

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

May 04 2021

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

S.C. SUPREME COURT

State v. Tillman, Ct. App. Op. No. 5805 (filed February 17, 2021)

Charles Tillman,.....Petitioner,

v.

State of South Carolina, ...Respondent.

APPENDIX – VOLUME I OF II

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Alan Wilson
Attorney General

W. Jeffery Young
Chief Deputy Attorney General

Donald J. Zelenka
Deputy Attorney General

Attorney for Petitioner Charles Tillman

Melody J. Brown
Senior Assistant Deputy Attorney General

Carolina Scrantom
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

***Attorneys for Respondent State of South
Carolina***

Index

Volume I

<i>State v. Tillman</i> , Ct. App. Op. No. 5805 (filed February 17, 2021)	1
Order Denying Petition for Rehearing.....	9
Letter Advising Petition for Rehearing <i>En Banc</i> Denied.....	11
Petition for Rehearing <i>En Banc</i>	12
Final Brief of Appellant	23
Final Brief of Respondent.....	63
Final Reply Brief of Appellant	99
Record on Appeal Volume I of II	116

Volume II

Record on Appeal Volume I of II (continued).....	501
Record on Appeal Volume II of II.....	632

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Charles Tillman, Appellant.

Appellate Case No. 2018-000495

Appeal From Abbeville County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5805
Heard November 4, 2020 – Filed February 17, 2021

AFFIRMED

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General W. Jeffrey Young, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody Jane Brown, Assistant
Attorney General Samuel Marion Bailey and Assistant
Attorney General Caroline Scrantom, all of Columbia,
for Respondent.

KONDUROS, J.: Charles Tillman was convicted for the murder of Christie Stutler (Victim), and for the possession of a firearm during the commission of a violent crime. He appeals his convictions, arguing the trial court erred in denying his motions for directed verdict and new trial, in admitting certain postdeath

photographs of Victim, and in denying his request for an *Edwards*¹ charge regarding circumstantial evidence in the case. We affirm.

FACTS/PROCEDURAL BACKGROUND

Tillman and Victim were in a long-term on-again/off-again relationship. In November of 2016, the pair were living together in a trailer located on Tillman's mother's property on Bell Road in Abbeville County. According to his video-recorded statement to police, Tillman went to work at approximately 9:00 a.m. on November 8 with J.C. Boggs and Tillman's cousin, Walter Tillman. The three performed various handyman services. When Tillman returned home around 6:00 p.m., he entered the trailer and found Victim on the bed lying on her stomach with her head turned and hair covering her face. The crime scene photographs showed blood down the side of the mattress near Victim's head. However, no evidence of how Victim was harmed was visible. Tillman called 911 and stated Victim was dead and had committed suicide by shooting herself. At one point during the recorded call, Tillman's mother can be heard mentioning a gun.

When police arrived on location, approximately six minutes after the 911 call was placed, they secured the scene. A burning kerosene heater was located relatively close to the bed. Victim was wearing a t-shirt but no pants or underwear. After further investigation, authorities determined Victim had been shot in the head and shin. Two additional bullet holes were found in the bedroom ceiling and wall. Upon further investigation, police found the murder weapon, a .22 caliber rifle, in an inoperable car that Tillman and Victim used for storage located on the property. The coroner determined Victim had not committed suicide and her time of death was between 11:00 p.m. on November 7 and 11:00 a.m. on November 8.

During interviews with police, Tillman consistently stated Victim was alive when he left for work that morning. However, his responses to pertinent questions were evasive. Tillman never acknowledged the presence of a gun in the trailer or mentioned having access to a gun until confronted by police after the murder weapon was found. He could not account for the last time he might have held the gun; he could not remember when he might have last accessed the junk car, nor could he explain why his mother would have mentioned a gun on the 911 call. He

¹ *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) (*abrogated by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004), *as recognized in State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)).

explained he *assumed* Victim had committed suicide by shooting herself because she had talked about doing so before.

At trial, Tillman's mother testified she had stopped by the trailer to see if Victim wanted to accompany her to the laundromat. Victim did not open the door, but Tillman's mother thought she heard Victim say something and saw a shadow move in the trailer. She acknowledged she did not initially share this information with police. Additionally, she could not explain why she would have mentioned a gun on the 911 call.

Victim's DNA and DNA that could belong to Tillman were found on the murder weapon and Tillman's DNA was found in Victim's fingernail clippings. A very small amount of gunshot residue (GSR) was found on Tillman's shirt. Dr. Brett Woodward, a forensic pathologist, testified Victim died from a close range gunshot wound to the head. He further testified as to bruising and other traumatic injuries on Victim's body.

There were multiple bruises, both of a recent and a remote nature. You can only judge a bruise by it's recent, it's less than about 12 to six hours, or it's remote, it's more than 18 hours when it begins to show changes in coloration. Obviously, some people bruise more severely than other people with the same trauma, but you can only judge the time between the bruises in that particular way. We saw some bruises, which suggested fingertips being pressed against the body in an effort to manipulate, control or hold the body. We saw scratches on the body which were consistent with another individual's fingerprints – or excuse me fingers losing contact with the body and the nails scratching the victim, and we saw burn injuries.

At the conclusion of the State's case, Tillman moved for a directed verdict. The trial court denied the motion, explaining there was "substantial circumstantial evidence and direct evidence . . . from which the jury could conclude that the Defendant is the one who took the life of [Victim]." Tillman offered the testimony of his co-workers, Walter Tillman and J.C. Boggs, and his uncle Willie Tillman in his defense. At the conclusion of his presentation, Tillman renewed his motion for directed verdict, which the trial court denied. Tillman was convicted of murder

and possession of a firearm during the commission of a violent crime. He was sentenced to life in prison without the possibility of parole. This appeal followed.

LAW/ANALYSIS

I. Denial of Motion for Directed Verdict

Tillman contends the trial court erred in denying his directed verdict motion because the State did not present substantial circumstantial evidence he killed Victim. We disagree.

"On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). "The [c]ourt's review is limited to considering the existence or nonexistence of evidence, not its weight." *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

"When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof." *Id.* at 236, 781 S.E.2d at 353. "Nevertheless, a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *Id.* at 236, 781 S.E.2d at 354. "Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013).

Multiple pieces of circumstantial evidence, when put together, create more than mere suspicion Tillman killed Victim. DNA consistent with Tillman's was found on the murder weapon and Victim's fingernail clippings. One particle of GSR was found on the right sleeve of Tillman's shirt. Tillman was with Victim from 11:00 p.m. until approximately 9:00 a.m., and her time of death was determined to be between 11:00 p.m. and 11:00 a.m. Victim had recent and remote bruising on her body and cigarette burns although Tillman told police he never physically harmed her. Tillman indicated Victim had shot herself during his 911 call even though the cause of death was not evident based on the position of Victim's body when discovered. The murder weapon was found hidden in a car on the Bell Road property in which Tillman and Victim apparently stored clothing and other items. Tillman never mentioned the gun to police until after it was found and could not give any timeframe for when he might have last touched the gun or the car in

which it was discovered. The bullets that killed Victim matched a cache of bullets found in Tillman's trailer. At trial, Tillman's mother admitted that during the 911 call, she could be heard asking Tillman about having a gun at the trailer.² She initially denied mentioning a gun on the recording but later admitted it, telling police "she had been wondering to herself why she would say that." Tillman's mother testified at trial that she had called out to Victim about going to the laundromat with her the morning of the murder after Tillman had left for work. Tillman's mother stated Victim said something she could not understand, and she saw a shadow move near the door. Tillman's mother did not initially report this to police.

Taken cumulatively and in the light most favorable to the State, the evidence described above is sufficient to withstand directed verdict. As the trial court noted, taken in isolation, the evidence may only have raised a suspicion of Tillman's guilt. However, when put together and coupled with Tillman's inconsistent and implausible statements to police, the threshold required to withstand directed verdict was met.³ Many of the items on this list could be challenged. For example, Victim and Tillman lived together so his DNA could have been under her nails without a struggle. Tillman could have gotten GSR on his shirt just by being in the room where Victim was shot. However, it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict Tillman. *See State v.*

² At trial, Tillman's mother specifically denied asking Tillman whether he had a gun at the trailer *the previous day*. While the contents of the 911 tape are not always clear, Tillman's mother can be heard saying "yesterday" during her query to Tillman. She also denied having further conversation with Tillman during the call although a muffled conversation can be heard in the background on the recording.

³ In *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), a case cited by Tillman, the court determined any "demeanor" evidence gleaned from the defendant's testimony at trial could not be considered in evaluating the sufficiency of the State's evidence. In reversing the denial of directed verdict the court stated "*absent [the co-defendant's] interested testimony and the ability to assess Appellant's credibility on the witness stand*, the State did not present substantial circumstantial evidence sufficient to warrant the denial of Appellant's midtrial directed verdict motion." *Id.* at 442, 753 S.E.2d at 416 (emphases added). Contrastively, in this case, because the State presented Tillman's police interviews in its case-in-chief, the jury could have properly drawn determinations about his credibility and the veracity of his explanations to police.

Mealor, 425 S.C. 625, 654, 825 S.E.2d 53, 69 (Ct. App. 2019) ("[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt."), *cert. denied*, S.C. Sup. Ct. Order dated Aug. 5, 2019; *see also Bennett*, 415 S.C. at 237 n.1, 781 S.E.2d at 354 n.1 ("We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holdings in those cases are limited to their peculiar facts.").

Based on all of the foregoing, we affirm the trial court's denial of Tillman's directed verdict motion.

II. Admission of Photographs

Next, Tillman argues the trial court erred in admitting certain photographs depicting the Victim's body at the scene and from her autopsy. He maintains the photographs were not relevant because Tillman had stipulated the death was a homicide and, even if relevant, were more prejudicial than probative. We disagree.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000). "However, photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to the issues at trial." *Id.*

The trial court held a lengthy pretrial hearing to determine which photographs would be admitted. Even though the manner of death was admitted, the photographs were very relevant to establish what Tillman saw upon arriving at the scene and whether that scene would support his having characterized the incident as a suicide. *See State v. Hawes*, 423 S.C. 118, 130-31, 813 S.E.2d 513, 519-20 (Ct. App. 2018) (affirming the admission of photographs including the victim's body, which reflected the crime scene); *see also State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370 (1995) (affirming the admission of photographs corroborating witnesses' testimonies regarding the discovery of the crime scene). Additionally, the autopsy photographs were used to show bruising and cigarette burns, which would have been consistent with Tillman and Victim having had physical altercations in the past, something Tillman denied.

The photographs were probative on the two points just discussed, and the trial court took measured steps to minimize their prejudicial impact. It ordered the State to cover the Victim's face in one photograph and to reproduce several of the

photographs in black and white to lessen their graphic nature. We conclude the trial court did not abuse its discretion in admitting the disputed photographs as they were relevant to matters in controversy, were highly probative, and were not unduly prejudicial.

III. Remaining Issues on Appeal

Tillman raises several other arguments on appeal. We find these remaining issues are without merit. As to the trial court's failure to define the standard of review it applied in evaluating Tillman's motion for directed verdict, the trial court found there was substantial circumstantial evidence Tillman committed the crimes of which he was accused. *See State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004) ("The trial court has a duty to submit the case to the jury where the evidence is circumstantial if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced."). Likewise, Tillman's contention the trial court erred in refusing to give the substantial circumstantial evidence charge as stated in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989), is without merit. The trial court was bound to give the charge it gave—the charge set forth by our supreme court in *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). *See id.* at 98-99, 747 S.E.2d at 451-52 (disapproving of the "every other reasonable hypothesis" language in *Edwards* because it came close to shifting the burden of proof to the defendant to provide an alternate theory that would prove his innocence); *see also State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012) ("[T]his court lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court.").

Additionally, we reject Tillman's argument the trial court erred in denying his motion for mistrial after the State asked State Law Enforcement Division Agent Bo Barton questions about his experience as a criminal profiler. The trial court's curative instruction was lengthy and unequivocal in dispelling any notion that it had qualified Agent Barton as an expert in any legally legitimate scientific field. *See State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005) ("Generally, a curative instruction is deemed to have cured any alleged error."). Finally, Tillman maintains this court should overturn his conviction based on the cumulative error doctrine. Because we find the issues raised by Tillman were properly decided by the trial court, his cumulative error argument is unavailing. *See State v. Thompson*, 420 S.C. 386, 404, 803 S.E.2d 44, 53 (Ct. App. 2017) ("Because we have found no errors in regard to the other issues [the appellant]

raised on appeal and [the appellant] does not point to any other errors made by the trial court, [his cumulative error argument] is without merit.").

CONCLUSION

Based on all of the foregoing, Tillman's convictions for murder and possession of a firearm during the commission of a violent crime are

AFFIRMED.

LOCKEMY, C.J., and MCDONALD, J., concur.

The South Carolina Court of Appeals

The State, Respondent,

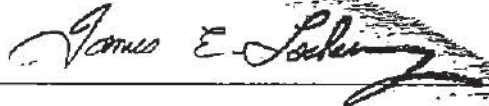
v.

Charles Tillman, Appellant.

Appellate Case No. 2018-000495

ORDER

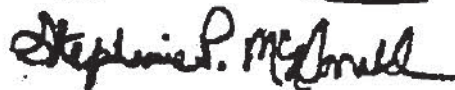
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Samuel Marion Bailey, Esquire
W. Jeffrey Young, Esquire

Donald J. Zelenka, Esquire
Caroline Scrantom, Esquire
The Honorable Frank R. Addy, Jr.

FILED
Apr 05 2021



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 05, 2021

Mr. E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood SC 29646

Re: The State v. Charles Tillman
Appellate Case No. 2018-000495

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

V. Claire Allen

CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Samuel Marion Bailey, Esquire
W. Jeffrey Young, Esquire
Donald J. Zelenka, Esquire
Caroline Scrantom, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 04 2021

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2018-000495

Charles Tillman,..... Appellant.

v.

State of South Carolina, ... Respondent.

PETITION FOR REHEARING *EN BANC*

Pursuant to Rule 221(a), SCACR, Charles Tillman petitions for rehearing because this Court overlooked or misapprehended the matters set forth in this pleading.

As a threshold matter, this Court did not defer to the trial judge's findings of fact. *See State v. Vickery*, 399 S.C. 507, 513-14, 732 S.E.2d 218, 221 (Ct. App. 2012) ("In criminal cases, the appellate court sits to review errors of law only. Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." (internal quotations and citations omitted)). This error of law impacted this Court's holdings in multiple issues presented in this appeal. The trial judge agreed the following facts are beyond dispute:

1. Ms. Stutler's time of death was between 11:00 p.m. on November 7, 2016 and 11:00 a.m. on November 8, 2016.
2. From sometime beginning between 8:30 a.m. and 9:00 a.m. on November 8th, Mr. Tillman had an alibi. Mr. Tillman was at work with J.C. Boggs and Walt Tillman.

3. A South Carolina Law Enforcement Division (“SLED”) forensic scientist found exactly one particle of gunshot residue on the shirt that Mr. Tillman wore on November 8th. The scientific testimony cannot establish how this single particle of gunshot residue got onto Mr. Tillman’s clothing. This particle of gunshot residue could have gotten on his shirt by Mr. Tillman firing a gun, by Mr. Tillman transferring it to his shirt after touching something in the room where he found Ms. Stutler’s body, or by law enforcement transferring it to the shirt by not wearing gloves when collecting the shirt for evidence.
4. A SLED forensic scientist discovered the DNA of *at least* three people on the rifle used to shoot Ms. Stutler. One sample is unquestionably Ms. Stutler’s DNA. Mr. Tillman cannot be excluded as contributing one of the samples, although his paternal male relatives cannot be excluded as contributing this sample. The person or people contributing the other DNA sample(s) remain unidentified. The scientific evidence cannot establish when these DNA samples were placed on the rifle or whether the DNA was placed on the rifle by the individual(s) or transferred to the rifle in some other manner.

See New Trial Motion, R. 15-23, and Order Denying New Trial Motion, R 3-5. Once this Court gives proper deference to these factual findings, the need to reverse the trial court becomes apparent.

Question I

Did the trial judge err by denying Charles Tillman’s motion for the court to identify the standard of review it applied when considering Mr. Tillman’s motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a “scintilla” or “modicum” of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of “substantial circumstantial evidence” employed by our state’s appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?

This Court summarily dismissed this issue by stating:

As to the trial court’s failure to define the standard of review it applied in evaluating Tillman’s motion for directed verdict, the trial court found there was substantial circumstantial evidence Tillman committed the crimes of which he was accused. See *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d

529, 531 (2004) (“The trial court has a duty to submit the case to the jury where the evidence is circumstantial if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.”).

State v. Tillman, No. 2018-000495, 2021 WL 609089, at 4 (S.C. Ct. App. Feb. 17, 2021).

This Court—like the trial court below—did not define the meaning of “substantial circumstantial evidence.” During the hearing on the directed verdict motion, Mr. Tillman and the trial judge discussed—at great length—the confusion surrounding the definition of “substantial circumstantial evidence” resulting from conflicting opinions of our Supreme Court. R. 576-87. Mr. Tillman’s Brief of Appellant, at 11-18, and Reply Brief of Appellant, at 1-2, specifically asked this Court to define the meaning of “substantial circumstantial evidence” consistent with the holdings in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). *See State v. Phillips*, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016) (“[I]t is incumbent upon the [C]ourt of [A]ppeals to apply [the Supreme] Court's precedent.” (citing S.C. Const. art. V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”))). If “substantial circumstantial evidence” is defined consistent with the holdings in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*, then the State did not present substantial circumstantial evidence in this case.

As seen above, the trial judge made specific findings of fact regarding the facts that were beyond dispute presented during Mr. Tillman’s jury trial. When “substantial circumstantial evidence” is properly defined, the facts beyond dispute support directing a verdict of acquittal.

At a minimum, as discussed in Mr. Tillman's briefs, our state's precedent is inconsistent regarding the standard for the trial court to apply when considering a directed verdict motion. This Court, accordingly, should rehear this matter and provide guidance about the meaning of the term substantial circumstantial evidence.

Question II

Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?

Mr. Tillman's Brief of Appellant, at 19-20, specifically asked this Court to apply "the 'substantial circumstantial evidence' standard applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*." Section I of the Law/Analysis section of this Court's opinion, however, does not discuss these cases at all. *Tillman*, at 2-3. Once these cases are considered, the Court's obligation to grant Mr. Tillman's motion for a directed verdict becomes apparent. "[I]t is incumbent upon the [C]ourt of [A]ppeals to apply [the Supreme] Court's precedent." *Phillips*, 416 S.C. at 194, 785 S.E.2d at 453.

As seen above, the trial judge made specific findings of fact regarding the facts that were beyond dispute presented during Mr. Tillman's jury trial. When "substantial circumstantial evidence" is properly defined, the facts beyond dispute require directing a verdict of acquittal.

This Court, accordingly, should rehear this matter, consider *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*, reverse the trial court, and enter an order directing a verdict of acquittal.

Question III

Did the trial judge err by denying Charles Tillman’s motion to exclude photographs depicting Christie Stutler’s deceased body—State’s Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler’s injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?

Although acknowledging the proper standard for reviewing the admissibility of crime scene and autopsy photographs, this Court did not apply it.

The challenged crime scene and autopsy photographs were not relevant to any contested issue at trial. Rules 401 and 402, SCRE. Even though the photographs were arguably relevant to establish what Mr. Tillman “saw upon arriving at the scene,” *Tillman*, at 3, Mr. Tillman did not contest the condition Mr. Stutler was found in their bedroom. His initial belief that Ms. Stutler might have committed suicide was based on his prior knowledge of her mental health. Although “the autopsy photographs were used to show bruising and cigarette burns,” *id.*, Mr. Tillman did not contest those injuries.

This Court recognized “photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or unnecessary to the issues at trial.” *Id.* (internal quotations omitted). Yet, this Court never conducted an analysis regarding whether these photographs were likely to arouse sympathy and prejudice. Nor did it apply a Rule 403, SCRE analysis.

This Court, accordingly, should rehear this matter, withdraw its opinion, reverse the trial court, and remand for a new trial.

Question IV

Did the trial judge err by denying Charles Tillman’s motion for a mistrial when the State sought to introduced evidence from a purported “criminal profiler,” when “criminal profiling” is not a legitimate science?

This Court’s opinion implicitly holds the prosecution solicited inadmissible testimony when “the State asked State Law Enforcement Division Agent Bo Barton questions about his experience as a criminal profiler.” *Tillman*, at 4. Yet, this Court summarily denied this issue because “[t]he trial court’s curative instruction was lengthy and unequivocal in dispelling any notion that it had qualified Agent Barton as an expert in any legally legitimate scientific field.” *Tillman*, at 4 (citing *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005)). This holding overlooks the trial judge acknowledging a curative instruction could not “unring the bell” under the circumstance of this case. *State-Record Co. v. State*, 332 S.C. 346, 356, fn. 19, 504 S.E.2d 592, 597, fn. 19 (1998) (internal quotations omitted). Once this Court defers to the trial judge’s finding of fact that the jurors could not disregard Agent Barton’s testimony, *see Vickery, supra*, the need reverse the trial court’s failure to declare a mistrial becomes apparent.

This Court, accordingly, should rehear this matter, withdraw its opinion, reverse the trial court, and remand for a new trial.

Question V

Did the trial judge err by denying Charles Tillman’s request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?

This Court summarily resolved this issue by stating:

Tillman’s contention the trial court erred in refusing to give the substantial circumstantial evidence charge as stated in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989), is without merit. The trial court was bound to give the charge it gave—the charge set forth by our supreme court in *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). *See id.* at 98-99, 747 S.E.2d at

451-52 (disapproving of the “every other reasonable hypothesis” language in *Edwards* because it came close to shifting the burden of proof to the defendant to provide an alternate theory that would prove his innocence); see also *State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012) (“[T]his court lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court.”).

Tillman, at 4.

While Mr. Tillman’s appeal was pending before this Court, our Supreme Court once again modified the circumstantial evidence charges because of a concern that the *Logan* charge given to Mr. Tillman’s jurors might “invade the fact-finding role of the jury.” *State v. Herndon*, 430 S.C. 367, 369, fn. 1, 845 S.E.2d 499, 500, fn. 1 (2020). In his Brief of Appellant, at 29-32, and Reply Brief of Appellant, at 8-9, Mr. Tillman argued the *Logan* charge does not convey to the jurors that the prosecution has the burden of disproving, beyond a reasonable doubt, any alternate theories that an accused argues are supported by the circumstantial evidence in the case. The more our Supreme Court “waters down” the circumstantial evidence charge, the greater the danger jurors will convict an innocent person.

This Court’s opinion illustrates the dangers an innocent person could be convicted when the jurors are not instructed adequately regarding the prosecution’s burden of disproving alternate explanations of the evidence consistent with the circumstantial evidence. Regarding the denial of the directed verdict, this Court held:

Taken cumulatively and in the light most favorable to the State, the evidence described above is sufficient to withstand directed verdict. As the trial court noted, taken in isolation, the evidence may only have raised a suspicion of Tillman's guilt. However, when put together and coupled with Tillman's inconsistent and implausible statements to police, the threshold required to withstand directed verdict was met. Many of the items on this list could be challenged. For example, Victim and Tillman lived together so his DNA could have been under her nails without a struggle. Tillman could have

gotten GSR on his shirt just by being in the room where Victim was shot. However, it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict Tillman.

Tillman, at 3. This Court thus condoned the jurors speculating how to piece together the prosecution's circumstantial evidence in a manner inconsistent with the State's burden of proof.

As seen above, the trial judge made specific findings of fact regarding the facts that were beyond dispute presented during Mr. Tillman's jury trial. This Court's failure to defer to the trial judge regarding these findings of fact, *see Vickery, supra*, is particularly prejudicial when considered with this Court's holding allowing the jurors to speculate about how the "pieces" of circumstantial evidence "fit together."

This Court, accordingly, should rehear this matter, withdraw its opinion, reverse the trial court, and remand for a new trial.

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

This Court resolved this issue by holding, "Because we find the issues raised by Tillman were properly decided by the trial court, his cumulative error argument is unavailing." *Tillman*, at 4. Once this Court recognizes the errors discussed in this petition for rehearing, this holding cannot stand. This Court, accordingly, should rehear this matter, withdraw its opinion, reverse the trial court, and remand for a new trial.

REQUEST FOR REHEARING *EN BANC*

Pursuant to Rule 219, SCACR, Charles Tillman respectfully requests that this Court rehear this matter *en banc*. Defining the meaning of “substantial circumstantial evidence” “involves a question of exceptional importance.”

CONCLUSION

For the foregoing reasons, this Court should rehear this matter *en banc*, withdraw its opinion, and reverse the trial court, and direct a verdict of acquittal. Alternatively, this Court should reverse the trial court and remand this case for a new trial.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

March 4, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Mar 04 2021

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2018-000495

Charles Tillman,..... Appellant.

v.

State of South Carolina, ... Respondent.

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2020-12-16-01, Section (c)(13), by emailing at copy to counsel, at their AIS email address, as reflected below:

Caroline Scrantom, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
cscrantom@scag.gov

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

March 4, 2021
Greenwood, South Carolina

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groslawfirm.com
Web: GroseLawFirm.com

March 4, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Mar 04 2021

SC Court of Appeals

Re: *State of South Carolina v. Charles Tillman*
Appellate Case Number 2018-000495

Dear Ms. Kitchings:

Enclosed please find Mr. Tillman's Petition for Rehearing *En Banc*, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: Mr. Charles Tillman
Caroline Scrantom, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

RECEIVED
NOV 12 2019
SC Court of Appeals

Charles Tillman, ... Appellant,

v.

State of South Carolina, ... Respondent.

Final Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant Charles Tillman

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

Charles Tillman, ... Appellant,

v.

State of South Carolina, ... Respondent.

Final Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant Charles Tillman

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Questions Presented	1
Statement of Case	2
Statement of Facts	4

Arguments

Question I

Did the trial judge err by denying Charles Tillman’s motion for the court to identify the standard of review it applied when considering Mr. Tillman’s motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a “scintilla” or “modicum” of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of “substantial circumstantial evidence” employed by our state’s appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)? 11

Question II

Did the trial judge err by denying Charles Tillman’s directed verdict motion when the State failed to present “substantial circumstantial evidence” he killed Christie Stutler? 19

Question III

Did the trial judge err by denying Charles Tillman’s motion to exclude photographs depicting Christie Stutler’s deceased body—State’s Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler’s injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value? 20

Question IV

Did the trial judge err by denying Charles Tillman’s motion for a mistrial when the State sought to introduced evidence from a purported “criminal profiler,” when “criminal profiling” is not a legitimate science? 23

Question V

Did the trial judge err by denying Charles Tillman’s request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?..... 29

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine? 32

Conclusion 33

TABLE OF AUTHORITIES

Cases

<i>Holland v. United States</i> , 348 U.S. 121 (1954)	31
<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)	15
<i>Jackson v. Virginia</i> , 443 U.S. 307, 320 (1979).....	12, 14, 15
<i>Roseboro v. State</i> , 317 S.C. 292, 454 S.E.2d 312 (1995).....	32
<i>State v. Aleksey</i> , 343 S.C. 20, 538 S.E.2d 248 (2000).....	31
<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	1, 5, 11, 12, 13, 17, 18
<i>State v. Bealin</i> , 201 S.C. 490, 23 S.E.2d 746 (1943)	31
<i>State v. Blurton</i> , 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000).....	32
<i>State v. Brown</i> , 267 S.C. 311, 227 S.E.2d 674 (1976)	16
<i>State v. Burkhardt</i> , 350 S.C. 252, 565 S.E.2d 298 (2002)	31
<i>State v. Cain</i> , 419 S.C. 24, 795 S.E.2d 846 (2017).....	16
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004)	11, 16, 30
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989).....	2, 1, 29, 30
<i>State v. Grippon</i> , 327 S.C. 79, 489 S.E.2d 462 (1997)	30
<i>State v. Hepburn</i> , 406 S.C. 416, 753 S.E.2d 402 (2013).....	14, 15
<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	1, 11, 12, 13, 18
<i>State v. Huckabee</i> , 419 S.C. 414, 798 S.E.2d 584 (Ct. App. 2017).....	29
<i>State v. Johnson</i> , 334 S.C. 78, 512 S.E.2d 795 (1999)	32
<i>State v. Kornahrens</i> , 290 S.C. 281, 350 S.E.2d 180 (1986).....	23
<i>State v. Land</i> , 419 S.C. 191, 797 S.E.2d 48 (Ct. App. 2016)	11
<i>State v. Langley</i> , 334 S.C. 643, 515 S.E.2d 98 (1999).....	22, 23

<i>State v. Littlejohn</i> , 228 S.C. 324, 89 S.E.2d 924 (1955)	30
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013)	30, 31
<i>State v. Middleton</i> , 288 S.C. 21, 339 S.E.2d 692 (1986)	23
<i>State v. Mitchell</i> , 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998)	1, 11, 13, 16, 17, 18
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	1, 11,13, 16, 17, 18
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011).....	12
<i>State v. Phillips</i> , 416 S.C. 184, 785 S.E.2d 448 (2016)	15
<i>State v. Rosemond</i> , 356 S.C. 426, 589 S.E.2d 757 (2003)	12
<i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984).....	1, 11, 16
<i>State v. Torres</i> , 390 S.C. 618, 703 S.E.2d 226 (2010)	23
<i>State v. Vickery</i> , 399 S.C. 507, 732 S.E.2d 218 (Ct. App. 2012).....	3
<i>State-Record Co. v. State</i> , 332 S.C. 346, fn. 19, 504 S.E.2d 592, fn. 19 (1998)	27
<i>Watson v. Ford Motor Co.</i> , 389 S.C. 434, 699 S.E.2d 169 (2010).....	26

Constitutional

S.C. Code. §16-23-490	3
S.C. Const. Art. I, § 3	15
U.S. Const. Am. XIV	15

Rules

Rule 401, SCRW.....	22
Rule 402, SCRE.....	21, 22
Rule 403, SCRE.....	23

Other Authorities

Rosenberg, 31 Hous. L. Rev.....	30

QUESTIONS PRESENTED

Question I

Did the trial judge err by denying Charles Tillman's motion for the court to identify the standard of review it applied when considering Mr. Tillman's motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a "scintilla" or "modicum" of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of "substantial circumstantial evidence" employed by our state's appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?

Question II

Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?

Question III

Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body—State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?

Question IV

Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduced evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?

Question V

Did the trial judge err by denying Charles Tillman's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

STATEMENT OF THE CASE

On November 8, 2016, Charles Tillman came home from work and found Christie Stutler dead in the single-wide trailer they shared in Iva, South Carolina. On November 29, 2016, the State charged Mr. Tillman with murder, possession of a firearm during the commission of a violent crime, and obstruction of justice. R. 6-8. On October 20, 2017, the Abbeville County Grand Jury returned true bill indictments for these charges. R. 9-14.¹

From January 22-26, 2018, the State tried Mr. Tillman for murder and possession of a firearm during the commission of a violent crime before the Honorable Frank R. Addy, Jr. and a jury.² Yates Brown and Micah Black, both of the Eighth Circuit Solicitor's Office, represented the State. Charles Grose represented Mr. Tillman. The State and Mr. Tillman stipulated that Christie Stutler's death was a homicide, R. 77, 108, 127, and Mr. Tillman acknowledge during his closing argument that whoever killed Ms. Stutler committed murder, R. 652. The trial judge agreed the following facts are beyond dispute:

1. Ms. Stutler's time of death was between 11:00 p.m. on November 7, 2016 and 11:00 a.m. on November 8, 2016.
2. From sometime beginning between 8:30 a.m. and 9:00 a.m. on November 8th, Mr. Tillman had an alibi. Mr. Tillman was at work with J.C. Boggs and Walt Tillman.

¹ The Solicitor did not call the obstruction of justice charge to trial.

² Mr. Tillman is a black male. Ms. Stutler is a white female. The jurors sitting in judgment of Mr. Tillman included six white men, four white women, one black man, and one black woman. R. 35-44. During opening statements, counsel for Mr. Tillman expressed is concern, "Quite frankly in a case like this I'm worried that with my client being a black man and Christie [Stutler] being a white woman, that that might enter into the decision." R. 138.

3. A South Carolina Law Enforcement Division (“SLED”) forensic scientist found exactly one particle of gunshot residue on the shirt that Mr. Tillman wore on November 8th. The scientific testimony cannot establish how this single particle of gunshot residue got onto Mr. Tillman’s clothing. This particle of gunshot residue could have gotten on his shirt by Mr. Tillman firing a gun, by Mr. Tillman transferring it to his shirt after touching something in the room where he found Ms. Stutler’s body, or by law enforcement transferring it to the shirt by not wearing gloves when collecting the shirt for evidence.
4. A SLED forensic scientist discovered the DNA of *at least* three people on the rifle used to shoot Ms. Stutler. One sample is unquestionably Ms. Stutler’s DNA. Mr. Tillman cannot be excluded as contributing one of the samples, although his paternal male relatives cannot be excluded as contributing this sample. The person or people contributing the other DNA sample(s) remain unidentified. The scientific evidence cannot establish when these DNA samples were placed on the rifle or whether the DNA was placed on the rifle by the individual(s) or transferred to the rifle in some other manner.

See New Trial Motion, R. 15-16, and Order Denying New Trial Motion, R 3; *see also* *State v. Vickery*, 399 S.C. 507, 513–14, 732 S.E.2d 218, 221 (Ct. App. 2012) (“In criminal cases, the appellate court sits to review errors of law only. Thus, an appellate court is bound by the trial court’s factual findings unless they are clearly erroneous.” (internal quotations and citations omitted)).

The jurors convicted Mr. Tillman as charged. Judge Addy sentenced Mr. Tillman to life imprisonment without the possibility of parole for murder. Judge Addy did not impose a sentence for possession of firearm during the commission of a violent crime in accordance with S.C. Code. §16-23-490. R. 715; R. 1-2.

By written motion filed and served on February 5, 2016, Mr. Tillman moved for a new trial. R. 15-22. By written order dated March 8, 2016, Judge Addy denied Mr. Tillman’s new trial motion. R. 3-5. This appeal follows.

STATEMENT OF FACTS

On November 8, 2016, Willie Tillman, who is Charles Tillman's oldest brother, arrived at the property on Bell Road, Iva, South Carolina, which is owned by their mother, Vonnie Cummings. Ms. Cummings lives in the main house with Walt Tillman (Charles Tillman's cousin), Fanny Carson (Ms. Cummings' aunt), and Antonio Tillman (Charles Tillman's son).³ Charles Tillman and Christie Stutler lived in a single-wide trailer on the property. When Willie arrived at 7:30 a.m., Walt was walking out of the main house. After speaking to Walt, Willie walked to the trailer to ask Charles about a price estimate for re-doing the flooring at the church. The entrance to the trailer is raised off the ground, so Willie walked around to the end of the trailer containing the bedroom that Charles shared with Ms. Stutler. Like most trailers, the walls are very thin. Willie heard Charles tell Ms. Stutler he would leave twenty dollars "for her to get a pack of cigarettes and something to eat that day." Willie asked Charles about the estimate for the church. Charles "was talking back and forth to" Willie and Ms. Stutler. Willie heard Charles asked Ms. Stutler to write the estimate. Willie heard Charles and Ms. Stutler discuss "what to put down" on the estimate. Willie waited outside the trailer. After two or three minutes, Charles came outside and gave Willie the estimate. Shortly thereafter, Charles left for work with Walt and J.C. Boggs. R. 608-16; *see also* State's Exhibit 40, Defendant's Exhibits No. 1, 3-6.

Between 8:30 and 9:00 a.m., after Charles and Walt Tillman left for work with Mr. Boggs, Ms. Cummings and Willie Tillman put clothes in the car to go to the laundry mat. Because Ms. Stutler often joins them when they go to the laundry mat, Ms.

³ Antonio Tillman left for work at 5:30 a.m. R. 169.

Cummings “hollered for her.” Ms. Stutler did not go that day, telling Ms. Cummings someone was coming to visit her that day. R. 156-74.

J.C. Boggs operates a small construction business that makes minor improvements to residential and commercial properties. At about 8:30 a.m. on November 8, 2016, Mr. Boggs picked up Charles and Walt Tillman, who regularly work for him. The three left for a work site “beside the Jockey Lot” in Anderson County.⁴ They worked until 5:00 p.m., stopped by the bank, and ate dinner at the Spinx convenience store on Highway 28 in Anderson. Mr. Boggs returned Charles and Walt Tillman to their homes on Bell Road with enough time left for him to vote.⁵ Mr. Boggs provided this information to law enforcement. R. 591-95. Walt Tillman confirmed this information. R. 600-03.

When Charles Tillman returned to the trailer, he found Ms. Stutler dead in their bed. Her body was stiff. He called 911 at 6:10 p.m.⁶ R. 140-46.

Abbeville County Sheriff Deputy Evan McCurry was the first law enforcement office to respond. Charles Tillman was “frantic,” describing what he had found, and was not able to follow instructions. Deputy McCurry found Ms. Stutler lying face down in the bed with one of her arms hanging off the side of the bed. He went to the side of the

⁴ <http://www.jockeylot.com> (last viewed Dec. 29, 2018). Located at 4530 Highway 29 North, Belton, SC 29627, the Jockey Lot is 23 miles from the incident location on Bell Road, Iva, South Carolina. *See State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (taking judicial notice of distance).

⁵ November 8, 2016 was Election Day.

⁶ At first, Mr. Tillman and his family thought Ms. Stutler might have committed suicide. She had a history of mental illness and had talked about “hurting herself.” R. 170. Robert Stutler, Christie Stutler’s father, testified AnMed in Anderson for drug treatment, but AnMed would not accept her without insurance. R. 458-60.

bed, “observed blood running [from her head] down the side of the mattress,” and determined she was not responsive. He secured the scene and waited for medical personnel to arrive.⁷ R. 147-55.

Law enforcement interviewed Charles Tillman four times. The first interview occurred while law enforcement still controlled the crime scene. During this interview, Mr. Tillman informed investigators that Mr. Stutler smoked Newport cigarettes and smoked illegal drugs. When investigators asked who “injected drugs” drugs, Mr. Tillman stated neither he nor Ms. Stutler used drugs in that manner. State’s Exhibit 124, Defendant’s Exhibits 7-12, R. 408-09. Investigators misrepresented to Mr. Tillman that the only way a person can get gunshot residue their hands is by firing a gun. R. 568, 662. During one of the interviews, investigators misrepresented the forensic pathologist established the time of death to be between 7:00 a.m. and 9:00. During the fourth interview, SLED Lieutenant Darwood Joseph (“Bo”) Barton misrepresented to Mr. Tillman that only his and Ms. Stutler’s DNA was found on the rifle. R. 486-90.⁸ Despite all these misrepresentations, Mr. Tillman steadfastly maintained his innocence.

Agent James Tallon, a crime scene agent for SLED, processed the trailer for evidence and sketched the crime scene (State’s Exhibit Number 142 and Defendant’s Exhibit Number 1). When he first saw Ms. Stutler’s body, he did not see a gunshot wound, but it was obvious she had an injury to her head. When he viewed Ms. Stutler’s

⁷ Deputy McCurry started a crime scene log. R. 154-55; Defendant’s Exhibit No. 2.

⁸ Agent Barton claimed he was not aware of a third person’s DNA on the rifle because Abbeville County Sheriff Office Investigators withheld that information from him. Nonetheless, he claimed “misrepresenting things in an interrogation is an accepted police technique.” R. 486-90.

body, “there was blood in the head, nose, and mouth area.” He also saw bruising on the back of her left leg and the right side of her back and an injury to her “right palm, in between the thumb and index finger.” He photographed the crime scene and “found some projectile defects above the bed” from a bullet “that appeared to go straight out through the roof.” He also documented a bullet hole in the west wall of the bedroom. He also located a cartridge that had fallen behind the bed. He collected fingernail scrapings under fingernail swabs to be submitted to SLED to be processed for DNA.⁹ R. 373-87.

After Agent Tallon departed the crime scene, Lieutenant Matthew Graham called him to report finding a .22 rifle in a blue car located on the property (State’s Exhibit Number 140). Agent Tallon returned, collected the rifle and “some bullets in a magazine,” which he submitted to be processed for latent prints and DNA. R. 378-79.

On cross-examination, Agent Tallon acknowledged the trailer was very messy, and sometimes he is not able to locate all the evidence. He also acknowledged that none of the investigators ever informed him who smoked Newport cigarettes or used illegal drugs. Agent Tallon, accordingly, did not collect the package of Newport cigarettes or the drug paraphernalia, which included a syringe, a plastic pipe, and a spoon. Even though he observed what could be cigarette burns on Ms. Stutler’s body, Agent Tallon did not collect the ashtray and cigarettes that were turned over in the bedroom. As a result, none of these items were processed for DNA. Agent Tallon also located—but did not collect—an “I Voted” sticker that fell off the clothing of one of the Abbeville County investigators that assisted processing the crime scene. R. 388-96; 415-16, Defendant’s Exhibit Numbers 7, 10, and 16.

⁹ Agent Tallon also collected a known DNA Sample from Charles Tillman and major case prints from Ms. Stutler. R. 384-86.

Agent Kimberly Mears is a forensic scientist in the latent print department at SLED. Although locating a fingerprint on the .22 rifle, Agent Mears testified that fingerprint did not match the known fingerprints of Charles Tillman or Christie Stutler. Investigators never asked her to compare the fingerprint to any other known set of fingerprints. Agent Mears also took swabs from the rifle's trigger and trigger guard (SLED Item 1.1), the non-smooth sides of the "magazine that came with the rifle (SLED Item 1.2), the surface areas of eight cartridges (SLED Item 1.3), and the "cartridge case that was found on the bedroom floor (SLED Item 2.2). Agent Mears forwarded these swabs and a hair fiber found on the cartridge case found on the bedroom floor (SLED Item 2.1) to SLED's DNA section. R. 420-29.

Agent Jessica Stowe is a forensic serologist at SLED. She examined "a projectile fired from a .22 rifle" for blood, but did not find any. Agent Stowe also processed the fingernail scrapings taken from Ms. Stutler's right and left hands for further processing by the DNA lab. With the fingernail scrapings from Ms. Stutler's left hand, Agent Mears found a hair that was not suitable to be forward to the DNA lab because the root was not present. Agent Mears also processed the sexual assault kit but did not find any evidence of spermatozoa or semen for possible DNA examination. Finally, Agent Mears examined Charles Tillman's green shirt for blood, but none was found. R. 446-56.

Agent Catherine Leisy is a "forensic scientist assigned to the DNA casework department" at SLED. She testified the DNA profile identified on Christie Stutler's fingernail scrapings was Ms. Stutler's DNA. A partial Y-STR (male) profile on the fingernail clippings matched Mr. Tillman's DNA profile, but his male relatives could not be excluded. The second Y-STR profile on the fingernail scrapings was "insufficient for

interpretation.” The major contributor of DNA to the trigger and trigger guard of the .22 rifle (SLED Item 1.1) was Ms. Stutler. The Y-STR profile on the trigger and trigger guard was probably a mixture of two people’s DNA. The DNA profile on the on-smooth sides of the magazine (SLED Item 1.2) was a mixture of at least three people. For the Y-STR profile found on the magazine matched Charles Tillman’s DNA profile, but his male relatives could not be excluded as contributors. Regarding the two profiles that matched Mr. Tillman’s DNA profile, Agent Leisy testified “the probability that you could randomly select and unrelated male individual having a profile matching the major contributor [of this DNA sample] is approximately one in 8,600.” Finally, Agent Leisy testified she cannot tell when or how the DNA got on these items. For example, Ms. Stutler could get male DNA on her fingernails by handling items in the house. Mr. Tillman’s DNA—if it was his DNA—found on the magazine could have gotten there at a prior time. R. 503-29.

The State called two forensic scientists from SLED with GSR expertise. Agent Ila Simmons took “four particle lifts” from Mr. Tillman’s shirt for GSR examination. R. 356-72. Agent Tyler Sturkie processed the “particle lifts” for GSR. Agent Sturkie found exactly one particle of GSR on the right sleeve of Mr. Tillman’s shirt. On direct examination, Agent Sturkie testified there were two ways the one particle of gunshot residue could get on Mr. Tillman’s shirt. “One is that [the shirt] was in the vicinity of the discharge of a firearm, or the second is an object that GSR on it came into contact with this object as well.” On cross-examination, Agent Sturkie explained GSR “will come out of any opening [of the gun,] which would include the barrel and the ejection port.” He acknowledged if you fired the .22 rifle towards the ceiling of the bedroom in the trailer,

then GSR could settle all over the bedroom. Finally, in order to avoid the possibility of transferring GSR to an object, an investigator collecting the evidence should wear rubber gloves. R. 555-573. Investigator Hines, who had already been to the crime scene, admitted he did not wear gloves when he collected Mr. Tillman's shirt to be examined for gunshot residue. R. 406-08.

Agent James B. Green is a forensic firearms examiner at SLED. He examined the .22 rifle, the cartridge case found on the bedroom floor, and the bullet fragment recovered from the wall of the trailer. He concluded the shell case was fired by the .22 rifle. His examination of the bullet fragment was inconclusive. R. 429-38.

Agent Jared Castellani, a forensic toxicologist at SLED, examined Christie Stutler's blood that was collected during the autopsy. He testified Ms. Statler's blood contained .22 milligrams per liter of methamphetamine and .12 milligrams per liter of amphetamine. Agent Castellani testified methamphetamine is a street drug, sometimes called Ice. When methamphetamine breaks down, one of the components is amphetamine. R. 438-46.

During its closing argument, the State relied on the circumstantial evidence—DNA and GSR in particular—to argue Charles Tillman was responsible for Christie Stutler's death. R. 637-46. Mr. Tillman presented an alternate theory about the murder that law enforcement did not investigate. Christie Stutler was alive when Charles Tillman went to work with J.C. Boggs and Walt Tillman. While Mr. Tillman was at work, someone else came to the trailer to use illegal drugs with Ms. Stutler, a fact confirmed by the presence of the syringe. "[T]hat person flipped out or got violent. . . ,

shot and killed Christie [Stutler], and panicked and hid the gun in the car as they were fleeing the scene.” R. 646-79.

ARGUMENTS

Question I

Did the trial judge err by denying Charles Tillman’s motion for the court to identify the standard of review it applied when considering Mr. Tillman’s motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a “scintilla” or “modicum” of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of “substantial circumstantial evidence” employed by our state’s appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) affirmed by *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?

When moving for a directed verdict, Mr. Tillman acknowledged:

[T]here’s direct evidence that proves a homicide and direct evidence for which a jury could concluded that somebody murdered Christie [Stutler]. The issue in this trial is the identity of the person who did that. And in this case the State’s entire case on that [issue] is circumstantial evidence. And so, when we get into circumstantial evidence we get into an area that quite frankly has gotten a little bit confused in the appellate opinions.

R. 576-77. Counsel noted “the directed verdict standard Your Honor is supposed to consider is whether there’s any substantial circumstantial evidence.” *See, e.g., State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004) (“If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.”). Counsel noted our state recognizes two standards of review. First, “[I]n some of those opinions the word ‘any’ will be italicized.” *See, e.g., State v. Land*, 419 S.C. 191, 198, 797 S.E.2d 48, 52 (Ct. App. 2016) (“*any* substantial circumstantial evidence”). Second, in other opinions, the appellate courts emphasize the word “substantial.” *See,*

e.g., *State v. Odems*, 395 S.C. 582, 584, 720 S.E.2d 48, 49 (2011) (“substantial circumstantial evidence”). Often, our Supreme Court has not used the word “any” to modify “substantial.” See, e.g., *Odems*; *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) (“If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused....”); and *State v. Rosemond*, 356 S.C. 426, 429–30, 589 S.E.2d 757, 758 (2003) (“If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury.”).

Mr. Tillman reminded the trial judge about *Jackson v. Virginia* where the Supreme Court of the United States “said a scintilla of evidence is not enough to submit a case to the jury,” R. 577. 443 U.S. 307, 320 (1979) (“But it could not seriously be argued that such a ‘modicum’ of evidence could by itself rationally support a conviction beyond a reasonable doubt.”).

Mr. Tillman identified *Schrock*, “where there was a lot of circumstantial evidence placing [Schrock] in the vicinity of the murder,” *Hernandez* where finding drugs in the back of a truck was not sufficient evidence to submit to the jurors the drug trafficking charges of the drivers of another truck in the same caravan, and *Arnold* where law enforcement finding the accused’s “fingerprint on a tab from a coffee cup lid found in the center compartment between the seats” of the deceased’s car was insufficient evidence to submit the case to the jurors. 361 S.C. 386, 389, 605 S.E.2d 529, 530 (2004). R. 578.

Mr. Tillman request the trial judge not “consider any of the admitted falsities that were used by law enforcement in the interrogation” such as law enforcement claiming the murder occurred between “7:00 and 9:00 [a.m.] when the undisputed fact in the record is,

is that there was a 12 hour window and information was misrepresented to Charles [Tillman], either intentionally or carelessly.”¹⁰ Mr. Tillman pointed out “the window of time” where “he was at work” and to the evidence in the record that Ms. Stutler was alive when he left” for work. Counsel argued:

I realize you’ve got to view this [evidence] in a light most favorable to the State. But even viewing it in a light most favorable to the State, there is a window of time where [Ms. Stutler] could have been shot and killed when Charles [Tillman] was not there. You do not have an admission from Charles [Tillman]. In fact, you have denial after denial, even when they pressured him with false information. And I – what I anticipate the State is going to argue is that this DNA on the gun and the gunshot residue are pieces of circumstantial evidence that allow them to get this case to the jury. My concern with that – and again, I trust that you’re not going to consider what we know are misrepresentations [by law enforcement investigators] about, you know, the DNA and what GSR means in the interrogation. I assume that you’re going to consider what the science establishes is, which is nobody can say when and how those samples got there. A lot like the fingerprint and the automobile.¹¹ Presumably a lot like the drugs in the car, you know, in the Edgefield case.¹² And the best that they can establish is that it’s there. They can’t establish how it got there. There’s also the fingerprint case in Newberry¹³ where the fingerprints on the window. The screen that’s removed. That wasn’t enough to get the burglary charge to the jury.

[W]hen you look at the scientific evidence – you know, first of all, they’re not conclusively saying that Charles [Tillman’s] DNA is on the gun because they can’t rule out other male relatives. But they do conclusively state that there’s other peoples’ DNA on the gun. But the

¹⁰ The trial judge never stated whether he would consider law enforcement’s false statements as circumstantial evidence supporting sending the case to the jurors.

¹¹ See *Arnold, supra*.

¹² See *Hernandez, supra*.

¹³ *State v. Mitchell*, 332 S.C. 619, 622, 506 S.E.2d 523, 525 (Ct. App. 1998) (“a fingerprint found outside a dwelling near the point of entry is [not] ‘substantial’ circumstantial evidence sufficient to permit a jury to receive the case”) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000).

important part is, that gun's on the property. He's admitted to shooting it before. Nobody can tell you when or how his DNA got there. So it does not establish that it got there at the time the gun was fired that killed Christie [Stutler]. Same with the GSR. They cannot establish that it got there as a result of firing a gun. So when – if you focus on the “any” I think you get into the *Jackson vs. Virginia* problem. But if you focus on the “substantial” and then combining it, “any substantial,” I think that Mr. Tillman is entitled to a directed verdict.

R. 579-81 (footnotes added).

In response, the State relied on the DNA evidence, the GSR evidence, Ms. Cummings statement during on the 911 call that there was a gun at the trailer the prior day, and the window of time when Ms. Stutler was alive at the trailer and Mr. Tillman was present before he went to work. R. 581-82. Mr. Tillman responded by pointing to cases like *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), a homicide by child abuse case, where proof that the accused was present in the home at the time the child was injured was insufficient circumstantial evidence to submit the case to the jurors. R. 582-83.

The trial judge observed Mr. Tillman “is perhaps correct that the Court’s [sic] have been less than specific on what exactly substantial circumstantial evidence means.” The trial judge, in fact, discussed this very concern during a CLE presentation to the Greenwood County Bar but has “yet to see further clarification from the Supreme Court.” The trial judge, nevertheless, denied Mr. Tillman’s directed verdict motion. R. 583-86.

After the trial judge ruled, Mr. Tillman pointed out:

The only – the concern that I have was with the part of your ruling where you said that you don’t have to be concerned with what the any substantial circumstantial evidence means. I don’t know that you can apply the law to the facts without knowing what that means. And I would just respectfully ask for your definition for the record in case our Court – Appellate Courts are having to look at this [issue]. And I realize I’m putting you in a difficult spot because of the opinions out there, but I also feel like the law

has probably gotten a little unclear on some of this because we don't have these conversations at this stage of the trial on the record.

R. 586-87. The trial judge acknowledged that confusion about the meaning of “substantial circumstantial evidence” is discussed by circuit court judges on their listserv. The trial judge still did not define “substantial circumstantial evidence,” stating it “mean[s] exactly what the Courts have articulated in the past. So that will be my ruling.” R. 587.

Mr. Tillman presented his case, which did not fill in any of the gaps in the State's case. *See Hepburn, supra* (discussing waiver rule); *see also State v. Phillips*, 416 S.C. 184, 785 S.E.2d 448 (2016) (modifying *Hepburn*). At the close of all the evidence, Mr. Tillman renewed his directed verdict motion. R. 627. In his new trial motion, Mr. Tillman reminded:

This Court declined Mr. Tillman's request to define “substantial circumstantial evidence.” Mr. Tillman respectfully renews his request for this Court to define “substantial circumstantial evidence.” Mr. Tillman believes this Court applied a constitutionally inadequate standard denying him due process of law. *See Jackson* and *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

R. 20. Although acknowledging Mr. Tillman's request to define “substantial circumstantial evidence,” the trial judge did not define the term. R. 4-5.

An “any circumstantial evidence” standard would not comply with due process.¹⁴ *See Winship* and *Jackson, supra*. Rather, due process requires the trial judge to determine the existence of “substantial circumstantial evidence” in order to submit the case to the jurors. *Jackson* demands nothing less. Such a rule is consistent with our state's longstanding requirement that an accused's motion for a directed verdict must be

¹⁴ U.S. Const. Am. XIV; S.C. Const. Art. I, § 3.

granted when the evidence “is such as to permit the jury to merely conjecture or to speculate.” *State v. Cain*, 419 S.C. 24, 31, 795 S.E.2d 846, 850 (2017); *State v. Brown*, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976). It is equally well settled, “The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” *Cherry*, 361 S.C. at 594, 606 S.E.2d at 478. This Court, therefore, should hold that trial judges must apply a “substantial circumstantial evidence” standard when considering the accused’s directed verdict motion. Otherwise, trial judges would allow jurors to base their decision on speculation and conjecture.

The cases cited by Mr. Tillman at trial are instructive about the meaning of “substantial circumstantial evidence.” In *Schrock*, Schrock admitted to being in the general area at the time of a double murder. At the crime scene, law enforcement located a footprint that was consistent with Schrock’s footprint and Marlboro cigarette butts. Schrock admitted he smoked Marlboro cigarettes. “[O]n the morning after the incident, [Schrock] disposed of clothes and tennis shoes he had been wearing.” 283 S.C. at 132, 322 S.E.2d at 451. Our Supreme Court held:

The evidence presented by the State in the instant case may raise a suspicion of Schrock’s guilt, but it does not point conclusively, nor to a moral certainty, nor beyond a reasonable doubt, to his guilt. From the record before us, we can reach no other conclusion but that Schrock was entitled to a directed verdict of not guilty based on the lack of evidence.

283 S.C. at 134, 322 S.E.2d at 453.

In *Mitchell*, a burglar entered the homeowner’s house through a broken window and stole some guns. Law enforcement found Mitchell’s thumbprint on a window screen found directly under the broken window. Additionally,

the state presented evidence that Mitchell had been on the [] property at least twice, once to help [the home owner's] son move furniture and attend a social gathering in the house and another time to help the son unload lumber. [The homeowner] further testified that Mitchell had not entered the room where the broken window and glass were found on either occasion.

332 S.C. 619, 621, 506 S.E.2d 523, 524 (Ct. App. 1998), *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000). This Court reversed, holding the fingerprint found on the window screen was no “substantial” circumstantial evidence of entry into the house. 332 S.C. at 622, 506 S.E.2d at 525. The State appealed. Our Supreme Court affirmed, reasoning:

The evidence in this case is entirely circumstantial. The only evidence linking respondent to the burglary is the fingerprint. The State did not present any evidence whether the screen was on the window at the time the window was broken or when the screen had been removed. The fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim's house as least three times prior to the burglary.

341 S.C. at 409, 535 S.E.2d at 127.

In *Arnold*,

the State's theory of the case was that [Arnold] and [the decedent] drove to the woods where [Arnold] shot [the decedent] while [the decedent] was kneeling “either by force or for sex.” [Arnold] then drove the [decedent's borrowed BMW] car to Tennessee and stopped for coffee on the way [leaving his fingerprint on a coffee lid found in the car].

361 S.C. at 389, 605 S.E.2d at 531. Our Supreme Court held:

Viewing the evidence most favorably to the State, [Arnold's] fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where respondent was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that respondent killed [the decedent]. Further, there is no evidence respondent was at the scene of the crime, which according to the State's theory was in Colleton County.

361 S.C. at 390, 605 S.E.2d at 531.

In *Hernandez*, federal agents intercepted a tractor-trailer transporting 900 pounds of marijuana from Mexico to Trenton, South Carolina. A federal agent took the place of the driver of the tractor-trailer and transported the contraband to its destination in Edgefield County. The three defendants in *Hernandez*, occupying a rented Ryder truck, joined a caravan including the tractor-trailer transporting the contraband. When the tractor-trailer and the Ryder truck got stuck in the mud on a dirt road, the federal agents arrested the three occupants of the Ryder truck and charged them with trafficking marijuana. “At trial, [the three defendants] moved for a directed verdict claiming that the State had only proved mere presence at the scene and had failed to prove the element of knowledge.” 382 S.C. at 623, 677 S.E.2d at 604. The trial judge denied the motion, the jurors convicted, and the three appealed. Our Supreme Court held, “[T]his evidence does not constitute substantial circumstantial evidence of knowledge.” 382 S.C. at 625, 677 S.E.2d at 605.

In each of these cases—*Schrock*, *Mitchell*, *Arnold*, and *Hernandez*—an “any circumstantial evidence” standard would have allowed the trial judge to submit the cases to the jurors. The evidence in each case raised a suspicion of guilt; however, our appellate courts, applying a “substantial circumstantial evidence” standard, analyzed the limitations of the evidence and held the trial judge erred by not entering a directed verdict of acquittal. This Court should hold the trial judge erred by not identifying the standard of review applied by the court. This Court should further hold that the “substantial circumstantial evidence” standard applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez* is the appropriate standard.

Question II

Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?

After pointing out the trial judge declined his request to define "substantial circumstantial evidence," Mr. Tillman's new trial motion argued the trial judge erred by denying his directed verdict motion, pointing out:

Once this Court appropriately defines "substantial circumstantial evidence," the need to enter a directed verdict of acquittal becomes apparent. The prosecution merely presented evidence raising a suspicion that Mr. Tillman murdered Ms. Stutler. The forensic pathologist testified that the time of death was between 11:00 p.m. on November 7th and 11:00 a.m. on November 8th. Mr. Tillman has a confirmed alibi while he was at work on November 8th. The prosecution cannot account for how the single particle of gunshot residue got onto Mr. Tillman's shirt. Even if it is accepted that Mr. Tillman's DNA is on the rifle that shot Ms. Stutler, it cannot account for how or when Mr. Tillman's DNA got onto the rifle.

R. 20. Thus, viewing the evidence in a light most favorable to the State, the evidence presented at trial established that Ms. Stutler was alive at 8:30-9:00 a.m. on November 8th when Charles Tillman left for work with J.C. Boggs and Walt Tillman.

The State, however, relied on circumstantial evidence. The State's own forensic experts testified about the limitations of this evidence. A SLED forensic scientist found exactly one particle of gunshot residue on the shirt that Mr. Tillman wore on November 8th. The scientific testimony cannot establish how this single particle of gunshot residue got onto Mr. Tillman's clothing. This particle of gunshot residue could have gotten on his shirt by Mr. Tillman firing a gun, by Mr. Tillman transferring it to his shirt after touching something in the room where he found Ms. Stutler's body, or by law enforcement transferring it to the shirt by not wearing gloves when collecting the shirt for evidence. Another SLED forensic scientist discovered the DNA of *at least* three people

on the rifle used to shoot Ms. Stutler. One sample is unquestionably Ms. Stutler's DNA. Mr. Tillman cannot be excluded as contributing one of the samples, although his paternal male relatives cannot be excluded as contributing this sample. The person or people contributing the other DNA sample(s) remain unidentified. The scientific evidence cannot establish when these DNA samples were placed on the rifle or whether the DNA was placed on the rifle by the individual(s) or transferred to the rifle in some other manner.

Although the State's circumstantial evidence arguably meets an "any circumstantial evidence" standard, it cannot meet the "substantial circumstantial evidence" standard applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*. This Court, therefore, should reverse the trial court and direct a verdict of acquittal.

Question III

Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body—State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139 and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?

Prior to opening statements, the trial judge noted the State had marked over 100 photographs, many of which were not objectionable,¹⁵ but Mr. Tillman objected to some, arguing the State should not be allowed "to admit any photographs showing [Christie Stutler's] body." Specifically, Mr. Tillman objected to State's Exhibit Numbers 2, 3, 13, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141. The trial judge

¹⁵ State's Exhibit Numbers 4-12, 15-17, 19-35, 40-46, 52, 53, 57, 59, 62, and 64-93 were admitted into evidence without objection and without need for further identification. R. 111-13.

conducted a lengthy *in camera* hearings regarding the admissibility of these photographs.

R. 54-83, 108-13, 116, 178, 273-85, 287-89. Mr. Tillman pointed out:

Some of the photographs, both from the residence and from the autopsy have what also appears to be medical intervention involved. Some of the photographs from the residence, her body is where it was found. In other photographs it's been moved somehow, either turned over or their holding up hands. We've been doing this a long time and I think the pendulum is swinging back to where it used to be on photographs of decedents, and particularly autopsies that there could be a prejudicial effect of introducing these photographs, particularly if there's no other evidentiary value other than trying to appeal to the emotions of the jurors. And that's what I'm concerned is going on here, because I think we're going to have relatively few factual disputes this trial.

R. 54-55. Counsel informed the trial judge:

[T]he dispute is going to be whether or not Mr. Tillman killed Christie Stutler before he went to work or whether she died after he went to work and, therefore, was killed by someone else. So this is not a case where we're going to be contesting the nature of any of the wounds.

R. 56.

The trial judge instructed the Solicitor "to speak to the issue of relevancy."¹⁶ R.

57. See Rules 401, 402, SCRE. The Solicitor argued the State has to prove Ms. Stutler did not commit suicide. R. 56-77. To remove any confusion, Mr. Tillman stipulated that homicide was the manner of Christie Stutler's death, and the trial judge recognized the stipulation "seems to remove a great number of issues and the question of whether it's a suicide [is] out of the picture." R. 77-79.

¹⁶ At several points, the trial judge got confused about the grounds for the objection. See, e.g. R. 64 ("[T]he objection is that the prejudicial effect outweighs and probative value." Counsel for Mr. Tillman reminded, "And relevance."); R. 67 ("But the question is whether the prejudice outweighs any probative value."); and R. 76 ("The question is whether the prejudicial effect outweighs the probative value."). Mr. Tillman pointed out, "I don't think that's the entire question, because" case law talks about "whether or not these photographs depict something that's in issue or not," *i.e.* relevance, and Mr. Tillman is "not contesting a single thing that they've talked about so far, as far as what injuries are there." R. 76.

Dr. Woodard, the State's forensic pathologist, testified about many of these photographs. *See* R. 294-303. The Solicitor emphasized the photographs during the State's closing argument. R. 640.

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.” Rule 402, SCRE; *see also State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 100 (1999) (“testimony and the victim’s photograph were not relevant to proving the guilt of appellant”).

Mr. Tillman objected to the photographs based on relevance. Because Mr. Tillman stipulated Ms. Stutler’s death was a homicide, the photographs did not assist the jurors in making this determination. Mr. Tillman repeatedly offered to stipulate to the injuries depicted in the photographs and pointed out that Dr. Woodard could testify about the nature of the wounds without needing to use the photographs (using a diagram, for example). R. 56-57, 76-77, 79-81, 127, 134, 178, 528, 585, 633, 663. These photographs were not relevant, and this Court should order a new trial. “Because the evidence of [Mr. Tillman’s guilt was not overwhelming, [this Court] cannot find this irrelevant evidence did not affect the outcome of the trial under a harmless error analysis.” *Langley*, 334 S.C. at 648, 515 S.E.2d at 100.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. “Photographs which are calculated to arouse the sympathies or prejudices of the jury should be excluded . . . if they are irrelevant or not substantially necessary to show material facts or conditions.” *State v. Kornahrens*, 290 S.C. 281, 288, 350 S.E.2d 180, 185 (1986) (citing *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986)). Use of horrendous photographs is “an area of growing concern” for our Supreme Court that has strongly encourage[d] all solicitors to refrain from pushing the envelope.” *State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010).

In addition to not being relevant, the photographs were extremely prejudicial. In light of the stipulation, the prejudicial effect of these photographs substantially outweighed any probative value. The prosecution emphasized these photographs during its closing argument, compounding the prejudice. Admission of this evidence was not harmless. *See Langley, supra*. This Court should order a new trial.

Question IV

Did the trial judge err by denying Charles Tillman’s motion for a mistrial when the State sought to introduced evidence from a purported “criminal profiler,” when “criminal profiling” is not a legitimate science?

The State called SLED Lieutenant Darwood Joseph (“Bo”) Barton, and the following exchange occurred:

Q: And how long have you been in law enforcement, Mr. Barton?

A: Thirty years.

Q: And have you always been at SLED or did you work in other departments?

A: I've been at SLED since I graduated college.

Q: And where did you go to college?

A: Wofford College.

Q: And you've got a degree – was it a Bachelor's of Science?

A: Bachelor of Arts in Sociology, and then my Master's degree is Criminal Justice from the Charleston Southern University.

Q: All right. And you said you've been at SLED for about 30 years. What is – what's your title right now at SLED?

A: I am a lieutenant in charge of the behavioral science unit. I'm one of the criminal profilers at SLED.

Q: And before you became a criminal profiler, did you work in other areas at SLED?

A: Yes, sir. I worked in – my first job was Bloodhound tracking team, SWAT team, then I went to undercover narcotics, then I worked the violent crimes task force, drug task force, and then moved over into homicide, and then from there I went into the – excuse me. I went into the protocol to become board certified as a criminal profiler.

Q: And how long have you been a criminal profiler?

A: Since 2003.

Q: And you're a lieutenant over that division now at SLED?

A: Correct.

Q: On November the 8th of 2016, did you – you didn't respond to Bell Road, did you?

A: No, sir. I didn't

Q: How did you go about becoming involved in this particular case?

A: I received a call from Captain Talbert, Natalie. And so, she had formally worked at SLED and we worked – worked cases together before. And behavioral science or criminal profilers get called in occasionally to –

R. 461-62.

Counsel for Mr. Tillman asked for a sidebar and objected to Lieutenant Barton testifying as an expert in “criminal profiling.” The trial judge “sustained” the objection and instructed the Solicitor to “move along, please, and ask another question.” R. 462.

After asking Lieutenant Barton if he interviewed Mr. Tillman on November 29, 2016, R. 462-66, the following transpired:

Q: In the interview with Mr. Tillman, what did you all talk about initially when you all – when he first – when he first got there?

A: My point to talk to Mr. Tillman was to try to understand a better understanding of what he believed happened that day, what actually happened that day, events leading, state of mind of the victim, that kind of thing. So we began talking and I was going to give – I gave him three separate options as to the possible likelihood after my review of the case file –

R. 466.

Mr. Tillman moved for a mistrial, arguing:

I think the first thing is that the record needs to reflect that we had a sidebar where I informed the Court that I had been told that the purpose of this witness was that he took an interview and that they were going to either talk about that interview or play parts of that interview. That’s gone back and forth during this trial. I had been given absolutely nothing about an expert in criminal profiling. They went through all of his qualifications in that and didn’t offer him as an expert. You instructed him when you sustained the objection to move on. That is a junk science and I made that objection because he was getting ready to explain why Captain Natalie Talbert called him in and what a criminal profiler does. You instructed him to move on, and now what he’s getting ready to say is, based on my review of the file as an expert at criminal profiling I wanted to give Charles Tillman three scenarios and see how he responded to them, and he’s going to going to give opinion testimony. And he’s being portrayed to this jury as somebody who’s an expert, who’s putting his stamp of approval on it, that they’re going to say, this guy, who’s a criminal profiler

from SLED, came up and told you whatever, they're going to argue he's an expert.

I'm moving for a mistrial. This is not a science. This is a junk science. This type of testimony is not admissible in the Courts of South Carolina and we were sandbagged on this issue because we were told he was here to do an audio recording that now they're saying they're not even going to play for the jury, they're just going to let him give opinions on it.

R. 466-68.¹⁷

The Solicitor never responded to the expert testimony issue, but rather argued their intent was to limit the amount of the tape recording that had to be played to the jurors in order to avoid juror "fatigue." R. 468.

Counsel for Mr. Tillman elaborated:

What I don't want is, is I don't want him testifying like an expert, based on the review of my file, I wanted to give him three different scenarios. He's expressing an opinion on the evidence, an opinion on the victim's state of mind, an opinion on Charles [Tillman's] state of mind. That's what I have an objection to. If they want to – they didn't need to do all of this. A lot of times they call polygraph examiners to say, well, I got a statement from a person. The jury never hears that they're polygraph examiners. I feel like we have been totally sandbagged on this issue. If they want to ask him what questions did you ask him, what answers did he give, that's fine. I don't have a problem with us trying to end some of this video fatigue, but this is their evidence. And in the best evidence of what I asked him and what he said is what's on that video. And he does talk about – I've been doing this for a long time and I know things, but he doesn't give opinions on that like he's getting ready to do in this Court.

R. 468-69.

The trial judge agreed with Mr. Tillman's account of the sidebar and observed, "It sounded as if the State was about to qualify, or attempt to qualify, or elicit testimony that

¹⁷ At various times during the trial, Mr. Tillman reminded the trial judge about the three-prong test set forth in *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010) regarding trial courts' gatekeeping function for admitting expert testimony. See, e.g., R. 88-102, 280.

would indicate that Mr. Barton is an expert in criminal profiling.” And, “[T]he manner in which the testimony was being presented, although I think it was an innocent mistake on the part of the State, the manner in which it was starting to come out when Mr. Grose objected certainly seems to lend itself to the very thing Mr. Grose is complaining about.” And, “[I]t was definitely headed in the direction of giving the imprimatur in criminal profiling that there is some way to magically discern whether someone is telling the truth or not.” The trial judge noted criminal profiling is not recognized as an expertise in South Carolina. The trial judge did not think the questioning “crossed the line” requiring a mistrial. Although acknowledging the trial court could not “unring the bell,”¹⁸ the trial judge decided to give a curative instruction. R. 469-70, 475.

Counsel disagreed the State’s presentation was an “innocent mistake” when he argued:

Well, I think that this was carefully crafted questions and answer, and because they took so much time developing his expertise when they could have just said did you interview Mr. Tillman on such and such a date. And so, at this point, you’re right. We can’t unring the bell. And so, any curative instruction is – I’m going to deem inadequate to have the continuing motion. But I think that the Court needs to craft something this says this witness – because you’ve – we’ve not objected to any expert that they’ve called in this case.

And so, every time that an expert has been qualified without objection, you have explained, appropriately, what our system says that we tell about an expert. And so, I think that – you know, number one, if you’re going to craft a curative instruction, this jury needs to be told that he’s not an expert and that he cannot testified as to opinions. Something similar to but opposite of what you’ve said with people who were deemed to be experts.

¹⁸ *State-Record Co. v. State*, 332 S.C. 346, 356, fn. 19, 504 S.E.2d 592, 597, fn. 19 (1998) (internal quotations omitted).

R. 470-71, 476. Mr. Tillman asked for any curative instruction to include, “That it was improper for the State and the witness to present him as an expert.” R. 474. Over objection, the trial judge ultimately instructed the jurors:

Ladies and gentlemen of the jury, thank you for your continued attention and your continued patience and I wanted – before we proceed further, I want to clear up any misconceptions that perhaps you harbor concerning Mr. Barton and his current testimony. I want you to understand, ladies and gentlemen, previously today and yesterday we had a number of individuals testify as expert witnesses. I explained that when somebody is qualified as an expert, they are allowed to give opinion testimony. They cannot testify about something – or they can testify about something they observed, but they can also testify about their opinions.

In this case, ladies and gentlemen, Mr. Barton’s background, his job history, that kind of thing, that was alluded to in certain testimony. But please, understand that Mr. Barton is not an expert in any field that’s recognized in the law. Criminal profiling is not a recognized science. It is not an area of expertise that’s appropriate for an expert opinion or expert testimony, and Mr. Barton is not, in any way, shape, or form, an expert in any sort of science or in any sort of recognized field that would warrant qualifying him as an expert in that field. And to the extent that that impression may have been given to you, I want to dispel that immediately. And please, understand this is – this witness’ testimony is limited to something that he observed, something he heard, something he saw, smelled, tasted, felt, et cetera, and is not in any way, shape, or form opinion or expert testimony in any way.

R. 477-78.¹⁹ This instruction not only did not “unring” the bell, but it called further attention to the error and the perception that Lieutenant Barton had some special knowledge, if not considered an expertise by the courts. Mr. Tillman renewed his request for a mistrial in his Motion for a New Trial. R. 17-18.

¹⁹ Recognizing the magnitude of the issue, the trial judge stated, “You don’t have to object to my statement, Mr. Grose. You are covered. You don’t need to object afterwards be I know you have to object, regardless of what I say in order to preserve this issue.” R. 476.

By sustaining Mr. Tillman's objection and giving the curative instruction, the trial judge found the testimony inadmissible. Even after the curative instruction, Mr. Tillman was prejudiced because the jurors were left with the impression that there was something uniquely probative about Agent Barton's interview techniques and testimony, suggesting a decision in an improper basis.

"While criminal profiling may have a legitimate function in law enforcement investigations, such information constitutes propensity evidence and, therefore, has no place in a trial to determine the guilt of a specific individual. In other words, this type of testimony unduly tends to suggest a decision on an improper basis." *State v. Huckabee*, 419 S.C. 414, 425, 798 S.E.2d 584, 589 (Ct. App. 2017) (internal quotations omitted) (holding probative value of criminal-profile testimony was substantially outweighed by danger of unfair prejudice, and thus testimony should have been excluded under rule which provided for such exclusion).

Agent Barton's testimony about criminal profiling was inadmissible and suggested the jurors render a verdict on an improper basis. *Id.* It is impossible for this Court to say that this testimony did not affect the verdict. *See, e.g., Langley, supra.* This Court should order a new trial.

Question V

Did the trial judge err by denying Charles Tillman's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?

During the charge conference, Mr. Tillman requested this Court provide the jurors with the *Edwards* circumstantial evidence instruction, to wit:

[E]very circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the

accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989) (citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924, 926 (1955)). This Court instead provided the instruction mandated by *State v. Logan*, 405 S.C. 83, 86, 747 S.E.2d 444, 445 (2013)²⁰ (“*Logan* charge”).

“A key purpose of [*Edwards*]’ cautionary charge . . . was to preclude conviction of the innocent. The modern American trend, however, has been to abandon the common law instruction concerning circumstantial evidence. This has the effect of creating the very danger that the [common law] rule sought to eliminate.” Rosenberg, 31 Hous. L. Rev. at 1390. In fact, since *Edwards*, our Supreme Court has struggled with how trial courts should explain circumstantial evidence to jurors in a criminal case. In *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), the Court approved an alternate instruction that became mandatory after *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Both *Grippon* and *Cherry* were three-to-two decisions, with the minority opinions wanting to retain the *Edwards* Charge. But, in *Grippon* and *Cherry*, our Supreme Court, “never rejected the ‘reasonable hypothesis’ phrase [of the *Edwards* Charge] or found this phrase shifted the burden of proof.” *Grippon*, 327 S.C. at 82, 489 S.E.2d at 463.

Our Supreme Court revisited this issue and “modif[ied] *Grippon* and *Cherry* to allow the additional language provided . . . if requested by a defendant,” by setting forth a

²⁰ Mr. Tillman acknowledged that the Court was not allowed to grant his request for the *Edwards* instruction under the plain language of *Logan*. Mr. Tillman’s request and subsequent objection to the jury instructions, however, were needed to preserve this issue for appeal.

new instruction. *Logan*, 405 S.C. at 99-100, 747 S.E.2d at 452-53. In *Logan*, the majority opinion warned that “requiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant's guilt comes perilously close to shifting the burden of proof from the State to the defendant.” *Id.* 405 S.C. at 98, 747 S.E.2d at 451-52 (citing *State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000) (“Jury instructions on reasonable doubt which charge the jury to ‘seek the truth’ are disfavored because they ‘[run] the risk of unconstitutionally shifting the burden of proof to a defendant.’”)).

In *Holland v. United States*, the Supreme Court of the United States reminded the bench and bar of government’s obligation, as part of its duty “to see that justice is done,” 348 U.S. at 136, to disprove leads presented to it by an accused. 348 U.S. 121, 136 (1954). This obligation is consistent with the prosecution’s burden of proof. See *Winship*, *supra*. The *Logan* Charge, however, omits instructing the jurors the State’s proof must “point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis,” which implies that the prosecution has the burden of disproving every reasonable hypothesis inconsistent with guilt by proof beyond a reasonable doubt. Such an instruction is mandatory when an accused presents other defenses. “[W]hen self-defense is properly submitted to the jury, the defendant is entitled to a charge, if requested, that the State has the burden of disproving self-defense by proof beyond a reasonable doubt.” *State v. Burkhardt*, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002). And see Suggested Jury Instructions—Criminal, pp. 294-95. The prosecution, likewise, has the “burden of disproving the defense of alibi.” *State v. Bealin*, 201 S.C. 490, 23

S.E.2d 746, 754 (1943).²¹ *And see* Suggested Jury Instructions—Criminal, pp. 275-76 and Ralph King Anderson, Jr., South Carolina Request to Charge—Criminal, 2007, § 6-19. “An alibi charge is considered especially crucial when the evidence is entirely circumstantial.” *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). In a criminal sexual conduct case, if the accused raises the defense of consent, then “the state must prove beyond a reasonable doubt that the victim did not consent.” Suggested Jury Instructions—Criminal, p. 278.

Mr. Tillman’s case illustrates why the *Edwards* instruction is more appropriate than the *Logan* instruction. *Edwards* requires the exclusion of all reasonable hypotheses that the accused is not guilty. *Logan* leaves open the possibility that an innocent person might be convicted. This Court should order a new trial.

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

The cumulative error doctrine “provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial.” *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor’s improper argument and improperly excluded evidence warranted reversal). This Court should order a new trial because admission of the

²¹ The trial judge, in fact, charged Mr. Tillman’s jurors, “The State has the burden of disproving the Defendant’s alibi defense.” R. 693. Under the facts of this case, the *Edwards* instruction was necessary for the jurors to understand the State had the obligation to disprove, beyond a reasonable doubt, the alternate theory advanced by the defense.

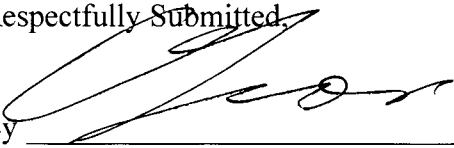
photographs combined with the “criminal profiler” testimony combined to deny Mr. Tillman a fair trial.

CONCLUSION

For the foregoing reasons, this Court should reverse Charles Tillman’s convictions and enter an order directing a verdict of acquittal. In the alternative, this Court should reverse the convictions and remand this case to the Court of General Sessions for a new trial.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Charles Tillman

November 5, 2019
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

Charles Tillman, ... Appellant,

v.

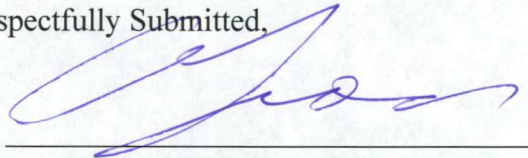
State of South Carolina, ... Respondent.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

November 5, 2019
Greenwood, South Carolina

RECEIVED

NOV 12 2019

SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Abbeville County

The Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

CHARLES TILLMAN,

Appellant.

Appellate Case No. 2018-000495

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY
Assistant Attorney General
S.C. Bar No. 103131

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

RECEIVED
NOV 19 2019
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL	1
RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
RESPONDENT'S STATEMENT OF FACTS	3
ARGUMENTS	5
I. The Trial Judge Identified and Applied The Proper Analysis In Dismissing Appellant's Directed Verdict Motion.	8
II. The Prosecution, During Its Case-In-Chief, Presented Sufficient Evidence To Overcome Appellant's Directed Verdict Motion	12
III. The Trial Judge Was Within His Discretion To Admit Photos Of The Deceased Victim Because The Photos Were Relevant To Prove The Circumstances Of The Murder	18
IV. The Court Properly Denied Appellant's Mistrial Motion Because Appellant Was Not Prejudiced By The Testimony Given By Agent Barton	21
V. The Trial Judge Properly Denied Appellant's Request To Charge The Jury On Circumstantial Evidence As Set Forth In <i>State v. Edwards</i> , As This Case Is No Longer Good Law.	27
VI. This Court Should Decline To Grant Appellant Relief Based On The Cumulative Error Doctrine.	29
CONCLUSION	30
DESIGNATION OF MATTER	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Federal Cases

<i>Imbler v. Pachtman</i> , 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)	20
<i>United States v. Ashley</i> , 606 F.3d 135 (4th Cir. 2010).....	18
<i>United States v. Escalera</i> , 536 F. App'x 27 (2d Cir. 2013)	18

State Cases

<i>Nichols v. State</i> , 267 Ala. 217, 100 So.2d 750 (1958)	21
<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	1
<i>State v. Baccus</i> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	10
<i>State v. Beekman</i> , 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013)	29
<i>State v. Bennett</i> 415 S.C. 232, 781 S.E.2d 352 (2016)	10, 11, 12, 13, 14, 15, 18
<i>State v. Bennett</i> , 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014)	14
<i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	13
<i>State v. Butler</i> , 407 S.C. 376, 755 S.E.2d 457 (2014).....	13
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	13, 28, 29
<i>State v. Coaxum</i> , 410 S.C. 320, 764 S.E.2d 242 (2014).....	25
<i>State v. Collins</i> , 409 S.C. 524, 763 S.E.2d 22 (2014).....	21
<i>State v. Drayton</i> , 411 S.C. 533, 769 S.E.2d 254 (App.2015).....	29
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989).....	1, 2, 27
<i>State v. Edwards</i> , 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007)	26, 27
<i>State v. Edwards</i> , 384 S.C. 504, 682 S.E.2d 820 (2009).....	10
<i>State v. Elders</i> , 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010)	25

<i>State v. Greene</i> , 423 S.C. 263, 814 S.E.2d 496 (2018).....	11
<i>State v. Grippon</i> , 327 S.C. 79, 489 S.E.2d 462 (1997).....	28, 29
<i>State v. Harris</i> , 340 S.C. 59, 530 S.E.2d 626 (2000).....	25
<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	1, 10
<i>State v. Inman</i> , 395 S.C. 539, 720 S.E.2d 31 (2011).....	26
<i>State v. Jenkins</i> , 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014).....	28
<i>State v. Johnson</i> , 334 S.C. 78, 512 S.E.2d 795 (1999).....	27
<i>State v. Johnson</i> 338 S.C. 114, 525 S.E.2d 519 (2000).....	20
<i>State v. Kelly</i> , 331 S.C. 132, 502 S.E.2d 99 (1998).....	25
<i>State v. Kelsey</i> , 331 S.C. 50, 502 S.E.2d 63 (1998).....	21
<i>State v. Kirby</i> , 269 S.C. 25, 236 S.E.2d 33 (1977).....	26
<i>State v. Knight</i> , 258 S.C. 452, 189 S.E.2d 1 (1972).....	19
<i>State v. Knoten</i> , 347 S.C. 296, 555 S.E.2d 391 (2001).....	28
<i>State v. Land</i> , 419 S.C. 191, 797 S.E.2d 48 (Ct. App. 2016).....	10
<i>State v. Larmand</i> , 415 S.C. 23, 780 S.E.2d 892 (2015).....	18
<i>State v. Littlejohn</i> , 228 S.C. 324, 89 S.E.2d 924 (1955).....	11, 15
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013).....	28
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001).....	17
<i>State v. Lynch</i> 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015).....	28, 29
<i>State v. Martucci</i> , 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008).....	21
<i>State v. Mitchell</i> , 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998).....	1
<i>State v. Moultrie</i> , 283 S.C. 352, 322 S.E.2d 663 (1984).....	19
<i>State v. Needs</i> , 333 S.C. 134, 508 S.E.2d 857 (1998).....	17

<i>State v. Nesmith</i> , 213 S.C. 60, 48 S.E.2d 595 (1948).....	17
<i>State v. Patterson</i> , 367 S.C. 219, 625 S.E.2d 239 (Ct. App. 2006).....	28
<i>State v. Patterson</i> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).....	26
<i>State v. Quattlebaum</i> , 338 S.C. 441, 527 S.E.2d 105 (2000).....	10
<i>State v. Rogers</i> , 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013).....	13
<i>State v. Rosemond</i> , 335 S.C. 593, 518 S.E.2d 588 (1999).....	21
<i>State v. Salisbury</i> , 343 S.C. 520, 541 S.E.2d 247 (2001).....	13, 17
<i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984).....	1, 10, 12
<i>State v. Spodnick</i> , 292 S.C. 68, 354 S.E.2d 904 (1987).....	19
<i>State v. Stanley</i> , 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005).....	26
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991).....	30
<i>State v. Walker</i> , 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).....	27
<i>State v. Ward</i> , 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007).....	25
<i>State v. Wasson</i> , 299 S.C. 508, 386 S.E.2d 255 (1989).....	26
<i>State v. Wilson</i> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	25

State Statutes

S.C. Code Ann. § 16-3-10.....	18

State Rules

SCRE, Rule 401	19
SCRE, Rule 403	20, 21

Other Authorities

Am.Jur.2d Stipulations § 17, at 557 (1974).....	20

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err by denying Charles Tillman's motion for the court to identify the standard of review it applied when considering Mr. Tillman's motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than an "scintilla" or "modicum" of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of "substantial circumstantial evidence" employed by our state's appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) affirmed by *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernández*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?
- II. Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?
- III. Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body— State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141 —when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?
- IV. Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduced evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?
- V. Did the trial judge err by denying Charles Tillman's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?
- VI. Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge adequately identify and apply the proper analysis in dismissing Appellant's directed verdict motion?
- II. Did the State, during its case-in-chief, present sufficient evidence to overcome the Appellant's motion for a directed verdict?
- III. Was the trial judge within his discretion to deny Appellant's motion and admit State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—as those photos were relevant to prove Appellant committed the murder?
- IV. Did the Court Properly Denied Appellant's Mistrial Motion Because Appellant Was Not Prejudiced By The Testimony Given By Agent Barton?
- V. Did the trial judge properly deny Appellant's request to under the jury on circumstantial evidence set forth in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989), as this case is no longer good law?
- VI. Should this Court decline to consider a new trial based on the cumulative error doctrine?

STATEMENT OF THE CASE

Timiya Massey (“Appellant”) was indicted by the Abbeville County grand jury on the charge of murder, attempted murder and possession of a weapon during a violent crime. (R. p. 34, ll. 12-17). At trial, Appellant was represented by Charles Grose, Esq. Assistant Solicitors Yates Brown, Esq., and Micah Black, Esq., prosecuted the case on behalf of the Eleventh Circuit Solicitor’s Office. (R. p. 24). Appellant was tried before the Honorable Frank R. Addy, Jr., January 22th, through January 26th, 2018. (R. p. 24). At the conclusion of the trial the jury found Appellant guilty as indicted. (R. p. 701, ll. 12-23). Following the conviction, Judge Addy sentenced Appellant to life in prison. (R. p. 715, ll. 9-14). Appellant then filed a timely Notice of Appeal. Trial Counsel, Charles Grose Esq., submitted Appellant’s Initial Brief on December 31, 2018. This Brief of Respondent follows.

RESPONDENT'S STATEMENT OF THE FACTS

In the evening of November 8, 2016, 9-1-1 received a call from Charles Tillman ("Appellant"), claiming he had come home from work to find his live-in girlfriend dead. Deputy Evan McCurry, with the Abbeville County Sheriff's Department, was the first to respond to the scene. There, he discovered the bloodied body of Christie Stutler lying dead on the bed in the master bedroom. R. p. 147, l. 24 – 151, l. 14.

A later autopsy revealed that the victim's death resulted from a single gunshot to the head. R. p. 301, ll. 19-23. It was further discovered that the victim had also suffered a physical beating and had cigarette burns to her hand and buttocks. She also had an additional gunshot wound to her leg. R. p. 295, l. 7 – p. 301, l. 18. The pathologist noted that some of the bruising he observed was of a remote nature. R. p. 298, ll. 3-16; p. 305, l. 22 – p. 306, l. 8. The forensic pathologist opined that the victim's death occurred sometime between 11:00 PM, November 7 and 11:00 AM, November 8. R. p. 303, ll. 11-14. The Pathologist also collected fingernail clippings from the victim that were forwarded to the State Crime Lab. R. p. 294, ll. 8-15. A later analysis there revealed the presence of Appellant's DNA under the victim's fingernail specimen. However, the DNA expert did concede at trial that paternal male relatives of Appellant could not be excluded as contributors to the specimen. R. p. 514, l. 7 – p. 515, l. 22.

During a canvas of the murder scene, Investigators discovered .22 bullets, a bullet hole in the trailer, and a single .22 caliber shell casing under the mattress where the victim's body was located. R. p. 220, l. 12 – p. 222, l. 9; p. 314, ll. 18-25. In addition, Investigators located a single .22 projectile lodged in the wall of Appellant's trailer. R. p. 195, ll. 3-25. Investigators eventually discovered the murder weapon, a .22 caliber rifle, hidden in a junked car near Appellant's trailer. R. p. 308, l. 21 – p. 310, l. 9. An analysis conducted by experts at the State Crime Lab confirmed it was the murder weapon and further revealed the presence of DNA from the victim. Analysis

also found DNA attributable to Appellant, however, the expert from the State Crime Lab again acknowledged that Appellant's paternal male relatives could not be excluded. R. p. 434, l. 21 – p. 435, l. 18; p. 505, l. 25 – p. 513, l. 2). There was also DNA from a separate unidentified male. R. p. 505, l. 19 – 512, l. 4. Investigators also swabbed Appellant's shirt for presence of gunshot residue (GSR). Those specimens were also sent to the State Crime Lab, where experts discovered a single particle of GSR present. R. p. p. 561, l. 23 - 562, l. 25

Throughout the investigation, Appellant maintained he was innocent. He was adamant that the victim had committed suicide, despite the fact that no weapon was found at the immediate scene. R. p. 183, ll. 18-24; SLED Interview: 12:00. Appellant gave several unusual and inconsistent statements during interviews with Law Enforcement. First, during the interview Appellant denied owning a gun and provided elusive answers to the investigators' questions about the .22 caliber bullets found in Appellant's trailer. State's Exhibit 124—16:13. Appellant also informed Law Enforcement that the victim was "speaking" with him after the murder. R. p. 405, ll.14-21. Appellant further acknowledged to that the victim had had several affairs with other men and that she wouldn't "do right by him." R. p. 411, ll. 4-18; State's Exhibit 124—28:25; 55:18. Lastly, Appellant mentioned a deer camera that he claimed was aimed at his house so he could watch who was coming and going. After Law Enforcement failed to locate it, Appellant changed his story that he had put it up afterwards. R. p. 321, ll. 9-22. However, Investigator Hines, with the Abbeville County Sheriff's Office, testified that there would have been no opportunity to put a camera up after the murder. R. p. 322, l. 21 – p. 323, l. 4. The relevant portions of these interviews were played for the jury during Appellant's trial.

During Appellant's trial, Appellant's mother testified that she had gone to Appellant's trailer, after Appellant had left for work, to see if the victim wanted to come with her to the

laundry mat. Appellant's mother alleged she had driven to the front and yelled outside for the victim. Appellant's mother further alleged that she saw a shadow and heard the victim respond to her from inside, but was not sure what she had said. They left without the victim. R. pp. 157, l. 24 - 159, l. 8. Appellant's mother admitted at trial that she did not inform Law Enforcement of this throughout the investigation. R. p. 159, ll. 9-16.

During the trial, the jury received testimony from Sheriff's investigator Sheri Ashley regarding to the 9-1-1 call made by Appellant. Investigator Ashley testified that during the 9-1-1 call Appellant's mother can be heard saying that Appellant had a gun. R. p. 190, l. 2 - p. 193, l. 6. During the 9-1-1 call that was played for the jury during Appellant's trial, Appellant tells his mother, while he is on the phone with 9-1-1 dispatch, that the victim shot herself. He also tells his mother that he could not find the gun. Appellant's mother responds that she thought he had a gun over at his trailer. Appellant instantly responded that he did not have a gun. State's Exhibit 1: 911 Call CD—4:32. Appellant's mother later admitted to Law Enforcement that she did mention something about a gun during the call, but claimed she could not recall why. R. p. 190, ll. 2-15; 229, ll. 2-13. Appellant also presented testimony from his friend and coworker, J.C. Boggs, and from his cousin, Walter Tillman. Both men testified that they picked Appellant up from his trailer at 8:30 AM on November 8, to go to a job site. R. p. 592, l. 2 - p. 594, l. 2; p. 602, ll. 1-21. They further testified that Appellant acted normal that day. R. p. 595, ll. 4-11; p. 603, ll. 5-8. Appellant's brother, Willie Tillman, also testified. He alleged that he walked over to Appellant's trailer earlier that morning prior to J.C. Bogg's arrival. He stated that he did not enter the trailer but did have a conversation with Appellant from outside. He further alleged that he heard Appellant engage in a conversation with the victim during this period. R. p. 607, l. 21 - p. 612, l. 5; p. 617, ll. 15-23. He did confess that he neither entered the trailer nor saw the victim.

R. p. 614, ll. 7-8; p. 618, ll. 5-8. He also conceded at trial that he neglected to inform Law Enforcement of this during the investigation. R. p. 621, l. 24 – p. 623, l. 17.

ARGUMENT

I. The Trial Judge Identified And Applied The Proper Analysis In Dismissing Appellant's Directed Verdict Motion.

How the Issue Arose at Trial

After the closing of the State's case, Defense Counsel moved for a directed verdict motion. In doing so, Defense Counsel noted:

You're going to charge direct and circumstantial evidence. And, of course, you know, there's direct evidence that proves a homicide and direct evidence for which a jury could concluded that somebody murdered Christie. The issue in this trial is the identity of the person who did that. And in this case the State's entire case on that is circumstantial evidence. And so, when we get into circumstantial evidence we get into an area that quite frankly has gotten a little bit confused in the appellate opinions because -- I don't have the cites, but you could go and pull up opinions that say, you know, the directed verdict standard that Your Honor is supposed to consider is whether there's any substantial circumstantial evidence. And in some of those opinions the word "any" will be italicized. And in other opinions the word "substantial" will be italicized. Then of course you have the whole *Jackson vs. Virginia* issue where the US Supreme Court has said a scintilla of evidence is not enough to submit a case to the jury.

[...]

So I guess one of the things that I'm going to ask you to do as part of your ruling on this is what our appellate courts have not done a very good job of, which is articulating exactly, you know, what the standard is that you're applying to your motion, given that there is the emphasis sometimes on "any" and emphasis sometimes on "substantial". I obviously believe that the emphasis should be on the substantial portion of it.

R. p. 576, l. 22 – p. 578, l. 20.

The trial judge respectfully conceded that "the Court's have been less than specific on what exactly substantial circumstantial evidence means." R. p. 584, ll. 1-2. Nevertheless, the trial judge concluded,

As a practical matter though, this Court's not so much concerned with the theoretical niceties of what, quote, "substantial" or, quote, "any" means. I'm more concerned with the actual practical application of facts through the

law. In this particular case I would agree with what the Solicitor was kind of alluding to a few moments ago. In isolation any one of the bits of circumstantial evidence, as with the others, would probably warrant the Court granting a directed verdict. If we were dealing with only a single particle of GSR found on the Defendant's sleeve without the other evidence, then certainly there would not be enough to go to the jury. Maybe even a particle plus the DNA found on the gun. Perhaps that would be insufficient to send to the jury. Perhaps a particle, the fact that she had the Defendant's DNA under her fingertips, and the DNA on the gun that belonged to the Defendant, those in isolation without other evidence might be insufficient to send it to the jury. But the Court has had the opportunity to, and the jury has had the opportunity to review the videos of the Defendant. And again, this is a case where the parties have stipulated that this was, in fact, a homicide. This is not a suicide. Someone killed Ms. Stutler. The Defendant has given several statements. He has been consistent in his belief that this was a suicide. But part of the State's theory of this case is that that belief was inherently unreasonable because no gun was discovered by Ms. Stutler. There were contradictions in the videos that were taken of the Defendant and the audio that was taken of him. There are contradictions, and there are credibility issues in what the Defendant said. The jury is ultimately the judge of credibility of witnesses. And by his statements to law enforcement, by the tapes that have been played for jury, the 911 tape, etcetera, I think that credibility is squarely an issue in this case. So we're dealing with one of those mixes of circumstantial evidence and direct evidence in the sense that the jury is entitled to pass upon the reasonableness of the Defendant's explanation, the credibility of what he is saying to the investigators, and the other circumstances involved in this case. The Defendant's point that there was a period of time where Ms. Stutler could have been killed is valid. That's accurate. But it does not -- it does not necessarily mean that the Court has to dismiss this case at this particular stage.

So the Court will conclude that there is substantial circumstantial evidence and direct evidence in which the Court -- or from which the jury could conclude that the Defendant is the one who took the life of Ms. Stutler, and that will be the Court's ruling. The Court will deny the Defendant's motions for a directed verdict. And, of course, the Defense having renewed all prior motions, including the motion for a mistrial and objections, the same rulings shall stand with regard to those.

R. p. 584, l. 17 -- 586, l. 18 (emphasis added).

Defense Counsel quickly responded:

The only -- the concern that I have was with the part of your ruling where you said that you don't have to be concerned with what the any substantial circumstantial evidence means. I don't know that you can apply the law to the facts without knowing what that means. And I would just respectfully ask for your definition for the record in case our Court -- Appellate Courts are having to look at this. And I realize I'm putting you in a difficult spot because of the opinions out

there, but I also feel like the law has probably gotten a little unclear on some of this because we don't have these conversations at this stage of the trial on the record.

R. p. 586, l. 19 – p. 587, l. 5.

The Trial Judge again conceded the confusing nature of the circumstantial evidence standard of review, but inevitably held:

I think that if this case were solely -- again, if this case were solely a circumstantial evidence case, if there weren't credibility issues involved in this, if the Defendant had never given a statement to the authorities or if his statements perhaps made a little bit more sense in light of the evidence, the other evidence that exists, then maybe your point would be a little bit better taken. ***I take substantial circumstantial evidence, when you're dealing with just a purely circumstantial evidence case, to mean exactly what the Courts have articulated it in the past. So that will be my ruling.***

R. p. 587, ll. 10-21 (emphasis added).

Standard of Review

“In criminal cases, this Court will review errors of law only.” *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “This Court is bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (citing *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)).

Analysis

As Appellant aptly notes in his initial brief, there has historically been a level of confusion in applying the “substantial circumstantial” analysis first set forth in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984). See, e.g. *State v. Land*, 419 S.C. 191, 198, 797 S.E.2d 48, 52 (Ct. App. 2016); *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). For this reason, our Supreme Court in 2016, issued the *State v. Bennett* opinion for the express purpose of

“clarify[ing] the framework of a court’s inquiry in determining whether substantial circumstantial evidence exists to require the denial of a directed verdict.” 415 S.C. 232, 235, 781 S.E.2d 352, 354 (2016). In the *Bennett* opinion the court cites to the analysis set forth in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955).

Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

Bennett, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (citing *Littlejohn*, 228 S.C. 324, 89 S.E.2d 924). The Court then concludes *Bennett* opinion with the proper analysis trial courts are to apply in directed verdict motions:

Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

Id. 415 S.C. at 237, 781 S.E.2d at 354.

The Court further refined the *Bennett* analysis in *State v. Greene*. 423 S.C. 263, 814 S.E.2d 496 (2018). There the Court, citing to *Bennett*, noted “when reviewing the denial of a directed verdict the Court must not weigh the evidence but must view it in the light most favorable to the State, for the Court is concerned only with the existence or nonexistence of evidence.” *Id.*, 423 S.C. at 267, 814 S.E.2d at 498.

The opinion in *State v. Bennett* did not overrule prior jurisprudence in regards to the “substantial circumstantial evidence” analysis. Instead it defined the term “substantial.” See *Bennett*, 415 S.C. at 235, 781 S.E.2d at 353 (“We agree the court of appeals applied an incorrect standard in its analysis and take this opportunity to clarify the framework of a court’s inquiry in

determining whether *substantial circumstantial evidence exists* to require the denial of a directed verdict.”) (emphasis added).

Appellant alleges that the trial judge erred in denying his motion to identify the standard of review it applied in denying Appellant’s directed verdict motion. Specifically, Appellant states that he requested the judge apply the “substantial circumstantial evidence” standard applied in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984). As noted above, *Schrock* is not the principal authority since *State v. Bennett*. Moreover, the record clearly supports that the judge identified the correct analysis. In the denial of the directed verdict, the trial judge twice stated that he found substantial circumstantial evidence to permit the jury to rule. R. p. 584, l. 17 – p. 587, ll. 10-21. While Appellant takes issue with the trial courts comment that it was “not so much concerned with the theoretical niceties of what, quote, ‘substantial’ or, quote, ‘any’ means,” the court correctly states immediately after, “I’m more concerned with the actual practical application of facts through the law.” This was correct response in light of *Bennett*, which does not require a specific analysis in regards to “substantial” or “any.” Instead, it requires the trial court a practical determination of “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty.” *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. The Trial Court’s ruling in denying the directed verdict motion reflects this reasoned analysis. See R. p. 584, l. 21 – p. 585, l. 13. For this reason, the trial court did not commit error as it clearly articulated the correct test in denying Appellant’s motion for a directed verdict.

II. The Prosecution, During Its Case-In-Chief, Presented Sufficient Evidence To Overcome The Defense’s Motion For A Directed Verdict.

Standard of Review

“On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State.” *State v. Bennett*, 415 S.C. 232,

235–36, 781 S.E.2d 352, 353–54 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). “The Court’s review is limited to considering the existence or nonexistence of evidence, not its weight.” *Id.* (citing *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478–79 (2004)). “When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof.” *Id.* 415 S.C. at 236, 781 S.E.2d at 354. However, “[u]nless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776–77 (2011).

Analysis

Appellant argues the trial court erred in denying his motion for a directed verdict because the State failed to present substantial circumstantial evidence which reasonably tended to prove his guilt. However, the record in the present case supports the trial judge’s denial of Appellant’s directed verdict motion because the State presented substantial circumstantial evidence supporting Appellant’s guilt.

“Circumstantial evidence [. . .] is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred.” *State v. Rogers*, 405 S.C. 554, 563; 748 S.E.2d 265, 270 (Ct. App. 2013) (citing *State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004)). “Circumstantial evidence is ‘based on inference and not on personal knowledge or observation,’ *Black’s Law Dictionary* 636 (9th ed.2009), and establishes ‘collateral facts from which the main fact may be inferred.’” *Id.* (citing *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n. 1 (2001)).

In *State v. Bennett*, the Supreme Court of South Carolina reversed the Court of Appeals finding that the trial erred in denying the Appellant's motion of a direct verdict. *Bennett*, 415 S.C. at 234, 781 S.E.2d at 353. The weight of supporting evidence encountered in *Bennett* is similar to the present case. In *Bennett*, Law Enforcement responded to an alarm at a Spartanburg community center. Law Enforcement discovered a shattered window with the door next to it ajar. Next, officers found a mounted television which showed signs of tampering. From it, they were able to lift a fingerprint that matched to the appellant. In addition, Law Enforcement discovered two blood droplets in a nearby office which also matched the appellant. Bennett was indicted for larceny, burglary and malicious injury to property. During trial, the director of the community center testified that Bennett was a frequent visitor, but that she would monitor him when he was there. *Id.*, 415 S.C. at 234-35, 781 S.E.2d at 353.

At the close of the State's case, the appellant moved for a directed verdict which was denied by the trial court after finding that there existed *substantial circumstantial evidence* from which the jury could infer guilt. Bennett was ultimately convicted. However, the Court of Appeals found error in the trial court's denial of the directed verdict motion and reversed. In doing so, the Court of Appeals held:

[W]e cannot say it would be unexpected to find Bennett's DNA in the computer room and his fingerprint in the community room. Though the exact locations of the DNA and fingerprint evidence do raise a suspicion of his guilt, the evidence simply does not rise above suspicion. The evidence undoubtedly placed Bennett at the location where a crime ultimately occurred; however, it is undisputed that Bennett was a frequent visitor to the location prior to the crime, and we disagree with the State's assertion that the evidence placed Bennett at the scene of the crime.

Bennett, 415 S.C. at 236, 781 S.E.2d at 354 (citing *State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014)).

In reversing the Court of Appeals, our Supreme Court held:

In our view, this discussion clearly indicates the court of appeals weighed the evidence and reversed based on its conclusion that there was a plausible alternative theory inconsistent with Bennett's guilt. This is contrary to our jurisprudence and misapprehends the court's role making this determination. As this Court clarified in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955), the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury. Within the jury's inquiry, "it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." *Id.* at 328, 89 S.E.2d at 926. However, when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *Id.* at 329, 89 S.E.2d at 926. Therefore, although the jury must consider alternative hypotheses, ***the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.*** This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

The evidence introduced by the State in this case was sufficient to withstand Bennett's motion for directed verdict. Forensic evidence placed Bennett within the Center and, more specifically, at the two places where the crimes had occurred.

Bennett, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (emphasis added).

Similar to *Bennett*, the State presented sufficient evidence to overcome Appellant's directed verdict motion. At the conclusion of the State's case, the following supporting evidence had been presented:

1. A 911 call from Appellant in which his mother can be heard referencing Appellant's gun, and Appellant's rapid response that he did not own a gun (R. p. 190, l. 2 – p. 193, l. 6; State's Exhibit 1: 911 Call CD—4:32);
2. The .22 caliber rifle used to murder the victim found hidden in an abandoned vehicle near Appellant's trailer (R. p. 309, l. 1 – p. 313, l. 14; p. 434, l. 21 – p. 435, l. 18);

3. Attributable DNA found on the murder weapon (R. p. 505, l. 25 – p. 513, l. 2)¹;
4. Attributable DNA found under the victim's fingernail (R. p. 514, l. 7 – p. 515, l. 22); and
5. Trace gunshot residue on Appellant's shirt (R. p. p. 561, l. 23 - 562, l. 25).

The State also presented the recorded Law Enforcement interviews with Appellant, which highlighted several inconsistencies and illustrations of motive. First, during the interview Appellant denied owning a gun and provided elusive answers to the investigators' questions about the .22 caliber bullets found in Appellant's trailer. State's Exhibit 124—16:13. Second, Appellant casually told Law Enforcement that he had a deer camera installed outside the trailer so that he could watch people coming and going. However, once investigators noted that they could use this camera to determine the murder suspect, Appellant changed his story and claimed that he has installed it after the murder. R. p. 321, ll. 9-22; p. 322, l. 21 – p. 323, l. 4. Lastly, Appellant noted during the interview various examples of infidelity by victim, and stated that she "didn't do right by him." R. p. 411, ll. 4-18; State's Exhibit 124—28:25; 55:18.

Moreover, the timeline established at trial limits the period that a third-party could have murdered the victim. The forensic pathologist gave a time of death between 11:00 PM and 11:00 AM. R. p. 303, ll. 11-14. Also, Appellant told law enforcement during the interviews that only he and the victim were at the trailer prior to him leaving for work the morning of the murder. State's Exhibit 124—2:03:32. Appellant's cousin and co-worker testified that they picked up Appellant from his trailer at 8:30 AM to drive to a worksite. R. p. 592, l. 2 – p. 594, l. 2; p. 602, ll. 1-21. This leaves a narrow period of only two and a half hours for someone to arrive at the trailer, violently beat the victim, and shoot her through the head. Interestingly, no evidence was presented at trial that would have supported a break-in or robbery.

¹ The DNA expert from the State Crime Lab testified that he could not exclude Appellant's paternal male relatives as contributors to the DNA found on the .22 rifle used to kill the victim or the victim's fingernail specimen. R. p. 511, ll. 16-24; p. 515, ll. 5-22.

Lastly, in addition to the above circumstantial evidence, direct evidence was presented during the State's case-in-chief. *See State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) ("If there is *any direct evidence* or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.") (emphasis added). Appellant's mother was the third witness called by the State. During her testimony, she alleged that she witnessed the victim alive after Appellant had departed for work. Because the testimony of Appellant's mother, if believed, directly exculpates her son as the murder, it constituted direct evidence. *See State v. Nesmith*, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) ("Direct evidence is testimony, which if believed, tends directly to prove a fact in issue."); *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 248-49 n. 1 (2001) ("Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption."). Accordingly, once Appellant's mother's testimony was admitted, her credibility became a prime issue that required a jury determination.² For this reason, the trial court correctly held that it was "dealing with one of those mixes of circumstantial evidence and direct evidence in the sense that the jury is entitled to pass upon the reasonableness of the Defendant's explanation, the credibility of what he is saying to the investigators, and the other circumstances involved in this case." R. p. 585, l. 24 – p. 586, l. 5; *see State v. Needs*, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) ("After the trial court properly has determined a witness is competent,

² Appellant, notes in his initial brief, "in a light most favorable to the State, the evidence presented at trial established that Ms. Stutler was alive at 8:30-9:00 a.m. on November 8th when Charles Tillman left for work with J.C. Boggs and Walt Tillman." Appellant undoubtedly is referring to his mother testimony in which she alleges she heard the victim answer her from outside the trailer after Appellant departed for work. However, the State's intent in introducing the 9-1-1 call was to impeach the credibility of Appellant's mother. Despite, having stated during the call that Appellant possessed a gun, the mother feigned ignorance when confronted by Law Enforcement. Therefore, *in a light most favorable to the State*, her testimony regarding the victim cannot be given the assurance of credibility that Appellant asserts.

the resolution of the credibility of the witness is within the province of the jury.”). Additionally, insofar as the charged crime required the State to prove Appellant possessed malice aforethought as required under S.C. Code Ann. § 16-3-10, the stipulation to murder constituted direct evidence of the offense charged. *See United States v. Escalera*, 536 F. App’x 27, 33 (2d Cir. 2013) (holding that appellant’s stipulation to possession of methamphetamine constituted direct evidence of conspiracy).

Despite the warnings set forth in *State v. Bennett*, Appellant would have had the trial court weigh the evidence. However, *Bennett* held that the reviewing court is only concerned with the existence or nonexistence of evidence. *Bennett*, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354; *see State v. Larmand*, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) (“[O]ur duty is not to weigh the plausibility of the parties’ competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer [the defendant]’s guilt.”). This Court should refrain from Appellant’s invitation to act as a thirteenth juror and usurp the jury’s role in weighing the evidence. *See United States v. Ashley*, 606 F.3d 135, 141 (4th Cir. 2010) (internal citation omitted) (“Though a jury may not convict on the basis of ‘rank speculation,’ it is entitled to deduce and to infer. . . . Our system of lay juries is designed to allow jurors to draw upon common experience and to rely upon reasonable intuitions, and it is not the province of an appellate court to undermine these virtues by picking apart a properly instructed verdict.”).

III. The Trial Judge Was Within His Discretion To Admit Photos Of The Deceased Victim Because Those Photos Relevant To Prove The Circumstances Of The Murder.

How the Issue Arose at Trial

Prior to opening statements, the State sought to admit photos taken at the scene of the

crime. R. p. 54, ll. 6-15; *see* State's Exhibit Numbers 2-123. Appellant objected to several photos portraying the deceased victim. The trial court then reviewed and admitted several photos of the victim, but excluded several that were taken during the autopsy. R. p. 60, l. 5 – p. 76, l. 10. Appellant then reasserted an objection on the basis of relevance. In doing so, he elected to stipulate that the victim's death resulted from murder. R. p. 76, l. 11 - 78, l. 5. The State then took issue to any potential evidential limitations that would result from the stipulation. R. p. 78, l. 23 – 80, l. 5. The following day, prior to opening, the trial again reviewed the photos. R. p. 108, l. 25 – p. 109, l. 3. Defense Counsel again objected to "any pictures that show [the victim's] body." R. p. 109, ll. 4-5. Despite Appellant's objection, the court admitted several photos which displayed the victim's deceased body. State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141

Standard of Review

"The admission of evidence in a criminal prosecution is within the trial judge's discretion and will not be disturbed on appeal unless an abuse is shown." *State v. Spodnick*, 292 S.C. 68, 69, 354 S.E.2d 904, 905 (1987) (*citing State v. Moultrie*, 283 S.C. 352, 322 S.E.2d 663 (1984)). "A conviction will not be reversed for non prejudicial error in the admission of evidence." *Id.* (*citing State v. Knight*, 258 S.C. 452, 189 S.E.2d 1 (1972)).

Analysis

Appellant argues that trial court erred in admitting the photos of the victim's deceased body. Specifically, Appellant argues that the photo were irrelevant under SCRE, Rule 401, because of the stipulation that the victim was in fact murdered. Nevertheless, despite this stipulation, the photos were relevant to prove Appellant committed the murder.

Despite the stipulation, the burden still rested on the State to prove that Appellant

unlawfully killed the victim with malice aforethought. In recognition of this burden, the South Carolina Supreme Court held in *State v. Johnson* that “the State has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation.” 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000) (citing Am.Jur.2d Stipulations § 17, at 557 (1974)). The Court further articulated that “there is no abuse of discretion if the offered photograph serves to corroborate testimony.” *Id.*; see also *Imbler v. Pachtman*, 424 U.S. 409, 426, 96 S.Ct. 984, 993, 47 L.Ed.2d 128 (1976) (“Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence.”)

In the law enforcement interviews presented at trial, Appellant was adamant that the victim had committed suicide. Furthermore, when questioned about extensive bruising found on the victim's body, Appellant claimed that he never laid a hand on the victim. See State's Exhibit 124: First Interview—25:10; 1:15:00. During trial, the State presented testimony from forensic pathologist, Dr. Brett Woodard. Dr. Woodard testified that the victim died as a result of a gunshot wound to the head. In addition, Dr. Woodard testified that during the autopsy of the victim, he encountered extensive bruising and abrasions. It was his expert opinion that several of the bruises he encountered were of a remote nature, i.e. they had occurred days prior. The State then offered various photos of the bruising. R. p. 295, l. 10 – 301, l. 23. As noted, the burden of proof remained on the state. Therefore, the photos of the deceased were relevant to show that the victim was brutally murdered. More importantly, these photos were also relevant to the State's theory that the victim had been subjected to extended abuse at the hands of Appellant, and that Appellant further lied to cover up his involvement.

Appellant also argues that the photos were prejudicial under SCRE, Rule 403. Despite

this argument, our courts have consistently held that “[a]dmitting photographs which serve to corroborate testimony is not an abuse of discretion. “*State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (citing *State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999)). Furthermore, “[t]he mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.” *State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (quoting *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958)). The photos presented were carefully vetted by the trial court under SCRE, Rule 403 prior to their admission. Moreover, each photo was used for the purpose of corroborating testimony of the State’s witness’s regarding the condition of the victim’s body. See *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim’s body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim’s mouth). For these reasons, the trial court did not err in admitting them.

IV. The Court Properly Denied Charles Tillman's Mistrial Motion Because Appellant Was Not Prejudiced By The Testimony Given By Agent Barton

How the Issue Arose at Trial

During Appellant’s trial, the State called SLED Agent Bo Barton. R. p. 461, l. 3-4. The State began examination by asking Agent about his law enforcement career. R. p. 461, ll. 5-6. Agent Barton responded that he had been in law enforcement thirty years, received his undergraduate degree from Wofford College, a master degree from Charleston Southern University, and that he currently was the lieutenant in charge of SLED’s behavioral science unit.

R. p. 461, ll. 7-21. The State then inquired into Agent Barton's participation in Appellant's case. Agent Barton testified that he had received a call from Abbeville County Sheriff's Department requesting the assistance of a criminal profiler. R. p. 462, ll. 14-17. Defense Counsel then requested a sidebar which was held off the record. R. p. 462, ll. Immediately after, the judge indicated that Defense Counsel's objection was sustained and instructed the State to move on with its questioning. R. p. 462, ll. 22-23. The State then asked Agent Barton about his interview with Appellant. R. p. 463, l. 25. Agent Barton responded that the interview took place twenty-one days after the victim's murder. R. p. 463, ll. 1-10. Agent Barton then began to briefly describe the interview. R. p. 465, l. 7 – p. 466, l. 6. Barton then transitioned into the substance of his interview with Appellant. Agent Barton stated the following:

My point to talk to Mr. Tillman was to try to understand a better understanding of what he believed happened that day, what actually happened that day, events leading, state of mind of the victim, that kind of thing. So we began talking and I was going to give -- I gave him three separate options as to the possible likelihood after my review of the case file --

R. p. 466, ll. 10-16.

Defense Counsel then immediately responded that he had matter of law. R. p. 466, ll. 17-23. Once the jury had retired from the courtroom, Defense Counsel placed on the record the substance of his previous sidebar. He indicated that the witness had not been admitted as an expert, and furthermore, that criminal profiling was a considered to be a junk science. Defense Counsel further ventured that the witness was about to give an opinion regarding his interview with Appellant. R. p. 466, l. 25 – 467, l. 22. Defense Counsel then moved for a mistrial. R. p. 467, l. 23 – p. 468, l. 4.

The State offered the following response:

Judge, we were -- and just to respond to that. We were attempting to -- you mentioned the word video fatigue yesterday and they've, essentially, been

looking at videos for a day and a half at this point. We were trying to cut those out and just jump straight to what they talked about, but Mr. Grose didn't allow us to get to that point. We're more than happy to play the video. It's about an hour. Since I'm not going to be allowed to ask questions without objections, we'll just hit play.

[...]

Judge, I wasn't planning on asking him for opinions at all and—

[...]

like I said, we can hit play. We cannot change what -- they he's the lieutenant over this division of SLED. We can't change his job title. I'm sorry, Judge.

R. p. 468, l. 5 – p. 469, l. 14

The Trial Court then conceded to the following:

All right. Here's where I am. Mr. Grose, first of all, is accurate concerning the conversation that we had at the sidebar. It sounded as if the State was about to qualify, or attempt to qualify, or elicit testimony that would indicate that Mr. Barton is an expert in criminal profiling. That is not a recognized -- so far as I'm aware of, unless the State can point me to authority to the contrary, that is not a recognized area of expertise in South Carolina under 702. The best thing, at this particular point in time, to do in my opinion is if -- I mean, the best evidence rule is the interview itself. The audio of the interview. The question that the Court has is, what kind of instruction should I give? I don't believe, Mr. Grose, necessarily, that they crossed the line in terms of necessitating a mistrial. But I am understanding and appreciate your position and the fact that maybe they didn't cross the line, but it appears, at least to me, that perhaps inadvertently they were moving in that direction. And I understand the Solicitor's desire to summarize and avoid a one hour audio taping played for the jury. But the manner in which the testimony was being presented, although I think it was an innocent mistake on the part of the State, the manner in which it was starting to come out when Mr. Grose objected certainly seems to lend itself to the very thing Mr. Grose is complaining about. So how do I unring the bell. I understand, Mr. Grose, you're going to say I can't. But, assuming that the Court is not thinking that this -- that the character of this testimony is so egregious as to warrant a mistrial, which is basically how I'm ruling, is there any statement that you would like for the Court to make for the trial jury in an effort to ameliorate whatever problems have been caused by the statements he just elicited?

R. p. 469, l. 15 – p. 470, l. 22.

Defense Counsel continued to move for a mistrial for the reasons stated above. Instead of

granting Defense Counsel's request, the trial court agreed to issue a curative statement to the jury. R. p. 470, l. 23 – p. 473, l. 6. After discussion between both parties, the court provided the following instruction upon their return.

Ladies and gentlemen of the jury, thank you for your continued attention and your continued patience and I wanted -- before we proceed further, I want to clear up any misconceptions that perhaps you harbor concerning Mr. Barton and his current testimony. I want you to understand, ladies and gentlemen, previously today and yesterday we had a number of individuals testify as expert witnesses. I explained that when somebody is qualified as an expert, they are allowed to give opinion testimony. They cannot testify about something -- or they can testify about something they observed, but they can also testify about their opinions.

In this case, ladies and gentlemen, Mr. Barton's background, his job history, that kind of thing, that was alluded to in certain testimony. But please, understand that Mr. Barton is not an expert in any field that's recognized in the law. Criminal profiling is not a recognized science. It is not an area of expertise that's appropriate for an expert opinion or expert testimony, and Mr. Barton is not, in any way, shape, or form, an expert in any sort of science or in any sort of recognized field that would warrant qualifying him as an expert in that field. And to the extent that that impression may have been given to you, I want to dispel that immediately. And please, understand this is -- this witness' testimony is limited to something that he observed, something he heard, something he saw, smelled, tasted, felt, et cetera, and is not in any way, shape, or form opinion or expert testimony in any way. The way that we're going to move forward is I'm going to allow the State to simply play the interview that this witness conducted of the Defendant. I'm told it lasts about an hour and -- about an hour and 10 minutes, hour and five minutes, somewhere in there. So what we're going to do is play about 45 minutes of it, and then take our lunch break, and we'll play the remaining 20, 25 minutes immediately after we return from lunch and continue with any additional testimony from Mr. Barton.

So, at this point in time, Solicitor, if you'll simply play the audio of the interview. This is not a video interview. It's audio only. And same rules as before. If you have trouble hearing it, just raise your hand and we'll try and adjust the speakers appropriately. Okay? You may continue. Mr. Barton, if you want to step down, you might be more comfortable somewhere else.

R. p. 473, l. 7 – p. 479, l. 1.

The Trial Court then proceeded to play the audio recording the Agent Barton's interview with Appellant. *See* SLED Interview.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Significantly, a decision as to whether to grant or deny a motion for mistrial rests within the sound discretion of the trial judge, and a trial judge's ruling in regard to a mistrial motion will not be disturbed on appeal absent a prejudicial abuse of discretion. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000); *see State v. Coaxum*, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014) (“[T]o receive a new trial, the defendant must show a prejudicial abuse of discretion.”); *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) (“A mistrial should not be granted unless absolutely necessary. Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice.”) (citations omitted). An abuse of discretion occurs where the trial court's conclusions lack evidentiary support or are controlled by an error of law. *State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

Analysis

Appellant maintains the trial court erred in failing to grant his motion for a mistrial after the testimony offered by SLED Agent Bo Barton. Even if error, the single comment regarding the interview was harmless, or at most minimally prejudiced Appellant, and certainly did not warrant the extreme remedy of a mistrial.

A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice. *Harris*, 340 S.C. at 63, 530 S.E.2d at 628; *State v. Ward*, 374 S.C. 606, 612, 649 S.E.2d 145, 148 (Ct. App. 2007). “A mistrial should only be granted in cases of manifest necessity and with the greatest caution for

very plain and obvious reasons.” *Patterson*, 337 S.C. at 227, 522 S.E.2d at 851 (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989); *State v. Kirby*, 269 S.C. 25, 236 S.E.2d 33 (1977) (holding that the granting of a mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes)). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. *State v. Edwards*, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing *State v. Stanley*, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005)). “The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way.” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011).

The incident in question did not inject such prejudice into the proceeding as to warrant the extreme measure of a mistrial. The witness simply stated his position with State Law Enforcement Division, and began discussing the substance of comments he made during his interview with Appellant.³ See R. p. 466, ll. 10-16. Immediately after, Defense Counsel indicated he had a motion and made his motion for a mistrial. See R. p. 466, ll. 17-23. The State’s strategy in examining Agent Barton was clarified during hearing that took place after. The State indicated that it was seeking to limit the jury’s exposure to additional recorded interviews. Further, the State affirmed that it was not intending to elicit opinion testimony from Agent Barton. See R. p. 474, ll. 14-25.

³ The three separate options referenced by Agent Barton was made apparent to the jury when the interview record was played. R. p. 478, l. 20 – p. 479, l. 5. During the interview Agent Barton discussed with Appellant what the evidence suggested; that either someone (1) murder the victim, (2) was attempting to prevent the victim from shooting herself and the gun went off during the struggle, or (3) arrived after the victim’s suicide and hid the gun to cover it up. SLED Interview: 25:00.

Given the reality of the situation, it will remain unknown where the testimony would have progressed. However, the Trial Court correctly concluded that any prejudice to Appellant by the comment was minimal and did not warrant a mistrial. Agent Barton's testimony to the jury was extremely limited. Furthermore, he did not express an opinion, but simply introduced the substance of his interview with Appellant. Lastly, the Trial Court went even further by issuing a thorough curative instruction to the jury regarding the testimony of Agent Barton. *See State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct.App.2005) ("Generally, a curative instruction is deemed to have cured any alleged error."); *see also State v. Johnson*, 334 S.C. 78, 90, 512 S.E.2d 795, 801 (1999) (Finding that the extensive curative instruction given by the trial judge cured any possible prejudice caused by the brief mention of an offer of a polygraph examination). As a result, the jury could not have been swayed by the simple comment. The trial court did not abuse its discretion in denying the motion for a mistrial because any prejudice resulting from Agent Barton's comment was minimal and did not rise to the grievous level necessitating the extreme measure of a mistrial.

V. The Trial Judge Properly Denied Appellant's Request To Charge The Jury On Circumstantial Evidence As Set Forth In *State v. Edwards*, As This Case Is No Longer Good Law.

How the Issue Arose at Trial

At the conclusion of the case, the parties participated in an on-the-record charge conference. Appellant moved for a circumstantial evidence charge articulated in *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989); specifically, that:

[E]very circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create

a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

R. p. 628, l. 17 – p. 629, l. 19.

Standard of Review

“The law to be charged must be determined from the evidence presented at trial.” *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). “In order to amount to reversible error, the failure to give a requested charge must be both erroneous and prejudicial.” *Id.* (citing *State v. Patterson*, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct.App.2006).

Analysis

Appellant argument has no merit. In *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004), our Supreme Court held the instruction on direct and circumstantial evidence approved in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), is the sole instruction to be given. That instruction is not what Appellant asked the Trial Court to follow. Appellant wanted the old *Edwards* charge on circumstantial evidence, which was not the law. Subsequent to this trial, in *State v. Lynch*, this Court rejected a challenge similar to the one raised here. 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). This Court held:

The trial court did not err in refusing to issue Lynch's requested jury charge.

[...]

[W]e believe Lynch's argument is without merit because his requested circumstantial charge was based on the “reasonable hypothesis” language from *Edwards*, which the supreme court found unnecessary in *Logan*. See *Logan*, 405 S.C. at 99, 747 S.E.2d at 452; *Jenkins*, 408 S.C. at 572–73, 759 S.E.2d at 766 (“Our supreme court has excluded the ‘reasonable hypothesis’

language from the circumstantial evidence instruction now required by *Logan*, recognizing that this language is unnecessary.”). Therefore, the trial court did not commit reversible error in refusing Lynch's requested charge. *See State v. Drayton*, 411 S.C. 533, 769 S.E.2d 254 (App.2015) (Shearouse Adv. Sh. No. 5 at 48, 51) (finding no reversible error in trial court's failure to include the *Edwards* “reasonable hypothesis” language in its circumstantial evidence jury charge when the trial court's instruction “as a whole, properly conveyed the applicable law”).

Lynch, 412 S.C. at 178, 771 S.E.2d at 357–58; *see State v. Grippon*, 327 S.C. 79, 83–84, 489 S.E.2d 462, 463–64 (1997) (finding a circumstantial evidence jury instruction including “reasonable hypothesis” language unnecessary); *State v. Cherry*, 361 S.C. 588, 600–02, 606 S.E.2d 475, 481–82 (holding the *Grippon* charge as the exclusive charge for circumstantial evidence cases). The charge issued by the Trial Court was correct under the prevailing law. As a result, this appellate ground has absolutely no merit and must be dismissed.

VI. This Court Should Decline To Grant Appellant Relief Based On The Cumulative Error Doctrine.

Appellant contends this Court should grant a new trial based on the cumulative error doctrine due the alleged prejudices that resulted from the trial courts admission of the crime scene photos and the testimony of Agent Barton. However, Appellant never raised the cumulative error doctrine to the trial court. He never raised it during trial or even in a post-trial motion after trial, and as a result, the issue is not preserved for review on appeal. *See Charles Tillman Motion for New Trial; State v. Beekman*, 405 S.C. 225, 236, 746 S.E.2d 483, 489 (Ct. App. 2013) (finding cumulative error doctrine must be raised to and ruled upon by the trial court in order to be addressed on appeal). Appellant seems to be asking this court to completely ignore longstanding preservation and waiver rules, and instead address this issue as plain error. South Carolina has rejected the plain error doctrine and this Court should not entertain it under the

guise of the cumulative error doctrine. See e.g., *State v. Torrence*, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991) (eliminating *in favorem vitae* review in death penalty cases and holding: “A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.”).

Further, there was not cumulative error in this case. Appellant has failed to show error by the trial court. Alternatively, any prejudice resulting from the testimony of the Agent Barton was not such that this Court should use the cumulative error doctrine as a means of circumventing the preservation or waiver rules.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the appeal be dismissed.

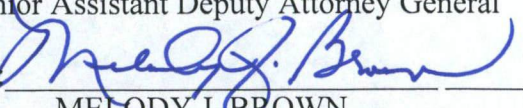
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

By 

MELODY J. BROWN

S.C. Bar No. 14244
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

November 19, 2019.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Abbeville County

The Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

CHARLES TILLMAN,

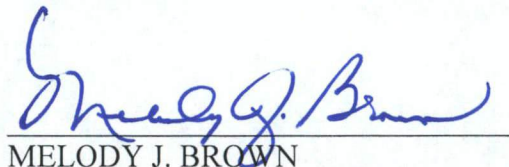
Appellant.

Appellate Case No. 2018-000495

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 19th day of November, 2019.



MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

RECEIVED
NOV 19 2019
SC Court of Appeals
A. 98

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

Charles Tillman, ... Appellant,

v.

State of South Carolina, ... Respondent.

Final Reply Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant Charles Tillman

RECEIVED

NOV 12 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

Charles Tillman, ... Appellant,

v.

State of South Carolina, ... Respondent.

Final Reply Brief of Appellant

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant Charles Tillman

TABLE OF CONTENTS

Table of Contents	i

Table of Authorities	ii

Arguments

Question I

Did the trial judge err by denying Charles Tillman's motion for the court to identify the standard of review it applied when considering Mr. Tillman's motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a "scintilla" or "modicum" of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of "substantial circumstantial evidence" employed by our state's appellate courts in <i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984), <i>State v. Mitchell</i> , 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) <i>affirmed</i> by <i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000), <i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004), and <i>State v. Hernandez</i> , 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?	1

Question II

Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?	3

Question III

Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body—State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139, and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?	7

Question IV

Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduced evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?	7

Question V

Did the trial judge err by denying Charles Tillman's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?..... 8

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine? 9

Conclusion 10

TABLE OF AUTHORITIES

Cases

<i>In re Winship</i> , 397 U.S. 358 (1970)	2
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	2
<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	1, 2
<i>State v. Beekman</i> , 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 203)	9
<i>State v. Bennett</i> , 415 S.C. 232, 781 S.E.2d 352 (2016).....	1, 2, 4
<i>State v. Cheeks</i> , 400 S.C. 329, 733 S.E.2d 611 (Ct. App. 2012)	9
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989).....	2, 8
<i>State v. Edwards</i> , 384 S.C. 504, 682 S.E.2d 820 (2009).....	3
<i>State v. Hepburn</i> , 406 S.C. 416, 753 S.E.2d 402 (2013).....	2
<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	1, 2
<i>State v. Langley</i> , 334 S.C. 643, 515 S.E.2d 98 (1999).....	8
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013).....	8
<i>State v. Mitchell</i> , 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998)	1
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	2
<i>State v. Quattlebaum</i> , 388 S.C. 441, 527 S.E.2d 105 (2000)	3
<i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984).....	1, 2
<i>State-Record Co. v. State</i> , 332 S.C. 346, fn. 19, 504 S.E.2d 592, fn. 19 (1998).....	8

Constitutional

S.C. Const. Art. V, § 9	9

Rules

Rule 410, SCORE	7

Rule 402, SCORE	7
Rule 403, SCORE	7

IN REPLY

Question I

Did the trial judge err by denying Charles Tillman's motion for the court to identify the standard of review it applied when considering Mr. Tillman's motion for a directed verdict when existing South Carolina precedent supports at least two standards of review, due process requires the prosecution to present more than a "scintilla" or "modicum" of evidence, and Mr. Tillman expressly requested the trial judge apply the standard of "substantial circumstantial evidence" employed by our state's appellate courts in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984), *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998) *affirmed by State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)?

The State argues, "The trial judge identified and applied the proper analysis in dismissing [Charles Tillman's] directed verdict motion." Brief of Respondent at 8. In support of this argument, the State points to the trial judge stating, "I take substantial circumstantial evidence to, when you're dealing with just a a purely circumstantial evidence case, to mean exactly what the Courts have articulated in the past. So that will be my ruling." *Id.* at 10. This sarcasm is obvious because the trial judge also acknowledged "the Courts have been less than specific on what exactly substantial circumstantial evidence means." R. 584.

The State, in fact, acknowledges, "[T]here has historically been a level of confusion in applying the 'substantial circumstantial' [evidence] analysis first set forth in *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984)." Brief of Respondent at 10. The State then argues, "For this reason, our Supreme Court in 2016, issued the *State v. Bennett* opinion for the express purpose of 'clarify[ing] the framework of a court's inquiry in determining whether substantial circumstantial evidence exists to require the denial of a directed verdict.' 415 S.C. 232, 235, 781 S.E.2d 352, 354 (2016)." *Id.* at 10-11. *Bennett*, however, did not provide a definition of "substantial circumstantial

evidence,” which is the very thing Mr. Tillman asked the court below to do. *Bennett*, moreover, reminded the bench and bar, “When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof.” 415 S.C. at 236, 781 S.E.2d at 353-54 (citing *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013)). *Bennett* further recognized, “[I]n this area of ever-evolving jurisprudence [the] inquiry is necessarily fact-intensive.” 415 S.C. at 237, 781 S.E.2d at 354.

Ultimately, the State concedes, “*Bennett* did not overrule prior jurisprudence in regards to the ‘substantial circumstantial evidence’ analysis,” Brief of Respondent at 11, such as *Schrock*, *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), and *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000). Thus, this Court must reject the State’s argument that “*Schrock* is not the principal authority since” *Bennett*. Brief of Respondent at 12.

Significantly, the State did not address Mr. Tillman’s contention that “due process requires the prosecution to present more than a ‘scintilla’ or ‘modicum’ of evidence.” Brief of Appellant at 11. Mr. Tillman specifically argued the definition of “substantial circumstantial evidence” must comply with mandates of *Jackson v. Virginia*, 443 U.S. 307 (1979) and *In re Winship*, 397 U.S. 358 (1970). Brief of Appellant at 15-16. The State did not address these cases *at all* in its brief. This Court should hold the trial judge erred by not identifying the standard of review applied by the court. This Court should further hold that the “substantial circumstantial evidence” standard applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez* is the appropriate standard.

Question II

Did the trial judge err by denying Charles Tillman's directed verdict motion when the State failed to present "substantial circumstantial evidence" he killed Christie Stutler?

As a threshold matter, the State acknowledges the appellate court "is bound by the trial court's factual findings unless they are clearly erroneous." Brief of Respondent at 10 (citing *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009) and *State v. Quattlebaum*, 388 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)). In this case, the trial judge found the following facts to be beyond dispute:

1. Ms. Stutler's time of death was between 11:00 p.m. on November 7, 2016 and 11:00 a.m. on November 8, 2016.
2. From sometime beginning between 8:30 a.m. and 9:00 a.m. on November 8th, Mr. Tillman had an alibi. Mr. Tillman was at work with J.C. Boggs and Walt Tillman.
3. A South Carolina Law Enforcement Division ("SLED") forensic scientist found exactly one particle of gunshot residue on the shirt that Mr. Tillman wore on November 8th. The scientific testimony cannot establish how this single particle of gunshot residue got onto Mr. Tillman's clothing. This particle of gunshot residue could have gotten on his shirt by Mr. Tillman firing a gun, by Mr. Tillman transferring it to his shirt after touching something in the room where he found Ms. Stutler's body, or by law enforcement transferring it to the shirt by not wearing gloves when collecting the shirt for evidence.
4. A SLED forensic scientist discovered the DNA of *at least* three people on the rifle used to shoot Ms. Stutler. One sample is unquestionably Ms. Stutler's DNA. Mr. Tillman cannot be excluded as contributing one of the samples, although his paternal male relatives cannot be excluded as contributing this sample. The person or people contributing the other DNA sample(s) remain unidentified. The scientific evidence cannot establish when these DNA samples were placed on the rifle or whether the DNA was placed on the rifle by the individual(s) or transferred to the rifle in some other manner.

See New Trial Motion, R. 15-16, and Order Denying New Trial Motion, R 3. These facts, accordingly guide this Court's determination of the legal issues raised in this appeal.

Next, the State's recitation of the standard of review regarding the appeal of a directed verdict motion does not address the meaning of "substantial circumstantial evidence" as applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*. Brief of Respondent at 12-13. Rather, the State continues to rely on *Bennett*, superficially equating the evidence presented in *Bennett* to the evidence presented in this case. The State relies heavily on the undisputed evidence that Mr. Tillman was present at the crime scene during a period of time when the crime *could have* occurred. This fact cannot be the sole basis for denying the directed verdict motion. In *Hepburn* and *Hernandez*, it was undisputed that the accused were present at the crime scene, yet our Supreme Court directed a verdict of acquittal.

The State, additionally, tries to misdirect this Court by arguing, "Interestingly, no evidence was presented at trial that would have supported a break-in or robbery." Brief of Respondent at 16. A break-in or robbery was not the alternate theory Mr. Tillman presented at trial. Rather,

Mr. Tillman presented an alternate theory about the murder that law enforcement did not investigate. Christie Stutler was alive when Charles Tillman went to work with J.C. Boggs and Walt Tillman. While Mr. Tillman was at work, someone else came to the trailer to use illegal drugs with Ms. Stutler, a fact confirmed by the presence of the syringe. "[T]hat person flipped out or got violent. . . ., shot and killed Christie [Stutler], and panicked and hid the gun in the car as they were fleeing the scene." R. 646-79.

Brief of Appellant at 10-11.

Finally, the State relies on the direct testimony of Mr. Tillman's elderly mother, Vonnie Cummings, "alleg[ing] that she witnesses the victim alive after Appellant had departed for work." Brief of Respondent at 16-17. The State called Ms. Cummings, and she testified:

Q. That day, did you go to the washroom?

A. Well, we all was folding and went to the washing room. But she said she had some – you know, somebody like – somebody was going to come pick her up. And I told her, I said well, I'm going to be leaving in the morning at what time. And when I came out to put the clothes in the car and I hollered for her and I think she said, I'm good.

Q. You think, you say?

A I ain't for sure. I'm saying she said something, but I ain't for sure what it was, so...

Q. Did you see her?

A. I seen the shadow. I don't know who shadow, but I seen the shadow. I was coming out there to get in the car to go to the washroom [sic] and I – I always told her because she always went everywhere I went mostly.

Q. What time –

A. Except –

Q. What time of morning would that be?

A. It was around about 8:30 or something to nine. Maybe 25 to 9:00 or somewhere along in there. I ain't for sure about the time, now.

Q. But you –

A. But I know it was around that time.

Q. But you said you saw a shadow. You couldn't even tell if that was Christie?

A. I couldn't tell who's shadow it was. But it could have been her.

Q. It could have been her?

A. It could have been.

Q. So you don't know if it was her or not?

A. Not for sure.

Q Did you leave to go to the washroom?

A. I left and went to the washerette

Q. Ms. Cummings, did you ever tell law enforcement about – about possibly talking with Christie that morning and seeing that shadow? Did you ever tell that to law enforcement?

A. They didn't ask me.¹

Q. You didn't feel like that was important information, potentially?

A. It may have been, but they didn't ask me about her.

R. 158-59 (footnoted added).² Viewed in a light most favorable to the State, this testimony established that Ms. Stutler spoke to Ms. Cummings and Ms. Cummings saw the shadow of a person inside the trailer that could have been Ms. Stutler or the person that Ms. Stutler had invited over that day. Circumstantially, Mr. Tillman is excluded as the murderer. The State, however, asks this Court to consider this testimony to be untruthful even though the prosecution never presented any evidence to contradict it. This is not the standard of review applied in cases like *Hernandez* and *Hepburn*.

Although the State's circumstantial evidence arguably meets an "any circumstantial evidence" standard, it cannot meet the "substantial circumstantial evidence" standard applied in *Schrock*, *Mitchell*, *Arnold*, and *Hernandez*. This Court, therefore, should reverse the trial court and direct a verdict of acquittal.

¹ And see R. 174 (Ms. Cummings testifying that law enforcement never asked her to come to the Law Enforcement Center for an interview).

² The State's Brief, at p. 17, fn. 17, argues Mr. Tillman "undoubtedly is referring to his mother [sic] testimony" when arguing "'in a light most favorable to the State, the evidence presented at trial established that Ms. Stutler was alive at 8:30-9:00 a.m. on November 8th when Charles Tillman left for work with J.C. Boggs and Walt Tillman.'" The State's contention overlooks the testimony of Willie Tillman, who also spoke to Ms. Stutler that morning. The State persistently tries to limit its analysis to the evidence it presented in its case-in-chief, but on appeal the defense evidence must also be considered. *Hepburn, supra*.

Question III

Did the trial judge err by denying Charles Tillman's motion to exclude photographs depicting Christie Stutler's deceased body—State's Exhibit Numbers 2, 3, 14, 18, 36-39, 47-51, 54-56, 58, 60, 61, 63, 94-123, 136-139 and 141—when those photographs were not relevant to any issue in the case because Mr. Tillman stipulated the manner of death was a homicide and did not contest the nature of any of Ms. Stutler's injuries and the prejudicial effect of admitting the photographs substantially outweighed any probative value?

The State's brief, at 18-21, never addressed the fact that Dr. Brett Woodard could have testified about the nature of the wounds to Christie Stutler without needing to use the photographs, for example, by using a diagram. Admission of these photographs was contrary to Rules 401, 402, and 403, SCRE. This Court should order a new trial.

Question IV

Did the trial judge err by denying Charles Tillman's motion for a mistrial when the State sought to introduced evidence from a purported "criminal profiler," when "criminal profiling" is not a legitimate science?

The State concedes error but argues the court below properly denied Charles Tillman's motion for a mistrial because Mr. Tillman "was not prejudiced by the testimony given by [SLED] Agent Bo Barton." Brief of Respondent at 21-27. The State brief, however, illustrates the prejudice. Following the prosecution's improper attempt to qualify Agent Barton as an expert in criminal profiling, he testified:

Q: In the interview with Mr. Tillman, what did you all talk about initially when you all – when he first – when he first got there?

A: My point to talk to Mr. Tillman was to try to understand a better understanding of what he believed happened that day, what actually happened that day, events leading, state of mind of the victim, that kind of thing. So we began talking and I was going to give – I gave him three separate options as to the possible likelihood after my review of the case file –

R. 466. At this point, Mr. Tillman moved for a mistrial, arguing, in part, that what Agent Barton is “getting ready to say is, based on my review of the file as an expert at criminal profiling I wanted to give Charles Tillman three scenarios and see how he responded to them, and he’s going to going to give opinion testimony.” R. 466-68. The State correctly observes, “These three separate options referenced by Agent Barton was [sic] made apparent to the jury when the interview record was played.” Brief of Respondent at 26. The jurors undoubtedly viewed this testimony in context of Agent Barton’s training as a “criminal profiler,” called in by Chief Deputy Natalie Talbert, for a specific reason to interview Mr. Tillman. As the trial judge acknowledged, the curative instruction did not “unring the bell.”³

Agent Barton’s testimony about criminal profiling was inadmissible and suggested the jurors render a verdict on an improper basis. *Id.* It is impossible for this Court to say that this testimony did not affect the verdict. *See, e.g. State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999). This Court should order a new trial.

Question V

Did the trial judge err by denying Charles Tillman’s request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?

The State merely argues that the jury instruction on circumstantial evidence based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) is no longer the current law in South Carolina. Mr. Tillman, in fact, acknowledged this fact in footnote 20 of his Brief of Appellant, at p. 30. Mr. Tillman, nevertheless, contends the instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) is inadequate to convey to the jurors

³ *State-Record Co. v. State*, 332 S.C. 346, 356, fn. 19, 504 S.E.2d 592, 597, fn. 19 (1998) (internal quotations omitted).

that the prosecution has the burden of disproving, beyond a reasonable doubt, any alternate theories that an accused argues are supported by the circumstantial evidence in the case. Perhaps, this Court can address this concern within the confines of current precedent. On the other hand, addressing this issue might require arguing an argument against precedent in our Supreme Court. *See State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012) (The Court of Appeals “lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court.”) *affirmed as modified by State v. Cheeks*, 408 S.C. 198, 758 S.E.2d 715 (2014); *see also* S.C. Const. Art. V, § 9.

Question VI

Should this Court grant Charles Tillman a new trial based on the cumulative error doctrine?

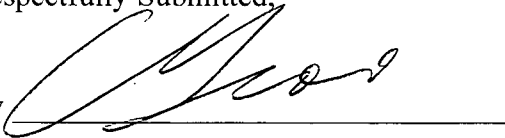
As discussed in Mr. Tillman’s opening brief, this Court should order a new trial based on the cumulative error doctrine based on the matters he preserved for appellate review during his trial. Respondent’s brief, at pp. 29-30, however, conflates the “cumulative error doctrine” with the “plain error rule” by misapplying this Court’s analysis in *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 203). Beekman asked this Court to apply the “cumulative error doctrine” based on his unspecified objections sustained during trial and other alleged errors that he did not object to during trial. Under those circumstances, this Court properly concluded Beekman was attempting to invoke the “plain error rule” that is not recognized in our State. *Id.* 405 S.C. at 236-38, 746 S.E.2d at 489-90. As seen, Mr. Tillman raised at trial every issue he asserted in his opening brief. This Court should order a new trial.

CONCLUSION

For the reasons set forth in Charles Tillman's Brief of Appellant and this Reply Brief, this Court should reverse the trial court and direct a verdict of acquittal. In the alternative, this Court should reverse the trial court, vacate Mr. Tillman's convictions and sentence, and remand this case for a new trial.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Charles Tillman

November 5, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

Charles Tillman, ... Appellant,

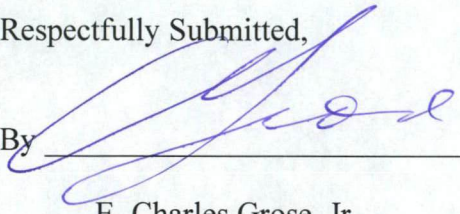
v.

State of South Carolina, ... Respondent.

Rule 211, SCACR Certification

This Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By  _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

November 5, 2019
Greenwood, South Carolina

RECEIVED
NOV 12 2019
SC Court of Appeals

RECEIVED
NOV 27 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-000495

State of South Carolina, ... Respondent.

v.

Charles Tillman, ... Appellant,

RECORD ON APPEAL – VOLUME I OF II

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Charles Tillman

Alan Wilson
Attorney General

W. Jeffery Young
Chief Deputy Attorney General

Donald J. Zelenka
Deputy Attorney General

Melody J. Brown
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

*Attorneys for Respondent State of South
Carolina*

INDEX

Volume I

Sentencing Sheets.....	1
Order Denying New Trial Motion.....	3
Arrest Warrants.....	6
Indictments.....	9
Motion for New Trial	15

Trial Transcript

Cover Page.....	24
Index	25
List of Exhibits.....	30
Hearing on Motion to Exclude Photographs (<i>in camera</i>).....	54
Resume Hearing on Motion to Exclude Photographs (<i>in camera</i>)	108
Resume Hearing on Motion to Exclude Photographs (<i>in camera</i>)	116
Opening Statements	
By the State	128
By Mr. Tillman.....	134
Kimberly Wells (SW)	
Direct Examination.....	140
Cross Examination.....	145
Evan McCurry (SW)	
Direct Examination.....	147
Cross Examination.....	153
Vonnie Cummings (SW)	
Direct Examination.....	155

Cross Examination.....	164
Redirect Examination.....	171
Recross Examination	174
Sheri Ashley (SW)	
Direct Examination.....	179
Cross Examination.....	202
Redirect Examination.....	207
Recross Examination	208
Alton Davis (SW)	
Direct Examination.....	208
Cross Examination.....	229
Ronnie Ashley (SW)	
Direct Examination.....	243
Cross Examination.....	247
Sam Ferguson (SW)	
Direct Examination.....	248
Cross Examination.....	251
Jeffery Hines (SW)	
Direct Examination.....	252
Resume Hearing on Motion to Exclude Photographs (<i>in camera</i>)	273
Dr. Brett Woodard (SW)	
Direct Examination.....	289
Cross Examination.....	303
Redirect Examination.....	306
Recross Examination	307
Jeffery Hines (SW)	
Resume Direct Examination.....	307
Cross Examination.....	324

Ila Simmons (SW)

Direct Examination	356
Cross Examination	365
Redirect Examination	372
Recross Examination	372

James Tallon, II (SW)

Direct Examination	373
Cross Examination	388
Redirect Examination	394
Recross Examination	394

Jeffery Hines (SW)

Resume Cross Examination	402
Redirect Examination	413
Recross Examination	415

Kimberly Mears (SW)

Direct Examination	420
Cross Examination	426

James Green (SW)

Direct Examination	429
Cross Examination	438

Jared Castellani (SW)

Direct Examination	438
Cross Examination	444

Jessica Stowe (SW)

Direct Examination	446
Cross Examination	455

Robert Stutler (SW)

Direct Examination	456
Cross Examination	459
Redirect Examination	460

Bo Barton (SW)

Direct Examination	460
Mistrial Motion	467
Curative Instruction	477
Resume Direct Examination	477
Cross Examination	484

Benn Huffman (SW) (*in camera*)

Direct Examination	491
Cross Examination	494

Volume II

Benn Huffman (SW) (*in camera*)

Cross Examination (continued)	501

Catherine Leisy (SW)

Direct Examination	503
Cross Examination	517
Redirect Examination	527
Recross Examination	528

Matthew Graham (SW)

Direct Examination	535
Cross Examination	541
Redirect Examination	551
Recross Examination	552

Tyler Sturkie (SW)

Direct Examination	555
Cross Examination	654
Redirect Examination	569
Recross Examination	571

Directed Verdict Motion	576

Jeffery Hines (DW)

Direct Examination	589
Cross Examination	590

J.C. Boggs (DW)

Direct Examination.....	591
Cross Examination.....	595

Walt Tillman (DW)

Direct Examination.....	600
Cross Examination.....	603

Willie Tillman (DW)

Direct Examination.....	607
Cross Examination.....	616
Redirect Examination.....	624
Recross Examination	624

Renewal of Directed Verdict Motion	627

Charge Conference	627

Closing Arguments

By the State	632
By Mr. Tillman.....	646
By the State	680

Charge on the Law	684

Verdict of the Jury.....	698

Sentence of the Court	714

Rule 210, SCACR Certification.....	718

State's Exhibit Numbers 2, 3, 14, 18, 36-39, 40, 47-51, 54-56, 58, 60, 61, 63, 94-127, 136-39, and 141-42 and Defense Exhibits 1-12 and 16 will be transported to the Court.

COUNTY OF ABBEVILLE

STATE VS.

CHARLES TILLMAN

AKA:

Race: Black

Sex: M

Age: 50

DOB:

SS#:

Address: 1083 Bell Road

City, State, Zip: Iva, SC 29655

DL#

SID#

*CDI: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def. s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

C. Yates Brown, Jr. Deputy Solicitor

SC Bar # 78607

Defendant

Attorney for Defendant

SC Bar # 66063

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections;☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$_____ plus 20% fee: \$_____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

A TRUE COPY

BY: Shandal Bogg
CLERK OF COURT☐ Appointed PD or appointed other counsel.

Proviso §61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: 2159

Jan 26, 2018

Clerk of Court/Deputy Clerk: Shandal B. Bogg

Court Reporter: Tula Scott

SCCA/217 (07/2016)

COUNTY OF ABBEVILLE

STATE VS.

CHARLES TILLMAN

AKA:

Race: Black

Sex: M

Age: 50

DOB: [REDACTED]

SS#: [REDACTED]

Address: 1083 Bell Road

City, State, Zip: Iva, SC 29655

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Possession Of A Weapon During The Commission Of A Violent Crime**

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549.

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,☐ (def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

C. Yates Brown, Jr., Deputy Solicitor

78607

SC Bar #

Defendant

Attorney for Defendant

66063

SC Bar #

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections☐ County Detention Center,

for a determinate term of _____

days/months/years or

☐

under the Youthful Offender Act not to exceed _____

years

and/or to pay a fine of \$ _____;

provided that upon the service of _____

days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections;☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS: _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund.

Other: _____

A TRUE COPY

BY Shandai B. Boggs

CLERK OF COURT

☐ Appointed PD or appointed other counsel.

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: 12157

Clerk of Court/Deputy Clerk: Shandai B. Boggs

Court Reporter: Tara Scott

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS
2017-GS-01-442, 443

STATE of SOUTH
CAROLINA,

-v-

CHARLES
TILLMAN,
Defendant.

ORDER DENYING MOTION FOR A NEW
TRIAL

Addy, J.

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a jury trial the week of January 22, 2018. Mr. Tillman was represented by Charles Grose, Esq. of the Greenwood Bar, and the State was represented by Deputy Solicitor Yates Brown and Assistant Solicitor Micah Black. On January 26, 2018 the jury returned a verdict of guilty on the charges of Murder and Possession of a Weapon during the Commission of a Violent Crime. The Court imposed a life sentence on the murder charge.¹ Mr. Grose requested ten (10) days to file a motion for a new trial, and his motion dated February 5, 2018 was subsequently timely filed. Having considered the matters raised in the motion, reflected on the testimony and evidence presented at trial, and considered the applicable law, the Court denies Mr. Tillman's motion on the following grounds:

As a preliminary matter, the Court acknowledges and agrees that the undisputed facts outlined in Mr. Tillman's motion are accurate, and Mr. Tillman did stipulate that Ms. Stutler's death was a homicide. However, the Court also notes that Mr. Tillman gave several statements over the course of the investigation of Ms. Stutler's death. Most of these statements were videotaped, and the jury had a full opportunity to evaluate the reasonableness of Mr. Tillman's explanations and pass upon his credibility. Therefore, the State's evidence against Mr. Tillman as presented in the State's case in chief was not solely circumstantial in that the jury had an opportunity evaluate Mr. Tillman's veracity and consider the reasonableness of his statements in

¹ Per Section 16-23-490(A), no sentence was imposed for the weapon possession conviction.

light of the other evidence. Accordingly, the evidence in this case was a mix of direct and circumstantial evidence.

- (A) Concerning Mr. Tillman's objection to the photographic evidence, the Court reaffirms its rulings at trial. The Court required the State to present several of the photos in black and white as opposed to color which substantially lessened any potential for improper prejudice. To the extent color photographs were admitted, the Court reaffirms its ruling that the probative value of the photographs outweighed any potential for undue prejudice.
- (B) Concerning the testimony of Agent Barton, the Court gave an appropriate curative instruction which negated any possibility of the jury believing that he testified in an expert capacity.
- (C) Concerning the Court's failure to give the *Edwards* circumstantial evidence charge, this Court was constrained to give the *Logan* instruction. The Court does note the curious evolution of circumstantial evidence jurisprudence and would meekly suggest that there may be times when the *Edwards* charge constitutes a more appropriate statement of the law. For example, if the State's case was entirely circumstantial, perhaps *Edwards* better explains the State's burden; that is, any other reasonable hypotheses must be excluded under the State's theory in order to convict in a purely circumstantial evidence case.² Similarly, in a case with a mix of direct and circumstantial evidence, the *Logan* charge would likely be more appropriate because of the way introductory infinitive phrase in *Logan* alludes to the potential existence of direct evidence which the jury may also consider.³ Because the present case involves precisely such a mix, however, the Court is satisfied that *Logan* represents the proper instruction.
- (D) Similarly, concerning Mr. Tillman's request that the Court define "substantial circumstantial evidence" for purposes of his directed verdict motion, the Court's ruling on the record stands. Because the case represented a mix of direct evidence and circumstantial evidence and because the jury is tasked with assessing the

² Or, as Arthur Conan Doyle succinctly put it, "Eliminate the impossible, and whatever remains, no matter how improbable, must be the truth."

³ "To the extent the State relies upon circumstantial evidence,...."

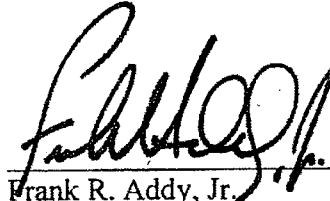


credibility of Mr. Tillman's shifting explanations, such a definitional exercise was unnecessary.

(E) With regard to all other matters raised in Mr. Tillman's post-trial motion, the Court finds insufficient grounds to warrant ordering a new trial.

WHEREFORE, Mr. Tillman's motion for a new trial is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge, Eighth Judicial Circuit

March 8, 2018
Greenwood, South Carolina

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2018 MAR 13 AM 9 23
EMILY Y MCMAHAN
CLERK OF COURT

ARREST WARRANT

2016A0110100352

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Abbeville

THE STATE

2016-36573

against

Charles Tillman

Address: Rd

Iva, SC 29655-7523

Phone: SSN:

Sex: M Race: B Height: 5 6 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0010000

Prosecuting Agency: Abbeville County Sheriff

Prosecuting Officer: Matthew Graham - 3003

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Charles Tillman
11-29-2016

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Recd 12/29/16

General Sessions
Courthouse Court Square, Room 102
P O Box 99
Abbeville, SC 29620

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

Personally appeared before me the affiant Matthew Graham

being duly sworn deposes and says that defendant Charles Tillman

did within this county and state on or about 11/8/2016

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Abbeville)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on November 8, 2016 in the county of Abbeville, one Charles Tillman did, with malice aforethought, cause the death of victim
Christie L. Stutler by shooting her in the head with a .22 cal. Ruger 10-22 rifle. This incident occurred at Bell Road, Iva.
Information from affiant and ACSO incident report no. 2016-36573.

A TRUE COPY

BY Shandal Boggs
CLERK OF COURT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

Affiant's Address 21 Old Calhoun Falls Road
Abbeville, SC 29620-

Affiant's Telephone:

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/8/2016 defendant Charles Tillman

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Abbeville) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 11/23/2016:

Signature of Issuing Judge (L.S.)
Susan Gilliam Gladden

Judge Code: 7005

Judge's Address

Abbeville, SC 29620-1156

Judge's Telephone

(864)446-6500

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

A. 127

R. 6

ARREST WARRANT

2016A0110100353

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

THE STATE

2016-36573

against

Charles Tillman

Address: Rd

Iva, SC 29655-7523

Phone: SSN:

Sex: M Race: B Height: 5 6 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0010000

Prosecuting Agency: Abbeville County Sheriff

Prosecuting Officer: Matthew Graham - 3003

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on Charles Tillman 11-29-2016

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Recd 12/29/16

General Sessions
Courthouse Court Square, Room 102
P.O. Box 99
Abbeville, SC 29620

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

Personally appeared before me the affiant Matthew Graham

being duly sworn deposes and says that defendant Charles Tillman

did within this county and state on or about 11/8/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Abbeville)

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on November 8, 2016 in the county of Abbeville, one Charles Tillman did knowingly and willfully possess a .22 cal. Ruger 10-22 rifle during the commission of a violent crime, being murder, of victim, Christie L. Stutler. This incident occurred at Bell Road, Iva. Information from affiant and ACSO incident report no. 2016-36573.

A TRUE COPY

BY Shandal Boggs
CLERK OF COURT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

Affiant's Address 21 Old Calhoun Falls Road
Abbeville, SC 29620-

Affiant's Telephone:

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/8/2016 defendant Charles Tillman

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Abbeville) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 11/23/2016

Signature of Issuing Judge (L.S.)

Susan Gilliam Gladden

Judge Code: 7005

Judge's Address

Abbeville, SC 29620-1156

Judge's Telephone: (864)446-6500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

A. 128

R. 7

ARREST WARRANT

2016A0110100354

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

THE STATE

2016-36573

against

Charles Tillman

Address: Rd

Iva, SC 29655-7523

Phone: SSN:

Sex: M Race: B Height: 5 6 Weight: 190

DL State: SC DL #:

DOB: Agency ORI #: SC0010000

Prosecuting Agency: Abbeville County Sheriff

Prosecuting Officer: Matthew Graham - 3003

Offense: Obstructing / Obstructing justice

Offense Code: 0118

Code/Ordinance Sec: C/L, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Charles Tillman
11-29-2016

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Recd 12/29/16

General Sessions

Courthouse Court Square, Room 102

P O Box 99

Abbeville, SC 29620

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

AFFIDAVIT

ORIGINAL

JAN 06 2017

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Matthew Graham

who

being duly sworn deposes and says that defendant Charles Tillman

did within this county and state on or about 11/8/2016

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Abbeville

in the following particulars:

DESCRIPTION OF OFFENSE: Obstructing / Obstructing justice

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That the defendant, Charles Tillman, did intentionally and unlawfully remove the Ruger .22 cal 10-22 rifle used in the death of victim, Christie L. Stutler which did hinder, impede and interfere with the administration of justice. This incident occurred at Bell Road, Iva, in the County of Abbeville, SC. Information from affiant and ACSO incident report no. 2016-36573.

A TRUE COPY
BY Shandal Baggs
CLERK OF COURT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Abbeville

Affiant's Address 21 Old Calhoun Falls Road

Abbeville, SC 29620-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/8/2016

defendant Charles Tillman

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Abbeville

) as set forth below:

DESCRIPTION OF OFFENSE: Obstructing / Obstructing justice

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 11/23/2016:

Signature of Issuing Judge (L.S.)

Susan Gilliam Gladden

Judge's Code: 7005

Judge's Address

Abbeville, SC 29620-1156

Judge's Telephone

(864)446-6500

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

A. 129

R. 8

R.9

WITNESSES

Matthew Graham
Abbeville County Sheriff's Office

WARRANT NUMBER

2016A010100352

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

October Term, 2017

Indictment # 17GS01-0442

THE STATE

VS.

CHARLES THILMAN

Charles Thilman presentment to the Grand Jury.

Defendant

Witness:

Lee Beasley Young

Foreman of the Grand Jury

Date: OCT 20 2017

TRUE BILL

VERDICT

Guilt

INDICTMENT FOR

Murder

SC Code § 16-31-10

COB 01:00

A TRUE COPY
BY Shondaw Beagles
CLERK OF COURT

A. 130

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

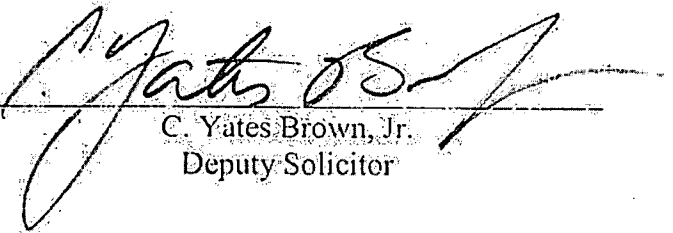
COUNTY OF ABBEVILLE

Murder
§16-03-0010

At a Court of General Sessions, convened on the 20th day of October, 2017, the Grand Jurors of Abbeville County present upon their oath:

That Charles Tillman, did in Abbeville County, South Carolina, on or about November 8, 2016, willfully, feloniously, and with malice aforethought kill Christy Lynn Stutler by means of shooting and the said Christy Lynn Stutler did die in Abbeville County as a proximate result thereof on or about November 8, 2016, in violation of Section 16-3-10, Code of Laws of South Carolina (1976, as amended):

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



C. Yates Brown, Jr.
Deputy Solicitor

R. 11

WITNESSES

Matthew Graham
Abbeville County Sheriff's Office

WARRANT NUMBER

2016A0110100353

Ric. Beasley, Jr.
Foreman of the Grand Jury

Date: OCT 20 2017

TRUE BILL

VERDICT

Guilt
James R. Hunter
Foreman
January 26, 2018

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

October Term, 2017

Indictment # 17GS01-0443

THE STATE

CHARLES TILLMAN

INDICTMENT FOR

Possession of a Weapon During The Commission of a
Violent Crime

SC Code § 16-23-0490

CDR 0549

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

A TRUE COPY
BY *Shanell Beggs*
CLERK OF COURT

A. 132

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

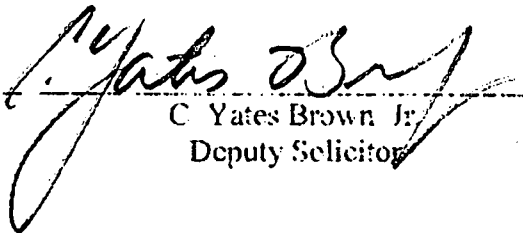
COUNTY OF ABBEVILLE

Possession Of A Weapon During The Commission
Of A Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 20th day of October, 2017, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Charles Tillman, did on or about November 8, 2016, in Abbeville County, South Carolina, while committing the violent crime of Murder, possess a firearm in violation of 16-23-0490, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



C. Yates Brown Jr.
Deputy Solicitor

R. 13

WITNESSES

Matthew Graham
Abbeville County Sheriff's Office

WARRANT NUMBER

2016A0110100354

Klee Brasley Young

Foreman of the Grand Jury

Date: OCT 20 2017

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

October Term, 2017
Indictment # 17GS01-0444

THE STATE

CHARLES TILLMAN

INDICTMENT FOR

Obstruction Of Justice
SC Code: § C/L, 17-25-0

CDR: 0118

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

Noble Prosegu

*Convicted at trial
for Murder and
Possession of weapon
during commission of violent
crime.*

*Pytho M
1/26/18*

A TRUE COPY
BY *Shandal Beags*
CLERK OF COURT

A. 134

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

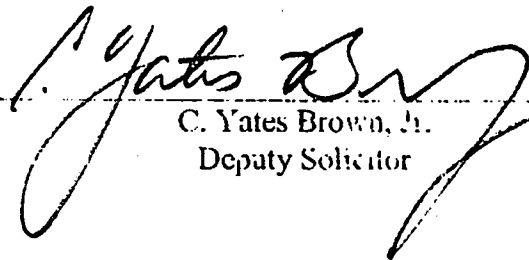
COUNTY OF ABBEVILLE

Obstruction Of Justice
§C/L, 17-25-0

At a Court of General Sessions, convened on the 20th day of October, 2017, the Grand Jurors of Abbeville County present upon their oath.

The defendant, Charles Filman, did on or about November 3, 2016, in Abbeville County, South Carolina, commit the crime of Obstruction of Justice by interfering with the orderly administration of the law or obstructing the due course of justice. All in violation of C/L, 17-25-0, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



C. Yates Brown, Jr.
Deputy Solicitor

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	Case No. 2017-GS-01-00442, 443
THE STATE	)	
	)	
	)	Motion for New Trial
vs.	)	
	)	
Charles Tillman	)	
	)	
	)	

To: The Honorable Frank R. Addy, Jr., Presiding Judge, Eight Judicial Circuit

Pursuant to Rule 29, SCRCrimP, Charles Tillman moves this Court for an order granting him a new trial. This Court imposed sentence on January 26, 2018 immediately after the jurors convicted Mr. Tillman of murder and possession of a weapon during the commission of a violent crime. The following memorandum of law supports this motion.

I. FACTUAL BACKGROUND.

The State and Mr. Tillman stipulated that Christie Stutler's death was a homicide, and Mr. Tillman acknowledge during his closing argument that whoever killed Ms. Stutler committed murder. The following facts are beyond dispute:

1. Ms. Stutler's time of death was between 11:00 p.m. on November 7, 2016 and 11:00 a.m. on November 8, 2016.
2. From sometime between 8:30 a.m. and 9:00 a.m. on November 8th, Mr. Tillman had an alibi. Mr. Tillman was at work with J.C. Boggs and Walt Tillman.
3. A South Carolina Law Enforcement Division ("SLED") forensic scientist found exactly one particle of gunshot residue on the shirt that Mr. Tillman wore on November 8th. The scientific testimony cannot establish how this single particle of gunshot residue got onto Mr. Tillman's clothing. This particle of gunshot residue could have gotten on his shirt by Mr. Tillman firing a gun, by Mr. Tillman transferring it to his shirt after touching something in the room where he found Ms. Stutler's body, or by law enforcement transferring it to the shirt by not wearing gloves when collecting the shirt for evidence.

4. A SLED forensic scientist discovered the DNA of *at least* three people on the rifle used to shoot Ms. Stutler. One sample is unquestionably Ms. Stutler's DNA. Mr. Tillman cannot be excluded as contributing one of the samples, although his paternal male relatives cannot be excluded as contributing this sample. The person or people contributing the other DNA sample(s) remain unidentified. The scientific evidence cannot establish when these DNA samples were placed on the rifle or whether the DNA was placed on the rifle by the individual(s) or transferred to the rifle in some other manner.

The prosecution and Mr. Tillman presented vastly different theories about who killed Ms. Stutler. The prosecution alleged Mr. Tillman shot and killed Ms. Stutler between 11:00 p.m. on November 7th and before he went to work on the morning of November 8th, hid the rifle in the blue automobile on the property, went to work, and called in Ms. Stutler's death as a suicide after he returned home from work. Mr. Tillman presented evidence from two witnesses that Ms. Stutler was alive when he went to work. Mr. Tillman additionally pointed to evidence that a third person had been inside the residence to "shoot up" drugs with Ms. Stutler. This unknown person is responsible for Ms. Stutler's death and hiding the rifle. Based on Ms. Stutler's mental health history, her prior suicidal ideation, and blood on the bed beside her head, Mr. Tillman reasonably believed Ms. Stutler had shot herself.

II. ARGUMENTS.

This Court should grant a new trial based on the following grounds.

A. This Court erred by allowing introduction of photographs of Ms. Stutler's deceased body.

This Court allowed the prosecution to introduce numerous photographs of Ms. Stutler's deceased body, including crime scene photographs and autopsy photographs. Mr. Tillman objected. First, the photographs were not relevant because Mr. Tillman stipulated that Ms. Stutler's death was a homicide and did not contest the nature of any of Ms. Stutler's injuries. Second, Mr. Tillman argued the prejudicial effect of these photographs outweighed the probative

value. Third, Mr. Tillman argued the volume of photographs were cumulative, resulting in additional prejudice. In making these objections, Mr. Tillman argued showing the jurors crime scene and autopsy photographs of Ms. Stutler's body, after her body had been moved by investigators, some of which showed signs of medical intervention, was extremely prejudicial. Mr. Tillman further argued that the forensic pathologist could explain Ms. Stutler's injuries to the jurors by using diagrams.

"Photographs which are calculated to arouse the sympathies or prejudices of the jury should be excluded . . . if they are irrelevant or not substantially necessary to show material facts or conditions." *State v. Kornahrens*, 290 S.C. 281, 288, 350 S.E.2d 180, 185 (1986) (citing *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986)). Use of horrendous photographs is "an area of growing concern" for our Supreme Court that has strongly encourage[d] all solicitors to refrain from pushing the envelope." *State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010). The photographs in this case were not relevant and were extremely prejudicial. The prosecution emphasized these photographs during its closing argument, compounding the prejudice.

B. This Court erred by not granting a mistrial when the prosecution sought to introduced evidence from a purported criminal profiler.

The prosecution called SLED Agent Bo Barton and elicited testimony about his experience in law enforcement and training as a "criminal profiler." Mr. Tillman objected when it appeared the Agent Barton was preparing to offer an opinion by explaining why a law enforcement agency would consult with "someone like me." When his testimony continued, Agent Barton explained that during his interview of Mr. Tillman, he gave Mr. Tillman options to explain what happened to Ms. Stutler and implied this approach was based on his training, experience, and expertise. Mr. Tillman objected again and moved for a mistrial, noting the structure of the prosecution's questions and Agent Barton's answers was carefully crafted to present impermissible expert testimony

without qualifying the witness as an expert witness. This Court denied the mistrial motion and, over objection, provided a curative instruction. In the process of considering the mistrial motion and crafting a curative instruction, this Court recognized Mr. Tillman's concern that "it is difficult, if not impossible, to unring a bell." *State-Record Co. v. State*, 332 S.C. 346, 356, fn. 19, 504 S.E.2d 592, 597, fn. 19 (1998) (internal quotations omitted).

"While criminal profiling may have a legitimate function in law enforcement investigations, such information constitutes propensity evidence and, therefore, has no place in a trial to determine the guilt of a specific individual. In other words, this type of testimony unduly tends to suggest a decision on an improper basis." *State v. Huckabee*, 419 S.C. 414, 425, 798 S.E.2d 584, 589 (Ct. App. 2017) (internal quotations omitted) (holding probative value of criminal-profile testimony was substantially outweighed by danger of unfair prejudice, and thus testimony should have been excluded under rule which provided for such exclusion). By sustaining Mr. Tillman's objection and giving the curative instruction, this Court has already found the testimony inadmissible. Even after the curative instruction, Mr. Tillman was prejudiced because the jurors were left with the impression that there was something uniquely probative about Agent Barton's interview techniques and testimony, suggesting a decision in an improper basis.

C. This Court erred by not defining "substantial circumstantial evidence" before considering Mr. Tillman's motion for a directed verdict.

As part of his motion for directed verdict, Mr. Tillman asked this Court to define the term "substantial circumstantial evidence," pointing out that the appellate courts of our state seemingly lack a consistent definition of that term. Sometimes the appellate courts emphasize the word "substantial" and other times the appellate courts emphasize the word "any." *Compare State v. Odems*, 395 S.C. 582, 584, 720 S.E.2d 48, 49 (2011) ("substantial circumstantial evidence") with *State v. Land*, 419 S.C. 191, 198, 797 S.E.2d 48, 52 (Ct. App. 2016)

(“any substantial circumstantial evidence”). Often, our Supreme Court has not used the word “any” to modify “substantial.” See, e.g., *Odems, supra*, and *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) (“If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused....”).

Mr. Tillman further argued that this Court should define “substantial circumstantial evidence” in a manner similar to how that term was used in cases like *Hernandez*, *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), *State v. Mitchell*, 341 S.C. 406, 407, 535 S.E.2d 126, 126 (2000), and *State v. Schrock*, 283 S.C. 129, 130, 322 S.E.2d 450, 451 (1984). See also *Odem* and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011). Mr. Tillman pointed out a “mere modicum” of evidence is insufficient to constitute “substantial circumstantial evidence,” citing *Jackson v. Virginia*, 443 U.S. 307, 320 (1979). “Substantial circumstantial evidence” has to mean the prosecution’s theory of guilt is substantially more probable than other theories excluding the accused’s guilt. *Holland v. United States* cautioned about the dangers of associated with the prosecution relying on circumstantial evidence and explained the role of the trial judge in reviewing the sufficiency of the evidence:

It is, of course, not for [courts] to prescribe investigative procedures, but it is within the province of the courts to pass upon the sufficiency of the evidence to convict. When the Government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanations by the taxpayer inconsistent with guilt. Such refutation might fail when the Government does not track down relevant leads furnished by the taxpayer—leads reasonably susceptible of being checked, which, if true, would establish the taxpayer’s innocence. When the Government fails to show an investigation into the validity of such leads, the trial judge may consider them as true and the Government’s case insufficient to go to the jury. This should aid in forestalling unjust prosecutions, and have the practical advantage of eliminating the dilemma, especially serious in this type of case, of the accused’s being forced by the risk of an adverse verdict to come forward to substantiate leads which he had previously furnished the Government. It is a procedure entirely consistent with the position long espoused by the Government, that its duty is not to convict but to see that justice is done.

348 U.S. 121, 135-36 (1954).

This Court declined Mr. Tillman's request to define "substantial circumstantial evidence." Mr. Tillman respectfully renews his request for this Court to define "substantial circumstantial evidence." Mr. Tillman believes this Court applied a constitutionally inadequate standard denying him due process of law. *See Jackson* and *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

D. This Court erred by not granting Mr. Tillman a directed verdict.

Once this Court appropriately defines "substantial circumstantial evidence," the need to enter a directed verdict of acquittal becomes apparent. The prosecution merely presented evidence raising a suspicion that Mr. Tillman murdered Ms. Stutler. The forensic pathologist testified that the time of death was between 11:00 p.m. on November 7th and 11:00 a.m. on November 8th. Mr. Tillman has a confirmed alibi while he was at work on November 8th. The prosecution cannot account for how the single particle of gunshot residue got onto Mr. Tillman's shirt. Even if it is accepted that Mr. Tillman's DNA is on the rifle that shot Ms. Stutler, it cannot account for how or when Mr. Tillman's DNA got onto the rifle. *See* Subsection C, *supra*, and cases cited therein.

E. This Court should order a new trial because the prosecution failed to present any direct or substantial circumstantial evidence by which jurors could find Charles Tillman guilty beyond a reasonable doubt.

When reviewing a motion for a new trial, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* at 319 (emphasis supplied by court). As seen, when this Court applies the appropriate definition of "substantial circumstantial evidence," the prosecution failed to present sufficient evidence to submit this case to the jury. *See* Subsections C and D, *supra*, and cases cited therein. This Court should order a

new trial based on the insufficiency of the evidence.

F. This Court should grant a new trial based on the cumulative error doctrine.

The cumulative error doctrine “provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial.” *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor’s improper argument and improperly excluded evidence warranted reversal). This Court should order a new trial because admission of the photographs combined with the “criminal profiler” testimony combined to deny Mr. Tillman a fair trial.

G. This Court erred by not charging the *Edwards* circumstantial evidence charge.

During the charge conference, Mr. Tillman requested this Court provide the jurors with the *Edwards* circumstantial evidence instruction, to wit:

[E]very circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989) (citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924, 926 (1955)). This Court instead provided the instruction mandated by *State v. Logan*, 405 S.C. 83, 86, 747 S.E.2d 444, 445 (2013).¹ Mr. Tillman’s case illustrates why the *Edwards* instruction is more appropriate than the *Logan* instruction. *Edwards* requires the

¹ Mr. Tillman acknowledged that the Court was not allowed to grant his request for the *Edwards* instruction under the plain language of *Logan*. Mr. Tillman’s request and subsequent objection to the jury instructions, however, were needed to preserve this issue for appeal.

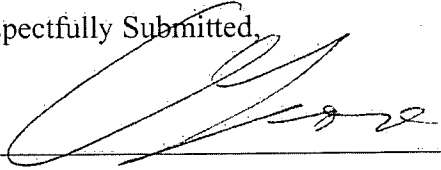
exclusion of all reasonable hypotheses that the accused is not guilty. *Logan* leaves open the possibility that an innocent person might be convicted.

III. CONCLUSION.

For the foregoing reasons, this Court should enter an order granting Mr. Tillman a new trial.

IT IS SO MOVED.

Respectfully Submitted,

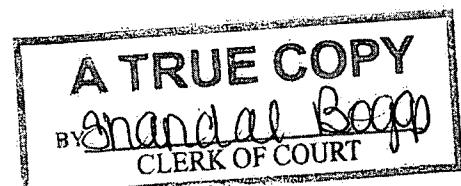
By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorney for Charles Tillman

February 5, 2018
Greenwood South Carolina

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2018 FEB 5 PM 2 12
EMILY Y MCMAHAN
CLERK OF COURT



THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

THE STATE

vs.

Charles Tillman

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

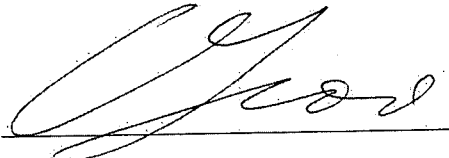
Case No. 2017-GS-01-00442, 443

Motion for New Trial

I certify that I have served a copy of this pleading on the State of South Carolina by hand delivering a copy to

Yates Brown, Esquire
Micah Black, Esquire
Eighth Circuit Solicitor's Office
Suite 203, Park Plaza Building
600 Monument Street
Greenwood, SC 20648

By


E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

February 5, 2018
Greenwood, South Carolina

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2018 FEB 5 PM 2 12
EMILY Y MCMAHAN
CLERK OF COURT

A TRUE COPY
BY Shanda Boopp
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
)
CHARLES TILLMAN,)
)
DEFENDANT.)
_____)

CASE NO(S): 2017-GS-01-0442
2017-GS-01-0443
2017-GS-01-0444

TRANSCRIPT OF RECORD

JANUARY 22, 23, 24, 25, 26, 2018
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

YATES BROWN, SOLICITOR
MICAHA BLACK, SOLICITOR

ATTORNEY FOR DEFENDANT:

CHARLES GROSE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
OPENING STATEMENTS.....	127
KIMBERLY WELLS	
DIRECT EXAMINATION.....	139
CROSS EXAMINATION.....	145
EVAN MCCURRY	
DIRECT EXAMINATION.....	146
CROSS EXAMINATION.....	152
VONNIE CUMMINGS	
DIRECT EXAMINATION.....	155
CROSS EXAMINATION.....	163
REDIRECT EXAMINATION.....	170
RECROSS EXAMINATION.....	173
SHERI ASHLEY	
DIRECT EXAMINATION.....	178
CROSS EXAMINATION.....	201
REDIRECT EXAMINATION.....	206
RECROSS EXAMINATION.....	207
ALTON DAVIS	
DIRECT EXAMINATION.....	207
CROSS EXAMINATION.....	228
RONNIE ASHLEY	
DIRECT EXAMINATION.....	242
CROSS EXAMINATION.....	246

SAM FERGUSON

DIRECT EXAMINATION.....247

CROSS EXAMINATION.....250

JEFFREY HINES

DIRECT EXAMINATION.....251

DR. BRETT WOODARD

DIRECT EXAMINATION.....289

CROSS EXAMINATION.....302

REDIRECT EXAMINATION.....305

RECROSS EXAMINATION.....305

JEFFREY HINES

DIRECT EXAMINATION.....307

CROSS EXAMINATION.....323

ILA SIMMONS

DIRECT EXAMINATION.....355

CROSS EXAMINATION.....365

REDIRECT EXAMINATION.....371

RECROSS EXAMINATION.....371

JAMES TALLON, II.

DIRECT EXAMINATION.....372

CROSS EXAMINATION.....387

REDIRECT EXAMINATION.....393

RECROSS EXAMINATION.....393

JEFFREY HINES

RESUME CROSS EXAMINATION.....401

REDIRECT EXAMINATION.....	413
RECROSS EXAMINATION.....	415
KIMBERLY MEARS	
DIRECT EXAMINATION.....	419
CROSS EXAMINATION.....	426
JAMES GREEN	
DIRECT EXAMINATION.....	429
CROSS EXAMINATION.....	437
JARED CASTELLANI	
DIRECT EXAMINATION.....	438
CROSS EXAMINATION.....	443
JESSICA STOWE	
DIRECT EXAMINATION.....	446
CROSS EXAMINATION.....	455
ROBERT STUTLER	
DIRECT EXAMINATION.....	456
CROSS EXAMINATION.....	458
REDIRECT EXAMINATION.....	460
BO BARTON	
DIRECT EXAMINATION.....	460
CROSS EXAMINATION.....	484
BEN HUFFMAN (IN CAMERA)	
DIRECT EXAMINATION.....	490
CROSS EXAMINATION.....	494
CATHERINE LEISY	

DIRECT EXAMINATION.....	502
CROSS EXAMINATION.....	517
REDIRECT EXAMINATION.....	527
RECROSS EXAMINATION.....	528
MATTHEW GRAHAM	
DIRECT EXAMINATION.....	534
CROSS EXAMINATION.....	539
REDIRECT EXAMINATION.....	548
TYLER STURKIE	
DIRECT EXAMINATION.....	552
CROSS EXAMINATION.....	561
REDIRECT EXAMINATION.....	565
RECROSS EXAMINATION.....	568
JEFFREY HINES	
DIRECT EXAMINATION.....	585
CROSS EXAMINATION.....	586
J.C. BOGGS	
DIRECT EXAMINATION.....	587
CROSS EXAMINATION.....	591
WALT TILLMAN	
DIRECT EXAMINATION.....	595
CROSS EXAMINATION.....	598
WILLIE TILLMAN	
DIRECT EXAMINATION.....	603
CROSS EXAMINATION.....	611

REDIRECT EXAMINATION.....	618
RECROSS EXAMINATION.....	619
CLOSING ARGUMENTS.....	631
JURY CHARGE.....	683
VERDICT OF THE JURY.....	697
SENTENCE OF THE COURT.....	714
CERTIFICATE OF COURT REPORTER.....	716

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>
S1	911 CALL CD
S2	PHOTO
S3	PHOTO
S4	PHOTO
S5	PHOTO
S6	PHOTO
S7	PHOTO
S8	PHOTO
S9	PHOTO
S10	PHOTO
S11	PHOTO
S12	PHOTO
S13	PHOTO
S14	PHOTO
S15	PHOTO
S16	PHOTO
S17	PHOTO
S18	PHOTO
S19	PHOTO
S20	PHOTO
S21	PHOTO
S22	PHOTO
S23	PHOTO
S24	PHOTO
S25	PHOTO
S26	PHOTO
S27	PHOTO
S28	PHOTO
S29	PHOTO
S30	PHOTO
S31	PHOTO
S32	PHOTO
S33	PHOTO
S34	PHOTO
S35	PHOTO
S36	PHOTO ID ONLY
S37	PHOTO
S38	PHOTO ID ONLY
S39	PHOTO ID ONLY
S40	PHOTO
S41	PHOTO
S42	PHOTO
S43	PHOTO
S44	PHOTO
S45	PHOTO
S46	PHOTO

<u>NO</u>	<u>DESCRIPTION</u>
S47	PHOTO ID ONLY
S48	PHOTO
S49	PHOTO
S50	PHOTO
S51	PHOTO ID ONLY
S52	PHOTO
S53	PHOTO
S54	PHOTO ID ONLY
S55	PHOTO ID ONLY
S56	PHOTO
S57	PHOTO
S58	PHOTO ID ONLY
S59	PHOTO
S60	PHOTO ID ONLY
S61	PHOTO
S62	PHOTO
S63	PHOTO ID ONLY
S64	PHOTO
S65	PHOTO
S66	PHOTO
S67	PHOTO
S68	PHOTO
S69	PHOTO
S70	PHOTO
S71	PHOTO
S72	PHOTO
S73	PHOTO
S74	PHOTO
S75	PHOTO
S76	PHOTO
S77	PHOTO
S78	PHOTO
S79	PHOTO
S80	PHOTO
S81	PHOTO
S82	PHOTO
S83	PHOTO
S84	PHOTO
S85	PHOTO
S86	PHOTO
S87	PHOTO
S88	PHOTO
S89	PHOTO
S90	PHOTO
S91	PHOTO
S92	PHOTO
S93	PHOTO
S94	PHOTO ID ONLY

<u>NO</u>	<u>E X H I B I T S</u> <u>DESCRIPTION</u>
S95	PHOTO ID ONLY
S96	PHOTO ID ONLY
S97	PHOTO ID ONLY
S98	PHOTO ID ONLY
S99	PHOTO ID ONLY
S100	PHOTO ID ONLY
S101	PHOTO ID ONLY
S102	PHOTO ID ONLY
S103	PHOTO ID ONLY
S104	PHOTO ID ONLY
S105	PHOTO ID ONLY
S106	PHOTO ID ONLY
S107	PHOTO ID ONLY
S108	PHOTO ID ONLY
S109	PHOTO ID ONLY
S110	PHOTO ID ONLY
S111	PHOTO ID ONLY
S112	PHOTO ID ONLY
S113	PHOTO ID ONLY
S114	PHOTO ID ONLY
S115	PHOTO ID ONLY
S116	PHOTO ID ONLY
S117	PHOTO ID ONLY
S118	PHOTO ID ONLY
S119	PHOTO ID ONLY
S120	PHOTO ID ONLY
S121	PHOTO ID ONLY
S122	PHOTO ID ONLY
S123	PHOTO ID ONLY
S124	FIRST INTERVIEW
S125	SECOND INTERVIEW
S126	THIRD INTERVIEW
S127	FOURTH INTERVIEW
S128	PROJECTILE
S129	KNOWN STANDARD TILLMAN
S130	ADVICE OF RIGHTS
S131	GSR TILLMAN
S132	T-SHIRT
S133	BULLETS FROM HOME
S134	ADVICE OF RIGHTS
S135	ADVICE OF RIGHTS
S136	PHOTO
S137	PHOTO
S138	PHOTO
S139	PHOTO ID ONLY
S140	FIREARM
S141	REDACTED PHOTO
S142	CRIME SCENE DIAGRAM

E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>
S143	CASING BEDROOM FLOOR
S144	FINGERNAIL SCRAPING
S145	TOUCH DNA SWAB TILLMAN
S146	LATENT PRINTS VICTIM
S147	PARTICLE LIFT GSR
S148	PHOTO OF SHIRT ON BOARD
S149	SWAB FOR DNA LONG GUN
S150	ADVICE OF RIGHTS
S151	SWAB FOR DNA FROM HOME
D1	DIAGRAM
D2	CRIME SCENE LOG
D3	PHOTO
D4	PHOTO
D5	PHOTO
D6	PHOTO
D7	PHOTO
D8	PHOTO
D9	PHOTO
D10	PHOTO
D11	PHOTO
D12	PHOTO
D13	PHOTO ID ONLY
D14	PHOTO ID ONLY
D15	J.C. BOGGS STATEMENT ID ONLY
D16	PHOTO
D17	LEO NOTES REDACTED 1 PAGE
C1	INTERVIEW REDACTIONS
C2	INDEX JOURNAL 1/24
C3	INDEX JOURNAL 1/23
C4	STATEMENT L. HUFFMAN
C5	STATEMENT B. HUFFMAN
C6	INDEX JOURNAL 1/25
C7	JURY NOTE
C8	LETTER READ TO THE COURT

1 TRIAL DAY 1: January 22, 2018

2 THE COURT: Ladies and gentlemen, we're about to begin
3 jury selection on the case which we are going to try this
4 week, and in a moment I'll have a number questions that are
5 specific to the case that we are looking at trying. We'll
6 follow the same procedure as before. If the question
7 applies to you, I'll simply ask that you stand up and give
8 me an answer. But if any question embarrasses anyone for
9 whatever reason, I'll give you a chance to come forward and
10 speak privately with me at some point during the questioning
11 process. Okay?

12 Ladies and gentlemen, the case that we're going to try
13 this week is entitled the *State of South Carolina vs.*
14 *Charles Tillman*. I've been presented with two indictments.
15 These indictments charge Mr. Tillman with the offense of
16 murder and possession of a weapon during the commission of a
17 violent crime. As a preliminary matter, ladies and
18 gentlemen, I'll let you know that, of course, these
19 indictments are nothing more than the accusations made
20 against Mr. Tillman. Mr. Tillman has pled not guilty to
21 these charges, and that plea puts the burden of proof on the
22 State to prove each and every element of these indictments
23 beyond a reasonable doubt.

24 Now, again, ladies and gentlemen, Mr. Tillman is
25 charged with one count of murder and one count of the

1 is with the printout -- the printer is, and then turn around
2 and face towards the back of the courtroom. Bring with you
3 any possession that you brought to the courthouse today if
4 your name is called, please. At that point in time the
5 State will be given an opportunity to either seat you or to
6 excuse you, and the Defense will be given a similar
7 opportunity.

8 Now, ladies and gentlemen, I'm going to tell you what I
9 tell every jury -- every jury panel. If for some reason one
10 of the lawyers ask that you not serve on this case, folks,
11 take it personally. Okay? This is just business and each
12 lawyer has a different way of picking a jury. So I promise
13 you, if you're excused or your asked not to serve by one of
14 the lawyers, again, this is just them doing their job.
15 Don't take it personally or get bent out of shape about it.
16 All right.

17 With that, Madam Clerk, if you'll give me a jury,
18 please.

19 MADAM CLERK: 73, Mozelle Jackson.

20 (Whereupon, Mozelle Jackson, a black female, came forward.)

21 MADAM CLERK: What say you for the State?

22 MR. BROWN: Please present Ms. Jackson.

23 MADAM CLERK: What say you for the Defense?

24 MR. GROSE: Please seat Ms. Jackson.

25 MADAM CLERK: You may take a seat in the jury box.

1 (Whereupon, the juror takes seat in jury box.)

2 MADAM CLERK: 77, Gabriel Keller.

3 (Whereupon, Gabriel Keller, a white male, came
4 forward.)

5 MADAM CLERK: What say you for the State?

6 MR. BROWN: Please present Mr. Keller.

7 MADAM CLERK: What say you for the Defense?

8 MR. GROSE: Please seat Mr. Keller.

9 MADAM CLERK: You may take a seat in the jury box.

10 (Whereupon, the juror takes seat in jury box.)

11 MADAM CLERK: 132, Pamela Timmerman.

12 (Whereupon, Pamela Timmerman, a white female, came forward.)

13 MADAM CLERK: What say you for the State?

14 MR. BROWN: Please present Ms. Timmerman.

15 MADAM CLERK: What say you for the Defense?

16 MR. GROSE: Please seat Ms. Timmerman.

17 MADAM CLERK: You may take a seat in the jury box.

18 (Whereupon, juror takes seat in jury box.)

19 MADAM CLERK: 49, Jordan Ford.

20 (Whereupon, Jordan Ford, a black male, came forward.)

21 MADAM CLERK: What say you for the State?

22 MR. BROWN: Please excuse Mr. Ford from the trial of
23 this case.

24 MADAM CLERK: You make take your seat back in the
25 courtroom.

1 (Whereupon, jury panel member takes a seat in the
2 courtroom.)

3 MADAM CLERK: 120, Bradley Randall.

4 (Whereupon, Bradley Randall, a white male, came forward.)

5 MADAM CLERK: What say you for the State?

6 MR. BROWN: Please present Mr. Randal.

7 MADAM CLERK: What say you for the Defense?

8 MR. GROSE: Please excuse this juror from this case.

9 MADAM CLERK: You may take your seat back in the
10 courtroom.

11 (Whereupon, jury panel member takes a seat in the
12 courtroom.)

13 MADAM CLERK: 47, Abigail Evans.

14 (Whereupon, Abigail Evans, a white female, came forward.)

15 MADAM CLERK: What say you for the State?

16 MR. BROWN: Please present Ms. Evans.

17 MADAM CLERK: Say you for the Defense?

18 MR. GROSE: Please excuse this juror from this case.

19 MADAM CLERK: You may take your seat back in the
20 courtroom.

21 (Whereupon, jury panel member takes a seat in the
22 courtroom.)

23 MADAM CLERK: 112, Eric Patterson.

24 (Whereupon, Eric Patterson, a white male, came forward.)

25 MADAM CLERK: What say you for the State?

1 MR. BROWN: Please present Mr. Patterson.

2 MADAM CLERK: Say you for the Defense?

3 MR. GROSE: Please excuse this juror from this case.

4 MADAM CLERK: You may take your seat back in the
5 courtroom.

6 (Whereupon, jury panel member takes seat in the courtroom.)

7 MADAM CLERK: 68, James Hester.

8 (Whereupon, James Hester, a white male, came forward.)

9 MADAM CLERK: What say you for the State?

10 MR. BROWN: Please present Mr. Hester.

11 MADAM CLERK: Say you for the Defense?

12 MR. GROSE: Please seat Mr. Hester.

13 MADAM CLERK: You may take a seat in the jury box.

14 (Whereupon, the juror takes a seat in the jury box.)

15 MADAM CLERK: 105, Grace Nelson.

16 (Whereupon, Grace Nelson, a white female, came
17 forward.)

18 MADAM CLERK: What say you for the State?

19 MR. BROWN: Please present Ms. Nelson.

20 MADAM CLERK: What say you for the Defense?

21 MR. GROSE: Please excuse this juror from this case.

22 MADAM CLERK: You may take a seat back in the
23 courtroom.

24 (Whereupon, jury panel member takes a seat in the
25 courtroom.)

1 MADAM CLERK: Number 1, Anoko Abalo.

2 (Whereupon, Anoko Abalo, a black female, came forward.)

3 MADAM CLERK: What say you for the State?

4 MR. BROWN: Please present this juror?

5 MADAM CLERK: What say you for the Defense?

6 MR. GROSE: Please excuse this juror from this case.

7 MADAM CLERK: You may take your seat back in the
8 courtroom.

9 (Whereupon, jury panel member takes seat in the
10 courtroom.)

11 MADAM CLERK: 34, Kelly Crawford.

12 (Whereupon, Kelly Crawford, a white female, came forward.)

13 MADAM CLERK: What say you for the State?

14 MR. BROWN: Please present Ms. Crawford.

15 MADAM CLERK: What say you for the Defense?

16 MR. GROSE: Please excuse this juror from this case.

17 MADAM CLERK: You make take a seat back in the
18 courtroom.

19 (Whereupon, jury panel member takes a seat in the
20 courtroom.)

21 MADAM CLERK: 148, William Wilson.

22 (Whereupon, William Wilson, a white male, came forward.)

23 MADAM CLERK: What say you for the State?

24 MR. BROWN: Please present Mr. Wilson.

25 MADAM CLERK: Say you for the Defense?

1 MR. GROSE: Please seat Mr. Wilson.

2 MADAM CLERK: You may take a seat in the jury box.

3 (Whereupon, juror takes a seat in the jury box.)

4 MADAM CLERK: 84, George Lyons.

5 (Whereupon, George Lyons, a black male, came forward.)

6 MADAM CLERK: What say you for the State?

7 MR. BROWN: Please present Mr. Lyons.

8 MADAM CLERK: What say you for the Defense?

9 MR. GROSE: Please seat Mr. Lyons.

10 MADAM CLERK: You may take a seat in the jury box.

11 (Whereupon, juror takes a seat in the jury box.)

12 MADAM CLERK: 90, Kenneth McCloud.

13 (Whereupon, Kenneth McCloud, a white male, came forward.)

14 MADAM CLERK: What say you for the State?

15 MR. BROWN: Please present Mr. McCloud.

16 MADAM CLERK: What say you for the State?

17 MR. BROWN: Please present Mr. McCloud.

18 MADAM CLERK: What say you for the Defense?

19 MR. GROSE: Please seat Mr. McCloud.

20 MADAM CLERK: You may take a seat in the jury box.

21 (Whereupon, juror takes a seat in the jury box.)

22 MADAM CLERK: 136, Louise Usher.

23 (Whereupon, Louise Usher, a black female, came forward.)

24 MADAM CLERK: What say you for the State?

25 MR. BROWN: Please excuse Ms. Usher from the trial of

1 this case.

2 MADAM CLERK: You may take a seat back in the
3 courtroom.

4 (Whereupon, jury panel member takes a seat in the
5 courtroom.)

6 MADAM CLERK: 89, Jean McClain.

7 (Whereupon, Jean McClain, a white female, came forward.)

8 MADAM CLERK: What say you for the State?

9 MR. BROWN: Please present Ms. McClain.

10 MADAM CLERK: What say you for the Defense?

11 MR. GROSE: Please excuse this juror from this case.

12 MADAM CLERK: You may take a seat back in the
13 courtroom.

14 (Whereupon, jury panel member takes a seat in the
15 courtroom.)

16 MADAM CLERK: 96, Robin McMurtury.

17 (Whereupon, Robin McMurtury, a white female, came forward.)

18 MADAM CLERK: What say you for the State?

19 MR. BROWN: Please present Ms. McMurtury.

20 MADAM CLERK: What say you for the Defense?

21 MR. GROSE: Please seat Ms. McMurtury.

22 MADAM CLERK: You may take a seat in the jury box.

23 (Whereupon, the jury takes a seat in the jury box.)

24 MADAM CLERK: 79, Eugene Knowlton.

25 (Whereupon, Eugene Knowlton, a white male, came forward.)

1 MADAM CLERK: What say you for the State?

2 MR. BROWN: Please present Mr. Knowlton.

3 MADAM CLERK: What say you for the Defense?

4 MR. GROSE: Please excuse Mr. Knowlton from this case.

5 MADAM CLERK: You may take your seat back in the
6 courtroom.

7 (Whereupon, jury panel member takes a seat in the
8 courtroom.)

9 MADAM CLERK: 150, Russell Wood.

10 (Whereupon, Russell Wood, a white male, came forward.)

11 MADAM CLERK: What say you for the State?

12 MR. BROWN: Please present Mr. Wood.

13 MADAM CLERK: What say you for the Defense?

14 MR. GROSE: Please seat the juror.

15 MADAM CLERK: You may take a seat in the jury box.

16 (Whereupon, the juror takes a seat in the jury box.)

17 MADAM CLERK: 65, Mamie Hall.

18 (Whereupon, Mamie Hall, a white female, came forward.)

19 MADAM CLERK: What say you for the State?

20 MR. BROWN: Please present Ms. Hall.

21 MADAM CLERK: What say you for the Defense?

22 MR. GROSE: Please seat Ms. Hall.

23 MADAM CLERK: You may take a seat in the jury box.

24 (Whereupon, the juror takes a seat in the jury box.)

25 MADAM CLERK: Number 5, Debra Ashley.

1 (Whereupon, Debra Ashley, a white female, came forward.)

2 MADAM CLERK: What say you for the State?

3 MR. BROWN: Please present Ms. Ashley.

4 MADAM CLERK: What say you for the Defense?

5 MR. GROSE: Please excuse this juror from this case.

6 MADAM CLERK: You may take your seat back in the
7 courtroom.

8 (Whereupon, jury panel member takes a seat in the
9 courtroom.)

10 MADAM CLERK: 29, David Castlebury.

11 (Whereupon, David Castlebury, a white male, came forward.)

12 MADAM CLERK: What say you for the State?

13 MR. BROWN: Please present Mr. Castlebury.

14 MADAM CLERK: What say you for the Defense?

15 MR. GROSE: Please excuse this juror from this case.

16 MADAM CLERK: You may take your seat back in the
17 courtroom.

18 (Whereupon, jury panel member takes a seat in the
19 courtroom.)

20 MADAM CLERK: 59, Lindsay Giles.

21 (Whereupon, Lindsay Giles, a white female, came forward.)

22 MADAM CLERK: What say you for the State?

23 MR. BROWN: Please present Ms. Giles.

24 MADAM CLERK: What say you for the Defense?

25 MR. GROSE: Please seat Ms. Giles.

1 MADAM CLERK: You may take a seat in the jury box.
2 (Whereupon, the juror takes a seat in the jury box.)
3 MADAM CLERK: 100, Justin Minick.
4 (Whereupon, Justin Minick, a white male, came forward.)
5 MADAM CLERK: What say you for the State?
6 MR. BROWN: I missed the number. Tell me what --
7 MR. GROSE: 100.
8 MR. BROWN: Please present this juror.
9 MADAM CLERK: What say you for the Defense?
10 MR. GROSE: Please seat Mr. Minick.
11 MADAM CLERK: You may take a seat in the jury box.
12 (Whereupon, the juror takes a seat in the jury box.
13 THE COURT: Again, we'll take two alternates, strikes
14 will be one and two for each alternate.
15 MADAM CLERK: 106, Derrick Norman.
16 (Whereupon, Derrick Norman, a black male, came forward.)
17 MADAM CLERK: What say you for the State?
18 MR. BROWN: Please excuse Mr. Norman from the trial of
19 this case.
20 MADAM CLERK: You may take your seat back in the
21 courtroom.
22 (Whereupon, jury panel member takes a seat in the
23 courtroom.)
24 MADAM CLERK: 103, Juliana Morris.
25 (Whereupon, Juliana Morris, a white female, came forward.)

1 MADAM CLERK: What say you for the State?

2 MR. BROWN: Please present Ms. Morris.

3 MADAM CLERK: What say you for the Defense?

4 MR. GROSE: Please excuse this juror from this case.

5 MADAM CLERK: You may take your seat back in the
6 courtroom.

7 (Whereupon, jury panel member takes a seat in the
8 courtroom.)

9 MADAM CLERK: Number 12, Kimberly Beaty.

10 (Whereupon, Kimberly Beaty, a white female, came forward.)

11 MADAM CLERK: What say you for the State?

12 MR. BROWN: Please present Ms. Beaty.

13 MADAM CLERK: What say you for the Defense?

14 MR. GROSE: Please seat Ms. Beaty.

15 MADAM CLERK: You may take a seat in the jury box.

16 THE COURT: Right here at the side. One of those green
17 chairs, Ms. Beaty.

18 (Whereupon, the jury took a seat in the jury box.)

19 MADAM CLERK: 133, Patsey Truax.

20 (Whereupon, Patsey Truax, a white female, came forward.)

21 MADAM CLERK: What say you for the State?

22 MR. BROWN: Please seat Ms. Truax.

23 MADAM CLERK: What say you for the Defense?

24 MR. GROSE: Please excuse this juror from this case.

25 (Whereupon, jury panel member takes a seat in the

1 courtroom.)

2 MADAM CLERK: 116, Laura Phillips.

3 (Whereupon, Laura Phillips, a black female, came forward.)

4 MADAM CLERK: What say you for the State?

5 MR. BROWN: Please present Ms. Phillips.

6 MADAM CLERK: What say you for the Defense?

7 MR. GROSE: Please seat Ms. Phillips.

8 MADAM CLERK: You may take a seat in the jury box.

9 (Whereupon, the juror takes a seat in the jury box.)

10 THE COURT: All right. Any issues concerning selection
11 or composition of the jury from the State?

12 MR. BROWN: No, Your Honor.

13 THE COURT: Any from the Defense? Are we good, Mr.
14 Grose?

15 MR. GROSE: Yes, sir. Thank you, Your Honor.

16 THE COURT: Very good. Ladies and gentlemen who were
17 picked on this case, I'm going to ask that you adjourn to
18 the jury room right through that door immediately to your
19 right just for a few moments. I'm going to release the rest
20 of the panel and then I'm going to give you just some very,
21 very brief five minutes worth of instructions about what to
22 do and what not to do. Okay? So adjourn to the back.
23 Don't talk about the case. That should be amazingly simple.
24 You don't know anything about it yet. So take a brief
25 break.

1 (Whereupon, the jury exited the courtroom at 12:44
2 p.m.)

3 THE COURT: Solicitor, I assume you're comfortable
4 cutting the rest of the panel loose?

5 MR. BROWN: Yes, sir.

6 THE COURT: All right. Ladies and gentlemen who were
7 not selected on this particular case, I'm told by the
8 Solicitor, and again, as I explained to you earlier, I
9 anticipate that this case will take all week to try. So you
10 are essentially free to go. All right?

11 Now, remember what I said earlier. Just because you
12 came in here today, you are qualified as part of the panel.
13 You get that coveted get out of jury service free card which
14 is redeemable with any Circuit Court judge for the next
15 three calendar years. All right? So if you're summoned for
16 jury duty in the Court of Common Pleas or the Court of
17 General Sessions, you can contact your Clerk of Court, Emily
18 MacMahan. Let her know that in January of 2018 you
19 appeared. You were part of the pool. You were qualified to
20 serve. And odds are, if you want to claim the exemption,
21 you won't even have to show up on that first day for it.
22 Okay?

23 Yes, sir. You have a question?

24 JURY PANEL MEMBER: I have a question.

25 THE COURT: Yes, sir.

1 JURY PANEL MEMBER: If you served like over at the city
2 is that considered, too?

3 THE COURT: No luck. No, sir.

4 JURY PANEL MEMBER: Okay. I didn't know, because I had
5 been there.

6 THE COURT: It's only redeemable with a circuit judge.
7 It's not redeemable with city court. The city court,
8 magistrate's court or federal court. If they summons you,
9 you've got to go. But if you're summoned to come here,
10 please feel free to let Emily know and she'll take care of
11 it. All right?

12 JURY PANEL MEMBER: Three years, right?

13 THE COURT: Three years. Yes, sir. So you're good
14 until, I don't know, 2020, something like that.

15 Now, ladies and gentlemen, you will get a check. It is
16 in the mail. It is for jury service. It will be for the
17 grand sum of -- how much?

18 MADAM CLERK: Fifteen.

19 THE COURT: Fifteen dollars? A whole \$15. I know.
20 Cash it and blow it. All right? Don't use it for the
21 electric bill. Honestly, I know that if some day you do get
22 a chance to serve on a trial jury -- I will never have the
23 opportunity because of my job. I'm employed within the
24 walls of the courthouse. But I am always, always -- I've
25 always, always wanted to do that. And I hope that you do

1 get that opportunity at some point in the future, but it
2 just ain't today.

3 With that, you are free to go. There will be a work
4 excuse for you in the mail if you need it. It'll be in the
5 mail. You all take care and have a great week. Okay?
6 Thank you all very much.

7 (Whereupon, the jury panel members were released at
8 12:45 p.m.)

9 THE COURT: Let's go ahead and have the jury in,
10 please.

11 (Whereupon, the jury entered the courtroom at 12:48
12 p.m.)

13 THE COURT: The jury is back and seated. Ladies and
14 gentlemen, in a moment, as I explained earlier, I'm going to
15 release you for the rest of the day. I'm going to ask that
16 you be back in the jury room tomorrow morning at 9:00.
17 That'll give me an opportunity to go honor Judge Charles,
18 and it will give the attorneys and myself, once I come back
19 here, an opportunity to address any procedural matters or
20 pretrial stuff that doesn't involve you. Okay? So I assure
21 you that we will be working this afternoon, but I see no
22 reason to keep you guys around, obviously if we're not going
23 to be able to stay the case in earnest until tomorrow
24 morning.

25 Just a few housekeeping matter. First of all, in

1 Abbeville, that second row, be very careful about that
2 footrest. Okay? I just don't want you all tripping on it.
3 Feel free to use it as a foot rest, but when you're getting
4 up to that back row I've actually had some jurors catch
5 their feet on it. So, gentlemen, if you all keep those
6 seats -- you don't have to. But if you call keep them, be
7 careful stepping over that footrest, because it's kind of
8 not the safest thing in the world but it's going to make it
9 more comfortable.

10 Most importantly, ladies and gentlemen, while the case
11 is going on, and I'll give you further instructions on this
12 tomorrow. But while the case is going on it's very
13 important that you not decide any issue until all the
14 evidence has been presented and you've received my
15 instruction. Okay? Only those lines, please don't discuss
16 this case with anyone. Don't talk to your spouse about it,
17 not friends, not family members. Ultimately this decision
18 is going to fall to you people to make and that decision
19 cannot be influenced by anything that anyone says to you or
20 talks to you about. Okay? So simply do not discuss this
21 with your spouse, with anyone. Just keep it to yourself.
22 You are free to tell them that, yeah, I was picked on a
23 jury, but don't talk about the actual offense. Don't talk
24 about the allegations with them, because you never know.
25 They might say something that's well intentioned but

1 ultimately has some affect on you, on your findings of fact.

2 Most importantly, ladies and gentlemen, please do not
3 go home and engage in any kind of independent research.
4 Don't go home and Google peoples' names, don't try to do any
5 sort of independent research about this case. You're all
6 very intelligent people. As I'm sure you understand, a lot
7 of the stuff that's online, a lot of the stuff that's in the
8 paper, online media, there's no filter for that. Okay? A
9 lot of that stuff that's online just isn't true. It's not
10 accurate. And the rules of evidence are designed to try and
11 give you the best more reliable information possible okay?
12 So it's very important that you not engage in any kind of
13 independent research. I'll tell you that judges in other
14 parts of the state have been faced with situations where
15 jurors have disobeyed that instruction. It came to light.
16 It came to the attention of the Court. Those judges were
17 not at all happy with those particular jurors. I've never
18 been put in that kind of a position. Please don't put me in
19 that kind of a position. But just trust me that you'll have
20 the information that you need from the testimony, the
21 exhibits and the other evidence that's introduced while the
22 case goes on. All right?

23 With that, I'm not going to keep you any longer. If
24 you would, again, please be back in the jury room tomorrow
25 morning at 9:00. There was one juror who -- were you

1 auditioning for a part in a play who mentioned -- did they
2 get seated?

3 MR. BROWN: No, Your Honor.

4 THE COURT: All right. She did not get picked. Good
5 enough. Then we won't have to concerns ourselves with that.
6 You all have a great night. Yes, sir. You had a question?

7 JUROR: Just generally, when will the end of the day
8 be? When will we close things off in the afternoon?

9 THE COURT: It really depends. I don't -- usually
10 we'll take a lunch break around 1:00. I don't like
11 interrupting witnesses in the middle of their testimony. So
12 it kind of depends on how the testimony falls. And
13 typically around 5:00, 5:30, 6:00 is when we break. Maybe a
14 little bit earlier, a little bit -- you know. Typically no
15 later than 6:00 because most people have business to attend
16 to. If I find ourselves -- I want to make sure that you
17 guys get this case by Friday. So if we end up going a
18 little bit slower some days we may work a little bit later
19 on other days. Okay? But I wanted you guys to have this by
20 Friday at the latest, hopefully Thursday afternoon at the
21 earliest, so that we don't have to worry about either coming
22 back Monday or working on Saturday. Okay?

23 With that, enjoy your evening. I'll see you back
24 tomorrow morning at 9:00. You two are the alternates. Keep
25 those seats. I'll give instructions on moving around and

1 things like that tomorrow. Have a great night. Go on about
2 your business. I'll see you in the morning. Thank you.

3 (Whereupon, the jury was released at 12:53 p.m.)

4 THE COURT: The jury is out. As I -- we discussed in
5 chambers, the parties are marking exhibits and that sort of
6 thing. And then after I come back from the funeral, I
7 expect to be back maybe around 3:15 or so hopefully, 3:30.
8 We can address any objections, any procedural matters that
9 we need to deal with at that particular point in time so
10 that hopefully we can hit the ground running tomorrow
11 morning.

12 Is Mr. Tillman out on bond or is he --

13 MR. GROSE: He's in custody.

14 THE COURT: Oh, okay.

15 MR. GROSE: So we'll need to have him back at 3:15.

16 THE COURT: Certainly.

17 MR. GROSE: Yeah.

18 THE COURT: Very good. Let's make sure Mr. Tillman's
19 back at 3:15 and I'll be back as soon as possible everyone.
20 All right? We'll be at ease until -- if you call can be
21 back maybe around 2:30, that'll give my court reporter a
22 chance to grab some lunch and then you all can start --

23 MR. GROSE: Yeah, I was going to take lunch first, too.

24 THE COURT: Very good. I'll see you all shortly.

25 (Whereupon, a lunch recess was held from 12:54 p.m. to

1 2:30 p.m.)

2 (Whereupon, State's Exhibit Nos. 1 through 123 were
3 marked for identification.)

4 (Whereupon, Defendant's Exhibit Nos. 1 through 15 and
5 124 through 127 were marked for identification purposes.)

6 THE COURT: Let us go back on the record, if we could,
7 in Mr. Tillman's case. Of course, the record will reflect
8 that Mr. Tillman is present with counsel. My court reporter
9 informs me that you all have marked in excess of 100
10 exhibits, and some of which apparently you all can agree to
11 and they won't need to be -- we won't have to go through the
12 move to introduce, any objection kind of thing. But
13 apparently there are some that you disagree with. Why don't
14 we deal with first what we do agree with, and then we can
15 address what is in dispute.

16 Mr. Grose: It would probably be easier if I just go
17 through them and tell them -- and pull out the ones I want
18 you to look at.

19 THE COURT: Sounds great. Let's do it that way then.
20 It's 120. If you need some time, I can step down, Charles.

21 MR. GROSE: No, they should be real quick.

22 THE COURT: Okay. Because essentially, Judge, I'm just
23 -- I don't think that they need to admit any photographs
24 showing her body. So I'm going to keep them -- in the first
25 group I'm going to hand up the State's Exhibits 2, 3, 14,

1 18, 36, 37, 38 and 39. And what they've given divided in
2 the second group, State's Exhibit 47, 48, 49, 50, 51, 54,
3 55, 56, 58, 60, 61 and 63. The entire third group, Your
4 Honor, which is Number 94 through 123, these are all from
5 the autopsy. I think that's it, Your Honor. And obviously
6 the last group that I handed up was the autopsy. Some of
7 the photographs, both from the residence and from the
8 autopsy have what also appears to be medical intervention
9 involved. Some of the photographs from the residence, her
10 body is where it was found. In other photographs it's been
11 moved somehow, either turned over or their holding up hands.
12 We've been doing this a long time and I think the pendulum
13 is swinging back to where it used to be on photographs of
14 decedents, and particularly autopsies that there could be a
15 prejudicial effect of introducing these photographs,
16 particularly if there's no other evidentiary value other
17 than trying to appeal to the emotions of the jurors. And
18 that's what I'm concerned is going on here, because I think
19 we're going to have relatively few factual disputes this
20 trial.

21 The main factual dispute -- to give Your Honor a little
22 bit of background. As I understand it, I've been told that
23 Dr. Woodard places the time of death between 7:00 p.m. on
24 the 7th of November -- I'm sorry. 11:00 p.m. on the 7th of
25 November and 11:00 a.m. on the 8th of November. At a time

1 at 8:30 or 9:00 on November 8th, depending on which
2 timeframe you believe, Mr. Tillman had gone to work with
3 other people. And I understand there's really not going to
4 be any dispute as to that. And so, the dispute is going to
5 be whether or not Mr. Tillman killed Christie Stutler before
6 he went to work or whether she died after he went to work
7 and, therefore, was killed by somebody else. So this is not
8 a case where we're going to be contesting the nature of any
9 of the wounds. I think to the extent -- I understand why
10 they would want to have somebody describe the wounds, and I
11 think that Dr. Woodard is capable of doing that. I've had
12 trials with Dr. Woodard in the past in this courtroom, and
13 other pathologists, where they have been able to talk about
14 the injuries that somebody sustained without admitting any
15 photographs, and they can do it -- I've seen it done in
16 cases -- I don't know if I've ever tried one where they've
17 used like a manikin for a wig or something, a head, to be
18 able to show head entry wounds and exit wounds and angles.
19 But I've certainly have seen it where Dr. Woodard is able to
20 do diagrams of the body and explain what the injuries are
21 and the locations of the injuries and what he observed. And
22 given the nature of the issues that are at trial in this
23 case, we're not intending to dispute any of the injuries.
24 If there's anything that we need to stipulate to we can
25 certainly talk about doing that. And I certainly think Dr.

1 Woodard would talk about these injuries without having to
2 have the actual photographs.

3 THE COURT: All right. Let's break -- let's do it this
4 way. As far as the three groups are concerned, the first
5 group of photographs -- and, Solicitor, I'm going to want
6 you to speak to the issue of relevancy. That series of
7 photographs, there are four that are of primary concern to
8 the Court. I want you, of course, to talk about the reason
9 the State wants admission of all eight. The ones that are
10 of greatest concern to the Court -- and I realize that we
11 have family members present and I really don't want to do
12 anything to upset them. But four of the photographs --
13 three of the four, and I'm talking about Exhibits 37, 38 and
14 36, show the decedent basically face down. Her posterior is
15 clearly visible in one photograph. Her arm is hanging off
16 -- her left arm is hanging off the bed. That's in
17 photograph 38. And in photograph 39, that shows her front
18 as well as her vaginal area, and one arm is in the air.
19 Clearly rigor mortis has set in. The other arm is kind of
20 over her face. Why is the State looking to get these into
21 evidence?

22 MR. BROWN: Your Honor, part of the case is -- the call
23 was called in as a suicide. Also, there's Statements that
24 Mr. Tillman gave throughout when he was being interviewed
25 saying that he believed she got up and walked around.

1 There's -- the pictures we have of her in the room, and I
2 can't really see --

3 THE COURT: These four are the ones I'm most concerned
4 with. They show position. I assume that she was found face
5 down as depicted, for example, in State's 14. I assume that
6 that's the way that she was actually --

7 MR. BROWN: That's right. Face down, left side of the
8 bed. The pictures that we've shown -- this would be State's
9 Exhibit 39. Their allegation -- or there was testimony and a
10 video where he was talking to law enforcement that she must
11 have gotten up and moved around. Walked around with a
12 cloth. In this photo, State's 39, you clearly see pooling
13 of blood in one location and you also see a cloth. There's
14 a cloth that's mentioned throughout in interviews that Mr.
15 Tillman keeps referring to. That would clearly show a cloth
16 in that picture. Photograph 38 -- which one are you looking
17 at?

18 THE COURT: 39.

19 MR. BROWN: 38 shows her position. More of a closeup
20 of how she's laying with her arm.

21 THE COURT: Is there any significance in the State's
22 theory of the case -- and again, I don't -- I'm not privy to
23 what the State's theory is. But is there any significance
24 to the fact that from the waist down she's not wearing any
25 clothing?

1 MR. BROWN: He denied seeing any kind of bruising and
2 talks about how they sleep naked all the time, yet there's
3 bruising all over her.

4 THE COURT: All right.

5 MR. BROWN: It would show her position in the bed.
6 Part of the State's theory of -- if you're not aware, the
7 call in was that she committed suicide. So our intention to
8 show different angles of the room showing how she was
9 laying. Showing what may be around or what's not around,
10 you know, for a weapon to be, you know, supported by. Things
11 of that nature. It just really shows where she is and that
12 her location in this when she was found, and how she was
13 found, and with bruising on her.

14 THE COURT: The primary bruise that I'm looking at is
15 -- seems to be on her back, thigh, butt, leg, depicted on
16 State's Number 27. You can sort of see it on the bottom
17 right-hand corner of 38. And you can see it again on
18 State's 36. But you're -- when you're talking about
19 bruising, that's the primary bruising that you're talking
20 about, Solicitor?

21 MR. BROWN: There's bruising on the back of the leg.
22 There's also burn marks on her --

23 THE COURT: We're not dealing with these yet.

24 MR. BROWN: But, say, State's 36, it shows her
25 position. Also the -- anything around the outside. You

1 know, anything -- any kind of dresser, that nature.

2 MR. GROSE: Well, to be fair, they've got other
3 pictures that show the locations of furniture. So they
4 don't have to -- they don't have to have those to show that.

5 THE COURT: My initial reaction, Solicitor, is that 36,
6 37, 38 and 39, the prejudicial effect of those photographs
7 would outweigh any probative value.

8 Now, as far as proving about the bruising or what have
9 you, I may simply reserve ruling on State's 37. That's the
10 photograph that shows her left leg that I was referencing a
11 moment ago and seems to show -- or seems to be the best
12 photograph of the bruising that you're talking about. The
13 discoloration that's depicted in State's 39, I think more
14 likely than not is related to the period of time between the
15 time of death and the time that the photograph was taken or
16 that she was inverted from laying face down. And I believe
17 that those -- that that discoloration is probably from
18 pooling of fluid. So I may reserve judgment on State's 37
19 at the moment. But in terms of the position of body and the
20 way the body was discovered, I think 14, 2, 3, and 18
21 adequately show the manner in which she was found without
22 the prejudicial effect that's inherent in 36, 38, 39.

23 MR. GROSE: Can I look at those four?

24 THE COURT: Sure.

25 MR. GROSE: Because I'm having a hard time keeping

1 track of which ones are -- I guess my question would be why
2 do they need all four of those. I understand why three is
3 different than some of the others. But the other -- the
4 other three that we just discussed seemed to show mostly the
5 same thing. I understand three is different --

6 THE COURT: Yeah.

7 MR. GROSE: -- because it's a closeup.

8 MR. BROWN: Judge, I want to show angles of the
9 distance between her and something else over here.

10 THE COURT: Is that relevant to some issue in this
11 case?

12 MR. BROWN: If she shot herself with a rifle, it is.

13 THE COURT: The entry wound is to her temple?

14 MR. BROWN: Left temple. Exit right side of her head.

15 THE COURT: Okay.

16 MR. GROSE: I just -- I'm not sure why they -- other
17 than the objection I've already made, I'm not --

18 THE COURT: Right.

19 MR. GROSE: -- and again, I can see why they might want
20 to use -- in addition to Number 3, I can see why they might
21 want to use 2, 14 or 18. I just don't know why they need
22 all three --

23 THE COURT: Yeah.

24 MR. GROSE: -- is my concern.

25 THE COURT: Well, two of the photographs do have -- for

1 example, State's 14 does have a mirror that kind of reflects
2 the position -- her position. I can see where there would
3 be probative value in that, especially if there's some talk
4 of possible suicide with a rifle, whether or not it would be
5 possible -- physically possible for that to take place given
6 the proximity of other objections to the bed.

7 MR. BROWN: Really all four of those pictures, they're
8 all different angles.

9 THE COURT: I know. Do you need this one in
10 particular, State's 18, because these other three seem to
11 really capture what you're --

12 MR. BROWN: It would just be another angle showing
13 what's around the room away from her. You really don't see
14 -- don't see any blood, don't see anything like that. It
15 just shows her position in the bed with regard to other
16 pieces of furniture around the room.

17 THE COURT: My initial ruling, subject to change, if
18 this -- if something by way of testimony were to change my
19 mind, but 36, 38, 39, my initial ruling is at this point in
20 time my reaction is that the prejudicial effect outweighs
21 any probative value, so we're going to hold these out. I'm
22 going to hold off ruling on State's 37. I'm not ruling one
23 way or another on that one. Okay? But these, absent things
24 changing, are going to stay out. And subject to Mr. Grose's
25 objections, I'll allow 2, 18, 3 and 14 into evidence, and

1 reserving judgment on 37.

2 Moving on to the second group of photographs is -- I'm
3 looking at State's 61. Is there something terribly -- I'm
4 looking at 61, 63, 56, 58 and 60. They -- is there anything
5 particularly germane as it relates to those photographs?

6 MR. BROWN: I think State's 61 are the pictures as
7 you're entering the room and it shows more of the layout of
8 what you're seeing, how she's laying in the bed. Also
9 there's a heater at the base of this picture. There'll be
10 testimony about that heater. There's also a bucket with a
11 rag which appear to be soapy water. That will also be
12 pertinent in this case. It just shows where everything is
13 in the room, how it's laid out. There's also a notebook on
14 that bed. That's referred to a lot throughout interviews
15 and/or the investigation. With regard to State's 63, this
16 would just be another angle of the room as you first walk in
17 to see the layout. It kind of gives perspective of the size
18 of the room.

19 THE COURT: What's the significance of the heater and
20 the rag and the notebook as far as the State's case is
21 concerned?

22 MR. BROWN: Well, Mr. Tillman talks about all these
23 letters that -- I mean, all this documentation that she
24 writes all the time that we haven't found in it. They're
25 ripped out. The heater, he testifies -- or he says in his

1 interviews how hot it was inside the house. There's other
2 things he said throughout. I think something he had
3 mentioned to them -- to the biological mom prior.

4 MR. GROSE: I mean, you don't have that notebook
5 though?

6 MR. BROWN: No.

7 MR. GROSE: I mean, what did y'all do with that
8 notebook? Because that notebook would have been the best
9 evidence of that notebook. Y'all gave it away to family,
10 right?

11 MR. BROWN: I don't know what happened to it.

12 MR. GROSE: You all told him that you gave it to the
13 family. I know you all told him a lot of things in the
14 interview that weren't true, and that might not be true.
15 And I don't know that that was on the tape, but that's what
16 you all told him.

17 So, you know, Judge, we have -- I'm going to hand you
18 what we've marked as Defendant's Exhibit Number 1, which I
19 notice that they haven't marked, which is a diagram that
20 they did that could help orient the jurors to everything.

21 THE COURT: Well, the objection to these photographs is
22 that the prejudicial effect outweighs any probative value.

23 MR. GROSE: And relevance. I mean, I'm still not
24 convinced of -- and the fact that there is so many of them.
25 I mean, that's also an objection under 403 is the

1 accumulativeness.

2 THE COURT: Well, let me ask, Solicitor, the bucket,
3 the heater, the notebook, I understand what Mr. Grose is
4 saying about it would be great to have the notebook. But
5 how does this all tie into the State's theory of the case?
6 You ask the Defendant about it. And how is the presence of
7 the bucket, the heater and the notebook, how does that
8 indicate either prejudice or deception or whatever?

9 MR. BROWN: Judge, there's -- throughout his
10 statements, you know, they test for GSR, for DNA, things of
11 that nature, and part of his statements, you won't find my
12 DNA. You won't find GSR on me. It goes into the whole
13 theory of the case is there are multiple gunshots that
14 happened in that --

15 MR. GROSE: But we don't know when they happened. They
16 found one shell.

17 MR. BROWN: There's one casing. It'll go to the
18 State's theory of somebody could be cleaning up after
19 themselves. And so, that's the reason why I think that's
20 very relevant. The heater is very relevant.

21 THE COURT: Right, but how? I mean, he remarks that
22 she kept it -- or that she liked it hot in there, because
23 that --

24 MR. BROWN: Judge, there's -- there's -- weeks before
25 this he tries to say that she poured kerosene on herself and

1 was going to burn herself. And then going into all the
2 State's theory right now, the State believes he left. He
3 killed her that morning, left, put that heater in there
4 hoping the place would burn up and it would go along with
5 that story that he just told her mom, that she doused
6 herself with kerosene.

7 THE COURT: That's a kerosene heater then, I guess?

8 MR. BROWN: Yes.

9 MR. GROSE: This is the first we've heard of this
10 theory, 14 months into the case. That -- that's not
11 supported by -- and that gets into what we mentioned in
12 chamber about wild speculation. I mean, I don't even know
13 how -- there was a heater that was on. I don't know how
14 they get from that to what they just told you.

15 THE COURT: Well, I'm looking at State's 56. That
16 shows a very small electric space heater. There's another
17 kerosene heater reflected in State's 61. I don't see
18 anything in 63 that's not repeated either in 56 or 61. 60
19 seems to be cumulative to one of the previous exhibits that
20 the Court was going to admit. On 58, is that an electrical
21 junction box cover? Is that what that is that I'm looking
22 at? Is that relevant to anything? I see the flood light
23 just above it. But does that have any bearing on anything?
24 Because in this -- this photo I ask, because in this photo
25 those are the only -- that's the only item that's --

1 MR. BROWN: Judge, I think the intention is just to
2 show what all's in that room. A complete picture of the
3 room, and that shows a different angle. Some of the
4 pictures have the ceiling in it, some have the floor, and it
5 shows what's on the floor.

6 MR. GROSE: If we're going to do that then, Judge, I
7 think you need to look at all the other pictures that
8 they've got, because they've got pictures that show these
9 things without showing the body in them. And if that's what
10 -- if that's truly what they're trying to do, they can do
11 that without selecting pictures with the body.

12 THE COURT: I understand. But the question is whether
13 the prejudice outweighs any probative value. And I'll be
14 happy to look at some of the other photographs. But my
15 initial reaction is State's 56 and 61 are fair game, and the
16 others would simply be cumulative to those photographs.

17 Still dealing with the second group that Mr. Grose
18 referenced. I'm looking at 54. That's another photograph
19 that shows the decedent's left ankle at the corner of the
20 bed. My initial reaction is 51, 55, 47 and 54 would be
21 cumulative to photographs I've already given the green light
22 to. Is there anything, Solicitor, in those that is --

23 MR. BROWN: If I could --

24 THE COURT: Sure.

25 MR. BROWN: -- the ones we still have. Judge, this one

1 would be State's Exhibit 2. It would be distance -- showing
2 distance between something that --

3 THE COURT: I think I already ruled. This one's
4 copacetic. But that's copacetic.

5 MR. GROSE: Yeah, I think you have the ones in your
6 hand that are okay.

7 THE COURT: Correct. And it's the four that I'm
8 looking at here that I consider to be cumulative in terms of
9 what they depict compared to the ones that you're holding
10 right now that I've already said were all right.

11 MR. BROWN: Judge, I think I can -- I can live with
12 these.

13 THE COURT: You can live with the ones in your hand.
14 All right.

15 MR. BROWN: I think they show -- I was looking at what
16 else is in particular that picture, and I think we have --
17 have it all in that one.

18 THE COURT: Right. I'm going to find then that 51, 55,
19 54 and 47 are cumulative and not necessary. The remaining
20 three in the second group, 50 depicts the decedent.
21 Apparently she's been rolled over onto her left side.
22 There's some bruising or -- I take it it's bruising. I
23 don't know if it is or not, but some -- some discoloration
24 on the upper part just before you get to her right shoulder
25 on her back. And it otherwise depicts her without clothing,

1 with the exception of the shirt pulled up around her
2 armpits.

3 MR. BROWN: Judge, there would also be in that picture
4 a cigarette burn.

5 THE COURT: Is that what that is on her buttocks?

6 MR. BROWN: That's right.

7 THE COURT: Okay. And that is relevant in the State's
8 theory because there's allegations of prior abuse or
9 something that we're going to be getting into, or was this
10 at the time of the --

11 MR. BROWN: It would -- it would go into the whole
12 totality of the statements that he's made, and then new
13 bruising, old bruising, old wounds.

14 THE COURT: Is the cigarette burn referenced in his
15 statements?

16 MR. BROWN: He's asked about them.

17 THE COURT: And how does he respond?

18 MR. BROWN: He doesn't know anything about any of
19 these.

20 THE COURT: Okay. Are you going to have somebody who
21 can testify that that's a cigarette burn?

22 MR. BROWN: I believe so.

23 THE COURT: All right.

24 MR. BROWN: The pathologist.

25 MR. GROSE: I think he can testify that it's a burn. I

1 don't know that he can testify what caused it.

2 MR. BLACK: He'll say it's consistent with.

3 MR. GROSE: Well, and then we're going to have to get
4 into testimony about what he can --

5 THE COURT: Right.

6 MR. GROSE: -- what he can actually testify to or not,
7 because "consistent with" is speculation.

8 THE COURT: Well, we'll reserve judgment on State's 50
9 until maybe the pathologist testifies. Is he saying that
10 this is a -- this is not a post mortem burn, it took place
11 prior, or is he --

12 MR. BROWN: I think that was prior, or --

13 THE COURT: Prior to her death.

14 MR. BROWN: -- sometime before her death.

15 THE COURT: We'll put that in the questionable
16 category. 48 shows her --

17 MR. BROWN: Her fingernails.

18 THE COURT: And that's relevant for what reason?

19 MR. BROWN: They ended up taking fingernail samples
20 from her. It shows her hand and her position, and I guess
21 the composition of the body. But it does show her nails.

22 THE COURT: Are there any other photographs that show
23 her hand or show her fingernails?

24 MR. BROWN: That's showing her --

25 THE COURT: And that's State's 49 that depicts her --

1 her right hand. State's 48 depicts her left hand, and
2 there's a burn up here on the palm of her --

3 MR. GROSE: But it looks like, in the picture that
4 shows her body, and I'm looking at it from a distance, but
5 she's been unclothed. That's not how they found her. And
6 you also are getting some of the blood settlement, the
7 lividity or whatever they call it, in some of those that I
8 don't think is probative at all.

9 THE COURT: Well, what was the result of the DNA that
10 was collected from under her fingernails?

11 MR. BROWN: Tillman's.

12 THE COURT: It was his? Okay.

13 MR. BROWN: And I think -- I think the composition of
14 the body at that time is highly probative. She was found
15 sometime around 6:00 -- after 6:00 p.m. in the afternoon.
16 And our -- our belief is that it happened prior to Mr.
17 Tillman leaving the house that morning.

18 THE COURT: When you say the composition of her body,
19 what do you mean?

20 MR. BROWN: The rigor and bruising. It goes to how
21 long she'd been there, and how is --

22 MR. GROSE: But they can testify about that without
23 having to show that, and --

24 THE COURT: I think that I excluded the photo that
25 shows her being turned over onto her so that her front was

1 facing upward. I agree that you can -- you can offer
2 testimony about that, and maybe I'll revisit the -- if Mr.
3 Grose were to argue that rigor mortis had not set in, then
4 obviously I might go a different route. But I don't think
5 he's going to make that argument.

6 MR. GROSE: I'm not going to argue that.

7 THE COURT: As it relates to 49 and 48 though, I don't
8 find that those are so unduly prejudicial as to warrant
9 their exclusion.

10 Turning to the series of autopsy photographs. Are
11 there any autopsy photographs the Defense is okay with, or
12 all of these are --

13 MR. GROSE: I don't think most of those would be
14 admissible in a capital case, in the penalty phase, let
15 alone in the guilt phase of a non-capital trial.

16 THE COURT: Solicitor, I'll tell you that typically, as
17 far as autopsy photographs are concerned, the law, I think,
18 is pretty -- the danger is inherent with autopsy
19 photographs. The Supreme Court's been pretty clear on that.
20 I see a few here that seem to indicate maybe -- there's one
21 that maybe indicates -- was it a single shot? This seems
22 like a --

23 MR. BROWN: No, it's two shots. There's one in the
24 shin and one to the head. And the -- when it was called in,
25 it was called in as suicide. So that would go directly to

1 our case.

2 THE COURT: So 97 appears to be a photograph of her leg
3 perhaps showing entry point or direction?

4 MR. BROWN: Yes, sir.

5 THE COURT: There are a lot of -- what's the
6 significance of this one involving the photograph of her
7 hands that shows dark discoloration on her? I guess it's
8 her --

9 MR. BROWN: They had already tried to do -- I think
10 they tried to get fingerprints or something off of her. But
11 the discoloration would be showing that she was fighting.
12 She's scuffed up. She was fighting. And, Your Honor, I
13 can't -- I don't know what the number is. But some of the
14 bruising on her back, three bruises on her back, I don't
15 know if those were in from the initial photographs.

16 THE COURT: There was one that -- this is the one
17 that's in the questionable category, I may let in, I may not
18 let in. But it depicts her bruise on the left upper thigh.
19 Her left mid-thigh.

20 MR. BROWN: And there's also three bruising -- bruise
21 marks on her back, and I believe the pathologist -- that
22 would be State's --

23 THE COURT: I'm looking at State's 100 and 99.

24 MR. GROSE: I didn't think we had a 199.

25 THE COURT: No, 100 and 99.

1 MR. GROSE: Oh, okay.

2 THE COURT: This seems to be a photograph --

3 MR. BROWN: Three distinct bruises on the back of Ms.
4 Stutler. I believe the pathologist will -- his testimony
5 would be very similar to that one, which would be State's --

6 THE COURT: 50.

7 MR. BROWN: 50. There appear to be three separate
8 distinct blows that he believed to be the shape of a gun
9 butt.

10 MR. GROSE: And again, we're going to have to get into
11 that belief. I mean --

12 MR. BROWN: Or it's consistent.

13 THE COURT: Well, now I'm leaning towards allowing
14 State's 50 into evidence. That's the photo that was
15 initially in the questionable category, because it obviously
16 is a photo that depicts the decedent closer to the time of
17 death as opposed to the autopsy photographs. State's 100
18 and State's 99 also show blood. And I can't really speak
19 whether that blood was the result of the autopsy or
20 something else. It doesn't seem to be present in State's
21 50. So in lieu of State's 100 and 99, we're going to allow
22 in -- or I'm going to allow in, subject to all the
23 objections, State's 50. So that will now be fair game
24 because that's less prejudicial certainly than 100 and 99,
25 and it depicts the same injuries, and it depicts those

1 injuries closer to the time of death. As opposed to 99 and
2 100, presumably the autopsy that took place the next day,
3 there's going to be maybe more discoloration because of the
4 passage of time. That's what I would expect the doctor to
5 testify to.

6 The face shots, you have an awful lot of photographs,
7 Solicitor, of -- that are of the exact same profile.

8 MR. BROWN: Your Honor, we would -- we could actually
9 take out a couple of those. But we can also potentially put
10 tape or something over her eyes or nose. The State's 104
11 would show the bullet entry, where it entered, and also how
12 it is concealed.

13 THE COURT: What do you mean by concealed?

14 MR. BROWN: It's not just obviously there.

15 THE COURT: Oh, because it's behind her hairline, you
16 mean?

17 MR. BROWN: Combining that along with the pictures of
18 the --

19 THE COURT: Is that the entry point that I'm pointing
20 at right there? Go ahead.

21 MR. BROWN: That combined with pictures of her actually
22 in the home. This would go to our theory in the case.

23 THE COURT: Let me suggest that you make this maybe a
24 black and white photograph. That you either do a -- you can
25 easily scan this and convert it to black and white. It's

1 much less prejudicial. And quite honestly, the only time
2 I've allowed autopsy photographs in are in situations where
3 they're black and white, just because it's the color aspect
4 of it that drives a lot -- in my experience, drives a lot of
5 the prejudice.

6 MR. GROSE: That can be said for every single
7 photograph in front of you, Judge.

8 THE COURT: Well, I understand. The question is
9 whether the prejudicial effect outweighs the probative
10 value.

11 MR. GROSE: And I don't think though that's the entire
12 question, because, you know, when you look at some of the
13 older case law they talk about, you know, whether or not
14 these photographs depict something that's in issue or not.
15 And we're not -- we're not contesting a single thing that
16 they're talking about so far, as far as what injuries are
17 there, and --

18 MR. BROWN: Judge, I think it gets down to the point it
19 -- it is an issue. The 911 call initially comes out as a
20 suicide. But yet the way her body's laying and the absence
21 of a gun would speak -- say somebody knew a little more
22 about it than what they initially said. So all this would
23 go into it.

24 THE COURT: Let me -- let me ask this. Mr. Grose, is
25 the Defense going to stipulate that this was a homicide as

1 opposed to a suicide?

2 MR. GROSE: I'd have to talk with Mr. Tillman, but
3 probably.

4 THE COURT: If this is a homicide and the Defense is
5 willing to stipulate that this was, in fact, not a suicide,
6 that may change things.

7 MR. GROSE: Now, there's reasons why he thought it
8 might be a suicide. That is relevant. But --

9 THE COURT: Mr. Grose, let me do this. I'm going to
10 give you five minutes. I need to take a comfort break, and
11 perhaps somebody else does. So I'm going to take five
12 minutes, and then you can talk to him a little bit about
13 where you all stand on that question. We're at ease for
14 about five minutes.

15 (Whereupon, a brief recess was held.)

16 THE COURT: Mr. Grose, we'll go back on the record.
17 I'm assuming you've had a chance to talk to your client, or
18 where are we?

19 MR. GROSE: Yes. We'll stipulate that it's a homicide.

20 THE COURT: That seems to remove a great number of
21 issues and the question of whether it's a suicide out of
22 the picture, Solicitor.

23 MR. GROSE: Now, that being said, I don't want to be
24 misleading. I mean, they are going to -- there is reasons
25 why he thought it was a suicide. And -- and we're not going

1 to sit here and let them twist that into something that it
2 wasn't.

3 THE COURT: Fair enough.

4 MR. GROSE: But we are not contesting the injuries or
5 the manner -- cause and manner of death.

6 THE COURT: Understanding that your client, when he
7 spoke with police, may have had reasons to believe that it
8 was a suicide. Perhaps those reasons were -- I understand
9 your argument. In his mind there were perhaps reasons for
10 him to believe that it was a suicide. I understand your
11 argument. And without stipulating that he was covering
12 something up or being deceptive, he does agree though, at
13 this point in time it was not a suicide. It was, in fact, a
14 homicide and it was, in a sense, some other person took her
15 life?

16 MR. GROSE: Yes, sir.

17 THE COURT: That seems to narrow the issues quite
18 nicely.

19 MR. BROWN: Judge, throughout all four of his
20 interviews he maintained it was a suicide.

21 THE COURT: Right.

22 MR. GROSE: Judge --

23 MR. BROWN: And I'm trying -- I'm wanting to figure out
24 where we're going with this with regard to the evidence we
25 can present, because our theory to this case is up until

1 five minutes ago he's been with it being suicide, as far as
2 -- and that's what I'm trying to figure out where we're
3 going with the evidence and what we can present.

4 THE COURT: I assume that the State would have
5 additional evidence that demonstrates that the Defendant
6 perhaps had reason to know that it was not a suicide.
7 Something that actually links him to the homicide that the
8 Defense is now willing to stipulate to. It's not a small
9 matter for a Defense attorney to stipulate as to manner and
10 cause of death, or to a characterization that it is, in
11 fact, a homicide. By doing so, they've really improved upon
12 perhaps the efficiency by which this case can be tried, and
13 also maybe allow -- allows the jury to focus on the central
14 question in this case, maybe whether the Defendant did it.
15 I don't know what additional evidence you have that points
16 to the Defendant as being the guilty party. But if they're
17 willing to stipulate, Solicitor, I think that fixes a lot of
18 problems, including the question of whether the Court should
19 even charge suicide at the conclusion of the trial as a
20 potential cause of death.

21 MR. GROSE: I wasn't planning on asking for that even
22 without the stipulation, Your Honor.

23 MR. BROWN: Judge, I just want to be clear as to what
24 we can -- what pictures we can put in, because our --
25 obviously our theory in the case is she was battered and

1 beaten and then murdered.

2 THE COURT: Correct.

3 MR. BROWN: And so, I think it would be highly
4 probative to get these pictures in showing her -- her
5 bruising and the -- all the markings on her body.

6 THE COURT: And I did not disagree with that. I do
7 understand your position on that subject to his earlier
8 objection. But again, Solicitor, we're dealing with the
9 autopsy -- the autopsy photographs at this point in time.
10 I'm looking at 112. 112 is a color photograph of her right
11 side of her head. It speaks for itself. Is that the exit
12 wound?

13 MR. BROWN: That would be the exit wound. In that one
14 I think there's probably -- that would be --

15 MR. GROSE: That picture is extraordinarily
16 prejudicial.

17 THE COURT: I don't necessarily disagree with you, Mr.
18 Grose. I would suggest that you guys scan these things and
19 maybe, assuming for the moment that black and white is going
20 to come across as being substantially less prejudicial than
21 color, I would suggest that --

22 MR. GROSE: Well, I can stipulate that that's an exit
23 wound. I mean, I don't have a problem with that. Now, they
24 did identify -- some of the police officers did identify it
25 as an entry wound in some of their materials. So they may

1 have more confusion about it than we do. But I don't have a
2 problem with stipulating to what these -- I mean, what the
3 injuries are.

4 THE COURT: Let me suggest this, Solicitor. Go through
5 this third group again. I'm not ruling on any of them. You
6 know where I stand though as far as autopsy photographs.
7 It's where most judges stand. It's where Judge Johnson told
8 me stand when I first started doing this. And so, I'm
9 ruling on the Jim -- I'm using the Jim Johnson ruling with
10 regard to a lot of these photographs that were taken at the
11 autopsy. I would suggest that perhaps you scan these into
12 the computer. You have your IT person eliminate the color
13 aspects to it. That will reduce the prejudice. And more
14 importantly, now that we have this stipulation -- I realize
15 you haven't had a chance to think about it. It'll give you
16 a chance to review what you absolutely positively feel like
17 you have to have in the case. But I'm going to hand that
18 third group back to you and suggest that maybe that's a way
19 you can approach this. But it's my intention tomorrow, at
20 some point in time, to tell the jury, or I'll allow counsel
21 to if you all wish, but the parties have stipulated that
22 this is, in fact, a homicide.

23 MR. GROSE: I would be happy for the jurors to have
24 that stipulation before opening, or right after, whichever.
25 I mean, coming out of the gate. I want to be able to talk

1 about that in opening.

2 THE COURT: I would simply explain to the jury that a
3 homicide is a situation where one individual kills another
4 individual. That there are varying level of homicide. You
5 can have justifiable homicide, such as when somebody acts in
6 self-defense. But that it is agreed by the parties that
7 this is not a suicide and that someone did, in fact, take
8 the life of the victim. Let's leave it at that.

9 My clerk has kept track of what is in, what is out, et
10 cetera, and we still have a big question mark next to
11 State's 37. It shows the bruise on the back leg.

12 Anything else that we need to address pretrial before
13 we break for the day from the Defense?

14 MR. GROSE: I think there is an issue about the 911
15 recording. Their -- Vonnice Cummings, who is Mr. Tillman's
16 mother, is heard on that recording. Thank you, Judge. Ms.
17 -- under the confrontation clause under *Crawford* and the
18 case that came after it, I believe it was *Davis vs.*
19 *Washington*, but I could be mistaken. Let me back up. Mr.
20 Tillman is the one who made the 911 call. And I understand
21 that statements that he made are going to come in, if they
22 choose to. And this would certainly -- and I understand why
23 they see this call as being relevant to their case. If
24 they're going to introduce Mr. Tillman's mother's
25 statements, I think they have to call her as a witness. And

1 since this was mentioned in chambers this morning, Mr. Black
2 has indicated to me that they were planning to introduce the
3 911 tape, but not call Charles' mother as a witness. And
4 so, if that's the case, then I think that part of the tape
5 needs to be redacted because that would be a confrontation
6 clause problem, because they're asking questions at that
7 point in the call.

8 THE COURT: What is the substance of what she says in
9 the call?

10 MR. GROSE: It's hard to understand, but it has to do
11 with whether or not there was a gun at -- you know, on the
12 property.

13 MR. BROWN: Judge, the 911 -- the call's initiated by
14 Mr. Tillman. He calls 911. He's down in the trailer at
15 that time where Ms. Stutler is -- is lying lifeless. He
16 then leaves the trailer and says I'm going up to tell my
17 momma what's going on. He goes up to his mom's house, which
18 is on the property, and he tells her Christie's condition.
19 Momma said -- he said something about shot, and momma says
20 what about that gun, or something about a gun, and he starts
21 arguing with his mom on the phone.

22 Your Honor, this would be -- this is a 911 call kept in
23 the ordinary course of business. It's -- he initiated the
24 phone call. It's just a recording of his conversation with
25 his mother at that time. So it'll be --

1 THE COURT: So he calls from a cell phone, I guess --

2 MR. BROWN: Yes.

3 THE COURT: -- at that location, and then he --

4 MR. BROWN: He walks over to his mother's.

5 THE COURT: -- walks -- he walks up to his mom's house.

6 The 911 call reflects him relaying to his mother what he has
7 found --

8 MR. BROWN: Found.

9 THE COURT: -- and what he's seen, and then she remarks
10 about a pistol or something, or a gun?

11 MR. BROWN: A gun.

12 MR. GROSE: And I have no argument against the
13 admissibility of that provided they call her as a witness
14 and I get an opportunity to cross-examine her. That's all
15 I'm asking.

16 THE COURT: Okay. They start arguing back and forth
17 and -- help me on this.

18 MR. BROWN: Tillman is telling her what's going on and
19 she marks the remarks about a gun. And then she says, well,
20 don't yell at me. I don't know. And then kind of gets
21 quiet as the phone conversation is still being recorded by
22 911. And later on he comes back on the phone, once law
23 enforcement gets there, and starts going down to his
24 trailer. So it captures the whole 911 call, but he has
25 somewhat of a disagreement with his mom on the 911 call

1 that's recorded about the gun.

2 MR. GROSE: As long as they call the mom I don't have
3 an objection.

4 THE COURT: Is there a reason that you're not planning
5 on calling the mother? That's my first question. My second
6 question is, isn't there recent case law from South Carolina
7 on this 911 issue, whether the phones -- whether the 911
8 call is, in fact, a business record or qualifies under the
9 business record exception? I don't know if it was a recent
10 case or if it was something that was recently issued. I'm
11 trying to -- I'm wanting to say that I saw something
12 recently.

13 MR. GROSE: I don't know if it qualifies in the
14 business record exception or not, but it's a statement
15 that's subject to cross-examination. And like I say, I
16 don't have -- I'm not objecting to it as long as they call
17 her. She's sitting right here, and she'll be here.

18 MR. BROWN: Judge, every other trial we've had 911 come
19 in as a business -- as a business record. Kept in the
20 ordinary course of business.

21 MR. GROSE: I've had trials where 911's come in. I
22 don't know if I've ever had it come -- they may -- they may
23 come up and say do you keep these recordings in the ordinary
24 course of business. That's not why they're admissible.
25 They'd admissible as, you know, present sense impressions or

1 excited utterances of the person making the call up to a
2 point. That's why you get that *Davis* case that says, you
3 know, after a certain point the rest of the 911 call isn't
4 admissible.

5 THE COURT: Right. I thought there was some recent
6 guidance from our Supreme Court on that particular issue
7 though. I may be mistaken. But perhaps it was a matter
8 that was argued and I was simply looking at the oral
9 arguments that were scheduled. But you've been able to find
10 something, Mr. Black? What have you found?

11 MR. BLACK: Yes, sir. Your Honor, I have -- I've got
12 the Court a cite, and I searched -- I searched on
13 WestlawNext 911 business record exception. *State vs.*
14 *Thompson*. It looks like it's a Court of Appeals case. It's
15 420 S.C. 386, or 803 S.E.2d edition 44. And I haven't read
16 it yet. *State vs. Thompson*.

17 THE COURT: Hang on one second. I'm looking at it now.
18 *Thompson* is the one I remember.

19 MR. GROSE: If I could just add two things about
20 *Thompson*. One, it's talking about this distinction between
21 *Crawford* and *Davis*, just like what I'm doing, and it's
22 talking about the victim's statement. At first glance, that
23 appears to be a different situation than what we have. I
24 would also tell you that at Appellate case number
25 2017-001992, that case has been briefed at the cert petition

1 stage where our State Supreme Court. So it's not certain --
2 I mean, that case is not going to final judgment. And
3 again, our US Supreme Court has said that 911 tapes are not
4 inherently entirely admissible under the confrontation
5 clause. The business records, it looks like, authenticating
6 that --

7 THE COURT: I agree with you. A business record
8 exception is not really applicable here --

9 MR. GROSE: Yeah.

10 THE COURT: -- because that relates to authentication
11 as opposed to --

12 MR. GROSE: And I'm not objecting to authentication.

13 THE COURT: Right.

14 MR. GROSE: I'm just saying that if they're going to
15 introduce that, then they have to call Ms. Cummings and ask
16 her about that.

17 THE COURT: Do you have the 911 recording on digital
18 format?

19 MR. BROWN: We just have it on disc.

20 THE COURT: On disc. Do you mind if I borrow it for the
21 evening and then -- well, I probably shouldn't do that
22 technically. Can you scan it to your computer and email it
23 to me? Because I really don't want to be taking into
24 possession evidence.

25 MR. BROWN: Judge, I think I have another copy of it.

1 THE COURT: If you can find maybe another copy. I'll
2 listen to it tonight and I'll make a call.

3 And again, it's her saying on the telephone, well, what
4 about that gun, and then there's an argument back and forth
5 and no one's really able to understand what they're saying?
6 Is that how it's depicted?

7 MR. BROWN: It essentially sounds like -- I don't have
8 it right in front of me. So what about -- you had one down
9 there yesterday. And he says I didn't have no gun down
10 there. And they -- it gets muffled, and there's
11 conversation going on about that. That's the short of it,
12 but you can hear it.

13 THE COURT: Let me do that, and I'll just let you guys
14 know by email tonight or text or something where I'm coming
15 down on this. Okay?

16 MR. GROSE: Okay. The only other thing that I see as
17 being an issue, and there may be just some things we need to
18 put on the record. But the only other thing that I see is
19 an issue, we mentioned in chambers this morning, will be
20 regard to some of the expert witness testimony. There's
21 three prongs under *Watson vs. Ford Motor Company* that Your
22 Honor has to consider. The need for the expert testimony,
23 which I don't anticipate being an issue. The qualifications
24 of the experts, which I don't anticipate being an issue as
25 long as they qualify them narrowly to what they're training

1 is. What may become an issue is the gatekeeping function as
2 far as the reliability of their opinions. I imagine that
3 some of their opinions will be reliable and admissible. I
4 think we've already heard with some of the autopsy photos
5 that they're going to be doing some speculation about things
6 that they don't -- they don't know about. And that may be
7 unreliable. And I think the *Watson* case tells us that we
8 have to deal with that outside the presence of the jury
9 before they're called. We wouldn't need to go through an
10 entire expert examination because, like I said, I'm not
11 questioning certain things, but it would just be the
12 opinions.

13 THE COURT: Specifically, what expert testimony do you
14 think might fall under --

15 MR. GROSE: Well, I think --

16 THE COURT: -- the *Watson* case?

17 MR. GROSE: I think that they may have Dr. Woodard
18 begin to speculate about some things that are beyond what
19 are the findings of a pathologist. This thing could happen
20 with the DNA expert, and same could happen with the gunshot
21 residue expert. I believe those are going to be the main
22 ones.

23 THE COURT: What would you find objectionable? Having
24 reviewed the reports, what would you -- I'm trying to get a
25 feel for what nature the objection is going to be. I'm

1 assuming you're not taking issue with DNA to help identify
2 somebody, or the gunshot residue does, in fact --

3 MR. GROSE: Well, when they start offering an opinion
4 and trying to reconstruct what some of this stuff means.
5 Opinions that go beyond -- I mean, yes, they can talk about
6 DNA. They can talk about how DNA can get on something. But
7 if they offer an opinion that this means that Charles
8 Tillman shot that gun, I don't think they can do that based
9 on the evidence in this case. And, you know, Dr. Woodard,
10 you know, he's saying there's bruises on there -- on her
11 body, fine. I don't have a problem with that. But when
12 they start saying those bruises were caused by a butt of a
13 gun, or the cigarette marks, or something like that, that's
14 beginning to get into a cause and effect that's -- you know,
15 it might be consistent with that, but he better darn well
16 list the other 460,000 things in the universe that it's
17 consistent with as well. That's where I think it gets to be
18 -- where the expert testimony gets to be prejudicial.

19 THE COURT: I'm with you that a DNA analyst probably is
20 not going to be in a position to say that your client
21 definitively fired a -- do you all have the firearm that's
22 involved in this case?

23 MR. BROWN: Yes, sir.

24 THE COURT: Ballistics match, everything copacetic and
25 --

1 MR. BROWN: It matches a shell casing that's located
2 right there at the bed.

3 THE COURT: Okay. And I assume that there's gunshot
4 residue on the Defendant's hands?

5 MR. BROWN: Shirt.

6 THE COURT: There is?

7 MR. GROSE: There's no -- not on his hands.

8 MR. BROWN: On his shirt.

9 MR. GROSE: On his shirt.

10 THE COURT: Oh, I'm sorry. On his shirt. Okay. I
11 misheard you. And there's DNA on -- his DNA on the firearm?

12 MR. BROWN: On a clip.

13 MR. GROSE: His DNA, or one of his paternal relative's
14 DNA to be precise.

15 MR. BROWN: And under her fingernails.

16 MR. GROSE: And again, she can have his DNA under her
17 fingernails because she lives in the same house that he does
18 --

19 THE COURT: Correct.

20 MR. GROSE: -- you know. And so, I don't want them to
21 say that that means that she was in some sort of struggle
22 with him. That's where I run into a problem is to, you
23 know, when the experts start providing testimony and
24 offering an opinion that's really nothing more than
25 speculation, but just happens to be the theory of the

1 government's case.

2 THE COURT: Well, obviously when it comes from the
3 experts, they can testify that there was gunshot residue
4 found on the Defendant's clothing. And as you correctly
5 point out, maybe it's not at all unusual, but DNA from
6 somebody that you're involved with intimately might be --
7 their DNA may very well be on your person or vice versa. I
8 don't know that though -- I don't know that that necessarily
9 limits the experts from testifying to that. That becomes a
10 question of what can be -- you know, what reasonable
11 inferences can be extrapolated. And obviously they would be
12 free to argue the DNA is under her fingernails because she
13 was struggling. You argue the DNA is under her fingernails
14 because they were living together and it's not at all
15 unusual when you're living with somebody to have, perhaps,
16 that person's DNA --

17 MR. GROSE: But when they start asking questions that
18 -- if the expert's going to get into possibilities about all
19 of this, then they've got to list all the possibilities.
20 It's got to be reliable.

21 MR. BROWN: Judge, I think that's what cross-exam is
22 for.

23 MR. GROSE: Well, no. That's -- that's what *Ford* says
24 -- *Watson vs. Ford Motor Company* says is the Court's
25 responsibility as the gatekeeper. And I'll tell you, you

1 watch the arguments at the Supreme Court and you listen to
2 some of these Justices talk and speeches that they give at
3 CLEs, and they're talking about, you know, what is reliable
4 expert testimony or not. I mean, this is -- you know, it's
5 not cutting edge, but this is something that is right in the
6 middle of Appellate cases right now.

7 THE COURT: I understand your position. My
8 understanding, and I'll be more than happy to take a second
9 look at *Watson*, but as far as the reliability issue, I think
10 what the Court is asking the trial Court's to do is to make
11 sure that junk science isn't allowed.

12 MR. GROSE: Right. And I'm asking for my in camera
13 hearing of all the experts under *Watson vs. Ford Motor*
14 *Company*. I think it's mandatory. We won't have to argue
15 about it. We can find out what they're going to say, and
16 then you can rule on what's admissible and not admissible.

17 THE COURT: What do you -- what's your position on all
18 of this, Mr. Brown? I don't think that Mr. Grose is
19 necessarily challenging the science of DNA, forensic
20 pathology or gunshot residue, correct?

21 MR. GROSE: I'm not --

22 THE COURT: You just don't want them -- you just don't
23 want them speculating?

24 MR. GROSE: But I want -- I want to know -- I want the
25 Court to conduct a hearing to determine whether or not their

1 opinions are reliable. And if we have -- if we bring the
2 witnesses in and they say this is -- this is a DNA expert.
3 What are the opinions that you're going to testify to. And
4 we can go through that, and if I have any objections then --
5 then Your Honor can decide whether or not that opinion is
6 admissible, that it's reliable.

7 THE COURT: If you would, just answer my question. Are
8 you maintaining that these individuals that are getting
9 called by the State presumably have been qualified as
10 experts countless times are engaged in junk science, or are
11 you simply asking that the Court be mindful of the potential
12 for questions that offer or request a speculative answer
13 from those experts? I understand your position that you
14 don't want their status as an expert to cast any imprimatur
15 upon the State's theory of the case. But at the same time,
16 you're not arguing that DNA evidence or DNA doesn't exist,
17 and --

18 MR. GROSE: No, I'm -- no, I'm not. I'm not.

19 THE COURT: So what's the point of the hearing?

20 MR. GROSE: The point of the hearing is that you still
21 have to determine whether their opinion is based on the
22 facts and data that they're relying on are reliable.

23 MR. BROWN: Judge, I think that would just require a
24 contemporaneous objection at the time the question's asked.

25 MR. GROSE: Well, *Watson vs. Ford Motor Company* says

1 I'm entitled to a hearing on that. They're telling me by
2 how they're arguing this so ferociously that they're going
3 to try to get into some junk science type opinions. Not
4 that the underlying science is junk, but that the opinions
5 are junk. I want my hearing under *Watson vs. Ford Motor*
6 *Company*. That's all I --

7 THE COURT: Can you cite -- can you cite me to the
8 portion of *Watson* that you're talking about that relates to
9 that theory, the reliability of the opinions, because my
10 understanding was that it's junk science the Court's
11 supposed to act as a gatekeeper on. And if the Defense
12 agrees that the science of forensic pathology --

13 MR. GROSE: Then all of it is junk science then, if
14 that's the objection that I have to make. I think what
15 *Watson vs. Ford Motor Company* says is, is that there's three
16 things that the Court has to determine before expert
17 testimony is admissible. One, whether there's a need for
18 expert testimony. Two, whether this expert has the right
19 qualifications by training, experience, etcetera, etcetera.
20 And the third is whether the substance of their opinions is
21 reliable. And an example would be the forensic
22 interviewers. You know, our Court has said that a forensic
23 interview -- although that name is not right, they said that
24 that's admissible, but the reliability of certain opinions
25 are not admissible. That's what I'm saying here. What I'm

1 saying here is the State of South Carolina in 46 counties
2 and 16 judicial circuits, has gotten away -- excuse the pun,
3 but it's gotten away with murder in homicide trials by
4 bringing in experts to testify beyond what is the reliable
5 opinion within their field of expertise. And that's all I'm
6 asking. And *Watson* says we're entitled to a hearing on
7 that. I'm trying to narrow the focus of that hearing.

8 THE COURT: And I'm still not understanding what you're
9 objecting to. I thought I did. But now I'm hearing that
10 you're objecting to all the science.

11 MR. GROSE: Well, if I have to go get my hearing, I
12 will. But I'm trying not to do that because that would be a
13 waste of time. If Dr. Woodard wants to come in here and
14 testify about bruises, I'm okay with that. When he starts
15 testifying that that's consistent with the butt of a gun,
16 I'm not okay with that.

17 THE COURT: But you would be okay if he were to say
18 that I measured these bruises and the bruises are six inches
19 long and an inch and a half wide?

20 MR. GROSE: If he measured them. I don't know if he
21 measured them, but --

22 THE COURT: Let me talk. Let me talk for a minute.
23 Okay?

24 MR. GROSE: Yeah.

25 THE COURT: Let me talk for a minute, please, Mr.

1 Grose. So he gives those measurements. And then the
2 Solicitor can call some other witness that shows -- that
3 they can testify that they measured the butt of the rifle
4 and it's six inches long and an inch and a half wide.

5 MR. GROSE: I don't think I -- I don't think I could
6 argue with that if that was, in fact, the testimony. But
7 when -- but -- and that would be a circumstantial evidence
8 argument that they can make to the jury. That is not that a
9 butt of a gun caused that bruise I don't think it's an
10 opinion that anybody can give as an expert. That's my
11 point.

12 And I guess what I'm pointing to is that quote that
13 says, "Finally, the trial court must evaluate the substance
14 of the testimony to determine whether it's reliable," and it
15 cites *State vs. Counsel*. But that's -- that's what I'm
16 asking for.

17 THE COURT: All right. And I haven't finished reading
18 *Watson* yet, but my memory is consistent with what I've read
19 so far. *Watson* is a junk science case. The thing that the
20 Supreme Court had the biggest issue with was the lack of
21 peer review, the lack of scientific foundation for the
22 opinions that the expert gave in that case. And let me --
23 let me finish this portion here, please.

24 I've looked at *Watson*. It seems that the Court took
25 issue with the expert Dr. Anderson who gave testimony in the

1 field of EMI. They took issue with two things. First, that
2 Dr. Anderson failed to meet the 702 requirement for
3 expertise in a particular area. And then they talked about
4 the *Counsel* factors in determining whether the EMI evidence
5 was scientifically based and reliable. And that goes to the
6 stuff that we're familiar with; publication, peer review,
7 prior application and method to the type of evidence
8 involved in the case, quality control procedures to ensure
9 reliability and consistency of the method, recognized
10 scientific laws and procedures. So they seem to take issue
11 and essentially say that the EMI testimony that he offered
12 was junk science.

13 We'll handle it this way. Obviously if the witnesses
14 -- if there are issues with regard to the witness'
15 qualifications, their background, their expertise, etcetera,
16 I'm more than happy to allow there to be voir dire --
17 additional voir dire of those witnesses.

18 Solicitor, I think what Mr. Grose is truly getting at
19 is speculation and trying to get the expert witness's
20 imprimatur as an expert on the State's theory of the case.
21 I think my example about the gun butt is probably the most
22 germane. It's perfectly fine if Dr. Woodard took
23 measurements of her bruising on her back. If he can testify
24 that the bruise is six inches long and an inch and a half
25 wide and that so happens to match the measurements of the

1 gunstock, then clearly that's an inference that you can
2 argue to the jury. I don't think that the State -- because
3 obviously Dr. Woodard was not there at the time of the
4 homicide or at the time of the assault, clearly he's not in
5 a position to testify that the butt of the gunstock in fact
6 made that bruise, but --

7 MR. BROWN: Yes, sir. I don't believe he's going to
8 say it definitely did. I think it will be more consistent
9 with, in his observation.

10 THE COURT: Well --

11 MR. GROSE: But then I need to know the other things
12 that it's consistent with. I mean, that's the -- I mean,
13 that's where the problem with the expert putting their stamp
14 of approval on the State's case is it's prejudicial because
15 -- because like you said, he wasn't there. He doesn't know.
16 I have no problem with -- I have no problem with the
17 testimony about the bruise, how you outlined it, and them
18 being able to argue that. I have no problem with that. I
19 think that's fair game.

20 THE COURT: Well, here's how I think it's best that we
21 handle it, because this is something that -- he says it
22 could be the butt of the stock. At the same time it could
23 be from falling down steps. And I'm sure that you're
24 absolutely correct and you can probably off the top of your
25 head come up with at least 50 -- maybe not 400, but 50 that

1 would certainly drive home your point on cross-examination.
2 I understand where you are -- if you feel like they step
3 over a line, I'm sure you won't be shy about letting me
4 know. Because unlike the *Watson vs. Ford* case, we're not
5 dealing with junk science, pseudoscience, stuff that hasn't
6 been tested. We're dealing with science that we've been
7 confronted with on a daily basis. Your objection, I think ,
8 goes more towards the nature of the way that direct is going
9 to be handled as opposed to the underlying scientific
10 validity in the experts' fields.

11 MR. GROSE: Well, I would think though that certain
12 opinions would not have scientific validity. And that's --
13 and that's what I have -- again, you can -- you can have an
14 expert -- a child abuse dynamics expert in a child sexual
15 abuse case, the Court has said they're allowed to testify.
16 But then they can give unreliable testimony and go beyond
17 that. That's what I'm trying to prevent in this context.
18 And I think lawyers on my side -- on the Defense side have
19 been lazy over the last couple of decades about not
20 objecting to some of these opinions that go beyond the
21 scope. And that's what -- and I have, too. I'm still
22 wording stuff. And that's -- that's where I'm coming from.

23 THE COURT: Well, perhaps that -- perhaps if there --
24 I'm sure that if there was something objectionable that you
25 feel like is going outside the scope of their particular

1 expertise, an objection, Judge, calls for speculation
2 outside the expertise of the -- or outside the
3 qualifications of the witness, something along those lines,
4 and then we'll kick it around, or I'll sustain it or I'll
5 overrule it or something will happen. But --

6 MR. GROSE: Well, I'm going to be asking for a hearing
7 at that point. I mean, I think it would be better to have
8 the hearing up front and then we know, you know.

9 THE COURT: Well, the flip side of that is I assume
10 that these experts are going to be coming at specific times,
11 and for us to do it in limine means. I don't know -- I
12 don't know what order of witnesses the State intends to
13 call, but it's kind of hard to do it and then have them
14 report back. Let's see how it goes first, and if we get
15 into troubled areas or problem areas we'll deal with it as
16 it comes.

17 MR. GROSE: My suggestion would be to do it before they
18 take the witness stand. When they're here. You have a
19 hearing outside the presence of the jury, and then they get
20 to testify.

21 THE COURT: I understand. I don't know if I'm going to
22 do it that way. I'll think about it though. I probably
23 won't, but I'll consider that. I understand your position
24 though.

25 MR. GROSE: Well, I'm probably going to ask for it when

1 at least some of them come, so...

2 THE COURT: I understand. But again, *Watson* seems to
3 indicate that if performing the gatekeeping role -- and this
4 is my final ruling on this matter, so we're not going to
5 argue about it anymore. But in performing the Court's
6 gatekeeping role I'm focused on quackery. I'm focused on
7 pseudoscience. I'm focused on stuff -- I should be focused
8 on stuff that doesn't meet rigorous scientific standards.
9 I'm not hearing that that's what you're challenging. What
10 I'm hearing is something completely different. So this, I
11 don't see, as being a *Watson* case where we're dealing with
12 some new science of footprint impressions, or being able to
13 understand what a dog's bark means, or string theory. We're
14 not dealing with those things. We're dealing with
15 established science in this case.

16 So everybody knows where we stand. No more discussion
17 on that. Thank you very much. Anything else? I assume
18 you're going to want to sequester witnesses?

19 MR. GROSE: No.

20 THE COURT: No, okay. Good. Anything from the State?

21 MR. GROSE: We need to put on about the statements.
22 They have four -- three video statements and one audio
23 statement of my client. They've redacted to remove things
24 that relate to prior record, the inability to own a gun or
25 possess a gun because of prior record, polygraph, having

1 been in jail on other charges. I think their position is,
2 is that he wasn't in custody during those statements. I
3 would actually take the position that he was in custody
4 during the third video recording, and the audio recording,
5 which is the fourth statement, but I'm not challenging
6 Mirandas on those and I'm not challenging the admissibility
7 of those if -- and that they tell me that they're going to
8 use them.

9 There's also an additional statement of a witness named
10 Lawrence Postel who I understand that they're not calling as
11 a witness. If they were calling him as a witness I would
12 most likely want to play a portion -- or the majority of his
13 interview to the police. But it would have to also be
14 redacted because he talks about what he claims to know about
15 my client's polygraph. And if you're not going to use that,
16 I'm not going to go back and --

17 MR. BROWN: We're not planning on calling him.

18 MR. GROSE: Okay. So we don't have an issue there.

19 THE COURT: Just so I'm clear, Mr. Grose. The Defense
20 is not objecting to the first, second, third or fourth
21 interviews?

22 MR. GROSE: The redacted interviews.

23 THE COURT: The redacted --

24 MR. GROSE: We're not objecting to the redacted --

25 MR. BROWN: And, Judge, I will pass forward a copy of

1 all the redactions we pulled out. I emailed Mr. Grose a
2 couple of weeks ago asking about any particular redactions
3 he might want. I think -- I think we've gotten everything.
4 I've listened to it several times.

5 THE COURT: If he's good, I'm good.

6 MR. BROWN: Yeah. I haven't gotten a list from them.
7 So this is what we believe to take out, and we've taken out
8 everything we have found.

9 MR. GROSE: I just wanted there to be record of what
10 we're doing. And I didn't want there to be -- I wanted the
11 record to reflect that there is a disagreement about whether
12 he was in custody, but that's not something that I see as an
13 issue.

14 THE COURT: All right. Fair enough. I understand.

15 MR. BROWN: Judge, just to be perfectly clear. These
16 are all redactions that the State's taken out. I've not
17 gotten the list. But I have provided him a list. I think
18 he's --

19 MR. GROSE: I think we're good, Judge.

20 THE COURT: Sure. So long as we're good. How long are
21 all these that we're going to have to play? Because it's
22 four interviews --

23 MR. BROWN: Judge, there's -- the totality, if we
24 played all of them in full, it would be seven and a half
25 hours. I'm not planning on playing -- I was planning on

1 playing -- or introducing them all, and then I might not
2 even play one of the discs. I think if they wanted to
3 listen to it, or if Mr. Grose wanted to play some of it,
4 we'd have it in. But a lot of it -- he gave four interviews
5 and he never admits to it.

6 THE COURT: Right.

7 MR. BROWN: He gives different little pieces here and
8 there. But we are planning on playing the first one in it's
9 entirety, and then parts of the second -- or parts of the
10 third and fourth.

11 MR. GROSE: Well, but is the second one in it's
12 entirety or --

13 MR. BROWN: First one in entirety.

14 MR. GROSE: First one in entirety. I'm going to
15 require, under the rule of completeness, that they play the
16 first, second and fourth in their entirety. And I think --
17 I think --

18 THE COURT: Can I ask you this? How -- how long if --
19 you weren't planning on playing the third?

20 MR. BROWN: Second.

21 THE COURT: You're playing the first, second --

22 MR. BROWN: First, third and fourth.

23 MR. BROWN: First, third and fourth is what you're
24 looking at playing? First, third and fourth. And the
25 Defense wants first, second and fourth in it's -- in their

1 entirety?

2 MR. GROSE: Yes. I would argue that one of the least
3 relevant ones is the third one where the large portion of
4 that is just to get a DNA sample from him. And they ask him
5 to explain -- I mean, he's under -- obviously under a lot of
6 physical and emotional stress at that point. Probably
7 hadn't been sleeping. And they ask him to explain, you
8 know, what she told him in a vision. I mean, I don't -- you
9 know, I think the jury is going to see that for what it is.
10 But that --

11 THE COURT: May I suggest this? There's a strong
12 likelihood if we're dealing with seven and a half or eight
13 hours to play all of these, that we're going to end up
14 putting the jury to sleep or something's going to be lost.
15 You gentlemen know this case better than anybody else. I
16 understand the rule of completeness. And I suppose if the
17 Defense truly insists -- I'm not going to require anyone to
18 try their case in a specific way. But if there are tidbits
19 or bits and pieces that are germane, relevant, I would much
20 prefer that you all focus on aspects of the interviews. And
21 again, you all reviewed these. You know what portions are
22 most relevant to issues involved in this case. If we have
23 to play all eight hours, then we have to play all eight
24 hours. But if the State only wants to play a portion and
25 then the Defense wants the whole thing to be played from

1 start to finish, then that request can be made. At the same
2 time, if there are portions that we can emphasize and get
3 rid of the extraneous irrelevant banter that often goes on
4 in these interviews, I'd love to do that for purposes of not
5 boring the heck out of a jury. So I'm not going to tell
6 anybody how to try their case, but I would ask that we try
7 and focus on the portions of those statements that are the
8 most germane.

9 MR. BROWN: Yes, sir.

10 THE COURT: All right. Anything else we need to think
11 about this evening? What time would you like Mr. Tillman to
12 be back? And I assume his family has brought him a change
13 of clothes or he's going to wear -- would you like him here
14 at -- the jury's coming in at 9:00. We would like him here
15 at 8:30. I'd kind of like to avoid the possibility of a
16 juror seeing him walk in in custody. Do you all bring him
17 up through the back door?

18 MR. BROWN: Yes, sir.

19 THE COURT: Perfect. That will be perfect then. If
20 you could ask that they make sure they have him here around
21 8:30 when the courthouse opens. Okay?

22 All right. We're done for the day. You all have a
23 great evening. Thank you. See you in the morning.

24 (Whereupon, the proceeding was concluded for the day.)

25 *****

1 TRIAL DAY 2: January 23, 2018

2 THE COURT: We'll go back on the record in State vs.
3 Mr. Tillman. Mr. Tillman, of course, is present with
4 counsel. A few housekeeping matters before we proceed
5 further. I'll just state these in kind of the order that I
6 jotted them down this morning.

7 The stipulation that was entered into yesterday
8 occurred to me last night that technically under the rules
9 it's supposed to be a written stipulation signed by both
10 parties. Is that a deal breaker for anybody or do we need
11 to put something on a piece of paper, one sentence saying
12 that the parties agree that this was a homicide, or is that
13 a problem?

14 MR. GROSE: It's not a problem for us. We'll do
15 whatever the Court thinks is best.

16 THE COURT: Technically under the rules it's supposed
17 to be in writing, but I think that that's perhaps
18 unnecessary. I just wanted to address that.

19 One other thing that my Clerk brought to my attention,
20 the exhibits which -- for which there are no objections, I
21 assume that those are in evidence. Can we go ahead and, for
22 the record, indicate which photographs there is no objection
23 to?

24 MR. GROSE: I'll go through them if you want me to.

25 THE COURT: Well, he has -- Mr. Brown has a stack of

1 some. There was some that you did object to, and then I
2 think you left a whole bunch with Mr. Brown, but they were
3 not a problem --

4 MR. GROSE: I'm objecting to any pictures that show her
5 body --

6 THE COURT: Right.

7 MR. GROSE: And I think I called all of those to your
8 attention yesterday. If I didn't, it's because there's so
9 many and I -- so any of those I have an objection to. And I
10 don't want all of mine in. I have 15 exhibits here, Nos. 13
11 and 14 are actually pictures that I don't intend to use but
12 I had marked in case I needed them for reply as Defendant's
13 13 and 14. And 15 is a written statement of one of the
14 witnesses that I just marked in case I need to refer to it,
15 or in the unlikely event that it becomes admissible. So
16 those I wouldn't -- I would not want in evidence unless
17 something comes up.

18 THE COURT: Does the State have any problem with
19 Defendant's 1 through 12? Have you had a chance to look at
20 those?

21 MR. BROWN: I have not.

22 THE COURT: Go ahead.

23 MR. GROSE: They're in that folder. And all with the
24 except of the Google Map which I showed you yesterday,
25 they're all from the State's discovery.

1 MR. BROWN: Judge, I have no problem with his exhibits.

2 THE COURT: All right.

3 MR. BROWN: We are -- other photos that I think were
4 separated out yesterday I don't -- I don't believe Mr. Grose
5 has an objection to be would be SLED photos of the house
6 that night. I think these are the ones that don't have her
7 body included in them

8 THE COURT: Okay.

9 MR. BROWN: Also, sheriff's deputy photos, which would
10 also include the location where it took place, photos of Mr.
11 Tillman's hands and shirt, things of that nature. Also
12 where the bullets are located in the house. And then
13 photographs, I believe early on, on 11/9 of where the gun
14 was located.

15 And, Your Honor, we do -- after our pretrial meeting
16 yesterday regarding the photos of the autopsy, we are
17 getting those print out in black and white for further
18 review, and we can take that up at a break about probative
19 value helping describe what the State believes with those
20 pictures.

21 THE COURT: Fair enough. My understanding from talking
22 to my Clerk this morning on the way in that the pathologist
23 is not going to apparently testify until tomorrow. So it
24 would probably be best to go ahead and address those prior
25 to the pathologist testifying. Just for the record, can you

1 go ahead and read off the exhibits which are agreed to, that
2 there's no objection to. I'm going to rule that Defendant's
3 1 through 12 are already in evidence without authentication.
4 We don't have to go through the rigamarole with that. But
5 if you could, go ahead and give me the State's exhibits that
6 are coming in without objection.

7 MR. BROWN: And, Judge, the first set is 89 through 93.
8 Those will be coming through Sheri Ashley. Those will be
9 the first set of photographs coming in.

10 MR. GROSE: And those are the ones that you just showed
11 me. Then there's no objections to those.

12 MR. BROWN: Judge, 4, 5, 6, 7, 8 , 9, 10, 11, 12, 13 --
13 that's got her leg --

14 MR. GROSE: Yeah, that's got her leg. I would object
15 to 13.

16 THE COURT: Was that one of the ones I saw yesterday?
17 No? We'll add 13 to the possible objections. Keep going.

18 MR. BROWN: 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26,
19 27, 28, 29, 30, 31, 32, 33, 34 and 35.

20 MR. GROSE: Now, just for the record, I appreciate what
21 you're saying about coming in, authenticate without having
22 to go through all that rigamarole. There are some in there
23 that probably do need some explanation as far as -- you
24 know, for example, they have a mattress where she was found
25 that's been turned up on its side.

1 THE COURT: I'm assuming that -- I just wanted to --

2 MR. GROSE: Yeah.

3 THE COURT: -- take down housekeeping matters and not

4 --

5 MR. GROSE: Yeah. I'm not objecting to the
6 photographs, but I do think they have to put some of them
7 into context. And so --

8 MR. BROWN: We'll do that.

9 THE COURT: Was there another set that was without
10 objection?

11 MR. BROWN: State's 40. And these are out of order.
12 That would be my fault. I'm sorry.

13 MR. GROSE: It doesn't matter. Just read them out.

14 MR. BROWN: All right. 40, 66, 65, 67, 68, 64, 62, 59,
15 57, 53, 52, 46, 45, 44, 43, 42, 41.

16 THE COURT: All right. Those will be evidence without
17 objection. For Court's clarification, perhaps some of those
18 photos will be necessary. State's 89 through 93 will also
19 be in evidence without objection. State's 4 through 12, 15
20 through 17 and 19 through 35 will also be in evidence
21 without objection. And, of course, the witnesses can
22 explain anything about the mattress, etcetera.

23 MR. BROWN: Judge, I do have one other, Exhibit 69
24 through 88. This would be the firearm and where it was
25 located.

1 THE COURT: No objection to those?

2 MR. GROSE: No objection to those.

3 THE COURT: 69 through 88 will also be in evidence
4 without objection. One last housekeeping matter I did
5 communicate with the attorneys last night after I was able
6 to get the DVD to play. I didn't realize when I took the
7 DVD that I didn't actually have a DVD on my Court issued
8 computer, so I had to use my wife's. Candidly I did not
9 hear any reference to a firearm from the Defendant's mother
10 on the 911 recording. And, of course, the recording speaks
11 for itself. But basically the Defendant places the call,
12 explains what he's found, and then goes up to his mother's
13 house. I hear a female voice in the background, but it was
14 truly unintelligible to me. Are you all certain that she
15 makes reference to a firearm?

16 MR. GROSE: Then let's stop if it's -- they're going to
17 say -- they're going to interpret that unintelligible
18 statement. So let's just stop it before then. I mean,
19 that'll also solve the problem. If they're going to -- if
20 they're going to provide an interpretation as to what she
21 said, I'm entitled to ask her about that, not some cop who
22 says I listened to this tape and this is what I heard.

23 MR. BROWN: Judge, I think that would be a decision for
24 the jury to make if they can understand what she's saying.
25 You know, with a normal computer sometimes it's hard to

1 hear, but then when you turn it up with these speakers it
2 makes it a lot clearer.

3 MR. GROSE: Then I get to cross-examine her if they
4 want to use that statement. That's -- so I'm formally
5 moving that the cutoff before the female's voice is on the
6 computer unless they're going to call her and allow me to
7 cross-examine her.

8 THE COURT: The other point that I made in the email to
9 counsel last night was that the Defendant himself makes
10 reference to a firearm during the course of the 911
11 recording. I'm assuming -- and again, I haven't heard
12 statements to the police. I haven't heard those recordings
13 and those interviews, but I'm assuming that there's some
14 reference to a firearm that was kept in the house during the
15 course of him explaining that he thought this was a suicide.
16 Am I mistaken?

17 MR. BROWN: He -- that goes into the whole -- the whole
18 case. He calls it in as a suicide, but yet there's no gun
19 in the house, and -- but yet he's saying it's a suicide.
20 There's no gun there when he supposedly finds her. And then
21 they have this conversation on the 911 call.

22 Your Honor, I also -- the argument would be this is a
23 business record. It's --

24 THE COURT: You're not getting anywhere with that.
25 That goes to authentication --

1 MR. BROWN: Yes, sir.

2 THE COURT: -- as opposed to the hearsay aspect. The
3 *Crawford* aspect of this. And if you all reviewed the
4 *Thompson* case like I did, I am of the opinion that that was
5 a very peculiar case. I said as much in the email last
6 night. It was a situation where it was a burglary that was
7 called in to 911, and then at trial the victim actually did
8 not testify. But Judge Gibbons, the trial judge in that
9 case, permitted the entire tape to be played which
10 indicated, A, that the Defendant in that case had a firearm,
11 B, that he had broken into the house, C, his identification.
12 It was just very peculiar that they found that statement to
13 be non-testimonial, but the Court of Appeals ruled as they
14 ruled. And as Mr. Grose pointed out yesterday, that is
15 pending certain in South Carolina Supreme Court.

16 Candidly, Solicitor, I could not make it out. And I
17 tried it with my daughter's earplugs and I still could not
18 make out and I still could not make out what she was saying.
19 And I realize I'm 50 and maybe my hearing is declining. But
20 perhaps the best evidence of what was said would come from
21 her mouth. Why is the State reluctant, if it's necessary --

22 MR. BROWN: We'll call her in the future with the 911
23 tape. That's fine.

24 THE COURT: Okay. Let's handle it that way. I think
25 that's probably, out of the abundance of caution, the best

1 way to proceed. I'll give you your DVD back, Solicitor.

2 Are we ready for the jury now, everybody?

3 MR. GROSE: Well, I'm not -- I'm not sure where we
4 stand on some of the other photographs. Are we just going
5 to take those up when they come up?

6 THE COURT: Right. The main ones are the autopsy
7 photographs. And I expect, Solicitor, you're going to start
8 with the 911 call, or who's your first witness going to be
9 or --

10 MR. BROWN: Yes.

11 THE COURT: Okay. So the 911 operator would be the
12 first one. And just for purposes of authenticating the
13 record as opposed to playing it, are we going to call Ms.
14 Tillman, and how are we going to do that?

15 MR. GROSE: While they think on that I do have another
16 housekeeping thing.

17 THE COURT: Go ahead.

18 MR. GROSE: I want you to take extra steps to inquire
19 with the jury to make sure that they have not been exposed
20 to anything overnight. We've already had an incident this
21 morning of incidental communication between the chief
22 investigating officer and more than one juror coming into
23 the courtroom about the comfort of the jury room and whether
24 it's too hot or too cold. And that's also something you
25 might need to monitor during the trial, because this time of

1 year, while we're comfortable in here, that jury room gets
2 very uncomfortable sometimes, and --

3 THE COURT: I'll be happy to address that.

4 MR. GROSE: Thank you. And the Solicitor addressed it
5 when it happened, too, but I -- I just --

6 THE COURT: Out of an abundance of caution.

7 MR. GROSE: Right.

8 THE COURT: I hear what you're saying. And, Solicitor,
9 one option for you once the 911 call is authenticated, if
10 you want to play that part where Defendant's mother's voice
11 is about to be heard and then cut it off at that point, I
12 mean, that's one way, if you're just trying to open this
13 case with the chronology of how the law enforcement
14 officials started their investigation then that might be a
15 good way to do it. And then perhaps after she testifies,
16 when, like we said, becomes more germane then -- then the
17 rest could be played. That might be one way to handle it.

18 Regardless, let's go ahead and have the jury in here.
19 They've been waiting for 30 minutes. Okay? Let's bring
20 them in, please.

21 (Whereupon, the jury entered the courtroom at 9:31
22 a.m.)

23 THE COURT: Ladies and gentlemen, welcome back. Thank
24 you for being here this morning and thank you for being on
25 time. We had a few other -- other housekeeping matters that

1 we wanted to go ahead and address this morning. That's the
2 reason I've kept you waiting. But we have been working out
3 here. And again, by trying to address those housekeeping
4 issues, hopefully this case will be a little bit more smooth
5 for you.

6 One thing I do want to mention to you is in the jury
7 room this time of year with the weather changing from the
8 freezing cold of last week to the more temperate weather
9 that we're enjoying now, sometimes that jury room gets a
10 little bit too hot or too cold. Okay? And really we're
11 looking for the Goldilocks zone. Okay? Just right. So if
12 there's any issue with the temperature in there, don't be
13 shy about letting the bailiff know and adjusting that
14 temperature. Okay? You may want to bring -- for whatever
15 reason, you may want to bring a sweater, or maybe an
16 overcoat, because sometimes when it's fine it here it gets
17 too cold back there and really there's not a lot we can do
18 about it. But don't be shy about letting them know if there
19 are any issues with the temperature or the comfort in the
20 jury room.

21 Additionally, I just want to make sure that over the
22 course of the evening nobody read anything or was exposed to
23 any additional information concerning this case than what
24 was said yesterday. If any member of the jury panel has
25 spoken to anybody or read anything about this case just

1 raise your hand for me.

2 (Whereupon, no jury members respond.)

3 THE COURT: All right. No hands are up. Our first
4 order of business, ladies and gentlemen, is to select a
5 foreperson for the jury. And sir, you are actually in the
6 lucky seat. I cannot recall -- I cannot recall your name.

7 THE JUROR: I can move.

8 THE COURT: If I could, what's your name, sir?

9 THE JUROR: James Hester.

10 THE COURT: Mr. Hester, I think you were -- you're
11 employed as a farming -- in farming, correct?

12 THE JUROR: Correct.

13 THE COURT: All right. Mr. Hester, I'd like to make
14 you the foreperson. Again, there's no heavy lifting
15 involved with this. Your primary responsibility would be
16 once the case is submitted to the jury make sure everybody
17 has a chance to have their fair say. Okay? That's pretty
18 much all that's required of it. You preside over the
19 deliberations of the jury room. You're kind of first among
20 equals is how it works out. All right, sir? So Mr. Hester
21 will be the foreperson. Again, the other two, the two
22 alternates, if you all could stay in those seats. Mr.
23 Hester, if you'd say in that seat. The rest of you feel
24 free to move about as you want to.

25 One other housekeeping matter. If at any point in time

1 you have any difficulty hearing any of the testimony I want
2 you to raise your hand, wave, try and get somebody's
3 attention. My attention, my Law Clerk's attention, the
4 attorneys' attention. They'll ask the witness to speak up.
5 The acoustics in this courtroom are actually better than a
6 lot of courtrooms throughout the state, so I don't think
7 you'll have trouble hearing. But if you do have trouble
8 hearing what the State said, hand goes up and we'll tell
9 them to speak up. Okay? Additionally, if you need a
10 bathroom break, comfort break, whatever, just wave, get my
11 attention and let me know that you need a brief break and
12 we'll take a brief break. Okay?

13 Now, ladies and gentlemen, again, we're about to begin
14 in earnest the trial of the *State of South Carolina vs.*
15 *Charles Tillman*. And, of course, before we begin I want to
16 let you know that, of course, this case is going to be a
17 little bit different from what you've seen in terms of
18 trials depicted on TV or in the movies. Often from what we
19 see in popular culture we get the impression that trials are
20 filled with a lot of drama and a lot of emotion, and
21 sometimes certainly that is the case. Sometimes the cases
22 of this nature, like I alluded to yesterday, there is
23 emotion. There is passion. But obviously, ladies and
24 gentlemen, this case is real life. It's not for
25 entertainment and this is very important to both the State

1 of South Carolina and, of course, Mr. Tillman. And I want
2 to thank you. I understand that none of you have
3 volunteered for this duty. I want to thank you at the
4 outset for your willingness to come in here and resolve this
5 dispute essentially between the State of South Carolina and
6 Mr. Tillman. So again, thank you for your willingness to
7 participate in this process. Thank you for your willingness
8 to come in here and do your civic duty.

9 With that, I'm going to ask that you stand where you
10 are and raise your right hand so that the Clerk can
11 administer the oath.

12 (Whereupon, the jury was duly sworn at 9:35 a.m.)

13 THE COURT: Mr. Foreman, ladies and gentlemen of the
14 jury, what I now say to you is meant to serve just as an
15 introduction to the trial and these remarks are not
16 instruction on the law. I'll instruct you on the law that
17 applies at the conclusion of the trial before you begin your
18 deliberations. Again, this is just kind of an overview of
19 the process that we're going to use going forward so that
20 you can better understand what's taking place.

21 Now, ladies and gentlemen, if at any time during the
22 trial you want to take notes, that's perfectly fine. Just
23 let the bailiff know and we'll give to you a notepad that
24 you can use and a pen that you can use to take notes. Just
25 a few rules about note taking. First, please don't let the

1 taking of notes distract you from the testimony. Secondly,
2 those notes are kind of your personal property. Okay?
3 They're for your eyes only. And third, during any breaks
4 that we take overnight or what have you, leave those notes
5 here. They'll be secured and returned to you in the
6 morning. And finally, once the case is concluded, any notes
7 that you do take, please do take those home. Okay? So if
8 you want to take notes, that's fine. Just follow those four
9 caveats for me.

10 Now, ladies and gentlemen, again, Mr. Tillman has been
11 charged by two indictments filed with this Court with the
12 offenses of murder and possession of a weapon during the
13 commission of a violent crime. Again, I'll explain the
14 elements of these offenses to you later. Again, ladies and
15 gentlemen, these indictments are merely the means by which
16 this case was brought into Court and they are not, in any
17 sense of the word, proof of any of the allegations contained
18 in the indictment. In this case Mr. Tillman has pled not
19 guilty to these charges and that plea puts the burden firmly
20 on the State to prove his guilt beyond a reasonable doubt.
21 It'll be your duty to determine whether the State has met
22 this burden.

23 Now, ladies and gentlemen, your purpose as jurors is to
24 find and determine the facts. Understand that you are the
25 sole judges of the facts, so if at any time I make any

1 comment about the facts you have to disregard that comment.
2 You'll determine the facts from the testimony that you hear
3 and the other evidence which is introduced during the course
4 of the trial. I understand that it's up to you to determine
5 the inferences which you feel can properly be drawn from the
6 evidence presented. Now, ladies and gentlemen, it's
7 especially important that you perform your duty of
8 determining the facts diligently and conscientiously because
9 ordinarily there is no way to correct an erroneous
10 determination of facts by a trial jury.

11 Now, ladies and gentlemen, the same law that makes you
12 the judge of the facts makes me the judge of the law. The
13 law that's given by the Court is the only law that you can
14 consider. You'll have to accept it and apply it even though
15 you may disagree with it. Again, the law doesn't allow me
16 to tell you what the facts are. The law doesn't allow you
17 to disagree with me about what the law is or what the law
18 should be. Your job will be to take the law as I give it to
19 you, apply it to the facts as you find them to be, and after
20 doing that you will render your verdict under the oath that
21 you have just taken.

22 Now, again, until I advise you to begin your
23 deliberations please don't talk with anyone about this case.
24 Okay? Not friends, family members, Court officials,
25 attorneys. No one involved in this case obviously can talk

1 to you. When the case is submitted to you, you can discuss
2 it only in the jury room in the presence of all 12 jurors.

3 Now, the lawyers and the other individuals who are
4 involved in the trial of this case, they've been admonished
5 not to have any contact with you while the case is going on.
6 Okay? So if you happen to see one of the lawyers or some of
7 the parties coming or going from the courthouse and they're
8 not even saying hello to you, they don't even acknowledge
9 you, understand they're not being rude. They're just
10 following my instruction to have nothing to do with you
11 while the case is going on. The reason for this is
12 self-evident. Okay? If the other side were to see you
13 discussing this case with the party for the other side or
14 lawyer for the other side, it could easily be misinterpreted
15 as an effort at jury tampering. So the way just to keep
16 that issue from coming up is to say jurors are off limits
17 while the case is going on.

18 Ladies and gentlemen, during the trial, again, please
19 do not read, listen to or watch any news reports about this
20 case. That includes anything that's in the newspapers. I
21 don't believe that there's any television coverage or radio
22 coverage of this case. But again, anything that's on the
23 Internet or any other news source, please do not review,
24 please do not research it, and please do not read it. You
25 cannot consider anything what you may have read or heard

1 about this case outside the courtroom whether it's before or
2 during the trial.

3 Most importantly, ladies and gentlemen, keep an open
4 mind. Do not decide any issue in this case until all the
5 evidence has been submitted, the parties have made their
6 closing arguments to you and you've received my instruction
7 on the law. Again, it's your solemn responsibility to
8 determine the issues involved in this case and your verdict
9 has to be based solely on the evidence presented during the
10 trial and on the law as I instruct you.

11 Now, in a moment, ladies and gentlemen, the attorneys
12 are going to make what's known as an opening statement to
13 you in which they'll argue to you what the issues are or
14 they'll assert what the issues are in this case. Please
15 understand that what the lawyers say during their opening is
16 not argument. It's merely their overrule kind of a roadmap
17 of what they anticipate being presented. All right? Again,
18 the testimony being presented through the testimony of sworn
19 witnesses and the exhibits.

20 Now, typically during trials of this nature, ladies and
21 gentlemen, it's necessary for the Court to take periodic
22 breaks whereby I take up issues of law with the attorneys,
23 and during those breaks it may be necessary for me to ask
24 you to step into the jury room. The reason I'm asking you
25 to leave the courtroom is that sometimes in ruling on issues

1 of law I have to discuss with the attorneys or put on the
2 record facts or testimony I have to allude to those facts or
3 that testimony in making a legal ruling. Because you're the
4 judges of the facts, I don't want anything that I say to
5 have any effect on what you ultimately find those facts to
6 be. That's why I ask that you leave the courtroom so that I
7 can have a candid discussion with the attorneys on the
8 record about that issue of law and those facts and I can be
9 certain that what I say doesn't effect what you find as the
10 true facts in this particular case. Of course, during those
11 breaks please don't speculate about what I'm saying
12 concerning the facts. Again, the law does not permit me to
13 have any opinion about the underlying facts. In determining
14 what the facts are, ladies and gentlemen, you have to decide
15 whether or not the testimony of witnesses is believable or
16 not. Understand that it's my responsibility to rule as a
17 matter of law as to whether certain testimony is admissible.
18 Once it's admitted though, whether you choose to believe it
19 is entirely up to you. Deciding whether to believe a
20 witness you have the right to consider the interest of any
21 witness, the witness's bias, any prejudice, or the
22 opportunity for the witness to have seen the matters and
23 things which they testify about. You can also consider the
24 way the witness acts while on the witness stand. Understand
25 that you have the right to consider anything that's in the

1 record in this case that will help you evaluate the
2 testimony of those witnesses. That means it's your duty to
3 pay close attention to them, listen to them, observe them,
4 and pay close attention to the lawyers in the Court. Try
5 and keep your thoughts from wondering. Instead, try and
6 give strict attention to the testimony so that at the
7 conclusion of the trial you'll be as best a position as
8 possible to apply the law to the facts and render your
9 verdict under the oath that you have just taken.

10 Now, in a moment I'll give the attorneys an opportunity
11 to object to anything that I've said to you during these
12 opening remarks. I will let you know that in this case,
13 ladies and gentlemen, the parties have stipulated, and
14 basically what a stipulation is, is they agree that certain
15 facts are true. Okay? They basically agree that certain
16 facts are accurate, and it helps -- the stipulation helps
17 kind of move the case along. In this case the attorneys for
18 the Defense and the State have basically stipulated or agree
19 that Christie Lynn Stutler did die as the result of a
20 homicide. A homicide is basically where one individual
21 takes the life of another individual. Okay? So they
22 basically agree that she did pass away by virtue of homicide
23 as opposed to natural causes or some other cause. Okay?
24 Now, with that, I'll give the attorneys an opportunity
25 to object to anything I've said during these opening

1 remarks. Any objections from the State?

2 MR. BROWN: Not from the State.

3 THE COURT: From the Defense?

4 MR. GROSE: No, sir.

5 THE COURT: All right. We'll begin the trial in
6 earnest. Solicitor, you're recognized for your opening,
7 sir.

8 MR. BLACK: May it please the Court.

9 THE COURT: Yes, sir.

10 OPENING STATEMENT

11 BY MR. BLACK: Christie Stutler was a daughter.
12 Christie Stutler was a mother. Christie Stutler was a
13 sister. On November the 8th of 2016, on election day last
14 year, Christie Stutler was found murdered in Charles
15 Tillman's home at Bell Road.

16 Folks, over the course of the rest of the week you're
17 going to hear from every agency that was involved in this
18 case. You're going to hear from the Abbeville County
19 Sheriff's Department who conducted the investigation.
20 You're going to hear from the Coroner's Office that showed
21 up. You're going to hear from SLED, South Carolina Law
22 Enforcement Division, that showed up and helped investigate
23 the crime scene.

24 You're also going to hear from Christie Stutler. Now,
25 she's not going to get up here and tell you what happened to

1 her. She can't do that. She's not here. But you're going
2 to hear from Dr. Brett Woodward, pathologist, who's going to
3 testify -- who conducted the autopsy. He's going to
4 testify. He's going to tell you about the torture that she
5 endured. He's going to tell you about the bruises and the
6 burns on her body. And ultimately he's going to tell you
7 about the fatal gunshot that took her life. So while
8 Christie is not going to testify, she's not going to sit up
9 here on this stand and testify, you'll hear her testimony
10 loud and clear from the grave.

11 Now, folks, we're going to be -- we're going to be
12 straight up with you. We're going to be transparent with
13 you. Mr. Tillman, he's accused of murder, possession of a
14 weapon during the commission of a violent crime. You've
15 heard the charges. He doesn't give a confession. There's
16 not a confession. There's not a videotape of the murder.
17 There's not a videotape. We don't have that. We don't even
18 have an eyewitness that saw him commit this crime. But
19 there is a ton of evidence in this case, and there's a lot
20 of people that are going to get up here on the stand that
21 took part of this investigation and they're going to tell
22 you what they found. So over the course of this case there
23 are certain pieces of evidence and certain testimony that
24 you're going to hear about. You're going to hear about a
25 911 call. You're going to hear the call. You're going to

1 hear Mr. Tillman call in a little bit after 6:00 on that
2 November the 8th day when he got home from work. Listen to
3 the call. What does he call it in as? What's his emotion
4 like? How does he sound on the tape? It's going to be
5 something that you guy get to listen to over and over again.
6 Is the murder weapon mentioned on the call? That is
7 something you guys get to decide. The crime scene. You're
8 going to see tons of photographs of the crime scene. You're
9 going to hear it described in earnest about this location at
10 Bell Road, which is in Abbeville County kind of in the
11 Iva Antreville area just inside the Abbeville County border.
12 Law enforcement is going to describe the scene for you.
13 You're going to see pictures. Pay attention to how her body
14 was laying. Pay attention to the trained professionals, law
15 enforcement, who respond to these type of calls, Coroner's
16 Office who response to these types of calls. What was their
17 opinion when they first got there? Think about the
18 temperature, the time of year, November, election day. The
19 temperature that was inside the trailer. Bullet holes. Pay
20 attention to how many bullet holes are inside the trailer
21 versus how many shell cartridges were actually found by law
22 enforcement. It's going to be important. And finally,
23 where's the murder weapon? You're going to hear a little
24 bit about forensics, DNA. You're going to hear about DNA.
25 Whose got DNA on them. Where is DNA located. The firearm.

1 The firearm that was eventually recovered, does it match the
2 cartridge that was found inside the trailer. And finally
3 gunshot residue. Some of you may have heard of this. What
4 is gunshot residue, what is GSR, and who had it on them.

5 Like I said, there's not a confession, but Mr. Tillman
6 gave several statements. You're going to hear parts of
7 these statements, and you might hear all of them. I want
8 you to listen to everything and cut through everything on
9 these statements and you catch the one moment where he
10 finally tells you the truth. Where he finally tells you
11 what happened. What's going on. Do you find that one
12 moment. Listen to it. It's about eight hours of interview.
13 We might play all of them, we might not, depending on how
14 this thing goes. But do you catch that one moment where he
15 finally tells you what's going on.

16 And finally, the autopsy. Dr. Woodard, Anderson
17 pathologist who did the autopsy. Who conducted the autopsy
18 the next day. What's he going to tell you? Christi is not
19 going to be here to tell you what happened. But what does
20 her body tell you? What do the bruises, the burns, the
21 torture she endured? Like I said, the fatal gunshot that
22 took her life. What does that tell you.

23 Folks, in any criminal case in America the State has
24 the burden to prove its case beyond a reasonable doubt.
25 Those items, the 911 call, the crime scene, the forensic

1 statements and autopsy, that's the proof. That's the
2 evidence. That's what you're going to have to finally make
3 a determination. That's what we have to prove our case.
4 And Judge Addy said, we have the burden of proof. That's
5 something the State has, and we welcome that burden. But we
6 have to prove our case beyond a reasonable doubt. And what
7 is beyond a reasonable doubt? Judge Addy talked about it
8 just a little bit. He's going to talk a little bit about it
9 at the end. The attorneys, when they give their closing,
10 they're going to talk about it at the end. The attorneys,
11 when they give their closing, they're going to talk about
12 it. But when you think of beyond a reasonable doubt, it's
13 not beyond all doubt. It's not beyond a shadow of a doubt.
14 It's not beyond every possible conceivable doubt that we
15 have to prove the case and what the evidence shows. There
16 are few things in this world that we know for certainty, and
17 the law doesn't require us to prove a case to a certainty.
18 Beyond a reasonable doubt is not some mathematical formula,
19 some equation that we can wrap up nicely and give you. But
20 it's being firmly convinced of something. If after the
21 close of the evidence, after everybody talks, after we get
22 done talking and you have the evidence, if you're firmly
23 convinced that Charles Tillman murdered Christi Lynn
24 Stutler, you have no choice but to find him guilty.

25 This was mentioned just a moment ago. Typically I do

1 get up here and I tell people, you know, you watch CSI or
2 Law and Order and you see a crime committed and you see an
3 investigation and then you see the end of prosecution and
4 it's wrapped up nice and tight in an hour. That's not how
5 this works. It's been over a year and we're finally here
6 for trial. This trial, I imagine, is going to last the rest
7 of the week. This is how real Court, this is how real
8 criminal prosecutions happen in America. It takes time. So
9 it's not like what you see on TV. But there is forensic
10 evidence. There is a crime scene that you have to go
11 through like you see on TV. So in that regard it is a
12 little bit like what you might be aware of. We ask that you
13 go through all the evidence. We ask that you pay close
14 attention, because this case is important. It's important
15 to us. It's important to the family of Christie. It's
16 important to Charles Tillman and his lawyer and his family.
17 This case is important to everyone here. So please we ask
18 you -- we know that you're going to do this. We know that
19 you're going to listen. We know that you're going to do
20 your job. Just listen. Listen to everything that's said.
21 Listen to all the evidence and pay close attention. And we
22 are confident that once everybody's testified and all the
23 evidence that has been turned over to you, that you will
24 find him guilty of murder, and you will find him guilty of
25 possessing that weapon during the commission of a violent

1 crime. Thank you.

2 THE COURT: Thank you, Mr. Black. Mr. Grose, you're
3 recognized for your opening, sir.

4 MR. GROSE: Thank you, Your Honor. May it please the
5 Court.

6 OPENING STATEMENT

7 BY MR. GROSE: November 8, 2016 was the worst day of
8 Charles Tillman's life. It started off as an ordinary day.
9 He and Christi lived together at a house on Bell Road in
10 Abbeville. They got up. They talked that morning. They
11 said -- told each other that they loved each other. Other
12 people live on that property and congregate on the property.
13 Charles Tillman's brother, Walt, came down and spoke to
14 Charles and then that Christie was alive. Charles Tillman
15 went to work about 8:30 or 9:00. J.C. Boggs, his
16 supervisor, is going to tell you 8:30. You're going to hear
17 about 9:00 on the video. When Charles left to go to work
18 Christie was alive. Charles came home at 6:00, about 6:10
19 that night, and Christie was dead. Charles called 911. And
20 you're going to hear on 911 that he thought that Christie
21 had shot herself. Now, we know that that's not the case
22 because you've already heard Judge Addy tell you that the
23 parties have stipulated that this is a homicide, which means
24 that somebody, another person, killed Christie. But you
25 also have to understand that Charles knew Christie. That

1 they'd been together for 15 years and he knew that she had
2 some mental health issues. He knew that she had talked
3 about suicide before. So that was the first thing that went
4 through his mind. And you're going to hear him talk about
5 that not just on the tape of the 911 call, but over and over
6 again on these hours and hours of interrogations. That's
7 the first story. The first journey is what happened with
8 Charles and Christie on that day.

9 The second journey is the investigation. And they
10 talked about demeanor, listen to somebody's demeanor and pay
11 attention to somebody's demeanor. That could only tell us
12 so much. I remember when my mother died. I reacted one
13 way, my brother reacted another way, my father reacted
14 another way. Nobody was right, nobody was wrong. None of
15 us had to go through hours and hours of interrogations and
16 investigation that went for days. And you're going to be
17 able to tell, if they play a lot of this, that at some point
18 Charles wasn't getting any sleep and he was getting
19 fatigued. But he always told them, over and over and over
20 again, Christie was alive when I went to work. And they
21 pushed him, and they pushed him, and they pushed him, and
22 they tried to get him to explain things. And a lot of the
23 times he told them I just don't know. I wasn't there. But
24 they didn't accept those answers. And they pushed him and
25 pushed him, and sometimes he tried to theorize. But you're

1 going to have an opportunity to evaluate all of that.

2 You're also going to have an opportunity to evaluate
3 what went on in that investigation to determine whether or
4 not there was information that came to the attention of the
5 police, whether it was through Charles or whether it was
6 through the investigation at Charles' trailer, or whether it
7 was through a combination of those things. You're going to
8 be able to determine whether it was information that the
9 police could have followed up on and they didn't. Because
10 while on one hand you're going to be watching on this screen
11 or on that TV the police push and push and push Charles to
12 explain what happened, you've already heard Judge Addy say
13 that the burden of proof is on the State and the State has
14 to prove their case beyond a reasonable doubt. And that's a
15 principal that has guided us in trials since the beginning
16 of our country, and it's because the State has so many
17 resources. And I know it's easy to think little ole
18 Abbeville County, we don't have all those resources here,
19 but we do. We have the Sheriff's Department. You'll hear
20 that there was backup from the Police Department. You're
21 going to hear the Coroner's Office, and you're going to hear
22 that law enforcement can call in the assistance from people
23 like Dr. Woodard, who's the pathologist, and the State Law
24 Enforcement Division, and you're going to hear that they
25 control the scene. That when something like this happens

1 one of the first things that they do is they control the
2 scene and control who comes and goes so they can conduct an
3 investigation. And that gives them information that they
4 don't -- that the rest of us don't have or able to get.
5 We're not able to control what happens with that.

6 So the third journey that we're on is the one that
7 we've started on this week. There's Charles and Christie's
8 journey on November 8th. There's the investigation that
9 took place, and there's the journey that we've embarked on
10 this week. Judge Addy alluded to it earlier. You know, you
11 might be reluctant to be jurors in the case. I'm sure that
12 everybody who's been selected had other things that you
13 could do this week. But it's the civic duty that we're
14 called. Some people, they say Abraham Lincoln, but maybe it
15 was somebody else, said that, you know, short of serving in
16 the military, serving on a jury is the highest form of civic
17 duty that you can give. It's because of how we settle
18 issues and disputes in our country.

19 When I introduced myself yesterday I said I've been
20 representing people in Abbeville County for almost 20 years,
21 and every time you have a case like this you're worried
22 about certain things. And Judge Addy talked about some of
23 those things yesterday. You worry about the emotions of a
24 case like this. You worry about when you look at
25 photographs of injuries of whether or not somebody will

1 decide the case based on emotion or they'll decide the case
2 based on the other evidence that they hear. Quite frankly
3 in a case like this I'm worried that with my client being a
4 black man and Christie being a white woman, that that might
5 enter into the decision. And that's why Judge Addy asked
6 questions about those types of things when this case
7 started.

8 What I've learned over the years, and what Judge Addy
9 has talked about is that there is a process. There's a
10 process where you're going to get to hear from the
11 witnesses, you're going to get to view the videos, you're
12 going to get to look at the pictures. They have the burden
13 of proof. We don't have to ask any questions. I can't
14 imagine that I won't. I'm sure that I will. And the
15 questions that I ask are going to be designed hopefully to
16 highlight pieces of information that we think are important.
17 And they're going to do the same thing, too. And then at
18 the end of this case you're going to be the ones that end
19 this journey that we're on this week. You're going to be
20 the ones that get to review all of the evidence. You're
21 going to be the ones that get to decide whether or not the
22 State of South Carolina has met the burden of proof. And
23 Judge Addy, when he told you about the law, he's going to be
24 your guide. He's going to be the guide for you through the
25 process of how you make that determination.

KIMBERLY WELLS

138

1 I can tell you right now you're going to hear that
2 Christie died of a gunshot wound. You're going to hear that
3 the coroner -- not the coroner, but the pathologist, Dr.
4 Woodard, can't put an exact time on that gunshot wound, but
5 he can put it within a range. And that range starts before
6 Charles went to work and it ends after he went to work. So
7 that in and of itself is not going to give you the
8 information that you need to know. The reason question that
9 you're going to have to look at is, is whether or not there
10 is a real possibility, because that's where the benefit of
11 the doubt comes from. We've heard that phrase over and
12 over, somebody gets the benefit of the doubt. It goes with
13 our legal system. Proof beyond a reasonable doubt. If
14 there is a real possibility that Christie was alive when
15 Charles went to work. If there's a real possibility that
16 somebody else came into that home that day and is
17 responsible for Christie's death, then those are reasonable
18 doubts. And we're confident that at the end of this case
19 you're going to see and hear evidence that Christie was
20 alive when Charles went to work, and that means he's not
21 guilty of these crimes.

22 THE COURT: Thank you, Mr. Grose. Solicitor, call your
23 first witness, please

24 MR. BROWN: State calls Kimberly Wells.

25 KIMBERLY WELLS, having first been

KIMBERLY WELLS

139

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Ms. Wells, can you introduce yourself to the jury,
5 please.

6 A Kimberly Wells. I'm a 911 operator for Abbeville
7 County 911.

8 Q And how long have you been with 911?

9 A Seventeen years.

10 Q Okay. And your job currently as a 911 operator, what
11 does that entail?

12 A I'm currently the office manager. I do the addressing
13 for the 911 system. I oversee the telecommunicators who
14 essentially take the 911 calls and process them. I also
15 deal with record keeping for the 911 center.

16 Q Okay. And I'm assuming, since you've been there 17
17 years, you've worked your way up?

18 A Yes, sir.

19 Q What -- what kind of jobs did you have previously?

20 A A line telecommunicator, which is basic -- the basic
21 form of taking and processing the calls. So you take the
22 911 calls, then you dispatch them out. And then you keep up
23 with the radio traffic and the --

24 Q If somebody calls -- in Abbeville County if somebody
25 calls dispatch, are those calls typically recorded?

KIMBERLY WELLS

140

- 1 A Yes, sir.
- 2 Q Do you all also keep CAD reports?
- 3 A Yes, sir.
- 4 Q What -- what is a CAD report exactly?
- 5 A Computer aided dispatch is what CAD stands for. But
- 6 it's when the person calls 911, the information is
- 7 documented on the computer aided dispatch system. So you
- 8 get -- record the name, address, phone number and then what
- 9 kind of information the person is saying on the 911 line.
- 10 And then you keep up with the responders on the CAD report,
- 11 as far as time goes.
- 12 Q Responders being like the officers?
- 13 A The officers, EMS, fire. Whichever's needed.
- 14 Q Okay. And so, are you all the ones that actually send
- 15 out officers to -- to the call?
- 16 A Yes, sir.
- 17 Q Okay. In this -- in this particular case you didn't
- 18 bring you CAD report with you, did you?
- 19 A No, sir.
- 20 Q Does that look like that CAD report?
- 21 A Yes, sir.
- 22 Q Okay. This -- and this CAD report, these are always
- 23 kept; is that right?
- 24 A Yes, sir.
- 25 Q In this particular case, do you know who made the call?

KIMBERLY WELLS

141

- 1 A Charles Tillman.
- 2 Q And what time it was?
- 3 A 18:10 on November 8, 2016.
- 4 Q So that would be 6:00 --
- 5 A 6:10 p.m.
- 6 Q 6:10. And where -- where did the call originate from?
- 7 A Bell Road.
- 8 Q And that's in Abbeville County?
- 9 A Yes, sir.
- 10 Q And so, based on that information, what was the nature
- 11 of the call?
- 12 A The event code entered was a suicide.
- 13 Q Okay. And did you -- did you all send out emergency
- 14 responders?
- 15 A Yes, sir.
- 16 Q And who did you send out -- or who did you all send
- 17 out?
- 18 A The Sheriff's Office -- the Abbeville Sheriff's Office,
- 19 and then the EMS crew.
- 20 Q Okay. And what time did the first officers show up
- 21 according to that -- that log?
- 22 A 18:16.
- 23 Q So that would be --
- 24 A Six --
- 25 Q -- six minutes later?

KIMBERLY WELLS

142

- 1 A Yes.
- 2 Q And who was that, that recorded the incident?
- 3 A It was Officer 125. I don't know the name.
- 4 Q Okay. So they're just given a number?
- 5 A Yes, sir.
- 6 Q Okay. And other officers showed up, I'm guessing, as
- 7 well?
- 8 A Yes, sir.
- 9 Q And did EMS show up, as well?
- 10 A Yes, sir.
- 11 Q Okay. And do you know -- when did that call end? Is
- 12 there a time when it ends?
- 13 A When all the units clear or when the CAD record is
- 14 closed?
- 15 Q Well, were they out there for a while, that you call
- 16 tell?
- 17 A Yes, sir.
- 18 Q How long can you estimate?
- 19 A The CAD record closed the next day at 1:57. So it was
- 20 on the 9th.
- 21 Q Okay. That would be 1:57 p.m.?
- 22 A Yes, sir.
- 23 MR. BROWN: Okay. And, Your Honor, may I approach?
- 24 I apologize if I didn't ask previously.
- 25 Q I'm going to show you what's been marked as State's

KIMBERLY WELLS

143

1 Number 1. Do you recognize that?

2 A Yes, sir.

3 Q And have you had a chance to review that?

4 A Yes, sir.

5 Q And what is that disc?

6 A It is a copy of the 911 recording for the call that
7 initiated out at Bell Road.

8 Q Okay. And those are obviously kept in the normal
9 course of business?

10 A Yes, sir.

11 Q How long -- just how long are those -- those calls
12 typically stored? Do you know?

13 A We keep them, as designated by law, for 90 days to a
14 year, but we keep them, basically, as long as our recorder
15 has storage.

16 Q Okay.

17 MR. BROWN: Your Honor, at this point, the State moves
18 Number 1 into evidence and we ask to publish the parts that
19 we have talked about previously to the jury.

20 THE COURT: All right. Without objection that's
21 subject to The Court's pretrial rulings --

22 MR. GROSE: Yes, sir.

23 THE COURT: -- you may proceed.

24 MR. BROWN: Thank you, Your Honor.

25 (Whereupon, State's Exhibit Number 1 was admitted into

KIMBERLY WELLS

144

1 evidence).

2 (Whereupon, State's Exhibit Number 1 was published for
3 the jury).

4 MR. BROWN: So the record's clear, we stopped it at
5 4:07.

6 THE COURT: Thank you, sir.

7 Q And, Ms. Wells, there is -- there is more stuff to that
8 tape; is that right?

9 A Yes.

10 Q You -- and you listened to it?

11 A Yes.

12 MR. BROWN: Beg The Court's indulgence.

13 THE COURT: Yes.

14 MR. BROWN: I think that's all we have. Your Honor, I
15 think State's Number 1 has been admitted into evidence --

16 THE COURT: Correct.

17 MR. BROWN: To this point -- played to this point.

18 THE COURT: Any questions, Mr. Grose?

19 MR. GROSE: Yes.

20 CROSS-EXAMINATION

21 BY MR. GROSE:

22 Q I just to make sure I'm clear on the times because we
23 kind of went back and forth a little bit between military
24 time and what I call civilian time. It's fair to say that
25 the call came in at 16:00 p.m. -- 6:10 p.m. on November 8th?

EVAN MCCURRY

145

1 A Correct.

2 Q All right. And then you were talking about when the
3 CAD -- the computer assisted dispatch report says that the
4 officers cleared. That was what time? It was after 1:00, I
5 believe.

6 A 1:57 -- 13:57.

7 Q Okay. So it was in the afternoon?

8 A Yes, sir.

9 Q So 16:10 to 13:00 --

10 A 18:10.

11 Q I'm sorry. 18:10 -- I'm going to get out of the
12 military time.

13 A Okay.

14 Q 6:00 p.m. in the evening until 1:00 in the afternoon.

15 A Yes.

16 Q So over --

17 A They --

18 Q -- over 12 hours that they there?

19 A Yes.

20 Q Okay. And on the tape you heard Charles say that
21 Christie was stiff; is that right?

22 A Yes.

23 THE COURT: All right. Thank you, ma'am. You can step
24 down.

25 (Whereupon, the witness has stepped down from the

EVAN MCCURRY

146

1 witness stand).

2 THE COURT: Call your next witness, please.

3 MR. BLACK: The State calls Evan McCurry.

4 EVAN MCCURRY, having first been
5 duly sworn, testified as follows:

6 THE COURT: Mr. Brown, continue, please.

7 MR. BROWN: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Deputy McCurry, what's your full name?

11 A Evan McCurry.

12 Q And where do you work?

13 A At the time, I worked for Abbeville Sheriff's
14 Department.

15 Q Where do you work right now?

16 A Abbeville City Police Department.

17 Q How long have you been with the City Police Department?

18 A Approximately a month.

19 Q And back on November 8th, 2016, you were with the
20 Abbeville County Sheriff's Office?

21 A Yes, sir.

22 Q What was your -- what were your duties there?

23 A I was a road deputy. Answering calls of service.

24 Q On the 8th, were you dispatched to Bell Road?

25 A Yes, sir.

EVAN MCCURRY

147

1 Q What county is that in?

2 A Abbeville County.

3 Q And state?

4 A South Carolina.

5 Q What was the nature of the call that you were
6 dispatched?

7 A It was called in as a suicide.

8 Q Once you were dispatched by 911, how long did it take
9 you to arrive to Bell Road?

10 A Somewhere in the neighborhood of five, six minutes. I
11 was only a couple miles up the road.

12 Q Now, once you got to Bell Road, can you kind of
13 describe the property when you pulled up?

14 A When you turn off of Bell Road, you go up a long dirt
15 driveway. Well, I say long. It's about 150 yards long.
16 You go by a trailer on your left-hand side. Then you
17 approach what I believe to be his mother's house, which is a
18 brink house on your right. And then on farther back on the
19 property is another single-wide trailer, which --

20 Q Go ahead.

21 A -- which was said to be an incident location.

22 Q When you pulled up to Bell Road, did you see
23 Charles Tillman?

24 A I did.

25 Q And is Charles Tillman in the courtroom today?

EVAN MCCURRY

148

1 A Yes.

2 Q Can you describe what he's got on?

3 A Black, pin-stripped suit with a white shirt on under
4 it. (GESTURING)

5 THE COURT: The record would reflect that the witness
6 has identified Mr. Tillman.

7 Q As you pulled up into the driveway, it's almost, of
8 some sorts, considered like a compound. You've got multiple
9 houses out there -- or trailers, right?

10 A Uh-huh.

11 Q Did you encounter Mr. Tillman?

12 A Yes. When I pulled up and got out of the car, as I was
13 scanning to make sure of my surroundings, Charles approached
14 me at that point, and he was somewhat frantic, telling me
15 that -- what he had found and what had happened. And as I
16 was approaching the incident location that he described, I
17 did have to tell Mr. Tillman to stay out of the house
18 because I was trying to clear the scene. He was still
19 frantic. He did obey my orders at that point in time.

20 Q So he was wanting to get back in the house?

21 A Uh-huh.

22 THE COURT: That's a yes.

23 A Yes.

24 Q After he -- you did tell him to stay outside, he did
25 stay outside, correct?

EVAN MCCURRY

149

1 A Yes.

2 Q What did you do next?

3 A I then entered the house and I did what we call a
4 protective sweep. I scanned the whole house to ensure that
5 there was no one inside that permitted any danger to any
6 -- anybody following me. I then made it down the hallway.
7 I checked the -- the first bedroom on the left, and then I
8 made it to the last bedroom which is where Ms. Stutler was
9 located.

10 Q When you -- when you entered the house, what was the
11 temperature in there?

12 A It was fairly warm. It was cool outside. It seemed as
13 if maybe a heater had been left on or -- it was pretty warm
14 inside.

15 Q And when you went back to that back bedroom, what did
16 you discover?

17 A I -- I discovered a lady laying in the bed. As I made
18 my way in, I announced myself. I made myself -- I made my
19 way around the bed, and she was on the farthest side of the
20 bed away from the door, so I had to go ahead the bed. And
21 then I noticed that she was unresponsive, because I had
22 announced myself. And I did -- I didn't know at the point
23 in time, due to distress, I didn't recollect her name, so I
24 announced "ma'am" extremely loud several times. Didn't get
25 any response to her -- from her. So I moved on around the

EVAN MCCURRY

150

1 bed, observed blood running down the side of the bed. At
2 which point, I -- I called for her a couple more times with
3 no response, and due to -- due to the fact that I'm not a
4 medical personnel, I backed out, secured the scene for
5 medical personnel to come on in.

6 Q When you entered that house and looked in the bedroom
7 where Christie Stutler was lying in bed, did you notice any
8 firearm?

9 A No, sir.

10 Q When you went to Christie Stutler, how was she in the
11 bed? How was she laying?

12 A If memory serves me correctly, she was laying kind of
13 sort of faced down. One arm was hanging off the bed and her
14 face was almost even with the edge of the bed.

15 Q When you first went in the room and looked at her,
16 could you tell the cause of death?

17 A I couldn't tell the cause of death. The only thing I
18 observed was -

19 MR. GROSE: Objection, Your Honor. The pathologist is
20 the one who testifies about the cause of death as *State vs.*
21 *Commander*.

22 THE COURT: Right. He says he can't testify about
23 cause of death and he said that the only that he could
24 observe was --

25 MR. GROSE: Can we approach?

EVAN MCCURRY

151

1 THE COURT: Sure.

2 (Whereupon, a sidebar was held.)

3 THE COURT: Let's handle it this way. What did you
4 observe, again, when you saw Ms. Stutler?

5 THE WITNESS: I -- I observed her laying unresponsive.
6 And I observed blood running down the side of the mattress.

7 THE COURT: Continue.

8 Q Did you observe any gunshot wounds?

9 A No, sir.

10 Q Did you observe any gun?

11 A No, sir.

12 Q After you called out Ms. Stutler's name and backed out
13 of the trailer, again, what did you do at that point?

14 A Once I backed out, I secured the scene and started a
15 crime scene log. At that point my lieutenant,
16 investigators, EMS, they all started arriving. At that
17 point in time, I just kept a log of who was there. Who had
18 entered and who had left.

19 Q Was that the only time you entered that trailer?

20 A I -- I entered, secured it and left. That was the only
21 -- the first and only time I entered.

22 Q How long did you stay out on the scene that night?

23 A I think -- I'd have to look back at the CAD, but I'm
24 pretty sure I left somewhere around a little before 9:00.
25 Maybe around 9:00. Something like that.

EVAN MCCURRY

152

1 Q After the other law enforcement had gotten there and
2 took over?

3 A Yeah. SLED arrived on scene and cleared us up. At
4 that point, me and the guys that I was working with left.

5 MR. BROWN: No further questions.

6 THE COURT: Cross?

7 MR. GROSE: Thank you.

8 CROSS-EXAMINATION

9 BY MR. GROSE:

10 Q As I understand it, you were the first law enforcement
11 officer to arrive?

12 A Yes, sir.

13 Q Thank you. And you went inside the trailer?

14 A Yes.

15 Q And you went inside the bedroom where Christie was?

16 A Yes.

17 Q And you saw her laying on the bed?

18 A I did.

19 Q And she was laying face down?

20 A Yes.

21 Q And on the left side of the bed? As -- if you're at
22 the bottom of the bed, she would be on the left side?

23 A Facing the foot, yes. On the left.

24 Q Okay. And one of her arms was off the side of the bed?

25 A Yes.

EVAN MCCURRY

153

1 Q And you could see blood draining from her head, down
2 the side of the bed?

3 A From her -- from her head/facial region. I couldn't
4 exactly see where the blood was coming from.

5 Q In fact, that's what you noted in your report is that
6 the blood was coming from head/face region, running down the
7 side of the bed.

8 A Right.

9 Q And you did not touch her, did you?

10 A No, sir.

11 Q Okay. And I believe that you testified that you
12 secured the scene?

13 A Yes. I backed out and began to secure the scene.

14 Q I'm going to show you what's marked as Defendant's
15 Exhibit Number 2. Do you recognize that?

16 A Yes. This is my crime scene log.

17 Q Okay. And the first page lists some of the information
18 about Charles Tillman, right?

19 A Uh-huh.

20 Q And some of the civilians that were there that day,
21 right?

22 A Yes.

23 Q As well as police officers and vehicles?

24 A Yes.

25 Q Okay. And that -- when you testified earlier that you

VONNIE CUMMINGS

154

1 started the crime scene log, that's a copy of it other than
2 the fact that a couple of -- a handful of phone numbers have
3 been -- or date of births have been redacted.

4 A Right.

5 MR. GROSE: Okay. And this is already in evidence.
6 I'd like to publish it to the jury.

7 THE COURT: Proceed please.

8 MR. GROSE: Beg The Court's indulgence for a moment.

9 (Whereupon, State's Exhibit Number 2 was published for
10 the jury.)

11 THE COURT: And just so that you're aware ladies and
12 gentlemen, anytime that they show you anything, if it's in
13 evidence, you'll ultimately have it back in the jury room
14 and you can review it in greater detail at a later point in
15 time once you've started your deliberations. Okay? So
16 anything that's displayed to you, understand that you will
17 have that -- the chance to look at it more later on.

18 MR. GROSE: Nothing further at this time.

19 THE COURT: Sir, thank you very much. Step down.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 THE COURT: Call your next witness.

23 MR. BROWN: State calls Vonnie Cummings.

24 VONNIE CUMMINGS, having first been
25 duly sworn, testified as follows:

VONNIE CUMMINGS

155

1 THE COURT: Why don't you set the chair off that rise,
2 so that she doesn't have to step up and we'll just -- yeah.
3 That would make it the best way to get up.

4 MR. GROSE: Judge, what -

5 THE COURT: Yeah. All right. If we could, could we
6 get the exhibits back, please, so that we can just kind of
7 keep all of these -- can we get that back so that we keep
8 all of the exhibits together? Thank you very much.
9 Solicitor.

10 MR. BROWN: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 Q Ma'am, can you, please, state your full name?

14 A My name is Vonnie Cummings.

15 Q Can you spell your first name for the court reporter?

16 A V-o-n-n-I-e.

17 Q And Cummings is spelled how?

18 A C-u-m-m-I--g-s.

19 Q Ms. Cummings, do you recognize the gentleman over there
20 with the striped suit? (GESTURING)

21 A Yes.

22 Q Who is that? (GESTURING)

23 A That's my son, Charles Tillman. (GESTURING)

24 Q And, Ms. Cummings, where do you live?

25 A Bell Road, Iva.

VONNIE CUMMINGS

156

1 Q And is your house -- and that's in Abbeville County?

2 A Yes, sir.

3 Q Ms. Cummings, can you describe your property there at
4 Bell Road?

5 A Well, it's, I'm pretty sure, a little over a hundred
6 feet off of the main road, a little more. I ain't for sure.
7 I ain't never had it measured. And it's a brink house.
8 It's got a shed and a trailer on it.

9 Q And the trailer would be separate from the brink house;
10 is that right?

11 A Yes.

12 Q And who lived in that trailer?

13 A Christie and Charles Tillman was living in there.

14 Q Okay. And how long was Christie living with Charles in
15 that trailer?

16 A It wasn't very long, but I can't say how long, because
17 they had been in and out my house. They had been there
18 until they got the trailer.

19 Q Now, Christie and Charles would -- would Christie come
20 and go staying with Charles?

21 A Uh-huh.

22 Q And this time she was -- she was staying with Charles?

23 A Yeah. She -- yeah.

24 Q Ms. Cummings, do you remember November 8th, 2016?

25 A The incident.

VONNIE CUMMINGS

157

1 Q That day, did you go to the washroom?

2 A Well, we all was folding and went to the washing room.

3 But she said she had some -- you know, somebody like

4 -- somebody was going to come pick her up. And I told her,

5 I said well, I'm going to be leaving in the morning at what

6 time. And when I came out to put the clothes in the car and

7 I hollered for her and I think she said, I'm good.

8 Q You think, you say?

9 A I ain't for sure. I'm saying she said something, but I

10 ain't for sure what it was, so...

11 Q Did you see her?

12 A I seen the shadow. I don't know who shadow, but I seen

13 the shadow. I was coming out there to get in the car to go

14 to the washroom and I -- I always told her because she

15 always went everywhere I went mostly.

16 Q What time --

17 A Except --

18 Q What time of morning would that be?

19 A It was around about 8:30 or something to nine. Maybe

20 25 to 9:00 or somewhere along in there. I ain't for sure

21 about the time, now.

22 Q But you --

23 A But I know it was around that time.

24 Q But you said you saw a shadow. You couldn't even tell

25 if that was Christie?

VONNIE CUMMINGS

158

1 A I couldn't tell who's shadow it was. But it could have
2 been her.

3 Q It could have been her?

4 A It could have been.

5 Q So you don't know if it was her or not?

6 A Not for sure.

7 Q Did you leave to go to the washroom?

8 A I left and went to the washerette.

9 Q Ms. Cummings, did you ever tell law enforcement about
10 -- about possibly talking with Christie that morning and
11 seeing that shadow? Did you ever tell that to law
12 enforcement?

13 A They didn't ask me.

14 Q You didn't feel like that was important information,
15 potentially?

16 A It may have been, but they didn't ask me about her.

17 Q Ms. Cummings, that day when Charles got back from work
18 around 6:10 that night, do you remember Charles being on the
19 telephone?

20 A Yeah. He was on the telephone. He came up there
21 hollering at me because -- he say, momma, where you was, and
22 I say -- and I told him, well, you know, Christie had
23 somewhere to go and we went to the washerette and come on
24 back to the house.

25 Q Do you remember telling Charles when he came up there

VONNIE CUMMINGS

159

1 and he was on the phone that you thought that she was with
2 him? You hadn't seen her all day?

3 A I didn't tell Charles that. No.

4 Q You didn't say that?

5 A Because I know what Charles was with J.C. He left
6 going to work before I left going to the washerette.

7 Q You don't remember saying that to Charles? Do you
8 remember talking with Charles about a gun?

9 A I -- well, I asked him was it one down there. I don't
10 know who was talking to him about - I just asked him was
11 there any down there.

12 Q Were --

13 A And I don't even remember what he say, but I did ask
14 him was one down there. That's all I know.

15 Q If you heard it again, would that help you recall your
16 recollection?

17 A The tape?

18 Q Yes, ma'am.

19 A You can play it.

20 MR. BROWN: Judge, permission to go ahead and play the
21 rest of the tape.

22 THE COURT: You may.

23 MR. BROWN: And just put in the entire -- play the
24 entire exhibit.

25 THE COURT: Okay. That's fine.

VONNIE CUMMINGS

160

1 (Whereupon, State's Exhibit Number 1 was published for
2 the jury.)

3 Q Ms. Cummings, listening to that 911 call, does that
4 refresh your recollection of your conversation with Mr.
5 Tillman that night -- or that evening?

6 A Yes, sir.

7 Q And y'all did talk about a gun?

8 A Yeah. I asked him, did he have one down there.

9 Q After he -- after he responded --

10 A But he didn't -- he didn't -- because we was -- he was
11 all upset. He was hollering and going on, so I couldn't
12 make out what he was saying.

13 Q You didn't say, well, you had one down there yesterday?

14 A Huh-uh, no.

15 Q Ms. Tillman, after you had this exchange about the gun,
16 there's a long break where it sounds like you and Mr.
17 Tillman are having a conversation farther back in the room.
18 Do you remember that?

19 A Huh-uh. I was in the front part of the house, and I
20 never go to the back part of the house.

21 Q So that wasn't you muffled in the back after the
22 initial conversation about a gun?

23 A No. My -- my aunt was there. I don't know who else
24 was there, but --

25 Q Who all was in that house? Do you remember?

VONNIE CUMMINGS

161

1 A As far as I can think of there wasn't anybody else
2 besides me and my aunt, but she's 97.

3 THE COURT: She's what now?

4 THE WITNESS: Ninety-seven.

5 THE COURT: Ninety-seven?

6 Q But you deny saying you had a gun down there yesterday?

7 A I didn't say anything about he had one down there
8 yesterday. I asked him did he have a gun down there.

9 Because, you know, I don't have no gun, you know. So I was
10 just asking did he have one. I don't know whether there was
11 one down there or not. I never put foot in that trailer,
12 because I can't get in there.

13 Q So you never --

14 A So I don't know what was down there.

15 Q You never went in that trailer?

16 A Never.

17 Q Did anybody else go in that trailer that you know of
18 besides Charles and Christie?

19 A Well, I can't answer that because, see --

20 Q That's fair enough.

21 A -- I don't know, because I'm in my house and I don't
22 know who goes in, you know.

23 Q Yes, ma'am. How old is Charles?

24 A I -- I really don't know. I know what year he was born
25 in '60 --

VONNIE CUMMINGS

162

- 1 Q That's fine.
- 2 A -- '63. Oh, I'm sorry. I don't know.
- 3 Q Ms. Tillman, you love your son, don't you?
- 4 A Yes, sir. Everybody loves their children. Men, women,
5 boys and girls, you know. You --
- 6 Q Yes, ma'am.
- 7 A -- love your family and you love your children.
- 8 Q Never want anything bad to happen to them?
- 9 A I always teach them the right way.
- 10 Q Yes, ma'am.
- 11 A Love everybody.
- 12 MR. BROWN: No further questions.
- 13 A And Christie, I took her in as a daughter of mine,
14 because she seemed like she was throwed away. She was in
15 and out my house for a long time, and she stayed with these
16 other couple people across the road before she come to stay
17 at my house. So she really was just -- mostly was just in
18 and out of colored peoples' house, because she say she
19 didn't have no family that cared about her.
- 20 Q Are --
- 21 A I'm going let it go.
- 22 Q Are you staying she never -- are you saying never went
23 -- stayed with her parents? Bob Stutler?
- 24 A She stayed with him a while, but she said that --
- 25 Q Or the Huffmans?

VONNIE CUMMINGS

163

1 A -- they couldn't get along, so...

2 Q Or the Huffmans? Did you ever know that she went to
3 stay with them?

4 A She stayed with her mother, I guess. And then she
5 stayed with her father a while. But they couldn't get along
6 she said.

7 MR. BROWN: No further questions.

8 A Now, I don't know. That's hearsay.

9 THE COURT: Cross?

10 MR. GROSE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GROSE:

13 Q Ms. Vonnie, I'm going to ask you a few questions if
14 that's all right.

15 A Yes, sir.

16 Q The first -- the first thing I want to do is talk about
17 your house at -- on Bell Road. Okay? Is that fair?

18 A Yes.

19 Q Now, as I understand it, you come down a driveway and
20 -- and there's a brick house there, right?

21 A Yes, sir.

22 Q And in November 8th of 2016 there was a trailer on the
23 property?

24 A Yes, sir.

25 Q Now, that trailer hadn't always been there, had it?

VONNIE CUMMINGS

164

- 1 A No.
- 2 Q It had been there for a couple or a few months?
- 3 A Yes.
- 4 Q And I think that you said that sometimes Charles and
5 Christie were living in the brick house on -- at Bell Road;
6 is that right?
- 7 A Yes, sir.
- 8 Q Okay. Now, I want to focus you on November 8th of
9 2016, and ask you who was living in the brick house. You
10 were living in the brick house; is that right?
- 11 A Yes, sir.
- 12 Q And Walter Tillman was living in the brick house,
13 right?
- 14 A Yes, sir.
- 15 Q And Walter goes by Walt sometimes?
- 16 A Yeah, Walt.
- 17 Q So if we say Walt, we're talking about Walter Tillman;
18 is that fair? Is that fair?
- 19 A Yes, sir.
- 20 Q Okay. There was another lady, I think that you said
21 your aunt. Was that Ms. Fanny?
- 22 A Yes, sir.
- 23 Q What's Ms. Fanny's last name?
- 24 A Carson.
- 25 Q I'm sorry?

VONNIE CUMMINGS

165

- 1 A Carson.
- 2 Q Carson? Okay. And Antonio Tillman also lived there,
- 3 right?
- 4 A Yes, sir. He's in and out there, too.
- 5 Q Okay. And Antonio is -- he's in his early 20s maybe?
- 6 A Yes, sir.
- 7 Q And he's actually Charles' son; is that right?
- 8 A Yes, sir.
- 9 Q And -- so on November 8th, there were four people
- 10 living inside the house?
- 11 A Yes, sir.
- 12 Q And on November 8th, there was two people living in the
- 13 trailer, right?
- 14 A Yes, sir.
- 15 Q All right. Now, this is out in the country, but it's
- 16 not a terribly long distance between the house and the
- 17 trailer, is it?
- 18 A No, sir.
- 19 Q Okay. Now also, other people come to that trailer on a
- 20 regular basis; is that right?
- 21 A Yes, sir.
- 22 Q Okay. And I want to, again, talk about November 8th of
- 23 2016. That morning Willie Tillman came to the trailer,
- 24 didn't he?
- 25 A Yes, sir.

VONNIE CUMMINGS

166

1 Q And Willie and Charles are brothers, right?

2 A Yes, sir.

3 Q Okay. And Willie lives -- his address is right there
4 on Bell Road, too, right?

5 A Yes, sir.

6 Q All right. So he's -- he's not -- it's not the same
7 property, but it's right there in that area?

8 A Yes, sir.

9 Q Okay. And JC Boggs, he came on the morning of November
10 16th, didn't -- I mean, November 8th, didn't he?

11 A Yes, sir.

12 Q Okay. Now, JC Boggs is a man then that Charles was
13 working for at that time; is that right?

14 A Yes, sir.

15 Q And Walt, who's Charles' cousin, also worked with JC
16 Boggs?

17 A Yes, sir.

18 Q Okay. So on -- I think you also testified -- going
19 back to the trailer for a second. You testified that you
20 hadn't been in there because it's hard to get in there,
21 right?

22 A Yes, sir.

23 Q And the trailer had only been there for two, three
24 months maybe, right?

25 A Yes, sir.

VONNIE CUMMINGS

167

1 Q All right. And the -- the doors are kind of elevated
2 up off the ground, right?

3 A Yes, sir.

4 Q And there's a platform in front of the front door,
5 right?

6 A Yes, sir.

7 Q And then there's like, some logs that you have to step
8 up on?

9 A Yes.

10 Q All right. And I don't want to embarrass you, but with
11 this, it's -- you're not fit to be climbing up and down
12 there, right?

13 A No, sir.

14 Q Okay. Now, I believe the Solicitor asked you about
15 going to the laundry or the cleaners, that day, right?

16 A Yes, sir.

17 Q Okay. I want to try to put that into context. You
18 remember JC coming, right?

19 A Yes, sir.

20 Q And JC taking Charles and Walt, and they left in JC's
21 truck to go to work?

22 A Yes, sir.

23 Q Okay. And Willie was still there, right?

24 A Yes, sir.

25 Q All right. And Willie and JC and Walt and even Charles

VONNIE CUMMINGS

168

- 1 had been outside a little bit that morning before they left,
2 right?
- 3 A Yes, sir.
- 4 Q Okay. Now, before I get to the cleaners. Antonio,
5 Charles' son, he had left at like 5:30 that morning to go to
6 work?
- 7 A Yes, sir.
- 8 Q So he left real early?
- 9 A Yes, sir.
- 10 Q Okay. And so, after JC and Charles and Walt left,
11 that's when you went to the cleaners, right?
- 12 A Yes, sir.
- 13 Q Okay. Now, you didn't go to the cleaners alone, did
14 you?
- 15 A No, sir.
- 16 Q And I imagine you don't drive, do you?
- 17 A I drive.
- 18 Q You drive? Okay.
- 19 A Not far, but I drive.
- 20 Q But you went to the cleaners with Willie?
- 21 A With my -- my aunt went with me.
- 22 Q And did Willie go, too?
- 23 A Oh, now you got me puzzled.
- 24 Q Okay.
- 25 A Now, I can't -- he usually go with me, but I don't know

VONNIE CUMMINGS

169

1 did he had go with me that morning or not.

2 Q Okay. And Christie goes with you sometimes, doesn't
3 she?

4 A Yes, sir.

5 Q But she didn't go that day, did she?

6 A No, sir.

7 Q And she had told you earlier in the week that she was
8 having somebody come over that day?

9 A Yes, sir.

10 Q Okay. And I believe you testified that -- that you
11 called to her and you heard something, right?

12 A Yes, sir.

13 Q And at that point, Charles had already gone to work?

14 A Yes, sir.

15 Q All right. And then you went to the cleaners?

16 A Yes, sir.

17 Q Okay. Now, they asked you -- of course, you love
18 Charles. And you loved Christie too, didn't you?

19 A Yes, I did.

20 Q And you knew that Christie had some history of mental
21 health issues, didn't you?

22 A Yes, sir.

23 Q And you knew that she had done things to talk about
24 hurting herself in the past?

25 A Yes, sir.

VONNIE CUMMINGS

170

1 Q Okay. And did you accept Christie in your home like
2 one of your own children?

3 A Oh, yes, sir.

4 Q Okay. And Charles loved Christie, didn't he?

5 A Oh, yes, sir. He really did.

6 Q And just one last question. I mean, you have health
7 issues other than just moving around, don't you?

8 A Yes, sir.

9 Q I mean, you've had an aneurysm in the past before?

10 A Yes, sir.

11 MR. GROSE: All right. Thank you for being here.

12 THE WITNESS: All right. Thank you.

13 THE COURT: Redirect?

14 MR. BROWN: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. BROWN:

17 Q Ms. Cummings.

18 A Yes, sir.

19 Q Going through how everybody was living up there at the
20 property, you mentioned you've never stepped foot in the
21 trailer where Charles and Christie were living together,
22 right?

23 A Yes, sir.

24 Q So if you've never been inside, did they sleep down
25 there?

VONNIE CUMMINGS

171

1 A Well, they were down there. Like they slept down there
2 and they was down there and in the morning, they'll come up.

3 Q So if you had never been down there, could you see what
4 happened behind closed doors?

5 A I didn't say nothing about seeing beside closed doors,
6 now. I said I seen a shadow moving.

7 Q But you didn't -- you didn't see Charles' interactions
8 with Christie when they were down in that trailer, could
9 you?

10 A No, sir.

11 Q And Mr. Grose ask you about mental health issues. That
12 all came from Charles, didn't it?

13 A I got -- I got two stints in heart. My chest.

14 Q Well, I mean --

15 A Plus I got to get a --

16 Q Did Charles tell you that or did she actually tell you
17 that?

18 A Huh?

19 Q Did Charles tell you about mental health issues with
20 Christie?

21 A Well, I seen it myself with my own two eyes. I saw it
22 like every day. She had -- the last few months that Charles
23 was making -- he was doing time for --

24 Q That --

25 A And she was -- a had her at my house then. But she

VONNIE CUMMINGS

172

1 left, and when she came back she wasn't the same.

2 Q Now, did Christie have a car?

3 A Yes, sir. I think so. When it was running. I didn't
4 see her driving or anything now. But I think she had a car,
5 but I never seen her driving it.

6 Q On November 8th did she have a car at your house?

7 A It's -- you getting me confused now. I -- I don't
8 think so, but I know she had one.

9 Q But she -- you don't think she had one that day?

10 A No. She wouldn't have one.

11 Q Now, you said that morning you saw a shadow or maybe
12 heard her talk or something like that; is that correct?

13 A That's what I heard. Yes, sir.

14 Q And then you said before you went to the washroom,
15 Charles and --

16 A And Walter --

17 Q -- and Walt --

18 A -- and JC was --

19 Q -- and JC had already left?

20 A They had gone.

21 Q And where did you -- during this time -- in the 911
22 recording you said --

23 MR. GROSE: Objection. Beyond the scope of cross.

24 THE COURT: Overruled. Go ahead.

25 Q You said in the 911 call that you thought she was with

VONNIE CUMMINGS

173

1 Charles all day.

2 A I didn't say all day. I thought he had came back early
3 and him and her was gone somewhere.

4 Q But you hadn't seen her since that morning, or you
5 hadn't seen what you thought was her shadow all day? And,
6 again, you don't know what happened behind those closed
7 doors, do you?

8 A I couldn't see behind the closed doors to know what was
9 going on back there. I stayed in my house and they stayed
10 in theirs. The only time I seen them is when she came out
11 -- they came out of the house. So I don't know what was
12 behind closed doors. That's -- nobody know.

13 MR. BROWN: Thank you.

14 MR. GROSE: Just real brief.

15 THE COURT: Go ahead.

16 RECROSS-EXAMINATION

17 BY MR. GROSE:

18 Q The Sheriff's Office never had you come in and give a
19 video interview, did they?

20 A No, sir.

21 MR. GROSE: Thank you.

22 THE COURT: All right. Ma'am you can step down.

23 (Whereupon, the witness has stepped down from the
24 witness stand.)

25 THE COURT: Ladies and gentlemen, I know that you all

1 have been out here for about an hour and half or about two
2 hours. We're going to take ourselves a bathroom break.
3 Jury to the back. If any member of the jury panel needs to
4 step outside for a cigarette, just let the bailiff know and
5 he'll take you down the back way. Okay? But don't discuss
6 the case, all right? We'll be at ease for about 10 minutes
7 or so, and then we'll resume with the State's case. All
8 right? Adjourn to the back.

9 (Whereupon, the jury exited the courtroom at 10:56
10 a.m.)

11 THE COURT: We're at ease.

12 (Whereupon, a recess was held from 10:56 a.m until
13 11:15 a.m.)

14 THE COURT: Let's have the jury back out, please.

15 MR. GROSE: Judge, we need to put a sidebar.

16 THE COURT: Hold on one second. Hold the jury just one
17 second. Just -- sorry. That was premature. Ask them to
18 step back in there, please. My bad. Mr. Grose.

19 MR. GROSE: During, I believe it was, Officer McCurry.

20 THE COURT: Right. McCurry.

21 MR. GROSE: McCurry. We had two sidebars. The first
22 one, I expressed some concerns that based on what I've seen
23 on all of these tapes of the interrogation that you haven't
24 seen, plus the Solicitor's opening argument saying pay
25 attention to the opinion of the officers and the coroners,

1 that they were going to express opinions about what they saw
2 as far as the injuries and the cause of the injuries at the
3 crime scene. And what they're going to do is, is they're
4 going to say, as they did in these tapes, that only somebody
5 who shot her would have known that they shot her. And so,
6 when they ask an officer that says I didn't see a gunshot
7 wound, that's what they're setting up for. And -- and I
8 think they're also setting up for the coroner to come in and
9 give some opinions which -- we settled that in 1937, you
10 can't do that. That's *State vs Griggs*. And so, then when
11 they got into it, I didn't object to questions what did you
12 see. Did you see her? She was laying face-down, blood
13 draining down the side of her head. I didn't object to any
14 of that. I objected when they wanted to get into questions
15 about cause and manner of death, like the gunshot. And
16 that's when I asked for -- to be able to take it up outside
17 the presence of the jury. You didn't allow that, but you
18 did, at that point, intercede and ask some questions that
19 focused it back. And then they inched away from it again
20 when they asked about the gunshot wound. Only -- only Dr.
21 Woodard can testify about gunshot wounds in this case and
22 I'll -- I don't want any other witnesses coming in and
23 giving an opinion or non-opinion on the cause and manner of
24 death in that trailer that they're then going to turn around
25 and use that non-opinion to bolster their case in closing

1 argument. That's my concern.

2 MR. BROWN: Judge, I believe what -- what Officer
3 McCurry and what anybody else that entered that room is
4 going to do is tell what they saw. The question is did you
5 see a gun. No. How was she laying? Laying face-down under
6 covers. Did you see a gunshot? Where was it?

7 MR. GROSE: I'm not -- I don't have a problem up until
8 did you see a gunshot wound. You know, at some point, they
9 -- look, I got incident report where one of their deputies
10 describes there being an entry wound on the right side,
11 which we know is not true. Now, that be a scrivener's error
12 or it may be that that's what the coroner told her. Point
13 is, the coroner is not the person to give that testimony.
14 They can talk about what they observed. Did you see a
15 wound? That's fine. Did you see a gunshot wound? I have a
16 problem with that.

17 MR. BROWN: Judge, this call came in as a -- as a
18 suicide by gunshot. That she shot herself. So it's -- if
19 the officer's in the room and they can use their own -- one
20 of their senses to look at her and say I didn't see a
21 gunshot, that's not giving an opinion, that's just giving
22 what their observations are when they entered the room.
23 It's like if they see a gun in there or if they don't see a
24 gun in there.

25 THE COURT: Okay.

SHERI ASHLEY

177

1 MR. BROWN: They're viewing and examining -- they're
2 not examining her body, but they're just looking for what
3 the -- what they see. And that's all we're eliciting.

4 THE COURT: Well, I mean, if anyone who entered that
5 room, anyone who viewed the body can give the narrative and
6 testify of what -- about what they observed and what they
7 did not observe. I'm trying to picture in my mind some of
8 the photographs. I know that there were some covers up
9 towards the top of her body in those photographs. I think
10 that this is really somewhat -- it's been stipulated to that
11 this was a homicide. So someone clearly took her life. It
12 is not a suicide. If they're able to testify that they saw
13 an injury to her that they believe to be a gunshot wound, I
14 don't think that that's out of bounds. The ultimate
15 question on cause of death has been settled with the
16 stipulation that this is, in fact, a homicide. And I
17 believe that Dr. Woodard will testify that it's from a shot
18 to the head. So to the extent that any witness is able to
19 testify about what they saw or what they didn't see, I do
20 believe that that's fair game. I'm somewhat puzzled because
21 this is -- of course, this is a stipulated homicide at this
22 point in time. If they are able to view a wound and
23 describe a wound -- I saw what I believed, like Mr. Grose
24 says in one of the incident reports, it looks like an entry
25 would to the left or right of the head, whichever one it

SHERI ASHLEY

178

1 was. They -- they can testify to that because they saw it.

2 So that will be my ruling. Let's have the jury, please.

3 (Whereupon, the jury entered the courtroom at 11:22

4 a.m.)

5 THE COURT: All right. The record will reflect that
6 the jury is back and seated. The Defendant is present with
7 counsel. Solicitor, if you will call your next witness,
8 please.

9 MR. BLACK: State calls Sheri Ashley.

10 SHERI ASHLEY, having first been
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BLACK:

14 Q You're Sheri Ashley?

15 A Yes, sir.

16 Q And how long have you been in law enforcement, Ms.
17 Ashley?

18 A Almost 10 years.

19 Q And what departments have you worked at?

20 A I worked at Honea Path, and then Abbeville County.

21 Q Since you've been in Abbeville County, you were -- you
22 were previously in investigations; is that right?

23 A Yes, sir.

24 Q About how long were you an investigator?

25 A Probably two and a half, three years.

SHERI ASHLEY

179

1 Q Okay. And now you've moved on. You're the SRO at the
2 high school; is that right?

3 A Correct.

4 Q Officer at the high school -- the Abbeville High
5 School.

6 A Yes, sir.

7 Q And back on November the 8th, 2016, were you an
8 investigator with the Sheriff's Department?

9 A Yes, sir.

10 Q And did you get called out to Bell Road?

11 A I did.

12 Q How did you get called out to Bell Road?

13 A I received a phone call from my Captain, Natalie
14 Talbert.

15 Q And can you tell us a little bit -- I know Abbeville is
16 kind of a small county. How many investigators typically
17 are there with the Sheriff's Department?

18 A Approximately five. Maybe five or six.

19 Q Okay. And it's different from like a bigger county
20 like Anderson or Greenville or even Greenwood where there's
21 more investigators; is that right?

22 A That's correct.

23 Q On this particular case, did all the investigators
24 essentially work the case?

25 A Yes, sir.

SHERI ASHLEY

180

1 Q Okay. And so, when you showed up to Bell Road,
2 there were -- there were already people there; is that
3 right?

4 A That's correct.

5 Q Who else was there? What other investigators were
6 there?

7 A Lieutenant Graham and Sergeant Hines were already
8 there.

9 Q And do you know about what time you got there?

10 A I'm not exactly sure. I received a phone call about --
11 at 18:30, which is 6:30 in the afternoon.

12 Q And were you there throughout the night or did you --
13 did you end up going home that night?

14 A I went home for a few hours and came back.

15 Q Came back the next morning?

16 A Came back, I -- I believe, it was -- I don't -- maybe
17 around 3:00 or 4:00.

18 Q The time you would come back. Do you know?

19 A I think that's when I came back.

20 Q Okay.

21 A Yeah. I'm not real sure on that.

22 Q I'm sure the night was a little long.

23 A Yeah.

24 Q Can you describe a little bit -- I know there's already
25 been testimony about the description of Bell Road. Can

SHERI ASHLEY

181

1 you describe a little bit about where it is and how many
2 houses are out there?

3 A Yes, sir. When I pulled up, I believe it's dirt drive,
4 there's a -- maybe, a trailer on the left-hand side. I
5 pulled up into the grass across from that first trailer and
6 walked down the dirt drive to get to the 1083. The brick
7 house on the right was where I met with Evan and Lieutenant
8 Graham and Sergeant Hines.

9 Q And -- I'm sorry. You can continue.

10 A And then from there, Lieutenant Graham, Sergeant Hines
11 and I walked back toward the trailer.

12 Q Did you go inside the trailer when you first got there?

13 A Yes. We walked through the -- walked into the trailer.

14 Q Okay. And did you go back to the bedroom where
15 Christie Stutler was?

16 A Yes, sir.

17 Q And describe -- what did it feel like inside the
18 trailer?

19 A It was hot.

20 Q Like a heater or something?

21 A Yeah. There was some type kerosene heater running.

22 Q Okay. Did you have to take a jacket off or anything,
23 or do you remember?

24 A I don't remember.

25 Q Okay. And Christie, was she still in the bed?

SHERI ASHLEY

182

- 1 A Yes, sir.
- 2 Q Had she been moved at all, that you could tell?
- 3 A No, sir. That I could tell.
- 4 Q But she hadn't been moved?
- 5 A No, sir.
- 6 Q Okay. And can you describe how she was laying?
- 7 A She was laying on the left-hand side of the bed. Her
- 8 left arm was hanging off. The right arm appeared to be up
- 9 under her head. Her hair was -- her hair was kind of long
- 10 and it was -- it was everywhere. And blood was pooling down
- 11 the side of the mattress on onto the floor.
- 12 Q Okay. And had the coroner arrived yet, that you
- 13 remember?
- 14 A Not that I remember.
- 15 Q Okay. When you -- when you saw -- when you saw
- 16 Christie, did you see any kind of gunshot wound?
- 17 A No, sir.
- 18 Q Okay. Did you see any kind of gun in the room?
- 19 A No, sir.
- 20 Q And you all ended up going through that room after she
- 21 had been pulled out of that room; is that correct?
- 22 A Yes, sir.
- 23 Q Did you ever find a gun after that?
- 24 A No, sir.
- 25 Q Okay. Did you -- did you speak to Charles Tillman's

SHERI ASHLEY

183

1 mother? She's already given her testimony, Ms. Cummings.

2 Did you talk to her at the scene that day?

3 A Yes, sir.

4 Q Okay. And do you know -- do you remember what time
5 that was?

6 A I don't remember.

7 Q Okay. Did you -- did you talk to her the next day?

8 A Yes, sir.

9 Q Okay. And -- and you said you don't remember what time
10 you talked to her that night?

11 A I'm not -- I'm not real sure.

12 Q Where -- where would you all have talked? Was it her
13 house?

14 A At her house. Yes, sir.

15 Q Okay.

16 A The brick house.

17 Q Did -- did she ever mention anything to you --

18 MR. GROSE: Objection, Your Honor. I have a matter of
19 law to take up.

20 THE COURT: All right. Ladies and gentleman, if you'll
21 adjourn to the back for just a few moments. I need to talk
22 to the lawyers out here. Don't talk about the case. I'll
23 have you back out ASAP. Thank you.

24 (Whereupon, the jury exited the courtroom at 11:29
25 a.m.)

SHERI ASHLEY

184

1 THE COURT: All right. Solicitor, what's she about to
2 testify to?

3 MR. BLACK: I was going to ask if in her conversation
4 with Ms. Cummings if she ever mentioned seeing a shadow of
5 Christie in the house.

6 THE COURT: All right.

7 MR. BLACK: And then I was also going to ask her if she
8 ever remembered talking to her that day, if she -- if the
9 mom mentioned that. And then, also, if the mom ever
10 mentioned her mental health issues. Those are yes or no
11 questions.

12 THE COURT: And Mr. Grose?

13 MR. GROSE: Well, before they can do that, they have
14 to, under Rule 613 of the South Carolina Rules of Evidence,
15 they have to ask Ms. Cummings about any statements that she
16 made to Detective Ashley at the time, and ask her -- give
17 her an opportunity to admit or deny or explain those and
18 they did not do that during their questioning of Ms.
19 Cummings.

20 MR. BROWN: Judge, I -

21 THE COURT: My recollection of her testimony was that
22 she said that they never spoke to her.

23 MR. GROSE: Now, I don't think that she said that they
24 never spoke to her. I think that she said that they didn't
25 ask her certain questions. But I don't recall her ever

SHERI ASHLEY

185

1 being asked about specific statements to Detective Ashley.

2 THE COURT: Mr. Brown?

3 MR. BROWN: Judge, I remember, when I was questioning
4 her, I asked did you ever tell this to any of the law
5 enforcement and she says they never asked, but she talked
6 about law enforcement. But she -- but she didn't -- since
7 they didn't ask, they didn't voluntarily give that
8 information.

9 MR. GROSE: So -- and actually if -- if she's saying
10 she didn't make those statements to law enforcement and law
11 enforcement's saying that she didn't make those statements,
12 then there's nothing to impeach.

13 THE COURT: The note that I have after Ms. Cummings
14 testifies -- testified, "Didn't tell any law enforcement
15 about seeing the shadow. They didn't ask her about seeing
16 her". And then Ms. Cummings transitions into a discussion
17 about the Defendant leaving and going to work. Okay. Well,
18 if anything, it sounds like this witness' testimony may be
19 consistent with what Ms. Cummings said, so...

20 MR. GROSE: But it's not admissible, because under --
21 it's hearsay and it's not admissible under Rule 613.

22 THE COURT: Well --

23 MR. BLACK: They weren't -- they didn't call for
24 hearsay. The questions didn't call for hearsay.

25 MR. GROSE: Well, it does if -- if they say -- if it

SHERI ASHLEY

186

1 goes about a witness said. I talked to a witness and they
2 didn't say this. I mean, that's hearsay.

3 THE COURT: Well, Ms. Cummings herself admitted that
4 she never -- I'm trying to see where the harm is to the
5 Defense, where the harm is to the State, because it's
6 consistent with what Ms. Cummings previously testified to.
7 They didn't ask, so she didn't say. But --

8 MR. GROSE: Well, they're going to -- I don't know what
9 she's going to say because there's -- in the incident report
10 I have, there's nothing about her having asked any of these
11 questions. The point is, is under the rule it's not
12 admissible because they didn't lay the right foundation and
13 that's our objection.

14 THE COURT: All right. What was said in your
15 conversations with Ms. Cummings?

16 THE WITNESS: We basically questioned her about the
17 gun. Her saying -- you know, asking Mr. Tillman. But she
18 never -- she never mentioned anything about seeing Christie
19 that morning. She did tell us that she went -- they always
20 go to wash clothes or whatever, and that she pulled up down
21 there and nobody came out, so she left without her. But she
22 never said that she heard a shadow or talked -- I mean, saw
23 a shadow or talked to anybody.

24 THE COURT: All right. So she never mentioned hearing
25 a voice coming from the trailer --

SHERI ASHLEY

187

1 THE WITNESS: No, sir.

2 THE COURT: -- when she called -- when she called down
3 there about going to the washroom?

4 THE WITNESS: No, sir.

5 MR. GROSE: But the reports I have doesn't say anything
6 about them ever asking those questions, so...

7 THE COURT: You can deal with that on cross.
8 Solicitor? Where are you going with this?

9 MR. BLACK: I'm not -- I think the question was asked
10 by Mr. Brown. He did ask her about did you make any of
11 these statements to law enforcement and she -- like you
12 stated, she said she never asked -- or they never asked and
13 she never volunteered that information.

14 MR. GROSE: And they're not saying now that they asked
15 those questions. And so, I -- I just -- I'm -- I'm trying to
16 keep from -- they're going to try to confuse the heck out of
17 this jury before this case is over. I know where this is
18 going because that's what they did in their interrogation.
19 And these things that appear to you to be little matters are
20 going to be building up, and they're -- and they're going to
21 be extremely prejudicial when it comes time in how they
22 argue this case in closing.

23 THE COURT: All right. Well, technically, I think Mr.
24 Grose is correct. Under the rule, if we're talking about
25 impeachment, it's the same statement that Ms. Cummings gave

SHERI ASHLEY

188

1 earlier. So there's really nothing to impeach as far as the
2 conversation that Ms. Cummings had with her, as compared to
3 the testimony that she gave a short while ago. So let's, I
4 guess, just move on if we could. Were you all going to ask
5 her about anything else concerning the conversation?

6 MR. BLACK: I was going to --

7 THE COURT: Because you're on the subject of the gun.

8 MR. BLACK: Yeah. I was going to broach on the gun,
9 Your Honor. I think, initially, she denies several times.
10 Ultimately, about a week later, she does say -- when they
11 approached her and played the -- played the tape, she does
12 admit that she said something about the gun on there. And
13 then she says I don't why I said that, but that was very
14 similar to her testimony that she just testified to just a
15 moment ago.

16 THE COURT: Okay. That's fair. Let's have the jury.

17 (Whereupon, the jury entered the courtroom at 11:37
18 a.m.)

19 THE COURT: The jury has been seated. One thing, the
20 juror behind you, ma'am, has been having trouble seeing.
21 Maybe if you were to scoot -- one, you could maybe scoot --
22 or you with the purple, maybe you could scoot over.
23 Whatever. I just want to make sure that she's got a good
24 line of sight even though she's an alternate. There we go.
25 That's probably better. All right. Sorry about the delay.

SHERI ASHLEY

189

1 Solicitor, please continue.

2 Q Detective Ashley, you ended up listening to a copy of
3 the 911 call; is that correct?

4 A That's correct.

5 Q And it looks like on the next day you went and had a
6 conversation with Ms. Cummings about that particular 911
7 call; is that right?

8 A Yes, sir.

9 Q And you confronted her about her statement about saying
10 that she had the gun; is that right?

11 A Yes, sir.

12 Q And did she -- did she admit that she had said that or
13 did she deny it? Do you remember?

14 A She just said that she had been wondering to herself
15 why she would say that.

16 MR. BLACK: Well, let me -- Your Honor, may I approach
17 the witness?

18 THE COURT: Please.

19 Q The first -- on the report, down here at the bottom.

20 A Okay.

21 Q Can you read that?

22 A "Sergeant Hines and I listened to --

23 Q Hold on. Hold on. Hold on. Have you had a chance to
24 look at it?

25 A Yes, sir.

SHERI ASHLEY

190

1 Q Okay. And that would have been -- when you wrote this
2 and when you talked to Ms. Cummings, that would have been on
3 the next day? On the 9th?

4 A Yes.

5 Q Okay. And, like my previous question, you talked to
6 her about the gun; is that correct?

7 A That's correct.

8 Q And did -- did she admit that she said that on the 911
9 call or did she deny it?

10 A She denied.

11 Q She denied mentioning a gun on the tape?

12 A Correct.

13 Q Okay. Now, you -- you went back out there and talked
14 to -- well, before I get to that. When you were asking her
15 these questions about this gun, what was -- what was her
16 demeanor?

17 A Of course, she was upset. Pretty distraught.

18 Q Okay. That's -- and that's fair. Now, you and
19 Detective Davis -- now, that -- that incident, that was you
20 and Detective Hines; is that right?

21 A That's correct.

22 Q You all had a conversation with Ms. Cummings?

23 A Yes, sir.

24 Q And that was on the 9th? The day after you all got
25 called out there?

SHERI ASHLEY

191

- 1 A Yes, sir.
- 2 Q All right. Well, let's fast forward to the 16th. Do
- 3 you -- do you remember that day?
- 4 A I do.
- 5 Q Okay. And did you and Detective Davis go talk to Ms.
- 6 Cummings?
- 7 A Yes, sir.
- 8 Q Do you remember what time that was?
- 9 A I do not?
- 10 Q But she didn't come up to the Sheriff's Department?
- 11 A No, sir.
- 12 Q You all went out there?
- 13 A No, sir.
- 14 Q Okay. And did you -- did you take the 911 tape out
- 15 there and let her listen to it?
- 16 A I don't believe we took it back out there that day.
- 17 Q Okay. But you did confront her with what she had
- 18 previously heard?
- 19 A Yes, sir.
- 20 Q Okay. And at that point, did she admit or did she deny
- 21 making that statement?
- 22 A At that point, she stated that she had been wondering
- 23 herself why she would say that.
- 24 Q Okay. So -- so she basically admits it?
- 25 A Yes, sir.

SHERI ASHLEY

192

1 Q Okay. And you were -- you heard her testimony just a
2 moment ago; is that right?

3 A Yes, sir.

4 Q And that's pretty much what her testimony was just a
5 minute ago?

6 A Yes, sir.

7 Q Okay. And I got to ask you this because it's in your
8 report. It says that it was audio and video recorded. Do
9 you know if you had a audio or video recorder with you?

10 A I did have my body cam on, but it malfunctioned and
11 didn't record it.

12 Q Okay. Because I've never seen. And I know the --

13 MR. GROSE: Objection to the testimony from the
14 Solicitor.

15 MR. BLACK: Okay.

16 THE COURT: Well, I'm going to sustain. Go ahead.

17 Q But you did have one?

18 A I did have my body cam on, but it did not --

19 Q Does it work sometimes and not work sometimes?

20 A Yes, sir.

21 Q Okay. That's fair enough. While we're on -- while
22 we're on the subject of the 9th. And I'm going to --

23 MR. BLACK: May I approach, Your Honor?

24 Q I'm going to show you -- I'm going to show you this
25 statement. Do you recognize that?

SHERI ASHLEY

193

- 1 A I do.
- 2 Q And who's -- who's statement is that?
- 3 A Mr. Boggs. JC Boggs.
- 4 Q JC Boggs?
- 5 A Yes.
- 6 Q You took his statement that next day?
- 7 A I did.
- 8 Q Okay. You actually wrote this statement out, right?
- 9 A I did.
- 10 Q Okay. Just wanted to clarify that. Detective Ashley,
- 11 just a couple more questions for you. You -- you were out
- 12 there at the scene for a while; is that right?
- 13 A Yes, sir.
- 14 Q And you helped search the trailer, correct?
- 15 A I did.
- 16 Q Okay. And I'm going to show you what's been marked --
- 17 premarked as State's 129 -- well, I'm sorry. 128.
- 18 MR. BLACK: We might need some scissors, Your Honor.
- 19 THE COURT: Hold on.
- 20 MR. BLACK: I've got a box cutter.
- 21
- 22 THE COURT: Let's get some scissors. I mean, she's
- 23 going to end up --
- 24 MR. BLACK: Yeah.
- 25 THE COURT: That's going to not go well. Definitely

SHERI ASHLEY

194

1 better than a box cutter.

2 MR. BLACK: Okay. And are we ready?

3 Q Detective Ashley, you've opened that package. Do you
4 know what that is?

5 A This is a projectile we found at the crime scene.

6 Q And do you know -- I know there was a group of you all
7 out there. Did you find it or was it kind of a group
8 effort?

9 A It was a group effort.

10 Q Okay. But you -- you actually took possession of it
11 and you submitted it into evidence?

12 A Yes, sir. I did.

13 Q Do you remember what -- what time you found it? Was it
14 daylight or was it dark?

15 A It was -- it was daylight.

16 Q Okay. So it would have been the next morning sometime?

17 A Uh-huh. Yes, sir.

18 Q The projectile, where did you all find it?

19 A We found it in the wall of the trailer.

20 Q Okay. And was it in a particular room or do you
21 remember?

22 A It was in the bedroom.

23 Q Was it the same bedroom that Christie Stutler was found
24 dead?

25 A Yes, sir. It was.

SHERI ASHLEY

195

1 Q And where exactly if you're -- I guess, if you're
2 looking -- if you walk into the room, can you describe the
3 layout of the room and where the projectile relates?

4 A If you walk into the bedroom, the projectile was to the
5 right. It was towards the -- all the way toward the back of
6 the wall.

7 Q Okay. So it was on the right side of the wall right
8 when you walk in?

9 A All the way back --

10 Q All --

11 A -- to the opposite side.

12 Q All the way back. Now, was it -- was it high, kind of
13 in the middle of the wall, or was it lower? Do you
14 remember?

15 A It -- it was -- I believe where it went in it was high,
16 but then we found it down low at the bottom of the wall.

17 Q Did you all have to go outside and get it or were you
18 all able to get from inside the trailer?

19 A We got it from the outside.

20 Q Okay. And once you collected that projectile, where
21 did you put it?

22 A Put it into evidence.

23 Q Is that at that Sheriff's Department?

24 A Yes, sir.

25 Q Okay. And then, I'm assuming they sent it down the

SHERI ASHLEY

196

1 SLED?

2 A Yes, sir.

3 Q Okay. And once it goes to SLED, it's to be tested and
4 looked at, correct?

5 A Correct.

6 MR. BLACK: Okay. Your Honor, the State would like to
7 move Number 128 into evidence at this point.

8 THE COURT: Any objections at this point?

9 MR. GROSE: No. I thought they were already into
10 evidence.

11 THE COURT: I'm not sure if 128 is. But if it's not,
12 it is now. So no objection.

13 (Whereupon, State's Exhibit Number 128 was admitted
14 into evidence.)

15 Q I'm going to show you what's been marked as State's 93
16 through 89. Can you just flip through those real quick and
17 take a look at them? Do you recognize those pictures?

18 A I do. And just -- can you tell us what those pictures
19 are?

20 Q These are pictures of the incident location. Pictures
21 of outside the bedroom. Pictures of inside the bedroom, the
22 wall. And then a picture of where we were able to cut the
23 projectile out of the wall.

24 MR. BLACK: Okay. Your Honor, at this point, the State
25 moves those pictures into evidence.

SHERI ASHLEY

197

1 THE COURT: They're already in evidence. We handled
2 those pretrial.

3 MR. BLACK: That's correct. I apologize, Your Honor.
4 We ask that we could show them to the jury.

5 THE COURT: You can publish

6 MR. BLACK: Thank you, Your Honor.

7 (Whereupon, State's Exhibits Numbers 89 through 93 were
8 published for the jury).

9 Q And I'm going to start with Number 93. Can you just
10 describe -- you might need to step down and take a look.
11 Can you tell the jury what that is?

12 A That's that projectile that we removed from the wall of
13 the bedroom. The trailer. Sorry.

14 Q Okay. And is this the -- is this same projectile that
15 was previously put up there?

16 A Yes, sir.

17 Q Okay. And I'm showing you what's been marked as
18 State's Number 92. Can you see that?

19 A Yes, sir.

20 Q What is that?

21 A That is the outside wall of the bedroom on exactly --
22 that's exactly where we found the projectile --

23 Q And it's looks like --

24 A -- in the room.

25 Q -- you all had to cut it out?

SHERI ASHLEY

198

- 1 A Yes, sir.
- 2 Q How did you all cut it out?
- 3 A I believe we had a pocket knife and we just, you know,
- 4 tried to maneuver a -- a hole to get it out.
- 5 Q Okay. And I'm going to show you State's Number 91.
- 6 What is that?
- 7 A That's the inside of the bedroom.
- 8 Q All right.
- 9 A The back wall.
- 10 Q Is that where the -- was that where the projectile was?
- 11 A Yes. Down at the bottom of that wall.
- 12 Q Okay. And this is 89?
- 13 A That's the wall of the trailer before we cut it.
- 14 Q Is that the outside of the exterior?
- 15 A The outside. It's the exterior.
- 16 Q And then State's Number 90 I think is pretty
- 17 self-explanatory, but can you describe exactly kind of where
- 18 you all cut that projectile out?
- 19 A As you can see, the left corner of the trailer there?
- 20 Q Yes, ma'am.
- 21 A Just a few inches from the corner.
- 22 Q So you're saying the left side of the trailer. That
- 23 would be over here?
- 24 A Yes, sir. That's correct.
- 25 Q So down in that corner?

SHERI ASHLEY

199

1 A Uh-huh. Yes, sir.

2 Q All right. Thank you. How were you all able to locate
3 -- and I know this might sound, I guess pretty basic, but
4 how were you all able to locate -- to find that projectile
5 -- projectile? Do you remember?

6 A Yeah. We had -- we spoke to Lieutenant Graham after he
7 went to the autopsy.

8 Q Okay. So at that point, you all just started looking?

9 A Yes, sir.

10 Q Okay. And can you describe -- were you able to locate
11 it from the inside or the outside of the trailer?

12 A We started on the inside and saw where the bullet hole
13 was, and then we went to the outside and started looking and
14 you could see a piece of metal up under the wall on the
15 outside.

16 Q Okay. And this projectile, I mean, it doesn't look
17 like a bullet, does it?

18 A No.

19 Q It's kind of mangled?

20 A Yes, sir.

21 Q I'm going to show what's been marked as State's Number
22 129. Do you recognize this?

23 A Yes, sir.

24 Q Can you tell the jury what it is?

25 A It is the swab that I took from Mr. Tillman. From the

SHERI ASHLEY

200

1 inside of his jaw for DNA.

2 Q Okay. So it gets forwarded to SLED for a DNA analysis?

3 A Yes, sir.

4 Q Okay. And where was that done?

5 A At the Sheriff's Office.

6 Q Okay. And that's here in Abbeville?

7 A Yes, sir.

8 Q And I guess you label it -- do you label it known --

9 known standard, I'm guessing?

10 A Yes, sir.

11 Q Because you actually took it from him?

12 A Uh-huh. Yes, sir.

13 MR. BLACK: Okay. Your Honor, the State moves Number

14 129 into evidence.

15 MR. GROSE: I thought we did, but no objection.

16 THE COURT: 129 is in evidence without objection.

17 (Whereupon, States Exhibit Number 129 was admitted into
18 evidence.)

19 MR. BLACK: Thank you, Your Honor. Beg the Court's

20 indulgence. I think that's all the questions I have.

21 Please answer any questions Mr. Grose might have for you.

22 THE COURT: Mr. Grose?

23 MR. GROSE: Where were the photos that you were

24 publishing?

25 MR. BLACK: They're over by there. By the speaker.

SHERI ASHLEY

201

1 MR. GROSE: I'm sorry. Just for the record, this is
2 State's Exhibit Number 90.

3 CROSS-EXAMINATION

4 BY MR. GROSE:

5 Q Investigator Ashley, I think you were -- you were asked
6 to look at that photograph and you testified that this is
7 where you got -- recovered the projectile, right?

8 A Yes, sir.

9 Q And the projectile was over on this long side on the
10 corner?

11 A Near the corner. Yes, sir.

12 Q Okay. Now, this window here, that's the window to the
13 bedroom; is that correct?

14 A Yes, sir.

15 Q And when I say the bedroom, there's actually two
16 bedrooms, but I'm talking about the bedroom where Christie's
17 body was found.

18 A Yes, sir.

19 Q Okay. And so, if I put what's Defendant's Exhibit
20 Number 1 up on the screen -- you've seen this diagram in the
21 case materials, right?

22 A Yes, sir.

23 Q Okay. And this is the front door of the trailer,
24 right?

25 A Yes, sir.

SHERI ASHLEY

202

1 Q And this is the bedroom where her body was found?

2 A Yes, sir.

3 Q Okay. And so, the photograph that we were just looking
4 at, that window in the State's Exhibit, that window is right
5 here by where the bed is --

6 A Yes --

7 Q -- is that correct?

8 A Yes, sir.

9 Q Okay. And if we look just at that photograph -- and I
10 don't know if you can see it from there, but down here in
11 the bottom corner where the date is, do you see that?

12 A Yes, sir.

13 Q Okay. Right next to that there's an arm of a person,
14 isn't there?

15 A Yes, sir.

16 Q Okay. And that's just one of the investigators that
17 was out there that day.

18 A Yes, sir.

19 Q But that helped give us some context as to how high
20 that window and that trailer is from the ground. Is that
21 fair to say?

22 A Yes, sir.

23 Q Okay. Now --

24 MR. GROSE: And I think we can have the lights again,
25 please.

SHERI ASHLEY

203

1 Q They asked you some questions about what you saw when
2 you went to the trailer the first night?

3 A Yes, sir.

4 Q And that was on December -- I mean, my bad. November
5 8th of 2016?

6 A That's correct.

7 Q Okay. And you still have your incident report there
8 with you?

9 A Yes, sir.

10 Q And I'm looking at the one that's dated 11/8/2016.

11 A Okay.

12 Q All right. And in the second paragraph, it talks about
13 that you and Sergeant Hines - Sergeant Hines briefed you and
14 you walked through the trailer; is that right?

15 A Yes, sir.

16 Q And that where you saw Christie, in that back bedroom
17 that we just talked about on the diagram?

18 A Yes, sir.

19 Q Okay. And I think you observed that as you would look
20 at the bed, coming in the room, she was on the left side of
21 the bed, right?

22 A Yes, sir.

23 Q And her face was down, correct?

24 A Yes, sir.

25 Q And her right arm was under her forehead?

SHERI ASHLEY

204

- 1 A Yes, sir.
- 2 Q Her left arm was hanging straight down towards the
3 floor, right?
- 4 A Yes, sir.
- 5 Q Now you didn't touch her, did you?
- 6 A No, sir.
- 7 Q All right. And that would -- that would be a breach of
8 protocol if you did at that point?
- 9 A Yes, sir.
- 10 Q Okay. Now, you were able to see the blood going down
11 the side of the mattress and the box springs and onto the
12 floor; is that correct?
- 13 A Yes -- yes, sir.
- 14 Q Okay. And you didn't stay in there long?
- 15 A No, sir.
- 16 Q Because you all waited for the people from SLED to
17 come; is that correct?
- 18 A Yes, sir.
- 19 Q Okay. Now, they asked if you saw a gunshot wound?
- 20 A Correct?
- 21 Q All right. Now, you did later on in the night?
- 22 A Yes, sir.
- 23 Q Okay. Because after SLED got there and the coroner was
24 there and you all were looking at the body again and you
25 turned her over, right?

SHERI ASHLEY

205

1 A Correct.

2 Q And you documented in your incident report possible
3 brain matter in the hair above her right ear that was
4 thought to be an entrance wound, right?

5 A Yes, sir.

6 Q All right. Now -- so on the night of the 8th, you knew
7 that you were dealing with a possible gunshot wound?

8 A Yes, sir.

9 Q All right. And you documented that. And then the next
10 day you documented that it was actually an entrance wound on
11 the left and an exit wound on the right?

12 A Correct.

13 MR. GROSE: Okay. Beg the Court's indulgence for a
14 moment.

15 Q Now, as far as collecting evidence, I think the -- the
16 first round of collecting evidence in the trailer, that was
17 done by SLED, right?

18 A Yes, sir.

19 Q Okay. And then at some point, SLED, I think left; is
20 that correct?

21 A They left, but they came back.

22 Q All right.

23 A Yeah.

24 Q And the projectile -- now, you weren't in there when
25 the -- or were you? Were you inside when SLED was

ALTON DAVIS

206

1 processing the scene the night of the 8th going into the
2 morning of the 9th?

3 A Yes, sir.

4 Q Okay. Were you collecting any of the evidence then, or
5 were they doing that?

6 A They were doing it.

7 Q Okay. And then they left; is that right?

8 A Yes, sir.

9 Q And then, I guess they came back, but later on the
10 Sheriff's Department was involved in collecting evidence,
11 too?

12 A Yes, sir.

13 MR. GROSE: All right. I think that's all I have.

14 Thank you, Your Honor.

15 THE COURT: Nothing on redirect?

16 MR. BLACK: Just briefly.

17 REDIRECT EXAMINATION

18 BY MR. BLACK:

19 Q When you first walked in, did you see a gunshot wound
20 before she had been moved?

21 A No, sir.

22 Q Okay. And then, after she got flipped over, you saw
23 what might appeared to have been a gunshot wound?

24 A Yes, sir.

25 Q Okay. But this was after she got turned over?

ALTON DAVIS

207

1 A That's correct.

2 MR. BLACK: That's all I have.

3 RECROSS-EXAMINATION

4 BY MR. GROSE:

5 Q But when you first walked in, you did see the blood
6 draining down the side of the bed?

7 A Yes, sir.

8 MR. GROSE: That's all.

9 THE COURT: Thank you. You can step down and you're
10 free to go.

11 (Whereupon, the witness has stepped down from the
12 witness stand).

13 THE COURT: Call your next witness, please.

14 MR. BROWN: State calls Alton Davis.

15 ALTON DAVIS, having first been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BROWN:

19 Q Officer Davis, where do you work?

20 A Abbeville Sheriff's Office as an investigator.

21 Q How long have you been working with them?

22 A I came to the Sheriff's Office in 2015.

23 Q So what are your current responsibilities at the
24 Sheriff's Department?

25 A I'm a criminal investigator.

ALTON DAVIS

208

1 Q And have you been doing criminal investigation since
2 you began your work at the Sheriff's Office?

3 A Roughly. I -- there was about a six -- four to six
4 month period where I was a road deputy, and then I was move
5 to investigations.

6 Q Prior to arriving at Abbeville County Sheriff's Office,
7 where did you work?

8 A I was a Federal police officer with the Department of
9 Defense, and before that I was a military police officer
10 back in 2008. So from 2008 to current day.

11 Q So for over roughly now, 10 years, you've been in some
12 type of law?

13 A Yes, sir.

14 Q Mr. Davis on the 9th, or the evening of November 8th,
15 2016, did you respond to Bell Road?

16 A Yes, sir.

17 Q Prior to arriving out there, how were you first
18 notified of a death there at Bell Road?

19 A I was notified by Sergeant Ashley. She gave me a phone
20 call. I was actually on my way home and she stated that
21 there was a possible suicide at Bell Road and that we
22 needed to obtain a search warrant for the residence. And
23 then I headed back to the office and began on the search
24 warrant.

25 Q And you went back to the office and actually drafted up

ALTON DAVIS

209

- 1 the search warrant for the house?
- 2 A Yes, sir.
- 3 Q At Bell Road?
- 4 A Yes, sir.
- 5 Q After you got that typed up and signed by a judge, did
- 6 you all execute that search warrant?
- 7 A Yes, sir.
- 8 Q What time did you arrive -- or roughly arrive out there
- 9 at that location that location that night?
- 10 A I'd say it was probable two hours after I got the call.
- 11 So probably around 8:45ish, 9:00ish. Sometime around there.
- 12 Q When you arrived, was there other law enforcement
- 13 there?
- 14 A Yes, sir.
- 15 Q Had SLED already arrived?
- 16 A I do believe SLED was already there.
- 17 Q Once you brought the search warrant, did you actually
- 18 go inside the trailer?
- 19 A Yes.
- 20 Q At that time, had Ms. Stutler been moved at -- at any
- 21 point?
- 22 A No, sir. Not to my knowledge, she hadn't.
- 23 Q When you entered the bedroom, did you see Ms. Stutler?
- 24 A Yes, sir.
- 25 Q And did you notice any firearm?

ALTON DAVIS

210

1 A I did not.

2 Q In your observations of Ms. Stutler, did you see any
3 gunshot wound by just looking at her?

4 A I did not.

5 Q As you were working that night, did you stay at 1083,
6 at that trailer, and actually participate in the
7 investigation or the -- I guess, the photographing of the
8 crime scene?

9 A Yes, sir.

10 Q Along with SLED?

11 A Yes, sir.

12 Q And you actually took photos of that crime scene?

13 A I don't recall taking any photos.

14 Q But you were there the whole time these photos were
15 being taken?

16 A I was. Yes, sir.

17 Q And Abbeville County did take photos?

18 A Yes, sir.

19 Q I'm going to show you what's already in evidence as 4
20 -- State's Evidence 4 up to 35. I believe they're all in
21 order. Take a look at those photos and see if you recognize
22 them. Do you recognize these photographs?

23 A I do.

24 Q Are they photographs of the trailer at Bell Road?

25 A Yes, sir.

ALTON DAVIS

211

1 Q I'm going to show you what's been marked as State's
2 Evidence Number 4. Is that the front of the trailer where
3 the stairs are?

4 A Yes, sir.

5 Q Is that Sergeant Ashley there?

6 A Yes, sir.

7 Q And another Sheriff's Office employee?

8 A I -- I couldn't quite tell you who that was.

9 Q State's 5. That's just another person at the trailer
10 on the outside looking down, away from the front door?

11 A Yes, sir.

12 Q While you're investigating, do you canvass the whole
13 house and take outside pictures, and then do the inside?

14 A Yes, sir. Typically start form the outside of the
15 residence, work our way around the residence to include the
16 yard and area within the residence, work our way around the
17 house, then enter the house room by room methodically.

18 Q At this time when you arrived and began to take these
19 photographs, the scene around that trailer had been taped
20 off and nobody was allowed in or out other than law
21 enforcement --

22 A Yes, sir.

23 Q -- or the Coroner's Office or EMS personnel?

24 A Yes, sir.

25 Q I'll show you State's 6. That's the right side front

ALTON DAVIS

212

1 of the trailer?

2 A Yes, sir.

3 Q State's 7. The other side of the trailer?

4 A Yes, sir.

5 Q And State's 8. Is this the back?

6 A Yes, sir. The back side of the residence.

7 Q And State's 9, an additional picture of the back?

8 A Yes, sir.

9 Q State's 10. Where is this room as you enter the
10 trailer?

11 A As soon as you enter the front door of the residence,
12 that's the immediate picture you would see. So that's the
13 livingroom and to the right it kind of cuts off as a kitchen
14 area.

15 Q State's 11. Would this just be another angle of that
16 livingroom?

17 A That's just a further angle to the left of the
18 livingroom.

19 MR. GROSE: That was which number?

20 MR. BROWN: 11.

21 Q State's 12.

22 A That's to the right of the livingroom, which would be
23 the kitchen area.

24 Q State's 15.

25 A That's towards the back of the livingroom to the left,

ALTON DAVIS

213

1 which is a hallway that leads to the left side of the
2 trailer.

3 Q It leads to the left side of the trailer?

4 A Yes, sir.

5 Q And is that the bedroom where Ms. Stutler was found?

6 A Yes, sir. That's -- the bed -- the open end that you
7 see at the very back, that's the bedroom that Christie was
8 in.

9 Q State's 16.

10 A That's a bathroom down that left hallway to the left
11 side of the trailer before you get to the bedroom.

12 Q State's 17.

13 A That is immediately entering the bedroom that Christie
14 was in, to the left side of the bedroom.

15 Q What is this down in the picture?

16 A A mop bucket, and I'm not sure what was in it.
17 Possibly a rag or something.

18 Q Rags. Did the bucket have water in there? Fluids in
19 there?

20 A It did. Yes, sir.

21 THE COURT: Are you looking for the ones we dealt with
22 yesterday?

23 MR. BROWN: Yes, sir.

24 THE COURT: To the extent you're about to publish
25 anything that we addressed yesterday, prior objections are

ALTON DAVIS

214

1 noted, prior rulings stand. Go ahead, Mr. Brown.

2 MR. BROWN: Thank you, Your Honor.

3 THE COURT: Mr. Brown, let me ask you and Mr. Grose
4 something for just a second.

5 (Whereupon, a sidebar was held.)

6 THE COURT: All right. You can proceed, Solicitor.
7 Sorry about that.

8 MR. BROWN: Thank you, Your Honor.

9 Q Mr. Davis, I'm going to show you what's been marked as
10 State's 2, 18, 3, 14, 48, 49, 50, 56, and 61. Take a look
11 at that, see if you recognize those photos.

12 A I do.

13 Q Now, previously I went back to State's 17. When you
14 enter the back bedroom where Ms. Stutler was located, when
15 taking this picture, where are you standing?

16 A At the doorway. The entryway of the bedroom.

17 Q Taking a photograph to the right?

18 A To the -- to the --

19 Q Or to the left?

20 A It's going to be to the left side. Yes, sir.

21 Q I'll show you State's 61. What's -- what's this in the
22 bottom of the picture?

23 A It's a kerosene heater.

24 Q And was that running when you all entered the house?

25 A Yes, sir. It was running.

ALTON DAVIS

215

- 1 Q What is this?
- 2 A A mop bucket with some type of fluid in it.
- 3 Q Appears to be a cloth?
- 4 A It -- yes, sir. I can't recall if it was a rag or a
- 5 tee shirt of some kind or...
- 6 Q In the photograph, is this Ms. Stutler?
- 7 A Yes, sir.
- 8 Q What is this on the bed?
- 9 A I don't recall, sir.
- 10 Q Why don't you get closer and look.
- 11 A It's a -- it looks like some sort of notebook or binder
- 12 of some sort.
- 13 Q And where did notebook -- or did you all review the
- 14 notebook or pages in it?
- 15 A Yes, sir. I do recall reviewing pages in a notebook.
- 16 Q Did anything jump out at you that was on that notebook?
- 17 A Not particularly.
- 18 Q No suicide note?
- 19 A No, sir.
- 20 Q State's Number 2. Are you standing at the foot of the
- 21 bed when this picture was taken?
- 22 A Yes, sir.
- 23 Q What is that above her head?
- 24 A Are you talking about the -- the red material or the --
- 25 what exactly?

ALTON DAVIS

216

- 1 Q The white material on the -- I don't know if you can
2 see it that close or not.
- 3 A I -- I can't see it from here.
- 4 Q In that picture, do you see a gun?
- 5 A No, sir.
- 6 Q And is that how Ms. Stutler was found?
- 7 A Yes, sir.
- 8 Q Look at this picture. Is there a sizeable gap between
9 her arm, her head and anything to the left?
- 10 A Yes, sir.
- 11 Q State's 18. In this picture, would you be on the other
12 side of the bed --
- 13 A On the other side of the bed.
- 14 Q -- taking the photo of her back?
- 15 A Yes, sir.
- 16 Q And, again, there's like a rag or something above her
17 head?
- 18 A Yes, sir.
- 19 Q And State's Number 3. Here could you see her face or
20 was it covered?
- 21 A No, sir. Her face was completely covered.
- 22 Q She was face down on her right arm?
- 23 A Yes, sir.
- 24 Q Is that the only blood you could really tell?
- 25 A That was -- there was another little stream or a pool

ALTON DAVIS

217

1 of blood running down the -- the bottom mattress of the bed
2 -- or the bottom of the bed.

3 Q The box springs?

4 A The box spring. Yes, sir.

5 Q There's a -- would that be after you moved her or are
6 you saying --

7 A I'm just saying, there's -- it was that little puddle
8 there, and then you could tell it was kind of running down
9 the box spring, too. But you couldn't really see anything
10 -- another pool under the box spring or anything.

11 Q But it's all centrally located in that area?

12 A Yes, sir.

13 Q State's 14. Is this just another angle? State's 48.
14 In this photograph -- she had longer fingernails in this
15 photograph, correct?

16 A Yes, sir.

17 Q Later on, they were trimmed to try to recover evidence?
18 Or if you don't know, that's fine.

19 A Number I don't recall.

20 Q When you were photographing and you were in there with
21 SLED and the Coroner's Office, was her body stiff?

22 A Yes, sir. It was.

23 Q State's 49. What do we see in this picture?

24 A It's like, some type of burn of bruise of some sort on
25 the inside of her right palm.

ALTON DAVIS

218

- 1 Q And that would be her right palm, right?
- 2 A Yes, sir.
- 3 Q The -- the hand that's up under her head?
- 4 A Yes, sir.
- 5 Q State's 50. What are these on the back?
- 6 A Bruises.
- 7 Q Some marks on her rear-end?
- 8 A Yes, sir. We believe that to be a burn of some sort.
- 9 Q State's 56. Again, in this photograph you're focusing
- 10 in on this notebook or notepad?
- 11 A Yes, sir.
- 12 Q And it appears to be blank?
- 13 A Yes, sir.
- 14 Q After taking photographs of Ms. Stutler, was the
- 15 Coroner's Office there as well?
- 16 A Yes, sir.
- 17 Q And after taking those initial photographs, did you all
- 18 ultimately remove her from the home?
- 19 A Ultimately. Yes, sir.
- 20 Q And in doing so, did you all have to flip her body
- 21 over?
- 22 A Yes, sir.
- 23 Q And at that time, were you able to get a better idea of
- 24 what possibly transpired there?
- 25 A Yes, sir.

ALTON DAVIS

219

1 Q Did you assist the Coroner's Office and EMS in removing
2 her body from the trailer?

3 A I did.

4 Q How was she transported from Bell Road?

5 A By an EMS vehicle.

6 Q In continuing searching the house through State's 25,
7 what's this photograph of?

8 A Drug paraphernalia.

9 Q State's 26.

10 A Also the drug paraphernalia.

11 Q State's 27.

12 A That's ammunition for a firearm.

13 Q Do you remember what caliber?

14 A I don't remember exactly what caliber. I want to say a
15 .22. I don't remember exactly what caliber it was though.

16 Q State's 28.

17 A Also ammunition for a firearm.

18 Q State's 29.

19 A Shotgun shells.

20 Q State's 30. What does that appear to be?

21 A It appears to be an entry -- entry of a projectile from
22 a firearm.

23 Q Now, is that on the floor or is that on the ceiling?

24 A That's on the ceiling.

25 Q And where was that located in the room?

ALTON DAVIS

220

1 A It was located at the rear of the bedroom, to the top
2 right.

3 Q Rear of the bedroom, meaning towards the door?

4 A Towards -- no. Towards the wall. If that makes sense.

5 Q This would be State's 31. Now, is that just the
6 mattress and the box spring? Is that --

7 A Yes, sir. The mattress and the box spring. And that's
8 that -- towards where her head was laying at the top left
9 corner of the mattress.

10 Q I'll show you State's 32. Now, that picture of the
11 previous bullet hole that we saw in the ceiling of the
12 trailer, is this the picture you all trying to --

13 A I believe it is.

14 Q And the shot through the ceiling, was that a
15 through- and-through out of the trailer or do you remember
16 that?

17 A I don't recall.

18 Q State's 33. What is that in the corner?

19 A Another entry wound from a -- or another entry from a
20 projectile. And that's the measurements depicting where it
21 is.

22 Q And previously when Sergeant Ashley was testifying, is
23 this, ultimately, the bullet that was recovered the next day
24 after peeling it back?

25 A Yes, sir.

ALTON DAVIS

221

1 Q So it entered up towards the ceiling and then dropped
2 down in between the wall?

3 A Yes, sir.

4 Q I'll show you State's 34.

5 A That's more ammunition located inside her drawer.

6 Q State's 35.

7 A More ammunition. And that's on that kitchen counter.

8 Q There's ammunition just scattered about?

9 A Yes, sir.

10 Q I'll show you State's Number 19. Who is that?

11 A It's Charles Tillman.

12 Q And this tee shirt -- ultimately that tee shirt was
13 given to law enforcement later on; is that correct?

14 A Yes, sir.

15 Q And this picture was taken that evening?

16 A Yes, sir.

17 Q State's 20. Pictures of Mr. Tillman's hands?

18 A Yes, sir.

19 Q What appears to be on his hands?

20 A Appears there's paint on his hands.

21 Q 21, 22. And these would just be pictures of both
22 hands, front and back?

23 A Yes, sir.

24 Q 23. And lastly, the picture of Mr. Tillman in 24,

25 after -- when he was taking his shirt off. Now, Mr. Davis,

ALTON DAVIS

222

1 in this case, not only in your investigative capacity when
2 you were taking photographs and investigating the crime
3 scene, did you also have the opportunity to speak with Mr.
4 Tillman?

5 A I believe I did, briefly, on one occasion or so.

6 Q I'll show you what's already been introduce as State's
7 Number 130. You actually Mirandized Mr. Tillman; is that
8 correct?

9 A Yes, sir.

10 Q Read all of his rights out?

11 A Yes, sir.

12 Q He initialed, and then signed?

13 A Yes, sir.

14 Q Is that your signature?

15 A It is.

16 Q And that date would have been?

17 A The date's November 10th, 2016.

18 Q So two days after?

19 A Yes, sir.

20 Q And during that interview or that -- that talk, you
21 were with Sheri Ashley, right?

22 A Yes, sir.

23 Q And the purpose of that was to get a standard swab?

24 A Yes, sir.

25 Q DNA swab?

ALTON DAVIS

223

1 A Yes, sir.

2 Q And when doing that, did -- did he talk to you?

3 A He did talk to us. Yes, sir.

4 Q In that time that he was talking to you, he freely and
5 voluntarily just talked?

6 A Yes, sir.

7 MR. BROWN: Your Honor, at this time, I'd move State's
8 130, the Miranda form, into evidence.

9 MR. GROSE: I'm sorry. Which number is it?

10 MR. BROWN: 130.

11 THE COURT: 130. The Miranda form.

12 MR. GROSE: With no objection.

13 THE COURT: Without objection, it's in evidence.

14 (Whereupon, State's Exhibit Number 130 was admitted
15 into evidence.)

16 Q And during that the interview it was being recorded?

17 A Yes, sir.

18 Q And that took place at the Abbeville County Sheriff's
19 Office?

20 A Yes, sir. It did.

21 MR. BROWN: Your Honor, I would move State's 126, which
22 would be the third interview, into evidence at this time.

23 MR. GROSE: No objection.

24 THE COURT: Without objection, 126 is in evidence.

25 (Whereupon, State's Exhibit Number 126 was admitted

ALTON DAVIS

224

- 1 into evidence.)
- 2 Q Mr. Davis, when -- and the man you interviewed that day
- 3 you see in the courtroom?
- 4 A Yes, sir. He is.
- 5 Q Charles Tillman?
- 6 A Yes, sir.
- 7 Q And is he sitting in a striped suit?
- 8 A Yes, sir.
- 9 Q That night after searching the trailer that Mr. Tillman
- 10 -- or Christie Stutler was found, when finding or searching,
- 11 did you ever find a firearm in that trailer?
- 12 A No, sir. We didn't.
- 13 Q And did you all search that trailer upside down?
- 14 A Yes, sir.
- 15 Q Later on that night, did you go speak with Vonnie
- 16 Cummings?
- 17 A Yes, sir.
- 18 Q Mr. Tillman's mother?
- 19 A Yes, sir.
- 20 Q And is she sitting in the courtroom?
- 21 A Yes, she is.
- 22 Q Did Ms. Cummings give consent to search her home?
- 23 A Yes, sir.
- 24 Q And did you search her brick home?
- 25 A Yes, sir.

ALTON DAVIS

225

- 1 Q Who else searched with you?
- 2 A It was myself and Sergeant Ashley.
- 3 Q And did you locate a firearm in that house?
- 4 A We did locate a firearm. It was very old and seized
- 5 up. It was completely rusted and didn't operate at all.
- 6 Q Did you -- did you find a .22 rifle or a pistol in
- 7 there?
- 8 A No, sir.
- 9 Q As part of your being an investigator, do you -- do you
- 10 sometimes take collected evidence down to SLED?
- 11 A Yes, sir.
- 12 Q In this particular case, did you take a gunshot residue
- 13 kit down of Mr. Charles Tillman?
- 14 A Yes, sir.
- 15 Q In addition to Item 14, which is the gunshot residue
- 16 kit, you also took down a green shirt that was in the
- 17 photograph that Mr. Tillman was wearing; is that correct?
- 18 A Yes, sir.
- 19 Q And also a fired bullet, which I believed has already
- 20 been admitted into evidence, which would be Item 16. And
- 21 also, the fingerprint and palm print of Mr. Tillman --
- 22 A Yes --
- 23 Q -- which was Item 17 for SLED purposes; is that
- 24 correct?
- 25 A Yes, sir.

ALTON DAVIS

226

1 THE COURT: Is this the box with the tee shirt?

2 MR. BROWN: Yes, sir.

3 Q In the photograph taken, you all did collect a number
4 of the bullets that were located around the house; is that
5 correct?

6 A The number of the what?

7 Q Bullets.

8 A Yes, sir.

9 Q I'll let you take a look inside State's Exhibit 133.
10 And do those appear to be all of the bullets that were taken
11 --

12 A Yes, sir.

13 Q -- at the house?

14 A Yes, sir. They are.

15 MR. BROWN: Your Honor, the State would move State's
16 133 into evidence.

17 THE COURT: You need to help him out with -

18 MR. BROWN: Huh?

19 THE COURT: I believe you can help him out and make
20 sure --

21 MR. GROSE: My only objection is that I don't think
22 that this is everything that it has been pictured, but I
23 have no objection to it being entered.

24 THE COURT: 133 will be in evidence then, without
25 objection.

ALTON DAVIS

227

1 (Whereupon, State's Exhibit Number 133 was admitted
2 into evidence.)

3 Q An also, taking down -- you took down a GSR kit on Mr.
4 Tillman?

5 A Yes, sir.

6 Q Okay. And also a green shirt?

7 A Yes, sir.

8 Q Now, did you actually retrieve -- take this green shirt
9 off of him or were you handed this --

10 A Yes, sir. I was handed the evidence to take down to
11 SLED.

12 MR. BROWN: State's going to move 131 and 132 in as
13 evidence.

14 MR. GROSE: No objection.

15 THE COURT: All right. Which is 131, and which is 132?

16 MR. BROWN: 131 is the GSR kit on Mr. Tillman, and then
17 132 is the green tee shirt.

18 THE COURT: All right. Without objection, it's entered
19 into evidence.

20 (Whereupon, State's Exhibit Numbers 131 and 132 were
21 admitted into evidence.)

22 Q Now, Mr. Davis, you were with -- you continued out
23 through your duties that night of investigating the house --
24 or the crime scene. You continued your investigation as
25 part of the investigation; is that correct?

ALTON DAVIS

228

1 A Yes, sir.

2 Q And on 11 -- November 16th, 2016, you did -- did you
3 ride out with Sheri Ashley to speak with Vonnie Cummings?

4 A Yes, sir.

5 Q And did you ask her about the 911 tape?

6 A Yes, sir.

7 Q Was she confused as to why she would mention a gun on a
8 911 tape?

9 A Yes, sir.

10 Q You eventually -- after talking with her, she did
11 acknowledge that she said something about a gun on the 911
12 tape?

13 A Yes, sir. She did.

14 MR. BROWN: No further questions, Your Honor.

15 THE COURT: Cross?

16 MR. GROSE: Thank you, Your Honor. I'm going to put
17 State's Number 11 back on the screen.

18

19 CROSS-EXAMINATION

20 BY MR. GROSE:

21 Q This is one of the photographs that you testified about
22 earlier, I believe?

23 A Yes, sir.

24 Q And this photograph is in the -- the livingroom?

25 A Yes, sir.

ALTON DAVIS

229

1 Q Okay. We see a cabinet back there against the wall,
2 don't we? You see what I'm talking about?

3 A Yes, sir.

4 Q Okay.

5 MR. GROSE: I'm going to put State's Exhibit Number 26
6 on the screen.

7 Q That picture's inside that cabinet, isn't it?

8 A Yes, sir.

9 Q Okay. And earlier, you said that this picture depicted
10 drug paraphernalia; is that right?

11 A Yes, sir.

12 Q Okay. And there's what appears to be a spoon with
13 maybe some drugs in it, correct?

14 A Yes, sir.

15 Q And then there's a syringe; is that correct?

16 A Yes, sir.

17 Q Okay. Are those in any of this stuff down here?

18 A I'm not sure what's there without looking, sir.

19 Q Okay. Do you know if that was collected?

20 A I'm not sure if that was collected or not.

21 MR. GROSE: Okay. I'm going to put State's Exhibit
22 Number 29 up here.

23 Q That was -- I think when you were asked about it, you
24 said that there was some shotgun shells in that, right?

25 A Yes, sir.

ALTON DAVIS

230

1 Q Okay. Those aren't in this bag we just looked at, are
2 they?

3 A No, sir. They are not.

4 Q Okay. Also, in this picture there's, I guess, kind of
5 paper covering something over here, right? Do you see that?
6 In the corner.

7 A Yes, sir.

8 Q Okay. It looks like a W or something there; is that
9 right?

10 A Yes, sir.

11 Q If I put Defendant's Exhibit Number 7 up there and look
12 at that bottom corner, we can see that that's a pack of
13 Newport cigarettes, right?

14 A Yes, sir.

15 Q And it looks like what might be some sort of plastic
16 tube coming out of that?

17 A Yes, sir.

18 Q Possible drug paraphernalia, too?

19 A Possibly. I don't recall what it was.

20 Q All right. This Newport and that plastic tube, is that
21 in any of this stuff down here?

22 A Not that I know of, sir.

23 Q And as far as you know, that wasn't taken into
24 evidence?

25 A As far as I know, it wasn't.

ALTON DAVIS

231

1 Q And as far as you know, that syringe that we looked at
2 and the drugs that we looked at in State's Exhibit 29, those
3 aren't in evidence either, are they?

4 A I don't recall --

5 Q Okay.

6 A -- if we collected those or not.

7 Q You just don't recall one way or the other?

8 A Yes, sir.

9 Q Now, they -- they asked you pictures about, you know,
10 outside of the trailer, right?

11 A Yes, sir.

12 Q And I'm sorry. This is State's Exhibit Number 4. And
13 I think you said it was hot inside the trailer, right?

14 A Yes, sir.

15 Q And that may explain why one of the men coming out is
16 not wearing a jacket, but it looks like Investigator
17 Ashley's wearing a jacket, doesn't she?

18 A Yes, sir.

19 Q Okay. Now we -- this is the front door of the trailer,
20 right?

21 A Yes, sir.

22 Q And this is sort of a platform out in front of it,
23 right?

24 A Yes, sir.

25 Q And so, it doesn't have what would be an ordinary stair

ALTON DAVIS

232

1 casing coming up to it or landing, does it?

2 A No, sir.

3 Q And there's some objects like stumps or wood or
4 something that you kind of have to stand up -- climb up on,
5 right?

6 A Yes, sir.

7 Q So it is kind of awkward going in and out of that? You
8 would agree with that?

9 A Yes, sir.

10 Q Okay. Now, in State's Exhibit Number 61, you were
11 asked about a bucket of water, right?

12 A Yes, sir.

13 Q Okay. Do -- do you know -- are you aware that this
14 trailer did not have running water on November 8th, 2016?

15 A I was not aware. No, sir.

16 Q Okay. So that's not something that you looked into as
17 part of what you did in the investigation?

18 A No, sir.

19 MR. GROSE: Now, I'm going to put State's Exhibit
20 Number 3 in there and just warn everybody that this is the
21 one that shows Christie in it.

22 Q This is kind of looking down, right?

23 A Yes, sir.

24 Q And this is the position that you all found her in; is
25 that correct?

ALTON DAVIS

233

1 A Yes, sir.

2 Q And I think that you were asked about the blood, right?

3 A Yes, sir.

4 Q And so, what you observed that night is if you walk in
5 and you're on that side of the bed, you can see where the
6 blood is pooling on that mattress, right?

7 A Yes, sir.

8 Q And I think you also said in this picture -- you also
9 said you could tell where it was running down the side of
10 the mattress, too?

11 A Yes, sir.

12 Q All right. And so, some of the other people who
13 testified earlier said that they saw it pooling on the
14 floor. You really can't see the floor, but you don't
15 dispute what they said, do you?

16 A No, sir. I don't.

17 Q Okay. If I put State's Exhibit Number 20 back there on
18 the screen, that's one of the pictures of Charles' hands,
19 right?

20 A Yes, sir.

21 Q Okay. And I think you said that it looked like he had
22 paint on his hands, right?

23 A Yes, sir.

24 Q And that's, in fact, what you observed that night,
25 isn't it?

ALTON DAVIS

234

1 A Yes, sir.

2 Q Okay. I'm going to put State's 56 up here for -- and
3 that's one of the -- they asked you about that photograph,
4 too, didn't they?

5 A Yes, sir.

6 Q All right. And that one shows a notebook -- a pad on
7 the bed, right?

8 A Yes, sir.

9 Q And I think State's 61 is another angle that shows
10 that, right?

11 A Yes, sir.

12 Q And I think it also shows that bucket we talked about
13 earlier, right?

14 A Yes, sir.

15 Q Okay. Now, when you're conducting an investigation,
16 you don't always know what's going to be important now and
17 what's going to be important later, right?

18 A Yes, sir.

19 Q That's one of the reasons you take a lot of pictures,
20 right?

21 A Yes, sir.

22 Q That's one of the reasons you can collect things, if
23 you choose, that may not seem to be important, right?

24 A Yes, sir.

25 Q Okay. This notebook, we don't have it. It wasn't

ALTON DAVIS

235

1 collected was it?

2 A Not that I know of. No, sir.

3 Q Okay. Well, it's certainly not in any of these things
4 down here today, right?

5 A I guess not. I don't know.

6 Q Okay. And so, as far as you know, it wasn't collected?

7 A No, sir.

8 Q Okay.

9 MR. GROSE: I think we can turn the lights back on.

10 Q Now, they asked you -- I'm just going to hand these to
11 you for a second. The box is 132, and 131 the envelope.

12 Was 131 the gunshot residue kit that you --

13 A Yes, sir.

14 Q -- that you took from -- to SLED?

15 A Yes, sir.

16 Q Okay.

17 MR. GROSE: And -- so let's do this. Do we have the
18 scissors?

19 MR. BROWN: I think they're on the front up there.

20 Q And if we pull that out, there's another bag inside
21 here, right?

22 A Yes, sir.

23 Q Okay. And if we take and open that, what is inside
24 that?

25 A It's the gunshot residue test kit.

ALTON DAVIS

236

1 Q Well, there's these little tubes, right? Is that
2 right?

3 A Yes, sir.

4 Q Okay. And so, with gunshot residue what you're able to
5 do is take -- because I think -- let me just -- to
6 illustrate this. For example, this tube says left back,
7 right?

8 A Yes, sir.

9 Q All right. And what that means is the backside of the
10 left hand, right?

11 A Yes, sir.

12 Q And this tube is the right back?

13 A Yes, sir.

14 Q All right. And so, left palm is -- that's the -- the
15 palm side of the hand --

16 A Yes, sir.

17 Q -- and then the backside. And then, of course, the
18 final tube is the right palm?

19 A Yes, sir.

20 Q Okay. And basically, what you do, is you just wipe
21 something on somebody's hands to get a sample, right?

22 A Yes, sir.

23 Q Okay. And let's just go ahead -- so inside the box is
24 a -- a bag, and then inside that -- well, if we can just
25 kind of -- that's the green shirt.

ALTON DAVIS

237

- 1 A Yes.
- 2 Q Is that right?
- 3 A Uh-huh.
- 4 Q Okay. And so, that's -- these are the items that you
- 5 took to SLED; is that correct?
- 6 A Yes, sir.
- 7 Q Okay. I'll -- I'm almost done. But they put in a
- 8 Miranda form and a DVD. Do you remember what I'm talking
- 9 about? The DVD -- an interview.
- 10 A Okay. Yes, sir.
- 11 Q And the interview was where you took the swabs of the
- 12 known DNA sample?
- 13 A Yes, sir.
- 14 Q And I'm not going to get it out, but that's one of the
- 15 things that is down here, right?
- 16 A Yes, sir.
- 17 A And basically, what those are, those are just like big
- 18 Q-tips that you swirl around in somebody's -- inside of
- 19 their cheek --
- 20 A Right.
- 21 Q -- right? It's the way we get DNA samples now instead
- 22 of drawing blood --
- 23 A Yes, sir.
- 24 Q -- right? Okay. And that was videotaped on that DVD
- 25 when you did that, right?

ALTON DAVIS

238

1 A Yes, sir.

2 Q And what I want to do is just get a description of
3 where that was. I believe you said that Charles came with
4 you to the Law Enforcement Center, right?

5 A Yes, sir.

6 Q And in the Law Enforcement Center, there's a room,
7 isn't there?

8 A Yes, sir.

9 Q That's an interview room; is that right?

10 A Yes, sir.

11 Q And that is where you can interview witnesses to a
12 potential crime, right?

13 A Yes, sir.

14 Q And that interview room has a video camera in it,
15 right?

16 A Yes, sir.

17 Q Okay. And so, that's how that DVD was made; is that
18 right?

19 A Correct.

20 Q And just from watching this, it looks like sometimes
21 you all can hear, maybe even observe, what's going on in
22 other rooms in the Sheriff's Office?

23 A Yes, sir.

24 Q I mean, you can be in another room and hear and see
25 what's going on in the interview room, is what I mean.

ALTON DAVIS

239

1 A Yes, sir.

2 Q Okay. Now, Charles was the only person that you're
3 aware of that was brought to the interview room, right?

4 A Yes, sir.

5 Q All right. As far as you know, Vonnice Cummings was
6 never interviewed in the interview room?

7 A No, sir.

8 Q Willie Tillman was never interviewed in the interview
9 room?

10 A Not to my knowledge, no.

11 Q To your knowledge, Walt Tillman wasn't interviewed in
12 the interview room?

13 A I'm not sure.

14 Q Or JC Boggs or anybody else?

15 A Not to my knowledge. No, sir.

16 MR. GROSE: I beg the Court's indulgence for a moment.

17 THE COURT: Certainly.

18 MR. GROSE: Can we mark this as Defense Exhibit -- I
19 believe it would be 16.

20 (Whereupon, Defendant's Exhibit Number 16 was marked
21 for identification purposes.)

22 THE COURT: Go ahead and show it to the -- thanks.

23 Q This is one of the -- I don't know if you all took it
24 or if SLED took it, but that's one of the photograph's from
25 that night, isn't it?

ALTON DAVIS

240

1 A Yes, sir.

2 Q Okay. And in it there's, looks like an ashtray and
3 some cigarette butts; is that right?

4 A Yes, sir.

5 MR. GROSE: Okay. Let's just put this up here so --

6 Q So what we were talking about is -- you can see the
7 mirror is kind of reflecting back to where you can see
8 Christie on the bed. And then down to the bottom, below the
9 mirror, is the cigarette butts and the ashtray I just asked
10 you about?

11 A Yes, sir.

12 Q All right. And do you know if those were collected?

13 A I'm not sure if they were or not.

14 Q You don't know one way or the other?

15 A No, sir.

16 MR. GROSE: I -- I don't think I moved it into
17 evidence, but I'll move it into evidence, Your Honor.

18 THE COURT: Without objection, correct?

19 MR. BROWN: No redirect.

20 THE COURT: All right. No objection to 16 though?

21 MR. BROWN: No. No objection to 16.

22 THE COURT: All right. It's entered in evidence.

23 (Whereupon, Defendant's Exhibit Number 16 was admitted
24 into evidence.)

25 THE COURT: Nothing? You all have got no redirect?

RONNIE ASHLEY

241

1 MR. BROWN: No.

2 THE COURT: All right. Sir, thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Step down and have a good day.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 THE COURT: If you don't mind, would you stick that
8 white envelope back into that Manila envelope before we
9 commence.

10 Ladies and gentlemen, we've -- I'm hungry. I don't
11 know about you. So we're going to go ahead and take our
12 lunch break. I'm going to ask that if you would, please be
13 back in the jury room at 2:15. At that point in time we'll
14 continue with the States' case. Again, don't discuss the
15 case with anyone. If you happen to go to lunch with one of
16 your fellow jurors, friends, family member, that's fine.
17 Not a problem, just don't talk about the case. With that,
18 see you at 2:15. Enjoy your lunch. Thank you.

19 (Whereupon, the jury exited the courtroom at 1:03 p.m.)

20 THE COURT: We'll be at ease until around 2:15.

21 (Whereupon, a lunch recess was held from 1:03 p.m. to
22 2:23 p.m.)

23 THE COURT: We're back on the record. All right. Let
24 us have the jury, please.

25 (Whereupon, the jury entered the courtroom at 2:23

RONNIE ASHLEY

242

1 p.m.)

2 THE COURT: The record will reflect that the jury is
3 back and seated. Ladies and gentlemen, welcome back.

4 Solicitor, please call your next witness.

5 MR. BROWN: State calls Ronnie Ashley.

6 RONNIE ASHLEY, having first been
7 duly sworn, testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Please state your full name.

11 A James R. Ashley.

12 Q And Mr. Ashley, where do you work?

13 A Abbeville County Coroner's Office.

14 Q Are you the elected coroner?

15 A Yes.

16 Q How long have you been the coroner?

17 A Since 2001.

18 Q Since -- and what are your day-to-day activities or
19 your duties as coroner?

20 A Well, I go out to all deaths in Abbeville County and
21 pronounce.

22 Q And in this particular case, were you called out to
23 Bell Road?

24 A Yes, sir.

25 Q Out to the death of Christie Lynn Stutler?

RONNIE ASHLEY

243

- 1 A Yes, sir.
- 2 Q Was that on November 8th, 2016?
- 3 A Yes, sir.
- 4 Q What time did you arrive out there?
- 5 A 18:25. 6:25.
- 6 Q And when you arrived, were other law enforcement
- 7 officers there?
- 8 A Yes, sir.
- 9 Q Was the scene secure?
- 10 A Yes, sir.
- 11 Q As part of your job, did you inspect or did you go view
- 12 Ms. Stutler?
- 13 A I did.
- 14 Q And you had entered the room, where was Ms. Stutler?
- 15 A She was laying in the bed, left side. She had one arm
- 16 hanging off the bed. The right arm was up under her head
- 17 and her head was leaned over and her hair was covering her
- 18 face.
- 19 Q So, in her position, could you tell if she had been
- 20 shot?
- 21 A Not at that time.
- 22 Q When were you able to see if she had been shot --
- 23 A After --
- 24 Q -- or that she was shot.
- 25 A After SLED came in and they took the pictures and done

RONNIE ASHLEY

244

1 their investigation, I rolled her over and seen a wound to
2 the left side of the temple and an exit wound on the right
3 side, right above the ear.

4 Q And so, the exit wound would be on the right side?

5 A Yes, sir.

6 Q While in the room and after SLED performed their
7 investigation, taking photographs and all, were you able to
8 determine, I guess, her condition of the body?

9 A Yeah. She was cold and rigor had set in. She had been
10 there several hours.

11 Q And for those that may not know, what do you mean by
12 rigor?

13 MR. GROSE: Your Honor, this is -- this is the -- it
14 calls for expect testimony from the pathologist. *State vs.*
15 *Briggs*, that I cited this morning.

16 THE COURT: Rigor mortis is kind of -- does he mean
17 rigor mortis by rigor?

18 MR. BROWN: Yes.

19 THE COURT: That's a common term. People know what it
20 is. If he wants to describe though the condition of body,
21 whatever stiff --

22 MR. GROSE: But he can't get into time of death and
23 things like that.

24 THE COURT: I'm agreeing. But, I mean, he can describe
25 that -- if the body was stiff and things of that nature.

RONNIE ASHLEY

245

1 MR. GROSE: As long as we don't go any further than
2 that, I think --

3 THE COURT: Go ahead and back up and --

4 MR. BROWN: Yes, sir.

5 THE WITNESS: Okay.

6 THE COURT: -- I think you can get where you're going.

7 Q What was the condition of her body?

8 A She was cold and she was stiff.

9 Q Now, after law enforcement, SLED, Sheriff's Office had
10 taken their pictures and all, describe how you removed her
11 body from the house.

12 A We rolled her onto the bed. Rolled her right side and
13 put her in a body bag.

14 Q And then after that, you --

15 A After that, EMS took her to Anderson morgue for an
16 autopsy.

17 Q Okay.

18 A Which --

19 Q And she was under your care and custody --

20 A Yes.

21 Q -- during that time?

22 A Yes.

23 Q And when was the autopsy?

24 A Autopsy was at -- was the next morning --

25 Q And --

SAM FERGUSON

246

1 A -- at Anderson Hospital, and Dr. Woodard performed the
2 autopsy.

3 Q From the time she left the location, we've already seen
4 pictures of her body in the bed, to going to Anderson, did
5 you do anything to disturb her body other than move her?

6 A No.

7 Q And again, it's part of your -- it'd be outside of your
8 scope or your knowledge to be able to put any kind of time
9 of death on it? I'm not even asking for a time of death.

10 A It would be an estimated.

11 Q Yes, sir. Mr. Ashley, this did occur -- or you did
12 find her body at Bell Road --

13 A Yes.

14 Q -- in Abbeville County?

15 MR. BROWN: No further questions for Mr. Ashley.

16 THE COURT: Anything on cross?

17 MR. GROSE: Very briefly.

18 CROSS-EXAMINATION

19 BY MR. GROSE:

20 Q When you came into the room and first saw her, there
21 was blood running down the side of the mattress, right?

22 A Yes, sir.

23 Q And pooling on the floor?

24 A Yes, sir.

25 Q And that was something that, you had been up here all

SAM FERGUSON

247

1 morning, so far everybody's observed?

2 A Yes, sir.

3 MR. GROSE: That's all the questions I have. Thank
4 you.

5 THE COURT: You're free to go.

6 THE WITNESS: Thank you very much.

7 THE COURT: Thank you for coming.

8 (Whereupon, the witness has stepped down from the
9 witness stand.)

10 THE COURT: Call your next witness, please.

11 MR. BLACK: State calls Sam Ferguson.

12 SAM FERGUSON, having first been
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. BLACK:

16 Q Mr. Ferguson, can you state your full name for the
17 record?

18 A Sam Ferguson.

19 Q I'm not going to belabor the point. You're a deputy
20 coroner; is that right?

21 A Yes, sir.

22 Q Did you respond to the scene that day at Bell
23 Road?

24 A Yes, sir. I did.

25 Q Do you know about what time you got there?

SAM FERGUSON

248

- 1 A Probably five, 10 minutes after the coroner got there.
- 2 Q Okay. And you -- you walked over the scene; is that
- 3 correct?
- 4 A Yes, sir.
- 5 Q You observed the body?
- 6 A Yes, sir.
- 7 Q The position that she was laying in has been described.
- 8 Can you describe that, just briefly.
- 9 A It was the same as everybody else said. Her left arm
- 10 was hanging off the bed. She was laying on her right arm,
- 11 kind of on her stomach.
- 12 Q And you saw some of the pictures, that's how it was
- 13 when you arrived?
- 14 A Yes, sir.
- 15 Q Did it looked like she had been moved at all?
- 16 A No.
- 17 Q You let law enforcement do their investigation; is that
- 18 right?
- 19 A Yes.
- 20 Q Okay. And once they were done, then you all removed
- 21 the body?
- 22 A Yes.
- 23 Q Where did -- where did you all take the body or -- who
- 24 transported the body?
- 25 A Abbeville EMS.

SAM FERGUSON

249

- 1 Q And where did they transport that to?
- 2 A AnMed morgue.
- 3 Q And that would be in Anderson?
- 4 A Yes.
- 5 Q Okay. And can you -- can you -- did you go to the
- 6 autopsy, as well?
- 7 A I did not.
- 8 Q You did not go to the autopsy?
- 9 A No.
- 10 Q But you did -- there were some items collected from the
- 11 autopsy; is that correct?
- 12 A Yes.
- 13 Q And do you know what those items were?
- 14 A There was blood and fingernail clippings from both
- 15 hands.
- 16 Q And this is of the victim, Ms. Stutler?
- 17 A Yes, Ms. Stutler's.
- 18 Q Okay.
- 19 A And hair, and there was -- I think there was six or
- 20 eight tubes of blood, if I'm not mistaken.
- 21 Q Okay. And you got those from Lieutenant Graham; is
- 22 that right?
- 23 A Yes.
- 24 Q And what did you do with all those items?
- 25 A I took those to SLED.

JEFFREY HINES

250

1 Q Okay. And is that something standard that you all
2 typically do?

3 A Well, they were -- they were very busy with that scene.
4 So I was -- didn't have anything to do that day, so I
5 volunteered to take it to SLED just to help them out to
6 transport the evidence.

7 Q Okay. As part of the investigation?

8 A Yes.

9 Q Okay. And once you turned it over to SLED, they --
10 they did their tests?

11 A That's right.

12 MR. BROWN: Okay. I think that's all the questions I
13 have. Thank you for being here.

14 THE WITNESS: Yes, sir.

15 CROSS-EXAMINATION

16 MR. GROSE:

17 Q Can I just see that sheet you were looking at for a
18 second?

19 A Yes, sir.

20 Q And I think when you came into the room you were able
21 to see the blood, too, weren't you?

22 A Yes, sir.

23 Q Okay. And the pooling on the floor?

24 A Yes, sir.

25 MR. GROSE: Okay. That's all I have. Thank you.

JEFFREY HINES

251

1 THE COURT: Thanks for coming. You are free to go.

2 THE WITNESS: Thank you, sir.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Next witness.

6 MR. BROWN: State calls Jeff Hines.

7 JEFFREY HINES, having first been
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Mr. Hines, where do you work?

14 A Abbeville County Sheriff's Office.

15 Q And how long have you been with Abbeville County?

16 A I've been with Abbeville County going on five years.

17 Q And what's your title there and position?

18 A Sergeant of investigations.

19 Q Okay. Have you been in investigations your entire time
20 with Abbeville County?

21 A All but approximately the first six months that I was
22 there.

23 Q Before coming to Abbeville County Sheriff's Office,
24 where were you employed?

25 A Greenville City Police Department.

JEFFREY HINES

252

1 Q And how long were you there?

2 A Approximately eight years.

3 Q Now, Mr. Hines, on this particular case, the homicide
4 that occurred on November 8th, 2016, did you work this case?

5 A Yes.

6 Q And if you need to, you can move that mic closer to you

7 --

8 A Thank you.

9 Q -- so you don't have to keep moving forward. Mr.
10 Hines, when did you get the call to respond to Bell
11 Road?

12 A Oh, we received a call from the shift supervisor,
13 myself and Lieutenant Graham, on the 8th of November at
14 approximately 6:30.

15 Q And did you respond out to Bell Road?

16 A Yes, we did.

17 Q When you got there, what was going on?

18 A When we got there, there was of a lot of -- a lot of
19 people in the driveway. Different people was on scene. We
20 had to secure the -- secure the scene to start with by
21 putting crime scene tape up and stuff, myself, Lieutenant
22 Graham and Lieutenant Rhodes. After we put the crime scene
23 tape up, at that point, Lieutenant Rhodes kind of briefed us
24 on what was going on at the scene, and at that time we
25 entered the residence.

JEFFREY HINES

253

1 Q And, at some point during this time, did you also
2 contact Alton Davis, the Sheriff's Office and --

3 A Yes. Yes, we did.

4 Q -- got a search warrant?

5 A We did get a search warrant for the residence.

6 Q Once you entered the home, or the trailer, did you
7 observe Ms. Stutler?

8 A Yes, I did.

9 Q And where was she?

10 A She was in the back bedroom. When you entered the
11 home, there was a -- like a stump and some bricks. You had
12 to actually climb up to get inside of the -- the mobile
13 home. Once you go in the mobile home, the kitchen is on the
14 right-hand side. As soon as you go in there's a little
15 livingroom area. Then you proceed to the left and you go
16 down the hallway. And then at the very end of trailer, if
17 you're on Bell Road looking at the trailer, at the very end,
18 that's where the bedroom is. It's a -- and it's a fairly
19 small bedroom at the end.

20 Q When you entered that house, what was the temperature
21 like inside?

22 A When I entered -- when I was first going up the steps
23 -- well, I'm going to call it steps. It really wasn't a
24 step because, like I said, it was a stump and a brick to get
25 inside. But once you entered I smelled kerosene right --

JEFFREY HINES

254

1 right away, a strong odor of kerosene. The temperature was
2 extremely hot. It was a -- and, you know, it was -- it
3 wasn't freezing outside, but the inside was extremely hot.
4 It was -- it was very hot inside.

5 Q Once you entered the house or the trailer, you went
6 back to back bedroom where Ms. Stutler located, did you find
7 the origin of where that heat was coming from?

8 A Yes. It was a -- the heat was coming from a kerosene
9 heater. The heater was very, very close to the box spring
10 and mattress. There wasn't a -- it wasn't a bed, as far as
11 a bedframe and stuff. It was just a box spring and a
12 mattress laying on the ground. The heater was, like I said,
13 extremely close. There's -- there was like a dresser or
14 something with the TV on the foot of the bed, and then, on
15 the wall, next to the door, as soon as you walk in to the
16 left, and in front of that dresser area is where the
17 kerosene heater was -- was laying. So it was, you know,
18 just -- just a feet away. I mean, it was extremely close.

19 Q Now, when you entered the room and began looking
20 around, did you -- did you see Ms. Stutler lying in the bed?

21 A I did. Ms. Stutler was -- and as you all have heard,
22 because I've heard as well, Ms. Stutler was laying face down
23 on the left side of the mattress, partially covered up. I
24 did observe her left -- her left arm hanging off the side of
25 the bed. And then her right arm was kind of folded over her

JEFFREY HINES

255

1 head like this, just laying face down in the bed. I did
2 also observe a pool of blood laying on the ground and it had
3 ran down the bed. It was a very thick blood.

4 Q Now, after you all were in the trailer, did -- did you
5 initially look around the room and observe what was all in
6 the room?

7 A We did. We -- we did do a search with SLED and stuff
8 once the -- are you talking about once the search warrant
9 came back?

10 Q Yes.

11 A Yeah, we did. I did help with that.

12 Q I'm going to show you State's 61. Now, in this picture
13 -- is the heater you're referring to in the picture?

14 A Yes, sir.

15 Q And just to -- is the heater in the bottom?

16 A Yes, sir. And there's the TV stand on -- the TV on top
17 of the dresser that I was referring to, as well.

18 Q And also, the -- there was mention earlier about a
19 notebook and I think later on there'll be more talk about
20 it. But did you personally look through the notebook or
21 look around the room for any notebooks or writing?

22 A Yes. When -- when I was searching the residence, there
23 was not just one notebook, there was several different kind
24 of little notebooks with poems and things like that in it.
25 We did not see any value of evidence because nothing was

JEFFREY HINES

256

1 related to -- to a homicide inside the notebook. So those
2 notebooks were not collected.

3 Q Was there any suicide note in there?

4 A There was no suicide notes either. And I -- I do -- I
5 do a lot of search warrants and during the search warrants
6 that I do, I always look through notebooks. Especially
7 because it can be relevant to a case if someone's been, you
8 know, leaving notes and things like that. But at this -- at
9 this particular residence there was nothing inside of a
10 notebook that I personally thought was any kind of
11 evidential value.

12 Q And in that particular notebook in this photograph, I
13 believe it was 61. Did that notebook -- did it have
14 anything in it?

15 A No, sir. It -- it might have had poem or two. There
16 was also some pages that looked -- appeared to be ripped out
17 of it. As someone's, you know, doing a poem or something
18 and not liking it and tearing pages out or something like
19 that. But there was -- there was nothing of evidence at the
20 time.

21 Q But there were ripped pages out of it?

22 A Yes, sir. What -- what appeared to be ripped pages.

23 MR. GROSE: That was which number, 61?

24 MR. BROWN: 61.

25 Q Now, during the investigation and search of house, did

JEFFREY HINES

257

1 -- was SLED called in to assist?

2 A Yes, sir.

3 Q And that would be Special Agent Tallon?

4 A I -- I don't recall his name. There was actually -- I
5 think there was two that came, but I don't remember their
6 names.

7 Q And while Special Agent Tallon and Alton Davis and
8 Sheri Ashley and the other SLED investigator were taking
9 pictures and looking through the house, did you and Tim
10 Graham go anywhere?

11 A We did. We actually went and asked Mr. Tillman if he
12 would ride to the Sheriff's Office with us and talk to us,
13 which he agreed on.

14 Q Mr. Tillman went with you?

15 A Yes, sir.

16 Q Voluntarily?

17 A Yes, sir.

18 Q He wasn't placed under arrest at this time?

19 A No, sir. Not at all. And he was -- he was told that
20 he wasn't placed under arrest.

21 Q Now -- and this would have been on November 8th, 2016.
22 When -- and this would have occurred at the Sheriff's
23 Office?

24 A Yes, sir.

25 Q And was this conversation with Mr. Tillman, was it

JEFFREY HINES

258

1 recorded?

2 A Yes, it was.

3 Q I'm going to show you what's been marked --

4 MR. BROWN: Oh, actually, mark this.

5 MR. GROSE: I'm going to just see which one that is.

6 MR. BROWN: Here you go.

7 (Whereupon, State's Exhibit Number 134 was marked for
8 identification.)

9 Q I'm going to show you what's been marked as State's
10 Exhibit Number 134. What is that?

11 A This is a standard Miranda form that we use anytime
12 that we speak to anyone about a crime, we do read them a
13 Miranda form. It's a statement Miranda. And then also, one
14 through five is the actual -- the Miranda rights that we
15 read to them, and then the waiver of rights here is where
16 they sign if they want to talk to us -- if they willingly
17 want to talk to us. If not, they don't sign it and then,
18 you know, we don't speak to them if they don't sign their
19 Miranda form. This is my signature here by officer's name
20 and it's dated 11/8 at 10:57 p.m.

21 Q And who also accompanied you with Mr. Tillman?

22 A Lieutenant Graham.

23 Q And did you all, in fact, talk with him that night?

24 A Yes, sir.

25 Q And that's approximately about two hours and 40 minutes

JEFFREY HINES

259

1 of conversation?

2 A We talked to him for -- for a pretty significant amount
3 of time, so I would say that's probably right. Yes.

4 MR. BROWN: Your Honor, I'd move State's 134 into
5 evidence.

6 MR. GROSE: No objection.

7 THE COURT: Without objection, 134 is in.

8 (Whereupon, State's Exhibit Number 134 was admitted
9 into evidence.)

10 Q Before we play that first interview -- after that
11 interview, the following day, did you talk with Mr. Tillman
12 again?

13 A We did.

14 Q And, again -- and, again, did you provide him with a
15 copy of the Miranda rights?

16 A Yes, sir. It was the same -- the same Miranda form
17 that I provided him earlier. Due to it being a different
18 time and it was a separate questioning, I Mirandized him
19 once again once I got to the Sheriff's Office.

20 Q Do you recognize that form?

21 A I do. This one -- this one is the same form, the
22 Abbeville County Sheriff's Office statement of Miranda
23 rights and waiver of rights. It is also witnessed by me.
24 That's my handwriting and that's Lieutenant Graham's
25 handwriting. And this one's dated 11/9/2016 at 7:20 a.m.

JEFFREY HINES

260

1 Q At that time, he was not under arrest?

2 A No, sir. He was not.

3 MR. BROWN: Your Honor, State moves 135 in as evidence.

4 MR. GROSE: No objection.

5 THE COURT: 135 is in evidence.

6 (Whereupon, State's Exhibit Number 135 was entered into
7 evidence.)

8 Q Now -- now, initially, before we get into that first
9 interview, did -- how long were you out at Bell Road
10 before you and Mr. Tillman and Lieutenant Graham went to the
11 Sheriff's Office?

12 A We never left Bell Road, besides the times that we
13 were going to take Mr. Tillman to the Sheriff's Office. We
14 were out there a long time.

15 Q So, initially, you got the call to Bell Road, did
16 the initial investigation looking around, and then you and
17 Lieutenant Graham left with Mr. Tillman?

18 A That's correct.

19 Q And while you all left, were other investigators still
20 there searching?

21 A That's correct.

22 Q And after your first interview with Mr. Tillman at the
23 Sheriff's Office, did you go back to Bell Road?

24 A Yes, sir.

25 Q And then back to talk to him some more after ultimately

1 finding other evidence?

2 A That's correct. Yes, sir.

3 MR. BROWN: Your Honor, at this time -- Judge, State
4 would move 124, 125, 126, and 127 in as evidence now.

5 THE COURT: All right. Those are the --

6 MR. GROSE: Without objection.

7 THE COURT: All right. Without objection, 124 through
8 127 are in evidence and you may publish the -- and I assume
9 you intend to publish at this point?

10 MR. BROWN: Yes, sir.

11 (Whereupon, State's Exhibit Numbers 124, 125, 126, and
12 127 were admitted into evidence.)

13 THE COURT: All right. The first one is how long?

14 MR. BROWN: It's over two hours. We might need -- want
15 to take a break.

16 THE COURT: No. What we'll do is take a break at
17 about, you know, the 45 minute mark or something like that,
18 and then finish it out. If we're going to play the entire
19 thing, it'll probably take up the rest of the afternoon. Is
20 this video? This is the video one, right?

21 MR. BROWN: Yeah.

22 THE COURT: Okay, good. Can the -- can the witness
23 step down while we're playing this? Mr. Grose, do you have
24 any --

25 MR. GROSE: Oh, there's no objection to that, Your

1 Honor. .

2 THE COURT: Why don't you step over here and --

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Ladies, if you all need to move you can.

5 MR. GROSE: We found last month that sitting on that
6 back row sometimes can help, but whatever they're
7 comfortable with.

8 THE COURT: All right. Feel free to move if you need
9 to. Okay, ladies?

10 MR. BROWN: Judge, I might beg the Court's indulgence
11 so I can figure all these out.

12 THE COURT: Okay.

13 MR. BLACK: Is it plugged in?

14 (Whereupon, State's Exhibit Number 124 was published to
15 the jury at 2:50 p.m.)

16 (Whereupon, the jury exited the courtroom briefly at
17 3:02 p.m. while audio volume was being adjusted.)

18 THE COURT: We're going back on the record. The
19 Solicitor has modified the audio, somewhat, on the video
20 that we're watching. I think it's improved, but I've
21 indicated to the counsel that I'm going to ask the jury to
22 -- if they have trouble understanding what the Defendant in
23 this case is saying -- what Mr. Tillman is saying on the
24 video to indicate to me. I really don't know that we're
25 going to be in a position to improve it dramatically. I

1 think part of the problem is that we're broadcasting into a
2 microphone with computer speakers and I don't know what the
3 solution to that might be, other than to illicit a narrative
4 from the actual witness who conducted the interview, but I
5 really prefer the video because that's verbatim. To the
6 extent that it's intelligible. Let's go ahead and have the
7 jury out again and we'll see what happens. Okay?

8 (Whereupon, the jury entered the courtroom at 3:21
9 p.m.)

10 THE COURT: All right. The jury is back and seated.
11 The Solicitor, ladies and gentlemen, has, I think, improved
12 a little bit on the audio. But at the same time, if you're
13 having difficulty what's being said by any of the
14 individuals in the video, I want you to try and get my
15 attention again. Okay? So if you're having difficulty
16 understanding what's being said, I think it's improved
17 substantially over what you were listening to a minute ago.
18 But, again, don't be shy about stopping me and we'll see
19 what we can do about that. Okay? So, obviously, I --
20 everybody wants to hear what's being said here. So,
21 Solicitor, go ahead and play just from the post-Miranda part
22 forward.

23 (Whereupon, the publishing of State's Exhibit Number
24 124 was continued.)

25 THE COURT: We've been at it for about an hour, ladies

1 and gentlemen. We're going to take about a five or ten
2 minute break and then we'll reconvene. My experience is
3 that people get information overload after about an hour
4 watching these kinds of videos. So adjourn to the back. If
5 you need to step outside, let the bailiff know and he'll
6 take you down to the back. We'll be on the record in about
7 five or 10 minutes. Okay?

8 (Whereupon, the jury exited the courtroom at 4:27 p.m.)

9 THE COURT: We're at ease.

10 (Whereupon, a recess was held from 4:27 p.m. to 4:43
11 p.m.)

12 THE COURT: We've got about, I assume, about 45 minutes
13 about left of this?

14 MR. BROWN: No, sir.

15 THE COURT: How much?

16 MR. BROWN: About an hour and a half.

17 THE COURT: An hour and a half. That ain't going to
18 cut it.

19 MR. GROSE: Why don't we start in the morning. We were
20 talking about scheduling on these. He's inclined to play
21 most of this one. I want this entire one played. I don't
22 think -- you're not inclined to play any of the second one?

23 MR. BROWN: I want to cut the second one out because
24 it's very similar to this one, and that'll save about two
25 hours and something.

1 MR. GROSE: The third one is -- I think he wants to
2 play parts. The third one I think he wants to play parts
3 of. I may have parts that I want to play. But I agree that
4 playing that one is -- I agree that playing that one in it's
5 entirety is not necessary. The fourth one is just audio.
6 It's about an hour and 10 minutes before the redactions. An
7 hour and 11, something of that nature. I think he wanted to
8 play most of it. I think I want that entire one. So I
9 think where we're at is, is we've got about two and a half
10 hours and maybe a little bit more left. So by lunch
11 tomorrow, unless we take other witnesses.

12 THE COURT: Right. Is there a good stopping point in
13 this video after about another 30 or 45 minutes, or no?

14 MR. BROWN: I don't think it'll really matter where you
15 stop at.

16 MR. GROSE: Yeah, I don't think it --

17 THE COURT: Pretty much the same thing all --

18 MR. BROWN: Same. Same.

19 THE COURT: -- throughout. How are we in terms of
20 being on schedule, Solicitor? If we keep these pace, if we
21 maintain this pace with another two and a half hours audio
22 and video --

23 MR. BROWN: Judge, I think, you know, with this pace --
24 obviously we have the pathologist tomorrow. Finish up with
25 Mr. Hines on this and the third video. And then we -- we

1 really get into some other lay witnesses and then we'll get
2 into SLED. And most -- and all these things are pretty much
3 entered into, so it kind of cuts out --

4 THE COURT: So the State's case should be done by
5 Thursday --

6 MR. BROWN: Thursday.

7 THE COURT: -- close of business?

8 MR. BROWN: Probably so.

9 MR. GROSE: And I'm not objecting to any of this stuff.
10 I -- you know, if we want to get it all marked and in,
11 that's -- to move things along, that's fine.

12 MR. BROWN: And, Judge, we might be able to -- if we
13 get this moved in after today, I can talk to Charles about
14 -- there's some people who prep different items at SLED for
15 the analysts to do, like the GSR. There's one person that
16 prepped it and poked around on the shirt.

17 THE COURT: We can see what we can --

18 MR. BROWN: We can see if we can --

19 MR. GROSE: And again, I just will reiterate what I
20 said in chambers. I don't think it's made on the record.
21 If it was just somebody who carried something or prepped it,
22 I don't have a problem skipping over them. I'm not
23 objecting to the chain of any of this stuff or, you know,
24 anything of that nature.

25 THE COURT: Sure.

1 MR. BROWN: Quite frankly, the videos are going to be
2 the longest thing.

3 THE COURT: Right.

4 MR. BROWN: And then everything else will probably pick
5 up pretty quickly.

6 MR. GROSE: And we're just -- on our side of the road
7 we're just worried about the jury getting fatigued at this
8 juncture.

9 THE COURT: Yeah, that's sort of what I'm concerned
10 about as well. Including the rest of this we've got about
11 two and a half hours is what you all would guess?

12 MR. BROWN: Two and a half on this video or the other
13 ones?

14 THE COURT: No, no, no, no. Including what's left on
15 this. Adding in what you all are going to want to play on
16 the other videos and audio.

17 MR. BROWN: I would say probably three.

18 THE COURT: Closer to three. What I was thinking about
19 possibly, maybe going ahead and -- if we were to break and
20 then have the jury back at 9:30. We come back at 9:00.
21 I'll have a jury report in the grand jury room. We can take
22 up the question of the black and whites that you've
23 prepared. And I mentioned that in chambers as well. And I
24 was also going to suggest that perhaps either you or Mr.
25 Black contact your IT person and see if maybe they have a

1 better setup. This is much better than -- the audio is much
2 better than when we started playing it, but I've still seen
3 on or two jurors kind of squint trying to pick up on what's
4 being said.

5 MR. BROWN: Judge, quite frankly, when I played it in
6 my office on earbuds and all that, it's -- I think it's just
7 the quality of this with -- even turning it all the way up,
8 I don't believe the microphone is over the top of Mr.
9 Tillman's head, and sometimes he mumbles, so I don't know if
10 it's actually getting better.

11 THE COURT: Well, I was just thinking that it might be
12 worth at least asking --

13 MR. BROWN: Yes, sir.

14 THE COURT: -- if there's perhaps a second set of
15 speakers that could be erected kind of that second chair and
16 then that fifth chair, put them in front of the jury. I
17 thought that you had that equipment at your office where it
18 could be played so that you get the benefit of stereo
19 without going into a single speaker like we have it now.
20 You see what I'm kind of saying? I think part of the
21 problem is it's in mono because it's only one microphone.
22 And that's -- that could be harming comprehension. I might
23 be wrong. You may not even have those.

24 MR. BROWN: I don't know if we have that in our -- I
25 don't think we have -- I think the only thing we have in our

1 office really are other speakers like this. The only place
2 that's really equipped for that is the Greenwood courtroom.
3 They have the -- where it's wired into the speakers. And
4 then I think Laurens is the only one other than that. I can
5 -- I can play with it and see if we can get a better --

6 THE COURT: I think you probably got it as good as it's
7 going to get what's here. Let's go ahead and break for the
8 evening. We'll reconvene tomorrow at 9:00. I'll have the
9 jury come back at 9:30. Hit the ground running. See the
10 rest of the video. I assume Dr. Woodard will need to --
11 you've got him coming in the afternoon?

12 MR. BROWN: We'll call and get everybody else
13 rearranged.

14 THE COURT: When do -- when did you plan on calling
15 him?

16 MR. BROWN: I planned to call him in the morning, but
17 given the fact about this, I think he's flexible.

18 THE COURT: The only option would be to take him out of
19 order. See what his schedule is. Maybe take a break in
20 this and take his testimony and then reconvene with this.

21 MR. BROWN: Yes, sir.

22 THE COURT: But I'd prefer to finish this and --

23 MR. BROWN: Yes, sir.

24 THE COURT: -- and then go into Dr. Woodard if at all
25 possible.

1 MR. GROSE: I would prefer to do that, but we will be
2 flexible if that's necessary, Judge..

3 THE COURT: Let's go ahead and have the jury out,
4 please. We'll release for the night and reconvene tomorrow.

5 (Whereupon, the jury entered the courtroom at 4:50
6 p.m.)

7 THE COURT: Okay. Ladies and gentlemen, after talking
8 to the attorneys -- don't get too comfortable over there
9 because what we're going to do -- I'm told that there's a
10 good piece of time left on the current video and we're
11 actually doing pretty well in terms of the pace that is been
12 set here. And, candidly, I'm concerned that you might be
13 getting video fatigued. Okay? So -- I'm not even sure
14 that's a real word, and if isn't, I just made it up.
15 Anyway, we're going to go ahead and take a break for the
16 evening. Okay? And what I'm going to do -- the parties are
17 coming back here tomorrow morning at 9:00. There are a few
18 procedural matters that I still need to address on this
19 case, things that we just couldn't get to yesterday
20 afternoon after I released you guys. So we're going to be
21 addressing that at 9:00. I need you to report back, if you
22 would, I think we'll have it squared away by 9:30. But, out
23 of an abundance of caution since we may still be talking in
24 here, just report to the grand jury room that's just outside
25 the main entrance here to the courtroom. It's at the top of

1 the stairs. That big room with big table. Okay? So show
2 up there in the morning at 9:30 and hopefully we'll be in a
3 position to bring you straight in here and resume with the
4 playing of the video and taking additional testimony. Okay?
5 I see some of you all have been taken notes. I assume
6 you've written your name or something at the top or you can
7 identify your own handwriting, whatever the case may be,
8 just leave those with the bailiff when you leave here today.
9 Again, don't discuss the case with anyone. We are setting a
10 good pace on this case and I do not anticipate that it will
11 run into Saturday or next week based upon how things are
12 going. So I think we're in good shape to go ahead and take
13 a break and I'll let you all resume your domestic lives
14 here, okay, for the evening.

15 Again, don't talk to anyone about the case. I'll see
16 you all tomorrow morning. Leave the notebooks with us.
17 Have a great night.

18 (Whereupon, the jury exited the courtroom for the day
19 at 4:53 p.m.)

20 THE COURT: All right. Everyone have a pleasant
21 evening. Take care. I'll see you all in the morning.

22 TRIAL DAY 3: January 24, 2018

23 THE COURT: All right. I think you all have been
24 trying to improve audio and I think we're satisfied,
25 Solicitor, that it's a little bit better than it was

1 yesterday?

2 MR. BROWN: I think it's a little bit better.

3 THE COURT: Very good. I apologize for the delay in
4 getting in here this morning. I had a personal matter that
5 I needed to attend to real quick. The forensic pathologist,
6 when do you anticipate that testimony?

7 MR. BROWN: Judge, he's going to be down here right
8 before lunch, depending how fast we get to these. Either
9 right before lunch or right after.

10 THE COURT: The photographs, I'd asked you in chambers
11 to try and narrow your focus in terms of the photographs
12 from the autopsy that you felt were absolutely essential to
13 the State's theory of the case. Have you been able to do
14 that, and I assume that you've got -- you indicated
15 yesterday that you going to convert them to black and white.

16 MR. BROWN: Yes, sir. We have converted them to black
17 and white. We've broken them down to five. And one of them
18 actually can be taken out. I know you're holding ruling on
19 one. The bruise on the back of her thigh. The next would
20 be a cigarette burn on the -- on her rear-end. The next is
21 bruising to the back of her neck, which I believe we're
22 going to say was a hand -- hand impression, or it looks to
23 be a hand that caused that bruise. The next would be a
24 bullet shot to the shin. And then lastly, one picture to
25 depict where the entry wound was. So no pictures of the

1 exit would. If we need to, I can also put tape over her
2 face, if we need to.

3 THE COURT: All right. And these relate with the
4 State's theory of the case how?

5 MR. BROWN: Judge, in the -- in all of his interviews
6 -- we already heard his interview. He said he never touched
7 her. That they always -- that they were together. They
8 were living together. They sleep naked. That she caused
9 all these bruises to herself. Obviously, these bruises --
10 and I think it will come out in testimony that these bruises
11 were not done by her. So it would essential in the State's
12 case. More probative than prejudicial in our case.

13 THE COURT: All right.

14 MR. BROWN: The second one, and the one you're holding
15 in your right hand, that would be a second shot or wound to
16 her shin. And so, that also would be very telling in our
17 case and help the Doctor describe his findings.

18 THE COURT: All right. And just so that I'm clear in
19 my mind, because there's been some testimony about a bullet
20 hole inside of the bedroom. In the wall of the bedroom
21 there's a -- there's a bullet that's been recovered. What
22 is the State's theory as far as her position when she was
23 shot? Was she standing, laying on the bed --

24 MR. BROWN: No, sir.

25 THE COURT: -- or what is -- what's the State's theory.

1 on all this? Because you have two different wounds; the
2 fatal one, and then the one in her shin.

3 MR. BROWN: For the fatal wound, I believe she was in
4 the bed where she was lying when she was fatally shot.

5 THE COURT: Is it the State's theory that she was
6 sleeping on her stomach, and then --

7 MR. BROWN: No, sir. I -- I believe that there's
8 multiple shots that went on and that was her last place
9 where she went before she was shot.

10 THE COURT: Did they recover the bullet from the fatal
11 wound?

12 MR. BROWN: There were fragments that were located in
13 her -- in her brain, but the rest of the bullet was not
14 recovered.

15 MR. GROSE: So are you saying that one that was in the
16 wall was not the fatal bullet?

17 MR. BROWN: I can't say it is or if it isn't.

18 MR. GROSE: Okay. Because I don't want to hear one
19 theory now and another one in closing.

20 THE COURT: Right.

21 MR. GROSE: Or reply or whatever.

22 THE COURT: And we'll address that Friday morning.

23 But, okay. So she was -- it's the State's theory that she
24 was in the bed at the time that she was shot?

25 MR. BROWN: Judge, I believe that she was probably --

1 this -- I believe she was probably up. Some of these
2 bruises occurred to her while she was standing up. There's
3 probably -- I think there's going to be testimony that she's
4 got some defensive wounds on her. More -- probably more
5 than one gunshot went off in that room. You can tell she
6 was put down on that bed or told to be on that, and then got
7 the fatal shot.

8 THE COURT: All right. And, Mr. Grose, I'll hear from
9 you, and I do realize that you object to all five, six
10 photographs that I'm holding. At this point --

11 MR. GROSE: I haven't seen those except from a
12 distance.

13 THE COURT: Oh, okay. Here, I'll go ahead and let you
14 take a look at these. I was reserving ruling on State's 37,
15 and candidly, because that photograph shows the bruise and
16 because the color photograph is probably more probative than
17 the black and white, and the black and white photograph
18 doesn't, I think, fully reflect -- or accurately could
19 reflect the injuries close to -- closer to her time of
20 death. I might be incline to let 37 in as opposed to the
21 autopsy photograph that depicts the same bruise that's
22 depicted in 37:

23 MR. GROSE: And the ones that we're looking aren't
24 numbered.

25 THE COURT: Right.

1 MR. GROSE: Which one -- that one would go with --

2 THE COURT: Yeah. I was told that the one that shows
3 her laying on her right side -- the black and white
4 photograph that depicts her laying on her right side and,
5 just so the record's clear, we'll mark this for
6 identification at some point.

7 MR. GROSE: Well, I do have a problem with all of them,
8 but one of the problems that I had with the unmarked one
9 that's black and white is -- and we've already had some of
10 this, but it shows signs of medical intervention, which I
11 think is generally considered prejudicial. Particularly --
12 I'm even understanding, in this case, why wouldn't --

13 THE COURT: I'm inclined to pull this one.

14 MR. GROSE: Okay. And, you know, again with these
15 other four. As -- is that 37? As State's 37. I mean,
16 we're not contesting any of this. And so -- and I'm afraid
17 -- one of the concerns that I have is, is that we keep
18 jumping to prejudicial versus probative value, the 403
19 analysis, and skip over the 401, the 402 analysis as to
20 whether or not --

21 THE COURT: It's relevant.

22 MR. GROSE: -- it's relevant to give them the issues
23 that are being contested in the trial. And that's -- and
24 that's an argument we've been trying to make all along. I
25 mean, that was the stipulation, and I thought that the

1 stipulation was, you know, from the need to have to
2 introduce a lot of this.

3 MR. BROWN: Judge --

4 THE COURT: Right. Let me ask this question point
5 blank. With the stipulation that this is in fact a
6 homicide, how do these exhibits, these black and white
7 photographs, aid the State in its theory that the Defendant
8 was the one who committed the homicide?

9 MR. BROWN: Judge, it shows the whole pattern of being
10 in the house. He -- he says in his own statements that he's
11 never touched her, though. He's never did any of this. He
12 has no knowledge of how she got these bruises on her, and
13 yet they've been living there in this house together. They
14 really rebut his statements and show that there are older
15 bruises there, plus there are fresh bruises that would be
16 contemporaneous with the time of death. And --

17 THE COURT: Okay. You've articulated a reason,
18 perhaps, to allow the photographs in that relate to the
19 bruising. The black and white photograph showing the bruise
20 on the back and the other photograph showing her backside
21 with what the State reports is a cigarette burn. I'm
22 assuming that you've got some evidence that will link that
23 up. We're still dealing with the other two photographs.
24 The one involving the shin and the fatal wound to her head.
25 How do those two photographs aid the State in it's theory

1 that the Defendant is in fact the murderer?

2 MR. BROWN: The shin would go to the whole -- the
3 State's theory of leading up to it that she was defending
4 herself. There's -- there'll be other evidence introduced
5 that she's got his DNA up under her fingernails, that she --
6 there was a struggle. That she has a hand print on the back
7 on her head. That there are multiple gunshots in the house.
8 One -- there's two on her body, one in the shin and one
9 through her head, and it paints the whole picture -- shows
10 the whole picture of what the State alleges happened.

11 THE COURT: But the State's theory is that she was
12 laying on the bed at the time --

13 MR. BROWN: Of the fatal gunshot.

14 THE COURT: -- the fatal shot was fired and that the
15 shot to the shin, obviously, preceded that at some point --

16 MR. BROWN: Yes, sir.

17 THE COURT: -- during the course of the struggle?

18 MR. BROWN: Yes, sir.

19 THE COURT: Is it the State's theory that she was
20 knocked unconscious, that she was made to lay on the bed,
21 that she was forced to lay face down on the bed --

22 MR. BROWN: Forced --

23 THE COURT: -- that she was not in the bed?

24 MR. BROWN: Forced to remain -- to lay down in that
25 position, and then was shot after being beaten and causing

1 bruising.

2 MR. GROSE: Judge, they have absolutely no witness
3 that's going to testify to that. No statement that they're
4 going to introduce to that. That is -- that is -- and if
5 that is what the pathologist is going to testify to, then we
6 get back to needing our Watson vs. Ford Motor Company
7 hearing because I -- I'm not -- I don't have a problem with
8 the pathologist testifying that these are injuries. I don't
9 have a problem with saying I think some of these are old and
10 I think some of these are new. I don't think you're going
11 to hear me contest any of that. When he starts saying this
12 is consistent with her being forced to lay on the bed and
13 somebody's shooting her, I have a problem with that.

14 MR. BROWN: I don't -- I don't believe he's going to
15 say that.

16 THE COURT: I would agree --

17 MR. BROWN: He's just going to say what these injuries
18 are.

19 THE COURT: I would agree that he cannot testify as to
20 -- absent more evidence, he's not going to be able to
21 testify as to her position at the time that the shot was
22 fired. The fatal shot.

23 MR. GROSE: Well, I can even -- I can even, you know,
24 if he can say -- I mean, I would concede if he could say
25 certain things about the -- you know, that she would have to

1 be in certain positions for the angle or certain things like
2 that. But this whole theory that there was a struggle and
3 she was forced to lay on the bed, that is -- that's where it
4 gets to be crazy.

5 THE COURT: Is there any circumstantial evidence or
6 direct evidence the State is going to be able to put forward
7 to back up that theory, making it more likely than not that
8 that is what took place? And I'm using a very low bar here.

9 MR. BROWN: That --

10 THE COURT: I think that's the bar for --

11 MR. BROWN: That he would harm her if she ever tried to
12 leave his presence?

13 THE COURT: Right. Again, I'm not privy to the rest of
14 the testimony that you're intending to offer, so I'm trying
15 to get a feel for how the State developed this theory based
16 upon the totality of all the evidence, all the interviews,
17 all the statements.

18 MR. BROWN: Yes, sir. There would -- there would be a
19 couple statements where previously he said if I can't have
20 her, nobody else can have her. If she ever tried to leave
21 --

22 MR. GROSE: And we're going to have to have a 404(b)
23 hearing on that then.

24 MR. BROWN: And if ever -- if she ever tried to leave
25 me I'll kill her.

1 THE COURT: All right. Here's where things stand.
2 We're going to go ahead and mark these black and whites.
3 The Court will admit the two photographs that depict the
4 bruise on the back of her neck and the burn to her buttocks.
5 The Court will allow those two photos in. The Court will
6 also allow State's 37 in. The photograph of the autopsy
7 where the bruise on her back leg was depicted, that will not
8 be coming in. The photograph of the bullet wound to her
9 shin is fair game. That'll come in. All those are subject
10 to the Defendant's objections. I'm going to reserve ruling
11 on the final one. At the very least tape over her eyes
12 would be necessary. And not only her eyes, but preferably a
13 strip tape that covers her nose, her mouth and her eyes.
14 I'm assuming there are not other injuries depicted that you
15 feel would be germane.

16 MR. BROWN: Not in that picture. No, sir.

17 MR. GROSE: Is that going to be tape that can be removed
18 by the jurors or is that going to be something that's done
19 and then it gets reproduced? Because I can see, you know,
20 finding out post-trial that, you know, the jurors removed
21 the tape when the evidence comes back in the courtroom, and
22 then we would have the problem that you're trying to avoid.
23 I mean, quite frankly, I've never seen that as a solution.
24 I mean, I've seen photographs redacted or cropped, but I've
25 never seen -- I've never seen --

1 THE COURT: We may simply crop the photograph in such a
2 way that --

3 MR. BROWN: Yes, sir.

4 THE COURT: -- it cuts the image of her eye -- her eye,
5 her nose and her mouth and may simply just cut from the
6 bottom left corner, along the same line as the ruler that's
7 being held by the pathologist. If I allow that one in.

8 MR. BROWN: Yes, sir.

9 THE COURT: Let's go ahead and take a break and mark
10 these, so that the court reporter knows what is coming in.
11 These -- 37 is already marked. These three, get those
12 marked as State's whatever at this point, and then I'm going
13 to mark the other two for identification.

14 (Whereupon, State's Exhibit Numbers 37, 136, 137 and
15 138 were marked for identification and admitted.)

16 (Whereupon, State's Exhibit Number 139 was marked for
17 identification.)

18 THE COURT: All right. Just so the record's clear, 139
19 is the photograph -- black and white photograph. It is not
20 in evidence. I'm allowing State's 37 to come in in lieu of
21 139. Photograph 138 -- State's 138 is the photograph of the
22 burnt buttocks, 137 is the bruise on the back of the neck,
23 and 136 is the shot to the shin. Those are in evidence,
24 subject to the Defendant's objection. I will get the facial
25 shot marked at this particular point in time. I guess that

1 will be 130 -- or 140 -- no. It'll be 141. All right. The
2 -- the facial shot, will be State's 141 that I'm still
3 considering at this particular point in time.

4 (Whereupon, State's Exhibit Number 141 was marked for
5 identification.)

6 THE COURT: All right. Have you all had a chance to --
7 Mr. Grose had indicated he was not objecting to the other
8 stuff, quote/unquote, that's down there underneath the
9 exhibit table. Have we marked all that yet?

10 MR. BROWN: I think it is all marked. The gun's now
11 marked as 140. There are a couple other things in a box
12 that have not been marked, but we're not getting to them
13 until this afternoon.

14 THE COURT: Okay. All right. We'll do that this
15 afternoon. Let's go ahead and bring the jury into the jury
16 room. We'll take a few moments for ourselves, reboot the
17 tape at one hour and 13 minutes and 13 seconds and we'll
18 resume. So we'll just take a few moments for ourselves.

19 (Whereupon, a brief recess was held until 10:00 a.m.)

20 THE COURT: We're going to go back on the record and
21 the record will reflect that the Defendant is present with
22 counsel.

23 My court reporter was explaining to me that apparently
24 State's 13, that's one of the photographs, she could not
25 locate it. That was the one that there was an objection to.

1 I have that it is not in evidence and this harkens back to
2 our conversation yesterday morning, when we went over all
3 the exhibits that were coming in without objection. There
4 was an objection to State's 13. My clerk has it listed as
5 the objection questionable. The assistant clerk of court
6 also has the same thing. I have it as not being in
7 evidence. But we need to put a BOLO out for State's 13 just
8 so that it can be added to the record. And it could just be
9 stuck to a piece of paper. I want to make sure that it's
10 not. That the sticker from the exhibit sticker didn't
11 inadvertently cause the thing to get stuck to some other
12 photograph. And my clerk is -- or my court reporter is
13 indicating that is not the case, so we don't have to worry
14 about that. But when State's 13 shows up, you all let us
15 know. Let us have the jury, please.

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

18 THE COURT: All right. The two alternates, we're
19 moving you guys to the back. Okay? Yeah. I think you're
20 going to have to walk back where you came from, ma'am. All
21 right.

22 Ladies and gentlemen of the jury, thank you very much
23 for being back. You're welcome back. As you can tell, the
24 Solicitor has made efforts to improve the audio and I think
25 it is appreciably better than it perhaps was yesterday.

1 That's the reason that we located you two alternates in the
2 back of the jury. That's the reason we moved your chairs
3 and relocated you. I'm assuming, Mr. Foreman, I don't know
4 if you -- do you have a clear line of sight to the --

5 MR. FOREMAN: I'm okay. I was just asking her and she
6 said she was okay.

7 THE COURT: Okay. All right. In that case, we're
8 going to resume playing the video. We're going to start off
9 where we left off yesterday. It's -- we have one hour and
10 13 minutes, 13 seconds. So if you want to go ahead and
11 proceed with playing the video.

12 MR. BROWN: Yes, sir.

13 (Whereupon, State's Exhibit Number 124 was published
14 for the jury.)

15 THE COURT: All right. Ladies and gentlemen, I imagine
16 some of us are in desperate need of a restroom break, so we
17 will take a break at this particular point in time. Don't
18 talk about the case and if you need to step outside, let the
19 Bailiff know. Okay? Adjourn to the back. We'll move the
20 speakers so that there's a good line of sight between the
21 two jurors on the end of the witness stand, and then resume
22 with Mr. Hines' testimony. Okay? We'll be at ease for a
23 few moments.

24 (Whereupon, the jury exited the courtroom at 11:23
25 a.m.)

1 (Whereupon, a recess was held from 11:23 a.m. to 11:44
2 a.m.)

3 THE COURT: All right. Let's go back on the record, if
4 we could. Just a few housekeeping matters. We did meet in
5 chambers and we're going to take Dr. Woodard's testimony out
6 of order at this particular point in time. I realize that
7 technically Mr. Hines is still on the stand, but as a
8 convenience to the Doctor, and because it shouldn't take too
9 long, we're going to go ahead and get Dr. Woodard taken care
10 of.

11 The Court will be allowing in State's 141 subject to
12 the Defendant's earlier objections. I've had the Solicitor
13 cut the photograph in such a way as the images of Ms.
14 Stutler's mouth, nose and eyes, those have been redacted.
15 So the only portion of that photograph that depicts her face
16 is the portion that depicts the entry wound. So that will
17 be in evidence. Of course, subject to the Defendant's
18 objections.

19 Mr. Hines, while you're here, I may asked that I make
20 a quick inquiry of you. Of course, you're still under oath.
21 You haven't discussed your testimony with anyone while we've
22 been on break, correct?

23 MR. HINES: No, sir.

24 THE COURT: All right. Good enough. Let us have the
25 jury, please.

1 MR. GROSE: Real quick.

2 THE COURT: Oh, yes, sir. I'm sorry.

3 MR. GROSE: Just -- just so the record is clear, the --
4 you're ruling that the photographs are already in evidence?

5 THE COURT: Correct. You do not need to object.

6 MR. GROSE: Because I just -- well, because we've been
7 fairly informal about how we've done that and I didn't want
8 any of my silence when they came up again. So they're
9 already in. So subject to objection?

10 THE COURT: Correct.

11 MR. GROSE: Okay.

12 THE COURT: I -- the record should be clear, the ones
13 that you objected to previously, even though they were
14 shown, it was understood that you had a standing objection
15 to those photographs. The ones that have already been
16 published to the jury. You have a standing objection to the
17 ones going forward that will be published to the jury,
18 either by Dr. Woodard or other -- or other witnesses and you
19 do not have to offer a contemporaneous objection to those
20 photographs. And I also indicated that you do have to offer
21 a contemporaneous objection to earlier ones that have
22 already been published. So I believe that you are covered,
23 as far as the record's concerned.

24 MR. GROSE: Thank you, Your Honor.

25 THE COURT: All right. Let us have the jury, please.

DR. BRETT WOODARD

288

1 MR. GROSE: Can I just see the cropped photos that --

2 (Whereupon, the jury entered the courtroom at 11:47

3 a.m.)

4 THE COURT: All right. The record will reflect that
5 the jury is back and seated.

6 Ladies and gentlemen of the jury, just to let you know,
7 we're about to take a witness out of order. Technically,
8 Mr. Hines is still on the witness stand, but we're going to
9 take a witness out of order for the convenience of the
10 witness. And so, that's what we're going to do at this
11 particular point in time, then we'll resume with Mr. Hines'
12 testimony.

13 Additionally, I need to make an inquiry of all of you.
14 I forgot to do it this morning. But if any member of the
15 jury panel has read anything or heard anything overnight
16 about this case, if you would, just raise your hand for me.

17 (Whereupon, no jury members raise their hands.)

18 THE COURT: All right. No hands are up. Solicitor, if
19 you'll call your next witness, please.

20 MR. BROWN: Thank you, Your Honor. State calls Dr.
21 Brett Woodard.

22 BRETT WOODARD, having first been duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BROWN:

DR. BRETT WOODARD

289

1 Q Morning, Dr. Woodard.

2 A Good morning.

3 Q Can you spell your last name for the court reporter?

4 A W-o-o-d-a-r-d.

5 Q Dr. Woodard, where are you employed?

6 A I'm employed by a series of different county coroners.

7 I work out of the Anderson Coroner's Office at this current
8 time.

9 Q And are -- and what is your --

10 A I'm the medical examiner for Abbeville, Anderson,
11 Greenwood and Oconee County's.

12 Q Now, Dr. Woodard, can you go over your educational
13 background?

14 A I received my Baccalaureate degree from the University
15 of Pittsburgh. I received my medical degree from Tulane
16 University School of Medicine. I did an internship in New
17 Orleans at the Charity Hospital of New Orleans. I did
18 residency training in pathology at Duke University Medical
19 Center in Durham, North Carolina, and I did fellowship
20 training in forensic pathology at the North Carolina Medical
21 Examiner's Office. I came to Anderson, South Carolina in
22 1982 and have practiced pathology with Piedmont Pathology
23 Associates until -- yeah, 2016 when I retired my from
24 general pathology practice and limited my practice to
25 forensic pathology.

DR. BRETT WOODARD

290

1 Q Dr. Woodard, is there any way you can estimate how many
2 autopsies you've performed over your career?

3 A I've perform somewhere between 200 and 300 autopsies
4 every year and have done so for the 35 years that I've been
5 in Anderson, South Carolina.

6 Q Dr. Woodard, have you ever been qualified as an expert
7 in forensic pathology in the Court of General Sessions in
8 South Carolina?

9 A Yes, I have.

10 Q Roughly, how many times?

11 A Hundreds.

12 MR. BROWN: Judge, at this time, we'd move Dr. Woodard
13 as an expert in forensic pathology.

14 THE COURT: Any objections to his qualifications --

15 MR. GROSE: No, sir. No objections.

16 THE COURT: All right. Ladies and gentlemen, I'll let
17 you know that, technically, when a -- when witnesses testify
18 in cases, they have to give testimony that's consistent with
19 something they observed with one of their five senses, which
20 is something they saw, heard, touched, et cetera, and
21 they're not allowed to give opinion testimony. An exception
22 to this rule does exist for individuals who are qualified as
23 experts and, in this case, the parties agree that Dr.
24 Woodard is a expert in the field of forensic pathology. So
25 he can give opinion testimony and he's not limited to simply

DR. BRETT WOODARD

291

1 relating what he saw, heard, touched, etcetera. He can give
2 opinion testimony that you may consider.

3 With that, you may continue, Solicitor.

4 MR. BROWN: Thank you, Your Honor.

5 Q Dr. Woodard, did you have the opportunity to perform an
6 autopsy on Christie Lynn Stutler?

7 A Yes, I did.

8 Q And when was that autopsy performed?

9 A November the 9th of 2016.

10 Q Was this the day after she had deceased?

11 A Yes. She was found dead by the Abbeville Coroner's
12 Office on November 8th of 2016.

13 Q Now, did the Abbeville Coroner's Office bring her body
14 to you?

15 A Yes, they did.

16 Q And once you received her body, what did you do?

17 A We examined the body as we received it, meaning how it
18 was dressed at the time it was discovered. We looked at the
19 clothing that was present, as well as the surface of the
20 body for any kind of injuries or disease processes that may
21 have been evident from that. We then followed any injuries
22 into the internal organs to see what affect they would have
23 on the function of the body and we looked at the other
24 organs of the body in order to make sure that we understood
25 the general state of health that the young lady was under.

DR. BRETT WOODARD

292

1 Q And what was the condition of Ms. Stutler's body when
2 you received her?

3 A She had two gunshot wounds to her body. One to her
4 head, one to her right lower leg. She had multiple bruises
5 and scrapes of the skin, abrasions on her body consistent
6 with blunt trauma, and she had burn injuries, at least one
7 of them, characteristic of a cigarette burn.

8 Q Dr. Woodard, was her body stiff or how would you
9 describe her body at the time?

10 A Well, when we received her approximately 24 hours after
11 the Abbeville Coroner's Office had seen her, her body was
12 beginning to come out of rigor. Rigor is the stiffening of
13 the body after death because the cells lose their energy.
14 Also, blood had settled both in her front part of body and
15 the Coroner's Office placed her on the back of her body and
16 blood had repositioned itself to settle on the back part of
17 her body, also. So those were the characteristics of the
18 body in general.

19 Q Well, Dr. Woodard, going through your report, did you
20 make your report -- where did you start with? Let's just
21 start with there.

22 A I --

23 Q When you analyzed her body.

24 A The -- we start with, as I said, how the body is
25 received. We develop what we call general identity

DR. BRETT WOODARD

293

1 features. She's so tall, she's got this colored hair, she
2 has this colored eyes, she has any tattoos or medical scars
3 on her body that could be identified back to a medical
4 procedure or something that other people may have known
5 about her. And then we begin to examine the outside of her
6 body to look for bruises, scrapes, stab wounds, projectile
7 wounds to see if there were any injuries. We then collect
8 what we call external evidence. In her case, she had some
9 long nails. So we take a small kit that is used uniquely
10 just to her and we clip any places that there were long
11 nails and we place those into evidence in an envelope that
12 is then sent to the State Crime Lab for analysis to find any
13 kind of trace materials beneath the nails; DNA, fibers, any
14 other trace material that could be used to develop physical
15 evidence. We take blood samples, and so, that they can be
16 utilized to evaluate was she using substance. What were the
17 levels of substance if she was using substance. Was she
18 taking any kind of specific medication that may be of a hint
19 to how she presented herself to a practitioner -- a medical
20 practitioner, and we take urine and eye fluid for those same
21 purposes.

22 We then photograph, as we receive the body, any
23 injuries that we see on the surface of the body, and then we
24 begin a dissection. The dissection is performed in the same
25 way on all individuals, be it a death in a hospital or a

DR. BRETT WOODARD

294

1 death from violence. We look at the internal major organs
2 of the chest and abdomen and pelvis first. We look for any
3 evidence that might tell us about any injuries that they
4 had. In a woman of this age, we establish if she is or is
5 not pregnant at the time of her death. And then we open the
6 head, and then examine the neck.

7 Q Yes, sir. When going over evidence of injuries, let's
8 start at the first part of your report. I'm going to show
9 you what's in evidence as State's Number 49.

10 A This is the right palm of her hand and it shows a
11 linear bruise -- or, excuse me. A linear burn on her hand.
12 You can see the increased redness around the periphery, so
13 it's a more recent event. It hasn't started to heal in any
14 significant way. And it's what we refer to as a second
15 degree burn, meaning that it didn't burn all the way through
16 the skin and the subcutaneous tissues, it's just burnt the
17 outer layer of skin. Sort of what you might experience from
18 a blistering sunburn.

19 Q Dr. Woodard, you mentioned -- I'm going to show you
20 what's been marked and is in State's evidence Number 141.
21 What are we seeing here?

22 A You can see the edge of what you would call a sideburn
23 in a man at the edge of her hair, just beyond the left thumb
24 of my glove -- excuse me, the thumb of my glove. You can
25 see that there's a dark defect, which is a gunshot wound of

DR. BRETT WOODARD

295

1 entry.

2 Q And, Dr. Woodard, with that gunshot wound, how would
3 you characterize that?

4 A That's what we refer to as a tight contact wound,
5 meaning the gun was placed against the head at the time it
6 was discharged.

7 Q We're not going to -- did that bullet -- how did that
8 bullet travel?

9 A It travel through the substance of her brain tearing
10 her brain stem, and then exited on the right side of the
11 head to go on it's direction at the -- so it wasn't present
12 with the body at the time we did the autopsy.

13 Q Dr. Woodard, when doing this autopsy, did you also do a
14 scan of the head?

15 A We did an x-ray of the head. We saw small lead
16 particles within the substance of the brain, which are
17 consistent with the bullet. A lead covered bullet that's
18 passing through the body, it tears small pieces of lead off
19 as it goes through the hard bones as it enters the skull and
20 these small little pieces are left behind in the brain
21 tissue. It also shows us the direction that the bullet went
22 -- or another feature that show us the direction the bullet
23 went.

24 Q Dr. Woodard, once Ms. Stutler received this gunshot,
25 would she be able to move around this --

DR. BRETT WOODARD

296

1 A No. She would have lost the ability to have any
2 volitional movement. There may have been some slight
3 twitching type motions, but she wouldn't be able to
4 voluntarily move or do anything.

5 Q Would it be safe to say the location -- or where she
6 was when she received this gunshot was her final resting
7 place?

8 A That's correct.

9 Q Let me show you State's 136.

10 A This represents her right lower leg. You see an oval
11 shaped injury on the leg. This is a -- what we call an
12 atypical gunshot wound. These are most commonly seen as the
13 projectile passes through an object before it strikes the
14 individual, especially the lower the energy of the
15 projectile. So a large caliber gun may be less likely to
16 produce this kind of wound than a small caliber gun. It
17 also shows, because of the shape, that the bullet wasn't
18 traveling like a missile, it was traveling sideways. It
19 struck the skin in this location, tore some of the tissue
20 beneath the skin, but then either fell out or was push out
21 of the body.

22 Q Would that also be concurrent or in agreement with a
23 ricochet?

24 A Yes. Again, that would be your intermediate target in
25 that particular case.

DR. BRETT WOODARD

297

1 Q After your report, or after discussing the atypical
2 wound, what else did you observe?

3 A There were multiple bruises, both of a recent and a
4 remote nature. You can only judge a bruise by it's recent,
5 it's less than about 12 to six hours, or it's remote, it's
6 more than 18 hours when it begins to show changes in
7 coloration. Obviously, some people bruise more severely
8 than other people with the same trauma, but you can only
9 judge the timing between the bruises in that particular way.
10 We saw some bruises, which suggested fingertips being
11 pressed against the body in an effort to manipulate, control
12 or hold the body. We saw scratches on the body which were
13 consistent with another individual's fingerprints -- or
14 excuse me, fingers losing contact with the body and the
15 nails scratching the victim, and we saw burn injuries. One
16 which has already been shown to you.

17 Q Let me show you State's 137.

18 A This is the back of her right arm. We see a sort of
19 oval shape -- in a general oval shape bruise.

20 Q I'd like to hand this to you and get you a closer look.
21 Is this the back of her right arm or...

22 A Oh, excuse me. This is the -- yeah. This is back of
23 the neck. I apologize. I couldn't see up front there. And
24 you can see underneath the ruler that there are multiple
25 scratch-like injuries, as well as this bruise.

DR. BRETT WOODARD

298

1 Q I'll show you State's 138.

2 A This represents her buttocks. This is a burn injury.

3 The given shape is classic for a cigarette tip burn.

4 Q Where was this located?

5 A On her butt.

6 Q State's 37. Those pictures you took during your

7 autopsy. But is that -- did you observe that bruise

8 yourself?

9 A Yeah. You know, this is her posterior thigh. You can
10 see the bruise with the central clearing in the bruise.

11 It's often referred to as a tram bruise, meaning the
12 bruising makes two lines. It can occur with a broad or a
13 rectangular blunt trauma. What happens is, while the rod
14 strikes in the center, it forces the blood to the edges.

15 And so, the blood accumulates at the periphery of the
16 bruise.

17 Q State's 48.

18 A This is her left wrist. Beneath her hand, you see
19 scratches on her wrist, suggesting another individual's
20 fingernails in some form attempting to control that left
21 wrist.

22 Q And, Dr. Woodard, you did say during your autopsy or
23 exam you all did take fingernail clippings or scrapings?

24 A That's correct. As you can see, for instance in this
25 picture, her thumb has no fingernails, but her number two

1 and number three finger have fingernails, so we would have
2 clipped those longer fingernails.

3 Q And, Dr. Woodard, I'm going to show you State's Number
4 50.

5 A This is a long view of her right back. Again, for
6 orientation, you see the circular burn at the bottom of the
7 picture. At the upper portion of the picture, you see
8 bruises going up what I would call her right posterior
9 axillary line. And then you see her shirt pulled up with a
10 EKG patch.

11 Q And can you describe that as bruising?

12 A Those are all contemporary bruises. They're made up of
13 at least three, if not more, separate patterns with some
14 overlap. And you can see the bottom one that -- whatever
15 the striking object was, it had some element of an oval
16 shape to it.

17 Q Dr. Woodard, did you happen to measure those bruises on
18 her back?

19 A I took pictures with what we refer to as a dental ruler
20 so that they could be measured if an object ever came
21 forward that some degree of comparison was necessary for.

22 Q And based off of your measurements, State's --

23 MR. GROSE: I'm going to object to this as outside the
24 scope of his expertise, Your Honor.

25 THE COURT: All right. Overruled. It's noted. You

DR. BRETT WOODARD

300

1 can deal with it in on cross, and I think we've been down
2 this road and made a record of it already.

3 MR. GROSE: Yes, sir.

4 THE COURT: Let's proceed.

5 Q Dr. Woodard, I'm going to show you what's been
6 collected as State's 140. Would you take a look at this?

7 THE COURT: Solicitor, no offense, but before you hand
8 it to him, would you make sure that's cleared for us.

9 MR. BROWN: Yes, sir. The chamber's pulled back and
10 there's no clip or --

11 THE COURT: All right. Very good.

12 MR. BROWN: -- projectiles.

13 A The general shape observed on the butt of any long
14 rifle, would be a object that could produce the injuries
15 that were observed. They -- unless there's a specific
16 pattern, and this rifle appears to be largely smooth, it
17 doesn't produce a secondary pattern that could be matched
18 definitively to this rifle.

19 Q Dr. Woodard, based on a reasonable degree of medical
20 certainty, what was the cause of death and manner of death?

21 A The cause of death was the gunshot wound projectile
22 that went through her brain. The manner of death was
23 homicide.

24 Q And, Dr. Woodard, initially this call was called in as
25 a suicide. Is that even a possibility, based on your

DR. BRETT WOODARD

301

1 observations of this case?

2 A In my opinion, it was inconsistent with a suicide. The
3 -- without a specific support device to support the gun so
4 she could discharge it in the path that occurred.

5 Q And, Dr. Woodard, based on your observation of Ms.
6 Stutler's body, could you estimate a time of death or range?

7 A The range would be somewhere between 24 and 36 hours
8 before the time I saw her.

9 Q And you saw her at what time?

10 A 11:00 on the day after she was discovered.

11 Q So 11:00 on November 9th, 2016?

12 A That's --

13 THE COURT: And that was a.m. or --

14 THE WITNESS: November 10 -- 9th on 2016 would be
15 correct at 11:00. I'm sorry.

16 Q So 24 hours before that to 36 hours before that?

17 A That's correct.

18 Q So 11:00 a.m. on 11/8, which would have been election
19 day, or 11:00 p.m. on the 7th?

20 A That's correct.

21 Q And, again, after Ms. Stutler was shot there on the
22 bed, would -- she wouldn't have been able to move around
23 anymore?

24 A No, she would not.

25 Q Dr. Woodard, based on your exam and the bruising and

DR. BRETT WOODARD

302

1 the other marks on her body, how would you characterize --

2 A That she had been physically abused at times before
3 this event and she was physically attacked near the time of
4 this event and she made minimal effort to prevent her left
5 arm from being utilized in a way she didn't want it to be
6 used.

7 MR. BROWN: No further questions.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. GROSE:

11 Q The time of death you said was between 11:00 p.m. on
12 November the 7th in the evening, after that and before 11:00
13 a.m. on the 8th; is that right?

14 A That's correct.

15 Q And that is based on observing the body and how the, I
16 guess, the rigor mortis had been releasing and that sort of
17 thing?

18 A That's correct.

19 Q All right. And so, you can't narrow it down any
20 further than that?

21 A No. What they do on TV isn't real.

22 Q All right. That's kind of what I was getting at. All
23 right. And so, if we were to see any videotapes or
24 interrogations where police officers tried to put a time of
25 death at a more narrow time than that, that didn't come from

DR. BRETT WOODARD

303

1 you?

2 A That's correct.

3 Q Okay. Now, you said that you collected samples to be
4 sent off, right?

5 A That's correct.

6 Q And some of that was blood samples, correct?

7 A That's correct.

8 Q And that's sent for toxicology, right?

9 A We send it for toxicology and for DNA. The -- again,
10 it allows investigators to compare any blood that's present
11 at the scene that they don't feel they can account for with
12 her DNA.

13 Q Right. So it's for two purposes, right?

14 A That's correct.

15 Q And did you receive the toxicology report back?

16 A I never received any reports.

17 Q And I don't know if you can look at that on my
18 computer. On the first page --

19 A This slider? Let me make sure my --

20 Q Right there.

21 A Okay.

22 Q When you -- you have to use two fingers. I can -- just
23 tell me I can --

24 A Just slide it up. First page is negative. Keep going.

25 Second page is negative, and then they get down to

DR. BRETT WOODARD

304

1 methamphetamine and amphetamine and she has both of those
2 drugs in her system. Methamphetamine -- amphetamine is
3 always made when methamphetamine is made illicitly, so both
4 drugs have to be present. So methamphetamine and
5 amphetamine were both present.

6 Q All right. And so, one of them is a prescription drug
7 and one of them is a street drug?

8 A That's correct.

9 Q Okay. Now, sometimes people that smoke drugs can end
10 up with burns on themselves, can't they?

11 A Absolutely.

12 Q And you've seen that in autopsies, right?

13 A Absolutely.

14 Q All right. And people who smoke meth sometimes feel
15 like their skin's itching, right?

16 A Yes.

17 Q And, as a result of that, they scratch it?

18 A They can.

19 Q And it's almost like they feel like there's bugs or
20 something.

21 A That's correct.

22 Q Okay. And you said some of these injuries were recent
23 and some of them were remote?

24 A That's correct.

25 Q And the bruises on the ribs, those were remote?

DR. BRETT WOODARD

305

1 A No. The bruises on the right side of the ribs were
2 recent.

3 Q Okay.

4 A Bruises to the anterior abdomen, as a general area,
5 they -- they were remote and consistent with blows to the
6 abdomen.

7 Q Or somebody falling?

8 A Or somebody falling.

9 MR. GROSE: Okay. Beg the Court's indulgence for a
10 moment.

11 THE COURT: Yes, sir.

12 Q All right. And, again, the most that you can say on
13 the time of death is between 11:00 p.m. on the 7th of
14 November and 11:00 a.m. on the 8th of November --

15 A That's correct.

16 Q -- of 2016; is that correct?

17 A That's correct.

18 MR. GROSE: That's all I have. Thank you, Your Honor.

19 MR. BROWN: Just few followup questions.

20 REDIRECT EXAMINATION

21 BY MR. BROWN:

22 Q Dr. Woodard, the cigarette burn you referred to on her
23 rear-end, that is in a location -- would you consider that
24 to be in a location that is odd for somebody to do that to
25 themselves?

1 A It would be very inaccessible to be self-done.

2 Q And, Dr. Woodard, he was asking about scratch marks on
3 arms and that nature. In your exam, did you also notate
4 that there appeared to be defensive wounds on Ms. Stutler?

5 A There appeared to be wounds on her left arm and on her
6 right side of her chest wall that suggested that they were
7 defensive and the injuries to the back of her neck with the
8 bruising suggested someone pushing very hard on the back of
9 her neck, not herself.

10 MR. BROWN: Thank you, Dr. Woodard.

11 MR. GROSE: I just --

12 RE CROSS-EXAMINATION

13 BY MR. GROSE:

14 Q And you can't offer an opinion on the identity of that
15 person, can you?

16 A No, I can't.

17 MR. GROSE: Thank you. That's all I have.

18 THE COURT: Doctor, thank you very much for coming.
19 Good to see you again. Take care of yourself. Drive safe.
20 You're free to go.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: Mr. Hines, if you'll come back up, sir.
23 And I'll remind you, of course, you're still under oath.

24 MR. HINES: Yes, sir.

25 JEFFREY HINES, having been

JEFFREY HINES

307

1 previously duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Officer Hines, we're going to switch back here to
5 yesterday. Laying out this timeline. You had already been
6 at the -- at the residence at Bell Road prior to
7 interviewing with Lieutenant Graham of Charles Tillman at
8 the Sheriff's Department, correct?

9 A Yes.

10 Q And we just got done watching that interview, correct?

11 A That's correct.

12 Q After -- towards the end of that, you did collect his
13 -- the shirt he was wearing. Was that sent down to SLED for
14 testing?

15 A It was.

16 Q And after that interview, did the three of you return
17 to Bell Road?

18 A Yes, we did.

19 Q Once you returned to Bell Road, what did you and
20 the other officers do?

21 A They were still searching the residence of Mr.
22 Tillman's mother, SLED and other investigators. Mr. Tillman
23 said something in his interview that caught my interest.
24 There was a lawn mower that you all heard him talk about
25 that he was working on prior to going to work. So myself,

1 Lieutenant Graham, and another deputy went to the general
2 area where the lawn mower was. Well, another deputy noticed
3 that there was a car door that was ajar and he looked down
4 in there and inside the car through the window and said that
5 he believed that he observed a rifle. I went there and I
6 did observe a rifle in the vehicle, as well.

7 Q And can you give a description of where this vehicle
8 was located in relation to the trailer that Christie Stutler
9 was found in and his mother's home.

10 A Uh-huh. If -- the trailer would be to the left. And
11 if I remember correctly, there's some bushes and there was a
12 path from his trailer -- excuse me. There was a path from
13 his trailer that went up through the -- like through the
14 bushes. And then there was a car -- a couple cars I
15 believe, and then you continue to walk up the path and
16 then's it's -- and there's his mother's house. So it's a
17 well beaten kind of path that you would walk up to go to his
18 mother's house passing the car.

19 Q And as you were walking, or as you were investigating
20 that area, you noticed that the back car door was somewhat
21 open?

22 A It was a -- it was -- it was ajar where it happened.
23 It was like someone went to close it and then it didn't
24 latch all the way. So, therefore, there's a little gap in
25 it if -- you know how if you close your door and if you

JEFFREY HINES

309

1 don't slam it all the way, there's a little -- there's a
2 little gap in it. Like you can tell it's ajar.

3 Q Now, were you able to see that it was in fact a firearm
4 in that car?

5 A Yes. It appeared to be a firearm -- the butt-stock,
6 underneath a bunch of clothing.

7 Q And, ultimately, you all did receive a search warrant
8 to search that vehicle?

9 A Yes.

10 Q And you also already had consent to search from his
11 mother; is that correct?

12 A Yeah. The -- we had the first search warrant, which
13 never left the scene. The consent to search from his
14 mother. And then before we removed the firearm from the
15 property, we actually went and got another search warrant
16 before we actually removed it from the property.

17 Q Now, these photographs have gotten out of order with
18 the exhibits, but I'm going to show you -- let you take a
19 look at these photographs and see if you recognize them.

20 A Yes, sir. I do. I do recognize them.

21 Q Now, Mr. Hines, that's -- after you got back to
22 Bell Road. I'll show you State's 88. What is this a
23 picture of?

24 A That's a picture of the car that the gun was located
25 in. As you can see, it's -- it's been used for storage. It

JEFFREY HINES

310

1 looks like someone's using it as like a storage unit or to
2 store extra clothing and other items.

3 Q State's 86.

4 A That's just the back view of the same vehicle.

5 Q Does that photograph also capture that -- how the door
6 was -- how the door was on the car when you approached it?

7 A Yes, sir. It was -- it was not latched all the way.
8 It was kind of ajar.

9 Q State's 84.

10 A That would be the front of the vehicle. And as you can
11 see, that's the -- the other vehicle that I was talking
12 about that was there. And just to the left of that vehicle
13 is where there's a group of the trees that I was talking
14 about that -- the path to the trailer. You can -- you can
15 easily throw a rock and hit the trailer from the car.

16 Q State's 81.

17 A That is the rifle that we retrieved from the vehicle.

18 Q Now, once you locate this firearm in that vehicle, had
19 SLED -- where was SLED at during this time? The
20 investigators that had responded?

21 A The forensic unit for SLED had already left. They just
22 left, literally probably -- I don't know. Ten minutes
23 beforehand. They got finished at Mr. Tillman's mother's
24 house and then they left the scene.

25 Q After you returned back with Lieutenant Graham, did

JEFFREY HINES

311

1 SLED also -- were they called back?

2 A Yes. After we determined that a firearm was in the
3 vehicle, we did call SLED back and then went and got the
4 search warrant and removed it from the scene.

5 Q And SLED actually removed it --

6 A They did.

7 Q -- Agent Tallon?

8 A Sir?

9 Q The agent -- the SLED agent removed it?

10 A Yes, sir.

11 Q I'll show you State's 69.

12 A And that's going to be the -- that's going to be the
13 same firearm that was located inside the vehicle.

14 Q And when you retrieved this firearm, was it loaded? Is
15 that what appears to be --

16 A That was a bullet. There was -- there was -- there's
17 was going to be -- there was one in the chamber, which meant
18 that -- if a bullet's still in the chamber, either someone
19 either chambered the round or they shot it and it cycled
20 through. When you shoot the firearm your bullets cycle and
21 another one goes in the chamber.

22 Q And after a bullet's fired, the shell casing's kicked
23 out?

24 A When the bullet's fired, that is correct. Your shell
25 casing -- casings do eject out the side. For that

JEFFREY HINES

312

1 particular gun, that's a Ruger 10/22. They eject out of the
2 side. It is a side ejecting gun.

3 Q And in addition to the -- the one in the chamber, this
4 also has got a clip?

5 A Yes. It did have a magazine in it, as well.

6 Q And once this gun was removed from the car, was it
7 boxed up?

8 A SLED did. Once they removed it to take it from the
9 scene, it was boxed up the way that they -- I guess it's a
10 protocol in their procedure that they box the firearm and
11 make sure it's clear so no one else gets shot or hurt.

12 Q The State's Number 140, does this appear to be the same
13 firearm that was retrieved out of that vehicle that night?

14 A This is the same gun.

15 Q Now, Officer Hines, after you got done speaking with
16 him in the first interview when you returned back to the
17 house. In the first interview, he did mention a notebook --

18 A Yes, sir.

19 Q -- or other notebooks that Christie liked to write in?

20 A Yes, sir.

21 Q When you got back to the house, did you continue
22 looking and trying to find these notebooks?

23 A We did. We searched -- we actually went back in the
24 house after we located the gun to make sure that no shell
25 casings in or anything like that extra was missed. Any

JEFFREY HINES

313

1 bullets or anything like that. When we went back in, we did
2 look through the house again. And like I said previously
3 yesterday, there was a lot of different little notepads and
4 things like that in the house -- or notebooks, including the
5 one that was laying in the bed. But there was nothing of
6 evidential value inside the notebook, so there was no reason
7 for me to seize -- or take the notebook because it was
8 nothing to do with the case. So I did not take any of those
9 things. But -- and as I said yesterday, too, the book --
10 and I say in the interview. You all hear us talk about it
11 in the interview, as well. There was -- the notebook laying
12 on the bed, there was some pages that was ripped out of it.
13 But nothing of -- no evidence inside the -- inside the
14 notebook consistent with anything.

15 Q Now, when you went back to the house and while you all
16 were investigating and searching the house, how many shell
17 casings were located in the house?

18 A Well, Lieutenant Graham located one shell casing behind
19 the -- the mattress is laying like this. Just on the floor
20 with the box-spring underneath. The TV and stand's here.
21 The heater's here. We had to actually pick the bed up and
22 the shell casing was located kind of at the -- at the
23 headboard where it -- excuse me, where the headboard should
24 have been. So the head of the board -- oh, excuse me. The
25 head of the bed, it was laying like up underneath that

JEFFREY HINES

314

1 stuff.

2 Q I'm going to show you State's 68. And is this the bed?

3 A That is the bed.

4 Q And State's 66. Is that where that shell casing was
5 located --

6 A Can I --

7 Q -- after you moved the bed?

8 A Can I look at that a little closer, Solicitor?

9 Q Yes, sir.

10 A Yes, sir. That's correct.

11 Q And -- okay. That's 66. In that photograph, is this
12 the shell casing?

13 A Yes, sir.

14 Q And a closer look with 67; is that correct?

15 A That's correct.

16 Q Now, Officer Hines, during the first interview, you
17 questioned about Mr. Tillman in the 911 call; is that
18 correct?

19 A Yes, sir.

20 Q In that first interview, did Mr. Tillman ever say he
21 went up to his mother's house?

22 A He denies going up to his mother's house in the first
23 interview. In that interview he states that he was yelling
24 out of the -- out of the trailer, yelling at his cousin. We
25 asked him several times if he went to his mother's house and

JEFFREY HINES

315

1 he tells us no.

2 Q Now, after you went back to the house, after the first
3 time and you located the firearm, did you later on, on that
4 day -- so now it's now November 9th. It's a Wednesday. Did
5 you have the opportunity to talk to Mr. Tillman again?

6 A Yes, I did.

7 Q And during that interview, did Mr. Tillman ever really
8 change his story about not touching a gun or not moving a
9 gun?

10 A Everything Mr. Tillman's -- in all the interviews to me
11 and -- everything seemed like it was --

12 MR. GROSE: Your Honor, may we approach.

13 THE COURT: That's fine. Don't say anything right now.

14 THE WITNESS: Yes, sir.

15 (Whereupon, a sidebar was held.)

16 THE COURT: Objection sustained. Solicitor, ask
17 another question, please.

18 MR. BROWN: Yes, sir, Your Honor.

19 Q Mr. Tillman denied moving the gun?

20 A Yes, sir.

21 Q And he denied having a gun?

22 A That's correct.

23 Q And continued saying Christie did this to herself?

24 A That's correct.

25 Q After speaking with him in that second interview, did

JEFFREY HINES

316

1 you have the opportunity -- I believe it's the -- I believe
2 it was the next day, so it would be the 10th. Did you have
3 the opportunity to speak with Mr. Tillman again?

4 A I did.

5 Q And this would have been after Alton Davis,
6 investigator with the Sheriff's Office, and Sheri Ashley had
7 talked to him and actually Mirandized him?

8 A That's correct.

9 Q And you and Lieutenant Graham came in later in the
10 interview; is that right?

11 A Yes. That's correct.

12 Q After that particular interview, did you all leave the
13 Sheriff's Office? Or he was free to go and he left?

14 A That's correct.

15 MR. BROWN: Your Honor, at this time we would play the
16 third portion of the third interview.

17 THE COURT: All right. Very good.

18 THE WITNESS: Solicitor, do you want me to step down?

19 THE COURT: You can step down if you want.

20 THE WITNESS: Thank you, Your Honor.

21 (Whereupon, the witness stepped down from the witness
22 stand.)

23 THE COURT: And we need to get that speaker back up
24 probably, don't we? Or is it going to be better than --

25 MR. BROWN: I think it's relatively easy.

JEFFREY HINES

317

1 THE COURT: And just so that we're clear, Solicitor,
2 you're only playing the portion -- the portion that you feel
3 is relevant to this -- is this the second or third
4 interview?

5 MR. BROWN: Third.

6 THE COURT: Ladies and gentlemen, you're not going to
7 hear the entire interview. They're just going to play parts
8 that they think are relevant to the theory involved in this
9 case. Okay? It won't be the whole thing.

10 THE COURT: 126. Note that parenthetically.
11 Thirty-five?

12 MR. BROWN: Thirty-five minutes.

13 THE COURT: Thirty-five minutes. All right. Ladies
14 and gentlemen, here's what we're going to do. I'm going to
15 go ahead and let you take a lunch break. I have a very firm
16 deadline in terms of eating. Maybe you people suffer from
17 the same problem, but my blood sugar starts dropping
18 dramatically after 1:00. If it bottoms out and then I pass
19 out and that's never good, so we're going to go ahead and
20 take a lunch break. Okay? If you could, please be back in
21 the jury room, let's say, by 1:45. Okay? That will give
22 you about an hour and five minutes, give or take, and
23 hopefully by that point in time we'll be set up with the
24 rest of the audio, video, et cetera. Don't talk about the
25 case with anyone, leave your notebooks with the Bailiff and

JEFFREY HINES

318

1 I'll see you at 1:45. Thank you.

2 (Whereupon, the jury exited the courtroom at 12:40 for
3 a lunch recess.)

4 THE COURT: Everybody else, just stay in here while the
5 jury's being excused, please. Just stay in here, please.
6 Thank you. We'll be at ease for about an hour for a lunch
7 break. Mr. Hines, obviously, don't talk to anybody --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- about the case while we're on break.

10 (Whereupon, a lunch recess was held from 12:40 p.m. to
11 1:45 p.m.)

12 (Whereupon, the jury entered the courtroom at 1:56
13 p.m.)

14 (Whereupon, State's Exhibit Number 126 was published
15 for the jury.)

16 (Whereupon, the witness returns to the witness stand.)

17 THE COURT: You're still under oath.

18 THE WITNESS: Yes, Your Honor.

19 Q Mr. Hines, after that interview, did you all go back
20 out to the house?

21 A Yes, sir.

22 Q And did you ask or get him to try to show you where
23 that third bullet hole was?

24 A Yes, we did.

25 Q Was there a third bullet hole?

JEFFREY HINES

319

1 A I couldn't determine that it was a bullet hole. There
2 was a hole -- like a little hole in the wall, but you
3 couldn't really determine -- distinguish if it was a bullet
4 hole or not.

5 Q Now, in that interview or that -- between you, Mr.
6 Tillman and Mr. Graham, there was talk about a white rag --

7 A Yes.

8 Q -- that had blood on it. It had thick blood on it.

9 A Yes, sir.

10 Q At the crime scene in the back bedroom, State's Number
11 2.

12 MR. GROSE: Is that -- did you say Number 2?

13 MR. BROWN: Number 2.

14 Q What is that up by her head?

15 A Solicitor, can I make a -- can I get a closer look of
16 it, please, sir? It appears to be a white rag.

17 Q State's 14. And, again, above her head.

18 A A white rag.

19 Q After you all removed Ms. Stutler -- or after Ms.
20 Stutler was removed from the house, you all moved that
21 mattress around; is that correct?

22 A Yes, sir.

23 Q And behind that mattress, you ended up finding the
24 spent shell casing?

25 A That's correct.

JEFFREY HINES

320

1 Q And that rag ultimately fell down from there; is that
2 right?

3 A Yes, sir. That's correct.

4 Q Also, in that house, another rag -- just to account for
5 the rags, is State's 61. Is that a white rag in that
6 bucket?

7 A Yeah. That's -- that was some bucket with some kind of
8 liquid in it and a white rag inside the bucket there.

9 Q Now, during the interview, that last one we just
10 viewed, Mr. Tillman mentioned a deer camera.

11 A Yes.

12 Q After you all left that interview, did you go back out
13 there?

14 A We did.

15 Q Did you ever see a deer camera?

16 A I did not.

17 Q And Mr. Tillman was talking about this deer camera
18 being able to watch or see who came up to the house and all
19 and you asked him about it; is that correct?

20 A That's correct.

21 Q And, ultimately, he said, oh, I put it up afterwards?

22 A Yes. He said, I put it up afterwards.

23 Q Once law enforcement was called to the house, once the
24 suicide was called in, when did law enforcement leave?

25 A We -- we worked on this case for -- you know, we were

JEFFREY HINES

321

1 up two to three days. So it was a long, extended period of
2 time after we located the gun before we left.

3 Q And when you first got there -- law enforcement got
4 there, you and Matthew Graham had actually gone down to the
5 Sheriff's Office and talked to him; is that correct?

6 A Yes.

7 Q And all the while, SLED agents and other Abbeville
8 County Sheriff's deputies were there at that house, right?

9 A That's correct.

10 Q And you all also roped off the area; is that correct?

11 A That's also correct.

12 Q Throughout the night, after you got done talking with
13 Mr. Tillman, you ultimately came back and searched the car?

14 A That's correct.

15 Q And found a gun?

16 A That's also correct.

17 MR. GROSE: Object to the leading, Your Honor.

18 THE COURT: Okay. It's sustained. To the extent you
19 can let's avoid the leading, please, sir.

20 MR. BROWN: Yes, sir.

21 Q During that time, when would Mr. Tillman have been able
22 to put up that deer cam?

23 A There wasn't a -- there wasn't a time that someone
24 wasn't outside or around. We did see someone, I don't know
25 who, but come outside several times while we're at the car

JEFFREY HINES

322

1 to a clothes line or something out front of the house and, I
2 mean, this was way up in the morning. I can't remember
3 exactly what time, but it was definitely, you know, past
4 12:00 a.m.

5 Q And after that third interview, it wasn't until later
6 on, on November 29th of 2016 that Mr. Tillman was arrested;
7 is that correct?

8 A That -- that's correct.

9 Q And was that after some results had come back?
10 Forensic results?

11 A Yes. We -- we waited until we got forensic results
12 from SLED before we decided to pursue any kind of charges.

13 MR. BROWN: No further questions.

14 MR. GROSE: Your Honor, may we approach?

15 THE COURT: Oh, yes. Actually, can we take a -- why
16 don't we take a brief break.

17 MR. GROSE: Yeah.

18 THE COURT: All right. Ladies and gentlemen, I'm going
19 to go ahead and take a brief -- probably about, 10 minute
20 break or so. So adjourn to the back, and if you need to
21 step outside, let the Bailiff know. You're not supposed to
22 talk about the case, so please don't. Thanks.

23 (Whereupon, the jury exited the courtroom at 2:40 p.m.)

24 THE COURT: You can step down. Again, don't talk with
25 anybody about your testimony.

JEFFREY HINES

323

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: We're at ease.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 (Whereupon, a brief recess was held at 2:40 p.m. to
6 3:01 p.m.)

7 THE COURT: We're back on the record. Mr. Grose, are
8 you ready to proceed?

9 MR. GROSE: I am, Your Honor.

10 THE COURT: All right. Let's have the jury please.

11 (Whereupon, the jury entered the courtroom at 3:01
12 p.m.)

13 THE COURT: All right. The jury is back and seated.
14 At this point, Mr. Grose, your cross?

15 MR. GROSE: Okay. Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GROSE:

18 Q I'm going to put Defendant's Exhibit 2 -- I'm sorry.
19 Exhibit 3, which is not from the crime scene photos. And
20 I'll tell you, it's a Google Map thing that just to kind of
21 orient everybody.

22 A Yes, sir.

23 Q Would you agree that this is an overhead of the Bell
24 Road property?

25 A It appears to be. Yes.

1 Q Okay. And on the right side of it over here, this is
2 where the driveway comes in; is that right?

3 A That's correct.

4 Q And so, Bell Road would actually be -- as we face the
5 picture, the paved road is not on it, but it would be off to
6 the right side, right?

7 A My -- I believe so.

8 Q Okay. And over on the left side, in the upper left
9 corner, that's what we refer to as the brick house where Ms.
10 Vonnie Cummings lives, right?

11 A Yes. That's where Ms. -- Mr. Tillman's mother lives
12 at.

13 Q Okay. Ms. Vonnie Cummings?

14 A Yes, sir.

15 Q Okay. And here, it's kind of going off the bottom of
16 the screen, but that would be where the trailer is that
17 we're talking about, right?

18 A Yes, sir.

19 Q Okay. And when you were talking about a wooded area
20 before, there's just like a row of trees through here; is
21 that right?

22 A I don't believe I said wooded area. I thought I said
23 trees.

24 Q Okay. Well, you were talking about a path to the
25 trailer, but it's really -- you could maybe go between the

JEFFREY HINES

325

1 trees or -- I mean, it's really -- they're right next to
2 each other is point I'm getting at.

3 A Yes, sir. That's correct.

4 Q Okay. And, like I said, this is not from the crime
5 scene, so these cars are probably not -- may not be where
6 cars were that night. But there is like a little
7 outbuilding right here; is that correct?

8 A That's correct.

9 Q Okay. And that outbuilding, it's near where you found
10 the gun, right?

11 A That's correct.

12 Q Okay. And just to put State's Exhibit 84 on the
13 screen, that's the -- the blue car is sort of in the center,
14 right?

15 A Yes, sir. That's correct.

16 Q With the front wheel off?

17 A That's correct.

18 Q All right. So that car's not a car -- and that's one
19 of you all's photographs. Either you all or SLED from that
20 night, right?

21 A I did not take any photographs. So I couldn't testify
22 to that, sir.

23 Q Okay. Well, you're not disputing --

24 A -- I'm not disputing --

25 Q I mean, you testified earlier that this was the

JEFFREY HINES

326

1 condition of the car where you found the gun.

2 A That is correct.

3 Q Okay.

4 A That is the condition.

5 Q So we're not -- we're not in dispute on that. So --

6 and right behind it you see that little outbuilding that I

7 pointed out on the overhead photo a minute ago, right?

8 A That's correct.

9 Q Okay. Now, as I understand it, you were one of the
10 investigators that responded fairly quickly, right?

11 A That is correct.

12 Q Do you recall what time you got there?

13 A I'll have to go back to my report. It says that we
14 were notified at 6:30. So it might have been 6:45, 6:50ish
15 when we got there.

16 Q Okay. It was before Christie's body had been moved,
17 right?

18 A That is correct..

19 Q Okay. And I'm going to put on the screen -- and you
20 went into the bedroom and saw the body, right?

21 A Yes, I did.

22 Q Okay. And I'm going to put State's Exhibit Number 3 on
23 the screen. And that's the condition that she was found in,
24 right?

25 A That is correct.

JEFFREY HINES

327

1 Q All right. And there was no cover pulled over her
2 head?

3 A No.

4 Q Okay. And I think in your direct -- and I know it's
5 been chopped up a little bit because of overnight recess and
6 Dr. Woodard coming in today. But yesterday, in the early
7 part of your testimony, they asked you about the radiator or
8 the heater, right? The kerosene heater.

9 A Yes, that's correct.

10 Q All right. In State's 61 that I'm putting on the
11 screen, I think you initially said that it was near the bed,
12 right?

13 A Yes, sir.

14 Q All right. But we don't want to be misleading. It
15 wasn't -- and this is -- where it is in this photograph is
16 where it was, right?

17 A That -- that is correct.

18 Q I mean, you all didn't come in and move things around
19 and take photographs. I mean, that would be a breach of
20 protocol, right?

21 A Yes.

22 Q Okay. So it's not -- I didn't want to leave a
23 misconception. It's not pushed right up near the bed or
24 anything, is it?

25 A It is not touching the bed. No, sir.

JEFFREY HINES

328

1 Q Okay. Or the -- and there's enough room to walk
2 between it and the bed, right?

3 A I'm -- I'm a fairly big person and it was -- it was
4 difficult. I mean, it wasn't like -- I wouldn't have ran or
5 jumped around or anything to walk by it, but you could
6 maneuver around it. Yes, sir.

7 Q Okay. And, I mean, the point is, is you were saying
8 it's very close. But we've got two sneakers in between it
9 to kind of help put it into context, right?

10 A That's correct.

11 Q And I'm a big guy, too, but this is a small trailer.

12 A That is correct.

13 Q Okay. And this is a fairly small bedroom; is that
14 right?

15 A Yes, sir.

16 Q Okay. And before we move on from this. There's the --
17 I don't know, an orangish cloth on the wall, right?

18 A Can you point at it, sir?

19 Q Yes, sir. Where we're pointing at is this up here.

20 A Yes, sir.

21 Q Okay. And that's where the window is inside this
22 trailer; is that right?

23 A That's correct.

24 Q Okay. Because we've had a diagram that we were looking
25 at earlier, which is Defense Exhibit 1, which shows the

JEFFREY HINES

329

1 trailer, right? Is that right? And I know it's -- it's a
2 little bit bigger than some of the things we've been
3 showing.

4 A Yes, sir.

5 Q But you've seen this out of the SLED materials, haven't
6 you?

7 A I personally haven't reviewed that from the SLED
8 material, but that does look like the way out of the
9 trailer. Yes, sir.

10 Q Okay. And that looks like the front door; is that
11 right?

12 A Yes, sir.

13 Q And that looks like the bedroom where she was found?

14 A That's correct.

15 Q Okay. So just to go over this now that we're oriented
16 a little bit. What we were just talking about was what's on
17 the bottom right-hand of the screen would be the front door,
18 correct?

19 A Yes, that's correct.

20 Q And the bedroom where Christie was found is on the far
21 left end; is that correct?

22 A That is correct.

23 Q And we talked in the last photograph about the orangish
24 cloth. The window is not pictured in this diagram, but it
25 was -- it's there, right?

JEFFREY HINES

330

1 A Yes, sir. There is a window there.

2 Q Okay. And just to kind of keep oriented things. If we
3 go back to Defendant's Exhibit Number 3 -- and I'm focusing
4 in on the trailer at this point. The front side of the
5 trailer is this side over here. I guess if you're looking
6 at it on the screen it's the right-hand side; is that right?

7 A That is correct.

8 Q Okay. And because of some trees that make it an angle,
9 you really can't see the window in this photograph. But the
10 window we're talking about, the bedroom's on this end of the
11 trailer, right?

12 A Yes, that's correct.

13 Q And Defendant's Exhibit Number 6 is a photograph --

14 MR. GROSE: Is there a way to zoom this?

15 THE COURT: There we go.

16 Q Defendant's Exhibit Number 6 is a photograph that was
17 taken during the daytime, right?

18 A Yes, sir. It appears to be.

19 Q Okay. And so, that's the window on the outside of the
20 trailer? The bedroom window?

21 A I would agree with that. Yes, sir.

22 Q Okay. And it's hard to see on the screen, but I'm
23 going to show you. You see on that right side right there?

24 A Yes, sir.

25 Q By where the date stamp is?

JEFFREY HINES

331

- 1 A Uh-huh.
- 2 Q And you see a person there, right?
- 3 A Yes, sir.
- 4 Q It looks like a ball cap on -- a yellow, orange ball
- 5 cap?
- 6 A Can I look at it closer?
- 7 Q Yeah, sure.
- 8 A It does. Yes, sir.
- 9 Q Okay. And so, just to show what we were talking about,
- 10 and we're still looking at Defendant's Exhibit 6. We'll
- 11 zoom in a little bit. It's on this bottom right-hand corner
- 12 is the person that we're talking about, right?
- 13 A Yes.
- 14 Q Looks like wearing some sort of jacket and a ball cap
- 15 with maybe the Clemson logo on it or something?
- 16 A Yes.
- 17 Q Okay.
- 18 A Could I look at that picture one more time, please,
- 19 sir?
- 20 Q Yes, sir. You want them to turn the lights back on?
- 21 A Please. I just got a glance at something on the
- 22 bottom.
- 23 Q Yeah.
- 24 A Okay, yeah. You can -- you can tell it's actually --
- 25 it looks like a black male was definitely -- you know, you

JEFFREY HINES

332

- 1 can see the black hand. I can't tell if it's a male or not
- 2 --
- 3 Q Okay.
- 4 A -- but, yes, sir. I can tell.
- 5 Q All right.
- 6 A But it does have -- it looks like a Clemson logo or
- 7 something like that on the hat. Yes, sir.
- 8 Q All right. And the point is -- and I doesn't really
- 9 matter who this is --
- 10 A Okay.
- 11 Q -- but this was sort of in the walkthrough --
- 12 A Yes, sir.
- 13 Q -- the next day, right?
- 14 A Yes, sir.
- 15 Q And that just helps give us some context. I mean, I
- 16 assume the person standing on the ground gives us a little
- 17 ideal of how high that trailer --
- 18 A Yes, sir.
- 19 Q You would agree with that?
- 20 A Yes, sir. I would agree with that.
- 21 Q Okay. All right. Now -- okay. From a timeline
- 22 perspective, the call was around 6:10, I believe, right?
- 23 A I believe so.
- 24 Q And you got there closer to 7:00; is that right?
- 25 A That is correct.

JEFFREY HINES

333

1 Q Okay. And I think we had yesterday somebody here who
2 works in dispatch who indicated that the call was cleared a
3 little bit after noon the next day; is that right?

4 A I would not know that. That would have to be through
5 their records. I don't remember to be honest with you, sir.

6 Q Okay. But whatever she testified to, you would agree
7 to?

8 A I would agree that she's got the documentation and it
9 would be correct. Yes, sir.

10 Q Okay. All right. So I guess what I'm -- I'm trying to
11 just determine with a little accuracy is -- is how long you
12 all were in control of this incident location.

13 A It was when we got out there all the way throughout the
14 next morning. It was -- it was daylight when we left.

15 Q Okay. And that's what I'm getting at. If you all got
16 there at nighttime, the sun came up and you left and it was
17 still daylight?

18 A Yes --

19 Q On the 9th?

20 A That is correct because we -- we went to do the
21 interview, and then we located -- then we went back, located
22 the gun, and then went and did another interview, I believe.

23 Q Okay.

24 A So yes, sir. I think that was correct.

25 Q All right.

JEFFREY HINES

334

1 A I'm just trying to get my timeline through my head. I
2 don't want to tell you anything incorrect.

3 Q I -- and I don't want you to either.

4 A Yes, sir.

5 Q What I don't want to leave is -- is the impression that
6 you controlled this incident location for several days.

7 A No. No. It wasn't several -- we didn't control it for
8 several days. It was -- we controlled it for all of that
9 night, and then from whatever time that we left the next
10 following day.

11 Q And that would have been the time that the lady from
12 dispatch testified to; is that right?

13 A I would -- I would believe so. It could have been a
14 little -- that could be a little inaccurate. Sometimes the
15 times that we call off and sometimes we don't call until we
16 done with the reports or something like that, so...

17 Q Okay.

18 A So between that time and earlier, I would say yes.

19 Q So her time would be the latest that you would have
20 left.

21 A I would say so.

22 Q Okay. Fair enough. Now, there were some photographs
23 introduced of Charles earlier. This is State's Exhibit 19
24 that's on the screen and it looks like that was taken on
25 November 8th at, if I'm doing the military to civilian time

JEFFREY HINES

335

1 right, 7:17? Does that sound right?

2 A It says November 8th, 2016 at 7:17 p.m. Yes, sir.

3 Q Okay. And that's -- it's kind of hard to tell in the
4 lighting, but if you can look at that. You would agree that
5 that -- he's wearing that green shirt, right?

6 A That is -- this is a green -- it is a green shirt.

7 That is correct.

8 Q Is that the same one that's State's Exhibit 132? And
9 we can take it out if you need to.

10 A It's alright.

11 Q I'm sorry.

12 A Did you --

13 Q Sure. Sure. I'm sorry. Didn't mean to be rude.

14 A It appears to be. Yes, sir.

15 Q Okay. And that's the one that we see him taking off
16 and giving to you all in the end of the video that we
17 started yesterday and finished today; is that right?

18 A Yes. That's the shirt that he took off and gave to me
19 after I asked for consent to have it. Your photograph, sir.

20 Q Oh, thank you.

21 A Yes, sir.

22 Q Appreciate it. I'm going to put State's Number 20 on
23 the screen. That's a picture of, it looks like, his right
24 hand; is that right?

25 A That is correct. That's a picture of a right hand.

1 Q And I think we had some testimony earlier about that.

2 That's significant. It shows some paint; is that right?

3 A It appears to be paint.

4 Q And he had told you all that when he was working that
5 day he had been painting with Mr. Boggs?

6 A I honestly -- I can't answer that. I don't -- I don't
7 remember.

8 Q All right. State's Exhibit --

9 A I know he did work with Mr. Boggs, though, he said,
10 so...

11 Q Okay. State Exhibit 23. That looks like maybe the
12 other hand or -- or a picture of the other side of the same
13 hand.

14 A That's the inside of a right hand.

15 Q Yeah. And we looked at the outside a minute ago?

16 A I believe so. Yes, sir.

17 Q Okay. State's 22. That's the left hand -- the inside
18 of the left hand?

19 A That is correct.

20 Q And, again, we see some paint?

21 A Yes, sir.

22 Q And State's Exhibit 21. The outside of the left hand;
23 is that right?

24 A That is correct.

25 Q Okay. And State's Exhibit 24 is a picture of him

JEFFREY HINES

337

1 without his shirt on?

2 A Yes, sir. That is Mr. Tillman without a shirt.

3 Q Okay. All right. And I guess one of the things that
4 you were looking for was any injuries. And we've had no
5 testimony about any injuries on Mr. Tillman's body, have we?

6 A We have not had any testimony about injuries on his
7 body, at this point, as far as -- as long as I've been in
8 the courtroom.

9 Q All right. And well -- and you're not here to provide
10 any about them? Any testimony about any injuries to Mr.
11 Tillman?

12 A I don't have any testimony about injuries on his body.

13 Q Okay. Now, I'm going to put -- I'm going to let you
14 look at this first because I don't know how well you're
15 going to be able to see it when we put it up there. But
16 this is State's Exhibit 134. That's the Miranda form from
17 the 8th, right? November 8th?

18 A Yes, sir.

19 Q At 10:57 p.m?

20 A That is correct.

21 Q Okay. Just so the jurors can see what we were talking
22 about, this is the waiver of rights form. That's the top of
23 the form, the rights that you go over, and then the waiver
24 is at the bottom and it indicates J. S. Hines as a witness.
25 That's you, right?

JEFFREY HINES

338

1 A Yes.

2 Q The Abbeville County Sheriff's Office?

3 A That is correct.

4 Q 11/8/2016 at 10:57 p.m; is that right?

5 A That is right.

6 Q Okay. And so, this is the form that we see you going
7 over with him in that first interview?

8 A I went over a couple of different forms with him, but I
9 did go -- this would have been, I think, the first
10 interview, but -- and I did go over that form with Mr.
11 Tillman --

12 Q Okay.

13 A -- of his Miranda rights. That's correct.

14 Q All right. And the reason that I'm putting this up
15 here is, is I'm trying to just put everything into a
16 timeline. This would have been at the beginning of the
17 interview. So the interview started at just before 11:00,
18 right?

19 A Yes, I believe so.

20 Q Okay. And would you agree that the interview that we
21 watched yesterday and going into today, was just a little
22 over two and a half hours long?

23 A Yes, sir.

24 Q Okay. So earlier when you were talking about being
25 back at the incident location -- the Bell Road location and

JEFFREY HINES

339

1 seeing somebody come out of the house at night. You knew it
2 was the next morning -- well, it had to be the next morning
3 because you were still at the Sheriff's Office from 10:57 --
4 essentially 11:00. You wouldn't have gotten back out to
5 Bell Road until after 1:30?

6 A Yes, sir. That -- that's correct. And as I said
7 earlier, it was sometime in -- it was late. Sometime in the
8 morning.

9 Q Okay. All right. And it's, I guess, a -- I don't
10 remember. I've driven it. But it's a 20 minute drive or so
11 out there?

12 A I would say so.

13 Q Okay.

14 A That would be fair.

15 Q Now, I'm going to put up -- well, before we -- before
16 we go on. I think this is clear, but the -- the interview
17 was -- that's a room at the Sheriff's Office, right?

18 A That is correct.

19 Q Okay. And that's right out here on the bypass and Old
20 Calhoun Falls Road?

21 A That is correct.

22 Q Okay. And it's specifically designed for being able to
23 record what's going on in that room?

24 A It is.

25 Q Okay. I'm going to put Defendant's Exhibit -- this is

JEFFREY HINES

340

1 Number 2, on the screen. And I don't know if you were here
2 the other day when we heard one of the other officers talk
3 about starting a log.

4 A I was -- I was not here.

5 Q Okay. You've seen this before, right?

6 A I may have seen it when we were putting the case file
7 together. I can't -- I can't remember 100 percent.

8 Q Okay. All right. And looking at it starting at the
9 top left-hand side, it's got some personal information about
10 Charles Tillman, right?

11 A It appears so. Yes, sir.

12 Q Okay. And down below it, it's got a list of names of
13 people who were at the -- at that location, right?

14 A That is correct.

15 Q Now, the right-hand column is a list of deputies and
16 investigators, city police, EMS, the coroners, right?

17 A That is correct.

18 Q So that's the official people that were there apart of
19 the investigation, right?

20 A It should be. Yes.

21 Q Okay. Going down the list of people, the first name is
22 Walter Tillman, right?

23 A Yes, sir.

24 Q You were aware that Walter Tillman is also known as
25 Walt Tillman?

JEFFREY HINES

341

- 1 A I don't think so.
- 2 Q You don't think so?
- 3 A No, sir. I can't -- I can't say if I do or not.
- 4 Q Okay. Well, we watched the video.
- 5 A Yes.
- 6 Q The first video, right?
- 7 A Yes.
- 8 Q In it's entirety?
- 9 A That is correct.
- 10 Q All right. And you weren't on the stand, but you were
- 11 sitting over here on this other side of the courtroom
- 12 watching it, right?
- 13 A That is correct.
- 14 Q Okay. And during the video, during the interview,
- 15 Charles was consistent about Christie being alive when he
- 16 went to work that day, right?
- 17 A That is correct.
- 18 Q Okay. He was also consistent about Willie Tillman who
- 19 we see on that list, right? Willie Tillman's his brother --
- 20 A Yes.
- 21 Q -- right?
- 22 A Yes, that's correct.
- 23 Q And he was consistent about Willie Tillman coming to
- 24 the trailer that morning, right?
- 25 A That is correct.

JEFFREY HINES

342

1 Q And -- and he was consistent about -- this is
2 Defendant's Exhibit Number 6, about Willie coming to the
3 window, right?

4 A He did say he came to a window. He never said which
5 window he came to. No, sir.

6 Q Okay.

7 A But he did say he came to the window --

8 Q Okay.

9 A -- and knocked on it.

10 Q All right. And that's when he told you that Willie got
11 a note from the church, right?

12 A That is correct.

13 Q And I believe Charles said something to the effect of
14 that it was some estimate for some tile work, right?

15 A That is right.

16 Q And he told you that Christie wrote out that note,
17 right?

18 A That is correct.

19 Q And he told you that he gave that note to his brother
20 Charles, didn't he? I mean -- sorry. To his brother
21 Willie.

22 A Yes, sir. To his brother Willie.

23 Q So that note -- and I think he also told you that he
24 had ripped that note off a pad of paper, a notebook -- or
25 that Christie had ripped it off.

JEFFREY HINES

343

1 A I think he said Christie had ripped it out.

2 Q Okay. And, of course, in State's Exhibit 61 we have a
3 notepad in the bedroom, right?

4 A That is correct.

5 Q Okay. And Charles was consistent in telling you that
6 when he was talking to Willie about that note, that Christie
7 was alive, wasn't he?

8 A He was consistent.

9 Q Okay. All right. So now, going back to Defendant's
10 Exhibit Number 2, which is the list of people I think. Next
11 to the bottom is where Willie's name is, right?

12 A That is correct.

13 Q Okay. I'm going to show you -- I don't know if you
14 were here when they asked Investigator Ashley if she had
15 taken a statement from JC Boggs.

16 A I was not.

17 Q Okay. Just for identification, this isn't in evidence
18 at this point. But Defendant's Exhibit 15 is a statement of
19 JC Boggs, right?

20 A That is correct.

21 Q And it is witnessed by Sheri Ashley, right?

22 A That is -- that is correct. Yes, sir.

23 Q And it is on November 9th of 2016?

24 A That is correct.

25 Q Okay. And so, during that first interview, Charles was

1 also consistent in telling you that he had gone to work
2 around 9:00 on the 8th?

3 A Yes, that's correct.

4 Q Okay. And Mr. Boggs, he actually put that at 8:30?

5 MR. BROWN: Judge, objection.

6 MR. GROSE: It's all right. We'll call Mr. Boggs.

7 THE COURT: All right.

8 MR. BROWN: I'll withdraw the objection.

9 THE COURT: Is there any real dispute? I mean,
10 Solicitor?

11 MR. GROSE: I don't think they dispute it.

12 MR. BROWN: No, sir. He can ask the question.

13 MR. GROSE: Okay.

14 THE COURT: It reflects -- go ahead, then.

15 MR. GROSE: Okay.

16 THE COURT: Go ahead.

17 Q So JC Boggs puts the time of when they left for work at
18 8:30; is that correct?

19 A He says approximately 8:30.

20 Q Okay. All right. And he says that he picked up
21 Charles Tillman and Walt Tillman, right?

22 A Sir, if you're going to -- can I read the statement,
23 please?

24 Q Yeah, sure. Sure.

25 A Thank you. Because I don't want to answer questions

1 without reading it.

2 THE COURT: I'll tell you what, we'll -- I assume he's
3 going to testify?

4 MR. GROSE: He is going to testify. And I'd move the
5 statement into evidence.

6 THE COURT: Any problem with the statement, at this
7 point, assuming that he -- well, maybe it's best that we
8 wait until he testifies, technically.

9 A Okay, sir.

10 Q Okay. And so, you would agree with me, after reading
11 that, that Mr. JC Boggs said that he picked up Charles
12 Tillman and Walt Tillman?

13 A That is correct.

14 Q Okay. Now, going back to Defendant's Exhibit Number 2
15 that's on the screen, we got the name Walter Tillman as one
16 of the persons on location, right?

17 A That is correct.

18 Q All right. And so, sitting here today in January of
19 2018, if I understand what you're saying, you're not sure if
20 Walter Tillman is the same as Walt Tillman, are you?

21 A No, sir. I'm not.

22 Q Okay. But Charles Tillman did tell you in that first
23 interview about Walt Tillman, didn't he?

24 A Yes, sir. He said that he went to work with him. I
25 believe that's correct.

JEFFREY HINES

346

1 Q Okay. Now, there's one, two, three, four, five, six
2 names on this list of people that are on the scene and -- I
3 mean, and they put you up here as somebody who knows
4 something about this investigation, right? Is there a
5 written statement in the police file from any of these
6 people? Walter Tillman, Antonio Tillman, Scotty Tillman,
7 Caleb Patterson, Willie Tillman, Justin Tillman?

8 A No.

9 Q Okay. We have now seen parts of two videotaped
10 interviews with Charles, correct?

11 A That is correct.

12 Q And there's a third one that we haven't seen any parts
13 of yet; is that right?

14 A I believe so. That's correct.

15 Q Okay. Well, you were there for it, weren't you?

16 A If there's a third interview, I was there. That's
17 correct.

18 THE COURT: There was a third interview, correct?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 THE WITNESS: Yeah -

22 THE COURT: Yeah, I know. This is not a complex
23 question.

24 THE WITNESS: No.

25 THE COURT: Go ahead, Mr. Charles -- Mr. Grose.

JEFFREY HINES

347

1 Q The second interview, looking at State's Exhibit 135.

2 7:20 a.m. on November 9th; is that right?

3 A That one does say November 9th. Yes, sir. 7:20 a.m.

4 Q All right. And that's your name there, right?

5 A That is correct.

6 Q Okay. And then the third interview was the one you all
7 came in after Investigator Ashley had already talked with
8 Charles?

9 A Okay. Yes, sir.

10 Q Okay. And that one -- that was the one that we watched
11 today that was on the 10th; is that right?

12 A Yes, sir.

13 Q Okay. So just kind of working with this timeline --
14 well, before we move on. None of these people were ever
15 brought in for a videotaped interview, were they?

16 A No. Not a videotaped interview.

17 Q Okay. Well, are there statements from any of them?

18 A There is no written statements from any of them.

19 Q Okay. And Vonnice Cummings was never brought in for a
20 videotaped interview, was she?

21 A No.

22 Q Okay. So just to kind of followup with the timeline,
23 looking at State's 135 -- well, before we get to that. 134
24 is the one where we established the interview started at
25 about three minutes until 11:00 and went for two and a half

JEFFREY HINES

348

1 hours, right?

2 A That is correct.

3 Q Okay. And interview -- the second interview, if it
4 started at 7:20 a.m, that really didn't give anybody, you or
5 Charles Tillman, to have a full night's worth of sleep, did
6 it?

7 A No.

8 Q Okay. Now, we haven't played the second interview.
9 But if we were to do that, we would see that you and
10 Investigator Graham conducted that interview, right?

11 A That is correct.

12 Q All right. And we would see in that interview that
13 that was after you all had found the gun, which is Exhibit
14 140; is that right?

15 A Yes, sir. That's correct.

16 Q All right. And, in fact, if we were to watch that
17 interview, we would see you pull up on your phone on the --
18 I assume you have a smartphone where you pull up the
19 Internet?

20 A Yes, sir.

21 Q And we would see you pull up on the Internet a picture
22 of this type of gun?

23 A That is correct. I Googled a Ruger 10/22 and got a
24 stock photo --

25 Q Okay.

JEFFREY HINES

349

1 A -- on images.

2 Q And if we were to watch that interview, we would see
3 you show that picture to Charles, wouldn't we?

4 A Yes. That's correct.

5 Q All right. And we would see that you all had a
6 discussion about the gun, right?

7 A Yes.

8 Q And we would see that he acknowledged that that gun had
9 been in and around the Bell Road property, wouldn't we?

10 A He acknowledged that the -- he acknowledged -- he
11 identified the gun by saying that it didn't have a barrel
12 band.

13 Q All right. And this doesn't have a barrel band?

14 A That is correct.

15 Q Okay. And what I'd like for you to do is explain what
16 you mean about a barrel band.

17 A Yes, sir.

18 Q If you need to set some --

19 A I'm just going to set this right here. Yes, sir. A
20 barrel band is a piece that goes on mostly Ruger rifles.
21 And I'm not an expert in firearms, but I do have a couple
22 Ruger rifles myself. It's a band that wraps around right
23 here. You see the indentation right through here? It's a
24 band that wraps around -- all the way around the barrel
25 holds the stock close to the -- to the barrel. And you

JEFFREY HINES

350

1 can't remove the barrel and the action without removing that
2 band.

3 Q Okay. And so, he acknowledged that that gun had been
4 around the property. I think he said that people shoot
5 squirrels and cans with it, right?

6 A He did say that he and several other people have used
7 the gun before. Yes, sir.

8 Q Okay. And he also said though that he had not used
9 that gun on the 8th; is that right?

10 A He had stated that he hasn't shot -- he hasn't shot
11 that gun in a year, I believe is what the interview says.

12 Q It was six months to a year. I mean, he said both at
13 different times, right?

14 A I don't recall both. I just recall the year.

15 Q Okay. Well, when we're talking about months, it's not
16 uncommon for people to put things in a range, right?

17 A It's --

18 Q I mean, I can play you the tape. I mean, he said both
19 at some point, didn't he?

20 A And, like I said, I don't -- I don't remember. I know
21 that he did say the year mark. But if he said six months to
22 a year, it's still six months to a year.

23 Q Okay.

24 A I would agree with you there.

25 Q All right. And he said that he didn't move the gun on

JEFFREY HINES

351

- 1 the 8th, right?
- 2 A That is correct.
- 3 Q Okay. Now, you also asked him about the blue car where
- 4 the gun was found, right?
- 5 A Yes.
- 6 Q All right. And that's the blue car on --
- 7 A Yes, sir. That is -- that is the blue car.
- 8 Q -- State's Exhibit 87? Okay. And State's Exhibit 78
- 9 shows where the back door was opened, right?
- 10 A Yes, sir.
- 11 Q And I think we testified earlier that it looked like
- 12 this car was used more as like a place to store things.
- 13 A That is correct.
- 14 Q Okay. And -- and it's not far from where Charles'
- 15 trailer was?
- 16 A It was not.
- 17 Q Okay. And you asked him about the car and he said that
- 18 he had been in and out of that car, right?
- 19 A I believe so.
- 20 Q Okay. And it wouldn't surprise you if he would,
- 21 typically, if it's being used for storage?
- 22 A Oh, no. It was used for storage. Yes, sir.
- 23 Q Okay. And -- but he said -- he also told you that he's
- 24 not the person that put the gun in that car, isn't he?
- 25 A He did say that.

JEFFREY HINES

352

1 Q Okay. If we were to watch this second video, we would
2 also see some discussion about Christie's mental health,
3 wouldn't we?

4 A Yes.

5 Q And, at some point, he said that she had been in the
6 hospital at Anderson?

7 A That is correct.

8 Q And, at one point, either you -- actually, at a couple
9 points, either you or Investigator Graham or both said that,
10 in your interviews, both Charles' mother and Christie's
11 mother had confirmed that Christie had mental health issues?

12 A I can't recall that.

13 Q Okay. Well, you're not disputing that, are you?

14 A I'm not going to dispute it, but I can't -- I can't --
15 without watching the video, I can't say for certain. I
16 don't want to say for certain, unless -- unless I did see
17 it, so -- but I'm not -- I'm not disputing. I'm sure you
18 have watched the video, sir.

19 MR. GROSE: Can we forward it to about a minute and 22?

20 Yeah.

21 (Whereupon, a portion of the video was published.)

22 Q Okay. So does that refresh your memory?

23 A Yes, sir.

24 Q And so -- and that was the second interview and you
25 were talking about Christie's mother; is that --

JEFFREY HINES

353

1 A Yes. That's correct.

2 Q Okay. Now, the third interview, which you all did play
3 some of, was on the 10th; is that right?

4 A That is correct.

5 Q And what happened that day was -- is it -- it started
6 off with you all having Charles come in to get the swabs --
7 the DNA swabs from his mouth?

8 A Yes, that's correct.

9 Q Okay. And Investigator Ashley and another one of the
10 investigators handled that?

11 A Yes.

12 Q Okay. Now, if we were to play that first interview
13 from the beginning, it would show Investigator Ashley asking
14 Charles about a conversation that she had had -- he had had
15 with Christie the night before after she was dead, wouldn't
16 it?

17 A I have not watched that part of the interview.

18 MR. GROSE: Okay. Can we put in -- maybe we can take a
19 break and cue up the third interview from the beginning.

20 THE COURT: It sounds like we're going to have to. Go
21 ahead, please. We'll be at ease for just a few moment,
22 ladies and gentlemen. Adjourn to the back. We'll be back
23 on the record in about five minutes. Don't talk about your
24 testimony.

25 THE WITNESS: Yes, sir.

ILA SIMMONS

354

1 (Whereupon, the jury exited the courtroom at 3:50 p.m.)

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 (Whereupon, a recess was held from 3:50 p.m. to 3:59
5 p.m.)

6 THE COURT: Let's have the jury.

7 (Whereupon, the jury entered the courtroom at 3:59
8 p.m.)

9 THE COURT: The jury's back. Mr. Grose, you may
10 proceed.

11 (Whereupon, States Exhibit Number 126 was published
12 for the jury.)

13 (Whereupon, a sidebar was held.)

14 THE COURT: Sir, you can step down.

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 THE COURT: Ladies and gentlemen, what we're going to
18 do, there are some witnesses who are here who are simply not
19 available. And I do not like taking the testimony in
20 piecemeal like we've had to do with Mr. Hines, but in an
21 effort to be as accommodating to people who are here and to
22 get their testimony in, we're breaking with this at this
23 point and we'll resume this afternoon if we have time. And
24 if not, we'll resume in the morning. Okay?

25 So, Mr. Hines, don't talk to anybody about your

ILA SIMMONS

355

1 testimony --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- while we're on break, and I hope
4 somebody wrote down where we were in that interview.

5 MR. BROWN: We have it, Your Honor.

6 THE COURT: All right. In that case, Mr. Brown, call
7 your next witness, please.

8 MR. BLACK: State calls Ila Simmons.

9 ILA SIMMONS, having first been duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BLACK:

13 Q Can you state your name for the record, please?

14 A My name is Ila Simmons.

15 Q And, briefly, can you tell us a little bit about your
16 education?

17 A I have a Bachelor's degree in chemistry. After
18 completing that I came to work at the South Carolina Law
19 Enforcement Division, also known as SLED. I've worked in
20 the forensic trace evidence department for 15 years. During
21 that time I took practical and written examinations to
22 become a trace evidence examiner. Completed them all with
23 100 percent efficiency and testified as an expert witness in
24 the federal, state and civil courts of South Carolina over
25 300 times.

ILA SIMMONS

356

1 Q Okay. And what have you been qualified as an expert
2 in?

3 A In all disciplines of trace evidence. Gunshot residue,
4 paint, explosives, fibers, glass. Everything that we
5 analyze, including arson.

6 MR. BLACK: Your Honor, at this point, State moves Ila
7 Simmons as a expert in trace evidence with a concentration
8 in gunshot residue.

9 THE COURT: Any objection or voir dire?

10 MR. GROSE: No. I have no objection.

11 THE COURT: All right. Again, ladies and gentlemen, as
12 I explained with the forensic pathologist earlier today, in
13 this case, the parties agree that Ms. Simmons is an expert
14 in the field of trace evidence, specifically gunshot
15 residue. So we can offer opinion testimony and is not
16 simply limited to something she observed with one her
17 senses. Continue, please.

18 MR. BLACK: Thank you.

19 Q Ms. Simmons, and just generally, can you tell us what
20 gunshot residue is?

21 A Gunshot residue is a mixture of chemicals that come out
22 of the gun when it's discharged. It comes out in a cone
23 shaped cloud. It can get on anything in close proximity to
24 the weapon, including the on hands of the person holding the
25 weapon or on the garments of the person holding the weapon,

ILA SIMMONS

357

1 and also on the person who sustains the gunshot wound.

2 Q And you all typically describe these as particles; is
3 that correct?

4 A Yes. They're particles of gunshot residue that we're
5 analyzing for.

6 Q Does it make a difference, typically, the type of
7 weapon that's discharged? How -- the level of particles
8 that are discharged and where they go?

9 A Yes, sir. A smaller caliber handgun, because they have
10 less gunshot residue in it, produces less gunshot residue
11 when it's discharged. A .22 would produce much less than a
12 .45, and also the different types of handguns. Gunshot
13 residue can come out of a revolver more readily because a
14 revolver is an open system. A revolver is a gun where the
15 cylinder actually turns and the cartridges go around in a
16 circle, where a semiautomatic is a very sealed system and
17 uses gases to propel the cartridge case out of there. And
18 it can come out of the cylinder gap of a revolver, and also
19 it can come out of the ejector port of a semiautomatic
20 handgun.

21 Q And so, just kind of looking to referring to a longer
22 rifle with a small caliber. The caliber is not going to
23 produce as much particles?

24 A That's correct. And also, with the longer barrel, your
25 hand is farther from the muzzle of gun where most of the

ILA SIMMONS

358

1 gunshot residue comes out. So if you're shooting a rifle,
2 you may not get gunshot residue on your hands simply because
3 of the length of the barrel.

4 Q And so, if I were to shoot like a .38 Special, you
5 know, a revolver, that would be different, correct?

6 A Yes. You would expect to have a lot more gunshot
7 residue on your -- the hands of the shooter.

8 Q Because it's closer to the barrel and the discharge?

9 A Yes, sir.

10 Q Okay. Typically, when gunshot residue comes to SLED,
11 how does it -- how does it usually come in as?

12 A It can come in as a kit, a standardized kit collected
13 from someone's hands, or it can come in on any type of
14 inanimate object that may have in the vicinity of the gun
15 when it was discharged, including clothing from someone that
16 may have discharged a firearm.

17 Q And I'm not going to put this in evidence. But you're
18 here talking about the gunshot residue kits, the one that I
19 got from Abbeville City. Is that -- is that what you're
20 referring to?

21 A Yes, sir. This is a standardized kit.

22 Q Okay. Just -- you might need to take that out. But
23 what is -- what -- what is that? How do you actually
24 collect it?

25 A This is what we would call the particle lift and the

1 hands of the person taking the kit never touches what is
2 analyzed. The part that's analyzed is the small, black tab
3 that you see. It's a piece of double sided sticky tape and
4 how we would collect the kit is we would have the person
5 from whom the kits being collected and we would dab it
6 across their hands and it pick up any particles that were
7 present on the hands.

8 MR. BLACK: Okay. Your Honor, I need to mark a couple
9 of exhibits.

10 (Whereupon, State's Exhibit Nos. 147 and 148 were
11 marked for identification.)

12 Q And I'll take that kit back from you, Ms. Simmons. In
13 this particular case, you didn't actually examine the -- the
14 gunshot residue -- you didn't put it through the machine and
15 test it, did you?

16 A No, sir. We did not.

17 Q But you did do the lifts; is that correct?

18 A The lifts of?

19 Q The particle lifts.

20 A From the garment or from --

21 Q From the garment. Yes, ma'am.

22 A Yes, sir.

23 Q Okay. And I'm going to show you what's been marked as
24 State's Number 148. Can you identify this for us, please,
25 ma'am?

ILA SIMMONS

360

1 A Yes, sir. This is actually a photograph I took of the
2 shirt that we analyzed that I took the particle -- the
3 gunshot residues lifts from.

4 Q Okay. And I'm going to show you what's been marked as
5 147. Do you recognize these?

6 A Yes, sir. These are the particle lifts that I took
7 from this shirt. It's marked with my laboratory
8 identification number, the item number and my initials.

9 Q Okay. And I'm going to grab this listed exhibit right
10 here. This is State's Number 132. Do you recognize that
11 item?

12 A Yes, sir. I can see my initials, my lab number and the
13 item number from -- on the bottom of this shirt right here
14 where I analyzed it. So this would be the shirt that you
15 have in question there.

16 MR. BLACK: Okay. Your Honor, at this point, State
17 moves 132 into evidence, which I believe it already is.

18 THE COURT: It is.

19 MR. BLACK: We move 148 into evidence, as well as, I
20 believe, 147.

21 THE WITNESS: Yes, sir. 147.

22 MR. GROSE: No objection.

23 THE COURT: Without objection. Those are in evidence.

24 (Whereupon, State's Exhibit Numbers 147 and 148 were
25 admitted into evidence.)

ILA SIMMONS

361

1 Q Now, Ms. Simmons, can you describe to the jury how you
2 went about -- you received the shirt, how you went about
3 taking these particle lifts?

4 A Yes, sir. What I would do first is we would go into
5 our -- a clean room where we're not allowed to have any sort
6 of firearms or anything, so there's no gunshot residue
7 possibility that have gunshot residue in the room. We clean
8 everything down. I clean the table down. I put down a
9 piece of clean, sterile butcher paper and I would take the
10 garment -- I would wear gloves, a mask and cover myself with
11 a lab coat. I would take this shirt out, put it on the
12 clean paper, and then I would take the particle lifts, like
13 you just saw that I have here, and I would dab over four
14 areas of the shirt. In this case, I took a sample from the
15 right sleeve, I sampled from the area of the right chest, I
16 sampled from the left sleeve and I sampled from the right
17 chest -- I mean, left chest. Excuse me.

18 Q Okay. And once you get that, like how many times are
19 you dabbing on this shirt?

20 A Fifty to 100 time, perhaps. Just depending on the area
21 and how large the -- the area of the shirt was.

22 Q Okay. And those -- those -- what would you describe
23 those as?

24 A Those are particle lifts.

25 Q Particle lifts. Are they magnetized? Are they kind of

ILA SIMMONS

362

1 sticky? How does that collect the residue?

2 A It's a double sided sticky tape. So, yes. It's sticky
3 like -- like a piece of tape. If you rolled it up to try
4 and take lint off your clothing or something like that, it
5 would work the same way.

6 Q And how long does this process typically take to get to
7 this?

8 A Approximately 30 minutes.

9 Q Okay. And once you got done getting these lifts, what
10 do you do with it next?

11 A I would place them in this container, then I would seal
12 them, put them in a lockable filing cabinet, and then the
13 analyst would come and take these out, put them on the
14 instrument and analyze them.

15 Q And so, you've done -- you've done the analyzing
16 before, correct?

17 A Yes, sir.

18 Q But you didn't do it in this particular case?

19 A No, sir. I didn't.

20 Q That was another individual?

21 A Yes.

22 Q Can you tell us a little bit about -- if a person were
23 to have a shirt on all day and take their shirt on and off,
24 how does the particles -- do they -- do they -- can they be
25 lost? Can they -- can you describe that to us a little bit?

ILA SIMMONS

363

1 A Gunshot residue has the consistency of flour. So if
2 you've ever had flour on your hands and wiped your hand on
3 your pants, it comes off. So that's how light gunshot
4 residue is. If you were to take a shirt on and off that you
5 had flour on, it would brush the flour off. So it can --
6 taking your clothing on and off can remove gunshot residue
7 if it's present on the garment.

8 Q So over the course of the day, they could -- they could
9 lose some potentially?

10 A Yes, sir.

11 Q If they're out and about?

12 A Yes, sir.

13 Q Taking their shirt on and off?

14 A Yes, sir.

15 MR. BLACK: Okay. Beg the Court's indulgence.

16 THE COURT: Okay.

17 Q Besides taking gunshot residue from people's clothing,
18 does SLED test it from people's hands as well?

19 A Yes, sir. They do.

20 Q And does SLED -- what -- does it work the same way with
21 clothing as it does with somebody's hands?

22 A The process of collecting is similar, however there are
23 some limitations on the GSR kits that are taken from
24 someone's hands.

25 Q What are the limitations?

1 A If the time has passed between the shooting and the
2 collecting is greater than six hours, we won't analyze the
3 kit from the hands because you're sweating, your body's
4 absorbing materials, you're constantly touching things with
5 your hands. Laboratory tests have proven that gunshot
6 residue will not remain on someone's hands longer than six
7 hours. So if the kit is taken longer than six hours after
8 the shooting incident, we don't analyze it.

9 Q So that's like a -- that's a SLED policy, right?

10 A Yes, sir.

11 Q Okay. And so, for example, if I were to go wash my
12 hands with soap and water, would that potentially disturb
13 the particles?

14 A Yes. It could wash them completely off.

15 Q Okay. And potentially, you know, working -- working
16 somewhere, doing something, anything?

17 A Yes, sir. It can if your hands are making contact with
18 things.

19 MR. BLACK: Okay. I think that's all the questions I
20 have. Please answer any questions Mr. Grose might have for
21 you, and if I can get that back from you.

22 CROSS-EXAMINATION

23 BY MR. GROSE:

24 Q You're a hunter, aren't you?

25 A Yes, sir.

ILA SIMMONS

365

1 Q Okay. So it's fair to say you're familiar with guns,
2 right?

3 A Somewhat. Yes, sir. But I'm not a firearms
4 identification specialist.

5 Q And I'm not going to ask you to do that. But they did
6 ask you about how gunshot residue comes out of a gun, right?

7 A Yes, sir.

8 Q And it can come out of the barrel of a gun?

9 A Ninety-eight percent comes out of the end of that
10 barrel. Yes, sir.

11 Q Okay. And a gun like this where you can put a magazine
12 in and it chambers, gunshot residue can come out of this
13 opening up here, right?

14 A Yes, sir. The -- the extract -- Yes, sir.

15 Q All right. And that's the opening where this red lock
16 is to make sure the gun's safe, right?

17 A Yes, sir.

18 Q Okay. And they were asking you some questions about
19 gunshot residue and how long you can do testing, right?

20 A Yes, sir.

21 Q And I think that -- my understanding is that with the
22 hands -- people washing hands, wiping them off clothes, that
23 just sort of an arbitrary number of six hours is the limit
24 where SLED won't test it anymore; is that right?

25 A Yes, sir. Because of the laboratory tests that have

ILA SIMMONS

366

1 been conducted. Hundreds of tests have proven that it won't
2 remain longer than six hours.

3 Q Okay. Well, but it can. I mean, on hands. It's just
4 -- it's not likely to?

5 A I've never found it and it's never been documented as
6 to being scientifically documented longer than six hours.

7 Q All right. But we're talking about the hands of a live
8 person.

9 A Yes. Correct.

10 Q Okay. You all did get residue -- gunshot residue kits
11 from people that are decedents, right?

12 A Yes, sir.

13 Q And those same concerns aren't present?

14 A No, sir. Because the hands are no longer moving,
15 they're no longer sweating, absorbing things through their
16 skin.

17 Q All right. And were you asked to process the gunshot
18 residue kit for Christie Stutler?

19 A No. No kit was submitted for that person.

20 Q Okay. And they also asked you some question about
21 clothing, right?

22 A Yes, sir.

23 Q And I think you said gunshot residue's the consistency
24 of flour, right?

25 A Yes, sir.

ILA SIMMONS

367

1 Q And, of course, you get flour on your clothes and it
2 comes off.

3 A Yes, sir.

4 Q But it can also stay there for a long time?

5 A It can if it's not laundered in some way or removed in
6 some way. Yes, sir.

7 Q Right. And I understand you kind of played around with
8 that before -- experimental-wise, right?

9 A Yes, sir. We have.

10 Q And I asked you a minute ago that you were a hunter,
11 right?

12 A Yes, sir.

13 Q And, in fact, gunshot residue can be on clothing for a
14 long period of time in your experience, right?

15 A Yes, sir. It can.

16 Q And so, with clothing it's difficult to tell how long
17 it's been there?

18 A That's correct. If it hasn't been laundered or
19 something, it can remain on there indefinitely.

20 Q And when I talk about the experiment that you did, you
21 -- you're a hunter, you hung up your jacket at the end of
22 hunting season, and then you tested it the next year or
23 something?

24 A Eight months later. Yes, sir.

25 Q Okay. All right. And also, being the consistency of

ILA SIMMONS

368

1 flour -- and I'm not a very good baker. I always make a
2 mess and if I get it on me I tend to get it on something
3 else sometimes; is that right?

4 A Yes. You can.

5 Q And we kind of call that a transfer, don't we?

6 A Yes, sir. With gunshot residue, you can have secondary
7 transfer.

8 Q Okay. And it's just as easy to transfer the gunshot
9 residue from one place to another as it is that flour that
10 we sometimes make a mess in -- in our kitchen?

11 A That's correct. If gunshot residue is present on
12 something, it can be transferred.

13 Q All right. And you talked about the sterile conditions
14 in your lab, right?

15 A Yes, sir.

16 Q You do this is a room where guns aren't allowed, right?

17 A That's correct.

18 Q And we're worried about that transfer concept, right?

19 A Yes, sir. We don't want that possibility.

20 Q All right. And so, if, for example -- I mean, one of
21 the ways you can get gunshot residue is by handling a gun
22 that's recently been fired, right?

23 A Yes, sir.

24 Q Okay. And you don't have to fire a gun to have gunshot
25 residue on your hands, do you?

ILA SIMMONS

369

1 A No, sir. Not if you come in contact with gunshot
2 residue in some other matter like handling a gun.

3 Q Or if you come in contact with a surface that it has it
4 on?

5 A Yes, sir.

6 Q Because if I were to fire this gun or any gun, a
7 pistol, and get gunshot residue on my hand, I could come
8 shake your hand and then there's a good chance you're going
9 to have gunshot residue on your hand --

10 A Yes, sir.

11 Q -- is that right?

12 A Yes, sir.

13 Q And so, ideally people that are taking in gunshot
14 residue samples probably shouldn't be the people who have
15 been inside a crime scene?

16 A The way that the gunshot residue kits are collected,
17 the person should have gloves on so that they should not be
18 contaminating the situation in any way.

19 Q But, ideally, you would want to have that same sterile
20 situation that you do in your lab? Ideally.

21 A If it's practical, but it's not always practical to do
22 that.

23 Q Okay. And so -- but if a -- if a person goes into a
24 crime scene and touches an area that has gunshot residue,
25 they can -- they would have it on their hands and they can

ILA SIMMONS

370

1 potentially get it on their clothes, right?

2 A It's a possibility. Yes, sir.

3 Q All right. And so, a minute ago I asked you about your
4 experiment with your hunting jacket and, of course, that was
5 over a long period of time. You really can't tell how long
6 gunshot residue has been anywhere, can you?

7 A Not on clothing. Not on an inanimate object, no.

8 Q Not on clothing? And, in your case, it was there for a
9 long time and, in another case, it could be there for a
10 short time because of the transfer.

11 A That's a possibility.

12 Q Okay. And you can't rule that out just by looking at
13 it in the lab?

14 A No, sir.

15 MR. GROSE: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 Q All right. And I used the example of touching a gun
18 and then shaking your hands. But any object that has it on
19 could transfer it to another object and potentially onto
20 another object; is that right?

21 A Yes, sir. That is a possibility.

22 Q And you can't rule that out in the lab?

23 A No, sir.

24 MR. GROSE: That's all I have. Thank you.

25 THE COURT: Redirect?

JAMES TALLON

371

1 MR. BLACK: Briefly.

2 REDIRECT EXAMINATION

3 BY MR. BLACK:

4 Q Ms. Simmons, if somebody had claimed that they hadn't
5 touched a gun or moved a gun or they hadn't touched anything
6 in the area where this crime scene occurred, should they
7 have GSR on them?

8 A No, sir. They shouldn't if they haven't come in
9 contact with something that gunshot residue on it.

10 MR. BLACK: Okay. That's all I have.

11 RECROSS-EXAMINATION

12 BY MR. GROSE:

13 Q But somebody who had been in a crime scene and had
14 touched a body that had been shot could get gunshot residue
15 on them, couldn't they?

16 A Yes, sir. That's possible.

17 Q And because I think you said the majority of it comes
18 out of the barrel of the gun?

19 A Yes, sir.

20 MR. GROSE: Thank you.

21 THE COURT: Thank you very much. You are free to go.
22 Drive safely back to Columbia, please.

23 THE WITNESS: Yes, sir.

24 (Whereupon, the witness has stepped down from the
25 witness stand.)

JAMES TALLON

372

1 THE COURT: Solicitor, call your next witness.

2 MR. BLACK: State calls James Tallon.

3 JAMES TALLON, III, having first
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BLACK:

7 Q Can you -- can you spell your last name for the court
8 reporter?

9 A My name is James Tallon. T-a-l-l-o-n.

10 Q And you work at -- you work for SLED, correct?

11 A Yes, sir. I do.

12 Q How long have you been there?

13 A I've been at SLED for about fours years now. In
14 February it will be four years, and I did five for the City
15 of Sumter Police Department.

16 Q Which -- which city? I'm sorry.

17 A Oh, City of Sumter --

18 Q Okay.

19 A -- as a detective and on patrol.

20 Q And you were working for SLED back in November of 2016;
21 is that correct?

22 A Yes, sir. I was.

23 Q And what was your job back then?

24 A I was a crime scene agent.

25 Q Are you still a crime scene agent?

JAMES TALLON

373

- 1 A Yes, sir.
- 2 Q As part of your job as a crime scene agent, you're on
3 call at certain times; is that correct?
- 4 A Feels like all the time.
- 5 Q And I get that. Do you -- were you on call the night
6 of November the 8th of 2016?
- 7 A Yes, sir. I was.
- 8 Q Did you get a call from Abbeville County?
- 9 A Yes, sir.
- 10 Q Do you remember what time you came to Abbeville County?
- 11 A Yes, sir. May I review my notes, sir?
- 12 Q Yes.
- 13 A I received the call at approximately 6:42 p.m.
- 14 Q And where were you coming from?
- 15 A We all respond from Columbia.
- 16 Q Okay. And what time did you arrive at Abbeville
17 County?
- 18 A We arrived on scene at 8:33 p.m.
- 19 Q And that was Bell Road?
- 20 A Correct.
- 21 Q When you got there, you all -- you had another
22 individual with you; is that correct?
- 23 A Yes, sir. We travel in pairs. I had my partner,
24 Special Agent Cary Cooper.
- 25 Q And he came with you guys?

JAMES TALLON

374

1 A Correct.

2 Q When you all got there, you all started doing an
3 investigation; is that correct?

4 A Correct.

5 Q You took pictures?

6 A Correct.

7 Q And I'm -- the jury's seen a bunch of those pictures,
8 so I'm not going belabor the point. But you also did a
9 sketch of the -- of the trailer; is that right?

10 A That is correct.

11 Q I'm going to show you what's been marked as State's
12 142. Do you recognize this?

13 A Yes, sir. That is the sketch I provided.

14 Q And you made this sketch?

15 A Between myself and Cary Cooper. Yes, sir. We did it
16 together.

17 MR. BLACK: Okay. Your Honor, State moves 142 into
18 evidence.

19 MR. GROSE: No objection.

20 THE COURT: 142 is admitted.

21 (Whereupon, State's Exhibit Number 142 was admitted
22 into evidence.)

23 Q Can you describe this trailer just kind of briefly for
24 the jury?

25 A Okay. The -- here's the front door. Mind if I hold

1 it?

2 Q Yeah, absolutely.

3 A Here's the front door of the residence. It was off the
4 ground a good bit and there were no real stairs. It was --
5 I believe it was cement blocks or concrete blocks of some
6 sort. It's kind of dangerous. But you go up in through the
7 front door, and then the kitchen would be to your right.
8 The bedroom back behind the kitchen. And then behind the
9 livingroom there was a hallway that lead to a bathroom and
10 another bedroom, and the back door is right there.

11 Q Okay. And so, I guess the back bedroom is where the
12 body was; is that correct?

13 A That is correct.

14 Q Okay. And so, you -- did you go back to the back
15 bedroom and observe the body?

16 A Yes, sir. I did.

17 Q Had the body been moved at the point that you got
18 there?

19 A Not that I was aware of.

20 Q Okay. When you got there, how was the body positioned?

21 A Face-down on the -- if you were looking towards the
22 window of the back wall, she was to the left of the bed
23 face-down and covered. Not completely, but covered.

24 Q And -- and did you observe the victim, Ms. Stutler,
25 lying in the bed?

JAMES TALLON

376

1 A Correct.

2 Q Did you see any gunshot wounds?

3 A Not at the time. As a matter of fact, when we got the
4 call we weren't sure if there were any gunshots. We just
5 knew that there was possibly an injury to the head.

6 Q Okay. And so, you assisted Abbeville County with the
7 crime scene; is that right?

8 A That is correct.

9 Q And I believe in your report you noted -- you said you
10 arrived at 8:33 p.m?

11 A Correct.

12 Q And you also noted the temperature outside. What was
13 that?

14 A Fifty degrees.

15 Q Okay. And when you got there, you did -- you did a
16 walkthrough of the trailer; is that right?

17 A That is correct.

18 MR. GROSE: Object to the leading, Your Honor.

19 MR. BLACK: I'll -- I'll -- rephrase.

20 THE COURT: Rephrase.

21 MR. BLACK: Yes, sir. Thank you, Your Honor.

22 Q Anything -- anything of note that you noted on the
23 victim, Ms. Stutler?

24 A Yes. There were -- the blood was -- there was blood in
25 the head, nose and mouth area. There also bruising noted on

JAMES TALLON

377

1 the back of the victim's left leg and the right side of her
2 back. There was also an injury in the right palm, in
3 between the thumb and index finger.

4 Q Okay. And -- what -- how -- about how long were you
5 all out there? I know you were out there twice. How long
6 were you out there the first time?

7 A The first time, when we departed the scene, it was 2:24
8 a.m.

9 Q Okay. And when you departed the first time, did you
10 have in your possession a .22 rifle?

11 A Negative.

12 Q And did you later come into possession with that .22
13 rifle.

14 A Yes, sir. After we departed the scene the first time,
15 I received a phone call from Lieutenant Graham who stated
16 that they saw a firearm in a vehicle in plain view and we
17 responded back to the scene and waited on a search warrant.
18 Once the search warrant arrived, I then collected the
19 firearm from the gun.

20 Q And it was --

21 A I mean, from the car.

22 Q It was from that blue car that they've seen previously?

23 A That is correct.

24 MR. BLACK: And, Your Honor, I'm going to show him
25 State's Number 1 -- or, sorry, Number 140.

JAMES TALLON

378

1 Q You recognize this item?

2 A Yes, sir. I do.

3 Q And is that that gun you collected?

4 A Yes, sir. It is.

5 Q And there was also a -- some bullets in a magazine; is
6 that right?

7 A That is correct.

8 Q Did you -- did you put it all in this box once you got
9 it?

10 A They were packaged separately, but they ended up going
11 in the box. Yes, sir.

12 Q Okay. And what did you do with this -- these items?

13 A I turned these over once I took them back to our State
14 laboratory. I placed the firearm for processing to collect
15 DNA latent prints, and then it was sent to firearms.

16 Q So you basically take it to SLED, drop it off?

17 A Correct. And the analyst will do the -- perform the
18 techniques.

19 MR. BLACK: Okay. And, Your Honor, I believe State's
20 140 -- we'd like to move that into evidence.

21 MR. GROSE: No objection.

22 THE COURT: Okay. I thought it was in evidence. I
23 might be wrong, but it is now if it wasn't.

24 (Whereupon, State's Exhibit Number 140 was admitted
25 into evidence.)