

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 06 2021

SC Court of Appeals

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAQUAN JAVOR CRUMMEY,

APPELLANT

APPELLATE CASE NO. 2020-000537

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #101 (JAIL CALL CLIP); AND DEFENDANT’S EXHIBIT #3
F/K/A COURT’S EXHIBIT #8 (C.D. LINEUP W/MARTINEZ)**

State v Daquan J. Crummey & Denali D. White
Dulce Martinez (through interpreter)-Cross-Examination by Mr. Summa
March 11, 2020

1 one; right?

2 A. [Through the interpreter] Yes. But not from school
3 like he -- like you are trying to say.

4 Q. Okay. You didn't say you knew both of -- both of
5 them; right?

6 A. [Through the interpreter] No. Well, I mean, in
7 that call you can't hear me say I know both of them. I
8 said I know one of them but I don't know his name.

9 And then I said that I knew the taller one, the one
10 that had the hat, but I never said from where.

11 Q. Right. But you said I know one of them. You didn't
12 say I know two of them.

13 A. [Through the interpreter] Yes. But you cannot put
14 together two things since I didn't say any name and I
15 didn't make any correlation to the school.

16 Q. Okay. The jury is going to have that, so we can
17 move on.

18 You said also on direct that the tall one was
19 wearing a hat; correct?

20 A. [Through the interpreter] Correct.

21 Q. Was the tall one wearing a hooded sweatshirt?

22 A. [Through the interpreter] Not that I remember.

23 Q. Okay. You said that only one of the men were
24 wearing all black; right?

25 A. [Through the interpreter] Yes.

1 Q. One of the men was not wearing all black; is that
2 correct?

3 A. [Through the interpreter] In part.

4 Q. One of the men had on a grey shirt; right?

5 A. [Through the interpreter] I thought it was grey, so
6 I said grey.

7 Q. Okay. Let's talk about Facebook for just one
8 minute.

9 A. [Through the interpreter] Okay.

10 Q. You have Facebook like most people?

11 A. [Through the interpreter] Of course.

12 Q. You go on Facebook, you're nice, you friend people
13 on Facebook?

14 A. [Through the interpreter] Yes. But now, not as
15 much as before.

16 Q. Do you know how many Facebook friends you have right
17 now?

18 A. [Through the interpreter] Yes. Approximately about
19 2,000.

20 Q. You testified on direct that in the days following
21 the incident, you did nothing. For the two days
22 following the incident, you did nothing; correct?

23 A. [Through the interpreter] Correct.

24 Q. So you didn't go on Facebook at all for two days?

25 A. [Through the interpreter] No, until the 26th.

State v Daquan J. Crummey & Denali D. White
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1 Q. Okay. So just to be clear, you didn't go on
2 Facebook for two days?

3 A. [Through the interpreter] Yes, on the 24th and the
4 25th.

5 Q. Okay. You testified a little bit direct -- on
6 direct, right before we broke, about the U visa; right?

7 A. [Through the interpreter] Correct.

8 Q. And you told the -- you told the State's attorney
9 that you weren't seeking a U visa at the time of the
10 incident; right?

11 A. [Through the interpreter] Correct.

12 Q. You weren't seeking a U visa when you made the 911
13 call?

14 A. [Through the interpreter] Correct.

15 Q. You weren't seeking a U visa when you did the photo
16 lineup?

17 A. [Through the interpreter] Correct.

18 Q. But now you are seeking a U visa?

19 A. [Through the interpreter] Yes, because someone let
20 me know about that.

21 Q. When you met with the State's attorneys over the
22 past couple of months in preparations for this trial --
23 well, approximately how many times do you think you met
24 with them?

25 A. [Through the interpreter] I don't remember the

1 exact number of times, but several.

2 Q. And during those times, you were seeking a U visa?

3 A. [Through the interpreter] Can you repeat or can you
4 -- can you again say that question in a different way?

5 Q. Sure. I just wanted to get out that you knew about
6 a U visa. And obviously you want a U visa; right?

7 A. [Through the interpreter] I didn't know about the U
8 visa until December of the year of 2017. And now that I
9 can, I'm interested because I wanted to do things right.

10 Q. Sure. Absolutely. You want to stay in this
11 country; right?

12 A. [Through the interpreter] Of course, so that I can
13 see myself as a worthwhile person.

14 Q. Do you think that at the times when you met with the
15 State's attorney, you were aware of the U visa over the
16 couple of -- over the past couple of months?

17 A. [Through the interpreter] Yes. As I said before, I
18 have known about the U visa since December of 2017 and I
19 applied whether I would receive some type of benefit.

20 Because the victims' advocate, who called me for the
21 first hearing, said that -- she said since I was a young
22 person, if I applied for the visa now, then I could maybe
23 get a social security number to go to college.

24 Q. You agree that the U visa program in America is a
25 really great thing?

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1 A. [Through the interpreter] In part because it's very
2 expensive.
3 Q. Oh. To get the U visa is also very expensive?
4 A. [Through the interpreter] How do you mean?
5 Q. Never mind.
6 MR. SUMMA: The Court's indulgence.
7 THE COURT: Yes, sir.
8 [Whereupon, Mr. Summa and Ms. Norris confer]
9 Q. [Mr. Summa] Ms. Martinez, you obviously have an
10 interpreter with you, right next to you; right?
11 A. [Through the interpreter] Correct.
12 Q. But earlier in this proceeding, you testified under
13 oath outside the presence of the jury; right?
14 A. [Through the interpreter] I don't understand.
15 Q. You were in that seat yesterday?
16 A. [Through the interpreter] Yes.
17 Q. But you didn't have an interpreter then; right?
18 A. [Through the interpreter] Of course.
19 Q. You said that you're in twelfth grade; right?
20 A. [Through the interpreter] Yes.
21 Q. Your classes are in English; right?
22 A. [Through the interpreter] Yes.
23 Q. You don't have an interpreter with you at school, do
24 you?
25 A. [Through the interpreter] Because I decided to deny

1 that option.

2 Q. Okay. So you could have got an interpreter, but you

3 chose not to have one?

4 A. [Through the interpreter] Yes. Because the age I

5 have right now, I think it's possible for me to get

6 developed in school.

7 Q. You spoke English when you called 911; right?

8 A. [Through the interpreter] Yes.

9 Q. And in the moment it was scary, but you understood

10 what the robbers were saying; right?

11 A. [Through the interpreter] Of course, because they

12 were very basic words.

13 Q. Okay. Well, you spoke English with 911 like you

14 testified?

15 A. [Through the interpreter] Yes.

16 Q. You interpreted for other people?

17 A. [Through the interpreter] Yes.

18 Q. When you spoke to the police on scene, you spoke in

19 English; right?

20 A. [Through the interpreter] Yes.

21 Q. When you spoke to Detective Khan at the hospital, it

22 was in English; right?

23 A. [Through the interpreter] Sort of, because some

24 words I didn't know how to say them so there was no way

25 for me to tell him everything.

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1 Q. Okay. And you have a job; right?
2 A. [Through the interpreter] Yes.
3 Q. And you speak English at your job?
4 A. [Through the interpreter] No.
5 Q. Okay. Where is your job?
6 A. [Through the interpreter] Citadel Mall.
7 Q. Okay. And then you spoke English when you were in
8 that seat earlier yesterday testifying; right?
9 A. [Through the interpreter] Yes.
10 Q. Ms. Martinez, I just want to go back to something
11 you had said earlier.
12 A. [Through the interpreter] Okay.
13 Q. You said that people make mistakes.
14 A. [Through the interpreter] Of course.
15 Q. When you were talking about why you did what you did
16 at the time, that's your theory -- that's what you said
17 of why you said what you said; right?
18 A. [Through the interpreter] Of course.
19 Q. You're trying to figure out why you said what you
20 said?
21 A. [Through the interpreter] This time, no. I was
22 very clear as to why I did it.
23 Q. Well, you said your theory of why you did it is what
24 you said; right?
25 A. [Through the interpreter] Yes.

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1 Q. It's obviously way easier to remember things today
2 and from yesterday than they are from two and a half
3 years ago; right?

4 A. [Through the interpreter] Yes. If he's talking
5 about -- well, rather, you are talking about the written
6 paper. But if we start comparing like testimonies and
7 written things, yes, you can make mistakes.

8 But when we talk about faces, you don't make
9 mistakes with faces because -- because faces that you see
10 in traumatic times, you never forget them.

11 Q. You don't think somebody can make a mistake?

12 A. [Through the interpreter] I made a mistake.
13 Everybody can.

14 Q. And just to clarify. At the time of the incident,
15 you were very scared?

16 A. [Through the interpreter] In nervousness and
17 trauma.

18 MR. SUMMA: Court's indulgence.

19 THE COURT: Yes, sir.

20 [Whereupon, Mr. Summa and Ms. Norris confer]

21 Q. [Mr. Summa] Just one more thing, Ms. Martinez. You
22 testified obviously that you were confused when you spoke
23 with the detectives when you were writing that stuff on
24 State's Exhibit 88?

25 A. [Through the interpreter] Yes.

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1 Q. But you never told them that you were confused?

2 A. [Through the interpreter] No. Well, I mean, it was
3 a legal process so I thought that they were going to tell
4 me that that was bad.

5 Q. But you never told them I'm confused. You never
6 told them I don't quite understand. You just ---

7 A. [Through the interpreter] --- no ---

8 Q. --- did what you told -- what they told you to do;
9 right?

10 A. [Through the interpreter] Yes. I followed their
11 directions.

12 MR. SUMMA: No further questions.

13 MR. VOIGT: May it please the Court?

14 THE COURT: Mr. Voigt.

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1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. One of the disadvantages, or maybe advantages, is
4 that by going last I don't have to re-plow the same area
5 that's already been gone over.

6 But I'm going to ask you some questions that are
7 going to be very similar to what Mr. Summa asked you.

8 A. [Through the interpreter] Okay.

9 Q. On July 26, 2017, when you called 911, you made that
10 call in English and you responded to questions and
11 answered questions in English and gave a report of what
12 happened to you in English; is that correct?

13 A. [Through the interpreter] Yes. But the corrected
14 date is July 23rd.

15 Q. I'm sorry. July 23rd. Okay. And when you sent a
16 text to Detective Khan several days later on the 26th,
17 you sent that text to Detective Khan in English?

18 A. [Through the interpreter] Yes, because writing is
19 the first thing you learn how to do when you get here.

20 Q. Okay. And when you met with Detective McCauley and
21 Detective Sharpe on the 31st -- and we didn't get to see
22 much of Detective Sharpe, maybe we will later, but he's
23 the grey-haired guy back here -- you did that in English;
24 right?

25 A. [Through the interpreter] Yes.

State v Daquan J. Crummey & Denali D. White
Dulce Martinez (through interpreter)-Cross-Examination by Mr. Voigt
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1 Q. And you didn't ask for help with translations. You
2 answered questions; is that correct?

3 A. [Through the interpreter] Yes, because I didn't
4 know whether that was even an option.

5 Q. Did you ask any questions in English?

6 A. [Through the interpreter] Like what kind are you
7 referring to?

8 Q. Well, did you ask for assistance?

9 A. [Through the interpreter] No.

10 Q. Did you believe that you needed assistance?

11 A. [Through the interpreter] In part. But I didn't
12 dare tell them.

13 Q. Were you intimidated by them?

14 A. [Through the interpreter] Yes, because they are
15 police.

16 Q. So what you're wanting this jury to believe is
17 somehow Detective Sharpe back here intimidated you?

18 A. [Through the interpreter] I'm not talking about him
19 exactly, but police in general.

20 Q. Okay. Well, I'm going to talk about the two
21 detectives that you met on the 31st exactly.

22 I'm going to talk about Detective McCauley and
23 Detective Sharpe. Did either one of those gentlemen
24 intimidate you?

25 A. [Through the interpreter] No. But I was nervous to

1 talk to them.

2 Q. Okay. At any times, during the times that we've
3 seen on the video screens that have been played during
4 those interactions on the 31st, did you ask them any
5 questions?

6 A. [Through the interpreter] Can you repeat the
7 question?

8 Q. At any time on the 31st, during your meetings with
9 the detectives that we have seen on the video, did you
10 ask them any questions?

11 A. [Through the interpreter] What I remember is I
12 asked them how to spell a word.

13 Q. Okay. Is it safe to say, or rather would you agree
14 with me, that your memory of July 23rd and the events of
15 July 23rd on 2017, you remembered those events better in
16 July of 2017 that you do today?

17 A. [Through the interpreter] To be clear, I remember
18 just -- well, I remember everything that happened, like
19 all the processes that I went through, everything that I
20 spoke with police for the most part.

21 But what I remember the most is what happened at the
22 house because it was a matter of life or death when
23 somebody is pointing a gun at you.

24 Q. Did you not understand my question?

25 A. [Through the interpreter] If you repeat it again,

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Dulce Martinez (through interpreter)-Cross-Examination by Mr. Voigt
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1 of course I will understand it.

2 Q. Is your memory better about the events of July 23rd,
3 2017, today or were they better in July of 2017?

4 A. [Through the interpreter] It's the same. It
5 doesn't change.

6 Q. So nothing has changed since July of 2017?

7 A. [Through the interpreter] Only, like I said, that I
8 made a mistake that the shorter young man was the one
9 that I had gone to school with.

10 Q. Okay. You made one mistake?

11 A. [Through the interpreter] Several. I don't deny
12 it.

13 Q. Okay. And, let's see.

14 [Whereupon, Mr. Voigt reviews exhibits]

15 MR. VOIGT: I'm looking for the photographic lineup.

16 Oh. Here it is. Here we go.

17 [Whereupon, the photograph is published]

18 Q. [Mr. Voigt] I believe you testified that you went
19 to school with this individual, the individual that's in
20 location number two on that lineup, which is in State's
21 88.

22 A. [Through the interpreter] Yes. But I don't think
23 this has anything to do with what I testified about
24 because of like what I was telling you. I was telling
25 the detective at that time that I had gone to school with

1 another person that was there, also. And that's why I
2 made that mistake that I had gone to school with someone,
3 and that I have seen the person in front of my dad's
4 store.

5 But I was referring that I had only seen the taller
6 young man, that he was the one that I had seen in front
7 of my dad's store. That's all.

8 Q. My question, before that answer, was you testified
9 under direct examination and under cross-examination that
10 this person in position number two right here on State's
11 88 is someone that today you're testifying you went to
12 school with at some point?

13 A. [Through the interpreter] I also went to school
14 with him. We could say that.

15 Q. Okay. Is it true that the very first time you've
16 ever told anyone at all related with this case, be it the
17 Solicitor's Office, the detectives, or anyone else, that
18 you went to school with somebody in a photographic lineup
19 that you didn't tell them about at the time of the
20 photographic lineup, is today in court from that witness
21 stand?

22 A. [Through the interpreter] Can you repeat the
23 question?

24 Q. Sure. Isn't it true that you have never told
25 anybody from the Solicitor's Office, anybody from the

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1 Sheriff's Department, that you went to school with number
2 two up there on that what's State's 88, which is the
3 lineup that's in evidence in this case -- the first time
4 you ever mentioned that to anyone is today in this
5 courtroom from that witness stand?

6 A. [Through the interpreter] Yes, because it's
7 something irrelevant in the case, plus -- but he has to
8 do something -- it has something to do with the statement
9 that was written in the paper.

10 Q. Do you agree with me that what's relevant in a
11 criminal court case is not determined by you?

12 A. [Through the interpreter] Yes. That is something I
13 wrote, so that's something I need to clarify.

14 Q. What did you write on that picture that indicated
15 that you knew number two ---

16 MS. SHEALY: --- I would ask that the attorney
17 discontinue yelling at the witness, Your Honor.

18 MR. VOIGT: I am keeping my voice up so that the
19 court reporter can properly record me.

20 MS. SHEALY: I don't believe she's indicated she was
21 having any difficulty ---

22 THE COURT: --- hold on one second. Let's maintain
23 decorum in the courtroom. Mr. Voigt, will use an
24 appropriate voice so everyone can hear him. Let's
25 proceed.

1 THE INTERPRETER: Counselor, could you repeat the
2 question for the interpreter -- the interpreter?

3 MR. VOIGT: Thank you.

4 Q. [Mr. Voigt] Would you agree with me that you are
5 not the person who determines what is relevant in a
6 criminal proceeding?

7 A. [Through the interpreter] In part, you're right.

8 Q. What part of that question is not right?

9 A. [Through the interpreter] I don't know what you
10 mean.

11 Q. Okay. And just like the fact that the very first
12 time you ever told anybody that you had gone to school
13 with this person was today, isn't it true that today is
14 also the very first time you asked for an interpreter to
15 assist you in your testimony?

16 A. [Through the interpreter] Yes, just today, because
17 today is the first time that I testify in front of the
18 jury. That's why.

19 Q. You testified yesterday?

20 A. [Through the interpreter] Yes, but not in front of
21 the jury.

22 Q. And you testified earlier today outside the presence
23 of the jury; is that correct?

24 A. [Through the interpreter] No.

25 Q. Prior to you testifying here today, did we have a

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Dulce Martinez (through interpreter)-Cross-Examination by Mr. Voigt
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1 brief hearing about whether or not you needed an
2 interpreter?

3 A. [Through the interpreter] Oh. Of course.

4 Q. So you testified in English today earlier; right?

5 A. [Through the interpreter] I think so.

6 Q. And you testified in English earlier yesterday;
7 right?

8 A. [Through the interpreter] Yes, because I didn't
9 know that you were here as an interpreter. I'm referring
10 to you.

11 Q. You're referring to the interpreter? I'm sorry.

12 A. [Through the interpreter] Uh-huh.

13 Q. That makes more sense.

14 You didn't require an interpreter when you told
15 Detective Sharpe that you didn't know my client, Denali
16 White, did you?

17 A. [Through the interpreter] No.

18 Q. Okay. It wasn't -- you weren't intimidated then,
19 were you?

20 A. [Through the interpreter] It was nervousness, not
21 intimidation.

22 Q. Okay. And at no time did they, any of the
23 detectives, influence you to write anything about either
24 of the individuals, the taller one or the one you
25 identified as the shorter one?

1 A. [Through the interpreter] Today? No.

2 Q. Okay. And not some other day, either; right? They
3 haven't influenced what you've had to say?

4 A. [Through the interpreter] No, because everything
5 comes from myself, everything that I have written.

6 Q. Okay. So and let me show you the first part of
7 State's 88.

8 [Whereupon, the photograph is published]

9 Q. And that's the written part. It should be up on the
10 screen right in front of you.

11 A. [Through the interpreter] Yes.

12 Q. When was the first time that you told the detectives
13 that you had made a mistake in what was written down
14 there, that you knew him from school?

15 A. [Through the interpreter] I didn't tell them.

16 Q. So you never told the people who were charged with
17 the investigation of the crime against you that you had
18 made a mistake in how you thought you knew the people
19 involved?

20 A. [Through the interpreter] No, because first, I
21 didn't think about it at that moment. And, secondly,
22 much later after this, I never had any more contact with
23 them. And third, just now is when I'm being asked about
24 this.

25 Q. So when did you first realize that you had made a

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1 mistake?

2 A. [Through the interpreter] Not long ago.

3 Q. Okay. When do you remember the first time telling
4 somebody that you had made a mistake?

5 A. [Through the interpreter] Not long ago, either;
6 before the case started.

7 Q. Is it in the last week?

8 A. [Through the interpreter] I don't remember well,
9 but I don't know.

10 Q. When you went with Detective Khan to Stahl High
11 School -- and we have seen part of the yearbook, we've
12 seen what's been State's Exhibit 40.

13 And I'll just put that up there so that we all know
14 what we're talking about.

15 [Whereupon, the exhibit is published]

16 Q. Why -- who were you looking for in the yearbooks at
17 Stahl High School?

18 A. [Through the interpreter] I was looking for the
19 shorter young man.

20 Q. And when did you go to Stahl High School with
21 Detective Khan; do you remember?

22 A. [Through the interpreter] I think it was one day or
23 two days after the incident.

24 Q. Okay. So right around the same time that you wrote
25 that part of State's 88? Right around the same time you

1 wrote this; within a day or so?

2 A. [Through the interpreter] Honestly, I don't
3 remember well.

4 Q. Okay. You would agree with me that the incident
5 happened on July 23rd?

6 A. [Through the interpreter] Yes.

7 Q. And you would agree with me that you texted
8 Detective Khan on July 26th?

9 A. [Through the interpreter] Yes.

10 Q. And you would agree with me that you talked -- told
11 Detective Sharpe on July 31st that you didn't know Denali
12 White?

13 A. [Through the interpreter] Yes. But as I said, it
14 was a mistake. Because ---

15 THE INTERPRETER: Sorry.

16 Q. And would you agree with me ---

17 THE COURT REPORTER: I'm sorry. I didn't hear ---

18 THE INTERPRETER: Because.

19 Q. [Mr. Voigt] --- that all these events happened
20 within eight days of the incident?

21 A. [Through the interpreter] I'm not sure about the
22 period of time.

23 Q. Would you agree with me that from July 23rd to July
24 31st is eight days?

25 A. [Through the interpreter] I think so.

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1 Q. Would you agree with me that in the days, the hours
2 after the incident, your memory was more clear than it is
3 today?

4 A. [Through the interpreter] Something like that.
5 Well, because I was going through a trauma because of the
6 incident.

7 Q. Was that a yes or a no answer?

8 A. [Through the interpreter] No.

9 Q. So it's your testimony that your memory is more
10 clear today than it would have been in July of 2017?

11 A. [Through the interpreter] It's almost the same.
12 But there are some things that you remember well and some
13 things that you don't.

14 Q. Exactly. You remember going on Facebook?

15 A. [Through the interpreter] Yes.

16 Q. And you remember talking to me about going on
17 Facebook yesterday; right?

18 A. [Through the interpreter] I think so.

19 Q. Okay. You think so?

20 A. [Through the interpreter] Yes.

21 Q. Okay. Do you remember me asking you questions,
22 about you going on Facebook, yesterday?

23 A. [Through the interpreter] Yes, about the
24 screenshots.

25 Q. Okay. So you do remember?

1 A. [Through the interpreter] Yes.

2 Q. Okay. You remember -- I think that you were asked a
3 question at some point and you said that you kept digging
4 -- or you dug deeper into Facebook; is that true?

5 A. [Through the interpreter] Correct.

6 Q. Okay. And I believe you testified that the very
7 first thing that you saw on Facebook was something that
8 Mr. Crummey -- something of Mr. Crummey's that came into
9 your Facebook feed; is that correct?

10 A. [Through the interpreter] Correct.

11 Q. Okay. And do you recall what that thing was that
12 came into your Facebook feed?

13 A. [Through the interpreter] Yes. It was a live
14 video.

15 Q. Okay. Do you recall when you first saw it?

16 A. [Through the interpreter] Yes. That same night
17 that I sent -- that I took a picture of his profile, it
18 would have been like what, like an hour before.

19 Q. Okay. So about an hour before you texted Detective
20 Khan?

21 A. [Through the interpreter] I couldn't say an hour.
22 But like minutes.

23 Q. Okay. And when you saw that -- was that Facebook
24 live?

25 A. [Through the interpreter] Yes.

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1 Q. And where was Mr. Crummey at that time, if you
2 recall?

3 A. [Through the interpreter] Yes. I remember that he
4 was in Florida because even the video description said
5 it.

6 Q. Okay. So was the reason why Mr. Crummey's live --
7 Facebook live video came up into your Facebook feed
8 because you were previously Facebook friends with him?

9 A. [Through the interpreter] We were friends at that
10 time. Still at that time, we were friends.

11 Q. Okay. Do you recall how you became Facebook friends
12 with him?

13 A. [Through the interpreter] No. Like I said before,
14 probably I added him like from the section where it shows
15 people that you might know.

16 Q. Okay. At any time, did law enforcement ask you to
17 look at your Facebook feed to see if they could figure
18 out when you had friended him?

19 A. [Through the interpreter] No.

20 Q. Okay. Would you agree with me that there is a
21 difference between Facebook friends and other kinds of
22 friends?

23 A. [Through the interpreter] Yes.

24 Q. And you may not have ever met the person that you
25 had friended on Facebook in person before. Is that fair

1 to say?

2 A. [Through the interpreter] Well, not have seen him
3 but -- or met him. But like in this case, I have seen
4 him before.

5 THE INTERPRETER: The interpreter asks for a
6 verification.

7 [Whereupon, the witness and the interpreter confer]

8 A. [Through the interpreter] It's just that the boy,
9 the young man, I didn't even know that he was my friend
10 on Facebook.

11 Q. [Mr. Voigt] Okay. Just so that we're clear, to
12 become friends on Facebook, one of you has to send a
13 friend request and one of you has to accept it. Isn't
14 that true?

15 A. [Through the interpreter] Correct.

16 Q. Okay. And isn't it true on Facebook -- and you may
17 or may not know this, so I'm not going to hold you to it.
18 But isn't it true on Facebook that if you interact with
19 people more, the more their posts will show up in your
20 feed?

21 A. [Through the interpreter] Not that I know of
22 because it had been a long time since I had been in
23 Facebook and that was the first thing that showed up.

24 Q. Okay. Do you recall what he was doing on that live
25 Facebook feed?

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1 A. [Through the interpreter] He was just in a car,
2 like a passenger.

3 Q. Okay. Once you saw his -- tell me if this is true.
4 I believe you testified to this that once you saw his
5 post, you then went to his Facebook profile?

6 A. [Through the interpreter] Yes, because his face
7 came to my mind quickly.

8 Q. Okay. And you looked at pictures on his Facebook
9 page; is that correct?

10 A. [Through the interpreter] Correct.

11 Q. And is it true that most of the pictures on his
12 Facebook page had him in them?

13 A. [Through the interpreter] Yes, because it was his
14 profile.

15 Q. Right. Did the deputies ever ask you to go back and
16 look at your Facebook profile to see if you had ever
17 liked any of his posts or ever interacted with him at
18 all?

19 A. [Through the interpreter] They never asked me that.

20 Q. They never asked you. Okay. And to the best of
21 your knowledge, you've never liked any of his posts,
22 commented on any of his posts, posted on his wall, or
23 direct-messaged him through Facebook Messenger, to the
24 extent you remember?

25 A. [Through the interpreter] No. Well, because, as I

1 said before, I did not know him but I had seen him
2 before. I didn't know that he was my Facebook friend, so
3 I didn't pay much attention to it because it was like a
4 person like any other.

5 Q. Okay. To the best of your knowledge, had any of his
6 Facebook posts ever appeared in your Facebook feed prior
7 to July 26th?

8 A. [Through the interpreter] No, and that was really
9 strange.

10 Q. How long did you spend looking at his Facebook page?

11 A. [Through the interpreter] Just one time when I did
12 the screenshot on the 26th.

13 And later, like on the 27th, 28th and the 29th I
14 would like go back to it just to -- like to be sure that
15 it was him. And after that is when I came across the
16 shorter young man and I saw them together.

17 Q. Okay. So you went on what's been marked as State's
18 84 -- you went on this gentleman's Facebook page. You
19 went on the 26th and you went on the 27th and you went on
20 the 28th. Did you go on the 29th, as well?

21 A. [Through the interpreter] I think that --
22 apparently, yes.

23 Q. Okay. Did you go on the 30th?

24 A. [Through the interpreter] Not that I remember.

25 Q. Okay. And I think we -- when we talked about this

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1 earlier, I think you said that this was on your -- on
2 your phone at the time; right?

3 A. [Through the interpreter] Correct.

4 Q. And so we were talking about the -- how Facebook
5 would be displayed as an app?

6 A. [Through the interpreter] Correct.

7 Q. And how large was your phone at the time?

8 A. [Through the interpreter] At that time I had the
9 iPhone 7, which has just come out.

10 Q. Okay. So in 2017, you had an iPhone 7. And do you
11 recall approximately how large that screen is? Because
12 I'm sure you have a bigger one now.

13 Q. [Through the interpreter] Honestly, I don't know
14 what size it was. But it was a 7 Plus.

15 Q. Okay. And you didn't look at this Facebook page on
16 a computer monitor or something large; right?

17 A. [Through the interpreter] No.

18 Q. Okay. And it's safe to say that in those four days
19 that you looked at this Facebook page, you spent hours
20 looking at this Facebook page; right?

21 A. [Through the interpreter] No. I wouldn't say hours
22 every day. But I would say like at least minutes that
23 would become like one hour, two hours, three hours,
24 together.

25 Q. Okay. So over the course of four days, perhaps as

1 much as three hours you looked at this Facebook page. Is
2 that fair to say?

3 A. [Through the interpreter] Yes. At least because it
4 caught my attention quite a bit.

5 Q. And you went back to it over and over again; is that
6 right?

7 A. [Through the interpreter] Yes. But just to rectify
8 memories with faces.

9 Q. So you were hoping to bolster your memory by looking
10 at these photographs. Is that safe to say?

11 A. [Through the interpreter] Not a hope. I knew that
12 it was him.

13 Q. Okay. And you kept going back and looking at more
14 and more photographs; is that true?

15 A. [Through the interpreter] Only a little, just to
16 check to see if I could find the shorter young man.

17 Q. And then on this Facebook page, you found somebody
18 who you thought was the shorter person; is that true?

19 A. [Through the interpreter] I didn't think. It was.

20 Q. Okay. And you told Detective Sharpe that you didn't
21 know Denali White; is that right?

22 A. [Through the interpreter] Yes. But as I said, it
23 was the nervousness.

24 Q. Okay. And you went on Mr. White's Facebook; is that
25 right?

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1 A. [Through the interpreter] Yes. But I only took a
2 screenshot of the profile and that was all.

3 Q. Okay. But how long did you spend looking at the
4 photographs on his profile page?

5 A. [Through the interpreter] Him? Less, because I
6 thought that he was the head of what happened.

7 Q. That who was the head of what happened?

8 A. [Through the interpreter] The taller boy.

9 Q. So you looked at his Facebook page more because you
10 thought he was the head of the whatever?

11 A. [Through the interpreter] I didn't think. He was
12 actually the head of everything that happened.

13 But I just went to the other page just to check if
14 they had any pictures together or to see if there was
15 something correlating the two of them or relating the two
16 of them.

17 Q. Okay.

18 A. [Through the interpreter] Relating the two of them.

19 MR. VOIGT: One moment, Your Honor.

20 THE COURT: Yes, sir.

21 [Whereupon, Mr. Voigt confers with his client]

22 MR. VOIGT: Judge, I don't have anything further.

23 THE COURT: Redirect.

24 MS. SHEALY: Your Honor, may we approach just for a
25 second?

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1 THE COURT: Sure.

2 [Whereupon, an off-the-record bench conference is
3 held]

4 THE COURT: Ladies and gentlemen, we're going to
5 take an extremely brief recess. The lawyers need to take
6 a break for a moment, but we will get you back in here
7 and conclude today's testimony in fairly short order. So
8 I'm going to see you to your jury room and remind you not
9 to discuss the case amongst yourselves or begin any
10 deliberations. Thank you.

11 [Whereupon, the jury exits the courtroom at 5:47
12 p.m.]

13 MS. SHEALY: Judge, may I run down the hall?

14 THE COURT: Yes, ma'am.

15 [Whereupon, Ms. Shealy exits the courtroom]
16

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1 THE COURT: If I could have the individual whose
2 phone went off come up.

3 [Whereupon, Mr. Thomas comes forward]

4 THE COURT: Sir, stand right there for me. What's
5 your name, sir?

6 MR. THOMAS: Devin Thomas.

7 THE COURT REPORTER: Say it again, sir.

8 MR. THOMAS: Devin Thomas.

9 THE COURT: Devin Thomas?

10 MR. THOMAS: Yes.

11 THE COURT: Mr. Thomas, as you can see, when a phone
12 goes off in the courtroom, it causes a little bit of a
13 disturbance at kind of a ---

14 MR. THOMAS: --- yes, sir ---

15 THE COURT: --- important ---

16 MR. THOMAS: --- I apologize for that, sir ---

17 THE COURT: --- important part in the trial. So I
18 assume you are friends or family with somebody that's ---

19 MR. THOMAS: --- yes, sir ---

20 THE COURT: --- involved in this case?

21 MR. THOMAS: Yes, sir.

22 THE COURT: Alright. I'm going to give you your
23 phones back. Okay?

24 MR. THOMAS: Thank you.

25 THE COURT: And ---

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1 MR. THOMAS: I can assure it won't happen again ---

2 THE COURT: --- if it -- if it happens again, it's
3 going to cost you \$100. Okay?

4 MR. THOMAS: Okay.

5 THE COURT: Alright because, technically, you're in
6 contempt of a court order. The Chief Justice has ordered
7 that if cell phones are present inside a courtroom for
8 anybody, lawyers included, if it goes off during court,
9 you could be held in contempt. But I'm not going to fine
10 you. I'm going to give you your phones back just because
11 ---

12 MR. THOMAS: --- I appreciate it ---

13 THE COURT: --- with the advice that when you come
14 in tomorrow -- and I would -- I would turn it off, out of
15 an abundance of caution. Okay?

16 MR. THOMAS: Yeah ---

17 THE COURT: --- alright? So you can -- you can stay
18 in the courtroom for the remainder of the day. Just turn
19 those phones off and you're -- the second time is going
20 to be a fine. Okay?

21 MR. THOMAS: I appreciate it.

22 THE COURT: Alright, sir. I appreciate you --
23 appreciate you apologizing. Thank you.

24 We'll be in recess for a little while. We'll come
25 back at 5:50.

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1 [Whereupon, Court is in recess from 5:45 p.m. to
2 5:55 p.m.]

3 THE COURT: Be seated please. Bring us the jury.

4 [Whereupon, the jury enters the courtroom at 5:57
5 p.m.]

6 THE BAILIFF: Your Honor, the jury is complete.

7 THE COURT: Thank you, sir. Ms. Shealy, redirect.

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1	REDIRECT EXAMINATION
2	BY MS. SHEALY:
3	Q. Dulce, let's talk about your wanting an interpreter.
4	okay?
5	A. [Through the interpreter] Okay.
6	Q. When was the first time you realized that was even a
7	possibility?
8	A. [Through the interpreter] For this case?
9	Q. For this case.
10	A. [Through the interpreter] Yesterday when the people
11	that did not speak English testified.
12	Q. Okay. And would you tell the jury you speak English
13	pretty well; right?
14	A. [Through the interpreter] Yes.
15	Q. At your job you speak what language?
16	A. [Through the interpreter] Mostly English --
17	THE INTERPRETER: The interpreter corrects herself.
18	A. [Through the interpreter] Mostly Spanish, with ten
19	percent English.
20	Q. [Ms. Shealy] What do you speak in your home?
21	A. [Through the interpreter] Spanish. We're not
22	allowed to speak English.
23	Q. What -- of your friends, what language do most of
24	them speak?
25	A. [Through the interpreter] Fifty percent Spanish and

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1 fifty percent any Asian language.

2 Q. Asian language?

3 A. [Through the interpreter] Correct.

4 Q. Tell the jury -- you came in yesterday and you were
5 seated in the courtroom; is that correct?

6 A. [Through the interpreter] Correct.

7 Q. Have you ever been to a United States court before?

8 A. [Through the interpreter] Never. I'd only seen it
9 on TV.

10 Q. Have you ever been sworn to tell the truth before?

11 A. [Through the interpreter] Never.

12 Q. Have you ever been around the presence of a judge
13 and attorneys in a formal setting?

14 A. [Through the interpreter] Never that either.

15 MS. SHEALY: Gabi Rairan, if she could just raise
16 her hand or stand up.

17 [Whereupon, Ms. Rairan complies]

18 Q. [Ms. Shealy] Do you know Ms. Rairan?

19 A. [Through the interpreter] Yes.

20 Q. And how do you know her?

21 A. [Through the interpreter] I think she was
22 designated as my victim advocate.

23 Q. Have you met with her along with members of my
24 office?

25 A. [Through the interpreter] Yes.

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1 Q. Would you tell the jury, when you were speaking with
2 me or Mr. Cooper, what language were you generally using?

3 A. [Through the interpreter] Mostly English.

4 Q. If you did not understand something, what would you
5 do with Ms. Rairan?

6 A. [Through the interpreter] I would ask her for help
7 so that she could help me like kind of like rephrase some
8 statements.

9 Q. Okay. And when -- would you and she have
10 conversations by phone, as well, without Mr. Cooper or my
11 presence?

12 A. [Through the interpreter] Yes.

13 Q. When you were speaking on the phone, would you speak
14 English and Spanish?

15 A. [Through the interpreter] Yes. Both.

16 Q. Okay. So tell the jury, why were you interested in
17 having an interpreter in this court proceeding?

18 A. [Through the interpreter] Mostly because sometimes
19 I get confused with some words. And also having an
20 interpreter, it could be like better, more reliable, like
21 have a better done concept.

22 Q. A better what?

23 A. [Through the interpreter] The concept better done.
24 Concept.

25 Q. Do you understand the word better?

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1 A. [Through the interpreter] To better translate or
2 interpret the statements.

3 Q. Okay. Have you ever been a victim of a crime other
4 than the one that we're here for?

5 A. [Through the interpreter] Yes, but not as violent
6 as this one.

7 Q. Had you ever been robbed ---

8 MR. SUMMA: --- Your Honor, this is outside the
9 scope of direct or cross.

10 MS. SHEALY: I can rephrase, Your Honor.

11 THE COURT: Let's approach, please.

12 [Whereupon, an on-the-record bench conference is
13 held as follows:]

14 MS. SHEALY: They asked ---

15 MR. VOIGT: that's --

16 MS. SHEALY: They have asked a bunch of questions of
17 how she could be mistaken of the circumstances, et
18 cetera. It's a new experience for her. We have a right
19 to say that she's never been in this kind of situation
20 before.

21 MR. VOIGT: That's not the question you're asking.

22 MS. SHEALY: I have to start with have you ever been
23 ---

24 MR. SUMMA: --- she just said she has.

25 MS. SHEALY: Not as serious as this, is what she

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1 said.

2 THE COURT: Well, she's testified that she has never
3 been involved with the court system, never been around
4 lawyers, never been around a judge before, so I think
5 she's gotten that point across.

6 I mean, I think we're -- I think everybody in the
7 room understands the purpose of this line of questioning.
8 I think you've about made the proper points. But just --
9 I think she's asked and answered the questions in a
10 different way, but I think it's re-plowing the same
11 ground so --

12 MS. SHEALY: It's what?

13 THE COURT: It's re-plowing, if not the same, very
14 similar grounds. So just ask the question that kind of
15 wraps up this.

16 MS. SHEALY: I will. I think what I'll do is focus
17 on have you ever been asked to go to a lineup before.

18 MS. NORRIS: What if she says she was raped before.

19 THE COURT: And I would caution don't -- we don't
20 want to get into the specifics of any prior --

21 MR. VOIGT: But I just object to has she ever done a
22 lineup before, because that's irrelevant.

23 MS. SHEALY: No, that's not ---

24 MR. VOIGT: --- it's clearly irrelevant.

25 MS. SHEALY: It's not irrelevant. Y'all are trying

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1 to say that she made a mistake and was foolish to have
2 made a mistake of why she -- whether she made a mistake.
3 If she's never been through the process ---

4 MR. VOIGT: --- so you gonna prove that she can do
5 it correctly some other ---

6 THE COURT: --- hey ---

7 MS. SHEALY: --- no ---

8 THE COURT: --- guys, I can tell this jury is
9 getting real sick of this stuff. If y'all really want
10 the risk of losing them ---

11 MS. SHEALY: --- no ---

12 MR. VOIGT: --- I'm not asking what ---

13 THE COURT: They've made -- they've made the point
14 that she made a mistake. That wasn't based on her
15 inability to understand English. I really think we're
16 getting a little far-afield at this point.

17 I mean, I think ask a question to sum up her lack of
18 knowledge of the court system and then if there are any
19 other issues as to why she requested an interpreter, you
20 can ask questions about that. But I think we're --

21 MR. VOIGT: Thank you, Judge.

22 THE COURT: This is a getting -- this is dragging it
23 out.

24 MS. SHEALY: Let me just make sure I understand.

25 What I would intend to ask, then, is when you went over

1 for that lineup, had you ever had -- ever gone to a
2 procedure like that before. There's nothing wrong with
3 that. There's nothing wrong with it.

4 THE COURT: And I think you -- I think you can ask,
5 but -- apparently, she didn't have any trouble
6 understanding what she was being told that day. I mean,
7 the tape kind of speaks for itself, and they've seen that
8 part of it. So, I mean, you can ask it, but I don't know
9 that it's -- they've already seen the tape.

10 MS. SHEALY: Well, they may be more forgiving of a
11 sixteen-year-old.

12 THE COURT: But just use your judgment, Ms. Shealy.
13 But we're -- like I said, I think we're -- the point is
14 getting close to have been made. So...

15 MS. SHEALY: Thank you.

16 [Whereupon, on-the-record bench conference
17 concludes]

18 Q. [Ms. Shealy] Okay. Dulce, when you went down to do
19 the lineup, had you ever been in that type of procedure
20 before?

21 A. [Through the interpreter] Never.

22 Q. And how did you get there?

23 A. [Through the interpreter] My uncle took me.

24 Q. You were asked a question about going to Stahl by
25 the defense attorneys, and I just wanted to follow up.

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1 A. [Through the interpreter] Okay.

2 Q. In State's Exhibit 40, in looking at Jaquan Coakley,
3 would you tell the jury between the taller or the shorter
4 person, why you were looking at Coakley.

5 A. [Through the interpreter] Because there were a lot
6 of similar things about him comparing to the shorter
7 young man.

8 Q. Compared to the shorter man?

9 A. [Through the interpreter] Yes.

10 MR. SUMMA: Your Honor, I have another objection.

11 THE COURT: Come on up.

12 [Whereupon, an on-the-record bench conference is
13 held as follows:]

14 MR. SUMMA: His photo was taken like two weeks ago.
15 Excuse me. I'm sorry. This photo was taken like two
16 weeks ago. I think it's misleading to talk to her and be
17 like, well, this is like what happened, like this is the
18 one you were looking at because this is a photo taken by
19 the detective two weeks ago, not at the time ---

20 MS. SHEALY: --- After she told us ---

21 MR. SUMMA: --- I think it's -- I think it's
22 misleading. I think the jury is thinking that, oh, this
23 is the photo that she was looking at, and we don't ---

24 THE COURT: --- refer to it as a photograph of the
25 pages of the yearbook. That's what it is; right?

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March 11, 2020

1 MS. SHEALY: It's --

2 MR. SUMMA: Its photographs of the -- but we don't
3 even know if it's the same yearbook. We don't know -- it
4 has not been ---

5 MS. SHEALY: --- she testified to that. She did.

6 THE COURT: Well, it's -- it's in evidence. I mean,
7 that -- I don't believe there were any objections when it
8 was offered. But clarify that it is a photograph of the
9 pages of the yearbook that she looked at.

10 MS. SHEALY: Okay.

11 [Whereupon, on-the-record bench conference
12 concludes]

13 THE COURT: The objection is overruled.

14 Q. [Ms. Shealy] Dulce, the picture of Mr. Coakley, is
15 that a picture that you saw from what was in the yearbook
16 when you went to Stahl?

17 A. [Through the interpreter] Yes.

18 Q. And that page was in the yearbook that you saw when
19 you were with Mr. Khan, Detective Khan?

20 A. [Through the interpreter] Yes.

21 Q. The photograph that's up there, is that a picture of
22 this page?

23 A. [Through the interpreter] Yes.

24 Q. You've been asked by the defense attorney, or at
25 least Mr. Voigt, about going back on Facebook; correct?

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1 A. [Through the interpreter] Correct.

2 Q. And showing you State's Exhibit 85, this picture.

3 [Whereupon, the photograph is published]

4 Q. Would you tell the jury whether you saw that picture
5 before you were asked to come do lineups?

6 A. [Through the interpreter] I remember that it was.

7 Q. If I show you the second page of State's 85, could
8 you tell the jury the date that you screenshotted it?

9 A. [Through the interpreter] Yes. It was July 27,
10 2017.

11 Q. And when you saw this photograph on Facebook, who
12 did you recognize in the photograph?

13 A. [Through the interpreter] Both.

14 Q. Could you tell the Court whether you recognized them
15 from the robbery?

16 A. [Through the interpreter] Yes.

17 Q. Pointing at this image, would you tell the jury
18 whether that was the taller or the shorter guy?

19 A. [Through the interpreter] The shorter one.

20 Q. And did you know him prior to the event, knew who he
21 was, or had seen him previously?

22 A. [Through the interpreter] Only I have seen him
23 before.

24 Q. Okay. And showing you this individual. Is that the
25 shorter or the taller person?

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Dulce Martinez (through interpreter)-Redirect Examination by Ms. Shealy
March 11, 2020

1 A. [Through the interpreter] This is the taller
2 person.

3 Q. Mr. Voigt asked you how long you looked at the
4 Facebook account and then revisited it.

5 A. [Through the interpreter] Okay.

6 Q. You indicated -- why did you do that? Why did you
7 keep going back to that Facebook page?

8 A. [Through the interpreter] Well, because it caught
9 my attention quite a bit, and I wanted to see his face
10 really well so that I could be sure that I was not
11 looking at the person that was not right.

12 Q. To make sure you were correct?

13 A. [Through the interpreter] Yes, because that face
14 was in my mind.

15 Q. And when you went down for the lineups, you
16 indicated on State's Exhibit 87 that the one circled is
17 whom?

18 [Whereupon, the exhibit is published]

19 A. [Through the interpreter] The shorter one.

20 Q. And you called him by what name and what you wrote?

21 A. [Through the interpreter] The accessory.

22 THE INTERPRETER: The interpreter corrects herself.

23 A. [Through the interpreter] It's the accessory, is
24 appropriate.

25 Q. [Ms. Shealy] And you wrote the word accomplice?

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1 A. [Through the interpreter] Yes.

2 Q. And in State's 88, when Detective McCauley -- let me
3 do it up here.

4 [Whereupon, the exhibit is published]

5 Q. When Detective McCauley showed you the lineup ---
6 Let me make sure I've got the right one.

7 [Whereupon, Ms. Shealy reviews documents]

8 Q. Did you notice then that you knew somebody on this
9 sheet?

10 A. [Through the interpreter] Yes.

11 Q. This is the one you circled?

12 A. [Through the interpreter] Yes.

13 Q. And you circled him because you knew him from what?

14 A. [Through the interpreter] I remembered that he had
15 been in the incident of what happened to us.

16 Q. Then I think you indicated that regarding this
17 individual in this lineup, he was familiar to you?

18 A. [Through the interpreter] Yes. Also.

19 Q. And where did you know him from?

20 A. [Through the interpreter] Him I did know from
21 school. I had several classes with him, also.

22 Q. And you're talking about Stahl?

23 A. [Through the interpreter] Yes.

24 MS. SHEALY: Beg the Court's indulgence just a
25 moment.

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1 THE COURT: Yes, ma'am.

2 [Whereupon, Mr. Cooper and Ms. Shealy confer]

3 Q. [Ms. Shealy] Do you remember mentioning that to
4 Detective McCauley when he put the pictures down?

5 A. [Through the interpreter] Yes. I told him that he
6 seemed kind of like a nice person to me because I had
7 known him from school. Oh, but it wasn't him, it was the
8 moment was kind of funny.

9 Q. Okay. I'm sorry. I don't know what you mean by it
10 wasn't him.

11 A. [Through the interpreter] What I was trying to say
12 is that it wasn't him that is being nice to me, it was
13 that it was a funny moment because I happened to see him
14 in there.

15 Q. Because you could recognize two people in one
16 lineup?

17 A. [Through the interpreter] Yes.

18 MS. SHEALY: Your Honor, at this time, we would seek
19 to play that portion of the lineup process where she's
20 advising Detective McCauley of that. It is Defendant's
21 3.

22 THE COURT: Any objection?

23 MR. SUMMA: No objection.

24 MR. VOIGT: No objection.

25 [Whereupon, Defendant's Exhibit Number 3 is played

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1 for the jury]

2 MS. SHEALY: Okay. Could you stop it there?

3 Q. [Ms. Shealy] Could you hear it? Okay. We're going
4 to play it back, just so we can hear it better.

5 [Whereupon, Defendant's Exhibit Number 3 is played
6 for the jury with questions from Ms. Shealy]

7 Q. [Ms. Shealy] Is that when you're laughing?

8 A. [Through the interpreter] Yes.

9 MS. SHEALY: You can stop it there.

10 [Whereupon, Defendant's Exhibit Number 3 concludes]

11 Q. [Ms. Shealy] It was a little hard for us to make
12 out. You laughed when you saw the other person on the
13 sheet. What did you say to Detective McCauley?

14 A. [Through the interpreter] That I knew him from
15 before.

16 Q. The picture of?

17 A. [Through the interpreter] Number two.

18 Q. Number two?

19 A. [Through the interpreter] Yes. I even pointed it
20 out to him with a pen.

21 Q. Thank you, Ms. Martinez. I appreciate it. Answer
22 any questions they may have.

23 THE COURT: Any recross?

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25

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RECROSS-EXAMINATION

BY MR. SUMMA:

Q. So your testimony today is that you were -- you pointed to number two when they showed you the lineup?

A. [Through the interpreter] Yes. But, it was because I had seen, before, that young man in school.

MR. SUMMA: We'd ask to play it again, Your Honor.

THE COURT: Okay.

[Whereupon, Defendant's Exhibit Number 3 is played for the jury]

MR. SUMMA: No further questions.

THE COURT: Mr. Voigt?

MR. VOIGT: Nothing, Judge.

THE COURT: Ms. Martinez, you can step down.

THE WITNESS: [Through the interpreter] Thank you.

[Whereupon, the witness is excused and exits the witness stand]

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1 THE COURT: Ladies and gentlemen of the jury, we're
2 going to adjourn for today. This is -- hour and this is
3 a good place to stop. I'm going to ask you to be back in
4 your jury room at 9:30 in the morning. We'll resume
5 testimony at that time.

6 Please don't discuss the case amongst yourselves or
7 with anybody else. Don't do any independent research
8 using any form of media, and I will see you in the
9 morning. And thank you for your patience with us today.

10 [Whereupon, the jury exits the courtroom at 6:23
11 p.m.]

12 THE COURT: Alright. We're going to adjourn for
13 today. Is there anything that either side can foresee
14 that we may need to do pretrial or before the jury comes
15 in in the morning? Any issues, any evidentiary problems,
16 anything that would require an in-camera hearing,
17 anything of that nature?

18 MR. VOIGT: I've got something, if they want to
19 think about it for a second.
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State v Daquan J. Crummey & Denali D. White
Motion to Reconsider Admissibility of Identification
March 11, 2020

1 MOTION TO RECONSIDER

2 MR. VOIGT: Judge, I would make a motion to
3 reconsider the admissibility of the identification that
4 you just heard because either it was fundamentally
5 defective and the detectives didn't know it at the time,
6 or we were lied to, because that is not a six-pack, that
7 is a five-pack, where there's already somebody that -- if
8 this last batch of testimony is to be believed, and this
9 is the first time we've heard this because we didn't hear
10 this in the hearing that would have actually determined
11 its legality.

12 Hearing this now, we now know that this is a
13 defective lineup, because it is not a six-pack, which was
14 the testimony we heard pretrial. It's, in fact, a five-
15 pack, with a friend.

16 Judge, I think at this point it's fundamentally
17 unfair. I would ask to exclude it, but ask to exclude
18 it, barring that a mistrial, barring that a severance and
19 mistrial.

20 MR. SUMMA: I would join. I think that the
21 identification -- I think a mistrial is more appropriate
22 because the jury has already heard, you know, about the
23 six-pack. We now know that it was not a very typical
24 six-pack. We'd ask for a mistrial.

25 THE COURT: Ms. Shealy?

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1 MS. SHEALY: Your Honor, maybe this is something
2 that we do need to address early in the morning. I'd
3 like to have the opportunity to look at it. I certainly
4 think that you've seen the video, the video they've had.
5 We've had the hearing, played the video. You can hear
6 what she says to the officer on the video. It's hardly a
7 surprise.

8 THE COURT: Well, I'm not going to rule on this
9 motion tonight. I would say that I don't -- I don't see
10 anything, from what the officers did, that would render
11 this out-of-court identification unduly suggestive. But
12 the other issues, I may need to take a look at those.
13 But I'm going to reserve any final ruling on that until
14 in the morning.

15 You know, my first inclination is that it would go
16 to the weight of evidence. It certainly makes a -- makes
17 it less strong of a lineup than an ordinary lineup with
18 all strangers. But I don't want to -- I don't want to
19 bind myself before I have a chance to think further on
20 this matter. But let's report at 9:00. We can deal with
21 this issue.

22 Any issues with regard to any foundational witnesses
23 or certifications for any business records that we
24 mentioned earlier but I can foresee that being another
25 instance where a jury -- the jury may have to go out.

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1 And I really -- I'm not finding fault with anybody, but
2 it's extremely -- this record is probably going to be one
3 of the choppiest records that's ever been produced in
4 Circuit Court. I really wouldn't -- I really don't want
5 to have to send them out tomorrow like we did multiple
6 times today.

7 So, you know, I'm learning about this case as we go
8 along. So if there's any issue with regards to any of
9 the law enforcement testimony, I want to be prepared to
10 take that up before we get started in the morning, as
11 well. So I'm relying on y'all to instruct me as to what
12 you foresee.

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1 MR. COOPER: I would say, Judge, my first few
2 witnesses in the morning, I don't think we'll have an
3 issue. But the one that deals with the extraction of the
4 phones and probably the one that deals with the mapping
5 of cell phones are my last two witnesses that I plan to
6 call, at least at this moment. So I anticipate maybe to
7 have some kind of hearing before those witnesses. But my
8 first few, I don't foresee any issues.

9 THE COURT: Well, the mapping witnesses I would
10 assume you'll be offering them as -- I mean, they'll be
11 giving opinions; correct?

12 MR. COOPER: We're offering them as an expert. Yes.

13 THE COURT: Okay. So...

14 MR. VOIGT: And I think there's only -- only Mr.
15 Summa has something he may say about that. I don't think
16 it relates to me.

17 MR. COOPER: Because it is both defendants, but, I
18 mean, it's not your client's records, if that's what
19 you're saying.

20 MR. VOIGT: That's what I'm saying. You don't
21 locate -- you don't have an expert that locates my client
22 anywhere; right?

23 MR. COOPER: I don't have cell phone records, if
24 that's what you're asking.

25 MR. VOIGT: Right. Right. That's right.

1 THE COURT: Well, I mean, I guess the issues with --
2 do you plan on asking for any individual voir dire of the
3 cell phone experts, Mr. Summa? I mean is the fact that
4 he is or is not an expert at issue, or is it more the
5 substance of his testimony that's going to be an issue?

6 MR. SUMMA: I think that at this point we're not
7 going to contest him being an expert, but I -- but that
8 does not apply to the phone-dump information that the
9 State is seeking to introduce. I have separate issues
10 with that.

11 THE COURT: Alright. Well ---

12 MR. SUMMA: Well, I guess that's a different person.
13 But if ---

14 MR. COOPER: --- it would be a different person,
15 Judge. I don't know -- at this time, I don't -- I don't
16 have -- I don't know if I need to qualify him as an
17 expert. But I have a different person that's doing the
18 phone extractions. I don't know what's at issue, but I
19 have a different person for that.

20 MR. SUMMA: And I do intend to ask -- I don't know
21 what the basis are, but I intend to ask the State to
22 stipulate to the qualification of my expert for mapping.

23 THE COURT: Your expert for what?

24 MR. SUMMA: We have a mapping expert, too, Your
25 Honor.

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1 THE COURT: A mapping expert?

2 MR. SUMMA: Cellular forensics, more accurate.

3 MR. COOPER: I'm not in a position at this point to
4 do that, Judge. I may --- tomorrow. I'm not in a
5 position to do that at this point.

6 THE COURT: I don't think at this late hour we need
7 to litigate any of these issues. But I just want to
8 stress that, you know -- as much as adverse parties can
9 cooperate, and I'm not asking you to -- either side to
10 knuckle under on an important point.

11 But I just -- I guess the best way to put it is I
12 hope we can avoid another day like today tomorrow because
13 I know the jury gets tired of going in and out, and in
14 and out, and in and out. So...

15 MR. COOPER: Judge, I do have that certification. I
16 don't know if that's an issue you want to address
17 tonight, but I do have the certification that I provided
18 the defense. They were aware of my intention to
19 introduce that evidence of the mapping at trial. It was
20 part of the initial files, the mapping was.

21 THE COURT REPORTER: What's the -- I'm sorry ---

22 MR. SUMMA: --- who was provided the ---

23 MR. COOPER: --- well, I just wondered -- if that is
24 -- I don't know if that's an issue, Judge, but I didn't
25 know if you want to take that up tonight.

1 THE COURT: I don't think I want to keep the court
2 staff here any longer. It just -- if they'll indulge me
3 this one thing.

4 I'm looking at 16 -- or, excuse me -- 19-5-520,
5 certified business records, which states: In addition to
6 those matters provided by Rule 902 of the South Carolina
7 Rules of Evidence, extrinsic evidence of authenticity as
8 a condition precedent to admissibility is not required to
9 respect -- with respect to the following:

10 The original or a copy of a domestic record that
11 meets the requirements of 803, Rule 803(6) South Carolina
12 Rules of Evidence, as shown by a certification of the
13 custodian or another qualified person that complies with
14 a state statute or a court rule; before the trial or
15 hearing, the proponent shall give an adverse party
16 reasonable written notice of the intent to offer the
17 record and shall make the record and certification
18 available for inspection so that a party has a fair
19 opportunity to challenge the record.

20 I'm not aware of any definition in the law which
21 defines what reasonable written notice is. But, you
22 know, I think a certification should -- I mean, I assume
23 it is a sworn certification. Or what do you have?

24 MR. COOPER: I have a sworn certification from the
25 phone company, Judge. The way I read the statute, the

1 record and my written intention to make it -- to make it
2 a part of trial was expressed two weeks ago to defense
3 counsel. The certification, once I received back was
4 given actually a week ago to this day to defense counsel.

5 I think the way the statute is written, its advanced
6 notice of producing a record. And then it says and the
7 -- then the record and certification must be made
8 available. But I provided written notice of my intention
9 to use the record at trial two weeks ago today.

10 They had -- they've had the record itself, the cell
11 phone, the call-detail records, and the like. But I sent
12 the first draft of the mapping two weeks ago. I will
13 check the Rule 5 but I believe it's at least a year ago,
14 if not before, when they had the actual call-detail
15 records.

16 THE COURT: And what would -- what would the
17 objection -- assuming for the sake of argument that the
18 certification is appropriate, what's the defenses'
19 position on this issue?

20 MR. SUMMA: I don't -- I don't really have -- I
21 mean, it's just tough, Judge. You know, we got an expert
22 well in advance. We got his drafts two weeks ago. And
23 then I guess a week ago -- I need to check my email -- we
24 got the new one that was peer-reviewed, and it is
25 different. I would say that the really relevant part is

1 pretty different, I think I'd say. I mean, there are
2 some significant -- like right at the -- right at the
3 incidents, there's flipped direction of where the cell
4 tower was.

5 So, you know, we're trying to figure out how -- you
6 know, what's going on here with stuff they provided and
7 it changes. So it just kind -- they just keep kind of
8 moving the goalpost, and I feel like that's kind of
9 unfair to a certain extent.

10 MR. COOPER: If I could respond to that before we
11 get to Mr. Voigt. I just want to respond to the
12 characterization.

13 There were many, many calls in the time period that
14 he mapped. One call, one tower. One thing was tweaked
15 under the peer review. But I will say even though it's a
16 different witness doing the mapping, a type of cell phone
17 mapping that expressed the same kind of evidence was a
18 part of the initial Rule 5; it was sent by the Sheriff's
19 Office, it wasn't our expert. But it was also provided
20 in Rule 5.

21 So there has been notice from the beginning that the
22 State had this evidence and most likely would use it
23 moving forward in the prosecution.

24 MR. VOIGT: Since this evidence really doesn't
25 affect us --

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1 THE COURT REPORTER: I'm sorry, Mr. Voigt. I'm
2 sorry. I can't --

3 MR. VOIGT: She quieted me down, and now I'm just
4 timid and meek.

5 THE COURT REPORTER: It's late in the day. I'm
6 sorry. I can't hear you.

7 MR. VOIGT: Alright.

8 THE COURT REPORTER: Sorry.

9 MR. VOIGT: The statute that the Court has cited --
10 and I will just let the Court know that I have -- I have
11 litigated this statute and I've lost every time. Okay.

12 But the practice, as I understand it and as I
13 interpret the paragraph that the Court read, requires a
14 notice to rely on the certification be done well in
15 advance such that if there was questions about the
16 underlying evidence, that the defense, in this case, Mr.
17 Summa, could do whatever he needed to do.

18 Because we don't have -- essentially, what that
19 statute does is it eliminates a right of confrontation to
20 a less important business records custodian. I mean,
21 it's kind of -- it's analogous to what they tried to do
22 in many states with criminals for drug cases, and that
23 was ruled to be a confrontation clause violation. And
24 I'm kind of concerned that this one is, as well. And
25 that's -- I always make the objection of the

1 confrontation clause, that the statute violates the
2 confrontation clause, because I believe that despite the
3 fact that we are bored to tears with records custodians,
4 they have been required in English law for 400 years and
5 until the statute gets enacted for certain kind of
6 records they would be required here.

7 So the question is not whether certain data was sent
8 in discovery a year ago or whether certain notices were
9 sent a week ago -- or, rather, certain certifications
10 were sent a week ago. It's were we notified that in lieu
11 of this person's testimony, we were going to seek to move
12 these records in. The practice in the cases that I've
13 been involved in requires an actual written notice
14 invoking that statute. We don't have that here. So
15 that's all I -- that's ---

16 THE COURT: --- I just wanted to get the -- get us
17 talking about this issue first. I'm not prepared to rule
18 without seeing what was sent.

19 So I would just instruct the State to provide any
20 documents that you feel serve as the -- as the statute
21 requires without explaining what this means, reasonable
22 written notice of intent to offer the record. So
23 anything that you would like the Court to review that you
24 feel meets that requirement, just be prepared to hand it
25 up tomorrow before we get started so I can wrap my mind

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1 around it and try and decide if whatever was sent to the
2 defendants was reasonable written notice. I just want us
3 to talk through this stuff now and not while the jury is
4 sitting in there in the jury room waiting on us,
5 wondering why this Judge can't tell time.

6 MR. COOPER: Beg the Court's indulgence just one
7 second.

8 [Whereupon, Mr. Cooper and Ms. Shealy confer]

9 MR. COOPER: I understand, yes sir. Thank you,
10 Judge.

11 THE COURT: Alright. I think -- I think that's
12 about enough for today. So if we could be ready to go at
13 nine o'clock in the morning.

14 And one other thing. I've decided I'm going to
15 order lunch in for the jury tomorrow. So we'll probably
16 be taking a shorter lunch, so, you know, it probably --
17 it probably will only be an hour tomorrow, so do with
18 that information what you will.

19 If you feel like you may need to bring something --
20 because I want us to keep this case on track. I don't
21 think any of us want to be here over the weekend. So
22 that's what I'm going to do tomorrow. So just keep that
23 in mind.

24 MS. SHEALY: Thank you, Judge.

25 MR. SUMMA: Thank you.

1 MR. VOIGT: Appreciate it, Judge.

2 THE COURT: Alright.

3 [Whereupon, jury trial adjourns at 6:55 p.m.]

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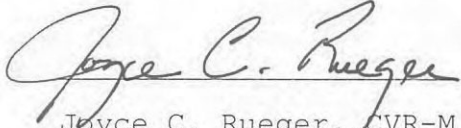
State v Daquan J. Crummey & Denali D. White
Certificate of the Court Reporter
March 11, 2020

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 11th day of March, 2020.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 3, 2020

A handwritten signature in cursive script, reading "Joyce C. Rueger", is written over a horizontal line.

Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-GS-10-568-580
	)	2020-GS-10-1484
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
DAQUAN JAVOR CRUMMEY	)	
	)	
Defendant	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 12, 2020
Charleston, South Carolina

Volume 4 (of 5)

B E F O R E:

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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Circuit Court Reporter

[Certified Transcript Provided for: SCCID]

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-GS-10-0592
	)	2018-GS-10-594-602
	)	2018-GS-10-0604
	)	2020-GS-10-1485
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
DENALI DEONCO WHITE	)	
	)	
Defendant	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

March 12, 2020
Charleston, South Carolina

Volume 4 (of 5)

B E F O R E:

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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STATE

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PROCEEDINGS

THE COURT: Good morning, everybody. Any motions or matters of law to take up before the jury comes in this morning?

MR. COOPER: Judge, did you want to go over the items we discussed last night, the items the State sent over last night?

THE COURT: Well, if the defense has any objection to what you intend to do, I'll hear it. But let me hear from -- let me hear from them.

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1 MOTION TO SUPPRESS

2 MR. SUMMA: Your Honor, this case has been pending
3 for over two and a half years. This is trial by ambush
4 in sending this video that they never told us that they
5 intended to introduce. It was -- none of us knew about
6 this until when he was offered the plea deal, until last
7 night at 9:30 they sent this video.

8 And we checked -- because we went over this phone
9 dump a lot. We spent hours going over this phone dump.
10 They never said they were going to introduce anything,
11 except for the text messages that were disclosed in the
12 Rule 5. And I have those for you. We checked our phone
13 dump; we can't even open these videos. There's no way
14 for us to even open these videos.

15 We had no idea that this was even possible for the
16 State to produce. It's completely unfair. And this
17 makes it probably about half the State's evidence has
18 been disclosed over the past three weeks in this case.
19 That's not how it's supposed to work, and it's a complete
20 trial by ambush, it violates Rule 5, and the remedy is
21 exclusion. Thank you.

22 THE COURT: Which evidence do you intend to
23 introduce with regard to these phone dumps, for lack of a
24 better expression?

25 MR. COOPER: Judge, the evidence I attached last

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1 night, the text message between Mr. Crummey and the phone
2 number of Mr. White. As far as Mr. Crummey's phone dump,
3 the text message where he claims his address as being the
4 one that was involved that day and in the video from Mr.
5 Crummey's phone dump.

6 With regard to Mr. White, there is a text message
7 conversation where he gives to somebody the day before
8 the incident his full name and address, to show he was
9 the one using that phone as well as two pictures of his
10 redacted social security card, that were taken three
11 months before, on the phone, to show the jury it was his
12 phone.

13 With regards to Mr. Summa's statement, that phone
14 dump was provided to the defense I believe it was in May
15 of 2019. They've had that phone dump for a year. So has
16 the State. I have not ever been made aware that they
17 were unable to open attachments on that CD. The State
18 would have remedied that. I can't remedy what I don't
19 know. But I know that I was -- it was provided to him.
20 And there is I think about ten, twelve gigs of
21 information on it. There is a lot of information.

22 But they've had that for over a year. So it's not
23 trial by ambush. I advised them in advance. But they
24 were provided it a year ago. I don't think in any way
25 that violates Rule 5. I resent that accusation. But

1 they've had it for over a year, both phone dumps. And
2 then -- well, I'll get to that later. But we think that
3 video, Judge, it shows the defendant flashing money,
4 making a gun sign three hours after the incident, which I
5 think flashing that kind of money is certainly relevant
6 given the accusation of armed robbery. And I have a
7 witness who will come and testify to the creation time on
8 the phone. And with it being three hours after the
9 incident, that is certainly relevant.

10 There's a lot of information on the phone, related
11 to that kind of stuff, the State is not going into. But
12 I think that is certainly relevant, and its information
13 that the defense has had for over a year.

14 MR. SUMMA: Your Honor, we can't -- I mean, clearly,
15 this is a strong piece of evidence and when you're trying
16 to convince me to convince my client to plead guilty;
17 they would have brought this up. They didn't bring it up
18 because they didn't look at it until then because they
19 never knew that they were going to introduce this. They
20 never intended to introduce it until they found it last
21 night.

22 Your Honor, we can't open this. Okay? And we would
23 have -- if they had said, we've got a video, we would
24 have looked at it. We can't open it. We can't look at
25 any of the videos. Ms. Norris couldn't open the videos.

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1 She was helping with this case. She couldn't open the
2 videos. And she assumed that it was -- we'll demonstrate
3 what happens when you try to open the video ---

4 MR. COOPER: --- Judge, we can't fix what we don't
5 know. I can appreciate that. But it was never, Mr.
6 Cooper, we can't open the attachments.

7 MR. SUMMA: They never intended ---

8 MR. COOPER: --- I don't have ---

9 MR. SUMMA: --- to introduce this video ---

10 MR. COOPER: I don't have a duty to tell you. I
11 don't have a duty to tell you ---

12 MR. SUMMA: --- you have a duty to ---

13 THE COURT REPORTER: --- I'm sorry, guys. I'm
14 sorry. I'm sorry ---

15 THE COURT: --- guys, guys. You can't -- you can't
16 all talk at the same time. Again, we are -- we're going
17 down the same road we've gone down every day this week.
18 There was no mention of a video.

19 I mean, these issues -- I guess what I'm inartfully
20 trying to say is why didn't y'all tell me about this last
21 night? I mean its 9:25. We're supposed to start at
22 9:30. These issues keep coming up. Why am I just
23 hearing about this now?

24 MR. SUMMA: You mean from the defense?

25 THE COURT: From anybody. I mean, I assume you're

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1 going to say because you didn't know about it until last
2 night.

3 MR. SUMMA: I didn't think the Court was going to be
4 -- I mean, obviously, if I -- if I had known that it
5 would have been helpful to this proceeding to respond to
6 it at 9:45, I would have done that. I'm sorry I didn't.

7 THE COURT: No. I'm not -- I'm not -- I'm not
8 asking you why you didn't respond to it last night. I'm
9 just -- it does give me some concern that we keep
10 discovering discovery and admissibility issues as this
11 case has progressed throughout this week.

12 MS. NORRIS: Your Honor ---

13 MR. COOPER: --- I would say this is -- this is not
14 just Mr. Voigt. I mean, it's not your motion. Let me
15 respond to the defense, please ---

16 MS. NORRIS: --- if I may. We didn't get this ---

17 THE COURT: --- hold on. Hold on. Hold on. Let
18 them make their point on -- or their ---

19 MR. COOPER: --- yes, sir ---

20 THE COURT: --- statement on this point, and then
21 I'll come back to you.

22 MS. NORRIS: This was emailed to us last night in
23 the same email that was sent to Your Honor with this is
24 what we want to send. Yes, we got this phone dump some
25 time ago. But we can't -- what we get is essentially a

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1 PDF. This picture that is the second one down is all we
2 can see. I click on that. Nothing opens. When we try
3 to click on an image, nothing opens. We were asking
4 what's going to be offered into evidence.

5 We first got this last night at -- if it please the
6 Court, I would like to actually play for Your Honor what
7 we're -- what we're talking about so that you can see
8 this clip.

9 [Whereupon, video clip plays for the Court]

10 MS. NORRIS: And, Your Honor, that, yes, is a few
11 hours after the alleged offense in this case, but that is
12 actually a popular rap song that was released in May of
13 2017 by a rapper named Blac Youngsta. It was popular
14 music.

15 It's no different than, you know, for example, I
16 Like Pink, Lady Gaga. A video of me singing their song
17 doesn't necessarily mean that I'm saying I just did
18 whatever is in the song. It's just extremely
19 prejudicial, and it's late notice. This should not be
20 allowed, period.

21 MR. COOPER: Judge, I have no objection to not
22 playing the sound. I think the pertinent part is how
23 he's acting and what he's showing, given that he was
24 three hours after being accused of armed robbery, over
25 \$1,000 taken. I provided the Rule 5. I'm not under a

1 duty to provide, in any fashion, the specific parts of
2 the dump that I'm going to show at trial. We did that
3 last night; and especially after the Court's admonition.

4 But I can't fix what I don't know. If there's a
5 problem with opening a document or opening an attachment,
6 they never made me aware. I can fix that if I know about
7 it, but I shouldn't be held accountable if I don't know
8 about it.

9 THE COURT: Well, you would agree with me that
10 you've got to provide the Rule 5 to the defense in a
11 manner in which they can view it.

12 I mean, if you send them -- this seems to be
13 analogous to years ago a lot of convenience stores had
14 their own proprietary surveillance information and it was
15 hard to provide video footage without some proprietary
16 driver to make the -- or software to make the video play.
17 I mean, if you provide the defense something that they
18 can't view...

19 MR. COOPER: If I may, Judge? If I could just ask
20 the defense. This requires no special software. Did
21 y'all copy the report or is it on the drive with all the
22 files I gave you originally?

23 MS. NORRIS: We have tried on the -- on USB,
24 everything. And just so it's clear, and it's up on the
25 screen, this is on page 30,610 of 30,616 pages. So

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1 according to them, we're supposed to guess that 30,000
2 pages later, a video that we can't open, of our client
3 singing a popular rap song, is all of a sudden going to
4 be evidence in this case.

5 THE COURT: I'm going to make this easy. The video
6 is not coming in. I think it's -- I think it's...

7 MR. COOPER: Judge, in that -- in that drive, they
8 -- if I can -- there's a ---

9 THE COURT: --- Mr. Cooper, I -- you complied -- I
10 don't -- I don't see that -- I don't think that you were
11 trying to hide anything from the defense. It was
12 provided, but it was provided in a voluminous document.
13 They didn't know about it. I also think it's more
14 prejudicial than probative.

15 So with regard to the video, I'm going to suppress
16 that. I don't think this was an intentional Rule 5
17 violation but, in actuality, it has essentially become
18 one because the defense has been surprised by it.

19 MR. COOPER: And if I could just -- one thing for
20 the record, Judge, that ---

21 THE COURT: --- Mr. Cooper, I'm not finished yet.
22 You know, it was -- they were provided the video in a
23 mechanism that they could open at -- after 9:30 last
24 night, I just don't see how that's -- and, again, not
25 finding any fault with you, Mr. Cooper, but this is just

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1 -- it's a surprise. It's not fundamentally fair to the
2 defense. And that's what we're all here for, to see that
3 they get a fair -- that everybody gets a fair trial.

4 I don't see any -- I note your exception to my
5 ruling. I don't see any point in us travelling down this
6 road any farther. I've made my ruling.

7 MR. SUMMA: Thank you, Your Honor. With regard to
8 the text message, Your Honor, it is -- it is a little
9 different than what they provided initially. I've had
10 some brief time to look at it.

11 There is some stuff where he's talking to a female.
12 It seems to be kind of dirty talk like -- there's some --
13 there's some language in there that is being sent that is
14 unrelated to this case. I don't think there's a claim
15 that it's related to this case. I'm referring to page
16 11,998 and 11,999.

17 I don't think we really have a particular objection
18 to the State showing that my client lived on Glouster
19 Street and their detective has already admitted that, so
20 I don't know what the -- I don't know what the probative
21 value of it is.

22 But I don't think that there's this -- this dirty
23 talk between him and a female, I just don't see how it's
24 -- I don't see how it's probative in this case. But I'm
25 happy to hear what they have to say about it.

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1 MR. COOPER: Judge, we redacted every indication
2 that's in that set except for the text messages between
3 him and that phone number we associate with Mr. White,
4 with the exception of one text message that is on page
5 12,003, line 36723. It's attached to a contact called
6 Beta Old Lady on 1:01:54 p.m. that day that says, get in
7 position.

8 I think that is certainly probative, especially
9 considering that is about the time the State alleges they
10 were going into the armed robbery. But other than that,
11 I have redacted every communication in that file that is
12 not between that and the number associated with Mr.
13 White.

14 MR. SUMMA: Oh. This is what you...

15 [Whereupon, Mr. Summa and Mr. Cooper confer]

16 MR. VOIGT: I've been trying to be heard, but
17 apparently it doesn't seem to matter. But ---

18 THE COURT: --- well, Mr. Voigt, I ruled with ---

19 MR. VOIGT: --- no, no ---

20 THE COURT: --- the defense on the first one.

21 MR. VOIGT: I know. That's why I sat down. But
22 this highlights -- I'm going to go back to something I
23 said last night from the statute that the Court cited and
24 one of the reasons why that statute requires notice. And
25 one of the things that it fundamentally does is it

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1 focuses the attention of the prosecutor on the evidence
2 that they seek to introduce through -- by bypassing a
3 records custodian. And the effect that it has on the
4 defense is also clarifying, as well, so that we're not
5 trying to figure out the night before what evidence the
6 State dumped on us a year ago they're going to now seek
7 to use.

8 And we're not trying to find out, morning of, what
9 selected redactions the State has made to make it
10 somewhat better. They didn't give us notice that
11 purports to do anything like that, in regards to their
12 custodian notice that they're required to do under the
13 law. So I think maybe all of this stays out, we may get
14 a much shorter day.

15 THE COURT: Well, I think -- I reviewed the notices
16 that Mr. Cooper sent and he sent what I would consider --
17 and none of it is formal, and the rule doesn't require
18 any formality, doesn't require a court filing or
19 anything.

20 But he cited the rule -- or the statute that allows
21 for certified records to be admitted on March the 4th.
22 You know, I -- and, again, in the statute, reasonable is
23 not defined. I don't see how this can be a whole lot
24 different than him saying, hey, I'm going to fly the
25 records custodian in from wherever they may be, and they

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1 show up on the day that they're to testify, come in, are
2 sworn, they are on the stand for two minutes and say the
3 same things from the stand that is in the certification.

4 So I think the records custodian -- the records
5 certification, under statute -- what's that statute
6 number?

7 MR. COOPER: It's 19-5-520.

8 THE COURT: 19-5-520. I mean, Mr. Voigt, I note
9 your objection. That is the law of the state of South
10 Carolina at this point.

11 MR. VOIGT: Please also note that I move -- I'm
12 asking the Court to disregard that statute and that I
13 believe that it violates the confrontation clause of the
14 Constitution. That's so that the record is clear that
15 I've made both objections.

16 THE COURT: The record will reflect that you've
17 objected to admission of the evidence that the statute
18 has not been complied with, and that you are making an
19 objection that the statute as it is written violates the
20 confrontation clause. And your motions are respectfully
21 denied.

22 MR. VOIGT: Thank you.

23 THE COURT: So do we have any dispute over anything
24 subject to the rulings I've already made?

25 MR. SUMMA: I just -- I've never seen these

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1 redactions before. Your Honor, if I may pass up this ---

2 MR. VOIGT: --- can I see it? I haven't seen this.

3 MR. SUMMA: I'm sorry, I'm so sorry.

4 [Whereupon, Mr. Summa and Mr. Voigt confer over
5 documents]

6 MR. COOPER: And, again, Judge, just to note the
7 objections to the materials and the statements, they are
8 the device associated with their clients so it's client's
9 messages, pictures, picture of the social security card
10 that belongs to Mr. White, video of Mr. Crummey. So
11 first off, it's not something they have never seen
12 before.

13 Secondly, the dumps were provided over a year ago.
14 The State has informed or informed before that those are
15 offered text messages. They were described in the file,
16 described in the search warrants. I mean, this is not
17 something that's brand new. And in that one text I think
18 -- and that's why I wrote to the Court -- I'm happy to
19 pass it up if you'd like to read it.

20 MR. SUMMA: Okay. Well, for this one, I would
21 rather it be unredacted because I think that just the
22 fact that it's just blackness and then getting in the
23 position in the middle, and then blackness, I think it
24 has a really prejudicial implication. I think that for
25 this page, the whole page should come in because it's

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1 also filled with a lot of stuff that doesn't say, get in
2 position. So I think that we'd request that for this
3 page, the entire page come in. And I'm not going to even
4 object to your other text messages. That's fine.

5 THE COURT: Do you have any objection to that, Mr.
6 Cooper?

7 MR. COOPER: Judge, I ---

8 [Whereupon, Mr. Cooper and Mr. Summa confer]

9 MR. VOIGT: I would join in Mr. Summa's motion, just
10 for record purposes.

11 THE COURT: So noted.

12 [Whereupon, counsel reviews photographs]

13 MR. COOPER: I have no objection to that, Judge, the
14 last page being 12,003 being unredacted out of the set.

15 THE COURT: Okay. Well and I'm looking at the items
16 that were provided in the email last night. I'm looking
17 at a social security card for Denali White and a card
18 from DHEC. They both -- they both have -- well, the
19 social security card has, obviously, Mr. White's social
20 security number. I don't think we need to publish his
21 social security ---

22 MR. COOPER: --- and, Judge ---

23 THE COURT: --- number to the jury.

24 MR. COOPER: The copies that I sent you last night,
25 Judge, I'm sorry, were not the redacted copies. I have

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1 the redacted copies. I've certainly redacted -- I think
2 his birthday is still on there, just to again to
3 identify. But the social security and all of that is
4 redacted. And that is just to show, again, that that is
5 Mr. White's phone.

6 MR. VOIGT: Security -- social cards are going to be
7 introduced to show that the phone is his? Is that what
8 I'm understanding?

9 MR. COOPER: Pictures of his social security card on
10 the phone.

11 THE COURT: Pictures of these cards were pulled from
12 his phone if I understand that.

13 MR. VOIGT: Okay. I understand. I understand.

14 THE COURT: Just make sure that there's no private
15 identifying information on any photos submitted to the
16 jury.

17 MR. SUMMA: Can I get a copy of the redacted?

18 [Whereupon, counsel confer]

19 MR. COOPER: And, Judge, I do want to mention --

20 [Whereupon, Mr. Cooper and Ms. Shealy confer]

21 MR. COOPER: We do have for the very first witnesses
22 and I showed these to the defense a minute ago, there
23 were -- the traffic stop that they were arrested at July
24 29th, witnesses have been instructed to refer to it as a
25 traffic stop, but we do have a picture of the speeding

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1 stop -- traffic stop for speeding of their booking photos
2 from that night, that have been redacted away so all you
3 can see is the face. But we think that has been put at
4 issue by the defense raising the statement of Brandie
5 Ross of the shaved heads on the side.

6 They do appear with shaved heads on the side, so I
7 think that is now certainly probative now as the best
8 evidence of what they looked at -- looked like six days
9 from the crime, with that officer to identify that's how
10 they appeared that night. That was initially the State's
11 plan, but with the inference by Brandie Ross and our
12 assumptions that they may put her up, that ---

13 THE COURT REPORTER: --- slow down just a little,
14 Mr. Cooper. Slow down.

15 MR. COOPER: Sorry. With shaved heads. So we think
16 it's certainly probative now, and relevant, for us to
17 introduce evidence they did have their shaved sides of
18 their heads at least six days after the incident.

19 THE COURT: Mr. Summa?

20 MR. SUMMA: Thank you, Your Honor. Mugs shots
21 obviously are prejudicial. It's always been that way.
22 So I object. There's already been introduced the lineup
23 photo and they're saying -- they're saying that's how
24 this person was identified, they looked like the person
25 in the lineup photo. So we think that adequately

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1 displays what this person supposedly looked like, by
2 their theory. And so I'll say that. If they're going to
3 admit -- if the Court is going to admit a mug shot, I'd
4 at least have them do the one that doesn't look really
5 scary. So that's...

6 MR. VOIGT: My turn. I didn't open a door, in any
7 respect, to the mug shot of my client coming in. Perhaps
8 if the State wished to introduce this sort of evidence,
9 the State has always been in the position to try these
10 matters separately.

11 I don't believe that -- I believe that the mug shot
12 of my client, for a -- taken during a speeding stop --
13 and by the way, now we can't fit that back in because if
14 we say it's speeding and we now know that he's not
15 driving, why do we have his mug shot?

16 THE COURT: I understand, Mr. Voigt. I agree. Any
17 testimony about these two individuals being arrested that
18 day is -- would be improper. The officers could testify
19 to what they looked like on the scene but this jury is
20 not going to hear anything about booking photos, mug
21 shots, or anything with regard to these two individuals
22 from that stop.

23 And that's -- that is made less probative by the
24 fact that the witness said that she knew these guys; she
25 had done the Facebook research. At least one of them was

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1 on the 26th when she did the screenshot. The next, if I
2 remember correctly, was on the 27th. The traffic stop
3 was on the 27th.

4 So it's -- I don't think any mug shots
5 -- I think that's more prejudicial than probative,
6 especially given my prior ruling that the purpose of the
7 traffic stop is to show that these individuals were
8 together, and not to paint them as criminals or anything
9 of that nature. So I think if we refer to -- if we
10 showed booking photos from that day, it would just be a
11 backdoor way around keeping any prior bad act evidence
12 in.

13 So I'm -- your officers can testify as to their
14 appearance as -- on the day of the speeding stop. But
15 I'm not going ---

16 MR. COOPER: --- I just want to clarify for the
17 record, Judge. I understand your ruling. But just so
18 you know, I wasn't suggesting that we have them testify
19 about being arrested or booked. I was going to show the
20 pictures. But I certainly know we can't get into that
21 testimony. So...

22 [Whereupon, Mr. Cooper and Mr. Summa confer]

23 THE COURT: I think -- I don't know how the booking
24 photos look in Charleston, but where I'm from the booking
25 photos are obvious -- that it's obvious that they're

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1 booking photos, and I just -- I don't want to go -- I
2 don't want to go down that road. So I understand where
3 you're coming from, Mr. Cooper. But any photos that
4 relate to the traffic stop, I'm going to keep those out.

5 MR. COOPER: I do plan to ask the witness about the
6 appearance that night just, again, as it relates to the
7 statements made about the witness saying they had a
8 shaved head. But I won't go into any pictures.

9 THE COURT: I think that's -- I think what the
10 officers observed that ---

11 MR. COOPER: --- yes, sir ---

12 THE COURT: --- that day of the traffic stop is
13 certainly relevant with regard to appearance. But,
14 again, you know, this needs to be referred to as a
15 traffic stop for speeding. And any of the other evidence
16 that was found that night is off limits.

17 MR. COOPER: Yes, sir. And then we do have I think
18 probably about five witnesses before we get to my last
19 two, one of which would be the phone extractions.

20 MS. SHEALY: And just quickly, Judge, since we're
21 talking about what are mug shots and whether they appear
22 to be mug shots. With Detective Khan, I was intending --
23 I'll hand them up.

24 [Whereupon, Ms. Shealy proffers documents to the
25 Court]

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1 MS. SHEALY: Just to show how they appeared on the
2 day in question. And to answer one of the defendant's
3 assertions that they identified them out of a lineup the
4 jury -- there's nothing in the record, nor would there
5 be, that that's how they appeared at the time in the
6 lineups.

7 So, the jury could get confused and question are the
8 lineups how they appeared close to the time of the crime
9 or not. There's nothing there. They've got plain
10 clothes on. It just shows them on the date of their
11 arrest. Obviously, they're arrested coming in.

12 THE COURT: This was the date of the arrest for
13 these ---

14 MS. SHEALY: --- of the incident in question ---

15 THE COURT: --- for these charges?

16 MS. SHEALY: Yes, sir.

17 THE COURT: Have the defense seen these?

18 MS. SHEALY: Yes, sir.

19 MR. SUMMA: Yes, Your Honor.

20 MS. SHEALY: I've redacted everything that would
21 make it appear like a mug shot.

22 THE COURT: I mean, if the foundation is laid that
23 these are the photos that were taken of the date of the
24 arrest, what do you have to say about that, Mr. Summa?

25 MR. SUMMA: If the Court is inclined to admit a mug

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1 shot, I think that the other one is less scary and we
2 would prefer the other one. And I think they can do
3 everything they need to do with that one.

4 MS. SHEALY: I mean, I -- it suits us to put those
5 in.

6 MR. VOIGT: I feel like I've just opened a door and
7 fallen down the trap while chasing a rabbit. I have no
8 idea what the probative value of placing my client's mug
9 shot at any time in these proceedings, whether it was
10 when he was arrested for this or not.

11 I have never taken issue with any of these witnesses
12 the -- I have not questioned the description of my
13 client. And so that is not at issue for my client, and I
14 don't see what probative value placing his mug shot would
15 have. It would only have prejudicial value in the way
16 that mug shots are per se prejudicial.

17 Again, it didn't have to be tried this way but
18 because it is being tried this way, I don't want to see
19 mug shots, and I would object strenuously to their being
20 admitted.

21 MS. SHEALY: Your Honor, I don't know that you've
22 had the opportunity to look at the two -- the two from
23 the stop a week later.

24 [Whereupon, Ms. Shealy proffers documents to the
25 Court]

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1 THE COURT: So tell me -- tell me again. They were
2 arrested eight days after this incident. I mean, why is
3 how they looked eight days after the incident relevant to
4 how they looked at the time?

5 MR. COOPER: We think that -- because Judge that is
6 the best evidence of how they looked at the time.
7 They're not -- the concern is not with victim
8 identification. We've got her testimony. But with
9 witnesses that saw them that day, or a witness that the
10 defense thinks contradicts those of the date of the
11 arrest, we think it's to show the description matches to
12 the extent what the witness said, and that is that they
13 had shaved heads on the sides.

14 And so the jury can see as close as possible to how
15 they looked at the time of the incident. They were
16 arrested. Mr. Crummey three weeks later, Mr. White four
17 weeks later. That is the best evidence that we've got to
18 show the jury and let them decide who they believe.

19 THE COURT: I don't -- I don't see how three weeks
20 can say that's how they looked at the time. I mean, if I
21 -- if I leave here tonight and decide, you know what, I'm
22 tired of this hair on my head, and shave it all off, I'm
23 going to look markedly different less than twenty-four
24 hours than I -- you know, I just don't see how you can
25 say that that, that these mug shots prove that they

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1 looked a certain way on the day of the incident, when
2 they were taken three ---

3 MR. COOPER: --- those are the ones that were six
4 days later, Judge.

5 THE COURT: I'm not going to get into a, to borrow
6 Mr. Voigt's phrase, down the rabbit hole of trying to
7 figure out how many days is too many days to show how you
8 look. I -- and the witness testified as to how they
9 appeared on the day. She's made the lineup photo.

10 None of these other witnesses -- none of the law
11 enforcement witnesses know how the individuals who broke
12 into this trailer looked the day it happened. So I just
13 don't think the dots are connected here.

14 I'm not going to allow the mug shots. You can't --
15 it's not competent evidence of how someone looked when
16 these photos were taken, at best, six days later. I just
17 don't think I can do that. So I'm not allowing -- any of
18 these mug shots that have been handed up to the Court, I
19 don't think that they're -- I don't think that they're
20 going to be relevant to show how they looked and how the
21 home invaders looked on the day this happened. The
22 witness has already testified to that.

23 MR. SUMMA: Judge, you know, after speaking with co-
24 counsel, surprise, we have no objection to the non-scary
25 mug shot for our client. And I think...

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1 MR. VOIGT: My position is mug shots are per se
2 prejudicial. I don't want per se prejudicial in this --
3 in this case, and I would object to every mug shot at
4 issue.

5 MR. COOPER: And the State -- I'm prepared to accept
6 the Court's ruling and just keep them out and I'll --
7 we'll go from there.

8 THE COURT: Okay. Let's -- anything else?

9 MR. COOPER: The only thing I -- before we -- before
10 we -- I'm sorry, Judge.

11 I've got about five witnesses before I get to the
12 phone-extraction person and I would just ask if it's not
13 lunchtime that if we could take a break so I can update
14 what we talked about with the redactions --

15 THE COURT: You just let me know when you need a
16 break and we'll handle that.

17 MR. COOPER: Thank you, Judge.

18 MS. SHEALY: Judge, there was one exhibit that I
19 intend to put in for in for Detective Khan. I've shown
20 it to both the defense counsel. It's marked right now
21 for I.D. purposes as State's Exhibit 94.

22 I don't know if there's an objection to this, but it
23 is -- it was what Detective Khan printed out when he went
24 on Runacheckup. It shows that Crummey is checking in in
25 Miami on whatever day it says right there. Mr. Voigt

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1 asked a line of questioning -- had a line of questioning
2 with Dulce Martinez when she was indicating that she had
3 gotten a live feed from Miami. So certainly I think it's
4 relevant for us to be able to establish that he's posting
5 from there a couple of days after the event.

6 MR. SUMMA: She's already testified to that, Your
7 Honor.

8 MS. SHEALY: She testified to a live video. And
9 then this is something that he -- it corroborates what
10 she said, that he then also checked in to Miami.

11 MR. SUMMA: They're just corroborating their own
12 witness. It's bolstering.

13 MS. SHEALY: It's not bolstering.

14 THE COURT: Well, I think the issue is -- I don't
15 think that we've -- at least at this point we've
16 established that Runachekup Youngn has pictures that
17 look like Daquan Crummey.

18 I think there's got to be a foundation that this --
19 that this Facebook page belongs to him. I mean, I assume
20 that y'all can get there, but I -- I'm going to -- I'm
21 going to reserve my ruling on this until Detective Khan
22 testifies.

23 MS. SHEALY: Okay. Thank you.

24 THE COURT: My thought process on that is we can't
25 say -- I don't -- I haven't heard any testimony that says

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1 this Facebook is Daquan Crummey's yet. We may hear that
2 later, but I -- you know, the pictures are one thing. So
3 I think there's got to be some foundation laid before you
4 can make that step between Runacheckup Youngn belongs to
5 Daquan Crummey.

6 MR. SUMMA: And our main argument is 401 on that.

7 MS. SHEALY: I'm sorry. What?

8 MR. SUMMA: Our main argument is 401 on that, the
9 probative value of it.

10 MS. SHEALY: Your Honor, also ---

11 MR. SUMMA: --- excuse me ---

12 MS. SHEALY: --- I'm sorry.

13 MR. SUMMA: I just wanted to -- our objection to
14 that will be relevancy.

15 MS. SHEALY: Judge, in addressing what you just
16 pointed out -- and the defense is aware of this from
17 Detective Khan's notes -- when he goes on Runacheckup
18 Youngn and sees the photographs that are being posted, he
19 knows that person as Daquan Crummey from an earlier
20 investigation, which I do not intend for him to mention
21 at all.

22 But what he can say is I recognize that person as
23 Daquan Crummey. That's what then leads him to run a
24 check on Daquan Crummey and he saw that he was involved
25 in a speeding traffic stop. So it's part of the

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1 investigation which leads to putting him in the lineup.

2 MR. SUMMA: Thank you for letting me know about that
3 beforehand. Your Honor, I think the fact that the
4 detective knows him makes him seem like a criminal that
5 goes along the same lines. I think its character
6 evidence.

7 I think the jury is immediately going to assume, oh,
8 you know, this is -- this is the guy that Detective Khan
9 has known for a long time. And I think it goes to --
10 it's bad-character evidence. I don't think it's -- it's
11 about whether or not the witnesses I.D. not the
12 detective.

13 MS. SHEALY: But, Your Honor, incumbent upon the
14 I.D. is why this guys shows up in the lineup. We have to
15 be able to establish that. He is not going to say one
16 thing about how he knows Daquan Crummey.

17 THE COURT: Hold on. Hold on one second. The
18 witness -- the witness told Detective Khan in her text, I
19 know -- that's how he was on the Facebook page to begin
20 with.

21 MS. SHEALY: That's correct.

22 THE COURT: I mean, that ---

23 MS. SHEALY: --- but he's the one who knows that
24 that person is Daquan Crummey. She doesn't know that
25 he's Daquan Crummey.

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1 THE COURT: Well, I think he can say -- I think he
2 can say, I looked at this Facebook page and I recognized
3 Daquan Crummey. He can't say I recognize Daquan Crummey
4 because he's been arrested before, or through prior -- my
5 prior law enforcement experience. But, I mean, I think,
6 I think he can say that, I recognized Daquan Crummey
7 after looking at this Facebook page.

8 But the fact that -- the fact that he knew to look
9 at this Facebook came from the victim. So it's not like
10 he put the puzzle together or -- the puzzle was mostly
11 put together when he got this information from the
12 victim. So I think that he can say -- if he -- if he
13 knows him, he just can't say how or why he knows him.

14 MR. SUMMA: Can we say that he determined it to be
15 Daquan Crummey? Again, you know, I determined it to be
16 Daquan Crummey? I think that's what he said in his
17 report.

18 MS. SHEALY: No. He said he recognized him from a
19 previous motor vehicle investigation, the theft of a
20 motor vehicle, investigation. Which I have instructed
21 him, and I can instruct him again, only say that you
22 recognized him as Daquan Crummey. That's all that I was
23 going to ask him.

24 THE COURT: I think he can say I recognize the
25 person in the photo as Daquan Crummey. I think that's --

1 that is certainly allowable. But anything beyond that is
2 getting close to improper character evidence or -- that's
3 essentially prior bad act evidence, and that's certainly
4 -- that certainly would cause a huge problem in this case
5 if any of that testimony comes out on the stand.

6 MS. SHEALY: That's all I have.

7 THE COURT: Are we ready for the jury?

8 MR. VOIGT: Yes, Your Honor.

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1 THE COURT: Bring us the jury, please.

2 [Whereupon, the jury enters the courtroom at 10:08
3 a.m.]

4 THE BAILIFF: The jury is complete.

5 THE COURT: Thank you, sir. Ladies and gentlemen of
6 the jury, thank you for your prompt return to the
7 courthouse here this morning. We are now in a position
8 to continue with the State's case.

9 MR. COOPER: Thank you, Judge. May it please the
10 Court?

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State v Daquan J. Crummey & Denali D. White
James Greenawalt-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State calls Detective James
2 Greenawalt.
3 [Whereupon, Mr. Greenawalt comes forward]
4 THE CLERK OF COURT: Please place your left hand on
5 the Bible and raise your right.
6 [Whereupon, Mr. Greenawalt is duly sworn by the
7 Clerk of Court]
8 THE CLERK OF COURT: You may be seated.
9 [Whereupon, the witness takes the witness stand]
10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling both your first and your
12 last.
13 THE WITNESS: Detective James Greenawalt. First
14 name is spelled J-A-M-E-S. Last name G-R-E-E-N-A-W-A-L-
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16 - - - - -
17 JAMES GREENAWALT,
18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:
20 DIRECT EXAMINATION
21 BY MR. COOPER:
22 Q. Good morning, detective.
23 A. Good morning.
24 Q. Will you tell the jury where you're currently
25 employed?

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James Greenawalt-Direct Examination by Mr. Cooper
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1 A. I am currently employed with the Summerville Police
2 Department.

3 Q. Back in July of 2017, where were you employed?

4 A. I was with the North Charleston Police Department.

5 Q. And focusing your attention to July 29th of 2017,
6 did you have the occasion to be involved in a traffic
7 stop on a white Ford Flex?

8 A. Correct.

9 Q. Do you remember what time that traffic stop was?

10 A. I'd have to look in my report for the specific time.

11 Q. Would you like a copy of it?

12 A. Please.

13 [Whereupon, the witness is shown document]

14 [Whereupon, the witness reviews documents]

15 A. The time of the traffic stop was at 22:09 hours,
16 which is ten -- just a little past 10:00 p.m.

17 Q. [Mr. Cooper] Okay. And then did you happen to come
18 to identify two individuals that were in the back seat of
19 that vehicle?

20 A. I did.

21 MR. COOPER: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Cooper and Ms. Shealy confer]

24 Q. [Mr. Cooper] I'm sorry. Would you please tell the
25 jury the identity of the two individuals in the back

1 seat?

2 A. The gentlemen that were in the back seat on the
3 driver's side passenger was Denali White, and the rear
4 passenger was Daquan Crummey.

5 Q. And then what was the reason for the traffic stop on
6 that vehicle?

7 A. The reason for a traffic stop was they were going
8 forty-seven in a forty-mile-an-hour zone.

9 Q. And then if you could remember, would you describe
10 how the hair appeared on the two individuals in the back
11 seat?

12 A. They had the shaved heads on the side and a close-
13 cut top --

14 THE COURT REPORTER: And a what?

15 THE WITNESS: Close-cut top.

16 Q. [Mr. Cooper] And how was the other individual's
17 hair described?

18 A. The other individual was described with -- I believe
19 he had more of an Afro style with the shaved heads on the
20 side.

21 MR. COOPER: Beg the Court's indulgence just one
22 second.

23 [Whereupon, Mr. Cooper and Ms. Shealy confer]

24 [Whereupon, Solicitors confer with defense counsel]

25 MS. SHEALY: Your Honor, may we approach just for a

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James Greenawalt-Direct Examination by Mr. Cooper
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1 second?

2 THE COURT: Yes, ma'am.

3 [Whereupon, an on-the-record bench conference is
4 held as follows:]

5 MS. SHEALY: What we would typically want to do is
6 show him the photograph from that evening to see if it
7 refreshes his memory as to how the second person's hair
8 looked, because he's described it as an Afro. I know
9 that he ---

10 MR. SUMMA: --- let me speak for myself.

11 MS. SHEALY: Okay.

12 MR. SUMMA: We actually want that photograph because
13 obviously our witness is going to say that he had shaved
14 heads, and so we want the jury to see they didn't look
15 like that at the time.

16 MR. VOIGT: My head is about to explode because I
17 don't think ---

18 THE COURT REPORTER: I can't ---

19 MR. VOIGT: --- any of this is relevant. I don't
20 think any of this is relevant. I think it's all -- I
21 mean, I think we're just going down the slippery slope.
22 And, I mean, the fact that he's even here, the fact that
23 we're spending five minutes having this conference is
24 driving me insane.

25 MR. COOPER: I think the way is just -- I'd like to

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James Greenawalt-Direct Examination by Mr. Cooper
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1 get that testimony in and be done with that. That way it
2 gets the description in and ---

3 THE COURT: --- let him -- let him look at the
4 photos and don't show them to the jury.

5 MR. SUMMA: Then can I admit it?

6 MR. COOPER: I think that's problematic. Then that
7 would let them know that they were --

8 MR. VOIGT: I going to object. This is why we don't
9 do it this way. We don't do it this way because there
10 are so many things that could go wrong.

11 THE COURT: Show him the photos. Don't show them to
12 the jury.

13 MR. COOPER: Yes, sir.

14 MR. VOIGT: I would object -- I would object to
15 showing that photo of my client. The inference is the
16 same whether they get to see it or not. The fact that a
17 photo exists -- if any one of them puts that connective
18 tissue together ---

19 MR. COOPER: They think it's a body cam we're ---

20 MR. VOIGT: --- oh, come on ---

21 MS. SHEALY: --- Judge, we could handle -- we could
22 handle it this way. We could handle it -- just say I'm
23 going to show you something to see if it refreshes your
24 memory and not even call it a photo.

25 MR. VOIGT: Why isn't this description good enough?

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James Greenawalt-Direct Examination by Mr. Cooper
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1 You prepped him. You asked him the question. If you
2 don't like the answer, quit trying to ---

3 MS. SHEALY: --- Judge, he needs to stop
4 pontificating up at the bench for the jury to see.

5 MR. VOIGT: This is the only place I can
6 pontificate.

7 THE COURT: Listen. Does he have any other
8 description that's written in a report anywhere?

9 MR. COOPER: He had his -- he had his body camera
10 but we're obviously not going with that. I can just say
11 -- I can just say -- if this refreshes your recollection
12 and not call it a photo. I can hand it to him. He did
13 have a body camera on that night.

14 MR. VOIGT: He didn't prepare it? It's not part of
15 his report. It's not something that would normally
16 refresh his recollection. They just didn't like the
17 answer they got the first time.

18 MR. COOPER: Mr. Summa can ask a leading on direct
19 -- on cross and get it in that way without even showing
20 him anything.

21 MR. SUMMA: I can do that. I'm going to ask him to
22 gesture.

23 THE COURT: Alright. Don't show him anything else.
24 Just you're stuck with the answer.

25 MS. SHEALY: Thank you, Your Honor.

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James Greenawalt-Direct Examination by Mr. Cooper
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1 MR. VOIGT: Thank you very much.

2 [Whereupon, on-the-record bench conference

3 concludes]

4 Q. [Mr. Cooper] Detective, thank you. I have no
5 further question for you. If you'll answer any the
6 defense may have for you.

7 THE COURT: Mr. Summa, cross-examination.

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State v Daquan J. Crummey & Denali D. White
James Greenawalt-Cross-Examination by Mr. Summa
March 12, 2020

1 CROSS-EXAMINATION

2 BY MR. SUMMA:

3 Q. Detective Greenawalt, how close would you say that

4 you got to Mr. Daquan Crummey?

5 A. Mr. Crummey? He was in the passenger side on the

6 rear side. So, I mean, I was at the driver's side window

7 on the traffic stop.

8 Q. Okay. So if I could demonstrate. About maybe this

9 close?

10 A. Maybe a little closer.

11 Q. Maybe a little closer. And you said he had an Afro-

12 style haircut; right?

13 A. Afro-style haircut with the little twist-braids on

14 top.

15 Q. Okay. How far above his head do you think that the

16 -- how high was his hair off his head? Can you

17 demonstrate for the jury?

18 A. Sir, you're asking me to remember something without

19 looking at a picture.

20 Q. Sure. If I show you a picture, would it refresh

21 your recollection?

22 A. Sure.

23 MR. VOIGT: Please note my objection for the record.

24 THE COURT: So noted.

25 [Whereupon, the witness is shown photograph]

1 A. Sure.

2 Q. [Mr. Summa] Could you demonstrate for the jury how
3 high off his head it was?

4 A. Approximately two inches.

5 Q. Do you mind demonstrating?

6 A. Two inches [indicates]. Not exactly sure what
7 you're asking me.

8 Q. It could be more than that; right?

9 A. Sure.

10 MR. SUMMA: Okay. Thank you.

11 THE COURT: Mr. Voigt?

12 MR. VOIGT: Thank you.

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State v Daquan J. Crummey & Denali D. White
James Greenawalt-Cross-Examination by Mr. Voigt
March 12, 2020

1	CROSS-EXAMINATION
2	BY MR. VOIGT:
3	Q. Detective, where was Denali White in the car?
4	A. He was the driver's side rear passenger.
5	Q. Okay. He wasn't driving?
6	A. He was not.
7	Q. He wasn't speeding?
8	A. He was in the vehicle speeding.
9	Q. But he had no -- I mean, he couldn't press the
10	pedal; right?
11	A. No.
12	Q. He couldn't turn the steering wheel?
13	A. No.
14	Q. He couldn't put a key in the ignition?
15	A. No.
16	Q. He wasn't driving?
17	A. Correct.
18	Q. So -- okay. He was in -- he was in the back seat?
19	A. He was part of the traffic stop. Yes.
20	MR. VOIGT: That's all I've got, Judge.
21	THE COURT: Any redirect?
22	MR. COOPER: No redirect, Judge. We'd ask that he
23	be excused.
24	THE COURT: Thank you. You may ---
25	THE WITNESS: --- thank you, Your Honor ---

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1 THE COURT: --- be excused.
2 [Whereupon, the witness is excused and exits the
3 witness stand]
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State v Daquan J. Crummey & Denali D. White
Chris Sanders-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State would call Officer Chris
2 Sanders.

3 [Whereupon, Mr. Sanders comes forward]

4 THE CLERK OF COURT: Please place your left hand on
5 the Bible, and raise your right.

6 [Whereupon, Mr. Sanders is duly sworn by the Clerk
7 of Court]

8 THE CLERK OF COURT: You may be seated.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling both your first and your
12 last.

13 THE WITNESS: Christopher Aaron Sanders. C-H-R-I-S-
14 T-O-P-H-E-R S-A-N-D-E-R-S.

15 - - - - -

16 CHRISTOPHER SANDERS,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. COOPER:

21 Q. Officer Sanders, will you tell the jury where you're
22 currently employed?

23 A. Isle of Palms Police Department.

24 Q. And how long have you been there?

25 A. Since March of last year.

1 Q. Were you previously in law enforcement?
2 A. Yes, sir.
3 Q. Where at?
4 A. Charleston County Sheriff's Office.
5 Q. What was your role when you left?
6 A. I was an investigator in the forensics unit.
7 Q. Were you also in that position in July of 2017?
8 A. Yes, sir.
9 Q. Describe for the jury what an investigator in the
10 forensics unit, what that role is.
11 A. So our primary duty is to basically serve, you know,
12 in collaboration with the detectives. So we basically
13 supplement anything they need, as far as gathering
14 evidence, sending evidence off to be tested. Basically,
15 just documenting the over-all scene.
16 Q. Is that sometimes called crime scene units and
17 things like that ---
18 A. --- yes, sir ---
19 Q. --- is that similar to your role?
20 A. Same thing. Yes, sir.
21 Q. Okay. And focusing your attention to July 23rd,
22 2017, did you have the occasion to respond to a crime
23 scene on Tedder Street?
24 A. I did.
25 Q. What was the nature of that call?

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March 12, 2020

1 A. It was a home invasion, an armed robbery.

2 Q. And how do you usually get brought in into an
3 investigation on a crime scene?

4 A. So normally the criminal investigations detective
5 Sergeant will actually notify the forensics unit and they
6 will call us out.

7 Q. Do you remember when you responded to the scene?

8 A. Yes, sir. In my report it's -- I responded -- I was
9 notified at 13:41 and I arrived at 14:26 hours.

10 Q. Okay. And if you'll just describe for the jury,
11 generally when you arrive on a crime scene, what do you
12 usually do when you arrive?

13 A. The first thing, like anything, you know, like being
14 a deputy on the road, we're just gathering information,
15 talking to, you know, the detectives, the responding
16 deputies, anybody else on scene like, you know, sometimes
17 we'll maybe talk to the victims.

18 Just kind of get an over-all so I can have a better
19 understanding of where I need to focus my attention on.

20 Q. And then in this case, generally, what information
21 did you gather about what happened before you arrived?

22 A. So in my report, if I may ---

23 Q. --- without saying what anybody told you, just
24 generally describe it.

25 Q. So basically what was told to me is that there was a

1 home invasion in -- you know, at Tedder Street. They
2 stated that two black males had actually entered the
3 residence and held them at gun point and demanded money.

4 Q. And so once you have that information, what is your
5 next step on the scene?

6 A. After I gather the information, the first thing I
7 typically do is do a walk-through. So the first thing
8 I'll do is I'll walk around on the outside of the
9 residence kind of just to see, you know, if there was
10 any, you know, evidence, you know, clothing, things of
11 that nature, that might have been dropped and then go and
12 work my way inside.

13 And I'll do a quick walk around inside, just kind of
14 getting an over-all, you know, feel to see, you know,
15 where I need to focus; things that would be out of place.

16 Q. When you're doing that, are you photographing inside
17 and outside of as you're ---

18 A. --- so the initial walkthrough is just kind of help
19 me to, you know -- at least I can, you know, be more
20 focused.

21 And then I usually typically will photograph and do
22 over-alls on the outside and then work my way inside and
23 do over-alls of the inside.

24 Q. And once you finish your over-all pictures of the
25 scene, what do you do next?

State v Daquan J. Crummey & Denali D. White
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1 A. Basically, I will -- depending on where like likely
2 the crime had occurred, if there was anything that was
3 disturbed during that time, then I will focus on those
4 main areas.

5 If there was -- obviously, if there was any evidence
6 that was actually left on the scene, then that would be
7 something else that I would focus on, too.

8 Q. What are you looking for as part of your
9 investigation?

10 A. Basically just anything that might identify a
11 subject to the crime that happened.

12 Q. What kind of -- give me examples of things. Like
13 fingerprints ---

14 A. --- so it would be fingerprints, DNA, clothing,
15 hair. I mean, you name it. You know, any time a person
16 enters and leaves a scene, there's always some sort of --
17 you know, can be some sort of evidence left on the scene.

18 Q. And so when you talk about, for example, to take DNA
19 or touch DNA, what kind of things are you looking for in
20 that regard?

21 A. Fingerprints, mostly. Like when there's -- when
22 there's -- you know, people tend when they're like -- you
23 know if they're going through, you know, cabinets looking
24 for something, or anything like that, then people will
25 touch surfaces and it will leave sometimes a fingerprint.

1 Q. Now, describe for the jury is every surface we touch
2 going to leave a fingerprint?

3 A. No, sir.

4 Q. What surfaces are ones you would not expect to find
5 a fingerprint?

6 A. With porous surfaces. So surfaces that actually
7 have like texture, rocks, you know, like vinyl siding,
8 you know, that -- nowadays we have, you know, stainless-
9 steel appliances that, you know, have -- you know,
10 they're -- that are touch-proof, you know, and they don't
11 leave any fingerprints or anything like that behind.
12 Some wood surfaces. But mostly like glass, metal; things
13 of that nature.

14 Q. What kind of substances are you looking for that
15 generally you would expect to find fingerprints?

16 A. Well, typically, I mean, if there's -- like if
17 somebody has touched like glass or anything like that,
18 that has basically some sort of smooth surface.

19 Nothing that has like porous, like something that
20 would actually absorb the oils that are in the fingers.

21 Q. I'll show you -- I'm showing you what's been marked
22 for I.D. purposes only as State's 97.

23 [Whereupon, the witness is shown photograph]

24 Q. Do you recognize that picture?

25 A. Yes, sir.

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1 Q. What is that?

2 A. That's the front door.

3 Q. Of the trailer you responded to?

4 A. Yes, sir.

5 Q. And how do you know that?

6 A. So it's the only one that had -- well, there was two
7 sets of stairs. There was one on the back side and then
8 one on the front side. But you could tell where the main
9 entrance was because that's where all the vehicles were
10 parked in front next to.

11 In the back, that was where like all the air-
12 conditioner units and electricity and stuff, so -- and
13 both of those doors were locked.

14 Q. Did you take the picture?

15 A. I did.

16 MR. COOPER: Your Honor, at this time, the State
17 would offer Exhibit 97 into evidence, I believe without
18 objection.

19 MR. SUMMA: No objection.

20 MR. VOIGT: No objection, Your Honor.

21 THE COURT: Admitted without objection. And that's
22 97?

23 MR. COOPER: Yes, sir.

24 [Whereupon, State's Exhibit Number 97 is admitted
25 into evidence by the Court]

1 [Whereupon, the photograph is published]

2 Q. [Mr. Cooper] That's a picture of the front door we
3 were talking about?

4 A. Yes, sir.

5 Q. And so describe for the jury these surfaces you see,
6 would you expect to find fingerprints on those?

7 A. No, sir, especially with the metals that we have.

8 Those were real porous surfaces. Vinyl siding was, you
9 know, metal with a porous surface.

10 The wood, you know, is one of those porous surfaces,
11 too. Anything that has some sort of ridge detail, it's
12 going to be very tough.

13 Q. Okay. And then did you -- did you attempt to try to
14 lift fingerprints from anything in this picture?

15 A. I did. The door, inside and out, and the doorknob.

16 Q. Because even though sometimes you don't expect it,
17 are you still hoping to find something?

18 A. Still attempt to do it. Yes.

19 Q. Once you went inside the house, what else did you
20 test?

21 A. So what I had noticed is as soon as you go into the
22 home, it goes into the living room. But off to the right
23 is the kitchen.

24 And I noticed that there were some cabinet drawers
25 that were open and there was a whole bunch of trash. It

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1 was like bags and things like that ---

2 Q. --- let me slow down real quick. I'm going to show
3 you a couple of pictures ---

4 A. --- okay ---

5 Q. --- while you're talking. I'm showing you State's
6 19.

7 [Whereupon, the photograph is published]

8 Q. Is that the kitchen?

9 A. Yes, sir.

10 THE COURT REPORTER: What was -- I'm sorry. What
11 number?

12 MR. COOPER: State's 19. I'm sorry.

13 Q. [Mr. Cooper] And I'm sorry. You were telling about
14 what you tested in the kitchen?

15 A. Yes, sir. You know, obviously, that wasn't
16 something -- that was something out of the ordinary
17 because, you know, the home overall was pretty well-kept.

18 So, you know if something had looked disturbed, I
19 attempted to obtain fingerprints from both the -- around
20 the surfaces, maybe where they had -- possibly had been
21 touched.

22 Q. And showing you State's 21.

23 [Whereupon, the photograph is published]

24 Q. That's the area you mentioned you noticed the trash
25 everywhere?

1 A. Yes, sir.

2 Q. And, again, that looked out of place in that home?

3 A. Yes, sir.

4 Q. Did you test the cabinets over there in that

5 picture, as well?

6 A. I did, sir.

7 Q. Did you also go throughout the house in the back

8 part of the house?

9 A. I did.

10 Q. Showing you State's 25.

11 [Whereupon, the photograph is published]

12 Q. Is that the hallway that leads into the back of the

13 house?

14 A. Yes, sir.

15 Q. Showing you State's 28.

16 [Whereupon, the photograph is published]

17 Q. And what is this picture?

18 A. A bedroom.

19 Q. And then showing you State's 29.

20 [Whereupon, the photograph is published]

21 Q. Is that part of the same bedroom?

22 A. Yes, sir.

23 Q. And, again, are you -- what are you looking for as

24 you're going throughout the house?

25 A. Same thing. Just anything that might be out of the

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1 ordinary, something that just wouldn't normally --

2 Q. I'm showing you State's 31.

3 [Whereupon, the photograph is published]

4 Q. In this picture, is there something that you tested,
5 as well?

6 A. I did. The -- these little what I call dresser
7 drawers, the plastic ones, they, you know, looked out of
8 place and, you know, they were all open.

9 Normally, you know, if I've ever been to a scene and
10 something hasn't been disturbed, they're normally closed.
11 So just kind of struck -- struck out to me.

12 MR. COOPER: Judge, in an abundance of caution, in
13 case we miss some, we'd would move at this time State's
14 25 through 31 into evidence, pictures of the trailer. No
15 objection, I believe.

16 THE COURT: 30 and 31 were already in, so 25, 26,
17 27, 28 and 29. Without objection?

18 MR. VOIGT: No objection.

19 MR. SUMMA: [No response]

20 [Whereupon, State's Exhibit Numbers 25, 26, 27, 28
21 and 29 are admitted into evidence by the Court]

22 Q. [Mr. Cooper] And then going back to State's 27.

23 [Whereupon, the photograph is published]

24 Q. Is that another bedroom that you ---

25 A. --- yes, sir ---

1 Q. --- went through ---

2 A. Yes, sir.

3 Q. And, again, what was your impression of the majority
4 of the home as far as how it was kept?

5 A. It was -- it was well-kept as far as, you know, a
6 home goes. Like I said, the kitchen is what stood out
7 the most because, you know, there was -- looked like
8 trash and stuff all over, and a couple of the cabinets
9 that looked like they had been gone through.

10 Q. Also showing you State's 12.

11 [Whereupon, the photograph is published]

12 Q. Did you also test anything in this picture?

13 A. I did. The chair, which I when I initially got
14 there learned that it was actually thrown out by one of
15 the subjects. So I did attempt to get latent prints off
16 that.

17 Q. And was that a wooden chair?

18 A. It was.

19 Q. Is that something that you would expect to find
20 fingerprints on?

21 A. No. Because it's another porous surface, but it's
22 one of those where I'm still attempting to try and
23 identify anything that, you know, might lead to some sort
24 of...

25 Q. And so describe for the jury because a lot of what

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1 people see on TV is that fingerprints and all these
2 things are everywhere. Is that always the case?

3 A. No, sir.

4 Q. Do you have to find a certain amount of a
5 fingerprint before you can use it?

6 A. Yes, sir. There has to be enough, and what I'll say
7 is ridge detail -- because we all have ridges on the
8 fingers that, you know, uniquely identify each one of us
9 before SLED or any other agency that has the machine
10 capability to do it, before they'll even accept it.

11 Q. Does the number of people at a scene or involved in
12 a situation also make a difference in what you can find?

13 A. Yes, sir.

14 Q. How so?

15 A. So the more -- the more people, it creates more
16 contamination in a crime scene. So that will basically
17 inhibit me from, you know, collecting DNA or fingerprints
18 of that nature, because of, you know, the contamination
19 and, you know, the amount of hands that have probably
20 touched certain areas.

21 MR. COOPER: Beg the Court's indulgence just one
22 second.

23 THE COURT: Yes, sir.

24 [Whereupon, Mr. Cooper and Ms. Shealy confer]

25 Q. [Mr. Cooper] Officer Sanders, I have no further

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1 questions for you. Please answer any that the defense
2 may have for you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Cross-examination.

5 MR. SUMMA: May it please the Court?
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State v Daquan J. Crummey & Denali D. White
Chris Sanders-Cross-Examination by Mr. Summa
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1	CROSS-EXAMINATION
2	BY MR. SUMMA:
3	Q. Investigator Sanders were you in charge of deciding
4	what got fingerprinted and what didn't?
5	A. So basically it's just a culmination. Like I kind
6	of get with the detectives whose case it is. I had an
7	investigating -- a senior investigator with me, so I kind
8	of gathered what would be the best method of trying to
9	obtain some sort of evidence.
10	Q. And you want to find as much evidence as possible.
11	You want to fingerprint everything; right?
12	A. I would -- I would love to, yes.
13	Q. Okay. And you document everything that you
14	fingerprint; right?
15	A. Yes, sir.
16	Q. Okay. Would you agree with me that you tried to
17	collect prints from the front door?
18	A. Yes, sir.
19	Q. The chair?
20	A. Yes, sir.
21	Q. The storage cabinet in the kitchen?
22	A. Yes, sir.
23	Q. The plastic storage bin?
24	A. Yes, sir.
25	Q. The stove?

1 A. Yes.

2 Q. And the broken ceramic bowl?

3 A. Yes, sir.

4 Q. Is that a complete list of everything you

5 fingerprinted?

6 A. Yes, sir.

7 Q. We've heard testimony in this case that the robbers

8 came in, took peoples cell phones. Are you aware of

9 that?

10 A. May have, but I -- like I said, it was not a hundred

11 percent sure.

12 Q. Is a cell phone a good place to get fingerprints

13 from?

14 A. Could be, yes sir.

15 Q. Is it -- is it porous?

16 A. No, sir. It's like one of those plastic-glass

17 surfaces, so, yeah, it ---

18 Q. It's actually one of the best things to get

19 fingerprints ---

20 A. --- yes, sir ---

21 Q. --- from; right? Of all things?

22 A. Yeah. Absolutely.

23 Q. Did you fingerprint the phones?

24 A. No, sir.

25 MR. SUMMA: Thank you. No further questions.

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1	THE COURT: Mr. Voigt?
2	MR. VOIGT: Thank you, Your Honor.
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1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. I just have a few questions for you.

4 A. All right, sir.

5 Q. You testified that you took -- that when you take

6 fingerprints or when you're -- when you're testing for

7 fingerprints ---

8 A. --- yes sir ---

9 Q. --- you take what are known as lifts; right?

10 A. Yes, sir.

11 Q. And tell the jury what a lift would be.

12 A. Basically, we use -- there's different colors of

13 powder that we use. Black is the typical color that we

14 use on surfaces. Especially on lighter surfaces, it will

15 show up.

16 But if there is any type of fingerprint, then, you

17 know, we will use just regular tape and then we'll

18 imprint it onto a card, a special card that's used, to

19 try and get fingerprints.

20 Q. And how do you spread this...

21 A. It's through ---

22 Q. --- powder on ---

23 A. --- like a brush. It's just a real fine brush.

24 Q. Okay.

25 A. Yes, sir.

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1 Q. And do you then take photographs of the lifts in
2 situ where they are?

3 A. If I do find like, one that is really, you know,
4 good, that I'm probably going to get a match on, then,
5 yes, I will. A lot of times we will photo it to scale
6 to show exactly where it is in relation to where it was
7 touched. So, yes, sir.

8 Q. Okay. And this can be a fairly labor intensive
9 process?

10 A. Absolutely.

11 Q. Because you're essentially creating a mess with this
12 stuff?

13 A. Yes, sir.

14 Q. And where you find what you described as ridge
15 detail.

16 A. Yes, sir.

17 Q. What exactly is ridge detail?

18 A. Ridge detail? So the ridges in your fingertips that
19 basically identify all of us as humans. You know,
20 fingertips is basically your identification.

21 Q. And fingerprint identification is something that law
22 enforcement has used now for over a hundred years?

23 A. A long time. Yes, sir.

24 Q. And then did you take any -- did you take any
25 photographs after you had dusted or tested?

1 A. No, sir. Actually, a couple, yes, sir. Yeah.

2 Yeah.

3 Q. But you didn't take any lifts of those?

4 A. No, sir.

5 Q. And you had heard -- because you're not there,
6 obviously, and you have to gather information from other
7 people.

8 A. Correct.

9 Q. You knew that there were a number of people in the
10 house?

11 A. Yes, sir.

12 Q. Okay. You didn't find any fingerprints of any of
13 the people in the house?

14 A. No, sir.

15 Q. And was this house completely devoid of any surfaces
16 that would have given rise to a fingerprint?

17 A. There would have been surfaces that would have. But
18 like I said, I was focusing on ---

19 Q. --- and you didn't hear anything in the course of
20 gathering information so that you could make your work
21 more fruitful, frankly, because you don't want to waste
22 two hours out there not finding anything?

23 A. I ---

24 Q. --- but you didn't get any information, for example,
25 that they came in in full hazmat suits so that there

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Chris Sanders-Cross-Examination by Mr. Voigt
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1 wouldn't be any sort of evidence; right?

2 A. No, sir.

3 Q. Okay. And you didn't find any fingerprints of any
4 of the individuals who were supposed to be there?

5 A. No, sir.

6 Q. And you testified that some of these surfaces are
7 not good surfaces for lifting fingerprints?

8 A. Yes, sir.

9 Q. And you testified that wood and porous surfaces;
10 correct?

11 A. Correct.

12 Q. But isn't it true that much like the woodwork in
13 this courtroom, often wood is treated and has either
14 lacquer or varnish or something else?

15 A. Yes, sir.

16 Q. And isn't it true that those chairs that you -- that
17 we saw in the photograph, specifically like State's 12,
18 they actually had been coated with something? They
19 weren't raw wood, were they?

20 A. Well, the chair, actually the coating was pretty
21 much worn down.

22 Q. Okay. Didn't find any fingerprints.

23 A. [No response]

24 Q. Did you make any swabs for DNA?

25 A. No, sir.

1 Q. Okay. Was that a decision made by you or the
2 detectives?

3 A. It was just a general decision made. Like I said,
4 when I went to the senior investigator at the time and
5 the course of action, the best course of action would
6 have been ---

7 Q. --- do you recall who the senior investigator at the
8 time was?

9 A. It's now Sergeant Kjellman.

10 THE COURT REPORTER: Sergeant?

11 THE WITNESS: Kjellman.

12 Q. [Mr. Voigt] With a K. So this wasn't -- your
13 decision wasn't influenced by the investigating
14 detectives? They're in a separate unit; right?

15 A. They -- a lot of times they will rely on our
16 expertise, what we've know from scenes to work, you know,
17 and other scenes.

18 Q. Okay. And between you and Sergeant Kjellman, it was
19 determined that there was no area where a -- and how is
20 DNA extracted? How would you find DNA?

21 A. And that's one of those things that would be --
22 obviously, perfect DNA would be, you know, bodily fluids:
23 blood, sweat, you know, semen, you know, urine, things of
24 that nature.

25 Q. Do you recall what time of year this was?

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1 A. It was July.

2 Q. Okay. Was it a typical North Charleston July day?

3 A. Yes, sir.

4 Q. As best you remember?

5 A. Yes, sir.

6 Q. So sweat was certainly a possibility; right?

7 A. Possible, yeah.

8 Q. Okay. But you didn't feel like swabbing for DNA
9 would have been productive?

10 A. I felt that trying to obtain fingerprints would have
11 been the best course of action.

12 Q. Okay. Going back to fingerprints does the
13 Charleston Sheriff's Department have access to a forensic
14 light unit?

15 A. Yes, sir.

16 Q. And that's a -- so the jury knows, that's a separate
17 way of locating fingerprints, isn't it?

18 A. Yes, sir.

19 Q. And how does that work?

20 A. You have to -- basically, you would use a particular
21 powder, something that would actually be illuminate --
22 you know, illuminate.

23 But you would -- it would have to be relatively dark
24 inside to try and lift it because of all the different
25 light from the windows, being daylight, you know, things

1 of that nature ---

2 Q. --- do you have a mobile forensic light unit? I'm
3 sorry to talk over you.

4 A. Like a -- like one with like a case, yeah.

5 Q. Okay. Are there times in your investigations where
6 units are brought to the forensic light unit so that you
7 can utilize a dark space?

8 A. If we have -- we usually have one available and
9 we'll usually take one with us, yeah.

10 Q. And the purpose of the forensic light unit is to
11 find fingerprints that dusting won't find; correct?

12 A. Right.

13 Q. So it's a more refined method of finding a
14 fingerprint on the surface ---

15 A. --- yes, sir ---

16 Q. --- that's more difficult?

17 A. Yes, sir.

18 Q. And you -- the choice was not to utilize it?

19 A. Correct.

20 MR. VOIGT: That's all I've got, Judge. Thank you.

21 THE COURT: Any redirect?

22 MR. COOPER: Just a few, Judge.

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REDIRECT EXAMINATION

BY MR. COOPER:

Q. And so, Officer Sanders, just to go off a few questions they asked why is it so important for you to gather that information before you go in and process a scene?

A. Basically, so that I can you know, I can know exactly what transpired.

You know, if say an assault, you know, happened, or maybe there was a struggle, you know, and maybe a victim had fought back and maybe had DNA, you know, underneath their, you know, fingernails from, you know, scratching or punching or whatever, then I would want to try and use the best course of action to obtain any type of, you know, evidence that might, you know, identify any -- you know anybody.

Q. So would it be -- would it be worthwhile to fingerprint or swab something that the supposed suspects never touched?

A. No.

Q. If the testimony were that the suspects had grabbed and taken away the victims' phones, would you have wanted to test those?

A. Absolutely.

Q. If the testimony was that they made the victims put

1 their phones on the table, would that hold any
2 evidentiary value if the victims had to put them on the
3 table?

4 A. So if -- the victims, or the suspects?

5 Q. The victims were ordered to put their phones on the
6 table.

7 A. No ---

8 Q. --- and the defendants never touched them?

9 A. No, because they're the victims' phones. I mean, we
10 all -- you know, they're their phones. We know that
11 they've touched them so -- and they belong to them, so
12 we're going to assume, you know, that their prints are
13 going to be on it.

14 Q. And Mr. Voigt asked about sweat and DNA. What kind
15 of scenes do you usually expect to find or swab for DNA?

16 A. A lot of times if there was a -- like an extreme --
17 like a really extremely violent crime, like a homicide,
18 when there's usually, you know, blood, you know, all over
19 the place, or anything like that, that's going to be the
20 best course to obtain -- or if it was like a sexual
21 assault where there was semen that was left over, then,
22 you know, that's -- those are the best courses to obtain
23 that.

24 Touch DNA, it's just -- it's really tough because
25 there are specific things that SLED actually requires

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1 like, you know, having an elimination, you know, DNA
2 buccal to go along with, you know, the sample that was
3 taken.

4 Q. And so when he also -- when he talked about sweat
5 and you mentioned it was a July day in Charleston ---

6 A. --- yes sir ---

7 Q. --- if there was one person in the room, would you
8 maybe find sweat DNA or things like that?

9 A. If there's carpet, no. I mean, there's going to be
10 God knows how much DNA because, I mean, any time you walk
11 into a room, I mean, you're bringing -- essentially
12 bringing new evidence, new DNA or whatever, dirt, you
13 know, water.

14 I mean, it could be anything, oils, anything you
15 pick up from your shoes and entering into the scene. So
16 it would just be all over the place.

17 Q. And if that -- if there were seven people ---

18 A. --- yes sir ---

19 Q. --- in a room ---

20 A. --- yes sir ---

21 Q. --- would that cause a problem?

22 A. Absolutely.

23 Q. And why?

24 A. It's -- it would -- you would have too many people
25 on the scene. It's all -- at that point, its

1 contamination. The key is, you know, to secure that
2 scene and, you know, try and have as less access -- you
3 know people that had access to it.

4 Essentially, in a perfect world, if one person had
5 access to that house, you know, then it would be -- it
6 would be great because then we could eliminate right
7 away.

8 MR. COOPER: Beg the Court's indulgence.

9 [Whereupon, Mr. Cooper and Ms. Shealy confer]

10 Q. [Mr. Cooper] I have no further questions. Thank
11 you, sir.

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Chris Sanders-Recross- Examination by Mr. Summa
March 12, 2020

1 THE COURT: You may step down, sir. Thank you for
2 being here.

3 MR. COOPER: Could we ask that he be excused?

4 THE COURT: Any objection?

5 MR. SUMMA: No objection.

6 MR. VOIGT: No objection.

7 THE COURT: You're excused, Officer. Thank you.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

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State v Daquan J. Crummey & Denali D. White
Zulfiqar Khan-Direct Examination by Ms. Shealy
March 12, 2020

1 MS. SHEALY: The State would call Detective Khan.

2 [Whereupon, Mr. Khan comes forward]

3 THE CLERK OF COURT: Please place your left hand on
4 the Bible, and raise your right.

5 [Whereupon, Mr. Khan is duly sworn by the Clerk of
6 Court]

7 THE CLERK OF COURT: You may be seated.

8 [Whereupon, the witness takes the witness stand]

9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling both your first and your
11 last.

12 THE WITNESS: It's Detective Zulfiqar Khan. It's
13 Z-U-L-F-I-Q-A-R. Last name, K-H-A-N.

14 - - - - -

15 ZULFIQAR KHAN,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MS. SHEALY:

20 Q. Detective Khan, would you please tell the jury where
21 you work?

22 A. I work with Charleston County Sheriff's Office. I'm
23 assigned to the CID Division.

24 Q. The CID Division?

25 A. Sorry, the Criminal Investigations Division.

1 Q. Okay. How long have you worked at the Sheriff's
2 Department?

3 A. Oh. Almost nineteen years now.

4 Q. And in what different capacities have you worked
5 there?

6 A. I worked patrol, and CID, and during my patrol years
7 I also worked a little bit on the intervention side for
8 drugs.

9 Q. Okay. And in 2017, July of 2017, in what capacity
10 did you work there?

11 A. I was still assigned to investigations, criminal
12 investigations, but I was -- my main part was working
13 property crimes.

14 Q. And did you also participate in the investigations
15 of armed robberies and burglaries?

16 A. Yes, ma'am. Just because we're assigned to property
17 doesn't mean that that's all we do. We pretty much work
18 whatever cases that come along, especially cases that are
19 assigned to us.

20 We're not going to be the primary on, say, a
21 homicide, but we would assist the homicide detectives
22 working those cases. So -- but we wouldn't -- basically
23 whatever they needed for us to do.

24 Q. And would you tell us where -- you said you're in
25 CID now. What are you assigned to now?

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1 A. I'm assigned as a task force officer with Homeland
2 Security Investigations.

3 Q. Okay. Now, in your experience as a detective
4 investigating armed robberies could you tell the jury
5 whether there is a familiar term often used to describe a
6 robbery?

7 A. Street language or slang is common ---

8 MR. SUMMA: --- objection, Your Honor. Speculation.

9 MS. SHEALY: I'll re-start and lay the foundation.

10 THE COURT: I think he can testify as to what he
11 knows. I respectfully overrule your objection.

12 MR. SUMMA: Thank you, Your Honor.

13 A. Common street terms, it's known as a lick.

14 Q. [Ms. Shealy] A lick?

15 A. Lick.

16 Q. Okay. Now, focusing your attention, then, back to
17 July 23rd, would you describe for the jury how did you
18 get involved in the investigation of what occurred over
19 on Tedder Street?

20 A. That week my team was on call. I was home, got a
21 phone call from our supervisor. We were told, hey, we
22 had a home invasion, I need you, me, to go to the
23 hospital, while Detective Sharpe was going to go to the
24 scene.

25 Q. And Detective Sharpe, is he seated in the courtroom

1 right ---
2 A. --- yes ma'am ---
3 Q. --- over here? When you went to the hospital, tell
4 the jury who you saw there.
5 A. I saw Dulce Martinez and Alberto Garcia in the
6 emergency room.
7 Q. And while you were there, was there an interpreter?
8 A. No, ma'am.
9 Q. Okay. Were there any noticeable injuries to Mr.
10 Alberto Garcia?
11 A. He did. He had a cut above his eye.
12 Q. A cut above his eye?
13 A. Yes, ma'am.
14 MS. SHEALY: Beg the Court's indulgence just a
15 moment.
16 THE COURT: Yes, ma'am.
17 [Whereupon, Ms. Shealy reviews photographs]
18 Q. [Ms. Shealy] I'm showing you what's been previously
19 marked as State's Exhibit 38.
20 [Whereupon, the photograph is published]
21 A. Yes, ma'am.
22 Q. Is that how Mr. Garcia appeared when you saw him at
23 the hospital?
24 A. Yes, ma'am. That's -- that's a cut.
25 MS. SHEALY: I want to see if we can get this pulled

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1 up. It is 38.

2 THE WITNESS: Yes, ma'am.

3 MR. SUMMA: Objection, Your Honor. It's bolstering,
4 and we're not contesting that a robbery took place.

5 THE COURT: I mean, it's in evidence. I think the
6 point has been made.

7 MS. SHEALY: Yes, sir.

8 Q. [Ms. Shealy] And that's how he appeared when you
9 saw him?

10 A. Yes, ma'am.

11 Q. Would you tell the jury whether you were able to
12 interview him well ---

13 THE COURT: --- Ms. Shealy, let me -- let me stop
14 you right there. Go ahead and take that down.

15 [Whereupon, the photograph is removed]

16 Q. [Ms. Shealy] Would you tell us, please, if you were
17 able to interview Mr. Garcia when you were at the
18 hospital?

19 A. No, ma'am. His English is about as bad as my
20 Spanish. No, we weren't.

21 Q. Okay. How about Dulce Martinez? Were you able to
22 talk to her for a bit?

23 A. Yes, ma'am. She's -- her English is better. I was
24 able to speak to her. It was initial -- just initial
25 details.

1 Q. Okay. And based on what she told you, what were you
2 looking for suspect-wise?

3 A. Two black males, one tall, one not as tall. That's
4 -- we had -- they're not wearing any facemasks or
5 anything to conceal their faces and black clothing.

6 Q. Okay. Do you remember whether she indicated she
7 knew one of them or both of them?

8 A. No, not both. She said that she knew one of the
9 guys from her time at Stahl High School.

10 Q. Okay. And did you ever interview Alberto Garcia
11 again?

12 A. We did. I had to get an interpreter and then we
13 spoke to Alberto at his house the following day.

14 Q. And when you spoke to Mr. Garcia, was he able to
15 give you details of the crime?

16 A. Yes, ma'am.

17 Q. As a detective, do you inquire of potential
18 witnesses whether or not they think they would be able to
19 identify someone later?

20 A. Yes, ma'am. That's the whole idea.

21 Q. And do you recall what Mr. Garcia told you as his
22 likely ability to identify someone?

23 A. He wasn't sure that he would be able to I.D.
24 anybody.

25 Q. He said what?

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Zulfiqar Khan-Direct Examination by Ms. Shealy
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1 A. He wasn't sure that -- you know, he basically would
2 have a difficult time trying to pick somebody out of a
3 lineup, so...

4 Q. When a witness advises you of that, do you typically
5 ask them to look at a lineup?

6 A. No, ma'am.

7 Q. What happened after you met with -- and did you
8 interview somebody else over at the house that day, as
9 well, another Spanish-speaking victim? Do you remember?

10 A. I think so, but I'm not sure.

11 Q. You don't remember who it was?

12 A. No, ma'am.

13 Q. Okay. Did you talk to Dulce again?

14 A. I did. After we left the -- Alberto's trailer,
15 spoke to her and told her to see if she had found the
16 name of the person that she was talking about that she
17 knew. She said she hadn't so I said, just keep on
18 looking and call me back or contact us sometime.

19 Q. Okay. And did you in fact see Dulce Martinez again
20 in the next couple of days?

21 A. Well, she called me -- she texted me and told me
22 that she had a name for the tall person that she
23 recognized.

24 Q. Was that before or after, if you remember, y'all
25 going to Stahl?

1 A. It was before.
2 Q. Okay.
3 A. No. I'm sorry. No.
4 Q. What ---
5 A. --- no. It's not. It's after.
6 Q. Would it help you to --
7 [Whereupon, Ms. Shealy reviews documents]
8 Q. Do you have your notes with you?
9 A. No, ma'am, I don't.
10 Q. Would it be helpful for you to take a look at them?
11 A. Yes, please.
12 Q. So you're saying, upon reflection, the Stahl High
13 School event occurred first?
14 A. Yes, ma'am.
15 [Whereupon, Ms. Shealy proffers documents to the
16 witness]
17 A. Thank you.
18 Q. Tell us about going to Stahl. What was the purpose
19 of that?
20 A. We figured since she couldn't figure out a name for
21 our -- the tall suspect, the guy that she did recognize,
22 maybe if she saw the yearbooks she might see that person
23 in one of the yearbooks. And that was the purpose for
24 going to look at the yearbooks --
25 Q. Okay. And who ---

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1 THE COURT REPORTER: --- I'm sorry. What was the
2 last part of your answer? That was the purpose of?

3 A. That was the purpose of us going to Stahl.

4 Q. [Ms. Shealy] When you were at Stahl, did you get
5 the school to let y'all look through a couple of
6 yearbooks?

7 A. Yes, ma'am.

8 Q. And would you tell the jury whether or not she was
9 able to identify anybody, from either yearbook, that she
10 saw in the trailer?

11 A. No. She looked through the yearbooks but she was
12 not able to find the guy that she told us that she knew.

13 Q. Okay. And do you recall whether you were thinking
14 that was the tall guy or the short guy, or did you know?

15 A. The descriptions that -- basically, from our
16 conversations with Dulce, we thought that the person that
17 she saw or that she knew from Stahl High School was going
18 to be the taller guy.

19 Q. You thought that's who it was going to be?

20 A. Yes, ma'am.

21 Q. Okay. So after you left Dulce and Stahl, what did
22 you instruct her to do?

23 A. To keep trying to find a name for the guy that she
24 recognized.

25 Q. Okay. And did you hear from her again?

1 A. I did. It was the 26th, I believe, and she texted
2 me that she had a name for the person that she
3 recognized.

4 Q. Okay. And when you say a name, do you mean a
5 person's last name or do you mean a Facebook account?

6 A. When I -- when I talked to her -- because back then
7 we had those little crazy flip phones, so they're hard as
8 heck to text from.

9 So I called her and she said that she -- that she
10 had a Facebook name for the person but not a -- you know,
11 a real name.

12 Q. Okay. And do you recall what that Facebook name
13 was?

14 A. The name that she gave me was Runacheckup Youngn.

15 Q. After she gave you that name did you, in fact, go on
16 that Facebook page as well?

17 A. I did, ma'am.

18 Q. And would you tell the jury, please, if you
19 recognized the person's profile on that account?

20 A. I did.

21 Q. Okay. And who did you recognize that as?

22 A. As Daquan Crummey.

23 Q. Okay. Now, tell us a little bit about your going
24 through Facebook. Could you describe for the jury, did
25 you just look at one page or did you go through the

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1 history of the Facebook account?

2 A. Just basically looked at all the posts on that -- on
3 that -- on that page, you know. Just scroll. Start from
4 the top and start scrolling down to the bottom, going
5 through his friends list and stuff like that. It was
6 unlocked.

7 Q. And as you were going down the Facebook page, would
8 you tell the jury whether the picture of Daquan Crummey
9 that was associated in the profile appeared to be that
10 person's account?

11 A. It was. But at that point, it wasn't -- there was
12 no significance to that at that point. It was just
13 another person. I thought that maybe, you know, if he's
14 kind of shorter, might be our second guy. But at that --
15 at that point, it wasn't that -- that that was going to
16 be my ---

17 Q. You're talking about the short guy right now?

18 A. Yes, ma'am.

19 Q. Let me -- let me rephrase my question, because I may
20 have asked it strangely.

21 [Whereupon, Ms. Shealy proffers documents to the
22 witness]

23 Q. [Ms. Shealy] When you were looking through the
24 Facebook page reflected on State's Exhibit 84, did you
25 see more than what's just on that first page of the

1 account?

2 [Whereupon, the photograph is published]

3 A. Just the -- yes, ma'am.

4 Q. I mean, you -- in other words, did you go down his
5 account to see what all he had posted?

6 A. Yes.

7 Q. Okay. And after looking at the pictures, did you
8 determine that it appeared to be Runacheckup Youngn's
9 Facebook account?

10 A. Yes, ma'am.

11 Q. Okay. Now, you were just talking about a shorter
12 guy that you saw within the body of it. Is that someone
13 different than the picture here?

14 [Whereupon, the witness views photograph]

15 Q. [Ms. Shealy] You're talking about another shorter
16 person?

17 A. Another shorter person, yes.

18 Q. Okay. Based on the name Daquan Crummey, your
19 recognizing him from that Facebook page, did you run a
20 check on the name to see if anything surfaced?

21 A. I did. That's when I found out that Daquan Crummey
22 had been a subject of a traffic stop.

23 Q. For speeding?

24 A. For speeding, yes.

25 Q. And do you recall when it was that that traffic stop

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1 occurred in relationship to the incident?

2 A. That I do not remember, ma'am. It wasn't -- it
3 might have been a few days after the home invasion.

4 Q. Okay. Now, when you looked at the traffic stop,
5 could you tell the jury whether or not there were any
6 other names that became of interest to you?

7 A. So from that, we have Daquan Crummey. And then
8 there's another name that's mentioned in that traffic
9 stop, and that comes back as Denali White.

10 Q. When you got the name Denali White and you had
11 gotten the name of Daquan Crummey, what did you then
12 decide to do?

13 A. Check DMV.

14 Q. Okay. And you were checking DMV for what purpose?

15 A. To see if I can find a picture for Denali White.

16 Q. When you looked at the DMV page, did you find the
17 photograph of Denali White?

18 A. Yes, ma'am.

19 Q. And would you tell the jury, based on what you saw,
20 what did you then do?

21 A. I took that picture and I went back to Daquan
22 Crummey's Facebook and I was able to find Denali White
23 and Daquan Crummey posting some pictures together.

24 Q. On Daquan Crummey's Facebook account?

25 A. Yes, Daquan Crummey's Facebook.

1 Q. Did you later find the Facebook account also of
2 Denali White, or did you not go down that road?

3 A. At a much later time I did.

4 Q. But not at the beginning of the investigation?

5 A. No, ma'am, because he also has vanity names. It's
6 not just under Denali White.

7 Q. Okay. A different name than his ---

8 A. --- yes ma'am ---

9 Q. --- given name? So at this point of your
10 investigation, you now have the name of Daquan Crummey
11 and Denali White?

12 A. Yes, ma'am.

13 Q. And when you looked at the DMV, did anything about
14 his appearance have any significance to you?

15 A. To me, Denali is more -- he's developing into the
16 shorter suspect of the two.

17 Q. So he's a possible suspect?

18 A. Yes, ma'am.

19 Q. Okay. So the next step in the investigation is
20 what? What do you do once you have both of those guys'
21 names?

22 A. I told Detective Sharpe, I said, hey, so Daquan
23 Crummey's -- that's pretty much going to be for sure,
24 that's going to be one of our guys, but he's also seen
25 with this other person that I've identified as Denali

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1 White. I think we're at a point now where we can go
2 ahead and apply for two separate photo lineups.

3 And that would be the time when we'd go ahead and
4 show them to Dulce and see where we go from there in our
5 investigation.

6 Q. Okay. Tell us just briefly do you, or does
7 Detective Sharpe, actually put the pictures together in
8 the lineups?

9 A. No, ma'am, we don't. That's just a safeguard that's
10 built in. The investigating officers do not have any
11 say-so on how or where -- you know, even what people are
12 picked.

13 The procedure is to pick as closely resembling
14 people as possible. But we don't have any say in that at
15 all. All I -- we send is a request.

16 Q. And who do you send that to?

17 A. SLED, or the -- or jail.

18 Q. Okay. And the only request y'all make is that in
19 one Daquan Crummey goes in and in one Denali White goes
20 in?

21 A. Yes, ma'am.

22 Q. Okay. Now, you told us you requested that because
23 you wanted Dulce to come up and see if she could take a
24 look at it?

25 A. Yes, ma'am.

1 Q. Would you describe for the jury, out of the people
2 who were in the house and anyone else that you had
3 learned about that was out there that day, why do you
4 choose Dulce?

5 A. So probably the biggest thing is that there's not a
6 giant language barrier. But in the house, she has the
7 most contact with the two suspects because nobody else is
8 speaking English in the house, as far as the victims go.
9 She does speak English. It's not good, it's not perfect,
10 but she does speak English.

11 So she is the one that is translating between our
12 victims and the two suspects. So she saw the suspects
13 the most and she has the most interaction with them and
14 she's able to see their faces the most, and that's why we
15 chose to show the lineups only to Dulce.

16 Q. Okay. Now, were you -- you weren't present in the
17 room when she was shown the lineup?

18 A. No, ma'am. Again, that's a procedure that's built
19 in.

20 Q. Let me ask you something. There was -- was there a
21 woman who lived in the trailer park named Brandie Ross?
22 Do you remember her?

23 A. Yes, ma'am. Across the road there.

24 Q. And did you interview her?

25 A. I spoke to her.

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1 Q. Did you ask her to come down and look at the lineup?
2 A. No, ma'am.
3 Q. Why not?
4 A. She says that she saw ---
5 MR. SUMMA: --- objection ---
6 MR. VOIGT: --- objection ---
7 MR. SUMMA: --- hearsay ---
8 A. --- basically ---
9 THE COURT: --- hold on one second.
10 MS. SHEALY: Hold on just a second.
11 THE COURT: Sustain the objection for hearsay.
12 He can testify as to why he didn't show her a lineup, but
13 not what she told him.
14 MS. SHEALY: Okay.
15 Q. [Ms. Shealy] So can you answer that question in
16 that way without repeating...
17 MS. SHEALY: Could we approach just for a second,
18 Your Honor?
19 [Whereupon, an on-the-record bench conference is
20 held as follows:]
21 MS. SHEALY: I think I could elicit why she says
22 that I can't do facial recognition, I'd have to see
23 somebody a bunch of times -- the side eye. The side eye
24 part may have to -- might be -- well, none of that's
25 offered for the truth of anything that's pivotal here.

1 It's the reason why he, as the investigator, doesn't ask
2 her to come down.

3 MR. VOIGT: It's offered -- it's actually offered
4 for the truth of the matter asserted, which is why he
5 didn't. I mean, it's not -- its hearsay.

6 MS. SHEALY: But her statement ---

7 MR. VOIGT: --- here is no exception ---

8 MS. SHEALY: --- her statement is not about what I'm
9 asking him. I'm asking him why didn't you ask her to
10 come down.

11 MR. SUMMA: She's going to testify. They don't need
12 to rebut her before she testifies.

13 MS. SHEALY: Well, I think I have the opportunity,
14 that I should have the ---

15 MR. VOIGT: --- it's hearsay --- it's hearsay.

16 MS. SHEALY: I should have the opportunity to
17 question him why didn't you ask her to come down for the
18 lineup.

19 MR. SUMMA: She's going to testify. She's going to
20 say it.

21 MS. SHEALY: I know, but I need to ask this man.
22 They're going to be questioning him about it.

23 MR. SUMMA: You need it twice?

24 MS. SHEALY: Huh?

25 MR. SUMMA: You need to do it twice?

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1 MS. SHEALY: I need to do it through him. Because
2 it's not -- one thing is what she said. Another thing is
3 why he chose not to have her come down for a lineup.

4 THE COURT: He can say I didn't believe she could
5 make an identification. That's what she can say. He can
6 say, I didn't -- I don't believe she can make an
7 identification.

8 MS. SHEALY: I'm not sure that when I --- that's
9 going to be the only sentence he says?

10 THE COURT: Well, that's ---

11 MS. SHEALY: --- what if I were to ask -- what if I
12 were to ask -- the drama up here at the bench Judge, in
13 front of the jury, is so inappropriate and unprofessional
14 ----

15 MR. VOIGT: --- it's hearsay.

16 THE COURT: He can -- he can testify that I didn't
17 feel she could make an identification, and whatever he --
18 whatever he says beyond that, I can't control what he
19 says, subject to ruling an objection. So you're going to
20 have to limit him to that answer.

21 MS. SHEALY: Well, may I do it this way, Judge, just
22 as to that question, may I ask that in a leading fashion
23 without going into any details, why did --

24 THE COURT: Do you -- did you feel that this witness
25 could make an identification. If he says, no, that's not

1 the answer ---

2 MS. SHEALY: --- may I say just yes or no?

3 THE COURT: Yes. That's fine.

4 [Whereupon, on-the-record bench conference
5 concludes]

6 Q. [Ms. Shealy] Detective Khan?

7 A. Yes, ma'am?

8 Q. Yes or no; did you feel like Brandie Ross would be
9 able to make an identification?

10 A. No.

11 Q. After Dulce was shown the two lineups, what was the
12 next step in the investigation?

13 A. Detective Sharpe and I started to get the arrest
14 warrants.

15 Q. Okay. And could you tell the jury, please, do you
16 remember when they were arrested or do you need to see a
17 copy of the warrant, too?

18 A. Copy of the warrant. I believe Crummey was arrested
19 on the 23rd. I'm sorry. The 13th I think of August;
20 right?

21 Q. I'll show you the --

22 [Whereupon, Ms. Shealy proffers documents to the
23 witness]

24 [Whereupon, the witness reviews documents]

25 Q. Does that refresh your memory?

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1 A. Yes, ma'am. 8/13 of '17 was Daquan Crummey.

2 Q. Okay. And do you recall when Denali White was
3 arrested? Do you need to see the warrant ---

4 A. --- yes, ma'am, that would be -- if that would be
5 possible. Thank you.

6 [Whereupon, Ms. Shealy proffers documents to the
7 witness]

8 [Whereupon, the witness reviews documents]

9 A. The 23rd, also of August of '17.

10 Q. So, again, Crummey on the 16th of August and Denali
11 White on the 23rd of August?

12 A. Yes, ma'am.

13 Q. When Daquan Crummey was arrested on the 13th, did
14 you and Detective Sharpe go to the jail to meet up with
15 the officer who arrested him?

16 A. I did.

17 Q. Okay. And while you were there, did you receive a
18 phone that had been on Mr. Crummey?

19 A. I picked up the phone. Yes, ma'am.

20 Q. Showing you what's been marked as State's Exhibit 66
21 for I.D.

22 [Whereupon, the witness is shown exhibit]

23 Q. Could you tell the jury whether you can identify
24 that? Would it help to give you a copy of the search
25 warrant?

1 A. Yes, ma'am. That'd be great. It looks like it, but
2 I can see -- see it better from the search warrant.

3 [Whereupon, Ms. Shealy proffers documents to the
4 witness]

5 [Whereupon, the witness reviews documents]

6 A. That's the cell phone.

7 Q. Okay. And do you remember who the officer was that
8 arrested him?

9 A. It was Deputy Ali, Alan Ali, at the time.

10 THE COURT REPORTER: What was the name again?

11 THE WITNESS: Alan Ali. A-L-I.

12 Q. [Ms. Shealy] And once you received the phone, was
13 that put in evidence at Charleston County?

14 A. Yes, ma'am. Actually I gave it to Detective Sharpe
15 and he put it into evidence.

16 Q. He put it in evidence?

17 MS. SHEALY: Your Honor, at this time, we would move
18 into evidence State's Exhibit 66.

19 THE COURT: Any objection?

20 MR. SUMMA: Could I just see it real quick?

21 [Whereupon, Mr. Summa views the exhibit]

22 MR. SUMMA: No objection.

23 THE COURT: State's 66 -- Mr. Voigt, any objection
24 to State's 66?

25 MR. VOIGT: No, Your Honor.

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1 THE COURT: State's 66 in without objection.

2 [Whereupon, State's Exhibit Number 66 is admitted
3 into evidence by the Court]

4 Q. [Ms. Shealy] Now, when Denali White was arrested,
5 was a phone on him as well?

6 A. Yes, ma'am.

7 Q. But you weren't a part of arresting him or ---

8 A. --- no ma'am ---

9 Q. --- getting the phone? Okay. Once you have both
10 of those phones in evidence, could you tell the jury what
11 you then did?

12 A. We drafted basically extraction or download search
13 warrants for both phones.

14 Q. And when you say you drafted search warrant, does
15 that mean you take information of the case to a
16 magistrate judge for approval?

17 A. Yes, ma'am. We type up a search warrant and we take
18 that search warrant to a magistrate that's working and
19 see if they will find merit in our probable cause to sign
20 the search warrant for a download.

21 Q. And did, in fact, you gain the permission to as we
22 call it, dump the phones?

23 A. Yes, ma'am.

24 Q. Okay. Now, using that word, is the more
25 professional word have a phone extraction done?

1 A. Yes, ma'am.

2 Q. And could you describe just briefly, what is an
3 extraction?

4 A. Basically, whatever data that is on a device, that
5 is hooked up to software and then all their data,
6 including pictures and contacts and text messages,
7 Facebook, whatever social media stuff that might be
8 contained on that device is downloaded to, and then it's
9 preserved.

10 Q. And back when this case was being investigated in
11 2017; are you aware of whether there was any difficulty
12 getting into Mr. Crummey's phone because of a password?

13 A. We were unable to.

14 Q. Based on that, what did you then seek regarding Mr.
15 Crummey's phone?

16 A. His call-detail records from his cell phone
17 provider.

18 Q. And when you say from the cell phone provider that
19 is the phone company that the account is with?

20 A. Yes, ma'am.

21 Q. And so you gained a search warrant in a similar
22 fashion?

23 A. Same process again.

24 Q. As far as you know, from one of the detectives in
25 the case, was Denali White's phone able to be extracted

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1 at that time?

2 A. Not at that time. I'm sorry. Denali White's? Yes.

3 Q. Denali White.

4 A. Yeah. Denali White's, yes.

5 Q. So you told us back in 2017 you couldn't get into
6 the phone of Daquan Crummey. Did that change at some
7 point because of technology?

8 A. It did.

9 Q. And when we talk about the extraction of the phone,
10 are you familiar with Paul McManigal of the County?

11 A. Yes, ma'am.

12 Q. And is he the person who does the extractions for
13 the ---

14 A. --- yes, ma'am ---

15 Q. --- County? One other thing. When you were looking
16 through Daquan Crummey's Facebook account ---

17 A. --- yes ma'am ---

18 Q. --- did you provide to the State some photos that
19 you had taken out -- taken pictures of, of entries on his
20 account?

21 A. Yes, ma'am.

22 Q. Okay. Showing you what has been previously marked
23 for I.D. purposes State's 94.

24 [Whereupon, the witness is shown exhibit]

25 Q. Do you recognize that? Just answer that question

1 first. Do you recognize that?

2 A. Yes.

3 MS. SHEALY: Your Honor, at this time, I would offer
4 State's 94 into evidence.

5 THE COURT: What is it?

6 MS. SHEALY: This is the Facebook...

7 MR. SUMMA: I don't see the relevance of it. That's
8 all I'm saying.

9 MR. VOIGT: I don't see the relevance of it, either.
10 Or, rather, I don't believe that its relevance -- the
11 foundation has been laid for its relevance. Just because
12 he testified he saw it on a Facebook page doesn't mean --
13 make it evidence.

14 THE COURT: I'm going to overrule your objection.
15 State's 94 is in.

16 [Whereupon, State's Exhibit Number 94 is admitted
17 into evidence by the Court]

18 [Whereupon, the exhibit is published]

19 Q. [Ms. Shealy] You can see this on the screen in
20 front of you?

21 A. Yes, ma'am.

22 Q. Tell the jury, if you would, what name of the
23 Facebook post is right there.

24 A. The person positing that is Runacheckup Youngn and
25 he's ---

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1 Q. --- could you tell the jury whether or not that was
2 the name of the Facebook account provided to you by Dulce
3 Martinez?

4 A. It is. For Daquan Crummey.

5 Q. And would you tell us the date of the post?

6 A. July the 26th and its saying that it's at 1:20 a.m.

7 Q. And the year that you took a screenshot of this was
8 what?

9 A. 2017.

10 Q. 2017. What does this reflect right here
11 [indicates]?

12 A. It's -- basically, he's saying check in at Miami,
13 Florida. He's in Florida at the time.

14 Q. And this is just an icon reflecting where?

15 A. That's where his location is.

16 Q. I have no further questions. Please answer any that
17 the defense may have.

18 THE COURT: Cross-examination.

19 MR. SUMMA: May it please the Court?

20 THE COURT: I'm sorry. I didn't see -- let her
21 gather her stuff before you start ---

22 MS. SHEALY: --- I'm sorry. I'm sorry.

23 [Whereupon, Ms. Shealy removes her documents]

24 THE COURT: Mr. Summa?

25 MR. SUMMA: Thank you.

1 CROSS-EXAMINATION

2 BY MR. SUMMA:

3 Q. Detective Khan, you testified earlier that you went
4 to school to see if Ms. Martinez could find the suspect
5 that she went to school with in the yearbook; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. And I believe you might have made a mistake
9 there. Did you do that before she had given you a name
10 or after she had given you a name?

11 A. Before.

12 Q. Okay. I want to show you what's been admitted as
13 State's Exhibit 40.

14 [Whereupon, the photograph is published]

15 Q. This photograph, did you take it back in 2017?

16 A. No.

17 Q. When did you take this photograph?

18 A. Just a few days ago.

19 Q. A few days ago?

20 A. [No response]

21 Q. Now, what is this man's name right here [indicates]?

22 A. White.

23 Q. This [indicates] man's name?

24 A. [No response]

25 Q. Who is the -- who is -- who are the defendants in

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1 this case, Detective Khan?
2 A. Daquan Crummey and Denali White.
3 Q. Daquan Crummey. Now, would you agree that Daquan
4 Crummey, Crummey starts with a C?
5 A. Yeah.
6 Q. Is there any reason why you went to the C section of
7 the yearbook?
8 A. That's -- this is not a suspect ---
9 Q. --- that's okay. That's fine.
10 A. Okay.
11 Q. You testified on direct that this phone, State's
12 Exhibit 66, was recovered from Daquan Crummey; is that
13 correct?
14 A. No. That's the iPhone? Or is that the Android?
15 Q. What did you testify to?
16 A. The Android comes from Denali White.
17 Q. So did you testify that this phone came from Daquan
18 or from Denali White?
19 A. The Android is Denali White.
20 Q. Okay. Is this an Android? You can look at it.
21 [Whereupon, the witness is shown exhibit]
22 A. It's a Samsung. Android refers to the operating
23 system.
24 Q. Sure. It's not an iPhone; right?
25 A. No.

1 Q. Okay. So you did not testify earlier that you got
2 that phone off of Daquan Crummey?

3 A. If I did, I misspoke. But this is an Android, or a
4 Samsung, and this came from Denali White.

5 Q. Okay. Detective Khan, you're a detective, so you
6 keep a lot of notes; right?

7 A. Yes, sir.

8 Q. It's important because you have to remember how
9 things happened when we're sitting here in court two-and-
10 a-half years after the incident; is that correct?

11 A. Yes, sir.

12 Q. Okay. Sometimes in your case notes you make a to-do
13 list; right?

14 A. Yes, sir.

15 Q. Did you write on your to-do list in this case to
16 contact Stahl High School to get Daquan's attendance
17 record?

18 A. No.

19 Q. You did not write that in your to-do list in this
20 case?

21 A. No.

22 Q. If I showed you a copy, would that...

23 A. It's on my notes, but I didn't write that. I
24 believe that's going to be Detective Sharpe.

25 Q. Oh. So your case notes -- let me just show you this

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1 to refresh your recollection.

2 [Whereupon, Mr. Summa proffers documents to the
3 witness]

4 [Whereupon, the witness reviews documents]

5 Q. [Mr. Summa] Whose name does it say on the top right
6 hand?

7 A. Mine.

8 Q. So you're saying that those notes aren't necessarily
9 from you?

10 A. No. This says, needs sups from Zack. That's me.

11 THE COURT REPORTER: I'm sorry. Repeat what you
12 just said.

13 A. It says to-do list, 8/23 of 2017. Contact Stahl
14 High School to get Daquan's attendance record, how long
15 was he there. But it also says, need sups from Zack.
16 Supplements from Zack, which is me.

17 Q. Okay.

18 A. So that's not my to-do list.

19 Q. Okay. But it's someone's to-do list; right?

20 A. Yes, sir.

21 Q. Okay.

22 A. But it's not mine.

23 Q. Did you ever check the school records to see if
24 Daquan actually went to school with Dulce Martinez?

25 A. No, sir.

1 Q. You thought Dulce Martinez was a suspect in this
2 investigation for some time, didn't you?

3 A. Everybody is.

4 Q. Well, you didn't mention anybody else in any of your
5 reports; right? You named her as a suspect specifically
6 for some period of time; right? She's obviously no
7 longer a suspect; right?

8 A. Right.

9 Q. But she was at a time?

10 A. Everybody is except ---

11 Q. --- well, she, in particular, was so much of a
12 suspect that you felt the need to document it in your
13 case notes; is that correct?

14 A. That's my thoughts. Yes, sir.

15 Q. We talked earlier about Alberto and how he said he
16 probably or maybe would not have been able to identify
17 the suspects in a six-pack lineup; is that correct?

18 A. Yes, sir.

19 Q. What about Rey, Mr. Rey Rodriguez?

20 A. Same thing. They're not ---

21 Q. --- so your testimony today is ---

22 A. --- they're not exactly sure.

23 Q. Your testimony today is that Rey did not tell you?

24 A. No. I'm saying I don't recall but probably that's
25 what he did. But we went with the best that we had, and

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1 that was Dulce.

2 Q. Do you remember whether or not Rey told you whether
3 or not he was -- he could identify a suspect in a six-
4 pack lineup?

5 A. No sir, I don't. Two years later I don't remember.

6 MR. SUMMA: Court's indulgence.

7 THE COURT: Yes, sir.

8 [Whereupon, Mr. Summa and Ms. Norris confer]

9 Q. [Mr. Summa] But if he had said that he could
10 recognize a suspect in a six-pack lineup, you would
11 certainly go and do that with him; right?

12 A. Yes, sir. It depends, but we went with Dulce
13 because she had the most contact with these guys.

14 Q. Okay. So once you had a six-pack from one person,
15 no need to go check on -- see if other people could
16 identify them?

17 A. No.

18 Q. Once you've got one, that's it; right? It doesn't
19 matter what the other four witnesses say?

20 A. She gave us the best. Yes.

21 Q. Don't want to muddle up the investigation; right?

22 A. Again, sir, in this case that was the best...

23 Q. You want ---

24 A. --- I could get ---

25 Q. --- a clear story that is consistent with what you

1 want?

2 A. That's not true, sir.

3 Q. How is it not true?

4 A. Like I said, we went with the best identification
5 that we had.

6 Q. But if two people could say that they could identify
7 the suspect, why would you only ask one to do a six-pack
8 lineup?

9 A. Again, she has the most contact with these guys.

10 Q. What would happen if you asked the other suspect --
11 or excuse me, the other witness to do a six-pack lineup,
12 a witness who said, I could identify somebody in a six-
13 pack lineup, and they picked somebody who was not Daquan
14 Crummey? What would -- how would that affect your
15 investigation?

16 A. Just one more lead to chase down.

17 Q. You would charge another person?

18 A. And it could be false, yes, but we ---

19 Q. --- the six-pack could be false?

20 A. No. The identification -- the idea of a
21 photographic lineup, if y'all don't know, is to, one,
22 clear innocent people, and secondly is to find a guilty
23 person.

24 So we chose to show those photographic lineups to
25 the one person in that house who had the most contact

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1 with both of the suspects.

2 Q. So it was a conscious decision to not do any other
3 photographic lineups, with any other witnesses, on your
4 behalf?

5 A. Yes, sir.

6 Q. Okay. I have no more questions. Thank you.

7 THE COURT: Mr. Voigt?

8 MR. VOIGT: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. Good morning, Detective.

4 A. Good morning, sir.

5 Q. So I'll just start where Mr. Summa left off, if you

6 don't mind. You testified that the primary purpose of the

7 photographic lineup procedure is to clear the innocent?

8 A. Yes.

9 Q. Is that what you said? Can you tell us in this case

10 how many innocent people you have cleared?

11 A. It'd be six persons per page or five persons per

12 page, so over ten.

13 Q. Okay. So what you're saying is that in these

14 photographic lineups, you cleared all these other

15 individuals of any sort of hint that they were part of

16 the commission of this crime?

17 A. Because they weren't picked. Yes, sir.

18 Q. But isn't it true that you had absolutely no

19 information whatsoever from any source, no evidence, no

20 hearsay, nothing, that would have implicated any of those

21 other people?

22 A. I don't understand what you're asking, sir.

23 Q. Yes, you do. You picked ---

24 MS. SHEALY: --- Your Honor, objection.

25 THE COURT: Mr. Voigt, ask questions.

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1 MR. VOIGT: Thank you, Judge. I'm getting to it.

2 Q. [Mr. Voigt] When you pick a photographic lineup,
3 okay, isn't it true that you are looking for people with
4 similar photographs, similar descriptions. Alright?

5 You're looking for people who are as similar to the
6 person that is the suspect as possible; is that true?

7 A. Yes. But, again, I did not make that lineup.

8 Q. I started this by asking you if you had cleared any
9 innocent people and your answer to me was that these
10 other five in this photograph were innocent.

11 A. I still stand by that, sir. They weren't picked.
12 Only that one [indicates] was.

13 Q. How can you clear someone who's never been accused
14 of anything?

15 A. They are placed in a lineup, sir. So we are
16 basically trying to establish the identification of one
17 of the suspects. And that's what was done here.

18 [Whereupon, the photograph is published]

19 Q. Alright. One of the suspects. And in this case --
20 and we're referring now, just so that the record can be
21 clear, about State's 88. There's only one suspect in
22 that photographic lineup; right?

23 A. Yes, sir.

24 Q. Okay. So what -- when I asked you about clearing
25 innocent people, we don't have to clear people who aren't

1 suspects; right?

2 A. [No response]

3 Q. Do you understand what I'm saying?

4 A. I ---

5 Q. --- you haven't cleared any innocent people in this
6 process, have you?

7 A. We eliminated ---

8 Q. --- it's that simple ---

9 A. --- we eliminated the other five, sir.

10 Q. But none of these other five were suspects?

11 A. Again, that is a process where the photo lineup is
12 made from. So ---

13 Q. --- I understand ---

14 A. --- there you go.

15 Q. But the only reason why these other five people are
16 in this photographic array is because they bear some sort
17 of superficial resemblance to Daquan Crummey; right?

18 A. Yes, sir.

19 Q. Okay. We don't know how tall they are; right?

20 A. Not fully, sir.

21 Q. Right.

22 Q. We don't know how much they weigh?

23 A. Again, it's just one single photograph, sir.

24 Q. Right. We don't know how old they are?

25 A. No. They all look about the same age, yeah.

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1 Q. When you're looking to populate a photographic array

2 ---

3 A. --- right ---

4 Q. --- there is a checklist, is there not, that has
5 certain physical characteristics so that the randomly
6 chosen photographs that will go along with your suspect
7 have basically the same eye color, skin tone?

8 You don't want somebody who -- in one picture who
9 weighs 380 pounds and one picture where somebody weighs
10 120 pounds; right? The obvious stuff; right?

11 A. Right.

12 Q. Okay. So my basic point to you is that these
13 photographs in each of these lineups, to the extent
14 possible, and the purpose of them, was to pick people who
15 were as similar as possible to people that you had
16 suspected of the crime?

17 A. Yes; based on the description that was provided to
18 us by Dulce.

19 Q. Okay. Alright.

20 A. And the other victims.

21 Q. And Dulce had told you that she went to school with
22 the taller one; right?

23 A. Yes, sir.

24 Q. Okay. And so you go to Stahl High School looking
25 for the tall one; right?

1 A. Right.

2 Q. Okay. And you don't find the taller one?

3 A. Not in the yearbooks.

4 Q. Not in the yearbooks. Okay. Matter of fact, let's
5 see, you started -- this investigation began with you --
6 your involvement with it was on July 23rd, 2017?

7 A. Yes, sir.

8 Q. Is that correct? And I believe you testified that
9 the last time you made a copy of the photograph was a
10 couple of days ago?

11 A. Yeah.

12 Q. So this has been an investigation that you've been
13 involved with for two-and-a-half years or until today,
14 safe to say?

15 A. There was a long break in between, yes.

16 Q. And there was a long break where nothing was
17 happening; is that fair to say?

18 A. [Indicates]

19 THE COURT REPORTER: Was that a yes?

20 THE WITNESS: Yes.

21 Q. [Mr. Voigt] Okay. So we have your initial
22 interviews with Ms. Martinez and your initial interaction
23 with Mr. Garcia at the hospital; yes?

24 A. Yes.

25 Q. And you have further contact with Ms. Martinez that

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1 leads to your trip to Stahl High School; yes?
2 A. Yes.
3 Q. You have a text communication with Ms. Martinez?
4 A. Yes.
5 Q. And she -- and you are told that she's found them;
6 yes?
7 A. Yes.
8 Q. Okay. And ---
9 A. --- not then; just him.
10 Q. Okay.
11 A. You said them.
12 Q. I'm going to show you what's been marked as State's
13 44. Do you recognize that?
14 [Whereupon, the witness is shown exhibit]
15 A. So it does say them.
16 Q. So it does say them?
17 A. I'm sorry. Yes, it does. Two-and-a-half years,
18 sir.
19 Q. And then going back to where I was going with this,
20 you're not present at the identification procedure?
21 A. No. I was on vacation.
22 Q. The next time you become involved is I believe you
23 were looking at the Facebook records of-- and I will
24 butcher it -- Runacheckup Youngn; is that fair to say?
25 Is that the next thing you do?

1 A. No. Once they are identified, then we went and
2 started getting arrest warrants done.

3 Q. Okay. And when were the arrest warrants completed;
4 do you recall?

5 A. No, sir. I'd have to look at the dates.

6 Q. You get the arrest warrants. And then what's the
7 next thing that you do?

8 A. They're entered into NCIC.

9 Q. But you don't do that personally, do you?

10 A. No.

11 Q. No. That's handed off for somebody else to do?

12 A. Yes, sir.

13 Q. And that's so that they're in the system so you
14 don't have to go look for anybody? Other agencies can
15 assist in wherever they're found? And you weren't part
16 of that process at all; right?

17 A. No.

18 Q. Okay. After that date, do you participate in any
19 other -- you testified as to the warrants having to do
20 with phones. Do you have any other participation in this
21 case after that?

22 A. I did talk to Denali White, myself and Detective
23 Sharpe, and that's pretty much it.

24 Q. Okay. And was it you who made the choice not to
25 show any lineups to any other potential victims?

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1 A. That was a mutual decision.

2 Q. When you say mutual decision, that was you and
3 Detective Sharpe made that ---

4 A. --- yes sir ---

5 Q. --- collaboratively?

6 A. Yes.

7 Q. Okay. Was there anybody else involved in making
8 that decision?

9 A. No, sir.

10 Q. So that was clearly, though -- so that the jury
11 knows, that's clearly a choice that you made based on
12 your law enforcement preferences or your opinions?

13 A. Not preferences sir; just basically what we had at
14 the time.

15 Q. Okay. So that we're clear, you had two people that
16 you believed were suspects and you believed that the
17 identification procedures had confirmed that they were
18 the right people; right?

19 A. Yes, sir.

20 Q. And using that information, you obtained arrest
21 warrants?

22 A. Yes.

23 Q. And did you have any further contact with any of
24 these victims after you had achieved -- after you had
25 gotten the arrest warrants?

1 A. I saw them at the office a couple of times when they
2 were -- one came in for the victim -- what they call
3 victim advocates?

4 Q. There -- the Sheriff's Department and all law
5 enforcement agencies in the Tricounty area have people
6 that kind of assist victims through the legal process;
7 right?

8 A. Yes, sir. They're basically there to help our
9 victims through whatever they need.

10 Q. And they really help you, as well, because those are
11 phone calls you don't have to answer or questions you
12 don't have to answer?

13 A. And I don't speak Spanish.

14 Q. Huh?

15 A. I don't speak Spanish.

16 Q. That's true. That's true.

17 MR. VOIGT: One moment, Your Honor.

18 THE COURT: Yes, sir.

19 MR. VOIGT: If I could.

20 [Whereupon, Mr. Voigt confers with his client]

21 MR. VOIGT: Thank you, Judge. That's all I have.

22 THE COURT: Redirect?

23 MS. SHEALY: Thank you, Your Honor.

24

25

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March 12, 2020

1 REDIRECT EXAMINATION

2 BY MS. SHEALY:

3 Q. Detective Khan, let's go back to the phone. I'm
4 concerned that I may have interchanged the names, but
5 let's make sure we're straight on something.

6 A. Yes, ma'am.

7 Q. Which defendant did you go down to the jail when
8 they were getting booked in?

9 A. The one that was brought in by Ali.

10 Q. Okay. And was that Denali White?

11 A. Yes, ma'am. But it's much later than...

12 Q. Than Crummey ---

13 A. --- Crummey. Crummey had already been arrested.
14 Okay. This Samsung that has been marked as State's
15 Exhibit 66 was the phone that came off of Denali White
16 when he was booked in; is that correct?

17 A. Yes, ma'am, because Crummey had an iPhone.

18 Q. Okay. And showing you the -- would it help you to
19 look at the evidence log to see what that date was?

20 A. Yes, ma'am.

21 [Whereupon, Ms. Shealy proffers documents to the
22 witness]

23 [Whereupon, the witness reviews docs]

24 A. It says a Samsung smart phone, cracked screen, with
25 a serial number and that was ---

1 MR. VOIGT: --- objection to him reading from a
2 document not ---

3 Q. [Ms. Shealy] --- well, does this refresh -- did
4 this refresh your memory?

5 A. Yes.

6 Q. Okay. And who did this phone come off of, State's
7 66?

8 A. Denali White.

9 Q. Okay. Take a look -- if you would take a moment.
10 And you have testified today that your memory was that
11 Dulce was looking for the tall guy when you went to ---

12 MR. VOIGT: --- objection to the form of the
13 question.

14 MS. SHEALY: I have to ---

15 MR. VOIGT: That's a narrative question.

16 MS. SHEALY: I haven't even finished the question.
17 I can rephrase it.

18 THE COURT: Rephrase it.

19 Q. [Ms. Shealy] Take a look at your notes ---

20 A. --- yes ma'am ---

21 Q. --- please. And tell us, when looking at them,
22 whether or not you indicated at the time, I know it's
23 been two-and-a-half years, whether you were looking for
24 the tall or the short when you went to Stahl. Look
25 through the entire thing, please.

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1 [Whereupon, the witness reviews document]

2 A. So on the 24th. Let's see. Spoke to Dulce. She
3 was unable to provide ---

4 MR. VOIGT: --- objection.

5 Q. [Ms. Shealy] Don't read it out loud.

6 A. Oh. Sorry.

7 Q. Just if you will look and see if ---

8 THE COURT: --- sustained.

9 Q. [Ms. Shealy] If you will look and see at the time
10 that you were doing the notes two-and-a-half years ago,
11 whether you actually indicate whether it was the tall or
12 the short, or for a side note to that?

13 MR. VOIGT: I'm going to make an objection, now,
14 Your Honor. I believe it's clear that this has gone
15 beyond refresh your recollection, which I think would be
16 the only purpose in allowing the deputy to look at that
17 document.

18 THE COURT: Well, as long as he reads the document
19 and refreshes his recollection and doesn't read directly
20 from the document, I believe that's allowed under the
21 rules.

22 So, Detective, review the entire document. If it
23 refreshes your recollection, then you can answer Ms.
24 Shealy's question. But don't read any of the written
25 words aloud.

1 THE WITNESS: Yes, sir.

2 [Whereupon, the witness reviews documents]

3 THE WITNESS: I'm ready.

4 Q. [Ms. Shealy] Okay. Do your notes reflect -- or
5 does that refresh your memory as to whether you knew
6 which of the two suspects you were looking for at Stahl?

7 A. So since the whole search was about the taller one
8 that she remembered, that is why we were at Stahl.

9 Q. Okay. And you say that because it was the tall
10 guy's Facebook name that she ---

11 MR. VOIGT: --- objection. That's a
12 mischaracterization of his testimony.

13 Q. [Ms. Shealy] Why did you say that the --

14 MS. SHEALY: I'm sorry, Your Honor ---

15 THE COURT: --- your objection -- your objection is
16 sustained.

17 MR. VOIGT: Thank you very much, Your Honor.

18 Q. [Ms. Shealy] Why did you ---I'm sorry. I'm trying;
19 now I'm trying to remember how I was going to ask it.

20 You just said that the investigation was focusing on
21 the tall person; is that right?

22 A. Yes, ma'am.

23 Q. Do you recall why you thought it was the tall
24 person?

25 A. Because ---

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1 MR. VOIGT: --- objection. I believe that the
2 question has been asked and answered.

3 THE COURT: Ms. Shealy, he's had an opportunity to
4 review his report to refresh his recollection. He has
5 answered the question. And so I don't -- I don't -- he's
6 answered the question you asked, he's refreshed his
7 recollection. The answer is the answer.

8 MS. SHEALY: Okay.

9 Q. [Ms. Shealy] Moving on, then. The defense has
10 asked you about making a copy of State's 40 of that
11 singular page from the yearbook.

12 A. Yes, ma'am.

13 Q. Tell the jury who asked you to go back to Stahl and
14 to look for that man's picture.

15 A. Mr. Cooper.

16 Q. Okay. In looking at Mr. Cooper's text to you, would
17 that refresh your memory?

18 A. Yes, ma'am.

19 MR. VOIGT: Excuse me. Objection.

20 THE COURT: Come up.

21 [Whereupon, an on-the-record bench conference is
22 held as follows:]

23 THE COURT: You're about to make Mr. Cooper nervous.

24 MS. SHEALY: Judge, I'm sorry. It's not like I'm
25 trying to make him a witness ---

1 THE COURT: --- it absolutely is if you're -- if
2 you're seeking to put evidence of what Mr. Cooper told
3 this investigator about this investigation, it absolutely
4 makes him a witness.

5 MS. SHEALY: Judge, they insinuated that he just
6 goes randomly, two-and-a-half years later, to get that
7 photograph. He did it at the direction of the State
8 after interviewing Dulce Martinez.

9 THE COURT: Well, that -- you can't get into what
10 Mr. Cooper told him. It's -- he's already said that he
11 did it at the direction of the State. The substance of
12 their text makes him a witness and is not coming in.

13 MS. SHEALY: I wasn't going to have him read it. I
14 just asked him if it would refresh his memory.

15 THE COURT: I hope ---

16 MR. VOIGT: This is not ---

17 THE COURT: --- that's -- the point has been made.
18 He did it because he was asked to do it by the State. We
19 can't go any farther than that. It's --- we'd get close
20 to making -- if he wants to refresh his recollection
21 based on what Mr. Cooper told him, that's tantamount to
22 putting it in.

23 I don't -- I think this is a dangerous route. I
24 think the answer that you've gotten, that he did it at
25 his direction -- ask him why he didn't do it two-and-a-

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1 half years ago. Or ask him is this the page you looked
2 at two-and-a-half years ago. Did you go take a picture
3 to show the jury what you -- what the witness looked like
4 two-and-a-half years ago. But what Mr. Cooper told him
5 to do; we can't put this in front of this jury. That's
6 my ruling.

7 MS. SHEALY: Thank you, Your Honor.

8 MR. VOIGT: Thank you.

9 [Whereupon, on-the-record bench conference
10 concludes]

11 Q. [Ms. Shealy] Okay. I think it was Mr. Voigt was
12 asking you about your statement that lineups were just as
13 helpful in clearing innocent people; is that correct?

14 A. Yes, ma'am.

15 Q. And in showing you State's Exhibit 88.

16 [Whereupon, the photograph is published]

17 Q. Mr. Voigt was asking you how is it that it clears
18 innocent people; correct?

19 A. Yes, ma'am.

20 Q. What would have happened if Dulce had not identified
21 him?

22 MR. VOIGT: Objection to speculation.

23 Q. [Ms. Shealy] Hold on a minute until the Judge
24 rules.

25 MR. SUMMA: I'll join in that objection.

1 THE COURT: Sustained.

2 Q. [Ms. Shealy] Detective Khan, State's Exhibit 88,
3 amongst the six people with similar complexions and
4 similar hair, which one did Dulce Martinez identify?

5 MR. VOIGT: Objection. We've already had testimony
6 as to this.

7 MS. SHEALY: I can ask him ---

8 THE COURT: --- he wasn't there. The document
9 speaks for itself. He wasn't -- he wasn't present at the
10 lineup, so ---

11 MS. SHEALY: --- as a detective in the...

12 THE COURT: He wasn't present. He testified he
13 wasn't there, so he doesn't know who she selected at the
14 time of the lineup. He knows what's on the -- what's on
15 the paper, and that has been -- that has been put before
16 this jury. But he wasn't there, so he can't testify as
17 to what she knew. So your objection is sustained.

18 MR. VOIGT: Thank you.

19 MS. SHEALY: Beg the Court's indulgence just a
20 moment.

21 THE COURT: Yes, ma'am.

22 [Whereupon, Mr. Cooper and Ms. Shealy confer]

23 MS. SHEALY: I have no further questions. Answer
24 any that the defense may have. Thank you.

25 THE COURT: Recross.

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Q. Detective Khan, one question. Do you have any knowledge of you or anyone else from the Sheriff's Office going to the home of my client's family and threatening to arrest them if they didn't turn over a phone to you?

MS. SHEALY: Your Honor, this is inappropriate
recross. May we approach?

MR. VOIGT: I have no further questions for this witness, Your Honor.

THE WITNESS: Thank you, Your Honor.

THE COURT: Let me see the lawyers. This doesn't need to be -- this doesn't need to be on the record.

[Whereupon, an off-the-record bench conference is held]

1 THE COURT: Ladies and gentlemen of the jury, it is
2 an appropriate time for us to take a recess. The Clerk's
3 Office tells me that your lunch will be here at noon, so
4 we are going to take a recess at this point and have
5 lunch when it gets here. And my thought is that we could
6 start testimony and resume this trial at one o'clock.

7 So I'm going to send you to your jury room, ask you
8 to remain there. Please do not discuss the case amongst
9 yourselves. Please do not do any research about this
10 case, in any form or fashion, using any type of -- any
11 type of electronic or print media. And we will be back
12 at one o'clock. Thank you very much.

13 [Whereupon, the jury exits the courtroom at 11:52
14 a.m.]

15 THE COURT: Alright. Ladies and gentlemen, we'll be
16 in recess until one o'clock.

17 MS. SHEALY: Your Honor?

18 THE COURT: Yes, ma'am?

19 MS. SHEALY: When we get back can you instruct the
20 jury to disregard the last question of Mr. Summa?

21 THE COURT: I did order it stricken from the record
22 but I will ---

23 MS. SHEALY: --- to be stricken ---

24 THE COURT: --- but I will tell the jury what
25 stricken from the record means.

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1 MS. SHEALY: Thank you.

2 THE COURT: Alright.

3 [Whereupon, Court is in recess from 11:53 a.m. to
4 1:21 p.m.]

5 THE COURT: Are there any matters that need to be
6 addressed before we bring in the jury?

7 MR. COOPER: Judge, I notified the defense before
8 lunch there is a portion of testimony this morning. He
9 did not -- in the jail call at the beginning where he
10 records his name that I'd like to play for the jury. He
11 just says Runacheckup is his name. It was recorded. So
12 when he calls out and people answer it says, you have a
13 call from, and it says Runacheckup.

14 I think that would link officially his Facebook to
15 him. Certainly it is the day that he's arrested, so
16 there's already going to be testimony that he was
17 arrested on August 13th. It's the very first call that
18 he makes. I'm cutting it off after we go to Runacheckup.
19 So it's not like I'm playing a statement of his.

20 MR. SUMMA: We would object because before they cut
21 it off this is a call from the Charleston County
22 Detention Center. They've gone ad nauseam with the fact
23 that Runacheckup Youngn is Daquan Crummey. He said that
24 and so many witnesses have said that. This is just, in
25 my opinion, the only thing the jury is going to get from

1 this is just, oh, he's a criminal. I don't see how ---

2 THE COURT: --- when was the phone call produced?

3 MR. COOPER: I have...

4 MR. SUMMA: I'll tell you this. They gave us a
5 bunch of phone calls and 11 disks. And we had
6 conversations, they'll agree with this, and they would
7 tell us what jail calls they were going to introduce
8 beforehand. And I know you didn't intend to at the time,
9 so they've definitely abided by their promise. But there
10 was an agreement between us to that effect ---

11 MR. COOPER: -- and -- sorry.

12 MR. SUMMA: And this is the first time that they
13 have told us about this. So I have never heard the call.

14 MR. COOPER: The jail calls they've had in discovery
15 for over a year. That was part, I think, of the whole
16 package that the Court saw that was sent last year when
17 they got the phone mapping.

18 It's a recording of his voice, is what would be on
19 every jail call. The issue of him being in jail, Judge,
20 the testimony is going to be that he was arrested and
21 taken to the jail. This is the same day.

22 So honestly the State is doing the best it can to
23 show that he's not in any longer. But we can't get
24 around the fact that he was arrested on the charges. And
25 I can play it for the Court if the Court would like to

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1 hear it. But, also, witnesses have identified that Mr.
2 Crummey's on that Facebook page. We have not been able
3 to link that to him. I think I'm entitled to do that.

4 THE COURT: What is -- what is the link? What are
5 you -- what witness is going to link this to Mr. Crummey?

6 MR. COOPER: The lady from the jail who handles the
7 booking and the jail calls, and all that, will
8 authenticate that as a jail call from the -- from the
9 jail, and that individual inmates are assigned a unique
10 PIN number, and that this is his first call out and it
11 has -- it's associated with his account and his name.

12 And I can play it for the Court if you'd like to
13 hear it. I think it's brief; it's a minute and a half or
14 so, I think. I think it's a ring at the beginning.

15 THE COURT: Well, let's go ahead. And is it -- I
16 assume it is a digital?

17 MR. COOPER: It is.

18 THE COURT: Let's go ahead and have it marked.

19 MR. COOPER: Madam Court Reporter, I'm sorry.
20 What's my next available number?

21 THE COURT REPORTER: I'm not sure what y'all have
22 marked recently, but I think your next number may be 101.
23 I know y'all have marked some that I don't know what they
24 are. But I think 101.

25 MR. COOPER: State's Exhibit 101.

1 [Whereupon, State's Exhibit Number 101 is marked for
2 identification by the court reporter]

3 THE COURT: Mr. Voigt, I'm not going -- I'm not
4 ignoring you. I'm going to listen to it before I --

5 MR. VOIGT: I don't have much to say.

6 THE COURT: Okay.

7 MR. VOIGT: I think everybody can probably
8 anticipate what I'm going to say.

9 [Off the record momentarily]

10 [Whereupon, State's exhibit 101, clip of jail call,
11 is played for the Court]

12 MR. COOPER: And, Judge, I'm happy to stop before it
13 says Charleston County Detention Center, but the lady is
14 going to testify that she's employed at the jail. But I
15 don't see any harm in that it is the same day that he's
16 arrested on these charges. So we're not introducing a
17 new day, new arrest, any length of time at the jail.
18 It's his very first call and we'll cut it after that.

19 THE COURT: Mr. Summa, anything?

20 MR. SUMMA: Your Honor. I just think it's
21 prejudicial. It's a jail call. They already -- they've
22 already got tons of evidence they've put in about him
23 being Runacheckup. I think that -- I'm not questioning
24 their intentions. But it comes off as a, this guy is in
25 jail. It's prejudicial. It's kind of along the same

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1 lines as both defendants. Thank you.

2 THE COURT: Mr. Voigt?

3 MR. VOIGT: I would object to it, Your Honor. It is
4 cumulative. It does seem to emphasize the incarceration
5 of Mr. Summa's client, without any probative value. And
6 I believe it is duplicative of other things that the
7 State has chosen to introduce --

8 THE COURT REPORTER: I'm sorry, Mr. Voigt. The very
9 last part of -- I didn't hear you, the very last thing.

10 MR. VOIGT: It is duplicative of other evidence that
11 the State has chosen to introduce.

12 MR. COOPER: Judge, our only other evidence is Dulce
13 Martinez and Detective Khan who can identify him in
14 pictures but cannot say for certainty that that is his
15 account, or I don't -- I don't think would be allowed to,
16 under the rules, for him to say that. And so I think I'm
17 allowed to corroborate that evidence, that it's the
18 defendant acknowledging that it's his account.

19 MR. SUMMA: He just says his name is Runacheakup.
20 They're -- I mean, I don't know because I haven't even
21 checked, but there could be tons of people that have ---

22 MR. COOPER: --- well, then ---

23 MR. SUMMA: --- on Facebook Runacheakup. There's no
24 evidence to show that it's his Facebook account just
25 because he says Runacheakup on the phone.

1 [Whereupon, the Court reviews documents]

2 MR. VOIGT: Judge, I'd bring up some other
3 objections to it. It doesn't appear to be an admission
4 against interest and there does appear to be a certain
5 mention of 901 authentication rule by using a document
6 prepared by the Sheriff's Office to authenticate a
7 Facebook record. I don't know why the State wouldn't do
8 that directly.

9 MR. COOPER: They're just entirely -- it's his own
10 statement, statement by him, one that I can argue to the
11 jury that shows that he acknowledges his Facebook but
12 it's not an authentication of the Facebook.

13 THE COURT: Well, if, just for the sake of argument,
14 this phone call came from the jail using a particular
15 inmate's unique PIN number, and there is a clear
16 admission, the money I stole is buried in the back yard,
17 or something of that nature, how is -- how is how he
18 identifies himself, how does that meet an admission by a
19 party opponent?

20 MR. SUMMA: Our argument, to me, isn't really based
21 on admission. It's just based on the fact that it's
22 cumulative, it's more prejudicial than probative. If he
23 said there is money buried in the back yard, that would
24 be something the State has no -- hasn't already offered
25 into evidence, you know, and they're saying two times,

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1 but I feel there has been a great deal of time spent on
2 this issue. I think that's different because it's
3 something they haven't already done a lot. And it's --
4 you know, I guess if you're a hypotheticalist.

5 MR. COOPER: Judge, per 801(d)(2): statements which
6 aren't hearsay admission by a party opponent the State is
7 offered against the party and is, (a), the party's own
8 statement in either an individual or representative
9 capacity.

10 That is his reference -- that he is talking and --
11 he is giving the name of himself and describing himself.
12 And when -- and the testimony from Ms. Mitchum will be
13 that they're allowed to say their name in that portion.
14 It doesn't have to be against interest.

15 MR. SUMMA: Hearsay exceptions still have to be
16 shown to be not unfairly prejudicial.

17 MR. COOPER: It's not hearsay.

18 MR. SUMMA: Or -- or non-hearsay has to be -- not
19 more unfairly prejudicial. And they've already put in a
20 ton of evidence to connect Mr. Daquan Crummey to
21 Runacheckup Youngn.

22 MR. VOIGT: It is also being used to authenticate a
23 record improperly, and that's -- and the State has
24 admitted why they're doing it. I don't know why they're
25 doing it, but that's what they're choosing to do. I

1 don't think -- and there's nothing in that admission that
2 is actually, oh, this is Daquan Crummey, my Facebook page
3 goes by this name. That's not that.

4 MR. COOPER: That is a weight question, not an
5 admissibility question, Judge. The State has ---

6 MR. VOIGT: --- the State's fallback always is that
7 it always goes to weight when they want to get in
8 something improper.

9 There's just no way to -- one, it's definitely more
10 prejudicial than probative. But, two, I mean, we talk
11 about 801, but we should also talk about 401. I mean,
12 why is that relevant at this particular point with all
13 the evidence that the jury has heard?

14 MR. COOPER: The State is allowed to introduce its
15 evidence to prove the defendant's guilt beyond a
16 reasonable doubt. We've done that in this case with the
17 identification by a witness of one of the defendants as
18 Runachekup Youngn.

19 This is the State introducing evidence of the
20 defendant that that is his account or that it could be
21 his account. If they want to argue that there were a
22 hundred Runachekups, they're free to do that.

23 THE COURT: Well, is there -- I assume you're going
24 to get into his cell phone dumps. Is there another way
25 to get this Runachekup Youngn name in that isn't fraught

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1 with potential 403 arguments?

2 MR. COOPER: There are text messages that I can put
3 in that come from Runacheckup Youngn and it's on the
4 defendant's phone. But the typical argument to that is
5 was he in possession of the phone, was he in possession
6 of his account, all of that. This is a statement from
7 him. But I do have something on the phone that...

8 THE COURT: Well, it's a statement from someone who
9 has a PIN number. I don't know that you can definitively
10 say that it's him. But it could be more likely than not
11 that it's him.

12 MR. COOPER: Beg the Court's indulgence.

13 [Whereupon, Mr. Cooper and Ms. Shealy confer]

14 MR. VOIGT: And ultimately the issue is are the
15 photos that the witness identified Mr. Crummey's, not who
16 belongs to the Facebook page. That's the ultimate issue.
17 It really doesn't matter who that person is.

18 It's is -- was that witness' identification based on
19 those photographs reliable. And the Court has already
20 ruled on that. And I don't think there's any question
21 that the photographs found in that Facebook page were of
22 Mr. Crummey.

23 MR. SUMMA: His picture is on the Facebook photo
24 that they've introduced into evidence with Runacheckup
25 Youngn right under it. Over objection.

1 MR. COOPER: And, Judge, I -- Mr. Crummey looks
2 different now than he did then and that he -- than how he
3 looked in these Facebook images. I think it's important
4 to show to the jury so they understand that that is his
5 account, that the witness identified him in that account
6 and that is Mr. Crummey's account.

7 The State is -- can have testimony from witnesses
8 looking at the account from a phone dump, but the State
9 isn't barred from putting in a statement of the defendant
10 representing that he is Runacheckup. It's not harmful.
11 It is not -- it's more probative than prejudicial,
12 certainly.

13 The State is minimizing any prejudicial risk by
14 putting in the same day as he was arrested, so there's no
15 extra concern about that. But it's his own statement.
16 It's made by him. The State is entitled to prove that;
17 prove that to the jury.

18 MR. SUMMA: You could have called somebody from
19 Facebook. I mean, I...

20 MR. COOPER: The manner in which the State does it
21 ---

22 MR. SUMMA: --- and I appreciate that agreement that
23 we made. I really thank you so much for doing that. I
24 think that was great. Right. But you couldn't have --
25 you can't be surprised that we would maybe argue --

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1 because actually we haven't argued yet, that the Facebook
2 is not Runacheckup Youngn. And that's not a surprise
3 thing that we've argued.

4 And so, you know, I appreciate your doing that. We
5 like it. But this was never intended to be introduced
6 into evidence. And they're saying, oh, well, they're
7 contesting who the Facebook belonged to.

8 MR. COOPER: We're not doing that.

9 MR. SUMMA: I mean, it's just going to be in and the
10 jury is going to hear another thing about how he was in
11 jail. And obviously being in jail is not evidence of
12 guilt.

13 MR. COOPER: We're not putting it in for guilt.

14 MR. SUMMA: You're seeking to admit it.

15 THE COURT: But the implication is -- it's not your
16 intent for why you're putting it in. It's whether the
17 probative value outweighs the prejudicial effect.

18 MR. COOPER: And, Judge, they're going to know by
19 testimony that he -- they've already heard testimony that
20 he was arrested on this date. They're going to hear it
21 because that's when the phone then was taken from him.
22 That evidence is already in the record that on August
23 13th he was in jail. I don't think a jail call from the
24 jail on that same day adds anything to that. It doesn't
25 change anything about that. They already know that

1 evidence. That is not new evidence.

2 MR. SUMMA: If they already have it, then it's
3 cumulative. I have nothing further, Your Honor.

4 MR. COOPER: We don't have it from the defendant.
5 And it's not cumulative because it's not evidence brought
6 -- evidence of him being in jail. It's his statement.
7 It's not cumulative because nobody, the defendant or a
8 representative, have ever said that's his Facebook
9 account. The State is entitled ---

10 THE COURT: --- well, I don't -- I don't know. I
11 think it's kind of a leap to say, okay, you can
12 conclusively presume that because he used this moniker of
13 Runachekup Youngn, well, then therefore that's his
14 Facebook page.

15 I mean, that's a -- that's a question that -- a
16 question of fact that the jury would have to decide. And
17 I don't think you can argue that because this moniker was
18 used on the jail phone call, and as a Facebook handle,
19 that that's conclusive proof that they are one and the
20 same.

21 MR. COOPER: Or it may be circumstantial evidence.
22 But I think the State is still entitled to go down that
23 road. I don't see a rule that bars it. It's more
24 probative than prejudicial because his Facebook is at
25 issue in this case, his nickname is at issue in this

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1 case, that he adopts as Runacheakup. We had witnesses
2 identify that Facebook because he has pictures on it.
3 But it's his statement.

4 MR. SUMMA: I have nothing further.

5 MR. COOPER: And I believe it's on every call that
6 he calls out. So when people answer the phone, it's
7 Runacheakup. And, Judge, I think my understanding from
8 the defense is they intend to call that witness, as well,
9 to put in booking information.

10 So the assertion is that I can't mention anything
11 further about the arrest, but then they want to do that I
12 think that needs to be known to the Court as well before
13 you rule on this. They have no burden, and I want the
14 record to refer I understand that. But if that is their
15 intention and their assertion, the State putting in some
16 evidence that the defendant is in jail that day, I don't
17 think they can say that the State shouldn't do it but
18 they can.

19 MR. SUMMA: Just to be clear. And maybe this is a
20 good thing to address before the jury comes in. We
21 wanted the lady to admit his booking photo from the
22 traffic stop, not any arrest that you're talking about
23 today, just to show what the defendant might have looked
24 like at the time. And that's the entire purpose of it.
25 So I just wanted to offer that to the Court ---

1 MR. COOPER: --- so, Judge, they don't want the
2 State to play a recording from the one day the jury knows
3 he's been arrested for these charges, they want to have
4 evidence about a second picture from a different arrest.

5 THE COURT: Alright. Here's what I'm going to do.
6 I don't think that the statement is hearsay pursuant to
7 801(d)(2). Mr. Cooper, I want you to be careful in
8 laying the foundation. But this jury does know that he
9 was arrested on this date.

10 If this photo -- or this recording does, in fact,
11 come from the day of his arrest, I don't think the jury
12 knowing that, considering they know he was arrested on
13 that day is going to be unduly prejudicial. After the
14 voice on the phone says Runacheckup, stop it.

15 MR. COOPER: Yes, sir.

16 THE COURT: And so assuming you can lay the proper
17 foundation with the PIN numbers and things of that nature
18 ---

19 MR. COOPER: --- yes sir ---

20 THE COURT: --- I do think that it's admissible for
21 this limited purpose. And I note both defense
22 counsels' objections for the record. They're certainly
23 preserved. But I'm limiting the recording to after that
24 word leaves the speaker's mouth, we're to stop it.

25 MR. COOPER: Yes, sir.

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1 THE COURT: Anything else before the jury comes in?

2 MR. COOPER: No, sir.

3 MR. SUMMA: I guess, for clarity, can we admit that
4 booking photo? I would ask the Court to prohibit the
5 State because of the people we're bringing in, to
6 prohibit the State from eliciting on cross that he was
7 arrested on a separate date.

8 I just want the lady to say that this is the photo
9 -- I mean, it's fine if she says this photo is from a
10 different day. That's fine. But, you know, get into,
11 oh, he was arrested, I would ask the Court to prohibit
12 the State from doing that.

13 MR. COOPER: The State is -- Judge, will abide by
14 the Court's ruling. I understand the rules of evidence.
15 I never once intended to go into that until now.

16 MR. SUMMA: Okay, great ---

17 THE COURT: --- and I also want to caution you
18 against in your questioning, making the conclusion from
19 the record that because this moniker was used on the
20 phone call that, therefore, the Facebook account belongs
21 to Runacheckup Youngn and therefore it belongs to Daquan
22 Crummey. That may be something you could argue in
23 closing.

24 MR. COOPER: Yes, sir.

25 THE COURT: But, you know, I don't want -- I don't

1 want this to be the aha moment and you make an
2 argumentative statement while you're -- while you're
3 questioning the witness. So just be -- just be careful.

4 MR. COOPER: Yes, sir.

5 THE COURT: Like I said before, the jury is going to
6 have to also determine the facts in the case and whether
7 the Facebook account belonging to Runacheckup Youngn is,
8 in fact, Daquan Crummey's Facebook account, is certainly
9 a question of fact for the jury.

10 MR. COOPER: Yes, sir.

11 THE COURT: So just be careful along those lines.

12 MR. COOPER: Yes, Your Honor.

13 THE COURT: Anything else?

14 MR. COOPER: No, sir.

15 MR. SUMMA: Nothing further.

16 THE COURT: Bring us the jury, please.

17 [Whereupon, the jury enters the courtroom at 1:44
18 p.m.]

19 THE BAILIFF: Your Honor, the jury is complete.

20 THE COURT: Thank you very much. Ladies and
21 gentlemen, we're ready to proceed with the State's case.
22 Mr. Cooper?

23 MR. COOPER: Thank you, Judge. May it please the
24 Court?

State v Daquan J. Crummey & Denali D. White
Robert Haslip-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State calls Deputy Robert Haslip.

2 [Whereupon, Mr. Haslip comes forward]

3 THE CLERK OF COURT: Please place your left hand on
4 the Bible, and raise your right.

5 [Whereupon, Mr. Haslip is duly sworn by the Clerk of
6 Court]

7 THE CLERK OF COURT: You may be seated.

8 [Whereupon, the witness takes the witness stand]

9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling both your first and your
11 last.

12 THE WITNESS: Robert Macon Haslip. Robert, R-O-B-E-
13 R-T. Haslip, H-A-S-L-I-P.

14 - - - - -

15 ROBERT M. HASLIP,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. COOPER:

20 Q. Good afternoon, Deputy. Could you tell the jury
21 where you're currently employed?

22 A. Charleston County Sheriff's Office.

23 Q. And how long have you been there?

24 A. Eight years.

25 Q. And what is your current position?

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Robert Haslip-Direct Examination by Mr. Cooper
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- 1 A. I'm a patrol deputy.
- 2 Q. Were you in the same position back in July of 2017?
- 3 A. Yes.
- 4 Q. Or in August, 2017? Excuse me.
- 5 A. Yes.
- 6 Q. Focusing your attention to August 13th, 2017, did
- 7 you have the occasion to arrest Daquan Crummey?
- 8 A. I did.
- 9 Q. How did you get involved?
- 10 A. I was dispatched to the address on Glouster to meet
- 11 with North Charleston after they were advised there was a
- 12 warrant with us.
- 13 Q. Do you remember the house number of that address?
- 14 A. [REDACTED].
- 15 Q. Do you have your report with you?
- 16 A. Yes, I have my report.
- 17 Q. And where is that address; if you could orient for
- 18 the jury?
- 19 A. It's on -- or off of Ashley Phosphate road in a
- 20 subdivision behind Ashley Heights near I-26 and
- 21 Northwoods.
- 22 Q. And why were you having to respond to that location
- 23 to meet North Charleston?
- 24 A. That the defendant had a warrant.
- 25 Q. Pending with your agency?

State v Daquan J. Crummey & Denali D. White
Robert Haslip-Direct Examination by Mr. Cooper
March 12, 2020

1 A. Yes.

2 Q. And was your role just to transport him to the jail?

3 A. Yes.

4 Q. Once you arrived at the scene, did you take custody
5 of him?

6 A. I did.

7 Q. Did you take any properties from him?

8 A. A cell phone.

9 Q. Do you remember what kind of phone that was?

10 A. A silver iPhone.

11 Q. Did you document any information about it on your
12 report?

13 A. I did.

14 Q. Is there a serial number located in your report?

15 A. Yes.

16 [Whereupon, the witness reviews documents]

17 A. Would you like it?

18 Q. One second. Once you've collected the property, do
19 you take -- do you transport him to the jail?

20 A. Correct.

21 Q. And once you get to the jail, what happens?

22 A. Then I book him in, transfer them over to the
23 deputies' custody at the jail.

24 Q. And did you -- did you do anything with his iPhone?

25 A. I take that back to the Sheriff's Office. We had to

1 log it into evidence.

2 Q. And was it logged it into evidence?

3 A. Correct. Yes.

4 Q. If I were to show you that phone, would you
5 recognize it?

6 A. Yes.

7 Q. Showing you what's been marked for I.D. purposes
8 only as State's 61.

9 [Whereupon, the witness is shown exhibit]

10 Q. Look at the serial numbers on the back. Would you
11 look at that and tell me if that matches the one that you
12 documented on your report?

13 [Whereupon, the witness reviews exhibit]

14 A. Yes. Yes.

15 Q. [Mr. Cooper] Thank you, sir. And then as part of
16 the booking process, do you collect some information
17 about the defendant during that process?

18 A. Yes.

19 Q. Is that routine process for the jail?

20 A. Yes.

21 Q. Did you collect a height of the defendant?

22 A. Yes.

23 Q. What was that?

24 A. Six foot one.

25 Q. Did you collect an address for the defendant?

State v Daquan J. Crummey & Denali D. White
Robert Haslip-Direct Examination by Mr. Cooper
March 12, 2020

1 A. I did.
2 Q. And was that actually provided by him?
3 A. Yes.
4 Q. What was that address?
5 A. [REDACTED] Street in North Charleston.
6 Q. And did he provide you a phone number?
7 A. Yes.
8 Q. What was that number?
9 A. It is 530-7790.
10 Q. Did he provide you a separate phone number on your
11 incident report?
12 A. Yes.
13 Q. What was that?
14 A. 843-781-4400.
15 MR. COOPER: Beg the Court's indulgence just for one
16 second.
17 THE COURT: Yes, sir.
18 [Whereupon, Mr. Cooper and Ms. Shealy confer]
19 MR. COOPER: Your Honor, based on the identification
20 of Deputy Haslip, the State would offer State's 61 into
21 evidence at this point.
22 THE COURT: Any objection?
23 MR. SUMMA: No objection.
24 MR. VOIGT: No objection.
25 THE COURT: State's 61 ---

State v Daquan J. Crummey & Denali D. White
Robert Haslip-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: --- thank you, Judge ---

2 THE COURT: --- in evidence without objection ---

3 MR. COOPER: --- sorry, Judge.

4 [Whereupon, State's Exhibit Number 61 is admitted
5 into evidence by the Court]

6 Q. [Mr. Cooper] I have no further questions. Thank
7 you. Please answer anything the defense may have for
8 you.

9 THE COURT: Cross-examination.

10 MR. SUMMA: Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Summa and Ms. Norris confer]
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State v Daquan J. Crummey & Denali D. White
Robert Haslip-Cross-Examination by Mr. Summa
March 12, 2020

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CROSS-EXAMINATION

BY MR. SUMMA:

Q. Officer Haslip?

A. Yes.

Q. You read your report today it was a gray phone?

A. Silver.

Q. Silver? When you say silver, you're talking about?

A. The back.

MR. SUMMA: No further questions.

THE COURT: Mr. Voigt?

MR. VOIGT: No questions, Your Honor.

THE COURT: Thank you, Officer. You may step down.

[Whereupon, the witness is excused and exits the
witness stand]

State v Daquan J. Crummey & Denali D. White
Alan Ali-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State calls Deputy Alan Ali.
2 [Whereupon, Mr. Ali comes forward]
3 THE CLERK OF COURT: Before you sit down, place your
4 left hand on the Bible, and raise your right.
5 [Whereupon, Mr. Ali is duly sworn by the Clerk of
6 Court]
7 THE CLERK OF COURT: You may be seated.
8 [Whereupon, the witness takes the witness stand]
9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling both your first and your
11 last.
12 THE WITNESS: Yes. My name is Alan Ismail Ali.
13 Alan, A-L-A-N. Ismail, I-S-M-A-I-L. Last name Ali,
14 A-L-I.
15 - - - - -
16 ALAN I. ALI,
17 Having Been First Duly Sworn,
18 was Examined and Testified as Follows:
19 DIRECT EXAMINATION
20 BY MR. COOPER:
21 Q. Good afternoon, Deputy Ali. Will you tell the jury
22 where you're currently employed, please?
23 A. Yes. I'm a supervisor in Charleston County
24 Sheriff's Office Metro Narcotics Division.
25 Q. How long have you been with the Sheriff's Office?

State v Daquan J. Crummey & Denali D. White
Alan Ali-Direct Examination by Mr. Cooper
March 12, 2020

1 A. Twenty-two years, sir.

2 Q. Focusing your attention back to August of 2017, did
3 you have the occasion to arrest a Denali White?

4 A. Yes, sir. That's correct.

5 Q. When did you do that?

6 A. Sometime on the 24th of August, 2017, sir.

7 Q. Would it have been the 23rd of August, 2017?

8 A. 23rd. Yes, sir. That's correct.

9 Q. And then did you -- once you arrested him, did you
10 transport him to the jail?

11 A. That's correct, sir. I did.

12 Q. What did you do with the phone that was collected
13 off him?

14 A. Another detective took possession of his mobile
15 device.

16 Q. Would that have been Detective Khan or Detective
17 Sharpe?

18 A. Yes, sir. That's correct, sir.

19 Q. And then once you book a defendant into jail, do you
20 collect some routine information from them?

21 A. That's correct, sir, for the booking sheet.

22 Q. What did you list as the height for Mr. White when
23 you arrested him?

24 A. I have him as -- one second.

25 [Whereupon, the witness reviews document]

State v Daquan J. Crummey & Denali D. White
Alan Ali-Direct Examination by Mr. Cooper
March 12, 2020

1 A. Five ten, 155.
2 Q. And then did he provide a phone number to you?
3 A. Yes, sir.
4 Q. What was that phone number?
5 A. He put a contact number of 843, looks like 688-0897.
6 It's kind of blurred here.
7 Q. Would that be 668-0697 ---
8 MR. VOIGT: --- objection. Leading.
9 MR. COOPER: He can say he understood that question,
10 Judge.
11 THE WITNESS: I'm sorry. The question again, sir?
12 THE COURT: Ask the question again.
13 Q. [Mr. Cooper] Would that be 843-668-0697?
14 A. Yes, sir. 0697.
15 Q. And did you collect an address from him?
16 A. Yes, sir. That's correct.
17 Q. What was that?
18 A. What I have here on the booking sheet of [REDACTED]
19 [REDACTED] in North Charleston.
20 MR. COOPER: Beg the Court's indulgence just for one
21 second.
22 THE COURT: Yes, sir.
23 [Whereupon, Mr. Cooper and Ms. Shealy confer]
24 Q. [Mr. Cooper] And when you arrested Mr. White, was
25 his cell phone on his person?

State v Daquan J. Crummey & Denali D. White
Alan Ali-Direct Examination by Mr. Cooper
March 12, 2020

1 A. Yes, sir. That's correct.

2 Q. I have no further questions at this time. Thank
3 you, sir. Answer anything the defense may have for you.

4 THE COURT: Cross-examination?

5 MR. SUMMA: I have no questions.

6 MR. VOIGT: No questions, Your Honor.

7 THE COURT: Deputy, you may step down.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you very much.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

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State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State calls Loretta Mitchum.
2 [Whereupon, Ms. Mitchum comes forward]
3 THE CLERK OF COURT: Please place your left hand on
4 the Bible, and raise your right.
5 [Whereupon, Ms. Mitchum is duly sworn by the Clerk
6 of Court]
7 THE CLERK OF COURT: You may be seated.
8 [Whereupon, the witness takes the witness stand]
9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling both your first and your
11 last.
12 THE WITNESS: Loretta Mitchum. L-O-R-E-T-T-A
13 M-I-T-C-H-U-M.
14 - - - - -
15 LORETTA MITCHUM,
16 Having Been First Duly Sworn,
17 was Examined and Testified as Follows:
18 DIRECT EXAMINATION
19 BY MR. COOPER:
20 Q. Ms. Mitchum, will you tell the jury where you're
21 currently employed?
22 A. Charleston County Sheriff's Office at the Al Cannon
23 Detention Center.
24 Q. And what is your current position there?
25 A. Administrative Assistant for the security threat

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Direct Examination by Mr. Cooper
March 12, 2020

1 group.

2 Q. How long have you been there?

3 A. Two-and-a-half years.

4 Q. Do you usually handle and respond to subpoenas and
5 requests for jail calls, and information like that from
6 the jail?

7 A. Yes.

8 Q. Will you describe for the jury what you do when you
9 receive a subpoena for a jail call?

10 A. It's according to what they're looking for, whether
11 it's mug shots, phone calls, video visits. Whatever
12 they're requesting, I go into the inmate file via
13 different programs we have for different requests.

14 Q. Will you explain to the jury how the jail call
15 system at the jail works?

16 A. When an inmate makes a call, it's recorded and it's
17 saved on a server. And I can go back for the time period
18 that the request is for and for that inmate, our target
19 number, PIN number; whatever information they're looking
20 for and pull that back up and record it.

21 Q. And you mentioned PIN number. Describe that for the
22 jury. What is that PIN number system?

23 A. When an inmate comes in, they're given a six-digit
24 PIN number and they carry that with them. If they were
25 to come back, they still have that number. It is given

1 to them. And during a phone call, it asks you for that
2 pin number. So we can put the phone calls with the
3 inmate and do the recording on that.

4 Q. And so no number is ever assigned to another
5 individual?

6 A. No.

7 Q. Once it's been assigned?

8 A. No.

9 Q. And then in what format do you and your office
10 provide jail calls that are requested?

11 A. CD disk.

12 Q. Would you recognize a CD of jail calls if I showed
13 it to you?

14 A. Yes.

15 Q. Showing you what's been marked for I.D. purposes
16 only as State's 101.

17 [Whereupon, the witness is shown exhibit]

18 Q. Do you recognize that CD?

19 A. Yes.

20 Q. And what is that CD?

21 A. That's phone recordings.

22 Q. For?

23 A. Crummey.

24 Q. Is there an inmate number there, as well?

25 A. 1130767.

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Direct Examination by Mr. Cooper
March 12, 2020

1 Q. Okay. And how do you know that that's what that is?

2 A. Because of the writing on it.

3 Q. Is it ---

4 A. --- and I initialed it.

5 Q. You initialed it?

6 A. [No response]

7 MR. COOPER: Your Honor, at this time, the State
8 would offer Exhibit 101 into evidence for limited
9 purposes.

10 THE COURT: Subject to previous objections, State's
11 101 is admitted.

12 [Whereupon, State's Exhibit Number 101 is admitted
13 into evidence by the Court]

14 MR. COOPER: May I publish it to the jury, Judge?

15 THE COURT: Yes, sir.

16 MR. COOPER: May we approach briefly?

17 [Whereupon, an on-the-record bench conference is
18 held as follows:]

19 MR. COOPER: I just wanted, out of an abundance of
20 caution, just to let -- and I was going to ask the clerk,
21 to make sure that our sound that is on the display is not
22 -- not to call any attention to it, but I didn't want the
23 full list of -- display. So I'm going to have the clerk
24 -- see if the clerk cannot put the video on, but keep the
25 sound on.

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Direct Examination by Mr. Cooper
March 12, 2020

1 THE COURT: Yeah. All we need to hear is the sound.

2 MR. COOPER: Yeah. I just wanted to make ---

3 MR. SUMMA: --- agreed.

4 [Whereupon, on-the-record bench conference
5 concludes]

6 MR. COOPER: The State is going to -- the call is
7 August 13th, 2017, at 2:14:55 p.m.

8 Q. [Mr. Cooper] I'm sorry. One question before I play
9 the recording. How do inmates identify themselves on the
10 calls?

11 A. They say their name.

12 Q. Is that a recording that's played whenever they call
13 out? It's a recording at the beginning that's played
14 whenever they call out?

15 A. The call says it's from the Al Cannon Detention and
16 it is going to be recorded. They ask for their PIN
17 number. And then when the person says hello, it
18 questions them, who is this, so they give them their
19 name.

20 MR. COOPER: Starting from the beginning, Judge,
21 zero, zero.

22 [Whereupon, State's Exhibit Number 101 is played for
23 the jury]

24 MR. COOPER: And stopped it at zero minutes and
25 fifty seconds, Judge.

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Direct Examination by Mr. Cooper
March 12, 2020

1 Q. [Mr. Cooper] Thank you, Ms. Mitchum. I have no
2 further questions for you. Please answer any the defense
3 may have for you.

4 THE COURT: Cross-Examination.

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1 CROSS-EXAMINATION

2 BY MR. SUMMA:

3 Q. In addition to being the custodian for jail calls,
4 you also are the custodian for pretty much all records at
5 the jail; right?

6 A. [Indicates]

7 THE COURT REPORTER: Is that a yes ---

8 Q. --- is that a yes?

9 A. Yes.

10 Q. [Mr. Summa] And that would include photographs taken
11 of people at the jail?

12 A. Yes.

13 Q. Okay.

14 MR. SUMMA: Court's indulgence.

15 [Whereupon, Mr. Summa and Ms. Norris confer]

16 MR. SUMMA: Your Honor, may I approach briefly?

17 THE COURT: Sure.

18 [Whereupon, an on-the-record bench conference is
19 held as follows:]

20 MR. SUMMA: I just don't know how to do this. They
21 have stipulated that this was taken on July 29th? I just
22 don't know how to do that. Do you want to say something,
23 or do I just...

24 THE COURT: Could I have the lawyers up here?

25 [Whereupon, an on-the-record bench conference is

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Cross-Examination by Mr. Summa
March 12, 2020

1 held as follows:]

2 THE COURT: That was taken on July 29th. Can y'all
3 stipulate that that is a true and accurate representation
4 of a photograph taken of Daquan Crummey?

5 MS. SHEALY: On what date?

6 THE COURT: July 29th.

7 MR. VOIGT: I would object to all that because the
8 jury has been paying attention and they realize --

9 THE COURT REPORTER: I'm sorry.

10 MR. VOIGT: I know. I'm trying not to speak up.
11 If the jury has been paying attention, they realize --
12 wait a second. What date are we talking about here?

13 MS. NORRIS: July 23rd.

14 MR. VOIGT: When was the --

15 MS. NORRIS: -- it's --

16 MR. VOIGT: So it's ---

17 MR. SUMMA: --- yes, it's --

18 MR. VOIGT: Okay. That's exactly what I'm saying.

19 If they're paying attention they realize it's the same
20 date that's been testified to as to a traffic stop. I've
21 tied myself, in the process, to make sure that there's no
22 mention of an arrest or an incarceration on that date and
23 I would object to him trying to do it, even though he
24 wants to.

25 MS. NORRIS: That is the August 13th, 2017 booking

1 photo ---

2 MR. VOIGT: --- oh, that's the August one?

3 MS. NORRIS: --- that's ---

4 MR. SUMMA: --- no, it's not ---

5 MR. VOIGT: --- alright, so -- if it were the August
6 one, I -- well, actually, I have a problem with that one.
7 And that's just me.

8 MR. SUMMA: We can just stipulate this was a photo
9 taken of him in late July, 2017.

10 THE COURT: I will allow that. Fine.

11 MS. SHEALY: You're talking about --

12 MR. SUMMA: --- however y'all want to -- however you
13 want to do it.

14 MS. NORRIS: He just said he'll allow it.

15 MR. SUMMA: You'll allow me to ask the witness?

16 THE COURT: No. I think I'm just going to say that
17 if -- the evidence comes in, there's an agreement as to a
18 certain fact, stipulate this is an accurate photo taken
19 of Daquan Crummey on July, 2017.

20 MR. SUMMA: Can we display it now?

21 THE COURT: Yes -- do you have any more questions
22 for her?

23 MR. SUMMA: I don't have any more questions for
24 her.

25 THE COURT: Do you have any questions?

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Cross-Examination by Mr. Summa
March 12, 2020

1 MR. VOIGT: I just have like one or two, but they're
2 real short.

3 THE COURT: Okay. Well, I'll do the stipulation
4 first and then you can question her.

5 [Whereupon, the on-the-record bench record
6 concludes]

7 THE COURT: Ladies and gentlemen of the jury, there
8 are many ways that evidence comes before you in a
9 criminal trial; testimony from the witness stand,
10 exhibits that are offered. And also, ladies and
11 gentlemen, there are times in criminal trials where the
12 parties will stipulate to the admissibility of an item of
13 evidence.

14 So I'm holding in my hand Defense Exhibit Number 5.
15 And, ladies and gentlemen, the parties have stipulated or
16 agreed that Defense Exhibit Number 5 is a true and
17 accurate photographic representation of Daquan Crummey
18 taken in July of 2017. Because of that stipulation, it
19 is admitted into evidence and now can be published to the
20 jury.

21 [Whereupon, Defendant Crummey Exhibit Number 5 is
22 admitted into evidence by the Court]

23 THE COURT: Any issue with what I've said regarding
24 the stipulation from the State?

25 MR. COOPER: No, sir.

State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Cross-Examination by Mr. Summa
March 12, 2020

1 MR. SUMMA: Late July.

2 THE COURT: The photo was taken late July, 2017.

3 MR. SUMMA: Thank you, Your Honor. Permission to
4 publish to the jury?

5 THE COURT: Yes, sir.

6 [Whereupon, the photograph is published]

7 MR. COOPER: I have no other questions for the
8 witness, Your Honor.

9 THE COURT: Mr. Voigt?

10 MR. VOIGT: Thank you.

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State v Daquan J. Crummey & Denali D. White
Loretta Mitchum-Cross-Examination by Mr. Voigt
March 12, 2020

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CROSS-EXAMINATION

BY MR. VOIGT:

Q. Ma'am, I just have a couple of brief questions for you.

A. Okay.

Q. When people are making phone calls from the jail, it's important that they use their own PIN numbers; isn't that true?

A. Yes.

Q. And if they -- do you have a problem at the jail with inmates exchanging PIN numbers or calling under other peoples PIN numbers?

A. Yes.

Q. And is that a problem that you seek to -- there are various ways you can discover that, but sometimes it goes on for a while before you discover it; is that correct?

A. Sure.

MR. VOIGT: That's all I have. Thank you, Judge.

THE COURT: Any redirect, Mr. Cooper?

MR. COOPER: No, Judge.

THE COURT: Alright. Ma'am, you can step down.

Thank you very much for being here.

[Whereupon, the witness is excused and exits the witness stand]

State v Daquan J. Crummey & Denali D. White
Paul McManigal-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: The State calls Paul McManigal.

2 [Whereupon, Mr. McManigal comes forward]

3 THE CLERK OF COURT: Please place your left hand on
4 the Bible, and raise your right.

5 [Whereupon, Mr. McManigal is duly sworn by the Clerk
6 of Court]

7 THE CLERK OF COURT: You may be seated.

8 [Whereupon, the witness takes the witness stand]

9 THE CLERK OF COURT: And for the record, please
10 state your full name, spelling both your first and your
11 last.

12 THE WITNESS: Paul McManigal. P-A-U-L. M-C-M-A-N-
13 I-G-A-L.

14 - - - - -

15 PAUL MCMANIGAL,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. COOPER:

20 Q. Good afternoon. Will you tell the jury where you're
21 currently employed?

22 A. I'm currently employed with the Charleston County
23 Sheriff's Office.

24 Q. And how long have you been there?

25 A. Thirty-one years.

State v Daquan J. Crummey & Denali D. White
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1 Q. What is your current role?

2 A. I'm a computer forensic examiner assigned to United
3 States Secret Service Electronic Crimes Task Force.

4 Q. And in that role, tell the jury what your
5 responsibilities are.

6 A. I'm responsible for processing all digital evidence,
7 which includes cell phones, laptops, computers, even the
8 entertainment systems from cars.

9 Q. Does it involve pulling extractions from those
10 digital devices?

11 A. It does.

12 Q. Is that also known as a phone dump or a dump of a
13 device?

14 A. It is. When we do an extraction on a device, people
15 relate back to actually dumping the data off of it.

16 Q. Will you explain that process to the jury?

17 A. Depending on what item it is in the cases of cell
18 phones, I have a variety of tools at my disposal that I
19 can use to connect the device to that tool and then it'll
20 pull all of binary data off of the memory card.

21 Q. And so when you do an extraction, for example, of
22 cell phones, does it pull every bit of information off
23 that phone?

24 A. It will pull all the data from the phone, just as a
25 binary copy of everything that's on the chip, and then

1 the software that we use actually goes through that data
2 and puts it into a readable format.

3 Q. Did you the occasion to dump two phones in this
4 case?

5 A. I did.

6 Q. Showing you what's already in evidence as State's 61
7 and State's 66. If you'll review both of those phones
8 for me.

9 [Whereupon, the witness is shown exhibits]

10 A. I did.

11 Q. [Mr. Cooper] And, in fact, which phone is that?

12 A. This one here is a Samsung and the other one is an
13 iPhone.

14 Q. And they're both phones that you received in your
15 dump back in 2017?

16 A. That is correct.

17 Q. And then when you perform an extraction, describe
18 for the jury how do you -- how do you prepare that
19 extraction? How do you send it back to those that
20 requested it?

21 A. I will export the report, usually as a PDF file,
22 which I will place on either a CD or a DVD, or if it's
23 too large for either one of those, I'll put it on a thumb
24 drive.

25 Q. And would you recognize those CDs and/or --- or

State v Daquan J. Crummey & Denali D. White
Paul McManigal-Direct Examination by Mr. Cooper
March 12, 2020

1 thumb drive if I were to show them to you?

2 A. I would.

3 Q. Regarding the Samsung phone. Showing you what's
4 been marked for I.D. purposes only as States 67.

5 [Whereupon, the witness is shown exhibit]

6 Q. Do you recognize that disk?

7 A. Yes. This is the disk I created for the Samsung
8 cellular phone report.

9 Q. And that's got your dump on it -- your extraction on
10 it?

11 A. It does.

12 MR. COOPER: At this time, Your Honor, the State
13 would offer Exhibit 67 into evidence.

14 MR. COOPER: May we approach?

15 THE COURT: Just approach, please.

16 [Whereupon, an on-the-record bench conference is
17 held as follows:}

18 MR. COOPER: I'm sorry I had to phrase it like that.
19 I made it for I.D. purposes only. He puts it in the
20 computer. I have selections from what I have taken and
21 printed that I want to introduce into evidence. But he
22 wants that extraction so he can compare them and say they
23 are duplicates. That's why I made it for I.D. purposes
24 only.

25 THE COURT: He actually -- I know he pulled it the

1 day of.

2 MR. COOPER: Uh-huh.

3 THE COURT: Did he create documents that you're
4 seeking to introduce as a result of the dump?

5 MR. COOPER: They are. I printed it from the dump.
6 And what he will do is he will go and review them and
7 say, yes, they appear to be duplicates of the redactions
8 and the like.

9 MS. SHEALY: While he's on the stand.

10 MR. COOPER: Yeah. And puts his -- and I clear that
11 up with him and he is like this is a duplicate, it's his
12 exact copy.

13 THE COURT: Yeah. I don't think this -- I don't
14 think it's quite time to offer it. Lay more foundation
15 as to --

16 MR. COOPER: I guess my question is to put the -- do
17 the CD for I.D. purposes only so that he can use that ---

18 THE COURT: --- Yeah ---

19 MR. COOPER: --- and it doesn't go back to the jury.
20 And I'm going to do the -- I'm not -- I'm not going to
21 introduce it like now. I'm going to go through the
22 selections. I just wanted to make sure that was clear
23 for the record that the CD is not in for evidence.

24 THE COURT: Yeah. It's in -- it's in for I.D.
25 purposes only.

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Paul McManigal-Direct Examination by Mr. Cooper
March 12, 2020

1 MR. COOPER: Okay.

2 MR. SUMMA: His phone dump it's not going to be
3 offered ---

4 THE COURT: --- No, it's on his computer ---

5 MR. SUMMA: --- and then you're not going to
6 introduce anything from the dump phone, right, like this
7 morning, right?

8 [Whereupon, Mr. Cooper and Mr. Summa confer]

9 [Whereupon, on-the-record bench conference
10 concludes]

11 THE COURT: Just so the record is clear, State's 67
12 is at this point for identification purposes only.

13 [Whereupon, State's Exhibit Number 67 is admitted
14 into evidence, for I.D. purposes only, by the Court]

15 Q. [Mr. Cooper] Deputy McManigal, regarding that
16 extraction that is on State's 67, when did you perform
17 that?

18 A. The Samsung cell phone, I performed the examination
19 on August 30th of 2017.

20 Q. And then as a part of that, did you happen to end up
21 with two extractions?

22 A. I did. I performed the first one using my primary
23 tool, which is called Cellebrite UFED Touch2.

24 Unfortunately, that software was not able to parse all of
25 the data. It wasn't able to translate it from binary

1 into something usable, so I used a secondary tool, known
2 as Oxygen Forensics, and it was able to grab other parts
3 of it.

4 So the Cellebrite report did not contain the
5 messages. So I ran it again on Oxygen and Oxygen was
6 able to read the messages.

7 Q. And when you received the phone, do you remember if
8 it was locked or not?

9 A. The Samsung phone was locked with a pattern lock.
10 However, when I get phones that are locked, sometimes I
11 will -- I will try standard patterns. In this case I
12 tried an M-shape and it worked.

13 Q. And this was pursuant to a search warrant, as well?

14 A. That's correct.

15 Q. And so Deputy McManigal, I have -- I want to point
16 you to certain points of your extraction. Regarding...

17 [Whereupon, Mr. Cooper confers with Mr. Summa and
18 Mr. Voigt]

19 Q. Regarding your Cellebrite report, on the -- let me
20 show you what's been marked for I.D. purposes only as
21 State's 68.

22 [Whereupon, the witness is shown exhibit]

23 Q. Do you recognize what that is?

24 A. This is the first page of my extraction report for
25 the Samsung.

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1 Q. Okay. And then does it appear to be a true and
2 accurate depiction of your extraction from that phone?

3 A. It is an exact copy.

4 Q. Other than the highlighting, does it appear to be
5 altered in any way?

6 A. No.

7 Q. Okay.

8 MR. COOPER: Your Honor, at this time, the State
9 would offer Exhibit 68 into evidence.

10 THE COURT: Any objection?

11 MR. SUMMA: No objection.

12 MR. VOIGT: No objection.

13 THE COURT: 68 in without objection.

14 [Whereupon, State's Exhibit Number 68 is admitted
15 into evidence by the Court]

16 Q. [Mr. Cooper] Is this how the initial part of your
17 extraction report usually appears?

18 A. Yes.

19 Q. And in the information contained you said what time
20 and date did you perform the extraction?

21 A. August 30th, 2017, at 2:21 p.m.

22 Q. Okay. And what was the phone number listed for that
23 device?

24 A. 843-668-0697.

25 Q. And I'm going to point you to two pictures from your

1 report. I'm showing you State's Exhibits 69 and 70 for
2 I.D. purposes only.

3 [Whereupon, the witness is shown photographs]

4 Q. Do those pictures appear to be two phones [sic] from
5 that device?

6 A. These are two photos.

7 Q. Looking on page 62 of your report, line 371 and 372.

8 [Whereupon, the witness reviews document]

9 A. These are photos from my report.

10 Q. Other than redactions, do they appear to be true and
11 accurate depictions of the photos that were on that
12 device?

13 A. They are.

14 Q. Have they -- other than, again other than
15 redactions, do they appear to be altered in any way?

16 A. They have not.

17 MR. COOPER: And, Your Honor, at this time the State
18 would offer Exhibits 69 and 79 in to evidence.

19 THE COURT: Any objection?

20 MR. SUMMA: No objection.

21 MR. VOIGT: No objection.

22 THE COURT: 69 and 70 are in without objection.

23 [Whereupon, State's Exhibit Numbers 69 and 70 are
24 admitted into evidence by the Court]

25 Q. [Mr. Cooper] On State's 69, what is that a picture

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1 of?

2 [Whereupon, the photograph is published]

3 A. It's a social security card in the name of Denali
4 Deonco White.

5 Q. And I'm showing you State's 70.

6 [Whereupon, the photograph is published]

7 Q. What does this appear to be?

8 A. That's a South Carolina Department of Health and
9 Environmental Control I.D. card in the name of Denali
10 Deonco White.

11 Q. And from your report, were you able to tell the date
12 and time those pictures were created on the phone or
13 added to the phone?

14 A. That would be May 26, 2017, at 9:14 a.m. for the
15 social security card and May 26, 2017, also at 9:14 a.m.,
16 for the I.D. card.

17 Q. Okay. Regarding the Oxygen phone extraction that
18 you performed --

19 [Whereupon, Mr. Cooper and Ms. Shealy confer]

20 Q. I'm showing you what's been marked as State's 71 for
21 I.D. purposes only.

22 [Whereupon, the witness is shown exhibit]

23 Q. Do you recognize that document?

24 A. This is the first page of the Oxygen forensics
25 report for the Samsung.

1 Q. Does it appear to be a true and accurate depiction
2 of what appears in your report?

3 A. It's an exact copy.

4 Q. Except the highlighting, has it been altered in any
5 way?

6 A. No, it hasn't.

7 MR. COOPER: Your Honor, at this time, the State
8 would offer Exhibit 71 into evidence.

9 THE COURT: Any objection?

10 MR. SUMMA: No objection.

11 MR. VOIGT: I would lodge a hearsay objection, Your
12 Honor.

13 [Whereupon, Mr. Cooper and Mr. Voigt confer]

14 MR. VOIGT: It could be any picture --

15 THE COURT: Overruled.

16 MR. VOIGT: Thank you, Judge.

17 MR. COOPER: Thank you, Judge.

18 MR. VOIGT: Please note my objection.

19 THE COURT: Objection is noted.

20 MR. VOIGT: Okay.

21 [Whereupon, State's Exhibit Number 71 is admitted
22 into evidence by the Court]

23 Q. [Mr. Cooper] And this is a separate extraction
24 report. Is this the same Samsung phone from the first
25 report?

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1 A. It is the same phone.

2 Q. Would you read the alias and retail name for us,
3 please?

4 A. The alias is SM-J327T1, and the retail name is the
5 Samsung SMJ327T1. The IMIE number is 355603083347973.

6 Q. Now I'm going to direct you to pages 4927 and 4929
7 of your report. I'm going to show you what's been marked
8 for I.D. purposes only as State's 72 and State's 91.

9 [Whereupon, the witness is shown exhibits]

10 Q. Do you know what those documents are?

11 A. This is a section of the text messages from the
12 Oxygen report on the Samsung phone.

13 Q. Other than highlighting and redactions, do they
14 appear to be true and accurate copies or altered in any
15 way?

16 A. They are.

17 MR. COOPER: Okay. Your Honor, at this time, the
18 State would offer Exhibits 71 and 92 into evidence.

19 THE COURT: Any objection?

20 MR. SUMMA: No objection.

21 MR. VOIGT: Subject to my previous objection which
22 is the one from actually two days ago, and for which we
23 had motions. And I would make a relevance objection to
24 these.

25 THE COURT: Could you hand those -- I can see them,

1 please?

2 [Whereupon, Mr. Cooper proffers documents to the
3 Court]

4 [Whereupon, the Court reviews documents.]

5 THE COURT REPORTER: Mr. Cooper, what are those
6 numbers again?

7 MR. COOPER: 72 and 91. I think I misspoke the
8 first time.

9 THE COURT REPORTER: Okay. 72 and 91. Okay.

10 MR. COOPER: I'm sorry. And Judge, they are
11 statements made the day before the incident.

12 MR. VOIGT: By the individual who's got the phone.

13 MR. COOPER: We're going to show whose phone it is.

14 THE COURT: Over Mr. Voigt's objections on all
15 grounds, I will allow State's 72 and State's 91.

16 MR. COOPER: Thank you, Judge.

17 THE COURT: They are admitted into evidence.

18 MR. COOPER: May I -- if I may publish?

19 THE COURT: You may.

20 [Whereupon, State's Exhibit Numbers 72 and 91 are
21 admitted into evidence by the Court]

22 Q. [Mr. Cooper] Showing you Exhibit 72, which is page
23 4927 of your report.

24 [Whereupon, the exhibit is published]

25 Q. And in this report are we working, as far as text

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1 messages, from the bottom up in chronological order?

2 A. That is correct.

3 Q. And so regarding line 1299, what is that a depiction
4 of?

5 A. That is a text message that's incoming to the
6 Samsung phone from another number. The text says what
7 your email address.

8 Q. And then going to line 1297 is that another text to
9 the phone?

10 A. It is.

11 Q. And it says what your email I.D.?

12 A. That's correct.

13 Q. And then 1296, is that a response from the Samsung
14 phone?

15 A. It is.

16 Q. With the email address of [REDACTED]@gmail.com

17 A. That was the message, yes.

18 Q. And the date of that response is July 22nd, 2017, at
19 1:53:15 p.m.; correct?

20 A. That is correct.

21 Q. Showing you State's 91.

22 [Whereupon, the exhibit is published]

23 Q. This is I believe page 4929 of your report.

24 Regarding line 1305, is this a text message to the phone?

25 A. It is an incoming message, yes.

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1 Q. And that's so what you ---

2 MR. VOIGT: I object to counsel reading the message
3 that's on the screen.

4 MR. COOPER: May I rephrase that for the Court?

5 THE COURT: Have the -- have the witness...

6 Q. [Mr. Cooper] Will you please read the description
7 of the message -- the text of the message on line 1305 to
8 the Samsung phone?

9 A. Yes. The incoming message is so what your full
10 name, address and email address.

11 Q. And then the response on line 1304 would you please
12 read that to the jury?

13 A. The response is Denali White, [REDACTED] Avenue,
14 North Charleston, South Carolina, 29405.

15 Q. And the date and time of that response?

16 A. It is July 22nd, 2017, at 1:47 p.m.

17 Q. I'm now going to direct you to the iPhone
18 extraction. The iPhone in 2017, were you able to perform
19 an extraction on it in 2017?

20 A. We received a search warrant for it, however, it was
21 pin-locked at the time and I did not have any software
22 that could bypass the pin lock.

23 Q. Since 2017, have you acquired the ability to get
24 past a pin-locked iPhone?

25 A. Yes. A little more than a year ago, my department

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1 was able to obtain a piece of hardware called the Grey
2 Shift GrayKey that is able to crack the pins on iPhones.

3 Q. And as a result, were you provided another search
4 warrant to perform an extraction on that iPhone?

5 A. I did. I received the search warrant I believe May
6 15th, 2019.

7 Q. And were you able to perform an extraction on the
8 phone at that point?

9 A. I did. I was able to perform a full extraction.

10 Q. And that was on State's 61, the iPhone we just
11 looked at?

12 A. That is correct.

13 Q. Alright. I'll let you do this so I don't drop it
14 and lose it. Regarding State's Exhibit 62 for I.D.
15 purposes only, is that the USB drive that you responded
16 to the iPhone extraction?

17 [Whereupon, the witness is shown exhibit]

18 A. It is.

19 MR. COOPER: Your Honor, at this time, the State
20 would offer Exhibit 62 for I.D. purposes only.

21 THE COURT: For I.D. purposes only, 62.

22 [Whereupon, State's Exhibit Number 62 is to be used
23 for I.D. purposes only]

24 Q. [Mr. Cooper] And we'll do the same thing with that
25 extraction report.

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1 [Whereupon, Mr. Cooper confers with Mr. Summa]

2 MR. SUMMA: Just subject to previous objection.

3 MR. COOPER: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Summa and Mr. Voigt review
6 documents]

7 MR. VOIGT: Subject to my previous objection, Your
8 Honor.

9 THE COURT: And just so the record is clear, which
10 numbers are you holding there?

11 MR. COOPER: Judge, I showed defense counsel, and
12 I'm going to show Mr. McManigal, Exhibit 63, 90, and 64
13 for I.D. purposes only at this point.

14 THE COURT: Okay.

15 Q. [Mr. Cooper] I'm going to show you State's 63
16 first.

17 [Whereupon, the witness is shown exhibit]

18 Q. Does that appear to be an accurate depiction of the
19 first page of your report?

20 A. This is.

21 Q. Other than being highlighted, has it been altered or
22 manipulated in any way?

23 A. No, sir.

24 MR. COOPER: Your Honor, at this time the State
25 would offer Exhibit 63 I believe without objection.

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1 MR. VOIGT: Subject to previous ---

2 MR. SUMMA: --- subject to previous objections.

3 MR. VOIGT: The same.

4 THE COURT: Previous objections are overruled.

5 State's 63 is admitted.

6 MR. COOPER: Thank you.

7 [Whereupon, State's Exhibit Number 63 is admitted
8 into evidence by the Court]

9 Q. [Mr. Cooper] And will you tell the jury in the
10 second line, when is -- was the date and time that you
11 completed this extraction?

12 A. It was May 16th, 2019, at 10:32 a.m.

13 Q. And what was the phone number that was associated
14 with that device?

15 A. Area code 843-781-4400.

16 Q. And that's also what's meant by the first line of
17 the call and the last used MSISDN?

18 A. That is correct.

19 Q. That'd be the last phone number that's used with
20 that account?

21 A. That is correct.

22 Q. And the IMEI number, would that be the same as the
23 serial number on the back of an iPhone?

24 A. That is a mobile phone identifier assigned by the
25 electronics commissioner.

1 Q. Is that the same one that matches this iPhone?

2 A. It is.

3 Q. And when you perform an extraction on an iPhone,
4 does it include text messages?

5 A. It includes everything, yes, sir.

6 Q. Would it also include Facebook messages?

7 A. That's correct.

8 Q. Focusing you to page 2166 of your report, and
9 showing you State's Exhibit 90 for I.D. purposes only.

10 [Whereupon, the witness is shown exhibit]

11 Q. Does that appear to be an accurate description of
12 that page of your report?

13 A. It is.

14 Q. Does it appear to be changed or altered or
15 manipulated in any way?

16 A. No, sir.

17 MR. COOPER: Your Honor, at this time, the State
18 would offer State's Exhibit 90 into evidence.

19 THE COURT: Any objection?

20 MR. SUMMA: Subject to previous objections.

21 MR. VOIGT: Subject to previous objections.

22 THE COURT: State's Number 90 is admitted over
23 defendants' objections.

24 [Whereupon, State's Exhibit Number 90 is admitted
25 into evidence by the Court]

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1 [Whereupon, the exhibit is published]

2 Q. [Mr. Cooper] And so if you'll orient us a little
3 bit. The messages on the -- the green ones, the ones on
4 the right, are those the ones from the phone or is it to
5 the phone?

6 A. Those are the ones from the phone.

7 Q. And the blue ones were the ones that were coming
8 into the phone?

9 A. That is correct.

10 Q. Can you tell whether this is a text or a Facebook
11 message?

12 A. No, I cannot at the moment. Just one moment.

13 [Whereupon, the witness reviews documents]

14 A. Can I please get the page number again?

15 Q. [Mr. Cooper] 2166.

16 [Whereupon, the witness reviews documents]

17 A. This appears to be a Facebook message.

18 Q. And at the top of that green message, that number --
19 is that the account number and account name?

20 A. That is.

21 Q. Would you read that for the jury?

22 A. The top one is -- the account number is
23 100013429417753, with the name of Runacheckup Youngn.

24 Q. And that message that it is sending out, will you
25 read that for the jury, please?

1 A. The message is: whenever you can come.

2 Q. And then the response? If you'll read that for us.

3 A. It is from number 100014840194029, user name Janae
4 Emily Nakita [phonetic]. The message is: alright, when
5 you give me your address I can come.

6 Q. And if you'll read the response, please.

7 A. The response is: [REDACTED] Street.

8 Q. And that's from the same Runacheckup Youngn account?

9 A. That is correct.

10 Q. And the date and time on that message?

11 A. The date and time is August the 1st, 2017, at 11:14
12 a.m.

13 Q. I'm now going to direct you to page 119 -- 11996 of
14 your report.

15 [Whereupon, Mr. Cooper and Ms. Shealy confer]

16 Q. I'll just put these up as separate exhibits just to
17 make it a little easier for us to discuss.

18 I'm showing you and looking at page 11996 of your
19 report. I'm showing you what's been marked for I.D.
20 purposes only as State's 64.

21 [Whereupon, the witness is shown exhibit]

22 Q. Do you recognize that as a portion of the timeline
23 log of that page?

24 [Whereupon, the witness reviews document]

25 THE WITNESS: I apologize, Your Honor.

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1 THE COURT: Take your time.

2 [Whereupon, the witness continues to review
3 document]

4 A. Yes, I recognize it. It is from my report.

5 Q. [Mr. Cooper] Other than it being redacted, does it
6 appear to be altered or manipulated in any way?

7 A. It does not.

8 MR. COOPER: Okay. Your Honor, at this time, the
9 State would offer Exhibit 64 into evidence.

10 MR. SUMMA: Subject to previous objection.

11 MR. VOIGT: Subject to previous objection.

12 THE COURT: State's 64 to be admitted over defense,
13 both defendants' objections.

14 MR. COOPER: Thank you, Judge.

15 [Whereupon, State's Exhibit Number 64 is admitted
16 into evidence by the Court]

17 THE COURT: Please proceed.

18 Q. [Mr. Cooper] And regarding page 12,001 of your
19 report, in State's Exhibit 102 for I.D. purposes only,
20 does that also appear to be an accurate depiction of that
21 page of your report?

22 [Whereupon, the witness is shown exhibit]

23 A. It is.

24 Q. [Mr. Cooper] And, again, other than the redaction,
25 does it appear to be manipulated or altered in any way?

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1 A. No, sir.

2 MR. COOPER: Your Honor, at this time, the State
3 would offer Exhibit 102 into evidence.

4 THE COURT: Any objection?

5 MR. VOIGT: Subject to previous objections.

6 THE COURT: 102 is admitted over the previous
7 objections.

8 [Whereupon, State's Exhibit Number 102 is admitted
9 into evidence by the Court]

10 Q. [Mr. Cooper] Now looking at page 12,002 of your
11 report in State's Exhibit 103 -- 103 for I.D. purposes
12 only.

13 [Whereupon, the witness is shown exhibit]

14 A. This is also a copy from the same report.

15 Q. Does it appear to have been altered or manipulated
16 in any way, other than the redaction?

17 A. No, sir.

18 MR. COOPER: At this time, Judge, the State would
19 offer Exhibit 103 into evidence.

20 MR. VOIGT: Subject to previous objection.

21 MR. SUMMA: The same, Your Honor.

22 THE COURT: 103 is in over objection of both
23 defendants.

24 [Whereupon, State's exhibit number 103 is entered
25 into evidence by the Court]

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1 Q. [Mr. Cooper] And then regarding page 12,003 of your
2 report, State's Exhibit 104 for I.D. purposes only.

3 [Whereupon, the witness is shown exhibit]

4 Q. I don't think that's been redacted. Is that the
5 exact page of your report?

6 A. This is a copy from the report.

7 Q. And not changed, altered, or manipulated in any way?

8 A. No, sir.

9 MR. COOPER: Your Honor, at this time, the State
10 would offer Exhibit 104 into evidence.

11 MR. SUMMA: Subject to previous objection.

12 MR. VOIGT: Same here.

13 THE COURT: 104 is in over both defendants'
14 objections.

15 MR. VOIGT: Thank you, sir.

16 [Whereupon, State's Exhibit Number 104 is admitted
17 into evidence by the Court]

18 Q. [Mr. Cooper] Before I show these, will you explain
19 to the jury, do phone extractions, do they include
20 separate areas for a phone's calls and text messages,
21 emails, and the like?

22 A. The way the reports work is that the software will
23 read all the binary computer language and figure out
24 what's a text message and what's a call log and what's an
25 image and it will separate it into different areas so

1 that when I export the reports, it will actually split it
2 up into different sections. It will have images, videos,
3 SMS messages which are just texts, or MMS messages which
4 may have an image attached to it.

5 It also has a section called a timeline, which is
6 the section that we -- I guess we're getting ready to
7 review.

8 Q. And the timeline, describe that section. How is it
9 different from the other sections?

10 A. A timeline takes all of the information from the
11 phone, regardless of what category it is, and places it
12 in chronological order.

13 So, you'll see everything on the phone in
14 chronological order whether it's a text message or a
15 picture.

16 Q. Regarding State's Exhibit 64.

17 [Whereupon, the exhibit is published]

18 Q. And unlike the previous photo, are we now back to
19 reading top to bottom in chronological order?

20 A. That is correct.

21 Q. Regarding line 36520, what information is that
22 providing us?

23 A. That is a text message that's incoming to the phone.

24 Q. And incoming at what date and time?

25 A. It was July 22nd, 2017, at 11:31 p.m. The message

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1 is, you at your spot ---

2 Q. And the number, the from number, is that the same
3 number that was on the Samsung we just looked at?

4 A. That is correct.

5 Q. And the to number is the 4400 for the iPhone?

6 A. That is correct.

7 Q. And then at line 36523, is that another incoming
8 message from the same number?

9 A. It is. It's incoming at July 22nd, 2017. It says
10 you at your spot again.

11 Q. And where it says read, that little category, what
12 does that mean?

13 A. That means that message had been read by the user.

14 Q. So it's not -- it's not a second message, it's just
15 that the user read that first message?

16 A. That's correct.

17 Q. And then the next line, 36524, is that the response?

18 A. That is the response. It shows there's an outgoing
19 text message at 11:54 p.m. It says WYA, which stands for
20 where you at.

21 [Whereupon, Mr. Cooper and Ms. Shealy confer]

22 Q. I'm showing you -- showing you State's Exhibit 102.

23 [Whereupon, the exhibit is published]

24 Q. And are we continuing through on this timeline?

25 A. We are.

1 Q. Focusing your attention to line 36658. Describe for
2 us what's in that picture.

3 A. That line is an incoming text message, July 23rd,
4 2017. The message: in my spot, phone had went dead.

5 Q. And so we've moved to the next morning at this
6 point?

7 A. That's correct.

8 Q. And is that, again, from the same phone number as
9 the Samsung report?

10 A. It is.

11 Q. And the next line at 36659 is that just an
12 acknowledgment that the iPhone had read that message?

13 A. That is when the message was read at 10:40 a.m.

14 Q. And looking at 36660, is that the text message
15 response from the iPhone?

16 A. It is. It's an outgoing message July 23rd, 2017, at
17 10:40 a.m. It says: get ah ride down here.

18 Q. And the next line, 36661, is that an incoming
19 message from that same number?

20 A. It is. It's incoming July 23rd at 10:41 a.m.
21 Message: I trying to now.

22 Q. Okay. And then the next line at 36664, what is that
23 line?

24 A. That is an outgoing call that occurred on July 23rd,
25 2017, at 10:43 a.m.

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- 1 Q. Again, it's the same number as the Samsung?
- 2 A. It is.
- 3 Q. And the duration is three seconds. Are we able to
- 4 tell on a phone dump if that was an answered call, a
- 5 missed call?
- 6 A. No.
- 7 Q. Focusing your attention to the next line, 36666, is
- 8 that another outgoing call from the same number?
- 9 A. That is.
- 10 Q. And what time and date is that?
- 11 A. July 23rd, 10:43 a.m.
- 12 Q. And that's zero-second duration?
- 13 A. That's correct.
- 14 Q. And then your attention to the next line. Is that
- 15 also an outgoing call?
- 16 A. It is.
- 17 Q. To the same number?
- 18 A. To the same number, eight-second duration.
- 19 Q. At what time?
- 20 A. At 10:46 a.m.
- 21 Q. Focusing your attention to 36671. Is that another
- 22 outgoing call to the same number that morning?
- 23 A. It is, occurring July 23rd, 2017, at 10:50 a.m.
- 24 lasting eighteen seconds.
- 25 Q. And the next line at 36672 another outgoing call?

1 A. Another outgoing call July 23rd at 10:51 a.m.
2 lasting zero seconds.
3 Q. Okay. And then the incoming message on the next
4 line, 36673?
5 A. Yes, sir. July 23rd at 10:51 a.m. It says: I at my
6 spot.
7 Q. And then at the last line on that page, 36674
8 another outgoing call to the same number?
9 A. It is.
10 Q. Regarding State's 103, is this the beginning of the
11 next page?
12 A. It is.
13 Q. Looking at line 3677, is that an outgoing text
14 message?
15 A. It is an outgoing text message saying: she say we
16 need you for the lick.
17 Q. And that's at 10:52 a.m. on July 23rd, 2017;
18 correct?
19 A. That is correct.
20 Q. From the same number as the Samsung?
21 A. That is correct.
22 Q. Looking at line 36678, what does that appear to be?
23 A. That is an incoming call from a subject listed as
24 Brown D in the contact list. The phone number is 843-
25 668-0697, lasting thirty-one seconds.

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1 Q. And then the next line at 36681, what does did that
2 text message say?
3 A. It says: what the address.
4 Q. And that came in at ---
5 A. July 23rd at 11:00 a.m.
6 Q. And then the next line below that is that just the
7 iPhone listing that it was read?
8 A. That is correct.
9 Q. And what does the iPhone respond in line 60 --
10 36683?
11 A. Outgoing message at 11:02 a.m. says: [REDACTED]
12 Street.
13 Q. And then the next line at 36684 is that another
14 outgoing message from the iPhone?
15 A. It is. July 23rd at 11:04 a.m. The message: is how
16 long before you get here.
17 Q. And then the response to that same number on the
18 next line at 36685?
19 A. The cab company still got me on hold.
20 Q. And that's at 11:04 a.m. on July 23rd?
21 A. That is correct.
22 Q. And then 36687 is just, again, acknowledgement the
23 phone read the message?
24 A. That's when the message was marked as read. Yes,
25 sir.

1 Q. And then the line below that, 36688, what does that
2 text message say?
3 A. It says: Ight just b4 12.
4 Q. And what time and date is that one?
5 A. That occurred July 23rd at 11:05 a.m.
6 Q. And then the incoming message from that same phone
7 number on line 36689?
8 A. The message is: Ight. And it came in at 11:07
9 a.m.]
10 Q. And the next -- again, the next line is just
11 acknowledgement that message was read?
12 A. That's correct.
13 Q. And then the response at 36691, what does the iPhone
14 say to that Samsung number?
15 A. The message is: big one, brah. And it came in at
16 11:08 a.m.
17 Q. What was the response from the Samsung number, the
18 next line, 36392 -- 36692? Excuse me.
19 A. 36692 is an incoming message. The message is: big
20 one, question mark, at 11:08 a.m.
21 Q. Okay. And then at 36693 is just, again, the
22 acknowledgement that it was read?
23 A. That's correct.
24 Q. And then what is the response by the iPhone to the
25 Samsung at line 36694?

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1 A. The message is: big, big one. At 11:08 a.m.

2 Q. And then regarding 36695, what is the message
3 incoming from that Samsung number?

4 A. The message is: Ight say less, my cab, OTW; which
5 stands for on the way now.

6 Q. And that's at 11:09 a.m.?

7 A. That is correct.

8 Q. And the next line is the acknowledgement that it was
9 read?

10 A. That is correct.

11 Q. And then the last line from the outgoing messages,
12 36697, is a Samsung number?

13 A. This is an outgoing message. The message is,
14 alright. And it occurred at 11:09 a.m. on July 23rd,
15 2017.

16 Q. And looking at, this is a new page, 12003 of your
17 report. Does this list capture the activity on the phone
18 from the beginning of 11:36 a.m. on the 23rd through line
19 36725 on our screen? Is that all the phone call and text
20 message activity on the phone?

21 A. That is all the activity on the phone between those
22 times.

23 Q. Okay. And then looking at line 36710. That's an
24 incoming call from who?

25 A. That is from the contact known as Brown D.

1 Q. And is that -- is it the same number identified with
2 the Samsung phone we just spoke about?

3 A. That is correct.

4 Q. And what time does that call take place?

5 A. That is on July 23rd, 2017, at 11:51 a.m.]

6 Q. And then moving down to line 36716. Is that an
7 outgoing call?

8 A. That is an outgoing call to a contact known as Beto
9 Ole Lady, with a different phone number of 843-452-8145,
10 occurring at 12:10 p.m.

11 Q. It lasted for a minute and three seconds?

12 A. That is correct.

13 Q. And then two lines down, is that another outgoing
14 call to that same Beto Ole Lady contact?

15 A. It is, lasting seven seconds.

16 Q. And that's at 12:33 p.m. that day?

17 A. That's at 12:24 p.m. Line 36718?

18 Q. Yes. I'm sorry. And then skipping two down from
19 that -- my apologies -- line 36720, is that another
20 outgoing call to the same Beto Ole Lady contact?

21 A. It is, occurring at 12:33 p.m., lasting for two
22 seconds.

23 Q. And then right after that 12:33 phone call, the next
24 activity is an incoming call at 12:53; is that correct?

25 A. That is correct.

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1 Q. And that is from who?
2 A. A contact Daquan Crummey, with the phone number 843-
3 270-7465.
4 Q. And that's at 12:53 p.m.?
5 A. That is correct.
6 Q. And then the next call -- the next item on the
7 timeline is an incoming call; correct?
8 A. That is correct.
9 Q. From what contact?
10 A. Robinson Esale, phone number 843-452-8145.
11 Q. Okay. And then the very next line, that outgoing
12 text message who is that to?
13 A. That's to a contact known as Beto Ole Lady, 843-452-
14 8145.
15 Q. And what time was that text?
16 A. 7:23, 2000 -- or I'm sorry. The date is 7/23/2017.
17 The time is 1:01 p.m.
18 Q. And what does it say?
19 A. Get in position.
20 Q. And then the next activity captured on the phone, is
21 that a -- what kind of -- what kind of activities are
22 being reported on line 36724?
23 A. It's simply a device notification. When an app
24 wants to put a message on your phone, it'll show up. And
25 you didn't do anything to active it. It just occurred.

1 Q. And then the very next line, what is that at 36725?
2 A. That is an incoming call at 1:06 p.m. from a contact
3 known as G Joey Gambino.
4 Q. And given that number right above the name, is that
5 similar to the Facebook account number we saw in the text
6 messages a minute ago?
7 A. That is correct.
8 Q. Does it appear that that call was answered?
9 A. Sorry?
10 Q. Does it appear that that call was answered?
11 A. No, it does not. It lasted zero seconds.
12 Q. And then the very next line at 36726, what is that?
13 A. That is an incoming text message. It says, what's
14 up.
15 Q. At 1:10 p.m.?
16 A. 1:10 p.m. Yes.
17 Q. Okay. So going back to line 36723, the outgoing
18 text at 1:01 p.m., the get in position text, the very
19 next activity by the user on this timeline, is that
20 occurring on line 36727?
21 A. That is correct.
22 Q. And what is that activity?
23 A. That's an outgoing phone call to the contact known
24 as Beto Ole Lady, and it lasted thirty seconds.
25 Q. And what time was that?

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1 A. That would be at 1:11 p.m. on July 23rd.

2 Q. Okay. And that very next line at 36728 is that
3 another outgoing call to Beto Ole Lady?

4 A. It is. Lasting for one minute and nine seconds at
5 1:11 p.m.

6 Q. And then an incoming call in the next line, 36729?

7 A. That's correct. From a contact known as Bennett
8 Tony, 843-568-9216, lasting for ten seconds, occurring at
9 1:15 p.m.

10 MR. COOPER: Beg the Court's indulgence just for one
11 second.

12 THE COURT: Yes, sir.

13 [Whereupon, Mr. Cooper and Ms. Shealy confer]

14 Q. I have no further questions for you. I appreciate
15 your time. Answer anything the defense may have for you.

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1 THE COURT: Ladies and gentlemen, at this time we've
2 been in the courtroom for quite a while. I think this is
3 an appropriate time for a brief recess. Court is going
4 to be in recess until 3:05. It's 2:58 now.

5 I'm going to send you to your jury room, remind you
6 do not begin deliberations on this case, do not discuss
7 this case amongst yourselves, and don't do any research
8 from any form of media. Thank you.

9 [Whereupon, the jury exits the courtroom at 3:03
10 p.m.]

11 THE COURT: Mr. McManigal, you may step down but do
12 not discuss your testimony with anybody while we're on
13 this recess.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Be in recess until 3:05.

16 MR. SUMMA: Your Honor, I just wanted to notify the
17 Court that I have a witness who cannot be here tomorrow,
18 so I just...

19 THE COURT: Who cannot be here tomorrow?

20 MR. SUMMA: That's correct. He's an expert. He's
21 travelling.

22 THE COURT: Alright. How many more witnesses does
23 the State have?

24 MR. COOPER: One.

25 THE COURT: We ought to -- I hesitate to try and

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1 foresee how much time anything is going to take at this
2 point, but I think we ought to be able to get at least
3 that one witness in today, even if it means staying a
4 little bit past 5:00. But let's be ready at 3:05 and
5 we'll accommodate that.

6 MR. SUMMA: Alright. I just wanted to let you know.
7 Thank you.

8 THE COURT: Thank you.

9 MR. SUMMA: Yes, sir.

10 [Whereupon, Court is in recess from 3:03 p.m. to
11 3:12 p.m.]

12 THE COURT: Thank you. Be seated.

13 MR. SUMMA: Your Honor, their next witness is their
14 mapping witness. We disagree a little bit about what the
15 mapping witness should be able to testify to. We can
16 handle it however you want, but I just wanted to alert
17 you to the issue in case you wanted to handle that now.

18 THE COURT: I think we should likely handle it now.
19 And what -- give me some information on what you disagree
20 on.

21 MR. SUMMA: Sure. And I'll put up what they've
22 shown me. Well, their initial Rule 5 just had a couple
23 of maps. This is totally different, but whatever. This
24 is what they're going to show, two incident locations.
25 Judge, this is the one that shows the incident location.

1 Here's another one. Here's another one. Here's another
2 one. Here's another one. And then there's another one.
3 What I have a problem with, especially, Judge, is this
4 one [indicates] because it doesn't show the incident
5 location.

6 And I think that at times -- I mean, clearly this
7 phone is in a nice, you know, Harrelson Village
8 neighborhood downtown, 12:20, 3:00 a.m. I mean, I don't
9 see how that's relevant. I think that -- I think it --
10 the jury is seeing that this is a scary man, he might
11 have his phone; he's hanging around a white neighborhood
12 at 3:00 a.m. I don't think it has anything to do with
13 this case. I'd ask that it be excluded.

14 They're going to say that it's to show movement
15 everywhere, but they can do that in all their other ones.
16 Why do we need this one that shows him in a nice area at
17 3:00 a.m.? Maybe we can even redact that part, right ---

18 THE COURT: --- it was 3:00 a.m. the night before?

19 MR. SUMMA: Correct.

20 MR. COOPER: The morning. Sorry. I apologize.

21 MR. SUMMA: The morning of. Right; so I guess nine
22 hours or so before the incident time.

23 MR. COOPER: Judge, if can just respond?

24 MR. SUMMA: We can probably just redact the two
25 bottom ones. I think that -- I think they -- whatever

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1 point they cross is just fine.

2 MR. COOPER: Several things, Judge. One, the
3 records are for six days. This, the State is just
4 showing from 12:01 a.m. on the 23rd to the end of the day
5 on the 23rd. One, I think it is important to show he
6 does not hang out in that neighborhood on Ashley
7 Phosphate the whole time.

8 But, two, Judge, just to orient you a little bit in
9 this area -- all I can. That area, Judge, is part of one
10 where we're located. There were a number of -- many of
11 the people in Mr. Crummey's age group, Mr. Summa's age
12 group, and my age group are all out at this time between
13 12:00 and two o'clock, 2:30 in the morning. That is a
14 very big part of the nightlife in Charleston.

15 There is no implication that he's out doing -- I
16 don't know what Mr. Summa is alleging. But that's
17 certainly not the State's intention. It's just showing
18 that he moves, he's not just in that one address. But
19 that is one more lively parts of the peninsular. He
20 could be at any one of the great restaurants, bars, and
21 who knows.

22 But the State's not putting that up to say he's
23 being in somewhere he shouldn't be. We're showing that
24 he moves from North Charleston, he goes down, he's not
25 just staying in this one area, so, then, that his

1 location at the crime scene is not by happenstance. But
2 it's certainly not prejudicial. We think it's entirely
3 probative, and the State has already reduced from the
4 full length of the records to one day.

5 THE COURT: I don't know that six day's worth of
6 records would be relevant. I think that's where I'm
7 struggling at this point. You know, what he was doing
8 nine hours before this event was alleged to have occurred
9 -- you know, if there was some evidence that they were
10 together nine hours before it occurred, it might make it
11 more relevant in my mind. But, you know, just that he
12 was in another part of Charleston nine hours; I'm
13 struggling to see the connection.

14 MR. COOPER: Part of the relevance, too, Judge --
15 and I'll show you from Mr. Summa's example -- is it also
16 helps to show that once he gets --

17 [Whereupon, Mr. Cooper proffers documents to the
18 Court]

19 MR. COOPER: This exhibit shows going until about
20 three o'clock in the morning, but then it shows a
21 stoppage of movement. He's at one place for six, seven
22 hours, and showing the movement before.

23 Then this stoppage would go to help the State
24 indicate that that is his address, that is where he's
25 sleeping, spending the night, which is an address that

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1 he's provided. And this is the heart of the State's
2 case. But showing that movement beforehand and showing
3 the relevant movement after hand goes to show that that
4 is where he's staying, that's where he's at that night.

5 THE COURT: Well, can the -- can the witness who's
6 going to testify with regard to these -- this cell site
7 analysis, can he -- is this address that is allegedly his
8 residence where he stays for multiple hours in the middle
9 of the morning the morning of, is that the same address
10 that has been referred to as his address?

11 MR. COOPER: Yes, sir, that Deputy Haslip gave and
12 that was produced from the iPhone. Yes, sir.

13 THE COURT: Well, I think -- I think that this
14 witness can say he was at this address starting at, if
15 I'm reading this correctly, 3:09 a.m. It's the address
16 that he gave law enforcement as his residence. I mean,
17 that's...

18 MR. SUMMA: Well, but the mapping expert can't
19 really say exactly and pinpoint where someone is. It's
20 just an area. So -- and, really, Judge, with respect to
21 -- we have an expert, too, and our expert is going to
22 testify that -- is basically going to shake all the data
23 the State gave us, basically, and put it in a time lapse
24 to show the entire movement of the person, right, not
25 just focusing on one little tiny part. We're trying to

1 give the jury context, right? And I think that they've
2 chosen not to give them context, and now they really want
3 to admit this little bit. I mean, honestly, I'm happy
4 with whatever ruling I just -- I would object to that one
5 thing as being prejudicial and --

6 MR. COOPER: I'm not sure quite about his comment
7 about the context, but I think it is important to show
8 that -- and if the State -- if the Court wants to get rid
9 of that first page, I certainly think that the one I
10 handed up should be the first one, then, Judge, because I
11 think it should show where he's at and where he's going
12 once he leaves the house.

13 Because once he starts texting again, that's when
14 the operative communication happens. But I would ask if
15 I could still elicit from my expert that the night before
16 he's in a variety of places and ---

17 THE COURT: --- well, I mean, you could -- you could
18 asked him based on his education, training and
19 experience, in his review of this did the person who had
20 this phone on him move around. And maybe just not focus
21 on the -- because I don't know that his particular
22 locations of movement prior to the actual daylight hours
23 of when this thing occurred are necessarily relevant.
24 The exact locations aren't necessarily relevant. But if
25 he's -- if you want to have the witness testify that he

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1 was moving up until 3:09 the night before I think that's
2 fine. I think that does give context. But the exact
3 locations, unless there's some other relevance to the
4 specific locations, I mean, I just -- I don't know -- I
5 don't know how that -- how that moves the ball forward
6 for you very much, other than saying he was moving.

7 If he's -- if he can testify to based upon my
8 analysis, he was moving around quite a bit, the movement
9 stopped, he was in the vicinity of what he's given as his
10 address, I think that -- I think that covers what you're
11 looking to cover without pinpoint -- I just don't see the
12 pinpoint locations that have nothing to do with this
13 offense being relevant.

14 MR. COOPER: The only other thing I'll add, Judge,
15 is that at the time of the incident, the sector of the
16 tower that he's pinging off of, he is not there any other
17 point in the day. And so part of also what the State
18 wants to show is that it's not, for example, a place he
19 passes by or through often so as to show that he was
20 there by accident.

21 It shows, in the State's -- in the State's mind,
22 that it's a deliberate being at that location. So
23 showing him being anywhere else but that sector and that
24 tower at the time of the crime, I think it speaks
25 volumes. And that's part of what the State's witness was

1 going to show ---

2 THE COURT: --- and I think -- I think that that
3 certainly may be relevant. But, like I said, the -- I
4 think you can ask your witness a general location that
5 the night and morning leading up to this was this cell
6 phone on the move? Yes.

7 And you can ask questions to point that -- I assume
8 you're going to -- he's going to say that at the time
9 this home invasion took place, this phone was pinging off
10 a cell tower in close proximity to where it happened. I
11 think that's certainly relevant.

12 So I think as far as the movement, you could seek in
13 more general terms and not -- because I just -- I don't
14 know that being down here close to the courthouse in the
15 early mornings is probative of much, other than he's not
16 near the incident location. And I think -- I think more
17 general terms are better with those issues.

18 MR. COOPER: And then once I get into that -- that's
19 the only time Mr. Summa has an issue, I can use -- I can
20 use the rest, is my understanding.

21 THE COURT: Yeah. I would just -- you know, I think
22 I would just caution against -- in getting lost in the
23 minutia of this thing. You know, it's -- I'm not -- I'm
24 not trying to tell you how to try your case, but, I mean,
25 it's -- I would -- I think the more general terms, as far

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1 as the movement, is relevant. The pinpoint locations
2 nine hours prior to the incident aren't very relevant and
3 certainly not probative of a whole lot. So ---

4 MR. SUMMA: --- thank you, Your Honor.

5 THE COURT: --- I would just caution you in that
6 regard.

7 MR. COOPER: And, also, just the Court's -- if there
8 are any objections to handle it now. I would like to
9 plan to use that record created by our expert witness
10 during his testimony to show to the jury.

11 THE COURT: Just for demonstrative purposes?

12 MR. COOPER: Yes, sir. Or I could use it starting
13 back during closing arguments, I guess.

14 [Whereupon, Mr. Cooper and Ms. Shealy confer]

15 MR. COOPER: We're planning to introduce it into
16 evidence. If they are, that's part of the expert
17 testimony. He's an expert that created those -- and
18 those are all records provided. I'm happy to...

19 MR. SUMMA: Judge, we think we do cross, show the
20 jury that these don't pinpoint the exact location,
21 obviously. We'd object under 403, but I don't have
22 anything else to say about that.

23 THE COURT: Which -- he said he intends to offer
24 that as an exhibit. Do you have any objection to him
25 offering the report as an exhibit?

1 MR. SUMMA: No.

2 THE COURT: Mr. Voigt?

3 MR. VOIGT: Yes, Your Honor. I believe that his
4 testimony that will suffice. I think the possibility
5 that the jury -- the jury could be confused that the
6 drafts and diagrams are more accurate than the -- than
7 his expertise will allow ---

8 THE COURT: --- Here's what I'm going to do. I'm
9 going to -- I liken this to a drug report in a drug case.
10 Yeah. The expert can testify and use the drafts and maps
11 as demonstrative evidence, but I'm not sending it back in
12 the jury room.

13 MR. SUMMA: Thank you, Your Honor.

14 MR. VOIGT: Thank you, Your Honor.

15 MR. COOPER: And I would just -- can I have a moment
16 to go ahead and explain that before we finish Mr.
17 McManigal with my expert witness before we break ---

18 THE COURT: --- go do that now ---

19 MR. COOPER: --- okay ---

20 THE COURT: --- so we can -- so we can move right
21 into his testimony when Mr. McManigal is finished.

22 MR. COOPER: And then I would assume -- I think Mr.
23 Summa has an expert that has mapping. But I'm assuming
24 that I could also -- he'd abide by that and that their
25 stuff wouldn't go back.

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1 THE COURT: Yeah. And I think it's -- I think it's
2 -- I mean, I think the report, even though he can use it
3 when he's testifying, I think technically it's -- I mean,
4 I've always -- I've always believed that expert reports
5 are fundamentally hearsay. And I have -- I have never
6 offered a drug report as an exhibit in a case, and that's
7 what I'm equating this to.

8 So the ruling is going to go both ways. If the
9 exhibits stay out for the State, the report of your
10 expert can be used demonstratively but ---

11 MR. SUMMA: It's a very short video that we can
12 provide to the State.

13 MR. COOPER: I would say, Judge, we can probably
14 work it out a little bit. I wouldn't mind if both went
15 back. I just -- my concern with that, with drug
16 analysis, is that's one -- one time they can hear. This
17 is far more complex and it's records that ---

18 THE COURT: --- that's where your expert has to be
19 really good. You know, just because its complex doesn't
20 make it not hearsay. So ---

21 MR. VOIGT: Judge, that's why I objected to the
22 extraction report; for the same reasons.

23 [Whereupon, counsel confer]

24 [Off the record momentarily]

25 THE COURT: Bring us the jury, please.

1 MR. COOPER: And, Judge, handle the certification
2 before we go and bring the jury back? Or are we going to
3 do it after this witness? I don't know the best way to
4 offer that.

5 THE COURT: Well, I mean, technically speaking, the
6 records that are already in from the cell phone dumps
7 were pursuant to the business records exception.

8 MR. COOPER: No. I'm talking about the cell tower
9 records we got from the service provider, T Mobile. The
10 phone itself was physically dumped pursuant to the search
11 warrant. These were already cell towers records that
12 were pursuant to search warrant with T Mobile that our
13 expert then mapped. And so under the 19-5-520, I have a
14 certification from T Mobile saying these are authentic
15 records. I just want to offer that.

16 THE COURT: Does anybody have any objection to their
17 authenticities -- authenticity of the records as
18 provided, keeping in mind that my prior ruling of the
19 statute which allows for certified records?

20 MR. SUMMA: I'll just go ahead and join Mr. Voigt's
21 objection.

22 MR. VOIGT: Subject to my previous objection.
23 Normally, you'd have the -- report introduced. But we
24 could do it any old way, I suppose.

25 THE COURT: Well, I think, Mr. Cooper, before you

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1 get started, just offer that item -- the certification
2 before you even question him and I will go ahead and
3 admit that and he can -- he can talk about that he
4 received the records from T Mobile and that they're
5 authentic T Mobile records, and then, you know, lay the
6 foundation that way.

7 MR. COOPER: Thank you, Judge.

8 THE COURT: Alright. Come on up Mr. McManigal.

9 [Whereupon, the witness retakes the witness stand]

10 [Whereupon, the jury enters the courtroom at 3:21
11 a.m.]

12 THE BAILIFF: Your Honor, the jury is complete.

13 THE COURT: Thank you very much. We are in a
14 position to proceed with the State's case. Mr. Cooper?
15 Or, excuse me, I'm sorry. Mr. Summa, cross-examination.

16 MR. SUMMA: Thank you, Your Honor. May it please
17 the Court?

18 THE COURT: Yes, sir.

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CROSS-EXAMINATION

BY MR. SUMMA:

Q. Could you remind me of your name, sir? I'm sorry.

A. Paul McManigal.

Q. Mr. McManigal, I'm going to show you what has been previously admitted into evidence as State's Exhibit 63.

[Whereupon, the exhibit is published]

Q. And just to be clear -- well, I'll get to that later. But State's Exhibit 63, see at the top where it says Apple I.D.?

A. Yes.

Q. Okay. Could you -- could you just read that second one for me real quick?

A. The second one is Ronaldsalgatto@icloud.com.

Q. Okay. And these are Apple I.D.s that are plugged into the phone, saved into the phone. So, you know, fair to say someone with the name Ronald Salgatto [phonetic], or someone with that email address, was using this phone?

A. That would be reasonable to say, yes, sir.

Q. Thank you. And then just really quick and then I'm done.

This is the phone log that the State was showing you and read every line from. Right here, 3721, from Daquan Crummey, that means that the person with this phone was receiving a call from somebody in the contacts named

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1 Daquan Crummey; is that correct?

2 A. Correct. The phone number is what the phone records
3 and it cross-references it with the contact list that is
4 stored in the phone.

5 Q. And just to clarify for the jury, I guess it's
6 uncommon to call yourself; right?

7 A. It would not be.

8 Q. Okay. It would not be uncommon to call yourself?

9 A. I would -- I would think it's uncommon.

10 Q. Uncommon, you said?

11 A. Yes.

12 Q. Okay. Sorry. Just wanted to clarify. And then
13 just so the jury -- so the jury is clear, this is about a
14 phone and the messages on the phone.

15 It doesn't -- it doesn't say who is typing into the
16 phone, definitively; right?

17 A. Correct. It just cross-references it ---

18 Q. --- right ---

19 Q. --- from the contact list.

20 Q. Okay. Thank you so much.

21 THE COURT: Mr. Voigt?

22 MR. VOIGT: Just a few questions.

23

24

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1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. In your role, you are to extract information from
4 these cell phones?

5 A. That is correct.

6 Q. And you don't put any weight on what information is
7 taken out of these cell phones; right?

8 A. That is correct.

9 Q. In other words, we had -- you know, you were -- we
10 had you read certain things, but those weren't things
11 that you chose or that you had highlighted or
12 investigated?

13 A. That is correct.

14 Q. So it's just raw data, you provide the raw data, and
15 you let other people in the Sheriff's Department or in
16 the Solicitor's Office figure out what's important and
17 what's not important; is that correct?

18 A. That's correct.

19 Q. And it's safe to say that, for example, from the
20 Samsung phone there were hundreds of text messages, other
21 forms of messages more than just text messages, photos,
22 phone calls, in the days prior; you know, all from July
23 and August of 2017 from that phone. Is that safe to say?

24 A. Yes, sir.

25 Q. And there were multiple contacts of both that were

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1 stored in the phone and then phone calls from outside; is
2 that right?

3 A. Yes, sir.

4 Q. And it's not your job to sift through all of that
5 and figure out what's important and what's not?

6 A. Not at the time of the investigation, no, sir.

7 MR. VOIGT: Alright. Thank you very much. I
8 appreciate it.

9 THE COURT: Any redirect?

10 MR. COOPER: No, Your Honor, not from the State.

11 THE COURT: You may step down. Thank you for being
12 here.

13 THE WITNESS: Thank you, Your Honor.

14 MR. COOPER: Can he be excused?

15 THE COURT: May he be ---

16 MR. SUMMA: --- no objection, Your Honor.

17 MR. VOIGT: No objection.

18 THE COURT: You may be excused.

19 THE WITNESS: Thank you, Judge.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

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1 MR. COOPER: Judge, may we approach briefly?

2 THE COURT: Yes.

3 [Whereupon, an on-the-record bench conference is
4 held as follows:]

5 MR. COOPER: I know we just brought the jury back
6 in, and this is completely my fault. I have got my copy
7 of questions and stuff for him in my office. Can I
8 please have two minutes to run and get them? That is
9 completely my fault. I don't ---

10 MR. VOIGT: --- who are you? What do you -- what
11 did you do on this case? What did you do ---

12 MR. COOPER: --- and thank you for ---

13 MR. VOIGT: --- what did you do next?

14 MR. COOPER: I need two minutes, Judge.

15 MS. NORRIS: Can you start while somebody else
16 grabs them?

17 MR. COOPER: No. It's all on my computer. I just
18 -- it's my fault, Judge ---

19 THE COURT: I know. All right.

20 [Whereupon, on-the-record bench conference
21 concludes]

22 THE COURT: Ladies and gentlemen, we've got a
23 technology issue we need to deal with, and I promise you
24 this is going to be brief, but I'm going to send you to
25 your jury room and remind you please do not discuss the

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1 case amongst yourselves or do any sort of research
2 through any form of media, and we will be back in the
3 courtroom very shortly. Thank you.

4 [Whereupon, the jury exits the courtroom at 3:37
5 p.m.]

6 THE COURT: Alright. Ladies and gentlemen, we're at
7 ease until Mr. Cooper gets back. We're just going to
8 remain in the courtroom. So just have a seat and as soon
9 as he gets back, we will bring the jury in.

10 [Off the record momentarily]

11 MR. COOPER: Judge, my apologies.

12 THE COURT: No problem. Are we ready for the jury?

13 MR. COOPER: Yes, Your Honor.

14 MR. COOPER: Yes, Your Honor.

15 MR. VOIGT: Yes, Your Honor.

16 [Whereupon, the jury enters the courtroom at 3:45
17 p.m.]

18 THE BAILIFF: Your Honor, the jury is complete.

19 THE COURT: Thank you, sir. At this time, we'll
20 resume the State's case. Mr. Cooper?

21 MR. COOPER: Thank you, Judge. Before we call our
22 next witness, the State would at this time offer
23 certification pursuant to section 19-5-520, State's
24 Exhibit 75 into evidence along with the accompanying
25 records, State's Exhibit 73; T Mobile records and

1 certification by T-Mobile.

2 THE COURT: And subject to the pretrial hearing, I
3 will note the defense objections to the admission of
4 these records and rely on my prior rulings. And tell me
5 the exhibit number again.

6 MR. COOPER: The records themselves are Exhibit 73
7 and the certification by T Mobile is 75.

8 THE COURT: State's 73 and 75 are admitted over
9 defendants' objection.

10 [Whereupon, State's Exhibit Numbers 73 and 75 are
11 admitted into evidence by the Court]

12 MR. COOPER: Thank you, Judge.
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1 MR. COOPER: The State would now call Special Agent
2 Clay Simmonds.

3 [Whereupon, Mr. Simmonds comes forward]

4 THE CLERK OF COURT: Please place your left hand on
5 the Bible and raise your right.

6 [Whereupon, Mr. Simmonds is duly sworn by the Clerk
7 of Court]

8 THE CLERK OF COURT: You may be seated.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling both your first and your
12 last.

13 THE WITNESS: Robert Clayton Simmonds. R-O-B-E-R-T.
14 Last name, S-I-M-M-O-N-D, as in David-S.

15 - - - - -

16 ROBERT C. SIMMONDS,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. COOPER:

21 Q. Agent Simmons, who -- where are you currently
22 employed?

23 A. I'm a supervisory special agent for the FBI here in
24 Charleston, South Carolina.

25 Q. And how long have you been with the FBI?

1 A. Almost eighteen years.

2 Q. And what is your current position with the Bureau?

3 A. Again, I'm a supervisor here in Charleston with a
4 special group of agents who are trained in analysis of
5 historical cell phone records, basically geographically
6 or geographically depict those records, give you an
7 visual depiction of what the cell phone records are
8 telling us over a particular moment of time.

9 That unit is called the Cellular Analysis Survey
10 Team. We call it CAST for short.

11 Q. And then tell the jury a little bit about your
12 background with the Federal Bureau of Investigation and
13 law enforcement.

14 A. So I graduated from the College of Charleston with a
15 business and accounting degree. I became a police
16 officer in 1995 here, working for the City of Charleston,
17 from 1995 to 2000.

18 I did two years of patrol, and then I was moved to
19 be an investigator detective with the FBI Violent Crime
20 Task Force. I later left and started graduate school up
21 at Clemson. 911 took place.

22 The Bureau started -- the FBI started hiring again.
23 I joined the FBI in May of 2002. Went to Quantico for
24 sixteen weeks, basic just training there. I was assigned
25 to the Oklahoma City Division starting in August of 2002,

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1 remained in that division until August of 2012, where I
2 was promoted to supervisor at headquarters, FBI
3 headquarters. I was on the executive staff as assistant
4 director of the criminal program.

5 At the time, CAST was created as an official unit
6 within the FBI in April of 2013, and I was moved over to
7 the CAST unit at that time to become one of the first
8 five supervisors for that unit.

9 Q. And tell the jury about any training you received to
10 become a CAST agent and CAST supervisor.

11 Q. Sure. And just to round out the career and get me
12 here. I became -- I stepped down from being a supervisor
13 at headquarters and here for the six years where I
14 primarily worked gang and violent crimes, anything that
15 was reactive.

16 I became certified as a CAST agent in August of 2015
17 and was promoted again back to supervisor of the CAST
18 unit or CAST in June of last year. To become certified
19 as a CAST agent, not only do you finish Quantico, which
20 we have specialized training where we basically have
21 stages of training.

22 The first stage of it is basically understanding
23 call-detail records, how do you get them, what's
24 available, how do you visually depict those records over
25 a period of time, what legal processes are needed for

1 that. We then have a kind of an advanced or a second
2 stage of CAST training where there may be some curve
3 balls with the records. Some of them may be in UTC time.

4 There may be some sort of information that you've
5 just got to search and dig a little bit deeper. There
6 might be some advanced records that we provide to you.
7 And, again, we give you those records so you can practice
8 visually depicting those records on a map.

9 Some of our training has changed over the last few
10 years. I can go through everything that I'm getting
11 ready to describe that I've participated at some point in
12 every bit of it.

13 So now, after the kind of the advanced basic class,
14 we send you to what we call a field-training exercise
15 where we throw you in scenarios all week. We tell you,
16 hey, there's a missing child, there's a robbery, there's
17 somebody that's been shot. And each scenario is
18 different, using the techniques that you have learned in
19 basic and advanced CAST.

20 We'd ask you to again visually depict the phone
21 records for that and then make your presentation of why
22 would you have looked there? Why would you send an
23 arresting here? Why would you go look to find that
24 missing person or child or whatever, in those records.
25 We also complete a two-week geolocation course down in

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1 Florida where we use specialized equipment, a cell-site
2 simulator, to go out and find phones. So we set up the
3 equipment, we figure out where the phones -- think they
4 are, turn this equipment on, and it kind of points us to
5 the right direction to go.

6 We also have an instructor development section for
7 about a week that we need to attend, because every CAST
8 agent, once you're certified, is expected to teach these
9 techniques to individuals who desire to learn them.

10 We then have our two two-week certification process.
11 The first week is where we learn about radio frequency
12 and how cell phones utilize that and cell networks
13 utilize radio frequency for the phones to communicate
14 between the towers and the network and the phone, and
15 that concept.

16 And then the second week is we have all providers,
17 Sprint, T Mobile, AT&T, U.S. Cellular -- T Mobile,
18 Sprint, AT&T, Verizon and U.S. Cellular.

19 They all come with their law enforcement personnel
20 that process the records for legal compliance, and their
21 engineers, and they basically instruct us how the
22 networks are set up, how records are available, what
23 records are available, what legal process they need to
24 have to get those records, whether it's an exigent
25 circumstance or just a normal search warrant that would

1 take place. We then go and tour a tower and then a
2 switch at the processing center where all the calls and
3 texts and data sessions take place, see how that works,
4 talk to the employees who are manning the towers and
5 switches, things of that nature, and go and ask them
6 questions.

7 And then the second phase of testing -- or
8 certification is another two-week session where we bring
9 folks in to talk about being expert witnesses, what it
10 takes to be an expert witness, what we can and cannot do
11 within court.

12 We also have a session where we take specialized
13 equipment, what we call drive-test equipment or drive-
14 test gear, where we can take that gear, set it up, and
15 then drive around an area and basically get an actual
16 footprint of what the tower looks like.

17 You'll see here in a little bit that we draw our
18 towers out to be these perfect little pie wedges on a
19 map, but actually the footprint of the tower is kind of
20 an irregular shaped polygon thing. Its radio frequencies
21 so it kind of weird shapes on maps when you actually go
22 out and drive-test it.

23 Then the students are given a case and basically
24 told to present your case, drive-test the -- drive-test
25 the area, and then come to what we call a moot court to

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1 be graded on that. So we fly attorneys in from all over
2 the country that specialize or have extensive knowledge
3 about presenting cellular data in the courtrooms and we
4 bring those guys in to play prosecutor, defense attorney,
5 and judge, and let them have at it with the students.

6 They are critiqued and graded. After that, if
7 they've met a passing score, then they're certified as
8 CAST agents.

9 Q. And did you also meet a passing score when you were
10 certified?

11 A. Yes, sir. I was certified in August of 2015.

12 Q. And if you'll describe for the jury what is meant by
13 the term historical cell-site data.

14 A. So historical cell-site records are basically like a
15 phone bill. If you remember getting a phone bill, cell
16 phone bill, they charged you for every minute and every
17 second you ever used.

18 It'd give you the date, the time, the duration, who
19 you called. They might have even been nice enough to
20 say, hey, you were in this city, in this state, at that
21 particular moment.

22 But with call-detail records, they give us a little
23 bit more information on there. So when networks are set
24 up, they have a switch or what some engineers call a
25 location area code. It's a group of towers that provide

1 service to that area. And then you have a cell site I.D.
2 And within that cell site I.D., it tells us what side or
3 what sector of the tower were utilized at that time.

4 And when you group a switch and the cell site I.D.
5 along with the sector together, there's not another one
6 on that company's network anywhere else in the nation.
7 So it's kind of like a fingerprint of where the phone
8 used that particular tower.

9 And so when we provide legal process, they give us
10 that information, the switch, cell site I.D., and sector,
11 and then we combine that information with the cell tower
12 list that's provided by the networks and we're able to
13 visually depict where a phone was, generally depict where
14 the phone was, on that particular moment in time.

15 Q. Approximately how many times have you performed that
16 -- performed that historical cell-site analysis?

17 A. Thousands of times. I do it -- I do it every day.
18 I've done it almost every day since August of 2015.

19 Q. And then what agency can request the services of
20 CAST?

21 A. I mean, anybody can. I mean state, local, federal
22 law enforcement. I know some of our CAST guys have been
23 requested by defense attorneys to look at cell phone
24 records. I've had records that I didn't agree with the
25 prosecution and had defense attorneys ask me about my

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1 opinion on those records prior to coming to trial. But
2 I've never had anybody from non-prosecuted or law
3 enforcement agency ask me to utilize the records to
4 provide them maps prior to a trial.

5 Q. Have you ever testified as an expert witness in this
6 area before?

7 A. Yes, sir. Many times. And I did it yesterday here
8 in Charleston County.

9 Q. Have you ever not been qualified as an expert in
10 historical call detail record location analysis?

11 A. No, sir.

12 MR. COOPER: Your Honor, at this time, the State
13 would offer supervisory Special Agent Clay Simmonds as an
14 expert in the field of historical call detail record
15 location and analysis.

16 THE COURT: Any objection?

17 MR. SUMMA: No objection.

18 MR. VOIGT: No objection.

19 THE COURT: Alright. Ladies and gentlemen, normally
20 a person cannot give opinion testimony. Normally when a
21 person testifies, they must testify as to what they
22 either saw, heard, sensed, or something of that nature.
23 However, there is an exception when someone is qualified
24 because of education, training, experience. They are
25 permitted to give their opinion in certain areas if the

1 Court qualifies them as an expert witness. This witness
2 has been offered in the area of historical call detail -
3 say it for me again, Mr. Cooper; I'm sorry. It's quite a
4 ---

5 MR. COOPER: Yes, sir. I have it written down so I
6 won't get it wrong. Historical call detail records
7 location analysis.

8 THE COURT: Alright. He has been offered as an
9 expert witness in that field and based upon his
10 education, training, and experience, I find that he is
11 qualified as an expert witness and he can give opinion
12 testimony in that field.

13 However, that does not mean you must accept his
14 opinions but it is evidence for you to use in any way you
15 see fit and give the weight and credibility you believe
16 is appropriate. Mr. Cooper, you may proceed.

17 MR. COOPER: Thank you, Judge.

18 Q. [Mr. Cooper] Agent Simmonds, focusing your
19 attention to this case, how did you become involved?

20 A. I was asked by your office to look at some phone
21 records that were associated with a T Mobile phone for an
22 incident that took place in July of 2017.

23 Q. And what phone number were they regarding?

24 A. It was 843-781-4400, I believe.

25 THE COURT REPORTER: Tell me again. I'm sorry.

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1 781?

2 A. I think it was 781. Maybe it was 789-4400.

3 Q. [Mr. Cooper] I'm showing you State's Exhibit 73 and
4 75, records and certification from T Mobile.

5 [Whereupon, the witness is shown exhibits]

6 Q. Those records, those phone number date and time that
7 information, is that what you were provided by my office
8 to review?

9 A. Yes, sir. So telephone number 843-781-4400. It's a
10 T Mobile phone. That's what I was asked to review.

11 Q. What information is included in these call detail
12 records?

13 A. Again, as I stated before, it's kind of like your
14 old cell phone bills or old phone bills. It provides you
15 the date and time of the call, the duration of the call,
16 what numbers called -- what number called you or what
17 number you happened to call; the direction of the call,
18 whether it's incoming or outgoing call. Text messages
19 can also be included within that data.

20 It gives us the switch, the group of towers that
21 processed that one and then the actual tower and sector
22 that completed that call when that green button was
23 pressed to make the call or send a text at that
24 particular moment. Some of the companies will give us
25 the ending cell tower, so where it ended at that

1 particular time, too.

2 Q. And then once you're provided with these records,
3 what do you do with them?

4 A. So, again, I look at -- I open them up, make sure
5 they're the right records that I was asked to review. I
6 make sure that there's cell site data there for me to
7 look at, that we could possibly place on a map.

8 And then once I figure out that information is
9 there, I use the cell tower list provided by the company
10 around the time of the incident that took place.

11 And I merge those two together and basically
12 visually depict where that phone generally was on those
13 dates and times that I was asked to analyze.

14 Q. And you also -- are you certified by T Mobile to
15 perform this analysis on these records?

16 A. T Mobile is one of the companies that attends our
17 trainings and participates in our certification.

18 Q. Once you finish your analysis and your mapping of
19 that analysis, is it reviewed?

20 A. Yes. So once I finish it -- once I finish it,
21 before I come here into the courtroom, I send it out to
22 another CAST agent for a peer review to make sure I
23 haven't misspelled any words, I plotted everything in the
24 correct spot, the orientation of the towers are correct,
25 my grammar is correct; things of that nature.

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1 Q. And that was done in this case?

2 A. Yes, sir.

3 Q. And then did you prepare a Power Point presentation
4 for your testimony in this case?

5 A. Yes, sir.

6 Q. If I were to show you a printout of it, would you
7 recognize it?

8 A. Yes, sir.

9 Q. Showing you what's been marked as State's Exhibit 74
10 for I.D. purposes only. Do you recognize this?

11 [Whereupon, the witness is shown exhibit]

12 A. Yes, sir. It's the presentation that I created for
13 this trial.

14 Q. [Mr. Cooper] And that appears to be in the manner
15 in which you provided it to me and not altered or
16 manipulated in any way, except taken out of...

17 A. So there was a three-hour time period that I was
18 advised was going to be removed from this. But other
19 than that, everything else seems to be correct.

20 MR. COOPER: Your Honor, at this time, I would offer
21 State's Exhibit 74 for I.D. demonstrative purposes.

22 THE COURT: Any objection to it being offered for
23 demonstrative purposes?

24 MR. SUMMA: No, Your Honor.

25 MR. VOIGT: No, Your Honor.

1 Q. [Mr. Cooper] Agent Simmonds, I'm going to put that
2 up on the screen for you.

3 [Whereupon, the exhibit is published]

4 Q. Alright. Agent Simmonds, is this the report that
5 you prepared for testimony today?

6 A. Yes, sir.

7 Q. Okay. Now, my law clerk, Phil McDriver [phonetic]
8 so if we need to move a slide, feel free to direct him.
9 But I'm showing you the next slide.

10 A. Sure. This is just the background of the case that
11 I was asked to review. These are the records for the
12 time period that I was asked to review them. So
13 telephone number 843-781-4400 was what we call the target
14 number.

15 I was asked to review for the time period of July
16 23rd, 2017. It explains the methodology, how it takes
17 the cell tower records and the call detail records, merge
18 them together, and then I visually depict them on the
19 following maps.

20 Q. Okay.

21 A. So as I mentioned earlier, that each tower generally
22 is divided into three sections, especially here in South
23 Carolina. Bigger markets, you may have them divided in
24 six sectors or even nine sectors in the LA's and the New
25 York's, Chicago's, bigger areas like that. But generally

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1 here in South Carolina, every tower is divided into three
2 sectors. We depict those sectors to be approximately 120
3 degrees coverage area. So we have 360 degrees around
4 that particular tower.

5 So, the cell tower list tells us the orientation of
6 that tower, what side of the tower was used for sector
7 one, sector two, and sector three. And they give us a
8 number, and that's in degrees.

9 And so we look at those degrees like a face on a
10 clock, with twelve o'clock being zero or 360, one o'clock
11 being 30, two o'clock, 60, so forth, until we get all the
12 way around the clock.

13 So when we look at that and we have an orientation
14 in this example, sector one is at 60 degrees. That means
15 the radio frequencies from that sector is going out at
16 its strongest point at 60 degrees.

17 To depict it coming to be 120 degrees, we go 60
18 degrees to the right of that number, 60 degrees to the
19 left of the number, to give us our 120-degree sector that
20 we'll have displayed on the following maps.

21 And then we go that way around for sector two and
22 sector three for that tower.

23 Q. And then does each tower have a set range that that
24 radio frequency goes out or is it depending on the tower,
25 depending on location?

1 A. Well, there's several factors that affect the
2 coverage area of the tower: the environment, the
3 buildings. Places like New York, you may have towers
4 every few blocks because they have ten million people in
5 the city that are demanding services from the network.

6 They have a lot bigger buildings than what we have,
7 which may block some of the signals. So they may put
8 multiple towers up to cover the same area, while in more
9 rural areas you can get them out a little bit farther.
10 There's less people, there may be less obstructions;
11 things of that nature. So the range of each tower is
12 dependent upon the market which it's in.

13 The engineers set up the towers to provide the best
14 possible coverage to the customers because they realize
15 that customers, like ourselves, hate it when we lose our
16 phone calls.

17 If you remember the early portion of phone, cell
18 phones, you get to that point when you're driving home
19 and you'll be like hey, I'll call you back in just one
20 second, because you knew you were getting into a dead
21 spot and you go and drop that call and have to start it
22 all over again.

23 Well, companies -- these companies realize it makes
24 you mad and just aggravates you, so they want to provide
25 the best possible coverage. And the way they generally

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1 designed their networks is -- kind of think of them as
2 sprinkler systems, that they have a tower, like you've
3 got a sprinkler head on one side, you've got a sprinkler
4 head on the other side, and they're both shooting in the
5 same direction.

6 Well, at some point, they have to overlap a little
7 bit or you're going to have a dead patch of grass in the
8 middle of your yard. The same thing with cell towers.
9 They both may cover the general area, and they have to
10 overlap so when you go from one tower to the next you
11 don't drop your call.

12 So your phone will see one tower with a clear,
13 strongest signal and start that call there. And as it
14 moves, it will basically move over to another call. But
15 if you start your call here, and end it here, and then
16 you move closer to another tower, then when you start
17 your next call that one is -- that tower will be the one
18 that gets populated in the call-detail records.

19 CAST uses the initial cell tower and sector that is
20 utilized when the green button is pressed or a phone call
21 is answered, because that is the tower that the phone saw
22 at that particular moment at -- for its clearest,
23 strongest signal. That's how the cell phone chose that
24 tower to complete that call.

25 Q. Do you also map the end of a call, or just the

1 beginning of that communication?

2 A. Again, like I just said, we only -- I only map the
3 -- for testimonial purposes, I only map the initial
4 process of that call because that's one -- that is the
5 call that -- or that is the tower that the phone saw with
6 the clearest, strongest signal at that time and the phone
7 chose that tower to make that.

8 And the ending, once you're in the network, the
9 network can say, hey, we're going to patch you off to a
10 neighboring tower that you might see okay.

11 But that's after the call has been -- has already
12 started. So we always use the tower and sector that the
13 phone chose for that transaction.

14 Q. Okay.

15 A. And then phones -- you're fine. And phones are
16 constantly -- when they're on are constantly looking at
17 their environment to see which phone or which cell tower
18 and sector is providing the clearest, strongest signal.

19 So as you move around, tower one, two and three may
20 be real clear to them at one point with one being the
21 strongest, but as it moves around it may re-rack and
22 stack those towers because it now moved down to towers
23 four, five and six, and it would ignore the other three
24 towers that it was just seeing. So it's constantly
25 looking at its environment to see which tower is

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1 providing its clearest, strongest signal. This slide
2 here is just to basically show you how the calls and
3 sectors will be displayed on the map.

4 We use this highlighted area here [indicates] to
5 show that that is the direction of the radio frequency
6 that is coming out from that tower and sector on this
7 particular call.

8 But it doesn't mean that the phone is right here in
9 this area. It could be within anywhere in the arms of
10 this tower and sector here.

11 Q. And about how far does it generally extend? Or is
12 there not a certain amount...

13 A. Again, it just depends on the environment. When you
14 sit up here and have -- go into rural areas of Charleston
15 County, you might have towers that extend two or three,
16 four, five miles out.

17 You come into downtown Charleston, the city of North
18 Charleston; Summerville that area is going to be a lot
19 smaller.

20 Go out to New York, LA, because of the demand on the
21 resources, obstructions and things that are there, that
22 footprint is going to be a lot different for that tower
23 than you would find here in South Carolina.

24 Q. And so if I'm understanding it the right way,
25 they'll be in the range of that tower, in the V, if you

1 will, of that tower, until they get farther away from
2 where the first powerful tower is there another tower?

3 A. Until they see -- until they see another tower with
4 a clearer, stronger signal, it will use that tower. When
5 they press -- as long as it sees that tower with the
6 clearest, strongest signal, when you press that green
7 button, that's what gets populated in the records.

8 If all of a sudden the phone moves to another
9 location later on in the day, later on when they make
10 another call, and it sees another tower with a clearer,
11 stronger signal, that tower will be populated within the
12 records.

13 Q. Now, is it just the beginning of a call? Or is it
14 also receiving a text message?

15 A. Text. When I say calls: text, whatever that --
16 that it is. They capture -- whatever they do to -- that
17 will provide cell site data within those.

18 It could be text. Sometimes it's data, data
19 sections. Most companies keep it remote for these
20 purposes, mainly phone calls and text messages.

21 Q. Is it every single phone call and text message?

22 A. Not necessarily. Text messages, some companies
23 don't catch the cell-site data if the call goes to voice
24 mail, goes unanswered, things of that nature. Text
25 messages, if it's like a multimedia text to send them a

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1 picture or you have three or four people in your group
2 chat, it may not catch your cell-site data at that point.
3 There are some companies that don't capture cell-site
4 data at all for text messages. T Mobile happens to catch
5 it.

6 But if you're also using a data session or a third-
7 party app, Text Now, or something of that nature, and it
8 doesn't go through that company's cellular network, that
9 information may not be captured within the call detail
10 records.

11 Q. What does this slide depict?

12 A. So this is the area of interest. The addresses that
13 I was provided that were important to this case, the
14 first one being 7522 Tedder Street, North Charleston. I
15 was advised that was the crime scene area.

16 And then the other address was [REDACTED] --
17 Goster, Glouster Street there in North Charleston. It
18 was a relevant address into the investigation.

19 The green dots that are also on the map, those
20 represent the T Mobile towers for the North Charleston
21 area.

22 Q. And what does this slide depict for us?

23 A. So this is the call-detail records, visual depiction
24 of the call-detail records, for 843-781-4400 on July 23rd
25 from 3:00 a.m. to 12:00 p.m.

1 Q. And so describe for all of us what we're looking at
2 on this map with these towers and these call logs.

3 A. So basically at three o'clock -- 3:09 and 43 seconds
4 in the morning, this phone uses this tower, 77728 sector
5 one, up there until approximately 10:52, at which time
6 the phone eventually goes down to this tower 75888 sector
7 one using the tower at 11:04.

8 And then earlier, before 3:09, the phone was down
9 here at 61650 sector one, using that tower at 3:03:45,
10 eventually moving up here to this area, staying at the
11 north tower until approximately 10:52, and then
12 eventually using this tower at 11:04, and then returning
13 back to tower 7728 by 11:12 in the morning.

14 Q. And, again, the way you described the V, it doesn't
15 -- the green shaded area is not where -- the device could
16 be is anywhere in that V-shaped area?

17 A. Sure. I mean, that phone could be anywhere within
18 this area, somewhere down in this -- anywhere in there.

19 MR. SUMMA: Your Honor, I'm going to have to object.
20 It's just -- it's just misleading. I'm just going to say
21 that.

22 THE COURT: Well, now, he's giving his opinion as to
23 where that device would be, so I'm going to overrule the
24 objection based on his qualifications as an expert.

25 MR. COOPER: Thank you, Judge.

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1 Q. [Mr. Cooper] Okay. I'm going to show you the next
2 slide. And what time frame is this slide showing us?

3 A. So this is from 12:00 p.m. to 12:30 p.m. on July
4 23rd, 2017. This phone was utilizing, again, tower 7728
5 sector one from 12:04 to 12:26 in the morning -- or in
6 the afternoon.

7 Q. This isn't a depiction of exactly where the phone
8 is, but it's within this area between the two arms?

9 A. Yeah. It's within -- it's within the two arms
10 there. With having a known location within those -- that
11 sector, if this was a fugitive or somebody that I was
12 going to look for, I'm going to start at a known
13 location.

14 It just makes sense to start in that area. But for
15 purposes of what the cell phone records show us, it shows
16 us that it used that tower and that sector which provides
17 services to that residence, but it can be within -- it
18 doesn't -- that person does not necessarily have to be at
19 that residence.

20 Q. And if you are in a fixed location multiples times
21 and hit off the same tower sector multiple times, would
22 that do -- be the same tower sector you'd hit off that
23 location?

24 A. Sure. I mean, if the phone sees that tower sector
25 as its strongest, clearest signal at the time the calls

1 are made and you don't leave that area, it's going to
2 pick that tower and sector each time.

3 Q. Showing you the next slide. What time frame is
4 depicted in this slide?

5 A. This is still July 23rd, 2017, from 12:30 in the
6 afternoon to 1:30 in the afternoon.

7 Q. And then so where is, at 12:33 p.m., the phone
8 number 781-4400, that phone ---

9 A. --- where? Go ahead. Sorry.

10 Q. What sector is it being depicted at being at 12:33?

11 A. So, again, it's in the same sector that was depicted
12 on the previous slide, or same tower and sector, 7728
13 sector one, in this area [indicates].

14 Q. Okay. And then what is the next action with that
15 phone that you were able to document?

16 A. So then the phone moves kind of southbound in this
17 general direction using this tower, 7588 sector one, at
18 12:53 and 40 seconds that afternoon.

19 Q. Okay. And what's the next movement?

20 A. Then it moves up. It moves up to this tower and
21 sector, 62593, using this sector down here [indicates],
22 and then eventually leaves this tower and goes into
23 another sector and then returns back to the tower that it
24 started off with.

25 Q. [Mr. Cooper] And so that sector that's facing

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1 downward includes the C.S., the crime scene location, is
2 it -- what times is that sector being hit off of?

3 A. I believe it's at 11:11:11 -- 11:00 and 11:15. But
4 I may -- go to the next slide, because I believe that
5 will clear it up for me.

6 [Whereupon, the next slide is shown]

7 A. So, yeah. So 12:50 -- at 12:54 and at 1:10, it's
8 using this tower and sector down here [indicates], which
9 is sector two, and then it eventually moves kind of
10 northbound at 11:11 to 11:15 using section three, which
11 is oriented at 320 degrees. And the previous sector that
12 was used at 12:54 and 1:10 p.m. was oriented at 190
13 degrees.

14 Q. Okay. And then so the sector facing downward, the
15 one that includes that C.S. location, the phone is
16 beginning to either answer or take a call at 12:54 and at
17 1:10 p.m.?

18 A. That's correct.

19 Q. And so you said it doesn't track -- CAST only tracks
20 when a phone call is started, accepted, or going
21 outwards; right?

22 A. Sure. We only use the initial -- the initial tower
23 and sector that was used by the phone when a call or a
24 text was completed.

25 Q. And I just want to make sure. I think -- I think

1 you said eleven just a second ago. But the first call
2 that is noted in that sector is 12:54 p.m.; right?

3 A. 12:54 and 55 seconds.

4 Q. And the very next activity that you were able to
5 monitor through the phone, the next call or incoming
6 route one that was started, is it 1:10 p.m.?

7 A. 1:10 and 53 seconds. Yes, sir.

8 Q. Okay. In that very next activity, 1:11:51, where is
9 that phone going?

10 A. It is utilizing this [indicates] tower; the same
11 tower, but just a different sector, in the north. So it
12 would be, in my opinion, going up that way [indicates].

13 Q. Okay. And then at 1:15:42 and 1:15:57, is it still
14 in that sector, moving back up?

15 A. Yeah. I mean, it gives me no indication that the
16 phone has left that sector and has gone to any other
17 direction other than in a northerly fashion.

18 Q. And this is a zoomed in of the coverage of that
19 sector?

20 A. Correct. It just gives you a little more detail of
21 what's around there, residential area around with the
22 crime scene, a tree line, some -- appears to be some more
23 businesses and things of that nature in the area.

24 Q. And it includes a little bit of the I-26 corridor a
25 little bit, doesn't it?

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1 A. Yes, sir.

2 Q. Would you expect for a phone to have two consecutive
3 call-detail periods that you can notate. If they were
4 traveling up and down the interstate, would you expect to
5 find those two in the same sector sixteen minutes apart?

6 A. Repeat your question again.

7 Q. Sorry?

8 A. Could you repeat your question again?

9 Q. So it covers a little bit of I-26. If the phone was
10 mobile, if it was moving up and down the interstate, for
11 example, would you expect to see it in that same sector
12 sixteen minutes apart?

13 A. I mean, they'd have to be driving just back and
14 forth up and down between those sectors. I mean, based
15 on what I could tell from this, it seems like that phone
16 was in that area for those sixteen minutes and then after
17 1:10 it began travelling north back up I-26, or whatever
18 roadway they used to get up in a northerly fashion.

19 MR. COOPER: Okay. I've got one more slide ---

20 Q. [Mr. Cooper] And so I just want to reiterate one
21 thing in this slide. So at 12:53, the one in the bottom
22 left, it is in that sector down facing up?

23 A. That's correct. It's down here [indicates].

24 Q. Okay. And then less than a minute later, at 12:54
25 and 55 p.m., it has moved to that sector facing down that

1 includes the crime scene?

2 A. Yeah. Just a little over a minute and fourteen
3 seconds.

4 Q. And then for sixteen minutes, is it still in that
5 same sector? Or that's where the call of the two periods
6 are?

7 A. The records don't indicate that the phone has moved
8 during that sixteen-minute period. And then it doesn't
9 start going to a northbound direction until 1:11 and 51
10 seconds.

11 Q. And then what does this picture depict?

12 A. So this is just the remaining of the day on July
13 23rd from 1:30 p.m. until 11:59 p.m. It just shows the
14 towers and sectors that were utilized by that phone for
15 the rest of the day.

16 Q. And then noting the specific sector, tower and
17 sector that include the crime scene that those two calls
18 were in at 12:54 and 1:10, did this phone hit off that
19 sector at any other point that day?

20 A. No. That tower is still the 62593, which is this
21 one [indicates] here. The records reflect that it used
22 sector one, which is kind of on the right side over here
23 [indicates], and then sector three which is, would be in
24 the sector pointing towards the residence.

25 Q. The only time that it used that sector that was

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1 facing downwards, that included the crime scene, was
2 12:54 and 1:10?

3 A. Based on the records for that day. Yes, sir.

4 MR. COOPER: Beg the Court's indulgence for just one
5 second.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Cooper and Ms. Shealy confer]

8 Q. [Mr. Cooper] And then in the records that were
9 provided to you, they also include subscriber
10 information?

11 A. Yes, sir.

12 Q. Do you have the information for who the subscriber
13 was?

14 A. There was -- T Mobile provided support to Daquan
15 Crummey, I believe, at [REDACTED] -- and the address that they
16 had associated was [REDACTED] Street or [REDACTED] Drive.

17 Q. Do you remember the activation date of that account?

18 A. Some time in June of 2017.

19 Q. And it went through September of 2017 is what T
20 Mobile has?

21 A. I don't think I looked at the end date.

22 Q. Alright. I have no further questions for you, sir.
23 I appreciate your time. Thank you.

24 THE COURT: Cross-examination.

25 MR. SUMMA: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. SUMMA:

Q. So Agent Simmonds, I think the jury already gets this, but, obviously, you're not tracking a person, you're tracking a phone; right?

A. Right. Yeah. I can't -- the phone -- I'm just telling you where the phone is. I don't know who utilized the phone at those particular moments.

[Whereupon, Mr. Summa reviews documents]

Q. Now, this is obviously not GPS; right?

A. No, sir.

Q. GPS is a much more accurate system; right?

A. True GPS can be a lot -- a lot more accurate. I have found that some of the latitude/longitude coordinates that they provide us when we are actively tracking the phone have been less accurate than doing an analysis of call-detail records, knowing residences, first calls, last calls of the day, towers and things.

We've been able to narrow down areas a little bit better. But, yeah, if you can get true GPS from the satellites and things of that nature, then, yes, that's accurate.

Q. And, again, for the jury's understanding, I think you testified to this before, this green doesn't really mean anything; right? That's just to indicate that it's

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1 -- those are the two you're looking at; right? The two
2 -- sector limits?

3 A. The arms are representing the 120-degree sectors.
4 As I stated before, cell tower footprints are not perfect
5 little pie wedges. They are irregular-shaped polygons.

6 The highlighted green bubble box, whatever you want
7 to call it, coming from there, it just represents --
8 that's the energy of the radio frequency coming from that
9 tower and sector.

10 Q. And you might -- I think you just said it, that it's
11 not even a -- that's not even really a perfect shape?
12 It's much more amorphous. It's not a clean like
13 triangular shape; right?

14 A. Generally, no, it's not. Like I said, it's an
15 irregular-shaped polygon. Sometimes it may be a little
16 bit bigger, sometimes it may be a little bit smaller.
17 It's radio frequency.

18 Q. In fact, sometimes the shape, you can actually ping
19 on a cell tower. So, for example, there's one in the
20 middle here [indicates] you could actually be right here
21 [indicates] and ping that tower; is that correct?

22 A. Sure. Again, because, just like I stated earlier,
23 cell phone towers have overlap, and that includes with
24 its sectors so when you travel from tower to tower and
25 sector to sector, you don't have dropped calls.

1 Q. So those lines, they're not even really, you can't
2 even say definitely that they're within those lines?

3 They can be outside of those lines; right?

4 A. I never said they were definitely inside those lines
5 ---

6 Q. --- sure I ---

7 A. --- as I said, that generally -- generally
8 represents the 120 degrees to cover 360 degrees around
9 the tower.

10 In my experience of doing this hundreds if not
11 thousands of times, the 120 degree is a -- usually --
12 most of the time, usually an overrepresentation of the
13 actual footprint of that sector.

14 Q. Okay. Most of the time, but not all of the time;
15 right?

16 A. Not all the time.

17 Q. Okay. And, further, the tower that a device pings
18 on isn't necessarily the closest tower; right?

19 A. Correct. I said the phone uses the tower that has
20 the clearest, strongest signal when the call or text is
21 made or received.

22 Q. In fact, a device can ping on a tower that is up to
23 twenty or thirty miles away; right?

24 A. That's incorrect.

25 Q. Oh, really?

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1 A. It can. In a perfect little environment, sure, when
2 there's no -- there's no other obstructions, there's no
3 high demand for it, you have a clear line of -- path,
4 sure, it could possibly hit twenty, thirty miles away.

5 If the networks could get away with putting up
6 towers for every twenty or thirty miles, they sure as
7 heck would do it because they're in the business of
8 making money and it cost them money to put up these
9 towers, maintain these towers, pay lease agreements for
10 individuals that have towers on their property, more
11 personnel to go out there and manage those towers if they
12 ever fail for whatever reasons, they would do that.

13 But because of demand from us as customers, they set
14 up these networks to provide the best possible coverage
15 and that's why we have as many towers as we see depicted
16 on the maps.

17 Q. So your answer to my question is yes?

18 A. Repeat your question.

19 Q. It can travel up to twenty or thirty miles away?

20 A. Again, in a perfect environment, no obstructions,
21 perfect line of sight, sure, it could -- it could take
22 place.

23 Q. And so, you know, regardless of how long, it's not
24 always the closest tower. It depends on a number of
25 factors. Sometimes certain cell towers are being

1 repaired. Other factors like the height of the tower,
2 the weather, can be even the number of people that are in
3 a certain tower that might cause that tower to be
4 overloaded, and then the device might be used on a
5 different tower; is that correct?

6 A. No.

7 Q. Okay.

8 A. It's not.

9 Q. Please correct me.

10 A. So phones are constantly looking at its environment
11 trying to find the clearest, strongest signal.

12 So when you go to a large sporting event or a large
13 event that takes place, things of that nature, and it
14 sees that tower with its clearest, strongest signal, it's
15 going to try and use that.

16 So if you're at a sporting event and they make a
17 great touchdown catch or home run or whatever, and
18 everybody wants to call or text their friend and all that
19 and you go and hit that green button and you're like, why
20 in the world is this taking so long to get through, it's
21 delayed because that tower is saying, hey, give me a
22 minute, I'll give you resources when I have it, or you
23 get that fast busy signal and you've got to redo your
24 text message or your call over again. Because that phone
25 saw that tower with the strongest, clearest signal and

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1 wants to use it so it's going to wait on it. If it sees
2 another tower and maybe you're in a good overlap and it
3 sees another tower in that area with a clear, strong
4 signal, it may utilize -- it may utilize that tower. But
5 most of the time the phone is going to stay with that
6 tower and be granted resources.

7 It's kind of like going into a busy restaurant. You
8 see that you want to go in there and eat; the maitre d or
9 hostess whatever is there and says, hey, you have to sit
10 here and wait for ten, fifteen, thirty minutes until
11 there is a table available for you.

12 And when those resources, in this situation a table,
13 is available then you can sit down and eat in this
14 restaurant; same general concept with cell phones.

15 Q. And you went to school on how to testify; right?

16 A. Sure.

17 Q. So your answer to my question of it's not always the
18 closest tower that a device is pinging on is yes; right?

19 A. It's the phone will use the tower with the clearest,
20 strongest signal, which is not necessarily the closest
21 one.

22 Q. It can depend on the height of the cell tower?

23 A. Sure.

24 Q. It can depend on the weather?

25 A. Usually the engineers have got it pretty tightened

1 up on the weather. But, yeah. So catastrophic weather,
2 a hurricane comes through, tornado comes through, takes a
3 tower down, things of that nature, sure, that can; but
4 just general weather, rain, things of that nature,
5 usually not.

6 Q. Okay. Now, I know you're going to say usually not.
7 But isn't it certainly possible that a phone all the way
8 over here [indicates] could be pinging on this tower
9 [indicates]?

10 A. It would not -- it would not -- it may see that
11 tower as a tower in its neighbor list but it would not
12 use that phone -- or that tower for a call because of all
13 the other towers that we have inbetween it.

14 I didn't use timing advance data or anything of that
15 nature for this analysis. I used what the phone selected
16 at the time that that call or text was taking place that
17 it saw as its clearest, strongest signal. That's what is
18 represented here on this map.

19 Q. But it's possible; right? Again, I'm not saying
20 that it's normally that far away. I'm just asking is it
21 possible.

22 A. But we don't get pings -- we don't get ping
23 information from the cell phone companies in a -- in a
24 historical fashion unless we ask for timing advance data.
25 Timing advance data was not available for this. So what

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1 is available or what is shown on this map is what the
2 phone chose as its clearest, strongest cell tower.

3 Q. Clearest, strongest cell tower is not always the
4 closest cell tower; right?

5 A. Correct.

6 A. Okay. And so even though it's unusual, you could be
7 up here [indicates] pinging at this tower [indicates];
8 right? And I know -- I'm not asking you usually. I'm
9 just saying is it possible.

10 A. I'm don't -- I'm not understanding your terminology
11 of ping.

12 Q. I'm just using the word ping, so I'm sorry about
13 that.

14 A. So ---

15 Q. --- what word would you use ---

16 A. --- that phone -- pinging is a totally different
17 thing than historic -- phones accepting historical call
18 details records of your call-detail records.

19 The call-detail records are provided by the company
20 because that phone chose that tower and sector to depict
21 where that phone was at that particular moment in time.

22 Pinging a phone is the phone company goes, hey, we
23 want to make sure our network's working okay, we want to
24 optimize it so we're going to send a signal from these
25 towers to this device or these devices and see where they

1 are and how long that signal takes to come back to that
2 particular tower and sector. That information was not
3 captured here.

4 So pinging a phone in this situation is irrelevant
5 because none of that information was made available to
6 us.

7 But to answer the question, if we had pinging data,
8 sure, it could be right here [indicates] and see this
9 tower. But it could also see this one [indicates], this
10 one [indicates], and this one [indicates], too. And that
11 data may be available to us if we ask for it in a timely
12 fashion.

13 Q. Do you care if I clear your mark here?

14 A. Yeah, I was getting ready to do it, too.

15 Q. So I'm misusing the word ping. That's not what I
16 meant. What I meant was if you make a call, right, and
17 you are right here [indicates], it is possible that this
18 tower [indicates] has the strongest, best signal, right,
19 even though there's a closer tower; right?

20 A. Very doubtful because there's just too many other
21 towers in between and the terrain here wouldn't allow ---

22 Q. --- isn't that ---

23 A. --- it would just be unthinkable that that could
24 take place that far away.

25 Q. What if that tower was on maintenance? What if that

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1 tower was being ---
2 A. --- which ---
3 Q. --- on maintenance ---
4 A. --- which one?
5 Q. I'm saying, for example, if we were right here
6 [indicates]. This tower [indicates] is in maintenance.
7 You could ping to this tower [indicates], this tower
8 [indicates], this tower [indicates], this tower
9 [indicates], this tower [indicates], or that tower
10 [indicates]; right?
11 A. The other two, probably not. But, yes, some of the
12 other ones that you pointed out.
13 Q. Okay. This is not an exact science; right?
14 A. No.
15 Q. Urban development can affect it; right?
16 A. Sure, changes in the environment. You pick up --
17 put up bigger buildings in the area that block one tower.
18 The engineers may figure out that they need to put up
19 another tower or put up, you know, other antennas in the
20 area to provide that service.
21 Q. I just want to get across two more points. This
22 extension of the green does not represent a limit on how
23 far a device can be; right?
24 A. That's correct.
25 Q. So this would be ridiculous, right, for me to draw

1 that line?

2 A. That's why we have open sectors. We don't ---

3 Q. --- right. So you could be pretty far away; right?

4 A. Sure. I mean, again, they don't represent the

5 distance from towers. Basically, the way the networks

6 are set up, as I said earlier, they are set up for each

7 tower to generally overlap each other so as you pass from

8 one tower to the next or one sector to the next, you have

9 a smooth transition of your call.

10 Q. Agent Simmonds, you -- this is your final draft,

11 right.

12 A. Sure ---

13 Q. --- of the document? You prepared a draft on your

14 own for this; right?

15 A. Sure.

16 Q. And you submitted it for peer review; right?

17 A. Correct.

18 Q. And when it got peer reviewed, things were changed;

19 right?

20 A. Yeah, at an orientation of a sector. That was off.

21 Q. So you made a mistake when you did the draft; is

22 that correct?

23 A. I make mistakes all the time.

24 Q. Sure. And everyone does. I'm not saying you don't

25 or I'm not saying nobody makes mistakes. But you did.

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1 You have a ton of experience. You've gone to school
2 about all of this stuff and despite all that, you made a
3 mistake in this case, is that correct, at one point?

4 A. Sure. Prior to it being submitted to the Court,
5 yes.

6 Q. Thank you.

7 MR. SUMMA: Beg the Court's indulgence one second.

8 THE COURT: Yes, sir.

9 [Whereupon, Mr. Summa reviews documents and confers
10 with Ms. Norris]

11 Q. [Mr. Summa] And let's just demonstrate one thing.
12 You only get this data when you make a call or text or
13 use your phone in some way that utilizes a cell tower;
14 right?

15 A. That's correct.

16 Q. So if I'm here [indicates] and I go all the way
17 around here [indicates], never use my phone during this
18 whole time, come back here [indicates] and then use my
19 phone again, it would just have -- you know, hours later,
20 for example, it would only show in your analysis that the
21 phone was pinging off that [indicates] tower; right?

22 A. Yeah, for the call that initiated. And then if you
23 drove around in the area and then returned, ended that
24 call and then made another call, then, yes.

25 Q. So we don't really -- you can't really know -- and,

1 for instance, you can even stand on the exact same spot,
2 make a call, wait five minutes, make another call, wait
3 five minutes, make another call, and you can actually
4 ping different towers? It's possible.

5 I'm not saying it happens all the time, but it is
6 possible that you could be literally in the exact same
7 spot, make several calls over the course of the day, and
8 ping different towers throughout the day? Is that
9 correct?

10 A. If you're in the same general location, it's going
11 to generally use the same tower and sector, you know, for
12 those calls.

13 There would have to be some movement, or you would
14 have to be kind of located in that overlap where --
15 overlapping two towers or sectors for it to kind of go
16 back and forth in that -- in that area.

17 Q. So it happens; right?

18 A. It can.

19 MR. SUMMA: No further questions.

20 THE COURT: Mr. Voigt?

21 MR. VOIGT: No questions, Your Honor.

22 THE COURT: Redirect?

23 MR. COOPER: Yes, Judge.

24

25

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1 REDIRECT EXAMINATION

2 BY MR. COOPER:

3 Q. Agent Simmonds, I forgot to ask you earlier, did --
4 can you give me the distance between those three towers?

5 A. From the base of each one of those towers is
6 approximately a mile from what I -- off my initial
7 measurements.

8 Q. Okay. And then will you describe for the jury the
9 one mistake that you noted in your draft that was sent to
10 me before it was peer reviewed? What was that?

11 A. Sure. This tower, 7588 sector one, was -- had an
12 orientation of, I had it at 240 degrees instead of at
13 zero degrees, which it should have been.

14 Q. And is that why you peer-review?

15 A. Of course that is.

16 Q. And so you and the Federal Bureau of Investigation,
17 your team all stand behind this report?

18 A. That's correct.

19 Q. As is -- as is the case every time you testify?

20 A. That's correct.

21 Q. Now, I want to ask you -- they talked a lot of about
22 these sectors and moving and all of that. So we're
23 looking for the clearest, strongest signal; right?

24 A. That's correct.

25 Q. So at 12:53 p.m., the phone thought that this sector

1 right here [indicates] was the strongest signal; right?

2 A. That's correct.

3 Q. And whatever movement occurred between 12:53:40 and
4 12:54:55, the phone -- the phone then thought this
5 [indicates] was the clearest, strongest signal?

6 A. Sure. Again, that's kind of what I'm talking about.
7 It could have bene in a general overlap area in moving
8 around for it to pick another tower and sector.

9 Q. And then, again, between 1:10:53 and 1:11:51,
10 whatever movement was done, it then found that as the
11 strongest signal; right?

12 A. That's correct.

13 Q. And so in an area that small, you talked about
14 between these three towers as being about a mile between
15 each one; correct?

16 A. That's correct.

17 Q. And so if we're talking now an area, give or take,
18 about that big [indicates] if the movement is from the
19 tower to the bottom, to the tower at the top, would in
20 your expert opinion the phone likely be moving towards
21 that top tower?

22 A. It's moving in a northerly direction.

23 Q. And we talked about also, demand can make a
24 difference as well; right?

25 A. Sure.

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1 Q. So for example, if you're there at the Cooper River
2 Run -- Cooper River Bridge Run weekend, certainly those
3 phones may not have as far to reach as they do on a
4 normal day; those towers.

5 A. There's a lot of demand on it, so you may have to
6 wait for services to be provided.

7 Q. I think Mr. Summa mentioned about height of towers
8 and bridges and buildings and other large obstacles that
9 could be in the way.

10 In this sector going towards the bottom, do you see
11 any of those large structures that may get in the way and
12 affect the signal?

13 MR. SUMMA: Objection. Speculation.

14 MR. COOPER: He's an expert witness.

15 THE COURT: Mr. Summa, I'm going to overrule your
16 objection. He's giving opinion testimony. He can give
17 his opinions to that. Go ahead.

18 THE WITNESS: Thank you.

19 A. So the tower is actually located right here
20 [indicates] by Carolina Ice Palace -- if I recall
21 correctly, it's either -- I believe it's on top of the
22 roof of the Ice Palace.

23 I don't know if that has any structure to make it
24 any higher, but it's at least at the height of the Ice
25 Palace roof and coming out in these directions to provide

1 service. I'm unaware of anything being in that area that
2 would obstruct that signal. I believe the highway may be
3 raised up a little bit, but there's no buildings in that
4 -- in that area that would be taller than the Ice Palace
5 where the tower is located.

6 Q. [Mr. Cooper] And Mr. Summa also mentioned weather
7 to be an issue. Like hurricanes, for example. If it was
8 a sunny day on the day these records -- on the day these
9 records were captured, would you expect any interference?

10 A. It wouldn't matter if it was a rainy day during
11 this. I would expect the cell phone to still utilize the
12 towers that were depicted.

13 I mean, I've made many phone calls during hurricane
14 evacuations, and things of that nature, that went through
15 just fine.

16 So, you know, unless the weather tears down a tower
17 because of a tornado or a hurricane, power goes out all
18 across, I couldn't image the weather affecting the calls.

19 Q. Okay. And just to reiterate. The phone records
20 that you reviewed, the phone from phone number 843-781-
21 4400 that was subscriber information for Daquan Crummey,
22 at 12:54 p.m. and 1:10 p.m. what sector is it hitting off
23 of?

24 A. This sector two [indicates] which is oriented at 190
25 degrees.

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1 Q. I have no further questions. Thank you, sir, for
2 your time. I appreciate it. Answer anything else Mr.
3 Summa may have.

4 MR. SUMMA: Just one question.

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RECROSS-EXAMINATION

BY MR. SUMMA:

Q. You said there are no -- did you go out to this sector and check to see if there's any obstructions, yourself, in person?

A. I've been through that area numerous times and, again, as I sit here, I can't recall anything that would cause ---

Q. --- when's the ---

A. --- any obstructions ---

Q. --- last time you went out there?

A. Probably two weeks ago.

MR. SUMMA: No further questions.

THE COURT: Alright. Agent Simmonds, you may step down.

THE WITNESS: Thank you.

[Whereupon, the witness is excused and exits the witness stand]

MR. COOPER: Your Honor, may we approach the bench?

THE COURT: Yes.

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1 [Whereupon, an on-the-record bench conference is
2 held as follows:]

3 MR. COOPER: Your Honor, can we take a quick break?
4 We just want to make sure we've got everything together
5 because potentially at this point the State could rest
6 but I just want to make sure we've got everything
7 together before we do that.

8 THE COURT: Okay. Does anybody have any objection
9 while we're on break to us hearing the motions which have
10 to come after --

11 MR. SUMMA: I guess we can do them on break.

12 THE COURT: We can do it while we're on break. We
13 can note for the record I think that would be a better
14 use of our time.

15 [Whereupon, the on-the-record bench conference
16 concludes]

17 THE COURT: Ladies and gentlemen, we're going to
18 send you to your jury room for a brief recess. I ask
19 that you not discuss the case, do not do any sort of
20 deliberation, or any research about this case through any
21 form, and we will get you back out shortly. Thank you
22 very much.

23 [Whereupon, the jury exits the courtroom at 4:49
24 p.m.]

25 THE COURT: We can stand at ease. Keep the

1 defendants in the courtroom. Give the State some time to
2 get their ducks in a row and then we will proceed with
3 the next step of the trial.

4 [Whereupon, Court is in recess from 4:50 p.m. to
5 4:59 p.m.]

6 THE COURT: Are we in a position to move forward?

7 MR. COOPER: Your Honor, the State will be ready to
8 rest in front of the jury.

9 THE COURT: Alright. My preference would be for us
10 to hear any motions at this time. And then, Mr. Cooper,
11 Ms. Shealy, I will give you an opportunity to rest in
12 front of the jury.

13 And then since we do have one witness who has to
14 testify today, we will move directly into the defenses'
15 case. So I'll be happy to hear any motions.

16 MR. SUMMA: Thank you, Your Honor. I think, first
17 of all, Agent Simmonds, I think the State either needs to
18 decide what they are going to -- I think he's going to
19 remain in the courtroom to help with the cross, they need
20 to stipulate that he's not to be called back as a
21 witness. Does that make sense?

22 [Whereupon, Mr. Summa confers with Mr. Voigt]

23 MR. SUMMA: I'll just go through my quicker motion
24 first, Judge. Sorry.

25 THE COURT: Yes.

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1 MR. VOIGT: I would join in that motion, though, if
2 he is going to remain to help them with their cross-
3 examination, Mr. Simmonds -- it seems unfair that they
4 get that cross-examination --

5 MR. COOPER: I don't have any objection to that,
6 Judge.

7 MR. SUMMA: Okay, great.

8 THE COURT: Okay.

9 MR. SUMMA: Thanks.

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State v Daquan J. Crummey & Denali D. White
Motion for Directed Verdict-Remarks by Mr. Summa
March 12, 2020

1 MOTION FOR A DIRECT VERDICT

2 MR. SUMMA: Your Honor, Motion for a Directed
3 Verdict, just very briefly. We've heard conflicting
4 testimony about what these individuals looked like.
5 We've heard conflicting testimony about the witness who
6 supposedly IDs my client.

7 I just think that even the evidence -- or the
8 evidence viewed even in a light most favorable to the
9 State, does not rise to the level that a reasonable jury
10 could find my client guilty. Thank you.

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State v Daquan J. Crummey & Denali D. White
Motion for Directed Verdict-Remarks by Mr. Voigt
March 12, 2020

1 MOTION FOR A DIRECTED VERDICT

2 MR. VOIGT: I would join in that motion,
3 specifically as to Mr. White, because even though there's
4 not enough evidence to convict Mr. Crummey, there was
5 substantially less evidence to convict Mr. White. And I
6 believe even in the light most favorable to the State,
7 they have not met the burden.

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State v Daquan J. Crummey & Denali D. White
Motion for Directed Verdict-Remarks by Mr. Cooper
March 12, 2020

1 MR. COOPER: Judge, thank you. And, you know, at
2 this time when the Court is considering a Motion for a
3 Directed Verdict, the Court is only concerned with the
4 existence of evidence, not the weight.

5 The State has provided ample evidence to go to the
6 jury regarding the two defendants who went to the house.
7 We have eyewitness identification that picked them both
8 out of lineups. One who saw them more than any other
9 witness and has been talked about this entire trial, was
10 able to identify them quickly out of lineups, knew who
11 they were, described them from the beginning, even though
12 there was a language barrier that admittedly caused a
13 little bit of an issue along the way she knew. And not
14 only did she know she was right.

15 Now we have phone evidence that Mr. Crummey, the
16 phone that associated with him, per T Mobile and the
17 booking records when he was arrested, show that 781-4400
18 was his phone. Then you have the phone number associated
19 with Mr. White, the 668 number that we just saw, also,
20 that he provided as his number when he was arrested.

21 They are texting each other that morning about going
22 and doing a big lick, meeting at Mr. Crummey's house, per
23 the phone records that puts Mr. Crummey's phone; puts him
24 in the area of the residence at the time of the crime.
25 We've got witnesses that identified them based on the

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Motion for Directed Verdict-Remarks by Mr. Cooper
March 12, 2020

1 description. They give the heights from the beginning,
2 five -- six one or so. Five nine or five ten, you've
3 heard today. Mr. Crummey is six one, Mr. White is five
4 ten. Those -- we have the witness about the hair, the
5 twist, those -- you have testimony from four witnesses
6 that discuss the two men coming uninvited and
7 unannounced.

8 They hear a knock at the door. Ms. Martinez tries
9 to keeps them out. They force their way in. That's
10 burglary. And regarding the armed robbery, you've heard
11 I believe testimony from each of the four witnesses that
12 all five people in that trailer had money taken from them
13 at gunpoint, at gunpoint by two people, Dulce Martinez,
14 Alberto Garcia, Rey Rodriguez, Gilberto Blanco. And you
15 didn't hear from Emil Iana Barrios but you heard from
16 four separate witnesses that she was a victim, as well.
17 So the State is going forward with the fifth indictment.

18 You heard about assault and battery and the injury
19 and the intent to cause the injury, the ability to cause
20 the injury. He slammed the gun in the face of Mr.
21 Garcia, causing the injury the jury saw and the intent
22 behind doing the injury with Mr. Crummey to Ms. Martinez.
23 You certainly heard evidence about them both being in
24 possession of firearms. So I think the State has more
25 than met its burden or more than satisfied their part at

1 this point to go to the jury. Whether the issue is with
2 eyewitness identification or Facebook or the disputed
3 phone records that is the essence of a jury question.

4 So, Judge, I would ask that you deny both motions,
5 you allow the jury to decide the case since there is
6 evidence for us to go forward.

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State v Daquan J. Crummey & Denali D. White
Motion for Directed Verdict-Ruling by the Court
March 12, 2020

1 THE COURT: And as y'all know, these motions -- the
2 Directed Verdict Motion, I have to look at the evidence
3 in the light most favorable to the nonmoving party and
4 I'm looking for the existence of evidence. And I'm
5 certainly not in the position to weigh the evidence, as
6 the judge of the law and not the trier of fact.

7 I agree there may be some discrepancies in the
8 identification portion in this trial. But if I were to
9 rule as -- rule on those discrepancies, I would be making
10 findings of fact and concerning the weight of the
11 evidence not its existence.

12 So at this time I'm going to respectfully deny both
13 defenses, both defendants' Motions for a Directed
14 Verdict. There is evidence in the record where a jury
15 could potentially find the defendants guilty on the
16 charges they've been indicted for.

17 And as I said before, I will bring the jury back in.
18 I'm going to give the State the opportunity to rest on
19 the record, and then proceed directly into the defenses'
20 case so we can keep moving and get this one witness that
21 has to testify today up and down.

22 MR. SUMMA: Thank you, Your Honor.

23 THE COURT: Are we ready ---

24 MR. VOIGT: --- thank you, Your Honor ---

25 THE COURT: Are we ready for the jury?

State v Daquan J. Crummey & Denali D. White
Motion for Directed Verdict-Ruling by the Court
March 12, 2020

1 MR. VOIGT: Yes, Your Honor. Just please note my
2 exception to the Court's rulings.

3 THE COURT: I will note objections to my ruling for
4 both defendants, and your objections are preserved for
5 the record. Thank you.

6 MR. VOIGT: Thank you.

7 MR. SUMMA: Thank you, Your Honor.

8 THE COURT: Are we ready for the jury, ladies and
9 gentlemen?

10 MR. SUMMA: Yes, Your Honor. I'm sorry.

11 [Whereupon, the jury enters the courtroom at 5:08
12 p.m.]

13 THE BAILIFF: Your Honor, the jury is complete.

14 THE COURT: Thank you. And thank you, ladies and
15 gentlemen of the jury. We are going to proceed with the
16 State's case.

17 MR. COOPER: Your Honor, at this time, the State
18 would rest.

19 THE COURT: Thank you, Mr. Cooper. Ladies and
20 gentlemen, the State has rested. That means they will
21 not be presenting anymore evidence so now it's time to
22 shift. If the defendants choose to present any evidence,
23 now is the time to do so. So I'll recognize Mr. Summa.

24 MR. SUMMA: Thank you, Your Honor.
25

State v Daquan J. Crummey & Denali D. White
Thomas Slovenski-Direct Examination by Mr. Summa
March 12, 2020

1 MR. SUMMA: Mr. Crummey would call Tom Slovenski.

2 THE COURT: Mr. Slovenski, please come around and be
3 sworn.

4 [Whereupon, Mr. Slovenski comes forward]

5 THE CLERK OF COURT: Please place your left hand on
6 the Bible, and raise your right.

7 [Whereupon, Mr. Slovenski is duly sworn by the Clerk
8 of Court]

9 THE CLERK OF COURT: You may be seated.

10 [Whereupon, the witness takes the witness stand]

11 THE CLERK OF COURT: And for the record, please
12 state your full name, spelling both your first and your
13 last.

14 THE WITNESS: Thomas Slovenski. T-H-O-M-A-S S-L-O-
15 V-E-N-S-K-I.

16 - - - - -

17 THOMAS SLOVENSKI,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. SUMMA:

22 Q. Thank you, Mr. Slovenski. Would you tell the jury a
23 little bit about what you do?

24 A. I have a company in Greenville called Cellular
25 Forensics, LLC. It's been in existence since 2008. I

1 specialize in mobile phone and historical cell tower
2 records analysis training and I'm also an expert witness.

3 Q. Go into that training a little bit, if you don't
4 mind. What kind of training have you received? And you
5 can include professional experience in there, as well.

6 A. I am a former police officer of fifteen years, both
7 in South Carolina and Texas. I am a graduate of Bob
8 Jones University, have a B.A. degree from them.

9 I also have been certified in mobile phone
10 forensics, as well as certified and deemed a subject-
11 matter expert in historical cell records analysis.

12 Q. Have you received any special training in cell site
13 location data?

14 A. That is correct. I sure have.

15 Q. Can you tell the jury a little bit about that?

16 A. Sure. When I got started in mobile forensics back
17 around in 2007, there was hardly any training whatsoever
18 when it came to historical cell record analysis.

19 There was one gentleman that was offering it to both
20 the police and to the private sector, such as myself, and
21 in 2009 I was certified by that company and then was
22 recertified in 2011 as the software was progressing.

23 What we were using both on the law enforcement side
24 and in the private side was starting to wane out, and so
25 I had to look for a new way to basically skin the cat.

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1 And I found a company out of Arizona that specializes in
2 cell record analysis plotting, mapping, and their
3 training, so I went to every one of their trainings, on
4 my dime.

5 And they held forty-hour classes where you actually
6 attended the class. This wasn't on line. You attended
7 the class; you did your workshops and became proficient
8 in not only looking at the cell tower record, also how to
9 interpret them, how to map them, and then how to explain
10 them.

11 Such to the point that after taking all their
12 classes, I then applied for their subject-matter expert
13 certification and I was the very first in America that
14 was not a law enforcement officer to ever get their
15 subject-matter expert certification.

16 Q. Have you ever testified as an expert witness?

17 A. Many times.

18 MR. SUMMA: Your Honor, at this time, I'd move to
19 have Mr. Slovenski testify as an expert.

20 THE COURT: And he's going to be an expert in
21 historical cell phone records analysis? Is that the
22 field of study?

23 THE WITNESS: Yes, sir.

24 THE COURT: Alright. Any objection from the State?

25 [Whereupon, Mr. Cooper and Ms. Shealy confer]

1 MR. COOPER: I just have a few -- can I query the
2 witness, Judge? Voir Dire?
3 THE COURT: Sure.
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Thomas Slovenski-Voir Dire by Mr. Cooper
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1 VOIR DIRE EXAMINATION

2 BY MR. COOPER:

3 Q. Good afternoon, Mr. Slovenski. I just want to make
4 sure, I just have a few things. What -- could you
5 describe the training you've had regarding historical
6 cell site analysis?

7 A. I've already stated it. What are you asking for ---

8 Q. --- I'm just asking what continuing training have
9 you had in that regard.

10 A. Oh, continuing training? Yes, very good. I, every
11 year, am required to go back to that company. It's
12 called the Zetx Corporation. It's ---

13 THE COURT REPORTER: What's the name of it again?

14 THE WITNESS: Zetx. Z-E-T-X.

15 A. Zetx Corporation. And their program, I'll go ahead
16 and just say it right now. It's the TRAX program,
17 T-R-A-X. It is utilized by over 500 law enforcement
18 entities in the United States, including federal agencies
19 such as the Secret Service, U.S. Marshalls, and DEA.

20 It is basically taking law enforcement by storm.
21 We're even hearing that SLED is considering getting it.
22 But I'm the only guy in South Carolina right now that's
23 got it. But what -- as for continuing education, yes,
24 every year I have to go back to be recertified. So I'm
25 planning on going back this year in November, if the

1 virus will let me, into Arizona, and then for -- then the
2 next year I'll be recertified again.

3 Q. Do you ever -- do you get certified with the
4 individual carriers?

5 A. There is no certification for individuals with the
6 carriers.

7 Q. And how many times have you testified as an expert
8 regarding this matter in South Carolina; the subject
9 matter?

10 A. Right now I think I'm about eight to ten times. I
11 really don't count all the time.

12 Q. Have you ever not been qualified in a state court of
13 South Carolina as an expert witness or not been allowed
14 to be qualified?

15 A. Never.

16 Q. What about federal court?

17 A. Never went to federal court yet. I've had cases
18 that were federal but they never made it to court.

19 MR. COOPER: Beg the Court's indulgence.

20 [Whereupon, Mr. Cooper and Ms. Shealy confer]

21 Q. [Mr. Cooper] I know you mentioned that cell phone
22 providers don't specifically train. Do they assist the
23 providers in their training? Are they involved in that
24 at all?

25 A. Both. Okay. The providers are the companies

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1 providing the service. Could you be more ---

2 Q. --- the trainings you get, are the cell phone
3 provider companies involved with those companies you get
4 your training with?

5 A. Do they actually come to the class and give ---

6 Q. --- via that or -- I'm just trying to figure out if
7 they're involved in any way in how you've been trained
8 in the actual companies that have the cell towers, I'm
9 trying to figure out if you've been trained by them.

10 A. As in directly? Like they show up in the classroom
11 and talk to you directly? No, sir.

12 Q. Okay. And then what companies, again, have
13 certified you is Zetx and TRAX? Or is TRAX a system that
14 Zetx uses?

15 A. TRAK is the proprietary system in Zetx. Zetx is the
16 corporation and so they have a program that was developed
17 by a former law enforcement officer called TRAX, T-R-A-X.

18 If I may add, in talking about my training and
19 everything, I've also trained many not just law
20 enforcement officers -- hundreds of law enforcement
21 officers.

22 I was also a senior instructor for the State
23 Department and traveled abroad training national police
24 departments in several foreign countries. I've also
25 produced eight training videos for the South Carolina Bar

1 and have provided training to numerous attorneys across
2 the state. So my training is not just receiving it. I'm
3 also giving it out.

4 Q. And how many hours of training have you had?

5 A. I've had -- I mean, like as in when I was a police
6 officer up until now, the actual ---

7 Q. --- in historical cell site analysis?

8 A. Oh, probably a couple hundred.

9 MR. COOPER: I have no objection at this time,
10 Judge.

11 THE COURT: Ladies and gentlemen, again, ordinarily
12 witnesses can only testify about what they've seen,
13 heard, observed, things within their knowledge and they
14 cannot give opinion testimony. However, there's an
15 exception when someone is qualified because of his
16 education, training and experience, he is permitted to
17 give expert testimony and opinion in certain areas if the
18 Court deems the expert is qualified.

19 This witness will be qualified in the area of
20 historical cell phone record analysis, and that will
21 allow him to give opinion testimony in that area. That
22 does not mean you must accept his opinion but it is
23 evidence for you to use any way you see fit and give the
24 weight and credibility you believe is appropriate. So
25 this witness is qualified as an expert. Mr. Summa?

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1 MR. SUMMA: Thank you.

2 MR. VOIGT: Your Honor, might I ask that we stop the
3 distraction here while we're trying to hear testimony? I
4 would object to that.

5 THE COURT: I don't -- I don't have any problem if
6 the individual that they keep conferring with, if he
7 wants to come on this side of the bar to minimize the
8 disruption, I don't see any problem with that. So if
9 it'll make it easier, that's certainly fine.

10 [Off the record momentarily]

11 THE COURT: Let's stay focused on the reason we're
12 here ladies and gentlemen.

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State v Daquan J. Crummey & Denali D. White
Thomas Slovenski-Direct Examination by Mr. Summa (resumes)
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1 DIRECT EXAMINATION (resumes)
2 BY MR. SUMMA:
3 Q. Mr. Slovenski, you probably consider yourself one of
4 the country's foremost experts in cell location data,
5 wouldn't you?
6 A. I know a lot, but I don't want to...
7 Q. Sure. Yeah, you don't ---
8 A. --- I wouldn't say that I'm ---
9 Q. --- want to pat yourself on the back. I understand.
10 A. Correct, sir.
11 Q. I do want to talk to you about specifically what
12 Agent Simmonds just testified to. You were provided a
13 copy of that?
14 A. Yes sir, I was.
15 Q. And I'm going to show you a picture from that.
16 [Whereupon, Mr. Summa reviews photographs]
17 [Whereupon, the photograph is published]
18 Q. What are they saying that depicts?
19 A. Okay. From all my years of doing this, what this
20 is, the is -- looks to be a representation of a cell
21 tower and a inaccurate way of propagating how that tower
22 actually puts out a cell signal.
23 Q. How is it inaccurate?
24 A. Several factors. Number one, it is -- it's not
25 accurate in how it's drawn. Alright? This is the old

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1 method that we were taught back in 2008, 2009, alright,
2 because there was nothing else at that time to basically
3 illustrate to everyone this is how a cell tower works, it
4 has a sector and the beams go out. Alright?

5 So I call that the old pie method and you'll see why
6 because it looks like a pie. As you'll see, as I am
7 presented with further things from the report, you'll
8 actually see how a cell tower really propagates, how it
9 actually puts the signal out. This is old and
10 unrealistic and inaccurate.

11 You'll also notice that it doesn't show you an
12 estimation about how far will that signal really go.
13 Okay? Sure, a cell tower can go from a half a mile to
14 forty miles, but it depends on a lot of factors, and
15 that's called attenuation.

16 That's things such as buildings in the way. Is
17 there water? Are there trees? How many people are
18 using the tower that day? You know, was it a heavily
19 congested area. All of that has a bearing.

20 And this is just a way to say, hey, there's a tower
21 and the signal went out. That's the best that they can
22 do. Alright? I would us that if it was accurate.
23 Because you've got to remember, I'm the guy that does
24 this for a living; therefore, I have to know what I'm
25 doing and have the best software, the best way of

1 replicating this, because my livelihood depends on it.
2 So in accuracy, just the form itself is old, outdated.

3 And you'll notice as other diagrams -- or not
4 diagrams -- other pages of this report are drawn out,
5 that the diagram always stays the same. It's the same
6 diagram everywhere you go.

7 Cell towers are not like that. Cell towers work in
8 conjunction with each other. Hence, that's why they're
9 called cells, because they overlap each other. But
10 that's got to be taken in consideration. This figure
11 does not do that.

12 Now, I'm not throwing down on the FBI agent. Don't
13 get me wrong. Okay? I was a cop for fifteen years. I
14 admire what they do. You know, hey, it's a hard job.
15 And I would only imagine that he's using this because
16 he's been told to. Okay? I can tell you that the other
17 federal agencies ---

18 MR. COOPER: --- Judge, objection. I think Mr.
19 Summa needs to ask a question and he answer, not
20 pontificate about the FBI. It's ---

21 THE WITNESS: --- well, I was just -- I'm sorry.

22 THE COURT: Let's focus the question and answer
23 process. So I will sustain the objection as to the
24 narrative nature of this testimony. So let's break it up
25 a little bit, please.

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1 Q. [Mr. Summa] Fair to say you enjoy this stuff;
2 right?

3 A. Yeah. I love this stuff.

4 Q. Alright.

5 A. Okay.

6 Q. This -- and you can draw on that screen.

7 [Whereupon, the photograph is shown]

8 A. Great.

9 Q. And I know -- show us more -- what is a -- what is
10 the real shaped of the tower? What's the real -- what's
11 the real shape look like? And I know it's very exact,
12 but just do it rough approximation for the jury, if you
13 don't mind.

14 A. Okay. A rough shape is going to look kind of like a
15 mushroom. And I'm going to try to draw it with my
16 finger, so please bear with me.

17 [Whereupon, the witness indicates on screen]

18 A. Now, what I'm saying is wherever I put the top part,
19 I'm not saying that's as far as it went. Okay? I'm just
20 drawing a diagram on here. Okay? So kind of forget that
21 pie shape right there [indicates]. Alright. Do you
22 want me to explain this?

23 Q. Maybe later.

24 A. Okay.

25 Q. Let's go ahead to one of the other slides.

1 A. That's a terrible picture. I'm sorry.

2 Q. Well, I mean, and I think it's important that the
3 jury understands that that line you drew on top is not --
4 like you said, does not represent the extent of it;
5 right?

6 MR. SUMMA: The way you clear it is on the top
7 right, that little green arrow.

8 THE WITNESS: Okay. Cool.

9 MR. SUMMA: And there's a clear button below it.

10 THE WITNESS: Thank you.

11 Q. [Mr. Summa] So this. You told me about this. You
12 described it to me -- what did you describe it as when
13 you...

14 MR. COOPER: Your Honor, may we approach briefly?

15 [Whereupon, an on-the-record bench conference is
16 held as follows:]

17 MR. COOPER: I would just -- those were provided by
18 my expert. I have -- I know his has provided materials.
19 I don't know if that appropriate for him to continue to
20 go through my expert's report ---

21 THE COURT: --- experts can refer to hearsay
22 materials to give the basis for their opinion, so that
23 would go to --

24 MS. SHEALY: --- we were just talking about the
25 demonstrative aspect. We weren't allowed to put it in.

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1 THE COURT: He's not putting it in, either.

2 MS. SHEALY: Well, he's showing it to the jury
3 through this guy.

4 MR. COOPER: I would have never shown mine through
5 him -- through my guy ---

6 THE COURT: Experts can rely on hearsay. You can
7 laugh, but it's the law. Okay? I'm getting a little
8 irritated by the sides in this. When I make a ruling ---

9 MS. SHEALY: --- I think that may have been the
10 first one from our side, Judge.

11 THE COURT: Well, I'm just saying. I didn't direct
12 it at anyone in particular. I'm just getting a little
13 irritated by it, especially at this hour. So I've made
14 my ruling.

15 [Whereupon, on-the-record bench conference
16 concludes]

17 THE COURT: You can continue.

18 Q. [Mr. Summa] So Mr. Slovenski, would you describe
19 this as misleading?

20 A. Yeah.

21 Q. How?

22 A. Well, for one thing, we -- the dots that are all
23 over here, I know what they're trying to represent, and
24 they're trying to represent that these are various cell
25 towers. However, to the untrained mind, or to someone

1 that's looking at just this one diagram, it looks like
2 that you're saying that the -- that the device that's in
3 question was at all these different locations.

4 Q. Fair enough.

5 [Whereupon, the photograph is published]

6 Q. This photo, have you seen this before?

7 A. Yes, sir.

8 Q. What's misleading about this?

9 A. Well, there again, we have those little dots that we
10 were just talking about. And what's misleading about
11 this is that you'll notice that the shape, they're all
12 the same.

13 Cell towers are not all the same. Okay? So it's
14 just basically representing that's a tower that puts out
15 a signal.

16 Q. And I know you've already talked about the shapes.
17 Anything else you want to add to this slide?

18 A. Well, if you're looking for a device and it says up
19 here [indicates] that this is the device in question,
20 judging from the use of this diagram, this part here
21 [indicates] can be misleading.

22 And we've addressed this in court, other courts, as
23 well. What is the purpose of it? It could -- and I'm
24 not saying it has, but it could be used to misrepresent.

25 Q. And I think in this case -- you weren't here for his

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1 testimony. I think we made that clear in cross, so thank
2 you for pointing that out.

3 [Whereupon, the photograph is published]

4 Q. What about this one? Anything to add on this one?
5 And I'll just zoom it in a little bit.

6 A. Yeah. Again, we have the points that were -- we
7 were talking about. Also, this here [indicates] is,
8 again, where these -- or this diagram is misrepresenting
9 because I checked this out personally.

10 This tower here [indicates] overlaps each other.
11 Okay? The sectors do. I'm sorry. This sector
12 [indicates] and this sector [indicates] overlap each
13 other. I went in there and checked it.

14 There's no space like you see right there
15 [indicates]. So this is not an accurate representation
16 of how those cell towers actually put out the signals.

17 Q. Would you describe it as misleading?

18 A. Depends on what you're wanting to say.

19 Q. You weren't in here, Mr. Slovenski, but the State is
20 trying to say that this depicts definitively that someone
21 went from the yellow dot to the red dot and then back
22 again. That's not how it works; right?

23 A. That is -- they went from the yellow dot you're
24 talking about right there [indicates]?

25 Q. Correct.

1 A. Down to here [indicates]. No. All its depicting is
2 at a particular date and time, this tower was being
3 utilized right here [indicates], this tower was being
4 utilized right here [indicates], and this tower is being
5 utilized right here [indicates].

6 Q. Do you think -- and we're talking about, and they
7 talked about this too, a hot summer day in the area.

8 Is it possible and is it -- is it -- or is it
9 incredibly unlikely that you might be -- that the device
10 might be physically closer to one of these towers but
11 actually be utilizing a different tower?

12 A. If the record from the provider says at this date
13 and time that tower was utilized, okay, that's the best
14 we can go on. We have to go by what the provider says,
15 and so we map it out accordingly.

16 But if there was a closer tower than the one that
17 they're showing -- is that what you're saying, would that
18 not have been...

19 Q. I guess what I'm saying is you don't always ping the
20 closest tower -- or I say ping very mistakenly.

21 A. Yes.

22 Q. You don't always use -- whenever a device is
23 utilized, it doesn't always use the physically closest
24 tower; is that correct?

25 A. That is correct. And in 2013, the FBI got in

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Thomas Slovenski-Direct Examination by Mr. Summa (resumes)
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1 trouble with the Supreme Court twice on that. It's
2 called granularization.

3 Q. Did you -- and looking at this report, this is just
4 about roughly twenty-four hours; right?

5 A. I believe so, yes sir.

6 Q. Okay. You analyzed more than just twenty-four
7 hours, didn't you?

8 A. Yes, sir. I analyzed everything that you gave me.

9 Q. And you made a video to show all of the pings over
10 the course of several days; is that correct??

11 A. I believe so, sir.

12 MR. SUMMA: Your Honor, I am marking the CD, which
13 shows Mr. Slovenski's video, as Defense Exhibit 15, or
14 whatever you want to do. It doesn't matter.

15 THE COURT REPORTER: Your next number is 6.

16 MR. SUMMA: Sure.

17 [Whereupon, Defendant Crummey Exhibit Number 6 is
18 marked for identification by the court reporter]

19 MR. SUMMA: Your Honor, I'm marking this for
20 demonstrative purposes only, and I'd like permission to
21 publish it to the jury.

22 THE COURT: Has it been shared with...

23 MR. SUMMA: Yes.

24 THE COURT: Any -- Mr. Cooper, any objection to the
25 video prepared by this witness being marked as an exhibit

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1 for demonstrative purposes and being shown to the jury?

2 MR. COOPER: No, sir.

3 Q. [Mr. Summa] So this video, and before we get there
4 actually could you explain what granularization is? You
5 said the FBI got in trouble for that?

6 A. Yeah. Granularization is the theory that a cell
7 phone, when in use, utilizes the closest tower to it.

8 And that was found to be false and it's not
9 scientifically accurate. What happens is your phone uses
10 the best tower for it at that particular time.

11 Q. So, and then again, back to this video you showed
12 us. This shows much more data. You analyzed much more
13 data than what is depicted in this report?

14 A. Yes. Records were forwarded to me that the
15 prosecution forwarded to you. I took those and I mapped
16 them out in an animated fashion.

17 MR. SUMMA: Okay. Permission to publish --
18 actually.

19 THE COURT: That's correct.

20 [Whereupon, Defendant Crummey Exhibit Number 6 plays
21 for the jury]

22 Q. [Mr. Summa] So what is -- can you read this, Doctor
23 Slovenski, on the top right, what date that is?

24 A. 7/19/2017, 20:57:25 hours.

25 Q. And just give a -- if you don't mind just telling

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1 the jury your impressions from where that device was over
2 the course of five or six days?

3 A. Well, it wasn't stagnant but it -- but it tend [sic]
4 to revisit places that it already had been.

5 Q. The towers in the FBI reports, it pinged off those
6 towers -- and I keep saying ping -- it used those towers
7 most of the time for that entire stretch; right?

8 A. Correct, sir.

9 MR. SUMMA: Can I republish the video to the jury,
10 Your Honor?

11 THE COURT: Any objection?

12 MR. COOPER: Publish what to the jury? I'm sorry.

13 MR. SUMMA: Play the video again. It's very short
14 and fast.

15 MR. COOPER: Sure.

16 MR. SUMMA: Okay. Thank you.

17 [Whereupon, Defendant Crummey Exhibit Number 6 is
18 plays again for the jury, with questions from Mr. Summa]

19 Q. [Mr. Summa] And as this video is playing, I'll try
20 and ask you -- I mean, is it -- is it even weird that
21 this cell phone is in -- is in that area?

22 I mean, I think the jury can see it so I mean, we
23 don't really need you to explain it. But, I mean,
24 clearly it's misleading to talk about it reveals
25 something so amazing that it was in this area at a

1 specific time; right?

2 A. Yes. Correct.

3 [Whereupon, Defendant's Exhibit Number 6 concludes]

4 A. And that's one of the things that we're taught, is
5 you have to look at patterns, patterns of life. We're
6 all made up of patterns.

7 We do the same thing all the time. So when we have
8 something like this, we question why was the device
9 always in the same area all the time.

10 MR. SUMMA: No further questions.

11 MR. COOPER: Will you bring that back? I want to
12 look at that.

13 MR. SUMMA: Do you understand what you're seeing?

14 MR. COOPER: Yes. Sorry. He's pulling it up Mr.
15 Summa, but I just wanted to ask a few questions.

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State v Daquan J. Crummey & Denali D. White
Thomas Slovenski-Cross-Examination by Mr. Cooper
March 12, 2020

1	CROSS-EXAMINATION
2	BY MR. COOPER:
3	Q. You mentioned you were a cop for fifteen years;
4	right?
5	A. Correct.
6	Q. And that ended in 1999; right?
7	A. That's right.
8	Q. Well before cell phones really even had taken off
9	like they have now?
10	A. Correct.
11	Q. And you mentioned the Supreme Court case about
12	granularization?
13	A. Uh-huh.
14	Q. Were you a party or a lawyer in that case?
15	A. No. It's on Google.
16	Q. Okay. I just want to try to slow this down just so
17	we can get an idea from the time. I'm just trying to get
18	an idea about an actual depiction of what happened during
19	this case.
20	A. Sure.
21	[Whereupon, Defendant Crummey Exhibit Number 6 plays
22	for the jury, with questions from Mr. Cooper]
23	Q. So to go by your description, I'm looking and I can
24	make out some of this, 723 172 -- 1253 right there
25	[indicates]. Do you see that, Mr. Slovenski?

1 A. Yes, sir.

2 Q. That has a footprint on -- is it called a footprint?
3 Is that how you -- is that the terminology you use for
4 the mushroom shape? Is that the footprint of the tower?

5 A. Estimated radio frequency coverage.

6 Q. Okay. That estimated radio frequency coverage still
7 has home on Tedder Street in that same location is that
8 right, in the estimated radio frequency coverage of the
9 tower?

10 A. Take the -- take the red dot off again.

11 Q. Okay.

12 A. I wish I could put my computer up here and show you
13 the actual map and then zoom in on it.

14 Q. Well, you prepared this for -- you don't have one
15 zoomed in for the actual date and time of the incident?

16 A. Anything that I gave to the defense, that's between
17 you guys, okay? I've got everything here, if you want me
18 to bring it out.

19 [Off the record momentarily]

20 Q. [Mr. Cooper] Mr. Slovenski, did you see on there a
21 time for any call at 1:10 or 1:11 p.m.? I may have
22 missed it. Did you see it on there?

23 We can back it up for just a second if we need to.

24 I saw one at 12:54, and I think it jumped to two-
25 something?

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1 A. There's 12:53.

2 Q. [Mr. Cooper] I still -- I see -- just hold on for
3 one second. Right there. Mr. Slovenski, do you see that
4 right there [indicates]?

5 A. 13:16?

6 Q. Where is that? I'm assuming it's still -- right
7 here [indicates].

8 A. No. It actually seems to be -- if you'll take that
9 off, it's reflecting what appears to be this tower right
10 here [indicates].

11 Now, there again, I'm just looking at this like --
12 I'm used to looking at it more in depth. You know other
13 courts I'm able to bring my laptop up on the stand and
14 then explain right from there, so I'm at a disadvantage
15 right now.

16 Q. Okay. So how do you determine the footprint of a
17 tower?

18 A. That is determined through the use of -- when you
19 use the TRAX system ---

20 Q. --- okay ---

21 A. --- the TRAX has 3.5 million towers in it.

22 Q. Okay.

23 A. These towers are constantly validated as to their
24 coverage from thousands and thousands of users, like
25 myself, who submit the provider records when we get them.

1 TRAX will then look at the tower locations and all the
2 engineering data that goes with it, and then it will
3 validate itself. So constantly, hundreds of times a day,
4 TRAX is revalidating its tower records. Okay. That's
5 just one part.

6 Q. Okay.

7 A. Another part is where there are actual drive-bys.
8 And a drive-by is where usually it's the police agency
9 will take this unit that's about 125,000 dollars. It's a
10 special unit and you stick it in your car and you go and
11 you drive around these towers that are of particular
12 interest to you.

13 Like if you're saying that this defendant hit this
14 tower, then you would do a drive-by. That would be due
15 diligence, and I didn't see that in this case, so I could
16 not take that and then run a side-by-side study on it.
17 So that was something that was missed.

18 That -- those -- that information from all those
19 drive-bys that are performed around the country are also
20 fed in. Also, what data TRAX has with the providers
21 themselves is then put it. You take all of this data
22 together and TRAX is verifying each tower all the time.

23 Q. Let me ask you one thing about ---

24 A. --- now -- okay, well I was getting to your
25 propagation.

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1 Q. Oh. Okay. Getting ---

2 A. --- oh yeah, I'm going to get to it. I'm sorry.

3 But I had to lay the groundwork.

4 What happens now is there is a proprietary algorithm
5 in the system that utilizes the towers' overlap. So if
6 we say tower -- I'm just going to make it up. This tower
7 right here, tower 123, we're going to call it. Okay?

8 If I put that in the system, TRAX says, oh, tower
9 123. It's also got 4, 5, 6, 7 and 8, 9 up here. So you
10 might have a tower right here [indicates], but then
11 you've got another one here [indicates], another one here
12 [indicates].

13 So you've got this coverage where it's overlapping
14 each other. And so TRAX looks at the other towers in the
15 area, because you just can't take one tower and says, oh,
16 it goes out for fifteen miles.

17 Q. That's part of my question. So you're saying ---

18 A. --- yeah ---

19 Q. --- take the records from the provider; that's what
20 we get, that's what we take, that's what we use?

21 A. That's right.

22 Q. Well, they provide a tower and a sector number,
23 don't they?

24 A. Correct.

25 Q. And so why don't we use that here?

1 A. We are.

2 Q. Well, which sector of the tower are you using when
3 it's a whole...

4 A. Okay. Very good.

5 Q. Okay.

6 A. Because what is happening now is you see -- I wish
7 we could blow this up. Okay. But let's just take this
8 one right here [indicates], for instance. Okay?

9 That is on sector it appears sector number one, this
10 one right here [indicates], ladies and gentlemen, right
11 there [indicates]. Okay? That's a sector. That's not
12 the whole tower. That's just that sector.

13 Because as we showed, the propagation from the
14 tower, this is how it looks like. And how do I know?
15 Because we got this diagram -- and I say we, because it's
16 TRAX and -- I'm a business partner with them, by the way,
17 also, okay.

18 And we got this from actual patents of cell-tower
19 makers. So the guys that make the towers, when they put
20 the patents in, they say, oh, by the way, this is how our
21 tower propagates. And then we're not -- and it's just
22 not patents that are saying that.

23 It's also academia that is now looking at TRAX and
24 there's -- there was recently written a book by Doctor
25 Zocowski -- Zarkowski [phonetic], excuse me, and you can

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1 find it on Amazon and it's like 187 bucks. He's real
2 proud of his work. And so but he deemed TRAX, you know,
3 in the forensic field as highly accurate providing a
4 animated presentation of actual activity.

5 So what happens is you've got these rear lobes,
6 you've got side lobes right here [indicates], and then
7 you've got front lobes. The way it's being portrayed by
8 the other side is that it just goes like this
9 [indicates].

10 Well, look at all that's missing. And by the way,
11 we've been trying to get FBI on board for years, but
12 they've stepped back.

13 Q. [Mr. Cooper] Okay. I want to give you a break real
14 quick, and then I just want to see -- alright. Let's hit
15 it again. I just want to see if we can pick up where
16 it's travelling right around the time of the incident.

17 [Whereupon, Defendant's Exhibit Number 6 resumes for
18 the jury]

19 Q. [Mr. Cooper] Okay. So that is, as far as I can
20 read, between about ten -- eleven-and-a-half to ten
21 o'clock in the morning. Close to 11:00; right?

22 A. Correct.

23 Q. Okay. And so, again, it's tracking down towards the
24 little house icon where it was before; right?

25 A. Correct, sir.

1 Q. [Mr. Cooper] You mentioned you do this for a
2 living; right?

3 A. That is correct.

4 Q. You even list on your resume, as one of your job
5 descriptions, expert witness; right?

6 A. Correct. Uh-huh.

7 Q. Do you get paid extra for animation?

8 A. No, sir. That's part of the package.

9 Q. Okay. Do you get paid to come in here and agree
10 with the FBI?

11 A. To agree with the FBI?

12 Q. Exactly. Do you get paid to come in here and agree
13 with the FBI?

14 A. I am not a liar for hire. I analyze, and then I
15 report on my analyzation. And my history with working on
16 cases for the Public Defender is without repute.

17 Q. Were you overheard in the hallway telling Mr. Summa
18 you should charge more money for waiting?

19 A. We are over budget.

20 MR. COOPER: I've got no further questions, Judge.

21 THE COURT: Hold on one second, Mr. Summa. Mr.
22 Voigt, do you have any questions?

23 MR. VOIGT: I do not, Your Honor.

24 THE COURT: Thank you. Any redirect, Mr. Summa?

25 MR. SUMMA: Yes.

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1 REDIRECT EXAMINATION

2 BY MR. SUMMA:

3 Q. You like to get paid for what you do; right?

4 A. That's how I make my living; doing this.

5 Q. And you are here doing overtime; right?

6 A. I am very much overtime.

7 Q. Have I promised, or has anyone promised, you extra

8 money for being here?

9 A. No, sir. I just ---

10 MR. COOPER: --- object. Your Honor, I object to

11 the form of the question. Can't lead the witness.

12 THE COURT: It didn't suggest the answer. He asked

13 if he was promised anything extra for being here. So

14 I'll overrule your objection.

15 Q. [Mr. Summa] So you're working overtime right now;

16 right?

17 A. Yes, sir.

18 Q. This is more than what was paid for because we

19 didn't expect the State's case to take -- to take so

20 long; right?

21 A. I guess so, sir.

22 Q. Okay. And I was telling you that we can -- or I'll

23 ask my boss if we can compensate you ---

24 MR. COOPER: --- objection, Your Honor ---

25 Q. [Mr. Summa] --- for ---

1 THE COURT: --- now we might be getting into
2 leading.

3 MR. COOPER: And relevance, I would add.

4 THE COURT: Well, the pay has been made an issue so
5 let's ask non-compound questions that don't suggest the
6 answer.

7 Q. [Mr. Summa] Was I or was I not suggesting that I
8 ask my boss if we can help compensate you for the extra
9 time that you've come in, that you've given up other
10 projects, to come and explain to this jury how their
11 expert is doing something that is completely misleading?

12 A. You promised me nothing, sir.

13 Q. But I did have a discussion with you and I was
14 saying I hope that ---

15 MR. COOPER: --- objection, Your Honor. Again, he's
16 leading the witness.

17 THE COURT: Mr. Summa, ask him ---

18 MR. SUMMA: --- I'm done with that, Your Honor.

19 THE COURT: Okay.

20 Q. [Mr. Summa] But anyway, going back to the video.
21 This device is always in the area of the incident
22 location -- and I don't always -- very particular --
23 usually in the area of the incident location; is that
24 correct?

25 A. It's in an area that is covered by that tower.

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1 Q. Usually?

2 A. Usually, yes.

3 MR. SUMMA: Thanks. No further questions.

4 THE COURT: Any recross, Mr. Cooper?

5 MR. COOPER: I've got no further questions, Judge.

6 THE COURT: Alright. Thank you for being here. You
7 may step down.

8 MR. SUMMA: Could we ask that he be excused, Your
9 Honor?

10 THE COURT: Any objection?

11 MR. COOPER: No, sir.

12 THE COURT: Thank you for being here, sir. You're
13 excused.

14 THE WITNESS: Thank you, Your Honor.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

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1 THE COURT: Ladies and gentlemen of the jury, it is
2 an appropriate time to stop for the day and so I'm going
3 to excuse you for the rest of the day and ask that you be
4 back in the jury room at nine o'clock tomorrow morning.

5 Please don't discuss this case amongst yourselves or
6 with anybody else. Please don't do any independent
7 research using any print or electronic media. I hope you
8 have a good evening. I thank you for your attentiveness
9 here today and we will see you tomorrow at nine o'clock.
10 Thank you.

11 [Whereupon, the jury exits the courtroom at 5:54
12 p.m.]

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Charge Conference
March 12, 2020

CHARGE CONFERENCE

THE COURT: Alright. I know it's late, but I think we need to do this now before we get started tomorrow. We've got to talk about the jury charge and if any lesser included offenses are going to be requested by either side. And I've started a preliminary draft of the jury charge. I'm just going to read out -- read out the things that I think are -- that I think need to be in there.

I've got my general introduction, duties of the jury and the trial judge; charge, arrest and indictment are not evidence; multiple defendants; presumption of innocence; reasonable doubt; direct and circumstantial evidence; credibility of witnesses; expert witnesses.

I'm going to give a curative instruction with regard to -- let them know that any evidence that was stricken from the record cannot be considered. I've got a general criminal intent charge. I know we're not to this point yet but I've included it in the draft because I always include it until it needs to come out, as far as defendants testifying.

I know that decision has not been made on the record yet but it's in my general jury charge. Hand of one is the hand of all; identification; prior inconsistent statements. And then we go to the actual criminal

1 offenses. Certainly with armed robbery and assault and
2 battery in the first degree and burglary first and
3 possession of a weapon during the commission of a violent
4 crime. And then my standard charge dealing with the jury
5 verdict. And then after the verdict is read, I've got
6 the discharge of the jury charges, basically, that tells
7 them that their service has ended.

8 I know y'all aren't in the position to submit
9 anything, but I think that's kind of a framework. I
10 think I've covered the issues that have come up in this
11 trial. If y'all want to submit anything specific --
12 these charges come from Court Administration and they
13 were updated in the late summer of 2019.

14 I think they're all pretty standard jury charges.
15 But if there's anything that y'all want added, anything
16 specific, I'll be happy to review them. And I know y'all
17 aren't in a position to submit anything right now. But
18 let's -- I do think we could talk about lesser included
19 offenses now.

20 MR. VOIGT: Just a point, Your Honor. Do you use
21 Victor v Nebraska? And do you use hesitate to act?

22 THE COURT: I use a blend as -- I'll read what
23 the...

24 MR. VOIGT: You may have noticed I did that in my
25 opening. I try to anticipate where ---

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1 THE COURT: --- mine has -- mine has what is -- it
2 starts out what is a reasonable doubt in the law?
3 Reasonable doubt is the kind of doubt that would cause a
4 reasonable person to hesitate to act; the State has the
5 burden of proving that the guilt -- defendant guilty
6 beyond a reasonable doubt.

7 Some of you may have served in -- as jurors in civil
8 cases where you are told it is only necessary to prove
9 that a fact is more likely true than not true, such as
10 the greater weight or preponderance of the evidence. In
11 criminal cases the burden -- the State's proof must be
12 more powerful than that and must be beyond a reasonable
13 doubt. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt.

15 So I blend -- that's what they want us to do. I
16 don't think many judges go with either firmly convinced
17 or hesitate to act; it's a blend. So that's what the
18 charge says.

19 MR. VOIGT: I have no objection to that charge. I'd
20 just like to have the same language for my ---

21 THE COURT: --- I understand. I understand. I used
22 to do the same thing, Mr. Voigt. As far as lesser
23 inclusions, where do y'all think -- and I'm not -- you
24 know, we're not -- I'm just -- I just want us to talk
25 through these issues so we can get started straight away

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1 in the morning. I don't think burglary two violent is in
2 play because there's no doubt that this was a dwelling.
3 So it's not a building, so burglary two violent would be
4 out. I think burglary three would be out. You know, I
5 don't know if anybody wants burglary two nonviolent or
6 not. Y'all are shaking your heads so I think we just --
7 it'll be all or nothing on the burglary.

8 The assault and battery first degree, obviously it's
9 because of the -- it's alleged to have been committed
10 during a burglary, robbery and the like. There's been no
11 testimony as to severity of injury, as far as I can see,
12 that would allow a jury to make the determination as to
13 whether this is great bodily injury or the type of
14 conduct that could have caused great bodily injury.

15 So I think A&B first is just based, for both
16 charges, is based upon the fact that it was alleged to
17 have been committed during a burglary or robbery. Do
18 y'all agree or disagree with that contention?

19 MR. SUMMA: I'm sorry. You're saying that it's
20 assault and battery first degree automatically because it
21 was...

22 THE COURT: Well, I think that's the whole -- let me
23 -- let me look at the indictments and see what's alleged
24 in the indictments.

25 MR. SUMMA: Maybe I can just for the Court, I --

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1 we're not -- we're not requesting any lesser includeds in
2 this case.

3 THE COURT: Okay. How about from the State?

4 MR. COOPER: No, sir.

5 THE COURT: Okay. So this will be -- just so I'm
6 clear, they're both charged with five counts of armed
7 robbery, both charged with assault -- or, excuse me --
8 both charged with burglary in the first degree, one
9 count, both charged with possession of -- possession of a
10 weapon during the commission of a violent crime, and then
11 Mr. Crummey is charged with the assault and batteries in
12 the first degree. Correct?

13 MR. COOPER: Yes, sir.

14 THE COURT: Alright. So in the proposed charge,
15 I'll take out any reference to any lesser included
16 offenses. The verdict forms will be -- since there are
17 multiple indictments, I'm going to do a separate piece of
18 paper for every indictment, so there will end up being
19 five armed robberies for each defendant; one verdict form
20 for the burglary, one verdict form for each defendant for
21 the weapon's charge, and then the two assault and battery
22 first degrees for Mr. Crummey.

23 And I think it's just easier if we have -- rather
24 than trying to delineate the indictments, the indictment
25 numbers on one form that goes on multiple pages, we'll

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1 just have separate forms for each indictment, and I think
2 that'll be the cleanest way.

3 MR. SUMMA: It sounds good to me. If something
4 changes I'll email the clerk, but I don't see that.

5 THE COURT: Yeah. And then if you've got -- if
6 you've got any specific charges you want, email my clerk
7 and she'll get them to me.

8 Give me an idea -- you list -- Mr. Summa, you've
9 listed up to ten witnesses. And I'm not going to hold
10 you to this. I just want an idea of where we may be in
11 terms of time tomorrow.

12 MR. SUMMA: Your Honor, probably done, depending on
13 when we -- if we start at 9:30, probably done by 2:00.
14 It's really tough to guess. But, you know, I don't
15 anticipate each witness' testimony would be lengthy at
16 all. I think that, frankly, we have one more expert, who
17 I don't -- I think will probably take about the same time
18 as Mr. Slovenski, and then a number of rather short
19 witnesses; maybe three short witnesses. So that's my
20 best guess. I'm sorry.

21 THE COURT: Well, my plan is to do tomorrow much
22 like we did today. I'm going to bring the jury lunch.
23 And I'm not going to rush anybody, but I just everybody
24 to be cognizant of the fact that tomorrow is Friday and
25 I'm sure that these folks are probably concerned about

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1 this coronavirus news that's all over the place now. But
2 we're going to -- we're going to work hard tomorrow and
3 take an abbreviated lunch, have it brought in, so we can
4 be certain to finish this case tomorrow. Alright?

5 MR. SUMMA: Certainly --

6 THE COURT: Anything else?

7 MR. VOIGT: No, sir.

8 MS. NORRIS: Your Honor, just a couple of things. I
9 don't know if Your Honor wants to go ahead and address
10 defendant's testimony. I know we've got time to do that,
11 but if you wanted to go ahead and let them be thinking
12 about that?

13 THE COURT: I can -- I can just -- I will tell them
14 -- I won't ask them the questions on the record tonight.
15 I'll just -- Mr. Crummey and Mr. White, if y'all would
16 stand up for me.

17 [Whereupon, Mr. Crummey and Mr. White stand]

18 THE COURT: At a certain point in this trial, the
19 two of you are going to have to make a decision,
20 independent of each other, whether you want to take the
21 witness stand.

22 The law certainly does not force a criminal
23 defendant in any circumstances, to give up his right to
24 remain silent. This is a decision that you have to make
25 with the advice of your counsel. So I'm not sure -- you

1 and your counsel will speak about this matter. You can
2 ask them any questions and make a list of pros and cons
3 for testifying versus not testifying. But I want you to
4 know that it is one-hundred percent your decision, each
5 of you, independent of each other.

6 One of you could chose to testify, one of you could
7 chose not, you both could chose to testify, or you both
8 could chose not to testify, and that it's one-hundred
9 percent your decision. Nobody is going to make you do
10 anything.

11 But I will cover this issue on the record after
12 you've had an appropriate amount of time to think about
13 it. I would caution you to listen to your -- listen to
14 your lawyer and really discuss this matter because it is
15 important.

16 But I want you to understand that it is your
17 decision and no criminal defendant ever will be required
18 to testify against himself. So think about that matter
19 overnight and we will cover that at the appropriate time
20 tomorrow.

21 Mr. Crummey, do you have any questions?

22 MR. CRUMMEY: No, sir.

23 THE COURT: Mr. White, do you have any questions?

24 MR. WHITE: No, sir.

25 THE COURT: Alright.

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1 MS. NORRIS: One other matter, Your Honor. I have
2 to ask to be excused. It was my understanding when this
3 case started that it would be finished by Friday. Mr.
4 Crummey has been made aware. Mr. Summa is. Megan
5 Ehrlich will be here in my stead tomorrow. But I need to
6 appear in Berkeley County.

7 THE COURT: Okay. And Ms. Ehrlich is not planning
8 on conducting any examination of any witness?

9 MS. NORRIS: No, Your Honor. She will simply serve
10 the role that I have in assisting Mr. Summa.

11 THE COURT: I just want to make sure, since she
12 wasn't present at the jury qualification, I -- you know,
13 I wouldn't want to run the risk of there being any juror
14 that may have known her, since we did not go into that
15 when the jury was selected. So as long as she's going to
16 serve in the assisting role and not make an actual
17 appearance, I think that would be fine.

18 MR. SUMMA: Could she be just introduced to the jury
19 at one point so they're not distracted wondering who she
20 is?

21 MR. COOPER: I don't think that's relevant at all.

22 THE COURT: I mean, I think ---

23 MR. COOPER: Okay. That's fine. That's fine.

24 MS. SHEALY: I don't think it's a problem Judge, if
25 they just say that today who has joined us is Ms.

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1 Ehrlich, because...

2 THE COURT: I'll just -- I'll let you -- I'll let
3 you ---

4 MR. SUMMA: --- I'd just like to be ---

5 THE COURT: --- introduce her before we get started
6 and just tell the jury that she'll be -- she'll be
7 assisting you with logistical -- however you want to --
8 however you want to phrase it.

9 But, you know, I don't want to -- I don't want to
10 announce she's a new lawyer in the case. You can
11 introduce her, tell the jury why there's a new face
12 sitting in that chair, but I don't want to run the risk
13 of them thinking, well, they've gotten Mr. Crummey a new
14 lawyer at the end of the case. Yeah, I think if she's
15 introduced and given -- and you give a general
16 explanation as to what she's going to be doing, I think
17 that will serve its purpose.

18 MR. SUMMA: Thank you.

19 THE COURT: Alright? We'll be back at nine o'clock
20 in the morning.

21 MR. COOPER: Thank you, Judge.

22 THE COURT: Thank you.

23 MS. SHEALY: And, Judge, remind me. Did you tell
24 the jury to come back at 9:00, too, or are they coming
25 back at 9:30?

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1 THE COURT: They're coming back at 9:00. But, I
2 mean, assuming that there are no -- no more -- I know the
3 -- I figure your first witness will be the -- an expert?

4 MR. SUMMA: Yeah.

5 THE COURT: Okay.

6 MR. SUMMA: Yes, sir. I'm sorry.

7 THE COURT: That's fine. It's been a long day. I'm
8 sure everybody is ready to get out of this courtroom, so
9 don't worry about it.

10 Yes, assuming there is no matters of law that need
11 to be addressed, I think we'll be -- if the jury is here
12 on time, we should be ready to roll at 9:00. I just want
13 to make sure that we make every effort to get this case
14 to the jury at a reasonable time tomorrow afternoon.

15 MR. SUMMA: Thank you, Your Honor.

16 THE COURT: Alright. Thank you.

17 [Whereupon, the jury trial adjourns at 6:10 p.m.]
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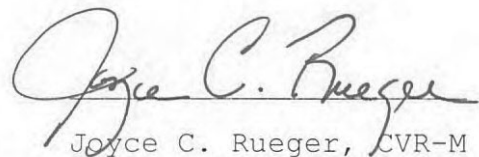
State v Daquan J. Crummey & Denali D. White
Certificate of the Court Reporter
March 12, 2020

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 12th day of March, 2020.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 3, 2020

A handwritten signature in cursive script, reading "Joyce C. Rueger", is written over a horizontal line.

Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-GS-10-568-580
	)	2020-GS-10-1484
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
DAQUAN JAVOR CRUMMEY	)	
	)	
Defendant	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 13, 2020
Charleston, South Carolina

Volume 5 (of 5)

B E F O R E:

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided for: SCCID]

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-GS-10-0592
	)	2018-GS-10-594-602
	)	2018-GS-10-0604
	)	2020-GS-10-1485
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STATE OF SOUTH CAROLINA	)	
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vs.	)	
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	)	
DENALI DEONCO WHITE	)	
	)	
Defendant	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

March 13, 2020
Charleston, South Carolina

Volume 5 (of 5)

B E F O R E:

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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[Certified Transcript Provided for: SCCID]

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PROCEEDINGS

THE COURT: Good morning, everybody. A couple of housekeeping matters before we get started. My law clerk is about to email the draft of the jury charges that I think will be appropriate in this case.

My only caveat in emailing them to you is I don't want you to hold them up during the closings and say; this is what the Judge is going to tell you. You can read them and incorporate the law into your charge [sic], but I just don't want you to represent that -- to the jury that you have the charge. But I don't mind you pulling appropriate parts out. And if there are any objections, just let me know before we get started.

She's also going to email the proposed verdict forms so y'all can take a look at those before we -- before we present them to the jury.

And I think that's all I have other than -- I don't know; is it an appropriate time now to actually make the formal showing of whether the defendants wish to testify, or do you want to wait on that; it's up to y'all.

MR. SUMMA: I'd like to have another couple of minutes with my client. We're pretty sure he's not going to testify but...

THE COURT: That's fine. We'll just wait, then.

MS. SHEALY: Your Honor, I do have one matter. I've

1 asked Mr. Summa what he intends to have a Ph.D. expert
2 witness testify to, making sure it's not inviolate of
3 Rule 704 of the Rules of evidence. I asked him
4 specifically whether he intended to ask her anything
5 about the specifics of this case.

6 He told me he wasn't sure what she was she going to
7 testify to. So I do think we probably need to sort
8 through that before he calls her as a witness.

9 MR. SUMMA: I believe what I said was I don't know
10 exactly what she's going to say. She's going to talk
11 about memory, cognition, identification and then maybe, I
12 mean, she doesn't really know much about this case. She
13 knows kind of the facts of this case to a decent degree.

14 I mean, I think that her conclusions and her
15 opinions, based on her training and experience, based on
16 her wealth of knowledge and experience, is going to help
17 the jury in understanding how I.D. memory function works.
18 I don't really understand what counsel is talking about
19 these ---

20 THE COURT: Are you -- are you going -- are you
21 planning on asking her to review the lineups in this case
22 and render an opinion on whether she thinks they are
23 unduly suggestive? Or, I guess I'm looking at -- looking
24 for -- I understand your about the memory and cognition
25 and, you know, things like that. But I guess how fact-

1 specific are you looking to get with what went on in this
2 particular case?

3 MR. SUMMA: Well, I don't think she's going to talk
4 about the lineups, specifically. But I think I'm going
5 to pose a hypothetical to her about how this came to be
6 and how, you know, she -- how Ms. Martinez, how she --
7 how this kind of developed into an I.D. and explain that
8 and help the jury understand that it's not exactly like
9 how Ms. Martinez might have been it seems -- how memory
10 works.

11 MS. SHEALY: And, Your Honor, I would object to that
12 line of questioning. Typically when these types of
13 experts testify, they discuss memory and all of the other
14 matters but not the specifics of this case. It's up to
15 this jury to conclude what they will from the evidence in
16 the record.

17 And someone who is a Ph.D. just comes in and then
18 would be allowed to give her opinion as to the I.D. or
19 the lineup would be inappropriate. That would be going
20 to an ultimate issue to be decided by the trier of fact.
21 I've never seen that done.

22 THE COURT: Well, I don't think Mr. Summa -- I took,
23 from what he said, that he was going to set up a scenario
24 and not refer to the parties in this case or -- I mean, I
25 think, obviously, expert witnesses can testify about

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1 hypotheticals and what their opinion would be. But, I
2 mean, as long as she's not looking at the identification
3 that was made in this case and doesn't utter phrases such
4 as, I don't believe there's any way this witness could
5 have identified these people, that -- obviously, that's
6 out. But ---

7 MR. SUMMA: --- and I'll just state for the record
8 that, Your Honor, she is a very experienced witness and
9 she is -- she is -- I can tell that she holds, I think,
10 herself to the highest standards.

11 I think that she probably has the best understanding
12 of what she's allowed to say and not allowed to say than
13 anyone else in the room. I think that she -- I don't
14 think there's any risk of her saying anything improper,
15 because she knows what's improper and she knows not to do
16 that.

17 THE COURT: And, you know, obviously, I don't know
18 what she is going to say and nobody can be absolutely
19 certain of what she's going to say.

20 Ms. Shealy, I would just -- based on what he's
21 telling me now, I don't think he's going to get close to
22 704 but if you feel like he's getting there, certainly
23 stop him. And we could argue about what could happen for
24 a long time here this morning, and I don't know that's
25 necessarily the best use of our time. So, you know,

1 assuming she's qualified as an expert, just if you feel
2 like something is objectionable, object and we'll deal
3 with it then. But we're all just kind of flying blind
4 until she gets on the stand and we actually hear her
5 testimony. So just object when you think it's necessary.

6 MS. SHEALY: Yes, sir. And I know we talked about
7 this yesterday and I know it applies to the State,
8 because we did it once yesterday as well. But I would
9 ask that when we approach the bench that there's no
10 dramatic, you know, sounds coming from any of the defense
11 attorneys, gestures like they're frustrated, in front of
12 the jury.

13 THE COURT: Well, we're all -- we're all going to
14 maintain appropriate decorum in the courtroom. And we're
15 obviously getting close to the end of this case, so I
16 think -- I think we'll all have a renewed energy this
17 morning and our frustration levels will be lower. So I
18 don't think that's going to be a problem. But I just
19 direct you to act like lawyers in the courtroom. Thank
20 you.

21 MS. SHEALY: Thank you, Your Honor.

22 MR. SUMMA: And, Your Honor, this is Ms. Ehrlich.
23 She has kindly agreed to sit with me today. I know I
24 mentioned that I wanted to just briefly introduce her to
25 the jury. I just wanted the Court...

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1 THE COURT: Okay. Well, when they come in, I will
2 address them and then I'll recognize you to call your
3 next witness and you can say, Your Honor, before I do
4 that I'd like to introduce you know like we spoke about
5 yesterday, just introduce she's going to be assisting you
6 and I think that'll be fine.

7 MR. SUMMA: Thank you.

8 MS. SHEALY: The only thing I would ask about that,
9 because it wasn't allowed of any of us your typical to do
10 it in front of the jury. She has a leadership position
11 in the Public Defender's office. I don't think that's
12 necessary.

13 THE COURT: From what we talked about yesterday,
14 he's not going to -- he's not going to talk about
15 anything other than she's there and she's helping with --
16 she's assisting him with however he wants to phrase it,
17 assisting with the -- I don't know.

18 MR. SUMMA: I'm just going to say like helping me
19 out with this case.

20 THE COURT: You know, as long as he's not to
21 announce -- I don't want it announced that she's -- just
22 say she's an employee of the Public Defender's office.
23 And I -- I just don't even want her that she's a lawyer
24 because she wasn't -- she wasn't here for the jury
25 qualification or jury selection. And so just be as vague

1 as you can. Just introduce her and don't -- don't go any
2 further than that, beyond she's just helping you.

3 MR. SUMMA: I can say she's --

4 THE COURT: Yeah. That's fine. That's fine.

5 THE COURT REPORTER: I'm sorry, Mr. Summa. The door
6 was closing. What?

7 MR. SUMMA: I said I can say that she's with my
8 office.

9 THE COURT: Yes. Certainly. Alright. Are we ready
10 for the jury?

11 [No response]

12 THE COURT: Bring us the jury.

13 [Whereupon, the jury enters the courtroom at 9:16
14 a.m.]

15 THE BAILIFF: Your Honor, the jury is complete.

16 THE COURT: Thank you, sir. Ladies and gentlemen of
17 the jury, I want to thank you for being here, ready to
18 go, early this morning.

19 We are now in position to continue with the
20 defenses' case. Mr. Summa?

21 MR. SUMMA: Thank you, Your Honor. I just wanted to
22 briefly introduce Ms. Megan Ehrlich. She works in my
23 office. Ms. Theresa Norris didn't expect this to go as
24 long, and she had a matter scheduled today, so Ms.
25 Ehrlich has kindly agreed to take her place. So I just

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1 wanted to introduce her.

2 THE COURT: Alright. You may call your first
3 witness.

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Dr. Lori Van Wallendael-Direct Examination by Mr. Summa
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1 MR. SUMMA: The defense will call Dr. Lori
2 Wallendael.

3 [Whereupon, Dr. Wallendael comes forward]

4 THE CLERK OF COURT: Please place your left hand on
5 the Bible, and raise your right.

6 [Whereupon, Dr. Wallendael is duly sworn by the
7 Clerk of Court]

8 THE CLERK OF COURT: You may be seated.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling both your first and your
12 last.

13 THE WITNESS: Doctor Lori, L-O-R-I, Van Wallendael,
14 V-A-N W-A-L-L-E-N-D-A-E-L.

15 - - - - -

16 DR. LORI VAN WALLENDÆL,

17 Having been first duly sworn,

18 Was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SUMMA:

21 Q. Doctor Wallendael, do you mind telling the jury a
22 little bit about what you do?

23 A. I'm an Associate Professor in the Department of
24 Psychological Science at UNC Charlotte.

25 Q. Can you tell the jury a little bit about your

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1 education and your background?

2 A. Yes. I received my Bachelor's degree from MacMurray
3 College, which is a little college in about central
4 Illinois in 1982. Then I received my Master's and my
5 Ph.D. from Northwestern University in 1986.

6 My research interests have always been in human
7 memory and decision making and other aspects of human
8 thinking.

9 Q. And can you tell us a little bit about your current
10 position? Are you in a leadership position at the
11 Department of Psychology?

12 A. Yes. I am the Associate Chair of the Department.

13 Q. Okay. And have you won any awards throughout your
14 career in this field?

15 A. I have had some fellowships and also a finalist for
16 a major teaching award at my university a few years back.

17 Q. Can you give the jury just a sample of some of the
18 courses that you teach at UNC Charlotte?

19 A. Sure. I teach General Psychology. It's a big
20 freshman class of 300 students. I teach Research
21 Methodology.

22 I also teach more specialized classes in human
23 thinking and forensic psychology and in the history of
24 psychology among others.

25 Q. Do you serve on any boards at UNC Charlotte?

1 A. Yes. I serve on the usual number of committees;
2 curriculum committees, academic integrity -- and so
3 forth.

4 THE COURT REPORTER: I'm sorry; what was the
5 second?

6 THE WITNESS: Academic Integrity.

7 Q. [Mr. Summa] Have you had the opportunity to submit
8 any or to have any of your work published?

9 A. Yes.

10 Q. One or two things or more than that?

11 A. I think it's probably around 20 peer review
12 publications plus some book chapters, textbook materials
13 and so forth.

14 Q. Have you ever testified as an expert witness?

15 A. Yes, I have.

16 Q. Approximately how many times?

17 A. I'm thinking it's around 30 times now.

18 Q. Okay. And let's get this out of the way because it
19 was brought up yesterday. You're getting paid to be
20 here, right?

21 A. Yes, I am.

22 Q. You're taking time away from your normal job to come
23 here, right?

24 A. Yes.

25 Q. Okay.

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1 MR. SUMMA: So, Your Honor, at this time I would
2 like to ask that Ms. [sic] Wallendael be qualified as an
3 expert in memory cognition and identification.

4 MS. SHEALY: I'm sorry; memory cognition and what?

5 MR. SUMMA: Identification.

6 [Whereupon, Mr. Summa and Ms. Shealy confer]

7 Q. [Mr. Summa] Tell us a little bit about the research
8 that you've done on identification and memory
9 specifically.

10 A. So I have done studies on different aspects of the
11 identification process in a criminal situation. A number
12 of my studies have involved different methods of
13 conducting a lineup or other identification procedure.

14 I've also done research on cross-racial
15 identifications and the problems that are associated with
16 those.

17 MS. SHEALY: I have no objection to her being
18 qualified.

19 THE COURT: All right. Ladies and gentlemen again,
20 normally a person cannot give opinion testimony.
21 Normally when a person testifies they must testify as to
22 what they either saw, heard, or sensed or something of
23 that nature. However, there is an exception when someone
24 is qualified because of their education, training, or
25 experience they are permitted to give their opinion in

1 certain areas if the Court qualifies them that way.
2 This witness will be qualified in the areas of memory
3 cognition and identification. She will be qualified to
4 give opinion testimony in those areas.

5 That qualification does not mean that you must
6 accept her opinions but it is evidence for you to use in
7 any way you see fit and give the weight and creditability
8 you believe is appropriate. Mr. Summa, thank you.

9 MR. SUMMA: Thank you.

10 Q. [Mr. Summa] Doctor Wallendael, tell us a little bit
11 do you mind just giving us just a short description of
12 how memory works?

13 A. Not at all. So the first thing I usually tell my
14 students is that memory is nothing like a photograph or a
15 videotape recording. Psychologists describe memory as a
16 reconstructive process. Kind of like putting the pieces
17 of a jigsaw puzzle together.

18 So we talk about a variety of stages of memory from
19 initially paying attention to an event to what we call
20 encoding that event into memory, taking it in a form that
21 our brain can actually store, and then eventually
22 retrieving that memory.

23 So, eventually pulling that memory back out of our
24 brain storage in a way that we can use to make decisions
25 and to use that information in your memory in a variety

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1 of ways. So, in an identification context we're usually
2 talking about what were the circumstances that were
3 surrounding a person when they tried to encode a memory,
4 when they attended to a situation or participated in it
5 and then what were the circumstances when they actually
6 used that stored knowledge in their minds to attempt to
7 recognize a person that might have been a party in a
8 particular event.

9 Q. So, tell us a little bit about how someone might I
10 guess you know go to the park how they might remember
11 their experiences there and the people they see verses
12 someone who is experiencing a fast, stressful, scary
13 event?

14 A. So typically in our day to day lives we will pay
15 attention to the most important parts of what is going on
16 around us. And a lot of what comes in through our senses
17 really doesn't get processed to any great extent.

18 So when you go to the park you know you may notice
19 what your own child is doing, you may notice if something
20 unusual happens in the park but a lot of details that are
21 more ordinary or that seem less interesting to you are
22 really never encoded at all.

23 And when we're at the park going about our day to
24 day lives we're typically in a situation where our mental
25 resources are at pretty much peak if we're not stressed,

1 if we're not distracted by something we're alert and
2 awake but probably not overburdened mentally.

3 When a crime occurs we are very often under threat
4 to perhaps our property or even to our personal safety.
5 And we know that despite what Hollywood tries to tell us
6 stress is a very dramatic negative impact on our
7 memories.

8 It effects what we pay attention to, it effects how
9 much processing we can give to a situation so that when
10 we're under stress or some sort of threat we typically
11 find ourselves with a kind of tunnel vision. A lot more
12 escapes our attention than normally would.

13 And you know although a lot of people tend to think
14 they would never forget a particularly stressful or
15 traumatic event in fact the research tends to show that
16 we do forget those situations much more than we would a
17 less stressful one.

18 Q. Can you talk more specifically about not just memory
19 in general but the memory of faces in a stressful crime
20 situation?

21 A. Sure. So memory for faces is kind of a special sort
22 of memory for humans. In some ways we're very good at it
23 but we're also subject to certain limitations.

24 We know for instance that we're really better at
25 identifying faces as wholes rather than identifying

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1 pieces of faces. So unless you have something really
2 unusual like Elizabeth Taylor's violet eyes, I'm showing
3 my age there, we probably don't notice people
4 specifically by some feature like their eyes.

5 We notice the whole person; so even something like
6 obscuring people's hair line, or if someone was wearing a
7 cap or a hood, probably decreases our ability to
8 recognize faces. And anything that would draw your
9 attention away from the face would be problematic.

10 What we do tend to notice would be things that might
11 be unusual. So, for instance if somebody had a scar,
12 that would probably draw our attention to that aspect of
13 their face and be specially encoded.

14 But for the most part we're probably looking at the
15 overall shape of the face, the hair, the way that a
16 person's facial features come together.

17 Q. You mentioned specific unusual features about a face
18 might be encoded and someone might focus more on them is
19 that, am I describing that correctly ---

20 A. --- yes ---

21 Q. --- okay. Like a scar would something like gold
22 teeth fall into that category?

23 A. Yes.

24 Q. How so?

25 A. Something that we're not used to seeing every day.

1 So, you know, like a scar something like gold teeth would
2 be an unusual feature that would separate a person from
3 most of the other people that we encounter day to day.
4 So that would be one of those things that we would
5 probably be more likely to recognize and encode.

6 Q. And I know I'm asking you kind of broad questions
7 but could you tell the jury a little bit about what
8 weapon focus is and how that might affect someone's
9 memory of a traumatic event?

10 A. Sure. Weapon focus is a term that psychologists use
11 to refer to a tendency that we have to focus on items
12 like weapons that are of particular importance to us in
13 the sense that they pose a particular danger to us.

14 And I mentioned that stress in general was bad for
15 memory. Weapons in specific are bad for memory. We have
16 a lot of research; U.S. research tends to focus on guns
17 as weapons.

18 A lot of research that suggests that if there is a
19 gun present in a situation people are less likely to be
20 able to remember details and recognize faces because
21 their attention is focused on the gun.

22 And it's not just that your eyes are focused on the
23 gun, there is actually some studies that suggest that
24 when there is a gun visible in a situation people are
25 less likely to be able to do things like recognize voices

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1 or remember the things that were said in a situation.
2 So, it's really not just about where your eyes are
3 looking.

4 It's about where your mind is looking in terms of
5 being focused on a thing that is the greatest threat to
6 you at the moment.

7 Q. You said that memory is more like a reconstructive
8 process. Tell the jury a little bit about the effect of
9 seeing a photograph immediately after a traumatic event
10 and how that might affect the recollection of the event
11 itself.

12 A. The reason we use the term reconstructive is to kind
13 of get at the notion that memories are constantly
14 changing.

15 That's one of the reasons why they're not like a
16 photograph because a photograph might fade if you leave
17 it out in the sun but in general it's going to keep the
18 same features in it.

19 Memories on the other hand are constantly being
20 modified. And one of the things that happens is that
21 when we experience an event we have a certain number of
22 details that are encoded in our memory but a lot that is
23 not.

24 So the next time we tell somebody else about that
25 event we probably fill in some of the blanks with things

1 that seem logical to us or maybe things that other people
2 have suggested to us or asked us about so that each time
3 we relive the memory in our mind it probably changes a
4 little.

5 And that's why people often will give slightly
6 different accounts when they talk about an event more
7 than once. But specifically if you do something like see
8 a photograph or some other kind of depiction of a person
9 after an event you're very likely to kind of combine your
10 memory for that photograph with your memory for what you
11 might have seen in the actual event.

12 So what we say really is that subsequent viewings of
13 things like mug shots for instance can contaminate
14 someone's memory and can make you think that you saw
15 someone at the time of the crime when maybe actually
16 you're really remembering you know seeing them in a
17 different time and place and particularly subsequently to
18 the crime in the form of a lineup photo or a mug shot.

19 Q. Sure. And memory is clearest -- is it clearest
20 closer to the actual event or is it clearest two and a
21 half years later for instance?

22 A. Definitely closer to the actual event. So basically
23 the more time that goes by the more opportunity there is
24 for memories to get changed and degraded. So the very
25 first account is usually the one that is clearest in a

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1 person's mind and has the least chance of having been
2 contaminated in some way.

3 Q. And tell us a little bit about how identifying
4 people of different races might play into a particular
5 scenario?

6 A. We know from a lot of research that in general
7 people are not very good at identifying faces of other
8 races. Some of my own research in my lab suggests that
9 it is because that we just, we may not focus on the right
10 aspects of other race faces.

11 We don't see other race faces as being as
12 distinctive as faces in our own race. So as a result we
13 know that people are more prone to errors when they try
14 to identify someone whose race is different from their
15 own.

16 I notice this even in my classes when I have a large
17 class at UNCC. As a white person from the time that I
18 was a tiny baby I have learned to focus on things that
19 make white faces different from each other; you know
20 things like your hair color, things like maybe your eye
21 color, features that help me tell one person, one white
22 person, from another but that are pretty useless to me
23 when I'm trying to identify an African American person or
24 a person of Asian heritage or Hispanic heritage.

25 And each race kind of learns different types of

1 features that are important for recognizing their own
2 family members for instance but that may not help them in
3 other kinds of situations.

4 So we know that when you are trying to identify
5 someone of another race that you are definitely at a
6 disadvantage.

7 Q. Are there any studies that deal specifically with
8 Hispanic individuals identifying African Americans?

9 A. Yes, there are. The early studies in the area
10 tended to be mostly Caucasian verses African American.
11 But in recent years there have been a lot more studies
12 that have tried to bring in different ethnic groups to
13 see if this is sort of a general phenomenon.

14 And the consensus is that it really is a very
15 general phenomenon. There are specific studies that look
16 at for instance Hispanic witnesses and their ability to
17 identify African American faces.

18 And those studies indicate that there is a cross-
19 race difference. We are more prone to mistakes when
20 we're looking to identify someone who is not in our own
21 group.

22 Q. If you're being, if you experience a traumatic event
23 and you're being told to go find somebody how does that
24 affect your memory of what happened?

25 A. When -- first of all when you experience a traumatic

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1 event and you're in a situation where you might be a
2 witness for the police for instance there is probably
3 initially just a psychological need for closure and need
4 to be helpful.

5 And when you're actually asked to look at photos or
6 to look for some kind of evidence that would help
7 identify the perpetrator you're probably very highly
8 motivated to want to pick someone.

9 And so as a result from a decision-making standpoint
10 if you see a photo let's say that looks a little familiar
11 that might be you're probably pushed psychologically to
12 go from that stage of maybe to that stage of yes, I think
13 that's the person.

14 Q. Thank you.

15 MR. SUMMA: Beg the court's indulgence.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Summa and Ms. Norris confer]

18 Q. [Mr. Summa] Thank you, Doctor Wallendael. Please
19 answer any questions the State may have for you.
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1 CROSS-EXAMINATION

2 BY MS. SHEALY:

3 Q. Good morning.

4 A. Good morning.

5 Q. You don't know Dulce Martinez, right?

6 A. No, I do not.

7 Q. And obviously you can't comment on her memory,

8 right?

9 A. No, I can only comment on memory in general.

10 Q. And you can't get inside of her head?

11 A. No ---

12 Q. --- it's fair to say. Okay. Now you would agree

13 would you not that you're not saying that the only cases

14 that need to be tried are ones with DNA?

15 A. Oh no, certainly not.

16 Q. You recognize the value of eye-witness

17 identification?

18 A. In the right circumstances, of course.

19 Q. Okay. And would you agree that a witness that -- if

20 a witness had taken great care in looking at photographs

21 that that speaks well for them; that's it's just not a

22 gut reaction before she recognizes someone?

23 A. There is actually some kind of mixed research in

24 that area. There are some researchers who think that

25 actually sort of the quickest gut response may be our

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1 more accurate recognition and taking the time to you know
2 think about for instance a lineup for a long time may
3 actually be a sign of a weaker memory.

4 But it's probably not an area of research that I
5 think -- that researchers would you know say with
6 certainty that quick is better or longer is better.

7 Q. Okay. Because for example what you had said
8 previously was if someone is presented with a picture
9 they may too quickly supplant that picture for the
10 person, is that correct?

11 A. Right, so it kind of changes ---

12 Q. --- from both sides of it ---

13 A. --- right.

14 Q. You also commented that one question when looking at
15 whether or not someone's memory I guess can be trusted is
16 whether they were initially paying attention.

17 A. Correct.

18 Q. Is that correct?

19 A. Yes.

20 Q. And so if a witness indicates they were paying
21 attention from the beginning of a crime to the end that
22 would be of value, is that correct?

23 A. Yes.

24 Q. And you also -- you were giving us a comparison
25 between going to the park and kind of nothing is

1 interesting to you so it doesn't get filed in there.

2 A. Uh Huh.

3 Q. And then how if you're interested in what is going
4 on it gets filed in your memory, is that fair to say?

5 A. Yes.

6 Q. You would agree would you not that if someone were
7 looking through photographs and paused and then realized
8 that is not the right person it's showing they're using
9 discernment.

10 A. Yes, I would agree with that.

11 Q. So they see someone that looks like someone and they
12 look more closely and they're like oh, that's not him it
13 shows they are discerning, they are evaluating
14 appropriately, is that correct?

15 A. Yes.

16 Q. And you were also asked, testifying that it also
17 matters when the person is first asked what had happened.

18 A. Right.

19 Q. Like if there is some distance between them. So if
20 someone were to immediately call 911 and give a
21 description that's pretty close to the time of the
22 incident, right?

23 A. Yes.

24 Q. And then if they were to walk outside and the police
25 be there and they ask what they saw moments later that

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1 would be close to the incident.

2 A. Yes.

3 Q. And then over the course of a few days if they were
4 asked to see if they could figure out a name and they
5 were looking through a bunch of photographs, not a lot of
6 them but a bunch of photographs, seeing all kinds of
7 people that would be still pretty close to the crime and
8 showing that they are being presented with more than just
9 one lineup.

10 A. It's pretty close to the crime. There is actually
11 research to suggest that the first 24 hours is critical.

12 So that 911 call would be great; that immediate you
13 know talk to the police would be great. From there our
14 memory tends to kind of drop off and then sort of I guess
15 kind plateau basically.

16 Q. That's what the research -- that's not ---

17 A. --- that's what the research suggests ---

18 Q. --- individual to every single person who ---

19 A. --- no, that's ---

20 Q. --- looked through that ---

21 A. --- the quote unquote average person who is the
22 subject of research.

23 Q. Okay. And I think another thing that you indicated
24 was what's important is how close they are physically to
25 one another.

1 A. Yes, that is important.

2 Q. So if someone were close enough to get struck in the
3 head that would be pretty close.

4 A. Yes.

5 Q. If someone were at a door coming in and the witness
6 was right there that would be close.

7 A. Yes.

8 Q. If throughout a crime they were being asked to
9 translate to other people there and looking at the
10 speaker that would be close.

11 A. Yes.

12 Q. And you're certainly not testifying that for example
13 in a rape someone is close and being raped that they are
14 not going to be able to remember a face ---

15 MR. SUMMA: --- objection.

16 THE COURT: What's the grounds for your objection?

17 MR. SUMMA: It's just inflammatory.

18 THE COURT: Overruled.

19 Q. [Ms. Shealy] You can answer the question.

20 A. Um ---

21 Q. --- like if someone were being raped and they're
22 close it doesn't mean that even though it's a crime that
23 they aren't going to remember the person right there, is
24 that correct?

25 A. It doesn't mean that they cannot remember the person

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1 there but we do certainly have circumstances and examples
2 of situations where that exact situation did happen where
3 someone who was being raped did not recall the face.

4 Q. And that's because people are very individualistic
5 regarding their memory, is that fair to say?

6 A. People do have I guess a range of memory abilities
7 and a range of reactions to stress.

8 Q. Well for example you may react and the image is
9 seared in your mind as to what someone looks like and I
10 may be blocking it out because of the stress of it. Is
11 that fair to say?

12 A. It's I mean in general people under stress will
13 probably not have it seared accurately into their mind
14 but certainly yes, there is a range of reactions that
15 people might have.

16 Q. But you're not saying every armed robbery victim is
17 making a mistake when they identify the perpetrator?

18 A. No, of course not.

19 Q. And you're not saying everyone who has been
20 assaulted is making a mistake when they identify the
21 perpetrator.

22 A. No.

23 Q. And you mentioned, did Mr. Summa tell you there was
24 a hat involved in this case?

25 A. He -- I believe I read some initial police reports

1 that suggested a hat; specifically I think a baseball cap
2 possibly.

3 Q. So as it relates to hats you would agree that there
4 are members of the population who, for example, I'm at
5 the courthouse all day may not see anybody with a hat on,
6 fair to say?

7 A. Correct.

8 Q. And if a hat is turned backwards and you go to a
9 local high school you may see kids all day with hats on
10 turned backwards, right?

11 A. Quite likely.

12 Q. Okay. Regarding gold teeth ---

13 A. --- okay.

14 Q. You don't know the demographics do you of North
15 Charleston?

16 A. No, I do not.

17 Q. And you don't know the demographics of Stall High
18 School?

19 A. No.

20 Q. And you don't know for sure whether many people
21 there have gold teeth, is that correct?

22 A. Correct, that's an example basically coming from my
23 own experience where I rarely see that.

24 Q. Okay. So if a person were used to being in school
25 with people who had -- who were black and had gold teeth

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1 or you were in private school downtown where it is mostly
2 white people may react differently to the presence of
3 gold teeth, is that right?

4 A. Yes.

5 Q. And certainly you can't tell the jury when someone
6 is yelling whether they are showing their top teeth, is
7 that fair to say?

8 A. It's fair to say.

9 Q. You don't know the demographics over on Dorchester
10 Road or Ashley Heights neighborhood is that correct?

11 A. No, I do not.

12 Q. So when we're talking about Hispanic people being
13 asked to identify black individuals it would be very
14 individualistic would it not as to someone's familiarity
15 with members of another race?

16 A. It would -- yes. Research tends to suggest that it
17 is individual based probably on your very early childhood
18 experiences. But there is certainly some variation to
19 familiarity across races.

20 Q. Okay. And whether there are a number of Hispanic
21 children who go to school with a number of black children
22 you can't tell the jury that you can predict whether a
23 Hispanic person can tell the features of another ---

24 A. --- no ---

25 Q. --- black individual ---

1 A. --- of any individual person.

2 Q. Okay. Now if a witness were to say I don't
3 recognize faces well; I couldn't do an I.D. you would
4 agree that would not be a good witness to show an I.D.
5 to, is that fair to say?

6 A. Not necessarily. People are not always very good
7 judges of their own abilities in those areas. I've seen
8 people who are really lacking in confidence who do a good
9 job and people who are super confident who actually mess
10 it up.

11 Q. That's a different question as to whether a police
12 officer should put them in a lineup procedure, is that
13 fair to say?

14 A. I think it would depend on a lot of factors about
15 the situation.

16 Q. And if someone were to indicate I'm not good with
17 faces, I have to see people many times before I can
18 remember them that's something of value to know, is that
19 fair to say?

20 A. Yes.

21 MS. SHEALY: Beg the court's indulgence just one
22 moment.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Shealy and Mr. Cooper confer]

25 MS. SHEALY: I have nothing further. Thank you.

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1	THE COURT:	Mr. Voigt?
2	MR. VOIGT:	Thank you.
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CROSS-EXAMINATION

BY MR. VOIGT:

Q. I'll just -- I'll pick up where Ms. Shealy left off.
Is the confidence, the confidence with which someone
expresses a memory is it related to the accuracy of the
memory?

A. Only very loosely. There is a statistical
relationship but in general it's a fairly weak one; one
in which there are a fair number of non-confident people
who are fairly accurate and inaccurate people who express
100 percent confidence.

Q. Okay. So it's not safe to say that because somebody
relates a memory with extreme confidence that that memory
or their relation of it is accurate in any way?

A. That is correct. That is not a good statement to
make.

Q. Okay. And this is a question about facial
recognition. Have you ever seen me before?

A. I believe I might have caught a glimpse of you
yesterday in the hallway but I'm not 100 percent sure.

Q. Okay. And how would you remember me? What would
make you think that you remembered me?

A. I would probably say the beard and mustache as
distinguished.

Q. Okay.

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1 A. Hair style, facial features.

2 Q. When it comes to cross-racial identification does
3 facial hair play into it regarding African Americans?

4 A. It certainly should.

5 Q. Okay. Do African American males display more facial
6 hair generally in your studies than Caucasian males do
7 for example?

8 A. I would say probably not.

9 Q. Okay. Would something like facial hair be something
10 that would be one of those things that would be noticed
11 in a stressful event, much like a scar?

12 A. Yes, I would say so.

13 Q. How about, we talk about facial recognition, how
14 about memories regarding height and weight? Are those as
15 accurate as facial recognition?

16 A. Typically not. There is typically a lot of
17 variability in people's tendency to be able to estimate
18 height and weight. So we tend to find that people in
19 general are not especially accurate; particularly with
20 height.

21 Q. So when it comes to weight there is some degree of
22 accuracy?

23 A. People generally are pretty good at making fairly
24 broad distinctions like average or skinny or stocky you
25 know. So probably most of us I would say would not be

1 able to just like estimate somebody's weight within 10
2 pounds of their real weight.

3 Q. That's for the state fair, right?

4 A. Right, exactly.

5 Q. Okay. But height it's not uncommon is it that
6 people have a wide variety of descriptions and accuracy
7 is fairly low when it comes to descriptions, is that
8 true?

9 A. Correct.

10 Q. Okay. Mr. Summa asked you a little bit about
11 whether memories become more accurate or less accurate
12 with the passage of time. And I think you said that our
13 recollections are more accurate closer to the event;
14 whatever event ---

15 A. --- correct ---

16 Q. --- whether it be a walk in the park or some
17 automobile accident. Our memories are actually more
18 accurate earlier closer to that event, is that...

19 A. Correct.

20 Q. Do people report their confidence in their
21 recollections as being more accurate sooner to the event
22 or sometime later?

23 A. Generally people's confidence increases over time
24 particularly in a case like a criminal court case.

25 People often find that their memories are validated or

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1 you know that people kind of give them confirming
2 feedback over time so that ---

3 Q. --- people support ---

4 A. --- they become more confident ---

5 Q. --- I'm sorry; court reporters hate when I do that.
6 So people when they go through a process much like this
7 process but it could also be a civil case involving an
8 automobile accident and you know lawyers who just use one
9 number in their phone numbers and that sort of thing that
10 because of the process it pushes them into a sense that
11 their memories are, that they are more confident in their
12 memories ultimately.

13 A. Yes.

14 Q. And that confidence doesn't bear any relationship to
15 its accuracy does it?

16 A. No. Accuracy is not changing over time so the
17 confidence obviously is being affected by things that do
18 not actually affect memory accuracy.

19 Q. So if somebody is really certain about a specific
20 memory that has no bearing whatsoever on whether they are
21 right or not?

22 A. Correct.

23 Q. It has no bearing -- and they can be completely
24 sincere in that belief.

25 A. Oh absolutely. It's not about sincerity or honesty

1 or anything like that. It's just you know people make
2 mistakes and people often tend to be overconfident.

3 Q. You talked early on about how memory is
4 reconstructed, how we perceive things and then we
5 categorize them and we shuffle them away. And then at
6 some time we have to pull them back and kind of put them
7 back together again and there's our memory.

8 Do people ever substitute other things, other
9 memories or perceptions during that reconstruction
10 process when they're bringing it back are there things
11 that can influence them and make that recollection less
12 accurate?

13 A. Yes.

14 Q. What sorts of things are those?

15 A. Well, often times we will perhaps hear something or
16 maybe be asked a question about something that becomes a
17 part of our memory. Sometimes we can take elements of
18 our ordinary lives and interject them into memories.

19 My oldest daughter has a quote unquote memory, a
20 recollection of an event that happened to her when she
21 was about a year and a half old.

22 And she swore for years that she had her favorite
23 stuffed animal Mutzie [phonetic] with her until we
24 finally were able to prove to her that she didn't get
25 Mutzie [phonetic] until about a year and a half after

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1 that event. But it was a piece of her important life
2 that got incorporated into what she thought she was
3 remembering.

4 Q. And we're of approximately the same vintage. When
5 we grew up we had photographs in our parent's living
6 room, albums of every photograph of every family vacation
7 and aunts and uncles ---

8 A. --- exactly.

9 Q. And is it possible to substitute those photographs
10 just like your daughter may have done you know Christmas
11 1973 when you weren't born until 1975; that sort of
12 thing?

13 A. Yes.

14 Q. Okay. And it's the act of reviewing the photograph
15 that actually helped put that memory or we'll call it a
16 memory even though you can't possibly remember it into
17 your perception, is that right?

18 A. Correct, yes.

19 Q. So the repeated viewing of photographs can actually
20 substitute something, an image or a recollection into our
21 perceived memory.

22 A. Yes. It can create pieces of memories or even
23 wholesale memories that didn't happen.

24 Q. And we've had problems in criminal proceedings in
25 the past, and these have been studies have they not, with

1 recovered recollections that have been invented out of
2 old cloth ---

3 A. --- oh, yes.

4 Q. And tell the jury what that is because that was --
5 hopefully it doesn't happen anymore but that was a trend
6 there for awhile wasn't it?

7 A. There was, yes. There was a trend in my field where
8 people were being encouraged to recover repressed
9 memories. And some studies came out that eventually
10 showed that it was fairly easy to suggest to a person an
11 event that in fact had never happened to them.

12 Some students in my lab actually took some college
13 students and asked them questions about a time when they
14 went to Washington, D.C. and had a certain event happen
15 to them.

16 And the students began creating stories about this
17 event that in fact we even verified with their parents
18 had never actually happened because they had never been
19 to Washington, D.C. during that time period.

20 Q. And that's more serious when it comes to a criminal
21 case because whole events and whole memories can be --
22 people can invent them.

23 They can be influenced by others. And isn't it true
24 that just part of our human nature is to fill in those
25 blanks and create a coherent story about what happened?

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1 A. Absolutely. And part of our human nature is that we
2 are suggestible. And you know so when we try to create
3 our stories basically we are open to suggestions from
4 other people's questions, comments, as you said photos;
5 many different things.

6 Q. And isn't it true that just part of us being human
7 and having to relate things that happened to us in
8 language that the mere act of relating it can often
9 change that memory?

10 A. Yes, absolutely.

11 Q. And the language that we use.

12 A. Yes.

13 Q. And the language that others around us use who may
14 -- I think you said that you had influenced people in
15 your lab by telling them things, is that correct?

16 A. Correct.

17 Q. And even when the influencer is doing it with the
18 best of intentions we can still place false things into
19 people's memories, right?

20 A. Correct.

21 Q. So nobody has to be a bad guy for the memory to be
22 inaccurate, right?

23 A. Oh, definitely not.

24 MR. VOIGT: I think that's all I've got, Judge.

25 THE COURT: Thank you. Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. SUMMA:

3 Q. Fair to say that the way that Hollywood depicts it

4 of something traumatic happening that you remember it

5 exactly forever is not very accurate, right?

6 A. Correct.

7 Q. Thank you.

8 MR. SUMMA: No further question.

9 THE COURT: Any recross?

10 MS. SHEALY: I have nothing further.

11 THE COURT: Mr. Voigt?

12 MR. VOIGT: No, Your Honor.

13 THE COURT: Okay. Thank you, ma'am for being here.

14 You may step down.

15 THE WITNESS: Thank you.

16 MR. SUMMA: May she be excused, Your Honor?

17 THE COURT: Any objection?

18 MS. SHEALY: I have no objection.

19 MR. VOIGT: No objection.

20 THE COURT: Ma'am, you're excused.

21 THE WITNESS: Thank you.

22 [Whereupon, the witness is excused and exits the

23 witness stand]

24

25

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Maya Hatfield-Direct Examination by Mr. Summa
March 13, 2020

1 MR. SUMMA: Your Honor, the defense will call Maya
2 Hatfield.

3 [Whereupon, Ms. Hatfield comes forward]

4 THE CLERK OF COURT: Please place your left hand on
5 the Bible, and raise your right.

6 [Whereupon, Ms. Hatfield is duly sworn by the Clerk
7 of Court]

8 THE CLERK OF COURT: You may be seated.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record, please
11 state your full name, spelling both your first and your
12 last.

13 THE WITNESS: My first name is Maya, M-A-Y-A, and my
14 last name is Hatfield, H-A-T-F-I-E-L-D.

15 - - - - -

16 MAYA HATFIELD,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. SUMMA:

21 Q. Thank you, Ms. Hatfield. Have you ever testified
22 before?

23 A. I have not.

24 Q. A little scary for you?

25 A. It's a little nerve-wracking.

1 Q. Just tell the jury a little bit about what you do.

2 A. I work for the Charleston County Public Defender's
3 Office as a legal assistant.

4 Q. And what do you do as a legal assistant, primarily?

5 A. I assist attorneys on a number of matters and I work
6 with clients, generally.

7 THE COURT REPORTER: Mr. Summa, could you ask your
8 witness to speak up, please?

9 THE WITNESS: I'm sorry about that.

10 MR. SUMMA: Oh, just speak up so they can record
11 you.

12 Q. [Mr. Summa] Tell us a little bit about where you're
13 from, if you don't mind.

14 A. I'm originally from Los Angeles, California, and I
15 am currently here on orders with my husband who is in the
16 Navy.

17 Q. And, I'm sorry, but how old are you?

18 A. I'm twenty-six years old.

19 Q. Okay. Do you know a lot about this case?

20 A. I do not.

21 Q. But I asked you to do something for this case;
22 right?

23 A. Yes.

24 Q. And tell us a little bit about that. I mean, what
25 is Urban Dictionary?

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March 13, 2020

1 A. Urban Dictionary is an online crowd source
2 dictionary. Essentially the word crowd source means that
3 it is a large number of people with an online presence
4 that give input into a specific project. That's kind of
5 just the general sense of crowd sourcing.

6 So essentially Urban Dictionary is where individual
7 users can go online, submit a word or a phrase, and then
8 also submit a definition. And then other users are able
9 to upvote or downvote, kind of similar to like the Like
10 System on social media.

11 And that generally places or ranks the specific
12 definitions that are given for a word or a phrase based
13 off of how many upvotes or downvotes that specific
14 definition has received.

15 Q. So is it -- is it one person deciding -- well, I
16 guess let me ask this first. Urban Dictionary how is it
17 different than a regular dictionary?

18 A. Well, a regular ---

19 MS. SHEALY: --- Your Honor, we -- I object; may we
20 approach?

21 [Whereupon, an on-the-record bench conference is
22 held as follows:]

23 MS. SHEALY: I would object. I don't think a
24 foundation has been laid for her to be able to explain
25 how an Urban Dictionary is different than -- I mean, I

1 don't know that she would have that body of information.

2 MR. SUMMA: --- you can go on line and look at it.

3 Its public knowledge.

4 MS. SHEALY: The definitions; but that doesn't
5 explain ---

6 MR. SUMMA: --- you can go in there and it tells you
7 how it works. That's why she knows ---

8 MS. SHEALY: --- she's not -- no. I don't think
9 that ---

10 MR. VOIGT: --- that doesn't require any level of
11 expertise. And it's no more expertise than an officer
12 had when he testified to a meaning of a word.

13 MS. SHEALY: He works the streets in Charleston.
14 She's been asked today how Urban Dictionary works and how
15 that is different from another dictionary. I don't think
16 she's qualified ---

17 MR. SUMMA: --- you go on your page; you click right
18 on your website ---

19 THE COURT: --- okay, what ---

20 MS. SHEALY: --- I understand how that works ---

21 THE COURT: --- what rule of evidence are you
22 relying on to get this in?

23 MR. SUMMA: For her testimony? Well, I think that
24 she can talk about going on a website, a publicly
25 available website, people vote on the meanings of words,

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1 and testify what's on the website.

2 MR. VOIGT: She can't testify as to their accuracy.

3 THE COURT: How is -- how is that not hearsay?

4 MR. SUMMA: Well, it's not really a statement being
5 offered. It's just -- it's just what is on the internet
6 ---

7 THE COURT: --- no, I think ---

8 MS. SHEALY: --- it is hearsay ---

9 THE COURT: --- I think -- I think absent some other
10 rule I think it certainly is hearsay. I mean, I just...

11 MR. SUMMA: Is it a business record?

12 THE COURT: Well, I don't think we can get
13 there...

14 MR. VOIGT: Judicial noted?

15 MS. SHEALY: Judge, I don't think that's ---

16 MR. SUMMA: --- I want to show you what I just
17 found. You go online, there are 2,000 upvotes.

18 MS. SHEALY: We'll withdraw, we'll withdraw our
19 objection.

20 THE COURT: Okay.

21 [Whereupon, on-the-record bench conference
22 concludes]

23 Q. [Mr. Summa] Ms. Hatfield, how do you know about
24 Urban Dictionary works? And what is -- what is Urban
25 Dictionary?

1 A. Urban Dictionary is -- as I stated before, is a
2 crowd-source online dictionary. I've used it pretty much
3 the entire time I've been using the internet, so probably
4 -- Urban Dictionary was created in 1999. I was born
5 seven years prior.

6 I've been using it probably since elementary school,
7 kind of a general thing that everybody I would say knows
8 about or has been -- or heard about. So I've used it
9 quite a bit to understand some colloquial terms that I
10 may not know the definition to.

11 Q. Is it where -- is it where people go to look up
12 words that might be considered not in the regular
13 dictionary?

14 A. Correct.

15 Q. Okay. And tell us a little bit about how you know
16 how Urban Dictionary works.

17 A. I had some -- a general understanding prior to --
18 you had asked me to do some research just about the
19 upvote and downvote system and that somebody can, or
20 anybody can go online and submit something and then it's
21 moderated by that system.

22 But I did do a little bit of research into the
23 actual terminology surrounding that type of functionality
24 that it uses.

25 Q. I guess is there -- does Urban Dictionary have a

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Maya Hatfield-Direct Examination by Mr. Summa
March 13, 2020

1 page where it explains how it works?

2 A. Yes.

3 Q. Okay. And you went to that page?

4 A. Yes.

5 Q. Okay. And did you go on Urban Dictionary and type
6 in any slang terms that might relate to this case?

7 A. I went onto Urban Dictionary and typed in the word
8 lick and ---

9 Q. --- and could you -- do you have a copy of that
10 definition in front of you?

11 A. I do.

12 Q. When did you go and look on it most recently?

13 A. I looked at the page for the word lick this morning,
14 probably around 9:00 a.m.

15 Q. I'm going to show you what I need to mark as Defense
16 Exhibit 7.

17 [Whereupon, Defendant Crummey Exhibit Number 7 is
18 marked for identification by the court reporter]

19 Q. Do you recognize what I'm showing you?

20 [Whereupon, the witness is shown document]

21 A. Yes.

22 Q. What is it?

23 A. It is a screenshot of the web page for Urban
24 Dictionary for the definition of the word lick.

25 Q. Is it a true and accurate reflection of what you saw

1 on the internet earlier today?

2 A. Yes.

3 MR. SUMMA: Okay. Your Honor, may I publish this to
4 the jury for demonstrative purposes only?

5 MS. SHEALY: May we take a look at it, please?

6 MR. SUMMA: Sure.

7 [Whereupon, Mr. Summa proffers documents to Ms.
8 Shealy]

9 [Whereupon, Ms. Shealy and Mr. Cooper review
10 document]

11 MR. COOPER: Your Honor, may we approach?

12 [Whereupon, an on-the-record bench conference is
13 held as follows:]

14 MS. SHEALY: Approach --

15 MR. COOPER: So I don't have --- so I don't have an
16 objection to them putting this in, but this is not the
17 only definition. The State would seek to query on the
18 other ones that are listed. I don't...

19 THE COURT: I think this -- I mean ---

20 MR. COOPER: --- I just -- I don't have them printed
21 so can I ---

22 MS. SHEALY: --- we're like to have a second to
23 print the definition ---

24 MR. COOPER: Or if I can show her...

25 MS. SHEALY: We can show it to her on a phone.

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1 MR. COOPER: And then put them on -- put them on the
2 computer.

3 MR. SUMMA: Or I can just have her read it and I
4 guess we don't have to publish this necessarily --

5 THE COURT REPORTER: I can't hear you, Mr. Summa.

6 THE COURT: Just have her -- just have her read it
7 and then on cross, if you -- if you plan to -- if there
8 are -- if there are other definitions, you can read those
9 out.

10 MR. COOPER: Okay.

11 THE COURT: And ask -- and if she -- if she says no,
12 I don't believe that, then you can show it to her. Okay?

13 MR. COOPER: Okay. Yes, sir.

14 THE COURT: Is that fair?

15 MR. COOPER: Thank you.

16 [Whereupon, on the-record bench conference
17 concludes]

18 Q. [Mr. Summa] And, Ms. Hatfield, the way Urban
19 Dictionary works, there's a bunch of different
20 definitions; right? It's not just one definition at the
21 top; right?

22 A. Yes.

23 Q. And those definitions, how are they ranked?

24 A. It utilizes that upvote downvote system. So the top
25 definition has the highest number of upvotes and then it

1 decides from there in terms of what comes second highest,
2 third highest, and so on and so forth.

3 Q. Okay. And I'm going to show you what's been marked
4 as Defendant's Exhibit 7.

5 [Whereupon, the witness is shown exhibit]

6 Q. What is the highest definition for lick on Urban
7 Dictionary?

8 A. The highest definition is any instance when you come
9 upon easy money, whether you jack it, hustle it, or
10 barter for it --

11 THE COURT REPORTER: Or?

12 THE WITNESS: Barter.

13 Q. [Mr. Summa] How many upvotes and downvotes does
14 that definition have?

15 A. It currently has 2,012 upvotes and 510 downvotes.

16 Q. Okay. Do you know what the second, third, fourth
17 and fifth definitions on the lick page are?

18 A. I do not presently have it on the screenshot that
19 was accessed this morning.

20 Q. That's fine.

21 A. But...

22 Q. I think you'll be shown it in a minute.

23 A. Okay.

24 Q. When you go to Urban Dictionary normally, do you
25 scroll through all the definitions or do you normally

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1 just accept the top one as the most common way in which a
2 word is used?

3 A. Generally, yes, I would just look at the top one.

4 Q. Okay. And tell the jury a little bit about your own
5 experience and what lick means to you hanging out with
6 people in the office ---

7 MR. COOPER: --- objection, Your Honor ---

8 Q. [Mr. Summa] --- back home ---

9 MR. COOPER: --- this would be calling for witness'
10 speculation. And it's not relevant, her opinion, on what
11 a lick is. She's here to testify as to that one exhibit.

12 THE COURT: I'm going to sustain the objection.

13 MR. COOPER: That's fine.

14 Q. [Mr. Summa] Okay. Thank you, Ms. Hatfield. Please
15 answer any questions that the State might have.

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1 CROSS-EXAMINATION

2 BY MR. COOPER:

3 Q. Good morning, Ms. Hatfield.

4 A. Good morning.

5 Q. I'll going to do this in a little bit of an inartful

6 way. I don't have a printout with me.

7 Mr. Summa only had you print out the screenshot of

8 the first definition; is that right?

9 A. Correct.

10 Q. Okay.

11 MR. COOPER: May I approach the witness, Judge?

12 THE COURT: Sure.

13 [Whereupon, Mr. Cooper provides his laptop to the

14 witness]

15 Q. [Mr. Cooper] Would you agree with me the second

16 definition of what it says a side hustle or a way of

17 making money?

18 A. Yes.

19 Q. Would you agree that the third definition listed for

20 lick says a noun; slang for robberies?

21 A. Yes.

22 Q. And would you agree that the fourth definition of

23 lick in the Urban Dictionary says, one, somebody who is

24 easy to rob or get money from, and, two, an illegal way

25 to get money easily, like robbing, hustling, or selling

State v Daquan J. Crummey & Denali D. White
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March 13, 2020

1 dope?

2 A. Yes.

3 MR. COOPER: Beg the Court's indulgence.

4 [Whereupon, Mr. Cooper and Ms. Shealy confer]

5 Q. [Mr. Cooper] I've got no further questions. Thank
6 you, ma'am.

7 THE COURT: Mr. Voigt?

8 MR. VOIGT: Thank you.

9 [Whereupon, Mr. Voigt and Mr. Summa confer]

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1 CROSS-EXAMINATION

2 BY MR. VOIGT:

3 Q. Only if you know the answer to the question as in
4 personal knowledge of it; I don't want you to guess.

5 But in your understanding of Urban Dictionary, are
6 the meanings of the terms fluid in terms of how they get
7 ranked?

8 A. It's in relationship to the upvote and downvote
9 system.

10 Q. Okay. So it can change over time?

11 A. It can.

12 Q. And some usage of slang can become very popular and
13 then go out of fashion?

14 A. Correct.

15 Q. And it can happen fairly quickly; is that right?

16 A. Correct.

17 Q. And so that accepted meanings of slang terms can
18 become outdated or passé very quickly?

19 A. Yes.

20 Q. And certain -- and certain terms can come very
21 quickly out of nowhere; right?

22 A. Yes.

23 Q. Like memes and other things that just all of sudden
24 show up.

25 A. Correct ---

State v Daquan J. Crummey & Denali D. White
Maya Hatfield-Cross-Examination by Mr. Voigt
March 13, 2020

1 Q. --- and you don't know where they came from?

2 A. Yes.

3 Q. And isn't it true that slang, as related through the
4 definitions of Urban Dictionary, the meanings can
5 radically change and sometimes even mean the opposite of
6 what they originally meant?

7 A. Correct.

8 Q. You know, so some something that's cool may actually
9 not be cool at all; right?

10 A. [Nods affirmatively]

11 Q. I mean, you know, it's just because -- alright.

12 A. [No response]

13 MR. VOIGT: I don't have anything else. Thank you.

14 THE COURT: Redirect?

15 MR. SUMMA: Yes.

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1 REDIRECT EXAMINATION

2 BY MR. SUMMA:

3 Q. I'm just going to ask you to compare the number of
4 votes on each of these definitions. So just for the
5 jury, tell us how many upvotes and downvotes the first
6 definition has.

7 A. The first definition has 2,012 upvotes and 510
8 downvotes.

9 Q. Okay. What about the next definition?

10 A. The next definition has 143 upvotes and 36
11 downvotes.

12 Q. What about the next one?

13 A. That has 825 upvotes and 362 downvotes.

14 Q. And what about the next one?

15 A. 161 upvotes and 66 downvotes.

16 Q. And I want to ask you something. If you're a police
17 officer ---

18 MR. COOPER: --- objection, Your Honor. It's
19 speculation.

20 MR. SUMMA: Could I ---

21 MR. COOPER: --- that's exactly -- proffer ---

22 THE COURT: --- let's approach. Let's approach.

23 [Whereupon, an on-the-record bench conference is
24 held as follows:]

25 MR. SUMMA: I'm going to ask her if you're a police

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Maya Hatfield-Redirect Examination by Mr. Summa
March 13, 2020

1 officer, do you get more than one vote. That's all.
2 THE COURT REPORTER: I can't hear you --
3 MR. SUMMA: I'm sorry.
4 THE COURT: Let's wait until everybody is up here.
5 MR. SUMMA: Sorry. Here's my last question, Judge.
6 If you're a police officer, does your vote count more
7 than ---
8 THE COURT: --- she can't answer that. No.
9 MR. COOPER: Thank you, Judge.
10 [Whereupon, on-the-record bench conference
11 concludes]
12 Q. [Mr. Summa] Does any person -- does any person --
13 [Whereupon, Mr. Summa and Ms. Norris confer]
14 Q. [Mr. Summa] Thank you, Ms. Hatfield. I -- that's
15 all I have.
16 THE COURT: Any recross?
17 MR. COOPER: No, Judge. Thank you.
18 THE COURT: Mr. Voigt, any recross?
19 MR. VOIGT: No, thank you, Your Honor.
20 THE COURT: Ma'am, you may step down.
21 MR. COOPER: Your Honor, if I could approach? I
22 just want to grab my laptop from the stand.
23 THE COURT: Absolutely.
24 MR. SUMMA: May she be excused, Your Honor?
25 THE COURT: Sure.

State v Daquan J. Crummey & Denali D. White
Maya Hatfield-Redirect Examination by Mr. Summa
March 13, 2020

1 MR. COOPER: No objection.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

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State v Daquan J. Crummey & Denali D. White
Bernard Blaney-Direct Examination by Mr. Summa
March 13, 2020

1 MR. SUMMA: Your Honor, the defense will call
2 Bernard Blaney.

3 THE COURT REPORTER: Did you say Bernard Bailey?

4 MR. SUMMA: B-A-L-A-N-Y [sic].

5 [Whereupon, Mr. Blaney comes forward]

6 THE CLERK OF COURT: Please place your left hand on
7 the Bible, and raise your right.

8 [Whereupon, Mr. Blaney is duly sworn by the Clerk of
9 Court]

10 THE CLERK OF COURT: You may be seated.

11 [Whereupon, the witness takes the witness stand]

12 THE CLERK OF COURT: And for the record, please
13 state your full name, spelling both your first and your
14 last.

15 THE WITNESS: Bernard Herman Blaney, Jr. First name
16 Bernard, B-E-R-N-A-R-D. Last name B-L-A-N-E-Y.

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18 BERNARD BLANEY,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. SUMMA:

23 Q. Mr. Blaney? Am I saying that right?

24 A. Correct.

25 Q. Mr. Blaney, tell the jury what you do for work.

1 A. I'm assistant administrator at North Charleston High
2 School.

3 Q. Okay. And in that role, do you have access to
4 attendance records?

5 A. I do.

6 Q. Okay. And were you asked to look at attendance
7 records for anybody in this case?

8 A. Yes, sir.

9 Q. Who are those people?

10 A. Daquan Crummey. Am I saying that correctly?

11 Q. Yes.

12 A. And I also have the record of Dulce Yisel Martinez-
13 Garcia.

14 Q. When did Mr. Crummey attend Stahl High School?

15 A. According to the records, between May of 2014 and
16 November of 2014.

17 Q. When did Ms. Martinez attend Stahl High School?

18 A. August of 2016 and August of 2017.

19 Q. So these two individuals never overlapped?

20 A. No, sir.

21 Q. Can you say that with a hundred-percent certainty?

22 A. Yes sir, according to the records; yes sir.

23 MR. SUMMA: No further questions.
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State v Daquan J. Crummey & Denali D. White
Bernard Blaney-Cross-Examination by Ms. Shealy
March 13, 2020

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CROSS-EXAMINATION

BY MS. SHEALY:

Q. I'm sorry; is it Mr. Blaney?

A. Yes, ma'am.

Q. You told us that you work at North Charleston High School; is that correct?

A. Yes, ma'am.

Q. Did you ever work at Stahl?

A. No, ma'am.

Q. Are you familiar with Stahl?

A. As a -- as a school, yes, ma'am.

Q. Would it be fair to characterize it as being a predominately African-American population at that school?

A. A large African-American and Hispanic population. Yes, ma'am.

Q. Okay. So those are the two largest populations at that school; African-American and Hispanic?

A. Yes, ma'am.

MS. SHEALY: I have no further questions. Thank you.

THE COURT: Mr. Voigt?

MR. VOIGT: No questions, Your Honor.

MR. SUMMA: Just briefly.

State v Daquan J. Crummey & Denali D. White
Bernard Blaney-Redirect Examination by Mr. Summa
March 13, 2020

1 witness stand]

2 MR. SUMMA: Your Honor, I think my next witness ran
3 to the restroom.

4 THE COURT: Alright. We've been in the courtroom
5 about an hour and twenty minutes. Let's take a ten-
6 minute -- or an eleven-minute recess and we'll bring you
7 back at 10:35. Thank you.

8 [Whereupon, the jury exits the courtroom at 10:06
9 a.m.]

10 THE COURT: Alright. We'll be at ease until 10:35.

11 MR. COOPER: Thank you, Judge.

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1 [Whereupon, Court is in recess from 10:36 a.m. to
2 10:45 a.m.]

3 THE COURT: Are we -- and, again, I'm not rushing.
4 I just wanted to make sure that I ask, while the jury is
5 out of the room, are we in a position to put the
6 defendants' decision of whether they want to testify on
7 the record?

8 MR. SUMMA: I am, Your Honor.

9 MR. VOIGT: I am, Your Honor.

10 THE COURT: Alright. We'll do this one at a time.

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State v Daquan J. Crummey & Denali D. White
Fifth Amendment Rights (as to Daquan Crummey)
March 13, 2020

1 FIFTH AMENDMENT RIGHTS (Daquan Crummey)

2 THE COURT: Mr. Crummey, stand up for me, please.

3 [Whereupon, Mr. Crummey stands]

4 THE COURT: Mr. Crummey, yesterday I told you that
5 you have the Fifth Amendment right to remain silent. All
6 criminal defendants in this country do.

7 And we're getting close to the point in this case
8 where you need to make a decision as to whether you
9 intend to testify or whether you intend to exercise your
10 right to remain silent, and that has to be done on the
11 record. So, Mr. Crummey, have you had the opportunity to
12 discuss that decision with your lawyer?

13 MR. CRUMMEY: Yes, sir.

14 THE COURT: Have you had enough time to speak with
15 him about that decision?

16 MR. CRUMMEY: Yes, sir.

17 THE COURT: Have you understand -- understood your
18 discussions with them?

19 MR. CRUMMEY: Yes, sir.

20 THE COURT: And at this time are you prepared to
21 tell the Court whether you plan to testify, or exercise
22 your right to remain silent?

23 MR. CRUMMEY: No, sir, I do not wish to testify.

24 THE COURT: Okay. And you're making that decision
25 freely and voluntarily?

State v Daquan J. Crummey & Denali D. White
Fifth Amendment Rights (as to Daquan Crummey)
March 13, 2020

1 MR. CRUMMEY: Yes, sir.

2 THE COURT: And with the advice of counsel of your
3 lawyer?

4 MR. CRUMMEY: Yes, sir.

5 THE COURT: Need any more time to talk with him
6 about that now?

7 MR. CRUMMEY: No, sir.

8 THE COURT: Alright. Thank you. You may be seated.

9 [Whereupon, Mr. Crummey is seated]
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State v Daquan J. Crummey & Denali D. White
Fifth Amendment Rights (as to Denali White)
March 13, 2020

1 FIFTH AMENDMENT RIGHTS (Denali White)

2 THE COURT: Mr. White, similarly, you have the
3 absolute right to remain silent under the Fifth Amendment
4 of the Constitution. And at this point in the trial, I
5 need to put on the record whether you intend to exercise
6 that right or choose to testify. So have you had enough
7 time to discuss that decision with your lawyer, Mr.
8 Voigt?

9 MR. WHITE: Yes, sir.

10 THE COURT: Okay. And have you understood your
11 discussions about that issue with Mr. Voigt?

12 MR. WHITE: Yes, sir.

13 THE COURT: Has he given you advice and answered any
14 questions that you may have had?

15 MR. WHITE: Yes, sir.

16 THE COURT: And, Mr. White, do you intend to
17 exercise your right to remain silent, or do you want to
18 testify on your own behalf in this case?

19 MR. WHITE: I will remain silent, sir.

20 THE COURT: Okay. And has anybody -- has anybody
21 exerted any influence over you whatsoever in getting you
22 to make that decision?

23 MR. WHITE: No, sir.

24 THE COURT: You've understood your discussion with
25 your lawyer?

State v Daquan J. Crummey & Denali D. White
Fifth Amendment Rights (as to Denali White)
March 13, 2020

1 MR. WHITE: [No response]

2 THE COURT: You've understood your discussions with
3 your lawyer?

4 MR. WHITE: Yes, sir.

5 THE COURT: Has he answered any questions you may
6 have?

7 MR. WHITE: Yes, sir.

8 THE COURT: You're making that decision freely and
9 voluntarily here today?

10 MR. WHITE: Yes, sir.

11 THE COURT: Do you have any questions you want to
12 ask the Court?

13 MR. WHITE: No, sir.

14 THE COURT: And do you need any more time with your
15 lawyer before we proceed?

16 MR. WHITE: No, sir.

17 THE COURT: Alright. I find that both witnesses
18 have been advised of their rights under the Fifth
19 Amendment and they have chosen after speaking with their
20 lawyer and being advised of their rights; they've chosen
21 to remain silent in this case and will not be testifying.
22 I find their decisions to do that are freely,
23 voluntarily, and intelligently made.

24 And we are ready to proceed. Ready for the jury?

25 Mr. Summa, are you ready for the jury?

State v Daquan J. Crummey & Denali D. White
Fifth Amendment Rights (as to Denali White)
March 13, 2020

1 MR. SUMMA: Yes, Your Honor. I'm sorry.

2 THE COURT: Bring us the jury.

3 [Whereupon, the jury enters the courtroom at 10:47
4 a.m.]

5 THE BAILIFF: Your Honor, the jury is complete.

6 THE COURT: Thank you, sir.

7 Ladies and gentlemen, we are in a position to
8 proceed with the trial.

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State v Daquan J. Crummey & Denali D. White
Melissa Bryant-Direct Examination by Mr. Summa
March 13, 2020

1 MR. SUMMA: Your Honor, Mr. Crummey would call
2 Melissa Bryant.

3 THE COURT: Have her come forward please.

4 [Whereupon, Ms. Bryant comes forward]

5 THE CLERK OF COURT: Please place your left hand on
6 the Bible, and raise your right.

7 [Whereupon, Ms. Bryant is duly sworn by the Clerk of
8 Court]

9 THE CLERK OF COURT: You may be seated.

10 [Whereupon, the witness takes the witness stand]

11 THE CLERK OF COURT: And for the record, please
12 state your full name, spelling both your first and your
13 last.

14 THE WITNESS: It's Melissa Bryant. M-E-L-I-S-S-A
15 B-R-Y-A-N-T.

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17 MELISSA BRYANT,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. SUMMA:

22 Q. Thank you, Ms. Bryant. Can you tell the jury a
23 little bit about what you do?

24 A. I work for the South Carolina Department of Motor
25 Vehicle. I'm a manager. I've been employed there for

State v Daquan J. Crummey & Denali D. White
Melissa Bryant-Direct Examination by Mr. Summa
March 13, 2020

1 fifteen years.

2 Q. Okay. What location?

3 A. The Ladson branch.

4 Q. Okay. And in your position as a manager at the DMV,
5 do you have access to people's driving records?

6 A. Yes sir, I do.

7 Q. Do you have access to photographs that people get
8 taken of them when they come into the DMV?

9 A. Yes sir, I do.

10 Q. And you can tell when those photographs are taken;
11 correct?

12 A. Yes sir, I can.

13 Q. I'm going to show you what I'm marking as Defense
14 Exhibit 8.

15 [Whereupon, Defendant Crummey Exhibit Number 8 is
16 marked for identification by the court reporter]

17 Q. [Mr. Summa] Do you recognize what I'm showing you
18 right here?

19 [Whereupon, the witness is shown photograph]

20 A. Yes, sir.

21 Q. What is it?

22 A. This is an actual -- when someone comes into the
23 department and they take their photo, this is the record
24 that we can pull off to see exactly when it was taken
25 whenever you print it out.

State v Daquan J. Crummey & Denali D. White
Melissa Bryant-Direct Examination by Mr. Summa
March 13, 2020

1 Q. Okay. And what does -- what's the name on there?

2 A. The name is Daquan Javor Crummey.

3 Q. And is that a photograph of Mr. Crummey?

4 A. Yes, sir.

5 Q. When was that photograph taken?

6 A. It was taken on January the 5th, 2017.

7 Q. Okay.

8 MR. SUMMA: Your Honor, may I enter Defense Exhibit
9 8 into evidence?

10 THE COURT: Any objection?

11 MS. SHEALY: No objection.

12 MR. VOIGT: No objection.

13 MR. SUMMA: I wish to publish to the jury.

14 THE COURT: Defendant's 8 is in without objection.

15 [Whereupon, Defendant Crummey Exhibit Number 8 is
16 admitted into evidence by the Court]

17 THE COURT: You may publish to the jury.

18 Q. [Mr. Summa] Is that a photograph of Mr. Daquan
19 Crummey?

20 [Whereupon, the photograph is published]

21 A. Yes, sir.

22 Q. Notice anything interesting about his teeth?

23 A. He has gold teeth on his top.

24 MR. SUMMA: No further questions.

25 MS. SHEALY: May it please the Court?

State v Daquan J. Crummey & Denali D. White
Melissa Bryant-Cross-Examination by Ms. Shealy
March 13, 2020

1 THE COURT: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. SHEALY:

4 Q. Ms. Bryant, in that photograph, it's fair to say
5 he's got a big smile on his face; is that correct?

6 A. Yes, ma'am.

7 Q. Not a mean face?

8 A. No, ma'am.

9 MS. SHEALY: Thank you.

10 THE COURT: Mr. Voigt?

11 MR. VOIGT: No questions, Your Honor.

12 THE COURT: Alright. Thank you.

13 Ma'am, you may step down. Thank you for being here.

14 THE WITNESS: Thank you.

15 THE COURT: Counsel, I would assume you have no
16 problem with her being excused?

17 MS. SHEALY: Oh. No, none at all. Thank you.

18 MR. SUMMA: No issue from me.

19 THE COURT: You're excused, ma'am. Thank you.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

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1 MR. SUMMA: Your Honor, the defense would call Ms.
2 Brandie Ross.

3 THE COURT: Come around this way [indicates] ma'am.
4 [Whereupon, Ms. Ross comes forward]

5 THE CLERK OF COURT: Please place your left hand on
6 the Bible, and raise your right.

7 [Whereupon, Ms. Ross is duly sworn by the Clerk of
8 Court]

9 THE CLERK OF COURT: Please be seated.

10 [Whereupon, the witness takes the witness stand]

11 THE CLERK OF COURT: And for the record, please
12 state your full name, spelling both your first and your
13 last.

14 THE WITNESS: My name is Brandie Ross. Brandi is
15 B-R-A-N-D-I-E. Ross is R-O-S-S.

16 - - - - -

17 BRANDIE ROSS,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. SUMMA:

22 Q. Thank you, Ms. Ross. Will you tell the jury a
23 little bit about what you do?

24 A. I'm actually disabled, so I just basically stay home
25 and just take care of my house at this point.

State v Daquan J. Crummey & Denali D. White
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1 Q. And where do you live currently?

2 A. Currently, I'm residing in Myrtle Beach.

3 Q. And where were you living in mid July, 2017?

4 A. I was residing in North Charleston.

5 Q. Where, specifically?

6 A. On Tedder Street. There's a mobile home park.

7 Unfortunately, it never had a name.

8 Q. Are you aware of what happened on July 23rd, 2017?

9 A. Yes. I was made aware when I saw the police
10 outside. I went out there and ---

11 Q. --- are you aware of which mobile home was robbed?

12 A. Yes. It was the gentleman that was right across
13 from me.

14 Q. Okay. So your across-the-street neighbor; is that
15 correct?

16 A. Yeah. Across the street, within the park, so it was
17 just a little -- one little main road.

18 Q. Okay. When you were there that day, before the
19 police got there did you notice anything suspicious?

20 A. Yes. I left my home. It was between 1:00, 1:30,
21 and I went to go visit a neighbor.

22 And I noticed as I was leaving my front door that --
23 there's a trailer right beside me about ten feet away.

24 We share a common yard. And their back door is about
25 twenty-five feet from my front door. And on the stoop I

1 saw two gentlemen sitting there. And I went to go visit
2 my neighbor, came back a few minutes later, and one of
3 the gentlemen got up, came over to me, and told me that
4 they were waiting for a ride.

5 Q. Okay. So that gentleman who came up and talked to
6 you, how close was he to you when you spoke with him?
7 And I can demonstrate. Maybe it'll help the jury out a
8 little bit.

9 A. Uh-huh.

10 Q. Was he this close?

11 [Whereupon, Mr. Summa approaches the witness stand]

12 A. Yeah. Uh-huh.

13 Q. Closer?

14 A. I'd say probably about three to four feet. Yeah.

15 Q. Okay. About this distance away?

16 A. Uh-huh.

17 THE COURT REPORTER: Was that yes?

18 A. Yes.

19 Q. [Mr. Summa] And you don't remember whether that was
20 the tall one, quote -- I guess, first, there -- do you
21 believe that there was a tall one and a short one?

22 A. Yes. The second gentleman remained sitting but
23 based on his leg length on the stairs, he appeared to be
24 the shorter of the two.

25 Q. Okay. How far away was the second gentleman? About

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1 here [indicates]?

2 A. Actually, yes. It's about -- about twenty-five
3 feet. Uh-huh.

4 Q. Okay. So you're not a hundred percent positive, but
5 you think that the man who approached you and got this
6 close to you [indicates] was the taller individual?

7 A. Yes. Uh-huh.

8 Q. And what were they wearing?

9 A. Both of them were wearing all black attire. And it
10 was -- it was very easy to see them because, like I said,
11 it was July, you know, at one o'clock, so it was real
12 easy to see them and recognize ---

13 Q. --- do you wear glasses or contacts?

14 A. I wear reading glasses but, you know, just for
15 close-up reading.

16 Q. So you have no problem with your eyesight?

17 A. No.

18 Q. Except close-up reading?

19 A. Uh-huh.

20 THE COURT REPORTER: Was that yes?

21 THE WITNESS: Yes; sorry.

22 Q. [Mr. Summa] And, Ms. Ross...

23 A. Uh-huh.

24 Q. The individual who came -- who was standing far away
25 from you, did he have a hat on?

1 A. I apologize. What was that?
2 Q. The individual who was farther away from you ---
3 A. --- uh huh ---
4 Q. --- did he have a hat on?
5 A. No. No.
6 Q. Are you -- are you a hundred percent positive?
7 A. Yes, a hundred percent. Uh-huh.
8 Q. What about the individual who stood this close to
9 you [indicates]?
10 A. No. Neither gentleman had hats on.
11 Q. A hundred percent positive?
12 A. Uh-huh. Yes.
13 Q. How would you describe the hairstyle of the
14 individual, that you think is the shorter one that was
15 standing about here [indicates]?
16 A. That gentleman, he had a very close-shaven head.
17 Q. Do you think it's possible that you might have
18 mistaken his close-shaven head as a hat?
19 A. No. No. No. There was no bill. There was no --
20 if there -- you know, or a scarf. There was no knot,
21 nothing of that nature. So it was clearly not covered.
22 Q. What about the individual who stood this close
23 [indicates] to you?
24 A. Oh no. He definitely also had clean-shaven hair and
25 it was very short, as well.

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1 Q. Very short?

2 A. [No response]

3 Q. Did the individual who was standing this close to
4 you [indicates] he was talking to you; right?

5 A. Yes. Uh-huh. He was the one that indicated that
6 they were waiting for a ride.

7 Q. And you were suspicious; right?

8 A. Yes, because at -- like I said, they were sitting on
9 the back stoop of the trailer beside me. That trailer
10 was vacant. And, also, that area is fenced off.

11 So if you're going to be waiting for a ride, it
12 would have had to have been near a door -- you know, my
13 door, because why would you be waiting in the back of the
14 property for someone that's going to be coming down the
15 road forty feet away?

16 Q. Were you scared of them?

17 A. I wasn't scared of them, but they looked very
18 sketchy. You know, like, you know, they were -- they
19 only -- like I said, they only approached me when I --
20 they noticed that I noticed them.

21 Q. But you weren't in a state of panic?

22 A. No.

23 Q. You were not in a state of fear?

24 A. No ---

25 MS. SHEALY: --- Your Honor, I would ask that he ask

1 direct questions, not leading.

2 Q. [Mr. Summa] Were you in a state of fear?

3 A. No, I wasn't -- I wasn't fearful of them. It was --
4 it was just something that caught my eye.

5 Q. Approximately how long do you think you had an
6 opportunity to look at these individuals when you combine
7 the two instances in which you had the opportunity to
8 view them?

9 A. All together, I'd say about -- I'd say about four to
10 five -- actually, I'm sorry. I had walked my dog. I
11 apologize. I left this part out.

12 When I had left, I had my dog with me and I had the
13 dog on the leash, so the dog was doing a little bit of
14 business around the yard. So around five minutes between
15 the two incidents.

16 Q. Okay. When you say that those individuals had
17 shaved heads, how sure are you?

18 A. Positive.

19 Q. A hundred percent sure?

20 A. Yes. Uh-huh.

21 Q. You gave a statement to the police. They came and
22 interviewed you; right?

23 A. Actually, I saw the police there outside the trailer
24 and since I had, like I said, had a very sketchy feeling
25 about those gentlemen, I made the, you know, effort to go

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1 out and see if what they were responding to was anything
2 related to that.

3 Q. Do you remember giving a statement to them?

4 A. Yes, sir.

5 Q. Do you remember giving a written statement to them?

6 A. Yes, sir. Uh-huh.

7 Q. If I showed you a copy of it, would it remember --
8 refresh your recollection as to what you told the police
9 at the time?

10 A. Yes. You can. Uh-huh.

11 Q. Do you mind reading that statement in its entirety?

12 MS. SHEALY: Your Honor, may we approach, please?

13 [Whereupon, an on-the-record bench conference is
14 held as follows:]

15 MS. SHEALY: I would object. He can't ask her about
16 a prior consistent statement. She hasn't needed to look
17 at it. She's ---

18 THE COURT: --- well, I see where you're going.
19 What has she misremembered here -- Mr. Summa?

20 MR. SUMMA: Well, I could ask her. I don't think
21 she's going to remember every detail of every word she
22 said to the police.

23 MS. SHEALY: He can ask her a question to see ---

24 THE COURT: --- ask her questions -- you can read
25 the statement and ask her a question.

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1 MR. SUMMA: Did you tell police this?

2 THE COURT: No. No, no, no. Ask her open-ended
3 questions. If she says something different from the
4 stand than what's in the written statement, then you can
5 -- then you can show it to her and have her refresh her
6 recollection.

7 But there's got to be -- there's got to be something
8 that she either says she can't remember, or it's going to
9 be something inconsistent for you to use the statement.

10 MR. SUMMA: Okay.

11 MS. SHEALY: Thank you.

12 [Whereupon, on-the-record bench conference
13 concludes]

14 Q. [Mr. Summa] Do you remember what you told police
15 when they interviewed you? And just to be clear, when
16 you -- when they were interviewing you, where were y'all
17 situated?

18 A. Right in front of my trailer right along the roadway
19 there.

20 Q. Okay. And do you remember who was -- who was
21 interviewing you?

22 A. Unfortunately, I'm sorry. I'm terrible with names.
23 I don't remember the name of the officer.

24 Q. Okay. What did you tell the police about these two
25 individuals?

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1 A. I told them that -- as I told you, that when I was
2 leaving my home I noticed the two gentlemen sitting on
3 the back porch of the vacant trailer. And I gave their
4 descriptions that they were all dressed in black with
5 clean-shaven heads.

6 And once I came back about ten, fifteen minutes
7 later, that one approached me and told me that they were
8 waiting for a ride, and that I went at that point back
9 into my home.

10 Q. You told the police specifically that both
11 individuals had close-shaven heads; right?

12 A. Yes. Yes. I wanted to give the best description I
13 could.

14 Q. And you wrote that down; right?

15 A. Yes. Uh-huh.

16 Q. And that's still your testimony today?

17 A. Yes, sir.

18 Q. Did the police ever follow up with you?

19 A. No sir, they did not.

20 Q. They never contacted you again?

21 A. No sir, they did not.

22 Q. Even though you were very close to one of the
23 individuals, looking at them?

24 A. Yes, I was very close. And, no, they did not.

25 Q. I believe the detective -- did he ask you whether or

1 not you would have been able -- or whether or not you
2 wanted to do a photo lineup?

3 A. He asked me if I thought I could identify the
4 gentlemen in a photo lineup and I told them I could
5 unfortunately probably not because I didn't study their
6 faces that hard. But I -- I did inform them I probably
7 could not do a lineup.

8 Q. Why did you not really want to do a lineup? Was it
9 because ---

10 MS. SHEALY: --- I object to him leading.

11 THE COURT: Just...

12 Q. [Mr. Summa] Do you want them to convict the wrong
13 people?

14 A. Oh. Definitely not.

15 Q. Did you want to give the police the wrong idea?

16 A. No, sir.

17 Q. Is that why you're here today?

18 A. Exactly. Yes.

19 Q. I'm going to show what's been previously marked as
20 Defendant's Exhibit 5, a photo of Mr. Crummey in late
21 July of 2017.

22 [Whereupon, the photograph is published]

23 Q. Can you say with a hundred percent certainty whether
24 or not the man who stood right next to you had hair that
25 looked anything this?

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1 A. Not in the least. It was, like I said, very short
2 like it had just been cut.

3 MR. SUMMA: No further questions.

4 MS. SHEALY: May it please the Court?

5 THE COURT: Yes, ma'am.

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Brandie Ross-Cross-Examination by Ms. Shealy
March 13, 2020

1	CROSS-EXAMINATION
2	BY MS. SHEALY:
3	Q. Good morning, Ms. Ross.
4	A. Good morning.
5	Q. You said on the stand today that you're terrible
6	with names; is that right?
7	A. Yes. Oh, yes. I'm sorry.
8	Q. No. That's okay. And do you remember on the day
9	that this occurred; you also told the police you're
10	terrible with faces?
11	A. Not that I'm terrible with faces but that I didn't
12	see -- I didn't study their faces long enough for me to
13	be able to make a hundred-percent identification.
14	Q. Okay. Well, let me ask you. Do you remember
15	saying, I'm kind of bad with faces and that you have to
16	see someone several times before you can recognize a
17	face?
18	A. Yes, because I -- like I said, I -- to be able to,
19	you know, pick someone out of a lineup, I'd need to, you
20	know, have seen them for either a longer period of time
21	or multiple occasions.
22	Q. Okay. And you made that clear to the officers that
23	day; is that correct?
24	A. Yes. Uh-huh.
25	Q. Now, Mr. Summa had asked you whether the police ever

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1 contacted you. That day you had seen -- I don't know if
2 you remember his name, but Officer Vecchione. You may
3 remember him because he's got kind of a Boston accent.
4 Do you remember the first officer that approached you?

5 A. I don't remember an accent. I'm sorry.

6 Q. Okay. But you remember that you had been seen by
7 one officer, at least, before Detective Khan came in?

8 A. Yes. Yes. I went out and I met the cruiser,
9 basically, and I told them that I had seen people in the
10 vicinity, and, you know -- and what I had seen and then I
11 went back in my home, and then later the detective came a
12 few -- within a half an hour.

13 Q. Okay. And so what you told the jury, the two guys
14 that were out there looked sketchy?

15 A. Yes. Because, like I said, it was an empty vacant
16 trailer. They were, you know, right by a fence where if
17 you're waiting for a ride, you have almost no vantage
18 point of a car coming or going. So ---

19 Q. --- so it looked like they were up to no good?

20 A. It looked like they were, you know, trying, you
21 know, not to be seen.

22 Q. Okay. And do you remember telling the officer that
23 they were two young black males?

24 A. Yeah. Late teens to early twenties.

25 Q. Okay. Dressed in all black?

1 A. All black. Yes.

2 Q. And when the officers interviewed you, you told them
3 you gave them the side-eye when you were going over to
4 your friend's house. Do you remember that?

5 A. Yes. Basically, I, you know, wanted them to know, I
6 see you, because like -- unfortunately me and my sister
7 lived there by ourselves so, you know, I wanted, you
8 know...

9 Q. So you looked over at them.

10 A. [Indicates]

11 Q. And ---

12 THE COURT REPORTER: --- that's yes?

13 THE WITNESS: Yes.

14 Q. [Ms. Shealy] And you indicated that they were
15 dressed in all black. I think we've talked about that.
16 When you were describing their hair both to the police
17 and to Mr. Summa, you said clean-shaven?

18 A. Clean-shaven, yes. Uh-huh.

19 Q. Clean-shaven. Okay. And you don't remember a hat?

20 A. There was no hats on either.

21 Q. But no question you didn't see all the twists in the
22 hair?

23 A. Their -- yeah. There was -- it was -- it was almost
24 like a military buzz cut. I mean, it was probably like a
25 -- each of them looked about a quarter of an inch long.

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1 Q. Would you agree, though -- now, this is two-and-a-
2 half years later ---

3 A. --- uh-huh ---

4 Q. --- when you were interviewed by the police that you
5 used the same gesture you used today: clean shaven?

6 A. Uh-huh.

7 THE COURT REPORTER: Is that yes?

8 THE WITNESS: Yes. I'm sorry. I apologize.

9 Q. [Ms. Shealy] And I'm sorry if I've already asked
10 you this. You had never seen them before; is that
11 correct?

12 A. No. I've never seen those two gentlemen in the
13 neighborhood.

14 Q. Now, I want to make sure we're clear on something.
15 When Detective Khan came and interviewed you, he asked
16 you about could you identify them in a lineup; right?

17 A. Yes, he did.

18 Q. And you told him the part that we've already
19 discussed, that, I really need to see somebody a few
20 times ---

21 A. --- uh-huh ---

22 Q. --- before I could recognize them?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes, ma'am.

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1 Q. You communicated to Detective Khan that you did not
2 think you could go through the lineup for that reason.

3 Is that fair to say?

4 A. Yes. I -- yes. I told him that the only things,
5 you know, I was sure about was the clothing and the hair.

6 Q. And, in fact, do you remember specifically saying, I
7 didn't see them for very long and I'd love to say I
8 could, meaning the lineup ---

9 A. --- uh-huh ---

10 Q. --- but I probably couldn't?

11 A. Uh-huh.

12 Q. Is that fair to say?

13 A. Yes, ma'am.

14 Q. And they looked like they were in their teens?

15 A. I estimated it was roughly I'd about seventeen,
16 eighteen to very early twenties; twenty-two, twenty-
17 three, at the latest.

18 MS. SHEALY: Beg the Court's indulgence just a
19 moment.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Mr. Cooper and Ms. Shealy confer]

22 Q. [Ms. Shealy] I have no further questions. Thank
23 you.

24 THE WITNESS: Alright.

25 THE COURT: Mr. Voigt?

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1	MR. VOIGT: No questions, Your Honor.
2	THE COURT: Thank you.
3	MR. SUMMA: One follow-up question.
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1 REDIRECT EXAMINATION

2 BY MR. SUMMA:

3 Q. Ms. Ross, would you ever describe a hairstyle like

4 this [indicates] as close-shaven hair?

5 [Whereupon, the photograph is published]

6 A. Never. No.

7 MR. SUMMA: No further questions.

8 MS. SHEALY: Nothing further.

9 THE COURT: Ms. Ross, thank you for being here. You

10 may step down.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: Be careful as you're exiting the witness

13 stand.

14 THE WITNESS: Oh. Thank you, sir.

15 MR. SUMMA: May she be excused, Your Honor?

16 THE COURT: Without objection?

17 MS. SHEALY: No objection.

18 MR. VOIGT: None.

19 THE COURT: Ma'am, you're excused.

20 THE WITNESS: Thank you, Your Honor.

21 [Whereupon, the witness is excused and exits the

22 witness stand]

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1 MR. SUMMA: Your Honor, the defense rests.

2 THE COURT: The defense for Defendant Crummey rests,
3 correct, Mr. Summa?

4 MR. SUMMA: Yes, sir. I'm not in a position to
5 speak for Mr. Voigt.

6 THE COURT: Mr. Voigt?

7 MR. VOIGT: Your Honor, Mr. White rests.

8 THE COURT: Alright. Ladies and gentlemen, we are
9 at the point in the trial where both sides have rested
10 their case in chief. I'm required to send you to your
11 jury room for a brief moment so we can take up some
12 matters of law outside your presence. So I'm going to
13 ask you to go to the jury room at this time.

14 I caution you again, please don't discuss the case
15 amongst yourselves, don't begin your deliberations, don't
16 do any independent research regarding anything that may
17 have happened with regard to this case. And I would ask
18 you to retire to the jury room and we'll bring you back
19 out shortly. Thank you.

20 [Whereupon, the jury exits the courtroom at 11:14
21 a.m.]

22 THE COURT: Alright. Any motions at this time?
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Renewed Motion for Directed Verdict
March 13, 2020

1 RENEWED MOTION FOR A DIRECTED VERDICT

2 MR. VOIGT: Judge, at this time, I would renew my
3 motion for a directed verdict.

4 MR. SUMMA: Me, too, Your Honor. I'm not going to
5 elaborate on it. The evidence speaks for itself.

6 THE COURT REPORTER: Repeat the last part that you
7 said.

8 MR. SUMMA: I think the evidence speaks for itself.

9 MR. COOPER: I will renew what I said earlier in the
10 week ---

11 THE COURT: --- right. And ---

12 MR. COOPER: --- the first time, Judge. And I would
13 add -- incorporate my entire argument I made the last
14 time about how we met the charges or how we -- there is
15 enough evidence in the light most favorable to non-moving
16 party -- existence for us to go to the jury for each of
17 the charges for each of the defendants. And I still
18 stand by that and will incorporate that into these
19 motions.

20 THE COURT: And, again, taking the evidence in the
21 light most favorable to the nonmoving party, I think
22 there is certainly enough evidence in this record for
23 this -- these charges to go to the jury. Certainly, any
24 inconsistencies or discrepancies in the evidence
25 presented certainly is a matter for the jury's

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Renewed Motion for Directed Verdict
March 13, 2020

1 determination as the trier of fact. So I will
2 respectfully rely on my ruling from yesterday and deny
3 these -- respectfully deny these motions, based upon my
4 belief that there is -- that evidence exists at least and
5 that if I were to grant any directed verdict motions at
6 this time, I would be invading upon the province of the
7 jury. So your motions are respectfully denied.

8 MR. SUMMA: Thank you, Your Honor.
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1 THE COURT: Alright. I think it would -- in terms
2 of time, unless y'all tell me you want to do something
3 different, I want -- well, let me back up. I think I'm
4 getting a little bit ahead of myself.

5 Is there going to be any reply testimony?

6 MR. COOPER: No, Judge.

7 THE COURT: Okay. What I'd like to do is do the
8 closing arguments, break for lunch, and then the charge
9 on the law. I think that's the most efficient use of our
10 time, as its 11:15-ish right now. Any objection to that
11 procedure?

12 MR. COOPER: I do, Judge. One, I would just say
13 after the testimony this morning, and the length of the
14 trial I would and in our estimation yesterday, if the
15 Judge -- if the Court would be okay with it I would ask
16 if we could take lunch now and do it consecutive. There
17 are things I'd like to incorporate based on this morning.
18 And if you're inclined to break it up, I've done it
19 before; we charge first and then close.

20 MR. SUMMA: Your Honor ---

21 MR. COOPER: --- jury charge. But I would -- I
22 would ask that we at least be able to break at some point
23 and do that before the closings. Given the length of the
24 trial, given today's testimony, I think that's -- and as
25 close as it is to the lunch hour, and that this will take