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STATE OF SOUTH CAROLINA
SC Court of Appeals IN THE COURT OF APPEALS

VOLUME II OF II

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHEO D. GREEN,

APPELLANT

APPELLATE CASE NO 2016-000124

RECORD ON APPEAL

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1 Q Okay. Gunshot Wound B?

2 A Gunshot Wound B here is almost kind of on the front
3 of the right shoulder.

4 Q Let me take this one for you.

5 A And so it basically perforates kind of between the
6 clavicle and the first rib. You can kind of feel
7 the clavicle. So it goes inside the body, kind of
8 passes through there underneath the skin, and then
9 perforates the right upper lobe of the lung. And
10 then actually was able to -- there was a lot of
11 bleeding in the right lung from the next gunshot
12 wound I'm about to describe. So it was basically
13 just floating in the blood in the cavity that
14 surrounds the right lung, the right chest cavity.
15 So we were able to recover the bullet from there.

16 The third gunshot wound, Gunshot Wound C here,
17 goes in kind of in the back, almost kind of in the
18 armpit kind of area.

19 Q Can you describe it?

20 A All right. It is right around here.

21 Q Okay.

22 A And so that one -- actually, these are both going
23 almost directly from right to left. But this one
24 actually is going kind of back to front and also
25 upwards as well as right to left, and so it

1 traveled up.

2 Q And when you say back to front, so slightly towards
3 the front of my body?

4 A Right. So it is coming in here and kind of coming
5 towards the front of the body. So that wound goes
6 upwards, actually ends up kind of perforating a
7 pretty major vessel inside of your right chest
8 called the subclavian artery. It comes off the
9 aorta. So the subclavian artery is totally about
10 as thick as a pinky. And it's an artery. Arteries
11 have a lot of pressure in them. And a perforated
12 artery causes a lot of blood, close to two liters.
13 So if you can picture two liters completely full of
14 blood, that's how much blood had collected within
15 his right chest cavity from that gunshot wound.
16 And it actually traveled up, kind of into the neck
17 area and in between, like, your airway, your
18 trachea here, and your esophagus runs behind where
19 you swallow, the food goes down. The bullet was
20 kind of lodged right in between those two
21 structures.

22 Q So you recovered all three projectiles from these
23 three gunshot wounds?

24 A Right.

25 Q Inside Mr. Davis?

1 A Yes. None of them exited. They were all recovered
2 from inside of the body.

3 Q From either of these three gunshot wounds, would
4 you necessarily expect there to be a lot of
5 bleeding at the moment that he got shot?

6 A No, not necessarily. It was a lot of internal
7 bleeding, mostly inside of the chest. So not
8 necessarily, no.

9 Q Okay. Is there -- so this is -- they are all three
10 right to left, but this one is slightly back to
11 front?

12 A Back to front and upwards.

13 Q Would these be consistent with the person that shot
14 the gun being to the right side of Mr. Davis?

15 A Yes.

16 Q Okay. Could it also be consistent with someone
17 being slightly to the right and slightly behind
18 Mr. Davis?

19 A Yes.

20 Q So if Mr. Davis was driving the car, there was a
21 passenger next to him and there was a passenger in
22 the back seat behind the front seat passenger, not
23 directly behind Mr. Davis, could it be consistent
24 with coming from that individual in the back seat?

25 A Yes, it could.

1 Q Okay. Now, what variables are there in terms of
2 knowing the, I guess, position of the gun?

3 A Well, there are a lot of variables. So we don't
4 know if the Decedent was twisted, so we don't know
5 if the person had their arm around the seat, so we
6 don't know if Mr. Davis was attempting to get out
7 of the car. There are a lot of variables. I can't
8 say for certain. I can say, you know, if the body
9 was, say, like this, an anatomical position as we
10 call it, which way the projectile would travel.
11 But I don't know if he was bending over, none of
12 that, so I can't say for sure.

13 Q And does that -- that factors in also, as well with
14 one, two and three, because, I guess, potentially
15 the person could be turned at the time of the first
16 shot, but then turned back at the second shot?

17 A Right.

18 Q And then turn again at the third shot?

19 A Right.

20 Q I mean, any of these shots, you could be shot once
21 this time and then turn?

22 A Right.

23 Q At any level of this without knowing exactly the
24 position --

25 A Correct.

1 Q -- of his body? Is this wound consistent with
2 escaping the vehicle?

3 A Yes, it would be. If you were kind of leaning
4 downwards to get away from a gun, he would slightly
5 be going upward. That would make sense, yes.

6 Q Okay. Can you -- I guess, just generally, can you
7 determine the distance that a gun is from the
8 victim's body?

9 A So the way we try to determine that is we look for
10 two things, soot and stippling. So soot, you know,
11 are kind of combustible materials that come out of
12 the end of the barrel of the gun. And in order for
13 that to leave marks on your skin or within the
14 wound, the end of the gun has to be within
15 six inches of the body. I did not see soot in or
16 around any of these wounds.

17 The other thing we look for is stippling,
18 which is actual flakes or balls of gunpowder coming
19 out and actually scrapes around the wound, actually
20 scrapes and abrades the skin. That is called
21 stippling. And that is usually up to around 18 to
22 24 inches from the tip of the gun at the time the
23 person was shot. This can go through clothing,
24 even a few layers of clothing. Unless he was
25 wearing like a lot of clothing or it went through a

1 seat of the car or a window, that could also block
2 the soot or stippling. That would be -- you
3 wouldn't be able to tell.

4 But in this case, without the projectile
5 having gone through anything else, A and B would
6 probably be more than 18 to 24 inches away. And
7 then Gunshot Wound C is within 18 to 24 inches.

8 Q Okay. So more than 18 to 24 is A and B, between
9 18 --

10 A Between 6 to 18.

11 Q Between 6 and 18?

12 A 6 to 18.

13 Q Okay. And, again, I mean, the variables are going
14 to be, I guess, potentially is, is the person
15 shooting going towards the person or are they
16 remaining --

17 A Right. So if --

18 THE COURT REPORTER: I'm sorry, could you
19 start over?

20 A. So if the Decedent is moving away from the gun or
21 if the person is being aggressive and going after
22 him, I could not tell, again, which order they came
23 in or which scenario. I cannot tell from the
24 autopsy.

25 Q Okay. Anything else that you think was significant

1 in your findings?

2 A Those are the three major significant things, other
3 than the scars, medical intervention, that sort of
4 thing.

5 Q Medical intervention, you mean by the tubes down
6 the throat?

7 A Right, and he had a surgical incision where they
8 opened up his chest trying to resuscitate him,
9 trying to save his life.

10 Q Do you have an opinion to a reasonable degree of
11 medical certainty as to Mr. Davis's cause of death?

12 A Yes. I put his cause of death as multiple gunshot
13 wounds involving neck and chest.

14 Q Okay. Looking at first State's Exhibit 61 is what
15 we're looking at here?

16 A So these are the three projectiles we recovered at
17 the autopsy. So this is the projectile recovered
18 from the right plural cavity, the one that was kind
19 of within the blood in the right side.

20 This is the projectile we recovered from the
21 neck that was between the airway and the esophagus.

22 And this is the projectile that we felt right
23 here underneath the skin right by the right collar
24 bone.

25 Q State's Exhibit 59?

1 A Right. So this is a picture of the Decedent. You
2 can see his head is up here, here is his right arm
3 coming down, it is laying down. This is Gunshot
4 Wound A that I described where it comes in here on
5 the right shoulder. And you can kind of almost see
6 it actually in the picture where I can feel the
7 projectile.

8 And this is Gunshot Wounds A and B. As you
9 can see what I was talking about, I know it was an
10 entrance wound because of the abrasion collar. I
11 don't know if you can see it from where you're
12 sitting, but there is a little ring of abrasion
13 around each of these wounds. You can see it. This
14 is the probe we stuck through, again, to show how
15 Gunshot Wound A lines up to that. We were able to
16 track there.

17 Q And then 60?

18 A Right. So this is what I described as Gunshot
19 Wound C. Again, as we talked about, kind of on the
20 back of the right arm, kind of near the armpit.
21 This is the one that kind of goes up towards the
22 neck area and perforates that large, that fairly
23 large artery.

24 And you can see, here is the entrance wound.
25 Again, it does have that abrasion collar. But what

1 is significant about this wound, this is a
2 closer-up view of it, is all these little dots you
3 can see around, these tiny abrasions, and that is
4 stippling. That is from the gunpowder scraping
5 against the skin. So that would have had to have
6 been roughly between 6 to 18 inches because we did
7 not see soot, but we did see stippling.

8 Q Thank you very much.

9 A. (Witness returns to witness stand.)

10 BY MS. BODMAN:

11 Q 37, I just ask you if you recognize those?

12 A Yes, those are the projectiles recovered at
13 autopsy.

14 MS. BODMAN: No further questions at this
15 time.

16 MS. SINGLETARY: May it please the Court?

17 CROSS-EXAMINATION

18 BY MS. SINGLETARY:

19 Q Good morning, Dr. Durso.

20 A Good morning.

21 Q How are you doing?

22 A Good. How are you?

23 Q Now, you testified that as a pathologist your job
24 is to complete the autopsy?

25 A Yes.

- 1 Q And do a complete examination?
- 2 A Yes.
- 3 Q And that you are to examine the outside and the
- 4 inside of the body?
- 5 A Yes.
- 6 Q And you are to determine the cause of death?
- 7 A Yes.
- 8 Q And that you are supposed to document any
- 9 abnormalities that you may see?
- 10 A Yes.
- 11 Q And as it relates to the actual gunshot wounds, you
- 12 labeled them as A, B, and C?
- 13 A Yes.
- 14 Q And you stated that there are -- you cannot testify
- 15 to which gunshot wound occurred first?
- 16 A I cannot, no.
- 17 Q That is not your job?
- 18 A Right. There is no way from the autopsy to be able
- 19 to determine that.
- 20 Q And you also said that there is so many different
- 21 variables and too many different positions that the
- 22 actual victim could have been in at the time?
- 23 A Yes.
- 24 Q Of the actual shooting?
- 25 A Yes.

1 Q You stated that he could have been twisted in one
2 way?

3 A Right. He could have been twisted either way. I
4 have no way of telling from the autopsy.

5 Q And you also stated that because you wasn't there
6 you have no way of telling what position the gun
7 was actually in?

8 A That's correct.

9 Q And you said that Gunshot Wound C was consistent --
10 could be consistent with the victim actually trying
11 to exit the car?

12 A It could be, yes.

13 Q But it could be consistent with several other
14 theories also; right?

15 A I'm sure it could, yes.

16 Q And you also testified that Gunshot A could be
17 consistent with the shooter being in the back seat;
18 correct?

19 A It could, yes.

20 Q But it could be consistent with the shooter being
21 in the front seat?

22 A It could, yes.

23 Q And Gunshot B, you testified that it could be
24 consistent with the shooter being in the back seat?

25 A Yes.

1 Q But it also could be consistent with the shooter
2 being in the front seat?

3 A Yes.

4 Q And were you aware of the fact that the victim, it
5 was alleged at the time of his death that he was
6 actually in a car driving?

7 A I was told that, yes.

8 Q And, lastly, you stated that you could not tell
9 what area the gun was in?

10 A Correct.

11 Q Based on the autopsy?

12 A Correct.

13 Q And you could not tell the scenario from the
14 position of the gun based on the autopsy?

15 A Right.

16 Q You were there and you gave your opinion about the
17 cause of death for Mr. Davis?

18 A Yes.

19 Q And that cause of death was multiple gunshot
20 wounds?

21 A Yes.

22 MS. SINGLETARY: I have no further questions,
23 Your Honor.

24 THE COURT: Anything else from the State?

25 MS. BODMAN: No further questions.

1 THE COURT: All right. Any objection to this
2 witness being excused?

3 MS. SINGLETARY: No, Your Honor.

4 THE COURT: All right. Dr. Durso, you are
5 free to leave.

6 THE WITNESS: Thank you.

7 (Witness steps down and is excused.)

8 THE COURT: Call your next witness.

9 MS. BODMAN: The State calls Donnella Lee K.
10 Jackson.

11 MR. GARFIELD: Your Honor, may I approach?

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, a bench conference was held
14 in the presence of the jury but out of
15 the hearing of the jury.)

16 MS. GARFIELD: Your Honor, I apologize for the
17 delay. Ms. Jackson is in our office.

18 (Witness enters courtroom.)

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

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you are about to give in this case will
24 be the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Have a seat in the
3 witness stand, please.

4 (Witness complies.)

5 THE CLERK: State your name for the record.

6 THE WITNESS: Donnell Jackson.

7 DONNELLA JACKSON,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BODMAN:

11 Q Donnell, how old are you?

12 A I'm 21.

13 Q Okay. And what are you doing right now? Are you
14 in school? Are you working?

15 A No, I work for my sister right now. I help my
16 family. I just moved back.

17 Q Okay. And what are you doing for your sister?

18 A I watch her kids while they are working.

19 Q Okay. And how old are the kids?

20 A They are one and four.

21 Q So back in the fall, September, October of 2012,
22 did you know Austin Murray?

23 A Yes, I was his girlfriend at that time.

24 Q How long did y'all date?

25 A Probably at that time, maybe just like two months.

1 Q So I want to take you back to October, the second
2 week of October of 2012. Did you go to, I guess, a
3 party or a gathering with Austin?

4 A It was a gathering.

5 Q Okay. And do you remember who all was there?

6 A No. It was just some of his friends. I really
7 didn't know anybody.

8 Q Okay. Was Cheo Green there at that party?

9 A Yes.

10 Q And had you seen him before that party?

11 A I have seen him around, but I've never spoken to
12 him one-on-one, you know.

13 Q But you know who he is?

14 A Yes.

15 Q Okay. Do you see him today in the courtroom?

16 A Yes(indicating).

17 Q Sitting right over there? Can you describe maybe
18 what he is wearing so that we know who you pointed
19 to?

20 A A suit, a tan-grayish suit, I think it is.

21 MS. BODMAN: Let the record reflect the
22 witness has identified the Defendant.

23 BY MS. BODMAN:

24 Q And so Cheo was at that party?

25 A Yes.

1 Q At any point did you hear a conversation between
2 Austin and Cheo?

3 A No.

4 Q Okay. Did you see them go and talk?

5 A Yes.

6 Q Okay. Did they, like, stay inside the party or did
7 they step outside?

8 A They went outside.

9 Q About how long were they outside together?

10 A Five, ten minutes. Not that long.

11 Q Did Austin come back in to you?

12 A Yes. I was by myself, so --

13 Q Okay. And when Austin came back in after stepping
14 outside with Cheo, describe how Austin was
15 behaving.

16 A He was just freaked out and he was actually crying.
17 And so I kind of just wanted him to leave because I
18 was scared myself. I didn't know what was going
19 on.

20 Q And you say crying. What else, if anything, do you
21 remember that he was doing?

22 A He was just shook. He sat down on the couch and I
23 sat down with him and was asking him what was
24 wrong, but he would not tell me. So I just asked
25 to leave. I didn't know anybody there. And that's

1 really what happened. We left.

2 Q And that was right after he came back in after
3 talking to Cheo?

4 A Yes.

5 Q Without saying what it is that Austin told you, did
6 he later tell you about that conversation?

7 A Yes.

8 Q And back in 2012, did you give a statement to law
9 enforcement about what you knew?

10 A Yes.

11 Q. I don't have any more questions at this time. Just
12 answer any questions that Ms. Singletary may have.

13 A. Thank you.

14 THE COURT: Yes, ma'am?

15 MS. SINGLETARY: Thank you, Your Honor, if it
16 pleases the Court?

17 CROSS-EXAMINATION

18 BY MS. SINGLETARY:

19 Q Good morning. How are you doing?

20 A I'm good.

21 Q And you testified that you do not know the extent
22 of -- you did not actually hear the conversation
23 between Austin Murray and my client?

24 A No, ma'am.

25 Q They went outside by themselves?

1 A Yes, ma'am.

2 MS. SINGLETARY: I have no further questions.

3 MS. BODMAN: Nothing else, Your Honor.

4 THE COURT: All right, you may step down.

5 (Witness steps down.)

6 THE COURT: Any objection to this witness
7 being excused?

8 MS. SINGLETARY: No, Your Honor.

9 THE COURT: Ma'am, you are free to leave.

10 (Witness excused.)

11 MR. GARFIELD: The State calls Jamil Brennan.

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: Yes, ma'am.

21 THE CLERK: Thank you. Have a seat in the
22 witness stand, please.

23 (Witness complies.)

24 THE CLERK: State your name for the record.

25 THE WITNESS: My name is Jamil Brennan.

1 JAMIL BRENNAN,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. GARFIELD:

5 Q Good morning, Mr. Brennan. Share with the jury
6 where you are from.

7 A From Columbia, South Carolina.

8 Q Where did you go to high school?

9 A Spring Valley.

10 Q How old are you?

11 A Twenty.

12 Q And what do you do, Mr. Brennan?

13 A I go to school right now.

14 Q What school do you go to?

15 A W. R. Wright Adult Education.

16 Q Where?

17 A Adult Education.

18 Q Trying to get your GED?

19 A Uh-huh, yes, ma'am.

20 Q And I'm going to ask you a series of questions. Do
21 you know the Defendant in this case, Cheo Green?

22 A Yes, ma'am.

23 Q And do you know a person that testified yesterday,
24 Austin Murray?

25 A Yes, ma'am.

1 Q Please explain to the jury how you know Mr. Green?

2 A I grew up with him.

3 Q Known him your whole life?

4 A Something like that, yes, ma'am.

5 Q Did y'all go to school together?

6 A Yes, ma'am.

7 Q Did you consider him a friend?

8 A Yes, ma'am.

9 Q Was he a close friend?

10 A Yes, ma'am.

11 Q And also Mr. Murray. Back to Mr. Murray, do you
12 know Mr. Murray as well?

13 A Yes, ma'am.

14 Q How long have you known him?

15 A About my whole life.

16 Q And y'all go to school together, too?

17 A Yes, ma'am.

18 Q So you consider the two of these individuals close
19 to you?

20 A Yes, ma'am.

21 Q Are you nervous today?

22 A Yes, ma'am.

23 Q Is this the first time you ever testified?

24 A Yes, ma'am.

25 Q And these two people are your friends?

- 1 A Uh-huh.
- 2 Q You don't want to see them get in trouble; right?
- 3 A No, ma'am.
- 4 Q And you know why we are here today; right?
- 5 A Yes, ma'am.
- 6 Q I'm going to take you back a long time ago to the
7 early morning hours of September 16th, 2012. Do
8 you remember Mr. Green and Mr. Murray coming to
9 pick you up?
- 10 A I don't remember that night like that.
- 11 Q Okay. What do you remember?
- 12 A They came and picked me up, rode around for a
13 little bit. Car ran out of gas. And we got to
14 walking.
- 15 Q Were only the two of them in the car?
- 16 A Yes, ma'am.
- 17 Q And what kind of car was it?
- 18 A A white car.
- 19 Q Had you ever seen that car before?
- 20 A No, ma'am.
- 21 Q And what did they say to you when they came to pick
22 you up? What did Mr. Green say to you?
- 23 A Nothing, just the usual greetings, What's up, bro?
24 Stuff like that.
- 25 Q And what time was this?

- 1 A It was late.
- 2 Q Was this unusual for them to come to you so late at
3 night?
- 4 A I mean, you know, we teenagers, so.
- 5 Q Right. What do you mean by that?
- 6 A I mean, I don't know. You know, we just hang out,
7 like that, you know.
- 8 Q It is just common for him to come pick you up in
9 the middle of the night?
- 10 A I mean, this is what I'm getting at, like,
11 teenagers tend to do stuff late, you know what I'm
12 saying? So it was not unusual for me, so.
- 13 Q Okay. So they came to pick you up in a white car?
- 14 A Uh-huh.
- 15 Q And you testified you'd never seen that car before?
- 16 A (Nods negatively.)
- 17 Q Did you ask them where the car came from?
- 18 A I didn't ask no questions.
- 19 Q Did they tell you where the car came from?
- 20 A No, ma'am.
- 21 Q Okay. I am going to take you back to sometime
22 after that. Do you remember talking to the
23 Columbia Police Department?
- 24 A Uh-huh.
- 25 Q Do you remember Investigator Gilliam and

1 Investigator McCracken coming to your house?

2 A I don't remember them, but I remember some
3 investigator coming to my house.

4 Q You just don't remember particularly who came to
5 talk to you?

6 A I don't remember that. That was three years ago,
7 three, almost four years ago.

8 Q Absolutely, a long time ago, wasn't it?

9 A Uh-huh.

10 Q I'm sure a lot has happened in your life since
11 then; right?

12 A Yes, a lot.

13 Q Okay. Do you remember giving a statement to law
14 enforcement?

15 A Uh-huh, because they gave it to me yesterday.

16 Q And do you remember asking -- them asking you where
17 the car came from or if they were told -- if they
18 told you where the car came from?

19 A No, ma'am.

20 Q Okay. If I show you your statement, do you think
21 that might refresh your memory, it was such a long
22 time ago?

23 A You can show it to me.

24 Q Okay. Sure.

25 MS. GARFIELD: May I approach the witness,

1 Judge?

2 THE COURT: Yes.

3 (Complies.)

4 BY MR. GARFIELD:

5 Q Mr. Brennan, I am going to direct you to, Did
6 either Austin or Cheo tell you where the car came
7 from? Can you tell me what that answer is?

8 THE COURT REPORTER: I'm sorry, you need to
9 speak up.

10 A It said, I asked and they told me somebody let them
11 borrow it.

12 Q So they told you someone let them borrow it?
13 That's what you told police officers?

14 A According to the statement.

15 Q And you just saw the statement, Mr. Brennan. And I
16 know I'm asking questions, but the jury is the one
17 who needs to hear your answers, okay? I know you
18 never testified before. Mr. Brennan, is that your
19 handwriting?

20 A Uh-huh.

21 Q So that answer is in your handwriting?

22 A Yes, ma'am.

23 Q Okay. Do you also remember being asked if you knew
24 the phone numbers of Mr. Green?

25 A The phone numbers, no, ma'am.

1 Q Or Mr. Murray?

2 A No, ma'am.

3 Q Do you remember identifying a phone number of...
4 -7838 as one of your phone numbers?

5 A I don't remember that, no. I don't remember ever
6 having that number.

7 Q Do you remember identifying -6566?

8 A I think.

9 Q Is that one of your phone numbers?

10 A Yes, that was my little brother's phone.

11 Q All right.

12 A Because they called my phone, my little brother.

13 Q And I believe you told law enforcement back then
14 that the other number belonged to your house phone?

15 A It's been so long since we had a house phone, I
16 can't even tell you.

17 Q Everybody has cell phones now; right?

18 A Yes.

19 Q Okay. And sometime after this, do you remember the
20 police wanting to talk to you again?

21 A Uh-huh.

22 Q And do you remember going up to the Columbia Police
23 Department and giving another statement?

24 A Uh-huh.

25 Q And at that time you told law enforcement a little

1 bit more about the car. You said -- you just
2 testified you rode around and the car ran out of
3 gas; is that correct?

4 A Uh-huh.

5 Q Where did y'all go?

6 THE COURT: Sir, you need to say yes.

7 A. Oh, yes, ma'am. Somewhere around a new
8 neighborhood around Spring Valley.

9 Q Spring Valley High School or Spring Valley
10 neighborhood?

11 A Like the neighborhood.

12 Q I'm sorry?

13 A Like the neighborhood. That's where we ran out of
14 gas.

15 Q And when the car ran out of gas, what did you do?

16 A We got out and started walking.

17 Q And where did you walk to?

18 A I don't even know. I don't know that area too
19 well.

20 Q Did anybody come pick you up?

21 A Yes, somebody in a green car.

22 Q And what kind of green car?

23 A I don't know, I just know it was a green car.

24 Q And did you know the person that came to pick you
25 up?

- 1 A No, ma'am.
- 2 Q Let me ask you this. Do you know or have any
3 relationship with an individual by the name of
4 DaQwane Robinson?
- 5 A No, ma'am.
- 6 Q Do you have any sort of relationship or know a
7 person by the name of Curtis Wright?
- 8 A No, ma'am.
- 9 Q Did you know who the green car belonged to?
- 10 A No, ma'am.
- 11 Q Who was driving the white car?
- 12 A A dude that I didn't know.
- 13 Q I'm sorry?
- 14 A A person -- a person that I didn't know.
- 15 Q And that's the green car? You don't know the
16 person driving the green car?
- 17 A Yes, ma'am, I don't know who that was.
- 18 Q I'm talking about the white car. When they came to
19 pick you up from your home, who was driving the
20 white car?
- 21 A Austin was driving.
- 22 Q Austin?
- 23 A Uh-huh.
- 24 Q Austin was driving? And was Mr. Green in the car
25 as well as Cheo?

- 1 A In the green car or the white one?
- 2 Q I'm sorry, in the white car, was Cheo Green in it
- 3 as well?
- 4 A Yes, ma'am, we was all in it.
- 5 Q And where was he sitting?
- 6 A In the passenger.
- 7 Q And then where did you get in the car?
- 8 A Behind him.
- 9 Q Do you remember law enforcement asking for a sample
- 10 of your DNA?
- 11 A No, ma'am.
- 12 Q Do you remember them putting a Q-tip in your mouth?
- 13 A No, they didn't --
- 14 Q You don't remember that?
- 15 A I don't think they did.
- 16 Q You don't remember Investigator McCracken putting a
- 17 Q-tip in your mouth?
- 18 A I don't remember him at all.
- 19 Q I'm sorry?
- 20 A I don't remember him at all.
- 21 Q You don't remember him at all? That's Investigator
- 22 McCracken right there. You don't remember him at
- 23 all?
- 24 A I don't remember none of them.
- 25 Q Don't remember anybody with law enforcement?

1 A No.

2 Q Do you see Mr. Green in the courtroom?

3 A Who?

4 Q Cheo Green? Do you see Cheo Green in the
5 courtroom?

6 A Yes, ma'am.

7 Q Okay. Where is he?

8 A He's right there(indicating).

9 Q And what is he wearing, just for the court record?

10 A A blazer.

11 Q A blazer?

12 A Yes, ma'am.

13 Q Sitting at the counsel over there?

14 A Yes, ma'am.

15 MS. GARFIELD: Your Honor, may the record
16 reflect the witness has identified the Defendant?

17 THE COURT: So noted for the record.

18 BY MS. GARFIELD:

19 Q Mr. Brennan, Mr. Green is your good friend; right?

20 A Yes, ma'am.

21 Q And you've been in trouble before too, haven't you?

22 A Yes, ma'am.

23 Q I believe you've got a shoplifting conviction?

24 A Yes, ma'am.

25 Q Also some drug convictions?

1 A Yes, ma'am.

2 Q Marijuana?

3 A Yes, ma'am.

4 Q And your testimony today, though, is that the
5 Defendant, Cheo Green, and Austin Murray picked you
6 up in a white car?

7 A (Nods affirmatively.)

8 Q Y'all drove around --

9 A Yes, ma'am.

10 Q -- until y'all ran out of gas?

11 A Yes, ma'am.

12 Q And that was in the Spring valley area?

13 A Yes, ma'am.

14 Q And then a person in a green car came and picked
15 you up?

16 A Yes, ma'am.

17 MS. GARFIELD: / Beg the Court's indulgence.

18 Let me check one thing, Judge.

19 (Pause.)

20 BY MS. GARFIELD:

21 Q. Mr. Brennan, thank you very much. Please answer
22 any questions Ms. Singletary would have for you.

23 MS. SINGLETARY: May it please the Court, Your
24 Honor?

25 CROSS-EXAMINATION

1 BY MS. SINGLETARY:

2 Q Good morning, Mr. Brennan.

3 A Good morning.

4 Q How are you doing?

5 A All right.

6 Q I'm going to try to be as brief as possible, okay?

7 A Yes, ma'am.

8 Q So the Prosecution asked you about some previous
9 statements that you made to law enforcement.

10 A Uh-huh. Yes, ma'am.

11 Q They stated that you made two statements to law
12 enforcement?

13 A (Nods affirmatively.)

14 Q And they actually showed you at least one of those
15 statements; correct?

16 A Yes, ma'am.

17 Q And it is your testimony that you were in this
18 white car on the early morning of September 16th of
19 2012?

20 A Yes, ma'am.

21 Q And when you were in the car, the only people that
22 were in the car was Austin Murray and my client,
23 Cheo Green; correct?

24 A Yes, ma'am.

25 Q You never saw Mr. Davis, did you? Mr. Davis was

1 the person who was driving the car previously,
2 earlier that night?

3 A I don't even know who that is.

4 Q Yeah. You don't even know who he is? You didn't
5 even see him on that night?

6 A No, ma'am.

7 Q Or that early morning?

8 A No, ma'am.

9 Q Even though you were in the vehicle?

10 A Yes, ma'am.

11 Q And you said that Austin Murray was driving this
12 white car; correct?

13 A Yes, ma'am.

14 Q And my client, Mr. Green, was in the passenger
15 seat?

16 A Yes, ma'am.

17 Q And they came to your home and they picked you up?

18 A Yes, ma'am.

19 Q And you guys were just riding around chilling after
20 they picked you up; correct?

21 A Yes, ma'am.

22 Q Y'all were having a good time together?

23 A I mean, we were just riding. It wasn't even really
24 a long ride.

25 Q I'm sorry?

1 A I said we were just riding, it wasn't even really
2 like a long ride. The car, like, ran out of gas,
3 like, soon as we -- you know.

4 MS. SINGLETARY: Your Honor, may I approach to
5 position the mic? I can barely hear him.

6 THE COURT: He just needs to sit up.

7 And it may help, sir, if you keep your hand
8 out of your face so she can hear you, so the jurors
9 can hear you and the court reporter.

10 THE WITNESS: Yes, ma'am.

11 BY MS. SINGLETARY:

12 Q So you and my client and Austin, y'all wasn't
13 fussing and fighting during this ride, was you?

14 A Not that I recall.

15 Q You said that you guys were just riding around?

16 A Yes, ma'am.

17 Q And you said it was a short ride?

18 A Yes, ma'am.

19 Q Because the car pretty much ran out of gas. About
20 how long would you say after you got into the
21 vehicle with them did the car run out of gas?

22 A Probably about ten minutes. I don't know, about
23 ten minutes. I'd probably say about ten minutes.

24 Q So did you guys have enough time to go to different
25 homes in the Spring Valley area?

1 A Oh, no, ma'am.

2 Q Did my client ever ask Mr. Austin to go to any
3 houses specifically in the Spring Valley area?

4 A I don't remember.

5 Q Well, did you guys ever pull up to a home and wait
6 outside waiting for someone to come out or for you
7 guys to go in?

8 A Not that I remember. Not that I remember.

9 Q And you said that the car basically just ran out of
10 gas like ten minutes after you got in the car?

11 A Yes, ma'am.

12 Q Now, when Mr. Austin and my client came to pick you
13 up, did you bring anything from out of the house?

14 A No, ma'am.

15 Q You didn't bring a rag --

16 A No, ma'am.

17 Q -- out of your home?

18 A No, ma'am.

19 Q You didn't give my client, Cheo Green, a rag on
20 that night?

21 A No, ma'am.

22 Q Now, when the car ran out of gas, did you see
23 Austin Murray take off his shirt and wipe down the
24 car with his shirt?

25 A No, ma'am.

1 Q Did you see my client wipe down this white car with
2 a rag?

3 A No, ma'am.

4 Q Now, that's when the car ran out of gas. What
5 about when they pulled up at your house, did you
6 see Austin Murray take a shirt and wipe down the
7 car?

8 A No, ma'am.

9 Q Did you see Cheo Green, my client, use anything to
10 wipe down the car?

11 A No, ma'am.

12 Q Okay. Now, let's go back and talk about these
13 statements. You gave a statement to law
14 enforcement on October the 23rd, 2012. And I know
15 you say you can't remember Investigator Gilliam and
16 McCracken, but that was a long time ago, it was
17 over three years?

18 A Uh-huh.

19 Q But in that statement on October the 23rd, 2012,
20 you were actually asked whether or not you saw
21 Austin Murray on that night or whether or not you
22 saw my client on that night; correct?

23 A Uh-huh. Yes, ma'am.

24 Q And at that time, you told them that you hadn't
25 seen them, initially?

1 A It's written -- it's a written statement?

2 Q Yes.

3 A They gave me a copy of the statement, and I ain't
4 seen it in the statement.

5 MS. SINGLETARY: Your Honor, may I approach?

6 THE COURT: Yes, ma'am.

7 MS. SINGLETARY: Your Honor, let the record
8 reflect I am showing Mr. Brennan a copy of a
9 statement that is dated October the 23rd, 2012.

10 (Complies.)

11 BY MS. SINGLETARY:

12 Q Now, is that your signature right there?

13 A Yes, ma'am.

14 Q And, now, what was your response to Investigator
15 Gilliam on that date in reference to whether or not
16 you saw Austin Murray on that night?

17 A That I saw Austin Murray on that night.

18 Q Is it that you saw Austin Murray on that night?

19 A It says that I received several calls from a
20 number.

21 Q And that you assumed that Austin Murray was trying
22 to come to your house because he wanted to make
23 some music in your studio?

24 A Yes, ma'am, because that's what we was doing at the
25 time.

1 Q All right. And then the State talked about another
2 witness -- another statement on September the 29th,
3 2012; correct?

4 A Another who?

5 Q Another statement that you gave law enforcement?

6 A And where is that at?

7 Q I have it right here.

8 MS. SINGLETARY: Your Honor, may I approach?

9 THE COURT: Yes, ma'am.

10 (Complies.)

11 BY MR. SINGLETARY:

12 Q And I'm not trying to trip you up, Mr. Brennan.
13 Like, I know this was a long time ago. I just want
14 to make sure that we're clear with the testimony
15 today. And this statement is dated October 29th,
16 2012. And is that your signature right there?

17 A Yes, ma'am.

18 Q Okay. Do you need the statement here with you?

19 A Yes, ma'am.

20 Q Okay. Now, on -- in that initial statement on
21 October 23rd, 2012, you freely admit to law
22 enforcement that you knew Austin Murray?

23 A Uh-huh.

24 Q You didn't hide that fact?

25 A Yes, ma'am.

1 Q You told them, Hey, he was calling me, like, and I
2 just assumed that he wanted to come into the studio
3 --

4 A Yes, ma'am.

5 Q -- at your home? And then you went back, and that
6 statement was kind of a short statement?

7 A Uh-huh.

8 Q You really didn't talk that much to law
9 enforcement. It doesn't appear that you were asked
10 that many questions on that day; correct?

11 A I guess not.

12 Q And so at sometime later, law enforcement calls you
13 because they want to talk to you again?

14 A Yes, ma'am.

15 Q And then when law enforcement calls you and they
16 want to talk to you again on the 29th, you go into
17 a little more detail; correct?

18 A Yes, ma'am.

19 Q And on that date, you actually say certain things
20 that you may have or may not have observed on that
21 night; correct?

22 A I don't know. I don't understand what you said.

23 Q Well, let me ask you this. Did you see my client
24 with a gun?

25 A No, ma'am.

1 Q Did you see my client or hear my client ordering
2 Austin Murray around on that night?

3 A No, ma'am. I was -- you know, I wasn't around, so
4 I don't know what happened. But as far as I know,
5 I ain't --

6 Q You don't know what happened before you got in the
7 car, you just know about --

8 A When I was in the car for that little bit of time,
9 that's all I know.

10 Q Exactly. And so when you were in the car for that
11 little bit of time, did Austin Murray seem scared
12 to you?

13 A No, ma'am. I don't really remember like that.

14 Q But him and my client wasn't arguing or
15 disagreeing?

16 A Not that I remember.

17 Q And my client wasn't ordering him around?

18 A Not that I remember.

19 Q Okay. And as you have testified to, you were
20 actually in that car, but you didn't shoot
21 Mr. Davis?

22 A No, ma'am.

23 Q But you were in the white car on that night just
24 like my client was in the white car that night?

25 A Yes, ma'am.

1 MS. SINGLETARY: I have no further questions.
2 Your Honor, may I approach to get the
3 statement?

4 THE COURT: Sure.
5 (Complies.)

6 THE COURT: Anything else?

7 MS. GARFIELD: Just briefly, Judge.

8 REDIRECT EXAMINATION

9 BY MS. GARFIELD:

10 Q So as Ms. Singletary went over with you, first you
11 talked to law enforcement, you give one statement;
12 is that correct?

13 A Yes, ma'am.

14 Q And you tell them that Austin Murray called you on
15 the night in question?

16 A Yes, ma'am.

17 Q But you don't know why he called you?

18 A No, ma'am.

19 Q You don't tell police that you saw them that night?

20 A I what?

21 Q The first time law enforcement talked to you --

22 A Uh-huh.

23 Q -- did you tell police that you saw Austin Murray
24 and Cheo Green --

25 A Oh, no, ma'am.

- 1 Q -- that night? And they talked to you again?
- 2 A Yes, ma'am.
- 3 Q And at that time you tell them you did see Austin
- 4 Murray?
- 5 A That's because a statement was given and my name
- 6 was in it.
- 7 Q Why was your name in it?
- 8 A I don't know. Someone had put my name in it.
- 9 Q Put your name in it how?
- 10 A Saying that I was there in the car.
- 11 Q But you were in the car, weren't you?
- 12 A Yes, ma'am.
- 13 Q So you wanted to let them know that you had not
- 14 told the truth the first time?
- 15 A They didn't ask me that. They just asked me about
- 16 the phone records.
- 17 Q They just asked you why Austin Murray would have
- 18 called you?
- 19 A Yes, ma'am.
- 20 Q He was calling you because he was coming to pick
- 21 you up; is that correct?
- 22 A Yes, ma'am.
- 23 Q Not because he wanted to make music in your house
- 24 in the middle of the night; is that correct?
- 25 A I don't know.

1 Q You don't know why he was calling?

2 A (Nods negatively.) No, ma'am.

3 Q And you didn't bring any rag to help wipe down any
4 evidence in the car either, did you?

5 A No, ma'am.

6 Q Today, in 2016, you want to tell this jury -- just
7 making sure I'm right -- back then you were 17
8 years old?

9 A Yes, ma'am.

10 Q Two individuals picked you up in the middle of the
11 night; is that correct?

12 A Yes, ma'am.

13 Q To ride around in a car?

14 A Yes, ma'am.

15 Q That you've never seen before?

16 A Yes, ma'am.

17 Q Until it ran out of gas?

18 A It just ran out of gas. Cars do that when they low
19 on fuel.

20 Q And y'all are just chilling?

21 A Yes, ma'am.

22 Q. Thank you.

23 MS. GARFIELD: Nothing further.

24 THE COURT: All right. Sir, you may step
25 down. Any objection to this witness being excused?

1 MS. SINGLETARY: No, Your Honor.

2 THE COURT: All right, sir. You are free to
3 leave.

4 (Witness steps down and is excused.)

5 MR. BERRY: The State calls Cierra Hodge.

6 (Witness approaches.)

7 THE BAILIFF: Please your left hand on the
8 Bible, raise your right hand, and face the clerk.

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm the
11 testimony you are about to give in this case will
12 be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness complies.)

18 THE CLERK: State your name for the record.

19 THE WITNESS: Cierra Nicole Hodge.

20 CIERRA NICOLE HODGE,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BERRY:

24 Q Good morning, Ms. Hodge. How are you?

25 A I'm fine.

- 1 Q How old are you, Ms. Hodge?
- 2 A Pretty good.
- 3 Q Pardon?
- 4 A I said I'm pretty good. Doing pretty good.
- 5 Q How old are you?
- 6 A How old am I? I'm 24.
- 7 Q 24? And where do live now?
- 8 A In Manning, South Carolina.
- 9 Q Is that where you're from?
- 10 A Yes.
- 11 Q Where did you live back in 2012?
- 12 A I lived in Columbia, South Carolina.
- 13 Q Where exactly?
- 14 A It was Courtyard West Apartments off of St.
- 15 Andrews.
- 16 Q St. Andrews. And do you recall the night of --
- 17 well, starting September 15th into the morning of
- 18 September 16th, 2012? Do you remember going to a
- 19 party at your friend's house?
- 20 A I do.
- 21 Q Which friend's house did you go to?
- 22 A It was my friend Sandy, Sandy Sweat.
- 23 Q And where did she live?
- 24 A It's the Enclave Apartments off of Broad River
- 25 Road.

1 Q And around what time were you there, do you recall?

2 A It was about 1:00 -- about 1:30.

3 Q Okay. And did anyone else come over that night?

4 A Yes. Curtis and Qwan came over.

5 Q Who's Qwan?

6 A Qwan is Curtis's brother.

7 Q Do you know his full name?

8 A I do not.

9 Q And do you know Curtis's last name?

10 A I can't recall.

11 Q And did anyone else come over with them that night?

12 A No. They were dropped off at her apartment.

13 Q Was any -- so they came -- the two of them came

14 inside your apartment that night?

15 A Yes.

16 Q Did anyone else try to come inside the apartment

17 that night?

18 A Yes. They were with their cousin, but he did

19 not -- well, yeah, he was downstairs. He dropped

20 them off. He was supposed to come over with them,

21 but we weren't okay with that.

22 Q Do you know his name, recall his name?

23 A Yes. That was Cheo.

24 Q And why wasn't -- why didn't he come in the

25 apartment again?

1 A We just -- we just didn't feel comfortable with him
2 coming up because the time before that we met with
3 him and Qwan and Curtis.

4 Q So how did you meet these guys?

5 A We met Curtis and Cheo at the parking lot. We were
6 going out downtown, and we just stopped to ask them
7 for directions or what was going on that night.
8 And I ended up -- Curtis asked me for my phone
9 number. It is that time we met them.

10 Q When was that relative to that night?

11 A It was probably like maybe three, five days before.

12 Q Okay. And how did you know -- did you actually see
13 Cheo that night?

14 A At --

15 Q At the -- I'm sorry, the night of the 16th?

16 A No, I did not see him.

17 Q How did you know he was there?

18 A Just from planning. That's who they said was going
19 to drop them off. They asked me if he could come
20 up, but -- yeah.

21 Q And why didn't you want him coming in?

22 A Because we just didn't feel comfortable with him
23 coming in from the previous -- the previous time
24 that they came over to my apartment.

25 Q. No further questions. Please answer any questions

1 Ms. Singletary has for you.

2 MS. SINGLETARY: No questions, Your Honor.

3 THE COURT: All right, ma'am, you may step
4 down. Any objection to this witness being excused?

5 MS. SINGLETARY: No, not at all, Your Honor.

6 THE COURT: All right, you are free to leave.

7 (Witness steps down and is excused.)

8 MR. BERRY: The State calls Sandy Sweat.

9 THE COURT: Let me see you all one second.

10 (Whereupon, a bench conference was held
11 in the presence of the jury but outside
12 the hearing of the jury.)

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, raise your right hand, and face the clerk.

16 (Witness complies.)

17 THE CLERK: Do you swear or affirm the
18 testimony you are about to give in this case will
19 be the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: Yes.

22 THE CLERK: Thank you. Have a seat in the
23 witness stand, please.

24 (Witness complies.)

25 THE CLERK: State your name for the record.

1 THE WITNESS: Sandy Sweat.

2 SANDY SWEAT,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BERRY:

6 Q How are you doing today?

7 A Fine.

8 Q Good. How old are you, ma'am?

9 A Twenty-five.

10 Q Twenty-five. And where do you live now?

11 A Manning, South Carolina.

12 Q Is that where you're from?

13 A Yes.

14 Q Did you live in Columbia back in 2012?

15 A Yes.

16 Q Where did you live?

17 A Enclave Apartments.

18 Q And where is that located?

19 A That is on Broad River behind the Taco Bell and the
20 KFC.

21 Q Were you -- did you live alone? Did you have
22 housemates? Who all did you live with?

23 A I lived with housemates.

24 Q And do you recall the evening of September the 15th
25 into the morning of September 16th?

- 1 A Yes.
- 2 Q Who was at your apartment that night?
- 3 A DaQwane and Curtis.
- 4 Q Do you know their last names?
- 5 A I don't.
- 6 Q And how did you meet them?
- 7 A We met in the parking lot of a club, I guess, at
8 the time. I met them in the parking lot of the
9 club, and Curtis asked for my friend's number.
- 10 Q That night or a prior night?
- 11 A Well, actually, the night that I met -- I met Cheo
12 and Curtis that night.
- 13 Q When was that?
- 14 A That was about three days prior to that night.
- 15 Q And did Cheo come over to your apartment that
16 night?
- 17 A No.
- 18 Q Did he try to come to your apartment that night?
- 19 A I believe he did, but I would not let him in.
- 20 Q You did not allow him to come up?
- 21 A No.
- 22 Q And why is that?
- 23 A I didn't feel comfortable with him being around me.
- 24 Q Do you know if DaQwane went by Qwan at all?
- 25 A No, I call him DaQwane.

1 Q You call him DaQwane?

2 A Uh-huh.

3 Q. No further questions. Please answer any questions
4 Ms. Singletary has for you.

5 A. Okay.

6 MR. SIMS: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SIMS:

10 Q Good morning, Ms. Sweat.

11 A Hi.

12 Q You stated that you met three days earlier?

13 A Uh-huh.

14 Q So you didn't really know these guys?

15 A Huh-uh.

16 MR. SIMS: No further questions.

17 THE COURT: All right. Anything else from the
18 State?

19 MR. BERRY: No, Your Honor.

20 THE COURT: All right, you may step down,
21 ma'am. Any objection to this witness being
22 excused?

23 MR. SIMS: No, Your Honor.

24 THE COURT: All right, ma'am, you are free to
25 leave.

1 (Witness steps down and is excused.)

2 THE COURT: Call your next witness.

3 MS. BODMAN: The State calls Doris Yarbrough.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, raise your right hand, and face the clerk.

7 (Witness complies.)

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

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Have a seat in witness
14 stand, please.

15 (Witness complies.)

16 THE CLERK: State your name for the record.

17 THE WITNESS: My name is Doris Yarbrough,
18 Y-A-R-B-R-O-U-G-H.

19 DORIS YARBROUGH,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BODMAN:

23 Q Where do you work?

24 A I work for the South Carolina Law Enforcement
25 Division, also known as SLED.

- 1 Q In what capacity?
- 2 A I'm a forensic technician in the Evidence Control
3 Department.
- 4 Q And so what are your duties and responsibilities?
- 5 A We accept, receive, package, and transfer evidence
6 within the lab that comes from law enforcement
7 agencies throughout the State of South Carolina.
- 8 Q And your -- I guess, the evidence that you handle,
9 do you give each case a unique SLED number?
- 10 A Each case that is logged into our computer system
11 receives a unique bar code label once it is
12 submitted.
- 13 Q Okay. Did you bring the records regarding
14 L1211393?
- 15 A I have a chain of custody.
- 16 Q Okay.
- 17 A Yes, ma'am.
- 18 Q First of all, I will direct you to, I guess, your
19 Number 14?
- 20 A Yes, ma'am.
- 21 Q Did you receive an item of evidence from Emmit
22 Gilliam?
- 23 A I did.
- 24 Q And what piece of evidence was that?
- 25 A It is a handgun with a serial number 211585.

1 Q I'm going to show you what is admitted into
2 evidence as State's Exhibit Number 29 and ask you
3 if you recognize that?

4 A I recognize it by the bar code label that was
5 placed on the box once it was submitted. It also
6 has Container E, which meant there was some other
7 items in the box as well.

8 Q Multiple items in that box?

9 A Yes, ma'am.

10 Q Okay. And then is it also documented, I guess,
11 what items were in that box?

12 A In our chain, it -- the items follow the gun
13 because they were in the box with the gun when they
14 were submitted.

15 Q So what -- this is 14, 15, and 16?

16 A That's correct. Cartridge casings were 15 and 16.

17 Q I think you received 14, 15, and 16 from Emmitt
18 Gilliam?

19 A Yes, ma'am.

20 Q On what day?

21 A 11/2 of 2012.

22 Q And I see the SLED tape. How does that get on
23 there?

24 A Once they submit the item to us, we put our SLED
25 tape on the item and then they initial and date the

1 date that it is submitted.

2 Q Okay. And you said what day was that?

3 A It was submitted to me on 11/2/2012.

4 Q Okay. And so then you would have Emmitt --

5 A He initialed it, yes, ma'am.

6 Q -- date it and initial it. Then where do you place
7 that item?

8 A I believe this item was going to have some DNA done
9 on it, so it went to the DNA evidence -- or it is
10 firearms area that also goes for DNA.

11 Q Okay. I want to direct your attention to Item 13.
12 What is that?

13 A That is a buccal swab. It is a known standard for
14 a Jamil Brennan.

15 Q I'm going to show you what is marked as State's
16 Exhibit Number 42 and ask if you recognize that?

17 A I recognize it by my handwriting and by the SLED
18 lab number that was placed on it, and it has an
19 item number of Item 13.

20 Q Okay. So given your unique number and the item
21 number. And then who puts it in this plastic --

22 A I put it in -- I take their envelope, which is
23 this, and put it into our plastic because it's
24 going to DNA. And then I seal it and he initials
25 and dates it after it is sealed, and then it is

1 transferred to the DNA evidence intake storage.

2 Q And was that also submitted on November 2nd, 2012?

3 A Yes, it was.

4 Q. Okay. That's all the questions I have. Please
5 answer any questions Ms. Singletary may have for
6 you.

7 THE COURT: Any questions?

8 MS. SINGLETARY: No questions, Your Honor.

9 THE COURT: All right. Ma'am, you may step
10 down.

11 THE WITNESS: Thank you.

12 THE COURT: Any objection to this witness
13 being excused?

14 MS. SINGLETARY: No, Your Honor.

15 (Witness steps down and is excused.)

16 MS. BODMAN: The State calls Jennifer Aycock.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, raise your right hand, and face the clerk.

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the
22 testimony you are about to give in this case will
23 be the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 THE WITNESS: Yes, I do.

1 THE CLERK: Thank you. Have a seat in the
2 witness stand.

3 (Witness complies.)

4 THE CLERK: State your name for the record.

5 THE WITNESS: My name is Jennifer Aycock. The
6 spelling of the last name is A-Y-C-O-C-K.

7 JENNIFER AYCOCK,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BODMAN:

11 Q And where do work?

12 A I'm employed with the South Carolina Law
13 Enforcement Division, also known as SLED.

14 Q In what capacity?

15 A I am a forensic technician in the Evidence Control
16 Department.

17 Q So what are your duties and responsibilities?

18 A We log in packages and transfer evidence for
19 forensic analysis.

20 Q Did you handle some evidence involving Lab
21 L1211393?

22 A May I look at my notes?

23 Q Absolutely.

24 A Yes, ma'am, I did. I handled two buccal swabs. We
25 identified them as Item Number 22 for us, and that

1 is a buccal swab from Cheo Green. And I also
2 handled Item Number 23, which is a buccal swab from
3 Austin Murray.

4 Q I'm going to show you what is marked as State's
5 Exhibit 30 and 31. You can take a look at those
6 and see if you recognize them.

7 A Yes, ma'am, I do. I can identify them by the
8 unique lab number and item numbers on the packages.

9 Q Okay. And who puts them into these plastic
10 packages?

11 A We -- the evidence is sealed, of course, before we
12 handle it. We actually put it into this package,
13 we seal it with the sealing official, which is the
14 submitting officer, who actually initials and dates
15 the package on the top part.

16 Q And then where do these -- where do you place these
17 items?

18 A They go into our secure evidence room. They are
19 placed on the DNA shelf.

20 MS. BODMAN: No further questions of this
21 witness at this time.

22 THE COURT: Any questions?

23 MR. SIMS: No questions.

24 THE COURT: All right. Ma'am, you may step
25 down. Any objection to this witness being excused?

1 MS. SINGLETARY: No, Your Honor.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 (Witness steps down and is excused.)

5 MS. BODMAN: The State calls Nikki Perry
6 Hughes.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the
9 Bible, raise your right hand, and face the clerk.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you are about to give in this case will
13 be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness stand.

17 (Witness complies.)

18 THE CLERK: State your name for the record.

19 THE WITNESS: Nikki Perry Hughes, H-U-G-H-E-S.

20 NIKKI PERRY HUGHES,

21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BODMAN:

24 Q Back in 2012, did you work for SLED?

25 A I did.

1 Q Okay. And in what capacity?

2 A I was a forensic technician for the Evidence
3 Control Department at the forensic laboratory.

4 Q And what were your duties and responsibilities?

5 A We would log in, package, and transfer evidence
6 submitted to the laboratory for forensic analysis.

7 Q And did you handle evidence related to Lab Number
8 L1211393?

9 A I did.

10 Q Okay. I'll first bring your attention to Item
11 Number 1. Did you handle that or accept that?

12 A I did.

13 Q And I guess along with that is Item 2 and 3?

14 A Yes, ma'am.

15 Q I am going to show you what is marked as State's
16 Exhibit 37 and see if you recognize that?

17 A I do. I recognize the label that we affixed to the
18 outside of the packages with the lab number that I
19 would have given this evidence, L12-11393. And
20 this would be Container A.

21 Q Okay. And so Item 1 is what?

22 A Per my chain of custody, Item 1 is labeled as fired
23 bullet described as projectile from R clavicular of
24 victim.

25 Q Okay. And Item Number 2?

1 A Item Number 2 per my chain of custody is labeled
2 fired bullet described as projectile from R pleural
3 cavity of victim.

4 Q And Item 3?

5 A Item 3 is described as fired bullet described as
6 projectile from neck of victim.

7 Q And I guess if three separate items come in one
8 container, you are still going to label them as
9 Item 1, 2, and 3?

10 A Right. The individual items inside of the one
11 package will each get its own item number.

12 Q Okay. After that, Item 4, did you handle that
13 item?

14 A Yes, ma'am.

15 Q And what is Item 4?

16 A Per my chain of custody, Item 4 is described as the
17 GSR kit from Michael Laverne Davis.

18 Q I'm going to show you what's marked as and admitted
19 as Exhibit 38. Do you recognize that?

20 A I do. I recognize the label affixed to the package
21 with the lab number and Item Number 4.

22 Q And these items -- well, sorry. Item Number 5, did
23 you handle that item?

24 A I did.

25 Q And what is that?

1 A Item Number 5, according to my chain of custody,
2 states that it is fingernail scrapings from Michael
3 Laverne Davis.

4 Q I'm going to show you what's marked State's Exhibit
5 40. Do you recognize that?

6 A I do. I recognize the lab number and Item
7 Number 5.

8 Q Item 6, did you handle that item?

9 A I did. Item 6 is described as a swab from a
10 Verizon cell phone.

11 Q And Item 7?

12 A Item 7 is a swab from a Samsung cell phone.

13 Q I'm going to show you what is marked as State's
14 Exhibit 44 and ask if you recognize that?

15 A I do. Again, I recognize the label affixed to the
16 outside of the package with the lab number and
17 Container B, which means that both items are in
18 this one package.

19 Q And all of these items, who were they submitted
20 from? Who brought them to SLED and logged them in
21 with you?

22 A I received them from Tammie Moore of the Columbia
23 Police Department.

24 Q Okay. And did you have her -- I guess, upon the
25 sealing of these, did you have her initial and put

1 her name?

2 A Yes, ma'am. On each package, I would have -- she
3 would be the sealing official since she submitted
4 them in my presence. She would sign and date the
5 package and initial and date all the fields.

6 Q And then what did you do with those items?

7 A After I logged them in and packaged them and had
8 Tammie sign, I then placed them in the firearms
9 evidence intake storage, which is located in our
10 secure evidence room. Well, that would be the
11 first container, not all of them. That would be
12 Container A. Each one of them went into a separate
13 area. Let's see. Item 4 I would have placed in
14 the trace evidence intake storage, which is also
15 located in our evidence room. And then the swabs,
16 which I believe were Container B, I would have
17 placed in the DNA intake shelf.

18 Q For each of them to then go off to their
19 prospective --

20 A Departments.

21 Q -- departments for analysis?

22 A Uh-huh, yes, ma'am.

23 MS. BODMAN: No further questions at this
24 time.

25 THE COURT: Any questions from the Defense?

1 MR. SIMS: No questions, Your Honor.

2 THE COURT: All right. You may step down.

3 Any objection to this witness being excused?

4 MR. SIMS: No, Your Honor.

5 THE COURT: You are free to leave.

6 (Witness steps down and is excused.)

7 MS. BODMAN: The State calls Laura Hash.

8 (Witness approaches.)

9 THE BAILIFF: Place your left hand on the
10 Bible, raise your right hand, and face the clerk.

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: I do.

17 THE CLERK: Thank you. Have a seat in witness
18 stand, please.

19 (Witness complies.)

20 THE CLERK: State your name for the record.

21 THE WITNESS: Laura Hash.

22 LAURA HASH,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. BODMAN:

1 Q And where do you work?

2 A I am employed in the DNA Department at the South
3 Carolina Law Enforcement Division.

4 Q And can you tell us, what is the South Carolina Law
5 Enforcement Division?

6 A Yes, we are an assisting agency, which means we
7 assist every other police agency in South Carolina.
8 I work in the Forensic Science Department. And we
9 are the only state lab that does forensics in South
10 Carolina.

11 Q And so what type of items are you all analyzing and
12 assisting with?

13 A We analyze any biological evidence from a crime
14 scene that is submitted to SLED. We most often
15 test for hair, saliva, semen, blood, or touch DNA.

16 Q Can you tell the jury a little about your education
17 and background that brings you to this position?

18 A Sure. I have a Bachelor of Science Degree in
19 Chemistry, which I received from Clemson
20 University. I also have a PhD Degree in Basic
21 Pharmaceutical Sciences, which I received from the
22 University of South Carolina.

23 After I completed these two degrees, I worked
24 for approximately one year at USC in a genetics
25 laboratory assisting a professor with his research.

1 Then I was hired on by SLED to work as a DNA
2 analyst in the Forensic Science Department.

3 Once I entered SLED, I was trained by a
4 court-qualified DNA analyst, who trained me in how
5 to properly handle evidence, how to test the
6 evidence for serology and DNA analysis, and then to
7 write reports and testify in court.

8 Q Have you testified in court previously regarding
9 your work as a DNA analyst?

10 A Yes, I have.

11 Q And have you been qualified as an expert?

12 A Yes, I have.

13 Q In what areas have you been qualified as an expert?

14 A In forensic serology and DNA analysis.

15 MS. BODMAN: Your Honor, at this time, I would
16 offer her as an expert in the area of forensic
17 DNA -- serology and DNA analysis.

18 THE COURT: Any objection? Any voir dire?

19 MS. SINGLETARY: No, voir dire. No objection.

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, this witness will be qualified in the
22 area of forensic serology and DNA analyst -- as a
23 DNA analyst to give opinion testimony in that area.

24 Thank you.

25 BY MS. BODMAN::

1 Q Now, did you bring the records regarding L1211393?

2 A Yes, I did.

3 Q Okay. And you did not actually perform the
4 analysis in this case, did you?

5 A No, I did not.

6 Q It was performed by whom?

7 A It was performed by Stephanie Stanley, who is also
8 a DNA analyst.

9 Q Okay. And she is unavailable this week?

10 A Yes, she is.

11 Q Okay. Did you review her work and her bench notes
12 and report in preparation for testifying today?

13 A Yes, I did. I actually performed the
14 administrative review on her case before the case
15 was actually released back to the Solicitor or the
16 investigating agency.

17 Q And we have a couple of, I guess, reports and -- we
18 have a report and then two supplementals; correct?

19 A Yes, I believe that's correct. Yes. So there is
20 one actual report that went out first, and then any
21 additional evidence that comes in or is tested goes
22 out in something called a supplemental report.

23 Q So the original -- the beginning of the analysis is
24 what items were analyzed in order to attempt to
25 develop DNA?

1 A On December 7th of 2012, the initial report was
2 released. And it contained Item 5, which were
3 fingernail scrapings from Michael Davis; Item 6,
4 which was swabs from a Verizon cell phone; Item 7,
5 which were swabs from a Samsung cell phone; and
6 Item 8.2.1, which was a dried blood standard from
7 Michael Davis.

8 Q And what is the purpose of getting a dried blood
9 standard from the victim?

10 A We get blood standards or swabs from the mouth,
11 which are known as buccal swabs, from anybody
12 involved in the case. This allows us to develop a
13 DNA profile for comparison to any DNA profile we
14 develop from the evidence.

15 Q And you need to know what the victim's profile is
16 in order to, I guess, compare him for any foreign
17 DNA?

18 A Correct. We don't want to say that the person on
19 the item did the crime if it is in fact, the
20 victim's DNA profile. So we always request the
21 victim's DNA profile so that we can compare the
22 evidence and subtract their DNA from that item.

23 Q So did you develop Michael Davis's DNA profile?

24 A Yes. Stephanie Stanley was able to develop a full
25 DNA profile from the dried blood standard.

1 Q And do any two people have the same DNA profile?

2 A The only two people that would have the same DNA
3 profile are identical twins. Everybody else is
4 expected to have a different DNA profile.

5 Q And, essentially, I guess, a short layman's kind of
6 explanation is what is DNA?

7 A DNA stands deoxyribonucleic acid. It is a chemical
8 found in our body. And approximately 99.9 percent
9 of everybody's DNA is the same, but there is a
10 short amount of DNA that's different between
11 individuals. And that is what forensic scientists
12 use to identify a particular person with their
13 genetic profile. Identical twins or triplets would
14 be expected to have the same DNA profile, but
15 everybody else has a different DNA profile.

16 Q And the 99.9 percent that we all have the same,
17 that's why we all have, you know, two eyes, a nose,
18 mouth?

19 A Yes.

20 Q You know, limbs? We all look the same?

21 A Yes.

22 Q So that part is all exactly the same?

23 A Correct.

24 Q You're looking for the uniqueness?

25 A Exactly.

1 Q So you did develop Mr. Davis's DNA profile?

2 A Yes. There was a profile developed for Michael
3 Davis.

4 Q The analysis of the fingernail scrapings from
5 Mr. Davis, what was the result of that?

6 A No DNA profile foreign to the victim was developed
7 from Item 5. That means that it was his DNA
8 profile on his fingernail scrapings.

9 Q And Item 6, the swab from the Verizon cell phone?

10 A No DNA profile was developed from this item.

11 Q And Item 7?

12 A There was no human DNA that was obtained from this
13 item.

14 Q And Item 7 was a swab from a Samsung phone;
15 correct?

16 A Correct.

17 Q And so, presumably, I mean, cell phones, human
18 beings have touched those items; correct?

19 A Correct.

20 Q But, still, even though they have clearly been
21 touched by human beings, no DNA?

22 A No DNA profile was developed, or no DNA was found
23 on Item 7, and no profile was on Item 6, which was
24 the Verizon cell phone.

25 Q So does the fact that you can't develop -- or that

1 there is no DNA on an item, does that mean that
2 nobody ever touched that item?

3 A No, it doesn't.

4 Q So, then, the supplemental -- the next analysis
5 that occurred, the report dated May 22nd, 2013?

6 A Yes.

7 Q What additional items did you then receive to -- or
8 was received to do some work on?

9 A Item 13 was received, which are buccal swabs from
10 Jamil Brennan. And this is just like a blood
11 standard, except it is a swab from the inside of
12 the mouth. We also use that as a standard.
13 Item 14.1, which were swabs from a gun; 14.2, which
14 were swabs from the cylinder and unfired rounds;
15 and Item 16.1, swabs from cartridge casings.

16 Q Were those swabs, 14.1, 14.2, and 16.1, were those
17 submitted to SLED, or did SLED create those swabs?

18 A I do not have the chain of custody, but I believe
19 if it is labeled a point one that SLED would have
20 created those items.

21 Q And so what was the result of the -- I guess, were
22 you able to develop a profile from Jamil Brennan's
23 buccal swab, from his own mouth?

24 A Yes, we were.

25 Q And that, you said, is just like a Q-tip swab you

1 put inside someone's mouth?

2 A Yes. We've gone to asking for buccal swabs because
3 it is not as invasive as getting a blood standard
4 from somebody.

5 Q 14.1, the swab from the gun -- and what gun was
6 that that was swabbed?

7 A It is listed as a black H&R, .32, with two rounds.

8 Q What was the result of the analysis on 14.1?

9 A The DNA profile developed from Item 14.1 is a
10 mixture of at least three individuals and was not
11 suitable for entry into the combined DNA in that
12 system. Michael Davis and Jamil Brennan are
13 excluded as possible contributors to this mixture.

14 Q So there is at least three people that have -- that
15 you can tell have touched this gun; correct?

16 A Correct. There are at least three individuals
17 whose DNA we picked up on the gun.

18 Q And it is not the victim's DNA and it is not Jamil
19 Brennan's DNA?

20 A Correct.

21 Q And, again, comparing it back to the cell phone,
22 you said you picked up at least three profiles.
23 That doesn't mean that more people haven't touched
24 this gun?

25 A That's correct.

1 Q The swab from the cylinder and the unfired rounds,
2 what was the result of the analysis there?

3 A No DNA profile was developed from this item.

4 Q And swabs from the cartridge casing?

5 A No human DNA was obtained from this item.

6 Q And presuming that these unfired rounds were found
7 inside the gun, I mean, a person touched those to
8 put them inside the gun; correct?

9 A I can't testify to that, but I would think that in
10 order to load the gun somebody would have to touch
11 it.

12 Q And, yet, despite that, no human being DNA, no
13 profile developed?

14 A No, because we don't know how they loaded it, if it
15 was a cloth or a glove they may have had on.

16 Q Then your -- the third report, June 17th, 2015?

17 A Yes, this was the second supplemental report.

18 Q Okay. And what additional items did you get to
19 attempt to develop profiles from?

20 A We got two additional standards, Item 22, which
21 were buccal swabs from Cheo Green, and Item 23,
22 which were buccal swabs from Austin Murray.

23 Q And were profiles developed from their own buccal
24 swabs? From 22 and 23, did you get their profiles
25 from their own swabs?

1 A Yes, we did.

2 Q Okay. And in comparing those profiles to the
3 mixtures on the gun, what was the result?

4 A Cheo Green and Austin Murray were also excluded as
5 possible contributors to the mixture on Item 14.1,
6 which were the swabs from the gun.

7 Q Again, does the absence of a profile mean that one
8 of those people didn't touch the gun?

9 A No, it doesn't.

10 MS. BODMAN: I have no further questions at
11 this time.

12 THE COURT: Yes, ma'am?

13 MS. SINGLETARY: Just briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. SINGLETARY:

16 Q Good morning. How are you doing?

17 A Good morning.

18 Q I just want to be brief. You testified that you
19 had buccal swabs from a Jamil Brennan?

20 A Correct.

21 Q As well as Cheo Green, my client?

22 A Yes.

23 Q And Austin Murray?

24 A Correct.

25 Q And you compared those buccal swabs, which would

1 have allowed for you to come up with some kind of
2 DNA profile for those three individuals; correct?

3 A Correct.

4 Q And you compared that to the DNA that you were able
5 to retrieve from the firearm that was submitted to
6 SLED; correct?

7 A From Item 14.1, yes, there was comparison made with
8 those standards and that mixture of DNA.

9 Q And you could not -- it excluded my client's DNA
10 from being on that gun; correct?

11 A It excluded -- and I can read it directly from the
12 report. The answer was, the DNA profile developed
13 from Item 14.1, which was the swab from the gun, is
14 a mixture of at least three individuals: Michael
15 Davis, Jamil Brennan, Cheo Green, and Austin Murray
16 are excluded as possible contributors to this
17 mixture.

18 Q So my client, Cheo Green, was excluded as a
19 possible --

20 A Correct.

21 Q And you said that there was some analysis done on
22 fingernail scrapings from Mr. Davis?

23 A Correct. Item --

24 Q I believe it was Item 5?

25 A In the first report, Item 5 were fingernail

1 scrapings from Michael Davis.

2 Q And that was only his DNA, no other person's DNA?

3 A No profile foreign to Michael Davis was developed
4 from the profile that was developed from the
5 fingernail scraping.

6 Q And then in the first report, you got swabs from a
7 Verizon cell phone; correct? Item 6?

8 A Correct, it was Item 6.

9 Q And the results was no DNA profile?

10 A No DNA profile was developed from Item 6.

11 Q And then let's go to Item Number 7, which was a
12 swab from a Samsung cell phone.

13 A Correct.

14 Q And there was no human DNA that was detected?

15 A Correct, no human DNA was obtained from Item 7.

16 Q And let's go to Item 4.2. That was the cylinder
17 and unfired round from Item Number 4.1, which would
18 have been the gun?

19 A I don't have an Item 4.1.

20 Q The black H&R, the swab from the gun?

21 A I have Item 14.2, which were swabs from the
22 cylinder and unfired rounds, and Item 14.1, which
23 were swabs from the gun.

24 Q And I said 4.1, I should have said 14.1. I'm sorry
25 about that. But, yeah, 14.1 is the gun.

1 A Okay.

2 Q And 14.2 is the cylinder and unfired rounds?

3 A Correct.

4 Q And in Item 14.2, the cylinder and unfired rounds,
5 there was no DNA profile that was developed;
6 correct?

7 A No DNA profile was developed from Item 14.2.

8 Q And Item 16.1, the cartridge casing, there was no
9 human DNA detected on that, was it?

10 A No human DNA was detected on Item 16.1.

11 MS. SINGLETARY: I have no further questions.

12 THE COURT: Anything else from the State?

13 MS. BODMAN: No.

14 THE COURT: All right, you may step down. Any
15 objection to this witness being excused?

16 MS. SINGLETARY: No, Your Honor.

17 (Witness steps down and is excused.)

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, we are running a little bit behind on
20 our morning break, so we will go ahead and do that
21 at this time. We will go ahead and take about 10
22 or 15 minutes, restroom break.

23 Remember, during your break, you should not
24 discuss the case with each other or anyone else.

25 All right. We will take about 10 or 15

1 minutes.

2 (WHEREUPON, the jury retires to the jury
3 room at 11:45 a.m.)

4 THE COURT: All right. We'll take 10 or 15
5 minutes.

6 (WHEREUPON, a break was taken.)

7 THE COURT: All right. Are you ready to bring
8 them in?

9 MS. BODMAN: Yes, ma'am.

10 THE COURT: Bring them in.

11 (WHEREUPON, the jury comes into open
12 court at 12:09 p.m.)

13 THE BAILIFF: The jury is all present, Your
14 Honor.

15 THE COURT: All right. I am going to ask the
16 State to call your next witness.

17 MS. BODMAN: The State calls Jennifer Nates.
18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right hand, and face the clerk.
21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you give in this case will be the truth,
24 the whole truth, and nothing but the truth, so help
25 you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. Have a seat in the
3 witness stand, please.

4 (Witness complies.)

5 THE CLERK: And state your name for the
6 record.

7 THE WITNESS: Jennifer M. Nates.

8 JENNIFER NATES,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BODMAN:

12 Q. And with whom are you employed?

13 A I am employed by the South Carolina Law Enforcement
14 Division in the trace evidence section.

15 Q And what are your duties and responsibilities in
16 the trace evidence section?

17 A My responsibilities and duties are I am the
18 supervisor of the department. I am responsible for
19 the day-to-day operations of the department and for
20 analysis of several different types of analysis we
21 perform on paint, fiber, glass, GSR, explosives,
22 fire debris, trace other cases.

23 Q Can tell the jury a little about your educational
24 background and your training that brings you to be
25 supervisor of the trace evidence section?

1 A I received a Bachelor of Science Degree in
2 Chemistry from a small state school in
3 Pennsylvania, California University of
4 Pennsylvania. Once I graduated, I began my career
5 at SLED in the drug analysis department, where I
6 worked for a year, and then I transferred to trace
7 evidence.

8 At that time, I began a 4-year training
9 program working under the supervisor of the
10 department and the senior analyst. I completed
11 that program and became an analyst in the
12 department and was supervisor, left. I then took
13 over the department.

14 Q And so how long have you been doing analysis in the
15 trace evidence section?

16 A I have been in trace evidence since 1999.

17 Q And have you testified before in courts of law
18 regarding your analysis?

19 A I have.

20 Q And have you been tendered and deemed an expert?

21 A I have.

22 Q In what areas have you been deemed to be an expert?

23 A I have testified and been deemed an expert in
24 general trace analysis, gunshot residue, fracture
25 analysis, fiber analysis, glass analysis, and drug

1 analysis.

2 Q And in relation to Lab Number L1211393, did you do
3 some analysis?

4 A I did.

5 Q And what type of analysis did you do?

6 A In this case I was asked to perform gunshot residue
7 analysis.

8 MS. BODMAN: Your Honor, at this time I would
9 tender Lieutenant Nates as an expert in the area of
10 gunshot residue analysis.

11 MS. SINGLETARY: With no voir dire, no
12 objection.

13 THE COURT: All right. Ladies and gentlemen
14 of the jury, this witness will be qualified as an
15 expert in the area of gunshot residue analysis to
16 give opinion testimony in that area.

17 Thank you.

18 BY MS. BODMAN::

19 Q And so explain to us, what is gunshot residue
20 analysis?

21 A Gunshot residue analysis is an analysis performed
22 on samples submitted to our lab to determine if
23 there are any particles of gunshot residue present
24 on a person or an article or an item.

25 Gunshot residue is the debris that is

1 discharged from a firearm when it is fired. It is
2 microscopic, you can't see it. It is discharged
3 from any open area on the gun and will deposit
4 within certain areas around the gun after
5 discharge.

6 Q Tell us a little bit about -- well, do you need to
7 be in an enclosed space? Is there a distance
8 involved? What are the factors that are taken into
9 account in determining whether or not you are going
10 to have gunshot residue on you?

11 A With gunshot residue, all guns will generate
12 gunshot residue. If it is raining outside,
13 anything that will affect the deposition of the
14 gunshot residue are outside environmental factors.

15 If I fire a weapon and I have gunshot residue
16 deposited on my hand, I can brush it off. You will
17 probably still have some left, but if you wash your
18 hands, you will completely remove it.

19 It is kind of like if you want to think about
20 like when you bake and you get flour on your hands,
21 it is a light dusting. You can't see the gunshot
22 residue, but it will be disbursed on your hands.

23 Different caliber guns will produce more or
24 less gunshot residue. And the distance you are
25 from a weapon when it is fired will determine

1 whether or not you may have it on you.

2 If I fire a weapon in this direction, you
3 possibly could have some deposited on you depending
4 on the type of weapon. And if it was outside -- if
5 it was inside, if two of you are in a bathroom and
6 a gun is discharged by one of you, both of you will
7 most definitely have it on your hands or your
8 clothing in such a small enclosed area.

9 So any outside weather forces will affect the
10 deposition. The size of the room you're in when
11 it's fired or anything you do after the deposition
12 can affect it.

13 Q So, for example, being in a car when a weapon is
14 fired, potentially, even if one person fires, the
15 other two people could have gunshot residue on
16 them?

17 A That's right. In a vehicle, especially, if a gun
18 is fired from within the vehicle, more than likely
19 everyone in that vehicle will have gunshot residue
20 on their hands unless the weapon is outside of the
21 window and the car is moving and it is fired not in
22 the vicinity of the inside.

23 Q And how soon after the gun is fired -- is there a
24 timeframe that that gathering of it is important, I
25 guess?

1 A With a living person, the GSR kit has to be
2 collected within six hours of the gun being
3 discharged. This is because the residue can be
4 washed away. If you sweat, it can be removed. If
5 you put your hands in and out of your pockets, if
6 you eat. Anything you do will remove it. So after
7 six hours, we do not accept any kits that are
8 collected for that incident.

9 With a deceased individual, once they are no
10 longer living or breathing, the removal of that
11 gunshot residue stops. So if they are not laying
12 outside in the rain or they are just found
13 somewhere, you can still collect the kit and
14 potentially find GSR after the six hours.

15 With inanimate objects, if it is clothing or
16 anything we collect GSR off of, it is also
17 indefinite. It has to be removed by an outside
18 force.

19 If I fire a gun here, I can deposit GSR on
20 this. It will stay there until someone removes it.
21 So if I find something on an inanimate object, I
22 can't tell you when it was deposited. It could
23 have been days, it could have been hours.

24 Q So if we have no idea who potentially shot the
25 weapon within six hours, essentially, that

1 potential tool or that tool is kind of lost to law
2 enforcement?

3 A No. We recommend they do not collect if it is
4 outside the 6-hour window.

5 Q So did -- was a GSR kit submitted to you for
6 analysis?

7 A I did receive a GSR kit for analysis.

8 Q Okay. And from whom was that kit -- what
9 individual was it collected from?

10 A It was submitted from a Michael L. Davis.

11 Q And I will show you what is admitted as State's 38
12 and see if you recognize that?

13 A This is the lab number. All evidence that is
14 submitted to the laboratory, when it comes through
15 the evidence intake area, it is given a lab number,
16 which all evidence with that case will be
17 associated to that lab number, and then given an
18 item number. And this is Item Number 4 from that
19 case. And then I initialed on the back when I
20 opened it.

21 Q And so is that the GSR kit that you analyzed?

22 A Inside here should be the GSR kit that was
23 analyzed.

24 Q So talk to us a little bit about, then, those kits,
25 how you collect it.

1 A A GSR kit is a kit that is provided to law
2 enforcement officers that has the sample inside the
3 kit. There are four particle lifts...

4 Q Is it okay to handle that?

5 A Yes, they are in tubes.

6 Q Okay.

7 A This is when I sealed it. Actually, when I open
8 this up, I put my initials and the date, a sticker
9 that gives the lab number and the item number, and
10 then the evidence tape when I reseal the evidence.

11 One of the things about GSR collection kits is
12 a lot of evidence, once you analyze it, it can be
13 degraded or you can't use it again. With gunshot
14 residue collection kits, it can be analyzed over
15 and over again because the samples are preserved.

16 Each kit will consist of four samples and each
17 one is labeled. It is labeled right palm, right
18 back, left palm, and left back. Those are the four
19 areas of the hand that we request they collect the
20 samples from. So they will take the top off. And
21 this is a sticky -- the particle lift is what it is
22 called. And it looks like -- it kind of has an
23 adhesive on it, like a Band-Aid adhesive type, and
24 they will just dab each area of the hand until they
25 don't feel it lifting anymore and when they have

1 collected the evidence from that area. And they do
2 it for each area that they have a sample for.

3 Q And, essentially, what was the result of the
4 analysis of the GSR kit from Mr. Davis?

5 A On the kit from Michael L. Davis, which was my Item
6 Number 4, on the right palm and the right back, I
7 found round lead particles, which are among the
8 components of gunshot residue. On the left palm, I
9 did not find any gunshot residue. And the results
10 for the back of the left hand were inconclusive.

11 Q Now, finding lead particles on an individual who
12 has been shot, did that mean that that person shot
13 a weapon, or what is the value of that evidence,
14 that a victim of a gunshot wound has GSR on them?

15 A When we receive kits that are collected from the
16 victim of a gunshot wound, all we can say from the
17 analysis is -- we expect to find gunshot residue on
18 their hands because they were shot. The front of
19 the weapon was pointed at them when it was
20 discharged. So we know they are in that cloud of
21 gunshot residue. So when we find gunshot residue
22 on a shooting victim, it basically tells us they
23 were near a weapon when it was fired, they could
24 have handled a weapon, or they could have fired a
25 weapon, but we can't tell you which of those three

1 that gunshot residue came from.

2 Q But having a gunshot wound, you know they were in
3 the presence of a gun?

4 A That is correct. When they have a gunshot wound,
5 we know they were in that vicinity and should have
6 gunshot residue on them.

7 Q Then there were other items submitted to you for
8 GSR; correct?

9 A There were.

10 Q And those items were collected from the vehicle?

11 A The items were collected -- they were collected
12 from the vehicle.

13 Q Okay. And just -- were you able -- just yes or no,
14 were you able to analyze those?

15 A I was not.

16 Q Okay. And the reason that you weren't able to
17 analyze them?

18 A They were not collected properly to perform a
19 gunshot residue analysis.

20 Q Okay. And were those collected by CPD, by the
21 Columbia Police Department, or another agency?

22 A According to my narrative from when I spoke with
23 Sergeant McCracken, they were collected by another
24 agency.

25 Q. Okay.

1 MS. BODMAN: I have no further questions at
2 this time.

3 THE COURT: Yes, ma'am?

4 MS. SINGLETARY: Your Honor. I have no
5 questions.

6 THE COURT: All right. You may step down.
7 Any objection to her being excused?

8 MS. SINGLETARY: No, Your Honor.

9 THE COURT: You are free to leave.
10 (Witness steps down and is excused.)

11 THE COURT: Call your next witness.

12 MS. GARFIELD: The State calls Curtis Wright.
13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, raise your right hand, and face the clerk.
16 (Witness complies.)

17 THE CLERK: Do you swear or affirm the
18 testimony you are about to give in this case will
19 be the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Thank you. Have a seat in the
23 witness stand.

24 (Witness complies.)

25 THE CLERK: State your name for the record.

1 THE WITNESS: Curtis Wright.

2 CURTIS WRIGHT,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. GARFIELD:

6 Q Good afternoon, Mr. Wright.

7 A How you doing?

8 Q Are you nervous today?

9 A A little bit.

10 Q Have you ever testified before?

11 A No, ma'am.

12 Q How old are you?

13 A Twenty-two.

14 Q Where are you from?

15 A Columbia.

16 Q Where did you go to high school?

17 A Went to Blythewood.

18 Q Did you graduate?

19 A No, ma'am.

20 Q Are you working?

21 A Yes, ma'am.

22 Q Where do you work?

23 A Right now I work for my father working down on Bull

24 Street building a new baseball stadium.

25 Q What are you doing building a new baseball stadium?

- 1 A We are doing the foundation for the bathrooms.
- 2 Q Mr. Wright, do you want to be here today?
- 3 A No, ma'am.
- 4 Q You're under subpoena?
- 5 A Yes, ma'am.
- 6 Q I'm going to ask you to share with the jury, do you
7 know the Defendant in this case, Cheo Green?
- 8 A Yes, ma'am.
- 9 Q Just tell the jury how you know him.
- 10 A His family is my next-door neighbor.
- 11 Q How long have you known him?
- 12 A Probably about 12 years.
- 13 Q Is he a friend?
- 14 A Yes.
- 15 Q Is he a good friend?
- 16 A Yes.
- 17 Q And you know why he is in the courtroom; right?
- 18 A I heard about it.
- 19 Q And you don't want to see him get in trouble;
20 right?
- 21 A No, ma'am.
- 22 Q Do you know another person charged in this case,
23 Austin Murray?
- 24 A I know of him.
- 25 Q How do you know of him?

1 A I just know of him, like in school, like we went to
2 the same school.

3 Q Is he a good friend?

4 A I mean, I hear he a good dude, I can't say a good
5 friend.

6 Q But you know him?

7 A Yes.

8 Q You want to see him get in trouble?

9 A No, ma'am.

10 Q Mr. Wright, I know this is hard for you, but I want
11 to take you back to September of 2012.

12 Specifically, do you remember Mr. Green getting in
13 some trouble?

14 A Yeah, kind of.

15 Q Do you remember in September of 2012 meeting a
16 couple of girls?

17 A I met a lot of girls.

18 Q Okay. Specifically, do you remember Cierra?

19 A I remember I just seen her out there. I remember
20 her face.

21 Q Remember her face?

22 A Uh-huh.

23 Q Do you remember where you met her?

24 A No, ma'am.

25 Q Do you remember exchanging phone numbers with her?

- 1 A No, ma'am.
- 2 Q Do you remember at some point you going to see her
- 3 at her apartment?
- 4 A I think I been over there like one time.
- 5 Q Where was her apartment?
- 6 A I couldn't tell you.
- 7 Q Do you know what side of town it was on?
- 8 A I think it was in Columbia, Columbia somewhere.
- 9 Q Where?
- 10 A I think it was in Columbia somewhere.
- 11 Q Do you remember, was it in the same area of town
- 12 that you live in?
- 13 A I'm not sure. I don't remember.
- 14 Q And do you remember who you went over there to see
- 15 Cierra and the girls with?
- 16 A I ain't -- I ain't really remember. I just
- 17 remember her face.
- 18 Q Do you remember who went with you to see the girls?
- 19 A My brother said he went with me.
- 20 Q Your brother went with you?
- 21 A Yes.
- 22 Q And what is your brother's name?
- 23 A DaQwane.
- 24 Q DaQwane what?
- 25 A Robinson.

1 Q Y'all don't have the last name. Why is that?

2 A Because we're not really brothers.

3 Q What kind of brothers are you?

4 A We just grew up close, I guess. My little brother
5 and his little brother, we real close.

6 Q You share a parent?

7 A No.

8 Q Y'all are just real close?

9 A Uh-huh.

10 Q And so you and your brother went over to see the
11 girls?

12 A That's what he say.

13 Q That's what he says?

14 A Uh-huh.

15 Q. Okay.

16 MS. GARFIELD: Beg the Court's indulgence.

17 (Pause.)

18 BY MS. GARFIELD:

19 Q Do you remember talking to the police about going
20 to see the girls?

21 A No.

22 Q You don't remember the police wanting to come see
23 you and calling you wanting to talk to you?

24 A They always want to come talk to me. They always
25 want to come try to get me.

1 Q They always want to come talk to you?

2 A Yes.

3 Q Do you remember Investigator Gilliam?

4 A No.

5 Q You don't remember Investigator Gilliam wanting to
6 come talk to you?

7 A His face don't look familiar.

8 Q His face looks familiar?

9 A It don't.

10 Q Doesn't look familiar. So you don't remember on --
11 back in October, October 24th of 2012, Investigator
12 Gilliam coming to your home to talk to you?

13 A Huh-uh, no.

14 Q About 12:27 in the afternoon?

15 A I don't remember a lot of stuff, to tell you the
16 truth.

17 Q You don't remember you coming back to the police
18 department and giving a statement?

19 A I mean, they say I wrote a statement. I ain't
20 remember.

21 Q Okay. I am going to hand you --

22 MS. GARFIELD: And, Your Honor, I'm handing
23 him a statement.

24 BY MS. GARFIELD:

25 Q Do you recognize that handwriting?

1 A It looks like mine.

2 Q That looks like your handwriting?

3 A Yes.

4 Q Does that look like your signature?

5 A Uh-huh.

6 Q But you don't remember making that statement?

7 A No, ma'am.

8 Q Okay. Well, I'm just going to go through this to
9 try to help refresh your memory because it has been
10 a long time ago, hasn't it?

11 A I done been through a lot of stuff in the last few
12 years.

13 THE COURT REPORTER: I'm sorry, what was that?

14 A. I been through a lot of stuff, a lot of stuff the
15 past few years.

16 Q You've been through a lot of stuff?

17 A Yeah.

18 Q So you can't really remember giving this statement?

19 A No.

20 Q Okay. You remember telling the investigator that
21 you and your brother and Cheo rode to the Enclave
22 off Broad River Road?

23 A No.

24 Q What's the answer?

25 A No, ma'am.

- 1 Q No, you don't remember saying that?
- 2 A No, ma'am.
- 3 Q And that you and your brother went up, Cheo stayed
4 in the car? Do you remember that?
- 5 A No, ma'am.
- 6 Q Do you remember, Then Cheo called me and said he
7 was about to leave? Do you remember that?
- 8 A No, ma'am.
- 9 Q And then you said, I asked him where he was going
10 and he told me don't worry about it, so I said
11 a'ight? Do you remember that?
- 12 A No, ma'am.
- 13 Q Don't remember that? Okay. Do you remember when
14 you said to Investigator Gilliam, who is here in
15 the courtroom, that, When we left, he had called me
16 and he was like where we at?
- 17 A No, ma'am.
- 18 Q Do you remember that?
- 19 A No, ma'am.
- 20 Q Okay. Do you remember that you told Investigator
21 Gilliam, I told him we was pulling up at the house
22 and he said a'ight? Do remember that?
- 23 A No, ma'am.
- 24 Q And where was your house at that time?
- 25 A I been staying in the same home for a long time.

1 Q Okay. And you don't have to give the exact
2 address, but what area of town?

3 A Northeast part.

4 THE COURT REPORTER: I'm sorry?

5 A. Northeast part of Columbia.

6 Q Northeast part of Columbia. That's the same area
7 Spring Valley is in?

8 A It is close by.

9 Q Okay. All right. Do you remember telling
10 Investigator Gilliam, I will see y'all boys there?

11 A No, ma'am.

12 Q You don't remember that? Do you remember telling
13 Investigator Gilliam, The next morning I woke up
14 and Cheo was asleep in my little brother's bed? Do
15 you remember that?

16 A No, ma'am.

17 Q Don't remember that? Then you told Investigator
18 Gilliam, That's when I woke him up and I was asking
19 him about a dude named Steve. Do you remember
20 that?

21 A Yeah, I remember a dude Steve that got killed.

22 Q Okay. First, do you remember saying that to
23 Investigator Gilliam?

24 A No.

25 Q Okay. But you do remember Steve?

- 1 A He got killed.
- 2 Q And where did Steve get killed?
- 3 A Not sure. I think in Columbia, though.
- 4 Q It was in Columbia?
- 5 A I think it was in Columbia.
- 6 Q And that was the same night you went to see the
- 7 girls at the Enclave?
- 8 A I'm not sure.
- 9 Q You're not sure. Do you remember telling
- 10 Investigator Gilliam, That's when he woke up and
- 11 started calling people to see if it was true about
- 12 Steve getting killed? Do you remember that?
- 13 A No, ma'am.
- 14 Q You don't remember telling Investigator Gilliam
- 15 that?
- 16 A I don't remember saying that.
- 17 Q Okay. Do you remember telling Investigator
- 18 Gilliam, That's when we were sitting outside
- 19 smoking Newports and he told me when I'm ready, he
- 20 had some real shit to tell me?
- 21 A No.
- 22 Q You don't remember him telling you that --
- 23 A No, ma'am.
- 24 Q -- or you telling the investigator that he told you
- 25 that?

1 A I don't remember a lot of stuff, man.

2 Q You don't remember a lot of stuff. I understand.

3 Do you remember telling Investigator Gilliam, I
4 took him -- I told him some shit you need to take
5 to the grave? Do you remember that?

6 A No, ma'am.

7 Q Okay. Do you remember telling Investigator
8 Gilliam, So a couple days later, we was sitting in
9 my brother DeQwane's, car and he was like, Bro,
10 remember that night that I had left when we was on
11 the river? Do you remember that?

12 A No, ma'am.

13 Q Do you remember telling Investigator Gilliam, I was
14 like, Yeah? Do you remember that?

15 A No, ma'am.

16 Q Okay. Do you remember telling Investigator
17 Gilliam, He was like some real shit happened? Do
18 you remember that?

19 A I don't remember about the situation, ma'am.

20 Q And you don't remember any of this; right?

21 A I don't remember a lot of stuff.

22 Q Okay. Do you remember telling Investigator
23 Gilliam, He was like him and Austin was riding with
24 this dude and he was playing in this bag --

25 MS. SINGLETARY: Objection, Your Honor.

1 THE COURT: What's the objection?

2 MS. SINGLETARY: 403, Your Honor. It's highly
3 prejudicial.

4 THE COURT: I think under the rules he says he
5 doesn't remember, so I think she has the
6 opportunity to refresh his memory and impeach under
7 607 and --

8 MS. GARFIELD: 613?

9 THE COURT: Thirteen.

10 MS. SINGLETARY: And, Your Honor, I would also
11 object on the grounds of hearsay.

12 THE COURT: Hearsay -- let me see you all one
13 second.

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: Ladies and gentlemen, there is a
18 matter of law that I need to take care of outside
19 of your presence. I am going to send you all out.

20 She tells me that your lunch is back there.
21 You can start if you would like, but we will have
22 to bring you back in.

23 So I am going to send you all out for a short
24 moment, then have you back in.

25 Thank you.

1 (WHEREUPON, the jury retires to the jury
2 room at 12:37 p.m.)

3 THE COURT: Yes, ma'am, what is your
4 objection?

5 MS. SINGLETARY: Your Honor, my objection is
6 simply that the witness is about to actually
7 testify to hearsay and that there is not an
8 exception to the hearsay rule. In essence, the
9 victim is going to testify to something that he is
10 saying -- a statement that my client actually said
11 outside of court and it would be provided for the
12 truth of the matter asserted.

13 MS. GARFIELD: Judge, that is called an
14 admission, which is a hearsay exception. It is a
15 statement her client made to this witness.

16 MS. SINGLETARY: And, Your Honor, I would
17 simply state it is a statement allegedly my client
18 made to this witness. This witness has testified
19 over and over again that he doesn't remember giving
20 the statement.

21 MS. GARFIELD: Which is then going to
22 Rule 613, which allows me to impeach him with the
23 statement in full.

24 THE COURT: She is allowed to impeach him.
25 And I think he testified that was his signature on

1 the statement. I don't know if he testified -- he
2 doesn't remember. He apparently can't remember
3 anything. But he said that that was his signature
4 on the paper, so -- on the statement.

5 And under 613, she does have the right to
6 impeach him based on the prior statement,
7 inconsistent statement.

8 MS. GARFIELD: And, Judge, I want to clarify
9 my argument. I'm not -- it is not exception to
10 hearsay, it is an admission, which is not hearsay.

11 THE COURT: Take a look at 801(D)(2),
12 statements which are not hearsay.

13 MS. GARFIELD: Yes, ma'am.

14 THE COURT: Take a look at State v. Gilchrist.
15 Unless you have some other case law, I think it is
16 under 613 -- not 613, 803 -- 801(D)(2), admission
17 by a party/opponent that the State is allowed to
18 question him and he can answer whichever way he
19 wants to.

20 All right.

21 MS. SINGLETARY: Thank you, Your Honor.

22 THE COURT: All right, thank you.

23 MS. GARFIELD: Thank you, Your Honor.

24 THE COURT: You can bring them back.

25

1 (WHEREUPON, the jury came into open
2 court at 12:47 p.m.)

3 THE BAILIFF: The jury is present, Your Honor.

4 MS. GARFIELD: May it please the Court?

5 THE COURT: Yes, ma'am. You may continue.

6 The objection is overruled.

7 MS. GARFIELD: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUES:

9 BY MS. GARFIELD:

10 Q Mr. Wright, while we were on that lengthy break,
11 were you able to recall going to talk to the
12 police?

13 A No, ma'am.

14 Q You still don't remember giving any statement to
15 the police?

16 A No, ma'am.

17 Q It is your testimony today that you didn't talk to
18 the police?

19 A I mean, I don't remember.

20 Q Do you remember when you told the police back in
21 October of 2012, at the Columbia Police Department,
22 telling Investigator Gilliam that he, referring to
23 Cheo Green, the Defendant, told you he would --
24 like, him and Austin was riding with this dude and
25 he was playing in this bag like he was looking for

1 some crack to sell the dude, and that's when he
2 text Austin's phone, Tell me when to do it. And
3 Austin said, Now.

4 Do you remember telling the police Cheo Green
5 told you that?

6 A No, ma'am.

7 Q Okay. Do you remember telling the police, So Cheo
8 said he shot him once and the dude was like, Okay,
9 okay, okay. That's when he shot him again.

10 Do you remember telling the police that?

11 A I don't remember that.

12 Q You don't remember that?

13 A No, ma'am.

14 Q Do you remember telling Investigator Gilliam, Then
15 he said they just cruised the city in the dude's
16 car.

17 Do you remember telling the police that?

18 A I don't remember none of that.

19 Q Do you remember Investigator Gilliam asking you,
20 Tell me about the car Cheo mentioned about bringing
21 to the house that night.

22 And he told you -- he had told you that he was
23 expecting or -- that's not his words. The answer
24 you gave was, A Chevy with rims on it. Then later
25 on he told me it was an old white car.

1 Do you remember telling the police that?

2 A No, ma'am.

3 Q Okay. I want to fast forward a little bit from the
4 information you gave the police that you don't
5 remember.

6 Your brother, that you call your brother,
7 DaQwane Robinson; right?

8 A Uh-huh.

9 Q What kind of car does he drive?

10 A I don't know. I been in prison -- I been in prison
11 two years. I don't know what he got.

12 Q You been in prison two years, you don't remember?

13 Okay. Well, back in October of 2012, what
14 kind of car did he drive?

15 A I remember him having a little black car, like a
16 black car.

17 Q Do you remember him having a green car?

18 A I think his mama -- his mama or somebody had a
19 green car.

20 Q His mama had a green car?

21 A I think so.

22 Q Do you remember the police pulling you over in a
23 green car back in October of 2012?

24 A No.

25 Q You don't remember that?

- 1 A (Nods negatively.)
- 2 Q Do you remember being arrested after you were
- 3 pulled over in a car?
- 4 A I know I been arrested so many times.
- 5 Q Do you remember specifically being arrested for a
- 6 gun back in 2012?
- 7 A I know I had a gun charge.
- 8 Q Do you remember how you got a gun charge?
- 9 A Huh-uh.
- 10 Q You don't remember?
- 11 A No, ma'am.
- 12 Q Back when you were talking with Investigator
- 13 Gilliam, do you remember talking to him about that
- 14 gun charge?
- 15 A I don't remember talking to him at all.
- 16 Q You didn't talk to him at all?
- 17 A I said I don't remember talking to him.
- 18 Q You don't remember talking to him at all?
- 19 A No, ma'am.
- 20 Q. Okay. And, again, I'm going to show you -- and I
- 21 have the statement marked State's Exhibit Number 24
- 22 for identification purposes. Do you recognize that
- 23 signature?
- 24 A Looks like mine.
- 25 Q Looks like yours?

1 A Uh-huh. My name.

2 Q That's your name?

3 A Uh-huh. I do remember my name.

4 Q I'm sorry?

5 A I do remember my name.

6 Q You do remember your name? Okay.

7 Mr. Wright, do you remember talking to
8 Investigator Gilliam and he asked you, Tell me
9 about the gun charge you was arrested for?

10 Do you remember that?

11 A No, ma'am.

12 Q Do you remember your answer being to Investigator
13 Gilliam, It was a black .32 auto with tape on the
14 handle? Do you remember that?

15 A Nope.

16 Q Do you remember saying, October 5th we got pulled
17 over, my brother DaQwane was driving, I was in the
18 passenger seat, and Cheo was sitting behind me.

19 Do you remember telling Investigator Gilliam
20 that?

21 A I don't remember nothing, ma'am.

22 Q Okay. Do you remember telling Investigator
23 Gilliam, My older cousin and a dude I call my uncle
24 was in the back too?

25 Do you remember telling Investigator Gilliam

1 that?

2 A No, ma'am.

3 Q Do you remember telling Investigator Gilliam, When
4 the police searched the car, they found a gun under
5 the back of my seat and that was Cheo's gun?

6 A No.

7 Q You don't remember that?

8 A No.

9 Q Do you remember Investigator Gilliam asking you at
10 the Columbia Police Department, on October 24th,
11 2012, do you remember him asking you, How did the
12 gun get under your seat?

13 A I don't remember him asking me nothing.

14 Q Don't remember him asking you nothing?

15 A No, ma'am.

16 Q Do you remember you answering, When they pulled us
17 over, Cheo slid it under my seat?

18 A I don't remember what I said.

19 Q You didn't say anything like that?

20 A I don't remember saying it.

21 Q Do you remember Investigator Gilliam asking you,
22 Have you seen Cheo with the gun before?

23 A No. No, ma'am.

24 Q Do you remember Investigator Gilliam asking you,
25 How do you know Cheo?

1 A I don't remember the man asking me nothing.

2 Q Do you remember telling Investigator Gilliam that
3 you call him my cousin, but he really just a close
4 friend?

5 A No, ma'am.

6 Q I'm sorry, do you remember that?

7 A No, ma'am.

8 Q Do you remember Investigator Gilliam asking you how
9 you know Austin?

10 A No, ma'am.

11 Q Do you remember answering him that you went to
12 Blythewood Academy with him and his street name is
13 AG?

14 A I remember going to Blythewood Academy.

15 Q You remember going to Blythewood Academy?

16 A I remember that.

17 Q But you don't remember telling Investigator Gilliam
18 that?

19 A Don't remember.

20 Q Do you remember Investigator Gilliam asking you why
21 would Austin call you in the early morning of
22 September 16th, 2012? Do you remember him asking
23 you about getting a phone call?

24 A No, ma'am.

25 Q Do you remember your answer being, That was Cheo

1 calling me off of Austin's phone?

2 A No, ma'am.

3 Q You don't remember that?

4 A Huh-uh.

5 Q And I believe they asked you about some phone
6 numbers as well. Do you remember what your phone
7 number was back then?

8 A No, ma'am.

9 Q Do you remember Investigator McCracken and
10 Investigator Gilliam asking -- I'm sorry,
11 Investigator Gilliam asking you what your phone
12 number was?

13 A No, ma'am.

14 Q Do you remember telling Investigator Gilliam your
15 phone number was -6063?

16 A No, ma'am.

17 Q Do you remember also giving a phone number for Cheo
18 Green?

19 A No, ma'am.

20 Q Do you remember telling Investigator Gilliam that a
21 phone number associated with Cheo Green was
22 -6729?

23 A No, ma'am.

24 Q Do you remember you also giving a phone number
25 associated with Cheo Green to be -6130?

1 A I don't remember none of that.

2 Q You don't remember any of that? Okay.

3 A No, ma'am.

4 Q And do you remember associating those phone
5 numbers -- you are saying you weren't sure which
6 number it was that he called you from?

7 A No. No, ma'am.

8 Q Do you remember Investigator Gilliam asking you,
9 What did Cheo tell you what he did with the gun?

10 A No, ma'am.

11 Q Do you remember answering Investigator Gilliam, He
12 said it is across the street in the field by my
13 house?

14 Do you remember that, Mr. Wright?

15 A No, ma'am. I don't remember a lot of things,
16 ma'am.

17 Q Did you realize that Investigator Gilliam was audio
18 recording that statement with you?

19 A No.

20 Q Because you don't remember giving it?

21 A Huh-uh.

22 Q Do you remember Investigator Gilliam asking you for
23 a sample of your DNA?

24 A No, ma'am.

25 Q Has the Defendant in the courtroom, your good

1 friend for many, many years, ever threatened you?

2 A No, ma'am.

3 Q And you said you've been in lots of trouble; right?

4 A I been in trouble.

5 Q You have many burglary convictions, isn't that
6 right?

7 A I ain't say many, I got a couple of them.

8 Q You have four burglary convictions; is that
9 correct?

10 A I ain't know about no four.

11 Q In fact, you just got out of prison, didn't you?

12 A Yes, ma'am.

13 Q New Year's Eve?

14 A Yes, ma'am.

15 MS. GARFIELD: Beg the Court's indulgence.

16 (Pause.)

17 BY MS. GARFIELD:

18 Q Do you see Cheo Green in the courtroom today?

19 A I see him right there(indicating).

20 Q What is he wearing?

21 A Got a little suit on.

22 Q A little suit on?

23 A Yeah.

24 Q What color is it?

25 A Looks gray.

1 MS. GARFIELD: Your Honor, may the record
2 reflect this witness identified Cheo Green, the
3 Defendant?

4 THE WITNESS: Everybody in here know him.
5 That's why everybody here.

6 THE COURT REPORTER: I'm sorry, I couldn't
7 hear you.

8 THE WITNESS: I said everybody in here know
9 him. That's why everybody here.

10 BY MS. GARFIELD:

11 Q That's why everybody is what?

12 A You asked me if he in the courtroom. Everybody
13 know he in the courtroom.

14 Q He's your friend; right?

15 A He's a good dude.

16 Q Excuse me?

17 A He's a good dude.

18 Q He's a good dude?

19 A Yeah.

20 Q. Thank you, Mr. Wright. Please answer questions
21 Defense counsel has.

22 MS. SINGLETARY: Thank you, Your Honor. If it
23 pleases the Court?

24 CROSS-EXAMINATION

25 BY MS. SINGLETARY:

1 Q Now, Mr. Wright, the State asked -- you said you've
2 been in trouble before?

3 A Yes, ma'am.

4 Q As a matter of fact, the gun that they're actually
5 saying is the murder weapon in this case, you were
6 actually arrested in a traffic stop for that murder
7 weapon; correct?

8 A I remember I had a gun charge.

9 Q And you were charged with that .32 caliber that
10 they are saying that was used in this murder
11 weapon?

12 A I guess. I don't know. I remember I had a gun
13 charge.

14 Q And that traffic stop was on October the 4th of
15 2012; correct?

16 A Yeah. I don't know.

17 Q And do you know when they're saying that Mr. Davis
18 was shot?

19 A Who?

20 Q The victim in this case, do you know when they're
21 saying he was shot?

22 A No, ma'am.

23 Q So if I told you that he was shot on September the
24 16th of 2012, would you disagree with that?

25 A I ain't know about it. I couldn't tell you.

1 Q And you're saying -- and you don't remember a whole
2 lot?

3 A I don't.

4 Q Is there a particular medical issue that you have
5 that causes you not to remember things?

6 A Trying to find out now. I been on medication,
7 like, mental health medication the last three years
8 when I'm in prison.

9 Q You've been on mental health medication?

10 A Yeah.

11 Q What kind of -- what are you diagnosed with?

12 A I ain't -- they say schizophrenia and bipolar, and
13 all that.

14 Q Okay. So you're paranoid schizophrenic and
15 bipolar?

16 A Uh-huh. Yes, ma'am.

17 Q So does that kind of affect some of the things that
18 you say?

19 A I think so.

20 Q Does it affect whether or not you remember things?

21 A I think so.

22 Q Do you think that that is affecting you today in
23 your testimony?

24 A It probably is.

25 Q Did you take your medication this morning?

1 A I don't take it no more.

2 Q When was the last time -- but you are supposed to
3 take medication?

4 A That's what they say.

5 Q When was the last time you took the medication?

6 A October.

7 Q October of last year?

8 A Yes, ma'am.

9 Q Now, I know you say that the medication and your
10 mental health issues affect you remembering things,
11 but I'm going to try to take you back to 2012.
12 Would you have been on your medication when you
13 spoke to law enforcement?

14 A No, ma'am.

15 Q And could that affect some of the statements that
16 you made to law enforcement at the time?

17 A If I did, it probably could.

18 Q Now, on September the 16th of 2012, did you see my
19 client with a gun?

20 A I don't remember.

21 Q Did you see my client shoot someone?

22 A No.

23 MS. SINGLETARY: I have no further questions.

24 THE COURT: Anything else from the State?

25 REDIRECT EXAMINATION

1 BY MS. GARFIELD:

2 Q You got out of prison on New Year's Eve?

3 A Huh?

4 Q You got out of prison on New Year's Eve?

5 A Yes, ma'am, on the 31st.

6 Q Just 13 days ago, 14 days ago?

7 A Yes, ma'am.

8 Q Have you seen the Defendant since then?

9 A In here.

10 Q In here?

11 A Yes, ma'am.

12 Q When's the first time you saw him?

13 A Yesterday.

14 Q Did you have any contact with him?

15 A No, ma'am.

16 Q You didn't give him a head nod?

17 A A head nod? No.

18 MS. GARFIELD: Nothing further.

19 MS. SINGLETARY: Your Honor, may I?

20 RE CROSS-EXAMINATION

21 BY MS. SINGLETARY:

22 Q And let me just ask you, out on the street when you
23 give someone a head nod, if you were to give
24 someone a head nod, what would that mean?

25 A What's up?

1 Q And what does "what's up" mean? Is that like
2 "hey"?

3 A Yeah.

4 Q Because you just got out of prison; right?

5 A Yes, ma'am.

6 Q On New Year's Eve?

7 A Yes, ma'am.

8 Q And you were in prison for two years?

9 A Yes, ma'am.

10 Q And the first time you've seen my client in over
11 two years would have been yesterday?

12 A Yes, ma'am.

13 Q And if you did give him a head nod, you were saying
14 hello?

15 A If I did, yes, ma'am.

16 Q But you didn't talk to my client at all?

17 A No, ma'am.

18 Q Verbally?

19 A No, ma'am.

20 Q You didn't mouth to my client?

21 A No, ma'am.

22 Q Okay.

23 MS. SINGLETARY: No further questions.

24 THE COURT: All right. You may step down.

25 Any objection to this witness being excused?

1 MS. SINGLETARY: No, Your Honor.

2 THE COURT: Sir, you are free to leave.

3 THE WITNESS: Thank you.

4 (Witness steps down and is excused.)

5 THE COURT: All right. It is 1:06. I think
6 we will take a lunch break. And the food is back
7 there.

8 Let's say about 30 minutes. Take your time.
9 We'll have them check. You just let us know when
10 you're finished and we'll start back. But we will
11 take at least 30 minutes so the lawyers will know
12 to be back here in 30 minutes. But take your time.
13 When you all are finished, just let the bailiffs
14 know, and then we'll all come back.

15 All right. Enjoy your lunch.

16 (WHEREUPON, the jury retires to the jury
17 room at 1:06 p.m.)

18 THE COURT: All right. Let's take about 30
19 minutes.

20 (WHEREUPON, a lunch break was taken.)

21 THE COURT: Are you ready to bring them in?

22 MS. BODMAN: Yes, Your Honor.

23 THE COURT: Bring them on in.

24 (WHEREUPON, the jury came into open
25 court at 2:09 p.m.)

1 THE BAILIFF: The jury is all present, Your
2 Honor.

3 THE COURT: All right. I hope you all enjoyed
4 your lunch.

5 At this time we will continue with the State's
6 case. I am going to ask them to call their next
7 witness.

8 MS. BODMAN: The State calls DaQwane Robinson.
9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, raise your right hand, and face the clerk.
12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you. Have a seat in the
19 witness stand, please.

20 (Witness complies.)

21 THE CLERK: State your name for the record.

22 THE WITNESS: DaQwane Robinson.

23 DAQWANE ROBINSON,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BODMAN:

2 Q DaQwane, how old are you?

3 A Twenty-two.

4 Q What are you doing right now with yourself? Are
5 you working? Going to school?

6 A I'm working.

7 Q Where are you working?

8 A At Waffle House.

9 Q Do you know Cheo Green?

10 A Yes.

11 Q And do you see him in the courtroom today?

12 A Yes.

13 Q Can you point to him and tell us what he's wearing
14 so we know who you're talking about?

15 A A gray blazer.

16 MS. BODMAN: May the record reflect the
17 witness has identified the Defendant?

18 THE COURT: So noted.

19 BY MS. BODMAN:

20 Q How long have you known Cheo?

21 A About three years now. Three years.

22 Q And I need you to speak up, okay? Because all
23 these ladies and gentlemen need to hear everything
24 you say, okay?

25 A (Nods affirmatively.)

- 1 Q How did you meet him?
- 2 A Through my brother.
- 3 Q And who is your brother?
- 4 A Curtis.
- 5 Q And are you and Curtis biological brothers?
- 6 A No, we're not.
- 7 Q You don't share a mother or a father?
- 8 A No, we don't share a mother or father, we share
- 9 siblings.
- 10 Q Okay. So one or more of your siblings --
- 11 A Two of my siblings.
- 12 Q -- shares a --
- 13 A A mother with them.
- 14 Q But you call him your brother?
- 15 A Yes.
- 16 Q Do you know how Curtis met Cheo?
- 17 A I'm not sure.
- 18 Q I want to take your attention back to the fall of
- 19 2012, September, October of 2012. Did you know
- 20 what kind of that gun Cheo carried?
- 21 A Yes.
- 22 Q And what kind of gun did he carry?
- 23 A A black .32.
- 24 Q .32 what?
- 25 A Caliber.

1 Q Automatic?

2 A I think --

3 Q Revolver?

4 A Revolver.

5 Q .32 revolver. Had you seen him with that .32

6 revolver?

7 A Yes.

8 Q In September of 2012, evening of the 15th, going

9 into the 16th, did you go out to the Enclave

10 Apartments?

11 A Yes, I did.

12 Q And who was with you?

13 A My brother, Curtis, and Cheo Green.

14 Q Do you remember about what time that it was that

15 you went?

16 A It was later in the evening, so I guess between

17 10:00 -- it had to be after 10:00.

18 Q 10:00 p.m.?

19 A After 10:00 p.m.

20 Q Do you know exactly what time it was?

21 A No, I don't.

22 Q And speak up for me, okay?

23 A Okay.

24 Q Who were you going to visit at the Enclave

25 Apartments?

- 1 A Some female friends, Sandy and Cierra.
- 2 Q And who had met Sandy and Cierra?
- 3 A Well, we met them at the club, I think a couple of
- 4 weeks before that.
- 5 Q And you say we. Who all?
- 6 A Me and my brother and Cheo.
- 7 Q So what car were you in when you went out to the
- 8 Enclave Apartments?
- 9 A I was in my mom's car, a green Toyota Avalon.
- 10 Q Who all drove that car?
- 11 A Just me.
- 12 Q So did Curtis ever drive that car?
- 13 A No.
- 14 Q When you got to the Enclave Apartments, who
- 15 actually went up to Sandy and Cierra's apartment?
- 16 A Just me and my brother.
- 17 Q And where did Cheo go?
- 18 A He stayed downstairs in the car.
- 19 Q Did you give him the keys to the car?
- 20 A No, ma'am.
- 21 Q So that was his transportation, how he got to the
- 22 Enclave Apartments?
- 23 A Yes.
- 24 Q While you were up at Sandy and Cierra's apartment,
- 25 did you -- Cheo tell you that he -- what he was

1 doing, where he was going, what he was going to do?

2 A Well, he contacted us. He said that he had found a
3 ride and he was leaving. He didn't say where he
4 was going.

5 Q Do you know about what time that was that he called
6 and said he was leaving?

7 A I know it was late. We were up there for I know at
8 least an hour. I don't remember the exact time.

9 Q You were up there for a period of time with these
10 two young ladies?

11 A Yes.

12 Q When you came back down out of the apartment back
13 to your mom's green Toyota, was Cheo there?

14 A No.

15 Q Where did you and your brother then go?

16 A To his house.

17 Q And where is his house?

18 A Off Farrow Road in Columbia.

19 Q Early that morning, did you see Cheo again?

20 A Yes.

21 Q And where did you see Cheo?

22 A I picked him up from off of North Brickyard. He
23 called me and said he needed a ride.

24 Q And who all was with Cheo?

25 A I don't remember exactly who they were. I know he

1 had some friends with him.

2 Q Do you know Austin Murray?

3 A Personally, no. I have seen him before. I don't
4 know him personally, or friends.

5 Q Do you know Jamil Brennan?

6 A No, not personally, no.

7 Q Were either of these two people with Cheo when you
8 picked him up?

9 A Yes. Yes.

10 Q And then where did you take them?

11 A Home.

12 Q And you say home, you mean your home?

13 A No, to their homes. And then I went home.

14 Q Did Cheo go with you back to Curtis's house?

15 A Yes.

16 Q Did Cheo ever tell you what happened while he was
17 gone from the Enclave Apartments?

18 A No, he never told me what happened.

19 Q Don't speculate. I'm just asking did he tell you
20 what --

21 A No, he never told me what happened.

22 Q Now, October the 4th of 2012, were you involved in
23 a traffic stop?

24 A Yes.

25 Q In your mom's car?

- 1 A Yes.
- 2 Q Tell us who all was in the car when that happened.
- 3 A It was myself, my brother, Cheo, and my uncle, and
4 my cousin.
- 5 Q What is your uncle's name?
- 6 A His name is Corey. His name is Corey. And my
7 cousin is John Demetrius.
- 8 Q Okay, speak up.
- 9 A John Demetrius and Corey.
- 10 Q And where was everybody sitting in the car?
- 11 A I'm in the driver's seat, my brother is in the
12 passenger seat, and Cheo is right behind him, my
13 cousin -- my uncle is in the middle, and John
14 Demetrius is in the seat behind me.
- 15 Q So Cheo was sitting behind your brother, Curtis?
- 16 A Yes.
- 17 Q And what car were you driving when this happened?
- 18 A The same green Toyota Avalon.
- 19 Q So you get pulled over. Do you know why you were
20 pulled over?
- 21 A I didn't know at the time, but the officer
22 explained to me he pulled us over for open
23 container.
- 24 Q And so then what happened?
- 25 A We waited for some more cars to pull up, and they

1 began to search the car.

2 Q And what did the office find?

3 A He found the handgun, the .32 revolver.

4 Q Where did he find it?

5 A Underneath the passenger seat.

6 Q And whose gun was that?

7 A Cheo's.

8 Q At the time the officer pulled everybody out of the
9 car, did anybody admit to that?

10 A No, nobody admitted to it.

11 Q And who ended up getting charged after nobody
12 admitted to whose gun it was?

13 A Myself and my brother.

14 Q After these incidents, after these nights, did you
15 ever have a conversation with Cheo about that gun?

16 A Yes.

17 Q And what did he say to you?

18 A He was --

19 Q Speak up.

20 A He was asking if I would take the gun charge.

21 Q Did he say anything else?

22 A Yes, he was saying that -- that I should take the
23 gun charge. And then he was basically saying ,
24 that -- basically not to talk to any investigators.

25 Q Did he say what would happen if you talked to

1 anybody?

2 A No, he didn't say what would happen, but he just
3 said he had a couple of screws loose in his head,
4 you know.

5 Q Do you remember giving a statement to law
6 enforcement?

7 A Yes.

8 (Pause.)

9 BY MS. BODMAN:

10 Q I am going to show you what is marked as State's
11 Exhibit 73. Have you looked at that?

12 A (Nods affirmatively.)

13 Q Three pages. Do you recognize that?

14 A Yes.

15 Q And is that the statement that you gave law
16 enforcement?

17 A Yes.

18 Q I'm going to direct your attention to the last
19 page. Read that just to yourself.

20 A (Nods affirmatively.)

21 Q Does that refresh your memory as to what Cheo said
22 to you would happen if you talked?

23 A Yes.

24 Q What did he tell you would happen if you talked?
25 Speak up.

1 A He said that he was going to kill me and my
2 brother, going to shoot me and my brother.

3 MS. BODMAN: No further questions at this
4 time.

5 THE COURT: Please answer any questions from
6 the Defense.

7 MR. SIMS: Beg the Court's indulgence.

8 THE COURT: I'm sorry.

9 (Pause.)

10 CROSS-EXAMINATION

11 BY MS. SINGLETARY:

12 Q Good afternoon, Mr. Robinson.

13 A Good afternoon.

14 Q And you -- actually, you and Cheo were -- you and
15 my client were good friends?

16 A Yes.

17 Q And his grandmother lived right across the street
18 from your brother, Curtis?

19 A Uh-huh.

20 Q And you and him used to hang out a whole lot?

21 A Yes.

22 Q And so you just testified a few minutes ago that my
23 client told you to take the gun charge?

24 A Yes.

25 Q But at the time of the traffic stop, my client

1 wasn't charged with any gun; right?

2 A Yes. He was telling me to take it for my brother.

3 Q Oh, so my client wasn't telling you to take the gun
4 charge for him?

5 A Yes. He wasn't even charged with it.

6 Q Okay. He was telling you to take the gun charge
7 for his brother?

8 A Yes.

9 Q So then why would my client tell you that if you
10 didn't take the gun charge that he would kill you
11 and his brother?

12 A I have no idea.

13 MS. SINGLETARY: I have no further questions,
14 Your Honor.

15 THE COURT: All right. Anything else from the
16 State?

17 MS. BODMAN: No, ma'am.

18 THE COURT: All right, sir, you may step down.
19 Any objection to this witness being excused?

20 MS. SINGLETARY: None, Your Honor.

21 THE COURT: Thank you, sir. You may be -- you
22 are free to leave.

23 (Witness steps down and is excused.)

24 MS. BODMAN: The State recalls Investigator
25 McCracken.

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 WITNESS: Yes, I do.

10 THE CLERK: Have a seat in the witness stand.

11 (Witness complies.)

12 ROBERT MCCrackEN;
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BODMAN:

16 Q Investigator McCracken, we left off when you were
17 testifying before about when you brought Austin
18 Murray in and you interviewed him; correct?

19 A Yes, ma'am.

20 Q At the conclusion of his interview, what, if
21 anything -- or where did you go with Austin Murray?

22 A Part of the interview, we asked Austin where the
23 car ran out of gas. He was trying to tell us where
24 it ran out of gas. So we asked him if he would
25 take us to where the car ran out of gas, and he

1 did.

2 Q Where was that?

3 A He led us to Windmill Orchard Road. The
4 vehicle -- when we got there, he showed us where
5 the car was parked, where they left it, and it was
6 right in front of that residence.

7 Q Did you attempt to contact anybody in the
8 neighborhood or -- I'm sorry, I'll go back. Was
9 the car there?

10 A No, ma'am.

11 Q And how many days after Mr. -- the homicide was
12 this?

13 A This was on October 26th. The homicide was
14 September, so I believe it was 40 to 45 -- I think
15 it was 45 days. I'd have to count them up.

16 Q What did you do -- standing out there at this
17 address, what did you do, if anything, to try to
18 find out where that car was?

19 A Well, naturally, I knocked on the door of the house
20 that he said it was in front of. A Mr. Trent Barr
21 came to the door and gave me information that he
22 called the police in reference to the car. I asked
23 him about what time it was. He said it was around
24 4:00 o'clock in the morning. He had heard a noise
25 and came outside and the car was there, but nobody

1 was around it.

2 He -- I asked him if he remembered who --
3 because this was late in the afternoon when we went
4 out there, me and Investigator Gilliam and
5 Austin -- asked him who he called, if he remembered
6 who towed it. He said Lonnie Roberts towed the
7 car. From that point, we went to Lonnie Roberts.

8 Q And did you find the vehicle at Lonnie Roberts'
9 yard?

10 A Yes. Yes. They were closing up. We begged them
11 to let us come in and see if the car was there.
12 Investigator Gilliam stayed with Austin in my car.
13 I walked in. Time I walked to the back lot, I saw
14 the car. I went over to the car and confirmed that
15 it was the car in question that we were looking
16 for.

17 Q And had you -- I guess, through Renea Prater or
18 otherwise, had you gotten the VIN number of the
19 car?

20 A Yes. We had gotten the VIN number two days after
21 it was towed. And that's when we put it in NCIC.
22 I did verify the VIN number.

23 Q And you mean two days after it was towed?

24 A I mean, two days after -- yeah, two days after it
25 was towed is when we got the VIN number and we were

1 able to put it in NCIC. Had we had the information
2 that night, the deputies would have realized it was
3 involved in a homicide and then stolen.

4 Q Okay. But at the point that you put it in NCIC,
5 you don't know that it has been towed, this is just
6 looking back you had put it in two days after?

7 A Correct. What normally happens is we put it in
8 NCIC and it goes through what is called a delayed
9 hit. It will send a hit back to the operator that
10 put it in to let them know that tag had been run
11 between the time it was put in and the time it was
12 stolen -- or the vehicle.

13 That happened. Our telephone response unit
14 officer contacted Richland County and asked them if
15 they had the vehicle, their front desk. They
16 stated they did not. The vehicle was not impounded
17 by Richland County, it was just towed as an
18 abandoned vehicle. At that point, she did not send
19 that information to investigations. She thought
20 she followed through with what she needed to follow
21 through with and just documented that she called.

22 Q So, essentially, two days after the homicide, you
23 did put the information, the VIN number in looking
24 for it, but you don't find it for 40 some-odd days?

25 A Until Austin showed us where it was parked when

1 they left it.

2 Q Okay. I am going to show you what's marked as
3 State's Exhibit Number 72. And there is three
4 photographs on this diagram. Do you recognize
5 these photographs?

6 A Yes, ma'am.

7 Q And is that the vehicle that you found recovered?

8 A Yes, ma'am.

9 MS. BODMAN: Offer into evidence State's
10 Exhibit 72.

11 MS. SINGLETARY: Without objection, Your
12 Honor.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit No. 72 was
15 marked for identification and received
16 into evidence.)

17 BY MS. BODMAN:

18 Q Okay. And tell us then what was the condition of
19 the vehicle when you found it at Lonnie Roberts'
20 Towing?

21 A The passenger side window was broken out. And
22 the -- and it had been covered up with plastic, but
23 the driver's side window was also partially down
24 and there was nothing covering that window.

25 Q And so it was just out there?

1 A In the weather, yes, ma'am.

2 Q In the elements?

3 A It was pulled out in a field where they store cars.

4 Q Did you, I guess, obtain a search warrant in order
5 to process this car?

6 A Yes, ma'am. We went the next morning.

7 Investigator Gilliam had the vehicle towed to our
8 headquarters' back lot. At that time, we secured a
9 search warrant. And we just do that out of an
10 abundance of caution as being a victim's car. It
11 is not necessary, but just out of an abundance of
12 caution we do a search warrant. So we did a search
13 warrant and then we went in the vehicle and
14 searched it.

15 Q Okay. And were there items that you collected out
16 of that vehicle?

17 A There were items collected -- and let me back up.
18 We had another agency do the search of the vehicle,
19 which would be the FBI.

20 Q. Okay.

21 A. We collected the items that the FBI took out of the
22 vehicle.

23 Q And the FBI is the one that processed the interior
24 of the vehicle?

25 A That's correct.

1 Q I am going to show you what is marked State's
2 Exhibit 35 and ask if you recognize that?

3 A Yes, ma'am.

4 Q And what is that?

5 A This is a box that contains the rearview mirror
6 that was taken off of that vehicle.

7 Q And Investigator Tammie Moore already testified
8 about attempting to process that rearview mirror
9 for prints. Why is it that the rearview mirror
10 would be an important item to process for prints?

11 A Well, usually, if somebody is getting in a vehicle
12 that they don't normally ride in, they adjust the
13 mirror. So somebody would reach up and adjust that
14 mirror, most times.

15 Q And I show you what is marked as State's Exhibit
16 Number 74 and see if you recognize that item?

17 A Yes. This is a book bag that was collected out of
18 the vehicle as well. And I also tagged that in.

19 Q So you were there -- even though the FBI was
20 processing this vehicle, you were present at that
21 time?

22 A I was present the whole time, yes, ma'am.

23 Q And took custody of these items?

24 A That's correct.

25 MS. BODMAN: Offer into evidence Exhibits 35

1 and 74.

2 MS. SINGLETARY: Without objection.

3 THE COURT: All right, they will be entered.

4 (WHEREUPON, State's Exhibit No. 35 was
5 marked for identification and received
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 74 was
8 marked for identification and received
9 into evidence.)

10 BY MS. BODMAN:

11 Q So now, after assisting with that, were there any
12 individuals that you were involved in interviewing
13 at the next step?

14 A Involved in interviewing? I was involved in
15 interviewing, I believe, Curtis Wright, as well as
16 Investigator Gilliam interviewed him. I was
17 present for that. Jamil Brennan, as well. And
18 Cheo. I believe that was it. I met with Cierra
19 Hodge as well.

20 Q I am going to show you what is marked as State's
21 Exhibits 42 and 30.

22 A Yes.

23 Q And see if you recognize 30? Do you recognize it?

24 A Yes. Yes.

25 Q And 42, do you recognize that?

1 A Yes, I do.

2 Q And what are these?

3 A These are buccal swabs, and I think y'all were
4 explained that by SLED. It is just a DNA
5 collection, is what it is.

6 Q And did you take those swabs?

7 A I did.

8 Q And after taking the swabs, what did you do with
9 the swabs physically?

10 A They would be put -- placed in the property room,
11 and then later they would be transported out to
12 SLED as evidence.

13 MS. BODMAN: At this time, I would offer into
14 evidence 30 and 42.

15 MS. SINGLETARY: Without objection, Your
16 Honor.

17 THE COURT: Admit 30 and 42.

18 (WHEREUPON, State's Exhibit No. 30 was
19 marked for identification and received
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 42 was
22 marked for identification and received
23 into evidence.)

24 BY MS. BODMAN:

25 Q An so Swab 30 is for what individual?

1 A Austin Murray.

2 Q And 42 is for?

3 A Jamil Brennan.

4 Q I draw your attention to your notes on Page 7. Was
5 there another individual that you also interviewed?

6 A Yes. Mr. Brisby.

7 Q John Brisby?

8 A John Brisby.

9 MS. BODMAN: No further questions at this
10 time.

11 THE COURT: Yes, ma'am?

12 MS. SINGLETARY: Thank you, Your Honor. If it
13 pleases the Court?

14 CROSS-EXAMINATION

15 BY MS. SINGLETARY:

16 Q Investigator McCracken, I want to try to be brief
17 since you gave testimony yesterday.

18 A Yes, ma'am.

19 Q Now, were you present when Austin Murray actually
20 gave an interview with Investigator Gilliam?

21 A With his attorney present?

22 Q Yes?

23 A Yes, ma'am, I was there.

24 Q Okay. And you heard Austin Murray's testimony
25 yesterday in reference to him changing his phone

1 number?

2 A Yes, ma'am.

3 Q For the phone that he had on that night?

4 A Yes, ma'am.

5 Q And yesterday you also heard Austin Murray state
6 that he did not change the SIM card in that cell
7 phone; correct?

8 A That's correct.

9 Q And yesterday he also said that he didn't direct
10 anyone by the name of KiKi to change the SIM card

11 --

12 A That's correct.

13 Q -- on that cell phone? And in your actual
14 investigation in this case, at some point, based on
15 information that you had received from Austin
16 Murray back in 2012, did you attempt to actually
17 locate this KiKi?

18 A I had a phone number that was provided to me. Let
19 me find that in my case notes.

20 Q I think it's on Page 7.

21 A I had a phone number that was provided to me by
22 Austin for KiKi. And I called that number, and
23 that number was no longer in service when I called
24 it.

25 Q And the purpose -- in your case notes, it says the

1 purpose of that, of you contacting KiKi, was to
2 follow up on Murray had stated about telling her of
3 the incident and about switching the SIM card in
4 the phone around about that date; correct?

5 A About switching the SIM card, yes, ma'am.

6 Q But Austin Murray testified yesterday that he
7 didn't switch any SIM card; correct?

8 A Yes. The information I have is -- hold on one
9 second. I believe he said that KiKi had told him
10 how to switch the SIM card. I contacted SLED --
11 I'm trying to find it in my case notes -- because
12 the phone records indicated that there was a
13 telephone number change.

14 Q Uh-huh.

15 A The way I understood it and it was explained to me
16 on the phone was that the SIM card -- the telephone
17 number -- hold on one second. The SIM card was
18 taken out of the suspect phone, which would be
19 Austin's phone, and replaced with a new SIM card.
20 Then the records show that the phone number
21 changing -- that showed the phone number changing,
22 but not the mobile identifier number, that would be
23 the equipment number, which would be the actual
24 phone. It just shows the phone number changing in
25 the phone. And then the number remained the same,

1 but then the equipment changed. That's what was
2 explained to me over the phone when I was trying to
3 get the information. The Verizon person that knows
4 more about this that testified yesterday said only
5 the phone number changed. So what I was being told
6 over the phone, I don't know if it was accurate or
7 not.

8 Q Okay. And that's my question. You don't know
9 whether or not it was accurate because during the
10 course of your investigation, you actually reached
11 out to an agent from the South Carolina Law
12 Enforcement Division?

13 A Correct. That's the one I talked to, yes.

14 Q Okay. And in your notes and your case summary, it
15 states that the agent told you back on -- as far as
16 he can recall, back on September the 16th of 2012,
17 that the SIM card was taken out of the phone and a
18 new SIM card was put in that phone that Austin
19 Murray had on that night?

20 A Which would change the telephone number.

21 Q Right.

22 A Again, this is information that I'm telling him on
23 the phone and he is telling me back on the phone.
24 I don't think he -- I can't remember if he actually
25 looked at the records or not, because I was in my

1 office when I was doing this.

2 Q Okay.

3 MS. SINGLETARY: I have no further questions.

4 REDIRECT EXAMINATION

5 BY MS. BODMAN:

6 Q When Austin Murray was arrested, did he have an
7 actual phone on his person that you were able to
8 take?

9 A We did not recover a phone.

10 Q Is it unusual in your line of work that sometimes
11 people don't return your phone calls and don't want
12 to talk to you?

13 A Not unusual.

14 Q Are you ever provided numbers that don't work?

15 A Quite often. People change numbers quite
16 frequently.

17 Q Their cell phone numbers?

18 A Cell phone numbers, yes.

19 Q Or switch phones? They have drop phones?

20 A Correct.

21 Q Burner phones? Or they are just putting minutes on
22 phones?

23 A Yes, ma'am.

24 MS. BODMAN: No further questions.

25 THE COURT: All right. You may step down.

1 (Witness steps down.)

2 MS. BODMAN: The State calls Investigator
3 Gilliam.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, raise your right, and face the clerk.

7 (Witness complies.)

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

12 THE WITNESS: I do.

13 (Witness seated.)

14 THE CLERK: State your name for the record,
15 please.

16 THE WITNESS: Emmitt Gilliam.

17 EMMITT GILLIAM,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BODMAN:

21 Q Can you tell the jury a little bit about your, I
22 guess, background in law enforcement and current
23 position today?

24 A Okay. Actually, I joined the police department in
25 another agency, actually in Batesburg/Leesville in

1 1995 when I went to the Academy. I stayed there 12
2 years where I did from a basic patrolman up to a
3 supervisor, as well as investigator for narcotics,
4 and also other major crimes..

5 I came to the City of Columbia in 2007, which
6 I started back as a patrolman. Went from patrolman
7 to a Community Reaction Team, what they call CRT.
8 Stayed there for approximately about six months.
9 Then I got promoted to investigator, which I went
10 into property crimes for about a year. And right
11 before this case here happened, I was moved over to
12 what we call VCAP, Violent Crimes Against Persons.

13 Q Prior to law enforcement, did you have a military
14 career?

15 A Yes, ma'am.

16 Q Tell us about that.

17 A I joined the United States Army in 1983. In 1990,
18 I got out of the regular Army, and went into the
19 National Guard, which I served until 2004 after I
20 came back from Iraqi Freedom.

21 Q How is it that you became involved in this
22 investigation?

23 A I was called out originally to an individual that
24 was murdered on the block of Main Street
25 within the City of Columbia.

1 Q And what was the first thing that you started doing
2 in your investigation?

3 A First thing, when I got to the scene I was briefed
4 by the on-call sergeant, as well as our CSI person,
5 because the victim was already transported to
6 Richland Memorial Hospital.

7 Q And, I guess at some point McCracken got involved
8 in the investigation, and so what was your
9 relationship in terms of working this
10 investigation?

11 A Actually, when he came in, I briefed him on what I
12 had. And the one video we was looking at from the
13 Papa Johns area of North Main, and we started
14 working from there. While he was working the
15 video, I was trying to find the victim's
16 girlfriend.

17 Q Who was?

18 A Shemica Johnson.

19 Q Shemica Johnson. And did you make contact with
20 Shemica?

21 A Yes, ma'am. Later that afternoon we found her
22 walking up Millwood Avenue, myself and
23 Investigator Dow.

24 Q And was she able to give you information about what
25 type of vehicle he was last -- that she last saw

1 him in?

2 A Yes, ma'am.

3 Q And so what type of vehicle were you looking for?

4 A Well, at that time she said it was a white vehicle.
5 She didn't know what type it was -- because that
6 was Sunday -- but she remembered going to Ms. Renea
7 Prater's residence the day prior and him -- well, a
8 day or two prior to that. She wanted him to work
9 on the car. And she remembered he lived off
10 Blossom Street in one of the buildings.

11 Q Were you able to find Renea Prater?

12 A Yes, ma'am. On that Monday, we went back down
13 there with Ms. Shemica Johnson, and she pointed to
14 the building. We knocked on the door. Nobody
15 answered. I looked up and I saw who was the
16 managing company. Contacted them. Went to their
17 location and asked them about who lives in the
18 apartment. And I explained why. And they gave me
19 the number for Renea Prater. At that time I did
20 contact her. She told us to meet her at Richland
21 Spring Hospital -- Richland Springs.

22 Q She works there?

23 A Yes, ma'am.

24 Q And so from Ms. Renea Prater were you able to get a
25 little bit more information about this vehicle?

1 A Yes, ma'am. We also got the VIN number. She had
2 the insurance card with her -- I think the
3 insurance card, but she gave the VIN number of the
4 vehicle, whether it had any damage to it -- any
5 damages to the vehicle that she knew at that time.

6 Q Do you remember if she told you about any damage?

7 A Yes. She told us some damage to the right side
8 and, I think, if I'm correct, a hub cap was
9 missing, and I think damage to a -- I think the
10 right side panel, I'm not exactly sure.

11 Q So what was the next thing that you did?

12 A At that time, I contacted my supervisor at that
13 time, Sergeant Pegram. Over the phone I gave him
14 the VIN number so we can get this vehicle in NCIC.

15 Q What, if anything, did you do with the two cell
16 phones that were found on the road that had Michael
17 Davis's name on it?

18 A Those two cell phones collected by the CSI team and
19 Tammie Moore and placed into evidence. I believe
20 she did DNA swabs on them.

21 Q Did you try to get any information off those
22 phones?

23 A After we got the search warrant to go into it, we
24 got the information off the phones and contacted
25 certain people.

1 Q Okay. So you started dialing up, I guess, names,
2 contacts?

3 A Yes.

4 Q Were you able to put together some type of timeline
5 for Mr. Davis's actions before the homicide?

6 A Yes. We were able to contact some -- and some
7 individuals he had talked to prior -- to help get
8 evidence where he was at and what direction he --
9 when the last time knowing anybody saw him.

10 Q Okay. I guess, did that assist you in focusing in
11 on those videos that were being provided by
12 Statewide Security Systems?

13 A Yes.

14 Q What do you remember next, the next step in your
15 investigation?

16 A We basically tracked -- because some of the damages
17 done to the car were by his girlfriend, Shemica, we
18 went to Muller Street and talked to Ms. Brown,
19 because she is the legal tenant on that property,
20 and asked her about did she know -- when was the
21 last time she saw Mr. Davis at her location, and
22 about the damage, what happened to the car, and all
23 that. She explained what she know, as well as who
24 was her -- the person that was staying with her at
25 the time.

1 Q Okay. Other than, I guess, his previous
2 whereabouts during the day, around the time of the
3 homicide, were you also working with McCracken --
4 or maybe not -- on focusing in on who may have been
5 with him at or near the time of the homicide?

6 A Yes. Like I say, we talked to Ms. Brown that were
7 places that he might have went to, and she told us
8 several locations: Salvage yard, a couple of
9 individuals that sell drugs that might have -- he
10 might have been over there. So we went to a few
11 locations.

12 Q At the point of finding, I guess, the video, the
13 Hess station video of Austin Murray and Mr. Davis
14 being seen together, and then the A-1 video, Austin
15 Murray also on that video, what do you do with
16 those stills?

17 A We put them on -- sent them out to local agencies
18 in the area, as well as we'll put it on national
19 media as well, local media, just so we can identify
20 who this person was.

21 Q Okay. And you got a name?

22 A Yes.

23 Q And then were you also involved in the interview of
24 Austin Murray?

25 A The initial part, until he did not want to talk

1 without counsel. The next day he came up -- when
2 we brought him up, his counsel was present. They
3 wanted just one investigator in there.

4 Q Okay. So it was just McCracken that was present
5 during that?

6 A That's correct.

7 Q Okay. Were you with Investigator McCracken when
8 y'all went out to the location where this vehicle
9 was apparently abandoned?

10 A Yes.

11 Q Okay. And then what did you do next?

12 A We were together when Mr. Austin Murray told us the
13 location. Stayed with Austin while Investigator
14 McCracken went to the residence, knocked on the
15 door and talked to an individual. After that, he
16 told him where they towed it to. And that was
17 probably not too far from where we were located, so
18 we went to Lonnie Roberts' Towing. And like I
19 stated, again, he was about to close up and we
20 inquired about the vehicle.

21 Q Did you participate in the search warrant of the
22 vehicle as well?

23 A Actually, I was just standing by to watch because
24 it was a process I had never seen before.

25 Q Okay. But you were there when it was happening?

1 A Yes. Yes.

2 Q Okay. So who were the people that you -- the
3 witnesses that you were involved in interviewing?
4 Did you interview Curtis Wright?

5 A Yes.

6 Q And was it just you or was --

7 A Me and --

8 Q -- Investigator McCracken with you?

9 A Me and Investigator McCracken together.

10 Q I'm going to show you what is marked as State's
11 Exhibit Number 64. Do you recognize that?

12 A Yes, ma'am.

13 Q And what is that?

14 A That is the written statement of Curtis T. Wright.

15 Q And is that all in his handwriting?

16 A No.

17 Q So tell me what part is in his handwriting.

18 A The initial statement, he had written himself. The
19 questions and answers -- the question, I wrote; the
20 answer is what he wrote down.

21 Q So when you take a statement from someone, how does
22 it start out? I mean, how does that process start?
23 Do you give them a pen and paper and say, Tell me
24 what you want to tell me, or what?

25 A I actually, basically say, Tell me what you know

1 happened during that day prior, or whatever, and
2 then work their way through the actual crime.

3 Q Okay. So that's him with his own hand and his own
4 pen in his hand writing line by line?

5 A That is correct.

6 Q And how many lines are that that he is writing free
7 flow on his own? One, two, three, four, five, six,
8 seven, eight, nine, 10, 11, 12, 13, 14, 15, 16, 17,
9 18, 19, 20, 21, 22, 23 lines before you ask a
10 question?

11 A That is correct.

12 Q Okay. Then the first question is in your
13 handwriting?

14 A Yes. Yes.

15 Q And then he answers that?

16 A Yes.

17 Q And that is with his hand and a pen. And then you
18 ask a question?

19 A Yes.

20 Q Then one, two, three, four, five, six lines are his
21 handwriting?

22 A That's correct.

23 Q And then you ask a question?

24 A Yes.

25 Q He answers it?

1 A Yes.

2 Q You ask a question?

3 A Yes.

4 Q And then one, two -- two lines are his answer?

5 A Yes.

6 Q You ask a question?

7 A Yes.

8 Q One line is his answer?

9 A Yes.

10 Q You ask Question Number 5?

11 A Yes.

12 Q How many lines is his answer?

13 A Actually, it is two lines, but it is one word. AG

14 is on the second line.

15 Q Sixth question. And the how long is his answer?

16 A One, one line.

17 Q Seventh question. How long is his answer?

18 A Two words.

19 Q Eighth question. And then his answer?

20 A Two lines.

21 Q And that is with his hand?

22 A Yes.

23 Q His pen?

24 A Yes.

25 Q Ninth question. And then how long is his answer?

- 1 A Three lines.
- 2 Q Tenth question. How long is his answer?
- 3 A Two lines.
- 4 Q Eleventh question.
- 5 A One line.
- 6 Q Is his answer?
- 7 A Yes.
- 8 Q Did you also -- I'm going to show you what is
9 marked as Exhibit 63. Did you also record his
10 interview?
- 11 A That is correct.
- 12 Q How did you get ahold of Curtis Wright?
- 13 A I was going through Austin's -- once we got the
14 cell phone record back from the phone company on
15 Austin Murray and I looked at the phone calls
16 during the timeframe before and after the murder,
17 and I came across this number, which later is
18 identified as Mr. Curtis Wright's cell number.
- 19 Q So you believe that phone number was Curtis
20 Wright's phone number?
- 21 A That is correct.
- 22 Q And so how did you actually contact him?
- 23 A I called the cell phone number. He answered the
24 phone. And I advised him, I said, I need to talk
25 to you in reference to a phone call that was made

1 to your phone.

2 Q Okay. So that is how -- you called the phone
3 number and Curtis Wright answered?

4 A That's correct.

5 Q What was that phone number that you called and
6 Curtis Wright answered?

7 A Hold on a second, please. Okay, the number is area
8 code -6063.

9 Q That is how you contacted him?

10 A Yes. At 11:05 a.m. that morning. I'm sorry,
11 October 24th.

12 Q And just going back to this statement that we've
13 been talking about, State's Exhibit 64, Curtis
14 Wright's statement, did he sign that statement?

15 A Yes.

16 Q And did you notarize that statement, or was it
17 notarized?

18 A Yes, I notarized the statement.

19 Q And so what does that mean?

20 A He swears to everything and confirms it is true to
21 the best of his knowledge.

22 Q I'm going to show you what's marked as State's
23 Exhibit 31 and ask if you recognize that?

24 A Yes, it's a buccal swab for Cheo Green.

25 Q Cheo Green?

1 A Cheo.

2 Q And were you present when that was taken from his
3 mouth?

4 A Yes, ma'am.

5 Q And who took that to SLED?

6 A I believe I took it to SLED. Yes, I took it to
7 SLED.

8 Q. Okay.

9 MS. BODMAN: Offer into evidence State's
10 Exhibit 31.

11 THE COURT: Any objection?

12 MS. SINGLETARY: Without any objection.

13 (WHEREUPON, State's Exhibit No. 31 was
14 marked for identification and received
15 into evidence.)

16 BY MS. BODMAN:

17 Q The night of Mr. Davis's homicide, was there also a
18 shooting, a murder at a McDonald's?

19 A Yes. That was earlier on the Saturday afternoon.
20 I'm not exactly sure of the timeframe, but I know I
21 just got done with a USC game. I was going up Two
22 Notch Road. And it is like 6:00 or 7:00 something
23 that afternoon. And officers and investigators
24 were out there at McDonald's.

25 Q And there has been talk about or a term used of

1 "crack rental." What, essentially, are we talking
2 about when we say a "crack rental"?

3 A Basically, a crack rental is a person who is on
4 drugs, or if not drugs, they need money, they would
5 lease their vehicle out to anybody for -- either
6 for drugs or for money for them to ride around and
7 do what they need to do, or whatever. And once
8 they finish with it, bring it back to the person.

9 Q Austin Murray, regarding him coming in and giving a
10 statement, who was kind of doing the communication
11 with Austin in trying to get him to come in and
12 talk to y'all?

13 A It was me.

14 Q Okay. Tell us a little bit about how that
15 happened, how it developed.

16 A Once we received some information from his
17 probation officer from DJJ, we reached out to -- we
18 went to his residence where his father said -- or
19 stepfather said that he would probably talk, but
20 he's got to have his attorney with him. And at
21 that time we backed away until the attorney and him
22 want to talk.

23 Well, during my still working on the case, I
24 received a phone call at headquarters where he
25 stated that he wanted to talk to us. I said --

1 Q And you say he. Austin Murray called you?

2 A Yes, Austin called the police department. Like I
3 said, he wanted to talk to -- he wanted to talk to
4 us. I said, Okay. And he said something about the
5 next day. I said, Okay, we'll talk the next day.

6 So the next day, me and Investigator McCracken
7 went to the residence, looked for him, he wasn't
8 there. We spotted him on Chestnut Street and we
9 approached him to see did he still want to talk to
10 us. And he was saying he just -- he wanted to wait
11 for his attorney to talk to us, so we backed off of
12 him.

13 Q And then as you developed probable cause, you got
14 warrants for him?

15 A That's correct.

16 Q Okay. And then brought him in. And then, as you
17 said, Investigator McCracken was the one that sat
18 down with the lawyer and Austin and interviewed
19 him?

20 A That is correct.

21 Q Are you familiar with this area that we talked
22 about from -- there has been discussion about
23 Benedict to where Mr. Davis contacted Austin
24 Murray, to Austin Murray's home where he said he
25 lived, are you familiar with that area?

1 A Yes.

2 Q So kind of what distance are we talking about from
3 Benedict to Austin Murray's home?

4 A You are probably talking about walking 15, minutes
5 tops. And like Austin said, he cut through the
6 path. I actually was assigned to that area when I
7 first came to Columbia, what we call the Metro
8 District, Two Notch Road side, and you can actually
9 walk through the cuts to actually get from Benedict
10 stadium to over there, which his residence is close
11 to the Hot Spot.

12 Q So about a 15 minute walk?

13 A Yes.

14 Q So it is not ten miles?

15 A No. Nowhere near it.

16 Q And the location that Austin described in front of
17 the Hot Spot where Mr. Davis pulled over and asked
18 him if he had any drugs, describe that area.

19 A That is Booker Street, which is in the -- I'm not
20 sure, I can't remember the exact community I was
21 over, but that is actually across the street from
22 the Hot Spot. It has got a parking lot over there
23 where a couple of businesses is there, but also you
24 have got several streets that junction from there
25 all the way back to Howell Avenue. He could have

1 parked anywhere over there on the side because most
2 of the time, people know the streets are narrow,
3 they do pull over to the side and talk. And that
4 is not uncommon.

5 Q And if we're talking, you know, 2:00 a.m. hour, is
6 there going to be a lot of traffic -- from your
7 experience in working that area, is there a lot of
8 traffic at the 2:00 a.m. hour?

9 A Not as much, no.

10 Q Murder and carjacking with bodily injury, are those
11 violent crimes?

12 A Yes, ma'am. They are felonies.

13 MS. BODMAN: No further questions at this
14 time.

15 MS. SINGLETARY: Thank you, Your Honor. If it
16 pleases the Court?

17 CROSS-EXAMINATION

18 BY MS. SINGLETARY:

19 Q Investigator Gilliam, I want to apologize for
20 saying it was ten miles from Benedict to where
21 Austin Murray lived at.

22 A Yes, ma'am.

23 Q Austin Murray told you the exact route that he
24 traveled from Benedict?

25 A No, ma'am, but he said he was cutting through the

1 path. Like I said, working that area, and if you
2 cut through a certain path -- even if you go by CA
3 Johnson or if he walked all the way up to -- now,
4 if he walked all the way up to Two Notch and
5 Beltline and walked down that way, you are probably
6 looking at 30, 35 minutes.

7 Q And in my mind, that is what I was thinking about
8 yesterday, since I'm not familiar with that area.

9 A Yes, ma'am.

10 Q So when I said ten miles, that is what I was
11 referring to.

12 So let's go to you talking about the statement
13 that Curtis Wright gave you.

14 A Yes, ma'am.

15 Q And when a witness comes in or when a suspect comes
16 in, they don't just automatically sit down and
17 start writing a statement; correct?

18 A That's correct.

19 Q Like, you have to prompt them? You have to tell
20 them why they are there?

21 A We -- once we first got the phone call -- once I
22 first called him and I told him I needed to talk
23 about a phone call, he gave us directions to his
24 residence to pick him up.

25 Once we picked him up and we got there and I

1 told him, Hey, we need to talk about this phone
2 call, he freely got in the car with us and went
3 down.

4 We told him, You are not under arrest. We
5 didn't advise him of his Miranda rights because we
6 had no reason -- at that time, nothing to charge
7 him.

8 And at that time we asked him, you know, to
9 talk to us about some things. And you can look at
10 him, in my opinion, that he had something he wanted
11 to get off of him, off his chest.

12 Q But he wasn't charged with anything?

13 A No. No.

14 Q Okay. But he just had something --

15 A Yes.

16 Q -- that he needs to get off his chest. So let me
17 go back to the question, so when he was at the
18 Columbia Police Department in the interview room
19 with you?

20 A Yes.

21 Q When he came in, you spoke to him prior to him just
22 writing down a statement; correct?

23 A Yes, we did talk to him.

24 Q So it wasn't like Curtis Wright came in and said,
25 Okay, well, let me just go ahead and write these 23

1 lines down about this?

2 A No. We just wanted to know what he knows, you
3 know, in reference to the phone call.

4 Q And when you all were doing that, you asked him
5 certain questions?

6 A Yes. We both did, myself and Investigator
7 McCracken.

8 Q Okay. I didn't know who you were referring to.

9 A I'm sorry.

10 Q I thought you were fixing to say that Curtis was
11 asking questions.

12 A No.

13 Q Okay. And you stated that you notarized that
14 statement?

15 A Yes.

16 Q And you said that notarizing a statement means
17 that, you know, that person is saying that they are
18 telling the truth?

19 A Yes.

20 Q Now, you interview a lot of people; right?

21 A Yes.

22 Q You interview a lot of witnesses; correct?

23 A Yes. Yes.

24 Q You interview a lot of suspects?

25 A Yes.

1 Q And you notarize those statements too?

2 A Yes.

3 Q And sometimes later on you find out the stuff that
4 they put in that statement wasn't true; correct?

5 A Yes, we do. Yes.

6 MS. SINGLETARY: Beg the Court's indulgence,
7 Your Honor.

8 (Pause.)

9 MS. SINGLETARY: Your Honor, I have no further
10 questions.

11 THE COURT: All right. Anything else from the
12 State?

13 MS. BODMAN: No further questions.

14 (Witness steps down.)

15 MS. BODMAN: May we approach?

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury but out of
19 the hearing of the jury.)

20 THE COURT: Ladies and gentlemen of the jury,
21 at this time there is a matter I need to take up
22 outside of your presence. And it is about 3:11, so
23 we have been going a little over an hour, so we
24 will go ahead and take our afternoon break for now.
25 That way you can refresh yourself. And we'll have

1 you back in about 15 minutes.

2 Thank you.

3 (WHEREUPON, the jury retires to the jury
4 room at 3:11 p.m.)

5 THE COURT: All right. I believe the next
6 witness is Investigator Van Houten. And
7 Ms. Singletary indicated to me that she had a
8 motion -- another motion she wanted to put on the
9 record.

10 And I'll be glad to hear from you.

11 MS. SINGLETARY: Your Honor, I'm ready.

12 THE COURT: You're ready? Okay. Yes, ma'am?

13 MS. SINGLETARY: Your Honor, if the Court
14 recalls, on Monday afternoon I made a motion to
15 actually exclude the testimony of Agent Van Houten
16 based on several different reasons.

17 At this time I am renewing my motion with all
18 of the reasons that I gave on that day. However, I
19 would like to supplement the record with what has
20 actually transpired during this trial.

21 Your Honor, my motion is based on several
22 different arguments. It is based on my client's
23 Sixth Amendment Right Of Confrontation. It is also
24 based on Rule 403, that that information is highly
25 prejudicial, that it would be confusing and

1 misleading to the jury.

2 Also, Your Honor, my motion is based on the
3 fact that if Investigator Van Houten is allowed to
4 testify to the testimony that would be elicited by
5 the State, that that would actually not give my
6 client a right to a fair trial.

7 This information is based on the previous
8 motion where Investigator -- not Investigator, but
9 Agent Van Houten testified before the Court and
10 said that he is not going to give an opinion in
11 this case. However, it would be our argument that
12 he is going to give an opinion in this case.

13 Then we would actually trickle down to the
14 fact that Investigator -- Agent Van Houten would be
15 giving testimony not based on any independent
16 evidence or investigation that he did, he would
17 actually be basing his information on information
18 that he received from the State, as well as
19 information -- and when I say information that he
20 received from the State, I am referring to
21 information that he received from the Prosecution
22 as it relates to the radius of these cell phone
23 tower ranges.

24 Now, Investigator -- Agent Van Houten also did
25 look at the historical cell data that was

1 subpoenaed for these actual two numbers that are in
2 question. However, if the Court is reminded, when
3 the actual custodian of records testified in this
4 court yesterday, the T-Mobile custodian of records
5 testified very generally. She testified to the
6 fact that the ranges for the cell towers for
7 T-Mobile, for a rule of thumb, the range is one to
8 a half a mile. She also testified to the fact that
9 the range could be up to 15 miles in an open field.

10 When I asked her specifically about the range
11 of the towers that are in question in this
12 particular case, she could not give me the specific
13 range for the towers that Agent Van Houten would be
14 using to demonstrate that to the jury.

15 When testimony was elicited from the custodian
16 of records for Verizon Wireless, she testified --
17 she didn't testify to a specific range for the cell
18 towers here in South Carolina, or in Columbia,
19 period. What she actually testified to is the fact
20 that in an urban area, this cell tower range could
21 be zero to three miles. In a suburban area, it
22 could be zero to five miles. In a rural area, it
23 could be zero to 15 miles.

24 One of the things that I didn't hear her
25 testify to is, what is Columbia considered? Is it

1 considered an urban area or is it considered a
2 suburban area? Because that drastically affects
3 the range of these cell towers.

4 Additional to that, as I stated, with the
5 T-Mobile custodian of records, who actually
6 testified yesterday, she had no specific ranges for
7 the towers that were -- are being testified to by
8 Agent Van Houten, if he is allowed to get on the
9 witness stand.

10 Your Honor, Investigator Van Houten's
11 testimony, in essence, would -- even though the
12 Prosecution says, Well, he's going to do a 3-mile
13 radius, well -- and that's all the jury is going to
14 see. They are going to see a 3-mile radius .and
15 they are not going to see that it could possibly be
16 a 1-mile radius or a half-mile radius or a 2-mile
17 radius, or a 3-mile radius, or a 4-mile radius, or
18 a 5-mile radius. That is general. That is
19 extremely misleading to the actual jury as it
20 relates to whether or not the cell phone that they
21 say is my client's cell phone was in the same
22 general location as Austin Murray's cell phone.

23 One of the key things also that I feel that is
24 damning is that there is a cell phone number, it is
25 -6130. The Verizon Wireless custodian of

1 records, when they asked who was the subscriber for
2 that cell phone, she said, We have no name.

3 Now, she didn't authenticate the fact that
4 these records belong to my client. But, in their
5 demonstration to the jury, they are going to
6 testify to the fact that these records belong to my
7 client.

8 You have Austin Murray that -- and I didn't
9 hear Austin Murray at all testify to for certain
10 that -6130 was my client's record.

11 Curtis Wright got on the witness stand, and he
12 can't remember anything. So he definitely doesn't
13 know if -6130 actually was my client's record.

14 So who is going to say within a reasonable
15 certainty that -6130 is my client's record?

16 One of the things that Investigator, I believe
17 that was McCracken, testified to a few minutes ago
18 is that people switched cell phones all the time
19 and they change numbers all the time. So we are
20 going to let -- we are going to lead the jury to
21 believe that this -6130 belongs to my
22 client when numbers can change all the time?

23 Are we going to lead the jury to believe that
24 when Verizon Wireless, who was not even -- did not
25 even have a relationship with the person who was

1 using that cell phone -- if you remember correctly,
2 Verizon Wireless said that their services was
3 leased by another company. And that person
4 actually -- whoever's cell phone it was actually
5 had a relationship with them, Your Honor.

6 Additionally, as it relates to me saying that
7 my client's Sixth Amendment Right to Confront his
8 witness would be violated is that where are we
9 coming with this 3-mile radius? And it has to be a
10 3-mile radius?

11 T-Mobile as well as Verizon testified to --
12 and I made a point of saying, You can't testify to
13 the radius? You can't testify to an exact radius?
14 I made a point of saying, Did you get trained in
15 how to determine the radius of cell phones? I made
16 a point of saying, Well, an engineer would have to
17 testify to that? The engineer would have to
18 testify to that?

19 And they said repeated on the witness stand,
20 No, that is -- our engineers do that. Our
21 engineers do that. No, I can't testify to that,
22 because the engineers actually have to give that
23 information.

24 But we are going to allow for the jury to see
25 information that is, in my opinion, half-cocked, is

1 not reliable upon anything that has any type of
2 substantial factual truth, Your Honor?

3 Additionally --

4 THE COURT: On the confrontation clause issue,
5 wouldn't you have an opportunity to cross-examine
6 him about that?

7 MS. SINGLETARY: The confrontational clause
8 has nothing to do with Van Houten.

9 THE COURT: Who are you saying you don't have
10 the right to confront?

11 MS. SINGLETARY: The engineer from T-Mobile or
12 Verizon. They are the ones who can actually
13 testify to the true cell tower range for these cell
14 phones.

15 THE COURT: All right.

16 MS. SINGLETARY: Beg the Court's indulgence,
17 Your Honor.

18 (Pause.)

19 MS. SINGLETARY: And, Your Honor, just to
20 echo -- and I know when Your Honor made the initial
21 ruling, you made a ruling based on a federal court,
22 but I would like to bring the Court's attention to
23 that ruling.

24 In that ruling, Your Honor said that the
25 custodian of records were actually qualified as

1 experts in that case.

2 THE COURT: No, they were not. They were not.

3 MS. SINGLETARY: They were not?

4 THE COURT: They were allowed -- if I remember
5 correctly, the custodian of records were allowed to
6 testify, that they did not have to be treated as
7 experts. They gave factual statements, like the
8 ones that came in here. So, no, they gave factual
9 statements and the Court in that case said that
10 they did not have to be -- they did not have to be
11 qualified as experts as long as they only give
12 personal knowledge and not -- they could not give
13 statements or opinions.

14 MS. SINGLETARY: And, Your Honor, I would say
15 that these custodian of records didn't have any
16 personal knowledge about the cell tower ranges that
17 Agent Van Houten -- and I apologize for calling you
18 investigator -- but Agent VanHouten would be
19 actually displaying for the jury. I think that
20 tremendously would mislead the jury to the fact
21 that my client would actually be in this location.

22 And this doesn't go to the weight of the
23 testimony, Your Honor. In essence, what would be
24 shown to the jury, as I said on Monday and Tuesday
25 afternoon, like, the jury would be basing their

1 reason to convict or not to convict my client on
2 misleading evidence that they are actually going to
3 take as fact.

4 THE COURT: Let me ask the State, because she
5 does bring up one point that I guess needs to be --
6 well, who connects him to the telephone number?

7 MS. BODMAN: Well, to me, even at the minimum
8 is we have circumstantial evidence that it is his
9 phone, because Austin Murray says that at the time
10 of the homicide he is in the car and he is texting
11 back and forth with Cheo Green. And the text
12 messages have been entered into evidence. And that
13 timeframe of the minutes before the murder that
14 connects up with the cell phone, he is texting back
15 and forth with one number, and that is the one that
16 is submitted, the 351.

17 THE COURT: The text from the Defendant?

18 MS. BODMAN: From Austin Murray to Cheo. So
19 Austin Murray, basically, says circumstantially
20 they need to believe that it is Cheo that is in the
21 car, you know, that he is texting back and forth
22 with. So he says, I'm in that car, this is the
23 timeframe, and those records put him texting with
24 that phone number. So essentially,
25 circumstantially, through Austin Murray's

1 testimony, he is saying that is Cheo's phone
2 number.

3 THE COURT: Did he testify to that? I don't
4 remember?

5 MS. BODMAN: He didn't testify as to the
6 number. He said -- I asked him and he said he
7 couldn't remember anybody's number, I think.

8 And then Curtis was impeached with, Didn't you
9 tell -- did you tell the investigator that this was
10 Cheo's phone number? And he was like, I don't
11 remember.

12 But, even disregarding that, if no one had
13 ever testified about it, it is Austin that is
14 saying that is Cheo Green's number. Without having
15 to recall the actual digits, he is saying, I am
16 sitting in this vehicle and I am texting back and
17 forth with Cheo Green.

18 And that is the phone number in those seconds
19 before we know the murder happened because
20 Mr. Davis is calling 9-1-1 at 3:21, you know, and
21 so many seconds. That is the phone number. So he
22 is putting that phone number as his.

23 Even if the subscriber information had come
24 back to John Smith, anybody could have John Smith's
25 phone.

1 MS. SINGLETARY: And, Your Honor, that's the
2 point I'm trying to make. Anybody could have John
3 Smith's phone, just like anybody could have had
4 that -6130 and was texting back and forth.

5 THE COURT: That's the argument you have to
6 make as to weight of the evidence.

7 MS. BODMAN: It has already been admitted. So
8 now you have to believe that that was, in fact,
9 Cheo on the other end of that phone. I mean, that
10 exactly is the weight of the evidence.

11 THE COURT: All right. Confrontation clause.

12 MS. BODMAN: I don't think there is any
13 confrontation issue, because they did not testify
14 as to the exact radius of each tower saying, Oh, we
15 called the engineer and the engineer told me, and
16 so now I'm going to tell you what my engineer told
17 me. That would be a violation of confrontation,
18 because they are telling us what the engineer told
19 them for the purpose of their testimony. They
20 would have the right to actually confront the
21 engineer.

22 What they said is, All I can tell you, based
23 upon my knowledge and training and experience, is
24 that our company has -- one of them says it is a
25 one and a half to one mile range. The other one

1 says -- or one and a half to one and a half --
2 half, whatever it was. And the other one says,
3 Depending on urban, suburban, rural, this is what
4 it is.

5 These are common, ordinary definitions and it
6 is the same thing, it is weight. I mean, even if
7 you expand it, you know, to ten or down to
8 whatever, it is still the weight.

9 And all of this information she brought out in
10 cross, she could continue bringing out in cross.
11 They could disregard it all together and say, We
12 don't even know that that's Cheo, actually. These
13 phones are together, but who has proved that it's
14 Cheo? That's for them to take the evidence as they
15 wish with all the information that is given them
16 about the strength of the radius and the record.
17 So it is all completely up to the weight.

18 MS. SINGLETARY: Your Honor, and that's just
19 my argument. They did not testify to any radius,
20 but we are going to show the jury a radius of three
21 miles. How is that not --

22 THE COURT: You'll have the opportunity to
23 cross-examine the witness regarding the radius and
24 what the cell phone persons testify to, and if it
25 is inconsistent, then that inconsistency, the jury

1 will look at that in weighing the evidence. But I
2 still think it all goes to the weight of the
3 evidence.

4 My only concern is that he could not come to
5 any conclusion. He cannot give any opinion if you
6 are not going to qualify him as an expert.

7 MS. BODMAN: And I had one more thought about
8 this. Let's say we even had an engineer come in
9 here and testify and to say Tower Number 51, that
10 range is zero to five. It is still -- we clearly
11 have testimony that there are other variants to it.
12 You have -- they said, weather. They said the time
13 of year with foliage. They said -- you know, there
14 is other variants that even that, you know, three
15 to five or zero to five on any particular moment or
16 nighttime or day is a variant.

17 The Court, in saying that this would not be
18 admissible, essentially would be saying, Unless you
19 can bring realtime historical records that you know
20 that that person is going to commit a murder
21 tonight so you better start tracking them tonight,
22 you cannot bring this evidence into court. That is
23 essentially, you know, what would happen if you
24 have to have realtime historical records tracking
25 somebody.

1 MS. SINGLETARY: And, Your Honor, I think she
2 initially made my point that this information is
3 not reliable. All the different factors. So if
4 this -- if we have all these different factors and
5 the time of day, the weather -- which I agree that
6 we have all these different factors -- how is this
7 information so reliable that we are going to rely
8 on the jury to actually say, Oh, well, maybe it is
9 one mile, maybe it is two miles, maybe it is three
10 miles? But, no, the State just showed me a 3-mile
11 radius. And that is what they are doing. They
12 would be tainting the jury by showing them this.

13 THE COURT: How is this any different, though,
14 than any other tool that the police use in
15 investigating a case? I mean --

16 MS. SINGLETARY: GPS is more accurate. This
17 is not as accurate as GPS.

18 THE COURT: Well, I mean, I don't know that.
19 Of course, you would have to have somebody to come
20 in and tell us that, but I don't know that for
21 sure. I guess what I'm saying is that they use
22 investigative tools all the time and the
23 investigators are able to come in and testify to
24 the tools that they use in investigating the case,
25 and then you are able to cross-examine them. I am

1 just trying to figure out how and why this is
2 different than any of the other tools that they may
3 use.

4 MS. SINGLETARY: Well, Your Honor, most of the
5 time, the investigators actually do -- and this is
6 not to diminish Agent Van Houten, but most of the
7 time those investigators actually do leg work.
8 They actually go out there and they do something.
9 Like -- but in this case, Investigator Van Houten
10 actually got his 3-mile radius not from the
11 custodian of records from T-Mobile. He didn't get
12 his 3-mile radius from the custodian of records
13 from Verizon. He got his 3-mile radius from the
14 State.

15 So they said, Let's use this 3-mile radius.
16 Because no one up there definitively testified to a
17 actual 3-mile radius. And Investigator Van Houten
18 was not in here to actually listen to the testimony
19 of the custodian of records. And if Investigator
20 Van Houten has spoken to either one of the
21 custodian of records and gotten the three miles or
22 had spoken to an engineer, we would certainly like
23 to know that.

24 THE COURT: Did he say yesterday the 3-mile
25 radius was based on his training? Was that what he

1 said?

2 MS. BODMAN: No, we -- when we were doing the
3 motion the other day, I was explaining that based
4 on the testimony, we would give him the radius. So
5 he'll testify to who gave him the radius. He is
6 sequestered. The 3-mile radius is consistent with
7 their testimony. And they will hear it. I mean,
8 they heard that the one said it was between --

9 Tell me again the --

10 MS. SINGLETARY: The one to one and a half
11 mile.

12 MS. BODMAN: I keep getting confused.

13 MS. SINGLETARY: Half mile or one and a half.

14 MS. BODMAN: And the other one said urban,
15 suburban, rural.

16 THE COURT: One gave the New York --

17 MS. BODMAN: Right. And so all of that goes
18 to the weight that the jury can say, Well, wait a
19 minute, this one person said in rural areas it
20 could be up to 15, but urban, North Main, is
21 up to three.

22 MS. SINGLETARY: Your Honor, this is what I
23 have a problem with. When we actually proffered
24 Agent Van Houten's testimony on Monday, the State
25 made sure that they went through all of this

1 training that he had to actually map this, map
2 that.

3 And when the jury actually hears all of that,
4 like -- I mean, in essence, they are qualifying him
5 to be an expert witness by saying that he actually
6 has all of this training, but then they are going
7 to pull back and say, But, no, we're not going to
8 qualify him as an expert witness. And the jury
9 isn't going to be able to make that distinction.

10 THE COURT: He -- but --

11 MS. BODMAN: Investigator Gilliam testified.
12 He didn't testify as an expert, but we darn sure
13 went through all of his experience as an
14 investigator so that they can weigh his credibility
15 to the jury. I mean, he knows -- he has to know
16 how to run the software program and how to plot GPS
17 points, you know.

18 MS. SINGLETARY: But Investigator Gilliam did
19 do leg work. He went and spoke to people. He
20 interviewed people.

21 THE COURT: All right. But, of course, you
22 understand you'll have the opportunity to
23 cross-examine him as to his qualifications. He is
24 not being qualified as an expert. I mean, so you
25 will be able to cross-examine him as to all of

1 that.

2 I just think that it goes to -- your arguments
3 go to -- all go to the weight of the evidence and
4 for the jury to consider. You can argue -- I don't
5 want to say argue all night, but you can argue all
6 night to them that -- some of the same arguments
7 you made to me today regarding, Is it reliable?

8 Had he been giving an opinion, an expert
9 opinion, then, of course, you would have to
10 consider the reliability to make sure that that --
11 you know, that as an expert -- and that is because
12 he is giving an opinion. But here he is not giving
13 an opinion. He is just saying what he did and what
14 he did in mapping it. But he can't give any
15 conclusions. He can't come to any conclusion. He
16 can't give any opinion. I just want to make sure
17 the State is clear on that. All he can talk about
18 is what he did, what showed up. You can ask him
19 whatever it is you want to ask him on
20 cross-examination, but he is not giving any
21 conclusion. He cannot say that your client was
22 there. I don't even know if he can even give --
23 based on what I've heard thus far that the
24 conclusion -- he can't even give the conclusion
25 that that is even your client's phone number,

1 because it is, circumstantial circle evidence. The
2 jury will have to decide whether or not they
3 believe Austin Murray and that that was your
4 client's number. But, I mean, he can't even give
5 that conclusion because no one has testified to
6 that. So all he can say is that that number or
7 that phone at that time. He can't say --

8 And please make sure that he does not say the
9 Defendant's phone, because he can't say that. He
10 doesn't -- I don't think he can testify to that
11 because he doesn't know that.

12 So he can testify -- I am going to allow him
13 to testify, but it is going to be very narrow as to
14 what he can. The only thing he can talk about is
15 what he did. No conclusions. No opinion. If you
16 start stating opinions, then she's right, you've
17 got to get into whether or not it is scientifically
18 reliable.

19 All right. Let's all take a bathroom break so
20 we can come back and do Van Houten.

21 Can you all please make sure you clear that
22 with him?

23 MS. BODMAN: Yes.

24 THE COURT: No opinions. He cannot
25 conclude -- come to any conclusion that the phone

1 belonged to the Defendant. All he can talk about
2 is the numbers and where the numbers -- what he
3 did, and that's it.

4 All right. We will take -- let's take about
5 five minutes.

6 (WHEREUPON, a break was taken at 3:39 p.m.)

7 THE COURT: Are you ready?

8 MS. BODMAN: Judge, we are going to call the
9 firearms person next. We don't know how long cross
10 will go, and we want to make sure we get her done
11 to go to Jasper.

12 THE COURT: All right, thank you.

13 You can bring them on in.

14 (WHEREUPON, the jury came into open
15 court at 3:49 p.m.)

16 THE BAILIFF: The jury is all present, Judge.

17 THE COURT: Thank you. All right, please call
18 your next witness.

19 MS. BODMAN: The State calls Michele
20 Eichenmiller.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, raise your right, and face the clerk.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat in the
6 witness stand, please.

7 (Witness complies.)

8 THE CLERK: State your name for the record.

9 THE WITNESS: My name is Michele Eichenmiller.

10 MICHELLE EICHENMILLER,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BODMAN:

14 Q. Where do you work?

15 A I work for the State Law Enforcement Division,
16 commonly known as SLED. I work in the Firearms
17 Department of the forensic lab.

18 Q And what are your duties and responsibilities in
19 the Firearms Department?

20 A I'm a firearms examiner. Firearms identification
21 is a branch of forensic science that deals with
22 firearms and ammunition components. The firearm
23 examiner is tasked with trying to find if a fired
24 bullet or fired cartridge case was fired by a
25 certain gun.

1 Q Can you tell the jury about your educational
2 background and your training that brings you to be
3 a firearms examiner?

4 A I have a Bachelor's Degree in biology. I also have
5 a Master's Degree in forensic science. In
6 addition, you can't learn firearms identification
7 in the classroom, you have to learn on the job, so
8 I completed a 3-year training program at SLED under
9 court-qualified examiners.

10 During that three years, I did a lot of
11 reading on my own. I learned the history of
12 firearms. I did a lot of microscopic comparison.
13 And I sat with the members in their offices to see
14 how they did the job.

15 At the end of three years, I completed a
16 cumulative exam of courtroom mock testimony, and
17 then they deemed me competent to work on my own.

18 Q And so how long have you been actually examining
19 firearms?

20 A Probably been six or seven years.

21 Q Have you testified in the courts of law in South
22 Carolina as a firearms examiner?

23 A I have.

24 Q And have you been deemed to be an expert?

25 A Yes.

1 Q And in what areas have you been deemed to be an
2 expert?

3 A In firearms identification.

4 MS. BODMAN: Your Honor, at this time I would
5 tender Ms. Eichenmiller as an expert in the area of
6 firearms identification.

7 THE COURT: Any objection?

8 MS. SINGLETARY: None, Your Honor.

9 THE COURT: All right. Ladies and gentlemen
10 of the jury, Ms. Eichenmiller will be qualified in
11 the area of firearms identification to give opinion
12 testimony in that area.

13 Yes, ma'am?

14 BY MS. BODMAN:

15 Q And does firearms identification include comparing
16 projectiles, fired projectiles, to a weapon to see
17 if they match, if those projectiles came from that
18 weapon?

19 A Yes, that's exactly what we do.

20 Q And did you examine evidence in Lab Number, Lab
21 Case L1211393?

22 A I did.

23 Q And that involved a Columbia Police Department case
24 involving a homicide?

25 A Yes, ma'am.

1 Q And what items of evidence did you initially
2 examine?

3 A At first, I examined three fired bullets that were
4 recovered from the victim.

5 Q And for what purpose and what was the examination
6 that you did on those three fired bullets?

7 A In the absence of a firearm, we can take a fired
8 bullet and take its class characteristics, which
9 are like the big ones, like caliber, how many lands
10 and grooves it has, the measurement of those lands
11 and grooves. We can put it into a database, and
12 then the database will give us a list of
13 manufacturers that use those characteristics. That
14 is kind of an investigative need for the agency to
15 try to find the firearm that may have been used.

16 Q First of all, can you explain what does it mean by
17 caliber?

18 A Caliber is the diameter of the bullet or the
19 diameter of the barrel of the firearm, either one.

20 Q And so give us an example of different calibers.

21 A Some calibers are: There is .22 long rifle; there
22 is .40 Smith & Wesson; there is .38 Special; .357
23 Magnum. Those are common calibers.

24 Q And then you said you examined the lands and
25 grooves? What is that?

1 A Those are the marks -- I have one for you.

2 Q So let me ask you. Did you bring something with
3 you to be able to demonstrate to the jury or
4 explain to the jury what lands and grooves are?

5 A Yes.

6 Q Okay. And what is this?

7 A These are just demonstrative aids that we use to
8 teach what lands and grooves look like.

9 This is a bigger bullet than what I would be
10 looking at, but it helps to show what a land and a
11 groove is.

12 Q Okay. If you can do that then.

13 A Lands and grooves are actually in -- this is a
14 cutout of a barrel of a firearm. And so the
15 manufacturers placed the lands and grooves in
16 there. The lands and grooves are meant to give
17 rotary motion to bullets as they go down the barrel
18 and out.

19 The rotary motion is like a quarterback
20 throwing a football. So you want it to go straight
21 in a tight spiral. That's what rifling does. So
22 when the bullet passes over the rifling, it gets
23 marks on it.

24 So this is a land impression. It was made by
25 the land in the barrel. And then a groove

1 impression. We look at the land impressions and we
2 look for individual characteristics that are in
3 there in order to say it was fired by a certain
4 firearm.

5 But at first, if you don't have a firearm, you
6 could just measure the land and grooves and then
7 count the number and the direction.

8 Q And so you said you had three projectiles?

9 A Yes.

10 Q Walk us through the comparison of the three
11 projectiles.

12 A When I initially get the evidence, I take pictures,
13 do a lot of documentation to show how it came to
14 me. Then I'll put it -- do a worksheet on it. We
15 have a worksheet that we fill out, writing down the
16 general characteristics, how many lands and grooves
17 there were, what caliber I measured. And then I'll
18 put it on my microscope -- basically, two
19 microscopes connected by an optical bridge, where I
20 can look at one bullet on one side and one on the
21 other. And by rotating them, I can try to match up
22 the striations that I see in there to see if they
23 were fired by the same firearm.

24 Q And you said that you also took photographs?

25 A Yes, ma'am.

1 Q I'm going to show you what is marked as State's
2 Exhibit 24. Do you recognize -- there's three
3 photographs here. Do you recognize those?

4 A Yes.

5 Q And what are those?

6 A These are the fired cartridge cases that we
7 received in the second submission in this case.

8 Q The second one?

9 A Uh-huh.

10 Q And then let me show you Exhibit 22. Do you
11 recognize that?

12 A Yes.

13 Q. And what is that?

14 A. Those are the photographs I took of the evidence
15 that I received at the second submission.

16 Q Okay. As you're opening, I guess, the packages?

17 A Uh-huh.

18 Q I show you what is marked as State's Exhibit 23 and
19 see if you recognize photographs on there?

20 A Uh-huh. Those are photographs I took of the fired
21 bullet.

22 Q Of your, I guess, test?

23 A Of the original three bullets that I looked at, and
24 then those bullets versus the test that I created
25 with the firearm.

1 Q And three projectiles?

2 A From the victim.

3 Q From the victim? With your test bullet?

4 A Correct.

5 Q Okay. State's Exhibit 21?

6 A Those are, yeah, my documentation photographs as I
7 opened the box -- as I opened the box and then the
8 identifying information from the firearm, like the
9 serial number and make and model.

10 Q Documenting that this was the firearm that you were
11 examining?

12 A Yes.

13 Q And you took these photographs?

14 A Yes.

15 Q And even backing up further is State's Exhibit 20.
16 Do you recognize that?

17 A Yes. That is the first submission that I received
18 in this case. Those are the three bullets from the
19 victim.

20 Q The projectiles?

21 A The projectiles, yes.

22 MS. BODMAN: Offer into evidence 20, 21, 23,
23 22, and 24.

24 THE COURT: Any objection?

25 MS. SINGLETARY: Without objection, Your

1 Honor.

2 (WHEREUPON, State's Exhibit No. 20 was
3 marked for identification and received
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 21 was
6 marked for identification and received
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 22 was
9 marked for identification and received
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 23 was
12 marked for identification and received
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 24 was
15 marked for identification and received
16 into evidence.)

17 MS. BODMAN: May I ask the witness to step
18 down?

19 (Witness complies.)

20 BY MS. BODMAN:

21 Q Okay. So what is this that we are looking at here?

22 A This is how I received the evidence overall. These
23 were the containers inside from the autopsy. And
24 then this is each bullet that I received.

25 Q And then, I guess, the second submission you said

1 --

2 A Uh-huh.

3 Q -- you received the firearm?

4 A Correct.

5 Q Okay. And so what are we looking at here?

6 A This is the container the firearm came in. It also
7 came in with additional items, which were 15 and
8 16. The firearm is 14. But this is identifying
9 characteristics on the firearm, such as make and
10 model and serial number.

11 Q And what type of weapon was this?

12 A It is a revolver. It is made by H&R. And it is
13 called the American Double Action.

14 Q And what caliber?

15 A It is a .32 S&W.

16 Q And what is, I guess -- this looks like a penny?

17 A It is the front side of the gun. It helps you
18 shoot straight.

19 Q Okay. And the serial number?

20 A Uh-huh.

21 Q And what is that wrapped around the --

22 A It was black electric tape wrapped around the grip.

23 Q When you got it?

24 A Right.

25 Q Okay. So which -- you said that there was also

1 other items that were in the box?

2 A Additionally, in the box, there were Items 15 and
3 16. 14 was part of the gun, which is the cylinder.
4 It was removed when I received it. And then the
5 unfired cartridges and the fired cartridge cases
6 that I examined, what they looked like on top. I
7 needed to document the manufacturer and caliber and
8 then which ones were fired or not.

9 Q So this instrument right here, this black
10 instrument, that is yours?

11 A Oh, that's just a plastic case to hold the
12 cartridges up so I could take a nice picture.

13 Q Okay. So the three projectiles, then, you examined
14 them?

15 A Uh-huh.

16 Q And what, if any, conclusions did you come to in
17 examining the three projectiles?

18 A In the first submission I just had the three
19 projectiles. I examined them versus each other.
20 And in my opinion they were all fired by the same
21 firearm.

22 Q So then in the second submission you received the
23 gun and the casing and the unfired bullet?

24 A Correct.

25 Q What was the next step that you did then?

1 A The next step after that is I document with all the
2 pictures of the firearm. I then shoot the firearm
3 into a water tank so I can obtain test specimens
4 that are perfect and I know came from that firearm.
5 I then compare those tests to the items that I
6 examined first, the three projectiles, to see if I
7 can find individual characteristics that say it was
8 fired by that firearm.

9 Q And were you able to find individual
10 characteristics?

11 A I was. In my opinion, they were matching
12 individual identifying characteristics that were
13 enough to say that those bullets were fired by that
14 firearm.

15 Q So what else did you do then?

16 A In addition, we got those fired cartridge cases. I
17 wasn't sure if they came out of the revolver or
18 not. If we know they came out, we wouldn't have
19 looked at them. I didn't know, so I looked at them
20 anyway. And those cartridge cases were fired by
21 that revolver as well.

22 Q So what are we looking at here in State's Exhibit
23 23?

24 A This is from my microscope. It is just kind of my
25 note to remind me of what I was looking at. These

1 are the lands and grooves you can see on an actual
2 bullet. This is the lands impression and then a
3 groove is up here. I don't remember the power,
4 either 10 or 15X --

5 THE COURT REPORTER: I'm sorry, I can't hear
6 you.

7 Q. Let's switch sides. That way you are talking
8 towards her.

9 A. It is either 10 or 15X, and then there is -- we can
10 go closer, so we can do 20X, 30X, even up to 60X if
11 we need to.

12 Q And what do you mean by that?

13 A X is just the magnification if we need to see it
14 closer.

15 Q So tell us, is this what you are seeing with your
16 eye or you are looking at a different type of
17 image?

18 A I'm looking at a bullet, you know, a round object
19 that's 3D. These are kind of flat images, so I use
20 these just to remind myself, kind of note, not
21 really used for identification. We don't make
22 identification from pictures.

23 Q So when you're actually doing your analysis, you're
24 looking at a 3D object and you're looking at it
25 through your microscope?

1 A Correct.

2 Q So much closer than we are looking at here?

3 A Right.

4 Q Okay. So then show us -- I guess, keep going
5 through the photographs and tell us what we're
6 looking at.

7 A So this is from the first submission, Bullet Number
8 1 and Bullet Number 2. You can see a fine line
9 down the middle, so there is one bullet on one side
10 and one on the other. We found these matching
11 individual characteristics to say that these were
12 fired by one gun. And then I used Item 1 versus
13 Item 3, which is the third projectile, and found
14 similar identifying characteristics in order to say
15 they were fired by the same firearm.

16 Q So 1, 2 and 3 match each other and are fired from
17 the same firearm?

18 A Correct.

19 Q Okay. So then what are we looking at?

20 A And then when I received the firearm, I was able to
21 use Item 1, which is our first bullet. First, it
22 is test -- it was my Item 14 was the revolver.
23 Found similar identifying characteristics here.
24 And this is all Item 1. This is the second bullet,
25 and then the third bullet. To say that all three

1 of those bullets were fired by that revolver.

2 Q So 14, Item 14, you actually shot out of this
3 firearm yourself?

4 A Correct.

5 Q And then compared it to the projectiles that were
6 removed from the victim's body?

7 A Correct.

8 Q Do you have an opinion as to whether or not these
9 projectiles that were removed from Michael Davis's
10 body were shot from -- I will show you what is
11 entered as State's Exhibit 29. Do you recognize
12 that?

13 A Whenever I receive evidence in the case, I'll write
14 my name or my initials, the item number, and the
15 case number on it. This one has my initials on it,
16 so this is a firearm I examined.

17 Q So do you have an opinion as to whether or not the
18 projectiles removed from Michael Davis's body were
19 shot from this gun?

20 A In my opinion, based on the matching individual
21 identifying characteristics that I found, these
22 three bullets that were removed from the victim
23 were fired by this revolver.

24 Q Have a seat.

25 A (Witness complies.)

1 Q The projectiles that you matched to that gun, is
2 that the, I guess, ammunition that is normally used
3 with that weapon?

4 A That firearm was actually calibered for a .32 -- it
5 is chambered for a .32 S&W. What was fired in it
6 was a .32 auto. .32 auto can be fired in it. It
7 is not what is recommended, but it can be used.

8 Q. No further questions at this time. Answer any
9 questions from Defense counsel.

10 MR. SIMS: No questions, Your Honor.

11 THE COURT: All right, ma'am, you may step
12 down.

13 Any objection to this witness being excused?

14 MS. SINGLETARY: No, Your Honor.

15 THE COURT: All right. Thank you. Ma'am, you
16 are free to leave.

17 THE WITNESS: Thank you.

18 (Witness steps down and is excused.)

19 MR. BERRY: The State calls John Van Houten.

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, raise your right hand, and face the clerk.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm the
25 testimony you are about to give in this case will

1 be the truth, the whole truth, and nothing but the
2 truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Have a seat in the
5 witness stand, please.

6 (Witness complies.)

7 THE CLERK: State your name for the record.

8 THE WITNESS: John Van Houten.

9 JOHN VAN HOUTEN,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BERRY:

13 Q Hi, Mr. Van Houten. How are you doing today?

14 A All right.

15 Q Good. What is your job and title, sir?

16 A I am a computer and cell phone forensic examiner.

17 Q Who do you work for?

18 A I am employed by the Columbia Police Department,
19 but I am assigned to the U.S. Secret Service.

20 Q What do you do for both agencies?

21 A I'm a full-time task force agent with U.S. Secret
22 Service, where I perform computer forensics and
23 cell phone forensics.

24 Q And explain to the jury what you do for CPD as
25 well.

1 A Well, not necessarily CPD, but any agency
2 requesting assistance on computer exams or cell
3 phone exams. Anything that has to do with digital
4 electronics, I assist in recovering data for them.

5 Q And how long have you been in law enforcement
6 working in these capacities?

7 A Over 16 years.

8 Q And any certifications throughout the course of
9 your time?

10 A Yes. I have attended cell phone forensics training
11 and computer forensics training with Mississippi
12 State University Computer Forensics Research at our
13 Law Enforcement Training Center, SLED, the National
14 Computer Forensic Institute, the Nationwide Public
15 Crime Center.

16 Q And you have trained and taught other people this
17 type of work?

18 A Yes. I'm an assistant instructor at the National
19 Computer Forensics Institute where I assist in
20 training Prosecutors from across the country on
21 digital evidence, cell phone forensics, and
22 computer forensics.

23 Q And, if you could, just again for the jury explain
24 what it is that you do in general with these
25 computer forensics, and all this?

1 A Well, with computer forensics and cell phone
2 forensics, it is a broad spectrum of things that we
3 do. When you look at a phone or you look at a
4 computer and you see the pictures and the icons,
5 that is called logical information or logical data.
6 That is stuff that you can see, stuff that you can
7 view.

8 What we do is we go in and we can pull the
9 logical data off that device and we can pull what
10 is called unallocated data, which is the deleted
11 stuff that you can't see. We are able to recover a
12 vast amount of information and data from the
13 devices.

14 Q And what were you asked to do specifically in this
15 case here?

16 A In this particular case, I was specifically asked
17 to plot cell tower information based on two phone
18 numbers.

19 Q And how do you plot cell phone towers?

20 A Generally, what we normally do is we obtain
21 historical data records from carriers. They are
22 called detailed records. The information that the
23 carriers keep on the phone, what tower the phone is
24 hitting off of, the call number -- the call numbers
25 that the user is calling to or receiving a call

1 from.

2 Each -- all that information is logged by the
3 carrier, and it is for billing purposes by the
4 carrier, and it is also to determine if there is an
5 error for their customer.

6 We take that information and we put it into a
7 software program that will generate that
8 information and generate a location where that
9 phone may have been.

10 Q And what software do you use to do this plotting?

11 A There is numerous softwares that we can use. In
12 this particular instance, I used a software called
13 KML Creator. KML is the file name that Google
14 Earth uses to plot information on their service.

15 Q And have you had a chance to review the data
16 contained on what is marked as State's Exhibits 47
17 and 48?

18 A I have.

19 Q And what is on these disks?

20 A Those are the historical call detail records for
21 the two phone numbers that I was asked to plot the
22 towers for.

23 Q And this is phone number -9542 and phone
24 number -6130; correct?

25 A That's correct.

1 Q And would it assist you in explaining to the jury
2 your plotting if you use your smart board to show
3 what you plotted?

4 A Sure.

5 MR. BERRY: Permission to have the witness
6 stand down, Your Honor, and bring the smart board
7 to show the plotting?

8 THE COURT: Yes.

9 (Witness steps down.)

10 BY MR. BERRY:

11 Q Now, while we get this fired up here, what was on
12 those disks, the data on those disks, did you plot
13 what is on those disks in your system here?

14 A Yes. The data on the disk contains GPS location
15 coordinates and -- with a tower number. Every
16 tower, every permanent tower that is used is
17 assigned a GPS location. That is so they know
18 where their tower is at. All I did was take the
19 GPS location provided by the carrier and the tower
20 location and plotted it on -- using KML creator to
21 plot in on Google Earth. That's all I did.

22 Q So what's on those disks is what you plotted?

23 A Yes.

24 MS. SINGLETARY: May we approach, Your Honor?

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 BY MR. BERRY:

5 Q Just to clarify, that folder says Green.

6 THE COURT REPORTER: I'm sorry, I couldn't
7 hear you.

8 MR. BERRY: Yes, ma'am.

9 BY MR. BERRY:

10 Q That folder says Green. The only reason that
11 folder says Green is because this is the State vs.
12 Cheo Green; correct?

13 A Yes, sir.

14 Q All right. That is all that was.

15 THE COURT: Do you need the microphone? Can
16 you all see?

17 BY MR. BERRY:

18 Q. So what do we have here?

19 A This is the map of the Columbia area plotted,
20 displayed by Google Earth. And over here are the
21 weigh points, which are the thumbtacks, weigh
22 points that I plotted based on information I
23 received regarding this case, and the individual
24 phone numbers and the time or times and the tower
25 location that each phone number was using that

1 tower.

2 MR. BERRY: Beg the Court's indulgence very
3 briefly, Your Honor.

4 (Pause.)

5 BY MR. BERRY:

6 Q Okay. So, first up, North Main Street where
7 the incident happened, where is that?

8 A In the red is the location -- which I indicated is
9 the incident location, North Main Street.

10 Q And how about the Enclave Apartments off of Broad
11 River Road?

12 A (Witness indicates.)

13 Q And, lastly, Windmill Orchard where the vehicle
14 was found?

15 A Enclave Apartments, incident location, titled
16 disabled vehicle, Windmill Orchard Road.

17 Q I want to first ask you about the phone number
18 9542. What is the first time that you
19 have a hit on that phone number? And what is that,
20 what is a hit?

21 A When I located the tower information based on call
22 detail records, I narrowed my timeframe down to
23 around midnight to about 4:00 a.m. So everything
24 you see here is roughly around midnight until maybe
25 4:00 a.m. or a little after.

1 Q And this is just an excerpt from the full data that
2 was compiled from September first --

3 A Yes, sir --

4 Q. -- all the way up until after --

5 A. For the phone number ending in 9542?

6 Q Correct, 9542.

7 A The phone number ending 9542, the first cell phone
8 hit, according to the call detail records, occurred
9 at 12:27 a.m. on the 16th, and it hit Tower 2343.

10 Q Okay. So where is the tower being pinged or hit
11 right now?

12 A It is -- bear with me for just a second(pause).

13 Q In the middle of that circle?

14 A Yes. Actually, if you zoom in on each one far
15 enough, you will actually see the cell phone tower.
16 This long -- right here. Zoom out real quick.

17 Q So a person using that phone number gets a call or
18 text and from a ping off of that tower?

19 A Right. This -- what you see here is the tower.
20 This point -- when you see these circles, this
21 point, the beginning of the point, is the tower
22 itself. And the caller or the person using the
23 phone can be pretty much anywhere in this radius.

24 Q Now, why is it that radius? What does that radius
25 represent?

1 A That radius -- when I entered the information into
2 the -- my software to print up the pretty map, I
3 went with a radius of three miles, 3-mile radius.
4 So anywhere around this is 3-mile radius. Three
5 miles is generally --

6 Q So let me ask you this. Could it be --
7 technically, could it be beyond there or even
8 closer?

9 A Right. The thing with the cell phone towers is
10 based on location. The more populated an area is
11 going to be the more towers you are going to have.
12 The more densely populated the area, the less
13 towers you are going to have. Each tower is going
14 to produce a different signal, a radio signal. It
15 could be three miles, it could be out to 15 miles.
16 It is individually based on each tower. Generally,
17 in this area, three miles is --

18 Q Okay. Can we zoom back out? This was the hit at
19 12:27 a.m. on September 16th?

20 A Right. And the hits indicate the phone is in use.
21 It indicates either a call was being made or a call
22 was being received or answered, a text is being
23 made, a text is being received, or data usage, or
24 using data. So the call is -- the phone is active.
25 It is actively being used.

1 MR. BERRY: Can I see the next -- can the jury
2 see the next -- take this one down and show the
3 next one, perhaps? The next chronologically.

4 BY MR. BERRY:

5 Q. What time is that?

6 A This is at 12:29 a.m. Again, hitting Tower 2348.

7 Q And next tower?

8 A The next tower is 12:31 a.m. and hitting Tower
9 2343. So between 27 -- 12:27 a.m. and 12:31 a.m.,
10 the cell phone is hitting the same tower. It may
11 not be in the same location, but it is hitting off
12 the same tower.

13 Q If you could keep just taking the jury through the
14 rest of this time chronology here.

15 A 12:47 a.m., it is hitting, according to call detail
16 records, Tower 5422. And at 1:02 a.m., Tower 5342.
17 1:56 a.m., Tower 23 -- 2432. 1:59 a.m., Tower
18 5506. 2:00 o'clock in the morning, Tower 2437.
19 2:02 a.m., Tower 2437. At 2:06 a.m., Tower 2437.
20 At 2:09 a.m., Tower 5506.

21 Q This is a lot of contacts; right? This -- a lot of
22 phone calls, texts coming in? What is all this?

23 A Yes. This information that you see, the time and
24 the tower location is what the call detail records
25 of the carrier supplies saying that at this date

1 and this time this phone was hitting this tower.

2 Q Please continue.

3 A 2:22 a.m., Tower 2437. 2:25 a.m., Tower 5506.

4 2:27 a.m., Tower 2437. 2:29 a.m., Tower 2431. At

5 2:32 a.m., Tower 2432. At 2:33 a.m., Tower 5501.

6 At 2:39 a.m., Tower 2432. At 2:42 a.m., Tower

7 2201. At 2:46 a.m., Tower 2206. At 2:49 a.m.,

8 Tower 7127. At 2:56 a.m., Tower 5137. At

9 3:18 a.m., Tower 7127. At 3:23 a.m., Tower 2437.

10 At 3:25 a.m., Tower 5572. At 3:29 a.m., Tower

11 5167. At 3:38 a.m., Tower 2602. At 4:09 a.m.,

12 Tower 5428. And at 9:41 a.m., Tower 2437.

13 Q And there is another number down there, -0231.

14 Where is that?

15 A That was a third number that was provided to me

16 shortly after these two numbers. This is showing

17 that this particular number was being used on this

18 cell phone tower at 2:30 p.m. that afternoon.

19 Q Let's switch over from these numbers over to the

20 -6130 number?

21 A Okay.

22 Q If you could just take it from the top and explain

23 to the jury.

24 A Right. This is 11:59 p.m., just shortly before

25 midnight the day before. This is between

1 11:59 p.m. and 12:35 a.m., this cell phone was
2 hitting this tower. There were several calls made,
3 but during this timeframe, this cell phone was only
4 hitting this tower. And same thing at 12:37 a.m.
5 to 12:38 a.m., it is hitting Tower 138. 12:40 a.m.
6 to 1:56 a.m., it is hitting Tower 520. At
7 2:31 a.m. to 2:57 a.m., it is hitting Tower 30. At
8 3:27 a.m -- 3:27 a.m., Tower 520. At 4:01 a.m., it
9 is hitting Tower 138. At 4:07 a.m. to 4:17 a.m.,
10 it is hitting Tower 520. At 4:22 a.m. to -- 4:22
11 hitting Tower 520. At 4:27 a.m. to 4:28, it is
12 hitting Tower 138. 4:20 a.m. to 4:33 a.m., it is
13 back to Tower 520. At 4:32 a.m. to 4:35 a.m., it
14 is hitting Tower 127. And 4:36 a.m. to 4:54 a.m.,
15 it is hitting Tower 31.

16 Q If you could, on this number, can you find the
17 number that starts at 2:31 again? And then again
18 on the -9542 number, can you highlight the
19 number that is --

20 A. It is right there before 3:00 a.m. It's 2:56,
21 Tower 5137.

22 Q Thank you, Investigator. A couple more questions
23 for you.

24 A Sure.

25 Q Do you recognize these -- so this program here, can

1 you print the screenshots from here?

2 A Yes.

3 Q And would printing such screenshots assist the jury
4 in understanding the location of cell phone tower
5 hits?

6 A Yes.

7 Q And these documents, these -- what are these right
8 here? Tell me what these are.

9 A These are the screenshots of the tower location,
10 basically.

11 Q Don't show the jury yet.

12 A I'm sorry. Screenshots of the tower locations.

13 Q So I just showed you State's premarked Exhibit 71,
14 State's premarked Exhibit 69, State's premarked 67.
15 Would you just take a look at each one?

16 A Yes. These are the --

17 Q And 70?

18 A Yes.

19 Q Sixty-eight?

20 A Yes.

21 Q Sixty-six?

22 A Yes.

23 Q And 65?

24 A Yes.

25 Q You've had a chance to see these before, haven't

1 you?

2 A Yes.

3 Q Are these printouts from your program here?

4 A Yes.

5 Q And they accurately reflect the information from
6 these disks that we talked about?

7 A Yes.

8 MR. BERRY: At this point, I'd like to offer
9 into evidence State's premarked Exhibits 65, 66,
10 68, 70, 69, 67 and 71. And request permission to
11 publish them to the jury.

12 BY MR. BERRY:

13 Q Agent, I want to show one more thing before we
14 continue with the request to offer. Can you take
15 that down and pull up on your maps from number
16 22-9542 at 3:29 a.m., can you bring that tower up?
17 And then from the number -6130, can you pull up
18 the hit beginning at 3:27 p.m.? And can you pull
19 up the one at -- I'm sorry, I wanted you to pull
20 up -- go down a little bit. Take that one off.
21 Yes, 329.

22 A 0329 again?

23 Q Yes, sir. Thank you.

24 MR. BERRY: At this point, I'd like to offer
25 these exhibits into evidence and request permission

1 to publish to the jury.

2 MS. SINGLETARY: Without objection, Your
3 Honor.

4 THE COURT: You said with or without?

5 MS. SINGLETARY: I'm sorry, Your Honor,
6 without objection.

7 THE COURT: Okay.

8 (WHEREUPON, State's Exhibit No. 65 was
9 marked for identification and received
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 66 was
12 marked for identification and received
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 67 was
15 marked for identification and received
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 68 was
18 marked for identification and received
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 69 was
21 marked for identification and received
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 70 was
24 marked for identification and received
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 71 was
2 marked for identification and received
3 into evidence.)

4 BY MR. BERRY:

5 Q And very briefly, Agent. Put those on the easel
6 and just walk the jury through. They have
7 basically seen this information, but just so we can
8 make sure we know what we've got here.

9 A Basically, how you see it on the screen here, it is
10 just a printout. It appeared purple, but it is
11 actually blue. I designated each component with
12 its own color. Phone records ending in 9542 is
13 marked in blue, but here it is purple. This is a
14 printout of this. And then the key, it shows the
15 phone number here for this display. It shows the
16 call time and it shows the tower, the number that
17 it is hitting off of.

18 Q And so what times are these?

19 A Twelve -- for cell phone number ending 9542,
20 beginning at 12:27 a.m., 12:29 a.m., 12:31 a.m.,
21 12:47 a.m., 1:02 a.m., 1:56 a.m., 1:59 a.m., and
22 from 2:00 a.m. to 2:06 a.m., all representing that
23 phone ending in 9542.

24 Q And this contains every single plot that you have
25 now on these; correct?

1 A Yes, everything that could be printed out, yes.

2 Q And, now, this has three hits. This has 2:00 to
3 2:06 and three hits. What exactly does that mean?

4 A Multiple -- the phone was in use during this time.
5 It just never hit a different tower. It always --
6 it continuously hit the same tower.

7 Q. That tower for three hits before going to the next
8 tower.

9 Okay. Please continue.

10 A Continuing with the cell phone number ending 9542,
11 beginning at 2:09 a.m., another hit at 2:22 a.m., a
12 hit at 2:25 a.m., a hit at 2:27 a.m., a hit at 2:29
13 a.m., a hit at 2:32 a.m., a hit at 2:33 a.m., and a
14 hit at 2:39 a.m., all regarding cell phone number
15 ending 9542.

16 Q Okay. And this one?

17 A Continuing phone number ending in 9542, another hit
18 at 2:42 a.m., 2:46 a.m., 2:49 a.m., and 2:56 a.m.
19 Almost there.

20 Continuing with cell phone number 9542,
21 3:18 a.m., 3:23 a.m., 3:25 a.m., 3:29 a.m.,
22 3:38 a.m., 4:09 a.m. and 9:41 a.m.

23 Q And those were all the -9542?

24 A Correct.

25 Q Switching here, what is this?

1 A This is for phone number -0231. And this
2 is a tower hit at 2:30 p.m. that afternoon.

3 Q And, now, we are on -6130?

4 A That's correct. This representation shows ten hits
5 or ten usage pings from September 15th at
6 11:59 p.m. through September 16th at 12:35 a.m.
7 This represents ten pieces of activity with that
8 device. At 12:37 a.m. to 12:30 a.m., there was two
9 activity hits for this device ending in 6130. And
10 at 12:40 a.m. to 1:56 a.m., there are 14 activity
11 hit for this phone ending in 6130. And between the
12 hours of 2:31 a.m. and 2:57 a.m., there are seven
13 hits regarding -- or activity hits regarding number
14 ending 6130. Continue?

15 Q Please, sir.

16 A Continuing with 61 -- cell phone ending in 6130,
17 3:27 a.m., 4:01 a.m., there is two activity hits.
18 4:07 a.m. to 4:17 a.m., there is four activities
19 hits. At 4:22 a.m., there is one activity hit. At
20 4:27 a.m. to 4:28 a.m., there is two activity hits
21 located here. And between the hours of 4:28 a.m.
22 and 4:33 a.m., there are four activity hits on this
23 tower. And at 4:34 a.m. to 4:35 a.m., two activity
24 hits. And from 4:36 a.m. to 4:54 a.m., six
25 activity hits from that tower.

1 Q And, lastly, this right here -- this right here,
2 both of those at the top. Why is that?

3 A This is a representation of both phone numbers.
4 Again, 9542 is the purple phone number. Phone
5 number ending in 6130 is the green. At 2:56 a.m.
6 for phone number ending in 9542 hitting off of
7 Tower 537, and at 2:57 a.m., roughly a minute
8 apart, phone number ending in 6130 is hitting off
9 Tower 30.

10 And same thing down here, phone number 9542 at
11 3:29 a.m. is hitting off Tower 5167. And cell
12 phone number ending in 6130 is hitting off Tower
13 520 at 3:27 a.m.

14 Q Thank you very much. Please retake your seat.

15 A (Witness complies.)

16 MR. BERRY: Beg the Court's indulgence.

17 (Pause.)

18 BY MR. BERRY:

19 Q. Thank you, kind sir. Please answer any questions
20 Ms. Singletary may have for you.

21 MS. SINGLETARY: Thank you, Your Honor. May
22 it please the Court?

23 CROSS-EXAMINATION

24 BY MS. SINGLETARY:

25 Q Mr. Van Houten, how are you doing?

1 A Good.

2 Q Now, I just want to talk a little bit about your
3 testimony that you just gave.

4 A Uh-huh.

5 Q Now, you actually -- were you given the specific
6 range for the cell towers that you utilized in this
7 system?

8 A At the time that I was asked to map the tower
9 location, 3-mile radius was given to me.

10 Q And who was that given to you by?

11 A It was given to me by the Solicitor's Office.

12 Q And it wasn't given to you by T-Mobile?

13 A No.

14 Q It wasn't given to you by any other cell phone
15 carrier?

16 A No. Not for this case, no.

17 Q And I know you wasn't in the courtroom the other
18 day, but we had two custodian of records who
19 actually testified in this case.

20 A Right.

21 Q And one of the things that was consistent, I would
22 say, between the custodian of records is that they
23 stated that the range of a cell phone tower differs
24 or varies tremendously?

25 A Yes.

1 Q And that there are several different factors that
2 could actually take that range that you plotted on
3 there from three miles and take it down as small as
4 one mile?

5 A That is correct.

6 Q And it could take it up as big as 15 miles?

7 A Correct.

8 Q And, now, tell the jury, what are some of the
9 factors that affect the range of a cell phone
10 tower?

11 A Sure. Weather, geolocation, if you are within
12 mountains, buildings, very densely populated areas
13 that could affect the signal, solar flares,
14 customer usage could affect signal strength. There
15 is a number of factors that can affect signal
16 strength.

17 MS. SINGLETARY: Beg the Court's indulgence.
18 I'm going to bring it down.

19 THE COURT: Yes, ma'am.

20 (Pause.)

21 BY MS. SINGLETARY:

22 Q And, Agent Van Houten, can you step down for a
23 second, please, sir, and assist me?

24 A (Witness complies.)

25 Q And for the number in blue, could you actually --

1 the , could you just go to like 156, pull
2 that up?

3 A Take those off, too?

4 Q Yes, please take that one off. I'm sorry.

5 A Which number?

6 Q Right here, the -- the 9542. I'm sorry.

7 A Which timeframe?

8 Q Oh, I'm sorry. The 2:02. And then go up to the
9 3:51 -- you know what, let's stay right here for a
10 second before we go on to that.

11 Now, when you plot this 3-mile radius, you are
12 not saying exactly that the person that was using
13 this cell phone was in an exact location?

14 A No, I can't say exactly where in the circle that he
15 is at, but it is somewhere within the circle.

16 Q The person is somewhere within the circle?

17 A Or the phone -- the phone is making activity.

18 Q The phone is somewhere within it?

19 A Somewhere within it.

20 Q And so the person could be right here; correct?

21 A That's -- yes.

22 Q Or they could be all the way down here?

23 A That's correct.

24 Q Or they could be right here?

25 A That is correct.

1 Q Or they could be right there?

2 A Correct.

3 Q Now, could you pull up the similar time for
4 -6130?

5 A Tell me which time you want.

6 Q Let's say 1:56.

7 A Okay.

8 Q Let's do a more indicative one. Let's go to maybe,
9 let's say 4:01 for that number. And then later
10 around about that time for the number ending 9542.

11 A 4:09. 4:09 a.m.

12 Q Uh-huh. Okay. So on this actual picture, you are
13 showing that there is actually an overlapping of
14 these two particular cell phones?

15 A Well, yes, that is correct. Keep in mind, there
16 are also two different carrier towers, one for
17 T-Mobile and one for Verizon. So, yes, they are
18 overlapping.

19 Q And even though these two are overlapping, you
20 cannot pinpoint a place, a specific place in this
21 overlapping that those two phones were at?

22 A No, not using historical call record data from the
23 carriers, no.

24 Q What would you have to use to pin or try to put
25 someone in a particular area?

1 A I would -- basically, realtime data from two or
2 more towers with actual live tracking, per se, by
3 the carrier.

4 Q And, now, did you have -- did you have that in this
5 case?

6 A No, I -- in my experience, I have yet to see any --
7 it is not realtime tracking more than one tower
8 location using historical call records.

9 Now, if it was an active realtime track yes, I
10 can pinpoint exactly where the phone is at.

11 Q But in this case you weren't able to do that?

12 A No. Not using these records, no.

13 Q And so, again, I am going to say that this green
14 circle representing phone number ending in 6130,
15 that person could have been -- or that phone could
16 have been anywhere in that circle?

17 A That is correct.

18 Q And that person could have actually been outside of
19 that circle?

20 A Right. Depending on the radio frequency
21 interference, something in that nature, yes.

22 Q But that is not indicative on this display?

23 A Right. This is using a 3-mile radius.

24 Q This is just using a 3-mile radius?

25 A That's correct.

1 Q And the radius could be up to as big as 15 miles?

2 A Yes, depending on location, terrain. The further
3 out in the country you go, the less densely
4 populated area, your cell phone towers emit a more
5 powerful signal. And the more densely populated
6 area, you are going to have more cell towers that
7 will not require a broader signal, just more towers
8 to handle the customer call.

9 Q And you made an excellent point earlier, a few
10 minutes ago. You said to me these are two
11 different carriers?

12 A Yes.

13 Q And because there is two different carriers, those
14 two different carriers can have two different
15 ranges?

16 A That is correct. One is the CDMA, which is
17 Verizon, and one is a GSM, which is T-Mobile.
18 Verizon signals are predominantly a little
19 stronger.

20 Q And this does not accurately depict a Verizon
21 signal for these cell phone towers?

22 A No, it could be anywhere from three miles --
23 usually, in a densely populated area, three miles
24 is about the average for Verizon. Of course, it
25 can expand the further you go out in the country,

1 but, yes, three miles -- you know, it is a circle,
2 but it is not the magic cutoff line. The signals
3 can travel for miles and miles and miles. This
4 just represents a 3-mile radius surrounding that
5 tower.

6 Q And I just want to clear a couple of things up.
7 You did not specifically speak to or get any
8 information from a telecommunications engineer from
9 Verizon Wireless, did you?

10 A In this particular case, no. I relied on the
11 information provided by the Solicitor. It was my
12 understanding they were going to bring a
13 representative in to explain.

14 Q And if I tell you that those representatives who
15 came in and explained gave me -- gave this Court
16 very different ranges of cell phone towers, would
17 you say that that --

18 A Yes, it is very possible. The tower -- the signal
19 towers reaches -- or the signal range, radio signal
20 tower could be vastly different.

21 Q Because, as a matter of fact, the representative
22 that came from T-Mobile actually testified that it
23 could be -- the rule of thumb is that the range is
24 one to one and a half miles?

25 A Yes, it is possible for a GSM network by T-Mobile

1 or AT&T to have that.

2 Q And that it could be up to as many as 15 miles?

3 A Yes.

4 Q And Verizon, they broke it down, they said that in
5 an urban area it could be zero to three miles?

6 A Right.

7 Q And then in a suburban area it could be zero to
8 five miles?

9 A Right.

10 Q And then they said in a rural area it could be zero
11 to 15 miles?

12 A Right. It varies depending on the location and the
13 terrain where each tower is located.

14 Q Now, let me ask you this. Do you know what type of
15 terrain T-Mobile considered where these cell phone
16 towers were?

17 A I'm assuming -- and, again, I'm just assuming --
18 they are going to classify it as a predominantly
19 congested area, their lowest signal, because they
20 are going to have more towers based on a more
21 populated area.

22 Q But you didn't get that information from them?

23 A No.

24 Q And for Verizon, do you know what Verizon considers
25 the area where these cell towers were at?

1 A Again, I presume it is going to be their 3-mile
2 radius for the densely populated area.

3 Q But you didn't speak to any engineer and get the
4 specifics?

5 A No. The information I received on the -- doing the
6 3-mile radius for each cell phone tower was based
7 on the Solicitor's Office.

8 Q And in your demonstration, you are simply trying to
9 demonstrate where two different cell phones could
10 have been at particular times; correct?

11 A Could have been -- what I'm trying to demonstrate
12 is the cell phones were using a particular tower at
13 a particular location, yes.

14 Q And you are not saying that a particular person --

15 A No, I cannot say that at all.

16 MS. SINGLETARY: I have no further questions.

17 THE COURT: Anything further from the State?

18 MR. BERRY: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BERRY:

21 Q Agent, I first want to address different carriers.
22 Do they share towers? All the carriers, they use
23 the same towers?

24 A Generally GSM, which is AT&T -- I'm sorry GSM,
25 AT&T, T-Mobile, some Cricket, some Metro PCS, they

1 lease -- how do I say it? Say T-Mobile has a tower
2 and you are a Metro PCS customer. Well, Metro PCS
3 is going to lease time from the AT&T tower or
4 T-Mobile tower. So, yes, they do share -- GSM does
5 share GSM towers. They do not share CDMA towers,
6 such as Verizon or Sprint. Sprint and Verizon may
7 share a tower because they are the same signal,
8 they are CDMA signals.

9 Q So do some companies use different towers, like
10 T-Mobile might use this tower and Verizon might use
11 this tower; is that correct?

12 A That is correct.

13 Q They don't share?

14 A Correct.

15 Q So could I be five feet from someone if we have
16 different -- we both have a phone on us and we have
17 different carriers, would we be pinging from two --

18 A You will not be hitting the same towers. You would
19 not be hitting each other's carriers tower at all.

20 Q Even though we're only five feet from each other?

21 A That's correct.

22 Q And realtime data, live tracking, I believe was
23 mentioned?

24 A Yes.

25 Q Re-explain what exactly that is.

1 A Live tracking is -- in certain circumstances, law
2 enforcement can contact the carriers, AT&T,
3 T-Mobile, Sprint, whoever it may be. If we are
4 looking for a person, say a missing person, we can
5 contact the carrier and say we need to find this
6 phone with this IMEI number, which is the
7 International Manufacturing Equipment
8 Identification. Each phone has an IMEI number. It
9 is the fingerprint to that phone. And we can
10 contact the carrier with a court order and say we
11 need to locate this person. The carrier will then
12 send a signal to the phone, which will use two or
13 more towers, sometimes three, and it will base that
14 signal at the location where the phone is at.

15 So think of it as a radar that sends a signal
16 out. In the time it takes to get that phone and
17 come back, you've got a pretty good idea. It is
18 hitting one tower. On two towers, we are getting
19 two locations, we have a better idea. Using three
20 towers, we'd have a pretty good location within
21 about 20 to 50 feet.

22 Q So that is realtime?

23 A Yes.

24 Q That is when you know the act is going on, you're
25 actually tracking it?

1 A Yes.

2 Q She also mentioned historical records. Is that
3 what we have here?

4 A That's what you have here.

5 Q Why do we have historical records here?

6 A Because the realtime tracking has to be activated
7 by the carrier at that time. That information is
8 not stored by the carrier. The only information
9 that the carrier was going to store is time and
10 whether a call was placed or received on that phone
11 by their tower so they can properly bill you or
12 bill your subcarrier, such as Metro PCS or Cricket.

13 Q So when we go back in time to look at what
14 happened, this is what we got?

15 A That is correct.

16 Q And what you plotted here is historical records?

17 A It is historical records only showing one tower.

18 Q What you receive --

19 MR. BERRY: Okay. No further questions.

20 THE COURT: All right. Anything else?

21 MS. SINGLETARY: No, Your Honor.

22 THE COURT: All right. You may step down.
23 Any objection to this witness being excused?

24 MS. SINGLETARY: No, Your Honor.

25 THE COURT: All right. You are free to leave.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness steps down and is excused.)

3 MS. BODMAN: May we approach?

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 COURT: Ladies and gentlemen of the jury,
8 we are going to take like a five or ten minute
9 break, then I'll have you all back shortly. We
10 should not be here late this evening like last
11 night. I have a couple of housekeeping matters,
12 and then I'll bring you back in.

13 (WHEREUPON, the jury retires to the jury
14 room at 4:59 p.m.)

15 THE COURT: Do you think that's enough time
16 for you guys?

17 MS. BODMAN: I'll let you know.

18 THE COURT: Okay. Because I'd like to -- what
19 I want to do is advise him of his rights, give him
20 the evening and Ms. Singletary the evening to
21 discuss whether or not he is going to put up any
22 evidence. And then I would like to start -- well,
23 depending on what the Defendant does, of course.
24 If he puts up evidence, we won't, but if he does
25 not, then I would like to start closing arguments

1 around 9:30. If he does, then, of course, it will
2 be later, but that's fine, if he decides.

3 All right. Before we end this evening, let me
4 have Mr. Green stand up.

5 (The Defendant complies.)

6 THE COURT: Becky, can you swear him?

7 THE CLERK: Raise your right hand.

8 (The Defendant complies.)

9 THE CLERK: Do you swear or affirm to tell the
10 truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Thank you.

14 All right. Mr. Green, the State has informed
15 me that that was their last witness, so they are
16 going through exhibits at this point in time to
17 make sure that everything that was entered into
18 evidence is over there and was entered.

19 But at this time I am going to explain to you
20 certain rights that you have. If you do not
21 understand anything I say, please let me know. If
22 you want me to explain anything in more detail,
23 please let me know. Do you understand, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. We have reached the

1 stage in the trial -- well, tomorrow, we will reach
2 the stage in the trial where you may present your
3 defense. You have the right to claim the
4 protections given to you by the Fifth Amendment to
5 the constitution of the United States. This
6 amendment states in part that no person shall be
7 compelled in any criminal case to be a witness
8 against himself. This means that you cannot be
9 required to testify in this case. You have the
10 right to testify on your own behalf; however, no
11 one can make you testify. This is a personal right
12 and no one can waive this right except for you.

13 If you decide to testify, you would be subject
14 to the same rules that govern other witnesses and
15 you may be examined and cross-examined on any
16 relevant issue in this case.

17 In addition, if you have any convictions
18 involving dishonesty, a false statement, or for
19 crimes punishable by imprisonment for more than one
20 year and the Court determines that the probative
21 value of admitting this evidence outweighs the
22 prejudicial effect to you, the Solicitor will be
23 able to introduce your record to attack your
24 credibility.

25 If you decide to testify, the decision on your

1 part must be freely, voluntarily, and intelligently
2 made with the knowledge and protections given to
3 you by the Fifth Amendment and the consequence of
4 your decision to testify.

5 If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you
7 did not testify any consideration whatsoever, and
8 that there is to be absolutely no prejudice to you
9 because you did not testify. It is left entirely
10 up to you whether or not you testify. You may talk
11 with your attorney, your family and friends, or
12 anyone else, but the final decision will be left
13 entirely up to you.

14 Do you understand what I just explained to
15 you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about
18 what I have explained to you?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: All right. Over the evening, I am
21 going to give you an opportunity to speak with your
22 attorney about what we just discussed. And in the
23 morning, I will ask you -- put you back under oath
24 and ask you at that time if you desire or wish to
25 testify after consulting with your attorney.

1 All right. Just remember the decision is
2 ultimately yours.

3 THE DEFENDANT: Yes, ma'am. Thank you.

4 THE COURT: Thank you. You may be seated.

5 (The Defendant complies.)

6 THE COURT: You know what, why don't y'all
7 take time to look at it overnight? We will come
8 back in the morning. You can rest on the record,
9 then I'll send them back out. Well, you know what?
10 If we start at 9:00, you can rest and then you can
11 officially rest in front of them.

12 MS. BODMAN: We can actually put it on the
13 record that we're resting, do it officially in
14 front of the jury.

15 THE COURT: Okay. And Stacy has e-mailed you
16 all a proposed jury charge and also a proposed
17 verdict form. Take a look at that. And she and I
18 both are usually on our e-mail throughout the
19 evening, so if there is anything -- any
20 communications or anything, you can e-mail us. And
21 that way, if she needs to make any changes that we
22 can all agree on, if there was something that was
23 left out, just e-mail us and we'll try to get that
24 done before tomorrow morning.

25 MS. GARFIELD: And, Judge, we might want to

1 submit a couple of requests to charge, one felony
2 murder and one hand of one, hand of all.

3 THE COURT: Anything you can think of, Ms.
4 Singletary?

5 MS. SINGLETARY: Not at this time, Your Honor,
6 except for voluntary manslaughter. I think we have
7 to make a determination as to whether or not that
8 charge could actually be relevant based on the
9 testimony presented in the case in chief.

10 THE COURT: Do we need to start at 8:30 in the
11 morning? I can have them come at 9:30. Do we need
12 to start at 8:30?

13 MS. SINGLETARY: The argument is that Austin
14 Murray attests to that was going on at the time.
15 He said that there was an argument prior to the
16 shooting. That is why she said that I went into it
17 so long.

18 THE COURT: Voluntary manslaughter.

19 MR. GARFIELD: And we don't have to decide
20 right this second.

21 THE COURT: Let me take a look at it. And I
22 may have Debbie e-mail me what she has. So that's
23 what you're relying on? That's the only portion of
24 the testimony you're relying on?

25 MS. SINGLETARY: Well, not only that, but the

1 testimony that came out previous that on that night
2 it was told to law enforcement that the victim had
3 actually hit his girlfriend, Shemica Johnson, with
4 an actual tool. So not saying that we submitted
5 any information that he was going to hit my client,
6 but I think that that leads up to kind of like the
7 aggression and the victim actually being on drugs
8 on that night.

9 THE COURT: But he would -- and I'm thinking
10 outloud, but how would your client know anything
11 about the incident between him and the girlfriend?

12 MS. SINGLETARY: And I'm not saying that my
13 client would actually know that, I'm just saying
14 that that just goes ahead -- it sets a pattern of
15 aggressive behavior and combative behavior on the
16 part of the victim.

17 THE COURT: Okay. All right. I'll see if I
18 can have -- I will definitely have her find the
19 testimony regarding the incident where the car hit.

20 MS. BODMAN: Actually, I objected to it,
21 though, as completely irrelevant, whether or not he
22 hit his girlfriend that night hours earlier and
23 whether or not the Defendant, you know, is the one
24 that killed Michael Davis. I actually objected and
25 we approached. It was a completely --

1 MS. SINGLETARY: I don't think that it was
2 actually sustained, however. I believe I was asked
3 to rephrase my line of questioning.

4 THE COURT: We'll take a look at it.

5 Let me bring the jurors back in, and then we
6 can continue this. We can let them go.

7 MS. GARFIELD: Murder, obviously, in a drug
8 deal, and hand of one, hand of all. Curtis Wright
9 scoots over to the driver's seat. Obviously, there
10 has been no evidence submitted that Mr. Green is
11 actually the one driving the car, but we would
12 argue hand of one, hand of all for the carjacking.

13 MS. BODMAN: Because he orders him -- once he
14 is shot and the victim falls out of the car, he
15 says, Drive, Drive. So he orders Austin Murray to
16 take control of that vehicle and leave the scene.

17 THE COURT: Let me take a look at that. I
18 looked at it earlier. And voluntary manslaughter,
19 I'll take a look at that.

20 And you said something else you wanted or was
21 it just voluntary?

22 MS. SINGLETARY: It was just voluntary.

23 THE COURT: All right. Let's bring them in
24 and let them go. Are we good at telling them 9:30?
25 It sounds like we've got a lot to do in the morning

1 before they get here.

2 But Mr. Bowen, tell them 9:30 because we
3 probably won't -- I don't -- I know you normally
4 tell them to get here at 9:15.

5 THE BAILIFF: Right.

6 THE COURT: It may -- I don't want them to
7 come 15 minutes early. It may be about --

8 THE BAILIFF: I can tell them to be here at
9 9:30, 9:45, whichever you --

10 THE COURT: 9:30, so they'll be here about
11 9:45.

12 THE BAILIFF: All right. Got you.

13 (WHEREUPON, the jury came into open
14 court at 5:11 p.m.)

15 THE BAILIFF: The jury is present, Your Honor.

16 THE COURT: All right. Ladies and gentlemen
17 of the jury, we are finished with our witnesses for
18 today. I will go ahead and tell you more than
19 likely we will be ordering lunch again tomorrow --
20 we will be ordering lunch tomorrow. So I am going
21 to ask you all to get here at 9:30. I know
22 Mr. Bowen normally gives 15 minutes ahead of time,
23 but you need to be here at 9:30, then we'll take
24 the orders -- she'll take the order. We'll be in
25 here working. We'll be here before 9:30. So she

1 will take your orders in the morning. And like she
2 said yesterday, we only have two or three options,
3 so I guess you can either choose the same or choose
4 another.

5 But I do want to remind you at this point, you
6 have received a lot of testimony and a lot of
7 evidence. You cannot discuss the case until you
8 have received all of the evidence, the arguments of
9 the parties and the charge on the law. It would
10 also be improper for you to talk to your family
11 members. It would be improper for you to do any
12 research regarding anything that we have discussed
13 here today or this week. And it would be also
14 improper for you to form an opinion in your mind at
15 this time until you have received all of the
16 evidence, the arguments of the parties, and the
17 charge on the law.

18 So I am going to send you home. We will see
19 you back at 9:30 in the morning. And -- see you
20 back at 9:30. She will be at the door to take your
21 orders at that time.

22 Have a great evening. Thank you.

23 (WHEREUPON, the jury is excused for the
24 day at 5:14 p.m.)

25 THE COURT: So you all want to start at 9:00

1 in the morning?

2 Ms. Singletary, you need to hold your client
3 to talk to him?

4 MS. SINGLETARY: Yes, Your Honor. I guess no,
5 Your Honor.

6 THE COURT: They'll hold him for a second.
7 We're getting out earlier, so they'll hold him
8 downstairs. If you want to -- what is the easiest?

9 THE BAILIFF: Downstairs.

10 THE COURT: They'll hold him downstairs.

11 MS. SINGLETARY: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MS. BODMAN: (Nods negatively.)

14 THE COURT: So I'll see you all at 9:00 in the
15 morning. We'll try to crank up the air.

16 (WHEREUPON, court adjourned for the
17 evening at 5:15 p.m.)

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19 (WHEREUPON, the proceedings resumed at
20 9:21 a.m.)

21 THE COURT: All right. We are all ready to
22 go.

23 All right. Anything that we need to put on
24 the record? I guess the State is going to rest
25 this morning?

1 MS. BODMAN: Yes, Your Honor.

2 THE COURT: Officially? Are we going to do
3 it -- are you going to rest now and then I can hear
4 your motions?

5 MS. BODMAN: There are two items of evidence I
6 need to move in that I -- one of them, I guess we
7 thought we had, but the record does not reflect
8 that we did, and the other one I clearly did not.
9 It is 11, State's Exhibit 11, which is the map of
10 the area showing -- the Google Map, and it just
11 shows where all the cameras were that were
12 testified to, the Hess station where Mr. Davis was
13 found, the A-1, and those markings that was done as
14 people testified onto the map. And the other one
15 was State's Exhibit 7, which is the photo array
16 that Austin Murray identified Cheo. And it was all
17 testified to, but I just didn't move the actual
18 array in with the identification.

19 MS. SINGLETARY: No objection, Your Honor.

20 THE COURT: All right. Those will be entered
21 in without objection.

22 (WHEREUPON, State's Exhibit No. 7 was
23 marked for identification and received
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 11 was
2 marked for identification and received
3 into evidence.)

4 THE COURT: Anything else?

5 MS. BODMAN: No. We do have, I guess, some
6 discussion about the jury charge, but -- do you
7 want to do that now?

8 THE COURT: Yes, we are going to do it all,
9 but I need you to rest so I can --

10 MS. BODMAN: All right. The State rests.

11 THE COURT: All right. Any motions?

12 MS. SINGLETARY: Yes, Your Honor. At this
13 time, the Defense actually moves for a directed
14 verdict motion in this matter, Your Honor. It
15 would be the State's contention that the State --
16 it would be the Defense's contention that the State
17 has not actually presented substantial
18 circumstantial evidence in order for these charges
19 to be sent to the jury, Your Honor.

20 THE COURT: All right. I'll be glad to hear
21 from the State, and then I will give her an
22 opportunity to respond.

23 MS. BODMAN: We presented direct evidence.
24 Austin Murray was in the car, saw it all, and
25 identified the Defendant as the shooter. It is

1 direct evidence.

2 THE COURT: All right. Anything else?

3 MS. SINGLETARY: Yes, Your Honor, at this time
4 the Defense would like to renew all their previous
5 objections and their previous pretrial motions.

6 THE COURT: All right. And that would be the
7 motion regarding the cell phone?

8 MS. SINGLETARY: I'm sorry?

9 THE COURT: That is the motion regarding the
10 cell phone?

11 MS. SINGLETARY: Yes, Your Honor.

12 THE COURT: All right. As to the motion for
13 directed verdict, I do find that there has been
14 evidence presented to the jury regarding, I guess,
15 direct evidence through the testimony of the
16 Co-Defendant in this case. Also, there has been
17 circumstantial evidence presented. And that there
18 is a genuine issue of fact that should be presented
19 to the jury.

20 So I am going to respectfully deny the motion
21 for directed verdict. And that is to both -- that
22 is to all three charges; is that correct?

23 MS. SINGLETARY: Yes, Your Honor.

24 THE COURT: Your motion as to all three
25 charges?

1 MS. SINGLETARY: Yes, it was as to all three
2 charges, Your Honor.

3 THE COURT: All right. And also the Defense
4 has renewed previous objections to their motion
5 and -- pretrial motions and objections throughout
6 the trial.

7 I am going to respectfully deny those for the
8 reasons stated earlier.

9 All right. So let me ask you -- let me go
10 ahead and ask you this. On yesterday I went
11 over --

12 Let me have Mr. Green stand up.

13 (The Defendant stands.)

14 THE COURT: All right. On yesterday,
15 Mr. Green, I went -- let me have you raise your
16 right hand.

17 (The Defendant complies.)

18 THE COURT: Do you swear or affirm to tell the
19 truth, the whole truth, so help you God?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. So on yesterday I went
22 over your constitutional rights with you, and
23 specifically regarding the right to testify or your
24 right not to testify and present evidence against
25 yourself.

1 And on yesterday evening we gave you an
2 opportunity for your attorney to come downstairs
3 and meet with you and discuss everything with you.

4 And now we are at the point of you all making
5 a decision, or you making a decision as to whether
6 or not you wish to testify. And if you do wish to
7 testify, we will do that this morning. If you
8 decide not to, I will prepare a jury charge, which
9 will instruct the jurors that they cannot hold that
10 against you and that -- actually, they are not even
11 to discuss the fact that you did not testify.

12 Ms. Singletary, have you and your client had
13 ample enough time to discuss his right to testify,
14 his constitutional right?

15 MS. SINGLETARY: We have, Your Honor. Me and
16 my client had a discussion about his right to
17 testify yesterday afternoon. Additionally, I met
18 with my client this morning in the holding cell and
19 we discussed whether or not he had had a change of
20 heart overnight and whether or not he wanted to
21 testify. He has told me that he does not want to
22 testify.

23 THE COURT: All right. Thank you. Do you
24 know if you will be presenting any evidence?

25 MS. SINGLETARY: Your Honor, the Defense will

1 not be presenting any evidence.

2 THE COURT: All right. Let me have you close
3 the door, because the jurors are going to be
4 walking in, and I don't need them hearing anything.

5 THE BAILIFF: I have them all.

6 THE COURT: Oh, they are all here? Okay.
7 You may be seated, sir.

8 (The Defendant was seated.)

9 THE COURT: Let's talk about the jury charge
10 real quick. And then we will -- procedurally, I
11 will bring the jury in -- I'm thinking I'll bring
12 the jury in, the State will rest, then I'll ask the
13 Defense if they have anything, and then they'll
14 rest, and then we can go into closing arguments.

15 Who is closing?

16 MS. BODMAN: I am.

17 MS. SINGLETARY: Oh, I am, Your Honor.

18 THE COURT: And you are going to get last
19 word?

20 MS. SINGLETARY: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. GARFIELD: Judge, there are only two
23 additional requests from yesterday, felony murder
24 and hand of one, hand of all. We did draft the
25 proposed instruction for Your Honor.

1 Your Honor, there was evidence introduced that
2 Mr. Green was engaged in an attempted illegal drug
3 transaction that led to the murder of Mr. Davis, so
4 we do believe a felony murder instruction is
5 warranted at this time.

6 And the hand of one, hand of all, I have two
7 reasons for submitting that. One, Austin Murray
8 did testify that he was the one that scooted over
9 and drove. I think it may be misleading or
10 confusing for the jury to understand why the
11 Defendant would be charged with carjacking not
12 having a proper instruction of hand of one, hand of
13 all when he wasn't the one actually driving the
14 car, even though he ordered Mr. Murray to drive the
15 car, and they may not understand why they are both
16 charged with that. As well as Mr. -- in the same
17 vein, Mr. Murray is charged with murder, they may
18 not understand why he is charged with murder when
19 he is not the one -- or the evidence hasn't
20 suggested that he is the one that pulled the
21 trigger. So I believe hand of one, hand of all
22 would help the jury understand the law of our
23 state.

24 THE COURT: All right. I'll be glad to hear
25 from the Defense.

1 MS. SINGLETARY: Thank you, Your Honor. As it
2 relates to the felony murder charge, the Defense
3 understands the fact that my client is actually
4 charged with a felony and that is why the State is
5 actually asking for the felony murder charge, and
6 we do not contest the felony murder charge.

7 As its relates to the hand of one, hand of all
8 charge to the jury, Your Honor, the Defense would
9 actually like to address this issue as a matter of
10 law.

11 Your Honor, throughout the duration of the
12 State's case in chief, there was testimony by
13 Austin Murray more specifically that he had nothing
14 to do with the murder. And when I say that he had
15 nothing to do with the murder, throughout his
16 testimony he stated that my client was the shooter,
17 that he did not act in concert with my client. As
18 a matter of fact, Austin Murray said he actually
19 tried to talk my client out of doing something
20 irrational. So, therefore, he did not act in
21 concert with him as it relates to the murder. So
22 how can the State have two inconsistent theories to
23 say that my client is the shooter and have Austin
24 Murray testify to the fact that my client is the
25 shooter, and have Austin Murray testify to the fact

1 that he had nothing to do with the murder, but now
2 at this juncture say that, Okay, well, Austin
3 Murray testified to the jury and said he wasn't the
4 shooter and he had nothing to do with it? But now
5 he wants the jury to hear this alternative theory
6 that, Okay, maybe Austin Murray did have something
7 to do with it. Maybe he did act in concert with
8 Mr. Green. And there is nothing on the record that
9 clearly shows or even indicates slightly that
10 Austin Murray acted in concert with Mr. Green.

11 Now --

12 THE COURT: What about the carjacking?

13 MS. SINGLETARY: Oh, I'm sorry. That --

14 THE COURT: I think that might be where the
15 hand of one, hand of all may come up is the
16 carjacking part, the charge of the carjacking.

17 MS. SINGLETARY: Well, Your Honor --

18 THE COURT: Based on Murray -- I thought about
19 this actually earlier yesterday. He testified that
20 they all -- that they both rode around after --
21 even after the shooting, regardless -- let's say,
22 regardless of whichever one of them did it. Then
23 they both took the car and they rode around for
24 several hours. According to Murray, they rode
25 around in the car for several hours after, went to

1 somebody's house, picked up -- just based on that
2 testimony, that is why I'm thinking the hand of
3 one, hand of all might come into play. But I
4 don't -- of course, I can't get into commenting on
5 the facts.

6 MS. SINGLETARY: Well, Your Honor, Austin
7 Murray made a point of saying that after, according
8 to his testimony, my client shot Mr. Davis, that he
9 was frozen and my client immediately demanded him
10 to Drive, Drive, Drive. So because my client
11 demanded him to drive and he felt that he was
12 threatened because of the fact that he said that my
13 client actually had just pulled a gun out on
14 somebody. And I don't know if Your Honor
15 remembers, I kept asking Austin Murray over and
16 over again, Well, if you were so threatened, did my
17 client actually place a gun on you? And so I had
18 to rephrase my question to say, Did my client point
19 a gun at you?

20 So he was making a point that he didn't
21 voluntarily want to drive, that my client actually
22 demanded that he drive.

23 Then after that point, Austin Murray says that
24 my client demanded him to take him to two different
25 locations in Spring Valley. So Austin Murray's own

1 testimony says that he is not a willing participant
2 to actually driving this vehicle. Therefore, he
3 did not act in concert with my client as it relates
4 to the carjacking charge.

5 So, again, I say that the jury can't hear from
6 Austin Murray that he was scared of my client and
7 he -- he was fearful for his life, that is why he
8 actually immediately jumped in the driver's seat
9 after Mr. Davis was shot, and he was scared for his
10 life and he feared for his life, and that is why he
11 went to two different locations after my client
12 demanded him to go to these two locations, Your
13 Honor. Clearly, that does not show that Austin
14 Murray acted in concert with my client.

15 And having the jury have this alternative
16 theory that he is somewhat culpable now, in his
17 testimony, clearly, Austin Murray is saying, I
18 really had nothing to do with this. I was at the
19 wrong place at the wrong time. And Mr. Green, by
20 himself, decided to do all of these things.

21 THE COURT: All right. Anything else from the
22 State?

23 MS. BODMAN: No. We just believe clearly from
24 the facts hand of one, hand of all is applicable.

25 THE COURT: All right. Well, I think based on

1 the testimony given by Murray earlier this week, I
2 do find that the hand of one, hand of all is an
3 appropriate charge.

4 I did not put in there the mere presence. I
5 was going to ask Ms. Singletary about that.

6 Did you want that?

7 MS. SINGLETARY: Yes, Your Honor.

8 THE COURT: All right. So add that one. And
9 that one just says that they have to prove beyond a
10 reasonable doubt that your client participated in
11 the crime.

12 Any position regarding that?

13 MS. BODMAN: None, Your Honor. If she wants
14 it --

15 THE COURT: I usually charge that.

16 All right. Anything else from the State?

17 MS. BODMAN: Yes. I did notice a couple of
18 things in here is, under when you are talking
19 about -- under the definition of murder at the
20 bottom of Page 11 that goes into 12, you have
21 that -- there is an instruction about a hand or
22 fist is not normally considered a deadly weapon. I
23 just don't -- there is no testimony of any --

24 THE COURT: That is just standard. I think
25 that it is just the standard.

1 MS. BODMAN: I think on the record -- I mean,
2 on the facts that there was like a fighting, but.
3 It is just a small paragraph just before you start
4 with the carjacking.

5 THE COURT: Yes, that is just the standard
6 charge.

7 MS. BODMAN: Under the definition of
8 possession of a weapon during the commission of a
9 violent crime at the end -- I have it on Page 13,
10 it is before you get to intent, it said murder is a
11 violent crime. They also need to be instructed
12 that carjacking is a violent crime because
13 potentially I guess they could say, Oh, we think
14 that Austin Murray is the one who committed the
15 murder, but Cheo was involved in the carjacking.

16 THE COURT: All right.

17 MS. BODMAN: The statement of the Defendant,
18 we didn't admit his statement in evidence, so that
19 needs to be taken out. We didn't offer Cheo's
20 statement.

21 THE COURT: What about the --

22 MS. BODMAN: That whole instruction just has
23 to do with the Defendant himself on trial. It
24 doesn't go to -- it wouldn't go to Austin Murray.
25 It only goes to if we are trying to offer --

1 THE COURT: No, no, no. I was thinking the
2 guy that Ms. Garfield cross-examined.

3 MS. BODMAN: Jamil Brennan?

4 THE COURT: Yes.

5 MS. BODMAN: You addressed that in a separate
6 instruction about prior inconsistent statements.

7 THE COURT: Not Brennan, Wright. When she
8 read in the statement.

9 MS. BODMAN: Oh, yes. That instruction, you
10 have in there, you talk about prior statements.
11 But this instruction, the statement of the
12 Defendant is when we are offering the
13 Defendant's --

14 THE COURT: I know, the Defendant's statement.

15 MS. BODMAN: From law enforcement. But all
16 that needs to be --

17 THE COURT: Let me look at the one -- and,
18 Ms. Singletary, look at the one about statement of
19 witnesses and see if that is sufficient.

20 MS. SINGLETARY: Okay.

21 THE COURT: Because this was testimony from --
22 who is one who didn't know anything?

23 MS. BODMAN: Curtis Wright.

24 THE COURT: Or couldn't remember?

25 MS. BODMAN: The paranoid schizophrenic.

1 THE COURT: But his statement -- it would be
2 an inconsistent statement.

3 MS. BODMAN: Right. I can't find it now, but
4 you have an instruction in here about prior --

5 THE COURT: It is on Page 5.

6 MS. BODMAN: Prior inconsistent statements, I
7 have it on Page 5. After you talk about prior
8 record, witness confirms statements.

9 THE COURT: Okay. And I put in here to give
10 it the weight you think it deserves. Okay.

11 MS. SINGLETARY: That is sufficient, Your
12 Honor.

13 MS. BODMAN: Then the instruction on proximate
14 cause I think just confuses. There is no second
15 injury here.

16 MS. SINGLETARY: No.

17 MS. BODMAN: This man died within 30 minutes.

18 THE COURT: Okay.

19 MS. BODMAN: I think that is all I saw.

20 MS. SINGLETARY: I don't see anything else,
21 Your Honor.

22 THE COURT: All right. Yes, ma'am? Anything
23 from you regarding the jury charge? I know you
24 asked on yesterday a charge on voluntary?

25 MS. SINGLETARY: Yes, Your Honor.

1 THE COURT: And just for the record, I did go
2 back -- the court reporter -- and I may actually
3 make this a part of the record -- actually, I'll
4 read it into the record also -- but the court
5 reporter pulled up the testimony of Austin Murray.

6 MS. SINGLETARY: Yes, ma'am.

7 THE COURT: I think this is your
8 cross-examination. I think it is your
9 cross-examination. And it says, basically --

10 Well, the question was: So did the victim
11 say, Hey, guys, what's up? Are you going to get me
12 straight? Did you say it like that?

13 And the answer was, basically: So he was --

14 Question is: So he was just calm about
15 getting his drugs?

16 And the answer is: Yes, because it wasn't
17 no -- it wasn't like a hostile environment yet. It
18 was like it didn't get out of hand yet.

19 Question: Now, you testified that there was a
20 hostile environment on direct examination?

21 Yes, after like a little argument between the
22 victim and Cheo.

23 Question: So is it your testimony that the
24 victim was calm and said, Hey, are y'all going to
25 get me straight? Where are the drugs? And just

1 out of the blue, my client just gets mad?

2 Answer: I mean, I can't really say why he got
3 mad. I can't -- I can't really say that. Like, he
4 was calm because, like, it was a long time ago, but
5 I know he wasn't -- like, he wasn't aggressive.

6 He wasn't aggressive at all?

7 Answer: No.

8 Question: So this wasn't an aggressive
9 argument?

10 Answer: No. When he -- when he asked, like,
11 us to get him, like, what's up with the drugs, he
12 wasn't aggressive at all.

13 Question: So was the argument at some
14 point -- was the argument -- at some point did the
15 victim getting aggressive?

16 Not that I remember, no.

17 Question: So there is no need to get upset if
18 the victim is so calm?

19 Answer: I guess so.

20 And that was the conversation I think you
21 referenced yesterday regarding the testimony or, I
22 guess, what was classified as an argument, a calm
23 argument, I guess, by Mr. Murray. And I think that
24 was the reason you were asking for the voluntary?

25 MS. SINGLETARY: That is correct, Your Honor.

1 THE COURT: And there are some cases out
2 there -- I'll put them on the record -- I wanted to
3 put that on the record. I'll mark this as Court
4 Exhibit 1. But I'll be glad to hear from you all
5 regarding the voluntary manslaughter as a charge.
6 And I have looked at some cases, but I'll be glad
7 to hear from some authority regarding that.
8 Usually, the voluntary is in the heat of passion.
9 And, I don't know, even based on the
10 cross-examination, it sounds like it wasn't. He
11 said everything was calm, so.

12 MS. SINGLETARY: Your Honor, we would stand by
13 our request on yesterday afternoon.

14 THE COURT: Okay. All right.

15 Yes, ma'am?

16 MS. GARFIELD: And, Judge, just to support
17 your ruling as well as our position, just for the
18 record, I'd like to submit several cases that do
19 support that words alone do not suffice for a
20 voluntary instruction.

21 Just for the record, State v. Johnson, 476
22 S.E.2d 681; State v. Collins, 682 S.E.2d 898; State
23 v. Starnes, 698 S.E.2d 604. Most recently, State
24 v. Cook. This was just published this past
25 December, Judge, where, essentially, the State had

1 requested an instruction on voluntary where there
2 is no evidence to support this charge, and it was
3 reversed. State v. Harvey, 68 S.E.2d 409, as well
4 as, Judge, I am submitting the actual voluntary
5 manslaughter instruction from the Judge's book
6 where it specifically says words alone, however
7 vulgar or insulting, are not enough to be legal
8 provocation for death caused by use of a deadly
9 weapon. The words must be accompanied by some
10 overt threatening act which could have been --
11 which could have produced heat of passion.

12 I would submit those for the record.

13 THE COURT: All right. Also, State v. Lowery.
14 I'm not sure she -- I think that is one of the
15 older ones. It is 315 S.C. 396. And State v.
16 Frazier, a 2013 Court of Appeals case. And that is
17 401 S.C. 224. And all of those cases state that
18 there has to be more than just words. It has to be
19 some overt act, some threatening act or threatening
20 behavior, in the heat of passion, it has to be some
21 evidence that the Decedent was about to initiate a
22 physical encounter when the shooting occurred.

23 And I looked at it and read over the
24 transcript, and viewing it in the light most
25 favorable to the Defendant, I still did not see any

1 evidence of any overt act or threatening behavior.
2 There is no testimony of any threatening act or
3 threatening behavior as it pertains to the Decedent
4 in the case.

5 And for that reason, I am not going to charge
6 the voluntary manslaughter. I will make the
7 transcript -- portion of the transcript that I read
8 a Court Exhibit, Court's Exhibit 1.

9 (WHEREUPON, Court's Exhibit No. 1 was
10 marked for identification only.)

11 THE COURT: All right. I'm sorry, anything
12 else?

13 MS. SINGLETARY: No, Your Honor.

14 THE COURT: Just so I'm clear on the jury
15 charge, we're adding hand of one, we are adding
16 mere presence, felony murder. Those are the three.
17 And she is taking out -- so she can clean it up --
18 and we'll probably take a break before I charge the
19 jury. On Page 11, the part about hand or first.
20 On Page 13, we have to add the carjacking is a
21 violent crime. Taking out statement of Defendant
22 on 14 and 15. Proximate cause on 16. And I
23 believe that's it.

24 What about the verdict form? Did y'all have a
25 chance to look at it?

1 MS. SINGLETARY: Yes, Your Honor. I had no
2 issue with that.

3 THE COURT: All right. So we are going to go
4 into closing arguments. Does anybody need to take
5 a bathroom break?

6 MS. BODMAN: Can I run down the hall real
7 quick?

8 THE COURT: Yes, let's do that, because it is
9 probably going to be --

10 MS. BODMAN: It'll be a few minutes.

11 (WHEREUPON, a break was taken at 9:49
12 a.m.)

13 THE COURT: Are you ready to bring them in?

14 MS. BODMAN: We are.

15 THE COURT: All right. You can bring them on
16 in.

17 MS. SINGLETARY: Your Honor, in front of the
18 jury do you want me to renew my motions?

19 THE COURT: No, I don't think you have to do
20 that because you already formally did it. It has
21 formally been done.

22 (WHEREUPON, the jury came into open
23 court at 10:02 a.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: All right. Good morning, ladies

1 and gentlemen of the jury. I hope that you had a
2 restful evening.

3 At this time I will ask the State to call
4 their next witness.

5 MS. BODMAN: Your Honor, at this time, the
6 State of South Carolina rests its case.

7 THE COURT: All right. Thank you.

8 All right. At this time I will ask the
9 Defense to call any witnesses they choose to.

10 MS. SINGLETARY: Your Honor, at this time the
11 Defense rests.

12 THE COURT: All right.

13 All right. Ladies and gentlemen of the jury,
14 the State has rested. And, as I informed you
15 earlier in my introduction, the Defendant does not
16 have to present any evidence. The burden is on the
17 State to prove him guilty beyond a reasonable
18 doubt. And I will explain that in more detail to
19 you during my jury charge, but he does not have to
20 present any evidence and you cannot hold that
21 against him.

22 All right. At this time we are ready for
23 opening statements -- I mean, closing statements.
24 We will hear from Ms. Bodman, on behalf of the
25 State, and then you will hear from Ms. Singletary.

1 (WHEREUPON, the following occurred at
2 10:04 a.m.)

3 CLOSING STATEMENT

4 MS. BODMAN: Dr. Morrison placed his hands on
5 Michael Davis's heart and massaged it. He said
6 there was not a heartbeat, but it was trying.

7 Michael Davis was a human being. He had an
8 addiction, but he was a human being that was trying
9 to live.

10 When he was in that car with Austin Murray,
11 Austin Murray said how they talked about their
12 family, and how Michael Davis said that he had a
13 son. He was living in that car one heartbeat at a
14 time.

15 I want to say how absolutely proud I am to
16 work beside these two gentlemen in law enforcement,
17 who have a John Doe on the street, and they work as
18 hard as they can to find justice for the human
19 being that Michael Davis was so that we could come
20 here to you today and ask for that justice.

21 I am going to talk to you a little bit about
22 the law that is applicable in this case. And we're
23 going to walk through the facts. The Judge is
24 going to read you the law after we're done with
25 closings. We call it the jury charge. The law

1 that is applicable.

2 You all are the judges of the facts. And
3 taking those facts and applying it to the law that
4 the judge is going to give to you in order to reach
5 your verdict.

6 First of all, proof beyond a reasonable doubt
7 is our burden. The judge is going to read to you
8 that it is proof that leaves you firmly convinced
9 of the Defendant's guilt. There are few things in
10 this world that we know with absolute certainty.
11 And so that is not our burden.

12 In criminal cases, the law does not require
13 proof that overcomes every possible doubt. Based
14 on your consideration of the evidence, if you are
15 firmly convinced that the Defendant is guilty of
16 the crime charged, you must find him guilty. If,
17 on the other hand, you think there's a real
18 possibility that he's not guilty, you must give him
19 the benefit of the doubt and find him not guilty.

20 The only way we could ever prove in a criminal
21 case with absolute certainty beyond all doubt is if
22 you were in that car with Austin Murray and Cheo
23 Green and Michael Davis. Then you would be a
24 witness and you would come to this courtroom and
25 testify on that witness stand.

1 Opposing counsel stood up in opening
2 statements and said, I want to show you what
3 reasonable doubt is, and tore a tiny little corner
4 off a piece of paper. This is you witnessing it.
5 That is you witnessing it. You know what we know?
6 This is a piece of paper. This is a piece of
7 notebook paper. It is an 8.5 x 11 piece of
8 notebook paper. It is white with lines on it. It
9 has holes on it. It has the standard red line down
10 the side. This is you seeing it yourself. That is
11 not beyond a reasonable doubt. Follow the
12 definition.

13 Use your common sense. The common sense that
14 you walked in that door on Monday with into this
15 courtroom, you are not going to leave at this door.
16 You are going to take it into the jury room and you
17 are going to use your everyday common sense in
18 looking at the evidence.

19 Direct and circumstantial evidence. There is
20 two types of evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge.

23 Austin Murray: I saw it myself.

24 The firearms expert: I examined the
25 projectiles. I examined the weapons. I have

1 direct actual knowledge that these were fired from
2 this weapon.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of
5 a fact. So phone numbers hitting cell towers and
6 overlapping, that is circumstantial evidence that
7 puts him in the area at the time. With all the
8 testimony that you heard in terms of the radius and
9 the strength of the signal, that is going to put
10 him in that area. That is circumstantial evidence.

11 The law does not distinguish between the
12 weight that you give either of these types of
13 evidence. We could put on a completely
14 circumstantial evidence, and if you believe it
15 beyond a reasonable doubt, that is sufficient.

16 On the other hand, we could put on in a
17 particular case a single witness, nothing else.
18 Not a single other exhibit, piece of paper,
19 witness, just one person who says, I saw this
20 crime, they testify to all the elements of that
21 crime, and if you believe that single witness
22 beyond a reasonable doubt, that would be enough.

23 It is the totality of the evidence, whether it
24 is direct, whether it is circumstantial, that you
25 say, That satisfies me beyond a reasonable doubt.

1 So circumstantial can be just as strong to you in
2 your analysis as direct.

3 Identification. She is going to give you a
4 charge about the accuracy of identification.
5 Really, that involves more cases where there is a
6 stranger identification; right? You're in a dark
7 alley and someone you've never met before comes up,
8 grabs your purse and runs away, and you try and
9 give a description.

10 In our case, everybody knows that Austin
11 Murray knows him. Donnell Lee Jackson knows Cheo
12 Green. Jamil Brennan knows Cheo Green. DaQwane
13 Robinson knows him. Curtis Wright even says when
14 we said, Point him out in the courtroom, he says,
15 Everybody knows who he is. We all know him. Why
16 are you making me point him out?

17 So that is really -- if you listen to her
18 instruction, it is the accuracy of an ID. Do I
19 know this person? How long have I known him?
20 Austin Murray knows him.

21 Murder. It is the killing of a human being
22 with malice aforethought. Malice is defined as
23 hatred, ill-will, hostility towards another person.
24 It is also the intentional doing of a wrongful act
25 without just cause or excuse with an intent to

1 inflict an injury or under circumstances that the
2 law is going to infer an evil intent.

3 Now, malice does not have to exist for any
4 particular time prior to the act. This is not
5 premeditation. That is something totally and
6 completely different. Malice is a differentiation
7 between an intentional act with, say, accident:
8 I'm cleaning my gun. Malice is: I point a deadly
9 weapon and I intentionally pull the trigger. It is
10 at that moment of the act you have malice. It is
11 not: I have planned this. I thought about it.
12 This was the plan ahead of time. No, it can be at
13 that single moment. It is a decision to do that
14 act, to raise your hand and to pull the trigger.

15 So there is express malice, a person speaks
16 words that express hatred or ill-will. Or it can
17 be somebody lying in wait: I'm fixing to do
18 something hot. That is express malice. Those
19 words, texting: I'm fixing to do something hot.

20 You can also infer malice from the act.
21 Because sometimes people don't say things before
22 they do them, they just do them. So you can infer
23 it from the facts, from the conduct that shows a
24 total disregard for human life: When you point a
25 deadly weapon and shoot.

1 Inference. A deadly weapon is any article,
2 instrument or substance, which is likely to cause
3 death or great bodily harm.

4 There is no other purpose for a firearm than
5 to kill, whether or not you are testing animals,
6 you are using it for defense purpose, or you use it
7 in a cold, callous senseless manner. There is no
8 other purpose for a firearm. It is a deadly
9 weapon.

10 Also, you can infer malice from the fact when
11 a person intentionally kills another person during
12 the commission of a felony.

13 Drug distribution. I am going to connect you
14 up with the drugs you are requesting for, is a
15 felony. When a person is killed during the
16 commission of that felony, the drug distribution,
17 you can infer malice.

18 So we have express: I'm fixing to do
19 something hot. We have implied or inferred from
20 the use of the deadly weapon. And we have inferred
21 from the commission of a felony, the drug
22 distribution. We have malice all over this case.

23 Carjacking. To take or attempt to take a
24 motor vehicle from another person by force and
25 violence or by intimidation while the person was

1 operating the vehicle or while the person was in
2 the vehicle.

3 Mr. Davis is driving that car. Cheo Green
4 lifts up his gun, shoots him three times to the
5 point where Mr. Davis is escaping and fighting to
6 live, escapes out of that vehicle.

7 Cheo says, Get over and drive. And they drive
8 away.

9 It is classic, clearly, couldn't be more
10 clear, a carjacking with bodily injury.

11 The great bodily injury is bodily injury which
12 creates a substantial risk effect. Well, Mr. Davis
13 died. There was clearly a substantial risk of
14 death.

15 So I want to talk to you about the hand of one
16 is the hand of all. How do we charge more than one
17 person for a crime?

18 Well, if a crime is committed by two or more
19 persons who are acting together in the commission
20 of an offense, the act of one is the act of all.
21 Two people could be guilty for killing another
22 person when only one had a pistol and there is only
23 one bullet.

24 Classic example, bank robbery; right? I'll be
25 the getaway driver. You go in. So, I never

1 touched the gun. I don't have any contact with any
2 victims in this bank. I don't demand any money.
3 But I am on the ready outside in the getaway car.
4 We are both guilty of committing that bank robbery.

5 The carjacking, at the moment that Cheo Green
6 lifts up his gun, shoots, causes that great bodily
7 injury as Mr. Davis is driving that vehicle, and
8 then Austin Murray gets over into the driver's seat
9 and they say, Go, and then they drive around for a
10 while until that car runs out of gas, that is the
11 hand of one is the hand of all. They are operating
12 together in that carjacking. Whether or not there
13 was premeditation planned or not, at the moment
14 that it happens, they are acting together and in
15 concert with each other.

16 Possession of a weapon during the commission
17 of a violent crime. He possesses a firearm or
18 visibly displays what is one. A firearm is a
19 revolver. The law defines that. Murder is a
20 violent crime and carjacking is a violent crime.
21 So if you are possessing that weapon during the
22 commission of either of those offenses, he is
23 guilty of this crime.

24 Intent. Intent can be shown by the acts and
25 the conduct of the Defendant and other

1 circumstances from which you may naturally and
2 reasonably infer intent. So the evidence of the
3 character of the assault. Evidence of the
4 character of the instrument used, a firearm. The
5 manner in which the instrument was used. Held up,
6 pointed straight at the victim, pulls the trigger.
7 The resulting wound and injuries. That is the
8 purpose of a firearm.

9 You cannot cut into someone's head and look at
10 their brain and see why they did something. Why is
11 not something we have to prove to you because
12 sometimes nobody knows why. It does not matter
13 why. We do not have to prove that.

14 The investigation. Let's walk through the
15 facts and apply it to the law that we talked about
16 it.

17 So I am going to talk about the things that we
18 didn't necessarily have in this case. I'm not
19 hiding from it. I'm not running from it. We are
20 putting it all out there for you so that you can
21 know that everything was done to give you every
22 piece of evidence that we did have.

23 Fingerprints. They wiped down the car. They
24 got a rag and wiped it down. Austin Murray said he
25 took his own shirt off, wiped it down. The

1 rearview mirror, right, they said they tried to
2 process it. It's a great place to get prints
3 because the person driving is going to be moving it
4 to their own height and angle that they need it to
5 be. They didn't end up getting prints, but we know
6 people were in that car, we know it was operated,
7 right? We know it was driven from point A to point
8 B. Fingerprints -- this is not TV, this is not
9 CSI. On TV, they get everything. They get the DNA
10 and the fingerprints and video and they catch them
11 within 40 minutes and commercials. This is not TV.
12 This is real life where people touch things and
13 they don't leave prints and they don't leave DNA,
14 and they wipe it down and they get rid of it. But
15 we tried.

16 The vehicle was also out there in the elements
17 for 40 plus days, right? It is abandoned in that
18 neighborhood on the north side and sits there with
19 the broken window out, taken to the towing company,
20 to Lonnie Roberts' Towing. It is sitting out
21 there.

22 DNA. Again, wiped it down. Broke out the
23 window where he spit. Austin Murray says he had
24 spit on the window, and as they walked away from
25 that car he broke out that window. He knows.

1 Wiping down, cleaning up, so that we don't have
2 that evidence to present to you.

3 The absence of DNA does not mean they didn't
4 touch, really, because, right, they swabbed the
5 cell phone. We know people touched Mr. Davis's
6 cell phone. But he still -- we just didn't get any
7 DNA off of it. There is going to be a lot of
8 factors that go into that. And Austin Murray's DNA
9 is not there. He said, I was there, I was in the
10 car, I was driving.

11 GSR you have to collect within six hours. We
12 didn't know who to even go to within six hours to
13 try to collect. The fact that the victim has it on
14 him, they are doing their job in collecting that
15 GSR, but all that tells us is that he was in the
16 presence of a firearm. And we know that because he
17 died of gunshot wounds.

18 The autopsy. Cause of death is multiple
19 gunshot wounds. The third shot is the one that
20 goes not only right to left, but also slightly from
21 front to back. That is consistent with Mr. Davis
22 leaving that car. You think about the three
23 angles. He's driving. Austin Murray says how
24 there is, Are you going to get me straight? You
25 know, where are the drugs? He's turned. He is

1 going back -- he's talking. His guy is Cheo. That
2 is his connection is Cheo. You're the guy that's
3 supposed to get me the drugs. Where are they?
4 What's up? Are you going to get me straight?
5 Boom. Boom. Fleeing out that door. Boom.

6 This also goes to malice. Three shots. The
7 manner in which this is committed. The cold,
8 callous, senseless: Boom, boom, boom.

9 The phone records and the cell tower hits. So
10 Sue Johnson gives us the records about -9542.
11 Austin Murray says, This is my phone. She says the
12 rule of thumb for the radius is going to be a mile
13 to a mile and a half from the cell tower hit.

14 Now, she told us they do not store cell tower
15 hits for text messages, right? So we have the one
16 record that is going to show us just the call log,
17 the calls back and forth. And this record that
18 says both numbers gives us the GPS coordinates of
19 the cell tower. Okay? So that is going to tell us
20 where these cell towers were hitting.

21 This record, the subscriber detail record,
22 this is the one that does show text messages. It
23 is SMS, she said, are text messages between the
24 two. So we don't have the actual cell tower hits
25 for text messages, but we can see them coming in

1 and going out, who he is communicating with and
2 when.

3 These records, the subscriber detail, red on
4 top, she says are in Pacific time. So any of these
5 times you are going to add three hours to. Okay?
6 So if it is a midnight call, it is 3:00 a.m. here.

7 She also said that these are billed calls, so
8 they are completed calls and text messages. So you
9 are also going to add the duration of the call,
10 because they only log this in at the completion of
11 the call. That is what we're going to bill you
12 for.

13 These records document the time that it hit
14 the switch. So you are going to look at this time,
15 you're going to add three hours, plus the duration
16 of the call. You know, if it is a minute, you are
17 going to add three hours and one minute. And
18 you'll see how it lines up with the subscriber
19 detail records. This.

20 Karen testified to the -6130 number. She
21 told you that they have different radiuses, either
22 in an urban area, zero to three, suburban, zero to
23 five, and rural, zero to 15. And I would submit to
24 you that North Main, when we're talking about that
25 time, that place where Mr. Davis is murdered, is an

1 urban area. But, you know, use your common sense
2 and look at it and if you -- if you want to give a
3 little bit and bigger radius. She also said, I
4 mean, we can't put an exact radius on these because
5 she said it does depend. It depends on weather, it
6 depends on the foliage, it depends on other
7 factors. So it is a guide for you to look. But at
8 least it tells you which cell tower is being hit
9 and you can at least look at the center of all
10 these records.

11 Now, this record right here showing the text,
12 Pacific time adding three hours plus the duration
13 of the call. At 11:39:34, on September 15th,
14 11:39:34, so that's going to be 2:39:34 a.m.,

15 -6130. 2:39:34. When you look at the time,
16 that is about the time that Austin Murray says, I
17 was at the Hot Spot. The victim pulled up, asked
18 me if I knew anybody who had some drugs. I made a
19 call, and I connected with Cheo.

20 Then you walk through. He says that he also
21 called Jamil Brennan. 11:41, so 2:41 a.m. Then
22 back, 11:50, which is 2:50:51, is -6130. That's
23 him, according to his testimony, calling Cheo.
24 That would be, Hey, I'm over on Broad River Road.
25 Come get me.

1 12:02:44, that's at 3:00 a.m. in the morning.
2 3:02:44. The text messages with the Defendant
3 start. 12:02:44. SMS. He and Cheo are texting
4 from 3:02 a.m. to 3:20 a.m. and 10 seconds. That
5 is entirely consistent with what he is saying, that
6 is in the car, they are texting back and forth.
7 What are we going to do with the car when we get
8 it? Does he have any money?

9 3:20:10. I'm fixing to do something hot.
10 That is the last text message.

11 3:21 a.m., Michael Davis called 9-1-1 and
12 said, I've been shot.

13 There aren't any more text messages between
14 those two numbers. I don't think you even see any
15 phone calls between he and Cheo. But you know who
16 he is calling? Austin Murray at 3:29:58, right?
17 They are burning down North Main. They are burning
18 around that corner on Cook Street. They are
19 burning around the corner. And they are burning up
20 277 to get across town as fast as they can. And
21 then Austin says when they get to the north side of
22 town, they go pick up Jamil Brennan.

23 Jamil Brennan testified, Oh, that's my
24 brother's number. -6566, that's my brother's
25 number. That is entirely consistent with Austin

1 Murray. We hooked up with Jamil Brennan.

2 4:00 a.m. 363-6763, the number that
3 Investigator Gilliam said that he called and Curtis
4 Wright answered. That -- our car ran out of gas.
5 We need a ride.

6 Now, Curtis Wright and DaQwane are brothers.
7 DaQwane said that they were together. And he said
8 that he's the one that went to go get them. But
9 they're together. Hey, we need a ride. Curtis
10 Wright was probably like, it's 4:00 a.m., you go
11 get them.

12 That is when Investigator McCracken said that
13 he contacts a gentleman who lives in the house
14 where the car was abandoned. The deputy doesn't
15 get there until like 5:26 a.m. The car is warm.
16 He contacts the gentleman that lives in that house
17 that says it was about 4:00 a.m. It was about
18 4:00 a.m. I noticed the car was out there.

19 How much you want to bet that gentleman was
20 woken up at 4:00 a.m. by the sound of breaking
21 glass in his front yard, and he probably goes to
22 the window and sees, what is this car out there,
23 you know? I'm going to call Richland County and
24 see if they'll come out and take care of that car.

25 This is Austin Murray's testimony. It is

1 completely corroborated by the other evidence.
2 They are together. It is showing communication.
3 They are texting while in their car. It tracks
4 them together.

5 There is the -9542, Austin Murray's number.
6 You can look at it all. All these circles are
7 tracking exactly where he says is that he is
8 hanging out. He went to the Benedict game or he's
9 over there by the stadium. You can see it is all
10 in that area tracking exactly what he says. He's
11 getting closer, slightly closer and slightly closer
12 to his home and to that North Main area. Then,
13 boom, it is out across town. See him going to the
14 Enclave and then you will slowly see him coming
15 back into where Mr. Davis was shot. And then,
16 boom, shooting over to that north side of town.
17 All those phone records corroborate.

18 Where they significantly overlap is, that is
19 about around the 3:00 a.m. hour where Austin Murray
20 and Cheo Green's phone numbers are on top of each
21 other at the Enclave and on top of each other
22 headed out 277 where the vehicle was abandoned.

23 The video, unbelievable. Twenty years ago,
24 this would probably still be an unsolved crime. I
25 mean, there is a John Doe in the middle of the

1 street with three gunshot wounds. I am sure within
2 a short period of time we would have at least
3 identified Mr. Davis because his family would have
4 come forward and reported him a missing person, his
5 girlfriend, and we would identify him. This is
6 amazing, but the number of hours that they probably
7 sat and watched video after video after video and
8 thinking, Let's go to these gas stations. There
9 had to be some contact.

10 And then this. We need to talk to this guy.
11 He is on the Hess station video with the victim and
12 his car. He is buying gas. And now we see him at
13 the A-1.

14 Then all of these videos. 2:48, coming out of
15 the Hess station. The Hess station is right there.
16 That is Cook Street. Headed up North Main,
17 2:49:35, up towards the A-1, up North Main.

18 Now, you said that the times may be a little
19 off, but McCracken says you can match up coming out
20 of the Hess station, up North Main.

21 Then we have the A-1 video, the stills of
22 Austin Murray at that time. So it corroborates
23 they stopped in that. Then they head up
24 Monticello. They go out to Broad River. The cell
25 phones have them hitting out there. And then they

1 are coming back down Monticello Road, 3:20:43 a.m.
2 This is around the time, right, he is texting and
3 he is fixing to do something hot. That is
4 Monticello Road comes up to North Main.

5 The 9-1-1 call. The call comes in, 3:12:21.
6 They said the North Main and Miller video, he knew
7 was ten minutes slow. By looking at the video
8 himself and looking at his watch, he knew this was
9 ten minutes slow. So 3:22:21, there they are
10 headed North Main and Miller, back down North Main,
11 hitting the bottom moving so fast back up that Cook
12 Street where the Hess station is.

13 Witnesses. You are the judge of the
14 credibility of the witnesses. Was the witness
15 straightforward or were they hesitant?

16 Oh, right, I have paranoid schizophrenia, I
17 don't remember anything. You know, a lot has
18 happened over the past three years. Yeah, he's my
19 buddy.

20 Were they consistent or inconsistent? Austin
21 Murray sat up here and told you straightforward
22 what happened. He was not changed by
23 Ms. Singletary's cross-examination. No, I'm
24 telling you this is what happened. Consistent.

25 How did they know what they know? Is the

1 testimony of the witness strengthened or weakened?
2 Every piece of evidence backs up Austin Murray. It
3 makes him stronger and stronger and stronger as
4 each witness testified.

5 And is there a reason a witness would want to
6 give testimony which would help or hurt? Now,
7 Austin Murray, sure, he's got motivations. We all
8 have motivations in life to do everything. And it
9 can be a combination of things. He said he wanted
10 to do the right thing. He is hoping that something
11 good will happen, sure. He is a human being too.
12 He is scared and he is in serious, serious trouble.
13 But that does not mean that he didn't tell you the
14 truth. It means that he has every motivation to
15 tell you the truth. Every reason. And we backed
16 up every piece of his story.

17 So you look at everyone. What is their
18 interest, bias, prejudice or motive, their prior
19 record, prior inconsistent statement? I don't
20 remember. I don't remember. I don't remember. My
21 own handwriting. My own signature. I don't
22 remember.

23 So Jamil Brennan. You know, they are all
24 buddies, but he does say that Cheo Green and Austin
25 Murray came and picked him up. They came and

1 picked him up in a white car. He corroborated they
2 ran out of gas. He even said Austin Murray
3 couldn't put a couple more dollars in the car. He
4 didn't say, None of us could. That corroborates
5 Austin that he is being this nice guy, in a sense,
6 to Mr. Davis. Mr. Davis asked for drugs and Austin
7 is going to help him. But he goes and puts the
8 money in the car for the gas. He goes into the A-1
9 and buys him some cigarettes. He is going to drive
10 him out and hook him up with his friend.

11 And Jamil Brennan says Austin Murray couldn't
12 put any more money in it, in the car. It was late.
13 He told us what his little brother's number was, so
14 he corroborated the records for us. Someone in a
15 green car picked him up. You know, when you're
16 weighing their motivation, he's not going to admit
17 that he helped wipe down a car after -- a stolen
18 car. I mean, he's got to know it is stolen. It is
19 like the guy with the watches, you know, Hey, would
20 you like a watch for a dollar on the street corner.
21 They show up and say they have this white car.
22 Come on.

23 He also lied in his first statement, right?
24 He comes in and says, Oh, yeah, I got some phone
25 calls, but I was thinking they just wanted to

1 record some songs in my studio. And then he comes
2 back in later and is like, Okay, yeah, they came
3 and picked me up and they had this white car.

4 Curtis Wright. I mean, says he is a paranoid
5 schizophrenic and that probably affected his memory
6 after Ms. Singletary suggested it to him. He is
7 like, Yeah, I think that did affect my memory. Oh,
8 the police always want to come and talk to me. He
9 doesn't even remember getting pulled over in the
10 green car by the deputy and getting charged with
11 the gun charge. Can't remember anything. Did
12 remember his own name, which is quite remarkable.
13 Thinks maybe DaQwane's mama had a green car. I
14 mean, they're brothers. They are driving this car
15 everywhere all the time. He knows.

16 DaQwane did tell us that the Defendant had
17 threatened to shoot he and his brother. Motivation
18 to not tell the truth.

19 DaQwane corroborates they went to the Enclave
20 Apartments on Broad River. He was with Cheo and
21 his brother, Curtis. Cheo was not allowed to come
22 up to the apartments, so he is left alone in the
23 parking lot. Sounds like a lot of fun, doesn't it?
24 3:00 o'clock in the morning, 2:30, 3:00 o'clock in
25 the morning, you are stuck in the parking lot while

1 your two buddies are up with some ladies. You get
2 a phone call saying, Hey, can you hook this guy up
3 with something? Think you'd rather do that? Sure,
4 come on. Swing by. Come get me. I am not having
5 a great time hanging out in the parking lot waiting
6 for them. They don't leave him with the car. He
7 is not going to leave him with the keys. Calls and
8 says that he is leaving.

9 Later on, after he gets home, after them
10 seeing these young women, says he goes to pick him
11 up. They're walking around. They left that car
12 that ran out of gas.

13 When they get stopped by the deputy and the
14 murder weapon is found under the seat in front of
15 Cheo, Yeah, none of them said anything out there at
16 that time. Curtis is, I'm constantly getting
17 stopped by the police. They are all going to shut
18 up. When it comes down to this, this is serious.
19 Yeah, that is Cheo's gun.

20 Cierra Hodge and Sandy completely corroborate
21 Austin Murray and DaQwane. He came out there and
22 we would not let him in. Donnella Lee Jackson.
23 Austin Murray says that he went to a party and
24 stepped out and Cheo threatened him. Now, Austin's
25 memory of it is that his girlfriend actually heard

1 the threat. But Donnell Lee Jackson said he came
2 back in and he was crying and shaking to the point
3 that I said, We need to leave.

4 Cheo threatened Austin Murray. My cousin got
5 a charge for the gun. He knows that gun is in
6 evidence. A murder weapon is in evidence that he
7 used. You better take that charge. I'm going to
8 come out to this point.

9 Austin Murray. Boom, Hess station video
10 corroborates him. A-1 gas station video
11 corroborates him. The Broad River Road, Sandy,
12 Cierra, DaQwane, Curtis, the cell tower hits. Back
13 down Monticello Road, down on Main Street, cell
14 tower hits, out 277, Spring Valley. Jamil Brennan
15 cell tower hit. Boom, boom, boom, boom, boom.

16 Picked up Jamil Brennan. Jamil Brennan says
17 they drove around and ran out of gas. Jamil and
18 DaQwane say it. Broke the car window. The photo.
19 Abandoned vehicle. Both Jamil Brennan, Officer
20 Pinkney, and Lonnie's Towing. Was taking him home
21 -- DaQwane Johnson [sic] says he took people and he
22 took Cheo back to his house. The fact that he was
23 threatened, Donnell Jackson corroborates it.
24 Everything is backed up by something else.

25 The murder weapon, .32 caliber. It matches

1 the projectiles that were removed from Mr. Davis's
2 body. This is the murder weapon that was recovered
3 under the seat in front of Cheo Green. And do you
4 know who was not in that car? Austin Murray was
5 not in that car. Cheo Green was.

6 We will never know if Michael Davis would have
7 beat his addiction. Cheo Green robbed Mr. Davis of
8 the opportunity to do that. Cheo Green robbed
9 Mr. Davis's family of the opportunity to have his
10 beating heart in their lives, addiction or no.
11 When we stand up as United States citizens and we
12 put our heart over our chest and we say the pledge
13 of allegiance we say, And justice for all. If
14 there is not justice for every single one of us,
15 there is justice for none of us. And that includes
16 Michael Davis.

17 We came before you at the beginning of this
18 week and we told you that we were on a course for
19 justice, and every single piece of evidence, every
20 witness followed that course. And we ask you to
21 finish that course and to find him guilty of
22 murder, carjacking, and possession of a weapon as
23 justice and the facts demand.

24 Thank you.

25 MS. SINGLETARY: Your Honor, may we approach?

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, at this time you will hear from
6 Ms. Singletary, on behalf of Mr. Green.

7 MS. SINGLETARY: Thank you, Your Honor. May
8 it please the Court?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, the following occurs at
11 10:50 a.m.)

12 CLOSING STATEMENT

13 MS. SINGLETARY: Good morning, ladies and
14 gentlemen of the jury.

15 THE JURY: Good morning.

16 MS. SINGLETARY: Ladies and gentlemen of the
17 jury, it is truly a tragedy that Michael Davis lost
18 his life on September the 16th of 2012. And it is
19 not my job to stand here in front of you today and
20 it wasn't my job the past three days to minimize
21 that fact. It is always a tragedy when someone
22 loses their life due to violence. And that's why
23 if you all notice, there was some witnesses that
24 came to this witness stand and we didn't ask them
25 one question at all. And do you know why that is?

1 It is because there were certain things that we, as
2 the Defense, we didn't dispute. It would be
3 foolish of us to dispute certain things. It would
4 be a waste of your time for us to dispute certain
5 things. And those things that we didn't dispute,
6 we didn't dispute that Michael Davis lost his life.
7 We didn't dispute that he got shot with a
8 .32 caliber. We didn't dispute that he died. But
9 what we do dispute is that my client, Mr. Green, is
10 the one who actually shot Mr. Davis on
11 September the 16th, 2012.

12 Now, there were some other witnesses that we
13 asked a few questions of. And those witnesses were
14 like Cierra Hodge, it was Sandy Sweat. Now, the
15 Prosecution just told you that Cierra Hodge and
16 Sandy Sweat corroborated Austin Murray's story
17 about coming over to the Enclave Apartments to pick
18 up Cheo Green. But you heard their testimony. Did
19 Cierra Hodge say that she saw Austin Murray on
20 September the 16th, 2012? Did Sandy Sweat say she
21 saw Austin Murray on September the 16th, 2012? Did
22 either one of them say that they saw Austin Murray
23 pic up my client? They didn't.

24 Did DaQwane Robinson say he saw Austin Murray
25 pick up my client on September the 16th, 2012? He

1 didn't. But DaQwane Robinson was at the Enclave
2 Apartments with Sandy Sweat and with Cierra Hodge.

3 Curtis Wright was there with them also. Did
4 he corroborate Austin Murray's statement that he
5 picked up my client at the Enclave Apartments? He
6 didn't. You know who said that Austin Murray
7 picked up my client at the Enclave Apartments?
8 Austin Murray. Nobody else.

9 Now, again, I told you a few minutes ago that
10 there were certain things that we didn't dispute.
11 We didn't dispute that the projectiles that were
12 actually removed from Mr. Davis's body matched that
13 .32 caliber. But, again, as I said, we do dispute
14 that my client, Mr. Cheo Green, actually shot
15 Mr. Davis.

16 Now, there were some other witnesses that were
17 called to the witness stand and we asked very few
18 questions of them. You may have been thinking in
19 your mind, Well, why didn't the Defense ask them
20 more questions? Well, there are just some
21 witnesses during a trial that as a defense
22 attorney, I just have to ask a few questions just
23 procedurally so that the trial can move along
24 properly. So don't take the fact that we, as the
25 Defense, may have asked few questions or we may

1 have asked no questions to a witness to actually
2 say something or speak something to you. That is
3 just not true.

4 So, that being said, by no means did the
5 Defense during these three days try to
6 underestimate the gravity of this case. And as I
7 said, when a person loses their life and when a
8 person loses their life through violence, that is a
9 tragedy.

10 But let me tell you what else is a tragedy.
11 If an innocent person, if a person who did not
12 shoot that individual is convicted of a crime that
13 he did not commit based solely on the word of one
14 person. And that one person is Austin Murray. The
15 State would like you to believe that each and every
16 witness that they called after Austin Murray took
17 the stand corroborated his story. You all saw
18 Austin Murray on this witness stand. The State
19 also said that no matter how hard I tried to shake
20 Austin Murray, how hard I tried to ask him
21 questions, he was consistent.

22 Now, did Austin Murray seem consistent on that
23 witness stand to you? He didn't to me. But you
24 are the judge of the facts. And when you go back
25 there, keep in mind the things that Austin Murray

1 said. Keep in mind his actions on this witness
2 stand.

3 Now, at the beginning of this case, Assistant
4 Solicitor Joe Berry told you that my client --

5 Stand up Mr. Green.

6 (Defendant complies.)

7 MS. SINGLETARY: He said that my client was
8 cloaked in a robe of innocence, and that he is
9 innocent until proven guilty. And that is right.
10 My client is cloaked in a robe of innocence. But
11 then Assistant Solicitor Joe Berry said that during
12 the State's case they were going to tear and they
13 were going to rip at that cloak of innocence. But
14 me standing before you right now, my client
15 standing before you right now, he still has on that
16 cloak of innocence.

17 (Defendant seated.)

18 MS. SINGLETARY: Now, let's talk about the
19 burden that the State has. The State has a burden
20 to prove my client guilty beyond a reasonable
21 doubt. That is a very, very, very high burden. As
22 a matter of fact, that is the highest burden that
23 we have in the criminal justice system. And it is
24 that way for a reason. A person shouldn't be
25 convicted based on the words of one person. And I

1 want you guys to hold the State to that burden.

2 And that is what is so wonderful about living
3 here in the United States. We are not like other
4 countries where -- or third world countries where
5 someone can just walk up and say, They -- she did
6 this, and then it's off with their head. There is
7 no jury. There is no fact finder. They are just
8 automatically punished. But that is not how we do
9 things here. We hold the State to their burden.
10 And you hold them to that.

11 And, ladies and gentlemen, that is where you
12 all come in as jury members. You as jury members
13 must hold the State to that high burden. The Judge
14 has already told you, the Prosecution has already
15 told you, Mr. Green doesn't have to prove anything
16 at all. Mr. Green doesn't have to get on the
17 witness stand and testify. Mr. Green doesn't have
18 to say anything. It is the State that has to prove
19 him guilty.

20 Now, with all the fancy high tech electronics
21 that they are showing you here during the closing
22 argument, all the fancy high tech mapping that they
23 showed you during Agent Van Houten's testimony,
24 that does not mean that my client is guilty. It is
25 pretty. It is pretty like this pretty little box

1 that I've got right here for you. But let's see
2 what is inside that box. Let's put the State's
3 case in that box. And let's see how pretty at the
4 end it ends up looking.

5 So I said that the State has the burden to
6 prove my client guilty beyond a reasonable doubt.
7 What is reasonable doubt? I will tell you that
8 legal scholars for years and years and years have
9 came up with all of these complex definitions of
10 what reasonable doubt is. But, ladies and
11 gentlemen, I'm simple. And I'm going to tell you
12 all just like this. Each and every one of you all
13 have common sense. Each and every one of you all
14 are reasonable. Each and every one of you all have
15 life experiences. And you all know when something
16 just doesn't sound right, and you all know when
17 something sounds wrong. You all know when
18 something looks right, and you all know when
19 something looks wrong. You all can determine when
20 someone is telling the truth and you all can
21 determine when someone is telling a lie. And,
22 ladies and gentlemen, that is reasonable doubt.

23 Now, Ms. Bodman said something to you all in
24 reference to Mr. Sims in his opening argument
25 talking about a piece of paper and him ripping off

1 a little sheet of that piece of paper. I've got a
2 piece of paper too. And guess what? This piece of
3 paper says, The State of South Carolina vs. Cheo
4 Green. Do you know why this piece of paper is
5 important? Because that is how Cheo Green got here
6 today. There was a charging document. There was a
7 piece of paper that said, Okay, now State, you can
8 take Cheo Green to trial. So it is not a laughing
9 matter. It is not funny when you see a sheet of
10 paper. Because when you get that jury verdict,
11 what is that going to be? A sheet of paper. And
12 it is going to say, The State of South Carolina vs.
13 Cheo Green. And you are going to have to make a
14 decision on that sheet of paper. So this is a very
15 serious matter.

16 Now, what I will tell you also with this sheet
17 of paper is you see reasonable doubt. That's what
18 I was telling you about earlier, that the State has
19 the burden to prove my client beyond a reasonable
20 doubt. And as I continue, you'll see the
21 reasonable doubt.

22 Now, we all know that in the past three days,
23 you have heard testimony from several different
24 witnesses. And I'm not going to repeat everything
25 that the witnesses said, I am just going to bring

1 out some important points or some points that the
2 Defense feels is important.

3 Austin Murray. Hum. Yes, that's reasonable
4 doubt. I can say a lot about Austin Murray. You
5 saw him on this witness stand. And the Prosecution
6 in their closing argument, they kept going back to
7 Austin Murray, going back to Austin Murray, saying
8 everybody corroborated Austin Murray. Austin
9 Murray is the Prosecution's star witness.
10 Mr. Reasonable Doubt himself.

11 Austin Murray is, you know, one of those kind
12 of witnesses that, you can't buy him, but you sure
13 can rent him for a period of time. And that's
14 exactly what he did on that witness stand.

15 So Austin Murray would lead you all to believe
16 that on September the 16th, 2012, him being 17
17 years of age, he is out at the Carolina Classic by
18 himself. He gets a call from his mother around
19 1:00 or 2:00 in the morning and she says, Hey, I
20 heard someone got shot. You need to come home. So
21 Austin, being the good guy that the Prosecution
22 would like for you to believe, said, Okay, mom, I'm
23 coming home. So he starts walking home.

24 But while he's walking home, Mr. Davis
25 approaches him. Mr. Davis said, Hey, do you know

1 where I can get some crack? Well, Austin Murray,
2 yet again, being that good guy that he is, said,
3 Okay, let me make some calls. Let me find this for
4 you. You know, let me be a gentlemen to you. So
5 he makes the phone call, according to him, to Jamil
6 Brennan.

7 Austin Murray says that him and Mr. Davis wait
8 for five to ten minutes for Jamil Brennan to call
9 them back. Jamil calls him back. He actually
10 calls Austin Murray back and tells him, Hey, I know
11 where you can get drugs. Austin Murray says, All
12 right, I'm going to get those drugs for Mr. Davis.

13 But not only does Austin Murray do that,
14 Austin Murray feels compelled, Hey, Mr. Davis,
15 let's stop at the Hess station. I'm going to put
16 some gas in your car. That's Austin Murray being
17 that good guy again. The good guy that was
18 actually trying to broker a drug deal.

19 And Austin Murray didn't just stop there with
20 him being a good guy. He says, Let's go up to the
21 A-1 store, Mr. Davis. I'm 17, but I'm going to go
22 inside the A-1 store and I'm going to get you some
23 cigarettes. That's just him being the good guy
24 that he is.

25 At that point Austin -- at this point, Austin

1 Murray says that him and Mr. Davis go to the
2 Enclave Apartments.

3 Now, I want you all to listen to me and listen
4 to me very close when I say this. The Prosecution,
5 during her closing argument, she kept saying that
6 these pictures, the cell phone records place Austin
7 Murray and my client in a specific location at a
8 specific time.

9 Now, did you hear one witness on this witness
10 stand other than Austin Murray that placed my
11 client and Austin Murray in a specific place at a
12 specific time? None of those witnesses testified
13 today.

14 As a matter of fact -- and let's just go to
15 the cell phone number. They talked about the

16 -6130. They say that that is my client's cell
17 phone number. Hum. And that cell phone belongs to
18 Verizon. And the Verizon custodian of records was
19 up here. Now, did she say that we have information
20 that that phone actually belongs to Cheo Green?
21 She didn't. So, again, we are basing everything on
22 the word of Austin Murray.

23 Now, let me just go ahead and take off a
24 couple of another pieces of reasonable doubt,
25 because that Verizon Wireless person did not say

1 that -6130 belonged to my client. Cierra Hodge
2 did not say that she saw Austin Murray and my
3 client together on that night. Sandy Sweat didn't
4 say that she saw them together on that night.
5 Curtis Wright didn't say that he saw them together
6 on that night.

7 And then let me give you another bit of
8 reasonable doubt. In all of these handy-dandy,
9 pretty photos, who do you see with the victim?
10 Austin Murray. Are there any photos or videos of
11 my client with the victim? There isn't. Even in
12 the videos that -- or the stills of the video where
13 you are seeing this white car go all over the North
14 Main, the Monticello Road area, Cook Street, at the
15 Hess, and everything like that, can you tell who is
16 in that car? Can you see Michael Davis? Can you
17 see Austin Murray? More importantly, can you see
18 my client, Cheo Green? You cannot.

19 And these exhibits are going to go back with
20 you. And I want you to look at all of them and see
21 if you see my client, Cheo Green, at all in that.

22 Now, Austin Murray says they go and they pick
23 up my client. Okay? So Austin Murray says that
24 they leave the Enclave Apartments and they actually
25 head back toward the North Main area.

1 Now, I asked Austin Murray, I said, Now,
2 wasn't the -- according to you, wasn't the goal of
3 going to the Enclave Apartments to meet my client
4 just to pick up drugs? That was the goal. So why
5 would my client just get into the car with them?
6 Because, after all, Austin Murray and Michael Davis
7 had brokered the deal to rent the vehicle for
8 drugs, not my client, Cheo Green. But he said that
9 my client gets in the car and that they drive all
10 the way from the Broad River area all the way back
11 to Monticello. He says that the radio was playing,
12 but nobody speaks of drugs at all. But that was
13 the whole point of this. Why wouldn't anybody talk
14 about the drugs that were supposed to be given in
15 exchange for the car?

16 And then Austin Murray says that when they get
17 back to the North Main area, they go by Mr. Davis's
18 house. They don't stop. And, remember,
19 Mr. Davis's house was supposed be the drop-off
20 spot. Once he got the drugs, then they were
21 supposed to drop him off at his house and,
22 according to Austin Murray, they were supposed to
23 leave in the car. But if you remember, Austin
24 Murray testified that prior to them going to Broad
25 River Road, him and Mr. Davis had already stopped

1 by his house so that Mr. Davis could show Austin
2 Murray where to drop the car off.

3 Mr. Reasonable Doubt.

4 So then at this point Austin Murray expects
5 you to believe that -- and Austin Murray says that
6 there was a disagreement between my client and
7 Mr. Davis. But he makes sure when I questioned him
8 to say, No, they was talking calm, like, Mr. Davis
9 wasn't aggressive. Like, he was -- just wanted to
10 know where his drugs was. And based on Mr. Davis
11 being so calm and just wanting to know where his
12 drugs was, that my client shot Mr. Davis.

13 But that's not all Austin Murray is saying.
14 Austin Murray is saying that because Mr. Davis is
15 being so calm and saying, Where are my drugs, my
16 client decides to start texting him to say, Hey,
17 I'm going to do something hot. Hey, I'm going to
18 rob Mr. Davis. But that just doesn't make any
19 sense at all.

20 And then Austin Murray leads you to believe
21 that my client just -- bang, bang, bang -- in the
22 back seat just out of nowhere. Austin Murray knew
23 nothing about it, like, didn't expect it, and shot
24 Mr. Davis while he was driving.

25 You all heard the testimony of Dr. Amy Durso.

1 She stated that Mr. Davis was shot in his upper
2 right shoulder and that he was shot right here.
3 Okay?

4 Now, one of the things that she also said is
5 that she can't tell you which shot came first. She
6 also told you that she can't tell you what position
7 Mr. Davis's body was actually in when he was
8 actually shot. As a matter of fact, she said that
9 his body could have been twisted. His body could
10 have been bent. His body could have been like he
11 was actually leaving out of the car. But she could
12 not tell you his exact position.

13 As a matter of fact, she took it a step even
14 further and said, Well, I can't tell you where the
15 gun was at. I can't tell you where the point was
16 at. That's not my job as a pathologist. My job is
17 to perform the autopsy.

18 And then the State asked of the pathologist,
19 they said, Is that consistent with a shot coming
20 from the back seat of the car?

21 And then when I went and asked the pathologist
22 a question, I said, Dr. Durso, could those shots
23 have come from the front car -- front seat of the
24 car? And what was her response? Yes.

25 Now, Austin Murray at this point after the

1 shooting has occurred -- and he, Austin Murray, the
2 only person placing my client in this car at the
3 time of the murder -- says that my client all of a
4 sudden said, Drive, Drive, Drive. So Austin
5 Murray -- I don't know if he was trained as a stunt
6 driver, or anything like that, but while this car
7 is still moving, while no one is driving this car,
8 he is able to jump from the passenger seat all the
9 way in the driver's seat and then start driving.
10 But he wants you all to believe that he did that
11 because of the fact that my client demanded him to
12 get in that car and drive. What reason would
13 Austin Murray have to lie about that?

14 Then Austin Murray says that my client tells
15 him -- or demands him -- and let's be clear with
16 that, because he kept using the word "demand,"
17 "demand." And he also kept saying that, Man, he
18 just -- my client just shot somebody. So he was
19 kind of scared. He was frozen. So he was going to
20 do what my client demanded him to do.

21 So Austin Murray said that my client demanded
22 him to go to these two different homes in Spring
23 Valley because my client wanted to see somebody,
24 but the people never came out.

25 But we know from Austin Murray's testimony and

1 Jamil Brennan's testimony that prior to going to
2 the Spring Valley area, Austin Murray drove to
3 Jamil Brennan's home and picked him up.

4 Now, the State said that Jamil Brennan's
5 testimony was consistent with Austin Murray's
6 testimony. I beg to differ. Austin Murray stated
7 that when he and my client arrived at Jamil
8 Brennan's home that my client said, Hey, Jamil, I
9 need you to get a rag out of the house. What did
10 Jamil Brennan say? Nobody told me to get a rag out
11 of the house.

12 Then Austin Murray said that my client told
13 Jamil Brennan, Hey, I just shot somebody. Jamil
14 Brennan on that witness stand said that, Cheo Green
15 didn't tell me that he shot someone.

16 Austin Murray on that witness stand said that
17 while they were with Jamil Brennan, he took his
18 shirt off and wiped down the car and that Cheo
19 Green, my client, took the rag from Jamil and wiped
20 down that white car. Jamil Brennan said that
21 simply didn't happen. He was there.

22 And let's talk about that. So the State wants
23 you to believe -- and follow me with this -- that
24 some of Jamil Brennan's statements are true, but
25 anything that is inconsistent with what Austin

1 Murray says is a lie. They can't have it both
2 ways. Jamil Brennan testified here for himself.
3 He did not see a rag. He did not get a rag. He
4 did not hear my client say that he shot anybody.
5 He did not see anybody wipe down a car.

6 Now, another thing about the car and damage to
7 the car. Now, if we believe what Austin Murray
8 said about my client and him wiping down the car,
9 tell me this. Why would my client mistakenly spit
10 on the window of the car and take the butt of the
11 gun to break the window, instead of just taking
12 another rag and wiping the spit from off of the
13 car? That just doesn't make any sense.

14 Austin Murray said that after this night, he
15 sees my client later on, and that my client
16 actually says he is going to get rid or kill the
17 missing link. Who was witness to that statement?
18 Austin Murray. Austin Murray alone.

19 Now, the Prosecution just told you that his
20 girlfriend at the time, Donnella Jackson, was
21 witness to that statement. That's not the truth.
22 Donnella Jackson on that witness stand said that
23 her and Austin Murray were at a event and that my
24 client happened to be at that event and that Austin
25 Murray went outside and spoke to Mr. Green. She

1 never said that she was present to actually hear
2 what that conversation was, but the State wants you
3 to believe that she was present, and that
4 corroborates again their star witness,
5 Mr. Reasonable Doubt, Austin Murray.

6 Now, I want to deal with, again, this issue
7 with the cell phone and this issue with the
8 evidence that the State actually presented.

9 The Prosecution kept saying that these maps,
10 these cell phone records, place my client with
11 Austin Murray at a specific time on a specific day.
12 That simply is not true. Even their own witness
13 said that he mapped a 3-mile radius and that is
14 just a general radius that he mapped. And what did
15 he map that radius on? Information he got from the
16 Prosecution. Not information he got from Verizon
17 about the range of their towers, not information he
18 got from T-Mobile about the range of their towers,
19 but based on the Prosecution saying, Hey, do a map,
20 do it for three miles. Now, does that prove that
21 my client shot Mr. Davis on that day? I dare not
22 say.

23 Let's deal with this even further. Now, the
24 Prosecution's own witness, when I asked him about
25 his 3-mile radius, I went up to that smart board

1 and I said, Agent Van Houten, you are not saying
2 that a person was in this specific area? And even
3 Van Houten corrected me quickly and he said, No,
4 I'm placing a cell phone in that area, not a
5 person. Unlike what the Prosecution would like for
6 you to believe.

7 And I know -- ladies and gentlemen of the
8 jury, I saw you guys. You guys were paying very
9 close attention to these maps that Agent Van Houten
10 testified to. But I want it to be clear that there
11 was no testimony that actually said that my client
12 was in a exact location within this radius. It
13 places a cell phone with the number -6130 in
14 that area. Anyone could have been on that phone.
15 It does not and was not my client.

16 Now, the State tried to kind of minimize that.
17 But let me tell you what Investigator McCracken
18 said. And I believe that was yesterday when I
19 talked to him. They made a point about whether --
20 I made a point about whether or not Austin Murray,
21 whether or not he changed the SIM card out of his
22 phone hours after Mr. Davis was shot. So the State
23 actually put Investigator McCracken back on the
24 stand. And let me see exactly -- or almost exactly
25 what Investigator McCracken said.

1 He said, People frequently change cell phones,
2 frequently change cell phone numbers, and they
3 frequently switch cell phones.

4 So based on that, are we to believe that on --
5 based on Austin Murray's testimony, that

6 -6130 was my client's cell phone? I think
7 not.

8 Now, let's go back to these maps again. Now,
9 when I actually asked Agent Van Houten questions
10 about this map, I pointed within that 3-mile
11 radius. And I said, Investigator Van Houten, could
12 a cell phone be here? Could a cell phone be here?
13 Could it be anywhere within that 3-mile radius?

14 And he said, Yes. I can't tell you exactly.
15 I can just tell you that that cell phone was
16 pinging from off that tower and I mapped a 3-mile
17 radius.

18 I also asked him -- and I want you guys to pay
19 close attention to this, is that, You did this
20 3-mile radius, but could that cell phone be outside
21 of that 3-mile radius?

22 And what does he say? Yeah, sure. That cell
23 phone could be out of that 3-mile radius because
24 there are so many factors that affect the strength
25 and signal of the cell phone, like the time of day,

1 like the weather, whether or not there is a lot of
2 high call volume.

3 So the State wants you to believe that they
4 can place that cell phone within that 3-mile
5 radius, but their witness themselves said that cell
6 phone could be outside of that 3-mile radius.

7 Now, the State has already said this, and I'm
8 going to say it also. There was no DNA. And what
9 I'm concerned about is the DNA of my client. My
10 client's DNA was not found inside that white car.
11 My client's DNA was not found on that .32 caliber.
12 My client's DNA was not found on the bullet. My
13 client's DNA was not found on that rearview mirror
14 that was actually found. And they are not
15 disputing that. It was not found there.

16 Let's talk about fingerprints. Was my
17 client's fingerprints found anywhere? Was it found
18 it in the car? No. Was it found on the cell
19 phone? No. So you have no DNA. You have no
20 fingerprints. Reasonable doubt.

21 I want to briefly hit on the statements of
22 DaQwane Robinson and Curtis Wright. DaQwane
23 Robinson states that he did go and pick up Austin
24 Murray and Jamil Brennan on the morning of
25 September the 16th, 2014 [sic], but what DaQwane

1 Robinson could not say is that my client told him
2 that he shot Mr. Davis. He could not say that he
3 personally witnessed my client shot Mr. Davis.
4 And, more importantly, DaQwane Robinson couldn't
5 say what time my client got in that white car that
6 Mr. Murray was driving.

7 Now, DaQwane Robinson tried to say that my
8 client threatened him because my client wanted
9 DaQwane to take a gun charge from that traffic stop
10 where all of them were in the car and DaQwane was
11 arrested for the gun and his brother, Curtis
12 Wright, was arrested for the gun. But what he said
13 just didn't make any sense.

14 Mr. Robinson said that my client came to him
15 and said, If you don't take that gun charge for
16 your brother, Curtis Wright, then I'm going to kill
17 you and Curtis Wright. Why would my client want
18 DaQwane Robinson to take a gun charge for a person
19 that he has threatened to kill his life? My client
20 didn't have a gun charge at that point. DaQwane
21 Robinson already had a gun charge. So it made no
22 sense when he testified to that.

23 Now, let's go to Curtis Wright. And I'm going
24 to tell you, bless his heart, he didn't want to be
25 here. And it was painfully obvious that he didn't

1 want to be here. He kept saying, I don't know. I
2 don't know. I don't know. I don't know.

3 But just because Mr. Wright on that witness
4 stand said, I don't know, I don't know, I don't
5 know, doesn't mean he was lying. It also doesn't
6 mean that he was telling the truth. It also
7 doesn't mean that when he gave that statement that
8 the Prosecution read into evidence that he was
9 telling the truth when he spoke to law enforcement.

10 Because, remember, Investigator Gilliam said
11 that, Yeah, that is Curtis Wright's signature and
12 that's his handwriting and he was just a writing,
13 writing, writing, writing, writing. And then
14 Investigator Gilliam said, And I notarized it.

15 And the State was like, Well, what does that
16 mean when you notarize something?

17 And Investigator Gilliam said that, Well, you
18 know when you notarize something, that person is
19 saying that that statement that you gave them is
20 the truth.

21 But then when I got up there and I asked him
22 Investigator Gilliam, Has he ever, in all of his
23 years of law enforcement, took a statement from a
24 witness or a suspect and they wrote up that
25 statement and he notarized it, have those

1 statements ever come back as lies?

2 And he said, Yeah, sure they do.

3 So the fact that Curtis Wright's statement was
4 notarized does not make it true.

5 Now, I want to talk about the fact that the
6 State explained to you the hand of one, hand of all
7 charge. The State said that the hand of one, hand
8 of all means that two people acted together. Two
9 people acted in concert to actually commit a crime.

10 I argue that everything that Austin Murray
11 said on this witness stand went totally against
12 that.

13 And do you know why I say that? Because what
14 did Austin Murray say? I don't know why Mr. Green
15 did that. He made me take the car.

16 So how can they act in concert when Austin
17 Murray is constantly saying over and over again
18 that, I didn't know Mr. Green was going to shoot
19 Mr. Davis. Mr. Green ordered me to drive the car
20 after he shot Mr. Davis. Mr. Green then ordered me
21 to go to two areas in Spring Valley.

22 Now, how can they act together? They may have
23 been together, but did they act together? That's
24 not what Austin Murray testified to.

25 So the State can't have it both ways, ladies

1 and gentlemen. They just can't. The State cannot
2 have Austin Murray on this witness stand and
3 saying, I knew nothing about this murder
4 beforehand. I did not know Cheo Green was going to
5 shoot Mr. Davis. When he shot Mr. Davis, I got
6 scared and he demanded me to go and drive this car,
7 so I drove this car because Cheo Davis -- I mean,
8 Cheo Green had just shot Mr. Davis, so I'm frozen.
9 I'm scared. He demanded me, so I'm going to do
10 exactly what he said.

11 They can't have Austin Murray get on this
12 witness stand and say that he had nothing to do
13 with the murder and nothing to do with a carjacking
14 and then come back at this late date and tell you
15 guys that, Austin Murray, he did have something to
16 do with that carjacking. Austin Murray did have
17 something to do with that murder. Austin Murray
18 helped Cheo Green with the carjacking. Austin
19 Murray helped Cheo Green with the murder.

20 Was there any testimony from this witness
21 stand that Austin Murray helped Cheo Green with the
22 carjacking? Was there any evidence from this
23 witness stand that Austin Murray helped Cheo Green
24 commit a murder?

25 So you can't have your cake and eat it too.

1 You can't say that my client is the shooter and my
2 client acted alone and then at this late hour say
3 that, No, he acted with Austin Murray. That
4 doesn't make any sense. It sounds kind of
5 desperate.

6 So, ladies and gentlemen, in wrapping up, I
7 want you all when you go back there to deliberate
8 on the fate of my client as it relates to the
9 charges of murder, carjacking, possession of a
10 weapon during the commission of a violent crime, I
11 don't want you to look at this pretty box. I
12 brought this pretty box up here to you. I brought
13 it to you from my table, but I probably should have
14 been bringing it to you from the Prosecution's
15 table, because that's exactly what they are trying
16 to do. They are trying to give you this pretty box
17 and say, Don't look inside. Don't look at the
18 problems with our case. Look at our star witness,
19 Austin Murray, and convict Cheo Green based on his
20 testimony. They say that everybody else
21 corroborates Austin Murray. I say that it doesn't.

22 Ladies and gentlemen of the jury, kind of,
23 should have, maybe, it is just not enough. Just
24 not enough to prove that my client is guilty of
25 murder.

1 No one places my client in the car at the time
2 of the shooting, except for Austin Murray. It is
3 not enough to convict my client of carjacking. It
4 is not enough to convict my client of possession of
5 a weapon during a violent crime.

6 So when you go back there after the Judge has
7 charged you all on the law, take the lid off the
8 State's pretty box, their pretty case that they've
9 presented to you, and you'll see that it is riddled
10 with reasonable doubt; and, therefore, they can't
11 meet that very, very, very high burden of guilty
12 beyond a reasonable doubt, because all of the
13 reasonable doubt, ladies and gentlemen, is right
14 here.

15 I would like to thank you, ladies and
16 gentlemen of the jury, on behalf of my client, Mr.
17 Sims, and myself for taking the opportunity to
18 listen to all the testimony and to actually examine
19 it for what it really is. And I am sure when you
20 go back there and you deliberate, the verdict will
21 be clear. And that will be that my client, Cheo
22 Green, is not guilty of all charges: Not guilty of
23 murder, not guilty of carjacking, not guilty of
24 possession of a weapon during the commission of a
25 violent crime.

1 Thank you.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, we have been going almost two hours.
4 We are going to take -- my charge will probably
5 take 30, 40 minutes, so we are going to take a
6 quick bathroom break, stretch our legs, and then I
7 will have you all back in about ten minutes.

8 All right. Thank you. Remember, do not
9 discuss the case until you have received the charge
10 and instructions to begin deliberations.

11 (WHEREUPON, the jury retires to the jury
12 room at 11:41 a.m.)

13 THE COURT: All right. Let's take about ten
14 minutes, run to the restroom.

15 (WHEREUPON, a break was taken.)

16 THE COURT: I am going to lock the doors, so
17 if anyone needs to leave or get back in, the door
18 will be locked during the jury charge. So now is
19 the time that you need to exit if you are not going
20 to be able to stay. Please make sure all cell
21 phones are off.

22 And I think we are ready to bring them in.

23 (WHEREUPON, the jury came into open
24 court at 11:59 a.m.)

25 THE BAILIFF: The jury is present, Your Honor.

JURY CHARGE

1
2 THE COURT: All right. Ladies and gentlemen
3 of the jury, you have heard all of the evidence,
4 you have heard the arguments of the parties. Now
5 it is my responsibility to charge you as to the law
6 in this case.

7 I remind you that during this trial you and I
8 have certain duties to perform. As the trial
9 judge, it is my responsibility to preside over the
10 trial of this case. And I also have the duty to
11 rule on the admissibility of evidence offered
12 during the trial.

13 You are to consider only the competent
14 evidence before you. If there was ever any
15 testimony ordered stricken from the record in this
16 case during this trial, you must disregard that
17 testimony.

18 You are to consider only the testimony which
19 has been presented from this witness stand and
20 exhibits which have been made a part of the record
21 in this case and any stipulations of counsel.

22 I have the additional duty to charge you the
23 law applicable to this case. As the presiding
24 judge, I am the sole judge of the law of this case.
25 And it is your duty as jurors to accept and apply

1 the law as I now state it to you.

2 If you already have any idea as to what the
3 law is or what the law ought to be and it does not
4 agree with what I now tell you the law is, you must
5 abandon that idea because you are sworn to accept
6 the law and apply the law exactly as I state it to
7 you.

8 In every case tried in the court before a
9 jury, the jury becomes the sole and exclusive judge
10 of the facts. A trial judge cannot state, comment
11 on, or make any statement to a trial jury about the
12 facts in a case. Because you, the jury, are the
13 sole judge of the facts in this case, you are not
14 to infer from what I said during the progress of
15 this trial in ruling upon the admissibility of
16 evidence, or otherwise, or anything that I say now
17 during the course of this instruction to you that I
18 have an opinion about the facts in this case. The
19 law does not allow me to have an opinion about the
20 facts in this case. This is a matter solely for
21 you, the jury, to determine. As jurors, it is your
22 duty to determine the effect, value, weight, and
23 truth of the evidence presented during this trial.

24 Ladies and gentlemen of the jury, there are
25 two types of evidence that we consider during a

1 trial. There is direct evidence and circumstantial
2 evidence. Direct evidence is testimony of a person
3 who claims to have actual knowledge of a fact, such
4 as an eyewitness. It is evidence which immediately
5 establishes a main fact to be proved.

6 Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of
8 a fact. It is evidence which immediately
9 establishes collateral facts from which the main
10 fact may be inferred. Circumstantial evidence is
11 based on inference and not on personal knowledge or
12 observation.

13 The law makes absolutely no distinction
14 between the weight or value to be given to either
15 direct or circumstantial evidence, nor is a greater
16 degree of certainty required of circumstantial
17 evidence than of direct evidence. You should weigh
18 all of the evidence in the case. After weighing
19 all of the evidence, if you are not convinced of
20 the guilt of the Defendant beyond a reasonable
21 doubt, you must find the Defendant not guilty.

22 Necessarily, you must determine the
23 credibility of witnesses who have testified in this
24 case. Credibility means -- simply means
25 believability. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine
2 which evidence convinces you of its truth.

3 In determining the believability of witnesses
4 who have testified in this case, you may believe
5 one witness over several witnesses, or several
6 witnesses over one witness. You may believe a part
7 of the testimony of a witness, and reject the
8 remaining part of the testimony of that same
9 witness. You may believe testimony of a witness in
10 its entirety, or reject the testimony of a witness
11 in its entirety. You may consider whether any
12 witness has exhibited to you any interest, bias,
13 prejudice, or other motive in this case. You may
14 also consider the appearance and the manner of a
15 witness while on the witness stand.

16 As I told you earlier in the week, the rules
17 of evidence ordinarily do not permit witnesses to
18 testify to opinions or conclusions. An exception
19 to this rule exists for a witness we call expert
20 witnesses. A witness who by education or
21 experience has become an expert in some art,
22 science, profession, or calling may state an
23 opinion as to relevant and material matters in
24 which the witness claims to be an expert and may
25 also state the reason for their opinion.

1 You should consider any expert opinion
2 received in evidence in this case and, like any
3 other evidence, give it the weight you think it
4 deserves.

5 If you decide the opinion of an expert witness
6 is not based on sufficient education and
7 experience, or if you conclude that the reason
8 given in support of the opinion is not sound, or
9 that the opinion is outweighed by other evidence,
10 you may disregard the opinion entirely.

11 An expert's testimony is to be given no
12 greater weight than that of other witnesses simply
13 because the witness is an expert. Further, you are
14 not required to accept an expert's opinion, even
15 though it is not contradicted.

16 A person -- ladies and gentlemen of the jury,
17 there were several witnesses who testified in this
18 case who had prior criminal records. A person who
19 has a past criminal record is competent to testify
20 during a trial. A past record does not affect the
21 ability of that witness to testify. The past
22 record may only be considered by you, if at all, in
23 determining the witness's believability. Remember,
24 you are the sole judges of the facts in this case
25 and of the believability of any and all witnesses.

1 There has been evidence presented that
2 witnesses have made prior statements which are not
3 consistent with the witness's present testimony.
4 You may use the evidence to decide whether to
5 believe the witness. You may also use evidence of
6 the earlier contradictory statements to determine
7 the truth of those statements. It is up to you to
8 decide whether to believe the earlier statements or
9 the testimony given at trial.

10 If a witness is shown to have knowingly
11 testified untruthfully concerning any matter --
12 material matter, you may consider this in
13 determining whether to trust the witness's
14 testimony as to other matters. You may reject all
15 testimony of that witness or give all or part of
16 the testimony the weight you think it deserves.

17 Ladies and gentlemen of the jury, the
18 indictments in this case charge the Defendant with
19 murder, carjacking with injury, and possession of a
20 weapon during a violent crime. I remind you that
21 the fact that the Defendant was arrested, charged,
22 and indicted in this case is not evidence in this
23 case and cannot be considered by you as evidence of
24 guilt in this case, nor does it create any
25 presumption or inference of guilt. These documents

1 are simply the formal written instruments which
2 contain the charges made against the Defendant. It
3 is the formal document by which the case is brought
4 into court.

5 Ladies and gentlemen of the jury, the
6 Defendant in this case has pled not guilty to the
7 three indictments. And that plea puts the burden
8 on the State to prove the Defendant guilty. A
9 person charged with committing a criminal offense
10 in South Carolina is never required to prove
11 himself innocent. I charge you that it is an
12 important rule of law that the Defendant in a
13 criminal trial, no matter what the seriousness of
14 the charge may be, will always be presumed to be
15 innocent of the crime for which the indictment was
16 issued unless guilt has been proven by evidence
17 satisfying you of that guilt beyond a reasonable
18 doubt.

19 The presumption of innocence does not end when
20 you begin your deliberations, but it accompanies
21 the Defendant throughout the trial until you reach
22 a verdict of guilt based on evidence satisfying you
23 of that guilt beyond a reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the

1 Defendant, which remains with the Defendant until
2 it has been stripped from the Defendant by evidence
3 satisfying you of the Defendant's guilt beyond a
4 reasonable doubt.

5 The presumption of innocence is not mere legal
6 theory. It is not just a legal phrase. It is a
7 substantial right to which every Defendant is
8 entitled unless you, the jury, are satisfied from
9 the evidence of the Defendant's guilt beyond a
10 reasonable doubt.

11 What is reasonable doubt? Reasonable doubt is
12 the kind of doubt that would cause a reasonable
13 person to hesitate to act. The State has the
14 burden of proving the Defendant guilty beyond a
15 reasonable doubt. Some of you may have served as
16 jurors in a civil case where you were told that it
17 is only necessary to prove that a fact is more
18 likely true than not true, such as by the greater
19 weight or preponderance of the evidence.

20 In criminal cases, the State's proof must be
21 more powerful than that. It must be beyond a
22 reasonable doubt. Proof beyond a reasonable doubt
23 is proof that leaves you firmly convinced of the
24 Defendant's guilt. There are very few things in
25 this world that we know with absolute certainty and

1 in criminal cases the law does not require proof
2 that overcomes every possible doubt. If, based on
3 your consideration of the evidence, you are firmly
4 convinced that the Defendant is guilty of the
5 crimes charged, you must find the Defendant guilty.

6 If, on the other hand, you think there is a
7 real possibility that the Defendant is not guilty,
8 you must give the Defendant the benefit of the
9 doubt and find him not guilty.

10 An issue in this case is the identification of
11 the Defendant as the person who committed the
12 crimes charged. The State has the burden of
13 proving identity beyond a reasonable doubt. You
14 must be satisfied beyond a reasonable doubt of the
15 accuracy of the identification of the Defendant
16 before you may convict the Defendant.

17 Identification testimony is an expression of
18 belief or impression by a witness. You must
19 determine the accuracy of the identification of the
20 Defendant. You must consider the believability of
21 each identification witness in the same way as any
22 other witness. You may consider whether the
23 witness had an adequate opportunity to observe the
24 offender at the time of the offense. This will be
25 affected by things like: How long or short a time

1 was available; how far or close was the witness;
2 the lighting conditions; and whether the witness
3 had a chance to see or know the person in the past;
4 are you satisfied that the identification made by
5 the witness subsequent to the offense was the
6 product of his own recollection?

7 You may take into account both the strength of
8 the identification and the circumstances under
9 which the identification was made. If the
10 identification by the witness may have been
11 influenced by the circumstances under which the
12 Defendant was presented to him for identification,
13 you should scrutinize the identification with great
14 care. You may also consider the length of time
15 that lapsed between the occurrence of the crime and
16 the next opportunity of the witness to see the
17 Defendant as a factor bearing on the reliability of
18 the identification. You may take into account any
19 occasion in which the witness failed to make an
20 identification of the Defendant or make an
21 identification that was inconsistent with his
22 identification at trial.

23 Finally, you must consider the credibility of
24 each identification witness in the same way as any
25 other witness. Consider whether he or she is

1 truthful and consider whether he or she had the
2 capacity and opportunity to make a reliable
3 observation on the matter covered in testimony --
4 his or her testimony.

5 Once again, I instruct you that the burden of
6 proof is on the State and extends to every element
7 of the crime charged. And this specifically
8 includes the burden of proving beyond a reasonable
9 doubt the identity of the Defendant as a person who
10 committed the crime.

11 If, after examining the testimony, you have a
12 reasonable doubt as to the accuracy of the
13 identification, you must find the Defendant not
14 guilty.

15 Ladies and gentlemen, as I told you earlier,
16 the Defendant in this case is charged with murder.
17 The State must prove beyond a reasonable doubt that
18 the Defendant killed another person with malice
19 aforethought. Malice is hatred, ill-will, or
20 hostility towards another person. It is the
21 intentional doing of a wrongful act without just
22 cause or excuse and with an intent to inflict an
23 injury or under circumstances that the law will
24 infer an evil intent.

25 Malice aforethought does not require that

1 malice exist for any particular time before the act
2 is committed, but malice must exist in the mind of
3 the Defendant just before and at the time the act
4 is committed. Therefore, there must be a
5 combination of the previous evil intent and the
6 act.

7 Malice aforethought may be express or
8 inferred. These terms, express and inferred, do
9 not mean different kinds of malice, but merely the
10 manner in which malice may be shown to exist. That
11 is, either by direct evidence or by inference from
12 the facts and circumstances which are proven.

13 Express malice is shown when a person speaks
14 words which express hatred or ill-will for another,
15 or when the person prepared beforehand to do the
16 act which was later accomplished. For example,
17 lying in wait for a person or any other act of
18 preparation going to show that the deed was within
19 the Defendant's mind would be express malice.

20 Malice may be inferred from conduct showing a
21 total disregard for human life. Inferred malice
22 may also arise when the deed is done with a deadly
23 weapon. A deadly weapon is an article, instrument,
24 or substance which is likely to cause death or
25 great bodily harm. Whether an instrument has been

1 used as a deadly weapon depends on the facts and
2 circumstances of each case.

3 Felony murder. If one intentionally kills
4 another during the commission of a felony, the
5 inference of malice may arise. If facts are proved
6 beyond a reasonable doubt sufficient to raise an
7 inference of malice to your satisfaction, this
8 inference would simply be an evidentiary fact to be
9 taken into consideration by you, along with all
10 other evidence in this case, and you may give it
11 the weight that you decide it should receive.

12 Ladies and gentlemen of the jury, I charge you
13 that an attempted drug distribution under our state
14 law is a felony.

15 Carjacking resulting in great bodily injury.
16 The Defendant in this case is charged with
17 carjacking. In order to prove carjacking, the
18 State must prove beyond a reasonable doubt that the
19 Defendant took, or attempted to take, a motor
20 vehicle from another person by force and violence
21 or by intimidation while the person was operating
22 the vehicle or while the person was in the vehicle.

23 Great bodily injury is bodily injury which
24 creates a substantial risk of death or which
25 creates -- which causes serious permanent

1 disfigurement or extended loss or impairment of the
2 function of any bodily member or organ.

3 Ladies and gentlemen of the jury, I also
4 stated to you that the Defendant is charged with
5 possession of a weapon during the commission of a
6 violent crime. The Defendant is charged with
7 possession of a weapon during the commission of a
8 violent crime. The State must prove beyond a
9 reasonable doubt that the Defendant was in
10 possession of a firearm or visibly displayed what
11 appeared to be a firearm during the commission of a
12 violent crime.

13 A firearm means any machine gun, automatic
14 rifle, revolver, pistol, or any weapon which will,
15 is designed to, or may be readily converted to
16 expel a projectile.

17 In order to find the Defendant guilty of
18 possession of a weapon during the commission of a
19 violent crime, you must first find the Defendant
20 guilty of either committing a violent crime of
21 murder and/or carjacking, which are violent crimes.
22 The State must prove beyond a reasonable doubt that
23 the weapon further advanced or helped in the
24 commission of these crimes.

25 In order to determine criminal liability,

1 criminal intent is required. For example, the
2 mental state required to be proven by the State for
3 a particular crime might be purpose, intent,
4 knowledge, recklessness, or criminal negligence.

5 Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is
7 always a matter that must be determined by the jury
8 from the circumstances surrounding the situation.
9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can
11 dissect a person's brain and determine what the
12 person had in mind, so the law says that criminal
13 intent may be inferred from the circumstances shown
14 to have existed. This is how you make a
15 determination of whether or not the element
16 requiring intent was present.

17 It is not necessary to establish intent by
18 direct and positive evidence, but intent may be
19 established by inference in the same way as any
20 other fact, by taking into consideration the acts
21 of the parties and all the facts and circumstances
22 of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the
25 Defendant intended to do based on the circumstances

1 shown to have existed.

2 Criminal intent can arise from action or a
3 failure to act. It may arise from negligence,
4 recklessness, or an indifference to duty or to the
5 consequences that is considered by law to be the
6 equivalent of criminal intent.

7 I charge you, Madam Forelady, and members of
8 the jury, that it is the law of this state that if
9 a crime is committed by two or more persons who are
10 acting together in the commission of an offense,
11 the act of one is the act of both or all.

12 By way of illustration, two people can be
13 guilty of killing another for a murder when only
14 one of the two had a pistol and one -- only one
15 bullet. If both are together, acting together,
16 assisting each other in the commission of the
17 offense, the law says that under those
18 circumstances, the act of one is the act of all.
19 And it is sometimes said or called, the hand of one
20 is the hand of all.

21 Ladies and gentlemen of the jury, mere
22 presence at the scene is not sufficient to prove
23 someone guilty of a crime. A Defendant's presence
24 where a crime is being committed or mere
25 association with a person who commits a crime does

1 not make the Defendant an accomplice or an aider
2 and abettor of the person committing a crime. The
3 burden is on the State to prove every element of
4 the crime charged.

5 If you find, after reviewing all the evidence,
6 that the State has proved that the Defendant was
7 only present at the scene of a crime and that they
8 have not proved beyond a reasonable doubt any other
9 participation in the crime, then you must find the
10 Defendant not guilty. The law is that proof of at
11 the scene of a crime is not sufficient to find
12 someone guilty.

13 I instruct you, ladies and gentlemen of the
14 jury, and emphasize that the fact that the
15 Defendant did not testify is not a factor to be
16 considered by you in any way in your deliberations
17 and in your consideration of the question of guilt
18 or innocence of the Defendant. It must not be
19 considered by you in any manner whatsoever. A
20 Defendant has a constitutional right to remain
21 silent. And the assertion of this right must not
22 be considered by you in your deliberations. I
23 repeat, under your oath you are to draw no
24 conclusion whatsoever from the fact that the
25 Defendant in this case did not testify or present

1 any evidence. The fact that the Defendant did not
2 testify should not even be discussed in the jury
3 room.

4 The burden of proof, as I have stated to you
5 all throughout the trial, is on the State. The
6 Defendant is not required to prove his innocence.
7 The burden of proof remains with the State to prove
8 the Defendant guilty beyond a reasonable doubt.

9 The State and the Defendant are entitled to
10 the individual opinion of each juror on the issue
11 of facts in this case. It is the duty of each of
12 you to consider and weigh all of the evidence in
13 this case and from such evidence to determine, if
14 you can, the question of guilt or innocence of the
15 Defendant.

16 There is nothing peculiarly different in the
17 way a jury should consider the evidence in a
18 criminal case from that in which all reasonable
19 persons treat any question depending upon evidence
20 presented to them. You are expected to use your
21 good sense, consider the evidence in the case for
22 only those purposes for which it has been admitted
23 and give it a reasonable and fair construction in
24 the light of your common knowledge -- in the light
25 of your common knowledge of the natural tendencies

1 and inclinations of human beings.

2 If the accused be proved guilty beyond a
3 reasonable doubt, say so. If not so proved, say
4 so.

5 Your verdict in this case will be one of two
6 forms. If, from the evidence and the law, you find
7 that the Defendant is not guilty, you will circle
8 "not guilty" on the verdict form that I will give
9 you, and the forelady will sign her name.

10 If, on the other hand, you find that the
11 Defendant is guilty based upon the evidence and the
12 law which you have heard, you will circle "guilty"
13 on the verdict form, and Madam Forelady will sign
14 her name.

15 Your verdict must be unanimous. It must be
16 guilty or not guilty. The law requires that a jury
17 verdict be unanimous, which means that all jurors
18 must agree. The only two forms of the verdict are
19 guilty or not guilty.

20 Madam Forelady, once the jury reaches a
21 verdict of not guilty or guilty, circle the verdict
22 on the face of the verdict form and sign under the
23 verdict to signify that what you have circled is
24 the verdict of all jurors. Then you will notify us
25 by knocking on the door.

1 I have the verdict form here. And it reads --
2 the verdict form that you will have in the jury
3 room -- and it reads: State of South Carolina,
4 County of Richland, in the Court of General
5 Sessions of the Fifth Judicial Circuit, Indictment
6 2013-GS-40-7535, 7537, and 7538, State of South
7 Carolina v. Cheo Green, Defendant. And it states:
8 Verdict Form. Please circle the appropriate
9 verdict below.

10 And I will go ahead and tell you. I had to
11 put guilty, not guilty, they are next to each
12 other, I had to put one before the other. Please
13 do not infer that I have a position as to which one
14 you circle. I just had to put one in front of the
15 other one.

16 As to the indictment alleging murder: We, the
17 jury, unanimously find the Defendant -- and you
18 will circle guilty or not guilty.

19 As to the indictment alleging carjacking
20 resulting in great bodily injury: We, the jury,
21 unanimously find the Defendant guilty or not
22 guilty.

23 As to the indictment alleging possession of a
24 weapon during a violent crime: We, the jury,
25 unanimously find the Defendant guilty or not

1 guilty.

2 You will circle your answer. Madam Forelady,
3 you will sign where it says "presiding juror" and
4 date the jury verdict form.

5 I am going to send you all back into the room,
6 but you cannot begin your deliberations until you
7 receive all of the evidence -- and there is quite a
8 few exhibits, so it is going to take a second to
9 gather those up -- until you receive all of the
10 exhibits, the verdict form, and then you will
11 receive an instruction from the bailiff to begin
12 your deliberations.

13 Your lunch should be arriving shortly. And
14 you are more than welcome to deliberate while you
15 are eating your lunch, or if you choose to eat your
16 lunch and then begin your deliberations, it is up
17 to you how you wish to proceed.

18 If, for some reason, someone has to leave the
19 room, then we will -- you will have to stop your
20 deliberations until that person returns to the
21 room, and then you can begin your deliberations
22 again.

23 All right. So we are going to send you all
24 back into the jury room.

25 And I am going to ask my alternates to hang

1 back.

2 And, as I said, I will send you all back into
3 the jury room.

4 All right.

5 (WHEREUPON, the jury retires to the jury
6 room at 12:28 p.m.)

7 THE COURT: All right. Let me see you all one
8 second.

9 (WHEREUPON, a bench conference was
10 held.)

11 THE COURT: To our alternates. Ms. Thompson?

12 ALTERNATE JUROR: (Nods affirmatively.)

13 THE COURT: And Mr. -- is it Pak?

14 ALTERNATE JUROR: Yes, ma'am.

15 THE COURT: All right, I want to thank you all
16 for participating in this trial this week. As you
17 can see, none of the 12 jurors -- all of the 12
18 jurors have returned today and remained throughout
19 the trial. So, therefore -- we only need 12 jurors
20 for purposes of deliberation, so, therefore, your
21 service is complete.

22 You are more than welcome to hang around and
23 see -- if you would like to see what your fellow
24 jurors are going to come back with, or you are free
25 to -- they are free to leave? I think you are free

1 to leave, but I will send you downstairs. I'm
2 pretty sure that they have released the remaining
3 jury panel for the week. Your lunch is out --
4 should be out there. In a couple of minutes, the
5 bailiff will -- if you want to wait around on your
6 lunch, you can get your box of lunch. You just
7 can't go back into the jury room while they are
8 deliberating.

9 So, once again, I do want to thank you. I
10 know as my former boss always said, being an
11 alternate is like being invited to the dance, but
12 not being asked to dance.

13 So I do want to thank you all and appreciate
14 you -- thank you on behalf of everyone here and
15 appreciate you being attentive and giving us your
16 time here this week.

17 Thank you. If you need a work excuse -- Can
18 you take them to Becky and see if she can -- She
19 can get you a work excuse.

20 All right. Thank you.

21 (WHEREUPON, the alternates were excused
22 at 12:31 p.m.)

23 THE COURT: All right. So y'all take a look
24 at the exhibits. They told us -- do you send that
25 back into the jury room, that thing?

1 MS. GARFIELD: We've been taking it and just
2 leaving it in the back hallway.

3 THE COURT: So they said that they have
4 someone that operates that, but they think it is
5 improper to send that person back into the jury
6 room and asked if my law clerk -- what they said
7 they have been doing in the past, takes a quick
8 course on how to operate it, and they will send her
9 back to operate it.

10 MS. SINGLETARY: Yes, Your Honor.

11 THE COURT: She can't say anything while she
12 is operating it.

13 MS. SINGLETARY: Yes, Your Honor. They
14 explained that to me earlier.

15 THE COURT: Okay. Any objections or
16 exceptions to the jury charge?

17 MS. BODMAN: None from the State, Your Honor.

18 MS. SINGLETARY: None from the Defense, Your
19 Honor.

20 THE COURT: All right. Anything else before
21 we take the exhibits and I give them the verdict
22 form?

23 MS. SINGLETARY: Your Honor, would you like
24 for me to renew my trial motions --

25 THE COURT: Sure.

1 MS. SINGLETARY: -- and objections, as well as
2 objections during the trial and renew my directed
3 verdict motion at this time, Your Honor.

4 THE COURT: All right. And as previously
5 ruled, those will be respectfully denied, but noted
6 for the record.

7 MS. SINGLETARY: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. BODMAN: Thank you.

10 THE COURT: All right. Y'all gather up the
11 exhibits and they will take it back. Here is the
12 verdict form right here.

13 (WHEREUPON, the jury was instructed to
14 begin deliberations at 12:38 p.m.)

15 (Break.)

16 (WHEREUPON, the following occurred at
17 2:48 p.m.)

18 (WHEREUPON, Court's Exhibit No. 2 was
19 marked for identification only.)

20 THE COURT: Make sure all cell phones are
21 turned off. They have a question. All right, the
22 question is Court's Exhibit Number 2: Could we see
23 the initial statements that were given to the
24 investigators the week following the homicide for
25 Curtis, DaQwane, Jamil, and Austin?

1 So I will tell them that that is not in the
2 evidence, and they only can consider the exhibits
3 that are in evidence, but that I can have Debbie
4 pull up the testimony and they are more than
5 welcome to listen to the testimony.

6 THE COURT: All right. Bring them on in.

7 MS. BODMAN: Are you bringing them in to
8 instruct them, or write it?

9 THE COURT: Yes, on the record.

10 (WHEREUPON, the jury came into open
11 court at 2:50 p.m.)

12 THE BAILIFF: The jury is all present, Your
13 Honor.

14 THE COURT: Ladies and gentlemen of the jury,
15 we have received your question, and I have marked
16 that as Court Exhibit Number 2: Could we see the
17 initial statements that were given to the
18 investigators the week following the homicide for
19 Curtis, DaQwane, Jamil, and Austin? Signed by the
20 Forelady.

21 We -- those -- I can't give you exhibits that
22 have not been entered into evidence. The only
23 thing that you can consider are those exhibits that
24 are in evidence, the testimony, any part of the
25 testimony that you would like heard -- now, let me

1 explain that to you. The court reporter, you all
2 see her over there working hard, taking down the
3 testimony and everything that we are saying, but it
4 is in a different form, so therefore you would not
5 be able to -- it is not as if I can have her, say,
6 print off the transcript, because you would not
7 understand it. It is in, I guess, is it shorthand,
8 Debbie? It is shorthand and it would be really
9 difficult for you to read if you didn't know
10 shorthand. And it has not been edited either.
11 When I say edited, she has to go back and check for
12 misspelled words, and stuff like that. But she can
13 play back the audio portion of any testimony if you
14 wish to hear any portion of the audio testimony.
15 But that will be up to you. I just need to know
16 what it is that you need to hear. And then I will
17 bring you back in the courtroom and we can listen
18 to it out here.

19 All right. So I am going to send you all back
20 in to the jury room. You can continue your
21 deliberations.

22 Madam Forelady, if you do decide there is some
23 testimony that you want heard, you all want heard,
24 just let us know. It will take a second because
25 she has to go back and find it. So it will take

1 more than a second, but she has to pull it back up
2 and find it on the recording.

3 All right. Thank you.

4 (WHEREUPON, the jury retires to the jury
5 room at 2:53 p.m.)

6 THE COURT: All right. We will see if they
7 come back and ask for any testimony. Y'all may
8 want to keep the Defendant upstairs back here for a
9 second so you won't have to run back down to get
10 him if they do want to hear any.

11 All right.

12 (Break.)

13 THE COURT: My understanding is they have a
14 verdict. I will have the bailiff bring them in.

15 Let me remind everyone in the audience when
16 the verdict is read there is to be no outburst from
17 anyone. If you feel as if you cannot contain
18 yourselves, then I would ask you to go ahead and
19 leave now.

20 All right.

21 (WHEREUPON, the jury came into open
22 court at 3:40 p.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: It is my understanding that the
25 jurors have reached a verdict; is that correct?

1 THE FORELADY: Your Honor, that is correct, we
2 have.

3 THE COURT: And you have the verdict form,
4 hand that to the bailiff.

5 THE FORELADY: Yes, Your Honor, we have.

6 THE COURT: Is the verdict unanimous verdict.

7 THE FORELADY: Yes, Your Honor, it is.

8 THE COURT: Thank you.

9 (Court views verdict form.)

10 THE COURT: All right, I am going to ask the
11 clerk to publish the verdict.

12 THE CLERK: State of South Carolina, County of
13 Richland, Court of General Sessions of the Fifth
14 Judicial Circuit. The State of South Carolina v.
15 Cheo Green. Indictment 2013-GS-40-7535,
16 2013-GS-40-7537, 2013-GS-40-7538.

17 As to the indictment alleging murder: We, the
18 jury, unanimously find the Defendant guilty.

19 As to the indictment alleging carjacking
20 resulting in great bodily injury: We, the jury,
21 unanimously find the Defendant guilty.

22 As to the indictment alleging possession of a
23 weapon during a violent crime: We, the jury,
24 unanimously find the Defendant guilty.

25 Signed and dated by Deborah Stokes, Forelady.

1 Dated 1/14/16.

2 Madam Forelady, is this your verdict, and the
3 verdict of the entire jury?

4 THE FORELADY: Yes, it is.

5 THE COURT: Thank you.

6 All right. Anything else from the jurors
7 before I release them? Anything from the State?

8 MS. BODMAN: Nothing from the State, Your
9 Honor.

10 THE COURT: Anything from the Defense?

11 MS. SINGLETARY: I would ask to poll the jury,
12 Your Honor.

13 THE COURT: Yes, ma'am.

14 At this time the clerk is going to poll the
15 jurors by number, please, Becky. Number.

16 THE CLERK: Yes, ma'am.

17 Juror 262, was this your verdict?

18 THE JUROR: Yes, it was.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes, it is.

21 THE CLERK: Number 12, was this your verdict?
22 I'm sorry, Number 233, was this your verdict?

23 THE JUROR: Yes, it was.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes, it is.

1 THE CLERK: Number 82, was this your verdict?
2 THE JUROR: Yes, it was.
3 THE CLERK: Is it still your verdict?
4 THE JUROR: Yes, it is.
5 THE CLERK: Number 203, was this your verdict?
6 THE JUROR: Yes, it was.
7 THE CLERK: Is it still your verdict?
8 THE JUROR: Yes, it is.
9 THE CLERK: Number 220, was this your verdict?
10 THE JUROR: Yes, it was.
11 THE CLERK: Is it still your verdict?
12 THE JUROR: Yes, it is.
13 THE CLERK: Number 35, was this your verdict?
14 THE JUROR: Yes, it is.
15 THE CLERK: Is it still your verdict?
16 THE JUROR: Yes, it is.
17 THE CLERK: Number 295, was this your verdict?
18 THE JUROR: Yes, it is.
19 THE CLERK: Is it still your verdict?
20 THE JUROR: Yes, it is.
21 THE CLERK: Number 122, was this your verdict?
22 THE JUROR: Yes, it was.
23 THE CLERK: Is it still your verdict?
24 THE JUROR: Yes, it is.
25 THE CLERK: Number 257, was this your verdict?

1 THE JUROR: Yes, it was.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Number 301, was this your verdict?

5 THE JUROR: Yes, it was.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes, it is.

8 THE CLERK: Number 83, was this your verdict?

9 THE JUROR: Yes, it was.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Number 249, was this your verdict?

13 THE DEFENDANT: Yes, it was.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes, it is.

16 THE CLERK: The jury is polled, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury,

18 I want to thank you on behalf of everyone here
19 today for your service this week. I know that it
20 has been -- although it is Thursday, it has been a
21 long week because we worked late, and I appreciate
22 your willingness to do that.

23 I do want to thank you all once again for your
24 service and your hard work this week on behalf of
25 the State and on behalf of the Defense. This

1 matter has come up. They are unable to be
2 resolved. That is when we have to call upon 12
3 citizens like you to fulfill your civil obligation
4 and duty, and you have done that this week. And I
5 do want to thank you and let you know that you are
6 greatly appreciated for that.

7 The clerk may have some paperwork for you to
8 fill out --

9 THE CLERK: Yes, ma'am.

10 THE COURT: And I think during jury
11 qualification you probably heard you will not have
12 to serve for another three years in this court. I
13 cannot promise you will not have Magistrate's Court
14 or Federal Court, but as far as the court here in
15 Common Pleas you will not, Common Pleas or General
16 Sessions down here. You will not have to serve in
17 circuit court for the next three years.

18 I hope that you all learned something this
19 week. And I hope that this experience is something
20 that you will remember.

21 All right, thank you. Have a wonderful
22 weekend, long weekend. And she has some items for
23 you, I think.

24 THE CLERK: Work excuses.

25 THE COURT: Work excuses. And they will send

1 anything else in the mail.

2 Okay. Thank you.

3 (WHEREUPON, the jury was excused at 3:45
4 p.m.)

5 THE COURT: Yes, ma'am?

6 MS. SINGLETARY: At this time can the Defense
7 renew --

8 THE COURT: Yes, ma'am.

9 MS. SINGLETARY: The Defense actually renews
10 all of their prior motions as it relates to the
11 pretrial motions and objections. And also the
12 Defense at this time requests a new trial, Your
13 Honor.

14 THE COURT: Anything from the State?

15 MS. BODMAN: No, Your Honor.

16 THE COURT: All right. The motion for new
17 trial will be respectfully denied. All motions
18 will be respectfully denied.

19 All right, anything else?

20 MS. BODMAN: We are ready to proceed with
21 sentencing. If you all are?

22 THE COURT: Are you ready?

23 MS. BODMAN: I think so.

24 THE COURT: On the sentencing sheet for the
25 murder, I put -- there was nothing on it. I put

1 violent, most serious.

2 MS. BODMAN: Violent and most serious, as well
3 as the carjacking is also.

4 THE COURT: All right. And it is on the
5 carjacking but not on the other one.

6 All right. Yes, ma'am?

7 MS. BODMAN: Your Honor, if we could please
8 start with some words from the family members.
9 First I would tell you that Michael Davis's ex-wife
10 is present, Rosalyn Davis. And she did not wish to
11 speak, but wanted me to say this, that:

12 Cheo has no idea what he has taken away from
13 us. It is a horrible pain, and we do not wish that
14 upon anyone. And may Lord have mercy on his soul.

15 Another family member would like to speak.

16 THE COURT: I will be glad to hear from him.
17 State your name first.

18 MR. DAVIS: Anthony Davis. I am next to
19 oldest of Michael Davis. I'm sorry. This has been
20 so traumatic on my nephew, my brothers, and family
21 members. And I just spoke with Michael that
22 Saturday before this happened. And to know that
23 that was him. I drove back down and it was really
24 him. We just buried his youngest brother, then
25 buried my sister, then just buried Mike, all in one

1 year. So what happened, happened. It really took
2 a toll on me, to lose all three brothers and sister
3 in one year. A tragedy like that. It really
4 bothered me and it hurts, and it hurts my nephew
5 even worser to see him not have him, break that
6 kind of news to him. And. Will to this. Say,
7 nothing else to say about it.

8 Thank you.

9 THE COURT: Thank you.

10 MS. BODMAN: That's all. Michael Davis's son
11 was present, but I think he had to step out of the
12 courtroom. It is very difficult for him.

13 Your Honor, the Defendant has no prior
14 convictions. You are aware of the other pending
15 charges that he has with me. We would ask --

16 THE COURT: What are those charges?

17 MS. BODMAN: He has an armed robbery. And a
18 possession of a weapon during the commission of a
19 violent crime that is still pending with me. We
20 just ask that you take into consideration the cold
21 and senseless acts that it was and also what you
22 heard in terms of some of the witnesses being
23 threatened if they came forward and gave
24 information against him.

25 Anthony Davis wanted also to add that he is

1 asking Your Honor to impose the highest punishment
2 possible.

3 THE COURT: All right. All right. I will be
4 glad to hear from Ms. Singletary.

5 MS. SINGLETARY: Thank you, Your Honor. If it
6 pleases the Court? Your Honor, my client is 22
7 years of age. Shortly after this tragedy occurred,
8 my client was arrested, and I believe it was object
9 30th of 2012. We are respectfully requesting with
10 any time that the Court deems appropriate that he
11 gets credit for that time.

12 Your Honor, my client was born and raised here
13 in Columbia, South Carolina. He is a father of a
14 3-year-old, Your Honor. And he has a very
15 supportive family. His mother and father are
16 actually in here today.

17 Your Honor, this is a heartbreaking situation,
18 not only for Mr. Davis's family, and our heart goes
19 out to Mr. Davis's family, but two families will be
20 affected in this, Your Honor. And my client's
21 mother would like to address the Court at the
22 appropriate time.

23 Your Honor, in speaking to both his parents,
24 as well as knowing his grandmother through the
25 duration of time that I have represented Mr. Green,

1 we are respectfully asking, based on the fact that
2 my client has no prior convictions, that you will
3 consider the minimum 30-year sentence in this
4 matter.

5 And his mother, Ms. Shauntea Green, would like
6 to address the Court.

7 THE COURT: Ma'am, yes, ma'am?

8 MS. GREEN: Thank you. First of all, I'd like
9 to say --

10 THE COURT: She has to take down what you are
11 saying. Speak up.

12 MS. GREEN: First of all, I'd like to say --
13 like to apologize to the Davis family. We're
14 here -- this is where we find ourselves. I'm so
15 sorry for their loss. And today, as three years
16 ago, I have had to suffer, not really a similar
17 loss, but the absence of my son from my home and
18 from at that time a newborn daughter's life. I'm
19 just so sorry.

20 And I would like to ask Your Honor if it is
21 any way possible if he could receive the minimum
22 because -- and I don't downplay the loss of one
23 life, you know, and trying to save my son, but I
24 just ask -- I beg for mercy.

25 I love my son, and I would just like to ask at

1 the time if it is possible that it be considered a
2 sentence to the minimum.

3 THE COURT: Thank you.

4 MS. SINGLETARY: Thank you.

5 THE COURT: All right. Anything else?

6 MS. BODMAN: No.

7 THE COURT: From the Defendant?

8 MS. SINGLETARY: No, Your Honor.

9 THE COURT: All right. To the family of --
10 the Davis family, I too want to let you all know
11 that I am sorry for your loss. I know that this
12 week has been trying for you. But I hope that
13 having some closure in this will give you an
14 opportunity to begin to heal. I'm not sure who
15 stated it earlier, but this was a -- to the
16 Defendant -- this was a cold and senseless murder.
17 I guess for really no reason at all. I don't think
18 I have heard any reason other than someone at some
19 point thought it was something hot to do. I hope
20 that Mr. Green will, although he's been in the
21 Department of Corrections for a long time, I hope
22 that at some point he will realize the impact that
23 this has had on the family of the victim and also
24 on the family, as his mother said, on his family,
25 and on himself. But, more importantly, on the

1 family of the victims, who have lost a loved one.

2 So I am going to, on the murder charge,
3 2013-GS-40-7535, the sentence is you will be
4 sentenced to the State Department of Corrections
5 for 45 years.

6 On 2013-GS-40-7537, you will be sentenced to
7 on the carjacking, 25 years.

8 And the 2013-GS-40-7538, you will be sentenced
9 to five years.

10 All of those sentences will run concurrent.
11 He will be given credit for 1,171 days credit for
12 time served, he already served since 2013.

13 All right. Thank you.

14 MS. BODMAN: Thank you, Your Honor.

15 MS. SINGLETARY: Thank you, Your Honor.

16 (WHEREUPON, the proceedings were
17 concluded at 4:06 p.m.)

18 (END OF TRANSCRIPT)

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 11th through 14th days of January, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 10, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 3 2013-GS-40-7435
 4 2013-GS-40-7537
 5 2013-GS-40-7538

5 State of South Carolina,)
 6 Plaintiff,)
 7 vs.) TRANSCRIPT OF RECORD
 8 Cheo D. Green,)
 9 Defendant.)

10 January 8, 2016
 11 Columbia, South Carolina

12
 13 B E F O R E:

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

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

18 MARGARET FENT BODMAN, ASSISTANT SOLICITOR
 19 JOSEPH B. BERRY, ASSISTANT SOLICITOR
 20 DOLLY J. GARFIELD, ASSISTANT SOLICITOR
 Attorneys for the Plaintiff

21 NICOLE L. SINGLETARY, ESQ.
 22 WILLIAM J. SIMS, ESQ.
 Attorneys for the Defendant

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

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

JANUARY 8, 2016

1
2 THE COURT: Yes, ma'am, Ms. Bodman? I guess
3 to ahead and put on the record 2013-GS-40-7535,
4 7537, and 7538. And Judge Newman, Chief Admin,
5 informed me as of yesterday that this matter is
6 scheduled next week for trial and has assigned me
7 as the trial judge over the case.

8 Just for the record, I requested a status
9 conference with the attorneys, at which time
10 regarding pretrial matters, put all that on the
11 record what pretrial matters we have scheduled for
12 next week. If you have any written motions you can
13 e-mail those to my law clerk and I'll take a look
14 at them over the weekend.

15 Also, during the status conference, the State
16 indicated there was a plea offer yesterday rejected
17 in front of Judge Hood, and that was placed on the
18 record, and that a subsequent plea offer was made
19 that the State wanted to put on record. That is
20 why we are here this morning.

21 MS. BODMAN: So on Monday we had -- previous
22 to Monday we had made an offer of 14 years,
23 pleading to voluntary manslaughter, the carjacking,
24 and the possession of weapon, all to run
25 concurrent, and I would dismiss a separate

1 unrelated armed robbery, as well as possession of a
2 weapon during the commission of a violent crime.

3 Two charges stem out of the same incident, but I
4 would dismiss those. That offer, we placed that on
5 the record with Judge Hood sometime before noon, I
6 believe, and gave an expiration of the end of the
7 day. So that offer is no longer on the table.

8 Subsequent conversations with Ms. Singletary,
9 I have made an offer of 15, everything else
10 remaining the same, details remaining the same,
11 being a 15-year negotiated sentence.

12 In those admonishments on Monday, additionally
13 Judge Hood went through the ramifications of most
14 serious, violent. If he was convicted of the
15 carjacking or voluntary manslaughter, either of
16 those, then potentially it would be LWOP if
17 convicted of an armed robbery separate.

18 So this offer of 15, we want to make sure it
19 is clear on the record that expires as of about
20 2:00 o'clock this afternoon. We will give him that
21 time to talk to Ms. Singletary about that offer.

22 THE COURT: All right. Yes, ma'am, let me
23 make sure I understand on all three charges. The
24 charge is 15 years on the murder -- well, it would
25 be pleading down mandatory 30, so you said

1 voluntary?

2 MS. BODMAN: Yes.

3 THE COURT: Fifteen on carjacking and
4 possession of a weapon during a crime. And all to
5 run concurrent. And you will dismiss another
6 pending charge?

7 MS. BODMAN: Yes, the armed robbery and
8 possession of a weapon during the commission of a
9 violent crime.

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

11 MS. SINGLETARY: Thank you, Your Honor. I
12 have actually relayed the offer of 15 years to my
13 client. I spoke to him last night in reference to
14 the offer, spoke to him today. My client is saying
15 that he officially -- he officially rejected the
16 offer when I spoke to him earlier today. We will
17 be discussing the offer once we actually place this
18 on the record with him and his family to see
19 whether or not he will now accept the offer.

20 Your Honor, one thing that I will ask. My
21 client asks that I ask the judge to explain to him
22 or talk about Jackson v. Denno. May it please the
23 Court? I had previously spoken to you in chambers
24 and explained the pretrial motion of Jackson v.
25 Denno is one thing that would be done, but he wants

1 me to bring this up right now because we are in
2 front of you and because you are the trial judge,
3 Your Honor.

4 THE COURT: We can talk about the motions.
5 Also, we'll put -- I will have you all put on the
6 record what motions you all will have pretrial to
7 handle on Monday.

8 MS. SINGLETARY: Yes, Your Honor.

9 THE COURT: And we can handle that. Do you
10 want to do that? What motions does the State have?

11 MS. BODMAN: Jackson v. Denno, because he did
12 make a statement to law enforcement after being
13 properly Mirandized, and it was a recorded
14 statement. Potentially there are some -- because
15 of the armed robbery, while it is an unrelated
16 charge, factually his Co-Defendant on the armed
17 robbery charge is testifying during this trial. So
18 I think we will need to go through, you know, what
19 facts and potential charges are pending against
20 individuals regarding that incident.

21 THE COURT: Regarding the separate armed
22 robbery?

23 MS. BODMAN: Correct, regarding a separate
24 armed robbery. His Co-Defendant in the separate
25 armed robbery is a gentleman by the name of DaQwane

1 Robinson. Mr. Robinson is also a fact witness in
2 this murder trial. He was with the Defendant prior
3 to the murder and also has knowledge of the murder
4 weapon that was used. So DaQwane Robinson is
5 charged with an armed robbery that he committed
6 with Cheo Green, actually charged as an accessory,
7 a specific charge of accessory after the fact of
8 armed robbery. So we'll have to deal with that
9 issue in terms of what can be brought up with
10 regard to DaQwane Robinson's charges and --

11 THE COURT: So the State is interested in
12 bringing that in, is what you are saying?

13 MS. BODMAN: No, we are saying that we will
14 not bring it in, but I think we need to make sure
15 it is on the record if the Defense possibly wants
16 to bring it in because, you know, it could possibly
17 go to challenge the credibility of DaQwane Robinson
18 that he has pending charges with Mr. Green and he
19 has motivation to try to, I guess, help himself out
20 with these pending charges. But the down side of
21 that is then it opens the door to Mr. Green being
22 charged with a whole other set.

23 THE COURT: But the State does not intend
24 on -- the State is not asking to give that
25 information?

1 MS. BODMAN: Correct. Correct.

2 THE COURT: Only if in response -- from what I
3 hear from you, only in response if the Defendant
4 brings it up on cross-examination, DaQwane
5 Robinson?

6 MS. BODMAN: Yes. DaQwane Robinson or Curtis
7 Wright. DaQwane Robinson's brother is Curtis
8 Wright. The three of them are implicated factually
9 involving that armed robbery, while Curtis Wright
10 is not charged in that armed robbery. It is a
11 separate armed robbery. He was brought up
12 factually in that incident, so, you know, I don't
13 know if she would want to go down that road in
14 trying to cross-examine Curtis Wright about
15 involvement with that as well. But if she did say
16 that I think DaQwane opens that door. We believe
17 then bringing up that Mr. Green is involved in that
18 armed robbery as well. We will have to hammer
19 through identification issues. There were line-ups
20 or photographs of Mr. Green that were shown to
21 witnesses. But we believe that all of these
22 witnesses independently know Mr. Green, and so --

23 THE COURT: You will have the officer here
24 first thing Monday to deal with the line-up?

25 MS. BODMAN: Yes. So in terms of the State's

1 motions, I think Jackson v. Denno legally is the
2 only one that absolutely must go forward because we
3 are offering a statement he gave to law
4 enforcement.

5 THE COURT: Then I assume you have to settle
6 the record on all --

7 MS. BODMAN: Yes, Your Honor.

8 THE COURT: All right. And, yes, ma'am, any
9 motions from the Defense?

10 MS. SINGLETARY: Your Honor, the Defense
11 concurs as to with Neil v. Biggers and Jackson v.
12 Denno. And then the Defense is kind of in a
13 conundrum relating to Curtis Wright and DaQwane
14 Robinson and the fact that we would like to use
15 those prior charges to impeach their credibility,
16 but we do know that that would in essence probably
17 open up the door for the jury to actually hear that
18 my client has a prior armed robbery, which is
19 something that we --

20 THE COURT: Pending or prior?

21 MS. SINGLETARY: Pending. But it happened
22 prior to this actual murder charge that he is being
23 charged with. So we are kind of in a conundrum as
24 it relates to that.

25 Additionally, Your Honor, as you said, we do

1 need to settle the laywitnesses' records. The
2 Defense would also like to be heard on the fact of
3 the admissibility of the testimony by Investigator
4 Van Houten. It is our opinion that he will be
5 testifying to the cell phone towers and the pinging
6 of the victim's record, cell phone records, my
7 client's record, and his Co-Defendant. Officer
8 Murray placing them in the general vicinity prior
9 to the murder and after the murder. At this time
10 that is the only --

11 THE COURT: 701 under expert?

12 MS. SINGLETARY: Yes.

13 THE COURT: Testifying as an expert?

14 MS. BODMAN: No, we're not going to qualify
15 him as an expert. Basically just lay out his
16 training in being able to read the record and to
17 plot the GPS coordinates of the cell towers on the
18 map and to plot the radius of the strength of that
19 signal. So he'll give no opinion.

20 THE COURT: I was going to say, if you don't
21 qualify him, he can't give -- of course give any
22 opinion.

23 MS. BODMAN: He is not giving any opinion. He
24 is strictly going to be saying, you know, go
25 through -- I mean, to me he is an expert because he

1 just has amazing, you know, training and
2 credentials. So we'll walk through that: This is
3 how I know how to read these phone records. I have
4 the software program. I know how to work the
5 software program and to put these GPS coordinates
6 into this, you know, software program, and to plot
7 the radius of these cell tower hits.

8 THE COURT: All right.

9 MS. SINGLETARY: Your Honor, the only other
10 motion I see offhand that is not really out of the
11 unusual is a Riddle motion to see whether or not
12 any of the laypersons or either any of law
13 enforcement, anyone involved in this case, whether
14 or not there have been any additional statements
15 that have been made since the time that they
16 initially made their statements, Your Honor.

17 And obviously we would ask for the witnesses
18 to be sequestered. And we would renew Rule 5 and
19 Brady, Your Honor.

20 THE COURT: And you said your client has a
21 question regarding Jackson v. Denno?

22 MS. SINGLETARY: Yes, Your Honor. My client
23 and I actually spoke about the process of the
24 Jackson v. Denno hearing last night. It appears
25 that he would like for me not to have or request a

1 Jackson v. Denno. But I don't think he understands
2 the fact that the State --

3 THE COURT: Requests it. The State --

4 MS. SINGLETARY: Exactly, Your Honor.

5 THE COURT: So the State, sir, has
6 requested -- the State has a motion for Jackson v.
7 Denno. In order for them to get in your statement,
8 they have to have a hearing where the Court
9 determines by a preponderance of the evidence as to
10 whether or not the statement was given freely and
11 voluntarily.

12 And once they do that, they usually put up the
13 police officers, they usually put who took the
14 statement. Your attorney would have the
15 opportunity to cross-examine that person. And then
16 the Court will make a ruling at that time.

17 Then of course later on I would instruct the
18 jurors that they have to decide beyond a reasonable
19 doubt as to whether or not the statement was given
20 freely and voluntarily. But the standard is lower
21 for the Court for purposes of admissibility. Of
22 course, the jury has to decide after I instruct
23 them and during deliberation information that the
24 statement was freely given, voluntarily given
25 without any coercion or duress. So procedurally

1 the State requested it because they are the ones
2 trying to get it in. The only way we get around
3 not having a Jackson v. Denno is if you consent to
4 the State putting in your statement. Your
5 attorney, I'm assuming, is not going to consent to
6 that. And that is the reason why we have to have a
7 Jackson v. Denno hearing. I'm not sure if that
8 clarifies it, but you are not -- she is not asking
9 to get the statement in. They are asking to get
10 the statement in.

11 THE DEFENDANT: Oh.

12 THE COURT: She is opposed. She will be
13 opposing the statement coming in. That is why
14 we -- she is opposing it. That is the reason we
15 have to have a Jackson v. Denno hearing as to the
16 admissibility of the statement.

17 MS. SINGLETARY: Your Honor, my client says
18 that that clears everything up.

19 THE COURT: As to the Lyle issue. This is
20 something you all probably need to talk about this
21 weekend. I'm not going to -- I'll do some looking
22 into it. But I'll tell you right offhand, if on
23 the armed robberies that are pending, I am not
24 going to allow the State to get into that because I
25 think it would be prejudicial. However, you do

1 have the issue of impeaching DaQwane Robinson and
2 somebody else.

3 MS. SINGLETARY: Curtis Wright.

4 THE COURT: You are entitled to cross-examine
5 and your attorney is entitled to cross-examination.
6 Ordinarily on cross-examination a lawyer would get
7 in someone has a record or something regarding
8 character, that is something that she would want to
9 ask. The problem we have here is that if she asks
10 them about the armed robbery, then it opens the
11 door that you allegedly were there. And then of
12 course the State would be able to get that
13 information in that you have also been charged with
14 the armed robbery. And so that is how it would
15 come in. I will not allow the State to present
16 that in their case in chief. But you all will need
17 to make a decision as to whether or not that is
18 something you want to impeach the witnesses on on
19 cross-examination, or impeach their character, I
20 guess.

21 MS. SINGLETARY: Yes, Your Honor.

22 THE COURT: Credibility. So that is something
23 that you'll need to decide this weekend also.

24 MS. SINGLETARY: Your Honor, out of an
25 abundance of caution, we have two other witnesses.

1 I think they are possible Lyle. Cierra Hodge and
2 Sandy Sweat. They were two young ladies that
3 Curtis Wright and DaQwane Robinson and my client
4 was at their apartment complex on that night.

5 In their statement they say that -- Ms. Sandy
6 Sweat and Ms. Hodge, Cierra Hodge, said they would
7 not let my client into their apartment on that
8 night because on a previous occasion when they were
9 with my client and the other two individuals my
10 client just started randomly shooting out the back
11 of a vehicle.

12 I would say that is a prior bad act and that
13 they should not be allowed to actually testify to
14 that because it is a prior bad act that he wasn't
15 charged with or has not been convicted with. I
16 don't think that there is a clear -- can't meet the
17 burden of clear and convincing evidence to allow
18 those two individuals to testify to those facts.

19 THE COURT: You can argue that one on Monday.

20 MS. BODMAN: I think so.

21 THE COURT: Trying to get that in.

22 MS. BODMAN: Well, I would like to wait and
23 argue it on Monday because I think there are a
24 couple issues involved in that.

25 THE COURT: I'm sure there are some cases out

1 there. My law clerk and I will take a look at it
2 this afternoon and over the weekend. There are
3 some cases out there that discuss the witness
4 getting into testimony of acts and things. So
5 we'll all take a look at that this weekend and can
6 argue on Monday.

7 MS. SINGLETARY: Yes, Your Honor.

8 THE COURT: Good. So we can all know which
9 direction we're going in.

10 MS. SINGLETARY: Yes, Your Honor.

11 THE COURT: As to the line-up and
12 identification issues, that is what we call a
13 Biggers hearing. What happens, sir, these are
14 cases that come down and we just -- the lawyers --
15 Jackson v. Denno is a case regarding a statement.
16 A Biggers hearing is a case regarding
17 identification. We will have to do that. She says
18 there is a line-up as to witnesses, how he was ID'd
19 as a person --

20 MS. SINGLETARY: Yes, Your Honor. There are
21 three photo line-ups. One Curtis Wright, one
22 DaQwane Robinson, and then from Austin Murray, who
23 all know my client by name and by sight.

24 THE COURT: Y'all take a look at the
25 Livingston case over the weekend. That is a

1 Richland County case. Because that is the one that
2 came out -- it is two or -- because it was a lot of
3 issues on it, but it came out about two years ago,
4 I think. Two or three years ago. Take a look at
5 that one. It talks about the witnesses actually
6 knowing -- the witnesses actually knowing the
7 Defendant.

8 Try to get the rap sheet to her so y'all can
9 look at it, the laywitnesses' records. I'll take a
10 look at the issue regarding admissibility regarding
11 Van Houten, the cell phone records. If there are
12 any other statements can you -- on the Riddle
13 motion, give that to her this weekend. Just
14 doublecheck and make sure. But as of today I'm
15 assuming there is nothing else.

16 MS. BODMAN: Yes. I cannot think of any other
17 statements, but I'll make sure I thoroughly review
18 it through my head.

19 THE COURT: It usually comes up in preparation
20 of trial somebody says something, so if someone
21 does, please just let her know.

22 MS. BODMAN: Yes.

23 THE COURT: Of course, a motion to sequester
24 witnesses, that will be granted. And the same
25 thing with Rule 5 and Brady. Doublecheck with the

1 law enforcement officer and make sure you gave
2 everything.

3 MS. BODMAN: On Monday.

4 THE COURT: Okay. As to the plea offer that
5 was placed on the record -- what time is it? Let
6 me get you to stand up, Mr. Green. Let me get you
7 to stand up and raise your right hand, as best as
8 you can.

9 (Defendant stands.)

10 THE COURT: Do you swear or affirm to tell the
11 truth, the whole truth, so help you God.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So the State -- you can put your
14 hand down.

15 (Defendant complies.)

16 THE COURT: The State last made an offer --
17 and it is my understanding you rejected the offer
18 Monday in front of Judge Hood. Now they made
19 another offer of 15 years, pleading guilty to a
20 voluntary manslaughter and a carjacking and
21 possession of a weapon during the commission of a
22 violent crime. The offer expires, I think she
23 said, this afternoon around 2:00 o'clock or so,
24 which means if you decide you want to accept that
25 offer, I'll go ahead and take the plea sometime

1 this afternoon from you. But I think your lawyer
2 said she wanted to talk with you about it and your
3 family before you make that decision.

4 What is the offer after this afternoon? Is
5 there an offer? Or are you just going to be --

6 MS. BODMAN: I have indicated that on Monday
7 morning prior to -- well, I guess after, you know,
8 after 2:00 o'clock today if the plea doesn't happen
9 on the 15, that until the jury is sworn, my offer
10 would be 20. Same thing. 20 on voluntary,
11 carjacking, and then the possession of a weapon
12 actually carries five, you know, so it is
13 concurrent. Essentially 20. The same thing. I
14 would dismiss the armed robbery, separate armed
15 robbery, and possession of the weapon. So up until
16 the moment that the jury is sworn, the offer would
17 be 20.

18 THE COURT: All right. So, sir, you
19 understand the murder carries a minimum of 30 to
20 life?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: So if you were to go to trial and
23 if you are convicted of the murder, it carries a
24 minimum of 30 to life? I am not -- I don't have
25 the authority to give you anything less than that.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You understand? And the
3 carjacking carries up to 30. The possession of a
4 weapon during the commission of a violent crime
5 carries between zero and five. So you are looking
6 at life with these sentences, looking at
7 potentially a sentence up to life in prison. Do
8 you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You understand that on the murder
11 charge, I'm sure your attorney has told you that
12 under South Carolina on a life sentence it is day
13 for day, not -- on a murder charge, even if it was
14 30 years, it is day for day, not 85 percent. I
15 think the State has said the offer is to reduce it
16 to voluntary manslaughter, which is 85 percent of
17 any sentence that you get.

18 So her offer now, I think this is a negotiated
19 plea, is for 15 years. So it would be 85 percent
20 of that, minus whatever time you served. Have you
21 been in jail since 2013?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: So any time that you serve will be
24 subtracted from the 15 years. 85 percent of
25 whatever 15 years is. And I haven't calculated

1 that. Don't calculate it, because the Department
2 of Corrections does and I don't want to tell you
3 the wrong thing, but I can tell you what the law
4 is, it is 85 percent. I can tell you that you
5 would get credit for the time you served. I always
6 give people time for time they already served.

7 With all of that being said, you understand,
8 sir, if you do not take this today, she is saying
9 between this afternoon and Monday morning before
10 the jury is sworn, if the offer goes up to 20
11 years, what she relayed to your attorney, once the
12 jury is sworn, they will -- all offers are off the
13 table at that point. I will not -- I do not get
14 into -- the Solicitor's Office handles making
15 offers. They handle what they charge you with.
16 When it comes before me for sentencing, as I said,
17 with a murder charge, the only thing I can sentence
18 you to, the least amount of time would be 30 years.
19 So even if I wanted to sentence you to less, I
20 could not statutorily do that because the sentence
21 carries 30 years. Do you understand that, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. I am going to -- do
24 you wish to speak with your attorney and your
25 family regarding the 15-year offer?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I think -- yes, I think you should
3 at least speak with them and then make an informed
4 decision after talking to her and your family
5 members. Okay? Is your family coming up here?

6 MS. SINGLETARY: Yes, Your Honor, they should
7 actually be here by now. I told them to meet me
8 outside on the second floor.

9 THE COURT: Okay. So is there somewhere he
10 can meet? I mean, since it is Friday afternoon,
11 I'm thinking they are still doing probation
12 violations. Is there some way they can meet with
13 family members?

14 THE DEPUTY: Maybe in one of the jury rooms.
15 How many folks are we talking about, Judge?

16 MS. SINGLETARY: Two to three.

17 THE COURT: That way you won't have to send
18 him back to jail and talk through -- you can talk
19 to them next to him and talk to him.

20 MS. SINGLETARY: Yes. Thank you, Your Honor.

21 THE COURT: And the officers will let you know
22 which one, which jury room.

23 MS. SINGLETARY: Thank you.

24 THE COURT: All right, thank you.

25 MS. BODMAN: Thank you, Judge.

1 THE COURT: Let me know one way or the other
2 what he says he wants to do. I know of course you
3 have the victim's family.

4 MS. BODMAN: Yes, they are kind of just
5 sitting on standby. We told them, you know, we
6 would call them as soon as we knew something. We
7 just didn't want them sitting here all day. The
8 Victim's Advocate is just waiting, ready to give
9 them a ring.

10 THE COURT: Just let us know. We will
11 probably grab lunch, but you can e-mail. She
12 usually gets e-mail right away. Just let us know.
13 And then if it is no, then I will see you all
14 Monday morning.

15 MS. SINGLETARY: Yes, Your Honor.

16 THE COURT: You got clothes and all that for
17 him?

18 MS. SINGLETARY: Yes, Your Honor.

19 THE COURT: Get dressed out, will have him
20 dressed out before -- that might be family members.

21 MS. SINGLETARY: Yes, it is, Your Honor.

22 THE COURT: Come on in. Do you want me to
23 explain the offer?

24 MS. SINGLETARY: If you could.

25 THE COURT: We won't have to do it again.

1 There is an offer on the table. The officers are
2 going to find a jury room so you all can sit and
3 talk with him about the offer.

4 DEFENDANT'S MOTHER: Are you going to put on
5 the record what --

6 THE COURT: Are you his mother?

7 DEFENDANT'S MOTHER: Yes. That is his father.
8 He is a big crybaby. I'm sorry about that.

9 THE COURT: Ma'am, it is okay. This is -- it
10 is a sensitive matter, so that is fine.

11 (Pause.)

12 THE COURT: So the State can put on the
13 record -- we just explained it to Mr. Green -- can
14 put the offer back on the record.

15 MS. BODMAN: He is set to go to trial Monday
16 on three separate charges: Murder, carjacking, and
17 possession of a weapon during the commission of a
18 violent crime.

19 Murder carries 30 up to a life sentence.
20 Thirty is day for day. He will not get released
21 prior to 30 years. He has to serve that day for
22 day. And any sentences that he -- murder is 30 up
23 to life. The carjacking carries up to 30. And
24 possession of a weapon during the commission of a
25 violent crime is five. We are offering him to

1 reduce the murder to voluntary manslaughter for a
2 sentence of 15 years. That would also be
3 carjacking for 15, and five for the weapons charge.
4 So only 15 that he would be serving. And that
5 would be at an 85 percent charge, meaning he
6 doesn't have to do day for day, he only has to
7 serve absolutely 85 percent. And then I guess
8 based on his good behavior after that, but not a
9 day for day. He has a separate pending charge with
10 me, which is armed robbery and a weapons charge. I
11 am offering, if he pleads to this, 15 years on
12 voluntary manslaughter. I will dismiss the armed
13 robbery and the separate weapons charge. This
14 would be a negotiated plea, and so the judge
15 couldn't give him a day more than 15 years even if
16 she wanted, and couldn't give him a day less if she
17 wanted. It would be negotiated 15. And he would
18 get credit for the three years that he has been
19 sitting in Alvin S. Glenn Detention Center pending
20 trial.

21 MS. SINGLETARY: Let me reiterate, if I may,
22 the fact that when the Solicitor says that it is a
23 negotiated sentence, as she said, the judge
24 couldn't give him more than 15 years and the judge
25 cannot give him less than 15 years. So that would

1 be an absolute 15 years if the judge took that
2 sentence. Okay?

3 THE COURT: And the offer expires this
4 afternoon. If he was to decide -- I think that is
5 why she is wanting to bring you up. If he decides
6 to take the offer, then we will take the plea this
7 afternoon. If he does not, then we will be
8 prepared to go forward with the trial. But she
9 says that she is going to take the plea offer --
10 the offer is going to expire this afternoon. It
11 will be 20 until the jury is sworn, I believe. And
12 once the trial begins, I think all offers are off
13 the table at that point, and you would be looking
14 at, on the murder, it carries a minimum of 30 to
15 life. And I explained to him that even if I wanted
16 to give him less than 30, under the statute I
17 cannot give him less than 30 years on a murder
18 charge and it is day for day. On the carjacking it
19 carries up to 30. And the weapon, possession of a
20 weapon during the commission of a violent crime
21 carries up to five. Which will be all ran together
22 for purposes of the plea offer. I think the plea
23 offer is to voluntary manslaughter, and that is not
24 a day for day sentence. I think I already stated
25 that. I do not have a position one way or the

1 other. I just want to make sure that your son is
2 informed as to him making an informed decision and
3 that you all -- the decision is his, but I just
4 want to make sure that everyone is informed in
5 making the decision they make.

6 All right. She is going to give you an
7 opportunity to talk. They will take you into the
8 jury room and y'all can sit back there and talk.

9 MS. SINGLETARY: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)

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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 8th day of January, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 12, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

WITNESSES

(S) Robert Mccracken
- Columbia Police Department

ARREST WARRANT NUMBER

2012A4021601474

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin
Foreperson of Grand Jury

Date: NOV 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-07535

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

92

**THE STATE
vs.**

CHEO GREEN

**Indictment for
MURDER**

**SC Code: 16-03-0010
CDR Code: 0116**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

892

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13,
2013, the Grand Jurors of Richland County present upon their oath:

MURDER

That CHEO GREEN did in Richland County, on or about SEPTEMBER 16,
2012, willfully, feloniously, and intentionally kill the victim, MICHAEL
DAVIS, with malice aforethought, either express or implied, by means of
GUNSHOT, and the victim did die as a proximate result thereof, in violation
of Section 16-03-0010, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Robert Mcracken
- Columbia Police Department

ARREST WARRANT NUMBER

2012A4021601475

ACTION OF GRAND JURY

TRUE BILL

Valencia Morton
Foreperson of Grand Jury

Date: NOV 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-07537

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

92

THE STATE
vs.

CHEO GREEN

Indictment for
CARJACKING WITH INJURY

SC Code: 16-03-1075(B)(2)
CDR Code: 2600

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

894

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

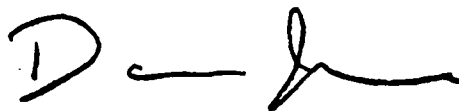
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13,
2013, the Grand Jurors of Richland County present upon their oath:

CARJACKING WITH INJURY

That CHEO GREEN did in Richland County on or about the SEPTEMBER 16,
2012, take and/or attempt to take one MAZDA PROTEGE from MICHAEL
DAVIS by force and violence or by intimidation while said victim was operating
and/or in the vehicle, causing great bodily injury to the victim, in violation of
Section 16-3-1075(B)(2), S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Robert Mccracken
- Columbia Police Department

ARREST WARRANT NUMBER

2012A4021601476

ACTION OF GRAND JURY

TRUE BILL

Valencia Morton
Foreperson of Grand Jury

Date:

NOV 15 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-40-07538

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

92

**THE STATE
vs.**

CHEO GREEN

**Indictment for
WEAPON-POSS DURING COMM VIO
CRIME**

SC Code: 16-23-0490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

896

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13, 2013, the Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That CHEO GREEN did in Richland County, on or about SEPTEMBER 16, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

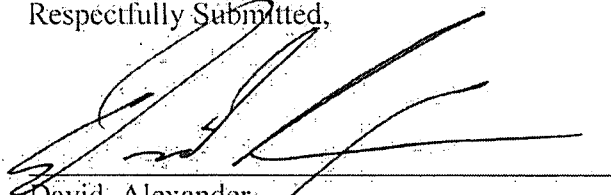


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of January, 2017.

RECEIVED

JAN 18 2017

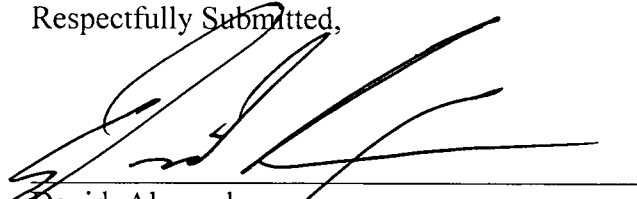
898

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of January, 2017.