mr. Smith.

4 THE COURT: Okay. If you'd ask him to clarify which
5 one he's talking about. Okay.

6 BY MR. MORONEY:

7 Q Can you clarify with respect to whose records,
8 Mr. Smith's? Are you able to do that?

9 A Yeah. That was Jahru Smith.

10 Q All right. And when you talked about these call
11 logs -- so you're plugging the call logs into the system
12 and then it's --

13 A It will, actually, put the information onto a map so
14 that we can see where each call was made, which tower it
15 connected to when that call was made.

16 Q And were there -- was there an animation that was
17 created as a result of you pulling this information?

18 A Yes. I created an animation so that you could show
19 the Court.

20 Q Okay. Did you, also, have stills that you pulled
21 from that animation which captured still images of the
22 animated cell phone tracking?

23 A I did.

24 (WHEREUPON, State's Exhibit Nos. 133 and 134 were
25 marked for identification only.)

1 BY MR. MORONEY:

2 Q Sergeant Kelly, I'm handing you what's been premarked
3 as State's Exhibit No. 134. I would ask you to take a
4 look at that, and let me know if you recognize it.

5 A I do recognize it.

6 Q Can you, please, tell the jury what that is?

7 A This is a map that GeoTime, when the data was plugged
8 into, created showing the incident location of [REDACTED]
9 Avenue, and the cell phone calls of Logan and Jahru Smith.

10 Q All right.

11 A It, also, shows the track that was made.

12 Q All right. And is that a fair and accurate depiction
13 of what you took a still image of from that video?

14 A Yes, it is.

15 MR. MORONEY: Your Honor, at this time, the State
16 would move State's Exhibit No. 134 into evidence.

17 THE COURT: Objections?

18 MR. KORNFELD: No objection.

19 MR. SULLIVAN: No objection.

20 THE COURT: All right. Without objection, the same
21 is moved into evidence.

22 (WHEREUPON, State's Exhibit No. 134 was admitted into
23 evidence.)

24 BY MR. MORONEY:

25 Q I'll, also, hand you what's been premarked as State's

1 Exhibit No. 133 for identification purposes. Do you
2 recognize what that is?

3 A I do.

4 Q And what is that?

5 A It is, basically, the same thing showing a -- a
6 different -- a couple different phone calls.

7 Q And is that a fair and accurate representation of the
8 animation that you pulled as a result of this
9 investigation?

10 A It is.

11 MR. MORONEY: At this time, the State would move for
12 State's Exhibit No. 133 to be entered into evidence.

13 MR. SULLIVAN: No objection.

14 MR. KORNFELD: No objection.

15 THE COURT: All right. Without objection, the same
16 is admitted.

17 (WHEREUPON, State's Exhibit No. 133 was admitted into
18 evidence.)

19 BY MR. MORONEY:

20 Q And Sergeant Kelly, I'm now handing you State's
21 Exhibit No. 69 for identification purposes. Do you
22 recognize what that is?

23 A Yes. This is a CDR that I made of the video track.

24 Q And how do you know that to be that CDR?

25 A That's my handwriting.

1 Q Okay. So you've had time to review this previously?

2 A Yes.

3 Q And this disk, does it depict the animation you
4 talked about that you pulled from the investigation
5 plugging in the call logs?

6 A It does. It creates a moving animation space in time
7 showing the track on the map between phone calls.

8 Q And this disk depicts a fair and accurate
9 representation of exactly what was created?

10 A That's correct.

11 MR. MORONEY: Your Honor, at this time, the State
12 would move State's Exhibit No. 69 into evidence.

13 MR. KORNFIELD: No objection, Your Honor.

14 MR. SULLIVAN: None, Your Honor.

15 THE COURT: Okay. Without objection, the same is
16 admitted.

17 (WHEREUPON, State's Exhibit No. 69 was admitted into
18 evidence.)

19 MR. MORONEY: Permission to publish to the jury.

20 THE COURT: Yes, sir. You may.

21 BY MR. MORONEY:

22 Q Sergeant Kelly, I'm going to play this video. Feel
23 free, if you would, to walk us through what we're looking
24 at.

25 A You see Logan, the victim's phone, it's moving -- and

1 every time it has a dot and the sectors show up behind it,
2 that is a phone call that is being made and it's connected
3 to a tower. So you'll see them move. And whenever that
4 phone call, if it hits this one, then it is connected to
5 that tower.

6 So it is on this side of the tower as it makes that
7 call. And then the next time it hits, you'll see another
8 circle. That's when it's moving to the next tower.
9 That's when it's connecting between towers. So that's how
10 it creates a tract. It's a straight line. It doesn't
11 move along the road. It moves between those towers.

12 Q And is there a time and date stamp, or any kind of
13 call information?

14 A As it pulled out there, you can see that there's a
15 time and date stamp. It shows the latitude and longitude
16 that the call is made, and the start and date time, the
17 local time. Because all phone records are in Greenwich
18 Mean Time, or GMT. So it converts to local time. And
19 then it has the target number listed, the direction of the
20 call, whether it was outgoing or incoming, and then the
21 other party it connected to.

22 And then you see now that those two have connected
23 together as they came together on the map. Those two cell
24 phones are in close proximity.

25 Q And just for clarification purposes, what two cell

1 phone numbers are we talking about?

2 A That would be the (864) [REDACTED] and the
3 (864) [REDACTED]. That call was made at 10:30:12 p.m. And
4 then it moves down Interstate 85. And that is moving to
5 Anderson County. And that call was at 11:55 p.m.

6 Q So, in summary, as I let this play, what did this
7 animation show to you between these two phone numbers?

8 A It shows that the two phones were apart, then,
9 actually, came together. And then one stayed still. And
10 the other moved and left and made a tract down,
11 Mr. Smith -- Mr. Jahru Smith's phone came down to
12 Anderson. And the X signifies [REDACTED] Avenue. I
13 forgot to mention that.

14 MR. MORONEY: Your Honor, permission to publish the
15 two items already in evidence, State's Exhibit Nos. 133
16 and 134.

17 THE COURT: Yes, sir. You may.

18 BY MR. MORONEY:

19 Q Sergeant Kelly, I'm going to show you these two still
20 images created, and ask you just to explain what it is
21 we're looking at.

22 A These are three calls that were made from [REDACTED] to
23 another caller at 11:55 p.m., one at 9:54, and the other
24 at 10:54.

25 MR. MORONEY: Thank you.

1 I beg the Court's indulgence one moment.

2 (Pause.)

3 MR. MORONEY: Thank you.

4 Please answer any questions the Defense attorneys may
5 have for you.

6 CROSS-EXAMINATION

7 BY MR. KORNFELD:

8 Q Officer Kelly, you say you're not a part of any
9 scientific associations concerning the use of GeoTime. Is
10 that a fair statement?

11 A Yes, sir.

12 Q All right. And when you look at the cell phone data
13 yourself and what you put in, you can't tell who these
14 phones are registered to when you put the numbers in using
15 this software; is that correct?

16 A Only based on the information I get from the
17 investigator and the set of phone records that were
18 obtained through the search warrant.

19 Q Do you -- does this software give you the -- it
20 doesn't give you the opportunity to look to see text
21 messages, or anything like that; is that fair?

22 A That's correct.

23 Q All right. Isn't it true that the locations using
24 this GeoTime can be off up to several thousand feet from
25 the actual location?

1 A Based on the cell tower itself, yes. That's correct.

2 Q All right. And isn't it true that the cell phone
3 tracking is based on the assumption that the location of
4 the user of a cell phone can be determined merely by the
5 location of the cell phone -- or by the cell tower with
6 which the cell phone connects when it's in use?

7 A Could you rephrase that?

8 Q I'll try.

9 A I want to make sure I answer correctly.

10 Q Sure. I understand. So -- okay. I'll break it
11 down. The cell phone tracking is based on the assumption
12 that the location of the user of the cell phone can be
13 determined by the location of the cell tower; is that
14 correct?

15 A The hand set connects to the tower.

16 Q Right.

17 A On a certain side. And that information is provided
18 by the phone company. And that's where it shows on the
19 map.

20 Q Correct. All right. And isn't it fair to say that
21 cell phones don't always connect with the closest cell
22 tower at the time a call is placed?

23 A It will try to connect to the closest tower, unless
24 there's unusually heavy traffic. Then it could move to a
25 different tower.

1 Q Or if there's an obstruction, such as a large
2 building or tree; isn't that true as well? That it could
3 use another tower because of that?

4 A That's true.

5 Q Okay. Isn't it true that the data regarding the
6 actual coverage area of any tower at the time of the
7 incident is not provided by the cell phone carrier?

8 A Only if it is provided when they have it. In this
9 case, I don't believe it was provided. So they did not
10 have it for that cell tower.

11 Q Okay. And --

12 A Are you talking about the actual distance that the
13 tower will reach?

14 Q That's correct.

15 A Yeah. That's not provided on that. That's called a
16 radius.

17 Q Okay. So isn't it true that it's not -- it's not
18 possible to reliably determine the coverage area of a cell
19 phone -- or cell tower antenna as it relates to a
20 particular cell phone at the time of a call simply by
21 comparing the distance between cell towers?

22 A I'm not sure I understand completely what you're
23 looking for on that. When a handset connects to a tower,
24 it's going to look for the strongest signal.

25 Q Right.

1 A And it's constantly searching for that so that it's
2 ready to go whenever you make a phone call. So once it
3 hits that strongest signal, it's going to connect to that
4 tower when you're ready.

5 Q So another way to say that would be that it attempts
6 to connect with the tower omitting the strongest and
7 highest quality signal. Is that fair, Officer Kelly?

8 A That's true.

9 Q Okay. Isn't it true that the actual tower that's
10 used is complex and hinges on a multitude of factors that
11 are not memorialized in call detail records?

12 A They're in the call detail records almost all the
13 time. Sometimes, they don't provide the radius, the
14 distance that the tower will go. And, usually, you have
15 to have an engineer to speak to that. But the majority of
16 the data that the cell phone company collects is because
17 of billing. So it's quite accurate.

18 Q Okay. Well, Officer Kelly, do you know the health of
19 the towers in the area at the moment in time and what
20 their functionality is, if they're older, if they're
21 newer, anything like that?

22 A No, sir.

23 Q Do you know the line of sight of the tower from the
24 cellar phone itself from the data?

25 A No, sir.

1 Q Do you know the radio signal inference from other
2 cell phone towers in the area?

3 A No, sir.

4 Q And you can't tell the specific make and model of a
5 particular cell phone being used from the data either, can
6 you?

7 A Yes. It has the IEDI, the identifier -- the
8 electronic identifier and the phone type in the record.

9 Q Okay. And I don't know if you're -- well, let me ask
10 you this. The animation that you created --

11 A Yes, sir.

12 Q -- does that use -- in the animation where you're
13 trying to show where these cell phones -- the approximate
14 location of them, did you put pie shapes in there?

15 A No. Those are generated by GeoTime, based on the
16 call detail record.

17 Q Okay. But are they in the animation, I guess I'm
18 asking?

19 A They were in the animation, yes, sir.

20 Q And those are not -- those are just, I guess, an
21 example. Because the actual radius or diameter of these
22 cell towers is, actually, different. They're not, you
23 know, a perfect pie; is that correct?

24 A Correct.

25 Q Okay. When did you, actually, do this analysis?

1 A They brought -- I can't remember the exact date when
2 they brought me the records. But I revisited it once we
3 were preparing for court.

4 Q Right. Okay. That's fine. So is it fair to say it
5 was done within the last three months, Officer Kelly?

6 A Actually, some of it was done quite a bit before.
7 But we went back and looked at it again for the animation.
8 I created the animation recently.

9 Q Do you know, when you say the stuff was done before,
10 when that was done?

11 A I couldn't tell you for certain. It was when the
12 investigator brought me the records. We copy the records
13 and put it in there and get to it as time allows.

14 Q All right. Is -- the Geo test that you do, is that
15 the same, or is it synonymous with what's called a drive
16 test?

17 A No.. GeoTime?

18 Q Yes.

19 A It is strictly software generated.

20 Q Okay. Do you know if the original data that you
21 collected was collected around the same time of year, such
22 as in a February of a year, or was it when the leaves were
23 out or --

24 A I couldn't, honestly, say.

25 Q Okay. And that can have some effect as to what

1 towers are used, too, if there's blockage, such as a big
2 tree, or something like that? It could possibly use
3 another tower?

4 A That's true.

5 Q Is that correct? So that's a factor to consider when
6 looking at what you do and the -- when you're doing these
7 Geo -- I forget the name of it.

8 A GeoTime.

9 Q GeoTime; is that correct?

10 A That could be. It could have a bearing on it.

11 MR. KORNFELD: Okay. Thank you, Officer Kelly.

12 No further questions.

13 THE COURT: Mr. Sullivan?

14 MR. SULLIVAN: Nothing, Your Honor.

15 THE COURT: Anything in redirect?

16 MR. MORONEY: Very briefly, Your Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. MORONEY:

20 Q Just to clarify. You took the call logs from
21 (864) [REDACTED]. And did those call logs show that they
22 linked up with (864) [REDACTED] in the area of [REDACTED]
23 Avenue?

24 A Yes, sir.

25 Q And that was just after plugging the call log into

1 the program?

2 A Yes, sir.

3 Q And then did it show that -- (864) [REDACTED], that
4 number and phone went to Anderson County?

5 A That's true.

6 MR. MORONEY: Thank you.

7 MR. KORNFIELD: No redirect, Your Honor.

8 THE COURT: Okay. Thank you, sir.

9 I appreciate it. You can step down.

10 The State may call its next witness.

11 MR. WESTON: Your Honor, that's all the witnesses we
12 have. We have one housekeeping matter. As you may
13 recall, Your Honor, there was a stipulation concerning the
14 chain of custody on a number of items that went in and
15 went -- some to DNA and some to other forensic areas.

16 And we just need to put those into the -- into
17 evidence. We need to enter them into evidence. They've
18 come through property and evidence. But they were not
19 entered into evidence because we weren't sure if we needed
20 one more person after that, or having then taken out, or
21 what have you. But, at this point, we'd like to put them
22 into evidence for the record.

23 THE COURT: Okay. The State can identify by the
24 exhibit number?

25 MR. WESTON: Yes, sir.

1 THE COURT: And the Defense can lodge any appropriate
2 objection as you call them out.

3 MR. WESTON: All right, sir. It's going to be quite
4 a number of them.

5 THE COURT: Okay.

6 MR. WESTON: But we will gather them up as quickly as
7 we can, Your Honor.

8 MR. SULLIVAN: Judge, will they identify the item by
9 the number?

10 THE COURT: Uh-huh.

11 Okay. Yes, sir.

12 MR. WESTON: All right. Your Honor, State's Exhibit
13 No. 83, which is clothing --

14 THE COURT: How about this -- I don't know. Do you
15 need the jury present as you do this?

16 MR. WESTON: No, sir, Your Honor. This might be a
17 good time to take a break, if that's okay.

18 THE COURT: There's a couple of things I've got to
19 do. We'll go through this process outside of your
20 presence.

21 And then, also, the State will rest, if I'm not
22 mistaken.

23 Am I correct, Mr. Weston?

24 MR. WESTON: Yes, sir, Your Honor.

25 THE COURT: So there are some motions that I'll need

1 to take up. So y'all go ahead and take a break. And then
2 we'll come in after we've done all of this housekeeping
3 business and I've listened to the motions.

4 So, please, don't discuss the case.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 3:09 p.m.)

8 THE COURT: Okay. You can go ahead.

9 MR. WESTON: Thank you, Your Honor.

10 I think I mentioned State's Exhibit No. 83, State's
11 Exhibit 84 --

12 MR. SULLIVAN: Will you say what's in them, Jeff?

13 MR. WESTON: I'm sorry?

14 MR. SULLIVAN: What's in both of them?

15 MR. WESTON: Yeah, sure. Clothing in both of those.

16 State's Exhibit Nos. 83 and 84 are clothing; State's
17 Exhibit No. 73, clothing; State's Exhibit No. 85, which
18 is, also, clothing; and State's Exhibit No. 94, which is,
19 also, clothing; and State's Exhibit No. 102, a DNA swab;
20 State's Exhibit No. 99, a DNA swab; State's Exhibit No.
21 104, DNA swab; State's Exhibit No. 115, DNA swab; State's
22 Exhibit No. 100, DNA swab; State's Exhibit No. 98; State's
23 Exhibit --

24 Excuse me, Your Honor, one second.

25 (Pause.)

1 MR. WESTON: State's Exhibit No. 103, dried blood;
2 State's Exhibit No. 118, dried blood; State's Exhibit No.
3 80, DNA swab; State's Exhibit No. 101, DNA swab; State's
4 Exhibit 113, DNA swab; State's Exhibit No. 89, a buccal
5 swab; State's Exhibit No. 87, DNA swab; State's Exhibit
6 No. 117, dried blood; State's Exhibit No. 91, DNA swab
7 specimen; State's Exhibit No. 116, dried blood; State's
8 Exhibit No. 114, dried blood; State's Exhibit No. 119,
9 dried blood; State's Exhibit No. 88, buccal swab; State's
10 Exhibit No. 71, swab from -- DNA swab from phone. And
11 we're just about done. State's Exhibit No. 111, broken
12 glass; State's Exhibit No. 72, identification card and
13 papers; State's Exhibit No. 78, dried blood; State's
14 Exhibit No. 86, dried blood; and State's Exhibit No. 95,
15 ownership -- automobile ownership documents.

16 I believe that's it, Your Honor.

17 THE COURT: Okay. Any objection?

18 MR. WESTON: There's some other items that were
19 marked that we did not reference, and are not part of the
20 chain of custody for purposes of introduction into
21 evidence, Your Honor.

22 THE COURT: All right. Any objections to any of
23 those exhibits?

24 MR. SULLIVAN: None from Bobby Smith, Your Honor.

25 MR. KORNFELD: None, Your Honor.

1 THE COURT: Okay. Good enough. Then they are all
2 admitted.

3 (WHEREUPON, State's Exhibit Nos. 71, 72, 73, 78, 80,
4 83, 84, 85, 86, 87, 88, 89, 91, 94, 95, 98, 99, 100,
5 101, 102, 103, 104, 111, 113, 114, 115, 116, 117, 118,
6 and 119 were admitted into evidence.)

7 MR. SULLIVAN: Judge, could we step out of the
8 courtroom for a second?

9 THE COURT: Yeah, yeah. So what we'll do, we'll come
10 back in about five or 10 minutes. And we'll do the -- I
11 presume you have some motions?

12 The State has rested; right?

13 MR. MORONEY: Yes, Your Honor. The State rests.

14 THE COURT: All right. So we'll go over those
15 motions. And to the extent you need me, Mr. Sullivan, to
16 address your client regarding his right to testify or
17 right to remain silent, I'll do the same.

18 MR. SULLIVAN: I think he's going to testify. But
19 I'd like for you to talk to him.

20 THE COURT: Okay. We'll take a quick break.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Motions?

23 MOTIONS

24 MR. KORNFELD: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. KORNFELD: I'd like to put on the record, again,
2 my client had an attorney-client privilege. He wanted to
3 assert that right. I informed his previous attorney of
4 that with the applicable rules.

5 THE COURT: Yes, sir.

6 MR. KORNFELD: And I find that would be unduly
7 prejudicial to him in this case. And I just want to note
8 that for the record.

9 THE COURT: Okay. You're protected on the record in
10 that regard. I think we've been over that issue. And I
11 think it's clear that he waived that attorney-client
12 privilege.

13 MR. KORNFELD: As far as the armed robbery that
14 Mr. Smith, Jahru Smith was charged with --

15 THE COURT: Yes, sir.

16 MR. KORNFELD: -- I don't think they've reached their
17 burden to show how Jahru Smith was involved with a
18 robbery, if there was a robbery, how he was involved. So
19 I ask for a directed verdict on that.

20 THE COURT: Okay.

21 MR. KORNFELD: Also, just to the extent I can, Judge,
22 concerning the spousal immunity with Tiffany Petty. She
23 had conflicting statements there stating that -- that
24 should have been excluded due to her testimony, although
25 conflicting.

1 And Jahru Smith was not identified as the Defendant
2 in the courtroom, specifically, here today. Now, it was
3 stipulated that he was in a video. But it wasn't stated
4 that that was the same Jahru Smith.

5 Those are all my motions, Your Honor.

6 THE COURT: Thank you.

7 Does the State care to respond?

8 MR. MORONEY: I don't know if I caught the middle
9 one.

10 But, first off, with respect to the armed robbery, I
11 think there's ample evidence for this to be submitted to a
12 jury. If you recall, Your Honor, we heard testimony from
13 the victim's mother, Teresa Lang, who testified just a
14 couple hours before her daughter was shot and killed that
15 she had about \$700 to \$800 on her person. And that all
16 that was recovered, ultimately, was \$107 of that money
17 from Bobby Smith, arguably.

18 Furthermore, there was no drugs. We know that this
19 was -- from the testimony, this was a drug deal. That
20 Ms. Logan was under the impression she was going there to
21 sell some drugs. No drugs were ever recovered from inside
22 the car. Obviously, it's the State's theory that those
23 drugs were with Jahru Smith. He, certainly, joined in the
24 armed robbery and murder of Ms. Logan. I can go into
25 greater detail, if necessary, with respect to the evidence

1 on that.

2 THE COURT: No, sir. You don't need to.

3 MR. MORONEY: Okay.

4 THE COURT: I'll respectfully deny the motions for
5 directed verdict from Mr. Jahru Smith. I apply the
6 appropriate standard not to determine the weight or
7 credibility of the evidence, but the existence of the
8 evidence. I think there's evidence in the record that
9 there is a suggestion from the State that -- that even if
10 he didn't directly take the cell phone, and/or monies, or
11 anything else from the victim, under a theory of
12 accomplice liability, he could still be guilty of the
13 same. We're not saying that that's the theory under which
14 he would be guilty. I don't take any position with regard
15 to that. I'm just saying there's evidence in the record
16 of the same.

17 With regard to the spousal privilege, I believe that
18 we've addressed that appropriately. And I'll just refer
19 to the record for my ruling in that regard.

20 I'll, also, take the opportunity again to address the
21 fact that he's -- that he, Mr. Jahru Smith, has elected
22 not to participate in the trial. He's here again today.
23 He has clothes to dress out. He's elected not to come
24 into the courtroom. And, again, I've tried to encourage
25 him to come into the courtroom.

1 I, also, recognize the motions with respect to his --
2 I recognize that he's made a motion to defend himself,
3 which I granted. But once he found out that that was not
4 going to operate to cause a continuance, he left the
5 courtroom again.

6 Oftentimes, when you look at a transcript of a
7 record, it's difficult to ascertain what, actually,
8 happened. And I just want to state on the record that,
9 from the Court's perspective, that motion of
10 self-representation, that was entirely pretextual and an
11 attempt from the Defendant to delay the trial. When that
12 was unsuccessful, then he, for the second time, excused
13 himself from the courtroom and elected not to participate
14 in the trial.

15 So I think it's clear that was a pretextual motion
16 made by him. And I'll state as well, after colloquy, I
17 granted his motion. And then he elected, again, not to
18 participate.

19 So I believe that addresses all of the issues that
20 you had raised, Mr. Kornfeld.

21 Did I miss anything?

22 MR. KORNFIELD: No, Your Honor.

23 THE COURT: All right. Mr. Sullivan, do you have
24 directed verdict motions, sir?

25 MR. SULLIVAN: Judge, as to the armed robbery, Judge,

1 I think the information on Bobby is that he took the cell
2 phone, which we will show had the money and the ID in it
3 after she was dead. So I don't think you can have armed
4 robbery after the person has been killed, unless you were
5 involved in the killing.

6 It's our position that the killing happened. And
7 then he was brought to the scene and took the stuff. So
8 we'd ask for a directed verdict as to the murder. And
9 then the armed robbery would be no armed robbery, if he
10 was not involved in the murder.

11 THE COURT: Okay. At this point, I'm going to
12 respectfully deny the motion. I think that theory is
13 premature. Because he hasn't put any evidence into the
14 record to suggest that he just had the phone and the
15 money.

16 The only evidence that's in the record is they acted
17 in concert to rob and kill this young lady. And I'm
18 not -- again, I'm not saying that that's true or not. I
19 don't take a position on that. I'm saying there is
20 evidence in the record. As those -- the theory that you
21 suggested, there's no evidence in the record to support
22 that as we sit here right now.

23 Now, you may put your client on the stand and he may
24 offer evidence to that extent. But it's not in yet. So
25 I'll -- viewing the evidence in the light most favorable

1 to the nonmoving party, I'll respectfully deny your motion
2 for directed verdict.

3 MR. SULLIVAN: Thank you, Judge.

4 THE COURT: Yes, sir.

5 Now, Mr. Sullivan, do you intend to put your client
6 on the stand, sir?

7 MR. SULLIVAN: I would like for you to do the proper
8 inquiry.

9 THE COURT: Okay. I will do that.

10 MR. SULLIVAN: So you will know his decision.

11 THE COURT: Okay. Good enough.

12 MR. SULLIVAN: Bobby, stand up.

13 THE COURT: Mr. Smith, will you raise your right
14 hand, please, sir.

15 WHEREUPON,

16 BOBBY LEON SMITH,

17 after first having been duly sworn, testified as follows:

18 THE COURT: Mr. Smith, you understand that we've
19 reached a stage in the trial where you will have the
20 opportunity to present evidence and present a case on your
21 behalf. In doing so, you have the right to testify, if
22 you would like to. And you can get on the stand and
23 testify and tell the jury your side of the story.

24 Now, understand that under the Constitution, you do
25 not have to testify. In this trial, as I've already told

1 the jury, and I'm going to tell them again, you do not
2 have the burden of proof. The State has the burden of
3 proving each and every element of the offense beyond a
4 reasonable doubt. And you don't have the burden of
5 proving anything. As a matter of fact, you have a right
6 to remain silent, which means you do not have to say
7 anything. You don't have to take the stand.

8 Now, as I suggested to you, you can, also, take the
9 stand and testify. Understand if you do that, then you're
10 subject to cross-examination, which means that the State
11 can ask you questions that could be harmful to you. That
12 is, they could ask you about a prior record, if you have
13 one that's admissible. They can ask you other questions
14 in an attempt to throw your credibility into question.
15 That is, make the jury think that you're not to be
16 believed.

17 Now, Mr. Smith, whether you testify or not,
18 ultimately, is your decision. You can listen to your
19 lawyer. And I'm sure that he will give you advice in that
20 regard. He may have already given you advice. You can
21 listen to friends and family. But, ultimately, the --
22 excuse me, the decision to testify or not to testify is
23 yours and yours alone.

24 Do you understand that, sir?

25 DEFENDANT BOBBY SMITH: Yes.

1 THE COURT: And do you understand your right to
2 testify and your corresponding right to remain silent?

3 DEFENDANT BOBBY SMITH: Yes.

4 THE COURT: Okay. Do you have any questions about it
5 at all that you'd like to ask me or Mr. Sullivan?

6 DEFENDANT BOBBY SMITH: No, sir.

7 THE COURT: Have you made a decision whether you
8 would like to testify or not, sir?

9 DEFENDANT BOBBY SMITH: Yes, sir.

10 THE COURT: And do you want to testify?

11 DEFENDANT BOBBY SMITH: Yeah.

12 THE COURT: Okay, sir.

13 Do we know -- have y'all had a discussion about what,
14 if any, prior record would be appropriate for examination?

15 MR. SULLIVAN: We can come up and --

16 THE COURT: Y'all don't necessarily have to tell me.
17 If y'all agree, then I'm comfortable with whatever your
18 agreement is.

19 MR. SULLIVAN: Let me just double-check. I don't
20 want to --

21 THE COURT: And I'll tell you -- and let's do this
22 while you're doing that. Okay.

23 And, Mr. Smith, you can have a seat, sir. You can
24 have a seat.

25 While y'all are doing that, let's take advantage of

1 our time. So I know that Mr. Jahru Smith is here.

2 So, Mr. Kornfeld, what I'd like you to do is talk to
3 him. Or if he won't talk to you, have one of the officers
4 talk to him and ask if he would like to come into the room
5 and testify, or discuss on the record his right to
6 testify.

7 I'm not going to compel him to come into the
8 courtroom. Because, as I have suggested to all the
9 attorneys, I don't think it profits any of us to create a
10 scene and make him do something that he doesn't want to
11 do. But if he would like to come in and I can ask him the
12 same questions that I asked his brother, Mr. Bobby Smith.
13 And he can make an election as to whether he wants to
14 participate going forward.

15 So while Mr. Sullivan and the State discuss what
16 offenses may be admissible, you can have that conversation
17 with him.

18 We'll be in recess for about five minutes so you
19 can -- or 10 minutes, whatever you need to have that
20 conversation. And we'll come back in and we'll move
21 forward in whatever fashion is appropriate.

22 MR. KORNFELD: Okay. Thank you.

23 THE COURT: Okay. Thank you.

24 (WHEREUPON, a break was taken.)

25 THE COURT: Have we come to -- have y'all come to an

1 agreement with respect to what offenses may be admissible?

2 MR. MORONEY: We have, Your Honor.

3 MR. WESTON: We have, Your Honor.

4 THE COURT: Okay. Well, good. Then you don't need
5 me for that. That's good news.

6 MR. WESTON: I think we should pass them up to you,
7 Judge, to let you look at them as well.

8 THE COURT: Okay.

9 (Pause.)

10 THE COURT: Mr. Kornfeld, did you have the
11 opportunity to discuss with Mr. Jahru Smith whether he
12 would like to come into the courtroom, sir?

13 MR. KORNFELD: An officer came out and told me he said
14 his peace. He's got nothing to say, and he wants to fire
15 me.

16 THE COURT: Who spoke to him?

17 THE COURTROOM DEPUTY: Ashley Russell.

18 THE COURT: All right. So he indicated clearly to
19 law enforcement that he doesn't intend to come out?

20 THE COURTROOM DEPUTY: That's correct.

21 THE COURT: Good enough.

22 Are y'all ready for the jury?

23 MR. MORONEY: Yes, Your Honor.

24 THE COURT: Okay. Let's bring them in, please.

25 MR. WESTON: Your Honor, I assume based on your

1 pronouncements on Monday that this -- assuming this is the
2 only witness for the Defense, we'll be arguing and
3 charging in the morning?

4 THE COURT: Yes, sir. I think so. Well, it's almost
5 4:00 now. So we won't be done until after 4:00. We'll
6 argue and charge tomorrow.

7 (WHEREUPON, the jury came into open court at
8 approximately 3:57 p.m.)

9 THE COURT: Okay. So, Mr. Sullivan, do you wish to
10 call witnesses on behalf of Mr. Bobby Leon Smith, sir?

11 MR. SULLIVAN: I do, Your Honor.

12 THE COURT: All right, sir. You may call your
13 witness.

14 MR. SULLIVAN: Bobby, if you'd come up and take the
15 stand.

16 THE CLERK: Mr. Smith, if you'll pause at the end of
17 the bench.

18 Place your left hand on the Bible and raise your
19 right hand, please.

20 WHEREUPON,

21 BOBBY LEON SMITH,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 THE CLERK: Will you, please, state your name for the

1 record?

2 THE WITNESS: Bobby Leon Smith.

3 THE CLERK: Thank you, sir.

4 DIRECT EXAMINATION

5 BY MR. SULLIVAN:

6 Q Bobby, I'm standing back here. So if I can hear you,
7 the jury can hear you. Do you understand?

8 A Yes, sir.

9 Q Okay. Try to speak up, clear and slow.

10 All right. Are you Bobby Smith?

11 A Yes, sir.

12 Q Are you one of the Defendants in this case?

13 A Yes, sir.

14 Q Do you have a brother?

15 A Yes, sir.

16 Q What is his name?

17 A Jahru Smith.

18 Q Is he the other Defendant?

19 A Yes, sir.

20 Q Do you have any other brothers and sisters?

21 A No, sir.

22 Q Is -- Ms. Hattie Smith in the front row here, is she
23 your mother?

24 A Yes, sir.

25 Q Okay. How old are you, Bobby?