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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF RICHLAND) 2013-GS-40-7435
 2013-GS-40-7537
 2013-GS-40-7538

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) TRANSCRIPT OF RECORD
)
 Cheo D. Green,)
)
 Defendant.)

January 11-14, 2016
 Columbia, South Carolina

B E F O R E:

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

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DEBORAH M. McCURDY, RPR
 Official Court Reporter

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JANUARY 11, 2016

THE COURT: Any objections? I received the State's witness list and also the Defendant's potential witness list. Also, the pretrial motions, which we'll do this afternoon. And the Defense's requested voir dire. I have not received any voir dire from the State. I'm assuming that means you all want me to ask the routine questions?

MS. BODMAN: Yes, Your Honor, any reciprocal related to -- your routine questions, and then any that you are going to ask from the Defense's proposed questions we would ask for reciprocals in terms of, for example, if anyone was the victim of a robbery. We also want to know if anybody or their close friend or family was ever charged, victim of a homicide, if a close friend or family member was charged.

In addition, I guess the same, like if anybody knows anybody in the Solicitor's Office or the Attorney General's Office, related -- anybody related to criminal defense attorneys or the Public Defender's Office, people that are members of Defense rights groups, prison rights groups, ACLU, The Innocence Project, that sort of thing.

The only question on her list that I

1 absolutely had no objection to was the very last
2 one, because I believe that it goes to committing
3 jurors to facts -- and committing them to the
4 facts.

5 MS. SINGLETARY: Your Honor, we will withdraw
6 that last question, which is Question 13.

7 THE COURT: And before we bring them in, I'll
8 go over the names. Shaunteah Nawana --

9 MS. BODMAN: Yes, Shaunteah McDuffie. And,
10 Your Honor, I had written -- I told Ms. Singletary,
11 and I think I wrote on the court reporter's and the
12 clerk's list, I added a name at the top, Whitney
13 Davis, Mr. Whitney Davis. There is one up on the
14 ledge that I think I wrote.

15 THE COURT: Okay. I see it. Shemica Johnson.
16 Karen Mildbrodt. Shantai Green. DaQwane Robinson.

17 All right, are you ready to bring them in?
18 Anything else before I bring the jury in?

19 MS. SINGLETARY: No, Your Honor.

20 THE COURT: All right. And the State is
21 moving -- just for the call of the case, this is
22 Case Number 2013-GS-40-7535, this is an indictment
23 for murder; 2013-GS-40-7538, an indictment for
24 possession of a weapon during a violent crime; and
25 2013-GS-40-7537, which is an indictment for

1 carjacking with injuries.

2 All right. Are we ready to bring them in?

3 MS. SINGLETARY: Yes, Your Honor.

4 (WHEREUPON, the jury panel came into
5 open court at 12:36 p.m.)

6 THE COURT: Good afternoon. I'll introduce
7 myself and my clerk. I'm DeAndrea Benjamin. I'm a
8 resident judge in Richland County. And this week I
9 am assigned to a term of General Sessions Court.

10 To my right is my law clerk, Stacy Williams.
11 And over to my left is the court reporter, Debbie
12 McCurdy, who is taking down everything that we are
13 saying in here today.

14 In just a minute you all will have an
15 opportunity -- may have an opportunity to speak. I
16 would ask you to speak loud so that the court
17 reporter can hear you and make sure that we have an
18 accurate record of everything that is said in the
19 courtroom today.

20 I would like to first start by thanking you
21 all for being here. And I know you were -- I
22 believe Judge Gee did your qualifications earlier,
23 and there was a series of questions that she asked
24 of you.

25 Once again, I will ask a series of questions

1 of you to answer. If you answer any of these
2 questions in the affirmative, I will ask that you
3 stand, state your juror number for the record. If
4 you do not know your juror number, just give us
5 your name and we will find the number for you.

6 If there is any question that you do not wish
7 to answer in front of the entire panel, I will give
8 you an opportunity at the end to speak with me
9 regarding a response to any question that you may
10 deem private or uncomfortable to speak about in
11 open court.

12 Also, if there is any question that you are
13 not sure if it applies to you, stand up anyway, and
14 I will ask you some questions and we'll figure out
15 if it applies to you or not.

16 All right, ladies and gentlemen of the jury
17 panel, we are about to begin the trial in the case
18 of the State of South Carolina v. Cheo Green.

19 Once again, before we select a jury, there are
20 several questions which I will ask you.

21 Ladies and gentlemen of the jury panel,
22 Mr. Green is charged with three indictments here
23 today. And I will instruct you later, but the
24 indictments that I have here in my hand are the
25 charging papers that bring the Defendant before the

1 court and before you. The Defendant in this case
2 has pled not guilty to these indictments and has a
3 right under our constitution to be tried before a
4 jury of 12. And the State has the burden of
5 proving him guilty beyond a reasonable doubt.

6 So what I will read to you, once again, from
7 the indictments are allegations. Once again, the
8 State has to prove the allegations of the
9 indictments beyond a reasonable doubt.

10 The first indictment, 2013-GS-40-7535, is an
11 indictment for murder. The indictment reads that:
12 Cheo Green did, in Richland County, on or about
13 September 16, 2012, willfully, feloniously, and
14 intentionally kill the victim, Michael Davis; with
15 malice aforethought, either express or implied, by
16 means of a gunshot, and the victim did die as a
17 proximate result thereof, in violation of Section
18 16-3-10 of the Code of Laws of South Carolina,
19 1976, as amended.

20 The second indictment is Indictment
21 Number 2013-GS-40-7537, the State v. Cheo Green.
22 The indictment is for carjacking with injuries.
23 The indictment reads that: Cheo Green did, in
24 Richland County, on or about September 16, 2012,
25 take and/or attempt to take one Mazda Protege from

1 Michael Davis by force and violence or by
2 intimidation while said victim was operating and/or
3 in the vehicle causing great bodily injury to the
4 victim in violation of Section 16-3-1075(A)(2),
5 South Carolina Code of Laws, 1976, as amended.

6 And the third indictment is 2013-GS-40-7538.
7 And that is an indictment for possession of a
8 weapon during the commission of a violent crime.
9 And it reads that: Cheo Green did, in Richland
10 County, on or about September 16th, 2012, possess a
11 firearm, or visibly display what appeared to be a
12 firearm, or visibly displayed a knife during the
13 commission or attempted commission of a violent
14 crime in violation of Section 16-23-490, South
15 Carolina Code of Laws, as amended, 1976.

16 Once again, ladies and gentlemen of the jury,
17 these are the indictments that the Defendant is
18 charged with, the allegations before you today.
19 Once again, the State has to prove the allegations
20 of those indictments beyond a reasonable doubt.

21 All right, ladies and gentlemen of the jury --
22 have they been sworn?

23 THE CLERK: They were sworn this morning, Your
24 Honor.

25 THE COURT: All right. Ladies and gentlemen

1 of the jury, I will remind you that you are still
2 under oath, that you were sworn this morning during
3 qualifications, and that you are still under that
4 oath for purposes of selection of the jury in this
5 case.

6 The first question is: Has anyone ever been
7 related by blood or marriage to either the
8 Defendant in this case, Mr. Cheo Green, or the
9 victim in this case, Mr. Michael Davis? If so,
10 please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Has anyone had a close personal,
13 social, or business relationship with Cheo Green or
14 Michael Davis? If so, please stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: All right, ladies and gentlemen of
17 the jury, I will read you now what is the potential
18 witness list of witnesses that may be called during
19 this trial. And the question will be: Is anyone
20 related by blood or marriage to any of the people
21 that I will call the names of, or if you have a
22 close personal, social, or business relationship
23 with any of these people, or if you know any of
24 these people, I'll ask you to stand. I'll repeat
25 any names that you need for me to repeat.

1 The first name would be Shaunteah Nawana
2 McDuffie.

3 And if any of these witnesses are in the
4 courtroom, I'll ask you to stand when your name is
5 called.

6 Curtis Tyon Wright.

7 John Brisby.

8 Jamil Brennan.

9 Cierra Hodge.

10 Shemica Johnson.

11 Michael Morris.

12 DaQwane Robinson.

13 Renee Prater, P-R-A-T-E-R.

14 Sandy Sweat.

15 Linda Denmark.

16 Donnella-Lee K. Jackson.

17 Karen Mildbrodt, with Verizon Wireless.

18 Susan Johnson, with T-Mobile custodian of
19 records.

20 Investigator Tammie Moore, with the City
21 Police Department.

22 Amanda Beckham, with the Columbia City Police
23 Department.

24 Shayne Phillips, with Columbia City Police
25 Department.

1 Donna Martin, CPD.

2 James Morrison. Dr. James Morrison.

3 Jackie Richburg, with 9-1-1.

4 Shannon McKellar, CPD.

5 Officer Cannon Fulmer, with CPD.

6 Investigator Emmet Gilliam, CPD.

7 (Witness stands.)

8 THE COURT: Investigator Robert McCracken,
9 with CPD.

10 (Potential juror stands.)

11 THE COURT: Yes, sir?

12 THE POTENTIAL JUROR: I know Mr. Gilliam.

13 THE COURT: All right. Are you related by
14 blood or marriage, or do you have a close personal
15 or social relationship, or do you just know him?

16 THE POTENTIAL JUROR: I just know him.

17 THE COURT: And what is your juror number,
18 sir?

19 THE POTENTIAL JUROR: Forty-nine.

20 THE COURT: Forty-nine? And the fact that you
21 know Investigator Gilliam, does that affect your
22 ability to be fair and impartial in this trial?

23 THE POTENTIAL JUROR: I don't -- I don't
24 believe so.

25 THE COURT: All right. Let me go ahead and

1 tell you all, there is no wrong answer. There is
2 no wrong answer, but the answer has to be yes or
3 no.

4 THE POTENTIAL JUROR: No.

5 THE COURT: And so the question that I'm
6 asking is, can you be fair -- you know him, but can
7 you be fair and impartial in this trial?

8 THE POTENTIAL JUROR: Yes. Yes.

9 THE COURT: All right. Thank you. You may be
10 seated.

11 (Potential juror seated.)

12 (Potential juror stands.)

13 THE COURT: Yes, sir?

14 THE POTENTIAL JUROR: Juror 100.

15 THE COURT: Yes, sir?

16 THE POTENTIAL JUROR: I know of Investigator
17 Gilliam.

18 THE COURT: Okay. Is that through work?

19 THE POTENTIAL JUROR: Through work.

20 THE COURT: All right. And you work where,
21 sir?

22 THE POTENTIAL JUROR: At the City of Columbia.

23 THE COURT: At the where?

24 THE POTENTIAL JUROR: For City of Columbia.

25 THE COURT: And would that affect your

1 ability -- the fact that you work for the City of
2 Columbia and you know Investigator -- or know of
3 Investigator Gilliam, would that affect your
4 ability to be fair and impartial in this trial?

5 THE POTENTIAL JUROR: No, ma'am.

6 THE COURT: All right. Thank you.

7 (Potential juror seated.)

8 THE COURT: All right. Investigator Robert
9 McCracken, who is with CPD.

10 Nikki Perry Hughes, who is formerly of SLED.

11 Patricia Crooks, formerly of SLED.

12 Amy Stephens, SLED -- and that is the South
13 Carolina Law Enforcement Division.

14 Doris Yarborough, SLED.

15 Ila Simmons, SLED.

16 Lieutenant Jennifer Nates, with SLED.

17 Kathleen Woodward, with SLED.

18 Maribeth McCormack, with SLED.

19 Toni Broome, with SLED.

20 Courtney L. Smith, with SLED.

21 Verona Herrera, with SLED.

22 Jennifer Aycock, with SLED.

23 Jackie Davis, SLED.

24 Michele Eichenmiller, with SLED.

25 Stephanie Stanley, South Carolina Law

1 Enforcement Division.

2 Laura Hash, with SLED.

3 Shana B. Sorrells, with SLED.

4 Jessica Herron, with SLED.

5 Jim Reese, with the Richland County Coroner's

6 Office.

7 Amy Durso. Dr. Amy Durso.

8 Kevin Lawrence, with the Richland County

9 Sheriff's Department.

10 William Cedarstaff, with the Richland County

11 Sheriff's Department.

12 Margaret Harris, with EMS.

13 Donald Oliver, with EMS.

14 Joe Phillips, with EMS.

15 (Potential juror stands.)

16 THE COURT: Okay. Yes, ma'am?

17 THE POTENTIAL JUROR: Juror 90.

18 THE COURT: Yes, ma'am?

19 THE POTENTIAL JUROR: I know Officer Kevin

20 Lawrence.

21 THE COURT: Kevin Lawrence. And are you

22 related by blood or marriage to Officer Lawrence,

23 or are you a friend or --

24 THE POTENTIAL JUROR: No. We had a business

25 relationship.

1 THE COURT: Okay. You had, or you still have?

2 THE POTENTIAL JUROR: Had. And occasionally
3 touch base. I'm a real estate agent, and I was
4 helping him in a transaction. I haven't spoken
5 with him in about a year, though.

6 THE COURT: All right. And, ma'am, the fact
7 that you have had a business relationship with
8 Officer Lawrence, would that affect your ability to
9 be fair and impartial in this trial?

10 THE POTENTIAL JUROR: No, ma'am.

11 THE COURT: All right. Thank you.

12 (Potential juror seated.)

13 THE COURT: William Cedarstaff, Richland
14 County Sheriff's Department.

15 Margaret Harris, EMS.

16 Donald Oliver, EMS.

17 Joe Phillips, EMS.

18 Carey Shealy, Statewide Security Systems.

19 Vernell Spann.

20 Carylin Colours.

21 Jamil Brennan.

22 Shantai Green.

23 Michael Morris.

24 Sherald Brown.

25 Raymond McKinzie.

1 Theresa Weldon.

2 And John Brisby.

3 Is there any --

4 MS. BODMAN: May I approach?

5 THE COURT: Yes. And one other one is Whitney
6 Davis.

7 (Witness stands.)

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: All right, once again, I'm sorry.
12 Mr. Whitney Davis. I think he is here.

13 (Witness standing.)

14 THE COURT: He is standing. Thank you.

15 (Witness seated.)

16 THE COURT: And two additional names.

17 Investigator Van Houten, John Van Houten, with the
18 Columbia Police Department.

19 And Investigator Christopher Pinckney, with
20 the -- Well, Van Houten is with Richland County
21 Sheriff's Department?

22 MS. BODMAN: He is CPD and Secret Service.

23 THE COURT: Okay. And Christopher Pinckney is
24 with the Columbia Police Department.

25 MS. BODMAN: Formerly the Sheriff's

1 Department, and now with Mecklenburg in North
2 Carolina.

3 THE COURT: All right.

4 (Potential juror stands.)

5 THE COURT: Yes, sir?

6 THE POTENTIAL JUROR: Yes. Juror 250. I have
7 had business dealings with Mr. Davis.

8 THE COURT: Okay. All right. And Mr. Davis
9 may be a witness in this case. Would that affect
10 your ability to be fair and impartial in this
11 trial?

12 THE POTENTIAL JUROR: No, ma'am.

13 THE COURT: All right, thank you.

14 (Potential juror seated.)

15 THE COURT: Anyone else? Does anyone need me
16 to call the names again?

17 All right. The attorneys in this case --

18 (Potential juror stands.)

19 THE COURT: Yes, ma'am.

20 THE POTENTIAL JUROR: I don't have association
21 with a lot of those people, but my husband does.
22 And I do know a lot of those names.

23 THE COURT: All right. What is your number,
24 ma'am?

25 THE POTENTIAL JUROR: 146.

1 THE COURT: All right. I mean, which names?

2 THE POTENTIAL JUROR: Jackie Richburg, with
3 9-1-1. My husband is 9-1-1, Richland County
4 Emergency Services with the EMS, 9-1-1 and Fire.

5 THE COURT: So all of the names, EMS and the
6 9-1-1 operator --

7 THE POTENTIAL JUROR: Are names that I have
8 been at social events with.

9 THE COURT: Because your husband works there?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Ma'am, would that affect your
12 ability to be fair and impartial in this trial?

13 THE POTENTIAL JUROR: No.

14 THE COURT: All right, thank you.

15 (Potential juror seated.)

16 THE COURT: All right, ladies and gentlemen of
17 the jury, at this time I will introduce the
18 attorneys in the case.

19 For the State, with the Fifth Circuit
20 Solicitor's Office, I'll introduce Ms. Margaret
21 Bodman. If you could stand.

22 (Ms. Bodman stands.)

23 MS. BODMAN: Good afternoon.

24 THE COURT: Mr. Joe Berry.

25 (Mr. Berry stands.)

1 MR. BERRY: Hi.

2 THE COURT: And Ms. Dolly Garfield.

3 (Ms. Garfield stands.)

4 THE COURT: They are with the Fifth Circuit
5 Solicitor's Office.

6 Thank you. You may be seated.

7 (Ms. Bodman, Mr. Berry, and Ms. Garfield
8 are seated.)

9 THE COURT: Representing Mr. Green today is
10 Ms. Nicole Singletary, who is a part of the
11 Richland County bar.

12 (Ms. Singletary stands.)

13 THE COURT: And Mr. William Sims, who is also
14 part of the Richland County bar.

15 (Mr. Sims stands.)

16 (Ms. Singletary and Mr. Sims are seated.)

17 THE COURT: Has any member of the jury panel
18 ever been represented by any of the attorneys
19 involved in this case or by anyone in their office?
20 If so, please stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Has anyone ever been related by
23 blood or marriage to -- or had a close personal or
24 social relationship with any of the attorneys in
25 this case or anyone in their office? And

1 Ms. Singletary is a sole practitioner, so -- and
2 Mr. Sims are the only ones in her office. In the
3 Solicitor's Office, that would be Solicitor Dan
4 Johnson's office, there are quite a few attorneys,
5 probably about 20 or 30. But if anyone has any
6 relationship to, by blood or marriage, or has been
7 involved with the Fifth Circuit Solicitor's Office,
8 I'll ask that you stand at this time.

9 (WHEREUPON, there was no response.)

10 THE COURT: Thank you.

11 Has any member of the jury panel formed or
12 expressed an opinion about any issue or matter
13 involved in this case?

14 (WHEREUPON, there was no response.)

15 THE COURT: Is any member of the jury panel
16 aware of any bias or prejudice towards either the
17 State or the Defendant in this case? If so, please
18 stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Is there any member of the jury
21 panel that was a member of the Grand Jury which
22 issued the indictment in this case? If so, please
23 stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: Is there any member of the jury

1 panel who is a member of or contributor to any
2 group which has its primary concern with the
3 promotion of law enforcement or victims' rights?
4 These groups would include, but are certainly not
5 limited to, MADD, which would be Mothers Against
6 Drunk Driving; SADD, which would be Students
7 Against Drunk Driving; CAVE, Citizens Against
8 Violent Crime; or any organization -- that is not a
9 complete list, but any organization who has its
10 major concern with the promotion of law enforcement
11 and victims' rights? If so, please stand.

12 (Potential juror stands.)

13 THE POTENTIAL JUROR: My husband is a Richland
14 County deputy.

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

16 THE POTENTIAL JUROR: 159.

17 THE COURT: And your husband works for
18 Richland County Sheriff's Department?

19 THE POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: And, ma'am, the fact that your
21 husband works for Richland County Sheriff's
22 Department, would that affect your ability to be
23 fair and impartial in this trial?

24 THE POTENTIAL JUROR: Not at all.

25 THE COURT: All right, thank you.

1 (Potential juror seated.)

2 THE COURT: All right. And, ladies and
3 gentlemen of the jury, is there any member of the
4 jury panel who is a member of or a contributor of
5 any organization whose primary concern is
6 prisoners' rights, such as The Innocence Project?
7 Is there anyone who is a member or contributor to
8 any one of these groups?

9 (WHEREUPON, there was no response.)

10 THE COURT: All right. Does any member of the
11 jury panel -- is anyone on the jury panel related
12 by blood or marriage to, or a friend or
13 acquaintance of, a member of any law enforcement
14 agency? If so, please stand.

15 (Potential juror stands.)

16 THE COURT: All right, and Juror Number 159,
17 it is your husband. Is there anyone else that --

18 THE POTENTIAL JUROR: No, ma'am.

19 THE COURT: And I ask -- I'll ask again -- the
20 fact that your husband is a Richland County Sheriff
21 deputy, would that affect your ability to be fair
22 and impartial in this trial?

23 THE POTENTIAL JUROR: Not at all.

24 THE COURT: All right, thank you. You may be
25 seated.

1 (Potential juror seated.)

2 (Potential juror stands.)

3 THE COURT: Yes, sir?

4 THE POTENTIAL JUROR: Yes. My father is a
5 retired police chief.

6 THE COURT: All right. What is your juror
7 number?

8 THE POTENTIAL JUROR: 143.

9 THE COURT: And where is he retired from?

10 THE POTENTIAL JUROR: Marion. The City of
11 Marion, South Carolina.

12 THE COURT: So would that affect your ability
13 to be fair and impartial in the trial?

14 THE POTENTIAL JUROR: Yes, it would.

15 THE COURT: All right. Thank you. You may be
16 seated.

17 (Potential juror seated.)

18 (Potential juror stands.)

19 THE COURT: Yes, sir?

20 THE POTENTIAL JUROR: I'm 182. And I'm not
21 sure it is a qualifying statement, but my
22 mother-in-law is retired from John Meadors' office
23 in Kershaw County.

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

1 THE POTENTIAL JUROR: No, ma'am.

2 THE COURT: Thank you.

3 (Potential juror seated.)

4 (Potential juror stands.)

5 THE COURT: Yes, sir?

6 THE POTENTIAL JUROR: Yes. My son-in-law is a
7 Tuscaloosa, Alabama police officer. I'm Juror 208.

8 THE COURT: 208. And, sir, the fact that your
9 son is a --

10 THE POTENTIAL JUROR: My son-in-law, ma'am.

11 THE COURT: -- son-in-law. Would that affect
12 your ability to be fair and impartial in this
13 trial?

14 THE POTENTIAL JUROR: No.

15 THE COURT: All right, thank you.

16 (Potential juror seated.)

17 (Potential juror stands.)

18 THE COURT: All right, yes, ma'am?

19 THE POTENTIAL JUROR: I am number 269. And my
20 mother and uncle work for the South Carolina
21 Department of Corrections.

22 THE COURT: All right. And, ma'am, would the
23 fact that your mother and uncle work for the
24 Department of Corrections, would that affect your
25 ability to be fair and impartial in this trial?

1 THE POTENTIAL JUROR: No, it wouldn't.

2 THE COURT: All right, thank you.

3 (Potential juror seated.)

4 (Potential juror stands.)

5 THE COURT: Yes, sir?

6 THE POTENTIAL JUROR: Yes. I have
7 acquaintances that I know that work for the
8 Richland County Sheriff's Department.

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

12 THE POTENTIAL JUROR: No, Your Honor.

13 THE COURT: What is your number, sir?

14 THE POTENTIAL JUROR: 198.

15 THE COURT: 198. Thank you.

16 (Potential juror seated.)

17 (Potential juror stands.)

18 THE COURT: Yes, sir?

19 THE POTENTIAL JUROR: Juror 100.

20 THE COURT: Yes, sir?

21 THE POTENTIAL JUROR: My dad is a retired
22 police officer for the City of Columbia.

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

25 THE POTENTIAL JUROR: No, ma'am.

1 THE COURT: All right, thank you.

2 (Potential juror seated.)

3 (Potential juror stands.)

4 THE COURT: Yes, ma'am?

5 THE POTENTIAL JUROR: I'm Juror 203. My

6 fiancé is a Richland County deputy.

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

9 THE POTENTIAL JUROR: I don't think so, no.

10 THE COURT: All right. Like I said earlier,
11 there is no wrong -- you just have to say yes or
12 no. No wrong answer.

13 THE POTENTIAL JUROR: No.

14 THE COURT: All right. Thank you.

15 (Potential juror seated.)

16 (Potential juror stands.)

17 THE COURT: Yes, sir?

18 THE POTENTIAL JUROR: Juror 49. My cousin and
19 my uncle were former police officers, and my
20 brother-in-law is a current prison guard.

21 THE COURT: He is a what, now?

22 THE POTENTIAL JUROR: My brother-in-law, he is
23 a current prison guard in Florida, in Miami.

24 THE COURT: All right. And the fact that you
25 have family members in law enforcement, would that

1 affect your ability to be fair and impartial in
2 this trial?

3 THE POTENTIAL JUROR: No, Your Honor.

4 THE COURT: All right, thank you.

5 (Potential juror seated.)

6 (Potential juror stands.)

7 THE COURT: Yes, ma'am?

8 THE POTENTIAL JUROR: 146. My husband is a
9 retired state trooper and currently works for
10 Richland County Emergency Management System.

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

14 THE POTENTIAL JUROR: No.

15 THE COURT: Thank you.

16 (Potential juror seated.)

17 (Potential juror stands.)

18 THE COURT: Yes, ma'am?

19 THE POTENTIAL JUROR: 303. And my nephew was
20 a Richland County sheriff for about eight years,
21 and now he is on the Fairfield County Sheriff's
22 Department.

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

25 THE POTENTIAL JUROR: No.

1 THE COURT: Thank you.

2 (Potential juror seated.)

3 (Potential juror stands.)

4 THE COURT: Yes, ma'am?

5 THE POTENTIAL JUROR: 133.

6 THE COURT: Yes, ma'am?

7 THE POTENTIAL JUROR: My father was Pemiscot

8 County, Missouri sheriff.

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

12 THE POTENTIAL JUROR: No, ma'am.

13 THE COURT: Thank you.

14 (Potential juror seated.)

15 (Potential juror stands.)

16 THE COURT: Yes, ma'am?

17 THE POTENTIAL JUROR: Juror 230.

18 THE COURT: Yes, ma'am?

19 THE POTENTIAL JUROR: Close cousin used to be
20 the deputy warden in Lee County. He is currently
21 on Broad River Road as a warden.

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

24 THE POTENTIAL JUROR: No.

25 THE COURT: Huh?

1 THE POTENTIAL JUROR: I said no.

2 THE COURT: You said no?

3 THE POTENTIAL JUROR: I said no.

4 THE COURT: Okay. Thank you.

5 (Potential juror seated.)

6 (Potential juror stands.)

7 THE COURT: Yes, ma'am?

8 THE POTENTIAL JUROR: I'm Juror 12. You did
9 say friends or associates as well?

10 THE COURT: That's fine, yes.

11 THE POTENTIAL JUROR: Okay. I have one good
12 friend and one associate that are Richland County.

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

15 THE POTENTIAL JUROR: Yes.

16 THE COURT: You said it would?

17 THE POTENTIAL JUROR: (Nods affirmatively.)

18 THE COURT: All right, thank you.

19 (Potential juror seated.)

20 THE COURT: Is there any member of the jury
21 panel that is employed by the City of Columbia
22 Police Department, Richland County Sheriff's
23 Department, SLED, or Federal Bureau of
24 Investigation? Who is previously or currently
25 employed? And I think y'all stood up regarding

1 your family members.

2 (Potential juror stands.)

3 THE COURT: Yes, sir? Juror Number 100?

4 THE POTENTIAL JUROR: I'm Juror 100. I work
5 for the City of Columbia, but I am employed by the
6 Columbia Police Department.

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

10 THE POTENTIAL JUROR: No, ma'am.

11 THE COURT: All right, thank you.

12 (Potential juror seated.)

13 THE COURT: Is any member of the jury panel
14 related by blood or marriage to, or a friend or
15 acquaintance of, anyone employed by the Attorney
16 General's Office, the Fifth Circuit Solicitor's
17 Office, or any prosecuting agency? If so, please
18 stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Has any member of the jury panel
21 ever been employed by any civilian or military law
22 enforcement agency? And I say "military." I think
23 we have already answered law enforcement, local law
24 enforcement. Anyone ever been employed by any
25 civilian or military law enforcement agency?

1 (WHEREUPON, there was no response.)

2 THE COURT: Has any member of the jury panel
3 read or heard anything about this case today or
4 before today?

5 (WHEREUPON, there was no response.)

6 THE COURT: Has any member of the jury panel
7 discussed this case or heard anyone else discuss
8 this case or a similar case today or prior to
9 today?

10 (WHEREUPON, there was no response.)

11 THE COURT: Is there anything in the nature of
12 the allegations in this case that would cause any
13 member of the jury panel a problem sitting as an
14 impartial juror, meaning is there any reason or
15 anything that you have heard this far in the case
16 that would prevent you from being fair and
17 impartial in this trial?

18 (WHEREUPON, there was no response.)

19 THE COURT: Has any member of the panel or any
20 member of the potential juror's family ever been a
21 victim of a violent crime? If so, please stand.

22 (Potential juror stands.)

23 THE POTENTIAL JUROR: Can you repeat that,
24 please?

25 THE COURT: Has any member of the panel or any

1 member of a potential juror's family ever been the
2 victim of a violent crime?

3 THE POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Yes, ma'am?

5 THE POTENTIAL JUROR: Juror 42.

6 THE COURT: Yes, ma'am?

7 THE POTENTIAL JUROR: The last question, I was
8 trying to get up.

9 THE COURT: That's okay.

10 THE POTENTIAL JUROR: And then this question
11 also. I'm a little bit uncomfortable with the
12 murder charges. That makes me a little squeamish.

13 THE COURT: Okay. Would you think that would
14 affect your ability to be fair and impartial in
15 this trial?

16 THE POTENTIAL JUROR: Yes.

17 THE COURT: All right.

18 THE POTENTIAL JUROR: I think it would.

19 THE COURT: You are 42?

20 THE POTENTIAL JUROR: Yes. And I have also
21 been the victim of a violent crime.

22 THE COURT: And when was that, ma'am?

23 THE POTENTIAL JUROR: It has been more than
24 ten years ago.

25 THE COURT: All right, thank you.

1 (Potential juror seated.)

2 (Potential juror stands.)

3 THE COURT: All right, Juror Number -- yes,
4 ma'am, in the red?

5 THE POTENTIAL JUROR: 169. My sister was
6 murdered in a domestic violence.

7 THE COURT: Ma'am, would that affect your
8 ability to be fair and impartial in this trial?

9 THE POTENTIAL JUROR: Yes, ma'am, I believe it
10 would.

11 THE COURT: You said yes? Okay. Thank you.

12 (Potential juror seated.)

13 (Potential juror stands.)

14 THE COURT: Yes, ma'am?

15 THE POTENTIAL JUROR: Juror 177. My husband
16 was attacked by three gang members, slashed in the
17 face about 11 years ago.

18 THE COURT: 11?

19 THE POTENTIAL JUROR: Uh-huh.

20 THE COURT: Ma'am, would that fact affect your
21 ability to be fairly impartial in this trial?

22 THE POTENTIAL JUROR: No, ma'am.

23 THE COURT: All right, thank you.

24 (Potential juror seated.)

25 (Potential juror stands.)

1 THE COURT: Yes, ma'am?

2 THE POTENTIAL JUROR: Juror 248. My
3 brother-in-law was shot and killed back in 1990.

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

6 THE POTENTIAL JUROR: No.

7 THE COURT: All right, thank you.

8 (Potential juror seated.)

9 (Potential juror stands.)

10 THE COURT: Yes, ma'am?

11 THE POTENTIAL JUROR: Juror 140. I was here
12 in November with my son who was here for a case for
13 attempted murder.

14 THE COURT: Your son was charged or he was a
15 victim?

16 THE POTENTIAL JUROR: No, he was a victim.

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

19 THE POTENTIAL JUROR: No, ma'am.

20 THE COURT: All right. And, ma'am, do you
21 remember who you worked with with the Solicitor's
22 Office?

23 THE POTENTIAL JUROR: I'm not sure.

24 THE COURT: You don't remember who the
25 Assistant Solicitor was?

1 THE POTENTIAL JUROR: No, ma'am.

2 THE COURT: And, ma'am, do you believe you
3 could be fair and impartial in this trial?

4 THE POTENTIAL JUROR: Yes, ma'am.

5 THE COURT: All right, thank you.

6 (Potential juror seated.)

7 THE COURT: Has any member of the jury panel
8 or a family member or a friend or associate ever
9 been a victim of a robbery? If so, please stand.

10 (Potential juror stands.)

11 THE COURT: All right. Yes, sir?

12 THE POTENTIAL JUROR: I have been robbed once
13 in Columbia in like 1990. And then in Tennessee
14 when I lived in Tennessee our house was robbed.

15 THE COURT: What is your juror number?

16 THE POTENTIAL JUROR: Oh, I'm sorry.
17 Fourteen.

18 THE COURT: Fourteen? And, sir, would that
19 affect your ability to be fair and impartial in
20 this trial?

21 THE POTENTIAL JUROR: No, ma'am.

22 THE COURT: All right, thank you.

23 (Potential juror seated.)

24 (Potential juror stands.)

25 THE COURT: Yes, ma'am?

1 THE POTENTIAL JUROR: Juror 42. My house was
2 broken into in October.

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

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: All right, thank you.

8 (Potential juror seated.)

9 (Potential juror stands.)

10 THE COURT: Yes, sir?

11 THE POTENTIAL JUROR: Juror 249.

12 THE COURT: Yes, sir?

13 THE POTENTIAL JUROR: I had stuff stolen off
14 my truck, work truck.

15 THE COURT: Sir, would that affect your
16 ability to be fair and impartial in this trial?

17 THE POTENTIAL JUROR: No, ma'am.

18 THE COURT: Thank you.

19 (Potential juror seated.)

20 (Potential juror stands.)

21 THE COURT: Yes, sir?

22 THE POTENTIAL JUROR: Juror 83. My residence
23 was burglarized about three years ago.

24 THE COURT: Sir, would that affect your
25 ability to be fair and impartial in this trial?

1 THE POTENTIAL JUROR: No, ma'am.

2 THE COURT: Thank you.

3 (Potential juror seated.)

4 (Potential juror stands.)

5 THE COURT: Yes, ma'am?

6 THE POTENTIAL JUROR: 146. My residence was
7 burglarized.

8 THE COURT: You said one --

9 THE POTENTIAL JUROR: -- forty-six.

10 THE COURT: And, ma'am, the fact that your
11 residence was burglarized, would that affect your
12 ability to be fair and impartial in this trial?

13 THE POTENTIAL JUROR: No, ma'am.

14 THE COURT: Thank you.

15 (Potential juror seated.)

16 (Potential juror stands.)

17 THE COURT: Yes, sir?

18 THE POTENTIAL JUROR: Juror 49. My business
19 was broke into three times, most recently within
20 the last 60 days.

21 THE COURT: Sir, would that affect your
22 ability to be fair and impartial in this trial?

23 THE POTENTIAL JUROR: No, ma'am.

24 (Potential juror seated.)

25 (Potential juror stands.)

1 THE COURT: Yes, ma'am?

2 THE POTENTIAL JUROR: I was the victim of a
3 robbery.

4 THE COURT: What is your number again?

5 THE POTENTIAL JUROR: 140.

6 THE COURT: And would that affect your ability
7 to be fair and impartial in this trial?

8 THE POTENTIAL JUROR: No, ma'am.

9 THE COURT: Thank you.

10 (Potential juror seated.)

11 (Potential juror stands.)

12 THE COURT: Yes, ma'am?

13 THE POTENTIAL JUROR: 133. I was the victim
14 of a home burglary also.

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

17 THE DEFENDANT: No.

18 THE COURT: Thank you.

19 (Potential juror seated.)

20 (Potential juror stands.)

21 THE COURT: Yes, ma'am?

22 THE POTENTIAL JUROR: Juror 177. My husband
23 was the victim of an attempted robbery.

24 THE COURT: Ma'am, would that affect your
25 ability to be fair and impartial in this trial?

1 THE POTENTIAL JUROR: No, ma'am.

2 THE COURT: All right. Thank you.

3 (Potential juror seated.)

4 THE COURT: All right, ladies and gentlemen of
5 the jury, I think I already had one or two people
6 stand up, you don't have to stand up again, but has
7 any member of the jury panel or a family member or
8 a friend or associate been a victim of a homicide?
9 If so, please stand.

10 (Potential juror stands.)

11 THE COURT: Yes, ma'am?

12 THE POTENTIAL JUROR: Juror 42. The couple
13 were friends of mine. The wife was killed. My
14 male friend -- the man in the relationship killed
15 the wife, so --

16 THE COURT: Okay. Ma'am, would that affect
17 your ability to be fair and impartial in this
18 trial?

19 THE POTENTIAL JUROR: No. That would not, no.

20 THE COURT: Thank you.

21 (Potential juror seated.)

22 (Potential juror stands.)

23 THE COURT: Yes, ma'am?

24 THE POTENTIAL JUROR: Number 269.

25 THE COURT: All right.

1 THE POTENTIAL JUROR: My daughter's father was
2 killed in 2011.

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

5 THE POTENTIAL JUROR: No, ma'am.

6 THE COURT: All right, thank you.

7 (Potential juror seated.)

8 THE COURT: All right. I have asked about
9 being victims. Is there any member of the jury
10 panel who has a family member or friend who has
11 ever been charged with robbery or homicide or
12 murder? If so, please stand.

13 (Potential juror stands.)

14 THE POTENTIAL JUROR: Juror 170. My son is
15 currently serving time for murder.

16 THE COURT: I'm sorry?

17 THE JUROR: Juror 170. My son is currently
18 serving time for murder.

19 THE COURT: For homicide?

20 THE POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: You may be seated.

22 (Potential juror seated.)

23 (Potential juror stands.)

24 THE COURT: Yes, sir?

25 THE POTENTIAL JUROR: Juror 215. My brother,

1 a few years ago, was charged with robbery and spent
2 some time in DJJ for it.

3 THE COURT: All right. Thank you. And, sir,
4 would that -- did I ask you -- would that affect --
5 you may have to stand back up, Juror Number 170.

6 (Juror 170 stands.)

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

9 THE POTENTIAL JUROR: No.

10 THE COURT: Okay, thank you.

11 (Potential juror seated.)

12 THE COURT: And, Juror 215, would that affect
13 your ability to be fair and impartial in this
14 trial?

15 THE POTENTIAL JUROR: No, ma'am, it would not.

16 THE COURT: All right, thank you.

17 (Potential juror seated.)

18 (Potential juror stands.)

19 THE COURT: Yes, ma'am?

20 THE POTENTIAL JUROR: Number 42. A friend was
21 tried and convicted.

22 THE COURT: Your what?

23 THE POTENTIAL JUROR: Friend.

24 THE COURT: Your friend?

25 THE POTENTIAL JUROR: Yes, ma'am.

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

3 THE POTENTIAL JUROR: No.

4 THE COURT: All right, thank you.

5 (Potential juror seated.)

6 (Potential juror stands.)

7 THE POTENTIAL JUROR: 259. Nephew charged
8 with murder.

9 THE COURT: And when was that, sir?

10 THE POTENTIAL JUROR: Eight years.

11 THE COURT: Was he convicted?

12 THE POTENTIAL JUROR: Yes, he was.

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

15 THE POTENTIAL JUROR: No.

16 (Potential juror seated.)

17 (Potential juror stands.)

18 THE COURT: Yes, sir?

19 THE POTENTIAL JUROR: Juror 233.

20 THE COURT: Yes, sir?

21 THE POTENTIAL JUROR: I had a childhood friend
22 that was convicted of homicide.

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

25 THE POTENTIAL JUROR: No, ma'am.

1 THE COURT: Thank you.

2 (Potential juror seated.)

3 (Potential juror stands.)

4 THE COURT: And, yes ma'am?

5 THE POTENTIAL JUROR: Juror 230.

6 THE COURT: Yes, ma'am?

7 THE POTENTIAL JUROR: I have a cousin that was
8 actually charged with murder of her husband,
9 Mecklenburg County. And that would make me
10 impartial.

11 THE COURT: And what now?

12 THE POTENTIAL JUROR: It would make me
13 impartial.

14 THE COURT: So you cannot be fair and
15 impartial?

16 THE POTENTIAL JUROR: No, not at all.

17 THE COURT: Okay.

18 (Potential juror seated.)

19 (Potential juror stands.)

20 THE COURT: All right, yes, ma'am?

21 THE POTENTIAL JUROR: One my best friend's
22 sons is incarcerated for robbery.

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

24 THE POTENTIAL JUROR: 203.

25 THE COURT: 203?

1 THE POTENTIAL JUROR: Yes, ma'am.

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

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: Thank you.

6 (Potential juror seated.)

7 THE COURT: All right, ladies and gentlemen of
8 the jury, is there any member of the jury panel who
9 knows of any reason whatsoever why he or she should
10 not serve as a juror in this case, with particular
11 emphasis being placed on your ability to be fair
12 and impartial to both the State and the Defendant?
13 If so, please stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: May I see the attorneys real
16 quick? And Madam Clerk.

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: All right. Anything else from the
21 State before we proceed?

22 MS. BODMAN: Nothing, Your Honor.

23 THE COURT: Anything from the Defense before
24 we proceed?

25 MS. SINGLETARY: Nothing, Your Honor.

1 THE COURT: All right, ladies and gentlemen of
2 the jury, at this time we will select a jury in
3 this case. And we will probably choose two
4 alternates. We will choose two alternates also.

5 When your name is called, you will come to the
6 microphone. Can I have one of my bailiffs
7 demonstrate, please?

8 (Bailiff complies.)

9 THE COURT: You will come to the microphone.
10 You will face the audience. And you will state
11 your name, where you work, if you are married, and
12 where your spouse works.

13 All right. Please bring your belongings with
14 you.

15 What will happen -- it is always hard for the
16 first person -- what will happen is the State will
17 say either, Please seat the juror, or, Please
18 dismiss the juror.

19 If they say, Seat the juror, you are going to
20 stand there. If they say, Dismissed, you will go
21 back into the audience and sit on one of the back
22 rows. If they say, Seat the juror, then we will go
23 to the Defense, who will state, Please seat the
24 juror, or, Please dismiss the juror. If they say,
25 Seat the juror, you will take a seat in the jury

1 box. If they say, Dismiss, you will go back into
2 the audience.

3 It is always a little confusing for the first
4 person, so we of course will help you along.

5 I will ask Madam Clerk to begin the process.
6 The strikes are ten and five.

7 Yes, ma'am?

8 THE CLERK: Thank you, Judge.

9 THE COURT: Are you ready?

10 THE CLERK: Yes, ma'am.

11 Number 182.

12 (Potential juror approaches.)

13 THE POTENTIAL JUROR: Name, occupation,
14 spouse?

15 THE COURT: And spouse occupation. Yes, sir.

16 THE POTENTIAL JUROR: I'm Robert Moore, or
17 Robert Seabrook Moore. I go by Brook. I work for
18 Vista Bank, which is a community bank here in
19 Columbia. My spouse is Heather Moore. She works
20 part-time as an artist and as a homemaker.

21 THE CLERK: What says the State?

22 MS. BODMAN: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. SINGLETARY: Please excuse the juror.

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

1 courtroom, please.

2 (Juror 182, a white male, was excused by
3 the Defense.)

4 THE CLERK: Number 262.

5 (Potential juror approaches.)

6 THE POTENTIAL JUROR: I'm Juror 262. My name
7 is Deborah Stokes. I am a former teacher. I
8 currently work part-time at Kirkland's. My husband
9 is a financial manager with Vendors Supply.

10 THE CLERK: What says the State?

11 MS. BODMAN: Please present the juror.

12 THE CLERK: What says the Defense?

13 MS. SINGLETARY: Please present the juror.

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

15 (Juror 262, a white female, was seated
16 on the jury.)

17 THE CLERK: Number 14.

18 (Potential juror approaches.)

19 THE POTENTIAL JUROR: Martin Andrew Barth. I
20 go by Andy. I work for South Carolina Electric &
21 Gas. I am an engineering supervisor for
22 configuration management. My wife works for Blue
23 Cross Blue Shield as a fraud statistical analyst.

24 THE CLERK: What says the State?

25 MS. BODMAN: Please present the juror.

1 THE CLERK: What says the Defense?

2 MS. SINGLETARY: Please excuse the juror.

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

5 (Juror 14, a white male, was excused by
6 the Defense.)

7 THE CLERK: Number 233.

8 (Potential juror approaches.)

9 THE POTENTIAL JUROR: My name is Ethan Seidel.
10 I am a facility operations manager at the
11 University of South Carolina. My wife is the
12 administrative director of the Department of
13 Neurology here at the University of South Carolina.

14 THE CLERK: What says the State?

15 MS. BODMAN: Please present the juror.

16 THE CLERK: What says the Defense?

17 MS. SINGLETARY: Please seat the juror.

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

20 (Juror 233, a white male, was seated on
21 the jury.)

22 THE CLERK: Number 170.

23 (Potential juror approaches.)

24 THE POTENTIAL JUROR: I'm Juror 170. My name
25 is Alfredia Mcbeth. I work for SCE&G as the

1 coordinator for the operators. I'm single.

2 THE POTENTIAL JUROR: What says the State?

3 MS. BODMAN: Please excuse this juror.

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

6 (Juror 170, a black female, was excused
7 by the State.)

8 THE POTENTIAL JUROR: Number 82.

9 (Potential juror approaches.)

10 THE POTENTIAL JUROR: My name is James
11 Etheridge. I work for Zeus Industrial Products as
12 a machinist. And my wife works for Baptist
13 Hospital.

14 THE CLERK: What says the State?

15 MS. BODMAN: Please present the juror.

16 THE CLERK: What says the Defense?

17 MS. SINGLETARY: Please seat the juror.

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

19 (Juror 82, a black male, was seated on
20 the jury.)

21 THE CLERK: Number 208.

22 (Potential juror approaches.)

23 THE POTENTIAL JUROR: My name is Marc Rapport.

24 I am a writer/editor for a credit union consulting
25 firm. My wife is a nurse reviewer at Blue Cross

1 Blue Shield of South Carolina.

2 THE CLERK: What says the State?

3 MS. BODMAN: Please present the juror.

4 THE CLERK: What says the Defense?

5 MS. SINGLETARY: Please seat the juror.

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

8 (Juror 208, a white male, was seated on
9 the jury.)

10 THE CLERK: Number 259.

11 (Potential juror approaches.)

12 THE POTENTIAL JUROR: Kenneth Stevenson.
13 Retired Air Force. Single.

14 THE CLERK: What says the State?

15 MS. BODMAN: Please excuse the juror.

16 THE CLERK: Have a seat in the back of the
17 courtroom, please.

18 (Juror 259, a black male, was excused by
19 the State.)

20 THE CLERK: Number 220.

21 (Potential juror approaches.)

22 THE POTENTIAL JUROR: My name is Gloria
23 Robinson. I am an administrative specialist for
24 the South Carolina Department of Insurance.

25 THE CLERK: What says the State?

1 MS. BODMAN: Please present the juror.

2 THE CLERK: What says the Defense?

3 MS. SINGLETARY: Please seat the juror.

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

6 (Juror 220, a black female, was seated
7 on the jury.)

8 THE CLERK: Number 90.

9 (Potential juror approaches.)

10 THE POTENTIAL JUROR: I'm Juror 90. My name
11 is Belinda Forrest. I am a full-time real estate
12 broker with Exit Real Estate Solutions. My husband
13 is retired military. He currently works at
14 Wendy's.

15 THE CLERK: What says the State?

16 MS. BODMAN: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. SINGLETARY: Please excuse the juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom.

21 (Juror 90, a black female, was excused
22 by the Defense.)

23 THE CLERK: Number 30.

24 (Potential juror approaches.)

25 THE POTENTIAL JUROR: I'm Ronald Bridgette. I

1 work at Wal-Mart as a sales associate. And I'm
2 single.

3 THE CLERK: What says the State?

4 MS. BODMAN: Please excuse the juror.

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

7 (Juror 30, a black male, was excused by
8 the State.)

9 THE CLERK: Number 176.

10 (Potential juror approaches.)

11 THE POTENTIAL JUROR: Thomas Meyers. I am an
12 auto technician for Taylor's Automotive Service in
13 Chapin. And my wife is a school bus driver for
14 Richland Two.

15 THE CLERK: What says the State?

16 MS. BODMAN: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. SINGLETARY: Please excuse the juror.

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

21 (Juror 176, a white male, was excused by
22 the Defense.)

23 THE CLERK: Number 292.

24 (Potential juror approaches.)

25 THE POTENTIAL JUROR: My name is Billy Wilson.

1 And I'm retired.

2 THE CLERK: What says the State?

3 THE COURT: Where are you retired from?

4 THE POTENTIAL JUROR: Oh, retired from Kline
5 Iron & Steel Company.

6 THE COURT: You said Kline Steel?

7 THE POTENTIAL JUROR: Yes.

8 THE CLERK: What says the State?

9 MS. BODMAN: Please excuse the juror.

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

12 (Juror 292, a black male, was excused by
13 the State.)

14 THE CLERK: A review of the strikes. For the
15 State I have four. For the Defendant I have four.
16 Number 215.

17 (Potential juror approaches.)

18 THE POTENTIAL JUROR: I am Evan Rikard. I am
19 currently unemployed looking for work. I am not
20 married.

21 THE CLERK: What says the State?

22 MS. BODMAN: Please excuse the juror.

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

25 (Juror 215, a white male, was excused by

1 the State.)

2 THE CLERK: Number 303.

3 (Potential juror approaches.)

4 THE POTENTIAL JUROR: I'm Ester Melton. I'm
5 an artist and art teacher at City Art in the Vista.
6 And my husband is a computer systems analyst at
7 Blue Cross Blue Shield.

8 THE CLERK: Does the State challenge for
9 cause?

10 MS. BODMAN: No.

11 THE CLERK: What says the Defense?

12 MS. SINGLETARY: Please excuse the juror.

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

15 (Juror 303, a white female, was excused
16 by the Defense.)

17 THE CLERK: Number 302.

18 (Potential juror approaches.)

19 THE POTENTIAL JUROR: Yes, my name is Bob
20 Little. I sell medical devices. And my wife
21 Shelly works for Arnold Construction.

22 THE CLERK: Does the State challenge for
23 cause?

24 MS. BODMAN: No.

25 THE CLERK: What says the Defense?

1 MS. SINGLETARY: Please excuse the juror.

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

4 (Juror 302, a white male, was excused by
5 the Defense.)

6 THE CLERK: Number 35.

7 (Potential juror approaches.)

8 THE POTENTIAL JUROR: My name is Thomisa
9 Brown. I'm single, not married. And I'm a
10 paralegal.

11 THE CLERK: Does the State challenge for
12 cause?

13 MS. BODMAN: No.

14 THE CLERK: What says the Defense?

15 MS. SINGLETARY: Please seat the jury.

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

18 (Juror 35, a black female, was seated on
19 the jury.)

20 THE CLERK: Number 295.

21 (Potential juror approaches.)

22 THE CLERK: My name is Laurie Woller.
23 Administrative assistant. And my husband is an
24 auto mechanic at Firestone.

25 THE CLERK: Does the State challenge for

1 cause?

2 MS. BODMAN: No.

3 THE CLERK: What says the Defense?

4 MS. SINGLETARY: Please seat the juror.

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

7 (Juror 295, a white female, was seated
8 on the jury.)

9 THE CLERK: Number 306.

10 (Potential juror approaches.)

11 THE POTENTIAL JUROR: My name is Andrew
12 Ziegler. I am the head golf professional at Holly
13 Tree Country Club. And my wife is an attorney.

14 THE COURT: Does the State challenge for
15 cause?

16 MS. BODMAN: No.

17 THE CLERK: What says the Defense?

18 MS. SINGLETARY: Please excuse the juror.

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

21 (Juror 306, a white male, was excused by
22 the Defense.)

23 THE CLERK: Number 122.

24 (Potential juror approaches.)

25 THE POTENTIAL JUROR: My name is William Ray

1 Hornsby. I work for R. C. McEntire Trucking. My
2 wife works for Fatz Cafe.

3 THE CLERK: Does the State challenge for
4 cause?

5 MS. BODMAN: No.

6 THE CLERK: What says the Defense?

7 MS. SINGLETARY: Please seat the juror.

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

9 (Juror 122, a white male, was seated on
10 the jury.)

11 THE CLERK: Number 250.

12 (Potential juror approaches.)

13 THE POTENTIAL JUROR: My name is Ted Smith.
14 I'm in office equipment sales at CSF, Inc. And my
15 wife is a homemaker.

16 THE CLERK: Does the State challenge for
17 cause?

18 MS. BODMAN: No.

19 THE CLERK: What says the Defense?

20 MS. SINGLETARY: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom.

23 (Juror 250, a white male, was excused by
24 the Defense.)

25 THE CLERK: Number 257.

1 (Potential juror approaches.)

2 THE POTENTIAL JUROR: Lisa M. Steele.

3 Customer service coordinator at Palmetto GBA.

4 THE CLERK: Does the State challenge for
5 cause?

6 MS. BODMAN: No.

7 THE CLERK: What says the Defense?

8 MS. SINGLETARY: Please seat the juror.

9 THE CLERK: Have a seat in the jury box.
10 (Juror 257, a black female, was seated
11 on the jury.)

12 THE CLERK: Number 177.

13 (Potential juror approaches.)

14 THE POTENTIAL JUROR: My name is Candice
15 Michalik. I am a customer care representative at
16 Verizon Wireless. And my husband works for BMW in
17 Greer as a supplier quality engineer.

18 THE CLERK: Does the State challenge for
19 cause?

20 MS. BODMAN: No.

21 THE CLERK: What says the Defense?

22 MS. SINGLETARY: Please excuse the juror.

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

25 (Juror 177, a white female, was excused

1 by the Defense.)

2 THE CLERK: Defense, that will be your ninth
3 strike.

4 Number 301.

5 (Potential juror approaches.)

6 THE POTENTIAL JUROR: I'm Shallen Hadwiger.
7 And my husband and I are both active duty army
8 musicians.

9 THE CLERK: Does the State challenge for
10 cause?

11 MS. BODMAN: No.

12 THE CLERK: What says the Defense?

13 MS. SINGLETARY: Please seat the juror.

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

16 (Juror 301, a white female, was seated
17 on the jury.)

18 THE CLERK: Number 83.

19 (Potential juror approaches.)

20 THE POTENTIAL JUROR: My name is Chris Ferris.
21 I am a project manager for Blue Cross Blue Shield
22 of South Carolina. And I am single.

23 THE CLERK: Does the State challenge for
24 cause?

25 MS. BODMAN: No.

1 THE CLERK: What says the Defense?

2 MS. SINGLETARY: Please seat the jury.

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

5 (Juror 83, a white male, was seated on
6 the jury.)

7 THE CLERK: Number 100.

8 (Potential juror approaches.)

9 THE POTENTIAL JUROR: Juror 100. My name is
10 Ewell Graddick. I work for the City of Columbia.
11 I'm single.

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

14 MS. BODMAN: No.

15 THE COURT: What says the Defense?

16 MS. SINGLETARY: Please excuse this witness.

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

19 (Juror 100, a black male, was excused by
20 the Defense.)

21 THE CLERK: Number 249.

22 (Potential juror approaches.)

23 THE POTENTIAL JUROR: Miles Smith. I work for
24 East Richland County Public Service District, waste
25 water plant operator. My wife is a homemaker.

1 THE CLERK: Does the State challenge for
2 cause?

3 MS. BODMAN: No.

4 THE CLERK: Does the Defense challenge for
5 cause?

6 MS. SINGLETARY: No.

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

9 (Juror 249, a white male, was seated on
10 the jury.)

11 THE CLERK: 269. This is for alternate.
12 (Potential juror approaches.)

13 THE POTENTIAL JUROR: I'm Kendra Thompson. I
14 am a support desk operator for Jones Food Supply.
15 And I'm single.

16 THE CLERK: What says the State?

17 MS. BODMAN: Please present the juror.

18 THE CLERK: What says the Defense?

19 MS. SINGLETARY: Please seat the juror.

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

22 (Juror 269, a black female, was seated
23 as the first alternate.)

24 THE CLERK: Number 198.

25 (Potential juror approaches.)

1 THE POTENTIAL JUROR: My name is Myong Pak. I
2 work for Sprint Wireless as a technical consultant.
3 And I am single.

4 THE CLERK: What says the State?

5 MS. BODMAN: Please present the juror.

6 THE CLERK: What says the Defense?

7 MS. SINGLETARY: Please seat the juror.

8 THE CLERK: Have a seat in the jury box,
9 please.

10 (Juror 198, an Asian Male, was seated as
11 the second alternate.)

12 THE COURT: All right. Anything else for the
13 remaining members of the jury panel? Anything from
14 the State?

15 MS. BODMAN: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MS. SINGLETARY: Nothing, Your Honor.

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, for those of you not selected, I am
20 going to send you back downstairs. You will get
21 further instructions down there. If I do not see
22 you all before the end of the week, I hope that you
23 have a good experience here at the Richland County
24 courthouse and that you will learn something about
25 our court system while you are here, if you have

1 not already.

2 I am going to send you back downstairs. And,
3 once again, thank you all for your service here
4 this week.

5 (WHEREUPON, the remaining jury panel was
6 excused at 1:54 p.m.)

7 THE COURT: All right, ladies and gentlemen,
8 for these of you who were selected, I know you all
9 realize that the hour is late as to lunchtime. I
10 am going to -- we have some matters that we need to
11 take up outside of your presence, so I am going
12 to -- and they probably will take most of the
13 afternoon -- so I am going to go ahead and release
14 you all for the afternoon so you can have lunch or
15 dinner or whatever it is you have, supper, at this
16 hour.

17 You are to be back tomorrow morning at 9:30 in
18 the morning.

19 I will go ahead and tell you, you do not know
20 anything about the case other than what I have read
21 to you from the indictment, so I would ask that you
22 not discuss this case with anyone. You cannot
23 discuss it with your family members, your
24 co-workers, if anyone is going to work, and you
25 cannot discuss it with each other. It would also

1 be improper for you to form an opinion in your mind
2 as to the innocence or guilt of the Defendant until
3 you have received all of the evidence, the
4 arguments of the parties, and the charge on the law
5 from the Court.

6 I will ask that you not do any independent
7 research in this case. That means that you are not
8 to -- and also no social networking regarding
9 anything that happens here in the courtroom or at
10 the courthouse. So that means that you cannot go
11 on the internet and search for any -- do any
12 research regarding any issues that come up in the
13 case or any issues regarding the case. You cannot
14 go onto Facebook or Twitter or -- gosh, I can't
15 keep up with all of them, there is something new
16 everyday -- but any of the social media networking
17 sites and discuss anything that is happening here
18 in the courtroom. I am not saying that you cannot
19 go on your computer for work or anything else like
20 that and you cannot Tweet or Facebook or Instagram,
21 but not about anything that is happening here at
22 1701 Main Street.

23 Once again, I would ask that you not discuss
24 the case. It has become really difficult when we
25 have jurors discussing a case before we have

1 received all of the evidence. I will ask each of
2 you -- I hate to ask you to do this, but it has
3 become an issue across the state with jurors
4 discussing the case before they have received all
5 of the evidence. If anyone in your group decides
6 to talk about the case or you hear anyone talking
7 about the case, I will ask you to let one of the
8 bailiffs know and they will let me know. And you
9 do not have to make that known that you are telling
10 the bailiff or telling me, but it is important that
11 we have fair and impartial jurors and that all
12 evidence is received before you make a decision.
13 You will have ample time during your deliberation
14 to discuss the case. And at the end of the week
15 you can talk to your family as much and as often
16 about the case as you would like. But until then,
17 I am going to instruct you not to have any
18 discussion regarding the case.

19 I am going to ask Ms. Stokes, who is Juror
20 Number 262, to serve as our forelady in this case.
21 I will give you further instructions. But
22 basically she will be the spokesperson here in the
23 courtroom on behalf of the rest of the jurors.

24 I will give you further instructions in the
25 morning when we start the case. I believe that is

1 all. The bailiffs are going to have some
2 instructions for you in the back -- some brief
3 instructions, Mr. Bowen -- for them in the back.
4 And then they will allow you to go about your
5 business for the rest of the day.

6 All right. Thank you again.

7 THE JURY: Thank you.

8 THE BAILIFF: Follow me, ladies and gentlemen.

9 (WHEREUPON, the jury is excused for the
10 day at 2:00 p.m.)

11 THE COURT: I know you all have some pretrial
12 motions. We are going to take our lunch break. I
13 would say come back at 3:00. Ms. Bodman, can
14 Mr. Berry or -- I know Ms. Justice -- I'm sorry,
15 Garfield -- do you think 3:30 your hearing will
16 be --

17 MS. BODMAN: I can let Judge McCulloch know.
18 I mean, I am planning on going to tell her that I
19 have stepped out from the murder case and that I
20 need to make it as brief as possible. I really
21 don't think -- I don't expect it should be lengthy.
22 I will take someone with me in the office that
23 knows about the mental health case, and so that if
24 I have to step away, at least I have been there
25 initially to say what Judge McCulloch needs my

1 input to be, and then I could step away so that
2 they can be there for the resolution of it.
3 Because there are people in the office that are
4 aware of that case.

5 THE COURT: All right. So we'll start back at
6 3:30. Does that work for you?

7 MS. SINGLETARY: Yes, Your Honor.

8 THE COURT: All right. So I will see you all
9 back at 3:30.

10 (WHEREUPON, a lunch break was taken at
11 2:02 p.m.)

12 (WHEREUPON, the proceedings resumed at
13 3:53 p.m.)

14 MS. GARFIELD: Do you want to hear the audio
15 on the record? We thought we would begin with
16 Jackson v. Denno.

17 THE COURT: Sure.

18 MS. GARFIELD: May it please the Court, Your
19 Honor?

20 THE COURT: Would you rather do that than --
21 because the motions I have, I think
22 Ms. Singletary -- let's see what she has.

23 MS. GARFIELD: Assuming that is okay with
24 counsel. I haven't talked to you.

25 MS. SINGLETARY: That's fine.

1 THE COURT: We need to go ahead and get
2 started.

3 Okay. I know -- you have already renewed your
4 Rule 5 Brady motion. Anything else on that?

5 MS. SINGLETARY: No, Your Honor.

6 THE COURT: And the motion to sequester the
7 witnesses is granted.

8 The Riddle motion I believe on Friday we said
9 everything was turned over. Anything else on that?

10 MS. SINGLETARY: Your Honor, when we met
11 Friday afternoon, we went through the file with the
12 State. There were some additional items. We
13 actually retrieved those on Friday afternoon.

14 THE COURT: Okay. Yes, sir? Anything else?

15 MR. BERRY: I'm fine.

16 THE COURT: Motion to settle the Defendant and
17 all witnesses' criminal records. Have y'all done
18 that?

19 MS. SINGLETARY: Your Honor, on Friday
20 afternoon they actually gave me the rap sheets for
21 all of the lay witnesses. And I would assume that
22 we would handle it right before they actually
23 testified.

24 THE COURT: All right. Yes, we'll do it
25 before testimony, just let me know.

1 MS. SINGLETARY: All right.

2 THE COURT: Then there is a motion to redact
3 the witness statements.

4 MS. SINGLETARY: Your Honor, I spoke to
5 Ms. Bodman this morning. That is kind of
6 interlinked with the Lyle motion. She tells me
7 that because the witnesses will be here present to
8 testify they are not seeking to enter in any of
9 those statements.

10 THE COURT: Okay. So that is moot?

11 MS. SINGLETARY: Yes, Your Honor.

12 THE COURT: All right.. And then Biggers, are
13 you going to do that this afternoon?

14 MR. BERRY: Yes, Your Honor.

15 THE COURT: And -- do you want to do all of
16 that at the same time?

17 MS. GARFIELD: Well, as far as the Biggers is
18 concerned, we would ask Your Honor for guidance.
19 We can go ahead with law enforcement portion of it,
20 but the actual witnesses that picked by the line-up
21 be done before they testify. They are not all
22 present this afternoon.

23 MS. SINGLETARY: That's correct.

24 THE COURT: Okay. But the officers, I am
25 assuming, can testify to that at the same time he

1 does the Denno?

2 MS. GARFIELD: If Mr. Berry can get it
3 together for me, we can do that.

4 THE COURT: Okay. And then she had a motion
5 to preclude prior bad acts?

6 MS. SINGLETARY: Yes, Your Honor.

7 THE COURT: Did I rule on that Friday? Or I
8 said what I thought I was going to do?

9 MS. SINGLETARY: You said what you thought you
10 were going to do. And I think Ms. Bodman said
11 that -- as it relates to Cierra Hodge and Sandy
12 Sweat, those are the two witnesses that would be
13 elicited to testify to prior bad acts that was not
14 charged. Ms. Bodman said that she thought she
15 would have some research to --

16 THE COURT: We will wait on her to get back on
17 that. And then there was testimony regarding the
18 cell phones.

19 MS. SINGLETARY: Yes, Your Honor.

20 THE COURT: But I think I ruled as to the
21 issues regarding your cross-examination of DaQwane
22 Robinson.

23 MS. SINGLETARY: Yes, Your Honor. As it
24 relates to DaQwane Robinson, as well as Curtis
25 Wright, DaQwane Robinson was actually charged as an

1 accessory after the fact of an armed robbery where
2 my client is also a Defendant.

3 At that time, Your Honor, you explained to me,
4 as well as my client, on the record that if we were
5 actually to try to impeach Mr. Robinson with that
6 offense, then we would be in essence opening up the
7 door for the Prosecution to actually mention that
8 my client is a Defendant in that crime also.

9 THE COURT: And I understand Ms. Bodman is not
10 going to get into that in her statement. The only
11 way it is going to come in is if you all bring it
12 up.

13 MS. SINGLETARY: That is my understanding,
14 Your Honor.

15 THE COURT: And that will be my ruling, so
16 just be careful on cross-examination and make a
17 note of that.

18 MS. SINGLETARY: Yes, Your Honor.

19 MR. BERRY: And, additionally, Van Houten,
20 John Van Houten, of CPD and Secret Service, those
21 cell phone records, I don't know if you had a
22 chance to look through all those.

23 MS. SINGLETARY: Yes, we did. Your Honor, on
24 Friday afternoon we met with Investigator or Agent
25 Van Outen. I was actually able to review the

1 demonstrative evidence that he is actually seeking
2 to enter into the evidence, but that goes in line
3 with my last motion to actually the admissibility
4 of his testimony.

5 THE COURT: Okay. All right. All right, we
6 can start with the Denno. And, the State, that was
7 all you had was the Denno; is that correct?

8 MS. GARFIELD: Also Biggers.

9 THE COURT: And the Biggers hearing.

10 MS. GARFIELD: I will mark 1 as audio of the
11 Defendant's statement, and 2 will be the advice of
12 rights.

13 (WHEREUPON, State's Exhibit No. 1 was
14 marked for identification only.)

15 (WHEREUPON, State's Exhibit No. 2 was
16 marked for identification only.)

17 MS. GARFIELD: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, ma'am.

20 MS. GARFIELD: The State calls Sergeant Robert
21 McCracken.

22 (Witness approaches.)

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

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Have a seat in the
7 witness stand, please.

8 (Witness complies.)

9 THE CLERK: State your name for the record.

10 THE WITNESS: Robert McCracken.

11 ROBERT MCCrackEN,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GARFIELD:

15 Q Sergeant McCracken, where are you employed?

16 A City of Columbia Police Department.

17 Q And what are your duties at Columbia Police
18 Department?

19 A Currently, I am a sergeant assigned to South Region
20 investigations. At the time of this incident I was
21 an investigator.

22 Q And your duties have changed recently at Columbia
23 Police Department; is that correct?

24 A Correct.

25 Q You had some restructuring in your region?

1 A Yes, ma'am.

2 Q And back in October of 2012, what were your
3 assigned duties at Columbia Police Department?

4 A I was an investigator at that time.

5 Q And did you have any particular crimes you
6 investigated?

7 A I was a member of the Violent Crimes Unit, and I
8 investigated violent crimes.

9 Q Did you have an occasion to be assigned to work a
10 murder involving Mr. Cheo Green?

11 A Yes.

12 Q And did you have an occasion to have any contact
13 with Mr. Green?

14 A Yes.

15 Q And can you please explain to the judge how that
16 contact came about?

17 A Mr. Green was brought down to our office in
18 reference to interviewing him.

19 Q And where was your office at that time?

20 A At the time it was #1 Justice Square, which is
21 Police Department headquarters.

22 Q And you said Mr. Green was brought down to your
23 office. How was he transported?

24 A He was transported in a police vehicle from the
25 county jail.

1 Q And what was he housed at the county jail for?

2 A An armed robbery charge.

3 Q And was that separate from the offense we are
4 talking about today?

5 A That's correct.

6 Q And when he got to the Columbia Police Department,
7 did he voluntarily want to talk to you?

8 A Yes.

9 Q And just explain to the judge how that went about.
10 Was he brought to your office?

11 A He was brought in to the Police Department. We
12 have interview rooms on the second floor. He was
13 placed in one of the interview rooms.

14 At that time, myself and Investigator Gilliam
15 interviewed him. He did speak with us initially.

16 He stated at that time -- we advised him of
17 his rights, but he refused to sign the waiver.

18 Q Let's go into that. Is Investigator Gilliam
19 sitting here in the courtroom with you?

20 A Yes.

21 Q And were those the only two people with the
22 Columbia Police Department involved in this
23 interview?

24 A Yes.

25 Q And you did go over his Miranda rights with him?

1 A I did.

2 Q And did you have him -- did you read those rights
3 to him?

4 A Yes.

5 Q And did you have him sign an Advice of Rights form?

6 A Yes -- well, he didn't sign it. He refused to sign
7 it.

8 Q Okay. I am going to hand you what has been marked
9 as State's Exhibit for identification purposes for
10 this pretrial hearing Number 2. Do you recognize
11 this document?

12 A Yes. That is an Advice of Rights form that we use
13 at the City.

14 Q Is this a routine form used when interviewing
15 potential suspects?

16 A Yes. Yes, ma'am.

17 Q And did you go over each of those rights with him?

18 A I did.

19 Q And how do you know you went through each of those
20 rights with him?

21 A I signed the bottom of it as a witness to it, and
22 it is dated and timed.

23 Q For purposes of this hearing, can you just read
24 those rights into the record?

25 A Before we ask you any questions you must understand

1 your rights. You have the right to remain silent.
2 Anything you say can be used against you in court.
3 You have the right to talk to an attorney or lawyer
4 for advice before we ask you any questions and have
5 him with you during questioning. If you cannot
6 afford a lawyer, one will be appointed for you
7 before any questioning if you wish. If you decide
8 to answer questions now without a lawyer present
9 you will still have the right to stop answering at
10 any time. You also have the right to stop
11 answering at any time until you talk to a lawyer.

12 Then the waiver section of it says:

13 I have read the statement of my rights and I
14 understand what my rights are. I am willing to
15 make a statement and answer questions. I do not
16 want a lawyer at this time. I understand and know
17 what I am doing. No promises or threats have been
18 made to me. No pressure or coercion of any kind
19 has been used against me.

20 Q And you went through each of those rights with
21 Mr. Green?

22 A Yes, we did.

23 Q And then at that time did he agree to speak with
24 you?

25 A He agreed to speak with us, but he refused to sign

1 the waiver.

2 Q And did he indicate why he wished to refuse -- why
3 he wished to not sign the waiver?

4 A I don't recall if he gave a reason.

5 Q Did he voluntarily wish to speak to you, though, at
6 that time?

7 A Yes.

8 Q And at that time, Sergeant McCracken -- how many
9 years have you been in law enforcement?

10 A I've been in 26 years now.

11 Q Did Mr. Green appear to understand what you were
12 reading to him?

13 A Yes, ma'am.

14 Q Did he appear to be under the influence of alcohol?

15 A No, ma'am.

16 Q Were any promises made by you, by the Columbia
17 Police Department?

18 A No, ma'am. The only thing he requested was to
19 smoke a cigarette, and we took him downstairs and
20 allowed him to smoke a cigarette.

21 Q Was that at this point in time?

22 A It was -- we spoke to him, if I recall. And I
23 haven't listened to the recording since 2012. But
24 if I recall correctly, he said he wanted to talk to
25 us about the incident or about what we wanted to

1 talk to him about, but he wanted to smoke a
2 cigarette first to calm his nerves.

3 Q And did you allow him to smoke a cigarette?

4 A Yes, we let --

5 Q Did he have a cigarette in the interview room with
6 you?

7 A No, ma'am. We have to go downstairs. They don't
8 allow smoking in the building.

9 Q Did you transport him downstairs to smoke a
10 cigarette?

11 A We did, yes.

12 Q You, yourself?

13 A I went down with him, yes.

14 Q Anyone with you?

15 A Investigator Gilliam.

16 Q Did you make any threats to Mr. Green?

17 A No.

18 Q Make any promises of any kind?

19 A No, ma'am.

20 Q If he had not wanted to speak to you, what would
21 you have done?

22 A Taken him back to the Detention Center.

23 Q Sergeant McCracken, at that time was the Columbia
24 Police Department equipped to audio record
25 conversations?

1 A No, ma'am.

2 Q Did you have a chance to --

3 A They weren't -- the department is not equipped, but
4 we have individual recordings. As I said, we
5 weren't equipped, because we are getting equipment
6 for video and audio recording.

7 Q You would go into like a room being equipped?

8 A Right. Right. The interview room itself. But,
9 yes, we were issued individual recordings --
10 recorders.

11 Q And you had an opportunity to review that recording
12 in the past?

13 A After it occurred, but that has been since 2012.

14 Q You had --

15 MS. GARFIELD: Your Honor, at this time I'd
16 like to publish State's Exhibit Number 2[1], which
17 would be the recording, for purposes of this
18 hearing.

19 THE COURT: Any objection, for purposes of
20 this hearing?

21 MS. SINGLETARY: Not for purposes of this
22 hearing, Your Honor.

23 THE COURT: All right.

24 MS. GARFIELD: Your Honor, I will ask
25 Ms. Wilson with our office, since I don't do

1 anything with technology.

2 (WHEREUPON, State's Exhibit No. 1 was
3 admitted into evidence.)

4 (State's Exhibit 1 was published in open
5 court.)

6 BY MS. GARFIELD:

7 Q I have just a few questions. The CD that was
8 introduced, is that divided into two parts?

9 A Yes, ma'am.

10 Q And can you just explain why it is divided into two
11 parts?

12 A Once we left the interview room, I quit recording
13 because we weren't going to be discussing the case
14 downstairs while he was smoking a cigarette, and I
15 clearly told him that.

16 Q And then you came back and began to record again?

17 A Correct. We turned it back on.

18 Q That is the second part?

19 A That's correct.

20 Q And both of those parts are on the CD?

21 A Yes.

22 Q Sergeant McCracken, did go down with him to smoke
23 the cigarette?

24 A Yes.

25 Q And "him" being Mr. Green?

1 A Mr. Green, as well as Investigator Gilliam.

2 Q Investigator Gilliam went with you?

3 A Yes.

4 Q And was there any discussion pertaining to this
5 offense while y'all were outside?

6 A No, ma'am.

7 Q In the video -- I mean, I'm sorry, the audio, you
8 can hear chains. You allude to some leg chains.
9 Why is that? Why is he being put in chains?

10 A Because we are going outside and he is in custody
11 for the other charge. And that is for his
12 protection, as well as ours.

13 Q That doesn't have anything to do with the
14 questioning at hand?

15 A No, ma'am. He is handcuffed and he has got the leg
16 chains on.

17 Q And I believe you did offer him water?

18 A Yes, ma'am.

19 Q And did you secure water for Mr. Green?

20 A I did.

21 Q And while y'all were outside smoking -- while he
22 was outside smoking a cigarette, were there any
23 further promises made to Mr. Green?

24 A No, ma'am.

25 Q Further threats?

1 A No, ma'am.

2 Q Any type of coercion?

3 A No, ma'am.

4 Q And when you got back to the interview room at the
5 Columbia Police Department, you proceeded to
6 interview again?

7 A That's correct.

8 Q And that is the Part 2 of this audio?

9 A That's correct.

10 MS. GARFIELD: With the help of Ms. Wilson, I
11 would like to publish that, Your Honor.

12 MS. SINGLETARY: No objection, Your Honor.

13 THE COURT: Objection to her playing it?

14 MS. SINGLETARY: I said there are no
15 objections.

16 THE COURT: Oh, no objection. I thought you
17 said objection. All right. For purposes of the
18 pretrial?

19 MS. SINGLETARY: Yes, Your Honor.

20 (State's Exhibit 1 continued to be
21 published in open court.)

22 BY MS. GARFIELD:

23 Q Just to reiterate, from the recording, Mr. Green
24 requested counsel and did terminate the interview?

25 A Yes, ma'am. Once I got him to make it clear he

1 wanted a defense attorney.

2 Q Did you ever have any further communications with
3 Mr. Green?

4 A No, ma'am.

5 MS. GARFIELD: Your Honor, I have no further
6 questions for the purposes of the Denno hearing at
7 this time.

8 THE COURT: All right. Please answer any
9 questions that Ms. Singletary has.

10 MS. SINGLETARY: Thank you, Your Honor. May
11 it please the Court?

12 CROSS-EXAMINATION

13 BY MS. SINGLETARY:

14 Q Investigator McCracken, at the time that you
15 actually interviewed my client, Mr. Green, he was
16 incarcerated at the county jail; correct?

17 A Yes, ma'am.

18 Q And when he was transported over to City of
19 Columbia headquarters, he was in the custody of
20 which county?

21 A What do you mean custody? The CPD transported him,
22 but he was in custody of the jail while he was at
23 jail. That would be Richland County.

24 Q And the charge that he was actually charged with,
25 was it a City of Columbia charge?

1 A Yes, ma'am.

2 Q Or was it a Richland County charge?

3 A A City of Columbia charge.

4 Q And did my client actually initiate the
5 communication between you and him?

6 A No, ma'am.

7 Q Okay. And you actually sent someone down there to
8 retrieve him and bring him to the City of Columbia?

9 A Yes. Yes, ma'am.

10 Q And at the time that my client was actually brought
11 to the City of Columbia to ask questions concerning
12 this homicide, at any point could he -- I know he
13 was arrested and he was at the jail, but at any
14 point could he just be free to go?

15 A Not free to go. At any point he could clearly say
16 he didn't want to talk to me.

17 Q And as you testified earlier, if my client would
18 have said that he didn't want to talk to you, you
19 would have terminated the conversation?

20 A Correct.

21 Q And at the time that you were actually -- let me
22 just clarify. So at this point you are
23 interviewing my client?

24 A Yes, ma'am.

25 Q And you are interviewing him in reference to this

1 homicide?

2 A That's correct.

3 Q And at some point on Part 1 of the video -- and I
4 just want you to clarify this -- at some point you
5 tell my client that, I promise you I'm going to
6 give you a cigarette?

7 A Yes, ma'am.

8 Q Could you explain to the Court what you meant when
9 you told my client that you promised him that you
10 were going to give him a cigarette?

11 A That is -- I used that word "promise." That is
12 more of a statement of fact, Regardless -- and I
13 think I clarified that further in the interview --
14 Regardless of what you tell me, you are getting a
15 cigarette. And I keep my word.

16 I specifically told him that, I think -- I
17 don't want to use the word in here, but, If you
18 tell me to kiss your butt, I'm still giving you a
19 cigarette. So it doesn't matter. We just need to
20 get through the interview process instead of taking
21 a break downstairs smoking a cigarette and coming
22 back up.

23 Q Okay. And as you testified earlier, there is two
24 parts to this video, I mean, to the interview?

25 A Yes, ma'am.

1 Q And the first part ended at 11:52, if you remember?

2 A I don't remember, but, yes, ma'am.

3 Q And then if I were to tell you that the video
4 started back up 14 minutes later with Part 2, would
5 you disagree with that?

6 A I don't recall what it was, but I have no reason to
7 disagree.

8 Q And so that would mean that you were downstairs
9 with my client for a total of about 14 minutes?

10 A The elevator ride, the elevator back up, yes,
11 ma'am.

12 Q And during that time that you were downstairs with
13 my client, what did you all talk about if you
14 didn't talk about the case?

15 A Idle chitchat. I can't remember specifically what
16 conversation we had, but it was not about the case.

17 Q And in the interview, Section 2, my client at some
18 point says that, when you are referring to him
19 giving the DNA swab, he starts talking about
20 wanting to talk to an attorney?

21 A About giving --

22 Q Is that correct?

23 A I don't recall that. I was listening to it, but I
24 did not pick that up, because I couldn't hear what
25 he was saying on the recorder.

1 Q But at some point you ended the interview because
2 you may have been under the impression that he
3 wanted to speak to an attorney?

4 A I ended the interview because he made it clear he
5 wanted to speak with an attorney about his
6 situation.

7 Q And that was my previous question that I was
8 asking, that at some point my client did indicate
9 that he did want to speak to an attorney?

10 A At some point, yes, ma'am.

11 Q And that was in the second interview?

12 A Yes, ma'am.

13 Q And then at that point he asked you or he commented
14 that he wanted to just ask his attorney a question
15 about the DNA?

16 A I guess, yes, ma'am.

17 Q Okay. And at that point you told him that, I could
18 call your attorney, but I'm not going to call your
19 attorney right now?

20 A That's correct.

21 MS. SINGLETARY: Your Honor, at this time I
22 have no further questions.

23 THE COURT: Anything else?

24 MS. GARFIELD: No, ma'am.

25 THE COURT: All right. Sir, you may step

1 down.

2 (Witness steps down.)

3 THE COURT: All right. Any motions or
4 argument to be heard at this time?

5 MS. SINGLETARY: Beg the Court's indulgence,
6 Your Honor.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 MS. SINGLETARY: Nothing from the Defense,
10 Your Honor.

11 MS. GARFIELD: I would just ask you to make a
12 finding it is voluntary.

13 THE COURT: All right. After hearing the
14 testimony of the officer, I do find that the --
15 I'll make some findings on the record.

16 I find that the investigator read the
17 Defendant his Miranda rights.

18 I find that the investigator repeatedly told
19 him that he didn't have to talk.

20 I further find that the investigator informed
21 the Defendant that he was being recorded.

22 I find that the Defendant asked for a
23 cigarette.

24 That the investigator told him that he would
25 give him a cigarette after they finished talking.

1 Regardless if he talked or he did not talk, that he
2 would give him a cigarette. I think at the time
3 that he testified that he did give him a cigarette,
4 he told him that he could have the cigarette
5 regardless and it should not influence anything
6 that he stated.

7 I further find on Part 2 of the audio
8 statement that the Defendant stated in response to
9 a question that he did not discuss anything with
10 the investigators while downstairs smoking.

11 I further find that the Defendant -- questions
12 were asked the investigator to speak with an
13 attorney regarding giving a DNA sample, at which
14 time the investigator stopped the interrogation
15 with the Defendant.

16 Based on the evidence presented to the Court
17 and based on a preponderance of the evidence, I do
18 find that the statement was given voluntarily. And
19 it is therefore admissible to the jury.

20 All right. Next motion. No one needs to
21 leave I hope before --

22 MS. BODMAN: (Nods negatively.)

23 THE COURT: Any time soon. It is 5:00
24 o'clock. Because I would like to get through all
25 the motions this afternoon that we can get through

1 so we can start at 9:30 sharp when the jury gets
2 here in the morning.

3 All right. So I believe that is the Denno.

4 You said the identification, we are going to
5 do that for each witness? How many witnesses ID'd
6 him?

7 MS. GARFIELD: Five. Four.

8 THE COURT: So you want to do an in-camera
9 Biggers hearing prior to --

10 MS. BODMAN: Yes. We will have Austin Murray,
11 DaQwane Robinson, Curtis Wright here in the
12 afternoon, they will be ready to testify tomorrow
13 afternoon, so we could do it really quickly when we
14 come back from the lunch break before they testify.
15 Austin Murray is in custody and will be brought
16 over from Alvin S. Glenn.

17 THE COURT: And Curtis Wright?

18 MS. BODMAN: And Curtis Wright is out on bond,
19 but he'll be here around the lunch hour, so he will
20 be ready to testify after the lunch break.

21 THE COURT: All right. Let me understand --
22 the allegations that you all -- are they testifying
23 that they were there?

24 MS. BODMAN: Okay. So, essentially -- do you
25 want me to give you just a really quick synopsis of

1 this?

2 THE COURT: Yes.

3 MS. BODMAN: Okay. So, essentially, the
4 victim, Mr. Davis, is driving kind of around the
5 North Main area, Monticello Road. He has a car in
6 his possession that he is driving that he had
7 gotten from a woman for the purposes of doing some
8 work on her transmission.

9 Mr. Davis had a drug problem. And he
10 approached Austin Murray, who was walking down the
11 road. And Mr. Davis stopped his car and asked
12 Austin Murray, Do you know where I could get some
13 drugs in exchange for this vehicle, for renting
14 out, for use of this vehicle?

15 Austin Murray said, Yeah, let me see. Austin
16 made some phone calls and was connected up with
17 Cheo Green, the Defendant.

18 The Defendant said that he was over on Broad
19 River Road at some apartments. So Austin Murray
20 got into the car with Mr. Davis and they went to a
21 gas station, went to another little convenience
22 store, then drove over to Broad River Road where
23 they picked up Cheo Green.

24 DaQwane Robinson and Curtis Wright are
25 brothers. They had gone to the apartment complex,

1 to the Broad River Road apartment complex with
2 Cheo. They were up in an apartment with these two
3 young ladies, so Curtis Wright and DaQwane Robinson
4 basically put Cheo Green in that -- at that
5 apartment complex where Austin says he comes to get
6 him.

7 Cheo Green gets into the car. They drive
8 around for a short while. Pretty soon Mr. Davis
9 realizes Cheo is not producing any drugs. This is
10 not going to happen.

11 And so he says, I don't want to do this
12 anymore.

13 Austin Murray says, Take me home.

14 They start driving down the road.

15 Austin Murray and Cheo Green are texting each
16 other.

17 At some point Cheo says, I'm fixing to do
18 something hot.

19 THE COURT: They are texting each other in the
20 car?

21 MS. BODMAN: To Austin Murray. Yes, they are
22 texting each other in the car.

23 THE COURT: Okay.

24 MS. BODMAN: And Cheo says, I'm fixing to do
25 something hot, and then pulls out a gun and shoots

1 Mr. Davis three times.

2 Mr. Davis falls out of the car into the middle
3 of North Main Street. Austin Murray gets over into
4 the driver's seat and speeds off heading out
5 towards the north side of town, Spring Valley area.

6 Investigators basically get video
7 surveillance, so they've got -- we know what car
8 the victim has now been connected to, because they
9 have this vehicle. See video where Austin Murray
10 and the victim, where they had stopped at the gas
11 station, so now they are connecting Austin Murray
12 to the vehicle.

13 Information is put out regarding they are
14 looking for this Austin Murray, and information
15 comes in to the Police Department identifying
16 Austin Murray.

17 There is, you know, other things I'm leaving
18 out in terms of trying to lift the victim's phone,
19 you know, trying to connect -- they have this
20 person in the middle of the road, and they have got
21 to figure out how he got there.

22 So that is essentially it.

23 DaQwane Robinson is also charged in a -- I
24 shouldn't say also -- is charged in a separate
25 crime involving Cheo Green. There was an armed

1 robbery in Five Points about a week or so after --
2 after this murder. DaQwane is charged in that as
3 an accessory before the fact to the armed robbery
4 and he identified Cheo Green as the person -- as
5 one of the people that committed the actual armed
6 robbery on a college student taking their ring.

7 So there is -- it was essentially in DeQwane's
8 being brought over to give a statement about his
9 involvement in the armed robbery that he also
10 provides information about Cheo Green being with
11 him at this Broad River Road apartment complex.

12 Then on October 6 there was a vehicle that was
13 pulled over in a traffic stop. DaQwane Robinson
14 was the driver. Curtis Wright was the front seat
15 passenger. Cheo Green was in the back seat behind
16 the passenger. And a weapon was recovered from in
17 front of Cheo Green under the seat. That weapon
18 was taken into custody by the Richland County
19 Sheriff's Department.

20 When investigating this murder, they come upon
21 this incident report. Investigators go get that
22 gun at the Sheriff's Department, have it tested at
23 SLED, compare it to the projectiles that were
24 recovered from Mr. Davis's body. And that is our
25 murder weapon.

1 So DaQwane Robinson and Curtis have
2 information about him being at Broad River Road,
3 have information about it being his gun recovered
4 from that vehicle. And then potentially, depending
5 on how the facts and the cross-examination evolve,
6 is this separate armed robbery in Five Points.

7 DaQwane says that he knew Cheo to carry a .32
8 automatic and identifies it, you know, recognizes
9 it in the photographs of looking at the gun.

10 THE COURT: For purposes of the Biggers, I am
11 trying to figure out -- so you have Murray, Wright,
12 Robinson, and two ladies that are testifying on
13 identification? So we need to do in-camera
14 testimony on all five?

15 MS. BODMAN: Well, actually Cierra Hodge and
16 Sandy Sweat, they are the two girls at the
17 apartment complex, I don't know that they are ever
18 shown line-ups, so we are not offering any
19 line-ups, so there is -- they would just -- they
20 know him and they could -- we could develop that in
21 their testimony. But at the apartment complex,
22 they don't actually see him at the apartment.
23 Basically Cheo -- the guys arrive at the apartment
24 complex. DaQwane and Curtis Wright tell the ladies
25 that Cheo is there. And they say, He cannot come

1 up here. But they don't actually eyeball Cheo at
2 the apartment complex.

3 THE COURT: So for purposes of the Biggers,
4 the identification is Murray, Wright, and Robinson?

5 MS. BODMAN: Correct.

6 THE COURT: Or Murray and Wright tomorrow?

7 MS. BODMAN: Murray and Wright, correct.

8 THE COURT: So those are the two -- three --
9 two, maybe three, to do in-camera identification?

10 MS. SINGLETARY: Yes, Your Honor.

11 THE COURT: Okay. Those three were shown a
12 line-up?

13 MS. SINGLETARY: (Nods affirmatively.) And,
14 Your Honor, also Jamil Breenan, but I don't know if
15 the State is electing to call Mr. Brennan.

16 MS. BODMAN: We would like to develop the
17 testimony with the officers, and then if we call
18 Jamil Brennan, then at the time we can handle that.

19 THE COURT: Okay. So we'll just do -- so my
20 understanding is that you are going to call two or
21 three tomorrow afternoon and we'll do an in-camera
22 hearing at that point.

23 MS. BODMAN: Okay.

24 THE COURT: So do we need to hear from the
25 officer regarding the identification at this point?

1 MS. BODMAN: I don't think so. The witnesses
2 themselves will testify about how long they have
3 known him and their identification.

4 THE COURT: Okay. All right. Any other
5 motions from the State?

6 MS. BODMAN: Your Honor, yes. And it is not
7 necessarily a motion, but I -- this morning, as I
8 had to approach with a couple of other witness
9 names, there was a name that I left off the witness
10 list that I'm asking in the morning that you just
11 voir dire the jury on, which is Austin Murray. The
12 Co-Defendant, Austin Murray, is testifying. He was
13 originally on -- I mean, he is listed on the trial
14 docket, but is, instead of being tried, is
15 testifying as a Co-Defendant. And I apologize.
16 The jury has not been sworn, but even if -- I just
17 ask that you voir dire them in the morning about
18 whether or not they know Austin Murray. And if
19 somebody does, we have -- at least, you know, we
20 have the two alternates we can deal with. And if
21 something else happens, then we will go from there.
22 But I just ask you do that in the morning.

23 THE COURT: Anything from the Defendant?

24 MS. SINGLETARY: Your Honor, I just want to
25 clarify about the Neil v. Biggers. Is the State

1 saying that they are not going to have the law
2 enforcement to develop the six-pack, testify to
3 them developing those six-packs, and showing them
4 to the witnesses that are going to testify to the
5 fact that they picked the individuals out?

6 THE COURT: I think that is that I was asking.
7 If the officer was going to testify independent of
8 the witnesses. If so, we could probably do that
9 today.

10 MS. BODMAN: I can do it very quickly.

11 THE COURT: Yes. I think maybe -- that is
12 what I was asking earlier. The officers are going
13 to testify as to what they did with the line-up.
14 And then I can come back later and hear the
15 testimony of the individuals.

16 MS. BODMAN: Okay. The State calls
17 Investigator Gilliam.

18 (Witness approaches.)

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 on the
3 witness stand, please.

4 (Witness complies.)

5 THE CLERK: State your name for record.

6 THE WITNESS: Emmitt Gilliam.

7 EMMITT GILLIAM,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BODMAN:

11 Q By whom are you employed?

12 A City of Columbia Police Department.

13 Q In what capacity?

14 A Investigations.

15 (WHEREUPON, State's Exhibit No. 3 was
16 marked for identification only.)

17 (WHEREUPON, State's Exhibit No. 4 was
18 marked for identification only.)

19 (WHEREUPON, State's Exhibit No. 5 was
20 marked for identification only.)

21 BY MS. BODMAN:

22 Q And how did you become involved in this -- the
23 investigation of the murder of Michael Davis?

24 A Initially I was called by my on-call supervisor in
25 reference to an individual shot that was on the

1 block of Main Street.

2 Q Did you work the investigation of this case with
3 Investigator McCracken?

4 A That is correct.

5 Q Okay. Did you meet with witnesses, I guess, one by
6 the name of Curtis Wright and another one by the
7 name of Jamil Brennan?

8 A Yes. On the photo line-up on Jamil, it was
9 actually done by Investigator -- Sergeant
10 McCracken.

11 Q Did you handle the line-up that was shown to Curtis
12 Wright?

13 A That is correct.

14 Q Okay. I am going to show you first what is marked
15 as State's Exhibit Number 3, file folder I guess
16 with a bunch of different documents in it, and ask
17 if you recognize that?

18 A Yes, I do.

19 Q Okay. And how do you recognize it?

20 A This is a six-pack photo array that I developed in
21 reference to talking to Mr. Curtis Wright in
22 reference to this murder.

23 Q Okay. And you say six-pack photo array. So how
24 many separate photographs are in there?

25 A Six.

1 Q And are those 8.5 x 11?

2 A Yes.

3 Q And they are color photographs?

4 A That is correct.

5 Q Okay. And each photograph -- how do you know what
6 order you showed these photographs in?

7 A Actually I remember all six photographs.

8 Q Okay. And in State's Exhibit Number 3, there is
9 also this document that says "photo line-up" at the
10 top. What is that?

11 A It is basically information on -- when we show a
12 photo line-up, we give the date, the investigator
13 who is showing the photo line-up, how many pictures
14 we are showing them. And if they do pick out a
15 person, we ask them to circle whether male, female,
16 black, white. Crime -- what the crime is, and
17 where was the crime committed at.

18 And at the very end we actually sign also --
19 we swear them in to the statement saying, This is
20 the person you pick.

21 Q And do you know where you got those six
22 photographs?

23 A They came from SLED, if I'm correct. I think SLED
24 did the six-pack for us.

25 Q And who, I guess, is in this particular line-up

1 that is involved in this investigation?

2 A In the first one is Austin Murray.

3 Q Okay. And what number is he?

4 A He is Number 2.

5 Q Okay. And who, in looking at the six photographs,
6 who did Curtis Wright identify?

7 A Picture Number 2, which is Mr. Austin Murray.

8 Q In your discussions with Curtis Wright, do you
9 remember him telling you anything about how long he
10 had known him or anything?

11 A He said he had known him from some of the --
12 like -- I don't know what you call it, a little
13 school he had to go to in the Spring Valley area,
14 if I'm correct. He knew him from over there.

15 Q So had he known him for a period of time, or did he
16 just meet him for a short occasion on the incident
17 that happened?

18 A If I'm correct, he said he had known him for a
19 short period of time.

20 Q And describe basically the process of you showing
21 those photographs to Curtis Wright.

22 A We had six pictures. We lay them out: One, two,
23 three, four, five, six. We just number them in the
24 right-hand corner. Each of them have got a
25 different number on them. And we ask the witnesses

1 can he identify the person that he is talking about
2 that participated in this crime.

3 Q And then how did you have them document that
4 identification -- or have him document that
5 identification?

6 A He actually signed it, dated it, and time of the
7 person.

8 Q Did you any way suggest to him who to pick out?

9 A No.

10 Q I'm going to show you State's Exhibit Number 4 and
11 ask you to open that back to see if you recognize
12 that.

13 A Yes, I do.

14 Q And what is in State's Exhibit Number 4?

15 A It is a six-picture photo array of Mr. -- with a
16 picture of Mr. Cheo Green involved in this, as well
17 as, like I said again, showing who the individual
18 investigator that actually showed him the photo
19 array, which number he picked out, which is Number
20 4, and the crime was committed. And at the very
21 end we make him swear to it that the person he is
22 picking out is the person who participated in the
23 incident.

24 Q And these photographs, are they the same as in
25 State's Exhibit Number 3? They are color

1 photographs?

2 A Yes.

3 Q And they are 8.5 x 11?

4 A Yes.

5 Q And are they all numbered?

6 A Yes.

7 Q And then you have him fill out also a photo line-up
8 identification sheet form?

9 A Yes. We actually have them sign at the top for it.

10 Q Okay. Indicating that he picked out Number 4?

11 A That is correct, ma'am. Also, he did sign and date
12 and time as well.

13 Q Okay. And in -- I guess, do you select when you
14 get the six-pack from SLED?

15 A No.

16 Q Do you select which photograph they are going to
17 send you?

18 A No.

19 Q And did you in any way suggest to Curtis Wright
20 who to pick out in State's Exhibit Number 4?

21 A No.

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

24 THE COURT: Yes, ma'am?

25 MS. SINGLETARY: Thank you, Your Honor. If it

1 pleases the Court?

2 CROSS-EXAMINATION

3 BY MS. SINGLETARY:

4 Q Now, Investigator Gilliam, you just testified to
5 the fact that the photos that you used in order for
6 Curtis Wright to identify my client, Cheo Green,
7 and Austin Wright -- and Austin Murray -- was
8 actually generated by SLED?

9 A If I'm correct, I believe it came from SLED.

10 Q Okay. And what information did you give to SLED in
11 order for them to generate these particular
12 photographs as it relates specifically to my
13 client, Cheo Green?

14 A We used -- if I'm correct, we use a jail photo or
15 we might use his DMV picture to give them the
16 information, one or the other. I'm not sure which
17 one we did. And they build a photo array from that
18 picture.

19 Q So tell me if I'm correct. So you generate -- you
20 got different photographs of the individuals who
21 were actually shown to Curtis Wright so that he can
22 identify my client?

23 A The only thing we did was just give SLED the
24 information on Mr. Green, Mr. Cheo Green.

25 Q Okay.

1 A They developed the line-up through their system.

2 Q Okay. Okay. So just now you kind of confused me.

3 You said that you used jail photos and DMV

4 information?

5 A Well, I'm not sure exactly which one I did off the
6 top of my head, did I use jail ones or did I use
7 the DMV picture. I have to go back and look at the
8 notes and see which one I did, essentially.

9 Q And what I'm trying to clarify is that, did you --
10 when you spoke to SLED, did you say, SLED, I want
11 you to use jail photos of African-Americans that
12 are 6'4", dark skin, or --

13 A We just use -- we give them the picture. We don't
14 do a whole picture. We just do the facial shot.

15 Q Okay.

16 A Beside the point, the witness did know Mr. Cheo
17 Green, because they are friends.

18 Q Okay. So you actually gave the different photos in
19 this six-pack to SLED?

20 A No, no. I gave them the information for one
21 person, Mr. Cheo. They develop from that.

22 Q Okay. So you gave them the information for Cheo
23 Green?

24 A That's correct.

25 Q Okay. And when you gave them this information for

1 Cheo Green, did you give a photo of Cheo Green, or
2 did you say he is 5'6", or what did you do?

3 A No, ma'am. Actually what I did -- either one -- if
4 I used the jail picture from the Alvin S. Glenn
5 Detention Center, I will put down there, Hey, use
6 Jail Picture Number such-and-such or send the
7 number, ID number, blah-blah-blah. But his correct
8 information is already in the paperwork, last name,
9 first name, date of birth. But also I put in
10 highlight, Please use this number. Or, if they use
11 the South Carolina driver's license picture, I just
12 leave that part blank and say -- and they'll use
13 the South Carolina ID. So --

14 Q Okay. So what I'm trying to clarify is that you
15 told them that you needed them to generate a
16 six-pack with Cheo Green in it; correct?

17 A That's correct.

18 Q And they picked the other five individuals?

19 A That is correct.

20 Q You didn't give them any photos or anything for
21 those other five individuals?

22 A No, ma'am.

23 Q Okay. But you may have suggested that they use a
24 particular jail photo of Mr. Green or his driver's
25 license?

1 A Yes. Yes.

2 Q And that is what I was trying to clear up?

3 A Oh, I'm sorry. Yes.

4 Q Okay. And you stated that you showed those
5 pictures to Curtis Wright?

6 A That's correct.

7 Q And it appears, based on Mr. Wright actually
8 signing those photos, that he was shown those
9 photos on October the 24th of 2012?

10 A I think so. That's correct.

11 Q And when you actually showed Mr. Wright these
12 photos, did you show him these photos one at a
13 time?

14 A I believe I put them out for him: One, two, three,
15 four, five, six. I'm not exactly sure did I just:
16 One, two, three -- I have to go back and listen to
17 the audio as well.

18 Q But typically you don't show photos one at a time?

19 A Typically I try to do it, is count them out when I
20 am recording, saying: Photo 1, Photo 2, Photo 3,
21 4, 5, and 6, you know.

22 Q Okay. Okay. And you said that -- you said that
23 Curtis Wright knew Austin Murray from a school that
24 they previously went together. And I believe that
25 was Blythewood Academy?

1 A Yes. Yes.

2 Q Now, how did Curtis Wright know my client,
3 Mr. Green?

4 A They are friends. And if I'm correct -- I have to
5 go back and re-listen to the audio, which I will do
6 this evening -- I believe they are part --
7 affiliated in the same gang.

8 Q So you are saying that they are affiliated in a
9 gang together?

10 A That's correct. If I'm correct. I have to go back
11 and re-listen to that.

12 Q And that is what helped him pick my client out of a
13 photo line-up, gang ties; is that your testimony?

14 A No, sir -- no, ma'am. I was basically saying they
15 had known each other for a while.

16 Q Okay. So they had known each other for a while?

17 A That's correct.

18 Q So any gang affiliation has nothing to do with it
19 at all?

20 A Dealing with this crime here? Dealing with the
21 photo line-up?

22 Q Yes?

23 A No, ma'am, I don't think so.

24 MS. SINGLETARY: I have no further questions,
25 Your Honor.

1 THE COURT: All right. Anything else from the
2 State?

3 MS. BODMAN: No, ma'am.

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

5 (Witness steps down.)

6 MS. BODMAN: The State calls Investigator
7 McCracken.

8 THE CLERK: Do you want him resworn?

9 THE COURT: He is already under oath.

10 (WHEREUPON, State's Exhibit No. 6 was
11 marked for identification only.)

12 (WHEREUPON, State's Exhibit No. 7 was
13 marked for identification only.)

14 ROBERT MCCRACKEN,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BODMAN:

18 Q Investigator McCracken, I am going to show you what
19 has been marked as State's Exhibit 5 first and ask
20 you if you recognize that?

21 A Yes, ma'am.

22 Q Okay. And what is that?

23 A It is a photo line-up that was presented to Jamil
24 Brennan.

25 Q Okay. By you?

1 A By me, yes, ma'am.

2 Q Okay. And describe this photo line-up and how it
3 is put together, how you got the photographs, and
4 how it was presented to Mr. Brennan.

5 A As stated before by Investigator Gilliam, a request
6 was sent to SLED. A DL number was provided to SLED
7 Fusion Center in order to develop a photo line-up.
8 They base their line-up on the photograph of that
9 DL picture. They send back a six-pack photo
10 line-up with six individuals on that line-up, and
11 it is numbered below each picture.

12 Q And so then how did you present it to Jamil
13 Brennan?

14 A Normally, the way I present a photo line-up is I
15 take the line-up, I turn it upside down on the
16 table, when it is a six-pack -- I do the arrays
17 differently -- if it is six-pack photo line-up, I
18 turn it face-down in front of the witness.

19 Once I turn it down, I explain to them, I want
20 them to turn over the picture -- the paper. There
21 are six photographs on that piece of paper. There
22 are six different individuals on that piece of
23 paper. And what I want you to do is look at that
24 and see if you recognize anybody in that -- in
25 those pictures. It doesn't matter if you saw them

1 down in the lobby. If you recognize them, I need
2 to know you recognize them. Whenever you get
3 ready, turn that over and tell me what you see.

4 At that time the witness would turn over that
5 piece of paper and then explain to me anybody that
6 he recognized from the photo.

7 Q So is that what you did with Jamil Brennan?

8 A Yes, ma'am. That is my standard practice.

9 Q Okay. And so now you were using two different
10 terms, six-pack and then an array. And so did
11 you -- what kind of photo line-up are we looking at
12 here?

13 A That is a six-pack that is done by SLED. Back
14 then, when we requested photo line-ups from SLED,
15 they sent back six-pack photo line-ups.

16 Q Okay. So this one is a single piece of paper 8.5 x
17 11 with six photographs on it?

18 A Correct.

19 Q Okay. As opposed to the six individual 8.5 x 11's?

20 A Correct.

21 Q Okay. And did Mr. Brennan make an identification?

22 A Yes. Whenever they identify someone, I have them
23 circle the number, sign it, and date it. And he
24 circled Number 3.

25 Q Okay. And did he make an indication of who he was

1 identifying?

2 A He writes his name on it. I can't read it.

3 Jamil --

4 Q Jamil Brennan is his signature, but is that Austin
5 Murray?

6 A Austin Murray, yes, ma'am.

7 Q Okay. And then he dates --

8 A Date and time.

9 Q 10/29/12 at 10:00 a.m. maybe?

10 A Yes. Yes, ma'am.

11 Q Okay.

12 A I can't see very well any more with old age.

13 Q So date, time, who he is identifying, and his own
14 signature?

15 A That's correct.

16 Q Okay. I show you what is marked as State's Exhibit
17 6. And take a look at that and see if you
18 recognize it.

19 A Yes, ma'am, this is a photo array with six
20 photographs in it.

21 Q Okay. So these are six individual photographs?

22 A Correct.

23 Q And they look like they are probably --

24 A 5 x 7.

25 Q 5 x 7?

1 A (Nods affirmatively.)

2 Q Okay. And who did you show this array to?

3 A This array was shown again to Jamil Brennan.

4 Q And did he make an identification?

5 A Yes, ma'am. Cheo Green. He signed it and -- I
6 can't read the date on it, but it is 10:00 a.m.

7 Q And dated and signed it?

8 A Yes, ma'am.

9 Q Okay. And so this array you had stapled to the
10 photo line-up form. But do you know if that is the
11 order that you showed the pictures, or did you lay
12 them out?

13 A The pictures are numbered on the back 1 through 6.

14 Q Okay.

15 A The way I do the photo arrays is different from --
16 a little different from the six-pack. I explain to
17 the person that I am going to show them six
18 photographs, I am going to turn them over one at a
19 time. If you recognize that person, tell me you
20 recognize them, and tell me where from.

21 So normally I would go -- start with Picture
22 Number 1. I would turn it over face-up, show it to
23 the person, ask them if they recognize them. If
24 they say no, I turn it face-down, set it aside.
25 Number 2, I turn it face-up, show it to them, and

1 et cetera, all the way through the array.

2 Q Okay. So you said you did -- you numbered these on
3 the back so you would remember the order that you
4 showed them to?

5 A Yes, ma'am.

6 Q So I guess you -- well, do you number them ahead of
7 time beforehand?

8 A Yes, ma'am.

9 Q And then State's Exhibit Number 7?

10 A And this is the same thing. It is a photo array.
11 This one also has six pictures. I showed this. I
12 don't see the photo line-up sheet in here. But my
13 handwriting is on there for the date and time
14 Austin Murray signed it and wrote the name of the
15 person, which is Cheo Green.

16 Q And these are color photographs?

17 A Yes, ma'am.

18 Q And they are 8.5 x 11?

19 A Yes, ma'am.

20 Q And you also did -- you said you numbered them on
21 the back of the order --

22 A Correct.

23 Q Okay. And so in this one Cheo Green is 4?

24 A Number 4.

25 Q Okay. For any of these arrays that you showed,

1 these three line-up arrays, six-packs, did you at
2 all suggest to the witnesses who to identify?

3 A No, ma'am. They knew the individuals.

4 MS. BODMAN: No further questions at this
5 time.

6 THE COURT: Ms. Singletary?

7 CROSS-EXAMINATION

8 BY MS. SINGLETARY:

9 Q Investigation McCracken?

10 A Yes, ma'am.

11 Q In the case of Mr. Brennan picking out the
12 Co-Defendant Austin Murray in the photo array, it
13 was just the photo array, and just that, according
14 to your testimony?

15 A Yes, ma'am.

16 Q Is there any particular reason why in the case of
17 my client, Mr. Green, that Jamil Brennan was shown
18 a six-pack and a photo array?

19 A I showed what I have there. The one I have is a
20 array, if I'm not mistaken.

21 Q Okay. I think you may have been just testifying to
22 the difference between a six-pack and an array?

23 A Yes, ma'am.

24 Q It made it seem as though you showed him a six-pack
25 and an array, but you only showed him an array in

1 the case of my client, Mr. Green?

2 A Correct. I showed Jamil Brennan two arrays. One
3 was for Austin, and one was for Cheo, I believe.

4 Q Okay. I'm sorry.

5 A And the other one was the six-pack I showed for
6 Austin Murray.

7 Q Okay. Okay. And could you tell the Court how
8 Mr. Brennan knew my client?

9 A I believe they were friends.

10 Q And do you know how long Mr. Brennan knew my
11 client, Cheo Green?

12 A I don't recall how long it has been.

13 Q And, again, did you in any manner, shape, or form
14 suggest which picture that Mr. Brennan should pick
15 out as it relates to the array that my client was
16 in, Mr. Green?

17 A No, ma'am. That is what why I turn them over one
18 at a time and then turn them face-down after they
19 look at them.

20 MS. SINGLETARY: I have no further questions,
21 Your Honor.

22 THE COURT: Anything else from the State?

23 MS. BODMAN: Not at this time. We will just
24 continue with the motion with the witnesses
25 themselves.

1 THE COURT: All right. You may step down,
2 sir.

3 THE WITNESS: Thank you.

4 (Witness steps down.)

5 THE COURT: All right. We will hear from each
6 individual witness before they testify as to the
7 identification.

8 All right. Any other motions from the State?
9 I know -- just in case I forget tomorrow, just
10 remind me. I will leave it up here so I can --

11 MS. BODMAN: It is my understanding when I was
12 absent, I think there was a motion to sequester the
13 witnesses. I just want to clear up one thing, is
14 we do have Mr. Whitney Davis, the victim's brother,
15 on the witness list. He is going to be -- he
16 doesn't have any personal knowledge of the events.
17 He is going to be identifying his brother's voice
18 on the 9-1-1 call. He is the victim's family. We
19 would just ask that he be allowed to stay in the
20 courtroom.

21 MS. SINGLETARY: We have no objection to that,
22 Your Honor.

23 THE COURT: I think the family members, which
24 in this case would be the victims, are allowed to
25 stay in the courtroom for purposes of sequestering

1 the witnesses. But all other witnesses will need
2 to be sequestered.

3 MS. BODMAN: Following up on the Court's
4 rulings regarding the Jackson v. Denno and the
5 Defendant's statement, we want to make it clear,
6 while we needed those rulings for the purposes of
7 whether or not we want to offer it at some point,
8 and that would be included for impeachment
9 purposes, we are not intending on offering that
10 statement. The statement is basically an alibi.
11 And we have never been given notice of an alibi.
12 And so, while we are holding it for purposes of
13 impeachment material with the Court's rulings that
14 it is voluntary, not coerced, and admissible, we
15 are not offering it. And so in that we have not
16 been given alibi notice, there should be no mention
17 of either his statement during opening statement by
18 the Defense or of a story that he was at his
19 grandparents' house and was providing alibi. That
20 should be excluded since, you know, since we have
21 not been given notice of intent to provide an
22 alibi.

23 THE COURT: Any response?

24 MS. SINGLETARY: Your Honor, we briefly
25 addressed this issue last Monday about the alibi.

1 The Defense understands that they were under a
2 direct duty if they had any alibi information we
3 would turn that over to the Prosecution ten days
4 prior to this trial, Your Honor. And the Defense
5 did not do so because they were not informed until
6 last Monday.

7 THE COURT: You were not informed?

8 MS. SINGLETARY: Yes, Your Honor. I was not
9 informed until probably about 10:45 Monday a.m.
10 prior to going in front of the Honorable Judge Hood
11 that there was a possibility of an alibi in this
12 case.

13 THE COURT: You mean informed by your client?

14 MS. SINGLETARY: Yes. Informed by my client,
15 yes.

16 THE COURT: Okay. All right. And therefore
17 that is the reason you are saying you did not file
18 that?

19 MS. SINGLETARY: Yes, that is the reason why I
20 did not file it.

21 THE COURT: And so yesterday, last Monday,
22 would be seven days?

23 MS. SINGLETARY: That's correct, Your Honor.

24 THE COURT: And of course there is a ten day
25 notice to the State requirement.

1 All right. Anything else from the State?

2 MS. BODMAN: No, ma'am.

3 THE COURT: All right. I will be glad to hear
4 from the Defense.

5 MS. SINGLETARY: Your Honor, I think the main
6 motion that the Defense actually has deals with the
7 admissibility of the testimony of Investigator Van
8 Houten.

9 Your Honor, I know last Friday we actually
10 kind of briefly put this on the record. My
11 argument as it relates to his -- Van Houten's being
12 able to testify to the ranges of the cell phone
13 towers is twofold.

14 I brought it before the Court on Friday saying
15 that I would object to him actually being tendered
16 as an expert to testify to the material that he
17 would be testifying to, which I base that on
18 Rule 702, as well as pursuant to Jones and White.
19 Your Honor, that addresses those issues as it
20 relates to an expert testifying to their opinion.

21 Your Honor, at that time we were informed that
22 the State will not tender Investigator Van Houten
23 as an expert witness. Therefore, over the weekend
24 my argument turned into an absolute motion for him
25 not to testify to any information at all, based on

1 me actually meeting with him and the Prosecution on
2 Friday afternoon.

3 The basis for that motion is that his
4 information would be highly prejudicial. It would
5 be misleading. And it would tend to confuse the
6 jury.

7 Your Honor, that motion is based on the fact
8 that Investigator -- or Agent Van Houten actually
9 is a non-fact actual witness. He did not gather
10 this information. Investigator Ross, with the
11 Columbia Police Department, was the individual who
12 actually subpoenaed all of these cell phone
13 records.

14 And after he subpoenaed the cell phone
15 records, Verizon, as well as T-Mobile, actually
16 gave him information as it relates to the cell
17 towers, as it relates to the phone calls that were
18 made, the historical information on the cell phone.

19 Based on that -- and Agent Van Houten actually
20 generated a Google Earth map, and he, on that
21 Google Earth map, he actually pinpointed where the
22 actual victim's body was located, which was
23 North Main Street. He pinpointed the apartment
24 that my client was alleged to have been at on that
25 night in Broad River, as well as he pinpointed my

1 client's grandmother's address in Spring Valley,
2 and pinpointed where the victim's car was actually
3 abandoned.

4 He then took information from other
5 individuals, not information that he generated
6 himself, but information that the actual engineer
7 -- and the Court has to pay close attention to what
8 I'm saying right here when I say "engineer"
9 because -- and I understand that the State will
10 have a custodian of records for Verizon to come in
11 and testify to, This is the subscriber to this
12 particular cell phone and these are the records for
13 that cell phone. But the only person who could
14 technically testify to the accuracy of these cell
15 phone towers and their ranges and the position of
16 the antenna, and other factors that actually deal
17 with the range of the actual cell phone ranges,
18 would be an engineer that actually worked for that
19 cell phone company. There is no way that the
20 actual State can have a custodian of records get on
21 that witness stand and actually accurately testify
22 to that. Van Houten himself notes he was not under
23 oath, but in essence says that himself.

24 Your Honor, the federal court for the past two
25 years have actually moved to the point where when

1 it relates to cell phone towers and pinging in
2 actual criminal cases, like federal judges have
3 refused to let law enforcement officers who are not
4 specifically trained and who have not had thorough
5 training and don't have some type of background in
6 engineering, actually testify to the actual
7 information that we would -- the Court would have
8 to allow for Van Houten to testify to. That is
9 totally going to confuse the jury.

10 The only way that they would actually know --
11 place my client exactly in this white car on
12 September the 16th or at the Enclave Apartments on
13 September the 16th or where this car was abandoned
14 on September the 16th or at his grandmother's house
15 on September the 16th is if they had realtime
16 bandwidths. But they don't have realtime
17 bandwidths. They don't have realtime bandwidths.
18 They don't have the engineer who actually is an
19 expert in the ranges of the cell phones.

20 Therefore, based on that, my motion went from
21 not wanting him to be an expert witness to saying
22 that he can't testify to the testimony that the
23 State is actually trying to elicit from him. Like
24 if the jury were allowed to listen to his
25 testimony, they would in essence be convicting my

1 client, if they return a verdict of guilty, based
2 on flawed information, flawed testimony.

3 Based on that, I feel that Van Houten
4 shouldn't be allowed to testify to any maps that he
5 has actually generated.

6 THE COURT: All right. Thank you.

7 Let me hear from the State, and specifically
8 as to what it is that you are offering Van Houten
9 to testify to.

10 MS. BODMAN: Yes, Your Honor. We do have two
11 employees from the two different phone companies
12 coming to testify. They are people that are
13 specifically trained and qualified to testify to
14 more than just, We keep these records, because we
15 told them we do have -- you know, we have given the
16 records that we have.

17 So they are actually going to be testifying
18 based on their own company is, you know, This is
19 the explanation of all the records. They are
20 actually going to be testifying to the radius of
21 the strength of the towers as they are trained and
22 have that knowledge of employees of the company.
23 And that is what they do is disseminate this
24 information for law enforcement purposes.

25 So they are the ones that the information is

1 coming from.

2 THE COURT: Are you qualifying them as
3 experts?

4 MS. BODMAN: No. They are not rendering any
5 kind of opinion. Nobody is going to say some
6 conclusory opinion. They are just saying, Our
7 towers have this sort of strength in a rural area,
8 it is up to 15 miles, in a suburban area it is up
9 to five, and in an urban area they are up to three,
10 and, you know, what the GPS coordinates are, that
11 sort of thing.

12 Van Outen is somebody who is trained and
13 qualified in using the software to create maps. So
14 he takes -- he knows how to read GPS coordinates to
15 plot those cell towers and the hits on a map. And
16 then you tell him -- he doesn't know -- if he
17 knows -- he gave a lot of information to
18 Ms. Singletary. He came up to our office on Friday
19 and we invited her in to look at the program. He
20 gave her the same identical CD that we got with the
21 Google Earth and all the pings on it.

22 And so I think as a person who has a lot of
23 information, he shared information with
24 Ms. Singletary that we're not necessarily going to
25 ask him on the witness stand. He doesn't testify

1 to the radius of these companies. That is what the
2 companies know. They know that. He is not going
3 to be testifying to any kind of direction of the
4 antennas. He doesn't know that. The companies
5 know that. He was just sharing that information
6 with Ms. Singletary.

7 And so literally he is testifying as I -- This
8 is all of the training that I have received. I
9 even go train on how to use this software. I train
10 on how to do dumps on cell phones. And I gave the
11 information that the cell phone witnesses from the
12 company are going to be testifying. They
13 authenticate the record. And he is going to say, I
14 then just took those records and plotted the
15 coordinates. I know how to read them and I am
16 trained in that manner.

17 So we are not qualifying him as an expert. He
18 is a fact witness in terms of, I created this map
19 for you that shows where these hits are. Based on
20 the testimony of the Verizon and the T-Mobile
21 employees, I put in the radius that they testified
22 to.

23 And then from there it is, it is questions
24 that she can ask to go to the strength or weakness
25 of cell tower hits and what that actually tells the

1 jury about that hit on that cell tower. She can
2 argue that that is the weight. But as far as the
3 admissibility of making a map and saying that, I
4 got information to plot, you know, where Mr. Davis
5 was found in the street, you know, that information
6 is just -- it is going to be based on the testimony
7 that he then incorporated into the maps.

8 THE COURT: All right. And he is not here
9 today either?

10 MS. BODMAN: No, ma'am.

11 MS. SINGLETARY: And, Your Honor, if I may say
12 something, because I need to get it tomorrow. But
13 based on what the State just said -- and they refer
14 to the fact that these custodian of records will
15 testify to a possible range of up to 15 miles in a
16 rural setting or up to five miles in a city
17 setting, that says -- that makes my argument. Up
18 to. There is no precise location.

19 And if we are allowed to let Van Houten use
20 like those pinpoints that put --

21 THE COURT: Wouldn't that go to the weight of
22 it? Wouldn't that go to the weight of the
23 evidence?

24 MS. SINGLETARY: That is burden shifting, Your
25 Honor. Because if he puts those up, those range

1 points up there, and he shows that to that jury,
2 then it forces me to then disprove that my client
3 was in the location that he just plotted and showed
4 to the jury.

5 MS. BODMAN: That is a ridiculous argument.
6 That is like saying that we found somebody's DNA
7 somewhere and they have to disprove their DNA so it
8 is burden shifting. It is evidence.

9 She says that it is three things: Highly
10 prejudicial, misleading, confusing to the jury. It
11 is highly prejudicial. It is highly prejudicial,
12 because we have him with Austin Murray exactly like
13 Austin Murray says. The misleading and confusing
14 is exactly why these witnesses read the record and
15 know how to plot the GPS coordinates and that she
16 can say, Wait a minute, you know, according to you
17 it could be up to 15 miles. She can bring all
18 those weaknesses out.

19 THE COURT: Well, I can -- when is he
20 testifying?

21 MS. BODMAN: Not until -- you know, one of our
22 last witnesses in the case. So depending on how
23 far on Wednesday we get, he would be one of our
24 last witnesses.

25 THE COURT: When will he be available? It is

1 kind of hard for me to make a ruling as to his
2 testimony. I would have liked to have him here. I
3 thought we were going to do all of that today. I
4 would have liked to have had him here so we could
5 have made a ruling on it one way or the other.

6 MS. BODMAN: We can have him here at the
7 Court's request. I think he said he had a pretty
8 open week, so if you wanted to do it at one of the,
9 you know, kind of breaks, shifts, we could have him
10 here at those times.

11 THE COURT: Ms. Singletary, I hear what you
12 are saying, but I guess because I have tried these
13 cases with the pings and the radius and they bring
14 those people in from Verizon and AT&T and T-Mobile.
15 Usually there is not -- when you say an "engineer,"
16 I'm not quite sure what type of engineer you are
17 referring to, but usually it is someone from SLED
18 who has been trained and they actually do the --
19 and it is law enforcement -- and they actually do
20 the training as to how to locate people with the
21 cell phones.

22 So are you saying Van Houten has the same type
23 training?

24 MS. BODMAN: Yes, Your Honor. He is CPD and
25 Secret Service. He is Secret Service. He is

1 trained and goes nationwide teaching these
2 trainings. He teaches law enforcement.

3 MS. SINGLETARY: But I want to be clear. The
4 State said earlier that he is trained and qualified
5 to create maps.

6 MS. GARFIELD: With the Court's permission, he
7 is calling me right now -- I will step outside --
8 on availability.

9 THE COURT: Okay.

10 (Complies.)

11 MS. BODMAN: He is trained and qualified to
12 deal with a lot of things. The purposes for this
13 trial is -- he didn't do anything else. He didn't
14 dump the phones. He -- all we asked him to do is a
15 small sector of his great knowledge is just to use
16 his software program to plot these GPS coordinates
17 and the cell hits and be able to plot the radius
18 for us so that we could print them out in a
19 presentable, professional form. But, yes, he is
20 overly qualified in terms of he is the person that
21 does these trainings.

22 THE COURT: All right. Well, as soon as we
23 can hear some testimony from him, I'll make a
24 decision as to that.

25 I'll go ahead and take a look at -- if you all

1 have any case law, I will be glad to look at it.
2 Of course, this is limited because this is of
3 course a developing area of the law, cell phones
4 and pings, and all of that stuff.

5 MS. SINGLETARY: Your Honor, if I may approach
6 on the first issue? I do have a written memo to
7 pass up to you in reference to him not being
8 tendered as an expert. And I will have some
9 additional information for the Court tomorrow.

10 (Complies.)

11 MS. SINGLETARY: Your Honor, also I would like
12 to put on the record that this kind of cripples the
13 Defense as it relates to our opening statement. So
14 whether or not Van Houten is actually able to
15 testify to this information is solely dependent on
16 what my co-counsel will be able to say in his
17 opening statement.

18 (Pause.)

19 MS. BODMAN: He said he could be here any
20 time, so we could do it first thing in the morning.

21 (Pause.)

22 MS. BODMAN: I apologize, Your Honor. I
23 thought the only issue was qualifying him as an
24 expert and that we had talked about it and that
25 we're not. But the memo is moot because we're not

1 qualifying him as an expert.

2 MS. SINGLETARY: Well, that is what I said
3 previously, that on Friday we talked about it and
4 then, because they said that they weren't going to
5 tender him as an expert, my motion changed to
6 excluding all of his testimony. However, I don't
7 know that based on me -- my motion this afternoon
8 whether or not it may switch back, so out of an
9 abundance of caution at lunch I drafted that to
10 bring in this afternoon.

11 THE COURT: All right. Okay. So he needs to
12 be here at -- let's be prepared to go forward at
13 9:00 in the morning with his testimony. I don't
14 know -- how long do you think it is going to take?

15 MS. BODMAN: I don't believe our direct would
16 that be that long. We will have him bring his -- I
17 think he calls it a statement of qualification
18 maybe, not a CV, but whatever he calls it, and we
19 can just walk through his qualifications and,
20 depending on Ms. Singletary's cross --

21 THE COURT: So hopefully he will finish by
22 9:30 so we won't have the jurors waiting too long.

23 All right. So anything else that we'll need
24 to take up in the morning? I'm just trying to get
25 through as much stuff as possible so we can go

1 ahead and get started.

2 Prior bad acts. There is some -- you had a
3 motion excluding prior bad acts? I know I have
4 already ruled as to the issue regarding DaQwane
5 Robinson. Were there any other bad acts? I think
6 you had some concern about the young lady saying
7 they didn't want him in the apartment or something?

8 MS. SINGLETARY: Yes. Because they said on
9 the first occasion that they met him and they were
10 going to the apartment that my client randomly shot
11 out of a back window with a gun.

12 MS. BODMAN: In speaking with the witnesses, I
13 just wanted to, before they addressed that on
14 Friday, I wanted to make sure before I committed to
15 it with the witnesses that our understanding is
16 that occurred about a week prior, so it wasn't that
17 night. And the one young woman who was in the car
18 when it happened doesn't recall anything unique
19 about the gun because she is not -- we were
20 wondering if maybe she could tie something
21 specifically to that gun, and she wasn't. So we
22 will not be asking her about the shooting incident.

23 They will both be testifying that, you know,
24 they didn't want him up in the apartment. And that
25 will explain why he is out in the parking lot and,

1 you know, DaQwane and Curtis are up in the
2 apartment with them.

3 And they said, No, you can't bring Cheo up
4 here. So that is why he is out in the parking lot.
5 But as to the specifics of why they didn't want him
6 up there, we won't go into.

7 Now, we will obviously approach the Court if
8 we believe that a door is opened in terms of, you
9 know, Our client -- We have never seen our client
10 with a gun, or, He doesn't carry guns, or, He stays
11 away from guns, or any kind of door is open, we
12 will then go walk through it, but we won't bring it
13 up with those witnesses.

14 THE COURT: All right. Any other Lyle issues?

15 MS. SINGLETARY: Your Honor, just out of an
16 abundance of caution, we know that the State has
17 put us on notice that they will not seek to enter
18 in my client's statement that was given to
19 Investigator McCracken. However, if the Court
20 deems some kind of way that that statement comes
21 in, there was one portion of that statement that we
22 would like to have redacted. That was at the end
23 of the first interview where McCracken --
24 Investigator McCracken actually mentions that my
25 client is at jail for an armed robbery. So we

1 would want that redacted out, out of an abundance
2 of caution.

3 THE COURT: If it does, for whatever reason,
4 if they decide that they want to put it in, then
5 that needs to be redacted.

6 MS. BODMAN: Absolutely.

7 THE COURT: Anything else? So the only issue
8 we need to deal with tomorrow morning is the cell
9 phone; is that correct?

10 MS. BODMAN: Yes.

11 MS. SINGLETARY: Yes, Your Honor.

12 MS. BODMAN: I don't know -- did y'all address
13 the criminal records of the witnesses?

14 MS. SINGLETARY: Yes.

15 THE COURT: We will settle the record as it
16 comes. We'll do the Biggers as they come. I think
17 that takes care of all of the motions, pretrial
18 motions. Of course, if there is anything else that
19 comes up, just remember -- and just instruct your
20 witnesses to not get into any testimony regarding
21 any other bad acts or any other robberies or
22 shooting of the gun or -- and of course those
23 ladies cannot testify as to why they did not want
24 him up there.

25 MS. BODMAN: Yes, ma'am.

1 THE COURT: They can testify they didn't want
2 him up there, but they cannot get into anything
3 about a gun and shooting.

4 MS. BODMAN: Yes, ma'am.

5 THE COURT: All right. And of course you
6 know, Ms. Singletary, if for some reason you get in
7 any testimony as to whether or not he owned a gun,
8 and all of that, then it is going to be fair game.

9 MS. SINGLETARY: Yes, Your Honor.

10 THE COURT: Okay. All right, well, I will see
11 you all at 9:00. And I did not tell the jurors --
12 I did not tell them today, but we will probably
13 work a little late tomorrow to try to get through
14 some of the testimony. So if anyone has any
15 conflicts, I will need you to try to work those
16 out. We will try to work a little bit later.

17 All right. Anything else?

18 MS. SINGLETARY: No, Your Honor.

19 MS. BODMAN: Can I bring something up, just to
20 make sure we are clear on the Lyle stuff, is in my
21 summary to Your Honor I mentioned that DaQwane
22 Robinson says that he has seen this Defendant with
23 that -- this particular gun that we're offering
24 into evidence before, and so that would be -- that
25 would not be Lyle. That -- this gun in the

1 Defendant's custody, this particular weapon.

2 MS. SINGLETARY: I understand that.

3 THE COURT: Yes.

4 MS. BODMAN: Okay. I just didn't want to be
5 in middle of it.

6 THE COURT: And is there any issue
7 regarding -- I am assuming they are going to
8 testify regarding -- somebody is going to testify
9 regarding the stop when they find the gun? Do you
10 have any position?

11 MS. SINGLETARY: No, Your Honor. I can't
12 think of any.

13 THE COURT: Well, I mean, I think it leads to
14 the arrest. But the testimony is just going to be
15 that they --

16 MS. BODMAN: DaQwane and Curtis were both
17 charged with the unlawful UCP of that gun. So, I
18 mean, she can clearly cross them on, Weren't you
19 actually charged with, you know, the possession of
20 this? But, yes, they are both going to say that
21 was his gun. Nobody admitted it. When they were
22 pulled over and pulled out of that car, that that
23 was Cheo's gun.

24 THE COURT: All right. So, I guess, when they
25 got stopped, what were they stopped for?

1 MS. BODMAN: It was just some kind of traffic
2 stop, but I believe that maybe the officer saw one
3 of them drinking a beer, so they were stopped for
4 some kind of open container. And there were
5 actually five people in the car, and they were all
6 pulled out. And the officer just sees it right
7 there.

8 THE COURT: Okay. All right. I will see you
9 all at 9:00 in the morning.

10 (WHEREUPON, the proceedings were
11 concluded for the day at 6:12 p.m.)

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13 (WHEREUPON, the proceedings resumed at
14 9:24 a.m.)

15 THE COURT: I believe one issue we have to
16 take up real quick is the motion regarding
17 Ms. Singletary's motion, testimony in reference to
18 the cell phone records; is that correct?

19 MS. BODMAN: Yes.

20 MS. SINGLETARY: I think so, Your Honor.

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

22 MS. BODMAN: The State calls Investigator Van
23 Houten.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

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

7 THE WITNESS: I do.

8 THE CLERK: Thank you. Have a seat in the
9 witness stand, please.

10 (Witness complies.)

11 THE CLERK: State your name for the record.

12 THE WITNESS: John Van Houten.

13 JOHN VAN HOUTEN,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BODMAN:

17 Q. And with whom are you employed?

18 A. I am employed by the Columbia Police Department.

19 Q. Okay. And do you also have -- I guess, who all do
20 you work with, even though you are employed by the
21 Columbia Police Department?

22 A. I am employed by the Columbia Police Department,
23 but for the last five years I have been assigned to
24 the United States Secret Service.

25 Q. And can you tell the judge a little bit about your,

1 I guess, education and background leading up to
2 your current employment?

3 A Yes. I started in '96, Florence-Darlington
4 Technical College, criminal justice.

5 Throughout the years, or in 1999, South
6 Carolina Criminal Justice Academy. I received my
7 basic law enforcement certification.

8 Starting in 2009, I started getting training
9 for computer and cell phone forensics.

10 I have attended the National --

11 Q I'm sorry, go back. What year was that?

12 A I started in 2009.

13 Q Okay.

14 A I have attended the Federal Law Enforcement
15 Training Center in Glynco, Georgia. I have
16 attended the National Computer Forensic Institute
17 in Hoover, Alabama. The Mississippi State
18 University Forensic Research Center. And just
19 recently I have -- I just came back as assistant
20 instructor training prosecutors for cell phone
21 forensics.

22 Q. So tell us about what certifications you have
23 involving computer forensics.

24 A I received certifications from the National White
25 Collar Crime Center.

1 Q And what did that certification entail? What did
2 you have to do in order to be certified?

3 A That was the Cyber Investigations, Secure
4 Techniques for Onsite Preview.

5 THE COURT REPORTER: I'm sorry, can you repeat
6 that?

7 A I'm sorry. Cyber Investigations, Secure Techniques
8 for Onsite Preview. That is forensically
9 previewing a suspect machine forensically for
10 logical information, stuff that you can see on a
11 computer when you navigate through a computer.

12 U.S. Department of Justice, DEA, Basic
13 Telecommunications Exploitation Program. That is
14 part of the mapping training that I received. It
15 also --

16 Q Mapping training. What are you talking about?

17 A Plotting cell phone towers for -- based on carrier
18 call detail records.

19 Q So we're not talking about a desktop or a laptop,
20 you are talking about a cell phone?

21 A Yes. Call detail records from the carrier, yes.

22 Q Okay. And how long was that training?

23 A Forty hours.

24 Q Okay. And what did that training specifically
25 teach you how to do?

1 A Part of it was for the cell phone mapping. The
2 other part was acquiring data from the carriers,
3 what to ask for for the carriers, the types of
4 federal services that are available to acquire
5 certain information, some open to the public, some
6 that are not.

7 Q So go back to, you are saying you had to learn how
8 to -- what information to ask for from the company
9 and how to ask for that information, like what
10 actual language and verbiage to use?

11 A Right. And what you ask for is depending on your
12 case, what type of case you are investigating. You
13 could just ask for call detail records for the
14 particular number, or you could ask for geolocation
15 of towers where the phone, as a cell phone, was
16 making or receiving communication.

17 Q Geolocation meaning what?

18 A That physical location of a particular tower owned
19 by a carrier, or group of carriers.

20 Q So how to find the particular location of a cell
21 tower?

22 A Right. The carriers maintain this database of all
23 their towers, the towers that they lease from other
24 carriers. They provide -- they store all the
25 records that -- all activity for every cell phone

1 company for that particular carrier. And the
2 reason they store that is for billing purposes
3 only.

4 Q And so you learned how -- what information the cell
5 phone companies keep and how to ask for that
6 information?

7 A Yes.

8 Q And then you said also mapping. So you know how to
9 ask for the information -- you know what
10 information you want, you know how to ask for it,
11 and then you learned how to do what with that
12 information?

13 A To basically determine the latitude and longitude
14 of the tower, the information provided by the cell
15 phone carrier, cell phone company, taking the
16 longitude and latitude and plotting it on a map.
17 The easiest -- you can use any map. The easiest is
18 Google Maps, or you can use Bing. Microsoft has a
19 mapping software. It is generally up to the user
20 to determine which mapping software they want to
21 use.

22 Q Okay. And so was that your first introduction to
23 mapping?

24 A Yes.

25 Q Okay. And that was back in 2011?

1 A Yes.

2 Q And so what other -- what certifications, then, did
3 you get as a result of that program back in 2011?

4 A Just for mapping or cell phone? National Computer
5 Forensic Institute, Advance Mobile Device Examiner
6 Program. That was in 2013.

7 Q National Computer Forensic Institute?

8 A Yes. That is in Hoover, Alabama.

9 Q. The Advance Mobile Device Examiner Program. So
10 what further information does that course give you
11 in 2013 that you didn't have back in 2011?

12 A Well, it is pretty much a refresher course. The
13 information that you receive from the call -- from
14 the carrier is pretty much the same. They differ
15 from carrier about how they put their information
16 in. But it was basically just a refresher course.
17 Of course, there are more cell phone carriers now
18 than there were five years ago. And it basically
19 discussed on the subcarriers, like Metro PCS or
20 Cricket, carriers that lease towers from the major
21 carriers.

22 Q Okay. And so how many hours was that program?

23 A I believe that one was 40 hours.

24 Q And in between 2011 when you went to the program
25 with the U.S. Department of Justice Drug

1 Enforcement Agency to this program you are talking
2 about in August of 2013, were you doing mapping
3 between that time, 2011 and 2013?

4 A I was doing a few. I wasn't doing as much as I do
5 now.

6 Q But you were doing mapping?

7 A Right. If an agency requested assistance on, Can
8 you tell me if this -- whether it is this tower
9 here, or if Columbia P.D. was investigating a case,
10 they could give me the call records and I can plot
11 it for you on the tower.

12 Q. And did your training include also, I guess, the
13 information about radiuses and the cell towers
14 having different radiuses and I guess companies
15 having different -- the radius and the strength of
16 the tower?

17 A Yes. That would be dependent on each carrier and
18 where the tower location is located at. Only the
19 carrier can determine or can provide that
20 information as far as the signal strength, the
21 radio signal submitted by the carrier. And that
22 depends on, of course, where the tower is located.

23 Towers that are out in the country, of course,
24 generate a higher radius. They have to produce
25 more power to supply their customers. In a more

1 densely populated area, such as a large city, your
2 towers can be on top of buildings, water towers,
3 and not necessarily just cell phones, individual
4 cell phone towers.

5 Q What other, I guess, training have you gotten in
6 regard to mapping, telecommunications, mobile
7 devices?

8 A As far as the mobile devices, I have received
9 numerous training, most of it from the National
10 Computer Forensic Institute and the Federal Law
11 Enforcement Training Center.

12 The mapping portion is something that is
13 generally not -- it doesn't change. You are just
14 taking the information that is provided by the
15 carrier and you are plotting it for the requested
16 information by the investigator or the agent.

17 Q Okay. And did we request you to plot some
18 information based on some records we received in
19 this case?

20 A Yes.

21 Q. And did you receive a particular software program?

22 A I did.

23 Q And what was that software program?

24 A. It is a KML generator program. It is in my -- the
25 documents I provided. I'm having a hard time

1 remembering exactly the name of it. But it allows
2 you to enter the tower location, latitude and
3 longitude, the radius of the signal based on what
4 the carrier provided, and also color-coordinate it,
5 if you have more than one cell phone you are trying
6 to plot.

7 Q. Since you have gotten your initial training in
8 2011, how many times do you think that you have
9 done mapping on a case?

10 A I would have to say for an actual criminal court
11 case, maybe anywhere from six to eight times.

12 Q Eighteen?

13 A Six to eight times.

14 Q. Six to eight times?

15 A. Yes.

16 Q. And do you mean like actual coming -- case coming
17 to court?

18 A. An actual - a criminal case, right.

19 Q And how many times have you even just looked at
20 records, I guess, as a consultant to help read the
21 records, map the hits?

22 A I mean, I have been asked to verify the findings
23 kind of like a peer review.

24 Q. Okay.

25 A. I've been asked to peer review certain cell

1 phone -- mapping records, not necessarily -- there
2 could be -- the issue that you have is that there
3 is certain cell phone mapping software that -- the
4 most expensive ones like Penton, they allow you
5 just to import the data, and you can import
6 hundreds and hundreds of call records, and they
7 will plot it.

8 Generally, when we do a peer review, we would
9 just go in and just spot check, you know, ten or so
10 towers throughout the records to verify that, yes,
11 the plotting appears to be correct.

12 Q And the information, I guess not only the
13 information about the longitude and latitude
14 coordinates, the cell phone records themselves that
15 we provided, but did we also give you information
16 that we believe is going to be testified to with
17 regards to radius, the strength of the towers?

18 A Yes. The radius that was given to me was a 3-mile
19 radius.

20 Q Okay. And so that is information that you just
21 took from us based on potential testimony to plot
22 the map?

23 A That is correct.

24 Q. Do you know how many times you have actually ended
25 up testifying regarding mapping?

1 A I think twice. I know one is for sure locally in
2 Lexington County, the Solicitor's Office, it was a
3 homicide trial.

4 Q And do you also do training yourself, as you are
5 the trainer?

6 A Yes. I also give presentations on cyber forensics,
7 computer forensics, and cell phone forensics. I am,
8 an assistant instructor with the National Computer
9 Forensic Institute. And as I said, I have given --
10 I have assisted in instructing Prosecutors from
11 across the country. I have presented at the South
12 Carolina Solicitor's Conference in Myrtle Beach.
13 And the Kershaw County School District, their
14 annual research training, I have done computer
15 forensics, presented a computer forensic program to
16 them.

17 MS. BODMAN: No further questions at this
18 time.

19 THE COURT: Yes, ma'am.

20 MS. SINGLETARY: Thank you, Your Honor. May
21 it please the Court?

22 CROSS-EXAMINATION

23 BY MS. SINGLETARY:

24 Q. Investigator Van Houten?

25 A Uh-huh.

1 Q Your job in this case is to actually plot on a map
2 information that is given to you from the cell
3 phone provider; correct?

4 A That's correct.

5 Q You don't have any personal knowledge of the
6 information, you are just given that information?

7 A Right. The numbers, the call times, the location,
8 that is the only information that I receive.

9 Q And that is actually called historical cell data?

10 A Yes.

11 Q Now, in your opinion, in historical cell data, is
12 that very accurate?

13 A. It is historical as far as which tower a cell phone
14 is hitting off of. That is accurate.

15 Q But wouldn't it be more accurate if you actually
16 did realtime?

17 A Yes.

18 Q Yes. And let me go back to something that you
19 actually stated earlier. You said that -- well,
20 the Prosecution asked you about the radius that you
21 actually mapped in your presentation?

22 A Yes.

23 Q And the radius that you mapped was given to you
24 based on testimony that the Prosecution believed is
25 going to be elicited at this trial; correct?

1 A Yes.

2 Q And there is no way for you to actually determine
3 the radius of those cell phone towers other than
4 getting information from the carrier?

5 A That is correct.

6 Q And, now, as it relates to these cell phone towers,
7 aren't there a lot of factors that actually
8 determine the radius of the coverage?

9 A Yes. It would determine -- weather can be a
10 determination, solar flares from the sun can be a
11 determination, the amount of call volume hitting a
12 particular area can be a determination, the
13 geolocation, such as buildings, mountains, things
14 of that nature, can be a factor in the radius of
15 the tower.

16 Q And also time of day?

17 A Yes.

18 Q And isn't it true that with these cell phone
19 towers, a lot of times cell phone towers and their
20 strength and their actual distance, they overlap?

21 A Yes, they do.

22 Q Now, I want to make it clear. What you would be
23 actually testifying to is not that my client was
24 actually in a pinpoint-specific location? That is
25 not the testimony?

1 A I am not giving expert testimony in this case.

2 Q Okay. And your radius is a 3-mile radius of that
3 cell phone tower?

4 A Correct.

5 Q And meaning that it is a 3-mile radius of that cell
6 phone tower, that individual who has that cell
7 phone could be three miles north to that cell
8 phone?

9 A Correct.

10 Q Three miles south to that cell phone?

11 A From the tower, yes.

12 Q From the tower?

13 A Yes.

14 Q Three miles to the west?

15 A Yes.

16 Q Three miles to the east of that tower?

17 A Yes.

18 Q But no specific location?

19 A Only that the specific tower that the phone was
20 using at that time.

21 Q Now, have you ever heard of what they call a dry
22 test?

23 A Yes.

24 Q And would you explain to the Court exactly what a
25 dry test is as it relates to cell tower data and

1 collecting that data?

2 A The dry test is actually using equipment to
3 determine the actual strength, radio strength
4 coming from the tower. And the -- currently, the
5 only knowledge that I have currently, that the only
6 people or agency that do the dry test are the FBI.

7 Q And so -- and would it be correct if I said that
8 you did not do a dry test in this case?

9 A No. I would be basing my plotting based on what
10 the technician from the carrier stipulated.

11 Q Now, in your opinion, wouldn't it be best if -- Let
12 me rephrase that. As it relates to more detailed
13 information about a location of a particular person
14 being gained from cell phone towers, wouldn't it be
15 best for an actual telecommunications engineer to
16 actually testify to a more specific location to
17 where a person is as it relates to cell phone tower
18 ranges?

19 A I don't think they are going to testify to what --
20 where the person is, they are just going to only
21 testify to the radio strength signal and how far it
22 would go, basically. They -- the carriers, their
23 technicians monitor this remotely. It is an
24 automatic thing. But they would be able to testify
25 the probabilities of how far that signal can go

1 out. I mean, it is possible the signal can be, you
2 know, three miles, which is generally the lowest
3 that you are going to find on most carriers, up to
4 10, 12, 15 miles, again, depending on terrain.

5 Q Okay. And I just want to highlight on that. So
6 your testimony is that, depending on the terrain,
7 that signal could be as little as a 3-mile radius?

8 A Yes.

9 Q I'm sorry. Go ahead.

10 A When I speak of the terrain, I'm talking of a
11 mountainous area. Of course, mountains are going
12 to impact the signal a lot, differently than they
13 would buildings, trees, things of that nature.

14 Q But it could be up to as large as a 15-mile radius?

15 A It is possible, yes.

16 Q But you would have to get that information from the
17 cell phone provider?

18 A Correct.

19 Q Now -- and I think we kind of went over this, but
20 you didn't test the strength of these individual
21 towers?

22 A No.

23 Q And you were actually given the actual GPS location
24 of the towers from the carrier in this case?

25 A I was given the documents provided by the carriers,

1 yes.

2 Q All right. Now, do you know what particular type
3 of equipment that these particular carriers use on
4 the cell phone towers?

5 A I'm not a technician for the carrier. I couldn't
6 tell you what specific equipment they are using.

7 Q And doesn't the type of equipment that these cell
8 phone carriers use actually can affect the range of
9 the cell phone towers?

10 A I'm not sure. I couldn't answer that question.

11 Q And in your case, you said that you are relying on
12 historical cell tower location data and call detail
13 records?

14 A Yes.

15 Q That was actually provided to you?

16 A Yes.

17 Q From the cell phone providers?

18 A That I was provided.

19 Q By the State?

20 A Yes.

21 Q Who got it from the cell phone provider? Now,
22 isn't it true that the use of historical cell site
23 locator -- location data is different from realtime
24 triangulation?

25 A Yes.

1 Q Okay. Now, could you explain to the Court, exactly
2 what is realtime triangulation?

3 A Realtime triangulation is when the carrier can
4 locate an active phone currently -- whether in use
5 or not in use, if it is just -- and not being used
6 to make calls or text messages, just holding your
7 cell phone, a carrier can do what is called a
8 triangulation and determine the location of where a
9 particular phone is from a distance between two or
10 more towers.

11 Q And in this case were you provided information on
12 realtime triangulation on either one of these cell
13 phones?

14 A No. That information is only available in
15 realtime, current actual time.

16 Q Were you provided any GPS technology using
17 satellite as it relates to these two phones during
18 realtime, I guess kind of piggybacking on the
19 question that I just asked you?

20 A I'm sorry. Was I provided?

21 Q GPS satellite locations of the actual cell phone?

22 A I was provided GPS coordinates.

23 Q GPS coordinates? Of the cell towers?

24 A Coordinates of the towers themselves.

25 Q But not the cell phone?

1 A No, not from historical records.

2 Q. And isn't it true that the accuracy of GPS and
3 realtime is more reliable than the historical cell
4 phone data that you were given?

5 A. No -- yes, it is, because you are using more than
6 one tower to make a determination of location.

7 Q. And they simply use at a minimum three towers when
8 they are looking at that?

9 A. Two to three, depending on the carrier, and of
10 course terrain, geolocation, all that stuff.

11 Q. And it wouldn't be your testimony today that -- so
12 the essence of your testimony is that you are
13 actually going to say that you can put -- place my
14 client and the Co-Defendant in a particular area?

15 A. No. That would be expert testimony.

16 Q. So an expert would actually have to testify to
17 that?

18 A. Right. The -- all I would be testifying to is
19 basically the information that I received and how I
20 came to this conclusion. And being a forensic
21 examiner, it is to duplicate your work. As long as
22 you use the information that I received, anybody
23 else can come up with the same findings at the end.

24 Q. Okay. And so you said your job is just to
25 duplicate the work?

1 A Well, yes. I mean, my job in this case was to take
2 the information from the call detail records,
3 pinpoint the tower location using a 3-mile radius.
4 And if you were to take the information that I
5 plotted on the tower, if you use the same GPS which
6 is provided by the call records, the same tower
7 number, which was provided by the call records, and
8 you use the 3-mile radius, you will still come out
9 with the same results.

10 Q Okay. And I just want to clarify again, so you are
11 not testifying that -- your testimony would not say
12 that you are placing my client in a particular
13 area?

14 A No. I can't say that a particular person. Now, I
15 can say that a phone is --

16 Q A phone. I'm sorry?

17 A -- in a particular area.

18 Q. I'm sorry.

19 A That a phone is in a particular area. And using
20 the basis of a 3-mile radius, and again from the
21 call detail records provided by the carrier, that
22 on this particular date and time this particular
23 phone was using this particular tower.

24 Q So if the information that you actually received
25 that you used to actually map out these cell

1 phones, the tower locations, as well as these
2 particular phone locations, are you aware of the
3 fact that there they have been some changes to the
4 radius of those cell phones from September of 2012
5 up to present time?

6 A Yes. Only the carrier representative would have to
7 testify to that, or notify the Court of that
8 information..

9 Q So if one of the carrier representatives came into
10 court today and they actually testified to the fact
11 that back in 2012 the radius was two miles versus
12 now in 2016 at three miles, that would actually
13 affect the presentation that you have already
14 generated?

15 A Yes. And that is possible. If that is the case,
16 if they reduced the signal on a radio tower, which
17 I personally have not heard of, the only -- you
18 know, as time progresses, they boost their signal,
19 they try to -- for their customers. If that is a
20 possibility, then it can be changed in five
21 minutes. It is all based on the radius.

22 Q And the ranges of cell towers vary greatly?

23 A Yes. Again, depending on location, weather, all
24 that stuff.

25 Q And the tower ranges overlap? They can overlap

1 significantly?

2 A Yes. It is possible within that 3-mile radius to
3 have ten towers. It is just the particular tower
4 that that particular phone was hitting, that
5 doesn't change.

6 Q And isn't it true that -- and I am going to give
7 you an example. Isn't it true that I can be
8 standing right here and you can be sitting on that
9 witness stand and we can both have the cell phone
10 carrier Verizon and actually make a phone call at
11 the same time and we can actually hit off of two
12 separate towers?

13 A That is correct.

14 Q And, now, earlier we were talking about the
15 different factors that actually affect the ranges
16 of cell phone towers. We talked about the call
17 volume, we talked about the weather, we talked
18 about the time of day?

19 A Uh-huh.

20 Q Now, isn't it true that sometimes these cell phone
21 companies, if there is an event that is in town and
22 there is a lot of people that are in town and that
23 there is an overload of cell phone uses, isn't it
24 possible for me to be here in South Carolina and my
25 cell phone will hit off of a tower in Florida?

1 A No.

2 Q It is not possible?

3 A That is incorrect.

4 Q Okay.

5 A I think what your -- analogy you are trying to
6 display is a mobile wireless tower.

7 Q. Uh-huh.

8 A Towers are given -- a particular tower is given a
9 number. And I'll use an example, Tower 1-2-3.
10 Tower 1-2-3 is a permanent tower in Columbia, South
11 Carolina. And then Tower 7-8-9 is a mobile tower,
12 or a tower on wheels, that may be assigned to
13 Orlando, Florida. And because it is assigned to
14 Orlando, Florida, the last hit for that tower, or
15 the last location that the company is going to log
16 is the GPS location for that tower. Okay.

17 So now the carrier takes that mobile tower and
18 they bring it to Columbia, South Carolina. So --
19 and I'll use the USC football game during the fair.
20 And that is an event that more than likely there is
21 going to be a mobile tower.

22 There are two towers, one mobile, one
23 permanent, fixed at this location. It is possible
24 for that phone to hit that mobile tower only within
25 that radio signal where that tower is hitting at,

1 or the signal that the tower is giving off. But
2 when you receive your records, you are going to --
3 it will show you that you are hitting -- when you
4 hit the GPS coordinates, it is going to show at
5 Columbia, Columbia, Columbia. And then the next
6 call made is going to be in Orlando, Florida.

7 Well, of course, physics is not going to allow
8 that to happen, so that is when you -- from my
9 experience, that that is going to be a mobile
10 tower, a mobile wireless tower.

11 And the cell phone carrier would be able to
12 explain, yes, this GPS, this tower number is listed
13 as a mobile wireless tower.

14 Q Okay. So let me rephrase what I actually just
15 said, because you made the point that I wanted to
16 make. That there are permanent towers and there
17 are mobile towers?

18 A Yes.

19 Q Sometimes when there is a high call volume, even
20 though a person may be here in Columbia, South
21 Carolina, and they make a call, and if you get the
22 records later on, it may initially show that it hit
23 a permanent cell tower in Columbia, but then it may
24 switch to a mobile cell tower in Florida, in the
25 example that you gave?

1 A It will show that the tower is registered in
2 Florida. And, again, the call was still made in
3 Columbia, it is just the call records are showing
4 that that one particular call was coming out of
5 Orlando, Florida. But the cell phone carrier, the
6 technician, would be able to say, yes, between this
7 date and this time, Tower Number 7-8-9 was
8 stationed in Columbia. So it is going to vary.
9 And they are going to give you exactly where it was
10 stationed at.

11 Q Yes. So the actual personnel from the cell phone
12 company would be able to come in here and say that,
13 Hey, this call was actually made in Columbia, South
14 Carolina. It shows up on their cell phone record
15 that it hit a tower, a mobile tower, in Florida,
16 but that does not change the fact that the call was
17 made in Columbia, South Carolina?

18 A That is correct.

19 Q Yes. Okay.

20 A But -- I'm sorry -- in this case here, in the
21 records that I received here, when you view the
22 tower location by the GPS, you can physically see
23 the permanent towers in Columbia.

24 Q Yes.

25 A In this case.

1 Q Yes. Particularly in this case.

2 Now, let's talk about the antennas for the
3 cell phone towers. Now, isn't it true that
4 depending on the actual like direction or the angle
5 of the antenna that is on that cell phone tower,
6 that could actually affect the radius?

7 A. Yes.

8 Q And let's be specific. Let's say -- not all cell
9 phone towers have their antennas positioned in the
10 same direction?

11 A Right.

12 Q And so that could cause overlapping of the actual
13 cell phone ranges, because what could be -- like
14 let's say for Verizon, if they had their antennas
15 faced to the south, and then you had AT&T and their
16 antenna was actually faced to the north, that could
17 actually cause some type of double range or double
18 coverage? And I'm not saying to increase the three
19 miles, but --

20 A You are comparing two different carriers, though.
21 Yes, I mean, you are going to have overlapping
22 between all cell phone companies, yes.

23 Q Okay. And that is the point I was trying to make,
24 that there is going to be some type of overlapping,
25 and not every cell phone company has their actual

1 cell phone antenna positioned in the same
2 particular area?

3 A. That is correct.

4 Q So it is not -- there is no standard?

5 A There is a standard based on height, radio
6 frequency. You know, they can only transmit at a
7 certain frequency, so it is all based on -- you
8 know, there is a lot of factors every cell phone
9 carrier has to take in. You know, FCC regulations,
10 I'm not aware of, but, yes, there are a lot of
11 factors that can --

12 Q But there is no standard as to whether or not, like
13 one particular company has to or is mandated to
14 actually position their antenna in a certain
15 direction?

16 A That is under FCC guidelines. There is a mandate,
17 but I'm not sure what it.

18 Q. Okay.

19 MS. SINGLETARY: Beg the Court's indulgence.

20 (Pause.)

21 BY MS. SINGLETARY:

22 Q And you said that you are not testifying as an
23 expert?

24 A I am not giving my opinion in this case.

25 Q The work that you actually did in this case was

1 based on information that you were actually given
2 from the Prosecution's office and they got that
3 information from the cell phone providers in this
4 case?

5 A That is correct.

6 Q You didn't do anything outside of that?

7 A I did not.

8 MS. SINGLETARY: No further questions, Your
9 Honor.

10 MS. BODMAN: No further questions.

11 THE COURT: All right, sir, you may step down.
12 (Witness steps down.)

13 THE COURT: All right. Yes, ma'am, I will be
14 glad to hear your position.

15 MS. SINGLETARY: Thank you, Your Honor. May
16 it please the Court? Your Honor, I have the same
17 objections to this testimony that I had yesterday.
18 The witness on the witness stand testified to the
19 fact that he is not giving any opinion in this
20 case.

21 What he is in essence doing, or did, is use
22 the information that was given to him from the
23 Prosecution's office, that was given from them from
24 someone at the cell phone company.

25 Like -- Your Honor, he also testified to the

1 fact that there are so many different factors that
2 actually determine the actual range of a cell phone
3 tower. Like the time of day actually affects the
4 range. The weather actually affects the range.
5 Whether or not there is extremely high call volume
6 affects the range.

7 In order to let the actual jury to see these
8 maps, which would have what is suspected as my
9 client's cell phone location before and during and
10 after the time of this murder, would be extremely
11 prejudicial. It would be confusing the jury. And,
12 in essence, it would be misleading the jury.

13 If this officer cannot give an opinion as to
14 the actual precise location of where my client is
15 at, when the jury actually sees this demonstrative
16 evidence, they are going to base their actual
17 decision based on what they actually saw that the
18 officer displayed, which, as I said earlier, he is
19 a non-fact witness. He is just -- he is not an
20 expert, who is actually relying on someone else's
21 information in order to give an opinion. He said
22 it over and over again, he is not giving an opinion
23 in the case.

24 Based on -- beg the Court's indulgence.

25 (Pause.)

1 MS. SINGLETARY: And, Your Honor, I don't
2 think that we should actually chance this and say
3 that the jury can actually consider his testimony
4 and give whatever weight that they actually want to
5 give to this testimony.

6 In this case, we actually have it where these
7 cell phone companies have actually given a range to
8 them. Like, if that is the case, the cell phone
9 company giving them the lowest range, which would
10 be a 3-mile radius, why don't we actually picture
11 the highest range, which would be a 15-mile radius.
12 So let's give the jury a fair depiction on where
13 these two cell phones actually could have been in
14 this case.

15 I believe that once the jury actually hears
16 the testimony, when they actually see the
17 demonstrative evidence, that their ultimate
18 decision, if they convict my client, would be based
19 solely on misleading evidence, Your Honor.

20 I think it is highly prejudicial, as I said.
21 And this actual field -- the reliability of this
22 field is just not on par at this point. Like I
23 said yesterday, in the past two years, like federal
24 courts have dealt with this issue over and over
25 again. South Carolina federal court actually tried

1 to deal with this back in 2013, but because of the
2 fact that the issue was not ripe, they could not
3 give an opinion on it.

4 So I think that this is an issue that needs to
5 be addressed now, even though in past years courts
6 have allowed for this type of testimony to come in,
7 but this type of testimony is unfair to my client,
8 it is very damning to my client, and I think that
9 it violates his rights to actually have a fair
10 trial.

11 THE COURT: Thank you.

12 Yes, ma'am?

13 MS. BODMAN: Thank you, Your Honor. I think
14 that Ms. Singletary's cross-examination of Van
15 Houten actually showed the Court more the --
16 actually, even though we are not designating him as
17 an expert, but really his level of expertise in the
18 area and his knowledge of the field, his knowledge
19 of the workings of the information that cell phone
20 providers give, essentially he is taking a fact
21 that is going to be entered into evidence by the
22 custodians, the GPS coordinates, and he is going to
23 be plotting them onto a map.

24 All of the rest of the mapping, the radiuses,
25 are for attack for the weight and not the

1 admissibility. They are admissible pursuant to
2 the -- as custodian of records, they are going to
3 have the GPS coordinates.

4 All he is going to say is, I am trained to map
5 these coordinates on -- you know, put them onto a
6 map, onto a Google Map, I put a radius around them.
7 And actually one of the radiuses is -- one company
8 says one to three. And so we're actually giving
9 the larger -- you know, we went with three. We
10 didn't go down to one. So we are giving the
11 benefit in that regard. But it is for challenging,
12 you know, how all these switches work, the hits.
13 It not realtime, it is for the weight and the
14 impact to the jury, and not admissibility.

15 THE COURT: All right. I am assuming you
16 all -- of course, this is all -- as technology
17 evolves, so will our case law in this case. But at
18 this point there is not a whole lot out there
19 regarding cell phone pings.

20 We were able to find a case. It is called
21 U.S. v. Langford, 749 F.3d 1914. It is a 2014
22 case. It is probably the closest thing we can
23 find. It talked about the pings. In this case
24 this was the record custodian explaining how phone
25 towers, records from each, and pings from these

1 cell phone numbers and how they mapped cell phones,
2 tower locations for the phone calls.

3 In relation -- in that case it was a robbery
4 or something, and locating the Defendant in that
5 case. And then also in that case the cell phone
6 record custodian was not offered under 701 to give
7 opinion testimony.

8 And in that case the Court found that
9 testimony did not require expertise because they
10 were testifying to a fact based on training that
11 they had as the cell phone record custodian.

12 701 limits testimony in the form of an
13 opinion, so of course based on the testimony that
14 he has given, Officer Van Houten would not be able
15 to give any testimony regarding opinion under 701.
16 But I do find that he can testify as to how he
17 collected the information and he can testify to the
18 map. He cannot give opinion testimony. He cannot
19 give any statements as to any opinion, only factual
20 testimony as to what he did and what he collected,
21 similar to, I guess it would be analogous to any
22 other investigation, any other investigation
23 technique used by the police to collect any other
24 evidence. He could testify as to -- normally they
25 testify as to what their training is. He could

1 testify as to how he has been -- if it was any
2 other type of evidence, how he has been trained to
3 collect that evidence, and what he collected.

4 So I will allow him to testify, but not under
5 701. He cannot give expert testimony, based on the
6 testimony. Of course, he can testify as to what he
7 did and he can testify as to Google Maps. I'm sure
8 everyone on the jury is familiar with what a Google
9 Map is.

10 And I think any of the questions that
11 Ms. Singletary asks of him would go to the weight
12 of the evidence regarding -- him and also the cell
13 phone records custodian.

14 All right. Thank you.

15 Are you ready to bring them in?

16 MS. BODMAN: Yes. And we just ask that you
17 voir dire the jury regarding their knowledge of
18 Austin Murray.

19 THE COURT: All right. You can bring them in.
20 (WHEREUPON, the jury came into open
21 court at 10:12 a.m.)

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

23 THE COURT: Ladies and gentlemen of the jury,
24 I hope you had a restful evening. I know some
25 people probably stayed up late last night watching

1 the game, and I guess it's unfortunate that it did
2 not turn out the way some of the folks wanted it to
3 turn out, but I hope that you had a restful
4 evening. And it is great to see you back here this
5 morning.

6 I apologize for the delay. We were handling
7 some pretrial matters before we brought you all in
8 the courtroom so we would not have to send you all
9 back out and keep bringing you back in and sending
10 you out.

11 All right. At this time, I am going to ask
12 the clerk to swear the jurors. If you all could
13 please stand and raise your right hand.

14 MS. BODMAN: Your Honor?

15 THE COURT: Oh, I'm sorry.

16 Also, there was a witness whose name was left
17 off of the witness list on yesterday. And that --
18 so I need to make sure that no one on the jury has
19 a relationship or knows the witness. The name is
20 Austin Murray.

21 Does anyone have a business, social, or is
22 related by blood or marriage to Austin Murray? If
23 so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. All right, ladies and

1 gentlemen of the jury, at this time, if you would
2 please stand and raise your right hand.

3 (WHEREUPON, all jurors complied.)

4 THE CLERK: Do you swear or affirm that you
5 shall well and truly try and true deliverance make
6 between the State of South Carolina and the
7 Defendant at bar whom you shall have in charge, a
8 true verdict give according to the law and
9 evidence, so help you God? If so, please say, I
10 do.

11 THE JURY: I do.

12 THE CLERK: Thank you.

13 THE COURT: Thank you. Let the record
14 reflect, Madam Court Reporter, that all the jurors
15 have affirmed their oath.

16 All right, ladies and gentlemen of the jury,
17 what I would say now is intended to serve as an
18 introduction to the trial of this case. These
19 remarks are not a charge on the law in the case. I
20 will instruct you as to the law applicable to this
21 case at the end of the trial before you retire to
22 consider your verdict.

23 This is merely an explanation of the procedure
24 that we will follow in the trial of this case so
25 that you may better understand what may be

1 happening.

2 You are not to take any notes during this
3 trial. The Defendant in this trial is charged by
4 an indictment filed in the court with the crimes
5 of, as I stated to you on yesterday, there is an
6 indictment for murder, there's a second indictment
7 for carjacking with injuries, and a third
8 indictment for weapon -- possession of a weapon
9 during the commission of a violent crime, the
10 elements of which will be explained to you later.

11 The indictments in this case are simply the
12 charge for which the case is brought into court and
13 is not in any sense evidence against the Defendant.

14 The Defendant has pled not guilty to these
15 indictments. The State therefore has the burden of
16 proving each of the elements of the indictment
17 beyond a reasonable doubt. And it will be your
18 duty, ladies and gentlemen, to decide whether the
19 State has met that burden.

20 Your purpose as jurors is to find and
21 determine the facts. You are the sole judges of
22 the facts in this case. If at any time I make any
23 comment regarding the facts, you must disregard it.
24 You are to determine the facts from the testimony
25 you hear and the other evidence introduced in

1 court. It is up to you to determine the emphasis
2 which you feel may properly be drawn from the
3 evidence. It is especially important that you
4 perform your duty of determining the facts
5 diligently and conscientiously because, ordinarily,
6 there is no way to correct an erroneous
7 determination of the facts by a jury.

8 On the other hand, and with equal emphasis,
9 the same law that makes you the judges of the facts
10 in this case makes me the judge of the law. The
11 law as given by the Court is the only law you may
12 consider. You must accept and follow it even
13 though you may disagree with it. I cannot tell you
14 what the facts are and you cannot disagree with me
15 about what the law is or what the law should be.

16 Your job is to take the law as I give it to
17 you and apply it to the facts as you find them from
18 the testimony of the witnesses and any other
19 evidence that is introduced. After doing that, you
20 will render your verdict, a verdict under the
21 solemn oath that you just took as jurors.

22 Until I tell you that you may begin to
23 deliberate, you must not discuss this case with
24 anyone, including your fellow jurors, friends,
25 family members, and anyone involved in the case.

1 The attorneys and the parties in this case
2 have been advised that they are not to talk to you
3 at all. So if you see anyone involved in the case
4 and they do not say hello, they are not being rude
5 or unfriendly, they are just following the
6 instructions of the Court.

7 During your deliberations, you may only
8 discuss the case in the jury room with your fellow
9 jurors. You must decide the case based solely on
10 the evidence presented here in this courtroom.
11 That means during the trial, you must not conduct
12 any independent research about this case, the facts
13 of the case, the evidence presented in the case, or
14 the people or organizations involved in any way in
15 the case. Please do not try to find out any
16 information from any source outside the courtroom.

17 In other words, you must not look at
18 dictionaries or other reference materials, search
19 the internet, websites, or blogs, or use any other
20 electronic tools to get information about the case
21 or to help you decide the case. You may not use
22 computers, telephones, cell phones, smart phones,
23 tablets, the internet, or other tools of technology
24 with communication capabilities at any time while
25 you're in the courtroom or during your

1 deliberation.

2 During your breaks or meals or overnight, if
3 necessary, you -- during your breaks or meals or
4 overnight, you may use your cell phones and your
5 smart phones and your computers, however, you must
6 not use these devices to communicate with anyone
7 about the case until the case is over. This means
8 you must not use phone calls, e-mails, text
9 messages, instant messages, Twitter, or any blog,
10 chat room, or website, including Facebook,
11 GooglePlus, MySpace, LinkedIn, YouTube, or any
12 social media to send or receive information about
13 this case. This includes information about a
14 party, a witness, an attorney, or a court officer,
15 news accounts about the case, research on any topic
16 raised, any topics you may think would be helpful
17 in deciding the case, or any testimony presented by
18 any witness.

19 During the trial, do not read, listen to, or
20 watch any news reports about this case. This
21 includes anything that may be in the newspapers, on
22 the internet, radio, or television. You must not
23 consider anything you may have read or heard about
24 the case outside the courtroom, whether before or
25 during the trial. Information on television,

1 radio, the internet, or from other sources might be
2 wrong or incomplete. In our judicial system, it is
3 important that you are not influenced by anything
4 or anyone outside of this courtroom.

5 If you become aware of another juror's
6 violation of these instructions, please inform me
7 immediately. It is important that you keep an open
8 mind and not decide any issue in the case until all
9 the evidence has been presented, the parties have
10 made their closing arguments, and I have instructed
11 you on the law in this case. It is your solemn
12 responsibility to determine the guilt or innocence
13 of the Defendant. And your verdict must be based
14 solely on the evidence as it is presented to you in
15 this trial and on the law as I instruct you during
16 and at the close of the trial.

17 In just a moment, the Solicitor will make what
18 is called an opening statement, in which the
19 Solicitor will explain to you the issues in this
20 case or, at least, what the Solicitor thinks the
21 issues are in this case. The attorney for the
22 Defendant may also make an opening statement,
23 although she is not required to do so.

24 What the attorneys tell you during their
25 opening statements is not evidence in this case.

1 It is only their contention as to what the issues
2 are. The evidence in the case will be presented to
3 you by the testimony of the sworn witnesses from
4 the witness stand and/or by exhibits that may be
5 introduced into evidence.

6 From time to time during the trial, you may
7 hear one of the lawyers say something like, Your
8 Honor, I believe we have a question of law or a
9 matter of law to discuss with you, or, Your Honor,
10 may we approach the bench. Or sometimes I, myself,
11 might find it necessary to excuse you from the
12 courtroom for a short while so that the attorneys
13 and I can discuss issues related to the law.

14 The reason for this is because you are the
15 judges of the facts in this case, and sometimes in
16 ruling on matters of law it will require me to make
17 some comment as to the facts in the case in
18 connection with ruling as to whether or not a
19 particular law applies.

20 I am not supposed to tell you what I think the
21 facts are, so I will excuse you from the courtroom
22 while these discussions take place so that in no
23 way will you be influenced by anything that I may
24 say or do in connection with the facts.

25 In determining what the true facts are in a

1 case, you must decide whether or not the testimony
2 of the witness is believable. It will be my
3 responsibility to rule as a matter of law as to
4 whether certain testimony is admissible at all or
5 not, but once the testimony is admitted, whether or
6 not you believe it is solely for you to determine.

7 In deciding whether to believe a witness, you
8 have the right to consider the interest of any
9 witness, the bias of any witness, the prejudice of
10 any witness, the opportunity for the witness to
11 have seen the matters and things about which the
12 witness may testify, and the way the witness acts
13 on the witness stand. You have a right to consider
14 anything that is in the record that will help you
15 evaluate the testimony of the witnesses.

16 That means that it is your duty to pay close
17 attention to these witnesses, to observe the
18 witnesses, to listen to the witnesses, and to pay
19 close attention to the attorneys and the Court. Do
20 not let your thoughts wander, but give strict
21 attention to the testimony in the case so that at
22 the end of all of the testimony, after hearing the
23 arguments of counsel and the charge on the law by
24 the Court, you will then be in a position to
25 determine what the true facts are and to apply the

1 law to those facts, and thus render a verdict.

2 Madam Forelady, it is your added duty to
3 preside in the jury room and be the juror
4 spokesperson here in court. It will also be your
5 duty to write the verdict, but I will give you
6 further instructions regarding that at the end of
7 the trial.

8 In order to preserve everyone's rights, I will
9 give the parties an opportunity to object to
10 anything that I said.

11 Any objections or exceptions by the State?

12 MR. BERRY: No, Your Honor.

13 THE COURT: By the Defense?

14 MS. SINGLETARY: No, Your Honor.

15 THE COURT: All right, ladies and gentlemen of
16 the jury, I have received a note regarding a couple
17 of people needing to leave around 5:30 and 6:30. I
18 will -- and I should have told you all this
19 afternoon. I think you all were able to work that
20 out? Is that correct, Madam Forelady? Were most
21 people able to work it out?

22 THE FORELADY: I believe so, Your Honor.

23 THE COURT: All right. As you know, there is
24 quite a few witnesses that we do have in this case
25 and quite a bit of testimony, so I am going to try

1 to work a little bit later maybe today so that we
2 can get out of here, hopefully, by Friday. I know
3 that it is a holiday weekend and that people
4 probably have plans this weekend, so we are going
5 to work a little bit later and try to get some
6 extra testimony in this afternoon and maybe even
7 start earlier in the morning so that we can get all
8 the testimony in and get the case to you all for
9 you to deliberate and, hopefully, be done before
10 the end of -- by the end of the week on Friday.
11 All right?

12 All right. I am going to ask the State -- I
13 think Mr. Berry will be doing the opening statement
14 for the State.

15 MR. BERRY: Yes, Your Honor.

16 THE COURT: And is Mr. Sims doing opening
17 statement for the Defense?

18 MR. SIMS: Yes.

19 THE COURT: All right.

20 MR. BERRY: May it please the Court?

21 THE COURT: Yes.

22 (WHEREUPON, the following occurred at
23 10:25 a.m.)

24 OPENING STATEMENT

25 MR. BERRY: Michael Davis was a brother, a

1 father, and a grandfather.

2 In the early morning hours of September 12th
3 -- September 16th, 2012, while driving on North
4 Main Street, he was senselessly murdered, shot
5 three times in his side by the Defendant, Cheo
6 Green.

7 Mr. Davis was able to escape the car, call
8 9-1-1, but he passes out due to the trauma of the
9 bullets, never again to regain consciousness.

10 Mr. Davis was a mechanic. He fixed cars.
11 That's why he had the car he was driving that
12 night, a 1996 white 4-door Mazda Protege, he had
13 gotten from Renea Prater.

14 Mr. Davis also had a drug problem. He met Ms.
15 Prater at rehab. He had fixed cars for her before.
16 He was supposed to fix the transmission on this
17 car. Before he returned that car, however, he
18 tried to rent it out for some drugs.

19 So late that night, early in the morning,
20 after 2:00 a.m., he is driving off in the Farrow
21 Road area, and he sees a 17-year-old Austin Murray
22 walking along the way.

23 He hails Mr. Murray over, asked him if he has
24 drugs. Austin says no, but he can try to find him
25 some. So Austin makes a few phone calls and

1 connects with the Defendant.

2 Now, at this time, the Defendant is over off
3 of Broad River Road at the Enclave Apartments. He
4 had gone there with his buddies, Curtis Wright and
5 DaQwane Robinson. They were going to a little
6 house party at Sandy Sweat and Cierra Hodge's
7 apartment. However, the girls didn't want the
8 Defendant coming inside, so he is waiting out in
9 the parking lot when he gets the call from Austin.
10 And that's how they connect.

11 So Austin gets in Mr. Davis's car. Mr. Davis
12 is driving. Austin is in there in the front
13 passenger seat. And they go pick up the Defendant.

14 The Defendant is now on the back rear
15 passenger seat directly behind Austin
16 catty-cornered to the victim.

17 First, they drive by the house that Mr. Davis
18 wants the car dropped off at. They're done. After
19 that, they continue to drive, but it quickly
20 becomes apparent that the Defendant doesn't have
21 any drugs for sale. They argue. And Mr. Davis
22 called the deal off. Not happening. Let's just go
23 about our way. Austin asked to be dropped off at
24 home. They head that way, but the Defendant has
25 other ideas.

1 He texted Austin, he is about to do something
2 hot, and he does. He pulls out his gun and begins
3 to shoot.

4 Ladies and gentlemen, the Defendant is charged
5 with murder, carjacking, and possession of a weapon
6 during a violent crime.

7 Murder is the killing of another with malice
8 aforethought. Carjacking is a taking of a car,
9 motor vehicle, from another, whether driving or
10 just a passenger, with force and violence.
11 Possession of a weapon during a violent crime is
12 possessing a weapon during what the legislature has
13 statutorily defined as violent crimes, of which
14 murder most certainly is one.

15 Today, as he sits here before you, the
16 Defendant is innocent until proven guilty. He is
17 wrapped in a cloak of innocence. And I submit to
18 you that throughout this trial as we present
19 evidence, it comes in, each piece of evidence will
20 rip and tear away that cloak. And at the end of
21 the trial, he will be revealed before you as the
22 murderer that he is.

23 Now, evidence. We're going to have a good bit
24 of evidence in the next couple of days. It's going
25 to come in various ways. You'll see physical,

1 visual, testimonial evidence. For example, you'll
2 hear from the investigators who worked the case.
3 And their testimony is evidence. You will hear
4 from them about how they identified the victim,
5 Mr. Davis. How they found out what car he was
6 driving. How they went to the gas stations and
7 convenience stores nearby to get the surveillance
8 footage to see, Okay, here they are.

9 From that, they identified Austin. They go to
10 Austin and Austin's going to talk. You'll hear
11 from Austin. You'll hear from the person who was
12 there throughout the evening. You'll hear what he
13 has to say, what happened.

14 You'll also hear from DaQwane and Curtis, the
15 two young men who were with the Defendant before
16 the incident. You'll hear from Sandy and Cierra,
17 who wouldn't let him in. You'll also hear about
18 and get to see visuals, maps, cell phone data,
19 tracking the cell phone associated with both Austin
20 and the Defendant, see where those phones were
21 going that night throughout town.

22 And, ultimately, you'll see the gun. You will
23 get to see the murder weapon that was found inches
24 from the Defendant's feet weeks after the murder.

25 You'll hear from the SLED firearms expert who

1 took that gun, analyzed that gun, analyzed the
2 three bullets that were removed from Mr. Davis's
3 body and concluded that that gun, now inches from
4 the Defendant's feet, was, in fact, the murder
5 weapon, as well as testimony from Curtis and
6 DaQwane, who testified that was his gun.

7 Ladies and gentlemen, I'd like to direct your
8 attention to a plaque that is on the first floor of
9 this building. I come in every morning, the
10 elevators are here. Right beside those elevators
11 is a plaque that says, Justice will be ours.

12 And during the course of this trial, that will
13 be our aim, that will be our course...justice.

14 And at the trial's conclusion, my colleague,
15 Ms. Bodman, will stand up before you to do the
16 closing statements. And at that time, she will ask
17 you to return a verdict, a verdict of guilty of
18 murder, carjacking, and possession of a weapon
19 during a violent crime.

20 Let justice be your course.

21 Thank you.

22 MR. SIMS: May it please the Court?

23 THE COURT: Yes, sir.

24 (WHEREUPON, the following occurred at
25 10:33 a.m.)

1 OPENING STATEMENT

2 MR. SIMS: No. No. No. These should be the
3 words that you guys are saying right now.

4 Ladies and gentlemen of the jury: No. No.
5 No. I'm telling you guys these are the words that
6 you should be saying. These are the words that
7 should be resonating in your mind right now.

8 This is your job here this week. You have to
9 check the Prosecution. You have to put them in
10 their place. The Prosecution will undoubtedly play
11 on your emotions. And why would they do that? It
12 is from the emotions where we make our decisions.
13 It is from an emotional place where we make the
14 worst decisions. So: No. No. No. No.

15 While everyone else out in the audience is
16 listening to the allegations of the Prosecution,
17 while they are getting upset, while they are being
18 disturbed, while they are wanting results, while
19 they are wanting a conviction for this senseless
20 act, you guys should be saying: No. No. No.

21 Ladies and gentlemen of the jury, you were
22 chosen for this very purpose. Your job is
23 different from anyone else out in this audience
24 right here. Different than my job, different than
25 the Prosecution. It is more different than the

1 judge. Your job is more difficult.

2 I will say that your job is more difficult
3 because you have the job of listening to what is
4 being said. You have the job of not being
5 emotional about what is said. You have the job of
6 making the Prosecution, although they painted an
7 ugly picture and it looks very ugly, you have the
8 job to say, Don't cloudy my judgment. Don't cloudy
9 my emotions. Don't cloudy my eyes with tears.
10 Don't cloudy my eyes with anger. Don't cloudy it
11 with disgust. Don't cloudy it so that I cannot see
12 what I need to see, that one thing that I need to
13 see.

14 This is your job. You have to make the
15 Prosecution meet their burden. Okay? You have the
16 this job, you have the job of making the
17 Prosecution meet their burden of proving the
18 Defendant guilty. This burden is on the
19 Prosecution. It is not Mr. Green's job to prove
20 his innocence. The burden is on the Prosecution.
21 You must force them to establish guilt beyond a
22 reasonable doubt.

23 Beyond a reasonable doubt is the highest
24 burden of proof there is. Probably guilty? No.
25 Likely guilty? No. That is not sufficient, so:

1 No.

2 Should probably guilty be enough to convict
3 Cheo Green? No. I want you guys to put yourself
4 in the position of a Defendant, State v. whatever
5 your name is. Should probably guilty be enough to
6 convict you? Should likely guilty be enough to
7 convict you? No.

8 So please listen to the evidence that is given
9 by the witnesses. Please listen to their
10 testimony.

11 What I would ask you to do is to weigh it.
12 Just weigh it. Listen to their testimony. See
13 what motives they have, especially Austin Murray in
14 saying what he's going to say.

15 And if you have a reasonable doubt as to the
16 Defendant's guilt, then that is enough to say not
17 guilty.

18 Mr. Cheo Green is our client. I'm William
19 Sims. My co-counsel is Nicole Singletary. And
20 before I leave here, right now I'm going to show
21 you something that was taught to me, because we
22 have a hard time of saying -- we have a hard time
23 of saying and showing what reasonable doubt is.

24 So you have to take this piece of
25 paper(indicating). This is what the Prosecution is

1 laying out before you. This is reasonable doubt.
2 This is what you have at the end of this case. Not
3 guilty.

4 Thank you.

5 THE COURT: Call your first witness.

6 MS. BODMAN: Your Honor, there was a motion to
7 sequester the witnesses.

8 THE COURT: There was.

9 MS. SINGLETARY: Beg the Court's indulgence.
10 (Witnesses sequestered.)

11 (Pause.)

12 MS. BODMAN: The State calls Jackie Richburg.
13 (Witness enters the courtroom.)

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

16 (Witness complies.)

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

21 THE WITNESS: I do.

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

24 (Witness complies.)

25 THE CLERK: State your name for the record.

1 THE WITNESS: Jacquelyn Richburg.

2 JACQUELYN RICHBURG,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BODMAN:

6 Q And, Ms. Richburg, who do you work for?

7 A The City of Columbia, Columbia Richland 9-1-1
8 Communication Center.

9 Q 9-1-1 Communication Center. And in what capacity?
10 What are job duties and responsibilities?

11 A I'm the Deputy Director. And one of my
12 responsibilities is to pull the FOI, Freedom of
13 Information, calls for citizens.

14 Q The calls that are made to 9-1-1, are those kept by
15 the Communication Center?

16 A Yes, they are.

17 Q Okay. And that -- is that a regular responsibility
18 of the Communication Center is to maintain these
19 phone calls?

20 A Yes.

21 Q Okay. And are there also records that are paper
22 records that are kept, reports that are kept in
23 relation to those calls?

24 A Yes. It goes into evidence.

25 Q And is it the regular duties and responsibility of

1 the 9-1-1 Communication Center to keep those
2 records?

3 A Yes.

4 Q The closed incident reports?

5 A Yes.

6 Q Okay. And then you said responding to Freedom of
7 Information Act. So people that request copies of
8 those calls of the reports go through you?

9 A Yes.

10 Q And are they -- these records are maintained by
11 you?

12 A Yes.

13 Q I ask you -- I am going to show you what is marked
14 as State's Exhibit No. 45 and ask you if you
15 recognize that?

16 A Yes.

17 Q And what is that?

18 A This is one of the CDs that we would place the
19 recordings on, placed them on CDs.

20 Q And did you actually listen to that CD?

21 A I did.

22 Q And is that one of the calls made to the
23 Communication Center and kept by the Communication
24 Center?

25 A It is.

1 Q You listened to it yourself?

2 A Yes.

3 Q And authenticated it as such?

4 A Yes.

5 Q Okay. Is that a call made -- that was made on
6 September 16th, 2012, at approximately 3:21 a.m.?

7 A Yes.

8 Q Okay. I'm going to show you also what is marked as
9 State's Exhibit No. 51. Do you recognize that
10 report?

11 A Yes.

12 Q Is that report kept and maintained by 9-1-1
13 Communication Center?

14 A It is.

15 Q And is that the, I guess, paper report that was
16 made in connection with this call September 16th at
17 3:21 a.m.?

18 A Yes.

19 Q And the call that you listened to, just the phone
20 calls made by an individual to Communication, it
21 did not include the dispatch record?

22 A That's correct.

23 Q Because you also do keep, I guess, those radio
24 calls going back and forth about, you know, I'm now
25 going to the hospital, or, Another officer has

1 arrived, or whatever. This is strictly just the
2 person calling in to 9-1-1?

3 A Right.

4 MS. BODMAN: At this time, Your Honor, I would
5 offer into evidence State's Exhibits 45 and 51?

6 THE COURT: Any objection?

7 MS. SINGLETARY: Beg the Court's indulgence.

8 (Pause.)

9 MS. SINGLETARY: Without objection, Your
10 Honor.

11 THE COURT: All right. State's No. 45 and 51
12 will be entered without objection.

13 (WHEREUPON, State's Exhibit No. 45 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 51 was
17 marked for identification and received
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 45 was
20 played in open court.)

21 BY MS. BODMAN:

22 Q I ask you, from listening to that phone call and
23 deciphering those records, it appears that his call
24 to 9-1-1 was disconnected?

25 A Yes.

1 Q And then the operator attempted to call him back?

2 A Yes.

3 Q And I guess it went to voicemail?

4 A Yes.

5 Q Okay. And then there was a second female that
6 started to say -- I guess, report something and
7 said, Nevermind, the police are here?

8 A Yes.

9 MS. BODMAN: No further questions of the
10 witness.

11 THE COURT: Cross?

12 MR. SIMS: No questions, Your Honor.

13 THE COURT: All right. You may step down.
14 (Witness steps down.)

15 THE COURT: Any objection to this witness
16 being excused?

17 MS. SINGLETARY: None, Your Honor.

18 THE COURT: Ms. Richburg, you're free to
19 leave.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MS. BODMAN: The State calls Whitney Davis.

23 (Witness approaches.)

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

1 (Witness complies.)

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

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat in the witness stand,
8 please.

9 (Witness complies.)

10 THE CLERK: State your name for the record.

11 THE WITNESS: Whitney Davis.

12 WHITNEY DAVIS,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BODMAN:

16 Q Mr. Davis, do you have brothers and sisters?

17 A Yes, ma'am, I do.

18 Q How many?

19 A I have a lot of brothers and sisters. My mom had
20 five boys and one girl, then my father was married
21 before and had four other children.

22 Q Okay. Did you hear the 9-1-1 call?

23 A Yes, I did.

24 Q Do you recognize the voice of the person that
25 called 9-1-1 saying that they had been shot?

1 A Yes, ma'am, I do.

2 Q And whose voice was that on that 9-1-1 call?

3 A That voice was my brother, Michael Davis.

4 Q Did he also go by YaYa? His voicemail said
5 something about, You have reached YaYa.

6 A Yes, ma'am. YaYa, that was a name that -- it's
7 urban. It means that, you know, you can depend on
8 him, I got your back.

9 Q And where were you -- was he older than you or
10 younger than you?

11 A He was older than I am.

12 Q And did y'all grow up in Columbia?

13 A Yes, ma'am, we did.

14 Q And did Michael have any children of his own?

15 A Yes, ma'am, he did. He had one son.

16 Q Is he with us today?

17 A Yes, ma'am.

18 Q Okay. Did Michael have any grandchildren?

19 A Yes, ma'am, he did.

20 Q How many?

21 A He had three.

22 Q And what kind of work did Michael do?

23 A Michael was a mechanic. He also was an HVAC
24 technician. He also worked on televisions. He was
25 a welder. Listening to the 9-1-1 recording, his

1 business said, Any services, because he could fix
2 almost anything. And people would call on him to
3 fix on whatever that they needed fixing on. And he
4 was dependable because if you didn't have any
5 money, he still would do it and you can pay him
6 later.

7 Q He was good with his hands?

8 A Yes.

9 Q. Thank you very much.

10 MS. BODMAN: I don't have any further
11 questions.

12 THE COURT: Any questions from the Defense?

13 MS. SINGLETARY: None, Your Honor.

14 THE COURT: All right. Thank you. Any --
15 well, you may step down.

16 (Witness steps down.)

17 MR. BERRY: The State calls Cannon Fulmer.

18 (Witness approaches.)

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: Yes, ma'am.

2 THE CLERK: Have a seat on the witness stand,
3 please.

4 (Witness complies.)

5 THE CLERK: State your name for the record.

6 THE WITNESS: Cannon Fulmer.

7 CANNON FULMER,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BERRY:

11 Q So, Mr. Fulmer, would you state your title and
12 where you work right now?

13 A I'm an investigator at the City of Columbia Police
14 Department.

15 Q How long have you been working with the City?

16 A About five years now.

17 Q Okay. What do you investigate now?

18 A Now I'm an investigator in the Metro Region.
19 Previously, I investigated property crimes.

20 Q Were you on the force back in 2012, September 16th?

21 A Yes, sir.

22 Q What was your job back then?

23 A I was a patrol officer.

24 Q And as a patrol officer, what did you do?

25 A I'm responsible for particularly like neighborhood

1 territory, and I respond to calls in that area and
2 engage with any suspicious persons.

3 Q And were you working the night of September 16th,
4 early morning September 16th?

5 A Yes, sir, I was.

6 Q Did you get a call out that evening?

7 A Several.

8 Q What about the incident in question here?

9 A Yes, sir.

10 Q Did you respond to a shooting?

11 A Uh-huh. In this particular incident, I was driving
12 north on Main Street, and I saw a vehicle stopped
13 with its flashers on. So I pulled up next to it,
14 because I thought somebody was having vehicle
15 trouble. And there was a woman inside the vehicle,
16 she was on her cell phone. And she was making some
17 hand motions towards me, but her window was up. I
18 couldn't hear what she was saying. This all took
19 place over the course of maybe like two seconds.

20 And at that point, I got a call on the radio
21 from dispatch saying that somebody had been shot at

22 North Main Street, which was probably
23 100 yards north of where I was in the direction I
24 was facing, which is a Bi-Lo.

25 So I drove up to the Bi-Lo, I looked to the

1 right, I couldn't see anyone in that area, so I
2 turned around and went south, because about
3 100 yards south was a gas station. And sometimes
4 complainants get the addresses mixed up and they
5 give an approximate address of where they are, so I
6 figured that's the only other place that somebody
7 might be.

8 I went down to the gas station. I didn't see
9 anybody there. And I turned around again, at which
10 point, I saw the woman who was in the car -- or has
11 her lights on, outside of the car flagging me down.
12 At which point, I saw the victim laying in the
13 road.

14 Q Do you recognize this CD? You've had a chance to
15 review that CD?

16 A Yes, sir, that is the in-car video from that
17 incident.

18 Q Dash Cam video?

19 MR. BERRY: Your Honor, I'd like to offer into
20 evidence State's Exhibit 49.

21 MS. SINGLETARY: Your Honor, we would just ask
22 that he lay the proper foundation in order for that
23 to be entered into evidence.

24 THE COURT: Yes, sir, you can lay the
25 foundation.

1 BY MR. BERRY:

2 Q Did you have a chance to review this CD before
3 coming in here today?

4 A Yes, sir.

5 Q And where did the CD come from? How did you guys
6 get the CD? What's on the CD?

7 A So, the way the Dash Cams work is -- and I believe
8 this is the way they were operating at the time.
9 It has a hard drive on the camera. It records
10 whenever the blue lights are activated or the
11 officer chooses to initiate a recording. It will
12 also record, I think, like two minutes -- because
13 it has a hard drive on it, it will burn to the disk
14 about two minutes before the blue lights were
15 activated to catch what happened before that.

16 So once the disk is filled up, we take it out,
17 put it in evidence. And after a major incident
18 like this, the disk is usually -- the video is
19 pulled immediately after the incident and put into
20 evidence at the department.

21 Q And was your car operating a Dash Cam video that
22 night?

23 A Yes, sir.

24 Q Did you activate the blue lights that night?

25 A Yes, sir.

1 Q And this video that you viewed, is that an accurate
2 video from your car that night?

3 A Yes.

4 Q Anything change from this video from when it was
5 recorded?

6 A No, sir.

7 MR. BERRY: At this point, I'd like to offer
8 State's Exhibit 49 into evidence.

9 THE COURT: Any objection?

10 MS. SINGLETARY: None at this time, Your
11 Honor.

12 (WHEREUPON, State's Exhibit No. 49 was
13 marked for identification and received
14 into evidence.)

15 MR. BERRY: Permission to publish to the jury,
16 Your Honor?

17 THE COURT: Yes, sir.

18 (WHEREUPON, the State's Exhibit 49 was
19 played in open court.)

20 BY MR. BERRY:

21 Q Investigator, can I ask you to come down?

22 A (Witness complies.)

23 Q Anything you want to point out while you're
24 driving, please explain to the jury what is going
25 on here.

1 A So at this point, I'm driving north on North Main
2 Street. This is the vehicle I saw with its lights
3 on.

4 At this point, I'm pulling up trying to speak
5 to that person that is in the vehicle.

6 At this point, I've gotten a call. Here on
7 the right would be the Bi-Lo that I was talking
8 about. Here on the right, you can see the parking
9 lot of the Bi-Lo.

10 When I didn't see anybody there, I turned
11 around to check the gas station. And this is the
12 gas station I was talking about.

13 Right here, I'm getting on the radio and
14 letting other officers responding know that we're
15 in the roadway so that they'll see us.

16 Q So are you stopped at this point?

17 A Yes, sir. I was stopped because at this point, the
18 complainant, the lady who had been in that car had
19 gotten out and waved me down. And I don't know if
20 I saw the victim before I got out of the car or
21 just after I got out of the car. I think I saw him
22 before. But at that point I got out of the car and
23 I saw the victim on the ground. I saw -- I
24 observed a gunshot wound in one of his shoulders.

25 He was kind of -- as I remember, he was kind

1 of groaning, but he was unable -- he didn't say
2 anything or make any vocal, you know, words.

3 Q Let me stop you here and pause this video.

4 A Yes, sir.

5 Q Retake the stand.

6 A (Witness complies.)

7 Q So, Investigator, you stated that -- now, you got
8 the call, too. So you saw her driving by, but you
9 also get the call?

10 A Uh-huh.

11 Q What exactly was said on dispatch? What was the
12 call coming as?

13 A Yeah, the pin code they used I think was a 1071
14 hit, which means that there was a gunshot and the
15 person was hit by a bullet. As I remember it. I
16 can't remember verbatim what they told me.

17 And so my instinct was to move forward
18 because, typically, we will get calls pretty soon
19 after the incident has happened. And since I was
20 already present on scene, I thought there was a
21 reasonable chance the suspect would still be
22 present.

23 So I immediately tried to get -- and I figured
24 with such a short timeframe that I was expecting to
25 have heard something or seen something, and I guess

1 the timeframe was just a little bit longer than I
2 anticipated.

3 Q You didn't see anyone else there?

4 A No, sir.

5 Q And so you get there. And what is the first --
6 what do you do next once you're there?

7 A Once I was there, you know, I notified other the
8 officers exactly where we were so that we had a
9 better -- and by that, I mean block of Main
10 Street in the middle of the roadway. And I
11 notified -- I put over dispatch that the victim was
12 still alive so that the EMTs could make whatever
13 decisions they needed to make about how they were
14 going to get to us and what they needed to do. I'm
15 unaware of what their procedures are, so.

16 Q Okay. Did you observe any -- did the Defendant
17 speak with you? Did you talk with him? I'm sorry,
18 the victim. Did the victim speak with you?

19 A No, sir, he couldn't say anything.

20 Q And did you stay with him? What happened next?

21 A So after that, the EMTs arrived. And I remember
22 they did chest compressions on him. Shortly after
23 that, they put him into the ambulance. And I went
24 with the ambulance down to the hospital with him.

25 Q And how long did you stay at the hospital?

1 A I have in my report that he was pronounced dead at
2 4:09 a.m. And I believe I got the call at
3 3:20 a.m. So I probably left not too much later
4 than he was pronounced dead.

5 Q So a couple more follow-up things. Can you
6 describe exactly where you found the body, where
7 you saw Mr. Davis when he was there?

8 A The best of my memory is somewhere in the middle of
9 the roadway. And I think he was in between -- in
10 the center of two lanes. There's two lanes in each
11 direction on North Main in that area. And I think
12 he was in the center of the two lanes.

13 Q And how many lanes were there?

14 A I think there were a total of four lanes.

15 Q And were you in Richland County at this point?
16 Where were you?

17 A Yeah, Richland County, City of Columbia.

18 Q. No further questions. Thank you.

19 A. Thank you, sir.

20 THE COURT: Any questions from the Defense?

21 MS. SINGLETARY: Yes, Your Honor. May it
22 please the Court?

23 CROSS-EXAMINATION

24 BY MS. SINGLETARY:

25 Q Investigator Fulmer, you stated that you came

1 across the scene on that night --

2 A Yes, ma'am.

3 Q -- correct? And you also testified to the fact
4 that you actually didn't initially get a call out
5 to the scene?

6 A I arrived there before I received a call.

7 Q And then once you were on the scene, you received a
8 call?

9 A Yes, ma'am.

10 Q And then I believe you testified to the fact that
11 it was a relatively short amount of time from the
12 time that you actually arrived, so you thought that
13 there was a chance that the suspect, or possible
14 suspect, could have been still at the scene?

15 A Yes, ma'am.

16 Q But the only person that was actually there was a
17 female?

18 A Yes, ma'am.

19 Q And it is a female that actually called 9-1-1?

20 A Yes, ma'am.

21 Q And that was Shaunteah McDuffie?

22 A Yes, ma'am.

23 Q And you -- the only personal knowledge that you
24 actually have about this case is you doing your job
25 as an investigator?

- 1 A As a patrol officer.
- 2 Q And just responding to the scene?
- 3 A Yes, ma'am.
- 4 Q And then calling other law enforcement officers and
- 5 dispatch to alert them to what you physically
- 6 observed?
- 7 A Yes, ma'am.
- 8 Q And you didn't observe anyone shoot Mr. Davis?
- 9 A No, I did not.
- 10 Q You just observed Mr. Davis laying in the middle of
- 11 the road?
- 12 A With a gunshot wound, yes, ma'am.
- 13 Q With a gunshot wound, yes. And you stated that Mr.
- 14 Davis didn't tell you anything?
- 15 A No, ma'am.
- 16 Q He didn't tell you that, This person shot me?
- 17 A No, ma'am.
- 18 Q And you said EMT arrived on the scene?
- 19 A Yes, ma'am.
- 20 Q And you followed them to the hospital?
- 21 A I went to the hospital -- typically, we'll follow
- 22 right behind the ambulance, so I think that's
- 23 probably what I did on that night, too.
- 24 Q And after that night, was there any other
- 25 investigation that you did as to this?

1 A When we were at the hospital, I wrote in my report
2 that we found paperwork in his pockets or
3 something, or the hospital staff did, and that's
4 how we came across his name, because initially we
5 didn't know who he was.

6 Q But other than that, there was nothing else that
7 you did, no other type investigation that you did
8 in this case?

9 A No, ma'am, there was not.

10 MS. SINGLETARY: No further questions, Your
11 Honor.

12 THE COURT: All right. Anything else from the
13 State?

14 MR. BERRY: No, Your Honor.

15 THE COURT: You may step down, sir.

16 (Witness steps down.)

17 THE COURT: Any objection to this witness
18 being excused?

19 MS. SINGLETARY: No, Your Honor.

20 THE COURT: All right, sir, you are free to
21 leave.

22 (Witness excused.)

23 MR. BERRY: The State calls Joe Phillips.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

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

7 THE WITNESS: I do.

8 THE CLERK: Have a seat in the witness stand,
9 please.

10 (Witness complies.)

11 THE CLERK: State your name for the record.

12 THE WITNESS: Joe Phillips.

13 JOE PHILLIPS,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BERRY:

17 Q Good morning, Mr. Phillips. How are you? Tell the
18 jury what your job is.

19 A I'm a paramedic for Richland County.

20 Q Is that currently your job?

21 A No more, no, sir.

22 Q What about back in 2012?

23 A Yes, sir.

24 Q And as a paramedic, what all did you do? What all
25 did your job description entail?

1 A Just answering 9-1-1 calls, someone that's sick,
2 transport them to the hospital. As paramedics, we
3 can start IVs, give drugs, put tubes in people's
4 throats to help them breathe.

5 Q What was your training to do all this?

6 A I had to go through like eight months of EMT school
7 and then about ten months of paramedic training.

8 Q And you work by yourself, in a crew, how does that
9 work when you guys arrive places?

10 A There is usually two of us on the ambulance.

11 Q And the night/early morning of September 16th,
12 2012, were you in a crew that morning? Were you
13 working that morning?

14 A Yes. I was acting as a supervisor that day.

15 Q And did you get called to an incident where a man
16 was shot?

17 A Yes, sir.

18 Q Can you tell us about what happened when you got
19 there? What happened? What did you see?

20 A When I pulled up -- I was by myself that night. I
21 pulled up. I saw a gentleman laying in the road.
22 As I approached him, he was breathing, but then as
23 I got to him, he quit breathing.

24 Q What did you do next?

25 A We have the -- what they call a bag, mouth bag,

1 mask that we use to put over their face and squeeze
2 it to help them breathe. And then the unit got
3 there, the crew got there. And we put him on a
4 back board and put a C-collar around his neck,
5 which keeps his head still, because he got shot in
6 the chest, and that was the protocol at the time
7 for any trauma to the chest.

8 Q After he is on that back board, what happens next?

9 A That's when he went into cardiac arrest.

10 Q Okay.

11 A And we started manual CPR on him at that time. And
12 then we have a device, we call it a CPR machine,
13 which does the -- you hook it up to oxygen and it
14 does compressions for us so we can do other stuff
15 we need to do as far as starting an IV on him.

16 Q And at this point, he's in cardiac arrest; right?

17 A That's right. He had no pulse. He didn't have any
18 pulse, or anything.

19 Q Okay. And once he's in that stage, what do you --
20 what happens next? What do you do?

21 A We actually -- we get him off the scene as quick as
22 we can, get him in the back of the ambulance, start
23 heading towards Richland, the Trauma Center.

24 Q Why Richland?

25 A Because it's the Trauma Center for this area.

1 Q And I want to hand you a document marked State's
2 Exhibit 50. Do you recognize this document?

3 A Yes, sir.

4 Q Please tell the jury -- actually, what is that
5 document?

6 A It is a run report for the patient. It describes
7 what we did for the patient.

8 Q Is that your report that you filled out that night?

9 A Yes, sir.

10 Q Any changes to it since you filled it out back in
11 2012?

12 A No, sir.

13 MR. BERRY: I'd like to offer State's Exhibit
14 50 into evidence.

15 THE COURT: Any objection?

16 BY MR. BERRY:

17 Q Is this what you normally take in the course of
18 your ordinary business, a record that you normally
19 take?

20 A I'm sorry?

21 Q This document is the kind of document you would
22 normally take in the ordinary course of your
23 business?

24 A Yes, sir. We -- that is typed out on a computer
25 and that was printed off after everything we did

1 and wrote.

2 MR. BERRY: I would offer into evidence
3 State's 50.

4 THE COURT: Any objection?

5 MS. SINGLETARY: No objection, Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit No. 50 was
8 marked for identification and received
9 into evidence.)

10 BY MR. BERRY:

11 Q And once y'all took Mr. Davis to the hospital, what
12 do you do there?

13 A We take him into a room they call a trauma room.
14 It's a special room designed for any trauma
15 patients. We transfer them over to the bed, give
16 the doctor a report, tell them everything we do,
17 and then we leave.

18 Q So that's what you did that night?

19 A Yes, sir.

20 Q You left him in the trauma room?

21 A Yes, sir.

22 MR. BERRY: Beg the Court's indulgence.

23 (Pause.)

24 Q. No further questions. Please answer any questions
25 Defense counsel may have.

1 MR. SIMS: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. SIMS:

5 Q Hello, Mr. Phillips.

6 A How you doing?

7 Q Wonderful. How are you?

8 A Doing good.

9 Q You stated that you put a breathing apparatus on
10 the victim's mouth; correct?

11 A Yes.

12 Q To help him breathe?

13 A Yes, sir.

14 Q Okay. And you said when you arrived at the scene,
15 there was no -- there was breathing, but he stopped
16 as soon as you got there?

17 A Yes, sir. Soon as I walked up to him, he stopped
18 breathing.

19 Q Okay. So he didn't -- he didn't say anything to
20 you?

21 A Oh, no, sir. He was unconscious.

22 Q So he didn't state that Mr. Green shot him?

23 A Oh, no, sir. He didn't say anything.

24 Q He was unconscious?

25 A Yes, sir.

1 Q Okay. All right. And you stated that he was --
2 you kind of saw where he was shot at. You said he
3 was shot in the chest?

4 A Yes, sir.

5 Q Okay. Thank you.

6 MR. SIMS: No further questions.

7 THE COURT: Anything else from the State?

8 MR. BERRY: No.

9 THE COURT: All right, sir, you may step down.
10 (Witness steps down.)

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

13 MS. SINGLETARY: None, Your Honor.

14 (Witness excused.)

15 MR. BERRY: The State calls Renea Prater.

16 (Witness approaches.)

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

19 (Witness complies.)

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

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, please.

2 (Witness complies.)

3 THE CLERK: State your name for the record.

4 THE WITNESS: Renae Prater.

5 RENAE PRATER,

6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BERRY:

9 Q Good morning, Ms. Prater. How are you doing?

10 A Lovely.

11 Q And are you from Columbia?

12 A Not originally.

13 Q Where are you from?

14 A Pittsburgh.

15 Q And you live here now?

16 A Uh-huh.

17 Q And what all do you do here?

18 A Housekeeping.

19 Q Housekeeping?

20 A (Nods affirmatively.)

21 Q And did you know Mr. Michael Davis?

22 A Uh-huh.

23 Q How did you know Mr. Davis?

24 A We went to LRADAC together.

25 Q LRADAC together. What is LRADAC?

1 A Alcoholic and drug treatment.

2 Q After meeting him there, did you guys stay in
3 touch?

4 A Well, when we were there, he mentioned that he
5 fixed cars. And he would --

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

8 A. He would fix my car every so often.

9 Q Fix your car ever so often?

10 A Uh-huh.

11 Q And so he did that several times for you?

12 A Well, the first one.

13 Q First one?

14 A Toyota.

15 Q You said a Toyota?

16 A That's the first one I had.

17 Q Did you also have a 1996 Mazda Protege?

18 A Yeah, I had been given one of those.

19 Q You did have one of those?

20 A Uh-huh.

21 Q How did you get that?

22 A My Toyota had broke, so my brother gave me that
23 one.

24 Q Okay. And did you ask Mr. Davis to do work on that
25 one for you, too?

1 A It had broke down at Bi-Lo. And I hadn't heard
2 from him in a while, so I had to look for his
3 number. And I reached him and he came and fixed
4 it.

5 Q He fixed it for you?

6 A Uh-huh.

7 Q And remember back in 2012, in September of 2012
8 when this incident all occurred, had you given him
9 that Mazda to do work on it?

10 A Uh-huh, first to fix the transmission.

11 Q. Okay.

12 A. And he first said he had -- had the transmission
13 for me. I gave him money for that. And then he
14 was supposed to -- we met up so he can get my car,
15 that one, and fix it.

16 Q Did you ever get that car back, ma'am?

17 A Huh-uh, never seen it again. Well, I seen it
18 again, but he never fixed it.

19 Q Right. Right.

20 Thank you very much for your time this
21 morning, Ms. Prater. Please answer any questions
22 Defense counsel may have for you.

23 A. Okay.

24 MR. SIMS: May it please the Court?

25 THE COURT: Yes.

CROSS-EXAMINATION

1
2 BY MR. SIMS:

3 Q Hello.

4 A Hey.

5 Q You stated that you met Mr. Davis where at?

6 A At LRADAC.

7 Q You met him at LRADAC, a drug treatment program?

8 A Well, mine was alcohol.

9 Q Yours was alcohol?

10 A (Nods affirmatively.)

11 Q Okay. And he fixed cars?

12 A Uh-huh.

13 Q You said you never received your car back?

14 A Huh-uh.

15 Q Did you go to the police and file a breach of trust
16 against Mr. Davis for not returning your car?

17 A Well, that is what I was said to do. I didn't know
18 what to do.

19 Q Okay. And how did you meet with Mr. Davis outside
20 of the program?

21 A Like I said, he gave me his number. And he would
22 come to my house when he fixed the Toyota.

23 Q Okay.

24 A And when he fixed the white car the first time, it
25 was at Bi-Lo.

1 Q Okay. You said at Bi-Lo?

2 A Because it broke down the first time at Bi-Lo, so
3 that's how he knew I needed a transmission.

4 Q Okay. Thank you.

5 A Uh-huh.

6 THE COURT: Anything else from the State?

7 MS. SINGLETARY: Beg the Court's indulgence,
8 Your Honor.

9 (Pause.)

10 BY MR. SIMS:

11 Q Ms. Prater, on the dates surrounding this incident,
12 you went to the police station around that time, or
13 you were going to file a report around that time
14 because you had not received your car back?

15 A The day -- when I didn't hear from him, I got
16 worried, I got scared because I kept calling and
17 calling, but he didn't return any of my calls.

18 Q Okay.

19 A Then when I seen the car on the news, I really got
20 scared.

21 Q Okay.

22 A So a police officer came to my job and asked was
23 that my car, and it was mine.

24 Q. Okay. Thank you.

25 MR. SIMS: No further questions.

1 MR. BERRY: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BERRY:

4 Q And when did Mr. Davis get that car from you
5 originally?

6 A If I recall, it was that Saturday.

7 Q That morning of the incident?

8 A (Nods affirmatively.)

9 Q He got it that morning?

10 A And then I didn't hear from him.

11 Q That night?

12 A Whenever I watched the news, or whatever.

13 Q You never talked to him again?

14 A Huh-uh.

15 Q. Thank you.

16 MR. BERRY: No further questions.

17 THE COURT: You may step down, ma'am.

18 (Witness steps down.)

19 THE COURT: Any objection to her being
20 excused?

21 MS. SINGLETARY: No, Your Honor.

22 (Witness excused.)

23 THE COURT: All right. I think right now,
24 it's about 11:20, we'll go ahead and take our
25 morning break, about 15 minutes, and then we'll

1 continue with the State's case.

2 So we'll take about a 15 minute break. Do
3 not -- and I say 15, 10 or 15 minute break.

4 Do not discuss the case with each other. Do
5 not discuss the case with anyone, as I instructed
6 you on yesterday and today. We'll take about a 10
7 or 15 minute break for the morning break, and then
8 we'll take our lunch break a little bit later. So
9 if someone wants a snack, I think the bailiffs have
10 some snacks back there.

11 All right. Thank you.

12 (WHEREUPON, the jury retires to the jury
13 room at 11:22 a.m.)

14 THE COURT: Let's take about a 10 or 15 minute
15 break.

16 (WHEREUPON, a break was taken at 11:23
17 a.m.)

18 (WHEREUPON, the proceedings resumed at
19 11:46 a.m.)

20 THE COURT: Anything before I bring the jury
21 in?

22 MS. BODMAN: No, Your Honor.

23 MS. SINGLETARY: Nothing.

24 THE COURT: Bring them in.

25

1 (WHEREUPON, the jury came into open
2 court at 11:48 a.m.)

3 THE COURT: All right, ladies and gentlemen of
4 the jury, we will continue with the State's case.

5 I will ask the State to call its next witness.

6 MS. BODMAN: The State calls Tammie Moore.

7 (Witness approaches.)

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

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: Yes, ma'am.

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

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Tammie Moore.

21 Tammie Moore,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BODMAN:

25 Q And with whom are you employed?

1 A I'm employed with the City of Columbia Police
2 Department.

3 Q Okay. In what capacity? What's your title?

4 A Crime scene investigation unit.

5 Q Can you tell the jury a little bit about your
6 educational background and then, I guess, training
7 leading up to your career now as being an
8 investigator?

9 A Okay. I have a chemistry major, a math minor from
10 Columbia College. I have been in crime scene
11 investigation for -- since May of 2008. I've
12 received extensive training in fingerprinting,
13 photography, evidence collection, blood spatter, a
14 whole gamut of other training.

15 Q And prior to being a crime scene investigator --
16 was that your entry into law enforcement?

17 A No. I started -- I entered into law enforcement,
18 gosh, it's been over 25 years. I have 25 years so
19 far. I started with City of Columbia. I have
20 worked Department of Corrections. I have worked
21 with Richland County. And I returned back to the
22 City of Columbia where I've been there since 2001,
23 2002.

24 Q And so did you start out, I guess, essentially as a
25 road deputy and then just kind of worked your way

1 up?

2 A I started off as a line unit, yes.

3 Q And so you said you've been with crime scene since
4 2008?

5 A 2008.

6 Q Okay. So you said you've received training in, I
7 guess, fingerprinting, blood spatter, photography.
8 What about collection of GSR?

9 A Yeah. Evidence collection, that would be in there.

10 Q Okay. And GSR is what?

11 A Evidence collection.

12 Q What does the GSR stand for?

13 A Gunshot residue.

14 Q Okay. Were you called out to around
15 North Main Street on September 16th of 2012?

16 A Yes, I was.

17 Q Okay. Approximately, do you know what time it was?

18 A I don't. Approximately 3:45 in the morning.

19 Q Okay. And I see that you have some documents in
20 front of you. Did you make a report in connection
21 with your involvement in this case?

22 A Yes, I have a case jacket.

23 Q And did you make those reports at or near the time
24 of the events that happened?

25 A Yes.

1 Q Okay. Would it help you to be able to refresh your
2 memory as to the events to be able to refer to
3 those reports?

4 A Yes, ma'am.

5 Q Okay. So what do you remember that you did first
6 when you arrived out there at North Main Street?

7 A I called the supervisor that was on duty.

8 Q Okay. And they told you what?

9 A To find out what was going on, exactly what
10 happened on my scene, and anything else that they
11 found so I can strategize how I was going to
12 process and photograph and collect everything and
13 where everything was located.

14 Q When you arrived, was the victim, Michael Davis,
15 still on scene in the middle of the road?

16 A He was not.

17 Q Okay. And did you end up taking pictures and doing
18 some charts in connection with your involvement?

19 A Yes, I did.

20 Q I'm going to start with State's Exhibit 25 and 26.
21 And first off, I guess I'll show you 25. Do you
22 recognize those photographs?

23 A Yes. That's a picture of the block of North
24 Main.

25 Q Okay. As it was when you were on scene?

1 A As when I arrived on the scene, that's what I
2 observed.

3 Q Okay. And are these accurate photographs showing
4 what you saw?

5 A Yes.

6 Q Okay. There are eight photographs on State's
7 Exhibit 25?

8 A Yes, there are.

9 Q Okay. And showing you nine photographs on State's
10 Exhibit 26, I think. Do you recognize the
11 photographs here?

12 A Yes, I do. Those are pictures that I took of the
13 object that was in the roadway.

14 Q Okay. And do these photos accurately reflect the
15 items that you saw and the location that they were
16 and I guess the markings that you put down on them?

17 A Yes, markings I placed on them, yes.

18 MS. BODMAN: At this time, we would offer into
19 evidence State's Exhibit 25 and 26.

20 MS. SINGLETARY: Without objection, Your
21 Honor.

22 THE COURT: You said 25 and 26?

23 MS. BODMAN: 25 and 26, yes, ma'am.

24 (WHEREUPON, State's Exhibit No. 25 was
25 marked for identification and received

1 into evidence.)

2 (WHEREUPON, State's Exhibit No. 26 was
3 marked for identification and received
4 into evidence.)

5 BY MS. BODMAN:

6 Q Investigator Moore, if I can have you step down.

7 A. (Witness steps down.)

8 Q. I'll get the easel here. And I am going to have
9 you stand on this side so that your voice can
10 project not only to the jury, but to the court
11 reporter. And we'll start with 25. And we used to
12 have a pointer around here. If you can keep your
13 voice up and show us basically what we are looking
14 at.

15 A This first photo -- I'm losing my voice, bear with
16 me. This first photo, this is the block of
17 Main Street. This is the median that runs down
18 here by the Bi-Lo. If you're familiar with Main
19 and Monticello, this is where Monticello branches
20 off right here, and this is the Bi-Lo. This is the
21 median that runs down between the Piggly Wiggly and
22 the gas station that's on the corner right here.
23 If you all are familiar with that area. I forgot
24 the name of the gas station, Sunoco, or whatever.
25 And this is just a view from the southbound

1 lane of traffic from where the items were.

2 This is the same view, but it's headed
3 northbound, but it's just in the middle of the
4 roadway in the median.

5 This is the northbound lane of travel of the
6 same area.

7 So I'm trying to give you three different
8 perspectives of where these items were from three
9 different angles. And this is a little closer.

10 Q Here is a cup of water if you need it.

11 A This is a little bit closer to where the items were
12 located. And, again, it is in the middle. And
13 here is closer to -- this is the southbound --
14 southbound -- I'm sorry -- yeah, southbound view of
15 the median.

16 Q So the Bi-Lo is going to be on this side?

17 A The Bi-Lo is going to be on this side.

18 Q Okay. And over here, the Bi-Lo is in front of us
19 or the Bi-Lo is behind us?

20 A Bi-Lo is here (indicating).

21 Q. Okay.

22 A. And this is -- this is the southbound view of the
23 same median. Over here is that little gas station
24 that I was telling you about. And this is the
25 blood that was in the roadway next to the median,

1 the blood and the other items that I marked. And I
2 got a close-up picture of the blood.

3 Q So you essentially tried to give us kind of three
4 separate perspectives looking northbound, three
5 separate looking southbound?

6 A Southbound.

7 Q Okay. Now, State's Exhibit 26. What are these
8 yellow markers?

9 A These are numbers that I placed on items that I
10 find. And how many I find, I just place a number
11 by them.

12 Item Number 1, it was a beer can, but it was
13 punctured and it had condensation on it, like it
14 was kind of fresh.

15 Q You say punctured, but it was not an open -- like
16 somebody was drinking it? It was closed?

17 A It was closed, but it had like a puncture in it
18 where the beer was actually seeping out of it.

19 Number 2 is a cell phone. And Number 2 is
20 right here in the middle of the median. That's a
21 cell phone. Again, that is another picture of the
22 cell phone.

23 3 is -- 2 was a cell phone. I think 2 was a
24 cell phone. I need to doublecheck. Cell phone
25 battery. That's the battery. Number 2 is the

1 battery. 3 are the cell phones. There's two cell
2 phones. And they are here. They are here next to
3 the shirt.

4 And I marked the shirt as Number 4.

5 And Number 5 was a crumpled up receipt. And
6 it was just southbound of Item 2, 3, and 4. That
7 was in the middle of the median right here. And I
8 put Number 5 in that photo.

9 Q I'm going to show you what is marked as State's
10 Exhibit 52 and ask you do you recognize?

11 A Yes.

12 Q Okay. If we open up 52 and look at that real
13 quick, do you recognize those items?

14 A Yes.

15 Q Okay. And is that what is reflected in --

16 A Number 3 and Number 2.

17 Q Okay.

18 MS. BODMAN: I offer into evidence State's
19 Exhibit 52.

20 MS. SINGLETARY: Without any objection, Your
21 Honor.

22 THE COURT: State's No. 52 is entered into
23 evidence.

24 (WHEREUPON, State's Exhibit No. 52 was
25 marked for identification and received

1 into evidence.)

2 BY MS. BODMAN:

3 Q There is two cell phones and a cell phone battery
4 in this one?

5 A Number 3 and Number 2.

6 Q And it looks like in the photographs there is this
7 little piece of paper that says M. Davis?

8 A Yes.

9 Q Because that is how it is found? It wasn't that
10 y'all put M. Davis on these phones, that is how it
11 was found?

12 A That's how it was found.

13 Q Okay. And then the cell phone battery?

14 A And a cell phone battery.

15 Q Okay. And then here was Number 4?

16 A That is the bloody shirt.

17 Q Okay. And that was just found -- and these are all
18 just found exactly as you see them?

19 A Exactly as I found them.

20 Q Okay.

21 A I photographed them exactly how I found them.

22 Q Now, that shirt, what did you do with that after
23 you collected it?

24 A I put it in a drying chamber.

25 Q Okay. Back at CPD, I guess?

1 A Headquarters.

2 Q Okay. And then after you put it in the drying
3 chamber, what do you do with it?

4 A I package it up and turn it in to the evidence
5 room.

6 Q Okay. And did you -- back at headquarters, did you
7 take some more photographs of that shirt?

8 A Yes. I hung it up and took a photo of it.

9 Q Okay. And I'm going to show you State's Exhibit
10 28. Do you recognize that?

11 A Yes.

12 Q And what is that?

13 A A picture of the shirt from here, Item Number 4.

14 MS. BODMAN: Offer into evidence State's
15 Exhibit 28.

16 THE COURT: Any objection?

17 MS. SINGLETARY: None, Your Honor.

18 (WHEREUPON, State's Exhibit No. 28 was
19 marked for identification and received
20 into evidence.)

21 BY MS. BODMAN:

22 Q You collected that actual shirt, we have it, but, I
23 mean, obviously, there's contaminants on that
24 shirt. And it probably wouldn't smell very good.
25 So in order to document the shirt that was found,

1 you hung it up here. And can you see bullet holes
2 in that, Mr. Davis's shirt?

3 A Yes. Here (indicating), which is here
4 (indicating). EMS cut it off, so -- but I
5 definitely can see that one. I definitely can see
6 that one.

7 Q And then State's Exhibit 5, that little crumpled up
8 piece of paper?

9 A That was a receipt.

10 Q I show you what is marked as State's Exhibit Number
11 39 and ask if you recognize that?

12 A Yes.

13 Q And what is that?

14 A That's a receipt.

15 THE COURT REPORTER: I'm sorry, I can't hear
16 you.

17 A That's a receipt.

18 Q And so what did you do with that receipt after
19 taking a picture of it there at the scene?

20 A I packaged it in the envelope that you have and I
21 turned it in to the evidence room.

22 Q And, I mean, what is the purpose of, you know,
23 collecting this and documenting this?

24 A Usually, a receipt would give us -- sometimes it
25 would give us a timeframe where the victim may have

1 been prior to the incident.

2 Q You are just trying to figuring out anything you
3 can --

4 A Anything that gives us a timeframe of where he may
5 have been.

6 MS. BODMAN: Offer into evidence State's
7 Exhibit 39.

8 MS. SINGLETARY: Without objection.

9 (WHEREUPON, State's Exhibit No. 39 was
10 marked for identification and received
11 into evidence.)

12 BY MS. BODMAN:

13 Q After, I guess, documenting all this, what do you
14 do next?

15 A After documenting whatever I can process, I try to
16 process it. And after that, I package it and I
17 turn it in to evidence.

18 Q Did you make any other diagrams or charts in
19 connection with this?

20 A Yes, I did.

21 Q I show you what is marked as State's Exhibit 27 and
22 ask if you recognize that?

23 A Yes.

24 Q And what is that?

25 A That is the photos of the scene during the daylight

1 hours where I had marked the items that I collected
2 and the measurements that I took.

3 Q So did you go back to the scene and take these
4 photographs or are they Google type?

5 A That's Google.

6 Q. Okay.

7 A. That's a Google Map.

8 Q And then you measured, I guess, the distance
9 between?

10 A I measured the -- I measured the tire tracks and I
11 measured from the blood spot where he was, where
12 the blood was left to different points to try and
13 relate back to that spot where he was.

14 Q You created all of these?

15 A Yes, I did.

16 Q And did all the measurements?

17 A Yes, I did.

18 MS. BODMAN: Offer in evidence State's Exhibit
19 27.

20 MS. SINGLETARY: Without objection.

21 (WHEREUPON, State's Exhibit No. 27 was
22 marked for identification and received
23 into evidence.)

24 BY MS. BODMAN:

25 Q So, just briefly, show us what we're looking at

1 here then.

2 A Again, this is the block of North Main going
3 northbound. Again, this is the Bi-Lo over here.
4 This is the park. Here, this represents tire skid
5 marks. And it appears to be coming off of
6 Monticello. This is Monticello, and it curves
7 right into North Main going southbound. And it
8 looked as if they came off of -- coming out of that
9 curve and swerved over here into this lane of
10 travel.

11 And so what I did, I measured as much as I
12 could find. One of the -- if the car is coming
13 southbound, this would be the tires on the driver's
14 side, this would be the tires on the passenger
15 side. And the one on the driver's side measured
16 approximately 72 feet 3 inches. The one on the
17 passenger side measured approximately 78 feet 8
18 inches. And the distance between the two was
19 5 feet 2 inches.

20 And, again, I have marked here approximately
21 the area where the items that I showed you, 1, 2,
22 3, 4, and 5 were located. 3, 4, 2, 5 and 1 is down
23 here. And this is an aerial view from overhead.
24 It's a bird's-eye view of the same area.

25 Again, this is Monticello Road as you're

1 coming onto North Main southbound, and this is
2 North Main going northbound with the same
3 measurements on it. I tried to give you an aerial
4 view if you're looking down on it, rather than a
5 directional view.

6 (Witness returns to witness stand.)

7 BY MS. BODMAN:

8 Q So you said you tried to process some of these
9 items. Let's talk about that a little bit.

10 I'm going to show you State's Exhibit 44 and
11 ask you if you recognize that?

12 A Yes, I do.

13 Q Okay. And so what, if anything, did you do with
14 the cell phones in terms of trying to process that
15 for evidence?

16 A I swabbed the cell phones for DNA.

17 Q And is that what this is?

18 A Yes.

19 Q And the swabs themselves, are they just kind of
20 like Q-tip-type swabs?

21 A Yes, they're like Q-tips.

22 Q And then you packaged them in this?

23 A I packaged them, I sealed it, and I turned it in to
24 the evidence room.

25 Q Okay. And then later did you take that to SLED for

1 --

2 A Yes.

3 Q -- processing?

4 A Yes, for analysis.

5 Q The beer can, did you try to do anything with that?

6 A The beer can had condensation on it. I think after
7 it dried, I tried to process it for latent prints.

8 Q By condensation, you're saying that it was wet?

9 A It was wet.

10 Q Okay. And in your experience, is that going to be
11 tougher to get prints off of something that is wet?

12 A No, you can't get prints off.

13 Q But you tried anyway?

14 A Yes.

15 Q Did you go to Mr. Davis's autopsy?

16 A Yes, I did.

17 Q Okay. And what things did you do in connection
18 with the autopsy?

19 A I did nail scrapings just in case that he may have
20 gotten into a physical altercation with whoever
21 assaulted him and may have gotten their skin cells
22 underneath his fingernails. I did nail scrapings.
23 I did a gunshot residue test, which is the GSR, on
24 him to see if he may have gotten in contact with
25 the gunpowder. And I collected the three

1 projectiles that were in his body.

2 Q I'm going to show you what's marked as State's
3 Exhibit 40. Do you recognize that?

4 A The nail scrapings.

5 Q Okay. And you collected those yourself?

6 A I collected those myself. I did those myself at
7 the autopsy.

8 Q Okay. And then did you package them yourself?

9 A I packaged them myself.

10 Q And I want to show you Exhibit 38, and ask you if
11 you recognize that?

12 A This is the gunpowder residue kit, the GSR kit that
13 I did at the autopsy.

14 Q Okay. And State's Exhibit 37, do you recognize
15 that?

16 A This is the packaging of the three projectiles that
17 came out of his body, that the doctors removed, and
18 I packaged them, also.

19 Q Okay. And in packaging those, describe your
20 packaging process. Basically, what are you doing?

21 A With the projectiles, each one is packaged in a
22 little plastic container individually and they are
23 sealed. They are sealed with integrity tape. And
24 we just package them all in there and then I seal
25 the package itself, so the items are sealed and the

1 package is sealed. And then that's how SLED
2 accepts it.

3 With the GSR, it's a kit that we -- it's a
4 package that it comes in too. I seal it, put the
5 integrity seal on it, and then put it in this and
6 seal it also.

7 The nail scrapings, the nail scrapings are in
8 individual packets, and I put them in and I seal
9 the package and the envelope so everything is
10 sealed. And I put my name on them.

11 Q Okay. And then where did you submit those items?

12 A To SLED for analysis.

13 Q Well, I guess, before that, after the autopsy,
14 where do you take them?

15 A Oh, I submit them to the evidence room. Everything
16 that I collected has to be documented through our
17 department.

18 Q At Columbia Police Department evidence room?

19 A Evidence room.

20 Q Okay. And then you said that you subsequently took
21 those to SLED?

22 A Yes, I did.

23 Q I'm going to show you what has been marked as
24 State's Exhibit -- I guess starting with 54, just
25 for identification purposes, do you recognize that?

1 A Yes. This is my submission form for SLED.

2 Q Okay. And so what items then did you take to SLED
3 on 9/17/2012?

4 A One, two, three fired bullets; a GSR kit;
5 fingernail scrapings; swabs from two cell phones.
6 That was submitted on that date.

7 Q And then, apparently, I guess -- and you said the
8 fired bullets, are those the projectiles that we
9 just talked about that you got at the autopsy?

10 A Yes.

11 Q Okay. And so subsequently, I guess, those were
12 taken back to the CPD property room?

13 A Yes.

14 Q And did you resubmit those to SLED at some point?

15 A I resubmitted those.

16 Q And those three projectiles, when were they
17 resubmitted to SLED?

18 A 3/28/13.

19 THE COURT REPORTER: I'm sorry, I can't hear
20 you.

21 A. 3/28/13.

22 Q And that is State's Exhibit 37 that we're talking
23 about?

24 A Yes, they are.

25 Q The projectiles?

1 A Yes, they are.

2 MS. BODMAN: Your Honor, at this time, I would
3 offer into evidence 37, 38, 40, and 44.

4 THE COURT: Any objection?

5 MS. SINGLETARY: No, Your Honor.

6 THE COURT: They are entered without
7 objection.

8 (WHEREUPON, State's Exhibit No. 37 was
9 marked for identification and received
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 38 was
12 marked for identification and received
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 40 was
15 marked for identification and received
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 44 was
18 marked for identification and received
19 into evidence.)

20 BY MS. BODMAN:

21 Q You said you took the victim, Mr. Davis's shirt
22 into the drying chamber. What is that?

23 A It's a -- it almost looked like a big refrigerator,
24 but the only thing it does, it air dries whatever
25 items you put in there without it being

1 contaminated from something else. That's what we
2 do to eliminate contamination. It just dries it
3 away from anything else that needs to be dried.

4 MS. BODMAN: No further questions at this
5 time.

6 THE COURT: Yes, ma'am?

7 MS. SINGLETARY: Thank you, Your Honor. May
8 it please the Court?

9 CROSS-EXAMINATION

10 BY MS. SINGLETARY:

11 Q Good morning.

12 A Good morning.

13 Q Now, your job as a crime scene -- responding to a
14 crime scene is to basically take photographs?
15 That's one part of it?

16 A That's one.)

17 Q And you collect evidence?

18 A Yes.

19 Q And in this case, you just testified on direct
20 examination that you took photographs when you
21 arrived on the scene that night?

22 A Yes, I did.

23 Q And you also collected evidence?

24 A Yes, I did.

25 Q And we just saw all of the -- well, a good bit of

1 the photos that you took on that night. And you
2 explained to the jury how you actually came to
3 discover those items?

4 A Yes.

5 Q And how you came to photographs those items?

6 A Yes.

7 Q And that you actually photographed those items in
8 the same position that they were in when you
9 arrived on the scene?

10 A Yes.

11 Q That you did not manipulate them?

12 A No.

13 Q That you just took the photos?

14 A Yes.

15 Q And also you testified to the jury that you
16 collected that evidence that was there on the scene
17 that night?

18 A Yes.

19 Q And some of that evidence that you collected on the
20 scene, you did some DNA swabs on it; correct?

21 A Yes.

22 Q And you stated that you actually swabbed the two
23 cell phones?

24 A Yes.

25 Q And you turned the swab kit over to SLED?

1 A Yes.

2 Q First, you sent it to the property room at the
3 Columbia Police Department, and then at some point
4 you took it over to SLED?

5 A Yes, ma'am.

6 Q And you actually talked about discovering a receipt
7 on that night?

8 A Yes.

9 Q And you collected that receipt?

10 A Yes.

11 Q You put it into evidence?

12 A Yes.

13 Q Now, did you try to retrieve any latent prints from
14 that receipt?

15 A No, ma'am.

16 Q And on direct examination, you testified in
17 reference to the fact that sometimes when you find
18 something like a receipt, it is kind of useful
19 because it may tell you around about where the
20 victim or a person may have been close to the time
21 of the incident?

22 A Yes.

23 Q Now, were you able to -- or according to your
24 understanding, was anyone able to specifically
25 pinpoint that receipt belonging to Mr. Davis?

1 A Only thing I do is collect it. I can't tell you
2 that.

3 Q So your job is just to collect the evidence?

4 A Just to collect it.

5 Q You can't tell me anything else about that receipt
6 and who it belonged to?

7 A No, ma'am.

8 Q And you also talked about finding a beer can?

9 A Yes, ma'am.

10 Q And you said that when you arrived on the scene,
11 there was some beer that was leaking out of the
12 can?

13 A Yes, ma'am.

14 Q And you said it was hard for you to try to get some
15 latent prints from off of that because of the fact
16 that it was wet?

17 A At the time it was wet.

18 Q Okay. And after the can dried out, did you try to
19 process it for latent prints then?

20 A I think I did, but I can't remember at this moment.

21 Q But if you would have found someone's prints on
22 that beer can, you would have actually made a
23 report?

24 A I would have submitted the prints in for analysis,
25 yes, ma'am.

1 Q Now, let me ask you this. Were there any other --
2 was there any other evidence that you processed for
3 latent prints as it relates to this incident?

4 A Battery, cell phones. Not that I recall.

5 Q Do you remember receiving some component of the
6 white car that was associated with the victim,
7 Mr. Davis, on that night?

8 A A white car on that night? On the night of the
9 incident?

10 Q Well, not processing it on the night of that
11 incident, but at some point, did you retrieve any
12 evidence from out of the car that it was said to
13 have been driven by Mr. Davis?

14 A On that night?

15 Q Not on that night. At some point later, did you
16 retrieve any evidence out of the car that Mr. Davis
17 was reported to be in?

18 A This was on 11/01/2012.

19 Q And what did you receive that was taken out of the
20 white Protege?

21 A On 11/01/2012, I received from Investigator Gilliam
22 a rearview mirror. Now, where -- I don't have
23 where he got the rearview mirror, but I processed
24 it for latent prints.

25 Q And when you actually processed that rearview

1 mirror that you received from Investigator Gilliam,
2 did you find any latent prints?

3 A It was found on the upper left and the lower right
4 corners.

5 Q And what did you do once you actually processed
6 those latent prints? What was your next step?

7 A I entered them into the AFIS, which is Automated
8 Fingerprint Identification System.

9 Q Now, let's tell the jury a little bit about AFIS.
10 Like, what's the whole purpose of this AFIS system?

11 A AFIS is short for Automated Fingerprint
12 Identification System. It is a known collection of
13 fingerprints. Anybody and everybody that has ever
14 been fingerprinted is in this system, but the
15 system is split between criminals and
16 non-criminals. And when we put in for a search, we
17 can only search the criminal side. So if you
18 haven't been arrested for anything, your prints
19 won't go over onto that side, so we can't find you
20 on that side. But it's just a known database of
21 fingerprints.

22 Q And when you actually ran these fingerprints that
23 you uncovered from this rear -- the rearview
24 mirror, did you get any matches out of AFIS?

25 A I did not.

1 Q And can you explain to the jury -- there were two
2 types of fingerprints that you actually found.
3 There was Latent 1.1, which you indicate was a palm
4 print, and then there was Latent 1.2, which was a
5 palm print?

6 A Uh-huh.

7 Q As it relates to Latent 1.1, you stated that there
8 was no match that was found in AFIS?

9 A No match in the system.

10 Q Now, what about Latent 1.2? Was it sufficient
11 ridge detail in order for you to be able to compare
12 it to anyone?

13 A Latent 1.2 had insufficient ridge detail, which
14 means there weren't enough ridge details. We look
15 for minutia. In minutia, we have bifurcations, we
16 have end ridges that we plot when we're trying to
17 map out a fingerprint, and it has to match exactly.
18 So if there's not enough minutia to give us a
19 positive ID, we label it as insufficient.

20 And 1.2 I found was insufficient minutia,
21 which actually I have zero minutia. There was no
22 minutia. It was just ridges, but no minutia.

23 And the 1.1, I had 14 minutia, but I didn't
24 get a match on that.

25 Q And you said that you also swabbed the two cell

1 phones that you retrieved on that night?

2 A Yes, I did.

3 Q Now, did -- after you swabbed it, did you actually
4 test it to see if there was --

5 A We don't do that.

6 Q You don't do that?

7 A No, ma'am. Those go to SLED. They do all our DNA
8 testing.

9 Q I wasn't asking about DNA testing, I was talking
10 about fingerprint testing. Did you do any
11 fingerprint testing?

12 A Oh, no, no. Oh, for the cell phones?

13 Q Yes, ma'am.

14 A No, I swabbed the cell phones.

15 Q Were you able to find any fingerprints on the cell
16 phones?

17 A No, I swabbed the cell phones. I swabbed them
18 versus the fingerprints.

19 Q Okay. So on the cell phones you didn't even try to
20 retrieve any fingerprints from off of them?

21 A I swabbed them. In my years of doing this, I have
22 found that if -- when you try to process a cell
23 phone for fingerprints, you don't get a good result
24 because people handle phones and their fingerprints
25 are on top of each other and the cell phones are

1 really small, so I would have a greater probability
2 of getting DNA than I would fingerprints.

3 So with the cell phones, I opted to do the DNA
4 instead of the fingerprints because the phone was
5 in the roadway. They were kind of in a rough
6 position, not really smooth, so I opted for the DNA
7 versus the fingerprints. Once I do the swab for
8 the DNA, whatever fingerprints, whatever minutia or
9 ridge detail was on there is gone.

10 Q So once you swab the cell phones for the DNA, then
11 if there were any fingerprints on it that would
12 have wiped all the fingerprints away from off the
13 cell phone?

14 A Yes.

15 Q And you also stated that you actually performed a
16 gunshot residue test on the hands of Mr. Davis; is
17 that correct?

18 A Yes, it is.

19 Q And you didn't actually do anything further with
20 that GSR kit other than turn it in?

21 A To SLED. SLED does all the final analysis outside
22 of latent prints.

23 Q And the actual T-shirt that you retrieved on that
24 night, do you know whether or not there has been
25 any analysis that has been done on that T-shirt to

1 retrieve any DNA? Or did you turn it in to anyone
2 and make a request for there to be any DNA
3 retrieved from off of that T-shirt?

4 A I submitted it into evidence, but as far as I know
5 of, it was not submitted to -- as far as I know of,
6 it wasn't submitted to SLED for any type of
7 analysis.

8 Q So would it be a correct assessment to say that the
9 T-shirt has been in the property of the Columbia
10 Police Department since 2012 in their evidence
11 room?

12 A As far as I know of? I know I turned it in.
13 That's about all I can tell you.

14 Q So you just know you turned it in, that's all?

15 A I just know I turned it in.

16 MS. SINGLETARY: Beg the Court's indulgence,
17 Your Honor.

18 (Pause.)

19 MS. SINGLETARY: Your Honor, I have no further
20 questions.

21 THE COURT: Anything else from the State?

22 MS. BODMAN: No, ma'am.

23 THE COURT: All right, ma'am, you may step
24 down.

25 (Witness steps down.)

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

3 MS. SINGLETARY: No, Your Honor.

4 THE COURT: All right, ma'am, you are free too
5 leave.

6 (Witness excused.)

7 MS. BODMAN: The State calls Carey Shealy.

8 (Witness approaches.)

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

11 (Witness complies.)

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

16 THE WITNESS: I do.

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

19 (Witness complies.)

20 THE CLERK: State your name for the record.
21 State your name, please.

22 THE WITNESS: Carey Shealy.

23 CAREY SHEALY,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BODMAN:

2 Q Mr. Shealy, where do you work?

3 A Statewide Security Systems.

4 Q Okay. Can you tell us a little bit about Statewide
5 Security Systems and what you do?

6 A Well, mainly, we do alarm systems. We do
7 surveillance cameras all over the state, a lot of
8 them all over the city.

9 Q And so tell us about your surveillance cameras. I
10 mean, where all do you have them in Columbia?

11 A Well, I don't have an exact list in front of me
12 with me, but it is quite a few, and they are spread
13 out everywhere.

14 Q Five Points?

15 A Uh-huh.

16 Q Up North Main?

17 A Uh-huh.

18 Q And I guess -- how is it that your company goes and
19 places these security cameras at different
20 locations?

21 A Well, the City Police determine where we -- whoever
22 we're under a contract with, where they want them.
23 And whenever there's an event or some situation
24 that calls for it, we go out and search the video
25 and give it to the investigator.

1 Q Okay. And so do you work constantly with the
2 Columbia Police Department in their requests to --

3 A Yes.

4 Q -- pull video?

5 A Yes.

6 Q I am going to show you what has been marked as
7 State's Exhibits 55, 56, 8, 9 and 10, and ask you
8 first do you recognize these?

9 A Yes.

10 Q Okay. Prior to coming into the courtroom today,
11 did you look at each of those exhibits?

12 A Yes.

13 Q And are each of those videos that are from your
14 maintained surveillance cameras?

15 A Yes.

16 Q Okay. Talk to us a little bit about how you do
17 maintain the cameras?

18 A How we maintain them?

19 Q Right.

20 A Well, we go out and we check them. We usually go
21 out and we're just looking at them for situations,
22 so pretty much, you know, just see them working
23 when we go out and look at them.

24 Q I guess, do you have some sort of main headquarters
25 where you can see if the cameras are working?

1 A Most of the cameras -- or some of them are not live
2 monitored, they are just recording locally. Some
3 of them are connected to the internet, but we're
4 not sitting there looking at every little camera.

5 Q Okay. So someone would need to call and say, Hey,
6 can you pull the video footage from "X" location?

7 A Yes.

8 Q Or, Do you have a camera at this corner of Main and
9 whatever?

10 A That's right.

11 Q Okay. And so in looking at all of those, those are
12 videos from your maintaining surveillance cameras?

13 A Uh-huh.

14 Q And did all of those that you looked at appear to
15 be accurate in terms of they didn't shut off in the
16 middle, they were continuous recordings --

17 A Looks like it.

18 Q -- from the times that were requested from the
19 beginning to end?

20 A Uh-huh.

21 Q And that the dates and times were properly
22 recorded?

23 A Yes, ma'am.

24 Q Okay.

25 MS. BODMAN: Offer into evidence 8, 9, 10, 55,

1 and 56.

2 THE COURT: Any objection?

3 MS. SINGLETARY: Beg the Court's indulgence,
4 Your Honor.

5 (Pause.)

6 MS. SINGLETARY: Without objection, Your
7 Honor.

8 THE COURT: All right. They will be entered
9 without objection.

10 (WHEREUPON, State's Exhibit No. 8 was
11 marked for identification and received
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 9 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 10 was
17 marked for identification and received
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 55 was
20 marked for identification and received
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 56 was
23 marked for identification and received
24 into evidence.)

25 BY MS. BODMAN:

1 Q And I guess -- are these your initials at the
2 bottom of each of these exhibits?

3 A Yes.

4 Q Okay. And so do the labels that are on the covers,
5 are those accurate as to what is --

6 A Yes.

7 Q -- on these disks?

8 A Yes, ma'am.

9 MS. BODMAN: I have no further questions.

10 THE COURT: Yes, ma'am?

11 MS. SINGLETARY: Your Honor, I have no
12 questions for this witness.

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

14 (Witness steps down.)

15 THE COURT: Any objection to this witness
16 being excused?

17 MS. SINGLETARY: No, Your Honor.

18 THE COURT: All right, sir, you are free to
19 leave.

20 (Witness excused.)

21 MS. BODMAN: The State calls Chris Pinkney.

22 (Witness approaches.)

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

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm the
2 testimony you are about to give in this case will
3 be the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Have a seat in the
7 witness stand, please.

8 (Witness complies.)

9 THE CLERK: State your name for the record.

10 THE WITNESS: Christopher Pinkney.

11 CHRISTOPHER PINKNEY,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. BODMAN:

15 Q And where are you currently employed?

16 A Charlotte-Mecklenburg Police Department.

17 Q Did you used to work for the Richland County
18 Sheriff's Department?

19 A Yes, ma'am.

20 Q And did you work there back September 16th of 2012?

21 A Yes, ma'am.

22 Q Did you have occasion on that day, September 16th,
23 2012, in the early morning hours go to make a
24 report about basically an abandoned vehicle?

25 A Yes, ma'am.

1 Q Did you make a report in connection with that?

2 A Yes, ma'am.

3 Q Do you have a copy of that with you?

4 A Yes, ma'am.

5 Q Okay. I know it was a long time ago, so if you
6 need to refresh your memory. Would it help you to
7 be able to refer to that report?

8 A Yes, ma'am.

9 Q Okay. So what location was it that you reported to
10 or responded to with regard to that vehicle?

11 A Windmill Orchard Road in Richland County.

12 Q And what part of the city is that?

13 A Northeast Columbia.

14 Q And what type of vehicle was that that you found
15 upon arriving to Windmill Orchard Road?

16 A It was a white in color Mazda Protege.

17 Q And did you document the tag number?

18 A Yes, ma'am. It was bearing South Carolina

19 Q And what time of the morning was it that you went
20 to Windmill Orchard Road?

21 A It was approximately 5:00 -- between 5:20 and 5:30
22 in the morning?

23 Q A.M.?

24 A Yes, ma'am.

25 Q And did you touch that vehicle?

1 A Yes, ma'am, I touched the hood.

2 Q And what did you feel when you touched the hood of
3 that car?

4 A The hood was warm to the touch.

5 Q Was there anything else that you noticed about the
6 vehicle?

7 A It had a busted out window. I believe it was on
8 the front passenger side.

9 Q So what did you do? There is this car there, it is
10 abandoned, I guess. A neighbor or somebody must
11 have reported it abandoned?

12 A I can't recall exactly if I was just patrolling or
13 if it was actually a call for service that brought
14 me out there. But, basically, I just ran the tag.
15 It didn't come back to that vehicle. I ran the
16 VIN, and it came back to the vehicle. At that
17 point in time, I just did it as an abandoned
18 vehicle and had the vehicle towed.

19 Q And what vehicle tow service company did you use?

20 A It was towed by Lonnie Roberts.

21 Q Did you do anything else in connection with that?

22 A No, ma'am.

23 Q. Okay. I have no further questions. Answer any
24 that she may have.

25 MS. SINGLETARY: Thank you, Your Honor. If it

1 pleases the Court? Just briefly.

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MS. SINGLETARY:

5 Q Officer Pinkney, your role in this case basically
6 is that you actually uncovered an abandoned
7 vehicle?

8 A Yes, ma'am.

9 Q And you stated that when you actually got on the
10 scene, you tried to determine who was the owner of
11 this vehicle; correct?

12 A By running the tag, yes, ma'am.

13 Q And when you ran the tag that was on the vehicle,
14 that tag didn't come back to that vehicle?

15 A Correct. It came back to a 2002 Chevy Tahoe
16 registered to a Jacquelyn Jenkins of Jones
17 Street in Columbia.

18 Q And so the next step that you did, once the actual
19 tag didn't come back to the vehicle that you
20 physically saw before you, you ran the VIN number?

21 A Yes, ma'am.

22 Q And when you ran the VIN number, who did that
23 vehicle come to belonging to?

24 A It was registered to a Norman Ellis of
25 Fairlinks Road in Smoaks, South Carolina.

1 Q And that is the extent of your knowledge as it
2 relates to this case?

3 A Yes, ma'am.

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

6 MS. BODMAN: Nothing.

7 THE COURT: All right, sir, you may step down.
8 (Witness steps down.)

9 THE COURT: Any objection to this witness
10 being excused?

11 MS. SINGLETARY: No, Your Honor.

12 THE COURT: You are free to leave, sir.

13 THE WITNESS: Thank you, ma'am.
14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MR. BERRY: The State calls Susan Johnson.
17 (Witness approaches.)

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

1 THE CLERK: Have a seat in the witness stand,
2 please.

3 (Witness complies.)

4 THE CLERK: State your name for the record.

5 THE WITNESS: Susan Johnson.

6 SUSAN JOHNSON,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BERRY:

10 Q How are you today?

11 A Good.

12 Q Good. Where are you from, Ms. Johnson.

13 A I'm from T-Mobile in New York.

14 Q And what is your job with T-Mobile?

15 A I'm the manager for the Law Enforcement Relations
16 Group.

17 Q So how long have you been doing that?

18 A I have been with T-Mobile 19 years.

19 Q Nineteen years. And what all do you do in that
20 capacity?

21 A My team handles subpoenas from various law
22 enforcement agencies across the United States, and
23 then we also testify in court as the custodian of
24 those records.

25 Q And, ballpark, how many times have you testified?

1 A Over 700.

2 Q And did your company receive a search warrant
3 subpoena for a cell phone -0231 back in
4 September -- or back in 2012?

5 A Yes, we did.

6 Q What all information was requested?

7 A Subscriber information and call detail records, as
8 well as cell phone information.

9 Q And so does your company keep that, those records?
10 How do they maintain all of that information?

11 A Yes, we do keep those records, and everything is
12 maintained electronically.

13 Q Ordinary course of business, y'all maintain all of
14 that data?

15 A Correct.

16 Q And do you recognize this disk right here?

17 A Yes, I do.

18 Q How do you recognize that disk?

19 A My initials are on this disk.

20 Q Why did you initialize it?

21 A Because I was able to access the information on it
22 this morning.

23 Q And what information is on this disk?

24 A The subscriber information, call detail records,
25 and cell phone information.

1 Q Is that everything that your company submitted in
2 this case?

3 A Yes, it is.

4 MR. BERRY: The State would like to offer
5 State's Exhibit 48 in evidence.

6 MS. SINGLETARY: Without objection, Your
7 Honor.

8 THE COURT: All right. It is entered without
9 objection.

10 (WHEREUPON, State's Exhibit No. 48 was
11 marked for identification and received
12 into evidence.)

13 BY MR. BERRY:

14 Q In addition to this disk, did you also look at
15 other documents that we prepared?

16 A Yes, I did.

17 Q I'll bring those to you. Do you recognize -- one
18 at a time, how about that. Do you recognize this?

19 A Yes, sir, I do.

20 Q And is that your initials right there?

21 A Yes, it is.

22 Q What is the title of that?

23 A Both phone numbers, .XLXS.

24 Q And where did all this information come from?

25 A My company.

1 Q So is this the same information that was on that
2 disk?

3 A Yes.

4 MS. SINGLETARY: Without objection, Your
5 Honor.

6 MR. BERRY: I offer State's premarked Exhibit
7 14 into evidence.

8 (WHEREUPON, State's Exhibit No. 14 was
9 marked for identification and received
10 into evidence.)

11 BY MR. BERRY:

12 Q If you may step down for a minute, just explain --

13 MR. BERRY: Permission to publish to the jury,
14 Your Honor?

15 Q Briefly walk through a couple of -- I know it's
16 tiny, but we'll see it later. Just have you maybe
17 come around and tell us what that first column is.
18 Just kind of explain these columns so we know what
19 we're working with here.

20 A Sure. The first column is labeled MSISDN. This is
21 the actual cell number that was subpoenaed, which
22 we refer to as the target phone number. The next
23 column is cut off a little bit, but it should read,
24 Direction. And then MTC stands for Mobile
25 Terminating Call, which is an incoming call. And

1 then MOC is Mobile Outgoing Calls; which means it
2 is an outgoing phone call. TC, seizure date. This
3 is the date and time that the call is made or
4 received.

5 The next column is labeled First Cell ID.
6 This is the cell ID number that we assigned -- our
7 engineer team assigns the cell tower.

8 Then the next couple of columns, you've got
9 the first tower latitude and the first tower
10 longitude. This is the latitude and longitude to
11 where the individual was when they made or received
12 the phone call.

13 MS. SINGLETARY: Objection, Your Honor.

14 THE COURT: Hold on one second.

15 Any objection?

16 MS. SINGLETARY: May we approach, Your Honor?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held
19 in the presence of the jury but outside
20 the hearing of the jury.)

21 THE COURT: The objection is sustained.

22 Please rephrase.

23 MS. SINGLETARY: Thank you, Your Honor.

24 BY MR. BERRY:

25 Q To clarify, what you're referring to is the cell

1 tower; correct?

2 A Correct.

3 Q And what we're saying here -- what you're saying,
4 pardon me -- is that this phone number pinged off
5 of that cell tower at that time? That's all you're
6 saying; correct?

7 A Correct.

8 Q Okay. So how do you guys know where these cell
9 towers are? Do you keep records of the cell
10 towers?

11 A Yes, we do.

12 Q How many cell towers roughly would y'all have in
13 the area?

14 A In South Carolina, I have no idea, but nationwide,
15 there is thousands of them.

16 Q Okay. So we've got the cell tower -- the GPS
17 location of the cell tower where that phone pinged
18 at that time. What's next?

19 A Then the next column is listed as the Last Cell ID.
20 This is the cell tower number when the call ended.
21 So this would be the tower that the phone was
22 pinging off of.

23 Q So it could start at one tower and then hit another
24 tower later, is that what that is, one and two?

25 A Correct.

1 Q Okay.

2 A Then the next column, this is just an internal
3 column. It is labeled Last Net Type. This is the
4 type of technology.

5 Then the next column is MSC Main. This is a
6 switch name that our engineering team uses.

7 The next column is labeled Market. Then the
8 column after that is labeled Region.

9 So it is kind of squished together, but it
10 will say South Carolina and it is the south region.

11 Then the next column is labeled Calling
12 Number. And the column after that is labeled
13 Called Number. So this is either going to be the
14 number calling into the phone or that the phone is
15 calling out to.

16 Q Anything relevant --

17 A No. No.

18 Q What about these, what is this IMEI and IMSI?

19 A So, the IMEI number stands for International Mobile
20 Equipment Identifier. That is the actual handset
21 itself. So that is the serial number that you
22 would see in the back of the phone.

23 Q So it tracks the phone?

24 A The actual handset itself, yes.

25 Then the next column, the IMSI is

1 International Mobile Subscriber Identity Number.
2 That's the number that's associated with the SIM
3 card that is found in the back of phone.

4 And then the next column is the duration and
5 minutes.

6 Q So minutes -- so 3.18, that first call, that
7 means -- what does that mean, 3 minutes 18 seconds?

8 A Correct.

9 Q Okay. And you can take a seat again.

10 (Witness returns to witness stand.)

11 Q. I will do a couple of others. But first I want to
12 walk through -- this is real important here. You
13 said that this search warrant was for

14 -0231. However, there is this big column
15 here. Can I bring you back down here? I
16 apologize. That's my fault. Do you mind coming
17 back down here?

18 A. Sure.

19 Q That's my fault. I'm sorry about that.

20 (Witness steps down.)

21 Q. That initial CD we looked at, that had records from
22 what date to what date? That was a lengthy period
23 of time; right?

24 A It was.

25 Q Like a month or so exactly?

1 A I don't recall.

2 Q It was many, many weeks for that phone number;
3 correct?

4 A Yes.

5 Q This right here is just from when to when? This is
6 an excerpt; right?

7 A Correct. It's from September 15th, 2012, through
8 September 16th, 2012.

9 Q What exact time is at the top?

10 A It started at 10:54:13 seconds p.m. and it ended
11 September 16th, 2012, at 5:22:26 p.m.

12 Q A minute ago, I asked you that this search warrant
13 was about the -0231; correct?

14 A Correct.

15 Q Those first batch of numbers says -9542. Why is
16 that?

17 A The reason being is because the phone number was
18 changed.

19 Q How do you know that?

20 A I know that from looking at the records previously,
21 and you could see the change taking place down
22 below on the record.

23 Q Now, please explain to the jury how that -- how
24 could someone change their number? How would that
25 essentially happen?

1 A So what you have to do is call customer service and
2 tell them that you want to change your number.
3 They then program it on their end. And then the
4 phone number is changed. And then we could see
5 that because the ending number stays the same,
6 so -- and the phone number is different, so we know
7 that the individual changed their phone number.

8 Q Is there any other way that those numbers could get
9 mixed up? Any other way to try to sort that out?

10 A No. Just by changing the phone number.

11 Q Okay. Two more charts briefly to walk through.
12 This next one is premarked State's Exhibit 13.
13 Come take a look at this, please.

14 A Yes.

15 Q That is your initials at the bottom?

16 A Yes, it is.

17 Q And please tell the jury what this -- what is on
18 this placard?

19 A These are the actual incoming and outgoing phone
20 calls or text messages made to or from the phone.
21 It does not have the cell tower information.

22 Q Is this also an excerpt from that same original
23 disk?

24 A Yes, it is.

25 MR. BERRY: The State would like to offer

1 Exhibit marked as 13 in evidence.

2 THE COURT: Any objection?

3 MS. SINGLETARY: Beg the Court's indulgence,
4 Your Honor.

5 (Pause.)

6 MS. SINGLETARY: Without objection, Your
7 Honor.

8 MR. BERRY: Permission to publish to the jury
9 and offer into evidence.

10 (WHEREUPON, State's Exhibit No. 13 was
11 marked for identification and received
12 into evidence.)

13 BY MR. BERRY:

14 Q So this document, have you also had a chance, like
15 you said, to view this, premark this. You said,
16 again, this is the same information from that disk,
17 records from your company, except a smaller
18 excerpt; correct?

19 A Correct.

20 Q And what times does this work through?

21 A This is September 16th, 2012, at 7:36 a.m. through
22 September 16th, 2012, at 12:47:05 p.m.

23 Q Now, is this where -- have you got Pacific dates
24 going on? What is going on with this one?

25 A Yes. Everything on this printout, the calls,

1 everything that you see here is a Pacific time, so
2 you would have to add three hours.

3 Q So what is the difference between this document and
4 what we just looked at?

5 A What we just looked at is our calls from the
6 switch, which is the cell phone information. So
7 the calls showing on the cell phone information is
8 going to be In market time, to whereas these calls
9 are from our billing system, which is going to be
10 in Pacific time.

11 Q So they will all be three hours apart or will it be
12 different times slightly?

13 A On these records, yes, they are going to be -- you
14 have to add three hours to get the East Coast time.
15 And on those records, this also reflects the ending
16 time, so the time that you see listed here is the
17 time that the call actually ended.

18 Q So this is like the same calls, but three hours
19 back, plus that's when the call began and this is
20 when the call ended?

21 A. Correct.

22 Q. If you add in the duration of the call, it will
23 match exactly?

24 A Correct.

25 Q And, again, this is all from your company, the

1 records on that disk excerpted from this incident
2 timeframe; correct?

3 A Correct.

4 Q And, now, does this have the same cell tower
5 information we talked about earlier?

6 A This has no cell tower information.

7 Q This does, however, have the SMS and Voice. Please
8 explain to the jury what is on here that is not on
9 there.

10 A Okay. So what you're going to see on here is
11 Voice, which means an actual phone call. SMS,
12 which stands for Short Message Service, which is a
13 text message. And then you'll also see Data Usage,
14 which means that they accessed the internet from
15 their phone.

16 Q And, again, briefly, some of the key information
17 here I see, can you tell us what these columns are?

18 A Sure. The first column is labeled Sub ID. This is
19 the account number that we assign the phone number.
20 The next column is labeled MSISDN. This is the
21 phone number, or what we refer to as the target
22 phone number that was subpoenaed.

23 The next column is Date of Call, PDT, which
24 reflects the date and time of the call in Pacific
25 time.

1 Then the next column is labeled Call Number.
2 That is the number that either called in to the
3 phone or the phone was called out to or received a
4 text message from.

5 The next column is labeled Call Direction. It
6 tells us if it was an incoming call. It will --
7 I'm sorry, it is going to list "outgoing" if it is
8 an outgoing call. If it is an incoming call, it is
9 going to list the word "terminated."

10 And the next column is the event description
11 where you are going to see the Voice, SMS, or Data.

12 And then the last column is going to be the
13 bill duration in minutes. On the actual bill, you
14 are going to see it rounded up because we round up
15 on the billing.

16 Q And this again is this 9542 number, not the
17 original 0231?

18 A This is actually both of them.

19 Q This has both?

20 A Correct.

21 Q Please explain that to the jury.

22 A Okay. So the phone -9542, you will see the
23 records to that phone number up until the time the
24 phone number was changed, which was on
25 September 16th, 2012, at 10:52:05 a.m. Pacific time

1 when they made the first call. It reflects the new
2 phone number of -0231.

3 Q Okay. And I want to show you one last document.
4 Do you recognize this?

5 A Yes, I do.

6 Q Those are your initials at the bottom?

7 A Yes.

8 Q And why did you put your initials at the bottom?

9 A Because I reviewed it against the disk.

10 Q It is the same information that is on that big
11 disk, an excerpt?

12 A Yes.

13 MR. BERRY: I would like to offer State's
14 premarked Exhibit 12 into evidence.

15 THE COURT: Any objection?

16 MS. SINGLETARY: None, Your Honor.

17 (WHEREUPON, State's Exhibit No. 12 was
18 marked for identification and received
19 into evidence.)

20 MR. PERRY: Permission to publish?

21 BY MR. BERRY:

22 Q And the only difference between this, this is just
23 a lengthier time period; right? Is this the same
24 situation here? What is this?

25 A Yes, the records are the same.

1 Q How is this different? It just has different
2 times?

3 A Correct.

4 Q Okay. Please take a seat. A couple more
5 questions. I am almost done here.

6 A. (Witness returns to witness stand.)

7 MR. BERRY: Beg the Court's indulgence.

8 (Pause.)

9 BY MR. BERRY:

10 Q All right? A couple of questions. Okay. So now
11 the phone number -- the search warrant is for
12 -0231. And then we have the
13 associated ending in 9542. Do you know who that
14 number is subscribed to? Do your records tell you
15 who is subscribed to that number?

16 A No.

17 Q What subscriber information do you have?

18 A I believe there was no name associated with the
19 account.

20 Q And why wouldn't there be a name associated with
21 the account?

22 A Because the phones are prepaid, and prepaid phones
23 don't have to show any identification. They pay
24 for the minutes up front.

25 Q Okay. They pay you guys up front?

1 A Correct.

2 Q And we talked about the cell towers earlier as
3 well, where pings are made; right?

4 A Correct.

5 Q What is the signal strength on those cell towers?

6 A Signal strengths vary, but the general rule of
7 thumb is a tower can cover up to a mile, a mile and
8 a half.

9 Q Will all towers cover up to a mile and a half?

10 A No.

11 Q How would there be -- why would there be
12 differences in how far they cover?

13 A The example that I always use is, I live in New
14 York. In New York City the towers are going to be
15 every couple of blocks because you've got
16 population, you've got the buildings. So whereas I
17 live in upstate New York, so the phone can cover --
18 a tower can cover a phone up to 15 miles as long as
19 they are, you know, within an open field. So it
20 varies.

21 Q But is there a general average rule of thumb?

22 A General rule is a tower covers a mile to a mile and
23 a half.

24 Q Why don't you keep cell tower hits for text
25 messages?

1 A Our text messages are not managed through the cell
2 flight system, it is rather through the data
3 server. So the cell tower gives its service to the
4 phone so it is able to go through, but once a text
5 message goes through, it is transmitted through a
6 data server.

7 MR. BERRY: One minute, please.

8 (Pause.)

9 MR. BERRY: Just for edification purposes,
10 Your Honor, I'd like to write the numbers that she
11 said was associated with each of these at the top
12 just for clarity, if it is all right?

13 THE COURT: Yes, that's fine.

14 BY MR. BERRY:

15 Q Do you mind actually writing it for me?

16 A Sure.

17 Q The editing?

18 A The phone number; correct?

19 Q Yes. In other words, these records are associated
20 with this phone number. This is what the subpoena,
21 the search warrant. -- I'm keeping you busy here,
22 ma'am.

23 A Now, this one here where it changed the phone
24 number, would you like me to draw a line where the
25 phone number changed?

1 Q Yes, if you would just put a little mark on the
2 side of where it switches over and write that
3 number below. I think that would be helpful.

4 A (Witness complies.)

5 Q And to clarify that last point, does that mean that
6 two different phones are being used or is it the
7 same phone that is being switched? It is the same
8 phone; correct?

9 A Correct, it is the same phone, just a different
10 phone number.

11 Q Thank you, ma'am. Just to clarify again, the CD
12 with all the records that your company produced in
13 response to the subpoena --

14 A Correct.

15 Q -- going back to like September first, all the way
16 through after the incident; correct?

17 A I believe that was the date on the CD.

18 Q And these excerpts here, these highlighted
19 portions, are from the end of the 15th, into the
20 16th, all the way through the 16th, the relevant
21 portion; correct?

22 A Correct.

23 Q. Please answer any questions -- thank you very much
24 for your time. Please answer any questions
25 Ms. Singletary might have.

1 A. Sure.

2 MS. SINGLETARY: Thank you, Your Honor. May
3 it please the Court?

4 CROSS-EXAMINATION

5 BY MS. SINGLETARY:

6 Q Good morning. How are you doing?

7 A Good afternoon -- I'm sorry, good morning.

8 Q I don't understand what time it is now either.

9 I wanted to just ask you a few questions.

10 When you were actually testifying to the different
11 columns in the records that the Prosecution showed
12 you, and when you referred to the cell ID column,
13 you said that your company engineering team
14 assigned that cell tower ID; correct?

15 A Correct.

16 Q And, also, when we were talking about the MSC name,
17 you said that that's a name that your engineering
18 team uses?

19 A That's the switch name, correct.

20 Q And that is -- the engineering team uses that?

21 A Correct.

22 Q And you are not an engineer for T-Mobile, are you?

23 A I am not.

24 Q And you actually testified to the fact that signal
25 strength of cell towers vary?

1 A Correct.

2 Q And you stated that the rule of thumb is one to one
3 and a half miles?

4 A Correct.

5 Q Who determines that signal strength?

6 A Our engineer team.

7 Q So you weren't given any official training to be
8 able to determine that signal strength?

9 A Training as -- I mean, I have gone through training
10 with engineering, yes. And, yes, we have been
11 trained. But as far as each individual cell tower
12 has their own signal strength, so to speak about a
13 specific time, I could not do that.

14 Q Could an engineer with your company?

15 A Yes.

16 Q Speak to that?

17 A Yes.

18 Q But you cannot do that?

19 A Correct.

20 Q And you also said that -- and you used the example
21 because you live in New York and there's a
22 different population, that the coverage could be up
23 to 15 miles?

24 A Correct.

25 Q Now, let me ask you this. Is it possible for you

1 to testify to any of the equipment that is
2 associated with these cell towers?

3 A Equipment as far as?

4 Q Like the antennas on the cell towers?

5 A Yes, I have testified to the antennas.

6 Q Now, on the specific cell towers that you actually
7 presented information to on this case, do you know
8 the exact equipment that was used on those cell
9 towers?

10 A No.

11 Q Do you know the position in which those antennas
12 are actually pointing on that cell tower?

13 A Yes.

14 Q And for each particular cell tower on the
15 information that you presented to the Prosecution?

16 A Yes.

17 Q And so if I was actually to pull this up, pull the
18 information up that you testified to earlier, you
19 could tell me if the cell tower was pointing in the
20 south direction?

21 A Correct.

22 Q And at what angle?

23 A I can't tell you the degree. I could just tell you
24 it was pointing northeast, south, or northwest.

25 Q And the angle actually determines the range and the

1 strength of the cell tower?

2 A Correct.

3 Q And would you be able to give me any detailed
4 testimony about that, or would it be more
5 appropriate more an engineer?

6 A An engineer.

7 MS. SINGLETARY: Your Honor, I have no further
8 questions.

9 THE COURT: All right. Anything else from the
10 State?

11 MR. BERRY: No, Your Honor.

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

13 THE WITNESS: Thank you.

14 (Witness steps down.)

15 THE COURT: Any objection?

16 MS. SINGLETARY: No, Your Honor.

17 THE COURT: You are free to leave.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, at this time it is about 1:15, which
22 is a good time for us to stop and take our lunch
23 break.

24 We will start back at 2:30. So if you all
25 could be back at 2:30.

1 Remember, do not discuss the case with anyone.
2 Remember to keep those badges on at all times,
3 especially if you are going to eat in the area,
4 because there is a good chance that you may see
5 someone involved in the case.

6 If someone attempts to speak with you, it is
7 not -- speak with you regarding the case, inform
8 them that you are on the jury and that you cannot
9 discuss the case. If they insist and continue to
10 try to talk to you, please let the bailiffs know
11 and let myself know and we will handle it from
12 there. All right. Thank you. Have a great lunch.

13 (WHEREUPON, the jury is excused for
14 lunch at 1:16 p.m.)

15 THE COURT: All right. We will start back at
16 2:30 unless there is anything we need to take up.
17 Is there anything we need to take up?

18 MS. BODMAN: Nothing from the State, Your
19 Honor.

20 THE COURT: Ms. Bodman, will you have
21 witnesses -- I'm thinking we will work until about
22 6:30 -- 6:00, 6:30 --, do you have witnesses to take
23 us through the evening?

24 MS. BODMAN: We should, Your Honor,
25 absolutely. I've got a lot planned, yes.

1 THE COURT: All right. I will see you at
2 2:30.

3 Remember, for those of you who are in the
4 audience, you are not to speak with anyone that is
5 on the jury. You are not to have any discussions
6 with them. If you do and the Court finds out about
7 it, you will be subject to the contempt powers of
8 the Court, which can be anything from a fine or
9 jail time.

10 All right. Thank you. Have a great lunch.

11 (WHEREUPON, a lunch break was taken at
12 1:17 p.m.)

13 THE COURT: Are we ready to bring them in?

14 MS. BODMAN: Yes, Your Honor.

15 THE COURT: Bring them in.

16 (WHEREUPON, the jury came into open
17 court at 2:36 p.m.)

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, I hope you had a good lunch. At this
20 time, we will continue with the State's case.

21 I ask the State to call their next witness.

22 MR. BERRY: The State calls Karen Mildbrodt.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible and raise your right.

1 (Witness complies.)

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

6 THE WITNESS: I do.

7 THE CLERK: Have a seat in the witness stand,
8 please.

9 (Witness complies.)

10 THE CLERK: State your name for the record.

11 THE WITNESS: Karen Mildbrodt.

12 KAREN MILDBRODT,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BERRY:

16 Q Where are you from, Ms. Mildbrodt?

17 A I'm flying in from Tampa. I work for Verizon
18 Wireless.

19 Q And what do you do at Verizon?

20 A One of my responsibilities is I'm a records
21 custodian.

22 Q Okay. What all do you do as a records custodian?

23 A I will travel around the country and authenticate
24 records, explain how to interpret the records, and
25 just provide testimony.

1 Q What are your other responsibilities there?

2 A Well, when I'm in the office, I respond to
3 complaints that customers have filed with
4 government agencies, like the FCC, the Attorney
5 General, community.

6 Q How many times have you testified on cell phone
7 records, roughly?

8 A A couple of hundred.

9 Q And how long would you say you've been at Verizon?

10 A It will be 17 years in March.

11 Q And as part of your job requirements and
12 responsibilities, you got involved in this case;
13 correct?

14 A Yes, sir.

15 Q Did your company receive a subpoena, search warrant
16 for the phone number -6130?

17 A We did.

18 Q And what kind of data -- when that search warrant
19 is received, what all is being asked for?

20 A It was incoming/outgoing call records, cell tower
21 information, subscriber information. When I say
22 cell tower information, where are the cell towers
23 located. Subscriber information. And then there's
24 a log that tells you how to read those. In the
25 event you don't need us, there's a log that

1 explains how to interpret the record.

2 Q And did your company submit that information?

3 A We did.

4 Q I show you State's Exhibit 47. Do you recognize
5 this?

6 A I do.

7 Q How do you recognize it?

8 A I viewed it this afternoon, and then I initialed
9 it.

10 Q And what is on this disk?

11 A The incoming and outgoing cell records, call detail
12 records, the cell site address location, the
13 subscriber information, and, again, that log.

14 Q So this is everything that was asked for in the
15 search warrant?

16 A Yes, sir.

17 Q It is everything that your company provided?

18 A That is correct.

19 Q And are these records kept in the ordinary course
20 of Verizon's business?

21 A They are.

22 MR. BERRY: The State would offer premarked
23 Exhibit 47 into evidence.

24 THE COURT: Any objection?

25 MS. SINGLETARY: None, Your Honor.

1 (WHEREUPON, State's Exhibit No. 47 was
2 marked for identification and received
3 into evidence.)

4 BY MR. BERRY:

5 Q And, in addition to that disk, let me show you
6 another document here. Do you recognize this?

7 A I do.

8 Q How do you recognize this?

9 A Again, I looked at this this afternoon. And,
10 again, this is a page of incoming and outgoing call
11 logs, same for the phone number ending 6130.

12 Q That's your initials?

13 A And I initialed it.

14 Q And so the contents of this are exactly the same as
15 what is on that disk; correct?

16 A Just a portion of that record.

17 Q Just an excerpt?

18 MR. BERRY: Your Honor, we would like to at
19 this point offer State's Exhibit 15 into evidence.

20 MS. SINGLETARY: Without objection.

21 MR. BERRY: And permission to publish to the
22 jury?

23 THE COURT: All right, 15 is entered without
24 objection.

25

1 (WHEREUPON, State's Exhibit No. 15 was
2 marked for identification and received
3 into evidence.)

4 BY MR. BERRY:

5 Q And ma'am, I am going to ask you to step down, if
6 you don't mind.

7 A (Witness complies.)

8 Q So that original disk, that had like a month plus
9 worth of data; right? September 1st all the way
10 until after 16th and 17th; correct?

11 A Right.

12 Q A full month's worth of data. This excerpt, what
13 is this from? From when to when does this cover?

14 A The date is here, so it is September 15th, 2012, at
15 23:59 military time.

16 Q What is that?

17 A 11:59.

18 Q P.M.?

19 A P.M., yes. And the end date is September 17th,
20 same year, 2012, at 16:48, so that would be 4:48 in
21 the evening.

22 Q And if you could, just explain to the jury what
23 each of these columns -- what do we have here?

24 A Certainly. The first column is called Network
25 Element Name. And our network has throughout the

1 country have buildings that are called switches.
2 And the network element is the part of our network
3 where the computers are, where it takes the --

4 COURT REPORTER: I'm sorry, I can't hear you.
5 You need to face this -- can you get her on the
6 other side?

7 A. Yes. The Network Element Name is a part of our
8 network that decides how to route calls, so it is
9 in buildings throughout the country. And they,
10 like I say, it has computer boards instead of a
11 person actually saying from here to here, it is a
12 computer doing that.

13 Q I am going to bring you over here, so you can try
14 to speak to both the court reporter and the jury.

15 A Yes, sir.

16 Q Thank you. And the next column, please?

17 A The next one is Mobile Directory Number. This is
18 going to remain constant. These are the records
19 for the telephone number ending 6130. It should be
20 the same all the way down.

21 The next one is Dial Digit Number. And that
22 is the actual number that the caller dialed, that
23 they entered into their keypad.

24 Call Direction. These are different codes
25 that will tell you whether the call was an incoming

1 call, an outgoing call, whether the call was
2 forwarded.

3 And then we have Routing. And that's just
4 when our network sends a call.

5 Seizure, Date and Time. That is the date of
6 the call and the time in military.

7 Future Duration is how long the call lasted on
8 our network in seconds.

9 Then we have First Serving Cell Site and First
10 Serving Cell Space. So this is Cell Site 552
11 running from this switch. And the cell space is
12 the antenna.

13 Q Cell site, is that a tower? What is a cell site?

14 A It's a tower, like when you're driving along the
15 road.

16 Q So how does that process work? This number makes a
17 phone call. What is it going to do?

18 A Our network, our switch is going to identify where
19 you are located, what towers you are by, and then
20 it will make a decision what cell tower is best to
21 complete that call.

22 Q Okay. How does it make that decision? What is it
23 basing the best tower on?

24 A Some of the factors are: How close you are to the
25 tower. You obviously have to be within range of

1 the tower. How many people are pulling from that
2 tower. What structures are in the way.

3 Q So like high volume times, for example? Say, it's
4 in the middle of the day versus middle of the
5 night, would that make a difference?

6 A Certainly.

7 Q Okay.

8 A Right.

9 Q Any other factors that are worth noting?

10 A In the summertime when there is a lot of foliage,
11 that will shorten the strength of the radio
12 frequency. So summertime gets a little rougher on
13 the network than, say, in the winter when the trees
14 lose all their leaves.

15 Q I understand. Please continue.

16 A So we've got the cell site. We've got the antenna.
17 And, as I said, most cell towers have three banks
18 of antennas facing different directions. This one
19 just happens to be on what we call Cell Site 2, or
20 Antenna 2.

21 This is when the call started. Last serving
22 Cell Site is 542, so when the call ended it was on
23 the same tower, on the same antenna.

24 Q So it would be possible for it to start on one
25 tower and end on another tower?

1 A Absolutely.

2 Q What is that indicative of?

3 A Traveling. Movement. And then the last one is
4 Calling Party Number. And that is a person who
5 made the call. If the number is the same as the
6 mobile directory number, then that would be our
7 customer has made the call. If it is any other
8 number other than that, it is someone calling our
9 customer. It is another way you can tell if it is
10 incoming or outgoing.

11 Q If you would please take your seat. I have a few
12 more questions for you. Thank you very much.

13 A Sure.

14 Q Actually, if you don't mind, put the number -- if
15 you can just write on here the number in question
16 here. Just anywhere in this area is fine.

17 A Write?

18 Q The number that the search warrant was for here.
19 So what number all these records are associated
20 with, the cell phone number.

21 A (Witness complies.)

22 Q Thank you very much.

23 A. (Witness returns to witness stand.)

24 Q. Okay. A few more questions. So we talked about
25 these cell towers. Signal strength, how does that

1 work? What are the signal strengths for these cell
2 towers?

3 A For like how far these signals can travel?

4 Q Yes. What is the radius of how far --

5 A Sure.

6 Q -- the signal works?

7 A Again, there is various factors, but we typically
8 say in an urban area where it is heavily populated,
9 lots of buildings, you have anywhere from zero to
10 three miles.

11 If you go out to a more suburban area, less
12 populated and the buildings are smaller, it is --
13 I'm sorry, the first is zero to three.

14 Q Right.

15 A Suburban is zero to five. And then people in a
16 rural area where there is very little population
17 and the cell towers can be taller, it is zero to
18 15.

19 Q Farm land area?

20 A Farm land, interstates, where the towers are
21 considerably higher.

22 Q You said other factors like time of the year and
23 time of day. Any other factors worth noting?

24 A No, those are the game changers.

25 Q And this number, this -6130, any subscriber

1 information about what person was associated or
2 subscribed to that number?

3 A We don't have a name. We do -- this was what we
4 call the reseller account, meaning we are not the
5 billing party. The billing party was Smart
6 Wireless, so we don't know who Smart was billing.
7 We only know the traffic.

8 Q So this person didn't have an account with Verizon?

9 A He was not a Verizon -- he or she was not a Verizon
10 customer.

11 Q Whoever had this number?

12 A Uh-huh.

13 MR. BERRY: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. BERRY:

16 Q. No further questions. Please answer any questions
17 they have for you.

18 A. Yes, sir.

19 MS. SINGLETARY: Thank you, Your Honor. May
20 it please the Court?

21 CROSS-EXAMINATION

22 BY MS. SINGLETARY:

23 Q Good afternoon.

24 A Good afternoon.

25 Q You stated on direct examination that one of your

1 duties as a custodian of records is to authenticate
2 cell phone records?

3 A Yes, ma'am.

4 Q And also to explain how to interpret cell phone
5 records?

6 A Yes, ma'am.

7 Q And the Prosecution actually showed you an excerpt
8 of some cell phone records that you all presented
9 upon request to law enforcement in this case?

10 A Yes, ma'am.

11 Q And when you actually went over those records, you
12 actually went through each and every column?

13 A I did.

14 Q And in those columns, you kind of interpreted what
15 the -- what seizure meant, what duration meant. Is
16 that the extent of your testifying as it relates to
17 interpreting the record?

18 A What the columns mean?

19 Q Yes.

20 A It is not my entire extent, but it was the extent
21 of my testimony, yes.

22 Q Now, are you actually a telecommunications
23 engineer?

24 A I am not an engineer.

25 Q Okay. And the telecommunication engineers for a

1 particular cell company, including Verizon, since
2 you work for Verizon, they actually help to
3 determine the actual accuracy of the radiuses of
4 these cell towers?

5 A Yes, that is part of their duties, yes.

6 Q And you stated earlier that there are several
7 factors that actually influence the radius of cell
8 towers?

9 A Yes, ma'am.

10 Q And your testimony was like the closeness of a
11 particular person to that cell tower?

12 A Yes, that is one of the factors.

13 Q You said if there is any structures in the way,
14 that could determine the range of the cell tower?

15 A Correct.

16 Q You stated that if you are in an urban area, that
17 cell tower range could be anywhere from zero to
18 three miles?

19 A Correct.

20 Q If you're in a suburban area, it could be anywhere
21 from zero to five miles?

22 A Correct.

23 Q And then you also stated that if you're in a rural
24 area, it could be anywhere from zero to 15 miles?

25 A Correct.

1 Q Now, do you know the specific range for the cell
2 towers that were actually used by this number,
3 -6130?

4 A I do not.

5 Q Would an engineer be best suited to testify to that
6 information?

7 A It is possible that that information was part of a
8 subpoena.

9 Q Was that information part of the subpoena that you
10 all received?

11 A No.

12 Q And you also said that this phone number, -6130,
13 you don't have any information for the specific
14 name of he or she that was using this cell phone?

15 A Correct.

16 Q You stated that -- and what was the company?

17 A Smart Wireless.

18 Q So Smart Wireless actually, I guess, contracted
19 with an individual to use this cell phone?

20 A Right.

21 Q And you said Verizon was not a party to the bill?

22 A Correct. We are the network for Smart Wireless.
23 They use our towers for their customers.

24 Q So would it be a fair assumption to say that Smart
25 Wireless is kind of like a subcontractor? It is

1 like a middleman between you all and -- well,
2 between Verizon and whoever this number belongs to?

3 A No, not so much. They are a cell phone company.
4 However, they are only a billing cell phone
5 company. They don't have an infrastructure, so
6 their customer has a relationship with them and
7 then Smart Wireless will lease our towers so that
8 their customers can make phone calls.

9 Q So Smart Wireless actually leases towers from you
10 all?

11 A They use time on our towers.

12 Q Time on your tower?

13 A And the phone number itself is ours.

14 Q And the phone number?

15 A Yes.

16 Q And so whoever owns this cell phone would deal
17 directly for billing purposes with Smart Wireless?

18 A Correct.

19 Q And you wouldn't deal necessarily for billing
20 purposes with the individual who owns the cell
21 phone?

22 A We would not.

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

25 MR. BERRY: Nothing further from the State.

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

3 MS. SINGLETARY: No, Your Honor.

4 THE COURT: All right, ma'am, you may step
5 down, and you are free to leave.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Witness steps down and is excused.)

9 MS. BODMAN: The State calls Kevin Lawrence.

10 (Witness approaches.)

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

13 (Witness complies.)

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

18 THE WITNESS: Yes, ma'am, I do.

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

21 (Witness complies.)

22 THE CLERK: State your name for the record.

23 KEVIN LAWRENCE,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BODMAN:

2 Q Can you introduce yourself to the jury?

3 A I am Deputy Kevin Lawrence, with the Kershaw County
4 Sheriff's Office.

5 Q How long have you been with Kershaw Sheriff's
6 Department?

7 A About a month now.

8 Q Okay. And where did you work prior to that?

9 A I was a sergeant with the Richland County Sheriff's
10 Department.

11 Q Can you tell the jury just a little bit about your
12 education and your career up until now?

13 A I started off with Aiken County Sheriff's Office,
14 left Aiken County, worked in a small town called
15 New Ellenton. Went to the Richland County
16 Sheriff's Department December 1st of '07. Left
17 Richland County December 3rd, 2015. And I've been
18 in Kershaw ever since.

19 Q I would like to talk to you about back on October
20 the 4th of 2012, in -- I guess late that night.
21 Were you on duty?

22 A Yes, I was.

23 Q With the Richland County Sheriff's Department?

24 A Yes, ma'am.

25 Q And you were a road deputy?

1 A I was a Community Actions Team deputy, CAT Team.

2 Q Okay. So what were your duties and
3 responsibilities on this particular night?

4 A That particular night, we were conducting a
5 suppression in the community in Region 2, which is
6 the Two Notch Road area. We had been getting a lot
7 of complaints about narcotics activities, a high
8 traffic area. The area that we were patrolling
9 that night was a residential area that had been
10 experiencing a lot of foot traffic and a lot of
11 vehicle traffic. We actually had several deputies
12 that lived in that community, and they called me on
13 our work phone at the time and asked me could I
14 patrol area during the night hours. And being that
15 I was on the CAT Team, I made my schedule so I
16 could be available with the rest of my deputies to
17 work that area of patrol.

18 Q Okay. So that's what brought out -- brought you to
19 that area?

20 A Yes, ma'am.

21 Q Okay. So at approximately, I guess, 10:45 or so,
22 did you make a traffic stop?

23 A Yes, ma'am.

24 Q Okay. And did you prepare a report in connection
25 with that traffic stop?

1 A Yes, ma'am.

2 Q Do you have that in front of you?

3 A Yes, ma'am.

4 Q Okay. And did you make that report at or near the
5 time of the incident, so somewhere close to October
6 4th of 2012?

7 A Yes, ma'am.

8 Q Okay. If you need to refresh your memory, would it
9 help you to be able to refer to that document?

10 A Yes, ma'am, it would.

11 Q Okay. And so first of all, I guess, is what was
12 the type of vehicle that you stopped?

13 A To my recollection and according to the report, it
14 was a green in color Toyota. I believe it may have
15 been a Camry, I'm not sure. I don't believe I put
16 that in my report. But it was a 4-door sedan.

17 Q 4-door green Toyota?

18 A Yes, ma'am.

19 Q And why did you stop that vehicle?

20 A I stopped that vehicle because it failed to use its
21 turn signal at Dartmore and Chatsworth. And I
22 believe at that time I was sitting in an area where
23 they couldn't see me and I was blacked out.
24 Blacked out meaning I didn't have my headlights
25 illuminated or my tail lights so they couldn't see

1 me in hopes of seeing somebody run that stop sign
2 so I could get a violation and stop them.

3 Q Okay. And you did?

4 A Yes, ma'am, I did.

5 Q So you stopped that vehicle. And who ended up
6 being the driver of that vehicle?

7 A The driver of that vehicle was a -- I believe it
8 was a DaQuan or DaQwane Robinson.

9 Q And I guess how many people ended up being in that
10 vehicle?

11 A Four, I believe. Four people in the vehicle.

12 Q I am going to draw your attention to -- do you have
13 an additional narrative?

14 A I just have this, and I have this, yes, ma'am.

15 Q Do you have this page of your additional narrative?
16 There's two more.

17 A Yes, I do.

18 Q Okay. So we have -- let's count out the names. We
19 have DaQwane Robinson. Who else do you identify in
20 that car?

21 A Craig Sims.

22 Q Craig Sims?

23 A Mr. Cheo Green. And one more, Curtis Wright.

24 Q Curtis Wright?

25 A Uh-huh.

- 1 Q And there's a mention in here of a John Brisby?
- 2 A Four or five.
- 3 Q If you look at the end of that first paragraph.
- 4 A John Brisby.
- 5 Q Okay, so five. So DaQwane Robinson is your driver?
- 6 A Uh-huh.
- 7 Q Who is your front seat passenger?
- 8 A My front seat passenger -- Curtis Wright was the
- 9 front seat passenger.
- 10 Q Okay. So then that leaves John Brisby, Craig Sims,
- 11 and Cheo Green in the back seat?
- 12 A Yes, ma'am.
- 13 Q Okay. And do you recall which of those three were
- 14 sitting behind the front seat passenger, not the
- 15 driver, but the front seat passenger?
- 16 A The front seat passenger, I do not recall.
- 17 Q Okay.
- 18 A He gave me the name.
- 19 Q Okay. So you stopped the vehicle and, I guess,
- 20 initially contact the driver of the vehicle,
- 21 DaQwane Robinson?
- 22 A Uh-huh.
- 23 Q Okay. And what happens next after you contact him?
- 24 A I contacted him. I asked him for the reason -- I
- 25 told him the reason for the stop. I identified

1 myself. His front -- his window wouldn't open, so
2 he had to open the door. And the way I was
3 positioned, I had a lot of light inside the vehicle
4 and I could see that it was open containers of
5 alcohol inside the vehicle.

6 And then I believe shortly after, several
7 other deputies arrived for backup, and we began to
8 get each person out of the vehicle, person by
9 person. And we patted them down for weapons.

10 Q After you got the -- I guess, did you recover
11 anything from the vehicle? What was the first
12 thing you recovered from the vehicle?

13 A Of course, the first thing was the beer cans, or
14 whatever.

15 Q. Okay.

16 A. Which was tried in Magistrate's Court. Secondly,
17 we recovered a handgun.

18 Q Where and how did you find that gun?

19 A Once the front passenger was asked to step out of
20 the vehicle, there was a lot of reaching and stuff
21 going on. So of course we shined the light to see
22 what was going on. And that's when we saw the butt
23 of what we believed to be a gun at the time. So,
24 of course, then everybody was taken out of the car.
25 But it was the gun under the front passenger seat.

1 Q Under the front passenger seat where Curtis Wright
2 was sitting in that front passenger seat?

3 A Yes, ma'am.

4 Q Okay. And what did you do with that weapon?

5 A I took it out and I cleared it. I made sure no
6 bullets were in it. And then after I cleared it,
7 of course, everybody got amnesia and nobody knew
8 who the gun belonged to. So I read everybody their
9 Miranda rights, and they still didn't know who it
10 belonged to, so I had to do what was right and I
11 charged the people that I thought were within
12 immediate reach of the weapon at the time.

13 Q Okay. And that's what you're going to go with, if
14 nobody else is owning up to it, people that are in
15 the immediate reach of it, which was who in that
16 vehicle?

17 A In the vehicle, of course, the driver. Everything
18 in the car is his because he's in control of the
19 vehicle. And it was under the front passenger
20 seat, and it was in his immediate reach, because
21 the way the gun was positioned, he could have
22 reached down and picked it up at any time during
23 the traffic stop.

24 Q Okay. It was under his seat where he was sitting?

25 A Uh-huh.

1 Q Okay.. And that was Curtis Wright; correct?

2 A Uh-huh.

3 Q I'm going to show you what is marked as State's
4 Exhibit No. 29. Do you recognize that?

5 A Yes, ma'am.

6 Q Okay. Is that your handwriting?

7 A Uh-huh.

8 Q Okay. So tell us what you did with that weapon
9 after you secured it?

10 A After I secured the weapon, I put it in a temporary
11 evidence bag. Of course, I had to put it somewhere
12 so I could hold it before I could take it to
13 headquarters.

14 After everybody was charged, we determined who
15 had warrants, who didn't have warrants, who had
16 drugs, the alcohol, all that other stuff. Several
17 of the occupants were secured and taken to the
18 jail. The other ones were either allowed to walk
19 home or somebody picked them up.

20 I then took the gun to the Richland County
21 Sheriff's Department at headquarters. Before we
22 enter a gun into evidence, we have to complete an
23 incident report. We have to get the NCIC check on
24 the gun. We have to determine whether the gun is
25 stolen, whether it is not. We have to seal the box

1 properly, initialing it, tape on it, evidence tape.
2 And you have to put a copy of the incident report
3 in there, along with the NCIC check, before you put
4 the gun box and the gun into evidence.

5 Q And that NCIC check, I guess you are running a
6 description of the gun and the serial number, or
7 what are you running -- what are you putting in
8 there?

9 A The description of the gun, the serial number,
10 usually the make and model. It tells you if it is
11 stolen or not. NCIC is National Crime Information
12 Center. So if a weapon is stolen in Columbia and
13 it was found in Aiken or it is found in Las Vegas,
14 Nevada, it is going to pop up on the registry as a
15 stolen weapon. So we want to make sure that it is
16 not stolen.

17 Q And what type of weapon was this that you recovered
18 under the seat of that vehicle?

19 A It was a black in color revolver H&R Arms, .32
20 Caliber. It had two rounds in it and two shell
21 casings.

22 Q And so did you box that gun up in State's Exhibit
23 29?

24 A Yes, I did.

25 Q All right. And there is a -- you said that you

1 recognized your handwriting. What did you write
2 on? Is that just a general formula used?

3 A It is a form that we put on the property label.
4 Usually we put the case number, the date of the
5 incident, the phone number in case you mess up
6 evidence and they have to call you into work to
7 come back and correct it. And pretty much it is
8 just a basic form that you have to put describing
9 the gun, what all was included with the gun when
10 you found it, and what type of case that you have
11 and the person is charged.

12 Q And did you properly seal that box before you
13 submitted it to the Richland County Sheriff's
14 Department property room?

15 A I didn't get a call that morning, so, yes, ma'am, I
16 did.

17 Q And then the documents that you were talking about,
18 the NCIC and incident report, where does that go?

19 A It goes in this enclosed packaging that is attached
20 to the box, and it is secured properly with
21 evidence tape.

22 Q And so then what does it reflect as the date and
23 the time that you submitted it to that property
24 room?

25 A It says on October the 5th, 2012, at 1:45 in the

1 morning.

2 Q Okay. And the stop was at -- on the 4th at 10:45?

3 A Yes, ma'am.

4 Q Okay. And does the case number that you wrote on
5 here, does that correspond with the case number on
6 the incident report documenting these events?

7 A Yes, ma'am, it does.

8 MS. BODMAN: Your Honor, offer into evidence
9 State's Exhibit 29.

10 MS. SINGLETARY: Without objection, Your
11 Honor.

12 THE COURT: You said 29?

13 MS. BODMAN: Yes, Your Honor.

14 (WHEREUPON, State's Exhibit No. 29 was
15 marked for identification and received
16 into evidence.)

17 BY MS. BODMAN:

18 Q Is this the weapon you recovered from under the
19 seat in that vehicle?

20 A Yes, ma'am.

21 Q And you said that there were two bullets, two
22 rounds and two shell casings --

23 A Yes, ma'am.

24 Q -- in that? Is this, I guess -- I don't want to
25 say is this the condition that you found it in

1 because it does look like there has been some
2 writing on it, but was that black tape on it --

3 A Yes, ma'am.

4 Q -- when you found it?

5 A Yes, ma'am, the black tape was on it.

6 Q I want to go back to the -- I was asking you about
7 the rear passengers. Did you specifically
8 document -- when you wrote in here about who were
9 the rear passengers, did you specifically document
10 in your report where the three rear passengers were
11 sitting, or did you just call them all rear
12 passengers?

13 A I believe I called them all rear passengers.

14 Q Okay. And so you didn't specifically make a
15 documentation of where those three people were
16 sitting, just that they were all in the rear?

17 A They were all in the back.

18 Q Okay. No further questions at this time. Please
19 answer any questions she may have.

20 MS. SINGLETARY: Thank you, Your Honor. If it
21 pleases the Court?

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. SINGLETARY:

25 Q Is it still Sergeant Lawrence?

1 A No, it is just deputy now.

2 Q Okay. Well, Deputy Lawrence, just briefly. You
3 stated when you stopped this vehicle, a DaQwane
4 Robinson was the driver of the vehicle?

5 A Yes, ma'am.

6 Q And you said that Curtis Wright was the front seat
7 passenger of the vehicle?

8 A Yes.

9 Q And then you also testified to the fact that when
10 you actually -- after you retrieved the beer can,
11 that was the first item that you retrieved?

12 A Uh-huh.

13 Q At some point, you go to the front passenger side
14 where Curtis Wright is at; correct?

15 A Uh-huh.

16 Q And you stated that you saw a lot of reaching --

17 A Uh-huh.

18 Q -- at that point?

19 A Yes, ma'am.

20 Q And was that Curtis Wright reaching?

21 A Yes. He was the front passenger. He was the one
22 reaching, yes.

23 Q And when he was reaching, the next step that you
24 did was you shined the flashlight?

25 A Yes.

- 1 Q And when you shined the flashlight, that's when you
2 saw the butt of a gun?
- 3 A Uh-huh.
- 4 Q And that was in the general location where Curtis
5 Wright was reaching at?
- 6 A He was the one that I charged, yes, ma'am.
- 7 Q And he was charged with that gun?
- 8 A Uh-huh.
- 9 Q And you know for certain that Curtis Wright was the
10 front passenger?
- 11 A According to my incident report. It has been about
12 three or four years ago. So, yes, ma'am.
- 13 Q I can understand. And that DaQwane Robinson was
14 the front seat -- was the driver?
- 15 A Yes, ma'am.
- 16 Q And you said that when you saw this gun, you
17 started clearing everybody out of the car one by
18 one?
- 19 A Yes, ma'am.
- 20 Q And they got amnesia?
- 21 A Uh-huh.
- 22 Q Nobody said anything?
- 23 A Yes, ma'am.
- 24 Q Nobody said whose gun it was?
- 25 A Yep.

1 Q And you just said this was a long time ago, this
2 was like three years ago, over three years ago?

3 A Uh-huh.

4 Q And nobody said whose gun it was?

5 A Yes, ma'am.

6 Q On that day?

7 A Yes, ma'am.

8 Q And you decided to charge two people?

9 A Yes, ma'am.

10 Q For that gun?

11 A Yes, ma'am.

12 Q And those two people that you charged for that gun
13 was DaQwane Robinson?

14 A Yes, ma'am.

15 Q And Curtis Wright?

16 A Yes, ma'am.

17 Q You also said that there were some people that were
18 in that vehicle because we've established there
19 were five people in that vehicle. We know for
20 certain who was the driver, DaQwane Robinson?

21 A Uh-huh.

22 Q We know for certain who was the front seat
23 passenger, Curtis Wright?

24 A Yeah.

25 Q Then we know there were three other people there in

1 that vehicle?

2 A Yes, sir.

3 Q Craig Sims was one?

4 A Yes.

5 Q Cheo Green was one?

6 A Uh-huh.

7 Q And John Brisby was one?

8 A Uh-huh.

9 Q We don't know where they were sitting at in that
10 back seat; correct?

11 A Correct.

12 Q We just know that they were in that back seat?

13 A Yes, ma'am.

14 Q And you said that some people were let go on that
15 night?

16 A Uh-huh.

17 Q My client was one of those people who was allowed
18 to let go; right?

19 A Yes.

20 Q And walked away from the scene?

21 A He didn't show up to court either, but, yeah, he
22 walked away.

23 MS. SINGLETARY: Objection, Your Honor.

24 THE COURT: All right, ladies and gentlemen,
25 please disregard the last answer to the question.

1 Thank you.

2 Any follow-up questions?

3 REDIRECT EXAMINATION

4 BY MS. BODMAN:

5 Q You did say that when you first stopped that car,
6 there were several beer cans on the floorboard of
7 that car; correct?

8 A Yes, ma'am, more than two.

9 Q Okay. And you didn't actually see -- or did you
10 actually see Curtis Wright shove the gun under his
11 seat, or did you just --

12 A I just saw movement. I didn't see him shove
13 anything under the seat. I just saw him moving.

14 Q Saw movement. So it could have been the beer can
15 as well, or beer as well?

16 A Yes, ma'am, it could have been.

17 Q. Okay.

18 MS. BODMAN: No further questions.

19 MS. SINGLETARY: Just briefly, Your Honor.

20 THE COURT: Yes, ma'am.

21 RECROSS-EXAMINATION

22 BY MS. SINGLETARY:

23 Q And you testified that there were several beer
24 cans?

25 A Yes, I did.

1 Q And my client was charged with an open container?

2 A He was, yes, ma'am.

3 Q And he was allowed to walk away?

4 A He was.

5 Q And so when you said he didn't show up to court,
6 you were referring to the fact that you gave him a
7 ticket for an open container on that?

8 A Yes, ma'am, I was.

9 MS. SINGLETARY: I have no further questions.

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

11 (Witness steps down.)

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

14 MS. SINGLETARY: No, Your Honor.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MS. BODMAN: May we approach very briefly?

18 (WHEREUPON, a bench conference was held
19 in the presence of the jury but outside
20 the hearing of the jury.)

21 MS. BODMAN: The State calls Investigator
22 McCracken.

23 (Witness approaches.)

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

1 (Witness complies.)

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

6 THE WITNESS: Yes, I do.

7 THE CLERK: Thank you. Have a seat in the
8 witness stand please.

9 (Witness complies.)

10 THE CLERK: State your name for the record.

11 THE WITNESS: Robert McCracken.

12 ROBERT MCCRACKEN,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BODMAN:

16 Q I apologize. I think I called you investigator.
17 You are now actually a sergeant?

18 A Yes, ma'am.

19 Q Sergeant. Can you tell the jury then a little bit
20 about your education and your career that brings
21 you to be a sergeant with the Columbia Police
22 Department?

23 A Columbia Police Department. I've been there --
24 March, I'll be starting my 22nd year. I started as
25 a patrolman back in 1990. In 1998, I was assigned

1 to the Investigations Division in a region. Once
2 assigned there, the next year I was promoted to
3 investigator. Enjoyed the job. Finally, put in
4 for sergeant in 2012, and was promoted to sergeant
5 in December of 2012, shortly after this incident.

6 Q And tell us about your duties and responsibilities
7 as a sergeant.

8 A I started out as a Property Crimes sergeant and
9 then I moved -- that was for a year. Then I was
10 assigned to the Robbery Unit, worked the Robbery
11 Unit for a year. And then I was assigned to the
12 Violent Crimes Unit and worked the Violent -- I was
13 a supervisor over Violent Crimes, the ATF Task
14 Force Fugitive Unit and the Cold Case Unit, and
15 that was this past year.

16 As of January 4th of this year, CID of
17 Columbia Police Department, Criminal Investigations
18 Division, reorganized and they divided everyone up,
19 all the investigations into regions, so now I'm
20 currently assigned to the South Region and East
21 Region. And I am the supervisor over the
22 investigators that handle all the crimes in that
23 region from homicide down to larcenies.

24 Q And as someone who investigates homicides, what all
25 does that entail?

1 A How much time we got?

2 Q Yeah.

3 A Well, it entails a lot. You have to start out
4 sometimes with very little and piece together
5 information and piece together whatever you can
6 find to bring the case to a successful conclusion.
7 And it is a lot of work and it is a lot of time.

8 Q How did you become involved in investigating or
9 being part of the investigation team of Michael
10 Davis's homicide?

11 A It was a weekend. I was actually in North
12 Carolina, and it was a very bad weekend,
13 apparently. They called me to come back from North
14 Carolina to assist in this particular case. So I
15 arrived there several hours later than everyone
16 else. And once I arrived there, I was assigned
17 with Investigator Gilliam to investigate the case.

18 Q Okay. So what information do you know of -- at the
19 moment that you come back from North Carolina and
20 you are told you are assigned to this case, what
21 information are you starting with?

22 A I initially was assigned the task of searching for
23 video around the location. I do believe they had
24 the victim identified at that point, but they had
25 nothing further. The responding officer, Officer

1 Cannon -- y'all heard from -- Cannon Fulmer, y'all
2 have heard from already, basically, rolled up and
3 he had a victim laying in the middle of the street
4 with nothing else. So I was initially tasked with
5 the searching for video.

6 Q And have you used that Statewide Security Systems,
7 Carey Shealy and Elizabeth Shealy, frequently?

8 A Yes, ma'am. I'm very familiar with them, yes.

9 Q Okay. So what's the first thing that you asked
10 them to look for?

11 A We know the incident occurred. We know when it
12 occurred because of the fact that the officer
13 rolled up and the victim called 9-1-1. So we had a
14 time to look for. And I called Carey Shealy and
15 Elizabeth Shealy, his daughter, and asked them to
16 search for video in the area. He's got cameras all
17 over the place. So any time we have a violent
18 crime or any kind of crime that we need assistance
19 from cameras -- and it doesn't matter what it is,
20 it can be a petit larceny, it doesn't have to be a
21 murder -- we call him, and then he will go search
22 the videos. And since we had a time, it makes it a
23 whole lot easier. You are not looking for a big
24 wide, you know, four to six hours looking through
25 video. You have a particular time and then you

1 backtrack.

2 Q So what was the first, I guess, piece of
3 information from looking at videos that you got?

4 A The first thing that was provided to me was the
5 victim's vehicle coming off of Monticello Road.
6 And you can see in the camera at a distance the
7 vehicle headlights drop down as if it's stopping.
8 And then they pick up, and then they pop up as if
9 they're accelerating. We had that video initially,
10 so we did have a picture of the car. We didn't
11 know a year, make, model at that time.

12 Q You said a video of it coming off of Monticello
13 Road. So in relation to where Mr. Davis is found,
14 describe that video and the angle of the headlights
15 that you see popping down and back up.

16 A The camera is actually on the Papa Johns building,
17 I think it's the block of North Main Street.
18 It points north and south. And there's one that
19 points straight out.

20 Monticello Road merges into North Main Street.
21 If you are familiar with that area at all, it
22 merges. You can see the victim's vehicle coming
23 off of Monticello from the headlights as it merges
24 onto North Main. And it goes a very short distance
25 when the headlights drop down from the angle of the

1 camera. You can see that.

2 Q And then you said that it passed in front of the
3 Papa Johns?

4 A Correct, it passed in front of Papa Johns. We knew
5 which direction it was going. We knew where it
6 came from, at least the road it came off of, and
7 then we proceeded to again look for additional
8 video.

9 Q And so this, at least, is -- you know, you
10 connected this car -- you believe you connected the
11 car to Mr. Davis lying in the middle of the road
12 and you're thinking it's a white car?

13 A Well, this car on the video is definitely connected
14 because you can watch the video and you can see the
15 police pull up. So it is not -- there's nothing
16 there prior to that.

17 Q And it is consistent with the time of the call that
18 Mr. Davis makes to 9-1-1?

19 A Correct.

20 Q So what do you do then next?

21 A I continue looking for video. We know the
22 direction it was going. We know where it came
23 from. The victim was found with a cell phone.
24 Naturally, a cell phone is a wealth of information.
25 People keep all kind of stuff on their cell phones.

1 Also, we can pull call detail -- well, what we
2 do is we dump the phone -- we call it dumping a
3 phone. It is the actual phone that we have and we
4 take it to John Van Houten, who is the one y'all
5 heard from earlier, and we dump it. We get
6 everything off of that phone and we put it on paper
7 where we can see it.

8 And once we do that, we can get phone calls to
9 and from. We can find out who the last person is
10 that they talked to, what time that was. And then
11 we track those people down to get a timeline of the
12 victim prior to the incident occurring.

13 Q And so do you then make contact with some of those
14 people that it looks like they either spoke with or
15 contact people in the phone?

16 A Yes, ma'am, we contact whoever we can contact. A
17 lot of times, we just call the telephone number and
18 ask them, Do you know this person? And a lot of
19 times, you'll get positive responses.

20 Q Did you ever get some information as to tying
21 Mr. Davis to that white car?

22 A Yes. I was provided the information of who the car
23 belonged to, and that was obtained from one of the
24 telephone numbers that we retrieved off of his
25 phone, was a witness that was aware of him going to

1 go get that car from the young lady that y'all
2 listened to. I can't remember her name.

3 Q Renea Prater?

4 A Renea Prater, yes.

5 Q. Okay.

6 A. So we knew when he picked that car up and where it
7 came from. And that -- we were able to put that
8 car into NCIC, which is the National Crime
9 Information Computer, at that time. We couldn't do
10 it before.

11 Q And at this point, though, you know he is tied to a
12 white -- this white car, but do you have any idea
13 where that white car is?

14 A No, we do not. We do send a picture out of the car
15 on the video, an internal BOLO -- well, it's not
16 internal, but it is for police only at that time,
17 to all agencies, local agencies, and stuff like
18 that. We are trying to actively find it.

19 Q Okay. So in relation to the white car, what, if
20 anything else, do you do with the video, searching
21 for video?

22 A We continue to backtrack. Again, we know when it
23 happened. And we have several businesses in the
24 area that have video inside the businesses. And we
25 go check those businesses and look for times close

1 to that to see if the car pulls into the business
2 or if somebody gets out of the car and goes into
3 the business. It is a long, drawn out process. It
4 is not something -- if you get one video, then
5 you -- it is kind of like piece of a puzzle. You
6 can say, Okay, well, we have this, and now we need
7 to look over here in these three spots. And we
8 continue on until we get a pretty good picture of
9 what happened during that time span.

10 Q What video, if anything, do you actually then come
11 up with with Mr. Davis and/or the white car at the
12 business?

13 A What do you mean at the business?

14 Q At a business? As it relates to -- not the
15 Statewide Security, but an actual business?

16 A Yeah, yeah. We have -- we eventually backtrack
17 enough to where we catch the victim's vehicle going
18 outbound. When the incident happened, he was
19 coming inbound. We catch the vehicle going
20 outbound. We notice that it turns onto Monticello
21 Road. Right up from Monticello Road, there is a
22 business called A-1 Food Store, I think the A-1
23 store. We go there to check. And, mainly, we're
24 looking for the vehicle going by or turning on
25 Duke. When we're looking at the video, the vehicle

1 actually just pulls into the A-1 store and someone
2 gets out of the vehicle and goes inside.

3 Q Okay. And so what do you do with that photo of the
4 person who got out of the vehicle and goes inside?

5 A That naturally is a person we want to talk to, so
6 we put a BOLD out. Initially, we put a BOLD out to
7 all the local agencies, and we put that on TV for
8 the public's help in identifying that particular
9 person.

10 Q And I assume because you said a particular person
11 got out of the vehicle, you are not talking about
12 Mr. Davis?

13 A Correct. This is a person who got out the
14 passenger's side and it is video showing that.

15 Q At A-1. Do you get any other video connecting
16 these two people together with the white car?

17 A Not long after that, we do recover some video from
18 the Hess station, which also shows just prior to
19 them going to the A-1, they stopped at the Hess
20 station to get gas. At the Hess station, the
21 subject that is seen in the A-1 video gets out of
22 the vehicle and goes and pays for the gas. And it
23 is a window. You can't go inside that late at
24 night, so you have to pay at the window. And the
25 victim actually gets out of the car and pumps the

1 gas, so you can clearly see the victim.

2 Q So we said that you got some stills off of those
3 videos because you have a person you want to talk
4 to?

5 A Yes, ma'am.

6 Q Somebody got out of the car?

7 A Yes, ma'am.

8 Q And who do you disseminate those photographs to?

9 A Again, we disseminate them to the local agencies.
10 It is a BULO that we put out to all the local
11 agencies, I mean, all over the state, really. I
12 say local, but it's all over the state. And we put
13 it on TV.

14 Q Okay. Do you get any phone calls or communications
15 of the possible identification, the name of this
16 person?

17 A Yes. We get phone calls and we get Crime Stopper
18 tips identifying the person in the video.

19 Q And what name were you provided?

20 A Austin Murray.

21 Q And so at this point, then, what do you want to do?

22 A Find Austin Murray and talk to him.

23 Q Okay. And so then what steps do you take to go
24 talk to Austin Murray, find him and talk to him?

25 A Well, the information that we had from the caller

1 and the -- several of the Crime Stopper tips, we
2 knew where he lived, and we went and tried to talk
3 to him.

4 MS. BODMAN: Beg the Court's indulgence.

5 (Pause.)

6 BY MS. BODMAN:

7 Q So describe for us how this happened, your attempt
8 to meet with Austin Murray to come in and talk?

9 A Right. We tried to -- we made contact with him and
10 we tried to make contact at his house. I believe
11 his father called us back asking what we wanted to
12 talk to him about. He also saw the video, if I'm
13 not mistaken, on TV of Austin. At some point, they
14 stated that I would need to talk to their attorney
15 before talking to him. So at that point, I asked
16 them who their attorney was, and I tried to set
17 something up with the attorney.

18 Q Okay. So then what happened next?

19 A The attorney advised me that he was not going to
20 let him talk to me unless I charged him.

21 Q Okay. Unless -- was there a specific term that he
22 used or phrase that he used?

23 A Put some paperwork on him.

24 Q Throw paperwork on him or you weren't talking to
25 him?

1 A Right.

2 Q And so what did you go do?

3 A Well, we finished -- we continued to investigate
4 the case and once we had what we believed was
5 probable cause, we put the paperwork on him and
6 went and picked him up.

7 Q Were there any other videos that you were able to
8 obtain showing the victim's vehicle, you know, kind
9 of in that area --

10 A Yes, ma'am.

11 Q -- that Main Street, driving up and driving down?

12 A Yes, ma'am. We have video of the victim's vehicle
13 when it enters onto Main Street, up Main Street to
14 Monticello. Well, he pulls into the Hess station
15 and pulls out -- after getting gas, he pulls out
16 the Hess station. He drives up North Main, turns
17 on Monticello. He goes up Monticello to the A-1
18 station -- or A-1 store. That's where they get out
19 of the car at the A-1 store. Austin goes inside,
20 comes back out. You see him talking on the phone
21 at that point.

22 He gets in the car. They drive outbound on
23 Monticello Road. Then you have him coming back,
24 and that's when the homicide occurred. And you
25 have him going down and then turning beside the

1 Hess station again. So all of that is on video,
2 that portion of the scene, I guess you'd say.

3 Q Okay. You've got Austin Murray in that car with
4 Michael Davis before and after -- well, before, and
5 the vehicle fleeing after Michael Davis's homicide?

6 A Right. We have him in there at the Hess station.
7 We have him in there at the A-1, leaving going
8 outbound on Monticello. You can't tell who's in
9 the vehicle when they are driving by coming back.

10 Q Okay. So you get the warrant for Austin Murray.
11 What happens next? Was he arrested?

12 A He was arrested. He was brought down to police
13 headquarters. We attempted to question him at that
14 point. And it was a long, drawn out process. He
15 said he kind of wanted to talk to his attorney
16 first.

17 I said, Okay, I can't talk to you anymore.

18 Then he would say, But I want to talk.

19 And if they make contact with you after they
20 request an attorney and say they want to talk, you
21 can still talk to them, but they have to make the
22 contact.

23 He said he wanted to talk.

24 So I said, Okay.

25 We started talking a little bit. And he said,

1 No, I want my -- it just went back and forth most
2 of the night.

3 At some point, I went ahead and put him down
4 into the paddy wagon. In the paddy wagon, he did
5 the same thing again and said, You know, I really
6 want to talk. I want to tell you what's going on.
7 I want to talk to you.

8 I said, I'll come get you tomorrow. Just take
9 your time, think about it, think about what you
10 want to say. If you want your attorney, we'll get
11 your attorney. If you want to talk to me, you can
12 talk to me.

13 We went back and picked him up in the morning,
14 and it started all over again. So we were able to
15 get his attorney eventually by the end of that day.
16 And we did feed him a Wendy's hamburger. By the
17 end of the day, we did meet with the attorney and
18 Austin did give a statement.

19 Q And how did you document or memorialize that
20 statement? Was it written or recorded, or just
21 your memory?

22 A I'm pretty sure it was both. I know it was
23 recorded.

24 Q Okay. So, first of all, I guess the videos that
25 Mr. Shealy testified about and were admitted, are

1 those at least some of the videos that you reviewed
2 in putting the case together that you've talked
3 about here about documenting seeing cars up and
4 down Main?

5 A Yes.

6 Q The Hess station?

7 A Yes, ma'am.

8 Q Okay. I'm going to show you what is marked as
9 State's Exhibit No. 16 and ask if you recognize the
10 photograph on this?

11 A Yes, ma'am. That's the video of Papa Johns just up
12 from the Hess -- between Hess and Monticello. It
13 has got one going out straight and one going north
14 and one south.

15 Q These are still photos from that video?

16 A Yes, ma'am.

17 Q Papa Johns headed north on Main.

18 State's Exhibit 19, do you recognize that?

19 A Yes, ma'am. That's the video of Austin inside the
20 A-1 store.

21 Q Okay. Now --

22 A That was at the time he -- they pulled off of
23 Monticello Road and they pulled into the A-1 -- I
24 mean, into Hess.

25 Q So these are stills from that video?

1 A Yes, ma'am.

2 Q State's Exhibit 17, do you recognize these?

3 A Yes, ma'am. That's the vehicle pulling out of the
4 Hess station heading north on North Main Street.

5 Q Northbound on Main?

6 A Uh-huh.

7 Q And is that taken from that video that is in
8 evidence?

9 A That's taken from the video, I guess.

10 Q One of the videos you watched?

11 A Right. This exhibit should be in there. It's from
12 the tire store across the street from the Hess
13 station, which I think it's a Speedway now.

14 Q State's Exhibit 18?

15 A That's the vehicle coming back southbound onto Main
16 Street -- or off of Main Street turning onto Cook
17 Street. Now, this is shortly after -- within
18 seconds after the homicide occurred.

19 Q I show you what is marked State's 57. Do you
20 recognize those?

21 A Yes, ma'am. That's coming inbound on Monticello
22 going onto -- going towards Main Street.

23 Q Just prior to the homicide?

24 A Yes, ma'am.

25 Q And State's Exhibit 58?

1 A That's North Main and Miller pointing out towards
2 North Main Street. There was three cameras, one
3 pointed north, one pointed south, and I believe one
4 pointed straight out.

5 Q Okay. And you said North Main and Miller?

6 A Yes, ma'am.

7 Q And you obtained that video from Statewide Security
8 Systems?

9 A I can't remember if it was Statewide or if it was
10 the business itself. There was a business right
11 there on the corner, Finish Net, I think, but it's
12 no longer there.

13 Q Okay. And when you watched that video, what, if
14 anything, did you note about the time on that
15 video?

16 A When I retrieve video, I always check to allow time
17 with the actual time because there will be a
18 difference sometimes, your times will be a little
19 off. And on this particular video, it was ten
20 minutes off, or approximately ten minutes off.

21 Q And ten minutes fast or ten minutes slow?

22 A I had it written on here. Ten minutes slow.

23 Q Ten minutes slow. So North Main and Miller, the
24 times on here are ten minutes slow?

25 A Correct.

1 MS. BODMAN: I offer into evidence 16, 19, 17,
2 18, 57, and 58.

3 THE COURT: Any objection?

4 MS. SINGLETARY: Beg the Court's indulgence,
5 Your Honor.

6 (Pause.)

7 (WHEREUPON, State's Exhibit No. 16 was
8 marked for identification and received
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 17 was
11 marked for identification and received
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 18 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 19 was
17 marked for identification and received
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 57 was
20 marked for identification and received
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 58 was
23 marked for identification and received
24 into evidence.)

25 BY MS. BODMAN:

1 Q Can I have you step down here and we can kind of
2 put this --

3 A. (Witness complies.)

4 Q. Okay. So I guess first of all is 19. So this is a
5 still of Austin Murray at A-1?

6 A Correct. That's the A-1 store at Monticello and I
7 think Duke, but that's the A-1 store.

8 Q And what did you do with these photographs?

9 A This is the actual photograph that I used to put
10 out a BOLD and put out on TV.

11 Q To see if anybody recognized them?

12 A Correct.

13 Q Okay. What time -- date, time, and what location
14 are we looking at?

15 A This is on the 16th, approximately 2:46 in the
16 morning. And this is the Papa Johns business on
17 North Main Street. This pointed directly out from
18 Papa Johns. This is going north towards
19 Monticello. And this is actually the camera view
20 that you can see when the car is coming back. It
21 slammed on brakes or the front end dropped down.
22 And this is just the other direction, so you'll see
23 the car. You should see the car here. And then
24 this is as it passes. And then it is passing by
25 there. So it is just a different camera angle of

1 the car passing by at that time.

2 Q And if we're -- I guess this is the Papa Johns
3 location, we're headed North Main. So which
4 direction is the Hess?

5 A The Hess is back south.

6 Q And which direction is the A-1?

7 A The A-1 would be north.

8 Q Where they are headed to?

9 A Correct.

10 Q The direction they are headed to?

11 A Correct.

12 Q Then 2:48?

13 A This is at the Hess station, pulling out of the
14 Hess station. They are going northbound. This is
15 Cook Street right here. You can see Cook. And
16 they are going northbound. That is prior to the
17 homicide.

18 Q And in looking at the -- if the Hess station is
19 over here, excuse me, then these times may be off a
20 little bit --

21 A Correct.

22 Q -- on one of them because it has up North Main at
23 2:46, but down North Main at 2:48?

24 A No, he's going north there, and going north there.

25 Q Okay.

1 A This is on the opposite side of the street as that.

2 Q Okay.

3 A Those two cameras were provided by Shealy. And
4 back then, he would not -- he did not verify the
5 times, he would just get the video and bring it to
6 us, because he was finding so many cameras. We
7 have addressed that now. He doublechecks the live
8 time with the actual time.

9 Q. Okay.

10 A. So that would explain the difference in time a few
11 minutes. You can look at the whole video and the
12 car is constantly in a camera frame.

13 Q You can see it going from the Hess up to North Main
14 passing Papa Johns?

15 A Yes, ma'am.

16 Q Then at Monticello Road to Main, 3:20. Which
17 direction?

18 A This is coming -- I'm not sure if Monticello runs
19 south or east and west, but this is the A-1 store
20 back -- this is the A-1 store back here, so they
21 are coming inbound, the vehicle is coming inbound.
22 And this is just a side shot as it passes by.

23 Q Now, North Main and Miller, this is the one you
24 said the times are ten minutes slow?

25 A Correct.

1 Q It would be 3:22?

2 A Correct. I retrieved this video and I checked the
3 timestamp on it when I retrieved it.

4 Q Okay. In relation to where Michael Davis was found
5 in these pictures, where are we talking about?

6 A It would have been further up north.

7 Q So this is the car coming from Michael Davis or
8 towards Michael Davis?

9 A Where he was found, it's coming from.

10 Q From Michael Davis?

11 A Yes, ma'am.

12 Q Okay.

13 A The Hess station is just down a little bit.

14 Q Down this direction?

15 A That's correct.

16 Q Michael Davis was up there?

17 A Correct.

18 Q And this is 3:22?

19 A Correct.

20 Q Then southbound onto Cook Street?

21 A Correct. This is coming southbound. The Hess
22 station sits right here. If you remember the other
23 video, he was pulling out right here out of the
24 Hess station and going north. This is coming back
25 after the homicide, and you can see him taking a

1 left on Cook Street fast enough to leave sparks
2 behind.

3 Q Yeah. What is that? What is happening?

4 A That's sparks coming from the vehicle when they hit
5 the little gully going up on Cook Street. You can
6 see it is kind of like a slant.

7 Q Okay. And that's --

8 A That's the car back there as well, yes, ma'am.

9 Q So it's flying there. I'm going to show you what
10 has been marked as State's Exhibit 11 and ask if
11 you recognize this?

12 A Yes, ma'am, it's a Google Map.

13 Q Of the area that we're talking about?

14 A Yes, ma'am.

15 Q Would it assist you to be able to use this map to
16 show them in relation where these cameras are and
17 the direction that the car is going?

18 A Yes, ma'am.

19 Q So where is Main Street?

20 A Here is North Main Street here. Cook Street, which
21 is by the Hess station. The Hess station is right
22 on that corner. Cook Street, when you have the
23 video from the Hess station, it shows him coming
24 off of Cook Street into the Hess. The pull out of
25 Hess. They drive down. That's Miller and Main.

1 Pass Miller and Main. The Papa Johns is right
2 along here. They pass Papa Johns. They come up
3 and go onto Monticello Road. They go to Monticello
4 and Duke where the A-1 is. That is where they
5 get -- Austin gets out of the car, gets back in the
6 car. And then they proceed north on Monticello
7 Road.

8 Q Okay. So we already have marked here the Hess at
9 Cook Street?

10 A Yes.

11 Q And is that where -- we're looking at this?

12 A Yes.

13 Q Southbound on Main turning onto Cook. So it is
14 going -- State's Exhibit 18, would that be where --

15 A Yes, that's them coming back.

16 Q 58, North Main and Miller?

17 A That's right here.

18 Q And that's State's Exhibit 58?

19 A Yes, ma'am. They're on the way back.

20 Q Then Monticello Road to Main?

21 A That would be Monticello to Main. That camera is
22 actually on the -- right in here.

23 Q Right about Jackson, where you pointing to?

24 A Yes.

25 Q So 57?

- 1 A It would be on other side of the road.
- 2 Q On Ensor?
- 3 A. Yes.
- 4 Q. Then we are also looking at northbound Main
- 5 passing Cook?
- 6 A That is the same as right here, but they're going
- 7 northbound.
- 8 Q And that's Exhibit 17. And Papa Johns heading
- 9 North on Main?
- 10 A That is Papa Johns again. That is -- Papa Johns is
- 11 right in here.
- 12 Q Right towards the end of -- what is this green
- 13 space right here?
- 14 A That's a park, I believe.
- 15 Q Okay.
- 16 A And it is right there -- Papa Johns is right along
- 17 in here.
- 18 Q Towards the bottom part of the park?
- 19 A Yes, ma'am.
- 20 Q Exhibit 16. And then we have where -- that is
- 21 approximately where Mr. Davis was found?
- 22 A In that area, down just below Bi-Lo, yes, ma'am.
- 23 Q Okay.
- 24 A Off in the middle of the road.
- 25 Q And then Exhibit 19?

1 A That is the inside the business here at the A-1.

2 Q And this is the Hess station that you stated we
3 also saw video of Mr. Davis and the victim
4 together?

5 A Correct.

6 Q Okay. And what was -- you said Mr. Davis and the
7 victim -- Mr. Davis and Austin Wright?

8 A Right.

9 Q Thank you. You can have a seat.

10 A (Witness complies.)

11 MS. BODMAN: At this time, Your Honor, I
12 will -- I have no further questions at this point.
13 We would like to recall Investigator McCracken
14 later for the rest of the investigation after some
15 other witnesses. So if there is any
16 cross-examination with regard to this portion of
17 his testimony.

18 THE COURT: Yes, ma'am?

19 MS. SINGLETARY: Beg the Court's indulgence
20 Your Honor.

21 (Pause.)

22 CROSS-EXAMINATION

23 BY MS. SINGLETARY:

24 Q Investigator McCracken, you stated that when you
25 came onto this investigation, you actually were

1 assigned the task of searching for videos?

2 A Yes, ma'am.

3 Q And the videos that you actually just testified to
4 to the jury are all videos that you actually
5 retrieved and watched?

6 A I watched them all. Some of them I retrieved
7 myself. Some of them were delivered by Shealy,
8 Carey Shealy, with Statewide Security.

9 Q And you just testified to the fact that the person
10 that was actually seen on the video at the Hess
11 station with the victim, Michael Davis, was Austin
12 Murray; correct?

13 A Yes, ma'am.

14 Q And the person who was seen at the A-1 convenience
15 store with Mr. Davis was Austin Murray on that
16 video?

17 A That's correct.

18 Q And you also --

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

20 THE COURT: Yes, ma'am.

21 BY MS. SINGLETARY:

22 Q And you testified to State's Exhibit Number 17?

23 A Yes.

24 Q And in this video -- in this bottom picture, this
25 is the video that you are referring to when you say

1 that's the video that Mr. Davis was in on that
2 night, or can be attributed to Mr. Davis?

3 A Yes.

4 Q Okay. And looking at this video, can you clearly
5 see who is inside of that vehicle?

6 A No, ma'am.

7 Q And in State's Exhibit 16, can you see in this last
8 picture who is clearly inside of that vehicle?

9 A No, ma'am.

10 Q And in State's Exhibit Number 57, Picture Number 2,
11 can you see who's clearly inside of that vehicle?

12 A No, ma'am.

13 Q And there was some other videos, like southbound --
14 well, stills of videos from southbound Main onto
15 Cook as well as North Main and Miller; correct?

16 A Correct.

17 Q That you testified to. And in those videos, can
18 you clearly see who is inside of that vehicle?

19 A No, ma'am.

20 Q And you stated that, you know, when you're
21 investigating a homicide, it's a long, drawn out
22 process?

23 A Yes, ma'am.

24 Q Like you have to --

25 A A lot of times.

1 Q Yes. And you have to put the pieces together?

2 A Correct.

3 Q So on this night, you actually -- or not
4 specifically on this night, but throughout the
5 duration of your investigation, you actually
6 started calling people who were in Michael Davis's
7 cell phone?

8 A Yes, we spoke to numerous people.

9 Q Okay. And you also testified to the fact that you
10 spoke to someone in particular and you were able to
11 actually find out where Mr. Davis got that vehicle
12 from?

13 A I did not speak to her, one of the other
14 investigators did. But, yes.

15 Q Who did you specifically speak to in reference to
16 trying to piece together what happened to Mr. Davis
17 on that night?

18 A I did speak with that young female, but that was
19 later. And I re-interviewed and got information
20 from her that we followed up on. I spoke with
21 another young lady that he saw just prior to -- I
22 think it was the last phone call he made other than
23 the 9-1-1 call. We did speak with her, and which
24 we were able to get video to corroborate what she
25 told us as well. I spoke with several other people

1 as well.

2 Q Did you at some point in your investigation speak
3 to a SHERALD Brown?

4 A I don't remember that, but I may have. We spoke to
5 a lot of people.

6 MS. SINGLETARY: Beg the Court's indulgence,
7 Your Honor.

8 (Pause.)

9 BY MS. SINGLETARY:

10 Q Did you become aware of the fact that at some point
11 someone in your office may have spoken to
12 Ms. Brown?

13 A Oh, no, I got it right here. SHERALD Brown.

14 Q SHERALD Brown.

15 A SHERALD, okay.

16 Q It is kind of spelled funny?

17 A Yes, ma'am. She resides on Muller Street. And we
18 got information from someone else that they had
19 visited Muller Street earlier that day. So we went
20 out to Muller Street and spoke with her. Actually,
21 we spoke to her twice.

22 Q And once you actually spoke to her during the
23 course of your investigation, you became aware of
24 some things that actually occurred at that
25 Muller Street; correct?

1 A Yes, ma'am.

2 Q And isn't it true that you became aware of the fact
3 that --

4 MS. BODMAN: Objection. Hearsay.

5 MS. SINGLETARY: Your Honor, State v. Thompson
6 allows for me to go into investigatory hearsay
7 which was actually uncovered during the course of
8 the police officer's investigation.

9 THE COURT: What is the question? Let me hear
10 the question. Then don't answer.

11 BY MS. SINGLETARY:

12 Q You said during the course of your investigation,
13 you actually spoke to a Sherald Brown?

14 A Correct.

15 Q And you testified that she was -- she stayed at
16 Muller Street?

17 A Yes.

18 Q And my next question was you became aware of some
19 of the activities that occurred at Muller
20 Street on that day?

21 A We interviewed her about the victim being over at
22 that location earlier in the day, yes, ma'am.

23 Q And during the course of your investigation, you
24 became aware of the fact that the victim was there
25 with Ms. Shemica Johnson, correct?

1 A Correct.

2 Q And Ms. Shemica Johnson is actually the girlfriend
3 of Mr. Davis?

4 A Yes.

5 Q And you also became aware of some activities that
6 Ms. Shemica Johnson and Mr. Davis were
7 participating in at Muller Street?

8 A I'd have to look at her statement.

9 Q If I were to tell you that during the course of
10 your investigation, you became aware of the fact
11 that there was some drug activity that was
12 occurring --

13 A Oh, yes.

14 Q -- at Muller Street?

15 A Yes.

16 Q And that Ms. Shemica Johnson, as well as Mr. Davis,
17 came to that residence at least three times on that
18 day?

19 A It was multiple times, but I don't know. I'd have
20 to look at her statement.

21 Q And there was some other activities that actually
22 happened at Muller Street that you became aware
23 of?

24 A Yes.

25 Q There was actually an altercation that occurred at

1 Muller Street; correct?

2 A Yes. Shemica told us about that.

3 Q Okay. And you became aware of the fact that there
4 was an altercation between Ms. Johnson and
5 Mr. Davis?

6 A Correct. She told us about that when we first
7 interviewed her.

8 Q And you became aware of the fact that Ms. Johnson
9 was hit with a tool from out of the white vehicle
10 that you just testified to?

11 A That's what she said.

12 MS. BODMAN: I object. There's no evidence of
13 that.

14 THE COURT: Let me see y'all a second.

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

18 THE COURT: All right. Objection sustained.
19 Please rephrase the question.

20 MS. SINGLETARY: Yes, Your Honor.

21 BY MS. SINGLETARY:

22 Q And, again, you said that you guys called and you
23 all talked to -- well, you specifically -- you all
24 talked to several people to try to gain some
25 information about this crime?

1 A Yes, ma'am.

2 Q And at some point, you became aware of the fact
3 that on this night that Mr. Davis was looking to
4 rent out his car to someone; correct?

5 A That was the information we received, yes, ma'am.

6 Q And Mr. Davis was looking to rent out his car to
7 someone in exchange for them giving him crack
8 cocaine; correct?

9 A Drugs. I couldn't tell you which particular drug.
10 Yes, ma'am.

11 Q And you stated that after gaining all this video,
12 you actually got a person of interest?

13 A Yes, ma'am.

14 Q And that was from that surveillance at the Hess
15 station?

16 A Yes, ma'am.

17 Q And at the Hess station, the person of interest,
18 who was later identified as Austin Murray, actually
19 went and paid for gas?

20 A Correct.

21 Q He couldn't go inside?

22 A Correct.

23 Q There was a little window?

24 A Correct.

25 Q And you said that you could clearly see Mr. Davis

1 pumping gas at this point?

2 A Correct. He gets out of the car and pumps the gas
3 while Austin pays for it.

4 Q And then we fast-forward to them coming to the A-1
5 store or grocery?

6 A A little convenience store, a neighborhood store.

7 Q Okay. And we clearly have pictures of Austin
8 Murray actually getting out of the passenger side
9 of Mr. Davis's car?

10 A Yes.

11 Q And as a result of that, you said you sent out a
12 BOLO, Be On The Lookout, for that person of
13 interest?

14 A Right. Well, an identification BOLO, yes.

15 Q And you sent that to local agencies?

16 A Local agencies, and we put it on TV.

17 Q And then once you put it on TV, you actually got
18 some calls and you were able to find out that this
19 person of interest is Austin Murray?

20 A That's correct.

21 Q And you stated that you went by Mr. Murray's house
22 to see if you could actually speak to him and,
23 apparently, he was not there the first time you
24 went?

25 A I can't remember if he was there the first time,

1 but his father got involved and asked that we not
2 speak to him without talking to his attorney first.

3 Q And when you spoke to the attorney, you became
4 aware of the fact that you were not going to be
5 able to talk to Austin Murray until you put papers
6 on him?

7 A Right.

8 Q And so you put papers on Austin Murray?

9 A Well, after we gathered some more evidence, yes.

10 Q After you gathered some more evidence, yes.

11 A Yes.

12 Q And you put papers on him. And so you brought him
13 down to headquarters?

14 A Correct.

15 Q And Austin said, I want to talk, I want to talk?

16 A Correct.

17 Q But then when you got him there, he kind of went
18 back and forth. He was like, I want to talk to my
19 attorney, but I really want to talk to you?

20 A Correct. Several hours.

21 Q Yes. Several hours. But that was your first --

22 A Contact with him as in formal interview, yes,
23 ma'am.

24 Q Exactly. And so you say, Look, Austin, if you want
25 an attorney, then I can't talk to you anymore?

1 A Correct.

2 Q I'm going to take you downstairs, put you in the
3 paddy wagon?

4 A Correct.

5 Q You get down to the paddy wagon, Austin said, I
6 want to talk, I want to talk, I want to talk. Oh,
7 no, I need to talk to my attorney.

8 A Well, at that point he's saying he wants to talk.
9 And at that point, I said, We're going to slow
10 down, go to the Detention Center, think about it,
11 and I'll bring you back up in the morning. If you
12 want to talk to your attorney or if you want to
13 talk to me, you can tell me at that time.

14 And that's what we did. And he said he wanted
15 to talk to his attorney.

16 Q And that was the second attempt?

17 A That was the second time we spoke to him.

18 Q So the next morning you bring Austin Murray back to
19 City of Columbia?

20 A Yes, ma'am.

21 Q Headquarters?

22 A Yes, ma'am.

23 Q And Austin Murray is again, I want to talk, I want
24 to talk. But he wants to talk to his attorney in
25 the morning, that's what he's telling you?

1 A Correct.

2 Q And so Austin Murray is there for, I believe, you
3 said several hours?

4 A Most of the day, yes. Well, we were trying to get
5 in touch with his attorney most of the day. Once
6 he got to that point where he was wishy-washy
7 again, we tried to call his attorney numerous
8 times. His father tried to call the attorney. We
9 got in touch with the attorney. He said he was
10 representing him, but it was by the end of the day.
11 I got it in my notes like 4:00 o'clock in the
12 afternoon or 5:00 o'clock before the attorney
13 showed up.

14 Q And then at that point, that was the fourth
15 occasion for you to talk to Austin Murray? It was
16 the second day, but kind of the fourth encounter?

17 A Well, it was third. Would be the third.

18 Q But you had spoken to him earlier that morning;
19 right?

20 A I spoke to him earlier that morning, and then when
21 he said he wanted his attorney, that was the end of
22 that, and we got him his attorney.

23 Q And then you got his attorney that afternoon?

24 A Right.

25 Q Okay. And that's when you finally were able to

1 talk to Austin Murray?

2 A Correct.

3 MS. SINGLETARY: Beg the Court's indulgence,

4 Your Honor.

5 (Pause.)

6 BY MS. SINGLETARY:

7 Q Now, at this point, had my client's name been
8 mentioned?

9 A No, ma'am.

10 MS. SINGLETARY: I have no further questions.

11 THE COURT: Yes, ma'am?

12 REDIRECT EXAMINATION

13 BY MS. BODMAN:

14 Q Do you recall Austin Murray giving his attorney's
15 name, George McElveen?

16 A McElveen.

17 Q During the entire time that you interviewed Austin
18 Murray, I think it lasted an hour and a half, two
19 hours?

20 A I can't remember, but it was --

21 Q When Mr. McElveen was present?

22 A Right. He was present the whole time.

23 Q Did Mr. McElveen interrupt a single time?

24 A No, ma'am.

25 MS. BODMAN: No further questions.

1 THE COURT: All right. Do you have any
2 questions?

3 MS. SINGLETARY: No questions.

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

5 (Witness steps down.)

6 THE COURT: Ladies and gentlemen of the jury,
7 at this time, we will take our afternoon break.
8 We'll take about a 10 or 15 minute break, and then
9 we'll have you back in the courtroom to continue
10 with the State's case.

11 Thank you.

12 (WHEREUPON, the jury retires to the jury
13 room at 4:12 p.m.)

14 THE COURT: We'll take about a 10 or 15 minute
15 break.

16 Are you calling --

17 MS. BODMAN: Austin Murray.

18 THE COURT: Do we need to settle a record on
19 him?

20 MS. BODMAN: Let me doublecheck.

21 MS. SINGLETARY: Your Honor, he just has the
22 carjacking and murder that is pending, and then
23 there is a no disposition for an unlawful entry
24 into a closed place.

25 MS. BODMAN: Yeah. There's nothing. The

1 pending charge.

2 THE COURT: Okay. All right. And after him,
3 you have somebody else that we're going to need to
4 settle the record?

5 MS. BODMAN: Potentially, you know, depending
6 on how long Austin goes, we have DaQwane Robinson.
7 His just shows the pending accessory before the
8 fact to the armed robbery. That is the Five Points
9 armed robbery. And Curtis.

10 MS. SINGLETARY: Curtis Wright, Your Honor, I
11 show that he actually has from 2010 a burglary
12 second that he received a YOA on that we would
13 actually seek to actually interview.

14 Additionally, it appears that he had a couple
15 of burglary firsts that may have -- three counts of
16 burglary first and then two counts of grand larceny
17 from 2011, which ultimately -- it appears from the
18 rap sheet that he may have pled to multiple
19 burglaries. It is hard to understand.

20 MS. GARFIELD: I think what happened, Judge,
21 is he pled to two in 2010 and then he pled to
22 another one in 2011, which then caused Probation
23 and Parole to pull in all three at once. From what
24 I'm reading, I think we're in agreement with
25 Ms. Singletary that he had one burglary second from

1 2010, two from 2011. He then pled guilty to a
2 grand larceny in 2011, as well as a burglary second
3 degree out of Fairfield County in 2013. That would
4 be a total of four burglaries.

5 MS. SINGLETARY: Yes, Your Honor.

6 THE COURT: Burglary second?

7 MS. BODMAN: One, two, three, four burglary
8 seconds.

9 MS. SINGLETARY: That's my understanding, Your
10 Honor.

11 MS. GARFIELD: And, Judge, I let
12 Ms. Singletary know this morning, Mr. Wright is not
13 represented for any charges, but he is present with
14 Mr. Drelton Carson as a lawyer and family attorney.
15 It is my understanding through Mr. Carson that Mr.
16 Wilson -- I'm sorry, Mr. Wright, Curtis Wright, is
17 intending to indicate that he does not recall
18 making a statement to police, so we will be going
19 to impeach him under Rule 613.

20 THE COURT: All right. Is Mr. Carson going to
21 be here?

22 MS. GARFIELD: Yes, ma'am.

23 THE COURT: Okay. Tell him to be on time, I'm
24 not waiting on him.

25 MS. GARFIELD: Yes, ma'am, I will send him

1 FFM.

2 MS. BODMAN: DaQwane also has an UCE still
3 pending from a traffic stop.

4 MS. SINGLETARY: Yes.

5 MS. GARFIELD: DaQwane.

6 THE COURT: So those are not convictions?

7 MS. BODMAN: Correct. I think -- as far as
8 her being able to go into it, he is charged with
9 the gun.

10 THE COURT: All right. Well, that is already
11 in the record.

12 MS. BODMAN: Yes.

13 MS. SINGLETARY: I won't rehash that, Your
14 Honor.

15 Your Honor, I would like to bring -- as it
16 relates to Austin Murray, I would like to be able
17 to go in and say that he has a pending carjacking
18 and murder, because I believe that that certainly
19 gives him bias for him to testify here today.

20 THE COURT: You mean related to this offense?

21 MS. SINGLETARY: Yes, this offense.

22 THE COURT: Yes, I think you can.

23 MS. BODMAN: Yes.

24 THE COURT: Of course, you don't get into the
25 armed robbery and stuff -- I mean, is it armed

1 robbery?

2 MS. BODMAN: Austin Murray is not involved, it
3 is an unrelated --

4 THE COURT: Okay. It is DaQwane. As long as
5 -- if you get into that, then -- it is up to you,
6 but, of course, you know they'll be able to bring
7 in the fact that your client was involved in that
8 too, allegedly?

9 MS. SINGLETARY: Yes, Your Honor.

10 THE COURT: All right, we will take about 10
11 or 15 minutes.

12 (WHEREUPON, a break was taken 4:17 p.m.)

13 THE COURT: Are we ready to bring the jurors
14 in?

15 MS. BODMAN: We're ready.

16 THE COURT: You can bring them on in.

17 (WHEREUPON, the jury came into open
18 court at 4:43 p.m.)

19 MS. BODMAN: May we approach real briefly?

20 THE COURT: Yes.

21 (WHEREUPON, a bench conference was held
22 in the presence of the jury but out of
23 the hearing of the jury.)

24 THE BAILIFF: The jurors are all present, Your
25 Honor.

1 THE COURT: I would ask the State to call your
2 next witness.

3 MS. BODMAN: The State calls Austin Murray.

4 THE BAILIFF: Stand up and place your left
5 hand on the Bible and raise your right and face the
6 clerk.

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

11 THE WITNESS: So help me God, yes.

12 THE CLERK: Thank you.

13 THE BAILIFF: Have a seat.

14 (Witness complies.)

15 THE CLERK: State your name for the record,
16 please.

17 THE WITNESS: Austin Murray.

18 AUSTIN MURRAY,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BODMAN:

22 Q Austin, how old are you?

23 A Twenty years old.

24 Q Okay. And can you tell us a little bit about
25 yourself? Where did you grow up?

1 A I grew up in Woodfield Park off of Decker
2 Boulevard.

3 Q Here in Columbia?

4 A Yes, ma'am.

5 Q Is this where you were born?

6 A Yes, ma'am.

7 Q Where all did you go to school?

8 A I went to Conder Elementary, I went to Dent Middle
9 School, and Richland Northeast.

10 Q You're here in handcuffs and shackles. Where are
11 you living right now?

12 A Alvin S. Glenn Detention Center.

13 Q Prior to that, where were you living?

14 A Off of McKinney Street.

15 Q And what area of town is that?

16 A That is off of Farrow Road, like, the downtown
17 area, I guess.

18 Q Do you know any other streets around there?

19 A Harden, Park Street, Farrow, and Sunset Boulevard.

20 Q And how far did you go in school?

21 A To the 11th grade.

22 Q Were you working anywhere or what were you doing
23 before you got arrested?

24 A Before I got arrested, I was working at McDonald's
25 on -- I think that's -- I can't -- I think it is

1 Killian Road.

2 Q Do you know Cheo Green?

3 A Yes, ma'am.

4 Q Do you see him in the courtroom today?

5 A Yes, ma'am.

6 Q How long have you known him?

7 A Since about 9th grade.

8 Q And, I mean, how did you meet him? Did you go to
9 the same school or what?

10 A We both went to Richland Northeast, but he is more
11 like a friend of my brother's because he is a
12 little older than me.

13 Q And who is your brother?

14 A Xavier Murray.

15 Q How old is Xavier?

16 A Xavier is 22.

17 Q And so, I guess, how often would you see or be
18 around Cheo?

19 A Not that often. We hung around each other a couple
20 of times, but like not too much.

21 Q Every couple of months? Every couple of weeks?

22 A About like every couple of months maybe.

23 Q And you said since you were in the 9th grade?

24 A Yes, ma'am.

25 Q So tell us about -- we're going to go to the night

1 of September 15th of 2012, into the 16th of 2012,
2 into the early morning hours. I mean, do you
3 remember what you were doing earlier that evening?

4 A Earlier -- I believe that that was the day of the
5 classic, the Benedict Classic.

6 Q Okay.

7 A So I was -- that day, I was on Two Notch Road
8 mostly at the game. And like further on into the
9 night, somebody had got shot at McDonald's. And my
10 mother was like -- she called -- she called me and
11 she told me I need to come home because somebody
12 had got killed that night, and she wanted me in the
13 house.

14 Q So where did you go?

15 A From there, I started walking. I left Two Notch.
16 I walked through the neighborhood. And as I got
17 closer towards my house, that's when I -- that's
18 when the victim had pulled up beside me on the
19 street and that's when he asked me about renting a
20 car for some drugs.

21 Q Do you know what street you were walking on when he
22 drove up?

23 A No, ma'am. I'm not familiar with the street, but I
24 know it's like directly across from the Hot Spot,
25 the gas station.

1 Q Do you know in relation to your home where it was?
2 Like, were you still far away from your home or
3 close?

4 A It was right across the street from where -- from
5 McKinney Street, from where I stay at.

6 Q Okay. You were almost home?

7 A Yes, ma'am.

8 Q How are you feeling right now? Are you a little
9 nervous?

10 A Yes, ma'am.

11 Q Do you have any particular memory about what time
12 it was that the victim pulled up next to you?

13 A I'm guessing around maybe like -- around late 1:00
14 in the morning, 1:00 o'clock in the morning, 2:00.

15 Q Okay. I mean, did you -- and that's why I was
16 asking did you have any particular memory. I mean,
17 did you look at your watch or look at your phone or
18 anything about what time it was?

19 A I know when I was on Two Notch, it was -- it was
20 kind of late. It had to be around, like -- around,
21 like 1:00. So for me walking towards there, like,
22 you know, kind of like I was dragging a little bit.
23 So it had to be later than 1:00 o'clock, maybe
24 2:00, 2:00 something.

25 Q And so do you know the victim's name?

1 A I didn't know the name at the time, but, like, I
2 seen him around a couple of times. Like, he be --
3 he might be around the store in the neighborhood.

4 Q But you didn't know his name?

5 A No, ma'am.

6 Q When you all talked there, did you exchange names?

7 A Yes, ma'am.

8 Q And so he said what to you?

9 A He -- when he pulled -- when he pulled up beside me
10 that night, he asked me -- he asked me did I want
11 to rent a car for some drugs. I told him I didn't
12 have any. I told him I didn't have any, so that's
13 when I told him maybe I could try to call around to
14 see if I could find somebody who had some.

15 So that's when I went to my phone and I dialed
16 my friend number, my friend Jamil, and I told him
17 the situation. And he told me that he was going to
18 call me back, he was going to call around and
19 find -- see what he could find. So I waited -- we
20 waited like five or ten minutes. And then after
21 that he called me back and he told me to call Cheo
22 --

23 MS. SINGLETARY: Objection, Your Honor,
24 hearsay.

25 THE COURT: Sustained.

1 BY MS. BODMAN::

2 Q So he calls you back. And do you get the name of
3 someone that you are going to get some drugs from
4 or who is going to hook you up?

5 A Yes, ma'am.

6 Q So at this point, are you -- have you gotten into
7 the victim's car, or are you still standing
8 outside?

9 A I'm still standing outside the car.

10 Q So what happens now?

11 A I make the phone call to my friend. He called --
12 he told me to call -- he was going to call me back.
13 So once he called me back, he gave me Cheo's name,
14 and he told me to call Cheo, and Cheo, he will tell
15 me what's going on there, like, as far as drugs and
16 everything.

17 So I called Cheo and I told him the situation.
18 He told me where to meet him at. He told me that
19 he was on Broad River Road.

20 So after that, I told the victim what he told
21 me. He said, All right.

22 So after that, that's when we continued --
23 that's when we -- I got in the car and we drove --
24 we made our way to Broad River.

25 Q Okay. Did you make any stops first before you went

1 to Broad River? Where did y'all go?

2 A First we stopped at the Hess gas station on North
3 Main and we got -- I paid for the gas. After that,
4 we stopped at that A-1 corner store on Monticello,
5 like further up North Main. I bought the victim
6 some Blue cigarettes.

7 And after that, we left the A-1 corner store
8 and drove further down Monticello. And we veered
9 off -- we veered off in like a neighborhood like
10 across from Eau Claire High School. And we drove
11 past the victim's house. He told me this is where
12 he stay at and this is where he wanted me to drop
13 the car off when we got done with the car, or
14 whatever.

15 So after that, he really wasn't too much
16 talking to us in the car. He was just like small
17 talk. He told me about his son and his family.
18 And like from there, we just talked about like
19 different people we both knew.

20 So after that, I believe we had drove -- we
21 drove further down Monticello and got on the
22 highway.

23 And after we got on the highway, we drove to
24 the area where Cheo told us to meet him.

25 Q And so how did you know where to go to meet Cheo?

1 A Cheo told me the directions on the phone.

2 Q So you get to that area and what happens?

3 A Well, we get to that area. It was kind of like
4 some confusion because, like, he told us to drive
5 in one parking lot, and then we get in one parking
6 lot and he, like, he told us to come out of that
7 parking lot and to drive to another parking lot.
8 And after all that, he was, like, come out of that
9 parking lot and just drive straight down the
10 street. So we drove straight down the street, and
11 that's when we seen him walking. And after that,
12 he got in the car. I introduced --

13 Q Okay, hold on a second. I want to go back to when
14 you said it was kind of confusing because you're
15 going through the parking lot and said it was here.
16 Is this one solid conversation, or are you like
17 calling back and forth?

18 A It is one solid conversation.

19 Q You're not going, Hey, we're trying to find you.
20 Hang up. Where are you?

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

22 Q And so then he gets in the car, and then where do
23 y'all go?

24 A From there, we drive back down the highway towards
25 Monticello Road. And, like, again -- it really

1 wasn't too much talking in the car. Like, the
2 radio was playing. But he was telling us, like, he
3 was going to take us back to his house and we were
4 going to drop him off. And then from there,
5 whenever we got done with the car, that's where he
6 wanted us to bring the car back to. So --

7 Q So you said you were driving back down Monticello.
8 So are you going back --

9 A Back down the highway.

10 Q -- down to where you came from?

11 A Yes, ma'am.

12 Q Okay. How long do you think that you -- from the
13 time that the victim, Mr. Davis, stopped where you
14 were walking until, I guess, you get to Cheo, how
15 long do you think that was?

16 A Maybe like 30, 35, 40 minutes maybe.

17 Q Because you stop and make some phone calls -- or
18 you initially make some phone calls and you said
19 you went to the Hess and then you went to A-1 and
20 then you're headed off towards Broad River?

21 A Yes, ma'am.

22 Q Okay. So then what happened? So he's telling you
23 that he wants y'all to drop him back --

24 A He wanted --

25 Q -- to his house?

1 A -- us to drop him back off of Monticello to the
2 house where he showed me where he lived.

3 And after that, like, once we got around that
4 area, like, he was, like, he kept saying, like, Get
5 me straight. Like, what's up with the drugs?
6 Like, what's going on?

7 So Cheo is, like, I got you. I'm going to get
8 you straight.

9 So, by the time we get to the house, the
10 victim was like -- he was like, What's up? What's
11 going on?

12 So he's like, I am going to get you straight.
13 I am going to get you straight.

14 So he drove around the corner. , So, like, I
15 guess, to give him time, like, to get himself
16 together, whatnot.

17 So we get back around in front of the house,
18 and then it is like, basically, like an argument.
19 They started getting into it, started arguing.

20 Q Arguing about what?

21 A Arguing about -- because I guess he feel like --
22 like we was -- like, it was planned. So --

23 Q And still, have you seen any drugs being presented?

24 A No, ma'am.

25 Q Or is there any information that you're on the way

1 to get any drugs?

2 A No, ma'am. From my understanding, I thought that
3 the drugs was already in the car through Cheo.

4 Q That's what you thought was going to happen?

5 A Yes, ma'am.

6 Q Okay. At some point, do you and Cheo start texting
7 each other in the car?

8 A Like, around the time of the argument, it was
9 like -- if I can remember -- I remember it was some
10 text messages, like, I remember he asked me, like,
11 What we going to do with the car whenever we got
12 the car?

13 I said I didn't know.

14 Then, like, he started texting me. I can't
15 remember, but -- I can't really remember, but I
16 remember it was a text message, like, a couple of
17 them was like, Did the victim have any money?

18 And I was, like -- I told him, I don't know
19 nothing about that. I don't know nothing about no
20 money.

21 Then he was like, he was going to do something
22 hot.

23 Q Say that again?

24 A He said that he was going to do something hot.

25 Q Okay.

1 A And, like, from that, I understood, like, it was
2 something else --

3 MS. SINGLETARY: Objection, Your Honor. That
4 is speculation. What my client's interpretation of
5 something hot could be totally different from what
6 Austin Murray's interpretation of what something
7 hot is.

8 MS. BODMAN: It could be. And so it is what
9 did he think that that meant.

10 THE COURT: The objection is overruled.
11 Rephrase the question as to what he thought, not --

12 BY MS. BODMAN:

13 Q What did you think "fixing to do something hot"
14 meant?

15 A What I thought it meant, like, hot basically means
16 like something crazy. Something -- just like
17 spontaneous -- something crazy.

18 Q So, like, did you have ideas in your head of what
19 that meant?

20 A In my mind, what I thought it meant, like, I
21 thought it meant he was going to rob him or
22 something. But, like, he already asked me did the
23 man have some money. I thought that was kind of
24 weird, but --

25 Q Because, obviously, he was needing to trade the car

1 for drugs?

2 A For some drugs, yes, ma'am.

3 Q So he didn't have any money to buy drugs, he was --

4 A (Nods affirmatively.)

5 Q And when you stopped at the Hess station, what did
6 y'all get?

7 A The first time, right, we got -- I paid -- I paid
8 for the gas.

9 Q Okay. So he didn't pay for the gas, you paid to
10 put gas in this man's car, Mr. Davis's car?

11 A Yes, ma'am.

12 Q So he says, I'm fixing to do something hot. You're
13 thinking he's going to rob him for his car?

14 A Yes, ma'am.

15 Q And what happens next?

16 A At that point, I told him, I was, like, Man, don't
17 do nothing -- don't do nothing stupid. But -- so
18 after that, like, you know, after they got -- hey,
19 they still arguing, so I'm, like, Man -- I told
20 him -- I told the victim, just like, just to take
21 us home, just take me home. I'll put some more gas
22 in the car so you can take Cheo home. And then --

23 Q You said, I'll put some more gas?

24 A In the car.

25 Q Is that what you said?

1 A Yes, ma'am.

2 Q Okay.

3 A And after that, we started driving around
4 Monticello a little more. And then it was like, we
5 got past the A-1, and we passed -- we barely got
6 past the General, and then that's when, like, out
7 of the blue, like, I just seen like sparks, like
8 sparks from a gun fire. And I ain't really know
9 what to do. I seen -- all I remember is like the
10 victim was yelling.

11 Q The victim was yelling?

12 A Yes. He started screaming. And, like, he fell out
13 the car. I guess he must have opened the door by
14 himself. But I remember him falling out the car
15 and the car just started rolling. And, like, I
16 ain't know what to do. Like, I froze because I was
17 surprised. I ain't -- that ain't never happened --
18 I ain't never been around that situation before.

19 Q Then what happened?

20 A Then after that, the car is still rolling. So Cheo
21 is, like, Drive. So I ain't know what to do. The
22 man got a gun. I didn't want to end up like the
23 victim, so I ain't got no choice but to drive. So
24 I got in -- I jumped -- I crossed over from the
25 passenger seat and I got in the driver's seat and I

1 started driving.

2 Q Which direction -- do you know what street you're
3 on?

4 A By that time, we are on North Main.

5 Q And what direction on North Main do you start
6 driving?

7 A We are going down North Main towards the Hess.

8 Q Back towards the Hess?

9 A Yes, ma'am.

10 Q Now, the whole time that you have been in the car,
11 from the time that Mr. Davis picks you up until
12 this, just before he gets shot, where are you
13 sitting the car?

14 A The passenger seat.

15 Q Passenger seat, front or back?

16 A Front and back -- I mean, front. I'm sorry. I
17 apologize.

18 Q That's okay. So the front?

19 A Yes, ma'am.

20 Q And where is Cheo seated?

21 A Cheo is seated behind -- he's seated behind me,
22 like, towards -- like, directly behind me.

23 Q Not behind the victim, behind you?

24 A Yes, ma'am.

25 Q So you take off driving back down North Main. And

1 then where do you go?

2 A From that area, we drive -- we take -- we veer off
3 by the Hess, like we take a back road and we get
4 back on Sunset Boulevard and we drive towards the
5 hospital and then we get on the highway. I think
6 that's like 277, if I ain't mistaken.

7 Q Okay.

8 A From 277, we drive to Two Notch. We get off Two
9 Notch by the, I think that's Lowe's. And from
10 there, we drive -- we driving -- I think we took a
11 back road to a neighborhood on Two Notch to where
12 Jamil stays.

13 Q Jamil? Do you know Jamil's last name?

14 A Jamil Brennan.

15 Q You drive to his house?

16 A Yes, ma'am.

17 Q And then what do you do at Jamil's house?

18 A Once we get to Jamil's house, I remember Cheo told
19 him to bring out like a rag. So when he brought
20 the rag out, he started wiping down everything he
21 touched. He was just like, Wipe the car down.

22 So I took -- I had on a green shirt that
23 night, so I took off the green shirt and I wiped
24 down everything I touched.

25 And in between that time and like before we

1 left, that's when, like, he started telling Jamil
2 about what happened in the situation.

3 Q Now, you said you were wiping down the car. Did
4 Mr. Davis bleed in the car as a result of his
5 wound, or what were you all wiping down?

6 A I'm not -- I didn't remember seeing no blood, but,
7 from my understanding, we were wiping down, like, I
8 guess, fingerprints or something. Everything that
9 we touched, I guess.

10 Q So Cheo starts telling Jamil about this?

11 A Yes, ma'am.

12 Q Where do you go? What do you do next?

13 A After that, Cheo told me to drive down Two Notch to
14 a neighborhood called Deer Park. So once we got to
15 Deer Park, I guess whoever he supposed to meet, I
16 guess they wasn't there. So we left Deer Park and
17 then we drove back up Two Notch to a neighborhood
18 called Charleswood.

19 Like the same thing in Deer Park, whoever, I
20 guess, Cheo was supposed to meet, they didn't --
21 they wasn't there. So we drove -- I think we took
22 that -- we got out of that neighborhood and we
23 drove like down North Brickyard Road where we
24 eventually ran out of gas in another neighborhood,
25 and so we parked the car in the street. And I

1 rolled the windows up -- we rolled the windows up,
2 locked the car door.

3 And after that, we just walked off. And
4 eventually Cheo called somebody in like a green
5 4-door car, and he come and picked us up.

6 Q You said a green 4-door car?

7 A Yes, ma'am.

8 Q Somebody came to pick you up in that car?

9 A Yes, ma'am.

10 Q When you left that car on the side of the road,
11 were there any broken windows or windshield?

12 A The passenger side window was broken.

13 Q When you got it or while you all had it?

14 A While we had it.

15 Q And how did that happen?

16 A I think while we were in Charleswood, and Cheo had
17 spit on the window and, like, he hit the window
18 with the gun, with the butt of the gun, and broke
19 the glass.

20 Q So the person that came to pick you up in the green
21 4-door car, do you know who that was?

22 A No, ma'am.

23 Q Was it somebody that you had seen before or you
24 knew or was a friend of yours?

25 A I probably -- I seen him before, but I don't --

1 like, he wasn't like a friend of mine.

2 Q Do you remember what his name was? Can you tell us
3 what his name was?

4 A No. No, ma'am.

5 Q So then where do y'all go in the green 4-door car?
6 What happened?

7 A After he picked us up, he take the highway -- he
8 take me back home to Farrow Road, on McKinney
9 Street. And after that, I don't -- I can't say
10 where they went. I know he took me straight home
11 after that.

12 Q After this night, did you have any conversation
13 with Cheo about what happened?

14 A Yes, ma'am. I seen Cheo like a week or two after
15 the incident. And we were at a friend's house
16 named Allen. He stay over in Trenholm Acres behind
17 Columbia Mall. He was basically telling me, like,
18 his cousin -- I guess his cousin named Curtis. He
19 was, like, Curtis got caught with the gun. He was
20 telling me that Curtis got caught with the gun. He
21 might have gave up -- he might have told about the
22 incident. And he was telling me, like --
23 basically, like, if I told or whoever told, he was
24 going to kill the weakest link.

25 Q Who were you with when you had that conversation

1 with Cheo?

2 A I was with my girlfriend, Donnell Jackson.

3 Q Was she present during the conversation, or you
4 were just with her, you went to the party with her?

5 A She was present and, like, I believe, Jamil was
6 there too. Jamil and, like, a couple more people,
7 but I remember Donnell, she was beside me when
8 that happened, when that was said.

9 Q So Donnell went to that party with you?

10 A Yes, ma'am.

11 Q Did you actually see the gun that Cheo used to
12 shoot Mr. Davis?

13 A I barely seen it. I can't really say that I did.

14 Q I'm going to show you what's been admitted into
15 evidence as State's Exhibit Number 29. Have you
16 ever seen Cheo with that gun?

17 A I can't say -- I can't say that I did, but, like,
18 the gun had to be a revolver because --

19 THE COURT REPORTER: I'm sorry, I didn't hear
20 you.

21 A. I said, the gun, it had to have been like a
22 revolver or something because, like, when I seen it
23 in the car, it couldn't have been like too big.

24 Q Okay. You just used your hands to kind of show
25 inches. Can you hold it up?

- 1 A Probably like that big (indicating).
- 2 Q Did you get a good look at it or just --
- 3 A Like, it was a quick glimpse, but it was like -- I
- 4 remember, like, it wasn't too many shots.
- 5 Q Have you seen that Hess video?
- 6 A Yes, ma'am.
- 7 Q I'm going to show you what is marked as State's
- 8 Exhibit 46. Do you recognize that?
- 9 A Yes, ma'am.
- 10 Q Okay. And are those your initials?
- 11 A Yes, ma'am.
- 12 Q And basically what -- this is a disk, you are
- 13 holding a CD or DVD; is that right?
- 14 A Yes, ma'am.
- 15 Q And did you watch that?
- 16 A Yes, ma'am.
- 17 Q And what is that a video of?
- 18 A It is a video of me at the gas -- at the Hess gas
- 19 station getting gas.
- 20 Q And who else can you see in that video?
- 21 A I see the victim.
- 22 Q And the car, I guess?
- 23 A Yes, ma'am.
- 24 Q Can you see the car in that?
- 25 A Yes, ma'am.

1 Q And is that the video that you saw? Does that
2 accurately show what you did at that Hess station
3 that night with the victim?

4 A Yes, ma'am.

5 Q And that is you and that is him?

6 A Yes, ma'am.

7 MS. BODMAN: Offer into evidence State's
8 Exhibit 46.

9 MS. SINGLETARY: Without objection.

10 THE COURT: It will be entered into evidence.
11 (WHEREUPON, State's Exhibit No. 46 was
12 marked for identification and received
13 into evidence.)

14 MS. BODMAN: If I can publish it to the jury.
15 (WHEREUPON, State's Exhibit 46 was
16 played in open court for the jury.)

17 BY MS. BODMAN:

18 Q Can you see that?

19 A Yes, ma'am.

20 Q Is that you?

21 A Yes, ma'am.

22 Q In the green shirt?

23 A Yes, ma'am.

24 Q Going up to pay for the gas?

25 A Yes, ma'am.

- 1 Q And what is Mr. Davis doing back at the car?
- 2 A Pumping gas.
- 3 Q Do you have to go pay for it outside?
- 4 A Yes, ma'am.
- 5 Q After -- I guess, after a certain hour, the gas
- 6 station --
- 7 A Yes, ma'am.
- 8 Q -- locks the door and you have to pay for it
- 9 outside at the window?
- 10 A Yes, ma'am.
- 11 Q I guess -- are y'all talking just briefly?
- 12 A Yes, ma'am.
- 13 Q And you got in what seat of the car?
- 14 A The passenger seat to the -- on the right side of
- 15 the driver's side.
- 16 Q Okay. You said you also went to the A-1 store?
- 17 A Yes, ma'am.
- 18 Q State's Exhibit Number 19, is that you?
- 19 A Yes, ma'am.
- 20 Q And so where is Mr. Davis, in the car?
- 21 A Yes, ma'am.
- 22 Q Are they outside waiting, or where is he?
- 23 A He's outside waiting in the car.
- 24 Q Did you see this on the news? Did you see your
- 25 picture on the news?

1 A Yes, ma'am.

2 Q You said that after Mr. Davis was shot, you took
3 off back down --

4 A North Main.

5 Q Back down North Main. And then you took a turn
6 across from the Hess?

7 A Yes, the same way we came when we -- when we were
8 en route to pick Cheo up.

9 Q Did you remember scraping bottom and making sparks?

10 A Yes, ma'am.

11 Q So talk to us a little bit about you coming to talk
12 to the police. Initially, I mean, did you just
13 readily walk in and tell Investigator McCracken
14 everything that you knew?

15 A No, not -- not -- not initially. But I wanted
16 McElveen to be present, my attorney. So --

17 Q Before you talked to Investigator McCracken with
18 George McElveen, who else had you told about this?

19 A I told -- I told my dad and I told George McElveen.

20 Q Did you talk about it with your girlfriend,
21 Donnella?

22 A Yes. Yes, ma'am.

23 Q And do you have a friend by the name of KiKi as
24 well. Who is KiKi?

25 A Her name is Keshara Heaton?

1 Q And how is she -- is she like a friend, relative?

2 A It is just like a friend of mine.

3 Q And had you told her as well?

4 A Yeah, I --- yes, ma'am.

5 Q So when you came in, sat down finally with
6 Investigator McCracken, you were with George
7 McElveen?

8 A After -- yes, when I finally got to talk to him,
9 yes, ma'am, I was with McElveen.

10 Q But you were still saying you wanted George
11 McElveen to be there? You wanted to talk, but you
12 wanted Mr. McElveen to be there?

13 A Yes, ma'am.

14 Q And you are today also charged with murder, are you
15 not?

16 A Yes, ma'am.

17 Q And you are also charged with carjacking, are you
18 not?

19 A Yes, ma'am.

20 Q Have I made you any promises or deals in exchange
21 for your testifying today?

22 A No, ma'am. I haven't been offered nothing. I just
23 feel like it's the right thing to do. Like,
24 because somebody died, so I feel like I have to
25 tell the truth. I just have to tell what happened.

1 And, like, I don't -- I don't expect, like, nothing
2 of it, but, like, I do hope that something might --
3 some good might come out of this.

4 Q But you have no idea what is going to happen with
5 your own charges?

6 A No, ma'am.

7 MS. BODMAN: May we approach at this point,
8 Your Honor?

9 (WHEREUPON, a bench conference was held
10 in the presence of the jury but out of
11 the hearing of the jury.)

12 THE COURT: Ladies and gentlemen of the jury,
13 there is a matter of law that I need to take up
14 with the attorneys outside of your presence, so I
15 am going to send you all out for about five or ten
16 minutes, and then we'll continue on.

17 (WHEREUPON, the jury retires to the jury
18 room at 5:25 p.m.)

19 THE COURT: All right. Ms. Bodman, so we
20 won't have to keep sending them out, who is your
21 next witness?

22 MS. GARFIELD: We're trying to figure that out
23 right now, Judge.

24 THE COURT: I guess it will depend on the
25 time.

1 MS. GARFIELD: Well, we've got three witnesses
2 and, with the time, we are just trying to figure
3 out which one to do next.

4 THE COURT: The reason I ask is if we could do
5 the Biggers on the other -- instead of sending them
6 in and out, if the other person was available --

7 MS. BODMAN: Sure could.

8 THE COURT: -- to do it -- do it now.

9 MS. BODMAN: They are all three here. We can
10 do that.

11 THE COURT: Do his, and then maybe we'll let
12 him step down and bring the next person in. I
13 don't know, we may get through another one. I
14 don't know how long the other witnesses are. I'm
15 guessing -- I think cross-examination is going to
16 take a while.

17 MS. BODMAN: We have one that we think would
18 be pretty brief. Jamil Brennan I think would be
19 pretty brief.

20 THE COURT: Okay.

21 MS. BODMAN: Okay.

22 DIRECT EXAMINATION CONTINUES (IN-CAMERA)

23 BY MS. BODMAN:

24 Q I'm going to show you what is marked as State's
25 Exhibit Number 7. And do you remember Investigator

1 McCracken showing you some photographs to see if
2 you could identify anyone in those photographs?

3 A Yes, ma'am.

4 Q Okay. And speak up so the court reporter --

5 A. Yes, ma'am.

6 Q. Even though the jury is not here, the court
7 reporter has got to get this. Do you remember him
8 suggesting in any way who to pick out?

9 A No, ma'am.

10 Q Okay. I guess he put the photos in front of you,
11 asked you if you could look through them and see if
12 you recognized anybody; correct?

13 A Correct.

14 Q Okay. And there's one photo, two, three, four,
15 five, six. Who did you identify?

16 A Cheo. Cheo Green.

17 Q Okay. And that is Photograph Number 4 is written
18 on the back?

19 A (Nods affirmatively.)

20 Q Yes or no?

21 A Yes, ma'am.

22 Q Did they tell you, We need you to pick somebody
23 out? It important you pick somebody out? You
24 know, Identify -- We're sure you are going to
25 identify somebody? Or did they just ask you to

1 look at the photos?

2 A He just asked me to look at the photos to see if I
3 recognized anybody.

4 Q Okay. And you signed it and dated it?

5 A Yes, ma'am.

6 Q Okay. Or, I guess -- yeah, signed, dated and --

7 MS. BODMAN: That's all the questions I have
8 regarding the line-up.

9 MS. SINGLETARY: Beg the Court's indulgence,
10 Your Honor.

11 (Pause.)

12 CROSS-EXAMINATION (IN-CAMERA)

13 BY MS. SINGLETARY:

14 Q. And you stated that Mr. Green -- you stated that
15 you would just see him like once every so many
16 months?

17 A Yes, ma'am.

18 Q So you wouldn't see him on a day-to-day basis?

19 A No, not really.

20 Q You wouldn't see him on a week-to-week basis?

21 A No.

22 Q And you said that he really wasn't your friend, he
23 is older, so he was your brother's friend?

24 A He was more my brother's friend than mine.

25 Q And you said you guys only hung around each other a

1 few times?

2 A Yes, ma'am, that I can remember.

3 Q A few times that you remember. Is that what you're
4 saying?

5 A Yes, ma'am.

6 Q So could it have been less times?

7 A It could have been.

8 MS. SINGLETARY: Your Honor, I have no further
9 questions.

10 MS. BODMAN: No further questions.

11 THE COURT: All right, I'll be glad to hear
12 from you all.

13 MS. BODMAN: Well, he said he had known him
14 since the 9th grade, and he was his brother's
15 friend, and came around, hung out every couple of
16 months. So he -- I mean, he clearly knows him,
17 know of him, knows exactly who we're talking about,
18 so it is not a stranger or an inconsequential
19 meeting. He knows him.

20 THE COURT: Anything?

21 MS. SINGLETARY: No, Your Honor.

22 THE COURT: All right. I find that based on
23 the totality of the circumstances that the
24 identification was reliable.

25 In considering the reliability, the Court has

1 considered the witness's opportunity to view the
2 Defendant at the time of the alleged crime. The
3 witness has testified as to his degree of
4 attention. They were in close proximity in the car
5 together for a significant amount of time that
6 evening. The Court has considered the time between
7 the crime and the confrontation with the line-up
8 with the police. I believe it was within several
9 weeks.

10 Also, the Court finds that the witness has
11 testified that he was familiar with the Defendant
12 in this case and had previous interactions with
13 him.

14 Furthermore, the Court finds that based on the
15 testimony given on yesterday that the line-up was
16 not suggestive -- based on the testimony given
17 yesterday and today, that the line-up was not
18 suggestive in this case.

19 All right. Therefore, it will be admissible.

20 All right, who else can we --

21 MS. BODMAN: We have just spoken, and we have
22 decided that for Jamil, DaQwane, and Curtis, we
23 will forego the line-up identification and just do
24 in-court ID.

25 THE COURT: Oh.

1 MS. BODMAN: Since Jamil Brennan is
2 testifying, we do need to settle his record, so I
3 guess while we're on a quick break, we can do that.

4 MS. SINGLETARY: Your Honor, it appears that
5 Jamil Brennan has from November 2012 a public
6 disorderly, no disposition. August 15, 2014, a
7 shoplifting, where he received a fine. March 27th,
8 2015, he was charged with resisting arrest, which
9 was dismissed. And then he has a manufacturing
10 possession of a scheduled substance where he
11 received a YOA. Then in --

12 THE COURT: Schedule what?

13 MS. BODMAN: It just says Schedule 1, 2, and 3
14 first on his rap sheet.

15 THE COURT: What does that carry? Is that six
16 months?

17 MS. BODMAN: Zero to five.

18 THE COURT: Zero to five?

19 MS. SINGLETARY: He got a YOA not to exceed
20 five years on that offense, Your Honor.

21 THE COURT: I didn't know if it was scheduled
22 up to six -- a controlled substance carries up to
23 six months. Okay.

24 MS. SINGLETARY: He does have one of those,
25 also, Your Honor, at a later date.

1 THE COURT: All right. So the shoplifting.
2 The drug offense. He was convicted on that one?

3 MS. SINGLETARY: Yes, Your Honor, on September
4 3rd, 2015.

5 MS. BODMAN: That drug offense, I looked it
6 up, at least, in our system and it says it was a
7 PWID marijuana, zero to five, felony.

8 THE COURT: That's all?

9 MS. BODMAN: Then he's got I think another --
10 no, that's the same one.

11 THE COURT: She said she thinks he has a
12 possession of a controlled substance.

13 MS. SINGLETARY: And then a failure to stop
14 for a blue light. And then it appears he has
15 another PWID first where he got five years
16 suspended to two years' probation.

17 MS. BODMAN: Yes, a separate PWID marijuana.
18 So he has two PWID marijuanas and a shoplifting, I
19 think.

20 MS. SINGLETARY: Failure to stop for a blue
21 light.

22 MS. BODMAN: Well, a conviction -- I don't
23 think it has much to do with, you know,
24 credibility, so I don't think -- I don't think
25 failure to stop for a blue light would be an

1 impeachable offense. It is not a felony, it is a
2 misdemeanor. And it doesn't have anything to do
3 with moral turpitude.

4 MS. SINGLETARY: Your Honor, I'm okay with
5 failure to stop for a blue light not coming in. We
6 have the other offenses.

7 MS. BODMAN: Okay.

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

10 MS. BODMAN: Yes.

11 (WHEREUPON, the jury came into open
12 court at 5:36 p.m.)

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

14 THE COURT: All right. Yes, ma'am, you may
15 continue.

16 DIRECT EXAMINATION CONTINUES

17 BY MS. BODMAN:

18 Q Mr. Murray, when you met with Investigator
19 McCracken, did he have you look at a photo line-up
20 to see if you could identify anybody in that -- I
21 say line-up, I guess six separate photographs of
22 individuals?

23 A Yes, ma'am.

24 Q Okay. If you want to take a swallow of water, go
25 ahead.

1 A. (Pause.)

2 Q. So I'll have you look through State's Exhibit
3 Number 7 and look at those photographs and tell me
4 if those are the photographs that Investigator
5 McCracken had you look at?

6 A Yes, ma'am.

7 Q And were you able -- did you recognize one of those
8 photographs and were you able to identify someone?

9 A Yes, ma'am.

10 Q And who did you identify?

11 A Cheo.

12 Q And how did you mark on the photograph that you
13 identified Cheo?

14 A I printed my name, his name, and then I dated it.

15 Q Today in the courtroom, do you see Cheo Green
16 sitting in this courtroom?

17 A Yes, ma'am.

18 Q Can you please point to him, describe, I guess,
19 where he's sitting and what he is wearing so that
20 we know who you are talking about?

21 A The guy in the suit, navy blue suit and black
22 undershirt.

23 Q The black shirt?

24 A Yes, ma'am.

25 Q And where is he sitting?

1 A To the right.

2 Q This table over here?

3 A That table, yes, ma'am.

4 MS. BODMAN: Let the record reflect the
5 witness has identified the Defendant.

6 THE COURT: So noted.

7 Q. No more questions at this time. If you could
8 answer any questions that Ms. Singletary has.

9 THE COURT: Yes, ma'am?

10 MS. SINGLETARY: Thank you, Your Honor. May
11 it please the Court?

12 CROSS-EXAMINATION

13 BY MS. SINGLETARY:

14 Q Good afternoon, Mr. Murray.

15 A Good afternoon.

16 Q Okay. I want to start off with the testimony that
17 you have actually testified to today in front of
18 the jury.

19 A Yes, ma'am.

20 Q And we are going to deal with that -- those
21 statements first, okay?

22 A Yes, ma'am.

23 Q Because you spoke to law enforcement on other
24 occasions; correct?

25 A Yes, ma'am.

1 Q So today you testified to the fact that around this
2 time it was what they refer to as the Carolina
3 Classic?

4 A Yes, ma'am.

5 Q A football game?

6 A Yes, ma'am.

7 Q And earlier on that day, you were around that area
8 on Two Notch area?

9 A Yes, ma'am.

10 Q And you testified that today you're 20 years old?

11 A Yes, ma'am.

12 Q So three years ago, you would have been about 17?

13 A Yes, ma'am.

14 Q And when you were at this Carolina Classic football
15 event, were you by yourself?

16 A No, ma'am.

17 Q Who else were you with?

18 A I was with Jamil Brennan later on that day -- I
19 mean, earlier that day. And after that, I was
20 mostly by myself.

21 Q Okay. So on that day, September 15th, when you
22 were in the Two Notch area, you were with Jamil
23 Brennan?

24 A Yes, ma'am.

25 Q And then after that, you were pretty much by

1 yourself?

2 A Yes, ma'am.

3 Q Okay. And so you say that at some point you get a
4 call from your mom, probably about 1:00 o'clock,
5 2:00 o'clock in the morning?

6 A Yes, ma'am.

7 Q Saying that you need to come home?

8 A Yes, ma'am.

9 Q She has heard about something that has happened?

10 A Yes, ma'am.

11 Q She has heard about a shooting?

12 A (Nods affirmatively.) Correct.

13 Q And she wants you to come home?

14 A Yes, ma'am.

15 Q So let me go back. When you were in this Two Notch
16 area, what part of Two Notch were you actually at?

17 A Before I got the call, I was like closer to the
18 stadium.

19 Q Now, what stadium are you referring to? Are you
20 referring to the Benedict College stadium?

21 A Yes, ma'am.

22 Q And you said that you actually live near the Hot
23 Spot on Farrow Road?

24 A Yes, ma'am.

25 Q Like your residence is like across the street from

1 the Hot Spot on Farrow Road?

2 A It's more like beside the Hot Spot on Farrow Road.

3 Q Beside the Hot Spot. And, now, Benedict football
4 stadium, how far would you say that is away from
5 where you live at?

6 A Like -- maybe like 20, 30 minute walk maybe.

7 Q It's actually kind of almost on the other side of
8 town, like maybe about ten -- about five to ten
9 miles, depending on which location that you go?

10 A I don't -- I can't really say.

11 Q And your testimony is that you walked at 1:00
12 o'clock, 2:00 o'clock in the morning from the
13 Benedict stadium area --

14 A Yes, ma'am.

15 Q -- to where you live at?

16 A Yes, ma'am.

17 Q And by yourself?

18 A Yes, ma'am.

19 Q Okay. So you are actually walking home, you are
20 minding your own business? You are ready to get
21 home because your mother has called you and told
22 you to come home?

23 A Yes, ma'am.

24 Q And Mr. Davis just randomly stops you?

25 A Yes, ma'am.

1 Q He pulls up beside you?

2 A Yes, ma'am.

3 Q And Mr. Davis says, Hey, you know where I can get
4 some crack? Do you have some crack?

5 A Yes, ma'am.

6 Q And he picks you out of anyone else?

7 A I mean, I was the only person walking down the
8 street at the time.

9 Q At 1:00 o'clock or 2:00 o'clock in the morning, you
10 were the only person walking down the street?

11 A On that strip, on that street, yes, ma'am.

12 Q And what street was that that he stopped you at?

13 A I can't really remember the name, but I know it was
14 directly across from the Hot Spot.

15 Q It was directly across from the Hot Spot. And so
16 you testified that you told Mr. Davis, Well, I
17 don't have any drugs, but let me make some phone
18 calls?

19 A Yes, ma'am.

20 Q Okay. So you start making phone calls because you
21 feel obligated to get these drugs for Mr. Davis?

22 A I don't feel obligated, but, I mean, that's what I
23 did.

24 Q Yes. That's what you did. You made phone calls;
25 right?

1 A Yes, ma'am.

2 Q And so you said that you called your friend, Jamil
3 Brennan?

4 A Yes, ma'am.

5 Q And Jamil tells you apparently he has no drugs
6 either?

7 A Yes.

8 Q But Jamil tells you, Hey, I know somebody that you
9 can get drugs from?

10 A No, he told me -- well, basically, what I told them
11 today is that he's got to call -- he's going to see
12 if he can call somebody.

13 Q So you and Mr. Davis are just waiting here on the
14 side of the road?

15 A Yes, ma'am.

16 Q The street across from Hot Spot?

17 A Yes, ma'am.

18 Q And you testified that it took about five to ten
19 minutes for Jamil --

20 A To call back.

21 Q -- to call you back? So these five or ten minutes,
22 you are just sitting there -- well, standing beside
23 the road?

24 A Yes, ma'am.

25 Q With Mr. Davis?

- 1 A Yes, ma'am.
- 2 Q Was Mr. Davis parked in the middle of the road or
- 3 did he turn off and park in a parking lot
- 4 somewhere?
- 5 A It was just like on the side of the road.
- 6 Q Was he impeding traffic if he was parked like on
- 7 the side of the road? Was there a parking space?
- 8 A No. He was just in the road, like.
- 9 Q So Mr. Davis just sat there in the roadway for five
- 10 or ten minutes waiting for you to get a call back
- 11 from Jamil Brennan?
- 12 A Yes, ma'am.
- 13 Q Okay. And so at this point, today, you testified
- 14 to the fact that you get a call back from Jamil
- 15 Brennan?
- 16 A Yes, ma'am.
- 17 Q And Jamil said, Hey, I found somebody that can give
- 18 you some drugs, and that is Cheo Green?
- 19 A Basically, yes, ma'am.
- 20 Q And then so, apparently, you relay this to Mr.
- 21 Davis?
- 22 A Yes, ma'am.
- 23 Q You tell Mr. Davis, Hey, I found the drugs for you?
- 24 A Not in that -- yes, but not like how you saying it.
- 25 Q But you informed him that you were now in the

1 position where you could make sure that he could
2 get drugs?

3 A Yes, ma'am, I guess so.

4 Q And then so at this point, you say that you all
5 go -- at this point, you get into Mr. Davis's car?

6 A Yes, ma'am.

7 Q And you and Mr. Davis go to the Hess that is on
8 North Main Street?

9 A Yes, ma'am.

10 Q Now, I'm going to ask you a question and I may have
11 to ask you another question and then come back to
12 this initial question, okay?

13 A All right.

14 Q About what happened at the Hess.

15 A All right.

16 Q You stated that when you all went to the Hess, you
17 actually went and you paid for the gas?

18 A Yes, ma'am.

19 Q That was your money?

20 A Yes, ma'am.

21 Q Not Mr. Davis's money?

22 A Yes, ma'am.

23 Q Mr. Davis didn't give you money?

24 A No.

25 Q To put gas in his car?

- 1 A No, ma'am.
- 2 Q And out of the goodness of your heart, you felt
3 that you needed to put gas in Mr. Davis's car?
- 4 A I mean, he offered me like to rent the car, so I
5 mean, I put gas in the car.
- 6 Q But Mr. Davis was still in the car at the time?
- 7 A Yes, ma'am.
- 8 Q You wasn't in the car by yourself driving it around
9 to where you wanted to go to?
- 10 A No, ma'am.
- 11 Q So after you did that deed, then you all drive a
12 couple minutes up the road. You go to the A-1
13 store?
- 14 A Yes, ma'am.
- 15 Q And, again, you get out of the car; right?
- 16 A Yes, ma'am.
- 17 Q You go inside the A-1 store?
- 18 A Yes, ma'am.
- 19 Q And what do you do, you buy loosies, which are
20 single cigarettes, for Mr. Davis?
- 21 A Yes, ma'am.
- 22 Q You didn't use Mr. Davis's money, did you?
- 23 A No, ma'am.
- 24 Q You used your own money?
- 25 A Yes, ma'am.

1 Q So, again, you felt that you needed to purchase
2 something for Mr. Davis?

3 A Yes, ma'am.

4 Q And, now, you testified on direct examination that
5 in your opinion Mr. Davis didn't have any money on
6 him that night; right?

7 A Correct.

8 Q That's because he wanted to rent his car for crack?

9 A Yes, ma'am.

10 Q Which means he didn't have money to purchase crack?

11 A Yes, ma'am.

12 Q So I guess that's why you felt compelled to buy gas
13 to put in his car, Mr. Davis's car?

14 A Yes, because I was going to rent the car.

15 Q And you were going to rent the car?

16 A I mean, I was the passenger.

17 Q And my client wasn't with you at that time; right?

18 A No, ma'am.

19 Q And you testified that my client was actually
20 somewhere on Broad River Road; correct?

21 A Correct.

22 Q And my client was over there just minding his own
23 business?

24 A Yes.

25 Q You don't know what he was doing, but he wasn't

1 communicating with you?

2 A Yeah, until we communicated on the phone.

3 Q But you initiated that communication; correct?

4 A Yes, ma'am.

5 Q My client didn't call you?

6 A Correct.

7 Q My client didn't say, Hey, I have a Mr. Davis here
8 and he wants to rent his car for crack?

9 A Right.

10 Q You were the one who said that?

11 A Correct.

12 Q So you brought my client into this situation?

13 A Not necessarily.

14 Q So how would my client know who Mr. Davis is if you
15 wouldn't have met Mr. Davis first?

16 A Because, like I said, I called up a friend and he
17 called him and he stated he knows that he had drugs
18 for Mr. Davis, so that was that.

19 Q And your testimony today is that my client told you
20 that he actually had drugs for Mr. Davis?

21 A Yes, ma'am.

22 Q And so at this point you leave the A-1 convenience
23 store?

24 A Correct.

25 Q And you -- and let's be clear, the A-1 convenience

1 store is on Monticello Road?

2 A Yes, ma'am.

3 Q And my client, according to you or your testimony,
4 is that he is off of Broad River Road?

5 A Yes, ma'am.

6 Q As a matter of fact, when -- he was at an apartment
7 complex?

8 A Yes.

9 Q According to your testimony?

10 A Yes, ma'am.

11 Q Do you remember what apartment complex my client
12 was at on that night according to your testimony?

13 A I don't -- I can't recall -- I can't say what
14 exactly apartment because it is a lot of apartments
15 back on that strip, so I can't say which one he was
16 coming from.

17 Q Do you know what strip that was or what street all
18 of those apartments are on?

19 A No. The only thing that I could say about that
20 street, like it is a neighborhood called like
21 Lexington Station like all the way in the back, so
22 I know it was around that area.

23 Q So -- I'm sorry for interrupting. I'm sorry. Go
24 ahead.

25 A All right, go ahead.

1 Q If I was to tell you that the apartments that you
2 say that you went to on that night were off of
3 Longcreek Drive in the Broad River area, would that
4 seem correct?

5 A I couldn't say. I don't know.

6 Q About how long did it take you and Mr. Davis to go
7 from A-1 convenience store to the apartment complex
8 that you are saying my client was at?

9 A I know from me and the victim, like, initially
10 meeting to that area on Broad River probably took
11 like 30 to 40 minutes.

12 Q So from you meeting Mr. Davis across from the Hot
13 Spot to you going to the Broad River area, it is
14 your testimony that 30 to 40 minutes elapsed during
15 that time?

16 A Yes, ma'am, mainly.

17 Q From you initially picking up my client, according
18 to your testimony?

19 A Yes.

20 Q And then you say that you and Mr. Davis make it to
21 this apartment complex?

22 A Yes, ma'am.

23 Q And you say that there was some kind of confusion?

24 A Yes, ma'am.

25 Q That my client was telling you guys to -- well, you

1 and Mr. Davis -- Come to this parking lot. But
2 then apparently when you would get to that parking
3 lot, you wouldn't see my client?

4 A Yeah. And he would say like, Come to this parking
5 lot, back out of this parking lot, come to this
6 parking lot.

7 Q So you guys were doing a whole lot of maneuvering
8 during that apartment complex to try to find my
9 client, according to your testimony?

10 A Yes, ma'am.

11 Q And then you said -- now, I want to back up. Now,
12 how did you and Mr. Davis get to the Broad River
13 Road area from Monticello Road?

14 A We drove down Monticello Road and we got on the
15 highway and we got off on the exit on Broad River.

16 Q So the highway you are referring to, were you guys
17 on Interstate 20?

18 A I believe so. I can't -- I don't really know
19 like -- I can't recall the highway.

20 Q But you guys didn't take any back streets to Broad
21 River Road?

22 A No, ma'am.

23 Q And after the confusion between you and Mr. Davis
24 trying to locate my client, you testified that you
25 finally see my client and he is walking?

1 A Yes, ma'am.

2 Q Now, do you remember what my client had on that
3 night clothing-wise? I know it was a long time
4 ago.

5 A Yeah. I can't really say what he had on that
6 night.

7 Q And when you actually pulled up to the parking lot,
8 did you see my client and only my client?

9 A Yes, ma'am.

10 Q There was no one else out in the parking lot?

11 A No, not in the parking lot, on the street, like,
12 in between all the apartments.

13 Q In between the apartments, there were other people
14 out here?

15 A No.

16 Q Okay. Could you explain, please?

17 A I'm saying, like, the street where he told us to
18 meet him, that's the street that we met him on, but
19 he was telling us like to, Turn to this parking
20 lot, turn in that parking lot. And then we came
21 out of -- we came out of one parking lot and he
22 told us to like continue on down the street, and
23 that's when we seen him walking.

24 Q And when the confusion was going on, you were on
25 the phone with my client; correct?

1 A Yes, ma'am.

2 Q Okay. And you testified that this was one
3 continuance conversation?

4 A Yes, ma'am. I said --

5 Q And it wasn't -- oh, I'm sorry. Go ahead.

6 A I said, yes, ma'am, as I remember.

7 Q Okay. And it wasn't that you called my client and
8 then you went to that park and hung up the phone?

9 A If I did, I don't remember.

10 Q So when you guys went to the different parking
11 lots, would it be your testimony that you were on
12 the phone with my client the entire time?

13 A I -- yes, ma'am, I believe so. Like, as far as
14 memory goes, I believe so.

15 Q And so at this point, you say that my client gets
16 into Mr. Davis's car?

17 A Yes, ma'am.

18 Q And you are in the passenger seat; correct?

19 A Correct.

20 Q Mr. Davis is driving the car; correct?

21 A Correct.

22 Q And you say my client gets in the rear of the car
23 directly behind you?

24 A Yes, ma'am.

25 Q Now, when you all went to the apartments at Broad

1 River, the goal was to get some type of drugs from
2 my client; correct?

3 A Correct.

4 Q Now, the agreement between you and Mr. Davis that
5 happened earlier was an agreement for you and
6 Mr. Davis to do a crack rental; correct?

7 A Not necessarily, because that's like the whole
8 reason for me to call your client.

9 Q But my client wasn't there when you had the initial
10 conversation with Mr. Green about you giving him
11 drugs for the vehicle; correct?

12 A Correct.

13 Q Okay. So when you and Mr. Davis -- well, let me
14 back up. When you called my client, you are
15 looking for drugs?

16 A Correct.

17 Q And you are looking for drugs so you can give those
18 drugs to Mr. Davis?

19 A So he can get drugs, yes, ma'am.

20 Q So Mr. Davis can get the drugs; correct?

21 A Correct.

22 Q And then when Mr. Davis gets the drugs, then you're
23 going to get the car?

24 A I guess, yes. Correct.

25 Q So when you go to the apartments on Broad River

1 where my client is at, the purpose of going over
2 there was to get drugs from him?

3 A Correct.

4 Q The purpose wasn't for my client to just jump into
5 the car, was it?

6 A I mean, no.

7 Q Okay. But it is your testimony that you pull up,
8 you pick up my client, my client just gets into the
9 car?

10 A Correct.

11 Q And then you testify that you all get back on that
12 same highway and you drive towards Monticello Road?

13 A Correct.

14 Q You said that there was not much talking, the radio
15 was playing?

16 A Correct.

17 Q So when are we talking about the drugs?

18 A I mean, like, during the time -- I can't really
19 remember because it was a long time ago, but I
20 remember, like, between us going to his house and,
21 like, us driving from that area, like, it was
22 supposed to be exchanged by then, but I can't
23 really say, like, what exact time.

24 Q How long would it have taken you all -- and
25 Mr. Davis is still driving at this point; right?

1 A Correct.

2 Q How long would it have taken you all to drive from
3 where these apartments are at in the Broad River
4 area back to Mr. Davis's house on Monticello Road?

5 A I can't -- I can't say.

6 Q And so there is no exchange of the drugs during
7 this ride?

8 A No, ma'am.

9 Q Even though the purpose of going to Broad River was
10 to get drugs?

11 A Correct.

12 Q So now we are back on Monticello Road. And, now,
13 during direct examination -- and maybe you were a
14 little confused. During the direct examination,
15 you testified that at this particular point right
16 now, when you and Mr. Davis and my client are in
17 the car, there is only 30 to 40 minutes that have
18 elapsed?

19 A From the time that I initially met the victim until
20 the time that we picked up your client.

21 Q So it was 30 to 40 minutes during that period of
22 time; correct?

23 A Yes, ma'am.

24 Q So when you testified on direct examination that it
25 was 30 to 40 minutes from the time that you met

1 Mr. Davis, went to Hess, then went to A-1, then
2 went to Broad River, then picked up my client, and
3 came all the way back onto Monticello Road --

4 A No, the other -- like, I can't -- I don't know that
5 exact time. Once we picked him up, I can't really
6 say the exact time after that to where we made it
7 back to Monticello.

8 Q And then you said once you get around that area you
9 said he, the victim, said, Get me straight. What's
10 up with the drugs?

11 A Correct.

12 Q So you were there, so you heard the victim say
13 this; correct?

14 A Correct.

15 Q You were able to see his mannerisms when he said
16 this?

17 A Correct.

18 Q You was able to hear his tones when he said that?

19 A Correct.

20 Q And at this point, what time of the morning is it?

21 A I can't really say what exact time it was.

22 Q So did the victim say, Hey, guys, what's up? Are
23 you going to get me straight? Did he say it like
24 that?

25 A Basically.

1 Q So he was just calm about getting his drugs?

2 A Yes, because it wasn't no -- it wasn't like a
3 hostile environment yet. It was like -- it didn't
4 get out of hand yet.

5 Q Now, you testified that moments after this, there
6 was a hostile environment on direct examination?

7 A Yes, after, like, a little argument between the
8 victim and Cheo.

9 Q So is it your testimony that the victim was calm
10 and said, Hey, are y'all going to get me straight?
11 Where are the drugs? And just out of the blue, my
12 client just gets mad?

13 A I mean, I can't really say why he got mad. I
14 can't -- I can't really say that, like, he was calm
15 because, like, it was a long time ago, but I know
16 he wasn't like -- he wasn't aggressive.

17 Q He wasn't aggressive at all?

18 A No.

19 Q So this wasn't an aggressive argument?

20 A No. When he -- when he asked, like, us to get him,
21 like, What's up with the drugs, like, he wasn't
22 aggressive at all.

23 Q So was the argument -- at some point, did the
24 victim get aggressive?

25 A Not that I remember, no.

1 Q So there is no need to get upset if the victim is
2 so calm?

3 A I guess so.

4 Q So you said that my client at this point said, I
5 got you. I'm going to get you straight.

6 And so after this, the victim, who, again, you
7 testified that you didn't know his name on that
8 night; correct?

9 A No, not initially. I didn't know it, not
10 initially.

11 Q But you would just see him randomly around the
12 neighborhood?

13 A Right.

14 Q So at this point, this is the second time in this
15 30 to 40 minutes that you have actually been in the
16 vehicle with the victim that he takes you to his
17 house?

18 A No. He took me to his house the first -- soon as
19 we got in the car to go meet Cheo, he took me
20 there. That was one time. That was in between the
21 30 and 40, like, timeframe. But after that, like I
22 said, I can't recall how long it took us to get
23 from Broad River to Monticello, so --

24 Q But after you picked up my client, you went back to
25 the victim's house again?

1 A Correct.

2 Q And that's what I'm saying, that in this short
3 amount of timeframe that you have spent with the
4 victim on that night, you've been to his house
5 twice?

6 A Yes, ma'am.

7 Q The first time you were -- went to his house by
8 yourself?

9 A No.

10 Q Well, you went with Mr. Davis?

11 A I went -- yeah, but I, like, drove past really. I
12 \ wasn't really there, just drove past.

13 Q So he drove past the house, and that's when
14 Mr. Davis told you, Hey, once you get me my
15 crack -- or drugs?

16 A Correct.

17 Q That he wanted you to bring the vehicle back to
18 that house?

19 A Correct.

20 Q And that's why you drove by it?

21 A Correct.

22 Q The initial time?

23 A Right.

24 Q And so I want to get this clear. So at this point
25 there is still no exchange of drugs; right?

1 A No.

2 Q And so you go back to the victim's house again?

3 A Yes.

4 Q So you're going back to the victim's house to drop
5 him off?

6 A That's what -- that's what -- that's what we were
7 supposed to do.

8 Q But he didn't have the drugs yet?

9 A Correct.

10 Q So what's the purpose of going to his house again?

11 A Um, we were supposed to drop him off -- we were
12 supposed to go to his house and drop him off, but
13 Cheo was supposed to give him the drugs, like, in
14 between -- like, at any time, he was supposed to
15 give him the drugs, or whatever, and then we was
16 going to go about our way. But that never
17 happened.

18 Q Yes. It never happened. But you went back to the
19 house a second time, which would have been where
20 you would have dropped the victim off if he would
21 have gotten his drugs; correct?

22 A Correct.

23 Q So when you get to the house, the victim says,
24 What's up? What's going on? According to your
25 testimony?

1 A In between -- in between us picking Cheo up and,
2 you know what I'm saying, as we got close to his
3 house, yes. Yes, ma'am.

4 Q And so at this point, the victim doesn't stop at
5 his house, he drives around the corner, according
6 to your testimony?

7 A Um, he -- he, um, he drove past -- he drove to his
8 house and then he stopped and drove -- like, you
9 know, What's up? You know, Get me straight, or
10 whatever. And then he drove back around -- like he
11 drove around the corner and he came back, like
12 that.

13 Q And so when the victim is now saying, What's up?
14 Are y'all going to get me straight? This is the
15 first time that drugs are brought up when you guys
16 are in the car?

17 A Um, no.

18 Q When is the first time that drugs are brought up?

19 A Um, our initial meeting.

20 Q Well, let me rephrase that, because I kind of
21 confused you. Once my client actually gets in the
22 car, and it is you, my client, and Mr. Davis,
23 according to your testimony, Mr. Davis doesn't
24 bring up anything about the drugs until he gets
25 close to his home?

1 A As I remember, like -- like I said, he was -- from
2 the time that I called Cheo, he was supposed to be
3 -- like, he already knew, like, that's what we was
4 coming for, so --

5 Q Oh, I'm sorry.

6 A He never gave him the drugs, so, like --

7 Q Let me ask you this. Now, you said that Mr.
8 Brennan called my client on that night to get the
9 drugs?

10 A Um --

11 Q When you initially met Mr. Davis?

12 A I called him and he told me to call Cheo.

13 Q So you called Mr. Brennan?

14 A Correct.

15 Q And then Mr. Brennan told you to call my client?

16 A Correct.

17 Q Now, is there any particular reason that you had to
18 go through Mr. Brennan first?

19 A I mean, because I didn't know where to find -- I
20 didn't know where to find no drugs.

21 Q And so how did you get my client's phone number?
22 Did Mr. Brennan give it to you?

23 A I believe I had the number saved in my phone.

24 Q And what was it saved in your phone as?

25 A Cheo, I believe.

1 Q And we are going to talk about your phone later on.

2 A Correct.

3 Q And your phone records. So with that being said,
4 like, if my client's number was already in your
5 phone, why didn't you just call him first and ask
6 him if he knew where the drugs were at or if he had
7 any drugs?

8 A I mean, because, like, I didn't know he had drugs.
9 That's why I called Jamil, because like --

10 Q So Jamil is the man, he knows where the drugs are
11 at?

12 A I mean -- I mean, that's why I called because,
13 like, that's my home boy, so, like, I'm guessing --
14 I'm guessing he would know more than I do.

15 Q And you said Jamil is your home boy?

16 A Yes, ma'am.

17 Q And so we are going to go back to the fact that we
18 are near the victim's residence and the victim is
19 asking for, What's up, and for him to get straight.
20 And then you said that there is an argument?

21 A Correct.

22 Q And you say that there is an argument between my
23 client and the victim?

24 A Correct.

25 Q Now, does my client -- according to what you know,

1 does my client know Mr. Davis?

2 A Not that I know of.

3 Q Does my client live near you?

4 A I can't tell you where he stay at because I don't
5 know.

6 Q So it's not like my client would have been in the
7 neighborhood and seen Mr. Davis just riding around
8 like you did?

9 A No, ma'am.

10 Q And so at this point when you testified during
11 direct examination, you said that no drugs was
12 presented --

13 A No, ma'am.

14 Q -- at this time? And then you additionally said
15 when you were asked about the drugs, you said, I
16 thought the drugs were already in the car. So help
17 me -- explain this to me. Now, when my client gets
18 in the car with you and Mr. Davis --

19 A Right.

20 Q -- does my client show you any drugs?

21 A No, but he was fumbling -- I guess he was like --
22 he had a book bag and he was going in the book bag
23 or something.

24 Q Did you see any drugs?

25 A No, ma'am.

1 Q Well, why would you think that the drugs were
2 already in the car if he didn't present any drugs
3 to anyone?

4 A Because the whole reason for him to pick him up was
5 for him to have the drugs.

6 Q According to your testimony?

7 A Correct.

8 Q And then, again, you testified about this argument
9 that's going on. And then you say that my client
10 starts texting you?

11 A Um, correct. Like, I can't say, like, it was
12 exactly during, like, the argument, but, like, it's
13 around -- it's all around that time -- that
14 timeframe.

15 Q And you said that my client texted you and he --
16 and you kind of went back and forth. You said that
17 you couldn't really remember, like, the texts, but
18 then you would testify to specifics of you could
19 remember that my client texted you on that night?

20 A Um, I was, like, saying, like, stuff, like, that I,
21 like, as I remember them.

22 Q Uh-huh. Okay. And so you said that my client
23 asked you if the victim had any money; is that
24 correct?

25 A If I remember. I remember that is one of the text

1 messages that he sent me.

2 Q And your response via text was, I don't know
3 anything about any money?

4 A I don't -- I can't -- I don't really remember the
5 text. I remember telling him, like, I don't really
6 know about no money. I don't know.

7 Q Yes. And that's what you texted him. You didn't
8 really know about any money and whether the victim
9 had any money?

10 A Not to say that I texted him, but I remember, like,
11 me -- like I can't really remember because I was --
12 like I remember telling him that. I can't remember
13 whether it was a text or me like verbally saying
14 it.

15 Q So while the victim is actually in the car, you're
16 saying that you can't remember whether or not -- in
17 response to my client, according to your testimony,
18 saying, Does the victim have any money, whether or
19 not you texted my client back saying, I don't know
20 anything about money, or you just randomly blurted
21 out of the blue, I don't know anything about money,
22 in the car?

23 A I can't -- yes. Correct. I can't really remember
24 me saying -- whether I said it verbally or whether
25 I didn't.

1 Q That would be odd for you to randomly just shout, I
2 don't know anything about money, when nobody is
3 talking about money, except through a text,
4 according to you?

5 A Yes, so --

6 Q So -- now, I'm going to go back to what you
7 testified during direct and even testified during
8 cross-examination. You said that you put gas in
9 the victim's car; correct?

10 A Correct.

11 Q At the Hess?

12 A Correct.

13 Q You said that when you went to A-1, you bought
14 these cigarettes for the victim there?

15 A Correct.

16 Q That was your money?

17 A Correct.

18 Q The victim didn't give you any money?

19 A No, ma'am.

20 Q And because the victim -- and you testified
21 probably about 15 minutes ago or 10 minutes ago,
22 that because the victim wanted to do a crack
23 rental, which is exchanging a vehicle for crack,
24 you assumed he had no money?

25 A I mean, no. Anybody who want to rent a car for

1 drugs.

2 Q But you just testified 15 minutes ago to that fact?

3 A Yeah, I mean, he probably just want to rent the car
4 out.

5 Q So you don't remember testifying a few minutes ago
6 that you were under the impression that because the
7 victim wanted to exchange his vehicle for crack
8 cocaine that he did not have any money?

9 A I'm saying I didn't know if he had any money. I
10 don't know. I ain't in his pocket. I can't say
11 what's in his pocket.

12 Q You wasn't in his pocket, so you don't know what's
13 in his pocket?

14 A No, ma'am.

15 Q That's what you said?

16 A Correct.

17 Q If he had cash, he could have just went and got
18 some crack cocaine, couldn't he?

19 A I mean, yes, but he probably just wanted to rent
20 his car out.

21 Q He just wanted to give his car to you particular
22 because he picked you?

23 A I guess so.

24 Q Okay. And then -- let's keep up with these text
25 messages. You say that my client said, I'm fixing

1 to do something hot?

2 A As I remember, yes.

3 Q And then you said, Man, I thought he was just going
4 to rob him?

5 A No. I said from my understanding, like, something
6 hot, that means, like, spontaneous, like, crazy,
7 so, like, my understanding, he could have meant,
8 like, he was going to rob him or anything.

9 Q Okay. So you didn't think that my client was going
10 to rob him, but just your interpretation of
11 something hot is that somebody is going to do
12 something crazy, spontaneous, and that might be
13 robbing someone?

14 A I mean, yes. Like street term, like, that kind of
15 what that means.

16 Q Now, you were in the front seat; right?

17 A Correct.

18 Q My client was in the back seat --

19 A Right.

20 Q -- of this vehicle? Why didn't you nudge Mr.
21 Davis? Why didn't you try to warn him if you
22 thought something hot was about to happen?

23 A I mean, because I told him, like, I'm, like, Don't
24 do nothing stupid, you feel me? I mean, like, if
25 that was the case, like, I mean, I told him, Don't

1 do nothing stupid.

2 Q So you were trying to be the voice of reason?

3 A Correct.

4 Q The same person who was actually trying to hook up
5 a drug transaction was now being the voice of
6 reason?

7 A Correct.

8 Q Okay. Now, and I'm going to kind of pull back on
9 these text messages right now. Now, you've met
10 with the Prosecution?

11 A Have I met? Correct.

12 Q And have you talked to them, you know, about cell
13 phone records and your cell phone records
14 particularly?

15 A Not that -- I can't say that -- I can't say that I
16 did. I don't remember.

17 Q Well, do you remember meeting with Investigator
18 McCracken?

19 A. Um --

20 Q. He is seated right there.

21 A When I first got locked up, I did.

22 Q You remember talking to him about cell phone
23 records?

24 A Uh, no, I wasn't telling him about the text
25 messages, that was my statement that I gave them.

1 Q So you weren't talking to him about text messages?

2 A Correct.

3 Q Now, isn't it something that you did later on on
4 the day of the 16th to the cell phone that you were
5 using to text my client back and forth on that
6 morning?

7 A Yes, ma'am.

8 Q Didn't you take the SIM card out of that cell
9 phone?

10 A No, ma'am, I had the number changed.

11 Q Oh, you changed your number? You didn't take the
12 SIM card out?

13 A Correct.

14 Q Is that correct?

15 A Yes, ma'am.

16 Q And let me back this up. Did any of your friends
17 take the SIM card out of your cell phone?

18 A Um, no. I had the number changed.

19 Q Okay. You had the number changed. Now, again, you
20 remember speaking to Investigator McCracken about
21 these text messages down at the City of Columbia
22 Police Department?

23 A Correct.

24 Q You don't remember telling him that KiKi, your
25 friend, may have changed the SIM phone in that cell

1 phone?

2 A I told him that I had the number changed, I had
3 Kiki change the number.

4 Q You had Kiki change the number. You did not tell
5 Investigator McCracken that Kiki might have changed
6 the SIM card out?

7 A No.

8 Q You don't remember saying that?

9 A I don't remember saying that.

10 Q And do you know that -- isn't it true that because
11 that number was changed, according to you, or
12 either the SIM card was taken out, that these cell
13 phone texts that you're talking about are not in
14 existence anywhere?

15 A Can you say that question again? I'm kind of lost.

16 Q So due to the fact that you changed the number on
17 your cell phone, according to your testimony today?

18 A Correct.

19 Q Or either someone switched the SIM card out of that
20 cell phone that you were using on that early
21 morning?

22 A Correct.

23 Q The texts that you are testifying to?

24 A Right.

25 Q Cannot be retrieved. Are you aware of that fact?

1 A No, ma'am.

2 Q So the only thing that we have to go off of to the
3 substance of what those text messages was is your
4 testimony; correct?

5 A Correct, I guess.

6 Q So those text messages could say anything because
7 your memory was kind of shaky for that night?

8 A I mean, I remember the text messages being in line
9 with what I said.

10 Q But you don't remember exactly the substance of
11 them? You remember kind of roundabout what was
12 said?

13 A I remember -- I remember like those text messages,
14 like, saying, like, what I said.

15 Q You remember the text messages saying what you
16 said?

17 A Yeah, that's what I remember.

18 Q Okay. So at this point, we're still with -- we're
19 still going back and forth with text messages. And
20 at some point, like, you say that my client just
21 out of the blue from the back seat of this vehicle
22 starts shooting Mr. Davis?

23 A Correct.

24 Q And is the car still moving at this point?

25 A Yes, ma'am.

1 Q And is Mr. Davis still the driver?

2 A Yes, ma'am.

3 Q And so this would be -- I would be Mr. Davis
4 driving; correct?

5 A Correct.

6 Q And you would be right here beside Mr. Davis;
7 right?

8 A Correct.

9 Q And then there's a division between the front seat
10 and the back seat?

11 A No, I'm not sure of that.

12 Q There are seats; correct?

13 A There are seats, but it's like open, open about
14 like this wide.

15 Q It's a small opening that typically cars have?

16 A Yes.

17 Q And then you said my client is directly behind you?

18 A Correct.

19 Q And being directly behind you, my client shoots Mr.
20 Davis?

21 A Yes, ma'am.

22 Q At some point, did you become -- have you become
23 aware of the fact of where Mr. Davis was actually
24 shot at?

25 A I can't say that I do. I don't know exactly where

1 he was shot at, I can't say that.

2 Q And if I told you that he was actually shot in --
3 shot two times in his shoulder, like, would that
4 seem right or seem correct?

5 A I mean, I guess. If you like -- it was probably
6 the way he was angled.

7 Q And I'm saying the right shoulder, the shoulder
8 that would have been closest to you?

9 A I guess so.

10 Q And he was shot in the neck. And I know you're not
11 a doctor, but I'm just saying are you aware of
12 where he was shot?

13 A No, ma'am, I wasn't aware.

14 Q So at this point, Mr. Davis is shot and you say
15 that Mr. Davis -- while Mr. Davis is driving, he's
16 shot. Mr. Davis opens up the car door while he is
17 actually driving, and Mr. Davis, he jumps out of
18 the car?

19 A No, ma'am.

20 Q While it's moving?

21 A After he got shot, like, he just started screaming
22 and, like, he had leaned, kind of leaned on the car
23 door a little bit and -- I mean, he had to open the
24 door because, like, he fell out the car.

25 Q Mr. Davis opened up the door?

1 A Yeah, I'm pretty sure he did, because he fell
2 out -- how he fell out the car.

3 Q And before all of this happened, you said that --
4 and we're going to go back to the disagreement
5 that -- you said that there was a disagreement
6 between my client and Mr. Davis. And you said at
7 some point, prior to there being shots fired, you
8 tell Mr. Davis, Hey, man, Mr. Davis, just take me
9 home and drop me off?

10 A No. I told him -- I was like, Man, just -- just
11 take me home. I said I was going to give him gas
12 money to take me home and take Cheo back to where
13 he was.

14 Q And that's what I was about to get to. You were so
15 nice, once again, that you are offering Mr. Davis
16 money for gas, and not only for you, but to take my
17 client home?

18 A I mean, because, like, I -- yes.

19 Q Did you feel obligated to because you had kind of
20 set up this deal?

21 A No, I just -- I mean, I was ready to go home, so
22 the only way I know how to get home is if I give
23 him gas money. And I know he ain't going to take
24 him home for free.

25 Q And you said at this point you was just ready to go

1 home?

2 A Correct.

3 Q And so let's go back to the fact that you said that
4 my client just goes ahead and he -- according to
5 you, he just shoots Mr. Davis from the back of the
6 car, back seat of the car; is that correct?

7 A Right.

8 Q And then you testified that you froze?

9 A Yes, ma'am.

10 Q Now, I want to picture this in my mind. I've
11 always had a difficult time with this. Like, so
12 Mr. Davis is shot; right?

13 A Right.

14 Q And then Mr. Davis opens up the door some kind of
15 way and Mr. Davis falls out of the vehicle; right?

16 A Correct.

17 Q And the car is still moving; right?

18 A Right.

19 Q Okay. And so at some point while the car is still
20 moving with no one driving the car, you jump from
21 the passenger seat into the driver's seat?

22 A Eventually, yes.

23 Q And the car never once stopped running -- rolling,
24 it was always in motion?

25 A Correct.

1 Q And at some point, there was no one steering the
2 wheel, there was no one in the driver's seat?

3 A Correct.

4 Q And you jumped over and you got into the driver's
5 seat?

6 A Correct.

7 Q So you must have froze for like a millisecond
8 before you jumped into action?

9 A I froze, and he told me to drive, so I hopped
10 across the middle of the car and I drove.

11 Q And then -- you said -- you also said something at
12 the point, you said, Man, he had a gun, like, so
13 I'm just going to get in the car and I'm just going
14 to drive off?

15 A I mean, because he told me to drive.

16 Q My client didn't pull a gun out on you and said,
17 You need to get in that driver's seat and drive,
18 did he?

19 A He already had -- like, he already had the gun out.
20 He just shot this man, so, like --

21 Q Did he pull the gun out on you and demand that you
22 get in the driver's seat and drive?

23 A He already had the gun out and he shot him, so
24 what I'm saying --

25 MS. SINGLETARY: Your Honor, can you direct

1 the witness to answer the question?

2 THE COURT: I thought he did.

3 MS. SINGLETARY: The question was, did my
4 client pull a gun out on him and demand that he
5 actually drive the vehicle?

6 THE COURT: What is his answer?

7 THE WITNESS: I said that he already shot the
8 victim, so he already had the gun out, and he told
9 me to drive, so.

10 THE COURT: Is that not the answer to the
11 question?

12 MS. SINGLETARY: I asked --

13 THE COURT: Let me see y'all up here.

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

17 BY MS. SINGLETARY:

18 Q Let me rephrase that question. Did my client point
19 the gun at you and tell you to jump in the driver's
20 seat and drive off?

21 A Um, not necessarily. I mean, it was out, so.

22 Q But he didn't point it at you?

23 A Not necessarily.

24 Q So at this point, you are actually driving the
25 vehicle?

1 A Correct. After he told me to drive, I hopped over
2 and drove, correct.

3 Q And you had already said that you were ready to go
4 home?

5 A Yeah. That was while we were headed to the
6 direction of the Hess so I could pay for gas, and
7 take me home and take him home.

8 Q But then you said that where you drove to next was
9 not home, was it?

10 A No, ma'am.

11 Q You want to Jamil's house; correct?

12 A Correct.

13 Q And you said earlier, Jamil is your home boy?

14 A Correct.

15 Q And so instead of going home after this event that
16 caused you to froze, you decided to go to your home
17 boy's house?

18 A Correct.

19 Q Okay. And you stated that when you went to your
20 home boy's house, my client told your home boy to
21 bring out a rag to wipe down the car?

22 A Correct.

23 Q But Jamil is your home boy?

24 A Yes, he's my home boy, but he's like a mutual
25 friend, so.

1 Q And then you guys don't just stay at Jamil's house;
2 is that correct?

3 A Correct.

4 Q Y'all actually go to different locations?

5 A Right.

6 Q And you testified that you were going to different
7 locations based on my client wanting you to go into
8 these neighborhoods?

9 A Correct.

10 Q So did you hear my client on the phone talking to
11 someone saying that he wanted to come to that area?

12 A Nah, he probably was texting him, or something like
13 that.

14 Q You didn't hear him, but he probably was texting?

15 A Yeah, he probably was texting him.

16 Q But you don't know for certain?

17 A No, but I remember he was telling me, This is where
18 to drive, such and such here.

19 Q Now, isn't it true that you actually wasn't just
20 going to locations that my client actually wanted
21 you to go to, but you were actually going to pick
22 up some weed so you can smoke some?

23 A That is not from -- I was going wherever he told me
24 to drive.

25 Q Did you go somewhere to get some marijuana?

1 A Um --

2 Q Shortly after?

3 A (Nods negatively.)

4 Q You didn't?

5 A Not that I remember, no.

6 Q You don't remember getting any marijuana on that
7 night?

8 A I don't remember going nowhere to get no marijuana.

9 Q Did you smoke some marijuana after what happened to
10 Mr. Davis happened?

11 A I don't remember. No, I don't remember smoking no
12 marijuana, no, ma'am.

13 Q You and Jamil, and because my client was with you,
14 y'all didn't smoke any marijuana after?

15 A I don't remember.

16 Q You were thinking that that would be something that
17 you would remember; right?

18 A No. It was a long time ago. But, yes, I would --
19 I would probably remember that, but I don't
20 remember that.

21 Q And then you said that prior to you guys leaving
22 and going to those locations that my client -- like
23 I said previously, my client told Jamil to bring
24 the rag out, but you said you just took off your
25 green shirt that you had on that night; right?

1 A Right.

2 Q And then you just started wiping down the car;
3 correct? The white car?

4 A Yes, what I touched, or whatever.

5 Q The places you touched, you started wiping it down
6 in the car?

7 A Right.

8 Q And you said you don't remember seeing any blood?

9 A No, ma'am.

10 Q And you said that, I guess, when Jamil gets in the
11 car -- because once you leave Jamil's house, Jamil
12 doesn't stay at his house, he comes along for the
13 ride; correct?

14 A Correct.

15 Q And so you said that my client just tells Jamil,
16 Hey, Jamil, this is what happened earlier tonight
17 in this car?

18 A Not like that, but, I mean, that's how it happened.

19 Q And so are you saying that my client said, Hey,
20 Jamil, and he said a specific act that he did, my
21 client?

22 A Yes. Yes, ma'am.

23 Q I wasn't there. I mean, elaborate. Tell me what
24 you're trying to say that my client said on that
25 night to Jamil.

1 A Basically, told him, like, he killed a man.

2 Q And out of no prompting from Jamil, he just blurted
3 this out, I killed a man?

4 A Yes, I guess so.

5 Q And you said nothing?

6 A No, I was still, like, shocked.

7 Q You were still shocked?

8 A Yeah, I was still, like, in a daze, like, I was /
9 just --

10 Q But you were driving at this point?

11 A Correct.

12 Q And you picked up Jamil and went to all these other
13 locations?

14 A Correct.

15 Q And you were in a daze?

16 A Like, I wasn't, like, in my right mind, like,
17 really, like, indulging in that conversation
18 because, like, I ain't really want to have no part
19 in the conversation.

20 Q So you say after you drive around to these
21 different locations, and everything like that, all
22 of a sudden the car runs out of gas?

23 A Correct.

24 Q And so you leave the car where it's at because it
25 ran out of gas?

1 A Correct.

2 Q Now, didn't you testify that right before Mr. Davis
3 got shot that you offered him gas money?

4 A Correct.

5 Q So why didn't you put gas in the car? Why did the
6 car run out of gas at this point?

7 A I mean, because we just kept driving. He told me
8 to drive, so I just kept driving.

9 Q And it just ran out of gas?

10 A Correct.

11 Q Did you think about walking to a store and trying
12 to get some gas and then go back to the car?

13 A Not really.

14 Q Now, let me ask you this. Now, from the time that
15 Mr. Davis is shot and to the time that the car runs
16 out of gas, about how many hours would you say have
17 passed?

18 A I can't -- I can't recall.

19 Q Maybe one hour?

20 A I can't -- I can't -- I don't remember.

21 Q Two hours?

22 A I don't remember.

23 Q Okay. And you said once that car ran out of gas,
24 you rolled up the windows and you and Jamil and my
25 client went walking?

1 A Yeah, we went walking down through the
2 neighborhood. And that's when we called whoever
3 was in that little green car.

4 Q And did my client call the person in the green car
5 with a cell phone that he had on that night?

6 A Correct.

7 Q He didn't use your cell phone?

8 A (Nods negatively.)

9 Q And then you made mention -- the Prosecution asked
10 you about the passenger side window and that it was
11 broken?

12 A Correct.

13 Q And you said that when you and my client was in
14 Charleswood that my client spit on the window?

15 A Yes, he had -- like, he was trying to spit out the
16 window and it got on the window, so he broke it.

17 Q And so instead of just wiping the spit off, it is
18 your testimony that my client just took the gun and
19 just smashed the window out?

20 A Correct.

21 Q He could have easily just used something to wipe it
22 off; right?

23 A He could have.

24 Q Because you guys had just gotten rags from -- at
25 least, according to your testimony, my client had

1 gotten rags from Jamil to wipe the car down?

2 A Correct.

3 Q So he knew that he could have done that?

4 A I mean, yeah, I guess so.

5 Q Okay. And you said that you don't know the name of
6 the person who picked you guys up on that night?

7 A No, ma'am.

8 Q And that they dropped you off on Farrow Road?

9 A Yeah, back at my house.

10 Q At your house. And then you testified to the fact
11 that -- you said, now, after that night, you had
12 another conversation -- or you had a conversation
13 with my client; correct?

14 A After that night or that night?

15 Q After that night?

16 A Oh, yes, ma'am.

17 Q And you said about a week after that night -- and
18 this incident occurred on about September the --
19 late September 15th, beginning of, early morning of
20 September 16th; correct?

21 A Correct.

22 Q And you testified that a week after that timeframe
23 that you saw my client at a party?

24 A Not necessarily a party, but, like, kind of like a
25 get-together, like.

1 Q And you said my client at that time told you Curtis
2 got caught with the gun?

3 A Correct.

4 Q And that Curtis might have told someone about it?

5 A Yeah, about the incident.

6 Q About the incident. And did my client tell you how
7 Curtis got caught with the gun?

8 A Not that I remember.

9 Q But that Curtis had got caught with the gun a week
10 after Mr. Davis was shot?

11 A Yeah, like a week or so, yeah, at that party.

12 Q And you're sure of that timeframe?

13 A Yeah, like around -- maybe like a week or two or
14 so, yeah, about right.

15 Q And then you said that at this particular junction,
16 your girlfriend, Donnell Jackson, was there?

17 A Correct.

18 Q And that Jamil was also there?

19 A Correct.

20 Q And then you were actually asked about whether or
21 not you saw the gun that you are saying my client
22 had on that night?

23 A Correct.

24 Q And you said you barely saw the gun?

25 A Correct.

1 Q Then you testified to that, I cannot say that I saw
2 the gun, basically, for an extended amount of time,
3 it was very quick, but that you knew that it had to
4 be a revolver?

5 A Yeah, because, like, how many shots that I heard.
6 Automatic revolvers don't have, like, that many
7 shots, so it couldn't have been that big.

8 Q So you know a lot about guns?

9 A No, not really.

10 Q Okay. And so you said that the gun couldn't have
11 been that big, you took a quick glance?

12 A Correct.

13 Q And the Prosecution showed you the Hess video. And
14 in that Hess video, you identified yourself and the
15 victim as being the two individuals on that video?

16 A Correct.

17 Q And then you all went to talking about you actually
18 talking to law enforcement in reference to this
19 case after you had saw a picture of yourself on the
20 news?

21 A Correct.

22 Q And you said that when you went down to the police
23 station that you really wanted to talk to
24 Investigator McCracken, but you wanted to talk to
25 your attorney first?

1 A Correct.

2 Q Now, that's not the first time that the police
3 actually approached you in reference to this
4 homicide, is it?

5 A Um, I guess. I don't know.

6 Q What if I tell you that one day you and your
7 girlfriend, Donnella Jackson, was walking down, I
8 believe it was Chestnut Street?

9 A Right.

10 Q And law enforcement pulled up while you guys were
11 walking and asked to speak to you then on that day?

12 A Um --

13 Q Do you remember that happening?

14 A Yeah, I believe that did happen, but -- I believe
15 that did happen.

16 Q And you told them, I'm not ready to talk to you
17 right now?

18 A I remember calling, I think it was -- I don't think
19 it was McCracken. I called one of the
20 investigators and I told them that I wanted to talk
21 to him. And he asked me -- he was like, Well,
22 whenever you ready to come talk to me.

23 I said, I'm ready, but -- like, I was, like,
24 kind of, like, scared because, like, I mean --

25 Q You're facing a murder charge?

1 A I mean, yeah.

2 Q You should be scared?

3 A Yeah, but a man told me he was going to kill the
4 weakest link, so I don't want to go to the police
5 and then I tell them something and he find out,
6 know what I'm saying?

7 Q And let's go back to that, because your testimony
8 is that my client told you that he was going to
9 kill the missing link because --

10 A The weakest link.

11 Q The weakest link?

12 A Yeah, correct.

13 Q The weakest link, because a week after Mr. Davis's
14 murder Curtis Wright was caught with a gun?

15 A Correct.

16 Q And that's your testimony?

17 A (Nods affirmatively.)

18 Q What if I tell you that Curtis Wright wasn't caught
19 with a gun until sometime in October, which would
20 have been three to four weeks later?

21 A Well, like I said, I said a week or two or so.
22 Like, I can't -- like, around that timeframe. I
23 can't really remember, but I know it was shortly
24 after the incident.

25 Q So three to four weeks would be shortly after the

1 incident?

2 A Yeah, because after the incident, I probably was
3 home for like maybe a month, less than a month, or
4 something like that, know what I'm saying?

5 Q And then you actually told -- you actually
6 testified to the fact that the reason why you're
7 here today is because you want to do the right
8 thing?

9 A Correct.

10 Q You want to do what feels right?

11 A Correct.

12 Q And that you don't expect anything from the State?

13 A Correct.

14 Q And you are charged with -- you are currently
15 charged with murder right now?

16 A Correct.

17 Q And you know the penalties that are associated with
18 murder?

19 A Correct.

20 Q And you are also charged with carjacking right now?

21 A Correct.

22 Q So you are, in essence, charged with the same
23 charges as my client except for one?

24 A Correct.

25 Q And your testimony today, you don't want any type

1 of leniency from the State by agreeing to testify?

2 A I mean, I'm hoping, but, I mean, I don't -- I don't
3 expect it.

4 Q But -- and you said that you hope something good
5 might come out of this, meaning your testimony?

6 A Correct.

7 Q And the something good coming out of this is you
8 getting leniency from the State?

9 A No, not necessarily. Like, basically, like, by
10 good, I mean like the truth coming out. Like, they
11 know what's going on, like.

12 Q And that would be your truth; correct?

13 A Correct.

14 Q And when I started cross-examining you, I stated
15 that I want to deal with your testimony that you
16 actually gave today in front of the jury.

17 A Correct.

18 Q And you actually alluded to the fact that on other
19 occasions you actually spoke to law enforcement?

20 A I have.

21 Q And you have actually spoken to Investigator
22 McCracken?

23 A I believe -- no, at first, I didn't speak with
24 McCracken. I believe it was Gilliam. I want to
25 say it was Gilliam.

1 Q But at some point you spoke to Investigator Gilliam
2 and then you spoke -- and at one point you spoke to
3 Investigator McCracken?

4 A Correct.

5 Q Now, at what point did you tell Investigator
6 Gilliam or even Investigator McCracken that my
7 client threatened to kill the weakest link?

8 A This was like when I finally really got to talk to
9 them.

10 Q And you told them that?

11 A Yeah, I told -- I believe I told -- I told them
12 that when I got locked up, like, after.

13 Q Which investigator did you tell that to?

14 A I believe it was Gilliam. If I'm not mistaken, I
15 believe it was Gilliam.

16 Q And let me ask you this. Which Investigator did
17 you tell about your girlfriend, Donnella Jackson,
18 standing right beside you when my client made this
19 statement to you?

20 A She came in and made a statement on her own.

21 Q Oh, so Donnella told them that, you didn't tell the
22 investigator?

23 A No, she came and made a statement on her own later
24 on.

25 MS. SINGLETARY: Beg the Court's indulgence,

1 Your Honor.

2 (Pause.)

3 MS. SINGLETARY: Your Honor, at this time, I
4 have no further questions.

5 THE COURT: All right, let me see you all one
6 second.

7 (WHEREUPON, a bench conference was held
8 in the presence of the jury but outside
9 the hearing of the jury.)

10 THE COURT: We are going to let the State come
11 back and redirect. She tells me it is not going to
12 take very long. So then we'll be done for the day.

13 Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. BODMAN:

16 Q Austin, when you're putting gas in the car, are you
17 filling up the whole tank, or how much are you
18 putting in at a time?

19 A Like --

20 Q Like when you stopped at the Hess station first?

21 A I think I put, like, maybe, like, five dollars in
22 there.

23 Q Okay. So not that much?

24 A Not that much.

25 Q Okay. And the phone that you were using that

1 night, the -9542, was that your phone or
2 somebody else's phone?

3 A That was my phone.

4 Q Okay. And then you changed -- you called and
5 changed the number the next day to -0231?

6 A I believe so.

7 Q And, you know, looking back this time, were you
8 able to directly remember any of the numbers?
9 Like, did you remember whose number was -6130 or
10 -6130?

11 A No, ma'am, I don't remember that number.

12 Q Did it sound familiar to you?

13 A No, ma'am.

14 Q Do you remember Kiki's number at the time?

15 A No, ma'am.

16 Q Do you remember Jamil's number at the time?

17 A No, ma'am.

18 Q Okay. But you were -9542?

19 A Correct.

20 Q That was your phone?

21 MS. BODMAN: No further questions.

22 THE COURT: All right. All right, ladies and
23 gentlemen of the jury, we are going to -- I said we
24 were going to run late, but I didn't think we would
25 run this long. So I do appreciate your patience

1 here this evening.

2 We will start back -- do you want to start at
3 9:00 or 9:30? It is up to you all?

4 THE FORELADY: 9:30.

5 THE COURT: 9:30? What I may do is, I may try
6 to order lunch, and then that way we can -- I'm
7 going to see where we are after I release you all.
8 I may just order lunch and then that cuts down on
9 the lunch hour. I may do that for tomorrow, order
10 lunch so you can eat here. So what I'll do is when
11 you all get here at 9:30 in the morning -- I know
12 the bailiffs probably tell y'all to come earlier,
13 but if get here around 9:15, we'll have some -- is
14 my clerk still here? There she is. We'll have
15 menus ready for you all. We order from two or
16 three places -- or has that changed?. So we'll have
17 some menus back there for you to order some lunch
18 tomorrow and then that will cut down on -- we'll
19 take like a 30 minute break for lunch and come
20 back.

21 All right. All right, have a good evening.
22 Remember, do not discuss the case, do not do any
23 independent research on the case.

24 Thank you.

25 (WHEREUPON, the jury is excused for the

1 day at 6:56 p.m.)

2 (Pause.)

3 THE COURT: All right, back on the record. We
4 have DaQwane Robinson. Who is DaQwane? Raise your
5 hand. Curtis Wright. And Jamil Brennan.

6 MS. BODMAN: Jamil Brennan.

7 THE COURT: And does Mr. Brennan have an
8 attorney?

9 MS. GARFIELD: I believe his father is here.

10 THE COURT: Okay. All right. Mr. Robinson,
11 Mr. Wright, and Mr. Brennan, I am sure your
12 attorneys have explained to you that you all are to
13 be back here tomorrow. Your subpoena -- you are
14 under the subpoena until I release you from the
15 subpoena, which, after you testify, I will release
16 you all from the subpoena and then you can leave.
17 Until then, you are still under the subpoena, which
18 means you need to be back here tomorrow morning at
19 9:30.

20 Is that understood, Mr. Robinson?

21 MR. ROBINSON: (Nods affirmatively.)

22 THE COURT: Mr. Wright?

23 MR. WRIGHT: Yes, ma'am.

24 THE COURT: And Mr. Brennan?

25 MR. BRENNAN: Yes, ma'am.

1 THE COURT: If you do not appear, you will
2 receive a bench warrant and we will have someone
3 come pick you up and they will transport you here
4 and we will have you testify from -- and then you
5 will be at the department -- I mean, at the Alvin
6 S. Glenn. They will transport you here from Alvin
7 S. Glenn to testify and take you back to Alvin S.
8 Glenn. Is that understood?

9 MR. ROBINSON: Yes, ma'am.

10 MR. WRIGHT: Yes, ma'am.

11 MR. BRENNAN: Yes, ma'am.

12 THE COURT: I am sure your attorneys have
13 explained that to you.

14 MR. RUFFIN: Mr. Robinson is scheduled to work
15 from 9:00 to 2:00 tomorrow. I was going to request
16 from the Prosecutors if they would be willing to
17 call him in the afternoon. If not, that's fine.
18 He'll have to get somebody to cover.

19 THE COURT: Where does he work?

20 MR. RUFFIN: Waffle House in Ridgeway.

21 THE COURT: He needs to let them know he is
22 under subpoena. Is he going to be the --

23 MR. RUFFIN: They do know that.

24 THE COURT: -- next witness? We can try to
25 get him up and get him down and get him back to

1 work as soon as possible.

2 MR. RUFFIN: They need to call him in the
3 morning.

4 MR. CARSON: We have a similar situation as
5 well, but he works a little closer. And I think
6 that is Bull Street.

7 THE COURT: Where does he work?

8 MR. CARSON: Bull Street. He does
9 construction, brick work. He's working for his
10 parents working at Bull Street.

11 THE COURT: He's working for his parents?

12 MR. CARSON: Yes, ma'am.

13 THE COURT: Well, I'm sure his parents
14 understand the importance of him being here in
15 court. If not, you will explain that to them. And
16 he may be a little late for work.

17 MR. CARSON: Yes, ma'am.

18 THE COURT: So I think they -- which one --
19 who is supposed to be up first?

20 MS. BODMAN: Well, that is a problem with the
21 morning. We've got to call some doctors to see if
22 they can come later so then we could do that in the
23 morning. But we'll need to make some phone calls.
24 So that is --

25 THE COURT: Why don't you all coordinate with

1 the attorneys on time?

2 MS. BODMAN: We will.

3 THE COURT: As long as you all are here, the
4 attorneys will make sure you are here at the time
5 that they are supposed to testify. I do not want
6 court to break down because they are not here and I
7 have to send deputies and the Fugitive Team out to
8 come look for them. All right?

9 MR. RUFFIN: Absolutely, Judge.

10 THE COURT: You understand that, Mr. Brennan?

11 MR. BRENNAN: Yes, ma'am.

12 THE COURT: Mr. Brennan's dad, you'll make
13 sure he's here?

14 MR. BRENNAN'S FATHER: He'll be here. Thank
15 you.

16 THE COURT: All right. Thank you.

17 MR. RUFFIN: Thank you, Judge.

18 (WHEREUPON, the proceedings were
19 concluded at 7:04 p.m.)

20 JANUARY 13, 2016

21 (WHEREUPON, the proceedings resumed at
22 9:51 a.m.)

23 THE COURT: All right. One of the deputies
24 said that someone was taking pictures -- I don't
25 know what they were taking pictures of, but -- on

1 yesterday. So if anyone wants to be an amateur
2 photographer, they will lose their phone, camera,
3 and I'm going to take it and I'm not going to give
4 it back.

5 All right. Are we ready?

6 MS. GARFIELD: Your Honor, just a housekeeping
7 matter. It is my understanding that witnesses
8 Mr. Robinson and Mr. Wright are not present. I am
9 trying to contact their attorneys. There may be a
10 good reason. But I would like to go ahead and
11 request a bench warrant to get the paperwork
12 started.

13 THE COURT: All right. I told them to be here
14 at 9:30. They are not here. Issue a bench
15 warrant.

16 MS. GARFIELD: Thank you.

17 THE COURT: And get it to the Fugitive Team so
18 they can go pick them up.

19 MS. GARFIELD: Yes, ma'am.

20 THE COURT: What time did y'all tell them to
21 be here?

22 MS. SINGLETARY: Your Honor, I think that we
23 said to communicate --

24 MS. GARFIELD: We did. I'm just asking for
25 this so that I don't have to interrupt court in 45

1 minutes. If they show up or Mr. Ruffin tells me
2 they are on the way, then obviously we will not
3 execute it, but I just wanted to go ahead and get
4 the paperwork in motion.

5 THE COURT: Where are their attorneys?

6 MS. GARFIELD: I don't know. I just sent a
7 text message to both of them. I believe Mr. Ruffin
8 was physically going to pick his client up. That
9 is why I am trying to work with them, obviously,
10 but I just didn't want to interrupt court.

11 THE COURT: He represents Mr. Robinson?

12 MR. GARFIELD: Yes, ma'am.

13 THE COURT: Okay.

14 MS. GARFIELD: And Mr. Carson represents Mr.
15 Wright.

16 THE COURT: All right. Are we ready to bring
17 them in?

18 MS. BODMAN: Yes, ma'am.

19 THE COURT: All right, you can bring them in.
20 (WHEREUPON, the jury came into open
21 court at 9:55 a.m.)

22 THE COURT: Good morning, ladies and gentlemen
23 of the jury. We will continue with the State's
24 case.

25 I know it is a little warm in here, and I have

1 put in a request to have it a little bit cooler. I
2 just hesitate to do that because then they will
3 freeze us to death. But it is -- we have requested
4 that they adjust the temperature.

5 We will go ahead and get started with the
6 case, the State's case.

7 And I'll ask the State to call their next
8 witness.

9 MR. BERRY: The State calls Dr. James
10 Morrison.

11 (Witness approaches.)

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

14 (Witness complies.)

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

19 THE WITNESS: I do.

20 THE CLERK: Have a seat in the witness stand,
21 please.

22 (Witness complies.)

23 THE CLERK: State your name for the record.

24 THE WITNESS: My name is James Edward
25 Morrison, M-O-R-R-I-S-O-N.

1 JAMES EDWARD MORRISON,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BERRY:

5 Q Hey, Dr. Morrison. How are you this morning?

6 A Good, sir.

7 Q Good. Tell us a little about yourself. What kind
8 of doctor are you?

9 A Currently, I'm a wound care doctor and an intensive
10 care unit doctor at the VA Hospital, but previously
11 I was a full-time trauma surgeon for the majority
12 of my career until I retired from trauma in 2013.

13 Q Majority, how long was your career? How long did
14 you work as a trauma surgeon?

15 A I worked in trauma my entire career since
16 graduating residency in general surgery and
17 surgical critical care. So to become a doctor, you
18 do your four years of college, you do four years of
19 medical school, you complete a residency training
20 in a specific specialty. I completed a residency
21 in general surgery and I am boarded in general
22 surgery.

23 After completing that year, I did an
24 additional year of training specifically in
25 surgical critical care. And I have additional

1 boards in that field as well.

2 And then I have worked in trauma since
3 graduation from general surgery in '97, critical
4 care in '98, specifically in trauma and critical
5 care.

6 Q And have you testified before as an expert in
7 trials?

8 A I have testified in Columbia and Lexington, as well
9 as Sacramento. I have been deemed an expert
10 witness in trauma surgery and surgical critical
11 care.

12 THE COURT: What was the last one?

13 THE WITNESS: Surgical critical care.

14 MR. BERRY: The State would like to offer Dr.
15 Morrison as an expert in trauma surgery and
16 surgical critical care.

17 THE COURT: Any voir dire from the Defense?

18 MS. SINGLETARY: None, Your Honor.

19 THE COURT: All right. Any objection?

20 MS. SINGLETARY: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen
22 of the jury, normally a person cannot give opinion
23 testimony. Normally when a person testifies, they
24 must testify as to what they either saw, heard, or
25 sensed by smell or something of that nature.

1 However, there is an exception when someone is
2 qualified because of education or experience. They
3 are permitted to give their opinion in certain
4 areas if the Court qualifies them that way.

5 This witness will be qualified in the area of
6 trauma surgery and surgical critical care to give
7 opinion testimony in that area. That does not mean
8 that you must accept the opinion, but it is
9 evidence for you to use in any way you see fit and
10 give it the weight and credibility you believe is
11 appropriate.

12 All right. Thank you.

13 Thank you.

14 THE WITNESS: Appreciate it.

15 BY MR. BERRY:

16 Q Doctor, can you please tell the jury -- you said
17 you were working at Palmetto Richland back in 2012;
18 is that correct?

19 A I may or may not have said it, but, yes, in 2012, I
20 was a trauma surgeon at Palmetto Health Richland,
21 yes.

22 Q And do you remember a gunshot victim coming in to
23 the hospital in the early morning hours of
24 September 16th, 2012?

25 A Yes, I do.

1 Q And was that victim later identified as Michael
2 Davis?

3 A Yes, sir.

4 Q Can you please explain to the jury what your
5 responsibilities at the hospital were that night?

6 A I had multiple responsibilities. As an assistant
7 professor of surgery, I was overseeing residents, I
8 was overseeing medical students, but specifically
9 that night my job was to be in the hospital. Kind
10 of like a fireman waiting for a fire, we stay in
11 the hospital overnight, several nights a month,
12 actually, five or six nights a month. And then
13 when a critically injured patient comes to the
14 emergency room, we get called down to meet them
15 there and try to take care of them.

16 So at roughly 3:30, 3:35 in the morning, I
17 received a page saying a critically injured patient
18 was coming in. I went down to the trauma bay,
19 which is within the emergency department, and I was
20 there about three minutes later. I organized my
21 team. I had surgery residents that were learning
22 how to do surgery. I had medical students. There
23 were nurses. There were ER physicians. There was
24 actually quite a large group of people. And we
25 awaited the arrival of the patient, in this case,

1 Mr. Davis, who we knew was critically injured.

2 Q When Mr. Davis arrived, what all did you and your
3 team do?

4 A We had heard that he was shot. We had also heard
5 that possibly he was run over, but we did not know.
6 And these are things we hear. We believe them
7 somewhat. The paramedics usually know what's
8 happened, so they told us he had been shot. And
9 then our initial goal is to try to keep the patient
10 alive, or in his case, we knew that his heart had
11 already stopped. Our goal is to see if he was
12 someone that had enough life left in him that we
13 could in a way bring him back to life.

14 The first thing we did is we hooked up what
15 are called EKG leads to his chest. Those are
16 wires. Because I wanted to know if his heart was
17 trying to beat. In his case, his heart was trying.
18 It was not beating, but it was trying. He had
19 electrical activity, so I know that his body was
20 sending electrical pulses to the heart saying
21 please pump, but the heart itself was not pumping.

22 So we did several things. We put a tube in
23 his right chest to draw out blood where he had been
24 shot. And then we did something quite extreme that
25 we do in only rare circumstances. We opened up his

1 left chest. We made a cut from his breast bone,
2 underneath his breast, along up towards his armpit.
3 We separated his ribs and we, by hand, massaged his
4 heart, trying to make it beat.

5 We were successful briefly, and then the heart
6 stopped beating. It went into a rhythm that is not
7 compatible with life. We shocked his heart trying
8 to make it beat normally. And after we were
9 unsuccessful in making his heart beat, we declared
10 him dead.

11 Q Do you recall around what time that was?

12 A I declared him, and it was at 4:09 in the morning.

13 Q 4:09 in the morning. And to a reasonable degree of
14 medical certainty, what was the cause of death?

15 A He had bled to death. Most of the blood went in
16 his right chest. That made his body unable to
17 survive, unable to pump blood or he had no blood
18 left to pump, so he bled to death and died of
19 exsanguination.

20 Q. No further questions, Doctor. Please answer any
21 questions Defense counsel may have for you.

22 MS. SINGLETARY: Your Honor, we have no
23 questions for this witness.

24 THE COURT: All right. Sir, you may step
25 down.

1 Any objection to this witness being excused?

2 MS. SINGLETARY: No, Your Honor.

3 THE COURT: All right, Doctor, you are free to
4 leave.

5 THE WITNESS: Thank you, ma'am.

6 (Witness steps down and is excused.)

7 MS. BODMAN: The State calls Dr. Durso.

8 (Witness approaches.)

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

11 (Witness complies.)

12 THE COURT: Do you swear or affirm to tell he
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE COURT: Thank you.

17 (Witness seated.)

18 THE BAILIFF: State your full name for the
19 record, please.

20 THE WITNESS: Amy Durso, D-U-R-S-O.

21 AMY DURSO,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BODMAN:

25 Q Dr. Durso, where do you work?

1 A I work for Professional Pathology Services.

2 Q And what do you do for Professional Pathology
3 Services?

4 A I am a forensic pathologist.

5 Q Can you tell the jury a little bit about your
6 educational background and training that brings you
7 to be a forensic pathologist?

8 A Sure. So I completed by Bachelor's Degree in
9 Psychology at Emory University. After that, I got
10 my medical degree from the University of North
11 Carolina at Chapel Hill. I then went on to do a
12 4-year residency training program in general
13 pathology at Wake Forest University. And then I
14 spent an additional year at Wake Forest doing a
15 fellowship specifically in the field of forensic
16 pathology.

17 Q And then how long have you been here with
18 Professional Pathology?

19 A About five and a half years.

20 Q And what are your duties and responsibilities as a
21 pathologist? What do you do?

22 A So primarily in forensic pathology, I perform
23 autopsies. So autopsies are a way of examining the
24 body after death. So we do a complete examination
25 of the body starting on the outside of the body, as

1 well as making incisions and cuts into the body to
2 examine all of the internal organs and the brain,
3 documenting anything abnormal both inside and out.

4 Q And what is the ultimate purpose of the autopsy?

5 A To determine the cause of death, as well as just to
6 document any abnormal findings.

7 Q Have you previously testified in court as an expert
8 witness?

9 A Yes.

10 Q As a forensic pathologist?

11 A Yes.

12 Q And how many times have you been deemed an expert,
13 do you think?

14 A At least ten times.

15 Q. Okay.

16 MS. BODMAN: Your Honor, at this time, we
17 offer Dr. Durso as an expert in the area of
18 forensic pathology.

19 THE COURT: All right. Any voir dire? Any
20 objection?

21 MS. SINGLETARY: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen
23 of the jury, as I stated earlier, this witness will
24 be -- regarding the expert, this witness will be
25 qualified in the area of forensic pathology to give

1 opinion testimony in that area. That does not mean
2 that you must accept the opinion, but it is
3 evidence for you to use in any way you see fit and
4 give it the weight and credibility you believe is
5 appropriate.

6 Yes, ma'am?

7 BY MS. BODMAN:

8 Q So did you perform an autopsy back in 2012 upon an
9 individual by the name of Michael Davis?

10 A Yes, I did.

11 Q And that was on September 16th of 2012?

12 A Yes.

13 Q Okay. And did you prepare a report?

14 A Yes. We always prepare a full report of all of our
15 findings.

16 Q Okay. Does that include a diagram --

17 A Yes.

18 Q -- of your observations and findings? And
19 photographs?

20 A Yes. Photographs are usually taken by the
21 coroner's office and the investigative officers
22 there at the time of the autopsy.

23 Q I'm going to show you what is marked as State's
24 Exhibit No. 62 and ask if you recognize this?

25 A Yes, I do.

1 Q And is that the diagram that you prepared?

2 A Yes.

3 MS. BODMAN: Offer into evidence State's
4 Exhibit 62.

5 THE COURT: Any objection?

6 MS. SINGLETARY: None, Your Honor.

7 THE COURT: All right. Exhibit 62 will be in
8 evidence.

9 (WHEREUPON, State's Exhibit No. 62 was
10 marked for identification and received
11 into evidence.)

12 BY MS. BODMAN:

13 Q And while you are up here, I am going to show you
14 what is marked as State's Exhibit 59, 60, and 61.
15 Do you recognize 59?

16 A I do.

17 Q Do you recognize 60?

18 A Yes.

19 Q And 61?

20 A Yes, I do.

21 Q Okay. What are those?

22 A Those are all photographs taken at the time of
23 autopsy.

24 Q And do they document either the items recovered
25 from the victim and/or the wounds that you

1 observed?

2 A Yes.

3 MS. BODMAN: Offer into evidence 59, 60, and
4 61.

5 MS. SINGLETARY: Without objection.

6 THE COURT: All right, those will be entered
7 without objection.

8 (WHEREUPON, State's Exhibit No. 59 was
9 marked for identification and received
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 60 was
12 marked for identification and received
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 61 was
15 marked for identification and received
16 into evidence.)

17 MS. BODMAN: Your Honor, may I ask that the
18 witness be allowed to come down?

19 (Witness steps down.)

20 BY MS. BODMAN:

21 Q Stand on this side. So, if you can, I guess, just
22 walk us through the process of the autopsy, and if
23 you can use the diagram to tell us what you
24 observed.

25 A So in all of the autopsies I do -- I start out with

1 a basic blank diagram just to document all of our
2 findings. In documenting everything, so we do
3 everything, you know, from weight, length of the
4 body, eye color, all of those kinds of things. But
5 the most significant things I found on Mr. Davis --
6 he was originally labeled John Doe --

7 THE COURT REPORTER: I'm sorry, labeled what?

8 A. I'm sorry. He was originally labeled as John Doe
9 when we received his body in the morgue. He was
10 later identified as Mr. Davis.

11 The most significant things I found on autopsy
12 were three gunshot wounds. And I don't -- I just
13 kind of go from top to bottom. It doesn't mean
14 this is the order which the wounds occurred.

15 Q. Okay. So you have them labeled as --

16 A. A, B, and C. So these are all over on his right
17 side of the body.

18 Q And, I guess, is there any way that you can tell
19 which was the first shot, which was the second, or
20 which was the third?

21 A No, there is no way for me to tell from the
22 autopsy.

23 Q Okay. And can you tell if these were all entry
24 wounds or if any of these were exit wounds?

25 A These are all entrance wounds. So a gunshot

1 entrance wound causes a distinct characteristic
2 called an abrasion collar. So as the bullet is
3 actually pushing through your skin for a split
4 second, it kind of pushes on your skin for a second
5 and causes a little abrasion around where it
6 actually perforates the skin where it kind of
7 pushes in. And each of these wounds had an
8 abrasion collar, so I knew even before I got into
9 the inside of the body that these were all gunshot
10 entrance wounds.

11 Q Okay. So, I guess, let's start just alphabetically
12 and you can tell us about what you know about
13 Gunshot Wound A.

14 A Sure. Gunshot Wound A enters here on the right
15 shoulder, kind of on the -- kind of front side of
16 the right shoulder up here. It then basically just
17 perforates through the soft tissue up in this area.
18 And, actually, before we open up the body, you
19 could actually feel the projectile underneath the
20 skin here and we were able to track this entrance
21 wound to this projectile by pushing a probe through
22 it. So this gunshot wound actually would not have
23 been fatal by itself. So it just perforated soft
24 tissue and stops right here by the right clavicle
25 here.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

RECEIVED

JAN 18 2017

SC Court of Appeals

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHEO D. GREEN,

APPELLANT

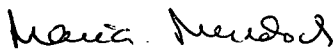
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Donald Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of January, 2017.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of January, 2017.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.