

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 14 2020

Appeal from Richland County

SC Court of Appeals

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE TYRONE HEATLEY, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-000165

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JANUARY 22-30, 2019 1

 PRE-TRIAL MOTIONS 13

JACKSON V. DENNO HEARING 122

 TESTIMONY

 WILLIAM GONZALEZ 123

 AUBREY TORRES 168

 ANDRE TYRONE HEATLEY 184

 COURT’S RULING 214

 MOTION TO QUASH INDICTMENT 217

 COURT’S RULING 232

 MOTION TO SUPPRESS DECEDENT’S STATEMENTS 233

 COURT’S RULING 241

 MOTION TO SUPPRESS PURSUANT TO FOURTH AMENDMENT 245

 TESTIMONY (CONTINUED)

 STEPHEN SCOTT FAUST 253

 COURT’S RULING 289

 OPENING STATEMENT BY MR. FYALL 302

 OPENING STATEMENT BY MR. O’NEIL 307

 TESTIMONY (CONTINUED)

 MOLLY NATIONS 314

MARY VEAL.....332

MAURICE MCKNIGHT.....337

BRIONNA APPLEBERRY.....348

PETE HOLLOWAY, III.....356

ANTHONY MCNEIL361

FRANKLIN RAINSFORD.....368

KAREN MILBRODT.....419

BECKY PARKER426

STEPHEN FAUST430

TIMOTHY LEE.....455

ARIEL EPPS.....490

AMY DURSO.....504

TREVOR HOLT531

ASHLEY GADSON.....539

MOTION TO EXCLUDE TESTIMONY544

COURT’S RULING553

TESTIMONY (CONTINUED)

 ASHLEY GADSON.....555

 BRITTANY CARROWAY.....563

 ANN NEELEY576

 HAROLD BOUKNIGHT605

 ANNA CAVNAGH.....623

 TRISHA ODOM.....646

RENO JORDAN	666
EDWARD ROGERS	686
SHANARD STOKES	690
JOE SMITH	700
KRISTIN POLIS	707
IVORY FLEMING	716
DESHA ANDERSON	748
WILLIAM GONZALEZ	787
DEVONTA SHUTTLES	908
AMANDA METZ	922
MEGAN FLETCHER	970
HUE C. TANG	992
JOHN BARRON	998
SCOTT MCDONALD	1028
MOTION FOR A DIRECTED VERDICT	1138
COURT'S RULING	1142
REQUEST TO CHARGE JURY ON ACCESSORY AFTER THE FACT	1148
COURT'S RULING	1152
TESTIMONY (CONTINUED)	
CYNTHIA ROACH	1080
AUBREY TORRES	1089
RENEWED MOTION FOR DIRECTED VERDICT	1155
CLOSING ARGUMENT BY MR. GOLDBERG	1155

CLOSING ARGUMENT BY MR. O'NEIL1202

JURY CHARGE1219

VERDICT1261

MOTION FOR A NEW TRIAL1266

COURT'S RULING1267

SENTENCING1274

STATE'S EXHIBIT NO. 1 (STATEMENT)1278

COURT'S EXHIBIT NO. 2 (WRITTEN MOTION)1282

COURT'S EXHIBIT NO. 3 (SEARCH WARRANT)1284

COURT'S EXHIBIT NOS. 8-11 (JURY NOTES)1290

INDICTMENTS1294

SENTENCE SHEETS1300

CERTIFICATE OF COUNSEL1302

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
) 2016-GS-40-06572
) 2016-GS-40-06573

3
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 Andre Tyrone Heatley, Jr.,)
 8 Defendant.)

9 January 22-30, 2019
 10 Columbia, South Carolina

11
 12 B E F O R E:

13 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
 14 jury.

15
 16 A P P E A R A N C E S:

17 DANIEL R. GOLDBERG, ASSISTANT SOLICITOR
 18 LAMAR J. FYALL, ASSISTANT SOLICITOR
 Attorneys for the Plaintiff

19 E. DEON O'NEIL, ESQ.
 20 KHALIL C. EADDY, ESQ.
 Attorneys for the Defendant

21
 22
 23
 24 DEBORAH M. McCURDY, RPR
 25 Official Court Reporter

INDEX OF WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WILLIAM GONZALEZ

Direct By Mr. Goldberg	123
Cross By Mr. O'Neil	143
Redirect By Mr. Goldberg	165

AUBREY TORRES

Direct By Mr. Goldberg	168
Cross By Mr. O'Neil	175

ANDRE TYRONE HEATLEY, JR.

Direct By Mr. O'Neil	184
Cross By Mr. Goldberg	195

STEPHEN SCOTT FAUST

Direct By Mr. Fyall	253
Cross By Mr. O'Neil	257

MOLLY NATIONS

Direct By Mr. Goldberg	314
Cross By Mr. O'Neil	326

MARY VEAL

Direct By Mr. Fyall	332
Cross By Mr. O'Neil	334

MAURICE MCKNIGHT

Direct By Mr. Goldberg	337
Cross By Mr. O'Neil	342
Redirect By Mr. Goldberg	346

BRIIONNA APPLEBERRY

1	Direct By Mr. Goldberg . . . . .	.348
2	PETE HOLLOWAY, III	
3	Direct By Mr. Fyall . . . . .	.356
4	Cross By Mr. O'Neil . . . . .	.359
5	ANTHONY MCNEIL	
6	Direct By Mr. Goldberg . . . . .	.361
7	Cross By Mr. O'Neil . . . . .	.364
8	FRANKLIN RAINSFORD	
9	Direct By Mr. Goldberg . . . . .	.368
10	Cross By Mr. O'Neil . . . . .	.398
11	Redirect By Mr. Goldberg . . . . .	.415
12	KAREN MILBRODT	
13	Direct By Mr. Fyall . . . . .	.419
14	Cross By Mr. O'Neil . . . . .	.422
15	BECKY PARKER	
16	Direct By Mr. Fyall . . . . .	.426
17	Cross By Mr. O'Neil . . . . .	.428
18	STEPHEN FAUST	
19	Direct By Mr. Goldberg . . . . .	.430
20	Cross By Mr. O'Neil . . . . .	.448
21	TIMOTHY LEE	
22	Direct By Mr. Fyall . . . . .	.455
23	Cross By Mr. O'Neil . . . . .	.479
24	Redirect By Mr. Fyall . . . . .	.487
25	Cross By Mr. O'Neil . . . . .	.488

1	ARIEL EPPS	
2	Direct By Mr. Fyall . . . . .	.490
3	Cross By Mr. O'Neil . . . . .	.496
4	Redirect By Mr. Fyall . . . . .	.499
5	AMY DURSO, M.D.	
6	Direct By Mr. Goldberg . . . . .	.504
7	Cross By Mr. O'Neil . . . . .	.523
8	Redirect By Mr. Goldberg . . . . .	.529
9	TREVOR HOLT	
10	Direct By Mr. Fyall . . . . .	.531
11	Cross By Mr. O'Neil . . . . .	.537
12	ASHLEY GADSON	
13	Direct By Mr. Fyall . . . . .	.539
14	Cross By Mr. O'Neil . . . . .	.540
15	Redirect By Mr. Fyall . . . . .	.543
16	Recross By Mr. O'Neil . . . . .	.543
17	ASHLEY GADSON	
18	Direct By Mr. Fyall . . . . .	.555
19	Cross By Mr. O'Neil . . . . .	.558
20	BRITTANY CARROWAY	
21	Direct By Mr. Goldberg . . . . .	.563
22	Cross By Mr. O'Neil . . . . .	.571
23	Redirect By Mr. Goldberg . . . . .	.574
24	ANN NEELEY	
25	Direct By Mr. Goldberg . . . . .	.576

1	Cross By Mr. O'Neil	583
2	Redirect By Mr. Goldberg	600
3	HAROLD BOUKNIGHT	
4	Direct By Mr. Fyall	605
5	Cross By Mr. O'Neil	618
6	Redirect By Mr. Fyall	620
7	Recross By Mr. O'Neil	620
8	ANNA CAVANAGH	
9	Direct By Mr. Goldberg	623
10	Cross By Mr. O'Neil	642
11	TRISHA ODOM	
12	Direct By Mr. Fyall	646
13	Cross By Mr. O'Neil	658
14	RENO JORDAN	
15	Direct By Mr. Goldberg	666
16	Cross By Mr. O'Neil	668
17	RENO JORDAN	
18	Direct By Mr. Goldberg	681
19	Cross By Mr. O'Neil	683
20	Redirect By Mr. Goldberg	685
21	EDWARD ROGERS	
22	Direct By Mr. Fyall	686
23	SHANARD STOKES	
24	Direct By Mr. Goldberg	690
25	Cross By Mr. O'Neil	696

1	JOE SMITH	
2	Direct By Mr. Goldberg	.700
3	Cross By Mr. O'Neil	.704
4	KRISTIN POLIS	
5	Direct By Mr. Goldberg	.707
6	Cross By Mr. O'Neil	.714
7	Redirect By Mr. Goldberg	.715
8	IVORY FLEMING	
9	Direct By Mr. Fyall	.716
10	Cross By Mr. O'Neil	.729
11	Redirect By Mr. Fyall	.735
12	DESHA ANDERSON	
13	Direct By Mr. Fyall	.748
14	Redirect By Mr. Fyall	.781
15	WILLIAM GONZALEZ	
16	Direct By Mr. Goldberg	.787
17	Cross By Mr. O'Neil	.859
18	Redirect By Mr. Goldberg	.904
19	DEVONTA SHUTTLES	
20	Direct By Mr. Goldberg	.908
21	Cross By Mr. O'Neil	.915
22	Redirect By Mr. Goldberg	.917
23	AMANDA METZ	
24	Direct By Mr. Goldberg	.922
25	Cross By Mr. O'Neil	.960

1	MEGAN FLETCHER	
2	Direct By Mr. Goldberg	970
3	Cross By Mr. O'Neil	984
4	Redirect By Mr. Goldberg	990
5	HUE C. TANG	
6	Direct By Mr. Fyall	992
7	JOHN BARRON	
8	Direct By Mr. Fyall	998
9	Cross By Mr. O'Neil	1014
10	Redirect By Mr. Fyall	1018
11	SCOTT MCDONALD	
12	Direct By Mr. Fyall	1028
13	Cross By Mr. O'Neil	1062
14	Redirect By Mr. Fyall	1077
15	CYNTHIA ROACH	
16	Direct By Mr. Goldberg	1080
17	AUBREY TORRES	
18	Direct By Mr. Goldberg	1089
19	Cross By Mr. O'Neil	1123
20	Redirect By Mr. Goldberg	1132
21	» » o < «	
22	Opening Statement by Mr. Fyall	302
23	Opening Statement by Mr. O'Neil	307
24	Closing Argument by Mr. Goldberg	1155
25	Closing Argument by Mr. O'Neil	1202

1	Jury Charge	1219
2	Verdict	1261
3	Sentencing	1274

STATE EXHIBITS

6	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
7	1	Statement	216	821
8	2 - 9	Photographs	375	375
9	10 - 14	Photographs	378	378
10	15	Photograph	382	382
11	17 - 47	Photographs	382	382
12	48 - 49	Photographs	392	392
13	50	Walmart Video	353	353
14	51 - 52	Fired Cartridge Casings	929	929
15	53 - 55	Maps	397	397
16	56	Cell Phone Flash Drive	420	420
17	57 - 62	Photographs	462	462
18	63 - 73	Photographs	463	463
19	74 - 78	Photographs	465	465

1	125		492	492
2		Bank Videos		
3	126		508	508
4		Diagram		
5	127 - 134		518	518
6		Photographs		
7	135 - 136		1088	1088
8		Video Footage of ATMs		
9	137		533	533
10		GSR Kit		
11	138		533	533
12		Projectiles and Bullet Fragments		
13	139		536	536
14		Fabric Swabs		
15	140		535	535
16		Swabs		
17	141		536	536
18		Firearms Disposition Report		
19	142		535	535
20		GSR Kit		
21	143 - 147		610	610
22		Photographs		
23	157 - 178		614	614
24		Photographs		
25	179 - 182		629	629
26		Photographs		
27	183 - 200		632	632
28		Photographs		
29	201 - 203		637	637
30		Photographs		
31	204 - 207		639	639
32		Photographs		
33	209		627	627
34		Bullet Fragment		

1	79 - 86		466	466
2		Photographs		
3	87 - 96		471	471
4		Photographs		
5	97 - 98		476	476
6		Photographs		
7	99		457	457
8		Photograph		
9	100 - 101		458	458
10		Photographs		
11	102		457	457
12		Photograph		
13	103 - 108		458	458
14		Photographs		
15	108		610	610
16		Photograph		
17	109		467	467
18		Black Nike Shoes		
19	110		474	474
20		Gun		
21	111		467	467
22		Red Nike Shoes		
23	112		469	469
24		Box of Clothes		
25	113		460	460
		Shoe Impression		
	114 - 116		428	428
		Photographs		
	117 - 123		471	471
		Photographs		
	124		492	492
		Bank Records		

1	210		639	639
2		Bullet Fragments		
3	212		688	688
4		Thumb Drive		
5	213		688	688
6		Pawn Shop Video		
7	214		695	695
8		Screenshot		
9	216 - 219		750	750
10		Text Messages		
11	220		796	796
12		Map		
13	221		842	842
14		Photograph		
15	222		846	846
16		Michael Kors Watch		
17	223		850	850
18		SHELL CASINGS, GUN BOX, AMMO		
19	224 - 235		849	849
20		Photographs		
21	236		834	834
22		Consent to Search		
23	237		834	834
24		Consent to Search		
25	238		957	957
		DNA Swab		
	239		994	994
		Pepper Spray		
	240		1034	1034
		PowerPoint		
	241		1032	1032
		Cell Phone		

1 242 1033 1033
 2 Cell Phone Dump on Disk

3 COURT EXHIBITS

4	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
5	1	Defendant's Request for Voir Dire	26	
6				
7	2	Motion	277	
8				
9	3	Search Warrant	277	
10	4	Jury Note	478	
11				
12	5	Death Scene Investigation Form	598	
13	6	Jury Charge	1237	
14				
15	7	Jury Note	1242	
16	8 AND 9	Jury Notes	1245	
17				
18	10 AND 11	Jury Notes	1258	
19				
20				
21				
22				
23				
24				
25				

1 JANUARY 22, 2019

2 (WHEREUPON, the proceedings began at
3 10:54 a.m.)

4 THE COURT: Call the case. We can just take
5 care of some housekeeping. You can go ahead and
6 call the case.

7 MR. FYALL: The State calls Andre Heatley, Jr.

8 MR. O'NEIL: I would like to wait for my
9 client to get here.

10 THE COURT: Is on the way up?

11 THE DEPUTY: He is on the way up.

12 (Defendant enters courtroom.)

13 MR. GOLDBERG: May it please the Court? The
14 State calls Andre Heatley, Indictment Numbers
15 2016-GS-40-6572 and 6573, one count of murder and
16 one count of armed robbery.

17 The State is ready to proceed.

18 THE COURT: Is there anything from the
19 Defense?

20 MR. O'NEIL: Thank you, Your Honor. May it
21 please the Court? We would have some pretrial
22 motions here, Your Honor. And I think our first
23 pretrial motion will be to quash the indictment.

24 THE COURT: Hold on one second. I guess from
25 a procedural or housekeeping standpoint, I was

1 thinking we would pick the jury first this morning,
2 and then maybe hear pretrial motions after that?

3 MR. O'NEIL: Yes, ma'am.

4 THE COURT: How long do you anticipate the
5 pretrial motions taking? I see you have about five
6 or six.

7 MR. O'NEIL: I think there is a couple that
8 require testimony. The Denno requires, of course,
9 testimony. And I think my motion to suppress the
10 file may require a short amount of testimony as
11 well. So I would anticipate two hours.

12 THE COURT: And then you all have a Jackson v.
13 Denno?

14 MR. GOLDBERG: Yes, ma'am.

15 THE COURT: That's it?

16 MR. GOLDBERG: Yes, ma'am.

17 MR. O'NEIL: And I was incorporating the Denno
18 in my 2-hour -- our 2-hour timeframe.

19 THE COURT: All right. And it is
20 11:00 o'clock now. What I would like to do,
21 because I think Mr. Truitt has a panel ready, is to
22 go ahead and pick the jury.

23 How long are you all anticipating this trial
24 taking?

25 MR. GOLDBERG: The length of the week, for

1 sure. Out of an abundance of caution, I would say
2 it is possible it could go into Monday. Obviously,
3 we are going to move as fast as we can, but just in
4 all candor, it is possible.

5 THE COURT: Well, because I asked them, I
6 don't know why y'all like to pick trials on the
7 short weeks, start trials, but whatever works. I'm
8 here next week. So I will have to -- I just need
9 to be able to tell the jury that there is a
10 possibility that this may go into the first of next
11 week and see if anyone has any conflicts with that.

12 Let's go ahead and -- and I think he is
13 ready -- let's go ahead and pick the jury this
14 morning. And then we can hear motions after that.
15 Then I'll have a better idea, once we pick the
16 jury, if we do pretrials this afternoon and then
17 just start fresh in the morning. You said it is
18 going take two hours. It will probably take
19 about -- I had planned on working until about 1:30
20 or so, I have to go to a doctor's appointment at
21 2:00, but I will be back. It shouldn't take more
22 than an hour. So, let's see how long it takes to
23 pick the jury, and maybe I will send them to lunch
24 and we'll keep working with the motions, and then I
25 can have them come back maybe at 3:00. And we can

1 go ahead and get started.

2 I'll try to move rapidly. I know I have been
3 accused of staying here late at night. I don't
4 think I will be able to this week. I have got some
5 other stuff. Well, I won't be able to go late,
6 late in the evening like I sometimes do. But we'll
7 try to move it as quick as possible. I'll try to
8 order lunch when needed just to move it along.

9 Any objections? I received voir dire from the
10 State. Their voir dire is the standard. I have
11 received voir dire from the Defense. Any
12 objection? A lot of it is covered in my standard
13 voir dire.

14 MR. FYALL: Number 9, Your Honor. The victim
15 lived at [REDACTED] Wilkinson Drive. Do you live in this
16 subdivision --

17 THE COURT REPORTER: I'm sorry, I can't hear
18 you.

19 MR. FYALL: I said, the victim lived at [REDACTED]
20 Wilkinson Drive. Do you live in this subdivision
21 or have any family or close friends... I'm not
22 sure how that is related to the case. They do ask
23 Your Honor to ask the jury do they know the victim
24 or familiar with her.

25 THE COURT: What is the name of the

1 subdivision?

2 MR. O'NEIL: That is kind of just my standard
3 language. I assume it is the subdivision in
4 general, just standard language that I use in all
5 my cases. I want to know whether or not they live
6 in the subdivision. Sometimes you live in a
7 subdivision and not realize you know somebody until
8 you --

9 THE COURT: Yes, but what is the name of the
10 subdivision?

11 MR. O'NEIL: I don't know the name of the
12 subdivision, to be honest, Your Honor. I normally
13 put subdivision. It is my normal. I wasn't
14 concerned specifically about the subdivision. I
15 meant neighborhood.

16 THE COURT: I assume you are concerned about
17 putting the address out there?

18 MR. O'NEIL: It is Brookhaven.

19 THE COURT: I mean, I can ask the question,
20 Does anybody live in the Brookhaven subdivision or
21 anyone have family members who live there? That is
22 in Blythewood?

23 MR. O'NEIL: Yes.

24 MR. FYALL: Yes, Your Honor.

25 THE COURT: All right.

1 MR. FYALL: Number 10, Your Honor, has the
2 media coverage in this case led you to think the
3 Defendant going to trial in this case is guilty or
4 probably guilty?

5 I think initially Your Honor should ask, or
6 maybe you are going to ask, Has anyone ever seen or
7 heard of any media coverage about this case?

8 At that point, asking that question in front
9 of the whole jury panel, I think it might be
10 implicative, imply something, so I would rather
11 have that at the sidebar with individual jurors.

12 Number 11, I don't think that is relevant,
13 unless, of course, someone saw this case
14 specifically on Live PD.

15 THE COURT: Was this on Live PD?

16 MR. O'NEIL: No, Your Honor. I want to know
17 what jurors -- do they watch Law and Order shows
18 like legal shows and what sort of preconceived
19 knowledge -- preconceived notion they have based on
20 them watching shows like First 48, Live PD, those
21 sort of things, not whether or not they have seen
22 this incident on Live PD, but do they frequently
23 watch those type of shows. And people who watch
24 those type of shows tend to have a preconception
25 about Defendants and trials and the legal system in

1 general.

2 THE COURT: So you mean to say, If anyone
3 frequently watches?

4 MR. O'NEIL: That's fine, Your Honor.

5 THE COURT: Yes. I'll ask that.

6 Number 10, it is in here somewhere, that there
7 has possibly been some --

8 MR. O'NEIL: And, Your Honor, I'm okay with
9 that, to just ask the jury whether or not they have
10 seen any media coverage, then you can ask Number
11 10.

12 THE COURT: And is there media coverage?

13 MR. O'NEIL: There was some media coverage I
14 think initially, about two years ago initially, but
15 there hasn't been anything recently. I just, out
16 of an abundance of caution, I wanted to know if
17 anybody remembered it from a couple of years back.

18 THE COURT: Okay. I will just say, There has
19 been some media coverage in the case. Has
20 anybody -- I think I normally ask, Has anyone seen
21 or heard anything about this on TV, radio, or
22 social media?

23 MR. O'NEIL: Yes, Your Honor, I'm fine with
24 that.

25 MR. FYALL: Nineteen, Your Honor. I think it

1 is part of the standard charge. And I think I'm
2 correct, Your Honor, when I say, Just because a
3 person has been charged or indicted, that is not
4 evidence in the case, blah, blah, blah.

5 MR. O'NEIL: And I want to make sure, even
6 though it is part of your charge, even though Your
7 Honor says it, we don't get an answer from the jury
8 how they feel based off that comment, so I want to
9 know, frankly, does anybody -- is anybody inclined
10 to think that way. If they are inclined to think
11 that way, I don't want them on the jury. I don't
12 believe the courts want them on the jury if they
13 come in and have preconceived notions. I think we
14 need to know whether or not they come in with a
15 preconceived notion that somebody that is charged
16 with a crime would lead them to believe -- inclined
17 to think that they are guilty of that crime.

18 So you can go so far with them and that is
19 when I think you --

20 THE COURT: I will ask that one.

21 Now, Number 20 and 21, I'm not sure if you
22 want to ask those, about -- I mean, What does this
23 have to do with the police stopping you and being
24 nervous about the police?

25 MR. O'NEIL: I want to get an idea from the

1 jury what their kind of preconceived notions about
2 law enforcement are either way. Some people have
3 been stopped by law enforcement and could have an
4 adverse feeling to law enforcement based on that
5 stop. Some people could have the total opposite.

6 THE COURT: All right. I'm not going to ask
7 20 and 21.

8 Twenty-two?

9 MR. FYALL: Twenty-two, Your Honor, again, I
10 think this question, as well as 20, 21, they -- I
11 think they are suggesting to the jury that they
12 might not otherwise say initially, would be
13 inclined to believe a police officer's testimony or
14 that of a private citizen merely because he is a
15 police officer. That -- I think that is suggestive
16 in the way it is worded. I don't think it is
17 necessary. And, again, I think that is covered by
18 Your Honor's charges about --

19 MR. O'NEIL: Your Honor, I think it is
20 clearly -- sort of the heart of this case boils
21 down to some discrepancies between what law
22 enforcement is going to say what happened and what
23 my client will say what happened. So I need to
24 know whether or not an individual juror comes in
25 with a preconceived notion about believing law

1 enforcement over a civilian, Your Honor.

2 THE COURT: All right, I'll ask that one.

3 Number 23, that goes to the jury charge. I am
4 not going to ask that one. I will go over all of
5 that, and I am not going to ask 23.

6 Number 24 -- because you are asking me to
7 comment. It is a question, but it is almost a
8 statement.

9 What about 24?

10 MR. FYALL: Same thing, Your Honor. That is a
11 jury charge for the end of the trial.

12 MR. O'NEIL: Well, the fact it is a jury
13 charge doesn't mean it is not an appropriate
14 question to ask at voir dire. It probably actually
15 makes it a more appropriate question to ask in voir
16 dire, to know what kind of preconceived notion
17 individuals come in with before the charge, before
18 they are given the law, you know, what, if any,
19 preconceived notion they come in with as relates to
20 their thought about reasonable doubt.

21 MR. FYALL: I mean, it is one-sided, so if
22 Your Honor asked that -- the equitable thing to do
23 would be to ask it in reverse, but I think that is
24 not necessary.

25 MR. O'NEIL: I'm fine with asking --

1 THE COURT: I'm not going to ask that. I will
2 cover all of that in my general opening with them
3 regarding he pled not guilty, they have to prove
4 him guilty beyond a reasonable doubt. I'm going to
5 ask them is there any reason why they don't think
6 they can sit in this case. I'm not going to get
7 into commenting on, Can you find a person not
8 guilty? Can you acquit this person? Do you
9 understand that -- I'm not going to ask those,
10 because I think the jury charge -- I mean, the voir
11 dire covers all of that. And I will ask them --
12 and instead of me suggesting anything, I would
13 rather ask -- explain it to them and then let them
14 stand up if there is a reason why they think that
15 they cannot be fair and impartial to both the State
16 and the Defendant. And they will stand up. All
17 right.

18 MR. O'NEIL: Well, Your Honor, for the record
19 I want to make sure I object to those portions not
20 being asked. I would ask that my voir dire be made
21 a Court's Exhibit to be preserved for further
22 review.

23 MR. FYALL: Obviously, Number 26, Your
24 Honor --

25 THE COURT: Twenty-five and 26 I'm not going

1 to ask. I'm not going to ask those. Your
2 objection is noted for the record on those.

3 MR. O'NEIL: Thank you, Your Honor.

4 MR. FYALL: And, Your Honor, you said you
5 would ask Number 22. I would just ask that Your
6 Honor reword it to say, would be able to judge the
7 credibility of a witness whether they are a police
8 officer or a private citizen based on the testimony
9 instead of because they are a police officer. Just
10 a more fair way of saying it. But if I think of
11 something else in the next 30 seconds, I will --

12 THE COURT: I think that is fine the way it
13 says it. I think that is fine. But you can't --
14 are you going to -- that is a question we ask all
15 the time, Would you believe a police officer's
16 testimony over other witnesses' testimony just
17 because he is a police officer? Is that what you
18 are asking?

19 MR. O'NEIL: Yes, Your Honor.

20 And, Your Honor, I apologize, we talked about
21 Number 10, regarding that one, only asking that one
22 if you first ask about media coverage. And, I
23 apologize, Number 5 is basically that question as
24 related to media coverage.

25 THE COURT: Yes, so that is the same question.

1 MR. O'NEIL: So as long as nobody stands for
2 Number 5, I would agree that we don't need that.
3 We don't need to ask Number 10.

4 THE COURT: All right. I'm looking at the
5 witness list. Let me go over the names real quick.
6 And the victim's name is pronounced?

7 MR. GOLDBERG: Deandra Roach.

8 THE COURT: Desha Anderson, is that correct?

9 MR. GOLDBERG: Yes, ma'am.

10 THE COURT: And is it Khirstin?

11 MR. GOLDBERG: Yes, ma'am.

12 THE COURT: Brionna? And is it Evadney?

13 MR. GOLDBERG: I believe it is Evadney.

14 THE COURT: Is it Shaehim?

15 MR. GOLDBERG: Yes.

16 THE COURT: Oh, boy. Mauriusz Zalewski? What
17 is it, Deputy?

18 MR. GOLDBERG: Zalewski.

19 THE COURT: And how do you pronounce Mauriusz?

20 MR. GOLDBERG: Mauriusz.

21 THE COURT: And you said it was Zalewski?

22 MR. GOLDBERG: Zalewski.

23 THE COURT: And John?

24 MR. GOLDBERG: Rebolj.

25 THE COURT: Stubblefield.

1 All right. Are we ready to bring them in?
2 Anything else as it pertains to jury selection?

3 MR. O'NEIL: No, Your Honor.

4 THE COURT: Are we ready to call them up? Of
5 course, the strikes will be ten and five. And how
6 many alternates do you want, two or three,
7 considering this might go into next week?

8 MR. O'NEIL: Probably do three.

9 MR. GOLDBERG: I think that would probably be
10 wise.

11 THE COURT: Do you have a copy of your voir
12 dire? We will mark it as a Court Exhibit.

13 MR. O'NEIL: I do, Your Honor.

14 (WHEREUPON, Court Exhibit No. 1 was
15 marked for identification only.)

16 (WHEREUPON, the jury panel came into
17 open court at 11:14 a.m.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: Thank you.

20 All right. Good morning, ladies and gentlemen
21 of the jury. My name is DeAndrea Benjamin, and I
22 am a resident judge here in Richland County. And
23 this week I am assigned to a term of General
24 Sessions Court, which also may be referred to as
25 Criminal Court.

1 We are about to pick a jury and begin the
2 trial of the case of the State of South Carolina v.
3 Andre Tyrone Heatley.

4 Ladies and gentlemen of the jury, before we
5 can begin that trial, there are several questions
6 that I need to ask of you all to determine if you
7 can be fair and impartial jurors in this case. I
8 know you answered some questions earlier for Judge
9 Hood. It will be in the same manner. If you
10 answer any of the questions in the affirmative,
11 stand up and state your juror number, or your name
12 if you don't know your number. I ask that you
13 speak loudly because this is the court reporter --
14 my court reporter, Ms. McCurdy, is taking down
15 everything that we are saying in the courtroom.
16 This is a court of record, and she has to record
17 everything that we are saying. So please speak up
18 loudly, speak up so she can have an accurate record
19 of your responses today.

20 Thank you. I remind you that you all are
21 still under oath. They have been sworn, right?

22 THE CLERK: I wasn't in jury qualifications.
23 I'm sure they were.

24 THE COURT: You all were sworn?

25 (Jurors nod affirmatively.)

1 THE COURT: I remind you that you all are
2 still under that oath to answer any questions
3 truthfully. I remind you that you are still under
4 that oath.

5 Ladies and gentlemen of the jury, I have in my
6 hand two indictments against Mr. Andre Tyrone
7 Heatley.

8 The first indictment, ladies and gentlemen, is
9 Indictment Number 2016-GS-40-6572, State of South
10 Carolina v. Andre Tyrone Heatley. This is an
11 indictment for murder. It reads that: Andre
12 Tyrone Heatley did, in Richland County, on or about
13 January 29, 2016, kill the victim, Deandra Roach,
14 with malice aforethought, either express or
15 implied, and the victim did die as a proximate
16 result thereof, all in violation of Section 15-3-10
17 of the South Carolina Code of Laws as amended.

18 The allegation in the second indictment is --
19 Indictment 2016-GS-40-6573, the State v. Andrew
20 Tyrone Heatley, indictment for armed robbery. The
21 allegation in this indictment reads that: Andre
22 Tyrone Heatley did, in Richland County, on or about
23 January 29, 2016, commit robbery by feloniously
24 taking from the person or presence of
25 Deandra Roach, by means of force or intimidation,

1 goods or monies of Deandra Roach, such goods or
2 monies being described as credit cards, U.S.
3 currency, and/or miscellaneous personal property,
4 with the intent to deprive the owner permanently of
5 such property while armed with a pistol, dirk,
6 slingshot, metal knuckles, razor, or other deadly
7 weapon, or while alleging, either by actions or
8 words, that he was armed while using a
9 representation of a deadly weapon, or any object
10 which a person present during the commission of the
11 robbery reasonably believed to be a deadly weapon.

12 Ladies and gentlemen of the jury, these are,
13 as I explained to you, indictments. I will go
14 ahead and tell you that these are indictments, that
15 they are not -- these are the charging papers that
16 bring the Defendant before the Court. The
17 Defendant in this case has pled not guilty. It
18 will be up to a jury of 12 to decide whether or not
19 the Defendant is found guilty or not guilty beyond
20 a reasonable doubt. The burden is on the State to
21 prove the Defendant guilty beyond a reasonable
22 doubt. Once again, these indictments are the
23 charging papers that are brought before the Court.
24 Do not -- the statements that I have read to you
25 are merely allegations that the State has to prove

1 beyond a reasonable doubt.

2 All right, ladies and gentlemen of the jury,
3 there is a series of questions that I need to ask
4 of you to determine, once again, if you can be fair
5 and impartial jurors to both the State and the
6 Defendant in this case.

7 If there is any question that you do not
8 understand, please stand up or raise your hand and
9 I will restate the question. If there is any
10 question that you do not wish to answer in front of
11 the entire panel, I will give you an opportunity at
12 the end to speak with me privately regarding any of
13 these questions.

14 All right. So the first question, Is anyone
15 related by blood or marriage to -- and I'll have
16 the -- if the Defendant can stand up and face the
17 jury panel.

18 (Defendant stands.)

19 THE COURT: All right, thank you.

20 (Defendant seated.)

21 THE COURT: All right. Is there anyone
22 related by blood or marriage to the Defendant in
23 this case, Mr. Andre Heatley? If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: The victim in this case is

1 Deandra Roach. Is there any member of the jury
2 panel related by blood or marriage to the victim in
3 this case? If so, please stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: Has anyone ever had a close
6 personal or social relationship with the Defendant
7 or the victim in this case? If so, please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: All right, ladies and gentlemen of
10 the jury, the following is a potential list of
11 witnesses. There are quite a few witnesses. I
12 will go through the names. If there is someone
13 that you think you may know and you need more
14 information, just raise your hand and I will try to
15 provide as much information regarding the person as
16 possible.

17 If there is anyone in the courtroom and your
18 name is called, I ask that you stand. You don't
19 have to say anything. But if there are any
20 potential witnesses in the courtroom, I ask that
21 you stand so that the jury will be able to see who
22 you are, and then I will ask the next question.

23 All right, so the list of witnesses are:

24 Pete Holloway.

25 Cynthia Belton Roach.

1 (Witness stands.)
2 THE COURT: Kelvin Davis.
3 You can sit back down, ma'am. Thank you.
4 (Ms. Roach seated.)
5 THE COURT: Denise Winston.
6 (Witness stands and seated.)
7 THE COURT: Ashley Gadson.
8 Shanard Stokes.
9 Brittany Carroway.
10 Desha Anderson.
11 Ivory Fleming.
12 Maurice McKnight.
13 Reno Jordan.
14 Khirstin Aiken.
15 Kanard Murray.
16 Kierra Grant.
17 Brionna Appleberry.
18 Mary Veal.
19 Jordan Harding.
20 Stacey Wilson.
21 Eddie Roger.
22 David Hammond.
23 Evadney Sprull.
24 Frederick Davis.
25 Devonta Shuttles.

1 Keion McLeod Harris.
2 Samantha Rivera.
3 Shaehim Brooks.
4 Tyrek Carroway.
5 Becky Parker, works at Wells Fargo.
6 Ariel Epps, works at Bank of America.
7 Anthony McNeal, Richland County EMS.
8 Kevin Hartley, Richland County EMS.
9 Deputy Kevin Beck, Richland County Sheriff's
10 Department.
11 Deputy Mariusz Zalewski, Richland County
12 Sheriff's Department.
13 Deputy James O. Jones, Richland County
14 Sheriff's Department.
15 Investigator Clay Short, Richland County
16 Sheriff's Department.
17 All of these are Richland County Sheriff's
18 Department:
19 Investigator Willie Gonzalez.
20 Investigator Molly Nations.
21 Investigator James Boland.
22 Investigator J.P. Smith.
23 Investigator Aubrey Torres.
24 Investigator Kevin Loftis.
25 Investigator Trevor Holt.

1 Investigator David Collins.

2 Investigator Trish Collins.

3 Investigator Amanda Metz.

4 Investigator Linda Houk.

5 Investigator John Rebolj.

6 Investigator John Barron.

7 All of the Richland County Sheriff's

8 Department.

9 (Potential juror stands.)

10 THE COURT: Yes, ma'am, what is your Juror
11 Number?

12 POTENTIAL JUROR: Number 2.

13 THE COURT: All right. And you know which
14 one?

15 POTENTIAL JUROR: Aubrey Torres. I'm familiar
16 with some of the other RCSD deputies as well.

17 THE COURT: And, ma'am, how do you know Ms.
18 Torres?

19 POTENTIAL JUROR: Through my husband. He is a
20 Richland County sheriff's deputy.

21 THE COURT: All right. And the fact that your
22 husband is a Richland County sheriff's deputy,
23 would that affect your ability to be fair and
24 impartial in this trial?

25 POTENTIAL JUROR: I don't think so.

1 THE COURT: All right. And this is for
2 everybody. The answer is either yes or no. There
3 is no wrong answer or right answer, but you have
4 to -- we have to have an answer of yes or no.

5 POTENTIAL JUROR: No.

6 THE COURT: All right. Let me ask the
7 question one more time. The fact that you know
8 Officer or Deputy Torres and your husband is a
9 deputy with the Richland County Sheriff's
10 Department, is that correct?

11 POTENTIAL JUROR: (Nods affirmatively.)

12 THE COURT: Would that affect your ability to
13 be fair and impartial in this trial?

14 POTENTIAL JUROR: No?

15 THE COURT: All right. Well, I'm not
16 suggesting one way or the other, but this is a case
17 that is a Richland County Sheriff's Department
18 case, and so a lot of these witnesses are from the
19 Sheriff's Department, as you heard me just state.
20 So would that affect your ability to be fair and
21 impartial in this trial?

22 POTENTIAL JUROR: Yes.

23 THE COURT: All right, thank you.

24 THE CLERK: What was her number again?

25 THE COURT: Number 2.

1 (Potential juror seated.)
2 THE COURT: All right, next we have some more
3 Richland County Sheriff's Department witnesses.
4 CSI Timothy Lee.
5 CSI Franklin Rainsford.
6 CSI Kristen Polis.
7 CSI Shawn Shroder.
8 CSI Harold Bouknight.
9 Sergeant Stan Richards.
10 Sergeant Robert Moreland.
11 Sergeant Scott Faust.
12 Sergeant Kevin Isenhoward.
13 Lieutenant Anna Cavanagh.
14 Lieutenant Rafael Gonzalez.
15 Captain Harry Stubblefield.
16 Captain Rocky Senn.
17 Captain Scott McDonald.
18 Chief Stan Smith.
19 Melody Galinski.
20 Marsden Roe.
21 Diane Bodie.
22 Christine Barrickman.
23 Ashleigh Dixon.
24 Melissa Horne.
25 Patricia Hart.

1 Amanda Burwell.

2 Jennifer Lee.

3 All of the Richland County Sheriff's
4 Department.

5 (Potential juror stands.)

6 THE COURT: Yes, ma'am, your number?

7 POTENTIAL JUROR: I'm Number 16.

8 THE COURT: Yes, ma'am?

9 POTENTIAL JUROR: I work for a financial
10 institution in a risk management department, and I
11 have worked a lot with those investigators.

12 THE COURT: Do you know which ones?

13 POTENTIAL JUROR: Isenhoward, Marsden Roe,
14 Scott -- I forget his last name.

15 THE COURT: Ma'am, as I stated to the last
16 juror, this case is a case where Richland County
17 sheriff deputies will be testifying, or
18 investigators, investigators or deputies or CSI.
19 Would that affect your ability, the fact that you
20 work in some capacity with the Sheriff's
21 Department, would that affect your ability to be
22 fair and impartial in this trial?

23 POTENTIAL JUROR: No.

24 THE COURT: All right, thank you.

25 (Potential juror seated.)

1 THE COURT: All right. The next group of
2 potential witnesses are with the South Carolina Law
3 Enforcement Division.

4 So, Amanding Brooking, with SLED.

5 Megan Fletcher.

6 Hue Tang.

7 Jennifer Nates.

8 Amy Stephens.

9 Jennifer Aycock.

10 Jackie M. Davis.

11 Doris Yarborough.

12 Whitney Berry.

13 And they are all with the South Carolina Law
14 Enforcement Division.

15 Are there any jurors that recognize any of
16 those names?

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. The next is Dr. Amy
19 Durso, and she is a pathologist.

20 Deputy Coroner Ann Neeley, with the Richland
21 County Coroner's Office.

22 Deputy Coroner Ted Powell, with the Richland
23 County Coroner's Office.

24 Heather Collins, with 9-1-1.

25 Custodian of records -- we don't have the

1 name -- a custodian of records from Sprint, and a
2 custodian of records from Verizon.

3 All right. Is there anyone who wishes for me
4 to repeat any of those names?

5 (Potential juror stands.)

6 POTENTIAL JUROR: I work -- sorry, 141. I
7 work with Amy Durso at Richland Hospital.

8 THE COURT: All right. And, ma'am, would that
9 affect your ability to be fair and impartial in
10 this trial?

11 POTENTIAL JUROR: No.

12 THE COURT: All right, thank you. And what is
13 your number again?

14 POTENTIAL JUROR: 141.

15 THE COURT: Which department are you in?

16 POTENTIAL JUROR: Surgery, trauma.

17 THE COURT: Okay.

18 (Potential witness seated.)

19 THE COURT: All right. Is there any member of
20 the jury panel who is related by blood or marriage
21 to any of the people that I have just listed? Is
22 there any member of the jury panel who has a close
23 personal or social relationship with any of these
24 people?

25 (WHEREUPON, there was no response.)

1 THE COURT: All right. The attorneys in this
2 case, representing the State is Mr. Dan Goldberg
3 and Lamar Fyall.

4 (Mr. Goldberg and Mr. Fyall stand.)

5 THE COURT: And they are with the Fifth
6 Circuit Solicitor's Office. Is there any member of
7 the jury panel who is related by blood or marriage
8 to the attorneys that I just listed or anyone that
9 works in the Fifth Circuit Solicitor's Office? The
10 Richland County Solicitor's Office?

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. Representing the
13 Defendant is Mr. Deon O'Neil and Kahlil Eaddy. And
14 they represent Mr. Heatley.

15 (Mr. O'Neil and Mr. Eaddy stand.)

16 THE COURT: Thank you. You don't have to
17 stand.

18 (Mr. O'Neil and Mr. Eaddy seated.)

19 THE COURT: Has any member of the jury panel
20 ever been represented by any of the attorneys
21 involved in this case or anyone in their law firm?

22 (WHEREUPON, there was no response.)

23 THE COURT: Has anyone ever been related by
24 blood or marriage to or have a close personal,
25 social, or business relationship with any of the

1 attorneys involved in this case or anyone in their
2 law firm or in the Fifth Circuit Solicitor's
3 Office? If so, please stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: Has any member of the jury panel
6 formed or expressed an opinion about any issue or
7 matter involved in this case?

8 (WHEREUPON, there was no response.)

9 THE COURT: Is there any member of the jury
10 panel aware of any bias or prejudice towards the
11 State or the Defendant in this case?

12 (WHEREUPON, there was no response.)

13 THE COURT: Is there any member of the jury
14 panel that was a member of the Grand Jury which
15 issued the indictments in this case?

16 (WHEREUPON, there was no response.)

17 THE COURT: Is there any member of the jury
18 panel who is a member of or a contributor to any
19 group which has its primary concern with the
20 promotion of law enforcement or victims' rights?
21 If so, please stand. This would be MADD, Mothers
22 Against Drunk Driving, SADD, Students Against Drunk
23 Driving, CAVE, Citizens Against Violent Crime,
24 Sister Care, any domestic violence-related victims'
25 rights groups? If so, please stand.

1 (Potential juror stands.)

2 POTENTIAL JUROR: Sister Care.

3 THE COURT: Yes, ma'am, your Juror Number?

4 POTENTIAL JUROR: 104.

5 THE COURT: All right. And, yes, ma'am, what
6 is your -- you have an affiliation with any of
7 those organizations?

8 POTENTIAL JUROR: Well, I volunteer.

9 THE COURT: With Sister Care?

10 POTENTIAL JUROR: Yes.

11 THE COURT: All right. And, ma'am, the fact
12 that you volunteer at Sister Care, would that
13 affect your ability to be fair and impartial in
14 this case to the State or the Defendant? Remember
15 I told you --

16 POTENTIAL JUROR: Yes or no, right?

17 THE COURT: Yes or a no, yes, ma'am.

18 POTENTIAL JUROR: I think I'm biased.

19 THE COURT: All right. So your answer is no.
20 Yes, ma'am. Thank you. And you are Juror 104, is
21 that correct?

22 POTENTIAL JUROR: Yes.

23 THE COURT: All right, thank you, ma'am.

24 (Potential juror seated.)

25 THE COURT: All right. Is there any member of

1 the jury panel who is a member or contributor to
2 any group which has its primary concern with
3 prisoners' rights, such as The Innocence Project?

4 If so, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Are you a former member of law
7 enforcement or any Department of Corrections in any
8 capacity? And that should say current or former.

9 (Potential jurors stand.)

10 THE COURT: All right. Yes, sir, right here
11 on the front row?

12 THE DEFENDANT: 264. I'm a former employee of
13 Alvin S. Glenn.

14 THE COURT: And when were you employed at the
15 Detention Center?

16 POTENTIAL JUROR: From the time 2011 to 2013.

17 THE COURT: All right. And the fact that you
18 worked at Alvin S. Glenn Detention Center, would
19 that affect your ability to be fair and impartial
20 in this trial?

21 POTENTIAL JUROR: No, ma'am.

22 THE COURT: All right, thank you.

23 (Potential juror seated.)

24 THE COURT: Yes, sir?

25 POTENTIAL JUROR: Juror 298. Correction

1 officer at -- on Broad River.

2 THE COURT: SCDC?

3 POTENTIAL JUROR: Yes.

4 THE COURT: All right. Would that affect your
5 ability to be fair and impartial in this trial?

6 POTENTIAL JUROR: No.

7 THE COURT: All right.

8 (Potential juror seated.)

9 POTENTIAL JUROR: Juror 196. Twenty-seven
10 years as military police, and ten years as a Deputy
11 Director for Emergency Services supervising the
12 Department of Armed Police. I retired three years
13 ago.

14 THE COURT: And, sir, would that affect -- any
15 of that affect your ability to be fair and
16 impartial in this case?

17 POTENTIAL JUROR: No, ma'am.

18 THE COURT: All right, thank you.

19 (Potential juror seated.)

20 THE COURT: Are any members of your family or
21 close personal friends employed by such law
22 enforcement agencies? If so, please stand.

23 (Potential jurors stand.)

24 THE COURT: Yes, sir, on the front. Your
25 juror number?

1 POTENTIAL JUROR: 299.

2 THE COURT: 299?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: All right. Yes, sir?

5 POTENTIAL JUROR: My brother-in-law is a
6 Richland County deputy.

7 THE COURT: Your brother?

8 POTENTIAL JUROR: My brother-in-law.

9 THE COURT: All right. And would that affect
10 your ability to be fair and impartial in this
11 trial?

12 POTENTIAL JUROR: No, ma'am.

13 THE COURT: All right, thank you.

14 (Potential juror seated.)

15 THE COURT: Yes, ma'am? And you have already
16 told us, is it your husband that works for Richland
17 County?

18 POTENTIAL JUROR: Yes.

19 THE COURT: All right, thank you. And you are
20 Juror Number?

21 POTENTIAL JUROR: Two.

22 THE COURT: Two.

23 (Potential juror seated.)

24 THE COURT: All right. Yes, ma'am?

25 POTENTIAL JUROR: I am Juror 159. My uncle

1 works in the highway department.

2 THE COURT: All right. And would that affect
3 your ability to be fair and impartial in this
4 trial?

5 POTENTIAL JUROR: No.

6 THE COURT: All right, thank you.

7 (Potential juror seated.)

8 THE COURT: All right, ladies and gentlemen,
9 as I told you earlier, the indictments in this case
10 are for armed robbery and murder.

11 Has any member of the jury panel been the
12 victim of a violent crime, or have any of your
13 close friends or relatives been the victim of a
14 violent crime? If so, please stand.

15 (Potential jurors stand.)

16 THE COURT: All right. We'll start with, is
17 it 299?

18 POTENTIAL JUROR: My uncle was murdered in
19 1981.

20 THE COURT: All right. And, sir, would that
21 affect your ability to be fair and impartial in
22 this trial?

23 POTENTIAL JUROR: No, ma'am.

24 THE COURT: All right, thank you.

25 (Potential juror seated.)

1 THE COURT: All right. Yes, sir?

2 POTENTIAL JUROR: Juror Number 286.

3 THE COURT: Yes, sir?

4 POTENTIAL JUROR: I was kidnapped 39 years
5 ago.

6 THE COURT: All right. And, sir, would that
7 affect your ability to be fair and impartial?

8 POTENTIAL JUROR: No, ma'am.

9 THE COURT: You said no?

10 POTENTIAL JUROR: That's right.

11 THE COURT: All right, thank you. And Juror
12 286?

13 POTENTIAL JUROR: Yes.

14 (Potential juror seated.)

15 THE COURT: Yes, ma'am?

16 POTENTIAL JUROR: Juror 190. In about 1999 I
17 was held up at gunpoint.

18 THE COURT: All right. And, ma'am, would
19 that affect your ability to be fair and impartial
20 in this trial?

21 POTENTIAL JUROR: No, ma'am.

22 THE COURT: All right, thank you.

23 (Potential juror seated.)

24 THE COURT: Yes, ma'am?

25 POTENTIAL JUROR: Number 155. About six years

1 ago my ex-husband was shot and I was --

2 THE COURT REPORTER: I'm sorry, I can't hear
3 you.

4 POTENTIAL JUROR: About six years ago my
5 ex-husband was shot and I was physically injured.

6 THE COURT: All right. And, ma'am, would that
7 affect your ability to be fair and impartial in
8 this trial?

9 POTENTIAL JUROR: No, ma'am.

10 THE COURT: All right, thank you.

11 (Potential juror seated.)

12 THE COURT: Yes, sir?

13 POTENTIAL JUROR: 264. I just have several
14 people that have been involved as victims of
15 violent crimes.

16 THE COURT: All right. And, sir, they are
17 family members or friends?

18 POTENTIAL JUROR: Both.

19 THE COURT: All right. And would that affect
20 your ability to be fair and impartial in this
21 trial?

22 POTENTIAL JUROR: No, ma'am.

23 THE COURT: All right.

24 (Potential juror seated.)

25 THE COURT: And, yes, ma'am?

1 POTENTIAL JUROR: Domestic violence.

2 THE COURT: All right. And your number again?

3 POTENTIAL JUROR: 104.

4 THE COURT: And, ma'am, would that affect your
5 ability to be fair and impartial in this trial?

6 POTENTIAL JUROR: Unfortunately, yes.

7 THE COURT: All right, thank you.

8 (Potential juror seated.)

9 THE COURT: Yes, sir?

10 POTENTIAL JUROR: Number 285.

11 THE COURT: All right, yes, sir?

12 POTENTIAL JUROR: I was the victim of an armed
13 robbery back in May of 2016.

14 THE COURT: And, sir, would that affect your
15 ability to be fair and impartial in this trial?

16 POTENTIAL JUROR: No, ma'am.

17 THE COURT: All right, thank you.

18 (Potential juror seated.)

19 THE COURT: All right, ladies and gentlemen of
20 the jury, there has been some news media regarding
21 this case in the past. It may have been on TV or
22 it may have been on the social media or the radio.
23 Is anyone familiar regarding -- has anyone seen any
24 publicity regarding this case? If so, please
25 stand.

1 (Potential juror stands.)

2 THE COURT: All right. And your number is?

3 POTENTIAL JUROR: 298.

4 MR. O'NEIL: Can we do this --

5 THE COURT: Let me have you come on down.

6 THE COURT: Yes, Juror 298.

7 (WHEREUPON, Juror 298 approaches the
8 bench out of the hearing of jury panel.)

9 THE COURT: Sir, do you remember anyone
10 talking about this case?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: All right. And when was that?

13 POTENTIAL JUROR: Maybe about three months ago
14 on the news.

15 THE COURT: This was on the news three months
16 ago?

17 POTENTIAL JUROR: The case when it came up
18 with the Columbia Police?

19 THE COURT: Sir?

20 POTENTIAL JUROR: In West Columbia?

21 THE COURT: No.

22 POTENTIAL JUROR: That's not it?

23 THE COURT: No, that is not the same one.
24 Okay. All right, thank you. Would any of that
25 affect your ability to be fair and impartial in

1 this trial?

2 POTENTIAL JUROR: No, ma'am.

3 (Potential juror seated.)

4 THE COURT: All right. Has any -- once again,
5 anyone seen any publicity regarding this case? If
6 so, please stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Ladies and gentlemen of the jury,
9 the victim in this case lived in the Brookhaven
10 subdivision in Blythewood.

11 Does any member of the jury panel or their
12 family members live in the Brookhaven subdivision?
13 If so, please stand. I think that is in
14 Blythewood.

15 (Potential juror stands.)

16 POTENTIAL JUROR: You mean current or former?

17 THE COURT: I'm sorry?

18 POTENTIAL JUROR: Do you mean presently or
19 former?

20 THE COURT: Currently or in the past?

21 POTENTIAL JUROR: I lived in Brookhaven in the
22 past.

23 THE COURT: All right. And, sir, do you
24 remember what street you lived on?

25 POTENTIAL JUROR: Ambergate.

1 THE COURT: All right. And would that affect
2 your ability to be fair and impartial in this
3 trial?

4 POTENTIAL JUROR: No, ma'am.

5 THE COURT: All right. Number again?

6 POTENTIAL JUROR: 264.

7 (Potential juror seated.)

8 THE COURT: Does any member of the panel
9 frequently watch legal shows, such as Live PD, Law
10 and Order, Bull? Stand up. Stand up for me.

11 ((Potential jurors stand.))

12 THE COURT: All right, so this is what I'm
13 going to do. If you can just give me your juror
14 number, we will go around.

15 Your juror number, sir?

16 POTENTIAL JUROR: 60.

17 THE COURT: Sir?

18 POTENTIAL JUROR: 60, 6-0.

19 THE COURT: All right, 60.

20 Yes, ma'am, your number?

21 POTENTIAL JUROR: 161.

22 THE COURT: Ma'am?

23 POTENTIAL JUROR: 161.

24 THE COURT: 161.

25 POTENTIAL JUROR: 286.

1 THE COURT: All right.

2 POTENTIAL JUROR: 116.

3 THE COURT: All right.

4 POTENTIAL JUROR: 70.

5 POTENTIAL JUROR: 100.

6 THE COURT: 100.

7 POTENTIAL JUROR: 306.

8 POTENTIAL JUROR: 156.

9 THE COURT: Yes, sir?

10 POTENTIAL JUROR: 47.

11 POTENTIAL JUROR: 255.

12 POTENTIAL JUROR: 104.

13 THE COURT: Remain standing for me.

14 POTENTIAL JUROR: 159.

15 THE COURT: Did I get everyone's number?

16 All right. Instead of me asking each one of
17 you, the fact that you frequently watch legal
18 shows, would that affect your ability to be fair
19 and impartial in this trial? If your answer is
20 yes, remain standing. If it is no, you may be
21 seated.

22 (All potential jurors seated.)

23 THE COURT: Madam Court Reporter, let the
24 record reflect that all the jurors have taken a
25 seat.

1 All right. Does any member of the jury
2 panel -- I assume -- live in Northeast Columbia?

3 MR. O'NEIL: Yes.

4 THE COURT: How about Blythewood? Live in
5 Blythewood or Irmo?

6 (Potential jurors stand.)

7 THE COURT: All right, we will start and do
8 the same thing. Give me your juror numbers.

9 POTENTIAL JUROR: My juror number is 41. I
10 live in Irmo.

11 THE COURT: All right.

12 POTENTIAL JUROR: 286. Lake Carolina.

13 THE COURT: All right.

14 POTENTIAL JUROR: Wildewood. [REDACTED]

15 THE COURT: You said 85?

16 POTENTIAL JUROR: Yes.

17 MR. O'NEIL: I think she was saying her
18 address.

19 THE COURT: What is your juror number, ma'am?

20 POTENTIAL JUROR: 116.

21 THE COURT: 116. And you can just tell me if
22 it is Northeast, Blythewood, or --

23 POTENTIAL JUROR: Northeast.

24 THE COURT: Northeast. All right.

25 And, yes, ma'am?

1 POTENTIAL JUROR: 200. Irmo.
2 THE COURT: 200?
3 POTENTIAL JUROR: (Nods affirmatively.)
4 THE COURT: All right. Yes, ma'am?
5 POTENTIAL JUROR: 190. Irmo.
6 POTENTIAL JUROR: 155. Irmo.
7 POTENTIAL JUROR: 9. Blythewood.
8 THE COURT: All right.
9 POTENTIAL JUROR: 231. Irmo.
10 POTENTIAL JUROR: 240. Irmo.
11 POTENTIAL JUROR: 244. Irmo.
12 POTENTIAL JUROR: 292. Northeast.
13 THE COURT: Yes, sir?
14 POTENTIAL JUROR: 264. Northeast.
15 POTENTIAL JUROR: 80. Northeast.
16 POTENTIAL JUROR: 141. Northeast.
17 POTENTIAL JUROR: 104. Northeast.
18 POTENTIAL JUROR: 2. Northeast.
19 POTENTIAL JUROR: 193. Northeast.
20 THE COURT: What is it?
21 POTENTIAL JUROR: 193. Northeast.
22 THE COURT: All right.
23 POTENTIAL JUROR: 22. Northeast.
24 POTENTIAL JUROR: 227. Northeast.
25 POTENTIAL JUROR: 196. Blythewood.

1 POTENTIAL JUROR: 285. Irmo.

2 POTENTIAL JUROR: 299. Northeast.

3 THE COURT: Yes?

4 POTENTIAL JUROR: 16. Northeast.

5 POTENTIAL JUROR: Is Lake Carolina northeast?

6 THE COURT: Yes, ma'am. What is your number?

7 POTENTIAL JUROR: 161.

8 THE COURT: All right. Did everyone respond?

9 Yes, ma'am? I can't hear you, I'm sorry.

10 POTENTIAL JUROR: 208. Northeast.

11 THE COURT: What is your number?

12 POTENTIAL JUROR: 208.

13 THE COURT: 208. And she said northeast.

14 All right, remain standing. I'm assuming this
15 question is because there are events -- some of the
16 alleged events may have occurred in northeast, or
17 witnesses may live in northeast or Irmo.

18 Does this affect anyone's ability to be fair
19 and impartial jurors in this trial? If so, remain
20 standing. If not, take your seat.

21 (WHEREUPON, all jurors were seated.)

22 THE COURT: All right, Madam Court Reporter,
23 let the record reflect that all the jurors have
24 taken their seats.

25 Does any member of the jury own a firearm?

1 (Potential jurors stand.)

2 THE COURT: All right. So let's do the
3 numbers again.

4 Yes, sir? First row. Yes, sir?

5 POTENTIAL JUROR: 58.

6 THE COURT: 58.

7 Your number, right next to him?

8 POTENTIAL JUROR: Oh, 41.

9 THE COURT: 41.

10 Yes, ma'am, right here?

11 POTENTIAL JUROR: 240.

12 THE COURT: 240.

13 POTENTIAL JUROR: 89.

14 THE COURT: 89.

15 POTENTIAL JUROR: 141.

16 THE COURT: 141.

17 POTENTIAL JUROR: 80.

18 THE COURT: 80.

19 POTENTIAL JUROR: 264.

20 THE COURT: 264.

21 POTENTIAL JUROR: 115.

22 THE COURT: 115.

23 POTENTIAL JUROR: 156.

24 THE COURT: 156.

25 POTENTIAL JUROR: 47.

1 THE COURT: 47.

2 POTENTIAL JUROR: 255.

3 THE COURT: 255.

4 POTENTIAL JUROR: 298.

5 THE COURT: 298.

6 POTENTIAL JUROR: 104.

7 THE COURT: 104.

8 POTENTIAL JUROR: 177.

9 THE COURT: 177.

10 POTENTIAL JUROR: 22.

11 THE COURT: 22.

12 POTENTIAL JUROR: 82.

13 THE COURT: 82.

14 POTENTIAL JUROR: 67.

15 THE COURT: 67.

16 POTENTIAL JUROR: 251.

17 THE COURT: 251.

18 POTENTIAL JUROR: 268.

19 THE COURT: 268.

20 POTENTIAL JUROR: 194.

21 THE COURT: 194.

22 POTENTIAL JUROR: 196.

23 THE COURT: 196.

24 All right, ladies and gentlemen of the jury,
25 there may be testimony in this case regarding a

1 firearm. Is there any member of the jury panel who
2 cannot be fair and impartial in this case because
3 there may be some testimony regarding a firearm?
4 If so, please remain standing. If not, please take
5 your seat.

6 (WHEREUPON, all potential jurors are seated.)

7 THE COURT: All right, Madam Court Reporter,
8 please let the record reflect that all of the jury
9 panel has taken a seat.

10 Has any member of the jury panel served on a
11 criminal jury before? If so, please stand.

12 (Potential jurors stand.)

13 THE COURT: Yes, sir, your juror number?

14 POTENTIAL JUROR: 156.

15 THE COURT: All right. Do you remember when
16 that was, sir?

17 POTENTIAL JUROR: July 2014 or 2015.

18 THE COURT: All right. And that was here?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: All right. Do you remember what
21 the verdict was in that case?

22 POTENTIAL JUROR: The verdict was not guilty.

23 THE COURT: All right. And do you remember
24 what the charge was?

25 POTENTIAL JUROR: Possession of drugs.

1 THE COURT: Okay. And would that affect your
2 ability to be fair and impartial in this trial?

3 POTENTIAL JUROR: This trial? No, ma'am.

4 THE COURT: All right. And is there anything
5 about your previous jury experience that would
6 cause you to be impartial -- unable to be fair and
7 impartial in this trial?

8 POTENTIAL JUROR: Not that I can say, no,
9 ma'am.

10 THE COURT: All right, thank you. You may be
11 seated.

12 (Potential juror seated.)

13 THE COURT: Yes, sir?

14 POTENTIAL JUROR: 202. In 2015.

15 THE COURT REPORTER: I couldn't hear him.

16 THE COURT: 2000 and?

17 POTENTIAL JUROR: 15.

18 THE COURT: 15. Do you remember what kind of
19 case it was?

20 POTENTIAL JUROR: It was two guys in jail.

21 THE COURT: What now?

22 POTENTIAL JUROR: Two people in jail fighting.

23 THE COURT: Okay. And do you remember what
24 the verdict was?

25 POTENTIAL JUROR: I believe he not guilty.

1 THE COURT: And is anything about that case
2 that would prevent you from being fair and
3 impartial in this trial?

4 POTENTIAL JUROR: No, ma'am.

5 THE COURT: All right, thank you.

6 THE COURT REPORTER: What was his number?

7 THE COURT: What is your number again?

8 POTENTIAL JUROR: 202 -- 209.

9 THE COURT: 209.

10 (Potential juror seated.)

11 THE COURT: All right. Yes, sir?

12 POTENTIAL JUROR: Juror Number 286. 1994. It
13 was a jury trial. And the guy turned State's
14 evidence.

15 THE COURT: Hold on. Hold on, hold on, hold
16 on, hold on, hold on. What was the charge?

17 POTENTIAL JUROR: It was a charge of shooting
18 at a police officer.

19 THE COURT: All right. And is there anything
20 about that case that would affect you from -- I
21 don't want to get into the facts of that case
22 because it doesn't have anything to do with this
23 case.

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: But is there anything about that

1 case that would affect you from being fair and
2 impartial in this trial?

3 POTENTIAL JUROR: No, ma'am.

4 THE COURT: All right, thank you. And do you
5 remember what the verdict was?

6 POTENTIAL JUROR: He turned State evidence.

7 THE COURT: What was the verdict? Was it
8 guilty or not guilty?

9 POTENTIAL JUROR: Not guilty.

10 THE COURT: All right, thank you.

11 (Potential juror seated.)

12 THE COURT: Has anyone ever appeared as a
13 witness for the Prosecution or the Defense at any
14 trial?

15 (Potential jurors stand.)

16 THE COURT: All right. Yes, ma'am?

17 POTENTIAL JUROR: I'm not sure. For the
18 Solicitor's Office, I've been a witness in several
19 cases for Richland County for financial crimes.

20 THE COURT: All right. And, ma'am, would that
21 affect your ability to be fair and impartial in
22 this trial?

23 POTENTIAL JUROR: No.

24 THE COURT: All right, thank you. And your
25 number?

1 POTENTIAL JUROR: 16.

2 THE COURT: 60?

3 POTENTIAL JUROR: 16.

4 (Potential juror seated.)

5 THE COURT: All right. Yes, sir?

6 POTENTIAL JUROR: 89. I have been an expert
7 witness in a criminal case for a gunshot in
8 Seattle, Washington. I've been an expert witness
9 in two medical malpractice cases.

10 THE COURT: All right. And, sir, would that
11 affect your ability to be fair and impartial in
12 this trial?

13 POTENTIAL JUROR: No.

14 THE COURT: All right, thank you. What kind
15 of expert were you qualified as? Do you remember?

16 POTENTIAL JUROR: Well, Defense or Prosecution
17 or?

18 THE COURT: No, no, no, no. What is your
19 expertise?

20 POTENTIAL JUROR: Orthopedic trauma.

21 THE COURT: Okay, thank you.

22 (Potential juror seated.)

23 THE COURT: All right. Yes, sir?

24 POTENTIAL JUROR: Juror Number 122. I have
25 appeared as a witness in civil matters, but no

1 criminal matters.

2 THE COURT: All right. And, sir, would that
3 affect your ability to be fair and impartial in
4 this trial?

5 POTENTIAL JUROR: It would not.

6 THE COURT: All right, thank you.

7 (Potential juror seated.)

8 THE COURT: And, yes, sir?

9 POTENTIAL JUROR: 196. I have appeared in
10 three different trials as a witness as a police
11 officer to testify.

12 THE COURT: And, sir, would that affect your
13 ability to be fair and impartial in this trial?

14 POTENTIAL JUROR: No, ma'am.

15 THE COURT: All right, thank you.

16 (Potential juror seated.)

17 THE COURT: Is any member of the jury panel a
18 member of or like any social media page that
19 promotes law enforcement? If so, please stand.

20 (Potential jurors stand.)

21 THE COURT: Yes, sir, your juror number?

22 POTENTIAL JUROR: 196, ma'am.

23 THE COURT: Yes, sir? Which social media
24 pages?

25 POTENTIAL JUROR: Yes, ma'am. I am a member

1 of the Military Police Retirement Association and
2 several different police web pages.

3 THE COURT: All right. And would that affect
4 your ability to be fair and impartial in this
5 trial?

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: All right, thank you.

8 (Potential juror seated.)

9 THE COURT: All right, anything else?

10 The victim in this case worked at Walmart at
11 10060 Two Notch Road.

12 Did any member of the jury panel frequent
13 there between 2015 and 2016? If so, please stand.

14 (Potential jurors stand.)

15 THE COURT: All right, let's do this again,
16 the numbers.

17 Yes, sir, on the front row?

18 POTENTIAL JUROR: 286.

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: 116.

21 POTENTIAL JUROR: 16.

22 POTENTIAL JUROR: 80.

23 THE COURT: 80?

24 POTENTIAL JUROR: Yes, ma'am.

25 POTENTIAL JUROR: 227.

1 THE COURT: What is it?

2 POTENTIAL JUROR: 227.

3 THE COURT: 227.

4 POTENTIAL JUROR: 22.

5 THE COURT: 22.

6 POTENTIAL JUROR: 159.

7 THE COURT: 159.

8 POTENTIAL JUROR: 104.

9 THE COURT: 104.

10 All right, the fact that the victim worked
11 there between 2015 and 2016, the Walmart on Two
12 Notch Road, would that affect your ability to be
13 fairly and impartial in this trial?

14 (WHEREUPON, all jurors answer in the
15 negative.)

16 THE COURT: All right, thank you.

17 (Potential jurors seated.)

18 THE COURT: Is there any member of the jury
19 panel who believes that a person is guilty of a
20 crime simply because that person was arrested?

21 (WHEREUPON, there was no response.)

22 THE COURT: All right. Is there any member of
23 the jury panel who is inclined to believe the
24 testimony of a police officer over the testimony of
25 a private citizen just because he or she is a

1 police officer?

2 (WHEREUPON, there was no response.)

3 THE COURT: Is there any member of the jury
4 panel who knows of any reason whatsoever why he or
5 she should not serve on a jury in this case with
6 particular emphasis being placed on your ability to
7 be fair and impartial to both the State and the
8 Defendant? If so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Is there any member of the jury
11 panel with any bias or any prejudice towards either
12 the State or the Defendant? Please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, this is, as you all know, starting on
16 Tuesday, so it is a short week and not a full week.
17 There is a potential that this case may go into the
18 beginning part of next week.

19 Is there any member of the jury panel who has
20 an extreme circumstance that would require you --
21 that would prevent you from serving into next week?
22 It may go into -- I hate to say, because I'll end
23 up saying one thing and being wrong -- but it may
24 go into Monday or Tuesday of next week. Is there
25 anyone with a compelling circumstance, extreme

1 hardship? Just remember that is an inconvenience
2 for everybody to be here. Well, most people it is
3 an inconvenience for you to be here. I am
4 concerned with those people that it would be an
5 extreme hardship on you for a particular reason to
6 be here all of this week and maybe the beginning of
7 next week.

8 (Potential jurors stand.)

9 THE COURT: All right. Let's get the juror
10 numbers and then I'll have you all come down and
11 speak with me privately. Or just don't worry about
12 getting the numbers, come down and speak with me
13 privately.

14 If there is anyone else who has any concerns
15 regarding serving on this trial with the focus
16 being on unable to be fair and impartial in this
17 trial, I am going to ask that you come down at this
18 time.

19 If there is any question that you did not wish
20 to answer in front of the entire panel, I ask that
21 you come down at this time.

22 All right.

23 THE CLERK: Number 299.

24 (Potential Juror 299 approaches the bench.)

25 THE COURT: Yes. Come on up. She has to take

1 down what you are saying.

2 POTENTIAL JUROR: 299. I'm a small business
3 owner. And I have to be in Atlanta next week.

4 THE COURT: When is that?

5 POTENTIAL JUROR: Wednesday. And I also have
6 a doctor's appointment repeatedly. I'm a diabetic,
7 and I need to be in dialysis on Tuesday.

8 THE COURT: Of next week?

9 POTENTIAL JUROR: Next week, yes, ma'am.

10 THE COURT: And you are juror number?

11 POTENTIAL JUROR: 299.

12 THE COURT: I can't promise you won't be
13 chosen, but you have already put us on notice. All
14 right, thank you.

15 POTENTIAL JUROR: Thank you.

16 (Potential juror seated.)

17 THE CLERK: Number 264.

18 (Potential juror approaches the bench.)

19 POTENTIAL JUROR: Okay.

20 THE COURT: Yes, sir?

21 POTENTIAL JUROR: My job don't pay me for
22 being here.

23 THE COURT: Most people don't get paid.

24 POTENTIAL JUROR: I can't get paid if I have
25 jury duty.

1 THE COURT: I understand.

2 POTENTIAL JUROR: Number Two, I have a
3 relationship with a guy that came in with the
4 victim.

5 THE COURT: What now?

6 POTENTIAL JUROR: A guy that came in with the
7 victim's family, we played football.

8 THE COURT: What is his name?

9 POTENTIAL JUROR: Ivory Fleming.

10 THE COURT: And would that affect your ability
11 to be -- he is here with the victim's family. Do
12 you know why he is here?

13 POTENTIAL JUROR: I don't know why. He was a
14 mentor to me, so.

15 THE COURT: Would that affect your ability to
16 be fair and impartial?

17 POTENTIAL JUROR: Possibly.

18 THE COURT: All right, thank you.

19 (Potential juror seated.)

20 THE CLERK: Number 70.

21 (Potential juror approaches the bench.)

22 POTENTIAL JUROR: I am finishing up a second
23 round of dialectical behavior therapy, and I have
24 been in a consult group for about a year and a
25 half, and if I don't finish the therapeutic round

1 next week, I don't get certified.

2 THE COURT: And it starts next week?

3 POTENTIAL JUROR: Yes, it starts on Monday.

4 Dialectical behavior therapy.

5 THE COURT: What is that?

6 POTENTIAL JUROR: DBT. It is a type of
7 therapeutic modality for treating clients with
8 severe suicidal crises and PTSD disorders.

9 THE COURT: What is your juror number?

10 POTENTIAL JUROR: 70.

11 THE COURT: All right. I am going to -- we
12 are on notice. I can't excuse you, but we are on
13 notice that you cannot be here next week.

14 (Potential juror seated.)

15 THE CLERK: Number 306.

16 (Potential juror approaches the bench.)

17 POTENTIAL JUROR: I don't know if this is
18 crucial enough, but I have a non-refundable plane
19 ticket on Wednesday morning to see my daughter.

20 THE COURT: Next week?

21 POTENTIAL JUROR: Next Wednesday in
22 California.

23 THE COURT: We'll be done.

24 POTENTIAL JUROR: Isn't it long?

25 THE COURT: Well, they won't call all those

1 witnesses, but we should be done hopefully before
2 Monday or Tuesday of next week.

3 POTENTIAL JUROR: Okay.

4 THE COURT: I can't excuse you, but they all
5 know that you have to leave on Wednesday. Okay.
6 Thank you.

7 (Potential juror seated.)

8 THE COURT: Y'all know those people I can't
9 excuse, but you will be on notice.

10 THE CLERK: Number 156.

11 (Potential juror approaches the bench.)

12 POTENTIAL JUROR: Hi. I am part owner of a
13 small company. And it is crucial for the long-term
14 planning is being there a short period of time.
15 Anything extended -- there is going to be a lot of
16 tax planning at the end of the year and things next
17 week that I need to be there for.

18 THE COURT: As I have been telling everyone
19 else, we just need to make note, and the lawyers
20 are making note, I'm making notes, but there is a
21 possibility it may be Monday or Tuesday. I can't
22 excuse you because you are qualified.

23 POTENTIAL JUROR: There is lot of tax
24 planning, lawyers, accountants, maybe Monday and
25 Tuesday next week they need me for. There is a lot

1 of things that they need administratively.

2 THE COURT: All right. Well, we will make a
3 note of that.

4 POTENTIAL JUROR: Thank you.

5 (Potential juror seated.)

6 THE CLERK: Number 89.

7 (Potential juror approaches the bench.)

8 POTENTIAL JUROR: I'm an orthopedic surgeon in
9 private practice. I made accommodations for this
10 week for staff, X-ray techs, but I have five total
11 joints on Monday and five more on Thursday. Half
12 of my hips come from out of town, out of state.
13 People made arrangements with their families to
14 take off work for six weeks at a time. To
15 reschedule people, I have scheduled surgery until
16 March, two and three months out.

17 THE COURT: I'll take you off. I will
18 probably put you on another panel if you can't --
19 that would be extreme.

20 POTENTIAL JUROR: I'm prepared for this week.
21 I mean, I didn't plan for next week.

22 THE COURT: What is your name? You are juror
23 number?

24 POTENTIAL JUROR: 89.

25 THE COURT: Thank you.

1 (Potential juror seated.)

2 THE CLERK: Number 141.

3 (Potential juror approaches the bench.)

4 POTENTIAL JUROR: I am a chief resident of the
5 trauma surgery at Richland. Residents, there is a
6 lot of responsibilities in the trauma bay right
7 now. While there are attendings there, it would
8 require me to make sure the days are organized and
9 the traumas are covered. While this week is okay,
10 next week may be a problem.

11 THE COURT: Let me see.

12 POTENTIAL JUROR: Okay.

13 THE COURT: We'll see. What is your number?

14 POTENTIAL JUROR: 141.

15 THE COURT: All right, thank you.

16 (Potential juror seated.)

17 THE CLERK: Number 116.

18 (Potential juror approaches the bench.)

19 POTENTIAL JUROR: You had mentioned if we were
20 a witness of a crime. As a teenager, I witnessed
21 an armed robbery at my parents' grocery store.

22 THE COURT: Would that affect your ability to
23 be fair and impartial in this trial?

24 POTENTIAL JUROR: No.

25 THE COURT: All right, thank you.

1 (Potential juror seated.)

2 THE CLERK: Number 40.

3 (Potential juror approaches the bench.)

4 POTENTIAL JUROR: Good morning. My husband
5 recently got laid off. His income is the only
6 income in my household. Without -- I'm a
7 cosmetologist, so if I am not at work, I don't pay
8 bills.

9 THE COURT: Well, I can't excuse you from this
10 week because you have already been qualified. And
11 it may go into Monday, Tuesday.

12 POTENTIAL JUROR: Usually I'm working. This
13 is actually my day off.

14 THE COURT: I can't excuse you because you
15 have already been qualified. So just stick around.
16 Everyone is on notice that it will be difficult for
17 next week.

18 (Potential juror seated.)

19 THE CLERK: Number 47.

20 (Potential juror approaches the bench.)

21 POTENTIAL JUROR: You mentioned about watching
22 Live PD. I wanted to let you know my son was a
23 North Charleston police officer and Richland County
24 and also appeared on Live PD.

25 THE COURT: Would that affect your ability to

1 be fair and impartial in this trial?

2 POTENTIAL JUROR: No.

3 THE COURT: 47.

4 (Potential juror seated.)

5 THE CLERK: Number 16.

6 (Potential juror approaches the bench.)

7 POTENTIAL JUROR: I just wanted to let you
8 know, I work for a financial institution, All South
9 Federal Credit Union, and I work for risk
10 management. I file court cases for the white
11 collar crimes on their behalf. So I work a lot
12 with Richland County Sheriff's Department. And,
13 like, right now I have cases that are active and
14 currently being worked by the investigators,
15 specifically Investigator Roe. But I don't have
16 any bias or anything, but I am working actively
17 with him. I just --

18 THE COURT: Would that affect your ability to
19 be fair and impartial in this trial?

20 POTENTIAL JUROR: No.

21 THE COURT: Okay.

22 POTENTIAL JUROR: I just wanted to be upfront
23 about it.

24 THE COURT: Thank you.

25 POTENTIAL JUROR: Thank you.

1 (Potential juror seated.)

2 THE CLERK: Number 268.

3 (Potential juror approaches the bench.)

4 THE COURT: Good morning.

5 POTENTIAL JUROR: I have a real estate closing
6 for Thursday afternoon with earnest money on the
7 line. I definitely want it over quickly.

8 THE COURT: Did Judge Hood not give you -- you
9 didn't ask him?

10 POTENTIAL JUROR: I didn't ask.

11 THE COURT: I am more concerned about next
12 week. So what time is it on Thursday?

13 POTENTIAL JUROR: 4:00 p.m. Thursday
14 afternoon. It has to be done by the 31st. Earnest
15 money is on the line.

16 THE COURT: All right. Well, what we'll do
17 is, everybody is on notice of that. I can't
18 promise you won't be seated, but we will try --
19 this case is probably going into Thursday
20 afternoon, but everyone is on notice of your
21 conflict.

22 POTENTIAL JUROR: I understand. It will
23 definitely make life rough.

24 THE COURT: All right. Thank you. 268.

25 (Potential juror seated.)

1 THE CLERK: Number 264.

2 (Potential juror approaches the bench.)

3 THE COURT: Yes, sir.

4 POTENTIAL JUROR: Just as a safety precaution,
5 I do work at local night clubs and parties of their
6 age group. I work there and I work the front door.

7 THE COURT: Well, do you know people -- do you
8 know the Defendant?

9 POTENTIAL JUROR: I don't know him, I'm just
10 as a safety precaution, me working there and it is
11 known for -- some clubs I work for are known for
12 violence.

13 THE COURT: Would that affect your ability to
14 be fair and impartial in this trial?

15 POTENTIAL JUROR: No. I just wanted to let
16 you know, that's why.

17 THE COURT: But that wouldn't affect your
18 ability --

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: -- to be fair and impartial, the--
21 fact you work at a night club? What do you do
22 there?

23 POTENTIAL JUROR: I'm a bouncer.

24 THE COURT: Okay. Would that affect your
25 ability to be fair and impartial?

1 POTENTIAL JUROR: No, ma'am, I just state it
2 as a safety precaution.

3 THE COURT: Okay. Thank you for letting us
4 know.

5 POTENTIAL JUROR: Thank you, ma'am.

6 (Potential juror seated.)

7 THE CLERK: Number 208.

8 (Potential juror approaches the bench.)

9 POTENTIAL JUROR: I forgot to tell you, my
10 cousin was killed by gunshot seven or eight years
11 ago.

12 THE COURT: Would that affect your ability to
13 be fair and impartial in this trial?

14 THE COURT: Her cousin was killed eight years
15 ago. Thank you for telling me.

16 (Potential juror seated.)

17 (The following is held at the bench.)

18 THE COURT: So I will strike for cause Number
19 2, 104, and 264.

20 MR. FYALL: Okay.

21 MR. GOLDBERG: 264.

22 THE COURT: Not impartial. Bouncer. Ivory is
23 a preacher for the family.

24 MR. GOLDBERG: He said he coached football
25 with him.

1 THE COURT: 264 did not want to serve, a lot
2 going on.

3 89 is the doctor who has appointments. I will
4 just take him out. He can't serve two weeks.

5 I'm assuming you will not put the trauma
6 surgeon?

7 MR. O'NEIL: I wasn't going to pick her.

8 THE COURT: Going to?

9 MR. O'NEIL: I wasn't going to pick her.

10 THE COURT: Strike? Going to pick?

11 MR. GOLDBERG: I would pick her.

12 THE COURT: You want me to leave her in? I'll
13 leave her in. I think there is a difference
14 between her and the doctor.

15 MR. GOLDBERG: Definitely a difference between
16 the two, the orthopedist.

17 THE COURT: Leave her in.

18 And then Number 306, she has a flight on
19 Wednesday. Take her out.

20 Number -- the lady that is a cosmetologist?

21 The lady that is dialectical behavior therapy,
22 PTSD?

23 MR. O'NEIL: Suicide prevention person.

24 THE COURT: 70. Take her out.

25 MR. GOLDBERG: 70.

1 THE COURT: Anybody else? Real estate didn't
2 get excused. I can't do anything about that one.

3 Somebody has diabetes treatment next week and
4 has to be in Atlanta on Wednesday. Didn't he say a
5 doctor's appointment?

6 MR. GOLDBERG: Wednesday.

7 THE COURT: Dialysis?

8 MR. GOLDBERG: Wednesday next week. Atlanta
9 Wednesday. Dialysis on Tuesday, I think he said.

10 THE COURT: Take him out or leave him in?

11 MR. GOLDBERG: I say leave him.

12 MR. O'NEIL: A business owner, a small
13 business owner too.

14 THE COURT: I am not going to excuse him for
15 that reason. Judge Hood qualified. He has
16 dialysis on Tuesday, so if he has dialysis I don't
17 want him to be sick. Take that into consideration.

18 Anything else? Number 2, excuse for cause.
19 Number 2, Number 104, 264. Five total?

20 MR. GOLDBERG: 2, 104, 264, 89, and 70.

21 MR. O'NEIL: Did you -- I was wondering
22 whether or not you read the amended indictment.
23 That is the amended indictment.

24 MR. GOLDBERG: The only difference is that
25 makes it specific that she died as a result of a

1 gunshot wound.

2 MR. O'NEIL: It says indictments on it.

3 THE COURT: Do you want me to --

4 MR. O'NEIL: I didn't know which one you were
5 reading. I didn't say there was anything wrong
6 with it.

7 MR. GOLDBERG: I don't know that it really
8 matters.

9 MR. O'NEIL: For this purpose. I just want to
10 make sure you are aware.

11 THE COURT: I don't think it is amended.

12 MR. O'NEIL: It is the old one. Because the
13 back says amended.

14 THE COURT: We need to get a new one.

15 MR. O'NEIL: Okay.

16 THE COURT: We'll do that. For purposes of
17 jury selection, do you want me to read the
18 indictment?

19 MR. O'NEIL: No, ma'am.

20 THE COURT: All right. So it is almost 1:00
21 o'clock. Do y'all want to just tell them to come
22 back in the morning?

23 MR. GOLDBERG: After we pick them?

24 MR. O'NEIL: Yes.

25 THE COURT: Pretrial you said two hours,

1 between two and a half hours. It will probably be
2 1:00 o'clock by the time we pick them and get them
3 out of here. I mean, I need to leave by quarter
4 till, not back until 3:00. And it will take two
5 hours.

6 MR. O'NEIL: I forgot about that.

7 MR. GOLDBERG: Pick and break.

8 MR. O'NEIL: Pick and break.

9 THE COURT: Start in the morning. We have to
10 break and go over motions. Then I can leave and
11 come back and continue motions.

12 MR. O'NEIL: Works for me.

13 THE COURT: Thank you. It wouldn't be -- I've
14 got an appointment to see a doctor for therapy I
15 have to get, I am having some issues --

16 MR. O'NEIL: Yes, ma'am.

17 THE COURT: -- with my hip. I need to go to
18 the doctor. I might need the orthopedic surgeon
19 from running.

20 (Bench conference ended.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen, for your patience. At this time we are
23 ready to select the jury in this case. The strikes
24 are ten and five.

25 Madam Clerk, are you ready?

1 When your name is called, you are going to
2 come down to this microphone right here and you
3 will state your name, where you work, if you are
4 married, where your spouse works. At that point
5 you don't have to say anything else. The State
6 will say, Please seat the juror, or, Please excuse
7 the juror. If they say, Please seat the juror, you
8 will remain standing there. If they say, Please
9 excuse the juror, you will go back into the
10 audience. If they say, Please seat, then we'll go
11 to the Defense and they will say, Please seat the
12 juror, or, Please excuse. If they say, Please
13 seat, you will go into the jury box. If they say,
14 Please excuse, you will go back into the audience.

15 It is always a little tricky for the first
16 person if you have not done this before. The only
17 thing you need to be concerned with is telling us
18 your name, where you work, if you are married, and
19 where you spouse works.

20 All right. Is everyone ready?

21 All right, yes, ma'am.

22 THE CLERK: Number 40, Emily Butler.

23 (Potential juror approaches.)

24 POTENTIAL JUROR: My name is Emily Butler. I
25 work for Great Clips. And my husband is a former

1 employee --

2 THE COURT: Can you fix the microphone out so
3 they can stand behind it.

4 POTENTIAL JUROR: My name is Emily Butler. I
5 work for Great Clips. And my husband is a former
6 state employee.

7 THE CLERK: What says the State?

8 MR. GOLDBERG: Please seat the juror.

9 THE CLERK: What says the Defense?

10 MR. O'NEIL: Please excuse the juror.

11 THE CLERK: Have a seat in the back of the
12 courtroom, please.

13 (Juror 40, a black female, was excused
14 by the Defense.)

15 THE CLERK: Number 249, Myron Singleton.

16 (Potential juror approaches.)

17 POTENTIAL JUROR: My name is Myron Singleton,
18 and I work for the Department of Transportation.

19 THE CLERK: What says the State?

20 MR. GOLDBERG: Please seat the juror.

21 THE CLERK: What says the Defense?

22 MR. O'NEIL: Please seat the juror.

23 THE CLERK: Have a seat in the jury box.

24 (Juror 249, a black male, was seated on
25 the jury.)

1 THE CLERK: Number 200, Tabitha Padgett.
2 (Potential juror approaches.)

3 POTENTIAL JUROR: Tabitha Padgett. I work for
4 Auto Owners Insurance.

5 THE CLERK: What says the State?

6 MR. GOLDBERG: Please seat the juror.

7 THE CLERK: What says the Defense?

8 MR. O'NEIL: Please excuse the juror.

9 THE CLERK: Have a seat in the back of the
10 courtroom, please.

11 (Juror 200, a white female, was excused
12 by the Defense.)

13 THE CLERK: Number 161, Patricia Marvin.

14 (Potential juror approaches.)

15 POTENTIAL JUROR: Patricia Marvin. I work for
16 Wellpath Recovery Solutions.

17 THE CLERK: What says the State?

18 MR. GOLDBERG: Please seat the juror.

19 THE CLERK: What says the Defense?

20 MR. O'NEIL: Please excuse the juror.

21 THE COURT REPORTER: I'm sorry, where did you
22 say you worked?

23 POTENTIAL JUROR: Wellpath Recovery Solutions.

24 THE CLERK: Have a seat in the back of the
25 courtroom, please.

1 (Juror 161, a black female, was excused
2 by the Defense.)

3 THE CLERK: Number 159, Carrie Macon.
4 (Potential juror approaches.)

5 POTENTIAL JUROR: My name is Carrie Macon. I
6 have disability and I am unemployed.

7 THE CLERK: What says the State?

8 MR. GOLDBERG: Please excuse the juror.

9 THE CLERK: Have a seat in the back of the
10 courtroom, please.

11 (Juror 159, a black female, was excused
12 by the State.)

13 THE CLERK: Number 47, William Claytor.
14 (Potential juror approaches.)

15 POTENTIAL JUROR: My name is William Claytor.
16 Retired military. My wife is retired from State
17 Farm Insurance.

18 THE CLERK: What says the State?

19 MR. GOLDBERG: Please seat the juror.

20 THE CLERK: What says the Defense?

21 MR. O'NEIL: Please excuse the juror.

22 THE CLERK: Have a seat in the back of the
23 courtroom, please.

24 (Juror 47, a white male, was excused by
25 the Defense.)

1 THE CLERK: Number 9, Andrena Balkcon.

2 (Potential juror approaches.)

3 POTENTIAL JUROR: Andrena Balkcon. I am a
4 registered nurse. And my husband works at --

5 THE COURT REPORTER: Works where, I'm sorry?
6 Your husband works?

7 POTENTIAL JUROR: Sleep Number.

8 THE CLERK: What says the State?

9 MR. GOLDBERG: Please seat the juror.

10 THE CLERK: What says the Defense?

11 MR. O'NEIL: Please seat the juror.

12 THE CLERK: Have a seat in the jury box,
13 please.

14 (Juror 9, a black female, was seated on
15 the jury.)

16 THE CLERK: Alfred Cross, Number 60.

17 (Potential juror approaches.)

18 POTENTIAL JUROR: My name is Alfred Cross. I
19 work for Invista in Lugoff, South Carolina, and my
20 wife works for USC.

21 THE CLERK: What says the State?

22 MR. GOLDBERG: Please seat the juror.

23 THE CLERK: What says the Defense?

24 MR. O'NEIL: Please excuse the juror.

25 THE CLERK: Have a seat in the back of the

1 courtroom.

2 (Juror 60, a white male, was excused by
3 the Defense.)

4 THE CLERK: Number 210, Cheryl Player.

5 (Potential juror approaches.)

6 POTENTIAL JUROR: I'm Cheryl Player. I work
7 for control management. And my husband is a
8 teacher.

9 THE CLERK: What says the State?

10 MR. GOLDBERG: Please seat the juror.

11 THE CLERK: What says the Defense?

12 MR. O'NEIL: Please seat the juror.

13 THE CLERK: Have a seat in the jury box,
14 please.

15 (Juror 210, a white female, was seated
16 on the jury.)

17 THE CLERK: Number 41, Derek Carrara.

18 (Potential juror approaches.)

19 POTENTIAL JUROR: My name is Derek Carrara.

20 I am a merchandiser for Grey Eagle Beverages.

21 THE CLERK: What says the State?

22 MR. GOLDBERG: Please seat the juror.

23 THE CLERK: What says the Defense?

24 MR. O'NEIL: Please seat the juror.

25 THE CLERK: Have a seat in the jury box,

1 please.

2 (Juror 41, a white male, was seated on
3 the jury.)

4 THE CLERK: 190, Vanessa Nelson-Reed.

5 (Potential juror approaches.)

6 POTENTIAL JUROR: I'm Vanessa Nelson-Reed.
7 I'm an administrator at Colleton County School
8 District. My husband Larry is a retired teacher.

9 THE CLERK: What says the State?

10 MR. GOLDBERG: Please seat the juror.

11 THE CLERK: What says the Defense?

12 MR. O'NEIL: Please excuse the juror.

13 THE CLERK: Have a seat in the back of the
14 courtroom, please.

15 (Juror 190, a black female, was excused
16 by the Defense.)

17 THE CLERK: Number 268, Jimmy Taylor.

18 (Potential juror approaches.)

19 POTENTIAL JUROR: I'm Jimmy Taylor. I work
20 for SCE&G, which is changing to Dominion Energy.

21 THE CLERK: What says the State?

22 MR. GOLDBERG: Please excuse the juror.

23 THE CLERK: Have a seat in the back of the
24 courtroom, please.

25 (Juror 268, a white male, was excused by

1 the State.)

2 THE CLERK: Number 299, Trevor Wright.

3 (Potential juror approaches.)

4 POTENTIAL JUROR: Trevor Wright. I'm a
5 business owner. My wife works for DSS. She is a
6 social worker.

7 THE CLERK: What says the State?

8 MR. GOLDBERG: Please seat the juror.

9 THE CLERK: What says the Defense?

10 MR. O'NEIL: Please excuse the juror.

11 THE CLERK: Have a seat in the back of the
12 courtroom, please.

13 (Juror 299, a black male, was excused by
14 the Defense.)

15 THE CLERK: Number 286, Robert Webb.

16 (Potential juror approaches.)

17 POTENTIAL JUROR: Robert Webb. I work for the
18 Department of Transportation, engineer. My wife is
19 a school teacher.

20 THE CLERK: What says the State?

21 MR. GOLDBERG: Please seat the juror.

22 THE CLERK: What says the Defense?

23 MR. O'NEIL: Please excuse the juror.

24 THE CLERK: Have a seat in the back of the
25 courtroom, please.

1 (Juror 286, a black male, was excused by
2 the Defense.)

3 THE CLERK: Number 22, Edward Benincasa.
4 (Potential juror approaches.)

5 POTENTIAL JUROR: My name is Edward Benincasa.
6 I work for a company called FN America. And my
7 wife is a teacher at Elgin-Lugoff Middle School.

8 THE CLERK: What says the State?

9 MR. GOLDBERG: Please seat the juror.

10 THE CLERK: What says the Defense?

11 MR. O'NEIL: Please excuse the juror.

12 THE CLERK: Have a seat at the back of the
13 courtroom, please.

14 (Juror 22, a white male, was excused by
15 the Defense.)

16 THE CLERK: Counsel, for the State I have two
17 strikes; for the Defense I have nine.

18 MR. O'NEIL: (Nods affirmatively.)

19 THE CLERK: Number 19, Whitney Beaufort.

20 (Potential juror approaches.)

21 POTENTIAL JUROR: Whitney Beaufort. I am a
22 customer service representative for America's First
23 Choice.

24 THE CLERK: What says the State?

25 MR. GOLDBERG: Please seat the juror.

1 THE CLERK: What says the Defense?

2 MR. O'NEIL: Please seat the juror.

3 THE CLERK: Have a seat in the jury box,
4 please.

5 (Juror 19, a black female, was seated on
6 the jury.)

7 THE CLERK: 58, Ernest Cromartie.

8 (Potential juror approaches.)

9 POTENTIAL JUROR: Ernest Cromartie. Principal
10 attorney, Cromartie Law Firm. My wife is a
11 physical therapist for the VA.

12 THE CLERK: What says the State?

13 MR. GOLDBERG: Please excuse the juror.

14 THE CLERK: Have a seat at the back of the
15 courtroom, please.

16 (Juror 58, a black male, was excused by
17 the State.)

18 THE CLERK: Number 209, Tommy Phan.

19 (Potential juror approaches.)

20 POTENTIAL JUROR: Tommy Phan. Nail
21 technician. And my wife also --

22 THE COURT REPORTER: I didn't hear that.

23 THE COURT: Where does your wife work?

24 POTENTIAL JUROR: Nail technician too. Work
25 at the same place.

1 THE COURT: All right.

2 THE CLERK: What says the State?

3 MR. GOLDBERG: Please excuse the juror.

4 THE CLERK: Have a seat in the back of the
5 courtroom, please.

6 (Juror 209, an Asian male, was excused
7 by the State.)

8 THE CLERK: Number 116, Gail Harrison.

9 (Potential juror approaches.)

10 POTENTIAL JUROR: Gail Harrison. Homemaker.
11 My husband works as a vice-president of finance for
12 Spirex Sarco.

13 THE CLERK: What says the State?

14 MR. GOLDBERG: Please seat the juror.

15 THE CLERK: What says the Defense?

16 MR. O'NEIL: Please seat the juror.

17 THE CLERK: Have a seat in the jury box,
18 please.

19 (Juror 116, a white female, was seated
20 on the jury.)

21 THE CLERK: Number 155, Taisha Lockette.

22 (Potential juror approaches.)

23 POTENTIAL JUROR: Taisha Lockette. I work at
24 V.C. Nuclear Station.

25 THE CLERK: What says the State?

1 MR. GOLDBERG: Please seat the juror.

2 THE CLERK: What says the Defense?

3 MR. O'NEIL: Please seat this juror.

4 THE CLERK: Have a seat in the jury box,
5 please.

6 (Juror 155, a black female, was seated
7 on the jury.)

8 THE CLERK: Number 130, Nicholas Jackson.
9 (Potential juror approaches.)

10 POTENTIAL JUROR: Nicholas Jackson. I work
11 for Animal Control for Richland County.

12 THE CLERK: What says the State?

13 MR. GOLDBERG: Please seat the juror.

14 THE CLERK: What says the Defense?

15 MR. O'NEIL: Please seat the juror.

16 THE CLERK: Have a seat in the jury box,
17 please.

18 (Juror 130, a black male, was seated on
19 the jury.)

20 THE CLERK: Number 100, Willie Gibbs.
21 (Potential juror approaches.)

22 POTENTIAL JUROR: Willie Mae Gibbs. I am
23 currently unemployed.

24 THE CLERK: What says the State?

25 MR. GOLDBERG: Please seat the juror.

1 THE CLERK: What says the Defense?

2 MR. O'NEIL: Please seat the juror.

3 THE CLERK: Have a seat in the jury box,
4 please.

5 (Juror 100, a black female, was seated
6 on the jury.)

7 THE CLERK: Number 231, Candice Rogers.
8 (Potential juror approaches.)

9 POTENTIAL JUROR: Candice Rogers. I'm a
10 homemaker. And my husband is a network engineer.

11 THE CLERK: What says the State?

12 MR. GOLDBERG: Please seat the juror.

13 THE CLERK: What says the Defense?

14 MR. O'NEIL: Please seat the juror.

15 THE CLERK: Have a seat in the jury box,
16 please.

17 (Juror 231, a white female, was seated
18 on the jury.)

19 THE CLERK: Number 298, Frank Woods.
20 (Potential juror approaches.)

21 POTENTIAL JUROR: Franks Woods. I am employed
22 at Mars Petcare. My wife is in HR and finance.

23 THE CLERK: What says the State?

24 MR. GOLDBERG: Please seat the juror.

25 THE COURT: What says the Defense?

1 MR. O'NEIL: Please excuse the juror.

2 THE CLERK: Have a seat in the back of the
3 courtroom.

4 (Juror 298, a black male, was excused by
5 the Defense.)

6 THE CLERK: Number 244, Jason Shealy.

7 (Potential juror approaches.)

8 POTENTIAL JUROR: I'm Jason Shealy. I work at
9 Michelin. My wife works at Chick-fil-A.

10 THE CLERK: What says the State?

11 MR. GOLDBERG: Please seat the juror.

12 THE CLERK: Does the Defense challenge for
13 cause?

14 MR. O'NEIL: No.

15 THE CLERK: Have a seat in the jury box.

16 (Juror 244, a white male, was seated on
17 the jury.)

18 THE CLERK: Number 177, Darryl Middleton.

19 (Potential juror approaches.)

20 POTENTIAL JUROR: My name is Darryl Middleton.

21 I work for Richland County School District 1. My
22 wife is a housewife.

23 THE CLERK: What says the State?

24 MR. GOLDBERG: Please seat the juror.

25 THE CLERK: Does the Defense challenge for

1 cause?

2 MR. O'NEIL: No.

3 THE CLERK: Have a seat in the juror box,
4 please.

5 (Juror 177, a black male, was seated on
6 the jury.)

7 THE COURT: Three alternates.

8 THE CLERK: Number 240, Patti Scurry.
9 (Potential juror approaches.)

10 POTENTIAL JUROR: I'm Patti Scurry. I'm an
11 executive assistant at Lexington Medical Center in
12 the physician network. And my husband is in
13 construction.

14 THE CLERK: What says the State?

15 MR. GOLDBERG: Please seat the juror.

16 THE CLERK: What says the Defense?

17 MR. O'NEIL: Excuse the juror, please.

18 THE CLERK: Have a seat in the back of the
19 courtroom, please.

20 (Juror 240, a white female, was excused
21 by the Defense.)

22 THE CLERK: Number 227, Nishika Robinson.

23 (Potential juror approaches.)

24 POTENTIAL JUROR: My name is Nishika Robinson.
25 And I am currently unemployed.

1 THE CLERK: What says the State?

2 MR. GOLDBERG: Please seat the juror.

3 THE CLERK: What says the Defense?

4 MR. O'NEIL: Please seat the juror.

5 THE CLERK: Have a seat in the jury box,
6 please.

7 (Juror 227, a black female, was seated
8 as the first alternate.)

9 THE CLERK: Number 122, William Higgins.
10 (Potential juror approaches.)

11 POTENTIAL JUROR: I'm Bill Higgins. I
12 practice law here in Columbia with Graybill,
13 Lansche & Vinzani. My wife is also a lawyer with
14 Burriss & Ridgeway.

15 THE CLERK: What says the State?

16 MR. GOLDBERG: Please excuse the juror.

17 THE CLERK: Have a seat in the back of the
18 courtroom.

19 (Juror 122, a white male, was excused by
20 the State.)

21 THE CLERK: Number 208, Tam Phan.

22 (Potential juror approaches.)

23 POTENTIAL JUROR: I'm Tam Phan. Nail
24 technician.

25 THE CLERK: Does the State challenge for

1 cause?

2 MR. GOLDBERG: No, ma'am.

3 THE CLERK: What says the Defense?

4 MR. O'NEIL: Please excuse the juror.

5 THE CLERK: Have a seat in the back of the
6 courtroom, please.

7 (Juror 208, an Asian female, was excused
8 by the Defense.)

9 THE CLERK: Number 16, Stephanie Bautista.
10 (Potential juror approaches.)

11 POTENTIAL JUROR: My name is Stephanie
12 Bautista. I work for All South Federal Credit
13 Union. My husband works for USC as a supply
14 specialist.

15 THE CLERK: What says the State?

16 MR. GOLDBERG: Please seat the juror.

17 THE CLERK: What says the Defense?

18 MR. O'NEIL: Please seat the juror.

19 THE CLERK: Have a seat in the jury box,
20 please.

21 (Juror 16, a white female, was seated as
22 the second alternate.)

23 THE CLERK: Number 251, Joel Skipper.

24 (Potential juror approaches.)

25 POTENTIAL JUROR: Joel Skipper. Carson Wealth

1 Financial Planning in Lexington, South Carolina.

2 THE CLERK: What says the State?

3 MR. GOLDBERG: Please seat the juror.

4 THE CLERK: What says the Defense?

5 MR. O'NEIL: Please seat the juror.

6 THE CLERK: Have a seat in the jury box,
7 please.

8 (Juror 251, a white male, was seated as
9 the third alternate.)

10 THE COURT: All right. Anything from the
11 State before I release the remaining members of the
12 jury panel? Anything from the State?

13 MR. FYALL: No, ma'am.

14 THE COURT: Anything from the Defense?

15 MR. O'NEIL: No, ma'am.

16 THE COURT: All right. Ladies and gentlemen
17 of the jury, for those of you who were not
18 selected, I want to thank you for your cooperation
19 and your patience this morning. I know that this
20 has been a long morning for you, but it is a
21 process that we have to go through in order to
22 impanel a jury.

23 So I do want to thank you for your service
24 here this week, for your service here today. I am
25 not sure if you will have to serve again or if you

1 will be picked on another panel, but I am going to
2 send you back downstairs for further instructions.

3 Once again, thank you. And have a great day.

4 (WHEREUPON, the remaining jury panel was
5 excused at 1:06 p.m.)

6 THE COURT: Ladies and gentlemen of the jury,
7 those of you who were selected, I know it has been
8 a long morning for you also. We are going to --
9 actually, there are some -- quite a few pretrial
10 matters that I need to take up over lunch -- maybe
11 we get lunch, maybe not -- over lunch, and they
12 tell me it is going to take several hours.

13 So instead of having you all sit in the jury
14 room, I am going to release you all for the
15 afternoon and have you come back at 9:30 in the
16 morning.

17 The bailiff will show you where the jury room
18 is. They will give you some instructions as to
19 where you are to report.

20 I will go ahead and tell you that -- you
21 haven't been sworn yet and we have not started the
22 trial, and the only thing that you know about the
23 case is what I have read to you from the
24 indictments. The only thing you know is the
25 allegations that are in the indictment. You don't

1 have any evidence in the case. And I would ask
2 that you not do any independent research regarding
3 any of the issues in the case. Do not go out there
4 and look up anything regarding the case. Remember
5 that you swore earlier that you could be fair and
6 impartial to both the State and the Defendant. And
7 that means not reading anything online, not doing
8 any independent research regarding any issue,
9 regarding the lawyers, regarding the parties
10 involved in the case.

11 As you know, there are things that you may
12 find online that are not always correct, and it
13 would be improper for you to read anything or look
14 up any issue with the possibility of it being
15 incorrect. We will supply you everything that you
16 will need for purposes of being a juror in this
17 case. It will be provided in the courtroom, and
18 then you will be given an opportunity to deliberate
19 at the end.

20 I will also ask that you not begin discussing
21 the case with each other. Remember, you swore
22 earlier and you will swear again tomorrow morning
23 to be fair and impartial jurors. Well, you can't
24 be fair and impartial if you have not heard all of
25 the evidence and if you have not heard the

1 arguments of the parties and if you have not heard
2 the charge on the law from the Court. You cannot
3 be fair and impartial if you make a decision after
4 one or two witnesses. You have to hear all of the
5 evidence, you have to hear the charge on the law,
6 you have to hear the arguments of the parties, and
7 them we will send you back into the jury room to
8 deliberate.

9 So I ask that you please, please do not
10 discuss the case with each other. Also, please --
11 it would be improper for you to form any opinion in
12 your mind as to the outcome or your position in the
13 case as to whether or not the Defendant is guilty
14 or not guilty because it would also be improper
15 until you receive all of the evidence in the case,
16 the evidence of the parties, and the charge on the
17 law from the Court.

18 So with that being said, I am going to ask
19 that you -- it is about ten after 1:00 -- that you
20 go home or get you lunch or go wherever it is that
21 you have to go and forget about everything that has
22 happened here today, other than the fact that you
23 have to be here at 9:30 in the morning and where
24 the bailiff tells you to return.

25 Please do not get on social media. Do not

1 post anything on Facebook or Snapchat or Linked In
2 or any social media site regarding your service on
3 the jury.

4 So, when you walk out the door, talk about how
5 cold it is, talk about whatever it is you want to
6 talk about, but please do not discuss anything that
7 is occurring in the courtroom. All right?

8 All right. We will see you all back tomorrow
9 morning at 9:30. You have a restful afternoon and
10 a good lunch.

11 Thank you.

12 (WHEREUPON, the jury is excused for the
13 day at 1:12 p.m.)

14 MR. FYALL: May we approach?

15 (WHEREUPON, a bench conference was
16 held.)

17 THE COURT: All right. Juror Number 227 said
18 she is going to need a ride, so if you all can
19 coordinate that with deputies or the clerk. Make
20 sure she is here at 9:30 in the morning.

21 THE BAILIFF: We have got the chief over
22 there.

23 THE COURT: I'm sure he will take care of it.

24 All right. Do y'all want to take a break or
25 do you want to come back at 3:00? I know we have

1 been going for a minute.

2 MR. O'NEIL: Mr. Heatley needs to go to the
3 restroom.

4 THE COURT: We need to wait a second because
5 they are going to talk to the jurors and give them
6 instructions, and sometimes it takes a minute, so I
7 don't want him walking out and them walking out at
8 the same time. Can you let us know when they
9 are --

10 THE BAILIFF: Yes, ma'am.

11 THE COURT: Any motions that I need to take up
12 while we are waiting on the jurors to leave the
13 building?

14 MR. O'NEIL: Just quickly, I think we have
15 one. Number 2, Your Honor, a motion to renew
16 discovery and Riddle information. I think I filed
17 a discovery motion in this case back in April 11th
18 of 2018. I was provided discovery by the State in
19 a timely fashion after that. And I think we had
20 this case previously scheduled for late last year,
21 so we had some meetings and reviewed discovery at
22 my office and Mr. Goldberg's office. We met two
23 weeks or so and reviewed our trial notebook and
24 their trial notebook and any pictures that we have,
25 everything in our trial notebook and everything

1 they have in their trial notebook. And I received
2 some e-mails from Mr. Fyall in the last couple of
3 days on some Riddle motions, but out of an
4 abundance of caution, I want to make sure that
5 there is no other Riddle information on discovery
6 basically that I don't have that they have not been
7 able to get to me, something that may have come up
8 in the last day or so that they haven't been able
9 to transmit to me. So based on that, I want to
10 renew my discovery motions and renew my Riddle
11 motion and any sort of contradictory statements any
12 sort of witness may have given them over the last
13 few days that they haven't been able to previously
14 turn over to me.

15 MR. GOLDBERG: Just because you mentioned
16 Mr. Fyall, I also e-mailed you as well. I just
17 want to make sure you got those.

18 MR. O'NEIL: I apologize for the oversight.

19 THE COURT: All right. Any response?
20 Everything has been turned over?

21 MR. GOLDBERG: I believe we are -- it sounds
22 like we are on the same page as far as discovery.
23 Should there be any additional Riddle information
24 that comes to light concerning the case, certainly
25 I will provide it as soon as I receive it.

1 THE COURT: All right. Next motion?

2 MR. O'NEIL: Your Honor, another quick motion
3 we could to at this point would be Number 5, my
4 motion to sequester any lay witnesses. I
5 understand the State has their lead investigators
6 here at the table here, but any other lay witnesses
7 I ask would be suppressed until after their
8 testimony -- I'm sorry, not suppressed, sequestered
9 until after their testimony.

10 THE COURT: And I think the family
11 representative of the victim? I don't know if they
12 are testifying or not.

13 MR. GOLDBERG: Your Honor, there was one
14 family member that was listed on the witness list.
15 That is the victim's mother. She is potentially a
16 witness, but certainly we would ask that she be
17 allowed to stay during the course of the trial.

18 THE COURT: I think she, under the --

19 MR. O'NEIL: Based on the statute, that she
20 would be allowed.

21 THE COURT: Under the statute she is allowed
22 to stay.

23 Other than that, any other -- because we did
24 have some witnesses that stood up -- they will not
25 be allowed -- the motion will be granted to

1 sequester those witnesses. So if you have -- you
2 all need to discuss that with all the potential
3 witnesses that you have, but they will be prevented
4 from coming in the courtroom during testimony.

5 MR. GOLDBERG: Just for clarification, so it
6 is not an issue later, you said lay witnesses, so
7 like if the next investigator arrives for
8 testimony, are they to remain outside or can they
9 come in? I don't want it to be an issue later.

10 MR. O'NEIL: Normally I would ask -- I would
11 allow for the lead investigator to stay in the
12 courtroom. I would ask for any non-lead
13 investigator -- Investigator Torres, I apologize,
14 is it Taylor or Torres?

15 INVESTIGATOR TORRES: I got divorced. It was
16 Taylor. I went from Torres to Taylor back to
17 Torres.

18 MR. O'NEIL: So I would be amenable for
19 Investigator Torres and Investigator Gonzalez to
20 stay in the courtroom. I would ask that any other
21 law enforcement individuals to no longer stay in
22 the courtroom.

23 THE COURT: All right.

24 MR. GOLDBERG: Beg the Court's indulgence one
25 moment.

1 (Pause.)

2 MR. GOLDBERG: That's all, Your Honor.

3 THE COURT: All right. They said that there
4 is an amended indictment that I will have to deal
5 with the issue on later. I don't know where -- is
6 there a record? So over the break, can you look
7 for that?

8 Anything else we can take up?

9 MR. O'NEIL: Quickly, I think we are able to
10 settle the lay witnesses' records. I don't know
11 what order you are planning on calling the lay
12 witnesses. Later on, if possible, I want to be
13 able to settle the lay witnesses' records before
14 they testify.

15 MR. GOLDBERG: Prior to their testimony.

16 THE COURT: So we are going to do it right
17 before they testify?

18 MR. GOLDBERG: Ms. Outen is working on that.
19 We should have the majority of them well in
20 advance.

21 THE COURT: Okay. So you will get it
22 hopefully to them by lunch -- after lunch?

23 MR. GOLDBERG: Certainly by the close of
24 business today.

25 THE COURT: Okay. All right.

1 MR. O'NEIL: And, Your Honor, the last
2 potentially short motion, I guess depending on the
3 State's answer, there are incidences in discovery
4 as relate to Mr. Heatley, the Defendant's alleged
5 prior bad acts. I don't know whether the
6 Department -- or the State is intending to try to
7 elicit testimony regarding those incidents here.
8 If they are not, then this motion is short. If it
9 is, then we may have some more legal argument about
10 it. But there is an alleged armed robbery at a
11 Taco Bell that is mentioned in witness statements,
12 and then there is alleged situation where my client
13 pointed a firearm on a Cliff individual at a party
14 or a nightclub mentioned in one of the lay witness
15 statements here. I don't know whether or not the
16 State is intending to delve into that. If they are
17 not, then we can settle it right now, but if they
18 are, I think we need to have some more testimony
19 taken about that.

20 MR. GOLDBERG: The short answer is we do not.
21 I would throw one caveat out there. Obviously with
22 reference to this Cliff thing, we are definitely
23 not going into that. In regards to the Taco Bell
24 incident, he was investigated and charged with a
25 burglary at a Taco Bell where he formally worked.

1 The only relevance I guess there could be to
2 that would be if -- and I don't think it is an
3 issue, it might be. I don't know, Mr. O'Neil, you --
4 tell me. There was a search warrant that was
5 executed at the Defendant's house. There were
6 actually two. One was the night that he was taken
7 into custody on this charge. There was another one
8 executed at his house several days later after
9 investigators had learned he perhaps was involved
10 with the robbery of his employer, Taco Bell. So
11 they get a search warrant for that to go to his
12 house. As they arrive at his house to execute that
13 search warrant, investigators observed shell
14 casings that they believe could be related to this
15 case. So they then actually stop, get another
16 search warrant for this case for that evidence, and
17 serve that at the same time essentially to collect
18 that evidence.

19 So I guess what I'm saying is, we don't have
20 any intention of talking about Taco Bell. They
21 would need to explain why they were at the house.
22 And I'm certainly fine with them saying, We were
23 just there executing the search warrant. They
24 don't have to say, For the Taco Bell case, of
25 course.

1 But I did want to put that out there on the
2 front end, just because it is somewhat related to
3 it.

4 MR. O'NEIL: It is related, but I don't think
5 it is necessary for Mr. Goldberg to elicit the
6 actual crime that the search warrant was for.

7 THE COURT: Which search warrant? They can
8 just say they were there --

9 MR. GOLDBERG: To execute a search warrant.

10 THE COURT: -- to execute a search warrant.

11 MR. GOLDBERG: Right.

12 THE COURT: They don't know if it had anything
13 to do with this case or any other case.

14 MR. O'NEIL: Judge, the only thing is going to
15 be whether or not the State is going to say they
16 went to get a different search warrant.

17 MR. GOLDBERG: I think if there is no
18 objection to -- like if we are not arguing about
19 the validity of any of the search warrants, there
20 would be no reason to go into that. It would be
21 just be that they would say they got a search
22 warrant executed on that date, this is what it
23 found.

24 MR. O'NEIL: I think -- preliminarily, I think
25 we can agree to that. I just want to doublecheck

1 something over the break.

2 MR. GOLDBERG: Sure.

3 THE COURT: All right. And so that is the --
4 is it a burglary or an armed robbery?

5 MR. GOLDBERG: Burglary.

6 MR. O'NEIL: Burglary.

7 THE COURT: All right. And the other issue
8 that you were concerned about the bad act is
9 something in the statement?

10 MR. O'NEIL: Yes. There is statement from a
11 lay witness that indicates that she knew
12 Mr. Heatley and that she observed Mr. Heatley pull
13 a firearm on a different individual prior to any of
14 this that we are here for today at a party.

15 THE COURT: All right. And do you intend on
16 getting into that?

17 MR. GOLDBERG: No, ma'am.

18 THE COURT: Okay. All right. Anything else?

19 Obviously, of course, which Mr. O'Neil will
20 not, but, of course, if you somehow open the door
21 to any of that, then, of course, that is always
22 fair game.

23 MR. O'NEIL: And I would say, there are some
24 generic references to my client previously carrying
25 a firearm that is mentioned in witnesses'

1 statements, not any specific instances, but
2 testimony -- there is evidence in witness
3 statements that my client carried a firearm before.
4 I don't know whether the State is getting into that
5 evidence either. I think that is prior bad act.

6 MR. GOLDBERG: Well, I think if a witness has
7 firsthand knowledge that they have seen him
8 carrying a weapon before, they would be entitled to
9 say so.

10 MR. O'NEIL: I'm not arguing it is hearsay,
11 I'm arguing it is evidence of a prior bad act.

12 THE COURT: Well, it is not necessarily --

13 MR. GOLDBERG: Fifty people just stood up on
14 the jury panel and said they had firearms.

15 THE COURT: I mean, if they said he was
16 acting -- pointing it or if he was shooting it
17 or --

18 MR. O'NEIL: Having a firearm without a --
19 having a firearm on you outside of your home
20 without a valid state weapon's permit is a crime.

21 THE COURT: Are y'all going to get into the
22 fact that he --

23 MR. GOLDBERG: No one will be suggesting that
24 he should have been charged for possession.

25 MR. O'NEIL: I'm not saying he should be

1 charged, but it is still a prior bad act. It is a
2 crime.

3 THE COURT: Are we getting into -- I
4 understand. But before the jury are you getting
5 into him not having a concealed weapon? Are y'all
6 going to ask questions, You know if he had -- I
7 mean, if they ask that, then, of course, then
8 that -- then you are saying to the jury that he was
9 illegally carrying a pistol.

10 MR. O'NEIL: Well, Your Honor, I think it is
11 kind of implicit propensity evidence, the only
12 relevance to the fact that he on prior occasions
13 carried a firearm may be that on this occasion he
14 had a firearm to commit this crime. There is no
15 other relevance to the fact that he priorly -- that
16 he previously had a firearm, I don't see the
17 relevance of that, other than it could be implicit
18 propensity evidence that he had a firearm in this
19 case and used it.

20 MR. GOLDBERG: Is there a particular instance
21 that you are referring to that is an issue?

22 MR. O'NEIL: There is a witness statement -- I
23 can't remember the witness off the top of my head,
24 but a witness statement that says my client carried
25 a firearm before.

1 THE COURT: Yes, I almost would have to hear
2 the testimony. I mean, if they are going to say
3 they saw him with a firearm ten years ago or five
4 years ago, I mean, I think there is a difference
5 between that and if they saw him with a firearm the
6 night before or --

7 MR. O'NEIL: And it is nothing that specific,
8 it is actually more general. I think a lot of
9 times when they got into background questions, the
10 investigators asked the lay witnesses, Have you
11 ever seen him with a gun before? Sometimes the
12 answer would be yes -- some witnesses that answer
13 would have been yes, some witnesses the answer
14 would have been no.

15 THE COURT: So I'm guessing you want the nos
16 in, but not the yesses?

17 MR. O'NEIL: Well, I think the nos are not
18 prior bad acts. I think the yesses are prior bad
19 acts.

20 THE COURT: I don't think you can -- I have to
21 look it up. I don't think you can have it that
22 way. All the nos were the ones that say, No, I
23 have never seen him with a firearm, and then say we
24 have got to exclude the ones that say, Yes, I have.
25 Under the doctrine of completeness, all of that --

1 I'm not sure if that is -- either you are going to
2 exclude all of them or you are going to exclude --
3 I mean, you are going to exclude all of them or you
4 let all of them in. I will have to hear the
5 testimony. I mean, so, but I don't think you
6 can -- I mean, I don't think that it would be
7 accurate to say, No, no, no, no, no, no. It is
8 almost like opening the door on these and say, Oh,
9 no, I have never seen him with a firearm, and you
10 have got other witnesses that say, Well, yes, I
11 have. Basically you are telling the jury --

12 MR. O'NEIL: I agree.

13 THE COURT: -- he doesn't carry a firearm.

14 MR. O'NEIL: Yes, ma'am.

15 THE COURT: Yes. So I'll be glad to listen to
16 your argument further on that, but I need to hear
17 the one witness that said that -- is it one or two?

18 MR. O'NEIL: I think it is at least one.

19 THE COURT: -- that said they have seen him
20 with a firearm.

21 MR. GOLDBERG: It is a couple.

22 THE COURT: A couple that say they have?

23 MR. GOLDBERG: Yes, ma'am.

24 MR. O'NEIL: Yes.

25 THE COURT: All right. So we will take a look

1 at that. Anything else on Lyle?

2 MR. O'NEIL: I think that is it. I don't
3 think there is anything else, Your Honor. Our
4 other three motions would require either some
5 testimony or some protracted legal arguments.

6 THE COURT: All right. I think I hear the
7 jurors moving chairs. They are just leaving.

8 THE BAILIFF: They are gone, Judge.

9 THE COURT: Can you doublecheck and make sure?

10 THE BAILIFF: Yes, ma'am.

11 THE COURT: I heard chairs squeaking.

12 (Pause.)

13 THE BAILIFF: They are gone.

14 THE COURT: They are gone?

15 THE BAILIFF: Yes, ma'am.

16 THE COURT: All right. So it is 1:30. I have
17 an appointment at 2:00. Do y'all want to -- I'm
18 sorry, anything else?

19 MR. FYALL: Yes, Your Honor. Since we are
20 going to be taking a break and coming back at 3:00,
21 if they have any case law that is the basis for any
22 of these motions, we would like to review them over
23 the lunch break.

24 MR. O'NEIL: That is not a problem.

25 THE COURT: And if you can send a copy to my

1 law clerk, that would be great.

2 MR. O'NEIL: I will.

3 THE COURT: And same thing, if you have
4 anything contrary to what they are saying, if you
5 can e-mail my law clerk?

6 MR. FYALL: Yes, ma'am.

7 THE COURT: All right. And so let's -- we
8 will start back at 3:15, and we'll hear the rest of
9 the motions. It looks like we have a motion to
10 quash, and the clerk will find that amended
11 indictment, and motion to suppress firearm, motion
12 to suppress victim's statement, and Jackson v.
13 Denno?

14 MR. O'NEIL: That's correct, Your Honor.

15 THE COURT: And you have all your witnesses
16 lined up to be here this afternoon?

17 MR. GOLDBERG: I have all the witnesses for
18 the Denno. I don't know what witnesses are needed
19 for the other motions. We were just provided with
20 this, so.

21 THE COURT: All right. Do you have a written
22 motion on the motions -- of the motions, motion to
23 quash?

24 MR. O'NEIL: No, Your Honor, not at this time.

25 THE COURT: Motion to suppress? All right.

1 All right, we will see you all at 3:15.

2 Let me say this. To everyone that is in the
3 audience -- I know that this is a serious case and
4 I know that are emotions are heightened -- I will
5 ask that you all not -- there be no one -- and I'm
6 sure everyone has already told you, but no one
7 blurting out, no one making any comments during the
8 trial regarding anything that may be said by the
9 attorneys or anything that may be said by the
10 witnesses.

11 When you are going in and out of the
12 courtroom -- there is quite a few of you in here --
13 when you are going in and out of the courtroom,
14 please try to exit and enter as quietly as
15 possible. The court reporter is trying to take
16 down -- this is a court of record, as you heard me
17 tell the jury -- and she is -- if there is too much
18 noise going in and out of the door, she cannot
19 hear and get testimony or arguments accurate if
20 there is a lot of background noise.

21 All right. So we are going to do pretrials at
22 around 3:00-ish, 3:15.

23 MR. O'NEIL: Yes, ma'am.

24 THE COURT: We will work until we finish
25 those, and start at 9:30 in the morning with

1 opening statements.

2 All right, thank you.

3 (WHEREUPON, a lunch break was taken at
4 1:31 p.m.)

5 (WHEREUPON, the proceedings resumed at
6 3:30 p.m.)

7 THE BAILIFF: Make sure cell phones are
8 completely off.

9 THE COURT: Make sure that all of our cell
10 phones are off. If anyone's phone goes off, the
11 bailiffs are going to take it, and then I'll have
12 to decide if and when you get it back, so. There
13 is a note on the door regarding cell phones, there
14 is an order regarding cell phones, so if you think
15 yours is going to go off, you don't know how to
16 operate it, go put it in the car so you won't have
17 to worry about it going off.

18 All right. We are ready. All right, we are
19 going to the Jackson v. Denno hearing first or?

20 MR. GOLDBERG: Whatever you like, Your Honor.

21 THE COURT: That is your motion, so we will go
22 ahead and start with you all. We will start with
23 the State with Jackson v. Denno. Are y'all ready?

24 MR. GOLDBERG: Yes, ma'am.

25 The State calls Investigator Gonzalez.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you are about to give in this case will
7 be the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 THE DEFENDANT: I do.

10 THE CLERK: Thank you. Have a seat in the
11 witness stand, please.

12 (Witness seated.)

13 THE CLERK: State your name for the record.

14 THE WITNESS: William Gonzalez.

15 WILLIAM GONZALEZ,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q Investigator Gonzalez, good morning.

20 A Good morning.

21 Q Good afternoon, I should say. Where are you
22 currently employed?

23 A Richland County Sheriff's Department.

24 Q How long have you been with the Sheriff's
25 Department?

1 A Eighteen years now.

2 Q And can you tell the judge a little bit about your
3 duties over those 18 years at the Sheriff's
4 Department?

5 A Yes, sir. I retired last year with the Sheriff's
6 Department. And during that time, when this case
7 was going on, I was with the Major Crimes Unit.
8 And after my retirement, 30 days later I came back,
9 and now currently I am with the school resource
10 officer.

11 Q And how long were you in Major Crimes?

12 A I would say I was in Major Crimes about 14 years.

13 Q Okay. Investigating what types of cases?

14 A Normally investigated armed robberies, aggravated
15 assaults with weapons, homicides, and all the
16 Hispanic cases that came through the county.

17 Q And back in January of 2016, you were working Major
18 Crimes, yes?

19 A That's correct.

20 Q Okay. And were you the lead investigator on the
21 Andre Heatley case?

22 A Yes, sir.

23 Q Did you have an opportunity to come in contact with
24 Mr. Heatley on or about January the 29th of 2016?

25 A Yes, sir.

1 Q Okay. And can you tell the judge a little -- how
2 that interaction started, the lead-up to that?

3 A Yes, sir. We had obtained a search warrant to
4 Mr. Heatley's residence. And we were staging at a
5 location close to his residence. We also had a
6 unit that was observing Mr. Heatley's residence
7 when we got notified that Mr. Heatley got in a
8 white car and left the residence.

9 Q Who was that that was observing Mr. Heatley's
10 residence?

11 A That was Sergeant Faust.

12 Q Okay.

13 A And he gave us kind of like play-by-play of where
14 he was going, where he was making the turn. And at
15 that moment, we all got in our cars and waited to
16 see if he was going to hit the main road.

17 Q When you say he, you are talking about Mr. Heatley?

18 A Mr. Heatley.

19 Q Okay.

20 A And we were informed that Mr. Heatley's car just
21 turned into the drive-through of the Burger King.
22 We were parked like right next to the Burger King
23 at a gas station.

24 Q What part of town is this in?

25 A Sir?

1 Q What part of town is this in?

2 A That was up by the Irmo area.

3 Q Okay.

4 A We also had -- we were actually waiting for Irmo PD
5 to show up and assist us in that location. So when
6 he pulled into the drive-through, we had some units
7 follow behind him. And I believe it was Sergeant
8 Faust came from the front, kind of like to block
9 him off.

10 And myself and Investigator Torres, we were
11 parked a little bit to the side from the front of
12 the car, and we kind of like walked up to the
13 driver's seat of the vehicle, along with Sergeant
14 Faust.

15 Q And what, if anything, did you say to Mr. Heatley
16 at that time?

17 A Well, at that moment I recognized that it was
18 Mr. Heatley based on the picture that we had
19 obtained.

20 I asked Mr. Heatley if he had any weapons in
21 the car or if he had any weapons with him, and he
22 stated yes. He told me that he had a weapon that
23 was in the glove compartment of the car.

24 I said, Do you have any weapons on you? And
25 he stated no.

1 So at that moment I kind of like opened the
2 door and I got him out of the car and I put him in
3 handcuffs. And I told him at that moment he was
4 detained for our safety because of the weapon being
5 at that location.

6 Q So you put him in handcuffs -- or you got him out
7 of the car, you put him in handcuffs, and where did
8 you take him from there?

9 A From there, myself and Investigator Torres, we
10 walked him over to my car.

11 Q What kind of vehicle were you driving?

12 A I was driving a Ford Explorer.

13 Q Is that --

14 A Unmarked.

15 Q Unmarked you say?

16 A Unmarked Ford Explorer.

17 Q That was your county-issued vehicle?

18 A That's correct.

19 Q Okay. So you took the Defendant over to your
20 county Ford Explorer. And who got in what part of
21 the car?

22 A I placed him in the front seat of my vehicle.
23 Investigator Torres sat in the back seat behind
24 him, and I sat in the driver's seat in the front.

25 Q All right. And what, if anything, did you say to

1 him at that point?

2 A At that point I told him that we were looking into
3 the disappearance of Deandra Roach. And I told
4 him that I wanted to talk to him in reference to
5 Deandra Roach.

6 Q And what, if anything, did he say at that point?

7 A Can I refer to my notes real quick?

8 Q You may.

9 (Pause.)

10 A At that point I started talking to him about the
11 victim's credit card.

12 Q You asked him about her credit card, you say?

13 A Yes. That why he was using the victim's credit
14 card.

15 Q And what was his response?

16 A His response was, and I quote, that -- he stated
17 that he wanted to speak with his parents because
18 they had told him that he should always have an
19 attorney present.

20 Q All right. Did he ask to speak to an attorney at
21 that point?

22 A He didn't directly say he wanted to speak to an
23 attorney at that point. He just made a general
24 comment that that was -- that was what he was told
25 by his parents.

1 Q So based on that, what did you do?

2 A Based on that, I pulled out my Miranda card that I
3 keep in my pocket all the time. I'll pull it out.
4 I pulled out my Miranda card, and I advised him of
5 his rights.

6 Q And can you go through for the judge how you
7 advised him of his rights using that card?

8 A Yes, sir. It doesn't want to come out. There you
9 go. I usually keep Miranda Rights in my pocket in
10 my little business card holder which I have the
11 Spanish Miranda Rights in, and I have the English
12 Miranda Rights. So I pulled out my card, and I
13 read to him that:

14 Before you have any questions, you must
15 understand your rights. You have the right to
16 remain silent. Anything you say may be used
17 against you in a court of law. You have the right
18 to talk to a lawyer for advice before we ask you
19 any questions and to have a lawyer with you during
20 any questioning. If you cannot afford a lawyer,
21 one will be appointed for you before any
22 questioning, if you wish. If you decide to answer
23 questions now without a lawyer present, you still
24 have the right to stop answering questions at any
25 time. You also have the right to stop answering

1 questions at any time until you talk to a lawyer.

2 Do you understand your rights?

3 And he said yes, he understood the rights.

4 Q He said he understood his rights?

5 A That's correct.

6 Q Did he appear to be under the influence of any
7 drugs or alcohol at that time?

8 A Not that I was aware of, no, sir.

9 Q Was there anything visually looking at him that
10 gave you the idea that he did not understand the
11 rights that you had just provided?

12 A No. I was sitting right next to him. I mean, we
13 were like maybe two feet apart.

14 Q Okay. And at that point he indicated he wished to
15 speak to you?

16 A At that point I asked him, said I wanted to ask him
17 some questions about Deandra Roach, and he stated
18 okay.

19 Q Okay. And did he ask you anything else at that
20 time?

21 A Yes. At that moment he asked me if he could use
22 the phone.

23 And I asked him, Well, why you need to use the
24 phone?

25 He said, Because I need to call my mother.

1 And I told him, Well, you are a grown man, you
2 know, you cannot call your mother at this time. We
3 need to talk about Deandra Roach.

4 Q And at that point was he willing to talk to you
5 about it?

6 A Yes.

7 Q Okay. So -- and then you don't have to go through
8 all of the details at this point, but tell us how
9 the conversation went generally at that point.

10 A Generally the conversation went to -- I wanted to
11 know when was the last time he seen Deandra. I
12 wanted to know when was the last time he used
13 Deandra's credit card.

14 And his response was, I haven't seen her or
15 used her credit card in over two months.

16 So at that moment I believe that I pulled out
17 a picture that I had of a person that was taken
18 using the victim's credit card at one of the ATMs.
19 I showed him that picture. I said, Who is that?

20 So he looked at it. And he kind of like
21 hesitated for a second. And then he said, Well,
22 that's me. So at that moment he admitted that that
23 person that was at that -- in that picture using
24 the victim's credit card was him.

25 Q And did you also ask him about purchases made on

1 her credit card as well on the internet?

2 A That's correct. I asked him -- well, basically he
3 kind of like told me that he only used her credit
4 card three times and didn't get any money out of
5 it, out of the ATM. And then after he used the
6 credit card the last time, which I believe it was
7 the Wells Fargo bank, he got rid of the card.

8 So then I told him, Well, how is that
9 possible? And that happened around 12:30. I said,
10 Well, how is that possible when at 1:00 o'clock you
11 are using her credit card to order a Michael Kors
12 watch online?

13 And then he kind of like stared at me, looked
14 at me, his eyes were rolling left and right, left
15 and right, like he was searching for something to
16 give me, to give me some type of response. And
17 then he admitted, Yeah, I ordered the items that
18 were ordered through the internet.

19 Q And then you generally went through some of the
20 timeline of events from that night as he described
21 it pertaining to the credit card, is that right?

22 A That's correct.

23 Q And during the time that you are talking to him and
24 he is providing you this information about the
25 usage of the credit card, and things like that, was

1 Investigator Torres in the vehicle with you as
2 well?

3 A Yes.

4 Q Okay. And at some point -- were you in there the
5 whole time with him, the three of you?

6 A Yes, the three of us were there pretty much all the
7 time.

8 Q Were you also receiving phone calls from other
9 investigators about the case at this time?

10 A At one point -- at one point during our
11 conversation and after I was able to obtain all
12 that information from him, Sergeant Faust called
13 me. So I step out of the car. And Investigator
14 Torres stayed with him in the car.

15 And the conversation I had with Sergeant Faust
16 was that they were executing the search warrant at
17 his house. And he told me at that moment that they
18 had found the clothes and the sneakers that were
19 used by the individual, by the Defendant, in the
20 ATM picture, in the picture from the ATM.

21 So once he told me that they had found that,
22 at that moment, in my mind, I believed I had enough
23 to where he was told that he was under arrest.

24 Q You told him that?

25 A Yes.

1 Q And based upon telling him that you were going to
2 place him under arrest, where did you guys go?
3 What did you do?

4 A And from there I told him that, We are going to go
5 to headquarters because we have got to clarify some
6 things.

7 Q Was it your intention to continue talking to him
8 more about the events, especially --

9 A Yes, absolutely.

10 Q Because at this point you hadn't asked him about
11 every detail related to the case, correct?

12 A No, not about every detail. I first wanted to see
13 what he had to say in reference to the credit
14 card, the credit card use, the person on the photo,
15 and all that.

16 Q So how did you get from the Burger King parking lot
17 back to headquarters?

18 A We drove. At that time I told him, Well, you know,
19 you are under arrest, and we are going to go back
20 to headquarters. And we drove back to
21 headquarters.

22 Q You, Mr. Heatley, and Investigator Torres?

23 A Myself, Mr. Heatley, and Investigator Torres.

24 Q Okay. And during the car ride, did he make any
25 statements to you about anything?

1 A During the car ride we were pretty much quiet. I
2 think Investigator Torres was talking back and
3 forth unrelated stuff to him, you know, trying to
4 establish a conversation, but myself, I was kind of
5 pretty much quiet.

6 Q Once you got back to headquarters, where did you
7 go? What did you do?

8 A We got to headquarters, and we took him over to
9 kind of like our office cubicle area. I offered
10 him something to drink, something to eat. He
11 stated that he just wanted to get something to
12 drink.

13 Q Did he indicate that he needed to use the restroom?

14 A Yes.

15 Q Was he allowed to do so?

16 A Yes.

17 Q And you said you gave him some water upon his
18 request?

19 A That's correct.

20 Q Okay. And at that point did you proceed to
21 continue with your questioning of him?

22 A Yes. At that point in time I wanted to get a
23 little bit more detail from what was his activities
24 like from Thursday morning all the way up to Friday
25 early hours in the morning.

1 Q And was this information obtained via written
2 statement at this time, or was it a verbal
3 conversation between you?

4 A It was a verbal conversation and there were some
5 notes taken. And then further on, once we covered
6 a lot of area, then we went into the written
7 statement.

8 Q So can you describe that process of the verbal part
9 and how you get to the written part?

10 A Normally what I do is, I like to talk to people and
11 just throw some questions out there and get their
12 answer, and then I annotate some notes down, jot
13 some comments down, or something like that, so when
14 we go into the written part of it, it gives me an
15 idea of where I want to go to make sure I don't
16 miss certain questions that -- or certain answers,
17 response, that I shouldn't be missing, and make
18 sure everything is covered. And then we do the,
19 what we call Q and A, which is question and answer.

20 Q And is that reduced to writing, the Q and A?

21 A Pardon?

22 Q Is the Q and A reduced to written form?

23 A That's correct. Typed. Typed in the computer.

24 Q Typed by you?

25 A Yes.

1 Q Okay. During the time that you were questioning
2 him during all this, were there ever any promises
3 of leniency made to him in any way?

4 A No.

5 Q Were there ever any threats of violence made?

6 A No.

7 Q Was there anything said or done to promise or
8 induce him to talk in any way?

9 A No, never.

10 Q Did he ever say that he wanted to stop talking?

11 A Never.

12 Q Did he ever say that he actually wanted an
13 attorney?

14 A No. We would constantly ask questions, and he
15 would constantly answer them.

16 Q All right. I want to show you what has been marked
17 as State's 1 for ID. This is -- tell me what that
18 is.

19 A That is the statement that was taken from
20 Mr. Heatley.

21 Q The typed statement?

22 A The typed statement, correct.

23 Q And once you did the Q and A with him and reduced
24 it to that version, did he have an opportunity to
25 review it?

1 A Yes.

2 Q How did he have an opportunity to review it?

3 A Well, normally what I do is, once we get everything
4 written in the computer, I will go over from the
5 screen, reading it from the screen, I will go over
6 everything, okay? And I want to make sure, and I
7 tell him, I want to make sure that this is your
8 statement, this is what you are telling us what
9 happened. And then if there are any changes that
10 need to be done, let me know now so I can change
11 it. And normally they say, No, there is no
12 changes.

13 So I get an initial printout of that
14 statement. Once I get the initial printout of that
15 statement, I turn it around so they can read it,
16 and I go over everything from top to bottom with
17 them.

18 I asked you this and this and this and that.
19 Your answer was this. Is that consistent? Yes, it
20 is. Okay.

21 Then we go to the next question. Okay. I
22 asked you this and this and this and that. Your
23 answer was this. Is that consistent? Yes.

24 So we go all the way down to the end.

25 Q And is that what you did with Mr. Heatley?

1 A That's correct.

2 Q At the beginning of Page 1 of that statement, did
3 you actually read the entire thing to him?

4 A Yes, because I normally start on the top. I say,
5 Look, I want to make sure that this is your right
6 name, date of birth, your address. And then I'll
7 put down here what today's date, this is the date
8 of statement that we are -- the date and time the
9 statement that was taken. That is my name. And
10 then I'll kind of like go through, you know, the
11 whole advisement of rights again that is written
12 out here all the way down to the bottom.

13 Q Can you just read up until the first question there
14 what that form says, the top?

15 A Yes. It says, I --

16 Q Well, I'm sorry, starting at the top, very top?

17 A On the top? It says:

18 Statement of Andre Tyrone Heatley, Jr. Date
19 of birth, [REDACTED]. Address is, 212 Kingstone Road,
20 Irmo, South Carolina, 29203. And then his cell
21 phone number.

22 Then I go down and say: Made at Columbia,
23 South Carolina, 30th day of January, 2016, at
24 03:52 hours in the morning. And present are,
25 myself, Investigator Gonzalez, with the Sheriff's

1 Department.

2 And I, Andre Heatley, understand that I have
3 the right to remain silent. Anything I say can be
4 used against me in a court of law. I have the
5 right to talk to a lawyer. And I will continue
6 reading that out, which is the same thing I read to
7 him initially when I pulled out my Miranda card.

8 And then down here it says --

9 Q And you can go ahead and read that paragraph.

10 A Okay.

11 ... a lawyer for advice before you ask me any
12 questions and to have a lawyer with me during any
13 questioning. If I can not afford a lawyer, one
14 will be appointed for me before any questioning if
15 I wish. If I decide to answer questions now
16 without a lawyer present, I still have the right to
17 stop answering at any time. I also have the right
18 to stop answering at any time until I talk to a
19 lawyer.

20 And then it says: Do make the following
21 statement. Okay?

22 And then this is where I go to, Q means I'm
23 asking the questions, that is me asking the
24 questions, and A means that is you answering the
25 question.

1 And location, where we are at at headquarters.

2 Q And you went through every one with him?

3 A And I went through every single one of them.

4 Q At the conclusion of each page, is there a
5 signature line?

6 A Yes.

7 Q For whose signature is that?

8 A That is Mr. Heatley.

9 Q And did he sign that statement?

10 A Correct. And if you notice on the statement -- and
11 I do that all the time -- is when I have the
12 statement upside down, I will mark with either an X
13 or a checkmark where they need to sign so there is
14 no confusion of where they need to sign. And each
15 one of these forms, you can see that there is an X
16 or a checkmark right before his name on each form.

17 Q How many pages is that that he signed?

18 A Four pages.

19 Q Including at the conclusion of the statement?

20 A Including the conclusion, that's correct.

21 Q Once the statement was signed and completed, did he
22 have any corrections that needed to be made?

23 A By that time, if he doesn't say, Look, I don't feel
24 comfortable with Question Number 3, that is not how
25 I told you it was, I will say, Okay, tell me how it

1 was, and I'll change it.

2 And, again, if there is any other change that
3 needs to be done, we'll reprint another one until
4 he feels comfortable with that, and then he signs
5 it.

6 Q And the version that he signed, he was comfortable
7 with that?

8 A He was comfortable with it.

9 Q What did you do with him at that point?

10 A Once we got the statement, at that point --

11 Q Was he taken into the D Cell in custody?

12 A Excuse me, sir?

13 Q Was he put in the D Cell in custody?

14 A Yes. Yes. Yes. He was put in the D Cell. We
15 make sure we pat him down real good. And I believe
16 Investigator Torres noted that he had three pair of
17 pants on. So we wanted to make sure -- we pulled
18 layers down of the pants to make sure he didn't had
19 anything that he wasn't supposed to have, any
20 weapons, or anything like that. And once we did
21 that, and then he was placed in the D Cell.

22 MR. GOLDBERG: Beg the Court's indulgence.

23 (Pause.)

24 MR. GOLDBERG: Thank you, sir.

25 THE COURT: All right. Yes, sir?

1 MR. O'NEIL: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. O'NEIL:

6 Q Investigator Gonzalez?

7 A Yes, sir.

8 Q What time did you interact with Mr. Heatley at the
9 Burger King that night?

10 A It was approximately after 1:00 o'clock in the
11 morning.

12 Q 1:15?

13 A Roughly, yes.

14 Q You said Mr. Heatley was in the Burger King
15 drive-through?

16 A That's correct. When I made contact with him, he
17 was in the drive-through like he was going to order
18 something to eat.

19 Q And that Burger King is near the residence there
20 that you had the search warrant for?

21 A Yes.

22 Q And nobody pulled any blue lights on Mr. Heatley
23 before he got into the Burger King, correct?

24 A No, I think -- I think there was some blue lights
25 turned on, yes.

1 Q Well, did you -- were you behind Mr. Heatley or --

2 A Excuse me?

3 Q You were actually in the Kangaroo station next
4 door?

5 A Correct.

6 Q And so you don't -- you wasn't driving behind him?

7 A No, I was not driving behind him.

8 Q So you don't know what was happening behind him?

9 A Sergeant Faust was driving behind him.

10 Q So you get him -- who physically gets -- whose car
11 physically gets in behind Mr. Heatley at the Burger
12 King drive-through?

13 A One of the other cars. I believe it could have
14 been a K-9 unit or one of the other cars. I know
15 Sergeant Faust's vehicle came in from the front
16 with myself, kind of like -- we were kind of like
17 laterally side-by-side.

18 Q So basically, for lack of a better word, y'all kind
19 of boxed him in in the Burger King drive-through?

20 A Yes, you could say that.

21 Q But is that what happened?

22 A I would say, yes, that is what happened.

23 Q And basically at that point he cannot drive out of
24 the Burger King drive-through without striking one
25 of your vehicles?

- 1 A Correct.
- 2 Q Is that fair to say?
- 3 A Correct.
- 4 Q And I think at that point you indicated in direct
5 that Mr. Heatley was not under arrest, correct?
- 6 A At that point --
- 7 Q That particular point?
- 8 A -- he was detained.
- 9 Q Yes, sir.
- 10 A Yes.
- 11 Q And at that point I think you said -- it was only
12 later I believe you said in direct you had enough
13 evidence to get -- to tell Mr. Heatley that he was
14 under arrest?
- 15 A That was later on. Correct.
- 16 Q Yes. That was after you got the indication from
17 Sergeant Faust that there was clothing at
18 Mr. Heatley's residence you believed matched the
19 clothing description from the pictures of the ATM?
- 20 A That's correct.
- 21 Q So when you first described that to him, he is not,
22 in your words, he was not under arrest?
- 23 A No. He was detained at that moment.
- 24 Q All right. And why was he detained?
- 25 A He was detained for officer safety and because

1 there was a weapon in the car.

2 Q Okay.

3 A In the glove compartment.

4 Q Well, he didn't have a weapon on him, correct?

5 A Correct.

6 Q And you removed him from the car, correct?

7 A That's correct.

8 Q And the weapon was in the car, correct?

9 A That's correct.

10 Q So why did you need to detain him after you removed
11 from the vehicle?

12 A He was still detained for our safety and he was
13 placed in my vehicle.

14 Q I understand you say that, but what threat to your
15 safety was he after you removed him from the car
16 and he didn't have any weapons on him?

17 A At that moment he was a murder suspect.

18 Q I understand he was a suspect, but you indicated
19 that you -- you didn't have enough evidence to
20 arrest him, correct?

21 A I wouldn't say I didn't have enough evidence to
22 arrest him.

23 Q Well, you just said it actually.

24 A No.

25 Q You just said that you didn't have enough -- you

1 didn't feel as though you had enough evidence to
2 make him under arrest until you got the clothing
3 description from the house, correct?

4 A No. That I wanted -- I wanted to make sure that
5 everything -- all the way from the pictures for the
6 identification and from the -- his whereabouts in
7 reference to the victim's credit card, was he using
8 it, why he was using it, all of that stuff came
9 into account.

10 Q I understand about that, Mr. Gonzalez. I want to
11 make sure -- your precise words on direct and about
12 two minutes ago to me were, you didn't feel as
13 though you had enough evidence to say Mr. Heatley
14 was under arrest until you got the clothing match
15 from Investigator Faust?

16 A I felt more comfortable --

17 Q No, no, no, you didn't say more comfortable.

18 A Well, I'm telling you right now, I felt more
19 comfortable telling him that he was under arrest
20 at that moment, because now we have the credit
21 card, him admitting that he used her credit card,
22 now we have the picture that he admitted, Yes, that
23 is me in the pictures, and now we have the clothes
24 that were used in the -- of the person in the
25 picture in his house, so I feel more comfortable at

1 that moment to say, You know what? Now this is not
2 just a merely use of a stolen credit card, or
3 anything like that. Now we have enough to go ahead
4 and arrest him for murder.

5 Q Okay. And that is what I'm getting to. You didn't
6 say more comfortable earlier. Earlier you said
7 you didn't feel as though you had enough evidence
8 to say he was under arrest until you got the
9 clothing match. That is what you said earlier.

10 A Okay. I didn't feel comfortable at that moment.

11 Q That's not what I'm asking you.

12 A Okay.

13 Q I'm asking you, didn't you say earlier that you
14 didn't feel as though you had enough to arrest him
15 for murder until you got the clothing match?

16 A I'm telling you I didn't feel comfortable at that
17 moment.

18 Q That's not what I'm asking you, Investigator
19 Gonzalez. It is a simple question. Earlier with
20 Solicitor Goldberg during direct and with me in
21 cross --

22 A Uh-huh.

23 Q -- did you not say that you didn't feel as though
24 you had enough evidence to arrest him for murder
25 until you got the clothing match from a phone call

1 from Investigator Faust. Is what you said?

2 A Well, you can read it back to me exactly what I
3 said, but I'm telling you that I didn't have --

4 THE COURT: Hold on one second. Hold on one
5 second. You are asking him a question. Let's stop
6 and see if the court reporter -- nobody can say
7 anything -- if she can find that language. I think
8 Solicitor Goldberg asked about it, and then -- the
9 exact question and the exact --

10 (Testimony read back.)

11 BY MR. O'NEIL:

12 Q So your testimony was at that moment you felt as
13 though you had enough evidence that he was under
14 arrest. That's all I'm asking, what you said.

15 A Yes. I felt comfortable that at that moment -- I
16 mean --

17 Q But, Investigator Gonzalez, you didn't use the word
18 comfortable. Can we just --

19 A Okay. Okay, then.

20 THE COURT: Okay, hold on.

21 A Okay, yes. Yes. Let's -- yes.

22 Q It is not difficult.

23 A Yes. No, it is not. I'm just trying to tell you.

24 THE COURT: All right. We will ask questions
25 and answer questions. No commentary.

1 BY MR. O'NEIL:

2 Q You didn't say comfortable when you spoke with
3 Investigator -- when you spoke to Solicitor
4 Goldberg just --

5 A Okay. I didn't think that was a big deal,
6 comfortable or not. You know, I just -- I felt I
7 had enough. Okay, that is exactly what I said. I
8 felt I had enough.

9 Q Fair enough. That's all I ask.

10 A Okay.

11 Q When you put him in -- and you stated that you put
12 him in your patrol car for officer safety, correct?

13 A Correct.

14 Q How was he a danger to your safety once he didn't
15 have a firearm on him and the firearm was in the
16 vehicle you removed him from?

17 A Well, I can tell you this. We have numerous case
18 law where individuals that supposedly weren't in
19 danger to law enforcement ends up somehow, some way
20 getting out of their handcuffs or doing something
21 that would endanger the life of law enforcement.
22 So at that moment I thought for him, and for us, it
23 is better for him to stay in handcuffs in the
24 vehicle.

25 Q So your answer is that it was based off other

1 people's behavior?

2 A And my experience and knowledge, yes.

3 Q Of other people, but nothing specifically about
4 Mr. Heatley?

5 A And other situations.

6 Q Okay. Other situations that didn't involve
7 Mr. Heatley?

8 A Right. I never -- I never encountered Mr. Heatley
9 before. That was my first time encountering
10 Mr. Heatley.

11 Q Okay. So when you placed him in your patrol car,
12 you put handcuffs on him, correct?

13 A Yes.

14 Q How long after you have him in your patrol car --
15 he wasn't in a patrol car, you say it was your
16 personal vehicle?

17 A No, it was a patrol car.

18 Q Okay. Well, it was an SUV, not a patrol car?

19 A Yes, it was a Ford Explorer, which is the
20 investigator's vehicle, commonly used vehicle.

21 Q How long was he in that vehicle before you come
22 back and begin talking with him?

23 A I can't tell you an exact time. I can say we were
24 there between, anywhere between maybe 20, 25
25 minutes.

1 Q Let me make sure I understand that. Are you saying
2 you were there at the Burger King the whole entire
3 time 20 to 25 minutes or you were --

4 A When we were talking to him, we were there at that
5 parking lot of the Burger King all that time.

6 Q So you were in the Burger King parking lot for
7 about 20, 25 minutes, generally?

8 A Generally.

9 Q And was any of this audio recorded?

10 A No, sir.

11 Q All right. Was any of this video recorded?

12 A No, sir.

13 Q Do you have that technology?

14 A We don't have that technology.

15 Q You don't have --

16 A Well, I don't have that technology capable in my
17 vehicle. In CID, that I know of, no vehicles are
18 equipped with cameras, or anything like that.

19 Q And that is for CID vehicles?

20 A That is for CID, correct, sir.

21 Q But there were other non-CID vehicles there,
22 correct?

23 A Yes. There was a K-9 Unit, which I believe he was
24 the one that was probably behind the vehicle. But
25 all the other vehicles were CID vehicles.

1 Q So there was a K-9 vehicle there that had the
2 capability of recording the interactions between
3 you and Mr. Heatley?

4 A If he has the camera in his vehicle, yes.

5 Q You chose not to avail yourself of that technology?

6 A I'm sorry?

7 Q You chose not to avail yourself of that technology?

8 A Well, that was not my concern at that moment. My
9 concern at that moment was to talk to him. I
10 wasn't worried about nothing else.

11 Q And, Investigator Gonzalez, I understand your
12 concern, but my question is simple. You chose not
13 to utilize that technology, correct?

14 A I guess you could say that.

15 Q I mean, it is either yes or no.

16 A I didn't use it. I did not use that technology,
17 yes.

18 Q And the only other person that can testify to what
19 happened in that conversation is Mr. Heatley, of
20 course, he was there?

21 A Correct.

22 Q And now Investigator Torres, at that time
23 Investigator Taylor?

24 A That's correct.

25 Q And you indicated that before you read, according

1 to you, you read Heatley his Miranda Warnings here,
2 you asked him why he was using the victim's credit
3 card, correct?

4 A Let me get this right before I say it. I don't
5 want you to come back on me.

6 I informed the Defendant that we were
7 investigating the disappearance of Deandra Roach.

8 Q Okay. And you also said, I wanted to know --

9 A And that I wanted to know why he was using the
10 victim's credit card, correct.

11 Q So you asked him about the credit card before you
12 read him Miranda, according to you, according to
13 your own notes?

14 A Yes.

15 Q Okay. And according to you, instead of responding
16 to your question, he said that he wanted to -- he
17 told -- he said he wanted to speak to his parents
18 because they told him he should always have an
19 attorney?

20 A Correct.

21 Q What did you interpret that statement he made to
22 mean?

23 A I interpreted that statement to --

24 MR. GOLDBERG: Objection, Your Honor. He is
25 asking Mr. Gonzalez to tell the Court what

1 Mr. Gonzalez -- he is asking Mr. Gonzalez to
2 comment on the Defendant's state of mind.

3 MR. O'NEIL: No, Your Honor. I'm not asking
4 this for the truth of the matter asserted, I'm
5 asking it for the effect on the --

6 Investigator Gonzalez is -- here in this
7 statement here -- and the question is, What does he
8 interpret this statement to mean as it relates to
9 Mr. Heatley's desire to have an attorney, which is
10 the crux of this hearing.

11 THE COURT: All right. The objection is
12 overruled. He can ask -- rephrase the question.

13 MR. O'NEIL: Okay.

14 BY MR. O'NEIL:

15 Q Mr. Heatley told you that -- he stated that he
16 wanted to speak to his parents because his parents
17 told him he should always have an attorney -- to
18 always have an attorney, correct?

19 A That's correct.

20 Q That is his precise words?

21 A Pretty much, yes.

22 Q Well, I want to make sure, now, because it is
23 important. Were those his precise words or that is
24 kind of your summary of his words?

25 A No, those were the words he stated.

1 Q Okay. How do you know those were the exact words
2 he stated?

3 A I remember it.

4 Q Because you didn't have it recorded, correct?

5 A Correct.

6 Q And you didn't have it videoed?

7 A Correct.

8 Q Were you taking notes of what he was saying
9 contemporaneously?

10 A Yes, I was taking some notes of what he was saying.
11 I might put down like, Used credit card, or
12 something like that, you know.

13 Q Was this phrase in your notes, about him wanting to
14 speak to his parents?

15 A I don't -- I don't recall. You are going to have
16 to look at my notes. But he did mention that.

17 Q What did you interpret that statement to mean? As
18 an investigator when you are questioning a
19 Defendant, what did you interpret that phrase to
20 mean?

21 A I interpreted that phrase to be just a general
22 comment that he wanted to talk, he wanted to talk
23 to his parents, because they told him that he
24 should always have an attorney.

25 He never came out and said, Look, I don't want

1 to talk to you guys until I talk to an attorney or
2 I have an attorney or I ain't going to answer no
3 questions until I get an attorney. To me that was
4 just a general statement. Same way I have people
5 that ask me, What do you think, do I need an
6 attorney? I say, That is not up to me, that is up
7 to you, you know. It is just a general statement.

8 Q Okay. And then at that point you said you read his
9 Miranda Warnings to him from the card?

10 A Right.

11 Q Once again, that reading of the Miranda Warnings is
12 not video taped and not audio taped, not -- only --
13 we only have your word for it that that is what
14 happened, correct?

15 A My word and Investigator Torres that was in the
16 car.

17 Q Okay. And you indicated -- what did he say? You
18 said you indicated he said okay?

19 A Yes. I asked him -- I asked him that I wanted to
20 talk to him, I had some questions about
21 Deandra Roach. And he said okay.

22 Q But he also said he still wanted -- but he said,
23 Can I use your phone?

24 A After he said that, yes. After he said okay, then
25 he said, yes, but I would like to use your phone.

1 And I asked him, Use my phone for what? He
2 wanted to call his mother. And that is when I made
3 the comment, I said, Look, you are a grown man,
4 okay? And you are not going to call your mother at
5 this time.

6 Q And what did he say to that, because looking at
7 your report, there is nothing -- there is no
8 notation of his response to that. What was his
9 response to that?

10 A I guess -- if I didn't write nothing down, there
11 was no response to that, because immediately --
12 immediately after he said that, I was going into
13 asking questions, you know. And then, look here, I
14 asked him, Tell me, when is the last time you spoke
15 to Deandra?

16 Q Go ahead. I apologize. Go ahead.

17 A And I also asked him -- and he stated that it was
18 over two months ago.

19 I said, When was the last time you used her
20 credit card? He said, Over two months ago.

21 Q In fact, Mr. Gonzalez, this has been almost to the
22 day three years ago, correct?

23 A It was this month, that's correct.

24 Q And as a matter of fact, you have to rely on your
25 notes at some point to remember what happened three

1 years ago, correct?

2 A That's correct.

3 Q You would agree with me that if it would have been
4 recorded, either by video or audio, you wouldn't
5 have to rely on your notes, you would have it?

6 A We would have it right there, clearly.

7 Q And there wouldn't be any back and forth about what
8 was said and what was not said?

9 A You are absolutely right, sir.

10 Q Okay. Now, did you ever have -- either at this
11 time or at the headquarters, did you ever have
12 Mr. Heatley sign a waiver before you started asking
13 questions?

14 A Well, I started asking questions from the vehicle.

15 Q Yes, sir.

16 A But actually sign the waiver? No. Because I
17 already advised him of his rights, and I was
18 relaying myself based on that verbal advisement of
19 his rights.

20 Q I have seen your testimony that you verbally
21 advised him of his rights. He never signed a
22 waiver, either in the car or at headquarters?

23 A No.

24 Q And as a matter of fact, at headquarters you have
25 these forms that have the waiver on them that he

1 could sign that would indicate that he waived his
2 right to talk to an attorney and all the other
3 Miranda Warnings before he gave you a statement?

4 A Yes, we have it at headquarters.

5 Q Okay. But you didn't utilize it at headquarters
6 either?

7 A No. No.

8 Q And I'm looking at the statement that he signed at
9 headquarters -- well, let me ask you this.

10 Obviously Mr. Heatley was in the Burger King
11 drive-through when he is stopped initially. It
12 would be a pretty easy deduction that he was
13 probably going to get something to eat, fair to
14 say?

15 A That is fair to say, yes.

16 Q All right. And, of course, you didn't give him
17 anything to eat there at Burger King, correct?

18 A I'm sorry?

19 Q You didn't get him anything to eat there at the
20 Burger King drive-through, correct?

21 A No. That was not my concern, no.

22 Q And you didn't state anything about Mr. Heatley's
23 background, educational level, ability to read or
24 write, any mental health, or anything like that,
25 did you?

1 A No.

2 Q You didn't determine whether or not he had a low
3 education or a low IQ, or anything like that,
4 correct?

5 A Did I ask him about that?

6 Q Yes, sir?

7 A No.

8 Q And I looked on the statement that you got at
9 headquarters. It is timed at 3:52. That is
10 3:52 a.m., correct?

11 A Roughly, yes, that's correct.

12 Q Is that the start -- is that the beginning of the
13 statement or that is the end of the statement, the
14 3:52?

15 A That is the time that I put down when I started
16 typing the statement, the written statement.

17 Q Okay. So you say -- you get to Burger King at
18 1:13. Y'all talked there between 20 and 25
19 minutes. How long does it take to get to
20 headquarters? I am assuming you went to
21 headquarters on Two Notch?

22 A Yes. Yes.

23 Q So you are in Irmo?

24 A In Irmo. Roughly maybe, what, 25, 30, 35 minutes.
25 Speed limit.

1 Q Okay. So if you get to Irmo Burger King at 1:13,
2 stay there 20, 25 minutes, then from Irmo to Two
3 Notch, it is another 20, 25 minutes there. Roughly
4 you get to headquarters around 2:00 o'clock, if my
5 math is correct?

6 A It could be. I wasn't tracking the time.

7 Q So more or less around 2:00 o'clock?

8 A Could be, yes, sir.

9 Q And you said you talked to him first before you
10 start typing, correct?

11 A Yes.

12 Q Yes? And you say you let him go to the restroom
13 there at the headquarters?

14 A Right. We got him some water, and stuff like that,
15 yes.

16 Q And how long do you talk to him before you reduce
17 this statement down to typed words?

18 A I don't know. I don't keep track of time. I just
19 go with the flow. And we start talking, we start
20 talking. I ask questions, got answers. I ask more
21 questions, got answers. And --

22 Q Was it closer to ten minutes or closer to an hour?

23 A I don't know. It could have been anywhere from one
24 minute to an hour.

25 Q You don't remember?

1 A I don't -- I don't keep track of that time.

2 Q Okay. And you would agree with me that if that
3 statement there at headquarters was either audio
4 recorded or video recorded, we would know how long
5 it was?

6 A Right. It would be a date and time stamped.

7 Q Okay. And do you have audio or video recording
8 technology there at the Sheriff's Department?

9 A I can tell you from my knowledge that right now,
10 within the last, I don't know, maybe six months,
11 there is.

12 Q Okay.

13 A There is an interview room now set up with audio
14 and video recording.

15 Q And back then --

16 A But back then, not at that moment.

17 Q In 2016 y'all didn't have a tape recorder lying
18 around at headquarters anywhere?

19 A No.

20 Q Not -- that is not in the budget?

21 A Well, it could be. It just wasn't our policy then.

22 Q Okay. So who else was present in this interview
23 with Mr. Heatley there in your office? Is it an
24 office or a cubicle?

25 A It was a cubicle.

1 Q Okay. Anybody else present in the immediate
2 vicinity?

3 A That I know of, no. Just Investigator Torres, the
4 Defendant, and myself.

5 Q Okay. And I notice on State's Exhibit 1 here that
6 the very top of the statement does have the Miranda
7 Warnings, the Miranda Rights that you talked about
8 earlier at the very top, that first paragraph?

9 A Correct.

10 Q But by the time Mr. Heatley sees this typed
11 version, he has already given you his statement,
12 correct?

13 A Yes.

14 Q This isn't -- you don't hand him this piece of
15 paper with the Miranda Warnings on it first, you
16 talk to him first, take your notes, and then begin
17 typing it, type it all the way out, and then it has
18 these warnings on it?

19 A Right. Right. Right. We just go over that
20 portion over there kind of like a refresher or
21 reminder, yes.

22 Q But by the time you refresh him, he has already
23 given you what is in the statement?

24 A That's correct. That's correct.

25 Q So the one and only time, according to you, that

1 you gave Mr. Heatley Miranda Warnings would have
2 been somewhere closely after 1:13 in the morning,
3 correct?

4 A. Yes. At 1:13 we made contact, so, yes, I would say
5 roughly close, give or take, 10 or 15 minutes.

6 Q Okay.

7 MR. O'NEIL: Beg the Court's indulgence, Your
8 Honor.

9 (Pause.)

10 MR. O'NEIL: Your Honor, that is all the
11 questions I have at this point.

12 THE COURT: All right.

13 Yes, sir, Mr. Goldberg?

14 REDIRECT EXAMINATION

15 BY MR. GOLDBERG:

16 Q Reviewing your notes here, you indicated --
17 Mr. O'Neil asked you about how when Mr. Heatley
18 first got in your vehicle, you told him you were
19 investigating the disappearance of Deandra Roach,
20 correct?

21 A Correct.

22 Q And you have here that you said you wanted to know
23 why he was using her credit card?

24 A Yes, I think -- I believe I opened my conversation
25 with him in reference to that, yes. If it is

1 written down.

2 Q Is it fair to say that that was a statement by you
3 and not a question?

4 MR. O'NEIL: Objection, Your Honor. Leading.

5 THE COURT: Sustained. Please rephrase.

6 BY MR. GOLDBERG:

7 Q Was that a statement or a question?

8 A Let me find it here, make sure.

9 Q Sure.

10 A Okay, yes. I then informed Mr. Heatley that we
11 were investigating the disappearance of Deandra
12 Roach.

13 Q Continue on. Read the whole thing.

14 A Investigating the disappearance of Deandra Roach,
15 and that I wanted to know why he was using her
16 credit card.

17 Q When you say, And that I wanted to know why he was
18 using her credit card, is that a statement by you
19 or a question?

20 A Pretty much a question to him.

21 Q But at this point he says he wants to talk to his
22 parents?

23 A Yes. After I mentioned that, that he wanted to
24 talk to his mom, I believe is what he said.

25 Q And then you advised him of his rights from the

1 Miranda card?

2 A I pulled out my Miranda card from my pocket, yes.

3 Q And then you told him that you wanted to ask some
4 more questions?

5 A (Nods affirmatively.) About Deandra Roach,
6 correct.

7 Q And he said okay?

8 A Yes.

9 Q And he never asked actually to call an attorney?

10 A He never what?

11 Q He never asked to call an attorney, he only asked
12 to call his parents?

13 A That's correct. That's correct.

14 Q Thank you.

15 THE COURT: Anything further?

16 MR. O'NEIL: No, Your Honor.

17 THE COURT: All right, sir. You may step
18 down.

19 THE WITNESS: Thank you.

20 (Witness steps down.)

21 MR. GOLDBERG: The State calls Investigator
22 Torres.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you swear or affirm the
3 testimony you are about to give in this case will
4 be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Have a seat in the
8 witness stand, please.

9 (Witness seated.)

10 THE CLERK: State your name for the record.

11 THE WITNESS: Investigator Torres, formerly
12 Investigator Taylor.

13 THE COURT REPORTER: First name?

14 THE WITNESS: Aubrey.

15 AUBREY TORRES,

16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q Where are you employed?

20 A Richland County Sheriff's Department.

21 Q How long been employed there?

22 A Ten years.

23 Q Can you tell the Court a little about your duties
24 over those ten years?

25 A I am currently working with the Major Crimes Unit.

1 I have been there for about two years. Primarily,
2 I work aggravated assaults, shootings, and
3 homicides.

4 Q And back in January of 2016, what kind of work were
5 you doing?

6 A I was employed with the Major Crimes Unit, and I
7 was assigned to assist Investigator Gonzalez with
8 the homicide of Deandra Roach.

9 Q So Investigator Gonzalez already testified that he
10 came in contact with the Defendant on January 29th,
11 and you were present as well?

12 A Correct.

13 Q And that was in the Burger King parking lot?

14 A Correct.

15 Q How did you get to Burger King?

16 A I was with Investigator Gonzalez in his unmarked
17 county car.

18 Q Okay. And can you tell the Court a little bit
19 about your interaction with the Defendant as he
20 arrived at Burger King?

21 A Sergeant Faust approached the vehicle, as well as
22 myself and Investigator Gonzalez. Investigator
23 Gonzalez and Sergeant Faust primarily made contact
24 with the Defendant, and I kind of hung back just a
25 little bit at the vehicle.

1 Once Mr. Heatley was detained and brought back
2 to the vehicle and placed in the front seat, I then
3 got in the back seat. I didn't have too much
4 interaction with the vehicle itself.

5 Q With Mr. Heatley's vehicle?

6 A With -- yes, Mr. Heatley's vehicle.

7 Q So you were present in Gonzalez's vehicle during
8 the exchange with the Defendant once he got in the
9 car?

10 A Yes.

11 Q And how do you recall that taking place?

12 A As soon as Mr. Heatley got into the vehicle,
13 Investigator Gonzalez explained to him that he --
14 or that we -- were investigating the disappearance
15 of Deandra Roach and wanted to know why he,
16 Mr. Heatley, was using her stolen debit card.

17 Q And his response was what?

18 A He made a general statement that his parents told
19 him that he should always have an attorney present.

20 Q And it was at that point that Investigator Gonzalez
21 read the Miranda card?

22 A He did.

23 Q Did you witness that entire reading of the card?

24 A I did.

25 Q Did Mr. Heatley appear to understand those rights

1 as they were given to him?

2 A Yes.

3 Q Did it appear as though he was under the influence
4 of any drugs or alcohol at that time?

5 A No.

6 Q Did it look like he understood those rights, all of
7 them?

8 A Yes.

9 Q And did he then agree to speak?

10 A Yes.

11 Q Now, upon doing so, what was his -- what else did
12 he ask for?

13 A He asked to -- after he agreed to speak with us in
14 reference to using Ms. Roach's stolen card, he
15 asked to use the phone to call his mother. And
16 Investigator Gonzalez explained to him that he was
17 an adult and not -- he was not going to be granted
18 to call his mother at that time.

19 Q And after that the questioning began?

20 A Correct.

21 Q At any point did he say he wanted to call a lawyer?

22 A No, sir.

23 Q Just his mother?

24 A Correct.

25 Q Did he ever say that he did not want to speak to

- 1 you?
- 2 A No.
- 3 Q Did he answer questions freely and voluntarily?
- 4 A Yes.
- 5 Q Was he cooperative?
- 6 A Yes.
- 7 Q And that conversation as testified to by
- 8 Investigator Gonzalez went on for about how long in
- 9 the vehicle?
- 10 A According to my notes and my follow-up, we made
- 11 contact at 1:10 in the morning, and we arrived at
- 12 headquarters at 2:30.
- 13 Q Okay. Did you stop anywhere in between?
- 14 A No, sir.
- 15 Q Did he say anything during the car ride from the
- 16 Burger King to the Sheriff's Department about not
- 17 wanting to talk or wanting a lawyer?
- 18 A No, sir.
- 19 Q Did he say anything at all during that time?
- 20 A No. I mean, we just made some small talk. I just
- 21 asked him if he smoked cigarettes or drank alcohol,
- 22 just asked him like his hobbies, or just different
- 23 things like that, just nothing pertaining to the
- 24 case.
- 25 Q And upon arrival at headquarters, was he given the

1 opportunity to use the restroom?

2 A Yes, sir.

3 Q Did he do so?

4 A Yes, sir.

5 Q And was he provided with any -- given the
6 opportunity for food or water?

7 A Yes. He declined food, but he asked for water. I
8 believe he had three cups of water.

9 Q He was taken to Investigator Gonzalez's cubicle?

10 A Correct.

11 Q And you were present for that?

12 A Correct.

13 Q And the conversation continued orally at that
14 point, is that right?

15 A Yes. It was just slow, the conversation from the
16 car ride into the cubicle.

17 Q Once you got in the cubicle, what did y'all talk
18 about?

19 A We just continued on. Investigator Gonzalez just
20 continued on kind of -- we picked up, basically
21 just kind of recapping things that we talked about
22 in the car.

23 Investigator Gonzalez was taking notes at that
24 point. Like, the official statement, or the asking
25 if Mr. Heatley would provide an official statement

1 had not been asked at that point, it was more or
2 less just from start to finish asking questions
3 while Investigator Gonzalez jotted notes down.

4 Q Once that process was complete, they then turned to
5 reduce the conversation to writing, is that right?

6 A Correct.

7 Q And were you present for that?

8 A I was. I did step out briefly for part of the
9 note-taking aspect and -- but I was present for the
10 entire written -- or the typing portion.

11 Q And during all this time, both in the car, at
12 Burger King, the car ride, and then back to
13 headquarters, at any point were there ever any
14 threats of violence made towards the Defendant?

15 A No.

16 Q Any offers of leniency of any kind?

17 A No.

18 Q Did he seem willing to talk to you all the entire
19 time?

20 A Yes.

21 Q And, again, did he ever ask for an attorney?

22 A No.

23 Q Thank you.

24 MR. GOLDBERG: That's all I have.

25 THE COURT: Yes, sir?

CROSS-EXAMINATION

1
2 BY MR. O'NEIL:

3 Q Investigator Torres?

4 A Yes, sir.

5 Q Is it the Sheriff's Department's policy not to use
6 written Miranda Warnings?

7 A It's not -- there is no policy. As long as the
8 Defendant or a person that is in custody or is
9 not -- feels that they are not free to leave or
10 advised of their rights, whether it is verbal
11 and/or written, either one is legally -- is
12 accepted.

13 Q Okay. And I understand if it is legally accepted,
14 I guess. What I'm trying to figure out is, is
15 there a policy -- why the policy is to not have
16 them sign a written waiver of Miranda Warnings?

17 A There is no policy.

18 Q Why is the practice of not having, specifically
19 Mr. Heatley, sign a wherein waiver of his Miranda
20 Warnings?

21 A You would have to speak with a staff attorney about
22 that.

23 Q Do you know why you didn't you or Investigator
24 Gonzalez didn't have Mr. Heatley sign a written
25 waiver of his Miranda Warnings?

1 A Because we had already advised him verbally.

2 Q Okay. But the fact that you advised him verbally
3 didn't prevent you from having him to sign a
4 written waiver, did it?

5 A Not necessarily, but he was aware and he did waive.

6 Q I understand that. I understand that is your
7 testimony. I guess my precise question is, even if
8 you advised him verbally, why didn't you have him
9 write -- why didn't you do it -- why didn't you
10 have him do it in a written fashion?

11 A Because it would have been redundant.

12 Q Okay. But it would have been proof that we could
13 show a jury or a judge that he actually waived his
14 Miranda Warnings?

15 A But here we are testifying that he advised -- that
16 he waived.

17 Q But you do agree that if you had it video taped or
18 audio taped or written down, we wouldn't have to be
19 going back and forth like this for the last hour?

20 A I'm not going back and forth, I'm testifying that
21 we advised him of his rights.

22 Q Okay. And you would agree that it would be more
23 definite evidence if you had a video of it or an
24 audio recording or even had it written down?

25 A I guess for your benefit.

1 Q Well, for everybody's benefit, correct?

2 A I guess, yes, sir.

3 Q And I'm looking at your follow-up here, which is
4 fairly detailed. You indicate that when
5 Mr. Heatley was stopped at the Burger King
6 drive-through -- and I want to make sure I get
7 these words correctly -- you said that he was taken
8 out of the vehicle and asked if there were any
9 weapons inside. Did I read that correctly?

10 A Let me make sure I'm where you are at at the same
11 time.

12 Q And I'm asking --

13 A Okay. Let's see. Okay. Yes. That is basically a
14 summary of what happened. I didn't personally ask
15 him that. It was just a summary, at least in my
16 follow-up, a summary of what happened on the
17 scene.

18 Q You are writing down in your follow-up what
19 happened on the scene because, you know, sometimes
20 you are here three years later and you need to
21 remember what happened back there from three years
22 ago? Fair enough?

23 A Fair enough.

24 Q Okay. And you want to be accurate in what you
25 write because sometimes you may not remember what

1 happened three years ago and you had -- I don't
2 even know how many cases between in these last few
3 years, so what you have got to rely on sometimes is
4 what you wrote down in your report, correct?

5 A Correct.

6 Q And you try to be as accurate and detailed as you
7 possibly can in your report?

8 A Correct.

9 Q So that is all that officially happened, and he was
10 taken out of the car and then asked if there was
11 any weapons inside?

12 A To my knowledge, from what I observed, Sergeant
13 Faust and Investigator Gonzalez approached the car
14 and asked him if there were weapons in the vehicle,
15 and the response was, yes, and he was taken out.

16 Q But you would agree with me how you wrote it down
17 is not that way? You wrote it down saying, He was
18 taken out of the vehicle and asked if there were
19 any weapons inside, correct? That is what you
20 wrote?

21 A Okay. That could have been how it happened as
22 well.

23 Q Well, I wasn't there. You were there, so you wrote
24 it down. You wrote it down. You said, He was
25 taken out of the vehicle and asked if there were

1 any weapons inside, correct? That's what you
2 wrote?

3 A Okay. That is how I wrote it, yes.

4 Q That's all I'm asking. And I look at your summary
5 of your conversation with Mr. Heatley here and I
6 look at Investigator Gonzalez's summary of what
7 happened with Mr. Heatley. You both have in
8 quotation this statement about, My parents told me
9 I should always have an attorney?

10 A Yes, sir.

11 Q Did you independently take notes about that
12 statement? How did that statement get in
13 quotations in both you and Investigator Gonzalez's
14 reports here?

15 A I was in the back seat and I was taking notes, and
16 I have it on my notepad.

17 Q The almost cursive-looking handwriting --
18 handwritten notes, those are your notes, not
19 Investigator Gonzalez's notes?

20 A I haven't seen Investigator Gonzalez's notes, he
21 may have wrote it down as well, but I know they are
22 all my notes. I was in the back seat and I was
23 basically the note taker.

24 Q Okay. And you indicate that y'all arrived at
25 headquarters around 2:30 that morning?

1 A That is what is on my notepad, yes.

2 Q So according to kind of your rendition of what
3 happened, you probably would have stayed at the
4 Burger King -- if it takes 30 minutes to get to
5 headquarters, you probably would have stayed at
6 Burger King about 50 minutes before you got --
7 before you left Burger King, is that fair enough?

8 A So from 1:10 to 2:30, so you minus 30 minutes,
9 whatever that time is, yes.

10 Q So it is about 50 minutes at the Burger King as
11 opposed to 20 or 25?

12 A Possibly. I guess from start to finish, because, I
13 mean, upon initial contact, doing all that, and
14 then getting into the vehicle, so, yeah, I guess
15 you could say that. So at 1:10 is when we exactly
16 make the whole contact.

17 Q These are your notes? You said y'all got there at
18 1:10?

19 A So at 1:10 we're actually staging at the BP gas
20 station.

21 Q Okay.

22 A And that is when we get notification from Sergeant
23 Faust that Mr. Heatley is getting into the vehicle.

24 Q Okay.

25 A So from 1:10 upon staging at BP, and then 2:30 is

1 when we are actually at headquarters. So I don't
2 know exactly what time Mr. Heatley got in our
3 vehicle, but that is from start to finish from
4 staging.

5 Q We know that you got -- you start staging at 1:10,
6 you got a call from Investigator Faust that
7 Mr. Heatley was leaving his residence, correct?

8 A Yes, sir.

9 Q And we know the residence is about a half mile away
10 from the Kangaroo gas station?

11 A Yes, sir.

12 Q So I'm assuming it takes that long to get half a
13 mile in Irmo traffic at 1:00 o'clock in the morning
14 here?

15 A Yes, sir.

16 Q And according to Investigator Gonzalez, it is
17 approximately around 1:13?

18 A That is -- yes. That is reasonable.

19 Q And we know that, according to one estimate, how
20 long it takes to get from Irmo to Two Notch here is
21 about 30 minutes, so and you got to Two Notch
22 around 2:30?

23 A Yes, sir.

24 Q And, once again, when you got to headquarters, no
25 video tape, no audio tape, nothing?

1 A No, sir.

2 Q Now, did you also get a -- also talk to Mr. Heatley
3 about any sort of DNA sample or any sort of consent
4 to search his home at that point?

5 A Content to search his home?

6 Q Yes?

7 A A search warrant had already been obtained for his
8 home, so consent for his home was not --

9 Q What about a cell phone? What about a cell phone
10 and DNA?

11 A Yes.

12 Q Okay. You inquired about consent to search his
13 cell phone and consent to retrieve a DNA sample
14 from him?

15 A Yes, sir.

16 Q Did you do that or did a different investigator do
17 that?

18 A I would have to look at the actual form to see
19 whose signature is on it.

20 Q So y'all actually use a written form for that?

21 A Yes.

22 Q Why not rely on the oral, verbal consent to get his
23 DNA and get his cell phone records?

24 A Because you have to have a form for our lab in
25 order for them to legally put it in the system.

1 And as far as our IT technician, same thing. They
2 either need a search warrant or a form before they
3 will legally download a phone. So they have to
4 have some sort of form.

5 Q Do you know why that is?

6 A I mean, I believe that is either law --

7 Q I'm just asking. If you don't know, you don't
8 know. I'm just asking do you know why --

9 A We have --

10 Q -- why they require a written form to retrieve DNA
11 and retrieve cell phones, but really on verbal
12 waivers of Miranda Warnings?

13 A I mean, that would be to show that he gave us his
14 phone and that he gave us his DNA.

15 Q And you would agree that if he had a verbal -- a
16 written waiver of Miranda, that would show that he
17 also waived his Miranda Warnings, correct?

18 A Correct.

19 Q Okay.

20 MR. O'NEIL: That it is all I have, Your
21 Honor.

22 THE COURT: All right. Anything else?

23 MR. GOLDBERG: No, ma'am.

24 THE COURT: All right, you can step down.

25 THE WITNESS: Thank you, Your Honor.

1 (Witness steps down.)

2 THE COURT: Call your next witness.

3 MR. GOLDBERG: That's all I have, Your Honor.

4 THE COURT: All right. Anything from the
5 Defense?

6 MR. O'NEIL: Your Honor, I call Andre Heatley,
7 Jr.

8 (Witness approaches.)

9 THE BAILIFF: Place your left hand on the
10 Bible, and raise your right hand, please.

11 (Witness complies.)

12 THE CLERK: Do you swear or affirm the
13 testimony you are about to give in this case will
14 be the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Thank you. Have a seat in the
18 witness stand.

19 (Witness seated.)

20 THE CLERK: State your name for the record.

21 THE WITNESS: Andre Tyrone Heatley, Jr.

22 ANDRE TYRONE HEATLEY, JR.,

23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. O'NEIL:

2 Q Mr. Heatley, I just want to talk with you
3 specifically about what happened that night going
4 to the Burger King going into that morning, okay?

5 A Yes, sir.

6 Q I don't want to talk about anything else, all
7 right?

8 A All right.

9 Q So what led you to go to Burger King that night?

10 A Well, I was hungry and I wanted to get something to
11 eat.

12 Q Do you know about what time of night it was?

13 A No, sir.

14 Q So you get in your car and you head towards Burger
15 King?

16 A Yes, sir.

17 Q How far away is Burger King away from your house?

18 A About a half a mile.

19 Q When do you first notice any law enforcement?

20 A Well, I noticed law enforcement when I looked up
21 and I seen them --

22 THE COURT REPORTER: I'm sorry, you are going
23 to have to speak up.

24 A I mean, I came in and they blocked me in.

25 Q So the first -- let me make sure I am hearing you

1 correctly. The first time you notice law
2 enforcement is when you are in the Burger King
3 drive-through?

4 A Yes, sir.

5 Q Okay. What do you do when you notice law
6 enforcement?

7 A I start looking around.

8 Q Okay. What do they do?

9 A Well, they get out the car.

10 Q Okay. How many -- do you know how many cars it
11 was? Do you know how many people it was?

12 A It was like almost 13 of them.

13 Q Okay. Now, are you able to leave out of the Burger
14 King drive-through in your vehicle?

15 A No, sir.

16 Q Why not?

17 A Because I can't move.

18 Q Why can't you move?

19 A Because all the cars in the way.

20 Q So the law enforcement cars have you blocked in?

21 A Yes, sir.

22 Q At that point do you feel as though you were free
23 to leave?

24 A No, sir.

25 Q Okay. What happens next?

1 A What happened next is I was told to keep my hands
2 up, stick my hands out the window and put the keys
3 outside.

4 Q Do you know who told you that?

5 A Not sure.

6 Q Okay. Was it somebody in a uniform or was it
7 somebody plain clothes?

8 A I really don't know.

9 Q Well, what do you do?

10 A I do as I told.

11 Q Okay. And what happens next?

12 A The car door is opened and I get put in handcuffs
13 and tell I'm being --

14 THE COURT REPORTER: I'm sorry, I can't hear
15 you.

16 A I get in handcuffs and I am told I am detained.

17 Q Did they tell you why you are detained?

18 A Because of the disappearance of Ms. Deandra Roach.

19 Q Okay. What is the first thing they ask you after
20 they detain you?

21 A The first thing they ask me is do I know what
22 happened to her, about her disappearance.

23 Q Okay. Now, Investigator Gonzalez testified that he
24 inquired about whether or not you had any weapons.
25 Do you remember him doing that?

1 A Yes, sir, he did.

2 Q When did he do that?

3 A I was already in handcuffs when he asked me about
4 the weapons.

5 Q Okay. Were you already out of the car by the time
6 he asked you that question?

7 A Yes, sir.

8 Q All right. And what did you respond?

9 A I said, yes, it is in the glove compartment, look
10 in the glove compartment.

11 Q Okay. To your knowledge, did anybody open the
12 glove box to see if it was in there?

13 A It was a black officer who was there. He opened
14 the door, but I'm not sure what he did at the time.

15 Q Okay. And was he in plain clothes or was he --

16 A He was in uniform.

17 Q So they get you out the car. Where are you
18 standing when you get out the car?

19 A I'm standing on the left side in front of the
20 speaker.

21 Q Okay. At that point are you -- are you in
22 handcuffs at that point?

23 A Yes, sir.

24 Q Did you feel as though you were free to leave at
25 -- that point?

1 A No, sir.

2 Q What -- and they begin asking you about the
3 disappearance Ms. Roach?

4 A Yes, sir.

5 Q And what do you say?

6 A I didn't say nothing at that moment until I got in
7 the car.

8 Q Okay. When you say car, what car did you get in?

9 A We got in the -- what is it, an Escape? I think it
10 is an Escape.

11 Q And how did get in that car?

12 A Gonzalez and another -- it was another male
13 officer, he walked me to the car.

14 Q Okay. And when they walked you to the car, did
15 they place you in the car?

16 A Yes, sir.

17 Q How long did they -- after they placed you in the
18 car did they begin asking you questions?

19 A Probably about 45 seconds.

20 Q Okay. What did they ask you?

21 A Well, I really -- I am really not sure at that
22 moment what they asked me.

23 Q In a general sense, what were they inquiring about?

24 A Well, they was trying to figure out about Ms.
25 Deandra Roach, they were stressing that.

1 Q Okay. And when you say they, was it just one
2 person asking you questions or was it more than one
3 person asking questions?

4 A Well, at that time it was Mr. William Gonzalez, and
5 then Ms. Taylor, or Ms. Torres, asked questions
6 later.

7 Q Okay. And at any time do you ever ask for an
8 attorney?

9 A I did ask for an attorney. At first I told them I
10 needed to call my mother or my parents so I could
11 get an attorney together because I needed to talk
12 to an attorney, I wasn't supposed to talk to nobody
13 without an attorney.

14 Q And, Mr. Heatley, I want to be real precise about
15 this. What precisely did you say about wanting an
16 attorney?

17 A I said, I need an attorney because of this
18 situation.

19 Q And those were your exact words?

20 A No, my exact words was, I need to use your phone so
21 I can call my parents because I need to get an
22 attorney.

23 Q That was your exact words?

24 A That is my exact words.

25 Q When did you say that?

1 A I said that before -- when he asked me about -- he
2 started asking me about Deandra.

3 Q Okay. And what did he -- how did he respond to you
4 saying that?

5 A He started digging through his pockets. I didn't
6 know what was going on. And that is when he tried
7 to read my Miranda Rights.

8 Q And what did you do when he started trying to read
9 you your Miranda Warnings?

10 A I just sat there and listened.

11 Q Okay. What did say after he stopped reading?

12 A I really don't know what I said after that.

13 Q Now, he indicated that at some point you told him
14 that you would talk to him. Did you ever tell him
15 that you would talk to him?

16 A I did, because he said I had to talk to him,
17 because he was trying to figure out what was going
18 on.

19 Q I want to make sure I'm clear. What precisely did
20 he tell you about you having to talk to him?

21 A Basically he was saying it was very important that
22 I talk to him because they are trying to
23 investigate what happened to her.

24 Q And how did -- what did you interpret that to mean?

25 A What I interpret that to mean is something happened

- 1 and they need to know what is going on.
- 2 Q Okay. Why didn't you stop and say, I am not saying
3 anything until my attorney gets here?
- 4 A Because of the situ -- because of the person, who
5 it was.
- 6 Q Okay. Now, at any -- did you ever ask to use the
7 phone again?
- 8 A I did.
- 9 Q And when was that?
- 10 A Later on after he kept asking me about Deandra.
- 11 Q Okay. When you say later on, are you saying still
12 in the Burger King parking lot?
- 13 A Yes, sir.
- 14 Q Okay. And what precisely did you say?
- 15 A I said, I need to use the phone. --
- 16 Q What did -- who did you say that to?
- 17 A I told it to Gonzalez. He told me no.
- 18 Q Okay.
- 19 A He said I'm grown, I can make my own decisions.
20 But at the end of the day, I still was trying to
21 get a lawyer.
- 22 Q Okay. And how did you try to express to
23 Investigator Gonzalez and at that time Investigator
24 Taylor your desire to get an attorney? What did
25 you say to them?

1 A By using the phone. I asked them could I use the
2 phone.

3 Q Okay. Now, at any point in time either in Burger
4 King or in headquarters, did anybody ever allow you
5 to use the phone to call an attorney?

6 A No, sir.

7 Q Did you repeat your request to get in contact with
8 an attorney when you got to headquarters?

9 A Yes, sir.

10 Q Okay. Who did you tell that to at headquarters?

11 A I told it to Gonzalez.

12 Q Okay. And what did he respond -- how did he
13 respond to you when you said that?

14 A He act -- he started acting different.

15 Q Okay. What do you mean different?

16 A Different as in, he was getting angry, he was
17 getting upset, like he was being very aggressive.

18 Q Okay. And that was different than his demeanor
19 there at Burger King?

20 A Yes.

21 Q The parking lot at Burger King?

22 A Yes, sir.

23 Q All right. And, Mr. Heatley, they indicated
24 that -- and we put into evidence that there is a
25 statement that has -- bears your signature,

1 correct?

2 A Yes, sir.

3 Q Why did you sign that statement?

4 A I was told that I had to sign paperwork about the
5 DNA, or whatever the -- what was going on, what we
6 talked about. They told me I had to sign it for
7 DNA and other things. And I just signed -- put X's
8 and I just signed. I didn't read nothing.

9 Q Okay. And when you say he, who are you referring
10 to?

11 A I'm referring to William Gonzalez.

12 Q Okay. I want to make sure I am absolutely clear on
13 this. Before you spoke with Investigator Gonzalez
14 there at Burger King here, is it your testimony
15 that you requested an attorney?

16 A Yes, sir.

17 Q And after you got out of the Burger King parking
18 lot there, nobody ever read you the Miranda
19 Warnings again prior to asking you questions about
20 the case?

21 A No, sir.

22 Q Mr. Heatley, that is all of the questions I have
23 for you. Answer any questions Mr. Goldberg has for
24 you, okay?

25 THE COURT: All right. Yes, sir?

1 MR. GOLDBERG: Beg the Court's indulgence.

2 (Pause.)

3 CROSS-EXAMINATION

4 BY MR. GOLDBERG:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q You testified on direct that you were in Gonzalez's
8 car for about 45 seconds before they started asking
9 you questions?

10 A Yes, sir.

11 Q But you don't know what they asked you?

12 A They asked a whole lot of questions.

13 Q And they told you they were trying to figure out
14 what happened to Deandra Roach?

15 A Yes, sir.

16 Q And you testified that -- you told them that you
17 needed to call your parents?

18 A Yes, sir.

19 Q And I believe Mr. O'Neil asked you exactly what you
20 said, and you said, I need to use your phone so I
21 can call my parents?

22 A Yes, sir.

23 Q Those were your words?

24 A Yes, sir.

25 Q And they told you you couldn't call your parents?

1 A Yes, sir.

2 Q And at no point did you ever say to Investigator
3 Gonzalez, I need to use your phone so I can call an
4 attorney?

5 A I told him I wanted an attorney, so it doesn't
6 matter what I said. I asked to use his phone to
7 call my parents, but I still told him I needed an
8 attorney at the end of the day.

9 Q You never told him you needed to use the phone to
10 call an attorney, you said you needed to use the
11 phone to call your parents?

12 A I told him I needed an attorney.

13 Q And did he acknowledge that response in any way?

14 A No, he didn't.

15 Q Did you say it again?

16 A Yes, I did.

17 Q How many times?

18 A It doesn't matter how many times.

19 Q How many times did you say it?

20 A It doesn't matter.

21 Q I'm asking you.

22 THE COURT: Sir, you have to answer the
23 question.

24 A How many times? Twice.

25 Q So twice. You told him you needed an attorney

1 which two times?

2 A Mr. Goldberg, I asked him twice to use the phone.

3 Q When was that?

4 A And I asked him twice for an attorney.

5 Q Oh, so now you say that you asked him to use the
6 phone to call your parents for an attorney and you
7 asked him twice to call an attorney?

8 A I asked him twice.

9 Q So three times?

10 A No, it is not three times.

11 Q You said you asked him again to use the phone later
12 in the Burger King. You said, I need to use the
13 phone?

14 A Yes.

15 Q Did you tell him you needed to use the phone to
16 call an attorney at that time?

17 A No, sir, I didn't say I needed to call -- use the
18 phone to call an attorney, I asked to call my
19 parents.

20 Q Okay. Thank you, sir. That's all I have.

21 MR. O'NEIL: I don't have anything further,
22 Your Honor.

23 THE COURT: All right, you may step down.

24 (Witness steps down.)

25 THE COURT: Call your next witness.

1 MR. O'NEIL: I don't have any other witnesses,
2 Your Honor.

3 THE COURT: All right. Anything from the
4 State as to the Denno hearing? Any other
5 witnesses, follow-up witnesses?

6 MR. GOLDBERG: No other witnesses, Your Honor.

7 THE COURT: All right. I will be glad to hear
8 from you all.

9 MR. GOLDBERG: Thank you, Your Honor. May it
10 please the Court?

11 Your Honor, it is our position that the State
12 has shown by a preponderance of the evidence that
13 the statements made by Mr. Heatley, to include the
14 verbal statements made in the car, Investigator
15 Gonzalez's car at Burger King, as well as the
16 verbal conversation at the headquarters and the
17 written statement at headquarters, were given
18 freely, voluntarily, knowingly, and intelligently,
19 that he did indicate that he wanted to speak to
20 them based on the testimony provided by
21 Investigators Gonzalez and Torres.

22 The testimony is that he asked for a phone
23 call to his parents. Their testimony was he never
24 asked to speak to an attorney. He never told them
25 he did not wish to speak. In light most favorable

1 to the State, I believe the State has met that
2 burden.

3 I also point Your Honor to a couple of cases,
4 State v. Register and State v. --

5 THE COURT: Do you have copies?

6 MR. GOLDBERG: Yes, ma'am, I am bringing them
7 now. State v. Register and State v. Wannamaker.

8 (Hands to Court.)

9 MR. GOLDBERG: Your Honor, those two cases
10 specifically address the issue regarding the
11 ambiguity of the right to an attorney.

12 Specifically, State v. Register, 323 S.C. 471,
13 says that: An adult's request for someone other
14 than a lawyer is not the same as a request for an
15 attorney. In that case, Register was actually 18
16 years of age at the time of a homicide. He was
17 actually younger than this Defendant. He was
18 placed under arrest. He was given a statement. He
19 had previously given a statement to law enforcement
20 prior to his arrest, and then -- approximately a
21 week prior -- but then on the date of his arrest he
22 was questioned extensively by law enforcement for
23 approximately three hours, from 10:20 a.m. to about
24 1:30 p.m. He told the police that he was not
25 telling them about it until he talked to his

1 mother. The police in that case actually stopped
2 the interrogation. They went so far as to stop the
3 interrogation to go see his mother. She did not
4 come back to the scene, nor did she actually speak
5 to her son. She sent a note to him, and the police
6 didn't give him the note, but they told him that
7 she was upset and she sent a note saying that she
8 loved him and that she wanted him to tell them what
9 happened that night. And the police continued to
10 talk with him. He ultimately confesses.

11 During the Denno hearing, the judge ruled that
12 it was a free and voluntary confession after he had
13 been advised of his rights. In doing so, the Court
14 looked at it and said that, although a juvenile's
15 request for a parent may be considered when
16 determining the voluntariness of a confession, that
17 an adult's request for someone other than an
18 attorney does not invoke the Fifth Amendment right
19 to speak with counsel.

20 Further, in *State v. Wannamaker*, 346 S.C. 495,
21 in that the Defendant was advised of her rights.
22 And the substance of the conversation turned to her
23 involvement in that particular incident. She
24 requested to speak to either a lawyer or her
25 mother. Investigators asked her if she had a

1 lawyer in mind that she wanted them to call. She
2 hesitated momentarily and said she did not have a
3 lawyer, just contact her mother for her, and they
4 agreed to do so.

5 In looking at that, the Court said that police
6 officers are not required to cease questioning a
7 suspect unless a request for counsel is
8 unambiguous. Things like, maybe I should talk to a
9 lawyer, even, I think I need a lawyer, have been
10 found not to meet the threshold.

11 And the Supreme Court of note in that case,
12 the Court said -- the Supreme Court has noted that,
13 If a suspect is indecisive in his request for
14 counsel, the officers need not always cease
15 questioning. And then they also cite Register for
16 the position that an adult's request for someone
17 other than an attorney does not trigger that right.

18 So, Your Honor, based upon the information and
19 testimony provided by Gonzalez and Torres in this
20 court, we believe that the State has met the
21 threshold burden for -- to show that these
22 statements were voluntarily given upon the
23 Defendant's waiver of Miranda.

24 MR. O'NEIL: Thank you, Your Honor. May it
25 please the Court?

1 I think the State concedes at the time Mr.
2 Heatley was questioned, he was in custody and he
3 was being interrogated, so I think they concede at
4 that point Miranda is required here. I think the
5 only question before this Court at this moment is
6 whether or not Mr. Heatley was given his Miranda
7 Warnings and whether or not he knowingly and
8 voluntarily waived those warnings.

9 I think we have a -- under the light of
10 Wannamaker and Register where there is, according
11 to that Court's record, ambiguous in Wannamaker,
12 ambiguous implication of the rights here.

13 In this case, Mr. Heatley took the stand in
14 pretrial and he told the Court unequivocally that
15 he asked for an attorney. At that point, Your
16 Honor, it is a credibility issue between
17 Mr. Heatley and law enforcement. And I think law
18 enforcement creates that credibility issue by
19 failing to either have a written waiver of Miranda
20 Warnings, a video tape waiver of Miranda Warnings,
21 or audio tape waiver of Miranda Warnings.
22 Mr. Heatley is in no position to audio tape or
23 video tape his side of what happens here. Law
24 enforcement has the ability and yet choose not to
25 do that, and we come into the hearing today, in the

1 Denno hearing, and they say it is a credibility
2 issue between Mr. Heatley and law enforcement. And
3 Mr. Heatley has no way to support his side of the
4 story here.

5 In totality of all that, it is the
6 Prosecution's burden to prove that the waiver was
7 knowingly and voluntarily given here. And since
8 they didn't avail themselves to techniques that
9 would show the Court that it was knowingly and
10 voluntarily waived here, I think the Court should
11 err on the side of caution and suppress the
12 statement because Mr. Heatley unequivocally
13 testified that he asked for an attorney and after
14 asking for an attorney, questions still continued,
15 and that his Miranda Warnings were not voluntarily
16 and knowingly waived.

17 In light of that, I would ask that the
18 statement Mr. Heatley gave in the car there at the
19 Burger King parking lot and also at headquarters be
20 suppressed.

21 THE COURT: I thought he testified that he
22 went in his pocket and read him his Miranda
23 Warnings.

24 MR. O'NEIL: I apologize, Your Honor?

25 THE COURT: I thought your client testified

1 that he went in and -- said Gonzalez started
2 reaching in his pocket and -- reaching for
3 something in his pocket, and then he started giving
4 him his Miranda Warnings?

5 MR. O'NEIL: He did, Your Honor. He testified
6 to that. That is what he testified to. But he
7 also testified that he asked for an attorney. The
8 question is --

9 THE COURT: I don't think he -- I think he
10 testified -- so after he gave him his Miranda
11 Warnings, he is saying he -- I don't believe the
12 testimony is that after he gave him his Miranda
13 Warnings he started -- he asked for an attorney. I
14 think he said in the beginning he asked to call his
15 mom -- I wrote it down -- that he needed to call
16 his parents, his mom, his parents, to get him an
17 attorney. And then he said, then Gonzalez started
18 reaching in his pocket and started pulling out and
19 started reading his Miranda Rights. And then I
20 think you asked him -- somebody asked him did he
21 say something after that, what did he do after
22 that. And I don't believe -- I can have her go
23 back and look -- I don't believe there is any
24 testimony after that point where he asked for
25 Miranda, he advised him that he had the right to

1 have an attorney and the right to remain silent,
2 that your client asked for an attorney at that
3 point. I don't believe the testimony --

4 MR. O'NEIL: I think the testimony on
5 cross-examination to Mr. Goldberg was, after some
6 back and forth, that he asked for his -- to talk to
7 his parents twice and asked for an attorney twice.
8 I think in testimony with me, I think it was more
9 of -- he said it in combination, that he asked
10 both -- to call his parents where he could get an
11 attorney. If Your Honor wants to read it back, I
12 want to make sure we get it correctly, but that is
13 my understanding of the testimony, that my client
14 testified that once Investigator Gonzalez started
15 talking to him about the disappearance of Mr. Roach
16 and the credit cards, he asked to talk to his
17 parents so he can get an attorney.

18 MR. GOLDBERG: And I asked him when, and he
19 couldn't answer that.

20 MR. O'NEIL: I'm not trying to speak to that
21 because I'm not sure precisely what Mr. Goldberg is
22 speaking to in that regard. My recollection of the
23 testimony was that my client said after
24 Investigator Gonzalez started asking him questions,
25 he asked to call his parents so he can get an

1 attorney. I think he initially gave Mr. Goldberg a
2 slightly different answer on cross, but then
3 ultimately said he asked for an attorney twice and
4 asked for his -- to talk to his parents twice as
5 well.

6 THE COURT: And I think -- I mean, she can
7 play it back, but I think he asked then when. And
8 your client might have said, I asked for -- twice.
9 And he said, Well, when? And I don't think he ever
10 answered the question.

11 MR. O'NEIL: Yes, but I think Solicitor
12 Goldberg then said, Was it three times? And he
13 kind of stopped there. There was never --

14 THE COURT: And he said it has now been three
15 times?

16 MR. O'NEIL: Yes. And there was never an
17 answer to that question, it kind of just ended.
18 That is my recollection of that.

19 MR. GOLDBERG: And even -- regardless of all
20 that, I mean, if the issue, as stated by
21 Mr. O'Neil, is credibility, that is an issue for
22 the jury to decide, not the credibility of
23 Investigators Gonzalez and Torres as to whether or
24 not they are telling the truth about this
25 interaction.

1 MR. O'NEIL: And, Your Honor, it is an issue
2 for the Court, because the Court has to decide
3 whether or not Mr. Heatley voluntarily and
4 knowingly waived his Miranda Warnings. The State
5 has that burden. If they want to introduce the
6 statement, they have to prove to the Court that he
7 knowingly and voluntarily waived his Miranda
8 Warnings. He says he didn't. They are saying he
9 did. And what I'm saying is that they created the
10 credibility issue by failing to independently note
11 Mr. Heatley's either waiver of his Miranda Warnings
12 by written form, audio form, or video form where
13 they could prove that precisely he voluntarily
14 waived these rights, but they don't do that. And
15 then they come into court in a Denno hearing and
16 all we have is Mr. Heatley's word against their
17 word as to what was precisely said.

18 MR. GOLDBERG: But they actually do note it.
19 There is not a written advisement of the rights
20 form, but they noted in their reports when they
21 indicate that when he was asked if he would talk,
22 he said yes. They did note it. So I don't think
23 it is accurate to say that that wasn't noted at
24 all. It is not noted in the form of a waiver, a
25 written waiver of his advisement of rights, but it

1 is in the form of their notes detailing what
2 happened that night, to include, when asked if he
3 would talk, he said yeah, but can I use the phone.
4 And they both testified to that.

5 MR. O'NEIL: And I'm not saying they didn't
6 put it in their reports. What I'm saying is it is
7 not noted in any advice of rights waiver form that
8 would be undisputable in court that Mr. Heatley
9 signed the form waiving his rights.

10 THE COURT: But your client already just
11 testified that he did, that he received his rights.
12 And I think that he said, I asked to call my
13 mother. He said, and then he started digging in
14 his pocket, read him the rights. And I think
15 somebody asked, Well, did -- what did you do? And
16 he said, I talked to them, he said, because I
17 thought I had to. This was after he was given his
18 Miranda Rights. That is the whole purpose of
19 Miranda is to say, You have the right to remain
20 silent, you have the right to have an attorney.

21 MR. O'NEIL: And he said he talked to them
22 because he felt like he had to. The question is
23 not that -- the question is not whether or not he
24 was given Miranda Warnings, the question is did he
25 voluntarily knowingly waive them. The fact that he

1 says, I talked to them because I had to, indicates
2 that he didn't voluntarily or knowingly waive the
3 right to have an attorney there, he felt as
4 though --

5 THE COURT: But he didn't indicate why he had
6 to. Did he say they had a gun to him or did they
7 tie him down? I mean, what is it -- you called
8 him --

9 MR. O'NEIL: I don't think he has to give a
10 reason why he didn't voluntarily waive them. If he
11 implicitly says he didn't waive them, he didn't
12 waive them.

13 THE COURT: Well, I have to have a
14 preponderance of the evidence that he was coerced
15 or he was threatened. I mean, those are things
16 that the Court has to consider, is that correct?

17 MR. O'NEIL: Those are facts to consider
18 whether or not he waived them, but he has
19 explicitly said he didn't waive. He said, I only
20 talked to them because I felt like I had to.

21 THE COURT: All right.

22 MR. GOLDBERG: And, Your Honor, if I may
23 approach, I failed to have this handed up to you
24 and I didn't have him read the statement to you,
25 but I reference the Court to Exhibit 1 there, the

1 statement. I ask the Court to look at it. The
2 first two questions on the statement are:

3 Did you understand your Miranda Rights as I
4 read them to you in my vehicle? Answer: Yes.

5 Question 2: Were you willing to talk to me in
6 reference to Deandra Roach? Yes.

7 THE COURT: Anything else?

8 MR. GOLDBERG: No, ma'am.

9 MR. O'NEIL: No, Your Honor.

10 THE COURT: All right. Based on the question
11 the Court must consider, whether or not the
12 statement that the Defendant gave was voluntary,
13 the Court must look at the preponderance of the
14 evidence, consider the totality of the
15 circumstances.

16 I think it is uncontradicted that Investigator
17 Gonzalez gave him his Miranda Rights. It is
18 uncontradicted that he pulled out the business --
19 something out of his pocket and started reading
20 to -- based on the Defendant's testimony and also
21 on Investigator Gonzalez and Investigator Torres's
22 testimony, that he read him the Miranda Rights in
23 the car.

24 In looking at State's Exhibit 1, the
25 Defendant -- I don't believe there was any

1 testimony contrary to State's Exhibit 1, which,
2 once again, reads the Miranda Rights, and it
3 says -- I also have where it says, I do make the
4 following statement, after there is the Miranda
5 Rights here. And then it goes on to say: Did you
6 understand your Miranda Rights as I read them to
7 you in my vehicle? Yes. Were you willing to talk
8 to me in reference to Deandra Roach? Yes. And
9 then it is signed and witnessed. It says, I make
10 the foregoing statements freely and voluntarily,
11 without fear, threat of promise or reward or hope
12 of reward of any kind. On Page 2, it says same
13 statement. Page 3, notarized. Page 1, 2, 3, and 4
14 saying that he voluntarily and freely gave. I
15 understand what you are saying about the Advice of
16 Rights form, but the rights are advised in the
17 statement that he signed. Even though they don't
18 have the Advice of Rights form that we sometimes
19 see, but the rights are spelled -- the same rights
20 are in State's Exhibit 1, and he signed and
21 notarized as he would have done on the advisement
22 of rights form.

23 MR. O'NEIL: And I understand the Court's
24 ruling. I want to make sure the Court is actually
25 clear about that those Advice of Rights are given

1 to Mr. Heatley, by testimony of Mr. Gonzalez, after
2 he has already given the statement. Those Advice
3 of Rights are given before he gave a statement.
4 That form is only shown to Mr. Heatley, and
5 Investigator Gonzalez testified to this, after he
6 has already given the statement. And in the sense
7 of reviewing it, I think Investigator Gonzalez was
8 refreshing the Miranda Warnings, but that
9 advisement was not given before he makes the
10 statement, it was given after he had already talked
11 to law enforcement. I think that is uncontroverted
12 from law enforcement.

13 THE COURT: Well, he says: Do you understand
14 your Miranda Rights as I read them to you in your
15 vehicle, which is not contradicted, and he says yes
16 again here.

17 MR. O'NEIL: I agree that the statement
18 references something that happened earlier, but
19 those warnings were not given before Mr. Heatley
20 makes the statement, they are given after he has
21 already made the statement.

22 THE COURT: I think there was testimony that
23 he gave him his Miranda Warnings again at the
24 Sheriff's Department before he gave them the
25 statement, then he went back and he typed up the

1 statement -- before he got the verbal statement --
2 and then he went back and typed it up, and that is
3 when he --

4 MR. O'NEIL: Well, no, I think it is clear
5 from Mr. Gonzalez he did not -- he never read the
6 Miranda Warnings again. I think that is
7 uncontroverted.

8 MR. GOLDBERG: That's correct.

9 THE COURT: He read them in the car?

10 MR. GOLDBERG: Correct.

11 THE COURT: Then he gave the statement at the
12 police station, and then he came back --

13 MR. GOLDBERG: He read them in the car, they
14 talked in the car, they drove to headquarters, a
15 very tiny conversation on the way. As soon as they
16 get to headquarters, they continue to verbally talk
17 more, a continuation of the conversation in the
18 car. Then they start putting it into the written
19 statement in typed form. It is not read to him on
20 the sheet until after it has --

21 THE COURT: It has been typed?

22 MR. GOLDBERG: Correct.

23 MR. O'NEIL: I just want to make sure the
24 Court is clear on that.

25 MR. GOLDBERG: That's fine.

1 MR. O'NEIL: That the Advice of Rights on the
2 statement wasn't given to him prior to him making
3 the statement.

4 MR. GOLDBERG: That's correct.

5 MR. O'NEIL: They were given to him after he
6 made all his statements.

7 THE COURT: But he -- you don't dispute that
8 he was given the Miranda Rights in the car?

9 MR. O'NEIL: I don't dispute that. There is
10 no testimony that contradicts that.

11 THE COURT: Okay. All right.

12 (Pause.)

13 THE COURT: The Court finds that based on the
14 totality of the circumstances that it is
15 uncontradicted that the Defendant was given his
16 Miranda Rights in the car by Investigator Gonzalez,
17 which is corroborated by the Defendant's testimony
18 and the testimony of Investigator Torres.

19 Based on the preponderance of the evidence,
20 there has been no testimony as to any threats or
21 any promises, and there has not been any testimony
22 that the Defendant said he wanted to stop talking
23 once he has been given his Miranda Rights -- he
24 wanted to stop talking and remain silent.

25 It is ambiguous as to if the Defendant asked

1 for his mother so his mother could get him an
2 attorney. He said he asked two times. When asked
3 again, he did not answer. I think Mr. Goldberg
4 asked him again and he did not answer. I think it
5 was undisputed that he asked to call his mother.
6 It is questionable as to what, if he said -- the
7 State says that he asked -- the investigator said
8 he asked to call his mom because his mom told him
9 not to talk to the police, or something like that.
10 He says he asked to call his mom so she can get him
11 an attorney. But immediately after that, he was
12 advised of his rights, and then he continued to
13 speak with Investigator Gonzalez.

14 Based on the totality of the circumstances,
15 the Court finds by a preponderance of the evidence
16 that the statement is voluntary. There has not
17 been any evidence of any threats or promises or
18 coercion in giving the statement. Investigator
19 Torres said he was given an opportunity to use the
20 restroom, he had three cups of water, he declined
21 any food. He was asked if he needed food, and he
22 declined food.

23 And for all of those reasons, based on the
24 totality of the circumstances, I do find that the
25 Defendant knowingly and voluntarily waived his

1 rights after being informed of his rights by
2 Investigator Gonzalez.

3 All right. So the statement will come in. It
4 is State's Exhibit 1. All right.

5 (WHEREUPON, State's Exhibit No. 1 was
6 marked for identification only.)

7 THE COURT: Any other motions from the State?

8 MR. GOLDBERG: Your Honor, was the court clerk
9 able to locate the amended indictment?

10 THE CLERK: We have it.

11 MR. GOLDBERG: Okay. Well, beg the Court's
12 indulgence.

13 (Pause.)

14 THE COURT: Where is the amended one?

15 THE CLERK: I put it up there.

16 MR. GOLDBERG: There is nothing else from the
17 State.

18 THE COURT: All right. Hold on. This is the
19 same indictment. Okay, here is this one that says
20 amended.

21 MR. O'NEIL: Your Honor, I think we talked
22 about this previously, but I want to make sure we
23 are absolutely clear. In discovery there is
24 another statement from Mr. Heatley given on
25 February 26th, 2016, from Investigator Loftis that

1 deals with the Taco Bell incident, and I think we
2 decided we are not going to address that issue. I
3 just wanted to make the Court aware that that
4 statement is there. The State is not -- even
5 though it was given in discovery of this case, the
6 State is not attempting to introduce that
7 statement.

8 THE COURT: All right. So this is the only
9 statement?

10 All right. Yes, sir?

11 MR. O'NEIL: Your Honor, I would have a motion
12 to quash Mr. Heatley's indictment. And I guess the
13 indictment that I would -- well, I guess I would
14 ask to quash both indictments. There is
15 2016-GS-40-6572, and then one that is the same
16 docket number that is amended here. One was acted
17 upon by the Grand Jury on November 7th, 2016, and
18 one was acted on by the Grand Jury on November 6,
19 2018.

20 Your Honor, as sort of a factual basis, Your
21 Honor is kind of aware through the Denno hearing,
22 when Mr. Heatley was arrested on January 30th,
23 2016, for murder in this case here, indicted
24 initially by the Grand Jury on the indictment that
25 was true-billed on November 7th, 2016. At some

1 point in time, Your Honor -- and that body of the
2 indictment failed to mention that the victim had
3 died as a result of means of a gunshot wound here.
4 At some point in time, Your Honor, it looks like on
5 November 6th, 2018, according to the face of the
6 indictment, Mr. Heatley is charged again in front
7 of the Grand Jury. And I guess that is kind of the
8 basis of my motion, or part of my basis of my
9 motion to dismiss or to quash the indictment, Your
10 Honor.

11 Mr. Heatley -- and I think I e-mailed both the
12 Court and the State a copy of my written motion,
13 and I would ask that this motion be made a Court
14 Exhibit. Mr. Heatley is entitled to a fair -- and
15 by due process of the federal constitution and both
16 the state constitution, he is entitled to a fair
17 treatment of this case by the Grand Jury here.

18 If you look at the body of the amended
19 indictment, Your Honor, the back of the amended
20 indictment here -- and I think Your Honor has it in
21 front of you here -- on the back of the amended
22 indictment it indicates that, at a Court of General
23 Sessions convened upon November 7th, 2016, the
24 Grand Jury of Richland County presents upon their
25 oath, and then indicates the statute of murder

1 here.

2 There is no way that a Grand Jury convened
3 this amended indictment on November 7th, 2016,
4 because this indictment was true-billed by the
5 Grand Jury on November 6, 2018. So there is no --
6 because of the secrecy of the Grand Jury, there is
7 no way for Mr. Heatley to know whether or not a
8 Grand Jury in Richland County on November 6, 2018,
9 considered this indictment or not, because the body
10 of it indicates it was considered by a Grand Jury
11 back in 2016, the date of the initial warrant, Your
12 Honor.

13 So that is my motion as relates to the
14 indictment and ask that it would be quashed because
15 of the constitutional rights of the state and the
16 federal constitution, he is entitled to due process
17 to a fair and impartial Grand Jury consideration,
18 and there is no way to know whether or not he got
19 that in this amended indictment because the back of
20 the amended indictment indicates that it was
21 considered by a Grand Jury two years previous to
22 when it says it was true-billed in November 6,
23 2018. So that is the first part of my motion as it
24 relates to quashing the indictment.

25 The second part of my motion as it relates to

1 quashing the indictment is based off of the court
2 rules. The criminal court rule indicates that the
3 Solicitor's Office has to make actions on warrants
4 here within 90 days of receiving the warrants here.
5 Mr. Heatley was arrested January 30th, 2016, here.
6 His first indictment didn't come until November 7th
7 of 2016. This amended indictment occurred in
8 November 6, 2018, some almost three years after he
9 was arrested for these charges, Your Honor.

10 And, also, the due process case law as it
11 relates to the Defendant is entitled to a speedy
12 indictment as relates to the time between when he
13 was arrested and when he was actually indicted. So
14 if we are moving forward today on the amended
15 indictment that was amended in November of 2018,
16 some two years and nine some months after he was
17 arrested for the charge he was actually indicted.
18 If that is the indictment we are moving forward on
19 here -- and I think Mr. Heatley -- I wasn't Mr.
20 Heatley's attorney at the very beginning of the
21 case. I can't speak to what delays or what actions
22 were done prior to April of 2018 here, but if we
23 are moving forward on the amended indictment, that
24 would mean that Mr. Heatley, you know, spent two
25 years and nine months in jail on a charge until he

1 was properly indicted that we are going forward
2 today on, which would have been November 6th of
3 2018, Your Honor.

4 Based on all of that, and based on my written
5 motion here, I would ask that this Court quash the
6 indictments as it relates to Mr. Heatley.

7 I previously spoke to the State here. There
8 are two issues kind of scrivener's-wise as it
9 relates to the indictment. I think the indictment
10 also cites the incorrect date. It says, on or
11 about the 29th year. I think the date that is in
12 question of this incident is actually the 28th.
13 And actually I think the indictment also indicts
14 Andre Tyrone Heatley, and that of course is
15 technically my client's father. My client is Andre
16 Tyrone Heatley, Jr. I just wanted to bring those
17 two things up to the Court as well as relates to
18 whether or not the indictments should or should not
19 be quashed.

20 THE COURT: Yes, sir?

21 MR. GOLDBERG: Thank you, Your Honor. If I
22 may approach? I have various things I was able to
23 pull up right before the end of the lunch break.

24 (Handed to Court.)

25 MR. GOLDBERG: Mr. O'Neil is correct in that

1 the case was originally indicted November of 2016.
2 It was true-billed on November 7, 2016.
3 Investigator Gonzalez presented the case to the
4 Grand Jury. He actually went back to the Grand
5 Jury November of 2018. That is the amended
6 indictment. It was reflected as a true-bill on
7 November the 6th of 2018. It was actually -- if
8 you look at the amended indictment, it was
9 actually, out of abundance of caution, signed by
10 the Interim Solicitor at that time, Heather Weiss,
11 and her signature bears out at the bottom of that
12 amended indictment as he then took that indictment
13 to the Grand Jury to be considered for the
14 amendment of the indictment. I believe the
15 original true-bill would have gone with it and the
16 amendment would have necessitated an explanation of
17 the additional language.

18 The difference in the body of the amended
19 indictment are the words on the third line, middle:
20 By means of a gunshot wound. That is the only
21 change to the amended indictment at that time.

22 If there is additional testimony required,
23 Mr. Gonzalez, I'm sure he is available to present
24 that. However, regarding the Rule 3 issue, I would
25 turn Your Honor to State v. Culbreath, 282 S.C. 38.

1 That is actually a case from 1984, and that was
2 before Rule 3 was Rule 3. It was its predecessor,
3 Rule 95. But on this issue the Court says:
4 Rule 95 is an administrative rule adopted for the
5 purpose of ensuring orderly and prompt disposition
6 of cases in the Court of General Sessions. While
7 the rule is designed to secure a prompt handling of
8 cases, it was not intended to be the criteria for
9 determining whether the constitutional guarantee of
10 a speedy trial has been met; therefore, the failure
11 of the Solicitor to act upon a warrant within 90
12 days as required by Rule 95 would not within itself
13 invalidate a warrant or prevent subsequent
14 prosecution.

15 And that is also referenced again in State v.
16 Adams, which is a non-published opinion that I
17 handed up to the Court from the Court of Appeals,
18 which cites -- which indicates that Adams -- excuse
19 me, the Defendant in that case had to prove that he
20 was prejudiced by the delay and the State was
21 negligent and willful in denying him a more prompt
22 trial. The Court has to consider the length of
23 delay, the reason for the delay, the Defendant's
24 assertion of a right to speedy trial, and any
25 prejudice sustained by the Defendant.

1 In this situation, Your Honor, Mr. O'Neil was
2 not the original attorney, as he stated. Ms. Johns
3 represented the Defendant. Mr. O'Neil did not
4 become counsel of record until April of 2018. I
5 don't believe that there has been any showing of
6 any prejudice sustained by the Defendant during
7 the -- delay the case and the subsequent amended
8 indictment reflecting that it was by means of a
9 gunshot wound. Discovery is very clear. There is
10 no issue as to cause of death here. The
11 indictment, as Your Honor is aware, is a notice
12 document, a charging document. As I said, it has
13 been clear from throughout the discovery,
14 throughout the pendency of this case, what the
15 allegation is in terms of the manner of death. I
16 don't believe there is any question as to how she
17 died that I'm aware of how that would be presented
18 in the case.

19 In the alternative, Your Honor, if Your Honor
20 is inclined, the State is willing and able to move
21 to amend the indictment at this time, and in fact
22 that is what we'll do regarding the date and the
23 name. Just to make things clear for Mr. Heatley,
24 we would ask that the Court amend the indictment to
25 reflect that it is Andre Tyrone Heatley, Jr., and

1 that the incident occurred on -- it says on or
2 about January 29. We would move to amend the
3 indictment to reflect January 28th. The allegation
4 is that the death occurred pretty late in the day
5 on the 28th. It was approximately 10:30 p.m. we
6 found out later. She was not discovered until the
7 next day, the 29th, is when the body was actually
8 located.

9 Statute 17-19-100 provides the authority of
10 allowing the Solicitor to move to amend the
11 indictment. And I would also point the Court to
12 314 S.C. 161, the State v. Johnson, which in that
13 case, at the trial the jury actually had been
14 qualified already, at which point the Defendant
15 moved to quash the indictment. And the State then
16 moved to amend the indictment to substitute
17 actually a different victim. They wanted to
18 substitute in a corporation for a foundation as the
19 victim of the breach of trust. They additionally
20 wanted to change language of the statute to quote
21 personal property valued in excess of \$200 to
22 change it to say a single check for \$134,000, et
23 cetera, et cetera. And the State also moved to
24 amend the date of the incident essentially, the
25 date the trust was created, from one month,

1 April 1989, to on or about April to September of
2 -1990. The judge allowed all three of the
3 amendments at that time. Cited the statute saying
4 the State may amend an indictment at trial provided
5 that it does not alter the nature of the crime
6 charged in the indictment.

7 I don't believe that any of the amendments
8 that we are discussing here today, whether it be
9 Jr., the date, or even the actual amended
10 indictment to represent "by means of a gunshot
11 wound" are altering the nature of the crime charged
12 in any way.

13 The Court went on to say that the indictment
14 has to contain the necessary elements of the
15 offense and fully inform the accused of the nature
16 of the accusations against him. I think it is
17 apparent that that has been satisfied in this case.

18 And the Court says, An indictment is
19 sufficient if it charges the crime substantially
20 and the language of the law of the statute or the
21 crime is so plainly stated that the nature of the
22 offense may be easily understood.

23 There is no question here what he is on trial
24 for or what he is accused of doing from Day One.
25 Simply an unfortunate series of scrivener's errors

1 that the State has tried to rectify.

2 MR. O'NEIL: Your Honor, I apologize, I just
3 want to get one thing clear, one further argument.
4 I think I heard Solicitor Goldberg say that
5 Investigator Gonzalez was a witness for the
6 November 2018 presentation to the Grand Jury and
7 that Investigator Gonzales brought with him the
8 original indictment to the new Grand Jury in 2018.
9 That's what I heard.

10 MR. GOLDBERG: No. If I said that he brought
11 it with him, that would be a mistake on my part.
12 My -- what I'm trying to say is that it would have
13 been present at the Grand Jury. He wouldn't have
14 had it, the court staff would have had it, because
15 the indictment was on file with the Clerk's Office.

16 MR. O'NEIL: Yes, Your Honor. In any event, I
17 think it is still improper if the new Grand Jury
18 already knew that Mr. Heatley had been indicted by
19 a previous Grand Jury on the same facts two years
20 earlier. He's entitled to a fair and impartial
21 consideration in this case by a Grand Jury. You
22 can't then proceed on an amended indictment if you
23 tell that Grand Jury in 2018 that Mr. Heatley has
24 already been indicted on these facts in 2016.

25 MR. GOLDBERG: And I don't know if they saw

1 the actual form or not, but how could anyone ever
2 present an amended indictment to the Grand Jury
3 without it being assumed that it had previously
4 been indicted?

5 MR. O'NEIL: And that is not Mr. Heatley's
6 fault. Mr. Heatley is entitled to a fair and
7 impartial consideration in this case by a Grand
8 Jury. It is not fair and impartial to proceed as
9 relates to Mr. Heatley on an indictment when the
10 Grand Jury who heard the indictment already knew he
11 had been true-billed on the same exact facts.

12 THE COURT: Well, we don't know -- we don't
13 know -- I mean, is there any evidence that they
14 were -- I'm assuming that Gonzalez testified -- is
15 that what you -- he testified in November of '18
16 before the Grand Jury?

17 INVESTIGATOR GONZALEZ: Yes, Your Honor.

18 THE COURT: I mean, I can put him on the stand
19 and let y'all ask him, I mean, did he go over the
20 facts -- I mean, the allegations in the case, and
21 we can put him on the stand and ask him.

22 MR. O'NEIL: Yes, Your Honor. I have no way
23 of knowing, Your Honor, because the procedure of
24 the Grand Jury is closed. I don't know what -- I
25 don't know what the Grand Jury knew or what they

1 didn't know.

2 MR. GOLDBERG: It is a closed proceeding, as
3 we all know. I don't know how going back through
4 what he presented at the Grand Jury --

5 THE COURT: Well, I'm not saying what he
6 presented. I mean, he is saying that --

7 MR. O'NEIL: I guess what Your Honor --

8 THE COURT: I guess the question is, did he
9 testify again before the Grand Jury?

10 MR. O'NEIL: I want to know whether or not the
11 2018 Grand Jury knew that Mr. Heatley had been
12 already true-billed in 2016. That is the
13 impression I got from the State's recitation of
14 what happened. I don't know what happened. I know
15 he is entitled to a fair and impartial
16 consideration of his case, and it would not be fair
17 and impartial if the Grand Jury already knew he had
18 already been true-billed and that they were
19 correcting an error in a previously true-billed
20 indictment.

21 THE COURT: You do agree that the amendments
22 are allowed?

23 MR. O'NEIL: Yes, I agree that amendments are
24 allowed.

25 THE COURT: From 17-19-100.

1 MR. O'NEIL: In the discretion of the Court,
2 yes, ma'am, I do agree that amendments are allowed.

3 MR. GOLDBERG: I just don't know how else the
4 State would ever be able to make amendment to any
5 sort of error other than having the investigator go
6 back to the Grand Jury to get an amended
7 indictment.

8 MR. O'NEIL: I think the State would come in
9 front of the Court and ask -- before the Court to
10 amend an indictment, not re-present -- not present
11 to the Grand Jury that the individual had been
12 indicted before and we need to correct an error.
13 The same way we just did a few seconds ago.

14 MR. GOLDBERG: Well, if that is the case, then
15 what we are arguing about is moot, if the Defense
16 concedes that the State has the ability to walk in
17 on the day of trial and ask for it to be amended,
18 which I do in the alternative.

19 MR. O'NEIL: But the problem is they did it
20 incorrectly to start with. They could have done it
21 that way, but what they did is present to a Grand
22 Jury, in my opinion, the fact that Mr. Heatley had
23 already been indicted in 2016, which I think is not
24 proper. He is entitled to have a fair and
25 impartial --

1 THE COURT: Well, we don't know that. That is
2 what you --

3 MR. O'NEIL: And we have no way of knowing
4 that.

5 THE COURT: And we won't know because the
6 Grand Jury proceedings are in secrecy. And that is
7 constitutional.

8 MR. O'NEIL: Yes, Your Honor. My argument is
9 as it relates to Mr. Heatley then, it is not
10 Mr. Heatley's problem. The relief Mr. Heatley
11 needs to get is a fresh consideration of his case
12 by a fair and impartial Grand Jury. If we are
13 going to proceed on this amended indictment and we
14 don't know whether or not the Grand Jury that heard
15 it already knew he was indicted, then the remedy is
16 to have him get a fresh impartial, fair
17 determination of the case by the Grand Jury.

18 THE COURT: Yes, sir. Anything else?

19 MR. GOLDBERG: No, ma'am.

20 THE COURT: All right. Based on 17-19-100,
21 the statute provides for amendments to indictments.
22 We all understand that the purpose of the
23 indictment is to put the Defendant on notice as to
24 what he is charged with.

25 In considering amendments to indictments, the

1 Court must consider whether or not the amendment
2 alters the nature of the crime charged and if there
3 is surprise to the Defendant as to what he has been
4 charged with.

5 It appears that the amendment of the amended
6 indictment, the November 7, 2016, date appears to
7 be a scrivener's error from the 2016 date.
8 However, on the front where it says true-billed,
9 signed by the foreperson, on November 6 it is
10 stamped true-billed on November 6, 2018.

11 For those reasons, I do find that is a
12 scrivener's error. And, of course, the case law
13 says if the scrivener's error does not change the
14 nature of the charges or the elements that the
15 State has to prove, then an amendment is
16 permissible under 17-19-100.

17 So therefore I will deny the motion to quash
18 the amended indictment based on the scrivener's
19 error.

20 As to the amendment made by the State today,
21 the amendment to change the date, motion to change
22 the date from November 7th -- is that -- your
23 motion to change the date from November 7, 2017, to
24 November 6, 2018, was one of the motions. The
25 second one was to -- are you changing the language

1 from -- motion to change on or about January 28th?
2 I think there is an issue regarding the time of
3 death and the investigation or when they discovered
4 the victim. And I think the case law says that as
5 long as the time period is not too remote, that the
6 on or about would probably cover the January 28th
7 date. But I will grant the State's motion to
8 change the date to January 28th, on or about
9 January 28th, 2016.

10 Furthermore, I will grant the State's motion
11 to change the name, that his father's name is
12 Heatley, Sr., and he is, Jr., and that Andre Tyrone
13 Heatley, Jr., is the way that the indictment should
14 read.

15 MR. GOLDBERG: Thank you, Your Honor.

16 THE COURT: All right. Anything else as to
17 the indictments?

18 MR. GOLDBERG: Not from the State.

19 THE COURT: Obviously it doesn't go back. I
20 will write amended.

21 All right. Yes, sir?

22 MR. O'NEIL: Your Honor, my next motion would
23 be as it relates to statements made by the victim
24 here. And, Your Honor, I am going to do it in an
25 en masse kind of setting here, but there is, from

1 my count, about close to 20 individuals that are
2 lay people who the victim made a statement to
3 concerning this case. And I don't know how many of
4 those people the State intends on calling and what
5 testimony they intend on eliciting here.

6 My overall motion is to sequester any
7 statement that the victim made to any individual
8 concerning the matters of this case. I think
9 anything the victim said is hearsay and is not
10 admissible in this court and is not a valid hearsay
11 exception to allow it in. I don't know what
12 exception the State would be proffering it. Of
13 course, I will let them say what exception they are
14 using and I can come back and tell you why I think
15 that does not meet it.

16 MR. GOLDBERG: Judge, we don't anticipate
17 going into that at this point. If there is a
18 certain witness where something arises, then
19 certainly we would bring it up in camera ahead of
20 time and let the Court and Mr. O'Neil know. At
21 this time we don't anticipate that being an issue.

22 THE COURT: All right. So you are going to
23 instruct your witnesses not to testify as to what
24 the victim -- when you say material, for example,
25 so we won't need to get into a discussion, because

1 I can imagine this is going to come up again, if
2 they testify she told them she was going to, I
3 don't know, the grocery store.

4 MR. O'NEIL: There is testimony from Walmart
5 employees that said the victim said, I am going to
6 meet Mr. Heatley after work. In this case they
7 allege it happened after work.

8 MR. GOLDBERG: I mean, they can be asked.
9 They can testify that they were, say, at work with
10 her and they talked to her, not say what they
11 talked about, not say the substance of the
12 conversation, if asked, based upon those
13 conversations where was she going.

14 MR. O'NEIL: That is hearsay, Your Honor.
15 That is just their -- that would just be their
16 interpretation based off her hearsay statement.
17 They can't just say based off the hearsay they are
18 not going to mention she was going here. They have
19 no non-hearsay knowledge of where she was going.

20 MR. GOLDBERG: I mean, we wouldn't be offering
21 it for the substance of the totalities of those
22 conversations. It is clearly her saying all these
23 things about him and their history and everything
24 else wouldn't be appropriate. Based on your
25 conversation with her, did you know where she was

1 going? It is not suggestive.

2 MR. O'NEIL: That is hearsay. I mean, it is
3 based off their -- I mean, he literally said in the
4 question, Based off your conversation with her,
5 based off hearsay, where was she going? The answer
6 is inadmissible.

7 THE COURT: And then you want to ask her where
8 was she was going, or you are just going to say,
9 Did she tell you where she was going?

10 MR. GOLDBERG: Both.

11 MR. O'NEIL: And that is hearsay. I mean, I
12 don't see -- that is the textbook -- I mean, that
13 is the black letter law, first year law school,
14 definition of hearsay. And there is literally 20
15 lay witnesses who 90 percent of their statement is,
16 The victim said this.

17 MR. GOLDBERG: I mean, you do have some
18 witnesses that are prepared to testify that that
19 night at work they said to her not to go see him.

20 MR. O'NEIL: And, well, that is hearsay.

21 MR. GOLDBERG: That is not hearsay if it is
22 coming from the witness.

23 THE COURT: Did they testify to it?

24 MR. O'NEIL: What is the relevance of what
25 they said to her? How is that relevant to

1 anything, what they said to her?

2 MR. GOLDBERG: How can they not talk about
3 what they said to her?

4 THE COURT: They can -- I don't think that is
5 hearsay if they said it.

6 MR. O'NEIL: But it is not relevant. Why is
7 it relevant what they said to her? What relevance
8 does that have to anything, what they said to her?

9 MR. GOLDBERG: These are some of the last
10 people to see her alive.

11 MR. O'NEIL: I don't dispute that. The
12 question is why is that relevant? Why is what --
13 how is it relevant what her boss said to her before
14 she left? What they said to her is not relevant to
15 anything. It doesn't make any fact in question
16 either more likely or less likely to happen, what
17 they said to her.

18 MR. GOLDBERG: It does if there is a question
19 about whether or not he was the one who met up with
20 her that night. It does call -- makes that an
21 issue.

22 THE COURT: Well, I think they can testify as
23 to what they said. Now, whether or not -- I'm
24 looking at the exceptions now -- the State hasn't
25 presented any -- as to whether or not they can say

1 what she said. I'm at looking 804, hearsay
2 exception, declarant unavailable. It has to be
3 former testimony.

4 All right, any exceptions as to the witness
5 statements as -- because your motion is as to the
6 victim's statement?

7 MR. O'NEIL: My motion is any statements given
8 by the victim to any individual, I would ask that
9 that be suppressed. Anything the victim said to
10 any individual, in my opinion, is hearsay unless
11 there is a valid exception for it.

12 THE COURT: If you have a witness that is
13 going to testify as to it, I would have to hear it.
14 And then you need to present an exception under
15 804.

16 MR. O'NEIL: As I said, there is literally 20
17 witnesses we would have to go through to do that.
18 Every single lay person that we have, go through
19 the witnesses, because every single lay person that
20 is involved with the case, the reason why they are
21 involved is because somebody said something to
22 them, whether it is the victim or allegedly my
23 client was -- 20 of them are only on this because
24 they allegedly had a conversation with the victim.

25 THE COURT: Yes, sir?

1 MR. GOLDBERG: I think as long as the witness
2 is able to testify about what the witness said to
3 the victim during those conversations, that is all
4 we will be seeking.

5 THE COURT: All right. And I think under --
6 look, before you jump up, look at 803. As to 803
7 and the exceptions as to what -- first of all, I
8 don't even know if it is hearsay if they are
9 testifying as to what they said. How is that
10 hearsay? How is that hearsay if the person
11 testifying testifies as to what they said?

12 MR. O'NEIL: Your Honor, it is hearsay -- if
13 it goes to --

14 THE COURT: You are saying it is not relevant.

15 MR. O'NEIL: No, it actually is hearsay, Your
16 Honor. If you go to the definition of hearsay --
17 and I apologize, Your Honor, I have to use my phone
18 to pull it up here.

19 THE COURT: And then go look at 803(3).

20 MR. O'NEIL: Hearsay -- the definition of
21 hearsay, 801(C), hearsay. Hearsay is a statement
22 other than one made by the declarant while
23 testifying at trial or a hearing offered in
24 evidence to prove the truth of a matter asserted.
25 Hearsay by definition --

1 THE COURT: All right. So look at the
2 exception.

3 MR. GOLDBERG: But we are talking about
4 statements made by the declarant. The witness is
5 the declarant.

6 MR. O'NEIL: Your Honor. It is reasonable,
7 Your Honor. The rule says -- 801(C) says, Hearsay
8 is a statement other than one made by the declarant
9 while testifying at the trial or hearing. Only the
10 statements made at the hearing, not things that
11 they said earlier. Things that they said earlier
12 is hearsay.

13 THE COURT: So go to 803(3).

14 MR. O'NEIL: 803(3) is -- and I would have to
15 cite some case law on that. And it talks about --
16 and I think I sent it to your law clerk -- is State
17 v. Hughes here. You are not allowed to say --
18 this is a classic peer case, this idea of you are
19 allowed to bring in the victim's state of mind.
20 Hughes specifically says you are not allowed to
21 bring in why the victim felt that way.

22 THE COURT: No, no, no, not -- if you read
23 803, it is the person testifying. You are not
24 bringing in what the victim said. We have already
25 cleared that.

1 MR. O'NEIL: Yes.

2 THE COURT: I think we are all in agreement
3 that they are not going to testify as to what the
4 victim said, where the victim said she was going.

5 MR. O'NEIL: Yes, ma'am.

6 THE COURT: And I'm really having to rule --
7 y'all have got me ruling -- because I would rather
8 hear what they said. But the example that Mr.
9 Goldberg gave is one of the witnesses is saying she
10 testified that she, which would be the declarant --
11 she would be the declarant at that point, right?

12 MR. O'NEIL: Yes, ma'am.

13 THE COURT: That the witness told the victim?

14 MR. O'NEIL: Yes, ma'am.

15 THE COURT: -- not to go see him?

16 MR. O'NEIL: Yes, ma'am. And I will tell you
17 the whole -- the entirety of that. The statement
18 is, the victim says, I'm going to see Mr. Heatley.
19 The witness then says, Don't go see him. There is
20 no relevance to why -- the witness saying, Don't go
21 see him, that is not relevant at all. That has no
22 relevance to the case. The then existing state of
23 mind of the witness has no relevance to the case
24 whatsoever. It is not relevant. It may or may not
25 be hearsay, but it is not relevant. What the

1 victim thought -- what the witness thought the
2 victim should do is not relevant to the case.

3 MR. GOLDBERG: It is relevant when you are
4 talking about how the victim disappeared, was a
5 missing person for almost 24 hours, nobody knew
6 where she was. And throughout the course of the
7 investigation statements were taken, and the people
8 who were with her prior to her disappearance, 30
9 minutes prior, they wouldn't be saying anything
10 about what she told them, we concede that at this
11 point. It would be, Were you at work with her?
12 Yes. What were you doing? Well, she worked here,
13 I worked there. Did you guys have a chance to talk
14 to each other? Yes. What time was that? You
15 know, where were you in the store? What, if
16 anything, did you say to her that night?

17 MR. O'NEIL: And the answer would be, I said,
18 Don't go to Mr. Heatley's house. That is not
19 relevant. Why -- that is not relevant to the case.
20 That is their opinion. -- They are saying, Don't go
21 there. That is their opinion.

22 MR. GOLDBERG: It is a fact that they said it,
23 though.

24 MR. O'NEIL: But it is not relevant, Your
25 Honor...

1 THE COURT: How is it not relevant?

2 MR. O'NEIL: Because it doesn't -- the
3 definition of relevance, that it makes a fact in
4 question either more likely or less likely to
5 occur. Them saying, Don't go there, is not
6 relevant. It does not make any fact -- it does not
7 make the fact -- it does not make the fact that the
8 victim actually met Mr. Heatley either more likely
9 or less likely to have -- the fact that they said,
10 I don't think you should go there.

11 MR. GOLDBERG: That is exactly what it does.

12 MR. O'NEIL: It only does that if you have
13 testimony that the victim actually took heed to
14 that statement. All you have testimony is that
15 they said it. It is more prejudicial than it is
16 probative because you don't know what the victim --
17 how the victim responded to that.

18 THE COURT: All right.

19 MR. O'NEIL: You don't know why the witness
20 said that.

21 THE COURT: So your argument is that it is not
22 relevant, not that it is not -- that it is hearsay,
23 but the exception does apply, but even if it
24 doesn't apply, it is not relevant?

25 MR. O'NEIL: Even if it is relevant, it is

1 more prejudicial than it is probative. It is
2 hearsay, it is not relevant, and even if it is
3 relevant, it is more prejudicial than it is
4 probative of anything.

5 THE COURT: How many witnesses are going to
6 testify to that? I mean, I would rather hear what
7 they say? I would rather have an in camera hearing
8 before the witness testifies.

9 MR. GOLDBERG: It is a couple. Couple, three.

10 THE COURT: Are they your first witnesses?

11 MR. GOLDBERG: They are in the first group,
12 yes.

13 THE COURT: Before lunch tomorrow?

14 MR. GOLDBERG: Possibly.

15 THE COURT: We will just have to stop. We
16 will have to take that testimony in camera, because
17 I would rather have the in camera review of the
18 testimony and make a ruling on it so we have a
19 proper record as to what they are going to testify.

20 At this point I am just kind of ruling in a
21 vacuum. I'm not sure what they are going to say.

22 All right. But your original motion was to
23 suppress any statements, any of the victim's
24 statements. And I think they have conceded that,
25 is that correct?

1 MR. GOLDBERG: Yes.

2 THE COURT: All right. The last one I think
3 is to suppress the firearm found in the Defendant's
4 vehicle?

5 MR. O'NEIL: Yes, Your Honor. And we kind of
6 heard that a little bit in the Denno hearing here.
7 What happened, Your Honor, is that when the -- as
8 you heard from the Denno hearing, they stopped him
9 at the Burger King that night, and when they pulled
10 him out of the car, there is a firearm in the glove
11 box of the car here. And we need testimony as to
12 what law enforcement did in relation to that
13 firearm prior to getting a search warrant, but
14 there was a search warrant established the next
15 day, on February 2nd, 2016, for that firearm.

16 It is my position that law enforcement first
17 illegally seized Mr. Heatley when they boxed him in
18 in the drive-through of the Burger King here, and
19 then they illegally searched Mr. Heatley's car and
20 saw the firearm in the glove box.

21 So based on that, then the later getting of a
22 search warrant here, Your Honor, at that point is
23 fruit of the poisonous tree, and I would ask for
24 that particular firearm that was seized from
25 Mr. Heatley's vehicle on that night be suppressed,

1 and any ballistics report relating to that firearm
2 be suppressed as well.

3 THE COURT: Yes, sir?

4 MR. FYALL: Your Honor, I think -- to speak to
5 some of the facts Mr. O'Neil stated, the return for
6 the search warrant is dated January 30th, 2016. So
7 there was no 2-day delay during the search, or
8 anything like that.

9 If that is the basis for his motion, I would
10 ask Your Honor to deny that. But we do have
11 Investigator Faust and Investigator Smith here to
12 testify in regards to the search warrant.

13 MR. O'NEIL: Your Honor, I would say that the
14 search warrant itself is -- the first search
15 warrant is dated February 1st, 2016, dated, time
16 stamped 2/23, if I am reading this correctly.

17 MR. FYALL: That is a second search warrant,
18 Your Honor. That was used to collect GSR. The
19 first search warrant has the Richland County Bond
20 Court stamp, January 30th, 2016, at 4:14 a.m.

21 MR. O'NEIL: In any event, it is still after
22 the fact that -- when they actually searched and
23 stopped -- the car was stopped on January 29th of
24 2016. If it is not two days later, it is one day
25 later.

1 THE COURT: I guess I don't understand the
2 motion. So your objection or motion is -- I
3 thought he testified that when they pulled him
4 over, they asked him if he had a firearm. He said
5 yes. And then he talked about -- I mean, I'm not
6 clear what -- your motion is to suppress it because
7 of what?

8 MR. O'NEIL: My motion is that when they boxed
9 him in at the Burger King drive-through, they had
10 no probable cause at that point to detain him.
11 That is why I kind of went back and forth with
12 Investigator Gonzalez about that precisely, when
13 did he have enough evidence to arrest Mr. Heatley
14 here. And he said, after a lot of back and forth,
15 he said after he had gotten a phone call from
16 Investigator Faust about the clothing match. They
17 initially got a search warrant for Mr. Heatley's
18 home, and then as you heard in the Denno, the
19 testimony is he left the home and came to the
20 Burger King here. At the moment they boxed him in
21 in the Burger King here, they had no probable cause
22 to do that. They had no probable cause to detain
23 him at that point here because -- they just didn't.
24 And they --

25 THE COURT: Probable cause to detain him or

1 arrest him?

2 MR. O'NEIL: Either one. They didn't have
3 probable cause to detain or arrest him at that
4 point. He had done nothing that a warrant
5 detaining him at that point when they boxed him in
6 in the drive-through of Burger King.

7 MR. GOLDBERG: But they didn't -- I think
8 there is confusion. They didn't actually collect
9 the gun at that time. Like, it wasn't seized.

10 MR. O'NEIL: I didn't say it was seized, I
11 said it was searched.

12 MR. GOLDBERG: It wasn't searched. That
13 didn't take place at that time.

14 MR. O'NEIL: We don't have testimony to that,
15 but --

16 MR. GOLDBERG: Well, we have got two witnesses
17 who are able to tell you exactly what happened
18 during that time. And I can tell the Court my
19 version of the events or my version of the
20 timeline, but they are here prepared to testify to
21 that.

22 THE COURT: We can go back and look at the
23 testimony, but I thought somebody asked the
24 Defendant if they went and got the gun out of the
25 car, and he said --

1 MR. FYALL: He said they opened the door and
2 closed it.

3 MR. O'NEIL: He said he didn't see --

4 THE COURT: He wasn't sure if they even
5 removed it at that time.

6 MR. O'NEIL: I never said -- I never argued
7 that the police officer removed it at the time.
8 What I'm offering precisely is that they seized
9 Mr. Heatley in the Burger King parking lot. They
10 seized his person, not -- they seized his person in
11 his car. They seized him. They boxed him in.
12 They curtailed his movement without probable cause.
13 They then ask him does he have a firearm in his
14 vehicle here. Asking him whether or not he has a
15 firearm here at that point, and then it becomes
16 fruit of the poisonous tree because they illegally
17 seized him to start with. There is no reason to
18 box him in. There is no probable cause to box him
19 in.

20 THE COURT: I think I understand. He is
21 saying that the actual stop when they surrounded
22 him was illegal detention because they had no
23 probable cause at that point to, I guess, detain
24 him by surrounding his car.

25 MR. O'NEIL: That's correct, Your Honor. And

1 there is uncontroverted testimony that they didn't
2 have enough evidence to arrest him until after they
3 had him in the other car in handcuffs and got a
4 phone call from Investigator Faust about they
5 thought the clothing Mr. Heatley had on matched the
6 surveillance photos that they previously had. They
7 didn't have enough probable cause to arrest him
8 when they came to the Burger King parking lot here,
9 but they boxed him in and detained him anyway.

10 MR. FYALL: Even if Mr. O'Neil would like to
11 interpret Investigator Gonzalez's statements that
12 way, he is not the final decider of what is
13 probable cause. At that point they had him using
14 her credit card at the ATM after talking to
15 multiple people that told them that she was going
16 to see him. At the very least they had probable
17 cause to arrest him for FTC fraud or all kinds of
18 crimes at that point. I would assert that they had
19 probable cause to arrest him for murder at that
20 point.

21 Further, Your Honor, his car was leaving the
22 house that they had a search warrant for. The
23 search warrant for that house includes his car that
24 they were executing.

25 Now, I would assert again that they had the

1 ability to seize his car right then and there.
2 They decide to do another search warrant, out of an
3 abundance of caution, decide to get another warrant
4 to search the car because he told them there was a
5 gun in it. The notion that there was no probable
6 cause to detain him is incorrect.

7 And, like Investigator Gonzalez said, he
8 wanted to ask him about using the victim's stolen
9 credit card, right? And that is a crime. And they
10 detained him to ask him about that crime, which
11 they had probable cause from the ATM videos.

12 MR. O'NEIL: The fact that they had to ask him
13 about whether or not he used the card is evidence
14 in and of itself that they didn't have the probable
15 cause to believe -- if they did have probable cause
16 about it, they would have just arrested him, not
17 ask him whether or not he used it. They didn't
18 have any identification of Mr. Heatley on the video
19 at that point. They had a gray photo here that
20 they could not identify Mr. Heatley on, and that is
21 why they didn't see Mr. Heatley and asked him about
22 it. If they had probable cause to arrest him in
23 relation to financial credit card fraud, they would
24 have got a warrant and done that, but they didn't.

25 MR. FYALL: That is just speculative.

1 MR. O'NEIL: Well, that is what they did.
2 They didn't do it.

3 MR. FYALL: What they would or would not have
4 done during certain situations is speculative, Your
5 Honor.

6 MR. O'NEIL: Well, what they didn't do was get
7 an arrest warrant for financial credit card fraud.

8 THE COURT: Once again, we may need to --
9 because I understand that the investigator
10 testified for purposes of Jackson v. Denno, but I
11 don't believe there was any questions asked of him
12 what was the probable cause for the stop, or any of
13 that stuff, during that testimony. So you are more
14 than welcome to call your witness, and then I'll be
15 glad to entertain arguments after that.

16 MR. FYALL: The State calls Sergeant Faust.

17 THE COURT: And I think if you are going to
18 have a motion to suppress based on probable cause,
19 you have got to have testimony regarding it, just
20 like any other motion to suppress.

21 Go ahead.

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Have a seat in the
7 witness stand, please.

8 THE WITNESS: Stephen Faust.

9 STEPHEN SCOTT FAUST,

10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FYALL:

13 Q Sergeant Faust, how are you?

14 A Doing good.

15 Q Where are you employed?

16 A Richland County Sheriff's Department.

17 Q How long have you been employed there?

18 A Twenty-three years.

19 Q Over those 23 years, what duties have you had?

20 A I started out in this very courthouse. I was a
21 patrolman in the Region 1 area, which is Bluff
22 Road, Garners Ferry, Leesburg Road area. I was a
23 regional investigator in 1999. I was promoted to
24 an investigator. I don't know all the dates of
25 when I became a sergeant. It was about seven years

1 after that. And since that time, I have basically
2 just about worked everything in criminal
3 investigation.

4 Q All right. And what is your current title again?

5 A I am a sergeant.

6 Q Now, on January 29, 2016, can you tell me your role
7 in regards to executing the search warrant?

8 A Yes. I was actually -- earlier that day when I got
9 the news that there had been a body found, I was
10 actually meeting a victim on a case that I actually
11 specialized in. From there, I left there, went to
12 find out how I could assist. A search warrant was
13 obtained for the address of 212 Kirkstone Road up
14 in Irmo. That search warrant included the property
15 and vehicles in the driveway. I went to go spot
16 the house just to make sure, you know -- I saw the
17 vehicles in the driveway. I sat up about a block
18 or two down the road. At that time of night I
19 didn't expect any vehicles to leave the house. As
20 they were about to head our way to this location, I
21 saw a white vehicle from that driveway speed off.
22 I didn't believe that I had been spotted. I had an
23 inconspicuous car. I immediately got behind it. I
24 had took some time to catch up with it. As it took
25 a left at the stop sign down at the end of the

1 road, it stopped, barely stopped, maybe ten miles
2 per hour, which would constitute a stop for a
3 failure to stop for a stop sign.

4 As I was trying to navigate following him,
5 make sure I didn't lose sight, because I was very
6 concerned about that vehicle leaving due to the
7 circumstances that had recently happened, we -- I
8 followed it, spotted it in the drive-through line
9 at Burger King. At that time I realized that I
10 could slow down a little bit. They -- our team,
11 search team, was right near me.

12 As I was getting in position -- again, I'm in
13 an unmarked car -- I saw my support coming, and I
14 made an immediate decision to block it. I didn't
15 want to get into a car chase. I realized that if
16 he saw law enforcement with the blue lights on
17 there, it may scare him due to him potentially
18 being a primary suspect in a case that we were
19 looking into. I threw my car and basically put
20 myself in jeopardy by pulling my front end with
21 myself exposed to that car, jumped out, ran towards
22 him. I knew at that time I had support coming up
23 from the rear.

24 I immediately asked him to show his hands. I
25 saw his hands reach up. I knew due to -- I won't

1 say this in front of the jury, but I realized that
2 it was, in my opinion, a crime of passion due to
3 the brutality of the ending of Ms. Roach's life.
4 And, you know, I was very concerned about, one,
5 being shot; and then, two, having to shoot
6 somebody. So I immediately had him show his hands.

7 We talked about -- I immediately said, Is
8 there any weapons? I wanted to identify if there
9 was a weapon. He did state there was a weapon.

10 At that time I'm, you know, planning, but we
11 get him out of the car, secure him, and then at
12 that time I had support, Investigator JP Smith. We
13 started to formulate getting that car secured.

14 Again, with or without him saying there was a
15 weapon in that car, it was going to be -- another
16 search warrant was going to be typed up due to the
17 fact that it had left the property. Again, that
18 initial search warrant included vehicles. We --
19 they proceeded to deal with the Defendant. We went
20 and did a search of the house, the team, the rest
21 of the team. I had asked Investigator JP Smith to
22 sit with the car to just make sure that no one --
23 that we didn't leave it with a tow, that there was
24 a set of law enforcement eyes on that vehicle at
25 all times.

1 Once I wrapped up the search warrant at the --
2 I don't know if he actually lived there, but at
3 the -- the search warrant at 212 Kirkstone Road. I
4 immediately then went and reformulated a search
5 warrant for the vehicle.

6 Q I just want to go back and tie up a few things.
7 You said you saw that vehicle at the residence?

8 A It was parked in the driveway and I had eyes -- I
9 never took my eyes off of it. And I saw it started
10 to back out the driveway, and I immediately reached
11 out to the support team and like, This car is on
12 the move.

13 Q Got it. And the search warrant covered the
14 vehicles?

15 A On -- for that -- the original search warrant that
16 we were going for the house would cover -- included
17 all vehicles. And one of the ideas was to go
18 search his vehicle.

19 Q And when you followed that vehicle, you observed
20 him make multiple traffic violations?

21 A Yes.

22 MR. FYALL: No further questions, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. O'NEIL:

25 Q Investigator Faust, I am just going to cut to the

1 chase here. You didn't box Mr. Heatley in because
2 he made traffic violations, did you?

3 A And -- well, I observed a traffic stop, but
4 absolutely out of -- we were going to do a search
5 warrant on that vehicle.

6 Q That is not what I asked you. You didn't box him
7 in because he made traffic violations?

8 A I boxed him in to make sure that vehicle didn't go
9 anywhere.

10 Q That's why you boxed him in?

11 A Yes.

12 Q So he wouldn't leave?

13 A That vehicle was going to -- we wanted to search it
14 at the property we were going to search, and I
15 personally made a decision to pull in front of that
16 vehicle to avoid any type of pursuit.

17 Q And that is exactly why you boxed him in, because
18 you --

19 A That is my thinking.

20 Q Yes. Because you had a search warrant for the
21 house and for vehicles at the house, but then he
22 left the house?

23 A For a murder, yes.

24 Q Yes. And when he left the house, he no longer
25 considered -- that vehicle was no longer considered

1 at the house?

2 A But that -- we were going to seize -- my plan was
3 to get a search warrant for that vehicle.

4 Q Fair enough. So you boxed him in so he couldn't
5 leave?

6 A For the public safety, my safety, absolutely.

7 Q Fair enough. And you didn't have --

8 A The vehicle. Mind you, it is the vehicle. We
9 wanted the contents of that vehicle.

10 Q And he is in vehicle? One of the contents of the
11 vehicle is Mr. Heatley?

12 A Absolutely.

13 Q And you didn't have a warrant for murder for
14 Mr. Heatley?

15 A Me? I don't.

16 Q Nobody did? Did anybody have it?

17 A I had a search warrant armed for a vehicle.

18 Q Did anybody have --

19 A No.

20 Q -- an arrest warrant for Mr. Heatley for anything?

21 A No.

22 Q For murder, for financial credit card theft --
23 fraud?

24 A No, but I believe there was probable cause for that
25 arrest at that time.

1 Q Did you get a warrant for that?

2 A I did not.

3 Q Did you have a match -- at that point, all you had
4 was photos from the ATM, correct?

5 A That he was using, yes.

6 Q But at that point you didn't know it was him
7 because the photos weren't clear, were they,
8 Mr. Faust?

9 A There was reasonable belief that it was him.

10 Q That is not what I asked you. The photos were not
11 clear that you had at that time, were they?

12 A I -- I never actually saw them, but I was led to
13 believe that the victim's mom -- I don't know at
14 which point in time, but the victim's mom I think
15 identified him.

16 Q But you don't know whether or not the victim's
17 mother had identified him prior to you boxing him
18 in at the Burger King?

19 A I'm -- I don't know exactly. I had reason to
20 believe at that time.

21 Q Well, that is not what I asked you. When you boxed
22 him in at the Burger King, you didn't know whether
23 or not anybody had identified him in that --

24 A He was clearly identified. He was the target of
25 the search warrant.

1 Q That is not what I asked you, Mr. Faust.

2 A You just asked me if was he identified.

3 Q When you boxed him in --

4 THE COURT: All right, I can't hear both of
5 you talk at the same time, and she can't keep a
6 record. So we need to ask a question, and then
7 answer.

8 BY MR. O'NEIL:

9 Q I'm going to say it slow, Investigator Faust, so
10 you can hear me. When you boxed him in the Burger
11 King drive-through, you did not know at that point
12 whether or not the victim's mother had identified
13 him in any sort of photos, correct? Yes or no?

14 A He was a target of a murder investigation based
15 off --

16 Q Mr. Faust, it --

17 A Yes.

18 Q You can explain what you want to explain. It is a
19 yes or no question. When you boxed him in at the
20 Burger King drive-through, you did not know whether
21 or not the victim's mother had identified him in
22 any sort of photos from the ATM?

23 A I believe --

24 Q Yes or no?

25 A I believe the search warrant said that.

1 Q I'm not asking you what the search warrant --

2 A He was the target of an investigation of a murder.

3 Q I'm not asking you that, Investigator Faust. I'm
4 asking you a simple yes or no question.

5 A I just answered it. Yes.

6 Q How did you know that? What did you put in the
7 report that you knew that?

8 A It was in the search warrant.

9 Q Did you do the search warrant?

10 A I signed it and I had read it before going to serve
11 it.

12 Q And the search warrant -- what search warrant was
13 it -- show me the search warrant where it says the
14 victim's mother identified the Defendant in the ATM
15 photo. Show me where that is at.

16 A I -- I have gotten older. My -- I can't really
17 see. I didn't bring my glasses to read.

18 Q I will read it for you, Investigator Faust. I will
19 read it if you want me to read it for you, because
20 it is not in there.

21 A We knew about the ATM, but he was the target of the
22 investigation and that was --

23 Q That is not what I asked you, Investigator Faust.
24 I asked you a simple question. It is a simple
25 question.

1 A I don't know at what point the mom -- the mom can
2 let me know, but I had reason to believe he did it,
3 and I was going after that vehicle.

4 Q You did not know when you boxed him in that the
5 victim's mother had picked him out of a lineup
6 matching the photo from the ATM?

7 A I just know the mom identified him. I don't know
8 what point.

9 Q I'm asking you one more time.

10 A I don't know what time the mother identified him.
11 I don't know if that is before or after the search
12 warrant.

13 Q Because you didn't write that in any report or any
14 search warrant that you had that you had knowledge
15 that he was identified in the ATM photos?

16 A The search warrant was clearly targeting him as a
17 suspect.

18 Q That is not what I asked you, Investigator Faust.
19 It is a simple question. We can play the game all
20 night long, but it is a simple question.

21 A Let's do it. Let's do it.

22 Q You did not know when you got the search warrant or
23 when you boxed him in that the mother of the victim
24 had identified Mr. Heatley as the individual in the
25 ATM photos?

1 A I do not know exactly at what point, but I do know
2 the mom identified him, and he was clearly the
3 target of the search warrant for the murder and
4 financial transaction card fraud.

5 Q When was he charged with financial credit card
6 fraud?

7 A I never charged him.

8 Q Did anybody charge him with that?

9 A I don't know. I don't know exactly what he was
10 charged with.

11 Q You had access to the whole --

12 A I looked at my notes and the two search warrants.

13 Q Do we have any evidence that anybody ever charged
14 him with financial credit card fraud?

15 A I don't know. I don't know what the arrest warrant
16 or arrest report says.

17 Q When did you actually get the pictures -- what time
18 did you get the pictures from the ATM?

19 A That was part of the investigation with Scott
20 McDonald, Stan Smith, that was just a team effort.
21 I was, again, I was meeting with a victim on an
22 unrelated matter and I was told to go start getting
23 ATMs. And Hal Boland I think was already getting
24 them. So I got the pictures after I met up with
25 Gonzalez after -- during the search of the house.

1 after he was detained.

2 Q So when you boxed him in, you didn't even have the
3 pictures of the ATM at that point?

4 A I was told that was him in the pictures.

5 Q Told it was him by who?

6 A The people involved in that. That is why we were
7 doing that.

8 Q The -- what people involved?

9 A Hal Boland. Hal Boland was a part of the going to
10 the ATM and that it was believed -- I mean, that is
11 why we were doing the search warrant.

12 Q How did Investigator Boland know it was him? Did
13 Investigator Boland know him personally?

14 A At some point somebody showed them to his mom.

15 Q And was that before or after you --

16 A I don't know.

17 Q -- boxed him in?

18 A I don't know.

19 Q Okay. So we do know that you didn't have the
20 photos, correct?

21 A I did not have the photos until after I met with
22 Gonzalez.

23 Q Okay. So you didn't have the ATM photos when you
24 boxed him in, you didn't charge him with financial
25 credit card fraud at any point here, and you didn't

1 have the arrest warrant at any time when you boxed
2 him in, and you boxed him in, in your very own
3 words, so he couldn't leave the Burger King
4 drive-through?

5 A I had a lawful search warrant for his residence and
6 vehicles, and he left.

7 Q Okay. And that is interesting, but my question is,
8 you boxed him in in the Burger King drive-through
9 in your own words five minutes ago because you
10 didn't want him to leave?

11 A Yes. To get a search warrant for that vehicle to
12 maintain any and preserve any evidence.

13 MR. O'NEIL: That's all I have, Your Honor.

14 THE COURT: All right. Yes, sir? Anything?

15 MR. FYALL: Nothing, Your Honor.

16 THE COURT: All right, sir, you may step down.

17 (Witness steps down.)

18 THE COURT: All right. Any other witnesses?

19 MR. FYALL: I don't believe so, Your Honor.

20 That is the totality of the argument based on the
21 seizure.

22 MR. O'NEIL: I will say precisely that
23 Investigator Faust just testified that he boxed my
24 client in so he would not leave. Not that he had
25 probable cause to stop him, not that he had an

1 arrest warrant, not that he had in his possession
2 photos of him matching --

3 THE COURT: Well, he did say he had probable
4 cause.

5 MR. O'NEIL: He said -- I asked him repeatedly
6 why he boxed him in. His response -- read it
7 back -- three times. His response, he boxed him in
8 so he would not leave so he could search the car.
9 That is the textbook definition of an illegal
10 seizure. I don't know what is more textbook than
11 that. He didn't say he had probable cause for
12 anything. He said he boxed -- his exact words were
13 he boxed him in so he would not leave so he could
14 search the car. If that is not an illegal seizure,
15 I don't know what is.

16 So I would ask that the gun that was found in
17 the car, the ballistic results from that gun, all
18 be suppressed as fruit from the poisonous tree.

19 MR. FYALL: I would agree with him if he
20 stopped the person behind him in the Burger King
21 that he didn't have any probable cause on, any
22 knowledge of committing multiple crimes and didn't
23 have a search warrant for their car.

24 I mean, the case law from, like he said when
25 he went to law school, is that you are allowed to

1 make pretextual stops. You can stop somebody for
2 speeding if your intention was to find drugs. I
3 mean, that is constitutional. The question is not,
4 you know, what his overall intention was. One, did
5 he have probable cause to stop him for the traffic
6 violation? The answer to that is yes. Is that the
7 main reason he stopped him? It doesn't matter, he
8 had probable cause because he stopped him for
9 making traffic violations.

10 Two, the search warrant that he executed
11 covered the car, which was at the house. He could
12 have searched the car right then and there. He
13 could have got him out of the car to leave the
14 house, right, but he stopped the car, detained it,
15 and then took the extra step, Your Honor, of
16 getting another separate search warrant for the car
17 that he already had a search warrant for.

18 This notion that the seizure is
19 unconstitutional is not grounded in any way. You
20 can seize someone -- whatever his preconceived
21 notion for the stop, the question is did he have
22 probable cause to stop him, right? His personal
23 intentions do not matter if the law allows him to
24 seize that vehicle for, one, traffic violations;
25 two, a search warrant that already covered the car

1 in the first place.

2 MR. O'NEIL: The search warrant covered the
3 car if the car was at the house. The car was not
4 at the house. The car was at the Burger King.

5 THE COURT: Is your position -- is your
6 position, so if there is a car that is at the house
7 that is the subject to the search warrant and the
8 car leaves, it is your position that the police
9 cannot stop the car, detain the person in the car
10 until they can go secure another search warrant?

11 MR. O'NEIL: Correct. Correct. They have to
12 go get a different search warrant because that car
13 is no longer at the house.

14 THE COURT: And that is what they did, right?

15 MR. O'NEIL: No, they illegally stopped him
16 and then got another search warrant. They have to
17 have a valid reason to stop him. The testimony,
18 uncontroverted from the witness, is that he didn't
19 have a valid reason to stop him. He stopped him to
20 box him in. That is textbook improper procedure.
21 I don't know how else to say it.

22 THE COURT: Yes, sir? Were you going to say
23 something else?

24 MR. FYALL: Yes, Your Honor. I e-mailed Your
25 Honor the case law in regards to this issue. I can

1 hand up another copy.

2 (Hands to Court.)

3 MR. FYALL: I also handed a copy to Defense.

4 Pointing specifically to State v. Weaver, Your
5 Honor, 374 S.C. 313, I think that is the most on
6 point with the facts of this case.

7 THE COURT: Where are you reading from?

8 MR. FYALL: Page 5, Your Honor.

9 THE COURT: Yes, sir. What paragraph?

10 MR. FYALL: Second paragraph. Well, let's try
11 again, Your Honor.

12 In June of 1999, Mr. McKnight was shot 13
13 times. Thompson spoke with witnesses and
14 investigation led him to the Defendant. He
15 received information that the Defendant was at the
16 home of his cousin. Thompson and other
17 investigators arrived at Arnold's home and found
18 the Jeep, which Petitioner was driving earlier that
19 night, in the back of the yard. Arnold testified
20 Petitioner had been at his home, and had asked for
21 a change of clothes, some bleach, and a garbage
22 bag. He left Arnold's house less than an hour
23 later.

24 Upon finding the Jeep, Thompson and another
25 officer testified Thompson opened the door of the

1 Jeep. After finding the inside of the Jeep was wet
2 and smelled of bleach, Thompson shut the door.
3 Investigators found a "bag of wash" that smelled
4 like bleach on a pump house near the Jeep. Based
5 on the evidence, the Jeep was impounded and towed
6 to the county jail. This is prior to the search
7 warrant.

8 After the Jeep had been impounded, the SLED
9 agent processed the Jeep. The agent testified he
10 found blood in the Jeep in several places,
11 including the interior of the driver's side door,
12 just below the rear window on the driver's side on
13 a, whatever.

14 Prior to trial, Defense counsel moved to
15 suppress the evidence taken from the Jeep. The
16 State noted officers obtained a search warrant
17 before searching the Jeep for blood evidence but
18 after it was impounded to a secure location.
19 However, the return was never made on the warrant
20 as required by S.C. 17-13-140. The State indicated
21 that they were not relying on the search warrant,
22 but were instead contending it was a valid
23 warrantless search. Therefore, the trial judge
24 analyzed the question of the propriety of the
25 search of the Jeep if no warrant had been obtained.

1 The trial judge preliminarily ruled the seizure of
2 the Jeep was proper without a warrant, that the
3 search was lawful, and that the evidence was
4 admissible.

5 According to that case, Your Honor, they
6 didn't have to get a search warrant.

7 MR. O'NEIL: Your Honor, this case is clearly
8 different. They found this Jeep. They didn't box
9 the Jeep in while the Defendant was driving it.
10 Because once -- this case is definitely removed
11 from this case. The Defendant in this case turned
12 himself in and the police just found the Jeep
13 later.

14 In this case here, they detained Mr. Heatley
15 while he was driving this vehicle. They seized him
16 in his vehicle. They just didn't find the vehicle.
17 It is the first seizure -- it is the seizure of
18 Mr. Heatley in the Burger King drive-through
19 without probable cause. That is a problem. If
20 they didn't have that, it is fruit of the poisonous
21 tree.

22 THE COURT: All right. Well, the case law
23 says that -- I'll take a look at it tonight and
24 read them more, because you keep saying they didn't
25 have a warrant for his arrest, so they can make

1 a -- are you saying they can't have a warrantless
2 arrest based on a felony charge?

3 MR. O'NEIL: What I'm saying is they can't
4 stop him without probable cause. We keep talking
5 about what was the probable cause.

6 THE COURT: They are saying that the probable
7 cause could have been him -- he testified that he
8 ran the stop sign, several traffic violations.
9 That is not probable cause?

10 MR. O'NEIL: No, because the officer -- the
11 investigator testified specifically as to why he
12 stopped him.

13 THE COURT: Well, he said he was the subject
14 of the -- he was the subject of the search warrant,
15 the house he was living in, he was the subject of
16 the search warrant, and that he was also -- that
17 the car was also listed in the search warrant.

18 And Mr. Fyall is saying that he didn't think
19 that they needed another search warrant, but they
20 went and got another one anyway, because it was
21 already the car listed in the search warrant to be
22 found at the home.

23 MR. O'NEIL: The car itself -- the search
24 warrant is not in evidence, one. So in my opinion
25 the search warrant itself doesn't specifically note

1 the car. I would like the State to put the search
2 warrant for the house into evidence so we know
3 exactly what the search warrant says. But from my
4 understanding of what it says, any vehicles present
5 at the home here. And this car is not present at
6 the home, so therefore it is not covered, it is not
7 present at the home. And we keep dancing around
8 what the probable cause is when they just should
9 have told us why they stopped him. He said, I
10 stopped him to box him in.

11 THE COURT: Well, he said -- no, he said he
12 stopped him because he had reasonable suspicion
13 that -- and I wrote that down -- that he, based on
14 the search warrant that he had --

15 MR. O'NEIL: And, Your Honor, I guess I
16 apologize. I would ask, can we read back the first
17 minute of my cross-examination of Investigator
18 Faust, because I asked him precisely why he stopped
19 him. It couldn't be more clear. In my first 30
20 seconds of talking with Investigator Faust, he
21 said, I boxed him in so he couldn't leave. I mean,
22 that is --

23 THE COURT: Because he saw the car leave from
24 the house, made several traffic violations, and
25 that the Defendant was the subject of the search

1 warrant.

2 MR. O'NEIL: That is not what he said, Your
3 Honor. That is what he is trying to put together
4 now and clean it up. That is not what he said. He
5 precisely --

6 THE COURT: What I will do is, I will have the
7 court reporter, because it is hard for us to make
8 arguments and go back. The court reporter will
9 type up what he said, she will e-mail it to all of
10 you all, so I will -- and me -- so I will be
11 correct in understanding what he said. Y'all did a
12 whole bunch of yelling back and forth, but I am
13 about 95 percent sure that he said that he saw him
14 run several traffic violations, that the car left
15 the house, and he saw the car leave the house, that
16 the car was subject to the search warrant, that the
17 Defendant was the subject of the search warrant.
18 And I'm pretty sure he said that more than one
19 time, that the Defendant was the subject of the
20 search warrant. It wasn't --

21 MR. O'NEIL: He was not the subject of the
22 search warrant, Your Honor. Him personally was not
23 the subject of the search warrant. There were
24 residents --

25 THE COURT: I understand, but that is what he

1 testified, that that was the reason why -- that he
2 had -- and I think he even used the word reasonable
3 suspicion. But we'll have her type it up and we
4 will have exactly what he said. We are going to go
5 ahead and break for the evening. I will be glad to
6 take a look at any case that you have. You can
7 send those to my law clerk and we will take a look
8 at them. The jury is coming in at 9:30 in the
9 morning. I believe this was the last motion?

10 MR. O'NEIL: Yes, Your Honor. I would just
11 ask that this motion, that we actually put the
12 search warrant that we keep referring to into
13 evidence.

14 THE COURT: I haven't seen the search warrant.
15 I will be glad to get it. I will mark it as a
16 Court Exhibit. Court Exhibit 1?

17 THE COURT REPORTER: No. We marked one, and
18 then he wanted something else to be marked, but he
19 never gave it to me. I can't remember what it was.

20 MR. O'NEIL: Well, I don't know -- in this
21 hearing or a different hearing? I think it was
22 this hearing.

23 THE COURT: No, something earlier you asked to
24 be marked as an exhibit. Oh, it was his voir dire.

25 THE COURT REPORTER: Well, we marked voir dire

1 first, I think, and then there was some other thing
2 you wanted, you said, I want to mark that. I never
3 got it. I don't know what. It was after Mr.
4 Heatley testified. I can try to go back and find
5 it.

6 THE COURT: It will be Court Exhibit Number?

7 THE COURT REPORTER: Well, if I find out what
8 he wanted as Number 2, it will be Number 3.

9 MR. FYALL: Number 2 is your written motion
10 that you e-mailed us.

11 THE COURT REPORTER: But I need it. I need to
12 mark it.

13 MR. O'NEIL: The motion to quash.

14 THE COURT: So that will be Court Exhibit 3.

15 (WHEREUPON, Court's Exhibit No. 2 was
16 marked for identification only.)

17 (WHEREUPON, Court's Exhibit No. 3 was
18 marked for identification only.)

19 MR. O'NEIL: Your Honor, may we approach?

20 THE COURT: Yes.

21 (WHEREUPON, a bench conference was
22 held.)

23 THE COURT: I will get you all a decision in
24 the morning. So we'll be prepared -- we'll start
25 at 9:00. The jury will be here at 9:30. I would

1 like to swear the jury, give the introductory
2 charge, and do opening statements in the morning.

3 I do know that Mr. O'Neil has requested an in
4 camera review of a couple of witnesses' testimony,
5 and so we'll do that before those witnesses, but if
6 you can call your first witness -- I don't know
7 where they fall.

8 I remind everyone that they have been
9 sequestered, the witnesses have been sequestered.
10 If you have been listed as a potential witness, you
11 are not to be in the courtroom unless you are an
12 investigating officer, the Defendant, or the
13 victim's immediate family.

14 MR. O'NEIL: Your Honor, I talked to the State
15 during the lunch hour. The State has Denise
16 Winston, who is my client's -- the mother of my
17 client's child here. They had -- the State had her
18 on the potential witness list, but she was not
19 under subpoena. I think we both agree that they
20 will not call her and I would not call her. I
21 think she -- she was in here, but she has left. So
22 we all agree that she is not a witness in the case
23 and she is allowed to be in the courtroom.

24 THE COURT: All right. And we are going to --
25 my understanding that there may have been or may

1 not have been some exchange or conversation between
2 the two families. I would urge you not to do that.
3 If it is reported, I will hold you in contempt of
4 court and we'll let you sit at the jail until we --
5 until I have time to have a contempt hearing. It
6 would be best if no one would say anything to
7 anyone regarding anything in the proceedings. I
8 would encourage you all again, I do not want to
9 lock the door, but I will encourage you -- I know
10 people have to use the restroom who have been in
11 here a long time, but the in and out, the laughing,
12 comments, if you cannot control your -- I think
13 over here earlier somebody was laughing at
14 something that was said -- if you cannot control
15 it, then I would suggest you go outside the
16 courtroom, because I do not want to have to put
17 anyone that is observing court in jail for contempt
18 of court. So if you can't control your emotions,
19 your laughter, then this is not the place for you
20 to be in. We will ask that you step outside the
21 courtroom because I do not want to, but I will
22 put -- find you in contempt of court. And if we
23 can -- remember, like I said, when the jury is here
24 in the morning, of course if you have to use the
25 restroom, you are more than welcome to go, but the

1 constant in and out, in and out, in and out, I am
2 going to ask that you limit that so you will not be
3 a distraction to the jurors one way or the other.
4 And, believe it or not, they do watch. You might
5 want to -- you all -- the State can inform the
6 victims, and Mr. O'Neil and Mr. Eaddy, you can
7 inform yours. But the jury watches what you do.
8 And I'm trying to avoid them being influenced by
9 anything on the outside other than the evidence
10 that is presented in this case.

11 All right. So I am going to -- we are going
12 to have the Defendant's family leave first, and
13 then we'll have the victim's family leave. Please
14 exit the courthouse. Leave. Go home. Do not say
15 anything to anybody else.

16 All right. Thank you.

17 MR. GOLDBERG: Thank you, Your Honor.

18 (WHEREUPON, court adjourned for the
19 evening at 6:36 p.m.)

20 JANUARY 23, 2019

21 (WHEREUPON, the proceedings began at
22 9:22 a.m.)

23 THE BAILIFF: Ladies and gentlemen, make sure
24 all cell phones are turned completely off. Not to
25 vibrate, but off.

1 THE COURT: All right. We're still waiting on
2 some of the jurors. I received some case law from
3 Mr. Fyall. We also did some research and read
4 over -- I believe you all have received the
5 transcript?

6 MR. O'NEIL: Yes, ma'am.

7 MR. FYALL: Yes, Your Honor.

8 THE COURT: I'll be glad to hear from the
9 State if there's anything else you want to add
10 regarding the suppression of the firearm. And then
11 I'll hear from the Defense regarding the
12 suppression of the firearm.

13 MR. FYALL: Your Honor, I think just to
14 briefly summarizing the case law that was provided,
15 the case law says that probable cause to search an
16 automobile, you can do so with or without a search
17 warrant. I think the officers seeing that car at
18 the location, relying on the probable cause they
19 already had from the magistrate that that car might
20 obtain evidence of a crime, and then that car
21 leaving the house, I think there was sufficient
22 probable cause for them to search that vehicle
23 without a search warrant because that's what Weaver
24 says. The fact that they got a search warrant, I
25 think again, is an extra step. And I think the

1 seizure of that car was within the bounds of the
2 constitution.

3 THE COURT: All right. Yes, sir?

4 MR. O'NEIL: Thank you, Your Honor. May it
5 please the Court? I don't know whether we
6 officially put the search warrants in question in
7 as a Court Exhibit?

8 THE COURT: It's Court's Exhibit 3.

9 MR. O'NEIL: I'm going to read from the --
10 because he is mischaracterizing what the search
11 warrant says. There is no search warrant for the
12 car. And I say, No search warrant for the car.
13 There is no search warrant for the car before the
14 car was boxed in. The search warrant -- and I'm
15 reading from it -- indicates, Description of
16 premises, person, place or thing to be searched.
17 It says, 212 Kirkstone Road in Richland County.
18 The residence is a brick in light color siding home
19 on the second floor with a black mailbox bearing
20 the numbers 212 on it. The driveway to the home
21 runs up to the right side of the apartment. The
22 front porch is on the left side of the house. And
23 it has light-colored columns on the front of it.
24 The search is to include any vehicles associated
25 with the suspect, Andre Heatley, which may be

1 present at the time of the search.

2 The vehicle in question that was seized in the
3 Burger King parking lot, by everybody's admission,
4 was not present at the home at the time law
5 enforcement searched the home. Law enforcement had
6 not gotten to the home before Mr. Heatley left the
7 home in the vehicle.

8 So the one and only search warrant that law
9 enforcement had prior to engaging Mr. Heatley on
10 that night was for the home and any vehicles
11 present at the home at the time of the search. The
12 white Fusion was not present at the home at the
13 time of the search; therefore, it is not covered
14 under the search warrant. There is no probable
15 cause to search that vehicle at that time. The
16 only probable cause that the State had was related
17 to the residence and any vehicles at the residence
18 at the time. There is no probable cause. There is
19 no search warrant that applies to that vehicle once
20 it is not at the home at the time the search
21 happens.

22 Secondly, Mr. Fyall provides information about
23 the automobile exception, but he skipped a step.
24 Before you get to the automobile exception, you've
25 got to have probable cause to stop and box

1 Mr. Heatley in the automobile in the Burger King
2 driveway. There is no probable cause at that
3 point. If we go to the actual transcript, and I
4 will read from Line 8 on Page 6, two questions on
5 my cross-examination of Investigator Faust.

6 Question, Line 8, says: Investigator Faust,
7 I'm just going to cut to the chase here. You
8 didn't box Mr. Heatley in because he made traffic
9 violations, did you?

10 Answer: And -- well, I observed a traffic
11 stop, but absolutely out of -- dot, dot, dot -- we
12 were going to do a search warrant on that vehicle.

13 Question: That's not what I asked you. You
14 didn't box him in because he made traffic
15 violations?

16 Answer: I boxed him in to make sure the
17 vehicle didn't go anywhere.

18 Question: That's why you boxed him in?

19 Answer: Yes.

20 Investigator Faust, in his own words, said, I
21 boxed him in. He didn't pull him over for a
22 traffic violation, he boxed him in in the driveway,
23 from his own words, to make sure, and I quote, I
24 boxed him in to make sure that the vehicle didn't
25 go anywhere. Not because he was going fast on some

1 road, not because he was speeding, not because he
2 ran through a stop light, he literally said, This
3 is why I boxed him in. Not stopped him, but boxed
4 him in.

5 It's different to have a pretextual stop.
6 When you have a pretextual stop, you may have a
7 desire to search, but I'm going to stop you for
8 this reason, some legal reason here. Investigator
9 Faust, in his own words, said, This is why I boxed
10 him in, because I didn't want him to leave.

11 At that point, there is no probable cause to
12 detain Mr. Heatley. There is no arrest warrants.
13 Investigator Faust said he doesn't even know when
14 he got the ATM folder. He doesn't know when he got
15 the confirmation that Mr. Heatley is the person in
16 the ATM folder. At that point, they had no
17 probable cause to stop and detain Mr. Heatley and
18 his vehicle.

19 It's our opinion, Your Honor, at that point,
20 that becomes illegal. It's an illegal search and
21 seizure of Mr. Heatley, his vehicle. And all the
22 contents of his vehicle. At that point here, any
23 search -- any subsequent search warrant for
24 Mr. Heatley's vehicle is fruit of the poisonous
25 tree. And any subsequent ballistic test of any

1 firearm found in Mr. Heatley's car is fruit of the
2 poisonous tree.

3 And I would ask that the search of Mr. Heatley
4 here and the seizure of the firearm and any
5 ballistics test from that firearm be suppressed.
6 That's fruit of the poisonous tree of the illegal
7 stop and seizure of Mr. Heatley, his vehicle, and
8 the contents thereof.

9 THE COURT: All right. Thank you.

10 All right. In reading the -- just to address
11 the issue, I think -- maybe I'm getting ahead of
12 myself -- I think it's questionable as to -- I
13 think that's what Mr. Fyall was arguing as to
14 whether or not they even needed a search warrant
15 once they got to the -- they boxed the car in. The
16 question was whether or not they even needed a
17 search warrant to search the car, but they did, I
18 think out of, I think he said, an abundance of
19 caution went and secured a search warrant for the
20 car. But I understand that's not your issue. Your
21 issue is did he actually have probable cause for
22 the stop.

23 In reviewing the cases, the Court must
24 determine if probable cause existed. The
25 investigator, or Sergeant Faust testified that the

1 Defendant committed two traffic violations in the
2 brief time that he observed him. He said he was
3 speeding and he ran a stop sign. He further stated
4 that the Defendant's vehicle -- the Defendant was a
5 suspect -- I think yesterday it was stated he was
6 not, but it clearly says in here that he was the
7 suspect for possibly murder, and also they -- in
8 reading the affidavit, they believed that he was,
9 as far as probable cause, the investigator said
10 there was a strong resemblance to him when they
11 compared previous photos of him from -- I'm
12 assuming, photos of him related to a charge he had
13 back in July of 2015, in which they also had an
14 incident, they said he was known to have a
15 9-millimeter pistol.

16 So in reading the affidavit for the probable
17 cause for the search warrant, he -- they swore to
18 an affidavit that the probable cause was that they
19 had used previous photos up against the
20 surveillance photos to determine -- that gave them
21 probable cause to believe that he was the one using
22 the ATM card -- or using ATM cards at the ATM.

23 I also note that in reading the transcript --
24 I have to find the exact language -- Investigator
25 Faust, I think you asked, Was there an arrest

1 warrant for murder or financial credit card theft
2 fraud? He said, No, but I believe that there was
3 probable cause for the arrest at that time.

4 So he has testified there was probable cause.
5 He also said that he had reasonable belief based on
6 the photos that he was the person using the ATM
7 card at the banking institution, and cited that as
8 probable cause also for an arrest or suspicion that
9 the Defendant was involved in financial fraud when
10 the Defendant was noted in the surveillance videos
11 at two banking locations using or attempting to use
12 the victim's ATM card. The investigators matched
13 up pictures of the Defendant to the video
14 surveillance from cameras at the banking
15 institution and believed that it was the Defendant
16 who attempted to use the victim's debit card on
17 both locations.

18 So this also would give him, as he stated, the
19 probable cause for the stop at the Burger King.

20 That, coupled with the Defendant being named
21 as the main suspect or target in the search warrant
22 for financial transaction card -- for the financial
23 transaction card fraud, and also potentially for
24 the murder, I think all of those three things
25 together gave the deputies or officers probable

1 cause to stop him at the Burger King and to detain
2 him.

3 And there is also a case that says that --
4 where is that case? That the police can detain him
5 while he goes and gets the search warrant. In this
6 case is what they did. They can detain him while
7 he went and got the search warrant if they believe
8 that he had been involved in criminal activity.
9 And I'll find the name of that case.

10 So, with all of that being said, I am going to
11 deny the motion. This Court finds that there was
12 probable cause for the stop at Burger King. I am
13 going to deny the motion to suppress the firearm
14 that was found in the Defendant's vehicle.

15 Anything else?

16 MR. FYALL: Not from the State, Your Honor.

17 MR. O'NEIL: I understand the Court's ruling.
18 I just want to make one point of clarity. As it
19 relates to the search warrant that's in evidence
20 for this hearing, I want to make sure the record is
21 absolutely clear that this search warrant, the
22 information in the -- related to the probable cause
23 of this search warrant was given to the magistrate
24 after Mr. Heatley had already been stopped. There
25 was no testimony from the -- from the witness stand

1 as relates to the body of this warrant with this
2 information that supports the probable cause of
3 this warrant when it was gathered.

4 THE COURT: This was the search warrant for
5 the house. How is it after the stop?

6 MR. O'NEIL: The search warrant -- there's two
7 search warrants. I want to be clear on which one
8 we have.

9 THE COURT: I'm referring to the one that they
10 initially got, and that's the one he was testifying
11 about. The search warrant for the house that
12 included the automobile. It also said there was
13 possibly a 9-millimeter in the automobile. It's
14 Court Exhibit Number 3.

15 MR. O'NEIL: I just want to make sure -- there
16 were two of them -- that we've got the same one.

17 THE COURT: Yeah, not the search warrant they
18 went and got after Burger King.

19 MR. O'NEIL: Yes, ma'am.

20 THE COURT: No, if you read the affidavit that
21 they swore to the magistrate, that's where all the
22 information is about the photograph of him in the
23 surveillance photos and how they went back to the
24 2015 incident and got the photos and matched it up
25 to the surveillance videos. And that's how they --

1 that, based on the information that they had
2 received, that the Decedent had planned to meet
3 him. So they took all of that. That's what they
4 swore to the magistrate, and that's how they
5 obtained the search warrant for the house and any
6 cars and vehicles and potentially a 9-millimeter.
7 But that was sworn to before he stopped him.

8 MR. O'NEIL: Yes, ma'am, I understand that. I
9 just wanted to make sure that --

10 THE COURT: That's the one I have. I don't
11 have the other one.

12 MR. O'NEIL: Okay. Let me make sure. That
13 same probable cause is in the subsequent search
14 warrant, so I just wanted to make sure we have the
15 right one in evidence. That's the one that was
16 made prior to them -- prior to them stopping him.

17 THE COURT: Three -- no one has introduced the
18 search warrant for the one that they go get --

19 MR. O'NEIL: Yes, ma'am.

20 THE COURT: -- after they box him. Are you
21 challenging that search warrant?

22 MR. O'NEIL: No, no, I wanted to make sure we
23 had the right one in evidence.

24 THE COURT: Oh, yes. Yes, this is the one I
25 have is 3. Yes, that's the one I have. It is

1 for -- it's not -- it is for the house, the
2 residence. The one you just read about the house
3 where the driveway runs up the side of the
4 property.

5 MR. O'NEIL: I just wanted to make sure we had
6 the right one.

7 THE COURT: Okay. All right. All right,
8 thank you.

9 Are we ready? Anything else we need to take
10 up? I know we still have to -- I need to listen to
11 the testimony of those witnesses, but I -- I mean,
12 I looked at that last night too. I'll listen to
13 what they have to say, but if they -- I mean, the
14 State has not provided exception to get into her
15 testimony at this point. So I do agree with
16 Mr. O'Neil that that would be hearsay unless y'all
17 can provide an exception as to how you would get
18 into her testimony. But as to the -- what the
19 witnesses said to her, I'll be glad to hear from --
20 I'll hear it in camera. You just need to let me
21 know. Once we get rolling, we'll just need to stop
22 and listen to that in camera. Maybe it will fall
23 around lunchtime.

24 All right. So we need to bring the jurors in,
25 swear the jury.

1 Let me see y'all one second.

2 (WHEREUPON, a bench conference was
3 held.)

4 THE COURT: All right. Bring them on in.

5 (WHEREUPON, the jury came into open
6 court at 9:38 a.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: Good morning, ladies and gentlemen
9 of the jury. I hope that you had a restful
10 evening. At this time, we are ready to begin the
11 trial of the case of the State of South Carolina v.
12 Andre Heatley, Jr.

13 Before we get started, I will ask that the
14 clerk swear the jurors.

15 THE CLERK: Ladies and gentlemen of the jury
16 panel, please stand and raise your right hand to be
17 sworn.

18 (Jurors comply.)

19 THE CLERK: Do you swear or affirm that you
20 shall well and truly try and true deliverance make
21 between the State of South Carolina and the
22 Defendant at bar whom you shall have in charge and
23 a true verdict give, according to the law and
24 evidence, so help you God? If so, please say, I
25 do.

1 (Jurors comply.)

2 THE COURT: All right, thank you. You may be
3 seated.

4 (Jurors seated.)

5 THE COURT: Madam Court Reporter, please let
6 the record reflect that the jurors have answered
7 their oath in the affirmative.

8 All right, ladies and gentlemen of the jury,
9 what I will say now is intended to serve as an
10 introduction to the trial of this case. These
11 remarks are not a charge on the law in this case. I
12 will instruct you on the law applicable to this
13 case at the end of the trial before you retire to
14 consider your verdict. This is merely an
15 explanation of the procedure that we will follow in
16 the trial of this case so that you may better
17 understand what may be happening.

18 You are not to take any notes during the
19 trial. The Defendant in this case is charged by an
20 indictment filed in this court with the crime of
21 murder and armed robbery, the elements of which be
22 explained to you later.

23 The indictments, as I explained to you on
24 yesterday, are simply the charges by which the case
25 is brought into court, and it is not in any sense

1 evidence of any of the allegations it contains.

2 The Defendant in this case has pled not guilty
3 to this indictment. The State, therefore, has the
4 burden of proving each of the elements of the
5 indictment beyond a reasonable doubt. And it will
6 be your duty, ladies and gentlemen of the jury, to
7 decide whether the State has met that burden.

8 Your purposes as jurors is to find and
9 determine the facts. You are the sole judges of
10 the facts. If at any time I make any comment
11 regarding the facts, you must disregard it. You
12 are to determine the facts from the testimony you
13 hear and the other evidence introduced in court.

14 It is up to you to determine the emphasis
15 which you feel may properly be drawn from the
16 evidence. It is especially important that you
17 perform your duty of determining the facts
18 diligently and conscientiously, because ordinarily
19 there is no way to correct an erroneous
20 determination of the facts by a jury.

21 On the other hand, and with equal emphasis,
22 the same law that makes you the judges of the facts
23 makes me the judge of the law. The law as given by
24 the Court is the only law you may consider. You
25 must accept and follow it even though you may

1 disagree with it. I cannot tell you what the facts
2 are and you cannot disagree with me about what the
3 law is or what the law should be.

4 Your job is to take the law as I give it to
5 you and apply it to the facts as you find them from
6 the testimony of the witnesses and any other
7 evidence that is introduced. After doing that, you
8 will render your verdict, a verdict under the
9 solemn oath that you just took as jurors.

10 Ladies and gentlemen of the jury, as I told
11 you yesterday, until I tell you that you may begin
12 your deliberations, you must not discuss this case
13 with anyone, including your fellow jurors, your
14 friends, your family members, anyone involved in
15 the case. The attorneys and the parties in the
16 case have been advised that they are not to talk to
17 you at all. So if you see anyone involved in the
18 case and they do not even say hello, they are not
19 being rude or unfriendly, they are just following
20 my instructions.

21 You must decide this case based solely on the
22 evidence presented here in the courtroom. This
23 means that during the trial, you must not conduct
24 any independent research about the case, the facts
25 of the case, the evidence presented in the case, or

1 the people or organizations involved in any way in
2 the case. Please do not try to find out
3 information from any source outside of the
4 courtroom.

5 In other words, you must not look in
6 dictionaries or other reference materials. You may
7 not search the internet, website, or blogs, or use
8 any electronic tools to get information about this
9 case or to help you decide the case. You may not
10 use your computer, telephone, cell phone, smart
11 phone, tablets, or internet, or other tools of
12 technology with communication capabilities at any
13 time while you are in the courtroom or during your
14 deliberations.

15 You can use your phone when you're not in the
16 jury room and when you're not in the courtroom.
17 When you go home, you can use your phone for
18 anything other than anything that has to do with
19 1701 Main Street, anything going on here. At any
20 time during your breaks and meals, if necessary, if
21 you need to use the devices, you can. However, you
22 cannot do any independent research regarding any
23 issue in this case.

24 You must not use your phone, e-mail, text
25 message, instant message, Twitter, or any blog,

1 chatroom, website, including FaceBook, Google Plus,
2 or MySpace, LinkedIn, YouTube, or any social media
3 website to send or receive information about this
4 case. This includes information about a party, a
5 witness, the attorneys, court officers, news
6 accounts about the case, research on any topic,
7 raise any topics you may think would be helpful in
8 deciding this case, or any testimony presented by
9 any witness.

10 During the trial, do not read, listen to, or
11 watch any news reports about this case. This
12 includes anything that may be in the newspapers or
13 on the internet, the radio, or TV. You must not
14 consider anything you may have read or heard about
15 the case outside of the courtroom, whether before
16 or during the trial.

17 Information on TV or radio or internet or from
18 other sources might be wrong or incomplete. In our
19 judicial system, it is important that you are not
20 influenced by anything or anyone outside of this
21 courtroom. If you become aware of another juror's
22 violation of these instructions, please inform me
23 or the bailiff immediately.

24 It is important that you keep an open mind and
25 not decide any issue in a case until all the

1 evidence has been presented, the parties have made
2 their closing arguments, and I have instructed you
3 on the law in this case.

4 It is your solemn responsibility to determine
5 the guilt or innocence of the Defendant, and your
6 verdict must be based solely on the evidence as
7 presented to you in this trial and on the law as I
8 instruct you during and at the close of the trial.

9 In just a moment, the Solicitor will make what
10 is called an opening statement in which the
11 Solicitor will explain to you the issues in this
12 case, or at least what the Solicitor believes the
13 issues are in the case. The attorney for the
14 Defendant may also make an opening statement,
15 although he is not required to do so.

16 What the attorneys tell you during their
17 opening statements is not evidence in this case.
18 It is only their contention as to what the issues
19 are. The evidence in this case will be presented
20 to you by the testimony of sworn witnesses from the
21 witness stand and/or by exhibits that may be
22 introduced in evidence.

23 From time to time during the trial, you may
24 hear one of the lawyers say something like, Your
25 Honor, I believe we have a question of law or a

1 matter of law to discuss with you, or, Your Honor,
2 may we approach the bench. And sometimes I might
3 find it necessary to excuse you from the courtroom
4 for a short while so the attorneys and I can
5 discuss a matter of law. The reason for this is
6 because you are the judges of the facts in the case
7 and sometimes when I discuss matters of law with
8 the attorneys, it may be necessary for me to make
9 some comment on the facts in connection with ruling
10 on whether a particular law applies. I am not
11 supposed to tell you what I think the facts are, so
12 I will excuse you from the courtroom while these
13 discussions take place so that you will in no way
14 be influenced by anything that I may say or do in
15 connection with the facts.

16 You must consider all of the testimony and
17 consider all of the witnesses that will testify.
18 In deciding whether to believe a witness, you have
19 the right to consider the interest of any witness,
20 the bias of any witness, the prejudice of any
21 witness, the opportunity for the witness to have
22 seen the matters and things about which the witness
23 may testify, and the way the witness acts on the
24 witness stand.

25 You have the right to consider anything that

1 is in the record that will help you evaluate the
2 testimony of the witnesses. That means it is your
3 duty to pay close attention to these witnesses, to
4 observe the witnesses, to listen to the witnesses,
5 and to pay close attention to the attorneys in the
6 court.

7 Please do not let your thoughts wander, but
8 give strict attention to the testimony in this case,
9 so that at the end of the testimony, after hearing
10 the arguments of counsel and the charge on the law,
11 you will be in a position to apply the law to those
12 facts and render a verdict.

13 In order to preserve everyone's rights, I will
14 give the parties an opportunity to object to
15 anything I have said.

16 Any objections or exceptions?

17 MR. GOLDBERG: Nothing from the State.

18 MR. O'NEIL: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 we will begin the trial. As I told you, you will
21 first hear from the State, then you will hear from
22 the Defense as to opening statements.

23 MR. FYALL: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir.

1 case. And we're here today because the reason no
2 one heard from the victim again is because of the
3 Defendant, Andre Heatley. He met up with her at a
4 spot that he liked to call the shooting spot. He
5 stood on the passenger side of her vehicle and he
6 gunned her down. He shot her over and over and
7 over and over again.

8 One of those shots entered her head right
9 here, and the bullet traveled through her brain and
10 was found right outside of her ear. And that's
11 important. And I'll tell you why.

12 But after he gunned her down, that wasn't
13 enough. He then went to the driver's side of her
14 car, pulled her out of the car, took her cell phone
15 and her debit card, and left her there dead while
16 he got on 77 and then 20 and then 26 and went to
17 Irmo to try to take money out of her bank account
18 with the card that he just stole.

19 And the question, I guess, that you have is,
20 how do we know that? Well, we knew that he had the
21 pin number to her debit card because he told
22 people. He bragged about it. He sent texts to
23 people saying, Yes, I heard from -- Devonta said
24 that her pin number is the same. He told people
25 that he had a master plan.

1 How else do we know? Because law enforcement
2 got a search warrant for his car and a gun was
3 found in that car. And the lab at the Richland
4 County Sheriff's Department analyzed that gun and
5 the bullet that was found sticking out of her head.
6 And they will determine that that gun fired that
7 bullet. His gun.

8 What's even more interesting is there were two
9 guns out there that night. And there were shell
10 casings from the gun that he used to kill her. But
11 there were also shell casings from another gun,
12 shell casings that matched a High Point

13 9-millimeter rifle. And why does that matter?
14 Because the Defendant, shortly before he killed the
15 victim, bought a High Point 9-millimeter rifle.

16 There's also modern technology. If you have a
17 smart phone, even when you don't make a call, even
18 when you don't send a text message, your smart
19 phone is communicating with a cell phone tower.
20 It's pinging back and forth. So it knows your
21 location.

22 And Captain McDonald with the Richland County
23 Sheriff's Department looked at that data, and it
24 shows the Defendant's cell phone in the area that
25 the victim was found at the time of the murder. It

1 shows his cell phone traveling along 77, traveling
2 along 20, and traveling along 26 into the Irmo
3 area.

4 Not coincidentally, the victim's cell phone
5 takes the exact same route to the area where he
6 used the ATMs, three ATMs to try to get money with
7 her card. And we know it was him at the ATM
8 because, as ATMs do, there are pictures and videos
9 of him at the ATM taking that money.

10 And you would think that would be good enough,
11 to leave a dead body lying on the side of the road,
12 taking their possessions and trying to get money,
13 but it wasn't. He then says, I'm going to buy
14 myself a Michael Kors watch with the same card of
15 the same dead girl that he left there lying on the
16 side of the road.

17 And eventually law enforcement catches up with
18 him and he makes a series of statements. And it
19 keeps changing. When is the last time you saw her?
20 Months ago. Where were you yesterday? I was at my
21 girlfriend's house all night. And, of course, then
22 they confront him with evidence: Well, how could
23 you be at your girlfriend's house all night if
24 there's a picture of you at an ATM machine? Then
25 the story changed that he met a guy named Von. And

1 Von gave him the card and Von was in the car when
2 he went to the ATM. They asked him, Well, who is
3 Von? I don't know, I just know him by Von. I met
4 him at a stop sign, I sold him a chain one time.

5 Well, Von is really a guy named Devonta
6 Shuttles, who had no relation with this crime. But
7 if it was really Von, he could have just told him
8 who Von was because Von's number is in his phone.
9 And, in fact, he had been texting Von previous to
10 that because he said something Von didn't like
11 about Von's sister. Von was just the first name on
12 his mind. The first thing he could come up with to
13 try to make sense of the fact that law enforcement
14 had evidence that he had committed this crime with
15 his gun that he bought.

16 And for that he was charged with two things,
17 murder for killing Deandra Roach, and armed
18 robbery for using a gun to shoot her and then take
19 her belongings.

20 And we are here today because we have to prove
21 him guilty beyond a reasonable doubt. And that's
22 the burden that the State has and that's the burden
23 of proof that we always have in every single case.
24 And in this case, we are prepared to meet that
25 burden. At the end of the day, at the end of this

1 trial, I'm going to come back before you and ask
2 you to find him guilty of gunning down Deandra
3 Roach and leaving her body there for someone else
4 to find at 5:00 o'clock the next day. Guilty of
5 murder, armed robbery.

6 Thank you.

7 THE COURT: Thank you.

8 MR. FYALL: Thank you, Your Honor.

9 THE COURT: Yes, sir?

10 MR. O'NEIL: Your Honor, may it please the
11 Court?

12 THE COURT: Yes, sir.

13 OPENING STATEMENT

14 MR. O'NEIL: Me and my wife, we have this
15 picture hanging in the kitchen of our home. I
16 bought it for my wife about two years ago here.
17 And I thought about it this morning. When I walked
18 by it in the kitchen, I thought about this case and
19 I thought about more specifically the opening that
20 you just heard from Mr. Fyall when I saw this
21 picture. Because when you look at this picture, I
22 have a piece of tape over this right here because
23 when it's in our home, when we first put it up
24 there, we had it an unobstructed view of this
25 picture. But since we put it in our home here,

1 there's a plant that -- right in front of this
2 picture here, and it blocks this picture right here
3 in the same way this tape blocks it. So when
4 people walk in our home, imagine a plant being
5 right here, this is kind of what they see in this
6 picture here.

7 And I know what this picture means to me and
8 my wife here because I bought it and I have seen
9 the whole entire picture. When people come in our
10 home, they get this obstructed view of the picture.
11 They don't see everything that's on the picture. I
12 bought this picture for my wife. She's amazing,
13 she's loving, she's strong, she's always happy,
14 she's selfless, and she's graceful. And I know
15 that about her. But when I looked at this picture
16 and saw it obstructed, I thought when people come
17 in our home, they don't know the true picture of
18 what my wife is actually like here.

19 So when you actually get the whole picture,
20 you know that not only is my wife amazing, loving,
21 strong, happy, and selfless, and graceful, but she
22 is also a mother. And that's what you would know
23 if you saw the whole entire picture. That's what I
24 know about her.

25 And why does this matter in this case here?

1 Because knowing only half the story doesn't give
2 you the full picture. Knowing only half the story
3 never gives you the full picture.

4 And what Mr. Fyall just told you in his
5 opening was only half the story. I'm going to give
6 you the full picture.

7 Mr. Fyall talked about this ballistics report
8 here. What he didn't tell you about the ballistics
9 report is that when the expert comes to testify,
10 he's going to tell you that he can't testify to any
11 degree of scientific certainty that the bullet that
12 he received from the victim was fired from the
13 weapon they recovered from Mr. Heatley. He can't
14 tell you that with any scientific certainty. They
15 didn't give you that part of the story.

16 He talked about these credit cards here, this
17 credit card that was used here. Let me give you
18 the whole story, the whole picture. What he didn't
19 tell you is that Mr. Heatley had used these credit
20 cards before. And the last time that we knew that
21 the victim had this credit card was 5:00 o'clock
22 that day. They don't know whether or not the
23 victim had this credit card when she was at work or
24 when she left work here. He only gave you half the
25 story.

1 They talk about this idea of a timeline. We
2 know the victim clocked out of work at 10:09 that
3 night. We know that from the payroll and from the
4 time cards here at Walmart. We know from video
5 surveillance that she left the Walmart parking lot
6 at 10:13. We know that. It's on video from the
7 Walmart video. We know -- also we know and what
8 they didn't tell you is that the victim usually
9 takes the same route from home every single day and
10 she goes home from work here. But on this
11 particular night here, instead of turning left like
12 she normally does, she turns right.

13 Why is that going to be very important here?
14 Turning right would take her longer to get to her
15 home and to the spot where she was found out than
16 it would normally take her. Why is that extremely
17 important? If she left the Walmart parking lot at
18 10:13, we know from ATM surveillance here that her
19 credit cards were used at 11:09 that night. She
20 leaves Walmart at 10:13, parking lot. Her credit
21 cards are used at 11:09. That is uncontroverted.
22 Everybody agrees to that. The facts are what they
23 are. So that tells you that there are 56 minutes
24 between when she leaves her work here and this ATM
25 photo that he was using her debit card.

1 Why is that important? She works in the
2 10,000 block of Two Notch in the northeast side of
3 Columbia. She is found in the Blythewood area off
4 Farrow Road, depending on who you ask, between 18
5 and 20 something minutes away from the Two Notch
6 Walmart here.

7 The incident level -- the incident place on
8 Two Notch is about -- several miles away from where
9 she's found. Where she's found off Farrow Road
10 here is several miles away from Irmo where
11 Mr. Heatley was with her debit card at 11:09.

12 The timeline is really important because if
13 the timeline doesn't match up, it would be
14 impossible for Mr. Heatley to get from where the
15 victim was found over to where the ATM was used
16 here, and that is sort of my time period. And
17 that's what's going to be very important. So pay
18 attention closely when you see the timeline, the
19 pictures. It's going to be very important for you
20 to determine whether or not what they say happened
21 is even possible.

22 They told you about the fact that they think
23 that Mr. Heatley shot the victim. What they didn't
24 tell you is that none of Mr. Heatley's fingerprints
25 were found on the victim's car. What they didn't

1 tell you is that none of his DNA was found there at
2 the scene here. What they didn't tell you is that
3 none of Mr. Heatley's DNA is found on the victim's
4 clothing here. What they didn't tell you is that
5 there are no eyewitnesses to this crime here. What
6 they didn't tell you is that nobody saw
7 Mr. Heatley's car in that area. They indicate
8 Mr. Heatley is in the same area where the victim
9 was killed at. What they didn't tell you is that
10 Mr. Heatley has family, his father lives in that
11 area. He has reason to be in that area. What they
12 didn't tell you is that Mr. Heatley went out to eat
13 dinner that night in the northeast area. They
14 didn't tell you that either. They told you that
15 Mr. Heatley is in the Irmo area here. What they
16 didn't tell you is that his stepmother, his family
17 lives in the Irmo area. They told you part of the
18 story, not the whole story. And you can never get
19 the full picture from only half the story.

20 Look at any sort of motive you will see in
21 this case. Why would Mr. Heatley kill Ms. Roach?
22 You won't have any information that that makes any
23 sense. He had no reason to do that.

24 What I ask of you is to keep an open mind.
25 until you hear all of the evidence, the whole

1 entire story, because before you seated right now
2 is Andre Heatley. He's an innocent man. And
3 that's not just my opinion, that's the law. He's
4 presumed to be innocent until and unless the State
5 of South Carolina can prove him guilty beyond a
6 reasonable doubt. And I am convinced when you hear
7 all the evidence in this case here, there are going
8 to be reasons to doubt.

9 Y'all -- you have a very important job to do.
10 And we all have jobs to do in this case here.
11 You're going to see at the end of the case, your
12 job is to be supervisors of what happens in this
13 courtroom. Your job is not to find out what
14 happened. Your job is not to try to find what went
15 on to prove the case here. That's law
16 enforcement's job. That's the State's job. Your
17 job is solely to decide whether or not the State
18 has done their job. Have they proved their case
19 beyond a reasonable doubt? Have they given you the
20 full picture? And I submit that they have not and
21 they cannot.

22 Mr. Heatley sits before you right now an
23 innocent man. And at the end of this trial here
24 when all the evidence gets presented here, he will
25 still sit in front of you an innocent man. And I

1 ask that you, at that point, render the one true
2 verdict here of not guilty for Andre Heatley.

3 Thank you.

4 THE COURT: Thank you.

5 Call your first witness.

6 MS. GOLDBERG: The State calls Molly Nations.

7 (Witness approaches.)

8 THE BAILIFF: Please your left hand on the
9 Bible and raise your right.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm to tell the
12 truth, the whole truth, and nothing but the truth,
13 so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness is seated.)

18 THE CLERK: State your name for the record.

19 THE WITNESS: Molly Nations.

20 MOLLY NATIONS,

21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GOLDBERG:

24 Q Ms. Nations, good morning.

25 A Good morning.

1 Q Can you tell this jury where you are employed?

2 A Richland County Sheriff's Department.

3 Q And tell the jury a little bit about how long
4 you've been there and what your duties have been
5 during the time at the department?

6 A I've been employed with Richland County Sheriff's
7 Department since 2011 working missing persons --

8 THE COURT REPORTER: I'm sorry, you need to
9 speak in the microphone.

10 A I have been working with Richland County Sheriff's
11 Department since 2011 working with missing persons,
12 primarily adults.

13 Q And when you say working missing persons, can you
14 describe generally what that means and what that
15 entails?

16 A Yes, sir. So any time a parent, friend, co-worker,
17 whoever it may be, calls in to report that somebody
18 hasn't returned home or has not been heard of in a
19 certain amount of time, they call and file a
20 missing persons report. It is then sent to us in
21 investigations and we make the initial call and go
22 from there.

23 Q When you say go from there, what are some of the
24 things that you're trying to do at that point?

25 A So depending on what the complainant tells us, you

1 know, we find out basic information about the
2 missing person, what school they go to, where they
3 work, you know, places that they may frequent,
4 where they live, any friends or associates that
5 they have.

6 You know, from there, we then follow up and
7 determine, you know, kind of what their routine is,
8 who the last person is that talked to them, and go
9 and talk to that person to find out, you know,
10 where this person could be.

11 Q Back on January the 29th of 2016, were you working
12 with the department in this capacity?

13 A Yes, sir.

14 Q Did you receive a phone call about a missing -- a
15 new missing persons case?

16 A Yes.

17 Q Was that regarding Deandra Roach?

18 A Yes, sir.

19 Q And tell us how you were notified about that.

20 A All right. On Friday, January 29th, 2016, right at
21 2:10 in the afternoon, I was sitting at my desk,
22 received a call that had been transferred from our
23 desk. Answered the call. It was Ms. Cynthia
24 Roach. At that time, I had not gotten the missing
25 persons report because she had just filed the

1 report earlier that morning. So because of that, I
2 had to kind of start from the beginning with her in
3 terms of asking who the report was on, you know,
4 and just getting all the background information
5 that I could.

6 Q And some of that background information that you
7 obtained, obviously, is that the person who was
8 missing was Deandra Roach, correct?

9 A Yes, sir.

10 Q Did you learn her age at the time?

11 A Yes, sir. Mom told me -- Ms. Cynthia told me that
12 Deandra was 18 years old. She had not returned
13 home from work at Walmart on Two Notch Road that
14 previous night. Ms. Cynthia told me that she and
15 Deandra had such a close relationship, and at that
16 point she almost knew something was wrong because
17 she couldn't get in touch with Deandra.

18 Q And so she -- again, she indicated that she worked
19 at Walmart?

20 A Yes, sir.

21 Q And that she had been there the night before?

22 A Right.

23 Q And she had not heard from her after she got off
24 work?

25 A Yes, sir.

- 1 Q Nor any point throughout the night?
- 2 A Yes, sir.
- 3 Q Or that morning?
- 4 A Right.
- 5 Q And that that was unusual?
- 6 A Yes, sir.
- 7 Q For Deandra to not contact her?
- 8 A Yes, sir.
- 9 Q And in gathering more information about that, did
- 10 she provide you with any other, as you say, friends
- 11 or associates or boyfriends or ex-boyfriends or
- 12 anything of that nature, any names like that?
- 13 A She did. You know, and that's where we --
- 14 Q Without saying anything about that, just who those
- 15 names were.
- 16 A Okay. It was -- she had mentioned Andre Heatley.
- 17 Q Okay. And did she also mention a Kelvin Davis as
- 18 well?
- 19 A Yes, sir.
- 20 Q And those were described as ex-boyfriends, is that
- 21 right?
- 22 A Yes, sir, with Andre being the most recent.
- 23 Q Okay. Did she indicate whether Deandra had a
- 24 current boyfriend?
- 25 A Yes, sir.

1 Q Did she give you that name? Or is it fair to say
2 she just didn't provide it?

3 A She didn't, but that he lived in Charlotte and was
4 not in town at the time.

5 Q Okay. What information did she give you about
6 Ms. Roach's activities, banking?

7 A Ms. Cynthia was the emergency contact on Deandra's
8 First Citizen -- I'm sorry, Bank of America bank
9 account. And because of that, she was contacted by
10 the bank about some fraudulent use that had been
11 tagged on the account.

12 Q And did she also tell you what kind of car
13 Ms. Roach was driving?

14 A Yes, sir.

15 Q What was that?

16 A It was a Honda Civic, 2012 gray Honda Civic.

17 Q You said this was about 2:10 in the afternoon on
18 Friday, the 29th?

19 A Yes, sir.

20 Q Was Deandra supposed to work that day as well, on
21 Friday?

22 A Yes, sir.

23 Q Based upon that information provided to you, what
24 was your next step?

25 A So from there, after mom said that she had received

1 a call from the bank, that rose red flags for me.
2 And because of that, I immediately contacted the
3 bank and spoke to a lady in the fraud department
4 who said that there were multiple attempts to
5 withdraw cash from ATM machines. With that, I was
6 able to request photographs.

7 Q And those attempts to withdraw had been made when?

8 A There were three different attempts. The first one
9 was at 11:01 p.m. on the 28th at the Palmetto
10 Citizens in Irmo. The next one had been at
11 11:13 p.m. on the 28th at the High Point Center in
12 Irmo at the Bank of America machine. Then there
13 had been two attempts at 12:24 and 12:25 a.m. on
14 the 29th at the Wells Fargo in Ballentine.

15 Q And, additionally, was there reference to an
16 internet purchase as well?

17 A Yes, sir, a Michael Kors purchase coming from New
18 Jersey.

19 Q And what time was that?

20 A That was at 1:30 in the morning on January 29th.

21 Q Okay. So based upon that information, what request
22 did you make?

23 A I requested any video footage that they had at the
24 machines there at Bank of America.

25 Q And did you, in fact, receive that footage?

1 A Yes, sir.

2 Q Was that videos or stills that you got?

3 A Still photos.

4 Q Tell us what a tag reader is.

5 A So there are tag readers all over the place, in
6 parking lots, on highways, on main roads. There's
7 even cars that are hired to drive around with tag
8 readers all over the car just to kind of flag, you
9 know, every single license plate to ensure that,
10 you know, a car wasn't stolen, you know, whatever
11 the case may be. And we are able to request
12 information pertaining to certain tag numbers and
13 for whatever reason, you know, it may be.

14 Q And so would it be a common practice to try to use
15 that information in a missing persons case?

16 A Yes, sir.

17 Q How so?

18 A Just because Ms. Cynthia had specified that
19 Deandra was in her car, her car was missing as
20 well, it's protocol for me to go ahead and run that
21 tag to see, you know, if it has been spotted
22 anywhere unusual.

23 Q Had it been spotted at all?

24 A It had only been spotted in the Walmart parking
25 lot, which was her place of employment.

1 Q And is that unusual for it to not show up on this
2 road or that road or all over town?

3 A It is, yes, sir.

4 Q What was your next step?

5 A So from there, mom, Ms. Cynthia, had told me that
6 she was on her way to Walmart to see if Deandra
7 was going to show up that night at 5:00 o'clock.
8 You know, by that time, she had not shown up. So
9 she began to just kind of ask some co-workers, you
10 know, when the last time they had seen her, et
11 cetera.

12 From there, I went ahead and got Deandra's --
13 requested her phone records because her phone was
14 off as well. And that takes a little bit of time,
15 so I didn't immediately get those. So we were just
16 kind of waiting from there.

17 Q You said her phone was off. Does that mean any
18 attempts to call went straight to voicemail?

19 A Yes, sir.

20 Q Once you received her phone records, did you notice
21 if any calls had been made around the time that she
22 left work?

23 A Yes, sir.

24 Q And what time were those calls made and who were
25 they made to?

1 A So at 10:13 p.m., she had tried to call out to a
2 friend. You want me to tell the name?

3 Q Sure.

4 A A friend by the name of Jordan Harding. It went to
5 voicemail, she didn't get in touch with Jordan. At
6 10:14 p.m., a minute later, she had tried to reach
7 out to a friend, Ashley Gadson. Also unsuccessful.
8 After that, she had tried to make a call at 10:16
9 to a Mr. Stokes.

10 Q And did Deandra also have any missed calls at this
11 time?

12 A That I was not able to see.

13 Q Okay.

14 A I had just asked for the exigent circumstance form,
15 which is just, you know, simply have any calls been
16 made. It is just outgoing. And, if so, location.

17 Q But her mother indicated that she was calling her?

18 A Right. Yes, sir.

19 Q After work?

20 A Yes, sir.

21 Q And was unable to speak to her?

22 A Yes, sir.

23 Q Did you learn what time she actually clocked out
24 from Walmart?

25 A She clocked out from work at 10:09 p.m.

1 Q And she was on video walking out to her car?

2 A Yes, sir, with several co-workers as well.

3 Q Now, at this point you also received some more ATM
4 photos, correct?

5 A Yes, sir.

6 Q And then made -- tried to make contact with
7 Ms. Roach once again, the mother, Ms. Roach, is
8 that correct?

9 A Yes, sir.

10 Q You said that Ms. Roach indicated that Deandra was
11 supposed to go back to work that day on Friday, the
12 29th. What time was her shift supposed to begin?

13 A At 5:00 p.m.

14 Q And what information did we learn about whether or
15 not she was there?

16 A She never showed up to work that night.

17 Q At this point, what is your protocol with moving
18 forward with your investigation?

19 A So while this was ongoing, I was constantly
20 relaying this information to my captain because of
21 the red flags, you know, that had come up in the
22 case. As I was updating him, a fellow investigator
23 had walked into his office at the same time that I
24 did, right at 5:00 o'clock, shortly after
25 5:00 o'clock.

1 Q And what information was provided by the
2 investigator?

3 A He had just gotten into the office, meaning he had
4 just gotten out of his car. Heard on the radio
5 that a female had been found deceased.

6 Q Did he indicate where?

7 A Yes, off Farrow Road.

8 Q Typically, with these missing persons
9 investigations, at that point, is your role to
10 continue investigating the case to the end or is
11 there another faction of the department that
12 handles that?

13 A Yes, sir. So from there, my missing persons case
14 was closed after it was identified to be Deandra.
15 From there, I went ahead and transferred all the
16 information I got, all the pictures, the phone
17 records to the Major Crimes Unit because it had
18 turned into a homicide.

19 MR. GOLDBERG: Beg the Court's indulgence one
20 moment.

21 (Pause.)

22 Q Just looking at your notes here, what other tasks
23 did you do? Did you request any other records?

24 A Yes, I did. I requested Andre Heatley's phone
25 records.

1 Q Did you also receive those and pass them along to
2 investigators?

3 A Yes, sir.

4 Q And was that the end, for lack of a better word, of
5 your investigation -- your missing persons
6 investigation?

7 A Yes, sir.

8 MR. GOLDBERG: Thank you. That's all I have.

9 THE WITNESS: Thank you.

10 THE COURT: Yes, sir?

11 CROSS-EXAMINATION

12 BY MR. O'NEIL:

13 Q Good morning, Ms. Nations.

14 A Good morning.

15 Q I just want to be clear. You were a little bit
16 noncommittal when you were asked on direct about
17 this. When you talked with Ms. Cynthia Roach about
18 her daughter's background, she gave you two names?

19 A Yes, sir.

20 Q She just didn't give you the name -- when I say
21 she, Ms. Cynthia Roach, just didn't give you the
22 name of Andre Heatley?

23 A Yes, sir.

24 Q She gave you two names, correct?

25 A Yes, sir.

- 1 Q And the other name was Kelvin Davis?
- 2 A Yes, sir.
- 3 Q And you -- part of your investigation, when you
4 gathered the video footage from Walmart and the ATM
5 footage from the various locations, that was
6 building a timeline of kind of the last known
7 verified places that you saw either the victim or
8 her belongings at, fair enough?
- 9 A Yes, sir.
- 10 Q So what we know uncontroverted is that she clocked
11 out from Two Notch Walmart at 10:09 that night,
12 correct?
- 13 A Yes, sir.
- 14 Q And correct me if I'm wrong here, but we know
15 uncontroverted that she was in the parking lot of
16 that same Walmart at 10:12 that night?
- 17 A Yes, sir.
- 18 Q And that's on the surveillance video?
- 19 A Yes, sir.
- 20 Q That's not anybody's speculation, that's concrete
21 evidence?
- 22 A Yes, sir.
- 23 Q And we know -- and all that's on the Two Notch side
24 of Richland County?
- 25 A Yes, sir.

1 Q Fair enough? And we know that at some point --
2 well, we know that she's found off Farrow Road,
3 also in the northeast, kind of in the Blythewood
4 area, fair enough?

5 A Yes, sir.

6 Q All right. And we know that she leaves the parking
7 lot around 10:12. We know that, from your
8 investigation, that the video stills of her ATM
9 card being used -- and I want to make sure I'm
10 absolutely clear on this -- is at 11:01 the same
11 night?

12 A Yes, sir.

13 Q So we have her leaving Walmart parking lot in her
14 car, no evidence of foul play at that point,
15 correct?

16 A Yes, sir.

17 Q At 10:12 that night on the Two Notch side?

18 A Yes, sir.

19 Q And we have her ATM card being used over in Irmo
20 area, correct?

21 A Yes, sir.

22 Q Do you have the exact address for that?

23 A No, sir.

24 Q You know it is in Irmo -- that Palmetto Citizens is
25 over in Irmo?

- 1 A Yes, sir.
- 2 Q At 11:01?
- 3 A Yes, sir.
- 4 Q All right. So that's about, if my math's correct,
5 48 minutes? Is my math correct on that?
- 6 A Yes, sir.
- 7 Q Forty-eight minutes later?
- 8 A Yes, sir.
- 9 Q But several miles apart from each other, fair
10 enough?
- 11 A Yes, sir.
- 12 Q You pulled both -- eventually, you pulled both Ms.
13 Roach's phone records and you pulled, you said,
14 Mr. Heatley's phone records, correct?
- 15 A Yes, sir.
- 16 Q Did you see any calls made by Mr. Heatley to
17 Ms. Roach?
- 18 A I did not get that. I went ahead and transferred
19 everything to Major Crimes.
- 20 Q But you did say -- you did an exigent circumstance
21 warrant to see what calls she made and what calls
22 she received that night?
- 23 A What calls she made, yes, sir.
- 24 Q Also what calls she received or just what calls she
25 made?

- 1 A I just got calls that she made.
- 2 Q Did she make any calls to Mr. Heatley that night?
- 3 A No, sir.
- 4 Q When you got Mr. Heatley's records, did he make any
5 calls to Ms. Roach that night?
- 6 A I never looked at his records.
- 7 Q You didn't look at them at all?
- 8 A Right, yes, sir.
- 9 Q You just sent them straight on to Major Crimes?
- 10 A Yes, sir.
- 11 Q And then after that, your kind of involvement was
12 over?
- 13 A Yes, sir.
- 14 Q And you said that the ATM card was attempted to be
15 used at 11:01 p.m. that night, correct?
- 16 A Yes, sir.
- 17 Q At 11:13 that night?
- 18 A Yes, sir.
- 19 Q And then 12:24, essentially the next morning, but,
20 you know, an hour or so later, but that same -- the
21 following morning at 12:24 or 12:25?
- 22 A Yes, sir.
- 23 Q And those were declined by the bank?
- 24 A Yes, sir.
- 25 Q Do you know why?

1 A The wrong pin number was entered too many times.

2 Q The wrong pin number was entered too many times?

3 A Yes, sir.

4 MR. O'NEIL: Beg the Court's indulgence, Your
5 Honor.

6 (Pause.)

7 MR. O'NEIL: That's all I have, Your Honor.

8 MR. GOLDBERG: Nothing further.

9 THE COURT: You can step down.

10 (Witness steps down.)

11 THE COURT: Call your next witness.

12 MR. FYALL: The State calls Mary Veal, Your
13 Honor.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the
19 testimony you are about to give in this case will
20 be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: Yes.

23 THE CLERK: Thank you. Have a seat in the
24 witness stand, please.

25 (Witness seated.)

1 THE CLERK: State your name for the record.

2 THE WITNESS: My name is Mary Veal.

3 MARY VEAL,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FYALL:

7 Q Hello, Ms. Veal. How are you?

8 A Good.

9 Q Can you just tell us where you're from?

10 A I'm from South Carolina, Columbia, South Carolina.

11 Q Your whole life?

12 A Yes.

13 Q Did you know Deandra Roach?

14 A Well, I was acquainted with her from where I work.

15 Q And where did you work?

16 A Walmart.

17 Q Which one?

18 A On Two Notch Road.

19 Q Which section did you work in?

20 A I worked in apparel, which is the clothing area.

21 Q And which area did she work in?

22 A Electronics.

23 Q On January 28th, 2016, did you see her at work that
24 day?

25 A Yes, I did.

1 Q What time -- well, did you talk -- did you interact
2 with her?

3 A With, Hey, how you doing, in passing by.

4 Q What time did you get off and what time did she get
5 off from work?

6 A Well, I can tell you this. I may have gotten off
7 at anywhere between 10:00 and 10:20 p.m. that night
8 and walked out probably about 10:30 or a little
9 later, 10:30, about 10:35, something like that.

10 Q When you left Deandra, was she off work?

11 A Well, we all met up right before we all walked on
12 out of the door. So she was coming -- it was a
13 group of us coming first and then her and another
14 young lady joined us as we walked on out.

15 Q All right. Did she have any trouble finding her
16 car?

17 A Yeah, she was -- she was saying, I can't find my
18 car. So she hit the panic button, and it was in
19 the front, but another car was beside it. So when
20 she hit the panic button, it lit up, and she was
21 saying, Oh, there's my car. So she was one of the
22 first people to get in their car and leave out.

23 But before all of that, she was, Everybody be
24 careful. If you're heading home, go home. If
25 you're not, at least let someone know where you

1 going. And from that moment on, that was the last
2 I saw her.

3 MR. FYALL: No further questions, Your Honor.

4 THE COURT: Yes, sir?

5 CROSS-EXAMINATION

6 BY MR. O'NEIL:

7 Q Ms. Veal, you said that you -- what time did you
8 get off that night?

9 A It may have been anywhere between 10:00 and about
10 10:20.

11 Q And how long after you got off did you head into
12 the parking lot, do you remember?

13 A If it was 10:20, it would have been 10 minutes, 10
14 to 15 minutes before we actually got to the parking
15 lot. And then if it was 10:00 o'clock, then we
16 stayed in the store about a good 20 minutes just
17 inside the store. And then once we all -- a group
18 of us, we all made our way to the door. And as we
19 got to the door -- before we got to the door, like
20 I say, her and the other young lady joined us
21 before we even got all the way out of the door.

22 Q Ms. Veal, I want to be absolutely clear. I don't
23 want to put words in your mouth here. You said
24 probably the earliest you think you got off would
25 have been 10:00 o'clock?

1 A Yes. In between -- my schedule will say 10:00, but
2 we don't always get off at 10:00 exactly on the
3 dot, so within me being inside the store -- we was
4 in the store. And like I say, about 10:30, 10:35
5 is when all of us finally was outside the store
6 getting into cars and leaving the parking lot.

7 Q Yes, ma'am. So according to your memory from that
8 night, you would have got off around 10:00 o'clock
9 and would have been leaving the parking lot around
10 10:30, 10:35?

11 A Yes.

12 Q That's what you remember?

13 A Yes.

14 Q You said -- so that would have been 10:35 that
15 night at Two Notch Walmart?

16 A Yes.

17 Q And I think Ms. Roach left first from the group?

18 A Yes. Her car was the closest to -- exiting the
19 door, her car was right across from the door that
20 we exited from.

21 Q And you didn't see which direction she went?

22 A No. When she got in the car, the rest of us talked
23 among each other. She got in the car, she crunk
24 the car up, and she left the parking lot.

25 Q And according to your memory, that would have been

1 about 10:30, 10:35?

2 A. Yes.

3 MR. O'NEIL: That's all I have, Your Honor.

4 THE COURT: Any follow-up questions?

5 MR. FYALL: No, ma'am.

6 THE COURT: All right. You may step down.

7 (Witness steps down.)

8 THE COURT: Call your next witness.

9 MR. GOLDBERG: The State calls Maurice
10 McKnight.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible and raise your right hand.

14 (Witness complies.)

15 THE CLERK: Do you swear the testimony you're
16 about to give in this case will be truth, the whole
17 truth and nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat in the witness stand,
20 please.

21 (Witness seated.)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Maurice McKnight.

24 MAURICE MCKNIGHT,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. GOLDBERG:

3 Q Mr. McKnight, good morning.

4 A Good morning.

5 Q Can you tell the jury a little about yourself, who
6 you are, where you're from, what you do?

7 A Well, basically I just work at Walmart right now,
8 but I attend the Full Sail University over in
9 Florida.

10 THE COURT REPORTER: I'm sorry, what
11 university?

12 A Full Sail University. I'm doing an online program
13 for the video game design. I work at Walmart right
14 now, been there for about for four years.

15 Q That would be Walmart on Two Notch Road?

16 A Yes, sir.

17 Q Is that in the northeast part of town?

18 A Yes, sir.

19 Q Okay. And you've been working there for that whole
20 time?

21 A I took a break maybe about six months and I came
22 back.

23 Q And were you working there back in January of 2016?

24 A Yes, sir.

25 Q What was your job at the Walmart at that time?

- 1 A I worked in the electronics department.
- 2 Q Did Deandra Roach work in electronics as well?
- 3 A Yes, sir.
- 4 Q And how long did y'all work together?
- 5 A It was almost a year.
- 6 Q Okay. And was she working there on the night of
- 7 January 28th, 2016?
- 8 A Yes, sir.
- 9 Q Okay. You guys were working together?
- 10 A Yes, sir.
- 11 Q How long was your shift that day?
- 12 A About eight hours. It would usually be like -- I
- 13 think it was 1:00 to 10:00. I usually worked night
- 14 shifts back then.
- 15 Q Had there been any meetings that day for work?
- 16 A There were actually a couple.
- 17 Q Did you attend one that morning?
- 18 A Yes. Oh, you mean work meetings?
- 19 Q Uh-huh?
- 20 A Oh, no.
- 21 Q Okay. What time do you recall Deandra coming to
- 22 work that day?
- 23 A It was either 12:00 or 1:00.
- 24 Q When does -- does she usually work in the afternoon
- 25 as well?

1 A Yes, sir.

2 Q Starting at 5:00 o'clock?

3 A Yes.

4 Q And that 5:00 p.m. shift goes until 10:00 o'clock,
5 is that right?

6 A Yes, sir.

7 Q Was that the case on this particular day?

8 A As far as I can remember, yes.

9 Q And at the close of that 10:00 p.m. shift, was it
10 unusual for a group of you all to leave together at
11 the same time?

12 A Not really.

13 Q Did y'all leave as a group that night as well?

14 A Yes, sir.

15 Q And that would have included yourself, Deandra,
16 and who else?

17 A Brionna, Mary, a lady named KK. And that was it as
18 far as I can remember.

19 Q And when you got off work, is it fair to say that
20 you clocked out a little after 10:00 p.m.?

21 A Yes, sir.

22 Q If I told you that Deandra clocked out at 10:09,
23 would that sound about right?

24 A Uh-huh.

25 Q Upon clocking out, you walked out in the parking

1 lot?

2 A Yes, sir.

3 Q And at that point, where did Deandra go in terms
4 of -- did she go to her car?

5 A We all went out like the left side of the building
6 and we all just kind of talked a little bit and
7 then we all went our separate ways into the parking
8 lot. So from her, she came out the left door, she
9 would be going straight.

10 Q Okay. And, actually, did you and her then leave
11 the parking lot around the same time?

12 A Pretty much, yeah, around the same time.

13 Q This Walmart is on Two Notch. Can you describe
14 what else is in that general area?

15 A They have a gas station kind of on the corner.
16 There's a plaza. You have the Game Stop, a Dollar
17 Tree, Office Depot, I believe, and like a nail
18 salon, hair shop.

19 Q Is it kind of near where Two Notch meets
20 Sparkleberry Lane?

21 A Yeah, right on the corner where -- there used to be
22 a Ryan's there, but now they added a new
23 restaurant. But that's where the corner was where
24 we last kind of separated.

25 Q And when you come out of the Walmart, do you pull

1 straight onto Two Notch or do you go down a side
2 road to get --

3 A Yes, you go down a side road to get to Two Notch.

4 Q And did you do that on that night?

5 A (Nods affirmatively.)

6 Q Did you see Ms. Roach drive out as well?

7 A Yes, sir.

8 Q Was she in front of you or behind you?

9 A In front of me.

10 Q And when you get out on the side road, that runs
11 into Two Notch?

12 A Uh-huh.

13 Q Is there a traffic light there?

14 A Yes.

15 Q All right. And what happened at the traffic light?

16 A She went -- usually I guess she goes the opposite
17 direction.

18 THE COURT REPORTER: Can you speak in the
19 microphone?

20 A I'm sorry. She went the opposite direction, I
21 guess, what she usually drives.

22 Q Which is which direction?

23 A To the left.

24 Q She usually goes to the left, but she turned to the
25 right?

1 A Uh-huh.

2 Q Which way did you turn?

3 A I turned to the right.

4 Q Is it possible you have that backwards?

5 A I probably do.

6 Q You turned left, she turned right?

7 A Right.

8 Q So when you turned left on Two Notch, that's going
9 back kind of towards town, if you will, is that
10 right?

11 A Uh-huh.

12 Q And then to the right is towards Sandhills area?

13 A Yes, Sandhills area.

14 Q And after that time, did you ever have any contact
15 from Ms. Roach after that?

16 A No.

17 Q Any phone calls, text messages, did you ever see
18 her at work again?

19 A No.

20 MR. GOLDBERG: Thank you. That's all I have.

21 THE COURT: Mr. O'Neil?

22 MR. O'NEIL: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. O'NEIL:

25 Q Mr. McKnight, you don't have any notes from what

1 happened that night, do you?

2 A No.

3 Q You don't -- its been almost three years ago now,
4 correct?

5 A Yes, sir.

6 Q And some of your memory is a little bit fuzzy?

7 A Yes, sir.

8 Q Would that be fair to say?

9 A (Nods affirmatively.)

10 Q Some of the stuff you were kind of fuzzy on, you
11 were trying to just agree with what Mr. Goldberg
12 said happened that night?

13 A Yes, sir.

14 Q You don't have any specific knowledge of what time
15 you clocked out that night, do you?

16 A No.

17 Q You didn't keep your time card from three years
18 ago?

19 A No, sir.

20 Q So if Mr. Goldberg said it was around 10:09, you
21 agree with him, but you don't specifically
22 remember?

23 A Yes.

24 Q And I don't want your address, but what general
25 side of town did you live on back then?

1 A It was usually between closer to the middle of Two
2 Notch where like Bi-Lo or Walgreen's was. And then
3 my mom, she lived up in Lugoff, so it was kind of
4 back and forth between there.

5 Q So that's why when you left out of Walmart, you got
6 on the little side road Rivkin?

7 A Uh-huh.

8 Q And then Rivkin leads you to Two Notch?

9 A Yep.

10 Q That's the main thoroughfare there?

11 A Yes, sir.

12 Q That's why you turned left to go back that
13 direction?

14 A Yes, sir.

15 Q And you said Ms. Roach turned right?

16 A Yes, sir.

17 Q What's to the right of that?

18 A Like the Sandhills area. As far as -- I think it
19 was Pontiac, they had a Skateland out there too, a
20 couple restaurants, stores.

21 Q And if you were going to Farrow Road, which way
22 would you turn on Two Notch?

23 A Left.

24 Q So when you got on Two Notch, if you're going to
25 Farrow Road, you would turn left, correct?

1 A Uh-huh.

2 Q That's the most direct way to get to Farrow Road?

3 A Yes, the most direct way.

4 Q And if you are going -- you turn right, that's away
5 from Farrow Road?

6 A Uh-huh.

7 Q And it would take you longer to get to Farrow Road
8 if you turned right?

9 A Yes.

10 Q Do you know how long it takes you to get to Farrow
11 Road if you turn right?

12 A It all depends on the way that you go. You can
13 turn right and hit Sparkleberry. It will take you
14 to a back road. And after that, I think is
15 Brickyard. But if you take the left, you can just
16 go straight to North Brickyard.

17 Q It makes more sense if you're going to Farrow Road
18 to turn left than turn right?

19 A Uh-huh, yes.

20 Q Because right would be longer time-wise and
21 distance-wise?

22 A Uh-huh.

23 Q That's a yes?

24 A Yes, sir.

25 Q Was there any traffic out there that was memorable

1 to you that night?

2 A No, it was pretty late, so traffic is usually down
3 by then.

4 Q There was no roadwork that prevented you from
5 turning left that way, was there?

6 A No.

7 Q So if you wanted to go left and go towards Farrow
8 Road, you could have?

9 A Uh-huh.

10 Q And do you know how long y'all talked in the
11 parking lot before everybody got in the car and
12 left?

13 A Not really. I want to say maybe five, ten minutes.

14 Q Okay. So whatever time you clocked out, you think
15 you stayed in the parking lot between five and ten
16 minutes before everybody left?

17 A Yes, sir.

18 MR. O'NEIL: Beg the Court's indulgence, Your
19 Honor.

20 (Pause.)

21 MR. O'NEIL: Nothing further, Your Honor.

22 THE COURT: All right. Anything on redirect?

23 MR. GOLDBERG: Just briefly.

24 REDIRECT EXAMINATION

25

1 BY MR. GOLDBERG:

2 Q Mr. O'Neil asked you a lot of questions about how
3 long it would take to go this way or that way and
4 distance and time. You haven't actually timed off
5 or measured any of those different routes, correct?

6 A No.

7 MR. GOLDBERG: Okay. Thank you, Your Honor.

8 THE COURT: All right. You may step down.

9 (Witness steps down.)

10 MR. GOLDBERG: The State calls Brionna
11 Appleberry.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 testimony you are about to give in this case will
18 be the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you have a seat in the
22 witness stand, please.

23 (Witness seated.)

24 THE CLERK: State your name for the record.

25 THE WITNESS: I'm Brionna Appleberry.

1 BRIONNA APPLEBERRY,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GOLDBERG:

5 Q Good morning.

6 A Good morning.

7 Q Ms. Appleberry, if you could tell the jury a little
8 bit about who you are, where you're from, what you
9 do.

10 A Well, my name is Brionna Appleberry, and I'm
11 originally from Birmingham, Alabama.

12 Q And, I'm sorry, I am going to stop you. The court
13 reporter has got to hear everything you say, and
14 they've got to hear everything you say, so it's
15 kind of hard. So if you could speak into the
16 microphone, okay? Thank you.

17 A All right. Well, my name is Brionna Appleberry,
18 and I'm originally from Birmingham, Alabama. I
19 work at Palmetto Heart Hospital as an acute care
20 extender. So, yeah, that's it about myself.

21 Q All right, thank you. And back in January of 2016,
22 where were you employed?

23 A I was employed at Walmart on Two Notch Road.

24 Q That's the one out in northeast near Two Notch and
25 Sparkleberry?

1 A It is.

2 Q And what kind of work did you do at the Walmart
3 back then?

4 A I was a phone operator/sales associate.

5 THE COURT REPORTER: I'm sorry, I can't hear
6 you.

7 A I was a phone operator/sales associate.

8 Q Okay. How long did you work there?

9 A Four years.

10 Q And did you get to know Deandra Roach while you
11 worked there?

12 A Yeah, I know her. Yeah, I did.

13 Q How long did you guys work together, do you
14 remember?

15 A Not specifically.

16 Q Okay. Back on January 28th of 2016, was she
17 working with you that day?

18 A I believe so, yes.

19 Q Okay. Well, let me ask this. Did you ever see her
20 at work again after that day?

21 A No.

22 Q What department did she work in?

23 A She worked in electronics.

24 Q So how often would you come in contact with her at
25 work -- without saying what you guys talked about,

1 how often would you see her and talk to her at
2 work?

3 A Whenever she came over to apparel and talked to me.

4 Q Okay. Did that happen from time to time?

5 A Yes, from time to time, when she was passing
6 through.

7 Q And on the night of the 28th, what was her demeanor -
8 like that night?

9 A She was calm, regular, in my opinion. Well, when I
10 was talking to her, she was like that.

11 Q Okay. What time did you stop working that night?

12 A I got off around 10:00.

13 Q And at 10:00 o'clock or around that time, who all
14 was departing the store?

15 A It was me, Maurice, Mary, and KK, along with
16 Khirstin and Deandra.

17 Q Okay. And did you all walk out together?

18 A No. Me, Maurice, Mary, and KK walked together
19 first, and then Khirstin and Deandra were like
20 maybe a few seconds behind us.

21 Q All right. And when you walked out, where did
22 everybody go to?

23 A Well, first, we -- it's a breezeway towards the
24 front of the store on the grocery side, so me,
25 Maurice and Mary and -- me and Maurice, Mary, and

1 KK all met there. We all walked together and
2 stopped there. And Deandra and Khirstin came
3 behind us. And when they met up with us, that's
4 when we all walked out to the left side of the
5 store.

6 Q Towards the parking lot?

7 A Yes. Because it's like a door this way and a door
8 this way, and we took the left side out, yeah.

9 Q And did you see where Deandra went when she got
10 outside?

11 A Yeah. She was walking -- well, at first, she
12 couldn't find her car. She beeped her keys and an
13 alarm went off, and she walked to her car.

14 Q Did you immediately go to your car at that time?

15 A Yes. I was riding with Mary and KK, so we was
16 going together, walking together.

17 Q And did you and Mary stay and have conversation in
18 the parking lot for a few minutes?

19 A Not really. We was like just joking with each
20 other and just laughing while we was walking to the
21 car.

22 Q Okay. Did you see Deandra get in her car?

23 A Yeah, she did. She got in her car and drove off in
24 it, yeah, because she left before we did, you know.

25 Q She left before you did?

1 A Uh-huh.

2 Q Did you see which way she went when she left?

3 A No, I didn't.

4 Q Ms. Roach -- Ms. Appleberry, I want to show you
5 what has been marked as State's Exhibit 50. It's a
6 Walmart recording. Have you had an opportunity to
7 review that prior to today?

8 A Uh-huh.

9 Q Or today even?

10 A Uh-huh.

11 Q And does this look like the one that you reviewed?

12 A Yes.

13 Q Okay. And that was a video of the Walmart at --
14 what's the address at Walmart, is it 10060 Two
15 Notch Road, does that sound right?

16 A I haven't been there in like almost a year.

17 THE COURT REPORTER: I'm sorry, I couldn't
18 hear you.

19 A I haven't been there in like almost a year.

20 Q The video that you reviewed today, can you describe
21 what it showed?

22 A Well, it showed basically me, Maurice, KK, and Mary
23 all walking to the breezeway. And about maybe a
24 few seconds behind us, you see Khirstin and
25 Deandra walking to meet us. But then we all just

1 walk off.

2 Q And was the video that you viewed a fair and
3 accurate representation of how those events took
4 place that night?

5 A Yeah, I believe.

6 Q Okay.

7 MR. GOLDBERG: Your Honor, at this time we'd
8 offer State's 50 into evidence.

9 THE COURT: What's the number?

10 MR. GOLDBERG: 5-0, being the Walmart video.

11 THE COURT: Any objection?

12 MR. O'NEIL: No, Your Honor.

13 THE COURT: All right, it will be entered
14 without objection.

15 (WHEREUPON, State's Exhibit No. 50 was
16 marked for identification and received
17 into evidence.)

18 BY MR. GOLDBERG:

19 Q Can you see it, Ms. Appleberry?

20 A I can.

21 Q And does this appear to be the same video that you
22 reviewed earlier?

23 A (Nods affirmatively.) It is.

24 Q If you can just describe whenever you see people
25 that you recognize.

- 1 (Video plays.)
- 2 A Right there.
- 3 Q Uh-huh.
- 4 A In the white shirt, that's KK.
- 5 Q Okay.
- 6 A With the golden hair afro, that's Mary. Maurice is
7 the only male. And I'm the person that is carrying
8 the umbrella.
- 9 Q Okay. This would have been at the end of your
10 shift when you guys were leaving?
- 11 A Yes.
- 12 Q I know it's hard for you to see from all the way
13 over there, but if I told you that this video says
14 on the screen that this is 10:10 p.m., does that
15 sound about right?
- 16 A (Nods affirmatively.)
- 17 Q You have to answer verbally.
- 18 A Oh, yes. Right there in the blue jacket, that's
19 Khirstin. And in the black jacket with the stripe,
20 that's Deandra.
- 21 Q I want to make sure I've got it right. The blue
22 jacket here is Khirstin?
- 23 A Uh-huh, that's Khirstin.
- 24 Q And then right here?
- 25 A Is Deandra.

1 Q That's Deandra?

2 A Uh-huh.

3 Q And, again, after that is when, as you described,
4 you got in your cars and --

5 A Yes.

6 Q -- went your separate ways?

7 A Yes, sir.

8 Q After you left that night, did you ever get any
9 phone calls, text messages, were you ever contacted
10 by Deandra in any way whatsoever once you left
11 work that night?

12 A No, I wasn't.

13 MR. GOLDBERG: Thank you.

14 THE COURT: All right. Cross-examination?

15 MR. O'NEIL: No questions, Your Honor.

16 THE COURT: All right. Ma'am, you may step
17 down.

18 (Witness steps down.)

19 THE COURT: Call your next witness.

20 MR. FYALL: The State calls Pete Holloway.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you give in this case will be the truth,
2 the whole truth, and nothing but the truth, so help
3 you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. Have a seat in the
6 witness stand, please.

7 (Witness seated.)

8 THE CLERK: State your name for the record,
9 please.

10 THE WITNESS: My name is Pete Holloway, III.

11 PETE HOLLOWAY, III,

12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FYALL:

15 Q Good morning, Mr. Holloway. Can you tell us a
16 little about yourself, where you're from, where you
17 work?

18 A I live in Blythewood, South Carolina. And I did 23
19 years in the military. I currently work at the VA
20 Hospital as a medical supply tech. And I also work
21 at the South Carolina Youth Academy.

22 Q All right. I'm just going to take you back to
23 January 29th, 2016. Can you tell us what you did
24 that morning?

25 A Well, that morning, I got up and I took my dog out

1 for a little walk. And there's a field out there
2 where I normally take him so I can let him off the
3 leash so he can run around.

4 Q Where is that field?

5 A It's off of Farrow Road.

6 Q At the time, were there any sort of like buildings
7 or houses?

8 A At the time, there was -- the building was on
9 Wilson Boulevard, but behind that and all the way
10 to Farrow Road was all woods and then an open
11 field. The open field was -- if you didn't know
12 where to turn to get back there was, you'd probably
13 go right past it.

14 Q Got it. All right. When you walked your dog that
15 day, did you see anything?

16 A Well, that morning -- I don't remember, I think it
17 might have been around 9:00 or 10 o'clock -- I went
18 out there and I saw a vehicle parked off in a
19 distance up under a tree. And I didn't go down
20 there because I thought it was some people meeting
21 up for lunch, or whatever, and I didn't want them
22 to feel that I was being nosy.

23 Q So at that point, you saw a vehicle?

24 A Yes.

25 Q Could you see a body at that point?

1 A No, sir.

2 Q What did you do after that?

3 A I went back home, went out with my wife. And later
4 on that day, I went back out there.

5 Q All right. And tell us what you saw then.

6 A I saw -- when I pulled my truck in, I saw a car
7 door open and I saw somebody laying on the ground,
8 so I thought it was someone who had been drinking.
9 I said -- I walked down there with my dog to see if
10 they needed some help. And that's when I noticed
11 it was a female laying on the ground.

12 Q What did you do at that point?

13 A Well, I didn't have my dog on a leash, so I had to
14 pull him away. And then I knew she wasn't alive.
15 I saw the two bullet holes in her side. So I
16 called 9-1-1, called the police, and I had to run
17 back out to Farrow Road so they wouldn't pass that
18 turn. I had to put my dog in the car and go out to
19 Farrow Road.

20 Q All right. And why did you say you had to run back
21 up the road? Again, why did you run back out to
22 Farrow Road?

23 A Because I was a good distance in away from Farrow
24 Road.

25 Q All right. And you told law enforcement sort of

1 where to go?

2 A Yes, sir. It was -- I think it was an SCE&G right
3 across the street, and I told them to turn right
4 near there and that I would be standing out on the
5 road waiting on them.

6 MR. FYALL: All right. Beg the Court's
7 indulgence.

8 (Pause.)

9 BY MR. FYALL:

10 Q All right. Did law enforcement eventually show up?

11 A Law enforcement eventually came. The first vehicle
12 sped past the turn, but I got out there in time to
13 catch the next one.

14 Q All right. Did you tell law enforcement sort of
15 what you saw?

16 A Yes, sir.

17 MR. FYALL: All right. No further questions,
18 Your Honor.

19 THE COURT: All right. Any cross?

20 MR. O'NEIL: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. O'NEIL:

23 Q Mr. Holloway, do you remember what you had on that
24 morning?

25 A No, sir, I don't remember what I had on. Probably

1 some sweat pants, because that's what I normally
2 wear.

3 Q Were you out jogging that morning?

4 A No, sir.

5 Q Just walking your dog?

6 A Just walking my dog.

7 Q So sweat pants and sneakers or --

8 A Sneakers.

9 MR. O'NEIL: That's all I have, Your Honor.

10 THE COURT: Any redirect?

11 MR. FYALL: No, ma'am.

12 THE COURT: All right. Thank you, sir. You
13 may step down.

14 Any objection to this witness being excused?

15 (Witness steps down and is excused.)

16 MR. GOLDBERG: The State calls Anthony McNeil.

17 Your Honor, can we approach briefly?

18 THE COURT: Yes, sir.

19 (WHEREUPON, a bench conference was held

20 in the presence of the jury but out of

21 the hearing of the jury.)

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the

24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Have a seat in the
7 witness stand, please.

8 (Witness seated.)

9 THE CLERK: State your name for the record.

10 THE WITNESS: Anthony McNeil.

11 ANTHONY MCNEIL,

12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GOLDBERG:

15 Q Mr. McNeil, can you tell the jury a little bit
16 about yourself?

17 A I'm a paramedic with Richland County.

18 Q How long have you been doing that?

19 A This is my eleventh year.

20 Q Eleventh year. Can you describe generally what it
21 is that a paramedic is responsible for doing?

22 A Our responsibility is to treat patients and
23 transport them to the nearest appropriate facility
24 to provide care.

25 Q And do you still do that currently?

1 A Yes.

2 Q Okay. And were you doing that back on January the
3 29th of 2016?

4 A Yes.

5 Q And did you have an opportunity to respond out to
6 the area near 10771 Farrow Road here in Richland
7 County?

8 A Yes.

9 Q Okay. Was that in regards to a body being located?

10 A Yes.

11 Q All right. And when you -- were you by yourself or
12 did you have somebody else with you?

13 A No, we operate typically with a partner. I was
14 with another person.

15 Q And how would you have been notified about a call
16 like that?

17 A I believe at the time we were at a substation in
18 Blythewood. We were called about an unknown call
19 out in a field. So we drove to the location and
20 then found the car there.

21 Q So when you got out to the location, what is your
22 plan of action? What do you do at that point?

23 A With any initial call, you do an initial scene
24 size-up and you just kind of take in what's going
25 on. So we arrived on scene. We saw a car and then

1 we saw a body next to the car.

2 Initially, we grabbed some equipment thinking
3 potentially the patient might still be alive. We
4 walked up, my partner and I, and deemed the patient
5 had been deceased and had been past the point of
6 doing anything. So we made the call at that time.

7 Q And did you actually make physical contact with the
8 body?

9 A I believe if I remember right, I checked her for a
10 carotid pulse and didn't feel anything.

11 Q And was the body -- how did the body feel to you at
12 the time when you touched it?

13 A Cold.

14 Q And so at that point, there's no action for you to
15 take at that point?

16 A No. Typically, anything outside like 30 minutes to
17 an hour, you start -- you're not going to get
18 anything, and even if there was, there's going to
19 be absolutely no quality of life.

20 Q And it didn't appear as though it had been that
21 recent?

22 A No, it didn't seem that way.

23 Q Again, this location that you went to, that was in
24 Richland County?

25 A Yes.

1 MR. GOLDBERG: I believe that's all I have for
2 you, sir. Thank you.

3 THE COURT: Yes, sir. Any cross?

4 MR. O'NEIL: Just briefly.

5 CROSS-EXAMINATION

6 BY MR. O'NEIL:

7 Q Mr. MCNEIL, what time did you arrive there on the
8 scene?

9 A I'm not sure off the top of my head. I think it's
10 in the report. I think it was some time after
11 5:00 p.m.

12 Q 5:00 p.m.?

13 A I believe so.

14 Q Do you know the address where you arrived at?

15 A I'm not -- Farrow Road. I'm not sure of the exact
16 address, I'm sorry.

17 Q Off Farrow Road in the Blythewood area of Richland
18 County?

19 A Yes, sir.

20 MR. O'NEIL: That's all we have, Your Honor.

21 THE COURT: Any redirect?

22 MR. GOLDBERG: No, ma'am.

23 THE COURT: All right, sir, you may step down.
24 (Witness steps down.)

25 THE COURT: Any objection to this witness

1 being excused?

2 MR. O'NEIL: No, Your Honor.

3 THE COURT: Sir, you're free to leave.

4 (Witness excused.)

5 MR. GOLDBERG: Your Honor, may we approach?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held
8 in the presence of the jury but out of
9 the hearing of the jury.)

10 THE COURT: All right, ladies and gentlemen of
11 the jury, I don't know if I told you this. My days
12 are mixed up. Yesterday, since it's Wednesday, I'm
13 not sure if I told you, but we'll take breaks every
14 hour to hour and a half. And so we have been going
15 about an hour and a half, maybe a little bit
16 longer, and so it's time for our morning break. So
17 we'll take a morning break, a lunch break, and then
18 an afternoon break. And then, of course, if you
19 have to go -- if you need a break, just raise your
20 hand and I'll take a break at that time.

21 But we are ready now for our morning break, so
22 I will send you all back into the jury room.
23 Please do not discuss the case. This will give
24 you -- we'll take about ten minutes so you can
25 refresh yourselves. I believe they have snacks and

1 drinks back there. And we will bring you back in
2 shortly.

3 Thank you.

4 (WHEREUPON, the jury retires to the jury
5 room at 11:14 a.m.)

6 THE COURT: All right. We will take about ten
7 minutes.

8 Just a note, please do not get -- wait until
9 the jury goes out, and then once they leave -- I
10 understand most of you have not been in court
11 before, but when the jury goes out, then you can go
12 out after that when we take breaks.

13 All right. Thank you.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Is the State ready?

16 MR. GOLDBERG: The State is ready.

17 THE COURT: Are you ready to bring them back
18 in? Do you have witnesses lined up until
19 lunchtime?

20 MR. GOLDBERG: I believe this witness might
21 take a little while, it's the crime scene
22 investigator, and then there's a photo evidence
23 lady. That's going to at least get us to about
24 12:30.

25 THE COURT: Okay. We'll probably break around

1 1:00.

2 (WHEREUPON, the jury came into open
3 court at 11:41 a.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: All right. We're ready to
6 continue with the State's case.

7 I ask the State to call its next witness.

8 MR. GOLDBERG: Thank you, Your Honor. The
9 State calls Franklin Rainsford.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you are about to give in this case will
16 be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. Have a seat in the
20 witness stand.

21 (Witness seated.)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Franklin Rainsford,

24 R-A-I-N-S-F-O-R-D.

25 FRANKLIN RAINSFORD,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. GOLDBERG:

4 Q Investigator Rainsford, where are you employed?

5 A The Richland County Sheriff's Department.

6 Q And how long have you been employed there?

7 A For about 11 years now.

8 Q Can you tell the jury a little bit about your
9 duties over those 11 years?

10 A Yes, sir. The first couple of years I was on
11 patrol as a road unit. And then in 2012, I was
12 promoted to crime scene investigator, where I have
13 been working as crime scene investigator since.

14 Q Tell the jury what exactly that means to be a crime
15 scene investigator and what that entails.

16 A Yes, sir. I respond to --

17 THE COURT REPORTER: Can you speak in the
18 microphone, please?

19 A Yes, ma'am. I respond to a variety of crime
20 scenes, anywhere from burglaries, assaults,
21 suicides or homicides. I document the scene,
22 collect evidence and package that evidence, return
23 it to headquarters for further processing or for
24 storage.

25 Q When you say processing evidence, what does that

1 mean?

2 A Generally that means looking at evidence for either
3 fingerprints, DNA to further identify who the
4 perpetrators or the victims may be.

5 Q Okay. And tell the jury a little bit about your
6 education and training along those lines.

7 A Yes, sir. I received my Bachelor of Science from
8 the University of South Carolina in 2005. And as
9 far as crime scene investigation, we have an
10 extensive in-house training, but I've also received
11 training in 2008, Courtroom Testimony from Black
12 and White Forensics in 2017. I attended the South
13 Carolina National Association for association
14 training. 2016, Digital Crime Scene Photography
15 from Forensic Training Source; Surviving Verbal
16 Conflict offered by Nolan Herring; Shooting
17 Analysis and Reconstruction training from Training
18 Forensic Sources; Examination and Comparison of
19 Footwear Evidence by Forensic ITC Services;
20 Advanced Blood Stain Pattern Analysis by Kish;
21 Crime Scene Investigation Certification
22 Preparation, 2014; Crime Scene Reconstruction by
23 Forensic Pieces; Clandestine Lab Investigation from
24 DEA in Quantico; Ethics and Forensic Science from
25 the West Virginia University; Crime Scene

1 Reconstruction by Bevel & Gardner; Crime Scene
2 Technology and Evidence Collection from Sirchie;
3 North Two Drug Identification from Sirchie; Crime
4 Scene Photography from Sirchie; and Blood Stain
5 Pattern Analysis from Bevel & Gardner.

6 I'm a current member of the International
7 Association for Identification, as well as the
8 South Carolina Division of International
9 Association for Identification.

10 I am currently a certified crime scene
11 investigator and a certified blood stain analyst.

12 MR. GOLDBERG: Your Honor, at this time we'd
13 offer Investigator Rainsford as an expert in crime
14 scene investigation analysis.

15 THE COURT: Any voir dire?

16 MR. O'NEIL: No voir dire, Your Honor.

17 THE COURT: Any objection?

18 MR. O'NEIL: No, Your Honor.

19 THE COURT: All right, ladies and gentlemen of
20 the jury, normally a person cannot give opinion
21 testimony. Normally, when a person testifies, they
22 must testify as to what they either saw, heard, or
23 sensed by smell, or something of that nature.
24 However, there is an exception when someone is
25 qualified because of education or experience. They

1 are permitted to give their opinion in certain
2 areas if the Court qualifies them that way.

3 The witnesses will be -- this witness will be
4 qualified in the area of crime scene analysis to
5 give opinion testimony in that area. That does not
6 mean that you must accept the opinion, but it is
7 evidence for you to use in any way you see fit and
8 give it the weight and credibility you believe is
9 appropriate.

10 Thank you.

11 Yes sir, you may continue.

12 MR. GOLDBERG: Thank you, Your Honor.

13 BY MR. GOLDBERG:

14 Q Investigator Rainsford, did you become involved
15 with the investigation of this case on November --
16 January the 29th of 2016?

17 A I did.

18 Q And tell the jury how you became involved and what
19 your first actions were.

20 A I first received a call to respond to the 10771
21 block of Farrow Road, which is an open field area.
22 When I arrived on scene, the scene was secured with
23 crime scene tape and the crime scene log was being
24 maintained.

25 In a field near a small grove of trees, I

1 observed the victim laying next to a silver in
2 color Honda. EMS was still on scene.

3 I then requested that Lieutenant Cavanagh, or
4 then Lieutenant Cavanagh, and Investigator
5 Schroder, and Investigator Lee also respond to the
6 scene just for additional help given the nature and
7 the size of the scene, requested for additional
8 crime scene investigators.

9 Deputy Coroner Ted Powell and Neeley also
10 responded to the scene at that time.

11 Q All right. Thank you. You talked about responding
12 to 10771. I show you this what has been marked as
13 State's 53 and ask you to take a look at it.

14 All right. So tell us generally where on this
15 map of Richland County you responded to.

16 A Generally between I-77 here and then Farrow Road.
17 Basically around the northern part towards
18 Blythewood.

19 Q Up here?

20 A Yes, sir.

21 Q Does this map reflect, it looks like some railroad
22 tracks?

23 A Yes, sir.

24 Q And so would it have been right about here?

25 A Yes, sir, in the middle of the field between those

1 two.

2 Q I'll show you another one. Same general area, but
3 a little closer in, State's 54. Farrow Road, is
4 that right?

5 A Yes, sir.

6 Q Okay. And can you describe where it was this crime
7 scene was located?

8 A It was in an open field surrounded by a couple of
9 industrial buildings, but it was inside this field
10 around a small grove of trees.

11 Q And how did you make entry into the field?

12 A There's a small dirt road entrance off of Farrow
13 Road.

14 Q Okay. Now, looking at State's 55, is that a little
15 closer shot of that field?

16 A Yes, sir. And as I said, the entrance was here off
17 of Farrow Road, came into the dirt road. Then this
18 would be the grove of trees about where we found
19 the vehicle.

20 Q Okay. You can have a seat.

21 (Witness is seated.)

22 Q All right. So you were talking about who all was
23 on scene at the time and what you observed when you
24 first walked up. What is your goal in conducting
25 this crime scene investigation at this time?

1 A To preserve any evidence located and collect it for
2 future processing.

3 Q What did you observe about the vehicle as you
4 approached it?

5 A I observed that the vehicle doors were closed, that
6 the front passenger window was damaged, shattered
7 out. There were several possible impact points to
8 the vehicle.

9 Q All right. And did you go inside the vehicle at
10 that time?

11 A I did take overall photographs of the photo and
12 some initial photographs of the inside interior of
13 the vehicle.

14 Q And I will have you look at what has been marked as
15 State's 2 through 9. Take a look at those and talk
16 about generally what those are photos of.

17 A These would be photographs of the vehicle and its
18 condition at the time of the incident.

19 Q And do those photos fairly and accurately depict
20 how the vehicle and its contents appeared on that
21 night?

22 A They do.

23 MR. GOLDBERG: Your Honor, at this time, I
24 would offer State's 2 through 9 into evidence.

25 THE COURT: Any objection?

1 MR. O'NEIL: No, Your Honor.

2 (WHEREUPON, State's Exhibit Nos. 2 - 9
3 were marked for identification and
4 received into evidence.)

5 BY MR. GOLDBERG:

6 Q Now, you said you observed some impact points, is
7 that right?

8 A Yes, sir.

9 Q What is an impact point?

10 A It's where a projectile possibly passes or hits the
11 target. In this case, it would be the vehicle.

12 Q Okay. I'm going to show you State's 2 and 3. If
13 you could point out to the jury what you're
14 referring to.

15 A The possible impact point here would be on the
16 exterior of the driver's door. And then on this
17 photograph, this is a photo of the interior of the
18 same driver's door where you can see possibly two
19 visible impact points to the vehicle door.

20 Q All right, thank you. And you also indicated there
21 was shattered glass that you observed?

22 A Yes, sir. The front driver's passenger seat, glass
23 was shattered and damaged.

24 Q What about the front -- well, take a look at the
25 photos, take a look at 6 through 8 and Number 2.

1 Is it the driver's side or the passenger side
2 window that was shattered?

3 A Oh, the passenger side.

4 Q Passenger side?

5 A Sorry. The front passenger side was damaged and
6 there was broken glass on the interior of the
7 vehicle on the passenger side.

8 Q Can see the broken glass in those photos?

9 A Yes, sir.

10 Q And where is it located?

11 A Along the floorboard, predominantly in the -- on
12 the front passenger side. There's glass in the
13 front passenger seat and one in the back.

14 Q And then also in -- well, at that point you didn't
15 go inside the car, correct, and really process it
16 at that point, right?

17 A No, sir, I just photographed the vehicle as it was
18 at that point.

19 Q At this point we'll stay outside the car for a
20 minute. And you indicated -- what did you observe
21 on the actual seats?

22 A There were reddish-brown stains believed to be
23 blood on the driver's seat and door.

24 Q And can you point that out in State's 4 and 5?

25 A This is the open driver's door. You can see

1 reddish-brown stains in the seat, then along the
2 floorboard area. A little bit darker photograph,
3 but more showing the red-brown stains.

4 Q Thank you. State's 4 and 5 are stains in the car
5 and State's 2 and 3 those impact points.

6 All right. What did you do next?

7 A Then I observed the victim lying next to the
8 vehicle on the driver's side. She was wearing a
9 black in color jacket, a blue Walmart vest, dark
10 colored pants, and brown boots. I observed
11 possible drag marks between her and the vehicle's
12 driver's side door. The victim's jacket and shirt
13 appeared to be pulled up towards her head, towards
14 her right shoulder, in fact. I observed injuries
15 to the victim's right side. There was also injury
16 to the victim's left wrist and left breast.

17 Just doing a quick visual inspection, there
18 was a possible projectile located behind the left
19 ear. I did not collect anything from the victim at
20 that point. There was also another reddish-brown
21 stain next to the victim, which I labeled RB-1 on
22 the ground.

23 Q Okay. I want to show you a few more general shots
24 here. These are what's been marked as State's 10
25 through 14. And if you could describe what those

1 are photos of.

2 A These photographs are of the vehicle as I saw it
3 that evening, kind of showing you the relation to
4 the small grove of trees in the open field, the
5 position of the victim.

6 Q The position of the victim related to the vehicle?

7 A Correct.

8 Q All right. And do those photos fairly and
9 accurately depict how all that appeared on that
10 day?

11 A They do.

12 MR. GOLDBERG: Your Honor, at this time we
13 would move State's 10 through 14 into evidence.

14 THE COURT: Any objection?

15 MR. O'NEIL: No, Your Honor.

16 THE COURT: All right, no objection.

17 (WHEREUPON, State's Exhibit No. 10 - 14
18 were marked for identification and
19 received into evidence.)

20 BY MR. GOLDBERG:

21 Q So, again, State's 10, what is that?

22 A It's showing the vehicle behind the crime scene
23 tape. The victim can be seen on the ground next to
24 it near the small grove of trees.

25 Q And that was prior to anybody moving or touching

1 anything at that point, correct?

2 A EMS would have already been on scene.

3 Q Okay.

4 A But prior to Crime Scene Units collecting any
5 evidence out of the scene.

6 Q All right. State's 12, here's another shot of?

7 A Correct, it a shot of the vehicle from the
8 passenger side.

9 Q And, again, the passenger side window had been
10 what?

11 A It's damaged, broken out.

12 Q And 13 -- 11, 13, and 14 are just additional
13 identifying photos of the vehicle, is that right?

14 A Correct.

15 Q And state's 11 here, you referenced a group of
16 trees nearby?

17 A Yes, sir.

18 Q And some pine straw as well. What are cartridge
19 casings?

20 A Cartridge casings are -- after a bullet is fired,
21 it is ejected from the gun itself. It's just a
22 spent shell cartridge.

23 Q And is it common to locate those at crime scenes?

24 A It is.

25 Q All right. Did you locate some in this case?

1 A I did.

2 Q All right. Can you talk about that?

3 A Several fired cartridge casings were located. They
4 were -- I located them and marked them Numbers 1
5 through 17, 19 through 21, A, B, C, G, and H.

6 Q When you say markers, what is the purpose of using
7 a marker and what is that?

8 A Just for photography, so I can locate and measure.
9 I oftentimes will measure these cartridge casings
10 between two given points. And for identification
11 when I photograph them later so we can go back and
12 try to reconstruct the scene, if necessary.

13 Q And are shell casings something that are readily
14 apparent to the eye when you come to the scene?

15 A Sometimes they are. Other times, given the nature
16 of the hour, if it's late in the evening, sometimes
17 they can be kicked under the sand, under pine
18 straw. So generally they are visible, but
19 sometimes we have to go back and do a more thorough
20 search.

21 Q So is another use of the markers to note where they
22 are located so that you know that they have been
23 addressed?

24 A Yes, sir.

25 Q So you marked the shell casings. What else did you

1 find while you were out there?

2 A I think we also found cigarette butt, bottle of
3 gel, a Skoal can, used condom. I believe that was
4 it.

5 Q Were you the only crime scene investigator out
6 there that night?

7 A I was not.

8 Q Who else was working that day?

9 A At the time it was Lieutenant Cavanagh, now Captain
10 Cavanagh, Sergeant Tim Lee, and Investigator
11 Schroder.

12 Q Was everybody kind of working together to process
13 the scene, or is one person in charge, how does
14 that work?

15 A We generally work together to try to be as
16 efficient as possible and locate as much evidence.
17 We do designate different responsibilities to the
18 investigators.

19 Q And were you tasked with collecting the shell
20 casings that were located on that particular day?

21 A I did.

22 Q All right. I'm going to show you a group of photos
23 here that have been marked as State's 15, and then
24 17 through 27, as well as 28 through 47. Take a
25 look at those.

1 A One group shows the overall photographs of the
2 markers that I placed down indicating where the
3 fired cartridge casings were collected. And then
4 this packet shows a close-up photo of the
5 individual cartridge casings that I collected.

6 Q Do all of those photos or each of those photos
7 fairly and accurately depict the scene, the markers
8 and the casings as they appeared on the 29th of
9 January?

10 A They do.

11 MR. GOLDBERG: Your Honor, at this time, we'd
12 offer State's 15, and 17 through 47 into evidence.

13 THE COURT: Any objection?

14 MR. O'NEIL: No, Your Honor.

15 (WHEREUPON, State's Exhibit No. 15 was
16 marked for identification and received
17 into evidence.)

18 (WHEREUPON, State's Exhibit Nos. 17 - 47
19 were marked for identification and
20 received into evidence.)

21 MR. GOLDBERG: Your Honor, permission for the
22 witness to step down?

23 THE COURT: Yes, sir.

24 MS. GOLDBERG: Come on down.

25 (Witness steps down.)

1 BY MR. GOLDBERG:

2 Q If you could, sir, just kind of talk about these
3 photos generally and the markings and what they are
4 and what they depict to the jury for this crime
5 scene. If you can reference the number of the
6 photo.

7 A State Number 15, here we have the small group of
8 trees --

9 THE COURT REPORTER: I am going to need him to
10 face this way.

11 A -- a small group of trees off -- on the left side
12 of the photograph we have a grouping of markers in
13 the pine straw. There's her vehicle. And then
14 kind of forward of the vehicle, there's another
15 grouping of fired cartridge casings also labeled,
16 marked.

17 Q And the body in the photo?

18 A That is down here to the left side of the vehicle.

19 Q So you had two different groupings, one here by the
20 pine straw, and then one kind of closer to the
21 passenger side, is that right?

22 A Correct.

23 Q Okay.

24 A Here's another side of the same markers and the
25 vehicle, just a little bit different angle.

1 Showing the grouping of cartridge casings in the
2 pine straw, and then further back in the same area.

3 Q And each marker represents?

4 A One fired cartridge casing.

5 Q One fired cartridge casing, which would,
6 presumably, come from one bullet, correct?

7 A Correct.

8 Q All right.

9 A Another angle of the same area of the groupings by
10 the vehicle and then over by the grove of trees,
11 same markers. And here's the passenger side of the
12 vehicle, there is a cartridge --

13 Q State's 19?

14 A Yes, sir. Exhibit 19. Showing a cartridge casing
15 by the passenger side of the vehicle. And then two
16 other cartridge casings toward the passenger side
17 of the vehicle.

18 Q Now, looking at State's 19 here, you said there was
19 a marker by the passenger side of the vehicle.

20 That's Marker C?

21 A C, correct.

22 Q Okay. Go ahead.

23 A State's Exhibit 20. We have a photo of the
24 grouping of fired cartridge casings that just
25 forward the passenger side of the vehicle.

1 Q All right. When we were talking about Casing C,
2 I'm going to show you State's 23 and 24.

3 A This is State Exhibit 23. The marker labeled C
4 with the cartridge casing -- fired cartridge casing
5 right there. And then just another shot of the
6 same fired cartridge casing labeled C.

7 Q And that's just laying on the ground as it was
8 found on that day?

9 A Correct.

10 Q And Marker 8, if you'll talk about that in 25 and
11 26.

12 A State's Exhibit 25, Marker H, showing the
13 relationship between fired cartridge casing and
14 this was actually more towards the rear of the
15 vehicle, the back tire. Marker H.

16 And State's 26 is a close-up photograph of
17 Marker H and the fired cartridge casing as it was
18 when found.

19 Q All right. And then -- we don't have to go through
20 them individually, but 28 -- State's 28 through 47,
21 those are all up-close, I guess, photos of the
22 casings, is that right?

23 A Correct.

24 Q And, again, what is the purpose of taking these
25 particular photos?

1 A To identify the cartridge casings as they were
2 found at the scene at the time.

3 Q All right. Thank you. You can have a seat.
4 (Witness is seated.)

5 Q So all in all, how many cartridge casings were
6 collected from the scene that night?

7 A Twenty-five.

8 Q Twenty-five. How do you physically collect that
9 evidence?

10 A While wearing appropriate protective gear, in this
11 instance, gloves, I would collect each one into an
12 individually marked little manila envelope, label
13 it with a marker, and seal it, and transport it
14 back to headquarters.

15 Q Each one of them individually sealed?

16 A Correct.

17 Q I'm showing you what has been marked as State's
18 Exhibit 52. Can you tell the jury what that is?

19 A These are the fired cartridge casings that I
20 collected from the scene that night. Each one is
21 individually labeled and marked as to which marker
22 they were collected from.

23 Q And for the record, the name, if you will, of each
24 marker that you collected was what? What were
25 their numbers or designations?

1 A Fired Cartridge Casing 1 for Marker 1, Fired
2 Cartridge Casing 2 for Marker 2, so forth and so
3 on.

4 Q All the way through what?

5 A One through 14 on the first one. 15, 16, 17, 19,
6 20, 21, then A, B, C, G, and H.

7 Q One through 17, 19 through 21, A, B, C, G, and H?

8 A Correct.

9 Q Those were the markers that are noted in the
10 photographs for each casing found on the ground?

11 A Correct.

12 Q And that's what was collected?

13 A Correct.

14 Q And sealed up. And did you have an opportunity to
15 do any further examination on these casings, 1
16 through 17, 19 through 21, and A, B, C, G, and H?

17 A I did. They were transported back to headquarters
18 by myself where I processed them for latent prints
19 and DNA.

20 Q What does it mean to process something for latent
21 prints?

22 A We try to enhance any fingerprints that may be on
23 the evidence itself. The method I used was
24 cyanoacrylate, which is commonly referred to as
25 super glue fuming. They're put into the chamber

1 with the super glue, brought up to a certain
2 temperature where the super glue would adhere to
3 any possible latent prints. After that, I dusted
4 it with the black powder. And at that point, I
5 look to see if there were any fingerprints that
6 were developed from the cartridge casing
7 themselves.

8 Q And is that the process that you used when
9 analyzing these casings?

10 A It is.

11 Q And what results, if any, did you obtain?

12 A I did not collect any latent prints from the fired
13 cartridge casings, which is not unusual.

14 Q Why is that?

15 A Just because given the substrate and the surface of
16 the cartridge casing, the environmental factors,
17 when they were fired, how long they had been out
18 exposed to the environment. So it's not at all
19 unusual to not find fingerprints on a cartridge
20 casing.

21 Q Okay. And what did you do with the casings after
22 that?

23 A After processing for latent prints, I collected a
24 swab from each cartridge casing individually, each
25 of those swabs. And to collect a swab, I take a

1 one-time sterile swab, moisten it with water --

2 Q Like a Q-tip?

3 A Yes, sir. A Q-tip swab, moisten it with distilled
4 sterile water, rub it against the item, and then
5 package it in a single-use cardboard box, labeled
6 it with the case number, location where I got it
7 from. As an example, Fired Cartridge Casing 1.
8 Then submitted it to evidence for holding and
9 further processing.

10 Q So the fingerprint test that you did, you did that
11 on each of the physical shell casings and the swabs
12 are packaged separately, is that correct?

13 A Correct.

14 Q Because you're not testing swabs, correct, you were
15 just actually getting the swab, correct?

16 A I collect the swab from the item, package it, and
17 then our DNA department would be the ones to
18 actually run the DNA.

19 Q Okay. So once you did that, these were sealed up
20 and submitted into evidence?

21 A Correct.

22 Q This is State's 52 again on the fired cartridge
23 casings. They are out of your hands at that point?

24 A Correct. Once I submit them to evidence, they will
25 go -- the cartridge casings will go to our firearms

1 division and the DNA swabs will go to our DNA.

2 Q And for the sake of explanation, when you say
3 submit to evidence, what does that actually mean?

4 A I seal the package up with the evidence tape, date
5 and initial, then take it down -- well, downstairs
6 to our evidence and property room where they will
7 log it in, maintain the chain of custody of the
8 item until it is checked out by another division or
9 kept for safekeeping.

10 Q When you say downstairs, is that at the Richland
11 County Sheriff's Department?

12 A It is.

13 Q Okay. So when you seal this up and sign it, what's
14 the date which you did that?

15 A They were submitted January 30th, 2016, at 1315.

16 Q All right. That, again, is State's 52. How long
17 were you at the scene?

18 A The first night, from about 5:00 o'clock until a
19 little after 10:00 that night.

20 Q P.M.?

21 A Yes, sir.

22 Q You said the first time. You returned out there,
23 is that right?

24 A I did. I returned the next day with Captain
25 Cavanagh and Investigator Schroder to conduct

1 another search during the daylight hours. Given
2 the timeframe that we went out there the previous
3 night, it was dusk going into full nightfall. We
4 returned out there to search for further evidence.

5 Q And is that unusual to go back to a scene a second
6 time like that?

7 A It's not. Especially depending on the
8 circumstances, the time of day. Sometimes it's
9 just easier to look for items in full daylight.

10 Q Okay. And what did you do when you went back on
11 the 30th?

12 A Returned to the incident location with Lieutenant,
13 now Captain Cavanagh, and Investigator Schroder. I
14 located two possible footwear impressions from
15 where the vehicle was towed. Those were marked
16 with AC and AD. The footwear impressions were
17 photographed, cast, and collected. I also searched
18 the area with a metal detector finding another
19 fired cartridge casing, which was labeled J at the
20 scene.

21 Q Tell us about the metal detector. Is that
22 something you use frequently?

23 A Not overly frequently, but we do use it. It is
24 calibrated to locate items.

25 Q Okay. I show you State's 48 and 49.

1 A State's Exhibit 48 is a close-up photograph of the
2 fired cartridge casing in the pine straw and small
3 grove of trees.

4 And State's Exhibit 49 shows J, the fired
5 cartridge casing in relation to the other fired
6 cartridge casings that were previously marked the
7 night before.

8 Q Those two, 48 and 49, fairly and accurately reflect
9 how it appeared on that day?

10 A It did.

11 MR. GOLDBERG: I move State's 48 and 49 in
12 evidence.

13 MR. O'NEIL: No objection, Your Honor.

14 THE COURT: What number is that one?

15 MS. GOLDBERG: Forty-eight and 49.

16 THE COURT: All right. No objection.

17 (WHEREUPON, State's Exhibit Nos. 48 - 49
18 was marked for identification and
19 received into evidence.)

20 BY MR. GOLDBERG:

21 Q I'm just doing a little cross-referencing here. I
22 see that J is in the middle of some pine straw on
23 49, is that right?

24 A Yes, sir.

25 Q And that's in the same -- where is that in relation

1 to these other casings found in State's 15,
2 generally?

3 A Generally, on the left-hand side of the
4 photograph -- or the right-hand side.

5 Q In the pine straw?

6 A In the pine straw, yes, sir.

7 Q Talking about up here?

8 A Correct.

9 Q Is it odd or unusual in any way that that wasn't
10 located the night before?

11 A No, given that it was in the pine straw and we were
12 looking for evidence at nighttime, we came back
13 during the day to locate further evidence.

14 Q Okay. And the procedure you discussed earlier
15 about the collection of the casings the night
16 before that were talked about in State's 52, did
17 you follow the same procedure in regards to this
18 casing marked Marker J?

19 A Yes, sir. We located it, marked it, photographed
20 it, and then collected it.

21 Q I show you State's 51. What is that?

22 A This would be the fired cartridge casing J,
23 collected from Marker J.

24 Q Okay. And, again, what did you do with it once you
25 collected it?

1 A After I collected it in the little envelope,
2 brought it back to headquarters, processed it for
3 latent prints and then DNA.

4 Q Any prints pulled off of that one?

5 A No, sir.

6 Q All right. And what other duties did you undertake
7 in this case?

8 A I did respond back to the scene and collected two
9 soil samples from the incident location just as a
10 future reference in case we needed it for possible
11 analysis later on.

12 Q And to your knowledge, is that relevant in this
13 case at this point?

14 A No, sir.

15 Q But at that time, you have no way of knowing what
16 is relevant or what isn't relevant, correct?

17 A Correct.

18 Q Okay. And the soil samples that you collected
19 would have been on what date you went out there?

20 A I believe that was just following day, on
21 January 30th at about 5:00 o'clock.

22 Q Did you have any involvement with the case after
23 that?

24 A No, sir.

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

1 (Pause..)

2 BY MR. GOLDBERG:

3 Q I did want to ask you about, going back to the
4 scene here, we'll use for example State's 21.

5 A Yes.

6 Q You talk about two different groupings of shell
7 casings. Are you familiar with how a firearm
8 operates and how casings end up on the ground?

9 A Generally, when a pistol is discharged, of course
10 the projectile goes out the front of the muzzle,
11 but then the cartridge casing itself is typically
12 ejected back and to the right of the shooter,
13 depending on the make and model, but generally it's
14 to the back and right of the person firing the
15 pistol.

16 Q Back and to the right?

17 A Correct.

18 Q And in this case, you noted that the passenger
19 window was shattered, correct?

20 A Yes, sir.

21 Q And the casings -- these groupings of casings were
22 located to the left or right of the vehicle?

23 A If you're facing the passenger side of the vehicle,
24 the grouping would be to the right, so the
25 cartridge casings off to the right.

1 Q So those would be consistent with what you've
2 described in terms of ejection back and to the
3 right?

4 A Correct, if someone is facing the passenger side.

5 Q Right. And, again, the impact points that you
6 noted were on the driver's side of the vehicle,
7 correct, driver's sides?

8 A Correct, the driver's door had impact points.

9 Q And those impact points were on the interior of the
10 car, correct?

11 A Yes, sir. They -- it appeared they entered through
12 the inside of the driver's door and exited the
13 outside of the driver's door.

14 Q Based upon your experience in crime scene
15 investigation and analysis, can you tell the jury
16 based upon what you have seen and what you
17 testified to where it would appear as though the
18 shooter in this case was positioned?

19 A I would say that the shooter was positioned on the
20 passenger side, discharged the firearm through the
21 passenger side and exited the driver's side of the
22 door.

23 Q Did you find any casings on the driver's side at
24 all?

25 A No, sir.

1 MR. GOLDBERG: Your Honor, permission to
2 publish the photos to the jury?

3 THE COURT: Yes, sir.

4 MR. GOLDBERG: Thank you.

5 (Photos published.)

6 MR. GOLDBERG: I think I failed to do this
7 earlier, Your Honor, my apologies. It's just a
8 matter of housekeeping.

9 BY MR. GOLDBERG:

10 Q States 55, 54, and 53, these maps, as you described
11 them earlier, depict the scene that you went to?

12 A Yes, sir.

13 MR. GOLDBERG: Your Honor, I'd offer 53
14 through 55 in evidence.

15 THE COURT: Any objection.

16 MR. O'NEIL: No objection, Your Honor.

17 (WHEREUPON, State's Exhibit Nos. 53 - 55
18 were marked for identification and
19 received into evidence.)

20 MR. GOLDBERG: Thank you. Please answer any
21 questions Mr. O'Neil has.

22 MR. O'NEIL: Your Honor, I'll give the jury a
23 moment to look at those photos here.

24 (Pause.)

25 CROSS-EXAMINATION

1 BY MR. O'NEIL:

2 Q Investigator Rainsford?

3 A Yes, sir.

4 Q It was daylight when you arrived on scene on the
5 29th, fair to say?

6 A Dusk. It was coming into the evening hours.

7 Q And we have pictures that we've spent the last 15
8 minutes looking at pictures, but the pictures would
9 indicate the level of light that was present at the
10 time you were out on the scene, is that fair
11 enough?

12 A Yes, sir, when I arrived.

13 Q You were on scene, I think, from 5:40 -- and my
14 military time might be a little bit off, but 5:40
15 to about 10:14?

16 A Correct.

17 Q And those pictures kind of show the transition of
18 that time. It being light to getting completely
19 dark by the end of your observations that
20 particular night, fair enough?

21 A Yes, sir.

22 Q Now, you noticed -- I think you testified there
23 were two distinct groups of shell casing groupings
24 that night when you got there?

25 A Broadly, there were two groupings, yes, sir.

1 Q As an expert crime scene investigator, what did
2 that tell you?

3 A That at two possible points, there was two
4 different -- well, since I cannot determine at what
5 time any of those cartridge cases were put down,
6 but that there were two distinct positionings of a
7 shooter.

8 Q As a matter of fact, there were two different types
9 of shell casings out there, correct?

10 A The majority of the fired cartridge casings were
11 Hornady. I believe there was a Winchester and a
12 Speer that was also collected.

13 Q Look at your notes, I want to make sure -- it's an
14 important fact, I want to make sure you're correct
15 on that.

16 A Hornadys were the majority of the cartridge
17 casings. Fired cartridge Casing C was a WIN
18 9-millimeter and Fire Cartridge Casing H was a
19 Blazer, not a Speer. So marker H was a Blazer.

20 Q And markers -- there was another marker that was a
21 WIN 9-millimeter, correct?

22 A Correct. Fired Cartridge Casing labeled C was a
23 WIN 9-millimeter. Fired Cartridge Casing, H Blazer
24 9-millimeter.

25 Q And the other ones were all the same?

1 A Correct.

2 Q So we have three different brands of --

3 A Yes, sir.

4 Q -- casings out there that morning? What did that
5 tell you as a crime scene investigator?

6 A That the majority of them were Speers and there
7 were two other types that were also discharged.

8 Q And I know that I'm not expert, but what -- you are
9 the expert. What did -- did that tell you anything
10 additional about the crime scene?

11 A That -- well, without going through which gun fired
12 anything, that there was a 9 -- that the WIN was
13 fired out there, the WIN 9-millimeter and the
14 Blazer 9-millimeter was fired.

15 Q And you can't tell from being a crime scene
16 investigator when or what time or what day these
17 shell casings were fired out there?

18 A Correct.

19 Q All you know is when you got there on the 29th,
20 they were there? You don't know how long they had
21 been there? They could have been however long, but
22 you don't know how long they had been there?

23 A Correct. I don't know that the times they were
24 fired, but just that they were there present within
25 the scene when I arrived.

1 Q And how many -- and what we refer to as
2 projectiles, how many projectiles, if any, did you
3 recover from the scene?

4 A I did not recover any projectiles from the scene.

5 Q And projectiles, for us non-ballistic people, are
6 what we call just a bullet, is that fair, in a
7 simplified version?

8 A Yes, sir.

9 Q So the shell casing is what comes off and the
10 projectile is actually what we normally refer to as
11 a bullet?

12 A Yes, sir.

13 Q So even though there were 25 shell casings out
14 there, you didn't recover 25 projectiles?

15 A We did search the area, but given that it was an
16 open field, we did search for projectiles, but none
17 were located. The vehicle itself, I did not
18 process or search through the vehicle.

19 Q Do you know whether or not the vehicle itself had
20 any projectiles in the door or anything?

21 A The vehicle was towed from the scene that night,
22 taken to our forensic garage where another crime
23 scene investigator did process and search the
24 vehicle.

25 Q I'm just asking, do you know whether or not there

1 was ever any projectiles found in the vehicle? If
2 you don't know, you don't know.

3 A At this point, no, sir, I don't know.

4 Q Okay. And the only way to really tell whether or
5 not these 25 shell casings were related to this
6 case is to determine whether or not they match some
7 projectile that's also relevant to this case, is
8 that fair enough to say?

9 A The firearms analyst would take any fired cartridge
10 casings known or unknown and compare it with any
11 projectiles that were found. The firearms analyst
12 would be the one to make that determination.

13 Q And I'm not asking you to make a determination, I'm
14 just saying that in order for it to be relevant in
15 this case, the shell casings have to match some
16 projectile somewhere or some firearm somewhere, is
17 that fair enough to say?

18 A The fired cartridge casing would come back to a
19 firearm, yes, sir, or a projectile.

20 Q And to be relevant in this case, the shell casing
21 would have to match something, either a projectile
22 or a firearm?

23 A Correct.

24 Q And you didn't do that, somebody else does that,
25 that's somebody else's job?

1 A Yes, sir.

2 Q Now, you indicated that when a firearm -- when a
3 projectile is fired here, it usually ejects to the
4 right and to the rear. Is that your testimony
5 earlier?

6 A Generally pistols will eject the cartridge casing
7 back and to the rear.

8 Q Okay. And that's assuming that the individual is
9 holding the firearm in what most people consider a
10 normal fashion?

11 A Yes, sir, assuming it's straight on.

12 Q Yes. If it's any different, then that changes the
13 direction that the projectile would eject from,
14 fair enough?

15 A Yes, sir, the orientation of the gun would
16 determine where the projectile -- or the cartridge
17 casing would eject from.

18 Q And you don't know the orientation of the firearms
19 that expelled the projectiles in this case, do you?

20 A No, sir.

21 Q So you don't know -- you can't tell whether or not
22 these groupings of shell casings in this particular
23 area is significant without knowing the orientation
24 of the firearm, fair enough?

25 A Without the firearm itself, yes, sir.

1 Q So you are just kind of speculating when you say
2 that these shell casings being grouped in this
3 particular area indicate anything more specific
4 than just in this area?

5 A Given the totality and the scene where we do have a
6 vehicle that has been impacted by projectiles and
7 cartridge casings, we can infer where a shooter
8 would have been.

9 Q But you are just guessing, you don't know when --
10 what the orientation of the firearm was. If the
11 firearm was oriented in a different direction, then
12 that changes the whole analysis, fair enough?

13 A Yes, sir, it could be.

14 Q Okay. Now, you also indicated that the passenger
15 side window was shattered, correct?

16 A Yes, sir.

17 Q All right. And you didn't find any shell casings
18 inside of the vehicle, correct?

19 A Correct. There were no fired cartridge casings
20 found inside the vehicle.

21 Q As a crime scene investigator expert here, what
22 does that indicate to you as to the position of the
23 shooter in relation to being inside or outside the
24 car?

25 A The shooter would have been on the outside of the

1 vehicle.

2 Q Okay. So whoever was the shooter in this case
3 here, the victim did not let them inside the car?

4 A I cannot say the victim -- or the subject was ever
5 inside the vehicle. I just know that at the time a
6 gun was discharged, the shooter was outside the
7 vehicle, projectile passed through the vehicle.

8 Q Do you know whether the doors were locked on
9 unlocked when you got there?

10 A I do not have that notated in my photograph -- or
11 in my report or photographs.

12 Q And that would be pretty important to determine
13 whether or not somebody was ever inside the vehicle
14 because if the passenger side door was still
15 locked, what would that indicate to you as a crime
16 scene investigator?

17 A If the vehicle was still locked?

18 Q Yeah, if the passenger side vehicle -- the
19 passenger door was still locked, what would that
20 indicate to you as a crime scene investigator about
21 whether or not somebody was ever inside or outside
22 the vehicle?

23 A I would not be able to determine anything that
24 happened prior to the vehicle being locked.

25 Q Now, I think you also collected a cigarette butt,

1 correct?

2 A Yes, sir.

3 Q And what was reason you did that?

4 A It was inside of the crime scene. Its probative
5 nature, it was collected as evidence.

6 Q Because you wanted to see whether or not it had DNA
7 on it, fair enough?

8 A Correct, yes, sir.

9 Q If it had DNA on it, it would tend to prove the
10 existence of that person whose DNA matched being at
11 the crime scene at some point?

12 A Yes, sir, at some point, someone smoking a
13 cigarette dropped it within the crime scene.

14 Q And I would assume that is the same reason why you
15 collected a used condom as well?

16 A Yes, sir, it was just within -- around the crime
17 scene.

18 Q And if it had DNA on it, it would determine whether
19 or not somebody was more than likely than not at
20 the scene at some point in time?

21 A Yes, sir.

22 Q Now, do you know whether or not that -- those two
23 items were tested for DNA?

24 A I do not. I collected them, packaged them, sealed
25 them, and submitted them to our evidence and

1 property room.

2 Q You submitted them to the evidence and property
3 room for DNA testing?

4 A Let's see if they were actually marked for DNA.
5 Yes, they did indicate request for DNA processing
6 on the condom and cigarette butt.

7 Q What about the -- I think the Skoal can, that's a
8 tobacco can?

9 A Yes, sir.

10 Q Tobacco can and a bottle of gel, were those also
11 marked for DNA?

12 A Those were not marked at the time when I submitted
13 them requesting for DNA.

14 Q And why not?

15 A I would leave that up to the investigators,
16 depending on their -- how the investigation was
17 going. If they needed it to be run, they would be
18 able to request that those items be run.

19 Q Well, you being a crime scene investigator, you
20 want to see if somebody's DNA or fingerprints were
21 on any one of these other items, that would
22 indicate they were present at the scene at some
23 point in time?

24 A If DNA was collected from an item, yes, it would
25 show that the person had more than likely passed

1 through that crime scene.

2 Q I mean, you thought they had enough evidential
3 value that you tagged it and you bagged it, for
4 lack of a better word?

5 A Yes, sir.

6 Q But what happened to it is not in your control,
7 that is determined by a different investigator down
8 the line?

9 A Yes, sir, I collected it and then --

10 Q And you also swabbed the center console and the
11 glove box for fingerprints and DNA?

12 A I did not process the vehicle. It was towed from
13 the scene back to our forensic garage where another
14 investigator did.

15 Q A different forensic investigator processed those
16 two things?

17 A Yes, sir.

18 Q But you did process the shell casings for
19 fingerprints, correct?

20 A The fired cartridge casings that I collected from
21 the scene, I did process those for latents and DNA.

22 Q And none of those fingerprints matched Mr. Heatley?

23 A I did not collect any fingerprints from them. As
24 stated earlier, it's not uncommon for us not to
25 locate any fingerprints on a fired cartridge

1 casing.

2 Q Well, you do -- I mean, you would admit that when
3 most firearms are loaded, that they are touched by
4 the individual who loads them, correct?

5 A That would be handled. Depending on if person was
6 sweating a lot. You know, there are many factors
7 as to why or why not a fingerprint would be left on
8 an item.

9 Q I understand your commentary about why it could or
10 could not be on the cartridge, but you do admit
11 that normally to load a firearm, you have to
12 physically touch each and every one of the
13 projectiles that are loaded into the weapon?

14 A Yes, sir.

15 Q Fair enough?

16 A Yes, sir.

17 Q So that's why you swabbed it for fingerprints?

18 A Swabbed it for DNA.

19 Q You swabbed it for DNA, but you tested it for
20 fingerprints?

21 A Yes, I processed it with black powder and
22 cyanoacrylate for fingerprints and then swabbed it
23 for DNA.

24 Q And neither one of those two things came back to
25 Mr. Heatley, correct?

1 A They were run after I submitted them, so that would-
2 be another analyst who would have analyzed the DNA
3 swabs.

4 Q And you came back the next day, looks like around
5 1:30. Does that jibe with your notes here?

6 A I believe so. It was during the daylight. Yes,
7 sir, about 1:30 in the afternoon on the 30th.

8 Q I want to back up for one second and ask you this
9 here. You said there were how many other crime
10 scene investigators there that first night?

11 A Now Captain Cavanagh and Sergeant Lee and
12 Investigator Schroder.

13 Q So a total of four?

14 A Yes, sir.

15 Q Including you?

16 A Yes, sir.

17 Q Two deputy coroners?

18 A And two deputy coroners.

19 Q And at some point -- it was light when you first
20 got there, correct?

21 A Yes, sir.

22 Q And nobody noticed -- you say nobody noticed any
23 footwear impressions that first day?

24 A I believe another investigator did locate two
25 footwear impressions.

1 Q Was that the first day or the second day?

2 A Actually, the next day when I returned to the
3 scene, I collected -- I observed and photographed
4 cast two footwear impressions that were by where
5 the vehicle was towed.

6 Q That was the second day?

7 A Correct, when I went out there and I found another
8 projectile.

9 Q Do you know whether or not between the first
10 day --

11 A Cartridge casing.

12 Q I apologize.

13 A Yes, sir, the next day I did collect two footwear.

14 Q And do you know between the first day and the
15 second day whether or not the scene was guarded by
16 anybody, was it --

17 A Yes, sir. The crime scene tape was up, a crime
18 scene rotation was started. The crime scene tape
19 was left up, so it was protected.

20 Q In any event, you didn't collect any footwear
21 impressions the following day? You collected the
22 footwear impressions the second day?

23 A On the 30th.

24 Q Yes.

25 A Yes, sir, I collected two.

1 Q And you came back -- at a later time, you came back
2 and collected soil samples, correct?

3 A Yes, sir.

4 Q And that would be relevant if you at some point
5 found shoes that matched the footwear samples, fair
6 enough?

7 A Just possible trace evidence to use as a control.
8 We know that this soil sample came from the crime
9 scene to compare to any other forensic evidence
10 that may come down the line.

11 Q Forensic -- you're a crime scene investigator and
12 you're a crime scene expert. If you found shoes
13 that matched a shoe print, you want to check those
14 shoes to make sure they didn't have soil from that
15 area?

16 A Yes, sir.

17 MR. GOLDBERG: Your Honor, he's asking this
18 investigator about shoe print analysis and
19 investigation, and he hasn't testified about any of
20 that. He's not an expert in that.

21 MR. O'NEIL: I'm asking him about whether or
22 not if he found shoes that matched the shoe prints,
23 whether or not it would be important to know
24 whether or not those shoes had soil on them or not
25 from the soil sample he took.

1 THE COURT: Did he testify regarding the shoe
2 prints on direct?

3 MR. O'NEIL: Yes, he testified he cast two
4 shoe prints on the second day. He testified that
5 he came back and collected soil samples after that.

6 THE COURT: And what's your question?

7 MR. O'NEIL: Would it be important -- would it
8 be the reason why he had done that to at a later
9 time compare any sort of trace evidence on the
10 shoes to the soil sample that he collected.

11 THE COURT: All right. Objection overruled.
12 You can answer.

13 THE WITNESS: Yes, we would look for trace
14 evidence on other items that we found and
15 collected.

16 BY MR. O'NEIL:

17 Q And do you know whether or not you did that in this
18 particular case? Did you ever compare the soil
19 samples that you took to any other items?

20 A I would not have done any such analysis on soil
21 samples.

22 Q Do you know if anybody did it?

23 A I'm not sure whether any analysis was compared to
24 the soil.

25 Q Okay. Now, last one, Investigator Rainsford. Did

1 you check for any sort of tire tracks out there at
2 the scene that day?

3 A Tire tracks? I mean, I know the vehicle was towed
4 from when we secured the scene, but I do not
5 believe there was any tire tracks that were
6 specifically photographed and cast at that.

7 MR. O'NEIL: I want to beg the Court's
8 indulgence, Your Honor.

9 (Pause.)

10 BY MR. O'NEIL:

11 Q Investigator Rainsford, I'm going to show you what
12 has been marked State's Exhibit 15. Does it appear
13 to be tire tracks in State's Exhibit Number 15?

14 A Yes, sir, there are several tire tracks throughout
15 this scene, sandy soil on this open field.

16 Q Okay. And you -- and as a crime scene
17 investigator, it would be fair to say that if those
18 tire tracks matched a particular car, that would be
19 relevant at some point to indicate that car was
20 there at that scene?

21 A As far as tire tracks go, yeah, it could be shown
22 that a vehicle did pass through there, if they
23 were -- had the same tires.

24 Q Okay. And do you know whether or not any of that
25 analysis was done in this particular case?

1 A No, sir.

2 Q You would have been the person to have done it if
3 it would have been done, either you or Investigator
4 Cavanagh or Investigator Lee?

5 A Yes, sir.

6 Q Investigator Schroder?

7 A One of us would have done that.

8 Q To your knowledge, did anybody do that?

9 A No, sir.

10 MR. O'NEIL: All right. Beg the Court's
11 indulgence, Your Honor.

12 (Pause.)

13 MR. O'NEIL: That's all I have, Your Honor.

14 MR. GOLDBERG: Just a couple of questions,
15 Your Honor.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q Mr. O'Neil asked you about projectiles being
20 located?

21 A Yes, sir.

22 Q And you responded with a comment about this being
23 an open field type of situation. How does that
24 play into the possibility of locating projectiles?

25 A Just by the open -- say, if we were inside a house,

1 I would be able to locate other items that were
2 impacted, such as a wall when you're looking for
3 projectiles there, but given an open field, without
4 knowing -- you know, we broadly know some of the
5 direction, possibly that a gun was discharged, but
6 how far a projectile went, the direction that it
7 was aimed, we don't have that information. So they
8 could be anywhere in that field.

9 Q Is it fair to say that if a projectile did strike
10 something at the scene, like the car or the victim
11 or even a tree, something like that, that it could
12 go on a pretty good ways?

13 A Yes, sir, I would firmly believe that.

14 Q He asked you several things about the tire tracks
15 and potential DNA evidence off things like Skoal
16 can, and things of that nature. You can't put a
17 time stamp on any of those things, is that right?

18 A Correct.

19 Q So even if those things did have some evidentiary
20 value that was located later, would that be able to
21 tell you when the person who had the cigarette butt
22 or had the Skoal can was in that exact spot
23 specifically?

24 A Correct, I can't say when anything was deposited,
25 but I can just say that the item was found.

1 Q It could have been that day or it could have been
2 six months ago?

3 A Correct.

4 Q Or anywhere in between. And, finally, based
5 upon -- you said that the passenger window was shot
6 out, correct?

7 A Yes, sir.

8 Q There were impact points found on the driver's side
9 door, correct?

10 A Yes, sir.

11 Q The victim sustained wounds, correct?

12 A Yes, sir.

13 Q And you testified about the shell casing groupings
14 that you said were back and to the right of that
15 right passenger side of the car, correct?

16 A Yes, sir.

17 Q And in light of all of that, are the location of
18 those casings consistent with the shooter having
19 stood and fired in through the passenger window of
20 the car?

21 A Yes. That would put the shooter standing facing
22 the passenger side of the vehicle discharging the
23 firearm.

24 MR. GOLDBERG: Thank you.

25 MR. O'NEIL: No questions.

1 THE COURT: All right, sir, you may step down.
2 Any objection to this witness being excused?

3 MR. GOLDBERG: No, Your Honor. May we
4 approach?

5 (Witness steps down and is excused.)

6 (WHEREUPON, a bench conference was held
7 in the presence of the jury but out of
8 the hearing of the jury.)

9 MR. FYALL: The State Calls Karen Milbrodt.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you give in this case will be the truth,
16 the whole truth, and nothing but the truth, so help
17 you God?

18 THE WITNESS: So help me God.

19 THE CLERK: Thank you. Have a seat in the
20 witness stand, please.

21 (Witness seated.)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Karen Milbrodt.

24 THE CLERK: Spell your last name.

25 THE WITNESS: M-I-L-B-R-O-D-T.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KAREN MILBRODT,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FYALL:

Q Ms. Milbrodt, where do you work?

A Verizon Wireless.

Q What are your duties at Verizon Wireless?

A I am a senior analyst in executive relations. And one of those responsibilities is I am a records custodian.

Q At some point were you given an exigent circumstance request from Richland County Sheriff's Department -- not you, but Verizon?

A Verizon, yes, sir. Verizon received an exigent warrant.

Q All right. And those numbers were for (803)800-7071, (803)240-0293?

A Yes, sir.

MR. FYALL: May I approach, Your Honor?

THE COURT: Yes.

Q I'm going to show you what's marked as State's 56. Do you recognize that?

A Yes, sir.

Q Can you tell us what it is?

A This is a hard drive that includes the records that

1 we were able to produce responsive to those exigent
2 warrants.

3 MR. FYALL: Your Honor, I would like to
4 introduce State's 56 into evidence.

5 THE COURT: Any objection?

6 MR. O'NEIL: No, Your Honor.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, State's Exhibit No. 56 was
9 marked for identification and received
10 into evidence.)

11 BY MR. FYALL:

12 Q One of those records is titled Cell Site Incoming
13 and Outgoing. Can you tell us what that means?

14 A Yes, sir. As a normal course of business, we keep
15 a record of our incoming and outgoing -- our
16 customer's incoming and outgoing activity. So that
17 is a record that is reflective of incoming and
18 outgoing calls to one or the other specific
19 numbers.

20 Q All right. Does that include the tower that I
21 guess captured the call?

22 A Yes, sir. It includes the tower when the call
23 began and the tower that the call ended on.

24 Q And also there's something on there called RFF?

25 A RTT.

1 Q RTT Columbia. Can tell us what that is?

2 A Yes, sir. This is a record that captures -- the
3 first record is strictly cell calls, voice calls to
4 the phone. The RTT record is what's called a
5 realtime tool. So this is a log that is tracking
6 all the activity that may have happened on that
7 device, text messaging, phone calls and data
8 sessions.

9 Q When you say data sessions, like you get an update
10 from Facebook or Snap Chat or Instagram?

11 A Yes, that's a data session.

12 Q All right. And are the towers located in that
13 information as well?

14 A It is.

15 Q All right. And do the towers have separate names
16 and locations?

17 A Yes, each tower -- not necessarily a name, we give
18 them a number.

19 Q A number?

20 A Uh-huh. And so that's how it's recorded, as a
21 number, not a name.

22 Q And towers have sectors as well?

23 A Yes, sir.

24 Q Can you tell us about that?

25 A Sure. Most of our cell towers have three banks of

1 antenna on top of them and they face in three
2 different directions so that we can -- it's our
3 hope to get a 360-degree coverage. So a sector is
4 just piece of that pie.

5 Q All right. And so if a data has a tower number in
6 the sector, that could tell you which area in that
7 360 degrees the tower covers and tell you where
8 that phone call or text message was captured?

9 A Not a text, but a call, yes.

10 MR. FYALL: Beg the Court's indulgence.

11 (Pause.)

12 MR. FYALL: No further questions.

13 MR. O'NEIL: Briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. O'NEIL:

16 Q You're not an expert in determining what sector the
17 call would bounce off, for lack of a better word,
18 correct?

19 A No, sir, I'm not an expert. I'm a records
20 custodian.

21 Q That's somebody else's area --

22 A Pardon?

23 Q That's somebody else's area of expertise as it
24 relates to what calls bounce off what sector or
25 what cell phone tower?

1 A Yes, an engineer or someone with a degree would be
2 able to better speak to that.

3 Q Do you know whether or not an individual -- for
4 instance, like a Straight Talk customer, does
5 Straight Talk utilize Verizon's cell phone towers?

6 A Yes, sir.

7 Q Would that -- is there any difference between how a
8 non-Verizon customer's cell phone interacts with
9 the cell tower as opposed to a Verizon customer
10 interacts with cell towers?

11 A No, sir.

12 MR. O'NEIL: That's all I have, Your Honor.

13 MR. FYALL: Nothing further, Your Honor.

14 THE COURT: Ma'am, you may step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Any objection to this witness
17 being excused?

18 MR. FYALL: No, Your Honor.

19 MR. O'NEIL: No, Your Honor.

20 THE WITNESS: Thank you, Judge.

21 (Witness steps down and is excused.)

22 THE COURT: All right, ladies and gentlemen of
23 the jury, it is 1:03 according to my clock and so
24 therefore it is time for us to take our lunch
25 break.

1 I remind you do not discuss the case with
2 anyone, not your fellow jurors. It would be also
3 improper for you to form any opinion at this time
4 yourself considering you have not received all of
5 the evidence in this case.

6 If you're going to eat lunch around here, make
7 sure you keep those badges on. There's a good
8 chance you will run into someone from the
9 courtroom, lawyers, judges, parties involved, folks
10 sitting in here in the courtroom, and we do not --
11 as long as you have a badge on, we know not to
12 speak in front of you, so keep that badge on. If
13 anyone tries to speak with you during the lunch
14 break, please inform us immediately and we will
15 handle it.

16 All right. Thank you. Have a good lunch. I
17 didn't tell you what time to be back, did I?

18 Let me see the lawyers real quick.

19 (WHEREUPON, a bench conference was held
20 in the presence of the jury but outside
21 the hearing of the jury.)

22 THE COURT: All right. We will start back at
23 2:30. That will give you all an opportunity to go
24 to your cars and probably take about 10 or 15
25 minutes to get out the building. So we'll see you

1 back at 2:30.

2 Thank you.

3 Remember, please do not walk out of the
4 courtroom until the jurors exit.

5 (WHEREUPON, the jury is excused for
6 lunch at 1:05 p.m.)

7 THE COURT: All right. Remember not to walk
8 out until the jurors exit. I remind you, please do
9 not -- when you're at lunch, be mindful of the fact
10 that the jurors may be -- if you're going to eat
11 somewhere around here there's a good chance that
12 they may be sitting there. So please do not
13 discuss the case in the presence of the jurors.
14 And please do not discuss any -- speak to any
15 jurors.

16 All right. Thank you.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: All right. Let's bring them in.

19 (WHEREUPON, the jury came into open
20 court at 2:53 p.m.)

21 THE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: All right. Ladies and gentlemen
23 of the jury, we will proceed.

24 I ask the State to call the next witness.

25 MR. FYALL: The State calls Becky Parker.

1 (Witness approaches.)

2 MR. O'NEIL: Your Honor, may we approach?

3 THE COURT: Yes.

4 (WHEREUPON, a bench conference was held
5 in the presence of the jury but out of
6 the hearing of the jury.)

7 THE BAILIFF: Place your left hand on the
8 Bible and raise your right.

9 (Witness complies.)

10 THE CLERK: Do you swear the testimony you're
11 about to give in this case will be the truth, the
12 whole truth and nothing but the truth, so help you
13 God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness seated.)

18 THE CLERK: State your name for the record.

19 THE WITNESS: My name is Becky Parker.

20 BECKY PARKER,

21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FYALL:

24 Q Good afternoon, Ms. Parker. Where are you
25 employed?

1 A I'm employed with Wells Fargo Bank.

2 Q What are your duties there?

3 A I'm sorry?

4 Q What are your duties at Wells Fargo?

5 A I'm a security agent. We respond to bank
6 robberies, burglaries, that sort of thing. Assist
7 law enforcement.

8 Q All right. In 2016, early part of 2016, did
9 Richland County ask you to do anything in regards
10 to getting some ATM information?

11 A They did. We got a call about 10:30 one night.
12 And our duty agent was Matt Livingston, who was in
13 Florida. He was asked to view the video and see if
14 we had any photographs of two transactions. He
15 could not locate the ATM machine, so he called me
16 because I work in this area. I was able to give
17 him the number and we pulled up the photographs and
18 sent them to, I believe it was Sergeant Faust.

19 Q Thank you. Do you have the photographs?

20 A I do.

21 Q All right.

22 MR. FYALL: Beg the Court's indulgence.

23 (Pause..)

24 MR. FYALL: At this time, I'd ask to move
25 State's 114, 115, and 116 into evidence.

1 THE COURT: Any objection?

2 MR. O'NEIL: No, Your Honor.

3 THE COURT: That's 14, 15, and 16?

4 MR. FYALL: Yes, ma'am.

5 (WHEREUPON, State's Exhibit Nos. 114 --
6 116 were marked for identification and
7 received into evidence.)

8 BY MR. FYALL:

9 Q And do those photos have the date and time --

10 A Yes, sir.

11 Q -- when the transactions occurred?

12 A They do.

13 MR. FYALL: No further questions, Your Honor.

14 MR. O'NEIL: Thank you, Your Honor. May it
15 please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. O'NEIL:

19 Q Ms. Parker, do you know what time you sent those
20 photos to Investigator Faust?

21 A It was shortly after he asked for them. I don't
22 have the exact time, I do in the folder over there,
23 I have the e-mail, but it was somewhere after 10:00
24 o'clock p.m. on January 29th, I believe.

25 Q Do you need your folder to make sure?

1 A Yes, that will be fine. It's right there on the
2 first row with my purse.

3 Q I was taught not to touch a woman's purse.

4 A It's JUST lying right there on the bench by my
5 purse. That's it.

6 MR. O'NEIL: Permission to approach, Your
7 Honor?

8 THE COURT: Yes, sir.

9 THE WITNESS: They were sent to him on
10 January 29th at 10:40 p.m.

11 MR. O'NEIL: Thank you, Ms. Parker. That's
12 all I have for you.

13 THE WITNESS: Thank you.

14 MR. FYALL: No redirect, Your Honor.

15 THE COURT: All right, ma'am, you may step
16 down.

17 (Witness steps down.)

18 THE COURT: Any objection to this witness
19 being excused?

20 MR. O'NEIL: No, Your Honor.

21 MR. FYALL: No, Your Honor.

22 THE COURT: Ma'am, you're free to leave.

23 THE WITNESS: Thank you.

24 (Witness steps down and is excused.)

25 MR. GOLDBERG: The State calls Investigator

1 Scott Faust.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.

5 (Witness complies.)

6 THE CLERK: Do you swear or affirm the
7 testimony you give in this case will be the truth,
8 the whole truth, and nothing but the truth, so help
9 you God?

10 THE WITNESS: I do.

11 THE CLERK: Have a seat in the witness stand,
12 please.

13 (Witness seated.)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Stephen Faust.

16 STEPHEN FAUST,

17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q Is it Sergeant Faust?

21 A Yes.

22 Q Where are you currently employed?

23 A With Richland County Sheriff's Department.

24 Q How long have you been employed there?

25 A Twenty-three plus years.

1 Q Can you tell the jury a little bit about your
2 experience, sir, in those 23 years, what you do,
3 sir?

4 A Yes, I started back in '95 in this courthouse. I
5 eventually went to the road about two years later.
6 I was a patrol officer. And then about 1999, I
7 became an investigator, was assigned to the
8 burglary division. Went to the armed robbery
9 division, got promoted, was over several units,
10 property crime. And then from there, for ten years
11 I was in the Special Victims Unit. And now, I'm
12 back over a section in property crime.

13 Q All right. And back in January of 2016, what was
14 your role?

15 A On that particular day, that Friday, I began as a
16 shift supervisor for an on-call team, that is
17 basically from midnight Thursday for a whole week
18 until the next Thursday at midnight I start on
19 call. That Friday at 3:30, I was actually in the
20 unit that I specialize in at the time, Special
21 Victims Unit, I was actually -- I came in early to
22 go meet with a victim and the family.

23 As I was meeting with them, a call came in
24 related to this case about a body being found.
25 It's going to be a murder. From there, we have a

1 team. We have usually a primary and then, since it
2 was earlier in the day, we had a couple of other
3 people working on it. And I began to work on the
4 case just kind of filling in and going from there.

5 Q That's on Friday, January 29th, 2016?

6 A Yes.

7 Q And so what were you first tasked with doing?

8 A I initially was told by another supervisor to start
9 working on getting videos. I would learn that
10 somebody had already started to do that. I then
11 would start to go work on another aspect and, you
12 know, it was a little bit of confusion because we
13 had a lot of people chip in at that time. I
14 eventually was going to be tasked with helping out
15 with a search warrant for a residence.

16 Q And what residence was that?

17 A The residence was going to be at 212 Kirkstone Road
18 up in Irmo, which is in Richland County, but
19 technically, I guess, the Irmo jurisdiction. It's
20 like the City of Columbia versus Richland County.

21 Q Based upon the information you were provided, who
22 resided at that residence that was of interest to
23 the investigation?

24 A The Defendant -- and I apologize, I forgot to bring
25 my glasses again today -- the Defendant -- let me

1 make sure I get his name right -- Andre Tyrone
2 Heatley.

3 Q And so did you actually obtain the search warrant
4 -- or did somebody else?

5 A This particular search warrant, somebody had
6 already gotten it signed, Investigator Rebolj. And
7 I was tasked just going to assist with the search
8 and just assisting.

9 Q And the purpose of this search warrant was what as
10 it relates to Heatley's residence?

11 A We were looking for property, specifically a
12 9-millimeter handgun. We were going to be looking
13 for what's listed in the search warrant,
14 ammunition, paperwork, other paraphernalia
15 associated with possession of a 9-millimeter
16 pistol. We were looking for clothing associated
17 with an ATM card that the victim had that was seen
18 in a video/pictures of the ATM being used and it
19 was not by the actual victim. And it specified out
20 in the search warrant what we were looking for.

21 Q All right. Tell us how the process worked where
22 the department was set up to go try and execute the
23 search warrant?

24 A Well, what we do is we have the person who signs
25 the search warrant and the primary team leaders,

1 which would have been Investigator Gonzalez and
2 Torres in this situation. I had already seen the
3 search warrant, so I chose to go to the location
4 and spot the house. I do a quick driveby, do a
5 loop around and then find a spot to keep an eye on
6 the house. I saw at least one or two vehicles in
7 the driveway, and I went around the corner two
8 blocks down the road. I parked on the side of the
9 road to where if you -- if I was outside of your
10 house, it would probably be of concern, but I was
11 far enough away from our target address to where I
12 was inconspicuous, I wouldn't stand out with the
13 house around the corner.

14 Q You mentioned there were vehicles. The purpose of
15 the search warrant, was that to only search the
16 house or anything else as well?

17 A The search warrant includes all vehicles on the
18 property.

19 Q Okay. And were you by yourself at that point?

20 A I was in my vehicle by myself.

21 Q Where was the rest of the team that was preparing
22 to execute the search warrant?

23 A They were right around the corner where we had the
24 team leaders basically telling everybody, this is
25 the residence where we're going, give a little

1 information specifically about what we're searching
2 for. We want everybody in the house to be on the
3 same page so we all know what we're looking for.

4 Q All right. And tell us what happened after that.

5 A As I was waiting, I was in communication with Chief
6 Stan Smith, and I noticed a car pull out of the
7 driveway and it caught my attention because this
8 was close to 12:30, 1:00 o'clock at night. And
9 usually you don't see that much traffic. And for
10 it to be our target location, I was extremely
11 concerned because that was one of the items or
12 things we wanted to search on the property.

13 ~~When the vehicle pulled out, it sped by me. I~~
14 don't have a radar, but common sense will tell you
15 it was speeding. I quickly got in behind it. I'm
16 in an unmarked vehicle. It was probably -- didn't
17 catch his attention. As we got to a stop sign, he
18 went through the stop sign, not a rolling stop,
19 which is what you see a lot of people -- if you're
20 driving on a typical day, you'll see somebody kind
21 of roll up and then go. This was a 5- to
22 10-mile-per-hour going through a stop sign. Part
23 of my mind is concerned as was I spotted, did he
24 know the police were out there, or was he just
25 driving through a neighborhood he lives in and

1 knows he can run through the stop sign.

2 I continued to follow him until he got to
3 Burger King. While I'm doing that, I'm on the
4 phone with Willie Gonzalez and let him know he's on
5 the move, you know. And at the time, I don't know
6 who is in the vehicle, but the vehicle that left
7 the scene speeding, you know, Hey, we need to check
8 this vehicle out.

9 It ended up pulling in the Burger King, going
10 around and getting into the drive-through line.
11 About that time, with me communicating where the
12 car was going, they were literally less than a
13 hundred yards, if not even closer to that, to where
14 we were. The team --

15 Q I'm sorry, let me stop you. They who were less
16 than --

17 A They, our search team, headed up by Investigator
18 Torres and Gonzalez.

19 Q About how far away from the Kirkstone residence was
20 this Burger King located?

21 A A mile or less. Not far at all. I mean, from the
22 time I pulled out, I was probably there in two or
23 three minutes.

24 Q So he happened -- the car happened to pull into an
25 area that was just adjacent to where the team was

1 set up prior to executing the search warrant?

2 A That's correct. I'm in the process -- I'm going
3 down this road, and I don't go to Irmo much, but,
4 you know, I'm going to let you know where we're
5 pulling out. I think we're about to pull back out
6 on Broad River Road. Oh, wait a minute, we're at
7 Burger King.

8 Q Once the vehicle pulled into Burger King, what
9 happened?

10 A The team pulls in. My vehicle was kind of off to
11 the side. And at that point in time, I made a
12 decision to pull my vehicle -- it wasn't the most
13 strategic thing, because I left myself a little
14 vulnerable, but I pulled my front end -- if this is
15 the driver's seat, the vehicle would technically
16 kind of be where y'all are, and I literally pulled
17 my vehicle in to where my front headlight is within
18 about five feet of his front bumper.

19 MR. O'NEIL: Your Honor, for the record, I'm
20 going to object to this testimony based on my
21 previous objection that this is a violation of
22 court rules.

23 THE COURT: Objection overruled, but noted for
24 the record.

25

1 BY THE WITNESS:

2 Q At that point, I immediately got out the car. Due
3 to the circumstances of this case, I immediately
4 said, Show me your hands, whoever the driver was.
5 It turned out to be Mr. Heatley. And his hands
6 went up to where I could see them. As an officer
7 safety issue, I just -- the fact that we're looking
8 for a gun, I don't want to be shot nor do I want to
9 shoot anybody, so I made sure that the hands were
10 up.

11 As I approached the vehicle, I had a support
12 team from the rear and the side. I don't remember
13 everybody specifically who was there, but we had
14 several people. But I know Willie Gonzalez and I
15 were pretty much at the driver's door about the
16 same time.

17 I specifically remember saying, Do you have a
18 weapon in the vehicle? As long as you can see the
19 hands, you're usually pretty safe. When the hands
20 disappear, you don't know what's going to happen.
21 So it's all somewhat of a distraction technique too
22 to get them thinking. And so when I said something
23 about a weapon, he said yes.

24 MR. O'NEIL: Your Honor, so it's absolutely
25 clear, I'm going to object to this testimony as

1 well as violation of Mr. Heatley's Fourth Amendment
2 rights. The testimony about him having a weapon in
3 the car.

4 THE COURT: All right. That objection is
5 overruled, as previously stated.

6 THE WITNESS: At that point, Mr. Heatley was
7 removed from the vehicle and detained.

8 BY MR. GOLDBERG:

9 Q All right. And let me back up and go through that
10 a little bit again. That's a lot that happened
11 there. So when you pulled in and pulled -- you
12 pulled your vehicle in front of his vehicle as he's
13 in the Burger King parking lot, is that correct?

14 A Yes.

15 Q You approached the car. You ask him to show you
16 his hands. And did he do that?

17 A Yes.

18 Q Okay. And when you asked him if he had any
19 weapons, what was his response?

20 A Yes.

21 Q Okay. Did he indicate where the weapon was?

22 A The glove box.

23 Q At that point, did you go to the glove box?

24 A No.

25 Q All right. What did you do?

1 A We detained him for safety reasons. He was put in
2 handcuffs. Obviously, due to our situation and why
3 we were there, we wanted to make sure we were safe,
4 he was safe. There were no problems. He was very
5 compliant. No resistance. At that point in time,
6 since the vehicle -- we have a search warrant for
7 the vehicle on that premise, the vehicle was no
8 longer on the premise, I then assigned another
9 investigator who was there, J.P. Smith, to stay
10 with the vehicle and we were going to tow it to go
11 get another search warrant to where we would have
12 an officer there to make sure anything in the car
13 was not disturbed. You know, for example, with a
14 tow company, when the tow car drives off. We had
15 an officer there watching it all the times so it
16 was never out of law enforcement's eyesight. From
17 there --

18 Q I'm sorry to interrupt. While all this is
19 happening, you said he had been taken out of the
20 car, right? And you said Investigator Smith, I
21 think, was --

22 A J.P. Smith.

23 Q J.P. Smith was going to stand by the car, is that
24 right?

25 A Yes.

1 Q So where did Mr. Heatley go once he's taken out of
2 his vehicle?

3 A He went with Investigator Torres and Gonzalez. And
4 from there, I had no dealings with them. In other
5 words, my -- I then took over and was more
6 concerned about going to the residence, because
7 obviously we didn't want them to be tipped off to
8 get rid of any evidence now that law enforcement is
9 obviously involved. And I also was concerned about
10 the vehicle, wanted to have it secured.

11 Q All right. So Mr. Heatley is with Gonzalez and
12 Torres. Investigator Smith is with the vehicle?

13 A Yes, sir.

14 Q And tell the jury a little bit about why that's
15 important to have somebody stand by the vehicle and
16 keep eyes on it like that?

17 A We don't want to have anybody be able to tamper
18 with evidence. You don't want a tow company to go
19 in and see money on the floorboard and take money.
20 Not that they do it, but sometimes you have people
21 whose cars are towed saying stuff are missing.
22 With Investigator J.P. Smith, who is a veteran in
23 law enforcement, he was there and he offered to
24 help, so I had him sit with the vehicle just to
25 make sure the chain of custody stayed intact and

1 nobody disturbed that vehicle, nobody went into
2 that vehicle until we could get another search
3 warrant.

4 Q And he was tasked, I believe you indicated, with
5 having the vehicle towed, is that right?

6 A Yes.

7 Q And where was it being towed to?

8 A To 400 Powell Road, which is where our compound is.
9 We have a secured fence, barbed wire sitting --
10 where anybody who goes through the fence, it will
11 trigger the alarm. But at that point, we had it
12 towed there. The tow car -- the tow driver dropped
13 it off and from that point, J.P. Smith stayed with
14 that vehicle until we could secure the weapon, and
15 it took a couple of hours.

16 Q Okay. While that is taking place, what do you do
17 in the meantime?

18 A The rest of us, we then go with the search warrant
19 to the Keystone Road address --

20 Q Kirkstone?

21 A Kirkstone, yes, I apologize, K-I-R-K, I apologize.
22 My eyesight has gone bad in the recent months.
23 But, yes, we went to Kirkstone. And from there, I
24 had a search warrant. We knocked on the door and
25 we had everybody in the residence go to a safe

1 couch where we cleared it for any weapons, knives,
2 guns, anything like that, and had them sit there
3 while we executed the search warrant. We read the
4 search warrant. We left them a copy and then we
5 executed on a what we call search warrant return
6 what we collected and who collected it and where
7 they collected it. And we had a lab unit there to
8 photograph.

9 Q Right, the lab unit was there. So you didn't
10 actually collect the items?

11 A I more scribed the first couple of items, and then
12 the other items -- like when I would go -- if there
13 was something come up or somebody had a question,
14 then I may leave the station area to where we were
15 scribing it. And let's say an issue came up or I
16 had to make a phone call, I would step away. If an
17 item was brought up, somebody would document what
18 it was and then it was collected by the lab unit.
19 But as things came in, we always usually have a
20 table and somebody will bring an item there. We're
21 going to be collecting -- for example, this was a
22 5C phone cell, pink with clear cover. So then that
23 will be documented and who and where they found it.

24 Q So what, in fact, did you actually -- what, in
25 fact, was collected by the Crime Scene Unit as a

1 result of the search warrant?

2 A In this case, there were 12 items. Starting with
3 Number 1, it was a 5C phone, cell phone, pink with
4 clear cover. We had a dark hooded sweatshirt,
5 light gray jacket with dark zipper pocket, red
6 Nikes, black Nikes, black sweatpants, tan pair of
7 pants, a black sweatshirt with a red and silver
8 cross on the left shoulder, black Ipod, white Ipod,
9 white phone with spec cover, and a black desktop
10 computer.

11 Q All of those items, you would not have physically
12 taken control of those at that time?

13 A No.

14 Q That would have been up to the crime scene
15 investigators?

16 A Yes. In a situation like this, we bring a Crime
17 Scene Unit with us to gather them. And then from
18 there, he takes it to the evidence room so you have
19 less of a chain of custody. In other words, if I
20 hand something to you, it has to be documented,
21 chained over, and then if we hand it to somebody
22 else, it has to be chained over. So the less
23 chain, the less convoluted it gets.

24 Q And that was Investigator Lee in this case?

25 A That would be correct, Lab Unit Investigator Lee.

1 Q All right. And you mentioned earlier that there
2 was another search warrant for the vehicle, is that
3 right?

4 A That is correct.

5 Q What happened with that?

6 A Once I left the Kirkstone address, I then went to
7 an office and typed up another search warrant with
8 the details of why we wanted to search that
9 vehicle. I took it to a magistrate down on Bluff
10 Road at the county jail, the Alvin S. Glenn
11 Detention Center. I had a magistrate review it,
12 clock it in. And she signed it, I signed, we swear
13 the facts in the search warrant are the truth. And
14 then from there, we go execute it. In this
15 specific case, I would have left the jail and then
16 gone to 400 Powell Road, which is back up on the
17 other side of town.

18 Q What type of vehicle was it that the search warrant
19 was for?

20 A This particular vehicle, a white Ford Fusion, South
21 Carolina tag JJX, I think that's a 384. I've got
22 the tag right here.

23 Q Would your eyes agree with me if I said 884?

24 A Thank you.

25 Q Is that the same vehicle that you had gotten

1 involved in with Burger King? Is that right?

2 A Yes, that is the exact same vehicle that was
3 stopped at the Burger King and taken to the
4 compound, obviously followed by J.P. Smith and he
5 sat on it until Lab Unit Tim Lee and myself got
6 there.

7 Q Okay. Once you acquired this search warrant for
8 the Fusion, what did you do with it?

9 A Well, at this point, I let the Lab Unit Timothy Lee
10 search it, and he collected photos of the vehicle
11 before he started the search, and then we collected
12 a 9-millimeter handgun out of it.

13 MR. O'NEIL: Your Honor, I object to the
14 search and seizure as well.

15 THE COURT: All right. Objection overruled.

16 BY MR. GOLDBERG:

17 Q But Investigator Lee would have been responsible
18 for actually conducting the processing of the
19 vehicle and the collection of any evidence?

20 A That is correct. And then he would have said what
21 he was collecting and then I would have scribed it.
22 So if he said, I'm taking this photo, I may have
23 wrote down photos. And then from the car, we would
24 have looked for bullets or anything in the back
25 seat, under the seat, trunk and didn't find

1 anything. The only thing of significance in this
2 situation was the gun.

3 Q Did you physically go out to Powell Road where the
4 car was?

5 A I physically went out there.

6 Q Okay. To deliver the search warrant?

7 A Yes, I saw him actually collect the weapon.

8 Q I want to take you back briefly to the encounter
9 with Mr. Heatley in Burger King. Once he was taken
10 out of the Fusion, right, you didn't have any
11 involvement with him in terms of speaking to him
12 any further, correct?

13 A No. Once he was secured, he was taken away.

14 Q And did you hear him say anything at that point to
15 anyone?

16 A I didn't. I was more -- at that point in time with
17 their investigators with their assignments, I then
18 focused in on the search warrant.

19 MR. GOLDBERG: Okay. That's all I have.

20 Thank you very much.

21 THE COURT: Cross-examination.

22 MR. O'NEIL: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. O'NEIL:

2 Q Investigator Faust, you said Mr. Heatley, according
3 to your words, went through a stop sign and was
4 speeding a little bit?

5 A Yes, sir.

6 Q And what, if any, tickets did you write him for
7 that?

8 A I haven't had a ticket book in 20 years.

9 Q So that's a no, you didn't write him anything?

10 A I did not write him a ticket.

11 Q And this is -- let me back up here. The victim's
12 body was found earlier that day. Do you remember
13 what time exactly that was?

14 A I do not. I don't have the incident report in
15 front of me.

16 Q But this is essentially 1:30 the next morning -- I
17 apologize, 1:13 the following morning?

18 A On the search warrant, we have -- I have 1:30 when
19 I went to the Kirkstone Road address, is when I
20 arrived at the address. So it would have been a
21 few minutes before then. 1:13 sounds about right.
22 Got him out of the vehicle and then from there we
23 went back up to the residence, so.

24 Q And when you come in contact with Mr. Heatley that
25 morning, he's not leaving the Richland County area,

1 correct?

2 A He was in the Burger King parking lot
3 drive-through.

4 Q He went from his house to Burger King, essentially?

5 A That's correct.

6 Q He wasn't getting on I-20 heading west or east, he
7 wasn't going 77, you don't know if he was --

8 A I can simply say he left his house and went to
9 Burger King parking lot.

10 Q Did you find any suitcases in his car or any
11 evidence that he was fleeing the location?

12 A A search warrant, we found a gun. No suitcases.

13 Q No suitcases, no clothes, nothing indicating he was
14 fleeing the area?

15 A That would be correct.

16 Q Basically got him in the drive-through --

17 A Burger King --

18 Q -- getting something to eat?

19 A -- as stated several times, yes, sir.

20 Q And your testimony is that when you came in contact
21 with him that day, he didn't fight you?

22 A No, sir, very cooperative.

23 Q Didn't try to run?

24 A No, sir. He wouldn't have gone far if he did.

25 Q But didn't even try?

1 A No.

2 Q No indication -- you testified he was extremely
3 compliant, I think is the word you used?

4 A There were, I would say anywhere from five to ten
5 of us out there. I would probably be compliant
6 too.

7 Q But how long have you been in law enforcement?

8 A Twenty-three.

9 Q And I'm pretty sure you've seen people that you
10 came in contact with that while a lot of law
11 enforcement officers, are still not being
12 compliant?

13 A They will take off running, but this is something
14 where I don't think he was expecting it. But, yes,
15 there have been plenty of people that will get out
16 and take off running, but he was not one of those.

17 Q Against all odds, take off running trying to get
18 away?

19 A That's correct.

20 Q But Mr. Heatley didn't do any of that?

21 A No, sir.

22 Q You said, Put your hands up, and he put his hands
23 up?

24 A Yes, sir.

25 Q Did you have him turn off the car or you just told

1 him to put his hands up?

2 A We got him out of the -- got his hands up and got
3 him out the car. I don't remember exactly what he
4 did.

5 Q But did you have to get him out the car or did he
6 get out the car?

7 A He got out. I think we opened the door and he got
8 it. We made sure we could see his hands.

9 Q He got out on his own volition. And I think it's
10 your testimony is you asked him whether or not
11 there were any weapons in the car?

12 A That's correct.

13 Q And according to your testimony, he voluntarily
14 told you there was a weapon in the car?

15 A I don't know if he volunteered, we asked him and
16 he -- it was for officer safety, he said yes. And
17 I was like, Just don't reach for it, come on, get
18 out the car.

19 Q Let me put it this way. You don't know whether he
20 volunteered, you didn't force him to tell you, did
21 you?

22 A No.

23 Q He told you on his own volition. You didn't coerce
24 him, you know, beat him up to get him to tell you
25 that, did you?

1 A It was a simple question, yes, sir.

2 Q And he answered you on his own?

3 A And he's a lot larger than me, there was no me
4 beating him up, no, sir.

5 Q I understand that. But he voluntarily answered?

6 A Absolutely. Very cooperative.

7 Q And you actually wind up executing the search
8 warrant on his mother's residence, is that correct?

9 A There was a search warrant at that residence, yes,
10 sir. I don't technically know who the owner is,
11 but --

12 THE COURT REPORTER: Don't know what, I'm
13 sorry?

14 A I don't know who the owner actually is.

15 Q And of the items that you obtained from the
16 residence, one was a cell phone?

17 A Yes.

18 Q That cell phone actually belonged to Ms. Desha
19 Anderson, correct?

20 A That's what we have listed.

21 Q That was at that time Mr. Heatley's current
22 girlfriend?

23 A If you say so.

24 Q Do you say so in your own report that --

25 A His girlfriend, yes.

1 Q His girlfriend? In fact, she was staying -- she
2 was at the house when you got there?

3 A That's correct.

4 Q I think she was laying on the couch or on a
5 makeshift bed when you got there?

6 A That's correct.

7 Q It's 1:30 in the morning and she's laying on the
8 bed. Did you find anything in that residence that
9 belonged to the victim, Ms. Roach?

10 A I don't believe any of these items belonged to her.

11 Q Did you find a purse that belonged to Ms. Roach?

12 A No.

13 Q Didn't find any keys that belonged to Ms. Roach?

14 A Don't see them listed on the search warrant, no,
15 sir.

16 Q You didn't find any phone that belonged to
17 Ms. Roach at his residence?

18 A Don't see it -- but, no.

19 Q And this is just hours after Ms. Roach's body had
20 been found dead?

21 A It would have been earlier that day, yes, sir.

22 Q In the Farrow Road area of Columbia?

23 A Yes, sir.

24 MR. O'NEIL: Beg the Court's indulgence, Your
25 Honor.

1 (Pause.)

2 MR. O'NEIL: That's all I have, Your Honor.

3 THE COURT: Yes, sir.

4 MR. GOLDBERG: No more questions.

5 THE COURT: All right. You may step down.

6 (Witness steps down.)

7 THE COURT: Call your next witness.

8 MR. FYALL: The State calls Investigator
9 Timothy Lee.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible and raise your right.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you're about to give in this case will be
16 the truth, the whole truth and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. Have a seat in the
20 witness stand, please.

21 (Witness seated.)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Timothy Lee, L-E-E.

24 TIMOTHY LEE,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. FYALL:

3 Q Investigator Lee, can you tell us where you're
4 employed?

5 A Richland County Sheriff's Department, Crime Scene
6 Unit.

7 Q How long you been with the Crime Scene Unit?

8 A Crime Scene Unit since 2007. I've been with the
9 department for 24 years.

10 Q All right. What are your duties as a member of the
11 Crime Scene Unit?

12 A Currently, I'm the sergeant over the Crime Scene
13 Unit, day-to-day operations, I manage ten people,
14 assist with the lieutenant and captain on doing
15 paperwork and administrative stuff. I also respond
16 to calls and cover shifts, whatever needs to be
17 done.

18 Q All right. Let's talk about your involvement in
19 this case. Can you tell us how you began
20 involvement in this case on January 29th, 2016?

21 A Sure. 2016, on January 29th, I was coming on duty
22 in Richland County. I was third shift, which was
23 the midnight shift, and I was contacted by my
24 captain, Captain Anna Cavanagh, requesting that I
25 respond to 10771 Farrow Road to assist with a

1 homicide scene. I got out there. There was two
2 Crime Scene Units already on scene and it was a
3 sanded undeveloped lot. And they were marking, had
4 areas cordoned off. There was a vehicle. I just
5 showed up to see what I could do, see what needed
6 to be done.

7 Q And what did you do?

8 A I assisted Investigator Schroder, who's no longer
9 with us, him and Investigator Rainsford had already
10 marked evidence, so I assisted with measurements.
11 I searched around the vehicle. In the sand, there
12 were several shoe impressions, and I marked those
13 with Markers AA and AB. Photographed them with a
14 scale. And then I used dental casting stone to
15 cast them to lift them out of the ground.

16 Q I'm going to show you State's Exhibits 99 and 102.
17 Do you recognize those?

18 A The first one is going to be an overall markers
19 that were already placed there around and in front
20 of the vehicle, and the next one is going to be
21 additional markers on the passenger side front of
22 the vehicle.

23 MR. FYALL: Your Honor, at this time we would
24 offer State's 99 and 102 into evidence.

25 MR. O'NEIL: No objection, Your Honor.

1 THE COURT: All right. They're in without
2 objection.

3 MR. FYALL: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibit No. 99 was
5 marked for identification and received
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 102 was
8 marked for identification and received
9 into evidence.)

10 BY MR. FYALL:

11 Q So these are just overall of the scene when you got
12 there?

13 A Yes.

14 Q All right. You mentioned collecting some shoe
15 impressions. I'm going to show you State's 101 --
16 I'm sorry, 100, 101, and 103 through 108. Tell us
17 if you recognize those.

18 A I do.

19 Q What are they?

20 A These are going to be establishing shots mid-range,
21 A and B --

22 Q Don't show them yet. Just tell me if you recognize
23 them.

24 A Okay. A and B marked impressions and on through to
25 close-up on impressions, shoe impressions with a

1 scale, and then overall of the casting, where I put
2 the casting material in the impressions.

3 Q Do those fairly and accurately reflect the scene as
4 you visited it?

5 A They do.

6 MR. FYALL: Your Honor, at this time, the
7 State offers 100, 101, and 103 through 108 into the
8 evidence.

9 MR. O'NEIL: No objection, Your Honor.

10 THE COURT: No objection? Marked without
11 objection.

12 (WHEREUPON, State's Exhibit Nos. 100 -
13 101 were marked for identification and
14 received into evidence.)

15 (WHEREUPON, State's Exhibit No. 103 -
16 108 were marked for identification and
17 received into evidence.)

18 BY MR. FYALL:

19 Q And just to clarify something, what date and time
20 did you arrive on scene?

21 A This was January 29th, 2016, and I arrived at 1950
22 hours.

23 Q What time is that?

24 A 1950? That is 7:50.

25 Q Okay. 7:50 on January 29th?

1 A P.M., correct.

2 Q All right. I'm going to show you 103 and 104. Can
3 you describe those for the jury?

4 A These are shoe impressions with a scale added,
5 Markers AA.

6 Q I'm going to show you 105 and 106. Can you
7 describe that?

8 A The second shoe impression marked AB with scale.

9 Q After you marked those shoe impressions, can you
10 tell us what you did?

11 A I photographed them -- I marked them, I
12 photographed them, and then I used dental stone,
13 which dental stone is just a casting stone. We all
14 pretty much know what it is. And it flows into all
15 the nooks and crannies. Once it dries, you can
16 lift it and you can see the reverse impression.

17 Q I show you State's 107 and 108.

18 A This is the dental stone after applied and it is
19 curing.

20 Q I show you State's 113. Do you recognize that?

21 A This is the box that I placed the cast in, the
22 dental stone cast of AA and AB.

23 MR. FYALL: Your Honor, at this time we would
24 offer State's 113 into evidence.

25 THE COURT: Any objection?

1 MR. O'NEIL: No, Your Honor.

2 THE COURT: It will be entered without
3 objection.

4 MR. FYALL: Thank you, Your Honor.

5 (WHEREUPON, State's Exhibit No. 113 was
6 marked for identification and received
7 into evidence.)

8 BY MR. FYALL:

9 Q After you went to the scene, what was your next
10 involvement in this case?

11 A Once I finished at the scene, I was requested to
12 escort a vehicle from the scene, a 2012 Honda
13 Civic, silver in color, back to our forensics
14 garage located behind our headquarters, and I
15 secured it in our forensics garage per our
16 protocol.

17 I left from there at -- I finalized that at
18 2300 hours, 11:00 p.m., and I was requested to
19 respond to 7703 Broad River Road, which I arrived
20 there at 1:55 on the 30th. And that is the Burger
21 King located at Irmo -- Broad River and Irmo, 7703.

22 Q Okay. And just backing up, you said you escorted
23 the car that was in the crime scene back to the
24 forensic garage?

25 A I did, yes.

1 Q Just to make sure there was no issue?

2 A It's per our protocol, we maintain contact with it.

3 Q All right. Sorry to interrupt. Can you tell us
4 about the Burger King?

5 A No problem. I met with CID investigators at the
6 drive-through area of the Burger King. I observed
7 a white Ford Fusion sitting there in the
8 drive-through area. And I was requested to take
9 exterior photographs of the vehicle, which I did.
10 And then another investigator escorted the vehicle
11 towed to our Richland County compound yard located
12 at Powell Road.

13 Q I'm going to show you State's 57, 58 -- 57 through
14 62. Do you recognize those?

15 A Yes, these are overall photos of the described
16 vehicle.

17 Q Do those fairly and accurately represent the
18 vehicle when you arrived at the Burger King?

19 A Yes.

20 MR. FYALL: Your Honor, at this time, the
21 State offers 51 through 62 into evidence.

22 THE COURT: Any objection?

23 MR. O'NEIL: No, Your Honor.

24 BY MR. FYALL:

25 Q Did you do anything with the vehicle on that date

1 besides take pictures of it?

2 A Not at this location, no.

3 THE COURT REPORTER: Was that 51 or 57?

4 THE COURT: Yeah, because I had 57.

5 MR. FYALL: 57 through 62.

6 THE COURT: So 57, not 51.

7 MR. FYALL: 57, I'm sorry, Your Honor.

8 THE COURT: Without objection?

9 MR. O'NEIL: That's correct, Your Honor.

10 (WHEREUPON, State's Exhibit Nos. 57 - 62
11 were marked for identification and
12 received into evidence.)

13 BY MR. FYALL:

14 Q After you took pictures of the vehicle at the
15 Burger King, what did you do?

16 A I left from the Burger King. I was requested to
17 respond to 212 Kirkstone Road in Irmo and meet with
18 CID investigators.

19 Q All right. And while there, did you collect
20 anything, take pictures?

21 A I was requested by the investigators on scene,
22 Sergeant Faust, Investigator Rebolj, Investigator
23 Roe, to collect certain items that they described
24 in several different areas of the home, clothing
25 items, cell phones, computers, and so forth.

1 Q I'm going to show you State's 63 through 73. Do
2 you recognize those?

3 A I do.

4 Q Do those fairly and accurately represent the home
5 as you saw it on that day?

6 A Yes.

7 MR. FYALL: Your Honor, at this time the State
8 offers 63 through 73 into evidence.

9 THE COURT: Any objection?

10 MR. O'NEIL: No, Your Honor.

11 (WHEREUPON, State's Exhibit Nos. 63 - 73
12 were marked for identification and
13 received into evidence.)

14 BY MR. FYALL:

15 Q All right. Starting with 63, what's the purpose of
16 that?

17 A That is the address, the mailbox showing the
18 location.

19 Q And 64?

20 A It's the exterior of the home, description of the
21 exterior.

22 Q All right. And you said you were directed by
23 investigators to go to which place in the home?

24 A As you come in the front door, there is a, was
25 probably one time a living room that's been.

1 converted to a bedroom just off to the left of the
2 front door. There was a bed, a couch, television,
3 personal items. And there were clothing that they
4 had seen that they wanted collected. I would take
5 the item, clean a spot that was on the bed, so I
6 laid it out on the bed, photographed it, and
7 packaged it.

8 Q All right, 65 and 66 is the bedroom you're
9 referring to?

10 A Yes.

11 Q You collected some items. I want to show you 67.

12 A Yes. Those are going to be, I believe, black
13 sweatpants.

14 Q 68?

15 A Those are going to be khaki pants.

16 Q And 69?

17 A And that's going to be a gray Swiss brand jacket.

18 Q I'm going to show you State's 74 through 78. Do
19 you recognize those?

20 A Yes.

21 Q Do those fairly and accurately represent the scene
22 when you took these photos?

23 A Yes, sir.

24 MR. FYALL: Your Honor, at this time the State
25 offers 74 through 78 into evidence.

1 THE COURT: Any objection?

2 MR. O'NEIL: No, Your Honor.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit Nos. 74 - 78

5 were marked for identification and

6 received into evidence.)

7 BY MR. FYALL:

8 Q I'm going to show you 74 and 77. Starting with 74.

9 A That is, I believe it's going to be a black Swiss
10 brand jacket.

11 Q And 77?

12 A That is a stand next to the bed and I think it's an
13 iPad and cell phone with charger.

14 Q And you said you collected some items while you
15 were there?

16 A Yes.

17 Q I'm going to show you State's 79 through 83 --
18 actually, through 86. Do you recognize those?

19 A I do.

20 Q Do those fairly and accurately represent --

21 A Yes.

22 Q Sorry. Thank you.

23 MR. FYALL: Your Honor, at this time the State
24 offers 79 through 86 into evidence.

25 THE COURT: Any objection?

1 MR. O'NEIL: No, Your Honor.

2 (WHEREUPON, State's Exhibit Nos. 79 - 86
3 was marked for identification and
4 received into evidence.)

5 BY MR. FYALL:

6 Q All right. I show you 79 and 80. Would you
7 describe that?

8 A This is an area as you come in from the front door
9 to your left. You come into the room, there's a TV
10 stand with a TV. And there were shoes on the
11 floor. And I was asked to collect the red Nike and
12 the black Nike tennis shoes.

13 Q All right. 84, 85, and 86?

14 A Closer shots of the item of the black to include
15 the side.

16 Q 82 -- 81, 82, and 83?

17 A This is the red Nike's, side, bottom, and top.

18 Q I'm going to show you State's 109 and 111. Do you
19 recognize those?

20 A It is the evidence label I filled out for red Nike
21 shoes. It was submitted 1/31/2016 at 2:30 in the
22 morning. And this is the black Nike shoes evidence
23 label at the same time by me.

24 MR. FYALL: Your Honor, at this time the State
25 offers 109 and 111 into evidence.

1 THE COURT: Any objection?

2 MR. O'NEIL: No, Your Honor.

3 (WHEREUPON, State's Exhibit No. 109 was
4 marked for identification and received
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 111 was
7 marked for identification and received
8 into evidence.)

9 BY MR. FYALL:

10 Q Can you show those to the jury, please.

11 A Red Nike shoes. You want them taken all the way
12 out?

13 Q Just one.

14 A Just one.

15 Q What is that?

16 A Black Nike shoes.

17 Q I'm going to show you State's 112. Do you
18 recognize that?

19 A Evidence label I created on 1/31/2016, 2:30 in the
20 morning, gray Swiss jacket, black Swiss jacket.
21 There was a black hoodie, black sweatpants, and
22 khaki pants. Do you want me to describe the
23 difference?

24 Q Yes.

25 A And also it appears the black hoodie was removed to

1 be sent to SLED on 3/23/2016.

2 MR. FYALL: Your Honor, at this time, we'd
3 offer State's 112 into evidence.

4 THE COURT: Any objection?

5 MR. O'NEIL: Your Honor, why don't we put them
6 all as one item and separate out -- there are
7 multiple things in that one box.

8 THE COURT: You want to mark them separately,
9 is that what you're saying?

10 MR. O'NEIL: Yes, Your Honor. I think there's
11 like four different items in that one box.

12 THE WITNESS: Yes, sir, four.

13 MR. O'NEIL: I don't have a problem if they
14 mark them all as one exhibit.

15 THE COURT: Madam Court Reporter, what's the
16 best way to do that?

17 THE COURT REPORTER: We usually just do it
18 altogether and keep them in the box, but if you
19 want to do them separately, we can.

20 THE COURT: As long as the box has the
21 contents in there.

22 MR. O'NEIL: I don't want them to get
23 separated once -- if we're going to mark them
24 altogether, they can't get separated out later on
25 in any fashion.

1 THE COURT: We'll let the foreperson know to
2 put them all back.

3 MR. O'NEIL: Yes, ma'am.

4 THE COURT: It's labeled on the box what it's
5 supposed to be?

6 MR. FYALL: Yes, Your Honor.

7 THE COURT: 112.

8 MR. FYALL: Yes.

9 (WHEREUPON, State's Exhibit No. 112 was
10 marked for identification and received
11 into evidence.)

12 BY MR. FYALL:

13 Q Will you show it to the jury, please?

14 A These are wrapped in craft paper. You want me to
15 take them out?

16 Q Yes.

17 A It's the gray Swiss jacket, black Swiss jacket,
18 black pants, and the khaki pants. Put them back in
19 the box?

20 Q Yes. Once you took everything from the house,
21 submitted it into evidence, what was your next
22 involvement in this case?

23 A I left 212 Kirkstone at 3:05 a.m. and the evidence
24 was taken back to headquarters and it was later
25 submitted into evidence and property as you see the

1 evidence label.

2 I left from there and I responded to 400
3 Powell Road to our compound yard, and I met with
4 Investigator Smith, who had maintained custody of
5 the towed vehicle from the Burger King.

6 Sergeant Faust arrived with a search warrant.
7 He requested that I collect a firearm that was in
8 the glove box. I observed and located a
9 9-millimeter Smith & Wesson in the glove box.
10 Photographed it, collected it to be taken back to
11 headquarters.

12 Q I'm showing you State's 87 through 96. Do you
13 recognize those?

14 A I do.

15 Q I'm also going to show you State's 117 through 123.
16 Do you recognize those as well?

17 A I do.

18 Q All right. Do those photos fairly and accurately
19 represent the car when you had it at the impound
20 yard?

21 A Yes.

22 MR. FYALL: Your Honor, at this time the State
23 offers 87 through 96 and 117 through 123 into
24 evidence.

25 MR. O'NEIL: Your Honor, I do have an

1 objection to some of them.

2 THE COURT: All right.

3 MR. O'NEIL: Your Honor, I would object to
4 State's 87 through 90 and State's 121 and 122 based
5 off my previous objection that that item was
6 obtained in violation of his Fourth Amendment.

7 THE COURT: Is this the same objection from
8 pretrial?

9 MR. O'NEIL: Yes, Your Honor. It's a picture
10 of the item that we objected to pretrial.

11 THE COURT: All right. Those would be entered
12 over the objection of Defense, and the others would
13 be entered without objection.

14 (WHEREUPON, State's Exhibit No. 87 - 96
15 marked for identification and received
16 into evidence.)

17 (WHEREUPON, State's Exhibit Nos. 117 -
18 123 were marked for identification and
19 received into evidence.)

20 BY MR. FYALL:

21 Q I'm going to show you 117 and 119.

22 A This is a photograph of the front end of the
23 described vehicle. This is a photograph of the
24 back with the tag.

25 Q Can you read that tag?

1 A JJX884.

2 Q When you entered that vehicle, what did you find?

3 A I was asked to look in the glove box for a firearm,
4 which I found a Smith & Wesson semi-auto pistol.

5 MR. O'NEIL: Your Honor, I object. It is in
6 violation of his Fourth Amendment rights.

7 THE COURT: Your objection is overruled, but
8 noted for the record.

9 BY MR. FYALL:

10 Q I show you 88 and 89.

11 A Those are pictures of the glove box with the weapon
12 in the glove box.

13 Q What brand of gun did you say it was?

14 A Smith & Wesson -- yeah, Smith & Wesson 9-millimeter
15 pistol.

16 Q 87 and 121?

17 A That's the same weapon removed from the glove box.
18 It has a light of some sort on the bottom of it.

19 Q After you collected that, what did you do?

20 A I cleared the compound yard at 5:00 a.m. and I went
21 back to headquarters on Two Notch Road where we
22 have our lab and I proceeded to process the weapon.
23 I could not see the serial number on the weapon due
24 to the light, so when I removed the light, I was
25 able to get the serial number, which was FWL2257.

1 I removed the magazine, which had unfired
2 cartridges in it, and I processed both of them
3 using cyanoacrylate fuming, which is super glue
4 vaporized, and black powder for latent prints. I
5 was able to develop one latent print off of the
6 magazine of the weapon. And then I swabbed both
7 the magazine and the firearm for possible DNA. All
8 these items, including the latent print card, were
9 all submitted to evidence. And I completed that
10 call at 6:20 a.m.

11 Q I'm going to show you 97 and 98. Do you recognize
12 those?

13 A Yes.

14 Q And when you say you processed the gun and the
15 magazine, was the magazine in the gun?

16 A Yes.

17 Q When you found it?

18 A It was.

19 Q All right. And that's the serial number?

20 A It is a picture of the serial number and then a
21 picture of the bottom of one of the cartridges.

22 Q I'm going to show you State's 110. Do you
23 recognize that?

24 A This is the evidence label I created for the Smith
25 & Wesson pistols, serial number FWL2257, with the

1 magazine and unfired cartridges. And it was
2 submitted to our evidence room on 1/30/2016 at 6:20
3 in the morning.

4 MR. FYALL: Your Honor, at this time, I'd
5 offer State's 110 into evidence.

6 THE COURT: Any objection?

7 MR. O'NEIL: Yes, Your Honor, subject to my
8 previous objection. It's in violation of his
9 Fourth Amendment.

10 THE COURT: That is entered over objection.

11 MR. FYALL: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit No. 110 was
13 marked for identification and received
14 into evidence.)

15 BY MR. FYALL:

16 Q Can you show that to the jury?

17 A You want it opened?

18 Q Yes.

19 A Smith & Wesson firearm. This is the light that was
20 removed off the bottom of it. This is the magazine
21 emptied. Do you want these opened as well?

22 Q Tell us what they are.

23 A These are unfired cartridges, 9-millimeter, that
24 was removed from the gun.

25 Q After you processed that gun and magazine and

1 turned it in to evidence, did you have any other
2 further involvement in this case?

3 A No, that was the end of my involvement in the case.

4 MR. FYALL: Thank you. No further questions.

5 THE COURT: All right. Before we get into
6 cross-examination, we're going to go ahead and take
7 our afternoon break. We've been going for probably
8 about an hour and 20 minutes, I think. So we'll go
9 ahead and take about a five to ten minute break to
10 refresh yourself, and then we will come back for
11 cross-examination.

12 Thank you.

13 (WHEREUPON, the jury retires to the jury
14 room at 4:06 p.m.)

15 THE COURT: You may step down, Investigator.

16 (Witness steps down.)

17 THE COURT: We'll take about five or ten
18 minutes. We'll start back about 4:15.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: May I see the attorneys at the
21 bench?

22 (WHEREUPON, a bench conference was
23 held.)

24 THE COURT: Wait for everybody to come back in
25 the courtroom.

1 MR. FYALL: Your Honor, Madam Court Reporter
2 told me that I may have not entered 97 and 98 in
3 evidence.

4 THE COURT: Any objection?

5 MR. O'NEIL: Yes, Your Honor. Subject to my
6 previous objection.

7 THE COURT: So those will be over objection of
8 the Defendant.

9 (WHEREUPON, State's Exhibit Nos. 97 - 98
10 were marked for identification and
11 received into evidence.)

12 MR. GOLDBERG: One moment, Your Honor.

13 THE COURT: I want to have a conversation. So
14 the deputies are in the courtroom. I am going to
15 ask -- we've received a note from the jurors
16 regarding the cell phones, people on the phones,
17 they see y'all on the phones, and the phones being
18 exposed. And you cannot video, you cannot record
19 anything, you cannot take any pictures. If you
20 have your cell phone, I ask that you put it up in
21 your pocket, in your purse. I explained to you all
22 earlier that the jury is sitting over there. They
23 are watching, they have a direct view definitely
24 over here, and they are looking over here. I'm
25 asking that you put up your phones. If somebody is

1 in the back -- the deputy said somebody is in the
2 back typing something. I don't know what is -- is
3 there anyone that is a reporter with the media?

4 The media knows that they are supposed to have an
5 order before they do any recordings, any typing of
6 proceedings. The only person that needs to type
7 the proceedings is the court reporter.

8 All right. I hear phones dropping over here.
9 If you cannot continue to -- if I get another note
10 from the jurors, then at that point, I'm probably
11 going to clear out the courtroom except for people
12 who are the victims and the victim's immediate
13 family members, the Defendant's mom or dad, if
14 they're here in the courtroom, but everybody else
15 is going to have to leave, because I'm not going to
16 continue to get letters from the jury regarding
17 what's going on in the audience. They're supposed
18 to be paying attention to the lawyers and the
19 witnesses and not being distracted by people and
20 phones.

21 So put the cell phones up, put the laptops up.
22 If you have business that you need to take care of,
23 go outside and do it. But please put the cell
24 phones up. All right?
25

1 (WHEREUPON, Court Exhibit No. 4 was
2 marked for identification only.)

3 MR. GOLDBERG: Judge, may we approach briefly?

4 THE COURT: Yes.

5 MR. GOLDBERG: In regard to scheduling.

6 THE COURT: And the other thing, somebody said
7 somebody needs to pick a child up by 6:00.

8 (WHEREUPON, a bench conference was
9 held.)

10 THE COURT: Let's bring them on in.

11 I need to mark the note. This one, this needs
12 to be marked.

13 (WHEREUPON, Court's Exhibit No. 4 was
14 marked for identification only.)

15 (WHEREUPON, the jury came into open
16 court at 4:38 p.m.)

17 THE BAILIFF: The jury is seated, Your Honor.

18 THE COURT: All right, ladies and gentlemen of
19 the jury, we are ready for cross-examination. I
20 did receive your note. Someone had a concern
21 regarding picking a child up at 6:00 o'clock.

22 We'll be gone in enough time for you to do that.

23 All right. Cross-examination.

24 MR. O'NEIL: Thank you, Your Honor, may it
25 please the Court?

CROSS-EXAMINATION

1
2 BY MR. O'NEIL:

3 Q Investigator Lee, I think you went to about four
4 locations, including the department's own impound,
5 is that right?

6 A Roughly, yes.

7 Q YOU went to the incident location, you went to
8 Kirkwood, you went to Burger King, and you did some
9 stuff at the Powell Road compound, correct?

10 A Incident location, headquarters, Burger King,
11 Kirkstone, back to Powell Road, back to
12 headquarters.

13 Q And you were out there I think with Investigator
14 Rainsford and Schroder on the 29th around 7:00 or
15 so o'clock?

16 A Yes, I got out there at 1950, 7:50.

17 Q And one of the things -- one of the group of things
18 you collected at that point was some shell casings,
19 you remember that?

20 A I did not, no.

21 Q You didn't collect any shell casings?

22 A No.

23 Q You only did the --

24 A I did measurements with Schroder and then I
25 photographed and collected the shoe impressions, A

1 and AB.

2 Q And as it relates to what you did at Burger King,
3 you photographed and helped secure the vehicle
4 Mr. Heatley was in at Burger King, correct?

5 A No, I photographed the exterior of the vehicle.

6 Q And when you photographed the exterior of the
7 vehicle there at Burger King, did the vehicle
8 appear to have been freshly detailed or anything
9 like that?

10 A I don't remember, no.

11 Q If that would have been the case, you probably
12 would have noted that somewhere in some report that
13 you made?

14 A It's possible, yes.

15 Q And you didn't note that anywhere?

16 A No, sir.

17 Q Once the vehicle got back to the compound, you
18 photographed the inside and the outside of the
19 vehicle at that point, correct?

20 A Yes. Limited on the inside. I was specifically
21 going to where they told me to find a weapon.

22 Q I think you photographed -- a bunch of photographs
23 had in evidence, it was the inside of the trunk of
24 the vehicle?

25 A The trunk was open, yes.

1 Q Did you photograph the inside of the trunk?

2 A I don't think I photographed down into it. I
3 photographed somewhat into it.

4 Q There were two tires in there?

5 A If I recall.

6 Q We can get the photograph is we need to, but there
7 are two tires in there?

8 A If I recall, yes.

9 Q And there was no evidence in your examination of
10 the outside of the vehicle of any sort of excessive
11 amount of dirt or anything on those tires?

12 A I don't recall. I never looked at that part of it.
13 I was specifically going to look for a weapon.

14 Q In any event, those pictures up there, those
15 pictures would have captured what the car looked
16 like at that particular time?

17 A Yes.

18 Q You also indicated that you -- in direct, that you
19 recovered a weapon out of the inside of the car,
20 correct?

21 A Yes.

22 Q Was the glove box locked on the inside of the car?

23 A I don't think so.

24 Q If it would have been locked, you would have had to
25 open it some other way other than a key, correct?

- 1 A It would have had to have been forced open if I
2 didn't have a key, that's correct.
- 3 Q And you probably would have noted forcing it open
4 somewhere in your report if you had to do that?
- 5 A I would have, yes.
- 6 Q But you didn't note that anywhere?
- 7 A Not that I have in my notes, no.
- 8 Q So is it safe to assume that the glove box was
9 locked, correct -- unlocked, I apologize?
- 10 A Unlocked.
- 11 Q Now, did you do the processing on the inside of the
12 car for fingerprints?
- 13 A No, I did not.
- 14 Q As it relates to the firearm, you did process that
15 firearm for fingerprints, correct?
- 16 A Yes.
- 17 Q What were the results of that processing?
- 18 A Positive. I'm not sure of your exact question.
19 Positive for latent print lift.
- 20 Q And you don't personally do the comparison of those
21 latent prints?
- 22 A No. We have latent print personnel that does that.
- 23 Q You pass that on to another individual?
- 24 A Yes.
- 25 Q And you also processed the magazine of that weapon,

1 correct?

2 A Yes.

3 Q Now, I want to make sure we're talking about the
4 weapon specifically here. To your knowledge here,
5 the weapon had a full magazine in it when you
6 observed it?

7 A It had ammunition, yes, unfired cartridges in it.

8 Q You know how many?

9 A I don't remember.

10 Q But all --

11 A Where is the box at? We can look. I can tell you
12 how many were in it.

13 THE CLERK: Right there.

14 MR. O'NEIL: Permission to approach, Your
15 Honor?

16 THE COURT: Yes.

17 THE WITNESS: No, this is not my writing, so I
18 did not remove them from the magazine. I can count
19 them for you if you want me to.

20 BY MR. O'NEIL:

21 Q Yes, sir.

22 A It says one is loose, and there's one unfired in
23 there. These are all unfired. There's 16 there,
24 so 17 total.

25 Q Do you know how many that magazine holds?

1 A I don't know.

2 Q But you know for sure there's 16 -- or a total of
3 17 unfired projectiles that was collected?

4 A Per the magazine, it says it holds 16. So if you
5 had one in the slide, 17 total.

6 Q So most guns -- most weapons here, you would have
7 had 16 in the magazine and had one all the way to
8 preload, that would make 17?

9 A On this weapon, it appears so.

10 Q On that weapon. So when you received that weapon
11 here, for all intents and purposes, it was fully
12 loaded, is that fair to say?

13 A Appears so, yes.

14 Q So we have a loaded weapon and no -- was there any
15 evidence that the weapon had been recently fired?

16 A That's not what I do. All I did was process and
17 then it goes on to firearms.

18 Q Let me ask you this, was there any soot or any of
19 that material on the weapon when you saw it?

20 A I don't know, I didn't look at that. I processed
21 it for latent prints.

22 Q And did you also process any of the projectiles in
23 the magazine for latent prints?

24 A Projectiles?

25 Q Yes, any bullets in the magazine?

1 A The unfired cartridges?

2 Q The unfired cartridges.

3 A I did not pull them out of it.

4 Q Okay. So they were not processed for prints at
5 all?

6 A The top one would have been processed and the one
7 that came out of the slide, the chamber area, those
8 were the two that would have been accessed.

9 Q Okay. And lastly, Investigator Lee, I think you
10 also did a -- did you personally do a test on some
11 currency that was given to you by Investigator
12 Gonzalez?

13 A Yes, while I was waiting on the processing for the
14 cyanoacrylate, it takes a little while, some money,
15 currency was brought in with reddish stains on it.

16 Q Okay.

17 A And, yes, I did test it for the presence of blood
18 using hemident, which is a presumptive test.

19 Q Uh-huh.

20 A That came back negative.

21 Q So the money that you were given from a different
22 investigator, you tested that for blood and the
23 presumptive test was negative for blood?

24 A Yeah, the swab that I collected and tested with the
25 hemident came back negative on the print.

1 Q Investigator Lee, did you -- from the vehicle in
2 Burger King, the collection of the materials from
3 Kirkwood -- Kirkstone, I'm sorry -- or the vehicle
4 at the impound, do you know if anything was found
5 in that -- from your collection in here that
6 belonged to the victim, Ms. Roach?

7 A I don't understand your question.

8 Q When you photographed the car at Burger King here,
9 when you helped process the scene there at
10 Kirkstone here, do you know whether or not any of
11 the items, that would be the pictures or collected
12 through your processing belonged to the victim,
13 Ms. Roach?

14 A I don't know.

15 Q Do you know -- you collected the shoes there at
16 Kirkstone, correct?

17 A Yes.

18 Q Do you know whether or not those shoes were ever
19 tested for any sort of trace evidence?

20 A I don't know on that.

21 Q Who would have submitted the shoes for testing, do
22 you know?

23 A It would have been requested by an investigator.
24 Usually, the lead investigator will request testing
25 on clothing, shoes and such.

1 Q So your job is basically to collect it and then the
2 lead investigator of the case decides whether or
3 not those items need to be sent on for further
4 testing?

5 A Not every time. In this case, yes. I was
6 requested to go. They already executed a search
7 warrant and I collected what they asked.

8 Q I guess I just want to make sure we understand kind
9 of procedurally how. Sometimes, as the collection
10 individual, you would request some testing be made
11 and sometimes the lead investigator would decide
12 what things need to be tested?

13 A Usually, it's going to go through the investigator
14 no matter what.

15 MR. O'NEIL: Beg the Court's indulgence, Your
16 Honor.

17 (Pause.)

18 MR. O'NEIL: That's all I have, Your Honor.

19 THE COURT: Redirect?

20 MR. FYALL: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. FYALL:

23 Q I want to clear one thing up. You tested the gun
24 and the magazine for prints?

25 A I processed the gun and the magazine for prints,

1 yes.

2 Q All right. And can you give us the results one
3 more time?

4 A Positive, one latent print card collected, which
5 how we write ours, it means a latent print was
6 observed, a latent print was lifted and placed onto
7 a card. That card was submitted in for THE latent
8 print section to review.

9 Q Is that lifted off the magazine or the gun?

10 A Off of the magazine, I believe.

11 Q So the gun was negative?

12 A Yes.

13 MR. FYALL: No further questions.

14 MR. O'NEIL: One more question. I apologize,
15 Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. O'NEIL:

19 Q Investigator Lee, can you tell us what brand of
20 ammunition was in that firearm here?

21 A Per the photograph, it looks to be Luger
22 9-millimeter, would be the ammunition. WIN Luger
23 9-millimeter.

24 Q And you opened those 16 that is in the evidence
25 bag?

1 A Oh, what's in here, you mean?

2 Q In both, yes.

3 A I don't know. WIN Luger 9-millimeter -- you want
4 me to go over all of them?

5 Q Yes, sir.

6 A Same. Same. Same. Same. Two of the same. I
7 will try to do two at a time to go faster. Two of
8 the same. Same. Same. Same. All WIN Luger
9 9-millimeter.

10 Q They're all Luger Winchester 9-millimeter, correct?

11 A Yes.

12 MR. O'NEIL: That's all I have, Your Honor.

13 THE COURT: Anything else?

14 MR. FYALL: No, ma'am.

15 THE COURT: All right, sir, you may step down.

16 THE WITNESS: Thank you.

17 (Witness steps down.)

18 THE COURT: Let me see you all one second.

19 (WHEREUPON, a bench conference was held
20 in the presence of the jury but outside
21 the hearing of the jury.)

22 THE COURT: Call your next witness.

23 MR. FYALL: The State calls Ariel Epps.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE DEFENDANT: Yes, I do.

8 THE CLERK: Have a seat in the witness stand,
9 please.

10 (Witness seated.)

11 THE CLERK: State your name for the record.

12 THE WITNESS: Ariel Epps.

13 ARIEL EPPS,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FYALL:

17 Q Ms. Epps, where do you work?

18 A Bank of America.

19 Q And what do you do there?

20 A I'm the branch manager.

21 Q In February of 2016, were you asked to provide some
22 documents related to Ms. Deannandra Roach?

23 A Yes, sir.

24 Q What were those documents?

25 A They were transactions from the ATM card.

1 Q All right. Were you asked to provide a video as
2 well?

3 A I wasn't. Our loss prevention team was.

4 Q Were the transaction log and videos provided?

5 A Yes.

6 Q I'm going to show you State's 124 and 125. Do you
7 recognize those?

8 A Yes.

9 Q What are they?

10 A These are the transaction details from the ATM
11 debit card.

12 Q All right. And what is 125?

13 A This is a video from one of the ATMs, at one of the
14 Bank of America ATMs.

15 Q And that's the video you provided?

16 A Not the video, but the records.

17 MR. FYALL: Your Honor, at this time the State
18 offers 124 and 125 in evidence.

19 THE COURT: Any objection?

20 MR. O'NEIL: I just want to see it, that's
21 all. No objection, Your Honor.

22 THE COURT: Those two will be entered without
23 objection.

24 (WHEREUPON, State's Exhibit No. 124 was
25 marked for identification and received

1 into evidence.)
2 (WHEREUPON, State's Exhibit No. 125 was
3 marked for identification and received
4 into evidence.)

5 BY MR. FYALL:

6 Q I want to hand you 124. I'm going to point you to
7 the second page. Tell me what you see there
8 regarding the transaction.

9 A Yes. There was a transaction done at Sonic
10 Drive-In for \$7.37.

11 Q Is the time on there?

12 A It is.

13 Q What time was that?

14 A 164959.

15 Q That's 4:50 in the afternoon?

16 A Right.

17 Q All right. Thank you. All right. And on this,
18 there are some things in this fourth column that
19 say yes?

20 A Uh-huh.

21 Q Can you tell us what that means?

22 A So that means that the transaction was declined.

23 Q All right.

24 A There was an attempt, but it was declined.

25 Q I show you Page Number 3. Can you tell me what you

1 see there?

2 A Yes. There was a balance inquiry tried to be done.

3 It was attempted at a Wells Fargo Bank.

4 Q Was it successful?

5 A No.

6 Q Page 4?

7 A Again, there was another inquiry that was trying to
8 be done, but it was not successful as well.

9 Q Where was that at?

10 A This was at a Wells Fargo.

11 Q All right. Page 5?

12 A Page 5, a \$250 withdrawal was tried to be attempted
13 at Palmetto Citizens, but that's when our fraud
14 team blocked it because they found irregular
15 activity.

16 Q What time was that?

17 A That was at 2304, so 11:04.

18 Q Page 6?

19 A Again, there was another \$250 withdrawal.

20 Q It was an actual withdrawal?

21 A It was tried to be, attempted, but it was blocked.

22 Q And where was that?

23 A Same, Palmetto Citizens.

24 Q What time?

25 A Same time, 11:04.

1 Q Next page?

2 A The next page, another withdrawal for \$290 tried to
3 be attempted at a Palmetto Citizens, but it was
4 also declined by fraud. It's the same transaction,
5 Palmetto Citizens, \$290.

6 Q All right. I want to take you to the ninth page.

7 A There was a \$300 withdrawal tried to be attempted
8 at a Palmetto Citizens, but it was declined.

9 Q All right.

10 A On January 28th, it shows that there was an inquiry
11 to check a balance.

12 Q All right. And what location was that?

13 A That was at Palmetto Citizens.

14 Q Let me show you this page. Can you tell us what
15 that says?

16 A Yes. So there was a \$200 withdrawal that tried to
17 be attempted at a Bank of America. It was also
18 declined.

19 Q Two hundred dollars was declined?

20 A Yes.

21 Q All right. Were any of the attempts to withdraw
22 money successful?

23 A No.

24 Q I'll show you those one more time. All right. I'm
25 going to show you what's listed Page 1 of the

1 transaction history. Can you tell us the second
2 item on there?

3 A Yes. There was a Michael Kors check card purchase
4 for \$291.60.

5 Q All right. I'm going to take you to -- these are
6 listed in reverse order, I'm sorry. All right.
7 That transaction right there, when did that start?

8 A This transaction was at 11:01. It was at a
9 Palmetto Citizens. It shows invalid account was
10 selected. It looks like a savings account tried to
11 be selected, but the card was only linked to a
12 checking account.

13 Q All right. So the last one, what time was that
14 transaction?

15 A I don't know military time, but 002535.

16 Q 12:25?

17 A Okay, there you go. And the transaction type, not
18 allowed. Again, it was trying to do an inquiry on
19 a savings account, but it wasn't linked to that
20 card.

21 Q One final one. Tell us that transaction.

22 A This was the Michael Kors.

23 Q Purchase from Michael Kors?

24 A Purchase from Michael Kors.

25 Q What time was that?

1 A This was at 15309.

2 Q All right. Again, whose name is on this account?

3 A Deandra Roach.

4 MR. FYALL: Beg the Court's indulgence.

5 (Pause.)

6 MR. FYALL: No further questions, Your Honor.

7 THE COURT: Yes, sir?

8 CROSS-EXAMINATION

9 BY MR. O'NEIL:

10 Q Ms. Epps, you indicated on direct that there was a
11 Sonic purchase around 4:50 something on the 28th,
12 is that correct?

13 A Yes.

14 Q Okay. And that purchase -- in your knowledge as a
15 bank employee, that purchase at Sonic would not
16 have required a pin number just to go through?

17 A Correct.

18 Q All you would have needed was the card itself?

19 A Correct.

20 Q So we don't know who made that purchase on the --
21 at 4:50 something that day, correct?

22 A Correct.

23 Q There were -- no identifying information needed to
24 be given in order to make that purchase?

25 A Correct.

1 Q All somebody needed was just the card?

2 A Right.

3 Q When was next time the card was declined, the use
4 of the card was declined?

5 A Declined? It's not in order. It looks like the
6 first one to be declined was the 11:01 when it was
7 a withdrawal for the \$401.

8 Q Do you know why that was declined?

9 A Invalid account selected, so they tried to choose a
10 savings account.

11 Q And the card was attached to a checking account?

12 A Correct.

13 Q And that was at the Palmetto Citizens?

14 A Palmetto, correct.

15 Q And that was 11:01 that night?

16 A Uh-huh.

17 Q And there's a video attached to that. You didn't
18 obtain the video, but there's a video attached to
19 the ATM as well?

20 A Correct.

21 Q Was there any --

22 A Not to that ATM, the video was attached to the Bank
23 of America ATM.

24 Q Okay. And to your reading of the record, there is
25 no transactions between the 4:50 p.m. transaction

1 at the Sonic until the next transaction would have
2 been 11:01?

3 A Correct.

4 Q And we know whoever made the 11:01 transaction
5 attempted to access an invalid type of account?

6 A Correct.

7 Q Was all -- and then it was declined twice based off
8 that same reasoning? What was --

9 A No, the other ones were based off irregular
10 activity, so our fraud protection blocked the card.

11 Q It would have been blocked for that first one
12 failed attempt?

13 A Let me see. After then, there was another inquiry
14 for the savings, again invalid account selected.
15 And then that's when we started blocking the card.

16 Q And even though Bank of America blocked the card,
17 the -- you may be able to help me with this. The
18 Michael Kors purchase, did that go through -- in
19 layman's terms, did that go through or --

20 A Yes, sir.

21 Q -- was that --

22 A No, the Michael Kors went through.

23 Q Do you know why that went through even though the
24 account was blocked?

25 A I don't. It may have just -- we may have just

1 blocked it from withdrawals, but it still allowed
2 for the purchase because it's a point of sale.

3 MR. O'NEIL: That's all I have, Your Honor.

4 MR. FYALL: One brief question, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. FYALL:

7 Q I'm going to show you Page 9 of this. Up here in
8 the left, what's that?

9 A The savings and the checking account.

10 Q How much money is in those accounts?

11 A In the savings, it says \$702. In the checking, it
12 says \$303.

13 Q What was the transaction on that page?

14 A This was the \$300 withdrawal that tried to be
15 attempted at Palmetto Citizens.

16 Q What's the available balance after that?

17 A It didn't go through.

18 Q Okay.

19 A It says available balance \$1.27, but because it
20 didn't go through, it was reversed, it washes
21 itself out.

22 Q Got you.

23 MR. FYALL: Nothing further, Your Honor.

24 THE COURT: All right, you may step down.

25 Any objection to this witness being excused?

1 MR. NEAL: No, Your Honor.

2 THE COURT: All right, ma'am, you're free to
3 leave.

4 (Witness steps down and excused.)

5 THE COURT: All right, ladies and gentlemen of
6 the jury, it is about 11 after 5:00, and we are at
7 a good stopping point. So we will wrap up as far
8 as today and start back at around 9:30 in the
9 morning. So if you'll be in the jury room at 9:30.

10 I ask that you do not discuss any of the
11 testimony, anything about the case that you have
12 seen or heard today. Do not -- your family members
13 will probably ask you what case you're on, what's
14 going on with the case. You will tell them all
15 about it at the end of the trial. Go home and have
16 a restful evening and forget about everything that
17 happened here in the courtroom today.

18 Have a good evening. See you in the morning
19 at 9:30.

20 (WHEREUPON, the jury is excused for the
21 day at 5:12 p.m.)

22 THE COURT: All right. So we will start at
23 9:30 in the morning.

24 Anything else we need to take up prior to that
25 time?