THE STATE OF SOUTH CAROLINA

In The South Carolina Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable Thomas W. Cooper

STATE OF SOUTH CAROLINA, Respondent

v.

MELEKE D. STEWART, Appellant.

APPELLATE CASE NO. 2018-001916

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STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MELEKE STEWART,	)	
	)	
DEFENDANT,	)	

October 16-18, 2018
Conway, South Carolina

BEFORE:

THE HONORABLE THOMAS W. COOPER, JUDGE and a jury.

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KAREN AMBROZIAK
Official Court Reporter

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THE COURT: Folks, I take it we're now ready to proceed with the Blair hearing; is that right, Mr. DeBusk?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. You can call your witness.

MR. DEBUSK: Your Honor, for the record, this is indictment 2014-GS-26-03681, Meleke Da'Shawn Stewart, possession of a weapon during the commission of a violent crime, 2014-3682 for murder, and 2018-GS-26-2255 for attempted armed robbery.

THE COURT: All right.

MR. DEBUSK: At this time, Your Honor, the State would call Sharetha Christopher.

THE COURT: Come forward, please and be sworn.

SHARETHA CHRISTOPHER, after being duly sworn, testified as follows:

THE WITNESS: Dr. Sharetha Christopher.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Dr. Christopher, who is your employer?

A The Medical University of South Carolina.

Q And what are your duties at MUSC?

A I primarily do forensic evaluations and I'm also the director of two programs, the Youth and Family Forensic Program, and also the Postdoctoral Fellowship in Forensic Psychology.

Q Could you briefly tell the Court about your training and qualifications?

A Absolutely. I obtained a Bachelor's Degree in psychology from the State University College of Portland in New York. I earned my Masters Degree and PhD from Palo Alto University, and that's in California.

Also, while I was there I got a forensic emphasis certificate, which just basically demonstrates excellence in forensic psychology. I attended the University of Massachusetts Medical School in their forensic tract for a predoctoral internship in forensic psychology, and then I also postgraduate went to East Central Regional Hospital in Augusta, Georgia, where I did specialized forensic year there before I started my employment.

Q I think you probably answered this already, but do you have a specific area of specialization?

A Yes, forensic psychology.

Q What is forensic psychology?

A Forensic psychology is anywhere that you see an intersection between clinical psychology and the law.

Q And how long have you been actively engaged in conducting clinical forensic psychology?

A I've been doing -- so it's part of graduate training, so it's throughout that process you do it, as well, but since I've earned my degree in 2013, I've independently

been doing it.
Q Approximately how many evaluations have you participated in?
A I've been the independent -- excuse me, the primary examiner for over 400 cases and I've been involved, whether it was in a supervisory or a second evaluator capacity maybe a total of 550 or more.
Q Now, have you testified in court before?
A I have.
Q All right. Have you been qualified as an expert?
A I have.
Q How many times?
A I believe this would is the fifth, this would be the fifth.
THE COURT: How many before?
THE WITNESS: Four prior.
MR. DEBUSK: Your Honor, we'd offer Dr. Christopher as an expert in the area of forensic psychology.
THE COURT: Mr. Fox? Mr. Hiller?
MR. FOX: I don't have any questions.
THE COURT: Dr. Christopher, make it five. Thank you.
MR. DEBUSK: Thank you, Your Honor.
Q Dr. Christopher, did you have an opportunity to examine Meleke Stewart?

A I did.
Q Did you do it alone or do you have a second examiner?
A We have a second examiner in competency evaluations.
Q But both of you were present throughout the --
A Yes.
Q When did this evaluation take place and where?
A Is it okay if I reference my report?
Q Okay. Did you create a report from your work?
A We did.
Q Let me show you what would be marked as State's 1 and as you if that is --
A This is.
Q Thank you.
MR. DEBUSK: Your Honor, we'll make this a Court's Exhibit and provide it for the Court.
THE COURT: Good. Thank you.
(WHEREUPON, Court's Exhibit No. 1 marked for identification only.)
BY MR. DEBUSK:
Q All right. Dr. Christopher, is that Court's Exhibit the same report you're referring to?
A It is.
Q Thank you. Please do refer to your report.
A Okay. So I actually saw Mr. Stewart on two occasions prior to today. The first date was January 17th and the

second date was February 7th, both 2018.

Q Thank you. Where did you meet with him?

A At the Medical University of South Carolina in the forensic psychiatry program.

Q That's, of course, in Charleston?

A Yes.

Q What information did you have at your hands to conduct this evaluation?

A We had several sources that are outlined here on the source of information page to include the order. For this evaluation, we had the discovery documentation, criminal history.

We had his driving report, police department records, all these supplemental reports, the investigation reports. We had his mental health, outpatient mental health records, as well as his Chester County School District records.

Q And after reviewing all that material, did you conduct an interview with the defendant?

A We did.

Q Or multiple interviews?

A Yes.

Q Did you have, again, a chance to speak with the defendant?

A I did.

Q So is that a total of three or a total of two?
A I would say I interviewed him a total of three times.
Q Three times. Thank you. What did you conclude from your evaluation?
A We concluded that he had adequate factual understanding, adequate rational understanding and the ability to consult with his attorney and we also identified some mental health concerns.
Q What were the mental health concerns?
A Let's see. Specifically, we diagnosed him with one, which is a developmental disorder, specific learning disordered. This has to do with a specific learning disability.

Primarily, it sounds like in reading from the context of his records, but we diagnosed it by history because the diagnostic manual which you use to base your diagnoses on requires that you see a significant difference or a dramatic difference between a person's global functioning and how they do overall with one domain of learning.

So usually, you do that with psychological testing. And so since we don't do that as part of our competency evaluation and I got to review his from the past, I have given them the learning disability by history, suggesting that it's likely to be present, but we didn't repeat the testing.

We also diagnosed major depressive order recurrent episodes severe with anxious distress mild. That's a long way of saying he has some major symptoms of depression that are kind of co-occurring. It sounds like they predated his legal involvement, predated some other major stressors that have happened in his life. He's had a lot of loss of loved ones.

So these symptoms of depression have predated that, which is why he would qualify for that disorder as opposed to one that just had to do with the current situation. There's a specify on it with anxious distress, and that largely just means that he has some experiences of anxiety in addition to that, but not enough that it would be a separate stand alone disorder.

Q Would the learning disability, the stress disorder and the anxiety affect the competency to stand trial?

A For Mr. Stewart, it did not.

Q So it's your opinion that he is competent to stand trial at this time?

A It is.

Q And he can aid his attorney trying the case?

A Yes.

MR. DEBUSK: Thank you. Please answer any questions Mr. Fox may have.

THE COURT: Mr. Fox.

MR. FOX: Thank you.

CROSS-EXAMINATION:

BY MR. FOX:

Q All right. Dr. Christopher, bear me while I sort through some of these things. You met with Mr. Stewart in, I think the end of January at MUSC. And that interview needed to be discontinued, correct?

A That's correct.

Q And you and I spoke over the phone. You called me to indicate there was difficulty getting information out of Mr. Stewart, correct?

A That's correct.

Q And in your view, part of that was he indicated -- he was living in the Rock Hill area at the time?

A Correct.

Q Drove from Rock Hill to Charleston that morning, had an early morning appointment, I believe?

A He did. He had an early morning appointment and he had -- from my understanding had really poor sleep that night.

Q Not sure if he had a full breakfast and that sort of thing?

A Right.

Q You basically felt under the circumstances that was the explanation for not really being able to have a

meaningful interview; is that correct?
A That's correct.
Q Okay. At my request, we rescheduled that for a little bit later in the morning, right?
A Yes, we did.
Q And he came, I think, in the middle of February?
A February 2nd.
Q Okay.
A Excuse me, February 7th.
Q Okay. And how did interview go?
A Much better. He said that he had slept. He got adequate sleep, he had eaten a full meal before he came and he was much more willing to engage in the interview.
Q And you were able, in fact, based on that and the records that you reviewed to then do your report of that interview, correct?
A Yes.
Q And the Court, of course, will have a copy of your report. I'd like to point out a few things.

Fund of knowledge, you said he had adequate fund of knowledge. He could do things like name a president and some past presidents, cities, you know, things like that, put he was unable to name the four directions, correct? The four cardinal directions north, south, east and west; is that correct?

A Let me reference that if that's okay.
Q It's on Page 7?
A Okay. Great. Thank you. That's right.
Q And he was unable -- he provided incorrect answers to questions regarding number of seconds in a minute, days in a week, hours in a day, months in a year, days in a year, weeks in a month. So, basically, very general time issues, he was unable to answer correctly?
A So I think that the important piece here is not necessarily unable because I think he probably had the ability to do so. I think that it was a combination of these questions can really be frustrating for people sometimes, and I think that during that section, he wasn't trying very hard, especially because those things are much more -- require less -- more basic knowledge than things like identifying cities, U. S. Presidents, a much more high level of thinking than how many days are in a week. And I think it was partly frustration that was helping him to not answer those questions.
Q But he did answer -- he answered those incorrectly. You believe -- you've explained why you believe that was, but he answered those incorrectly?
A That's right.
Q He had poor interpretation of proverbs like birds of a feather flock together, that sort of thing?

A Yes.
Q Now, in reviewing previous -- and I recognize you're limited by what's given to you and didn't conduct the tests himself, which he had -- I believe at age 12 and I assumed through school had been given an intelligence and IQ test, scored out at 80? And that was on Page 3 of your report.
A Yes.
Q Which differed fairly significantly from one just a couple years before, right? He had one of, I think, 98?
A Yes, there was a difference there.
Q And that seems to me as a layman to be a pretty significant difference between -- 18 points seems to be a pretty significant --
A Yes.
Q -- gap?
A Yes.
Q Okay. Were they the same? Can you tell from the reports you had and your own whether the same tests were given? I think one was at age nine and one was given at age 12.
A Given what I know about IQ testing, it should be the same, but let me just check. He did WISC. It doesn't look like that -- either that test was identified or I didn't put it in my report for some reason. But it

doesn't say here what the other test was that provided the 98 full scale.

Q So again, you didn't conduct those tests, correct?

A Right.

Q So like any testing, whether you're testing electric current or testing the human mind, how it's applied is important, correct?

A Of course.

Q And you don't know who the examiner was in that case?

A Right.

Q So it's really hard to say which is -- it seems one of them seems to be an outlier?

A Right.

Q But can you tell which one is? Could the 80 be more accurate than the 98?

A Actually, I think the more important thing is they're both probably not accurate. When you have a specific learning disability, the full scale IQ is not valid. That's because a full scale IQ is measuring someone's global abilities. They're ability across all domains. So if someone has a learning disability, a learning disorder in reading, then they're going to perform really poorly on reading and it's going to drag all the scores down.

Q I understand.

A So that overall score is no longer going to be

sufficient. So that's -- that is a problem with whoever conducted these tests.

Q And my understanding of these different IQ or these intelligence tests is you have an IQ score, but then there's other sections that measures other things.

A That's correct.

Q Correct? Okay. And can you tell from the record you had were there other indicators that there were issues with Mr. Stewart? In other words, were there other measurements, red flags or comprehension problems or that sort of thing?

A The problem is with testing that I didn't conduct, I don't have the raw data so I can't see what sub-domains were elevated or what ones weren't. So, unfortunately, I can only rely on their conclusions, what they wrote in the report.

So I believe they said there were two -- I'll have to find them, but one time in this report, they identify that his biggest deficit was in comprehension, so hearing information and being able to apply it or understand it.

And then later, I want to say -- I'll have to locate it, but later, it said his comprehension was much improved. So it's unclear from these records whether he had that specific learning disability specific to reading or learning comprehension or whether that was just an area

that he had not put forth a lot of effort in. So it's not possible for me to tell with these records.

Q And you wouldn't have any knowledge of what assistance or what steps were being taken in the schools to assist him to deal with that?

A Right. And it's entirely possible given my observations and my experience with him. I see a lot of times where in the school setting that kids get really frustrated with these and then they don't try very hard. And when that's the case, that can certainly impact IQ scores.

Q And then, obviously, you would be -- well -- all right. Now, you mentioned comprehension and the ability to understand, process information that you're given.

A Yes.

Q That would seem to be a critical element of being able to assist your attorney in a complicated legal matter, would it not?

A Yes.

Q And if you had deficits in that area, that could potentially be a real problem in terms of, again, your ability to number one, understand what it is that is happening, and number two to communicate effectively with your attorney?

A It can be, depending on the severity.

Q Okay. Now, this morning I was able to, at your request because Malik was having some issues answering your questions in terms of -- I sat in this morning briefly?
A Yes.
Q And what I believe you indicated was that his reading is, I think you say he can't read, but it's very limited, his reading ability; is that correct?
A So I don't have any data to support that objectively, but I can say what he told me. And he said that he has significant difficulty reading.
Q And that's reflected, at least, in some of the records -- I understand it shows improvement, but at one point I think when he was well past the first grade, they indicated he read at like at a one-and-a-half grade level when he was, at that time, I think in middle school, correct?
A Yes.
Q So significantly behind, assuming -- if that's accurate, that he was significantly behind, at least, in middle school?
A Yes.
Q So, obviously, his problems reading would also interact with his comprehension? Typically --
A Absolutely.

Q -- if you have difficulty reading the word, you're more likely maybe to have problems understanding that being explained to you. Is that fair to say?
A It depends. So people can understand things. Some people are -- you know, I learn better by reading and sometimes people need to have a conversation to learn better. Sometimes people need diagrams and visual aids to learn.
Q Sure.
A So it just completely depends on how he learns best. But from our discussions and from what he shared with me today, if we handed him a piece of paper and asked him to explain it to me, he's going to have difficulty with that.
Q And further, so you ask as part of -- I assume this was part of the interview in February, as well, but you asked him to define or explain some things, what does a judge do and things like that, what's the jury's role and things like that?
A Absolutely.
Q What kind of answers did he give you to that? Let's start with this morning, more recently.
A Sure.
Q So you asked, What does a judge do? What was his answer to that?
A He said listen.

Q A judge listens. Okay. And what about my role?
A He said, His job is to win.
Q And what about the solicitor's role?
A So I didn't ask him that today. I did in the past, so I'm glad to share.
Q Sure.
A So in the past, he said the role of the defense attorney is to help me with my case. He said for the solicitor, His job is to try put me in jail.
Q Okay, but today it was a little more?
A That's right.
Q And that was in February, so this is about eight months?
A That's right.
Q So today, his response was the attorney's job was to win and the judge's job was to listen?
A Right.
Q Not incorrect, but not very specific either?
A Right.
Q And you've met with him on three different occasions?
A Yes.
Q And part of that process is there is some -- if you have any client that's got -- because, again, you're not a lawyer, so you have to give some education to see if they can understand and then recall correct? In other words,

maybe they have no clue what a judge does, you give them a little brief education, then see if they can put it in their own words or recall that, is that fair to say?

A Yes, sometimes.

Q Okay. So that's been done just by yourself about three times, correct?

A Correct.

Q And from the records you reviewed of this case, these charges against Mr. Stewart have been pending about four-and-a-half years, correct?

A Yes.

Q So he still when asked gives very general responses to court procedures and roles of different court personnel, is that fair to say?

A It's my opinion that part of that is behavioral, so it's his decision, he's frustrated. And so part of that is not wanting to give a response and then part of that is probably also related to what we already discussed about having a more concrete way of understanding things.

Q Sure. Okay. Just one moment.

(Pause.)

I guess the last question, you believe Mr. Stewart has adequate rational understanding?

A Correct.

Q And that's in reference to, again, what he's accused

of and maybe not every -- not the minutia of court procedure, but the basics. That would be undermined, would it not, by his ability to consult, understand information, that comprehension that we discussed before. You've reached the conclusion that he has an adequate level, but that would, in fact -- would it not be negatively affected by his inability to read well, his inability to comprehend certain things?

A His overall understanding is certainly impacted by that, but to say with the bar being -- having the ability to do so, it's my opinion that he has the ability to do so, especially when he puts forth effort to do it, but, certainly, someone's comprehension and ability to understand can impact their performance.

MR. FOX: Thank you. No further questions.

THE COURT: Redirect, Mr. DeBusk?

MR. DEBUSK: Briefly, Your Honor. Thank you.

REDIRECT EXAMINATION:

BY MR. DEBUSK:

Q Was Mr. Stewart particularly cooperative today?

A No, not at the beginning, no.

Q But last time, he answered some of these questions and he gave short answers today?

A Yes.

Q Did you take all of those learning deficits and

everything else into account when you made your evaluation?

A Yes, I did. He was able to provide much more detailed answers when I saw him on the second interview.

Q And based on that and the standard for competency to stand trial, it's your expert opinion that he's competent?

A Yes.

Q And you've listed all that in your report?

A I have.

THE COURT: Any further followup on this point, Mr. Fox.

MR. FOX: No, Your Honor.

THE COURT: Dr. Christopher, you can step down. Thank you very much.

MR. DEBUSK: Your Honor, we would ask Dr. Christopher be excused from her subpoena.

THE COURT: Without objection?

MR. FOX: No objection.

THE COURT: You're excused. Thank you for coming.

Mr. DeBusk?

MR. DEBUSK: Your Honor, based on the expert opinion of a very experienced and well qualified expert, Mr. Stewart is competent to stand trial. The report stands on its own. It gives the reasons, it gives the standard, it gives the conclusion. It's a well-founded opinion and we

believe he is competent to stand trial.

THE COURT: All right. I take it from that that the State intends to offer no other evidence on the issue of his competency; is that right?

MR. DEBUSK: No, Your Honor, we would offer the report and the testimony of Dr. Christopher.

THE COURT: Mr. Fox, I'll be glad to hear any evidence or testimony that the defenses might wish to put up on his competency.

MR. FOX: Judge, I don't have anything to add.

THE COURT: I'm going to come back to you for argument then, okay?

MR. FOX: Sure.

THE COURT: Mr. DeBusk, competency, of course, the burden is on the State at this -- well, I don't know who the burden is on, quite frankly, but I'll -- as a matter of fact, I think competency in the law is presumed in the absence of testimony to the contrary.

In that regard, Mr. Fox, revisiting that, I think I'll now hear from you on the arguments on the issue of competency.

MR. FOX: And, Your Honor, I'm aware of the burden is a fairly low bar that is set for competence, but I do have some remain concerns partly based on we don't know what his IQ is based on.

I realize that's not the only measurement, but there is, at least, some indication that he has an IQ in the very low range, not the borderline range, but 80 is very low. We see both in testing and in the doctor's own testimony great difficulty with reading comprehension and understanding, and that's with -- you know, I'm not sure what they're asking him to read in those evaluations, but that's aside, not even getting to legal issues --

THE COURT: Right.

MR. FOX: -- as indicated to the doctor that he basically can't read. And again, I think that's supported by some of the testing that we see, some of the data.

He was on -- you can see in the report, he's been on educational plans, IEP and things like that. He was in the 11th grade when this happened. I don't know how he got to the 11th grade, quite honestly, with some of the things that we've seen that have been documented, but he was.

I can tell -- I know this is not expert evidence or anything else, but I can tell you as an officer of the court, I've had the same difficulties with Mr. Stewart in explaining, in trying to get full participation, not because he's not interested in the outcome or because he doesn't trust me, but there's been a real difficulty, significant difficulty, over four years of being able to

have a discussion not just about the factual issues, but how the court process works, what the charges are, what the State has to prove, all the things we would cover with a client. And also multiple times, but from my own view, there's not a whole lot of retention from one interview to the next with him.

Again, I understand there may be effort issues, but there seems to be a significant -- for a person, who apparently has completed the 10th grade, to not know the four cardinal directions, to not be able to answer really any basic time issues, minutes, seconds, weeks. I mean, these are very basic things that most people comprehended at a pretty young age.

So anyway, for all of those reasons, Judge, we have real concerns about his competency and leave that for Your Honor.

THE COURT: All right. Thank you.

Mr. DeBusk, I'll be glad to hear from you further.

MR. DEBUSK: Thank you, Your Honor. A very experienced, well-educated psychologist look at this and she concluded that he was not lacking some of this knowledge. He just wasn't being very cooperative.

THE COURT: All right.

MR. DEBUSK: That he was getting frustrated and not giving answers he knew. Her conclusion was that he

understood what was going on, he understood the roles of the courtroom personnel. He was able to aid his attorney in the trial of the case.

She is experienced and examined that specific issue and it's her conclusion that he is competent, though not particularly cooperative. Everyone has -- there's even some attorneys that have diagnoseable mental issues, but that doesn't change the fact he's competent to stand trial.

THE COURT: All right.

MR. DEBUSK: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Fox, you've got the last word.

MR. FOX: Judge, I don't know that I have really anything to add to that. Again, I think it kind of speaks for itself when you read the report and see these things. Although I have zero questions about the doctor's qualifications, there is some interpretation there was he being cooperative, was he not. He certainly had the capability when he went in February. He was very cooperative. That, in fact, was the interview that information came out.

THE COURT: All right. Thank you.

Our Code of Laws requires in a situation like this, the salient provision is the one that is cited in the

evaluation, Court's Exhibit No. 1. Section 44-23-410 says that whenever a judge has reason to believe that a person on trial before him is not fit to stand trial because that person lacks the capacity to understand the proceedings or to assist in his own defense as a result of a lack of capacity, the judge will order an evaluation. Of course, that has been done. Judge Russo has done that some time ago.

The evaluation has been completed in accordance with the statute. That is to say, too, examiners designated by the Department of Mental Health have taken part in the evaluation. Those reports are included in Court's Exhibit No. 1.

The standard under the case of State vs. Davis found at 422 S.E.2d at 123 is whether or not, as the report indicates, the defendant understands the charges against him and the possible penalties if he were convicted, is able to assist his counsel with his defense, understands the role of the various courtroom officers and responds appropriate to inquiries and to his counsel's instructions.

Obviously, all of those things are somewhat subjective. The level of understanding, of course, varies on certain issues and certain matters. The ability to assist, likewise, is something of a sliding scale, I

suppose, whether he understands the role of the courtroom officers and whether he responds appropriate to inquiries as to his counsel's instructions, and there is included within the evaluation reports that he didn't make 100 on the test, obviously, but according to the evaluators, he did well enough for them to conclude that he was, in fact, competent given the standards I've just read to you.

There is difficulty, of course, in understanding the rational behind the difference in an IQ of 80, three years separated from that of an IQ of 98. Of course, neither of those, as Mr. Fox has pointed out, would fit what used to be the definition -- we used to use the words mentally retarded. Now, we use the words developmentally challenged, I think, with some sort of developmental disorder -- would place him below that level, below that borderline level.

The reading comprehension test, likewise, don't seem to comport with borderline disabilities. The report reflects that while he had difficulty reading, reading was his weakness, he was given an IEP, individual educational placement I think that stands for. His reading for isolated word recognitions at the 6th grade level. His comprehension is in the upper 8th grade level. So none of those things would indicate a concern.

I recognize that the answers to some of his

questions, as Mr. Fox has pointed out, are not consistent with that level of testing, and Dr. Christopher has indicated some reasons that she thinks that those issues could appear in the questioning as opposed to the written testing.

Ultimately, the conclusion is that he has been diagnosed with a major depressive disorder, recurrent episodes severe with anxious distress, mild and specific learning disorder by history at the time of the current evaluation related to depressed mood and difficulty learning. There was no indication during the course of this evaluation that Mr. Stewart was not being forthright and honest with regard to competency to stand trial.

In sum, the report indicates that it is our opinion that the current symptoms of depression and deficits and his ability to learn are not currently compromising those abilities typically associated with competency to stand trial.

The report goes on that he has demonstrated sufficient factual knowledge of the proceedings against him, aware of the charges he is facing and demonstrated a good understanding of the associated allegations and possible ramifications.

The report goes on to, of course, set out more specifics. I come to the conclusion that it is our

opinion that Mr. Stewart has a requisite rational and factual understanding of the proceedings against him and the ability to consult with his lawyer with a reasonable degree of rational understanding. Therefore, upon conclusion of this evaluation, he is opined competent to stand trial.

The requirements of State vs. Blair found at 273 S.E.2d at 536 have been complied with. The Court adopts the evaluation of Dr. Christopher and Christian Eyre, E-Y-R-E, as a finding and judgment of this Court and finds Mr. Stewart competent to stand trial.

Thank you, folks.

MR. DEBUSK: Your Honor, State's Exhibit 1 is, in fact, a duplicate of the original. I just wanted to make that clear on the record. We're using it as a duplicate. Thank you.

THE COURT: Thank you. There's no indication that there's any distinction between State's Exhibit 1 and the actual, so it will be a Court's record.

MR. DEBUSK: Thank you.

THE COURT: All right. Folks, what do we have next?

MR. MILES: Your Honor, I guess we do have a post-Miranda confession that we plan on introducing at trial, so I guess the next matter of business should be the Jackson vs. Denno hearing.

THE COURT: All right.

MR. MILES: And for that, Your Honor, the State would call first Hugh Jones to the stand.

THE COURT: Just to be sure, Mr. Fox, the defense is ready to proceed on that issue as well?

MR. FOX: We are, Your Honor.

THE COURT: Okay. Yes, sir, you can call your witness, Mr. Miles.

MR. MILES: Yes, sir.

THE COURT: The name again?

MR. MILES: Hugh Jones, Your Honor.

THE COURT: Mr. Jones.

HUGH JONES, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Sure. It's Hugh, H-U-G-H, Jones, J-O-N-E-S.

DIRECT EXAMINATION:

BY MR. MILES:

Q What is your current occupation?

A I'm a sergeant with the Myrtle Beach Police Department.

Q And what was your occupation in June of 2014?

A I was a violent crime investigator.

Q Okay. And what were your duty specific to a violent

crime investigator?
A Basically, it's a detective, too, and you investigate crimes against personals, violent crimes, robberies, that sort.
Q And how long had you been in that field in 2014?
A In 2014, I believe approximately two years. I spent a total of six years.
Q Did you have an occasion to assist on this case we're here for today?
A Yes, sir.
Q All right. When did you get involved in this case?
A When it actually occurred. It occurred on June 16th of 2014. We actually overheard the radio traffic. We were in our office and we responded from our office to the scene.
Q And how were you assisting in the investigation? What was your role?
A Detective Kitelinger was lead. Basically, I was there with him. Whatever he assigned me, I would handle. I believe at the actual scene, I followed up with -- once the victim -- there was a tag on the car, we ran it, found the victim's possible name. I checked the hotel to see if he was staying there, canvassed for possible witnesses. Then just -- that was the initial day and throughout the investigation.

Q Did you have an occasion where you went to Chester?
A Yes, sir, I believe it was two days after the actual event.
Q Why did you go to Chester?
A We had received information, I believe through the victim's cell phone, a number that had -- that he was communicating with right before the murder. And we had developed a person of interest from that and he lived in Chester. We went to Chester to follow up on the investigation.
Q Okay. And while you were in Chester, did you have an opportunity to witness the interview done with Meleke Stewart?
A Yes, sir, I did.
Q Okay. And who was all present during that interview, inside the room and with -- excuse me, let's change that. Who all went to Chester with you?
A Went to Chester. It was Detective Kitelinger.
THE COURT: How do you spell his name?
THE WITNESS: K-I-T-L-I-N-G-E-R. Can I check my report and make sure I get it right?
MR. MILES: It's K-I-T-E and then L-I-N-G-E-R.
THE WITNESS: I always seem to mess that up.
THE COURT: Okay. That's good.

BY MR. MILES:
Q And were you in that room where the interview was being done?
A No, sir. Basically, the way the interview rooms at Chester Police Department are laid out, there is an interviewer room, basically, on the right and one on the left and in between there's, basically, a small room with glass on both walls so you can see both interviews. And it also has the camera system so you can see, watch, hear the interviews. I was sitting in there watching the interview.
Q So could you hear and see what was going on in the interview room with Meleke Stewart?
A Yes.
Q Let's talk a little bit about that interview. Could you tell whether or not he was read his Miranda rights in that room?
A Yes, sir, I did.
Q And when was he read his Miranda rights?
A At the beginning of the interview.
Q Did he appear to understand his rights?
A Yes, sir.
Q And after being read the Miranda, did he agree to talk to the officers?
A Yes, sir, he did.

Q Was he threatened in any way in order get the testimony?
A No, absolutely not.
Q Did he ever ask for a lawyer or ask to speak with an attorney while he was in there?
A No, sir, he did not.
Q And it was clear that he understood those rights, the Miranda rights --
Court's indulgence, Your Honor?
THE COURT: Okay.
BY MR. MILES:
Q After he was read his Miranda rights, did he sign a form?
A Yes, sir, he did.
Q Would you recognize that form if I showed it to you today?
A Yes, sir.
Q Take a look at that for me. Do you recognize it?
A Yes, sir, that's it.
Q And what is that?
A It's our basic Miranda form we use throughout our department.
Q And that's his signature on that form?
A Yes, sir.
MR. MILES: Your Honor, at this time, we'd like to

mark this as State's Exhibit 2?

THE COURT: All right. We'll do that for identification right this minute.

MR. MILES: All right.

THE COURT: If that's okay.

MR. MILES: That's fine.

THE COURT: State's 2 for ID.

THE COURT REPORTER: I had a previous one as Court's Exhibit 1.

THE COURT: That's right, so we don't have a State's 1 yet. Do you have another State's 1 out there somewhere?

MR. MILES: No, that would be State's 1, Your Honor.

THE COURT: Thank you.

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

BY MR. MILES:

Q And while he was speaking with the officers in that room, did it appear that he was speaking freely and voluntarily?

A Yes, sir.

Q Okay. And was this interview recorded?

A Yes, sir, it was.

Q Have you seen that recording?

A Yes, sir.

Q Okay.

MR. MILES: Your Honor, at this time, the State would like to publish the interview of Meleke Stewart?

THE COURT: All right. Let's get that marked as well, please. That will be State's Exhibit No. 2 for identification.

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

MR. FOX: Your Honor, this may be the time, while that's being marked, to address this issue. I would object to it being introduced through this witness. He did not conduct the interview. He did not read the rights.

I'm assuming if this officer is testifying, then I assume Detective Kitelinger will not be a witness, which means I will not have an opportunity to directly confront and cross-examine him as Crawford requires. So I'm going to object to this being played at this time through this witness.

MR. MILES: That's fine, Your Honor. We have -- Detective Young was present in the room during that interrogation. We can put him up next and we can put the interview in through him, who was present actually in the interview room.

THE COURT: All right. Thank you. All right. We can mark them for identification right now in any event.

I won't look or listen to them until.

(WHEREUPON, State's Exhibits Nos. 3, 4 were marked for identification only.)

BY MR. MILES:

Q All right. So it was your conclusion that the statement was freely and voluntarily given?

A Yes, sir.

Q And did he appear under the influence of alcohol or drugs?

A No, sir.

Q Did he appear to understand the questions that were being asked?

A Yes, sir.

Q Did he appear to give responsive answers to those questions?

A Yes, sir.

MR. MILES: No further questions, Your Honor.

Please answer any questions the defense may have.

THE COURT: Mr. Fox.

CROSS-EXAMINATION:

BY MR. FOX:

Q I think it's Officer Johns or Jones?

A Jones.

Q I'm sorry. It's been a long time since we've been in court together. I just want to make clear for the record,

you did not conduct the interview yourself?
A No, sir, I did not.
Q You did not yourself read Mr. Stewart his rights or have him sign -- is there a form that typically gets signed --
A Yes, sir. This is the form.
Q And that was not part of your duty?
A No, sir.
Q Okay. And you, in fact, stayed outside of the interview room, able to see and hear?
A Yes, sir.
Q But not actually in the interview room?
A Yes, sir.
Q Did not ask Mr. Stewart any questions?
A No, sir.
Q Was another interview going on at the same time in the other room?
A Yes, sir, the codefendant.
Q Mr. Roscoe?
A Yeah, was going on at the time to my left.
Q They, at least, overlapped?
A Yes, sir.
Q So you were kind of --
A Watching both.
Q -- watching both?

A Yes, sir.
Q Or kind of following both?
A Yes, sir.
MR. FOX: Thank you. That's all.
THE COURT: Any redirect?
MR. MILES: None, Your Honor.
THE COURT: Thank you, Sergeant Jones. You can step down.
THE WITNESS: Thank you, sir.
MR. MILES: Your Honor, the State calls the next witness Wade Young.
THE COURT: Mr. Young, come forward, please, and be sworn.

WADE YOUNG, Jr. after being duly sworn, testified as follows:

THE CLERK: Please state your name and spell your name.
THE WITNESS: My name is Wade Young, Jr., W-A-D-E, Y-O-U-N-G, J-R.

DIRECT EXAMINATION:

BY MR. MILES:
Q Mr. Young, what is your current occupation?
A I'm an investigator, detective, Chester County Sheriff's Office.
Q And what law enforcement agency were you employed

with in 2014?
A Chester County Sheriff's Office.
Q What are your present responsibilities?
A I'm an investigator.
Q And on June 2014, what were your responsibilities then?
A I was a school resource officer.
Q And how long had you been working as a school resource officer at that time?
A At that time, about three years.
Q Did you have any prior law enforcement experience prior to becoming --
A Yes, I was a road deputy for three years.
Q And are you from Chester County?
A Born and raised.
Q And how big is Chester?
A Small town, small community.
Q Did you have an occasion to assist on this case we're here for today on?
A Yes, sir.
Q Can you tell the jury -- or excuse me, tell the Court how you became involved in this case?
A Well, I was asked to sit in because Mr. Stewart was one of my students, so they asked me would I sit in on the interview.

Q So you knew Mr. Stewart prior to this interview?
A Yes, sir.
Q And so how did you assist in this particular case?
A I just sit in.
Q And why did you think you sat in for it?
A They asked me if I'd sit in, Meleke -- Mr. Stewart would be more comfortable if someone he knew was in the room.
Q Okay. Can you tell us about how long they talked to him?
A I'm not sure now. It's been four years ago. Maybe close to two hours, hour-and-a-half.
Q All right. And was the defendant at any time denied access to the phone, bathroom, food or drink?
A No, sir, not that I can remember.
Q And at some point, was he actually allowed to see his family members?
A At the end of the interview, yes.
Q During the interview, did you or the other officer in that room ever threaten the defendant in an effort to make him give a statement?
A No, sir.
Q Did you ever promise him anything in exchange for his statement?
A No, sir.

Q When you talked to the defendant that day, was he in custody?
A I never really talked to him, basically, just sat in.
Q Well, at the beginning of that interview, was he read his Miranda rights?
A Yes, sir.
Q In addition to reading those rights to him, did you also go through the Miranda form with him? Was the Miranda form gone through?
A Detective Kitelinger, he actually read him his Miranda warning.
Q And did you think that he appeared to understand his rights that day?
A He seemed to.
Q And did he acknowledge that he understood his rights?
A By nodding his head, yes.
Q All right. Did he sign anything indicating he understood those rights?
A Yes.
Q And did he sign indicating he wanted to talk to police?
A Yes.
Q Okay. At any point, did he indicate to you that he didn't want to talk any more in that interview?
A Not that I can remember.

Q Okay. At any point, did he request an attorney?
A No, sir.
Q Were all of his answers responsive to the questions he was asked?
A Yes.
Q Was the interview recorded?
A Yes.
Q Was the interview transcribed?
A What do you mean transcribed?
Q Was it written down?
A I think Detective Kitelinger did write down some information, but he had his own recording, also.
Q And how long have you been interviewing suspects?
A Right now, three years now.
Q And to the best of your knowledge, was this defendant's statement freely and voluntarily given?
A Yes.
Q All right.

MR. MILES: Your Honor, at this time, we would like to publish the interview for Meleke Stewart. I understand defense's concerns about the person who asked the question. Detective Kitelinger is no longer with the law enforcement. He has retired due to health reasons. I believe his presence in the room, he can testify to whether it was -- to the questions that were asked and the

responses given.

THE COURT: All right. Mr. Fox.

MR. FOX: Well, Judge, I respectfully disagree. We do not have an opportunity to cross-examine the witness who did the actual interrogation. I'm not aware that retirement is an exception to appearing in court.

THE COURT: All right.

MR. FOX: I'm sympathetic to any health issues he may have. And one thing that jumps out, Judge, from Officer Young's testimony is that there were two recordings. We have one that I believe was set up permanent in the interview room. Apparently, Officer Kitelinger did a separate one. I don't know if that was a phone, it was audio or he had a little camera, I don't know. You can take video with your IPhone. We don't have that. And I would certainly be asking him about to see if they're any different. But if further conversations that extend beyond the video that we do have, if there's more to it, can't do that through Officer Young. So I would object again to it coming in through Officer Young. I think Detective Kitelinger has to be here. It's a Crawford issue.

THE COURT: Let me inquire about that. First of all, are you aware of the other recording, counsel, that was just testified by Mr. Jones?

MR. MILES: Yes, Your Honor. It's on there.

THE COURT: By Mr. Young. So has a copy of that recording been provided to the defense?

MR. MILES: Yes, Your Honor.

MR. FOX: I may have -- I will look back through what we have, Judge, but I recall -- I mean, there is clearly an interview and I believe it might even be in a couple of sections, but this leads me to believe that Kitelinger's is more or less complete. What I believe I have is one recording, one complete interview. No indication -- certainly, nothing in my mind that indicates a different angle or a different -- again, I'd ask counsel is this a video recording, is it audio recording?

MR. MILES: It's an audio recording that has been provided to the defense.

THE COURT: All right.

MR. FOX: Judge, I'm not doubting that and there may be a miscommunication. I do not believe we have -- and regardless, I would certainly want to question Detective Kitelinger about that.

THE COURT: Well, let me inquire a little bit further along those lines. Is there any -- have you listened to both Detective Kitelinger's recording, as well as a video which is on that -- what you intend to offer into evidence?

MR. MILES: Excuse me, Your Honor?

THE COURT: Have you heard both?

MR. DEBUSK: I have, Your Honor. I've listened to both.

THE COURT: All right. Good. Is there anything on the official -- excuse me, is there anything on Detective Kitelinger's recording that does not show up on the State's Exhibit?

MR. DEBUSK: No, Your Honor. It was small audio recorder they use as backup in case the main recording should fail. It's routine at Myrtle Beach.

THE COURT: Right.

MR. DEBUSK: I think it actually stops before the family member comes in the interview.

THE COURT: Right.

MR. DEBUSK: So I think it might be less on that.

THE COURT: So the tape then is a more complete?

MR. DEBUSK: The video recording is more complete.

THE COURT: Mr. Fox, I'll allow you to confirm all of that and satisfy yourself before we go to a jury with any of this, that the Kitelinger recording does not contain anything, for example, that is not on the video.

MR. FOX: Yes.

THE COURT: Failing that, I think it falls under the -- Judge Sander's rule is if it doesn't make any

difference, it doesn't matter.

MR. FOX: Yes, sir.

THE COURT: So in the absence of something to the contrary.

MR. FOX: Yes, sir.

THE COURT: Now, let's go back to your request -- to your objection on the basis of authentication.

MR. FOX: Well, I do think it needs to be authenticated by the person who was in charge of -- no testimony from Officer Young that he had anything to do with the recording equipment, but after reviewing. I think it needs some authentication.

The interview itself, again, we've got a Crawford issue in terms of Detective Kitelinger. He is the witness who conducted the interrogation. That's really what we're getting to. I mean, there is a video that's going to be played, but really it's about the interrogation.

If he's not here for this, he's not going to be here for the trial, and I do not have the opportunity to directly what Justice Scalia called confront him in the crucible of cross-examination.

THE COURT: Right. Is it, however, Detective Kitelinger's credibility that is at issue in this case that cannot be dealt with one way or the other by seeing everything that he did and said on the videotape?

MR. FOX: Well, you can certainly see his behavior and his words. There would be cross-examination regarding why he did what he did certain things, pointing out about different points, what his thoughts were, how he got there to begin with.

This actually goes beyond the statement. I know right now we're talking about the statement, but it's also going to be an issue when we get to -- Mr. Hiller is going to argue the suppression motion, but that's going to be an issue very much as well in terms of how they got to Chester, why, what the basis was and why that interview happened. So this is going to spill over into the other motion very much, as well, Your Honor.

THE COURT: And it might be more relevant on that issue, frankly, than it is on this one.

MR. FOX: Yes, sir.

THE COURT: As to authentication, of course, the rule of authentication is a relatively low bar, quite frankly, as you know.

MR. FOX: Yes, sir.

THE COURT: Mr. Young.

THE WITNESS: Yes, sir.

THE COURT: Have you yourself seen the video of the statement that is about to be offered into evidence?

THE WITNESS: Yes, I have, sir.

THE COURT: You've seen it?

THE WITNESS: Yes, sir.

THE COURT: And so you sat in on the actual interview?

THE WITNESS: Yes, sir.

THE COURT: And you have seen the recording of that interview?

THE WITNESS: Yes, sir.

THE COURT: Is the recording of the interview according to your recollection, your knowledge, complete?

THE WITNESS: Yes, sir.

THE COURT: Is there anything, to your knowledge, that occurred in that interview room while you were there with the defendant and with Detective Kitelinger that does not show up on the video?

THE WITNESS: Everything the same, sir.

THE COURT: Okay.

Rule 901 is a rule that deals with authentication, of course, and it's a relatively simple rule that says that an example of authentication or identification conforming to the requirements of the rule of identification is that a witness who has knowledge of the event testifies about it and says, in essence, that the testimony in this particular case of the video is what it's claimed to be. That satisfies, in my view, the requirements of 901(b)(1)

for authentication. So the objection as to that ground is respectfully overruled. When Mr. Hiller argues, we might address other --

MR. FOX: Yes, sir, and only for the record, I'd like to ask Officer Young one further question.

CROSS-EXAMINATION:

BY MR. FOX:

Q If you know -- I don't know if you're aware of this, was there any -- I know you said you were in the entire interview, recorded interview, do you know whether Detective Kitelinger at any point in that room or another was alone with Mr. Stewart? In other words, could there have been any communication between Detective Kitelinger and Mr. Stewart that you weren't present for?

A No, sir, he never was alone with Mr. Stewart.

MR. FOX: Thank you. That answered my question.

Nothing further, Your Honor.

THE COURT: All right. I think you're prepared now to publish the tape; is that right?

MR. MILES: Yes, that's correct, Your Honor.

THE COURT: How long does it last?

MR. MILES: It is about two hours long, Judge.

THE COURT: Why don't we take about -- let's see, two hours, that gets us to 12:30, 1:30, the jury comes in.

MR. MILES: Your Honor, may I approach, as well?

THE COURT: Okay.

(Whereupon, there was a bench conference.)

THE COURT: Folks, let's start back at quarter of the hour. That's about 12 noon.

You can step down during the break, Sergeant Young.

THE WITNESS: Thank you, sir.

THE COURT: We'll resume at 15 minutes until the hour. Thank you.

(Whereupon, a short break was taken.)

THE COURT: All right. Folks, we'll resume now. Is everybody ready for the publication of the State's Exhibit No. 2 for ID?

MR. FOX: Defense is ready, Your Honor.

THE COURT: All right.

(Whereupon, State's Exhibit No. 2 was played for His Honor.)

MR. FOX: Your Honor, he has a question and would like to address the Court.

THE COURT: Mr. Stewart, what's your situation?

THE DEFENDANT: I got my own attorney, lawyer. I don't feel comfortable him representing me.

THE COURT: Okay.

THE DEFENDANT: Is that a problem, sir?

THE COURT: Well, let's see. You have hired another lawyer to represent you?

THE DEFENDANT: Yes, sir.

THE COURT: Is that lawyer in court?

THE DEFENDANT: No, sir, but we'll try to get him up here.

THE COURT: If you get him up here and you can satisfy me that there's some sort of a problem between you and Mr. Fox, I'll be glad to listen to that, but the trial is -- we're going to go with the trial.

THE DEFENDANT: Yeah, I know.

THE COURT: If your lawyer gets here today before the jury gets here and is prepared to go forward at that time, I'll address that at that time. We're starting the trial at 2 o'clock today with Mr. Fox and Mr. Hiller or whoever this other lawyer is. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. What is it you feel that Mr. Fox has not done for you that should be done?

THE DEFENDANT: Not giving me a good fight.

THE COURT: Not giving you a good fight?

THE DEFENDANT: Yeah.

THE COURT: The fight hasn't started yet. The fight won't start until 2 o'clock today. When witnesses take the stand, he'll get a chance to address those witnesses. Up until now, you haven't had a day in court.

THE DEFENDANT: Yeah, I thought he was going to ask

questions before anything started.

THE COURT: Who's he going to ask the questions of, Mr. Stewart?

THE DEFENDANT: I thought you were going to ask me the question do I still feel comfortable with them representing me.

THE COURT: Well, you have to do a little bit better than that because the trial hasn't even started yet. You haven't -- up until now, your lawyer has just been responding to everything the State has given him to deal with to try to -- the best he can represent you in these charges. He has filed motions, which we're hearing right this minute.

The first time that I know of that he and Mr. Hiller have had any chance to argue any motions on your behalf is right here in this courtroom right now today. So you don't know whether he's going to fight for you yet or not. Like I say, the fight hasn't started.

So whoever your other lawyer is, you can provide that name to Mr. Fox or Mr. Hiller to help enlighten them and they can advise the Court, but I want to make sure, you're out on bond and during the break, if we have a break during the playing of this tape, you contact your lawyer and tell him we're starting the trial at 2 o'clock today.

THE DEFENDANT: Okay.

THE COURT: And if he shows up and is prepared to step into Mr. Fox's and Hiller's shoes and take up your defense, you're satisfied with that, I'll address that then, but not right now.

THE DEFENDANT: Okay. Thank you.

THE COURT: All right, Mr. Miles.

MR. MILES: Yes, Your Honor.

(Whereupon, State's Exhibit No. 2 was continued to be played for His Honor.)

THE COURT: We've got, at least, another hour ahead of us. We'll take about a 10-minute recess. Try to start back a little bit -- let's start back at 20 after the hour. That's about 15 minutes. I think that will give us enough time to stretch our legs and do whatever we need to do. We'll start back at 1:20.

(Whereupon, a short break was taken.)

THE COURT: All right. Are you ready to crank things back up?

(Whereupon, the video was continued to be played for His Honor.)

THE COURT: Is there any additional evidence at this time to be offered in connection with the Jackson vs. Denno motion of the voluntariness of the statements that are made in this case? Anything else from the State?

MR. MILES: Nothing else from the State, Your Honor.

THE COURT: Thank you, Mr. Miles.

Does the defense wish to offer any evidence or testimony regarding the voluntariness of the statements?

MR. FOX: No, Your Honor.

THE COURT: Gentlemen, the jury, of course, is downstairs. They have eliminated the pool to 50, I think, and by this time, sent everybody, except the 50 away with instructions to call back.

Is that right?

THE CLERK: Yes, sir.

THE COURT: All right. Now, we've got motions yet to hear and nobody in here has had lunch yet that I know of. So I need to know in order to help plan the balance of the afternoon about how long it's going to take to argue the motions, whatever is left to be argued about Jackson vs. Denno and the suppressions motions? Can you all give me any idea about that?

Mr. Hiller, you'll be arguing, I take it, most of these for the defense; is that right?

MR. HILLER: Yes, Your Honor. I'm going to be handling the suppression motion. I don't want to steer the Court wrong. I would hope not more than 30 to 45 minutes.

THE COURT: Okay.

MR. HILLER: I think the detective that handled the

search warrant primarily is here to address his justifications.

THE COURT: Right. Does your time estimate include the time that the testimony might take, as well as the time to argue the motion or just take time to argue it?

MR. HILLER: I was hoping, Your Honor. I think my cross might be pretty short on him, but maybe more like 45 than 30. I'm sorry, Judge, if I'm wrong. It's just a guess.

THE COURT: Well, a guess is the best we can do at this juncture. Who's going to handle the motion for the State?

MR. DEBUSK: I will, Your Honor.

THE COURT: How long do you think it will take, Mr. DeBusk, from y'all perspective?

MR. DEBUSK: My response would not be much longer than 15 minutes at most.

THE COURT: Okay.

Natalie, if you'll phone downstairs and tell whoever is in charge there if they will instruct the panel of 50 that they can be excused temporarily and to report back to the assembly room at 4 o'clock. An hour to argue both sides of this gets us to 3:22.

I'm factoring in a little slippage there, probably closer to 3:30. I might even be wrong at that. It gives

us 30 minutes to each eat lunch, if you call it lunch at 3:30, and we will bring the jury up at 4 o'clock this afternoon to start the trial of the case. Can you tell them that?

THE CLERK: Yes, sir.

THE COURT: All right. Thank you.

All right. Folks, let's proceed then to -- let's deal, first of all, with the voluntariness of the statement. We'll chop this up into little pieces. I understand that all of these things are intertwined, as you all have indicated to me in pretrial, but the only way for us to handle it is to handle them all separately and, as I say, chop it up into little pieces.

As far as the statement is concerned, I've already dealt with the issue of authentication. Now, we deal with the issue of voluntariness of the statement.

Mr. Hiller, do you wish to be heard on that?

MR. FOX: Your Honor, actually, I'll be handling this issue as far as the statement.

THE COURT: Okay. Mr. Fox, go ahead. I'm sorry.

MR. FOX: Judge, we would call the Court's attention to the testimony during the Blair hearing. I believe that's very relevant.

It touches on freely, knowingly and voluntarily being made, but Mr. Stewart's understanding of what's happening

I think does go to voluntariness. It does appear he was read his rights and he did sign on the video. You see them going over that with him.

I do question he kind of nods his consent, but we do have his signature on the form. I'll stop there. I would argue based on his limited understanding that it was not -- the discrepancy between the officer's obvious education and experience versus Mr. Stewart, who at the time, is just a week past his 18th birthday.

THE COURT: Sure.

MR. FOX: We would argue it's not voluntary.

THE COURT: All right. Thank you.

Mr. Miles.

MR. MILES: Your Honor, after reading the Miranda statements, I think by watching that interview, as well as answering and giving responsive answers to each one of the questions that were asked of him, I believe he knew exactly what was going on in these proceedings.

He wasn't under the influence of anything. He was advised of his right. He wasn't threatened. He wasn't withheld water or food. He wasn't under the influence of anything as it appeared. For those reasons, Your Honor, I do think these statements are freely and voluntarily.

THE COURT: All right. Thank you.

I need not restate in any great length what is

already in the record, that is the fact of assuming that he was in custody at the time. Of course, he was eventually placed under arrest at some time during the statement, but nonetheless, we will assume for the purposes of argument that he was in custody and therefore the Miranda rights would be triggered by that. Then the question is, as has been indicated, whether or not he understood his rights, whether or not he voluntarily waived those rights and made a voluntary statement.

I find that the State has met the burden of proof required at this juncture by a greater weight of the evidence.

The narrow scope of understanding what the Miranda warnings are and what is given up when the Miranda warnings are waived I think is -- purely would be certainly within the level of competency that was found by the evaluator in this particular case.

He had the right to remain silent. If he said anything, it would be used against him in a court of law. He had the right to have a lawyer present with him if he wanted one. He could stop questioning at any time if he choose to do that. Those basic rights I think were understood and were voluntarily waived and he gave up those rights in making an extended statement, which is also now a part of the record. So the motion to suppress

the statements themselves as to their voluntariness and those issues which have you been raised in authentication is respectfully denied.

We move then to -- I have a suppression motion; is that right? I'm not trying to jump ahead.

MR. FOX: I think -- well, it is a suppression motion but based on what we've learned with Detective Kitelinger, who conducted the interrogation. We would argue even if the statement is freely and voluntarily and knowingly made that we have an issue. I would argue anything that Detective Kitelinger says on that, he's, basically, getting a chance to testify and present his version of -- Detective Kitelinger's version of the facts without the opportunity to cross-examine him.

THE COURT: Right.

MR. FOX: I would argue it's hearsay. He is not an unavailable witness. I know there's an exception for health. We don't know exactly what his health issues are. I would ask the State to expound on that for us. But even if he's unavailable, there has got to be under Crawford, the second is the ability to cross-examine him. There are issues beyond just what Meleke says. There's issues surrounding how they got to Meleke, the investigation. Kitelinger was the lead investigator.

THE COURT: Right.

MR. FOX: But again, in terms of the statement, I would argue that anything he says is hearsay and should be excluded, so -- and intertwined, it would be virtually impossible and ridiculous to take his statements out and not leave -- and leave the defendant's.

THE COURT: Right. Even if Mr. Kitelinger were here testifying in the suppression or the Jackson v. Denno issue, the testimony regarding that would be limited on issues regarding the voluntariness of the statement. To go beyond that would take it out of the ambit of Jackson vs. Denno. The only issue --

MR. FOX: I didn't mean to interpret. I was actually taking that next step. I believed Your Honor had ruled on the Jackson vs. Denno.

THE COURT: That's right. As to these other issues, of course, they are -- that's the reason I the voluntariness out and took it by itself and that leaves undisturbed whatever other issues you might raise and the subsequent motions to make. But as to voluntariness, I find the fact that Detective Kitelinger was not here to testify to those issues, there is no prejudice to Mr. Stewart on those issues, all right.

MR. FOX: Yes, sir, I understand.

THE COURT: All right. Now, let's move to whatever is next.

MR. FOX: Your Honor, again, I guess I jumped the gun. I think what we're asking for with regard to the statement -- Your Honor, just so we're all on the same page, the voluntariness has been ruled on.

Now, as to how we handle that and part of that would be what, if there's any objection to say particular language or particular things. I've written down the transcripts the solicitor provided certain portions that we would object to. I would starting with, again, if Detective Kitelinger is not going to be here, then I think we have major problems under Crawford. He is a witness.

THE COURT: Right.

MR. FOX: He is there in the room and the interview is more than just what is said. There's the context. There's the context of the entire investigation. There would be questions for him from myself regarding what he meant by certain things, what he was doing, issues about -- and I know police are allowed to mislead and lie to defendants in their interrogations.

However, those are certainly issues I would explore with him, things that he stated -- without belaboring it, things that he stated that are just factually incorrect that I would explore with him to -- it would be a part of his credibility and it would be both -- because Your Honor has made a determination about the admissibility and

voluntariness of the statement.

The jury, of course, makes the ultimate determination on what weight to give that. And I think part of any cross-examination with the detective would be here are some things where we suggest maybe it wasn't done right, you know, and explore kind of his own demeanor, his own character. And that's something -- although we can see his demeanor and so forth in this statement, he's not being cross-examined.

THE COURT: Right.

MR. FOX: He's doing his job.

THE COURT: Right.

MR. FOX: But he's not facing questioning and interrogation and who knows where that may go. And without him here, I can't do that.

THE COURT: Right.

MR. FOX: In effect, gets to be a witness without having to come to testify.

THE COURT: Mr. DeBusk, Mr. Miles, how do you address those concerns that Mr. Fox has raised in regard to Mr. Kitelinger's absence?

MR. DEBUSK: Your Honor, it's fairly common for a recorded statement for the person asking the questions not to be present. That's why we record the statements. In this case, Detective Kitelinger is no longer with the PD

and I'm not sure what his condition is, but it's the answers to the questions that are relevant.

It's the statement of the defendant that is being offered for the truth of the matter asserted. The questions are pretty straightforward. In some of the places where he expounds -- if he wants to give us particular instances where Detective Kitelinger expounds on his theory of the case that are not in the form of a question, we can argue over that and maybe redact it from the statement, but the fact is what's being offered here as the truth of the matter asserted are the defendant's own statements, not the statements of Detective Kitelinger.

THE COURT: To what extent would redaction address, at least, some of your concerns, Mr. Fox?

MR. FOX: Well, potentially, it would, but, frankly, there's some things I want to explore with him.

THE COURT: All right.

MR. FOX: And one of them -- and I don't mind saying, one of them is he says several times this young man that was shot weighed 120 pounds. Well, we know from the autopsy he weighed a good bit more than that. We know these were not accurate size and weight.

I think that's important for the jury to hear. So we could cross that out, but I would like the jury to have

that whole context. Part of the reason he got these statements and things from Mr. Stewart was he kept going. Again, that's police interrogation, that's what it is. But I don't think it's any secret one of the things I will argue to the jury in defense is, we don't have a discussion between equals here.

THE COURT: Right.

MR. FOX: So then the detective throws in things that we will show are factually inaccurate. That's just one example. And, you know, I would like to cross-examine to see what his explanation is, he may have it perfectly good. And they may say we like the way he answered that question, we're fine with it. But, again, I don't have the opportunity to explore. And that's just one example. I don't think redaction cures the problem.

THE COURT: I can agree, it doesn't cure the entire problem. I'm not trying to -- of course, obviously, not telling you how to try a case like this, Mr. Fox. You've tried more of these things as a lawyer than I ever tried as a lawyer, but when I think about it from the perspective of prejudice, whether from a strategic standpoint, whether it's better not to have Officer Kitelinger here to explain those obvious discrepancies in which you say are obvious untruths and let you argue them to a jury without any explanation on his part or to give

him a chance to rehabilitate those things by saying well, you know, we do have the right to mislead slightly and I was trying to get him to open up and tell me everything he knew and that's what I did.

I'm not saying that's the way we should handle it, but I'm trying to think from the perspective of me trying to decide where the prejudice is in that, that's what I would offer.

MR. FOX: I would agree with that, I think Your Honor hit it right on the head. It think it would be a strategic choice and I should have that choice. And those touch on the fundamental right that the defendant has, which is confront the witnesses against him.

THE COURT: That's right, I understand. Okay.

Anything further from the State on that issue?

MR. DEBUSK: No, Your Honor. We just have an unavailable witness and we have a statement that we're offering responses from the defendant not the questions.

THE COURT: I tell you what you are going to need to do, Mr. DeBusk, you're going to have to firm up the unavailability of that witness. It's going to take just a little bit more than a blanket statement that he's unavailable. Not necessarily for right this minute. You might have to get it.

MR. DEBUSK: Okay.

THE COURT: But in order to comply with the rule, I've got to be satisfied that he is genuinely unavailable under the rule, so okay. All right.

Respectfully, though, Mr. Fox, I will deny your motion to further suppress the statement on that basis outside of the voluntariness of it.

MR. FOX: Yes, sir.

THE COURT: That you've raised for the reasons I think we put on the record one way or the other here, even through arguments Mr. DeBusk or statements I've made. You have raised a legitimate concern about the voluntariness of this witness and I will address that during the course of this trial. Certainly, before this testimony is submitted to the jury.

MR. FOX: Yes, sir.

THE COURT: All right.

MR. FOX: I think the next thing would be redactions that we are requesting in the statement. There's not -- they are numerous, but I think very small. For convenience, the first one I would request is starting on about Page 57. Basically, when Officer -- well, it's a little bit before Officer Elliott comes in at the end.

THE COURT: Right.

MR. FOX: Kitelinger says this ends the interview and then they start talking about getting his mother in there.

And then Officer Elliott comes in and they basically just kind of -- him and Mr. Stewart just kind of chat about additional things. I don't think it's particular relevant. I don't think there's anything really incriminating in there, other than he does talk about the fight, but in the context, I'm not as worried. It's about 17 or 18 pages of the transcript. I'm not sure it adds anything. It's probably 15 minutes or so of court time and mostly, I think it's irrelevant.

MR. DEBUSK: Tell me which one.

MR. FOX: Gosh, let's see, starting on Page 57, I would say just when Detective Kitelinger says the time is 3:34, basically, at the top.

THE COURT: Yeah.

MR. FOX: As much as a --

THE COURT: Gentlemen, do you all want to look -- if you haven't had a chance to look through that, address those things among yourselves and, also, the fact that Mr. Fox, if you hear my rulings, you might have some redactions of other things prior to that that he may wish concerning Detective Kitelinger. Some he may want to stay in, as he says, some he may want to take out. Do you think you all might be able to put your heads together overnight instead of taking what precious time we have now?

MR. MILES: I can tell you right now that we are fine if we wants to take out the portion of the interview after Detective Kitelinger leaves the room, we're okay with that, Judge.

MR. FOX: Then we can. I feel confident -- I think there's maybe dozen, but they're short. They're not big and I'll get with the solicitors. I think we can --

MR. DEBUSK: We may agree with them, Your Honor.

THE COURT: You try to agree and if you can't, then I'll help you agree.

MR. MILES: Yes. Thank you.

MR. FOX: Thank you. And I think that will be any issues we have with the statement at this time, Judge.

THE COURT: Okay. All right, Mr. Hiller.

MR. HILLER: Yes, sir, Your Honor. The defense motion to suppress stems from the -- a warrantless search of our client's cell phone.

THE COURT: Right.

MR. HILLER: I think you're all fairly familiar with the facts having listened to the interview between Mr. Stewart and Detective Kitelinger. As we know now, the victim's phone began texting the client's phone sometime around 7:00 or so on the early evening, 7:00 something on the 15th of June, 2014.

THE COURT: Right.

MR. HILLER: First thing they did when they found the body the next morning around 9:00 a.m. is they --

MR. DEBUSK: Your Honor, may Officer Young step down?

THE COURT: You're so quiet, we forgot about you.

THE WITNESS: Thank you, sir.

THE COURT: Except for the fact that you normally have to answer questions in that chair, I would say it's more comfortable than the others. I promise you before we adjourned for the evening, we were going to let you go.

Mr. Miller, I'm sorry. Go ahead.

MR. HILLER: The first thing law enforcement did when they arrived on scene, one of the first things they did when they arrived on scene around 9:00 a.m. on the 16th was they secured a search warrant for the vehicle. The search of the vehicle led to the discovery of two cell phones, both of which they applied for search warrants and received them.

The one thing the State didn't do is request a search warrant to search the client's phone. I could offer as a defense document for purposes of the motion hearing or I could actually call the detective to inquire about it, but they basically circumvented the warrant requirement by going straight to Verizon under emergency situation disclosure form.

It's an internal form prepared by Verizon. They

filled it out, conducted a full warrantless search of account holder information, which let them know who he was, his location information, which when the detective comes to Chester, he said we know where you were. We knew you were in Myrtle Beach. We know a lot about this case. True. And it was all obtained without a warrant.

Further, they got call logs and text logs, which the call and text logs led to the discovery of the codefendant, who they acquired a search warrant for his phone. They just didn't for our client, and Your Honor, I do assert that my client had a Fourth Amendment right in his records.

I've got some cases to hand up. Don't -- the size is a little onerous; however, there is a United States Supreme Court decision in there that takes up most of it, Carpenter V. United States. But Your Honor, the heart of the matter is cell phones, as both Riley, Riley vs. California, which is 2014 case existed at the time of this.

And then later, Carpenter, which is this year, but still discussing the fourth amendment rights of the United States to be secure from unlawful search and seizure, it's clear that these phone records, phones themselves, cell phones permeate society. Rules like the third party doctrine no longer apply. This is a new era and unless

you live under a rock, you've got a cell phone.

THE COURT: Right.

MR. HILLER: And like Riley says, unless you have exigent circumstances -- and that's what we're going to be discussing here, Your Honor, get a warrant. Get a warrant. The top case, thought, is the South Carolina case, fairly recent. United States -- South Carolina V. Moore.

THE COURT: Right.

MR. HILLER: And in Moore, the police collected from an attempted murder homicide where the victim was lying outside of his vehicle. The facts are very similar here. They conducted a limited warrantless search of the phone to figure out who the codefendant -- or who the defendant was and then once they figured out who the guy was, they got a full-blown search warrant and solved the case.

THE COURT: Right.

MR. HILLER: The court in that case said no violation of the defendant's fourth amendment rights. The police had the ability to figure who he was. And I'm not necessarily saying that they didn't have the right to figure out his name, but what they didn't have the right to do is arm themselves with cell site information, which is basically tracking of the phone down the road. They did that, they received that. Kitelinger said I got this

stuff. I know where you were.

Kind of tying it back to the Jackson vs. Denno, I do believe that a piece of evidence unlawfully acquired cannot be used against the defendant for purposes of interrogation. That happened at the beginning. It also kind of ties in with Kitelinger's absence.

His investigative report says when the text messages came about, that's when the change in the defendant happened in the interview, and we kind of see that. I mean, he did. He was being coy, cagey, you know man, and then here we go, we've got the records. The records came from the victim's phone, but for the warrantless search, they never would have found the leak.

THE COURT: Now, the victim's phone records, as I recall, which they had a right to, I take it?

MR. HILLER: Yes, sir.

THE COURT: Also indicated that the victim had received several text messages or calls in any event from some other phone; is that correct?

MR. HILLER: Yes, sir.

THE COURT: Would they not have had a right notwithstanding Moore or Riley to have obtain the name of whoever those other phones calls came from?

MR. HILLER: Yes, sir, I'm --

THE COURT: That's what Moore says is a fact.

MR. HILLER: I'm prepared to concede under the Fourth Amendment that applying what they call subscriber information is most likely okay. And Moore talks about a Georgia case where they found an IPhone, called 911 because you can do that even when the phone is in lock mode, and say hey, who owns this phone.

They said this guy. That search ended up being okay in Georgia. And the Moore court relied heavily on that logic. I can kind of see, you know -- but what I am also arguing as a second sustaining grounds for suppression is the South Carolina right to privacy under article one section ten. One of the cases I did hand up is Forrester. And Forrester discusses specifically the fact that on Page 6 --

THE COURT: Is that Justice Few's case?

MR. HILLER: This is --

THE COURT: The burglary scene, left the phone at the scene?

MR. HILLER: No, sir, that is not that case. I'm pretty familiar with that case, as well, but this is from Justice Toal back in 2001, actually. But like Justice Toal says, she notes that as noted by the Court of Appeals that drafters of our State's constitutions right to privacy protections were principally concerned with the emergence of new electronic technologies that increase the

government's ability to conduct searches.

So we do know the Fourth Amendment is a floor and our State Constitution can provide more protection. So while I do concede under Moore that was not a violation of Moore's constitutional Fourth Amendment right when they searched the SIM card to find his name only, I'm arguing that was a violation of our State Constitution as the South Carolina citizen's right to privacy was violated. That was not initially addressed in Moore, that's my argument.

THE COURT: Right.

MR. HILLER: But since --

THE COURT: Justice Few, in his opinion, you're probably familiar with the case.

MR. HILLER: Yes, sir.

THE COURT: Seemed to indicate that the expectation of privacy is as much a factual issue as it is a legal issue, he did in that case.

MR. HILLER: In that case -- yes, sir, the break-in at Christmas time, find the phone in the dead center of the victim's bedroom floor. Law enforcement held onto it for six days. Then at that point, they guessed one, two, three, four, which unlocked the phone --

THE COURT: Nobody ever figure that one out.

MR. HILLER: And they did some like genealogical

family research based on contacts like grandma. Okay, it was grandma and they figured out the family tree. That was a pretty divided decor on that case, but Justice Few, I believe the majority held that it was abandoned property and that six days later after the defendant took no effort to continue to assert his right -- his Fourth Amendment right to that phone, it was abandoned six days later.

THE COURT: I recall Justice Hearn objected rather strenuously. I think she was one of the -- I believe, I get these things mixed up. It's not unusual to have dissenting opinions. I think Moore, of course, was a Court of Appeals opinion; is that right?

MR. HILLER: I believe it was.

THE COURT: And there was a dissent to that, as well.

MR. HILLER: It was a 2017 South Carolina.

THE COURT: Yeah.

MR. HILLER: And a lot of them do quote Justice Konduros from the Court of appeals.

THE COURT: She disagrees on all of those, that's right. One of these days, that shift is going to shift and she gets somebody else to agree with her.

MR. HILLER: There is a difference, Judge, between the cell phone itself and the cell phone records.

THE COURT: Yes.

MR. HILLER: But one is a mirror of the other.

That's goes to the cloud and it's a carbon copy. That's why Carpenter came out in 2018. It's limited to cell site location information, specifically the tracking of the phone as it moves from tower to tower. But that is one of the things in this case acquired without a warrant, that is now get a warrant unless you're in exigent circumstances.

THE COURT: Right.

MR. HILLER: Now, we need to address those. If exigent circumstances exist in this case, as serious as it is, they exist in every police investigation when the identity of a suspect is unknown.

THE COURT: Right.

MR. HILLER: The Carpenter opinion talks about an active bomb threat, a child abduction, an actual ongoing emergency.

THE COURT: Right.

MR. HILLER: Riley also talks about an ongoing emergency. In this case -- and, in fact, at this point, I do need to make it an exhibit. I'm happy to because I do need to read from the document itself used by the Myrtle Beach Police Department.

THE COURT: That's fine. That would be a Defense Exhibit for identification only, unless you want to go ahead and start putting in evidence now.

MR. HILLER: Well, if I need to lay a foundation for the detective, I can call him.

THE COURT: You can ask those questions on the basis of identification without giving up your right not to present evidence and your right to final argument.

MR. HILLER: Right.

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification only.)

MR. HILLER: Your Honor, what's been marked as Defense 1 for identification is actually just a handwritten form, a phone record from Myrtle Beach, and information from the victim's phone indicates he was supposed to meet the person with the defendant's number, which is (803)899-2079 period.

At this time, we don't know if they already know the victim and needed assistance or if they are the perpetrators. Based upon that, Verizon said here you go. It was a warrantless search.

THE COURT: Mr. Hiller, I don't want to stand too much on the ceremony, but it helps for many reasons, of course, if you face the judge when you're talking to him.

MR. HILLER: Yes, sir.

THE COURT: Primarily in my case because I'm deaf in both ears.

MR. HILLER: I apologize. I meant no disrespect.

THE COURT: I knew you meant no disrespect. Thank you. I just couldn't hear everything you were saying.

MR. HILLER: I'm sorry, Your Honor. I apologize. I'm very embarrassed by that.

THE COURT: Forget about that.

MR. HILLER: What I was trying to say is Myrtle Beach, basically, said we don't know if this is another victim or if this is the perpetrator.

THE COURT: Right.

MR. HILLER: I can't think of a case, an active police investigation where that wouldn't suffice to get them records if the Fourth Amendment didn't exist.

THE COURT: Right.

MR. HILLER: I just -- I'm know the exigent rules you're asking.

THE COURT: Right.

MR. HILLER: But trust us for the police, I'm a defense lawyer. I can't go along with that. They need to get a warrant. They could have got a warrant. They got a search warrant for every other phone in this case before and after this search. What they got was records faster because that emergency disclosure form, it's an emergency. You know, we need these now, not like we'd like to cut a corner.

THE COURT: Would they not have been able to get the

identification on those other numbers they were looking for without a warrant -- without, of course, interfering with the obligation to get a warrant for what's in those phones. Does that make any sense?

MR. HILLER: So, basically, we're back to the subscriber?

THE COURT: Well, does that form you just introduced, does it, in effect, circumvent the right to get a warrant in those cases?

MR. HILLER: Well --

THE COURT: I'm not saying it's right that they do it, but it's a legal factor.

MR. HILLER: Your Honor, I would have go back to the Riley vs. California and Carpenter vs. United States where they do say that exigent circumstances do exist and that the police in every case do not need to get a warrant.

THE COURT: The question, of course, is -- which you've already posed, what are the exigent circumstances in this case.

MR. HILLER: Here's what I can tell you, Your Honor. They were on scene at 9:00 a.m. The first time --

THE COURT: That's the scene of the crime?

MR. HILLER: Yes, sir, the crime scene. Now, they had that search -- just from going through discovery, they were screen shotting this text conversation at 1:37 in the

afternoon. That form up there, they had to physically request from Verizon. Page 2 of that, which is attached, is the fax header. It is dated 3:30. So at 3:30, Verizon faxes them the form, says complete it and send it back to us.

We're six-and-a-half hours into the investigation at this point. There's not one shred of evidence that with those records, they did looking for anyone injured. I mean, they knew it was the perpetrator. They did. I mean, last number to call, last number to text.

It's cell site location information put him on that same cell tower. They had it without a warrant. And I do not believe that these are exigent circumstances.

The California -- Riley vs. California, Page 17 discusses that -- and I'm actually going go to -- I'm sorry, the Carpenter because I believe it's more on all fours because we're talking about cell phone records and -- cell phone records versus cell phones themselves search incident to arrest as Riley talks about.

THE COURT: Okay.

MR. HILLER: But on Page 14 of the Carpenter opinion, further, even if the government would generally need a warrant to access -- again, we're talking specifically about cell site location information listed at 18 --

THE COURT: I'm still trying to put my numbers with

those on this page.

MR. HILLER: I will wait.

THE COURT: Page 14.

MR. HILLER: Yes, sir, Page 14 of Carpenter about two-thirds of the way down.

THE COURT: What's the head note number?

MR. HILLER: Eighteen.

THE COURT: Okay, I've got it.

MR. HILLER: Even though the government will generally need a warrant to access CSLI case specific based upon a warrantless search of an individual's location records under certain circumstances.

One of the well-recognized exceptions applies when the exigencies in the a situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.

Such exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence.

As a result, if law enforcement is confronted with an urgent situation, such fact specific threats will likely justify the warrantless collection of cell site location information. Lower courts have approved warrantless searches related to bomb threats, active shootings and

child abductions.

Our decision today does not call it out, warrantless access, to cell site location information out in such circumstances. While police must get a warrant when collecting CSLI to assist in the mind run criminal investigation, the rule we set forth does not limit their ability to respond to an ongoing emergency.

I'll admit I had to look up mind run, but it means average. Now, murder is not your average charge on the spectrum, but it's a case that's capable of being solved by going through the process by having the neutral and detached magistrate make the decision, not the officers actively involved in the case.

THE COURT: All right.

MR. HILLER: I just can't see a way around it. This isn't like the other cases where well, yeah, they maybe should have gotten a warrant, but we also had three eyewitnesses and we had a trail of blood and all the other angles.

This is -- his phone -- the search of his phone without a warrant is a lunch pin between what they knew and then everything they uncovered. There was no other way around it. It's the bottleneck. There is not an alternate theory I can come up with that would have solved this case.

THE COURT: If, for the purposes of argument, they would have the right to have identified him without a warrant, that is to identify Mr. Stewart as the person who kept the conversation going back and forth, is there -- and I take it there were other people on that phone call or on the victim's telephone that indicated other calls received about the same timeframe, is that fair to say?

MR. HILLER: Yes, sir, there was one like, hey, what's up? Still in Conway. Before and after this.

THE COURT: Right. These are phones call not from Mr. Stewart, but from other folks; is that right?

MR. HILLER: Yes, sir, but they were clearly from the phone records that were provided to us.

THE COURT: All right.

MR. HILLER: Well, to answer that question.

THE COURT: Yes.

MR. HILLER: Of course, that assumes that the Court would rule against me on the South Carolina privacy right, which I'm asserting would protect his account subscriber information.

THE COURT: Right.

MR. HILLER: But, I guess, Your Honor, under that theory, they could go to Chester and they could get a warrant. Like the case in Moore, they went and got a warrant for arrest after they started.

They did the initial little peak kind of a thing. But again, you have to know where to request the subpoena. You can't just blanket Verizon, AT&T, Cingular and the rest. So that's why the SIM card got searched in that case.

THE COURT: Right.

MR. HILLER: And a similar thing here, you don't know who to address until you know who to address.

THE COURT: Exactly.

MR. HILLER: But they didn't do that. And I don't know that we can divorce from what they did from what they didn't do. They got it all. The used it all. And then they went and made their arrest and they armed themselves.

But, theoretically, I think I may have to say that they would be on stronger ground anyway if they just got his name and then his address, which, of course, came with his name, and went to Chester and started in on him and he caved at that point, I don't know. It would be a much closer issue for sure. It would still raise the privacy challenge, but it didn't happen, so I don't know.

THE COURT: All right. Mr. Hiller, thank you.

All right. Mr. DeBusk, Mr. Hiller is raising valid points. Why the exigency in this case? Why not get a warrant for this phone? Why is this not flying squarely in the face of Carpenter and Moore and Riley --

MR. DEBUSK: First of all, Your Honor --

THE COURT: -- which says get a warrant in the absence of exigent circumstances?

MR. DEBUSK: First of all, the third party doctrine still exists and it still applies to subscriber information, still applies to phone logs. It says that in Carpenter itself. Third-party concept still exists.

So it's subscriber information, it's fair game because it's been published to third party. The analogy being back records, subscriber records and phone records where the calls are made and to whom they're made.

THE COURT: Okay. I'll grant you that. But now, when you say subscriber information, you're talking about the victim's or you're talking about Mr. Stewart's subscriber --

MR. DEBUSK: Mr. Stewart's, anyone's subscriber information.

THE COURT: Okay, good.

MR. DEBUSK: Your Honor, should I put the witness up or should I just tell you?

THE COURT: Well, let's see if we need testimony. Why don't you just say what he's going to say and if that's any doubt, we'll put him up.

MR. DEBUSK: Well, what happened here is the police came to the scene and they found the victim dead in the

car. And they found in the car two cell phones. They did search warrants on those cell phones, which they had in hand, and were able to, upon service of the search warrant, obtain the information on the cell phones immediately.

THE COURT: Right.

MR. DEBUSK: In that, they found an individual who had been texting back and forth with the victim about meeting for a sexual encounterer to be paid by the victim. And after the texts ended, there was a series of phone calls from that same number up until the point where the phone activity ends.

THE COURT: So at this point, they've got the victim's phone and he's got text information from that, which they have a right to get, that has these sexual innuendos from an unidentified telephone number?

MR. DEBUSK: Right.

THE COURT: Which they would have had a right to get -- at least, that telephone number, the subscriber of that telephone number without a warrant?

MR. DEBUSK: As well as the number call logs under the third party doctrine. They then inquired to Verizon for that information under emergency circumstances.

THE COURT: Can you tell me what the emergency was?

MR. DEBUSK: Yes, sir. In this case, they had an

individual who was dead. They had someone who had met him for an apparent sexual encounter. They had no idea what that other individual was or what it had become, whether there was a second victim or third party shooter, whether they were, in fact, the perpetrator, whether they're fleeing destroying evidence.

There was exigent circumstances here. The individual might have been a danger to others in the community, might have been fleeing, might have been destroying evidence. In fact, in this case, he did destroy evidence. He got rid of the gun. He also -- later developed that he took the phone to Rock Hill and destroyed it there. So when the phone was recovered, it was no longer functioning. They did not search his phone. What they did was they obtained phone records from the phone company under exigent circumstances.

The next morning, they submitted a search warrant to Verizon for the same records. That search warrant was ultimately returned with the same records one week later, way after the information could have been useful any exigent circumstances. It takes approximately a week for Verizon to turn around a search warrant on phone records.

THE COURT: Uh-huh.

MR. DEBUSK: In this case, it actually turned out to be a Tracone, so they requested these records from

Verizon. And they had to go through Tracfone to get the subscriber information. So they had to get exigent circumstances information from two different sources. Upon learning the identity of the phone number holder, they went to Chester and interviewed him.

At that point, they determined that he was, in fact, located at the -- they interviewed him and determined that he was, in fact, the perpetrator and they no longer had to pursue the possibly of a third-party shooter or that he's just a witness or anyone else was in danger.

THE COURT: But did they not exact information from him by Detective Kitelinger saying I know where you work because I've seen your cell phone record?

MR. DEBUSK: Well, that's one of the things I wanted to present in testimony, Your Honor. What they have are not the CSLI that's discussed in Carpenter. What Carpenter pertains to is -- to quote from Carpenter, A cell phone log -- cell phone log to cell site record identifies its operation without any affirmative act on the part of the user beyond powering up.

THE COURT: Tell me where --

MR. DEBUSK: In this case --

THE COURT: Tell me where you're reading from there.

MR. DEBUSK: Oh, I'm sorry. I've got a web version, so it's kind of hard to make a pinpoint.

THE COURT: Well, I've got it, too.

MR. DEBUSK: I believe it would be on Page 2219 of the recorded opinion.

THE COURT: Let's see.

MR. DEBUSK: The paragraph beginning, Neither does the second rational underlying third party doctrine voluntary exposure --

THE COURT: I don't have those numbers. Can you give me a headnote number?

MR. DEBUSK: Well, there's a -- the paragraph has headnote 14. It's two paragraphs after that.

THE COURT: Okay.

MR. DEBUSK: The first word is neither does. First two words are neither does.

THE COURT: I got it.

MR. DEBUSK: And in that paragraph, there's a -- says cell phone logs and cell site records by its operation without any affirmative act on the part of the user beyond powering up. That's not the type of data we have here.

What we have here is the tower associated with a specific call. Here the only tower information they had was which tower picked up this call made by the defendant's phone or this text made by the defendant's phone. There was an affirmative action there in sending the call or receiving the call or sending the text. It's

not the kind of cell phone information covered by Carpenter.

However, they didn't -- and I would present testimony to that point. They didn't have the ability to track him point to point. They had the ability to tell which sector of the tower the phone was picking up on, as well as a time lag, which would also give you some idea of distance. But they didn't use that because it's unreliable because it's approximately 1,000 meters.

What they did, they were able to tell when those last calls were made to the victim, he was within the tower that covered the area where the crime occurred. It was a bluff on behalf of Detective Kitelinger to say they can track him point to point. They didn't have that kind of data at that point. And I don't think the subsequent search warrants produced that kind of data either. All they had was which tower a certain phone call hit off of.

And I would reiterate, I do believe there were exigent circumstances in this case because they had a dead individual and they knew of a meeting with another individual. They didn't know what the role that person was in the killing of the victim. And they had to investigate that. And by getting the identity of that person and interviewing them by determining they had, in fact, been present at the crime and weren't, in fact,

texting the victim far off.

They were going to find out this person was there at the time interviewing him and determined that he was the perpetrator and to eliminate the possibility of other persons out there that's a danger to the community.

THE COURT: All right. Thank you.

Mr. Hiller.

MR. HILLER: Your Honor, Detective Kitelinger launches into Meleke Stewart with it was a great deal of evidence -- this is at Page 3 of the transcript. There was a great deal of evidence gathered and the reason that I'm here. Down just a little bit at Line 26, I have a ton of evidence that you were in Myrtle Beach and all you have to do is tell me how you got there and what was going on.

THE COURT: Right.

MR. HILLER: I mean, that's the way -- Eric Fox already pointed out the disparateness and sophistication between an 18-year-old, who's definitely struggled in school, and a detective, who this ain't his first rodeo, as he told us in the video earlier. When you have that kind of disparity and a violation of the Fourth Amendment at the same time, I think at the very at least, the suppression of the statement is something to consider. But, Your Honor, I disagree, though. I think -- and I guess at this time, I would like to present to the Court a

brief memorandum drafted, copied to opposing counsel.

THE COURT: Okay.

MR. HILLER: And briefs the issue, Your Honor, that I'm trying to argue.

MR. DEBUSK: I object to this being considered. If the State had received this ahead of time, we could have responded. We have no chance to respond in memo form because we weren't given this.

MR. HILLER: Well, if that's how Your Honor wants to see it, that's fine. I certainly think I have the right to not present my argument on a silver platter.

THE COURT: You can argue everything in here or whatever you think you need to argue. And I imagine much of what you've argued is in here.

MR. HILLER: Oh, absolutely.

THE COURT: So that's fair game. But you're right.

MR. HILLER: Yes, sir.

THE COURT: Okay.

MR. HILLER: Well, Carpenter -- back to the third party doctrine. In Carpenter, and this is a direct quote from -- I'll have to pull it from the -- but I will read it verbatim and then I'll tell you where it is. Given the unique nature of cell phone location records, the fact that the information is held by a third party does not by itself overcome the users playing the Fourth Amendment

protection. An individual maintains a legitimate expectation of privacy and the record of his physical movements as captured through cell site location information.

That is -- the government, of course, in Carpenter third party doctrine rules today. It's easy. You gave it up. And the court was trying to make this ancient wonderful right mesh with modern society because when they're doing -- finally reaching difficulty technological issues in Riley and in Carpenter.

I do think the third party doctrine is out the window as it relates to the privacies of life on their cell phone. And that's call logs, text message logs and cell site location information.

The detective -- and we'll definitely get into this in trial, should we get there, the detective knew when Meleke start showing up, his basic goings about in Myrtle Beach.

He knew the rough time the victim and the defendant's phone intersected. They used cell site location information extensively in this case, just the tracking of the movements of the phone. Yes, they also knew which tower he was on right about this time, but they did heavily rely on this cell site location information obtained without a warrant to put this case together, tie

it up in a nice bow, drive to Chester ready to go to do the interviewing part of it.

They solved this case without a warrant and there is just not an exclusion to the rule. There is no evidence from the crime scene. They knew there was a single bullet. It went left to right. Driver's here, passenger's here, bullet went left to right, and Meleke acted it out on camera earlier.

Whoever was in the car shot the guy. There's not a blood trail leading from the back seat to a motel room. They would have found that person within the first five minutes of being on scene. They're grasping at straws. The exception swallows the rule these are exigent circumstances.

THE COURT: What about Mr. DeBusk's argument that they had a dead guy and they had text messages back and forth, but they didn't know from whom. It could have been from the defendant, could have been from another victim out there somewhere for all they knew.

They had no way of knowing looking at those two things, that is the identity of the victim, whom they knew, and the identity of whoever this party was calling, whether that other number that was coming in there, as Mr. DeBusk I think may have suggested, could have been another victim that was involved somehow or another in

this scenario. So that was the exigent circumstances that he alleges, I think in part.

If I'm wrong, Mr. DeBusk, correct me.

That he says the State relied upon in acting quickly and exigently, if there's such a word, to try to make sure that there was not some other victim out there that might be involved in a crime spree by some unknown person who may not have been the person on that number that got texted at all. It could have been just what it appeared to be. What do you say to that?

MR. HILLER: I don't think getting that speculative is in the spirit of Carpenter or Riley. We're talking a child abductor. I mean, those cases -- I tried to read that earlier to try to give concrete examples of what the United States Supreme Court felt to be exigent circumstances.

THE COURT: Right.

MR. HILLER: There could be any number of hypotheticals out there.

THE COURT: Right.

MR. HILLER: I think the fact the CSIs on scene acting under the direction of Detective Kitelinger knew there was one dead person from one bullet hole, that a shot had to have come from inside the car and that the floor mat even was kicked up as if the person who was in

the passenger seat left in a hurry.

THE COURT: Right.

MR. HILLER: Those are facts that they knew well before 3:30 when they finally got the form from Verizon. Those are facts they knew at 9:00 a.m.

THE COURT: Right.

MR. HILLER: That form from Verizon comes in at 3:30 in the afternoon. Again, they had the cell text. They're looking at the victim's phone with the warrant, looking through it going yeah, this is -- and it's a long conversation. Starts at like seven something in the evening. And there's long pauses in it, like, hey, you still coming? There's all this back and forth, 300, 79, I got 450. It just goes on and on and on.

THE COURT: Right.

MR. HILLER: And then, of course, they had some idea about time of death and that number calling in was it. I mean, I just can't imagine that anyone -- and if you're worried about a deceased or dying or bleeding out person, six-and-a-half hours is a long time to wait to even ask for the -- to get the form to even ask for the records. I mean, maybe if they started asking Verizon at 10:00 a.m., I think they might have believe there are some exigent circumstances. But I see six-and-a-half hours as a problem for a good faith belief that we have real exigent

circumstances.

THE COURT: Mr. DeBusk, address that. Mr. Hiller is raising a valid situation. What happens to exigent circumstances if we're talking about an emergency when six-and-a-half hours go before they seek --

MR. DEBUSK: Your Honor, at this point, they had a choice between six-and-a-half hours or a week to get these records to find out who this other individual was.

THE COURT: Well, was it six-and-a-half hours or a week or was it a week or, perhaps, an hour or two or whatever -- how long it would have taken them to try to get that information.

MR. DEBUSK: To process a search warrant through Verizon -- and I would have presented an experienced detective who's done this before. It takes about a week to get the records back from Verizon.

THE COURT: I understand that. How long does it take to fill out that form that was filled out for the telephone company that said we need this information?

MR. DEBUSK: In this case, they had to be called to the scene, exam the scene, find the phones, serve a search warrant upon the phones, get the information out and find out this series of texts, find out the number they were from. It took a while to do that before they could submit of affidavit of exigent circumstances. And exigent

circumstances aren't just limited to life-threatening situations. They are other information.

I'll give you an example. And this is from out of our circuit. Exigent circumstances you have to justify a warrantless search can include things like danger of harm to officers and other persons, destruction of relevant evidence, the escape of a suspect or some other consequence improperly frustrating legitimate law enforcement efforts. That's from Williams vs. County of Alameda, a northern district from California Federal case.

THE COURT: Right.

MR. DEBUSK: That's just the persuasive -- a definition. In this case, you had destruction of evidence. The gun was lost, the phone was destroyed. You had flight of the suspect.

The suspect went to Chester from Myrtle Beach. He fled the jurisdiction to far, far away. You also had the uncertainty of it. We didn't know what his role or participation was in this.

We didn't know his identity until we got the information out of the victim's cell phone, which had to be processed. They had to use the Cellebrite machine to draw the information out of the phone and interpret it. But that was the cause of six-hour delay.

THE COURT: You just mentioned some exigent

circumstances that did exist in this. How many of those exigent circumstances were known at the time that they sought immediately to get into the phone and how many were learned after the fact they got into the phone?

MR. HILLER: Well, they didn't know what the circumstances were. It was the uncertainty. They didn't know if this person -- what their involvement was in the crime, if they were another victim, if they were a perpetrator, a witness. They didn't know where they were going to go. They didn't know if they would harm somebody else. They didn't know if they had been harmed by a third-party shooter.

THE COURT: I'll give you all of that.

MR. HILLER: That was the exigency. The exigency was they didn't know what the situation was and the possibilities were dire.

THE COURT: Okay.

MR. HILLER: This scene is just like the scene in Moore. A dying guy hanging out a car at a Taco Bell. They didn't know the totality of those circumstances. They got a warrant after they did the little bit they were allowed to do under the law.

THE COURT: Okay.

MR. HILLER: This is not -- it's just not exigent.

THE COURT: Okay.

MR. DEBUSK: They would have been looking at a five-to-seven-day delay had they used the search warrant in this case. As I said, the consequences could have been the loss of evidence or a danger to others.

THE COURT: How would anything have been -- how would anything have been changed in those seven days between what we know now?

MR. HILLER: Well, from what we know now, I don't know anything would have changed. But from what they knew then, this individual could have left the state. This individual could have been kidnapped and harmed. A third party shooter could have fled.

THE COURT: Right.

MR. DEBUSK: Important evidence could have been destroyed, and it was.

THE COURT: Okay. What I'm trying to do is and I struggle with this because those are the sorts of things that could exist in almost any case, the things you just mentioned. The fact that whoever that telephone number came from could be out doing anything. He could be doing anything or doing anything bad. And that exist -- I'm trying to struggle with whether or not that meets what the Supreme Court thinks exigent circumstances is.

MR. DEBUSK: Your Honor, I would argue it does exist in most murderers where they have a situation like that

where they don't what happened, just that someone has been killed. I think there always is the possibility of danger to society. A car break-in or a burglary, probably not, but with a death case, the stakes are so high that the exigent circumstances rise forward.

THE COURT: But in the hypotheticals the Supreme Court seems to have mentioned in some of these cases, except for a serial killer or something like that, they don't seem to distinguish murder from some other crimes that rise to the level of exigent circumstances.

As I look at what his -- the guidance that we do get, such as it is, sometimes five to four, sometimes four to three in our State court. Sometimes in the appellate court one, one, and one, but the guidance that they do give us when they give us those hypotheticals doesn't just seem to pick out a serious crime itself and say here it is, the bar is down in this particular case. It's says need a little something more than a serious crime.

Folks, we're going to have the jury up here at 4 o'clock and we all need to eat some lunch and I need to decide what I'm going to do with this motion.

MR. HILLER: Your Honor, may I say one more thing on it and it will be like one paragraph. Carpenter was a serious crime. That was a rash of robberies. Carpenter was sentenced to over a hundred years. And the Supreme

Court said that is not a serious enough crime.

MR. DEBUSK: Your Honor, if I may, that was incarcerated -- 127 days of non-called for -- non-affirmatively requested tower data.

THE COURT: Say that again now, 127 days of what?

MR. DEBUSK: Phone data that the phone automatically sends without some affirmative action. In this case, we have one night of tower data based on affirmative made calls. I don't think that Carpenter even applies here. The third party doctrine still applies.

THE COURT: Thank you. Thank you.

Folks, thank you. You have each built a record that one of you is going to have to argue before the Supreme Court, and I'll let you know in a few minutes which one. We'll start back at 15 minutes of the hour. Try to get something to eat and we will try to work on a longer lunch hour schedule once we get this trial underway. We'll be in recess until 15 of the hour. Thank you.

(WHEREUPON, a lunch break was taken.)

THE COURT: I needed a little longer to do my legal research and whoof down parts of three pieces of cold pizza. I want to apologize for this slight delay.

The motion to suppress the evidence emanating from the examination of the defendant's telephone without a warrant and to the extent that it is embodied into the

motion to suppress the statement itself are before me at this point in time. Both motions are respectfully denied.

And I deny the motion on a very narrow issue, and that is what I determine to be exigent circumstances which exist in this particular case. The victim's phone found in the victim's vehicle was legally searched and it revealed the numbers of telephone calls from a single phone in addition to random calls from other numbers. Further text messages from that same call -- from that same number revealed some sort of rendezvous extensively for sexual purposes from that same telephone number.

Law enforcement, by looking at those numbers, could not tell from the victim's phone whether the text messages came from the perpetrator of the crime or from an innocent third party. The protection of an innocent third party engaged in communication with the decedent is a legitimate concern in my view of law enforcement, and I find it to be, frankly, the only exigent circumstance which can be made to exist in this case.

I note this, that in the case of State vs. Moore, the Georgia case of State vs. Hill, both represented the discoverability of telephone information from phones that were both found or left at the scene of a crime. The records were allowed in under limited circumstances in that particular case and not on exigent circumstances,

quite frankly, as I understand the cases, but nevertheless, the fact that the phones in those particular cases were found at the scene of the crime creates something of a nexus between the owners of those phones and the perpetrator of the crime itself, much as a weapon dropped at the scene of a crime or some other bit of evidence found at the scene of a crime which is relevant or could be more likely connected to the person who committed the crime rather than some innocent third party.

In this particular case, as far as I know from looking at the transcript, I don't know if the defendant's telephone was ever found. Certainly, it was not found by time the interview was done, and so it may have never been found.

And so the phone itself, lacking any nexus by examination of the number itself to the crime in this particular case could have just as likely been the telephone number of some innocent third party.

And as I've said, the protection of this innocent third party engaged in communication with the decedent at this time in close connection to the time of this crime could just as well give rise to a concern on law enforcement that there might be another innocent party out there who could be victimized by the same criminal.

And that concern in my view is enough to permit the

identification of the third caller, whoever it might be, and the information that came from that in the text messages, as well.

It, however, does not support in my view the discovery of the CSLI information. That information is not relevant to the protection of this innocent third party. It will be relevant to the perpetrator of the crime, that is where the person could be located. But in my view does not in and of itself lend itself to discoverability under this finding.

No exigent circumstances exist in my view, in other words, as to the discovery of that particular information. To the extent that is referred to in the statements or any other part of the evidence linking this defendant with a crime, the suppression of that evidence is granted. Otherwise, the motion to suppress is denied.

Does everybody understand that?

MR. DEBUSK: Your Honor, the phone records were received pursuant to a search warrant some week after the interviews. Would I be allowed to use the data itself --

THE COURT: It can be referred to in the statement itself and as to the extent that that information was used to -- and I guess it would be a matter of redaction in there. The reference of the location of that phone that was used in the interview by the detective has to be

redacted.

MR. DEBUSK: I understand that, Your Honor, but may we use the location information?

THE COURT: That information that was found pursuant to a valid search warrant --

MR. DEBUSK: Yes, Your Honor.

THE COURT: -- is admissible. I only addressed the information that was found or was used without the valid search warrant.

MR. DEBUSK: Yes, Your Honor. And for the record, just to make clear, the phone was ultimately recovered based on information given in the statement. It was smashed. It was not usable.

THE COURT: He said in the statement that it was smashed and was in a trash can or a dumpster somewhere?

MR. DEBUSK: It was.

THE COURT: All right. I think, folks, as I said earlier, Mr. Hiller, you've done a wonderful job in protecting the record in that regard, and I have tried to give a narrow enough rational for my decision in this so that you can focus on that if you have to argue this before some higher court, okay.

All right. Now, folks, the jury is going to come up. We're going to pick a jury because we've got to get the testimony of a witness in as I understand it by the end of

the day. I'm not fooling myself into believing that we're going to get a lot accomplished by 5 o'clock today. And I'm not real happy about it, quite frankly, but nothing we can do about it. In the criminal court of law, as well as in the civil court, expert witnesses control our schedule.

And what we will do is this. We're going to pick a jury. The jury is going to be sworn and the first thing that's going to happen is you're going to put up that witness. You're not going to open, you're not going to open and I'm not going to open today.

MR. DEBUSK: Okay.

THE COURT: We will open tomorrow. Okay.

MR. FOX: Yes, sir.

THE COURT: All right. Ask them to send up the 50, please.

Mr. DeBusk, when the jury is in place, we will recognize you. You will call your case, and I will go through the process of qualifying the jury and then you'll call your witness.

(WHEREUPON, the jury panel enters the courtroom.)

THE COURT: Ladies and gentlemen, thank you again for your patience with us today. We have been working pretty hard in this room since 9:30 this morning. I will admit we took a 15-minute lunch break around 3:30 this afternoon trying to get this case in a position to start today

because we have a critical witness -- or a witness, you'll decide whether it's critical or not.

We have a witness who can only testify today, this afternoon. And that witness will be the only witness that we'll put up today, but we have to get that witness in under our rules today.

So that's the reason we've asked you to hang around and start a trial at, essentially, 4 o'clock in the afternoon, and we haven't started the trial yet. We have the jury selection, first of all, to take care of.

We're going to select a jury. We will select 12 principle and two alternate jurors. And the rest of you will be dismissed for the day with the instructions to call that number after 6 o'clock tomorrow. The 14 jurors who are here will be sworn and we will go immediately into the testimony of that one witness that has to testify today.

Normally, we would begin the trial with introductory comments by me as the judge telling you what this process is all about and opening statements by the State and opening statements by the defendant, if he chose to make opening statements, and then we would start the testimony of the witnesses. That process, if we were to let it unfold, would go much beyond the time that you expect to stay here today. So in order not to keep you away from

your homes and your families, those 14 who will be here, any longer than absolutely necessary, we will forego those preliminaries until tomorrow morning.

But we set about now to begin the jury selection process. Momentarily, you're going to be asked some questions relating to that process. I'll remind you again that you were placed under oath yesterday. The oath you took then will follow you throughout this process and, indeed, any process throughout the balance of your service as jurors this week.

Can all of you hear me okay? For some reason, this is the only microphone in the courtroom that's not working and it's the only one I need right at this minute. Can you all hear me on the back okay? Okay. Thank you.

Mr. Solicitor, you can call your case.

MR. DEBUSK: The State calls the State vs. Meleke Stewart, indictments 2014-GS-26-3681 for possession of a weapon during the commission of a violent crime, 3682 for murder, and also indictment 2018-GS-26-2255 for attempted armed robbery.

THE COURT: Thank you.

Ladies and gentlemen, as you have heard, the State has called the case of the State vs. Meleke Da'Shawn Stewart. Mr. Stewart has been indicted by the grand jury of Horry County and charged in indictment number 3682 with

the crime of murder. That indictment says that Mr. Stewart did here in Horry County on or about June 16th of 2014, willfully, feloniously and intentionally kill the victim, Alton Antonio Daniels, with malice aforethought, either expressed or implied by means of shooting him, that he died as a proximate result of that on June 16th, 2014, in violation of the law.

Mr. Stewart is also charged in indictment number 3681 with possession of a weapon during the commission of a violent crime. That indictment says that Mr. Stewart did in Horry County at the same time and place, June the 16th of 2014, possess a firearm or what appeared to be a firearm during the commission or the attempted commission of a crime of violence in violation of the law.

And then finally, indictment number 2255 charges attempted armed robbery. And that indictment alleges that Mr. Stewart did, along with codefendants in Horry County, on or about June the 16th of 2014, while armed with a deadly weapon attempt to take and carry away the personal property from the immediate presence of Alton Daniels, the alleged victim in the murder case, with the intent to deprive him of that property by use of force, threats or intimidation in violation of the law.

Now, ladies and gentlemen, the indictments which I have just read to you are not evidence. They are not

proof of the charges that they contain. They are simply legal documents, charging documents that tell you or me or anybody who reads them what this case is all about.

To the charges contained in these indictments, Mr. Stewart has entered pleas of not guilty and has asked for a jury trial at your hands.

Mr. Stewart, will you please stand and face the jury behind you?

(Defendant stands.)

THE COURT: Thank you. You can be seated.

Ladies and gentlemen, are any of you all related by blood or connected by marriage to Mr. Meleke Da'Shawn Stewart? That is, are you kin to him, are you a friend of his, a business associate of his, a casual acquaintance of his or a person who has any direct or indirect contact with Mr. Stewart? If so, would you'll please stand.

(There was no response.)

THE COURT: Thank you. The alleged victim named in the indictment is Alton Antonio Daniels. Are any of you related by blood or connected by marriage to Mr. Alton Antonio Daniels? That is are you kin to him, are you a friend of his, a business associate of his, a casual acquaintance of his, or a person who has any direct or indirect contact with Alton Antonio Daniels? If so, would you please stand.

(There was no response.)

THE COURT: Ladies and gentlemen, have any of you heard or read anything about this case? Have you read anything about it in the newspaper? Have you heard anything about it? The date of the crime in the indictment is June the 16th of 2014, a little over four years ago. I need to know if you know anything about it from any source at all, newspaper, conversation, radio reports, whatever the news media is out there, or Facebook or whatever. If you have any knowledge about this case from any source at all, would you please stand?

(There was no response.)

THE COURT: Thank you. Now, you don't know anything about the case, but you do understand what the case is all about. You understand the charges, murder, possession of a weapon during the commission of a violent crime, attempted armed robbery. Those are crimes of personal violence under our law. There are other crimes of personal violence, kidnapping, armed robbery, criminal sexual conduct, assault and battery of any degree, those are crimes against a person. That's the reason we call them crimes of personal violence. So I need to know if any of you or any member of your immediate family have ever been involved in a crime of personal violence, not just those referred to in these indictments today, but as

I have described that to you, whether you or any members of your immediate family have ever been involved in a crime of personal violence, either as a defendant, that is a person who was charged with a crime, or a victim, the person against whom the crime was committed, or as a witness to the crime? So if that questions applies to you in any of those respects, would you please stand right now and let me get your name and your identifying number and then I will bring you up here in the presence of the lawyers and the court reporter and inquire further about your situation.

Yes, sir, your name and number?

PROSPECTIVE JUROR: Robert Sobczyk, 341.

THE COURT: Thank you, sir.

Yes, ma'am, your name and number, please?

PROSPECTIVE JUROR: Janie Isabelle, 183.

THE COURT: Thank you.

PROSPECTIVE JUROR: Thomas Correl, 86.

THE COURT: Eighty-six?

PROSPECTIVE JUROR: Eighty-nine.

THE COURT: Thank you.

Yes, sir.

PROSPECTIVE JUROR: John Lockwood, 223.

THE COURT: Thank you.

PROSPECTIVE JUROR: Sharon Simpson, 332.

THE COURT: Thank you.
PROSPECTIVE JUROR: Glenn Hawk, 163.
THE COURT: Yes, sir, in the back.
PROSPECTIVE JUROR: Joseph Anderson, No. 9.
THE COURT: Ninety?
PROSPECTIVE JUROR: Nine.
THE COURT: Nine zero?
PROSPECTIVE JUROR: No, just nine.
THE COURT: Just nine, no zero. Thank you.
Yes, ma'am?
PROSPECTIVE JUROR: Elissa Priest, 292.
THE COURT: Okay.
Yes, sir, your name and number, please?
PROSPECTIVE JUROR: 316, Berwyn Sasck.
THE COURT: Those of you on this side, if you will please form a line in the center aisle, I'll bring you forward individually. And then we will come over to this other side.
THE DEPUTY: 332.
THE COURT: Ms. Simpson, if you'll come around here, please, ma'am, and stand right here and speak into that microphone so she can hear. It is Ms. Simpson; is that right?
PROSPECTIVE JUROR: It is.
THE COURT: Ms. Simpson, was it you or a family

member?

PROSPECTIVE JUROR: Well, it's a family member. My father was a captain on the Charlotte Mecklenburg police force.

THE COURT: Right.

PROSPECTIVE JUROR: So he obviously was involved in many.

THE COURT: Okay. He himself was not a victim or defendant, obviously, but he was involved, perhaps, as a witness in many of these sorts of situations?

PROSPECTIVE JUROR: Sure.

THE COURT: He's retired now?

PROSPECTIVE JUROR: Yes, he's deceased actually.

THE COURT: Would that involvement, being the daughter of a police officer, have any impact on your ability to be fair and impartial as a juror in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: It would. All right. Well, we can understand that, Ms. Simpson. We appreciate your candor. We will stand you aside as a juror in this case. Don't leave us yet. If you'll just go back and have a seat. Please don't discuss your father's occupation or your thoughts along these lines with anybody.

PROSPECTIVE JUROR: Absolutely.

THE DEPUTY: 163.

PROSPECTIVE JUROR: Judge --

THE COURT: Let me get -- I've got your -- Mr. Hawk?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Mr. Hawk, was it you or a family member that was involved?

PROSPECTIVE JUROR: Me.

THE COURT: And what was your involvement?

PROSPECTIVE JUROR: Through my career, I was assaulted many times on the job.

THE COURT: What kind of career did you have?

PROSPECTIVE JUROR: PO, probation officer and deputy sheriff. And here, personally, I was assaulted in Myrtle Beach probably seven years ago.

THE COURT: Okay.

PROSPECTIVE JUROR: But it would not hinder me to come to a fair and impartial verdict on my part.

THE COURT: And that was my next question, Mr. Hawk, given your extensive involvement both as a police officer and being victimized in many cases, would you be able to set aside those experiences --

PROSPECTIVE JUROR: Yes, I would, sir.

THE COURT: -- and decide this case based on the evidence that you hear in court and set aside your own experiences?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Would you do that?
PROSPECTIVE JUROR: I would.
THE COURT: Thank you. Go back and have a seat. Thank you.
THE DEPUTY: 183.
THE COURT: Ms. Isabelle?
PROSPECTIVE JUROR: Uh-huh.
THE COURT: Is it you or a family member that was involved?
PROSPECTIVE JUROR: A family member.
THE COURT: What was the relation to you, please?
PROSPECTIVE JUROR: My father.
THE COURT: What was his involvement?
PROSPECTIVE JUROR: It happened when I was really, really small.
THE COURT: I'm sorry, can you speak up so she can hear you.
PROSPECTIVE JUROR: Yes. It happened when I was really, really small, so I'm not a hundred percent sure, but he was convicted of first degree manslaughter.
THE COURT: And where did that occur?
PROSPECTIVE JUROR: In New York.
THE COURT: New York. All right.
PROSPECTIVE JUROR: I don't know any details or anything. He was in prison my whole life.

THE COURT: He was.

PROSPECTIVE JUROR: Yeah, so I don't really even know him.

THE COURT: Oh, I'm sorry. Would your involvement then, as you've explained it, as the daughter of one convicted of a crime of violence, would that make it difficult for you to be fair and impartial as a juror in this trial?

PROSPECTIVE JUROR: No.

THE COURT: Could you set aside your own experience and decide this case based on the evidence that you hear in court?

PROSPECTIVE JUROR: Yes.

THE COURT: Would you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you. You can go back and have a seat.

THE DEPUTY: 341.

THE COURT: Mr. Sobczyk? How close was that?

PROSPECTIVE JUROR: Pretty close.

THE COURT: Was it you or a family member who was involved?

PROSPECTIVE JUROR: My wife.

THE COURT: And what was her involvement?

PROSPECTIVE JUROR: She was a pharmacist at Garden

City Pharmacy and it was armed robbery about seven years ago.

THE COURT: Was she physically injured?

PROSPECTIVE JUROR: No, just a gun to her head.

THE COURT: That will leave a mark. My mother was a postmaster in a small town and she had a gun held to her head one time. So didn't leave any physical marks, but. Was anybody ever caught and convicted for that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Were they prosecuted here?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Would your experience through your wife in that regard make it difficult for you to be fair and impartial as a juror in this trial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Could you set aside her experience and yours vicariously and decide this case based on the evidence that you would hear without regard to that experience?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Would you do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, sir. You can go back and have a seat.

THE DEPUTY: 136.

THE COURT: 136?
PROSPECTIVE JUROR: Uh-huh.
THE COURT: I didn't have 136 down, I really wasn't --
PROSPECTIVE JUROR: Oh, no. I wasn't really sure.
THE COURT: Just want to make sure I didn't -- let me get you located. You're Ms. Gattis?
PROSPECTIVE JUROR: Uh-huh.
THE COURT: Ms. Gattis, was it you or a family member who was involved?
PROSPECTIVE JUROR: My dad.
THE COURT: And what was his involvement.
PROSPECTIVE JUROR: I don't know. He's just been to jail. I don't know. I was just making sure.
THE COURT: You tell me what your involvement your dad had with a crime of personal violence and we'll be able to tell you.
PROSPECTIVE JUROR: I think he beat up my mom or something. Does that count? I'm just making sure.
THE COURT: You're right, it could. Was he charged with that?
PROSPECTIVE JUROR: I'm not sure.
THE COURT: You don't know if he was ever prosecuted for that?
PROSPECTIVE JUROR: I don't know.

THE COURT: How long ago did that happen?

PROSPECTIVE JUROR: I think it was last year.

THE COURT: Were you living at home when it happened?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Were you a witness to the crime itself?

PROSPECTIVE JUROR: No.

THE COURT: You don't know if your mom took out charges against him?

PROSPECTIVE JUROR: I don't think so. I think it was dropped. I was just making sure.

THE COURT: Well, that's good. You did exactly the right thing. We want you to come up. Now, I need to know if your involvement, as you have just described it through your situation involving your dad and your mom, would that make it difficult for you to be fair and impartial as a juror in this case?

PROSPECTIVE JUROR: No.

THE COURT: Can you set that aside and decide this case based on the evidence?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: You'll do that?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Thank you, Ms. Gattis. You can go back and have a seat.

All right. Finish that side? Okay.

Folks on this side, if you'll form a line, please, and we'll get to you.

THE DEPUTY: Eighty-nine.

THE COURT: Is it Mr. Correll?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Mr. Correll, was it you or a family member who was involved?

PROSPECTIVE JUROR: It was my brother.

THE COURT: And what was his involvement?

PROSPECTIVE JUROR: He actually fired a gun at me back in 1990. I don't know if this pertains to it or not.

THE COURT: Well, it does.

PROSPECTIVE JUROR: And it went to court and actually the State prosecuted him.

THE COURT: Right. So your brother was the defendant and you were the victim?

PROSPECTIVE JUROR: Yep.

THE COURT: What was the outcome of that case?

PROSPECTIVE JUROR: I know he served three years for it.

THE COURT: He did.

PROSPECTIVE JUROR: Yeah. I don't exactly remember what the charges was. I didn't press charges.

THE COURT: Was that here in Horry County?

PROSPECTIVE JUROR: No, that was in the State of

Ohio.

THE COURT: Would the situation you just described to me, Mr. Correll, that is your brother a defendant and you a victim, make it difficult for you to be fair and impartial as a juror in this case?

PROSPECTIVE JUROR: I don't think so. I don't really think so. I didn't know if it pertained to any --

THE COURT: And that depends on your perspective of it. So let me ask you a question again, if you were serving as a juror in this case, would you be able to make your decision as a juror based on what you would hear in this court about these charges and not based on your prior experience that you've just described to me.

PROSPECTIVE JUROR: I guess if I had enough time.

THE COURT: Enough time to do what?

PROSPECTIVE JUROR: To hear the case and figure out what was going on.

THE COURT: Now, you'll have the same time that everybody else will. It will take a couple of days to try it and the jury takes as long as they want to deliberate. I just need to know, regardless of the time constraints, if your prior experience as you've just described it is going to enter into your thought process in any way?

PROSPECTIVE JUROR: I don't believe it will, no.

THE COURT: You don't think so?

PROSPECTIVE JUROR: No.
THE COURT: Can you tell me you would make your decision based on what you would hear in court without regard to that?
PROSPECTIVE JUROR: Yeah, oh, yeah.
THE COURT: You would do that?
PROSPECTIVE JUROR: Oh, yeah, yeah.
THE COURT: Fine. You can be with us, Mr. Correll. Thank you.
THE DEPUTY: 316.
THE COURT: Is it Sasck or --
PROSPECTIVE JUROR: Sasck.
THE COURT: Mr. Sasck, was it you or a family member who was involved?
PROSPECTIVE JUROR: It was me.
THE COURT: And what was --
PROSPECTIVE JUROR: I was pistol whipped in a robbery.
THE COURT: How long ago was that?
PROSPECTIVE JUROR: About 25 to 30 years ago.
THE COURT: Where did that happen?
PROSPECTIVE JUROR: Pardon me?
THE COURT: Was it here?
PROSPECTIVE JUROR: Overland Park, Kansas.
THE COURT: Was anybody caught and convicted for

that?

PROSPECTIVE JUROR: I do not know for sure. They had stockings over their heads and he hit me in the head with a gun because I was staring at him.

THE COURT: I'm sorry.

PROSPECTIVE JUROR: I had some recognition of him and that sort of thing.

THE COURT: Did you have to go to counseling or anything like as a result of that?

PROSPECTIVE JUROR: No.

THE COURT: Did you have to get some medical treatment as a result of that?

PROSPECTIVE JUROR: No, he didn't hit me hard enough. Once he hit me once, I stayed down.

THE COURT: That was smart.

PROSPECTIVE JUROR: Yeah.

THE COURT: Would your experience, however long ago it was, make it difficult for you to serve fairly and impartially as a juror in this case?

PROSPECTIVE JUROR: With that situation and what I was doing at the time, I was running a roller skating rink. And there were other instances, shootings, I was a witness to a drive-by, things like that in Kansas City. And because of blacks -- they have that problem a little bit and I don't feel good about it.

THE COURT: Well, that's the reason we call you up here to talk to you about these situations because we don't want to put you in a place that makes you feel uncomfortable.

PROSPECTIVE JUROR: I don't think I would be a good person.

THE COURT: You don't have to explain that not to a soul in the world. You've answered my questions honestly and we appreciate it. That's what we ask you to do.

PROSPECTIVE JUROR: Thank you.

THE COURT: You can go back and have a seat.

Juror No. 316 will be stood aside in this trial.

THE DEPUTY: No. 9.

THE COURT: Mr. Anderson. Let me see if that's -- Mr. Anderson. Was it you or a family member that was involved?

PROSPECTIVE JUROR: Family member.

THE COURT: And what was their relation to you?

PROSPECTIVE JUROR: My brother, oldest brother.

THE COURT: And what was his involvement?

PROSPECTIVE JUROR: He responded to a Craigs List, purchase on Craigs list and it was a setup. They tried to rob him. A pursuit took place where they tried to get him and he was shot twice.

THE COURT: Did he recover?

PROSPECTIVE JUROR: Yeah. They shot him in the butt.
THE COURT: Okay. Did that happen here locally?
PROSPECTIVE JUROR: Yes.
THE COURT: Was anybody ever caught?
PROSPECTIVE JUROR: Yeah, three of the four. Three of the four were caught and stood trial.
THE COURT: Were they convicted? Was that here in Horry County?
PROSPECTIVE JUROR: Pled to a lesser charge, but yeah.
THE COURT: How long ago was that?
PROSPECTIVE JUROR: A little over two years.
THE COURT: Would your brother's experience in that regard as a victim make it difficult for you to be fair and impartial as a juror in this particular case?
PROSPECTIVE JUROR: No, sir.
THE COURT: Could you set that aside and decide this case based on the evidence you hear in court?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Would you do that, please, sir?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Thank you, Mr. Anderson. You can go back and have a seat.
THE DEPUTY: 292.
THE COURT: I'm going to get you located on this as

soon as -- 292. Ms. Priest. Ms. Priest, was it you or a family member that was involved?

PROSPECTIVE JUROR: Me.

THE COURT: And what was the involvement, please?

PROSPECTIVE JUROR: My ex-husband, spousal abuse, tried to choke me. He went to prison for two years.

THE COURT: For criminal domestic violence?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Was that here in Horry County?

PROSPECTIVE JUROR: No, North Carolina.

THE COURT: How long ago was that?

PROSPECTIVE JUROR: 1982.

THE COURT: Would your involvement as a victim in a crime of violence in that case make it difficult for you to be fair and impartial as a juror in this case.

PROSPECTIVE JUROR: I really don't know. I'm not sure.

THE COURT: Well, let me put the question and if you're still not sure when I ask you this question, that's fine, your answer is I'm not sure. I'd rather you tell me that than say yes or no if there's any doubt in your mind. If you were asked to serve as a juror in this case, would you be able to decide this case based on the evidence you would hear in this court and not in regard to your own

prior experience?

PROSPECTIVE JUROR: Not my personal feelings, I think I could.

THE COURT: Would you?

PROSPECTIVE JUROR: Yes.

THE COURT: That's all we ask you to do. Thank you. You can go back and have a seat.

THE DEPUTY: 223.

THE COURT: Mr. Lockwood?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Make sure she can hear you.

PROSPECTIVE JUROR: Okay.

THE COURT: Was it you or a family member?

PROSPECTIVE JUROR: Family member.

THE COURT: What was the relation to you?

PROSPECTIVE JUROR: My grandfather.

THE COURT: What was his involvement?

PROSPECTIVE JUROR: He was murdered in Baltimore City.

THE COURT: How long ago was that?

PROSPECTIVE JUROR: It was in the early to mid-70s. I can't remember the exact year.

THE COURT: Were you living up there in that area at the time?

PROSPECTIVE JUROR: Yes.

THE COURT: Was anybody caught and convicted?

PROSPECTIVE JUROR: Yes.

THE COURT: At that time, you would have been much younger?

PROSPECTIVE JUROR: Correct, about 14, 15.

THE COURT: Were you close to your grandfather?

PROSPECTIVE JUROR: So-so, yeah, yeah.

THE COURT: Would your involvement then as a victim yourself, family of a murder victim, would that make it difficult for you to be fair and impartial as a juror in this case where the charges are the same as your grandfather?

PROSPECTIVE JUROR: No.

THE COURT: Could you set aside your experience in that regard and decide this case based on the evidence that you hear in court?

PROSPECTIVE JUROR: I could.

THE COURT: Would you do that?

PROSPECTIVE JUROR: I will.

THE COURT: Thank you. You can go back and have a seat.

Folks, thank you for your cooperation. Ladies and gentlemen, I'm now going to read a list of witnesses to you. Don't be upset by this list of witnesses. It is a long list of witnesses. And I will tell you, if every one

of these witnesses would testify, I'm not sure that our life expectancy is going to be long enough to sit through it. But they have to list anybody that has any knowledge about this case as potential witnesses.

So I'm going to read this list -- I'm going to break it up into smaller parts so that you can follow it from time to time, and then I'm going to ask you the same thing about these witnesses that I just asked you about the parties in this case.

Now, if you've been previously stood aside or excused for some reason or another, you don't have to stand for any more questions. We've already taken care of your situation and you know what that is. Otherwise, if you'll stand in place if you know anything about these folks or if you're kin to them and I'll inquire of you further.

So I need to know if any of you are related by blood or connected by marriage, that is kin to any of these folks or if your friends of theirs or business associates of theirs or casual acquaintances of theirs or people who have any direct or indirect contact with any of these potential witnesses. Paul Sweeny of the Myrtle Beach Police Department, M. R. Ammons of the police department, initial D. Knipes, K-N-I-P-E-S, from the police department, Tony Lever from the police department, Will Kitelinger, K-I-T-L-I-N-G-E-R, from the police department,

Todd MacPherson from the police department, Bill Stair from the police department, Detective Sutton from the police department, Gary Conley is just a lay witness, Cornelia Johnson, also, a lay witness.

Are any of you related by blood or connected by marriage to any of those? If so, please stand.

(There was no response.)

THE COURT: Thank you.

Other potential witnesses in the case are Barbara Kelly, a lay witness, initial S. Householder from the police department, Lester Cook from the police department, Kandi McSpadden, a witness, Dean Briggs from AT&T, Karen Milbrondt, M-I-L-B-R-O-N-D-T, from Verizon, P. Morrell, M-O-R-R-E-L-L from the police department, Mark McCabe, a witness that works at that Scotchman, Hugh Jones from the police department, Steve Clothier from the police department.

Any of you have any connection with any of those potential witnesses, friends, business associates, casual acquaintances or kinship? If so, please stand.

(There was no response.)

THE COURT: Thank you. That's the good thing about coming to a big county like this. If I was in Clarendon County, I'd already have 40 people standing up back there, kin to most of these folks. Thank you.

Other potential witnesses who may testify in the trial of this case, Leon Hull, a lay witness, Dalvin Hutchins, a lay witness, Mike Quinn from the police department, Breanna Feaster, F-E-A-S-T-E-R, a witness, Richard Arroyo from the police department, Rose Bennett, a witness, Chris Smith, a lay witness, Wade Young from the Chester County Sheriff's Office, Detective St. Clair form the Chester County Sheriff's Office, Tony Humes from the police department.

Any of you related by blood, connected by marriage to any of those folks, friends, business associates, casual acquaintances or people who have any direct contact with them or indirect?

(There was no response.)

THE COURT: Okay, good. We're on a roll. Just a few more. Other potential witnesses are Officer Gibson from the police department, Tamara Willard is the deputy coroner, Dr. Edward Proctor from Grand Strand Regional Hospital, Malinda Shadoan, S-H-A-D-O-A-N, from the police department, CSS Williamson from the police department, Chad Smith from SLED, Special Agent Simmons from the FBI, Timothy Daniels, the brother of the victim, and Doug Furlong from the police department.

Any of you related by blood or connected by marriage to any of those folks, friends, casual acquaintances and

so forth?

Oh, finally, we have one. Yes, ma'am, your name and number, please, ma'am?

PROSPECTIVE JUROR: Tina Leonardo, 215.

THE COURT: 215, let me get that. Okay. Ms. Leonardo, who is the connection with, please, ma'am?

PROSPECTIVE JUROR: Dr. Proctor.

THE COURT: What's that connection?

PROSPECTIVE JUROR: I work with him at the hospital.

THE COURT: In what capacity, do you mind telling me?

PROSPECTIVE JUROR: We do biopsies and he has to come into our department.

THE COURT: You work in the pathology department?

PROSPECTIVE JUROR: I work in CAT scan and he comes over from pathology.

THE COURT: I understand. Would the association that you've just described with Dr. Proctor, Ms. Leonardo, make it difficult for you to be fair and impartial as a juror in the trial of a case in which he is likely to testify -- or is going to testify in just a few minutes?

PROSPECTIVE JUROR: No, sir.

THE COURT: Can you set that association aside and decide this case based on what you would hear in court without regard to that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Would you do that, please?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, Ms. Leonardo.

Yes, sir, your name and number, please?

PROSPECTIVE JUROR: Jeffery Gause, 137.

THE COURT: Mr. Gause, tell me who the association is with please, sir.

PROSPECTIVE JUROR: Agent Simmons with SLED and Dr. Proctor.

THE COURT: And what's the association, first of all, with Agent Simmons?

PROSPECTIVE JUROR: He's a former coworker.

THE COURT: Okay. And Dr. Proctor?

PROSPECTIVE JUROR: I've attended well over 200 autopsies with him.

THE COURT: Would your association as you have just described it, Mr. Gause, obviously, before you retired, I take it, right?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Would any of those associations or both of them together make it difficult for you to be fair and impartial as a juror in the trial of a case in which he's likely to testify?

PROSPECTIVE JUROR: No problems.

THE COURT: Can you set aside that and decide this

case based on what you will hear in court without regard to that relationship?

PROSPECTIVE JUROR: No problem.

THE COURT: And you will do that? Thank you, Mr. Gause.

Ladies and gentlemen, are any of you all members of or supports of or contributors to any law enforcement support organization or victim's rights organization, such as MADD, SADD, CADRE, CAVE or the like? If so, please stand.

(There was no response.)

THE COURT: Have any of you formed in your own mind or expressed to anybody else any opinion that you might have as to the guilt or innocence of Mr. Stewart? If you have, would you please stand.

(There was no response.)

THE COURT: Do any of you know of any reason whatsoever that would keep you from serving fairly and impartially as a juror in the trial of this case? If you know of any such reason, would you please stand.

(There was no response.)

THE COURT: Can all of you then give both the State and this defendant a fair and impartial trial? If you know of any reason why you cannot, please stand.

(There was no response.)

THE COURT: Thank you.

Mr. DeBusk, Mr. Miles, any additional questions from the State?

MR. DEBUSK: No, Your Honor.

THE COURT: Mr. Fox?

MR. FOX: None, Your Honor.

THE COURT: Mr. Hiller?

All right. Madam clerk, you can give us a jury. The strikes will be five for the State, ten for the defense. We will select two alternates. As to each alternate, the State will have one strike. The defense will have two.

Ladies and gentlemen, as your names are called, please follow the instructions that the clerk will give you. Just follow those steps through and we'll tell you what to do.

THE CLERK: No. 176, Anthony Howard.

THE COURT: You told them what to do?

THE CLERK: If you'll just come up to the front, sir, turn around and face the back of the courtroom.

(Juror No. 176, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please seat the juror.

THE CLERK: Please be seated in the jury box.

No. 299, Christopher Reissman.

(Juror No. 299, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

JUROR: Can I get my book?

THE COURT: Ladies and gentlemen, if you'll bring your personal belongings with you when you come, it will expedite things.

THE CLERK: No. 6, Ronald Alston.

(Juror No. 6, a black male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please seat the juror -- please present the juror, I apologize.

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

No. 292, Elissa Priest.

(Juror No. 292, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please excuse the juror.

THE CLERK: You're excused from this particular case.

No. 239, John McClernum.

(Juror No. 239, a white male, came forward.)

THE CLERK: What says the State?
MR. MILES: Please seat the juror.
THE CLERK: Defense?
MR. MILES: Present.
MR. FOX: Please seat this juror.
THE CLERK: Please be seated in the jury box.
No. 192, Latoya Johnson.
(Juror No. 192, a black female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present this juror.
THE CLERK: Defense?
MR. FOX: Please present this juror.
THE CLERK: Please be seated in the jury box.
No. 60, Christopher Bryant.
(Juror No. 60, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 136, Victoria Gattis.
(Juror No. 136, a white female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.

No. 325, John Sellers.
(Juror No. 325, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 163, Glenn Hawk.
(Juror No. 163, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 341, Robert Sobczyk.
(Juror No. 341, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please seat the juror -- present.
THE CLERK: Defense?
MR. FOX: I'm sorry, what's this juror, 341?
THE CLERK: 341.
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 253, Terry Miller.
(Juror No. 253, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present this juror.

THE CLERK: Defense?

MR. FOX: Just a moment, please. Please seat this juror.

THE CLERK: Please be seated in the jury box.

No. 156, Joyce Hargrove.

(Juror No. 156, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

No. 49, Sally Brantley.

(Juror No. 49, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present this juror.

THE CLERK: Defense?

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

222, Christine Locke.

(Juror No. 222, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present this jury.

THE CLERK: Defense?

MR. FOX: Please excuse the juror.
THE CLERK: You're excused from this particular case.
No. 392, Elizabeth Wilson.
(Juror No. 392, a white female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 159, Regina Harrington.
(Juror No. 159, a white female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present this juror.
THE CLERK: Defense?
MR. FOX: Please seat this juror.
THE CLERK: Please be seated in the jury box.
No. 384, Charles Weiss.
(Juror No. 384, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please seat the juror.
THE CLERK: Defense?
MR. FOX: Please seat this juror.
THE CLERK: Please be seated in the jury box.
No. 259, James Morton.
(Juror No. 259, a white male, came forward.)

THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please seat this juror.
THE CLERK: Please be seated in the jury box.
No. 183, Jamie Isabelle.
(Juror No. 183, a Hispanic female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 223, John Lockwood.
(Juror No. 223, a white male, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present the juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
No. 64, Kimberly Bush.
(Juror No. 64, a white female, came forward.)
THE CLERK: What says the State?
MR. MILES: Please present this juror.
THE CLERK: Defense?
MR. FOX: Please excuse this juror.
THE CLERK: You're excused from this particular case.
THE COURT: The State has exercised three strikes,

the defense has exercised eight strikes.

THE CLERK: No. 9, Joseph Anderson.

(Juror No. 9, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: What says the defense?

MR. FOX: Please excuse this juror.

THE CLERK: You're excused from this particular case. No. 65, Megan Butler-Phillips.

(Juror No. 65, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

THE COURT: We'll proceed now to alternates, Madam Clerk. The strikes will be one for the State, two for the defense as to each of the two alternates.

THE CLERK: No. 81, Ronald Cline.

(Juror No. 81, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please seat this juror.

THE CLERK: Please be seated in the jury box.

No. 89, Thomas Correll.

(Juror No. 89, a white male, came forward.)

THE CLERK: What says the State?

MR. MILES: Please excuse this juror.

THE CLERK: You're excused from this particular case.

No. 304, Ashley Roberts.

(Juror No. 304, a white female, came forward.)

THE CLERK: What says the State?

MR. MILES: Please present the juror.

THE CLERK: Defense?

MR. FOX: Please present the juror.

THE CLERK: Please be seated in the jury box.

THE COURT: Mr. Miles, are there any matters of law regarding the jury selection process from the State?

MR. MILES: None from the State, Your Honor.

THE COURT: Mr. Fox, from the defense?

MR. FOX: None, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, those of you who were not selected as jurors for the trial of this case, thank you again for your cooperation this afternoon. You might want to get a lottery ticket on your way home, but don't give up. We're going to be here for a while, we might get another shot at you during the week. But if we do not, I thank you for your cooperation thus far in this process.

Of course, you're free to go now.

Be careful on the way home. And call the number that you got yesterday after 6 o'clock tomorrow. Everybody understand that? Call the number after 6:00 tomorrow. Thank you, ladies and gentlemen.

PROSPECTIVE JUROR: A.m. or p.m.?

THE COURT: Is there such a thing as 6:00 a.m.? That's a good question. 6:00 p.m. tomorrow. Call after 6:00. In other words, you've got tomorrow, but you know we're not going to mess with you.

(Whereupon, the unselected members of the jury left the courtroom.)

THE COURT: Now, ladies and gentlemen, you, of course, have been selected as jurors for the trial of this case. As I told you earlier, we were going to take something of an abbreviated approach to things today because it's 5 o'clock and we're trying to get the testimony of this witness in and we will forgo the opening statements or opening remarks from the Court and from the State and the defense until tomorrow.

I think you'll be able to get through the testimony of this first witness without those -- without the necessity of those remarks that we will give to you.

I will tell you this, and I'll repeat this again tomorrow, that your role as jurors in this case is to find

the facts of the case. You are to determine what the facts of the case are.

So you'll listen to the witnesses and you decide what facts you believe in a particular case. You have to determine what the facts are, that's your role as jurors. So you pay attention, close attention to the witnesses as they testify so that you'll be able to determine the facts of this case once the case is over and put in your hands.

You're going to be put under oath right now, ladies and gentlemen. I want you to pay attention to the oath that you're about to take. It is a time honored, it is an artfully-worded oath. It tells you very succinctly, but at the same time very completely what your role as jurors is going to be in this case. I'm going to be reminding you during this trial and, indeed, after this trial as to what you're sworn to do. So please listen to the clerk now as she administers the oath.

Madam Clerk.

THE CLERK: Please stand and raise your right hand to be sworn.

Do you solemn swear or affirm you will well and truly try the issues joined in this case and a true verdict render according to the law and evidence, so help you God.

THE COURT: Folks, you all can be seated.

Ladies and gentlemen, as I said, we're going to begin

the trial of this case right now with the State offering its first witness.

The State will put in its evidence and testimony first in this trial and then the defendant has a right, if he chooses, after the State has put in its evidence and testimony to offer evidence and testimony, but he doesn't have to. I'll tell you tomorrow why he doesn't have to.

For our purposes right now, the State is going to call its first witness in order to meet a very tight time schedule that he has and the short window of availability this witness has.

Mr. DeBusk, you can call your witness.

MR. DEBUSK: I call Dr. Edward Proctor.

THE COURT: Dr. Proctor, come forward, please, and be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

EDWARD PROCTOR, JR., M.D., after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record and spell it for the Court.

THE WITNESS: Yes, ma'am. I am Edward Proctor, Jr., and that's P-R-O-C-T-O-R.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Dr. Proctor, who is your employer?

A I am self-employed.

Q Where do you do your work at?

A I do my work at Grand Strand Medical Center in Myrtle Beach.

Q And you have your own practice?

A That's correct.

Q Are you a licensed physician?

A I am a licensed physician in the states of South and North Carolina, yes.

Q How long have you been licensed?

A Since about 1978.

Q And I think you answered this already, but you're presently engaged in the practice of your profession?

A I am.

Q Where did you receive your medical training?

A I trained at the Medical University of South Carolina in Charleston and did my residency training courtesy of the United States Army at Walter Reed Army Medical Center.

Q What year did you complete that training?

A I finished med school in 1978. I finished my residency in pathologist in 1982. Then I was in the United States Army at Fort Bragg, North Carolina for four years and been in Myrtle Beach since 1986.

Q What is your specialty area?
A I practice general pathology to include anatomic pathology, clinical pathology, and I do a subspecialty practice in forensics pathology.
Q Will you tell this jury what forensic pathology is?
A Forensic pathology by definition is the medical legal investigation of death. We are asked by law enforcement authorities, medical examiners, coroners to investigate a case. And as part of my job as a forensic pathologist, I get what history is available. We get the deceased. We do a complete examination. We do toxicologic evaluation. And then based on all of that information formulate a cause and manner of death.
Q Does that include autopsies?
A That's correct.
Q What is an autopsy?
A Autopsy is the actual examination of the body to include an external examination, internal examination with visualization involving organs, microscopic examination of things that we need and examination of the body fluids for toxicologic reasons.
Q And can you tell this jury approximately how many autopsies you've performed?
A I've been doing these for almost 30 years. Probably somewhere around four or 5,000.

Q Are you a member of any medical or scientific groups or board certification?
A I am board certified by the American Board of Pathology and Anatomic Pathology, Clinical Pathology and subspecialty certified in forensics.
Q Have you been qualified as an expert in a court of law before?
A Yes, sir, I have.
Q About how many times?
A How many times have you called me? Probably couple hundred or so.
MR. DEBUSK: Your Honor, we would proffer Dr. Proctor as an expert in forensic pathology.
MR. FOX: Absolutely no question, Your Honor. I'm well familiar with Dr. Proctor and his qualifications.
THE COURT: Dr. Proctor is so qualified as an expert.
Mr. DeBusk.
BY MR. DEBUSK:
Q Dr. Proctor, did you perform an autopsy of Alton Daniels?
A Yes, sir, I did.
Q When and where did that take place?
A I was contacted by Deputy Coroner, Ms. Tamara Willard, and I did this examination on the 17th of June in the morgue at Grand Strand Medical Center approximately

7:00 to 7:30 in the morning.
Q What year was that there?
A That was in 2014.
Q Thank you. Let me begin by showing you a couple of pictures, State's Exhibits 3 and 4, and ask if you recognize these?
A Yes, sir, I do.
Q What are they?
A These exhibits are photographs taken by law enforcement authorities of both the entrance and exit wounds on Mr. Daniels.
Q Would these assist you in explaining to the jury the nature of the wounds?
A They can, yes, sir.
MR. DEBUSK: Your Honor, the State would proffer into evidence State's 3 and 4.
MR. FOX: Without objection.
THE COURT: Without objection, 3 and 4 in evidence. Thank you.
(WHEREUPON, State's Exhibit Nos. 3 and 4 were admitted into evidence.)
BY MR. DEBUSK:
Q I wanted to give you some other pictures, Dr. Proctor, that are not and will not be offered into evidence and ask if you recognize these?

A Yes, sir.
Q Please don't show them to the jury.
A Yes, sir. These are pictures at the time of this autopsy that actually show the injuries to the heart and the trajectory of the bullet.
Q Those are actually internal?
A Internal trajectory of the bullet through body, yes, sir.
Q Now that you have those exhibits and you examined them, I want to ask you what injuries did Mr. Daniels suffer?
A This gentleman received a gunshot wound to the right chest, basically, just below the shoulder in what we call the posterior axillary line, the backside of the shoulder. It traversed the body through the 5th rib interspace.
Q Does that mean between the ribs?
A Between the ribs. Hit the right lower lung lobe, passed through that, passed through the left ventricle of the heart, passed through left lower lung lobe and exited the body through the 5th rib interspace on the left slightly more anterior than the entrance site on the right.
Q Anterior means towards the front?
A Towards the front, correct.
Q So, basically, it was a shot through the heart?

A Shot through the heart and lung, yes, sir.
Q What would have been the immediate effect of that?
A The immediate effect would have been significant hemorrhage every time the heart beat, which was evidenced by there being about 2,000 to 2,500 cc's of fluid in the left chest cavity.
Q Would death and unconsciousness shortly have followed?
A It certainly would have led to loss of consciousness and death, yes, sir.
Q Can you say how soon it would have?
A I can't put an actual quantitative seconds or minutes on it, but it would not take very long for the heart with each beat to quickly pump out the blood volume into the chest cavity.
Q Were there other injuries on his body?
A He had some superficial injuries on his right hand between the webbing of a couple of fingers, abrasions.
MR. DEBUSK: Beg the Court's indulgence one moment.
THE COURT: Okay.
(Pause.)
THE COURT: We'll move it out after this.
BY MR. DEBUSK:
Q Let me move on to State's Exhibits 3 and 4. 4, of the right sort of back and side, that shows --

A That is the entrance.
Q The entrance wound.
A Uh-huh.
Q And how do you determine which is the entrance and which is the exit?
A Basically, you look at the wound itself and the beveling of the projectile as it goes through the skin actually penetrates the skin and pushes it out. And when it exits, it pushes the material in front of it. When it hits bone, it's much easier because it actually bevels the bone and you can see it.
Q So there's a quite, to you, obvious difference?
A Yes, sir.
Q And you've seen thousands?
A Yes, sir, I've seen quite a few.
Q And State's 3, that represents what appears to be the left side of the individual?
A That's the left side, mid-axillary line. Yes, sir, that's the exit.
MR. DEBUSK: Your Honor, may I publish State's 3 and 4 to the jury?
THE COURT: Yes.
BY MR. DEBUSK:
Q Dr. Proctor, on the hand, were you able to tell what caused the injury to the hand?

A There were -- let me actually give you a better description of it. There was an abrasion and laceration at the base of the right 5th finger in the webbing, in this area.

Q Between the pinky finger?

A Between the fourth and fifth fingers, that's correct. You know, it could have been caused by a number of things. It could have been hitting his hand on something in the vehicle, could have been turning his hand and, you know, in the path of projectile. There's no way I would know.

Q But the injuries on the chest were clearly bullet wounds?

A The injuries on the chest were clearly bullet wounds, yes, sir.

Q Now, if you would, I have here a dowel. And using --

May Dr. Proctor step down?

THE COURT: Sure.

BY MR. DEBUSK:

Q Would you demonstrate for the jury on my body where the entry and exit wounds were and what --

A Well, let's see. This would have been an entrance wound on the right side posterior axillary line, somewhere in this area just below the armpit, passing in a right to left direction across the body, slightly anterior to exit. And, basically, the same area on the other side. So

pretty much straight through slightly posterior to anterior.

Q A little bit behind the midline to coming out a little bit?

A Basically, at the posterior line of your back coming out right in the mid area on the other side.

Q Thank you. And based on your examination and your -- oh, did you do a toxicology?

A Yes, we did.

Q Was there anything important in the toxicology report?

A Our toxicologic evaluation is performed by National Medical Services in Willow Grove, Pennsylvania, which is a national forensic lab that does just about everybody's toxicologic work and there were no toxicologic findings. The blood ethanol was negative, blood drug screen was also negative.

Q Now, based on your examination and your expertise, did you reach an opinion on what the cause of death was?

A Yes, sir.

Q What was that?

A This gentleman died as a result of a gunshot wound to the chest area with extensive trauma, traumatic injury to the internal organs and massive hemorrhage. And the manner of death being homicide.

Q So he was shot through the heart?
A He was shot, that's correct.
MR. DEBUSK: Please answer any questions the defense may have.
THE COURT: Mr. Fox -- excuse me, Mr. Hiller.
MR. HILLER: Thank you, Your Honor. May it please the Court?
THE COURT: Yes, sir.

CROSS-EXAMINATION:

BY MR. HILLER:
Q Dr. Proctor, could you please tell jury the vital statistics of the gentleman you observed during autopsy?
A This gentleman was 71 inches tall and had an estimated weigh of approximately 180 to 200 pounds, so roughly six feet tall, 200 pounds.
Q Thank you very much. Now, you noted the injury to his right hand between the webbing of the fourth and fifth finger, correct?
A Correct.
Q Did you during your examination of him notice any other injuries to that right hand?
A He had -- let's see. There was an abrasion in that area and the left upper extremity had a four-centimeter area of sloughing of skin about the wrist and a similar area in the medial forearm area and elbow area.

Q And then in your -- you did prepare an autopsy report, correct?
A That's correct.
Q In your case summary, do you recall identifying any other injuries to the deceased?
A No. I've described the abrasion at the base of the right thumb, did not address any of the other areas in my summary.
Q So in addition to the webbing, there was no abrasion --
A There was some abrasions in this area and back here around the elbow.
THE COURT: On which arm, Doctor?
THE WITNESS: Left arm, Your Honor.
BY MR. HILLER:
Q But the abrasion was to the base of the thumb on the right -- I'm sorry, maybe I'm getting --
A Here we are. The abrasion -- there was half-centimeter abrasion, which is small, and laceration at the base of the right fifth finger within the webbing between the fourth and fifth figurers. The left arm showed an area of sloughing about the left wrist and additional areas on the arm and elbow.
Q All right. Thank you. Thank you very much.
A Yes, sir.

Q All right. Now, when you testified on direct examination, you said that the individual died quickly?
A He died rapidly, that's correct. It's hard to quantitate seconds to minutes, but the heart is still beating, probably beating at a rapid rate and with every beating of that left ventricle, it's -- there's a hole there and it's throwing -- nothing is going back through the body, it's all going into that lung space.

MR. HILLER: Thank you. I have no further questions.

THE COURT: Redirect.

MR. DEBUSK: Just one briefly.

REDIRECT EXAMINATION:

BY MR. DEBUSK:

Q Could you explain to the jury what you mean by sloughing of skin?
A Sloughing of skin can occur as a result of decomposition or hitting something hard and it just abrades and rolls the skin, just sloughs it off the surface.
Q Is that a postmortem process?
A It can be. It can be pre-mortem, depending on what you hit.
Q Would it cause bleeding?
A It can cause oozing, yes, sir.
Q And where was it located on the arm?

A There was a small on the wrist area and there's an area on the forearm and about the elbow.

Q And that could have been postmortem?

A It could have been, I don't know.

MR. DEBUSK: Thank you.

THE COURT: Yes, sir.

Thank you, Doctor. You can step down. Without objection, you can be excused. Thank you for coming.

THE WITNESS: Thank you, Your Honor. I appreciate it.

THE COURT: Okay. All right, folks, is this a good time for us to break for the day?

MR. DEBUSK: Yes, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, as promised, we are going to break for the day and ask you to be back in the jury room tomorrow at 9:30. We're going to run on a relatively normal schedule from now on. We start at 9:30 every morning.

We'll take about an hour and 15 minute break sometime during the middle of the day whenever we get to a good stopping place, around 12:30, 1 o'clock. We'll take about an hour and 15 minutes, maybe an hour and 20 minutes for lunch. Then we come back and we work, and at 5 o'clock, we look for a good stopping place around 5 o'clock in the

afternoon. That's going to be our schedule for the balance of this trial so that you can make whatever plans you can make with those sorts of things in mind.

As I said, you won't come back into this courtroom tomorrow. You will go into the jury room, which will be your home away from home for the next couple of days while you're in trial here. In just a moment, you will follow Ms. Sardis right there, who will have you in charge for the next couple of days, and she'll show you the jury room that you're to report to. You'll use a secret back stairway to get into that jury room in the morning.

Now, I'll give you some specific instruction tomorrow before we start the trial of the case about things that you can and cannot do as jurors during the trial of this case. But to keep you from mistakably innocently doing some of those things overnight that you don't know you're doing wrong, let me tell you that you're not allowed to find out anything on your own about this case outside of this courtroom.

You took an oath to well and truly try this case and to render a true verdict according to the evidence and the law so help you God. The evidence is going to come to you only from this courtroom according to the Rules of Evidence that we have and the protections that those Rules of Evidence give to all the parties who are involved in

this trial.

If you try to find out something on your own outside of this courtroom about this case, you will have violated that oath and you will have upset all the trouble that we went to before we got you in that seat to put 14 jurors over there who didn't know anything about this case, didn't have any interest in this case, didn't have any connection with the people in this case or the events in this case. That's why we asked you all those questions because we wanted people like you in the jury box when we started.

So please don't try to find out anything on your own about this case. Don't go to Facebook or whatever, all those things you can find stuff out. I doubt there will be anything about this case on there, but if there is, don't look at it right this minute. You can put those matters aside and if you'll real curious when your trial experience as a juror is over, you can go back and look at it then. Please, not until then.

Everything you need to know about this case in order to render a verdict, indeed, everything you're allowed to know about this case in order to render a verdict, you will learn from this courtroom and from no other source at all.

And by the same token, please don't talk about this

case among yourselves when you get back into the jury room. You don't know anything about it now. I know you don't know anything because you told me you didn't know anything about it, but you've heard the testimony of a single witness. You know what that witness testified to. You might want to go back there and talk about the testimony of that witness while it's still fresh in your mine, but you can't do that. I'll tell you more specifically tomorrow why not. Just take my word for it right now. You can take advantage of that time tomorrow to get acquainted, drink some coffee.

We'll get you out close to 9:30 tomorrow to resume the trial of this case. Have a safe trip home. Thank you for your cooperation and your patience today. We'll see you tomorrow at 9:30.

(Whereupon, the jury left the courtroom at 5:22 p.m.)

THE COURT: Now, gentlemen, do you all know of any matters of law that we need to take up tomorrow before the jury gets out here at 9:30 that will cause us to get here a few minutes early to deal with those matters?

Mr. DeBusk?

MR. DEBUSK: No.

THE COURT: Thank you.

Mr. Fox?

MR. FOX: Not before the jury. We still have the

outstanding issue with the detective and that may play into it, but not for getting started, Your Honor.

THE COURT: Okay. Good.

MR. FOX: We'll have information about that.

THE COURT: And it's probably always a good idea if you already know, Mr. DeBusk, to put Mr. Fox and Mr. Hiller on notice as who you intend to call first tomorrow so they can get ready for it.

All right. Anything further then from the State before we break, gentlemen?

MR. DEBUSK: Nothing from the State.

THE COURT: From the defense?

MR. FOX: No, Your Honor.

THE COURT: 9:30 tomorrow. Thank you.

(Whereupon, there was an overnight recess)

THE COURT: Madam Reporter, if you will please memorialize a chambers conference with all counsel present a few moments ago raising some issues that defense primarily would like to put on the record to preserve the record if necessary for appellate purposes.

Mr. Fox, first of all, raised the issues of the impact of the ruling on the absence of Detective Kitelinger and how he would be able to deal with that, accepting the fact, I believe, at least, for the purposes of argument that he is unavailable under the law, how does

he deal with it, and I instructed them as I will now that the detective's statements made in the interrogation themselves are, of course, not evidence. I'll instruct the jury in that regard.

Mr. Fox, I'll be glad for you to put anything else on the record that you need to in that regard.

MR. FOX: Thank you, Your Honor. I'll try to summarize briefly. Our objection is that it appears Detective Kitelinger because of some very serious and verifiable health issues is not going to be a witness. I believe he would fit the definition under Rule 803 as an unavailable witness.

THE COURT: Right.

MR. FOX: However, my argument would be under Crawford V. Washington -- let me make sure I have that right. Yes, United States Supreme Court decision 2004 that number one, it is testimonial in nature that his conversation, his interrogation back and forth with Mr. Stewart does amount to a testimonial situation that is created with the intent of introducing evidence at trial, and that's something that Crawford specifically addresses, and if it is testimonial, there are two things that must be satisfied before he can be absent.

First, if he is unavailable, and we believe and see that he is unavailable. The second is a prior opportunity

to cross-examine the witness, and there has been no such tunnel. And we believe for those reasons that the defendant's statement should be excluded.

Thank you.

THE COURT: The Crawford case which Mr. Fox has correctly cited, of course, is -- applies to witnesses who are bearing testimony against the accused. And Crawford describes that as a solemn declaration or affirmation made for the purpose of establishing or proving some fact.

Testimonial statements include statements taken by police in interrogations, affidavits, prior testimony that a defendant was unable to cross-examination somebody and therefore the confrontation clause is brought to bear. And so Crawford primarily applies to testimony against a defendant which is offered -- that the defendant himself has not had the opportunity to confront or to cross-examine on, so I'm not sure, quite frankly, that Crawford applies to the officer's statements in this particular case. As a matter of fact, I'm pretty sure that it does not, but because the statements themselves, as I will instruct the jury, are not evidence in the case.

I appreciate Mr. Fox wanting to explore the facts that he would have liked to have been able to go into it with the detective, the basis for some of those questions if there was a factual basis for them or what it was, if

there were any, and I appreciate that.

I don't think that is something that Crawford is designed to address or to protect against. And so I simply renew my rulings in that regard, and I think the record is preserved for appellate review if that should be an issue down the road somewhere.

MR. FOX: Yes, sir.

THE COURT: And Mr. Hiller, you also had raised the issue about a continuing objection to some of these matters and also a federal statute that you wanted to put into evidence. And I think Mr. Fox, you, as well, or somebody wanted to put into evidence some statistical information regarding the use of affidavits as opposed to search warrants. Will you go ahead and put that on the record?

MR. HILLER: Yes, sir, I'll be very brief. The record that was played for identification yesterday during the suppression motion references on its face a federal statute, and that federal statute is Title 18 Section 2702.

It's entitled voluntary disclosure of customer communications or records. That statutes starts with the premise that a service provider like Verizon is prohibited from disclosure of any records in their possession. But then the rest of the statute goes on to give exceptions

for both communications, which we have like call logs and things like that, and customer records. And that exception is identical in both parts of this law.

If the governmental agency records can be disclosed without a search warrant to a government entity if the provider in good faith believes that an emergency involving danger of death or serious physical injury to a person requires disclosure without delay of communications regarding to the emergency.

So basically, that's the exception that the federal law gives. You have to check a box on the form saying this involves the danger of death or serious physical injury, so the emergency situation to disclosure form tracks the federal law precisely.

THE COURT: Right.

MR. HILLER: Your Honor, just as an additional ground, I just don't believe that federal statute was met. I believe this is becoming a loophole. Verizon itself in a transparency report from the first half of 2015 said that in the first half of 2014, which is when this happened, that law enforcement requested emergency requests 24,257 times and search warrant 14,977 times.

So if there is a backlog with search warrants, it's because law enforcement are figuring out that if we do the emergency request form, we're going to get them faster.

So I think we're starting to -- I just see it as a loophole that's getting exploited, Judge. But thanks for letting me put that on the record. I appreciate it.

THE COURT: I understand. Thank you.

Folks, on behalf of the State and the defense, does that completely embody the gist of what we talked about in claimers. Do we need to go over that anymore?

MR. DEBUSK: No, Your Honor.

MR. FOX: No, Your Honor.

THE COURT: Good. All right, folks. We'll bring in the jury now. I will appoint a foreperson and make some introductory remarks and then allow openings.

Who will be opening for the State?

MR. MILES: I will be opening.

THE COURT: All right. And who will open for the defense?

MR. FOX: I will.

THE COURT: Is everybody ready then for the jury?

MR. MILES: Yes, sir.

MR. FOX: Yes, sir.

THE COURT: Okay. Bring us the jury.

(Whereupon, the jury entered the courtroom at 10:02 a.m.)

PRETRIAL CHARGE:

THE COURT: If you will leave that first seat open on

the front row there. And, ma'am, if you'll start on the back row, please. Thank you.

Mr. Charles Weiss?

JUROR: Yes, sir.

THE COURT: Will you switch places with this gentleman on the end, please, sir, right here. If you all will just switch places. I'll tell you why in a minute.

Mr. Weiss, I've asked you to sit in that seat, sir, because I want you to serve as the foreperson of this jury. All that means is you'll be the jury spokesperson here in court.

When the trial is over, you'll be responsible for writing the verdict of the jury, but I'll tell you more about that before you have to do it. All you need to remember right now is that you've got a reserved seat. You'll occupy that chair throughout the trial of this case unless I ask you to sit somewhere else.

Mr. Cline.

ALTERNATE JUROR: Yes.

THE COURT: And Ms. Roberts. You all are the alternate jurors in this case. So if I could -- I don't know where the alternates normally sit. I think Mr. Cline, I'll ask you to switch places with the lady on the end right there sitting by you to your right. Now, we've got it. Good. Now, everybody is sitting where

they're supposed to sit. I appreciate that.

The rest of you, other than the foreperson and the alternates jurors, don't have reserved seats. You've got to do the best you can as you come in from time to time, but all those seats are the same.

It's always a good idea to do what you did today, and that is to move all the way down and not leave an empty chair beyond you. Those spaces are kind of confined up there and somebody might have to step on your feet to get to that open chair.

Now, ladies and gentlemen, I'm going to do some things today that I would have done yesterday before you were sworn. Because of constraints of time yesterday, as you know, I don't need to go into that any further, we skipped some of the normal preliminaries. But we're not going to leave them out, we're going to take care of them this morning.

One of the things I want to do at the outset is introduce to you the court personnel that you will see here for the next couple of days while you're involved as a juror in this trial. Ms. Dana Sardis was out there yesterday. She's the lady who took you all to the jury room.

She's normally out there in the hall to greet you when you come in in the morning, but she's working with

the grand jury today and so she will not be with us today. May return tomorrow, we don't know what her schedule is for tomorrow.

Deputy Jerry Persio is the gentleman who met you all this morning in her stint. The bailiffs are here to see to your comfort and convenience. And in addition to them, we're happy to have with us Deputy Jerrell, who normally is out there in the hall and, also, Deputy Fairfax today. Deputy Jerrell is over here and Deputy Fairfax is right there by the door. These gentlemen are here to help maintain order in the court and also to see to your comfort and convenience if that should be necessary.

The other court personnel here, right behind the screen over here, you can't see her, is Natalie Stevens. She is a representative of the clerk's office who is assigned to this court this week. You met the clerk of court on Monday when you were downstairs and then so you had a chance to meet Ms. Elvis, Ms. Renee Elvis, who is your elected Clerk of Court, and she and her office have the responsibility of maintaining the records of all of these courts. It's a demanding job, and I can tell you when I went down yesterday -- or Monday, I should say, to talk to you the first time, they led me through a catacomb or a rabbit warren of walking through records on either side. They would not allow me to go unchaperoned. I

would still be lost in those catacombs if they had. That's a way of me saying there's a lot of records that have to be maintained by the court and her office is in charge of maintaining those.

Obviously, Ms. Elvis can't be everywhere at one time. So we have three courts going on this week, so she has to have three deputies who are scattered about. And we're glad to have with you Ms. Stevens as a clerk's representative. You can thank her for the doughnuts you got this morning. She was responsible for making sure you had those refreshments.

Right here to my left is the court reporter Ms. Karen Ambroziak. Some of you may have had some distance to travel this morning and it may have been inconvenient. It's a big county and depending upon where in the county you live, you probably had to drive a little while to get here. You're not going to get any sympathy from Ms. Ambroziak. She had to drive two hours and a 20 minutes each way coming and going. She spends four-and-a-half hours plus on the road each day added to her workday, and that's because of the shortage of the court reporters.

She is assigned as a resident judge's reporter in the Fifth Circuit, in Columbia, Richland County and Kershaw County, and she lives up in that area. And so because her court broke down, she drew the short straw and was

assigned to us this week. She's the reason we're able to go ahead and try this case because without her, we could not.

She has the exacting job of taking down every word that is said. That is a court of record. Everything that I say, the lawyers say, the witnesses say, she has to take it down. And right now, she's saying how about shut up so I won't have to take down so much of this stuff and get on. You need to know what she does and how important she is and, also, the price she is paying to be with us this week. And we appreciate all that.

Now, ladies and gentlemen, let me take just a few moments to tell you what this process is all about that you're involved in and you're going to see unfolding, as you have already begun to see unfolding before you. In just a few moments when I finish talking to you, the State is going to stand before you and make an opening statement.

Mr. Miles on behalf of the State is going to stand before you and make an opening statement, and in that opening statement, he is going to outline for you something in a preview fashion what this case is all about from the State's perspective. And he may indicate to some of you or to all of you some of what the State intends to offer by way of proof in support of the charges brought in

these indictments.

When he has finished making the opening statement on behalf of the State, then the defendant has a right to make an opening statement, but does not have to under the law. And I'll tell you why in just a moment. I understand that Mr. Fox will be making an opening statement this morning on behalf of the defendant.

When the opening statements have been made, then you will actually begin to see and hear the presentation of additional evidence. Yesterday, you saw the presentation of evidence from the first witness, the pathologist in this case, Dr. Proctor. The State will offer additional evidence and testimony today.

When the State has completed putting in its evidence and testimony, then the defendant, Mr. Stewart, has a right to offer evidence and testimony, but, once again, he is under no obligation to do that. And I'll tell you why in just a moment.

When all the evidence and testimony as been offered before you, the lawyers will come back before you and make their final arguments, their closing arguments they're sometimes called. And in those closing arguments, they're allowed to summarize the evidence that has been offered in this case and submit to you conclusions that they claim that you should draw from that evidence. Obviously,

conclusions which support their side of the argument in this case.

And after that has been done, then I will instruct you or charge you as to what the law is in this case. And then and only then will you be able to go back into your jury room and start discussing this case among yourselves.

Now, as I told you yesterday, it might seem logical that you hear somebody testify about something out here and you want to go back there and talk about it while it's still fresh in your mind, but I've told you you can't do it, and the reason that you can't do it is because once you start talking about the case among yourselves, you're going to start to make up your mind about the case, subconsciously, perhaps, but making up your mind about the case.

It could be that later in the trial you hear some evidence that different from that that you've started to talk about and started to draw a conclusion based on, but if you have already started to talk about the case, you're not likely to receive that later evidence with an open mind because you've already started to make up your mind based on what you've heard earlier.

You have to keep an open mind throughout the trial of this case, and that's the reason you're not allowed to talk about the case at any time during the trial. When

the trial over and when we put this case in your hands for your deliberation, you can talk about it for as long as you want to. You can take as much time as you want to talk about it then. But, please not until then.

For the same reason you're not allowed to talk with anybody else outside the courtroom or let anyone else talk with you about it, the same reason. You're bound by your oath to decide this case based on what you hear in this courtroom and from no other source. I doubt that anybody will try to talk to you about this case, but if they do, just tell them I've told you you can't talk about it with them. And I'm sure that will end the discussion, but if it does not, if it does not, then just separate yourselves from them as discreetly as you can. Find out who they are, please, and let us know when you get to court and we'll handle that matter for you.

Now, ladies and gentlemen, the opening statements that the lawyers will make and the closing statements that the lawyers will make and the questions that the lawyers will ask, none of those are evidence. Your oath is to well and truly try this case and render a true verdict according to evidence and the law.

Now, opening statements, closing statements and questions, they're all an important part of this process and we wouldn't be able to conduct a very orderly trial if

we didn't have those things, but they are not evidence.

The evidence does not come from the mouth of the lawyer. The evidence does not come from the mouth of the questioner, whoever it happens to be. The evidence is not the question. The evidence is the answer to the question. Because the answer comes from a person who is under oath sworn to tell truth.

Questions come from people who are trying to inquire about information, not under oath and asking about information. It is the answer or the witness who is being asked to give testimony what about he or she knows, not the question. So keep that in mind throughout this entire process. In other words, don't get so hung up on the question that you don't what the answer is.

Some of you have indicated or asked questions if you can take notes in this particular case. Frankly, I don't think you'll have a lot of trouble remembering what goes on in this and I ask you to rely on your memory. But if you get into the case and you feel like it would help you to take notes, then we will provide those things for you. But if you do take notes, let me tell you this. Be careful.

Make sure that you are not so busy writing down the question that you overlook the answer. That is the evidence and that's what your verdict must be based upon.

And the reason is really important, folks, that you understand the difference between what is evidence and not evidence is this. When it comes to evidence, you all are actually the judges. Those badges that you're wearing say juror, but when it comes to the matter of evidence, that badge should say judge. You're the judge of the evidence. You're the judge of the facts.

Now, I'm the judge of the law. I've got the relatively easy job. All I've got to do is to decide as a matter of law whether you can hear somebody tell you something from this witness stand or whether you can look at a photograph or some item of evidence, but once I decide that you hear the testimony or look at the evidence, from that point on, what you do with it is entirely up to you. You've got the right to believe it or not believe it. You've got the right to assign weight to it that you think it should bear on the issues that you have to decide.

Because your role in this case, ladies and gentlemen, is to decide the facts of the case, what happened or what didn't happen, the facts of the case. That's what you discern, determine.

And once you decide what the facts of the case are, you will apply the facts that you have found to the law that I will charge you, and those two things will come

together and will result in a verdict in this particular case.

Now, a few moments ago I told you that the defendant does not have to offer an opening statement, does not have to offer evidence or testimony if he chooses not to, and the reason for that, as I told you yesterday, Mr. Stewart has entered pleas of not guilty to these charges. When someone enters a plea of not guilty to a charge in a criminal case, that person is presumed to be not guilty. He is presumed to be innocent. You've heard that all your life. Innocent until proven guilty, that's what we're talking about here, innocent until proven guilty.

There's nothing in that phrase -- you all remember from your seventh grade civic studies, I hope, or some studies, innocent until proven guilty. There's nothing in there that says innocence has to be proven. It is guilt that has to be proven. Not just in this case, but in every cases of that sort brought in our courts.

So the burden then is not on the defendant to prove he is innocent. He does not have to take that stand and try to convince you that he did not do the things he is accused of doing. He does not have to bring a parade of witnesses in here to present to you to try to convince you that he is not guilty, to make you believe he is not guilty. He has no burden. The burden on the State in

this and every case to satisfy you and each of you of his guilt beyond a reasonable doubt.

When this trial is over, I'll tell you in greater detail what we mean by proof beyond a reasonable doubt. But for our purposes right now in this preliminary setting, let me tell you that proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

So after you have heard all the evidence and testimony in this case, if you are firmly convinced that the defendant is guilty of the crime charged, then the State has met its burden of proof and would be entitled to a verdict of guilty at your hands.

But after hearing all of the evidence and testimony in this case, if you find that there is a real possibility that he is not guilty of these charges, then the State has not met its burden of proof. In that particular case, the defendant would be entitled to a verdict at your hands. If you find that there is reasonable doubt as to his guilt, then he has not -- the State has not met its burden of proof. The defendant in that case would be entitled to a verdict of not guilty at your hands.

So you're going to be listening today and into tomorrow to the evidence and the testimony. Then after you've heard it all, you'll go back into that jury room

and start talking about it and deliberating this. And in your discussions, you will decide whether or not the State has met its burden of proof as I've expressed that to you and will explain to you greater, and you will express your opinion as to whether or not the State has met its burden of proof by writing a verdict that says we find the defendant guilty or we find the defendant not guilty according to your view of the evidence and the law.

Thank you, folks, for your attention to these remarks. Please now give your attention to the attorneys as they make their openings statements.

Mr. Miles.

MR. MILES: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING STATEMENT:

MR. MILES: Ladies and gentlemen, we're going to be dealing with some pretty heavy stuff today. I want to explain something to you real quick.

When I left the courthouse yesterday, for some reason, my front foot didn't quite make it and I slipped and twisted my ankle and kind of just bumped all the way down the stairs. So when you see me up here limping, it's not for dramatic effect or anything, I'm actually hurting on the entire left side of my body.

But back to what we're here for today, in the late

evening, early morning hours of June 16th, 2014, Alton Daniels' life was tragically taken from him when he was shot and killed in the driver's seat of his own vehicle. And he was shot and killed because this individual set him up to rob him. And when he didn't just hand the money over to him, Meleke Stewart pulls out his gun and Alton Daniels freaks. He tries to get out of the car. And he shot right through here. You saw the pictures yesterday. And he's killed.

And before I go any further, I want to tell you right now that some of the things we may talk about today may make some of you uncomfortable. And that's because the evidence will show that shortly after Alton Daniels meets Meleke Stewart on the date leading up to his death, the two exchange numbers and begin a conversation.

And that conversation consists of Alton Daniels is telling Meleke Stewart that he's willing to pay him money in exchange for a sexual act. And this was a part of Alton Daniels' life that is clear from the evidence he didn't want everyone knowing about. And listen, we all have our own little convictions, okay. I'm not talking about a criminal record.

I'm talking about those personal convictions about yourself that you don't want all your friends and family knowing about because maybe if they knew that one thing,

they may treat you different and they may look at you different, and you might not be afforded the same opportunity, same reason I didn't put my 7th grade math teacher on the job reference when I applied for this job because there's more to me than just a smart aleck 13-year-old. And there was more to Alton Daniels than just what happened and what he was looking for that night. But that's it.

No more about personal convictions. The only conviction we're concerned with today is convicting this man right here for the crimes that he committed that led to Alton Daniels' death.

So let's talk about those crimes. Now, you just heard the judge instruct you on some of the things and at the end of this case, he's going to instruct you on the law. And that's the only person that you need to listen to when it's concerning the law.

What I'd like to go over is some of the things and terminology can get a little bit confusing, so I want to better elaborate on some of those.

So the first crime that Meleke Stewart has been charged with is murder. Murder is the killing of another person with malice aforethought. The law defines malice as having hate in the heart, ill will. And aforethought goes to the time that that intent was formed.

Now, see malice can be expressed or it can be implied. Now, expressed malice is exactly that. It's expressed. Joe sees Bob. Joe tells Bob I hate you. I can't stand you. I don't want you to live anymore and pulls out a gun and shoots and kills him. That's expressed malice.

It's expressed by his actions and words. But what more commonly happens is that malice has to be implied from the surrounding circumstances, and one of those ways that malice is implied is when death results during the commission of certain felonies, violent felonies.

Because what the law states is that there's some felonies by the very nature and conduct involved in those actions are inherently dangerous and death is a reasonable and foreseeable consequence of those actions when you engage in them. And what the evidence is going to show is that Meleke Stewart set Alton Daniels up to rob him. And that when he gets in the car, he pulls -- Alton Daniels doesn't hand over the money, so he pulls out his gun.

All right. That's your second charge, attempted armed robbery. But when he pulled out his gun, he didn't get any money because Alton Daniels tried to take off and he shot and killed him.

Now, he's also been charged with possession of a weapon during a violent crime. The evidence will show

that when he went there, he brought that pistol for a reason, because if he didn't hand over the money, he had it as back up. But he didn't expect Alton Daniels to try run. Because what you'll see today is when he was found, his driver's door was wide, open one foot out. He almost made it, but Meleke Stewart didn't let him, so he was shot and killed.

You're going to hear things from both sides today. And they're two very good defense attorneys that I know and respect. And there's some things we will agree on and there's some things we won't. And that's your determination as the jury to use your common sense, your real life experience to determine who's up here telling the truth.

Ladies and gentlemen, I could go on and on and speak for another 30 minutes or so, I could do it. I'm two generations of preachers. But fortunately for you, I'm not the only person that you're going to have to hear from today.

You're going to get to hear from the witness who first saw Alton, detectives, investigators, police officers. You've already heard from the doctor. You're going to get to hear from an FBI agent. And when you're listening to these people, you know, think about this question.

What happened that night? What does the evidence say happened that night? And that's going to lead you to one verdict and that's a verdict of guilty on all charges.

THE COURT: Thank you, Mr. Miles.

Mr. Fox.

MR. FOX: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

OPENING STATEMENT:

MR. FOX: Ladies and gentlemen, again, my name is Eric Fox. It's my privilege today to be represent Meleke Stewart assisted by my coworker and cocounsel, Jonathan Hiller. It's 10:25. I promise you I'll be done by 10:30.

Mark Twain said it's a horrible death to be talked to death, and you're already subjected to enough lawyers and you're going to hear a lot of conversation from them, but it's very important. Murder is the most serious offense that we have. There is the most severe penalty taking another human being's life, obviously, always has been. Just the most awful thing and serious thing that you can be accused of.

The burden of proof in this case and all cases, as the judge told you, beyond a reasonable doubt. That is the highest burden of proof we have in law. If we were having civil court down the hall, people fighting about

car wrecks and contracts and things like that, in that court, you just kind of need to tilt the scales in your favor ever so slightly, preponderance of the evidence. In criminal court, you've got to tilt it a lot more. And the judge will explain exactly what that means, pretty much what it sounds like, beyond a reasonable doubt. That doesn't mean beyond all doubt. None of us, other than Mr. Stewart, in this courtroom were present on that evening back in June of 2014.

So you can't know 100 percent, but I will tell you that there are absolutely more than one interpretation of the events and that the conclusions that the State has drawn from the beginning -- they reached a conclusion from the beginning and then matched their interrogation -- and you're going to hear Mr. Stewart's statement to the police.

He talked to the police. He gave a long involved statement about what happened that night. And without that statement, we wouldn't be here. There is no evidence. There's obviously evidence that Mr. Daniels was killed. There is no doubt. That's why we had Dr. Proctor here yesterday. There's no question he was shot and the result of that. A bullet wound was the cause of his death. But nothing in that evidence connects Mr. Stewart. And without Mr. Stewart cooperating and telling the police

what happened, we wouldn't even be here today.

I'm not going to summarize and review all the evidence other than to say I disagree with the State. Obviously, we're here because we disagree with the State's version of events. It doesn't matter how strongly you believe in it, how forcefully you express it, that doesn't make it any more true.

There is no question that Mr. Daniels and Mr. Stewart were communicating about meeting up for a sexual act for payment. And there isn't any question that they did, in fact, meet up. What happened when they met up is where this dispute, where this disagreement is.

Mr. Stewart has nothing to prove to you. He cannot be required to do that. The State has the burden. I ask you to keep very -- and I know you will because that's why we selected you, keep a very open mind. You're going to hear a lot of testimony, and keep in mind what does this actually prove.

I think and the evidence will show that the police got a theory. They knew they had a dead body. They felt it must be murder. If it's murder, they need it to be robbery because, as the solicitor told you, killing in the commission of a felony, of an armed robbery can make it murder as opposed to something that might be accidental or a different degree of homicide. And so the police from

the very beginning decided it was murder, fit the facts in their minds and guided their interrogation of Mr. Stewart and their investigation of this incident towards murder to the exclusion of all else.

Your job is to decide whether or not it was justified. The police obviously it was murder. I believe it was not. And I believe the evidence that you will have from the witness stand will more than support our version of events. I want you to listen very carefully to Mr. Stewart's statement. It's fairly long.

You're going to hear it. It's more than an hour long, but it's very important that you listen very carefully to what's said, how it's said and how it's elicited. And I want you to think about the people involved, the officer compared to Mr. Stewart. And I'll talk a lot more about that at the end of the case.

My five minutes is up. I really appreciate your attendance here this week. Winston Churchill said there's three great duties when you're a citizen in democracy, serving your country in time of war, voting, and serving on a jury. It's that important. Thank you.

THE COURT: Thank you, Mr. Fox.

You can call your first witness.

MR. MILES: Your Honor, the State calls Cornelia Johnson.

MR. FOX: Your Honor, at this point, I would ask that witnesses be sequestered other than, obviously, Ms. Johnson and the lead investigator.

THE COURT: The sequestration will be reciprocal.

MR. FOX: Yes, sir.

THE COURT: That is all fact witnesses for the State and the defense will be required to be out of the courtroom during the testimony. I'll leave that up to each of you who know who your witnesses are by face and by name and make sure that they are out of the courtroom during the live testimony. Keep that in mind.

Your witness again, I'm sorry?

MR. MILES: It's Cornelia Johnson, Your Honor.

THE COURT: Okay.

Ms. Johnson, come forward, please, ma'am, to be sworn.

THE CLERK: Raise your right hand, place your left hand on the Bible.

(Pause.)

Raise your right hand.

CORNELIA JOHNSON, after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name and spell it for the Court. State your name and spell it for the court.

THE WITNESS: My name is Cornelia Johnson, C-O-R-N-E-L-I-A, Johnson, J-O-H-N-S-O-N.

DIRECT EXAMINATION:

BY MR. MILES:

Q Ms. Johnson, good morning.

A Good morning.

Q Do you live in Horry County?

A I do.

Q How long have you lived in Horry County?

A I've been living in Horry County for approximately 20 years.

Q And how old are you?

A I am 39 years of age.

Q Okay. And where do you currently work?

A I currently work at Days Inn Grand Strand as a housekeeping supervisor and I work at Subway.

Q Okay. And where did you work in June of 2014?

A In June of 2014, I worked at Days Inn Grand Strand, 9th Avenue, South.

Q Okay. And what were your responsibilities at that time at the motel?

A My responsibility as a housekeeping supervisor is to recruit my crew as far as cleaning.

Q Do you normally keep the same hours?

A I do.

Q And what are those hours?
A Those hours are mainly from 8:00 a.m. to 4:00 p.m., sometimes 3:00 p.m.
Q All right. Now, June 16th, 2014, while at Days Inn, did you have an occasion where you called the police?
A I sure did.
Q Do you recall about what time it was you called the police?
A It was approximately 8:30 a.m. or 9:00 a.m., somewhere in between.
Q Okay. So. Sometime early that morning?
A Sometime.
Q And why did you call police?
A I called the police because there was a deceased found in our parking lot.
Q Okay. Can you tell the jury what exactly you saw?
A What I saw, as I came to work that morning and I was confronted by one of our janitors. He let me know that there was something suspicious in our parking lot. There were a young man in the car hanging halfway out, and he appeared to be deceased.
Q Okay. And did you go out and see him?
A I did.
Q Did you see any blood on him?
A I did.

Q Where did you see blood?
A I saw blood in his upper shirt.
Q Okay. Now, when you got there, did you touch anything?
A I did not.
Q And do you remember -- did you get a good enough look -- did you see any bullet holes or anything like that in the car?
A I didn't notice any bullet holes in the car.
Q Do you remember any windows or anything being broken out?
A I didn't see any windows broken out in that vehicle.
Q And you got a good look at this individual?
A I did.
Q Did you know if at that time he was staying at your motel?
A I don't think he was a guest on our property.
Q Do you remember what he looked like as far as his age, race?
A He was a black young male. I'm going to assume he was maybe 32, somewhere in that area.
Q Okay. And if I showed you a picture, could you tell me if the picture was of what you saw that day?
A Sure.
MR. MILES: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

MR. HILLER: Your Honor, may I see what --

THE COURT: Let's get her to identify it first, then we'll let you look at it.

THE WITNESS: These pictures were the way I found the deceased in the car.

BY MR. MILES:

Q Okay. Is it a true and accurate depiction of what you saw that day?

A Yes.

THE COURT: Any objection, gentlemen?

MR. FOX: No, Your Honor.

THE COURT: Okay.

MR. MILES: I would like to have -- the State moves to have these marked as State's Exhibits 5, 6 and 7 and publish them to the jury, Your Honor, at your convenience.

THE COURT: 5, 6, and 7 are in evidence without objection.

(WHEREUPON, State's Exhibits Nos. 5-7 were marked for identification and received into evidence.)

MR. MILES: Your Honor, may I publish to the jury at this time?

THE COURT: Yes, you can.

BY MR. MILES:

Q One last thing, Ms. Johnson, did you tell the police

what you saw?
A I did.
Q Okay. And what you told the police is the same thing you're telling this jury?
A That's correct.
MR. MILES: No further questions from this witness, Your Honor.
THE COURT: Thank you. Cross-exam, Mr. Hiller.
MR. HILLER: Yes, Your Honor.

CROSS-EXAMINATION:

BY MR. HILLER:
Q Ms. Johnson, did you tell us what time you got to work that morning?
A I did. I got to work around, I want to say 8:30 a.m.
Q And you didn't hear any gunshots, did you?
A I didn't.
Q So whatever happened happened before you got to work?
A Yes.
Q And you don't know what happened, do you?
A I don't.
MR. HILLER: No further questions.
THE COURT: Thank you.
Ms. Johnson, you can step down. Thank you, ma'am, for coming.
MR. MILES: Your Honor, the State's next witness, we

call Officer Paul Sweeney.

THE COURT: Okay.

Officer Sweeney, come forward, be sworn.

PAUL SWEENEY, after being duly sworn, testified as follows:

THE CLERK: Please state your name and spell your last.

THE WITNESS: Paul Sweeney.

DIRECT EXAMINATION:

BY MR. MILES:

Q Officer Sweeney, where do you currently work?

A City of Myrtle Beach Police Department.

Q How long have you worked with the Myrtle Beach Police Department?

A Almost eight years.

Q Can you tell the jury what kind of training you have undergone to work at the Myrtle Beach Police Department?

A In a whole week preservice training at the police department and then 12 weeks at the South Carolina Criminal Justice Academy, and then after that more weeks road experience before going out on my own.

Q Okay. And what are your current responsibilities?

A I'm currently assigned to the street crimes unit, primarily working with narcotics.

Q Okay. What were your responsibilities in June

of 2014?
A I was assigned to day shift patrol, which I would answer routine calls for service.
Q Okay. Were you working on or around June 16th of 2014?
A Yes, I was.
Q And on that date, did you respond to an incident at the Days Inn motel?
A Yes.
Q Can you tell the jury what you saw when you arrived?
A When I arrived, I saw a vehicle parked on the side of the Days Inn hotel off 9th Avenue South and Yaupon Drive. When I was pulling up, I saw the driver's door of the vehicle open with a leg sticking out of it. At that time, I got out of my vehicle, approached that driver's side. I looked in and I saw the victim laying with the back of his head tilted backward and appeared to be deceased.
Q What did you do upon seeing the victim?
A I immediately called my supervisor, let them know. And, basically, from that point on, they handled everything from there.
Q So you did not do anything else to further assist in this investigation?
A No.
MR. MILES: No further questions, Your Honor.

THE COURT: Okay.

MR. MILES: Please answer any questions the defense may have.

THE COURT: Mr. Fox.

MR. FOX: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. FOX:

Q Mr. Sweeney, were you by yourself when you responded?

A Yes.

Q Did Officer Ammons arrive while you were still there?

A Yeah, he arrived probably 30 seconds, maybe less than that.

Q But you were the first one there and first one to approach the vehicle?

A Yes.

Q And just the one person inside?

A Yes.

Q One door opened? The driver's door, I'm sorry?

A I believe driver's door, yes.

Q Passenger door closed, the front?

A I cannot remember, but I believe it was closed, yes.

Q Would the photographs refresh your memory on that?

A Yes.

Q Do you recall looking at those? Do I need to get those for you to show you that photograph of the car?

Would that refresh your memory?
A It might a little bit, but I think that door was closed at that time.
Q That's fine. We'll come back to that in a moment. I want the jury to have all the time they need with that.
Now did you do any part or have any part of processing -- you went and looked in the car, saw Mr. Daniels laying in the front seat, front driver's seat, correct?
A Uh-huh.
Q Slumped over to the front passenger's side?
A Yes.
Q Would you say he was more on his back, on his side, face down, how was he?
A He was more kind of tilted backwards like this with his head stretched out.
Q So you could see his face?
A For the most part, yeah.
Q And did you observe anything about -- other than the fact that he was obviously -- I assume you saw blood?
A Yes.
Q Did you notice anything about his clothes?
A I noticed his buckle was undone and his zipper was down.
Q Were the pants pulled down at all or just undone?

A From what I remember, I believe just undone. Once I saw he was deceased, I backed up immediately because it was a crime scene.
Q Did you observe anything else or take -- you don't process crime scenes, correct?
A No.
Q They've got special officers that come and do that, correct?
A Yes.
Q Did observe anything, did you take a look around, see anything else in the vehicle that got your attention?
A Once I saw he had blood on his chest and appeared to be deceased, I backed up immediately and called my supervisor.
Q You may be able to tell from this. I'll show you what's been marked as State's Exhibit 5. That is what again?
A It's what I saw.
Q Tell the judge again, what is that?
A That's the vehicle with the victim's leg hanging out.
Q All right. And then after looking at that again, can you recall whether there were any doors open on that vehicle?
A I believe the passenger door was closed.
Q So that -- I'm sorry, I'm so much thinking about

that. I just didn't catch your response. When I asked you about if you observed anything else in the vehicle, obviously, you described Mr. Daniels and what you saw?

A Yes.

Q Was there anything else in there when you looked in that caught your attention?

A No. Like I said, once I saw he was deceased, I immediately backed up.

Q I understand.

MR. FOX: Thank you. No further questions.

THE COURT: Redirect, Mr. Miles?

MR. MILES: Nothing from the State, Your Honor. We ask this witness be released from his subpoena.

MR. FOX: Without objection.

THE COURT: Without objection, Officer Sweeney, you're released to go back to work. Thank you.

THE WITNESS: Thank you.

MR. MILES: Your Honor, the State calls next Bill Stair.

THE COURT: Mr. Stair, come forward, please, and be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

WILLIAM STAIR, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: William Stair, S-T-A-I-R.

DIRECT EXAMINATION:

BY MR. MILES:

Q What is your current occupation?

A Police officer for City of Myrtle Beach.

Q And what law enforcement agency were you employed with in 2014?

A Myrtle Beach Police Department.

Q And can you tell the jury and the Court about any and all law enforcement training you've received prior to and while at the Myrtle Beach Police Department?

A Prior to, I was certified as a field training officer and a school resource officer, been trained in various drug interdiction classes, traffic, radar, lidar, DataMaster room.

After crime scene, I took numerous classes for crime scene photography, death investigations, homicide investigations, fingerprint recognition. I'm also certified as one of the AFIS examiners for the department for fingerprints, as well as we have a FARO focus. It's a 3D scanner for crime scenes.

Q And just for clarification, what does AFIS stand for?

A It's the automated fingerprint identification system.

Q What were your duties in 2014 with the Myrtle Beach

Police Department?
A At that time, I was assigned to the crime scene unit.
Q How long had you been working with the police department at that time?
A At that time, it was I believe seven years.
Q Can you explain your duties specific to being a crime scene investigator?
A For crime scene, we were called out to any type of crime, so processing for burglaries, break-ins to cars, homicides. We would go to the scene, photograph, collect any evidence, run fingerprints, send anything else off to the State lab.
Q Okay. So how long did you specifically work as a crime scene investigator at that time?
A At that time, I was five years.
Q Okay. And did you have an occasion to assist on this case we're here on today?
A Yes, I did.
Q Can you tell the jury what you did to first assist in this investigation?
A I was originally called by detectives and officers to the scene. And at the beginning, I arrived at the location at the interaction of 9th Avenue South and Yaupon Drive and I began photographs of the area to include the street signs and the vehicle in the back parking lot of

break.

Officer Stair, you can step down during the break. Obviously, you cannot talk about your testimony with anybody while you're on the stand.

And then after those have been premarked, we'll give the court reporter and the staff a chance to take a brief break before we get back. Once we get started, we'll work until the lunch hour.

(WHEREUPON, State's Exhibits Nos. 22 - 35 were marked for identification only.)

(Whereupon, a short break was taken.)

THE COURT: Mr. Stair can resume the stand.

Resume the stand, please, sir. Mr. Stair, you're still under oath, of course.

Any objection to 8 through 35, gentlemen?

MR. FOX: No, Your Honor. We had them in discovery and had a chance to review them and we have no objection.

THE COURT: Thank you. Eight through 35 is in evidence without objection.

We can bring the jury in. Thank you.

(WHEREUPON, State's Exhibits Nos. 8 - 35 were admitted into evidence.)

(Whereupon, the jury entered the courtroom at 11:07 a.m.)

THE COURT: Thank you, folks. We're now ready to

resume the morning work with the continuing direct examination of Detective Stair by Mr. Miles.

Mr. Miles.

MR. MILES: Yes, Your Honor. Did you allow those to be admitted into evidence?

THE COURT: Eight through 35 are in evidence without objection.

MR. MILES: All right. Your Honor, we would like to publish 8 through 23 by Powerpoint.

THE COURT: Okay. Ladies and gentlemen, publish is a word that we use in court that means they're going to show you the pictures, okay. So that's nothing complicated about it. Thank goodness technology enables in courtrooms like this for you to see it in enlarged fashion all at one time other than having to shuffle paper around individually.

BY MR. MILES:

Q As we go through the pictures, I guess we can go -- what do you see right here? Is this what you saw when you first approached?

A Yes.

THE COURT: Mr. Miles, it would help if you would give us a number so the court reporter can pick up the number of what he's talking about, okay?

MR. MILES: Okay. Judge, that is No. 8?

THE COURT: Okay. Thank you.
BY MR. MILES:
Q Can you tell me what you see in this photo?
A On my arrival at the hotel, this was the victim's vehicle that was parked in the rear parking lot right adjacent to Yaupon Drive.
MR. MILES: All right. Next slide.
Q What is this a picture of?
A Passenger side of the same vehicle.
THE COURT: The number again, please?
MR. MILES: Nine, Your Honor.
THE COURT: Thank you. If you'll just keep up with that, that will make our record clear.
MR. MILES: My apologies.
THE COURT: That's okay.
MR. MILES: Next line, please.
BY MR. MILES:
Q Exhibit 10, what do you see right here?
A That would be the front view of victim's vehicle.
MR. MILES: All right. Next slide, please, showing Exhibit 11.
Q And is this just a closer-up shot of what you had in Exhibit 8?
A Yes, it is.
MR. MILES: All right. Go to Exhibit 11, please.

Q And what do you see right here in this photo?
A That was the interior of the driver's door showing a phone, keys and some cash.
MR. MILES: Okay. Next photo.
Q All right. Exhibit 12, is this just a close-up of the money and the phone and the keys?
A Yes.
Q What is this the photo of?
A That's a close-up of the same door of the car keys that were in the bottom pocket of the driver's door.
Q Driver's door?
A Yes.
MR. MILES: Okay. Next slide.
Q It's Exhibit 13, I believe. Can you show -- explain this picture right here to the jury?
A This was the view looking into the driver's door of the victim with his left leg out on the ground leaning back over the center console.
Q Okay. And what, if anything, do you notice about the floor mat on the driver's side?
A The floor mat has been pushed forward as he's getting out of the vehicle.
MR. MILES: Okay. Next slide.
Q It's 13.
THE COURT: I thought it was 13 a minute ago.

MR. MILES: Are we on 14? This is actually 16, Your Honor.

THE COURT: Okay. It's a close-up of the victim is No. 16.

BY MR. MILES:

Q And what do you notice about this photo?

A In this photo, you can see blood stains on the left armpit area.

MR. MILES: All right. Next shot, please.

Q And is this a close-up on State's Exhibit 19?

A Yes, it is.

Q I apologize. This is State's Exhibit 17.

MR. MILES: Next shot.

Q And what is this a photo of?

A That would be a close-up of the left armpit of the victim showing a hole, a bullet hole with blood around it.

Q This was 18.

MR. MILES: Next photo.

Q Can you tell this jury what this photo tells you?

A It's a picture of his hands in the position they were in when he was found.

MR. MILES: Okay. Next slide.

Q And what -- how is this -- what is this a view of?

A View from the front passenger side of the victim as he's leaned over the center console.

Q That's Exhibit No. 20.
MR. MILES: Next slide.
Q And what is this a photo of?
A It's a close-up of the last photograph showing his face, the victim's face.
Q And what is this right here?
A That was a spent casing that was located on the dashboard cluster.
MR. MILES: And next slide.
Q This is 23. Is this just close-up of that shell casing?
A Yes, it is. That concludes the PowerPoint.
Q Now, did you -- what, if any, evidence, did you collect from the scene?
A From the scene, I collected a Coke bottle, a beer can and a cigarette butt that were laying in the parking lot in the area of the car, as well as that spent casing in the last photograph.
Q Okay. And which of those, if at all, were of any significance to this case?
A The casing.
Q And what did you do with that shell casing?
A The casing, I collected it, brought it back to our evidence room. It was stored to be sent off to SLED.
Q And while you're investigating and taking pictures

and looking at the scene, did you find any kind of weapon?
A I found no weapons.
Q All right. Now, after you documented the scene, what did you do next?
A When we were done with the scene after I collected that casing, the vehicle was picked up by a tow truck and towed back to our lab with me following the vehicle all the way where it was then stored in our crime lab for further processing.
Q Did you further process that vehicle?
A Yes, I did.
Q Did you document what you saw when you processed the car?
A Yes, I did.
Q Did you document the evidence you collected from the car by taking pictures?
A Yes, sir.
Q I'm showing you what's been marked as State's Exhibits 24 through 34. Will you look through those real quick and tell me if you recognize those photos?
A Yes, I do.
Q Are those the photos that you took when you processed the vehicle at the lab?
A Yes, they are.
Q Are they a true and accurate depiction of the photos

as you saw it and took the pictures of that day?
A Yes.
MR. MILES: At this time, the State would move --
THE COURT: They're already in. Actually, through 35 are all in evidence.
MR. MILES: All right, Your Honor. I'd like to publish these to the jury at this time.
THE COURT: You can. Go ahead.
MR. DEBUSK: Can we get the screen again?
BY MR. MILES:
Q All right. I'm showing you what's been marked as State's Exhibit 24. Nope.
MR. DEBUSK: Yes.
MR. MILES: Is that 24?
MR. DEBUSK: Twenty-four.
MR. MILES: The Court's indulgence, Your Honor.
THE COURT: Okay.
MR. MILES: It's actually Exhibit 34, Your Honor.
THE COURT: Okay.
BY MR. MILES:
Q All right. Tell me what you see in this photo.
A That was a photograph I took of the driver's side interior of the vehicle.
Q Is there anything that you noticed in particular about that floor mat in this photo?

A The floor mat was actually in the vehicle upside down and pushed forward.

MR. MILES: All right. Next slide.

Q All right. What's in this photo?

A That would be the driver's seat with another spent casing.

Q Okay. When did you discover that spent casing?

A That was after the victim was removed by the coroner.

Q Okay. And so in order -- well, let's move to the next slide.

THE COURT: What was that one that showed the spent casing?

MR. MILES: That's 24, Your Honor.

THE COURT: Okay.

MR. MILES: This is 25 that shows a close-up of that spent shell casing.

THE COURT: Okay.

BY MR. MILES:

Q Again, is this a close-up photo of the shell casing you saw on that seat?

A Yes, it is.

MR. MILES: Next photo, George.

BY MR. MILES:

Q Now, this is State's Exhibit 26. Could you tell us about this photo? What is this a photo of?

A That was an interior shot of the front passenger's seat of the vehicle.

MR. MILES: All right. Next photo.

Q And can you tell us about this photo?

A Another interior photo of the rear passenger's seat behind the driver.

Q And this is Exhibit 27.

MR. MILES: Next.

Q It's Exhibit 28. Can you tell us about what this is a photo of?

A Interior photo of the rear passenger seat behind the front passenger.

Q Let's move on to Exhibit 29. And what is this a picture of?

A A picture of the glove box.

MR. MILES: All right. Next photo.

Q And this is State's Exhibit 30. Can you tell us what you see in this picture?

A That would be the contents of the trunk.

Q And I can't see everything that well. What is this book right over here?

A I believe that was a Bible.

Q Okay. And did you notice anything else that was in his trunk?

A I located under the silver pan was the victim's

wallet.
Q Okay.
MR. MILES: Let's go on to the next photo, George.
Exhibit 31.
Q And what is this right here?
A I just have to move the pan over, the victim's wallet and cash was laying there.
Q So he had his wallet and cash in the trunk?
A Yes.
MR. MILES: Next photo.
Q And is that a close-up of his wallet that he had in his trunk?
A Yes, it is.
MR. MILES: Next photo.
Q I'm showing you State's Exhibit 33. Is this the ID that you found at the scene?
A Yes, that was his ID in the car.
Q What do they list his height on here?
A 5'6".
Q All right. No further -- well, hold on. While you were processing the car, did you notice any bullet holes anywhere?
A No.
Q All right. Did you -- after you processed the vehicle and looked around, did you see any kind of weapon

in that car?
A No, I did not.
Q Find any kind of drugs in that car?
A No, sir.
Q After you looked -- okay. So did you do anything else to assist in this investigation?
A Yes.
Q And what was that?
A The following day, I also responded to Grand Strand Hospital, met with Dr. Proctor regarding the autopsy.
Q And did you have to go looking for any kind of evidence after this was all over?
A After that, I also responded to the city dump, trash dump where they brought a tow truck up -- or a trash truck was brought up from the Sea Mist Resort to look for a gun that was tossed into a trash can.
Q Did you ever look for that gun?
A Yes, I did.
Q And did you look through the trash bins for that gun?
A Yes, there was five or six of us that went through, I believe it was three tons of trash.
Q And you did not locate the gun?
A No.
Q And so what you just told the jury, does that conclude your involvement in this case?

A The only other thing I did in this case was also the soda bottles and the beer can. I processed them another day for any evidence. And that is all I've done in this case.

Q Did you find anything of any significance from those items?

A No, sir.

Q Why?

A The one bottle I found the victim's prints on, but it was located in the car.

Q Okay. What about the other two items?

A No viable prints were located on either one.

Q All right.

MR. MILES: Court's indulgence?

THE COURT: Yes, sir.

BY MR. MILES:

Q I want to talk about that spent shell casing that was in the seat. What, if any, indication does that give you that the spent shell casing was up under the seat when you processed the car and didn't see the bullet that was up under it?

A The casing laying on the seat, we did not see it at the scene. Once the victim was removed, we could see it laying there. Once it was returned to the lab for further processing, that's when we removed it.

Q So why do you think it was up underneath --

MR. FOX: Objection, Your Honor. That calls for a conclusion, speculation.

THE COURT: It would, but he's been qualified as a crime scene investigator. It might have some significance. It has to go beyond speculation, I'll give you that, to be relevant.

MR. FOX: Your Honor, I don't believe he's been qualified. They asked him about training, but he has not been qualified as an expert.

THE COURT: He has not been. That's right. If you want to -- before he renders an opinion in that regard, Mr. Miles, you're going to have to have him qualified so he can be...

MR. MILES: That's all right, Your Honor.

THE COURT: Okay.

MR. MILES: Let's see.

(Pause.)

BY MR. MILES:

Q How much money was in the door handle?

A I can refer to my report?

Q Certainly.

(Pause.)

A It was three 20-dollar bills and one one-dollar bill.

Q In the trunk, were you able to determine how much was

in the trunk, as well?
A I believe that would actually be in the tow report.
Q Did you fill out a tow sheet?
A Yes, I did.
Q Would you recognize that tow sheet if I showed you today?
A Yes.
Q I'm showing you what's been marked as State's Exhibit 35.
A Okay. This would be my tow report, as well as the original officer's report when it was towed to our crime lab.
Q Does it show an amount of money that was in the wallet in the trunk in that tow sheet?
A Yes, it does. It shows $115.
MR. MILES: Your Honor, I believe this has been entered into evidence. May I publish it to the jury?
THE COURT: It is. State's 35.
MR. MILES: Your Honor, I guess the State has no further questions for this witness.
Please answer any questions the defense may have.
THE COURT: Mr. Fox, you may cross-examine.
MR. FOX: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. FOX:
Q Instead of completing that note and getting off track, let's start with the mundane, it may be silly. You testified after the solicitor's question about the contents of the trunk when you took the vehicle back to the lab for processing, correct?
A Yes.
Q You took a photo of the trunk?
A Yes.
Q And one of the items in the trunk was a Bible?
A Yes.
Q If you had seen -- what in your mind would be significant at all about the Bible in the trunk?
A I do not know.
Q Okay. And if you thought it was an important piece of evidence, would you have, perhaps, taken an individual picture of that, like a shell casing?
A Yes.
Q Thank you. Now, let's go to the shell casing, particularly the one that was found in the front driver's seat. You state that it wasn't visible when Mr. Daniels was still in the car?
A That's correct.
Q He was, basically, slumped over, basically, covering the seat, correct?

A That's correct.
Q And had arms down. Can you say that that shell casing couldn't have been lodged, say, behind his shoulder and then fallen when he --
MR. MILES: Your Honor, under the same grounds, Judge.
THE COURT: Well, if he's opening the door, you can come back on redirect.
BY MR. MILES:
Q Let me rephrase this. Do you know where that shell casing was while Mr. Daniels was still in the car?
A Once he was removed from the car, it was laying on the seat underneath where he was.
Q So where it was prior to that, you don't know. Didn't observe it, didn't see it?
A Correct. I did not see it until he was moved.
Q Okay. Now, this was a Mazda 626; is that correct?
A I believe it was a Mazda 6.
Q Six, okay, so maybe not a compact car, but not a big luxury vehicle, as well?
A Yes.
Q Kind of a medium to small car, is that fair to say?
A Yes.
Q Not a lot of room inside. When you fire a bullet, a gun, shell casing gets ejected, correct?

A Correct.
Q If you're in an open space, where does it typically go, do you know?
A No.
Q Okay. Away from the gun, is that fair to say?
A Yes.
Q Okay. And do you know what would happen if you fired a gun in a tight enclosed space like this car in terms of where the shell casings would do?
A I would not know.
Q Okay. Now, you found no bullets, correct?
A That's correct.
Q Were you present at the autopsy? You testified a minute ago. Were you actually at the autopsy with Dr. Proctor?
A Yes, I was.
Q And no bullet was recovered from Mr. Daniels' body; is that correct?
A That's correct.
Q And I'm assuming that -- you testified you searched the vehicle itself. Did you search the surrounding area looking for a bullet?
A Yes, I did.
Q Didn't find any bullets of any kind, correct?
A No, sir.

Q Now, you also testified that you found a Coke bottle, cigarette butt, spent casings. Was there -- with any of the physical evidence you collected around the vehicle -- I'll get to inside the vehicle in a moment, but the Coke bottle, cigarette butt, et cetera, in any way, were you able to connect to Mr. Stewart?

A No.

Q Was there anything inside the vehicle -- we have these photographs. Were you able to process or find anything that, again, physically connected Mr. Stewart to being in that vehicle?

A No.

Q Now, we have the pictures of Mr. Daniels and let me -- if you'll indulge me just a moment. And what's been marked as State's 16, I'm going to show you that again. Could you please again tell the jury that is, what that depicts?

A That was a picture of the victim as he's laying over the console in the driver's seat.

Q Can you tell me what do you notice, if anything, about his -- let me get the right hand, his right hand?

A In this picture, his right hand is down near the floor and you can see what appears to be blood coming from.

Q There's a trail of blood coming from that right hand?

A Yes.
Q Did you observe or do your photographs show -- obviously, we have the bullet wound, and we have in State's 16 the blood coming from his right hand area. Did you observe any other wounds of any kind on Mr. Daniels, again, aside from the obvious bullet wound?
A Yes, I did.
Q What was the other one?
A The only other one I saw was on the right hand between two of the fingers webbing area, small cut.
Q Could that possibly be the blood we see in that picture I just showed you?
A It could be, yes.
Q Okay. Did you process anything for fingerprints?
A I processed the bottle, can and all four doors of the vehicle.
Q And you produced a report -- AFIS, you explained what that is, tell us again, please.
A The automated fingerprint identification system.
Q So tell me if I'm correct in describing this. If you get a fingerprint, you can submit it to that. That's basically a database of fingerprints already on file?
A Yes, it is.
Q Where is that? What is in that database?
A Our database -- what we run our prints through is the

criminal aspect of that database throughout the -- we run ours through the State of South Carolina.

Q So when you said criminal aspect, that would be people who have been convicted of crimes in the State of South Carolina?

A That database is everyone convicted of a crime or anyone in law enforcement.

Q Okay. And, in fact, in your report, you show you couldn't make any identification about Mr. Stewart because he had no criminal history and therefore he was not in AFIS; is that correct?

A I did not run the prints. I only ran one print. Another AFIS examiner ran the others.

Q Well, did you prepare an AFIS analysis report afterwards?

A For the print I lifted off one of the bottles. The ones from the car was actually run by another AFIS operator.

Q Did you ever see that result of consult with anything --

A Yes, I was told it received no matches.

Q So knowing what you know about AFIS and being told that there were no matches, would it be a fair conclusion that Mr. Stewart's fingerprints were not in that database?

A Yes, at that time when they were ran, there was no

match to his prints.
Q Okay. Now, you had the obvious -- again, Mr. Daniels was there. Did you collect -- you say you had blood. There was blood from his hand, right hand. There was blood on the seat beneath him. Did you find blood in any other area of car?
A I believe that was all the blood. I'm not sure. I probably have photos.
Q And I apologize if I missed this. Were you able to collect any of those samples, say, from the seat cushions and make any determinations whose blood it was?
A We did not swab the seats since the victim was on the seat where the blood was.
Q I understand. Did you -- what indication -- from what you observed and the physical evidence, what indication did you have of the number of people or who else may have been -- not identity so much, but, again, physical evidence of other persons that may have been in the car, specifically, at the time Mr. Daniels was shot?
A I would -- the only thing we had was the front passenger floor mat was pushed slightly.
Q Now, I have -- excuse me. I believe it's in evidence. You testified about the driver's floor mat?
A Yes.
Q And that's reflected in the picture. You wouldn't

have any way of knowing what that floor mat look like, say, the day before, would you?
A No.
Q Okay. Let me -- let me -- you took photographs --
MR. FOX: Beg the Court's indulgence, Your Honor. I'm not sure this one is in evidence yet. I want to --
THE COURT REPORTER: It is.
THE COURT: Everything through 35 is in evidence.
MR. FOX: Thank you. Thank you, Mr. Miles.
BY MR. FOX:
Q All right. This is State's 26. Tell us what that appears to be.
A This is the interior photograph I took of the front passenger seat.
Q Does it show the floor mat?
A Yes.
Q It's your testimony that that's askew?
A Slightly, yes, it was.
Q Again, do you have any -- this would have been in the -- you would have photographed the car in the condition you found it, correct?
A Yes.
Q I mean, you can't be moving things around. That's whole point, you document the condition as you find it?
A Yes.

Q You do the inventory on the seat. Again, you wouldn't know what that looked like before?
A That's correct.
Q But in your mind, that was slightly askew. And that's the State's 26.
Did you observe yourself through pictures of Mr. Daniels, could you tell or did you notice whether his belt was buckled, pants belt buckled?
A I would have to see the photographs again.
Q You don't recall?
A I can't recall that.
Q I understand. I'm not sure that -- let's see if you from the photograph. I'll ask as a prelude, did you notice anything about his zipper?
A I'd have to see the photograph.
Q I'll show you -- there's State's 15. Tell me if you can see anything from that?
A No.
Q And the other one I think that possibly would be State's 19?
A Thank you. I can't tell from the photograph there.
Q Okay. That's fine. Thank you. Now, in the inventory that you did of the vehicle the solicitor asked you about, you documented everything you found inside the car, correct?

A Yes, everything I collected is in my report.
Q And in the report, it indicates that the wallet with $115 was in the passenger area. Was it there or was it in the trunk?
A The wallet with $115 was in the trunk.
Q But in the passenger door -- I'm sorry, I said passenger, driver's door, $61, correct?
A That's correct.
Q Just cash loose in that door. There were also a couple cell phones?
A There were two cell phones.
Q Where was the black pouch?
A I believe that was -- I'd have to refer to my report. I believe it was under one of the seats.
Q That contained credit cards and so forth?
A If I can refer?
Q Of course.
A It was located under the driver's seat and it contained his -- the victim's debit card and medical card and some business cards.
Q And they asked you about -- the solicitor asked you about Mr. Daniels' ID?
A Yes.
Q All right. And his height?
A Yes.

Q Did that identification reflect his weight?
A North Carolina license only list the height.
Q But you were present for the autopsy, correct?
A Yes.
Q And you're aware that Dr. Proctor estimated Mr. Daniels weighed between 180 to 200 pounds?
A I do not know what he put in his report.
Q Okay.

MR. FOX: Thank you. No further questions.

THE COURT: Thank you.

Redirect, Mr. Miles.

MR. MILES: Yes, Your Honor.

REDIRECT EXAMINATION:

BY MR. MILES:

Q I believe it was 16 defense counsel pointed out when he was talking about the blood coming down from his hand. You stated that, you know, possibly that could be an injury to his arm, but isn't it also a possibility from the location of the wound and his body that the blood could have been dripping out of the gunshot wound and coming down his hand?
A Yes, it could.
Q And let's look at State's Exhibit 15. Is this a true and accurate depiction of the size he was?
A Yes, it is.

MR. MILES: No further questions, Your Honor.

THE COURT: Thank you.

Any followup on that?

MR. FOX: Just on that specific point.

RECROSS-EXAMINATION:

BY MR. FOX:

Q Is there any -- with the victim's right hand, is there any trail of blood running down his arm? I can show you 16 again.

A From what I can see on the one side in the u can see in the photograph I did not see any blood on that side.

Q Okay. The blood, in fact, is down by his hand, correct?

A Yes.

Q And you testified that you, in fact, observed an abrasion in the webbing between his fourth and fifth finger, kind of the pinky finger, correct?

A Yes.

MR. FOX: Thank you.

THE COURT: You have the last word, Mr. Miles. He's your witness.

MR. MILES: Your Honor, no further questions. We ask that he be released from his subpoena.

MR. FOX: No objection.

THE COURT: Detective, you can be released and

excused. Thank you, sir, for coming.

THE WITNESS: Thank you, Your Honor.

MR. DEBUSK: Your Honor, can we approach for scheduling?

THE COURT: Yes, sir.

(Whereupon, there was a bench conference.)

THE COURT: Call your next witness.

MR. DEBUSK: Thank you, Your Honor. State calls Sergeant Lester Cook.

THE COURT: Come forward, please, Mr. Cook, and be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

LESTER COOK, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Lester Cook, L-E-S-T-E-R, C-O-O-K.

(WHEREUPON, State's Exhibits Nos. 36 - 40 were marked for identification only.)

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Sergeant Cook, who is your employer?

A Myrtle Beach Police Department.

Q What are your duties at this time?

A Currently, I'm sergeant assigned to the property

crimes section of the investigations division.
Q As sergeant, you're a supervisor?
A Yes, sir.
Q How long have you been with Myrtle Beach?
A A little over 17-and-a-half years.
Q Is that your whole time with law enforcement?
A That's my whole time with law enforcement.
Q Did you work on the investigation and death of Alton Daniels?
A Yes, I did.
Q That was in June of 2014, correct?
A Yes, sir.
Q What was your role?
A I was asked to assist with a couple of cell phones that were found in the victim's vehicle.
Q Why did they ask you? Do you have skills in that area?
A Yes, years back, I had received some training in cell phone data, records analysis and also some training of cell phone forensics back before smart phones became prevalent. And I was a little bit familiar with the Cellebrite device that we use, so they asked me to assist with that.
Q What is the Cellebrite device?
A It's know as a UFED. It's called a Universal

Forensic Extraction Device. Basically, in layman's terms, it's just a device that we use to get data off a cell phone.

Q Does it create data or just take what's stored on the cell phone?

A It takes what's stored off the cell phone. It doesn't create data. It just extracts the data from the cell phone.

Q Did you receive some cell phones to analyze in this case?

A Yes, sir, I did.

Q How many?

A There were two.

Q Did either of them have recent -- at that time, June 2014, recent data on them?

A Yes, one of them did, the LG phone, I believe it was.

Q What about the other one?

A The other one was determined to have older data, like from back in May, so I didn't do anything further with that one.

Q State's 13. Do you recognize that?

A Yes, it looks like the LG phone.

Q Is that the one you analyzed?

A Yes.

Q What did you do with that phone?

A I obtained a search warrant to get the contents off the phone, and then I -- with the assistance of crime scene Officer McSpadden, we did hook up the Cellebrite device and get the information off the phone.

Q What information did you gain from that?

A I performed I believe what's called a logical extraction, which would have gotten like call records, text messages, contact information, that kind of thing.

Q Were you also able to view the text messages directly on the device?

A Yes, I was.

Q Were you able to find some numbers that were communicating -- that had last communications with that phone found with the victim?

A Yes, that's correct.

Q Were there texts, phone calls or both?

A Both.

Q Okay. Let me show you what's been marked as State's Exhibit 36, 37, 38, 39 and 40, and ask if you recognize these?

A Yes, sir, these are photos of the text messages on the victim's phone between the victim's phone and (803)899-2076.

MR. DEBUSK: Okay. Your Honor, we would offer State's 36 through 40 into evidence at this time?

MR. HILLER: No objection.

THE COURT: Without objection, 36 through 40 in evidence. Thank you.

(WHEREUPON, State's Exhibit Nos. 36 through 40 were admitted into evidence.)

BY MR. DEBUSK:

Q We'll get back to these in a moment. Let's talk about that phone number. Was there anything about these texts that made them evidentiary important?

A Yes, there was.

Q Did you try to do anything to try to determine whose number that was that sent those texts?

A Yes, we did.

Q What did you do?

A We identified the carrier on the phone and we contacted the -- which Verizon was the one providing service on that phone. We did contact Verizon. We did get information to include the subscriber details, via the Tracfone, which had the phone, but they used Verizon to provide the service. And we also got --

Q Just explain what that is. What is the difference between Tracfone and Verizon?

A Tracfone is a service provider. If you've seen on TV where you have like Straight Talk from Wal-Mart or something like that. They always usually piggyback off a

service provider's network, like Verizon, AT&T or T-Mobile or that sort of thing. The Tracfone did pretty much did same thing. The phone went through Tracfone, but Verizon provided the service for the phone.

Q Instead of buying a plan, you buy the minutes on a card?

A Prepaid phone, pretty much, yes.

Q So this turned out to be a prepaid phone?

A Yes.

Q Did you get subscriber details from, I think, you said the original number was Tracfone?

A Yes, we did get --

MR. HILLER: Your Honor, at this time, I respectfully object on the grounds previously raised before you.

THE COURT: Okay. Thank you.

MR. HILLER: And to the extent that I don't -- so I don't have to stand up again, I'd have a continuing objection to the line of questioning.

THE COURT: I'll allow the continuing objection to questions related concerning -- contained about the other phone to the extent that those things came within the objection in the pretrial motions that were made, will not require additional objections. So unless some other grounds exist that would cause you to object, Mr. Hiller.

MR. HILLER: Understood. Thank you, your Honor.

THE COURT: Go ahead.

BY MR. DEBUSK:

Q Did you obtain subscriber details for that track phone?

A Yes, sir, I did.

Q Who was it that engaged in that texting with the victim?

A The subscriber is identified as Meleke Stewart.

Q The defendant?

A Yes.

Q Let's talk about the texts. What we see in 36 through 40, is that as they appeared on the phone; is that correct?

A Yes, sir.

Q Some of them are blue and some of them are white. What's the difference between the blue and the white?

A The difference should be one's the phone communicating with this phone and those -- the other color is the text message being sent to the other party.

Q In fact, the blue ones say sent and the white ones say received, correct?

A That's correct.

Q So this one being the phone found with the victim, the blue ones would be the ones sent by the victim and the white ones would be ones received from that number?

A That's correct, sir.
Q And that number is the Tracfone belonging to the defendant?
A Yes, sir.
Q Okay.
MR. DEBUSK: Your Honor, we'd like to publish these by PowerPoint if it's okay?
THE COURT: Okay. Thank you.
BY MR. DEBUSK:
Q There we go. Well, it's a little bit discolored on this screen. It's a little bit different in the photographs. So the difference again, the ones that says sent, as in this first one says sent, June 15th, 2014. That is originating with the phone found with the victim, correct?
A Yes, sir.
Q And these are the phones that were stored on the memory of the victim's phone?
A Yes, sir.
Q Okay. What do these say? Why is it not in plain English? Are you aware of why?
A Yeah, it's common for people to use shorthand when they're texting someone for brevity purposes, I guess.
Q So this is sort of shorthand text?
A That's what it looked like to me.

Q Let the contents speak for themselves, but there appears to be an offer to make some money; is that correct?
A Yes, sir.
THE COURT: I take it that's No. 36?
MR. DEBUSK: That is one -- that is part of 36. Thirty-six has four images on it. This is one of the four images on 36.
THE COURT: Okay.
BY MR. DEBUSK:
Q Now, this text that's a little slightly different color, it says received, that was the one that came from (803)899-2076, right?
A Yes, sir.
Q And appears to be asking who is this, correct?
A Yes, sir.
Q And the reply would be the boy in the black car?
A Yes, sir.
MR. DEBUSK: Next one, please.
Q Again, more greetings on the shorthand text. What's up?
MR. DEBUSK: Next one, please.
Q And here we have an initial offer of $50, correct, for whatever, unspecified?
A Yes.

MR. DEBUSK: Next one. And then more back and forth, what's up?
A Yes, sir.
Q Keep it to yourself, don't tell; is that correct?
A Yes, sir, that's correct.
Q And all of these were sent on June 15th, 2014, right?
A June 15th.
Q June 15th, 2014. While we're here, let me ask you, did you ultimately obtain more records for this phone number?
A Yes, sir, I did ultimately get a search warrant for these phone records, the regulation of this phone.
Q How do you get phone records, a search warrant?
A We submit a search warrant to the provider and they submit -- they provide the records to us.
Q How long does it take to turn around?
A Typically, days, weeks, sometimes months.
Q How long did it take in this case?
A It took about four-and-a-half to five days.
Q Now, you also had a search warrant for this phone, right?
A Yes, this phone right here, yes, we did.
Q All right.
THE COURT: When you say this phone, you got a search warrant for the other phone and search warrant for this

phone, could you be more specific?

MR. DEBUSK: Yes, I'll straighten that out.

BY MR. DEBUSK:

Q You got a search warrant for the phone found with the victim, which is the phone shown on search warrant, right?

A Yes, sir.

Q But you were able to execute that one right away and get the data, correct?

A That's correct.

Q So you didn't have to rely on the turn around from the phone company?

A No, we had possession of the phone.

Q The records for that phone number that called this phone, the (803)899-2076, that's the one you had to wait?

A Yes, sir.

Q And that was the phone belonging to the defendant?

A Yes, sir.

Q But on the day you first processed this phone, you had these texts?

A Yes.

Q When you got the letters ultimately later, did you find out the time the texts were sent?

A Yes.

Q We'll handle that with another witness. At this time, you had these texts and you knew someone was making

these negotiations.

MR. DEBUSK: Next one, please.

Q More back and forth and the first -- that message was the first suggestion of maybe some sort of sexual suggestion?

A Yes, sir.

MR. DEBUSK: Next one.

Q And then a responding showing some interest, correct?

A Yes.

Q And another offer of money?

A Correct.

Q Forty-five dollars. And the response is apparently misspelled, that ain't enough. For 300, I'll do it?

A Correct.

Q 300, I'll do that particular act. I guess I have to ask this of somebody, so I'll ask it of you. When it says I will go down, what does that suggest? Does that suggest oral sex?

A I'm thinking oral sex or something similar.

MR. DEBUSK: Next, please.

Q And then more negotiations as to money. He says, I can do 355?

A Yes, sir.

Q Won't take me long. 10 minutes. And then another counteroffer?

A Yes.
Q And then the counteroffer goes down to 75.
MR. DEBUSK: Next please.
Q Then that counteroffer went down a little bit, 70, next offer. And then some talk about how to meet up. How can you get away from your people. Is that what it appears to be?
A Yes.
MR. DEBUSK: Next one, please.
Q So this is the victim's phone sending 75 as the final offer?
A Yes.
Q So what are you going do?
MR. DEBUSK: Next one, please.
Q And then a little more negotiations, might as well say eight?
A Yes.
MR. DEBUSK: Next one, please.
Q And then a little more negotiations. So if you want to meet up, let me see.
MR. DEBUSK: Next one, please.
Q What are you going do? Yes, give me a minute. Again, after that, I've sent that message before. It was just to say yes.
MR. DEBUSK: Next one, please.

Q Okay. This is it. Apparently, they're still talking about meeting up and how they can meet up?
A Yes.
Q Is that the next one?
A There's one.
Q And then we have some more messages about meeting up and about the money?
A Correct.
Q After these text messages ended, did you ultimately determine that some phone calls were made?
A Yes, I believe at about 1:02 in the morning there was a phone call between these two numbers.
Q Okay.
MR. DEBUSK: Your Honor, may I ask the victim -- ask the witness to approach the computer so he can authenticate something before it's published?
THE COURT: What's on your screen you mean?
MR. DEBUSK: Yes, Your Honor.
THE COURT: All right. Mr. Cook, if you'll step down, look at whatever he has on the screen, make sure it can be authenticated before he offers it.
MR. DEBUSK: Thank you. I apologize, Your Honor. I failed to print that particularly one out.
THE COURT: It's okay.

BY MR. DEBUSK:

Q Now, you just saw on the screen as you approached the computer a list of phone calls. Is that a fair and accurate representation of the actual phone calls between this phone, the phone found with the victim, and the number associated with the defendant, Meleke Stewart?

A Yes, sir, it should be.

MR. DEBUSK: Your Honor, may I publish that to the jury?

THE COURT: So it's a list of calls from the victim's phone, is that what you're saying?

MR. DEBUSK: To and from.

THE COURT: Yes, okay.

Any objection on that?

MR. HILLER: No, Your Honor. Those are the victim's phone records. No, sir, no objection to the victim's phone records.

THE COURT: Okay. Thank you.

So that this record will be preserved, Mr. DeBusk, I'm telling you to make a copy of that screen shotand it will be State's 41.

MR. DEBUSK: I will do so, Your Honor, and I will bring it after the lunch break and enter it into evidence.

(WHEREUPON, State's Exhibit No. 41 was marked for identification only.)

BY MR. DEBUSK:
Q Now, these are the two phone numbers, correct?
A Yes, sir.
Q You had -- the phone that was found with the victim, did you ultimately determine that to be the phone number for that phone?
A Yes.
Q And that is the same phone shown in 36 before you, correct?
A Yes, sir.
Q And (803) 899-2076 was the number you associated with the defendant and was sending texts to this phone?
A That's correct.
Q Okay. Thank you. So you have a number of calls from the victim to the defendant around 12:41. In fact, the last one was actually a text, correct, the one with red next to it?
A Yes.
Q These were short calls. Did they go through? Could you tell if they went through?
A I'll have to look. I don't know if those are successful or not. We know for sure that the last call displayed there was -- the duration indicates it was a successful call.
Q Four minutes, correct?

A Yes, sir.
Q So a number of calls around 12:40, 12:45, 12:50 and a long call at 1:02 a.m.?
A Yes, sir.
Q Was there any more activity on the victim's phone after that?
A After that, there was a call coming in inbound to the victim's phone at about 1:17 in the morning, if I got the time correct. It had zero seconds in duration, which indicated to me the call was not successful, didn't go through.
Q Were there any outgoing calls or texts after that 1:02 call?
A I didn't see any outbound traffic after that.
Q And the phone was found with the victim where he lay dead, correct?
A Yes, sir.
Q Thank you.
MR. DEBUSK: Put the screen back up.
Your Honor, for the record, that will be Exhibit 41?
THE COURT: That's correct. That's my understanding of next exhibit.
THE COURT REPORTER: Yes.
(WHEREUPON, State's Exhibit No. 41 was admitted into evidence.)

BY MR. DEBUSK:
Q And once again, Detective Cook -- or Sergeant Cook, you obtained more complete records for the phones to get a search warrant, correct?
A Yes, sir.
Q It just took some time to get those records?
A That's correct.
Q Did you provide the information you got about the ownership of the phone and the calls made to the detectives in the investigating the case?
A I'm sorry, what was that again?
Q Did you provide that information to the detectives investigating the case?
A Yes, sir, I did.
Q When you received the records, did you provide that, as well?
A Yes, sir.
Q Was that used in furtherance of the investigation?
A Yes, sir.
Q And you obtained that from Verizon, correct?
A Yes, the call records, they came from Verizon.
Q And on what will be Exhibit 41, the timeline of the phone calls, you have the duration information for those phone calls, it just wasn't on there?
A Yes, that was on the -- when we got the information

off the phone, it was on that.
Q But for the last one, which was four minutes long?
A You say the last one, you're talking the last one with Stewart, not the last one coming into the phone?
Q 1:02 a.m.?
A Yes.
MR. DEBUSK: Thank you. Please answer any questions the defense may have.
THE COURT: Do you want to approach for scheduling here?
(Whereupon, a bench conference was held.)
THE COURT: We were just whispering how long it would take. Didn't want to intrude in your lunch hour. That's all.
You can cross-examine, Mr. Hiller.
MR. HILLER: Thank you, Your Honor. May it please the Court.
THE COURT: Yes, sir.

CROSS-EXAMINATION:

BY MR. HILLER:
Q Is it sergeant? Make sure I have it correct?
A Yes, sir, that's correct.
Q Thank you, Sergeant Cook. How long -- you testified you received -- you actually requested and received two search warrants to start your involvement in this case,

correct?
A It was one search warrant for the victim's phone, the phones that were found in the car.
Q Is that one -- a search warrant for each?
A I believe it was one search warrant for both phones.
Q Okay. Got you. Thank you. And with that search warrant, you ran them through Cellebrite, which you told us is extraction software or extraction --
A Device, yes, sir.
Q At what point in the -- how long did that take? How long does it take a Cellebrite to extract the data?
A It depends on the phone and the amount of data on the phone. I'd have to go back and look for certain, but I think this search warrant was stamped 1:07 p.m. and I think the report from Cellebrite was around two something in the afternoon, give or take, when we got that report generated and then we uploaded it to take a look at it.
Q Was that phone locked? How did you get around -- or was it an unlocked phone?
A I'm not sure if it was locked or unlocked. I don't remember for sure. Sometimes when phones are locked, it does have the capability to bypass the security protocols that lock the phone.
Q Tell me again, when did you -- exactly when did you have the search warrant in hand and started the search of

that phone, the LG?
A It would have been some time after the search warrant was stamped because the search warrant would have been stamped by the clerk of court and then I would have had to drive back to the office and the lab where the phone was located at and I'd have to begin the process of getting the data off the phone. I couldn't give you an exact time. I just don't remember.
Q Sure. You said it was early afternoon?
A Yes. On the Cellebrite report, if you go in the properties, it will tell you the time the report was generated.
Q You don't have that with you right now, do you?
A No, sir, I remember it being some time around two in the afternoon, but I'd have to look at the file to confirm that.
Q Did you -- tell me -- those are actual screen shots that y'all took of those phones, right? Not photographs of the phone as it sits, but actual screen shot?
A These are actual photographs -- the screen was brought up on the phone, powered up, the phone was powered up and went to the text messages and then photographs were taken of those text messages as you would see them on the phone.
Q What time is on that display?

A The time is going to be the time that the phone was on when we were taking the photographs.
Q What time is that?
A That's 1:38 p.m.
Q 1:38. So it's fair to say you were searching that phone pursuant to warrant at 1:38 p.m.?
A No, these photos were taken a while back in preparation for the trial. They're not taken the day the search warrant was executed.
Q Okay. So those are not real time photographs taken?
A Yes, this time is not reflective of the time of the day.
Q We're not looking at photographs taken on the 16th of June is what you're telling me?
A Yes, sir, that's correct.
Q You testified in this case you got results back from Verizon pursuant to the search warrant for the victim's phone four to five days later?
A Yes.
Q Okay. Who is -- the solicitor mentioned that you were relaying the information you received to detectives, correct?
A Yes, I would have passed this information on to other's involved in the investigation.
Q So you were kind of working underneath the lead

investigator?
A Yeah, I believe Detective Kitelinger was the lead investigator for this case.
Q So you gave Detective Kitelinger a report from Cellebrite on this phone?
A Well, we would usually just summarize some of the findings that we found out that may be relevant to the investigation. We usually have meetings involving our chain of command and other detectives involved in the investigation. We would share that information so they, in turn, can use it.
Q I understand. Thank you. Were you given further instructions after you kind of reported back at that juncture?
A At which point?
Q When you gave the lead detective, Kitelinger, as you say it was, when you gave him the information about Cellebrite and what you found on the victim's phone, this conversation we've seen, did you given a second job or did you just kind of manage the cell phone stuff without direction from the lead investigator?
A Well, we wanted to follow up on that phone number because based on we saw in these text messages, that would probably have been the last person we had contact with.
At this point in time, we didn't know who they were.

Whether or not they were an offender, whether or not they were a victim or whether or not they had some other part to play. So, obviously, wanted to try to identify who that person was and go from there.

Q How did you actually go about doing that?

A Based on the circumstances, we contacted -- I contacted Verizon and requested an emergency disclosure request. We got the record back, the call records and the subscriber name. The subscriber name came from Tracfone and Verizon referred me to their law enforcement assistance line where I contacted them and they provided me the subscriber details.

Q How long did it take you to get those records from Verizon?

A Maybe an hour-and-a-half, maybe an hour, give or take. I don't remember the exact amount of time.

Q Were they transmitted via fax or email? How did you get them?

A The subscriber information I believe was given to me over the phone by Tracfone. And I think like the call records, they were provided, I believe via email.

Q So you're -- the emergency disclosure request form, do you have a stack of those or how did you get that?

A Usually, the way Verizon operates in those situations, when you call them up and identify the

situation that you have that qualifies for emergency disclosure, they'll take down the target number, they'll let you know the status of the phone in the network, in other words, whether or not it's still active on the network. And then they'll send us a form that we complete and then fax back to them.

Q Again, they e-mailed you back their response to that?

A Yeah, I'm pretty sure they emailed me -- usually, they send an encrypted email when they send the records to us.

Q Okay. Thank you. So your exigent circumstances were, basically, you didn't know who this person was?

A Yeah, for all we knew, there could have been another victim out there that needed assistance, medical or otherwise, that needed to act upon. So yeah, we were concerned about that and wanted to get that information as quickly as possible.

Q And when you actually received information, what did you do to ensure the safety and welfare of that previously unknown person?

A Once that information was obtained on the subscriber, I believe one of other officers, it may have been Lieutenant -- at the time, Lieutenant Prock, she's now chief, I'm not sure which one. But I think they made contact with the Chester County Sheriff's Office and they

were able to follow up on the person the phone was registered to, the defendant.

Q And who again did that, I'm sorry?

A I want to say it was Chief Prock, at the time, Lieutenant Prock, she was lieutenant of the violent crimes section at the time. But I'd have to refer to the reports in the case file to be a hundred percent certain that's who did it. But somebody contacted Chester County to request their assistance in trying to determine the location of Meleke Stewart and what his status was.

Q Okay. You don't -- the owner of the phone, of course, not necessarily the user of the phone, right?

A Can that be -- yes, that can be possible.

Q So we don't know exactly who was texting and sending and receiving texts from what was then an unknown phone number?

A At that point in time, we didn't know for certain who was using that phone. We just had information indicating that Meleke Stewart was the subscriber of that phone.

Q We still don't know for certain who was using that phone?

A I do believe we know that now.

Q Just one moment.

(Pause.)

BY MR. HILLER:

Q So the exigent circumstances, again, that was an unknown person, might be the perpetrator, might be a victim in need of assistance?

A Yes, we didn't know at the time what the status was. In particular, the concern is, is this another victim we have out there. We don't know. We just didn't know, so we felt obligated to do what we needed to reasonably do to try to alleviate that concern.

Q And do you know what forensic evidence collected from the crime scene was relied upon to even theorize that there may be another victim?

A Well, we had the victim, obviously, shot, deceased in the driver's side of the car. It was also reported to me that there was a floor mat on the passenger's side of the car that had been shifted up and towards the center console. And for me, that kind of indicated maybe someone got out of car in a hurry.

Q Yeah, maybe the perpetrator?

A Or another victim being extracted from the vehicle. We just didn't know at that point. We didn't have enough information to make a determination either way.

Q Let me make sure I have a good clear picture of that kicked up floor mat. Looks like it's featured in State's 26. That floor mat?

A That, I didn't know. I didn't see the floor mat. I was just relying on what was told to me.
Q Okay. So I'm not going ask you to speculate here, but, really, any crime scene could have a victim in need of assistance in theory. You weren't there. Nobody saw what happened in that car that night, correct?
A No, I was not there.
Q And that -- I'm trying to envision a situation, maybe you can answer this for me. What type of situation could you definitively say we don't a victim in need of assistance in this case?
A Well, in this case, we knew we had the text messages indicating there was some sort of meet, including the phone call at 1:02 in the morning. At 1:17 in the morning, this phone is getting an incoming call and he's not answering it. So for me, I was able to infer in my mind that something happened between 1:02 and 1:17 when this guy with this phone or whoever had this phone was supposed to meet up with him. He's no longer present. And when we contacted Verizon with the exigent circumstances, we did learn that the phone was no longer on the network at 1:30 in the morning. There could have been for a number of reasons, of course, but the concern was there this could be another person that we needed follow up on.

Q Were there other texts that were on the victim's phone sent around that time?
A There may have been incoming texts after that. I don't know. I just know at 1:17 in the morning, he had an incoming call and he didn't answer it.
Q Did you track down any other records -- any other phone numbers that were on the victim's phone besides the one that we've already heard about?
A No, I did not follow up on any other number to this number.
Q Okay. But do you recall from your review of that log that there were others that you could have followed up on?
A No. Everything pointed to the last person having contact with the victim was this phone, so I felt that was the logical course of action to look into this number and then once -- whether that panned out or not, then backtracking and going from there.

MR. HILLER: Beg the Court's indulgence, Your Honor.

(Pause.)

BY MR. HILLER:
Q I'm definitely not trying to belabor the issue, but certainly an incoming -- you knew what the victim's last call or his last communications, right, were to this number?
A Yes. (803)899-2076.

Q Well, that certainly doesn't mean that was the last communication he had with his phone. I mean, he could have answered someone else's call, right?
A I didn't see other calls answered after that. The last successful call I saw was with this number.
Q Or he could have chosen not to answer. Maybe it's mom, he doesn't want mom to know. He's on the DL, the down low. Maybe he didn't intentionally answer his phone, correct?
A In and of itself, that could have been a reason, but when you look at the totality of the circumstances, I had reason to believe there was a reason why and that was probably because he was no longer with us. That's what I thought when I saw all this information knowing what I knew about the case at that point in time.
Q Because that number you didn't know -- you got your exigent circumstances to circumvent getting a warrant, correct?
A Well, I didn't do it to circumvent getting a warrant. I did what I thought was reasonable and necessary knowing that we didn't know who this person was at that point in time knowing, knowing they probably had contact with them and we didn't know their status. We felt it was prudent to try to figure that out. And we did follow up with the search warrant after the fact.

Q Right. And you could have -- you could have, correct. I understand. Just one more question.

When you were doing all this, did you know -- were you using these records to try to establish the time of death or did you have any independent knowledge about the time of death?

A No, I just know that a victim was shot and deceased and when looking through these records, knew he had to meet up with this gentleman or whoever had this phone, excuse me. And I know that between 1:02 and then the last incoming call to his phone, he didn't answer it.

Q Okay. Thank you.

THE COURT: Would you clarify one thing before we leave this point, Mr. Cook?

THE WITNESS: Yes, sir.

THE COURT: The 1:17 call that was not answered, is that what you're saying?

THE WITNESS: Yes, sir, it registered --

THE COURT: Okay. Okay. Somebody made a call at 1:17 that was not answered. Was that call at 1:17 to the victim or from the victim to somebody else?

THE WITNESS: It was a call to the victim from somebody else.

THE COURT: Okay. And so the victim did not answer the call at 1:17, is that what you're saying?

THE WITNESS: Yes, sir.

THE COURT: And before we leave this any further, Mr. Hiller might be following up on this point, would you explain to the jury what an emergency disclosure request is?

THE WITNESS: It's also known as exigent circumstances. If you have a situation that may be a potential threat to life or harm to others, you can get a request from the phone company for information immediately versus having to wait for it to come back.

THE COURT: Mr. Hiller, I didn't mean to jump in front of your cross-examination, but I wanted to give you a chance to follow up on any of those points I raised.

MR. HILLER: Thank you, Your Honor.

BY MR. HILLER:

Q And on that emergency disclosure -- situation disclosure form, the -- is that a -- so the idea is if there's a -- the threat of physical injury, death, you can get the records under like exigent circumstances or emergency situation type theory?

A If there's a potential for threat to life.

Q So the presumption being you don't have an emergency, those records are off limits?

A I wouldn't call them off limits, but we would have to go through the legal process versus calling them up and

getting the information right then and there.
Q Right. But going through the process?
A Right.
Q So this is the way to not go through process, the emergency disclosure form?
A That's the way to do it if we feel there's a potential risk to life.
Q And that's the only reason -- that's the only way you can do it? I mean, that's the only exception to the rule that they're off limits except for process or emergency situation?
A Yes, I see what you're saying.
Q All right. Thank you.
MR. HILLER: At this time, I believe I have no further request questions Sergeant Cook.
THE COURT: Thank you.
Redirect, Mr. DeBusk?
MR. DEBUSK: Thank you, Your Honor.

REDIRECT EXAMINATION:

BY MR. DEBUSK:
Q Mr. Hiller was asking about Detective Kitelinger. That would be Will Kitelinger?
A Yes, sir.
Q Is he still with the Myrtle Beach Police Department?
A No, sir, he's not.

Q Is he retired?
A He's medically retired.
Q To your knowledge, is he available to testify?
A I don't believe he is.
Q And we may have covered this already, I think we have, but how long would it take to get a search warrant response back from Verizon?
A Usually, it's days, weeks, sometimes in sending off for cell phone records, it's taken months.
Q In this particular case, you actually did it. You went and got a search warrant, didn't you?
A Yes, we did.
Q How long did it take?
A About four-and-a-half to five days, give or take, how long it took back to get the records from the point we sent the search warrant.
Q And if this unknown person who had been sending these texts to the dead victim had, in fact, been in danger, would it have been reasonable to leave him hanging for five days?
A No, sir, I do believe so.
Q When did the phone actually go off the network?
A You're referring to the 899 --
Q Yes.
A According to Verizon, it was 1:31 in the morning.

Q That was how long after the last phone call, that four-minute phone call?
A That's about what, roughly 23 minutes, if I'm doing my math right.
Q What does it mean go off network?
A It could be a number of things. The phone could be turned off, it could be destroyed or -- it's not connecting to the towers.
Q In a murder case like this when you don't know about the scene, there is likely to be danger to others, isn't there?
A Yes, sir.
Q And that was your basis for requesting records on an emergency basis?
A Yes, sir, that's correct.
Q And you also went on to request a search warrant to get these records, correct?
A Yes, sir, that's correct.
Q And this number, the number that was on all these texts, specifically (803)899-2076, that was last number that had a connected call with the victim, correct?
A Yes, sir.
Q Before the phone went off-line, before that call that was not answered?
A Yes, sir, that's correct.

Q That call was not answered, but someone calling the victim's phone?
A Yes, sir.
Q The victim did not pick up?
A That's correct.
MR. DEBUSK: Thank you. No further questions.
THE COURT: Any followup, Mr. Hiller?
MR. HILLER: Just very briefly, Your Honor.
THE COURT: Okay. Y'all have divided the cross-examination now?
MR. HILLER: We are at this particular point, Your Honor, if that's okay.
THE COURT: You can do it.
MR. HILLER: That's okay.

RECROSS-EXAMINATION:

BY MR. HILLER:
Q You testified you were consulting -- I'm referring to the last question, but you're consulting during this whole process with Detective Kitelinger, correct?
A I would have been speaking with others in the investigation. I can't say specifically at this point this many years back if it was him or someone else.
Q And they had a theory about what they saw when they got these text messages clearly reflecting there were, at least, negotiations about meeting up for a sexual act,

correct?
A Yes.
Q And obviously, that got everybody's attention, correct?
A Yes.
Q And, in fact, I'm not saying you, but somebody in law enforcement, collective law enforcement had a theory based on that which was this guy is the perpetrator, the other end, obviously, Mr. Daniels is the victim, but whoever's on the other end of those text messages, that's our prime suspect? That's what we have going on, right?
A That's one of the potential scenarios possible at that point in time.
Q Right. So what you were looking at was we need these records now because we've got a suspect? That was the prime motivation. It wasn't -- I don't deny or doubt that there was some concern about a possible victim. You've got no evidence there was anybody else involved at all from phone calls, from physical evidence on the scene, nothing other than it could be. Nothing that supported the idea that there was somebody else involved other than the person communicating with Mr. Daniels in those text messages?
A We didn't know at the time if the person with this phone was the perpetrator or not.

Q Right. But you did suspect the person was the perpetrator? He was suspect number one, is that fair to say?

A We can make assumptions based off that.

Q Right, and you did. I'm saying you, I'm referring collectively. Not you personally, I recognize this was a collective effort.

Now, those other phone numbers, there were other phone numbers during the evening, other calls, other communications between Mr. Daniels and some other phone numbers besides that number, correct, the -- sorry, the (803)899-2076. There were other numbers and communications also with Mr. Daniels, correct?

A Yes, I believe you're correct.

Q Okay. Did you make any effort to determine who those people were?

A No.

Q How can you possibly say or why would you that they might not be a person who, perhaps, met up and did the deed? Why wouldn't you explore those individuals just to find out who they are?

A Well, like I said earlier, this was the person he was last in contact with. This was the person he was supposed to meet up with and the last known successful phone call he had with. And to me, it was reasonable to look at that

number and see if this person was someone we needed to deal with or not and then backtrack from there.

Q No question, but it's also reasonable -- what you don't know is whether, in fact, they did meet. At that time, at the time that you were looking through these records, not now, not what we know now, at the time, you had no way of knowing if the person with that 899 phone number, the 2076 phone number, if that person ever actually met up with Alton Daniels. I understand why you would be curious. I understand communication, but you had no way of knowing at that moment whether they, in fact, ever met?

A I couldn't say for certain, I could just base it on what I've seen with these records.

Q And then you had communication -- do you recall how many other different phones number were -- let's say from about the time these text messages start, so 8:00, 9 o'clock the previous evening until 1:30 on the morning of June 16th. So that four-to-five-hour period, do you recall how many other numbers were in communication with --

A Not without looking at the records, I couldn't tell you how many.

Q More than one?

A I believe so.

Q Okay. And you had -- at that time when you were checking all those records, you had no way of knowing whether those people communicating had, perhaps, been the last person to physically be in contact with Mr. Daniels?
A Yeah, I didn't see anything indicating they were meeting up like I did with this number.
Q I understand, but there was no effort -- again, collectively, no effort by law enforcement to determine even who those people were?
A If anybody else checked on those numbers, I don't know.

MR. HILLER: Okay. Thank you.

THE COURT: All right. Mr. DeBusk, you have the last word. He's your witness.

MR. DEBUSK: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION:

BY MR. DEBUSK:

Q I don't want to whip a dead horse, but what would have been the most obvious course of action given the data before you that night?
A To track down the person with this phone.
Q Why?
A To find out who they are and whether or not they were in need of any kind of assistance or if they were the perpetrator. We just didn't know at that point.

Q And if, in fact, they had turned out to be a prankster living in another zip code and nowhere near the scene, what would you have done then?
A We would have moved on to the other leads in the case.
Q So you pursue the leads according to likelihood?
A Yes, sir.
Q And this was the most likely lead in your investigation?
A Yes, sir.
Q Based on the information you passed on to the other investigators, they followed up on it, did they not?
A Yes, sir, they did.
Q We'll ask them about that. Thank you.
THE COURT: Okay. Thank you. You can step down, Mr. Cook.
MR. DEBUSK: May Sergeant Cook be released from his subpoena?
THE COURT: Without objection?
MR. HILLER: No objection.
THE COURT: Thank you.
You can be released, Mr. Cook. Thank you.
THE WITNESS: Thank you.
THE COURT: Ladies and gentlemen, that is a good time for us to take the lunch break. And I'm going to ask that

you be back in the jury room -- you know more about the eating places around here than I do. Is an hour and 15 minutes enough or do you need an hour and a half, what do you think? Can you get -- I'll give you -- choose your poison, 1:45 or 2 o'clock. Okay.

THE JUROR: Two o'clock.

MR. MILES: Thank you.

THE COURT: Okay. All right. That decision does not require a unanimous vote from the jury, ladies and gentlemen. Two o'clock, be back in the jury room at 2 o'clock. Remember, of course, not to discuss this case among yourselves when you return to the jury room or with anybody else while you're out of the courtroom. I'll see you back at 2 o'clock. Thank you.

(Whereupon, the jury left the courtroom at 12:31 p.m.)

THE COURT: Mr. Stewart, I didn't get a chance to tell you this last night before we broke, but normally, when a trial is called and a bond is voided or recalled itself by that time, it no longer has any legal effect and that would normally require me as the judge to require you to be held in custody during the course of this trial.

I was advised that you have always kept up the schedules that you were supposed to. You never missed any court calls that I'm aware of and you're also on a monitor

and also that your bondsman was still willing to stay on your bond as far as Mr. Fox knew. He was going to check on that and that obviously is the case.

MR. FOX: It is, Your Honor. I was able to do that yesterday afternoon immediately after court. I made the call from right here and was able to verify he's was willing to stay on it.

THE COURT: So I'm certainly not going to require you to be held in custody at this time given the fact that you've always shown up in the past, but I do -- and I am obligated to let you know that if for some reason you do not show up, the trial will go on without you. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: Just to make sure you understand that. With that, you will not be held in custody during the course of this trial.

Folks, anything else before we break for lunch from the State, Mr. DeBusk?

MR. DEBUSK: Yes, Your Honor, may we approach?

THE COURT: Okay.

MR. DEBUSK: This has to do with the affidavit of unavailability of Detective Kitelinger and some confidential information.

(Whereupon, there was a bench conference.)

MR. FOX: Judge, I don't have any issues at all with

that.

THE COURT: I'll look at it. It will be filed under seal.

MR. DEBUSK: Thank you, Your Honor.

THE COURT: Two o'clock, ladies and gentlemen. Thank you.

MR. FOX: Yes, sir.

THE COURT: We're in recess until then.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, State's Exhibits Nos. 42 - 48 were marked for identification only.)

THE COURT: Madam Reporter, if you will mark as a Court's Exhibit under seal, if you will, and I'll find an envelope if you don't have one to put that in relative to the --

MR. DEBUSK: Your Honor, may I add to that. We got a copy of the letter that is sign by the healthcare provider.

THE COURT: Okay. Good.

MR. DEBUSK: Also sitting on your bench is -- you can put them both in there -- would be Exhibit 41.

THE COURT: All right. Gentlemen, is everybody ready for the jury?

MR. DEBUSK: Yes, sir.

THE COURT: Bring us the jury, please.

(WHEREUPON, Court's Exhibit No. 2 was marked for identification only.)

(Whereupon, the jury entered the courtroom at 2:10 p.m.)

THE COURT: Good afternoon, folks, thank you for your prompt return from lunch. We're ready now to continue the trial of the case as the State continues to offer evidence and testimony in this case.

Mr. DeBusk.

MR. DEBUSK: Thank you, Your Honor. The State calls Karen Milbrondt.

THE COURT: Come forward, please, and be sworn.

KAREN MILBRONDT, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Good afternoon. My name is Karen Milbrondt.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Ms. Milbrondt, who is your employer?

A Verizon Wireless.

Q Where do you work out of?

A My office is in Tampa, Florida.

Q What's your role at Verizon?

A My title is I'm a senior analyst in executive

relations and one of the responsibilities is I'm also a records custodian.

Q Would you explain to jury what a records custodian is?

A Yes, Verizon keeps business of records in the ordinary course of business, and from time to time, those records are subpoenaed. And a records custodian would produce records or my function is to appear at a court hearing and explain, authenticate and just help a layperson understand the business records.

Q So you have access to an area that the records system has with Verizon?

A Yes, sir.

Q So when Verizon produce something, you can authenticate it as being true copies?

A Yes, sir.

Q Let's talk about some of those records, actually, quite lot of those records. Did you receive some search warrants from the Myrtle Beach Police Department for two numbers, specifically (803)899-2076 and (980)228-7541?

A Yes.

MR. HILLER: Objection, Your Honor, on grounds previously stated at the pretrial motion phase.

THE COURT: I'm sorry?

MR. HILLER: I would object on the grounds previously

stated pretrial.

THE COURT: I see. I appreciate that. I didn't know exactly what the warrants referred to, but I --

MR. HILLER: Both phones in question.

THE COURT: Right. Exactly. The testimony will go forward subject to objection of defense counsel. That objection was made previously at pretrial and ruled on. It will be a continuing objection through this line of questioning.

MR. HILLER: Thank you.

THE COURT: Thank you.

BY MR. DEBUSK:

Q Do you by chance have a date on those search warrant or were you familiar with what was produced?

A I would need to see the search warrant to get the actual date. I have an electronic copy.

Q Let me show you what's been marked as State's Exhibit 46 and ask if you recognize this bundle of papers?

A Yes, sir, I recognize this.

Q What is that?

A One of the requests in the subpoena, it is for what's called text content. And text content is the actual date and time the sender, the receiver of a text message and the verbiage that was actually sent during that text session. And this is the document that is responsive to

that portion of the subpoena.
Q For which number?
A (980)228-7451.
Q Okay. And did that contain text sent to and from that particular number?
A Yes, sir.
Q In addition to the -- sorry, I lost my train of thought. In addition to the text itself, the content of the text, is there a time?
A Yes.
Q I'm going to show you what's been marked as State's Exhibit 47 and ask if you recognize this?
A I do.
Q What is it?
A This is a record that was created from Verizon's record. So this is not a Verizon record that we produced, but it was information that was redacted from this record was used to create this record.
Q Have you checked the accuracy of State's 47 against State's 46 to make sure the time is correct?
A I checked it against my own internal records that I had.
Q Which are the same?
A Which matched them, which matched, like I said, the electronic version that I brought.

Q Is that a fair and accurate portrayal of those times and texts?
A Yes.
Q Between -- I'm sorry the number on the records and the number (803)899-2076?
A And other parties, as well. Oh, this record is simply, yes.
Q State's 46 would have all the texts. This is just to one number?
A Correct.
Q Thank you.
MR. DEBUSK: Your Honor, we would seek to admit State's 46 and 47 into evidence at this time?
THE COURT: Subject to the previous objection, are there any additional objections at this time?
MR. HILLER: No, Your Honor. Objections on the same grounds as previously stated.
THE COURT: Thank you. Forty-six and 47 in evidence over objection of defense counsel.
(Whereupon, State's Exhibit Nos. 46 and 47 were admitted into evidence.)
MR. DEBUSK: May I publish State's 47?
THE COURT: Yes, sir.
BY MR. DEBUSK:
Q Let me go over some other items that were provided

for phone number (803)899-2076. Multitudes of records marked State's 45, 44, I believe 43 and 42 -- yes, 43 and 42. I'm going to give you a moment to check if you recognize these.

A Yes. The first record that I have --

THE COURT: Would you give us that number, please, Ms. Milbrondt? It should be an exhibit --

MR. DEBUSK: It's on the back.

THE WITNESS: Exhibit 42.

THE COURT: Yes, ma'am. Thank you.

THE WITNESS: This is what we call an incoming and outgoing record of a specific number. So this is all incoming and outgoing phone calls, includes date, time, the telephone number that was called, the telephone number of the receiving party, the cell tower that was used, the switch that was used when this call was made, how long the call lasted. I do want to make a correction, this is for the phone number that ends 2076 and I think you gave me a different number when you presented the packet.

BY MR. DEBUSK:

Q I'm sorry. Let me correct the record. That was (803)899-2076?

A Yes, sir. So this particular record is specific for only that phone number.

Q Okay. And from that, they can determine which tower

the phone call connected to?
A Yes, sir. There is a column that has the tower number, so Verizon keeps a record of our towers and we number them. And from that, if you have the cell site address key, you're able to determine where the tower is located.
Q We'll go into this more with a subsequent witness, but just so the jury won't get confused, these are cell phone records, right?
A These are cell phone records.
Q The receivers is on towers that receive the phone calls?
A Correct.
Q That's the towers you're talking about?
A Yes, sir, the actually cell tower that was used to facilitate the phone call.
Q How about 43, the next big one on the stack there?
A This is what we call an RTT record. So this is a record that includes all activity, data sessions, text sessions, voice log. Again, includes things like dates and times. This particular record also includes a latitude and longitude of where our network has determined where the call is located based on we call a round trip, how long it took the signal to go from tower to phone and back. So this is an RTT record. But this first record

is what we call a MEVDORT record. Again, the records are driven by device ID, not the mobile number, so it's one of the two numbers we produced records for. This is a document that is strictly data session, so Facebook updates, e-mails, any sort of data transaction are these two.

Q And does it include the same sort of information that was on the RTT records or different information?

A It is and much more. Much more engineering records, date, time, the type of session, the device ID.

Q I guess from the standpoint of authentication, it is an accurate representation of what was provided by Verizon to the Myrtle Beach Police Department in response to the search warrants?

A It is an absolute identical record.

Q Thank you.

MR. DEBUSK: Your Honor, we offer State's 42 through 45 into evidence. I think Mr. Fox had a chance to review those?

THE COURT: Okay. Have we talked about 45?

MR. DEBUSK: Yes, Your Honor. It was -- I'm sorry. I'll ask one more question just to make sure.

BY MR. DEBUSK:

Q State's 44 and 45 has similar labels on them. Are they different?

A They are just an accumulation of one very voluminous record.

Q It's so big, it wouldn't fit in one?

THE COURT: I got you, same stuff just a different file folder?

THE WITNESS: Yes.

THE COURT: Okay. Forty-two through 45 subject to the same objection previously lodged.

Are there any additional objection to 42 through 45?

MR. HILLER: No, Your Honor. I'm just objecting to the 803 record. We don't know which -- or which necessarily are the device ID's, but to the extent there's any of the records in there, we object to those on previously stated grounds.

THE COURT: The objection is preserved for any records for the (803)899-2076 number previously argued and previously ruled upon. That would be a continuing objection to that testimony and to those exhibits. Thank you.

(WHEREUPON, State's Exhibit Nos. 42 through 45 were admitted into evidence.)

MR. DEBUSK: All right, Your Honor. I would ask to publish State's 47.

THE COURT: Okay. It's in evidence.

BY MR. DEBUSK:

Q And Ms. Milbrondt, the times associated with the various texts on State's 47 were correct according to the Verizon records?
A Yes, sir.
Q Everyone though Verizon didn't create this?
A Correct.
Q So we have records for (803)899-2076?
A That's correct.
Q And this one, (980)228-7541?
A Yes, those are the two numbers we sent records for.
Q We've been through all these texts before, but I'm just going to ask you a couple things. These are the sender and the receiver and then we have the content of text. And this right here would be the time, Eastern Standard Time, correct?
A For these records?
Q Yes.
A They are in Eastern Standard Time.
Q So the time for each of these texts is from the Verizon records in correct Eastern Standard Time?
A Yes. To both.
Q Go ahead. So the texts went from between 7 o'clock and 1:00 a.m.? Texts and calls between 7:31 and 1:00 a.m.?
A This document, yes.

Q And those numbers and those times are correct, weren't they?
A Yes, they were.
Q And that's all on this document?
A Yes. And they were driven out of the documents we produced.
MR. DEBUSK: It's already in evidence, Your Honor. I think that's sufficient publication --
THE COURT: All right.
MR. DEBUSK: -- for the jury read. I think we're done with this. You can raise the screen.
Please answer any questions -- oh, I have one final question.
BY MR. DEBUSK:
Q When you provided all these --
THE COURT: Can you wait just a second until that goes up. Sometimes when that's going up, it's hard to hear.
BY MR. DEBUSK:
Q When you provided all of these records, did you also provide any information on the location of the cell towers associated with Verizon?
A We did.
Q If we printed it out, how big would it be?
A Thousands of pages.

Q So it's a big database?
A Yes.
Q But that was provided, as well?
A It was.
Q Is that also routinely provided to the FBI for their purposes?
A Yes.
MR. DEBUSK: Thank you. Please answer any questions the defense may have.
THE COURT: Mr. Hiller, cross-examine.
MR. HILLER: Yes, sir, Your Honor.

CROSS-EXAMINATION:

BY MR. HILLER:
Q What exactly -- you said you were a senior analyst with Verizon?
A Senior analyst and executive relations.
Q And part of that job encompasses the records analyst and records custodian?
A Yes, sir.
Q What are your other duties at Verizon?
A When I'm in the office, I am assigned cases that consumers have filed against your government agencies, like FCC, attorney general, P.C., such as that. So I investigate those complaints. I try to contact the customer and resolve the matter. And then I send our

response back to the government agencies of what our position is and how we resolved it if possible. And if we can't, we explain our position. I also do small claims, depositions, AA, arbitrations and such like that.

Q Do you actually -- let me educate myself here. I thank you for your answer. Do you actually do the work of responding to like law enforcement requests or is that handled by another department?

A I am a part of the department that does the actual records response. Our office in New Jersey receives all of our systems and they actually create the records. Most records never turn into a trial, so on those few that do and they need someone to appear, we have us that are stationed across the country and I do the southeast part.

Q Thank you. Are you familiar with the Verizon Wireless internal emergency situation disclosure form?

A Yes.

Q So the New Jersey office, I suppose, would be tasked with responding to those requests, as well?

A That's correct, all incoming subpoenas whether it's an exigent situation or standard we just want your record.

Q The law that governs that disclosure in exigent or emergent situations requires just an officer telling you that they have good faith to be requesting the record via that form and not another more standard process like a

search warrant, is that correct?
A Correct, I don't -- I believe there's a different level of search warrant, has a different level of dots that have to be crossed, I's.
Q When a search warrant is received, I assume the company tries to be cooperative and respond quickly, correct?
A Sure.
Q Do you know how long it takes usually to respond to a search warrant?
A I don't have a time.
Q If a law enforcement officer were to submit a search warrant with a rush request, is that something the company would accommodate or is it like get in line --
A It is first come, first served.
Q Thank you. Now, of course, you told us that you pulled these records and you know where the phones are, but you don't know who the user of the provider phones was; is that right?
A No, sir, I don't know the users.
MR. HILLER: Thank you. No further questions.
THE COURT: Redirect, Mr. DeBusk?
MR. DEBUSK: No, thank you. We would ask that Mr. Milbrondt be relieved from her subpoena?
THE COURT: Did you come all the way from Tampa?

THE WITNESS: I did, sir.

THE COURT: Did you get through the storm okay?

THE WITNESS: We didn't have a problem at all. We were very blessed. I thought of Conway quite a bit.

THE COURT: Yes, these folks were in the news. Glad you were spared this time. Thank you for coming, Ms. Milbrondt. Have a safe trip back.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. DeBusk.

MR. DEBUSK: Thank you, Your Honor. The State calls Special Agent Clayton Simmons.

THE COURT: Agent Simmons, come forward, please, sir, and be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

CLAYTON SIMMONS, after being duly sworn, testified as follows:

THE CLERK: You can be seated.

THE WITNESS: Thanks.

THE CLERK: Please state your name for the record.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Agent Simmons, who is your employer?

A Well, first of all, my name is Robert Clayton Simmons.

Q Yes, sir.
A I am a special agent with the FBI here in Charleston -- or in Charleston, South Carolina.
Q How long have you been with the FBI?
A Just over 16 years.
Q Is that your total law enforcement career or did you do something before then?
A No, prior to joining the FBI, I was a police officer in Charleston, South Carolina with the Charleston Police Department for five years, spent two years on the streets doing routine parole, and three years as a task force officer on the FBI violent crime task force.
Q And then you moved up to the FBI?
A I went to graduate school at Clemson for a year, then I went to the FBI.
Q Tell me about cellular analysis, what is your role in that?
A So I'm part of a group call the Cellular Analysis Survey Team. We have the acronym of CAST. Our group is made up of special agents who are trained to look at and examine historical cell site records and cell phone records to determine an approximate location where cell phones were you at a particular date and time. We do that by grabbing cell phone records from the service provider, their tower list and merge those records together to,

basically, for lack of a better way of putting it, draw a picture to show you've visually where all the dates and times would have been on a map.

Q Would you explain to the jury and the Court what your training is to carry out this work?

A Sure, not counting my experience in becoming a special agent with the FBI and the training at Quantico. In addition to that, I have to take several steps or several stages of training to become CAST certified by the FBI.

That includes the basic class of one week of just an initial analysis of phone records. How did we get them? What information is available? How do we plot them? And they take us through a week of examining those records and plotting them, giving us examples of cases throughout the country to plot on a map.

Second phase of the training, we go through an advanced cellular analysis class where we have records that may not be in the local time of the market that you're in. There may be some information that can be found in another spot and tower records that you need to help plot those records. So you have to go through those kind of hurdles to get through and plot records on the map.

Third phase, we go through a geo-location course

where we spend two weeks finding cell phones. We just go around in the town that the training takes place and we go and find cell phones with specialized equipment. We have an instructor development course, which teaches us how to present these -- present this class, present CAST records to a jury, also, to teach the class.

And then the final two phases of training are two, two-week sessions where the first two weeks, we are taught about radio frequency theory, how radio frequency works, how the cell phones interact with the cell towers. We have the major service providers come in with their law enforcement relations group or their subpoena compliance personnel along with the engineers form each one of the major providers, and they tell us what records are available, how do we go about getting them.

The engineers explain how the network is set up, how the phones interact with their cell towers. We take a tour of one of the switches that are in the market that we're having this class.

And then the next phase of training is they give us a practical problem that we have to solve and make a presentation to. Go out and do -- have some specialized equipment that we use for drive testing to give us the actual footprint of a tower and then present that in a mock trial situation where attorneys come in and act as

prosecutors and defense attorneys, and they start questioning us in reference to our findings. And then we're critiqued. And at every stage of training within the CAST certification program, we get tested and we have to pass or we don't get certified.

Q In addition to all that training, have you also been doing this a while?

A Yes, sir. I got certified in August of 2014 and have been doing it ever since. My primary function as an agent in the Charleston office is I work gangs, violent crimes, kind of reactive matters. I do CAST as a collateral duty, but I look at cell phone records every single day. If not for my cases, local, state or another federal agency is calling me asking me questions about cell phone records, cell phone towers, the best way to go about getting the records. And if they're having trouble plotting them, I assist them and I try to plot them out on the map for them.

Q You probably can't give us an exact number, but about how many cases have you worked?

A Case-wise, it's hundreds of cases. Testifying as an expert in court, I've done anywhere from about eight to 12 times, in superior court in Washington, D.C., several times in Charleston County and Berkeley County.

Q All right. Would that be in the State of South

Carolina court?
A Yes, sir, Charleston and Berkeley County, South Carolina.
Q And also in federal court, as well?
A In federal court in Washington, D.C. I also went to Greenville, Tennessee to testify about cell phone records, but they never presented me as an expert. They just had me present what I did.
MR. DEBUSK: Your Honor, we would move to have Agent Simmons qualified as an expert in --
Q What area do you generally testify as an expert?
A Generally, an expert in historical cell site or cell call detail records.
MR. DEBUSK: In the area of historical cell site and detail records, Your Honor?
THE COURT: Any objection? Any voir dire?
MR. HILLER: Your Honor, no objection and I don't feel the need to add anything further as to his qualifications.
THE COURT: Okay. Very good. Seems to me that Agent Simmons is addressing the concerns raised by Justice Kittredge in the case of State vs. Donte Samar Brown. It goes beyond the testimony offered in that case. He said we know it's so because I said it's so or some words to that effect. Thank you. Agent Simmons is so qualified as

an expert.

Go ahead.

MR. DEBUSK: Thank you, Your Honor.

BY MR. DEBUSK:

Q Agent Simmons, did you do any analysis of call records and cell site locations for the numbers (980)228-7541 and (803)899-2076?

A Yes, sir, if I recall correctly.

MR. HILLER: Objection. Highly anticipated, but on the grounds previously stay.

THE COURT: Right. The continuing exception to the testimony regarding the 803 telephone number is preserved for the record. The testimony goes forward subject to that objection.

Go ahead.

BY MR. DEBUSK:

Q When did you do that?

A I've looked at both of those phones. I finished -- I believe I got the work at the end of February, first of March and finished in April of this year.

Q So all the work was done this year earlier?

A Yes, sir.

Q Just for the record, we have State's 42 through 45. I ask if you recognize these?

A Yes, sir. These appear to be the printed versions of

records provided to me electronically.
Q Is that what you used in your analysis?
A We used the electronic version of the records, yes, sir.
Q But the same records?
A The same records, yes, sir.
Q Did you also either receive or have access to a database of tower locations and tower details?
A Sure. When the cell phone companies provide call details records, they also provide a tower list for the towers that were utilized during the time period. I have access also to a database that the service providers give us access and they update ever how far often they update their cell tower list, so that I make sure the cell towers that were utilized in 2014 were also -- match up with the records of 2014. I don't want to use a cell tower list for 2018 for stuff that took place in 2014. And so I used the cell tower list from 2014.
Q Now, I'm going to ask you to explain to the jury how you locate a cell phone using tower data and what you did in this case. First, I'm going to show you State's 48 and ask if you recognize this?
A Yes, sir. It's the printed version, one page out of order. It is the printed version of the PowerPoint presentation I provided to your office when I was finished

with my analysis.
Q Would this PowerPoint aid you in explaining to the jury what you did in this case?
A Yes, sir.
MR. DEBUSK: Your Honor, we would offer into evidence State's 48?
THE COURT: Other than the previous objections?
MR. DEBUSK: No, sir, Your Honor, just the existing.
THE COURT: Thank you. Subject to previous objection only, in evidence, 48.
(WHEREUPON, State's Exhibit No. 48 was admitted into evidence.)
MR. DEBUSK: May we publish that to the jury?
THE COURT: Yes, sir.
BY MR. DEBUSK:
Q So my question is, could you explain to the jury how you can determine a cell phone location with the data you were provided and what you did in this case?
A Sure. So when I receive cell phone records, I take a look at the records to make sure there's information there that will be useful in the investigation around the date and time that I was requested to look at records. Once I determine that, I make sure that I grab the appropriate cell tower list to use that to map. I take the information within the call detail records and I,

basically, merge that with the location of where the cell towers are. And then I draw -- I draw sectors to show that the phone used at a particular tower on a particular site at that given moment.

So generally speaking, cell phone networks are made up of multiple towers. Y'all see them driving up and down the highways. Some of you guys may have them close by your homes, in your backyards or whatnot. They're generally just big, tall, metal towers that have antennas on the top of them. Each one of those groups of antennas are generally divided into about 120-degree sections, so we have three sections on one of the cell phone towers to give us a 360-degree coverage on that.

Q So coverage roughly a third?

A Roughly, a third, about 120-degrees. So once we grab the information from the cell phone records themselves, we look at the tower list and the tower list provides a latitude and longitude of where that cell tower is. We don't use the address because that may be a little off, so we use exact latitude and longitude of where that tower is.

We then look -- since I just said towers are divided into three sectors, they're usually labeled one, two or three or A, B, and C. We look for the azimuth of each one of those sectors. And all the azimuth is the direction of

the RF energy off that sector, where is it most centered and they provide you with a number there, and then we draw 60 degrees onto the left side of that number and then 60 degrees to the right side of the number.

And when I say that, it is generally they provide you the locations in almost 30-degree increments. So if you kind of look at a clock, if you have an azimuth at sector one at 12 o'clock or zero, I would draw out 60 degrees to 10 o'clock and then 60 degrees to 2 o'clock to give us our 120-degree sector. As another example, if it was at -- the records said the sector was at 90 degrees, I'd draw -- it would be facing towards 3 o'clock. I'd draw the one and the five to give us that 120-degree pie-width shape.

Now, with that being said, that is not the exact footprint of that tower. It's just kind of an estimate of the range of that tower. Different conditions affect RF frequency, how far RF goes.

If you have a big mountain in the way, RF can't penetrate through a mountain, it might have to go around it, go up it. Or if you have a big building, like in New York City, you might have a tower that's behind you that's providing service while there might be a tower just on the other side of that building that's closer, but the building is blocking and it can't see the radio frequency for the phones to talk to each other. So that's what we

use the azimuth for to determine our location of our tower sectors at that particular moment.

Then towers, the cell phone network are generally just made up kind of like a sprinkler system. So you've got towers strategically placed all over your town, your city, your building, especially if you're in New York, and what you're really trying to get is trying to get an overlap.

If any of you guys remember back in the day when cell phones first came out, you drive to that spot and you remember hey, I'll call you back in a second because you don't get a dead spot.

Well, cell phone companies realized that makes us mad and we don't want to have to keep calling people back. So they try and get these towers to overlap, kind of like the sprinkler systems so you don't have dead grass in your yard or dead crops out there in your field.

So that's the same concept with these cell phone towers. And so while you move from one tower to the next, you don't lose service and therefore you stay happy and you stay with these cell phone companies.

So this slide right here on slide number two is your typical orientation or a typical view of a cell phone tower, and a typical orientation of it. If you scroll through a couple of times, you'll start seeing arrows come

off. So each one of those are the different sectors that are available or that they label on those cell towers.

So sector one, sector two, and if you do it one more time, you'll see sector three, or sometimes some companies will call them alpha, beta or gamma. And that's just, basically, showing hey, sector one faces this direction, sector two is that direction and sector three would be generally behind us. And we base that off of the orientation or the azimuth that is provided in the tower records.

So in this slide right here, it's just the background, what records were provided to me, what timeframe I was asked to look at the records, which is June 16th, 2014, for about a half-hour time period, 12:54 a.m. to June 16th, 2014 at 1:26 a.m. The methodology I use, and I want to just read it to you, but it's, basically, what I just said.

I took the call detail records that were provided by the service provider, took their tower list, merged them together to draw, basically, a picture so you could see what all those numbers on those records would look like on a map if we were to map them out. And then my conclusions would be illustrated in the slides that we'll see here in just a few minutes.

So this slide right here is just to show that the

coverage area does not just fit in that little red portion that's displayed there. The coverage area is between the two arms of that sector.

It goes all the way out, RF frequency continuously goes out until the phone has too much noise or interference and it can hear another tower a little bit better.

So I don't want you guys to get misled that the phone would have to be in that small little red area. It goes all the way out -- all the way out to, you know, it starts getting interference with the next tower.

I don't know how far out that goes unless I was to go and drive test it, but I give a pretty good estimate of the footprint of that particular tower.

Go to the next slide. This slide here just shows the Verizon network in the Myrtle Beach area in June of 2014. The CS flag that was placed on the map was placed there by me. I was provided that location by the solicitor's office of 806 South Ocean Boulevard and I was told --

Q You're referring to the CS right there?

A Yes, sir. Yes, sir.

Q Could you explain --

A And that's just the legend --

Q That's the actual --

A So the CS right there is where the crime took place,

the crime scene. That's what CS stands for. And the CS up there in the top right is just to say hey, it's the crime scene and that's the address that I was provided where the crime took place. And then all the little red dots on there represent Verizon towers in the Myrtle Beach area.

So this slide right here shows the activity of the two phones that I was asked to analyze. The green area is for (803)899-2076, and the red one would be for (980)228-7541 on June 14th between 12:54 to 1:12 a.m. So from this slide right here, it appears that both towers between 12:54 and 1:02 a.m., both towers were using Verizon towers 601, sector two, and 1601, sector two, which is there on the top right.

Q Here?

A Yes, sir, that tower there.

Q Okay.

A And then as the day and night moved on, they came and traveled in between tower 1603 and started moving south, southwards.

Q 1603 right here?

A Yes, sir.

Q Okay.

A And moving southward and eventually moved on the south side of tower 1603, 603 and staying on that south

end, the 2076 phone stayed on the south end at approximately 1:10 a.m.

Q The next slide?

A Next slide. So this slide here shows the activities of the two phones between 1:15 a.m. and 1:26 a.m. It appears between 1:15 a.m. and 1:19 that both phones were using tower 603 and 1603-2 means sector two.

Q Here?

A Yes, sir. Which is at a -- that 235 at the end of each one of those phone numbers on there is the orientation of that sector. It's at 235 degrees at almost 8 o'clock. And they were using that tower and sector between those time periods.

Later on -- there was no more activity with the 7541 phone after 1:19 a.m. and then phone 20 -- ending in 2076 used the other two towers between the times displayed of, I believe that's 1:16 and 1:26 a.m. towers 602 and 1602-1 and 607 and 1607-1.

Another thing that Verizon is able to provide to us is an engineering tool they call a real time tool, RTT data. And, basically, what that is is that Verizon sits up there and provides an estimate of how far away a phone was from a tower and gives it the tower and sector and how far away it is from it.

And me, as an investigator, for individuals that go

looking for missing children, fugitives, potential evidence of things of that nature, I use that RTT data to find, hopefully, two towers that may overlap and then I plot the RTT data, which are the little arches displayed there and hope that they overlap generally around the same period time. And then I would direct investigators or me, as the arresting agent, I would into that overlap area to see if that person is still there or that evidence or that child or whatever it is we're looking for.

So in this situation, it appears that telephone number ending in 2076 between 1:16 and 1:17 a.m. used tower 607 and 603 in those overlapping arches. And those arches --

Q 607 being up here?

A That's correct.

Q And 603 down here?

A That's correct. And those arches that are labeled on the map are anywhere --

Q Here?

A -- yes, sir. Are anywhere from seven-tenths of a mile to 1.21 miles away from each of those towers. 603 has an estimated difference of .7 and .9 miles, while 6078 has an estimated distance of 1.21 to 1.4 miles from that tower when that data was collected.

Q It's a very busy picture, so let me ask you a couple

of questions. Each line here with one of the two phone numbers represents an individual call or other event?

A Some sort of activity that took place on the network to create that time. Whether it was a call, a data session, a text message, something of that nature for those points to be generated. The phone had to interact with the network somehow.

Q It could be a call, could be looking up an address on Google, anything?

A It has to be some sort of activity, yes, sir.

Q And these arcs are an estimate of the distance from the tower, but you don't know the bearing. You don't know where in that cone it is. You just know how -- approximate distance?

A So, no. If the only thing that I had up there is just one of those arches that were up there, I would have to go and try to figure out what logical reason, why are they in that arch.

When we have the overlapping arches, that is just great for us as investigators because we're going to start off in that overlapping area because there's been multiple times just by me personally and thousands of times by my unit in general that we found the fugitive, we founded the missing kid, found evidence at those overlapping spots. So if I was to direct investigators to go someplace, I'm

always looking for that overlap.
Q So what you're looking at on this particular item with the arcs and towers, are these phone calls in blue -- I'm sorry, not phone calls, events whenever --
A The activity that took place.
Q At 1:16 and 1:17 a.m.?
A At 1:16 and 1:17 a.m., the phone used those arcs displayed and you see a couple of those arcs overlap right there on the crime scene.
Q So, in fact, a small period of about a minute between 1:16, 1:17, a minute or two minutes, your estimate is the phone was in the area where the two overlap?
A That's correct.
Q The two arcs overlap?
A That's correct.
Q And that CS again is the crime scene at 9th and Yaupon?
A That's correct.
Q So your estimate is that that phone at 1:17 was close to the crime scene?
A Yeah, between 1:16 and 1:17, it was within the vicinity -- it was using two towers that provides service to that crime scene.
Q At the estimated distance?
A At the estimated distance right there in that

overlap.
Q In nontechnical terms, how does a tower estimate distance to a phone call?
A Basically, the network wants to know where the phone is. The phone says I'm over here and it shoots a signal back to that particular tower, to the tower that it sees. And then the phone companies capture that and however fast it goes back, that's how they're able to give us the distance from the tower.
Q So, basically, the time of return? If it's farther away, it could take a little longer. If it's closer, it's going to take a little less time?
A That's correct.
Q And that's how you generate the arcs?
A That's correct.
Q All right. Thank you. End of the report. So your estimate was that cell phone and the (803)899-2076 was in proximity of the crime scene at 1:16, 1:17 a.m.?
A Between those two times, yes, sir.
MR. DEBUSK: All right. Please answer any questions the defense may have.
THE COURT: All right. Mr. Fox.
MR. FOX: Thank you, Your Honor.
THE COURT: Do you need that?
MR. FOX: I do not. Not now, I don't think I will.

CROSS-EXAMINATION:

BY MR. FOX:

Q Do you have copy of that, that was projected up there?

A That's up there.

MR. DEBUSK: It's in evidence.

MR. FOX: Okay. If I need anything, it will probably be easier than pulling that thing down.

THE WITNESS: That thing your left hand was just on.

BY MR. FOX:

Q This here?

A No, sir, the one --

Q The one that says FBI?

A Yes.

Q All right. Agent, all the records that you used to prepare this report that we've seen up on the screen and to testify today, where did you get those records?

A Those records were provided to me from the Solicitor's Office.

Q And that was again when?

A I believe the presentation in February, so I believe sometime in February, early March.

Q Of this year?

A Of this year, yes, sir.

Q And the incident -- and the timeline that you were

examining was back in June of 2014, correct?
A Yes, sir.
Q Okay. Do you have -- I think I gathered from your description of what your job and the things you do specifically with the CAST, Cellular Analysis Team, might sometime -- you mentioned missing children or abduction, suspected abductions, that sort of thing, would you call maybe emergency-type situations?
A Usually, they are urgent situations, fugitive, time sensitive things that we need a quick response for.
Q So that's a bit of what you do, law enforcement, say in Charleston, Myrtle Beach or wherever contacts you and says you've got some specialized knowledge. We've got an emergency or urgent situation, would you please help us out?
A Sure, and then I also have it where an incident took place, they get cell phone records, don't know what they're looking at and then ask me to look at them and see if the phone can help corroborate witness statements or what evidence they have at that particular time.
Q Sure. But in this instance, did anyone from law enforcement in Myrtle Beach contact you back in June of 2014 requesting your assistance?
A No, sir, I was in Washington, D.C. at the time.
Q Okay. Are you aware that they contacted anybody with

the CAST team in place in Charleston in 2014?
A There is another individual that was examining cell phone records at the time, but it wasn't me. I was in Washington.
Q In doing your analysis now, would you have been aware if there had been any previous contact with the FBI back in 2014?
A Well, me and other guy overlapped when I transferred to Charleston. I would hope he would have said something to me.
Q Okay.
A But I'm not aware that he had any knowledge of the records at the time.
Q So as far as you know, there was no contact -- I recognize you're in Washington. As far as you know, there was no request or contact from Myrtle Beach law enforcement back in 2014 requesting the assistance of the FBI to track whether it be a suspect or --
A No.
Q -- possible victim, anything like that?
A Not that I'm aware of.
Q But again, that's something that specifically you your team does in part -- you do many other things, but that's specifically one of the things you do?
A That's one of the things that I do. We have other

agents that do nothing but CAST work all the time.
Q Sure. Okay. Now, the -- in this instance, the records were provided to you by the Solicitor's Office. Are there ever a situation where you yourself seek to obtain records from Verizon or AT&T or a provider?
A There are occasions where I will seek on behalf of another law enforcement entity, whether that's because they're not sure of what to gather, but in those kind of situations, I usually just provide them with examples or what I call go-bys to get the records so they can get them themselves. The only time -- or 90 percent of the time that I obtain records myself are for my own cases.
Q Okay. But you've done that?
A Yes, sir.
Q And what's the standard? Well, just your run-of-the-mill case, that would be -- you would use a search warrant, correct, to then request those records from, again, the provider, AT&T, Verizon, whoever?
A Well, up until a couple of months ago before the Supreme Court ruled, we could do it through -- the federal side could do it through a federal court order signed by a magistrate and obtain call detail records. When the supreme ruled in the Carpenter case, they mandated it to be a search warrant to obtain cell cite records, the tower information from it. My understanding in South Carolina

that local lawful had to use law enforcement to obtain those records.

Q Without going into all the minutia, more or less, to get a warrant, you contact, I guess, the federal side, the federal magistrate and you present an affidavit of reasons why you need this warrant.

This is our investigation. This is why -- we believe this number is relevant, that sort of thing. We've determined Verizon is the provider. Some basis for that?

A Yes, sir.

Q It's fairly straightforward process, is it not?

A Yes, sir.

Q Would you say in your experience those are turned down very often?

A I can't think of one that's been turned down for me, at least.

Q Okay. Now, that's not the only way to get records, right? If you have -- you know -- for instance, you mentioned child abduction. You've got -- if it's a custody dispute, whatever, you understand there's a child been taken by whoever, time is of the essence. What's another way you could do that?

A You could get an exigent request. You could declare an emergency and the service providers will determine whether your situation meets an emergency and they will

provide those records. Usually when that happens, we follow up legal process to obtain those records afterwards.

Q Okay. So the idea is it's quicker, it's faster?

A Sure. I'm not -- time is not being spent on preparing an affidavit, going to a judge, having a judge sign it and then finding -- serving it on that service provider. You're able to call a service provider. They determine -- or you tell them you have an emergency and they provide the records to you.

Q And again, in your experience, if law enforcement says we have an emergency, would it be very common at all for Verizon or AT&T or someone to say no, we don't think it's an emergency, we disagree?

A I've seen it happen before. I've seen several phone companies do such. In my experience -- it's never happened to me, but I know of others it sure did.

Q They don't tend do an independent investigation because it's a similar type thing, isn't it, when you do an exigent circumstances request -- and I say exigent, urgent, I guess, different people, different providers would label it different. Verizon in this case says exigent circumstances, which I take to mean kind of out of the ordinary, not run of the mill circumstances. Again, there's sort of -- they send a form, right, you request a

form and they send you their form for their recordkeeping?
A Yes, sir.
Q And then the agent or the officer, sort of like doing a warrant, says here's why this is exigent circumstances, correct?
A That's correct.
Q And it wouldn't really -- now, I understand you said sometimes they do turn it down, but they wouldn't have the time, resources, the service provider to do a separate determination whether it really was an urgent matter?
A Usually, the investigator, the agent, detective, whoever it is, it's usually a life situation, a child is missing, somebody was just shot and the suspect poses a threat to the rest of the community.

Usually they dictate that few data in there in their request to receive the records. So, again, it's very rarely that it's turned down, but I have seen it turned down if they don't give exigent reasons.
Q I'm sorry, I didn't mean to cut you off. Would it be fair to say that it's -- the request is typically specific, in other words, it's an emergency because we know there's a child missing. It's an emergency because an active shooter or got someone dead, fleeing suspect, it's rather than a catchall? Any one of these four things it's specific to the circumstances of the case is what I'm

trying to get at?

A The detectives are usually very good about articulating the facts of why it's an emergency and the phone companies generally provide it. Again, like I said, I've never had one tell me no.

MR. FOX: Just one moment, Your Honor.

THE COURT: Yes, sir.

MR. FOX: Thank you. No further questions.

THE COURT: Mr. DeBusk, redirect?

MR. DEBUSK: No, Your Honor. we would ask the Agent be excused from his subpoena so he can return to work.

THE COURT: Agent Simmons, thank you for coming. Have a safe trip to Charleston.

THE WITNESS: Thank you, sir.

MR. DEBUSK: May we approach?

THE COURT: Yes, sir.

(There was a bench conference in the presence of the jury but out of the hearing of the jury.)

THE COURT: Let's take 15 minutes now.

MR. DEBUSK: Thank you.

THE COURT: Once again, ladies and gentlemen, we were planning your immediate future. That's what we were talking about. We're trying to decide when to take a break. They're telling me what we've got left.

The next matter is going to be a videotaped

statement, and it's going to take about an hour and a quarter to do. Rather than get into it and interrupt it for the break, we're going to take a break now. We'll get you out in about 15 minutes. We'll start back at about 3:25. Please don't discuss this case among yourselves while you're in the jury room.

(Whereupon, the jury left the courtroom at 3:11 p.m.)

THE COURT: Okay. Folks, we'll take 15 minutes. Thank you.

(Whereupon, a short break was taken.)

THE COURT: Folks, are both sides ready for the jury?

MR. MILES: State's ready.

MR. FOX: Defense ready.

THE COURT: You can bring the jury.

(Whereupon, the jury entered the courtroom at 3:31 p.m.)

THE COURT: We continue now, ladies and gentlemen, as the State continues to offer testimony and evidence in this case.

Mr. DeBusk, Mr. Miles.

MR. MILES: Yes, sir, the State calls Sergeant Hugh Jones to the stand, please.

THE COURT: Come forward, please, sir, Sergeant Jones, and be sworn.

THE CLERK: Please raise your right hand, place

you're let me have hand on the Bible.

HUGH JONES, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Sure. It's Hugh, H-U-G-H, Jones, J-O-N-E-S.

DIRECT EXAMINATION:

BY MR. MILES:

Q Sergeant Jones, can you tell the jury what your current occupation is?

A Sure. I'm a sergeant with the Myrtle Beach Police Department. Right now, I'm assigned as one of the shift supervisor of, basically, what we call the power shift. It's parole shift and we also focus on high crime areas that have violence and we, basically, go and see if we can reduce the crime.

Q And what law enforcement agency were you employed with in 2014?

A The City of Myrtle Beach.

Q How long were you employed with the Myrtle Beach Police Department?

A Myrtle Beach, I believe I've been there 17 years.

Q And what are your present responsibilities?

A The present responsibilities as shift supervisor with the power shift.

Q And can you explain your duties as the investigator back in 2014?
A Yeah, in 2014, I was a violent crime investigator. Basically, we would investigate crimes against persons such as murder, armed robberies and just investigate and carry forward the cases.
Q And how long had you worked as a crime scene investigator at that time in 2014?
A As a detective, I was there -- let's see. I spent six years in investigations. At this time, I believe I've been back there two years.
Q Did you have an occasion to assist on this case we're here for today?
A Yes, sir.
Q When did you get involved with the case we're here for today?
A The incident occurred on June 16th of 2014. We, basically, heard the call come out on the radio, that they had found a victim in a vehicle with a gunshot wound and we, basically, responded from the very beginnings of the incident.
Q Okay. And how were you assisting in this investigation?
A As I said, I worked investigations at the time. I responded, along with several other investigators. And

just when we got to the scene, we observed the victim deceased in the vehicle. And we all just took different roles investigating the case from there.

At the scene, we ran the vehicle tag and learned a possible name for the victim, at which point, I went to the hotel.

The incident occurred at 806 South Ocean Boulevard, which was a hotel. I went to the hotel to see if he was staying there. He was not. And, basically, the crime scene responded and we were out there with investigations. Like the following day, we began to develop -- Detective Kitelinger was the lead investigator in the case. We had learned that the person of interest was in Chester, South Carolina.

Day three -- through the cell phone information. Day three, we had -- myself, Detective Kitelinger, Sergeant Quinn and Marshal -- an officer with our marshal task force, Officer Arroyo, had responded to Chester to see if we could locate the defendant, as well as execute a search warrant on his house and speak to another person of interest.

Q Okay. And why at that point, did you want to talk to, I guess, who you learn by the time you got to Chester was Meleke Stewart? Why did you want to talk to him?

A At the time of the incident, a search of the vehicle,

the victim's cell phone was recovered. A search of the victim's cell phone showed, basically, messages from the victim to an unknown subject up to -- basically, talking about sex for money right around the time of the murder and we had a phone call leading up to the murder. That was the last person the victim had spoke to.

Q And did you get a chance to speak -- or did they get a chance to speak to Meleke Stewart while they were in Chester?

A Yes, sir.

Q Did Meleke Stewart talk to the police?

A Yes, sir, he did.

Q All right. I want to talk a little bit about that interview. As part of your assistance in this case, did you also assist in the interviews?

A No, sir, my duty at the initial time was to do a search warrant on the residence. And then they -- the defendant was brought back to the police department. Investigator Kitelinger and Chester County detective -- or school resource officer had talked to the defendant since the school resource officer had known him for awhile.

I, basically, sat in an interview room or a little control room, which was right beside the interview room. There was a glass wall. It was audio, video recorded, so I could watch that interview, as well, as a second

interview at the same time it was going on.
Q Just to be clear, you could see and hear what was going on in the interview room with Meleke Stewart?
A Yes, sir.
Q Do you know if Meleke Stewart was read his Miranda rights?
A Yes, sir, he was.
Q Did he appear to understand his rights?
A Yes, sir, he did.
Q After the Miranda was read to him, did he agree to talk to the Myrtle Beach police officers?
A Yes, sir, he did.
Q And during that time, was the defendant, Meleke Stewart, in this case promised anything during that interview?
A No, sir.
Q Was he threatened during that interview?
A No, absolutely not.
Q Did he ever ask for an attorney or ask to quit the interview process?
A No, sir.
MR. MILES: No further questions at this time, Your Honor.
THE COURT: Thank you.
Cross-examine?

MR. FOX: Yes, sir. Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. FOX:

Q Sergeant, you indicated how long you've been a detective. How long have you been with Myrtle Beach Police?

A Myrtle Beach Police, I was there a total of 17 years. I spent eight years in North Myrtle before coming to Myrtle Beach, so I have 25 years.

Q Now, you went up to Chester with several other officers, correct?

A Yes, sir.

Q Including Will Kitelinger?

A Yes, sir.

Q And how long have you known -- he's Detective Kitelinger, correct?

A Yes, sir.

Q And he's retired at this point, correct?

A Yes, sir.

Q But how long had you known or worked with Detective Kitelinger?

A I believe he started, more or less, at the same time I did. When he came from North Myrtle, he had came to the Myrtle Beach Police Department from the Marine Corp.

Q So back in 2014, he would have had?

A That's four years ago, probably about 12 years at that point.
Q So Detective Kitelinger would have had a dozen years as a police officer in Myrtle Beach at that time?
A Yes, sir. I didn't work with him directly that whole time. I believe he was in narcotics at one point, I was in traffic. But I knew of him.
Q And this wouldn't have been the first case y'all worked on together, would it?
A No, sir.
Q And probably not the first interrogation that you've been, at least, present for at the same time?
A No, sir, I don't believe so.
Q That's part of his job?
A Yes, sir. Yes, sir. I was just trying to remember if I sat in.
Q Do you know if he worked at any other law enforcement agencies before Myrtle Beach?
A Off the top of my head, I'm not sure. I knew he was Marine Corp before he came to Myrtle Beach, but I have no idea.
Q Veteran, too, right? He was a combat veteran, wasn't he?
A I just know he was in the Marine Corp.
Q So he's a Marine and, at least, a 12-year veteran of

law enforcement. Do you know roughly what age person he is?

A Give or take, I believe he's around my age. I'm 50, so I believe he's right around there.

Q So again, four years ago, he was mid-40s, 45, 46 somewhere in there?

A Yes. I'm guessing. I'm not sure off the top of my head.

Q To be a police officer, like all police officers, he would have had training before he could be certified or sworn in as a police officer?

A Basically, the department will hire you after you go through background process and all that. Then once you get hired, you'll usually have preservice, which is building up to the academy, then you go to the state criminal justice academy. You, basically, get certified after you're hired, if that's what you're asking.

Q Sure. How long is the criminal justice academy? How long was that training?

A Three months. It may be a little longer now. It's been a while since I went.

Q Do you receive any training in questioning suspects, or just witnesses and conducting interviews?

A Usually, at the academy, it's a lot more of the basics. I believe you cover Miranda and all at the

academy. Like I said, it's been 25 years since I went, but usually the interview and interrogation is more of an advanced skill that you'll get into later.

Q Is that something you would be trained for later?

A I can only speak for myself. I've had numerous classes in interview and interrogation since going to the academy.

Q That would be common or typical for someone that's handling your duties?

A Yes, sir. In investigations, I received different investigation classes.

Q Okay. And then, of course, on-the-job training, simply going out and actually doing it, correct? Probably the best training you can get?

A You definitely learn a lot, people out.

Q Now, you were present -- now, if I recall from the previous matter we heard I guess the day before yesterday, you were present -- you were in the same building when Mr. Stewart was interviewed by Detective Kitelinger, correct?

A Yes, sir. Basically, the way it's laid out is there's an interview room on the right side and the left side. And in the center is a small control room, for lack of a better word. There's monitors for both rooms and both walls have like a double mirror like you see on TV,

where you can see in, but they can't see out.
Q So you weren't actually in -- physically in the room with Mr. Stewart and Detective Kitelinger, but you could see and hear, observe what was going on?
A Right. I could see from there and hear from the monitor.
Q Now, did you -- were you -- did you make any inquiries and, if you know, did Detective Kitelinger make any inquiries about how old Mr. Stewart was at the time?
A I can't remember off the top of my head.
Q Would it surprise you or would it sound right that he was just past his 18th birthday?
A I knew he was in high school.
Q So he was still enrolled at Chester High School?
A Yes, sir.
Q This was summertime, so summer school was going on; is that correct?
A I know he was late for school the day of -- after the incident.
Q And, in fact, that's one of the reasons why you had Mr. Wade Young, as the school resource officer, was there with Detective Kitelinger --
A Yes, sir.
Q -- because he was familiar with him?
A Yes, sir.

Q Didn't do any checking on with Mr. Young or with school authorities on Mr. Stewart's education level, intellectual capacity, anything like the?
A Not that I know of, no, sir.
Q Okay. So you would be unaware that he was in Special Ed classes, had IEPs, things like that during his --
MR. FOX: Objection, Your Honor.
THE COURT: I'll sustain the objection. It assumes right now facts not in evidence.
MR. FOX: Yes, sir.
BY MR. FOX:
Q And so there would have been a great disparity in the age, Detective Kitelinger, who was 45, 46, and Mr. Stewart, who was 18?
A Yes, sir, he was definitely older.
Q And certainly, a great disparity in experience in this kind of situation?
A Yes, sir.
Q Were you aware at that time -- I don't know if you've gotten to this point in the investigation, that Officer Stair, who was at the crime scene and processed a couple of items for fingerprints had run that through AFIS? Were you aware of that at the time that y'all went up the Chester, what the results of that were?
A I don't believe I was.

Q And would you have done -- would it have been routine to -- once you had identified Mr. Stewart -- and fair to say he was suspect at that point?
A Yes.
Q Once you identified his name and connected him to the phone and those text messages, fair to say he was a suspect, correct?
A Yes, sir.
Q Would it have been -- did you -- would it have been common practice to check on any criminal history he might have?
A Yes, sir.
Q Did he have any criminal history?
MR. MILES: Objection, Your Honor.
THE COURT: I think he -- my recollection was that Detective Stair indicated that he was not in any database; is that right?
MR. FOX: At least, in the AFIS database, Your Honor.
THE COURT: That's right.
MR. FOX: Which apparently is a law enforcement database based on convictions and I'm not sure if it encompass arrests or not.
THE COURT: I'll allow that. I think depending upon what parts of the -- well, I don't think that issue is in dispute right now. I'll allow the question.

THE WITNESS: Okay. As far as I know, he had no criminal history.

BY MR. FOX:

Q Thank you. That's all I needed to know. And I can provide you -- you prepared affidavits -- it would have been standard practice, and you did in this case prepare an incident report or a summary of your involvement?

A Yes, sir, basically, an investigative followup.

Q Have you had a chance to review the one you did?

A Yes, sir, I have it.

Q You have it with you, okay. Hold on. I want to say, I believe it's on the second page. It would be in the top half, you describe going to Chester, going to 129 Jeter Street. Do you see that? About midway through that top paragraph. Here I can show you, save a little time. Make sure I've got you on the right page.

Well, off have a slightly different -- let me show you what I have. I might have a slightly different -- hold on.

A Yes, sir, this one's mine.

Q I'm not trying to hoodwink you here.

A I got you. I got you.

Q I think I may have a slightly different version.

A Roy and I drove up to Chester, is this what you're talking about?

Q That is, that's it. Thank you. And then right about here. And then just read -- if you would look at that real quick, again, that right along in there.
A Yes, sir.
Q So after looking at your report, does that kind of refresh your memory of what you did?
A Yes, sir, we drove up to where offender lived and -- let's see. Detective Glenn, Kitelinger, Marshal Arroyo and I drove up to Chester.
THE COURT: Don't read quite so fast if you don't mind.
THE WITNESS: I'm sorry.
BY MR. FOX:
Q The way I'd like you to do it is take as much time as you need to review it. And rather than read straight from it, you would testify from what you recall if that helped you remember.
A Yes, sir. We served the warrants and conduct search warrants?
Q That's my question. Prior to going up there, you had already obtained search warrants, correct?
A Yes, sir.
Q Okay.
A Well --
Q Go ahead.

A I believe somebody had spoke with Chester. And we can't do a search warrant in Myrtle Beach, it would have to be through Chester.
Q That's correct. But you had contacted -- I say you, but Myrtle Beach law enforcement had contacted Chester and requested that they -- because that was the jurisdiction that you were in, they have to be the ones to take the lead on that, correct?
A Yes, sir.
Q So that request had been made prior to y'all going to Chester?
A Yes, sir.
Q And that was for a search warrant?
A Yes, sir.
Q Did you also have arrest warrants requested before you went up there?
A I believe Detective Kitelinger either had or was going to have.
Q And I think -- again, I want to make sure your memory is the same as mind going over your report. You indicated in that that you went along to Chester to observe the arrest? That's just below that line, about two lines below.
A Yes, sir.
Q So, in other words, you went -- at least, yourself

went to Chester with the expectation that Meleke Stewart would be arrested?
A Yes, I guess.
Q And, at least, for murder. We understand he's facing several charges now, but --
A Yes, sir.
Q -- he would be arrested for murder? Okay. So that would have been before anyone talked to Mr. Stewart, correct?
A Yes, sir.
Q Okay. Now, you were -- at the end of the interview, which we'll hear, in fact, Detective Kitelinger informed Mr. Stewart we're going to serve you with the murder --
A Yes, sir.
Q -- and I think possession of a weapon during the commission of a violent crime warrant?
A Yes, sir.
Q And it was those two, right?
A Yes, sir.
Q No others?
A I'm not sure what the warrants were for.
Q But that would be plain -- when we hear this recording of the interview, that will be plain on its face, right, we'll be able to tell that?
A Yes, sir.

Q Okay. Are you aware of when -- again, in your involvement in this case -- let me ask you this. Did you have any part of presenting this case to the grand jury?
A No, sir.
Q Are you aware of when any of these indictments were obtained from the grand jury from information you got afterwards, perhaps, in preparing for trial?
A No, sir.
Q Okay. Are you aware -- and if you're not aware, then you can say so. Were you aware that the indictment for attempted armed robbery was not obtained until earlier this year, 2018?
A I have no idea.
Q Okay.

MR. FOX: One moment, Your Honor.

THE COURT: Okay.

(Pause.)

THE COURT: Mr. Miles, redirect?

MR. MILES: Yes, Your Honor.

REDIRECT EXAMINATION:

BY MR. MILES:

Q During that interview, you stated that he was read his Miranda rights?
A Yes, sir.
Q And did he appear to understand those rights?

A Yes.
Q Did he fill out or sign a form acknowledging that he understood those rights?
A Yes, sir.
Q I'm going to show you what's been marked as State's Exhibit 1, I believe.
MR. MILES: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
Q Sergeant Jones, do you recognize what I'm showing you right there?
A Yes, sir, it's a copy of a Miranda form.
Q And is that the form that Meleke Stewart signed on that day prior to his interrogation?
A Yes, sir.
Q And what -- can you tell me what this language is up here or what is this?
A It's Detective Kitelinger's writing. But, basically, we'll ask clarification questions before we begin the interview, such as are you under the influence of any alcohol? How far did you go in school? Do you understand English? If I say something you don't understand, will you stop me, we'll talk about it. We'll make sure you understand what I'm asking you. Basically, to make sure they understand and they're lucid to conduct the interview. And then we'll ask him the actual Miranda

questions. Usually, go through every single question. But it's basically -- thank you.

THE COURT: Sergeant, perhaps, it would be helpful if you actually referred to what you did in this particular -- or what Detective Kitelinger did in this particular case since you have the statement there in front of you.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

THE WITNESS: Yes, sir. Basically, went through every single question and ask him if he understood. You have the right to remain silent and refuse to answer questions. I believe the defendant nodded his head. Anything you say can and may be used against you in a court of law. You have the right to talk to an attorney, have him or her present while you're being question. If you cannot afford to hire a lawyer, one will be appointed to represent you before questioning if you desire one. If you desire to make a statement or answer questions, you have the right to stop at any time.

And during the interview, Detective Kitelinger read those and. Then after the defendant acknowledged in one way, he checked every single one going over every one. And then he presents the form, basically, saying the above rights have been explained to me and I understand each one of them, at which point, the defendant signed and then

printed his name. And then Detective Kitelinger signed and printed his name as witness.

MR. MILES: All right. If we can, Your Honor, I know this one isn't the one that's been marked as State's Exhibit 1, but I would like to publish the Miranda form to the jury.

THE COURT: You can publish that. We'll attempt to find the original one that was used pretrial and remove the ID, it will be State's No. 1 in evidence.

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

MR. MILES: May I publish it at this time?

THE COURT: Yes, sir.

MR. MILES: And that concludes the questions I have for Sergeant Jones.

THE COURT: All right. Any followup questions?

MR. FOX: No, sir.

THE COURT REPORTER: It's right here. I'm sorry. I had it stuck to the Defense Exhibit, I'm sorry.

THE COURT: Okay. Good. Are you going to remove the ID?

THE COURT REPORTER: Yes.

THE COURT: You can step down, Sergeant. Thank you very much.

THE WITNESS: Thank you, sir.

THE COURT: Okay. Mr. Miles.

MR. MILES: Your Honor, the State's next witness, I'd call Detective Wade Young.

THE COURT: Okay.

Come forward, please, Mr. Young, and be sworn.

THE CLERK: Please raise your right hand. Place your left hand on the Bible.

WADE YOUNG, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Wade Young, W-A-D-E, Y-O-U-N-G, Jr.

DIRECT EXAMINATION:

BY MR. MILES:

Q Mr. Young, can you tell the jury what your current occupation is?

A I'm an investigator for Chester County Sheriff's Office.

Q What law enforcement agency were you employed with in 2014?

A Chester County Sheriff's Office.

Q All right. Can you tell the Court about any and all law enforcement training you've had during your law enforcement career?

A Yes, sir. I was a road deputy for three years, worked as a school resource officer for about three years.

When I became an investigator, I had criminal investigator basic training and, also, criminal investigative homicide.

Q All right. And how long were you employed with the Chester Sheriff's Office?

A Around nine years.

Q What are your present responsibilities?

A Investigate various crimes, criminal violent crimes. Based on my agency, we do it all. We investigate everything.

Q Are you from Chester County?

A Yes, sir, born and raised.

Q Can you explain to the jury about how big Chester County is?

A A small community.

Q And it's kind of one of those towns where everybody knows everybody?

A Yes, sir.

Q Did you have an occasion to assist on this case we're here for today?

A Yes, sir.

Q Can you tell the jury how you became involved in this case?

A Well, I was the school resource officer at the time in 2014, and Mr. Stewart was one of my students. So I was asked to come and sit in on the interview part of this

case.
Q Okay. Why do you think that was?
A I was advised that they really -- since Mr. Stewart knew me and I knew him, it would make him feel more comfortable to talk to someone -- to have someone in the room with that that he knew.
Q Okay. And can you tell the jury what your responsibilities were -- well, let's move on. How did you assist in this particular case?
A I basically just sit in in the interview. That's about it.
Q And who all was in the room during that interview?
A Detective Kitelinger, if I'm pronouncing it right.
Q That's correct. And just you two?
A Just me and Detective Kitelinger.
Q And Meleke Stewart?
A And Meleke Stewart.
Q And when you talked or heard the defendant speak and respond to questions, did he appear to be under the influence of alcohol or drugs?
A No, sir.
Q Did he appear to have any mental impairments at that time?
A No, sir.
Q Did he appear to be impaired in any form or fashion

that day?
A No, sir.
Q Do you remember about how long Meleke Stewart was in the interview room?
A Right at an hour and a half, two hours.
Q And was the defendant at any time -- or was the defendant denied access to phone, bathroom, food or drink?
A No, sir.
Q At some point, was he allowed to see his family members?
A Yes, sir.
Q During the interview, did you or the other officer ever threaten the Meleke Stewart in an effort to get him to make a statement?
A No, sir.
Q Did you ever promise him anything in order to get him to give a statement?
A No, sir.
Q All right. When you talked to the defendant at that time, was he in custody?
A Yes, sir.
Q And since he was in custody, were the Miranda rights read to him?
A Yes, sir.
Q And were they read to him before the interview

started?
A Yes, sir.
Q In addition to reading him the Miranda rights, did they also go through each one of the parts of the Miranda rights?
A Yes, sir.
Q All right. Did he appear to understand his rights?
A Yes, sir, he was advised if he didn't understand anything to -- he would -- Detective Kitelinger would clarify it for him. So he acknowledged okay.
Q Did he acknowledge that he understood his rights?
A Yes, sir.
Q Did he sign anything indicating he understood those rights?
A Yes, sir.
Q And what did he sign?
A He signed a Miranda form.
Q The same form that the jury was just -- well, I guess you weren't here.
At any point, did he indicate to you or anybody else in that room that he didn't want to talk anymore?
A No, sir.
Q At any point, did he request to talk to an attorney?
A No, sir.
Q Were all of his answers responsive to the questions

that were asked of him?
A Yes.
Q Was this interview recorded?
A Yes, sir.
Q And did you review the recording of this interview?
A I did.
Q Is it a true and accurate depiction of what occurred on that date the interview was taken?
A It is.
Q And you didn't see that it was altered or tampered in any kind of way?
A No, sir.
MR. MILES: Your Honor, at this time, we would like get this mark as State's Exhibit --
THE COURT: It's State's Exhibit 2 for ID, so you can remove the ID in order to get it --
I think that's right, isn't it?
THE COURT REPORTER: Yes.
MR. MILES: Your Honor, may we approach?
THE COURT: Okay. This is the redaction. We can mark this one as another -- this one is slightly different format, so let's give this a 2-A, State's 2-A.
(WHEREUPON, State's Exhibit No. 2-A was marked for identification only.)
MR. FOX: Your Honor, I would renew my objection from

previously that we argued on the same grounds as to the admissibility of that statement.

THE COURT: And I will renew the rulings made previously in that regard and the objection, once again, will be a continuing objection to this line of questioning and to the evidence itself, so the record will be preserved in that regard.

Are there any additional objections not previously lodged as to this particular exhibit?

MR. FOX: No, Your Honor. Just for a little bit of clarification, this would also encompass Mr. Hiller's objection on his issue that we dealt with before.

THE COURT: Exactly. I think they were all kind of enfolded and argued in this one.

MR. FOX: Thank you, Your Honor.

THE COURT: Thank you.

Subject to those objections, State's 2-A in evidence.

(Whereupon, State's Exhibit No. 2-A was admitted into evidence.)

MR. MILES: Your Honor, may we publish it to the jury at this time?

THE COURT: You can. It's in evidence. You can publish it.

(Whereupon, State's Exhibit 2-A was played for the jury.)

THE COURT: Mr. Miles, any further direct examination of Detective Young?

MR. MILES: No further questions for Detective Young, Your Honor. Just noting for the record that that was the redacted version of that interview.

THE COURT: I understand.

Cross-examination, Mr. Fox.

MR. FOX: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. FOX:

Q Detective Young, you were the school resource officer at Chester High back in 2014?

A Yes, sir.

Q Okay. And you knew Meleke Stewart from your time there?

A Yes, sir.

Q Okay. Did you know him before that or just --

A Not before school, but he lived also in my community on the same street.

Q It's a small community, everybody is kind of aware of each other?

A We lived on the same street. I think sometime that year he moved in.

Q And we heard reference in that interview. What do you mean by you're a champion wrestler, what did the

detective mean by that?
A He was a two-time state wrestling champion.
Q As a resource officer, of course, you're not involved -- it's important, but you're not a teacher, you're not involved in the direct education of Mr. Stewart or any of the students, correct?
A No, sir.
Q Okay. Were you aware that he was on IEP, an individual education plan?
A No.
MR. MILES: Objection, Your Honor.
THE COURT: I'll sustain the objection.
MR. FOX: Thank you, Your Honor. I'll move on.
BY MR. FOX:
Q He was clearly in custody when this interview took place, correct?
A Yes, sir.
Q Tell us again, what was he wearing when he was being interrogated for about an hour and a half, two hours?
A During the interview?
Q Yeah.
A What was he wearing during the interview?
Q Yeah.
A Some gym shorts.
Q And that was it, right?

A Yes, sir.
Q And a pair of shoes?
A Pair of shoes and gym shorts.
Q And at the very end, Detective Kitelinger then became worried about a shirt --
A Say it again, sir.
Q At the very end of the interview, then Detective Kitelinger asked about a shirt, are you cold, we want you to have decent clothes at the end of the interview?
A That's correct.
Q And to be clear, the solicitor referenced this a moment ago, what we just heard, it's all of the questions about what happened in Myrtle Beach, but there was a little bit more that went on that we elected and chose, both sides agreed not to show the jury because it was really just kind of talk; is that correct?
A That's right.
Q So the total time that Mr. Stewart was in there before he was taken out was probably closer to two hours, is that fair to say?
A That's fair.
Q Okay. Again, if you know, June, mid-June of 2014, I would imagine -- how long were you a resource officer at Chester High?
A About three years.

Q Three years. Okay. From your own knowledge, was it typical for seniors, but also other students at Chester High to come down to Myrtle Beach during what they call senior week at the end of school each year?
A I think so.
Q And that's typically early June, first week or two of June?
A I think it's right around graduation.
Q Right. Basically, right after the end of school or graduation proceeding; is that correct?
A Right.
Q That's been for years. You might have done that yourself?
A I didn't do it.
Q Okay. Now --
A I worked.
Q I got you. You were present, obviously, for that interview that we just saw?
A Yes, sir, I was present.
Q That's you in the corner, right, lower corner?
A That was me.
Q And you heard the time and you heard just now 23 different times Mr. Stewart described an attempt by Mr. Daniels to force him to have or to grab him and make him do some sexual act. He said that over and over and over

again, didn't he?
A I didn't count the times, but yes.
Q But it was numerous?
A Yes.
Q Okay.
MR. FOX: Thank you, Your Honor. No further questions.
THE COURT: Okay.
Redirect, Mr. Miles?
MR. MILES: Yes, Your Honor. Briefly.

REDIRECT EXAMINATION:

BY MR. MILES:
Q At any time during that interview, did Meleke ever say he was cold or if he could have a shirt?
A No, sir.
Q In June in Chester, what's the weather like during that time of year?
A Normally, it's pretty hot.
MR. MILES: No further questions, Your Honor.
THE COURT: Thank you.
Detective, you can step down. Thank you, sir.
THE WITNESS: Thank you, sir.
MR. MILES: Your Honor, we would ask he be released from his subpoena, as well.
MR. FOX: No objection.

THE COURT: Thank you. You're released and free to go back to Chester, as well.

THE WITNESS: Thank you.

THE COURT: Counsel, will you all approach for a moment for some planning purposes, please?

(There was a bench conference in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, I was just trying to figure out where we are. It looks like you'll get this case in your hands sometime tomorrow, and that's what I was really trying to check on.

So we'll start back in the morning again at 9:30, and you are to report back to the jury tomorrow morning. I have it on high authority, that is from Ms. Stevens, who's in charge of your breakfast --

It's going to be different tomorrow, Ms. Stevens?

THE CLERK: Yes, sir.

THE COURT: Okay. It's going to be good.

THE CLERK: You get biscuits tomorrow morning.

THE COURT: That's right, biscuits.

Okay. And if you don't like Bojangles biscuits, that's fine. Just give me yours.

You're going to find out a few weeks from now when you get a small check from the county, you're going to be glad you got some free biscuits and free doughnuts.

I remind you again, ladies and gentlemen, of course, as always not to discuss this case among yourselves when you get back to the jury room tomorrow morning and, of course, not to let anybody else talk with you about it or try to find out anything on your own about it while you're out of the courtroom. Have a safe trip home, we'll see you at 9:30 tomorrow morning. Thank you.

(Whereupon, the jury left the courtroom at 5:36 p.m.)

THE COURT: Mr. Miles, Mr. DeBusk, gentlemen, if you could give me a copy of the transcript that was used. I realize it's not official.

I had some difficulty hearing some of what Mr. Stewart was saying without having the transcript in front of me. It may be helpful to me in dealing with motions tomorrow if I have a copy to look at. I realize it's not redacted, and that's fine. But that would be helpful to me -- or may be helpful to me. I'm not sure.

Is there anything else before we break for the day from the State, Mr. DeBusk, Mr. Miles?

MR. MILES: No, Your Honor. And I have multiple copies of this, so you're more than welcome to this one if you like. Let me make sure there's no notes or anything improper in here.

THE COURT: That will be fine.

Mr. Fox, Mr. Hiller, anything from the defense before

we break for the day?

MR. FOX: No.

THE COURT: 9:30 tomorrow then.

MR. MILES: Your Honor, I don't want to hand you this with all the sticky notes and stuff on it. Is it okay if we get it to you in the morning or would you like me to run down and grab it now?

THE COURT: No, that's okay. I'll have some time tomorrow to look at it. And, frankly, I wasn't planning on reading it overnight anyway.

MR. MILES: Thank you, Judge.

THE COURT: See you at 9:30 tomorrow.

(There was an overnight recess.)

(WHEREUPON, State's Exhibit Nos. 49 through 53 were marked for identification only.)

THE COURT: All right, folks, are both sides ready for the jury?

MR. DEBUSK: Yes, sir.

MR. FOX: Yes, sir.

THE COURT: Okay. You can bring us the jury.

(Whereupon, the jury entered the courtroom at 10:26 a.m.)

THE COURT: Good morning, ladies and gentlemen. We are sorry for the delay. It could not be helped this morning. It was nobody's fault. A transportation

emergency arose and it was taken care of, it just took a while to do it. We are grateful for the message that we got while we were in delay that you all were willing to take a shorter lunch hour and to work longer to complete this trial today, and we are all in accord, that's our goal, as well.

You may have been told, and I'm sure you were told, that in order to shorten the lunch hour, lunch will be provided for you here. It will be brought in so you will not have to leave. That will save a lot of time in and of itself, and we think the case will certainly be in your hands well before the end of the day. And from that point on, we are on your time clock. You've been on ours all week, but once we put the case in your hands, then you're the ones who decide the pace of things from that point on. And we'll have it in your hands well before the end of the day. Thank you.

The State is continuing to offer evidence and testimony in this case. Ladies and gentlemen, please give your attention.

Mr. Miles.

MR. MILES: Your Honor, the State calls Sergeant Hugh Jones back to the stand.

THE COURT: Sergeant Jones, resume the stand, please. You're still under oath.

THE WITNESS: Yes, sir.

HUGH JONES, being previously sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. MILES:

Q You know we left off yesterday discussing your involvement with the interviews, but was that -- you didn't just stop your assistance with this case just with the interviews?

MR. FOX: Your Honor, I apologize, we can approach first. We may have a matter of law we need to take up outside. If we may approach first.

THE COURT: Okay. Let's try it.

(There was a bench conference in the presence of the jury but out of the hearing of the jury.)

THE COURT: You can continue, Mr. Miles.

BY MR. MILES:

Q Sergeant Jones, did your assistance with this case stop at the interview room?

A No, sir. After the interview, we learned that the defendant had, basically, thrown his cell phone away and tried to destroy it. On the way back to Myrtle Beach -- the defendant was taken in and arrested as well as the codefendant, and we then transported him back to Myrtle Beach.

It was learned in the interview he would show us where the cell phone is, so, basically, we went from Chester Police Department to a little convenience store in Rock Hill, South Carolina. I believe -- if I'll refer to my notes.

Q Yes, sir.

A It was the Quick C convenience store located at 1055 South Anderson Road, Rock Hill, South Carolina.

Q Now, I heard you say we. Who all went out to the area when you learned where to look for the phone?

A The defendant was transported by, at that time, Detective Quinn, Marshal Arroyo, followed by Detective Kitelinger and myself. They were in the front car leading us to where we were going. We were following behind them.

Q Ultimately, were y'all able to find that phone?

A Yes, sir. We followed them to the convenience store. Upon doing so, we approached -- the defendant was in the back of a patrol car. We asked him where it was.

He advised that he had thrown it towards the fence line. We all walked around, looked and the cell phone was located. I observed it on the grass. I believe Detective Kitelinger collected it, and we brought it back and placed it into evidence.

Q Did you get a chance to look at the phone?

A Yes, sir, I did. Also, once we found the phone, the

defendant confirmed that it was his phone.
Q So it was -- the defendant did assist you in helping to locate this phone?
A Yes, sir. We were having trouble finding it. It was a big grassy area behind the convenience store. We looked and looked. We came back over and he kind of pointed us in the general direction it was at. And once we recovered it, we confirmed with him it was the phone.
Q So that phone was then collected by your office?
A Yes, sir.
Q And can you describe what you remember from that phone to the jury?
A I believe it was a regular smart phone, Tracfone, I believe, and it had been -- clearly, tried to be destroyed. I believe the front face was shattered. I think -- almost like somebody tried to crush it. But it looked like a phone that was just completely broken.
MR. MILES: Your Honor, may I approach the witness?
THE COURT: Yes, sir.
BY MR. MILES:
Q I want you to take a look at what's been marked as State's Exhibit 49.
A Yes, sir, that's the phone.
Q And that's a true and accurate representation of the phone as you found it that day?

A Yes, sir.

MR. MILES: Your Honor, at this time, the State would move to have exhibit -- State's Exhibit 49 into evidence?

THE COURT: Any objection?

MR. HILLER: Object to the same line of objection as previously stated in this trial, Your Honor.

THE COURT: All right. Subject to previous objections only, this is in evidence over those objection. Thank you.

MR. MILES: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 49 was admitted into evidence.)

BY MR. MILES:

Q And after you found that phone, did you do anything further to assist in this investigation?

A No, sir, that was pretty much it.

MR. MILES: All right. Nothing further -- hold on one second.

BY MR. MILES:

Q Did you at any time go to the crime scene?

A Yes, sir. As said in the initial testimony, we had heard the call come out on the radio and we responded to the crime scene.

Q Where was this crime scene?

A I'm going to refer to my notes --

Q Certainly.
A -- to get the exact address. It was 806 South Ocean Boulevard. It's a hotel. It was, basically, at the rear parking lot of that, which is parallel to Yaupon Street.
Q What city was that location?
A City of Myrtle Beach, County of Horry.
MR. MILES: No further questions of this witness, Your Honor.
THE COURT: Thank you.
Cross-examination?
MR. FOX: Not on this issue, Your Honor.
THE COURT: Thank you.
You can step down, Mr. Jones. Thank you.
THE WITNESS: Thank you, sir.
MR. MILES: We'd ask he be released from his subpoena.
THE COURT: All right. We'll release him again.
MR. MILES: Oh, yeah, he's staying in.
MR. DEBUSK: We call Malinda Shadoan.
THE CLERK: Please raise your right hand and place your left hand on the Bible.
MALINDA SHADOAN, after being duly sworn, testified as follows:
THE CLERK: State your name for the record.
THE WITNESS: Malinda Shadoan, last name spelled

S-H-A-D-O-A-N.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Officer Shadoan, who's your employer?

A The City of Myrtle Beach Police Department.

Q Who are your duties?

A I am a property and evidence technician. I take in all, whether it be lost and found in the city or evidence from officers and investigators and house them in a secure location.

Q So you guard the evidence of all?

A Absolutely.

Q Okay. Did you have all the evidence in reference to this case, which was involving suspect Alton -- I'm sorry, Meleke?

A I did.

Q Thank you. Stewart. Let me show you what's been marked as State's Exhibit 53 and ask if you recognize that?

A Yes. These look like two pieces of evidence that I had taken to SLED.

Q What are the contents?

A Can I refer to my notes?

Q Yes. What are the purpose of notes?

A It's to show me exactly what each label would be

description-wise.
Q That's how you keep track of things?
A Correct.
Q Label the contents?
A Right. So group number four would be the fired shell casing from the dash and group 13 would be the fired shell casing from the driver's seat.
Q And both of those are inside this exhibit?
A They are, I hope. Yes.
Q When you received them, how would they have been packaged?
A They're actually packaged within this little box, and they are sealed with the red evidence tape that goes around, and I just so happen to put my label over the top of it.
Q Is that signed by the person who sealed it?
A Yes, whoever dropped it with us signs and dates the actual tape to show they're the ones that are dropping it.
Q Who was the person that signed and dropped these items with you.
A Group four was -- at the time, it was crime scene Officer Stair and group 13 would be the same.
Q Based on your notes, do you know what was done with that once it was put into evidence?
A After it was put in evidence, it was sent to SLED on

August 27th of 2014.
Q And how would it have been -- at that time, it was still in the boxes with the tape?
A It was.
Q Any further packaging you had to do?
A At that point then, what they like to do because it goes to one department, they'll put it in another envelope like this and then they'll put their yellow evidence tape on there. And then whoever drops it, which was another coworker at the time, Diane Roberts, she would then sign and date it as if like she had done two of the officers had done earlier.
Q And it would have been in a sealed condition when Ms. Roberts got it?
A Correct.
Q Where is Ms. Roberts?
A She has since retired and moved to Florida.
Q When its gets to SLED, do they package it again?
A Thereafter, they'll seal it on both sides to make sure it's tamper free and then whatever they do on the analyzed portion of it, I don't see.
Q But all the time it was in the custody control of Myrtle Beach Police Department, it remain sealed. If the sale had been broken, what would have been done?
A It's absolutely having to be sealed. I will not

accept anything unless it has a seal on it. If, by any chance, there was a seal tampered with, I will immediately contact the officer and not process it into my department.

Q And if it, for some reason, had to be opened, what would be done?

A They would go ahead and reseal it again with the date that they go to reseal it.

Q Then both dates would be visible?

A Correct.

Q And this only has the one?

A The one date.

Q One moment.

MR. DEBUSK: Your Honor, we offer State's 53 into evidence at this time?

THE COURT: Any objection?

MR. FOX: I mean, on behalf of Mr. Hiller and myself, the same objection that would be created. Thank you, Your Honor.

THE COURT: Subject to the objection, 53 in evidence.

(WHEREUPON, State's Exhibit No. 53 was admitted into evidence.)

BY MR. DEBUSK:

Q I'm showing you some other items which I believe have the same case number?

A Okay.

Q First, we're going to do State's Exhibit 50, ask if you recognize that?
A This looks like it's our group number 33 and it's a condom and a wrapper that was sealed with the evidence tape again before I processed it in.
Q I'm sorry. I apologize. I was asking him questions. What were the contents?
A It's a condom in a wrapper and our group number 33.
Q And who submitted that?
A Let me look. It was turned in by Michelle McSpadden on June 16th of 2014.
Q At that time, was Ms. McSpadden an employee of --
A She was. She was also crime scene.
Q And what would have been done with that?
A It was secured in our location and it did not go to SLED or any other type of analysis. Crime scene would have done whatever prior to bringing it in.
Q It was maintained in your custody and control in the evidence locker?
A Yes, the whole time until today.
MR. DEBUSK: Subject to further examination, Your Honor, we will withhold moving it in at this time.
THE COURT: I'm sorry?
MR. DEBUSK: Subject to further foundation, we'll withhold moving it in evidence at this time.

THE COURT: We'll mark it for identification only at this point in time.

BY MR. DEBUSK:

Q Get down to the markers where you can see them. What's been marked as State's 51 and I guess would be 52 -- and 52, I was correct. Did you handle these items?

A Yes, sir, let me just double check. The denim pants are our group 37, also brought in by Michelle McSpadden, and the shirt, same date and time, as well.

Q Were they maintained in a safe and secure location?

A Correct, they were.

THE COURT: What are the two items, shirt and what else?

MR. DEBUSK: Denim pants, Your Honor.

BY MR. DEBUSK:

Q And were they brought to court today by you?

A Yes, sir.

MR. DEBUSK: Thank you.

THE WITNESS: You're welcome.

MR. DEBUSK: Please answer any questions defense may have.

THE COURT: Cross-examine?

MR. FOX: Your Honor, I have no questions.

THE COURT: Thank you.

Ms. Shadoan, you may step down. Thank you.

THE WITNESS: Thank you.

MR. DEBUSK: She doesn't actually -- she was here today without a subpoena, but we would ask that she be excused.

MR. HILLER: No objection.

THE COURT: You're free go. Thank you, ma'am.

THE WITNESS: Thank you.

MR. DEBUSK: The State calls Chad Smith with SLED.

THE COURT: Okay.

Agent Smith, come forward, please, be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

CHAD SMITH, after being duly sworn, testified as follows:

THE CLERK: Please state your name.

THE WITNESS: My name is Chad Smith.

DIRECT EXAMINATION:

BY MR. DEBUSK:

Q Is it Agent Smith?

A Agent is fine.

Q Agent Smith, who is your employer?

A I'm employed with the South Carolina Law Enforcement Division, which is commonly known as SLED. Specifically, I work at SLED's forensic services laboratory in Columbia. I work in the firearms department.

Q What are your duties in the firearms department?
A My primary responsibilities are the examination of firearms, ammunition and ammunition components, such as bullets and cartridge cases. I also do serial number restorations on firearms that have obliterated serial numbers, as well as muzzle to target distance determination for shot pellets.
Q So pretty much in the area of firearms?
A Yes, sir.
Q Would you tell the jury and the Court about your training and qualifications?
A Well, I attended Clemson University where I got a Bachelor's of Science degree in biological sciences. Then when I came on board with SLED, I entered the training program to become a firearms examiner at SLED. This training program last between three to five years. It is supervised by the court qualified examiners of the firearms department with extensive reading and studying involved.

Multiple examinations and practical tests during this time period. I also attended various classes and courses and toured several firearms and tool manufacturing facilities.

Later in my training, I was able to help other examiners prepare their own casework. At the end of the

together marked as State's Exhibit 53, and ask if you can tell the jury what are these items?

A These are the two fired 9mm Luger caliber cartridge cases which I received for examination.

Q For this particular case?

A Yes, sir.

Q Tell me what a cartridge casing is in terms of a firearm or ammunition?

A A cartridge case, you can see here, is basically the container for all the other components of a cartridge. Some people kind of maybe just call this a bullet or you see that on TV. They just lump everything together as a bullet. Technically, that's incorrect.

You have a round of ammunition. One unit of ammunition is called a cartridge. So that cartridge is actually made up of several components. You've got the cartridge case, which would be evident here. That serves as a container for all the other components.

So inside the cartridge case is the gunpowder and then on top of the gun powder, which in kind of protruding out of the mouth, the opening of the cartridge case would be the projectile, the bullet. At the base of the cartridge case, which would be the bottom part here, there's a component which is called a primer.

So the primer, basically, once it's struck by the

consistent with being extractor marks, so you would see that on semiautomatic pistols as opposed to a revolver, which you actually have to manually insert cartridges in the chamber and extract them out. It doesn't have an automatic mechanism as a semiautomatic pistol would.

Q I don't have a semiautomatic, but I have a small sort of facsimile. Would you explain to the jury, when a semiautomatic pistol is fired, does any part of this beside the trigger move with the bullet?

A Yes, sir. To start with, a semiautomatic pistol, you have a magazine. The magazine is the portion which is attachable. Most of time, it's called a detachable box magazine, which you put your cartridges in. You load the cartridges into the magazine. You insert the magazine into the magazine well, which is typically the handle area of the frame. It goes up inside here. And then the top portion here is called the slide.

So what happens is to actually load a cartridge into the firearm, we'd have to pull the slide back. Now, there's a spring up here called a recoil spring. So as you pull the slide back, it compresses that spring and then when you let the slide go, it feeds a cartridge from the top of the magazine into the chamber so it's ready for firing.

So again, it's under spring tension, so when you pull

the slide back, it compresses the spring. You let it go and the spring expands and pushes everything forward. So at that point, it's ready to fire. When you pull the trigger, the firing pin strikes the primer component of the cartridge, which again ignites the gun powder and the bullet travels down the barrel.

As it's traveling down the barrel, the rearward pressure of the cartridge case pushes on the slide itself. There's a breach face mechanism here, which is basically just supports the bottom or head area of the cartridge that's being fired. So that force pulls the slide back. And then once a fired cartridge case is expelled out of firearm, again, spring tension forces the slide back forward and then another round is stripped from the top of the magazine and into the chamber and is ready for firing again.

Q That's call semiautomatic because it loads the next shot as a result of the first shot?

A Well, semiautomatic refers to, basically, one pull of the trigger, you get one round that's fire, as opposed to a fully automatic weapon where you just hold the trigger down and the mechanism fires it automatically until you run out of ammunition or you pull off the trigger. But semiautomatic just basically refers to one pull of the trigger, one round is fired.

Q So when the semiautomatic gun is fired, this top slide slides back and forth?
A Correct.
Q With some force?
A Yes, sir.
Q If someone's hand was tightly gripped over the gun, would it interfere with that function?
A It would interfere with the mechanism. You can actually -- if you hold the slide tight enough with your thumb up underneath the frame area, then holding the slide, you can actually just -- it would still fire, but the mechanism which would cause the cartridge case to be extracted and ejected would not work because you're actually holding down the slide part. But again, you would have to actually hold it down pretty tight for that to happen.
Q But if a steady hand was just resting on there and the slide operated, could it injury the hand?
A Yes, sir, if you just had it resting up there and then the cartridge is fired, again, it comes back with some severe force, it could injury the hand or cut the hand.
Q Now, let me talk about your examination of these two items in the State's 53. What did you determine about the relationship between those two items?

A What I did was I compared these two cartridge cases with each other. The way we do that is we have a comparison microscope. Basically, that's two microscopes that's connected by an optical system, so you can look through the eye pieces of the system and then you can compare both samples simultaneously. So there's two stages of the microscope, so you compare the two cartridge cases together and you're looking for markings that are created from firing. And in this case, I was looking at the markings that were created from the firing pin itself of the firearm making impressions on the primer portion of the cartridge cases.

So we're looking for very small microscopic marks that are created from the firearm that are imparted onto the cartridge cases. These marks, what we're looking for are individual marks that we can say are individual of a specific firearm. And then like when I have enough agreement of those markings, then I can say that they were fired by the same firearm. And in this case, I was able to determine that both the submitted cartridge cases were fired by the same firearm.

Q So it's your opinion that both of those casings came from the same firearm?

A Yes, sir.

Q Is it also that that firearm was semiautomatic, would

you go that far?

A I believe so. I believe that these -- now, the caliber is 9mm Luger. Typically, that's a round for a semiautomatic pistol. There are some revolvers that can fire 9mm Luger caliber cartridges. But again, having the one cartridge case exhibiting an extractor mark, I believe that that was caused from a semiautomatic firearm.

MR. DEBUSK: Thank you.

I'm sorry.

THE COURT REPORTER: It's okay.

MR. DEBUSK: Throwing evidence at the reporter is never a good thing.

Thank you. Please answer any questions the defense may have.

THE COURT: Cross-examination?

MR. FOX: Yes, sir.

CROSS-EXAMINATION:

BY MR. FOX:

Q Agent, I'm not going to use the technical terms the way you will, but the extractor marks were on one of the shell casings and I think you said it was consistent with a semiautomatic weapon?

A Correct.

Q Could it be consistent with an automatic weapon or is it -- I understand it could be a revolver and

semiautomatic. Could, though, what you found be consistent with an automatic weapon as well?

A It could. They both, basically, have the same parts. A fully automatic weapon would still have the extractor, the part that would extract the fired cartridge case out of the chamber, so they would share the same parts.

Q Was a weapon ever submitted to you for analysis?

A No, sir.

Q So you're basing these conclusions on your analysis of these cartridge casings, correct?

A Correct.

Q And you've described the slide action of a semiautomatic weapon and the fact that -- I believe you said you would have to be holding down tightly to prevent that?

A Right. If you wanted to impede that reciprocating action of the slide.

Q So we can say, at least -- obviously, you analyzed what was recovered at the scene. You obviously don't know what happened at the scene. We can say confidently two cartridges, who bullets were fired because we have two cartridge cases, correct?

A Yes.

Q Okay. No bullets were submitted to you?

A No, sir.

Q Okay. You had just the shell casings that are in evidence now?

A That's correct.

MR. FOX: Thank you. No further questions.

THE COURT: Redirect, Mr. DeBusk?

MR. DEBUSK: No, Your Honor. We would ask Agent Smith be relieved from his subpoena.

MR. FOX: No objection.

THE COURT: Thank you, Agent Smith. You can be released from your subpoena.

THE WITNESS: Thank you, Your Honor.

MR. MILES: Your Honor, the State calls as its next witness Michelle McSpadden.

THE COURT: Ms. McSpadden come forward, please, and be sworn.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

MICHELLE MCSPADDEN, after being duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Michelle McSpadden.

DIRECT EXAMINATION:

BY MR. MILES:

Q Ms. McSpadden, what is your current occupation?

A Deputy Coroner.

Q What law enforcement agency were you employed with in 2014?
A Myrtle Beach Police Department.
Q Can you tell this jury about any and all law enforcement training you've had prior to and while at the Myrtle Beach Police Department?
A I started my law enforcement career at Myrtle Beach PD. I was a dispatcher. I started in December of 2000. In 2003, I became a patrol officer. I went to the Criminal Justice Academy. I worked on the road for a couple of years before moving to the crime scene unit. I was in the crime scene unit from 2005 to the time I left the police department in 2014.

The training I had while I was there had anything to do with evidence, so fingerprint development, comparison, blood spatter analysis, death investigation, digital evidence, anything that had to do with evidence.
Q All right. And I'm bad with math, but how long were you employed with the Myrtle Beach Police Department at the date of this crime?
A Just a little under 14 years.
Q What were your responsibilities in 2014?
A I was assigned to the crime scene unit. I was the senior crime scene investigator. Our unit handled anything having to do with physical evidence.

Q Okay. And can you explain -- maybe just elaborate on that. What were your duties in your position during that time?

A So we responded to any scene where there might be evidence, physical evidence. So that could be anything from a vending machine gets broken into and we fingerprint the vending machine or someone gets cut and there's blood left behind. All scenes from very minor things up to and including homicide investigations.

Q How long had you worked as a crime scene investigator at that point?

A At that point, just under nine years.

Q Ms. McSpadden, did you have an occasion to assist on this case we're here for today?

A I did.

Q What did you do to assist in this investigation?

A On June 16th, I worked the evening shift, so I came in later in the afternoon. I don't remember exactly what time, probably 2:00 p.m. or so. I was asked to go and look for video surveillance at a convenience store that was near the incident location.

It was Lawrence Food Mart at 9th South and Kings Highway. So I started my day at Lawrence Food Mart looking for video surveillance that might be related to this.

Q Did you find anything of any significance from that surveillance?
A I don't believe so. I collected one camera. I don't even remember what the camera showed. I don't think anything came of that, but my job was specifically to collect the evidence, not necessarily to do the analysis later.
Q Well, thank you for that clarification. Now -- so after you did the surveillance, what was your next role in this investigation?
A Later the same evening, my partner and I went to Grand Strand Hospital where the body of Mr. Daniels was awaiting autopsy. The autopsy was scheduled for the next morning. My partner and I did some kind of preliminary evidence collection before autopsy.
Q Can you explain to the jury what exactly that is?
A Sure. So on that day, what we were looking for, specifically, we collected the clothes, went through his pockets.
Q And I'll stop you right there.
A Yes.
Q What kind of clothes was he wearing?
A He had two white sneakers, two socks, a pair of denim pants, a belt, a pair of underwear and a plaid short-sleeved shirt.

Q And would you recognize some of those items of clothing if I showed you them here today?
A Yes.
MR. MILES: Your Honor, may I approach?
THE COURT: Yes, sir.
BY MR. MILES:
Q I am showing you what's been marked as State's Exhibit 51. Do you recognize this?
A I do.
Q And how do you recognize this?
A This was the shirt that we took from Mr. Daniels while we were in the morgue that evening. He was wearing that.
Q Did you examine this shirt at all?
A I did.
Q What, if anything, of any significance did you find from this shirt?
A So there are two holes in the shirt. You can kind of see there's --
MR. MILES: Your Honor, would it be all right if I had the witness step out to point out the holes in the shirt to the jury?
THE COURT: You can do that.
Ms. McSpadden, if you'll make sure you face the direction of the court reporter as you're giving your

BY MR. MILES:

Q All right. You said you collected some denim pants, as well, blue jeans?

A Yes.

Q Would you recognize those blue jeans if I showed you those today?

A Yes.

Q I'm showing you what's been marked as State's Exhibit 52. Do you recognize those?

A Yes.

Q What are these jeans right here?

A These would be the pants that we removed from Mr. Daniels in the morgue.

Q And did you examine these pants?

A Briefly, yes. I took some photographs, basic photographs, didn't find anything really of evidentiary value. We did go through the pockets. Found in the pocket a stocking cap, an unopened condom and 95 cents change.

Q Okay. We're going get to some of that in a little bit. Is this a true and accurate depiction of the pants that you saw and examined that day?

A Yes.

MR. MILES: Your Honor, at this time, we would also like to move State's 52 into evidence?

THE COURT: Any objection?

MR. FOX: No, Your Honor.

THE COURT: All right. Thank you.

(Whereupon, State's Exhibit No. 52 was admitted into evidence.)

BY MR. MILES:

Q All right. You said you looked in the pockets?

A I did.

Q Okay. And what all did you find in the pockets?

A A nylon stocking cap, an unopened condom and 95 cents change.

Q Would you recognize the condom if we showed it to you today?

A Okay. Sure. Okay.

Q Is this is the condom that you found in Alton Daniels' pocket that day?

A It is. The way I know that is this is my handwriting on the front of packaging and my signature on the evidence tape.

MR. MILES: Your Honor, at this time, we would also like to introduce State's Exhibit No. 50 into evidence?

THE COURT: Any objection?

MR. FOX: None, Your Honor.

THE COURT: Without objection, thank you.

(WHEREUPON, State's Exhibit No. 50 was admitted into evidence.)

BY MR. MILES:

Q After examining these clothes and the contents of the pockets, did you do anything to assist in this investigation?

A There were a few more little things that we did with the body itself, processed the hands for gunshot residue. When I say process, I mean collected any gunshot residue evidence that might be present on the hands.

I clipped his fingernails in case there was any DNA underneath the nails that didn't belong to him, did fingerprints on him for a standard so that when we processed the car, we would know what prints were his and what were not. And because there was some -- I got information there was some evidence on a cell phone about a possible sexual encounterer, we swabbed his genitals, as well. We returned him to the cooler for autopsy that next morning.

Q And did that end your assistance in this investigation?

A One more thing. On the 19th, I met with Detective Kitelinger, so this was about three days later, four days later. Detective Kitelinger had served a search warrant in Chester and he brought me some evidence from that.

Q And did you do anything with that evidence? Did you examine that evidence any further?

A Some of it. So there were three cell phones that came with that evidence. One of them was broken. I looked at the cell phone, determined there was nothing at that point we could do with it to retrieve the evidence on it because of the condition it was in. I processed it for fingerprints, didn't get any.

There were two more cell phones, a Samsung cell phone. I did analyze its contents. The last activity on it was May 29th, 2014, which was a few weeks before this incident, so I don't think there was any more analysis done with it.

There was an iPhone that was locked. I was not able to get evidence from it because of the lock code on it. There was a memory card, like a computer memory card. I looked on it, did not find any files or anything stored on it. There was an unfired bullet, some paperwork having to do with a cell phone and some phones numbers and another unopened condom.

Q When you looked -- when you were looking at those cell phones, were you by yourself?

A Probably so.

Q Did you not have -- you didn't have anyone's assistance with you in examining those cell phones?

A On those, I don't have any notes that I did. I'm not positive.

MR. MILES: Okay. No further questions, Your Honor.

THE COURT: Thank you.

Cross-examination?

MR. FOX: No questions of this witness.

THE COURT: Thank you. You can step down.

THE WITNESS: Thank you.

MR. MILES: Your Honor, at this time, the State rests its case.

THE COURT: Thank you.

Ladies and gentlemen, the State has now rested its case in chief. That means that you have heard all the evidence you will hear from the State in the presentation of its case in chief.

Necessarily at each juncture like this in a trial of this sort, I have to deal with matters of law outside of your presence that do not require you in here. So I'm going to send you to your jury room for a few moments while we deal with those matters of law.

I'll get you back as soon as we have completed that to let you know about the balance of your morning's work. Please do not discuss this case among yourselves while you're in the jury room. Thank you.

(Whereupon, the jury left the courtroom at 11:08

a.m.)

THE COURT: Mr. Fox, Mr. Hiller, gentlemen, I'll be glad to hear motions from the defense.

MR. HILLER: Thank you, Your Honor. At this time, the defense moves for a directed verdict pursuant to Rule 19 of the South Carolina Rules of Criminal Procedure. In making this motion, Your Honor, I reraise all objections that we have made pretrial, specifically as to the exclusion of the majority of the evidence presented at trial due to both a violation of my client's Article One, Section 10 privacy right and the -- and the subscriber data taken from his phone without authority and without warrant and also violation of his Fourth Amendment rights in obtaining private protected records from his phone without a search warrant and without sufficient exigent circumstances sufficient to allow the bypassing of the warrant requirement. Of course, from that, Your Honor, followed the call logs that the Verizon custodian brought forth, the text logs, the CSLI that both the Verizon custodian brought forth and then the FBI analyzed. Of course, the statement of our client and the physical cell phone that he led them to.

Basically, what we argued pretrial, every -- the unfolding of this case -- the bottleneck in this case is the warrantless search of that cell phone. For that

reason, we believe that even in the light most favorable to the State, there's no evidence sufficient to send this case to a jury given our arguments previously made and, of course, ruled upon by Your Honor.

Also, Your Honor, we'd still continue the argument that the confrontation clause was violated by Detective Kitelinger's lack of presence at trial. We understand the medical reasoning, but do not believe that that -- but still have to address the fact that a right was violated.

Kitelinger told this then 18-year-old in the presence of his school resource officer that he's either gay or an armed robber, and I believe he had the right to get into that on direct. And there's no sufficient witness to substitute for the one who accused him of that. I do know how Your Honor ruled on that, but I still do for the purpose of preservation renew those arguments for the purpose of preserving a record.

THE COURT: Thank you. As to those -- excuse me. As to the renewal of those motions previously made, I think that the record is replete with my rulings and the rational, such as they were, to my ruling in that regard. So I simply renew those rulings again.

As to any additional grounds for the Rule 19 motion, they must be respectfully denied. As you stated, the evidence must be taken in the light most favorable to the

State, the nonmoving party.

The statement alone, assuming it's admissibility, as I do and have ruled, at least, from my consideration, there is sufficient evidence to lead a jury to believe if they chose to believe the evidence that Mr. Stewart is guilty of the crime charged.

As you know, we're concerned only with the existence of that evidence, not the weight of it. That's for a jury determine. But nonetheless, applying the standards that the courts over a long line of cases have given us in ruling on Rule 19 motions, I must respectfully the motion and find there is sufficient evidence to send this matter forward.

Now, State having rested its case, Mr. Fox, Mr. Hiller, gentlemen, are you prepared to give me some indication of how long you think it might take for you all to put a defense in this case or if the defendant chooses to testify or do you need some more time on that?

MR. FOX: Judge, I've spoke to -- prior to starting testimony this morning, I did speak to Mr. Stewart again about his option in terms of to testify and not and the implications and the questions that Your Honor would ask him.

I'd ask just -- I think I can do I right here to make sure nothing has changed because it's been a very brief

amount of time. The only question at this point would be whether Mr. Stewart testifies or not. If we can have just a couple minutes to speak with him. This might be a good time to take a break, five or ten minutes, Judge, would be fine.

THE COURT: We'll do that. Let's start back at, say, 25 after the hour, that should be enough time.

(WHEREUPON, a short break was taken.)

THE COURT: Mr. Fox, Mr. Hiller, have you had a chance to talk to Mr. Stewart about his wishes to testify or not testify?

MR. FOX: I have, Your Honor, and obviously done that many times over the last few years, but again just now, and we're prepared for Your Honor to question him about it.

THE COURT: All right. Mr. Stewart, if you'll stand up where you are, please, and raise your right hand.

MELEKE STEWART, after being duly sworn, testified as follows:

THE COURT: You can have a seat.

Mr. Stewart, we have reached the stage in the trial now where the State has rested its case now and you have the opportunity to offer evidence and testimony on your own behalf if you choose to do that.

You've heard me tell the jury why you do not have to

do that if you choose not to do that. That means that you have the right under our Constitution to invoke the protections that our Constitution gives you.

Both our United States and the South Carolina Constitution provide that no person shall be compelled, that means forced in any criminal case to be a witness against himself. That means that you cannot be forced to take the stand. You're not required to take the stand. You cannot be made to take the stand and testify in this case.

It is a right that only you have. The right not to testify, the right to remain silent is a Constitutional Right that is yours. It doesn't belong to anybody else. You're the only one that can exercise that right. You're the only one who can give it up. You have the right to testify and if you choose to testify and give up your right to remain silent, you'll be subject to examination by the witnesses on the other side and you can be impeached just like every other witness who has testified in this case can be.

If you choose not to testify, if you choose to exercise the right you have and choose not to testify, the jury will be instructed that they cannot take that into account in their decision as to whether or not you are guilty or nothing guilty of these crimes.

They will not even be allowed to discuss the fact that you did not testify in their deliberations and in their consideration of your guilt or innocence. So it then becomes a personal choice.

It's up to you to choose to testify and give up your right to remain silent and be subject to the same types of questions that every other witness has had in this case or to exercise that Constitutional Right and remain silent with the instructions that I'll give to the jury.

Do you understand what your rights are both to testify and not to testify in this case?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions you want to ask me about those rights?

THE DEFENDANT: No, sir.

THE COURT: So can I assume then that when you tell me whether you wish to testify or not testify, you're making that decision with a full understanding of what your rights are?

THE DEFENDANT: Yes, sir.

THE COURT: Do you wish to testify in this case?

THE DEFENDANT: No, sir.

THE COURT: Okay. Thank you.

All right. Folks, that gets us then to the next phase of the trial of this case. I'll note to the extent

that it's necessary the renewal of all other motions that you would normally put in after you have rested your case and renew those motions as well that would be proforma at this juncture.

What I recognize now that -- the lunch is not going to be here for an hour. Well, 12:30. That's too much time for us to kill, obviously, and not use in some meaningful way, so we're going to need to go to final arguments, but I realize that you all might need some time to get exhibits together and the final pieces together. And we'll take another recess, of course, to allow you to do that.

The State in this case, of course, will be required to make the first of the final arguments and then by that time, it might be lunch time, I'm not sure, it depends on how long it takes. If we have to break the arguments up, we will do that.

If it's possible to work both of the arguments in before lunch, we'll do that. I would prefer to do that, quite frankly. I don't mind separating the charge from the arguments, but I hate to divide the arguments themselves unless it's absolutely necessarily necessary.

In order to help you all prepare for the arguments, let me just go over the charges that I will give in accordance with our instructions, our discussion, I should

say, this morning in chambers.

The question remains as to what crimes I was going to instruct the jury as and what the jury verdict form would look like. I have had the opportunity to read again portions of the transcript of Mr. Stewart's statement.

On the basis of the transcript, I am going to charge the jury as to a voluntary manslaughter. The basis for that charge comes from portions of his statement which are scattered throughout that the gun went off during a struggle over the gun.

He is not entitled to a charge on accident because he was not in lawful possession of a firearm, and as you know, the charge on accident only arises when you're in lawful possession of a firearm. He was not in this particular case.

He is entitled, according to my view of the evidence, however, if the jury should choose to believe it to find him guilty of the lesser offense even if they believe that he committed the crime, but lacked the malice necessary to prove murder that he could be found guilty of voluntary manslaughter.

Of course, the verdict form as to that particular charge will be guilty of murder or guilty of voluntary manslaughter or not guilty.

On the armed robbery charge, I will charge common law

robbery on the basis of his testimony -- this is on Page 31. I was just going to take the money and run. I was going to take the money and run. I wasn't going to do nothing with the gun.

I was going to take the money and run. Of course, the gun got introduced into it and that gave rise to the charge of attempted armed robbery. So it becomes in my view a factual case for the jury to determine as to whether or not he is guilty of attempted armed robbery or guilty of attempted strong armed robbery.

So the verdict form as to that particular charge will be guilty of attempted armed robbery or guilty of attempted strong armed robbery or not guilty. I do not include guilty of petit larceny because regardless of any view of the facts, the money was attempted to be taken from his person or his presence by the use of force, fear or intimidation, which, of course, distinguishes petit larceny from strong armed robbery. Of course, the third possibly is not guilty.

The indictment for possession of a weapon during the commission of a violent crime, the choices are only two, guilty or not guilty.

As to my charge, generally, gentlemen, let me go over that with you, so you'll have, at least, some understanding of what I intend to charge and I'll be glad

to hear your exceptions as to these charges or any requests for additional charge.

My standard form on charges of this sort, the standard form that I use and the reasonable doubt definition that I use is from Victor vs. Nebraska or the State vs. Darby counterpart to that, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

There are very few things in this world that we know with absolutely certainty, and in criminal cases, et cetera. You're familiar with that. If you're firmly convinced the defendant is guilty, you must find him guilty. On the other hand, you think there's a real possibility you think he's not guilty, you give him the benefit of the doubt and so forth.

I tell you that because you're free as attorneys to argue any reasonable doubt definition which our supreme court has approved. I just didn't want you to stand before the jury and say in a few minutes the judge is going to tell you that reasonable doubt is the type of doubt that would cause a reasonable person to hesitate to act. That's not what I'm going to tell them. I've told you what I'm going to tell them so that you'll know how to deal with your arguments to the extent that you need to do that.

Of course, I'll instruct the fact that the defendant did not testify is not anything that they can take into account. I'll charge the credibility of witnesses and expert witnesses. I'll charge the statement by the defendant. Of course, the elements of murder. I will charge the inference that can be drawn from the use of a deadly weapon, the inference of malice in that particular case that can be drawn.

I'll charge voluntary manslaughter. The elements of possession of a weapon. The elements of attempt to commit a crime. I'll charge armed robbery and strong armed robbery, criminal intent, circumstantial evidence.

There is, Mr. DeBusk, as I indicated to you in chambers, there is a portion of your request from State vs. whatever it is that you gave me included in my voluntary manslaughter charge, which says furthermore, the victim's exercise of a legal right no matter how offensive to another is never in the law deemed to be a provocation sufficient to justify or mitigate an act of violence.

Now, that case indicated some facts which are particular to that case which might be particular to this case. To go any further than this charge, the bare charge on the law itself and to infringe into the facts of a particular case, of course, in my view goes beyond what we're allowed to do as State judges and that is charge on

the facts. So I'll decline to give the rest of that request that you asked me to give.

All right. Mr. DeBusk, Mr. Miles, gentlemen, as to the State, are there any request for additional charges or any exceptions to any of those charges from the State?

MR. DEBUSK: No, Your Honor.

THE COURT: Thank you.

Mr. Fox, Mr. Hiller, gentlemen, for the defense?

MR. FOX: Judge, only the Court's declining to charge on attempted petit larceny. We do believe in several places, in part, Page 31, the Court referred to where the defendant in his statement said, I just intended to snatch and grab this money. I didn't intend to use force and intimidation, use the gun.

There's, I believe, other places in the transcript -- of course, the video statement will speak for itself, but I believe there's other places where he even talks about the guy had the money out and I went to grab it and without -- just grab it without bringing out the gun, without trying to hit him. Then how things get very muted. But I do believe there's, at least, evidence from the defendant that that was his intent and that that's, at least, initially what happened. So that would be our only exception, Your Honor.

THE COURT: I understand. Without going too deep in

the woods on that, Mr. Fox, I'm not certain that just the grabbing itself from his hand or from his person and running satisfies petit larceny, but we'll let a higher court deal with that if they have to.

MR. FOX: Yes, sir.

THE COURT: From the State, Mr. DeBusk, Mr. Miles, gentlemen, how do you wish to divide the argument or do you divide it at all?

MR. DEBUSK: No, I'll do the closing, Your Honor.

THE COURT: How long do you think you might take?

MR. DEBUSK: I would guess approximately 30 minutes to an hour, Your Honor.

THE COURT: Oh, no. That gives me an idea.

Who will argue for the defense?

MR. FOX: I will, Your Honor.

THE COURT: How long do you think you might take, Mr. Fox?

MR. FOX: I would hope -- 30 would be the outside and I would think it would be closer to 20, Judge.

THE COURT: That will -- it's just for planning purposes. I don't ring a bell or blow a whistle. I do tell jurors -- I mean, lawyers, however, if I get the impression as you continue to go on and on and on that you have completely forgotten how long you told me that you were going to take, I might try to find some discrete way

to get your attention and let you know.

Mainly, of course, just for planning purposes. I'm going to try to -- as best I can to let both arguments get in before we break for lunch. If I give you 15 minutes and start back at 12:00, is that enough time, gentlemen?

MR. FOX: Yes, sir.

MR. MILES: Yes, sir.

THE COURT: All right. We'll start at 12 o'clock then.

MR. DEBUSK: Thank you, Judge.

(WHEREUPON, a short break was taken.)

THE COURT: Gentlemen, have all of you had a chance to look at the proposed verdict form?

MR. DEBUSK: Yes, Your Honor.

THE COURT: Any problems with the verdict form from the State?

MR. DEBUSK: No, Your Honor.

THE COURT: The defense?

MR. FOX: No, Your Honor.

THE COURT: Good. Are we ready now for the jury?

MR. DEBUSK: Yes, sir.

MR. FOX: Yes, sir.

THE COURT: Bring us the jury, please.

(Whereupon, the jury entered the courtroom at 12:10 p.m.)

THE COURT: Ladies and gentlemen, thank you for your patience as we have worked through some matters of law necessary to get this case ready for its next phase.

As you recall before we broke a while ago, the State had rested its case in chief, and I told you that meant the State had offered all the evidence that it intends to offer in support of the charges in the indictment.

The defense now has a right to present evidence and testimony if he chooses. I remind you again he is under no obligation to do that if he chooses not to. He has a Constitutional right not to.

Mr. Fox.

MR. FOX: Your Honor, the defense rest at this time.

THE COURT: Thank you.

Now, ladies and gentlemen, that means that you have now heard all of the evidence and testimony that you'll hear in the trial of this case. So we're ready now to proceed to the final arguments.

We did all this preliminary outside of your presence, rather than bring you back in some time ago and have Mr. Fox announce that the defense is going to rest and then send you back out while we got ready for final arguments. We compressed all of that for common sense best use of your time.

Now, we are ready to go to the final arguments that

will be presented. In this particular case, Mr. DeBusk on behalf of the State will present the first of those arguments.

After he has concluded his argument, then Mr. Fox on behalf of Mr. Stewart will present his argument. And I imagine about that time, it will probably be lunchtime and then we'll send you to your jury room for lunch and then bring you back out for the charge on the law that I'll give you.

I want to thank you, throughout the course of this trial, it hasn't been all that lengthy. Compared to what's going on down the hall, it looks like it's nothing, but it's still been lengthy for you all.

It's the only one that you're involved with and it has taken your time, but you've been punctual. Except for an emergency that delayed somebody getting here, which was nobody's fault, you have been here, you've been ready to go and you've been ready to work and we appreciated that, and you've paid attention throughout. And that's the most important thing, that you pay attention and that you continue to pay attention now to the lawyers as they present their final arguments and to me as I instruct you on the law.

Mr. DeBusk.

MR. DEBUSK: Thank you, Your Honor. May it please

the Court?

THE COURT: Yes, sir.

CLOSING STATEMENT:

MR. DEBUSK: Ladies and gentlemen, why did Alton Daniels die? There's different perspectives of that. Let's start with the perspective of our very first witness, Dr. Proctor.

He said he died because Alton was shot through the lungs and through the heart. You've got pictures of the entrance wound on the back of Alton Daniels about there, an exit wound under there, in between, straight through the heart.

Those are State's Exhibit 3 and 4. Remember the entrance wound about there, about here, and a little bit from the back. You can take a look at the pictures and decide for yourself. He also had a small injury on his right hand between the last two fingers, I believe Dr. Proctor said. But it was the shot through the heart that killed him.

There is Alton Daniels' view, the last few moments of his life. Alton was living on the down low. What Alton wanted was a sex act. He bargained for that. He negotiated for that. He was going to pay for that. Unfortunately, he picked the wrong guy.

You can see some things about the way he worked that

indicated that this wasn't his first rodeo. For instance, he kept his wallet in the trunk with most of his money. He kept part in the front he was going pay with. He had $60 there in the door handle. He bargained for 80, but I think the defendant said he gave him $20 already as a down payment.

He had that series of texts, but he led it off. He didn't lead off by asking for a sex act. He said do you want to make some money. He had done this before. When he was in the car, he wouldn't hand over all the money at once.

He said he had problems before. That's why the wallet was in the trunk. He was cautious and he knew what he was doing. He just picked the wrong guy.

Alton Daniels didn't force anybody to do anything. He put Meleke Stewart 18 years old, state champion wrestler. You can see the picture in the video of the interrogation. Big strong guy. You got pictures of Alton Daniels. You've got those autopsy pictures. You've got pictures of him laying in the car. He's not a big guy. You can see his arms are thin. You've got his pants here. You can see them. In the picture, they're sort of baggy pants and they're size 34.

I'm sad to say, I take a much larger pair of pants myself. You've heard different estimates of his size and

height. The State of North Carolina says he's 5'6". Dr. Proctor said about 5'11". Kitelinger estimated his weight at 120. Dr. Proctor estimated 180 to 200. You can look at the pictures yourself. You can judge for yourself. I would say he was nowhere near 200, but he also wasn't 120. I would submit 150. But the difference was the condition.

I'll give you an example. One time I was at a sports memorabilia store and I met a fellow named Ben Boulware, he was the starting linebacker for Clemson University football team. And I was kind of surprised to see I'm the same height as Ben Boulware. I was a little bigger. He weighed 245, I weighed 265. On paper, I should have been able to take him.

Let me tell you something, it would have been a short fight between me and Ben Boulware. He would have finished me in a hurry because he spent more time in the weight room than I spend in bed. He was in shape. That's the difference between Alton Daniels and the defendant.

Even if they're close in height, even if they're close in weight, the defendant was in much better condition. Alton Daniels didn't force him to do anything. He offered to pay him.

Why would he lock himself in a car with somebody that could easily overpower him? You don't do that. His incentive was money. He said you give me the act, I'll

give you the money. Of course, the defense would say you give me the money, I'll give you the act. Alton being experienced, he gave him $20. He kept the bulk of the money there behind him where the defendant couldn't reach it.

Another thing about being locked in the car, the defendant said when he got out, he reached over and pulled at the lock to get out of the car. If you look at the crime scene photos, this Mazda 6 did not have that kind of lock.

On a Mazda 6, there's a button right there by the door handle. That's how you unlock it. That was never locked. Alton Daniels wasn't going to lock somebody in the car that couldn't take him easily. Alton just wanted that sex act and he was willing to pay for it. Unfortunately for Alton, he ended up paying with his life.

Look at it from the defense view. What was he there for? Well, why did he get in the car with Alton? Because of that very first text. State's Exhibit 47, it's got all the texts and the times. 7:31 p.m., What's up?

7:49 p.m., what's up? Do you want to make some money?

He was there for the money. That's what got Meleke Stewart interested in Alton Daniels. He wasn't going to perform that sex act. That wasn't his thing. But he did

negotiate for a long time via text with the victim trying to bid up the price.

I got 50. I'll do it for 300. I'll do more than you want for 300. I don't have 300, maybe 100, 75, 80. I think the last bid was 80 or 75. You got the last text, you can read it for yourself.

If he was interested in -- or if he wasn't interested in the money or the sex, he wouldn't have -- well, he might have answered that texts, but it would have been something along the lines of when he says I want to rub my blank in your blank. It would have been something like you got the wrong guy or that's not what he liked.

If he wasn't interested, he never would have bothered with all that texting, all that negotiating, bidding up the price. He was interested in something. Maybe he was offended by the offer and just wanted to get with him and beat him up. If he wanted to do that, he could have accepted the first offer and said yeah, bring me $50 and meet me behind the hotel.

He couldn't just beat him up because Alton Daniels would have to blow his cover. He would have messed up his down low. No, because he bid up the price, it's clear he was interested in one of two things. Either he was going there to get that sex act and get that money or he was going to rob Alton Daniels.

He said that he never intended to do those sex acts and I intend believe to him. The primary reason I believe him is how he prepared. When he went over there, he armed himself. He took a gun. I'm using the facsimile of a gun.

He didn't go over there with an empty pocket waiting to get some money. He wasn't going to do that sex act, but he was going to get that money. That's what this is affable. That was his motivation for getting in that car.

When he got in that car, if the door was even closed behind him, he himself closed it to make sure he locked him in. He knew he was armed. He wasn't afraid of Alton Daniels at all.

And another thing, even though Alton made the first text, Do you want to make some money, made the first offer of money, the last four calls were by the defendant to Alton Daniels.

He worked very hard to find Alton Daniels and get in that car with him. He wasn't scared of him. He went looking for him. He went looking for him because he wanted the money.

He certainly wasn't surprised when he got in the car and Alton Daniels asked for his oral sex. That's what they bargained for. That's what's all the texts were about. That's what he wanted, that's what he was

expecting. So that wasn't a surprise to him. And again, he wasn't afraid of Alton or he wouldn't have made all those calls to get with him. He wouldn't have got in that and he wouldn't have closed the door behind him if he was afraid of Alton Daniels at all. He wasn't.

There was also no doubt that he armed himself to go over there. He had a gun in his pocket. He admits it. He bargained for a sex act, but he came armed with a gun. Was that his gun?

He said he started carrying a gun because he was afraid of threats, but he couldn't describe it. He couldn't tell you what it looked like, tell you the caliber, the size, the brand, the color. I can tell you something. I've been a prosecutor 20 years. When I'm not here guarded by the good deputies of Horry police department -- excuse me, Horry County Sheriff's Office, I carry a gun.

I'm licensed with a permit, but I do. I can describe that gun to you in detail. Smith and Wesson, air light, shielded hammer, 380, and it's loaded with Hornet A self-defense ammunition 38 PP.

I know exactly what it is because I pick that gun up every morning and I put it in a place that remains secret where I conceal it. He couldn't even describe the color of the gun, the size of the gun, the caliber of the gun.

He probably never touched that gun before that night. He just armed himself to go over there to commit this robbery. It was a borrowed gun.

So what happened in the car? Let's talk about that. Let me pull up my Mazda 6 real quick. There's the driver's seat. There's the passenger's seat. Alton Daniels sitting in the driver's seat of his car, and when the defendant found him after several phone calls and he sat in the car beside him, he probably did exactly what he had bargained to do when he asked for the oral sex.

The defendant, he asked for his money. Small car, they're right here next each other. You've got pictures of the car. You can see for yourself.

Now, the defendant said his plan was to go over there and grab the money and run, but he also brought a gun, so he had more plans than just to grab the money and run. Alton was too street smart to give him the money up front.

He might have give him the $20 down payment. I think that's what the defendant said in his statement. You can listen to it yourself and decide, but he wasn't given the whole money. Most of the money is right here where he could reach it easily, lickety split.

He would have turned it over after he got what he wanted. Of course, the defendant had no intention of giving him what he wanted. The defendant was going to get

that money, but he wasn't going to give the sex act.

So when he asked for the money and Alton wouldn't hand it over, even the defendant admits, he pulls out the gun. Which hand, the right hand. You've got the statement.

You've seen in the video, he signed the Miranda form. He signs with his right hand. He's right-handed. He would have pulled out the gun with his right hand. He would have had Alton over here. So he most likely would have turned a little bit so he cleared himself, so he doesn't shoot himself. He has the gun pointed at Alton.

Now, what does Alton do? Well, probably what most of us would have done if somebody pulled a gun on us. He panicked. He saw that big gun pointed at him, and if I had to guess, I would guess he put his hand out there and pushed it away. He didn't want that gun pointed at him, he pushed it away. The defendant was still trying to point it at him and a shot was fired.

He had that between his two fingers. That's consistent with the slide of the gun hitting him when it went back and forth. If he had grabbed the gun, he would have stopped that slide from going back and forth and that second shot wouldn't have fired because like the expert told you, it couldn't have received the next bullet, misfed, as they say.

Alton was over here and when that shot was fired, his door was almost certainly open. There's a slight possibility the window was down that much, may have made a shot and gone over there. Most likely that door was open. The defendant had that gun pointed at Alton, pushed it away a little bit with his hand. The shot went right out the door.

Alton had his hand on the gun. He has an injury, probably hurts, drew some blood. Talking to Mr. Fox, he showed you the drop of blood on his hand. He probably would have taken his hand that had the gun.

What did he do then? He still panicked, so Alton does the next thing, if he can't push the gun away, he's going to get himself away. So he goes for an exit. You can tell by his position when they found him he was trying to exit. He had one foot out. He was in a position to push.

I can't do it because of the seat, but you'll be able to look at the pictures. His butt was right on the edge of the seat when they found him, on the edge of the seat placed back like this.

The gun was over here, but the defendant turns to point it. Alton was trying to get out exposing his back right there. Right there below the sternum, below the clavicle, the shoulder blade to come out here. This arm

of armed robbery and turned an armed robbery into a murder.

The other thing, when Alton was found, he was back over the center console against the back of the seat. There was a casing down here. That's further indication that if a casing could get down there after being fired, he was up with his butt on the edge of the seat where he was found trying to get out of the car.

The defendant's story that Alton pulled on the gun pulling this trigger against him causing it to fire, that would require Alton to do something that he never would have done, point that gun at himself and pull it.

Nobody is going to point a gun at themselves, they're going to push it away. They're not going to point it towards themselves. So when the trigger was pull, it was pulled by the finger of the defendant, not Alton.

All Alton did was try to save himself. All Alton did was try to push that gun away and get out of the car. He did not pull that gun towards himself. Nobody in their right mind would.

Well, let's look a little closer at the defendant's statement. You have it on video. You can look at the whole thing if you want as many times as you want. What exactly did he say in the statement, what exactly did he admit to?

Well, his first story, his first story was a bald faced lie. He said somebody stole my phone when I was at the beach. I don't know anything about anything, but somebody stole my phone at the beach.

That story proved only one thing, that Meleke Stewart was willing to lie to save himself from responsibility. But he backed off that story, went to story number two. I met a guy in the car. We exchanged numbers, and that was it.

Then Detective Kitelinger tells him about the texts and he backs off that story, too. This whole statement was sort of an exercise in parsing out the truth, give you a little bit more of the truth every time he shows him his own lies, shows his own inconsistencies.

Story number three, he's confronted with the texts, he said, yeah, I texted him, but I was just teasing. It was something out of a movie. He didn't stick with that very long either. Story number four, if you watch the tape, is I blacked out. I don't remember what happened. He didn't stick with that one very long either.

Story number five was that Alton Daniels, he kept calling me and calling me and he was just calling me and I was afraid of him. Well, that one went by the way side, too, because like I said, the last four calls, you can see them on listed on and authenticated by the Verizon

representative, the last four calls made between the two of them, between the victim and the defendant, were made by the defendant. That was Meleke Stewart calling Alton Daniels, the last four calls. So this wasn't a case of the victim overwhelming his will or something like that.

When he was confronted with those last four phone calls, he changes his story again. It's getting closer to the truth. It goes to I wanted to make some money. I was going to grab the money and run. The problem with that is he brought a gun. He was ready for more than just a snatch and grab.

He came to rob him equipped with a gun. He came equipped for an armed robbery. That's the reason he brought that gun he couldn't even describe. I would argue to you he probably hadn't even seen it before that night. It was going to be an armed robbery.

He was going to get that money. He would snatch it and grab it or if he had to use a gun, he was going to get that money. At one point, I think he said he even had the $20 in his hand. But that wasn't enough, he wanted it all. He wanted whatever he had, the full $80. He could have taken the 20 and left, it wasn't enough. He stayed and pulled the gun.

Story number two, if you remember in the video, was the two-handed gun grab. Almost like I have the chairs

out here, Detective Kitelinger put the chairs next to each other and the defendant demonstrated he had the gun out, but Alton Daniels put both hands on the gun and that's how he got shot. The problem with that was where Alton Daniels was found. He was clearly getting out of the car when he was shot.

Okay, well that one didn't happen, let me think of something else. The next idea was Alton was twisting around pulling the gun towards him as he was getting out of car. As I said, nobody is going to pull a gun against him. You either push it away or you're going to let go. So that didn't work either.

He went to the next story, which was the one-handed gun grab. One hand, he's opening the door, the other he's grabbing the gun. That's maybe kind of close to the truth. Probably Alton did try to push that gun away and, certainly, he did open the door as he's trying to get out. But like I said, if he would have had his hand on that gun the first line of fire went through his hand, he would have let go and he would have had both hands engaged in getting himself out of that car in the position he was found.

The next story, I think it's story number nine now, he wanted to beat him with the gun. He brought the gun along because he was going to beat him with the gun.

Again, more truth. He said he wanted him to feel something strong.

Watch the video, you'll see I wanted him to feel something strong. Another way to convince him to part with that money, which was the reason he got in that car. The money he wanted to get. The pistol was something strong that was going to part Alton Daniels with his money, and the defendant's story evolved as he parsed the truth.

I don't know if he ever quite got to the same truth, but look at what he admitted. He admitted he went there because he wanted the money. He intended to take the money and gave service. He admitted he brought the gun.

He admitted he pulled the gun out and wanted Alton to feel something strong, something more than just fists to make him give that $80. He admitted that Alton was trying to get out of the car after defendant had the gun. He was fleeing.

He admitted he never had intention of performing those sex acts despite the fact that Kitelinger gave him multiple times to tell his story. He said, I'm not going to judge you if you're gay.

He said, No, I was not going to do that. I was there to get the money. He admits he disposed of the gun somewhere. He told me, I threw it in a dumpster behind

the hotel. For crime scene officers there, I believe he said they went through three tons of garbage out of the dumpster trying to find that gun, never found the gun. Probably because that gun was never in the dumpster. Probably that gun was returned to whoever it was borrowed from and he didn't want to rat his buddy out.

He admits that he fled back to Chester from Myrtle Beach after stopping in Marion and telling his aunt that he had shot someone. His aunt told him he needed to turn himself in. He still went back to Chester. After Chester, he went to Rock Hill. Smashed and disposed of the incriminating phone. He went about his business as if nothing happened. That's the story of an armed robbery. That's an admission to an armed robbery and a murder in the course of the armed robbery.

In the end, he admitted that he went to Alton's car to get the money. He went armed, went to get that money after he had lured him there by fooling with texts about a sex act he never intended to do. It was an armed robbery. And in this case, he's actually accused of attempted armed robbery because he never got the rest of the money. That first $20 Alton gave him was a down payment. They were going after the rest of the money. So it was an attempted armed robbery.

Armed robbery is taking the property of another by

threat of force while armed with a deadly weapon. The deadly weapon is clear, he had that gun. The bullet holes in Alton proves it. The casings in the car prove it. His own admissions prove it. He had a gun. He admitted what he was doing. He was trying to get the money. He was trying to take the property, the money of Alton Daniels by threat of force by pointing a gun at him.

Then there's possession of a weapon during a crime of violence. What that is, is -- the crime is in the name. Having a weapon on your while you're committing a violent crime.

In this case, you're going to consider three violent crimes when the judge charges you with the law. Attempted armed robbery is a violent crime. Murder is a violent crime and voluntary manslaughter is a violent crime. So if you find any one of those three crimes, he possessed a weapon during the commission of a violent crime.

Murder. Murder is the killing of another with malice aforethought. Malice is the ill will, intent to hurt someone. Aforethought doesn't mean premeditated. Aforethought means they had that intent at the time the trigger was pulled.

Here Alton was shot, was shot because he resisted an armed robbery. The malice arises from the fact the defendant was trying get his money and Alton didn't

cooperate. He was shot, and any efforts by Alton to push that gun away or to grab the gun and try to take it away, those are his efforts to defend himself.

He was exercising his legal right to self-defense if he touched that gun. And that can't be construed as anything but an effort of self-defense. And that comes more into voluntary manslaughter.

Voluntary manslaughter is the killing without malice. And you have to find that the defendant was in the heat of passion. For some reason, his passions were aroused and this case doesn't mean passion in terms of sex. It means passion in terms of anger or something like that. And that there was some sufficient legal provocation. Remember, exercising a legal right can't be sufficient legal provocation. If Alton tried to defend himself against that gun, that's not sufficient legal provocation. That's self-defense, that's exercising a right.

So I would argue to you the only finding here is that he had malice, that he went in that car to steal that money. And Alton wouldn't give it and Alton tried to run away and while he was running, he was shot.

He had malice. You're allowed to infer malice from the fact that a violent crime is being committed. So everything here, all the evidence points to a botched armed robbery. Why did Alton Daniels die? Why? He died

for $80, $80 for a life.

The only reason this was an armed robbery and murder was because the defendant brought a gun. He could have easily overwhelmed Alton. Alton couldn't put up a defense against a State champion wrestler.

He would have given up that money, but the defendant chose to make it an armed robbery and chose to make it a murder when he pulled that gun and he shot Alton and tried to kill him. And just remember, Alton never would have pulled that gun to himself. He would have pushed it away.

It wasn't Alton that made that gun go off. It was the defendant who pulled the trigger. And for all that, he's guilty of attempted armed robbery. He's guilty of murder. He's guilty of possession of a weapon during the commission of a crime of violence.

The final word is about the standard of proof in a case like this. It's proof beyond a reasonable doubt. Now, the judge will give you some instructions on what proof beyond a reasonable doubt is. He will tell you things about it's proof that leaves you firmly convinced of the guilt of the defendant. But the fact is, the judge can't draw you a picture.

Reasonable doubt comes from you. It comes from yourselves, a cross section of this community. You have to decide if the proof is sufficient to punish him for the

crimes he committed, and reasonable doubt comes from you.

I would argue to you that given what you have in this case, the defendant armed himself to go over there after luring the victim in with false texts and trying to rob him and shooting him for resisting, the only just verdict is he is guilty of murder, attempted armed robbery, possession of a firearm during a crime of violence.

Thank you.

THE COURT: Thank you, Mr. DeBusk.

Mr. Fox.

MR. FOX: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CLOSING STATEMENT:

MR. FOX: Meleke Stewart is not a murderer. Meleke Stewart in June of 2014 was barely past his 18th birthday, never been in any kind of trouble. They checked, of course, they checked, never been in any kind of trouble, not in the state system, two time state wrestling champion, doesn't mean a person who's a good athlete can't commit crimes, but he's that kind of guy. He's dedicated, hard-working. Does his best, he's going to summer school to try to continue his education. He's not a murdered.

I disagree with a lot -- it's not my job to speak for Mr. DeBusk, but I certainly have to reply to Mr. DeBusk on

certain. A lot of what he argued factually I believe is interpretation that he says must have been, could have been.

The judge will define reasonable doubt, but reasonable doubt is definitely something more than it might be that way, right. As the judge has already told you, it's something that leaves you firmly convinced. And if you're back there guessing maybe it went like this, maybe it went like that, that's not beyond a reasonable doubt. Okay. So it's, again, a doubt that leaves you firmly convinced.

There's not a big argument -- I mean, what Mr. DeBusk told you about the law is the law. I think there is an absence of malice here. I'm going to start with the facts -- there's an awful lot, I do not want to go through every single person's testimony or the facts, but the thing the solicitor specifically brought up that I disagree with.

The gun that Malik had, he has explained -- I wish young people in this country, in this state would do it the right way, but it is not uncommon for people of all ages to carry weapons that they don't have a lawful right to carry. I wish that wasn't the case. It's not smart, it's not good, but it's there.

And again, I agree the statement that Meleke makes

speaks for itself. You can watch it as many times as you want. You look at his action. You look at his demeanor. You listen to what he says and how things come out.

You watch what he says, there were some fellows back home. They were after my brother. I told them family first. I'm not dealing with you anymore, and then I started getting threats.

Now, the better thing to do if they're serious threats, go to law enforcement or go about getting your weapon legally, but it's just the fact that quite often the way that happens is if someone around has got a gun and you give them 20, $50, whatever it is, and now you're armed. And that's not smart, but that's how it is. He didn't arm himself to go rob Alton Daniels. He came to the beach with the gun. He didn't know or have any communication with Alton Daniels before he came down here. He had the gun when he came down here.

Would it have been better for everyone -- of course, we wish he had not taken the gun. This whole thing is a horrible, horrible tragedy. The bottom line, it's a tragedy.

Now, Alton has gone from his family and that's a horrible thing, but it's not your role to decide this case based on sympathy. Of course, there's sympathy for the Daniels family, but that's not what we're here about.

We're not having a trial about that. We're having a trial about whether Meleke Stewart is guilty of murder, attempted married, and possession of a weapon during a violent crime.

Now, this is not a who, we know who was there. Meleke had told the detectives and he told -- it's been played for you, we know who was there. It's not a who. It's absolutely a why and a how, okay, but I do have to talk a little bit about how the police got to Meleke because I think it's important when you evaluate that statement. The statement that you have is in evidence.

The judge -- we have all kinds of discussions when you're not around what about the rules are going to be, all right. And instead of in a football -- well, sometimes you have it in the middle of the game, but the Judge is the umpire, referee.

So before we start, we try to establish what the parameters are going to be. This piece of evidence will be allowed. This won't. Sometimes it comes up during trial, too. You've seen objections that have been made. But it's important because the judge has said you get to see that statement, it's in evidence.

How that statement came to be to me explains a lot about what these supposedly nine different stories are. There's not nine different stories from Meleke. There's

Is it inconvenient to law enforcement? Yes. It's a pain. Their job would be much easier if they suspected you of a crime, they could just kick down the door, come in and start looking around, go through your car. They can't do that. Go through your phone, hey, give me your phone. Let's see what's in there. So that's a requirement that protects everybody.

Mr. Stewart stands accused of murder. He possesses not a single right that all of you don't possess. He's simply in a position where he has to exercise his rights.

I often hear it said well, defendants have all the rights. No, defendants have the exact same rights as all of us have. One of those rights, rights under the Fourth Amendment. They needed the warrant. They went around that requirement, and guess what. They know how to get a warrant, because they did it. They did it for Mr. Daniels' phone, they did it for other phones. They know how to get a warrant. Getting a warrant is not hard. You literally call up a magistrate, give him the reasons over the phone. You still -- you don't even have to have the physical piece of paper in hand.

Now, with Verizon or somebody like that, you're going to have to send them something, but getting a warrant is easier than getting a driver's license for crying out loud most of time, all right. But again, they say well, we

want to go quick. It's an emergency. We're going to send this exigent circumstances request so we don't have to get a warrant and maybe it will be a delay in getting these records. Fine. It's a good thing that exists.

FBI agent told you what those things are. Child abduction, all right, imminent terrorist attack, ongoing threat. You know, ongoing shooting threat, all right.

Emergency situations, not just well, there's a guy out there who may have committed a crime and we want to find out as soon as possible. Well, of course, we want to solve the crime as soon as we can, but there's a way to do it. And the reason we have these procedures in place is to protect all of us from abuse by the State, okay. And so they didn't do that.

And the reason that you know it's nonsense that they claim it's an emergency is there was nothing -- again, you've got Mr. Daniels who was dead. Absolutely, that's serious, but there was nothing else on the crime scene in that car that indicated anybody else was involved, but there was another victim and that's what they hung their had on.

There's another victim out there, possibly, there's a kidnapping. There's somebody else that could be shot. There is nothing else that indicates -- in fact, there's nothing that indicates there was -- the only reason we

know someone else was in that car is because Meleke told us someone else was in that car.

From the physical evidence, it could have just as easily been somewhere else, someone outside. But bottom line is, no indication whatsoever that there was any emergency situation.

Now, they did it. They got the records. They got to Meleke. That's all well and good. The reason they did it is because they decided as soon as they saw those text messages between Mr. Stewart and Mr. Daniels, this is our guy.

Of course, they're going to go talk to the person who sent those text messages. But there's also phone calls and communication coming in from other numbers. Maybe those are the people that are in trouble. Did they get an exigent circumstances warrant for those numbers to even find out who they were? No.

They made up their mind who it is and when they went to Chester, they had already planned to arrest Meleke. Officer Jones told you that. We called ahead to get the search warrant. He said in his own report, I have went to observe the arrest.

It didn't matter what Meleke told them. They wanted a confession, but guess what, without his confession, there is literally no other evidence that you've been

presented with that connects Meleke Stewart to this death, not one thing. So they had to have a confession.

Now, they're allowed to do that. They're allowed to lie to a person, police officers, in an interrogation to get them to confess. That's what they do. That's fine. But that context I want you to keep in mind when you're evaluating what Meleke is telling you, all right.

They went there with a preconceived motion, made up their mind, cut corners, and he wasn't leaving. They said he was in custody, custody means you ain't going, all right.

A police officer can come up to us now and talk to us, but we're free to leave. It's always easier said than done my mind if you would turn your back and walk away from an officer that's asking you questions. But if you're not in custody, you have that right.

If you're in custody -- and it doesn't have to be handcuffs in a jail cell, it just means not free to leave. If you're sitting in your shorts in a room with one entrance and there's a policeman officer with his gun sitting two feet away from you and another officer, Wade Young, even if he's friendly and knows and likes you with his gun sitting by the door, you're not free to leave.

And then think about the disparity between these two. This was not a conversation between equals on any level.

You heard Detective Kitelinger's experience. He couldn't be here because he's required medical reasons, so we didn't get a chance to explore some of these things, but we got it through Detective Jones, I worked with Detective Kitelinger 12 years.

How many, probably hundreds of times has he questioned a witness or a suspect? He was 40 something years old at that time, Meleke is barely past his 18th birthday.

Legally an adult, but any one of you -- well, you're all over 18, I believe. Think of your own life and if you have kids at that age, think about it, they're right in that between. They're not totally adults. They don't think fully like adults. And to expect them to hold their own in a long discussion even if -- you know, we're way past the days when police interrogations involved rubber hoses, if that ever existed.

We're way past that, but there's other ways to intimidate somebody. There's other ways to exert your power and authority. And one way is to get real close. It doesn't have to be physical.

I'm not physically intimidating anybody, but if I get in your face and I'm very aggressive and I won't let you say anything that I would want and I keep after you until you say what I want to hear, that's a form of

And so Meleke is -- when they're bringing things out in bits and pieces, that is not him lying or trying to shift his story. That is -- listen, you saw this conversation. Officer Kitelinger had his view.

It is this. It's a robbery. Now, he didn't start out telling Meleke that, but that was his thing. This is a robbery. And why does it need to be a robbery? Because if it's not a robbery, it's not a murder, all right. Still might not be, but if it's a robbery, that's a felony and this is measure from the police point of view, all right.

Think of the number of times, I counted, you count for yourself. I counted 23 times that Meleke said that man, Mr. Daniels, was either aggressive to me or tried to force me to perform oral sex. All right. It really doesn't matter if Meleke went there either with the intention to do that, and I'll talk about that in a minute, but with the intention to go there and perform a sexual act or if he didn't, okay.

It does not matter. I agree, in a one-on-one stand up fight or in a wrestling match, Meleke Stewart is going to win that. And in a confined car, that's a whole different situation. You're wrestling powers and your size, you're not going to get to bring all that to bear in the confined spaces of a Mazda 6.

And this is one of those things, this is part of that intimidation, getting the information you want from Kitelinger. He says a couple different times, he's 120 pounds.

No, the man who performed thousands of autopsies says he's, at least, 180. Now, maybe -- even allow for a little bit. He wasn't at 120. His North Carolina driver's license says he's 5'6".

I have never in my life been measured at the DMV in either of the Carolinas to see -- I think you tell them, and same thing with weight. And we all lie about our weight. Fine, it says 5'6". Dr. Proctor, who actually measured the man says 5'11", and you heard nothing different. So you've got Dr. Proctor and you've got the North Carolina DMV. And if you want to believe the North Carolina DMV that this guy was 5'6", 120 pounds, well, that what you can do, you're the finders of fact, but the evidence in front of you is that this man was 5'11" and 180.

Now, I'm not suggesting that he could take Meleke in a fight, that's not the issue. But it's also not an issue of Meleke Stewart preying on some fragile little guy. What else do you have with Mr. Daniels? He's 34 years old.

He's almost twice the age of Meleke Stewart. He's

done here hanging around during senior week. I think we all know if you grew up around here, school after graduation, seniors and other people come down to Myrtle Beach and, basically, they party for a week. All right. It's a thing for high school kids.

I understand why Mr. Daniels needed to come down here away from home. He doesn't want this out. And it's his right, by the way, not to have his lifestyle advertised. It's nobody's damn business, all right, but put some of this in context. Put this in context.

Mr. Stewart, I believe the texts speak for themselves. I think Kitelinger was absolutely right in the beginning. I think either because Mr. Stewart has those sexual tendencies or was curious about those sexual tendencies, this absolutely was, at least, initially going to be meeting up for sex, okay.

I think prostitution, as the solicitor said, kind of nailed it on the head. To me, that's supported by way they first got -- they did not know each other. Mr. Daniels, Mr. Stewart did not know each other when they got down here, right.

They met on the boulevard or somewhere around Myrtle Beach earlier in the day or night, or the previous day, and they exchanged phones. They had what's apparently a pretty quick encounter.

Meleke not wanting to admit to being gay or having any interest in that tells the police officer that oh, we just talked about getting girls. And he said I want to get girls, too, so we exchanged numbers. That seems very strange to me.

I think what's much more likely is that they identified each other as people that might have common interest that way and exchanged numbers with the idea that at some point they would get up together. And that Mr. Daniels, in fact, starts that contact later in the evening. He's texting. And then, of course, you can see for yourself where it goes from there.

Now, forgive me for jumping around a little bit, but there are a lots of things, and I'm going to try to wrap this up. There's some factual things that I disagree with the solicitor.

The gun, all right, and what happened in the car. The SLED agent today said that could have been an automatic gun, pull the trigger, multiple shots. Couldn't rule it out. So we don't know. We don't have the gun, we don't know. All right. Couldn't rule it out. All right. So doesn't necessarily have to be to pull trigger.

SLED agent also said it would take more than just put your hand on top of that gun, it slides back, racking the bullet. It's going to take pretty serious pressure. I

can't remember the exact word, not extreme but a lot of pressure. So more than just having your hand on top of it, all right.

In other words, the gun could easily go off even with someone's hand up on top, okay. And that absolutely explains to me how Mr. Daniels ended up with some abrasion, cuts, small. And they're minor. I mean, it's not a big -- he bled a little bit. You could see it.

He got a little -- kind of looked like the skin was pinched. I don't know if that was necessarily from the gun action. It might have been, but it just as likely could have been from the sight on the gun or any parts. It was a metal gun. It could have been from any part of that gun.

And then Dr. Proctor said there was another abrasion on the hand. That's completely consistent with Meleke version of they struggled over this gun. All right.

Now, again, Meleke showed you -- I'm not going to belabor all the how this could have been, how their bodies could have been turned this way and that, but he showed you sitting next to Detective Kitelinger.

It makes perfect sense, I think it's really the only thing that makes sense that Mr. Daniels would use his right hand. All right. For whatever reason the gun comes out, he's going to go like that. That's the most to me,

that his right hand is closest. He's not going to reach all the way across his body. And that's very consistent with what he says. He's got his hand on it and the gun goes off.

Now, I don't buy that the casing under -- don't agree, rather, that the casing under Mr. Daniels means he was up and moving out of car, all right. Fire a gun, there's a shell casing, it ejects. In an open area, it tends to go -- you're going to find it probably nearby. In a closed environment, you know, with a roof right here, it's going to go up and bounce around, which is how you have one sitting in that -- where the speedometer is, right, in that little dashboard right there. That doesn't mean they fired a bullet into the dash.

Of course, we know they didn't because there's no holes in the car, right. That shell casing, that cartridge bounced around from somewhere. Is it possible that it was from a shot as he headed out, that is a possibility, but that's guessing. It's just as likely that it bounced off of something else. Maybe it would be caught under Mr. Daniels, but it bounced up and came behind him. They don't know.

And Officer Stair, who did the crime scene and inventoried the car, found that -- again, he didn't see it before. All he could say was when we removed the body,

there it was. Nobody knows how he got in that thing.

The wounds of Mr. Daniels are absolutely consistent with still being inside the car. It is very slightly -- if you think of the seam on your shirt, the wound is very slightly behind that.

So when Dr. Proctor says posterior, he simply means on the other side, but it's not a shot back here. It's not near the spine. It's not the kidneys. It's right here and it, basically, goes straight through. And it's very consistent with the man still being in the car, has his hand on the gun, the gun goes off accidentally and goes through and goes where, right out the door. They never recovered the bullet. The physical evidence that you do have is entirely consistent with Mr. Stewart's version of events.

Now, Mr. Stewart had no legal right to carry that gun. I think the text messages speak for themselves. His own statement is -- let me back up just a moment. Think about that interview again, all right, and the way it went and the way it played out.

Kitelinger, basically, gave Mr. Stewart an option to either be a murderer or to be openly gay. That's what he says, right, you don't want to be gay. That is a robbery. You're a murderer, and so that's his choice.

Now, some of us may be able to resist that and say --

and again, Meleke never says I'm a murderer. And you would think well, gosh, if those were my choices, I think I'd just be fine saying I was gay, no big deal, but you can imagine the consequences that might for Meleke, where he lived, who he is. That's not something that's, although maybe legal, it's something that's still not very accepted in many parts of the country, in many areas, which may explain why Mr. Daniels was down here instead of back home in Shallotte. I mean, again, that's no judgment on Mr. Daniels. But you tell an 18-year-old young man, son, we've got you and either you're a cold-blooded killer or you're gay, so choose. So Meleke said, Well, I'm not gay.

But even if you went with no desire or even if he changed his mind, Meleke, when he got there, he says over and over again, over and over again, the man tried to make me perform oral sex on him to the point where -- and again, this is in the transcript.

You listen to it if you need to, where he grabbed me and he grabbed my head and he was trying to force me. Now, do I think absent a gun, do I think Alton Daniels could, ultimately, have forced Meleke to do anything physically? I do not. That's not the point.

The point is that Alton Daniels, probably angry because hey, man, I went to this trouble. I got this

money. Here you are. You're telling me you're going to do this thing and now, you're not. Do it. He's agitated. Do it.

So Mr. Stewart, barely 18, perhaps, this is the first time he's been in -- it is the first time he's been in this situation. Maybe having second thoughts. I don't really want to do that. I want out of here. No, do it. If Mr. Stewart was a girl, that girl would be very justified.

I'm not saying to pick up a gun and put a bullet through the man's head, but we would absolutely see this in a different light. Because what Mr. Daniels did was, basically, attempt to sexually assault Mr. Stewart.

Now, again, I don't think he could have forced him to do that, all right, but that's what it is. I've told you no. Yeah, maybe I told you I was going to and here I am, but I've changed my mind. If this were a boy and a girl making out in the car and things start to move along and the girl said no, no means no.

So why is all that important? You know, wrap this up. It's important because the judge will tell you manslaughter is the absence of malice. It's something that -- a reaction to an event that causes you to, basically, lose -- you know, to react in the heat of passion, not sexual passion, but the heat of passion that

overcomes your normal will, your normal resistance, that type of thing. That's why that's critical, all right.

Mr. Stewart is there. Mr. Daniels begins to be aggressive with him. He's not beating him up. He's not punching him, but he's grabbing his head, he's being forceful. That's when the gun comes out. That's when the struggle occurs and that's when this tragedy happens. That's absence of malice, okay. That is manslaughter, a very serious crime, but it's not murder. It's not murder.

I've been talking at you a real long time and I meant to cut this short. I simply want you to think very carefully what about you actually heard and then actually have not -- it could have been like this and it must have been like. No, you decide. You look at it and take all the time you need. And I thank you very much for your time. I'm asking you to find Meleke not guilty of murder. I think, unfortunately for him, it almost certainly is manslaughter. That follows the possession of a weapon charge. They go hand in hand, unfortunately for him.

The only thing I say about the armed robbery, maybe it was an attempted armed robbery. Meleke says no, didn't plan to do that. Didn't plan to -- didn't even plan to force him. He was going to snatch and grab something. Perhaps, that's attempted strong armed robbery, but we also know that he got nothing. Nothing was taken away,

card or wallet, credit cards, phone, still in the trunk. Thank you very much.

THE COURT: Thank you, Mr. Fox.

Now, ladies and gentlemen, you have heard the final arguments presented by the lawyers. You have yet to hear the charge on the law, which I will give you. And as I told you earlier today, I think this juncture of the trial coincides pretty well with your lunch hour. The lunch should be in there by now. It's cold sandwiches to begin with, so they wouldn't have gotten any colder while you were out here if that's any small consolation to you.

Now, I'm going to send you to your jury room, ladies and gentlemen. First of all, I'm going to remind you one more time not to talk about this case among yourselves, not even yet. You've heard all the evidence, you've heard all the evidence. No more evidence and no more testimony is going to be presented to you. But when you took that other on Tuesday, or Monday, whenever you took it, you said you would well and truly this case and render a true verdict according to the law firm and the evidence. You've heard the evidence. You have not heard the law, so you cannot yet start your discussions about the case, okay.

Now, we are on your time schedule. You go back there and the lunch is there. You take as much time or as

little time as you want. We're not going to start again until you tell us you're ready to start. So when you finish your lunch and you're ready to begin, knock on the door and let us know and we'll bring you out and conclude the presentation of the case to you, that is the charge on the law and then let you go back and start your deliberations.

I understand that one of you might have an errand that you need to run for an important thing that has to be done today. You're free to do that. You have not yet been sequestered because you have not yet started your deliberations. You might not be able to get your lunch and do that errand, but you have to make that choice yourself. When everybody else in the jury room is ready to come back out, we're going to continue and conclude the trial of this case. Does everybody understand all that?

JURY: (Nods in the affirmative.)

THE COURT: Enjoy your lunch, folks. Let us know when you're through and ready to go. We'll be ready.

(Whereupon, the jury left the courtroom at 1:15 p.m.)

THE COURT: Mr. Jerrell, you'll have the defendant in your charge now. Thank you.

Folks, we'll be at ease until the jury tells us they're ready.

MR. DEBUSK: Thank you, Judge.

THE COURT: Thank you all.

(Whereupon, a lunch break was taken.)

THE COURT: Folks, are both sides ready for the jury?

MR. DEBUSK: Yes, sir.

MR. HILLER: Yes, sir.

THE COURT: All right. Good.

Bring us the jury, please.

(Whereupon, the jury entered the courtroom at 2:17 p.m.)

JURY CHARGE:

THE COURT: Good afternoon, ladies and gentlemen. Now, we proceed to the final phase of the case in this courtroom. The important work will begin in the jury room in just a few moments.

You have been very patient throughout this trial, as I said earlier, and you've listened very patiently not to the evidence and testimony, but also to the able arguments that have been made on behalf of both the State and the defense in this case.

It now becomes my responsibility under our Constitution to instruct you as to what the law is in this case. And it is your duty as jurors to accept the law as I charge it to you now and to apply it to the facts of the case that you find to exist.

Because as jurors, it is your exclusive duty to

decide all issues of fact in the case. And for that purpose, you have to determine the effect and the value and the weight that you will give to the evidence that you have seen and heard.

Both the State and the defendant have the right to expect that you will contentiously consider and evaluate the evidence and that you'll apply the law of the case to that evidence so that both the State and the defendant will receive a fair and impartial trial at your hands.

Throughout the course of this charge, ladies and gentlemen, when I use the word defendant, I'm referring to Mr. Meleke Da'Shawn Stewart. Mr. Stewart has indicted, as you know, by the grand jury of Horry County and charged in the first bill of indictment with the crime of murder. And that indictment charges Mr. Stewart here in Horry County on or about June the 16th of 2014, willfully, feloniously and intentionally killing the victim, Alton Antonio Daniels, with malice aforethought either expressed or implied by means of shooting him and that the victim died as a result thereof on June the 16th here in Horry County in violation of the law.

The next charge is for attempted armed robbery and that accuses Mr. Stewart here, along with codefendants in Horry County, on or about June the 16th, same date, 2014, while armed with a deadly weapon attempt to take and carry

away from the personal property from the immediate presence of Alton Daniels, who is the deceased, with the intent to steal it by use of force or threats or intimidation in violation of the law.

The final indictment charges possession of a weapon during the commission of a violent crime. Also, in Horry County on the same day possessing a firearm or visibly displaying what appeared to be a firearm during the commission or attempted commission of a violent crime in violation of the law.

I remind you again, ladies and gentlemen, that those indictments are not evidence nor are they proof of the charges they contain. They are legal documents, charging papers which tell me us what this case is all about, you or me or anybody else who reads them.

As you know, to the charges contained in these indictments, Mr. Stewart entered pleas of not guilty and requested a jury trial at your hands, which he has had and is still having.

The legal effect of a plea of not guilty to charges in a criminal case is to place the burden of proof on the State to prove the guilt of the defendant beyond a reasonable doubt before you as a jury can convict him and find him guilty.

Mr. Stewart is presumed innocent of all the charges

the benefit of the defendant unless and until you as the jury reach the conclusion that the State has proven his guilt beyond a reasonable doubt. So that's a burden then that the State has, not just in this, but in every case like this. Proof beyond a reasonable doubt.

Some of you might have served as jurors before, perhaps, in civil cases. And if you served as a juror in a civil case, the judge told you that in a civil case, it is only necessary for the party that has the burden of proof to present more evidence on that side than the evidence is on the other side, that is more convincing evidence on one side than the evidence on the other. But in criminal cases, the State's proof has to be more powerful than that. Here, it has to be proof beyond a reasonable doubt.

So what then do we mean by proof beyond a reasonable doubt? Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things in this life that you and I know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

So if based on your consideration of the evidence, you are firmly convinced that the defendant is guilty, you must find him guilty. If on the other hand, you think

there's a real possibly that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Reasonable doubt can arise from evidence in the case or it might arise from the lack of evidence in the case, but you, ladies and gentlemen, have to determine whether or not reasonable doubt exists as to the guilt of Mr. Stewart.

I tell you that the defendant is entitled to every reasonable doubt which exists or arises in the case. And if on any issue of fact, which is essential to a conviction and a verdict of guilty, you have a reasonable doubt as to how that issue should be resolved, it is your duty to resolve that reasonable doubt in favor of the defendant.

Because a defendant, ladies and gentlemen, is never required to prove his innocence, but the State is required in law to prove every essential element of the offense charged against him by evidence that satisfies you of his guilt beyond a reasonable doubt before you can convict him and find him guilty.

I instruct you now and I emphasize to you that the fact that Mr. Stewart did not in this trial testify in his own behalf is not a factor to be considered by you in any way in your deliberation and in your consideration of the question of his guilt or innocence.

It must not be considered by you in any manner whatsoever or militate against him in any respect whatsoever because a defendant has a Constitutional Right to remain silent, and if he chooses to assert that Constitutional Right, that cannot and must not be used against him and must not be considered by you in your deliberation.

So under your oath then, you are to reach no inference and draw no conclusion whatsoever from the fact that he did not himself testify. That should not even be discussed by you in the jury room because the burden, as I have told you, is upon the State. The defendant has no obligation to prove his innocence. The burden of proof remains upon the State to prove guilt beyond a reasonable doubt. The fact the defendant did not testify is not a factor to be considered by you in determining his guilt or his innocence.

So if then upon the whole case, you have a reasonable doubt as to the guilt or innocence of the defendant, he is entitled to that reasonable doubt and would be entitled to an acquittal and a verdict of not guilty at your hands. But on the other hand, if upon the whole case you find that the State has proven by evidence that satisfies you as a jury of his guilt beyond a reasonable doubt, then in such circumstances, it is equally your duty to convict him

and to find him guilty.

Now, during this trial, each of us, you and I, have our separate and distinct duties to perform. As a trial judge, it's my job to preside over the trial of this case and I also have the responsibility of ruling upon or passing upon the admissibility of the evidence which has been offered during this trial.

So you're to consider then only the competent evidence before you. That is the testimony offered from this witness chair right here and the items or the documents that have been entered into evidence during the course of this trial.

I have the additional duty as the judge to charge you as to what the applicable law of the case is and that's what I'm doing right now. As the presiding judge, I am the sole judge of the law in the case, and it is your duty to accept and apply the law as I state it to you now to be the correct law.

If you brought with you into your service this week as jurors some idea as to what you think the law is or if you have some preference about what you would like the law to be and those preferences and those ideas don't agree with what I'm telling you now the law actually is, you're obligated under your oath to forget what you think about the law or what you would like the law to be because

you're bound by that oath to accept law precisely as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. You, as the jury, are the judge of the facts and I am the judge of the law.

Our Constitution says I can't comment upon the facts. I can't hint to you or intimate to you or make any statement to you about the facts of the case. So since you're the sole judge of the facts of the case, you're not to gather from anything that I have said during this trial or anything that I'm saying to you now that I have an opinion about the facts of the case.

I'm not allowed such an opinion. That is solely a matter for you, ladies and gentlemen, to determine. So then as I have told you, it is your duty to determine the effect and the value and the weight of the evidence presented during the course of the trial.

Now, as you determine what the facts of the case are, you necessarily are called upon to pass upon the credibility or believability of the testimony that has been offered. And you have to decide the weight and the value that you will give to the testimony that you have heard. You and you alone have to decide the force and the effect of that testimony.

Now, in making this decision, there are a lot of things you can take into account. You can take into account the appearance, the manner of the witness as he or she testified from the witness stand. We sometimes call that the demeanor of the witness.

Was the witness forthright or was the witness hesitant? Was the witness's testimony consistent or did it contain inconsistencies or discrepancies? What was the ability of a witness to know the things that he or she was telling you about?

Did the witness have a cause or a reason to be biased or prejudice in favor of the testimony that the witness was giving? Was the testimony of a witness made stronger by other evidence and testimony in the case or was it made weaker by other evidence in the case?

Now, ladies and gentlemen, you have heard testimony in this trial of certain witnesses who have been qualified as expert witnesses. Under our law, lay witnesses like you and me can't testify about our opinions or conclusions. We can tell you what we saw or what we heard, but we can't tell you what we think. However, expert witnesses, that is people who are qualified because of their education and experience in some field may be allowed to give their opinions about matters in which they are qualified as experts.

You should consider any expert witness received in evidence in this case just like any other evidence. That is to say you give it the weight you think it deserves. And if you decide that the opinion of an expert witness is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound, then you can disregard the opinion entirely because an expert witness' opinion is to be given no greater weight than that of any other witness. That is to say, as jurors, you have the right to believe the small portion of the testimony of a single witness, expert or otherwise, and disbelieve the larger portion or vice versa. You can believe all of a witness's testimony or you can believe none of what a witness's testimony.

But what we require you to do is to exercise your mental processes, your common sense. And as you determine what the facts are in this case, we ask you to use your good judgment, your sense of logic and reason and your experiences in life. And you then apply these abilities that each of you has, that each of you have brought into your service as jurors this week from your own individual and separate walks of life and your separate backgrounds, you bring those things to bear on what you have heard in this particular case, and you'll be able to decide what the facts of the case are. And once you have determined

what the facts of case are, you will apply the law that I am now charging you to those facts. And those two things will come together to result in a verdict in this particular case.

Now, ladies and gentlemen, I instruct you now as to the law that applies to the charges that are brought in these indictments. I charge you, first of all, on the law as it pertains to murder. Murder under our law is the killing of any person with malice aforethought, either expressed or implied.

So in order for the State to prove the defendant guilty of murder, it must be proven beyond a reasonable doubt that the defendant killed the victim in this case and that the killing was done with malice aforethought. The State is not required to prove any motive for the killing, but it is required to prove malice aforethought.

So what is malice? Malice is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict injury. Malice aforethought is the deliberate and well-formed purpose to do the unlawful act. Aforethought means that the intention to do the unlawful act was conceived or planned some time before the actual commission of the act, but malice need not exist for any particular length of time prior to the act in order to satisfy the law. It is sufficient if the malice existed

at the time of the act.

Malice is a word that suggest a wickedness, a hatred or a determination to do what one knows to be wrong without just cause or excuse or legal provocation. As I have said, malice need not be in the mind of the one doing the act for any particular length of time before the act of killing in order to render the killing murder. If it is present in the mind of the one doing the act any time before the act itself, then its presence would be sufficient to render the killing murder.

Malice is said to be expressed malice where there is shown some violent deliberate intention to unlawfully take away the life of another human being, perhaps, threats or lying in wait or something like that. Malice may be inferred where no excuse or legal provocation for the killing appears and when circumstances surrounding the killing show an abandoned heart, a malignant heart, a heart fatally bent on mischief.

The law says that if one intentionally kills another during the commission of a felony, the inference of malice may arise. So if facts are proven beyond a reasonable doubt sufficient to raise an inference of malice along these lines to your satisfaction, that is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case on that issue,

and you give it such weight as you determine it should receive on the question of the absence or the presence of malice. I tell you that the defendant is not required to prove the absence of malice. The State is required to prove the presence of malice beyond a reasonable doubt.

Now, there is included in the crime of murder, the greater crime, the lesser crime of voluntary manslaughter. It is not charged in the indictment, but by operation of law, the larger crime of murder includes the lesser crime of voluntary manslaughter.

Voluntary manslaughter is the unlawful killing of another without malice, expressed or implied. So you see it, murder, the unlawful killing of another with malice, expressed or implied. Voluntary manslaughter, the unlawful killing of another without malice, expressed or implied.

Voluntary manslaughter commonly defined as the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. It involves intent on the part of the perpetrator, but not malice. So voluntary manslaughter is the wrongful killing of a human being without malice in sudden heat of passion upon sufficient legal provocation, so that if malice existed, the wrongful killing with malice would be murder, even if it is done in the heat of passion upon provocation.

So the law does not reduce a murder charge to a manslaughter charge just because it's committed in the heat of passion. It must be passion justly excited by legal provocation. And if an adequate legal provocation does not exist, the killing even in the heat of passion is murder, not manslaughter.

And so the sudden heat of passion, then, upon sufficient legal provocation which reduces a wrongful killing of murder to manslaughter does not need to remove one's reason entirely or to shut out knowledge or choice entirely, but it must be such as would naturally disturb the reason of the one doing the act and render the mind of an ordinary person incapable of cool reflection to produce what, according to human experience, may be called an uncontrolled urge to do violence.

In determining whether an act that caused the death was caused by the heat of passion or by malice, all surrounding circumstances and conditions have to be taken into consideration, including what the facts were existing at the time. If there had been any previous relationship or conditions connected with the crime. All of those things can be taken into account.

I tell you that the victim's exercise of a legal right, no matter how offensive to another is never in law deemed to be a provocation sufficient to justify or

mitigate an act of violence. That which a deceased person is doing that is perfectly justifiable under the circumstances cannot be legal provocation excusing the act of the one who is doing the killing. The killing of a human being even in the heat of passion is murder if the slayer has no just cause for his anger.

Now, ladies and gentlemen, the defendant is also accused with possession of a firearm during the commission of a crime. Our law make it illegal for someone to possess a firearm during the commission of a violent crime. I tell you that under the law of murder, voluntary manslaughter are crimes -- are violent crimes which satisfy the definition of a firearm being possessed during commission of violent crime.

So in order for the defendant to be found guilty on this separate crime of possessing a firearm during the commission of a violent crime, you must first find the defendant guilty of a violent crime. I tell you again, murder, voluntary manslaughter are crimes of violence, violent crimes under the law.

If you find the defendant is guilty of murder or voluntary manslaughter, then you must determine whether the State has also proven beyond a reasonable doubt that the defendant possessed a firearm during the commission of the crime. A firearm is any revolver, pistol or any

weapon which is designed to expel a projectile or bullet through the end.

Next, the defendant is charged with the crime of attempted armed robbery. I charge you, first of all, about attempt. The law of attempt is, an attempt is an act that is done in partial execution of a plan to commit a crime. There has to be an intent that the act shall be committed and an act done, which though not in completing the crime, but in pursuing the crime which was intended. Now, an attempt is different from the preparation to commit a crime, and also from the intent to commit a crime.

The law does not punish the mere entertainment of a criminal intent. To bring the law into action, it is necessary that some act has been known in pursuant of the intent immediately and directly tending to the commission of the crime itself. An act, for example, which if the crime had been carried out would be a part and parcel of the crime itself, but it doesn't reach the accomplishment of the crime because it's prevented or it's voluntarily abandoned.

So in order for you to understand what the elements of the cause of attempted armed robbery are, I will charge you as to what we mean by larceny and then by robbery and then by armed robbery, and remind you that the defendant

is charged not with the completed act, but with the attempt to commit the completed act.

Now, armed robbery under the law is defined in the Following way. A person who commits robbery while armed with a pistol and a whole lot of other weapons, dirk, which is an old knife in the Scottish way of things, slingshot, metal knuckles, razor or other deadly weapon, or while alleging either by action or words that he was armed with a deadly weapon or any object which a person might believe to be a deadly weapon is guilty of armed robbery. So robbery then while armed with a deadly weapon. We will call it armed robbery for conveniences.

I'm going to tell you, first of all, what we mean by larceny, then by robbery, then by armed robbery because these are all embraced in each other.

What is larceny? Larceny is the wrongful taking and carrying away by any person of somebody else's goods or personal property with the wrongful intent to steal them, this is a permanently deprive the owner of its property and convert it to the taker's own use.

The elements of the crime of larceny, which we call stealing, are, first of all, the wrongful taking into possession the personal property of somebody else. And then the taking away and carrying away of that personal property. And then the felonious intent, the intent to

steal that property so that the owner is permanently deprived of its use and the taker converts that property to his own use. That's larceny.

Now, in order for larceny to become robbery, robbery is the wrongful taking and carrying away of somebody else's personal property or anything of value of that property from the person of the victim or in his presence by violence or by putting the victim in fear of violence. And so robbery includes larceny and all of the elements which are necessary to include larceny are in the greater crime of a robbery.

So the elements of robbery, first of all, has to be personal property, property subject to the larceny. I tell you that coin, currency, lawful money is personal property under the law. Then there has to be a wrongful taking and carrying away of that property with the intent to steal it, and the taking and carrying away has to be done with the wrongful intent to permanently deprive the owner of its use.

And finally, the property must be taken from the person of another or from the presence of another. The taking must be done not only without consent, but it has to be accomplished with violence or by putting the person in fear of violence. That's robbery.

So there you have stealing -- if something were taken

from your home and you didn't realize it until you got home this afternoon, that would be stealing. But if you got home this afternoon and while you were there, somebody came and took property from your presence by putting you in fear of violence, that would be robbery.

So what makes robbery armed robbery? Well, in order for one to be guilty of robbery while armed with a deadly weapon, the law requires that one must have used a deadly weapon to accomplish the purpose of the robbery. So I tell you, ladies and gentlemen, that those are the elements of offense of armed robbery itself.

The defendant in this case is charged with the attempt to commit armed robbery. As I have suggested to you, included in the greater crime of the attempt to commit armed robbery is a lesser crime of the intent to commit strong armed robbery or armed robbery -- excuse me, of strong armed or common law robbery. That would be robbery that is not accomplished with the use of a deadly weapon. And you will be asked at the conclusion of these charges and after you have begun your deliberations to decided whether the defendant in this case is guilty of the attempt to commit armed robbery or the attempt to robbery or whether he is not guilty of either of those charges based on the law as I have instructed you.

Now, ladies and gentlemen, criminal intent is a

necessary element of the crimes that I have just instructed you. And the State has to prove criminal intent beyond a reasonable doubt.

It is always a matter that has to be determined by you from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty, obviously, and no way medical science will let us cut off the top of a person's skull and look down in the brain to see what they had in mind at the time.

So the law says that criminal intent may be inferred from the circumstances which were shown to have existed at the time. And that's how you make a determination as to whether or not the element requiring intent was present. So criminal intent is a state of mind and it operates jointly with an act in the commission of a crime.

Criminal intent is a mental state. It is a conscious wrongdoing. So it's up to you as the jury to determine what the defendant intended to do based on the circumstances which were shown to have existed. I tell you that the State has to prove criminal intent beyond a reasonable doubt just as the State has to prove every other element beyond a reasonable doubt.

Now, there are two types of evidence which are generally presented during a trial of a case like this. There's direct evidence and there's circumstantial

evidence.

Direct evidence is evidence that directly proves the existence of a fact. It doesn't require any conclusions to be drawn. It's generally evidence that applies to the senses, somebody comes in here and says this is what I saw or this is what I heard or this is what I did.

You don't have to reach any conclusions about that. All you have to do is decide whether you believe it, but you don't have to decide what he saw or what he heard or what he did. That's not a conclusion that you have to draw in that fact.

But circumstantial evidence, however, does require conclusions to be drawn or deductions to be drawn based on what you have heard. And crimes can be proven by circumstantial evidence. Circumstantial evidence is proof then of chain of facts and circumstances which indicate the existence of another fact.

The law makes no distinction between the weight and the value to be given either to direct or circumstantial evidence.

However, to the extent that the State relies upon circumstantial evidence, then all of the circumstances have to be consistent with each other and when taken together, they must point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances

merely portray the defendant's behavior as suspicion, then the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt and that rests upon the State regardless of whether it relies on direct evidence or circumstantial evidence or some combination of the two.

Now, ladies and gentlemen, you have seen and heard in this case a statement made by the defendant. While I determine as a matter of law whether or not you can see and hear that statement, you have to determine the existence, the voluntariness and the weight of any alleged statement made by the defendant.

So you must make the ultimate determination of whether or not the defendant, in fact, made the statement. And if you determine that he did make the statement, then you must next determine whether or not the statement was made voluntarily. And finally, then you will decided what weight, if any, you would give to any such statement.

You must determine whether the statement was a choice -- excuse me, the product of an essentially free and unconstrained choice by its maker. The State has to prove the voluntariness of a statement beyond a reasonable doubt.

If you determine beyond a reasonable doubt that a statement was given freely and voluntarily, then you can

give the statement such further consideration that you think it should receive. If you determine that the alleged statement was not the free and voluntary willed expression of the defendant, then you should not consider it as evidence for any source at all.

Now, as you determine whether or not a defendant's will was overcome in obtaining a statement, the law requires you to consider what is known as the totality of the circumstances.

You should consider both the characteristics of the defendant and the circumstances surrounding the questioning or the interrogation. And some of the factors the law says you may consider are the age of the defendant, the defendant's educational background, the defendant's mental ability or capacity, and the defendant's background, along with all of the other facts and circumstances surrounding the making of the statement.

Now, in determining the voluntariness of the statement, you should consider whether the defendant was advised of and understood his Constitutional rights. The law requires that before any questions can be asked of a person who is in custody, law enforcement must advise him of his Miranda rights. This means that he must be advised that he has a right to remain silent, that any statement can be used against him in a court of law, that he has a

right to have a lawyer present with him, that if he cannot afford a lawyer, then a lawyer will be appointed to represent him with cost, that he can stop making a statement at any time. The State must prove these warnings given beyond a reasonable doubt.

And you can also take into account other factors, such as the place and the length of any detention and the nature of the questions which were asked. You must carefully scrutinize all of the surrounding circumstances before you give any weight at all to a statement.

You must be satisfied beyond a reasonable doubt that the statement was made by the defendant uninfluenced by promise of reward or threat of harm.

If you find beyond a reasonable doubt that the statement was given voluntarily, then you must decide what weight, if any, it should be given. If you find that it was not voluntary, then you must not consider the statement as evidence for any purpose at all.

Now, ladies and gentlemen, finally -- that's a word you've been waiting on for a while, finally. Finally, let me tell you that you do not serve as partisans or advocates for the State of South Carolina or for this defendant. Obviously, would not be a system of justice at all. You don't serve as jurors to punish your enemies nor to reward your friends.

You have been selected by both the State and this defendant to be fair and impartial jurors. It is your duty then by your joint deliberations to determine the facts of this case, giving to this defendant the benefit of every reasonable doubt on each and every issue. And then to the facts which you determine to exist, you take and apply the law which I have just given you and thus arrive at a verdict which will speak the correct outcome of this particular case. And when you have satisfied the responsibilities that I've just instructed you, you will have discharged your duty to this Court.

Now, ladies and gentlemen, I want to go over the forms of the verdict with you. They're written out on the verdict form itself.

Mr. Persio, will you please give this to the foreperson right there. Thank you, sir.

THE DEPUTY: You're welcome.

THE COURT: Ladies and gentlemen, I've given the verdict form to the foreperson because he's the one who has to fill it out, but I'll tell you now and I'll tell you again later, it will not be his verdict alone. The verdict has to be unanimous. All 12 of you have to agree to the verdict before he can fill out the form and sign it.

Now, the order in which I have put the possible

verdict forms down on that sheet of paper doesn't mean a thing in the world. Don't reach any conclusions or draw any inferences from the order from which I have written them down. I have written them down in the order I find easiest to explain.

There are three separate charges. One for murder, one for attempted armed robbery, one for possession of a weapon. You will write three separate verdicts. One verdict for each of the three charges. Your verdict on one charge does not necessarily determine your verdict on another charge. The defendant can be acquitted or convicted of any or all of the charges listed on the verdict form.

The verdict form reads: We, the jury, by unanimous consent find the defendant, Meleke Da'Shawn Stewart, as to the indictment for murder, the possible forms of verdict are three. One is guilty of murder. That's the form that you will arrive at if you find the State has met its burden of proof as to all the elements of the crime of measure as I have instructed you.

If that is the verdict form which you arrive at, Mr. Foreman, you will put an "x" or a check mark there to the left of that form.

Another possible verdict form there is if the elements of the crime of murder have not been met to your

satisfaction, you can consider the crime of voluntary manslaughter.

If you find that the State has met its burden of proof as to the elements of voluntary manslaughter, but not as to the crime of murder, then that would be your verdict form as to number two, Mr. Foreman. Likewise, you would indicate that by putting an "x" or a check mark in the space provided.

The third possible verdict form is not guilty. If you find that the State has failed to meet its burden of proof as to all of the elements of murder or all the elements of voluntary manslaughter, your verdict would be not guilty. You would indicate that on the space provided.

As to attempted armed robbery, there are also three possible verdict forms. The first is guilty of attempted armed robbery. That's the verdict that you will arrive at if you find the State has satisfied you beyond a reasonable doubt as to the elements of attempted armed robbery. You'll indicate that by putting the "x" or a check mark in the space provided.

If the State has failed to meet its burden of proof in that regard, you would consider whether or not the State has proved to you beyond a reasonable doubt attempted strong armed robbery.

If the State has met its elements of proof as to that charge, but not as to attempted armed robbery, once again, you would indicate that by putting an "x" or a check mark to the left of that verdict form.

The third possible verdict form is not guilty. If the State has failed to meet its burden of proof as to all the elements of either armed robbery or attempted armed robbery, the verdict form as to that charge would be not guilty and you would indicate that in the space provided.

The final charge is possession of a weapon during the commission of a violent crime. There are only two possible verdict forms in this case, and that is guilty of possession of a weapon during the commission of a violent crime or not guilty.

I remind you again that in order to prove guilty of possession during the commission of a violent crime, you must first prove -- or must first have found the defendant guilty of either measure or voluntary manslaughter. And then you must decide whether or not he was in possession of a weapon. If the State has met its elements in that regard, of course, the verdict would be guilty. If it fails in any of those elements, the verdict is not guilty.

Now, I remind you again that the verdict has to be unanimous.

Mr. Foreman, you're not authorized to fill out that

verdict form nor to sign it a until all 12 of your members have agreed as to what the verdict should be.

I'm going to send you now to your jury room, ladies and gentlemen, but I ask that you wait one last time just far moment to see if I have left out anything or misstated anything to you in my instructions on the law.

If I have, the lawyers will tell me about that and I'll bring you out to correct it. If we do not have to bring you out to correct this charge, then the items of evidence will be brought in. Once the items of evidence are brought in, that will be your signal to begin your deliberations, not until then. Once you begin your deliberations, you will deliberate until you have reached the verdicts.

At that time, Mr. Foreman, you will fill out the verdict form, sign it. Knock on the door. Advise the bailiff. We'll bring you out to receive the verdict.

Please retire to your jury room. Do not yet begin your deliberations.

Mr. Kline, Ms. Roberts, if you all will stay right where you are for the time being. Thank you.

The rest of you, retire to your jury room. Wait just a minute.

(Whereupon, the jury left the courtroom at 2:58 p.m.)

THE COURT: Mr. DeBusk, except as previously noted,

are there any exceptions or request for additional charge from the State?

MR. DEBUSK: Your Honor, I believe attempted armed robbery is also a crime sufficient to support.

THE COURT: I didn't have it on my list on the statute. It could well have been and may have been since they have revised that. And I take that to be the case. I'm just trying to figure out the best way to deal with that, whether to bring them back out or to send them a note.

What do y'all say? Do you want me to bring them back out or can I give them instruction as to that -- some other way, by a note?

MR. DEBUSK: No objection to a note by the State.

THE COURT: Mr. Fox, what do you say to that?

MR. FOX: Judge, I have no objection to a note.

THE COURT: All right. Mr. Fox, other than previously noted, are there any exceptions to those charges or request for additional charges from the defense?

MR. FOX: None, Your Honor.

THE COURT: Thank you. If you all will assemble the evidence and make sure that it is correct, then we can take it in, tell them to deliberate. I'm going to write on this sheet of paper, ladies and gentlemen, of the jury

attempted armed robbery is also a crime of violence as I've instructed you. Is that enough to say?

MR. DEBUSK: Yes, sir.

THE COURT: Ladies and gentlemen, additional charge, attempted armed robbery is also a crime of violence. I'm sending that in.

MR. DEBUSK: Yes, sir.

THE COURT: Any objection to that?

MR. FOX: No.

THE COURT: Okay. Good.

(Whereupon, the additional charge was sent back to the jury.)

(WHEREUPON, Court's Exhibit No. 3 was marked for identification only.)

THE COURT: Mr. Kline, Ms. Roberts, we had to get all this straight before we I could address you and let you know our gratitude for your service. You've figured this thing out pretty much.

If any of the original 12 had not been able to complete their service this week, you would have taken their place and gone back to the jury room where they are right now to begin deliberations. Thankfully, they've all survived the trial, so we don't need to involve you all in this process, in the delivery process. But you are just as capable of any of them of deliberating and reaching a

verdict in this case. We just happened not to need you.

But -- but your service on the jury has been important to us because we knew every morning when you all showed up that if anything happened to one of those 12, you were going to be able to take their place. If you had not been there and if something had happened to those 12, we would have had to start this whole process over.

Even this morning when we had one juror who could not get here because of car trouble, if you had not here and if that juror had not been eventually able to get here, we would have had to start this whole thing all over. Everything up to that point would have been wasted. People who came in from Tampa and everywhere that they came, have to do it all over again. So your presence gave us assurance that we were going to be able to complete this trial. I thank you for that.

You're free go now. You'll get a check in the mail some time in the next couple of weeks. It's not going to be a whole lot of money. If you need a work slip to tell anybody who needs to know where you've been these last two or three days, you can get that from the clerk's office. Take with you, at least, from this process, at least, our gratitude for your service this week and for the time that you've invested in this.

I hope that you have gained -- even though you don't

get to make a decision in this case, I hope that you have gained somewhat greater appreciation of the importance of good folks like you and of the essential role that you play in our process. I've enjoyed working with you and I wish you good luck. Thank you.

(Whereupon, the alternate jurors left the courtroom.)

THE COURT: Okay, folks, we'll stand at ease until we hear from the jury.

(Whereupon, the jury began deliberations at 3:06 p.m.)

(WHEREUPON, Court's Exhibit No. 4 was marked for identification only.)

(Whereupon, the jury sent out a note at 3:41 p.m.)

THE COURT: Folks, I have a question from the jury. On its face, it seems to be quite simple. The difference between strong armed robbery and armed robbery? The simple answer is armed robbery is strong armed robbery accomplished with a deadly weapon.

MR. HILLER: And, Your Honor, if I could maybe make my belief known. I believe it's what the defendant -- or what the victim of the armed robbery perceives to be a weapon.

THE COURT: I'm sorry?

MR. HILLER: What the victim perceives to be a weapon is a part of it.

THE COURT: It is.

MR. HILLER: So --

THE COURT: And I'll be glad to elaborate that more fully. I didn't think that -- or I had not intended to be quite that flippant, as I told you, with the jury. I realize it's just too simple. It's simple for us, but you're right.

I'll tell them -- I'll redefine for them strong armed robbery, and then I will say strong armed robbery is accomplished with -- from the words of the statute, armed while using a representation of a deadly weapon or for a weapon itself or any object which a person present during the commission of the robbery reasonably believed, just as I did when I told them initially.

MR. FOX: Right.

THE COURT: Okay. Bring us the jury.

(Whereupon, the jury entered the courtroom at 3:43 p.m.)

THE COURT: Folks, I have your question, the difference between strong armed and armed robbery. So I'm going to define for you first robbery and then armed robbery because they are -- there's an important distinction between them, but they have many of the same common elements. So let's just talk about robbery, the first one, not armed robbery, just robbery.

Robbery is the wrongful taking and carrying away of somebody's personal property from that person or in the presence of that person by violence or by putting that person in fear of violence.

So the elements of robbery are, first of all, the property that is taken has to be the subject of larceny or stealing. That is money.

And secondly, there has to be a wrongful taking and carrying away of that personal property. And third, there has to be the wrongful intent to steal, the feloniously intent, the wrongful intent to phone steal that personal property.

And then finally, the personal property has to be taken from the person of the victim or taken from the presence of the victim, and it has to be done not only without the consent of the victim, but also accomplished with violence or by putting the person in fear of violence. Now, that's robbery.

Anybody have any questions about that before I go any further?

THE JUROR: That includes attempted robbery what he's charge with?

THE COURT: No, I'll get to attempt. I was trying to define the difference between robbery and armed robbery, okay. Then I'll talk about attempt because that applies

to either one of them. The same definition for attempt applies to armed robbery or strong armed robbery, okay. Okay.

So does everybody understand robbery?

THE JUROR: Yep.

THE COURT: Now, what is armed robbery? Armed robbery is when a person commits robbery as I just defined it, a person who commits robbery as I just defined it while armed with a deadly weapon, a pistol, or while alleging either by actions or words that he was armed with a deadly weapon, or any object that a person present during the commission of the robbery reasonably believed to be a deadly weapon.

So we got robbery like I just described it. Somebody takes somebody else's personal property from his person or his presence by putting him in fear of violence or violence itself.

Now, what makes that crime armed robbery is the introduction of a deadly weapon or what appears to be a deadly weapon. That's what makes a regular robbery an armed robbery. Does that make any sense?

JURY: (Nods in the affirmative.)

THE COURT: Does anybody have any questions about that.

JURY: (Indicating in the negative.)