VOLUME ONE OF TWO

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Lee Alford, Circuit Court Judge

Appellate Case No. 2013-000819

THE STATE,

RESPONDENT,

v.

RODERQUIZ
ROZELLE COOK,

APPELLANT.

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #3 (CD- CELL TOWER SITE LISTINGS)

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, -vs- RODERQUIZ ROZELLE COOK, Defendant.	)	MOTION FOR DISCLOURE UNDER RIDDLE Case Numbers 2011-GS-32-01505, 2011-GS-32-1506, & 2011-GS-32-01507

The defendant, Rod Cook, hereby moves for the Court to compel the State to produce information, materials, notes, statements, visits to the scene, prior record, plea bargains or agreements, polygraph tests, reenactments or demonstrations by a witness, videotapes, audiotapes – including any "enhanced" audio/video – drug/alcohol or mental health treatment or any other matters pertaining to any witness in this case.

A. The Applicable Standard and Duty of the Prosecutor to Disclose.

In *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006) (*Riddle IV*), the Court held that the State committed a *Brady*[1] violation in failing to disclose prior statements by a witness along with a pre-trial visit to the crime scene by the witness, law enforcement, and the prosecutor. The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching. *Riddle*, 369 S.C. at 44, 631 S.E.2d at 73, *citing Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999).

Even where a Solicitor may have an "open file" policy, "the existence of such a policy does not negate the solicitor's *Brady* obligation." *Riddle*, 369 S.C. at 46-47, 631 S.E.2d at 74. In fact, the

prosecution has the duty to disclose such evidence even in the absence of a request by the accused. *United States v. Agurs*, 427 U.S. 97, 107 (1976). Moreover, the prosecutorial duty in this regard to disclose such favorable evidence remains even if there is a failure by the police to bring favorable evidence to the prosecutor's attention, thus requiring the prosecutor to seek out such information and disclose it accordingly. *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

Our Court has summarized this serious prosecutorial duty as follows:

> The overriding theme of the *Brady* cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, "the prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations."

Gibson, 334 S.C. at 526, 514 S.E.2d at 325, *quoting Kyles v. Whitley*, 514 U.S. at 438-40 (quotes omitted) (citing *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935)).

The defendant hereby request:

but is not limited to: interviews; information, materials, notes, statements, visits to the scene, prior record, plea bargains or agreements, polygraph tests, reenactments or demonstrations by a witness, videotapes, audiotapes, drug/alcohol or mental health treatment, or any other matters pertaining to any witness in this case which may be exculpatory, relevant to impeachment, or favorable to the defendant, at either the trial or sentencing phase. *Kyles, supra.; Brady, supra.;*

---

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

Riddle, supra. This request includes, but is not limited to, all such information whether within the prosecutor's possession and control, or that of law enforcement or any other state agency.

This request also specifically includes, but is not limited to, any prosecutor's interviews of any witness or accompanying any witness to visit the scene or other place in this case. It is important to note that in both *Riddle* and *Kyles* it appeared that the prosecutor did not have contemporaneous notes involving the interview of the witnesses or visiting the scene with the witness, and that some information was within the knowledge and control of law enforcement. The Court found it material that the State failed to disclose the *information*, and held such failure to be a violation of the law.

Thus, defense counsel seek the information about any witness as set forth herein, regardless of whether the prosecution has made actual notes of such interviews, visits, or other matters; and also specifically including but not limited to any law enforcement knowledge of such information.

Furthermore, defense counsel seeks copies of any "enhanced" audios or videos in which the State seeks to admit as evidence, from the original audio or video recordings.

This Motion is made pursuant to *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963); *Riddle v. State*, 369 S.C. 39, 631 S.E.2d 70 (2006) (*Riddle IV*), U.S. Const. Amend. 5, 6, 8, and 14; S.C. Constitution Art. I §§ 3, 14, 15; and other applicable law.

Jean Toal

Deon O'Neil
Attorney for Defendant

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Columbia, South Carolina

This _8 day of April, 2013

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, -vs- RODERQUIZ ROZELLE COOK, Defendant.	)	MOTION TO REVEAL CONCESSIONS PLEA DEALS OR IMMUNITIES Case Numbers 2011-GS-32-01505, 2011-GS-32-1506, & 2011-GS-32-01507

Mr. Cook is accused of conspiring with co-defendants Tasha Matthew, Angelo Tucker and Meon Miller to rob the Batesburg-leesville Mcdonalds.

Initially, the state charged all arrestees with Murder, Armed Robbery and Conspricacy. Mr. Cook anticipates that his co-defendant(s) may be called to testify against him at trial. To date, counsel has received no information relating to any grant of immunity or leniency to the co-defendants in exchange for their testimony.

ARGUMENT

The Confrontation Clause of the Sixth Amendment guarantees a defendant the opportunity to cross-examine a witness concerning bias. The United States Supreme Court has recognized the exposure of a witness's motivation in testifying is "a proper and important function of the constitutionally protected right of cross-examination." *Delaware v. Van Arsdall*, 475 U.S. 673, 678-9 (1986) (quoting Davis v. Alaska, 415 U.S. 308 (1974)). In *State v. Gillian*, the South Carolina Court of Appeals included in the Confrontation Clause the right to cross examine a State's witness "as to possible sentences faced when there exists 'a substantial possibility [the witness]

would give biased testimony in an effort to have the solicitor highlight to [a] future [court]' how the witness cooperated in the instant case." 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct.App. 2004).

Considerable latitude is allowed in the cross-examination of a witness for potential bias. Id. at 450. The South Carolina Rules of Evidence state "[a] witness may be cross-examined on any matter relevant to any issue in the case, including credibility." SCRE, Rule 608 (b). The defense attorney may elicit any fact "which tends to show interest, bias, or partiality of the witness." Id. (citing *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002)). "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." SCRE, Rule 608 (c). Before any limitations may be placed by a trial court on the defense's inquiry into potential bias, the record must clearly show the cross-examination is inappropriate. *Id.* at 451.

In *Brady v. Maryland*, the United States Supreme Court held suppression by the prosecution upon request of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment. *Brady v.* Maryland, 373 U.S. 83, 87 (1963). A defendant's right to receive such evidence has come to be known as the Brady rule. Failure to provide such material evidence upon request can be grounds for granting a new trial. *Giglio v. United States*, 405 U.S. 150, 153 (1972). This does not require a showing of bad faith by the prosecution. *Id.*

The Court in *Giglio* stated that "when the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule [of disclosure]. Id. at 154 (quoting *Napue v. Illinois*, 360 U.S. 264 (1959)). In *Giglio*,

the Government's case against the defendant depended almost entirely on the witness's testimony. *Id.* Without the testimony, there could have been no indictment and no sufficient evidence to present the case to the jury. *Id.* The witness's credibility, therefore, was an important issue in the case and the Court stated that "evidence of any understanding or agreement as to future prosecution would be relevant to his credibility and the jury was entitled to know it." *Id.*

The South Carolina Supreme Court has cited all three of the preceding cases in its decisions on the prosecution's duty to disclose favorable evidence upon request. In *State v. Hinson* the court held that a defendant was entitled to renew a motion made for a new trial to determine whether the prosecution had failed to disclose a promise of immunity in exchange for a witness's testimony. 293 S.C. 406, 361 S.E.2d 120 (1987). There, the court stated that "[d]ue process requires disclosure by the prosecution, upon motion of the defendant, of evidence favorable to the accused and which is material to guilt or punishment." Id. at 407 (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The court also noted "evidence which may be used to impeach a witness's credibility is favorable to an accused under Brady." Id. (quoting *Giglio v. United States*, 405 U.S. 150 (1972)). On the materiality of the evidence, the court stated: "Evidence is material when there is a reasonable probability that the result of trial would've been different had the evidence been disclosed to the defense." Id. at 408 (quoting United States v. Bagley, 473 U.S. 667 (1985)). A reasonable probability was defined as one sufficient "to overcome confidence in the outcome." *State v. Cain*, 297 S.C. 497, 377 S.E.2d 556 (1988).

The fact that the witness has yet to reach a plea bargain (or other favorable agreement) or been found guilty should not prevent the admission of evidence of the promise of favorable treatment for witness testimony. *Gillian*, 360 S.C. at 454, 602 S.E.2d at 73. "The lack of a

negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency." Id. Thus, any promise or implication of leniency should be revealed to the defense prior to trial.

Respectfully submitted,

Deon O'Neil, Esq.
Attorney for the Defendant

This 9 day of April 2013

ORIGINAL

STATE OF SOUTH CAROLINA	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF LEXINGTON	**Warrant Numbers: I022657, I022658**

2010 DEC 15 A 10:55

CLERK OF COURT LEXINGTON, SC

The State of South Carolina,

vs.

RODERQUIZ COOK
Defendant.

MOTION FOR DISCOVERY AND DISCLOSURE OF EVIDENCE

TO: ASSISTANT SOLICITOR OF RECORD:

The above-named Defendant would, through his counsel, respectfully request the following information:

1) Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent;

2) A copy of Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

3) Any books, papers documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from

or belong to the Defendant;

4) Any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial;

5) Any relevant written or recorded statements made by any witnesses, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statements made by any witnesses;

6) The names and addresses of any witnesses who have given written or oral statements of information concerning the incident(s) in question;

7) A copy of the original incident report and any supplemental reports produced by the arresting or investigation agency;

8) Any other information or evidence within the knowledge or possession of the State that tends to indicate the innocence of the Defendant, or that tends to mitigate any punishment should he be found guilty;

9) Demand is made that any chemist, analyst, and all persons within the chain of custody appear in Court for the purpose of personally testifying. Attorney for the Defense thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, SCRCrimP.

10) The defendant hereby asserts his Fifth Amendment right to remain silent and

does not wish to be questioned in the absence of counsel, pursuant to *McNeil v. Wisconsin*, 111 S.Ct. 220 (1991), and *Edwards v. Arizona*, 451 U.S. 477 (1981), the United States Constitution, Amendments Five and Fourteen, and the South Carolina Constitution, Art. I § 12.

This information is requested pursuant to Rules 5 and 6, SCRCrimP.

This information is further requested pursuant to *Brady v. Maryland*, 373 U.S. 83, 10 L.E.2d 215 83 S.Ct. 1194 (1963), along with the following cases: *Crane v. Kentucky*, 476 U.S. 683 (1986), *U.S. v. Bagley*, 473 U.S. 667 (1986), *U.S. v. Agurs*, 427 U.S. 97, 49 L.E.2d 342, 96 S.Ct. 2392 (1976), *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1972), *Napue v. Illinois*, 360 U.S. 264 (1958), *Goodwin v. Metts*, 885 F.2d 157 (4th Cir. 1989), *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988), *Chavis v. N.C.*, 637 F.2d 213 (4th Cir. 1980), *Norris v. Slayton*, 540 F.2d 1241 (4th Cir. 1976), *State v. Jackson*, 396 S.E.2d 101 (S.C. 1989), *State v. Osborne*, 361 S.E.2d 256 (S.C. Ct. App. 1986), *State v. Mixon* 274 S.E.2d 406 (S.C. 1981).

Furthermore, this information is requested on the grounds that it is essential to insure the Defendant's right to a fair trial, right to confrontation of witnesses, the right to effective Counsel and due process of law and fundamental fairness guaranteed by the South Carolina Constitution Art. I §§ 3 and 14, and Amendments Six and Fourteen to the United States Constitution.

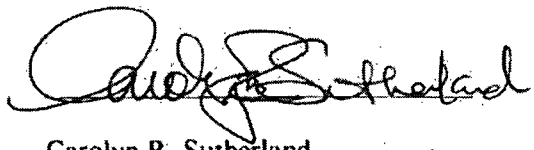
WHEREFORE, Defendant prays:

(a) That the Solicitor be Ordered to produce all information described herein and allow the Defendant the right to examine, inspect, copy and photograph, such materials and information at a specific time and place to be fixed by the Court.

(b) That the information be provided no later than 30 days from the date of this request, as reflected by the Clerk of Court's time-stamp appearing on the face of this document.

(c) That the Court enter an Order requiring the Solicitor's Office to make continuing disclosure of all matters requested herein up to and during the Trial of the charges against the Defendant.

Respectfully,



Carolyn R. Sutherland,
Attorney for Defendant

Post Office Box 50595
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Columbia, South Carolina

This 15th day of December, 2010

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,

PLAINTIFF,

-VS-

Roderquiz Rozelle Cook,

DEFENDANT.

Trial Transcript
2012-GS-32-6042
2012-GS-32-6044
2011-GS-32-1505

BEFORE THE HONORABLE LEE ALFORD, JUDGE

APRIL 8, 9, 10, 11, 12, 2013

LEXINGTON, SOUTH CAROLINA

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

Nancy Gunter Cote, Esq.
Heather Weiss, Esq.
For the Plaintiff

Deon O'Neill, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

THE COURT: Counsel, we're ready to proceed with any pre-trial at this time. Any on behalf of the State?

MS. WEISS: No, Your Honor. No pre-trial on behalf of the State, other than there is going to be one stipulation we talked about with the defense. That stipulation is that the victim, Willie Jennings, died as a result of the gunshot wound suffered on this night.

THE COURT: I'm sorry -- and the victim's name was?

MS. WEISS: Willie Jennings.

THE COURT: Okay.

MS. WEISS: Your Honor, as there are is no question with identification because of the relationships between the witnesses and the defendant, and the defendant gave no statement while in custody, there's no need for any other hearing -- any other pre-trial hearing on behalf of the State, Your Honor.

THE COURT: All right. No Jackson v. Denno, etc.

MS. WEISS: No, sir, Your Honor.

THE COURT: And anybody who is ID'ing the defendant you say knows him personally -- or is that

what you're saying?

MS. WEISS: Yes, sir, Your Honor.

THE COURT: Okay.

Counsel?

MR. O'NEILL: Your Honor, there's no question of ID. Mr. Cook did give a statement, though. This incident allegedly occurred on October 13th. Mr. Cook wasn't arrested until November 17th of that same year. So in that little over four-week period, he was questioned by law enforcement and gave he statement.

But he wasn't formally charged at that time. Out of an abundance of caution, we may need to just put on the record kind of the circumstances as to which that statement was made.

MS. WEISS: Your Honor, at this point we have no intention of introducing that statement.

THE COURT: Does that satisfy you?

MR. O'NEILL: Yes, Your Honor.

THE COURT: Okay.

MS. WEISS: If we change our mind, certainly we can decide then.

THE COURT: If you change your mind, we may have to have a Jackson v. Denno before it's introduced, all right?

MS. WEISS: Yes, Your Honor.

THE COURT: All right, anything else from the State?

MS. WEISS: No, Your Honor.

THE COURT: All right.

MR. O'NEILL: I do have some papers that I will pass up to the Court, sir.

THE COURT: All right.

MR. O'NEILL: I already gave the State a copy.

THE COURT: All right. Mercy, I thought you all didn't have any pre-trial motions much. This is a whole stack of them here.

MR. O'NEILL: Your Honor, I think we've resolved some of them, Your Honor.

THE COURT: Okay.

MR. O'NEILL: I think we resolved the biggest one. Your Honor, just first I would like to renew my Rule 5 motion to make sure there's no discovery out there that we still not have been afforded.

MS. WEISS: And, Your Honor, for the record, Mr. O'Neill is well aware we received some information yesterday, which I provided to Mr. O'Neill contemporaneously with my receiving it.

Some of that is cell tower site info from the cell phones.

We are now trying to get that map. That should be, as Mr. O'Neill knows, exculpatory and culpatory. We're working on that. He has the cell sites. He's had the phone records, just as we have, for a long time.

We just didn't realize there was a separate file somewhere with the site information. So we are trying to get that now, and we will provide that as soon as we get it, if we get it.

But he has the cell site information, and so we're just working on that. That was something that came up as recently as yesterday. But there's nothing new -- that's pretty new, but there's nothing beyond that we have at this time.

THE COURT: Mr. O'Neill?

MR. O'NEILL: Yes, sir. And certainly I have a motion for discovery on Riddle here. Specifically, Riddle -- if Your Honor is familiar with Riddle, specifically what I'm requesting is that there are several co-defendants in this case here, Ms. Tasha Matthews, Mr. Angelo Tucker, and Mr. Meon Miller.

And there are several other witnesses I

think Mr. Miller has provided, former cellmates of his maybe, Your Honor. I would at this point give you sort of notes or give you as to those lay witnesses here any sort of formal statements those lay witnesses have made here, anything that's additional to what I have not been provided on any sort of verbal statements anyone of these lay witnesses have made that may be useful for the defense in relation to impeachment or anything of that nature, Your Honor.

So anything that I'm entitled to on Riddle, any type of change in statements from lay witnesses here, any sort of scene re-creations done by the State that would place any lay witnesses here, I think I'm entitled to that under Riddle as well. So I would just like to renew my discovery on Riddle.

MS. WEISS: Your Honor, we turned over everything as it has come into our possession. As recently as last night, I provided a couple more notes that had been turned over from attorneys representing other co-defendants.

So we think it's Brady -- providing that through e-mails, phone calls. We provided everything that we've gotten along the way. There's

nothing in my knowledge at this point that we have done or anyone we have talked to that we have not provided to Mr. O'Neill.

THE COURT: All right, I think he's specifically talking about any notes that might have been made by an investigator or somebody talking to witnesses. Has that been turned over --

MS. WEISS: Yes, Your Honor.

THE COURT: -- to your knowledge?

MS. WEISS: You did receive the Eric Seales notes from the investigator?

Yes, then that's everything, Your Honor.

THE COURT: All right.

MS. WEISS: We had our investigator write up anything he had done, and we turned that over to Mr. O'Neill.

MR. O'NEILL: I just wanted to make sure, especially with the co-defendants. Have they spoken to any co-defendants, Tasha Matthews, Meon Miller, Angelo Tucker, since the last statement I had from those individuals that either written or verbally contradicts anything they said previously?

MS. WEISS: There's nothing -- I am not aware of anything that's contradictory to anything they said before.

MR. O'NEILL: Anything contradictory or additional to what they had mentioned?

MS. WEISS: Nothing, not that we've talked to you about. I think we've provided everything.

MR. O'NEILL: I just want to make sure it's clear for the record.

THE COURT: All right.

MR. O'NEILL: And I have a separate motion, but it's also kind of encompassing Riddle, as well. It's a motion to reveal any sort of deals or made by co-defendants Meon Miller, Angelo Tucker, and Tasha Matthews. All three are charged with the same exact charge. Mr. Cook is the only one on trial today. I anticipate all three of those individuals to be witnesses against Mr. Cook here, and all three of those individuals did have a murder charge, attempted armed robbery, conspiracy charge that's still pending here in Lexington County. I want to make sure that there's been no grants of immunity, no prospective deals, or plea bargains made to either one of those individuals.

MS. WEISS: There has not. Each one is facing to the charges that they are charged with, the same charges that Mr. Cook is charged with. There have been no deals, no offers, no hinted

offers. We have explicitly said each one has given information as to their part in this, and there have been no offers or deals made. The only offer made was to this defendant.

MR. O'NEILL: I just wanted to make sure there also have been no e-mails concerning potential future offers, as well. I just want to make sure the record is clear for that.

THE COURT: Say again?

MR. O'NEILL: There have no e-mails transmitted to any one of these three co-defendants' attorneys here that hint at future offers for their defendants in conjunction with them testifying against Mr. Cook.

MS. WEISS: As the defense, of course, knows, I guess they should have asked for offers, and we would have said, "No, your client is charged with murder. Your client has indicated him or herself in this case. There are no offers." The only offer has been made to Mr. Cook.

MR. O'NEILL: Thank you, Your Honor. Your Honor, I do have a motion to dismiss all three indictments against Mr. Cook here. That motion is lodged jointly in South Carolina Criminal Rules 310. The Federal Constitution and the State Constitution

guarantee the right to a speedy trial here.

Just factually, Your Honor, Mr. Cook was arrested on these charges here on November 15, 2010. And Ms. Weiss kind of explained to you a little about why we had different years on the indictments here. But Mr. Cook was originally indicted on June 6, 2011, by the Lexington County Grand Jury, Your Honor.

I think at that point it was 194 days after his arrest. I think Rule 3 of the criminal rules, Your Honor, does require, in my opinion, action on that warrant within 90 days of it being filed with a charge. Those warrants were filed with the Lexington County Clerk's Office on November 24, 2010.

There was no action made on those warrants until 194 days later. It would be obvious, Your Honor, that just based solely on South Carolina Criminal Rules rule number three that Mr. Cook is entitled to a dismissal of this warrant because there was no action on those charges that were pending the proscribed 90-day period.

We are aware of the current case law. There's only one case that's kind of on point in South Carolina with relation to that Criminal Rule

3, Your Honor. But I think that case was not decided before -- recently, the Leitner (PH) case came out about the Solicitor controls the docket here.

That's been kind a speedy trial motion in conjunction with the Rule 3 motion, as well. I think the delay since November 15, 2010, up until today, Your Honor, is a constitutional violation of Mr. Cook's federal and state Sixth Amendment rights to a speedy trial.

I think he is entitled to a speedy trial here. He has not received a speedy trial here. We did move for a bond in Mr. Cook's case on September 15, 2011, Your Honor. I think that in and of itself Mr. Cook's intention to have this case resolved in a speedy fashion. It kind of essentially to Mr. Cook's Sixth Amendment right at that point, Your Honor.

THE COURT: Did he get a bond?

MR. O'NEILL: He got the bond denied.

THE COURT: He never got a bond?

MR. O'NEILL: No, Your Honor.

THE COURT: Still in jail?

MR. O'NEILL: He waived one initially on the murder charge here. And then on September 15th,

the Honorable Judge Keesley denied Mr. Cook's bond for the murder charge.

THE COURT: So he's been in jail the whole time since he's been arrested?

MR. O'NEILL: Yes, sir. He's been in jail since November 15, 2010. I think that's over a two-year delay, Your Honor. I think at that point it becomes inherent on the State to justify the reason for that two, two and a half year -- close to two and a half year delay in relationship to Mr. Cook being charged.

I laid out in my motion that the Court can consider when it come to the delay in the speedy trial motion. I think, Your Honor, the State cannot justify the two and a half year -- close to two and a half year delay when awaiting his trial. So therefore I would ask for dismissal on Mr. Cook's warrants based on South Carolina Criminal Rule 3 and the Sixth Amendment of the U.S. Constitution and the State Constitution relating to a speedy trial.

THE COURT: Okay.

MR. O'NEILL: My argument is spelled out actually in my written motion that I've provided for the Court.

THE COURT: Counsel?

MS. WEISS: Thank you, Your Honor, may it please. First of all, a Rule 3 motion, that has been settled in State v. Culbreath. The Supreme Court stated or said in that case that it's merely a procedural recommendation for the State to require Solicitors to act on a warrant within 90 days of its issue agreed and affirmed the trial court's holding that the rule was administrative and not jurisdictional.

So it does not within itself validate a warrant and will prevent subsequent prosecution. The case was indicted, and as to Rule 3, it's clearly been settled by State v. Culbreath, which was directly on point that issue.

Secondly, is the speedy trial portion of his motion. Your Honor, the defense never made a speedy trial motion in this case, which I think is first and foremost the most important aspect. Secondly, I just want to give you a brief background into what happened with this case.

The offense did occur on October 13, 2010, and the arrest was November 15, 2010. And the first set of indictments was done on June 6, 2011. This case was originally sent to the Attorney General's Office on February 7, 2011, and accepted on February

10, 2011, as a conflict from the Lexington County Solicitor's Office.

THE COURT: What was that conflict?

MS. WEISS: The conflict had to do with an Assistant Solicitor who's no longer employed here had had a run-in with an officer who is with the Batesburg-Leesville Police Department.

And they felt that there were two sides to that story, but they felt that the Assistant Solicitor felt that he had been -- that the officer had been untruthful and was not comfortable prosecuting the case having to do with that officer. There were actually two officers involved.

THE COURT: Is that this case or a different case?

MS. WEISS: Totally different case.

THE COURT: All right.

MS. WEISS: Totally unrelated. It's an officer/former Assistant Solicitor issue.

THE COURT: Okay.

MS. WEISS: Former officer and former Assistant Solicitor issue.

THE COURT: So the Attorney General's Office accepted it on the conflict basis?

MS. WEISS: Yes, Your Honor, on February

10, 2011. At that time, it was assigned to David Stumbo, who is the Assistant Deputy Attorney General. He resigned to run for office in December of 2011, which he was subsequently elected Solicitor.

And at that point, it was assigned to me in early 2012. Of course, that was after it had already been indicted. I was not aware that it had already been indicted due to some glitches. So that's why you have two different dates. It was subsequently indicted as well another time.

However, once I got the case in early 2012, I began speaking to Mr. O'Neill about this case. We spoke off and on about the case, the possibility of resolution, from the time I got the case in early 2012 through the fall of 2012, at which time negotiations fell apart, and it became obvious that this was going to be a trial.

Late in 2012, we started putting our schedules together to come up with a date that was mutually agreeable with the Twelfth Circuit Solicitor's Office where they could put us in the Court's schedule. This was originally set for trial, which was approximately six weeks ago, where the defense requested a continuance.

And at that time, Judge Keesley set it for a date certain for today. And so, Your Honor, based on that procedural history, I believe there's been no unfair prejudice, there's been no speedy trial motion.

This case has come to trial fairly quickly concerning the changes of prosecutors in the case, although it was stalled for a brief while we were trying to negotiate the case. But there were no lengthy delays, no undue delays as they apply to this case, Your Honor.

THE COURT: All right. No speedy trial motion was filed or heard by the Court previous to today, is that correct?

MR. O'NEILL: I think that the bond motion -- in my recollection of the case law, a bond motion was it, not a speedy trial motion.

THE COURT: I don't agree with that at all. I think -- if you're going to argue a speedy trial motion and have it dismissed for failure to grant a speedy trial motion, I think you've got to file one. Then the State's going to have to show why they can't go forward with it, try to get a continuance on it.

But if you've never filed a speedy trial

motion, just said "We want a bond," and you don't get a bond. Typically when I deny a bond, I will say, "Well, give this some priority. We need to move forward with it," and then set it for trial within 90 days or so and give it priority with other cases that are out there if the person is going to be held without bond.

But sometimes there are problems with getting the case ready and it's not ready to go. But at least they're entitled to come back into court and be heard again. And I usually give them an opportunity to come back in within 90 days and be heard again if the case is not set for trial or not been able to make bond.

If there's no bond, obviously they can't make it, then to come back in again and seek bond. That's the way I work my court. But if you don't file a speedy trial motion, you haven't requested a speedy trial motion.

And then if you had requested, then a reason would have to be given why you haven't done it. It's not jurisdictional, it's not dismissive. You haven't shown any prejudice by that. Matter of fact, you most recently requested a continuance six weeks ago, and that was on behalf of the defendant.

And the Court granted that motion and set this case for day certain trial this week. It had to go this week and giving it priority over everything else. But the last continuance was on a motion by the defendant.

And so if the defendant was ready to go to trial six weeks ago, it could have been at least heard then. It was based on a continuance by the defense. I'll look at this over lunch. I'll look at your case you cited. But my inclination is if you haven't filed and had ruled on a motion for a speedy trial, then you really haven't given the Court an opportunity, then, to move the case up.

It looks like to me the Court has tried to do that, because it was up for trial six weeks ago. It was only continued at the request of the defendant, not the State. There was a conflict situation in which the State where the Solicitor's Office basically recused themselves or asked that another prosecuting agency prosecute.

And that would go to the Attorney General or some other Solicitor if they can get someone else to prosecute it from another circuit. But in any event, there is some conflict there. And then they're the Assistant Attorney General who was

originally assigned it resigned and ran for office.

And therefore, this Assistant Attorney General got the case. She went back through back and started working on it and went through and reindicted it without I guess realizing that they had gotten an indictment in the case and started working on it.

And she says you all have been communicating during 2012 about the case, even some negotiations and that sort of thing. So it's been ongoing, it appears to me. But if no motion for a speedy trial was filed and denied by the Court or heard by the Court, and there are reasons the State has given why the case hadn't been ready for trial, part of which is a continuance request by the defense, the Court would not be inclined to grant a dismissal motion.

As I say, it's not jurisdictional, and I've seen no prejudice to the defendant as a result, other than sitting in jail, of course. I've seen no prejudice to him shown as to how he'd be prejudiced in the outcome of a trial. I'll look at it, and I'll make a ruling before we get started back this afternoon. My inclination is that I'm going to deny your motion.

MR. O'NEILL: Your Honor, I'm almost certain -- if I have that case, I will provide it to the Court.

THE COURT: You'd better show that me, because I've never seen it. I think if you want a motion for a speedy trial, I think you've got to make a motion for a speedy trial.

Just because you make a motion for bond that isn't granted or you get a bond that's too high for the defendant to make, it's not a speedy trial motion. You can argue that -- and there may be a case that says this -- the person was denied a bond, was not able to make a bond, that they obviously want a speedy trial rather than sitting in jail.

There may be a case that says that. I'm not sure. But I'm saying you need to make your motion for a speedy trial or a motion again to reconsider the bond issue if he's been in jail a certain amount of time.

I don't know if that was done or not. You could again ask the Court either for a speedy trial, a motion reducing or granting him a bond. If you didn't do that, if it hasn't been done -- I won't say "you" necessarily.

I don't know if you've represented him the

whole time. But if it hasn't been done, the Court wasn't given an opportunity, then, to force it to trial. If you've got a case that says that, please hand it up.

MR. O'NEILL: Thank you, Judge.

THE COURT: All right, what else?

MR. O'NEILL: I guess the last one, Your Honor, we have is we have a motion to suppress any sort of jail phone calls either made by Mr. Cook while he was incarcerated in the Lexington County Jail or in addition to that phone calls that Mr. Cook received prior to being incarcerated in the Lexington County Jail from two of the co-defendants in this case, Mr. Meon Miller and Ms. Tasha Matthews.

I think they were seized by the Lexington County Sheriff's Department in violation of Mr. Cook's Fourth Amendment rights under both the U.S. and the State Constitution. I think it might be beneficial if the State would actually play the beginning snippets of the calls that they intend to introduce here, some of the calls and their contents.

MS. WEISS: And, Your Honor, before we address this, Mr. O'Neill is using the parts of 17-

30, which is the Homeland Security Act, the wiretap act, in order to base his motion that these were improperly intercepted phone calls.

Your Honor, pursuant to 17-30-110, section (a)(1), is the pre-trial motion to suppress grounds appealed by the State -- exclusive remedy, it states that "Prior to any trial, hearing, or proceeding before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, electronic communication or evidence derived therefrom on the grounds the communication was unlawfully intercepted.

"However, the motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person is not aware of the grounds of the motion. The motion must be made before the reviewing authority and must be decided on an expedited basis."

Your Honor, pursuant to 17-30-15, number nine states that "The reviewing authority is a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals."

Your Honor, recently this has been talked

about in two cases decided by the South Carolina Supreme Court. First is State v. Whitener, which is 732 Southeast Second 861. And in that case, Your Honor, the Court stated that the Court of Appeals correctly granted the State's motion to vacate, finding that the trial court lacked subject matter jurisdiction because the wiretap act required that a motion to suppress be made before a panel of judges of the Court of Appeals.

And following that is an order from the Court of Appeals, State of South Carolina versus Francisco Rivera Flores, where the Court also found that the reviewing authority is a panel of three judges of the South Carolina Court of Appeals and the arguments for suppression were appropriately handled in the South Carolina Court of Appeals in front of the reviewing authority.

So, Your Honor, based on those two, I would argue that this is the improper place for this motion to be brought since it was not brought prior to trial. This case has been called, that the defendant no longer lacks -- no longer has standing to object to these phone calls on that basis.

MR. O'NEILL: Your Honor, I think that's only part of my basis. My motion the Court has, we

filed a motion based on the Fourteenth Amendment of the U.S. Constitution and the Fourth Amendment of the State Constitution.

We have Fourth Amendment issues regardless of the statutory provisions of 17-30-10, Your Honor. In the U.S. Constitution and the State Constitution's Fourth Amendment guarantees this can be heard and should properly be heard by this Court, Your Honor.

THE COURT: Is an inmate made aware that the proceeding is being recorded, or no?

MS. WEISS: Absolutely, Your Honor.

MR. O'NEILL: That's why I think you need actually to hear it, so you can see what my argument is based on. Part of the time, Mr. Cook was not the inmate. Part of the time, Mr. Cook was the individual on the opposite side receiving a phone from the inmates here.

MS. WEISS: And he has been given the option to not even receive the phone call.

MR. O'NEILL: Your Honor, I want you to hear this. One of the phone calls from somebody in particular, Mr. Cook did not answer the phone when the collect call came in to the jail. There is a notation at that point that these calls may be

recorded.

Mr. Cook is not the individual who answered the phone. If you hear the tape, you can actually ascertain that. Mr. Miller calls Mr. Cook's residence. Somebody at Mr. Cook's residence answers the phone, that second call.

I guess presumably hears this warning here but then gives the phone to Mr. Cook here. So therefore, on that particular call, Mr. Cook himself heard no warning about these calls being recorded here.

THE COURT: Before he was ever jailed --

MS. WEISS: Yes, sir, Your Honor.

THE COURT: -- and he had not yet been put in jail or made aware of the policies of the jail to record conversations of inmates, is that the situation here? Now, where he's in jail and he's carrying on a conversation while he's in jail, and if there's a warning, basically an admonition, that these calls are being recorded, then that's one thing.

If there is no such -- well, I think what he's saying -- defense counsel is saying -- is that some of these calls were made before he was ever incarcerated and were made to somebody who picked up

the phone and maybe the warnings were given, and that was before he got on the phone. That's what they're saying.

MS. WEISS: Yes, sir.

THE COURT: So he would not have been aware that the phone calls were being monitored. And he's saying that's a violation of the Fourth Amendment and also the State Constitution.

MS. WEISS: Yes, sir, Your Honor. South Carolina, of course, is a one-party consent state, and both the people that were calling were consenting to that phone conversation. Therefore, there's no violation of the recording of that conversation from the consent side.

But, secondly, the very first phone call that came in was from Tasha Matthews to Rod Cook where he answered the phone. Not only did he consent and accept the phone call and hear the warning, but he also makes comments during the phone call about how it's definitely being recorded, and that's a good thing. So I can play that for you if you'd like to hear it.

THE COURT: Was that the first call?

MS. WEISS: Yes, sir, Your Honor.

THE COURT: How about that, counsel? If

he was forewarned, he didn't have to carry on any conversation. He certainly didn't have to make any incriminating statements, if in fact he made any.

MR. O'NEILL: And that's not my understanding that that was the first call. My first call I had was from Meon Miller that came to Mr. Cook's residence here when he did not answer the phone.

MS. WEISS: That would be the fourth call, would be the call from Meon Miller.

THE COURT: If I have to, I guess I can listen to them and see.

MS. WEISS: I can show it to the defense -

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THE COURT: Okay.

Ms. COTE: -- the times and dates, if that will help.

THE COURT: Here's the thing. If he was put on notice that these calls were being recorded, and he knew they were being recorded and the other side knew they were being recorded, because they had been told that -- and he knew they were being recorded -- then they're talking consensually with full knowledge that the State is recording them.

If that's the case, they waived any Fourth

Amendment right. You don't have a right to privacy, I don't believe, in telephone conversations with one party being in the jail and with the information that they're going to be recorded.

MR. O'NEILL: That's why I say, Your Honor, I want you to listen to the admonition on the calls here. The admonition says the calls may be recorded, and it doesn't specifically --

THE COURT: That's enough. That's enough. If they may be recorded, they may be recorded.

MR. O'NEILL: Yes, Your Honor.

THE COURT: So you're put on notice whatever you say could be produced against you.

MR. O'NEILL: And, Your Honor, one thing I want to point out that's kind of based more on my Brady motion here, that any sort of -- regardless if there's been consent here, there is no consent for that phone call to be turned over to the prosecution agency, Your Honor.

Those phone calls are recorded for jail security purposes and jail security purposes only. Once the jail turns those over to law enforcement -- we argue, Your Honor, at that point that they have exceeded any sort of consent that the Court will find that either party gave. There was never any

consent for these jail phone calls to be turned over to the prosecution agency to be used against Mr. Cook in court.

And there's no mention that these calls would be used against him in court. The only thing it says is that these calls may be recorded. So I think any sort of consent that may have granted by either party, I think even if it was consent granted I think they exceed the scope of that consent once the jail turns those over to law enforcement to use by the prosecution against Mr. Cook.

MR. COTE: Your Honor, if I may, Lexington County Sheriff's Department runs the jail. They are the jailer. They are law enforcement. We are law enforcement.

MR. O'NEILL: Your Honor, the phone service is recorded by essentially a hired agreement that Lexington County uses. So they record phone calls, and then they were turned over to the Lexington County Sheriff's Department and then turned over to the prosecution agency. I think that turning over to the prosecution agency would exceed the scope of any consent the Court may find.

THE COURT: Well, why would a jail have a policy like that if they couldn't hear the tapes?

MR. O'NEILL: The jail --

THE COURT: If they're running the jail and they're made and they have somebody record for them what the conversations are, what would be the point of that if they weren't going to listen to them?

MR. O'NEILL: Jailhouse security. I think those phone calls are recorded for jailhouse security, not for use in prosecution in criminal trials. I think they should never have turned those tapes over to the Attorney General's Office for prosecution here. I think it exceeds any sort of scope given by anybody.

THE COURT: Well, I'll look at what you've got. I've had them introduced many times. They've been introduced into evidence in many cases, many times. I can tell you that.

Whether it's the defendant himself in jail making the calls or outside the jail somebody making a call to him, they've been admitted into evidence time and time and time again when they were put on notice. If they didn't know they were being recorded, that's different.

But if they're put on notice they're being recorded, I think they waived their right to no

longer have any expectation of privacy. When they've been notified that they're being recorded and the jail people are going to have them, i.e. the Sheriff's Department is going to have the information, I think they've waived their right to privacy, or they don't have any right or expectation of privacy from that point.

And whatever conversations they make, they're put on notice. Again, I'll look at that. If you all have got any cases on it either way, hand it up, and I'll be glad to look at them.

MR. O'NEILL: My case is already encompassed in my brief.

THE COURT: All right, I'll look at it.

MR. O'NEILL: I just want to make sure if the State is proposing to call -- I'm concerned about the Meon Miller call to Mr. Cook, which is the fourth call. I want to make sure that that information is documented on the record, that it actually is in the record that there were previous calls made to the residence before the call was made by Mr. Miller.

THE COURT: Okay. Can you show that to the defense?

MS. WEISS: Yes, sir, Your Honor.

MR. O'NEILL: I don't know whether or not you want to hear another motion on suppressing the same tapes.

THE COURT: Let me point out one thing to you, a case I heard that went up to the Supreme Court, and the Supreme Court ruled on it. Two co-defendants who had been arrested sitting in the back seat of a police car talking to each other, and they left the camera on with the audio in the camera, which picked up their conversation.

And there was no warning given to them or anything else in that case. And I ruled they didn't have any expectation of privacy in a police vehicle, and the Supreme Court upheld that decision and said, "That's right. They don't have any expectation of privacy in a police vehicle." It wasn't their vehicle.

If you're sitting in a jail and you're warned that it's going to recorded, then what expectation of privacy do you have from that point on? You've been warned that the law enforcement agency is recording the conversation you're going to have.

You still haven't got it ready?

MS. WEISS: I've got it.

THE COURT: You've got it? All right, go ahead.

MS. WEISS: Yes, Your Honor. The first phone was at 9:44:48 on 10/15/2010. That was -- I know these because I've listened to them. But the first one is a 10:00 call and a 10:15 call were all from Tasha Matthews to Rod Cook.

THE COURT: What's the date on those?

MS. WEISS: October 10, 2010. And then 10:44:20 on 10/15 is the call from Meon Miller also to Rod Cook at the house. Ms. Matthews' oldest daughter was at the house, so she's talking on the phone during that. Mr. Cook puts her on a couple of times.

So I believe Mr. O'Neill is right. She is the one that answers the phone on that fourth call and then hands it to Mr. Cook. So that's the fourth call that's come in. He answers the phone on the first one.

THE COURT: My question is, the previous three calls, if they came from the jail?

MS. WEISS: They did.

THE COURT: Is there an admonition or a warning on the call coming into the person?

MS. WEISS: Would you like to listen to

it?

THE COURT: Yes, let me hear what they say. If he heard it three times on three previous calls, he certainly was aware of it by the fourth one.

(Whereupon, the phone call audio was played for the Court.)

THE COURT: That's what I wanted to hear. I don't need to hear the substance of it at this point. And you're saying there was three of these calls before the one that counsel wants to suppress, right?

MS. WEISS: Yes, sir, Your Honor.

THE COURT: He was put on notice that they were probably going to be recorded.

MR. O'NEILL: I think it's different whether it says you're going to recorded or could be recorded?

THE COURT: I don't agree. If they say it can recorded, may be recorded, will be recorded or may be recorded, may be recorded means speak at your detriment. If it's going to be recorded, it's going to be recorded, it's going to be available to the police department.

MR. O'NEILL: Right. Well, I think that's

kind of why -- well, when they turned it over to law enforcement, 'I think that exceeds any sort of --

THE COURT: Well, I understand your argument on that. But it's ridiculous to say it may be recorded, and then say, "Well, it didn't say it definitely was going to be recorded." May be recorded is sufficient. It's kind of a like a case I heard one time when I was on a cruise, and I went into the Netherlands Antilles, and they were holding court that day when I got off the ship.

And I said, "Man, I want to see what's going on." So I went up there, and they had this guy, a judge from the Netherlands. He came in there, and he serves at the pleasure of the Queen. So her picture, Queen Juliana, is behind him. And they had a trial going on.

And he asked this guy, he said -- so this guy was making a statement in court, and he was accused of firing a shotgun, sawed-off shotgun, three times at an individual. And so they sit without a jury in those courts. And the judge said, "Well, did you fire a sawed-off shotgun three times at this individual?"

He said, "No, Your Honor." He said, "What did you do?" "I shot at him once." And the judge

said, "Well, once is quite enough." If you were warned that this may be recorded, that's your warning. You speak at your peril.

You know that it's going to be recorded and will be used whatever you say against you. It's semantics. But "may be recorded" and "will be recorded" doesn't matter. You're on notice that it may and probably will be recorded.

MR. O'NEILL: I understand the Court's ruling. I just wanted to make my argument on the record.

THE COURT: All right. I'm going to look at whether the Sheriff's Department, what they can do with it. But if this agency is working for them collecting information, you know they're going to hear it, whether it's for security purposes or not.

Then you know they're going to hear it, that they're going to give it to them, and they're going to hear whatever the conversation is, whether you say it was for security or whatever reason it is.

If you know that they're collecting the information and just providing a service to the Sheriff's Department or police department and it's going to be turned over to them and they're going to

see it, then you have knowledge of that.

MR. O'NEILL: I think that's what the State's arguments are. I think there's no knowledge of any of the inmates that they're going to do that, this information is going to be turned over to law enforcement. There's nothing in the warning that advises them of that.

THE COURT: If they say it's going to be recorded, how can you have an expectation of privacy after you're warned that it's being recorded at the jail and they're going to have access to it. There would be no reason to do it if the law enforcement agency who supervises the jail is not going to have access to it and get the information. How are you going to provide for security and it's used for security purposes if you don't hear it?

MR. O'NEILL: Well, Your Honor, I think the consent is consent for security purposes, not consent granted for use in prosecution.

THE COURT: Well, that's a clever argument. But the fact of the matter is you're told that it's going to be recorded and the police agency is going to have it. The question is whether you've waived your right to privacy in any conversation you have there. You don't have to say anything, or you

can control what you say.

But if you're put on notice that they're going to have access to it, it doesn't matter for what purpose. If they're going to have access to it, they're going to hear what the conversation is. They'll know what he said and what they said, correct?

MR. O'NEILL: Yes. But, Your Honor, I do think sometimes they recognize why citizens can limit the scope of the consent that they give. I think it's contingent on the State --

THE COURT: They didn't give a limited consent.

MR. O'NEILL: Yes, Your Honor.

THE COURT: They didn't give limited consent. He didn't give limited consent. He spoke when he had no expectation of privacy. It's not an invalid search and seizure if the person does not have an expectation of privacy.

MR. O'NEILL: But I would argue that he does have expectations of privacy too, maybe a limited expectation of privacy but an expectation of privacy, nonetheless, Your Honor.

THE COURT: Counsel, I think you're going to lose that argument unless you can show me

something. I think once he's warned and put on notice whatever conversation he has at that point, he's waived his right or expectation of privacy in a conversation he's had on the phone where he's told the police agency, this agency is recording this for the police department.

I think he's put on notice they're going to have that information. Then he speaks at his own peril or he speaks with full knowledge that what he's saying is going to be recorded and heard by a police agency. Once he's done that, I don't think he has any expectation of privacy.

MR. O'NEILL: I understand the Court's ruling, Your Honor. I just want to make that the record is clear on my position. I think the warning, Your Honor, not that they don't give a warning. I don't think the warning actually states that it's going to be recorded by a police agency, Your Honor. I think the inmate does not have any knowledge that it's going to be recorded by police, a law enforcement agency. Your Honor, you don't hear the warning but once in the record, so there's no real reason for our argument.

THE COURT: I understand that. But to follow your argument there on the record, if it's

being recorded by a Sheriff's Department that's running the jail, it's going to be recorded and they're going to have access to it. I don't know how you can expect to have a right of privacy in something you've already been told they're going to record and have access to. I don't know how you can.

MR. O'NEILL: My argument I guess in the most simple term would be that you're consenting for them to then use it for the purposes to which it's gotten for them to use, whether you're consenting for it to be used for jail security purposes and not to be used against you in any sort of criminal prosecution. And when they use it against you in an extended manner beyond the scope of the consent that you had knowledge of giving, then I think it exceeds the requirements of the Fourth Amendment at that point.

THE COURT: The fallacy of your argument, counsel, is that once you don't have an expectation of privacy in that call, you don't have an expectation of privacy, okay? It's sort of like the police car.

These two guys are sitting back there whispering to each other in jail, but they've got

the audio on and it's picking up their conversation, or most of it. And they're admitting to each other, getting on each other about what they did with the drug transaction. And, of course, they didn't give any consent. They didn't even know they were being recorded.

MR. O'NEILL: Yes, sir.

THE COURT: You understand? They don't even know they're being recorded. They don't give consent to record it and use it against them in jail. So it's a search in a sense. Nobody says anything to them, doesn't even tell them it's being recorded, don't say it's going to be used against them.

So they would have more than expectation of privacy in that than if somebody said, "Look, we've got these video cameras on. It's basically for your security really and the officers' security. But we've got it on and recording the conversation that you're having," okay?

They don't even do that. There's no warning whatsoever. And the Supreme Court affirmed my ruling they had no expectation of privacy whispering in the back seat of a police car, because you don't have any expectation in a police car.

MR. O'NEILL: Yes, sir. My only argument would -- and I understand the Court's ruling -- is that once the jail says it's going to be used for security purposes, then they're limited to only use it for security purposes and not to be used in court.

THE COURT: Well, like I say, that's a point without distinction, because once he gives up any expectation -- if he has no expectation of privacy, then he can't complain when they've told him that they're going to record it and somebody overhears it.

MR. O'NEILL: Yes, Your Honor.

THE COURT: Okay. The police agency overhears it. And that would be my viewpoint about it. I'll look at it a little bit more and make my final ruling before we go to trial.

MR. O'NEILL: Yes, sir.

MS. WEISS: And also just for clarification, I don't believe it's ever said it's just for security purposes. That seems to be the defense's argument. But that would be going into the minds of each and every inmate that were to receive a phone call from the jail as to what each person thought.

THE COURT: Well, yes.

MS. WEISS: What their opinion would be.

THE COURT: The recording says whatever it says, but you're informed that this --

MS. WEISS: Yes, sir.

THE COURT: -- conversation may be recorded and a record made of it or whatever. So they're put on notice of that. And I don't know what expectation of privacy you would have after that. You tell him it's going to be recorded and he's in jail under the jurisdiction or auspices.

What expectation of privacy do you have when you start a conversation knowing it's probably being recorded by an agency that's doing it for the Sheriff's Department. That's the question. I don't believe it says just used for security purposes. It says it may be recorded, doesn't it?

MS. WEISS: Yes, Your Honor.

THE COURT: Okay. Like I say, I don't know how you expect to have any right of privacy when you're told your conversation is being recorded by someone on behalf of a police agency. Let's make sure the record on that point, that he received three prior calls from somebody that was in the jail?

MS. WEISS: Yes, Your Honor.

THE COURT: Before he received the one that was made by -- what's his name?

MS. WEISS: Meon Miller, which is the one he's seeking to suppress. Before he got that call, that was the fourth call he got, he says, "I didn't pick up initially. Somebody else picked it up. And I didn't hear the warning that it may be recorded."

But he already heard three before that, that says it may be recorded. So that's the standard greeting before you would get a call, you would have to accept it, reject it, say you don't want any more calls, all of that. But you're put on notice that it may be recorded.

And so he had already been warned about that three times. It doesn't matter that he picked it up after somebody else got that warning in his household when the call was made to him. He's already gotten that call on three prior ones, and that's the same one you get on every one.

Before somebody in the jail can call you, you have to accept the call, etc. He knew the substance of it. So I just want be sure the record is clear on that. It's not the first call. It's the fourth call. In three previous calls, he

answered and had already gotten the admonition of warning that the call may be recorded.

MS. WEISS: Yes, sir. And in one of the previous calls, he actually discusses the fact that it's being recorded.

THE COURT: Right. He could have declined the call obviously, and he could have declined to say anything or carry on any conversation, but he didn't do that. Anyway, I'll look at it. What else have we got?

MR. O'NEILL: Mr. Cook worked at a [redacted] different McDonald's previously from this. That McDonald's was robbed as well, and Mr. Cook was not charged with that robbery. I think that there were police reports provided to me in discovery concerning that robbery, videos of that robbery here. I've spoken with the Attorney General who's watching this case here, and she can tell the Court exactly what her intentions are.

It was my understanding from our conversation that her intention was not try to impeach any Lyle individuals, certainly those in that previous incident, Your Honor. I think Assistant Weiss can kind of clear up what her intentions are about that particular case.

THE COURT: Do you intend to offer any prior bad act evidence?

MS. WEISS: Your Honor, I do not believe this meets this test for Lyle evidence or 404(b) evidence as to the burglary of the prior McDonald's on Garners Ferry Road. That's why I told O'Neill I had no intention of bringing it in for that reason.

Although I will state my belief that he was involved in that, I don't believe I have any evidence to present to this Court. However, when he was the night manager, he was the closing manager at the Garners Ferry McDonald's and left the safe unlocked, which did allow the burglars to take a large sum of money from that McDonald's.

And if Mr. Cook were to take the stand, I may wish to cross-examine him on the fact that he did fail to follow procedure and left the safe unopened, which allowed the burglars to be able to take a large sum of money. So I think that flows into the facts of this case, Your Honor.

MR. O'NEILL: I don't know what evidence the State has that Mr. Cook failed to leave that safe open. That's not my understanding from watching the video of how the burglars got into the safe.

I don't think it's appropriate for her to ask that question on cross without any sort of foundation as to the fact that he left the safe open. I don't think there's any evidence of that. I think that's just the State's supposition, Your Honor. I don't think there's any evidence of that.

MS. WEISS: Your Honor, the video clearly shows Mr. Cook was the closing manager. He was the last person closing out. He's the one responsible for the safe when they close out at night as part his job responsibilities. It was the same job responsibilities he had at this McDonald's. And when the burglars come in, they walk over and open the safe.

THE COURT: What proof do you have of that?

MS. WEISS: Because I have a video of them walking over and opening the safe without having to go through a locking mechanism or any sort of lock. They literally walk over and open it.

MR. O'NEILL: The video speaks for itself, Your Honor. My review of the video is -- well, the video speaks for itself, either way. I don't think she can form a question in cross without any sort of evidence or without there being a prior admission in

evidence that he left the safe open intentionally for it to be burglarized.

THE COURT: Well, let me ask you this. Assume that they've got this evidence that they could produce. If she asks him if he previously left a safe unlocked when he left the place, the McDonald's, at night and the burglars were able to get in without opening the safe or doing anything other than just opening the handle on the safe, can they not ask him that, as long as they can back it up with the video?

MR. O'NEILL: I would first argue that it's not relevant. But if the Court finds that it's relevant, I don't think that the video proves that it's not locked. I don't think the video would suffice as convicting evidence.

I think the video proves that it's not locked. And I think at that point it's getting into these areas at that point, trying to prove that, well, he's at the McDonald's, they get robbed; therefore, he set up this robbery in this case. I just want to make sure Your Honor can understand what's going on in this case.

They're not claiming Mr. Cook actually was the gunman in this case. The State's position is

Mr. Cook conspired with these other co-defendants to have the McDonald's in Batesburg in this case robbed, is my understanding of the State's position on the facts of this case.

THE COURT: Essentially, wouldn't you be getting into Lyle evidence there?

MS. WEISS: Well, no, Your Honor. I'm not presenting it for that purpose. To tell you a little bit more how I see it as cross-examination information, is in this case the specific information given to Rod Cook as the night manager not to send anybody to take the trash out, along with I think Lawrence Berry (PH), he is to lock up the safe. These are precautionary measures for the store.

He is told to lock up the safe. He is told not to send anybody out after dark to take out the trash as of that day. That night, in violation of that rule, he sends Willie Jennings out to take out the trash, which, yes, we do believe further ends up in a conspiracy. But he violates the rule, sends Willie Jennings, and Willie Jennings is shot and killed.

Back at Garners Ferry Road, he's told to lock the safe. He doesn't lock the safe. He

doesn't follow procedure, which then allows people to steal money. We're not saying -- I believe -- I personally believe, based on what I've seen, that he probably did set that up. But that is not what we're asking to present to this jury.

What I'm saying is that he did not lock the safe, which is a procedural requirement for the night manager, once again violating policies which then allow a large sum of money to be taken from the McDonald's on Garners Ferry Road.

So he's choosing not to follow procedure. Then it goes one step further, prior to that when he worked at Wendy's, he failed to follow a store procedure which was properly working the cash register, cancelled out $148 worth of transactions, essentially stealing $148.

But, once again, that could not be proven clear and convincing as to whether he actually stole it. But he ended up essentially stealing $148 by failing to follow store procedure in the way he was working the cash register. So he was then terminated from that job.

So he has a history of not following procedures in a store. And I think that's important that he knows that there are consequences when he

failed to follow procedures. And that night, he was specifically instructed at 4:00 that afternoon, 9:00 that evening, not to send anybody out the door. Yet, he chose to make his own decision and sent him out the door anyway, and there were consequences to that, as well.

MR. O'NEILL: I don't follow that argument. First of all, that's clearly deficient evidence and law clearly, Your Honor. But him allegedly -- we don't need to get into that. But him allegedly not locking the safe has no bearing on this case at all other than saying that he's doing these things to allow the restaurants to be burglarized or robbed, which is exactly what basically 404(b) evidence is, Your Honor.

There's nothing about -- the only way that would be relevant is if Mr. Cook got up on the stand and said, "I always follow procedures. I've never violated procedures." Then that would be opening the door for the State where "You violated procedures back here in Garners Ferry."

But until he does that, him allegedly not locking the safe -- again, we don't agree with that. But him allegedly not locking the safe at Garners Ferry years earlier has no relevance on this case at

all.

THE COURT: I don't think you can get into it unless he takes the stand and opens the door.

MS. WEISS: Yes, Your Honor.

THE COURT: If he takes the stand and says anything that opens the door, then essentially you can impeach him with that or show inconsistencies or attack his veracity.

MS. WEISS: And that was my intention all along.

THE COURT: So that would be a way it could come into your case in chief. And it couldn't come into it with him on the stand, unless he gets on there and testifies to something that's inconsistent with that. Obviously, once he's on the stand and puts his character at issue, and you can ask him about any inconsistencies about that.

So I think that's where you're limited. If he gets on the stand, takes the stand, and testifies to something inconsistent with that, then I think you can impeach him with it or ask him about it.

MS. WEISS: Thank you, Your Honor.

THE COURT: You're limited to that. If he gets on the stand and doesn't testify to anything,

any inconsistencies or anything like that or open the door to it, you're not going to be able to ask him that --

MS. WEISS: Yes, sir.

THE COURT: -- to open the door yourself. He's going to have to open the door first; all right?

MS. WEISS: Yes, sir.

THE COURT: What else?

MR. O'NEILL: Your Honor, one final thing. There were some pictures in discovery of Mr. Cook's alleged gang activity. I have a motion to suppress the mention of any sort of gang activity.

I think the State's intending to use that information based on our prior discussion. I want to make sure that's on the record that we move to suppress any sort of mention of Mr. Cook's alleged gang activity.

MS. WEISS: Your Honor, there is a photo from Facebook of Mr. Cook and Mr. Miller in the same photo where they are giving hand signs. I don't personally know what those hand signs mean, and we do not have any intention of saying that those are gang signs.

I think at one point somebody said they

represented Highway 21, which is the area of Ridgeway that they're from. So that picture would be the only thing that we may want to put in just to show the connection between Meon Miller and Rod Cook but not with any mention of gang activities of Rod Cook.

MR. O'NEILL: Your Honor, first of all, I don't think Mr. Miller is in that picture. Secondly, I think it's Mr. Miller and his cousin, first cousin actually. So I don't think we need the picture to illustrate the connection between the first cousins here.

MS. WEISS: If I'm mistaken about that and he's not in that picture, we won't seek to introduce that.

THE COURT: You do not have a picture you've introduced, is that what you said?

MS. WEISS: If he's not in that picture, we would not even seek to introduce that. And we won't introduce that picture. I was under the impression they were both in that picture.

THE COURT: Okay. All right, what else?

MR. O'NEILL: Your Honor, I ask that the lay witnesses be sequestered in this case here to make sure there's no conversation before their

testimony as it relates to witnesses sharing testimony, things of that nature here, Your Honor.

THE COURT: When you say "lay witness," are you talking about everybody except the designated case agent for the State and the defendant himself?

MR. O'NEILL: Yes, Your Honor.

THE COURT: Everybody else?

MR. O'NEILL: Yes, sir.

THE COURT: What's the position of the State on that?

MS. WEISS: As far as?

MR. O'NEILL: And the victim's family, Your Honor. I don't know if the victim's family is here.

MS. WEISS: The victim's family and then we may have one evidence custodian that may be in and out, Lt. Clare, just checking on his evidence. I don't want him to get in any trouble if he were to come in for any reason. Do you have a problem with that?

MR. O'NEILL: No.

THE COURT: Okay.

MS. WEISS: That's fine, Your Honor.

THE COURT: Victims are allowed to be in

here by the Constitution. I don't think that extends to extended family. But I think perhaps if he has a spouse or his mother or somebody, I think they would probably be entitled to be in here. But your concept is to keep out a whole group of them who can go to school on each other's testimony, correct?

MR. O'NEILL: Yes, Your Honor.

MS. WEISS: Your Honor, he's going to have the defendant's mother, is on the witness list, is my understanding. So I would ask that she be kept out as well, if we're going to be keeping out lay witnesses.

THE COURT: All right. So I will grant the motion, then, to sequester. And I'll leave it up to counsel as an officer of the Court, make sure your witnesses understand that they can't be in the courtroom until after they testify. And they cannot, after they testify, discuss their testimony with anybody who has not yet testified, tell them what went on, what questions were asked, or anything like that.

That would apply equally to the State and the defense. Therefore, if you fail to observe a witness when you're coming in and they sit here

through other witnesses' testimony, then you may not be and probably will not be allowed to put that witness up and testify. You understand?

MR. O'NEILL: Yes, Your Honor.

MS. WEISS: Yes, Your Honor.

THE COURT: You understand?

MR. O'NEILL: Yes, Your Honor.

THE COURT: And it's your responsibility. I'm not going to sit here and try to figure out whether somebody's on the witness list or not, because I don't have any idea who they are. But it's going to be up to you to either watch out for those persons yourself or have somebody else do it. But you do it at your risk. If we're going to sequester them, then we're going to enforce the sequestration rule, okay?

MS. WEISS: Yes, Your Honor.

THE COURT: Anything else?

MR. O'NEILL: That's all I have.

THE COURT: All right.

Anything else?

MS. WEISS: No, Your Honor.

THE COURT: All right. If you've got any cases that you want to hand me that you've cited or anything on the question, I'll look at them. I'm

going to look at these and make a final ruling before we get started at 2:30.

MR. O'NEILL: Yes, sir.

(Court in recess.)

THE COURT: Counsel, a couple of things. Of course, the jury hasn't been sworn. I'll get the Clerk to do that when we bring the jury back. I wrote the information I had on the jurors, and I don't have any that stand out to me as particularly qualified to be foreperson. So I'm going to let them elect their own foreperson, when they go back in, out of the first 12 jurors chosen when they go.

I do have a preliminary charge I give to the jury about the format of the trial, and how we'll proceed, and their responsibilities. And I always give them that before asking you to start with opening statements, so we'll do that.

And we've got to go back now and rule on a couple of motions here. And I think we're pretty clear on Lyle evidence, the type evidence that the State can't put that in with cross-examination of the defendant if he takes the stand unless he opens the door somehow, he creates an issue and puts his character or his credibility at issue.

Then the door may be opened by him, but it

can't be opened by the State initially. As to the motion for a speedy trial and dismiss based on lack of a speedy trial, the Court, as I iterated or indicated really before we broke for lunch, my inclination to decline to grant that motion, and I affirm that.

I decline to grant the motion to dismiss for lack of a speedy trial for several reasons. There are a number of reasons the Court can give. And some of the cases handed up even by the defense highlight some of those that you look at. And some of the cases in the motion itself, the written motion, says the main goal right is to prevent undue pre-trial incarceration, minimize anxiety, stem public accusation where there is a possibility of being long delays and impairing an accused his defense.

But it goes on to say here, "Accordingly, the right to a speedy trial is necessarily relative. It is consistent with delays and depends upon the circumstances," citing Beavers versus Hubert -- H-U-B-E-R-T. "Stated differently, a speedy trial does not mean an immediate one. It does not imply undue haste, for the State too is entitled to a reasonable time in which to prepare its case. It simply means

a trial without unreasonable and unnecessary delay," citing Wheeler versus State, 247 South Carolina 393.

"Because of the vagaries of this unavoidably ad hoc increase, the Supreme Court has acknowledged that it can do little more than identify some of the factors for the trial" -- and it says "trial courts" -- "to examine" -- this is in Barker, 92 Supreme Court 2182. "These factors include the length of delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered."

Recognizing the same factors under South Carolina law is State versus Langford. Here, what we've got here -- and, of course, it's not jurisdictional, it's administrative. The question is the defendant was denied a bond fairly on after he was arrested. Of course, it was a while after the warrant was issued before he actually got served with the indictment.

I think part of that reason may be a question of whether the Solicitor's Office was going to hear and this circuit was going to prosecute the case or whether there was going to be a recusal or at least a request by the Solicitor's Office here to

get the Attorney General's Office to take the case and prosecute it.

And that was part of it. And part of that is exhibited by the fact that there was some confusion in handling the case by the Attorney General's Office because the Assistant Attorney General who was originally assigned the case decided to run for public office and resigned from the Attorney General's Office, and which the current Assistant Attorney General that's handling the case was appointed to it.

They themselves reindicted the case when he had already been indicted, and so there was some confusion there. So this was not intentional, the Court finds, and is just some misunderstanding there about the status of the case. Nevertheless, the current Assistant Attorney General is assigned the case, and they have been working on the case, and they've been discussing it with defense counsel back and forth, even trying negotiations and that, trying to get the case ready for trial.

There are a number of witnesses here. There is a full page of witnesses on behalf of the State and probably a third of a page of witnesses listed by the defense. And there are a lot of

witnesses involved, some technical evidence, etc. So there are reasons why the case has been drawn out to some extent, and the Court finds that there are some circumstances in looking at it from the totality of the circumstances to explain why the State has not proceeded faster than it did.

Looking at it from the other side, the defense, number one, the defense says that simply making a motion for a bond is also a motion for a speedy trial. It may intimate that the defendant would like to be released on bond or go to trial.

It may intimate that, but cases can't always go to trial immediately. Even the State has a right to prepare its case, etc. But once a motion was made for bond and the Court denied the bond, that's been some, what, almost two years ago. And the defense never made another motion for a bond.

When a person is not able to get out of jail on bond within some reasonable period of time, the defense has a right then to move the Court again to consider the issue of bond because the defendant has been in jail as long as he has without getting a bond, and the Court could consider it.

I usually make that provision, that you come back anytime after 90 days if the case has not

been set for trial. I at least hear the motion. I might not grant it, but I might, depending on the circumstances. But that was not done. So there was no subsequent motion, again, for a bond, to reconsider the bond issue, on behalf of the Court. That was not done.

Number two, there was no motion for speedy trial filed. And to imply that just asking for a bond is a motion for speedy trial, I don't see that. I don't see any cases to that effect. But it's easy enough to file a motion for speedy trial if that's what the defense wants to do. But that's never been done.

And so obviously the defense could have done it. Even in State versus Langford, the Court points out in a recent case by the Supreme Court, points out that the defense does have a right to make a motion for a speedy trial and a motion for bond -- has that right. And that's not been done in this case. Either until the trial or the day of the trial when we're selecting a jury is that motion being made for a speedy trial or dismissal.

But I think it's incumbent upon the defense if they want to insist on a speedy trial that they do it before the day of trial, that a

motion be filed before then to give the Court an opportunity to hear it and rule on it. So that mitigates against the defense asking for a speedy trial if they don't ever file a motion for a speedy trial.

So I find that there are valid reasons why the State did not come for trial. I'll point out one other thing that the defense did not do. When the case was ready to be called for trial six weeks ago, the defense asked for a continuance.

Obviously, the last six weeks the delay was called at the request of the defendant for a continuance. And if they weren't ready six weeks ago, the Court might assume that they weren't ready before six weeks ago either. So six weeks ago, it was set for day certain trial, and here we are. So that last six weeks was at the request of the defense.

If the defense was ready, like I say, if they weren't ready six weeks ago, I don't know why we would assume they were ready before the would six weeks.

For all those reason given, I find that the delay is reasonable other than the fact the the defendant has been in jail during this period of

time. I haven't been shown any other way in which he was prejudiced in his preparation for trial or going to trial in this case. Apparently, he was helped by that since he requested a continuance some six weeks ago to additionally prepare for the case. So, again, I deny that motion to dismiss because of the speedy trial issue.

As to the motion to suppress the admission of jail calls where the defendant was a party and calls made by the defendant, the defendant has moved to suppress the seizure and use of that information here at trial to being able to introduce it as evidence in the trial. And the only recordings that the written motion indicates he wished to have suppressed would be recorded phone calls made by the defendant, Mr. Cook, and co-defendant, Meon -- M-E-O-N -- Miller where the defendant was a party.

Those are the only ones sought to be suppressed. The defense cites 1730-10 of the South Carolina code, the sequence relating to homeland security, ability to search and seizure pursuant to the Homeland Security Act and cites certain procedures to be followed. Again, as the Attorney General's Office has stated, the motion to suppress would have to be made before a three-judge panel of

the Court of Appeals prior to trial, and that's not been done.

So the defendant had the option of filing a motion to have those recordings suppressed under the statute to be heard by the Court of Appeals three-judge panel. So no motion has been made prior to the case called for trial.

Furthermore, insofar as the Fourth Amendment and Fourteenth Amendment, the South Carolina Constitution, Article 1, Section 10, making the motion under those grounds as well, the Court simply finds that essentially consent was given by both of the parties in this case. And one of the parties knowledgeable of it can give consent to it, to the conversation intercept.

But in this case, essentially both of them consented to it. I know the defense doesn't agree with this, but the fact of the matter is, number one, there's no Miranda warnings that have to be given in this because the State wasn't interrogating anybody.

One defendant was in jail, held in custody, and obviously he was in custody. But the State wasn't trying to elicit any information out of it. There was no custodial interrogation of either

party. This defendant was not even in jail. He was not in custody, and he was not being interrogated.

The defendant making the call from the jail or even receiving a call in jail, whatever, he was in custody, but there was no custodial interrogation because no questions were asked of him by the State. Now, the recording, I want to get the wording of that just right for the record.

I've been thinking about it over the break when I was working on this. The exact warning that's given is what?

MS. WEISS: Your Honor, if I may just play it.

THE COURT: Yes, ma'am, please. I want to get the exact wording so I can get this right.

(Whereupon, the recording was played before the Court.)

THE COURT: All right, the exact language of that recording doesn't say anything "This is being done for security reasons." It doesn't say that. It doesn't mention security at all.

All it says is that "This call is subject to recording and monitoring" -- subject to recording and monitoring -- clear warning that whatever is said over this phone call may very well be and

probably will be recorded and monitored by the agency there.

And so there was full warning given. So both parties were aware that the conversation was subject to recording and monitoring. And based on that, you should assume that it will be recorded and monitored. Therefore, with that warning, the defendant in this case had to agree to accept the call, number one. He could have rejected the call. He accepted the call.

The person making the call heard the same information. And they both knew that whatever they said on there could be -- they should have well been aware they shouldn't make incriminating statements or anything that could be incriminating in those statements, they being subject to recording and monitoring by a police agency.

So with that warning, with that understanding, there was no expectation or reason to believe that the conversation would be private and not monitored by somebody else. Essentially, they gave consent to whatever conversation that was made, whatever incriminating statements might be made. They essentially gave their tacit consent to it, because they were aware of it.

In this case, Mr. Cook could have refused the call, not taken the call -- "I don't want to talk to this person. I'm not taking this call." They could have got on there and if that person started to say something incriminating, they could have terminated the call. He didn't have to talk to them at all.

If he talked to them, he didn't have to say anything that would be incriminating to him -- I don't know if he did or not, I haven't heard it -- and didn't have to take the call from this other person if they were attempting to incriminate him. So, number one, to me there's tacit consent that the conversation could be recorded and monitored -- number one.

Number two, there's absolutely no expectation of privacy in a call between somebody in the jail and somebody outside the jail when they're both put on notice that that conversation is subject to recording and monitoring. They certainly should assume that it would be for purposes of whether they're making an incriminating statement or something that could be used against them.

So I think it's tacit consent by both parties to it. I think there's absolutely no

expectation of privacy in such a conversation. And therefore I don't find that it's violative of the Fourth and Fourteen Amendments nor Article 1, Section 10, of the South Carolina Constitution, because there's no expectation of privacy.

Part of the argument by the defense is that the person who was in jail was coerced. Because they're being held there in the jail, they essentially are coerced. Nobody is making them make a statement. They don't have to talk to anybody, don't have to call anybody, don't have to receive any calls.

They don't have to do anything that might tend to incriminate them. So they're not being forced or coerced into anything. If they want to call and talk to somebody about getting out of jail or getting a bond or something, they can do that.

Talking to their attorney is privileged. But if you choose to make the call knowing that it's being recorded and monitored, then you give tacit consent to that. You can say you're forced to do that, but nobody makes them make a phone call. They have an alternative. They don't have to make the call.

So, in any event and for all those

reasons, I'm going to deny the motion to suppress whatever might have been said in that conversation and point out once again on the record that Mr. Cook, the defendant in this case, had three prior calls before the one he's trying to suppress that gave this warning.

So even if he didn't get the warning that it was going to be recorded and monitored in this particular conversation with this co-defendant, Meon Miller, he had it in three prior occasions shortly before that with another co-defendant. So he was aware of what the policy is.

And even if somebody else answered the phone that Mr. Meon Miller made and that warning had already been given before he got on the phone, he had already been made aware on at least three prior occasions with somebody trying to call him from the jail. So he cannot say he didn't understand and know what the policy with regard to monitoring and recording was. He's already been put on notice as to that.

All right, having said all that, I deny the motion, again, to suppress that evidence. Anything else that we need to address before we get started?

MS. COTE: Your Honor, in reviewing all of our notes during the lunch break, we have a couple of things that the defendant asked for in their motion, if there any notes or anything that were different, that I just wanted to share with the defense. I don't think it's anything major, but I just want it to be complete.

MR. O'NEILL: Your Honor, one thing in particular, I think the State has a laundry list of things that -- counsel has given me I think three things in particular here that she says now that applies I guess under Riddle.

One of the ones is that she stated just I guess disclosed to me that the co-defendant, Meon Miller, in this case admitted that he did the shooting, that he was actually the one that did the shooting. I have his note. I have close to 600 to 700 pages of discovery. It's nowhere in that discovery where Meon Miller mentioned being the shooter.

The one statement I have from Meon Miller dated September 2011 expressly says he did not do the shooting, and he blamed the shooting on Angelo Tucker. I prepared my case, because I had this case with that understanding here. And now five minutes

before we're about to do opening statements, I get this statement that says now that Meon Miller admits to doing the shooting where I have been provided nothing in discovery to that effect for these last two and a half years.

So I would object to that. I think that should be suppressed under Rule 5 in the U.S. Constitution on due process here, because at this point, I think it's impossible for Mr. Cook to get a fair trial because this changes my whole strategy when it comes to how we prepared Mr. Cook's defense here.

Secondly, Tasha Matthews here in this discovery I just received now, the statement I received from Tasha Matthews said that she thought that they were going -- this is what I have here. She thought they were going to do a drug deal, that Ron and Mr. Miller had did drug deals together in Batesburg-Leesville and had robbed --

MS. COTE: No, I didn't say that. That's what I told you earlier today. Tasha said that Ron and Meon had done drug deals and that Ron had done drug deals in Batesburg-Leesville.

MR. O'NEILL: Okay, I apologize -- that Ron had done drug deals in Batesburg-Leesville, and

Rod wanted to go back to hustling. This is the first time I've become aware of this here as well, Your Honor. I think at that point, Your Honor, I think that testimony should be excluded because I prepared my defense in the last two and a half years with none of this information. And now I get this information five minutes before I'm about to do opening statements as to what these witnesses have changed really their testimony.

I mean, Meon Miller is now admitting to being the shooting here. He's changing his whole entire testimony, the premise of his whole entire testimony that I've had the last two and a half years almost.

THE COURT: Counsel?

MR. WEISS: Your Honor, we believe that Meon was the shooter the entire time. Meon has just said in the last week that he did do the shooting. He still says that they both were involved in the struggle over the gun but that he was the last one to have the gun or actually do the shooting.

We just talked to him, and I don't think he ever quite got that. Originally, they were kind of pointing fingers at each other. Under hand of one, hand of all, it never really mattered to us,

because Angelo and Meon were there, Angelo and Meon that had the gun, and Angelo and Meon that were there when he was shot. To us, it never really mattered which one. It's just he happened to say in the last week, "Okay, I was the last one to have the gun that actually fired the shot. But I didn't mean to kill him," and that's the crux of it. That was within the last --

MR. O'NEILL: Your Honor, I was --

MS. WEISS: There was no -- but, Your Honor, this doesn't change the defense. This is a hand of one, hand of all case, felony murder case. This doesn't change anything for the defendant. He's still wasn't out there. There was no carrying out his plan that he set into motion, the same thing that the entire discovery is about, is setting Rod Cook's plan into motion.

MR. O'NEILL: Your Honor, I would speak on behalf of my own strategy, because it changes everything about my strategy. The strategy in this case would have been Meon Miller was not being truthful in any of his statements. The evidence pointed to him being the shooter, but he clearly denied being the shooter.

I was led to believe that he was still

denying to be the shooter up until two minutes ago. Now, that change adds on his credibility. If the only statement I had from him was that he's not the shooter and all of the evidence points to him being the shooter, that diminishes his credibility.

Now I find out two minutes before opening that he's admitting to being the shooter here. That changes everything that I was going to cross-examine him and base formation of my case on is that the State is relying on somebody who has no credibility. Now I get the statement where he's admitting to being the shooter here apparently some time week, and I've never even known he's being reinterviewed.

The last statement I had for him is September 2011, where he clearly not only says he's not the shooter but says he never touched the gun that day, that he only touched the gun after the fact, never walked out there with the gun at all.

And now I'm given information that he had the gun and he admits to being the shooter. That clearly changes everything I would do about this case, Your Honor. And I think it's not fair to have trial by ambush at this point.

MS. WEISS: Your Honor, this is not trial by ambush. It's the exact same factual scenario.

It's still somebody who's giving inconsistent statements. It's still the same cross-examination. It's just now he has said this. I can't change the fact that he said it.

So he's just added this. He has said he was the one that fired the shot, and he still says that Angelo had the gun first and that he had it second after it dropped, that he picked it up, and he's the one who fired the shot.

THE COURT: How long have you had that information?

MS. WEISS: This week. I was out of town Wednesday through Friday, so it was -- or was it last -- okay, I'm sorry, my weeks are screwed. It was within the last week and a half.

MR. O'NEILL: Your Honor, I get it two minutes before we do opening statements.

THE COURT: Well, I agree with you that it should have been given to you before now. But be that as it may, it changes slightly the way you'll have to approach the case. But I don't think it changes it enough to require us to continue the case.

What I will do is I will do this. From what I'm hearing about the facts of the case, he was

inside the building, was not out there when the shooting took place.

MR. O'NEILL: Your Honor, I want to make sure I clear up one thing, too. Meon Miller is the only person in this case that indicates that Mr. Cook had anything to do with setting up this robbery. He's the sole witness that states Mr. Cook set up this robbery.

He's the only person the State can use who has personal knowledge that Mr. Cook set up this robbery. And his credibility is an essential issue to this case. And that change in statement rehabilitates his credibility and changes the level of credibility that he has, Your Honor. I think it does tremendous damage to the way that I prepared this case, Your Honor.

MS. WEISS: Your Honor, the evidence clearly showed and I think Mr. O'Neill agrees that the evidence clearly showed that he was the one we believed all along he was the one who fired the shot. He just didn't say it. And I think they've believed all along he's the one who fired the shot.

MR. O'NEILL: That's exactly my point, Your Honor. And that's the way -- the way I prepared the case was that the evidence was showing

he was the shooter, and he was clearly not admitting to that. But yet they wait a week and a half to go talk to him again, and now he suddenly wants to -- he suddenly at this point confesses to being the shooter, which changes -- which rehabilitates his credibility and makes him more credible now. He's finally admitting to being the shooter when he clearly was the shooter the whole time.

THE COURT: Well, does it, because he's given two or three different accounts? He refused it, and now he says that he did. At first, he denied having anything to do with it. So credibility is still an issue. If he's given inconsistent statements about it, his credibility is still an issue.

Now, this is what I will do. I realize this is a little bit of a surprise to you today. What I would be willing to do is bring the jury back in, swear them, give them a preliminary instruction, send them on home, and give you till in the morning to work on your defense.

I don't think it makes that much difference in your defense at all. And so I'd be willing to give you overnight to address that issue, if you want that. And I agree with you, it should

have been provided to you earlier. But it has been provided to you now before we actually even get started with opening statements, and you can deal with it.

I still think Mr. Miller's credibility is an issue. If he's now giving two or three different accounts or statements as to what his involvement was, it's still an issue insofar as his testimony against your client.

And so you may think he's being rehabilitated to some extent, but now he's given more than one statement about what happened and what his involvement was. So I think his credibility is still an issue. That doesn't change, although, again, I think you should have had that information.

What I will do is -- and I'll be willing to just give a preliminary instruction to the jury about the format of the trial -- we'll swear them, give them a format instruction, let them go back to the jury room and elect a foreperson and go home. And we'll wait to get started in the morning. We can start at 9:30 or 10:00 in the morning with opening statements and give you the time overnight to address that in your defense.

MR. O'NEILL: Your Honor, can -- one more

thing, Your Honor?

THE COURT: Yes.

MR. O'NEILL: Can we throw in who and where that statement was given to by Meon Miller so that it's clear who was with him --

THE COURT: Where does the statement come from?

MR. O'NEILL: -- when it was taken.

MS. WEISS: When I took it, it was in trial prep up here in the Grand Jury room.

Which day did we do it -- April 1st.

THE COURT: Yes.

MS. WEISS: And I'll specifically get a date for you about that. Okay, thank you, Your Honor. Our meeting was at 9:30 a.m. on March 29th -- Friday, March 29th. And it was Ms. Cote, myself, Investigator Ellis, and Amy Zimmertrack, who is Meon Miller's attorney.

THE COURT: And the question is, what he's asking is who it was made in front of. Is that the first time the statement was made, or was it made before that, is what he's asking?

MS. WEISS: The first time I heard it.

THE COURT: Did anybody else have any prior knowledge of that statement?

MS. COTE: No, Your Honor. That was the first time I heard that, as well. I can't speak to what he's told his attorney, but that was the first time the State heard that.

THE COURT: And so his attorney was present for this, and you all had no prior knowledge before that meeting that he was taking responsibility for handling the gun?

MS. WEISS: No, Your Honor, and that was the whole thing, because we had been talking to both attorneys back and forth, saying, you know, we believed the whole time that it was Meon Miller, because you'll hear in the facts that he pulls the gun out of his waistband, puts it in the glove compartment, GSR is on.

I mean, it just -- it made sense that he was the one. He's the one that was instructed to go there by Rod. He's the one that's instructed to go -- you know, it just makes sense that he'd be the one that had the gun. But I had told both attorneys, "Listen, you're going to have to point fingers at each other.

"At this point, I don't really care, because both of them showed up there with a gun intentionally to commit a felony. You know, at the

end of the day, you're both just as guilty as the other. So if both of you want to point fingers at each other, fine. But, you know, it comes down to credibility. Somebody shot that gun, and you two are the ones who know."

And so when we were doing our pre-trial meeting, Angelo maintained, "I was not the one who fired the gun." And when Meon came in, he said, "I just didn't mean to. I didn't mean to." So it went down that fast. I mean, that's just a pre-trial preparation.

MR. O'NEILL: Your Honor, that's why I'm at a loss, because if they didn't make any deals here -- and the Attorney General just said that "It didn't matter which one of y'all shot him" -- I don't understand why out of the kindness of his heart nine days before trial he decides, "Okay, I'm going to fess up to shooting this individual," when for the last two-plus years he's never admitted to shooting this guy.

But now, nine days before the trial, he all of a sudden out of the kindness of his heart wants to admit to being the shooter for -- I don't see any apparent reason, unless there's some sort of deal out there, some sort of incentive for him to

now all of a sudden confess to being the killer. I'm at a loss here as to why.

MS. WEISS: Your Honor, I can't tell you. I'm his attorney. I'm not the defendant. I have four defendants that I've been dealing with this entire time. So they were all there.

THE COURT: They're saying they offered him nothing. It may be he's always held out a hope that maybe by cooperating and being truthful that that might be presented to the Court in the way of mitigation at sentencing.

But if they say they made no deals and are not making any recommendation, haven't even got any negotiation, with regard to him, that's what they say. I have to accept what they say on that point. The fact of the matter is why he decided to go ahead and say, "Well, I was the person that had the gun, but I didn't mean to shoot him," and that's what they're saying he said at that time, "I didn't mean to shoot him," not didn't intend to shoot him.

But in any event, I think his credibility is very still much an issue. You certainly can explore all of that. But it's still very much an issue, because if he's changing his statements, obviously those are inconsistent statements that can

be attacked.

His credibility can be attacked if he takes the stand and why he's changing his story. And at the same time while he's changing his story on that, he might be telling something that's not true about your client. I assume that's what we mean by credibility. And I think that's still an issue. I don't think that's been really taken away.

Now, the jury hasn't been sworn. We haven't had opening statements. Nobody has suffered any prejudice at this point. Meon Miller's credibility is always going to be an issue, still an issue. If you want me to give you till sometime tomorrow to take another look at your defense and talk to your client, I'm perfectly willing to do that.

But I don't think it's going to make any difference really whether it's tomorrow we go forward or if it's two weeks from now that we go forward. I think it's going to be all the same. Nothing is going in the meantime. So you still are going to have the same issue on his credibility.

MR. O'NEILL: I guess just out of an abundance of caution, Your Honor, I just want to make sure I'm clear that now -- I say this, Your

Honor, because Meon Miller gave a statement September -- let me get the exact date for Your Honor -- September 15, 2011, that would warrant other changes.

If he now admits to being the shooter, then that can't be the one different out of his statements. There are several in which he gives a statement where he essentially talks about what he did when he got in the car and how he stood back and Angelo Tucker did things.

So there are few other things that are in the different in the statement as well that don't coincide with him being the shooter, because he doesn't admit to having the gun in his possession, he doesn't admit to going around the corner in his statement. So that's another thing that he told y'all on March 29th that was different than what his statement says.

MS. WEISS: And, Your Honor, we can go through this right now, detail by detail. The point is that these are human beings that are telling the story. So I did not -- you know, they've given different versions. This has been the story -- these four co-defendants, this has been the story all along.

THE COURT: Well, that happens in a lot of cases --

MS. WEISS: And so I'm not --

THE COURT: -- where you've got more than one defendant or three or four defendants. The issue is, I think, that once he changed his statement, though, it was incumbent upon you to notify the defense of that.

MS. WEISS: Yes, sir, Your Honor.

THE COURT: And you all didn't do that, and in the future, you should make sure you do that. What I'm trying to do now is remedy that to the best I can. And I think we can do that simply by postponing any --

MS. WEISS: Yes, sir.

THE COURT: -- testimony and evidence or opening statements to the jury till tomorrow and give defense counsel a chance to do something with that, whatever changes he wants to make in the way he approaches it.

MS. WEISS: Yes, sir.

THE COURT: But that's not going to change a month now. So it's going to be the same tomorrow as it is a month from now.

MR. O'NEILL: Yes, Your Honor.

THE COURT: And I'm willing to give you tonight to go back over it and plan your strategy.

MR. O'NEILL: Yes, Your Honor.

THE COURT: It changes a little bit, but the issue really might be more -- credibility might be more an issue, I don't know. You can judge that for yourself. It might be more an issue than it was before, if he's given another statement that's different than what he gave before.

MR. O'NEILL: Well, Your Honor, in all candor I'll share with the Court my theory of this case was that Meon Miller was essentially blaming everybody but himself. I think this changes -- there were not changes then. Now he's accepting responsibility.

The statement he gave on September 15, 2011, blamed everybody in the world but him. He said Mr. Cook planned, Ms. Matthews drove, Mr. Tucker shot him, "I just stood there." And now we have him saying -- him admitting to being the shooter kind of changes that perspective. Now he's saying, "Okay, I take responsibility on my own," where in the September 15, 2011, statement he blamed everybody but him.

THE COURT: Well, I don't disagree with

you. He's taking a contrary position now. When he's got to get on the stand and tell the truth under oath, he's taking a different position now. There's no question about that.

But I'm just saying that that's not going to change now that you're aware of it. You should have been made aware of it sooner, but I'm giving you an opportunity and will work with you on giving you enough time to go back over it and set your strategy. Nothing has been said to the jury yet.

MR. O'NEILL: Yes, Your Honor.

THE COURT: They haven't even been sworn. And so I'm willing to give you some time overnight. If you need a little more time in the morning, I can do that, as well.

MR. O'NEILL: Yes, Your Honor.

THE COURT: But I don't think we need to continue the trial again, simply because I don't think it's going to change. Whatever strategy you're going to have on tomorrow, the same strategy you'd have a month from now. So I just don't think it makes that big a difference.

MR. O'NEILL: Yes, Your Honor. I just wanted to make sure that I got all the changes that we got. That's why I gave the State the Riddle

motion yesterday so they would know --

THE COURT: Well, I think --

MR. O'NEILL: -- I was specifically asking for any change in statements so I wouldn't be supplied with anything tomorrow.

THE COURT: I think that was a very astute motion and certainly was a fruitful motion to get that motion. At the same time, I would caution the Attorney General's Office that once you've got information that's different, if he changes his statement, you have to let the defense know.

Any of the witnesses that you interview or you plan to call or are going to call or not call, but anybody you talk to who changes their statement -- well, change it, period, because it then becomes a credibility issue.

And I think you have a duty and obligation -- all of the cases in Rule 5 and Brady have an obligation to let the defense know, and you really should let them know as soon as you're aware of it. And so keep that in mind in the future. You have that obligation to do that.

MS. WEISS: Your Honor, I appreciate that. I appreciate the Court's indulgence with us, and I do know that, and I apologize. I just am glad that

we addressed it, because I wouldn't have a chance to go back and look.

THE COURT: It would have been a much bigger problem if it developed during the trial.

MS. WEISS: Yes, sir, Your Honor. And I'll go over with Mr. O'Neill the statement. It is difficult because, like I stated, it's a retelling of the statements as some of the players switch around, but it's not a totally different statement. So it's confusing, so I think --

THE COURT: Has he got the complete statement now?

MR. O'NEILL: Your Honor, the problem is that when they -- I have a written statement on September 15, 2011.

THE COURT: I'm talking about from this meeting they've just had to prep for trial.

MR. O'NEILL: I never get anything written on that. I get oral statements from the Attorney General as to what was said. But they're going to talk to him nine days ago but never write anything down. So all I get is what he said through them. So there's no any written version of what happened.

MS. WEISS: Okay.

MR. O'NEILL: So at that point --

THE COURT: They don't have to give you their trial preparation, but they do have to give you --

MS. WEISS: Correct.

THE COURT: If they change their story, they have to give you that. And what I'm asking you is, have you given him all the change?

MS. WEISS: And as I was going to say, if I can just meet with him for a minute, I can go through this, because there's a little bit of -- not exactly because they sort of switched roles in the new version Of what Mr. O'Neill is saying, there had to be a couple of changes.

So in reviewing this, obviously there are a couple of changes because now he's the one shooter. So I can go over with him line by line.

THE COURT: What I want you to do is just sit down and go through every possible change.

MS. WEISS: That's what I want to cover, Your Honor.

THE COURT: So he'll be aware of it before we get started with opening statements. Maybe I just better wait to swear the jury as well --

MS. WEISS: Okay.

THE COURT: -- till tomorrow when we're

going to get started, whatever time we agree to start. And you go over it with him, and then I want him to be aware of any changes any witness made to a pre-existing statement.

MS. WEISS: And we'll sit down -- the three of us were in all of these meetings, so we can sit down, we'll look at our notes, look at these statements, and go over them with Mr. O'Neill to make sure any nuance that we find is covered so there's no doubt.

THE COURT: Any changes.

MS. WEISS: Yes, sir.

THE COURT: It might seem harmless, but it might not be harmless to the defense.

MS. WEISS: And that's what I think. That's why I think it would be better if we just go through and every nuance of a statement get covered.

THE COURT: Okay, all right. What do you want to do about starting tomorrow, then? I'm going to give you some time. What time do you want to try to get started tomorrow, Mr. O'Neill.

MR. O'NEILL: Ten o'clock is fine with me.

THE COURT: Is that all right with you?

All right, let's do this, then. I think what I'll do is I'll bring the jury in. I don't

even think I'm going to swear them because I don't know what else is going to come up.

I'm glad I didn't swear them before lunch. I'll bring them in. I'll go ahead and give them this preliminary instruction, let them go out and elect a foreperson. And we'll reserve the oath until tomorrow if we actually get started with opening statements.

That way, we'll use part of the afternoon, and let's get that done as quickly as we can, then you all spend whatever time is necessary. If it's okay to start at 10 tomorrow. I can give you a little more time than that if you need it. I'd like to get started at 10, but I can give you a little more time than that if you need it.

MR. O'NEILL: I'm fine with 10.

THE COURT: All right.

MS. WEISS: Thank you, Your Honor.

THE COURT: Anything else we need to address?

MS. WEISS: No, Your Honor.

MR. O'NEILL: No, Your Honor.

THE COURT: Just make sure you go over everything with him --

MS. WEISS: Absolutely.

THE COURT: -- from the Attorney General, everything you have, any changes.

All right, if we could bring the jury in. I have a preliminary charge I'm going to give them.

(Jury in at 3:23 p.m.)

THE COURT: Good afternoon, ladies and gentlemen of the jury panel. I apologize for keeping you back in the jury room this long. Some matters have come up that we had to address here before we got started that we didn't anticipate.

And as a matter of fact, there are a couple of things I'm going to do, including give you a preliminary instruction about the format of the trial and what to expect as we go through the trial. I'm going to do that.

And then I'm going to let you go back into the jury room and elect a foreperson for yourselves, and then go home for the evening because there's other matters that we're going to need to take up. And we're actually going to get started trying the case in the morning about 10:00.

But for now, let me give this kind of a preliminary instruction about the format of the trial and what to expect. I suspect that most of you have not served on a General Sessions trial

same as every other juror, and that's to listen carefully to the testimony in evidence so you'll be in a position to deliberate and help the jury reach a verdict in this case.

All right, ladies and gentlemen, I'm going to excuse you at this time. As I say, if you'll go back into the jury room and from the first 12 jurors chosen elect a foreperson. And that person will write their name and juror number down on a tablet provided and give it to the Bailiff. Once you've done that, you're free to go, and I'll ask that you be back in the jury room at 10 in the morning, 10 a.m. Thank you.

(Jury out at for the day at 3:38 p.m.)

THE COURT: All right, counsel, anything else we need to take up? We're not losing much time this afternoon. You will need to be out of here by five anyway, so we're not going to lose much time today.

MR. O'NEILL: Yes, tomorrow, too.

THE COURT: Oh, it's tomorrow, too?

MR. O'NEILL: Yes, sir.

THE COURT: All right, okay.

Anything else?

MS. WEISS: No, sir, Your Honor.

THE COURT: All right, you all have your little meeting there, then, and I'll see you in the morning at 10:00.

MR. O'NEILL: Yes, sir.

MS. WEISS: Thank you, Your Honor.

(Court in recess for the day.)

- End of Day -

Tuesday, April 9, 2013

(The defendant, together with counsel, was personally present in the courtroom.)

THE COURT: Good morning, counsel. We're still waiting on one juror, but I thought we'd see if we need to take up anything. For your information, the jury selected juror number 98, Zachary Huffines -- H-U-F-F-I-N-E-S -- as the foreperson.

Is there any matter we need to take up out of the presence of the jury at this time before we get started?

MR. O'NEILL: I think there's one matter, Your Honor.

THE COURT: Okay.

MR. O'NEILL: At the meeting with the Attorney General, we discussed the matter that we ended on yesterday here that relates to any sort of updates as it relates to any of the co-defendants' statements. Assistant Attorney General Weiss here, she verbally went through the statements here and indicated what adjustments she thought that were made.

I did note while we discussing it that I

think Assistant Attorney General Gunter here took notes during that meeting with these co-defendants here. And it is my position under Riddle that I'm entitled to the notes that were taken of that conversation, not entitled, of course, to any sort of personal impressions on their part, but any sort of notes that say, "Meon Miller said this."

THE COURT: Counsel, you're not entitled to trial prep any more than they're entitled to yours. And if they made notes in there in preparation for the trial, you're not entitled to get that. You're entitled to get anything that is exculpatory or there's been change that would be helpful to your case.

You're entitled to any of that or any new matter really
for that matter that came out in their prep that you're entitled to know. You're not entitled to get their trial prep notes any more than they're entitled to get yours. So if there's something specific you want to refer to, that's fine.

I'm not going to require them to turn over their trial prep notes, present impressions, and things like that on trial strategies. I'm not going to require them to turn that over to you. But I

have already instructed them to turn over to you anything that might be exculpatory or beneficial to you in your defense, that you need to know in your defense and that sort of thing.

I've asked them to do that. But I'm not going to ask them to turn over their trial prep notes with their trial impressions and their trial strategy and that -- that's the demarcation line -- any more than I'm going to require you to turn over yours.

MR. O'NEILL: Your Honor, I want to make sure I'm precisely clear now. I'm not asking for any sort of impressions or any sort of == any of their internal thoughts about what was said. What I'm asking for, if there is a notation that Meon Miller -- my understanding is that the Assistant Solicitor, while Meon Miller was relaying his version of the events, took notes of what he was saying.

I'm not asking for their impressions about what he's saying, their thoughts about what he's saying. I'm not asking for any of that. And I'm not entitled to their impressions. What I'm asking for is if they have notes that say Meon Miller -- if they're contemporaneously writing down what Meon

Miller said to them, because when I talked with the Assistant Attorney General, they also related he did some sort of reenactment of how the victim was shot.

If there are notes as to how that was done, if there are notes as to what he said, that's what I'm asking for. I'm not asking for their impressions about his character or his ability.

I'm not asking for any of that. What I'm asking for is if they have notes that say, "Meon Miller said this," one, I think those notes could be used as impeachment if he gets up on the stand and says something different than what was said in that interview.

And that's what I think I'm entitled to. I'm not asking for their impressions about him as a witness, any sort of their internal thoughts. If they have essentially dictations of what he said, that's what I'm asking for.

THE COURT: All right, counsel?

MS. WEISS: Your Honor, Ms. Cote can address her notes if you wish separately. But, Your Honor, these meetings were specifically for pre-trial prep. We went through -- I mean, as far as the reenactment, it was, yes, a reenactment which was done, again, with the investigator who was in

there wish us for Mr. O'Neill.

We went through those notes, and he orally got our notes, everything that -- we went through our notes as we were meeting with him. So he orally got our notes. But I, you know, agree with the Court and ask the Court to maintain the secretness of our pre-trial notes.

I mean, that's exactly what they were. We took down what we thought was important pre-trial for our strategy for trial, and we gave him -- you know, at the time, we went through our notes for each of the witnesses and gave him detail by detail through the statements anything that we perceived may have changed, even if -- because there was some question about whether it was an actual change or a perceived change.

We went through that with each of our notes. And so I would just argue that, you know, we're attorneys for the State. We're taking notes. It's attorney work product. It's pre-trial prep. And we shouldn't have to turn that over to the defense. But we did sit down and go detail by detail through each of the statements and go through any change or any perceived change.

THE COURT: All right. And I'm going to

clarify just one little bit. Defense counsel is saying anything he said that you wrote down insofar as what happened. And if that's included in your pre-trial notes and you can't just blank it and give it to him, then the question is, have you given him everything that he said happened out there, particularly at the scene, particularly if it's anything different than what he said before.

MS. WEISS: I can speak specifically to my notes because I know I went page by page through mine and tell you absolutely I didn't. I'll let Ms. Cote speak to hers.

THE COURT: Okay.

MS. COTE: Your Honor, as we went through the statement that Mr. Miller made and we noted any inconsistencies in his most recent discussion with us in pre-trial preparation, again, it's work product. I did make notes with my impressions of what the testimony was like when we were speaking with -- and what their demeanor was like, things like that, trial preparation strategy, when we were meeting with these witnesses.

Those are in my notes. And I've reviewed Riddle, 369 South Carolina 39, and unless I am missing something, there's nowhere in here that says

that the State is required to turn over our notes that we make in meeting with witnesses.

It discussed Brady with giving over information favorable to the accused and anything that is inconsistent with an original statement was made, and that's what we have done here, Your Honor. So it's our position that we have.

And also, Riddle is a PCR. I wanted to state that for the record. So it is a little bit different than what we're dealing with here. But it's our position that we have -- we are in accordance with Brady and have turned over everything to Mr. O'Neill.

MR. O'NEILL: Your Honor, they keep referring to their impressions. When we discussed this yesterday, I told them that it's fine that -- I did not want their impressions. They can black out their impressions. They take the position that they've given me everything that's in their notes. I don't want their impressions. I don't see why they can't give me their notes with their impressions redacted.

THE COURT: Counsel, in preparation for trial and talking to the witnesses, they're required to give you anything that might be exculpatory or

beneficial or helpful to you in your defense. In particular, you have the same statements previously that the witnesses had, I assume that they had.

Any changes in their statement, changes in position, they're required to give you those. And they say they've done that. And I'm not going to make them give you their trial preparation notes, they say is trial strategy, how they evaluate a witness, maybe the strength of witnesses, etc., how they evaluate the witnesses.

I'm not going to require them to give you that. There are some things that are trial prep, and they are work product in preparation for trial. And neither side could ever make any notes like that if they had to turn over and give it to the other side. You wouldn't do it either.

And so I'm saying if they say they've given you everything that's exculpatory or required under Brady and the discovery rules -- criminal discovery rules -- they say they've given you everything, any changes that were made in their statements. They've given you anything that might be exculpatory, including from this meeting, any changes made by a witness or that might be helpful to you in your defense.

They say they've given you that. And so I'm not going to require them to turn over their trial prep notes. Have you got something specific that you think is there, I'll be glad to take a look at the notes myself and see if there's anything there. But if you don't have anything specific, a shot in the dark out there somewhere is not very helpful to the Court.

MR. O'NEILL: And, Your Honor, I guess I'm in a position where I can't relay it to the Court whether I have anything specific or not because I haven't seen the notes. But I would ask that the Court review them just to make sure that there's not anything in there that I haven't been given.

Of course, I don't know whether or not there's anything that I haven't been given because I haven't seen. I was just relying that they told me that they had given me everything. And all of a sudden --

THE COURT: Are you going to give me yours and let me look at yours too and see if there's anything that's helpful to the State that you didn't turn over to them? Are you going to give me those?

MR. O'NEILL: Well, Your Honor, I would turn over anything that's required of me under

reciprocal Rule 5. I don't have any Rule 5 that I'm going to use in my case in chief here.

THE COURT: Are you going to bring me your trial prep notes and your evaluation of your witnesses and let me look over them? You see where you're going with this? You're going with the Court is going to have to review everybody's trial prep notes to see if there's anything they didn't turn over.

If there's something you say they didn't turn over, I'll be glad to look at them. But just to make me review all their notes and everything and do that in every case, I don't think we need to do that. They say they've turned over everything to you and went over everything with you that's exculpatory or required to be turned over to you.

MR. O'NEILL: Yes, Your Honor.

THE COURT: And you can't tell me anything that you think they might have that haven't been turned over. You're just telling me "I want you to review everything and see if there's anything in there that they haven't turned over," right?

MR. O'NEILL: Well, actually, Your Honor, what I'm saying is that -- precisely my point is that I think I'm entitled to essentially dictations

of the interview. I don't want any sort of impressions. I agree I'm not entitled to their impressions and thoughts of the witnesses.

I'm not asking for that. I want to make sure that the Court is clear on that. I'm not asking for any sort of trial prep when it relates to their internal characterization of the strength of a particular witness.

That's not what I'm asking for. All I'm asking for is if they said -- if they essentially dictated what the witness interview was, that's what I think I'm entitled to.

THE COURT: I don't see how you're going to separate it out if they're making notes in preparation for the trial. If you're saying a witness made a statement and they wrote down what the witness said in a statement and you're entitled to that.

MR. O'NEILL: Yes, that's what I meant.

THE COURT: I think you are if it's inconsistent with anything they said before or anything exculpatory or helpful to you in your defense. I think you're entitled to it.

MR. O'NEILL: Yes, sir. And that's --

THE COURT: But I don't think you're

entitled to go through their whole notes and everything to see if you can find something that might be --

MR. O'NEILL: Your Honor, I'm in a position where there's no way I can tell what I'm entitled to because I can't see what they have. So there's no way for me to know what I'm entitled to, if Your Honor understands me.

THE COURT: Well, I understand what you're saying, but I also say the Court is not going to review everybody's notes before everybody's trial just because you want to see what's over there. That's not the way it works.

MR. O'NEILL: I just want --

THE COURT: They're required to comply with the rules -- they say they've done that -- in Brady and the rules. They say they've done that.

MR. O'NEILL: Yes, Your Honor.

THE COURT: Okay. And so if you tell me there's something you think they've got over there that you need, I'll be glad to review their notes and see if that's the case. But just to come up with a blanket want the Court to review all their notes and everything to see if there's anything, I'm not going to do that in every trial I have.

They're officers of the Court, and I have to assume that they along with you are being honest with the Court. And if you say you've turned over everything, you've turned over everything. I have to assume that.

MR. O'NEILL: Yes, Your Honor.

THE COURT: If you can point to something specific that you think might be there, I'll be glad to look and see if it's there.

MR. O'NEILL: Your Honor, I just want to make clear I'm not implying dishonesty on the part of the State. Sometimes there's a difference of opinion as to what constitutes a change in a story or a variation in the statement here. That's the only thing I'm concerned about, Your Honor.

THE COURT: Well, then I've got to go back and review everybody's statements and everything to see if there's a possible inconsistency in there. And the Court can't do that in every trial.

MR. O'NEILL: Yes, sir.

THE COURT: That's like saying "Can't trust you guys. You're not going to turn over everything. The Court's going to have to review your trial prep notes every time to see if there's anything that might be helpful to me." I don't

think that's where we're going with discovery.

MR. O'NEILL: I understand the Court's ruling. But I just want to make sure that my client gets everything that we're entitled to, Your Honor. And I understand the Court's ruling.

THE COURT: They say they've turned it all over, counsel. They say they've turned it all over, and they've complied with Brady and the rules and the case law. I don't know what more I can do. I don't think I should get in the habit of reviewing everybody's notes, theirs and yours, to see if you all are in compliance with the discovery.

MR. O'NEILL: Yes, Your Honor.

THE COURT: You're an officer of the Court, and I assume you're telling me that okay. Even today or if we're in a post-conviction relief proceeding, and you say, "I think they've got this over there. I found out that they may have this there and included in their notes or their case file," I'll go look for it. I'll make them turn it over and let me look at it. I don't mind doing that.

But if you just tell me blanket, "I want you to look at everything they've got and see if I can find anything that's helpful to me," I don't

think that's where we need to go with discovery. If that's the case, we can't trust anybody, including you, and you're going to have to turn your notes over as well and let me review those.

I don't want to do that in every case, because then I've got to go back and review everybody's statements in the case. I've got to try the case insofar as the discovery is concerned. I've got to look at everybody's notes and check everybody's notes and see if there's anything that's beneficial to the other side or see if they're in compliance with discovery rules and Brady. I don't want to get in that position.

MR. O'NEILL: Yes, sir.

THE COURT: I don't think you want me to get in that position, because I'm going to have to review all your stuff too if they say, "We want to make sure he's turned over everything. We want you to look at his work product, his interviews, and his impressions, and any witnesses maybe he hasn't called that he got that's given him bad information that's not favorable to him." You want to get in that position?

MR. O'NEILL: I understand the Court's ruling, Your Honor.

THE COURT: Well, I'm trying to make it clear to you. I want to make sure everybody is fair and you've got what you're supposed to get under the rules.

MR. O'NEILL: Yes, sir.

THE COURT: But I don't want to come into court with this blanket "Look at everything they've got and see if you can find something for me." That's not far how discovery goes, I don't believe. If they don't turn over something they're supposed to turn over to you, then we'll take that up --

MR. O'NEILL: Yes, sir.

THE COURT: -- if it turns out to be the case.

MR. O'NEILL: Yes, sir.

THE COURT: All right?

MR. O'NEILL: Thank you, sir.

THE COURT: We'll take it up and deal with it.

MR. O'NEILL: Yes, sir.

THE COURT: All right?

MR. O'NEILL: Thank you.

MS. WEISS: Your Honor, may it please the Court, Mr. O'Neill had asked if we had any other information related to the cell tower. He just

asked if there's any more cell tower information. And we just got a list of the addresses that go with the numbers, the same thing that was on the cell site but this is a list we just got. It doesn't specifically relate to anything. It's just all of the cell tower sites and the numbers.

MR. O'NEILL: This is for all three cell phones?

MS. WEISS : This is for the entire country, I believe.

MR. O'NEILL: So this is a list of all the cell --

MS. WEISS: Yes.

MR. O'NEILL: -- phone towers?

MS. WEISS: Yes. It was something that Mr. O'Neill had asked for, and so I just want to let you know we turned that over. Also, just to be clear, we had talked to Mr. O'Neill yesterday about -- when I was giving him all the information, one of the things that we mentioned was that Tasha Matthews had told us that Rod Cook and Meon Miller had dealt drugs together and that Rod Cook had dealt drugs in Batesburg-Leesville, that she had taken him when he had done that.

And he said he was fine with that. I

don't want to be in any sort of mistrial situation if she testifies to that, because I wanted to make sure the Court is aware that this has been brought up ahead of time.

MR. O'NEILL: I'm fine with them telling me that. I don't think I was -- I won't admit that I was fine with that coming into evidence, Your Honor. I want to make sure I'm with that. I wasn't saying I was fine with that coming into evidence. I was saying I was fine with that disclosure.

MS. WEISS: Okay. Well, Your Honor, that is information that explains Tasha Matthews' testimony -- her state of mind, her testimony as to what she was doing, why she was doing it at the time that the murder took place.

Part of the testimony would be that she dropped off the two co-defendants and then drove to a separate place to park, that she had done that in the past when she had dropped Rod off to do a drug trial. She would go to a separate place to park.

So that's she thought that -- she knew something illegal was going on. She thought it was a drug deal because she had a history of this. It doesn't go the robbery. It doesn't go to whether or not it was a drug deal. It's just her state of

mine, her reasoning for doing what she did.

I think it helps explain why Tasha Matthews did what she did and explains her testimony. I think it would make the testimony incomplete to not be able to explain that she had done this in the past and that there was a reason in her mind for doing what she did.

MR. O'NEILL: If they want it for that limited purpose, okay.

THE COURT: Sir?

MR. O'NEILL: If they want it for that limited purpose, then I won't object to it.

MS. WEISS: Okay.

THE COURT: All right.

MR. O'NEILL: Your Honor, one thing that I just thought about that yesterday came up. We've got a previous stipulation as it relates to the cause of death. Based on our conversation yesterday as to Meon Miller's change as to how the shooting occurred, I'm in no position that I could stipulate to the cause of death, because the story that they related to me that Meon Miller related to them as to how Mr. Jennings died is not consistent with -- in my opinion is not consistent with the pathologist's report as to the gunshot wound that the victim

MR. HUFFINES: Yes, Your Honor.

THE COURT: Thank you. And we're ready to start with the trial now at this time. We're to that part of the trial where counsel will make their opening statements to you. I ask that you listen attentively now as counsel address you in opening statement.

Counsel, we're ready to proceed.

MS. WEISS: Thank you, Your Honor, may it please the Court?

THE COURT: Oh, I'm sorry, let me back up. I'm getting a little ahead of myself. We need to swear the jury panel.

Madam Clerk, please swear the jury panel.

CLERK OF COURT: Yes, sir.

THE COURT: Thank you.

(Whereupon, the jury panel was sworn.)

CLERK OF COURT: Be seated.

THE COURT: Counsel?

OPENING STATEMENT

BY THE STATE

MS. COTE: Thank you, Your Honor. We wouldn't be here today if it wasn't for this defendant, Rod Cook, because if it wasn't for him,

the victim in this case, Willie Jennings would not have died on October 13, 2010.

You see, back in October of 2010, Rod Cook needed money. So he decided to use the McDonald's in Batesburg-Leesville where he was a manager as his own personal piggy bank. He cooked up a plan to rob the McDonald's and recruited his younger cousin, Meon Miller, and his friend, Angelo Tucker, to do his dirty work.

Meon and Angelo were instructed to wait out by the dumpsters outside that McDonald's late night until the victim, Willie Jennings, came out with the trash. He was sent out with the trash by his manager, this defendant.

When Willie Jennings came out with the trash, Meon and Angelo were supposed to take him hostage, force him inside the McDonald's, and rob the McDonald's at gunpoint. That was the plan anyway.

There was one problem that Rod Cook didn't think about when he made up this plan, and that happened. Willie Jennings fought back. Willie Jennings fought back, he got shot, and he died as a result of that gunshot wound. He died as a result of Rod Cook's plan.

Now, that's a very brief -- very brief -- overview of the facts in this case, but I do that on purpose. I don't want you to hear what happened from me. I want you to hear it from the witnesses that are going to talk to you from this witness stand. They were there. They were the people that were involved.

And I want you to hear it from them and not from me. You're going to hear from a lot of witnesses over the next few days. And I want you to think of each one as pieces to a puzzle -- pieces to a puzzle that by the end of this trial will reveal a clear picture of what happened on the night of October 13, 2010.

You'll hear from members of law enforcement, both Batesburg-Leesville and Lexington County. There were actually two crime scenes or what was considered two crime scenes. We had the McDonald's where the shooting actually occurred, and then there was a car stop that wasn't far from the McDonald's. And officers were at both locations.

The car stop was where the defendant's girlfriend was driving the getaway car, and Meon and Angelo were located in that car. You will get to see phone records, and you'll hear testimony from

people with T-Mobile and AT&T, and you'll see phone records from the people that were involved, who was calling who. You'll get to see that.

You'll hear recordings of phone calls that the defendant has made. Some of them are long. I'll go ahead and warn y'all about that. But it's a piece to a puzzle, so we want you to hear it.

You'll get to hear also from the three people that were in the getaway car that night. You'll hear from the defendant's girlfriend, Tasha Matthews. You'll hear from Meon Miller. And you'll hear from Angelo Tucker.

My name is Nancy Cote, and sitting with me at the State's table is Heather Weiss. And we're both lawyers for the Attorney General's Office. We're representing the State of South Carolina in this case.

I want to take a little bit of right now to go over the law in this case with you, just briefly. Judge Alford, as he told you, he's the judge of the law in this case, and y'all are the judge of the facts. But I want you to have an idea of the law as you're listening to this testimony from these witnesses.

Judge Alford will talk to you, and we'll

be able to talk to you again at length, about the law at the end. But I just want to give you an idea of what to look for. The defendant is here charged with three crimes -- murder, attempted armed robbery, and criminal conspiracy.

Now first would be murder, and it's the killing of any person with malice aforethought. There are several different ways to show malice. One can be an intent to kill, and one is something that's known as the felony murder rule. And that is if two or more people combined together to commit an unlawful, and in the execution of that common purpose a homicide is committed by one of the actors as a probable or natural consequence of the act done in pursuant of the common design.

All present participating in the unlawful common design are as guilty as the one committing the homicide. The next charge is attempted armed robbery. It's an attempted armed robbery because they didn't actually get into the store to rob it that night because of Willie.

An attempt is an effort to accomplish a crime which does not succeed, and the defendant attempted to commit a robbery while armed with a pistol, dirk, slingshot -- these are all types of

deadly weapons. Here it's a deadly weapon with a handgun.

Next is criminal conspiracy. It's a combination between two or more persons for the purpose of committing an unlawful act or a lawful act by unlawful means. Now, those are the charges. There's one other principle that's important in this case. It's called the hand of one is the hand of all.

A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a natural consequence of the acts done in carrying out the common plan and purpose. So just because this defendant may not have been the one that actually fired the handgun, he's just as guilty as the person who actually fired the handgun because he was part of that common purpose.

Now, the State -- we as the State, as the prosecution, we have the burden of proof in this case. We have to prove to you all of these elements of these crimes that I just showed you beyond a reasonable doubt. The defense is going to get up and make a big deal about reasonable doubt, and he should. It is a big deal.

But I don't want you to think that it's something that's unusual or different about this case in particular. In every criminal case all over the country, the State has the burden. We have to prove these elements beyond a reasonable doubt.

Reasonable doubt isn't proof any doubt or proof beyond all doubt. It's just proof that leaves you firmly convinced of the defendant's guilt. And it's a burden that we welcome in this case. And after you hear all the testimony in this case and see these witnesses, we'll get to talk to you again.

And at that point, we're going to ask you to come back with three guilty verdicts -- one for attempted armed robbery, one for criminal conspiracy, and one for the murder of Willie Jennings. Thank you.

MR. O'NEILL: May it please the Court?

THE COURT: Yes, sir.

OPENING STATEMENT

BY THE DEFENSE

MR. O'NEILL: In the seventh chapter of Matthew, one of Jesus's parables is recorded. It talks about a foolish man. This foolish man built his house upon the sand. And when the rain came and the streams rose and the wind blew, that house fell.

The house fell because it wasn't built on a firm foundation. The State's case against Rod Cook is built on the foundation of a lie. Their whole entire case rests on the testimony of Meon Miller -- Meon Miller, a man that the evidence will show is two things, a liar and a killer -- a liar and a killer.

Meon Miller is the individual who the evidence will show used a firearm to kill Willie Jennings on the night of October 13, 2010, outside the Batesburg McDonald's. I don't know much about Meon Miller. I think the evidence is going to show two things about him through this trial -- he's a liar, and he's a killer.

He got in contact -- law enforcement got in contact with him that night. They caught him minutes away from the McDonald's here. On October 13, 2010, Meon Miller never breathed a word about Rod Cook setting up some sort of robbery, never told the police that.

When this incident occurred, when he was caught redhanded, he never told the police that Rod Cook had anything to do with this. The first time there's a statement -- a written statement -- from Meon Miller that says anything about Rod Cook being

involved with the murder he committed was in September of 2011, almost a year later, a year after Meon Miller had reviewed all the evidence in this case, gone over all the police reports, gone over all the witness statements.

And finally forensics came back from SLED that placed Meon Miller's back against the wall. And when his back was against the wall and he only had one way out, he chose the one way out he thought he had. That's when he wrote a statement and said Rod Cook had something to do with this.

And what's key about this case is that you're going to hear from Angelo Tucker and Tasha Matthews, two other people that the State has also charged with attempted armed robbery, conspiracy, and murder. Listen to Angelo Tucker and Tasha Matthews.

See if they back up anything Meon Miller is saying about Rod Cook being involved in orchestrating a murder or attempted robbery. You're not going to hear anything from Tasha Matthews or Angelo Tucker saying they talked to Rod Cook, and he set up a robbery. You're not going to hear that.

None of them are going to back up what Meon Miller is going to tell you from that stand

today. Don't just take their word for it. Look at the physical evidence. Look at the cell phone records, the cell tower information that the police investigated here.

See if that backs up anything Meon Miller is saying. Look at the independent witnesses here -- Van Harris [sic], Danikwa Trapp. You're going to hear from them. They came in contact with Meon Miller on that day. See if they back up anything that Meon Miller is saying.

Look at the physical evidence around the McDonald's. Listen for the last words of Willie Jennings himself and see if that backs up anything Meon Miller says. And it doesn't. Meon Miller, the evidence will show, is that foundation built on sand. And during this trial, the rains are going to come, the streams are going to rise, and the winds are going to blow in the form of questions and testimony in evidence.

And when it does, the State's case is going to fall. Now, everybody has a job in this particular case. Judge Alford, he's the referee. He makes sure that everybody plays by the rules. You're going to hear from law enforcement. Their job is to go out there and investigate these

incidents here, to bring the facts to the Attorney General's Office.

My job is to protect Rod Cook's rights and make sure nobody infringes on his rights. But the State's job, their job is to prove to you 14 their case, all of the elements, beyond a reasonable doubt. Beyond a reasonable doubt is the highest burden we have in our judicial system.

It's the reason why our system is the best system in the world. Beyond a reasonable doubt means you have to be firmly convinced of Rod Cook's guilt in order to find him guilty. You can't just think he did it. You can't just think he did it.

You've got to be firmly convinced by the evidence the State provides for you. And that's where you 14 people come in. Your job is to be supervisors. At the end of this case, your verdict is going to express whether or not you feel as though the State of South Carolina has done their job in proving you their case beyond a reasonable doubt.

You 14's job is not to figure out and investigate what happened. We have police that do that. That's not your job. If the State of South Carolina has not done their job, they haven't proved

their case beyond a reasonable doubt, your job is simple. You return a verdict of not guilty, because there's no way you can be convinced beyond a reasonable doubt, there's no way you can be firmly convinced on the word, on the foundation, of Meon Miller.

Two things you know about Meon Miller by the time this case is over here. One, he's a liar. Two, he's a killer. I want you to pay close attention to the activities of Rod Cook on that day. I want you to look at all the things he did that's not consistent for being part of this robbery.

He talked to 911 that day, you're going to hear. He talked to law enforcement that day, you're going to hear. He gave his statement before he was arrested. All these things are not consistent with him being a part of this robbery.

The State alludes to the fact that he has some financial motive for this robbery. Pay close attention to the information you receive about his financial situation during that time. Pay close attention to what you hear about his situation at the apartment during that particular time.

The State will claim that he was going to get evicted, so that's why he did this robbery. Pay

close attention to his history there at that apartment. See if that inference, does that make sense. I guarantee you when you hear the evidence here, it won't make sense.

Now, as I was prepping for this trial here, one of my friends sent me an e-mail here. And he's always one of those guys who send me e-mails, kind of random e-mails. He sent me this e-mail that said it was a one-question IQ test to see if you're a genius or not. One question determines whether or not you're a genius.

So I open up the e-mail. I needed a little break, so I opened up the e-mail. And it said this one question will determine whether or not you're a genius or not. It said, "How many months have 28 days?"

I'm like, "Yes. My Marlboro County public school education is finally coming in handy here. I'm a genius. I know this. I know the answer -- one. February has 28 days. I'm a genius." So I scrolled down the e-mail a little bit further, and it says, "If you picked February, one month, you're absolutely, undeniably wrong."

It said, "All months have 28 days. Some just have more." I learned two things that

afternoon here. One, I'm not a genius. And, two, a lot of times the easy answer isn't always the right answer. The easy answer in this case would be to say Rod Cook had something going on with this robbery because he was the manager at the McDonald's.

That's not the right answer. The right answer is that Rod Cook had nothing to do with the death of Willie Jennings on that night. And the evidence is going to show that. So at the end of this case, I'm going to ask you to just do your job here and bring forth the only proper verdict, not guilty. Thank you.

THE COURT: The State will call its first witness, please.

MS. WEISS: Thank you, Your Honor. The State calls Officer Lauren Wellons.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please, ma'am. Once you're seated, speak up loud and clear. State your full name, spelling your last for the record, please.

MS. WELLONS: Lauren Wellons, last name W-E-L-L-O-N-S.

LAUREN WELLONS, having first been duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Officer Wellons, where are you currently employed?

A Claremont Police Department, Claremont, Florida.

Q How long have you been there?

A August 2011.

Q What's your position there?

A Patrol.

Q At some point were you employed with Batesburg-Leesville Police Department?

A Yes, ma'am.

Q When were you employed there?

A From February 2009 to February 2010.

Q Will you discuss your training in law enforcement for the jury?

A Sure. I graduated the police academy in St. Augustine, Florida, June 2009. At that time, I applied for a job with Batesburg. I went up there, crossed over, got my certification in South Carolina, at which time I began working for Batesburg.

Q Were you on patrol the night of October

13, 2010?

A Yes, ma'am.

Q Did you get a call to respond to 210 West Columbia Avenue in Batesburg-Leesville that night?

A Yes, ma'am.

Q What's at that location?

A That's the McDonald's.

Q And is that McDonald's located in Lexington County?

A Yes, ma'am.

Q Where were you when you received the call?

A I had just sat down at Waffle House to have a cup of coffee.

Q Did you know what kind of call it was that you were responding to?

A Initially, as I recall, it would be a shots fired call.

Q When you were -- what happened after you received the call?

A We received the call. I got up obviously at a quick pace, got to my car, drove to the scene of the incident. It took me maybe one minute to get there from where I was.

Q Did you see anything on the way to the scene?

A No, ma'am.

Q Did you see anything that you noticed outside the Waffle House?

A Yes, ma'am. When I pulled up to the Waffle House, I noticed a vehicle sitting on the side road which connects -- Waffle House has two roads, and there was a vehicle sitting there with its lights on.

Q I'm going to show you what's been pre-marked as State's Exhibit Two and ask you if you recognize this.

A Yes, ma'am.

Q Is this an accurate depiction of the area that we're speaking about?

A Yes, ma'am.

Q Is it how it appeared except for it being daytime that night?

A Correct.

MS. COTE: Your Honor, I've showed this to Mr. O'Neill previously. The State would seek to introduce State's Exhibit Two into evidence.

MR. O'NEILL: No objection, Your Honor.

THE COURT: Admitted without objection.

(State's Exhibit Number Two, Chart of Incident Scene, was entered in evidence.)

MS. WEISS: Your Honor, may we publish this to the jury?

THE COURT: You may publish.

MS. WEISS: Thank you.

Q Ms. Wellons, there are some tabs on the back. Would you mind marking for the jury the location you're speaking of, the Waffle House, the McDonald's that you responded to, and the car that you observed.

A Okay.

Q I'll hold it while you mark it.

A This would be where the car was. This would be the McDonald's. And this is the Waffle House.

Q So when you left the Waffle House, will you show the jury which direction you drove, how you got there?

A I left the Waffle House, and I came this road right here, straight to McDonald's.

Q And how long did it take you to get there?

A Thirty to 45 seconds.

Q Okay. And is there -- what's located on that road where that car was located?

A This road goes back. I believe there's a storage facility back here. But it connects out to

this road right here.

Q Is it a main thoroughfare in Batesburg? Is there a lot going on on that street?

A No, ma'am.

Q And was the car in any kind of parking spot in a parking lot?

A No, ma'am, it was just parked on the road.

Q Did it catch your attention --

A Yes, it did.

Q -- that it was parked there?

A It did.

Q Okay, thank you. Now, when you were going to the Waffle House, was that car's lights on or off?

A When I was going to the Waffle House, the car's lights, if I recall correctly, they were on. When I left the Waffle House, the same car was there, and they were off.

Q Okay. And did you observe any activity in the car?

A No, it was -- I couldn't see in the car. It was very dark. And it was like I said, they were on the road, so it wasn't a lit area.

Q Okay. Did you ever see that car move?

A When I left the Waffle House, I could see

the lights turned on, so it caught my attention.

Q Then as you're leaving, did you -- what happened when you arrived at the McDonald's?

A When I arrived to McDonald's, I pulled up. The defendant was in the area where the trash -- where you would leave the side door --

Q Okay.

A -- waving in me, because that's where the victim was. So that's where I pulled up, was the side door. At that time, I exited my vehicle, ran into McDonald's, located the victim. At that time, I located the victim.

Q Where was he in the McDonald's?

A He was in a little break room area, sitting up in a chair.

Q Did you see him when you first walked into McDonald's?

A I actually ran right by him. Nobody's with him. I ran right by him because he was sitting straight up, and I was expecting, you know, the victim to be accompanied by somebody. So initially, no, I ran right by him.

Q When you ran back -- did you run back and actually tend to him?

A I did. I did.

Q Was Mr. Jennings alert at that time?

A He was somewhat. He was able to speak. He was sweating profusely, obviously in some sort of shock. But he was able to speak to me, yes.

Q What did he say to you?

A At first, obviously my first question was how he was hanging in there -- you know, how he's doing. And he said, "Not well." He had one gunshot wound to the stomach that I could see.

He then -- I then asked him what happened, and the only thing he could really say to me was "two young boys," I want to say was exactly his word -- two young boys. And I asked him what happened, and he said he didn't know. And that's really, you know, all I could get from him at that time.

Q At that point after you spoke to him, what happened next?

A I held his hand a little bit, just, you know, to try to keep him calm. But within a minute, I would say EMS arrived. At that time, I moved out of the way so they could tend to him, and I exited the McDonald's.

Q Where was the defendant, Rod Cook, when you were tending to Mr. Jennings?

A As I recall, he may have been standing

behind me in alley at the McDonald's. I really do not recall where he was when I was talking to the victim.

Q Y'all were kind of in like the back -- were you in the back area behind the kitchen?

A Yes, I do recall.

Q As far as office areas?

A Yes, ma'am -- yes, ma'am.

Q Okay. So when you left to get out of the way of EMS, where did you go?

A I exited the McDonald's out the same door.

Q What did you do when you exited?

A As soon as I exited out the side door, I was approached by I believe a woman and a man, witnesses. And they were very, you know, excited. They wanted to talk to me. You know, they were saying "We saw two boys. We saw them. We saw them."

And so immediately in my mind I'm thinking this could be our suspects. So I get a description of what they were wearing, and I put it out on the radio, a BOLO.

Q What was the description that you received?

A As I recall, it was two young men, two

black men, possibly in their early twenties. And they gave a clothing description. I believe one of the clothing descriptions was a white long-sleeved shirt with a black -- both wearing dark black and then a backpack. One of them had a backpack, from what I recall.

Q And you mentioned you put out a BOLO. What's that?

A Be on the lookout for.

Q And what did you do after you issued that?

A After I issued the BOLO, I went and got in my vehicle, and I began looking for these suspects, as well.

Q And when you issue a BOLO, are you asking other officers --

A Yes, yes.

Q -- also to be on the lookout for them?

A Yes, ma'am.

Q And where did you go?

A I believe from my recollection I went behind the McDonald's. There's an apartment complex, so that's where I started my search, was behind the apartment complex.

But by that time, I believe I got word from Sgt. Turner that they may have possibly located

them. So I went immediately to them.

Q After you went to them, where were they?

A After I put the BOLO out, he asked me to repeat the BOLO, repeat the descriptions of the clothes that they were wearing. And after I did that, he said that he had them on the highway where the Waffle House is, the road that runs where the Waffle House was. So at that time, I immediately went to his location to assist him in anything he needed.

Q What did you do there? How did you assist him?

A When I arrived on scene, I believe they were already handcuffed and everything was -- two of them at least were already handcuffed, and I just assisted at that time in taking them to the police department.

Q After you transported and provided any assistance that you could, where did you go after that?

A I believe I went back to the McDonald's. The same witnesses were there, and I believe two more actually. And I got statements from everybody.

Q Were you able to speak to the defendant, Rod Cook, at that point?

A Yes, ma'am.

Q What did he say to you?

A He kept asking where his wife was. That stuck out in my mind a lot. It was kind of odd. He kept asking where his wife was and where his ride was and that she was supposed to be there, and why wasn't she there.

And, you know, the questions didn't make sense to me at the time. I didn't have any answer for him. I didn't know where his wife was.

Q Was he asking you about Willie Jennings?

A No, ma'am.

Q What was his demeanor like?

A His demeanor was -- it was strange. It was weird. It was odd because he kept asking -- he was a little dramatic with his actions. It's like the longer I was there and the longer his wife didn't show up, you know, he seemed to get his nerves, started pacing, a lot of pacing back and forth. You know, he'd sit down, stand back up. But it was about his wife. He was worried about his wife. He was concerned about his wife.

Q Did he actually lay down at some point?

A He did. He did. He sat down. Then he laid down, and he sat back up. He wasn't in one

place very long.

Q Did you speak with other McDonald's employees that night?

A Yes, I did.

Q What did their concern seem to be?

MR. O'NEILL: Objection, Your Honor, hearsay.

MS. COTE: I'll withdraw the question, Your Honor.

THE COURT: All right.

Q Do you see Rod Cook that you spoke to in the courtroom today?

A Yes, I do.

Q Can you identify him for the jury?

A He's right there, in the red shirt.

MS. COTE: Your Honor, beg the Court's indulgence. Your Honor, if you'll give me a little leeway, I'd like to revisit the employees, if I can ask her a few preliminary questions --

THE COURT: You may.

MS. COTE: -- and see if I can lay a foundation.

THE COURT: You may.

Q When you were speaking with the employees, did they appear to still be in the heat of the

MS. COTE: Your Honor, I asked her specifically when she arrived the first time.

Q Did you speak with or encounter people from McDonald's when you first arrived that night?

A When I first arrived, when I walked in the door, the defendant was at the door and let me in. I went straight to the victim. I spoke with the victim approximately 30 seconds to a minute. EMS came right behind me.

At that time, I went back outside. And, of course, by that time -- I didn't see anybody else when I got there originally, because my main focus was the victim. There were people there, but all I was looking for was a way to get into the McDonald's, and that's how I got in. But there were people there, and I was back out in less than a minute. Less a minute or so, I was back out the door.

THE COURT: Clarify when the witnesses made the statement to her.

Q When did you actually speak to the --

A As soon as I walked back out, I moved out of the way for EMS. And they were at the door when I walked out.

Q And those were the witnesses that were lay

witnesses, not necessarily McDonald's witnesses --

A Yes.

Q -- is that correct?

A Correct.

Q When did you actually speak to witnesses from McDonald's?

A That was not until after I spoke to the witnesses that actually gave me the description of the suspects.

Q How much time had passed, would you estimate?

A From the time of the shooting or from the time that I arrived?

Q From the time that you arrived.

A Oh, less than two minutes.

MS. COTE: Your Honor, it's our position that they were still under the heat of the moment and still under the excited state. And she didn't -- if I may ask.

Q Did you question them, or were they coming to you with these impressions?

A No, ma'am, I questioned nobody. They came to me.

MS. COTE: Your Honor, it's our position that those would be excited utterances.

THE COURT: Let me get you to clarify one thing with her, and that is whether she spoke to them when she was first on the scene or came back and spoke to them.

Q Did you speak to them later when you returned to the scene -- is that correct -- the McDonald's employees?

A The McDonald's employees, correct.

THE COURT: And how much time passed between them? You're not clarifying that, counsel.

MS. COTE: I'm sorry.

Q How much time had passed from when you left after EMS came when you were doing the BOLO --

A Okay.

Q -- and then when you came back?

A I'm sorry, I don't recall that.

Q Okay. Do you think it was --

MR. O'NEILL: Objection, Your Honor, to leading.

THE COURT: She can get a time reference and a frame. Go ahead.

Q Was it around 15 minutes? Can you give us a range, do you think?

A From the initial time I spoke to the witnesses? Are we talking about the initial

witnesses who gave me the description of the suspects?

Q Now we're talking from when you initially respond or when you left to go do the BOLO and then you transported to the jail and then you responded back.

A I really don't recall. I couldn't tell you a time. It couldn't have been more, I would have to say, more than an hour, but that would be me just --

MS. COTE: Your Honor, may I ask one more question?

THE COURT: You may.

Q These witnesses that you spoke to later from McDonald's, had they all been on the scene initially, or had some of them come to the scene in response to phone calls? Were all of them working that night?

A No, ma'am. Some of them had came as a result of hearing the news.

THE COURT: Counsel, approach just a minute.

Q Officer Wellons, I don't have any further questions for you right now. Please answer any questions Mr. O'Neill has for you.

the information you possibly can to give to the inspectors to kind of move the investigation kind of further forward here?

A My job is to get the information as quickly as possible to apprehend the suspects.

Q Okay. And Mr. Cook was actually the one waving you inside the McDonald's when you got there?

A He let me in the door, correct.

Q Was he outside waving you in, telling you where you need to come at?

A Yes.

Q He was still on the scene, hadn't fled the scene or anything like that?

A No -- no, sir.

Q Okay. Did you -- were you the one who actually ascertained like the video recordings there at the McDonald's there?

A No, sir.

Q Okay. Were you aware that they had video recordings?

A Yes, sir.

Q Okay. But that was someone else's job to get those videotapes here?

A Yes, sir.

Q Okay.

for Ms. Jumpp.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Ms. Jumpp, at the very beginning of that call, I think you kept referring to the caller as "ma'am." You realize that was a male voice now?

A Yes, sir, after the call.

Q Okay. Do you realize the actual voice calling was Mr. Cook? Did you know that?

A Not at the time.

Q Do you realize that now?

A Yes.

Q So that was Mr. Cook calling 911. And what did he tell you?

A That his employee was shot by the trash dump, taking the trash out.

Q Okay. But it was Mr. Cook who was calling 911?

A Yes.

Q Okay. And you would have reported this case?

A I did.

Q Okay. By supplementary report -- a supplementary report?

A I believe it was.

record, please.

MS. JOHNSON: Susan Johnson -- J-O-H-N-S-O-N.

SUSAN JOHNSON, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Ms. Johnson, where are you employed?

A By T-Mobile.

Q And what's your position there?

A I am the custodian of records.

Q How long have you worked at T-Mobile?

A Sixteen years.

Q As the custodian of records, will you give us an idea of what your job duties are?

A Sure. Basically, we respond to subpoenas from various law enforcement agencies across the United States, which means that we comply with what they're requesting in the subpoena, such as subscriber information and call detail records.

Q Are any records that you maintain kept in the ordinary course of business?

A Yes, they are.

Q Were you served with a subpoena to come to testify here today regarding some cell phone

records?

A Yes, I was.

Q Were those mobile numbers 803-269-9028, 803-404-2860, and 803-629-3036?

A Yes.

Q I'm going to show you some exhibits. I'm showing you now what's been marked for identification as State's Four, Five, and Six, and I'm going to ask you if you recognize those.

A Yes, I do.

Q Did you review those prior to coming to court today?

A Yes, I did.

Q Are those records maintained by T-Mobile?

A Yes, they are.

Q And are those for the three numbers that I mentioned earlier that you were asked to come testify to?

A Yes.

MS. COTE: Your Honor, at this time the State would seek to introduce Exhibits Four, Five, and Six into evidence.

MR. O'NEILL: Can I see them, Your Honor?

THE COURT: Yes, sir.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection, counsel.

MS. COTE: Thank you, Your Honor.

(State's Exhibits Four, Five, and Six, were entered in evidence.)

Q Can you tell from looking at those whose name each of those phone numbers is registered to?

A Yes.

Q Will you please give us that information?

A Tasha Matthews is listed on two of them, and then Joyce Miller is listed on the last one.

Q Can you give us the numbers that are associated with Ms. Matthews and which one is associated with Ms. Miller.

A Sure. 803-404-2860 is associated with Tasha Matthews; 803-629-3036 is associated with Tasha Matthews. And then 803-269-9028 is associated with Joyce Miller.

Q There's a notation on those records for the time of the call. What time zone are those reported in?

A These are reported in Eastern time zone.

Q When it says number of minutes, how does T-Mobile record the number of minutes?

A We bill in one-minute increments. So if a

call is 52 seconds, we're going to round it up and bill it at one minute. If the call is one minute, five seconds, we'll round it up and bill it at two minutes.

Q If a call is only 15 seconds, would that be rounded up to one minute?

A Yes.

Q Are you able to tell from looking at the records if a call is just -- if a call is answered or if it goes to voice mail? Can you tell that just from looking at the records?

A Yes.

Q And how is that noted?

A The records are only going to reflect calls that actually took place, so an actual physical connection. If a call came in and was not answered, on our records you will not see that call reflected.

Q Okay. Are text messages noted on your account notes?

A Text messages are noted. They're denoted with the letter "D." However, text messages are going to be in Pacific time.

Q On those records as well, there's a note for originating cell site. Can you explain what

that means?

A Originating cell site is the cell site number listed in the records, which is the tower that the call occurred on when the call was placed or received.

Q So if we see a location on the cell site on a particular person's records, it's where the record

-- it's where the call is received, is that correct? Can you explain that better? I'm sorry, I'm not doing a good job of explaining it. But does it matter where the caller was?

A No, these records actually pertain to the actual individual. So these records are only going to reflect where the person of T-Mobile was when they made or received a phone call.

MS. COTE: May I approach the witness, Your Honor?

THE COURT: You may.

MS. COTE: Thank you.

Q For example, here we have a number that is incoming this 404-2860, which is the record that we have here, and we show that it's a Columbia originating cell site. So that means that the person who these records belong to was in Columbia -

-

A Correct.

Q -- at that time?

A Correct.

Q I'm going to show you now what's been marked for identification as State's Exhibit Three. Let me show this to Mr. O'Neill first. Do you recognize State's Three for identification?

A Yes, I do.

Q Did you review it prior to coming to court today?

A Yes, I did.

Q How can you tell that that's the same disk that you reviewed?

A I put the date and my initials on the disk.

Q What was on that disk?

A Our cell site tower listings, which is the address where our towers are located.

MS. COTE: Your Honor, at this time the State would seek to move Exhibit Three into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number

Three, CD, was entered in evidence.)

Q And on this disk, as you were saying, is that a complete listing for the towers where -- is it an address where the towers are located?

A Yes, it's the address, the cell tower number, as well as the city and state as to where the towers are located.

Q So on the individual records, if we see a cell site location, we could reference that disk and see where the actual tower is located, is that correct?

A Correct.

MS. COTE: Your Honor, beg the Court's indulgence for one moment. Your Honor, I have no further questions for Ms. Johnson.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Good morning, Ms. Johnson.

A Good morning.

Q I just want to ask you a few things. Do you have the phone records in front of you?

A Yes, I do.

Q You have the phone records associated with Joyce Miller?

A Yes, I do.

Q That's State's exhibit what number? I'm sorry.

A State's Exhibit Six.

Q And you say these records contain various call type information?

A Correct.

Q One of the kind of pertinent call type information that's on these records is cell phone towers?

A Correct.

Q That's basically the tower that the cell phone call, I guess for lack of a better word, pings off of when it's made?

A Correct.

Q Okay. Take a look at the cell phone records that are correlated with Mr. Miller, okay? Can you go to page 16 of 18 of that one?

A I'm there.

Q Okay. Can you look halfway down the page? These are Eastern Standard time, correct?

A Correct -- except for the text.

Q Except for the text, okay. Because texts are in what time?

A Pacific time.

Q Okay. Why is there some particular

records that don't indicate what call type they are?

A If there's no call type there, that means it's a regular phone call.

Q Okay. What does that mean?

A It means it's a call, an incoming or an outgoing phone call.

Q Not a T-Mobile mobile to mobile, a different land line? What do you mean by a regular phone call?

A It means it's just a call, whether it's with another cell phone carrier or land line carrier. It's just an actual telephone call. It's not a call waiting. It's not a text message. It's just a phone call.

Q You said that texts are denoted by "D"?

A Correct.

Q And what's denoted by "T"?

A "T" is on the front, which I believe is T-Mobile to T-Mobile.

Q Okay. So at -- let's see for one second here. Let's flip over to page 17 on that record, okay?

A I'm there.

Q All right. Look at incoming calls at 1:10 p.m., okay? Are you there for me?

A Yes.
Q That was a T-Mobile to T-Mobile call?
A Correct.
Q All right. And that was incoming at 1:10 Eastern Standard time?
A Correct.
Q Where -- what cell tower did the person who had this number call ping off of?
A Cell tower number 52461 in Ridgeway, South Carolina.
Q Okay. So at 1:10, the person who was receiving a call, an incoming call, that incoming call pinged off a tower in Ridgeway, South Carolina?
A Correct.
Q All right. That was 1:10 on October 13, 2010?
A Correct.
Q All right. And the next three calls that individual received at 1:11 and 1:15 also pinged off towers in Ridgeway, South Carolina?
A Yes.
Q Okay. And if we fast-forward here to I think 1:52 on October 13th, the person who had this cell phone call also pinged off Ridgeway -- a tower in Ridgeway, South Carolina?

A Correct.

Q All right. And that person received approximately one, two, three, four, five, six other calls between 1:52 and 2:23, correct?

A Correct.

Q And they all pinged off of cell phone towers in Ridgeway, South Carolina?

A Correct.

Q Okay. So just to be clear, from 1:10 to 2:23 on October 13, 2010, the person who had cell phone number 269-9028, their incoming and outgoing calls all pinged off cell phone towers in Ridgeway, South Carolina?

A Correct.

Q The first time that this individual's cell phone pinged off a tower in Columbia on October 13, 2010, would have been at 2:44 p.m., correct?

A Correct.

Q And do you know what cell phone tower that was?

A The cell ID number is 55161.

Q Do you have any idea where that's at?

A No, it would be on the list.

Q Okay, all right. One other question here for you. If this number, which is 269-9028, if it

called another T-Mobile number, would that call always be reflected on that other T-Mobile phone number's records?

A If who called who?

Q Let's say if 269-9028 called another T-Mobile subscriber.

A Yes. If 9028 called another T-Mobile subscriber and received either a live person or a voice mail, that call would reflect in these records.

Q But if that other subscriber's phone number was off, the phone was off -- when I say "off," the phone wasn't actively on -- it wouldn't be recorded on their phone records, correct?

A It wouldn't be recorded on the other person's phone records, correct.

Q Okay. There's a possibility that some records would show up on -- some phone calls would show up on one subscriber's records and not on the other subscriber's records?

A Right. The best way to remember that is somebody has to be billed for the air time. So as long as there's a physical connection with either voice mail or a live person, somebody's going to get billed for it.

Q Okay. So, for instance, if you turn over to page 18 of the same record that you're on here and go down to 9:19, which is 2219 hours, that was a T-Mobile to T-Mobile call?

A Correct.

Q And it was from phone number 269-9028, which is associated with Ms. Joyce Miller?

A Correct.

Q Okay. And it was to phone number 803-629-3036, which is, according to your records, associated with Tasha Matthews?

Q Yes.

Q Okay. But if Tasha Matthews' phone was not on, that call wouldn't be reflected on her cell phone records, correct?

A Correct.

Q Do you have Tasha Matthews' cell phone records --

A I do.

Q -- for that particular number? And can you go to the corresponding time on her records, which would have been about 9:19?

A I'm here.

Q And receiving a call from the number associated with Joyce Miller is not reflected on the

records you have for Tasha Matthews, correct?

A No, it's not.

Q So the phone number that is 629-3036 apparently was not on at the time that call was attempted to made to that number?

A I don't know if it was on or not. I can just tell you that the call wasn't answered.

Q Wasn't answered?

A Correct.

Q What if it was sent to voice mail? Would it be recorded on Ms. Matthews' record here if it was sent to voice mail?

A No.

Q Okay. Would not be recorded if it was sent to voice mail?

A It would not be recorded. It bypasses the billing system.

Q Okay. I want to ask you about the cell towers of phone numbers 629-3036. And you only have -- all you have is the subscriber information. You don't actually have physical possession of that phone, do you?

A Correct.

Q All you have is the subscriber's information. Okay, let's look at October 13, 2010,

okay? Around 12:48 in the afternoon.

A 12:48?

Q Yes, ma'am.

Q There is a series of calls. I think there's eight calls from 12:48 until 1:10.

A Is this for the 3036 number?

Q Yes, ma'am.

A I'm there.

Q Okay. What city's cell phone towers are those pinging off of?

A Columbia.

Q Okay. So from 12:48 to 1:10, all Columbia towers?

A Correct.

Q Okay. Then from 1:26 and at 1:52, what towers are they pinging off of?

A Columbia, South Carolina.

Q Okay. Not Ridgeway, but Columbia?

A Correct.

Q And then at -- is there any more cell phone activity -- the next cell phone tower that's pinged off of would have been at 3:20 that day, correct?

A Correct.

Q All right. And there's one call at 3:20

and one call at 3:23, and those are pinging off a different cell phone tower but still in Columbia?

A Correct.

Q What's that cell phone tower that it's pinging off of at 3:20?

A Cell tower number 2202.

Q And the phone calls that were at 12:48, what cell phone tower were they pinging off of -- the majority of them, I guess?

A I'm sorry, can you repeat that?

Q The first phone call at 12:48, what cell phone tower in Columbia was it pinging off of?

A Cell tower number 55161.

Q What significance do those numbers have, the order of those numbers?

A The only significance is basically the last digit. The last digit tells us what sector of the tower that person was hitting off of on that particular cell site.

Q Okay. And let me ask you this here. Would cell tower 55161 and cell tower 2202 be in close proximity to each other?

A I wouldn't know that.

Q But it would be on the list?

A Correct.

Q Okay. And the list would have the address of where those particular ones were?

A Correct.

Q Have you been able to look at the address for those particular towers yet, or you haven't been able to do that yet?

A No, I have not looked at it.

Q Okay. Can you tell us why when text messages are sent you can't locate what tower they ping off? Do you know they can't?

A Because it goes through a different server. It goes through a data server.

Q Okay. What happens on your record here when it has the 11-digit numerical sequence here? What do those numerical sequences indicate on the phone records here?

A Like the 216 dot?

Q Yes.

A That means that the person was accessing the Internet.

Q Okay.

A That's an IP address.

Q So that's data usage essentially?

A Correct.

Q Okay.

Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

MR. O'NEILL: No further questions, Your Honor.

MS. COTE: Your Honor, I have no further questions for Ms. Johnson. May she be excused from her subpoena?

THE COURT: No objection to excusing this witness, counsel?

MR. O'NEILL: No objection, Your Honor.

THE COURT: Thank you for coming, ma'am. You may be excused.

MS. JOHNSON: Thank you.

THE COURT: Counsel, it's probably a good time to take a recess. We've been at it a little over an hour and a half or about that.

Mr. Foreman, ladies and gentlemen of the jury panel, we'll take a short recess at this time. You may refresh yourselves during the break. We're going to take about 10 minutes or so.

(Jury out at 11 a.m.)

THE COURT: Counsel, I may be a little different than some judges. But I like for everybody to remain seated --

MS. WEISS: Okay.

MS. COTE: I'm sorry.

THE COURT: -- and not carry on any conversation while the jury is going out or coming in. Some judges might like for you to stand. But I would appreciate your doing that. Because the attorney tables are pretty close to the jury sometimes, I just prefer you to do that. Thank you. Let's take a recess.

MS. WEISS: Thank you, Your Honor.

(Court in recess.)

THE COURT: Please bring the jury in.

(Jury in at 12:14 p.m.)

THE COURT: Please proceed, counsel.

MS. WEISS: Thank you, Your Honor, may it please the Court. The State calls Tasha Matthews.

(The witness was sworn.)

CLERK OF COURT: Have a seat up there, ma'am. Once you're seated, I'm going to need you to speak up loud and clear, stating your full name, spelling your last on the record.

MS. MATTHEWS: Tasha Matthews -- M-A-T-T-H-E-W-S.

TASHA MATTHEWS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WEISS:

Q Good morning, Ms. Matthews. How are you?

A Good morning. I'm okay.

Q May I call you Tasha?

A Yes.

Q Tasha, did you want to be here today?

A Yes -- yes and no.

Q I'm going to start out and just ask you a little bit about yourself.

A Okay.

Q How old are you?

A I'm 40.

Q Where are you from? Where did you grow up?

A In Columbia.

Q Where did you go to high school?

A Spring Valley.

Q What year did you graduate from Spring Valley?

A 1990.

Q Did you attend school after Spring Valley?

A Not immediately. But eventually I went to Midlands Tech and graduated from there in 1995.

Q What degree did you have from Midlands Tech in '95?

A An associate's degree in accounting.

Q After Midlands Tech, did you continue on with your accounting?

A At first, I got a job. I was a manager at Burger King, and then I started working for a temp service and got a job at Blue Cross/Blue Shield.

Q So you worked at Blue Cross/Blue Shield for a while, and at some point did you leave there to continue on with your education?

A Yes, I started --

Q What year was that?

A I started back at Columbia College in 2002.

Q Did you graduate from Columbia College?

A Yes.

Q And what was your degree there?

A A B.A. in Accounting.

Q Did you work while you were in college at Columbia College?

A I worked at Wendy's at first, and then I went through a temp service and got a job with Medical Services of America.

Q What year did you get the job with them?

A In April of 2005.

Q Do you have any children?

A I have four.
Q How old is your oldest?
A She's 22.
Q And your second child?
A A son, he's 17. I have an 11-year-old daughter and a 7-year-old daughter.
Q And were you married at one point?
A Yes.
Q And who was your husband?
A Clifton Matthews.
Q Did you ever actually get divorced from Mr. Matthews?
A No.
Q Have y'all separated?
A Yes.
Q How long ago was that?
A In 2004.
Q That's about the same time that you -- before you graduated from -- it was about a year before you graduated from Columbia College?
A I graduated from Columbia College in 2006.
Q Okay. So in 2004, you separated from Mr. Matthews?
A Uh-huh.
Q And he's the father of --

A My middle two children.
Q -- your middle two children. And who had custody of your middle two children?
A They were back and forth between both of us.
Q And your oldest daughter?
A She was back and forth.
Q So you had joint custody --
A Uh-huh.
Q -- with all three of those kids?
A Yes.
Q With all three of your children?
A Yes.
Q Okay. And you started at Wendy's while attending school at Columbia College?
A Yes.
Q What was your job at Wendy's?
A Just a regular crew person.
Q And what was your reason for working at Wendy's?
A I was working there and going to school part-time.
Q Trying to make money?
A Yes.
Q Okay. Did you have the opportunity to

meet someone while you were working at Wendy's, someone that you started seeing?

A Yes.

Q Who was that?

A Roderquiz Cook.

Q Roderquiz Cook. And do you see him in the courtroom today?

A Yes.

Q Can you point him out for the record?

A He's sitting over there in the burgundy shirt.

Q And when you met him at Wendy's, did you start a relationship at that time?

A After a few months.

Q And at some point, did y'all move in together?

A Yes.

Q And what about your three children?

A They were back and forth with us and their father.

Q And since 2004, have you been with Roderquiz Cook?

A Yes.

Q And do you and Rod Cook have a child together?

A Yes.
Q And what's her name?
A Cook.
Q And how old is she now?
A She's seven.
Q You said that you got a job with Medical Services of America in 2005?
A Yes.
Q And that was before you even graduated with your accounting degree?
A Yes.
Q And what was job with Medical Services of America?
A I was working in the Accounts Payable Department.
Q And did you keep that job for several years?
A Yes, I did.
Q And up until October 13, 2010, were you still working at Medical Services of America?
A Yes.
Q And were you working full-time there?
A Yes.
Q Please tell the jury, what was your typical day around in the fall of 2010 involving

your work schedule? You would get up and go to work about what time?

A I had to be at work at 7:30. So I would get up probably about 5:30, get the kids up and get them ready for school. And I'd leave the house about seven, go to work. If Rod had to work, on my lunch hour I'd take the car home to him, and he'd take me back to work.

Q About what time did you leave for your lunch hour?

A Between twelve and one.

Q You'd leave sometime around then and bring the car home?

A Uh-huh -- yes.

Q And what would you do after you got home at lunch?

A He'd take me back to work. And then I got off at 4:30, so he'd pick me up, and then I'd take him on to work. And then I would go back home.

Q To your personal knowledge, did Rod have a driver's license at that time?

A No.

Q Okay. So you would leave him your car to drive?

A Yes.

Q Where was Rod working in the fall of 2010?
A At the McDonald's in Batesburg.
Q Now, when y'all met in 2004 -- was that 2004 when y'all met?
A Yes.
Q When y'all met, where was he working?
A At Wendy's.
Q And after he left Wendy's, where did he go to work?
A He went to the McDonald's in Blythewood.
Q And how long did he work there?
A Probably about a year.
Q And then where did he go?
A He stopped working for a while. Then he - -
Q You said he stopped working for a while?
A Yes. And then he went to the McDonald's on Forest Drive. And then after that, he went to the McDonald's on Parklane. And then after that, it was the McDonald's in Batesburg.
Q Was there --
A Well, it was the McDonald's in Garners Ferry, I'm sorry.
Q I understand.
A And then the McDonald's in Batesburg.

Q And was there a break between the Garners Ferry and the Batesburg McDonald's?

A Yes.

Q Do you remember about how long that break was?

A Probably three or four months.

Q So it's fair to say that Rod was moving around from job to job during the span that you were working at Medical Services of America?

A Yes.

Q And did you have to clock in and out each day?

A Yes.

Q And when you left for lunch, did you have to clock out?

A Yes.

Q I'm going to show you what's been marked as State's Exhibit Eleven for identification. Do you recognize this?

A It's my time card.

Q It's your time card -- from where?

A Medical Services of America.

Q Okay.

Your Honor, at this time I would like to enter State's Exhibit Eleven into evidence.

MR. O'NEILL: Omitted without objection.

(State's Exhibit Number Eleven, Tasha Matthews Time Card, was entered in evidence.)

Q So that's your time card. When was your pay ending for that time card?

A October looks like 27, 2010.

Q Okay. And looking at that week, you said you had to clock in and out every time you came and went during the week?

A Yes.

Q So on Monday of that week, what time did you get to work?

A Seven thirty.

Q And what time did you leave for lunch?

A Twelve twenty-four.

Q And so what time did you clock back in after lunch?

A One thirty-seven.

Q And what time did you leave that day?

A Four thirty-two.

Q And that was for a total hours of?

A Seven point eight-two.

Q And on Tuesday of that week, you clocked in at 7:30 and left for an hour for lunch, and then

finished out the day at 4:30 again?

A Yes.

Q Okay. And on Wednesday, October 13, what time did you come to work that morning?

A Seven thirty-three.

Q And what time did you leave for lunch?

A Twelve forty-six.

Q And did you ever return to work after you clocked out at 12:46 that day?

A No.

Q And do you have a policy at your office about if you leave and don't call in -- if you don't show up for work or leave and don't call in? Did you have a policy in your office about how that would work?

A Yes.

Q And what was that?

A If you didn't notify them within 24 hours, then you were terminated.

Q You were terminated?

A Uh-huh -- yes.

Q So on October 13, 2010, you left work according to your time sheet at 12:46. And where did you go?

A I went home.

Q And who was home when you got there?
A Rod and my oldest daughter.
Q And what's your oldest daughter's name?
A Trapp.
Q And when you left work at 12:46, was it your intention to return back to work that afternoon?
A Yes.
Q And what about the rest of the week?
A Yes.
Q Because you had been going to work there since 2005?
A Yes.
Q I'm going to show you what's already been entered as State's Exhibit Four. Do you recognize these?
A It looks like a copy of one of my cell phone bills.
Q Okay. Do you recognize the number over here, 404-2860?
A That was my cell phone number.
Q Could you speak up so they can hear you?
A That was my cell phone number.
Q So you said the number on the far left, 404-2860, was your cell phone number?

A Yes.

Q All right. You see the dates that go down the column that say October 13th. I'm going to ask you to go to -- you checked out of work at 12:46 -- the very last column on that page. Do you see what phone number that's from?

A Yes.

Q Do you recognize that phone number?

A Yes.

Q Whose phone number was that on October 13, 2010?

A That's Rod's cell phone.

Q And that is an incoming phone call to yourself?

A Yes.

Q Was it typical for Rod to call you when you were on your way home for lunch?

A Yes.

Q And y'all talked on the phone approximately three minutes?

A Yes.

Q Approximately how long did it take you to get home from work?

A Between 20 and 25 minutes.

Q I'm going to show you this call. Who is

that call from?

A Rod.

Q Okay. And he's calling you again?

A Yes.

Q And this call at 1:01, who is that from?

A Rod.

Q And then this call, another four-minute call, that's from Columbia. So that would be you calling, Whose number were you calling?

A Rod.

Q And one more call, who's calling you then?

A Rod.

Q When you say Rod, that's Rod Cook?

A Yes.

Q Now, was it typical for you to talk five times --

A No.

Q -- in the 20-minute ride from your work to home?

A No.

Q Did something happen that day just before you left work that Rod was concerned about, that he was calling you about?

A Yes, we got an eviction notice.

Q You got an eviction notice?

A Uh-huh.
Q Now, was it unusual for you to get an eviction notice?
A We had gotten them before.
Q And fairly regularly?
A Yes.
Q Typically, who paid the rent?
A I did.
Q And how did you pay the rent?
A With my check from my job.
Q Okay. And how often did you get paid?
A Every two weeks.
Q Now, sometimes Rod was working; sometimes he wasn't.
A Correct.
Q And at this point Rod was working. Did that change your spending habits or your ability to pay?
A Yes.
Q But you were still behind on the rent?
A Yes.
Q Okay. Now, this time, do you remember whether you had paid the rent the month before?
A No, it was late.
Q The month before was late --

A Uh-huh.

Q -- and then this month, and it was due on the first of the month?

A Yes.

Q And this is October 13th?

A Yes.

Q So you had already gotten a notice from the month before?

A Uh-huh.

Q And now you had a notice for two months in October?

A Uh-huh.

Q So do you recall how much your rent was at the time?

A It was $600 a month, but I don't remember how much the late fees and stuff were.

Q Okay, so it's $600 a month.

Beg the Court's indulgence one moment.

Q It's $600 a month, and you had trouble making $600 a month, right?

A Yes.

Q Okay. At this point, there was another $600 a month that you hadn't paid for two months?

A Right.

Q Now, was it typical for you to be two

months behind in rent?

A No.

Q So if $600 was a lot of money, was $1,200 a lot of money to you and Rod?

A Yes.

Q Okay. And you said this was plus late fees?

A Yes.

Q And did you also have to pay for the eviction notice when they were trying to put you out?

A Yes.

Q So you had $1,200 plus more. Did Rod have any other source of income?

A He would sell marijuana.

Q Okay. When he was working at McDonald's, did he do that as often?

A Yes.

Q And what was Rod's position -- well, let me put it this way. What was your position on that $1,200 plus that you owed to your apartment complex that you had gotten an eviction notice for on October 13, 2010? What was your position on that?

A I wasn't concerned about it because I had already sent him a check, and my deposit was coming

through. And I had worked a bunch of overtime, so it was going to cover everything.

Q So your deposit was coming through. That was, of course, contingent that you stayed at work?

A Well, no, that time period had already ended.

Q Okay. So you said the check was going to clear?

A Uh-huh.

Q And did you tell Rod that?

A Yes.

Q Was he okay with that?

A No.

Q What did Rod say?

A He started yelling and fussing about paying it late, and he was getting tired of paying bills late. And he got an eviction notice, and they woke him up out of his sleep.

Q Okay. They woke him out of his sleep because he had an eviction notice?

A Yes.

Q Did he come -- did he tell you of any way that he was going to pay this?

A No.

Q Okay. Did he tell you that -- did he seem

okay with the fact that you had said, "I've already mailed the check. It'll all go through the bank okay, and it'll clear eventually"?

A No, he was still fussing.

Q Okay. And so at that point, did you and Rod try to make a phone call to talk to anybody else about it?

A He called me and then called the office on three-way because he wanted me to tell them that I had already sent the check and the check number, how much it was for.

Q So you said he called. And then at some point, did the two of you get on the phone?

A Yes.

Q And did you tell them that?

A Yes.

Q And what did they say?

A She told me okay, that she'd have to wait a few days to call their main office in Charleston to make sure that they got it.

Q Okay. So at that point she said, "Okay, but it doesn't count until it clears"?

A Right.

Q So as far as you were concerned, it was going to all cover -- it was all going to be okay?

A Yes.

Q Okay. What about Rod? What did he say after that?

A He was still fussing at me that I should have paid it on time. And then he said we'll just talk about it when I got home.

Q Okay. So that was the five different conversations between when you left and when you got home?

A Yes.

Q When you got home, you said that your daughter was there and Rod was there?

A Yes.

Q And what kind of mood was Rod in?

A He was upset.

Q And when you say "upset," how do you describe upset?

A Yelling, fussing.

Q Fussing, just not in a good mood, or was it more than that?

A He wasn't in a good mood, and he was fussing and yelling at me about the money, and the rent being paid late, and the eviction notice.

Q Okay. And did he tell you at that point that he'd like to do something else to make money

faster?

A No.

Q You said that he did sell marijuana some?

A Yes.

Q You had intended to turn around and go right back to work, correct?

A Correct.

Q Why didn't you go back to work?

A Because he said he had to go to the Social Security office. He couldn't find his Social Security card.

Q "He" would be who?

A Rod.

Q So Rod Cook, knowing that you need money because y'all are always behind in your rent, you have four children at this point to support, and he's complaining that you don't have money, but he wants you to take off the afternoon from work and drive him to the Social Security office?

MR. O'NEILL: Objection, Your Honor, leading.

THE COURT: Please avoid leading, counsel.

MS. WEISS: Thank you, Your Honor.

Q So --

A I have to answer?

Q -- what did he want you to do?
A Take him to the Social Security office.
Q And what did that require you to do?
A Not go back to work.
Q What did it mean if you didn't go back to work?
A Well, I had leave time that would have covered that half a day, so I would have still got paid for it.
Q You would have to take leave?
A Yes.
Q Okay. And so what did you tell him?
A I told him that, you know, "Why do you need a Social Security card?" I didn't understand. And he just said he couldn't find it. He needed it. He needed to go get another one.
Q Okay. And why didn't you just give him the car and say, "Take me back to work"?
A Because he doesn't like to drive in downtown Columbia.
Q Why doesn't he like to drive in downtown Columbia?
A Because he didn't have a license.
Q But every other day, you would leave him the car to drive?

A Yes.

Q So what did you tell him then when he said he wanted you to take him?

A We started arguing about it, because I told him I needed to go back to work. I had a lot of stuff to do. And he said I really needed to take him down there, that I take off work to do stuff with the kids, so why can't I take off and take him to do what he needs to do.

Q Take off work to do stuff with the kids. So what did you say to that?

A I told him I didn't understand. We could do it another day. I could take the day off and take him down there. And he said he had to go. He needed his Social Security card.

Q And were y'all getting ready to go on any trips out of the country?

A We had a cruise scheduled in December, but we had already been on a cruise the year before.

Q Okay. So the cruise was scheduled in December?

A Yes.

Q And this is October?

A Yes.

Q And how much was the cruise? How much did

you pay for the cruise?

A It was like four-something a person. It was just the two of us going.

Q So about $800?

A Yes.

Q And who was the cruise for?

A It's a cruise that his dad's family does every year. They go on a cruise.

Q His family goes on a cruise, and who pays for it?

A Everybody pays for their own way.

Q So you and Rod are paying $800 to go on a cruise?

A Yes.

Q And this was just two months away?

A Yes.

Q So you argued. And then what ended up happening as far as the Social Security card?

A I ended up taking him to the Social Security office.

Q So you took him. So you did not go back to work?

A No, I didn't go back to work.

Q And how far is the Social Security office from your house?

A Probably 20, 25 minutes.
Q Do you recognize the number 957-0500?
A Yes, that was my job.
Q Okay. And so you called that number three times?
A Yes, I was trying to get in touch with my supervisor.
Q And what were you going to tell your supervisor?
A That I needed to take the rest of the day off. I wasn't coming back.
Q So where did you go when you left your house?
A We went to the Social Security office.
Q And where is that?
A Downtown Columbia.
Q And what did you do at the Social Security office?
A We went in, and he filled out the paperwork telling them that he needed to get another card. And we waited till they called him up, and they him a printout.
Q So what time was Rod supposed to be at work that day?
A He was supposed to be there at four for a

meeting.

Q And you knew that?

A Yes.

Q Okay. And how was he supposed to get to work that day, do you know?

A I think Van was going to take him.

Q But you don't know exactly?

A No.

Q But you were not planning to take him that day?

A No.

Q So 4:00 he's supposed to be at work. Did y'all -- you took him to the Social Security office, and he got a Social Security card?

A Yes.

Q What time did you get to Batesburg-Leesville?

A Maybe like 4:15, 4:20, somewhere around there.

Q So he didn't get to work at four --

A No.

Q -- his job at four?

A No, he was late.

Q He was late?

A Yes.

Q So you missed the afternoon of work, and he was late?

A Yes.

Q You got there sometime after four, but he still -- did you go in with him when you got him there?

A No.

Q Okay, what happened next? What did you do with him when you got there?

A I just dropped him off.

Q Okay. And did you see anybody or talk to anybody when you dropped him off?

A No.

Q And what did you do next?

A I went home.

Q You went home. So you drove back to Columbia?

A Yes.

Q Okay. What was your address in Columbia at the time?

A Road.

Q I'm going to show you what's been marked as State's Exhibit Twelve for identification. Do you recognize this? Do you recognize what it is?

A Yes.
Q What is it?
A A map with directions.
Q And what are the directions from?
A From my house to Batesburg.
Q Okay.
Your Honor, at this time I'd like to enter State's Exhibit Twelve into evidence.
MR. O'NEILL: I would object because I don't think that's relevant at this point. If we can approach, I can --
THE COURT: All right, approach just a minute.
MS. WEISS: Your Honor, at this time I'd like to enter State's Exhibit Twelve into evidence.
THE COURT: Admitted over objection.
MS. WEISS: Thank you, Your Honor.
(State's Exhibit Number Twelve, Mapquest re , was entered in evidence.)
Q All right, Tasha, looking at this chart, what does this -- you said it from the stand a minute ago -- what does this show -- is where?
A That was our address.
Q Okay. And West Columbia Avenue,

Batesburg?

A That's the McDonald's in Batesburg.

Q Okay. And approximately how long did it normally take you to get from your house to Batesburg to the McDonald's?

A About 45 minutes.

Q Okay. According to this, about 50 minutes?

A Yes.

Q So it's about --

A Depending on the traffic.

Q And so this is basically the way you would go, from your house straight out, get off in Batesburg, to the McDonald's?

A Yes.

Q And so at that point, you drove 45 to 50 minutes back to your house -- from the Batesburg McDonald's back to your house --

A Correct.

Q -- to your apartment? Was it an apartment?

A Yes.

Q On Pineland Road. When you got there, who was there when you got back?

A My children were there.

Q All four of them?
A Yes.
Q Okay. Was anybody else there?
A Not when I first got home.
Q And at any point did somebody else come in?
A Yes.
Q And who was that?
A Meon Miller.
Q And do you have any idea where he came from?
A No, I didn't know where he was. My daughter had told me that he had been over earlier.
Q And was it commonplace for him to come over to your house?
A Yes.
Q And did he sort of -- was he able to come and go as he pleased?
A Yes.
Q And what is the relationship between Meon Miller and Rod Cook?
A They're cousins.
Q And when you say cousins, are they first cousins?
A Yes, their mothers are sisters.

Q Back on October 13, 2010 -- I know you're a numbers person, so I'm asking a little bit of math here -- do you know, how old were you at that time?

A Thirty-eight.

Q How old was Rod Cook?

A Twenty-nine.

Q And how old was Meon Miller?

A I think Meon was 18.

Q So Meon was a younger first cousin?

A Yes.

Q And did he sometimes spend the night at your house?

A Yes.

Q And he was actually younger than your daughter or around the same age as your daughter?

A Yes.

Q So on this day, you get back. Were you expecting Meon to come over?

A Rod had mentioned before he got out of the car that Meon might be coming over and that to bring him when I picked him up from work, and that if he needed to go somewhere to take him.

Q Okay. So Rod said Meon might come over. Take him where he wants to go and bring him with you when you come to pick him up?

A Yes.

Q Did he give you any other specifics about what to do with Meon?

A No.

Q Was there any -- we haven't exactly covered this. On every other day, you would take Rod to work. He'd pick you up at work, and then you'd take him to work in Batesburg-Leesville. Typically, his shift started at what time?

A Five o'clock.

Q And what was his position at the McDonald's?

A He was the manager.

Q So you'd take him there at 5:00, and then what would you do at 5:00?

A I'd go home.

Q Okay. And what was your routine in the evening?

A Cook, help my kids with their homework, and get ready for the next day.

Q And who would pick Rod up and bring him home from work?

A I would.

Q And what time on a typical Wednesday would you pick up Rod from work?

A I'd leave the house like maybe a little after 11.

Q And what time would he finish at McDonald's usually?

A Between 12 and 12:30.

Q And then what would happen when he left? Where would you wait for him?

A In the parking lot.

Q Did you ever go inside?

A Sometimes.

Q And what would you do when you went inside?

A Help him clean up, help him count his deposit.

Q And typically was it the same people that were working that night shift with him or that late-night shift with him?

A Yes, typically.

Q And who were those two people?

A It's the guy, a man, Mr. Jennings, and it was a female. I can't remember her name.

Q Was it Renee?

A She's short. I can't remember her name.

Q So Willie Jennings would often work that evening shift with Rod?

A Yes.
Q So you had met Willie Jennings?
A Okay. And do you remember if he was an older guy, at least older than y'all were at the time?
A Yes.
Q Okay. And what was his job, if you know?
A I think he was just a regular crew person.
Q Okay. And had he been working with Rod there for a while?
A I had seen him there since Rod started working there.
Q And how long had Rod been working there at that time?
A Probably nine months.
Q Okay. So you had seen Mr. Jennings there with Rod on a regular basis?
A Yes.
Q But Rod was the manager?
A Yes.
Q So typically did you ever rest or do anything before you would leave at 11:00 to get him?
A Yes. When my youngest two went to bed at 8:30, I would go lay down and take me a nap until it was time to get up and go get him.

Q Okay. Because if you picked him up between 12 and 12:30, about what time would you typically get home in the morning?

A About 1:30.

Q And then you had to get up again at 5:30?

A Yes.

Q So on October 13, 2010, you let Rod off, and he told you this information. "Meon might come over. Take him where he wants to go, and then bring him back with you to Batesburg-Leesville." Was it unusual for him to say bring him back with you to Batesburg-Leesville?

A Yes.

Q Was it unusual for him to say, "Take Meon where he wants to go, pick Meon up, drive Meon around"?

A No.

Q And you did that on a fairly regular basis?

A Yes.

Q Okay. And you would do that -- would Meon call you directly and ask, or was it typically through Rod?

A Typically, it was through Rod.

Q Okay. And you did what Rod asked you to

do?

A Yes.

Q And so if Rod said, "Take him where he wants to go," you would take him where he wants to go?

A Yes.

Q And if he said to bring him back, you'd bring him back?

A Yes.

Q Did you ask him why?

A Not then.

Q Okay. So for some while, you said you didn't see Meon when you first got home. He wasn't there, just your kids were there?

A Right.

Q And was it a typical night? You were doing homework, that type of stuff?

A Yes.

Q All right. And do you remember if you tried to call or get in contact with Meon?

A Yes, I was trying to find out if I would have to take him somewhere, what time was he going to get there so I can go and do what I need to do so I can lay down.

Q And did you know Meon's number?

A No.

Q And how did you try to get Meon's number -- or how did you get Meon's number?

A I called Van and asked him for Meon's number.

Q Did you call him?

A I called him, and I don't think he answered. But I ended up texting him, and he said he'd call me back.

Q Okay. So this has already been testified to that there was a text. So you texted --

A I texted Van.

Q -- Van. And he gave you Meon's number?

A Yes.

Q Did you ever end up calling Meon?

A No.

Q And why not?

A Because he ended up coming through the door like five minutes later.

Q Okay. So he showed up?

A Yes.

Q And at that time, did you figure out with Meon when you were going to need to leave?

A He said a little while later, and then he was back in and out of our apartment.

Q So at what point -- how did you finally decide, "Okay, it's time to leave"?

A Meon had came back, and he said he needed me to take him to go pick up one of his friends. So I said -- asked him where we needed to go, and he told me up by Sandhills. I said, "Well, we'll leave here about 10:00 so I can take you to do what you need to do, and then we'll go on to Batesburg."

A Okay. And looking back at these records, at 10:05 whose number is that?

A Rod's.

Q And that says that was one minute. Then what time is that? That was at 10:15. Whose number is that?

A Rod.

Q And that's an incoming call from Rod. Do you remember what you talked to Rod about at that point?

A He had asked me where I was, and I told him I was taking Meon to pick his friend up. And he had asked about the kids, and then he asked me to talk to Meon.

Q Okay. So he talked to Meon on your phone at that point?

A Yes.

Q And then where did you go next?
A When I left my house?
Q Uh-huh.
A We went to pick up Angelo.
Q And whose car were you in?
A Mine.
Q So that's your car?
A Yes.
Q And you took Meon, and you went to Meon's friend's house?
A Yes.
Q Were you familiar with that area?
A No.
Q What is it near?
A It's near Sandhills Mall.
Q Okay. And did you know the house that you went to?
A No.
Q Okay. What did you see when you arrived at the house?
A Angelo was standing outside on the porch.
Q And you say Angelo. Did you know Angelo at the time?
A No.
Q So a person at that point to you --

A Yes.
Q -- was standing outside?
A Yes.
Q Did that person have anything in his hands?
A He had a backpack with him.
Q When you say backpack, was it a big backpack or a little backpack?
A Like a bookbag.
Q It was like a bookbag?
A Yes.
Q Okay. Do you know what was in that bookbag? Did you at that moment know what was in that bookbag?
A No.
Q Did you have an opinion? What was in your mind? What did you think was in that bookbag?
A Drugs.
Q Okay. And why was that?
A Because I know that Meon sold drugs sometimes.
Q Okay. And this was Meon's friend?
A Yes.
Q Had you ever, to the best of your knowledge, ever met Angelo Tucker before?

A No.
Q So what happened next?
A Meon got out of the car and talked to him, and Angelo went back inside and came out. And then they got in the car.
Q And who got in the front seat?
A Meon.
Q Who got in the back seat?
A Angelo.
Q And where did Angelo sit?
A He sat behind me.
Q He sat behind you, and then Meon is in the passenger seat, you're in the front seat?
A Yes.
Q Okay. And where did you go next?
A We went to Batesburg.
Q So you left Northeast Columbia with Angelo and Meon and drove to Batesburg?
A Yes.
Q Why did you take Meon and Angelo to Batesburg?
A Rod told me to bring Meon, and I picked him up.
Q Okay. And did you question why Angelo was coming to Batesburg, too?

A Not then. I thought I was taking him to do a drug deal.

Q Okay. And on the way to Batesburg, did you talk to Meon and Angelo?

A No, they were talking to each other.

Q At any point during the ride to Batesburg did you find out any information as to what was in that bookbag?

A Yes.

Q And how did that happen?

A Angelo had opened the bag and showed Meon, and Meon made a comment that he had a lot of ammo.

Q Had a lot of ammo. So what did that mean to you?

A A gun or two.

Q Okay.

A And some bullets.

Q And what did you think then?

A Maybe it's not a drug deal.

Q Did you ask them "What's going on?"

A No, I started trying to call Rod.

Q Do you recognize the number 532-0770?

A Yes.

Q And what number is that?

A The McDonald's in Batesburg.

Q So at 10:20, you called that number. Did you talk to anybody?

A He told me he was busy, he couldn't talk.

Q When you say "he," who is "he"?

A I'm sorry -- Rod.

Q I'm sorry, keep going. He told you he was busy and?

A He was busy. He couldn't talk right then.

Q Okay. And 10:22, you called again?

A Yes.

Q Did he even answer that time?

A I think he answered, and when he saw it was me, he hung it up.

Q Okay. 629-3036, whose number is that?

A That's Rod's cell phone.

Q And that's at 10:34?

A Yes.

Q Okay. And did he answer that?

A He answered that he's busy, he couldn't talk.

Q 10:59, 532-0770, what was that phone call?

A I asked was he still busy, and he said yes, he's still busy. And I started asking him what's going on, and he was like, "Don't worry about it." And I was like, "What you mean don't worry

about it? What's going on? What's going on?" He said, "Just don't worry about it." He said, "I can't talk. I can't talk. I'm busy."

Q Okay. And 11:24, a two-minute phone call, do you know -- do you recall what was said in that conversation?

A He asked me where I was, and I asked him what was going on. And he was telling me just answer his question, and we got into an argument.

Q Okay. Then you called again at -- I'm sorry. Yes, you called again at 11:31, and 11:36 is a two-minute conversation. Did anything else happen in those conversations?

A He just -- I kept asking him what's going on, and he kept telling me to stop questioning him, don't worry about it. And he asked did I drop Meon and them off. And I said, "Yes, I dropped them off at the stoplight." And then he kept saying he was busy, he had to go.

Q And so those were all fairly quick conversations?

A Yes.

Q And he didn't tell you anything?

A No.

Q Where did you go? You said you dropped

Meon and them off at the stoplight.

A Yes.

Q Whose decision was it to drop them off at the stoplight?

A Meon said, "Just drop me off at the stoplight."

Q I'm going to show you State's Exhibit Two. It's already been entered into evidence. Do you recognize this map?

A Yes.

Q Okay.

Can y'all see?

Do you see where McDonald's is on this map?

A Yes, right here.

Q Right here?

A Yes.

Q Okay. There's stuff up here so it will be easier for you to reach.

Is it okay if I step up here?

THE COURT: Yes, but she can stand down close to the jury if it's easier for them to see.

MS. WEISS: Yes, I just didn't know if she's able.

Q Can you show where the McDonald's is?

Okay. And where is the stoplight? I'm sorry, speak loudly so the Court Reporter can hear you --

A I'm sorry.

Q -- and the jury.

A It's right here at the corner where Walgreen's is.

Q Okay. And so Walgreen's --

THE COURT: Can everybody see, or do we need to come down a little bit?

JUROR: We can see.

THE COURT: They can see. Go ahead.

Q You can see this, okay. Prior to dropping them off, did you do anything different? Did you just drive straight down the road and drop them off, or did you do anything first?

A We rode around the block because I was going to see if the Wal-Mart was open.

JUROR: I apologize, I can't hear.

THE COURT: Ma'am, you'll have to speak up just a little bit --

MS. MATTHEWS: I'm sorry.

THE COURT: -- so everybody can hear you.

COURT REPORTER: She needs to face this way.

Q Let's try this. Let's try walking down

this way, and then you can get right by the Court Reporter so she can hear you, too.

A I drove around the block to see if the Wal-Mart was open.

MS. WEISS: Did y'all hear her?

COURT REPORTER: Yes.

Q To see if the Wal-Mart was open. And did you -- at any point did you tell Meon and Angelo anything?

A We were in the car talking, and they said --

Q Speak up.

A We were in the car talking, and they said to drop them off at the stoplight. And I told them, "Well, I'll wait for y'all on the road by the Waffle House."

Q And where is that?

A Over here.

Q Okay. So you waited on this road?

A Yes, right there.

Q Okay. And then you drove around, and you let them off?

A Yes.

Q And at that point, in your mind, what did you believe they were doing?

A Going to do a drug deal.

Q Believed that they were going to go do a drug deal, and you went over here. So your boyfriend is at the McDonald's, but you didn't go there and wait?

A No.

Q You went over here?

A Yes.

Q Okay. And could you see this cut-through here in the woods?

A No, I went up here on the road, and I parked like right here.

Q Okay.

COURT REPORTER: Could you repeat what she said?

A I was parked up here at the end of the road. I'm sorry.

Q Okay. And I'm just going to go ahead and jump ahead a little bit so we can get the map down and get you back on the microphone. A little bit later, a little bit of time passed by --

A Uh-huh.

Q -- and what happened -- where were you when you saw the boys again?

A I was parked here, and a police car came

out of the Waffle House parking lot and went past me. And when I looked up in my rear-view mirror, they were walking up the street.

Q Okay. So what did you do?

A I cranked up, and I backed up and picked them up.

Q And then what did you do?

A They were in the car and --

Q Who sat in the front seat?

A Meon sat in the front, and Angelo got in the back seat.

Q Which side?

A Back behind me.

Q Okay. And I'll get into a little more details. And then where did you go?

A They were arguing and --

Q Where did you go?

A Oh, where did I go? I'm sorry.

Q Let's just finish with the map.

A I went through the cut-through to the Waffle House parking lot.

Q Okay. And at some point, did you have to stop?

A Yes, as soon as I got out of the parking lot, ran right out of the parking lot, and the

police pulled up behind me.

Q Okay. And you stopped at that time?

A Yes.

Q You can go back. Okay, now I'm going to back up just a little bit since we were done with the map. So you drove into Batesburg-Leesville, and you dropped them off. You had already told them, "I'm going to wait for you over here on this road"?

A Right.

Q And you said you thought they were going to go do a drug deal?

A Right.

Q So why were you waiting on that road?

A I didn't know where they were going. I didn't want to be around it.

Q But you thought it was something bad?

A Yes.

Q And you waited on that road in the car?

A Yes.

Q What happened next? You were sitting in the car, and I know we kind of went over this with the map. And I want to go through it in a little more detail. So what happened next? After you sat in the car, what did you do?

A That's when I had the phone calls with

Rod.

Q Okay.

A When I kept trying to call and talk to him.

Q You said a police car pulled out and zoomed past you. Were there any other police cars over there by you?

A No, it was the car that was at the Waffle House, parked at the Waffle House when I parked.

Q Were there any other police cars at the Waffle House that you noticed?

A No, just the one.

Q And so you were parked there. And what made you move the car?

A When the police went past me and he had the lights going, I was going to go be nosy and see what was going on. But when I looked in my rear-view, they were walking up the street.

Q You looked in your rear-view mirror on your car, and you see them walking up the street?

A Yes.

Q Just walking casually?

A Yes.

Q Okay. And was either one carrying anything?

A Not that I could see.

Q Okay. When they got up closer, was either one carrying anything?

A Not that I could see.

Q So what did you do when you saw them in your rear-view mirror?

A I cranked up, and I backed up to pick them up.

Q Okay. And what was their demeanor like when they got in the car?

A They were arguing, and Meon was sweating. And Angelo kept asking him what happened.

MR. O'NEILL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q What did you see? Without saying what they said, what did you see? What was their demeanor? You said Meon was sweating.

A Yes.

Q And Angelo was talking?

A Yes.

Q But then did you see anything else in their demeanor and how they were acting?

A Meon was shaking.

Q And did you see -- what did you see happen

next?

A He took the gun --

Q "He" being who?

A I'm sorry. Meon took the gun out of his waistband and put it in my glove box.

Q And did -- so you saw the gun?

A Yes.

Q And what did you think at that point?

MR. O'NEILL: Objection, Your Honor, calls for speculation.

MS. WEISS: What did she think.

THE COURT: She can answer what she thought. If it's speculation, you can object again.

Go ahead.

Q What was your emotion? What was your thought?

A My thought was something bad happened.

Q Okay.

MR. O'NEILL: Objection, Your Honor, speculation and ask for her to restate it.

THE COURT: Overruled.

MS. WEISS: Thank you.

Q And did you say anything at that point?

A No. At that point, they were talking.

Q And what happened? After you saw the gun

go into the glove compartment, what happened next?

A By this time, the police had pulled up behind me?

Q And you were -- you had just pulled through the Waffle House parking lot?

A Yes.

Q And did you take off running?

A No, I pulled over.

Q You pulled over, stopped. And what happened next?

A The police officer walked up on the passenger side, and he -- Meon let the front window down. And then the police officer started talking on his radio, asking for a description of the suspects. And then when that came over the radio, then he told us all to get out of the car.

Q And what did you do?

A Got out of the car.

Q All right, Tasha. At the point that you were there, did anybody ask you what had happened, what you had just done, where these boys came from?

A He did eventually.

Q Who is "he"?

A The police officer. I can't remember his name.

Q Okay. So the police officer started asking you questions?
A Yes.
Q And what did you tell the police officer then?
A That I didn't know them.
Q That you didn't know them?
A Meon and Angelo.
Q Okay. Was that true?
A No.
Q So that was a lie?
A Yes.
Q Why did you lie to the police about knowing Meon and having picked up Angelo?
A Because I was scared.
Q What did you tell the police officer about the unknown Meon and Angelo that were in your car?
A That they were walking down the street, and I asked them if they needed a ride.
Q And why did you -- according to what you told the officer, why did ask them if they needed a ride?
A Because I ask people that all the time.
Q And was that true?
A Yes, I do do that sometimes.

Q Okay. So you told --
A It wasn't true then.
Q Huh?
A It wasn't true at that point.
Q Okay. So it wasn't true. Did you know who Meon was?
A Yes.
Q And did you know Meon pretty well?
A Yes.
Q And did you know who Angelo -- without necessarily even knowing his name, did you know who the other guy was or why the guy was there?
A Yes.
Q And did you intentionally pick them up?
A Yes.
Q Okay. What else did the officer -- did the officer tell you something about your driver's license?
A He came back up. He had ran it and found that it was suspended.
Q Did you know that at that time?
A No.
Q So what happened next? You're sitting on the side of the road, and what happened next?
A Two cars came and got Meon and Angelo and

took them away. And I was still sitting on the side of the road, and he was searching my car.

Q Were you aware that there were some drugs found in your car?

A Yes.

Q And what was it?

A Marijuana.

Q Was it a lot?

A No, it was a bud. It was the residue of the marijuana.

Q Okay. And that was it?

A Yes.

Q And who did that belong to?

A Rod.

Q And when was the last time you had seen Rod use it?

A On that day, when I took him to work.

Q Okay. And there were no other drugs in your car?

A No.

Q And the backpack you knew was in your car?

A Yes.

Q And you knew the gun was in your glove compartment?

A Yes.

Q Okay. So what happened next? The officer -- you gave the officer that statement?

A Yes.

Q And what happened next?

A He called for a tow truck, and we waited there until the tow truck came.

Q Okay. And then what happened? What did you do? Where did you go?

A To the Batesburg Police Department.

Q And did -- and who else was at the Batesburg Police Department?

A Meon and Angelo.

Q And once you got there, did you talk to Meon?

A No, not at first.

Q Did you or Meon -- did you acknowledge you were there --

A Yes.

Q -- say hello or "I love you"?

A Yes, he -- after they had took each of us out individually and brought us back, when they had brought me back, he told me loved me, and I told him I loved him, too.

Q When you say "I love you," is that romantic love?

A No, it's more like one of my children.
Q Because he was 18 --
A Yes.
Q -- and at the time, you were 38?
A Yes.
Q How long was it before you got to Lexington Detention Center?
A It wasn't until that Friday morning.
Q Were you allowed to make any phone calls prior to that?
A No.
Q And were you allowed to talk to Rod Cook prior to that?
A No.
Q And did you have charges at that point?
A I had one charge.
Q And what was that charge?
A The murder charge.
Q And do you still have that charge?
A Yes.
Q Have you been charged with anything else?
A With attempted armed robbery, conspiracy to commit armed robbery, and possession of a firearm used in a violent crime, and the driving stuff.
Q Okay. And have you gotten any deals for

any of those charges?

A No.

Q So you are still sitting up there today facing every one of those charges?

A Yes.

Q Has anybody told you that sitting up there today and talking is going to get you a lower charge, reduced charge, things dismissed, anything like that?

A No.

Q What was the first thing you did when you got to Lexington County Detention Center?

A I called home.

Q When you called home, who did you talk to?

A I talked to Rod.

Q Have you had an opportunity to listen to the phone calls that you made to Rod?

A Yes.

Q And do those accurately depict the phone calls that you made when you first go to Lexington County Detention Center?

A Yes.

MS. WEISS: Your Honor, at this time I would like to enter State's Exhibit Seven into evidence as those phone calls made by Tasha Matthews

to Rod Cook when she first got to the jail. Your Honor, may we approach briefly?

THE COURT: Yes, ma'am.

Mr. Foreman, ladies and gentlemen of the jury panel, it's taking a little longer than expected maybe with this witness. And so it's already about 20 after one, and we're still a ways from finishing with this witness.

So we decided to go ahead at this time and get some lunch. So I'm going to ask you go ahead and get some lunch at this time. I remind you not to discuss the case with anyone you might see during the lunch break and ask you to be back in the jury room ready to go at 20 after two. It's now about 1:20, about an hour for everybody to get lunch. Thank you.

(Jury out for lunch from 1:20 p.m. to 2:20 p.m.)

THE COURT: Ms. Matthews, you're going to be able to stand down during lunch and get some lunch.

Hopefully, she can get some lunch in an hour. Is she going to be able to do that?

MS. WEISS: Your Honor, we'll get somebody to go get her something and bring it to her, so

that's not a problem.

THE COURT: All right, we'll take a break. During the lunch recess, please, ma'am, do not discuss this case with anyone. You can discuss something other than this case, but do not talk to anyone about this case, the same as if you were still on the stand.

MS. MATTHEWS: Yes, sir.

THE COURT: All right, thank you.

MS. WEISS: Thank you, Your Honor.

THE COURT: We'll try to start back about 20 after.

(Court in recess for lunch.)

MR. O'NEILL: Your Honor, may I approach?

THE COURT: Yes, sir, counsel.

MS. WEISS: Your Honor --

THE COURT: Yes, ma'am.

MS. WEISS: -- we were just trying to settle the record. There are two more witnesses that are potentially today. The two witnesses are Vantouris Hanna and Meon Miller. And Vantouris Hanna only has a conviction for a public disorderly misconduct, which I think we both agree is not admissible. He has pending charges from Richland County, but those have not been disposed of.

THE COURT: Can't impeach for those.

MS. WEISS: And Meon Miller, the only charges he has are the current pending charges that he has. However, the only one showing up on the draft sheet is the murder charge. I just asked Chief Oswald why the murder charge is the only one showing up.

He said that the murder charge he was originally charged at Batesburg-Leesville, as they all four were, and they were transferred over to Lexington County. The warrants were served on them over here. So he can't answer why Lexington County hasn't submitted it.

It's not that anything has happened to those charges. All of them are still pending. They're all indicted.

THE COURT: All indictments are still pending?

MS. WEISS: Yes, sir, Your Honor.

MR. O'NEILL: I just wanted to clear the record, Your Honor.

THE COURT: Okay. And, of course, pending charges, certainly he can ask about pending charges --

MS. WEISS: Absolutely.

THE COURT: -- because it's part of this case. But you can't impeach them with them just because they're pending charges, okay? But if it's part of this case, obviously you can ask --

MR. O'NEILL: Yes, sir.

THE COURT: -- if they've got those charges pending against them for bias reasons and that reason.

MS. WEISS: Yes, Your Honor.

THE COURT: Okay.

All right, we can bring them on in.

(Jury in at 2:37 p.m.)

THE COURT: Good afternoon, Mr. Foreman, ladies and gentlemen of the jury. I hope you enjoyed your lunch. We are ready to resume now with the trial. I would remind everyone to please try to be on time, because even if one juror is late, we have to wait until that juror arrives to get started.

All right, we're ready to proceed, counsel.

MS. WEISS: Thank you, Your Honor, may it please the Court. I believe when we broke, we were at the point that we just introduced the phone calls into evidence, is that correct? Had they already

been admitted?

THE COURT: The Court Reporter can tell you for sure.

COURT REPORTER: Which one?

MS. WEISS: The very last one, State's Exhibit Seven.

COURT REPORTER: It's not in evidence.

MS. WEISS: Okay.

Your Honor, at this time I would like to admit State's Exhibit Seven into evidence, the three phone calls involving Tasha Matthews.

MR. O'NEILL: Your Honor, it would be subject to our previous objection. I think there are four calls on that CD, as well.

THE COURT: Your objection is as to the CD because it has the other one on it?

MR. O'NEILL: Yes, sir.

THE COURT: Okay, all right. Your objection is noted for the record and overruled.

You may proceed.

MS. WEISS: Thank you, Your Honor.

(State's Exhibit Number Seven, CD 736-0818, Phone Calls, was entered in evidence.)

MS. WEISS: Your Honor, at this time I'd

like to publish these three calls for the jury.

THE COURT: You may publish.

(Whereupon, the CD of the phone calls was played.)

Q So, Tasha, when you got off the phone with Rod, what did you do next?

A I told Meon to call him, and then I went and told them I needed to speak to the investigator.

Q So when you got off the phone with Rod Cook, you did exactly what he instructed you to do?

A Yes.

Q You went to -- I'm going to show you what's been marked as State's Exhibit Nine for identification. Do you recognize this?

A Yes.

Q What is it?

A The request I made to speak to the investigator.

MS. WEISS: Your Honor, at this time I ask to enter State's Exhibit Nine into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Nine, Inmate Request form 10/15/10, was entered in evidence.)

Q So what was the first thing you did when you got off the phone?

A I told Meon Rod wanted him to call him.

Q Okay.

A And I went got the request and filled it out to speak to the investigator.

Q Where did you get the request?

A From the booking desk.

Q And what did they say when you asked to speak to the investigator?

A She told me I had to fill out the form, that if they wanted to speak to me, they'd come get me.

Q Okay. And is the form she gave you?

A Yes.

Q And what is the date on this form?

A October 15, 2010.

Q And this is a form you filled out after you got off the phone when you first got to Lexington County?

A Yes, when I got to the detention center.

Q Did the investigator come and speak to you?

A Yes.

Q And how long was it before the

investigator came and talked to you?

A Probably 30 or 45 minutes.

Q Okay. And did you give a statement?

A Yes.

Q And if you recall, what did you focus on when you were giving that statement?

A I just told him -- he wanted to know what happened that night. So I told him what happened from the time I left my house up until.

Q Okay. So did you tell him exactly what Rod had told you to tell him?

A I told him what happened.

Q Was that the same thing you had told Rod on the phone?

A Yes. And I told him what was said in the car.

Q Okay. And you said you told him from the time you left your house?

A Yes.

Q Do you recall if you told him anything about talking to Rod that night?

A I don't remember. I might have.

Q Would it help you to refresh your memory by looking at your statement?

A Yes. No, I didn't.

Q Do you recall what your home phone number was at that time?

A 736-0818.

Q Was that the number that you called to reach Rod that night?

A Yes.

Q You didn't mention anything about talking to Rod Cook when you talked to the investigator?

A No.

Q Why is that?

A I didn't think it was relevant that I called to tell him what was going on.

Q So on October 15, 2010, after those three conversations --

A Uh-huh.

Q -- with Rod, at that point you didn't think it was relevant to tell law enforcement that you had spoken to Rod Cook several times that night between the time -- as you stated, between the time you left your house and the time you ended up at the Lexington County Detention Center?

A You're talking about the calls I made on my cell phone, or are you --

Q Yes.

A -- talking about the phone calls at the

jail?

Q I'm talking about the calls you made on your cell phone.

A I don't know. That just slipped my mind.

Q What information did you have at that point about Willie Jennings?

A They told me that he had been -- first, they told me that he had got shot, and then they came back later and told me that he died.

Q And who was Willie Jennings' supervisor that night?

A Rod.

Q But yet at this point you still didn't think it was relevant to tell law enforcement that you had spoken to Rod, right?

A No.

Q What were you focused on in this statement?

A Telling them what had happened since I left my house.

Q Who were the people that you included in this statement, that you talked to them?

A Me and Meon and Angelo and what happened at the police department.

Q After that, did you continue to talk to

Rod Cook on a daily basis or a regular basis while you were in the Lexington County Detention Center?

A After I got transferred to a room, after I got housed and got in a room and get rated, yes.

Q And were you able to still call him at the 736 phone number?

A For the first couple of days, I would call his cell phone.

Q Why is it that you told Danikwa to pack up the clothes for the younger kids and start packing up the apartment? Why didn't you tell Rod to do that?

A Because I wanted him to focus on getting my daddy to get me a lawyer.

Q Okay. So you focused on getting him to get with your dad to get you a lawyer?

A Yes.

Q When you were not able to reach Rod at the 736 number, where were you able to reach him?

A On his cell phone.

Q Okay. And were you able to reach him consistently on his cell phone after that?

A For about the next two weeks -- week and a half, two weeks.

Q You said that you were setting up the

visitation. You said that he was going to come visit you, and you were setting up the visitation. Did you do that?

A I did, yes.

Q And did Rod show up for the visitation?

A No.

Q What did you think when Rod didn't show up for visitation?

A I didn't know what was going on, and I called my dad to see if he knew what was going on, and he said he didn't know. And then probably two days later, the investigator came to see me and asked me if I knew anywhere that he can hide, because they were looking for him.

Q So at that point, Rod had not been arrested?

A No.

Q At some point after this, after he didn't show up for visitation and you weren't able to reach him, did you have the opportunity to talk to law enforcement again?

A When he came to ask me if I knew where he would be.

Q Okay. But after that, did you have the opportunity to give another statement?

A I didn't give another statement until 2012, last year.

Q And why did you give another statement?

A Because my lawyer told me I was going to make another statement.

Q So the first statement you gave or the first two statements you gave, you did not have a lawyer?

A Right.

Q And then your dad did go and get you a lawyer?

A Yes.

Q After talking to your lawyer, you made another statement?

A Yes.

Q If you recall, what was the difference in the next statement that you made? Would it help you refresh your memory to look at the statement?

A Yes. In this statement, I told him about me working half a day and going to the Social Security office. He had asked me what I did that day.

Q So in the statement that you gave with your attorney in 2012, what instructions, if anything, when you spoke to the officers were you

given as far as giving another statement?

A He just told me to go over everything I did that day.

Q Okay. And at that point, did you include information about talking to Rod Cook?

A Yes.

Q And why in 2012 did you decide to start telling law enforcement about talking to Rod Cook that day?

A Because at first, when I made that statement, I was just focusing on that night and what happened. And when I went back and they had me go through the whole day, step by step, a lot of stuff that I didn't think about before I started remembering and I was telling him. And he told me to make sure I wrote everything in my statement.

Q Okay. And is that statement the truth?

A Yes.

Q In this statement, you talked about talking to Rod earlier in the day when he told you about Meon coming over and taking him where he wanted to go and bringing him to Batesburg?

A Uh-huh.

Q Yet, here today, you told this jury about another phone call, the other phone call that you

mentioned before, later in the evening with your cell phone to Rod where you were calling the McDonald's?

A Yes.

Q Why did you not put that in your last statement?

A I told him I had been on my phone trying to call him off and on all night.

Q Okay. And you had in fact been on your phone off and on trying to call him all night?

A Yes.

Q But did he answer every time you called?

A Sometimes he would call and answer, see it was me, and he'd hung up, or he'd say he's busy, he can't talk, and he'd hang up.

Q Okay. And why didn't you think it was important to put that in this statement?

A I didn't write it in the statement, but I did tell him that I had been calling off and on all night.

Q And what about the last phone call, the phone call at 11:36? Have you been asked specifically about that one before you're here testifying today?

A No.

Q Okay. In that phone call, what was important about -- may not have been important to you, but what was said in that phone call?

A We were arguing. I kept asking him what was going on, and he told me don't worry about it. And he asked me why the fuck I keep calling him and asking questions.

Q Did he ever tell you what was going on?

A No.

Q Did he ever explain to you why you were bringing Meon out to Batesburg-Leesville?

A No.

Q All right, I'm going to ask you just a couple more questions. You mentioned somebody earlier named Van. Who is Van?

A It's one of Rod's other first cousins.

Q What's his full name?

A Vantouris Hanna.

Q Okay. And he's another one of Rod's first cousins?

A Yes.

Q So is he also Meon's first cousin?

A Yes.

Q And what is his -- do you know about how old he is? Is he closer in age to Meon or closer in

age to Rod?

A To Meon.

Q Did he also come in and out of your house, too?

A Sometimes.

Q Not as much as Meon?

A Right.

Q Who's Vito?

A That's Vantouris.

Q Okay, that's his nickname. Who's Tremayne? Rod talks about Tremayne on that phone call. Who's Tremayne

A His brother.

Q His older brother or younger brother?

A Younger.

Q And where is Tremayne, or where was Tremayne October 15, 2010?

A At Lee Correctional Facility.

Q Okay. And is that where he still is today?

A Yes.

Q And do you know why he's there?

A He was convicted of murder.

Q And just briefly, I'm just going to ask you -- I'm presenting State's Exhibit Eight for

identification to identify voices. I'm not asking to play it at this point but just for the purpose of identifying voices.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

Q Do you recognize whose voice that is?

A Rod.

Q Is it Rod Cook?

A Yes.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

Q Do you recognize the two voices there?

A It sounds like Vantouris talking to Rod.

Q Okay. And the first voice was?

A Rod.

Q Definitely Rod?

A Yes.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

Q And do you recognize that voice?

A Yes, that's Tremayne.

Q Okay. And by Tremayne, you mean Rod's brother Tremayne?

A Yes.

Q All right. And there's another call.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

Q Do you recognize those two voices?

A I know that one of them is Rod. I don't know who the other one is.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

Q Do you know whose voice that is?

A I don't know whose voice that is.

(Whereupon, a portion of the CD of two phone calls from the jail was played.)

THE COURT: Counsel --

MS. WEISS: I'm sorry.

THE COURT: Yes, sir.

MR. O'NEILL: The call is not in evidence at this point, and the witness has already said she can't authenticate the voices.

MS. WEISS: Now I'm moving to a different voice.

THE COURT: It has a different voice or different calls on there. She's asking about different ones that she --

MR. O'NEILL: I understand that, Your Honor. I don't think it's appropriate to play it until we get to the point where she's trying to find

the voice. She's putting it into evidence when it's not in evidence here. She's playing it out loud.

THE COURT: All right, can you narrow it to where you just identify a voice that you want her to see if she knows, recognizes?

MS. WEISS: Yes, sir, let me go to that. I'll turn it down and see if I can just hear.

Q The first voice is definitely Rod?

A Yes.

Q Okay, Tasha, the first statement you gave to law enforcement you've told this jury was a lie, that you didn't know them, that you didn't know why you were picking them up, you were just offering them a ride?

A Yes, when I got pulled over.

Q Since that statement, have you been telling the truth?

A Yes.

Q And are you telling the truth today?

A Yes.

Q And has your opinion changed as to the importance of those phone calls, that you started adding those phone calls back in?

A Yes.

Q And why is that?

A It just makes me think that --

MR. O'NEILL: Objection, Your Honor, calls for speculation.

THE COURT: Well, I think you need to be more definitive with your question than just that general statement, counsel.

MS. WEISS: Thank you, Your Honor.

Q When you gave your first statement, your first truthful statement, on October 15th after you had just talked to Rod, did you have any reason to believe that those phone calls were important that night, the phone calls you made to Rod when you were sitting on the side of the road?

A No, not then.

Q Okay. As you sit here now talking to this jury, you're still telling the truth?

A Yes.

Q Do you believe those phone calls were important now?

A Yes.

Q And when you took Meon Miller in your car to Batesburg-Leesville, why were you going out there?

A I was going to pick Rod up from work.

Q And why did you have Meon in your car?

A He told me to bring him when I came.
Q "He" told you?
A Rod told me.
Q Rod told you to bring Meon?
A Yes.
Q And what did Rod ask you in those last couple of phone calls concerning Meon?
A He asked me if I dropped him off.
Q And what did you tell him?
A I told him, "Yes, I dropped him off at the stoplight."
Q Thank you.
Your Honor, I have no further questions at this time.
Please answer any questions Mr. O'Neill may have for you.
MR. O'NEILL: May it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. O'NEILL:
Q Good morning, Tasha.
A Good morning.
Q I just want to clear up a few things here, okay?
A Okay.

Q It was not unusual for you and Rod to talk when he was at work, correct?

A Correct.

Q And essentially it's not unusual for him to call you at the end of his shift, correct?

A Correct.

Q Do you have a copy of your cell phone records in front of you now still?

A No.

Q Let's see can we find those.

MS. WEISS: They should still be on the table. This is the one I was using. Do you want the one I was using?

MR. O'NEILL: Beg the Court's indulgence.

THE COURT: Yes.

Q Tasha, I think Rod had worked the night before, on the 12th?

A Yes.

Q Okay. And y'all had talked pretty extensively that night as well, correct?

A Yes.

Q Matter of fact, y'all talked -- I guess from the 12th coming into the 13th, y'all talked at 12:08 in the morning on the 13th?

A Yes.

Q And then y'all talked two minutes later, at 12:10, on the 13th, correct?
A Yes.
Q And y'all talked again at 12:39 in the morning on the 13th?
A Yes.
Q That was all essentially the previous night?
A Correct.
Q So he had called you three times for 21 minutes the night before?
A Yes.
Q And that wasn't unusual?
A Right.
Q Okay. When was the last time he had worked previous to the 12th? Had he worked the 11th or the 10th, or you don't know?
A I don't remember.
Q I guess long story short, it wasn't unusual for him to call you a lot of times in a short period of time when he was at work?
A Right.
Q That wasn't unusual at all?
A No, it wasn't unusual.
Q He did it all the time?

A Yes.

Q And that's one of the reasons why you didn't think it was important to say anything in your first statements about him calling and y'all talking while he was at work?

A Yes.

Q Because that wasn't out of the ordinary for you?

A Right.

Q You always talked --

A Yes.

Q -- while he was at work, okay. Let's talk a little bit about your financial situation. I know you went over some of the jobs Rod had when Ms. Weiss was talking to you earlier this morning, correct?

A Yes.

Q I think you probably left a few of those jobs off, because the jobs you talked about this morning were all fast-food restaurants, correct?

A Yes.

Q And he worked at some other places besides those fast-food restaurants, right?

A Yes.

Q Where else did he work besides those fast-

food restaurants?

A He did landscaping for a few months.

Q He did landscaping. Where else? He worked at Target?

A Yes, he worked at Target.

Q And I think after was born, he worked at Bose as well, too?

A Yes, for a couple of months.

Q So he worked at some other places besides the ones --

A Yes.

Q -- that you talked about earlier, okay. Y'all had a joint banking account together, correct?

A At this time, yes.

Q Back in October 2010, both of your checks were getting direct deposited into your bank account?

A Yes.

Q And he had been working at McDonald's at that point for like nine months?

A Yes.

Q Okay. And you talked about your rent. You said that y'all were a couple of months behind on rent?

A Yes.

Q In October 2010?
A Yes.
Q Y'all moved into Hunters Mills Apartment looks like in January 2008, correct?
A Yes.
Q And correct me if I'm wrong Tasha, but literally y'all were late on your rent almost every month since January 2008 until October 2010?
A Yes.
Q That's a two-and-a-half-year period?
A Yes.
Q Y'all literally were late every month?
A Yes.
Q And when you say it's not unusual for y'all to be late, almost every month y'all were late?
A Yes.
Q And at least --
A The majority of them.
Q -- the majority of the time when y'all were late, y'all had eviction fees, as well?
A Yes.
Q How many times did they have to serve eviction notices on y'all?
A I don't know. It's more than three or

more.

Q At least more than three?

A Yes.

Q And that was in 2010?

A No, it's all within the last year.

Q Yes. Within the last year, y'all had been served with eviction notices three times?

A Yes, as far as I remember.

Q And y'all had been behind more than two months before as well, correct?

A Yes.

Q Because it looks like in August of 2008 and September 2008, y'all were behind two months?

A Yes.

Q In October 2008 and November 2008, y'all were behind two months, as well?

A Yes.

Q Looks like in November 2009, y'all were behind two months?

A Yes.

Q Looks like in March of 2010, y'all were behind two months?

A Yes.

Q Looks like in September 2010, y'all were behind two months, as well?

A Yes.
Q So being behind two months wasn't unusual either?
A No.
Q Y'all had been behind two months a lot of times?
A Yes.
Q And on this particular month, October 13, 2010, you had already made a payment on your rent?
A Yes, I had sent them a check.
Q You sent the check in?
A Uh-huh.
Q Not only had you sent the check in, you had already talked to the people at the apartment complex?
A Yes.
Q Talked to them about the fact that you had already sent a check in?
A Yes.
Q And was it your understanding that they were going to allow y'all to stay there until that check cleared?
A Yes.
Q So they weren't coming to kick y'all out that day?

A No.
Q They weren't coming to evict y'all that day?
A No.
Q They were giving y'all a chance to make good on your payment?
A Yes.
Q They had given y'all chances before?
A Yes.
Q Because y'all didn't want to be out in the street?
A Right.
Q If y'all didn't get any money that night, y'all weren't going to be thrown out of your apartment?
A Right.
Q You were going to be able to stay there until that check cleared?
A Yes.
MS. WEISS: Objection. He's testifying to this. She's testified as to what -- he's asking her a question she doesn't have an answer to.
THE COURT: It's cross-examination, counsel. You need to let her testify instead of you, okay?

MR. O'NEILL: Yes, sir.

THE COURT: Avoid the leading, please.

Q Isn't that correct?

A Yes.

Q Okay. Had you already -- you had a cruise planned in December 2010, correct?

A Yes.

Q How much did that cruise cost, I think you said?

A It was about $800, somewhere around there.

Q Who all was going on that cruise?

A Just me and Rod.

Q Was any of Rod's family going, as well?

A His dad's side of the family.

Q And y'all had already paid for this cruise, correct?

A I think we owed like maybe like $200 more.

Q But y'all had already paid at least --

A The majority of it.

Q The majority of it you had already paid?

A Yes.

Q When did y'all pay that?

A In September.

Q So in September, y'all had $600 to pay on the cruise?

A Yes.

Q So y'all had money to pay on the cruise the month before?

A Yes.

Q Okay. Now, I want to make sure we have your timeline down correct that day, okay? You got off work at 12:46?

A Yes.

Q And it took you about 20, 25 minutes to get home?

A Yes.

Q When you got home, I guess that would have been around about 1:15, 1:20. Is that about right?

A Somewhere around there.

Q You said only Rod was home and one of your children was home at that point?

A Yes.

Q Meon Miller wasn't at your house when you got home --

A No.

Q -- at 1:15 to 1:20?

A No.

Q Meon Miller was not there?

A No.

Q You and Rod then go to the Social Security

office?

A Yes.

Q And according to your phone records here, you called to your job about 1:30 and told them that you weren't coming back in that day?

A Yes.

Q So at 1:30 y'all leave to go to the Social Security office. At that point, was Meon Miller at your home?

A No.

Q Y'all go to the Social Security office here. Rod goes with you, just you and Rod?

A Yes.

Q Did Rod need a Social Security card for the cruise, or do you know?

A I know he was going to need it, and he couldn't find his.

Q So he needed a new one for the cruise?

A Yes.

Q That's why y'all were going to the Social Security office?

A Yes.

Q Okay. What time did Rod have to be at work?

A At four.

Q Okay. So y'all leave straight from the Social Security office to go to --

A Batesburg.

Q -- Batesburg. You don't go back home?

A No.

Q So once you leave the Social Security office, you go straight to Batesburg?

A Yes.

Q And Rod gets there about 4:15?

A Yes.

Q Then you go back to your house?

A Yes.

Q You get to your house around 5:00, 5:30 maybe?

A About 5:00.

Q Five o'clock. And then how long are you there before Meon Miller gets to your house?

A The first time he came in probably between 6:30 and 7:00.

Q It's 6:30 or 7:00 before Meon Miller gets to your home?

A Yes.

Q That you're aware of?

A Yes.

Q Okay. Now, at that time, is Rod at the

house?

A No.

Q Where is Rod at?

A He's at work.

Q He's at work, not at the house?

A No.

Q Now, do you ever give Meon Miller any details about how to rob a store when he comes over to your house?

A No.

Q Did you ever tell Meon Miller a plan to rob a McDonald's while he was at your house?

A No.

Q Did you ever tell Meon to wait behind the dumpster while he was at your house?

A No.

Q Did you ever tell Meon that Rod had scheduled a robbery at McDonald's while he was at your house?

A No.

Q None of those things you said to Meon Miller?

A No.

Q Okay. Did you ever tell Meon Miller that the plan was for them -- for Meon Miller to walk

some McDonald's employees into a freezer at the McDonald's?

A No.

Q And I'm talking about specifically while you're at the house, okay? At some point, you and Meon Miller and Angelo Tucker are in your vehicle going towards Batesburg, correct?

A Correct.

Q While y'all are in the car --

A Uh-huh.

Q -- do you ever instruct Meon Miller about a robbery at McDonald's?

A No.

Q Did you ever tell Meon Miller about getting -- telling somebody to put a gun there on that ride to Batesburg?

A No.

Q Never said either any one of those --

A No.

Q -- any of those things? In fact, when you got to Batesburg, Meon Miller told you where to park at, correct?

A He told me to drop them off -- well, when I went around the corner, I rode around, and then I came back around and dropped them off at the

stoplight. I said I'd wait for them at the street by Waffle House.

Q But it was Miller who told you where to stop and drop them off at?

A Yes.

Q You didn't drop them off in the McDonald's, did you?

A No.

Q Okay. Did you drive through the Ramblewood Apartments before you dropped them off?

A No, I didn't.

Q Okay. But Meon told you where to stop at?

A Yes.

Q You thought Meon Miller and Angelo were going there to do a drug deal?

MS. WEISS: Objection.

MR. O'NEILL: She testified this under direct, Your Honor.

THE COURT: It's already been asked. Overruled.

Q It was your thought that you thought Angelo Tucker and Meon Miller was coming there to do a drug deal, correct?

A Yes.

Q You thought they had drugs concealed in

that bag?

A Yes.

Q Angelo Tucker had a bag, correct -- bookbag?

A Yes.

Q And you thought there were drugs in that bookbag?

A Yes.

Q You thought they were coming to Batesburg to sell some drugs to somebody?

A Yes.

Q You didn't have any idea about any sort of robbery or anything like that?

A No.

Q On these phone calls you had with Rod here, he never mentioned anything about the armed robbery at McDonald's?

A No.

Q He never told you to tell somebody to bring a gun with them when they came?

A No.

Q In fact, Rod never specifically told you to bring Meon to the McDonald's, did he?

A He told me to bring him with me.

Q To Batesburg?

A When I picked him up.
Q Rod told you to bring Meon to Batesburg?
A Yes.
Q Not to the McDonald's? --
A He said, "Bring Meon with you when you come."
Q When you come. And where were you coming to?
A I was going to Batesburg to pick him up from work.
Q When you gave a statement -- those two statements that you gave, one in October 2010 and one in September 2011 -- those were your words?
A Yes.
Q Nobody was forcing you to say any of those things?
A No.
Q You said it because it was the truth?
A Yes.
Q And your testimony today, you said it because it's the truth?
A Yes.
Q And when you say that Rod never talked about a robbery or set up a robbery with you, you're saying that because that's the truth?

A Yes.

Q And when you say you never talked to Meon Miller about a robbery, you're saying that because that's the truth?

A Yes.

MR. O'NEILL: Beg the Court's indulgence, Your Honor.

THE COURT: Yes.

MR. O'NEILL: That's all I have, Your Honor.

THE COURT: Redirect?

MS. WEISS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. WEISS:

Q Tasha, Mr. O'Neill was asking you several questions about your rent. And in fact, you were behind several times but not every single month, right?

A It was like the majority of the time.

Q And the majority of the time, actually, unless there's something that I don't know, you actually -- you would normally pay your rent before the next rent was -- even though it was late, you'd pay it before the next rent was due?

A Yes. It was due by the fifth, but they

gave you a grace period till the tenth, but you had to add a late fee to it.

Q Okay. And even if -- so sometimes you would pay it after the late fee was due, so you'd have to add the late fee?

A Yes.

Q And then sometimes if you didn't pay it, you would get an eviction notice or eviction fees if you didn't pay it till right at the end of the month?

A Yes.

Q Okay. But going back to 2008, you actually paid the rent prior to the next month's rent being due on the first?

A Right, I tried to make it by the tenth.

Q You tried to make it by the tenth, but pretty much you almost always made it by the first or on the first?

A Yes.

Q Maybe once or twice on the second. But you paid it, you had it paid. And what was the procedure for paying your rent?

A We could either send it directly to the office in Charleston, or if it was late and we took it to the rental office, we had to have a money

order.

Q Okay. And so if you had to send it to Charleston, would it take a couple of days longer?

A Yes.

Q But then all of a sudden in September of 2010, you had your August rent was due. You paid that on September 1st, which was the same day your September rent was due, right?

A Yes, about that time.

Q Okay. And then you didn't -- then October 1st, your October rent was due?

A Right, October and September.

Q So it was October and September. That was actually the first time you actually owed a check or a money order for two months of rent, a $1,200 check?

A I would have to look at it. But if you're looking at it, then that's right.

Q Okay. And you just testified you had paid at least, what was it, $500 or $600 of this $800 cruise?

A Yes.

Q And you had just paid that in September, as well?

A Yes.

Q So you had just paid for the cruise, and you still owed $1,200. So in fact, October 13th, even though you had mailed the check, things were different on October 13th than they had been since 2008?

A Yes.

Q And to your knowledge, did that check actually clear, the $1,200-plus check?

A No. I think once I got arrested, he put a stop payment on it to take the money and put it towards a lawyer.

Q Mr. O'Neill was talking about your phone records. You said that it was typical for you to talk to Rod while he was at work?

A Yes.

Q On a typical day, Rod would bring you back to work, and you would drive him to work and then come home. When you were at home, what were you doing?

A Stuff with the kids, cooking, checking homework, stuff like that.

Q Okay. So when you were doing that, was it usual for you to be on the phone the entire time with Rod.

A Sometimes we'd be off and on the phone.

Q Okay. However, when you were in the car on your way to pick him up, would you be on the phone then?

A Sometimes.

Q Was it typical for you to -- what time would Rod get off? What time did the store close?

A Midnight.

Q So the calls the night before that Mr. O'Neill was talking about were three calls in a short period of time. But actually, if you look at it, these calls are 12:08, 12:10, and 12:29. Those are one incoming call from -- that's Rod's number, right?

A Yes.

Q And two calls to him. But the duration of those calls is just one minute?

A Yes.

Q And those would be all after the store had closed?

A Yes.

Q So where would you have been during that time if the store closed at midnight?

A Either on the way there or already in the parking lot.

Q On the night that we're talking about, on

October 13th, you can look -- you've looked at your phone records, but you actually lived them -- you and Rod did talk a lot on the phone?

A Yes.

Q Tasha, what was different about the phone calls this night? What was different about the phone calls from 10:05 to 11:36 on October 13, 2010?

A I just had a feeling that something wasn't right.

Q And normally when you called Rod, what would happen?

A If he wasn't busy, he'd talk.

Q And what happened on this night?

A He kept telling me he was busy.

Q And what else?

A He couldn't talk except that one time we actually talked.

Q Okay. And what did he say when he was talking to you?

A He asked me if I dropped Meon off, and I asked him what was going on, and we were arguing.

Q You were arguing. Was he saying it just in that tone, "Hey, what's going on?" Is that the type of tone he was talking to you in?

A When we were arguing?

Q When you were arguing.
A No, he was yelling.
Q What was he saying to you?
A He was yelling, saying -- I asked him what was going on, and he said, "Don't worry about it." And he asked me why the fuck I keep asking him questions. And I said, "What's going on? Something's not right." I just had a feeling. He was, "All right, just don't worry about it. Don't worry about it," and to stop calling, he was busy.
Q Okay. You called both his cell phone and McDonald's. Why did you call both lines?
A Because I was trying to get him to answer, because the feeling just wouldn't leave me that something wasn't right.
Q But normally when you called him, did it matter if you called the cell phone or McDonald's?
A No.
Q Would he answer?
A Unless he was busy. He'd answer and say he was busy.
Q When he answered and he was busy, would he talk to you? Was he nice to you?
A He'd say, "I'm busy. I can't talk," and he'd hang up, but he wouldn't yell about it.

Q Did he yell about it on October 13th?
A Yes. I kept asking questions.
Q And you kept calling. You called one, two, three, four, five, six, seven, eight, nine times. What was his opinion about you calling -- what was he saying to you about you calling nine times?
A Stop calling, why do I keep calling. He's busy. He can't talk.
Q He would say he was busy?
A Yes.
Q And was that unusual for him to be busy and unable to talk for that period of time at McDonald's?
A On a rare occasion.
Q But when he was busy before, he wouldn't yell at you?
A No.
Q This night when you kept calling, what was he doing? What was his demeanor?
A He was aggravated because I kept calling.
MS. WEISS: No further questions, Your Honor.
MR. O'NEILL: Briefly, Your Honor.
THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. O'NEILL:

Q Tasha, you said he was aggravated because you kept calling him, correct?

A Yes.

Q And before you had called, he said he was busy sometimes, too?

A Yes.

Q Y'all hadn't started arguing that night. Y'all had been arguing earlier that day, correct?

A Yes.

Q When you got off work and called, y'all had been arguing earlier then?

A Yes.

Q So did y'all argue while y'all were driving on the way to work here? When you took Rod to McDonald's, were y'all arguing at that point, too?

A Yes, I think we did.

Q So you were arguing when you took him to work here, had been arguing earlier that day, and then when you called nine times that night, y'all were still arguing again?

A Yes.

Q Okay. And I hate to do this, because Ms.

Weiss asked you about being late, and I just want to make sure we're clear on this. You moved in January 2008?

A Yes.

Q You were late April 2008?

A Probably, if that's what it says.

Q You were late May 2008? I'll let you see it you want to refresh your memory.

A I mean, I believe you. If you're reading it, then, yes.

Q You were late June 2008?

A Yes.

Q You were late July 2008?

A Yes.

Q You were late August 2008?

A Yes.

Q Late September 2008?

A Yes.

Q You were late October 2008?

A Yes.

Q November 2008?

A Yes.

Q December 2008?

A Yes.

Q January 2009?

A Yes.
Q You were late March 2009?
A Uh-huh.
Q April 2009?
A Yes.
Q May 2009?
A Yes.
Q June 2009?
A Yes.
Q You were late September 2009?
A Yes.
Q October 2009?
A Yes.
Q November 2009?
A Yes.
Q December 2009?
A Yes.
Q January 2010?
A Yes.
Q February 2010?
A Yes.
Q April 2010?
A Yes.
Q June 2010?
A Yes.

Q July 2010?
A Yes.
Q August 2010?
A Yes.
Q And September 2010?
A Yes.
Q And October was not the first time you had more than a $650 balance, is that correct? I want you to look at it so you can answer on your own. Would this refresh your memory?
A Yes.
MS. WEISS: Objection, Your Honor. I don't believe she's familiar with this that he was just reading from.
MR. O'NEILL: I'm just using it to refresh her memory, Your Honor.
MS. WEISS: It's not a document that she's familiar with, Your Honor.
THE COURT: Well, it hadn't been offered into evidence; and, two, she has no foundation to lay unless she had knowledge of it, counsel. You can ask her, but --
MR. O'NEILL: I'll do it this way, Your Honor.
Q Ms. Matthews, do you remember whether or

not you were two months behind in November 2009?

A I know we had been before.

Q Do you remember specifically about November 2009?

A I don't remember.

Q Would looking at this document refresh your memory as to whether or not you were behind on --

MS. WEISS: Objection, Your Honor.

THE COURT: I'm going to sustain the objection, counsel. You can ask her. That's all a statement. Just ask her, okay?

Q You were two months behind --

MS. WEISS: Objection, Your Honor. He's making a statement at this point.

Q Were you two months behind in November 2009?

A Yes, if that's what it says.

Q Were you two months behind in March 2010?

A Yes, if that's what it says.

Q And were you two months behind in August of 2010?

A I guess if that's what it says, yes.

MR. O'NEILL: No further questions.

THE COURT: Thank you, ma'am. You may

stand down.

MS. WEISS: Your Honor, may this witness be excused?

THE COURT: No objection, counsel?

MR. O'NEILL: I think she's on our witness list as well, so she's got to stay with us.

THE COURT: She's excused for now, but she's still on their list as a witness.

MS. WEISS: Your Honor, at this time the State calls Jay Dobbins.

THE COURT: It's time to take a break here. We've been at it over an hour and a half. Let's take a short break.

At this point, ladies and gentlemen of the jury panel, we're going to try to wrap up today about 5:00 because of a conflict. But we'll take a short break at this time and come, and we'll take what witnesses we can until we can break about 5:00. Please retire to the jury room.

(Jury out at 4:10 p.m.)

THE COURT: Let's put a couple of things on the record now that the jury is out. One is this list was never vouched for, so I couldn't allow you to put it into evidence or show it to the witness because it's never been shown to the witness. You

could ask questions from it like the State did, counsel, and maybe put on the record why didn't it. No foundation was laid for it. You could have objected to the State asking as well, I guess.

MR. O'NEILL: I couldn't hear you, I apologize.

THE COURT: I was just saying for the record, since the jury is out, the reason you couldn't show her the list, no foundation was laid for the list. She had not been shown and vouched for it or didn't prepare it or any of that. So it didn't come into evidence or anything.

It wasn't something she prepared, so she couldn't refresh her memory from it. But you could ask her about it, just like the State asked, and you could have objected to the State asking her from that list. But you didn't, and you were allowed to ask from the list, but you weren't allowed to vouch for the list, okay?

MR. O'NEILL: Yes, sir.

THE COURT: I want to make sure that's clear on the record I treated you on the same on that. All right, the other thing is the record will be clear that you objected to the phone calls from the jail, and that admission into evidence of that

video, the recording of a conversation.

But your objection was only as to the conversation with Meon Miller, not the other three. Your objection was only as to that one, because that one, I'm assuming, was on the video disk with the others. I want to be clear. You didn't object to the other three. You only objected to the one.

You didn't object to the self-serving statements, the prayer, emotional prayer, love you's and all that stuff, and self-serving information that your client spoke or made statements about to Tasha Matthews on the phone, all that self-serving.

You didn't object to that. But your objection is only as to Meon Miller. And I haven't heard that yet. I'm assuming that that would not be exculpatory or self-serving exculpatory statements made by your client.

I want to be sure on the record that you did not object to those three from Tasha Matthews at pre-trial and did not object to those at the trial. Your objection is only as to that of Meon Miller, okay. I want to be sure that's clear on the record. I don't want it to come back and somebody raise it on appeal if you objected to all four coming in because you didn't object to the three, all right.

Anything else we need to address?

MS. WEISS: No, Your Honor.

MR. O'NEILL: No, Your Honor.

THE COURT: We'll take a very short break.

(Court in recess.)

THE COURT: Counsel, let's get started so we can get out on time.

You can bring the jury in.

(Jury in at 4:27 p.m.)

THE COURT: Counsel, are you ready to proceed?

MS. COTE: Yes, sir, Your Honor. The State calls Jay Dobbins to the stand.

(The witness was sworn.)

CLERK OF COURT: Once you're seated, sir, please state your full name, spelling your last on the record.

MR. DOBBINS: My name is James Dobbins -- D-O-B-B-I-N-S.

JAMES DOBBINS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Mr. Dobbins, where are you employed?

A I'm a private consultant for AT&T.

Q How long have you worked with AT&T?
A I worked for AT&T for over 10 years.
Q And now you're employed as a consultant and still do work for AT&T?
A Yes, I do.
Q Okay. With your position with AT&T, are you a custodian of records?
A Yes, they've contracted me to provide information to certify their records.
Q And their records, are they kept in the ordinary course of business?
A Yes, they are.
Q How long does AT&T maintain records?
A AT&T has a retention policy for various kinds of records. It may range from only a few days for text messages to five years or more for certain toll records.
Q Was AT&T served with a subpoena requiring the production of records associated with phone numbers 803-532-0770 and 803-736-0818?
A Yes.
Q Are those land lines or cell phone numbers?
A Those are both land-line numbers.
Q What procedure did you follow in obtaining

those records and responding to the subpoena?

A AT&T has an electronic means to search records and to comply with the language in the specific legal demand.

Q I'm going to show you what's been marked for identification as State's Exhibits Thirteen and Fourteen. Do you recognize both of those?

A Yes, I do.

Q Do those appear to have been the records that you were subpoenaed for those two numbers, 532-0770 and 736-0818?

A Yes.

Q Do they appear to have been altered in any way?

A No.

MS. COTE: Your Honor, at this time the State would seek to introduce both of those items, State's Thirteen and State's Fourteen, into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Thirteen, Phone Call Log 2010-10-27-117, and State's Exhibit Number Fourteen, Phone Call Log 2011-05-24-029, were

entered in evidence.)

Q Do you have information on what name is associated with the account for 803-532-0770?

A Yes, that would be McDonald's Restaurant.

Q Okay. We've had previous testimony about 911 being called. And in reviewing those records, if you can review them, do you see 911 being called on those records?

A No.

Q Is there a reason why that might not show up on those particular records?

A Yes. AT&T would keep records regarding exchange of communications between telephone companies or exchange of -- or records concerning billings between themselves and any customer, commercial or intercompany. 911 is a call that does not require billing, and 911 typically does not appear on call detail records. There's no billing reason associated with it and no reason to collect a record pertaining to it.

Q So just because it's not on that record does not mean that it wasn't called?

A Correct.

Q Okay. We've also heard testimony about some T-Mobile records, Exhibit Number Four for Tasha

Matthews' number. It's 803-532-0770. Her records show on the highlighted times that she made calls to that McDonald's number, that 532-0770. On the McDonald's records, that same number is not shown. Can you explain -- it actually shows a different number calling at that same time on the McDonald's records. Can you explain why there might be a discrepancy there?

A Yes.

Q The call numbers are 2220, 2222, 2259, 2324, 2331, and 2336.

A At each of those instances, there's a corresponding record in the AT&T call detail that shows that the calls were from 803-238-9987. In AT&T's land-line switches, we would record information from where the call came from.

That number on the AT&T records corresponds to a connection between AT&T's land-line switch and a company called T-Mobile, connection to T-Mobile. And the switch would have recorded the connection to it from T-Mobile, not the actual originating caller ID number.

Q So it records that call was made from a T-Mobile phone, just not specifically necessarily the correct number. Is that right?

A Correct.

Q All right, thank you.

A It transited that trunk, and that trunk would have borne that number.

Q Okay. Mr. Dobbins, I don't have any further questions for you right now. Please answer -- let me ask you briefly if you can tell -- can you tell what time zone those phone calls are recorded at?

A Meaning they're Eastern time.

Q I have no further questions for you. Please answer any questions Mr. O'Neill may have.

MR. O'NEILL: I don't have any questions for this witness.

THE COURT: Thank you, sir. You may stand down.

MR. DOBBINS: Thank you.

MS. COTE: Your Honor, may Mr. Dobbins be excused from his subpoena?

MR. O'NEILL: No objection.

THE COURT: Thank you for coming, sir. You may be excused at this time.

MR. DOBBINS: Thank you.

MS. COTE: Your Honor, may we approach?

THE COURT: Yes, ma'am.

MS. COTE: The State calls Michael Durrell.

THE COURT: I would tell the jury that all the witnesses are sequestered outside the courtroom till they testify. That's the reason it's taking us a little bit longer to get them in.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please, sir. Once you're seated, please state your full name, spelling your last on the record.

MR. DURRELL: Thank you. Michael Steven Durrell, spelling of the last name is D-U-R-R-E-L-L.

MICHAEL STEVEN DURRELL, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Mr. Durrell, where are you currently employed?

A I'm currently employed with U.S. Express Trucking Company.

Q Were you employed with Batesburg-Leesville Police Department back in October of 2010?

A I was.

Q How long were you employed there?

A A little over a year, year and a half.

Q What was your rank there?
A Corporal.
Q Did you have cause to respond to a call late in the night on October 13, 2010?
A I did.
Q Where were you when you received that call?
A At the Waffle House, just a few blocks away from the incident location.
Q Did you have knowledge of the nature of the call you received?
A We received a call of a shooting at the McDonald's. --
Q What did you do once you received that call?
A We immediately left the McDonald's. It was myself, Sgt. Turner, as well as Patrol Officer Wellons. We left --
Q I'm sorry. Were you and Sgt. Turner in separate vehicles, or were you riding together?
A Separate vehicles.
Q Okay. What happened? I'm sorry for interrupting.
A We left the Waffle House. Sgt. Turner was in front of me, Officer Wellons had gotten there

just before -- the incident location just before we arrived. As we both exited off of Malibu Street right off the back side of the McDonald's, we just happened to notice a strange vehicle sitting off to the right-hand side.

Sgt. Turner made it out onto Mitchell Street, which is the street that goes into Marlboro Street -- Malibu Street, my apologies. He at that time asked me to go back and check on the vehicle because we both saw the lights come on at the same time.

Q I'm going to stop you for just a second and show you what's marked as State's Exhibit Two. This might help you. Can you show us where you were and where you were going? This is the Waffle House.

A Yes, this is the --

Q And the McDonald's is --

A -- parking lot. We were parked in this area right over here. This is Malibu Street near where the car was parked at. We came out the back side of the Waffle House and came out to Mitchell Street and then turned left onto Mitchell Street.

Q And you and Sgt. Turner took that same route?

A We did.

Q Did you go all the way to McDonald's?

A No, I did not. I went as far as the railroad tracks and turned around and came back to try to locate the vehicle.

Q What made you turn around and come back?

A Sgt. Turner asked me to turn around and go check out the vehicle because it looked suspicious sitting there.

Q Why was it suspicious?

A Just out of place. Nothing normally sat on that road. We patrolled that area on a regular basis, and we'd just never seen vehicles just sitting there. It just looked out of place.

Q After you went back to that car, what happened?

A As I started to go back to the car, I noticed the car had backed up and then turned right into the parking lot of the Waffle House at kind of what I consider to be a high rate of speed. It went all the way to the end. It exited and turned right onto Highway 23.

Q What happened at that point?

A I finally was able to get through back onto Highway 23 to get behind the vehicle. I did get behind the vehicle and did stop the vehicle and

find out what type of vehicle it was.

Q Did you initiate your blue lights?

A I did.

Q And do a traffic stop?

A I did.

Q At that point, did you have any kind of suspect description or anything, any information coming to you about the shooting at the McDonald's?

A I think the only description I had was one of the suspects was wearing dark clothing with some sort of a white type of a shirt.

Q What happened when you stopped the vehicle?

A When I stopped the vehicle, I exited my vehicle and came around on the back side of my vehicle so I wouldn't be illuminated by my lights going to passenger side of the vehicle. At that time, I noticed somebody come up from out of the back seat area, kind of popped up. And it kind of startled me a little bit, and I was a little concerned about it.

So I kept my eyes on that person. And then when I finally went around and asked everybody for identification, that's when the fellow in the back seat was handing me some identification.

Q Did you see anything unusual about the person in the back seat?

A I did. I actually saw what looked to be like a derringer type of a pistol, which kind of startled me.

Q Was it actually a pistol?

A It was not. It was a belt buckle.

Q I'm going to show you what's been marked -- pre-marked for identification as State's Sixteen. Is this the -- is that what you saw that day?

A Yes, it was.

MS. COTE: Your Honor, the State seeks to introduce Exhibit Sixteen into evidence.

MR. O'NEILL: No objection, Your Honor.

THE COURT: Admitted without objection.

(State's Exhibit Number Sixteen, Gun Belt, was entered in evidence.)

Q Did you receive identification from everybody in the car?

A At the time, I received identification from the passenger who in the back was identified as Mr. Tucker. I received identification from the driver, which turned out to be Ms. Matthews. At that time, I didn't receive any identification from the third person in there, who we later identified

as Mr. Miller.

Q Okay. So just so I'm clear, Ms. Matthews was the driver?

A That's correct.

Q Where was Mr. Tucker located? Was he behind the driver?

A He was. He was in the back seat.

Q And who we later learned to be Mr. Miller was in the front passenger --

A That's correct.

Q -- is that correct?

A Yes, ma'am.

Q How was Mr. Miller behaving?

A Mr. Miller was behaving kind of -- he was sweating profusely. His heart was beating on to look like it was about ready to pound out of his chest, and he was kind of nervous.

Q How were the other two -- the driver and the passenger, how were they behaving?

A The driver was acting kind of nervous as well herself, but she was a little more calm than the passenger, Mr. Miller. Mr. Tucker in the back, he alluded to be somewhat nervous himself, but he wasn't near as nervous as Mr. Miller was.

Q Did you hear some cell phones ringing?

A I did.

Q Did you remove them from the vehicle at some point?

A I did. They kept on ringing, and we were trying to figure out whose they were. There was three cell phones in the driver's side door panel, and we retrieved them.

Q Okay. And did you actually remove the driver and the passengers from the vehicle, as well?

A We did.

Q And what was the reason for that?

A Scene safety, for one, because we were unsure exactly what we had. We basically wanted to get everybody out of the car.

Q And at some point, did you receive information regarding a more positive suspect description?

A I believe the most positive one we had was the one of the one clothing description that we actually had.

Q Did you have information that there were -- did you have information regarding how many suspects there were?

A I don't recall being exact. I just knew that we were looking for somebody in the area.

Q Did you -- after you removed them from the car, what did you do next?

A We actually put them in investigative detention and put them back there by the rear of the vehicle. At that time, I went to the passenger side door to look for some sort of identification on the car because we were unable to find out who the vehicle belonged to at the time.

Q What did you do then?

A Actually, there was a glove box, an unlocked, unsecured glove box. As we opened up the glove box at the scene -- or I did -- to see if there was any vehicle registration or insurance information in there.

Q And what happened when you looked in there?

A By the time I opened up the door, there was a black handgun that actually dropped down.

Q Did you notice anything about that handgun?

A I could smell it. It smelled like it had been freshly fired.

Q How do you know what a freshly fired handgun smells like?

A I was a firearms instructor with the

department and also with the Criminal Justice Academy.

Q I'm going to show you what's been pre-marked as State's Exhibit Seventeen.

MR. O'NEILL: Your Honor, if you would ask the corporal about how the gun has to be secured. I want to make sure the gun is secured.

MS. COTE: It's been properly secured. Thank you.

Q This is State's Seventeen for identification. Will you take a look at that and tell me if you recognize that?

A Yes, I recognize this to be the handgun that I retrieved out of the glove box.

Q How are you able to identify it as the same handgun?

A I actually noted the serial number in my report, and I verified that it is the same serial number that's on this handgun.

Q Thank you.

Your Honor, at this time the State seeks to introduce seventeen into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number

Seventeen, Gun, was entered in evidence.)

Q Did you remove any other items from the car?

A Yes. During the -- to secure the vehicle and make sure there was no other weapons inside the vehicle, we actually -- when I saw in the back seat with my flashlight, I could actually see a black bag that was sitting in the black bag as well as the gloves in the floorboard in the front and in the back.

Q This is State's Fifteen for identification. Is that the backpack that you removed from the car?

A It is.

MS. COTE: Your Honor, the State seeks to introduce 15 into evidence at this time.

THE COURT: Let him see it.

MR. O'NEILL: Solely the backpack? There's no objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Fifteen, Bookbag, was entered in evidence.)

Q You saw you removed a bandanna, as well?

A I did. It was in the glove box with the handgun and a clip.

Q This is State's Nineteen for identification.

A Yes.

Q Does that appear to be the bandanna you removed from the car?

A It does.

MS. COTE: Your Honor, the State seeks to introduce number 19 into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Nineteen, Bandanna, was entered in evidence.)

Q Did you remove some ammunition from the car, as well?

A I did.

Q This is State's Twenty-Two. I guess I can do this all at once. Twenty-two, do you recognize that?

A Yes, I recognize this as being inside the backpack, a little bag thing filled with 9-millimeter rounds.

MS. COTE: Your Honor, at this time the State seeks to introduce number 22 into evidence, a bag of ammunition.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Twenty-Two, Bag/Ammo, was entered in evidence.)

Q This is State's Twenty-Seven. Do you recognize this?

A Yes, I recognize this as being the magazine that was with the weapon.

MS. COTE: The State seeks to introduce number 27 into evidence, Your Honor, at this time.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Twenty-Seven, 9mm Clip, was entered in evidence.)

Q Do you recognize this, State's Exhibit Number Twenty-Three?

A Yes, I recognize these as being other magazine clips that were in the backpack along with the other items you showed me.

Q Thank you. This is State's Twenty. It appears to be a bullet. Do you recognize that?

A Yes, I do.

Q And was that taken along with all the other evidence you removed from the car?

A It was.

MS. COTE: This is State's Number Twenty.

The State seeks to introduce that into evidence at this time.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Twenty, Bullet, was entered in evidence.)

MS. COTE: Your Honor, also he identified these magazines, number 23. I did not ask for those to be moved into evidence.

THE COURT: No objection?

MR. O'NEILL: No objection.

MS. COTE: And we would seek to do so. Thank you.

THE COURT: Admitted without objection.

(State's Exhibit Number Twenty-Three, Two Magazines/Gun, was entered in evidence.)

Q You mentioned some cell phones that were removed. I'm showing you State's Eighteen, Twenty-Six, and Twenty-Four. Twenty-four is a silver and black Nokia cell phone.

A Yes, I recall this one.

Q You removed that from the car?

A I did.

Q Twenty-six is a white Samsung cell phone?

A Yes, I recall this one, as well.
Q And 18 is a red and black Nokia cell phone?
A Yes, ma'am, I recognize that one, as well.
MS. COTE: Your Honor, at this time the State would seek to introduce 18, 26, and 24 into evidence.
MR. O'NEILL: No objection.
THE COURT: Admitted without objection.
(State's Exhibits Numbers Eighteen, Red and Black Cell phone; Twenty-Four, Silver and Black Cell Phone; and Twenty-Six, White Cell Phone, were entered in evidence.)
Q I have more ammunition. These are State's Twenty-One and Twenty-Five. I'm sorry, it's taped up very well. All right, this is 21, if you can tell me if you recognize that.
A Yes, these were the rounds taken out of one of the magazines.
Q Okay, this is 25. Can you tell me if you can look in there, and I ask you to tell me if you recognize those?
A Yes, I recognize these as well being in the other magazine, both found in the black bag.
MS. COTE: Your Honor, the State seeks to

introduce 21 and 25 into evidence at this time.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibits Numbers Twenty-One and Twenty-Five, Rounds from Clip, were entered in evidence.)

Q Mr. Durrell, after you took all these items into -- after you removed them all from the car, what happened to them?

A Basically, waited till Lt. Clare showed up, who was the evidence custodian, and gave everything to Lt. Clare to be logged.

Q Okay. He took everything into his custody at that point in time?

A He did.

MS. COTE: Beg the Court's indulgence, Your Honor.

Q Did you hear any of the defendants that you had in the car -- Ms. Matthews, Mr. Miller, and Mr. Tucker -- did you hear any of them talking to each other at some point?

A I did, in the booking area or actually from the detention area that was at the police department.

Q What did you hear?

A I overheard Mr. Miller holler out Tasha's name. And when she answered, he stated -- and I quote -- that he loved her. She said she loved him back.

Q Thank you. I have no further questions. Please answer any questions Mr. O'Neill has for you.

MR. O'NEILL: Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Just a few questions for you. You said that the driver and the back passenger were a little bit less nervous than Mr. Miller?

A Yes, sir.

Q Okay. And Mr. Miller was the most nervous of the three?

A Yes, sir. In my opinion, yes, sir.

Q Whose patrol car did Mr. Tucker wind up going in that night?

A I'm wanting to say that it was Sgt. Turner's, but I can't be a hundred percent for sure. My concentration at that point was mostly to secure the vehicle until Lt. Clare showed up.

Q Did Ms. Matthews wind up going in your

A Correct.

Q Were you aware of whether or not Angelo Tucker had anything in his pockets that was seized?

A I'm not sure I'm the one who actually patted him down. I think all three of us that were there at the scene pretty much took one individual person and secured it down. So I'm not -- at this particular time, I don't remember who got who.

Q Okay. Do you remember -- I think you told the driver, Ms. Matthews, that you were investigating a shooting at McDonald's?

A Yes, sir.

Q And do you remember she asked you whether or not her boyfriend was the one that got shot?

A That's correct, yes, sir.

Q She told you her boyfriend was Rod Cook?

A Yes, sir.

Q So she was asking you whether or not Rod was the individual who got shot?

A She --

MS. COTE: Objection, hearsay.

THE COURT: Sustained, counsel.

MS. COTE: Thank you.

Q Whatever question Ms. Matthews asked you, you answered her question?

McDonald's on October 13, 2010?

A Yes.

MS. COTE: Your Honor, at this time the State seeks to introduce 38, 39, 40, and 41 into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

MS. COTE: Thank you, Your Honor.

(State's Exhibits Numbers Thirty-Eight, Photo of Side Door, McDonald's; Thirty-Nine, Drive-through Photo; Forty, Outside McDonald's Photo; and Forty-One, photo of Shell Casings, was entered in evidence.)

Q After you took those photographs, Lt. Clare, what did you do?

A After I took the photographs, then I collected the items that I photographed.

Q What items did you photograph?

A I photographed two spent shell casings, one unfired round, a McDonald's hat.

Q Okay. This is State's Twenty-Nine for identification. If you'll look in there and tell me if you recognize that item.

A Yes, I do.

Q Is that an item that you collected?

A It is.
Q And what is it?
A It's a McDonald's hat.
Q Okay. I'm going to show you 31 at this time. Do you recognize that item?
A Yes, this is the unfired bullet.
Q And did you collect that that night, as well?
A I did.
Q And 32 and 33 for identification, do you recognize those items?
A These are the spent shell casings that I collected.
MS. COTE: Your Honor, at this time the State seeks to introduce 29, 31, 32, and 33 into evidence.
MR. O'NEILL: No objection.
THE COURT: Admitted without objection.
(State's Exhibits Numbers Twenty-Nine, McDonald's Hat; Thirty-One, Unfired Bullet; Thirty-Two, Shell Casing 1; and Thirty-Three, Shell Casing 2, were entered in evidence.)
MS. COTE: May I publish these items to the jury, Your Honor?
THE COURT: You may publish, yes, ma'am.

Q All right, Lt. Clare, if you'll help me give the jury a visual of the scene that night.

Beg the Court's indulgence, Your Honor.

Q What's this a picture of?

A That's a picture of the front of McDonald's showing the parking lot and one of the employee's vehicles.

Q And whose vehicle is that?

A That vehicle belonged to Mr. Jennings.

Q Okay. And what view was that from? Was that from West Columbia Avenue?

A From the West Columbia Avenue side, yes, ma'am.

Q All right. I'm just going to hold up these up, if you'll turn the lights back on. I'm not technologically savvy enough. This is a picture with two cones that I'm showing to the jury right now. What was found where those cones are located?

A Where those two cones are is where I collected the two spent shell casings.

Q And were these -- State's Thirty-Two and Thirty-Two, are those the spent shell casings?

A Yes, ma'am.

Q And there was one of those at each one of those cone locations?

A Yes.

Q Okay. Now, in this picture, what were you depicting?

A In that picture, the greenish cone was the unfired round, and the yellow cone was the McDonald's hat.

Q Okay. This is State's Thirty-Nine for the record. And State's Thirty-One, that was the unfired bullet that you were marking?

A Yes, ma'am.

Q Do you know who this McDonald's hat, State's Number Twenty-Nine, belonged to?

A I believe that belonged to Mr. Jennings.

Q This is State's Thirty-Eight. What was in that picture?

A That's a picture of the side door where I believe Mr. Jennings came out with the trash.

Q Okay. And can you show the jury as best you can where the shell casings and things were in location to this door? I see the drive-through right here. But can you show, kind of give them an idea?

A The shell casings were found back towards the drive-through right here, the spent casings. And the live round -- the unfired round was found on

the other side of the drive-through going towards the trash dumpster.

Q I'm going to show you what's already in evidence as State's Two. Do you see the McDonald's on that map?

A Yes, I do.

Q Can you show the jury where you found the shell casings, where the dumpster was located, just from that picture?

A The shell casings were located at the beginning of the drive-through.

Q Where the drive-through order --

A Yes.

Q -- or the ordering speaker was?

A Yes. The unfired round was found on the right side of where you order your food, and the hat was found in between the drive-through. And right here is where the dumpster is located. The hat was located in the middle.

Q If you don't mind, will you step down and do that all over again?

A Okay.

Q I'm sorry. I want to make sure everybody can see. And I'll hold it for you, if that helps.

A Okay, in this area right here is where I

found the two spent shell casings. And then the unfired round was found on the opposite side of the drive-through after where you order your food. The hat was found in between the drive-through and the dumpster.

Q And where was that door where Willie left?

A The door where Willie left is probably over here where this yellow vehicle is.

Q Okay, thank you. If you'll go back to the stand. And when you spent shell casings, just so we're clear, what are those?

A A fired shell casing, a shell casing that the round is not with it anymore.

Q Okay. So it's been fired from a gun?

A Yes.

Q Okay. After you left the McDonald's, did you attend Mr. Jennings' autopsy?

A I did.

Q Was it the next day?

A It was the same day. It was 9:30 in the morning, I believe.

Q Okay. I'm going to show you what's been marked for identification as State's Exhibit Thirty. Do you recognize that?

A Yes, I do.

Q And what is that item?

A That is the bullet that I recovered from the pathologist at the autopsy.

MS. COTE: Your Honor, the State would seek to introduce 30 into evidence.

MR. O'NEILL: No objection.

THE COURT: Admitted without objection.

(State's Exhibit Number Thirty, Bullet from Willie Jennings' Body, was entered in evidence.)

Q And you said the pathologist removed this from Mr. Jennings at the autopsy?

A Yes.

Q Okay, all right. Did you execute a search warrant for the clothing that two of the suspects, Mr. Miller and Mr. Tucker, were wearing?

A I did.

Q I'm going to show you State's Twenty-Eight and State's Thirty-Six, first State's Twenty-Eight. Do you recognize the item in that box?

A I do.

Q Did you collect that item?

A Yes, I did.

Q State's Thirty-Six, do you recognize that item?

MR. O'NEILL: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Good morning, Lieutenant.

A Good morning.

Q You indicated that you found two spent shell casings out there in the parking lot?

A Yes, sir.

Q And what did the fact that you found two spent casings indicate to you, in your kind of experience investigating crime scenes?

A That two rounds were fired.

Q That would indicate there were at least two rounds fired?

A Yes, sir.

Q What about the unspent shell casing that you found?

A Maybe it was ejected, I don't know.

Q Basically, the firearm that you recovered was a semiautomatic firearm?

A Yes, sir.

Q Okay. Are you familiar how a semiautomatic firearm is loaded for firing?

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. COTE:

Q Lt. Clare, when you went back the next day and you were looking for any kind of shell casing in the cement walls around that dumpster, did you have any indication that any hole had anything to do with this incident?

A I tore the wall apart where there was an indention in the cinder block. And I searched, and there was no bullet in there.

Q Was that night, October 13, 2010 -- do you remember it being a particularly windy night?

A I can't recall whether it was.

Q Okay. Just so the jury has a clear picture, we have several pictures of this cement encasing around the dumpster. Can you show approximately on one of these where this indention was that you were looking for?

A On this front part of the dumpster enclosure, coming from the drive-through area, approximately right here there was an indention on the side of the cinder block. And the indention was probably a couple of inches, but it didn't look like anything went through.

Q In relation to this spot that you just noted -- for the record, we're looking at State's Forty-Three -- where were those other spent shell casings found in relation to that?

A They were found probably back -- this is the drive-through light where you order -- just past that.

Q Could you give us an estimation how many feet away is that?

A I'd say it might have been a hundred, hundred and twenty-five feet in front of the enclosure.

Q Okay.

Thank you, Your Honor. I have nothing further.

MR. O'NEILL: Just briefly, Your Honor.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. O'NEILL:

Q Lieutenant, I'm going to show you what's marked State's Exhibit Forty-Three here.

Permission to approach, Your Honor?

THE COURT: Yes, sir.

Q Lieutenant, do you have any idea how many feet this dumpster enclosure is away from the side

(The witness was sworn.)

CLERK OF COURT: Have a seat, please, sir. Once you're seated, state your full name, spelling your last on the record, please. You'll need to speak up in a loud voice.

MR. HANNA: Okay. Vantouris Hanna.

VANTOURIS HANNA, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WEISS:

Q Mr. Hanna, what name do you go by?

A Van.

Q Van. May I call you Van?

A Yes, ma'am.

Q Okay. Van, how old are you?

A Twenty-one.

Q Where do you live?

A Ridgeway.

Q Who do you live with?

A My mom, grandparents' house.

Q Who else lives there with you?

A My cousins.

Q How many cousins do you have that live there?

A Six.

Q Okay. Boys or girls?
A Both.
Q Okay. Do you know Rod Cook?
A Yes.
Q Do you see him in the courtroom today?
A Yes.
Q Can you describe him for the record, what he's wearing?
A He's got a blue shirt with a tie -- I don't know if you'd call it a shirt --
Q Vest.
A -- vest.
MS. WEISS: Your Honor, may the record reflect he's identified the defendant.
Q Van, what is your relationship to Rod Cook?
A My cousin, first cousin.
Q First cousin. And how is he related as your first cousin?
A Through his mom.
Q His mom is?
A My aunt.
Q Okay. And your mom's sister?
A Yes.
Q And do you know Meon Miller?

A Yes.
Q And how are you related to Meon Miller?
A My first cousin.
Q He's your first cousin --
A Through his mom.
Q So your mom's another sister?
A Yes.
Q How many siblings are there in all, does your mom have?
A I think there's eight -- well, eight -- yes, eight.
Q All right. So there's nine total?
A Yes.
Q So you have a lot of first cousins?
A Yes.
Q Are you close with Rod Cook?
A Yes.
Q Are you close with Meon Miller?
A Yes.
Q Do you want to be here today?
A No.
Q Are you here under subpoena?
A Yes.
Q Would you have come if I didn't -- if you weren't served with a subpoena requiring you to be

here?

A Yes.

Q You would have come?

A Yes.

Q You're here because you're under subpoena?

A Yes.

Q Van, do you remember October 13, 2010?

A Not really.

Q The day that we're talking about here today?

A Yes.

Q And prior to that time, did you spend a lot of time with your cousin Meon?

A Yes.

Q Where did Meon live at that time?

A In Ridgeway.

Q With who?

A With his mom, his grandparents, aunts, and uncles.

Q Did y'all talk on the phone a lot?

A Yes.

Q Did you spend time together during the day?

A Yes.

Q Did you have a job back then?

A Yes.
Q Where did you work?
A McDonald's.
Q You did?
A Yes.
Q Which McDonald's?
A Blythewood.
Q Okay. And do you have a job now?
A No, laid off.
Q Back on October -- well, let me ask you this. Did you spend a lot of time talking to Rod back then?
A No.
Q Did you see him some?
A Yes.
Q Did you know where he lived?
A Yes.
Q Did you have a car back then?
A Yes.
Q Did Meon have a car?
A No.
Q So did you drive Meon around a lot?
A No.
Q Did you drive him when he called and needed a ride?

A Sometimes.

Q I'm going to take you back to October 13th, the day that Meon was arrested. You remember that day, right?

A Yes.

Q Did you talk to Meon Miller that day?

A Yes.

Q All right. Do you remember what time you woke up that day, what time you normally would wake up?

A Probably like around nine, ten, eleven.

Q Okay. And do you remember getting a call from Meon?

A Yes.

Q What did Meon say to you when he called?

MR. O'NEILL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q As a result of Meon's call, after he called you, what did you do?

A Went and picked him up.

Q Went and picked him up. As a result of your conversation, did you take anything with you?

A Yes.

Q What did you take with you?

A A gun, shotgun.
Q And whose shotgun was it?
A Mine.
Q And did you have any idea why Meon asked you to bring your shotgun? I'm sorry. Did you have any idea why you were bringing the shotgun?
A No, not really. But at the same time, it was like Bra probably had something going on.
MR. O'NEILL: Objection, Your Honor, hearsay.
THE COURT: I'll sustain the objection.
MS. WEISS: Yes, Your Honor.
Q What did you call Rod Cook when you talked about him just in a sentence?
A Say that again?
Q What would you call Rod? If you were talking to Meon, talking about Rod, what would you call him? What was his nickname?
A Nickname?
Q Yes.
A Rod.
Q Okay. What did you call Meon if you were talking about him?
A Meon.
Q Okay. If you were talking to him without

using his name, what would you use? What would you say?

A Bra.

Q Bra. And would you use the same thing to talk about Rod?

A Yes.

Q Okay. Is that generally how you address people?

A Yes.

Q And is it reserved pretty much for family?

A Yes.

Q And so you took a .410 shotgun?

A Yes.

Q What did it look like?

A Single barrel, about this long.

Q And where did you go?

A To Bra's house.

Q Okay. You said you picked up Meon first. And where was Meon?

A At my granddaddy's.

Q In Ridgeway?

A Yes.

Q And then where did you take him?

A To Rod's.

Q And who was there when you got to Rod's

house?

A [illegible] and [illegible] e.

Q And who is [illegible] e?

A Rod's daughter.

Q Who's [illegible]

A Tasha's daughter.

Q What happened to the shotgun when you got there?

A Put it in his room.

Q Whose is "his room"?

A Rod's.

Q In his room, okay. And then what did you do?

A Nothing.

Q Did y'all stay there?

A Yes, we stayed there and chilled with [illegible] and [illegible].

Q What does "chill" mean?

A Hanging out, watching TV.

Q Did you play with [illegible]?

A Yes.

Q How old was she then?

A She was about maybe three at the time.

Q She was little?

A Yes.

Q And how long did you stay there?
A Not long, about a couple of hours, then I left.
Q And did you ever talk to Rod that day?
A No.
Q And have you ever talked to Rod about what's going on here today with this incident?
A No.
Q After you left, did you ever find out where your shotgun was?
A No.
Q Did you just leave it at Rod's?
A Yes.
Q At some point, did you get your shotgun back?
A Yes.
Q And how did that happen?
A I came and got it.
Q Came where?
A To his house.
Q And where was it?
A Sitting in the same space.
Q How long after that day did you go back and get your shotgun?
A Two days later.

Q And what was going on when you went back two days later at the apartment? What did you see when you went in the apartment?

A Nothing.

Q Who was there?

A He was.

Q "He" being?

A Rod.

Q Did you talk to him?

A No, not really.

Q Okay. And what was Rod doing when you got there?

A Nothing.

Q Okay. Were the children there?

A No.

Q Do you know where they were?

A No.

Q Was their stuff there?

A Yes.

Q Van, what was your cell phone number back in 2010, do you remember?

A 422-5868.

Q Do you remember what Meon's cell phone number was?

A I think it's kind of like 269, I think.

Q Do you remember -- did you talk to Tasha at all that day?

A No.

Q And do you remember getting a text from Tasha that day?

A No.

Q If you had gotten a text from her asking for Meon's cell, would you have written back?

A No. She never texted me at all.

Q I'm going to show you State's Exhibit Four and ask you to look where my pen is, number 422-5367. Is that your cell number?

A Yes.

Q All right. That "D" indicates, according to this record, a text. So seeing that, could she have possibly texted you that day?

A If she did, I didn't reply back.

Q All right, Van. It's okay if you don't remember, but I'm going to show you here.

A Uh-huh.

Q There's an incoming text from 422-5367. So thinking back, could you have possibly responded to her?

A And that was her cell or her house?

Q That's her cell. If Tasha asked you for

Meon's cell number, would you have given it to her?

A No.

Q Why? So looking at these records, would you have texted Tasha? Going back to what we were showing earlier, going back to Meon's cell phone that began with 269 that's been entered into evidence, 269-9028.

A Yes.

Q That being Meon's cell phone?

A Yes.

Q So looking where my finger is there, 1359, which would be 1:59, you got a phone call, then you called Meon. Is that normal that you would have called?

A Yes.

Q And then Meon would have called you actually?

A Yes.

Q Okay. You said Meon called you, and it was a two-minute phone call?

A Yes.

Q Then 2:08, you called Meon?

A Yes.

Q At 2:22, you called Meon again?

A Yes.

Q That was just for one minute. So during that time, do you remember what the purpose was of those phone calls back and forth?

A To come pick him up.

Q Okay. So that was the time that you went and picked him up?

A Yes.

Q And then, your number pops up one more time around 5:12, and it was just a one-minute call from you. Do you remember calling him at 5:12?

A No.

Q But it was pretty common that y'all would just call back and forth?

A Yes.

MS. WEISS: Thank you, Your Honor. No further questions for this witness.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Good morning, Van. I've got a few questions for you, okay?

A When you got to Rod's house, was Rod there when you got there?

A No.

Q So you brought Meon to Rod's house, right?

A Yes.

Q And when you got there, Rod wasn't there?
A No.
Q When you got there with Meon, was Tasha there?
A She didn't get there till I left at 5:30.
Q You got there at -- what time did you get there, do you remember?
A Between 2:00, 2:30, 3:00.
Q When you got there around 2:30 or 3:00, neither Rod nor Tasha was there?
A No. Tasha came by like 5:30 when she got off.
Q And she came back by herself?
A Yes.
Q And Rod wasn't with Tasha when she came back?
A No.
Q So when you were there, there was no time where both Rod, Tasha, and Meon were at Rod's house that day together?
A No.
Q And you brought Meon to Rod's house?
A Yes.
Q Did Rod ever talk to you about a robbery that day?

A No.
Q Did Meon ever talk to you about a robbery that day?
A No.
Q Nobody ever talked to you about doing any sort of robbery of McDonald's?
A No.
Q When you got -- you say you came back and got your shotgun I think two days later after the 13th?
A Yes.
Q Was Rod home when you put the shotgun in his room?
A Yes.
Q What day did you put the shotgun in his room, do you remember?
A No, I don't remember.
Q Okay. So Rod wasn't there when you put the shotgun in his room?
A No.
Q Okay. And when you came back and got the shotgun, Rod was at the apartment?
A Yes.
Q And that was two days after the 13th?
A Yes.

Q And when you got the shotgun, it was still in the same place where you had left it?

A Yes.

Q Hadn't been moved, hadn't been touched or anything like that?

A No.

Q Okay.

Beg the Court's indulgence, Your Honor. That's all I have for this witness, Your Honor.

MS. WEISS: This witness may be excused.

THE COURT: Thank you, sir. You may stand down.

Any objection to the witness being excused?

MR. O'NEILL: No, Your Honor. He's under our subpoena as well, so release him from our subpoena, as well.

THE COURT: All right. Thank you for coming. You're free to go.

MR. HANNA: Yes, sir.

MS. WEISS: Your Honor, may we approach?

THE COURT: You may.

Mr. Foreman, ladies and gentlemen of the jury panel, the next witness is expected to be a rather long witness. So it's probably a good time

for us to go ahead and take a short break. You may retire to the jury room and refresh yourselves during the break. Thank you.

(Jury out at 10:43 a.m.)

THE COURT: All right, we'll take about ten minutes.

(Court in recess.)

THE COURT: Are we ready to proceed?

MS. WEISS: Yes, Your Honor. Before we proceed -- we plan to call the next witness as Meon Miller -- I just wanted to put on the record we had talked earlier in the court that there is -- that we settled the record. There's nothing. He only has these pending charges, so there's nothing obviously -- there's nothing to impeach him on beyond that.

However, I know we've talked about the fact whether or not this particular night could have involved a drug deal. There's no information that I have of any prior drug deals, and I would just as this point that the defense not go into that unless they have some sort of evidence of prior drug dealing.

MR. O'NEILL: I'm not sure what she's asking. I'm allowed to cross-examine him about it if I have a good-faith basis for my question.

THE COURT: Yes, that's what she's saying. Do you have a basis for your questions? She's saying any prior drug deals or whatever, going into something that you don't have any proof of.

MR. O'NEILL: I'm not sure what she thinks that I'm required to have. I'm not sure what the State's position it.

THE COURT: Well, I think their position is that if you don't have any evidence of prior drug dealing by this particular witness, you can't ask him about is he a drug dealer? That's clear to me.

MR. O'NEILL: Oh, yes. If I've talked to witnesses and they've indicated to me some prior drug activity on behalf of Mr. Miller, that would be the basis of any question I would ask. I'm not just pulling the question out of thin air. I've spoken to some witnesses that have indicated to me my basis for the question. That's my position.

MS. WEISS: If he has basis for that before he tries to attack my witnesses' credibility or my witnesses past history, I'd like to know what kind of information he has.

MR. O'NEILL: I think the evidence I have is what Ms. Matthews has already testified to on her direct here concerning past drug activity for Mr.

Miller.

MS. WEISS: She testified that she knew that Mr. Cook was a drug dealer and that she's not.

MR. O'NEILL: She testified about both Mr. Cook and Mr. Miller, is my recollection of Ms. Matthews' direct testimony.

THE COURT: I'm trying to recall her testimony. I think her testimony was that I think that the defendant had been involved in drug dealing before, with marijuana, I believe.

MS. WEISS: Yes, sir, Your Honor.

THE COURT: And she also testified that she thought that there may be a drug deal involved on that particular night that she was taking Meon Miller there, because they had a bookbag, and she thought that there was probably marijuana in the bookbag by not Mr. Miller but the other --

MS. WEISS: Tucker.

THE COURT: -- person named Mr. Tucker. And that's what she testified to. And then she said that, however, they opened up the bookbag before they got at the McDonald's at Batesburg-Leesville and showed a weapon and talked about ammunition in there. And she could see then there was no marijuana, so she knew at that time it was no drug

deal -- or that it was an indication it was something other than a drug deal.

And that's the way I recall her testimony. But she did testify, I believe, that Mr. -- the defendant had been involved in drug dealing before with marijuana. I'm trying to remember if she said Meon Miller also was involved in that.

MR. O'NEILL: That's my recollection of the testimony, Your Honor.

THE COURT: Do you recall?

MS. WEISS: I don't recall. I recall it as you did. I just don't recall her saying that Meon Miller had been involved in prior drug dealing.

THE COURT: We can try to pull it up.

How much trouble is it going to be to find it, Madam Court Reporter?

COURT REPORTER: Well, you'd have to listen to a lot of it probably.

THE COURT: Of her testimony.

MS. WEISS: I don't know how extensively he plans to cross-examine him on it. I feel if this becomes the whole point of the questioning, I don't know if there's any basis for it. And I want to make sure if he's going to impeach credibility, there needs to be something more that's clearly a

prior bad act.

I know he's not the defendant in this trial, but it just seems -- if he has information. I just don't have information from this witness. I don't have any prior record of it. I don't have -- now, whether he's used marijuana in the past, that would be a different ballgame.

MS. WEISS: Okay, never mind. My co-counsel did actually take the note that she did think that he had sold drugs sometime.

THE COURT: Okay, all right. Just have a basis for whatever questions you ask, the same as any witness. If you're going to ask him some questions, there has to be a basis for it other than just trying to tarnish a person's reputation without some reason to ask those questions.

All right, anything else?

MS. WEISS: No, sir, Your Honor.

THE COURT: All right. Please bring the jury in.

MS. WEISS: Your Honor, can we stop for one second? We just got a piece of information I need to turn over to the defense before they come out.

THE COURT: Okay. Hold the jury, please.

Are we ready to go now?

MR. O'NEILL: One second, Your Honor.

THE COURT: Yes, sir.

MS. WEISS: Okay, I think we're good.

THE COURT: We're ready to go. Counsel, we're moving mighty slow in this case. And we've got to pick it up, or I might start working late if we're going to finish this case this week. I'm not going to go beyond Friday on this case.

So if we need to, we'll start working later, if that's what it takes. I've tried to accommodate everybody, but I'm to the point now where I don't know how much more we've got to go. But we're going to start working late.

Bring the jury in, please.

(Jury in at 11:06 a.m.)

THE COURT: Counsel, are you ready to proceed?

MS. WEISS: The State is ready, Your Honor. The State calls Meon Miller.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please, sir. Sir, once you're seated, speak up loud and clear. State your full name, spelling your last on the record.

MR. MILLER: Yes, ma'am.

MEON MIKEAL DEANGLIUS MILLER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WEISS:

Q Good morning, Mr. Miller.

A Good morning.

Q May I call you Meon?

A Ma'am?

Q May I call you Meon?

A Yes, ma'am.

Q Meon, how old are you?

A Twenty.

Q Twenty. And how old would you have been on October 13, 2010?

A How old would I have been?

Q How old were you on October 13, 2010, the day we're --

A I was 18.

Q You were 18?

A Yes, ma'am.

Q Where did you grow up?

A I grew up in Ridgeway and Columbia.

Q When you were in Ridgeway, where did you go to high school?

A Where? Fairfield Central.
Q And where did you move to in Columbia?
A We stayed at Spring Valley Apartments.
Q Where did you go high school then?
A Spring Valley High.
Q Did you finish?
A No, ma'am.
Q How far did you go?
A I believe to the 10th, 11th.
Q Why did you leave?
A I just left.
Q Okay. Do you know Rod Cook?
A Yes, ma'am.
Q How do you know him?
A He's my cousin.
Q He's how close a cousin?
A He's real close.
Q Is he your first cousin?
A Yes, ma'am.
Q How well do you know him growing up?
A I know him all my life.
Q How often would you see him?
A Very often. Sometimes I'd babysit his daughter. You know, I spend the night at his house.
Q And so you said you'd spend the night at

his house sometimes?

A Yes, ma'am.

Q And so sometimes if your mom got mad at you, would you and stay at Rod and Tasha's?

A No, ma'am.

Q You could go over there any time you wanted to?

A Yes, I'd go over any time I want to, though.

Q Okay. Did you go over there and just hang out sometimes?

A Yes, sometimes.

Q Are you friends with ?

A Yes, ma'am.

Q She's close to the same age you are?

A I don't really know. I don't know how old she is.

Q She's maybe a little bit older?

A She's a little older.

Q Back in October 2010, before you got arrested, were you working?

A No, ma'am.

Q Did you ever sell drugs?

A Yes, ma'am.

Q What kind of drugs did you sell?

A I sold weed before.
Q Where would you sell it?
A Well, wherever.
Q Wherever in Ridgeway?
A In Ridgeway, Columbia.
Q Did you ever sell drugs in Batesburg-Leesville?
A No, ma'am.
Q Did you ever hang out in Batesburg-Leesville?
A No, ma'am.
Q Did you have friends in Batesburg-Leesville?
A I ain't met nobody from Batesburg-Leesville until I came to Lexington County.
Q Detention center?
A Detention center.
Q Okay. I'm going to take you back to the day you got locked up, October 13, 2010. Where were you staying the night before?
A The night before I was staying at my grandfather's house at Ridgeway.
Q And where is that located?
A Highway 12, 20 -- I can't really remember the address.

Q Anyway, it's out in Ridgeway?
A Yes, ma'am.
Q Okay. You were staying at your grandfather's house. And who else was there with you?
A I can't really remember. My brother was there that morning. He went to school that morning. I was staying there. I slept in his room that night.
Q What's your brother's name?
A [redacted].
Q And how much younger is he than you?
A Two years.
Q Two years younger. So do you recall getting a phone call that morning?
A Yes, ma'am.
Q From Rod Cook?
A Yes, ma'am.
Q Do you honestly remember exactly what time that call came in?
A It came in -- I don't honestly remember what time it was.
Q Okay. But you remember talking to Rod?
A Yes, I talked to him.
Q And what did Rod tell you when you talked

to him that morning or that day?

A He said that he got a jugg, and if I want to, know what I'm saying, come run it with him at his job.

Q He got a what?

A A jugg.

Q A jugg, okay. Can you please explain to us what a jugg is?

A Basically, it's something like something to do with making money. It was like a lick, you know what I'm saying.

Q What's a lick?

A A lick is stuff you do as robbing.

Q Okay. And he asked you to come do it at his job?

A Yes, ma'am.

Q Why would he call you and ask you to do that?

A I don't know.

Q Did you own a gun?

A No, ma'am.

Q Did you own a car?

A No, ma'am.

Q When he asked you to come do a jugg at his job, did he say why he needed you to come to his job

and do this?

A He said that he was going to be evicted, and he said he needed my help. And he was like crying, you know. At first, I declined. I said no again. I told him all right I will.

Q How did he -- you said first you said no. What did he say when you say no?

A He was like, "Well, that's where we live," and he didn't really say anything. We had hung up. And spoke again. And when we had spoke again, I was like all right.

Q What did he say?

A What did he say?

Q Yes.

A He was like --

Q Before you said all right, you said no, and then he called you back. What did he say?

A He said that "because I need you." He said "because I need you," you know what I'm saying. "I ain't trying to get evicted, and I ain't trying to be staying on the street."

That's what he said, and I was like, "All right," because he was like, "It's about $18,000 worth," you know what I'm saying. "We can split the money or whatever." And I was like, "All right."

Q So there's $18,000 worth, and y'all would split the money?

A Yes, ma'am.

Q At that time, did you have a job?

A No, ma'am.

Q No. And you were living with family?

A Yes, ma'am.

Q He said it was going to be $18,000. Did he -- what did he tell you as -- when you said okay, what did he say next?

A He was like, "First, I need you to get a ride to my house." He said he needed me to get a ride to my house, because he knew I ain't had a ride. I told him I had a ride, and he told me to ride to the store.

That's when I called my cousin Van. And he also told me to have a gun. I said I ain't have one. So I called my cousin. I knew my cousin had one. So I called him, and I told him to bring a gun.

Q You said you called your cousin. What cousin is that?

A Van.

Q Van?

A Vantouris Hanna.

Q And he's another first cousin?
A Yes, ma'am.
Q And what did he say when you called him? What did you say when you called him?
A I said, "Cuz, you could take me to Rod's house. He's having some problems," you know. "And if you've got a gun, can I borrow it?" you know what I'm saying. I ain't let him know about the robbery or anything like that, though.
Q Okay. And so you called Van. Did you know at that point any more details about what was supposed to happen? Did you know where Rod Cook worked?
A Yes, I know where he worked.
Q Where did he work?
A I knew he worked at a McDonald's like somewhere in Lexington County somewhere. But I ain't knew it was exactly Batesburg.
Q So did you used to ride back and forth with Tasha to take him and pick him up?
A I have rode with her on like one occasion. Like we had went to do stuff.
Q Okay.
A And we was like we had went there, and we was at a Wal-Mart, you know what I'm saying. Other

than that, no, I ain't ride with him to Batesburg.

Q So it wasn't a regular occurrence. You didn't go every night with her when she took him and picked him up?

A No, ma'am.

Q So you were not familiar with Batesburg or the McDonald's?

A No, ma'am. I rode with Rod a couple of times to pick Tasha up from work somewhere in Lexington somewhere. I don't even know where that was at.

Q But Tasha didn't work at that McDonald's?

A I ain't seen her working at McDonald's.

Q Did she work in Batesburg?

A I don't think so.

Q You said it was Lexington?

A I think it was somewhere in Lexington.

Q So at that point, you knew he worked at McDonald's, you needed to ride to his house, and he had to have a gun. What else did you know at that point about what was going to happen, about the jugg that he had?

A At that point, he was like he was going to call me with a little information on what I needed to do. So when I got to his house, I was on a

computer, and I believe I probably just smoked some weed at his home. And me and my cousin Van, we chilled, and then he left. He said he had to go back home.

Q Okay. Well, let's go back just a second. So when you called Van, you didn't know any more details about that point?

A No, ma'am, not at that point.

Q So Van came and picked you up. And did Van bring anything with him?

A Yes.

Q What did he bring with him?

A He brung a shotgun.

Q What kind of shotgun was it?

A I believe it was a .410 shotgun.

Q Okay. And were you going to use the shotgun?

A Yes, ma'am, I was supposed to use it.

Q Okay. And did you use the shotgun?

A No, ma'am, I didn't use it.

Q Why did you decide not to use the shotgun?

A Because me and Tasha had spoke. She was like, "You don't believe that's too big -- the gun's too big?" And I was like, "Do you think so?" And she said, "Yes." I was like, "Well, I know somebody

with a smaller one. I'll call them." So that's when I had called Angelo.

Q So he brought the shotgun, and he took you over to Rod and Tasha's house. Who was at Rod and Tasha's house when you got there?

A I want to say --

Q Just tell the truth. What do you remember?

A I want to say I think [illegible], and [illegible], and [illegible] (PH) I don't think [illegible]e was there. She hardly was, but I don't -- yes, she was there.

Q Okay. And so what did y'all do when you got there?

A I had got on the computer.

Q Okay. What were you doing on the computer?

A I was listening to music.

Q Do you remember how long you were there?

A I was there for -- me and my cousin, we chilled there for about I'll probably say two hours.

Q Okay.

A And he had left. He was like, "Cuz, I got to go back home. My grandparents need me." I believe that's what he said. I don't know if that was his exact words, but it was like, "I got to go

back home, go back to Ridgeway." I was like, "All right."

And then I was about to leave, Tasha had came in during that time that he was leaving. So they probably seen him. What she probably did was she had came by.

Q Okay. And so what did you do next?

A I went into the back room, because he had left the shotgun with me. That's when I was playing with the shotgun. I showed her, I was like, "I got the gun."

And she was like, "And you don't think it's too big?" That's what she asked, and was I was like, "Well, do you think it's too big?" And she was like, "Yes." I was like, "I know somebody with a smaller one."

Q All right. So what did you do next?

A What did I do next? I called Angelo, and I was like, "If I could hold your gun, I've got a little lick or whatever." He was like --

Q Now, who is Angelo?

A Angelo, he's a friend.

Q He's a friend. And how did you know Angelo?

A I know Angelo from doing tattoos.

Q Okay. And so Angelo is a friend. Is Angelo friends with Tasha and Rod?
A No.
Q Is Angelo from Columbia?
A Yes, ma'am.
Q You knew him from Columbia?
A I knew him from Columbia. I don't know exactly what he do.
Q But you knew him from Columbia?
A Yes, ma'am.
Q He wasn't from Batesburg-Leesville?
A No.
Q He was from around there. And he did tattoos?
A Yes, ma'am.
Q And was he somebody you just hung out with?
A Yes, ma'am.
Q So you called him and asked him about a gun?
A Yes, ma'am, because I knew he keeps one.
Q Okay. And what did you ask him?
A I had asked him, I was like, "If I could hold your gun, my cousin says he's got a little lick." He was like, "Well, what kind of lick?" I

said, "He wants me to come rob him at his job or whatever.

And he was like, you understand, what it's like. I was like, "Well, he said it's like $18,000." And he was like, "Well, Cuz, I can't really let you hold it. But I'll come with you."

Q Okay. And what did you think about that?

A I was like, "All right, that's cool," because I ain't never really done nothing like that. And he was like, "All right, that's cool," you know what I'm saying.

Q And you've never really done anything like that, like what?

A Like a robbery and a job, no.

Q Okay.

A I've done nothing like that. So I was like, "Okay." So he told me, he was like, "Just call me later on whenever you're ready. I'm going to be doing a tattoo."

Q Okay. And so what did you do after that?

A I was just in the neighborhood. I knew people in the neighborhood.

Q You were just hanging out in the neighborhood at that point?

A Hanging out in the neighborhood.

Q So did you talk to Rod again?

A I had talked to him. He was like, "This is what we're going to do." He was like, "I want you to come rob me at my job." I told him, I was like, "I'm got my home boy. He's got a smaller pistol or whatever" and asked him if he approved of it. He was like, "Yes, that's cool."

So I had let him -- I was like, "All right. So what you want us to do?" And he was like, "I want you to come hold me at gunpoint. Whoever's got the gun hold me at gunpoint, and we're going to do a lick." I think he said it was a female there.

He was like, "You put them in the freezer, whoever's got the gun put them in the freezer." And he said -- and then he said he's going to empty the money in a bag, and we're going to go to his house and split the money.

Q Put them in the freezer, and then what do you do after you put them in the freezer?

A We was going to -- Rod said whoever was holding him with the gun, he's going to give us the money, and we was going to --

Q Somebody's supposed to point a gun at him, too?

A Yes, ma'am.

Q He'll empty money into a bag, and then what?

A And then we was going to leave.

Q Okay. Now, did he tell you anything specific about what to wear, what to bring?

A He told me to have on long sleeves, something to cover my face.

Q Did you already have long sleeves with you? Were you already wearing long sleeves?

A No, ma'am. I believe I had got some long sleeves from his house and some clothes that I had left over there.

Q Okay. So you had long sleeves and something to cover your face. Did you have something to cover your face?

A Angelo had gave me something to cover my face.

Q What did Angelo give you?

A He gave me a bandanna, a dark-colored bandanna. I believe it like black or dark blue.

Q Did he say which door to go to, how you were supposed to get in the store?

A He said, "I need y'all to wait by the garbage can, and I'm going to send the old man to

come out where they take out the trash at 11 or probably at 10." And he was like, "Whoever's got the gun, go hold him at gunpoint and walk him back in the door, and he'll tell you, like he would know where to come in." I was like, "All right."

Q Had you ever met this old man before?

A No, ma'am.

Q Meon, back in that time, you texted a lot of people, correct?

A Yes, ma'am.

Q Who all did you like to text?

A Who all did I like to text? People that texted me, like family, friends, I'd text on back.

Q Did you have a girlfriend?

A No, not at the time. No, ma'am, I didn't.

Q Did you have a lot of friends that were girls?

A Yes, ma'am.

Q Did you text a lot of friends that were girls?

A Yes, ma'am.

MR. O'NEILL: Can we move that?

THE COURT: Yes.

Please place the easel where it won't obstruct the view of defense counsel.

Q So earlier in the day, you talked about getting a phone call. Do you recall what time you woke up that day?

A I really can't tell outside, because my brother, he keeps like something over the window, so I ain't really seen what it was, how it looked outside.

Q Okay. At 1:10, you get a call from 629-3036. Do you recognize that number?

A I believe I do recognize that number.

Q Was that Rod's number?

A Yes, ma'am.

Q Okay. You get a call then, and then a few minutes later -- that was a one-minute call. A few minutes later, at 1:52, when you called -- you got an incoming call from Rod's phone for seven minutes. Is that the call you were talking about where you talked to Rod?

A Yes, ma'am.

Q And after that phone call, you said you called Van. That was 422-5367, Van's number, do you remember that?

A It could be.

Q Okay. It's already been testified to that was Van's number. So you called --

MR. O'NEILL: Objection, Your Honor.

THE COURT: You have to ask the witness what he knows, counsel.

MS. WEISS: Okay.

Q So you called Van, and then at 4:23 -- if you'll look on there where my fingers are -- at 4:23, you called Rod. Would that be about right? And at 1809, a call from Rod.

You talked to him again for five minutes, and that would be at 6:09. That was five minutes. So those were the phone calls that you had earlier in the day with Rod? Those are the ones you're testifying to now?

A Yes, ma'am, I believe so.

Q Did you talk to Rod in person at his apartment at all?

A No, ma'am.

Q Okay. And so you talked to him during those three phone calls on the phone?

A Yes, ma'am, I believe so.

Q And then he gave you the instructions to wait by the garbage can, and walk the man back in the store, and then follow through with the other instructions that you have previously told us?

A Yes, ma'am.

Q And how many people did he tell you would be in the store?

A He told me it was going to be a girl, him, and a guy, and the old man.

Q And did he tell you anything, any details about those people that were going to be in there with him, other than there was an old guy?

A No, ma'am. He didn't explain no details.

Q Did you ask any questions about the people that were going to be in there?

A He was like, "Well, the guy is old." And, you know, he said he was going to send him out.

Q Did he ever tell you to do anything beyond just hold a gun to their heads?

A No, ma'am.

Q Did he tell you where the money would be?

A No, ma'am.

Q All right. So you stayed, you said you were hanging out in the neighborhood. About what time did you get back to Tasha and Rod's house, do you recall?

A I got back -- I mean, I been there like just in and out.

Q Okay.

A Hanging in and out, like if I got thirsty,

go get something to drink.

Q Did you ever talk to Tasha about what time y'all needed to leave?

A Tasha said she already had basically just knew what time we was supposed to leave. She was like, "You know you need to be ready like around ten, 10:00, 10:30."

Q Well, how would she know when you needed to leave? Did you tell her about Angelo?

A Did I tell her about Angelo? Yes, I told her about Angelo.

Q And when did you tell her about Angelo?

A I told her about Angelo like after the conversation when I got off the phone with him.

Q When you got off the phone with who?

A With Angelo. It was like, "Well, he's got a gun, and he said whenever we ready, for me to go pick him up."

Q Did you tell her where he was going to be?

A I believe I had called him back and asked him where he was going to be. I called him back, and he said -- when I called him back and I asked him where he was going to be, he said he was at in front of -- at some trailers in front of Sandhills, I think, right off of Two Notch.

Q And Angelo just said, "Sure, come pick me up. I'll bring a gun. I'll go with you to do a lick"?

A Yes, ma'am.

Q Okay. And this was all Rod's idea?

A Yes, ma'am.

Q And you didn't have any other information about this other than -- did you give Angelo these details, "This is what we're going to do"?

A Yes, ma'am.

Q Did you tell him that on the phone before you went and picked him up?

A Not on the phone. I told him like once we got like in the car. He asked, like, "What we going do?"

Q So you told Tasha you had to go pick up Angelo somewhere over by Sandhills?

A Yes, ma'am.

Q And then that's when she told you what time to be ready?

A Yes, ma'am.

Q Okay, so around 10:00. Do you know if Angelo was working that day?

A I knew he was working earlier that day when I first called him.

Q Okay.
A He was working at the tattoo shop on Parklane.
Q So you -- where did you sit in the car?
A I sat in the passenger seat.
Q And what were you wearing?
A I was wearing gray.
Q You were wearing gray. You were wearing gray on the outside of your shirt, or was it a short-sleeved shirt or long-sleeved shirt?
A It was a long-sleeved gray shirt -- and some gray pants.
Q Is that the shirt you were wearing, a long-sleeved gray shirt?
A No -- no, ma'am. I ain't never seen that shirt before.
Q You were wearing a white T-shirt underneath it?
A I believe I wore a white Jordan T-shirt.
Q You were wearing a gray shirt outside -- on the outside?
A Yes, ma'am, it was a light gray shirt.
Q Okay.
A It wasn't no V-neck on it. It was a thermal like the one I have on now. It was light

gray.

Q A thermal light gray shirt?

A Yes, ma'am.

Q Like that one?

A No, it wasn't no V-neck with no red on it or anything. It ain't had no other colors on it.

Q No, no, no. The red was written on it. It this the gray thermal?

A No, ma'am, I ain't never seen that shirt before.

Q But you were wearing a gray thermal shirt with long sleeves?

A Yes, ma'am.

Q Okay. And you sat in the front passenger seat?

A Yes, ma'am.

Q So where did you go to pick up Angelo?

A We picked him off of Two Notch in some trailer parks right at Sandhills Mall.

Q Who gave directions to go pick him up?

A He gave directions. I told Tasha where he was.

Q Okay. How did you know where he was?

A Because he told me where he was.

Q All right. So you knew Tucker's cell

phone number in your phone, right?

A He is in my phone. I don't know his number by heart.

Q Okay. But you called him several times until you picked him up. Until y'all picked him up, you were on the phone with him?

A Yes, I think when we got in the neighborhood, I was on the phone with him to ask him where the house was located. And he told me where it was. And then when we pulled up in front of it, that's when I got off the phone with him.

Q Okay. So you got off the phone with him. And where was he?

A He was inside the apartment -- not apartment, the trailer.

Q He was inside?

A He just was coming out. Probably he was like on the porch.

Q He was on the porch. So you saw Angelo on the porch, and what did you do next?

A I was about to walk up there, but it was a big dog in the front yard. So I ain't walked in the yard. So I stood by the car, and then he came out. And we talked, and we shared a cigarette.

And I was like, "Are your ready?" He was

like, "Yes." And I told him if he had his long sleeves and stuff like that, and he already had it on.

Q What was he wearing, do you remember?

A I believe he had on a black T-shirt and a white thermal.

Q So you were wearing gray, he's wearing black and white. Did he have anything with him?

A He had a bookbag and a gun.

Q Where was the gun?

A I don't know. I didn't see the gun until we got in the car and he pulled it out. And I looked back, and he said he had it. He was like, "I've got it right here."

Q Do you know where he normally carries the gun?

A Either in his bookbag or probably on his waist, in his back pocket, or something like that.

Q So you do know that that bookbag is one place where he carried that gun?

A Yes, ma'am.

Q All right. So he gets in the car, and what happens next?

A He gets in the car, and I gave him the details of how we've got to go out to the garbage

can. And Tasha was like, "When we get" --

Q Okay, don't talk about what other people said. What did you tell Angelo you had to do?

A I told Angelo that we had to -- I was like, "You've got the gun, so you've got to hold my cousin up. And I got to put people in the freezer. And we're going to keep the money, and then we're going to leave and come back at his house, and then wait for him to come home. Then we're going split the money." And I told him like that.

Q You started out with "We've got to stand by the trash can"?

A Yes, ma'am. He said we've got to go by the trash can, and I was like, "That's what we've got to do." And Tasha was like, "All right" --

Q We're not talking about what other people said. Just talk about what you said.

A That's what I said.

Q You said, "We've got to stand by the trash can"?

A Yes, ma'am.

Q Okay. Did you tell him any other details about what you were waiting for at the trash can?

A I told him we was going to wait for the guy to come out that he said would come. Somebody

was supposed to take out the trash, and we was waiting for the guy to come with the trash.

Q Okay. And what were you supposed to do when the guy came with the trash?

A We was just supposed to hold him at gunpoint and just walk him inside the building.

Q Did you know what door to take him to? How were you supposed to know where to go?

A I guess we was going to tell the dude what door.

Q Okay. So you had no details as to which door to take him to?

A No, ma'am, I ain't had no details.

Q And then what were you supposed to do when you got inside?

A What we supposed to do? We were supposed to -- whoever had the gun was supposed to hold Rod at gunpoint, and whoever didn't have a gun was going to put the people in the freezer. Rod was going give us the money, and we was going to leave.

Q Was there any mentioning about pistol whipping?

A Rod was like hit him with the gun, "But don't hit me hard." He was like, "Just make it look like, you know, it's a robbery."

Q So what else did y'all talk about in the car, do you remember?

A Once we got in the car, Tasha, she said --

MR. O'NEILL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q Please don't talk about what anybody else said, only what you said, and what Rod said, and what you did, okay?

A Well --

Q Did you talk about anything else in the car?

A No, ma'am.

Q Okay. Were you on your phone in the car?

A Yes, ma'am, I just was using my phone. I believe I was texting.

Q Okay. Did you see if Tasha was on the phone?

A Yes, ma'am, she was on the phone.

Q And were you paying any attention to what Angelo was doing?

A He was texting on his phone.

Q Do you remember about how long it took you to get to Batesburg?

A It felt like 20 minutes or so.

Q Did it feel like a long time?
A Not really, no -- no, ma'am.
Q What were you thinking at that point when you were in the car?
A I was just thinking, you know, like what's going on really, you know what I'm saying, how it's going to turn out. You know, I was just thinking to get what we came for and just come back.
Q Why were you willing to do this?
A I was willing to do this because at the same time, he told that he was going to get evicted. And at the same, I did want some money. And I didn't want to see my little cousin, you know, being evicted and stuff like that.
Q Had he ever told you before that they might get evicted?
A No, he told me that day.
Q Did he ever tell you on any other occasion?
A No, ma'am.
Q So what did y'all do when you drove into Batesburg?
A We drove into Batesburg. And when we drove into Batesburg, we -- we was --
Q All right, let me see if this will help.

I'm going to show you what's been entered as State's Exhibit Number Two. Do you recognize this map -- take a look at it -- McDonald's?

A Yes, ma'am, right there.

Q Why don't you step down so you can talk to the jury? You have to speak up so the Court Reporter can hear you. What did you do when you got into Batesburg?

A When we got into Batesburg --

Q Speak up.

A That's the light right here?

Q Uh-huh.

A We was like over here.

THE COURT: I think you might be blocking out part of the jury.

MS. WEISS: Yes.

THE COURT: If you could kind of stand to the stand. There you go.

MS. WEISS: There we go.

A We was over here, and she was like --

Q Speak up. Speak up so we can hear you.

A We was right here. We got out -- we didn't get out right here. We drove around. It was like, "I'm going to be parked right here." That's what Tasha stayed. It was somewhere over here.

"I'll be parked right here. I'm going to let y'all out right here" --

Q No, don't talk about what she said. Talk about what y'all did.

A Oh, well, we drove around, and then we got out right here at the light. And then we ran --

Q Who is "we"? Who got out at the light?

A Me and Angelo, we got out at the light.

Q Speak a little bit louder so everybody can hear you.

A Me and Angelo, we got out at the light, and we ran over here to the trash can.

Q Okay. And then once you got to the trash can -- the trash can is here -- where did you position yourselves at the trash can?

A I positioned myself on the inside.

Q Inside the trash can?

A Yes, ma'am.

Q Okay.

A And I believe Angelo got on top, somewhere like on top of the trash can to watch out for the guy.

Q Okay. You believe he did, or you know he did?

A He did.

Q Okay.
A He did. And he waited.
Q Okay, thank you. You can sit back down. Did Rod tell you why to go to the trash can?
A He told me to go to the trash can because he said that's where he was going to send the dude out so we can walk him back into the store.
Q Did he ever talk to you about surveillance cameras?
A I don't remember him mentioning anything about surveillance cameras.
Q So y'all positioned yourselves at the trash can?
A Yes, ma'am.
Q Could you see the drive-through windows?
A Yes, ma'am.
Q I'm going to show you State's Exhibit Forty-Three. Is this the trash can you're referring?
A Yes, ma'am.
Q When you say you got inside, you got inside that door right there?
A No, ma'am. I believe it was like an opening like a door on one side, but it didn't have no door. And I looked, and I just walked in. But I

was over there on that side.

Q So you were on that side --

A Yes, ma'am.

Q -- when you were waiting?

A Yes, ma'am.

Q Okay. And was Angelo in there with you?

A Yes, ma'am.

Q How long did y'all wait there?

A We waited --

Q Was it a long time or a short time?

A It wasn't long.

Q Okay. And did you hear something or see something first?

A I heard the wheels on the trash can.

Q Okay. Were they kind of loud?

A Yes, they was kind of loud. But I heard it.

Q Okay. And did you see anybody else out there?

A No, ma'am, I didn't see nobody because of the way I was positioned then.

Q When y'all over to the trash can, did you see anybody around the trash can?

A No, ma'am.

Q Okay. Did you see anybody in the parking

lot walking around?

A No, ma'am.

Q Did you have any marijuana on you?

A No, ma'am.

Q Did you try to sell anybody any marijuana?

A No, ma'am.

Q So you waited there, and you heard the wheels on the trash can. And what did you -- did you and Angelo say anything?

A He -- Angelo -- said he was going to get on top --

MR. O'NEILL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q Did you say anything to Angelo?

A Not that I can think of.

Q Okay. Who had the gun at this point?

A Angelo still had the gun at this point.

Q And did Angelo have his bookbag?

A Yes, ma'am.

Q Angelo had the gun; Angelo had his bookbag. Why didn't you have the gun?

A Why didn't I have the gun?

Q Yes.

A Because Angelo told me that I couldn't

hold it, that he was going come with me, so he had the gun.

Q And that was okay with you?

A Yes, that was okay with me.

Q Why was that okay with you? It was your lick.

A Because I didn't want to hold the gun, really. If I could have hold the gun, I would have held the gun.

Q Okay. So Angelo has the gun. What happens next?

A Angelo had the gun. I see him run out the little door. And when he run out, he was like, "There he goes. Get ready." And then when he ran out, the only thing I heard -- I was coming out, and I heard like somebody laugh.

Q Was it Angelo laughing?

A No, ma'am, it wasn't Angelo laughing.

Q Who was laughing?

A The guy.

Q So the old man?

A The old man.

Q He was laughing. And what did the old man that was laughing do?

A They was wrestling over the gun. They was

wrestling, and then the gun dropped. So I picked it up. When I picked it up, he rushed me. When he rushed me, he was like he was on my back. And I got the gun pointed at the ground, so I fired at the ground a couple of times.

And then when he finally let me go -- when he finally let me go, I looked back, it looked like he had got shot in his leg. So I'm thinking like, "I done shot this guy." So I ran.

Q All right. I'm going to back you up just a minute. Angelo Tucker goes out with the gun, holding the gun to an old man who starts laughing. Did he get the better of Angelo pretty quickly?

A When I came out, I didn't really see if he held the gun. When I come out, I just heard some laughing. And when I heard the laugh, I come out. And they was wrestling already. So they're wrestling. When I see them wrestling, I'm like, "I don't know what to do." So when the gun fell, I picked it up.

Q Okay. Before this gun fell -- I'm going to show you again State's Exhibit Forty-Three. You said you heard the wheels on the cart. Is that the cart you're talking about?

A I guess so.

Q Okay. Where was the victim -- where was the old man, as he was called -- standing in relationship to that cart?

A Maybe he was like -- he wasn't even by the cart when I first came out.

Q Where were they?

A They was like behind the cart somewhere.

Q Like over that way?

A Yes, like behind it.

Q They were moving back towards that --

A They was moving back towards this way.

Q Okay. They were wrestling, and the gun dropped.

A Yes, ma'am.

Q How long was that wrestling? How long did that take?

A It didn't take long, not at all.

Q It was pretty quick --

A Yes, ma'am.

Q -- and Willie Jennings got the gun out of Angelo's hand?

A Yes, ma'am.

Q At that point, why didn't y'all just run?

A At that point, why didn't we run?

Q Yes.

A Because I don't know. I just thought to pick the gun up, and, you know, to continue with the robbery.

Q So you had just seen this man knock the gun out of Angelo's hand, Angelo who's used to carrying a gun get the gun knocked out of his hand, and you decide to pick it up and go after him again? Do you think he's going to go with you this time?

A What you mean, think he's going to go?

Q You think he's just going to say, "Oh, okay. Now you have the gun. I'll just walk with you"?

A Yes, that's what I sort of kind of thought, yes, ma'am.

Q You were 18 years old, right?

A Yes, ma'am.

Q Does that make sense today?

A Not really.

Q That he just wrestled with Angelo, wrestled a gun out of a man's hand, and now you pick up the gun, and he's just going to say, "Oh, okay. Now that you have the gun, I'll just walk in with you"?

A Because -- I did it because I didn't know that -- I know that he really didn't see me. That's

why he was wrestling with him.

Q Okay. But does that make sense to you sitting here today?

A So now it's two of us, and now I've got a gun. I can see the two of us, and I didn't think that he was going wrestle with me.

Q Okay.

A And now it's two of us.

Q You didn't think he was going to wrestle with you. What happened when you picked up the gun?

A He wrestled with me.

Q And I show you State's Exhibit Thirty-Nine. I'm going to ask you to step down again. So looking at this picture, it's a lot smaller. But there's the big trash can, the dumpster. And you said they were moving back this way towards the drive-through wrestling, and you pick up the gun. Where are you standing?

A I believe right in here. I don't remember like --

Q Well, that's the dumpster right there.

A They were back over here.

Q There's the dumpster, and there's the front of the dumpster.

A I just remember like being somewhere --

COURT REPORTER: He's mumbling. I can't hear him. He needs to go on the other side of you.

MS. WEISS: Come on the other side of me, sorry.

A I just remember being somewhere about the trash can. They moved back, so they was wrestling somewhere over here.

Q Okay.

A And then the gun dropped, and I picked it up.

Q And so where were you when the gun dropped?

A The gun dropped like over here, I guess.

Q Okay. So y'all were still -- you were not in front of the trash can at this point anymore?

A No.

Q Y'all had been moving towards the McDonald's? The wrestling was moving back towards the McDonald's?

A Yes, the wrestling was moving.

Q All right. So you pick up the gun, and do you point it at Willie Jennings?

A Yes, ma'am, I was kind of like -- I was about to say when I come over, you know what I'm saying, like --

Q Turn around so that the jury can see.
A I just like kind of pointed at the ground.
Q You pointed at the ground?
A Yes, ma'am.
Q Where was Willie Jennings standing?
A He was --
Q He was standing right in front of you?
A Yes, ma'am. And I just pointed it like, you know what I'm saying?
Q No, I don't know what you're saying. What were you saying?
A I told him, I was like, "Now don't move and just come on." And he rushed me. He grabbed my hand.
Q Did he laugh again?
A No.
Q Okay. He rushed you, and he grabbed your hand, like that?
A Yes, ma'am.
Q And then what happened?
A I turned this way.
Q Okay. So he's still got your hand and the gun --
A Yes, ma'am.
Q -- and the gun's pointing that way?

A Yes, ma'am.
Q And he --
A It was body weight on me. It's like --
Q I'm sure he's bigger and a lot bigger than I am?
A Yes, ma'am. So --
Q So he's on you?
A So I'm trying to pull away.
Q Okay.
A So I realized I can't do nothing, so I shot at the ground.
Q You shot at the ground?
A Yes, ma'am, to get him off.
Q Okay, that's one shot. Now, this is the gun we're talking about. It's kind of a little gun.
A Yes, ma'am.
Q So you've got pretty good sized hands. You've got the gun, and you point it at the ground. And so what did he do after you shot once?
A We're still wrestling over the gun. So I pulled the trigger two more times, I guess.
Q You guess? So you know --
A I know I pulled the trigger two more times.
Q But he's got your hand, he's got his

weight on you, so do you know exactly where that gun was pointed?

A No, ma'am.

Q Where were you trying to point?

A I was just shooting at the ground to get him off me. I wasn't trying to hurt nobody. That wasn't my intentions. I wasn't trying to hurt nobody. I ain't one to hurt.

Q Right. You didn't want to hurt him. But you pointed a loaded gun at him and shot the gun three times while he's wrestling with you and that gun is in your hand moving around. At that point, did you know you had shot Willie Jennings?

A No, ma'am.

Q Okay. So what did you do after you fired the gun three times?

A After I fired the gun three times, I looked back to see what happened, because he had fell, like he had let me go, and he was hopping like he was he had got shot in the leg. So I thought, I was like, you know, "I done shot this man, and I shot him in his leg." So I ran.

Q So you just shot this man. You thought you shot him in the leg. You turn around, and you see him.

A It was like right there. And I ran.
Q And what were you thinking at that moment?
A I had --
Q In your words, what were you thinking?
A I had messed up.
Q And it was just that calm, "I messed up"?
A No, not that calm really. I was just like, "I done messed up, and I need to get away from this place right now. I need to go back to the car."
Q Okay. So you still had gun, and then what did you do?
A What did I do? I ran.
Q You ran. Where did Angelo go?
A He followed behind me.
Q So he ran, too?
A Yes, ma'am.
Q Okay. You can go sit back down. So Rod Cook told you he was going to send an old man out to the trash can?
A Yes, ma'am.
Q Was Willie Jennings what you thought -- did he look kind of like an old man when you first saw him?
A Yes, ma'am.

Q All right. He looked like one, didn't he?
A Yes, ma'am.
Q Did he act like the old man you thought Rod Cook was sending out to that trash can?
A No, ma'am.
Q So it was at first when he got the gun out of Angelo's hand that you knew it was messed up. But by the time you shot him, you knew the plan's over?
A Yes, ma'am.
Q And you ran. And where did you run?
A I ran back to the car.
Q Okay. And where was the car parked?
A I can't really tell you. It was parked like by a Waffle House.
Q Okay. And where did you get in?
A I got back in the passenger seat.
Q Okay. Passenger seat in the front?
A In the front.
Q Okay. What did you do with the gun?
A Angelo told me to wipe it off. I wiped it off, and I put it in the glove compartment.
Q You wiped it off with what?
A My shirt.
Q With your T-shirt?

A No, it was my shirt.

Q Your shirt, okay. And what did you do? Something we didn't mention before, you said that Angelo gave you a bandanna. At what point, if any, did you use the bandanna?

A It was already on my face like when we got out of the car. I had put it on my face.

Q Okay. You put it on your face when you got out of the car or when you got in the dumpster?

A When I got in the dumpster.

Q So you had it with you when you got out of the car.

A Yes, ma'am.

Q You get in the dumpster, and you put it on your face?

A Yes, ma'am.

Q Why did you put it on your face?

A Because I knew that we was about to rob the store, and it was just basically that time to put it over my face.

Q Okay. And when did you take it off your face?

A When I got back in the car.

Q Did you still have it on while you were fighting with Mr. Jennings?

A Yes, ma'am.

Q What did you do with the bandanna when you took it off your face?

A I took it off my face, and I believe I set it down in the car somewhere.

Q Did you wrap it around the gun, put it in there with the gun?

A I think so.

Q Is that the bandanna you're talking about?

A Yes, ma'am.

THE COURT: Refer to it by exhibit number, please.

MS. WEISS: Certainly. I'm sorry.

Q State's Exhibit Nineteen, is this the bandanna you're talking about?

A Yes, ma'am.

Q Did you say anything when you got in the car? Not what anybody else said, did you say anything when you got in that car?

A No, ma'am. They was just like said something to me.

Q And what did you say in response?

A I said, "I didn't mean to do it, Bra."

Q Did you say why you did it?

A Because he had -- he was strong. I had to

try to get him off of myself, try to get him off of me, so I shot at the ground.

Q Okay. And, Meon, you're charged with the attempted armed robbery for getting in that trash can, putting on that bandanna, and having that gun to go rob the McDonald's, right?

You're charged with the conspiracy with Rod Cook, Tasha Matthews, and Angelo Tucker in this case, right? And you are charged with the murder of Willie Jennings for shooting him?

THE COURT: You have to answer verbally, sir, instead of shaking your head.

A Yes, ma'am.

Q You are charged with all four charges?

A Yes, ma'am.

Q And have you been offered anything for those charges? Have you been offered to plead to those charges?

A No, ma'am.

Q Been made any sort of plea offer?

A No, ma'am.

Q Because you shot and killed Willie Jennings that night, right?

A Yes, ma'am.

Q All right. So you get in the car, and

Tasha is in the car?

A Yes, ma'am.

Q Where does the car go?

A I remember when we pulled out from where she was parked at, we did turn a right, and then we turned another right. And then the blue light come behind us.

Q Okay.

A And then we stopped.

Q And what were you thinking at that moment? How were you feeling at that moment?

A I was just feeling sick just knowing that I shot somebody, and, you know, it was an accident. I just didn't mean to do it. I was just -- I just felt bad.

Q It wasn't an accident that you shot that gun?

A No, ma'am.

Q And so what happened when the blue lights came on?

A We pulled over.

Q And what happened next?

A The police had came and told us to put our hands on the dashboard, you know, don't move. And then he said something on the walkie-talkie, and

then he had arrested us and put us in handcuffs. And Tasha, when we was on the ground, she said --

Q No, don't talk about what anybody else said.

A All right. Well --

Q But you're sitting there, and where did they take you at that point? Did they ask you -- did you answer any questions by the police right then?

A No, ma'am.

Q And where did they take you from there?

A They took us to the police station.

Q And did you say anything to Tasha while you were at the police station?

A I asked her, I was like, "What you want me to do?"

Q Okay. And did you tell her you loved her?

A Yes, ma'am. I told her I loved her, and I told her that I was sorry.

Q Did you say anything to Angelo?

A Yes.

Q What did you say to Angelo?

A I told him I loved him too and that I was sorry.

Q Was there anybody else out there by that

trash can besides you, Angelo Tucker, and Willie Jennings?

A No, ma'am.

Q Was there any plan -- had you ever even considered selling drugs out by that trash can?

A No, ma'am.

Q Do you know where people sell drugs in Batesburg-Leesville?

A No, ma'am, I never been to Batesburg-Leesville and sell drugs.

Q Okay. You were at the Batesburg-Leesville Police Department, and then did you get your charges then?

A I don't believe that night. I think it was like later on, like that morning.

Q What did you find out when you got those charges?

A They charged us with murder.

Q And did you find out the condition of the man you thought you had shot in the leg?

A Yes, ma'am.

Q What did you find out at that point?

A I found out that Mr. Jennings had passed, and they had charged us with the gun and the murder.

Q Did you make any phone calls from

Batesburg-Leesville?

A No, ma'am.

Q How long before you were taken over to Lexington County Detention Center?

A I really don't remember.

Q You don't remember?

A I really don't remember.

Q Was it a day or so?

A Yes, it was like a day, probably that same day, later on in the afternoon.

Q You got booked in at the Lexington County Detention Center?

A Yes, ma'am.

Q Was that the first time you were allowed to make a phone call?

A Yes, ma'am.

Q Who is the first person you called from the Lexington County Detention Center?

A My mother.

Q The first time you used the phone, were you before or after Tasha used the phone?

A I don't remember.

Q You don't remember. Who is the second person you called?

A I don't remember calling a second person.

Q You don't recall Rod Cook?
A I spoke to him.
Q Do you remember calling him?
A I don't remember calling him.
MR. O'NEILL: Your Honor, may we approach?
THE COURT: Yes, sir.
Mr. Foreman, ladies and gentlemen of the jury panel, there's a matter I need to take up with counsel out of your presence very briefly. If you'll retire to the jury room for a brief time, we'll have you just back.
(Jury out at 12:10 p.m.)
THE COURT: All right, counsel.
MS. WEISS: Thank you, Your Honor.
THE COURT: You may proffer.
Q I'll play the beginning of this and see if you recognize this voice.
(Whereupon, a portion of the CD was played.)
Q Do you recognize that voice?
A No, ma'am, I ain't really heared it.
(Whereupon, a portion of the CD was played again.)
A I think that was me.
(Whereupon, another portion of the CD was

played.)

Q Do you recognize that voice?

A Yes.

Q Who was that?

A I think that sounds like .

Q Okay. And who is the one calling?

A That was me.

Q Okay. And who did you ask to speak to?

A Rod.

Q Do you now remember making the phone call?

A Now I remember making the phone call.

MS. WEISS: Your Honor, at this time I would proffer the phone call for purposes -- and we can do this again, but I would ask that this call be put into evidence.

THE COURT: It's already into evidence really, but subject to --

MS. WEISS: Subject to the objection.

THE COURT: -- objection. And, of course, he objected at that time. But I think the objection now is as to whether the witness remembered making the call or not. And he now says he does remember making the call. And so that objection is no valid.

Anything else, counsel?

MR. O'NEILL: Your Honor, I want just to

mention my previous objection is still lodged.

THE COURT: The previous objection is lodged again for the record. There are three calls on this one video, right?

MS. WEISS: Four.

MR. O'NEILL: Four calls.

THE COURT: Four -- I'm sorry, four.

MS. WEISS: Three are in evidence.

THE COURT: There are three others other than this one, and they were all admitted into evidence. The other three were to Tasha, and they were made before this one.

And so all of that information is available to the defendant with regard to monitoring and recording the call. He was well aware of that. By the time this call came in, he was aware with the three that he talked with Tasha. He was aware of it when this call came in, as well.

And in any event, the basis of the Court's ruling was that he was well aware of the calls being monitored and recording, and he knew it from previous calls obviously. You might even say from his part of the conversation on previous calls, he was well aware that that probably could be used in the future.

And in this case, he had the previous calls and now this call. And, again, before this call, he was forewarned that it would be recorded and also monitored -- the conversation monitored. So he was well aware of that.

So I overruled the objection previously about that, that there's no right of privacy to a call that you accept, willingly participate in, you could reject, not accept, that you willing participate in with full knowledge that it's going to be recorded and monitored by a police agency.

There would be no expectation of privacy in such a call, and you're free not to engage and participate in if you're issued that forewarning. So, again, for all of those reasons, it comes in, and your objection is noted for the record. And, of course, it was a Court rule that it would be admitted in any event.

All right, I think we're ready.

MR. O'NEILL: While we're getting the jury, I've got an unrelated issue with this witness' testimony.

THE COURT: Okay.

MR. O'NEILL: On direct earlier, the witness testified that Mr. Rod Cook, my client, was

not at the house at the time that he had discussions with him concerning this armed robbery. In my opinion, that's a material change of statement from the statement he made that I have a copy of from September 2011. I just want to make sure he didn't divulge that to the Attorney General's Office in the pre-trial. I should have been made of that change in the statement here. That was a change that he made.

THE COURT: Say it again, now. What is the difference?

MR. O'NEILL: The statement that I have from this witness, Mr. Miller here, from September 15, 2011, intimates that my client, Rod Cook, was at the home when he got there, and they discussed the armed robbery. He was at that time at the home.

THE COURT: That all four of them were there, is that what you're saying?

MR. O'NEILL: All four of them, specifically my client, Rod Cook. On direct, he just testified that Mr. Cook was not at the home when that discussion occurred, and that's a material change from his statement. I just want to make sure this witness here didn't make that alteration when he spoke with the Attorney General's Office before,

and I wasn't made aware of that.

MS. WEISS: Your Honor, I'm not sure what Mr. O'Neill thinks the statement intimated. But the statement doesn't say that Rod Cook was at the house with Meon Miller. It may be an intimation that he took from it, but it doesn't say that.

MR. O'NEILL: If Your Honor wants, I'll read it for the Court.

THE COURT: All right.

MR. O'NEILL: It begins, "So I got a ride from my cousin Van Hanna. He gave me a ride to my cousin Rod's hose. So when we got there, my cousin Van Hanna had a .410 shotgun that we was playing with at Rod's. Then Tasha came in. My cousin Van had left. Then Rod was explaining to me something about how to do the robbery. I didn't really understand what he was telling me about the robbery job. So he just Tasha was going to give me more details."

THE COURT: It doesn't say he was there. He's testified today he gave him instructions over the phone from work. And so it doesn't say in there they were sitting down together.

It said that he gave him instructions and that Tasha would tell him more about it. That's

consistent with a telephone call. He doesn't ever say that they were sitting down together all four of them in one place in that statement as I hear it.

MR. O'NEILL: I agree those words are not there.

THE COURT: You can intimate whatever you want, but it doesn't say he was present. He's testified today that he talked with the defendant, and he got instructions from him over the phone and that Tasha would bring him there or whatever.

But he testified to that, and he testified that he talked to him a second time on the phone, and he gave him those instructions. So that's not inconsistent with that statement as I hear it.

MR. O'NEILL: I understand that.

THE COURT: So you would have to stretch that statement, or you'd have to add a lot to that statement to show that they were all present sitting around talking about it. That statement to the Court is still consistent with Tasha coming in after he was there with his cousin Van, coming late, and that he got instructions.

But he doesn't say where he got the instructions other than he got it there. He says he got instructions from the defendant. Well, today he

testifies that discussion came on the phone, so that's consistent with that. All right, I think we've covered it.

Let's bring the jury back, please.

MS. WEISS: Your Honor, when we bring the jury back, do you want me to go through that again with the phone call, or do you want me to ask him now if he remembers that? Is that sufficient?

THE COURT: You could ask him after hearing part --

MS. WEISS: Okay.

THE COURT: -- of it, does he now remember?

MS. WEISS: Okay.

(Jury in at 12:20 p.m.)

THE COURT: Please proceed, counsel.

MS. WEISS: Thank you, Your Honor.

EXAMINATION CONTINUED

BY MS. WEISS:

Q Meon, just before the break, I asked you if you remembered calling Rod Cook after you got to Lexington County Detention Center. After listening to a little bit of that recording, do you now remember calling Rod Cook?

A Yes, ma'am.

Q And do you recall where you got Rod Cook's phone number?

A I got the phone number from Tasha. Tasha had given me the number, because I didn't know it by heart.

MS. WEISS: Your Honor, at this time I would like to move the phone calls -- the same disk but move this phone call into evidence. Exhibit Seven, the rest of State's Exhibit Seven into evidence.

THE COURT: Admitted over objection.

MS. WEISS: Thank you, Your Honor.

(State's Exhibit Number Seven, was entered in evidence.)

MS. WEISS: May I publish it to the jury?

THE COURT: You may publish.

MS. WEISS: Beg the Court's indulgence. My computer is acting up.

THE COURT: Yes, ma'am.

(Whereupon, the CD was published to the jury.)

Q Meon, I've got a few questions for you. Listening to that phone conversation, what does it mean to be goochy?

A It means like --

Q Talk into the mike.
A It means straight.
Q What does that mean?
A Like everything's okay.
Q At one point, Rod asked you, "How solid is the dude you're dealing with?" What does that mean?
MR. O'NEILL: Your Honor?
THE COURT: He can answer if he knows, counsel.
MR. O'NEILL: He can't testify to what my client meant by that.
THE COURT: He can answer what it meant to him. All right.
A It basically means he's like a real -- what we call it, is he -- I ain't really got a word for it, but it's any type of person that will do something messed up, like tell or something like that.
Q So is he the type that's going to tell what happened?
A Yes, basically.
Q Your response on there is "I know. He's a homie."
A Yes.
Q So what did that mean? What did you mean

by what you were telling Rod, in your answer to "How solid is he? How solid is Angelo?"

A I told him like he's a homie. He's my homie, you know. I know him, you know what I'm saying? And he's good.

Q What did that mean?

A It basically meant that I know he ain't going to say nothing.

Q Okay. Y'all kept talking about keeping a thousand. What does it mean to keep a thousand?

A Basically I'm saying that --

THE COURT: Can you pull that mike down just a little bit, too?

MR. MILLER: Can I get some tissue?

MS. WEISS: Yes.

Q So keeping a thousand means don't say nothing. And then you said, "Man, I don't even know you. I don't even know Tasha, keeping a thousand." So what does that mean?

A Basically, I knew what we came to do at Rod's store. And I was just like, "But I don't know you. I don't know Tasha. I just know" --

Q What does it mean to say that? Obviously, you do know him, you do know Tasha.

A Yes, I know. Basically, I'm saying "I

ain't going to tell on y'all."

Q Okay. And then Rod tells you, "Keep it a hundred." What does that mean?

A The same thing as a thousand.

Q "Don't turn your word for nobody. Keep it a hundred."

A Basically saying as we was talking on that conversation when the drug deal gone bad, I just basically caught on to what he said, that everything just went wrong.

Q When the drug deal went bad? I'm sorry. We'll go back to that in a minute. Just tell me one more thing. He says, "I'm fucked up right now, but I'm going to come put some on your book, and we're going to hold you down." What does it mean to hold you down, and what does it mean to put some on your book?

A It means like my money for commissary. And hold me down is basically like "I'd be here for you," like my mama, my family right there.

Q Okay. So he'd be there for your mama and your family. He'd take care of your stuff while you're in jail?

A Yes, ma'am.

Q That's what it means to hold you down?

A Yes, ma'am.

Q And you said, "Man, just come down here and visit me." He says, "I am. I am going to come visit you." Did he ever come visit you?

A No.

Q He said in there several times, "I love you. You are my brother." He says, "You know, I just want to be your big brother. I want you to be my brother." When you were 18 back in 2010, was that the kind of relationship you two had?

A Yes, that's how I felt.

Q And were you that close to your own brother or to Tremayne?

A Tremayne ain't never really been around like, but that's my family. So I love him, but I do with my real brother. I do love my real brother.

Q Okay. But you were pretty much that close with Rod?

A Yes, ma'am.

Q Did you look up to Rod?

A Yes, ma'am.

Q What were you thinking that day, March 15, 2010, when you made that phone call? How were you feeling right then?

A March?

Q I'm sorry. October 15, 2010, when you made that phone call, what were you feeling, what were you thinking?

A I felt -- I just thinking I just disappointed him. I had just let him down.

Q You had just let Rod down?

A Yes, ma'am, and I messed up for myself.

Q So when you called, the first thing that Rod said was, "What was it, a dope deal went bad?" And then he gives you a lot more details about that dope deal. Did you ever tell him it was a dope deal went bad?

A I believe I did say it was a dope deal gone bad, knowing the circumstances.

Q Agreeing with him?

A Agreeing with him.

Q But did you tell -- that was the first phone call, right?

A Yes, ma'am.

Q And did you ever tell anybody else that it was a dope deal gone bad?

A No, ma'am.

Q Was it a dope deal gone bad?

A No, ma'am.

Q Were there any drugs there at all?

A No, ma'am.
Q Do you deal drugs in Batesburg?
A No, ma'am, I never in Batesburg dealed in drugs.
Q Did you know there was no camera pointed on the trash can?
A No, ma'am, I didn't know that.
Q Didn't that till you heard that on the conversation?
A Yes, I heard that.
Q Did you know the trash can is where people hang out to deal drugs?
A No, ma'am.
Q Did you hear that on the conversation?
A Yes, ma'am.
Q Rod tells you, "I'm going to ride with you." What does that mean?
A It's another thing for pointing me down.
Q Okay. And he says at one point, "The truth is going to come out. You will tell them it was only you." Who was in that trash can? It was --
A Me and Angelo.
Q -- you and Angelo. So even being out there wasn't only you. But he says he's not mad at

you. Why would he be mad at you?

MR. O'NEILL: Objection. This clearly calls for speculation.

THE COURT: Overruled. He may answer if he knows.

Q Why do you think he would be mad at you?

A Probably because we ain't followed through with the robbery.

Q Where is Tremayne now?

A He's in prison.

Q Okay. So when he said he was talking to Tremayne, was Tremayne in prison then, too?

A Yes, ma'am.

Q Did you know what he meant by "I'm talking to Tremayne, and he said he's talked to everybody. They're going to make sure you are straight"?

A No, ma'am.

Q When you were on the way to Batesburg, did you try to get in touch with Rod? Do you remember?

A I think I probably called him, or we texted, or something. I don't know.

Q How old are you now, Meon?

A I'm 20.

Q And you said on that phone, he told you to keep a thousand, so don't tell anybody. And then he

also said, "All right, you've got it. Go tell them Tasha had nothing to do with this. It was only you, drug deal gone bad," and he gave you all those details. Did you ever go and tell anybody that?

A No, ma'am.

Q Was that the truth?

A No, ma'am.

Q Did you eventually talk to law enforcement about this case?

A Yes.

Q Did you talk to an investigator?

A Not telling them it was a drug deal gone bad.

Q No, no, no. Did you eventually talk to an investigator?

A Yes, ma'am.

Q And was that with your attorney?

A Yes, ma'am.

Q When you did that, did you tell him the truth?

A No, ma'am.

Q No. What was the main part of that statement to the investigator that was not true?

A I put Angelo in my shoes.

Q You put Angelo in your shoes. So in that

statement, who did you say shot Willie Jennings?

A I said Angelo did.

Q And who really shot Willie Jennings?

A I did.

Q But as far as everything else, everything that you told this jury today, is that the truth?

A That's the whole truth.

Q And today at 20 years old, what are your feelings? How do you feel about this case? Would you have gone back out there today?

A I wish I can just -- I would have never even been there, that it would never even have happened. I just feel so sorry. I'm just saying I didn't mean to do it.

Q And you still care about Rod Cook? He's still your cousin. Are you afraid of disappointing Rod Cook today?

A To tell the truth, I'm going to tell the truth.

MS. WEISS: Thank you, Your Honor. No further questions at this time.

Please answer any questions Mr. O'Neill has for you.

MR. O'NEILL: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Mr. Miller, you gave a written statement to Lexington County Sheriff's Office -- you gave a statement to Lexington County Sheriff's Department back on September 15, 2011. Do you remember that?

A Yes.

Q And when you gave that statement, you swore that the statement was the truth, correct?

A Yes, at the time I did.

Q Just like you swore today you're going to tell the truth?

A I'm telling the truth today.

Q You swore you were going to tell the truth back in September of 2011, didn't you?

A Yes.

Q And you lied in that statement?

A I lied because I was scared.

Q Okay. But you lied?

A Yes.

Q Who was there with you --

A Who was there with me?

Q -- when you made that statement?

A My lawyer.

Q Was Rod Cook there with you when you made

that statement?

A No.

Q Just your lawyer?

A Just my lawyer.

Q I'm going to show you what's been marked as Defense Exhibit Number One. Do you recognize what that is?

A It's my statement.

Q How many pages is it?

A I don't know how many pages it is.

Q Take a look at it and see how many pages it is.

A Four.

Q Whose signature is at the bottom of that statement?

A Mine.

MR. O'NEILL: Your Honor, at this time I'd move into evidence Defense Exhibit Number One.

MS. WEISS: Objection.

THE COURT: Counsel, approach.

Q Meon, in that statement, you swore that you were going to tell the truth, correct?

A Yes.

Q You said that you swore that the facts contained in that statement were true and correct to

the best of your knowledge. That's what you did, correct?

A Correct.

Q In that statement that you gave to the police officer where you say you're telling the truth, you indicated what time you talked with Rod Cook that morning on October 13, 2010, correct?

A Say it again. I didn't hear you.

Q You told them what time you claim you spoke with Rod that morning on October 13, 2010, correct?

A Yes.

Q You told them you talked to Rod at nine or ten in the morning. Is that what you told them?

A Yes.

Q And these are your phone records, correct? Your phone number was 269-9028, correct?

A Yes.

Q Is there any phone calls from either your phone or from Rod's number that are around 9:00 or 10:00 in the morning?

A No.

Q So when you say you talked to Rod Cook at 9:00 or 10:00 in the morning when he called you, that was a lie?

A The reason why I said it was at 9:00 or 10:00 in the morning was because that's what I thought.

Q It's a simple question. Was that true? Did he call you at 9:00 or 10:00 in the morning?

A No.

Q So if it's not true, it's a lie?

A I guess I didn't talk to him at that time.

Q So it's a lie?

A Yes.

Q Then you said that he called you right after, a few minutes after 9:00 or 10:00 in the morning, correct?

A Yes.

Q And did he call you a few minutes after 9:00 or 10:00 in the morning?

A No.

Q So that was a lie?

A Yes.

Q Was it true?

A It wasn't true.

Q So it was a lie?

A Yes.

Q That's two lies we've got now. And it's your testimony that at some point you got -- well,

let's do this. Back in September 2011, you said at some point you got to Rod's house, correct?

A Yes.

Q And at some point you said Tasha got to Rod's house, as well?

A Yes.

Q What time was that?

A I don't know what time she got there.

Q Okay. You said at some point Tasha began explaining some details about what was going on?

A Yes.

Q Who all was in the room with you?

A Just me and Tasha.

Q Rod wasn't home then?

A Who?

Q Rod wasn't home then?

A No.

Q Just you and Tasha?

A Just me and Tasha.

Q Nobody else was in the room?

A Wasn't nobody else.

Q Was Van gone?

A Van was gone.

Q Danikwa was there?

A I believe so.

Q Did she hear this conversation?
A I don't know.
Q What room were y'all in?
A In their room.
Q Whose room?
A Rod's room, that's the bedroom.
Q Okay. Where was at?
A I don't even remember being there.
Q Okay. Where was at?
A I don't know, somewhere in the house.
Q But you said Tasha told you some details about what was going on?
A Yes.
Q So if Tasha said she didn't tell you that, who's lying?
MS. WEISS: Objection, Your Honor, pitting the witnesses.
THE COURT: Sustained, counsel. Pitting the witness, you can't do that.
Q You also -- anywhere in your statement here you never mentioned anything about Rod calling you on the phone and giving you details about this robbery, correct?
A You're saying in my statement?

Q Yes. In your statement of September 15, 2011, when you swore to tell the truth, nowhere in that statement did you say anything about Rod calling you on the phone giving you details about the robbery?

A I don't remember that.

Q Okay. Do you want to take a look at your statement to see if that refreshes your memory?

A Yes. Point it out. I can't look through it.

Q Is there anywhere in there that you mention Rod Cook calling you on the phone and giving you details about a robbery?

A And your question was, again?

Q Is there anywhere in that statement you said Rod Cook called you on the phone and told you details about a robbery?

A I say right here that he explained to me, but I ain't -- I'm reading it now. I didn't say he called where he explained to me about the robbery.

Q So nowhere in that statement do you mention him calling you on the phone and explaining this robbery to you?

A No.

Q But now you claim he called you on the

phone and explained it --

A Yes.

Q -- explained the robbery to you? That was that first call?

A No.

Q When was it, then?

A It was like later on, like when I got to his house, he called.

Q What time would that have been?

A Probably, I don't know, whenever I got to his house.

Q Around about 6:00?

A No, I didn't get there around no 6:00.

Q What time you got there?

A I don't know. It was in the afternoon.

Q Okay. You don't know what time it was?

A No, not as I remember.

Q The first call you had with Rod Cook here only lasted one minute, correct? The first time you talked to Mr. Cook was at 1:10, correct?

A Yes, I guess so.

Q The first time you talked to him that day was at 1:00 in the afternoon. And that phone call only lasted for how long?

A A minute.

Q One minute. So he couldn't explain to you a robbery in one minute. That's all y'all stayed on the phone for?

A Huh?

Q All y'all stayed on the phone for, according to these records, was one minute?

A Yes.

Q Okay.

A I guess so.

Q And basically in this statement, you say that Tasha explained to you everything that's going on about this robbery, correct?

A She has, yes.

Q She explained to you this stuff in the car?

MS. WEISS: Objection, Your Honor, hearsay.

THE COURT: He's talking about his statement. I think he can ask about his statement.

Q In your statement, you're saying that Tasha explained to you about the robbery on the way to the McDonald's that night, correct? Page two of your statement, if you want to refresh your memory there.

A Yes, it says exactly what I said that Rod

said. Tasha would explain to me and give me more details -- would give me more details like --

MS. WEISS: Objection, Your Honor. May we approach?

THE COURT: Yes, ma'am.

Q Let's do this, Meon. I'm not asking you what Tasha told you. In your statement back on September 15, 2011, you basically told law enforcement that Tasha instructed you how to conduct this armed robbery?

A Yes.

Q Basically, Tasha was giving you instructions at Rod's house and in the car going to McDonald's. That was your version of what happened back in 2011?

A Yes.

Q When you wrote this statement in 2011, when you swore to tell the truth, you said that it was Tucker who shot Mr. Jennings?

THE COURT: You have to answer verbally, sir.

A Yes.

Q And that was a lie?

A Yes, that was a lie.

Q You said that it was Tucker whose back Mr.

Jennings was on -- I'm sorry, you said that Mr. Jennings was on Tucker's back?

A Yes.

Q And that was a lie?

A Yes.

Q You said you were standing right in front of them while they were fighting?

A Yes.

Q And that was a lie?

A Yes.

Q You said you saw Mr. Jennings let go of Tucker after the shooting, and that was a lie?

A After the shooting?

Q Yes.

A Yes.

Q And that was a lie?

THE COURT: Please answer verbally, sir, so she can record your response.

A Yes.

Q You said when you got back in the car that Tucker had the gun?

A Yes.

Q And that was a lie?

A Yes.

Q You said that Tucker threw you the gun

when y'all got in the car?

A Yes.

Q And that was a lie?

A Yes.

Q You said that the gun was in Tucker's hand when it went off, and that was a lie?

A Yes.

Q You said you saw Tucker shoot Mr. Jennings?

A Yes.

Q And that was a lie?

A Yes.

Q You said the reason why you were writing the statement was that you felt sorry for Mr. Jennings' family?

A Yes.

Q Did you feel for Mr. Jennings' family when you shot him in the parking lot?

A Yes. In a sense, yes, I felt bad for them.

Q Why didn't you give a statement then?

A Why I didn't give a statement then?

Q You talked to law enforcement on October 13, 2010, and you didn't give a statement, did you?

A No.

Q You were at Batesburg-Leesville jail for two days, correct, before you got to Lexington?

A Yes.

Q You weren't allowed to talk to anybody on the phone?

A Nobody.

Q You weren't allowed to talk to Mr. Rood, your mother, nobody?

A Nobody.

Q They kept you separate from anybody else?

A Yes.

Q Nobody had a chance to influence you during that time you were at the Batesburg jail?

A I was around Tasha and Angelo.

Q They had you in the same cell as Tasha and Angelo?

A No, it's small. Like Tasha was next door. Angelo was right in front of me.

Q They had everybody in separate cells?

A Yes.

Q Did you contact any law enforcement and say, "Hey, I want to write a statement and tell y'all what happened. I feel sorry about what happened"?

A No.

Q The first time you wrote a statement for law enforcement was nearly one year after this incident occurred?

A Yes.

Q You were arrested on October 13, 2010, correct?

A Yes.

Q And you didn't write this statement until September 15, 2011?

A Yes.

Q And you admit when you wrote this statement, it's full of lies?

A Not full of lies.

Q What do you say is full of lies? How many lies have to be before it's full of lies?

A I mean, some of it's the truth, but it's a lot of lies in it.

Q Lot of lies in it. When did you get an attorney assigned to you in this case, do you remember?

A What did I give my attorney?

Q When did you get an attorney in this case?

A What did I give her?

Q When did you get that attorney?

A I don't really remember.

Q But you got an attorney assigned to your case?

A Yes.

Q You went over the evidence in your case with your attorney?

A No, not that I can remember.

MS. WEISS: Objection, Your Honor. He's coming into attorney-client privilege.

MR. O'NEILL: I'm not asking for the conversations they had, Your Honor. It goes to his bias.

THE COURT: Well, you're going to have to be more specific than that, then.

MR. O'NEILL: Okay.

THE COURT: You can't ask him about conversations he had with his attorney.

Q You reviewed the evidence in your case, correct?

A Where, in my motion?

Q Yes, in what you call your motion.

A I reviewed it myself.

Q Yes, yourself. You looked over the police reports, the witness statements, that sort of thing?

A Yes.

Q And you were looking over these witness

reports, these people's statements, up until you wrote this statement in 2011. You had all that information when you wrote the statement in 2011?

A Yes.

Q You had all the police reports, all the witnesses' statements, all those sort of things, correct?

A No, not from this.

Q I'm not talking about right now.

COURT REPORTER: Lean forward so we can hear you.

A Huh?

Q I'm not talking about right now. I'm talking about back in 2011.

A In 2011?

Q You reviewed all that stuff back in 2011?

A Yes.

Q So you knew in 2011 that the police had found gunshot residue on your clothes?

MS. WEISS: Objection, Your Honor.

THE COURT: Sustained, counsel.

Q Did you --

THE COURT: Approach just a minute.

Mr. Foreman, ladies and gentlemen of the jury panel, there's a matter that I need to take up

with counsel at this time out of your presence. If you'll retire to the jury room for a brief time, please. This will be pretty brief.

(Jury out at 1:16 p.m.)

THE COURT: All right, let's go on the record with this. I'm not comfortable carrying on this conversation in front of the jury or even at the bench because it go so prolonged.

My concern is the objection is made to being able to ask this witness about the gunshot residue test and that sort of thing. But yet we don't have any gunshot residue test, and we don't have any expert testifying about the method used or the accuracy, no foundation laid whatsoever and no evidence of a gunshot residue test being performed or report issued.

We don't have any of that. So no foundation has been laid for it, and yet counsel is asking this witness if he's aware of the test or was made aware of the test before he gave the statement. And my concern is that no foundation has been laid for this test, the accuracy of it, etc.

You see my problem with this. And what counsel has attempted to do, then, is to get it all before the jury without any expert testifying,

without any kind of foundation whatsoever, without any indication whatsoever that this witness even knows what you're talking about.

And now counsel says in his argument at the bench that this witness would have seen it on his own, had it on his own, that's what he testified to before he even got an attorney, and it wouldn't be part of the conversation he had with an attorney.

There's no evidence of that. You didn't ask him that. To the contrary, counsel was asking him when he got an attorney and did he go over this with an attorney, and the discovery. All that would indicate this was done after the attorney was appointed, not beforehand, or something he had in his possession and went over or understood.

Those are problems I've got with this, being able to ask him point-blank. I think you have a right to question him concerning his motivation or bias in making the statement that he made when he made it. But I have other problems with simply being able to get that before the jury, something about a gunshot residue kit, without ever laying any foundation.

MR. O'NEILL: Actually, Your Honor, to put my position on the record so it's clear, what I

asked him was when did he get an attorney. He was arrested October 13, 2010. I asked him when he got an attorney.

He said he didn't remember. I asked him did he review discovery in this case. He said yes. He referred to it as his motion. I then asked him, "Are you familiar" --

THE COURT: Well, you asked him essentially did he go over that with his attorney -- not in those words, but that was the implication of what you were asking, "Once you got an attorney, you went over this with him?" the discovery.

MR. O'NEILL: Yes, Your Honor. And he said --

THE COURT: Or her, as the case may be.

MR. O'NEILL: Right.

THE COURT: But that was the implication from it.

MR. O'NEILL: And, Your Honor, I was only saying this to make sure he had the discovery. Then he said at that point he went over the discovery on his own. He had it on his own in 2011.

THE COURT: I don't remember him saying that.

MR. O'NEILL: I specifically asked him did

he have it on his own in 2011. He said he didn't have it now. And I said, "Did you have it in 2011?" And he said yes.

THE COURT: Yes, but how did he get it? Did he go over it with his attorney? Come on.

MR. O'NEILL: I just want to let --

THE COURT: Don't try to mislead everything. He didn't testify to that. You asked him if he had his discovery. You didn't say, "Did your attorney go over the discovery with you?" or "When did he go over it with you?" or "When did you have an attorney?" or "Did you have the discovery and go over it yourself and understand it back when you got it?"

You didn't do any of that. You said, "Did you have discovery?" "Well, I ain't got it today." "But did you have discovery?" "Yes." That doesn't mean he didn't have it and go over with his attorney.

MR. O'NEILL: Yes, Your Honor. And I wasn't asking him about whether or not he went over it. The point of my question --

THE COURT: No, you're saying that means he did it himself, without an attorney.

MR. O'NEILL: No, Your Honor --

THE COURT: There's nothing in here that indicates that.

MR. O'NEILL: That's not what I'm saying, Your Honor. What I'm saying is that I asked him did he go over it with his attorney. I'm not concerned about whether or not -- I'm not concerned with the discussion with his attorney. I'm concerned about whether he had his discovery.

He said he didn't go over it with his attorney. He said he went over it himself. I'm assuming what he means is that his attorney dropped a copy of his discovery, and while he's at the jail, he's studying his discovery.

THE COURT: Well, you ask him that, and let's see what his answer is. But you absolutely didn't ask him that. And that's not the way the questioning and answering went. But I'll let you ask him now, and we'll find out.

IN-CAMERA EXAMINATION

BY MR. O'NEILL:

Q Mr. Miller, did you go over your discovery at the jail?

A Yes.

Q By yourself?

A Yes, I did.

Q You had a copy of your discovery in your cell at the jail?

A Yes.

Q In 2011?

A Yes.

MS. WEISS: Your Honor, if I may?

THE COURT: Wait one minute. I want to finish up this.

MS. WEISS: Okay.

THE COURT: You need to find out when in 2011. 2011 is a long year.

MR. O'NEILL: Yes, Your Honor. And I asked him specifically what I'm talking about that's at issue here. May I approach the witness.

THE COURT: What are you going to show him?

MR. O'NEILL: I want to show him the report I was referring about to see whether he -- and ask the question whether he ever saw it or not.

THE COURT: I'm still dealing with a timeline. He gave a statement at a certain time.

MR. O'NEILL: Yes, Your Honor.

THE COURT: And the question is when he had the discovery. You haven't cleared that up.

MR. O'NEILL: Okay.

THE COURT: 2011, that's 12 months.

MR. O'NEILL: Yes, sir.

Q Mr. Miller, when did you first get your discovery?

A When I first got my discovery was in like a couple of months after everything happened.

Q What month did everything happen?

A October.

Q And you got your discovery a couple of months after October?

A Uh-huh.

Q October of what year?

A 2010.

Q 2010. So you got your discovery a couple of months after October 2010?

A Yes.

Q You made the statement on September 15, 2011?

A Yes.

Q Did you have your discovery before you gave the statement in 2011? Let's do this, Mr. Miller, because I don't think you understood what I just said. You got arrested October 13, 2010, correct?

A Yes.

Q How long after you got arrested did you get your discovery?

A Probably like four or five months.

Q Approximately what month would that have been?

A I don't know. I can't remember.

Q What's our or five months after October 2010?

A Like January or February.

Q So you would have had your discovery in January or February 2011?

A Yes.

Q You gave a statement in September of 2011, correct?

A Yes. ---

Q September 15, 2011?

A Yes.

Q That was about 11 months after you had been arrested?

A Yes.

Q You got your discovery, you say, four to five months after you got arrested?

A Yes.

Q Okay. So you had your discovery before you gave your statement September 15, 2011? I'm

sorry, you've got to answer so the Court Reporter can take it down.

A Yes.

Q Okay.

THE COURT: Sir, she can't record a nod. You've got to say something so she can record it. So please answer verbally, okay? Don't shake your head. Just answer verbally.

MR. MILLER: Yes, sir.

THE COURT: Okay.

All right.

MR. O'NEILL: Nothing further.

THE COURT: All right, counsel?

MS. WEISS: Thank you, Your Honor -- the defendant's attorney. She was not appointed until April of 2011 when she got appointed to this case. Discovery was sent to her -- initial discovery was sent to her in April of 2011.

Initial discovery was pretty much what is in this notebook, would be what she had gotten. At that point, the only GSR that had come back was GSR of the hand that said that there was no GSR on anybody's hands. So that was a wash at that point.

There was a later submission where after our office had gotten the tape and was reviewing it

that we had said, "What about the clothing?" and because sometimes GSR can be found where he placed a gun in the waistband. So we said, "What about the shirt?" The shirt was submitted later. And I don't have that in front of me.

MR. O'NEILL: September 9, 2011.

MS. WEISS: So the report finished at SLED on September 9, 2011. According to -- and at that point, then either we have to -- it goes to Lt. Clare, and then he has to send it to us, and then we have to send it out as discovery.

So the idea that that happened within two days, that Mr. Miller got a copy of it, sat down and discussed it with his attorney and knew what was going on --

MR. O'NEILL: Your Honor, it's not two days' difference. The statement he gave was September 15, 2011.

MS. WEISS: I'm sorry, six days. And, Judge, I can --

THE COURT: You've totally misled the Court, because you are trying to indicate that he had it in January or February of 2011, and the report didn't even come out until September of 2011. How in the world could he have been looking at

discovery in January of February 2011 when it didn't even come out till September 2011?

MR. O'NEILL: Your Honor, I never intimated to the Court that he had it in January. My point was Mr. Cook had a bond --

THE COURT: Yes, but you just asked him that.

MR. O'NEILL: I just asked him when -- Your Honor, I asked him when he got his -- there was a set of discovery that he received. Mr. Cook had a bond reduction motion in September.

THE COURT: That kit was not in there. You knew that when you asked him the question, counsel.

MR. O'NEILL: Your Honor, what I'm saying is --

THE COURT: You know when it came out. You've looked it.

MR. O'NEILL: Your Honor, that's why nobody came up, because I know they gave it to me earlier than what they claim that -- the claim is that it was long delayed, this report specifically, and nobody gave it to us.

Mr. Cook had a bond reduction motion in September of 2011. Assistant Attorney General

Stumbo handed me this report prior to that bond reduction motion. He handed me this report in September 2011. I was told he did the same thing for Mr. Miller's attorney, that once he got this report, he handed it directly to them.

All I know is that this report was September 19th, and Mr. Miller did not give a statement with his attorney six days later, after this report comes out. It's my inclination that the reason why he gave this statement here is because he got the report six days later, and now he decides to go down to the Lexington County Sheriff's Office and write a statement.

There's no other explanation why he sat for a whole year, didn't give a statement until this report comes out. He gave a statement six days later, and I got the report handed to me in September 2011.

THE COURT: All right, if you want him questions, then ask him in the right way. You have totally misled the Court and the jury with regard to this report, because you've intimated that he had had it since January or February of 2011 when it didn't even come out till September, is when the test results were received by the State, and that

they would have disseminated it whenever they disseminated it, if they disseminated it during that six days. But you've totally misled the Court.

MR. O'NEILL: Your Honor --

THE COURT: You've totally misled the witness in your questioning of him by asking if he had the discovery when you knew he couldn't have this discovery because it didn't come out till September.

MR. O'NEILL: Your Honor, I was not intimating that he had -- and generally my own theory is that he got it that day, that he got it in September when it came out. And that's when he decided to make a statement, not that he had it in January, sat on it for nine months, and then decided to give a statement. The whole point of me asking him whether or not he had it --

THE COURT: I understand that. But you had the report. You know it's dated September. You know that's when the statement was. So don't ask him if he had it in January or February and mislead the Court and the record here when you know that's not true.

MR. O'NEILL: I never asked him whether he had it in January.

THE COURT: Yes, you did. You said, "You had that report in January or February, then?"

MR. O'NEILL: No, no. I asked did he have his -- he said he got his discovery in January or February. I didn't ask him if he --

THE COURT: Well, you knew this wasn't part of the discovery then. This was after discovery. It came out in September.

MR. O'NEILL: Your Honor, you asked me to set the foundation of when he got his discovery. I was trying to set the foundation of when he got his discovery.

THE COURT: It doesn't matter when he got the earlier discovery if this was not provided in discovery or the test was not done till September. You're asking about a gunshot residue kit and him making this statement after that report came out and when he got it after that, shortly after that.

That's what you're asking. But you didn't ask him all of that stuff. You asked him, "Well, you made a statement. You got arrested. When did you get your discovery?" "I got discovery about three or four months later." "That would have been January or February?" "Yes, sir." "So you had that discovery when you made your statement?"

That was not part of discovery. You know it was not part of discovery that he got if he got it in January or February. You knew that, because you got a copy of it in your discovery. You know that.

Why did we go through all this riggamarole asking him about getting discovery back in January or February when that wasn't even part of the discovery back then if you're trying to show bias and prejudice in making that statement after he got the report?

MR. O'NEILL: Well, I'm just trying to lay the foundation that Your Honor would require. I wasn't trying to mislead the Court that he got it in January. I wasn't trying to intimate that he got it in January. I'm trying to lay the foundation.

THE COURT: You intimated that he looked at it on his own. His attorney, he had an attorney in September of 2011, whenever he read it. He had an attorney. The attorney got it.

MR. O'NEILL: Yes, Your Honor. That's why I want to know whether he looked at it. I wasn't concerned about whether him and his attorney looked at it.

THE COURT: "You had it in your cell

before you ever got an attorney, and you looked at it yourself?" That's what you were asking him. I'm saying that's not --

MR. O'NEILL: I apologize if that's the way the Court took it.

THE COURT: That's what you asked him.

MR. O'NEILL: No, Your Honor, I never asked him, because I knew he had --

THE COURT: That's what you told the Court. We're getting more bogged in this, counsel. All of that is totally misleading. All of it is totally unnecessary to go into all of getting discovery months earlier than when this report came out.

You're asking him about this report -- it came out in September -- not something that was in discovery, the first discovery, provided months earlier. You're talking about this one.

MR. O'NEILL: Yes, Your Honor. I was just trying to lay the foundation that I thought the Court wanted. I wasn't trying to mislead the Court.

THE COURT: You're misleading the Court when you intimate that this gunshot residue kit you asked him about was part of the discovery he got and looked at in his jail cell even before he got an

attorney. You're misleading the Court.

MR. O'NEILL: Your Honor, and I guess that's what -- I wasn't asking him did he look at discovery before he got an attorney. I was asking if he looked at discovery -- when I say "on your own," I mean not before he got an attorney but not sitting there with your attorney flipping through it.

THE COURT: What difference does it make if he got discovery January or February that did not include what you're asking him about, which didn't come out for months later. And then he could have only gotten it after he had an attorney and went over it with his attorney. Does it make a difference?

MR. O'NEILL: No, Your Honor. And I didn't mean to go that far. I only asked him because I thought that's the foundation you wanted me to lay.

THE COURT: That's no foundation at all. That report was not part of discovery that he might have had earlier than that. So that's misleading to indicate that he had that information beforehand, before it even came out.

All right, anything else from the State on

this?

MS. WEISS: No, Your Honor. But in talking with defense counsel for this defendant, we both agree that she did not go over this with her client prior to giving the statement. The GSR, she said she didn't have it prior to him giving a statement, and they didn't go over it.

I don't believe she could have. We have been trying to find a date when she got it. But I know the timeline of the way things work, if this wasn't even completed until September 9th.

MR. O'NEILL: Well, I do know I got it at Mr. Cook's bond setting in September 2011. That's when I -- David Stumbo of the Attorney General's Office handed it to me then.

MS. WEISS: What was the date of the bond hearing?

MR. O'NEILL: I don't have it in front of me. I know that's when he handed it to me, in September of 2011.

MS. WEISS: I'm not saying it wasn't September. I'm saying it wasn't within six days. I'm telling you as an officer of the Court, his attorney said she didn't have it prior to going and meeting with law enforcement and giving a statement.

I wasn't there, so I'm probably revealing attorney-client information, too. I don't think -- it went through different hands, granted -- Mr. Stumbo, and I was helping Mr. Stumbo back then, but I wasn't at everything. I wasn't doing discovery at the time. I can just tell you this report wasn't even finished till September 9th.

So the fact that it's been mentioned, I mean, it's true that it was on -- I mean, that there was gunshot residue on his shirt. But I think what he's trying to imply is that that's why he went and gave his statement. And that part just I don't believe to be true.

THE COURT: All right, why don't we do this? I'll make this suggestion, and then we'll talk about it, that he be allowed -- defense counsel be allowed to ask the witness if he was aware that there was gunshot residue that the police had -- that he had been informed, let me put it that way, that there was gunshot residue on his shirt prior to making that statement or not.

And that should clear it up, because I don't know how we're going to know. If it was sent to his attorney, his attorney says she didn't go over it with him until after he was taken in and

gave that statement. I have no idea. I don't even want to get into that.

But I think what I'll do is allow you to ask him. I think you're entitled to ask him and determine whether he had knowledge of that, the allegation that he had or report that he had gunshot residue on his clothing, that was found on his clothing, prior to making that statement.

I think you're entitled to do that. So I'll allow you to ask him that question. You're pretty much going to have to accept his answer unless you want to put in some other evidence. That's the way I see it, because it hasn't been made part of the record.

It hasn't been offered into evidence or anything. But I still think, nevertheless, that you're entitled to ask him about whether he had knowledge of that, which could have affected his decision on what to put in a statement.

MR. O'NEILL: And, Your Honor, just one more point of clarity. There was a prior gunshot residue test in November 2010 on his hands, which was negative.

THE COURT: Right.

MR. O'NEILL: Am I allowed to ask him was

he aware of those results, as well?

THE COURT: Yes, that's already come out into evidence. Somebody testified to that, one of the witnesses. One of the police officers I think testified.

MS. WEISS: Testified about the gunshot residue.

THE COURT: That there was no gunshot residue found on any of the three persons.

MS. WEISS: Right.

THE COURT: And that is to say people in the car, that they were tested. And there was no gunshot residue found on the hands of any of the three people in the car.

MR. O'NEILL: Okay, I just wanted to make sure.

THE COURT: I believe that's already come in, has it not?

MR. O'NEILL: I know that one officer testified that a GSR was done.

MS. WEISS: I don't know if the results have come in.

THE COURT: I thought he said it was negative as to the three people in the car.

MS. WEISS: Your Honor, I don't believe

that the results of the gunshot residue test came in. I'm consulting with Lt. Clare that he was asked on cross-examination who took the gunshot residue. And he responded that it was an officer from Lexington County that took it, but he didn't testify as to the results. And I don't believe that we have put in those results because we know that it would require a chain witness.

THE COURT: All right. Well, if he didn't testify to that, he didn't testify to that. I'm confused about it, I guess. Somehow I got the impression that it was negative as to all three of the persons in the car. That was not testified to.

MR. O'NEILL: Your Honor, I'll still just ask him was he aware of that test kit. If he says no, then he says no.

THE COURT: All right. I don't think they can stop you from asking was he aware that a gunshot residue test was done of all of the three witnesses.

MR. O'NEILL: Yes, Your Honor.

THE COURT: Of all the three people in the car. And he can say yes or no to that, and that's about as far as you can go with it, I guess. But then on the other, I think you would be allowed, if he was aware at the time he gave his statement, of

that, or had he been informed that there was gunshot residue on his shirt or on his clothing at the time he gave that statement.

MR. O'NEILL: Yes, Your Honor.

THE COURT: That's the only way I know around it, without referring to the kit itself or the test itself, since no foundation has been laid and it hasn't come in. How much longer do you think we're going to be?

MR. O'NEILL: Fifteen minutes.

THE COURT: All right, we understand each other?

MR. O'NEILL: Yes, sir.

THE COURT: All right, please bring the jury in.

(Jury in at 1:40 p.m.)

THE COURT: All right, counsel, please proceed.

EXAMINATION CONTINUED

BY MR. O'NEILL:

Q Meon, let's pick back up where we were. At some point in 2011, you had what we consider the discovery materials in your cell with you at the jail?

A Yes.

Q Did you ever have --

A Which motion, because I'm hearing y'all talk about two motions.

Q In general, at some point you had a copy of the police reports involved in your case in your cell in 2011?

A Yes.

Q Okay. Were you aware in 2010 that there was a gunshot residue examination done on your hands?

A Yes.

Q Were you aware of the results of that gunshot residue test done on your hands?

A On my hands?

Q On your hands. You were aware --

COURT REPORTER: Is that a yes or a no?

A Yes -- yes, ma'am. I'm sorry.

MR. O'NEILL: Beg the Court's indulgence, Your Honor. May we approach, Your Honor?

THE COURT: Yes, sir.

Q All right. So you were aware that the gunshot residue test on your hands was negative?

A Yes.

Q You knew that there was no gunshot residue on your hands?

A Yes.

Q In September of 2011, before you gave -- you gave a statement September 15, 2011, correct?

A Yes.

Q Before you gave your statement on September 15, 2011, were you aware that there was another gunshot residue test taken on your clothes?

A No.

Q You didn't know that before you gave your statement?

A No.

Q You actually said -- what's been marked as State's Exhibit Thirty-Six, you said this is not what you had on?

A I don't remember that shirt.

Q Your testimony is that this is not the shirt you had on?

A Not that shirt, I don't remember.

Q You have any idea where this shirt came from?

A No.

Q Any earthly idea?

MS. WEISS: Objection, Your Honor. It's been asked and answered. He doesn't remember that shirt.

THE COURT: He said no, counsel.

Q What about the white shirt? Do you have any idea where the white T-shirt came from?

A I thought I had on a Jordan's T-shirt up under there, but it could have been a plain white T-shirt.

Q On direct, you said this wasn't -- on direct, you said you didn't have a plain white T-shirt on either?

A Yes. I thought it would have been a Jordan. It could have been white, but I just remember I just thought I had a Jordan. I knew it was a white shirt, but I just thought it had a Jordan symbol on the front.

Q You didn't think this was a shirt you had on either?

A Huh-uh.

Q Okay.

A No.

Q And what time of year was this, anyway? Do you remember October 13, 2010?

A Yes.

Q It was the fall of the year?

A Yes.

Q And this was late at night?

A Yes.
Q Mr. Miller, is your nickname Nino?
A Nino?
Q Yes, sir.
A Yes, that's what Rod calls me.
Q That's your nickname?
A No, but that's what he calls me.
Q That's what he calls you?
A Yes.
Q Do you answer to that when he calls you that?
A Only him.
Q Only to him?
A Yes.
Q What does three days one mean?
A I don't know.
Q Okay. At some point in time, were you -- let's do this. In 2012, were you and Mr. Cook on the same floor at the Lexington County Jail?
A Yes.
Q In 2012, did you send Mr. Cook a note?
A Not that I remember. I don't remember seeing him.
Q Okay. But you know what a kite is?
A Yes.

Q Okay. Do you remember sending him a kite stating that --

MS. WEISS: Objection, Your Honor.

THE COURT: Ask him to identify it first, counsel.

Q I'll get him just to identify it.

THE COURT: All right.

MR. O'NEILL: May I approach, Your Honor?

MS. WEISS: Your Honor, may I see what the defense is talking about?

THE COURT: Sure.

Show that to opposing counsel.

MS. WEISS: Beg the Court's indulgence. It's kind of hard to read.

MR. O'NEILL: Permission to approach, Your Honor?

THE COURT: Yes.

A Yes, I remember that.

Q You remember that kite?

THE COURT: Sir, please answer verbally. I know you --

A Yes, I remember that.

Q That was 2012, correct?

A Yes.

Q You remember saying that you lied on Rod

Cook in that kite?

A Yes.

Q You said, "I lied on you"?

A Yes.

Q And you said, "I'm going to change that as soon as possible"?

A Yes. There's a reason why I said that.

Q Do you remember writing Rod Cook a letter on December 2, 2010?

A No.

Q Do you remember sending a letter to Rod Cook's mother for Rod Cook's mother to send to him dated December 2, 2010?

A Yes.

Q Okay. Do you remember saying --

MS. WEISS: Objection, Your Honor. It was the defense talking about --

Q Meon, without going into --

THE COURT: Counsel, approach just a minute.

Q And, Meon, without going into the substance of what the letter says, essentially you're discussing how this drug deal went bad?

A Yes.

Q And that was your letter, December 2,

2010? You sent that to Rod's mother for her to send it to him?

A Yes.

Q You -- back in 2012, were you cellmates with a gentleman by the name of Genesis Pearson?

A Yes.

Q And you had discussions with Mr. Pearson about getting a deal in this case?

A No.

Q Did you ever intimate that you had proof that you were getting a deal in this case?

A No.

Q Did you ever discuss with him that you had e-mails that you were getting a deal in this case?

A No.

MS. WEISS: Objection, Your Honor. This has been asked and answered.

THE COURT: I'll give a little leeway on cross. Go ahead.

Q You didn't ever mention to Genesis Pearson that you had e-mails from the State that indicated you were getting a deal in this case?

A No.

Q Mr. Miller, you indicated that you know nobody in Batesburg?

A No.
Q You said you sold drugs, correct?
A Yes.
Q You said you sold them in Ridgeway?
A Ridgeway, Columbia.
Q And Columbia. But you don't know anybody in Batesburg?
A Not until I came to Lexington County Detention Center.
Q And when was that?
A October 13th.
Q So help me out a little bit here, Mr. Miller. We have some phone records here. Who is this Batesburg number right here that you called and you sent a text message to at 6:11 on October 13, 2010?
A I don't even know that person.
Q Okay. Who is this number that you sent a text message to at 6:28 from Batesburg? Who is that person?
A I don't even know that person.
Q Who is this person that you sent a text message to at 6:34 from Batesburg on October 13, 2010?
A I don't even know that number.

Q Who is this person --

MS. WEISS: Objection, Your Honor. It's the same number. He's answered the question.

THE COURT: Overruled.

Q Who is this person that you sent a text message to at 6:43 to Batesburg on October 13, 2010?

A I don't remember. I don't know.

Q This is your text phone -- this is your cell phone number, 803-269-9028?

A Yes.

Q What is this text to a Batesburg number on October 13, 2010, at 6:46?

A I think that's the same number.

Q What's the text message? Who did you send a text message to in Batesburg?

A I don't know.

Q Who were you sending a text message to in Batesburg right here around 6:48 on October 13, 2010?

A I don't know. I don't know nobody from Batesburg.

Q Who were you sending a text message to at 6:52 on October 13, 2010, from Batesburg?

A I don't know.

Q Who were you sending a text message to at

6:55 on October 13, 2010, from Batesburg?

A I don't know.

Q Who were you sending a text message to at 7:11 on October 13, 2010, from Batesburg?

A I don't know.

Q You have no idea how these 12 text messages to a Batesburg number got on your phone on the night of the shooting?

A No.

Q You said that you only shot at the ground in this case?

A Yes.

Q You said that Mr. Jennings was standing behind you?

A Yes.

Q And you shot at the ground?

A Yes.

Q Do you know where Mr. Jennings was shot at?

A No.

Q You said you thought you shot in the leg?

A Yes.

Q Did you ever find out you shot him somewhere different than the leg?

A Yes.

Q Where did you find out that you shot him at?

A At first, I heard it was his chest. Then I heard it was his stomach.

Q But you claim you only shot at the ground?

A I only shot at the ground.

Q How many times did you shot at the ground?

A Three times.

Q You said you had never done a robbery before? I think you said that on direct.

A Yes.

Q Never done a robbery at all?

A No.

Q You said you didn't know the Batesburg area?

A No.

Q You said you weren't familiar with the McDonald's?

A No, because I ain't never been to Batesburg.

Q Never been to Batesburg, not familiar with the McDonald's, didn't even know where the safe was in the McDonald's, correct? That's what you said?

A Didn't know what?

Q You didn't know where the safe, where the

money was in the McDonald's? You didn't even know where that was?

A No.

Q You were only 18 years old in 2010. And your testimony is that Rod Cook picked you to be the person to do a robbery?

A Yes.

Q When you wrote this statement back on September 15, 2011, you never mentioned anything about putting on any sort of mask or any sort of gloves, did you?

A I ain't put on no gloves.

Q Didn't put on any gloves, and you didn't mention anything in your statement in 2010 -- you didn't mention anything in your statement on September 15, 2011, about a mask, though, did you?

A I don't know. I don't think I did, but I know I did. I know I put a mask on my face. I know I put a bandanna on my face.

Q I'm asking you what you put in your statement. Did you put that in your statement?

A No.

Q You didn't put that in your statement, did you? You're currently charged with attempted armed robbery, conspiracy, and murder, correct?

A Yes.

MS. WEISS: Beg the Court's indulgence. My computer is acting up.

THE COURT: Yes, ma'am.

(Whereupon, the CD was published to the jury.)

Q Meon, I've got a few questions for you. Listening to that phone conversation, what does it mean to be goochy?

A It means like --

Q Talk into the mike.

A It means straight.

Q What does that mean?

A Like everything's okay.

Q At one point, Rod asked you, "How solid is the dude you're dealing with?" What does that mean?

MR. O'NEILL: Your Honor?

THE COURT: He can answer if he knows, counsel.

MR. O'NEILL: He can't testify to what my client meant by that.

THE COURT: He can answer what it meant to him. All right.

A It basically means he's like a real -- what we call it, is he -- I ain't really got a word

for it, but it's any type of person that will do something messed up, like tell or something like that.

Q So is he the type that's going to tell what happened?

A Yes, basically.

Q Your response on there is "I know. He's a homie."

A Yes.

Q So what did that mean? What did you mean by what you were telling Rod, in your answer to "How solid is he? How solid is Angelo?"

A I told him like he's a homie. He's my homie, you know. I know him, you know what I'm saying? And he's good.

Q What did that mean?

A It basically meant that I know he ain't going to say nothing.

Q Okay. Y'all kept talking about keeping a thousand. What does it mean to keep a thousand?

A Basically I'm saying that --

THE COURT: Can you pull that mike down just a little bit, too?

MR. MILLER: Can I get some tissue?

MS. WEISS: Yes.

Q So keeping a thousand means don't say nothing. And then you said, "Man, I don't even know you. I don't even know Tasha, keeping a thousand." So what does that mean?

A Basically, I knew what we came to do at Rod's store. And I was just like, "But I don't know you. I don't know Tasha. I just know" --

Q What does it mean to say that? Obviously, you do know him, you do know Tasha.

A Yes, I know. Basically, I'm saying "I ain't going to tell on y'all."

Q Okay. And then Rod tells you, "Keep it a hundred." What does that mean?

A The same thing as a thousand.

Q "Don't turn your word for nobody. Keep it a hundred."

A Basically saying as we was talking on that conversation when the drug deal gone bad, I just basically caught on to what he said, that everything just went wrong.

Q When the drug deal went bad? I'm sorry. We'll go back to that in a minute. Just tell me one more thing. He says, "I'm fucked up right now, but I'm going to come put some on your book, and we're going to hold you down." What does it mean to hold

you down, and what does it mean to put some on your book?

A It means like my money for commissary. And hold me down is basically like "I'd be here for you," like my mama, my family right there.

Q Okay. So he'd be there for your mama and your family. He'd take care of your stuff while you're in jail?

A Yes, ma'am.

Q That's what it means to hold you down?

A Yes, ma'am.

Q And you said, "Man, just come down here and visit me." He says, "I am. I am going to come visit you." Did he ever come visit you?

A No.

Q He said in there several times, "I love you. You are my brother." He says, "You know, I just want to be your big brother. I want you to be my brother." When you were 18 back in 2010, was that the kind of relationship you two had?

A Yes, that's how I felt.

Q And were you that close to your own brother or to Tremayne?

A Tremayne ain't never really been around like, but that's my family. So I love him, but I do

with my real brother. I do love my real brother.

Q Okay. But you were pretty much that close with Rod?

A Yes, ma'am.

Q Did you look up to Rod?

A Yes, ma'am.

Q What were you thinking that day, March 15, 2010, when you made that phone call? How were you feeling right then?

A March?

Q I'm sorry. October 15, 2010, when you made that phone call, what were you feeling, what were you thinking?

A I felt -- I just thinking I just disappointed him. I had just let him down.

Q You had just let Rod down?

A Yes, ma'am, and I messed up for myself.

Q So when you called, the first thing that Rod said was, "What was it, a dope deal went bad?" And then he gives you a lot more details about that dope deal. Did you ever tell him it was a dope deal went bad?

A I believe I did say it was a dope deal gone bad, knowing the circumstances.

Q Agreeing with him?

A Agreeing with him.

Q But did you tell -- that was the first phone call, right?

A Yes, ma'am.

Q And did you ever tell anybody else that it was a dope deal gone bad?

A No, ma'am.

Q Was it a dope deal gone bad?

A No, ma'am.

Q Were there any drugs there at all?

A No, ma'am.

Q Do you deal drugs in Batesburg?

A No, ma'am, I never in Batesburg dealed in drugs.

Q Did you know there was no camera pointed on the trash can?

A No, ma'am, I didn't know that.

Q Didn't that till you heard that on the conversation?

A Yes, I heard that.

Q Did you know the trash can is where people hang out to deal drugs?

A No, ma'am.

Q Did you hear that on the conversation?

A Yes, ma'am.

Q Rod tells you, "I'm going to ride with you." What does that mean?

A It's another thing for pointing me down.

Q Okay. And he says at one point, "The truth is going to come out. You will tell them it was only you." Who was in that trash can? It was --

A Me and Angelo.

Q -- you and Angelo. So even being out there wasn't only you. But he says he's not mad at you. Why would he be mad at you?

MR. O'NEILL: Objection. This clearly calls for speculation.

THE COURT: Overruled. He may answer if he knows.

Q Why do you think he would be mad at you?

A Probably because we ain't followed through with the robbery.

Q Where is Tremayne now?

A He's in prison.

Q Okay. So when he said he was talking to Tremayne, was Tremayne in prison then, too?

A Yes, ma'am.

Q Did you know what he meant by "I'm talking to Tremayne, and he said he's talked to everybody.

They're going to make sure you are straight"?

A No, ma'am.

Q When you were on the way to Batesburg, did you try to get in touch with Rod? Do you remember?

A I think I probably called him, or we texted, or something. I don't know.

Q How old are you now, Meon?

A I'm 20.

Q And you said on that phone, he told you to keep a thousand, so don't tell anybody. And then he also said, "All right, you've got it. Go tell them Tasha had nothing to do with this. It was only you, drug deal gone bad," and he gave you all those details. Did you ever go and tell anybody that?

A No, ma'am.

Q Was that the truth?

A No, ma'am.

Q Did you eventually talk to law enforcement about this case?

A Yes.

Q Did you talk to an investigator?

A Not telling them it was a drug deal gone bad.

Q No, no, no. Did you eventually talk to an investigator?

A Yes, ma'am.
Q And was that with your attorney?
A Yes, ma'am.
Q When you did that, did you tell him the truth?
A No, ma'am.
Q No. What was the main part of that statement to the investigator that was not true?
A I put Angelo in my shoes.
Q You put Angelo in your shoes. So in that statement, who did you say shot Willie Jennings?
A I said Angelo did.
Q And who really shot Willie Jennings?
A I did.
Q But as far as everything else, everything that you told this jury today, is that the truth?
A That's the whole truth.
Q And today at 20 years old, what are your feelings? How do you feel about this case? Would you have gone back out there today?
A I wish I can just -- I would have never even been there, that it would never even have happened. I just feel so sorry. I'm just saying I didn't mean to do it.
Q And you still care about Rod Cook? He's

still your cousin. Are you afraid of disappointing Rod Cook today?

A To tell the truth, I'm going to tell the truth.

MS. WEISS: Thank you, Your Honor. No further questions at this time.

Please answer any questions Mr. O'Neill has for you.

MR. O'NEILL: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. O'NEILL:

Q Mr. Miller, you gave a written statement to Lexington County Sheriff's Office -- you gave a statement to Lexington County Sheriff's Department back on September 15, 2011. Do you remember that?

A Yes.

Q And when you gave that statement, you swore that the statement was the truth, correct?

A Yes, at the time I did.

Q Just like you swore today you're going to tell the truth?

A I'm telling the truth today.

Q You swore you were going to tell the truth back in September of 2011, didn't you?

A Yes.
Q And you lied in that statement?
A I lied because I was scared.
Q Okay. But you lied?
A Yes.
Q Who was there with you --
A Who was there with me?
Q -- when you made that statement?
A My lawyer.
Q Was Rod Cook there with you when you made that statement?
A No.
Q Just your lawyer?
A Just my lawyer.
Q I'm going to show you what's been marked as Defense Exhibit Number One. Do you recognize what that is?
A It's my statement.
Q How many pages is it?
A I don't know how many pages it is.
Q Take a look at it and see how many pages it is.
A Four.
Q Whose signature is at the bottom of that statement?

A Mine.

MR. O'NEILL: Your Honor, at this time I'd move into evidence Defense Exhibit Number One.

MS. WEISS: Objection.

THE COURT: Counsel, approach.

Q Meon, in that statement, you swore that you were going to tell the truth, correct?

A Yes.

Q You said that you swore that the facts contained in that statement were true and correct to the best of your knowledge. That's what you did, correct?

A Correct.

Q In that statement that you gave to the police officer where you say you're telling the truth, you indicated what time you talked with Rod Cook that morning on October 13, 2010, correct?

A Say it again. I didn't hear you.

Q You told them what time you claim you spoke with Rod that morning on October 13, 2010, correct?

A Yes.

Q You told them you talked to Rod at nine or ten in the morning. Is that what you told them?

A Yes.

Q And these are your phone records, correct? Your phone number was 269-9028, correct?

A Yes.

Q Is there any phone calls from either your phone or from Rod's number that are around 9:00 or 10:00 in the morning?

A No.

Q So when you say you talked to Rod Cook at 9:00 or 10:00 in the morning when he called you, that was a lie?

A The reason why I said it was at 9:00 or 10:00 in the morning was because that's what I thought.

Q It's a simple question. Was that true? Did he call you at 9:00 or 10:00 in the morning?

A No.

Q So if it's not true, it's a lie?

A I guess I didn't talk to him at that time.

Q So it's a lie?

A Yes.

Q Then you said that he called you right after, a few minutes after 9:00 or 10:00 in the morning, correct?

A Yes.

Q And did he call you a few minutes after

9:00 or 10:00 in the morning?
A No.
Q So that was a lie?
A Yes.
Q Was it true?
A It wasn't true.
Q So it was a lie?
A Yes.
Q That's two lies we've got now. And it's your testimony that at some point you got -- well, let's do this. Back in September 2011, you said at some point you got to Rod's house, correct?
A Yes.
Q And at some point you said Tasha got to Rod's house, as well?
A Yes.
Q What time was that?
A I don't know what time she got there.
Q Okay. You said at some point Tasha began explaining some details about what was going on?
A Yes.
Q Who all was in the room with you?
A Just me and Tasha.
Q Rod wasn't home then?
A Who?

Q Rod wasn't home then?
A No.
Q Just you and Tasha?
A Just me and Tasha.
Q Nobody else was in the room?
A Wasn't nobody else.
Q Was Van gone?
A Van was gone.
Q Danikwa was there?
A I believe so.
Q Did she hear this conversation?
A I don't know.
Q What room were y'all in?
A In their room.
Q Whose room?
A Rod's room, that's the bedroom.
Q Okay. Where was Patience at?
A I don't even remember Patience being there.
Q Okay. Where was Danikwa at?
A I don't know, somewhere in the house.
Q But you said Tasha told you some details about what was going on?
A Yes.
Q So if Tasha said she didn't tell you that,

who's lying?

MS. WEISS: Objection, Your Honor, pitting the witnesses.

THE COURT: Sustained, counsel. Pitting the witness, you can't do that.

Q You also -- anywhere in your statement here you never mentioned anything about Rod calling you on the phone and giving you details about this robbery, correct?

A You're saying in my statement?

Q Yes. In your statement of September 15, 2011, when you swore to tell the truth, nowhere in that statement did you say anything about Rod calling you on the phone giving you details about the robbery?

A I don't remember that.

Q Okay. Do you want to take a look at your statement to see if that refreshes your memory?

A Yes. Point it out. I can't look through it.

Q Is there anywhere in there that you mention Rod Cook calling you on the phone and giving you details about a robbery?

A And your question was, again?

Q Is there anywhere in that statement you

said Rod Cook called you on the phone and told you details about a robbery?

A I say right here that he explained to me, but I ain't -- I'm reading it now. I didn't say he called where he explained to me about the robbery.

Q So nowhere in that statement do you mention him calling you on the phone and explaining this robbery to you?

A No.

Q But now you claim he called you on the phone and explained it --

A Yes.

Q -- explained the robbery to you? That was that first call?

A No.

Q When was it, then?

A It was like later on, like when I got to his house, he called.

Q What time would that have been?

A Probably, I don't know, whenever I got to his house.

Q Around about 6:00?

A No, I didn't get there around no 6:00.

Q What time you got there?

A I don't know. It was in the afternoon.

Q Okay. You don't know what time it was?
A No, not as I remember.
Q The first call you had with Rod Cook here only lasted one minute, correct? The first time you talked to Mr. Cook was at 1:10, correct?
A Yes, I guess so.
Q The first time you talked to him that day was at 1:00 in the afternoon. And that phone call only lasted for how long?
A A minute.
Q One minute. So he couldn't explain to you a robbery in one minute. That's all y'all stayed on the phone for?
A Huh?
Q All y'all stayed on the phone for, according to these records, was one minute?
A Yes.
Q Okay.
A I guess so.
Q And basically in this statement, you say that Tasha explained to you everything that's going on about this robbery, correct?
A She has, yes.
Q She explained to you this stuff in the car?

MS. WEISS: Objection, Your Honor, hearsay.

THE COURT: He's talking about his statement. I think he can ask about his statement.

Q In your statement, you're saying that Tasha explained to you about the robbery on the way to the McDonald's that night, correct? Page two of your statement, if you want to refresh your memory there.

A Yes, it says exactly what I said that Rod said. Tasha would explain to me and give me more details -- would give me more details like --

MS. WEISS: Objection, Your Honor. May we approach?

THE COURT: Yes, ma'am.

Q Let's do this, Meon. I'm not asking you what Tasha told you. In your statement back on September 15, 2011, you basically told law enforcement that Tasha instructed you how to conduct this armed robbery?

A Yes.

Q Basically, Tasha was giving you instructions at Rod's house and in the car going to McDonald's. That was your version of what happened back in 2011?

A Yes.

Q When you wrote this statement in 2011, when you swore to tell the truth, you said that it was Tucker who shot Mr. Jennings?

THE COURT: You have to answer verbally, sir.

A Yes.

Q And that was a lie?

A Yes, that was a lie.

Q You said that it was Tucker whose back Mr. Jennings was on -- I'm sorry, you said that Mr. Jennings was on Tucker's back?

A Yes.

Q And that was a lie?

A Yes.

Q You said you were standing right in front of them while they were fighting?

A Yes.

Q And that was a lie?

A Yes.

Q You said you saw Mr. Jennings let go of Tucker after the shooting, and that was a lie?

A After the shooting?

Q Yes.

A Yes.

Q And that was a lie?

THE COURT: Please answer verbally, sir, so she can record your response.

A Yes.

Q You said when you got back in the car that Tucker had the gun?

A Yes.

Q And that was a lie?

A Yes.

Q You said that Tucker threw you the gun when y'all got in the car?

A Yes.

Q And that was a lie?

A Yes.

Q You said that the gun was in Tucker's hand when it went off, and that was a lie?

A Yes.

Q You said you saw Tucker shoot Mr. Jennings?

A Yes.

Q And that was a lie?

A Yes.

Q You said the reason why you were writing the statement was that you felt sorry for Mr. Jennings' family?

A Yes.

Q Did you feel for Mr. Jennings' family when you shot him in the parking lot?

A Yes. In a sense, yes, I felt bad for them.

Q Why didn't you give a statement then?

A Why I didn't give a statement then?

Q You talked to law enforcement on October 13, 2010, and you didn't give a statement, did you?

A No.

Q You were at Batesburg-Leesville jail for two days, correct, before you got to Lexington?

A Yes.

Q You weren't allowed to talk to anybody on the phone?

A Nobody.

Q You weren't allowed to talk to Mr. Rood, your mother, nobody?

A Nobody.

Q They kept you separate from anybody else?

A Yes.

Q Nobody had a chance to influence you during that time you were at the Batesburg jail?

A I was around Tasha and Angelo.

Q They had you in the same cell as Tasha and

Angelo?

A No, it's small. Like Tasha was next door. Angelo was right in front of me.

Q They had everybody in separate cells?

A Yes.

Q Did you contact any law enforcement and say, "Hey, I want to write a statement and tell y'all what happened. I feel sorry about what happened"?

A No.

Q The first time you wrote a statement for law enforcement was nearly one year after this incident occurred?

A Yes.

Q You were arrested on October 13, 2010, correct?

A Yes.

Q And you didn't write this statement until September 15, 2011?

A Yes.

Q And you admit when you wrote this statement, it's full of lies?

A Not full of lies.

Q What do you say is full of lies? How many lies have to be before it's full of lies?

A I mean, some of it's the truth, but it's a lot of lies in it.

Q Lot of lies in it. When did you get an attorney assigned to you in this case, do you remember?

A What did I give my attorney?

Q When did you get an attorney in this case?

A What did I give her?

Q When did you get that attorney?

A I don't really remember.

Q But you got an attorney assigned to your case?

A Yes.

Q You went over the evidence in your case with your attorney?

A No, not that I can remember.

MS. WEISS: Objection, Your Honor. He's coming into attorney-client privilege.

MR. O'NEILL: I'm not asking for the conversations they had, Your Honor. It goes to his bias.

THE COURT: Well, you're going to have to be more specific than that, then.

MR. O'NEILL: Okay.

THE COURT: You can't ask him about

conversations he had with his attorney.

Q You reviewed the evidence in your case, correct?

A Where, in my motion?

Q Yes, in what you call your motion.

A I reviewed it myself.

Q Yes, yourself. You looked over the police reports, the witness statements, that sort of thing?

A Yes.

Q And you were looking over these witness reports, these people's statements, up until you wrote this statement in 2011. You had all that information when you wrote the statement in 2011?

A Yes.

Q You had all the police reports, all the witnesses' statements, all those sort of things, correct?

A No, not from this.

Q I'm not talking about right now.

COURT REPORTER: Lean forward so we can hear you.

A Huh?

Q I'm not talking about right now. I'm talking about back in 2011.

A In 2011?

Q You reviewed all that stuff back in 2011?
A Yes.
Q So you knew in 2011 that the police had found gunshot residue on your clothes?
MS. WEISS: Objection, Your Honor.
THE COURT: Sustained, counsel.
Q Did you --
THE COURT: Approach just a minute.
Mr. Foreman, ladies and gentlemen of the jury panel, there's a matter that I need to take up with counsel at this time out of your presence. If you'll retire to the jury room for a brief time, please. This will be pretty brief.
(Jury out at 1:16 p.m.)
THE COURT: All right, let's go on the record with this. I'm not comfortable carrying on this conversation in front of the jury or even at the bench because it go so prolonged.
My concern is the objection is made to being able to ask this witness about the gunshot residue test and that sort of thing. But yet we don't have any gunshot residue test, and we don't have any expert testifying about the method used or the accuracy of any of it. No foundation laid whatsoever and no evidence of a gunshot residue test