THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County Court of General Sessions
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2018-000824

The State of South Carolina.....Respondent,

v.

Nicholas McIver,.....Appellant.

RECORD ON APPEAL – VOLUME I

WILLIAM G. YARBOROUGH, III ▪ LAUREN C. HOBBIS
William G. Yarborough III, Attorney at Law, LLC
308 West Stone Avenue
Greenville, South Carolina 29609

COUNSEL FOR APPELLANT

ALAN WILSON
Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

COUNSEL FOR RESPONDENT

INDEX

Trial Transcript	1 – 665
Indictments	
Murder	666 – 667
Possession of a weapon during commission of a violent crime	668 – 669
Grand larceny, value $2000 -- $10,000.	670 – 671
Sentencing Sheets	
Murder	672
Possession of a weapon during commission of a violent crime	673
Grand larceny, value $2000 -- $10,000	674
Trial Exhibits[1]	
State's Ex. 1, Photo	675
State's Ex. 2, Photo	676
State's Ex. 3, Photo	677
State's Ex. 6, Stipulation	678
State's Ex. 9, Photo	679
State's Ex. 10, Photo	680
State's Ex. 11, Photo	681
State's Ex. 12, Photo	682
State's Ex. 13, Photo	683
State's Ex. 14, Photo	684
State's Ex. 15, Photo	685
State's Ex. 16, Photo[2]	686 – 687
State's Ex. 18, Photo	688
State's Ex. 19, Photo	689
State's Ex. 20, Photo	690
State's Ex. 21, Photo	691
State's Ex. 22, Document, 2 pages, Registration	692 – 693

[1] The description of exhibits listed in the index to the trial transcript are used herein where possible.

[2] The index to the trial transcript mistakenly lists this as "1 Photo."

State's Ex. 24, Photo	694
State's Ex. 25, Photo	695
State's Ex. 28, Receipt	696 – 697
State's Ex. 30, Photo	698
State's Ex. 31, Receipt	699
State's Ex. 32, Receipt	700
State's Ex. 36, Photo	701
State's Ex. 37, Photo	702
State's Ex. 38, Photo	703
State's Ex. 39, Photo	704
State's Ex. 40, Photo	705
State's Ex. 41, Photo	706
State's Ex. 42, Photo	707
State's Ex. 43, Photo	708
State's Ex. 44, Lineup - Six (6) Photos	709 – 714
State's Ex. 45, Photo...Instructions sheet to Lineup, two (2) pages	715 – 716
State's Ex. 47, Cellphone records report – "Amanda", two (2) pages	717 – 718
State's Ex. 48, Cellphone records report – "McIver", five (5) pages	719 – 723
State's Ex. 49, Cellphone records report – "McIver", one (1) page	724
State's Ex. 50, Cellphone records report – "McIver", nine (9) pages	725 – 734
State's Ex. 51, Cellphone records report – Times and dates of videos	735
State's Ex. 52, Photo	736
State's Ex. 53, Receipt	737
State's Ex. 54, Receipt	738
State's Ex. 55, Photo	739
State's Ex. 56, Photo	740
State's Ex. 57, Photo	741
State's Ex. 58, Photo	742
State's Ex. 59, Photo	743
State's Ex. 60, Photo	744
State's Ex. 61, Photo	745

Court's Exhibits 747 – 753

Certificate of Counsel 754

COPY

STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY)	
STATE OF SOUTH CAROLINA,)	**TRANSCRIPT OF RECORD**
)	April 23-27, 2018
Plaintiff,)	
)	**VOLUME I OF III**
vs.)	Pages 1 to 220
)	
NICHOLAS JACOB MCIVER,)	2016-GS-26-05556, 05557, 05558
)	
Defendant.)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
vs.)	2017-GS-26-02606, 02607, 02609
)	
TERRELL FREEMAN,)	
)	
Defendant.)	

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

George H. DeBusk, Jr., Esquire
Seth A. Oskin, Esquire
Attorneys for Plaintiff

G. Scott Bellamy, Esquire
Attorney for Defendant McIver

Martin D. Spratlin, Esquire
Attorney for Defendant Freeman

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

INDEX

APRIL 23, 2018 - DAY ONE

Pg.

Voir Dire 13
Jury Selection 28
By the Court 42
Opening by Oskin 58
Opening by Bellamy 64
Opening by Spratlin 72
By the Court 78

APRIL 24, 2018 - DAY TWO

By the Court 79
Kenneth Wayne Thompson
Direct by DeBusk 86
Cross by Bellamy 94
Cross by Spratlin 100
Redirect by DeBusk 103
Recross by Bellamy 104
Reggie Benton
Direct by DeBusk 105
Cross by Bellamy 109
Cross by Spratlin 112
Aaron Jones
Direct by DeBusk 115
(State's 7 Published - No Audio) 118
Cross by Bellamy 120

INDEX

Pg.

Aaron Jones

Cross by Spratlin 122

Caroline Alexina Rose

Direct by Oskin 124

(State's 8 published - Audio Not Transcribed herein).. 130

Cross by Bellamy 132

Cross by Spratlin 141

Redirect by Oskin 145

Amy Vicks

Direct by DeBusk 146

Cross by Bellamy 156

Cross by Spratlin 160

Redirect by DeBusk 161

By the Court 163

Michael Vann

Direct by DeBusk 166

Cross by Brown 178

Cross by Spratlin 187

By the Court 188

Sachin Patel

Direct by Oskin 190

Cross by Bellamy 197

Cross by Spratlin 198

INDEX

Pg.

Roger Garett Williams
Direct by DeBusk 201
Cross by Bellamy 207
Tonya Huneycutt
Direct by DeBusk 210
Cross by Bellamy 219
Cross by Spratlin 220
Redirect by DeBusk 221
Bob Crouch
Direct by Oskin 223
Cross by Bellamy 229
Cross by Spratlin 231
By the Court 232
Edward Leroy Proctor, Jr.
Direct by DeBusk 235
Cross by Bellamy 243
Cross by Spratlin 245
Redirect by DeBusk 247
By the Court 248

APRIL 25, 2018 - DAY THREE

NEIL V. BIGGERS HEARING

Philip Levett
Direct by Oskin 253

INDEX

Pg.

Philip Levett

Cross by Bellamy 258

Redirect by Oskin 260

Recross by Bellamy 261

Robert Klass

Direct by Oskin 264

Cross by Bellamy 270

Shaniah Holmes

Direct by Oskin 274

Cross by Bellamy 278

Cross by Spratlin 280

By the Court 281

Argument by Bellamy 281

Argument by Oskin 282

Argument by Bellamy 283

Ruling by the Court 284

By the Court 286

James Helms

Direct by Oskin 289

Cross by Bellamy 298

Cross by Spratlin 303

Redirect by Oskin 305

Recross by Spratlin 307

INDEX

Pg.

Philip Levett
- Direct by Oskin 308
- Cross by Bellamy 313
- Cross by Spratlin 314

Robert Klass
- Direct by Oskin 316
- Cross by Bellamy 322
- Cross by Spratlin 323
- Redirect by Oskin 324

By the Court 326

Shaniah Holmes
- Direct by Oskin 327
- Cross by Bellamy 332
- Cross by Spratlin 333

By the Court 334

Will Lynch
- Direct by DeBusk 337
- Cross by Bellamy 353
- Cross by Spratlin 363
- Redirect by DeBusk 369
- Recross by Bellamy 373
- Recross by Spratlin 374

By the Court 376

INDEX

Pg.

Owen Lynam
- Proffer Direct by Bellamy 383
- Proffer Cross by DeBusk 384

By the Court 385

Owen Lynam
- Direct by DeBusk 386

By the Court 427
- Direct by DeBusk 428
- Cross by Bellamy 443
- Cross by Spratlin 467
- Redirect by DeBusk 475
- Recross by Bellamy 480
- Recross by Spratlin 481

By the Court 482

APRIL 26, 2018 - DAY FOUR

By the Court 483

Tabetha Oxendine
- Direct by DeBusk 486
- Cross by Bellamy 503
- Cross by Spratlin 508

By the Court 520

Motions 522

By the Court 541

INDEX

	Pg.
Charge Conference	560
By the Court	567
Closing by DeBusk	568
Closing by Bellamy	588
Closing by Spratlin	603
By the Court	628
Charge to Jury	630
By the Court	642
APRIL 27, 2018 - DAY FIVE	
By the Court	648
Verdict of Jury	650
Polling of Jury	652
By the Court	654
Motions	655
Sentencing	657
Certificate of Court Reporter	665

EXHIBITS

No.		ID	EV
S1	1 Photo		90
S2	1 Photo		88
S3	1 Photo	80	91
S4	Large Poster (aerial)		85

EXHIBITS

No.		ID	EV
S5	Large Poster (aerial)		85
S6	Stipulation		85
S7	DVD (in-car cam)		118
S8	DVD (body cam)		130
S9	1 Photo		154
S10	1 Photo		149
S11	1 Photo		152
S12	1 Photo		152
S13	1 Photo	170	293
S14	1 Photo	170	293
S15	1 Photo		169
S16	1 Photo		193
S17	1 Photo		194
S18	1 Photo		197
S19	1 Photo		197
S20	1 Photo		197
S21	1 Photo		204
S22	Doc (2 pgs) Registration, etc.		203
S23	CD		205
S24	1 Photo		207
S25	1 Photo		211
S26	DVD		216
S27	CD/DVD		214

EXHIBITS

No.		ID	EV
S28	Receipt		218
S29	CD/DVD		226
S30	1 Photo		229
S31	Receipt		229
S32	Receipt		229
S33	Photo of Victim	238	
S34	Photo of Victim	238	
S35	Styrofoam head		240
S36	1 Photo		297
S37	1 Photo		293
S38	1 Photo		293
S39	1 Photo		295
S40	1 Photo		295
S41	1 Photo		295
S42	1 Photo		295
S43	1 Photo		295
S44	6 Photos	256	320
S45	2 pgs paper document - Instructions Sheet		320
S46	Bag and contents (purse, etc.)		296
S47	Report		344
S48	Report		345
S49	Report		347
S50	Report		350

EXHIBITS

No.		ID	EV
S51	Times and Dates of Videos		485
S52	1 Photo		387
S53	1 Photo		402
S54	1 Photo		402
S55	1 Photo		403
S56	1 Photo		405
S57	1 Photo		401
S58	1 Photo		401
S59	1 Photo		407
S60	1 Photo		399
S61	1 Photo		487
D1	(McIver) large notebook	356	
D2	(McIver) large notebook	356	
C1	Voir Dire Questions	14	
C2	E-mail to Bellamy and Spratlin	47	
C3	Note from Jury		
C4	Typewritten Charge	645	
C5	Typewritten Charge	645	
C6	Note from Jury	646	
C7	Typewritten Charge	648	
C8	Letter from Victim's Grandfather		

APRIL 23, 2018 - DAY ONE

(REPORTER'S NOTE: Jury Venire enters courtroom.)

VOIR DIRE:

THE COURT: All right, ladies and gentlemen, we're going to start the case of the State of South Carolina versus Nicholas Jacob McIver and Terrell Freeman. Now, these defendants have been charged by the State of South Carolina with several offenses. How that goes is the state charges the defendants, an indictment is issued. Now the indictment for that crime is issued and served on the defendant. In this particular matter, the defendants have pled not guilty to those indictments. Now, the indictments are the allegations of the state. They are not evidence, cannot be considered by you as evidence in the case. I am going to read to you certain information contained in the indictments for the only or sole purpose of seeing whether or not any potential juror has any information about this particular matter or they need to bring to the Court's attention some matter involved regarding this particular case.

Now ---

MR. DEBUSK: Your Honor, may we approach; may we approach briefly?

THE COURT: Sure.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury venire.)

COURT'S EXHIBIT NUMBER 1

MARKED FOR IDENTIFICATION

THE COURT: All right, ladies and gentlemen. Now, regarding this particular matter, I told you that the state has charged the defendants, Nicholas McIver and Terrell Freeman with certain offenses to which they have pled not guilty. The state has charged the defendant Terrell Freeman with the crimes of murder, kidnapping, possession of a weapon during the commission of a violent crime, and grand larceny valued at 2,000 to 10,000. The state has also charged the defendant, Nicholas McIver with the crimes of murder, kidnapping, possession of a weapon during the commission of a violent crime, and grand larceny.

Now, regarding this particular matter, and I'll start with the indictments against Mr. McIver, and again, I'm only reading these to you, understanding they are mere allegations, not facts or evidence. The state has charged that Nicholas Jacob McIver along or in combination with another, did in Horry County, on or about July 9th, 2016, willfully, feloniously, and intentionally killed the victim, Amanda Fisher, with malice aforethought, either expressed or implied, by means of shooting and the victim did die as a proximate result thereof on or about July 9th, 2016 in Horry County in violation of the Code of Laws, State of South Carolina, 1976, as amended.

The state has also charged that the defendant, Nicholas Jacob McIver, did in Horry County, on or about July 9th, 2016, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Amanda Fisher, with authority of law and again in violation of the Code of Laws of the State of South Carolina, 1976, as amended.

The state has also charged that Nicholas Jacob McIver, did in Horry County, on or about July 9th, 2016, possess a firearm or visibly displayed what appeared to be a firearm during the commission or attempted commission of a violent crime again in violation of the Codes of Laws of the State of South Carolina, 1976, as amended.

And finally, the state charges that the defendant, Nicholas Jacob McIver, did in Horry County, on or about July 9th, 2016, take and carry away the personal goods of Amanda Fisher valued at more than 2,000 but less than $10,000 described as follows: 2012 Chevrolet Malibu with the intent to deprive the owner permanently of such property and convert the goods to his own use, again in violation of Code of Laws the State of South Carolina, 1976, as amended.

The state has in similar indictments, charged the defendant, that the defendant, Terrell Freeman, did in Horry County, on or about July 9th, 2016, willfully, feloniously, intentionally killed the victim, Amanda Fisher, with malice aforethought, either expressed or implied, by means of a

gunshot. The victim did die as the proximate result thereof or about July 9th, 2016 in Horry County, again in violation of the Code of Laws of the State of South Carolina, 1976, as amended.

The state has charged that Terrell Freeman, did in Horry County, on or about July 9th, 2016, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Amanda Fisher without authority of law and again in violation of the Code of Laws, State of South Carolina, 1976, as amended.

The state has also charged that the defendant, Terrell Freeman, did in Horry County, on or about July 9th, 2016, possess a firearm or visibly display what appeared to be a firearm during the commission or attempted commission of a violent crime again in violation of the Code of Laws of the State of South Carolina, 1976, as amended.

And finally that the defendant, Terrell Freeman, did in Horry County, on or about July 9th, 2016, take and carry away the personal goods of Amanda Fisher valued at more than 2,000 but less than $10,000 described as follows: A 2012 Chevrolet Malibu with intent to deprive the owner permanently of such property and convert the goods to some use again in violation of the Code of Laws of the State of South Carolina, 1976, as amended.

Is there any member of the potential jury that knows anything about this particular case, has any information about

this particular case that they need to give to the Court? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. The possible or potential witnesses in this case are as follows -- now, I'm going to read, read those to you. Now, regarding those possible witnesses, it may very well be that not all of them are called as witnesses, but the potential exists that any or all of them could be called. Now, the first 10 of them are employed by the North Myrtle Beach Police Department. So that's Owen Lyman, L-Y-M-A-N; Will Lynch; Paul Sheets; Amy Vymislicky, V-Y-M-I-S-L-I-C-K-Y; Carrie Rose; Alex Johnson; Michael Thrower; Stephen Murphy; William McLeod; and Aaron Jones.

The next five are employed by the Charlotte/Mecklenburg Police Department: James B. Helms; Christine Cain; Matthew Bohlheber, B-O-H-L-H-E-B-E-R; Philip Levett; Robert Klass, K-L-A-S-S.

Then individuals by the name of Sachin, S-A-C-H-I-N, Patel; Jeremy Williams; Garett Williams; Tabetha Oxendine; Kenneth Thompson; I just spell this one, T-Y-Q-U-A-J-U-A Wiggins; Shania Holmes; Tonya Honeycutt; Bob Crouch; -- all those are potential witnesses -- Dr. Edward Proctor at Grand Strand Regional Medical Center; Michael Van; Leonard Stewart; Garett Holmes; Reggie Benton; and Ryan Duane of the South Carolina Law Enforcement Division; as well as Nicholas Jacob

McIver; and Terrell Freeman.

Is there any member of the jury panel that's related by blood or marriage, close personal friends, acquaintances of, knows any of these possible or pctential witnesses? If so, please stand at this time.

All right. Yes, ma'am, your name and jury number, please, ma'am?

JUROR 178: Jennifer Johnson, Juror Number 178.

THE COURT: All right. Who is it that you might know, please, ma'am?

JUROR 178: My husband is a police officer and he has worked with Mr. Aaron Jones.

THE COURT: All right. Very good. All right. Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 178: Yes, sir.

THE COURT: Thank you very much.

Anyone else?

(REPORTER'S NOTE: No response.)

THE COURT: All right. Is there any member of the jury panel that's ever had any matters of any kind handled, worked on, looked at, in any way, by the 15th Circuit Solicitor's office, that's the prosecuting office that covers Horry and Georgetown Counties? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of the jury panel, either you yourself or a member of your immediate family related by blood or marriage to anyone employed at the 15th Circuit Solicitor's office, either here in Horry or in Georgetown County? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of the jury panel, that either you yourself or a member of your immediate family has ever had any matters worked on, handled, looked at in any way by the 15th Circuit Public Defender's office that covers again, Horry and Georgetown Counties? If so, please stand.

Yes, sir, your name and jury number, please?

JUROR 348: David Sperling.

THE COURT: And then was it yourself or a family member?

JUROR 348: Was that a -- I was at a public ---

THE COURT: Now don't -- I don't want any explanations. Just listen to my question.

JUROR 348: Myself, sir.

THE COURT: All right. Can you give to the State of South Carolina and to the defendant a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 348: Yes, sir, I can.

THE COURT: Thank you very much.

MR. BELLAMY: Your Honor, what was that number?

THE COURT: Your number again, juror number again?

JUROR 348: My juror number is -- hold on, I'm just getting it -- 348. Thank you, sir.

THE COURT: All right. Thank you.

Is there any member of the jury panel that's related by blood or marriage, close personal friends, acquaintances of anybody employed at the 15th Circuit Public Defender's office either in Horry or Georgetown Counties? If so, please stand.

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

JUROR 5: Number 5, Angela Allen. Jimmy Richardson is a close family friend.

THE COURT: All right, ma'am. Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 5: Yes, sir.

THE COURT: Thank you very much.

All right. Counsel for the state, if you would stand up and identify yourselves to the jury, please.

MR. DEBUSK: I'm Senior Assistant Solicitor, George DeBusk. I work with the 15th Circuit Solicitor's office.

MR. OSKIN: Assistant Solicitor, Seth Oskin, also employed by the 15th Circuit Solicitor's office.

THE COURT: All right. For the defense, gentlemen, Mr. Bellamy?

MR. BELLAMY: My name is Scott Bellamy. I have a law

practice here in Conway right across from the old courthouse on Third Avenue and this is my client, Nicholas McIver, and seated next to him is Tangie Cook, now, who works for me.

Thank you, Judge.

THE COURT: Thank you.

Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor. I'm Martin Spratlin. I'm an attorney here in town. I represent Mr. Terrell Freeman, who is seated to my left.

THE COURT: All right. Thank you very much.

All right, ladies and gentlemen, regarding these attorneys have identified themselves to you, is there any member of the jury panel that's related by blood or marriage, close personal friends, acquaintances of, any of them, or regarding the defense, the private practice law, is there any member of the jury panel that has been a client of theirs in the past or currently? If any of that applies to you, please stand at this time.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you very much.

All right. Is there any member of the jury panel that you believe you have any kind of personal, political, religious, philosophical belief that you believe would prevent you from being a fair and impartial juror in this case? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Is there any member of the jury panel that either you yourself or a member of your immediate family was in the past a law enforcement officer or in regards to a family member, they may be in law enforcement now. So, yourself, were you in law enforcement in the past, family member, if you have a family member who is currently or in the past in law enforcement? If so, please stand.

All right. Yes, sir, your name and juror number again please?

JUROR 348: David Sperling, Juror Number 348.

THE COURT: All right, sir, and was it yourself or a family member?

JUROR 348: Johnny Grassia (spelled phonetically) 14719, New York City Police Department 1980's. I'm the cousin of John.

THE COURT: All right, sir, very good. Can you give to the State of South Carolina and to the defendant a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 348: Yes, I can, Your Honor.

THE COURT: Thank you very much.

All right. Standing next to him, yes, sir?

Juror 165: Matthew Hughes, 165. I was a -- I worked for Horry County Sheriff's Department at J. Reuben Long Detention

Center.

THE COURT: All right. Can you give to the State of South Carolina and to the defendant a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 165: Yes.

THE COURT: Thank you very much.

All right. Behind him, yes, ma'am, your name and juror number again.

JUROR 178: Jennifer Johnson, Juror Number 178. My husband is a police officer with the Myrtle Beach Police Department.

THE COURT: All right, ma'am. Can you give to the State of South Carolina and to the defendant a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 178: Yes, sir.

THE COURT: Thank you very much, ma'am.

Yes, ma'am, in the middle right there. Yeah, closer to me, first.

JUROR 77: Number 77, my brother was a captain of the City of Conway, Gary Hardee.

THE COURT: All right. Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 77: Yes, sir.

THE COURT: Thank you very much.

Yes, ma'am, behind her now.

JUROR 303: Dena Richardson, 303. My father is a retired police officer.

THE COURT: All right. And where from please, ma'am?

JUROR 303: Virginia.

THE COURT: Virginia. All right. Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 303: Yes, sir.

THE COURT: Thank you very much.

Yes, sir?

JUROR 284: Danny Pasatiempo, 284, and my father was a special police in Washington, D.C.

THE COURT: All right, sir. Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 284: Yes, Your Honor.

THE COURT: Thank you very much, sir.

All right, ladies and gentlemen, is there any member of the jury panel either you yourself or a member of your immediate family a member of any kind of victims' rights or law enforcement support organization? Let me give you a couple of examples, I'm not giving you an exhaustive list here, just trying to give you a couple of examples here:

Mothers Against Drunk Driving, Citizens Against Violent Crime, South Carolina Law Enforcement Officers' Association, South Carolina Sheriffs' Association, just some kind of victims' rights or law enforcement support organization, either yourself or member of your immediate family a member? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Next question, ladies and gentlemen, I'm gonna ask whether or not you yourself or a member of your immediate family has ever been the victim of a crime. Now, I am not going to ask you what occurred. I do not want you to volunteer any information to me about what occurred. The question is gonna be straightforward, was it yourself or a family member, and then I'll ask the qualification question. So, is there any member of the jury panel, either you yourself or a member of your immediate family has ever been the victim of a crime? If so, please stand.

All right. Yes, ma'am, your name and juror number please, ma'am?

JUROR 100: Donna Ebling, Juror Number 100.

THE COURT: And was it yourself or a family member?

JUROR 100: Family.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial; can you be a

fair and impartial juror in this case?

JUROR 100: Yes.

THE COURT: Thank you very much, ma'am.

Yes, sir, in the middle, your name and juror number?

JUROR 293: 293, Adam Powers.

THE COURT: Yourself or a family member?

JUROR 293: Myself.

THE COURT: Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 293: Yes, sir.

THE COURT: Thank you very much.

Yes, sir, name and juror number?

JUROR 277: Matt Nichols, 277.

THE COURT: Yourself or a family member?

JUROR 277: Myself.

THE COURT: Can you give to the State of South Carolina and to the defendants a fair and impartial trial; can you be a fair and impartial juror in this case?

JUROR 277: I honestly don't know.

THE COURT: All right, sir, come up and talk to me then.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury venire. Juror 277 excused from the trial of this particular case.)

THE COURT: Before I ask my final question from the

questions submitted -- and, Mr. Bellamy, any by number that you want me to ask?

MR. BELLAMY: Yes, sir, Your Honor. I would ask that Number 5, 6, 7, 10, and 11, Your Honor.

THE COURT: All right, sir.

All right. I believe you've marked the exhibit. I respectfully decline to ask those questions. I believe I've asked the proper question along with the last one I'm going to ask at this time.

Anything else from you Mr. Spratlin on the -- on those questions?

MR. SPRATLIN: No, Your Honor, I think it's all been covered.

THE COURT: All right. Very good.

All right. The final question, ladies and gentlemen, is there any member of the jury panel that you believe that you know of any reason that you cannot give to the State of South Carolina and the defendants a fair and impartial trial, that is for any reason whatsoever you believe you cannot be a fair and impartial juror in this particular case? If so, please stand.

Anything else from the state?

MR. DEBUSK: Nothing, Your Honor.

THE COURT: Other than what we've covered, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

JURY SELECTION:

THE COURT: All right, ladies and gentlemen, this is gonna be the process how this is going to go. Your names have been selected in a random order. The Clerk of Court's representative is going to call a name. If and when your name is called, you will come forward -- you'll come forward and come to a place basically right in front of the court reporter here, Ms. Dixie, right there, she's raised her hand. You'll come to a place right in front of the court reporter, you turn and face to the back of the courtroom. At that point in time, the clerk's representative will inquire of the state to present or excuse the juror. After that, the clerk will inquire of the defense to seat or excuse the juror. If you are presented by the state and you are seated by the defense, then the clerk will instruct you to go to the jury box and have a seat in the jury box. If you are excused either by the state or the defense, then you will go back and have a seat from whence you came.

Gentlemen, if y'all would come up for one second?

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury venire.)

THE COURT: All right, Madam Clerk, if you would start calling names, please, ma'am.

CLERK: Okay. Number 150, Susan Hazzard.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defense?

MR. BELLAMY: Court's indulgence, please.

THE COURT: Yes, sir.

MR. BELLAMY: On behalf Defendant McIver, we would excuse this juror, Your Honor.

THE COURT: All right. Very good.

CLERK: You're excused from this particular case.

Number 67, Janice Combs.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defense?

MR. BELLAMY: Seat the juror.

CLERK: Please be seated in the jury box.

THE COURT: No, there's two defendants, ma'am. You have to ask each defendant.

CLERK: I'm so sorry. I've never done this before, sorry. So I say it again?

THE COURT: No, ma'am. Defendant Freeman?

CLERK: Okay. Defendant Freeman, I apologize.

MR. SPRATLIN: No problem. Please seat the juror.

CLERK: Okay. Have a seat in the jury box.

What say the state? I'm sorry.

THE COURT: Call somebody.

CLERK: 189, Jennie Kendrick.

What say the state?

MR. DEBUSK: Please excuse the juror.

CLERK: You're excused from this particular case.

Juror 252, Charlene Medlin.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defense?

MR. BELLAMY: Seat Ms. Medlin.

CLERK: And Defense?

MR. SPRATLIN: Please seat the juror.

CLERK: All right. Please be seated in the jury box.

Number 33, Aubree Betterini.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant Freeman?

THE COURT: McIver.

CLERK: Defendant McIver?

MR. BELLAMY: Please excuse Ms. Betterini from the trial of this particular case.

Thank you, ma'am.

CLERK: You're excused from this particular case.

Number 394, Earline Woodard.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Woodard, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: All right. Please be seated in the jury box. Number 348, David Sperling.

THE COURT: Come around please, sir. Come around up here in front of the court reporter. Yes, sir.

CLERK: What say the state?

MR. DEBUSK: Please excuse ---

JUROR 348: South Carolina. I'm sorry.

THE COURT: All right. You're excused. That's all right, Mr. Sperling, you've been excused from this case. Go ahead and have a seat. Thank you, sir.

CLERK: Number 165, Matthew Hughes.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Mr. Hughes.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 330, Stacie Simmons.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please excuse Ms. Simmons from this particular trial, Your Honor.

CLERK: You're excused from this particular case.

Number 315, Kaitlyn Sadler.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: We would excuse Ms. Sadler from the trial of this particular case, Your Honor.

CLERK: You're excused from this particular case.

Number 245, Diane McGar.

What say the state?

MR. BELLAMY: Please present the juror.

JUROR 245: Diane McGar.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Ms. McGar.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 261, Polly Miller.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Ms. Miller.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 237, Marc Matson.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: We would excuse Mr. Matson from the trial of this particular case.

CLERK: You're excused from this particular case.

Number 308, Jan Rohner.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. -- how do you pronounce your name?

JUROR 308: Rohner.

MR. BELLAMY: Rhoner. Thank you, ma'am.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 79, Taylor Creel.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Creel.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 77, Teresa Cox.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Cox, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 243, Veanna McCary or McCray?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. McCray, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 303, Dena Richardson.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Richardson, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

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

Number 151, Marcia Hearl.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: We would excuse Ms. Hearl from the trial of this particular case, Your Honor.

CLERK: You're excused from this particular case.

Number 61, Levi Cardoso.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Mr. Cardoso.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 293, Adam Powers.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Mr. Powers.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 64, Christopher Carpin.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: I would excuse Mr. Carpin from the trial of this particular case.

CLERK: You're excused from this particular case.

Number 345, Joanne Smithey.

MR. BELLAMY: What was the number again, Madam Clerk?

CLERK: 345.

MR. BELLAMY: Thank you.

CLERK: What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please excuse -- how do you pronounce your name, ma'am?

JUROR 345: Smithey.

MR. BELLAMY: Smithey. Please excuse Ms. Smithey.

CLERK: You're excused from this particular case.

Number 262, Tashma Minto.

What say the state?

MR. DEBUSK: Please excuse the juror.

CLERK: You're excused from this particular case.

Number 17, Linda Baker.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Baker.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: All right. Please be seated in the jury box. Number 42, Tyler Boucher.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat -- how do you pronounce your last name?

JUROR 42: Boucher.

MR. BELLAMY: Mr. Boucher, thank you.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror from the trial.

CLERK: You are excused from this particular case. Number 178, Jennifer Johnson.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Ms. Johnson.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 5, Angela Allen.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Allen.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 73, David Covington.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Mr. Covington.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 198, Jarrod Kubereit.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat -- how do you pronounce your name?

Juror 198: Kubereit.

MR. BELLAMY: Kubereit. Thank you, sir.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 364, Angelia Todd.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: If you would excuse Ms. Todd from the trial of this particular case, Your Honor.

CLERK: You're excused from this particular case.

Number 100, Donna Ebling.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: If you would excuse Ms. Ebling from the trial of this particular case, Your Honor.

CLERK: You're excused from this particular case.

Number 144, Nicole Harbut.

What say the state?

MR. DEBUSK: Please excuse the juror.

CLERK: You're excused from this particular case.

Number 260, Justice Miller.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Mr. Miller.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

Number 359, Gilad Tannenbaum.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Please seat Mr. Tannenbaum.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

THE COURT: All right. We're going to have two alternates, gentlemen. And for each alternate, there will be two apiece. So, two for each alternate. Okay.

CLERK: Number 6, Teresa Allen?

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: We would strike Ms. Allen, please.

CLERK: You're excused from this particular case.

Number 43, Serena Bradford.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Bradford, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please take a seat in the jury box.

THE COURT: All right, ma'am, you're one of the alternates. Thank you.

CLERK: Number 324, Stuart Shelton.

What say the state?

MR. DEBUSK: Please excuse this juror.

CLERK: You're excused from this particular case.

Number 54, Lindsay Buckles.

What say the state?

MR. DEBUSK: Please present the juror.

CLERK: Defendant McIver?

MR. BELLAMY: Seat Ms. Buckles, please.

CLERK: Defendant Freeman?

MR. SPRATLIN: Please seat this juror.

CLERK: Please be seated in the jury box.

THE COURT: You are the other alternate, ma'am.

All right. Any objections to the jury as impaneled from the state?

MR. DEBUSK: None from the state, Your Honor.

THE COURT: From the defendant McIver?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: From the defendant Freeman?

MR. SPRATLIN: No, Your Honor.

THE COURT: Very good. I find the jury has been properly impaneled pursuant to *Batson vs. Kentucky* and *JEB vs. Alabama*.

BY THE COURT:

THE COURT: All right, ladies and gentlemen of the jury, I'm gonna ask that you do one thing for the Court in just a few minutes and that's going to be select your foreperson for this particular jury. So, let me tell you very briefly what the duties and responsibilities of the foreperson are.

If we are here in the courtroom during the course of the trial and some matter comes up, the witness needs to speak up or the lawyers or whatever the situation is the foreperson will raise your hand, gets the Court's attention, we will handle the matter whatever it is. If you're back in the jury room and some matter comes up, you'll take the pad and pen provided to you, you will write out a note, you will sign it, you'll give it to the bailiff and that'll come to me and, again, we'll handle that matter whatever it might be.

When we have gone through the evidentiary portion of the trial and we've heard all of the witnesses testify and received any kind of documentary or physical evidence that might be introduced in this particular matter, and then we've heard the closing arguments of the attorneys in this matter and then I have given to you the law that you will apply to the facts and evidence you have heard in this particular case,

after that I will submit the case to you, give the case to you for your deliberations and your unanimous decision in this particular matter. Now, in that instance and that regard, the foreperson is going to act like the chairperson at a meeting and guide the discussions, if necessary. An important duty and responsibility that the foreperson has is to make sure that everybody that wants to, has an opportunity to be heard. Everybody's voice has an opportunity to be heard, everybody can speak on the issue that wants to. Now, the foreperson's voice and vote carries no more weight than any other member of the jury. All members of the jury are equal in that regard but the foreperson does need to remain in charge and, again, guide the discussions, if necessary. Again, if some issue comes up and you take the pad and pen, write out the note, sign it, give it to the bailiff, and again it'll come to me and we'll handle the matter whatever it is.

The final duty and responsibility of the foreperson is once the jury has well and truly deliberated, you have reached your unanimous decision in these matters, the foreperson will take the verdict forms that the Court will provide to you, check the appropriate block or write out the appropriate word, thereafter signing your name as the foreperson indicating that indeed is the verdict of each and every member of the jury, excuse me, of the jury in this particular case so if called upon when the verdict was read by the clerk of court, all

members of the jury can affirm their verdict by the raising of their right hand.

I'm gonna ask that you back to your jury room, select your foreperson, knock on the door, let the bailiff know who that person is.

Now, the two alternates, Juror Number 43 and 54, ladies, y'all are alternates to substitute in, if necessary. You can vote on who the foreperson is but obviously being alternates the two of you cannot be the foreperson. Everyone else is eligible to be the foreperson. So, if you would all accompany the bailiff to the jury room, select the foreperson, knock on the door and let the bailiff know who it is.

Thank you.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: All right, ladies and gentlemen of the jury panel, that were not selected for this particular case, I'm gonna ask that you call back the juror information line tonight after 6 o'clock, follow those instructions whatever they may be. They might very well be to have you call back at a different date and time but, whatever those instructions are, please follow them. With that, you are now excused.

Thank you very much.

(REPORTER'S NOTE: Jury Venire exits courtroom.)

THE COURT: So, what we'll do, gentlemen, looking at the

time, we're gonna break for lunch. We'll give them, let's have them come back at 2:30. The jury will come back at 2:30. We'll do the opening statements and then we'll break for the day and we'll start again tomorrow morning.

So, with that, I'll excuse y'all until 2:30. Anything from the state before we break?

MR. DEBUSK: No, Your Honor.

THE COURT: All right.

MR. BELLAMY: Your Honor ---

THE COURT: Yes, sir.

MR. BELLAMY: On the issue of reading your charge on the hand of one?

THE COURT: Yes, sir, I can do that and also I think y'all wanted to put something on the record about the continuance that Judge Culbertson denied; is that correct, gentlemen?

MR. SPRATLIN: I believe so, Your Honor.

THE COURT: Who is that that wanted to do that?

MR. SPRATILIN: Your Honor, I think we both did.

THE COURT: Okay.

MR. SPRATLIN: I think we both filed motions for a continuance. Just real briefly, Your Honor, about two weeks ago, both defendants, I believe, filed motions for a continuance in this matter due to DNA evidence that was returned to us on April 9th by way of a South Carolina

Enforcement Division report. We moved before the Honorable Ben Culbertson for a continuance, filed motions; the state filed no response. Judge Culbertson responded by email stating that based on the motions provided that he was not going to grant a continuance. I understand the Court's position on not being able to re-hear the continuance motion. We would just ask to mark for a Court's exhibit the email from Judge Culbertson denying the motions for continuance.

THE COURT: You join in that, Mr. Bellamy?

MR. BELLAMY: Yes, Your Honor; I do.

THE COURT: Any objection to that from the state?

MR. DEBUSK: No, Your Honor, we would like to make the motion and the response part of the record as well.

THE COURT: All right. I'm assuming those are motions filed with the clerk of court as part of the file ---

MR. DEBUSK: Yes, they were, Your Honor.

THE COURT: --- but if not ---

MR. DEBUSK: They are.

THE COURT: --- the motions by the defense and the response of the state are hereby made a part of the record.

MR. DEBUSK: Thank you, Judge.

MR. SPRATLIN: Thank you, Your Honor. And I have a copy of the printed email from Judge Culbertson.

THE COURT: All right. So, if you'd just hand that to the court reporter, please?

MR. SPRATLIN: And, Your Honor, this has not been filed in the clerk of court's office.

THE COURT: Right. Okay. And that's fine and that's just gonna be an exhibit obviously that will not be going to the jury as with the other exhibits.

MR. DEBUSK: Yes, sir, Your Honor

THE COURT: Since you marked the other one's Court's Exhibit. We might as well be consistent and mark this one as 2. Okay?

COURT'S EXHIBIT NUMBER 2

MARKED FOR IDENTIFICATION

THE COURT: Okay. All right. All right. Now, Mr. Bellamy, you had asked other than the matter about the hand-of-one charge, is there anything else from the defendant McIver, at this time?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: From the defendant Freeman?

MR. SPRATLIN: Your Honor, if I could just put on the record real fast, I had filed -- or I was gonna ask the Court for a motion in limine regarding the victim in this case being a witness in the murder case up in Charlotte-Mecklenburg County. I believe the state has agreed that that's appropriate as stated in chambers in a pre-conference. I did not plan on bringing forth that evidence, so I would just like to place that on the record.

THE COURT: Is that correct, Solicitor?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. Very good.

Anything else from the defendant Freeman?

MR. SPRATLIN: No, Your Honor.

MR. BELLAMY: Your Honor, and I'm sorry, I misspoke. Also, which had been previously discussed in chambers, there is a statement by Co-defendant Freeman that has been made that because of *Bruton* issues, that will not be in the case in chief as well as it would relate to my client.

THE COURT: Now, is that correct, Solicitor?

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

THE COURT: All right. And as I understand it, gentlemen, that only unless and until the defendant intends to testify will we take up that issue regarding the *Jackson v. Denno* matter; is that correct, gentlemen? Any objection to that?

MR. OSKIN: None from the state, Your Honor.

MR. SPRATLIN: Not on behalf of Defendant Freeman, Your Honor.

MR. BELLAMY: No, sir, Your Honor.

THE COURT: All right. Very good. All right. So, with that, you wanted me to tell you regarding the hand-of-one charge that I would use. I will read that to you. Also, I'll too you that I have in the past and it will obviously be

dependent upon the facts that are developed in this particular matter, but in conjunction with the hand-of-one charge, I've also had instructed the jury about mere presence. So, I'm gonna read both of them to you understanding that obviously I've not heard the evidence and not decided what the charge is gonna be to the jury, but just so that if I did use that, I would be using it. So, mere presence says, mere presence scene is not sufficient to prove someone guilty of a crime. The defendant's presence where a crime is being committed or mere association with the person who commits a crime does not make a defendant an accomplice or an aider and abettor of the person committing the crime. The burden is on the state to prove every element of the crime charged. If you find, after reviewing all of the evidence that the state has proved that the defendant was only present at the scene of a crime and that they have not proved beyond a reasonable doubt any other participation in the crime then you must find the defendant not guilty. The law is that proof at the scene of the crime is not sufficient to find someone guilty.

Hand of one. If a crime is committed by two or more persons, who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person, which happens as a probable or natural consequence of the acts done in carrying

out the common plan and purpose. The act of one is the act of all or, as it is sometimes said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principle. Guilt as a principle is shown by actual or constructive presence at the scene as a result of prior arrangement. The state must prove beyond a reasonable doubt by competent evidence, the theory of the hand of one is the hand of all.

The principle in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime; all are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid, abet, and assist in the commission of a crime. Mere presence at the scene of a crime is not sufficient to convict one as a principle on the theory of aiding and abetting.

That's the intention of the Court regarding hand-of-one and mere presence. So, if there is anything else that y'all want to suggest regarding any charge, obviously you need to submit that to the Court for my consideration from the state or either defendant. All right?

All right. And, gentlemen, for your information, the jury has selected Juror Number 79, Juror Number 79, as the foreperson.

With that, we'll break until 2:30.

Thank you very much.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: Tell the jury to be back at 2:30, please.

(To Deputies) So, y'all just make sure that they are kept separate and apart. Okay?

DEPUTY: Yes, sir.

THE COURT: All right. Thank you very much.

All right. I'll see y'all at 2:30 then.

Thank you very much.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: All right. The first thing, Juror Number 79, Ms. Creel, you are the foreperson. Please go down to the end, if you would, please, ma'am.

And the two alternates, y'all are occupying the two end seats, correct? All right. So, those are the only assigned seats. The foreperson and two alternates, that's where y'all always have to sit when you come back from the jury room. The rest of you ladies and gentlemen, just kind of fill in wherever it is you happen to be walking into the courtroom.

All right. The very first thing that's gonna happen in this matter is the clerk's representative, is going to administer your oath to you, so, if you would all please stand at this time.

(REPORTER'S NOTE: Jury duly sworn.)

THE COURT: All right. Is there any member of the jury panel that did not affirmatively take the oath as just given by the clerk's representative? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: No juror having stood, I find the jury properly sworn in this matter.

All right, ladies and gentlemen, I'm sure you're collectively sitting there and having some question as to what your job is and what you're going to be doing in this particular case. In essence, you are going to be the judges of the facts of this case. I will not indicate to you in any fashion what I think the facts of this case are. It will not be my job and my responsibility; it will be your job and your responsibility to evaluate the facts and evidence, the

testimony, the evidence presented in this matter, and then ultimately to decide whether or not the state has proven the guilt of the defendants beyond a reasonable doubt. Now, I told you and read to you the indictments, the charges against the two defendants, and reminding you again, those indictments are merely the charging documents, the documents which bring the matter to court. They're not evidence, they can't be considered by you as evidence. That will come from the witness stand and maybe some type of documentary or physical evidence introduced by the state.

But to these indictments, the defendants have pled not guilty. Now, each of the defendants, Mr. McIver and Mr. Freeman, they are charged with the crimes of murder, kidnapping, possession of a weapon during the commission of a violent crime, and grand larceny value of 2,000 to 10,000. Each one of those is a separate charge. Each of them has distinct elements of law. There will be different facts that will be presented by the state regarding those particular matters. When you ultimately at the end render your collective decision in this matter, you will have decided four cases against Mr. McIver and four cases against Mr. Freeman. And I'll remind you about this at the very end, but your unanimous verdict on each one of the four charges against each defendant, they don't have to be the same, they don't have to be consistent with each other. Each one of them, as I told

you, has separate facts and separate elements of law and you're gonna have to evaluate each one of them as against each defendant.

So, you're trying two cases in one and four charges against each defendant in this matter, and the verdict form will reflect that. At the very end, they'll be -- have four verdict forms as to Mr. McIver and four verdict forms as to Mr. Freeman that you'll have to render a separate decision on each one of them.

Again, the defendants have pled not guilty to the indictments. What did that do? That immediately put the burden of proof on the State of South Carolina to prove the defendants guilty of the crimes charged beyond a reasonable doubt. The defendants, at the time the indictments were drawn against them and served on the defendants, they were presumed innocent; they're presumed innocent; they are always presumed innocent unless and until you, the jury, collectively believe the state has proven the guilt of the defendant on the crime charged beyond a reasonable doubt.

It's going to be your job, ladies and gentlemen, based upon the facts and evidence presented in this case, to determine and to decide whether the state has met that burden to prove the defendants guilty, beyond a reasonable doubt. The defendants have nothing to show to you. The defendants have nothing to prove to you. It is the state's burden on

each and every one of the charges that it has levied or brought against each defendant.

In your evaluation of the facts and evidence, you being the judges of the facts, you will be called upon to judge the credibility and the believability of the witnesses that come before you and testify under oath. You're thinking about how do I judge somebody's credibility and believability; you do it every single day of your life. When somebody tells you something, you are automatically in your own mind judging whether or not you believe them. You use your good common sense. You use your good judgment that you use in conducting your own affairs. That's what we're asking you to do here during the course of this trial. Use your good common sense, apply it to the facts and the evidence, and then at the very end look at all the facts and evidence and see if you believe the state proved the defendant guilty of that crime that he's been charged with, beyond a reasonable doubt.

How the case will proceed. After these opening statements by the attorneys, we'll have the presentation of witnesses. They'll come before you and testify as to certain things that they know. After that, we'll have the closing arguments of the attorneys, then I will charge the law. I'm will give you the law that you will apply to the facts and evidence you've heard in this case, and then I'll submit the case to you for your deliberations and your unanimous decision

on each and every one of the charges against both of the defendants.

I am gonna ask that you do not discuss the case until I give it to you at the very end. There would be, with some, a tendency maybe to after one witness believe a certain thing, and if that's expressed, some people find it hard to then go back and say oh goodness, the very next witness, I've changed my mind and I now believe something else. So, you keep that to yourself. When you've heard all of the evidence, you know the law that you got to apply to the facts and evidence you've heard, then you're able to fully discuss it among yourselves and reach your unanimous decision in this matter.

The -- I talked about the opening statements by the attorneys and the closing arguments. Please remember they're important. They're each side's -- at the very beginning, the opening statement, their presentation to you of what they think is going to happen during the course of the trial. The closing arguments are their comments on the evidence. But understand, that's not evidence. Evidence is what comes from witnesses testifying to you under oath. Evidence might be some kind of documentary or physical evidence. That's the evidence that you must base your decision upon.

During the course of trial if for some reason the attorneys raise some objection or motion to the Court, please remember, if I deal with it in your presence, I don't send you

back to the jury room, so I can more fully discuss it with the lawyers, about one of my duties, that is governing the conduct of the trial, how the trial will be conducted. But, if something is objected to, please remember, I'm not talking about credibility and believability of witnesses. I'm just saying, yes, it's proper for the jury to hear or, no, it's not proper for the jury to hear and then you give it whatever consideration or weight you want to give it. I'm just saying yes, you can hear it; or no, you can't. I'm not gonna invade your province as to the facts and the evidence; you being the judges of the facts and evidence in this case.

We're asking you and, understandably, understand that we're asking you to do something that you're not trained, you didn't go to law school; we appreciate it. What you bring to the courtroom is something extremely important, your common experiences, your experiences in your own life, your common sense. That's what we need for you to use to evaluate the facts and evidence in this case and render a verdict based upon the facts and evidence, and your decision of whether or not the state has proved the defendants guilty beyond a reasonable doubt. And I know, I'm confident that you collectively will do that.

Solicitor?

MR. OSKIN: Yes, sir, Your Honor, if it may please the Court?

OPENING BY MR. OSKIN:

Good afternoon, ladies and gentlemen.

Around 11:15 in the North Myrtle Beach section of Horry County on July 9th, 2016, Kenneth Thompson was visiting from North Carolina, what he thought was gonna be a quiet lunch by himself. Shortly after he gets out of his car, he hears a loud bang. I think he quoted it as a kapow. He hears that to his right. He thinks a tired popped. As he's adjusting his view, he sees two men pulling out a woman's body out of white Chevy Malibu car. What was gonna be a quiet lunch by Mr. Thompson for himself, quickly turned into him being a witness to a murder.

That woman that was pulled from her vehicle was Amanda Fisher. And just 10 hours prior to that, she was in the Myrtle Beach area with her cousin, Tabetha Oxendine, for the night. Nicholas McIver and Terrell Freeman were also in Myrtle Beach that night. At some point, the four individuals meet. They hang out through that night until early in the morning. It's time for Ms. Oxendine to get back to her kids in Shalotte area. So, they all ride together in Amanda's vehicle to the Shalotte area. They take -- they drop Tabetha off. They make a stop at Amanda's -- let me back up a second. Amanda also had -- her family has a residence in the North Carolina area as well, and they make a stop there. She told her family she was gonna go to the beach that day. And from

the time she left her family's residence in North Carolina until the time she was supposed to go back to Myrtle Beach, something horrible happened, her killing.

After these defendants are seen dumping her body in the parking lot, leaving her for dead, they returned to the Myrtle Beach area. They were staying at a motel called the Lancer. Once they get to that Lancer motel, they're seen leaving that parking lot, Defendant Freeman driving the truck that they got to Myrtle Beach from in the first place, and the defendant McIver driving the -- Amanda Fisher's Malibu.

After they depart Myrtle Beach -- I'm not sure you're familiar with the routes between Myrtle Beach and Charlotte; there's a couple of different ways to get there. Defendant McIver takes the road less traveled to get back to Charlotte and that's a back road through small country towns throughout. We know this because he's seen on video surveillance stopping in Bennettsville, South Carolina, then he's stopping in a town called Marshville, North Carolina, it's roughly 30 miles outside of the Charlotte area. He uses the victim's debit card there to make small purchases. You'll see video surveillance of him in those stores. You'll see video surveillance of her car leaving the Bennettsville parking lot.

From the time he leaves Marshville, he returns to Charlotte area, there's a road there called Sally Lane. Specifically, there's a section of Charlotte called Idlewood

and Sally Lane is a spot not far from where one of his girlfriends lives. He gives her a call to meet him there and once he gets there, he burns the vehicle's car -- or he burns the victim's car. He burns Ms. Amanda's car. He's seen by an eyewitness doing this.

From there, we're standing before you today. I expect these defendants to be on trial for murder, kidnapping, grand larceny, and possession of a weapon during a violent crime. These defendants are charged under the hand-of-one-hand-of-all theory. In a nutshell, that means the act of one is the act of all. In this case, you can expect to hear from officers who responded to the scene in North Myrtle Beach. You'll hear from Mr. Thompson, whose point of view I gave at the beginning of this opening. You'll hear from the store clerks, who can verify that Mr. McIver was in those stores, the transactions that he made, and you'll hear from witnesses who saw them burn that vehicle.

As a solicitor, it's mine and Solicitor DeBusk's burden to prove their guilt beyond a reasonable doubt. Reasonable doubt is the proof that will leave you, the jury, firmly convinced of both of their guilt. It's not an insurmountable burden and it's certainly not an impossible burden. It's a very high burden. It's a burden Solicitor DeBusk and I take very seriously and we're prepared to meet it in this case.

Murder is defined in our state as the intentional killing

of another with malice aforethought, whether it's expressed or implied. Murder in South Carolina doesn't have to have premeditation, but it can. That's the timing and aforethought.

Kidnapping is the unlawful seizure, confining of another. There's a couple of provisions to what defines kidnapping. In our state statute, it's not always the high profile amber alerts scenarios you see. Holding someone against their will is sufficient for kidnapping in the State of South Carolina.

Grand larceny, this might be a little bit more what it sounds like. Grand larceny is the taking of another's goods and converting it to your own use. Here it's value over $2,000 and less than $10,000. That's the value that Amanda Fisher's white Chevy Malibu was valued at, which is why it's that specific range of grand larceny.

Possession of a weapon during a violent crime. Again, that's what it sounds like, that means they were in possession of a weapon during the commission of a violent crime. Here you have two violent crimes committed; murder and kidnapping.

You're gonna hear testimony in this trial that there was what's called a contact wound to Amanda Fisher's head, roughly right here above her right ear, exit wound goes out this way. There's malice aforethought. That's the manner of death and you take that into account with the same circumstances that her body was left there. Her body was left there to die.

These defendants couldn't get out of there fast enough, but they did stay in constant contact with each other before, during the commission of this murder, and until they got back to the Charlotte area.

Kidnapping, again, that gun to her head was the unlawful seizure, confining of her in her vehicle. We have that met in this case.

Possession of a weapon during a violent crime, again, gun wound, exit wound, possession of a weapon during a violent crime.

And grand larceny would be as I previously said, it would be the conversion of someone's goods for their own use, essentially depriving the owner of its use. And you're gonna see video surveillance of where McIver was driving the victim's vehicle from that Bennettsville police station to further prove that.

A couple of things I need you to pay attention to during this trial. There's gonna be some geographic things that might be slightly confusing if you're not too familiar with this area. I'm assuming you're residents, I'm assuming you came here for a reason, if you haven't lived here your whole life. You have Myrtle Beach, that's where both the victim in this case and the defendants were staying. The victim and her cousin, Tabetha Oxendine, were staying at a hotel called the Holiday Sands North. That's on Ocean Boulevard in the Myrtle

Beach section of Horry County. You have the K&W at North Myrtle Beach. Now, that's not the north end of Myrtle Beach, that's the actual city, North Myrtle Beach, before you get to the bridge op there going into Little River, there's a K&W and that's where Ms. Fisher was shot and dumped in the parking lot. You have a town in North Carolina called Shallotte, sounds a lot like Charlotte. You've probably heard of Charlotte before, so you know it's not Shallotte. It's spelled different and it's as obvious as it sounds, but it's important to reiterate this and you'll see maps to that effect. You'll see maps that show the distance between North Myrtle Beach -- you'll see where these incidents happened. You'll see North Myrtle Beach, you'll see Myrtle Beach, you'll see the routes they took to go home, you'll see the gas stations they stopped at on maps to further add visual aides to the towns and items mentioned in this case.

You're gonna hear from the autopsy doctor to back up what I'm telling you here as far as malice aforethought to that contact wound, to that entry point, to how Ms. Fisher met her demise at the hands of these two defendants.

At the conclusion of this case, Senior Solicitor DeBusk will stand in front of you and he'll ask that you return a just verdict. I'll ask the same thing of you now and I'll ask that you pay attention throughout this trial, and at the end of it, your decision -- after the evidence you review, after

the evidence that you've seen, taken in its totality, you'll be confident in your decision to find both of these defendants guilty of murder, kidnapping, possession of a weapon during a violent crime, and grand larceny.

THE COURT: All right. Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING BY BELLAMY:

MR. BELLAMY: Mr. Solicitor, Mr. Spratlin, Madam Forelady, ladies and gentlemen of the jury, back in July of 2016, these folks sitting over here -- my client's grandmother, mother and fiancé -- came to me and asked me to represent Nicholas McIver. After much deliberation, I agreed to it.

Folks, as I listened to the solicitor's opening remarks -- again, nothing he says or I say or Mr. Spratlin says is evidence -- but the one thing that struck me in a murder case where there's a single gunshot, we know only one person pulled the trigger, you didn't hear anything about who in that car shot, and I think that's important for the 14 ultimately 12 of you. And I'm gonna talk to you a little bit later on about the why I don't think you know and what may not have been done in the investigation to give you a better idea.

But, folks, the gentleman out here and I don't recall his name, the stepfather of Ms. Fisher, he deserves to know who

pulled that trigger. Equally, there's two people sitting at this table, Mr. Freeman and Mr. McIver. One of them did not shoot. No question about it, that one needs to be -- to know, too.

Now, folks, Mr. Spratlin and I are seated together at this big long table and we had to arrangements for that, usually, we got two small tables. He and I, you may have seen the jury selection and other times we may speak to each other, but these are separate defendants, who have -- may have separate defenses. We are not a team of big table versus the little table. Your verdict can be different in each case for each defendant. So, just because we're seated there and may speak to each other, quite frankly, all of us colleagues work together, know each other, so, we're gonna do that for all kinds of reasons. So, please understand that while we're seated there, it's not a team necessarily approach.

Now, the other thing I want to say is there may be evidence elicited by me, the solicitor or Mr. Spratlin about Ms. Fisher's conduct during the 12 or so hours she was with these two gentlemen. It might involve activities that some people may find objectionable and I do it -- if I bring those things out, I tell you it involves many drugs, sex, or other things, not to disparage her as a person or her character or to suggest that anything she may have done in any way caused this to happen. But I may do it to give you the context of

what was the interactions of these four people. To let you know there was no force, coercion, tricks, anything of that nature, that this was a fully voluntary participation by everybody, four people who didn't know each other and a random meeting on the boulevard boardwalk in the City of Myrtle Beach.

Now, let me also say this, and I agree with a lot, maybe not all of what the solicitor says is factual in this case. There may be some things we are gonna disagree on, but the basic resuscitation is right. And I will tell you as I stand here today, on the charge of grand larceny, my client's guilty. I don't think in the 28 years I've practiced law, I've ever stood up in front of a jury whose gonna try my client and said my client was guilty of a charge; I've never done that. But he is; ain't no question about it, he is. And, he's also guilty of some, what I believe are other charges that he's not charged with. He's guilty of participating after the fact by using her credit card, driving off in her car, and other things, and there's a charge for that called accessory after the fact, but that's not we're here for today, but he's guilty of that, and he may very well have another day in court and should be punished for that.

So, we're not gonna contest -- and there's gonna be videotapes of most of this stuff. As you can imagine this day and time, there are videos everywhere.

Now, back to who shot and why we may not have the evidence that y'all should have. In the course of this, keep it in mind, I or my client bears no responsibility for bringing any of it. This is the state's burden as I understand it. But I ask questions of law enforcement officers on cross examination about why you didn't do this, or you should've done this, or something of that nature, and please, please, don't think I'm being disrespectful to law enforcement. I have as much respect for law enforcement as anybody. My father spent 40 years as a policeman. And when I became a lawyer, a lot of these policemen I had to cross examine were his friends. And I talked to him, I said, how do I do that? These people know you and know me. He said, do your job, Scott, whatever it may be, be respectful, don't make it personal. So, if I do that, please don't take that as disrespect at all.

Now, the solicitor has indicated that -- and again, I don't think you're gonna have any evidence of who did this, but they rely on the concept of law of the hand of all -- the hand of one is the hand of all and it is a theory in the law, which His Honor will instruct you on at some point at the end. There's also another concept that they didn't mention to you, which is called mere presence. That is a mere presence at a scene where someone commits a crime does not make you guilty of what they did. But, go back to the hand of one. It

requires -- and if I get this law wrong, you listen to Judge John, not me -- that there be knowledge that a crime was gonna be committed, but not just that, that's not even enough, and the agreement to participate in some conspiracy or common plan to do some criminal activity. So, I know it's gonna happen and I'm gonna do something to help you before the fact, before the fact. Not accurate, because there's no question my client did things after, which is a separate crime, but I don't believe we'll hear evidence before. Sometimes, we lawyers, we come up with a theory of our case and we try to fit the facts to it. I suggest to you, I suggest to you, it should work the opposite, the facts dictate what happened, not our theory and then we try to fit what fits in an ignore what doesn't.

I want to give you just a couple examples of mere presence and hand of one. It may help you as you're listening to this evidence. I don't want to talk too long, but I can't help it. Someone gets a call from their best friend or brother, hey, come pick me up, I need a ride from my ex-wife's, I got to give her something for my children or do what whatever. So, there's video of him picking him up somewhere and receipts where they stopped at Taco Bell or here or there. So, you've got good evidence and then maybe some surveillance at somebody's house that has them pulling up. Man gets out, goes to the porch, he and his wife maybe getting along, and unbeknownst to the man in the car, he shoots and kills her or

kills her anyway, and he runs back and the person in the car sees it, knows it happened, but he drives off with him anyhow for reasons sufficient to himself whether it's love, fear, or whatever it is and he helps him get away. Maybe helps dispose of things. That person is not guilty for murder. They're guilty of something, but without knowledge and participation in the before, that's mere presence. The after is a separate crime and I asked you to look for that evidence before, not an inference or assuming, but actual evidence of something before the fact.

Now, folks, I want to talk to you about a couple of legal principals His Honor has talked to you about which is presumption of innocence -- presumption of innocence, I've heard that for 20 some years. Nice phrase, it sounds good, that sort of thing, but quite frankly, the average person -- if I -- when I go to church, the ladies who keep the nursery, they'll read about a case and ask me because they know I do this, they'll say, well you know they did it, Scott, you know they did it. They've read a little article or seen something on T.V. or go to a Shrine meeting and my buddies will tell me the same thing. And I've actually sat on the big panel like y'all and heard people talking -- this was years ago, like gosh, wonder what that man did, he looks like he did this. So, I say human nature is -- and it's no disparaging remark on any of you or anybody, we kinda just have that. Well, he's

charged, the prosecutor is over here saying or here trying it, the Judge is gonna let them do it; there must be something to it. But that's not what it is. That's not what it is. You've got to presume they're innocent.

I had a conversation with a friend of mine and he said well, Scott, as a juror shouldn't I be in the middle -- and if we use this railing as innocent, I don't know, and right here at this speaker -- and that's what that is, by the way, so if you touch it -- guilty; shouldn't I be in the middle, Scott. Shouldn't I be neutral because I don't know the parties, don't know the facts. That's what they make sure of when we question them about who knows what. And I thought about that I said, well, yeah, kind of -- you know. Came back and had another conversation, I said, this is how you presume someone innocent when you don't obviously know anything about it. I said, I told him, I said conjure up in your mind somebody in your life who you have the most confidence, trust, you know, maybe it's your wife or husband, maybe it's not, maybe it's a child friend, preacher, parent, grandparent, that you have the most confidence in. For me it would be my grandma, you took care of me, and you get a call and say I got one -- she's been dead 25 years, and said she stole a pack of gum when she was 25. I'd look at you and say, that's a lie, my grandma ain't stole, because I know her. I have that much confidence and faith in her. That's how you presume someone innocent. And I

am not gonna believe it until you take me from here to there. And if fact, along that journey, I'm gonna fight you because I just -- I'm just not gonna believe it unless you prove it with real evidence. That's presumption of innocence. That's where you must start.

Now, burden of proof, the Judge has described it. Burden is a big word. It's not required but it should -- burden is a heavy word and it also means the defendant never has to paint you a picture of what happened, never has to clarify any issue; that's for the state. That's for the state to bring it to you. That's their burden. The defendant never has to testify, the defendant never has to present any evidence, and the reason these two concepts, I suggest, were put into our system of justice is that the government has a lot of power, resources, money, but the average everyday citizen don't necessarily have that. So, we settle up so we're presumed innocent and make the state prove it, not just say it with an indictment, but prove it with actual evidence.

Now, the last thing I want to talk to you about, a little bit about the facts is when you hear these facts and look at the totality of the circumstances and I'm not gonna through all the facts, they'll aptly bear themselves out, you're gonna need to ask yourself was this a planned event or was it some horrible, random act that took place July 4th week in the middle of the day, in an open parking lot on Business 17, but

everything leading up to this was perfectly fine. And then somebody, being under the influence, anger, combination thereof, lost it. I suggest to you that is what the evidence is gonna suggest clearly. And I suggest that it's important to know who pulled that trigger.

I thank you for your time this week. I'm sure not many of you really want to be here but you're a vital part of our system. On behalf of my client, his mother, grandmother, fiancé, and all the other family members here this week, I thank you very much.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING BY SPRATLIN:

MR. SPRATLIN: Good afternoon, ladies and gentlemen.

Life can change in an instant. That's a saying we've all heard probably a thousands of times during our lives. We've heard it so often because it's true. In the matter of seconds, in the matter of minutes, your life can dramatically change. You can get struck by a car, you can get hit by lightning, you can get shot, but you can also in a matter of seconds in this get wrongfully accused of a crime you didn't commit. And, ladies and gentlemen, that is the situation that my client, Terrell Freeman, finds himself charged with four crimes of which he didn't do.

Now, as you've already heard, my name is Martin Spratlin. And as Mr. Bellamy said, I'm here representing Terrell Freeman and only Terrell Freeman. That's one thing me and Mr. Bellamy agree on. I do not represent Nicholas McIver. He does not represent Terrell Freeman. Terrell Freeman is my client. Nicholas McIver is his.

I'm not gonna go back through everything you've already heard. Because one thing that's kind of unusual about this case, not so much unusual, but kind of an anomaly, is there's multiple codefendants. There's two people sitting there on trial. So, by matter of course, somebody has to go first, somebody has to go second; and I have to go second. So, I'm gonna be the person you hear a lot of times third. You're probably gonna hear from the state, they're gonna question a witness; you're gonna hear from Mr. Bellamy, he's gonna question a witness; and you're gonna hear from me and I'm gonna question the witness. Much like this opening statement; you've already heard from the state, you've already heard from Mr. Bellamy, and now it's my time. You might be getting a little tired about now, you've heard everybody talk. But one thing I'm gonna ask -- and I'm gonna try to waste your time. I'm gonna try not to rehash everything both the other attorneys who have questioned people say, but when I do ask questions, I ask that you pay attention as if I am the first one asking the questions, as if I am the first one examining

that witness and that is because that is what it means to be a fair and impartial juror. That is what it means to give my client his fair day in court and that's what we're here for.

Now, the first thing I want to make sure all of you understand regarding the evidence in this case, you are not gonna hear any evidence from the state that my client pulled out a gun and shot Ms. Fisher, because that's not what happened. You're also not going to hear that my client, Terrell Freeman, agreed to commit any crime with anybody that resulted in Ms. Fisher winding up getting shot.

A lot of the facts in this case are not gonna be in dispute like Mr. Bellamy said. And I'm not gonna go back through all of them but there is no doubt that my client, Nicholas McIver, Tabetha Oxendine, the cousin of the victim in this case, Amanda Fisher, and the victim were all -- met at the boardwalk in Myrtle Beach and spent the night partying together. And there's no doubt that all four of them drove back up to North Carolina the next day. No doubt that Tabetha Oxendine got out of the car. No doubt that the three remaining people in the car drove back. And my heart goes out to Ms. Fisher's family, but there's also no doubt that in the parking lot of K&W, she was shot. But I'll submit to you at the end of this trial, you're also gonna have no reason to believe that my client did it.

The state talked about hand of one, hand of all. So,

there's two people in the car, one person shot, they both must all be guilty. That's not the way the law works; that's not the way the justice system works. That's not how of this works. You don't get convicted of murder, you don't get convicted of kidnapping, you don't get convicted of possession of a weapon during the commission of a violent crime, you don't get convicted of grand larceny because you're there. You get it because you did something to help further it. You either did it or you helped further it. And you're not gonna hear any evidence that in the instant that that gun went off, in the instant Ms. Fisher was murdered, in the instant that all of that happened that my client did anything.

Now, like Mr. Bellamy said -- I know Mr. Bellamy said that he'd never done this before, I have. I have stood up before a jury before and said my client did something wrong. You're gonna hear about what my client did after the instant Ms. Fisher lost her life, after that gun went off. You're gonna hear that he didn't go to the police. You're gonna hear that he actually helped Nicholas McIver, drove Nicholas McIver's truck back up to North Carolina while Nicholas McIver, not my client, drove the victim's car. Like Mr. Bellamy said, when he was talking about his client, I submit to you that this evidence is gonna show that my client, Terrell Freeman, he did something wrong, and that -- like Mr. Bellamy said accurately makes him an accessory after the fact,

does not make him a principal. Driving a truck up to North Carolina, talking to somebody on the phone, does not make you a murderer, does not make you a kidnapper, does not make you have a gun during the commission of a violent crime, and doesn't mean he stole the woman's car.

The state, I suspect -- and I don't know, I'm not sure what their case is. I've reviewed all the reports, read through everything. They're going to look at all these things and they're gonna ask you to look at all these things my client did, the things they can prove he did after the fact. After that instant in time where his life was changed, Ms. Fisher's life was changed. They're gonna ask you to look at all those things they can show. They say that he did it, but what they're not gonna be able to show you, ladies and gentlemen, is one piece of evidence that shows that my client had any reason to want to harm Ms. Fisher, let alone kill her. They're not gonna be able to show any monetary gain that my client was supposed to gain with Ms. Fisher being shot. They're not gonna be able to show any person -- you see my client had only known Ms. Fisher for a matter of hours. You're gonna hear about that, how they just met at the boardwalk the night before. He didn't know any of her family, had no intimate relationship with her, had no animosity towards her, no reason in the world to want her to see any harm. And they're not gonna be able to show you that he did.

Now, motive is not required. There is no requirement that you have motive. But, sitting there in the jury, you might be asking why, and we're trying to figure out what happened, you might want to know why and what motive people had, what intent they have. Why would my client have done this? There's no reason and they're not gonna be able to show you any reason. Being an accessory after the fact, does not mean you're guilty of murder, it doesn't make you guilty of kidnapping; it just doesn't.

Mr. Bellamy did a very good job explaining to you what the hand of one, hand of all means. And I submit to you, ladies and gentlemen, at the end of this trial, when you are sitting there having to make a decision, whose blood or whose hands are the blood of Amanda Fisher is on, you're gonna see that the hand of one hand of all does not make it on my clients. And for that reason, after you hear all of the evidence, after you have had a chance to watch every witness testify from that witness stand, every piece of paper that's entered into evidence, you've had a chance to review every photograph, every videotape, every whatever else they present, you're still not gonna see that my client did anything in the instant when Ms. Fisher lost her life, and he most certainly did not do anything to help further Ms. Fisher getting to that instance. And for that reason, I will be asking you to find him not guilty at the close of all the evidence.

Thank you, ladies and gentlemen.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, to accommodate the state and the defense, we will stop for the day and we will resume tomorrow morning. We'll start the evidentiary portion of the trial tomorrow morning at 9:30. The bailiff will have you come a little bit early. I'm sure the clerk's office will have something for you in the jury room.

I want you to remember, you go home, you see your husband, wife, boyfriend, girlfriend, person down the street, if they happen to know you're on a jury, that's fine, but you can't talk to them about it. Remember, I told you, I don't want y'all talking about this case until I give it to you at the very end. Also remember what I told you at the beginning downstairs, you're not researchers, you're not investigators, do not look up anything. You must decide this case solely and completely on the facts and evidence you've heard in this courtroom and from no other source.

So, with that, I'll excuse you and see you back and we'll start the trial tomorrow morning at 9:30. Thank you very much.

Everyone else remain seated while the jury retires.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: All right. Anything further from the state at this point in time?

MR. DEBUSK: Not at this time, Your Honor.

THE COURT: From the defendant McIver?

MR. BELLAMY: Could you give me just one second, Your Honor?

THE COURT: Yes, sir.

MR. BELLAMY: No, sir, Your Honor. Thank you.

THE COURT: All right. And from the defendant Freeman, Mr. Spratlin?

MR. SPRATLIN: No, sir, Your Honor.

THE COURT: All right, gentlemen, as I said, we're gonna start tomorrow morning at 9:30. So, y'all make sure that you're here in the courtroom ready to go about 9:15. Okay?

MR. DEBUSK: Yes, Your Honor.

MR. SPRATLIN: Yes, sir, Your Honor.

THE COURT: All right. Thank y'all very much. See you tomorrow morning.

RECESS - END OF DAY ONE

*******OFF THE RECORD*******

(On the Record.)

APRIL 24, 2018 - DAY TWO

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: All right. The state ready for the jury to come in?

MR. DEBUSK: Yes, Your Honor.

THE COURT: And the defendant McIver?

MR. BELLAMY: We are, Your Honor. One -- there's some videotapes the state intends to play to the jury today that were body camera type videos that would've been recorded during -- at the crime scene. We don't have any problem with them with the exception of anything that would show the body and the blood, which I don't think is relevant to the issues in this case and we would object to that as being more prejudicial than probative. But in general, without that, we do not have any objection.

THE COURT: And what about the -- what about the defendant Freeman?

MR. SPRATLIN: Your Honor, I would join in that. Any portion of the video that shows the victim. The victim was discovered in a parking lot in a pool of blood. Any video that shows the victim in that state, we would object to as being more prejudicial than probative in that it would tend to inflame the jury.

THE COURT: What's the state's position?

STATE'S EXHIBIT NUMBER THREE

MARKED FOR IDENTIFICATION

MR. DEBUSK: Your Honor, we need to show the position of

the body as part of the res gestae of the case. The victim was dumped in the parking lot, and the method she was dumped is part of the, the gravamen of this offense. And I have what's been marked as State's Exhibit 3 ---

THE COURT: All right.

MR. DEBUSK: --- to show you the, the position of the body. It's facedown, you cannot see the face. There is a small amount of blood, but it's gonna be medical testimony that she was shot in the head. It's not even a large amount of blood. That's the only photo we would have that would show the body. There's also a body cam, one that shows it from a distance when the first officer drives up, that's a car cam, and one from the officer's body cam that shows her when she checks her to see if she is alive momentarily in the same position that she's in there.

THE COURT: All right. All right. The objection is -- though, is not to State's Exhibit 3?

MR. DEBUSK: No, I would think it would include State's Exhibit 3.

THE COURT: Does it include State's Exhibit 3?

MR. BELLAMY: Yes, sir, Your Honor.

THE COURT: The photographs, okay.

MR. DEBUSK: I just gave that as an example, Your Honor.

THE COURT: All right. That's fine. Okay. I do not find that State's Exhibit 3 is -- the prejudice to defendants,

if any, is certainly outweighed by the probative value of the jury having a clear, factual basis to evaluate the evidence in this matter and to apply that to the law that the Court is going to charge to them. I do not find that the picture -- it is not overly gruesome, it's not a, you know, a close-up on the -- as far as the blood. It's just not a photograph that the Court would find in any way would tend to inflame the feelings of the jury in this matter, and I do find it's important for the state to be able to present the full, factual basis of how this matter occurred, especially when you're talking about a prosecution that has as part of -- at least part of its basis the theory of the hand of one the hand of all and I think that is essential in that regard. As far as the video, it hasn't been shown to me. Unless there is some extreme close-up or some part of the video that just focuses solely on the blood, I don't see, again, how that -- the ruling would be the same. So, the video, and you need to describe it to me. So, as far as the ---

MR. DEBUSK: Your Honor, it shows roughly the same view as State's Exhibit 3 while the officer's car is driving up but from a distance with very little detail. He just sort of sees where the position of the body is in the parking lot. The second one, the officer briefly approaches the victim, bends down to see if she's alive, determines she's not, and then backs away and -- and begins working on other things.

THE COURT: All right. And so, is the view ---

MR. DEBUSK: The view is -- it's the same, Your Honor.

THE COURT: They are virtually the same as shown in the photograph, Exhibit 3?

MR. DEBUSK: With less detail because it's a body cam instead of a photograph.

THE COURT: All right. Very good. Then with that, then I just don't find that there -- there is any prejudice to the defendant or certainly, if there is any, that the probative value certainly outweighs any -- any prejudice to the defendants when the state has the need to describe the scene and to accurately reflect that to, to the jury.

All right. So I'm gonna allow it.

All right. Ask the jury to come in then.

MR. DEBUSK: One more item, Your Honor.

THE COURT: Yes, sir.

MR. DEBUSK: We've entered into a stipulation as to a phone number in this case.

THE COURT: All right.

MR. DEBUSK: I can mark this as an exhibit and we can ---

THE COURT: Yeah, just mark it as a State's exhibit and -- is that correct, gentlemen?

MR. SPRATLIN: Your Honor, on behalf -- it is my client, Defendant Freeman's phone number. We have entered a stipulation that was in fact his phone number at the time of

this incident.

THE COURT: All right. Very good.

MR. DEBUSK: For the record -- for the record, Your Honor, our method of proving it would have been a parole officer from, from North Carolina, and that could have caused prejudice to the defendant. That's why we've entered into this stipulation, Your Honor.

THE COURT: All right. Very good. All right. Thank you.

All right. So, I assume the defendant McIver has no objection to it then?

MR. BELLAMY: Well, we would like the parole officer to come, but since they've stipulated, I don't think we could force them.

THE COURT: All right. Thank you very much.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Solicitor, your first witness please.

MR. DEBUSK: Your Honor, first the state would like to enter by stipulation, State's Exhibit 6, which is the phone number of Terrell Freeman entered into stipulation with the defense, Your Honor.

THE COURT: All right. Very good.

MR. DEBUSK: Also, we have State's Exhibits 5 and 6 -- I'm sorry, 4 and 5, orientation maps that we are also

stipulating as to the entry.

THE COURT: All right. From the -- your client, Mr. Bellamy, any objection to that?

MR. BELLAMY: No, sir, Your Honor, we have no position on the first item, but those two ---

THE COURT: 4 and 5?

MR. BELLAMY: We do not object.

THE COURT: And as I understand it, State's Exhibit 6, Mr. Spratlin, that that was the stipulation you had with the state that that phone number is your client's phone number at that time?

MR. SPRATLIN: Yes, Your Honor, that's the stipulation and I have no objection to the two maps that the solicitor has. I've had a chance to review them and determine that they are true and accurate.

THE COURT: All right. Very good. So, State's Exhibit 6 is in evidence as a stipulation and then State's 4 and 5 are in evidence without objection.

STATE'S EXHIBIT NUMBER 4, 5, AND 6

ADMITTED INTO EVIDENCE

THE COURT: You may proceed, sir.

MR. DEBUSK: Thank you, Your Honor. The state calls Kenneth Thompson.

THE COURT: Please come around, all the way around up here and meet the clerk's representative right up here, sir.

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

KENNETH WAYNE THOMPSON, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

MR. THOMPSON: Kenneth Wayne Thompson, T-H-O-M-P-S-O-N.

THE COURT: Go ahead, sir.

DIRECT EXAMINATION OF KENNETH WAYNE THOMPSON BY MR. DEBUSK:

Q: Mr. Thompson, what's your occupation?

A: I'm a retired teacher.

Q: Okay. You live in Horry County?

A: No, I live in Brunswick County, North Carolina.

Q: Okay. So, not far off?

A: Right.

Q: Okay. Are you familiar with the K&W Cafeteria in North Myrtle Beach?

A: Oh, most definitely, yes.

Q: Okay. Were you there on July 9th of 2016?

A: I was.

Q: Had you ever been there before?

A: Oh, yeah, lots of times.

Q: On this large map, where it's labeled K&W Cafeteria; is that the one you go to?

A: That is the one.

Q: Why were you there on July 9th?

A: I had left my home and was just going to North Myrtle

Beach just for the day just to be doing something different, and I was hungry, so I pulled into K&W to go get a meal.

Q: Okay. Was anyone with you?

A: No, I was by myself.

Q: About what time was it; do you recall?

A: It was around 11 o'clock.

Q: And where did you park when you arrived?

A: I parked near the Highway 17 close to a tree that was there for some shade.

Q: I'm gonna show you what's been marked as State's Exhibit 2 and ask if you recognize that.

A: I sure do.

Q: What is that?

A: That's the area where the K&W is and the other buildings that are close by and Highway 17.

Q: So, it's right on Highway 17?

A: Yes, right at Highway 17.

Q: Did you enter K&W from Highway 17?

A: Yes.

Q: Can you see the area where you parked on that?

A: Yes.

Q: Can you indicate by maybe drawing a small circle with a black dot, if it will show.

A: Okay. Let me get my bearings here. Okay.

Q: Okay.

Your Honor, we'd move State's 2 into evidence.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection on behalf of Defendant Freeman, Your Honor.

THE COURT: All right. So, it's in evidence without objection.

STATE'S EXHIBIT NUMBER 2

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. DEBUSK: Your Honor, may I publish State's 2 to the jury?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: What color is your car, Mr. Thompson?

A: It's a very bright color.

Q: A very bright color?

A: Very bright.

Q: It would be visible?

A: Definitely.

Q: Why did you park so far from the door?

A: I don't what my car scratched up. And I'm proud of my car and I normally do that, no matter where I'm at. I park far away and I love to walk.

Q: So, what happened after you parked?
A: Well, when I parked the car, I sat there for just a few minutes in the car and then I got out, and I heard a popping sound. And I thought, oh, it's something happened on 17, so I immediately looked out toward Highway 17 and saw nothing was unusual. Traffic was flowing normally. And then I turned and was gonna go into the K&W Cafeteria.
Q: What happened then?
A: Then I looked and I saw -- I saw a man pulling a lady out of the car by her arm, head first, and another gentleman, another man on the other side pushing and it was then that I realized that the popping sound that I had heard was not out on 17, it was right there in the parking lot, and there was a young lady that was dumped out like a bag of garbage onto the pavement. And at that particular moment, being a man of faith, something told me run, and I ran as fast as I could thinking I would be the next one that would be shot.
Q: Where did you go?
A: I hid behind the K&W Cafeteria and, when I got to that point, I turned and looked and the white car was gone.
Q: Did you inform anybody of what happened?
A: I did. I went inside the K&W trying to use my cell phone and I could not dial the numbers on my cell phone. So, I ran inside and there was a gentleman in there, and I said someone has been shot in the parking lot at the K&W.

Q: Did they call 911?

A: They called 911, yes.

Q: Did you or them speak to 911?

A: No, I did not speak to 911. I spoke to the officers that were there.

Q: Let's step back for a minute.

A: Okay.

Q: You saw a white car; is that correct?

A: That's correct.

Q: I will show you State's Exhibit 1 and ask if you recognize that?

A: That's the car.

Q: Does that look like the car that you saw?

A: That looks just like the car, yeah.

Q: Okay.

Your Honor, we would move State's 1 as an exhibit. At this point, as demonstrative exhibit.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, sir, Your Honor.

THE COURT: All right. So, it's in evidence.

STATE'S EXHIBIT NUMBER 1

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Where was the lady that was being pulled out of the car; was she in the passenger seat, in the driver's seat?

A: She was in the driver's seat.

Q: What could you tell about her? Hair color, anything like that?

A: She was heavy set, kind of light-colored hair.

Q: Where did they -- where did she end up? She was out of the car?

A: She was out of the car laying on the pavement, yes. Like I said, like a -- she was thrown out like a bag of garbage.

Q: Let me show you State's Exhibit 3 and ask if you recognize that?

A: That is her.

MR. DEBUSK: Your Honor, State's 3 moved into evidence.

MR. BELLAMY: Your Honor, subject to the previous objection.

THE COURT: All right. Very good.

Same, Mr. Spratlin?

MR. SPRATLIN: Same, Your Honor, subject to the previous objection.

THE COURT: All right. So, it's State's 3 is in evidence over the objection of the defendants.

STATE'S EXHIBIT NUMBER 3

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Mr. Thompson, what can you remember about the individual you saw outside of the car?

A: He was a black male, appeared to have short hair. It could've been pulled back but I was not focused on him; I was focused on the young lady that was being pulled out of the car.

Q: Did he have light-colored skin or dark-colored skin?

A: I would say maybe medium, medium color.

Q: Okay. How about the individual that was inside the car?

A: The gentleman that was pushing on the inside, I did not see because I could tell that it was someone through the glass but I could not tell much about the details of him.

Q: Was that person in the front seat or the back seat?

A: Front.

Q: Okay. In the parking lot, where was the white car when you saw it, relative to your car?

A: The white car was probably about 25 to 30 feet from where I was standing.

Q: So you were close?

A: Very close.

Q: Okay. Was the woman talking or fighting in any way?

A: No, I did not see her move.

Q: Did you see the car leave?

A: No, because I was running for my life and, when I hid behind the K&W, I looked back and it was gone?

Q: So, you couldn't tell if it went north or south?
A: No, I sure couldn't. I was just glad it was gone.
Q: This is probably pretty obvious, but were you frightened?
A: One hundred percent frightened for my life.
Q: Were there many people in the K&W that morning?
A: Very few, it had just opened I think about 11 o'clock.
Q: And ultimately did the police come by?
A: Oh, yes; yes, they did.
Q: Did you talk to them?
A: I did.
Q: Give a statement?
A: I did.
Q: The people you saw in the car, the person pulling the lady out on the pavement or the person inside, had you ever seen any of them before?
A: Never.
Q: When did you find out what happened to the lady that they pulled out the car?
A: When did I find out? Someone came in the cafeteria and they talked with me and I realized then that she had passed and I wanted to go back and the officers said don't go back.
Q: All right. Please answer any questions the defense has.

THE COURT: All right. Mr. Bellamy?

MR. BELLAMY: May it please the Court?

CROSS EXAMINATION OF KENNETH WAYNE THOMPSON BY MR. BELLAMY:

Q: Mr. Thompson, and I understand, obviously, you don't want to be here and certainly didn't want to be in that parking lot of the K&W July the 9th, but I do feel it necessary to ask you some questions, if I may.

State's, the one that shows the parking lot. Let me show you again, if you would, what's been marked as State's 2, which is the parking lot of K&W, correct?

A: Correct, yes.

Q: Okay.

THE COURT: You need to speak up, sir, so that everybody can hear you.

A: Yes.

Q: And you have marked with a pen where your car would have been, correct?

A: Right, and I came in here.

Q: Okay. Now, this photograph doesn't reflect that day, does it?

A: No.

Q: But this is just a generic photograph of someday where the parking lot ---

A: Yes.

Q: If you could and I don't know -- Solicitor DeBusk, do you have a pen that will write on that?

You have marked where your car was, correct?

A: Uh-huh, (affirmative response).

THE COURT: You need to ---

Q: Answer out yes or no.

THE COURT: Sir, you have to say ---

A: Yes.

THE COURT: --- yes or no because uh-huh, the court reporter doesn't know what that is.

A: Yes.

BY MR. BELLAMY:

Q: Would you likewise mark where the white car that you say you saw in the parking lot?

A: Okay. About right here.

Q: And ---

A: And I was coming diagonally to go into the cafeteria. So, I would've been right in front of it ---

Q: Okay.

A: --- had I continued that way.

Q: All right. Would you put an X where you would have been standing at the moment -- I know you say you looked to the road first?

A: Uh-huh, (affirmative response), yes.

Q: And you're back towards walking into the entrance, put an X where you would've been approximately standing when you would've seen the white car. And that would've been approximately 25 feet away?

A: Approximately.

MR. BELLAMY: And, Your Honor, if I may publish this back to the jury.

THE COURT: Yes, sir.

MR. BELLAMY: Noticing the X where he was ---

THE COURT: Mr. Bellamy, you can't testify.

MR. BELLAMY: Sorry about that, Judge.

BY MR. BELLAMY:

Q: Now, Mr. Thompson, you gave a statement that day to law enforcement, correct?

A: Correct.

Q: Okay. Now, in that statement to -- I believe it was Officer Rose or one of the other officers and they've done a report here. They indicate that you did see that the vehicle went southbound on 17 or that's what they noted in their report. So, you don't recall that?

A: No, sir; I don't know which direction it went.

Q: Okay. So, if the officer put that in their report, they didn't get it from you?

A: No.

Q: Okay. Now, would it be fair to say that you were very upset that day?

A: Naturally.

Q: And I understand. And there would be -- the state has a videotape of the body camera of talking to you where you were extremely upset?

A: Right, never experienced anything like that in my life.
Q: And the police, because you were so upset, gave you a form to fill out when you calmed down; did they not?
A: Yes.
Q: All right. And do you recognize what this is?
A: I do, I have a copy.
Q: Okay. And that is what?
A: That's my voluntary statement.
Q: Okay. And this would have been prepared on the 10th of July, correct?
A: That is correct.
Q: And in this statement, you reference someone outside of the car pulling the person out?
A: That's correct.
Q: And when you referenced the other person, you say the other male seemed -- and these are your words because you wrote it -- to help push. So, you weren't sure what the person in the car was doing?
A: It was visible through the glass that someone was trying to push someone out.
Q: Well, I'm asking you this question. Did you use the word seemed?
A: I believe it's correct on there, yes.
Q: Do you need to see this?
A: I would like to, but I'm sure it's correct.

Q: Okay. If you want to refresh your memory on the word that you used that ---

A: Thank you. The other male, I'm not sure of skin color, seemed to be helping to push her out, yes.

Q: So, you're not sure. You're definitely sure on what the person outside was doing, but it seemed ---

A: She was being pushed out of the car and pulled out of the car.

Q: But again, you used the word seemed ---

A: Yes.

Q: So, we'll move on. Now, you're looking through the front glass of the car?

A: To see whom?

Q: To see what was going on within the car.

A: Well, yes. Yes. Except for the lady that was already being pulled out of the car.

Q: I gotcha. But you're -- the car would've been facing you, the front of the car, correct?

A: Yes.

Q: Okay. So, as you're looking in the car, you cannot identify the race of the person in the car, correct?

A: Not the one in the car, no.

Q: All right.

A: That's what I stated, I think, in my statement.

Q: That's correct. But now, do you know if the windows of

the car were up or down?

A: I was not looking at the side because the door was open and they were pulling her out, and I did not notice the window. My thought was not on the window.

Q: Did you hear any sounds of glass breaking?

A: No.

Q: Did you see any glass in the parking lot?

A: No.

Q: Did the person who you saw in the front seat of the car ever get out of the car?

A: Which one? You're talking ---

Q: Well, the person who was in the front passenger seat, did they ever get out of the car?

A: I did not see him get out of the car because I ran.

Q: Did you see the car as it pulled into the parking lot?

A: No.

Q: Did you observe or hear any squealing of tires or anything unusual?

A: No.

Q: And would you characterize the way the car was parked as normally in an appropriate space, not oblong or anything of that nature?

A: Normal.

MR. BELLAMY: Court's indulgence, Your Honor?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Mr. Thompson. Answer any questions, Mr. -- excuse me -- Mr. Spratlin may have for you.

THE COURT: Cross examination?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF KENNETH WAYNE THOMPSON BY MR. SPRATLIN:

Q: Good morning, Mr. Thompson; how are you?

A: Good morning.

Q: I'm Martin Spratlin. I'm just gonna have a couple of questions for you.

A: Okay.

Q: I'll try not to rehash everything you already said. Now, I know you said that the first time you kinda thought that anything was amiss or wrong was when you heard a loud bang, right?

A: A popping sound; that's the way it's in my statement.

Q: And you initially thought that that was a tire blowing on Highway 17, correct?

A: Yes, I had no idea what it was but that was my guess.

Q: And so your initial focus after hearing the loud popping sound was on Highway 17?

A: Yes.

Q: All right. It was only after you saw the man and the woman being pulled out of the car that you realized what had happened

A: And that was about 10 or 20 seconds later.
Q: Okay. Before you heard that loud popping sound, did you hear any argument?
A: No.
Q: Did you hear any kind of sort of a fight?
A: No.
Q: Did you hear any indication that anyone was in distress?
A: No, or I would've run before I did.
Q: Now, once you realized what had happened, you were pretty scared, right?
A: Oh, yeah.
Q: Terrified?
A: You would be, too.
Q: Oh, yes, sir, a hundred percent I would be.
A: Uh-huh, (affirmative response).
Q: So terrified that you -- instinct took over and you ran?
A: I'm a religious man, so I believe God protected me that day.
Q: And you ran, as anybody would, in the opposite direction of the entrance?
A: Instead of going diagonally into the K&W, I went the opposite direction and hid behind the K&W.
Q: Now, I know you said you weren't really able to see a whole lot about the individual that was in the front seat of the car, right?

A: Right.
Q: And there was a windshield there, your view of him was obscured, right?
A: It was obscured to a certain point, but I mean, you could tell someone was inside.
Q: Yes, sir.
A: With a portion of their body, the leg probably, outside.
Q: Yes, sir. And, and you were obviously scared so you were running the other way, so you weren't sitting there taking a mental picture of this scene, right?
A: Absolutely not.
Q: Now, I believe when Mr. DeBusk was asking you questions, the individual outside of the car, you said he was a black male with -- and I believe you stated either short hair or it could've been pulled back?
A: Could've been. My focus was not on him; it was on the young lady.
Q: Yes, sir. So, you couldn't really give a good description of who the individual was on the outside of the car either, right?
A: To a certain extent, I could tell that it was a black male and that his hair was short or pulled back.
Q: Could you tell anything about what he was wearing?
A: No, I didn't pay attention to what he was wearing.
Q: Could you tell if -- if you saw his hair, was he wearing

a hat?

A: No.

Q: Not wearing a hat, you're sure of that?

A: I'm fairly sure that I didn't see a hat.

Q: No hat. Okay. Now, you only hear one shot, right?

A: I only heard one sound, yes.

Q: One sound. Didn't hear a gun go off twice?

A: No.

Q: Didn't hear multiple gunshots?

A: No.

Q: Just one shot?

A: One.

Q: And one incident, one shot?

A: It was one -- one noise, one sound, one shot.

MR. SPRATLIN: I beg the Court's indulgence?

THE COURT: Yes, sir.

MR. SPRATLIN: No further questions, Your Honor.

THE COURT: Any redirect?

MR. DEBUSK: Briefly, Your Honor.

REDIRECT EXAMINATION OF KENNETH WAYNE THOMPSON BY MR. DEBUSK:

Q: Mr. Thompson?

A: Yes.

Q: The person that was inside the car, just to be clear for the jury, were they trying to push the person -- the lady out of the car or were they not?

A: They were trying to push the lady out of the car. I could just see just a brief vision of someone in there doing that.

Q: And the person outside the car, you said had medium tone skin?

A: Yes.

Q: And appeared to have short hair?

A: Yes.

Q: You didn't see dreadlocks or braids or anything?

A: I didn't see dreadlocks, no.

Q: Thank you.

THE COURT: Anything on that question, Mr. Bellamy?

MR. BELLAMY: Just briefly.

RECROSS EXAMINATION OF KENNETH WAYNE THOMPSON BY MR. BELLAMY:

Q: You can identify what he was doing in the car, the person who was in the passenger seat, but you can't tell anything else about him, color of skin, clothing, or anything; is that what you're telling us?

A: Yeah, that's what I'm telling you, but ---

Q: Okay.

A: Okay.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No questions, Your Honor.

THE COURT: All right. Solicitor, do you wish the witness to be excused?

MR. DEBUSK: We want him released from his subpoena, Your Honor. He may stay and watch for a while if he ---

THE COURT: All right. Any objection to the witness being release, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you are released from your subpoena, you may go or stay as you choose. Thank you very much.

MR. THOMPSON: Thank you.

THE COURT: Your next witness, Solicitor?

MR. DEBUSK: The state calls Reggie Benton.

THE COURT: All right, Mr. Benton, come all the way around up here and meet the clerk's representative right up here.

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

REGGIE BENTON, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

MR. BENTON: My full name is Reggie Benton, B-E-N-T-O-N.

DIRECT EXAMINATION OF REGGIE BENTON BY MR. DEBUSK:

Q: Mr. Benton, what's your occupation?

A: My occupation now, I'm food and beverage manager at OD Beach Club.

Q: How about in July of 2016, what were you doing back then?
A: I was the general manager of K&W Cafeteria.
Q: On State's Exhibit 4, is that the location marked as K&W there?
A: Yes, sir.
Q: That's 1621 Highway 17?
A: North Myrtle Beach, yes, sir.
Q: Also what's shown as State's Exhibit 2?
A: Yes, sir.
Q: When you turn out of the K&W parking lot onto 17, can you go south on 17?
A: Yes.
Q: Can you go north?
A: No, sir.
Q: So, anybody that turns out has to go south?
A: Yes, sir.
Q: Were you working at K&W on July 9th of 2016?
A: Yes, sir.
Q: What time did y'all open?
A: We open at 11 o'clock.
Q: You're not open for breakfast?
A: No, sir.
Q: So, you open for lunch?
A: Lunch; yes, sir.
Q: Okay. What were your duties when you were opening the

store as general manager?

A: We're just preparing to get open and making sure the food's getting ready to get out, checking the bathrooms, doing a little bit of everything to make sure, you know, we get open and everything's looking good.

Q: Okay. Did an incident in the parking lot come to your attention that day?

A: Yes, sir; it did.

Q: About what time?

A: It was probably right around opening time.

Q: How did you hear about it?

A: I got a first manager that -- they's a little beeper at the cash stand and he beeped for me and I went up to the cash stand, and he told me that there was a gentleman up here and he said there was a lady laying out in the parking lot out there.

Q: Did you go out and see?

A: Sure, I did.

Q: What did you see?

A: I seen a lady laying out there on the parking lot with her face down, blood up on her head.

Q: State's Exhibit 2, roughly where in the parking lot was that? Is there any indication on that area where that happened?

A: About right there where that -- right there where that

circle is right up in there?

Q: Around the white car?

A: Yes.

Q: I'll show you State's Exhibit 3 and ask if you recognize that.

A: That's the lady.

Q: Is that the position you saw her in?

A: Yes, sir.

Q: What was her condition when you approached her?

A: She just looked like somebody had throwed her out on the ground there face down, blood out her head.

Q: Did you see any movement?

A: While I was standing there I seen a little twitch, looked like a muscle twitched.

Q: So, she was moving, but was she talking and conscious?

A: No, sir. They wasn't no -- nothing going on. I just -- I did make the statement to her, ma'am, if you can hear me, they's help on the way. That's the way I told her. I just felt like I needed to say something to her.

Q: So, you thought there was enough spark of life that you tried to speak to her?

A: Yeah, I was hoping they was. For me to know, no, sir, I can't -- I don't know whether ---

Q: She didn't talk to you?

A: No, sir.

Q: Did she respond when you talked to her?
A: No, sir.
Q: Did you or anyone else call 911?
A: I'm pretty sure that Garett was the one that called 911. He was the manager that was in -- at the cash stand.
Q: He was the one that buzzed you about the ---
A: Yes, sir.
Q: How long did it take the police to arrive?
A: It took a few minutes, not a long time, but it took a few minutes for them to get there.
Q: You're general manager, so you would know if they had any cameras on K&W that day, right?
A: Yes, sir.
Q: Was there any showing that section of the parking lot?
A: No, sir.
Q: So, we wouldn't have a surveillance camera to show that?
A: No, sir.
Q: Thank you. Please answer any questions the defense has.

THE COURT: Cross examination?

MR. BELLAMY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION OF REGGIE BENTON BY MR. BELLAMY:

Q: Mr. Benton, you were inside when whatever happened happened?
A: Yes, sir.

Q: Did you ever talk to Mr. Thompson ---

A: Yes, sir.

Q: --- the gentleman who was in the parking lot?

A: Yes, sir.

Q: Did he tell you ---

MR. SPRATLIN: Objection, Your Honor.

MR. BELLAMY: I believe he's already testified to this point.

THE COURT: Ask the question and then I'll --

BY MR. BELLAMY:

Q: Did Mr. Thompson tell you which way the car left when it left the parking lot?

A: No, sir.

THE COURT: Is there an objection to that?

MR. BELLAMY: Oh, I'm sorry.

MR. SPRATLIN: No, Your Honor.

THE COURT: You may answer it. Go ahead and answer it again.

A: No, sir.

BY MR. BELLAMY:

Q: Okay. How long do you think it was before police -- did EMS get there first or the police?

A: Sir, that's, you know, that's ---

Q: Or you might've been back inside?

A: I probably went back in -- I know I went back inside

after that happened and then I went back out later after everybody started arriving. So, it's ---

Q: The -- let me look at this photograph one second. You indicated if you left K&W to go on 17, you can only turn -- would it be right?

A: Yes, sir, going south.

Q: Because there's a median that separates the northbound land.

A: Exactly, yes, sir.

Q: Do you recall what the weather was like that day?

A: Sir, I'm -- the best I can remember, it was a clear day.

Q: Okay. And this was the Saturday of 4th of July week?

A: It was a Saturday; yes, sir.

Q: And it was July the 9th, the 4th being the previous Monday; so it was the Saturday after July 4th week?

A: Yes, sir.

Q: Would you characterize that 4th of July week is the probably the busiest week tourist-wise of the whole year?

A: Yes, sir, one of the busiest weeks of the summer for us.

Q: Okay. So, and this area, there's motels on each side ---

A: Yes, sir, and Outback right beside us.

Q: So, there's a lot going on there, would you say?

A: Yes, sir, they's times when there's a lot going on, yes, sir.

Q: And this would've been about 11:15 in the morning,

correct?

A: Around 11 o'clock.

Q: Eleven o'clock, so y'all were open or opening?

A: Getting ready to open, yes, sir.

Q: As were other businesses around you?

A: Yes.

Q: So, this is not an isolated area at all, is it?

A: No, sir.

MR. BELLAMY: Court's indulgence?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Mr. Benton. Answer any questions Mr. Spratlin may have or the solicitor.

A: Okay.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF REGGIE BENTON BY MR. SPRATLIN:

Q: Good morning, Mr. Benton?

A: Good morning.

Q: Hope you're doing well. Now, you said that and just to kind of follow up on some of Mr. Bellamy's previous questions to you. You said that y'all were just getting ready to open, right?

A: Yes, sir.

Q: Do you remember if you were actually open when the person

came in or were you just still about to open?
A: Sir, I'm gonna say it was right there at the opening time. The doors were open. I know the doors were open.
Q: Okay. And preparing to open, there's a lot of staff that's required to be there ahead of time, correct?
A: Sure.
Q: So, the parking lot would have had cars in it, correct?
A: They would've been in the back of the parking lot.
Q: So, there would -- but there would've been cars parked in the lot?
A: Normally, there's a few cars. Once we get open -- if they would've been in an opening at the front of the parking lot, they would've probably on average would've been two or three cars out there.
Q: Okay. And you said that when you went out there, you saw a twitch, right?
A: Right. I walked out there and, while I was out there, I seen a twitch, yes, sir.
Q: Okay. But you can't say whether that was just a muscle twitch or anything like that?
A: I'm gonna say it was probably a muscle twitch; that's what I'm gonna say it was.
Q: Saw no other signs of life?
A: Not from my point, no, sir.
Q: Okay. Thank you. No other questions.

A: Yes, sir.

THE COURT: Redirect?

MR. DEBUSK: No, Your Honor, we would ask that the -- Mr. Benton be released from his subpoena.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right, sir, you are released from your subpoena and may go back to your regular activities.

MR. BENTON: Thank you.

THE COURT: Next witness, please?

MR. OSKIN: Thank you, Your Honor, the state would next call Officer Aaron Jones with the North Myrtle Beach Police Department.

THE COURT: All right. All right, officer, come all the way around up here and meet the clerk's representative, please.

MR. OSKIN: He's in the back, Your Honor. I apologize.

THE COURT: All right, officer, all the way up here, please.

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

AARON JONES, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

MR. JONES: Aaron Jones, J-O-N-E-S, my last name.

THE COURT: Go ahead, solicitor.

DIRECT EXAMINATION OF AARON JONES BY MR. OSKIN:

Q: Officer Jones, good morning, sir. Who is your current employer?

A: City of North Myrtle Beach.

Q: How long have you been employed there?

A: Eleven years.

Q: All right. Is that in the Law Enforcement Division of Department of Public Safety?

A: That is right.

Q: Okay. Do you have prior law enforcement experience before your 11 years with North Myrtle?

A: No, sir.

Q: What's your assignment?

A: Traffic, I'm with the traffic division.

Q: And how long have you been in that assignment?

A: Approximately five years now.

Q: All right. Will you please briefly describe to this jury some of your work duties in that assignment, sir?

A: As a traffic division -- in the traffic division, I'm over a motor unit. We handle traffic enforcement, reconstruct collisions, fatal wrecks, just normal traffic duties, speeding complaints in the neighborhoods.

Q: And you were in that same assignment in July of 2016?

A: That is right; yes, sir.

Q: All right. Do you remember roughly the date of July 9th of 2016?

A: Yes, sir.

Q: All right. Did you respond to the shooting at the K&W parking lot in North Myrtle Beach?

A: Yes, sir.

Q: Were you the first officer on scene?

A: Yes, sir.

Q: All right. As part of your response, as part of some of your duties, do you activate lights and sirens for your car when you're responding to a scene?

A: Yes, sir.

Q: Did you do that this day?

A: Yes, sir.

MR. OSKIN: If I could get this marked please, ma'am. If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Officer Jones, I'm showing you what's been pre-marked as State's Exhibit Number 7, do you recognize that?

A: Yes, sir.

Q: What is that?

A: This is a in-car video of my response to the -- this, this -- the incident location that day. That's my initials on

the back.

Q: Were you able to view that disc?

A: Yes, sir.

Q: And is that why you initialed it, sir?

A: Yes, sir.

Q: And that's an accurate reflection of your response to the scene that day?

A: It is.

MR. OSKIN: Your Honor, Court's indulgence as we set up the television?

THE COURT: And what exhibit is that, please?

MR. OSKIN: This is State's Exhibit Number 7.

THE COURT: All right. Mr. Bellamy, regarding State's 7, do you reserve your previous objection; is that the one?

MR. BELLAMY: Judge, I believe this is a separate exhibit.

THE COURT: A separate one. All right. Very good.

MR. BELLAMY: I believe what they were referring to earlier was a body cam video.

THE COURT: All right. Very good.

MR. BELLAMY: I would note my same objection as to relevance.

THE COURT: All right. Very good.

And, Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. Very good. I'm gonna allow it into evidence.

STATE'S EXHIBIT NUMBER 7

ADMITTED INTO EVIDENCE

THE COURT: You may proceed. You may publish to the jury.

MR. BELLAMY: Your Honor, may I move around?

THE COURT: Certainly. Both of you may.

MR. SPRATLIN: Thank you, Your Honor.

BY MR. OSKIN:

Q: And Officer Jones, just to be clear, I know we've got a lot of people moving around and standing up. There's been no additions, deletions, subtractions from that video?

A: No, sir.

Q: It's the full in-car video?

A: Yes, sir.

MS. OSKIN: Your Honor, we will publish to the jury at this time.

THE COURT: All right. Very good.

Once it starts playing, if there's any problem with you viewing it, I need for y'all to let me know.

(REPORTER'S NOTE: State's Exhibit 7 published. No audio.)

BY MR. OSKIN:

Q: Officer Jones, what that video showed, that showed you responding from the Department of Public Safety of North

Myrtle Beach?

A: Yes, sir.

Q: You drove roughly two miles north on Kings Highway up to the K&W?

A: Yes, sir.

Q: That's all within the City of North Myrtle Beach?

A: Yes, sir.

Q: And the City of North Myrtle Beach is within what county?

A: Horry County.

Q: Therefore, giving jurisdiction to your department for this response?

A: Yes, sir.

Q: As, as first responder to the scene, did you canvas the area for any surveillance footage?

A: I did; yes, sir.

Q: Were you able to find any?

A: I spoke to the manager of the K&W, the neighboring or adjacent -- or the adjacent building which is the Outback Steakhouse.

Q: Right.

A: And the video didn't show the areas where the actual incident took place.

Q: Okay. So, no surveillance was recovered ---

A: No, sir.

Q: --- with regards to the shooting?

A: No, sir.

Q: Officer Jones, how did you enter the K&W, from which road?

A: Old Highway 17, which is behind the building as it faces U.S. 17. K&W is sandwiched in between U.S. 17 and the old Highway 17. I took Old Highway 17 to come up to the rear of the building.

Q: Okay. Do those roads end up connecting back to each other?

A: Yes, sir.

Q: Okay. Nothing further from the state at this time. Please answer any questions from Mr. Bellamy and Mr. Spratlin.

THE COURT: Cross examination, Mr. Bellamy?

MR. BELLAMY: If it please the Court, Your Honor.

CROSS EXAMINATION OF AARON JONES BY MR. BELLAMY:

Q: Officer Jones, I believe the solicitor covered this, but you were at the Department of Public Safety when you left, correct?

A: Yes, sir.

Q: And I did not see because I couldn't see even if I had my glasses, about what time did you depart the Department of Public Safety?

A: The call came out at roughly 11:16 and probably a minute thereafter, within 30 seconds of hearing it, I was able to get in my car and leave.

Q: Okay. And it appears, I was able to get close enough at the end that it was 11:21 when it stopped?
A: Yes, sir.
Q: So, it would have taken you five minutes? It didn't look like -- seem like it was five minutes there, but you got the call about 11:15?
A: 15, 16 somewhere in there, yes, sir.
Q: Okay. The other thing I would note in the video, this was July the 9th, correct?
A: Yes, sir.
Q: That's the week of July 4th, July 4th being within that week period of time, the previous Monday?
A: The previous, yes, sir.
Q: Would you say that's a busy time of the year in North Myrtle Beach?
A: Yes, sir, typically.
Q: The busiest, quite frankly. And we saw on your video a lot of cars?
A: Yes, sir.
Q: Heading south and north that you're trying to navigate. Are there traffic cameras in the City of North Myrtle Beach on those lights like there at Main Street, where the Edge Parkway is and all the other lights, aren't there traffic cameras there?
A: I believe there is one at Main Street, but that's

operated by DOT.

Q: Okay. But there are cameras on these lights in North Myrtle Beach?

A: Yes, sir.

Q: Okay. And when you say you looked for video, that was from K&W and the two adjacent properties, but what you were looking for is something that would depict what happened in the parking lot, correct?

A: Yeah, that was my main concern at that point in time; yes, sir.

Q: I gotcha. Do you know -- and if you don't, you don't -- if there were any other businesses or these traffic cameras that were viewed?

A: I'm not -- I'm not certain, no, sir.

Q: And if you don't know, you don't know.

Court's indulgence?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Officer Jones, answer any more questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF AARON JONES BY MR. SPRATLIN:

Q: Good morning, Officer Jones.

A: Good morning.

Q: I don't have a whole lot of questions for you, but I do

have a couple. Now, you said that when you went to the -- I think you said was it the Outback Steakhouse or ---

A: The Outback, which is right next to it, yes, sir.

Q: They did not have any camera that showed that area of the parking lot ---

A: That area, no, sir.

Q: So, you weren't able to find any evidence that actually showed what occurred during this incident?

A: I wasn't able to find anything on the video that that -- no, sir.

Q: Okay. And I think Mr. Bellamy already asked this, but you -- you didn't check any of the traffic cameras heading in or out from K&W or heading down 17 or anything like that, right?

A: No, sir.

Q: All right. Thank you. No further questions.

THE COURT: Any redirect?

MR. OSKIN: Nothing from the state, Your Honor. We would ask that Officer Jones be released from his subpoena.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties.

MR. JONES: Thank you.

THE COURT: Next witness, please.

MR. OSKIN: Thank you, Your Honor. The state would next call Sergeant Carrie Rose, North Myrtle Beach Police Department.

Your Honor, for the Court's awareness, there will be video footage from this officer as well.

THE COURT: All right. Very good.

Come all the way around up front, please.

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

CAROLINE ALEXINA ROSE, HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

CLERK: State your name for the record.

MS. ROSE: My name is Caroline Alexina Rose.

THE COURT: Spell all those names, please, ma'am.

MS. ROSE: Caroline is C-A-R-O-L-I-N-E; My middle name is A-L-E-X-I-N-A; last name Rose, R-O-S-E.

THE COURT: Go ahead, Solicitor.

MR. OSKIN: Thank you, Your Honor.

DIRECT EXAMINATION OF CAROLINE ALEXINA ROSE BY MR. OSKIN:

Q: Sergeant Rose, who is your current employer?

A: City of North Myrtle Beach Department of Public Safety.

Q: All right. And how long have you been employed there?

A: Just over 16 years.

Q: Do you have any prior law enforcement experience prior to North Myrtle Beach?

A: I do not.

Q: What's your current assignment, ma'am?

A: Currently, I'm the Administrative Sergeant of the Communications and Detention Division at the department.

Q: What are -- what are some of the duties of your assignment?

A: Currently, I make administrative decisions in terms of scheduling and staffing for the detention facility as well as maintaining and making sure there's maintenance on the technology we have in our communications and 911 center.

Q: Were you in that same assignment July of 2016?

A: I was not.

Q: All right. What assignment were you in, ma'am?

A: I was the Day Shift Patrol Sergeant for the North District of the City of North Myrtle Beach.

Q: All right. And what would those duties include?

A: I was the supervisor of, depending on the day, roughly six officers, who were assigned the North District of North Myrtle Beach.

Q: What's in that North District of North Myrtle Beach?

A: The North District starts about 6th Avenue South, which is in the middle of North Myrtle Beach and every area north of that, which would include Cherry Grove, Ocean Drive Beach, and

the business sector along 17.

Q: Is the K&W Restaurant within North Myrtle Beach, is that in the North District of the city?

A: It is.

Q: Okay. Do you remember the date of July 9th?

A: Very well.

Q: Okay. Did you have the chance to respond to a shooting where the victim was at K&W parking lot?

A: I did.

Q: All right. Did you arrive on scene for that; did you respond to the scene?

A: Yes, I did.

Q: What did you see once you arrived on scene?

A: The parking lot was -- there weren't many vehicles there. I drove north on 17, so, I kinda had to do a U-turn to come back into the parking lot, how you would access the building. I saw Officer Jones was there and when I moved closer to the business, on the front of the parking lot, I saw a body of a woman laying there with a man standing over her. At that time, we were called for the particular incident, which was a woman lying in the parking lot and it was immediately apparent where she was.

Q: Did you see a cell phone on her?

A: I did.

Q: Did you -- were you involved in further investigation of

that phone itself?

A: We utilized the phone and what we're capable of doing to help identify the woman in the parking lot.

Q: Was that cell phone located near the victim in this case?

A: Yes, it was located between her legs on the ground.

Q: All right. Did you identify who the cell phone belonged to?

A: Yes.

Q: All right. How was the name identified?

A: The -- we couldn't find any other items that would identify our victim, so the cell phone had the locking feature, so we couldn't readily access any information on the phone. So, we used the phone to call 911, which allows her emergency access from any phone and that connected us with Horry County 911, and they gave us the telephone number for the phone. With that information, I utilized one of the MDTs, which is the mobile data terminal or the computers you see in police cars to start investigation into the phone number. I utilized a service that we have access to, it's called TLO, and it's a data base that is run by Transunion, which is a credit bureau and it contains court records, it contains asset records, property, vehicles, businesses, that we use to -- and phone numbers, that we can use to identify a phone number associated with a person. Initially, TLO did not connect the phone number we had on the phone to Ms. Fisher, but I actually

did the good old-fashioned Google search of the phone number and it came up associated to Amanda Fisher, and I then put the name into TLO and then it did connect that phone number with a high percentage -- there's a percentage of association on TLO that said this was very likely belonging to this woman.

Q: And was the name of Amanda Fisher, was that -- ended up being the confirmed deceased in this case?

A: Yes, it was.

Q: As part of your employment obligations, do you wear a body cam when you're on duty?

A: Yes, I do.

Q: Were you wearing one that day?

A: Yes, I was.

Q: Do you remember turning it on, did you turn it on when you arrived to the scene that day?

A: Yes, I did.

MS. OSKIN: I'll return this, Ms. Dixie, that's Number 7 and I'll ask that you pre-mark this.

Your Honor, Court's indulgence as we set up the television.

COURT REPORTER: State's 8.

THE COURT: What number is that?

COURT REPORTER: 8.

THE COURT: 8?

COURT REPORTER: State's 8.

MR. OSKIN: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

MR. SPRATLIN: Your Honor, permission to move about?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Sergeant Rose, I'll ask if you recognize what's been marked as State's Exhibit 8?

A: Yes, I do.

Q: What is that?

A: This is a disc that contains the footage from my body camera on the date of the incident, July 9th.

Q: How do you know that that's yours?

A: I viewed it previously and initialed the back. It has my initials on it.

Q: That's your body cam footage in its entirety?

A: It is.

Q: No material additions, deletions, subtractions from it?

A: No.

THE COURT: Is there any objection or renew or any objections, Mr. Bellamy?

MR. BELLAMY: We would object as to its relevance to the -- this case as to who shot or did what ---

THE COURT: All right, sir.

MR. BELLAMY: --- it's prejudicial value outweighs the probative.

THE COURT: All right, sir.

And Mr. Spratlin?

MR. SPRATLIN: Your Honor, we would object subject to our earlier objection.

THE COURT: Based upon the Court's prior ruling, I do find the evidence to be proper in this matter and I will allow it in evidence, you may publish it to the jury.

STATE'S EXHIBIT NUMBER 8

ADMITTED INTO EVIDENCE

MR. OSKIN: Thank you, Your Honor.

(REPORTER'S NOTE: State's Exhibit 8 published. Audio not transcribed herein.)

BY MR. OSKIN:

Q: Sergeant Rose, I believe the body cam video showed a man holding an umbrella over the victim in this case; is that correct?

A: That's correct.

Q: Do you know who that man was?

A: I don't recall his name. He stated that he had just come to the business to eat.

MR. BELLAMY: Your Honor ---

BY MR. OSKIN:

Q: Don't tell me what anyone said, I apologize.

THE COURT: Just a second.

Q: So, you're unsure who the man with the umbrella was?

A: I don't recall his name.

Q: All right. Did you get any excited utterances or present sense impressions from the man with the umbrella?

A: No.

Q: Did you set up a crime scene after responding to that scene?

A: Yes.

Q: Okay. Did you secure the perimeter to keep extra witnesses or extra people from coming to the scene?

A: As the -- sorry -- as the supervisor, that is my responsibility is to secure the scene and delegated officers to do that. The rolling area of the parking lot was quartered off fairly quickly.

Q: You kept a crime scene log as well?

A: I asked an officer on scene to establish and maintain the crime scene log.

Q: And the man with the umbrella, he had nothing to do with this case or any further investigation?

A: Not while I was there.

Q: Was the man with the umbrella, was he just a bystander?

A: Yes.

MR. OSKIN: Nothing from the state at this time.

THE COURT: Cross examination, Mr. Bellamy?

MR. BELLAMY: Yes, sir, Your Honor, may it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF CAROLINE ALEXINA ROSE BY MR. BELLAMY:

Q: Officer Rose, the -- to clear up something I think -- let me show you State's -- may I approach, Judge?

THE COURT: Yes, sir.

Q: State's 2 and ask if you recognize that photograph?

A: I recognize what it's a photo of.

Q: Okay. Well, what is it a photo of?

A: It's a overhead photograph of K&W parking lot as well as the neighboring hotels.

Q: Okay. Does it fairly and accurately show the parking lot at the K&W or at least the front portion of it that's on Highway 17?

A: It does.

Q: Okay. And in that photograph, could you identify the parking space that the car that Ms. Fisher would've been in, where it would've been parked? Are you able to do that based on your body cam video, when you come up, where she is, and where the car would've been?

A: I can identify the vicinity.

Q: Would you know, based on where she is, which space the car was in?

A: Possibly.

MR. BELLAMY: Would it be okay if she came down and showed?

THE COURT: Any objection from the state?

MR. OSKIN: Nothing from the state, Your Honor.

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

BY MR. BELLAMY:

Q: Would you come down, Officer Rose?

THE COURT: Make sure you stand in front of one of the microphones.

Q: And if you would, Officer Rose, maybe do it in two sections so everybody -- we'll do these six and then move here, and I'll hold this and if you could just point to -- well, let me ask you first, point to where Highway 17 is?

A: This is Highway 17 up in the front.

Q: Okay. And going -- excuse me -- and going this way, which way would you be going?

A: That upward direction would be north.

Q: Excuse me, this way.

A: Downward would be south.

Q: So, as you came out of the parking lot, you could only turn right?

A: You would have to turn south, right.

Q: And if you were coming from North Carolina or say Calabash area on Business 17, you would be in what lane of traffic, you would be in this lane and traffic in this lane, correct?

A: That side of the highway.

Q: And you would've made a right into the parking lot, correct, if you're coming from North Carolina?

A: Traveling south on 17, yes, you would have to take a right.

Q: This way is south and this way is north, so if you're traveling this way, if you're over here, you're going to North Carolina?

A: You're traveling north, you're in the far lanes.

Q: And we have some circles and some X's, but in looking at your video, and I've looked at a bunch of other ones too, where -- which space of these -- and again, this is not representative of that day, but can you tell us which space that the car would've been parked in? Can everybody see, by the way?

A: I can tell you the area.

Q: Okay.

A: It would be in this vicinity where there's a pre-existing circle.

Q: Okay. Now, isn't it true, though, in looking at your video, in fact it's the second space after this median, if you look at your video, which I just did, you wouldn't disagree with me if I said that, would you?

A: It was where, sir?

Q: You turned in here, heading south, that's the little median here, parking spaces here, past this little median, it

would be the second space pulling in and facing this way; the car facing that way?

A: I would agree that her body was closer to the little island than it is the building in that section of the parking lot.

Q: So, it would've been in the space between the island and that first line, correct?

A: In that vicinity, correct.

Q: And your video shows it, so which would've put the car in the second space facing south if we're gonna point this out, correct?

A: The vehicle had already left when I arrived on scene.

Q: I understand, but if there's a witness who says that the car was facing him and the body is here, it would put the car in the second space?

A: According to the witness, correct, uh-huh, (affirmative response).

Q: Okay. And we'll move down here, Officer Rose, just real quick, everybody's heard my questions but it would've been past the second island, the second space is where the car would've been, Ms. Fisher would've been in the first, correct?

A: In that vicinity, correct?

Q: Okay. All right. Thank you. You can go have to seat.

Now, you indicated -- did you take any measurements or do you know of any measurements that were taken in terms of where

Ms. Fisher, excuse me, where Ms. Fisher's body would've been in relation to that island or any of these lines or marked spaces; did you do any of that?

A: I did not take measurements at the scene.

Q: Did anybody that you know of?

A: While I was there, there were none taken.

Q: Okay. But if -- and if there were, there would be some documented report of that, correct?

A: Yes.

Q: Okay. In addition to the cell phone, there was another item, as she was face down, that was found, was there not?

A: There was.

Q: Very close to the cell phone?

A: Very close, yes.

Q: Between her legs there was a cell phone and what was that other item?

A: A small copper, metal item.

Q: It would've been a bullet, correct?

A: I believe it was a bullet fragment.

Q: Did you take custody of that?

A: I did not.

Q: Do you know if anybody made any measurements as to relation to where it was found as to where the car may've been marked?

A: Not that I have observed.

Q: Okay. And again, there would be a report if that had been done?

A: Yes.

Q: Okay. Did you -- do you know -- did you or do you know if anybody, while you were there, took possession of any of the clothes that she may have had on to be tested or analyzed at the scene?

A: While I was there, no.

Q: Okay. And again, if that was done at a later time, there would be a report that would reflect that, correct?

A: Yes.

Q: Now, did you find any glass or evidence that a bullet may've struck any glass and was left behind?

A: No.

Q: So, no glass near Ms. Fisher or near the parking space beside her?

A: No, not that I saw.

Q: Now, did you check for any video surveillance from any other businesses in the area?

A: Personally, I did not.

Q: And there are businesses both north and south, lots of them, of the K&W, correct?

A: Correct.

Q: And there are traffic lights certainly south of the K&W, correct?

A: Yes.
Q: And you're aware that the car that was there and left went south on 17, correct?
A: That's what the witness stated.
Q: Okay. That would've been Mr. Thompson, correct?
A: Yes, sir.
Q: Okay. So, he would have told you that? Mr. Thompson told you and you put it in the report that the car went south on Business 17, right?
A: I don't recall if he told me personally. I'd have to watch the video again, but he made a statement to either myself or another detective on scene. He was spoken to a little bit later on more thoroughly.
Q: Okay. So, law enforcement and I believe your video and again it's hard to see for me, but I think it was around 11:25 after you got on scene, correct? And the video will speak for itself, so if I'm wrong, but is that an approximation?
A: It was 11:15ish, I think is when the call was. It probably took me four to five minutes to get there, so...
Q: Okay. Do you know if any other officers checked businesses south of the K&W for any surveillance of a potential vehicle matching the description that -- you had a vehicle description, correct?
A: Yes.
Q: Okay. Did you know if anyone -- I know you said you

didn't, but if anybody else checked for video to see if that car may have went or turned?

A: Yes, Officer Jones went to several of the surrounding businesses to check video and one was Detrick's Carwash, which is just south on Highway 17 from K&W.

Q: Okay. Do you know if anybody checked the traffic cameras at these lights in North Myrtle Beach?

A: I'm not sure.

Q: Okay. But if it was done, there would be a report to reflect that, correct?

A: It would probably be noted it if they were checked, yes, sir.

Q: Okay. So, there would be a report for every video that would have been checked and some analysis of whether there is or isn't anything there, correct?

A: It would be reflected in a document or a statement that businesses have been checked for relevant video.

Q: Gotcha. Are you aware that the subject vehicle ended up in the City of Myrtle Beach?

A: I was advised the next day, I believe, by one of the investigating detectives.

Q: Do you -- do you know if there is any report of checking the surveillance cameras entering the City of Myrtle Beach?

A: I'm not aware if there are.

Q: Okay.

A: Excuse me.
Q: You were the patrol sergeant, I believe, back in '16?
A: I was.
Q: Okay. You would agree with me when I say that July 9th, that's a Saturday, correct?
A: I believe it was; it was the weekend, uh-huh, (affirmative response).
Q: It was the weekend and that would be the July 4th week, July 4th being the previous Monday or Tuesday, I believe, correct?
A: I'd have to see a calendar, but it was right around obviously the 4th of July, right after.
Q: And you would agree with me that is the busiest week of the year for the Grand Strand?
A: It's very busy.
Q: Very busy. And we've seen some car cam and there's a lot of traffic, and there's a lot of businesses around this K&W, and there's a lot of activity, correct? This is not an isolated area?
A: Specific to the business, it was very limited activity at the time I got there.
Q: But this is an area that there's a lot of traffic on 17 and businesses that are open all around where we are, correct?
A: Yes, it's a high traffic area; it's on Highway 17.
Q: And this was in the front of the business, correct?

A: It was.

Q: Okay. Did you receive any calls from any motorists of any disturbances in any vehicles, any bad driving, crazy driving, someone in distress in a white Malibu that day, roughly 11:15 in the morning or before?

A: We did not.

MR. BELLAMY: Court's indulgence?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Sergeant Rose. Answer any more questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF CAROLINE ALEXINA ROSE BY MR. SPRATLIN:

Q: Good morning, Sergeant Rose. How are you?

A: Fine, how are you?

Q: I am good. A couple of quick questions for you. Now, you spoke earlier about calling 911 to identify whose cell phone that was you found on the scene, correct?

A: I did.

Q: And actually it was maybe directed an officer, and I'm probably butchering this name, Vymislicky to do that, correct?

A: Yes, she had gloves on and I did not at the time, so she, in terms of preserving the phone, I think it was just one button you push, it's emergency or something along those lines and she pushed it.

Q: And she actually had to call 911 twice, right, or she had to call 911 twice in front of you? The first time it didn't connect; isn't that right?
A: Yes.
Q: And then so the first time it didn't connect. The second time called it connected?
A: It did.
Q: So, if the phone records of this phone show two phone calls to 911, that would be right?
A: Yes.
Q: Okay. As the patrol sergeant, as the -- at the time that you arrived on scene, you were in charge of the scene, correct?
A: Yes.
Q: And you pretty much remained in charge until the detectives show up; is that correct?
A: Yes.
Q: So, your job is to tell people what to do and where to go?
A: Essentially, yes.
Q: Such as when you talked to, I believe it was Officer Jones, and told him to go check out the Outback cameras; is that correct?
A: That's correct.
Q: Okay. Mr. Bellamy already asked you, to your knowledge,

other business -- there was several other business around there that maybe nobody checked or you're not aware if anybody checked?

A: I'm not aware; I remained on scene.

Q: Okay. All right. When you spoke with Mr. Thompson or just had any interaction with him, he seemed very upset, correct?

A: He was very upset.

Q: In fact, normally -- in fact, you gave him a written statement to complete at home and send to you, correct?

A: I don't believe I did.

Q: Okay. All right. But you didn't get a written statement from him that day?

A: Personally, I did not collect one or ask for one.

Q: Okay. Because he was so upset that he didn't give a written statement. It wasn't until the 9th -- it wasn't until the next day that he gave a written statement; is that right?

A: I couldn't tell you.

Q: Okay. All right. Do you remember directing anybody to give him forms so he could give you a statement; do you remember doing that at all?

A: I may have.

Q: Okay. And as Mr. Bellamy already asked you, to your knowledge, there's been no checking of any kind of traffic cameras, or any sort of other cameras that were checked?

A: While I was there, Officer Jones checked several of the businesses close to the K&W. What was checked beyond that, I couldn't tell you.

Q: Okay. Because once the detectives showed up, that became their responsibility?

A: Yes.

Q: And who was the head detective on that case?

A: Initially, Officer Vymislicky arrived on scene and then the detective sergeant arrived on scene as well as several others that work for our department. And after that, Detective Lynam was established as the lead investigator.

Q: So, Owen Lynam, who is seated behind the state, he was the head detective on this case, Owen Lynam was the head detective?

A: Eventually, yes, he was.

Q: Okay.

A: Yeah, that decision was made.

Q: Okay. All right. Thanks. I'm just trying to figure out who all the players are; that's all we're doing.

I appreciate it. Please answer any questions anyone may have.

A: Yes, sir.

THE COURT: Redirect?

MR. OSKIN: Briefly, Your Honor.

REDIRECT EXAMINATION OF CAROLINE ALEXINA ROSE BY MR. OSKIN:

Q: Sergeant Rose, you're not a crime scene analyst, correct?
A: Not any more.
Q: Okay. Your job this date was patrol sergeant?
A: I was strictly patrol sergeant, yes.
Q: So, you established the scene, correct?
A: Yes.
Q: You secured the scene?
A: Yes.
Q: Correct, that was your duty that day with regards to this case?
A: It was to orchestrate everything that needed to be done, yes.
Q: Okay. As far as Mr. Bellamy's question with you don't know which direction they left or which direction they could've left, there's only one way they can leave the K&W parking lot; isn't that correct?
A: From the front, yes. Only -- south is the only legal way to go but...

MR. OSKIN: Nothing further, Your Honor. Please excuse the witness.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: Just one second.

No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, ma'am, you're released from your subpoena, you may go back to your regular duties.

MS. ROSE: Okay.

THE COURT: Next witness?

MR. DEBUSK: The state calls Detective Amy Vymislicky.

MR. BELLAMY: Judge, may we approach with the solicitor for just a second?

THE COURT: Certainly.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right, ma'am, come around and meet the clerk's representative right over here, please.

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

AMY VICKS, HAVING BEEN SWORN

TESTIFIES AS FOLLOWS:

THE COURT: Well, all right, ma'am. You need to state your name at the time and now and spell both of them.

MS. VICKS: Okay. My name is Amy Vicks at this moment, and it's V-I-C-K-S. At the time of the -- when the case started, my name was Amy Vymislicky, and it's V-Y-M-I-S-L-I-C-K-Y.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF AMY VICKS BY MR. DEBUSK:

Q: Officer Vick -- Vicks?

A: Yes.
Q: Congratulations, I guess you've been married since we've last met?
A: Right.
Q: Who is your employer?
A: The City of North Myrtle Beach Department of Public Safety.
Q: How long you been there?
A: Sixteen years.
Q: At this time, April of 2018, what's your -- what are your duties?
A: At this time, I'm the code enforcement officer for the city.
Q: Back in July of 2016, what were your duties then?
A: I was in the investigative unit; I was a detective.
Q: Did you respond to the K&W parking -- K&W Cafeteria in North Myrtle Beach on July 9th of 2016?
A: I did.
Q: For what purpose?
A: We got called. I was the on-call detective at the time, and I was already at the police department, it was on the weekend, and they called me as a -- there was a shooting in the parking lot of the K&W Cafeteria.
Q: When you arrived, what was your role?
A: I was the first on-scene detective.

Q: Okay. What did you do?
A: When I arrived on scene, I basically took photographs, had it roped off with caution tape and crime scene tape, kinda basically took photographs, talked to different people that were on scene.
Q: And was it your role to, to, I guess memorialize the crime scene?
A: Yes.
Q: Okay. And you took a number of pictures?
A: I took -- yes.
Q: I show you State's 10, 11, and 12, as well as State's 3 and ask if you recognize these?
A: Yes, I recognize all the photographs.
Q: What are they?
A: They are of the actual scene upon my arrival.
Q: So, we've already talked about State's 3. That shows the victim, correct?
A: Yes.
Q: When you arrived and took that picture, had there been any efforts to treat her?
A: Not at that time, no.
Q: I mean, what is in the machine and the things that are on ---
A: That was after I had arrived, the first responders arrived to check for any vitals at that time.

Q: First responders being EMS?
A: Yes.
Q: Okay. And that's what -- their machinery?
A: Yes.
Q: That wasn't there when you first arrived?
A: No.
Q: It was just victim laying there?
A: Yes.
Q: Where she's laying there, was there some evidence that you collected at the scene?
A: I did. I collected a casing from a round.
Q: Okay. Is that reflected in State's Exhibit 10?
A: Yes.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. State's 10 is in evidence without objection.

STATE'S EXHIBIT NUMBER 10

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Now, is that part of a projectile?
A: Yes, sir. Yes.
Q: Is that the whole projectile or just part of it?
A: Just part of it.
Q: Would there also be a lead core that went with that

that's not present?

A: Yes.

Q: I think that's what you call the jacket of the bullet?

A: Yes.

MR. DEBUSK: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Now, on State's Exhibit 3 here, is that visible between the victim's feet?

A: It was near her left calf.

Q: Okay. But that -- that was the casing and that's where it was collected ---

A: Yes.

Q: --- after you arrived?

A: Yes.

Q: Was there another piece of evidence between her legs or her knees there?

A: Yes, there was her cell phone.

Q: Okay. Did you collect that cell phone?

A: We did collect the cell phone.

Q: What did you do with it?

A: Well, we were trying to -- Sergeant Rose was on scene just prior to my arrival. When we saw the cell phone there, we picked it up and we were trying to determine maybe what her name was, so...

Q: Did she have any ID or anything on her?
A: No, sir.
Q: No wallet, no purse?
A: No, sir.
Q: So, this phone was basically your best route?
A: Yes, sir. Yes, sir.
Q: How did you go about determining?
A: Sergeant -- Sergeant Rose took the phone into her possession at that time and went to her patrol car and started doing a little bit of research.
Q: Okay.
A: And found out that who belonged to the phone.
Q: Basically, that phone provided the name?
A: Yes. Yes, sir.
Q: Was the victim Amanda Fisher?
A: Yes, sir.
Q: Okay. State's 12 and 11, what do those show?
A: That is the actual crime scene of the K&W Cafeteria in the City of North Myrtle Beach.
Q: Are those views of the parking lot?
A: Yes, sir.
MR. BELLAMY: Judge, may we approach?
THE COURT: Is there an objection, Mr. Bellamy?
MR. BELLAMY: I do. May we approach just briefly?
THE COURT: Yes, sir. Bring those, please.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

MR. BELLAMY: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Ms. Vymislicky, 11 and 12, were those taken the day of the investigation?

A: No, I don't believe they were; they were taken after.

Q: Okay. When the parking lot was empty?

A: Yes.

Q: So, the vehicles that responded and the vehicles that were there at the time are not present in that photo?

A: No, they are not.

Q: But it does show the basic layout of the parking lot and the buildings?

A: Yes, sir.

MR. DEBUSK: And that's the purpose for this, Judge.

THE COURT: Is there any objection now, Mr. Bellamy?

MR. BELLAMY: That's cleared it up. Thank you, Judge.

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir. 11 and 12 are in evidence without objection.

STATE'S EXHIBIT NUMBER 11 AND 12

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. DEBUSK: May we publish, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Let's go to State's 9 and ask if you recognize that?

A: Yes, that is also the parking lot of the K&W from an aerial view.

Q: How was that taken?

A: Cherry picker, like ---

Q: Okay. So, you brought a cherry picker out there cause it gets high?

A: Yeah, uh-huh, (affirmative response), yes.

Q: Does the location where the victim's body was found and depicted in, I think it was State's Exhibit 2, is that marked on that?

A: Yes.

Q: How is it marked?

A: It's marked with an orange paint circle.

Q: Okay. State's 9, was this taken the day it happened or was this taken at a later date?

A: That was actually taken, I think, the following day.

Q: Okay. Again, the vehicles that responded and the body and everything are not there?

A: Not there.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: I'm sorry; no, sir, Your Honor.

THE COURT: All right. Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. State's 9 is in evidence without objection.

STATE'S EXHIBIT NUMBER 9

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: And again, on State's 3 that shows the body, there's a the parking -- parking lot line through that, correct?

A: Yes.

Q: And where that orange circle is drawn on State's 9, correct?

A: That's correct.

MR. DEBUSK: May I publish, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: So, recorded the crime scene, you collected the cell phone and the bullet casing, after photographing them. Did you put in collection reports, chains of custody on those items?

A: Yes.

Q: Okay. You marked the location -- was measurement necessary after you marked the location and all that?

A: No, sir.

Q: But you did memorialize the location in photographs and everything?
A: Yes.
Q: Now, you have at least a partial projectile. To your knowledge, were any firearms recovered in the investigation to compare to that?
A: No, sir.
Q: So, you just have a projectile and nothing to compare it to, correct?
A: That's correct.
Q: But you did collect the projectile and put it into evidence?
A: Yes, I did.
Q: And that was depicted in the photograph?
A: Yes, sir.
Q: And again, it was just the jacket of the projectile, not the lead?
A: That's correct.
Q: So, after photographing and memorializing the crime scene and collecting these items and putting them in the reports and collection, did you do anything further? Did you attend the autopsy?
A: I did not attend the autopsy.
Q: Was a Myrtle Beach detective assigned to attend the autopsy?

A: A North Myrtle Beach one, yes.

Q: North Myrtle Beach one?

A: Yes.

Q: Did you have any responsibilities with this investigation after you memorialized the scene and went back and took the pictures the next day?

A: Actually, after the autopsy, I -- I placed the victim's jewelry and the victim's fingernails in evidence as well.

Q: And those were collected at the autopsy?

A: Yes.

Q: And you just placed them into evidence, you weren't the one that went to the autopsy?

A: That's correct.

Q: Now, these photographs we've shown today, those aren't the only ones you took are they?

A: No.

Q: So, that's just a selected ---

A: Yes.

Q: --- set of them. You took many photographs?

A: I took a lot of photographs.

Q: Please answer any questions Defense may have.

THE COURT: Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor.

CROSS EXAMINATION OF AMY VICKS BY MR. BELLAMY:

Q: It's now Ms. Vicks?

A: Vicks is correct.

Q: Officer Vicks?

A: Yes.

Q: Give me just a second to -- Officer Vicks, you were doing crime scene, taking photographs, taking things into custody, correct?

A: That's correct.

Q: For them to be later analyzed and/or presented here in court, correct?

A: That's correct.

Q: You indicated you did not attend the autopsy. What detective or officer was assigned to that duty?

A: I believe Detective Sergeant Paul Sheets attended the autopsy.

Q: Okay. Do you know if he took any photographs at that autopsy?

A: I believe he did, yes.

Q: Okay. And did he -- what did he collect at that that he turned over to you?

A: What I got was the jewelry and the fingernails.

Q: And those were placed into evidence?

A: Yes, sir.

Q: And then you collected the -- and you describe it here as a bullet round?

A: Yes.

Q: Okay. And put it into evidence to be further analyzed?
A: Yes.
Q: And was the jewelry gonna be analyzed or just given back to Ms. Fisher's family?
A: I believe it was to be given back to Ms. Fisher's family.
Q: And the fingernails, were they gonna be analyzed?
A: I believe so.
Q: Okay. Detective Sheets, did he collect any of the clothing from Ms. Fisher for it to be analyzed for blood splatter or anything of that nature?
A: I am not positive, but I'm sure he probably did.
Q: Okay. But he didn't turn it over to you?
A: Not to me, no.
Q: And if it was collected and analyzed there would be a report memorializing that, correct?
A: Correct.
Q: Okay. Did you notice any glass in the area of the crime scene?
A: Not that I recall.
Q: And so we're clear and I don't want to belabor it again, but the car that Ms. Fisher would've been in would've been in the second space after the second little grassy island, correct?
A: Correct.
Q: And she would've been, you're seated in the car to the

left of it?

A: That's correct.

Q: Okay. And again, no measurements were done of where the bullet was found or her body necessarily, but there are photographs?

A: Yes.

Q: Okay. Also, you indicated you took the victim's -- Ms. Fisher's phone into your custody into evidence?

A: Yes.

Q: It was initially used through this system TLO, I don't -- that may be wrong, but somehow you were able to ascertain whose phone it was?

A: That's correct.

Q: Then contact was made with some member of her family to get the passcode, correct?

A: Yes, that was her mother.

Q: Okay. So, you had full access to her phone calls, missed calls, texts, everything, correct?

A: Yes.

Q: Did you do an analysis of the phone or somebody else with the department?

A: Someone else would've done that.

Q: That would have been?

A: Detective Will Lynch.

Q: Will Lynch. Okay. So, he could give us the results when

he testifies?

A: That's correct.

MR. BELLAMY: Court's indulgence, Your Honor.

THE COURT: Certainly.

BY MR. BELLAMY:

Q: Thank you, Officer Vicks, I have no further questions. Answer any other questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF AMY VICKS BY MR. SPRATLIN:

Q: Good morning, Officer Vicks.

A: Good morning.

Q: I won't rehash everything you've already been asked. That's kinda one of the disadvantages of going third. A couple of things I thinks important. When the -- you said that the victim, you recovered jewelry from her, correct?

A: It was recovered at the time of the autopsy, yes.

Q: Okay. All right. So, there was jewelry on her person at the time that she was autopsied?

A: Yes.

Q: All right. That hadn't been taken obviously?

A: That's correct.

Q: And you said that when you got on scene, you didn't see any indication that she was still alive, breathing, moving, anything like that?

A: No, sir.

Q: But you called EMS out or EMS arrived and was checking her out whenever you were there?

A: Yes.

Q: That's where the probes on her body came from?

A: That's correct.

Q: But you're not aware of any kind of lifesaving measures EMS attempted to do or anything like that?

A: No.

Q: As far as you, when she laid in that parking lot, as soon as she hit the ground, she had already passed?

A: Yes.

Q: Thank you, Detective Vicks. I think everybody else has already covered everything.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION OF AMY VICKS BY MR. DEBUSK:

Q: If there had been glass at the scene, you would have recorded that and collected it, correct?

A: That's correct.

Q: And photographed it?

A: Correct.

Q: So there was none?

A: No.

Q: Again the casing, I'm sorry, the jacket of the bullet, the partial bullet that was found right next to her calf,

right?
A: Yes, her left calf.
Q: Visible on that photo is a little sort of copper-colored dot?
A: Yes, sir.
Q: And also in State's Exhibit 10?
A: That's correct.
Q: You collected her jewelry?
A: Detective Sheets would've collected the jewelry. I put it into evidence.
Q: Was she bedecked with jewels?
A: No, sir.
Q: In fact, what did she have on? What am I showing you?
A: Two pairs of earrings and one gold ring.
Q: What was that that you were reading from? Just tell the jury what you're looking at.
A: Oh, this is an evidence form that we fill out prior to when we put it in an evidence bag, we attach this. It's an evidence form and it's recorded by numbers.
Q: Is that a pair of earrings?
A: Yes.
Q: No wallet?
A: Nope; no, sir.
Q: And the only way you were able identify her was through the cell phone?

A: That's correct.

Q: Thank you.

THE COURT: Any questions on those just asked? Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. You wish the witness to be excused?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right, ma'am, you're released from your subpoena, you may go back to your regular duties. Thank you.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, we're gonna take a short break at this point in time. If you go to the jury room, please remember don't talk about the case, don't allow anybody to talk to you about it, and I'll speak to you shortly. Just leave those on the rail. Okay. Thank you.

Go ahead and go to the jury room.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: Anything from the state before we take a break?

MR. DEBUSK: Just for scheduling, Your Honor. Things are moving along a little faster than I expected. I've got one

witness here for the rest of the morning and the rest of them are traveling in from some ways away.

THE COURT: All right.

MR. DEBUSK: They'll be here at 1:00, Your Honor.

THE COURT: All right. Well, we'll -- I don't think we'll be starting again at 1 o'clock, but we'll see if we can't fashion a break such that we'll start as soon as we can.

MR. DEBUSK: Thank you.

THE COURT: Okay. All right. Anything else right now, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Very good. We'll take a short break for about 10 minutes or so. Okay?

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: All right. Solicitor, you ready with your next witness, please?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. Very good.

And, Mr. Bellamy, you ready?

MR. BELLAMY: Yes, Your Honor, just one thing I would

like to make the Court aware of. During the break, I became aware that one of the witnesses for the state is in the courtroom. I did not know she was here until we took the break. She is on their witness list. I don't know whether she was subpoenaed by them or not. The court had ordered sequestration.

THE COURT: Well, who is the person?

MR. OSKIN: Tyquajua Wiggins, Your Honor.

MR. BELLAMY: Yeah, Tyquajua.

THE COURT: Okay.

MR. BELLAMY: Upon speaking with the solicitor, they do not intend to use her. I do not intend to use her. I'll let Mr. Spratlin address if he does?

MR. SPRATLIN: I do not intend to use this witness.

MR. BELLAMY: And so, based upon that, I don't know that she would be required to be sequestered, but then I'd let the Court ---

THE COURT: Okay. Solicitor, you've got her on the witness list. She is under the order of sequestration and should not be in the courtroom.

MR. DEBUSK: We'd ask she be released, Your Honor.

THE COURT: You're asking her to be released and you will not be calling her as a witness?

MR. DEBUSK: Correct.

THE COURT: All right. And she is released from the

order of sequestration. She should not have been in the courtroom prior to this time.

All right. Anything else, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: Ask the jury to come in.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, solicitor, your next witness please.

MR. DEBUSK: Thank you, Your Honor. The state calls Michael Vann.

THE COURT: All right. Please come around, sir, and be sworn and meet the clerk's representative right there.

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

MICHAEL VANN, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. VANN: Michael Vann, V-A-N-N.

THE COURT: Go ahead, solicitor.

MR. DEBUSK: Thank you, Your Honor.

DIRECT EXAMINATION OF MICAHEL VANN BY MR. DEBUSK:

Q: Mr. Vann, where do you live?

A: Stanley, North Carolina.

Q: Is that near ---

A: That's west of Charlotte.
Q: What's your occupation?
A: I'm an electrician.
Q: Are you married?
A: Yes.
Q: Is your wife here with you today?
A: Yes, she is.
Q: Is the reason Amanda Fisher?
A: Yes.
Q: Who is Amanda Fisher?
A: She is my step-daughter.
Q: How long have you been step-father to Amanda?
A: For about 16 years.
Q: How old was Amanda when she died?
A: She was roughly about 29.
Q: So, she was not even a teenager yet when you ---
A: Yes, she was like 15, 14.
Q: Did she have any children?
A: No, she did not.
Q: Where did she lived for most of her life?
A: She had lived with her mother most of her life up in Belmont, in Mount Holly area.
Q: That's again close to Charlotte?
A: Yeah, yes, that's west of Charlotte.
Q: Now, when she died, where was she living?

A: She was staying down here in Shallotte; had her a place down here cause she had moved down here to start a new life.

Q: 1158 River View Drive sound familiar?

A: Yes, sir; yes, sir.

Q: Is that where she was living?

A: Yes, sir.

Q: What was that residence?

A: It was a single-wide mobile home trailer.

Q: What was it used for before Amanda lived there?

A: Before then it was just a vacation place for everybody and she staying there for the time being and ---

Q: Sort of a transition home?

A: Yes.

Q: All right. State's Exhibit 15, do you recognize that?

A: Yes, I do.

Q: What is it?

A: That is the place.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir.

THE COURT: All right. Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. So, that's 15?

MR. DEBUSK: 15, yes, Your Honor.

THE COURT: All right. State's 15 is in evidence without objection.

STATE'S EXHIBIT NUMBER 15

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: Well, we'll get back to that in a moment. Was Amanda working at that time?

A: Yes, she was.

Q: What did she do?

A: She was an in-home care, taking care of elderly people at their houses and doing whatever they needed done.

Q: Did she work through an agency?

A: Yes.

Q: So, she went where she was assigned?

A: Yes, yes.

Q: What kind of car did Amanda drive?

A: It was a Malibu, white four-door.

Q: Let me show you what's been marked -- or it's already admitted into evidence as State's Exhibit 1 and ask if you recognize that.

A: Yes, I do.

Q: What is it?

A: That is the car of Amanda Fisher.

Q: Do you know what happened to that car after Amanda was killed?

A: What we were told was that it was drove back to Charlotte

MR. BELLAMY: Objection, Your Honor.

THE COURT: Yes, sir.

MR. BELLAMY: He's getting ready to say what he was told and ---

BY MR. DEBUSK:

Q: Did you receive the car back?

A: No, sir, we did not receive the car back.

STATE'S EXHIBIT NUMBER 13 AND 14

MARKED FOR IDENTIFICATION

Q: Okay. Let me show you State's 13 and 14 and ask if you recognize those.

A: Yes, sir; I do.

Q: What are they?

A: They are the car of the -- of Amanda Fisher.

Q: Okay. And it does have a license plate there, so you say that is the license plate?

A: Yes. Yes, sir.

Q: Is that the condition you last saw it in?

A: No, sir.

Q: Okay. State's 13 and 14. Just to reiterate on State's 13, that is Amanda's tag number?

A: Yes, sir.

MR. DEBUSK: Your Honor, we'll put these in with a subsequent witness subject to further foundation.

THE COURT: All right. Very good.

BY MR. DEBUSK:

Q: Who owned that car; was it Amanda or ---

A: It was her grandfather's.

Q: Her grandfather let her use that car?

A: Yes, sir.

Q: So, that was -- even though he owned it, that was Amanda's car?

A: Yes, sir.

Q: Do know what the value of that car was?

A: It was approximately between 10 to 16,000.

Q: Okay. And it was -- her grandfather helped her buy it?

A: Yes, sir.

Q: For that amount?

A: Yes.

Q: How long had she had it, do you know?

A: Probably about a year and a half to two years.

Q: So, it probably would've depreciated a little bit?

A: Yes, a little bit.

Q: Did Amanda take good care of her car?

A: Oh, yes.

Q: Was she proud of it?

A: Yes, sir.

Q: Was it functional?

A: Yes.

Q: Did the air conditioning work?
A: Yes, everything worked on it.
Q: When did you last see Amanda?
A: That Friday night, January the 8th -- I mean, July the 8th, I mean July the 8th.
Q: July the 8th?
A: Yes.
Q: Okay. Where did you see her?
A: We saw her at our place.
Q: Okay. Did she articulate to you any plans that she had?
A: No, sir; she did not.
Q: Okay. Do you know where she went?
A: No, we found out that she went to Myrtle Beach. She had called her mother and said that they were gonna go to Myrtle Beach.

MR. BELLAMY: Objection, Judge. I believe it's gonna be hearsay.

THE COURT: Don't -- all right. That's hearsay, Solicitor.

BY MR. DEBUSK:

Q: Okay. Do you know who she was with?
A: Yes, she was with my niece.
Q: What's your niece's name?
A: Tabetha Oxendine.
Q: So, she and Tabetha went somewhere?

A: Yes.

Q: Were you with your wife while she was gone?

A: Yes.

Q: Do you know that they had communication by phone?

A: Yes, I do.

Q: Okay. Do you know when the last time they communicated by phone was?

A: They -- Saturday morning at 9:11.

Q: Okay. And why does that stick in your mind?

A: Because she had questioned us going back to the beach that early.

Q: So, because it was that early?

A: Yes.

Q: Okay. Now, were you going -- what were you doing that day?

A: I was driving that day to the beach.

Q: Where were you going?

A: To Holden Beach.

Q: Holden Beach?

A: Yes.

Q: Just in case someone is not familiar with the North Carolina area, you were staying at the vacation house?

A: Yes, sir.

Q: Where is Holden Beach on that map?

A: It is directly about right here.

Q: It's south of ---
A: Yes.
Q: Closest beach you can get to?
A: Yes, sir.
Q: Okay. What were you doing at the beach?
A: Just sitting out there playing.
Q: Beach stuff?
A: Yeah, beach stuff.
Q: How long did you stay out there?
A: We stayed out there until about 3 o'clock.
Q: Who was with you when you went to the beach?
A: My family was and my brother and his family was.
Q: How many of you?
A: Probably about six to seven of us.
Q: Were you all staying together at the ---
A: No, sir.
Q: But you were staying there?
A: Yeah, we were staying there.
Q: When you last spoke to Amanda at 9:11 ---
A: Yes, sir.
Q: --- any reason for concern at that point?
A: No, sir.
Q: When did you find out Amanda had been killed?
A: We got the phone call at about 4 o'clock, 4:30.
Q: Do you know who called?

A: It was the coroner.

Q: Was this a surprise?

A: Yes, it was.

Q: Did there come a time when you met with the police?

A: Yes.

Q: Who was -- who all was present when you met with the police?

A: Me, my wife, and our youngest daughter, and we had called -- my brother had come over with Tabetha and his wife.

Q: So, your brother brought Tabetha over?

A: Yes.

Q: Okay. Did you tell the police what you knew about the situation?

A: Yes.

Q: Now, you and your wife went to the beach, you said about 9:00?

A: Yes.

Q: And came back around 3:00?

A: Yes.

Q: And it was you, your wife, and Amanda staying at the home showing in State's 16, correct?

A: And our littlest daughter.

Q: Who was with you at the beach?

A: Yes.

Q: While you were gone from your home at shown on State's 16

A: Uh-huh (affirmative response).

Q: --- do you know if anybody came back to the house?

A: When knew Amanda had said she was coming back to get some clothes and a bathing suit and all that. She said she was gonna spend the day at Myrtle Beach.

Q: Was there any evidence that she had come back?

A: Yes, there was a beer can sitting outside underneath the carport.

Q: That had not been there when you left?

A: No, it was not there when we left. And when we went inside, I went to the bathroom, the lid to the commode was lifted up, and I've never left the one up before because of all the women. So, we knew somebody else had been in there.

Q: Okay. So, somebody had been to your house while you were gone?

A: Yes, sir.

MR. DEBUSK: May I show State's Exhibit 15?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Did you and your family pass on information about card use, credit card use to the police?

A: Yes.

Q: You told them everything that had been sent to you by the credit card companies?

A: Yes, we did.

Q: And you passed it on to the police, correct?

A: Yes, sir.

Q: As of that date, had you ever heard of either of the defendants in this case?

A: No, sir; I have not.

Q: Why had Amanda come down to live at the coast?

MR. BELLAMY: Your Honor, I didn't hear the question, I'm sorry.

THE COURT: All right.

BY MR. DEBUSK:

Q: Why did Amanda come down to live at the coast?

MR. BELLAMY: I would object, Your Honor. I think we need to approach.

THE COURT: All right. That's fine.

(REPORTER'S NOTE. Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY MR. BELLAMY: Thank you, Your Honor.

THE COURT: Go ahead.

BY MR. DEBUSK:

Q: Mr. Vann, had, had Amanda moved down to Shallotte to start her own life -- start a new life?

A: Yes, sir.

Q: Start her life over again. And she already had a job, right?

A: At the time, she did not down here, but she was working ---

Q: She was working with the home health agency?

A: Yes.

Q: And she was wanting a place to stay?

A: Yes.

Q: So, this was gonna be a permanent move?

A: Yes, sir; it was.

Q: Thank you. Please answer any questions the defense might have.

THE COURT: Mr. Bellamy?

MR. BELLAMY: Thank you. May it please the Court, Your Honor?

CROSS EXAMINATION OF MICHAEL VANN BY MR. BELLAMY:

Q: Mr. Vann, and I know this is difficult and I apologize for you being here. I've got a job to do and I've got to ask you some questions. Okay?

A: I understand.

Q: So, you were down here, Ms. Fisher or Amanda, was living here at this place y'all had until she could find her own place?

A: Yes, sir.

Q: And but y'all -- because this was the week of July 4th, y'all had come down for the whole week or ---

A: For the whole week.

Q: Okay. Was this the last Saturday and y'all were leaving or ---

A: Yes, sir, we were leaving the next day.

Q: Okay. So, y'all had come the previous maybe weekend?

A: We started the following Friday night, Saturday.

Q: Okay. And you left home around what time did you say?

A: We left the place around 8:45 -- we left the place around 8:45, 8:50.

Q: Okay. And also, if you don't know, you don't know. Was a passcode provided to Amanda's phone that was found; do you know?

A: What do you mean a passcode to ---

Q: Well, Amanda's phone was recovered, correct?

A: Yes.

Q: And in order to get -- most phones there's some kind of code.

A: Right.

Q: That was given to the police so they could access everything in the phone?

A: Yes, it was.

Q: Okay. And you testified I believe earlier that at 9:11 a phone call was made to your wife's cell phone?

A: Yes, sir.

Q: And I assume that you remember that because you can -- we can go in our phone and look at her call log and see, correct?

A: Yes, sir.
Q: Okay. And at that time, I believe Solicitor DeBusk asked you if everything was fine; there was no reason to be concerned about anything, was there?
A: Yes, sir; that's right.
Q: And Amanda was 29, she was grown?
A: Yes, sir.
Q: And indicated she was gonna get some clothes and go back to Myrtle Beach?
A: Yes, sir.
Q: And that's at 9:11?
A: Yes, sir; it was.
Q: You also were aware that the night before -- what time did you last see her on Friday evening?
A: I really can't say exactly what time. It was after around 9:00 or so.
Q: Okay. At night?
A: Yes, sir, at night.
Q: And was there one of the two, Amanda or Tabetha's birthday or do you know?
A: I think it was close to Tabetha's birthday, I think, or something like that.
Q: Okay. So, it was to go have fun at the beach?
A: Yes.
Q: Okay. And was there any communication, I'm not asking

what was said, but via telephone, do you recall whether there were any calls made to your phone or your wife's phone between 9 o'clock Friday and I know the one at 9:11 on Saturday morning, was there any calls in there?

A: To my knowledge, I do not know.

Q: Did you receive any calls?

A: I did not receive any.

Q: And again, I'm not trying to ask you what was said, but if there was calls. And you don't recall whether your wife would have received any calls?

A: No, I could not say.

Q: But it's fair to say that there were no concerns over the Friday and Saturday morning?

A: No, sir; there was not.

Q: And when you returned to your phone, it was roughly 3:00 P.M.?

A: Yeah, between -- we left the beach around 3:00, so it takes about a little bit, so about 3:30.

Q: So, you would've got there ---

A: About 3:30.

Q: 3:30?

A: Yes.

Q: And then it was within less than an hour you received this phone call from law enforcement?

A: Yes, sir. Well, she -- yes.

Q: Okay. Or from the coroner you indicated?
A: Yes, yes.
Q: Now, you also indicated that there was an empty beer can somewhere outside the home?
A: At the carport.
Q: At the carport. Did you ever turn that over to law enforcement?
A: No, sir; I did not.
Q: What happened to it?
A: I threw it in the trash can.
Q: Did you try to retrieve it or tell the police -- the police came ultimately to see you?
A: I think we mentioned that there was a beer can left out there at the carport.
Q: Okay. And they would've come to see you the next day?
A: That afternoon they did.
Q: Oh, that same day?
A: Yes, that same day.
Q: And one of those detectives is, I believe, seated back here, the gentlemen on my left -- your left?
A: Yes, sir.
Q: He's the one who came to see you?
A: Yes, sir.
Q: At least one. And you would have informed him of the beer can?

A: Yes, sir.

Q: And was it ever collected?

A: To my knowledge, I do not know.

Q: Okay. Now, the other indicator that you had, is that the toilet seat was up, and living with or staying with a bunch of women, you wouldn't have done that ---

A: Right; yes, sir.

Q: --- for what it would bring you. Let me -- let me ask you this, inside the house, did you -- was there anything missing, taken, stolen, anything?

A: Not to our knowledge, no, there was nothing messed with.

Q: Any signs of disruption, tables knocked over, lamps knocked over?

A: No, sir.

Q: Any signs of forced entry or anything of that?

A: No, sir.

Q: Now, let me -- Your Honor, may I ask him to step down for a second?

THE COURT: Certainly.

BY MR. BELLAMY:

Q: Well, let me first ask him if he can identify this before I ask him. Mr. Mann, can you identify this as the area between K&W, your home, and Ms. Oxendine, where she would've been staying?

A: Yes, sir.

Q: You recognize that?

A: I recognize that area, yes.

Q: Okay. Could you come down please, step down for just a second?

THE COURT: Yes, sir, you can. Just make sure you stand in front of one of the microphones.

MR. SPRATLIN: Your Honor, may I reposition myself?

THE COURT: Yes, sir.

MR. SPRATLIN: Thank you.

BY MR. BELLAMY:

Q: Thank you. Can everybody see sufficiently?

This is where Ms. -- do you know where Ms. Oxendine lives; she's your niece, correct?

A: Yes.

Q: You know where she was staying?

A: That where she was staying at, yes, sir.

Q: Okay. What is the approximate distance between these two?

A: It took us about 10 minutes, 5 minutes to 10 minutes to get there.

Q: From here to here?

A: Yes, sir.

Q: Okay. And what kind of roads do you go through, two-lane, dirt road, interstate?

A: It's an asphalt road, two-lane roads.

Q: Two-lane roads?
A: Yes, sir.
Q: Is there a town in between the two?
A: When you come up here to 17 and go down 17 a little ways and then turn on the left.
Q: And what road is that, the two-lane road?
A: That's a two-lane road that goes down there to it.
Q: A lot of houses on that road?
A: It's a -- trailers.
Q: So, to come from here to here, that would've been the way they would've went?
A: Yeah, they would have come down south on 17.
Q: Okay.
A: And there's a cut -- shortcut through where you can come through and she kinda knows about that, but you probably can't see it on here.
Q: And you can see a little trees and things of that ---
A: Yes.
Q: And then from here to K&W, this is 17 along here?
A: That's what it looks like to me, yes.
Q: Get back on 17. What's the closest town in this area? Is that a town ---
A: There's Shallotte right there.
Q: Where's Shallotte?
A: Shallotte would be probably right in here somewhere.

Q: Okay. So, between Shallotte and K&W on 17, there's a lot of places you can go off left/right?

A: Yes.

Q: Okay. Out in the farmland and that sort of thing?

A: Right.

Q: What would be the approximate, if you know, travel time between where your home is and the K&W, and I know traffic can ---

A: It could go about 45 minutes, I would say roughly with traffic there between that and an hour.

Q: Okay. All right. Thank you, sir.

Court's indulgence for just one second?

THE COURT: Yes.

Q: Just a couple more, Mr. Vann, and I'll be finished.

Ms. Oxendine, your niece ---

A: Yes, sir.

Q: Without telling me what -- anything that she may've said, she -- the next day, Saturday, she was at her home, correct?

A: Yes, she had -- they had -- she had dropped her off at her home, yes.

Q: Okay. And do you know approximately what time that was?

A: We got the phone call at 9:11, so, I'm taking it was within that range time.

Q: Okay. So, and she was still at home when you went -- you took the police to her?

A: No. No, she came to our place.
Q: Okay.
A: My brother brought to her to us.
Q: So, the police could talk to her ---
A: Yes.
Q: --- because she had been with her the previous evening into the morning?
A: Yes, sir.
Q: So, she would've been with Amanda at 9:11?
A: I would take it, yes.
Q: Okay. Again, the Court's indulgence just one second?
THE COURT: yes, sir.
Q: Thank you, Mr. Vann. I have no further questions.
THE COURT: Mr. Spratlin?
MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF MICHAEL VANN BY MR. SPRATLIN:

Q: Good morning, Mr. Vann.
A: Good morning.
Q: Sorry we have to meet under such bad circumstances, but I'm Martin Spratlin. I've just got a couple of questions for you. Again, I'm not gonna rehash everything you've already gone over, but I just want to clarify. When Amanda called you early or called someone earlier that morning, your impression was not that she was any distress or danger, right?
A: Correct; yes, sir.

Q: And when you came home and saw that someone had been in your house, you weren't surprised by that fact, correct?
A: No, sir; I was not.
Q: In fact, you expected Amanda to come by the house?
A: Yes.
Q: Was there anything that caused you to be alarmed about that?
A: No, sir; there was not.
Q: You didn't come home and think someone had broken into your house or anything like that?
A: No, sir.
Q: Thank you, sir. That's all the questions I have.

THE COURT: Redirect?

MR. DEBUSK: No, Your Honor.

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

Y'all come up and talk to me just one second please.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY THE COURT:

THE COURT: All right, ladies and gentlemen, due to the schedule of witnesses and when they were asked to be here, we've kind of exhausted the ones for this morning, so we're gonna stop now for lunch. I'm gonna have you be back at 1:45. Be back in your jury room at 1:45, please.

Please remember, don't talk about the case, don't allow

anybody to talk to you about it. I'll see you back at 1:45.

Thank you very much.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: Anything from the state at this point in time?

MR. DEBUSK: No, Your Honor.

THE COURT: From your client, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, gentlemen, I'll see you back at 1:45 then. Thank you.

RECESS

*******OFF THE RECORD*******

(On the Record.)

(REPORTER'S NOTE: Bench conference is held off the record.)

BY THE COURT:

THE COURT: All right. So, with that though is the state ready to proceed?

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: Ask the jury to come in please, ma'am.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, solicitor, your next witness, please?

MR. OSKIN: Thank you, Your Honor. At this time, the state would next call Mr. Sachin Patel, please.

THE COURT: All right.

All right, sir, come all the way around and meet the clerk's representative right up here, please, sir.

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

SACHIN PATEL, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. PATEL: My name is Sachin Patel; S-A-C-H-I-N, last name Patel, P-A-T-E-L.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF SACHIN PATEL BY MR. OSKIN:

Q: Good afternoon, Mr. Patel; how are you, sir?

A: Good, how are you?

Q: Good. Mr. Patel, what is your occupation?

A: A motel manager.

Q: Okay. And what motel?

A: Lancer Motel in Myrtle Beach.

Q: All right. Where is that -- that is located in Myrtle Beach?

A: Yes, sir, 606 North Kings Highway.

Q: Okay. If you could reiterate that, I'm sorry for the interruption; if you can restate that, I apologize for interrupting you.

A: That's at 606 North Kings Highway in Myrtle Beach.

MR. OSKIN: If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Mr. Patel, I'm showing you what's previously been entered into evidence as State's Exhibit Number 4. Are you able to locate the Lancer ---

A: Yes, sir.

Q: --- on that map. Is that an accurate depiction of where it is?

A: Yes, sir.

Q: Okay. How long have you been the manager of that hotel?

A: About 20 years, sir; 20 years.

Q: So, you were the manager in July of 2016 then?

A: Yes, sir.

Q: Do you keep records of who checks in and out of your hotel?

A: Yes, sir.

Q: By chance, do you remember a guy named Terrell Freeman checking into your hotel?

A: I don't remember him by name, by face I remember him being there.

Q: If I were to show the business record, would you be able -- would that clarify your memory a little bit?

A: Yes, sir.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor, I've already had a chance to look at it.

THE COURT: All right. Very good.

BY MR. OSKIN:

Q: I'm showing you what's been marked as State's Exhibit Number 16. Is that a business record from your motel?

A: Yes, sir, it's one of our folios.

Q: Does it state who was checking in?

A: Yes, sir.

Q: All right. Do you take any form of identification or cell phone number, telephone number in addition to ---

A: We scan a copy of the driver's license.

Q: Okay. And how long were they supposed to be staying?

A: They checked in for two nights.

Q: All right. Do you recall when they left?

A: They left early Sunday morning.

Q: Early ---

A: I believe so.

Q: Is there a checkout time?

A: Checkout time is at 11:00.

Q: Okay.

If I may approach the witness again, Your Honor?

A: Yes, sir.

Q: I'm showing you what's been marked as State's Exhibit

Number 17, do you recognize that?

A: Yes, sir.

THE COURT: Let me stop you for one second. I know the defense didn't object, are you offering State's 16 into evidence.

MR. OSKIN: I will move it into evidence, Yes, Your Honor, but not publish it to the jury at this time.

THE COURT: So, is there any objection to that?

MR. BELLAMY: No, sir, Your Honor.

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. It's in evidence.

STATE'S EXHIBIT NUMBER 16

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. OSKIN: Thank you, sir.

BY MR. OSKIN:

Q: What is that a disc of?

A: It's a disc of our recordings for our security system.

Q: Okay. And it'll show -- it has -- hold that thought; I apologize. And there's been no -- you've been able to view that disc?

A: Yes, sir.

Q: All right. There's been no additions, deletions, anything like that to the disc to your knowledge?

A: No, sir.

Q: All right. And you've, you've witnessed that exact disc, right?

A: Yes, sir.

Q: How did you indicate that?

A: I initialed this disc.

Q: Okay.

Your Honor, the state would seek to move State's Exhibit 17 into evidence.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: Was that the DVD?

MR. OSKIN: The disc itself.

MR. BELLAMY: Oh, no, no objection, Your Honor, I'm sorry.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right, sir. So, it's into evidence without objection, you may publish.

STATE'S EXHIBIT NUMBER 17

ADMITTED INTO EVIDENCE

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: Which ones -- if I may approach the witness?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Mr. Patel, I'm showing you what's been marked as State's

Exhibit Number 18, 19, and 20. First I'll ask you, do you recognize what the State's Exhibit Number 18 is?

A: Yes, sir.

Q: What is that, sir?

A: An aerial photograph of the Lancer Motel.

Q: Okay. Does it show the surrounding streets?

A: Yes, sir.

Q: What are those streets?

A: Chester Street, 7th Avenue North, and 6th Avenue North, Kings Highway.

Q: Okay. And is that -- that's what's referred to as Kings Highway?

A: Yes, sir. Highway 17.

Q: How about 19, number, Exhibit Number 19?

A: Yes, sir.

Q: What is that a photo of?

A: That's a photograph of our front desk and outside the building.

Q: Okay. And is that where guests would check in?

A: Yes, sir.

Q: And/or check out of your motel?

A: Yes, sir.

Q: Okay. And which -- which street is that facing?

A: On Kings Highway, Highway 17 Business.

Q: Okay. And State's Exhibit Number 20, are you able to

recognize that, sir?

A: Yes, sir.

Q: What is that?

A: A photograph of our Building 3.

Q: Okay. Do you know where Building 3 faces with regards to the streets?

A: Yes, sir; it faces Chester Street.

Q: Okay. Nothing has been added, deleted from or changed in those photos?

A: No, sir.

Q: They're materially accurate to what they represent?

A: Yes, sir.

Q: Based off that exhibit, do you know which room, the room Mr. Freeman was checked into?

A: Yes, sir. He checked into Room 307.

Q: Could you hold that up and point it out to the jury please? And that is room what?

A: 307.

Q: Okay.

Your Honor, at this time, the state would seek to move State's Exhibit 18, 19, and 20 into evidence?

THE COURT: I understand there's no objection, gentlemen?

MR. BELLAMY: No, sir.

MR. SPRATLIN: No, Your Honor, no objection.

THE COURT: All right. So, 18, 19, 20 are into evidence

without objection.

STATE'S EXHIBITS NUMBER 18, 19, AND 20

ADMITTED INTO EVIDENCE

BY MR. OSKIN:

Q: Mr. Patel, I'll have you if you would please, sir, mark here for the jury where room 307 is. And I'll have you, I believe it's Exhibit 18, the aerial footage?

A: Yes, sir.

Q: Can you mark it there as well, please?

A: Yes, sir.

Q: Mr. Patel, I thank you. Please answer any questions for Mr. Bellamy and Mr. Spratlin.

THE COURT: Yes, sir, Mr. Bellamy?

MR. BELLAMY: May it please the Court?

CROSS EXAMINATION OF SACHIN PATEL BY MR. BELLAMY:

Q: Mr. Patel, I've just got a couple. They checked in, do you know what days of the week this would've been checking in, checking out, or have you went back to look?

A: I believe they checked in on a Friday and they left out Sunday.

Q: Okay. Do you know about what time checking in Friday?

A: They checked in around 9:30 or so Friday.

Q: And I think you indicated that when people check in, you require some identification to verify that that is the person actually in the room?

A: Yes, sir.

Q: And so, you would match the photograph or ID to the person?

A: To the person standing in front of me, yes.

Q: So, the person standing in front of you is gonna have to be the same person on the ID?

A: Yes, sir.

Q: Okay. And that person is Terrell Freeman, correct?

A: Yes, sir.

Q: All right. Do you recall my client being there?

A: I wasn't on desk at that time, no, sir.

Q: Okay. And the hotel is equipped with a number of security cameras?

A: Yes, sir, 16.

Q: Which are readily visible to people?

A: Yes, sir.

Q: They're not hidden? Like in other words, like you walk around the courthouse, we can see them where they are?

A: Yes, sir.

Q: Okay. I don't have anything further.

THE COURT: Mr. Spratlin?

CROSS EXAMINATION OF SACHIN PATEL BY MR. SPRATLIN:

Q: Mr. Patel, can I see State's Exhibit -- Your Honor, permission to approach the witness?

THE COURT: Yes, sir, please.

Q: Mr. Patel, it says that two individuals checked in; is that correct?
A: Yes, sir.
Q: All right. So, there were two adults?
A: Yes, sir.
Q: The fact that my client was the one that rented it, there was somebody else staying there?
A: Yes, sir.
Q: Thank you. I believe that is all the questions I have.
THE COURT: Any redirect?
MR. OSKIN: Very briefly, Your Honor.

REDIRECT EXAMINATION OF SACHIN PATEL BY MR. OSKIN:

Q: Mr. Patel, just to clarify for the jury, based off that receipt of where they stayed at your hotel, you know that checkout time was supposed to be on Sunday; is that correct?
A: Yes, sir.
Q: You didn't actually see them depart your hotel or when they left; is that ---
A: No, I wasn't -- we saw them as far as video surveillance that they'd left property, but they didn't actually come to the office and checkout with us.
Q: Right and is that pretty typical?
A: Yes, sir.
Q: All right. Because you're the manager and you have a lot of activities going on; you don't see necessarily every guest

leave, but you do know when they check in?

A: Right.

MR. OSKIN: Nothing further from the state.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Do you wish the witness to be excused?

MR. OSKIN: Yes, sir, Your Honor. thank you.

THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties.

MR. PATEL: Thank you, sir.

THE COURT: Next witness, solicitor?

MR. DEBUSK: Your Honor, the state calls Garett Williams.

THE COURT: Solicitor, could you go up and collect those exhibits and give them to the court reporter, please?

MR. DEBUSK: Yes, sir. I'm sorry, Your Honor.

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

ROGER GARETT WILLIAMS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

CLERK: State your name for the record.

MR. WILLIAMS: Roger, Roger Garett Williams; R-O-G-E-R, G-A-R-E-T-T, Williams, W-I-L-L-I-A-M-S.

THE COURT: Go ahead, solicitor.

DIRECT EXAMINATION OF ROGER GARETT WILLIAMS BY MR. DEBUSK:

Q: Mr. Williams, do you go by Garett?

A: Yes, sir.

Q: Okay. What's your occupation?

A: Hotel manager, family owns it.

Q: So, you manage the family hotel; what's that hotel?

A: Holiday Sands North in Myrtle Beach.

Q: I have here what's been marked as State's Exhibit 4, I don't know if you've had a chance to review this specifically after the incident. Is Holiday Sands North on there?

A: Yes.

Q: Is that correctly marked?

A: Yes.

Q: So, it's a beachfront hotel?

A: Correct.

Q: And you and your family own and operate that hotel?

A: Yes, sir.

Q: Same in July of 2016?

A: Since '84.

Q: Okay. How many rooms you got?

A: One-seventy-three.

Q: Okay. Do you know if you had a guest there on July 9th of 2016 by the name of Amanda Fisher?

A: Yes, sir; we did.

Q: And the staple came out. You don't have a stapler, do you, or a paperclip. All right.

I'm gonna hand you what has been marked an exhibit, State's 22, and ask if you recognize these two pages?

A: Yes, sir. It's a registration card and we would typically get a copy of an ID and the car information as well.

Q: Okay. So, who checked in with that State's 22?

A: I'm sorry?

Q: Who was the guest that ---

A: Amanda Fisher.

Q: Okay. And you got a copy of her ID there?

A: Yes, sir.

Q: Did you get her car tag number?

A: We did. DBJ9284, North Carolina plate.

Q: North Carolina plate. And did she have any guests with her?

A: Yes, a Tabetha Oxendine.

Q: What room did she -- was she assigned to?

A: Room 420.

Q: Is that all reflected that document?

A: Yes.

Q: What time did they check in?

A: Between 1:00 and about 1:10.

Q: In the morning?

A: A.M., A.M.

MR. BELLAMY: No objection from my client, Your Honor.

MR. SPRATLIN: No objection on behalf of Defendant Freeman, Your Honor.

THE COURT: What number is that, please?

MR. DEBUSK: 22, Your Honor.

THE COURT: All right. State's 22 is into evidence without objection.

STATE'S EXHIBIT NUMBER 22

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: On State's 22, again, you have a copy of her ID, her license plate number and name of her guest. Is that standard procedure?

A: Yes, sir.

Q: Okay. So, that was just a standard check in, nothing unusual?

A: Nothing -- no, sir. We do that for everyone.

Q: And it was only for one night; is that correct?

A: I think that is correct, but -- yes, correct.

Q: Okay. Now, we've talked about the Holiday Sands on the map in abstract, but what is in State's 21?

A: That is the front of the North Tower Hotel at the Holiday Sands North.

Q: From the Lancer.

A: From the Lancer, that's correct, looking from the boulevard towards the ocean.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right, sir. State's 21 is in evidence without objection.

STATE'S EXHIBIT NUMBER 21

ADMITTED INTO EVIDENCE

MR. DEBUSK: May I publish State's 21, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Finally, let me show you what's been marked as State's Exhibit 23 and ask if you recognize this.

A: Yes, I have signed on the front and the back stating ---

Q: What is it?

A: It's a video of the check-in process and some hallway footage of the guests coming in and out of the hotel.

Q: Did you review that today?

A: Yes, correct.

Q: Is it a fair and accurate representation of the output of your cameras in your ---

A: Yes, sir.

Q: Has it been altered in any way other than edited for ---

A: No.

MR. DEBUSK: State's 23.

MR. BELLAMY: We've seen this, yes. No objection, Judge.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. So, State's 23 is in evidence without objection.

STATE'S EXHIBIT NUMBER 23

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: Let me ask you a couple of things about the cameras themselves. Do you have a camera that shows the check-in desk?

A: Yes, sir.

Q: Do you have some cameras that show the entrance area?

A: Yes.

Q: And the parking lot next to it?

A: Yes.

Q: Okay. You've got, you've got a small parking lot in front of the hotel?

A: Some loading and unloading area and some handicapped spacing, correct?

Q: Along Ocean Boulevard, right?

A: Correct.

Q: And you've got cameras that show that area?

A: Yes.

Q: Does it show all of the parking areas in the ---

A: Not all of them, not across Ocean Boulevard, no.
Q: But it does show where the people come and go out of the ---
A: Yes.
Q: And do you have cameras on the guest floors?
A: Yes, sir.
Q: Okay. One of those -- do you know which room that Ms. Fisher and her guest were in?
A: Room 420, correct.
Q: Was there a camera that showed the entrance to Room 420?
A: Yes, one on -- yes.

MR. DEBUSK: Court's indulgence for one moment, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: I'm showing you State's 24 and ask you what that shows?
A: It shows one our Type G Units, which would be -- Room 420 would be one of those.
Q: Would be of that floor plan?
A: Yes, correct.
Q: Type G you call it?
A: Yes, correct.
Q: And does Type G have a balcony?
A: Yes, it does.
Q: And that balcony would face the ---

A: Ocean Boulevard.

Q: Ocean Boulevard?

A: Correct.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No, from Defendant Freeman, Your Honor.

THE COURT: All right, sir. It's into evidence without objection.

MR. DEBUSK: It's State's 22, 23 and 24, Your Honor.

THE COURT: All four of them are in evidence.

MR. DEBUSK: As well as 21?

THE COURT: Yes.

STATE'S EXHIBIT NUMBER 24

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Thank you. Please answer any questions the defense may have.

THE COURT: Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor?

CROSS EXAMINATION OF ROGER GARETT WILLIAMS BY MR. BELLAMY:

Q: It's Mr. Williams, correct?

A: Yes, sir.

Q: And I just a few. Did you actually check Ms. Oxendine and Ms. Fisher in?

A: Personally?

Q: Yes.

A: No.
Q: Okay. Was there a video, have you observed or reviewed the video of the check in?
A: Yes, sir.
Q: And was it just the two of them at check in?
A: At check in, yes.
Q: Okay. So, there are no males, my client or anybody else at the check in?
A: No, sir.
Q: Okay. Did during the course of the night -- y'all have a policy if there's a call for some problem in a room, noise, anything, y'all would make notation of that, would you not?
A: We would've; we have security that would do that.
Q: And there's security on premises, correct, all night I assume?
A: Not -- well, from 8:00 until 5:00 in the morning.
Q: Okay. Was there any calls for service, any problems that you had documented?
A: I can't answer that; I don't know.
Q: Have you looked?
A: Not to my knowledge.
Q: Okay. That's what I mean. And the security cameras that you have located on each floor and around the hotel, they're visible to people coming and going, right?
A: They're -- if they're paying attention, I'm sure.

Q: I gotcha. The video, or the disc that we have identified, have you looked at it ---

A: I have.

Q: --- and viewed it prior to coming here today, at some point?

A: Probably in 2016, I'm assuming.

Q: Okay. Did you observe Ms. Oxendine and Ms. Fisher leaving there at some point on those videos?

A: Yes.

Q: Did you notice anything unusual in terms of being drug out of there, forced, or anything of that nature?

A: No, sir.

Q: Did you observe any males in that video?

A: Yes, sir.

Q: Did you notice anything unusual going on with that?

A: No, sir.

MR. BELLAMY: Court's indulgence?

BY MR. BELLAMY:

Q: Thank you, Mr. Williams.

MR. SPRATLIN: I have no questions for this witness, Your Honor.

THE COURT: You wish any redirect?

MR. OSKIN: Nothing from the state, Your Honor.

THE COURT: All right, sir. You wish the witness be excused?

MR. DEBUSK: Yes, Your Honor, we would ask that he be excused.

THE COURT: All right, sir, you're released from your subpoenas and you may go back to your regular activities.

MR. WILLIAMS: Okay. Thank you.

THE COURT: Next witness?

MR. DEBUSK: Tonya Huneycutt, Your Honor.

THE COURT: All right, ma'am, come all the way around up front to meet the clerk's representative.

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

TONYA HUNEYCUTT, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MS. HUNEYCUTT: Tonya Huneycutt, T-O-N-Y-A, H-U-N-E-Y-C-U-T-T.

THE COURT: All right, ma'am. If you can, scoot as close as you can to the microphone and you need to speak up.

Go ahead, solicitor.

THE COURT: Thank you, Your Honor.

DIRECT EXAMINATION OF TONYA HUNEYCUTT BY MR. DEBUSK:

Q: Ms. Huneycutt, what's your occupation, what do you do?

A: We -- my family, we have convenience stores.

Q: Okay. Is one of them in Marshville, North Carolina?

A: Yes.

Q: What -- what brand, I guess is that?

A: Sunoco.

Q: Okay. Let me show you what's been marked as State's Exhibit 25 and ask you if you recognize that?

A: Yes.

Q: What is it?

A: It is one of our stores.

Q: Okay. Is that the one in Marshville?

A: Yes.

Q: Okay. How would you describe that store? Is it a big gas station, small gas station?

A: It's a small in a rural area.

Q: Okay. As part of your duties, are you responsible for maintaining records and whatnot of that store?

A: Yes.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: None from Defendant Freeman, Your Honor.

THE COURT: All right.

MR. DEBUSK: State's 25, Your Honor, I offer into evidence.

THE COURT: All right. So, it's into evidence without objection.

STATE'S EXHIBIT NUMBER 25

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

COURT REPORTER: What number was it, please? What

number?

MR. DEBUSK: 25.

BY MR. DEBUSK:

Q: There's a highway with trucks in front of the store; what is that highway?

A: 218.

Q: Is that a big highway or a busy highway?

A: No. It's just a -- no.

Q: A two-lane rural highway?

A: Two-lane rural, yes.

Q: Lots of truck traffic?

A: Yes, it's a common cut through from 485 to 74.

Q: Pretty good store location?

A: Yes.

MR. DEBUSK: Your Honor, may I publish 25 to the jury?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: I'm also gonna show you what's been marked as State's Exhibit 5 and there's a spot on there at the Sunoco, Marshville, North Carolina.

A: Yes.

Q: Is that where your store is?

A: Yes.

Q: Okay. It's sort of a rural area between Charlotte and the coast?

A: Yes.
Q: Now, again, you're sort of custodian for the records at that store, the videos and the -- the register receipts and things?
A: Yes.
Q: I'm gonna show you what's been marked as State's Exhibit 27, it's labeled the Marshville store video; do you recognize that?
A: Yes.
Q: Did you review that today?
A: Yes.
Q: What's on that disc?
A: It's just behind the register. It shows the clerk and who's coming in and out.
Q: That particular disc, is it part of the, the recordings directly from the video system?
A: Yes.
Q: How many video channels do you have?
A: Four.
Q: How many will record on that disc?
A: One.
Q: Okay. But that does show the interior of your store?
A: Yes.
Q: Fair and accurate representation?
A: Yes.

Q: An accurate copy of the video?

A: Yes.

MR. DEBUSK: That's State's 27.

MR. BELLAMY: No objection.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. So, it's into evidence without objection, you may publish if you choose.

STATE'S EXHIBIT NUMBER 27

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: So, State's 27 was the actual store video. At any point, did you make some videos from the store video?

A: Yes.

Q: How did you do that?

A: Recorded off a cell phone.

Q: So, you have a monitor with the store video on it?

A: Yes, and it shows four different cameras.

Q: And you held your phone up there and videoed it?

A: Yes; uh-huh, (affirmative response).

Q: Why did you do it that way?

A: I got a phone call from a detective asking me to do that.

Q: Okay. And at that time, were you able to download it yourself and ---

A: I was not.

Q: So, you did the next best ---

A: Yes.

Q: --- next best thing?

A: Yes.

Q: Okay. State's Exhibit 26 labeled modular phone, do you recognize that?

A: Yes.

Q: And did you review that video?

A: I sure did.

Q: What is it?

A: It picks up one of the other cameras showing the outside of the store at the gas pumps and it also has the same that's on the other.

Q: The same individuals that's on that ---

A: Yes.

Q: From the same time period?

A: Yes.

Q: And you recorded that from that specific time period at the detective's request?

A: Yes.

Q: And then you brought it to law enforcement? You gave it to the detective?

A: Yes.

Q: Okay. A thorough and accurate copy of what you took off your cell phone?

A: Yes.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: So, State's 26 is into evidence without objection, you may publish if you choose.

STATE'S EXHIBIT NUMBER 26

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Okay. Now, those videos that you took from the store video system ---

A: Uh-huh, (affirmative response).

Q: Did they have a time mark on them?

A: Yes.

Q: Was that time mark accurate?

A: Yes.

Q: Was that a fairly new system?

A: It was and it had not been installed long. So, the time should've been correct on it.

Q: So, it had just been set basically?

A: Yes.

Q: The clock had just been set?

A: Yes.

Q: How about your cash registers, was it have -- give an accurate time?

A: No, it wasn't, it was off somewhat.

Q: Did you, let me show you what's been marked as State's

Exhibit 28 and ask you if you recognize that.

A: Yes.

Q: What is it?

A: That is a receipt from our store?

Q: Okay. Does it correspond with the time shown on these videos?

A: No, it is off.

Q: Not the time of the video?

A: Oh, yeah, yes, right.

Q: So, the transaction shown on the video ---

A: Uh-huh, (affirmative response), is what is on the video, yes.

Q: Okay. Who was the holder of the card used in that transaction?

A: Fisher.

Q: You can look at the ---

A: Amanda Fisher.

Q: Okay. What was bought?

A: Gas and cigarettes.

Q: Okay. How much cigarettes; I mean what value?

A: 49.40.

Q: How much cigarettes do you get for 50 bucks?

A: It -- a carton.

Q: So, it would be like a carton of cigarettes and some gas?

A: Uh-huh, (affirmative response), yes.

Q: And again, that corresponds to the transaction shown on your cell phone video?

A: Yes.

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor, I've already had a chance to look at it.

THE COURT: All right. So, State's 28 is in evidence without objection.

STATE'S EXHIBIT NUMBER 28

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: So, the same individual seen walking around on the store video was the one on you cell phone video and corresponds to that?

A: Yes.

Q: Is the car that individual arrived in also visible on your ---

A: Yes, on the cell phone.

Q: Right.

A: This one.

Q: And the transaction of the register can be seen on the ---

A: Yes.

Q: Okay. Thank you. Please answer any questions the defense has.

THE COURT: Mr. Bellamy?

MR. BELLAMY: Yes, Your Honor. May it please the Court?

CROSS EXAMINATION OF TONYA HUNEYCUTT BY MR. BELLAMY:

Q: Ms. Huneycutt, you were not -- were you present in the store during that timeframe?

A: No, I was not.

Q: So, you didn't physically see any of this, but you have reviewed the videos?

A: Correct.

Q: And I assume spoken to the clerk who was there?

A: Yes, I did speak to her.

Q: Okay. In the videotape, is there any indication or -- of my client having -- what was he wearing, let me ask you that by way of a shirt?

A: I don't remember what he was wearing in the ---

Q: Well, you wouldn't disagree if I said he had a white T-shirt on, would you?

A: I can't say for certain to be honest.

Q: The video will show it?

A: Yes, the video will show.

Q: And do you have any indication either from your clerk or your review, which you said you did of this videotape, did you say you did it today?

A: Yes.

Q: Okay. So, you looked at it today. Was there any blood

at all on my client or his shirt?

A: I did not notice any.

Q: Okay. And you've spoken to the clerk as well?

A: Well, I've spoken to the clerk but, I mean, I didn't ask her that question.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Ms. Huneycutt, I don't have anything else.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Yes, sir, Your Honor, real brief.

CROSS EXAMINATION OF TONYA HUNEYCUTT BY MR. SPRATLIN:

Q: Good afternoon, Ms. Huneycutt.

A: Hey.

Q: I just have a couple of quick questions for you. Only one person was seen on that video using the card, correct?

A: Correct.

Q: And that was Nicholas McIver, correct?

A: Yes.

Q: Okay.

MR. BELLAMY: Excuse me, Your Honor, what was her answer?

THE COURT: You need to answer yes or no, ma'am.

A: Okay. Can you ask the question again please?

Q: The only person you saw using that credit card is that man seated right there next to Mr. Bellamy, correct?

COPY

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY	)	
STATE OF SOUTH CAROLINA, Plaintiff, vs. NICHOLAS JACOB MCIVER, Defendant.	)	**TRANSCRIPT OF RECORD** April 23-27, 2018 **VOLUME II OF III** Pages 221 to 420 2016-GS-26-05556, 05557, 05558
STATE OF SOUTH CAROLINA, Plaintiff, vs. TERRELL FREEMAN, Defendant.	)	2017-GS-26-02606, 02607, 02609

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A: Yes.

Q: You never saw my client on your store cameras that day, Mr. Terrell Freeman seated all the way over here?

A: No, sir.

Q: Never saw him in your store at all?

A: No.

Q: You never say him using Amanda Fisher's credit card?

A: No.

Q: Thank you. No further questions.

THE COURT: Any redirect?

MR. DEBUSK: One brief follow-up.

REDIRECT EXAMINATION OF TONYA HUNEYCUTT BY MR. DEBUSK:

Q: Ms. Huneycutt, were you the clerk on duty that day?

A: No, I was not.

Q: Who was?

A: Annette Burleson.

Q: Why isn't Ms. Burleson here today?

A: She just had triple by-pass surgery.

Q: So, she's indisposed?

A: Yes.

Q: So, you're sort of stuck in this spot of authenticating the records without having the original person here?

A: Right.

Q: But you were the one that helped them get the copy of the video?

A: Correct.

Q: Thank you.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: Do you wish the witness to be excused?

MR. DEBUSK: Please, Your Honor.

THE COURT: All right, ma'am, you're released from your subpoena, you may go back to your regular activities.

Next witness, Solicitor?

MR. OSKIN: Thank you, Your Honor. The state would next call Mr. Bob Crouch, please.

THE COURT: All right, Mr. Crouch, come all the way around up here next to where the clerk's representative is, please.

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

BOB CROUCH, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. CROUCH: My name, Bob Crouch, C-R-O-U-C-H.

THE COURT: Hold on one second.

Go ahead, Solicitor

MR. OSKIN: Thank you, Your Honor.

DIRECT EXAMINATION OF BOB CROUCH BY MR. OSKIN:

Q: Mr. Crouch, what's your occupation, sir?
A: I manage a convenience store.
Q: Okay. Who's your employer?
A: Sprint Foods.
Q: All right. Is that the same employer you had in July of 2016?
A: Yes.
Q: How long have you been with that store?
A: Two-and-a-half years.
Q: Okay. Where is that store located at?
A: On Highway 38 in Bennettsville.
Q: Okay. What county is Bennettsville in?
A: Marlboro County.
Q: How far is that from here?
A: About 70 or 80 miles.

MR. OSKIN: Your Honor, if I may approach the witness, sir?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Mr. Crouch, I'm showing you what's been entered into evidence as State's Exhibit Number 5. Do you -- do you see this is a map of ---
A: Yeah.
Q: Are you able to locate your store on this map?
A: Right there.

Q: Where is right there; tell me where about?
A: Right there.
Q: At 701 Broad Street in Bennettsville?
A: Yeah.
Q: Thank you, sir. What is the Bennettsville -- what is your -- what is your store like?
A: It's Shell station, just a convenience store.
Q: All right. Do you sell gas and stuff like that?
A: Gas, fountain.
Q: Okay. In your employment duties there, are you responsible for video and transaction records made at that store?
A: Partially. I do -- I can make copies of the videos and ---
Q: So, you're custodian of those records?
A: Yeah.
Q: How long have you had those duties?
A: The whole time I've worked for them.
Q: All right. And does your store have video surveillance, sir?
A: Yes.
Q: And do you know how long that surveillance system had been installed as of July 2016?
A: A long time. It was with the company that was before Sprint.

Q: Okay. Was the timeframe -- the timeclock on that video system, would that be accurate?

A: Yeah.

MS. OSKIN: May I approach the witness, Your Honor -- I apologize. Madam Court Reporter, would you pre-mark this.

Court's indulgence, Your Honor?

MR. OSKIN: I'm showing defense counsel what's been marked as State's Exhibit 29, 30, 31, and 32, Your Honor.

THE COURT: All right.

MR. OSKIN: If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Mr. Crouch, I'm showing you what's been marked as State's Exhibit Number 29. Do you recognize what that is?

A: It's a disc that we burned of the video.

Q: Did you view that video?

A: Yes, I did.

Q: Okay. And did you initial it ---

A: Yes.

Q: --- signifying that you watched it? Is it an accurate representation of your store in Bennettsville?

A: Yes, it is.

Q: No material additions, deletions, subtractions?

A: No.

Q: Okay.

MR. OSKIN: Your Honor, at this time the state would seek to move State's Exhibit Number 29 into evidence and not publish it at this time.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. It's in evidence without objection, you may publish when you choose.

STATE'S EXHIBIT NUMBER 29

ADMITTED INTO EVIDENCE

BY MR. OSKIN:

Q: Mr. Crouch, I'm showing you what's been marked as State's Exhibit Number 30; do you recognize that?

A: It's an aerial photo of the store.

Q: An aerial photo of the store, okay, and that's your store located in Bennettsville, correct?

A: Yes.

Q: What type of register system do you have?

A: It's an NCR.

Q: Okay.

A: Touchscreen.

Q: Okay. And does your system, does it keep accurate records of, of your transactions that take place?

A: I can go back in the office and bring up any transaction

on the computer.

Q: Is there like a transaction log or journal, perhaps?

A: Yes. Yes, there is.

Q: All right.

If I may approach one more time, Your Honor?

THE COURT: Yes, sir.

Q: I'm showing you what's been marked as State's Exhibit Number 31 and Number 32, do you recognize those, first starting with Number 31?

A: Yes, I do.

Q: All right. What is that?

A: That's a receipt I printed off the computer in the office.

Q: Okay.

A: He bought a book of matches it looks like.

Q: Okay. And does it show that that was purchased by credit card?

A: Yes, it does; I believe so.

Q: And whose credit card was that issued to, sir?

A: Jerry Fisher.

Q: All right. What's the time and date of that transaction, sir?

A: 7/9/2016 at 1:47 P.M.

Q: Okay. So, that would be July 9th, 2016?

A: Yes.

Q: All right. If you'll look at State's Number 31, please.
A: 32?
Q: 32, I apologize; thank you. What is that?
A: That's another receipt printed off the computer.
Q: Same system, same store?
A: Yep.
Q: All right. What is the -- what was purchased there?
A: $7.00 worth of gas and a pack of cigarettes.
Q: Okay. And does that show what cardholder -- whose card was issued to that purchased those items?
A: Amanda Fisher.
Q: Okay. Nothing's been changed or added ---
A: No.
Q: --- or deleted from that transaction journal?
A: Nope.
Q: It's an accurate reflection of it?
A: Yes, it is.

MS. OSKIN: Your Honor, at this time, the state would seek to move State's Exhibit 30, 31, and 32 into evidence?

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection.

THE COURT: All right. So, 30, 31, and 32 are in evidence without objection.

STATE'S EXHIBITS NUMBERS 30, 31, AND 32

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. OSKIN:

Q: Mr. Crouch, nothing further from the state at this time. Please answer any questions from Mr. Bellamy or Mr. Spratlin.

THE COURT: Cross examination, Mr. Bellamy?

MR. BELLAMY: Thank you, may it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF BOB CROUCH BY MR. BELLAMY:

Q: Mr. Crouch, you are not the clerk on duty?

A: No, I wasn't.

Q: Okay. So, you didn't personally observe who came into the store?

A: I did on the camera.

Q: On the camera, okay. So, when did you review that?

A: After they came up and asked to take a look through the camera system, and we went through and found it.

Q: Okay. And then you burned them a DVD?

A: Yes.

Q: When is the last time -- did you review it in preparation for today?

A: Right before.

Q: So, today?

A: Yeah.

Q: Okay. And in reviewing that videotape, did the person who used this credit card, did you observe that person on video?

A: Yes.

Q: Okay. Do you know what that person was wearing?

A: He had on a white T-shirt and I want to say khaki shorts.

Q: Okay.

A: Baggy ones.

Q: Did you observe any blood on that T-shirt?

A: I couldn't see it on the video.

Q: Have you spoke to the clerk in this matter?

A: No.

Q: But the clerk would be the better person to answer that than ---

A: Yeah.

Q: But the video speaks for itself?

A: Yes.

Q: Okay. Let me show you, this is State's Exhibit 5, which is a map that I believe you looked at it and told us where your store was, right?

A: Right there, yeah.

Q: Are you familiar with the route from your store to the Sunoco in Marshville?

A: No, I'm not.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Mr. Crouch. Answer any questions Mr. Spratlin or the solicitor may have for you.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF BOB CROUCH BY MR. SPRATLIN:

Q: Good afternoon, Mr. Crouch. I only have a couple of questions for you. You said that you had a chance to observe the transactions on videotape that were presented here today, correct?

A: Yeah.

Q: Does it appear that the transactions were made by the same person?

A: Yes.

Q: And both of those transactions or at least one of those transactions -- were they both captured on video or just one?

A: They both were.

Q: They both were. So, the person using the credit card for Jerry Fisher and Amanda Fisher on that credit card would've been the person who used the card at your store, correct?

A: Yes.

Q: So, whoever is on the video would be the person that used that card?

A: Yes.

Q: So, the video will answer all those questions?
A: Yes.
Q: Thank you.
THE COURT: Any redirect?
MR. OSKIN: Nothing from the state, Your Honor. We would ask that Mr. Crouch be released from his subpoena.
THE COURT: Any objection?
MR. BELLAMY: No, sir, Your Honor.
MR. SPRATLIN: No, Your Honor.
THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties. Thank you.
All right.
MR. DEBUSK: May we approach, Your Honor?
THE COURT: Please.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
BY THE COURT:
THE COURT: All right, ladies and gentlemen, we're gonna take a break at this point in time and I'll call you back out as quickly as I can. Thank you.
THE COURT: Just leave those right there and we'll get them. Thank you, sir. I appreciate it very much.
(REPORTER'S NOTE: Jury exits courtroom.)
THE COURT: All right. Solicitor, as I understand it, the next witness that you had planned to use was Mr. Lynch,

but that had to do with the phone records; is that correct?

MR. DEBUSK: Yes, Your Honor, there was some phone records that we didn't realize were in custody. We've turned them over. We were not gonna use them, but the defense wanted time to review them for possible exculpatory evidence.

THE COURT: All right.

MR. DEBUSK: So, we agreed to call Mr. Lynch, Will Lynch, tomorrow, which would leave us without a witness until Dr. Proctor gets here at 4 o'clock.

THE COURT: All right. So, that's your request to delay that, Mr. Bellamy and Mr. Spratlin?

MR. SPRATLIN: Your Honor, I would like an opportunity to review my client's phone records, yes, sir.

THE COURT: All right. Very good. All right.

All right. So, and the last communication you had with Dr. Proctor was that he'd be here at 4 o'clock?

MR. DEBUSK: Correct, Your Honor. That was about lunchtime.

THE COURT: All right. If you would endeavor in the meantime while we're on break to maybe communicate with him and see if you can't speed that up a little bit and just, you know, as soon as -- tell him, we'll put him on the stand just as soon as he gets here.

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. It's always important to Dr.

Proctor.

All right. We'll be at ease until then.

Thank you very much.

MR. SPRATLIN: Thank you, Your Honor.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: State ready?

MR. DEBUSK: Yes, sir, Your Honor. Defense counsel is in the room out there.

(REPORTER'S NOTE: Defense counsel enters courtroom.)

THE COURT: All right, Mr. Bellamy, you ready for the jury?

MR. BELLAMY: Yes, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Yes, sir, Your Honor.

THE COURT: Ask the jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, Solicitor, your next witness, please.

MR. DEBUSK: Thank you, Your Honor. The state calls Dr. Edward Proctor.

THE COURT: All right, sir. Please come around and be sworn, sir.

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

EDWARD LEROY PROCTOR, JR. HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

DR. PROCTOR: My name is Edward Leroy Proctor, P-R-O-C-T-O-R, Jr.

DIRECT EXAMINATION OF DR. EDWARD LEROY PROCTOR, JR. BY MR. DEBUSK:

Q: Dr. Proctor, what's your occupation?

A: I am a physician engaged in the practice of pathology.

Q: In which states are you licensed?

A: North Carolina and South Carolina.

Q: And how long have you been licensed?

A: Since approximately 1982.

Q: And where are you currently engaged in your practice?

A: My office is currently at Grand Strand Medical Center in Myrtle Beach.

Q: Okay. Where did you receive your medical training?

A: I received my medical training at the Medical University of South Carolina. I did my residency at Walter Reed Army Medical Center in the Armed Forces Institute of Pathology, and since then I have been practicing pathology while in the military at Fort Bragg and here in Myrtle Beach since 1986.

Q: Could you tell the jury what pathology is?

A: Pathology is the pathologic basis of disease and, as a

general pathologist, we look at specimens taken at the time of surgery and render a diagnosis. We also run the lab, doing blood bank, microbiology, and those kind of things, and I am also sub-specialized in forensic pathology, which is the medical legal investigation of death whereby we examine at the request of the medical authorities and police authorities and determine a cause and manner of death.

Q: Does that include forensic autopsy?

A: That is correct.

Q: And how many autopsies have you performed?

A: Several thousand.

Q: Are you a member of any specialized medical scientific groups or associations?

A: I am board certified in anatomic clinical and forensic pathology by the American Board of Pathology.

Q: Okay. What are the special requirements for that sort of position?

A: Special requirements is you have to sit for a certification exam and undergo training in those areas.

Q: Do you have continuing training as well?

A: That's correct.

Q: Okay. Now, here's a question for you, have you ever been qualified as an expert in pathology in a court of law before?

A: I have.

Q: About how many times?

A: Several hundred, I would think.

Q: Okay.

Your Honor, the state would proffer Dr. Proctor as an expert in forensic pathology?

THE COURT: Any requests by your client, Mr. Bellamy, to voir dire the witness or challenge his qualifications?

MR. BELLAMY: No, sir, Your Honor. I'm very familiar with Dr. Proctor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor, none at all.

THE COURT: All right. Very good. I'm gonna qualify the witness to render his opinion in the field of forensic pathology. You may proceed.

MR. DEBUSK: Thank you, Your Honor.

BY MR. DEBUSK:

Q: Dr. Proctor, did you have occasion to perform an autopsy on one Amanda Fisher?

A: Yes, sir, I did.

Q: Where and when was that done?

A: The autopsy was performed on July the 10th, 2016 and it was performed in the morgue at Grand Strand Medical Center in Myrtle Beach.

Q: What was the condition of Ms. Fisher's body when you received it?

A: Other than a significant wound to the body, it was in

good condition.

Q: Okay. What was that significant wound?

A: This woman suffered a gunshot wound to the head with an entrance in the right head above the ear and there was an exit wound in the left side of the head anterior and slightly -- above the ear and slightly anterior.

STATE'S EXHIBIT NUMBER 33 AND 34

MARKED FOR IDENTIFICATION

Q: I want to show you what's been marked for ID as State's Exhibit 33 and 34; these are not in evidence, nor will they go into in evidence. Would you examine these pictures and what are they?

A: These are pictures of the deceased demonstrating the gunshot wound and the trajectory.

Q: Okay. Now, other than these photos and their nature, did we prepare, just before you testified, a visual aide to demonstrate that?

A: Yes, sir; we did.

Q: Okay. Using this head, what did you do to demonstrate that?

A: I marked on the right side, the sight of entrance, which would've been on the ---

MR. DEBUSK: For the record, this would be State's Exhibit 35.

THE COURT: All right. Very good.

A: There was entrance on the right side above the area of the ear. This was a contact wound, which actually you could see the muzzle imprint of the gun with a circular entrance in the middle, no residue, which means this was against the skin and it all was pushed into the wound. The projectile path was right to left, very slightly anterior coming out of the anterior lateral skull in this area.

BY MR. DEBUSK:

Q: So, that demonstrates on that Styrofoam head, approximately the course the bullet took through Amanda Fisher's head?

A: That's correct.

Q: And when you say a contact wound, that means the muzzle of the gun was right up against the head?

A: The muzzle was hard contact against the head; that's correct.

Q: If had not been up against the head, you would have seen a different residue pattern?

A: That's correct.

MR. DEBUSK: Your Honor, the state would move State's 35 into evidence.

THE COURT: Any objection?

MR. BELLAMY: No, sir, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right, sir. So, State's 35 is in

evidence without objection.

STATE'S EXHIBIT NUMBER 35

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: Now, I think I've asked this, but if the gun was farther away than in contact we would have seen a different pattern?

A: A direct contact wound, all of the burning power and smoke and whatnot coming out of the end of the gun with that hard contact or direct contact to the head, it's pushed into the wound site with there being the gun away from the head, all of that would have hit the skin around the wound site.

Q: And you would have seen a burn pattern there?

A: You would've seen what we call residue and stippling. Residue being the smoky powder and the stippling actually the burning powder where it burns the skin.

Q: Other than the entrance wound and the exit wound you already told us about, were there any other injuries to the victim?

A: No, sir; there were not.

Q: What was the relative size of the entrance and exit wounds?

A: Well, the, the actual entrance, I think, was about an a half a centimeter across in the middle of the muzzle imprint.

Q: Okay. And how about the exit wound?

A: Exit wound about the same size.
Q: Okay. So, some projectile actually did exit the head?
A: It did.
Q: In your experience as a forensic pathologist, when a projectile exits the head, does it cause blood or other ejection to come out?
A: It can; yes, sir.
Q: Now, this might ask you for a little bit of speculation, but was this necessarily a fatal wound?
A: It was a fatal wound; yes, sir.
Q: No way to live through that?
A: That caused significant traumatic injury to the brain.
Q: When you do an autopsy, do you scan the body for drugs and other intoxicants?
A: Yes, sir; we do.
Q: Did you do that with Ms. Fisher?
A: Yes, sir; we did.
Q: What, what did you find in the toxicology screen?
A: All right. On all forensic cases, we do a toxicology screening for blood alcohol and common drugs of abuse. And in this case, there was a blood ethanol of 68 milligrams per decimeter, which if you convert that to say the breathalyzer reading is a .068.
Q: And the legal limit for drivers is a .08; is that correct?

A: Yes, sir.

Q: Okay.

A: The blood drug screen was positive for Alprazolam, which is a Valium type drug, and benzoylecgonine, which is a cocaine metabolite.

Q: Not the cocaine ---

A: No, it's the immediate metabolite of cocaine.

Q: But that suggested cocaine used sometime in the recent past?

A: That's correct.

Q: And the Alprazolam, was that in therapeutic levels or below therapeutic levels?

A: All I have is the screening, it was just detected.

Q: Now, did those -- the alcohol or the Alprazolam with cocaine in any way contribute to her death?

A: No, sir.

Q: Okay. Now, based on your autopsy within the bounds of reasonable medical certainty, have you formed an opinion as to discern the cause of death?

A: This woman died as a result of traumatic injury from the gunshot wound to the head.

Q: The contact wound to the head?

A: That's correct, contact wound.

Q: Right against her head?

A: Yes, sir.

Q: Thank you. Please answer any questions defense has.

THE COURT: Cross examination, Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor?

CROSS EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MR. BELLAMY:

Q: Dr. Proctor, while I understand that the toxicology report would not have killed her, do you -- and you may not be able to do this, but there are numbers, you gave a number on the alcohol, correct, of 68?

A: That's correct.

Q: And I believe the report on Alprazolam -- and you say that's -- is that Valium or Xanax?

A: It's ---

Q: Or is it the same thing, I don't know?

A: I'd have to look to be sure; they're similar, I think.

Q: Okay. It has a result here of a 15, do you have any -- can you quantify that as to will that make you high or I don't know what it does; you don't know?

A: I don't know.

Q: And again, with the cocaine or Benzo -- I can't pronounce it -- 83. Can you give us any idea of what that would mean for anybody?

A: It's an immediate metabolite of cocaine. I know that I've seen that level before, but I don't know the significance of it.

Q: Okay. Other than, I believe you testified for the

solicitor that it would've been recent -- cocaine leaves the system very quickly?

A: Very quickly; that's correct.

Q: Okay. I believe the half-life is anywhere from 30 minutes to an hour-and-a-half?

A: I would -- I'd have to look, but I think you're right.

Q: Okay. And half-life means half of it's gonna be gone in 30 minutes?

A: It degrades 50/50/50/50.

Q: Gotcha. Now, the wound here, clearly would've been fatal, no chance of survival?

A: That's correct.

Q: And death would have been instantaneous, correct?

A: Death would've been very -- death would've ensued very rapidly here, that's correct.

Q: And you indicated the contact wound. Is there any way you can tell us if that contact wound was instantaneous with the shooting or if the contact with the gun to the head would've been for a minute, 30 seconds, or it could've been for just an instant, correct?

A: It could've been just for an instant, yes, sir.

Q: And you were able to establish the entrance and exit at this angle?

A: That's correct.

Q: Now, did you do any analysis to determine where the

shooter may've been?

A: I was not at the scene. This was based -- that trajectory is based on the entrance site itself and exit with me putting in a trajectory rod to determine the angle.

Q: So, there's been no determination by you as a pathologist as to where the shot may have come from in relation to some -- whoever did the shooting?

A: No, sir.

MR. BELLAMY: Court's indulgence?

BY MR. BELLAMY:

Q: Thank you, Dr. Proctor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MR. SPRATLIN:

Q: Good afternoon, Dr. Proctor.

A: How you doing?

Q: I'm fine. I hope you are, too.

Now, Mr. Bellamy just asked -- I was having a little trouble hearing. He said that there was a contact wound with the gun pressed up against the head, correct?

A: That's correct.

Q: But there's no way to tell how long that gun was pressed up against the head?

A: Right.

Q: It could've been instantaneous?

A: Put the gun against the head and pull the trigger; uh-huh, (affirmative response).

Q: Okay. And you said that the injury or the shot was fatal?

A: Yes, sir.

Q: So, Ms. Fisher's death was guaranteed the instant that bullet went through her head?

A: Her death was a result of that bullet passing through her head.

Q: Okay. So, the fact that she wound up on concrete or was pushed out of her car, shoved out of the car, wouldn't have played any part in her death?

A: There were no injuries consistent with trauma from being pushed out of a car.

Q: Okay. And there were no other injuries present on her body consistent with being beaten or assaulted in anyway, correct?

A: Not that I saw.

Q: No other sign of any kinds of injuries or any other crime other than that bullet?

A: That is correct.

Q: Thank you, Dr. Proctor, no further questions.

THE COURT: Redirect?

MR. DEBUSK: Briefly, Your Honor.

REDIRECT EXAMINATION EDWARD LEROY PROCTOR, JR. BY MR. DEBUSK:

Q: Mr. Bellamy asked you about the Alprazolam and cocaine metabolite, again there was no apparent cocaine, just that metabolite, right?

A: That's correct.

Q: And Valium is a tranquilizer, right?

A: It's -- it's official classification, Valium-type drugs are mostly relaxants that have other effects.

Q: Okay. And you can't tell anything about how long the gun was against her head. It could've been there an hour or it could've been there a second?

A: There's no way to tell.

Q: No way to tell from the forensic test?

A: No.

Q: Thank you.

No further questions, Your Honor.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: Is there any reason the doctor should not be excused?

MR. DEBUSK: No, Your Honor. We would ask that.

THE COURT: All right, Dr. Proctor, you are released from your subpoena and may go back to your regular duties.

Thank you.

DR. PROCTOR: Thank you for your indulgence, too

THE COURT: Yes, sir.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, that will conclude the testimony the state had planned for today. We will resume tomorrow morning. We will resume tomorrow morning again at 9:30. I ask that you arrive, again, the clerk's office will have something for you in the morning, so you can arrive in time to enjoy that. We'll resume tomorrow morning at 9:30.

Again, remember, you know, go home, see somebody, you can't talk to them about the case. After the case is over with, you can tell them everything you want to or nothing at all. That'll be your choice but, until you reach a unanimous verdict in this matter, you may not discuss this matter with anyone, nor among yourselves until I give it to you at the very end. Again, remember, you're not researchers, investigators, you can't look up anything. You make a decision on the facts and the evidence presented in the courtroom and from no other source.

With that, I'll see you back tomorrow morning at 9:30. Thank you very much.

Everyone else remain seated until the jury retires.

(REPORTER'S NOTE: Jury exits courtroom. The following takes

place outside the presence of the jury.)

THE COURT: Anything further from the state at this time?

MR. DEBUSK: No, Your Honor; thank you.

THE COURT: Anything from your client, Mr. Bellamy?

MR. BELLAMY: Judge, what we discussed in chambers concerning the phone records. It's my understand that the solicitor's office is trying to arrange through T-Mobile a conference call for Mr. Spratlin and myself sometime in the morning. And I think at that point, I will be in a better position to advise the Court of what my client's position would be there.

MR. DEBUSK: Your Honor, we actually -- if I may interrupt, we've actually got a key that tells -- I think will help you understand the records.

THE COURT: So, you've got an index key that will ---

MR. DEBUSK: Yes, Your Honor.

THE COURT: --- decipher those codes.

MR. DEBUSK: And we will provide that at this time.

THE COURT: Okay. Very good.

MR. DEBUSK: Yes.

MR. BELLAMY: Okay.

THE COURT: So, then you'll have overnight to look at that and y'all can raise any matter to me in the morning then.

MR. BELLAMY: Thank you, Judge.

THE COURT: All right, sir. Mr. Spratlin, anything at

this time?

MR. SPRATLIN: No, Your Honor, just subject to I will review the records as well and if my position has changed, I will certainly let the Court know.

THE COURT: All right. Very good. All right, gentlemen, I'll see you back then so we can start at 9:30. So, y'all make sure you get here a little bit earlier than that, please.

Thank you very much.

MR. BELLAMY: Thank you, Judge.

RECESS - END OF DAY TWO

*******OFF THE RECORD*******

(On the Record.)

APRIL 25, 2018 - DAY THREE

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: All right. Mr. Bellamy, you said yesterday you may or may not have some question about the phone records. Has that been resolved?

MR. BELLAMY: Your Honor, I have had a chance and the solicitor was kind enough to give me some codes and different things and last night went over it. I would not have any motion at this time concerning the late disclosure of these phone records. I may have some questions for the officer when he testifies, but I don't have any motion concerning a

mistrial or anything of that nature at this time, Your Honor.

THE COURT: All right. Very good.

Mr. Spratlin?

MR. SPRATLIN: Your Honor, I have no objection or no need for a mistrial in this matter. However, due to the discovery violations and them not being turned over, I would just ask that they not be introduced into court, which I believe is the state's intention anyway. Obviously ---

THE COURT: The state already said they weren't intending to use them. So, I don't think that's an issue.

MR. SPRATLIN: I understand, Your Honor. I was just making sure that was clear for the record.

THE COURT: All right. Thank you.

MR. BELLAMY: Your Honor, just so I'm -- Your Honor is clear on my position, I'm not intending to introduce anything, but I would question the officer who obtained those about some things. So, I don't want to mislead the Court in that I'm not gonna bring it up. I'm gonna bring it up, not to introduce them, but I may ask some questions.

THE COURT: Mr. Spratlin, what do you say about that?

MR. SPRATLIN: Your Honor, obviously, I think my client would be somewhat prejudiced by these records -- by the records being discussed, but not being known. Obviously, I understand Mr. Bellamy's position. If we could confer and -- I think we might be able to reach an agreement.

THE COURT: I'm sorry, the two of you talk, is that what you're asking to do?

MR. SPRATLIN: Yes, sir, Your Honor.

THE COURT: All right. Go ahead.

(REPORTER'S NOTE: Counsel confers.)

MR. SPRATLIN: Your Honor, based on that, I do not necessarily have an objection. I would just ask that, obviously, you know, the state not be allowed to use them.

THE COURT: The state is not bringing it up, okay, in their direct. Now, if y'all start talking about it, I'll have to hear from the state as to their position at that point in time. But in the direct, the state's not bringing it up, okay? But if y'all bring it up, then we'll have to hear the state's position at that point in time.

MR. SPRATLIN: Yes, sir, Your Honor.

THE COURT: Okay?

MR. BELLAMY: Thank you, Your Honor.

THE COURT: All right. The state ready with a witness?

MR. OSKIN: Yes, sir, Your Honor, with regards to the *Neil v. Biggers* motion, the state would call Mr. Philip Levett with the Charlotte Police Department.

THE COURT: All right. So, okay, y'all want to go forward with the *Neil v. Biggers* hearing?

MR. OSKIN: Your Honor, it's certainly at your discretion. We have one witness, Detective Helms, who could

be heard in front of the jury before this motion. The state believed it would be more efficient to have these motions heard at this time, Your Honor, than to have the four witnesses simultaneously in front of the jury.

THE COURT: Okay. All right. How many witnesses do you think we're gonna have in the *Neil v. Biggers* hearing?

MR. OSKIN: Just three, Your Honor, one of them being a 10-year-old little girl, who is roughly 10 to 12 questions.

THE COURT: All right. So, we need to tell the jury that they can be excused until 11 o'clock.

MR. OSKIN: That gives more than enough time to finish the motion, Your Honor, and get back.

THE COURT: All right. All right. Go ahead and get started then.

NEIL V. BIGGERS HEARING:

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

PHILIP LEVETT, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. LEVETT: All right. First name is Philip, last name is Levett; P-H-I-L-I-P, L-E-V-E-T-T.

DIRECT EXAMINATION OF PHILIP LEVETT BY MR. OSKIN:

Q: You're a detective, correct?

A: Yes, sir.

Q: Detective Levett, who is your current employer, sir?

A: Charlotte-Mecklenburg Police Department.
Q: How long have you been employed there?
A: Nineteen years.
Q: Any prior law enforcement experience to that?
A: I do; Charleston Police Department.
Q: Charleston, South Carolina.
A: (Indicates affirmatively.)
Q: What department of Charlotte-Mecklenburg Police are you currently assigned to?
A: The arson unit.
Q: Have you been in that -- how long have you been in that assignment?
A: Seven years.
Q: So, you were in that assignment July of 2016?
A: Yes, sir.
Q: Would you please tell the Court what some of your job duties are in that assignment?
A: My jobs duties are basically to investigate intentionally set fires.
Q: Did you respond or become involved in the investigation of a burned car off of Sally Lane that occurred on July 9th of 2016?
A: I did.
MR. OSKIN: If I may approach the witness, Your Honor?
THE COURT: Yes, sir.

BY MR. OSKIN:

Q: I'm showing you what has been marked or moved into evidence rather, State's Exhibit Number 5. Do you recognize that map?

A: Yes.

Q: What is that a map of?

A: Basically, South Carolina and North Carolina.

Q: Okay. Do you recognize your jurisdiction pinpointed on that map?

A: Yes, I do.

Q: Where is that at?

A: Right here at the top, 3901 Sally Lane, Charlotte, North Carolina.

Q: Is that the same incident location that your investigation responded to?

A: It is or it was, I should say.

Q: Did you meet with any other detectives within Charlotte-Mecklenburg Police with regards to this investigation?

A: I did.

Q: Who was that?

A: Detective J.B. Holmes.

Q: Okay. After, after meeting with him, at that point in the investigation, did you have a suspect for who burnt the vehicle?

A: I did.

Q: And who was he?

A: Nicholas McIver.

Q: Did you have any further involvement with regards to this investigation?

A: I did.

Q: At any point, did you construct a photo -- a photo lineup?

A: I did.

Q: How did you construct a photo lineup?

A: Basically, what I did was we used six photographs. The photo lineup consists of one photograph of a person that's possibly involved in the crime and the other five photographs are filler subjects.

MR. OSKIN: If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

STATE'S EXHIBIT NUMBER 44

MARKED FOR IDENTIFICATION

BY MR. OSKIN:

Q: Detective Levett, I'm showing you what's been marked as State's Exhibit 44.

A: Yes, sir.

Q: If I can have you take a look through that and I ask if you recognize it?

A: I do recognize it.

Q: What is that?

A: It's the photo lineup that I put together.
Q: The same lineup you constructed on July 9th?
A: Yes, sir. Yes, sir.
Q: Now, is that a six-pack or does it consist of individual photos?
A: No, it's individual photos.
Q: Okay. And it's -- it's how many again, I apologize?
A: Six individual photos.
Q: All right. And did you present that six-pack to the witnesses at Sally Lane?
A: No, sir.
Q: Why not?
A: State law.
Q: Okay. And who presented that -- that photo lineup to the witnesses?
A: Detective Klass.
Q: Is that because of procedure or law you said?
A: Just pro -- yeah, procedure.
Q: Is this done in a manner to further ensure objectivity?
A: It is.
Q: To your knowledge, were the witnesses able to identify any suspect?
A: One witness did.
Q: And who was that?
A: Shaniah Holmes.

Q: All right. Who did she identify?

A: She identified Nichols McIver.

Q: Do you have any other involvement in this case?

A: No, sir.

Q: Nothing further from me, Detective Levett. Please answer any questions from Mr. Bellamy and Mr. Spratlin.

THE COURT: Mr. Bellamy?

MR. BELLAMY: Your Honor, may I approach the witness to retrieve the exhibit the state just -- Court's indulgence.

THE COURT: Yes, sir.

MR. BELLAMY: I have a copy of these photos, but these are obviously better quality.

CROSS EXAMINATION OF PHILP LEVETT BY MR. BELLAMY:

Q: Officer Levett, you composed this, correct?

A: Yes, sir.

Q: Now, the solicitor asked you a question about there were two witnesses. Now, you didn't present it, right?

A: No, sir.

Q: And I'll reserve that for the witness who did present it. But in looking at these photographs on State's 44, of the six photographs, there are four of them appear to be either a medium or dark-complected black males and there are only two that are light-skinned; wouldn't you agree with that? I'll show you the first photograph.

A: Okay.

Q: That one would not be light-skinned, would it?
A: It'd be just medium-complected, I guess.
Q: Medium-complected, Number 2. Number 3 would be light-skinned?
A: Yes, sir.
Q: Okay. Number 4 would be light-skinned?
A: Yes, sir.
Q: Number 5 would not be?
A: Hu-huh, (negative response).
THE COURT: Was that a yes or no?
MR. BELLAMY: He said no.
A: No.
BY MR. BELLAMY:
Q: And nor would Number 6?
A: Medium-complected.
THE COURT: I'm sorry, I didn't hear the answer, you interrupted his answer.
MR. OSKIN: I'm sorry.
A: Medium-complected.
Q: So, of the six that you compiled, four are medium or dark, and there are two light and my client is light-skinned, right?
A: Yes, sir.
Q: And of the two, and again I'm gonna show you this, of the two, my client, the photograph you have of him, shows a slight

mustache, right?

A: Yeah.

Q: Okay. And the other light-skinned individual does not have a mustache, correct?

A: No, sir.

Q: So, of the six that you showed, it really -- the description was a light-skinned person, from the two individuals that you had out there at the car, you only compose out of six, two, which leaves you a 50/50 chance now instead of one out of six. And then of those two, there's no mustache and a mustache on the other ---

THE COURT: Is there a question in that, Mr. Bellamy?

MR. BELLAMY: Well, I guess I'm trying to ---

BY MR. BELLAMY:

Q: Do you think that's a fair lineup?

A: I do.

Q: Okay. I don't have any further questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No questions, Your Honor.

THE COURT: Redirect?

MR. OSKIN: Very briefly.

REDIRECT EXAMINATION OF PHILIP LEVETT BY MR. OSKIN:

Q: Detective Levett, I should've asked this earlier, when these six photos are generated, how are they generated? Are they ---

A: Through a computer database.
Q: Okay. So, they're not necessarily handpicked by you, selected; you put in the characteristics of the defendant ---
A: We do.
Q: --- and then that system generates those photos; is that correct?
A: Yes, but it generates numerous photos, but they're all within that criteria, I guess, based on the original person's characteristics, which is the person that we believe is possibly involved in the crime.
Q: Right.
A: Which is height, weight, eye color, so on and so forth.
Q: Length of hair?
A: Yes, sir.
Q: Nothing further from the state, sir.
THE COURT: Any questions on that, Mr. Bellamy?

RECROSS EXAMINATION OF PHILIP LEVETT BY MR. BELLAMY:

Q: Was one of the criteria that you entered into the computer light-skinned?
A: The computer picks out those characteristics, so, I -- I didn't actually specifically put in light-skinned, that's just what the computer.
Q: Well, how would the computer know what to spit out?
A: Because I guess it takes out from the original person that we put in there, which would be the person that we

suspect that's involved in the crime and then once that criteria is in there, it just picks out pictures that are -- I guess, I mean I have no control of the computer system, I guess.

Q: Well, what did you put in?

A: I didn't put in anything. Because the system, we put it -- we get those photographs from a mug search system, which is mug shots that are taken in Mecklenburg County.

Q: Well, somebody had to put something in the computer so the computer would have an idea of what to spit back out. Who put in and what was put in the computer?

A: I wouldn't ---

Q: If you didn't do it, who did?

A: Well, every mug -- every mug shot that's taken, when they're arrested, they put in people's height, weight, complexion, hair length, hair style. So, those criteria are in there. I have never put any of those criteria in those, in that system.

Q: So, you can't tell us what was put into the computer to spit this out?

A: I mean, it's -- not specifically.

Q: Did you review these photographs to make sure that they were -- that the characteristics of each of the photographs were consistent so it would be fair?

A: I did.

MR. BELLAMY: Thank you, Judge. No more questions.

THE COURT: Let me understand this. You already had a photo in your database?

A: Yes, sir.

THE COURT: From a mug shot previously of Mr. McIver; is that correct?

A: Yes, Your Honor.

THE COURT: And so you put -- that's already in the system?

A: It is, sir.

THE COURT: So, you identified that person as the potential suspect in your crime?

A: Yes, Your Honor.

THE COURT: And then the computer program -- the computer runs the program and spits out photographs?

A: It does, sir.

THE COURT: And those are the ones that you use?

A: Yes, sir.

THE COURT: All right. So, you didn't pick the photographs, the computer program did it, correct?

A: Yes.

THE COURT: All right. Further questions, solicitor?

MR. OSKIN: None from the state, sir.

THE COURT: Further questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: All right. Very good.

You may step down, sir.

MR. OSKIN: Thank you, sir.

The state would next call Detective Robert Klass, please?

THE COURT: All right, Mr. Klass, come all the way around up front and meet the clerk's representative up here, please.

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

ROBERT KLASS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. KLASS: My name is Robert Klass; Last name spelling, K-L-A-S-S.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF ROBERT KLASS BY MR. OSKIN:

Q: Detective Klass, who is your current employer, sir?

A: Charlotte-Mecklenburg Police Department.

Q: All right. How long have you been employed there?

A: It'll be 19 years next month.

Q: Any prior law enforcement experience?

A: No, sir.

Q: What department of the CMPD are you assigned to, sir?

A: I'm a detective in the arson unit.

Q: All right. Were you in that same assignment July of 2016?

A: I was.

Q: What are some of your work duties in that assignment?
A: Origin and cause of fires, follow-up investigation. If it's a criminal case, we'll do the follow-up investigation and present it to the DA's office.
Q: All right. Did you become involved in an arson investigation that occurred around July 9th on Sally Lane in your jurisdiction?
A: I did.
Q: All right. What was your role in that investigation, sir?
A: I was asked to show a photo lineup.
Q: All right. What was the date of that photo lineup?
A: July 12th, 2016.
Q: All right. Do you remember the time?
A: Somewhere around 1 o'clock.
Q: All right. And where was that location; where did it take place at?
A: It was in the 3900 block of Sally Lane.
Q: Is that where you presented the lineup to the witnesses at?
A: Yes.
Q: So, how much time had passed since the original crime occurred?
A: I believe it was three days. I believe the original crime was on the 9th.

Q: All right. And who were the photos -- who were the witnesses to your photo lineup?

A: Walter Digsby and Shaniah Holmes.

Q: Walter Digsby is not available for testimony; is that correct?

A: That's correct, sir.

Q: Why is that?

A: He passed away.

Q: I apologize. What, if anything, were the witnesses told before they were shown the photos?

A: They, they were told that I was gonna show them a photo lineup and that they didn't have to feel pressured to pick out a person. If the person wasn't there it was fine to say that there wasn't anybody present.

Q: Is that evidenced by a paper record?

A: Yes, sir.

Q: All right.

If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

Q: I'm showing you what's been marked as State's Exhibit Number 45. I'll ask if you recognize that.

A: Yes, sir.

Q: What is that, sir?

A: That's the instruction sheet for the photo lineup?

Q: Is that the one you showed that day to the witnesses?

A: Yes, sir; that is.

Q: Is it evidenced by your signature as well?

A: Yes, sir.

Q: Now, when you showed Digsby and Holmes these lineups, were they shown separately or together?

A: They were shown separately.

Q: All right. How many photos were displayed?

A: Six.

MR. OSKIN: If I may approach again, Your Honor.

BY MR. OSKIN:

Q: I'm showing you what's been marked as State's 44. Do you recognize that?

A: Yes, I do.

Q: Is that the photo lineup?

A: Yes, sir.

Q: Is that the photo lineup you showed to the witnesses that day?

A: Yes, sir.

Q: Okay. And how many photos were displayed in that?

A: Six.

Q: And how did you present those photos to the witnesses?

A: I presented one at a time.

Q: All right. And based off your assessment, what's the nature of those photos used in the lineup?

A: I'm sorry, if you could ---

Q: Just how were the photos displayed?
A: By putting down on a piece of paper.
Q: Did you or anyone in your presence influence or suggest to the witnesses which photos to select?
A: No, sir.
Q: Did you have any witness who saw the photo lineup and then also participated in a physical lineup before seeing your photo lineup?
A: No, sir.
Q: Did you show any photos of any suspect to any other witnesses prior to having them view this lineup?
A: No, sir.
Q: Did any of the witnesses select a photo in this lineup?
A: Yes, sir.
Q: All right. Did they indicate whether this person was the person who committed this crime?
A: Yes, sir.
Q: Who was that person?
A: It was Photo Number 3.
Q: And which witness identified?
A: Shaniah Holmes.
Q: Okay. And it was, you said Picture Number 3?
A: Yes, sir.
Q: What else did she say -- well, without telling me what she said, how long did it take the witness to pick out that

particular photo?

A: It was instantly.

Q: And who did that photo reflect?

A: Mr. McIver.

Q: What was -- what was the witness' reaction upon seeing that photo?

A: She saw it, instantly pointed to it and said that's him.

Q: You would say she was confident in her ---

A: Yes, sir.

Q: Okay.

A: I asked her what degree of certainty she was, and she said 100 percent.

Q: And after she ID'd the defendant, did she communicate to to Mr. Digsby or any other witness who viewed the photo lineup, did she talk to anyone else before they viewed it?

A: No, sir.

Q: Did any -- did anyone else in addition to these people, view the photo lineup and point out Mr. McIver was the one who committed the crime?

A: No, sir.

Q: Please answer any questions Mr. Bellamy or Mr. Spratlin have.

THE COURT: Cross examination?

MR. BELLAMY: May it please the Court?

CROSS EXAMINATION OF ROBERT KLASS BY MR. BELLAMY:

Q: The female that you referenced that identified my client, she is how old or was how old?
A: She was seven at the time, I believe.
Q: Okay. Seven?
A: Yes, sir.
Q: Was she accompanied by someone?
A: Her mother.
Q: Okay. Did you do anything differently with her being seven than you would've with Mr. Digsby, who was an adult, in terms of explaining the process?
A: I took a little bit more time to explain the process and to make sure she understood exactly what her role was, yes.
Q: Did you go outside of what's written on your form?
A: No, sir. I'm required to read exactly what's on the form, but I did tell her that, not to feel pressured to make -- make a decision.
Q: Well, you testified that you did more with her?
A: Uh-huh, (affirmative response). I, I emphasized that she didn't have to make a decision if, you know, the person that she saw wasn't there.
Q: Okay. And did you simultaneously show these photographs?
A: No, sir.
Q: So, it's just like look, look, but did you continue to show photographs afterwards?
A: Yes, sir.

Q: Okay. Now, Mr. Digsby, you showed him the same -- he was the adult, right?

A: Yes, sir.

Q: And he actually interacted or spoke to the person who's suspected of doing this, correct?

MR. OSKIN: Objection to hearsay, Your Honor.

MR. BELLAMY: I'm not asking what he said.

A: Not to my knowledge.

BY MR. BELLAMY:

Q: So, he didn't tell whoever was parking that car, you can't park it here?

A: No, sir, not to my knowledge.

Q: But he didn't -- he was unable to pick out anybody, correct?

A: He wasn't sure; that's correct.

Q: Okay. Well, your form says ---

A: Right.

Q: He put no. He didn't put not sure, he put no by every picture; is that correct?

A: There was one photo where he said I believe it was maybe, I'd have to -- but he was not certain at all.

Q: And the one on the not sure was not my client though, was it?

A: That's correct.

Q: On my client it was no.

COURT REPORTER: I'm sorry?

THE COURT: Was there an answer; did you give the answer?

A: I'm sorry, to which?

THE COURT: Ask your question again.

MR. BELLAMY: Okay.

BY MR. BELLAMY:

Q: Photo Number 3 with Mr. Digsby, he was positive that it was not him, correct?

A: He said no to that photo, correct.

Q: Okay. Now, did you -- you did not compile these six photographs, did you?

A: No, sir; I did not.

Q: You didn't make any -- do any analysis to determine if they were consistent enough with each other to be fair, you just took them and showed them, right?

A: That's correct, sir.

Q: Court's indulgence?

Let me ask you this, Mr. Klass, Officer Klass, did you do any sort of questioning of this seven-year-old to determine her competence to understand the truth and untruths or lies or fantasy and things -- at seven years old, did you do any sort of, or did anybody, an analysis of her to make sure she was understood truth versus not truth or you just read to her that you don't have to feel pressured, this standard thing, which is what you said you just read that and you didn't go outside.

Q: Can you tell the truth? Do you remember or do know where a place in Charlotte called Sally Lane is?
A: Yes.
Q: How do you know where Sally Lane is?
A: Because I lived there since I was born.
Q: That's a long time. And when you lived at Sally Lane, were you ever able to play outside or hang outside?
A: Yes.
Q: Okay. Let me make you think back a little bit. Do you ever remember seeing a car on fire on Sally Lane?
A: Yes.
Q: Do you remember what kind of car that was?
A: White, a white car.
Q: Did you see it before it became on fire?
A: Yes.
Q: Did you see any people around that car?
A: Yes.
Q: Okay. What did the person look like who was outside the car?
A: He was light-skinned with dreads
Q: Was anybody else with him?
A: Yes.
Q: Did you see one -- did you see him or that other person or him light the car on fire?
A: That other person was in the car.

Q: That other person was in the car, but not in the car that was on fire.

A: No.

Q: So, there was another car?

A: Yes.

Q: Okay. And then did you see the car catch on fire?

A: Yes.

Q: Okay. What did you do when it caught on fire, did you go inside, did you tell somebody?

A: I told my mom.

Q: Okay. Shortly after you did that did some police officers come out and talk to you about it?

A: Yes.

Q: Did they have any papers with them?

A: Yes.

Q: Did they tell you anything about -- did they show you photos, did they show you photos of people?

A: Yes.

MR. OSKIN: If I may approach this witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Ms. Shaniah, I'm showing you a piece of paper there, are you able to see that. You want to hold that? Have you ever seen that piece of paper before?

A: Yes.

Q: Yes, how do you know? Did you sign it or anything?
A: There's my name on it.
Q: You put your name on it, okay, good enough. Now, when you saw those photos from the police officer, did -- did you see a photo of the person who was the same person that you saw set the car on fire?
A: Yes.
Q: And did you tell the police officers that?
A: Uh-huh, (affirmative response).
Q: And how sure were you?
A: One hundred percent.
Q: You still 100 percent?
A: (Indicates affirmatively.)
THE COURT: I'm sorry, ma'am, I didn't hear what she said?
Q: Just say yes or no; are you still 100 percent sure?
A: Yes.
Q: Nothing further from you Ms. Shaniah, please answer any questions for Mr. Bellamy or Mr. Spratlin.
THE COURT: Mr. Bellamy?
MR. BELLAMY: Court's indulgence for just one second, Your Honor.
May it please the Court?
THE COURT: Yes, sir.
MR. BELLAMY: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION OF SHANIAH HOLMES BY MR. BELLAMY:

Q: You doing all right, Ms. Holmes; it's Ms. Holmes, is it not?

A: Yes.

Q: Okay. What grade are you in?

A: Third grade.

Q: Third grade. What's your favorite subject in school?

A: Reading.

Q: Reading, that's good. I need to ask you a few questions so, if you don't understand something, please ask me and I'll try to rephrase it or explain it, or His Honor will, so we can get through this. You told Mr. Seth here that the person you saw in the car was light-skinned, right?

A: Uh-huh, (affirmative response).

Q: Okay. Now, I'm gonna show you some of these photographs and ask you how many of these people were light-skinned, okay? Do you mind doing that? I ask you to look at this which has 1 here, would you say this is light-skinned. Do you think he's light-skinned?

A: (Indicates affirmatively.)

THE COURT: Was that a yes?

Q: You need to actually talk.

A: Yes.

THE COURT: Okay. Thank you.

Q: Is he light-skinned?

A: Yes.

THE COURT: You'll have to say is that Number 2 or ---

MR. BELLAMY: Number 2, I'm sorry.

THE COURT: All right, sir.

BY MR. BELLAMY:

Q: Number 3?

A: Yes.

Q: Would you say he's much lighter skinned that Number 1 or Number 2?

A: Yes.

Q: Okay. Now, let's look at Number 4, what about him?

A: Yes.

Q: Yes, he's light-skinned, would he be close to the same skin color as Number 3?

A: Yeah.

Q: Okay. What about Number 5, he would be darker than the last two, right?

A: Yes.

Q: And likewise, Number 6, he would be darker, too, right?

A: Yes.

Q: So, of these six, there's two that are close and then other four are darker, right? Answer up?

A: Yes.

Q: And you had given, when you first talked to the police,

they asked for you to give them a description and that's when you said light-skinned, right?

A: Yes.

Q: And then they came back later to show you these, right?

A: Yes.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Ms. Holmes.

A: You're welcome.

THE COURT: Mr. Spratlin?

CROSS EXAMINATION OF SHANIAH HOLMES BY MR. SPRATLIN:

Q: Good morning, Shaniah, how are you?

A: Good.

Q: I'm Martin. I have a couple of questions for you. Okay?

A: Okay.

Q: You said earlier that you saw another person there besides the man that burned the car. That was a woman, wasn't it?

A: Yes.

Q: Okay. So, you didn't see any other men there with the man that burned the car, just the woman, right?

A: Yes.

Q: Thank you.

BY THE COURT:

THE COURT: Any other questions from the state?

MR. OSKIN: Nothing from the state, Your Honor.

THE COURT: All right, Ms. Shaniah, you can step down for right now, okay, we'll have to call you back in a little bit. Thank you. Just see the deputy, just go walk over there towards the deputy and then walk towards the other one. Okay?

All right. Next witness?

MR. OSKIN: Your Honor, that would conclude our witnesses for the purpose of the *Neil v. Biggers* motion. The state would ask that we be able to move that evidence into -- into the trial portion of this case, Your Honor.

THE COURT: All right. Presentation of any witnesses in the hearing from your client, Mr. Bellamy?

MR. BELLAMY: No, sir, we wouldn't have any witnesses. I would obviously have an argument to make.

THE COURT: Well, I understand that, but I just ---

MR. BELLAMY: No witnesses, Judge.

THE COURT: Okay. Mr. Spratlin, any witnesses?

MR. SPRATLIN: No witnesses, Your Honor.

THE COURT: All right. So, you object to it, Mr. Bellamy?

MR. BELLAMY: Yes, sir, Your Honor.

THE COURT: I'll be glad to hear from you.

ARGUMENT BY BELLAMY:

MR. BELLAMY: May it please the Court, Your Honor. As

elicited, as I understand the testimony and Your Honor questioned as well before excusing the first, they take the characteristics of some mugshot of my client, enter it into some computer and the computer just generates and they take it. There's no review of that. They don't take into account the description given by the potential witness, which I think is critical in this case. She describes as light-skinned and even this witness says, there are only two that are similar in this case to what she described as characteristic of the person. You take a mugshot that may be from whenever, and you don't know if it is a year ago, two years ago, three years ago and to let a computer randomly generate pictures that's not reviewed by anybody and is simply put out there, I think two out of the six is a 50/50 chance and as the officer, first officer, I believe testified, only one of the people had facial hair, which my client has facial hair, the other didn't and I think it's unduly suggestive and we would ask that it be suppressed and not be allowed as testimony in this case.

THE COURT: All right. Mr. Spratlin, any position?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Very good.

Reply by the state?

ARGUMENT BY MR. OSKIN:

MR. OSKIN: Yes, sir, Your Honor. With regards to how these photos were generated, Your Honor, a name is entered

into their system, so for here the name would be Nicholas McIver, it would pull his height, weight, characteristics, and then generate photos from there through the system after entering his name.

Further objectivity is shown by the fact that Detective Levett was responsible for these photos being generated and then he gives it to Robert Klass, who has no idea who Nicholas McIver is compared to anyone else in that lineup for further objectivity. Most importantly here, as the witness just testified before your court, she was 100 percent certain of who she picked. She had an immediate reaction to who she picked, no hesitation, and that was noted by her testimony here today. Taking in light-skinned and those features, it should be taken in as a whole. And, therefore, the state would ask that it be moved into evidence and not suppressed, Your Honor.

THE COURT: All right. Very good.

ARGUMENT BY BELLAMY:

MR. BELLAMY: Your Honor, how about just one, and I don't want to belabor the point, but ---

THE COURT: That's all right.

MR. BELLAMY: --- I forgot to mention one thing. The officer and this officer testified about generating the lineup, he couldn't even tell us what those characteristics of my client were that were put into the computer; it's just a

photo. And whoever did that mug shot, we don't know what characteristics they put in for him. The computer has it so no one can tell us the real criteria that the computer was using and that, again, is the basis I think it suppress this photo lineup. Thank you, Your Honor.

RULING BY THE COURT:

THE COURT: All right, sir. As far as the basic law regarding the identification process, it's that under the due process clause, evidence of an identification of an accused must be excluded if the process used to obtain the identification was so unnecessarily suggestive as to taint the identification in or the subsequent identification.

Now, in this, the Court has said that there's a when looking at whether or not this unnecessarily suggestive procedure would give rise to substantial likelihood in this identification, the Court has to evaluate it in a two-step process. One, was the out-of-court identification process unduly suggested; and two, if so, was the identification nevertheless so reliable that no substantial likelihood of misidentification could occur. And reliability is the lynch pin in determining the admissibility of the identification evidence.

The -- some factors that the Court is supposed to look at are the witnesses' opportunity to view the criminal at the time -- at the time of the crime, the witnesses' degree of

attention, the accuracy of the witnesses' prior description, the witnesses' level of certainty at the confrontation, and the time between the crime and confrontation.

As to the first part of this, was the out-of-court identification process unduly suggestive; I do not find that it was unduly suggestive. The Charlotte-Mecklenburg Police Department had the defendant's photo from prior involvement with the Charlotte-Mecklenburg Police Department. He was already in their computer system. They used that, what is called a mugshot, to those characteristics in their computer program, and the computer did its analysis and gave them multiple photos. They used five other photographs. Another officer taking those six photographs, showed those to the witness. The officer did not identify the defendant in any way, did not indicate to the witness in any way which one she should pick. There was no coercion in any way to pick a particular person. The witness was merely shown photographs. And Mr. Bellamy, when you asked her about light-skinned or such, she identified the first four as being light skinned, and she agreed that the last two were darker than the middle two, but she identified the first four as being light-skinned, that's what she said.

Clearly from the questioning, she had the opportunity to view what occurred, and she had the opportunity to see who was there, and she indicates at the time of the photo lineup that

she was 100 percent certain of her identification. She reaffirmed that today and as I understand it from the officer's testimony, there was three days between the time of the arson and when she was shown the photo lineup. Certainly no, hardly any length of time between the two at all that would affect a person's memory or recall.

So, with this, the Court -- first, I do find that it was not unduly suggestive. That even if such was the case, the identification by the witness, Ms. Holmes, was so reliable that there is no substantial likelihood of misidentification. I don't find it was suggestive, but even if it was found to be suggestive, there is no likelihood of misidentification possible in this matter. Therefore, I'm gonna allow the state to use the testimony and the photo lineup procedure in this matter.

BY THE COURT:

THE COURT: All right. Before the jury comes back, is there anything else from the state then?

MR. OSKIN: Nothing, Your Honor.

THE COURT: All right. How about from you, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: And, Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: In -- I do think when the -- you are questioning the minor in front of the jury, Solicitor ---

MR. OSKIN: Yes, sir.

THE COURT: --- the law of South Carolina is there is no fixed age that a person must attain to be a witness. The test is whether the minor, the law states that if the minor senses a duty to tell the truth and whether the child is aware of right from wrong and understands potential punishment for lying. That's the test.

All right. So ---

MR. OSKIN: Yes, sir.

THE COURT: So, we'll be at ease until the jury gets back at 11:00 and then we'll resume the testimony in the trial.

Thank you.

MR. SPRATLIN: Thank you, Your Honor.

MR. BELLAMY: Thank you.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: All right. Is the state ready for the jury to come in?

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: And, Mr. Bellamy?

MR. BELLAMY: Yes, sir. Your Honor.

THE COURT: And, Mr. Spratlin?

MR. SPRATLIN: Yes, Your Honor.

THE COURT: All right. Ask the jury to come in please, sir.

THE COURT: The order of witnesses, Solicitor, is that gone be the same that you did before?

MR. OSKIN: Your Honor, there will be one detective before that. He'll be our next between ---

THE COURT: I guess my question was ---

MR. OSKIN: One before the ---

THE COURT: The minor is gonna be last ---

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: --- of all the witnesses?

MR. OSKIN: Yes, sir.

THE COURT: Okay. All right. Because I need to tell the jury something before you actually call her.

MR. OSKIN: Okay. Yes, sir, understood. She will be after Klass.

THE COURT: Okay. Very good.

(REPORTER'S NOTE: Jury enters courtroom.)

All right, Solicitor, your first witness, please.

MR. OSKIN: Thank you, Your Honor, the state would next call Detective Helms, please.

THE COURT: Helms?

MR. OSKIN: Yes, James Helms.

THE COURT: All right. All right, Mr. Helms, come all the way around up front and meet the clerk's representative

please right up here.

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

JAMES HELMS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. HELMS: James, J-A-M-E-S, last name Helms, H-E-L-M-S.

THE COURT: Go ahead, Solicitor.

MR. OSKIN: Thank you, sir.

DIRECT EXAMINATION OF JAMES HELMS BY MR. OSKIN:

Q: Detective Helms, who's your employer?

A: The Charlotte-Mecklenburg Police Department.

Q: How long have you been employed there?

A: Eighteen years.

Q: You got any prior law enforcement experience prior to Charlotte?

A: No, sir.

Q: What's your current assignment, sir?

A: I'm assigned to the Violent Crimes Homicide Unit for the Charlotte-Mecklenburg Police.

Q: All right. Will you please tell this jury -- will you describe your job duties to them, please, briefly?

A: So, we investigate homicides, we investigate suicides, overdoses, and essentially all manners of death, and try to assist the medical examiner in determining cause of death.

Q: Were you in that same assignment in July of 2016?

A: Yes, I was.
Q: Do you recall becoming involved in an investigation that concerned a burned car in your jurisdiction?
A: Yes, I did.
Q: All right. And through the course of your work duties, did you become aware of a homicide that occurred in North Myrtle Beach, South Carolina?
A: Yes, I did.
Q: Was the car that was burned in your jurisdiction, had it been listed as stolen?
A: Yes, it had.
Q: Out of what state?
A: Out of South Carolina.
Q: Was a suspect ever generated by North Myrtle Beach as to who stole that car?
A: They provided me with some photographs of a person they thought may have stolen the car.
Q: What -- what did -- what had you learned from North Myrtle Beach, anything in addition to the photos?
A: A possible name.
Q: How were you able to get a name to match the photos?
A: I was notified by Detective Lynam of a possible telephone number and we also received a Crime Stoppers tip to the Charlotte Crime Stoppers with an identity, a possible identity of at least one of the suspects involved in the North Myrtle

Beach homicide.

Q: All right. What else did you get to do the specific name?

A: We conducted investigations in the various databases that we have from the information we provided and developed the name of both suspect -- both suspects.

Q: Okay. And what are those names?

A: One was Nicholas Jacob McIver and the other was Terrell Freeman.

Q: As part of this investigation, did you work directly with the Charlotte Arson Taskforce?

A: Yes, I did.

Q: Did you respond to the scene where the car was burned at?

A: Yes, I did.

Q: Where was that, sir?

A: It was on Sally Lane.

THE COURT: If I may approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Detective Helms, I'm showing you what's been marked as State's Exhibit Number 5.

A: Okay.

Q: Are you able to recognize what that is?

A: Yes, it's a map with various points on it. I was trying to figure out the bearings here, so...

Q: Does that map reflect the incident location you were just referring to as Sally Lane?

A: Yes, it does.

Q: Will you indicate to this jury where that's located at on this map?

A: Where it says car burned.

Q: So, you responded to the seen itself, correct?

A: Yes, I did.

MR. OSKIN: If I may approach again, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Detective Helms, I'm showing you what's been marked as State's Exhibit Number 13, 14, 37, and 38. I'll ask if you recognize those -- without showing the jury.

A: Yes, sir; I do.

Q: What are those photos of?

A: I'm able to explain what each one is?

Q: Were you present on the scene when those photos were taken?

A: I was not -- let's see. I was not present when these were taken, no, sir.

Q: Could you explain what each one shows?

A: It's a vehicle that has fire damage.

Q: The same vehicle at the incident location responded to?

A: Yes.

Q: Is there anything that indicates in any of those photos where that's located at, Sally Lane?

A: There is a number on a mailbox.

MR. OSKIN: Your Honor, at this time, the state would seek to move State's Exhibit 13, 14, 37, and 38 into evidence?

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: They're in evidence without objection.

STATE'S EXHIBITS NUMBERS 13, 14, 37, AND 38
ADMITTED INTO EVIDENCE

MR. OSKIN: All right. And the state would seek to publish it to the jury, Your Honor?

THE COURT: You may do so.

MR. OSKIN: Thank you.

BY MR. OSKIN:

Q: As part of your investigation, did you -- was this car further processed and an impound lot?

A: Yes, it was. Once we learned the vehicle was towed from the incident location, we had it towed to our evidence lot, which is a secure facility of the police department. And we went back on a later date with Detective Lynam and processed that vehicle.

Q: And you were present for that processing?

A: Yes, I was.

Q: Were photographs taken at that processing?

A: Yes, they were.

MR. OSKIN: If I may approach one more time, Your Honor?

THE COURT: Go ahead, sir.

BY MR. OSKIN:

Q: I'm showing you what's been marked as Exhibit State's 39, 40, 41, 42, 43. I'd ask that you review those, please, real quick.

A: All right.

Q: Are you able to recognize those photos?

A: Yes, I am.

Q: What are those photos of?

A: These are photos of the car at the time we processed it at the impound lot.

Q: The same part of the investigation you were just referring to, correct?

A: Yes, sir.

Q: No additions, deletions, subtractions, any material changes to those photos?

A: No, sir.

Q: It's an accurate reflection of how they were taken that day?

A: Yes, they are.

MS. OSKIN: Your Honor, at this time the state would seek

to move State's Exhibit 39, 40, 41, 42, and 43 into evidence and publish them to the jury.

THE COURT: Any objection?

MR. BELLAMY: No, sir, Your Honor.

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. They're in evidence without objection.

STATE'S EXHIBITS NUMBER 39, 40, 41, 42, AND 43

ADMITTED INTO EVIDENCE

MR. OSKIN: May I now publish, Your Honor?

THE COURT: Yes, sir, you may do so.

BY MR. OSKIN:

Q: Detective Helms, I'm showing you what's been marked as State's Exhibit Number 46. Are you able to determine what the contents of that bag are?

A: May I -- allowed to open?

Q: Yes, sir.

A: Yes.

Q: What is in that bag?

A: These are items that we collected from that vehicle and the date of the processing of that vehicle.

Q: All right. What items specifically are in that bag?

A: A purse with contents and part -- it looks like part of of a purse.

MS. OSKIN: Your Honor, at this time, the state would

seek to move State's Exhibit Number 46 into evidence.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. It's into evidence without objection, you may proceed.

STATE'S EXHIBIT NUMBER 46

ADMITTED INTO EVIDENCE

BY MR. OSKIN:

Q: Detective Helms, throughout the investigation in this case, did you become aware of a person named Tyquajua?

A: I did.

Q: Do you know if she's related to any of these defendants in any manner?

A: She was a girlfriend of Nicholas McIver.

Q: Through your investigation, did you become aware of where she lives?

A: Yes, I did.

Q: All right.

May I approach, Your Honor.

THE COURT: Yes, sir.

Q: I'm showing you what's been marked as State's Number 36, are you able to recognize that?

A: Yes.

Q: And what is that?
A: It is an overhead map. It contains the Sally address location as well as the location of Wiggins' apartment.
Q: All right. And that's in -- that's in your jurisdiction, correct? That's a map in your jurisdiction?
A: It is.
Q: Nothing material -- materially altered or edited on there, it's an accurate reflection of the current area?
A: Yes.
MS. OSKIN: I'm showing defense counsel what's been marked as State's Exhibit 36.
MR. BELLAMY: No objection.
THE COURT: Any objection.
MR. SPRATLIN: No objection, Your Honor.
THE COURT: All right, sir. So, State's 36 is in evidence without objection, you may continue.

STATE'S EXHIBIT NUMBER 36

ADMITTED INTO EVIDENCE

MR. OSKIN: Yes, sir, Your Honor. The state would seek to publish it to the jury.
THE COURT: You may do so.
BY MR. OSKIN:
Q: I know that's a map reflection of your jurisdiction. About how far apart is Tyquajua's residence from Sally Lane?
A: I would estimate it a half a mile to three-quarters of a

mile.

Q: Have you driven that route before?

A: Yes.

Q: About how long does it take you to get there?

A: Two minutes, tops.

Q: Detective Helms, nothing further from the state at this time. Please answer questions for Mr. Bellamy and Mr. Spratlin, please.

THE COURT: All right. Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION OF JAMES HELMS BY MR. BELLAMY:

Q: It's Detective Helms, correct?

A: That's correct.

Q: Okay. You, you live in that area, this is your community, I guess, not necessarily specifically there, but you're familiar with it like I would be, I grew up at the beach, but I'm familiar with Conway and Loris and Aynor, so you're familiar with this area?

A: Yes, sir.

Q: Where this car was burned, that's a residential neighborhood, isn't it?

A: Yes.

Q: Houses side-by-side?

A: Yes.

Q: It's not a rural farm community; it's a residential community?
A: Yes, it is.
Q: So, it's not isolated; it's not where one would expect you to burn something and hide it, would you think?
A: I can't answer that.
Q: Well, let me ask you this. I mean, you spoke to a gentleman named Mr. Digsby, who was physically present and actually had a conversation with the person they say ---
MR. OSKIN: Objection, Your Honor, it calls for hearsay.
MR. BELLAMY: I'm not asking what he said.
THE COURT: I understand that, but -- y'all come up and talk to me for a second.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
BY MR. BELLAMY:
Q: Detective Helms, I'm not trying to be confusing, but there were physically people outside in the yard and yards when this occurred, right?
A: From what I understand, yes.
Q: Okay. That's fine. And again, it's a residential neighborhood, not an isolated area?
A: That's correct.
Q: Okay. Now, you are involved, I think I heard right, more with the homicide, not necessarily with the arson stuff,

right?

A: That's correct.

Q: But you were sort of a link because there was a murder investigation down here?

A: Yes.

Q: Okay. Now did you physically process the car or were you present when that was done?

A: The initial one, I was not.

Q: Okay. Would that have been done by, I guess, a separate unit, an arson team?

A: That's correct.

Q: Okay. And so, I assume they can come tell us what their results of that would be. Okay, so that wouldn't be your expertise?

A: That's correct.

Q: Now, at some point, was there a pickup truck taken into custody by the Charlotte Police Department in reference to this case?

A: Yes, there was.

Q: Okay. And was there any processing done of it?

A: Yes, there was.

Q: Was that done by y'all?

A: It was done by CMPD, yes.

Q: At that would be Charlotte-Mecklenburg ---

A: Police Department.

Q: Okay. Do you know if there were any items taken into evidence?

A: I do not know that.

Q: But the item you've previously marked here was taken from the burned vehicle?

A: Yes, sir.

Q: Now, you indicate you weren't present for the initial processing of that vehicle, but that you went back at a later time; do you know when that was?

A: I do not know the exact date.

Q: Okay. Would that have been days or a few days later?

A: Yes.

Q: Okay. And who was present for that?

A: It was myself and Detective Dollar (spelled phonetically), and our crime scene tech.

Q: Okay. And what was the purpose of that?

A: To document -- we took photographs of the vehicle at that time and moved -- that's when we moved the vehicle to our evidence lot.

Q: Okay. Is that different than the photograph that we've - photographs we saw here where it's in like outside of ---

A: Yes, that's -- those photographs when it was at the evidence lot. So, initially, the car was towed from the scene to Williams Wrecker. We've learned of the homicide investigation, so the vehicle was -- we went out and processed

the vehicle at Williams Wrecker and then towed it to our evidence lot, secure lot. And then at a later date, we returned and processed and searched the vehicle.

Q: Okay. Is that when this was found?

A: That is.

Q: And when you say processed, is that something you did or somebody else did?

A: I was physically involved with the searching of the vehicle, yes.

Q: Okay. And you were looking for evidence of the arson or just items in the car?

A: Just evidence in general.

Q: Okay. And all you recovered was, you were looking for items to take out of the car?

A: Yes.

Q: And this is what you -- did you take anything other than this?

A: No, sir.

Q: All right. And I think you mentioned maybe you went back with somebody from North Myrtle Beach?

A: That's when those items were recovered.

Q: Oh, that's when this was done. I'm sorry.

A: Yes, sir.

Q: Okay. Did the North Myrtle Beach folks or anybody from South Carolina Law Enforcement, did they process the car, or

it was just y'all?

A: It was -- he was there assisting with the search of the car.

Q: Okay. Looking for items?

A: Correct.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Detective Helms, I don't have any more questions.

THE COURT: Go ahead, sir?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF JAMES HELMS BY MR. SPRATLIN:

Q: Good morning, Detective Helms. How are you?

A: Great, sir, how are you?

Q: I'm good. I've just got a couple of quick questions for you. Now, you were primarily -- you said you were homicide primarily, correct?

A: Yes.

Q: But you were working closely with the arson unit on this case?

A: Yes.

Q: And that's because you were contacted by North Myrtle Beach regarding a homicide investigation that they were working on?

A: Yes, sir.

Q: And Owen Lynam, he was actually the head detective that he spoke with, correct?

A: Yes, sir.

Q: And the processing of the vehicle the pictures just showed that you introduced into evidence, I'm not sure where they got put, but the jury knows what I'm talking about, when you processed the car, Owen was the person from North Myrtle Beach that was actually there with you, correct?

A: Yes, he was.

Q: Okay. So, you obviously knew at the time that you were processing that vehicle that there was a pending investigation into a homicide in North Myrtle Beach?

A: Correct.

Q: You also knew some of the details that involved a gunshot, correct?

A: Yes.

Q: And you said earlier that Nicholas McIver and Terrell Freeman were developed as suspects, that's from what occurred in North Myrtle Beach, correct?

A: Yes.

Q: Okay. Working with the arson unit, my client, Terrell Freeman, he was never developed as a suspect of the actual burning of the car, was he?

A: No, sir.

Q: No witnesses put him there to your knowledge?
A: No, sir.
Q: No information put him there?
A: No, sir.
Q: And the individual who you said lived near Sally Lane, Tyquajua Wiggins; is that correct?
A: Yes, sir.
Q: Again, just for the jury identification, whose girlfriend is she?
A: Nicholas McIver.
Q: No relation to Terrell Freeman to your knowledge?
A: Not that I know of.
Q: Thank you, detective; that's all the questions I have.
THE COURT: Redirect?
MR. OSKIN: Very briefly, Your Honor.

REDIRECT EXAMINATION OF JOSEPH HELMS BY MR. OSKIN:

Q: Detective Helms, I'm gonna ask you to kinda further explain this particular section of Charlotte. With regards to Sally Lane, is that street within a residential neighborhood?
A: Yes; it is.
Q: Is that residential neighborhood itself, as far as people, how does this part of Charlotte compare to say uptown or other sections of Charlotte?
A: I could probably best describe it as it's the kind of street I grew up on. It's -- it's one way in, one way out,

houses down both sides, but the kind of neighborhood where everybody knows everybody, not a lot of outsiders would come into. It's the way I would see the neighborhood.

Q: So, there's one in and one way out; is it a dead-end road then?

A: It is.

Q: Okay. Were you able to associate Nicholas McIver and Terrell Freeman together during your investigation?

A: Yes, I was.

Q: How so?

A: We were able to determine that they both -- I used social media, we were able to see they were both friends with each other on social media, and also through the Crime Stoppers tip we got, we learned that they both worked together at a restaurant called Floyd's. So, that's how we were able to link them together.

Q: And the restaurant, Floyd's, have you had a chance to -- do you by any chance know who owns that restaurant?

A: I do not know exactly, no. I know it's a family member of one of the two gentlemen, but I don't -- I can't recall who owns it, sir.

Q: All right. At the processing of the car, was there anything of evidentiary value seized from the car?

A: Just these items right here.

Q: That are present before the Court today?

A: Yes.

Q: Okay. And the car itself, had it been totally consumed by fire?

A: Yes, completely.

MR. OSKIN: Nothing further from the state, Your Honor.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Just briefly, Your Honor.

RECROSS EXAMINATION OF JAMES HELMS BY MR. SPRATLIN:

Q: You linked McIver and my client, Terrell Freeman, because they were basically friends, correct?

A: Yes.

Q: Worked together, correct?

A: Yes.

Q: Thank you. No further questions.

THE COURT: All right. Do you wish the witness to be excused, Solicitor?

MR. OSKIN: Yes, sir, please, Your Honor.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties.

MR. HELMS: Thank you, Your Honor.

THE COURT: All right. Your next witness, Solicitor?

MR. OSKIN: Yes, sir, Your Honor. The state would next call Detective Phil Levett, please.

THE COURT: All right, sir, just come right around up here and meet the clerk's representative right up front.

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

PHILIP LEVETT, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. LEVETT: Detective Philip Levett, P-H-L-I-P, L-E-V-E-T-T.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF PHILIP LEVETT BY MR. OSKIN:

Q: Thank you, Detective Levett. Who's your current employer, sir?

A: Charlotte-Mecklenburg Police Department.

Q: How long have you been employed there?

A: Nineteen years.

Q: Any prior law enforcement experience to Charlotte-Meck?

A: Yes.

Q: Where at?

A: Charleston Police Department.

Q: How many years did you spend with them?

A: About eight months.

Q: What department of Charlotte-Mecklenburg Police are you currently assigned to?

A: I'm assigned to the arson unit.

Q: All right. Is that the same assignment you had in July of 2016?

A: It was.

Q: All right. What are your -- what are some of your job duties in that assignment, sir?

A: My main job duty is to investigate intentionally set fires.

Q: Did you respond or become involved in the investigation of a burned car that occurred at Sally Lane within your jurisdiction in 2000 -- July 9th, 2016?

A: I did.

MR. OSKIN: May I may approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: Detective Levett, I'm showing you what's been marked as State's Exhibit Number 5, do you recognize this?

A: I do.

Q: What is that?

A: It's a map of the location where the car was burned.

Q: All right. And that's at Sally Lane?

A: Yes, sir.

Q: And that's the location you responded to?

A: 3901 Sally Lane, yes, sir.
Q: After this investigation began, Detective Levett, did you meet with any other detectives within Charlotte-Mecklenburg Police Department?
A: I did.
Q: Who was that?
A: Detective J.B. Helms.
Q: All right. Did you have -- after meeting with him, did you have a suspect who burned the vehicle?
A: I did.
Q: And who was it?
A: Nicholas McIver.
Q: Did you have any further involvement with regards to this investigation after meeting with Detective Helms?
A: I did.
Q: All right. What was that?
A: I put together a photo lineup.
Q: How do you construct a photo lineup?
A: It's a photo lineup is basically six photographs in which we present to a witness to see if they can identify any perpetrator of a crime. In this instance, I put together six photographs. One is the person that possibly is involved in the crime and the other five are just filler photographs.
Q: Detective Levett, how are those -- how do those photos come about; I mean how -- are they generated by computer?

A: They are computer-generated photographs based on similar characteristics.

Q: Okay. Where do those characteristics get pulled from?

A: Computer database.

Q: Do you just enter a suspect's name and then the computer does the rest?

A: Yes.

Q: This particular photo lineup, is it a six-pack or is it individual photos?

A: Individual photos.

Q: And it's -- it's how many again?

A: Six.

Q: Did you present those photos to any witnesses at Sally Lane?

A: No, I did not.

Q: Do you know who did?

A: Detective Klass with the Charlotte-Mecklenburg Police Department.

Q: All right. And why didn't you present those photos to them?

A: State law prohibits that.

Q: Is that also part of your department's policy?

A: Yes, it is.

Q: Is that policy -- is that to further insure objectivity?

A: Yes, sir.

Q: To your knowledge, were the witnesses able to identify the suspect?

MR. BELLAMY: Judge, I think the other officer would be more appropriate to testify to that since he wasn't present.

THE COURT: Why don't you rephrase your question.

BY MR. OSKIN:

Q: After further investigation, was a suspect identified by witnesses?

A: Yes.

Q: Did you have -- who did you -- so, you can constructed the six photos, correct?

A: Yes, sir.

Q: And then you gave those to Detective Klass?

A: Yes, sir.

Q: All right. And then so was it Detective Klass then that would've presented those photos to any witnesses?

A: It is.

Q: Do you have any further involvement in this case other than constructing the photo lineup?

A: Yes.

Q: What was that?

A: After the suspect was identified as far as the person -- the burning of the vehicle, I obtained warrants for that individual for burning of personal property.

Q: Nothing further from the state. Please answer any

questions of Mr. Bellamy and Mr. Spratlin.

THE COURT: All right, Mr. Bellamy, cross examination?

MR. BELLAMY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION OF PHILIP LEVETT BY MR. BELLAMY:

Q: Detective Levett, I believe you indicated that you primarily are involved in the investigation of arson?

A: Yes, sir.

Q: But you were assisting in doing this lineup thing?

A: Yes.

Q: Or the photo whatever?

A: Well, the actual case was assigned to me.

Q: Okay.

A: So, I was the detective in charge of that.

Q: And I guess it was an investigation of the arson to identify who was burning the car?

A: Yes, sir.

Q: Did you play any part in the processing of the vehicle that had been burned?

A: No, sir.

Q: Okay. Are you aware, and if you're not, you're not, that Mr. McIver turned himself in to the police?

A: I'm not.

Q: Okay. Would there've been some other officers with

Charlotte who would've examined the car on the arson side or processed it?

A: Well, we have a fire investigator that actually processes the car.

Q: So, there would've been another individual that would generate the report and that kind of thing?

A: Yes, sir.

Q: Okay. And the reason you were doing the photo lineup is you had witnesses who would've been physically on the scene at the time of the fire, correct?

A: Or prior to, yes.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Detective Levett. Answer any other questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Yes, sir, Your Honor.

CROSS EXAMINATION OF PHILIP LEVETT BY MR. SPRATLIN:

Q: Good morning, Detective Levett?

A: How you doing, sir?

Q: I'm doing pretty well. I've just got a couple of questions for you. You said that Defendant Nicholas McIver was developed as the suspect who burned the car, correct?

A: Yes, sir.

Q: Terrell Freeman, my client, he was never developed as a

suspect who burned the car, was he?

A: No, sir.

Q: In fact, you have no evidence as a result of your investigation that shows that Terrell Freeman had ever been on Sally Lane?

A: No, sir.

Q: Let alone the day that car was burned.

A: Yes, sir.

Q: Thank you, no further questions.

THE COURT: Any redirect?

MR. OSKIN: Nothing from the state, Your Honor, and we would ask that he be excused from his subpoena.

THE COURT: Any objection to that, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you are released from your subpoena, you may go back to your regular duties.

MR. LEVETT: Thank you, sir.

THE COURT: Yes, sir.

Next witness please?

MR. OSKIN: Thank you, Your Honor, the state would next call Detective Robert Klass, please, with the Charlotte police.

CLERK: Please raise your right hand and place your left

hand on the Bible.

ROBERT KLASS, HAVING BEEN DULY SWORN

TESTIFIES AS FOLLOWS:

MR. KLASS: My name is Robert Klass, R-O-B-E-R-T, K-L-A-S-S.

THE COURT: Go ahead, solicitor.

DIRECT EXAMINATION OF ROBERT KLASS BY MR. OSKIN:

Q: Mr. Klass, you're a detective with the Charlotte Police Department, correct?

A: Correct.

Q: All right. How, how long have you been employed there?

A: It'll be 19 years next month.

Q: Any prior law enforcement before that?

A: No, sir.

Q: What department of Charlotte-Mecklenburg Police are you assigned to?

A: The arson unit.

Q: Okay. Were you assigned to that same unit in July of 2016?

A: I was.

Q: What are your work duties in that assignment?

A: To help determine origin and cause of fires. Do an investigation, and then if it's a criminal case, then we present it to the district attorney's office.

Q: Did you become involved in an arson investigation that

occurred on Sally Lane in your jurisdiction?

A: I did.

Q: What was your role in that investigation?

A: I showed a photo lineup.

Q: What was the date you showed that photo lineup?

A: July 12th, 2016.

Q: All right. What time?

A: It was around 1 o'clock in the afternoon.

Q: All right. At what location did you show that lineup?

A: The 3900 block of Sally Lane.

Q: How much time had passed since the original crime occurred, that being the burning of the car?

A: I believe it was about three days.

Q: Okay. Who were witnesses to the photo lineup?

A: Who I showed the lineup to?

Q: Yes, sir.

A: It was a gentleman, Walter Digsby and a Shaniah Holmes.

Q: Walter Digsby is not available to testify today, is he?

A: He is not.

Q: Why is that?

A: He passed away.

Q: What, if anything, did you tell Shaniah Holmes before showing her any photos?

A: I told her not to feel pressured into making -- picking somebody that she wasn't a hundred percent sure about.

Q: Would that be evidenced by -- by paperwork, by a form?
A: Yes, sir.
Q: With your name, information from your employment, and also signatures of that witness?
A: Yes, sir.
MR. OSKIN: If I may approach the witness, Your Honor?
THE COURT: Yes, sir.
BY MR. OSKIN:
Q: I'm showing you what's been marked as State's Exhibit Number 45, are you able to recognize that?
A: Yes, sir.
Q: What is that?
A: That's the instruction sheet for the photo lineup that I showed Ms. Holmes.
Q: Is your information on that specific sheet right there?
A: It is.
Q: Is Shaniah Holmes reflected there as well?
A: Yes, sir.
Q: She sign that before any photos were presented to her?
A: I believe she signed it -- yes, sir, before any photos are shown, she's to sign it, yes.
Q: How many photos were displayed?
A: Six.
MR. OSKIN: If I may approach the witness again, Your Honor?

THE COURT: Yes, sir.

BY MR. OSKIN:

Q: I'm showing you what's been marked as State's Exhibit Number 44, I'll ask you to review that and let me know when you're ready for further questioning.

A: Okay.

Q: What is that?

A: That is the photo lineup that I showed Ms. Holmes.

Q: How -- are you able to tell any changes, additions, deletions, alterations to those photos?

A: No, sir, it looks like the same exact lineup as when I showed it.

MR. OSKIN: At this time, Your Honor, the state would seek to move Exhibit Number 44 and 45 into evidence.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: Note the previous objection, Your Honor.

THE COURT: All right.

And, Mr. Spratlin?

MR. SPRATLIN: No, Your Honor, I've had a chance to previously review it; no objections.

THE COURT: All right. So, the State's 44 and 45 are in evidence -- well, your objection was to 44. So, is there an objection to 45, the instruction sheet?

MR. BELLAMY: No, sir, Your Honor; I'm sorry.

THE COURT: All right. So, there's no objection to State's

45, that's into evidence without objection. State's 44 is into evidence over the objection of Defendant McIver.

STATE'S EXHIBIT NUMBER 44 AND 45

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. OSKIN: Thank you, sir.

BY MR. OSKIN:

Q: What's the nature of the photos used in that lineup, Detective Klass?

A: I'm sorry?

Q: What's the nature of those photos, characteristics of the people in those photos?

A: Black male, dreads, you know -- I didn't make the photo lineup, so I ---

Q: Right.

A: --- don't exactly know exactly the parameters he used.

Q: This will help us out. Who did -- who did you get the photos from; who did you get the lineup from?

A: Detective Levett.

Q: Okay. Did you or anyone in your presence influence or suggest to the witness, Ms. Holmes on who she should select?

A: No.

Q: Do you have any witness -- did she see the photo lineup and then also participate in the physical lineup before seeing the photos?

A: No.

Q: Did you show any photos to her or any other suspect before viewing this lineup?

A: No.

Q: Was she able to select a photo in this lineup that was the person who committed the crime?

A: She was.

Q: What photo was that?

A: Photo Number 3.

Q: How long did it take her to pick out that photo?

A: It was instantly.

Q: What was her -- any other reaction other than picking it instantly?

A: She just pointed to it and said that's him.

Q: How certain was she, if there was a numerical value to it?

A: She said a hundred percent.

Q: What was the name on that photo?

A: There's no name on the photo. I learned afterwards that it was Mr. McIver.

Q: She didn't select any other person in that lineup as who committed the crime or who could've committed the crime?

A: No.

Q: Only Nicholas McIver?

A: Yes, sir.

Q: Nothing further from the state at this time. Please answer questions for Mr. Bellamy and Mr. Spratlin.

THE COURT: All right, Mr. Bellamy, cross examination.

MR. BELLAMY: May it please the Court?

CROSS EXAMINATION OF ROBERT KLASS BY MR. BELLAMY:

Q: Detective Klass, I believe you said you were with the arson unit?

A: Yes, sir.

Q: Did you play any role in the processing of this vehicle?

A: I did not.

Q: Okay. But again, someone with your -- that group would have done that?

A: We work as a task force, and the Charlotte Fire Department did the original fire scene examination.

Q: Okay. Are you aware that my client, Mr. McIver, turned himself into y'all?

A: No, sir.

Q: And again, the reason for, and I keep saying again, because I've asked these questions to other people, but you weren't in here, so I apologize. The reason for the photo lineup is because your investigation revealed the physical presence of other people at the scene, so you had witnesses, right?

A: Yes, sir. Detective Levett told me that he had a couple of witnesses that he needed to show a photo lineup.

Q: Which would indicate that they would've been physically present, right?

A: Yes, sir.

Q: Okay. And this -- did you ever go out to -- you must've, because you just indicated you went to Sally Lane, this is a residential neighborhood?

A: Yes, sir.

Q: Not isolated?

A: It's towards a dead-end, I guess you could say.

Q: Houses?

A: Yeah, there's several houses on the street.

Q: Okay. It would not be the place that you would expect to try to burn something and nobody know about it, would you?

A: Not typically.

MR. BELLAMY: Court's indulgence.

BY MR. BELLAMY:

Q: Thank you, Detective Klass, answer any other questions.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF ROBERT KLASS BY MR. SPRATLIN:

Q: How are you this morning, Detective Klass?

A: Good, how about yourself, sir?

Q: I'm fine. A couple of quick questions for you. Walter Digsby, the gentleman you said passed away, he was actually

Shaniah Holmes' grandfather; is that correct?

A: I'm not aware of the relation, sir.

Q: It wouldn't surprise you?

A: I don't know.

Q: Okay. All right. Based on the fact that he was older, he could've been.

A: (No audible response.)

Q: You said you did one photo lineup with Ms. Holmes, correct?

A: Yes, sir.

Q: Including Defendant McIver, correct?

A: Yes, sir.

Q: You had no reason to ever do one with Defendant Terrell Freeman, did you?

A: I, I wasn't asked to, no, sir.

Q: Okay. Thank you. No further questions.

THE COURT: Any redirect?

MR. OSKIN: Very, very briefly, Your Honor. If I may approach the witness?

THE COURT: Yes, sir.

REDIRECT EXAMINATION OF ROBERT KLASS BY MR. OSKIN:

Q: Referring to the map -- do you recognize this map?

A: Just basically the address. I understand that that's a map of the area that we're talking about.

Q: Your jurisdiction, is there a reference point to your

jurisdiction or Sally Lane on this map?

A: That would be up here where it says car burned.

Q: All right. And in your experience in the Charlotte area, is that neighborhood less populated or more populated than other areas of the map?

A: It's actually, that particular area is a little bit less populated than other areas around there, that street per se.

Q: I'll also show you what's been entered into evidence as State's Number 36, do you recognize that?

A: Yes, sir.

Q: Is that a closer view of that area?

A: Yes, sir.

Q: All right. And Sally Lane is -- you said there's a couple of houses on the street. Is there -- is that street a dead-end, is there multiple entryways, through ways?

A: There is only one way and it is a dead-end.

MR. OSKIN: Nothing further from the state, Your Honor.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir. Do you wish the witness to be excused?

MR. OSKIN: I do, Your Honor.

THE COURT: All right. Any objection?

MR. BELLAMY: No, sir.

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties.

MR. KLASS: Thank you, sir.

THE COURT: Next witness, please.

MR. OSKIN: If we may approach the bench, Your Honor?

THE COURT: Yes, sir.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY THE COURT:

THE COURT: All right, ladies and gentlemen, the, the next witness that's going to testify is going to be a minor. In South Carolina, there is no fixed age that a person must attain to be a witness in a case. The test is whether or not the minor is aware of right from wrong and understands possible punishment for lying. It will be your duty and responsibility and I will charge you again at the end when we talk about the law, it will be your duty to, again, decide credibility and believability of all the witnesses and that would include obviously the minor's testimony. Now, regarding the minor, you obviously can consider the child's age, ability to observe and remember, to -- it's for you to decide whether or not the child understands the seriousness of appearing as a witness in the -- in the trial and understands the difference

between lying and telling the truth.

All right, Solicitor, you may call your next witness.

MR. OSKIN: Thank you, Your Honor. At this time, the state would next call Shaniah Holmes.

THE COURT: All right. Shaniah, you just need to walk all the way around and come up next to this lady right over here, please, ma'am.

CLERK: Raise your right hand and place your left hand on the Bible.

SHANIAH HOLMES, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MS. HOLMES: Shaniah.

DIRECT EXAMINATION OF SHANIAH HOLMES BY MR. OSKIN:

Q: What's your last name, MS. Shaniah?

A: Holmes.

Q: Ms. Shaniah, how old are you?

A: Nine.

Q: What city are you from?

A: Charlotte.

Q: Are you missing school to be here today?

A: Yes.

Q: Have you ever been in a courtroom before?

A: No.

Q: Do you like school at all?

A: Yes.

Q: What's your favorite subject?
A: Reading.
Q: Do you know the difference between right and wrong?
A: Yes.
Q: Do you think it's important to tell the truth?
A: Yes.
Q: Do you know what the truth is?
A: Yes.
Q: What is the truth?
A: When you do right thing and you say what's true.
Q: If somebody's lying is that bad?
A: Yes.
Q: Do you know what a lie is?
A: Yes.
Q: What is that? Is it different than the truth?
A: Yes.
Q: You said you're from Charlotte, right?
A: Yes.
Q: Do you know where a street called Sally Lane is?
A: Yes.
Q: How do you know that street?
A: Because I've lived there since I was born.
Q: You've been there or lived there?
A: Lived there.
Q: Okay. Is there a lot of houses on this street?

A: Yes.
Q: Are you ever able to play outside?
A: Yes.
Q: Would you play there often?
A: Yes.
Q: What about in the summertime if the weather is good, would you be outside?
A: Yes.
Q: So, a couple of summers ago, you remember playing outside? I know it's kind of random.
A: Yes.
Q: That's something you do. Have you ever seen a car set on fire before?
A: Uh-huh, (affirmative response).
Q: Yes?
A: Yes.
Q: Was that on Sally Lane?
A: Yes.
Q: What kind of car was it?
A: A white car.
Q: Did you see any people around that car?
A: Yes.
Q: Who did you see around that car?
A: A light-skinned man with dreads.
Q: All right. Was he with anybody?

A: Yes.
Q: Was he with a male or a female?
A: A female.
Q: Okay. Was -- how -- were you close to the street when the car was burned or where was the car burned and how close was that to your house?
A: It wasn't that close to our house, but it was close to the mailbox.
Q: Could you see flames?
A: Yes.
Q: Did you see -- you saw the car before there was flames, right?
A: Yes.
Q: Okay. Did you see it -- you saw it caught on fire then?
A: Yes.
Q: Well, what did that male and female do after that car was on fire?
A: They just left.
Q: They left. They left together?
A: Yes.
Q: But not in the white car that was on fire?
A: Yes.
Q: All right. Did you tell your mom or your dad or anybody?
A: My mom.
Q: Okay. What happened after that, did you talk to police

officers?

A: Yeah, she called the police office.

Q: Okay. Did police come and talk to you?

A: Yes.

Q: Did they show you paperwork and photos?

A: Yes.

Q: Did they show you photos of men?

A: Yes.

Q: Of six different men?

A: Yes.

Q: Did they show you a sheet and have you sign your name?

A: Yes.

Q: I'm gonna show you what's got Number 45 on it. Do you recognize that or see where you signed it?

A: Yes.

Q: Will you point out to this jury where you signed it at; will you hold it up and show them? So, they can see it this way, that's His Honor, and show the jury this way; show where you signed it?

A: (Witness complies.)

Q: Thank you. And when they showed you photos, did you recognize the guy in the photo as being the guy that you saw set that car on fire?

A: Yes, I did.

Q: How sure were you?

A: I was 100 percent sure of that.

Q: Nothing further from me, Ms. Shaniah. Please answer any questions of Mr. Bellamy and Mr. Spratlin. Okay?

A: Okay.

THE COURT: Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor.

CROSS EXAMINATION OF SHANIAH HOLMES BY MR. BELLAMY:

Q: You pronounce your name Shaniah?

A: Yeah.

Q: Okay. What grade are you in, Shaniah?

A: Third.

Q: Third grade and you like to read.

A: Yes.

Q: What grade would you have been in when you saw this fire?

A: Like second.

Q: Second, okay. This neighborhood, Mr. Seth here, he asked you about it and you said there were a lot of houses?

A: Yes.

Q: Okay. And are there other kids in the neighborhood that play outside in the summertime?

A: Yes.

Q: Were you playing with any other kids that day; were there any other kids outside playing with you?

A: Oh, no.

Q: Was there anybody outside with you that day, an adult?

A: Yes.

Q: Okay. Who would that have been?

A: Like my mom.

Q: Okay. Were there any other people out there that day that you remember? And if you don't, that's fine.

A: No.

Q: Okay. And this was in the daytime?

A: Yes.

Q: Okay. Again, you may not know this, it was a long time ago, do you have any idea if it was morning time or afternoon time?

A: No.

Q: Just that it was -- the sun was out?

A: Yes.

Q: Okay.

Court's indulgence?

THE COURT: Yes, sir.

Q: Thank you, Ms. Shaniah. Answer any questions Mr. Spratlin over here may have for you.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF SHANIAH HOLMES BY MR. SPRATLIN:

Q: Hey, Shaniah, how are you?

A: Good.

Q: I'm Martin. I'm just gonna have a question or two for

you. Now, you said you saw a man burn the car, right?

A: Yes.

Q: And you told the police who that man was, right?

A: Yes.

Q: And you saw a woman with him, right?

A: Yes.

Q: You didn't see another man with them, right?

A: No.

Q: Thank you, Shaniah.

THE COURT: Redirect?

MR. OSKIN: Nothing from the state, Your Honor. We would ask that Ms. Holmes be released from her subpoena.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Miss Shaniah, you can step down, okay, just walk over there towards the deputy. All right? She is released back to the custody of her mother.

BY THE COURT:

THE COURT: Y'all come and talk to me for just a second, please.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right, Madam Forelady, ladies and

gentlemen of the jury, if you'll go to your jury room for about five minutes or so, we'll come back and get in at least one more witness this morning. All right?

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: Mr. Spratlin, there's something that you wanted to bring to the Court's attention?

MR. SPRATLIN: Yes, Your Honor. I think Mr. Bellamy joins in this objection. It's more of an objection, we're just putting the state on notice that we're making it. I believe there's going to be several Cellebrite reports that are introduced through Detective Lynch. I have concerns about how the reports are generated based on my knowledge of how Cellebrite results and how the authentication will take place. Obviously, the state is -- it would present the evidence and attempt to authenticate it, but I do plan to make an objection at the appropriate time that there is not enough -- unless they're able to establish enough authentication for the actual Cellebrite report coming in.

THE COURT: All right. Well, we'll deal with that -- I mean, the state's aware you're gonna make an objection and we'll see if the state has supplied enough information for the Court to allow the records to come in.

MR. SPRATLIN: Yes, Your Honor.

THE COURT: Mr. Bellamy?

MR. BELLAMY: I would join in the motion, Judge.

THE COURT: All right. Very good.

All right. So, Solicitor, y'all know it's coming and we'll just deal with it as it -- as it comes in. All right?

MR. OSKIN: Thank you, Your Honor.

THE COURT: Thank you very much. We'll be at ease for about five to ten minutes.

Thank you.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: All right. Ask the jury to come back in, please.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right. Your next witness, Solicitor?

MR. DEBUSK: Thank you, Your Honor, the state calls Detective Will Lynch.

THE COURT: All right. Very good. All right, Detective, come all the way around up here and meet the clerk's representative up here, please.

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

WILL LYNCH, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. LYNCH: Will Lynch, L-Y-N-C-H.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATOIN OF WILL LYNCH BY MR. DEBUSK:

Q: Detective Lynch, who is your employer?

A: I currently am employed with the City of North Myrtle Beach.

Q: How long have you been with North Myrtle Beach?

A: Approximately, 23 and a half years.

Q: A long time?

A: Yes.

Q: What are your duties?

A: Currently, I'm inside -- I mean, assigned to the investigations divisions. We generally just do general investigations and it could range from a violent crime all the way down to, you know, some type of petty larceny as part of it.

Q: How -- and July 9th, 2016, were your duties the same?

A: Yes, they were.

Q: Okay. Were you involved in the investigation of the death of Amanda Fisher?

A: Yes, I was.

Q: Do you know where she was killed?

A: I do.

Q: Where was that?

A: The parking lot of the K&W Cafeteria in North Myrtle

Beach.

Q: I hate to ask the obvious, what county is that in?

A: Horry.

Q: Okay. Did you visit the crime scene?

A: I did.

Q: Did you get there before they transported Ms. Fisher?

A: No.

Q: So, you -- but you did see the crime scene, but not Ms. Fisher at the crime scene?

A: That's correct.

Q: Okay. As part of your duties, do you work with cell phone data?

A: I do.

Q: Were any cell phones recovered in this case?

A: Yes, there were.

Q: Was one recovered from Amanda Fisher?

A: Yes, there was.

Q: Do you know where that was recovered from?

A: My understanding it was recovered very close to the body there in the parking lot of the crime scene.

Q: At the K&W?

A: At the K&W.

Q: Was a cell phone recovered from Nicholas McIver?

A: Yes, it was.

Q: Where was Nicholas Jacob McIver's cell phone?

A: It was in the Charlotte-Mecklenburg Detention Facility.
Q: So, at the time he was arrested or placed under arrest?
A: That's correct.
Q: What type of cell phone did the victim have, Ms. Fisher?
A: I believe she had an iPhone.
Q: And what kind of phone did Mr. McIver have?
A: He had an Android, I think it was an LGE Android type phone.
Q: Are you trained in retrieving data from cell phones?
A: Yes, sir; I am.
Q: What kind of training do you have?
A: I was certified back in 2011 by a company called Forward Discovery in the use of machine that's manufactured by a company called Cellebrite. The machine is called a UFED machine, and the UFED stands for Universal Forensic Extraction Device. If you've ever had a cell phone and you've gone to a cell phone company and upgraded your cell phone, they use a very similar machine made by the same company that transfers your data from your old phone to your new phone. This particular device that we use actually pulls the information off of the cell phone itself and then puts it into a format that you and I could read as opposed to having to go through the cell phone and having to open up every single contact and incoming calls, outgoing calls, SMS pictures and things like that. It takes all that information off the phone and just

puts into a more readable user friendly format.
Q: So, when you have a smart phone, like a iPhone or an Android, what kinds of data are stored on that phone?
A: Anything that you input on that phone typically where it's incoming calls, outgoing calls, your contacts, pictures you may take, videos you may take, SMS messages, which is just your simple text messages, messages where you may send a picture or a video to a friend, anything that's basically stored on that device.
Q: So, when you use this machine made by Cellebrite on the cell phone, does it create any data on the phone or does it just extract what's already there?
A: It's just a read-only device. You can't input any information onto the cell phone, it only takes information from the cell phone itself.
Q: And it creates an output, obviously?
A: Yes.
Q: Are you familiar with the format of that output?
A: I am.
Q: Does it have different formats for the data to present?
A: It does. It will -- it'll generate a report and it will format it, like I said, incoming calls, outgoing calls, your SMS messages, your multimedia messages, your contacts. It can also generate a report called a timeline report, which will basically put all the user's activities in chronological

order. So for instance, if you made a phone call at a certain time and then, right after that phone call, you hung up and you texted someone, and then after that you took a picture and you sent it to someone, it would actually put it in a more chronological format for you to be able, you know, see what that phone did in a certain timeframe as opposed to having to go through and pick and choose dates and things like that. It also does analytics where it will show, you know, which number or which person was contacted more frequently than someone else, how many times you contacted this person, did you contact them by phone, you know, 50 times, did you send them 50 text messages, things like that.

Q: So, you've been certified by the company that created this machine, this Cellebrite machine?

A: That's correct.

Q: You have ongoing trainings to keep up with the changes?

A: I do.

Q: Okay. And you've been doing this at least since 2011?

A: August of 2011.

Q: Okay. Have you testified about this type of cell phone extractions in court before?

A: I have.

Q: How many times?

A: Three times; this will be my fourth.

Q: Is this a widely used program, machine?

A: It -- it's used worldwide and it's manufactured, you know, worldwide and it's -- it has different languages. I mean, anybody across the world can use it.

Q: To your knowledge, has it been admitted in other courts of law?

A: It has been.

Q: Did you use the Cellebrite machine on the two cell phones recovered in this case?

A: I did.

Q: Did you retrieve reports?

A: I did.

Q: Now, speaking -- are you aware of the phone number for Terrell Freeman that has been stipulated to in this case?

A: I believe I am, yes.

Q: Okay. On the cell phone of Amanda Fisher, did you retrieve a timeline showing the different order of calls and texts and things?

A: I believe I did.

Q: I show you -- I guess I had better get it marked first. Let me show you what now has been marked as State's Exhibit 47 and see if you recognize it.

A: Okay. I do recognize this.

Q: What is it?

A: This is a excerpt of the timeline report from the victim's cell phone.

Q: The victim being Amanda Fisher, correct?
A: That is correct.
Q: Now, that phone number that we stipulated to as being to Mr. Freeman's phone number, 980-298-1931, does that appear on Ms. Fisher's timeline?
A: It does.
Q: Are those indicated on that figure?
A: They are.
Q: When was the first call or contact, I guess?
A: The first contact was on July 9th at 1:18 in the morning.
Q: July 9th?
A: 2016 at 1:18 in the morning.
Q: I didn't mean to ---
A: No.
Q: --- cut you -- when was the last contact?
A: July 9th, 2016 at 6:44 in the morning.
Q: Does that fairly and accurately represent the output of the Cellebrite analysis of her cell phone?
A: Yes, it did.

MR. DEBUSK: Your Honor, we'd offer State's 47 into evidence at this time.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. State's 47 is in evidence without objection.

STATE'S EXHIBIT NUMBER 47

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. DEBUSK: Thank you, Your Honor.

BY MR. DEBUSK:

Q: State's Exhibit 48, what are the activity analytics?

A: Activity analytics basically show who that phone has contacted, the frequency of contacts that the person has contacted. So, in this particular case it would, you know, it would start who was contacted the most, how many times they were contacted, and then it would just go down to who was contacted, you know, the least amount of times, whatever it was a, you know, a phone number, an email, anything like that.

Q: And is that list from Mr. McIver's phone?

A: Yes, it is.

Q: On that list of contacts, does the number attributed to Mr. Freeman appear?

A: Yes, it does.

Q: Along -- does it have a name associated to it or just the number?

A: It just has a phone number associated with it.

Q: How many times was there contact between that phone and -- that phone and Mr. McIver's phone?

A: Two hundred and sixty one times.
Q: Among the most frequently contacted numbers, did the others all have names associated with the contact?
A: Yes, they did.
Q: Is that the only one amongst the top -- top list that doesn't have a name associated with it?
A: Yeah, I mean, I -- at least 27, the top 27 all have names of some sort of them beside it except for this one.
Q: And what number is Mr. Freeman's number?
A: 980-298 ---
Q: No, I mean what number on the list?
A: Oh, it's Number 9.
Q: Number 1 through 27 all have names except for Number 9?
A: That's correct.

MR. DEBUSK: At this time we'd offer State's 48 into evidence.

THE COURT: Objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. So, State's 48 is into evidence without objection.

STATE'S EXHIBIT NUMBER 48

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: Now, we'll talked about context for just a minute. Does that Cellebrite output actually give a list of contacts?
A: It does.
Q: Does it indicate the name associated with the number?
A: It does.
Q: Does it indicate when a contact has been deleted?
A: It does.
Q: Let me show -- well, let me get it marked. I show you what's been marked as State's Exhibit 49, and as you if you recognize that?
A: I do recognize it.
Q: What is it?
A: It's the contact list from -- from Mr. McIver's cell phone.
Q: Does the number associated with Mr. Freeman appear on that list?
A: It does.
Q: Does it have a name?
A: It does not.
Q: Does it indicate whether or not it was deleted?
A: It does. It shows that it was deleted.
Q: So, the contact for that number was deleted from the phone?
A: That's correct.
Q: Before you used the Cellebrite machine?

A: That is correct.

MR. DEBUSK: Your Honor, we'd offer State's 49?

THE COURT: Objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right. It's in evidence without objection.

STATE'S EXHIBIT NUMBER 49

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: Does the Cellebrite program create a call log, that is the number -- list of phone calls by time?

A: It does, yes.

Q: Once again, let me get this marked.

I'm showing you what's been marked as State's Exhibit 50 and ask if you recognize that.

A: I do.

Q: What is it?

A: It's the -- it's the call log.

Q: Is it the entire call log that you recovered or just portions of it.

A: Just a portion.

Q: Does the number associated with Mr. Freeman appear on Mr.

McIver's call log?

A: It does.

Q: Are those indicated in any way?

A: They are -- they are indicated on the call log, yes.

Q: How so?

A: It just shows whether the call for Freeman's phone is either called, or it came in, or it was a missed call ---

Q: Well, first, are they highlighted in some way?

A: They are highlighted, yes.

Q: In what color?

A: Pink.

Q: Okay. Are some of those calls labeled to?

A: They are labeled to.

Q: And some from?

A: They are labeled from.

Q: Could you tell the jury, although it's probably obvious, what does the to and from mean?

A: Who the call was made to or who the call came from.

Q: So, if it's McIver's list that says to, that would be McIver calling the other number?

A: That's correct.

Q: And if it says from, it would be the other number calling McIver?

A: That's correct. And it even -- next to, it says outgoing; and from, it says incoming.

Q: So, it gives you two, two ---
A: Yeah, two ways of knowing.
Q: Now, does it also show the length of the call?
A: It does.
Q: Would it be safe to say that a very short call probably didn't go through?
A: That would be safe to say.
Q: Maybe the other person didn't answer?
A: Possibly.
Q: Maybe the phone battery was dead; maybe the phone was turned off?
A: Possibly, yes.
Q: But it didn't -- probably didn't answer?
A: Correct.
Q: But if it's over a minute, it was probably a conversation?
A: Typically.
Q: Now, this is a call log, correct, it's not texts and pictures and things like that; that's just the phone calls, correct?
A: That's correct, just phone numbers.
Q: Now, if you would, at the top of that, since it's from Mr. McIver's phone, would you write McIver?
A: Sure.
MR. DEBUSK: Your Honor, at this time, the State would

move State's 50 into evidence.

MR. BELLAMY: Is that the one he just testified to?

No objection, Your Honor.

THE COURT: Thank you very much.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: It's in evidence without objection then, State's 50.

STATE'S EXHIBIT NUMBER 50

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: To summarize, we have the call log for Mr. McIver's phone showing contacts between he and Mr. Freeman, correct?

A: Correct.

Q: We have the contact list showing Mr. Freeman's contact was deleted, correct?

A: Correct.

Q: We have the usage statistics shows that the only -- of the top 27 most frequently called numbers, the only one that the contact had been deleted was Mr. Freeman's number?

A: That's correct,

Q: And we have from Ananda's phone the contact log with the highlighted times she communicated with Mr. Freeman's phone?

A: Yes.

Q: Do these phones also contain pictures and videos?

A: They do.

Q: Did you review the pictures and videos as well?
A: I did.
Q: Were there some videos -- are you familiar with a witness named Tabetha Oxendine?
A: I am.
Q: And you're familiar with the two defendants, Mr. McIver and Mr. Freeman?
A: I am.
Q: Was there video depicting Ms. Oxendine in the phone?
A: Yes.
Q: Where there multiple videos?
A: Yes.
Q: Was she engaged in a sexual act?
A: Yes.
Q: With whom?
A: Mr. Freeman.
Q: Okay. And this was on Mr. McIver's phone?
A: Yes.
Q: It was not Mr. Freeman taking the videos because he was engaged; is that correct?
A: That's correct.
Q: Were there five such videos?
A: I believe that's correct.
MR. DEBUSK: Court's indulgence for one moment.
BY MR. DEBUSK:

Q: I'm showing you State's 51 and ask if you recognize that.
A: I do.
Q: What is it?
A: This is just the times and dates that these videos were created.
Q: And each five of those videos depict sexual activity between Ms. Oxendine and Mr. Freeman?
A: That is correct.
Q: And that's just the times and the dates?
A: That is correct.
Q: Did you watch those videos?
A: I did.
Q: Were they all taken at the same place?
A: They were not.
Q: Okay. Were the first three taken at the same place?
A: They were.
Q: And how could you tell?
A: Just from the background surroundings; they were the same.
Q: The furnishings, the bedspreads, and such?
A: The furnishings, bedspreads.
Q: The second two were they taken a different place?
A: They were.
Q: Okay. Thank you. Were you, did you deal with the defendant McIver when he was officially taken into custody in

Charlotte? Or did you see him?

A: I did see him, yes.

Q: Okay. At that time, was his hairstyle different than it is now?

A: Yeah, I believe it was, yes.

Q: What his hairstyle then?

A: It was more of a like long dreads.

Q: Dreadlocks?

A: Braids type, yeah.

Q: Long braids?

A: Yeah.

Q: Okay. Thank you.

A: You're welcome.

Q: Please answer any questions the defense might have for you.

A: Sure.

THE COURT: All right, Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor.

CROSS EXAMINATION OF WILL LYNCH BY MR. BELLAMY:

Q: Detective Lynch, are you aware that you got the cell phone of Mr. McIver because when he turned himself in, he brought his phone with him, didn't he?

A: To my knowledge, that is correct.

Q: Okay. And in fact, he came to the police, didn't he?

A: Well, I believe he was brought to the police.

Q: Not by the police though?
A: Not by the police, that's correct.
Q: His uncle in the courtroom here, took him there?
A: To my understanding, that is correct.
Q: And he took him there with full knowledge that the police wanted to talk to him about a murder, right?
A: I'm not sure what they would have talked to him about at that time, but he knew that they wanted to speak with him, yes.
Q: Okay. So, he wasn't just walking by and stopped in to ask directions?
A: That is correct.
Q: And he had his phone with him?
A: That is correct.
Q: With the full knowledge that there's videos on there of him, Ms. Oxendine, Mr. Freeman, and Ms. Fisher, correct?
A: I would assume that to be correct, yes.
Q: Because it's -- and the solicitor has got these videos, right?
A: They should.
Q: Okay. It's clear that my client was taking the videos, correct?
A: Yes.
Q: And there's, for the jury's edification, there's a difference in going to like Sprint or T-Mobile or whoever, and

getting phone records from them and then having the phone. You have a whole lot more to get out of the phone, don't you?

A: Correct.

Q: Such as internet searches?

A: Correct.

Q: So, even if you get in there looking for directions or anything, you've got a record of that?

A: Yes, sir.

Q: Again, the photos, the videos, you've got that?

A: Yes, sir.

Q: You've got text messages on that phone, right?

A: Correct.

Q: You've got emails on that phone, right?

A: Correct.

Q: You've got social media stuff, all -- it is a -- literally and especially with young people, it is a picture of one's life; is it not?

A: It is.

Q: In today's world?

A: Sure.

Q: Good, bad, or indifferent. And you have -- you ran this report on my client's phone, right?

A: Yes, sir; I did.

Q: If you would just briefly look at this and see if you can tell us what it is?

A: This should be ---

MR. DEBUSK: Your Honor, if we're discussing it on the record, I would ask that it be marked for identification.

MR. BELLAMY: Only for identification at this point.

THE COURT: All right, sir.

MR. BELLAMY: Defendant's 1, I'm sorry, Your Honor. It's one exhibit.

A: This should be the ---

THE COURT: Just a second. He needs to get it marked first.

COURT REPORTER: Defendant McIver 1 and 2 for ID.

MR. BELLAMY: Thank you, Ms. Dixie.

DEFENDANT MCIVER EXHIBITS NUMBER 1 AND 2

MARKED FOR IDENTIFICATION

BY MR. BELLAMY:

Q: And you were getting ready to answer, so go ahead, Detective Lynch?

A: This appears to be the complete report that was generated by the Cellebrite machine for Nicholas McIver's cell phone.

Q: Okay. And you -- you did that whole report and you've reviewed all of that to see if there's anything on there at all that would help in this investigation, did you not?

A: I did do the report, yes, that's correct.

Q: And you reviewed it, did you not?

A: Yes, I did.

Q: Okay. And that goes back to what Solicitor DeBusk has cherry-picked out of here is just like a call log from one day or of a couple of hours or something, but this call log goes back months, years; so, it's a full and complete. So, you've got access to everything, right?

A: Correct.

Q: And in that, is there anything in Mr. McIver's phone, whether it's email, text, SMS, MMS, anything prior to July 8th, 2016 that indicates there's ever been any contact with Ms. Amanda Fisher or Ms. Tabetha Oxendine?

A: I don't recall seeing any of that.

Q: And in fact, even after that date, there's never -- there's no contact between my client's phone and Amanda Fisher or Tabetha Oxendine, is there?

A: I don't believe there is.

Q: And is there any text messages between -- so, there's no contact there between my client's phone and anybody that indicates a plan to come here to the beach and kill Ms. Fisher?

A: I don't believe there is, no.

Q: Is there anything after 11:15 July 9th, 11:15 A.M. July 9th, text, email, internet search, at all that indicates that my client killed Ms. Fisher?

A: I think that would kinda be left up for interpretation.

Q: Well, you tell us, did he text someone saying I just

killed somebody; is that in there?

A: No.

Q: Did he do an internet search on how to burn a car?

A: No, sir.

Q: Now, in addition to, the solicitor talked about my client calling Mr. Freeman. Most of those calls went unanswered based on the timeframe; would you say that's accurate?

A: I would say that is accurate, yes.

Q: And, but you do have calls on there where he made contact with various other people, correct?

A: Yes, that is correct.

Q: And most of them or some of them you did have a name or a contact associated with and these are calls after 11:15 A.M. that morning, right?

A: Yes, sir.

Q: And so, you had access to those people to contact them and say, hey, what did Mr. Freeman tell you -- not Mr. Freeman, Mr. McIver. You've had that opportunity, haven't you?

A: Yes.

Q: Because you had all that data even if you didn't have a name associated with it, you -- you've got a way to figure it out, right?

A: Correct.

Q: And I'm sure you went and looked or talked and did the

investigation, were you able to develop any witness to help or tell you anything that says my client killed Ms. Fisher?

A: No.

Q: Did you have any other role, Will, in -- yours was primarily the phone stuff or did you do any like crime scene out there at the K&W?

A: I was involved a few days after the fact, going back to the K&W and taking a few more pictures.

Q: Did you -- did you go to -- never mind, I believe that as Detective Sheets that went to the autopsy. Did you go to Charlotte?

A: I did.

Q: Okay. Did you do any analysis of the white Malibu that had been burned?

A: I did not.

Q: Okay. Do you know of anybody from North Myrtle Beach from crime scene did any analysis? And y'all have crime scene -- there's a separate group that does crime scene versus detectives; is that correct?

A: Typically, not in North Myrtle Beach. You know, we're a smaller department. You know, each of us have been trained in various aspects of investigations. Some people have more crime scene experience than others. We don't generally have a crime scene unit or a major crimes unit; we just -- it's general investigations for us. So, unlike the Charlotte

Police Department that may have various units, we just -- we don't have that.

Q: Okay. Did you do any -- you didn't do any analysis on the Malibu. What about the Ford truck which was taken into custody or seized by Charlotte reportedly owned by my client; did you do any analysis on that?

A: I did not, no.

Q: Are you aware of anything from that vehicle that was taken for evidence or tested?

A: I'm not aware. I'm not -- I'm not sure ---

Q: Okay.

A: --- if something was or wasn't.

Q: I believe Detective Lynam would probably be better to ask that question.

A: I would probably say so; that's correct.

Q: Did you do -- and I don't know whether it was you or somebody else, are you aware of a subpoena done looking for GPS coordinates of Ms. Fisher's -- when I say GPS, I'm talking which is locations, which would indicate locations of the victim's phone during any time period?

A: I, I'm not a 100 percent sure if that was done or not. I know there was -- I believe there was some records that were attempted to have been obtained, but I'm not a 100 percent sure. I cannot -- I don't recall.

Q: Okay. Did you do a subpoena to receive Mr. Freeman's

cell phone records?

A: Yes.

Q: And that would've been to the cell phone company, correct?

A: That's correct.

Q: Because you were never able to recover his phone; it was gone, right?

A: Correct.

Q: So, all the data that you could get off of Ms. Fisher's phone and my client's phone is not necessarily available through phone records?

A: That is correct.

Q: So, any photos, those sort of things, all you get is a call log; you don't get substance of texts and things like that?

A: Correct.

Q: So, did you receive the phone records for Mr. Freeman?

A: We did.

Q: Can you tell me the approximate date that it was provided?

A: July 18th of 2016.

Q: Nine days after this event?

A: Correct.

Q: And you turned those over to me when?

A: I didn't turn them over to you.

Q: When did you turn them over to the solicitor?
A: Yesterday.
Q: Yesterday afternoon?
A: Yes, sir.
Q: Okay. In reference to those records, again, you're limited because you only have a call log?
A: Correct, sir.
Q: But you -- what investigation have you done to investigate any phone calls made on the call log of Mr. Freeman?
A: As far as contacting other people?
Q: Yes, sir.
A: We haven't tried to contact anyone else.
Q: Okay. Now, the solicitor asked you or had you testify about my client, a deleted contact?
A: Yes, sir.
Q: But in truth, with this machine you have, as I've heard or been told, maybe you can verify it, you really can't delete absent just destroying the phone; that it's there somewhere?
A: Well, what typically happens is it goes into an unallocated space by the phone, but after you use so much of the phone's memory, deleted stuff will begin to get deleted off the phone.
Q: Now, Let me show you State's 49, what you've previously identified, I guess, as the deleted contact?

A: Yes, sir.

Q: Does it have a date on there that it was deleted?

A: No, the only date it has is just the last time that number was contacted.

Q: So, if it was deleted, you can't tell me whether it was deleted -- when it was deleted?

A: It just -- it would -- would've been deleted after the last contact.

MR. BELLAMY: Court's indulgence, Your Honor?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Detective Lynch, I don't have anything further.

A: All right.

THE COURT: Mr. Spratlin?

CROSS EXAMINATION OF WILL LYCH BY MR. SPRATLIN:

Q: Good afternoon, Detective Lynch. A couple of quick questions for you. Regarding the last topic Mr. Bellamy covered extensively, my client's phone records that were recovered by the search warrant, those did not contribute in any way to the investigation in this case; is that correct?

A: That's correct.

Q: Now, I did want to actually ask you specifically, about State's 47.

Your Honor, may I approach?

THE COURT: Yes, sir.

Q: If you would, Detective Lynch, the first contact between the phone number of my client and Ms. Fisher's phone, was that an incoming or outgoing call from Ms. Fisher's phone?

A: This was an outgoing call from Ms. Fisher's phone.

Q: So, Ms. Fisher was the first one, according to phone records, to initiate contact?

A: That's correct.

Q: These particular records, they don't show whether the call was connected or not; is that correct?

A: On this particular report, it doesn't show, that's correct. Now, if you went to the actual call log itself, this is a -- this is the timeline report and, if you went to the call log, it would show times that were associated with the phone call which may or may not show up if it was actually answered or not.

Q: Okay. So, all of these contacts don't necessarily mean that there were phone conversations; it could've just been voice mail, missed call, returned call?

A: Could've been.

Q: All right. Can you tell me what the last time contact between Ms. Fisher's phone and my client's phone was -- first off, what was it; was it a call or a message?

A: It was a text message.

Q: Okay. And going from my client's phone to Ms. Fisher or

from Ms. Fisher to my client?

A: It was going from Ms. Fisher to your client.

Q: All right. And what was -- does that timeline report have the details of what was sent in that text message?

A: It does; it has the message that was actually sent.

Q: And what was that message?

A: It says, is Tabby there cause I'm leaving.

Q: Okay. Now, regarding all of these phone logs that you discussed with the solicitor in this case and also Mr. Bellamy and on his cross examination, you have records of calls being made to and from him, correct?

A: Correct.

Q: But you do not have any records of what the contents of the communications or the -- what they were talking about.

A: Correct.

Q: There's no way to get that information?

A: Correct.

Q: In regarding the fact that the contact number associated with my client's name shows as being deleted, whose phone was this?

A: That was ---

Q: Mr. McIver's phone?

A: Yes, Nicholas McIver's.

Q: Okay. So, it was in his possession, custody, and control.

A: Yes.
Q: If the contact was deleted, there's no way that my client could've deleted it other than if he had the phone, right?
A: Correct.
Q: So, whoever had the phone must've deleted the contact?
A: That's correct.
Q: Again, not my client as far as you know?
A: Correct.
Q: In regarding there not being a name, I'm noticing several deleted contacts where there's no name, is that accurate, just on that one page of the report? Excuse me, I'm referring to State's 49 for Madam Court Reporter. I might be reading that wrong, but I think there's been a couple of contacts deleted; is that correct?
A: It looks like there's -- well, actually one of the contacts is actually the same -- the same number, it's Mr. Freeman's number and the other ones actually have a name or initials beside it. So, the only one really is just the one that doesn't have a name beside it, which would be Mr. Freeman's phone.
Q: Okay. But again, whoever owned the phone, whoever possessed the phone, would've been the one deleting that?
A: Correct.
Q: Now, regarding State's Exhibit Number 48, this activity analytics report, is that -- am I saying that correctly?

A: You are.
Q: All right. And that shows the most contacted numbers that a person has, basically?
A: Correct.
Q: And that includes -- does that include text messages?
A: Yes.
Q: And phone calls?
A: Yes.
Q: So, 261 being total -- well, on this thing actually says phone events, does that differentiate at all or is that still could be either one?
A: It could be either one.
Q: Okay. So, not necessarily that they've talked on the phone, had long conversations 261 times, just that back and forth there have been texts or phone calls, or something like that, 261 times?
A: Correct.
Q: And would it be an event every time Mr. McIver sent my client a text message?
A: Yes.
Q: And would it be an event every time my client sent Mr. McIver a text message?
A: Yes.
Q: Okay. And my client -- or if my client called Mr. McIver?

A: Correct.
Q: Or if Mr. McIver called my client?
A: Correct.
Q: And my client is Number 9 on the list, right?
A: Correct.
Q: Okay. Not number 1. Who's Number 1?
A: It looks like Tyqua.
Q: Tyqua or Tyquajua
A: Yep.
Q: Okay. Are you aware or ever become aware that that is somehow the person that is romantically related to Nicholas McIver?
A: I didn't know that.
Q: Okay. All right. It's not unusual to see on a man's phone, the first contact being a woman, though, is it?
A: Not unusual.
Q: In fact, if we were to run your phone, would it be your wife?
A: Most likely.
Q: Who would be Number nine on your phone, Detective?
A: I don't know if I even contact nine people.
Q: Could it be someone you worked with?
A: It could be someone I work with, yes.
Q: But not necessarily anything malicious or malevolent about being Number 9 on a person's contact list, is there?

A: No.

Q: Okay. Regarding these videos that you said you watched that were downloaded from Nichols McIver's phone, I believe you stated they, they show sexual acts between my client and Tabetha Oxendine, correct?

A: That's correct.

Q: You didn't witness any crimes on these videos, did you?

A: I did not.

Q: What they were doing wasn't criminal?

A: No.

Q: It was -- it appeared to you from watching these videos, to be consensual sexual relations between a man and a woman?

A: Correct.

Q: In a hotel room?

A: Correct.

Q: On those videos you watched, nobody is being hurt, right?

A: No.

Q: Thank you, detective, I think that's all the questions I have.

A: Okay. Thank you.

THE COURT: Redirect?

MR. DEBUSK: Thank you, Your Honor.

REDIRECT EXAMINATION OF WILL LYNCH BY MR. DEBUSK:

Q: Detective Lynch, why did you turn over those phone records of Mr. Freeman so late?

A: Well, we thought they had been previously submitted and we were not aware that they hadn't been submitted as of ---
Q: It was a mistake?
A: It was a mistake, yes, absolutely.
Q: And you said that Mr. McIver turned himself in. He actually turned himself in with Mr. Freeman, didn't he?
A: That's correct.
Q: And by the time he turned himself in, Amanda's car had been burned, right?
A: Absolutely.
Q: The contact for Mr. Freeman had been deleted from Mr. McIver's phone, correct?
A: That's correct.

MR. BELLAMY: Your Honor, I would ask him not to lead the witness.

THE COURT: Based upon the prior testimony, it's already in evidence without objection. I'm gonna allow the question.

BY MR. DEBUSK:

Q: Had both defendants already fled from K&W parking lot?
A: They had.
Q: All the way to Charlotte?
A: They had.
Q: Had Ms. Fisher's cards had already been used?
A: They had.
Q: At more than one place?

A: That's correct.

Q: Okay. You have in front of you, I believe it's Defendant's Exhibit 1. Would you say that was a fair and accurate copy of the entire Cellebrite report?

A: Yes.

MR. DEBUSK: We'd offer this entire report into evidence as State's Exhibit, Your Honor.

MR. BELLAMY: Your Honor, may I approach?

THE COURT: Certainly.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY MR. DEBUSK:

Q: I believe it was Mr. Bellamy that said there was no contact with Amanda after July 9th, 2016; is that correct?

A: I think so.

Q: Wasn't she dead after July 19th?

A: She was.

Q: Was there contact with Freeman after Amanda was found dead in the K&W parking lot?

A: There was.

Q: Multiple calls?

A: Yes.

Q: Did they talk -- were there calls that were well over a minute?

A: There were.

Q: Indicating that there was ---
A: Conversation.
Q: --- conversation?
A: Correct.
Q: Can you tell us what the content of that conversation was?
A: I cannot.
Q: But we know of the fact that on some occasions they talked as long as five minutes; is that correct?
A: That's correct.
Q: Okay. And on the list of most frequently called contacts, I've just noticed this, who were the top eight?
A: Based on the name, they all appear to be females.
Q: But is each name listed once or do they appear to be listed twice?
A: Listed twice.
Q: So, for some reason when that format came out, it came out with each contact listed twice?
A: That's correct.
Q: So, in fact, it's the Number 5 contact on that list?
A: Correct.

MR. DEBUSK: Nothing further, Your Honor.

THE COURT: Anything on those questions, Mr. Bellamy?

MR. BELLAMY: May it please the Court, very briefly, Judge?

THE COURT: Yes, sir.

RECROSS EXAMINATION OF WILL LYNCH BY MR. BELLAMY:

Q: Detective Lynch, I'm gonna show you State's 48 ---

A: Okay.

Q: --- which is the analytic report which breaks down the contacts. What timeframe -- is that from the entire time that phone, which goes back a long time, cause 700-and-some events, right, at the top that would be the Number 1, and 261 is four or nine, wherever you want to put it ---

A: Sure.

Q: Can we -- can we -- you identify the dates that that -- did you cherry-pick, like from date from ---

A: No, sir.

Q: --- point A to B or is that the entire time that that phone had been in use?

A: That's correct; the entire time that phone had been in use.

Q: Okay. From, and do you have the dates of those?

A: Well, it would be to the time that we -- or the Charlotte Police -- Charlotte-Mecklenburg Police Department actually took possession of that phone would be the last time, I'm sure.

Q: And I understand that, but do you know when the start dates would have been?

A: June 14th, 2016. So, less than a month or maybe a month.

Q: Okay. Now, again, this is your document -- as I read the top of this, it has something saying created, modified, assessed, and that's dated 7/2/16 beside created and the time. What does that mean at the very top?

A: I'd have to see where this came from, but if this was a picture or a video, it just basically meant when it was actually taken and then stored onto the phone.

Q: So, there's some video or something?

A: Yes, it's either a video or a picture. That's what that is and that would be what was associated with it.

Q: I gotcha. Thank you, Detective Lynch.

A: You're welcome.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: Yes, sir, Your Honor.

RECROSS EXAMINATION OF WILL LYNCH BY MR. SPRATLIN:

Q: Detective, regarding these calls that took place for several seconds or even possibly minutes, is it possible that those could have been routed to voice mail?

A: Yes.

Q: So, not necessarily an actual phone call, someone could've been leaving a voice mail at the time?

A: It could; yes, that's correct.

Q: So, all these contacts on this phone, which the solicitor asked about, could be voice mail, call back, voice mail, call back, four phone calls?

A: It could be; yes, sir.

Q: Okay. And again, Mr. Bellamy brought this up on his redirect or recross, excuse me, you said it was about a month's timeframe for his analytics report, give or take?

A: Correct.

Q: And my client's Number 5 on the list based on what the solicitor said, correct?

A: Correct.

Q: Nothing malevolent or malicious about being Number 5 on somebody's contact list, is there?

A: No, sir.

Q: Thank you.

THE COURT: Anything else, Solicitor?

MR. DEBUSK: One moment, Your Honor. Nothing further.

THE COURT: All right. Very good. Do you wish the witness to be excused?

MR. DEBUSK: Yes, Your Honor, we would.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right, sir, you're released from your subpoena, you may go back to your regular duties.

MR. LYNCH: Thank you, Your Honor.

THE COURT: Thank you, sir.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, we are going to break for lunch. I would ask that you be back in your jury room at 2:30, please. Back in your jury room at 2:30. Obviously, don't talk about the case, don't allow anybody to talk to you about it.

See you at 2:30. Thank you.

Everyone else remain seated while the jury retires.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: Anything else from the state at this point in time?

MR. DEBUSK: No, Your Honor.

THE COURT: All right. From the defense, Mr. Bellamy?

MR. BELLAMY: No, sir.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Thank you, gentlemen. 2:30.

MR. BELLAMY: Thank you, Your Honor.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: All right. Solicitor, you ready for the jury to come in?

MR. DEBUSK: I think Mr. Bellamy had something he wanted to bring up, Your Honor.

THE COURT: Yes, sir, Mr. Bellamy?

MR. BELLAMY: Yes, sir, Your Honor. I've been told that the next witness is Owen Lynam, the lead detective in the case, Your Honor. I would like to elicit, there were -- there are three statements that he's made during the course of this investigation and ask him did he make that statement in the course of the investigation. One of them being ---

THE COURT: I'm sorry, that Detective Lynam has made these statements?

MR. BELLAMY: Yes, these are recorded statements that were done in the course of ---

THE COURT: No, no, no, no. I don't think you understood my question. The statements you're talking about, are they statements that Detective Lynam said; that's what you want to ask him about?

MR. BELLAMY: Yes, sir.

THE COURT: Okay. All right. And but -- and I want to make sure that I don't open the door to anything. These three statements were made in the course of the interview -- an interview he did with Codefendant Freeman where he makes the statement, I don't think this was premeditated. This case was solved in 24 hours, and then there's a third statement in there as well. I don't want to open the door to that

statement coming in. Obviously, *Bruton* prohibits it.

THE COURT: All right.

MR. BELLAMY: But they are statements -- I would not ask him anything about Mr. Freeman on that statement, but it's a statement that he has made in the context of this investigation.

MR. DEBUSK: And, Your Honor, the only possible response that Detective Lynam could have is that these are made in the course of interrogation when you're trying develop rapport with the defendant and they're not really true beliefs, they were just things you say to try to develop rapport with the defendant.

THE COURT: Okay.

MR. DEBUSK: If he does that, then he opens the door to the fact that Mr. Freeman ---

THE COURT: Okay. Mr. Spratlin, you want to chime in on this?

MR. SPRATLIN: Your Honor, I would oppose any -- any questions or anything bringing up a statement that would open the door to allow the fact that my client either gave a statement to law enforcement or the contents of what that is, because if it was brought up and the door was opened, I think I would then be able to come back and ask who my client said was the actual shooter, which would obviously implicate Mr. Bellamy's client.

THE COURT: Okay. So, I'm just struggling here and y'all help me. Struggling here, Mr. Bellamy. Mr. Lynam is conducting an interview of your client?

MR. BELLAMY: No, sir, Mr. Freeman.

THE COURT: Okay.

MR. BELLAMY: Mr. Spratlin's client.

THE COURT: Okay. And he made a statement in the course of that questioning of Mr. Freeman?

MR. BELLAMY: Yes, sir.

THE COURT: No, sir, I'm not gonna allow that. You can proffer it, but I'm not -- I'm not allowing that because that is clearly going to prejudice the rights of the -- of the defendant represented by Mr. Spratlin, and it could have no other purpose but to inflame the jury against the defendant Freeman. It has no other purpose. But I'd be glad for you to proffer those questions, but ---

MR. BELLAMY: Can I follow-up on one particular -- another question ---

THE COURT: Yes, sir.

MR. BELLAMY: It does relate specifically to my client is there's a videotape in which depicts my client maybe having a gun after the fact. Mr. Lynam makes a statement there, I don't know whether it's a gun or a pill bottle. So, if he were to testify, yes, I think he's got a gun, could I then say, haven't you also made the statement -- and I'm not gonna

reference anything about Mr. Freeman that it was done during any interview of him, I'm just saying have you made a statement.

THE COURT: All right. Solicitor, you intending to ask Detective Lynam that question?

MR. DEBUSK: We'll discuss the, the, the video where he appears to pull a gun from his waistband and put it in the truck, but the only possible comeback to what he wants to use to cross examine him with is that that was made in the context of an interrogation, and it was not necessarily my belief but something I'm saying to the defendant to try to get him to be more forthcoming.

THE COURT: All right.

MR. DEBUSK: And that defendant would've been Mr. Spratlin's client.

THE COURT: All right. You're going to be -- how the question would be coming up -- okay. The videos are already in evidence, right?

MR. BELLAMY: Yes, sir.

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. And you're gonna be publishing them through Detective Lynam?

MR. DEBUSK: Yes, Your Honor.

THE COURT: The only way it could come up is if you're asking Detective Lynam, tell me what you see on the screen?

MR. DEBUSK: Right.

THE COURT: That's the jury's job. It's not his job to tell them what they see. They either see it or they don't see it. Now, you can comment on evidence in your closing.

MR. DEBUSK: Okay.

THE COURT: That it, you know, whatever you think it is or, you know, what, you know, your speculation about that, you know, depending upon how you phrase it, you know, there may be an objection. But, you can't ask the officer --- say, tell me what that shows. That's a jury's job.

MR. DEBUSK: Can he ---

MR. BELLAMY: That cures my problem.

MR. DEBUSK: Can we ask to the extent does he appear to be pulling something from his waistband without saying what the object is? It's obvious from the video.

THE COURT: Well, if it's obvious, the jury's gonna see it.

MR. DEBUSK: Yes, sir.

THE COURT: And you can comment on the evidence that's in record at the time of your closing, but you can't have the witness tell the jury that's what you see ---

MR. DEBUSK: I understand.

THE COURT: --- in the, you know, in the video. They -- that's their job to interpret it. So, the detective is not gonna be saying that.

MR. DEBUSK: Understood, Your Honor. He won't be saying that that's a gun.

THE COURT: So, that -- you're not gonna be asking any questions about it then?

MR. BELLAMY: No question at all, no, sir.

THE COURT: All right.

MR. BELLAMY: The other two questions, would it be possible to proffer what that would be just so I can preserve the record?

THE COURT: Yes, sir. Yes, sir. The -- let's -- it's sort of hard to get them out of context at this point in time, you know, I mean you can ask them now and get them in the record, but they're sort of out of context as to where it might come in his testimony, but if you want to do it now, fine, we can do it now.

MR. BELLAMY: I think now. That way when the jury comes in, we want have any ---

THE COURT: All right. That's fine. So, call the -- call the witness, Solicitor.

MR. DEBUSK: Owen Lynam, Your Honor.

THE COURT: Place him under oath.

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

OWEN LYNAM, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. LYNAM: Hello. My name is Owen Lynam, O-W-E-N, L-Y-N-A-M.

THE COURT: Go ahead, Mr. Bellamy.

PROFFER DIRECT EXAMINATION OF OWEN LYNAM BY MR. BELLAMY:

Q: Detective Lynam, just briefly. You conducted an interview of Mr. Freeman back in March of '17, I believe, correct?

A: Yes, sir.

Q: Okay. And that interview was recorded by yourself and Detective Lynch?

A: Yes, sir.

Q: And there's a transcript, I don't know if you know this, that the solicitor has done of that, had it typed up?

A: Okay.

Q: Okay. And during the course of that interview, did you ever make the statement that we had this case wrapped up within 24 hours?

A: I haven't actually watched the video in quite a while but, yeah, I would say it was a very good chance that I did say that.

Q: And did you also, the second statement, did you also make a statement that we know this wasn't premeditated, it just happened?

A: Again, I haven't watched the video recently but, yeah, there's a real good chance that I did say that.

Q: Okay.

MR. BELLAMY: That would be it, Judge.

THE COURT: All right. The -- Mr. Spratlin, do you want to ask any questions on that?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. Solicitor, is there anything you want to ask about that?

MR. DEBUSK: Yes, Your Honor.

PROFFER CROSS EXAMINATION OF OWEN LYNAM BY MR. DEBUSK:

Q: Why would you make such statements in the contents of the interview?

A: If I made those statements, they would've been made early on basically building rapport with the -- Mr. Freeman at the time.

Q: To convince a -- a witness to, to be more forthcoming, is that why you would say that?

A: Yeah, to share his story.

BY THE COURT:

THE COURT: All right. Thank you. All right. Again, the Court -- you can step down, sir. The Court reaffirms my ruling. I'm not gonna allow those questions to be asked because I think that would directly implicate the codefendant in this matter and prejudice his rights. It would be, I find, a violation, you know, a *Bruton* violation, and that also that it opens the door to matters that clearly are improper and

cannot be placed before, before this jury. So, I'm not gonna allow it.

MR. DEBUSK: Thank you, Your Honor.

THE COURT: All right. Ask the jury to come in then.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, Solicitor, your next witness, please.

MR. DEBUSK: Thank you, Your Honor. The state calls Owen Lynam.

THE COURT: All right. Please come around to be sworn, sir.

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

OWEN LYNAM, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. LYNAM: My name is Owen Lynam, O-W-E-N, L-Y-N-A-M.

DIRECT EXAMINATION OF OWEN LYNAM BY MR. DEBUSK:

Q: All right. Detective Lynam, who is your employer?

A: The City of North Myrtle Beach Department of Public Safety.

Q: How long have you been with them?

A: Twenty-five years last month.

Q: Now, what do you do as a member of the North Myrtle Beach Public Safety?

A: I'm currently assigned to the criminal investigations

division as a detective.

Q: You work with the detective you just saw?

A: Detective Lynch, yes, sir.

Q: Were your duties the same on July 9th, 2016?

A: Yes, they were.

Q: Were you involved in the investigation of the death of Amanda Fisher?

A: Yes, sir; I was.

Q: What was your role?

A: On the morning of the incident, July the 9th, I received a call at my residence from my sergeant instructing me to respond to the incident location, which was the K&W Cafeteria at North Myrtle Beach at 1621 North Highway 17 in reference to ---

Q: Let me stop you for just a second. I ask you to look at State's Exhibit 52 and ask if you recognize that?

A: Yes, sir.

Q: Is the K&W that you responded to located on that exhibit?

A: Yes, it is.

Q: Is that a fair and accurate representation of the layout in that section of North Myrtle Beach?

A: Yes, sir; it is.

Q: At this time, the state would offer State's 52 into evidence?

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: There's no objections, Your Honor.

THE COURT: So, it's into evidence without objection.

STATE'S EXHIBIT NUMBER 52

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: So, as far as the roads go, Detective Lynam, the K&W, what highway is it on?

A: K&W is located right on Highway 17 at the northern part of the city limits.

Q: Where is it relative to that big bridge over Highway 17 -- over the Intracoastal Waterway there?

A: It's approximately a quarter of a mile just south of the bridge.

Q: Is it close to the intersection of Highway 9, Number 9 going over to inland?

A: Yes, it is, it's about a half a mile from Highway 9.

Q: Is that shown on that exhibit?

A: Yes, sir.

MR. DEBUSK: Your Honor, may I publish that?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Okay. When you responded, what did you find?

A: I responded directly to the incident location. Upon my

arrival, there was quite a lot of law enforcement already on the scene along with fire department, EMS, and the representative from the coroner's office was there. The crime scene was already cordoned off with tape and the victim's body was still laying on the tarmac.

Q: Just so the jury will know, you seem to be looking down at something; what do you have?

A: I brought some notes that I had for my case.

Q: Oh, those are your case report?

A: Yeah, yes, sir.

Q: The reason you write reports is so you can testify accurately later, right?

A: Yes, sir.

Q: Okay. Was the victim still there when you arrived?

A: Yes, she was.

Q: Okay. In the course of the investigation, was the North Myrtle Beach Police Department or Department of Public Safety able to identify her?

A: Yes, upon my arrival, I made contact with the watch commander, Sergeant Rose and Detective Vicks already on scene. They informed me that they obtained the victim's phone, that it was still located on the scene. By using her phone through the 911 system, they'd already verified the victim's identity.

Q: Who was the victim?

A: The victim was Amanda Fisher.

Q: Were you present when she was transported from the scene?
A: I believe if I was still there, yes, sir.
Q: Okay. She would've been taken to -- for autopsy; is that correct?
A: Yes, sir.
Q: And the coroner would be responsible for that, correct?
A: Yes, sir.
Q: Once you identified the victim and her name, did you identify the family -- or I'm sorry, notify the family?
A: The family was actually notified by the coroner.
Q: Did you speak with the family?
A: Yes, I did, later that evening, I actually drove to River View Drive in Shallotte, and I met with the victim's family. I met with her mom, Renee Vann; her step-dad, Michael; and her cousin, Tabetha Oxendine.
Q: State's Exhibit 4 here, K&W is indicated on there?
A: Yes, sir.
Q: And is the place where you met the witnesses indicated on there?
A: Yes, it is.
Q: Where is it?
A: K&W is right here (indicating). The victim's right here in the top corner.
Q: Did you say River View or ---
A: River View.

Q: So, that would be this one?
A: Yes, sir.
Q: You drove up to, I believe, that's Shallotte; is that correct?
A: Yes, sir.
Q: And you met with -- were you able to determine that you had some key witnesses there?
A: Yes. When I got there, I learned that the victim's cousin, Tabetha, had actually spent the night before with her and that the victim had driven Tabetha home earlier that day.
Q: Did you get some information from those witnesses about possible suspects?
A: Yes, I did.
Q: Did you have names of possible suspects?
A: She provided one name and one partial name at that time.
Q: What was that?
A: The full name was Terrell Freeman and then there was a partial name of Jacob.
Q: Did she have any more information, any photos, videos, phone numbers that she could provide?
A: Yes, she did. She furnished me with Mr. Freeman's phone number from her phone, and she also furnished me with a photograph that she had in her phone from the night before.
Q: What did you do with that information once you got it; the partial name, the full name, and the photo?

A: Once she gave me the full name, upon returning to the station in North Myrtle Beach, I contacted law enforcement agencies in North Carolina.

Q: What particular part of North Carolina?

A: Charlotte-Mecklenburg. She informed me that Mr. Freeman and Mr. McIver had stated they were from Charlotte. So, I reached out to Charlotte-Mecklenburg Police Department, and I made contact with Detective Helms.

Q: Did you ultimately get more of -- you got a partial name of Jacob, did you ultimately get more of name for that individual ---

A: Yes.

Q: --- from the North Carolina authorities?

A: Yes, sir. On July the 11th, Charlotte-Mecklenburg provided the full name for Mr. McIver.

Q: What was it?

A: It was Nicholas Jacob McIver.

Q: Did you travel to Charlotte during the course of your investigation?

A: Yes, sir; I made several trips to Charlotte.

Q: Was the victim -- was she found with her belongings, with her vehicle, with her -- her purse, anything?

A: No, sir. The only thing I seen was the victim's body, but her vehicle was not there.

Q: Did you do anything to try and locate her vehicle?

A: Yes, sir. Upon speaking with the family, they provided the information on the vehicle including the color, the make, the year, the tag number. Again, upon returning to North Myrtle Beach police station, I immediately entered the vehicle as stolen in NCIC.

Q: What does NCIC stand for?

A: It's the National Crime Information Center. Basically, it's a database used by law enforcement nationwide to enter vehicles, missing persons, or try and locate vehicles and missing persons.

Q: Sort of an information exchange for law enforcement?

A: Yes, sir.

Q: Did you ultimately find any clues of the whereabouts of the Chevy Malibu that she was driving?

A: Yes, shortly after I'd entered it in NCIC through our dispatch center, they called me back and advised that the vehicle was already located in Charlotte, North Carolina area that afternoon.

Q: Okay. What condition was it in?

A: The vehicle was found fully involved in fire.

Q: Did you ultimately go see that vehicle personally?

A: Yes, I did.

Q: Where did you see it?

A: The first time I saw it was, I believe it was July the 13th, the following Wednesday. It was located at their

impound lot at the police department impound lot.

Q: I'm gonna show you State's 39 through 43 and ask if you recognize these, that's State's 39 through 43?

A: Yes, sir.

Q: What are they?

A: Those are photographs of the victim's vehicle as we found it in Charlotte, North Carolina.

MR. DEBUSK: These are already in evidence, Your Honor.

BY MR. DEBUSK:

Q: Was it pretty much fully burned?

A: Yes, sir, it was -- it was severe fire damage both to the exterior and the interior of the vehicle.

Q: Was there any glass left in the vehicle?

A: No, sir.

Q: Was that a consequence of the fire?

A: Yes, sir.

Q: Any upholstery?

A: No, sir.

Q: Carpet?

A: No, sir.

Q: In other words, it had been pretty much destroyed?

A: Yes, sir.

Q: Did you obtain information in Charlotte about who was the suspect in destroying the car?

A: Yes, sir. On that same night of the incident, Detective

Helms responded to the fire scene. He had the vehicle secured and realized it was related to the homicide we had earlier. Through their investigation and canvassing the neighborhood where the vehicle was set on fire, they obtained an eyewitness. The eyewitness subsequently positively identified Mr. McIver as the person seen running from the vehicle after it was set alight.

Q: When you were present -- were you present when they processed the car for evidence?

A: I returned to North Carolina in November and processed it in November.

Q: Okay. When you processed it, had it been kept secure by the Charlotte Police Department from ---

A: Yes, sir, it was wrapped in plastic and it was in the secure location.

Q: The whole car wrapped in plastic?

A: Yes, sir.

Q: So, nothing could get in or out?

A: Yes, sir.

Q: I take it they had to cut the plastic off to process the car?

A: Yes, sir.

Q: When you processed the car, did you find anything of evidentiary value like bullets or bullet casings or anything?

A: No, we didn't find any bullets or bullet casings. We

sifted through all the rubble and we ended up finding the victim's purse partially burned.

Q: State's 46, is that what you're referring to?

A: Yes, sir.

Q: Were there cards in that purse?

A: Yeah, her driver's license was in it and some other identity cards.

Q: Were there credit cards in there?

A: No credit cards, no, sir.

Q: I think it's shown on the video we already looked at, but were the keys in the car?

A: We found a melted key fob with some keys; yes, sir.

Q: State's 43?

A: Yes, sir; that's it.

MR. DEBUSK: Your Honor, may I publish 39 through 43 to the jury?

THE COURT: You may do so.

BY MR. DEBUSK:

Q: Now, in the course of your investigation, were you able to determine where the victim and, I believe you said her cousin, Ms. Oxendine, were staying?

A: Yes, sir. Upon speaking with Ms. Oxendine, she informed us that her and Amanda had spent the Friday night at the Holiday Sands North, a hotel located down in Myrtle Beach.

Q: Is that what is shown here on State's 4?

A: Yes, sir.

Q: Holiday Sands North?

A: Yes, sir.

Q: In less detail here?

A: Yes, sir.

Q: In some ways ---

A: Yes, sir.

COURT REPORTER: Mr. DeBusk, I'm having a hard time understanding you.

MR. DEBUSK: I'm sorry. I'll do my best.

COURT REPORTER: Use the microphone if you don't mind.

BY MR. DEBUSK:

Q: I'll step over here a little closer to you so Madam Court Reporter can hear me.

Did you retrieve video footage from that location?

A: Yes, I did.

Q: Did you review that footage?

A: Yes, I did.

Q: Was there footage of the victim and her cousin on there?

A: Yes, sir.

Q: Was their footage of the suspects on there?

A: Yes.

Q: Did you determine where the defendants had been staying?

A: Yes, we determined that the defendants stayed at the Lancer Motel located at -- on Highway 17, I believe it's the

600 block.

Q: Is that shown here on State's Exhibit 4?

A: Yes, it is.

Q: It was fairly close to the Lancer; how many blocks away?

A: About -- less than four blocks.

Q: Did you retrieve video from that location?

A: Yes, we did.

Q: Was there video of the defendants at their hotel?

A: Yes, there was.

Q: At some point, did the victim appear on the video?

A: Yes, she did.

Q: So, at that point, you had information about the burning car, the statement of Ms. Oxendine, the videos from the hotels. Did you obtain video from any other sites?

A: Yes, we did. Upon speaking with the family, later that Saturday evening, they advised us that Amanda's credit cards had already been used at two separate locations; one in Bennettsville, South Carolina, and once in Marshville, North Carolina.

Q: Did you retrieve or receive footage from Bennettsville?

A: Yes, we did.

Q: Did it show the victim's car?

A: Yes, it did.

Q: Did it show an individual in possession of that car?

A: Yes, it did.

Q: Who was that individual?
A: Nicholas McIver.
Q: Did it show -- did you obtain footage from Marshville, North Carolina?
A: Yes, we did.
Q: Did you obtain purchase records from Marshville, North Carolina?
A: Yes, we did.
Q: Did, did you see the victim's car in that?
A: Yes, we did.
Q: Was the victim's credit card used there?
A: Yes, it was.
Q: Who was it that used the credit card?
A: Nicholas McIver used the credit card.
Q: Did there come a time when you got warrants for the defendants?
A: Yes, we did.
Q: Were they taken into custody?
A: They were actually taken to the police station in Charlotte, North Carolina by a family member of Mr. McIver, both defendants were taken in together.
Q: Okay. So, they came to the police station together?
A: Yes, sir.
Q: Were you present when or shortly after they were taken into custody?

A: Yeah, once they were taken into custody, I drove to Charlotte, North Carolina PD.

Q: Do you see Mr. McIver in the courtroom today? Has there been a change in his hairstyle since that time?

A: It's slightly shorter right now and back in July 2016, it was more of longer dreads.

Q: Okay. Is that visible on the videos?

A: Yes, sir.

Q: I draw your attention to State's Exhibit 60 and ask if you recognize that.

A: Yes, this is a still shot from the video footage at the Marshville store.

Q: Is that the defendant?

A: Yes, it is.

Q: Is that his hair as you saw it at that time?

A: Yes, sir.

MR. DEBUSK: We move to offer State's 60 into evidence.

THE COURT: Mr. Bellamy?

MR. BELLAMY: No objection, Your Honor.

MR. SPRATLIN: No objection, Your Honor.

THE COURT: All right, sir. So, State's 60 is in evidence without objection.

STATE'S EXHIBIT NUMBER 60

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

MR. DEBUSK: May I publish, Your Honor.

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: How about Mr. Freeman, is his hairstyle substantially different today?

A: No, sir, it's pretty much the same.

Q: At the time of their arrest, did you receive a cell phone from Nicholas McIver?

A: Yes, we did. Charlotte Police Department had taken possession of the phone and then transferred it over to me.

Q: Was it ultimately analyzed?

A: Yes, it was.

Q: By whom?

A: Detective Lynch.

Q: Pursuant to a search warrant?

A: Yes, sir.

Q: Did you get a phone from Terrell Freeman?

A: No, sir; we did not.

Q: Did you ever the phone of Terrell Freeman?

A: No, sir; we did not.

Q: Did you ultimately determine what -- or did you ultimately determine what his phone number was?

A: Yes, we did.

Q: And that's in evidence, I believe.

A: Yes, sir.

Q: Did you determine what sort of vehicle McIver and Freeman arrived at Myrtle Beach in?

A: Yes, they were traveling in a older model Ford pickup truck. I believe it was a late 90s model Ford pickup truck, two-toned black-and-brown in color.

Q: I show you what's been marked as State's 57 and 58 and ask if you recognize that.

A: Yeah, those are photographs of the truck. One photograph is from the Holiday Sands; one photograph is from the Lancer Motel.

Q: Just for the record, which one is from the Lancer and which one is from the Holiday Sands?

A: Number 57 is the Holiday Sands. Number 58 is the Lancer.

Q: Are those stills from the surveillance videos that you retrieved?

A: Yes, sir.

MR. DEBUSK: Your Honor, we'd offer 57 and 58 into evidence?

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: In evidence without objection.

STATE'S EXHIBIT NUMBERS 57 AND 58

ADMITTED INTO EVIDENCE

BY MR. DEBUSK:

Q: Did you ultimately locate that truck in the course of your investigation?

A: Yes, it was located by Charlotte Police Department.

Q: Did their -- did they seize the truck?

A: Yes, they did.

Q: Was it ultimately processed pursuant to a search warrant?

A: Yes, it was.

Q: I show you State's 53 and 54, and ask if you recognize these.

A: Yeah, those are photographs of the truck taken at the Charlotte Police impound lot.

Q: Does that appear to be the same vehicle that was in the photos from the hotels?

A: Yes, sir.

MR. DEBUSK: We'd offer State's 53 and 54 into evidence, Your Honor.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: In evidence without objection.

STATE'S EXHIBIT NUMBERS 53 AND 54

ADMITTED INTO EVIDENCE

MR. DEBUSK: May I publish 53, 54, 57, 58 to the jury?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: When the truck was processed, did you find any evidence pointing to McIver as the holder -- owner of that truck?

A: Yes, we recovered a paycheck stub from the truck made payable to Mr. McIver.

Q: State's 55?

A: Yes, sir.

Q: It's a picture of the check stub to which you referred earlier?

A: Yes, it is.

MR. DEBUSK: Your Honor, the state would off State's 55 into evidence.

THE COURT: Any objection, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection.

THE COURT: What number again?

MR. DEBUSK: 55, Your Honor.

THE COURT: 55 is in evidence without objection.

STATE'S EXHIBIT NUMBER 55

ADMITTED INTO EVIDENCE

THE COURT: You may proceed.

BY MR. DEBUSK:

Q: What was the payer of the check; what was the ---

A: The check is bended; it's hard to make out who the payer was.

Q: That's okay.

May I publish 55 to the jury, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Was the truck processed for evidence?

A: Yes, it was.

Q: Did you find anything of evidentiary value in the truck, any weapons?

A: No, sir.

Q: Did you find any human blood?

A: No, sir.

Q: State's 56, what is that?

A: That's a photograph depicting the rear of the truck, the pickup portion.

Q: Was that taken at the time the truck was processed?

A: Yes, it was; this was taken at the Charlotte Police Department.

MR. DEBUSK: We would offer State's 56 into evidence, Your Honor.

THE COURT: Mr. Bellamy?

MR. BELLAMY: Your Honor, I'm not sure if I heard -- was he present when this was taken?

BY MR. DEBUSK:

Q: Were you present when this was taken?

A: Yes, I was.

MR. BELLAMY: No objection, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No objection, Your Honor.

THE COURT: It's in evidence without objection.

STATE'S EXHIBIT NUMBER 56

ADMITTED INTO EVIDENCE

BY MR. DEBUSK: May I publish, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: What else did you do in the investigation? You spent some weeks on this investigation, did you not?

A: Yes, sir. We tried to verify a lot of the information that we received, basically the identities of the defendants, cross referencing it with other information like phone numbers we received. We tracked their movements while they were at the beach and upon returning to North Carolina with the victim's car, and just put it all together.

Q: Is it safe to say this was a geographically very widespread case?

A: Yes, sir.

Q: In fact, your State's 4 goes all the way from Myrtle Beach up into Shallotte?

A: Yes, sir.

Q: And then on a wider scale still, you went all the way from Myrtle Beach and North Myrtle Beach to Charlotte, correct?

A: Yes, sir.

Q: So, you must've spent a lot of time traveling?

A: Yes, sir.

MR. DEBUSK: Your Honor, at this time, I'd like to publish some of the videos that were entered into evidence earlier in this case.

THE COURT: All right, sir.

MR. SPRATLIN: Your Honor, may I have permission to move myself so I can see the video?

THE COURT: Yes, sir.

MR. BELLAMY: Thank you, Your Honor.

BY MR. DEBUSK:

Q: While we're setting up the video, Detective Lynam, I show you State's 59 and ask if you recognize that.

A: Yes, sir, the top photograph was a still shot from the Lancer Motel showing Mr. McIver's pickup truck, and appears it's Mr. McIver in the background. The bottom picture is from the gas station in Bennettsville, South Carolina with Mr. McIver in the picture.

Q: Does it show what Mr. McIver is wearing?

A: Yes, it does. It appears he's wearing a white T-shirt with shorts.

Q: So, it would've been really 9:36, basically?
A: Yes, sir.
Q: Okay, so the individual just came back and got in the truck from the direction of the check-in office; is that correct?
A: Yes, and then I believe they moved the truck to a different section of the parking lot closer to the room that they got.
Q: This is a different camera angle of the parking lot of the Lancer?
A: Yes, the -- this is a different camera and they're still moving. They're moving toward the east side of the building at this point and this is gonna be the east side of the building.
Q: Were you able to determine where the room that the defendants stayed in was?
A: Yes, the room they stayed in was actually located right behind the parking spot right here.
Q: (Inaudible.)
COURT REPORTER: Mr. DeBusk?
THE COURT: Mr. DeBusk, nobody can hear you.
MR. DEBUSK: I'm sorry. I'll just have to stand closer, Your Honor.
A: Here we see Mr. McIver exit the vehicle.
BY MR. DEBUSK:

Q: From which -- from the driver's side or the passenger side?

A: Driver's side and Mr. Freeman exits from the passenger side.

Q: What do they appear to be doing here?

A: It appears like they're getting their luggage together, gathering up their belongings from the inside of the truck.

Q: Basically, moving into the room; is that correct?

A: Yes, sir.

Q: And this was at what time?

A: It's timestamped 9:34 P.M. on the video.

Q: That would really be about 9:45, 9:44?

A: Yes, 9:44.

Q: Okay. This is a little later in the evening, is it?

A: Yes, timestamped 9:52 P.M. on the video, and I believe they're getting ready to get in the truck and leave.

Q: I'm gonna switch videos on you, Detective Lynam, and go to the Holiday Sands. And who was staying at the Holiday Sands?

A: The victim, Amanda Fisher and her cousin, Tabetha Oxendine.

THE COURT: Will you please make sure the previous exhibit gets back to the court reporter, please.

MR. DEBUSK: I'm handing 17 back to the court reporter, Your Honor.

victim and Mr. McIver returning to the victim's room again.

Q: Just a few minutes?

A: Yes, sir.

Q: I'm showing you -- and they're in the room at 4:44. Did -- were some videos retrieved from Mr. McIver's phone?

A: Yes, sir.

Q: We have State's Exhibit 51, does that show the times of those videos?

A: Yes, sir; it does.

Q: What were the times of those first three videos?

A: The first three videos were 4:49 A.M., 4:53 A.M., and 5:13 A.M., the first three.

Q: So, shortly after they entered here?

A: Yes, sir.

Q: Please proceed. Anything happen here other than the door open?

A: No, the door appears to open briefly, and then it just closes; nobody exits or enters.

Q: Okay. What time is now?

A: 6:16, we see the victim's cousin, Ms. Oxendine, leave the room.

Q: Who is that?

A: Mr. McIver leaving the room at 6:17.

Q: They joined together at the elevator down there?

A: Yes, sir. Now, we're up to 6:18 A.M. Mr. McIver and Ms.

Oxendine exit the building and walk through the parking lot towards Ocean Boulevard.

Q: Does it appear to be daylight now on this video?

A: Yes, sir.

Q: What's that road where the car just went by there in front of the hotel?

A: That would be Ocean Boulevard down at Myrtle Beach.

Q: Which way did they exit on Ocean Boulevard?

A: It appears that they walked northbound once they got onto the boulevard.

Q: Okay. Now what time is it?

A: It's 6:20, and we see Mr. Freeman exit the hotel room and he's wheeling the cooler that Mr. McIver had brought into the building earlier.

6:21 A.M., again we're looking at footage from the main entrance to the hotel. Mr. Freeman walks through the parking lot wheeling the same cooler.

Q: And which way does he go on Ocean Boulevard?

A: He also goes north on the boulevard.

Q: Okay. Here we are ---

A: 6:22 footage from the fourth floor shows that the victim briefly opened the door and looked outside in the hallway, and then closed the door and stayed in the room.

Q: Back to State's Exhibit 51, were there two more cell phone videos during this time?

A: Yes, sir. Two more videos at 6:42 A.M. and 6:43 A.M.

Q: So, based on the video, were you able to determine from the first three videos were taken while they were inside the room at the Holiday Sands?

A: Yes, sir.

Q: And the cell phone videos at 6:42 and 6:43 would've been elsewhere, correct?

A: Yes, sir.

Q: Please proceed. Who is this entering the view up here?

A: That appears to be Mr. Freeman walking northbound with the cooler.

Q: It's best to wait till they get closer, I guess.

Okay. Here we go, who is this entering the hotel?

A: 6:54 A.M., this is Ms. Oxendine entering the hotel by herself.

Q: Okay.

A: 6:55 footage from the fourth floor, Ms. Oxendine going into her room by herself.

Q: Instead of switching videos, I'm just gonna ask you, was there anything on the video at the Lancer at this time, around this time?

A: Yes, at 7:08 at the Lancer Motel, we see Mr. McIver and Mr. Freeman leave in the pickup truck.

Q: And again, that would be off by 10, so it would be 7:18, I believe?

A: Yes, sir.

Q: Please proceed. Who is that?

A: 7:16, we see Ms. Oxendine exit the room briefly and goes back in. Now, at 7:17, we see the victim, Amanda, and Ms. Oxendine exit the room.

Q: Who is that that approaches there?

A: It's 7:18, we see Amanda and Ms. Oxendine meeting Mr. Freeman downstairs at the main entrance to the building in the parking area.

Q: Now, here we've stepped just back just a second in time, haven't we?

A: Yes, this is back to 7:17 A.M. It's a different camera view from the front of the hotel facing more south -- southwest. It's covering the parking area beneath the building.

Q: Do you recognize that vehicle pulling up at that time?

A: Yes. At 7:17, it appears Mr. McIver's pickup truck, Ford pickup truck, driving into the parking lot. Now he drives in and actually reverses into a parking spot in front of the hotel.

Q: Okay. Who is that that's approaching the camera?

A: That's Mr. Freeman exited the truck and walking towards the main entrance.

Q: And this corresponds to the moment we saw them meet on the other angle; is that correct?

COPY

STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY)	
STATE OF SOUTH CAROLINA,)	**TRANSCRIPT OF RECORD**
)	April 23-27, 2018
Plaintiff,)	
)	**VOLUME III OF III**
vs.)	Pages 421 to 665
)	
NICHOLAS JACOB MCIVER,)	2016-GS-26-05556, 05557, 05558
)	
Defendant.)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
vs.)	2017-GS-26-02606, 02607, 02609
)	
TERRELL FREEMAN,)	
)	
Defendant.)	

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A: Yes, sir.
Q: Who is that sitting inside the open door of the truck?
A: That's Mr. McIver, he's seated in the passenger seat of the truck.
Q: Who is that?
A: 7:19, we see the victim, Amanda, walk towards the truck. She's talking with Mr. McIver who is seated in the passenger seat.
Q: Okay. Who is this that seems to be entering in a close embrace?
A: That is Mr. Freeman and Ms. Oxendine.
Q: Go forward a minute. So, who's speaking to whom now?
A: Now, we've got Ms. Oxendine speaking to Mr. McIver at the truck, and over closer to the building we've got Mr. Freeman and the victim, Amanda, talking together.
Q: Who is that that seems to be in an embrace again there?
A: Mr. Freeman and Ms. Oxendine.
Q: Okay. Here, where did Ms. Oxendine and Ms. Fisher go?
A: The two ladies appeared to walk towards the boulevard and the two gentlemen are in the truck. It's 7:32 A.M.
Q: Forward it. That was end -- you can stop now. That was the end of the Lancer videos; is that correct?
A: That was the end of the Holiday Sands video.
Q: Holiday Sands video.
A: Yes, sir.

Q: And for the record, that was State's Exhibit 23. Okay. Go back to State's 17, the Lancer videos.

How long does it take to drive between the Lancer and the Holiday Sands? Are they close?

THE COURT: Mr. DeBusk.

MR. DEBUSK: Yes, Your Honor.

THE COURT: You're walking away asking questions, not a soul can hear you.

MR. DEBUSK: I'm sorry, Your Honor.

BY MR. DEBUSK:

Q: How long does it take to drive to the Holiday Sands and the Lancer?

A: I would guestimate three to four minutes, tops.

Q: They're very close?

A: Yes, sir.

Q: Here we are. We're stepping back in time here to 7:04, right?

A: Yes, sir.

Q: Again, because of the error, what time would that be?

A: 7:14.

Q: What's happening there?

A: We're back at the Lancer Motel. It depicts the east side parking lot and Mr. Freeman and Mr. McIver are getting into the truck.

Q: Just to step back in time. We had seen them arrive at

about 7:17 at the ---

A: At the Holiday Sands, yes, sir.

Q: On the other video, correct?

A: Yes, sir.

Q: And now what time is it?

A: On the video it is 7:27 A.M., which would have been 7:37 A.M.

Q: And they had left the Holiday Sands, about what time on that video?

A: About 7:28.

Q: Okay. What's happening here?

A: The timestamp on the video is 7:29, which would be 7:39, we see Mr. Freeman and Mr. McIver return to their motel and exit the truck.

Now, on the video it's timestamped 7:31, which would've been 7:41, we see the victim's car in the view at the bottom of the screen.

Q: That's the white car right at the bottom there?

A: Yeah, it'd be that white Chevy Malibu. Now, we see Mr. Freeman come from his room and he approaches the car, it's out of screen.

Q: Okay. Who is that at the bottom of the screen?

A: That's the victim, Ms. Fisher, exits the vehicle and walks over to the building. It appears she's conversing with someone over the balcony.

Q: After this brief appearance outside of the car, did you see her on the video again alive?
A: No, we did not.
Q: What time is it?
A: The video is stamped 7:33, which would've been 7:43 A.M.
Q: Right there. Here she is getting back in the car; is that correct?
A: Yes, sir.
Q: This video angle, along what street is that, do you recall?
A: That's actually gonna be looking southbound on Chester Street in Myrtle Beach. Chester Street is along here.
Q: Here, the car appeared to leave, correct?
A: Yes, sir. It's timestamped 7:42 in the video. The victim's vehicle was gone and we see Mr. Freeman walking by the truck and he actually enters the truck.
Q: What does he appear to be doing?
A: It's hard to determine exactly.
Q: Is it safe to say he's sitting in the truck?
A: Yes, sir, he's sitting in the door with the truck open. Then he remains in the truck and he closes the door.
Q: Now what time is it?
A: The video is timestamped 7 -- actually, 8:00 A.M., which would've been 8:10 A.M. real time.
Q: Is that when the white car returned?

A: Yeah, it appears like the victim's vehicle returns. It's in the bottom view of the screen. The driver's door opens, nobody gets out of the vehicle. 8:02, we see Mr. McIver standing outside of the driver's door of the victim's vehicle. He appears to be talking with whomever is sitting in the driver's seat.

It appears like Mr. McIver returned to his room for a brief moment and then he comes back to the car.

Q: Okay. At this point, the car leaves. Can you tell from analysis of the -- analysis of the video where everyone was?

A: Yeah, we determined that all four individuals left in the car together and they headed towards Shallotte, North Carolina at that time.

Q: Did you have, excuse me, did you have any video between leaving the Lancer at 8:06 A.M. and the time of the shooting?

A: No, sir; we did not.

Q: Did you have any time fixes?

A: From speaking with the family members and Ms. Oxendine, Ms. Oxendine was dropped at her house in Shallotte, North Carolina approximately 9:45 A.M.

Q: Okay. What was the dispatch time for the shooting at K&W?

A: The dispatch time was 11:17 A.M.

Q: What was the estimated shooting time?

A: Approximately, 11:15 A.M.

THE COURT: Before you start another video, let me know.

MR. DEBUSK: I'm sorry, Your Honor?

THE COURT: Before you start another video let me know.

MR. DEBUSK: Yes, Your Honor.

BY MR. DEBUSK:

Q: I think we've -- this has been published to the jury already. This is, I believe, Officer Jones' car video; is that right?

A: Yes, sir.

Q: And he, I believe, was the first responding officer?

A: He was the first officer to arrive on the scene.

Q: And this is where they're entering the K&W parking lot, correct?

A: Yes, sir. Mr. -- Officer Jones entered from the west side entrance which would've been off of Old Highway 17.

Q: And so, this is where the victim was -- what time is it when the officer ---

A: According to the video, it's timestamped 11:30 -- 11:21 A.M.

Q: About six minutes after the shooting?

A: Yes, sir.

MR. DEBUSK: That -- that's the end of that video, Your Honor.

THE COURT: All right. Very good.

Come back and have a seat, officer.

BY THE COURT:

THE COURT: All right. Madam Forelady, ladies and gentlemen of the jury, we'll take a short break, go to your jury room for about five minutes and we'll come back and continue with the videos.

Thank you.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: All right. We'll take a short break.

Officer, you may step down, but you may not talk to anyone while we're on break.

Thank you very much.

MR. SPRATLIN: Thank you, Your Honor.

RECESS

*******OFF THE RECORD*******

(On the Record.)

BY THE COURT:

THE COURT: Are you ready to resume, Solicitor?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right. The witness needs -- yes, sir, -- take the stand until the jury comes in.

Mr. Bellamy?

MR. BELLAMY: Oh, I was going to reposition but I didn't think about the jury coming back in as far as ---

THE COURT: That's all right.

And, Mr. Spratlin?

MR. SPRATLIN: I'm fine, Your Honor.

THE COURT: Ask the jury to come back in, please.

And, Mr. DeBusk, please remember, kind of keep your voice up, because they're definitely times that it's difficult to understand what you're saying.

MR. DEBUSK: Understood, Your Honor. I'll do my best.

THE COURT: All right. Very good, sir.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, solicitor, you ready to resume?

MR. DEBUSK: Yes, Your Honor.

THE COURT: And which State's exhibit will we be using?

MR. DEBUSK: Next will be State's 17.

THE COURT: All right. Very good.

You wish the witness to stand down next to you?

MR. DEBUSK: Please, Your Honor.

THE COURT: All right. Go ahead, sir.

MR. SPRATLIN: Judge, permission to reposition ourselves?

THE COURT: Please go ahead.

MR. SPRATLIN: Thank you.

(REPORTER'S NOTE: State's Exhibit 17 published. No audio.)

CONTNUATION OF DIRECT EXAMINATION OF OWEN LYNAM BY MR. DEBUSK:

Q: Detective Lynam, last we were here, I think we had talked about the shooting time. What was the estimated shooting time in North Myrtle Beach?

A: The estimated shooting time was 11:15 A.M. The dispatch time was about 11:17 A.M.

Q: Okay. So, that was 11:15 A.M.?

A: Yes, sir.

Q: Okay. We're back at the Lancer here; is that correct?

A: Yes, sir. This is the view of the east side of the Lancer again. It's timestamped 11:46 A.M., which would've been 11:56.

Q: And what's that that pulled up in the parking lot?

A: We see what appears to be the victim's vehicle pull in the parking lot.

Q: Who gets out of the passenger seat?

A: Mr. Freeman gets out of the passenger side.

Q: Who gets out of the driver's side?

A: Mr. McIver gets out of the driver's seat. Mr. Freeman walks directly towards the door of their room. Mr. McIver is following and if you look here, he appears to take an object from his waistband.

MR. BELLAMY: Your Honor ---

THE COURT: We'll let the video speak for itself. Thank you.

BY MR. DEBUSK:

Q: Again, who was that that parked the truck?

A: Mr. McIver.

Q: So, it's Mr. Freeman came first and then went up to the

room you said?

A: Yes.

Q: This is Mr. McIver coming up through here?

A: Yes.

COURT REPORTER: Mr. DeBusk?

MR. DEBUSK: I'm sorry. There you go.

BY MR. DEBUSK:

Q: Now, again, there was a time variance here, correct, with the counter on the tape?

A: Yeah, the timestamp in the video was actually gonna be 10 minutes behind real time.

Q: Okay.

A: So, looking at 11:49, it's actually gonna be 11:59. Now, at 11:50, the timestamp being noon.

Q: What was that that was partially blocking the ---

A: It appears like a bird flew in front of the camera lens.

Q: And again, this is the same camera angle we were looking at before, is it not?

A: Yes, sir.

Q: It's been approximately 10 minutes since they arrived; is that correct?

A: Yes, sir. Now, we would be up to 12:07 in the afternoon.

Q: What was that -- what was that that just flew into the screen?

A: It appears like one of the individuals, Mr. McIver or Mr.

Freeman, threw a luggage bag over the balcony into the back of the truck. Now, we're at 11:59 on the video, both individuals are at the truck.

Q: Who was it that just reached into the passenger rear of the bed there?

A: Mr. McIver.

Q: Now, where he is walking to?

A: Mr. McIver is walking towards the white vehicle again and he's getting into the driver-side door.

Q: And who is getting into to drive?

A: Mr. Freeman is getting in the driver's door of the truck.

Q: So, that was the white Malibu leaving with who driving?

A: The Malibu departed with Mr. McIver driving.

Q: And Mr. Freeman just ---

A: It appears he returns to the area of the room for just a minute here.

Q: Okay. Now, from the K&W parking lot where the white Malibu is seen with the victim being dumped out of it, to Lancer, over the course of your investigation, were you able to get an estimated travel time between the two?

A: Yeah, using MapQuest, we got a guestimated time of approximately 26 minutes between the K&W Cafeteria and the Lancer Motel located down in Myrtle Beach.

Q: Okay. And again this is July and there would've been heavy traffic at this time of year?

A: Yes, sir. It would've been one of the busiest weeks of the year on the beach.

Q: Now, we're gonna look at State's Exhibit 29, which is the Bennettsville video.

(REPORTER'S NOTE: State's Exhibit 29 published. No audio.)

BY MR. DEBUSK:

Q: I need to refer you to State's Exhibit 50, which was the call log for Mr. McIver. Approximately, what time did they leave the Lancer?

A: Approximately 12:10 A.M. in the morning -- in the afternoon, I apologize.

Q: You said approximately?

A: Ten after 12:00 in the afternoon.

Q: Based on State's Exhibit 50, the call logs for Mr. McIver, were there any calls between Mr. McIver and Mr. Freeman around that time?

A: Yes, we have an outgoing call from Mr. McIver's phone to Mr. Freeman's phone at 12:10 A.M. We've got another outgoing call at 12:11 P.M.; another outgoing at 12:15 P.M.; another outgoing at 12:17 P.M.; another outgoing at 12:25; outgoing at 12:26; outgoing at 12:30; and then we've got an incoming at 12:38.

Q: As -- on any of those did they speak for more than a minute or was there a call last more than a minute?

A: The incoming call lasted 5 minutes and 49 seconds, and

that was the incoming call at 12:38.

Q: And were there subsequent calls?

A: Yes, we have a call back at 12:44, it lasted 2 minutes and 48 seconds. And then we had another call back outgoing call at 1:06 P.M., it lasted 3 minutes and 7 seconds. Then there's an incoming call at 1:16 P.M. that lasts a minute and 30 seconds.

Q: So, there were a number of calls from -- to and from McIver and Freeman during that period?

A: Yes, sir.

Q: Now, we have the video from Marsh -- I'm sorry -- Bennettsville. What does it show?

A: This is the cameras covering the parking lot, which includes one of the gas pumps. Now, we just switched to a different angle and we see what appears to be a white four-door sedan, like a Chevy Malibu, stop at one of the gas pumps.

Q: Will you stop for a minute. Right here, does the window appear to be open?

A: Yeah, it appears to be open, yes, it does.

Q: Who is this getting out of the car?

A: That's clearly Mr. McIver exiting the vehicle.

Q: Okay.

A: Switch of camera angle, this is actually footage shot from inside of the store covering the front door. We see Mr. McIver enter the store wearing a white T-shirt with shorts.

A different camera angle, again, inside of the store. This camera angle is from behind the registers and captures Mr. McIver walking from the front door towards one of the cashiers.

Q: Did you retrieve transaction records from this location?

A: No, we did not. We, we received the video.

Q: You also ---

A: We got a record of the transaction, but not the actual receipt.

Q: Right. Whose card was used?

A: I believe ---

Q: I'm referring to State's Exhibit 32.

A: The name on the card was Amanda Fisher.

Q: Thank you.

Now, we're back at the gas pumps; is that correct?

A: Yeah, we've switched back to one of the exterior cameras. It's trained on the gas pumps in the parking lot of the store, and the time is 1:50 P.M. The time is still 1:50 P.M. and, again, this is just a different angle on the same parking lot, different camera footage.

We have what appears to be a white Chevy Malibu and clearly the driver has got a white T-shirt and ---

Q: And you can actually see through the open window?

A: Yes, we can.

Q: A lot of jockeying at the pump there?

A: Yes, it appears like the pumps are quite busy that day. On the extreme left side of the, the screen, we see what appears to be Mr. McIver exit the white Chevy Malibu.

Q: Who is visible at the far left of the screen there?

A: It appears Mr. McIver is actually pumping gas right now in the vehicle.

Q: What did he do right there?

A: He's got the trunk of the vehicle open and now he just closes it.

THE COURT: Timeframe?

A: It's 1:53 P.M. right now. 1:54, the car drives away from that particular pump.

At the same time, but at a different angle.

Q: Here, you see that the windows appear to be dark; is that correct?

A: Yes, sir.

Q: And what causes that?

A: Very possible it could be a window tint that's on the vehicle.

Q: Okay. What is window tint?

A: Window tinting is basically it's a process where they apply a plastic or a laminate on the interior of the windows to help reduce the UV rays and the sunlight into a vehicle or both.

Q: Is that one of those where you can see out, but you can't

see in?

A: Yes, sir.

Q: Thank you. Please be seated.

A: The same time frame with a different camera angle. We see Mr. McIver driving the vehicle around the parking lot.

Q: Is that the white car there, upper right?

A: Yeah, the upper corner of the screen it appears to be the vehicle.

Q: Is that it pulling off now?

A: Yes, it is.

Q: And pulling into traffic?

A: Yes, onto the highway.

Q: It's now traveling the same direction they came from or along the same route, I guess?

A: Along the same route, I can't say for certain which turn he made.

Q: Again, that was State's Exhibit 29, which was the Marsh -- Bennettsville, Bennettsville video.

Now, on State's 27 -- kind of dark in here for 50-year-old eyes. Let me draw your attention back to State's 59 and ask -- again, what is that?

A: 59, the top photograph appears to be Mr. McIver. The photograph is taken at the Lancer Motel. It's also got his truck in the picture. On the bottom part of the sheet, it's a photograph from the interior of the gas station at

Bennettsville.

Q: And in both those videos from the Lancer -- both of those video stills on State's 59, from the Lancer and from the Bennettsville store, does he appear to be wearing the same pants?

A: Yes, he does.

Q: How far down do they go?

A: I would guesstimate, maybe just at his knee or just below his knees.

Q: Okay. Now, what are we seeing here?

A: This is a -- this is a shot from the inside of the gas station located in Marshville, North Carolina.

Q: State's 60, is that a still from that video?

A: Yes, it is.

Q: Already in evidence?

A: Yes, sir.

Q: Has there been a change in his clothing?

A: Yes, it appears like he's wearing instead of the shorts, it appears like he's wearing more like a sweat pants type garment now.

Q: How far down on the legs on that one?

A: It's much closer to his ankles, much longer.

MR. DEBUSK: Your Honor, May I publish 59 and 60?

THE COURT: Yes, sir.

(REPORTER'S NOTE: State's 59 and 60 published. Audio not

transcribed herein.)

A: At the timestamp on the video we're looking at is ---

THE COURT: I didn't hear your answer.

MR. DEBUSK: We're waiting for the defendant to appear on video, Your Honor.

THE COURT: All right, sir.

BY MR. DEBUSK:

Q: Did you receive or retrieve a transaction receipt from this location?

A: Yes, we did.

Q: And whose card was used for that transaction?

A: The card name was in Mr. Jerry Fisher.

Q: Let me show you State's Exhibit 27.

A: Correction, it is actually Amanda Fisher.

Q: Amanda Fisher?

A: Yes, sir.

Q: That would be the victim's card used at this location?

A: Yes, sir.

Q: Here, what's happening?

A: Yeah, the timestamp on the video is right at 3:00 P.M., the video inside the gas station at Marshville, and Mr. McIver has just entered the store.

Q: Well, let's switch to State's Exhibit 26. We've just completed 27 and we're going to 26. What do we see here?

A: Again, this is footage from the interior of the gas

station in Marshville. The quality of video is not quite as good because this was recorded by a cell phone from the screen in the store, and it shows Mr. McIver swiping a credit card.

Q: What does this video show?

A: This is also video from the gas station at Marshville. It's one of the exterior cameras and it shows what appears to be the white Chevy Malibu parking beside the gas station. We see Mr. McIver exit the vehicle, and it appears like he walks inside the store.

Q: Does the window appear to be open again here?

A: Yes, it does.

Q: Thank you. I believe that's the last of the videos in the time series; is that correct?

A: Yes, sir.

Q: Please return to -- if I could refer back to State's Exhibit 50, the phone call log for McIver. Like me, you have glasses now?

A: Yes, sir.

Q: What time was Defendant McIver on video at the Marshville Sunoco?

A: He was video at the Marshville Sunoco right at 3:00 P.M.

Q: Based on the phone records, were there some phone calls made after, after 3:00 P.M.?

A: Yes, there was several calls made after 3:00 P.M.

Q: Who were the ones immediately after 3:00 P.M. made to?

A: Immediately after 3:00 P.M., there were calls made at 3:12, 3:30, and 3:41, all to Tyquajua.

Q: Okay. An exhibit avalanche here. State's 36, I believe authenticated by Detective Helms, was there Tyquajua that lived close to the area where the car was burned?

A: Yes, the exhibit -- it's got a dot on what appears to be a residence with Tyquajua's name on it.

Q: Do you know what time the car was reported burning?

A: I believe Charlotte-Mecklenburg received the call at 4:06 P.M.

Q: Okay. So, 3 o'clock at Marshville, 4:06 the car was reported burning. Right around 4:00, were there some more calls made by Mr. McIver?

A: Yes, sir.

Q: To whom?

A: At 4:03 P.M., 4:12, 4:13, 4:14, and 4:15, there were six calls -- seven calls made to Mr. Freeman.

Q: Okay. And after -- after those calls, did the calls to Mr. Freeman end at what time?

A: It appears like the last call to Mr. Freeman was at 4:52 P.M.

Q: Okay. Do we have all the -- yes, we do. Do you have any exhibits up there besides 50 and 26?

So, to summarize, the victim and her friend checked into the Holiday Sands North at what time?

A: They checked in at approximately, I believe it was 1:09 A.M. in the morning of Saturday, July the 9th.

Q: Okay. What time were they joined in their room by the defendants?

A: They're joined by the defendants at 2:52 A.M.

Q: Okay. What time were they seen on video with the defendants at the Holiday Sands in the parking lot around the defendant's truck?

A: They were seen in the parking lot near the defendant's truck at approximately 7:17 A.M.

Q: And what time did they depart all four of them together for the Lancer?

A: At approximately 8:06 A.M. in the morning.

Q: And what time was Ms. Fisher reported shot in the parking lot of the K&W parking lot, cafeteria?

A: The shooting occurred at 11:15 A.M.

Q: And what time did the defendants return to the Lancer?

A: They returned to the Lancer at 11:46 A.M.

Q: Okay. What time did they depart the Lancer?

A: They departed the Lancer at 12:01 P.M.

Q: And who was the Malibu?

A: Mr. McIver was in the Malibu.

Q: And what time did he arrive at the Bennettsville Shell?

A: He arrived in Bennettsville at 1:45 P.M.

Q: Based on your investigation, about how long does it take

to get from the Lancer to the Bennettsville Shell?

A: According to MapQuest, it was estimated at one hour and 38 minutes.

Q: And what time did he arrive at the Marshville Sunoco?

A: He arrived at the Marshville Sunoco right at 3:00 P.M.

Q: And about how long does it take to get from Bennettsville to Marshville?

A: Again, according to MapQuest, it's estimated at one hour and nine minutes.

Q: So, at Marshville at 3:00 and what time is the car burned?

A: 4:06 P.M.

Q: Okay. And about how long does it take to get from Marshville to Sally Lane?

A: Again, according to MapQuest, it's estimated at 37 minutes.

Q: Thank you. Please answer any questions defense might have.

THE COURT: All right, Mr. Bellamy?

MR. BELLAMY: May it please the Court, Your Honor, if I could just kind of set up here for just a second?

THE COURT: Yes, sir.

MR. BELLAMY: Your Honor, may I retrieve an item that's in evidence from the jury box?

THE COURT: Yes, sir.

CROSS EXAMINATION OF OWEN LYNAM BY MR. BELLAMY:

Q: Detective Lynam, you are the lead detective in this case as you've previously stated?

A: It turned out that way, yes, sir.

Q: It turned out. Good or bad for you, that's -- you ended up getting it?

A: Yes, sir.

Q: And as the lead detective, you sort of direct the resources available to you, whether it's North Myrtle Beach or the assistance of other agencies, Charlotte, or whoever, to assist you in gathering whatever evidence, correct?

A: Yes, sir.

Q: Okay. And to that end, this event occurred in the middle of the day in July 2016, correct?

A: Yes, sir.

Q: And, and I've been over this with others, but in a location which is an open business in front of the business, correct?

A: Yes, sir.

Q: Directly on Kings Highway or Business 17?

A: Yes, sir.

Q: And there are many open businesses around?

A: Yes, sir.

Q: So, we're not talking about an isolated area?

A: Correct.

Q: And you went, I believe, to Brunswick County to where Ms. Oxendine lives and that would considered much more rural type area, would it not?

A: Yes, sir.

Q: Did you make the trip or travel from Ms. Oxendine's location to where Ms. Fisher's family has a place?

A: No, I actually drove directly to Ms. Fisher's family's residence in Shallotte.

Q: Okay. But you know what I'm referring to ---

A: Yes, sir.

Q: --- it would've been the location Ms. Fisher would've went ---

A: Yes, sir.

Q: --- to retrieve items?

A: Yes, sir.

Q: So, and again, these are much more isolated areas, correct?

A: Yes, sir.

Q: And the travel between Ms. Fisher's location or where she was staying back to North Myrtle again, Shallotte back that's a -- there's a few businesses on that road until you get to Little River, but it's not that densely populated, is it?

A: Correct.

Q: Okay. Now, so in speaking to Ms. Oxendine and Ms. Fisher's stepdad who indicated there was a call at 9:11 A.M.,

correct?

A: Yes, sir.

Q: And that all was fine?

A: Yes, sir.

Q: And that she would be retrieving some clothes?

A: Yes, sir.

Q: And returning, which you now know through Ms. Oxendine with Mr. Freeman and Mr. McIver?

A: Yes, sir.

Q: And that there was no problem?

A: No, sir.

Q: And that Mr. Freeman had got this room, not just for Friday, like Ms. Oxendine had done or Ms. Fisher, I guess, had done, but they had it for two nights, correct?

A: Yes, sir.

Q: Saturday night as well?

A: Yes, sir.

Q: All right. And I believe, you've been in here the whole time, that's correct?

A: Yes, sir.

Q: Ms. Fisher was -- had an autopsy performed by Dr. Lee Proctor?

A: Yes, sir.

Q: And you were in here and heard his testimony that there was no physical injuries to her other than the obvious, which

was a gunshot wound indicating that she had been hit, beat, struck, cut, scratched, anything; is that correct?

A: Yes, sir.

Q: Okay. And you have a fairly good timeline, a really good timeline, quite frankly, of the shooting time, dispatched time, arrival time of Officer Jones, and with the video from the Lancer back at -- from K&W to the Lancer, right?

A: Yes, sir.

Q: All right. And there's only a couple of ways, quite frankly, you can go from those two points, K&W to Lancer, correct?

A: Correct.

Q: And I believe if you look closely enough, there may be a Google search on some phone as to how to do that, but did you time that out on -- you mentioned the 26 minutes, is that from K&W to there? I believe that's what you said.

A: Yes, from K&W to the Lancer.

Q: It could run longer based on that time of year?

A: Yes, sir.

Q: And based on what we saw with Officer Jones and there's a lot of traffic that day. Did you attempt to retrieve any business videos along the route that they would've had to have taken to see if the car shows up, to see who's driving or if anything was being thrown from the car or anything like that, because it's very densely business oriented all the way

through North Myrtle Beach. Did you do that?
A: No, we did not.
Q: Okay. Did you attempt to secure any DOT, Department of Transportation, or city cameras in North Myrtle Beach to ascertain who's driving or if the car may have turned left, right, to try to help you locate if anything had been disposed of?
A: I know that the city does not operate any cameras within the city limits, and regarding the DOT, those cameras do not actually record; it's live feed.
Q: Okay. Well, let's fast forward to North -- Myrtle Beach. They've got, I believe, in excess of 1,000 cameras?
A: Yes, sir.
Q: That virtually surround the Lancer Motel and you can't get in and out of Myrtle Beach without them knowing it. In addition, they also have patrol cars equipped with plate readers, these funky things you'll see on the trunk of the thing, it looks like a some sort of space thing, that can pick up and read license plates of every car, run it through a database to see if it matches the car, right?
A: Yes, sir.
Q: And the City of Myrtle Beach cooperates with y'all in investigations; do they not?
A: Yes, sir.
Q: As would you?

A: Yes, sir.

Q: Did you attempt, because you've got a pretty tight timeline, so, you're not looking for five days of video; you're looking from -- you would estimate the time from K&W to that first camera in Myrtle Beach. Did you retrieve and review videotape footage from the City of Myrtle Beach city cameras?

A: No, we did not.

Q: How about from any businesses that would have been on the route in the City of Myrtle Beach?

A: No, we did not.

Q: Okay. And again -- well, that would be redundant. If you didn't look at it, you wouldn't have seen them leaving the Lancer as well. Now, there were a number of items that were collected and taken as evidence in this case; is that correct?

A: Some items, yes, sir.

Q: Well, there are some items. For example, the -- retrieved from the car was a partially burned -- and I don't see -- oh, here it is, a partially burned pocketbook with some items in it, correct?

A: Yes, sir.

Q: Okay. But you also seized from the location at K&W -- you showed it to me earlier -- the bullet?

A: Yes, sir.

Q: Okay. That's in your possession over here, too, right?

A: Yes, sir.
Q: And you seized the victim's fingernails; is that correct?
A: Yes, sir.
Q: And put them in evidence; is that correct?
A: Yes, sir.
Q: Also, the Ford pickup truck in North Carolina, that was actually provided to you by Mr. McIver's uncle, is that not correct?
A: Yes, sir.
Q: Voluntarily?
A: Yes, sir.
Q: Okay. And the -- there -- was there a crime scene analysis done on that vehicle by Charlotte or by the North Myrtle Beach Police -- because Charlotte had it, correct?
A: Yeah, Charlotte Police Department Crime Scene Unit did process the vehicle.
Q: Okay. And in fact, they removed certain parts from the vehicle, did they not?
A: Yes, sir.
Q: And those parts were transferred to your custody?
A: They were taken directly to SLED labs in Columbia.
Q: Okay. Now, I believe, and I don't recall which, I believe it may've been Officer Vicks, is it Vicks; it's Vicks?
A: Yes.
Q: Okay. She testified as to taking photographs and other

things, and I believe she indicated that she did not attend the autopsy because I'd asked questions about the clothing, had it been retrieved. She indicated that Detective Sheets had attended the autopsy; is that your understanding as well as lead detective?

A: Yes, sir.

Q: And she didn't know, but were -- and I've been through everything and I don't seem to see it, but you tell me -- were her clothes taken from any kind of any kind of analysis for blood splatter or anything at all?

A: Yeah, her clothes were taken back to the station. As far as having analysis done on them, I don't recall them being sent off for any DNA analysis, no.

Q: Okay. Now, in terms of -- let's talk about crime scene analysis. Did you generate and you indicated to Solicitor DeBusk that you were looking at notes earlier?

A: Yes.

Q: And there's nothing wrong with that because that's the whole point because we're almost two years out and you've probably worked hundreds of cases in between and this is the way that helps you remember, right?

A: Yes, sir.

Q: All right. Did you do a crime scene report on your -- what you may have done with the truck in North Carolina?

A: It was included in my investigative notes.

Q: Did you do a separate report just for a crime scene analysis as to specifics, we swabbed this, we did this, we did that, or is it just a generalized?

A: The crime scene report was completed by Charlotte-Mecklenburg Crime Scene Unit.

Q: Okay. So, they did actually a report?

A: Yes, sir.

Q: Okay. Now, in terms of the Malibu, who would've done -- I know it was in Charlotte and I know the fire crowd was there. Did the fire crowd, just specifically, do an analysis and issue a report as to origin of fire, possible accelerate, things of that nature?

A: Yes, the Charlotte Fire Department did.

Q: Okay. Was there -- did the Charlotte Police Department do any other analysis on the vehicle?

A: Yes, at a later date, there was a -- another processing of the vehicle completed.

Q: Is that when -- when you refer to that, is that the November date that you speak of?

A: Yes, sir.

Q: Okay. Was that done by Charlotte?

A: Yes, sir.

Q: Okay. And that was where you were looking just as -- that's where you found the pocketbook?

A: Yes, sir.

Q: Okay. And just looking for items?
A: Yes, sir.
Q: There was no actual, like trying to find accelerate or doing anything structurally with the vehicle, it was just sifting through ashes?
A: Yes, sir.
Q: Okay. So, no other analysis done there?
A: No, sir.
Q: Okay. Was there a report generated by Charlotte on that vehicle?
A: Yes, sir.
Q: Okay. Now, in terms of -- let me ask you this and I -- I think I asked Detective Lynch this, North Myrtle Beach is a good department and all, but it's not the biggest so you can't have like Charlotte, you can't have just specialists in certain areas, because you just don't have it, but there are -- you have resources through the State Law Enforcement Division when you need some specialty person to help you; do you not?
A: Yes, sir.
Q: Okay. And one of those resources is crime scene people who that's all they do. You may do a little bit of crime scene, but you're also interviewing and any number of things. So, they would have someone that could come and help you at your -- at your request, right?

A: Yes, sir.
Q: All right. Did you ever request SLED to come and help with this crime scene in any way?
A: No, we did not.
Q: Now, in terms of Ms. Fisher, we know from Dr. Proctor, the entrance and exit and the approximate -- or not approximate but according to him and he -- I think he's right, the exact angle, up, down, left, right, front to back. Okay? But again, you did not seek the assistance of the State Law Enforcement Division to help you determine where that shot may've come from, did you?
A: No, we did not.
Q: And we know from the photograph of Ms. -- unfortunately, of Ms. Fisher's photograph, that the bullet ended up outside in the car, correct?
A: Correct.
Q: But it did not strike the windshield or any of the windows because there was no glass left at the scene, correct?
A: There was no glass located on the scene, no, sir.
Q: Now, in your investigation through phones and otherwise, you have not discovered any evidence that there had been any prior contact between Mr. McIver and either Ms. Oxendine or Ms. Fisher, did you?
A: No, we did not.
Q: And that your investigation also revealed that this

meeting was random, correct?

A: Correct.

Q: Which is not uncommon in Myrtle Beach on the Boulevard Boardwalk in July. Also, Detective Lynam, when you went on the 9th to North Carolina, you spoke to Ms. Oxendine?

A: Yes, I did.

Q: And she was able to provide you with photographs, excuse me, she had taken of Mr. Freeman and Mr. McIver on her cell phone?

A: Yes, sir.

Q: That Mr. Freeman and McIver were aware she was taking?

A: Yes, sir.

Q: And she was left alive and well, roughly an hour to an hour-and-a-half before whatever happened to Ms. Fisher, correct?

A: Correct.

Q: With pictures of them and names -- she had names of these people, correct?

A: Full name on one and partial on the second.

Q: And actually and also in her phone or maybe Ms. Fisher's phone, which you also have, but one of them also there was calls back and forth that night, right?

A: Yes, sir.

Q: So, they, at some point in time had exchanged phone numbers prior to when they actually show up on videotape going

into the Holiday Sands, right?

A: Yes, sir.

Q: Because the calls prior to that timestamp on Holiday Sands, right?

A: Yes.

Q: Okay. So, at some point, they walked down, must've -- we can assume hooked up and then they come on. Now, also, Ms. Oxendine gave you good information that led you to the Lancer Motel, too, right?

A: Yes, sir.

Q: In which there was no effort by anybody to hide the identity of who was staying in that room. There's a video -- I mean there's a photo ID presented as to who was staying in the room?

A: Correct.

Q: And it was a correct ID and the real name, nothing fraudulent about that. In addition, the Lancer is equipped with numerous cameras, right?

A: Yes, sir.

Q: Which are visible to anybody coming and going, correct?

A: Yes, sir.

Q: According to the manager. And likewise, at the Holiday Sands, there's probably a more sophisticated system there because it's a bigger operation, coming and going specifically to each room. They were there and coming and going from the

front door, correct?

A: Yes, sir.

Q: All right. And there was no reported difficulties at the Lancer, calls for security, anything of that nature of any problem by guests or anything in any room, was there?

A: No, sir.

Q: Likewise, at the Holiday Sands, the security on -- actually there overnight, there were no calls for security by other guests or anybody, correct?

A: Correct.

Q: Okay. And these videos that we have just watched from both motels, there is nothing that suggests that there's any violence, force, coercion, in them, is there?

A: No, sir.

Q: And in fact, everybody seems to be a willing participant, correct?

A: Correct.

Q: And including and leading up to the point they all get in the Malibu and leave, correct?

A: Correct.

Q: Now, there is one video, and I don't know how important it would be, but there may be a video. There's information they stopped somewhere between the Lancer and Ms. Oxendine to eat; is that not correct?

A: Yes, sir.

Q: At a Taco Bell?

A: Yes, sir.

Q: Did you ever try to see if anything happened there by way of video?

A: Yes, sir. I reached out to all the Taco Bells in the area and none of them -- I looked at their videos and nothing was captured at any of the stores.

Q: Okay. Now, let's talk about the cell phone video that was -- five videos were taken on Mr. McIver's phone. Now, first of all, and I believe Detective Lynch confirmed this, Mr. McIver's phone was retrieved by the Charlotte Police Department?

A: Yes, sir.

Q: And it was retrieved when Mr. McIver was taken voluntarily by a family member after y'all did a media release, did you not?

A: Yes, sir. We had Charlotte Police Department do a media release.

Q: With some photographs, anybody know anything about these people, they're wanted for questioning, suspects or people of interest, and you put it in the media so, hopefully people will say, hey, I know him, he lives down the road, which you did and they got a call, right?

A: Yes, sir.

Q: And they helped them develop names. And when that

happened, Mr. McIver went in to the Charlotte Police Department, correct?

A: Yes, sir.

Q: And when he went, he didn't leave his phone at home, he took it, correct?

A: Correct.

Q: And on that -- those videos, which you have watched, it's very evident that he's the one that's videoing, correct?

A: Correct.

Q: So, he goes there with full knowledge that he -- and this was within two or three days of this event, is it not correct, so about the 12th, some 12th, 13th, he goes in?

A: Yes, the 13th.

Q: So, knowing full well that the videos are there, phone calls are there, his whole life story is on that phone as evidenced by Detective Lynch and what he told us he could do with Cellebrite, correct?

A: Yes, sir.

Q: And on those videos, is there anything to indicate force, coercion, and there's audio and video on there, any talk of any plan, scheme, design, by anybody to do anything other than these people to party?

A: No, sir.

Q: And these people do party. There's the use of alcohol; is there not?

A: Yes, sir.

Q: The use of multiple drugs, is there not?

A: We didn't capture it on video.

Q: Not on the video. But based on your interview with Ms. Oxendine?

A: Yes, sir.

Q: And based on some toxicology that's proved to be true?

A: Yes, sir.

MR. BELLAMY: Court's indulgence, just one second.

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Let me ask you -- may I approach the witness?

THE COURT: Yes, sir.

Q: State's 60 is Mr. McIver -- and I forget that's Marshville, is it not?

A: Yes, sir.

Q: Okay. He has a white T-shirt on?

A: Yes, sir.

Q: And State's 59, that would be Mr. McIver as -- is that as he's preparing to leave or coming back to the Lancer at roughly noon?

A: That appears this is when he's arriving back at the Lancer, yeah.

Q: And you can see the Malibu -- and the truck in the car?

A: Yes, sir.

Q: And then the bottom photograph is Bennettsville with him as well, correct?

A: Correct.

Q: All right. Now, and again the video is in evidence, but in your review of the videos, Mr. McIver appears to be wearing the same shirt when he leaves to go to Shallotte, when he returns from Shallotte, then when he leaves to go to Bennettsville, Marshville, Charlotte, does he not?

A: Yes, sir.

Q: And the last still we have in Marshville, 60, does there appear to be any blood of any kind on that white T-shirt?

A: No, sir.

Q: And did you interview the clerks at -- because we haven't heard from them, they were not here for whatever reason, at either location we just had the custodian of some records to get the videos in, but we didn't hear from the clerks. You have no indication in your investigation that any of them saw any blood, do you?

A: They were interviewed and they did not report seeing any blood.

Q: Okay. And the photographic evidence confirms that, correct?

A: Correct.

MR. BELLAMY: Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Do you know if Mr. McIver is left or right-handed?

A: No, sir.

Q: Do you know if Mr. Freeman is left or right-handed?

A: No, sir.

Q: Did you, Detective Lynam, through the use of -- is it Cellebrite or Cellebrite, I don't know?

A: I pronounce it Cellebrite.

Q: Cellebrite, okay. Through the use of that, which you obtained a lot of information about Mr. McIver including different people he may have talked to.

Solicitor DeBusk, do you have, which one was the phone, which number was that?

MR. DEBUSK: 50, I believe.

MR. BELLAMY: Is that -- where would that be, Solicitor?

MR. DEBUSK: It's ---

MR. BELLAMY: Here, okay. Is this okay?

COURT REPORTER: Yeah.

BY MR. BELLAMY:

Q: I'll show you what's been marked as State's 50 and show you this. These are the phone records of Mr. -- the call log of Mr. McIver; is that correct?

A: That's correct.

Q: And there are calls on there, some which don't appear to be talking, that are 10 or 15 seconds, the way Detective Lynch

has indicated that's probably voice mail or either a missed call, correct?

A: Correct.

Q: But there are calls to other people on there, somebody by the name of Heath; is that correct?

A: Heath?

Q: H-E-A-T-H?

A: Yes, sir, I see one, two, three, four, five, just on this page.

Q: Just on that page?

A: Yes, sir.

Q: And that would've been around the time this event occurred or after, correct?

A: Yes, that's correct.

Q: And have you talked to Heath to determine what may or may not have been said by Mr. McIver?

A: No, sir.

Q: Okay. There's a -- and on this page, and I'm gonna let you look at, on 4:17 and 4:16, there are calls and this would be at the top and it's not highlighted, to Floyd's; is that correct, three separate calls?

A: Yes, sir.

Q: And did you reach out to anybody there?

A: No, sir.

Q: Okay. Now, looking forward from approximately 4:52 to

6:44, there are 20 either received or -- you don't have a copy of this that we could ---

A: No.

Q: --- so we could do it at the same time.

A: Yeah, mine is much different.

Q: If I hold it like this, could you look at it and I'll just kinda go through it?

A: Uh-huh, (affirmative response). Yes, sir.

Q: Can you see that?

A: Yes, sir.

Q: Okay. My client's phone -- two calls from 4:52 to Showtime. I don't know if that's a nickname or a business, three calls, four calls, five calls, correct?

A: Correct.

Q: And to Floyd's, correct?

A: Correct.

Q: And to Devin, correct?

A: Correct.

Q: And to Napria (spelled phonetically); is that ---

A: Yeah. Yes, sir.

Q: Then again to Tyquajua, correct?

A: Yes, sir.

Q: Then to Showtime?

A: Yes, sir.

Q: Then to Napria, okay?

A: Yes, sir.
Q: And somebody named Big T at 6:44 P.M.?
A: Yes, sir.
Q: Okay. And we can continue on over here. There are more calls later on 7/9 going to the evening to Big T, correct?
A: Correct.
Q: Killa (spelled phonetically)?
A: Correct.
Q: Smurf? Marian?
A: Correct.
Q: Yayo, I don't know what that -- Y-A-Y-O?
A: Yes, sir.
Q: Okay. So, there are more calls and that goes on to 10:27 P.M., correct?
A: Yes, sir.
Q: Okay. And on this page, there's a number of them, I just want to highlight and point out the different people that we have not talked about, but there are other calls to people we've already talked about. Then we have an addition to that, Jazza (spelled phonetically), again, correct?
A: Yes, sir.
Q: Now we're talking about 3:00 in the morning on the 10th, and these are back and forth and the jury will have these to review, but and it goes on and on and on and on, Keybo (spelled phonetically) is a new one.

A: Correct.
Q: And Alicia, Felicia, Iecia, Delmia, (spelled phonetically), anyhow, a lot of them?
A: Yes, sir.
Q: And of those, again I don't know how many numbers of different people that I had on there, how many of those have you contacted to determine or ask what in the world were you talking to Mr. McIver about?
A: I haven't called any of those numbers.
Q: Okay. Now, likewise, with Mr. Freeman's phone, excuse me, phone records, those were received by North Myrtle Beach Police on July 18th of 2016; is that correct, of your information?
A: From Detective Lynch's testimony, yes, sir.
Q: And again, I -- I'm not here to say anything bad about Will Lynch. Things happen, things get misplaced, we're all human, but for whatever reason, those were never investigated in terms of looking at who Mr. Freeman may have called to determine who he talked to and what he may've said to them; is that correct?
A: Correct.
Q: All right.
Court's indulgence?
THE COURT: Yes, sir.
Q: Detective Lynam, at the end of the day, you don't know

who pulled that trigger in that car, do you?

A: No, sir; I do not.

Q: But we do know that somebody in that car did not; isn't that right?

A: That would be my assumption, yes, sir.

Q: There was one shot and there's two people. We can assume both of them weren't pulling the trigger and I hate to assume, but I think common sense tells us that, so one of these people did not and we -- and we're fairly certain of that and one did?

A: Yes, sir.

Q: And prior to 11:15 on 7/9/2016, do you have anything -- evidence from any cell phone, overheard conversation, that my client, Nicholas McIver, entered -- voluntarily knew and voluntarily entered into an agreement, plan, scheme, design, conspiracy, to commit any crime that day beforehand?

A: No, sir.

MR. BELLAMY: Court's indulgence?

THE COURT: Yes, sir.

BY MR. BELLAMY:

Q: Thank you, Detective Lynam. Answer any other questions. Thank you.

THE COURT: All right, Mr. Spratlin?

MR. SPRATLIN: Thank you, Your Honor.

CROSS EXAMINATION OF OWEN LYNAM BY MR. SPRATLIN:

Q: I'll try to make this as brief as I can, Detective Lynam. Now, you talked a lot about Tabetha Oxendine, correct?
A: Yes, sir.
Q: She was kind of one of the key witnesses in your case, correct?
A: Yes, sir.
Q: A true -- this case would not be complete without hearing Tabetha Oxendine, correct?
A: Not as quickly.
Q: Now, the videos you referenced earlier that Detective Lynch got off the phone that the solicitor asked you about, those videos feature Tabetha Oxendine having intercourse with my client, correct?
A: Correct.
Q: It did not feature the victim having any sort of intercourse with my client?
A: Correct.
Q: It didn't show the victim doing any kind of sexual act at all?
A: Correct.
Q: Okay. And there was again, nothing illegal about what you saw on those cell phone videos off of Mr. McIver's phone, correct?
A: Correct.
Q: There wasn't any kind of force, there wasn't any kind of

abuse going on?

A: Correct.

Q: Everything seemed just to be consensual interaction between two adults, correct?

A: Correct.

Q: Regarding the other videos we watched, nothing we saw on any of those videos up and until -- well, let me go back. The Holiday Sands video didn't really observe anything illegal in any of those videos, right?

A: Right.

Q: Lancer Motel, didn't observe anything illegal on any of those videos, correct?

A: Correct.

Q: The -- regarding the gas station video that Solicitor DeBusk played where the credit card was being used, my client, Terrell Freeman, was not on any of those videos, correct?

A: Correct.

Q: In fact, there is no evidence that Terrell Freeman used or took anything of Amanda Fisher's that day, right?

A: Correct.

Q: He wasn't using the cards, right?

A: Correct.

Q: Wasn't -- she had her jewelry on her still, whatever jewelry she had, right?

A: Yes, sir.

Q: So, no evidence of any kind of gain that my client got out of the unfortunate death of Ms. Fisher, right?
A: Correct.
Q: Now, that pickup truck that my client left in, whose vehicle was that; that was Nicholas McIver's, right?
A: The vehicle in fact hadn't been registered yet. It was recently purchased. It's our understanding that it was Mr. McIver's ---
Q: Okay.
A: --- we can clarify that.
Q: Not my client's as far as you know?
A: Correct.
Q: My client, when he met Tabetha Oxendine and Amanda Fisher at Myrtle Beach, he gave his real name, right?
A: Yes, sir.
Q: Had no issues with locating him or finding out his name ---
A: Yes, sir.
Q: --- right? As Mr. Bellamy already asked, but I will ask again just to reiterate, when he checked into the Lancer Motel, he gave his real name, right?
A: Yes, sir.
Q: Didn't give a fake name, didn't give a fake ID or anything like that, right?
A: Yes, sir.

Q: There is nothing on any of the evidence that you turned up in the entire investigation that my client, Terrell Freeman, tried to pretend that he was somebody else here at the beach, right?

A: Correct.

Q: There is nothing that shows that he tried to hide his identity or avoid being seen by people, right?

A: Correct.

Q: In fact, he's all over all sorts of cameras, right?

A: Yes, sir. Yes, sir.

Q: Now, my client was on video driving the truck back to North -- or driving the truck away from the Lancer at least, right?

A: Yes, sir.

Q: Presumably to North Carolina where the truck was recovered, right?

A: Yes, sir.

Q: Which is also where Defendant McIver lived, right?

A: Yes, sir.

Q: So, driving the truck back home to where McIver lived?

A: Yes, sir.

Q: Not my client's truck, right?

A: Correct.

Q: Now, we have heard a lot about what you got off of Nicholas McIver's phone; we've seen phone records, right?

A: Yes, sir.
Q: Some sort of analytics thing which shows who he called or talked to the most, right?
A: Yes, sir.
Q: But you never got any of that off of my client's phone because you never had possession of my client's phone, right?
A: Correct.
Q: To your knowledge, did yourself or anyone at your request, execute a search warrant at my client's house to try to get the phone?
A: No, we did not.
Q: That's something as a law enforcement agency you can do, you can get search warrants to get evidence in crimes, right?
A: Yes, sir.
Q: It's not that hard, you go to a magistrate judge, tell them why you want it, and gives you a warrant to go get it, right?
A: Yes, sir.
Q: Now, Detective Bellamy -- Mr. Bellamy, excuse me, he asked you some questions about the Myrtle Beach cameras. Myrtle Beach is the next city over from North Myrtle Beach, right?
A: Yes, sir.
Q: In fact, they have what they refer to, I believe they call it Milestone; are you familiar with that at all?

A: No, sir.
Q: Okay. But they have a camera system, right, a pretty expensive camera system they put in a couple of years ago, were you aware of that?
A: Yes, sir.
Q: All right. High tech cameras, great resolution, right?
A: Yes, sir.
Q: Have you ever seen it in action?
A: Yes, sir.
Q: All right. It can show stuff as clear as if you're standing there looking at it sometimes, right?
A: Yes, sir.
Q: The vehicle, when it left the K&W parking lot, and it turned southbound, right, or in order to get to the Lancer Motel, eventually would've had to go south, right?
A: Yes.
Q: But you ever reach out to Myrtle Beach Police Department to see what was on their high tech very expensive camera system, did you?
A: Yes, I did.
Q: You did; was there anything on it?
A: They just had a snapshot of the victim's car in the vicinity of the Lancer Motel, but it was never picked up on their system again.
Q: Never picked up on their sensor again, but you did look

into that?
A: Yes, sir.
Q: All right. Now, in all the videos we watched of the Lancer and the Holiday Sands, my client and Amanda Fisher, the victim in this case, are together for all of three minutes; does that sound about right, alone together, I should say, for all of about three minutes between 6:17 and 6:20 in the morning. Does that sound about right?
A: Yes, sir.
Q: That was after Tabetha Oxendine left the room, right?
A: Yes, sir.
Q: And Nicholas McIver had also left the room, right?
A: Yes, sir.
Q: And the other videos that were on the phone were made after that, right?
A: Yes, sir.
Q: Assumingly at another location, correct?
A: Yes, sir.
Q: And then my client left at 6:20 A.M., right?
A: Yes, sir.
Q: So, three minutes alone with Amanda Fisher, and she was perfectly fine after those three minutes as far as you know, right?
A: As far as we know, yes, sir.
Q: Didn't show any signs of trauma, no injuries, no issues

that you're aware of?

A: Correct.

Q: Now, you said that you were involved somewhat in the investigation regarding the burned vehicle up in North Carolina, right?

A: Yes, sir.

Q: This was, I think you said, was it three days after or four days after, Detective Lynam?

A: It was actually on November the 16th.

Q: November the 6th, so several months later?

A: Yes, sir.

Q: We're talking August -- we're talking most of July, August, September, October, so at least four months, maybe a little bit more than that?

A: Yes, sir.

Q: And that's the first time that that car was thoroughly processed or a North Myrtle Beach officer looked at it, correct?

A: Yes, sir.

Q: But it was Charlotte-Mecklenburg Police Department who looked at it, right?

A: Yes, sir.

Q: It wasn't sent to the South Carolina Law Enforcement Division for processing, there weren't any scouring for bullet holes or anything like that that you're aware of?

A: Not previous to that, no.
Q: Okay. In fact, South Carolina Law Enforcement Division wasn't called in to do anything regarding processing of that vehicle to your knowledge?
A: Correct.
Q: In all the videos, all the evidence we've seen, there does not appear to be any animosity between Tabetha Oxendine, Amanda Fisher, my client, and Nichols McIver, does there?
A: No, there does not.
Q: So, I'll ask you the same question Mr. Bellamy asked you at the end of his, you do not have any evidence to show that my client, prior to the instant that that bullet went through Amanda Fisher's head, intended to do her any harm, do you?
A: No, I do not.
Q: And you have no evidence that my client put that bullet through her head with his own hands, do you?
A: No, I do not.
Q: Thank you. I have no further questions.
THE COURT: All right. Redirect?
MR. DEBUSK: Thank you, Your Honor.

REDIRECT EXAMINATION OF OWEN LYNAM BY MR. DEBUSK:

Q: Up here in Shallotte where the victim lived, that's still a neighborhood, isn't it, there's still houses around, it's just not as densely populated, is it?
A: Correct.

Q: In fact, if you look close, you can see all the streets with houses on them?
A: Yes, sir.
Q: What was your crime scene here besides a dead woman in the parking lot, a car that had been burned up so much that the glass was melted, and a truck that wasn't at the crime scene?
A: Basically, the car would've been what we'd call a primary crime scene. That's where the crime actually occurred.
Q: That car was burned so badly that the glass had melted, right?
A: Yes, sir.
Q: And covered with ashes and soot?
A: Yes, sir.
Q: Could you find any blood in that car?
A: No, sir.
Q: Do you think there would've been blood in the car if somebody had been shot through the head?
A: Yes, sir.
Q: But it had been burned up?
A: Yes, sir.
Q: And there was no glass?
A: No, sir.
Q: And the truck, the truck wasn't at the scene of the shooting, was it?

A: No, sir.
Q: Okay. Now, is it possible that the bullet could've passed through Amanda's head, breaking bone in two places and not had enough energy to go all the way through a window? It could've hit the window but not had enough energy to go all the way through?
A: It's possible the velocity would've decreased enough not to break the window.
Q: And we know that the -- we have a picture of it that the jacket of the bullet was with Amanda when she was found?
A: Yes, sir.
Q: And you saw the defendant in State's 59 and 60, that's the defendant McIver, he had a white T-shirt. Can you tell if it's the same white T-shirt?
A: Not with certainty, no, sir.
Q: But can you tell for a fact the pants are changed?
A: You can tell that the pants are different, yes, sir.
Q: So, he did change clothing to some extent?
A: Definitely his pants, yes.
Q: The clerk at Marshville, for instance, she wasn't here, right?
A: Not at the trial, no, sir.
Q: Wasn't testimony that she had just had triple bypass?
A: Yes, sir.
Q: So, she's not able to testify?

A: Correct.
Q: Any doubt that the videos show that there were two people getting out of the victim's car at the Lancer?
A: No, sir.
Q: Any doubt that that car was taken from Amanda after she had been shot and killed?
A: No, sir.
Q: So, they were in possession of a stolen vehicle at that scene?
A: Yes, sir.
Q: That in itself could be a felony conviction -- crime, right?
A: Yes, sir.
Q: You have some calls to the Floyd's Restaurant. Who worked at Floyd's Restaurant with Defendant McIver?
A: Mr. Freeman did.
Q: And right after they left the Lancer, after Amanda had been shot, who did Nicholas McIver burn up the phone to calling repeatedly as soon as he left the Lancer?
A: From the phone records, he called Terrell Freeman.
Q: Now, do both of the defendants have to pull the trigger to both be guilty of murder?
MR. BELLAMY: Your Honor, objection ---
MR. SPRATLIN: Objection.
THE COURT: That calls for a conclusion of law.

MR. DEBUSK: Thank you, Your Honor.

BY MR. DEBUSK:

Q: Now, is it -- this unfortunate death that Mr. Spratlin referred to, that was actually a contact wound to the head, an execution shot, wasn't it?

A: Yes, sir.

Q: And that car between the time it is initially processed by the arson investigators at Charlotte, that white car, the Malibu, didn't you say it was wrapped in plastic and preserved until it was unwrapped and processed in your presence?

A: Yes, sir.

Q: And again, you found it completely burned up?

A: Yes, sir.

Q: There's been a lot of testimony about the lack of animosity between Amanda and the defendants, correct?

A: Correct.

Q: Would Amanda have let them ride to North Carolina with her if ---

MR. BELLAMY: Your Honor, I would object. That calls for speculation.

THE COURT: That calls for speculation.

MR. DEBUSK: Thank you.

THE COURT: Anything on the questions just asked by the solicitor, Mr. Bellamy?

MR. BELLAMY: Yes, sir, just briefly.

RECROSS EXAMINATION OF OWEN LYNAM BY MR. BELLAMY:

Q: Detective Lynam, Solicitor DeBusk asked you about the velocity of a bullet, correct?

A: Yes, sir.

Q: You are not an expert in ballistics, are you?

A: No, sir.

Q: Never been trained, qualified at all?

A: No, sir.

Q: But there are people who are, correct?

A: Yes, sir.

Q: And as I mentioned before, the State Law Enforcement Division has people who can come in -- and, in fact, they, they took possession of that bullet, didn't they?

A: Yes, sir, it was sent off for analysis.

Q: Analysis. And someone could come in here and tell us the caliber, the type, and, and what would or wouldn't happen in terms of the impact to Ms. Fisher and what would have happened then, correct? Don't you believe that's possible?

A: With that particular bullet?

Q: Yes, we could -- an expert could give us -- maybe give us an opinion better than yours -- and I'm not saying your opinion is not just good, Owen -- but there are people trained that could tell us more, right?

A: We were heading in that direction, but the results we got from the analysis ---

Q: I don't want you to talk about results.

THE COURT: Well, Mr. Bellamy, you asked the question.

Q: Go ahead?

A: With the results we got from the analysis, there were, I believe, six different possibilities of the type and caliber of weapon that could've fired it.

Q: I guess what I'm asking about is, on the velocity, there's no report on that?

A: No, sir.

Q: And you did not seek one from anybody, did you?

A: Again, we did not request one based on the analysis results we got back from the ---

Q: Well, the analysis you got back was that it could be one of six types of bullet or fired from six types of weapon?

A: Yes, sir.

Q: Did you reach out then and say, hey, it could've been one of these six, tell me about velocity?

A: No, sir.

Q: Thank you. I don't have anything else.

THE COURT: Mr. Spratlin?

RECROSS EXAMINATIN OF OWEN LYNAM BY MR. SPRATLIN:

Q: Detective Lynam, very, very briefly. Solicitor DeBusk was questioning on his redirect, you have no evidence that that car was taken from the scene of K&W and Amanda Fisher's possession until after that bullet went through her head,

right?

A: Correct.

Q: Thank you.

THE COURT: Brand new matter brought up by those questions, Solicitor?

MR. DEBUSK: None, Your Honor.

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

MR. LYNAM: Thank you.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, we're gonna stop for the evening. We're gonna resume again tomorrow morning at 9:30. My expectation is that we'll certainly come to a point tomorrow where this case will be given to you for your deliberations and unanimous decision in this particular matter.

Please understand, again, I'm telling you something I've told you every single time. You can't talk about the case when you go home, can't let anybody talk to you about it, you can't do any research, can't do any investigation, don't talk about the case, you'll have all the time you deem necessary to talk about it when I give it to you for your unanimous decision in all of these matters. See you back tomorrow morning at 9:30.

Thank you very much.

(REPORTER'S NOTE: Jury exits courtroom. The following takes

place outside the presence of the jury.)

THE COURT: Solicitor, matters for the Court at this point in time?

MR. DEBUSK: No, thank you, Your Honor.

THE COURT: From the defense, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: Mr. Spratlin?

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. All right, gentlemen, I'll see you back tomorrow morning 9:30. Expectation is obviously that we'll be finishing up the testimony. So, I'll see y'all and we'll deal the matters as they come up.

Thank you.

MR. BELLAMY: Thank you, Judge.

RECESS - END OF DAY THREE

*******OFF THE RECORD*******

(On the Record.)

APRIL 26, 2018 - DAY FOUR

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: All right. Is the state ready for the jury to come in?

MR. DEBUSK: Yes, Your Honor.

THE COURT: And the -- your clients -- oh, the clients

are not -- the defendants are not in.

MR. SPRATLIN: Yes, Your Honor. They're bringing them out right now.

THE COURT: Okay.

MR. DEBUSK: Your Honor, there's one piece of evidence that I need to place -- move into evidence before the jury that I forgot to yesterday. It's State's 51, I believe it was, which was a list of the times of the cell phone videos.

THE COURT: All right. Hold on one second.

All right. So, State's?

MR. DEBUSK: 51, Your Honor.

THE COURT: 51, all right. And let's see, who is it -- which witness is it that identified that particular document?

MR. DEBUSK: Will Lynch, Your Honor.

THE COURT: All right. Is there any objection to that from the -- from your client, Mr. Bellamy?

MR. BELLAMY: No, sir, Your Honor.

THE COURT: All right.

And, Mr. Spratlin?

MR. SPRATLIN: No, Your Honor, I think they laid a proper foundation.

THE COURT: All right, sir. So Defendant's -- I'm sorry -- State's 51 is in evidence without objection.

MR. DEBUSK: Do I need to move before the jury again, Your Honor, or is it ---

THE COURT: No, sir, it's in evidence now.

MR. DEBUSK: Thank you, Your Honor.

THE COURT: It's in evidence now.

MR. DEBUSK: Thank you, Your Honor.

STATE'S EXHIBIT NUMBER 51

ADMITTED INTO EVIDENCE

THE COURT: So, with that, is the state ready for the jury to come in?

MR. DEBUSK: Yes, Your Honor.

THE COURT: All right.

And Mr. Bellamy?

MR. BELLAMY: Yes, sir, Your Honor.

THE COURT: And Mr. Spratlin?

MR. SPRATLIN: Yes, Your Honor.

THE COURT: All right. Very good.

All right. Ask the jury to come in.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, solicitor, next witness, please.

MR. DEBUSK: Your Honor, the state calls Tabetha Oxendine.

THE COURT: All right.

All right, ma'am, come all the way around right up here to where the clerk's representative is, please.

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

TABETHA OXENDINE, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MS. OXENDINE: Tabetha Oxendine, T-A-B-E-T-H-A, O-X-E-N-D-I-N-E.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF TABETHA OXENDINE BY MR. DEBUSK:

Q: Good morning, Ms. Oxendine. Where do you live?

A: Close to Charlotte, North Carolina.

Q: Okay. You work; you have a job?

A: Yeah, I work at Dollar General.

Q: Okay. Do you have any kids?

A: I have two.

Q: Okay. Did you know Amanda Fisher?

A: She was my cousin.

Q: Were the two of you close?

A: Yes.

Q: What was the age difference between the two of you?

A: We were really close in age. I think she was a year older than me.

Q: Where were you on July 8th of 2016?

A: We were at a motel in Myrtle Beach, me and my cousin.

Q: Where were you before you went to that motel?

A: At my aunt's beach house.

Q: I'm showing State's Exhibit 61 and ask if you recognize that.

A: Yeah, that's my aunt's beach house.

MR. DEBUSK: The state would move 61 into evidence.

THE COURT: Any objection?

MR. BELLAMY: No, sir, Your Honor.

MR. SPRATLIN: No, Your Honor.

THE COURT: All right. It's in evidence without objection, you may proceed.

STATE'S EXHIBIT NUMBER 61

ADMITTED INTO EVIDENCE

MR. DEBUSK: May I publish, Your Honor?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: Is that where you were staying, at the house?

A: Yes, sir.

Q: Where is it?

A: It's in North Carolina by Oak Island.

Q: Okay. Let me show you State's Exhibit 4. Is it up here in the Supply area?

A: Yes, sir; yes, sir.

Q: Who was staying there with you?

A: My mom, my dad, my sister, and brother-in-law, my kids.

Q: Were you down here on vacation?

A: Yes, sir.

Q: Where was Amanda at that time; where was she living?

A: At her grandparents' beach house.

Q: Is that also in ---
A: Yes.
Q: Now, on July 8th, what were you doing?
A: We were hanging out at the beach and stuff with the family.
Q: Okay. Down at Holden Beach, the nearest beach?
A: Yes.
Q: Okay. When you finished at the beach, what did you do?
A: We went back to my aunt's beach house and went swimming for a little bit.
Q: What were you swimming in?
A: The pool.
Q: There's a pool?
A: Yes, in the back.
Q: Okay. Did you have plans for that weekend or for the rest of that night?
A: Yes, me and Amanda was gonna go to Myrtle Beach and get a room to hang out for my birthday.
Q: Okay. Did you have hotel reservations?
A: Yeah.
Q: Who took care of that?
A: Amanda.
Q: How were you gonna get down there?
A: Amanda, in her car.
Q: She was gonna drive?

A: Yes.
Q: Do you remember what kind of car she had?
A: A white car, I don't know the model; I forgot.
Q: I show you State's Exhibit 1 and ask if you recognize that?
A: Yes, that's her car.
Q: Why were you just taking one car?
A: Yeah, just one car, cause I don't have a vehicle.
Q: Okay. When did you leave for Myrtle Beach?
A: It was around like 12ish maybe.
Q: Midnight?
A: Yeah.
Q: Okay. That would've been midnight between the Friday the 8th and Saturday the 9th?
A: Yes, sir.
Q: Okay. Do you remember where you went?
A: I forgot the name of the motel room.
Q: Do you remember the name of the hotel?
A: No, it's Sands-something.
Q: Okay. I show you State's 21 and 24 and ask if you recognize those.
A: Yes, sir.
Q: What are they?
A: That's where we stayed at and that's where our room.
Q: Was anybody gonna stay in that room except you and

Amanda?

A: No, there was no plans of nobody staying.

Q: Okay. How long were you planning on staying?

A: Just until the next morning.

Q: Did you later change your plans about staying?

A: Yeah, we were gonna go back and hang out with family at the beach and then go back later on.

Q: For Saturday night?

A: Yes, sir.

Q: Were the two of you together when you checked in?

A: Yes, sir.

Q: And, of course, Amanda made the reservation, she was the one who checked in?

A: Yes.

Q: Do you remember roughly what time you checked in?

A: Around 1 o'clock.

Q: Okay. Do you remember where Amanda parked?

A: It was away from the room. We had to walk to the car.

Q: Okay. Not right in front of the hotel?

A: No.

Q: Do you remember what number room you stayed in?

A: 420 on the 4th floor.

Q: Okay. What did y'all do after you checked in?

A: We walked on the balcony and stood out there.

Q: Anything happen when you were out on the balcony?

A: That's when we met the two guys.
Q: So, you were on the 4th floor and you talked to them down on the ground?
A: Yes.
Q: Did you talk to each other?
A: Yes.
Q: Did you exchange phone numbers?
A: Yes, sir.
Q: What did you do after that?
A: Then we walked downstairs and went on the beach.
Q: So, you walked out on the beach. What happened after you walked on the beach?
A: Then we all went back to the room. We met up with them and went to the room.
Q: You met with them on the beach?
A: Yeah.
Q: You already had phone contact, I guess?
A: Yes.
Q: Okay. When you went up to the room, what did you do?
A: Just hung out in the room and got to know each other.
Q: Uh-huh, (affirmative response). Was there any alcohol or drug use?
A: Yes.
Q: Who was participating?
A: Everybody.

Q: Did you know either of these individuals?
A: No.
Q: You just met them that night?
A: Yes, sir.
Q: Did either one say they knew you?
A: They -- Nick said that he went to school with me at Sun Valley.
Q: By Nick you mean Nicholas McIver?
A: Yes.
Q: Did you go to school with him at Sun Valley?
A: No.
Q: Did you learn their names?
A: I -- we learned that his -- the Terrell, but he told us his name was Jacob.
Q: So, Terrell would be Terrell Freeman?
A: Yes.
Q: That's the defendant sitting at the end of the table there?
A: Yes. And he told us his name was Jacob.
Q: Did you find out where they were from?
A: Charlotte, North Carolina.
Q: Okay. Is it safe to say you were hitting it off and you were having a good time?
A: Yes.
Q: Okay. During those early morning hours of Saturday,

where did you spend most of your time?

A: In our room.

Q: In your room. Did there come a time when you would leave from time to time?

A: Yes.

Q: Were you spending more time with one or the other of the two defendants?

A: With Freeman.

Q: Freeman. Was Amanda spending more time with one or the other?

A: Jacob.

Q: Okay. Now, let me ask you, did there come a time when there was some sexual activity with you and Mr. Freeman?

A: Yes, sir.

Q: Was that filmed?

A: That I didn't know about.

Q: Did you later learn that it was filmed?

A: Yes.

Q: Was that done with your approval?

A: No.

Q: Okay. That was a private moment between you and Mr. Freeman?

A: Yes.

Q: Who took the video, do you know?

A: I guess McIver.

Q: When that was happening, where was Amanda?

A: In her room, cause it was split rooms.

Q: Go back to State's 24. Does this show how the rooms were separated?

A: Yes.

Q: There was just a door between them?

A: Yes, sir.

MR. DEBUSK: May I publish?

THE COURT: Yes, sir.

BY MR. DEBUSK:

Q: So, when that -- that sexual activity first happened in the room, were you and Amanda ---

A: Yes, sir.

Q: Okay. Did there come a time when you went over to the hotel with the other ones were ---

A: Yes.

Q: Was there some more sexual activity?

A: Yes, sir.

Q: More videos?

A: Yes.

Q: Did you approve of it that time?

A: No.

Q: How long did you stay over at the other hotel?

A: Not for long.

Q: When you came back it was it already light?

A: Yes.
Q: Where was Amanda when ---
A: At our room.
Q: So, she stayed at the Holiday Sands Motel ---
A: Yes, sir.
Q: --- and you went over alone to the other ---
A: Yes, sir.
Q: When did you see Amanda again?
A: When I got back to the room.
Q: Okay. And once you got back to the room and reunited with Amanda, what did y'all do?
A: We got ready to leave to take me back to my aunt's beach house.
Q: Okay. What did you and Amanda have planned for that day?
A: To go hang out with family on the beach and then go back to Myrtle Beach later on.
Q: Okay. So, and why did you have to go back to North Carolina?
A: To get my kids and be with family at the beach.
Q: It was a family vacation?
A: Yes.
Q: Okay. How were you gonna get back to your kids in North Carolina?
A: Amanda.
Q: We're talking about up in Supply right?

A: Yes, sir.

Q: You were going to Supply, okay. When did you see the defendants again?

A: I didn't. Oh, when did I see them again?

Q: After you and Amanda left the room at the ---

A: We went to the car and then we rode over to their room where they were staying.

Q: Did you wait in the parking lot?

A: Yes, sir.

Q: When you walked downstairs they were ---

A: There, yes.

Q: In fact, Mr. Freeman, did he not walk up to you and ---

A: Yes.

Q: He embraced him, didn't you?

A: Uh-huh, (affirmative response).

Q: You had your arms around him?

A: Yes, sir.

Q: Later on, were you in the car with him when you went to North Carolina?

A: Yes, sir.

Q: How were you -- were you close to him then?

A: Yes, I was sleeping on his lap.

Q: You were sleeping on his lap. During that time, when you hugged him and you were sleeping on his lap, did he have a gun on him?

A: No, sir.
Q: Would you have known it if he did?
A: Yes, sir.
Q: Now let's step back to the -- when they met you in the parking lot, did y'all have a discussion there in the parking lot?
A: Yes.
Q: You and Amanda, I think you already said were heading out to go to North -- to Supply, to take you back there, right?
A: Yes.
Q: What happened after?
A: We went to the car and then we drove over to where they were staying?
Q: Why did you go over there?
A: To tell our last goodbyes.
Q: Okay. What happened while you were over there?
A: They decided to ride with us to drop me off.
Q: Who was it that decided?
A: McIver asked if he could ride back.
Q: Did you think that was a good idea?
A: No.
Q: Did Amanda approve it?
A: Yes.
Q: It was her car, right?
A: Yeah.

Q: Okay. So, you were over at the other hotel, was it called the Lancer?
A: Yes.
Q: State's Exhibit 20, do you recognize that?
A: Yes, sir.
Q: What is that?
A: That's where they were staying.
MR. DEBUSK: May I publish, Your Honor?
THE COURT: Yes, sir.
BY MR. DEBUSK:
Q: So, you went over to the Lancer. McIver asked to ride along and -- and do they?
A: Yes.
Q: So, what was the plan gonna be, you -- the four of you would go to North Carolina and what was gonna happen?
A: They were gonna drop me off and then come back down to Myrtle Beach.
Q: Who was gonna drive up to North Carolina?
A: Amanda.
Q: In which vehicle?
A: Her white car.
Q: In that white car, was the air condition working?
A: Yes.
Q: When you were in the car going back to North Carolina, who sat where?

A: Amanda and Nick was up front, and me and Freeman was in the back.

Q: So, Amanda was driving, right?

A: Yes.

Q: Mr. McIver was beside her in the front passenger seat.

A: Yes.

Q: Were you behind Amanda or behind McIver?

A: McIver.

Q: And Freeman was behind?

A: Amanda.

Q: Amanda. So, do you remember the ride from the Lancer back up to ---

A: No, I slept the whole ride.

Q: Okay. Do you remember any stops?

A: We stopped at a Taco Bell and they were walking back out when I sat up to look at them.

Q: Okay. But mostly you were tired?

A: Yes.

Q: You had pretty much spent the evening partying?

A: Yes.

Q: Okay. And the day before at the beach?

A: Yes.

Q: So, you were probably wore out. What, what was the mood of the people in the car; was it happy, was it ---

A: They all seemed fine.

Q: Did you see any tension?
A: No.
Q: If there had been tension, would y'all have gotten them to ride with you?
A: No.
Q: Did there come a time when they dropped you off at your house?
A: Yes.
Q: Or, I'm sorry, your aunt's house?
A: Yes.
Q: About what time, do you remember?
A: It was before noon.
Q: Okay. Did you see them leave?
A: Yes.
Q: Where was everyone sitting when they left?
A: The same spot.
Q: Nobody moved?
A: No.
Q: And McIver still sitting in the front seat?
A: Yes, sir.
Q: And Freeman was still sitting behind Amanda?
A: Yes.
Q: Did -- I think you told us this already, but did they express intentions of what they were gonna do?
A: Go back to the beach, Myrtle Beach.

Q: And what was the plan for you?
A: To go hang out with family at the beach.
Q: And then after that?
A: Go back to my aunt's house and then Amanda was gonna pick me up later on.
Q: Did that ever happen?
A: No.
Q: Did you ever see Amanda again?
A: No.
Q: How did you find out she had been killed?
A: Through my aunt.
Q: Did the police come by and talk to you?
A: Yes.
Q: Did you tell them what you could?
A: Yes, sir.
Q: Did you, in fact, give them some pictures from your phone?
A: Yes.
Q: The police came?
A: Yes.
Q: When the police came and talked to you, did you -- I'm sorry, I know it's difficult, Tabetha, but when the police came and talked to you, who was there? When the police came and talked to you ---
A: Who was there?