

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of General Sessions

The Honorable Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2019-001865

State of South Carolina Respondent

v.

Terry Renee McClure Appellant

**RECORD ON APPEAL
VOLUME I**

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1	State of South Carolina	)	
2	County of Lexington	)	
3	State of South Carolina,	)	
4	Plaintiff,	)	
5	vs.	)	
6	Terry Renee McClure,	)	
7	Defendant.	)	
	_____	)	

In the Court
Of General Sessions
Indictment Nos.: 2017-GS-32-01007,
01008, 01495, 01497

Transcript of Record

8

9

September 6, 2019

10

Lexington, South Carolina

11

12 BEFORE:

13

The Honorable Frank R. Addy, Junior, Judge

14

15 APPEARANCES:

16

Shawn Graham, Assistant State Solicitor
Attorney for the State/Plaintiff

17

18

Wayne Floyd, Esquire
Attorney for the Defendant

19

20 ALSO PRESENT:

21

Terry Renee McClure

22

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 THE CLERK: Terry McClure. Judge, this is a motion.

3 MR. GRAHAM: Your Honor, for the record, standing
4 before you is Terry Renee McClure. He has four pending
5 charges in Lexington County. 2017-GS-32-01007 which is a
6 attempted murder charge, 2017-GS-32-01008 which is a
7 murder charge, 01495 possession of a weapon during a
8 violent crime, and 01497 a burglary first indictment. He
9 is represented by Mr. Floyd and we're here on Mr. Floyd's
10 motion today, Your Honor.

11 THE COURT: Mr. Floyd, you provided my clerk earlier
12 today a copy of your motion. I have had a chance to
13 review. Essentially you're seeking dismissal of the
14 pending warrants under the Hunsberger case?

15 MR. FLOYD: That's correct, Your Honor.

16 THE COURT: Happy to hear you on your motion.

17 MR. FLOYD: Thank you, Your Honor. This stems from
18 an incident that occurred in April of 2014, Your Honor.
19 Mr. McClure was actually returned to South Carolina from
20 California July 24th of 2016, so after the three years
21 expired under the Hunsberger case we filed this motion on
22 July 26th of this year.

23 Your Honor, it's our position that according to the
24 ruling in Hunsberger, after three years there is a
25 presumptive prejudice that attaches to the case. Now,

1 this is exacerbated a little bit because there was a
2 co-defendant in this case, a gentleman by the name of
3 Butler. Now, Mr. Butler was tried June of 2016 and he
4 was actually convicted and given a 55 year sentence.
5 Mr. Butler was arrested in May of 2014, indicted in June
6 of 2015, and tried in June of 2016.

7 Now, Mr. McClure was actually served with an arrest
8 warrant in May of 2014. He was arrested in California on
9 other charges and they served him with the warrant in the
10 California jail. Now, he maxed out that sentence he
11 received with those charges in July of 2016. He was
12 returned to South Carolina at that time, however, it is
13 our understanding Mr. McClure informs me from California
14 law that he could have been extradited at any time during
15 that sentence, however, they waited until he maxed out
16 that sentence to return him to South Carolina.

17 Now, he has been continuously incarcerated without
18 bond since July of 2016. He is a resident of California
19 so he's been cut off from his family. They have been
20 unable to visit him or anything for this three year
21 period. He has done nothing to contribute to the delays.
22 He continues to be present and available and there's no
23 reason or justification for the delay. We feel that the
24 appropriate relief would be dismissal of the charges
25 against him.

1 THE COURT: All right. Has the defense previously
2 moved for a speedy trial in this case?

3 MR. FLOYD: No, Your Honor. We waited until the
4 three years was up.

5 THE COURT: Okay. Solicitor, what's the State's
6 position on this?

7 MR. GRAHAM: Your Honor, I have a timeline of the
8 procedural events in the case that I think would be
9 helpful to the Court and germane to our discussion today
10 under Hunsberger. If I can just go through it.

11 THE COURT: Sure.

12 MR. GRAHAM: The murder and attempted murder and
13 burglary first occurred on April 26th of 2014. Paperwork
14 from airlines show that Mr. McClure rented a car in
15 Atlanta and that he actually flew back to California on
16 the 27th. His fingerprint was found on the vehicle at
17 the murder scene placing him in South Carolina and at the
18 crime. His co-defendant Justin Butler who was not tried
19 as the trigger man was convicted at trial on June 9th of
20 2016 of the same charges and sentenced to either 50 or 55
21 years in the South Carolina Department of Corrections.
22 July 25th the defendant was transported from California
23 and served his arrest warrants here in South Carolina.
24 He did not have bond set and he has never requested any
25 type of hearing in General Sessions here.

1 He had been arrested on a drive by shooting that
2 allegedly occurred right shortly after his return. My
3 understanding is that case ultimately wasn't prosecuted.
4 I was told that it was gang related and that they were
5 having trouble getting witnesses and were not able to
6 prosecute the case. He was however arrested on a
7 probation violation for having a weapon in his car when
8 he met with his probation agent. That's the sentence
9 that he actually served in California and when he maxed
10 that sentence out, that's when he was released to South
11 Carolina and came here July 25th of 2016.

12 November 9th of 2016 he was appointed a Public
13 Defender. On December 1st of 2016 our office received a
14 letter of representation and a Rule 5 request by Walt
15 Whitmire who was his appointed attorney at the time.
16 Discovery was provided to Mr. Whitmire on February 10th.
17 A plea offer was mailed July 5th of 2017 and I believe
18 that I have attached some of the emails behind the
19 timeline, Your Honor, that you should have that would
20 show my contact with Mr. Whitmire, the plea offer and
21 also to Mr. Floyd.

22 Shortly after emailing Mr. Whitmire the plea offer,
23 we received a letter of representation from Mr. Floyd.
24 After that, Your Honor, we provided Mr. Floyd with the
25 same discovery that we provided Mr. Whitmire. December

1 5th after speaking with Mr. Floyd, I emailed him the
2 offer that had been sent to Mr. Whitmire and forwarded
3 that to Mr. Floyd. February 13th I re-emailed, well, I
4 emailed Mr. Floyd again asking to sit down since we had
5 not resolved the case and start talking about a trial
6 date. On March 21st at Mr. Floyd's request I
7 re-forwarded the email with the plea offer that was
8 originally told to Mr. Whitmire that had been sent to
9 Mr. Floyd before.

10 There was discussion about potentially trying the
11 case in the end of 2018 and ultimately, Your Honor, it
12 didn't get tried for a couple of reasons. One was the
13 Jones case was originally set for October 15th and then
14 it was the death penalty case and then was moved to April
15 29th when it did occur which was about a seven week
16 trial. The plea negotiations when we were talking during
17 that time, Your Honor, I had offered a straight up plea
18 to murder or a negotiated range on murder. Mr. Floyd
19 came back. All of our conversations were similar to
20 that. It was that offer and Mr. Floyd came back
21 requesting some kind of a manslaughter. He told - all of
22 our plea negotiations left with Mr. Floyd asking me to go
23 think about it and me asking Mr. Floyd to go talk to his
24 client about my offer. There was never a time when the
25 offer as rejected. There was never a time where I was

1 told he wants a trial.

2 I looked at bringing, potentially bringing back
3 Mr. Butler. At some point during my conversations with
4 Mr. Floyd I was told by Mr. Floyd that Mr. McClure was
5 going to have a self defense claim and that Mr. Butler
6 had assured Mr. McClure that he would testify for Mr.
7 McClure at trial which was problematic because at this
8 time after his conviction here, Mr. Butler was shipped
9 back to Alabama to face a murder charge there.
10 Ultimately he pled to that, but when I considered trying
11 to try the case, Mr. McClure's case in December of 2018,
12 I was unable to do that because Mr. Butler was scheduled
13 for trial in Alabama. Mr. Butler ultimately pled on
14 January 2nd, 2019 to his Alabama charge, received a 20
15 year sentence concurrent to South Carolina. He was
16 shipped back to South Carolina on January 3rd, 2019.

17 Both myself and email that I copied Mr. Floyd on we
18 contacted Jim Snell who represented Mr. Butler to find
19 out was he going to testify, was he going to invoke his
20 Fifth, was he going to testify for the State, was he
21 going to testify for the defendants. Mr. Floyd, as I
22 said, assured me that his client believed that he was
23 going to testify for him. So Mr. Butler was unavailable
24 during the time that he was in Alabama for us to even
25 move forward with the case even if we were able to agree

1 on a trial date.

2 Mr. Butler comes back to South Carolina on January
3 3rd. In the, probably in the January time frame I
4 remember speaking with Mr. Floyd on the telephone,
5 talking about if we were unable to resolve this, we
6 needed to look at trying the case in the fall of 2019.
7 Because of the Jones case I knew I wouldn't be able to
8 get to it before, but would be able to get to it
9 afterwards. As we discussed, the Jones case did occur
10 between April 29th and June 3rd. On my conversations
11 with Mr. Snell regarding Mr. Butler testifying he told me
12 that his client would not be able to answer the question
13 of whether he was going to testify or not until his cases
14 were handled. So he had, the Court of Appeals on June
15 5th affirmed his conviction here in Lexington County in
16 an unpublished opinion and currently there is a petition
17 for a writ of cert to the South Carolina Supreme Court
18 that's pending.

19 As Mr. Floyd said, he filed his motion for July 26th
20 of 2019 to have the case dismissed under Hunsberger which
21 is, I believe, exactly the three year anniversary of his
22 arrest. Maybe one day after three years. When I
23 received that in the mail, I called Mr. Floyd on the
24 phone and told him that we would schedule this hearing
25 and I asked for a trial date and told him that I could

1 offer one in August. Mr. Floyd told me that he needed
2 more time than a month and after further conversations
3 the trial date of October 21st of this year has been set.

4 I would point out, Your Honor, that the plea offer
5 was never rejected, a trial was never requested, and a
6 speedy trial motion has never been filed. That's the
7 procedural history. I can argue under Hunsberger now
8 about how I believe the Court should analyze the
9 situation or we can do that after you go back to
10 Mr. Floyd, or if you have additional questions, Your
11 Honor.

12 THE COURT: So as things stand right now you would
13 be looking, assuming for the moment the Court were to
14 deny the motion, you would be looking and you would be
15 available for an October 21st trial date?

16 MR. FLOYD: That's correct, Your Honor.

17 MR. GRAHAM: Yes, Your Honor.

18 THE COURT: Okay. I reviewed Hunsberger. Is there
19 anything else that you wanted to bring to my attention?

20 MR. FLOYD: No, Your Honor. I would like to point
21 out Hunsberger does cite the case of United States v.
22 Ingraham, Eleventh Circuit case, 446 Federal 3rd 1332.
23 In that case the Court ruled that a two year delay
24 violated the speedy trial even with no actual prejudice
25 shown. I understand the four factors that come into

1 play. We would argue that the length of the delay is
2 satisfied because it's more than three years which is the
3 standard set in Hunsberger. The reason for the delay we
4 don't think any of the reasons cited by the Solicitor are
5 attributable to the defendant Mr. McClure and, in fact,
6 in this case they already had their evidence together
7 because they already tried the co-defendant and tried him
8 over almost three years ago. There's no additional
9 investigation that they would have to undergo to bring
10 Mr. McClure to trial and we just see there's no reason
11 for the delay. Presumptive prejudice is present and
12 although the assertion of the right is one of the
13 factors, it's not a sole factor and it doesn't excuse, it
14 does not defeat the motion that you didn't make it until
15 after the three years was up.

16 THE COURT: And I do agree with you and the case law
17 is what you say it is. At the same time the Court has to
18 consider under the Reeds case any potential prejudice,
19 actual prejudice to the defendant as opposed to
20 presumptive prejudice. There can be delays that are
21 occasioned by missing witnesses, unavailability of
22 witnesses and I'm hearing some of that in this case and
23 in the for what it's worth category, Mr. Floyd, I agree
24 with you one hundred percent, that a three year delay is
25 unreasonable whether it rises to the level of a

1 constitutional violation maybe it's a different question
2 entirely and perhaps that's one that's better explored
3 when we reconvene in October for the actual trial of this
4 case because at that point in time we will know with more
5 certainty whether the defense has suffered any actual
6 prejudice from the delay.

7 I do agree with you a hundred percent though that a
8 person who has been in jail for three years on charges
9 such as this, that that is exceedingly too long. Of
10 course, there are other considerations, assertion of a
11 speedy trial right and things of that nature, but I
12 honestly believe that maybe the better course of action
13 is to address your motion or allow it to be renewed once
14 we get closer to the trial date. Witnesses as you
15 correctly point out in your motion, their memories may
16 have faded, they may have gone missing, they may be
17 unavailable. That would be the actual prejudice to the
18 defense, and I appreciate the State was engaged in the
19 Jones trial and that was the State's doing, okay?
20 Hunsberger is clear. Over crowded dockets, that's not -
21 that goes against the State so just because y'all were
22 busy doesn't relieve y'all of your obligations to Mr.
23 McClure to try to get his case resolved. So I hate that
24 y'all took so much time with Jones, but that ain't my
25 problem. My concern is Mr. McClure, not Mr. Jones.

1 So here's what we're gonna do. The case gets tried
2 October the 21st. You can renew all motions at that
3 particular point in time and for whatever reason the
4 State does not move forward that week, move for a trial
5 on that Friday, your client will be entitled to a
6 personal recognizance bond and he will get out of trial.
7 So if you move for a continuance though, that condition
8 doesn't apply, but they say they're ready October 21st so
9 it will be tried then. If it is not called for trial for
10 any reason whatsoever, because they say they're ready, if
11 it's not called for trial, your client gets a \$25,000.00
12 personal recognizance bond and he walks out and he may
13 return to California so far as I'm concerned. But three
14 years is too long to wait so that's where we are. We'll
15 try it October 21st and you can renew your motions
16 then.

17 MR. FLOYD: Thank you, Your Honor.

18 THE COURT: Thanks.

19 WHEREUPON, THE HEARING WAS CONCLUDED.
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 6th day of September, 2019.

11 I FURTHER CERTIFY that the forgoing 13 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 2nd day of March, 2020.

17

18

By:s/Steven E. LeBlanc

19

20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 State of South Carolina) Court of General Sessions
 2 County of Lexington) Eleventh Judicial Circuit
 3
 4 State of South Carolina,) Transcript of Record
 5 vs.) 2017-GS-32-01007
 6 Terry Renee McClure,) 2017-GS-32-01008
 7) 2017-GS-32-01495
 8) 2017-GS-32-01497
 9 Defendant.)

October 21st-25th, 2019

Lexington, South Carolina

B E F O R E:

The Honorable Frank Addy, Judge; and a Jury

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

D. Shawn Graham, Deputy Solicitor
 Sutania A. Fuller, Assistant Solicitor

On behalf of the State of South Carolina

H. Wayne Floyd, Esquire
 Colin T. A. Spangler, Esquire

On behalf of the Defendant

Stacy S. Johnson, RPR
 Circuit Court Reporter

1 Thanks.

2 (Recess taken at 11:34 AM.)

3 (Court's Exhibit Numbers 1 through 3 were marked
4 for identification.)

5 (Back on the record at 11:50 AM.)

6 BAILIFF: All rise. Court's back in session.

7 THE COURT: Thank you. Please have a seat.

8 All right. Before we start in on motions, the
9 bailiff, just so that you-all are aware, informed me
10 that one of the jurors apparently called his boss once
11 he was released and was told that if he has to stay all
12 week he's going to lose his job. I don't know which
13 juror it is. It's something I'm gonna address at 3:00,
14 but I'm kind of glad at this point in time that we
15 picked two alternates because obviously if what the
16 gentleman says is true we may be in a situation where
17 I'm compelled to release that juror, but I'm gonna find
18 out more details at 3:00 when they report back and --
19 and see where that goes, okay?

20 I do know that we have a couple of motions. We
21 have the Defendant's motions to dismiss and then we
22 have a Neil v. Biggers matters and a matter concerning
23 potentially some redaction issues on an already redacted
24 video, audio that we need to address.

25 And I think that, Mr. Floyd, you raised the motion

1 to dismiss last time I was here holding court roughly a
2 month ago and I basically suggested that when the case
3 was called for trial the motion could be renewed and
4 you could explain in greater detail to the Court any
5 potential prejudice. I do recall from your prior motion
6 that you had indicated that the -- the Defendant had been
7 in custody for three years. You cited the recent case
8 out of Edgefield County maybe or -- I'm not sure where it
9 was from, but you cited the relatively recent case that
10 addressed that question, so I'll turn the record over to
11 you.

12 And the bailiff informs me that Calvin Gillins,
13 G-I-L-L-I-N-S, Juror Number 86, is the juror whose job
14 is potentially at risk, so we'll have to talk to him
15 when we reconvene, but I'm happy to hear your motion to
16 dismiss, Mr. Floyd.

17 MR. FLOYD: Thank you, Your Honor.

18 Your Honor, the -- basically it's set out in our
19 filed motions, written motions, but Mr. McClure was
20 brought to South Carolina on these charges on July 24,
21 2016. We waited for three years. The Hunsberger case
22 has a standard of three years before it is presumptive
23 prejudice, so we filed the motion after he had been here
24 three years.

25 Your Honor, I think the passage of time creates the

1 presumption of prejudice. Now it may well be as things
2 will come up in the trial where we can argue actual
3 prejudice, but we don't know that until we have the trial
4 and see what their witnesses have to say. We think the
5 mere passage of time because it's been over five years
6 now since this incident happened creates an actual
7 prejudice because it would affect the memory of the
8 witnesses as they testify.

9 We ask Your Honor to keep the motion open and allow
10 us to renew it if you don't grant it at this point
11 to allow us to make the motion again later if, in fact,
12 some evidence of actual prejudice arises.

13 THE COURT: All right. Very good.

14 While we're on the topic though, Solicitor, can I
15 get your response to their motion and perhaps put on the
16 record the reasons that occasioned the delay in this
17 matter getting resolved. I do realize, of course, part
18 of that is probably coordination with the California
19 folks. I think you may have alluded to that at the last
20 hearing, but let me hear from you.

21 MR. GRAHAM: Thank you, Your Honor.

22 I have marked as Court's Exhibit 1 a procedural
23 timeline with attachments, Your Honor. I provided a
24 copy to defense of this before, Your Honor. If we step
25 through the timeline, Your Honor, relevant to this,

1 June 9th of 2016, Mr. Butler, who was the co-defendant,
2 was convicted here in this courtroom and sentenced to
3 fifty years. July 25th of 2016 is when Mr. McClure
4 came to South Carolina and Lexington County and was
5 served with his warrants, so that's when we start the
6 clock running.

7 October 12th, Mr. Butler is transported to Alabama.
8 He's got a felony murder charge there that he had to deal
9 with. November 9th, the public defender is appointed to
10 represent Mr. McClure, and it's not until December 1st
11 of 2016 that a letter of representation and Rule 5 is
12 served on us. That's when we first know that he has an
13 attorney.

14 So the State -- my first argument, Your Honor, would
15 be that the time from July 25th to December 1st does not
16 go into that three years. He didn't have an attorney, it
17 wasn't until that time, and anything that happened --
18 nothing could have happened during that time and the delay
19 gets attributed to him for getting an attorney at that
20 time.

21 Discovery is provided after the request is made
22 February 10th of 2017. Butler in Alabama has an initial
23 trial date of May 5th. I reviewed the case file and
24 sent an offer letter to Walt Whitmire, and there's an
25 attached e-mail, Your Honor, for that. July 17, 2017,

1 there's now a letter of representation received in my
2 office stating that Mr. Floyd will now be representing
3 Mr. McClure.

4 And, again, Your Honor, I would argue through no
5 fault of our own the Defendant has chose to delay the
6 case by switching from Mr. Whitmire to Mr. Floyd, and
7 that takes us almost to a year that would be against the
8 Defendant.

9 Discovery is provided to Mr. Floyd on December 5th
10 of 2017. That plea offer, again, was forwarded that was
11 initially sent to Mr. Whitmire, now to Mr. Floyd.

12 February of 2018, I e-mailed the -- I e-mailed
13 Mr. Floyd requesting us to sit down and discuss the
14 case since it hadn't been resolved yet and discuss a
15 trial date. There's an attached e-mail for that as well.

16 March 21, 2018, I forwarded my original e-mail with
17 the plea offer again to Mr. Floyd. That was an attached
18 e-mail. Although it doesn't excuse anything, you can also
19 see, Your Honor, that I was involved with the Jones death
20 penalty case that had been set for October and later moved
21 to April.

22 During this time, Your Honor, Mr. Floyd and I had
23 numerous conversations about the case. I would make an
24 offer, he would counteroffer. He never told me that he
25 refused an offer and wanted a trial. Not one time was

1 I asked to set a trial date. What he did tell me was
2 that if the case did go to trial that his client was
3 going to claim self-defense and that Mr. Butler would
4 be a necessary witness for him. Mr. Floyd informed me
5 that the defense would be that the victims had a hit
6 out on Mr. McClure and Mr. Butler and that they were
7 defending themselves.

8 Once I received notice of that, Your Honor, I
9 contacted Mr. Snell, who was Mr. Butler's attorney at
10 the time, and asked whether he was going to talk to the
11 defense, whether he was going to testify. The response
12 I got was he's not gonna make a decision until his
13 appeals were exhausted, which puts on the defense all the
14 delay of waiting until that time once they informed me of
15 that.

16 You can see on October 21, 2018, there was a news
17 article about Butler's trial in Alabama being rescheduled
18 for December 10th. You can see on October 16th that the
19 State Attorney General, who was handling the appeal, were
20 discussing oral arguments. I was trying to coordinate
21 with them knowing that when they did their case that it
22 was possible that Mr. Butler would be back in South
23 Carolina; however, we were unable to do anything in
24 December, either myself or the State AG, because the
25 trial date for Mr. Butler in Alabama was that week.

1 Ultimately, January 2nd of 2019, Mr. Butler pled
2 in Alabama receiving a twenty-year sentence. He was
3 returned to South Carolina on January 3rd. At that
4 time I spoke with Mr. Floyd again about the trial date.
5 Again, there was no -- my offer was out there again
6 and his counteroffer was out there again. He never
7 explicitly rejected my offer and asked for a trial,
8 never asked for a speedy trial.

9 As Your Honor is aware, I was in the death penalty
10 case April to June. On June 5, 2019, the Court of
11 Appeals affirmed Mr. Butler's conviction in an
12 unpublished opinion. July 26th, on the three-year
13 anniversary of his arrest date plus one day, the motion
14 was filed to dismiss. I immediately called Mr. Floyd
15 upon receipt in my office. I told him that I could offer
16 him an August trial date and he told me that he needed a
17 couple of months to prepare and so we set this date for
18 October 21st.

19 I would reiterate, Your Honor, that time counts
20 against the Defendant; the delay in getting an attorney,
21 switching attorneys and then informing me that Mr. Butler
22 was a material witness and Mr. Butler's attorney saying
23 that he would not be available until after the appeals
24 were final. Cert was requested on the Court of Appeals
25 decision and it was denied during the solicitors

1 conference the last week of September, so currently
2 Mr. Butler is out of appeals.

3 And I would also point out that no speedy trial
4 was ever requested, Your Honor.

5 THE COURT: All right. So it was -- it was Butler,
6 based upon your understanding of the logistics of this
7 trial, it was not a situation where the State was waiting
8 to use Butler or seeking to use Butler because I know
9 that was a significant issue in the Hunsberger case about
10 availability of witnesses and that sort of thing, but you
11 had been informed that -- that Butler was a necessary
12 witness for the defense?

13 MR. GRAHAM: Yes, Your Honor.

14 THE COURT: Okay. Mr. Floyd, do you want to
15 respond at this point to anything that they put on the
16 record, sir?

17 MR. FLOYD: A couple of things, Your Honor.

18 THE COURT: Sure.

19 MR. FLOYD: First of all, I don't know how they
20 can hold the time between his arrival in South Carolina
21 and getting appointed a public defender, the six months
22 it took for that to happen, how they can hold that
23 against Mr. McClure because he had a right to an
24 attorney and one should have been appointed sooner.

25 Now as far as that goes, changing attorneys hasn't

1 delayed the trial. They have not tried to try this case
2 until now, so it hasn't caused any delay in the trial.

3 Secondly -- or thirdly, I guess, Your Honor, as far
4 as the -- Mr. Butler being a witness, if they had called
5 this case for trial and if we had considered him a
6 crucial witness, we would have, of course, moved for a
7 continuance, but we haven't -- we haven't done that. We
8 haven't filed anything officially saying he's a crucial
9 witness in our case, so the fact that he may be a cause
10 of delay shouldn't be attributed to Mr. McClure because
11 we never made any affirmative steps to secure his
12 presence at this trial.

13 Thank you.

14 THE COURT: Okay. I note that Mr. Butler does not
15 seem to be listed on your -- on your witness list. Was
16 he listed on the State's potential witness list?

17 MR. GRAHAM: No, Your Honor. My belief is that
18 probably the defense's position has changed as to
19 Mr. Butler's importance.

20 THE COURT: I understand.

21 All right. Mr. Floyd, there was never a speedy
22 trial motion filed in this case on behalf of the defense
23 to your knowledge?

24 MR. FLOYD: Not until July.

25 THE COURT: Okay.

1 MR. FLOYD: After the three years ran.

2 THE COURT: Right.

3 Did Mr. McClure waive jurisdiction -- extradition
4 to South Carolina or did he fight it?

5 MR. GRAHAM: I believe he waived it, Your Honor.

6 THE COURT: He did waive it?

7 MR. GRAHAM: (Nods head.)

8 THE COURT: Okay.

9 MR. GRAHAM: Your Honor, I can -- I don't know that
10 I'm stating -- your question makes me want to offer to
11 the Court that the delay -- the reason that Mr. McClure
12 did not come to South Carolina until July of 2016 is
13 because he was arrested on a parole -- I think parole
14 violation -- a parole violation for having a gun in his
15 possession. That time was revoked and it wasn't --
16 California wouldn't release him until he served that
17 time.

18 THE COURT: Okay. That -- that explains it. The
19 Court has been reviewing the Hunsberger case and to the
20 extent that Hunsberger stands for the proposition or to
21 the extent that perhaps one might read Hunsberger as
22 standing for the proposition that any delay in excess of
23 three years is prejudicial, of course, that then triggers
24 the analysis that the Court has to engage in. Based upon
25 what has been presented today and, of course, this is

1 without prejudice to Mr. Floyd or the defense's ability
2 to argue during the course of the trial that actual
3 prejudice to the defense has been occasioned by the
4 passage of time, so that's a matter that you can bring to
5 the Court's attention at any point during the course of
6 the trial, Mr. Floyd, if you feel like actual prejudice
7 has resulted from the delay, but reviewing Hunsberger,
8 the Court does not find that there's any -- or that there
9 was any deliberate attempt on behalf of the State to delay
10 the trial. The State, based upon the timeline presented
11 to the Court, acted promptly. I'm not hearing that this
12 is a situation where overcrowded dockets may have weighed
13 or may have caused the delay. It would appear to me that
14 based upon the representation of counsel that their
15 understanding was that Mr. Butler may very well have been
16 needed. Again, the defense in this case did not file a
17 motion for a speedy trial and based upon the communications
18 between the attorneys, it was anticipated by the State
19 that perhaps Butler would be needed to testify.

20 I understand the Defendant has the right under the
21 Sixth Amendment to counsel of his choosing, and obviously
22 Mr. Whitmire represented him for a substantial period of
23 time until Mr. Floyd was retained in July of 2017,
24 changing lawyers by definition results in a delay of the
25 trial. I don't know of many lawyers on a case of this

1 gravity who could simply take the case one day and try
2 it the next day, so obviously there was -- by changing
3 lawyers there was a need -- or that occasioned rather a
4 different -- an additional delay in the trial of this
5 case because Mr. Floyd had to get up to speed on the
6 allegations and on the facts.

7 For those reasons and, again, because no actual
8 prejudice has been shown at this point because there was
9 not a motion for a speedy trial filed by the defense by
10 either Mr. Whitmire or Mr. Floyd that the Court will be
11 denying the Defendant's motion to dismiss under Hunsberger
12 at this particular point in time. Of course, this ruling
13 is without prejudice to how the trial progresses and
14 whether maybe actual prejudice due to the delay could be
15 shown by the defense, but we'll have to cross that bridge
16 if and when we come to it, so that will be the Court's
17 ruling as far as the Defendant's motion to dismiss.

18 I think that the next matter for the State -- or
19 do we have any additional defense motions before we go to
20 the Neil v. Biggers, the redaction issue?

21 MR. FLOYD: Your Honor, let me just bring one matter
22 to your attention that has just come up.

23 THE COURT: Please.

24 MR. FLOYD: My understanding of what you've just
25 advised us is that Mr. Gillins is gonna be the juror who

1 chance that that fourth individual being selected for
2 jury selection once we started calling names is -- is
3 obviously pretty low.

4 I'm trying to figure out how to handle Mr. Gillins'
5 situation when he comes back at three. I may very well
6 simply call his boss and try to intercede on his behalf.

7 By my notes Mr. Gillins is twenty years of age, he
8 works landscaping. I'm sure he's not making a ton of
9 money doing that. He is single. I don't know what
10 obligations he may have with child support or other
11 family obligations or financial obligations, but I might
12 just have to discuss that with him and see if I can
13 intercede on behalf of him with his boss to make it
14 possible for him to stay here without risking losing
15 his job. They really need to pass a law that says
16 employers have to pay jurors, but I've been bringing
17 up that for years and they're not gonna do it any time
18 soon probably because I'm asking, so we'll cross that
19 bridge at 3:00 with Mr. Gillins.

20 (Court's Exhibit Number 4 was marked for
21 identification.)

22 THE COURT: Any other defense motions before we go
23 into the others?

24 MR. SPANGLER: Judge, we just have a few motions in
25 limine that might be better heard after Jackson v. Denno

1 and Biggers.

2 THE COURT: Okay. Do you want to proceed,
3 Solicitor, with whatever you want to deal with first?

4 MS. FULLER: Yes, Your Honor.

5 Just briefly. We have a couple of motions in
6 limine, too, just to take care of those housekeeping
7 matters before we call witnesses.

8 The first one was regarding CSI Roger Gilland. We
9 provided in discovery an internal affairs investigation
10 and we're just requesting that Your Honor issue a ruling
11 excluding the use of the information disclosed. It's
12 the State's position that the content is not relevant to
13 this trial and didn't impact the investigation of this
14 case in any way.

15 THE COURT: I'm not sure what you're referring to.
16 Back me up and give me a bigger, wider view here. What
17 is it that was -- what is it we're talking about here?

18 MS. FULLER: I can hand up a copy of the internal
19 affairs investigation, Your Honor. It shouldn't come
20 up. It's just precaution.

21 THE COURT: Do you know what she's talking about?
22 Do you-all intend to use that?

23 MR. SPANGLER: We do, Judge, and we don't plan to
24 go into that specific investigation. We only plan to
25 ask him whether he's still employed with Lexington County

1 and where he works now. Unless the door's opened to
2 that stuff, we're not going into it.

3 MS. FULLER: Thank you.

4 THE COURT: Okay. In that case, if you find some
5 reason to go into it, just give me a heads-up before we
6 go down that road.

7 MR. SPANGLER: Yes, sir.

8 THE COURT: It sounds like that's not gonna be an
9 issue then.

10 MS. FULLER: Thank you, Your Honor.

11 Then the second motion in limine, which is something
12 that I do standard in these types of cases in terms of
13 victim -- character of the deceased and the surviving
14 victim here -- the surviving victim here. The State is
15 just seeking either an order now or that prior to any
16 potential introduction of evidence or questioning by
17 witnesses on direct or cross a ruling as to certain
18 items of evidence that I know they've provided in their
19 reciprocal Rule 5 like screen shots from Facebook. We
20 believe that wouldn't be relevant and potentially
21 an attempt at victim character of the deceased. Any
22 irrelevant cell phone content, that wouldn't be admissible
23 in this case, and any victim that's on the stand -- any
24 witnesses on the stand, Your Honor, so anything that would
25 go towards potential prior acts, messages or reputation

1 of the surviving victim and deceased victim in this case
2 and so we're just moving to exclude any reference in
3 opening arguments or once testimony begins this afternoon
4 any cross-examination or anything; that if they intend to
5 go into anything that would be potentially character or
6 reputation that we have a hearing prior to that being
7 done.

8 THE COURT: Okay. Well, my understanding is that
9 you-all anticipate self-defense is gonna be the defense
10 and I'm told that the -- that the alleged victims and the
11 Defendant --

12 MR. FLOYD: We're not committed to that defense at
13 this point, Your Honor.

14 THE COURT: Oh, okay. I'm sorry. My apologies.

15 I don't know how it's gonna play out. We'll just
16 have to see where it goes. Make the objection if you
17 feel like they've crossed the line, but obviously if
18 they were -- if they were to go down the self-defense
19 road, potentially I can see reputation of the victim
20 being relevant as it relates to the Defendant's mindset
21 and so perhaps that information could very well be
22 relevant to the Defendant's reasonable belief that he
23 needed to act in the manner that he did act, but I don't
24 know at this point in time. It's impossible for the
25 Court to say that that's necessarily off limits or not.

1 MS. FULLER: Correct, Your Honor.

2 And, specifically, it's in regard to the deceased
3 victim. Of course, that wouldn't even -- the State's
4 position is that wouldn't even come into play unless he's
5 gonna articulate in a self-defense case that there was
6 some prior -- prior bad dealing or interaction with him
7 and the deceased victim prior to this happening. But if
8 they're not going forward with self-defense, I don't see
9 that coming into play. I know we would probably take
10 some issue with the surviving victim and we can cross that
11 bridge in cross if necessary, but just putting it -- I
12 would just like to put it out there in the open so once
13 we start objecting, Your Honor, you know exactly where
14 we're coming from.

15 THE COURT: Okay. Well, we'll see how it goes. You
16 tried that case with me in Edgefield a couple of weeks
17 ago. I know I allowed a lot of information in that you
18 didn't feel was -- was as germane as it perhaps could
19 have been.

20 MS. FULLER: Your Honor, me?

21 THE COURT: We may -- we may be in sort of the same
22 situation, but we'll just have to take it as it comes.

23 MS. FULLER: Thank you, Your Honor.

24 And I believe we can go into probably Neil v.
25 Biggers first since Denno requires the audio.

1 THE COURT: That's fine.

2 MS. FULLER: Just for formality purposes, a lot
3 of the exhibits, including what we're gonna need for
4 the Neil v. Biggers is in the clerk's possession for
5 Justin v. Butler's -- for Justin v. Butler -- State v.
6 Justin Butler's case. Deputy Solicitor Graham prepared
7 an order substituting that evidence since we're gonna
8 start taking it out.

9 THE COURT: Sure.

10 MS. FULLER: I'm not sure if the defense has
11 anything they want, so I don't know if you want to
12 leave your order open, but it listed the items that we
13 anticipate needing from the case, the first one being
14 the photo lineup. I think it was State's 3 in Butler's
15 case.

16 THE COURT: Okay. All right. I'll authorize the
17 substitution of evidence, any evidence that was introduced
18 -- assuming that it's germane to these proceedings, any
19 evidence that was introduced in the Butler trial or the
20 Butler matter so far as I'm concerned can be used in this
21 case, whether the State wants to or the defense wants to.
22 I'll go ahead sign off on this order, but it will remain
23 an open order and any additional evidence that was in
24 that Butler case can also be used in the case involving
25 Mr. McClure, of course, so I'll sign that order with

1 that understanding.

2 MS. FULLER: Thank you, Your Honor.

3 MR. GRAHAM: On the Neil versus Biggers, Your
4 Honor, the State would call Roy Mefford to the stand.

5 (Whereupon, Roy Mefford was duly sworn by the Clerk
6 of Court.)

7 THE CLERK. Have a seat, sir. Once you're seated,
8 state your full name, spelling your last, please.

9 THE WITNESS: Roy Mefford, M-E-F-F-O-R-D.

10 ROY MEFFORD,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION (In-Camera)

13 BY MR. GRAHAM:

14 Q. Mr. Mefford, where are you currently employed and what
15 do you do?

16 A. I'm currently employed by the County of Lexington and
17 I'm the director of animal services for the county.

18 Q. Prior to that were you with the sheriff's department
19 in law enforcement?

20 A. I was.

21 Q. Would you tell the Court about your law enforcement
22 experience?

23 A. I am on my twenty-seventh year. I'm still a
24 commissioned officer in my current position, but I work
25 directly for the county administrator. But I am in my

1 twenty-seventh year of law enforcement. I spent five years
2 as a military police officer and then nineteen years at the
3 sheriff's department, thirteen of which as an investigator,
4 and I've been with animal services for the last two and a
5 half years.

6 Q. Back in April of 2014, what were your job
7 responsibilities in relation to this case?

8 A. In 2014, I was a major crimes sergeant and our major
9 crimes unit handles violent crimes, crimes against persons,
10 and I was a supervisor during that timeframe, which
11 included administrative duties along with supervising
12 personnel and supervising cases of a scale such as this.

13 Q. Now what was your relation specifically to this case
14 and Mr. McClure?

15 A. On this case, I was the on-call -- we have a team of
16 investigators on call twenty-four hours a day and during
17 this case I was the on-call supervisor for any crimes of
18 this nature that came in and I would respond and oversee
19 the investigation as it unfolded.

20 Q. At some point was Mr. McClure developed as a suspect
21 in this case?

22 A. Yes, he was.

23 Q. And did you or somebody under your direction arrange
24 for a photo lineup to be created?

25 A. Yes, I was in communication with the authorities from

1 Fairfield Police Department and I actually arranged for
2 photographs -- recent photographs to be provided to us by
3 them. I explained to them what our background looked like
4 of our jail photos, which is how we compile our photo
5 lineups, and once they provided me with a photo that was
6 similar in nature to our background of the database we had,
7 I compiled the photograph lineup myself.

8 MR. GRAHAM: Judge, I think, if it's all right, I'm
9 just gonna use that number so we don't have to put new
10 stickers on it.

11 THE COURT: That will be fine if there's no
12 objection. Will that work for you?

13 MR. SPANGLER: No objection, Judge.

14 THE COURT: Is that okay with you?

15 THE COURT REPORTER: Well --

16 THE COURT: The court reporter indicates it will
17 be all right.

18 THE COURT REPORTER: I just need to know what we're
19 doing.

20 MR. GRAHAM: This is 3 and we'll catch back up on
21 1 and 2.

22 THE COURT REPORTER: Well, see, that might mess up
23 because -- okay. Let's put --

24 THE COURT: Let's just start it fresh. Even though
25 we're using old exhibits that already has an old exhibit

1 number, I'm gonna have the court reporter just remark
2 what was used in Butler with a new number in this trial
3 so that if there is something further in Butler where
4 they need to reference the transcript and match it up
5 with the exhibit in the Butler case, they can do it, so
6 it will just sort of be a dual exhibit.

7 Are we good on that? Will that work? I really
8 think it's cleaner on this case because should the Court
9 of Appeals need to review anything that we take from
10 Butler we give it a new number in this case and we not
11 use the Butler number, so let's handle it that way and
12 there will be this order that you can put in the Butler
13 file that will show what exhibit came from that file
14 into this case.

15 THE CLERK: And I can just make a copy of it for my
16 records.

17 THE COURT: Yes.

18 MS. FULLER: Your Honor, just -- I can -- because
19 one thing we agreed to was that there will be no
20 reference to Butler's trial --

21 THE COURT: Oh, that is problematic.

22 MS. FULLER: So we have -- I'm gonna scan it in in
23 color and white redact the exhibit out, so if you're --
24 if they're okay with it not being the original because
25 this is the original photo lineup, I can go scan it in

1 and white redact out the exhibit and print a new copy.

2 THE COURT: All right. That is -- that is a
3 smarter way because this stuff will be going back to the
4 jury and we don't need different stickers on it.

5 MS. FULLER: Are you okay with me borrowing this?

6 THE CLERK: That will be fine.

7 MR. FLOYD: We're okay with that.

8 THE COURT: That's how we're gonna handle it then.

9 MS. FULLER: I'll be right back if you want to
10 keep going.

11 MR. GRAHAM: I probably can keep asking questions,
12 Your Honor, I would say.

13 THE COURT: Yeah, keep asking questions.

14 BY MR. GRAHAM:

15 Q. What I had just shown you, Mr. Mefford, was what?

16 A. That was the photo lineup that I had compiled and that
17 I eventually showed to the victim in this case, VonKeith
18 Toland.

19 Q. Okay.

20 MR. GRAHAM: And that will be marked, Your Honor,
21 as State's Number 1 for this trial.

22 THE COURT: Very good.

23 BY MR. GRAHAM:

24 Q. Mr. Mefford, can you describe where you showed
25 Mr. Toland the lineup?

1 A. VonKeith was still in the hospital at that time
2 undergoing treatment for the injuries he sustained in this
3 incident and I responded to the Richland -- Palmetto
4 Richland Hospital to the ICU unit and met with him.

5 Q. Do you remember the day?

6 A. I do. It was May 10th of 2014.

7 Q. And what was Mr. Toland's condition on May the 10th?

8 A. He was -- he was a little better as far as
9 communication from the few days earlier when we had showed
10 him the initial lineup of Mr. Butler and during that time
11 he was able to communicate a little better. Obviously he
12 had a trach and could not talk clearly, but once I
13 confirmed that he was able to communicate clearly with me
14 I advised him that I had identified the possible second
15 person involved in this incident and he indicated he could
16 identify them and I showed him the photo lineup and he
17 immediately picked Mr. McClure at that point and I asked
18 him how sure he was and he said he was positive.

19 Q. Did you do anything to suggest to Mr. Toland who he
20 should pick?

21 A. Absolutely not. I even advised him that the person
22 may or may not be in the photo lineup.

23 Q. You had referenced Mr. Butler. Had there been a
24 previous lineup of Mr. Butler that you showed to
25 Mr. Toland?

1 A. Yes, a few days earlier Detective Garrick and I showed
2 a photo lineup to Mr. Toland of Justin Butler because he
3 was also identified as a suspect in this case.

4 Q. And did -- your presentation of both photo lineups,
5 was it the same?

6 A. Yes.

7 Q. And was he able to pick out Mr. Butler, too?

8 A. He was.

9 Q. And I don't have State's Number 1 in front of me, but
10 you do remember -- do you remember how he selected -- what
11 did he do, if anything, to indicate that he recognized
12 Mr. McClure?

13 A. He immediately pointed him out, then I had him circle
14 the number of the -- that corresponded to the photograph,
15 in this case it was Number 5, and then I had him sign the
16 photo lineup and initial it.

17 Q. And how long did it take him? Was there a hesitation
18 or was it quick?

19 A. He immediately pointed out Terry McClure as the
20 individual involved in this incident.

21 Q. In addition to showing a lineup to Terry McClure -- I
22 mean, of Terry McClure to VonKeith Toland, did you also
23 come into contact with a lady named Ladondra Ellis?

24 A. I did.

25 Q. And where did you come in contact with her?

1 A. I met with her in Atlanta, Atlanta, Georgia, and
2 there was some phone conversations and some phone
3 connections between her and an individual that I felt was
4 involved in this case and it was later determined that the
5 correspondence with her was through two individuals that
6 she knew as "L". She did not know his real name. I met
7 with her and showed her the -- well, I had information that
8 that person, "L", that she was referring to was, in fact,
9 Terry McClure, so I showed her a photo lineup and she also
10 picked Terry McClure, Number 5, as the individual she
11 communicated with on the -- just prior to the incident.

12 Q. Let me show you a document and ask if you recognize
13 that as the photo lineup that you showed to Ms. Ellis?

14 A. Yes, it is.

15 MR. GRAHAM: Your Honor, the State would mark this
16 at this time, I guess, as State's 2 for identification.

17 BY MR. GRAHAM:

18 Q. Now is this the same lineup as State's Number 1 that
19 we discussed earlier?

20 A. It is.

21 Q. When you showed this lineup, where physically were you
22 and Ms. Ellis?

23 A. We met in the parking lot of a restaurant just up from
24 the Greyhound bus station in downtown Atlanta and we were
25 out -- standing outside near her vehicle.

1 Q. What was your understanding of her relationship with
2 Mr. McClure?

3 A. She knew Mr. McClure from -- she was also from the
4 Fairfield, California area; that area which we associated
5 that phone with. As I alluded to earlier in the case, we
6 identified a phone that originated in Fairfield,
7 California, and she was an acquaintance of his from high
8 school and they had -- they had a relationship -- off and
9 on relationship over several years and that they had
10 reconnected sometime later.

11 Q. What, if anything, did you say to her before showing
12 her the lineup?

13 A. I told her the same thing. I told her that the person
14 may or may not be in there and that I had a photo lineup
15 that I believed was the person that she knew as "L" and
16 wanted to verify that and she immediately picked him. She
17 picked Terry McClure. She didn't know his name, she just
18 knew him as "L".

19 Q. And how did she go about --

20 MR. SPANGLER: Objection, Judge. At this point
21 for the record we're just gonna note that is a hearsay
22 statement for purposes of this hearing.

23 THE COURT: Okay. The objection is noted. You can
24 continue though.

25 THE WITNESS: Yes, sir. She circled Number 5

1 corresponding with the photograph of Terry McClure and
2 she wrote on the form itself this is the person I know
3 as "L" and she signed the form and I witnessed it.

4 BY MR. GRAHAM:

5 Q. So the handwriting on here, the circle with the 5,
6 that's her handwriting?

7 A. Yes, sir.

8 Q. Is the statement this is the person I know as "L" also
9 her handwriting?

10 A. Yes.

11 Q. Under the witness, that's her name, her handwriting?

12 A. That's her signature.

13 Q. And then where it says investigator, the handwriting
14 there?

15 A. Yes, that's my signature, and I wrote the date also.

16 Q. The date of 5-15-14?

17 A. Yes, sir.

18 Q. Did you do anything to indicated to her who she should
19 pick out?

20 A. No.

21 Q. Nothing to suggest?

22 A. Absolutely not.

23 Q. Okay.

24 MR. GRAHAM: I believe that's all the questions,
25 Your Honor.

1 THE COURT: Cross?

2 MR. SPANGLER: Briefly, Judge.

3 THE COURT: Before you do that, hold on. Go ahead
4 and mark those exhibits so that we're square.

5 (State's Exhibit Numbers 1 and 2 were marked for
6 identification.)

7 THE COURT: All right. The court reporter has
8 marked the two exhibits as State's 1 and 2. Ms. Fuller
9 had scanned a copy of that and whited out the previous
10 evidence sticker from the other trial.

11 Go ahead.

12 MR. SPANGLER: All right. Thank you, Judge.

13 CROSS-EXAMINATION (In-Camera)

14 BY MR. SPANGLER:

15 Q. Is it Detective Mefford or Investigator Mefford?

16 A. I'm a director. I mean, that's kind of an awkward
17 title, but Mr. Mefford or however you want to address me
18 really. I know who you're talking to.

19 Q. All right. So back when you were doing those lineups,
20 that would have been shortly after this incident happened?

21 A. Yes, the incident occurred on the 26th and these photo
22 lineups were showed a couple of weeks later.

23 Q. Okay. So that would have been in 2014?

24 A. Yes.

25 Q. Okay. So fair to say that was five years ago?

1 A. Yes, it was five years ago.

2 Q. Okay. And no recordings of either of those interviews
3 that you had with either Mr. Toland or Ms. Ellis?

4 A. No.

5 Q. Okay. All we have to rely on here today about what
6 you may or may not have said is your recollection?

7 A. Correct.

8 Q. And you'd agree with me that your recollection would
9 have been better, let's say, a week after this lineup as
10 opposed to now, five years later?

11 A. Well, I documented it quite well in my supplementals
12 and it's -- when you're doing photo lineups, and I've
13 testified in these hearings before, I know to stay
14 consistent and I consistently show the photo lineups the
15 same every time so that -- that I know what I'm testifying
16 to and I document it in my supplements.

17 Q. Okay. So you're saying your recollection is the same
18 five years later than it is maybe a week after this lineup?

19 A. Well, of course -- of course, over the time, but if
20 you do something the same time every time, then you don't
21 have to rely on your memory, you rely on your techniques.

22 Q. Okay.

23 MR. SPANGLER: Nothing further, Judge.

24 THE COURT: Thank you, sir. You can step down.

25 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 MS. FULLER: Thank you, Your Honor. The State
3 calls VonKeith Toland.

4 (Whereupon, VonKeith Toland was duly sworn by the
5 Clerk of Court.)

6 THE CLERK: Once you're seated, speak up loud
7 and clear. State your full name, spelling your last,
8 please.

9 THE WITNESS: VonKeith Toland. Last name,
10 T-O-L-A-N-D.

11 VONKEITH TOLAND,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION (In-Camera)

14 BY MS. FULLER:

15 Q. Thank you, Mr. Toland. I'm gonna just for purposes
16 of this hearing for the judge, are you the victim of a
17 shooting that occurred in Pelion on Bushberry Road?

18 A. Yes, ma'am.

19 Q. And what location is that?

20 A. That was 688 Bushberry. At the present time it was
21 my home.

22 Q. So that was your residence at the time?

23 A. Yes, ma'am.

24 Q. And your brother -- is it your brother Tycus who was
25 shot and killed at that location?

1 A. Yes, ma'am.

2 Q. Now as it relates to the shooting, how many people
3 were involved?

4 A. It was two people that was involved with the act on me
5 and my brother.

6 Q. Okay. And on -- back on that day, April 26th of 2014,
7 did you know them prior to the shooting?

8 A. Yes, ma'am.

9 Q. And how did you know them?

10 A. Through a mutual friend about them wanting to purchase
11 a vehicle.

12 Q. And on that day, on April 26th, how did you come to
13 actually meet up that day?

14 A. Butler had contacted me by my cell phone and told me
15 that he wanted to view the vehicle and we had met.

16 Q. Okay. And then just for the record, you're referring
17 to Justin Butler?

18 A. Yes, ma'am. Justin Butler.

19 Q. And where did you guys actually meet up? And I'm just
20 streamlining some of it for the purposes of this hearing.
21 Where did you guys agree to meet up?

22 A. At my mother's house.

23 Q. And where's your mom's house?

24 A. It's located in North, South Carolina, on Savannah
25 Highway.

1 Q. And you mentioned that two people showed up. Do you
2 know who the individual -- other individual who showed up
3 with Butler is -- or was?

4 A. Well, I'd seen him before. I knew like a nickname,
5 but I didn't know his government name.

6 Q. Do you remember his nickname today? And if you don't,
7 that's okay.

8 A. I kind of did, but I kind of wasn't sure, so I'll just
9 say I didn't.

10 Q. Okay. And the other individual, you said you saw him
11 before?

12 A. Yeah, I knew him as -- as Jona, that was his nickname,
13 and that was Justin Butler.

14 Q. Okay. So Justin Butler is Jona and the other
15 individual you can't remember his nickname and you say you
16 don't know his government name?

17 A. No, I don't know the government name. It was like an
18 initial like. It's like a -- it wasn't like a hard name.
19 It was just like I didn't really --

20 Q. Okay. And so Jona you had seen before. How about the
21 other individual?

22 A. Yeah, I seen him before as well. He came down prior
23 to look at another vehicle. Prior to the April day, they
24 came to look at another vehicle and he came with him and
25 then on April he came back with him.

1 Q. Okay. And then just so -- to make sure the record is
2 clear, when you say "he" came with "him", you're referring
3 to the other individual that you didn't know his name came
4 with Jona to look at another vehicle?

5 A. Yes, ma'am. The other individual that I picked out of
6 the photo lineup.

7 Q. Okay. And we'll get to that shortly. We're just
8 giving the judge a little more background. And how -- when
9 was it before the April, before this all happened, when was
10 it that you saw that other individual? Do you remember
11 roughly?

12 A. Before the April incident?

13 Q. Uh-huh.

14 A. No, ma'am, I don't quite remember the date before
15 then.

16 Q. Okay.

17 A. It was a few months prior.

18 Q. A few months prior. And that's fine. On this
19 particular day we're at your mom's house now, right?

20 A. Yes, ma'am.

21 Q. And when -- how did they arrive?

22 A. They arrived in a small SUV, like a little smaller
23 truck, like a Kia truck or something. I wasn't that sure
24 of the kind, but it was like a small SUV.

25 Q. Do you recall if it was daylight or nighttime at this

1 point?

2 A. It was daylight.

3 Q. Okay. When they arrived, was there anything blocking
4 your view from seeing them?

5 A. No, ma'am.

6 Q. Okay. So they arrived. Take me through. Do you go
7 outside or do they come inside the residence?

8 A. I walk outside and -- and let them know that I'm
9 inside the residence and then they walked inside.

10 Q. Okay. So now they're inside the residence. Is it
11 light inside or is it dark inside the residence?

12 A. It's light.

13 Q. And what happens when they come inside the residence?

14 A. Once they come inside, we greet each other, and at the
15 time we were playing poker at my mom's house and the -- not
16 Butler, but the other one, he actually joined in with us to
17 play cards and was just kind of waiting there while we were
18 playing cards.

19 Q. And so when you say we were playing, were you actually
20 sitting at the table, too?

21 A. Yes, ma'am. I was playing for a short while and then
22 I left the two guys there.

23 Q. Okay. Let's talk about when you were playing. You
24 said the other guy sat down for a while and played?

25 A. Yes.

1 Q. Did he sit down at the table while you were sitting
2 there?

3 A. Yes, ma'am.

4 Q. And around this table area, is it still light, still
5 bright?

6 A. Yes, ma'am. It's daylight. You can see everything.

7 Q. And so you're playing cards and you had a good
8 opportunity to see him and interact with him?

9 A. Yes, ma'am.

10 Q. Was there anything blocking your vision of seeing him
11 while you were playing cards?

12 A. No, ma'am.

13 Q. And approximately how long did you interact with him
14 at your mom's house?

15 A. I would say roughly forty-five minutes and then I left
16 and came back in for like another fifteen minutes.

17 Q. Okay. And so when you came back, he was still there?

18 A. Yes.

19 Q. You got a good look at him again there?

20 A. Yes, ma'am.

21 Q. And then tell me whether or not you guys left your
22 mom's residence at any point.

23 A. Yeah. Well, when I came there, he was still playing,
24 but when I arrived he immediately got out of the game and I
25 took it as if he was ready to go look at the car, so we

1 left from there to go look at a car, me and my brother, and
2 they followed us, him and Justin.

3 Q. Okay. And so that other guy that sat down and played
4 cards followed you back to that address at 688 Bushberry
5 Road, your residence?

6 A. Yes, ma'am.

7 Q. And did you guys get out of the car there?

8 A. Oh, yes, we got out of the vehicle once we arrived to
9 look at the other vehicle.

10 Q. And it was still daylight?

11 A. Still daylight.

12 Q. And you guys interacted together there for some time?

13 A. Yes, ma'am, we interacted.

14 Q. When -- when you -- you referenced a few moments ago
15 that you were shown a photo lineup and do you recall -- do
16 you recall the officer who came and showed you that photo
17 lineup?

18 A. Yes, ma'am.

19 Q. And as it relates to the other guy?

20 A. Yes, ma'am.

21 Q. Okay. And was that Detective Mefford?

22 A. Yes, ma'am.

23 Q. And where were you when he showed you that photo
24 lineup?

25 A. I was still in the hospital in the bed in ICU.

1 Q. Okay. And was it your understanding that this was
2 gonna be a photograph lineup identifying the other guy?

3 A. Yes, ma'am.

4 Q. Okay. And when -- do you remember what he told you
5 when he showed you the photo lineup?

6 A. Yes, ma'am. He told me that the guy may or may not be
7 in the picture, so it wasn't like he was telling me that
8 they are in there for sure, so I had to actually visualize
9 and see them, and once I looked at it I immediately knew
10 who it was.

11 Q. And you said immediately?

12 A. Immediately.

13 Q. And you identified that other guy you were -- you
14 played cards with?

15 A. Yes, ma'am.

16 Q. Who followed you to your house?

17 A. Yes, ma'am.

18 Q. And you interacted with?

19 A. Yes, ma'am.

20 Q. And it was daylight?

21 A. Yes, ma'am.

22 Q. I'm gonna show you what's been marked as State's
23 Exhibit 1 and I'm gonna ask you if you recognize it?

24 A. Yes, ma'am. Yes, ma'am.

25 Q. And is this that photograph lineup that Detective

1 Mefford at the time showed you?

2 A. Yes, I do remember that lineup. Yes, ma'am, it's the
3 same one.

4 Q. And that was on that May 10, 2014, date? That's the
5 date there?

6 A. Yes, ma'am.

7 Q. And is -- did you select an individual on this photo
8 lineup?

9 A. Yes, ma'am.

10 Q. And what number did you select?

11 A. I selected Number 5.

12 Q. Did you circle that as well?

13 A. Yes, ma'am.

14 Q. And did you write it as well?

15 A. Yes, ma'am, and initialled it.

16 Q. Okay. And when he presented this photo lineup to you,
17 did he in any way point out who to select?

18 A. No, ma'am.

19 Q. Did he put it down and put his finger on a certain
20 number?

21 A. No, ma'am.

22 Q. Did he in any way suggest to you that Number 5 was the
23 person that you were referring to, that you hung -- that
24 you interacted with that day?

25 A. No, ma'am, he didn't.

1 Q. Okay.

2 MS. FULLER: I think that's it for the purposes of
3 this hearing, Your Honor.

4 THE COURT: Cross?

5 MR. FLOYD: Just a couple questions, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION (In-Camera)

8 BY MR. FLOYD:

9 Q. Mr. Toland, you didn't know Mr. McClure's name back
10 then, did you?

11 A. Only his nickname.

12 Q. And what was his nickname?

13 A. It was -- it was something funny. I don't recollect
14 it today.

15 Q. You knew it back then though, didn't you?

16 A. Yeah.

17 Q. So would you say your memory is not as good here five
18 years later as it was back then?

19 A. Well, I have to say it's -- it's still the same
20 because once you've been through an incident like that you
21 could never forget it.

22 Q. But you -- you don't remember his nickname today, but
23 you knew it in 2014; is that correct?

24 A. Yeah, his nickname wasn't relevant. I can remember
25 him shooting me and my brother, but I can't remember his

1 name, that wasn't important. But I do remember who pulled
2 the trigger and did what they did.

3 Q. Mr. Toland, I understand the way you feel, okay, but
4 your memory's just not -- you don't remember everything
5 from back then, do you?

6 A. Yes, I do. I don't remember his name. That's
7 different.

8 Q. What else don't you remember; do you know? Have you
9 forgotten anything else?

10 A. I kind of forgot what it feels like to talk to my
11 brother since he's no longer here, you know, due to
12 Mr. McClure, but other than that I haven't forgot most.
13 That was a very tragic incident.

14 Q. Except you don't remember his nickname, but you knew
15 back then; is that correct?

16 A. Yeah, it wasn't too important to me. It wasn't
17 relevant.

18 Q. Now when they came to show you the photos, were you
19 still in the hospital getting treated?

20 A. Yes, sir, I was still in the hospital.

21 Q. Were you on any kind of machines at that time?

22 A. I believe I was on maybe an IV machine, something like
23 that. Maybe like a feeding machine where they feed me food
24 because I couldn't eat on my own. I couldn't get fluids.

25 Q. Were you able to talk with them though? I mean, you

1 weren't on a trach back then, were you?

2 A. I wasn't able to talk until maybe like after I woke
3 up, maybe like a week after I woke up or a few days after I
4 woke up from me being in the medically-induced coma.

5 Q. But when you -- they came to see you on this day, you
6 were able to talk to them?

7 A. I wouldn't say that I had the best vocal, but I could
8 see and I could write, so it wasn't a problem with me
9 identifying him. I just couldn't actually tell them, you
10 know, what I can tell you now.

11 Q. Okay.

12 MR. FLOYD: Thank you. No further questions,
13 Your Honor.

14 THE COURT: Any redirect?

15 MS. FULLER: None, Your Honor.

16 THE COURT: All right.

17 EXAMINATION (In-Camera)

18 BY THE COURT:

19 Q. Were you on any kind of pain medication at this
20 point in time in the hospital?

21 A. Yes, sir.

22 Q. You were? Do you recall what it was?

23 A. It may have been -- I don't recall, sir.

24 Q. You don't recall?

25 A. No, sir.

1 Q. Okay.

2 A. But I know I was on pain medicine.

3 Q. You were on some. And this -- when you saw the ID,
4 how many days or weeks after the shooting was this when you
5 saw the photo lineup?

6 A. Like two weeks after the shooting.

7 Q. Two weeks after?

8 A. (Nods head.)

9 Q. Okay.

10 THE COURT: Any follow-up based on my questions
11 of the witness?

12 MS. FULLER: Yes. Thank you, Your Honor.

13 REDIRECT EXAMINATION (In-Camera)

14 BY MS. FULLER:

15 Q. Mr. Toland, when you identified Number 5 out of the
16 lineup, did you have any doubt in your mind who you were
17 selecting?

18 A. No, ma'am.

19 Q. Did -- the fact that you were on any pain medication,
20 did that impact your ability to remember who shot you and
21 your brother?

22 A. No, ma'am, not at all.

23 Q. Okay. Were you in any state that would have impaired
24 your ability to understand what you were doing?

25 A. No, ma'am, not at all.

1 Q. Okay. So even though you were still in the hospital
2 and still on some medication, you were still coherent
3 enough to understand what Detective Mefford was asking you?

4 A. Yes, ma'am. I was physically damaged, but mentally I
5 was good.

6 Q. Okay. And the pain medication was just to -- based on
7 the injuries?

8 A. Based on physical pains, but I never felt out of my
9 mind, no, ma'am.

10 Q. And go ahead and share with the Court, where were you
11 shot and what injuries did you have?

12 A. I was shot six times on the front, back, the neck,
13 stomach, side, and those were the -- the gunshot wounds.
14 The only thing that I still suffer from now is I still
15 carry ostomy bag from the injuries.

16 Q. From the injuries and that's -- so five years later,
17 you're still suffering from what happened?

18 A. Yeah, every morning when I wake up and every night I
19 still think about it.

20 Q. Okay. And do you have any doubt in your mind that the
21 person you selected was the person that did that to you?

22 A. No, ma'am.

23 MS. FULLER: I think that clears that up, Your
24 Honor.

25 THE COURT: Okay. Recross?

1 MR. FLOYD: No further questions, Your Honor.

2 THE COURT: Sir, thank you. You can step down.

3 (Witness excused.)

4 MS. FULLER: Thank you, Your Honor. The State calls
5 Ladondra Ellis.

6 THE CLERK: Once you're seated state your full name,
7 spelling your last, please.

8 THE WITNESS: Ladondra Ellis, E-L-L-I-S.

9 LADONDRA ELLIS,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION (In-Camera)

12 BY MS. FULLER:

13 Q. Ms. Ellis, where are you from?

14 A. Richmond, California.

15 Q. And where do you currently live?

16 A. Atlanta, Georgia.

17 Q. Okay. Do you want to be here today?

18 A. I don't.

19 Q. Okay. You're here because we sent a subpoena to
20 Atlanta, an out-of-state subpoena, requesting your presence
21 to come here?

22 A. Yes.

23 Q. Okay. I'll just jump right into it. Do you know the
24 Defendant, Terry McClure?

25 A. Yes.

1 Q. And I'm gonna go ahead and move the mic a little
2 closer. I know there's just us, just a few people in here,
3 but we want you to keep your voice up.

4 And how do you know him?

5 A. From high school.

6 Q. And this is back in California?

7 A. Yes.

8 Q. And how long had you known him?

9 A. Years. Like a long time.

10 Q. And back in 2014, were you still in contact with
11 Mr. McClure?

12 A. Yes.

13 Q. And did you -- did you call him Terry McClure?

14 A. No.

15 Q. What did you call him?

16 A. L.

17 Q. And would L be considered a nickname?

18 A. Yes.

19 Q. Now as it relates to your involvement in this case and
20 why you're here, can you go ahead and -- I'll just ask some
21 pointed questions for the purposes of this hearing. Back
22 in 2014, in April, do you recall receiving a request from
23 the person you know as L to pick up a friend in Atlanta?

24 A. Yes.

25 Q. And did you actually do that in this case?

1 A. I did.

2 Q. And when it comes to L, did you actually communicate
3 with him that day in terms of the actual day that you
4 picked up his friend?

5 A. I did.

6 Q. And when the police came and spoke to you, they asked
7 you who L was?

8 A. They did.

9 Q. And were you able to give them a name?

10 A. No.

11 Q. And so in that case they showed you a photo lineup?

12 A. They did.

13 Q. And when they showed you this photo lineup, did they
14 in any way share with you if the person you were referring
15 to as L was in this photo lineup?

16 A. They did.

17 Q. They told you that?

18 A. No, they told me that he might not be in there.

19 Q. Okay. So they told you he may be in it or he may not
20 be in it?

21 A. Correct.

22 Q. And did they suggest to you -- after they told you
23 that, did that officer, I believe it was Detective Mefford.
24 Do you recall?

25 A. (Nods head.)

1 Q. Did he in any way point out the person that you were
2 referring to as L in this photo lineup?

3 A. No.

4 Q. I'm gonna show you what's been marked as State's 2 and
5 do you recognize that photo lineup?

6 A. I do.

7 Q. And do you recognize the date that you were given this
8 photo lineup?

9 A. Yes. Yes.

10 Q. And was that that May 15th of 2014?

11 A. It was.

12 Q. And you said that you've known L since high school?

13 A. Yes.

14 Q. Let me ask you this. How -- how old were you back in
15 2014?

16 A. I --

17 Q. Okay. Bad question. What year did you graduate high
18 school?

19 A. 2006.

20 Q. Okay. And what years did you know him in school?

21 A. Ninth grade year. My ninth grade year.

22 Q. So you graduated class in 2006, so in 2014 it would
23 have been at least --

24 A. Ten years.

25 Q. -- eleven or twelve years that you'd known him since

1 you met him in ninth grade?

2 A. Yes.

3 Q. Okay. I'll do the math. And when you selected the
4 individual that you knew as L, did you have any doubt in
5 your mind who you were selecting?

6 A. No.

7 Q. And what number did you select?

8 A. Five.

9 Q. And then did you also write five?

10 A. I did.

11 Q. And is that your signature?

12 A. It is.

13 Q. Now on this photo lineup there's actually something
14 handwritten on there. Can you go ahead and tell me what
15 that says?

16 A. This is the person I know as L.

17 Q. And who wrote that?

18 A. I did.

19 Q. And did you have any doubt in your mind who you were
20 selecting?

21 A. No.

22 MS. FULLER: And this was streamlined and somewhat
23 leading for the purposes of just this hearing, Your Honor,
24 but I think that's enough. No further questions at this
25 time.

1 THE COURT: Cross?

2 MR. SPANGLER: Yes, Judge.

3 CROSS-EXAMINATION (In-Camera)

4 BY MR. SPANGLER:

5 Q. Good morning, Ms. Ellis.

6 A. Good morning.

7 Q. The time that you met with the police, when would that
8 have been when they showed you the lineup; do you remember?

9 A. Do you mean like --

10 Q. Like maybe the date that you did that lineup.

11 A. May 15th.

12 Q. Of what year?

13 A. 2014.

14 Q. So that's over five years ago?

15 A. Yes.

16 Q. Okay. Where were you when they showed you that
17 lineup?

18 A. In the parking lot of Magic City.

19 Q. Okay. What is Magic City?

20 A. It's a strip club.

21 Q. Okay. So you and the police were in the parking lot
22 of the strip club?

23 A. Yes.

24 Q. Okay. Are you inside the car or outside of the car?

25 A. Outside. I was outside the car.

1 Q. And I want to make sure I got your testimony right.
2 You remember everything the police told you that day when
3 you were talking with them?

4 A. No, not everything. Not everything.

5 MR. SPANGLER: All right. No further questions,
6 Judge.

7 THE COURT: Ma'am, thank you. You can step down.

8 (Witness excused.)

9 THE COURT: Any additional witnesses on this
10 issue?

11 MR. GRAHAM: Not for the purpose of this, Your
12 Honor.

13 THE COURT: You-all, I assume, do not have any
14 witnesses on this?

15 MR. SPANGLER: No, Judge.

16 THE COURT: All right. I'm happy to hear any
17 argument from whoever wants to go first.

18 MS. FULLER: Thank you, Your Honor.

19 Of course, it's the State's position that both of
20 these lineups should be admitted into court. There was
21 testimony given and nothing that contradicted that there
22 was no police suggestiveness. You received testimony
23 of -- from Ladondra, specifically how she was familiar
24 with the person she knew as L. She had made the
25 identification, she had known him since high school.

1 This was ten years plus of knowing him when she made that
2 identification.

3 In terms of VonKeith, he testified that he spent
4 well over forty, maybe forty-five minutes playing cards
5 with him, interacted, travelling to another location, it
6 was daylight and nothing obstructed his view of seeing
7 him. And he also I think testified on cross he would
8 remember the person that shot him and his brother. And
9 then after Your Honor asked him some questions in terms
10 of being in the hospital, he said his mental state was
11 intact, he didn't have any issues in terms of remembering
12 who did this.

13 It would be the State's position that balancing the
14 totality of circumstances and balancing everything with
15 VonKeith's opportunity to see who actually did this to
16 him and his brother, he testified with great certainty
17 on the stand and the fact that he actually identified
18 the actual person who actually did this and who's
19 standing trial. The length of time, Your Honor, was just
20 a mere two weeks, and I think the State would argue that
21 it wasn't two years later or five years later that he's
22 making this photo lineup. It was within a reasonable
23 amount of time and, of course, it will be developed in
24 the trial that that's in line with the investigation in
25 this case to be able to identify Terry McClure as a

1 suspect. So there wasn't an earlier opportunity to even
2 present him with a photo lineup. That would have been
3 the first opportunity to do so when that was done.

4 So, Your Honor, it's the State's position that
5 two weeks after a crime can still be reliable. I think
6 State versus Patterson stands for that proposition.

7 In terms of Ladondra, she has a long-term
8 relationship with him. I don't even believe that comes
9 into play, so it's the State's position that based on the
10 preponderance of the evidence that both photo lineups
11 should be admitted into evidence.

12 THE COURT: Any argument, Mr. Spangler?

13 MR. SPANGLER: Briefly, Judge.

14 As to the identifications by VonKeith Toland,
15 it's our position that the State at this point has not
16 offered any evidence as to his competency while making
17 the identification. He testified he was in the hospital,
18 he was on some sort of pain medication. The inference
19 is that it's a mind-altering medication five years ago.
20 At this point the State has presented no medical
21 testimony as to his state of mind while he's making
22 these observations, so for his testimony and his
23 identification.

24 To make that argument for Ms. Ellis, my final
25 question to her was can you remember what the police told

1 you while you were meeting with him. She says it was in
2 a parking lot of a strip club there in Atlanta. She said
3 she couldn't.

4 Under Biggers, that first prong, we don't even have
5 enough evidence to conduct that inquiry because she can't
6 remember what the police told her, again, because of the
7 five-year delay in this case.

8 So for those reasons, the lack of medical testimony
9 on VonKeith's identification and Ms. Ellis' inability to
10 recall what was told to her, we argue that both of these
11 identifications should be excluded.

12 MR. FULLER: Briefly, Your Honor, medical testimony,
13 this is probably a new balancing test for me under Neil v.
14 Biggers. Any competent witness can testify in this trial
15 and I don't think that's the standard to even consider
16 in this courtroom, Your Honor, and I don't believe his
17 competency or anything was attacked, and, of course, the
18 State would argue would be improper in this case. He
19 hasn't demonstrated anything whatsoever where his
20 competency as a witness in a case, which the standard is
21 pretty low in South Carolina, was challenged.

22 In terms of Ladondra, the question actually was
23 can you remember everything the police told you and,
24 truthfully, the answer was no. I'm not sure if I can
25 remember everything I just said five minutes ago, so I'm

1 not sure how that argument impacts the Neil versus Biggers
2 analysis that Your Honor needs to make.

3 Your Honor, it's still the State's position that
4 weighing everything, the totality of the circumstances,
5 preponderance of the evidence, they can attack competency
6 -- well, it's probably objectionable, but in front of the
7 jury if they want to challenge his identification -- his
8 identification, an in-court identification, essentially of
9 their client, they can do that in front of the jury, but
10 this is a lower standard for admissibility here, Your
11 Honor. And we're looking at police action and there was
12 no police action suggesting who to identify in those photo
13 lineups.

14 THE COURT: May I look at 1 and 2, please.

15 THE COURT REPORTER: (Handing.)

16 THE COURT: The record will reflect that the Court
17 has reviewed State's 1 and 2. The photographs in those
18 exhibits are, of course, identical and the photographs
19 show six African American males with short haircuts and
20 a mustache, I guess you would call it a goatee to some
21 extent, on all six individuals with facial hair both
22 above the lip and around the chin. So, of course, there
23 is nothing unduly suggestive about the manner in which
24 these photographs were collected or the -- or anything
25 unduly suggestive in the lineup itself. It is a totality

1 of the circumstances analysis.

2 The Court finds that there was no suggestiveness on
3 the part of either the lineup itself or on behalf of the
4 officer who showed these lineups to the witnesses. There
5 was no suggestion made to pick Number 5. Mr. Toland and
6 Ms. Ellis had sufficient time to familiarize themselves
7 with the appearance of the individuals that they selected.
8 The Court does find that an hour playing -- or forty-five
9 minutes playing poker and maybe an additional fifteen
10 minutes to drive out to the place where they were looking
11 at the -- the car, that is sufficient time for Mr. Toland
12 to familiarize himself with the Defendant's appearance.
13 The testimony of Mr. Toland indicates that he was alert,
14 he did have no issues at the time that he spoke to the
15 officer with remembering the face of Number 5. And, again,
16 the solicitor's point that this took place only two weeks
17 after the incident, that's a valid point to make. There
18 was no earlier opportunity to present the photo lineup
19 to Mr. Toland. And, most importantly, the certainty by
20 which Mr. Toland and Ms. Ellis picked the person out,
21 that certainly weighs heavily in favor of admissibility.

22 So under the totality of the circumstances, the
23 Court will find that State's 1 and 2 are admissible under
24 Neil v. Biggers, so that will be the ruling on that.

25 All right. We still have to address potential

1 redaction of the recording. Have you-all had a chance
2 to listen to that yet?

3 MR. SPANGLER: We have not, Judge.

4 THE COURT: You haven't? Okay.

5 Do you have something else?

6 MS. FULLER: No, Your Honor. Since they didn't have
7 an opportunity, we planned to just publish it during the
8 Denno hearing.

9 Is this a good time for a lunch break so then we can
10 just take it up in Denno?

11 THE COURT: It's a wonderful time for a lunch break.

12 MS. FULLER: Okay. Perfect.

13 MR. SPANGLER: And that would be fine, Judge, if we
14 could watch the whole thing during the Denno.

15 THE COURT: Sure. All right. That will be fine.

16 We'll be at ease until around, let's say, ten
17 minutes after two or so. That should be time for us
18 hopefully to get a bite to eat.

19 MS. FULLER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Whereupon, a luncheon recess was taken at 1:06 PM.)

22 (Back on the record at 2:22 PM.)

23 (State's Exhibit Number 3 and 4 or were marked for
24 identification.)

25 BAILIFF: All rise. Court is now in session. The

1 Honorable Frank Addy presiding.

2 THE COURT: Thank you. Please have a seat.

3 All right. Solicitor, we'll go back on the record.

4 Solicitor, you're ready to proceed with the issue
5 of the redaction slash Jackson v. Denno, however you
6 want to treat it?

7 MR. GRAHAM: Yes, Your Honor.

8 THE COURT: The ball's in your court.

9 MR. GRAHAM: The State calls Brent Pucci to the
10 stand, Your Honor.

11 (Whereupon, Brent Pucci was duly sworn by the Clerk
12 of Court.)

13 THE CLERK: Have a seat up there, please. Once
14 you're seated state your full name, spelling your last
15 on the record, please.

16 THE WITNESS: My name is Brent Pucci, P-U-C-C-I.

17 BRENT PUCCI,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION (In-Camera)

20 BY MR. GRAHAM:

21 Q. Investigator Pucci -- is it investigator? Is that
22 correct?

23 A. I was a detective at the time, yes, sir.

24 Q. Detective?

25 A. Yes, sir.

1 Q. Will you tell the Court where you are from and how
2 long you've been in law enforcement.

3 A. Yes, sir. I am currently employed with the Fairfield,
4 California police department. I've been a police officer
5 for over twenty-five years now. I began my career in Texas
6 and I'm currently out of California.

7 Q. And how long have you worked in California in law
8 enforcement?

9 A. California law enforcement, I'm on my twenty-third
10 year.

11 Q. Back in 2014, did you have an opportunity to come in
12 contact with Mr. McClure and advise him of his rights and
13 interview him?

14 A. Yes, sir.

15 Q. Would you tell the Court when that occurred and how it
16 occurred and where?

17 A. Yes, sir. That occurred on May 8, 2014, at
18 approximately 7:05 in the evening in the city of Fairfield,
19 county of Solano.

20 Q. And how did you come in contact with Mr. McClure that
21 day?

22 A. Mr. McClure became a person of interest in a shooting
23 investigation that took place on May 1, 2014.

24 Q. And in the course of that investigation, were warrants
25 obtained?

1 A. In the -- could you repeat that, sir?

2 Q. Were warrants obtained for his arrest?

3 A. There was wasn't -- there wasn't a warrant for his
4 arrest. It was a probable cause arrest for us.

5 Q. Okay. So at some point did he appear in an interview
6 room and you go in and meet with him?

7 A. That is correct.

8 Q. And did you -- you were actually interviewing him on a
9 shooting that was unrelated to this case, correct?

10 A. Yes, sir.

11 Q. Okay. He was in custody when you came in contact with
12 him?

13 A. That's correct, sir.

14 MR. GRAHAM: Your Honor, for a Court's exhibit,
15 I have Court's Exhibit 2, which is the entire video
16 recording of Detective Pucci's interview -- Miranda
17 and interview regarding the non-related shooting for a
18 Court's exhibit, and that's Number 2.

19 THE COURT: Very good. Court's 2 will be in
20 evidence obviously.

21 Go ahead.

22 BY MR. GRAHAM:

23 Q. Now that -- your contact with him, that was audio
24 taped; is that correct?

25 A. Yes, sir.

1 Q. And for the purpose of what we're here for today, we
2 have redacted out your interview of him regarding that
3 shooting in California, correct?

4 A. Yes, sir.

5 Q. And, in fact, at the defense's request we have turned
6 a video into an audio so you cannot see and redacted out --
7 actually it's not an audio, it's a video. We redacted out
8 the Defendant being brought in in handcuffs, correct?

9 A. Yes, sir.

10 Q. So let me show you what's been previously marked as
11 State's 3 for the purposes of this hearing. Do you see
12 your initials?

13 A. Yes, sir.

14 Q. And have you had a chance to view this?

15 A. I did, sir.

16 Q. And does it accurately reflect the portion of the
17 Miranda rights that you gave Mr. McClure that's on Court's
18 Exhibit 2, which is the full interview?

19 A. That's correct, sir.

20 MR. GRAHAM: Your Honor, the State -- I guess it's
21 marked already. State's 3 for ID.

22 THE COURT: Any problem with that?

23 It's in evidence.

24 MR. GRAHAM: With the Court's permission I will go
25 ahead and play it.

1 THE COURT: Please.

2 I think I indicated that's in evidence. Obviously
3 you'll move it into evidence when you have the jury
4 back, so it's not in evidence.

5 MR. GRAHAM: Your Honor, while we're working on
6 the technical, we're gonna get another disk drive. We
7 checked one disk in it, but apparently not this disk.
8 We're gonna get a portable drive.

9 While we're doing that, Your Honor, I can go ahead
10 and ask the detective questions.

11 THE COURT: Please.

12 BY MR. GRAHAM:

13 Q. Was Mr. McClure in your opinion under the influence of
14 alcohol or drugs during the time that you Mirandized him
15 and later spoke with him?

16 A. No, sir, he was not.

17 Q. Either -- before this tape did you or anybody else
18 threaten Mr. McClure in any way to get him to speak with
19 you or later to Detective Trojanowski?

20 A. No, sir.

21 Q. Did you -- were you aware of any force or coercion
22 that was used on Mr. McClure to get him to speak with
23 Detective Trojanowski?

24 A. No, sir.

25 Q. Did you or anyone you're aware of make promises or

1 give a hope of reward to Mr. McClure if he spoke with law
2 enforcement?

3 A. No, sir.

4 Q. To the best of your belief, did he understand the
5 rights that you advised him of?

6 A. Yes, sir.

7 Q. And did he voluntarily waive those rights and agree to
8 speak to you and then later Detective Trojanowski off of
9 those rights?

10 A. That's correct, sir.

11 (Whereupon, Court's State's Number 3 was played.)

12 BY MR. GRAHAM:

13 Q. Detective Pucci, do you recognize that as being the
14 audio portion of your advisement of rights?

15 A. Yes, sir, that is.

16 Q. And would you tell the Court how you advised him of
17 his rights? Do you have a card or did you do it from
18 memory? How did you do that?

19 A. No, I had done this from memory.

20 Q. And is that the way you normally advise people of
21 their rights?

22 A. Yes, sir.

23 Q. At any time -- and did he appear to understand those
24 rights?

25 A. He did understand his rights, yes, sir.

1 Q. And had waived the rights and actually spoke with you
2 and then later spoke with Detective Trojanowski?

3 A. That's correct.

4 Q. At any time during your conversation, your interview
5 with him regarding the shooting in California that you were
6 investigating, did he ever ask for an attorney?

7 A. No, sir, he did not.

8 Q. Did he ever say that he didn't want to talk anymore?

9 A. No, sir, he did not.

10 MR. GRAHAM: Your Honor, I believe that's all the
11 questions that I have for Detective Pucci on this
12 matter.

13 CROSS-EXAMINATION (In-Camera)

14 BY MR. SPANGLER:

15 Q. Good afternoon, Detective.

16 A. Good afternoon.

17 Q. What time did you say that interrogation started?

18 A. I believe it started about 7:05 PM.

19 Q. 7:05. Do you remember how long that interrogation
20 lasted?

21 A. Yes, sir.

22 Q. Okay. How long was it?

23 A. Approximately an hour and a half.

24 Q. All right. Now the first part of the interview when
25 you're in the room with Mr. McClure, how long is that part?

1 A. I don't understand your question.

2 Q. I guess before you left the room, the interview room,
3 how long -- when you were talking with him about the
4 California shooting you were investigating, how long is
5 that portion of the interview?

6 A. That interview lasted one hour and approximately
7 twenty-five minutes, maybe -- maybe a little bit longer
8 than that, but right around that time.

9 Q. All right. Maybe I'm not asking this as clearly as I
10 need to be. So the interview starts out, you and another
11 detective enter the room with Mr. McClure; is that right?

12 A. Yes, sir.

13 Q. Okay. Your goal is to discuss with him a shooting in
14 California; is that right?

15 A. Yes, sir.

16 Q. Okay. That's when you gave him those Miranda
17 warnings, when you and that detective entered the room with
18 him?

19 A. Yes, sir.

20 Q. Okay. You and that detective spoke with him in the
21 room for how long about the California shootings?

22 A. One hour and twenty-five minutes.

23 Q. After that hour and twenty-five minutes, you actually
24 got up and left the room?

25 A. That's correct.

1 Q. And the other detective left the room as well?

2 A. Yes, sir.

3 Q. Before you left the room, you told Mr. McClure to stay
4 put; is that right?

5 A. I don't recall -- I don't recall that. I'm not -- I
6 could have. I'm not sure.

7 Q. Okay. Well, do you remember telling him he was free
8 to leave the room at that point?

9 A. I don't -- no, he didn't -- I did not say that.

10 Q. Okay. Was he free to leave the room at that point?

11 A. No, sir.

12 Q. Okay. He was still in custody?

13 A. Yes, sir.

14 Q. Okay. So he remains in the room, you and the other
15 detective -- and so we have a name for him, who was the
16 other detective in there for the California shooting?

17 A. That was Detective Fok, F-O-K.

18 Q. All right. So you and Detective Fok leave the room.
19 Do you recall how long you were out of the room for?

20 A. After the interview, sir?

21 Q. When you-all tell Terry to stay put, you and the other
22 detective step out of the room, how long are you two out of
23 the room for?

24 A. I don't recall going back in any time soon. I believe
25 it was after Detective Trojanowski's interview, so I don't

1 recall. I don't know. I can't answer that question.

2 Q. Okay. Do you know when Detective Trojanowski -- and
3 maybe I'm mispronouncing -- Trojanowski?

4 A. Yes, sir.

5 Q. Okay. When did Detective Trojanowski enter the room
6 for the second interview?

7 A. I believe it was within ten minutes of me -- me
8 finishing my interview.

9 Q. Okay. So that would have meant Mr. McClure was in the
10 room for about ten minutes by himself?

11 A. Yes, sir, roughly.

12 Q. Now when Detective Trojanowski goes back in the room,
13 you don't go back in, do you?

14 A. No, sir, I do not.

15 Q. The other detective that was with you, Detective Fok,
16 he doesn't go back in at that point, does he?

17 A. I'm not sure.

18 Q. All right. Well, was anybody in the room with
19 Detective Trojanowski during this second interview?

20 A. I don't recall.

21 Q. But you weren't in the room for that portion?

22 A. That's correct.

23 Q. And it's your understanding the second interview
24 discussed what we're here about today, the South Carolina
25 case?

1 A. That's my understanding, yes, sir.

2 Q. And then the next time you make contact with
3 Mr. McClure is after that second interview has terminated?

4 A. Yes, sir. I don't -- I don't recall the actual
5 timeline, but there was a point where -- where I had met
6 with Mr. McClure again as it referenced the California
7 case.

8 Q. Okay. After the second interview was finished?

9 A. I believe so, yes, sir.

10 Q. All right.

11 MR. SPANGLER: Nothing further, Judge.

12 MR. GRAHAM: Nothing else, Your Honor.

13 THE COURT: Thank you, sir. You can step down.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: Do you have another witness?

17 MR. GRAHAM: As far as Miranda being read, that's
18 all the State has on that issue. We do have the second
19 interview and the interactions with the officer. Although
20 the rights weren't read, we still probably need -- however
21 Your Honor wants to address it.

22 THE COURT: Does the defense have a preference? Do
23 you want the second officer to testify and then we play
24 the recording or how do you want to do it?

25 MR. SPANGLER: Yes, sir, that might be best to put

1 up the second officer.

2 THE COURT: Go ahead and call him why don't you.

3 MR. GRAHAM: Thank you, Your Honor.

4 The State calls Detective Trojanowski.

5 THE CLERK: Have a seat, sir. Once you're seated
6 state your full name, spelling your last, please.

7 THE WITNESS: My name is Steven Trojanowski. Last
8 name is T-R-O-J-A-N-O-W-S-K-I.

9 STEVEN TROJANOWSKI,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION (In-Camera)

12 BY MR. GRAHAM:

13 Q. Detective Trojanowski, how long have you been in law
14 enforcement?

15 A. Sir, I have about -- approximately twenty-three years
16 of law enforcement experience.

17 Q. And how much of that was with the Fairfield County
18 Police Department?

19 A. So I started my career with the Solano County
20 Sheriff's Office. I spent four and a half years there and
21 I've spent the remainder of my career with the Fairfield
22 Police Department.

23 Q. And are you familiar with Mr. McClure?

24 A. Yes, sir.

25 Q. And were you asked by South Carolina law enforcement,

1 particularly Sergeant Mefford at the time, to assist in
2 interviewing Mr. McClure about the ongoing investigation in
3 South Carolina related to this case?

4 A. Yes, sir.

5 Q. Do you remember the date that you came in contact with
6 Mr. McClure?

7 A. I'd have to refer to my report. I think it's May 5th
8 -- May 8th.

9 Q. And I have a copy of your -- you did a courtesy
10 report, I guess, for assisting another agency; is that
11 correct?

12 A. Yes, sir.

13 Q. Let me show you that and ask you if recognize that?

14 A. Yes, sir.

15 Q. Reviewing that does it tell you the -- do you remember
16 now the date that you came in contact with Mr. McClure?

17 A. Yes, sir, May 8th.

18 Q. May 8th of?

19 A. 2014.

20 Q. 2014?

21 A. Yeah.

22 Q. And that was after the advisement of rights by
23 Detective Pucci and then whatever conversations he had with
24 Mr. McClure, correct?

25 A. Yes, sir. I allowed them to do the first interview

1 referenced our local case and the plan was for me to
2 interview him after they were done.

3 Q. Were you able to observe Detective Pucci's interview?

4 A. I did not watch the interview, no.

5 Q. Okay. Were you notified by Detective Pucci or
6 somebody else that his interview -- his Miranda warnings
7 and interview with Mr. McClure was complete?

8 A. Yes.

9 Q. And once that was done, did you have the opportunity
10 to come face to face with Mr. McClure?

11 A. Yes, I did.

12 Q. Okay. Was that by yourself or with someone?

13 A. It was with Detective Fok who had been involved in the
14 previous interview.

15 Q. Okay. And was it your understanding that Detective
16 Pucci had read his rights to Mr. McClure and Mr. McClure
17 had waived the rights?

18 A. Yes, sir.

19 Q. Did you have -- had anybody told you that he had
20 invoked his rights to an attorney before you spoke with
21 him?

22 A. No.

23 Q. Or that he didn't want to talk anymore?

24 A. No.

25 Q. Now you've had an opportunity -- this was a video

1 interview as well; is that correct?

2 A. Yes, sir.

3 Q. All right.

4 MR. GRAHAM: What's been marked as Court's Number 3,
5 Your Honor, is an unredacted version of the interview
6 conducted by Detective Trojanowski with Mr. McClure.

7 THE COURT: Court's 3 will be in evidence.

8 MR. GRAHAM: And then -- 3's a Court's exhibit,
9 Your Honor. 4, I'm sorry, is the redacted version, but
10 so far we've been -- doesn't have the redactions that the
11 State and the defense have been able to agree on at
12 this point.

13 THE COURT: All right. Very good.

14 BY MR. GRAHAM:

15 Q. Detective Trojanowski, let me show you what's
16 premarked as State's Number 4. Do you recognize that?

17 A. Yes, sir. That's the disc that I viewed this morning
18 and after viewing the disk, I signed it and dated it.

19 Q. Okay. Other than -- for purposes of this hearing, I
20 just stated that we have taken some things out of it. That
21 is correct?

22 A. Yes, sir.

23 Q. What is remaining though, is that a fair and
24 accurate depiction of the conversation that you had with
25 Mr. McClure?

1 A. Yes.

2 Q. Did he appear to understand your questions?

3 A. Yes, sir.

4 Q. Were his answers to your questions, did they make
5 sense? Were they rational?

6 A. Most of them.

7 Q. Do you have any belief from your dealings with him
8 that he didn't understand your questions?

9 A. No.

10 Q. Did he appear to be under the influence of alcohol or
11 drugs?

12 A. I did not smell any alcohol or marijuana and his
13 behavior didn't suggest to me that he was under the
14 influence of any other narcotics.

15 Q. Did you promise him anything to get him to speak with
16 you?

17 A. No, sir.

18 Q. Did you threaten him in any way to get him to speak
19 with you?

20 A. No, sir.

21 Q. At any time did he tell you that he didn't want to
22 talk anymore?

23 A. No, sir.

24 Q. Ultimately he did say that he wanted to speak to an
25 attorney, correct?

1 A. Toward the end of our interview, yes, he explained
2 he'd rather speak with an attorney so that he could to get
3 things correct --

4 Q. Okay. Once --

5 A. -- and we terminated the interview.

6 Q. I'm sorry, Detective. Once he stated that he wanted
7 to speak with an attorney, you stopped your questioning
8 and then shortly thereafter ended the interview; is that
9 correct?

10 A. Yes, sir. We explained his rights to extradition and
11 let him know who the investigating agency and officer was.

12 Q. In your interactions with him, did he appear to
13 understand the conversations you had?

14 A. Yes, sir.

15 Q. Is there anything about your dealing with him that
16 made you think that your interaction with him was not
17 voluntary on his part?

18 A. Not at all.

19 MR. GRAHAM: Your Honor, at this time I will go
20 ahead and publish 4 for the Court.

21 THE COURT: Go ahead, please.

22 (Whereupon, State's Exhibit Number 4 was played.)

23 BY MR. GRAHAM:

24 Q. Detective Trojanowski, after that point, that's when
25 he asked for his lawyer?

1 A. Yes, sir.

2 Q. And like we discussed before, you stopped asking
3 questions?

4 A. Yes, sir.

5 Q. Now at the beginning of it that we didn't see that's
6 on the unredacted version, when you came in you offered him
7 water and something to eat; is that correct?

8 A. Yes, sir.

9 Q. Does -- what we see there fairly and accurately
10 depicts that's what happened, right?

11 A. Yes, sir.

12 Q. And he talked to you in your opinion of his own free
13 will?

14 A. Absolutely.

15 Q. And when he wanted to end the conversation, you ended
16 it?

17 A. Yes, sir.

18 MR. GRAHAM: Thank you. Please answer any questions
19 the defense may have.

20 Oh, actually -- I'm sorry. I do have a few more
21 questions very briefly. I apologize.

22 THE COURT: Oh, sure. Go ahead.

23 BY MR. GRAHAM:

24 Q. During the interview you were showing him photographs;
25 is that correct?

1 A. Yes, sir.

2 Q. Let me show you six photographs and ask you if you
3 recognize those as the photographs that you showed to
4 Mr. McClure during your interview.

5 A. Yes.

6 Q. And are they in the proper order?

7 A. Yes.

8 MR. GRAHAM: Your Honor, the State would mark each
9 one of these individually.

10 MR. SPANGLER: Can we just look at them real quick?

11 (State's Exhibit Numbers 5 through 11 were marked
12 for identification.)

13 BY MR. GRAHAM:

14 Q. For the hearing and for the record, Detective,
15 State's Number 5 is a photograph you showed him and what
16 was your understanding of who that photograph was?

17 A. That's a photograph of Justin Butler.

18 Q. Do you actually know Justin Butler?

19 A. I do.

20 Q. And is that a photograph of Justin Butler?

21 A. Yes, sir.

22 Q. State's Number 6 that you showed during the interview
23 that we just watched, what is that?

24 A. That's a photograph taken from the Department of
25 Motor Vehicles in California of Alonzo Walker.

1 Q. And that was a name that you were given to ask
2 Mr. McClure about about the investigation in South
3 Carolina?

4 A. Yes, sir.

5 Q. State's Number 7.

6 A. This is a California State Department of Motor
7 Vehicles photo record for Rico Walker.

8 Q. State's Number 8, it looks like you got it off of
9 Google Earth; is that correct?

10 A. Yes, I got onto Google Earth and attempted to Google
11 the address where the incident occurred so I'd have some
12 reference to show during the interview.

13 Q. And that was 688 Bushberry Road in Pelion, South
14 Carolina?

15 A. Yes, sir.

16 Q. State's 9.

17 A. Again, a Google image. It's a little further up.
18 Again, because I wasn't familiar with this area I needed it
19 for myself to see about where we were talking about.

20 Q. State's Number 10.

21 A. It's the third Google image. It shows the rooftop of
22 a structure with some white -- I don't know if it's snow or
23 something on the ground, but, again, a Google image used to
24 show the location of the property.

25 Q. State's Number 11.

1 A. This is a photograph that was provided by Detective
2 Mefford of the two victims in this case, which I showed to
3 the Defendant in order to see if he would identify either
4 of them.

5 Q. State's 11 actually has four people; two adult males,
6 an adult female and a child in the picture; is that
7 correct?

8 A. Yes, sir.

9 Q. And your understanding is that the individual on the
10 right, I think in the interview you said he looked Suge
11 Knight, I think; is that right?

12 A. Yes, sir.

13 Q. Okay. And that to your understanding was the
14 surviving victim?

15 A. Yes. I don't even recall that I had their names. I
16 just knew that the individual on the left was deceased.

17 Q. Okay. You're referring to the adult male on the left?

18 A. Yes, sir.

19 MR. GRAHAM: Your Honor, unless Your Honor wants
20 to hear or see the first part of the interview that
21 we've taken out, the reason we took it out is they bring
22 him water into the room, they ask him if he wants something
23 to eat, if you're doing okay, and if I remember correctly
24 he actually tries to drink the water without using his
25 hands because in the previous they had talked to him about

1 DNA, so it's my guess he probably was trying not to put
2 his DNA on the cup and the ends up spilling, so -- and
3 they're cleaning up the water and we start right after
4 that with this interview. If Your Honor wants to see it,
5 we can play it. I don't know whether that will become
6 important or not.

7 THE COURT: If you-all are in agreement that that
8 portion shouldn't be played, I'm not gonna --

9 MR. SPANGLER: Judge, we'll just stipulate that they
10 gave him food and water at the beginning of the second
11 interview.

12 THE COURT: Okay. That's fine.

13 MR. GRAHAM: I think, Your Honor, that's all the
14 questions I have for Detective Trojanowski.

15 THE COURT: Mr. Spangler.

16 MR. SPANGLER: Yes, Judge.

17 CROSS-EXAMINATION (In-Camera)

18 BY MR. SPANGLER

19 Q. Good afternoon, Detective.

20 A. Good afternoon, sir.

21 Q. Let's start off with the beginning of the interview.
22 So you were not in the room during the first interview
23 about the California case, were you?

24 A. I was not. I was aware the interview was occurring.
25 I believe as they were starting I had called Detective

1 Mefford. Just based on Mr. McClure's physical appearance
2 and size, he seemed to meet the physical appearance of who
3 he described was involved in their crime. I gave Detective
4 Mefford his name and Detective Mefford indicated that Terry
5 McClure was on the airplane manifest that he had received.

6 Q. Okay. So the information about him being on the
7 manifest, that was something you learned from Detective
8 Mefford?

9 A. Yes, sir.

10 Q. Now let's talk about that phone call. How long --
11 while he's being interviewed by the first set of
12 detectives, you said you weren't watching, you were
13 actually on the phone with Detective Mefford; is that
14 right?

15 A. So I was not involved in the arrest or that case
16 investigation. I was at my desk in our investigations unit
17 and I saw them walk in the back door with Mr. McClure.
18 Just given his physical appearance, it matched the suspect
19 that I knew was involved in the South Carolina incident. I
20 also knew that Justin Butler and Terry McClure are both
21 Bristol Boy gang members and would have an association with
22 one another.

23 Q. All right. So you're sitting at your desk, you see
24 them lead him into the room, but you didn't actually
25 observe any part of that interview?

1 A. I was aware the interview was taking place, but I was
2 gathering information from the --

3 Q. Okay. But that's a no to my question, that you
4 weren't actually observing that interview?

5 A. No, sir.

6 Q. Okay. That interview concludes and then you went into
7 the interview room; is that right?

8 A. There was about a ten to fifteen minute gap just of me
9 meeting with, I think, Detective Fok just discussing that
10 he had not invoked and we were gonna have him come in with
11 me to do the second interview.

12 Q. Okay. So you-all go in for the second interview.
13 It's you and Detective Fok; is that right?

14 A. Yes, sir.

15 Q. That was after you say about a ten minute delay where
16 Mr. McClure was in the room by himself?

17 A. Approximately.

18 Q. Okay. Now we watched the video recording. Detective
19 Fok didn't speak during that interview, did he?

20 A. Correct. He kind of sits in the corner and it's
21 actually very difficult to see him during most of the
22 interview.

23 Q. Okay. You're the person doing all of the questioning
24 during that interview; is that right?

25 A. Yes, I was conducting the interview.

1 Q. Okay. And at no point did you give Mr. McClure his
2 Miranda rights, did you?

3 A. No. We had this discussion prior to entering the
4 interview room. Based on the fact that it had only been
5 ten minutes since the prior interview, Miranda had already
6 been read and not invoked, I decided I would continue
7 questioning without Miranda.

8 Q. But you had no part in that first interview just to be
9 clear?

10 A. Correct, but I had a discussion with Detective Fok
11 following the interview and we discussed these topics.

12 Q. All right. Now let's just talk briefly about what
13 you-all discussed during that interview. You talked a lot
14 about phone records.

15 A. Yes, sir.

16 Q. Okay. And you didn't actually access any phone
17 records or learn anything about phone records before that
18 interview?

19 A. That's correct.

20 Q. You learned those things from -- I think you said in
21 there your techs.

22 A. I had received some information. Detective Mefford
23 referenced a phone, that there had been some calls made
24 from the city of Fairfield and that there was some phone
25 record information that showed a cell phone from

1 the Sacramento airport, which powered down, powered up
2 next at Dulles airport, which I believe is in Virginia or
3 Washington, forgive my geography, and then had powered back
4 up in the city of Atlanta --

5 Q. Okay. But all that --

6 A. -- so we did have that information, yes.

7 Q. I'm sorry, Detective. But all that information is
8 stuff that you learned from other people; is that right?

9 A. Yes, sir.

10 Q. Okay. When you're talking about his girlfriend -- the
11 number in the girlfriend's phone, that's based on your
12 conversation with the girlfriend; is that right?

13 A. Yes.

14 Q. When you're talking about Justin Butler, you'd don't
15 know what he gave us, that's what I think you said during
16 the interview, that's based on your conversation with
17 Justin Butler?

18 A. No, sir.

19 Q. That is not based on your conversation with Justin
20 Butler?

21 A. That is an interview technique to make him believe
22 that I have more information than I do giving him the
23 opportunity to give up information.

24 Q. Well, I think that happened several times. There
25 were several things that you said that just weren't true

1 and it's an interview tactic; is that right?

2 A. Yes, sir.

3 Q. Some of the things you said that weren't true is that
4 you had information from Justin Butler?

5 A. Correct.

6 Q. That you're sure that DNA would be found at the scene?

7 A. Yes, sir.

8 Q. And maybe the last one, it's just your personal
9 opinion, we've got you locked in?

10 A. Yes, sir.

11 Q. All right. Those are all, what you say, interview
12 tactics?

13 A. Yes, sir.

14 Q. But no truth behind any of them at that point when
15 you're sitting in the room?

16 A. No verifiable information to confirm it.

17 Q. And just to be clear, the stuff with the phone records
18 and the airlines, that was -- those were things that you
19 learned either from Detective Mefford or from somebody
20 else?

21 A. From Detective Mefford, yes.

22 MR. SPANGLER: No further questions, Judge.

23 THE COURT: Any redirect?

24 MR. GRAHAM: Just one second, Your Honor. I
25 apologize. I think that's all the questions we have,

1 Your Honor.

2 THE COURT: Thank you. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness excused.)

5 THE COURT: Argument on this point?

6 MR. SPANGLER: Judge, we do have argument, and it
7 might be easiest if we break it up into two points. We
8 first have on the Miranda issue, the Jackson v. Denno
9 hearing, and then the redactions issue.

10 THE COURT: Sure. Go ahead.

11 MR. SPANGLER: So, first, on the Miranda issue,
12 it's clear and what both detectives told us is there's
13 a first interview where Detective Pucci went in, sat
14 down with him, gave him his Miranda rights and talks with
15 him about a separate completely unrelated case than what
16 we're here for today. Now that interview concluded. He
17 said it went on for about an hour and twenty-five minutes.
18 He leaves the room, the other detective leaves the room,
19 and then Detective Trojanowski goes in. Now the only thing
20 that's similar between the first interview and the second
21 interview is the location and that Mr. McClure is there.
22 We have a new person there asking the questions, we have a
23 completely new subject matter, a completely new case.

24 Now the law in South Carolina is unclear as to when
25 in the timeline Miranda rights need to be reapplied, but

1 we'd submit today that when you have a new officer doing
2 the interrogation about a completely new case, a completely
3 new case on the opposite side of the country, that that's a
4 situation where at least the officer should confirm that
5 he's aware of his Miranda rights, that he still has those
6 protections, but the best thing to do is that the officer,
7 -- the new officer coming into the room and questioning
8 about this new case, should re-Mirandize him. And even
9 though it was only a ten minute delay between the first
10 interview and the second interview, the fact that it's a
11 new officer doing the questioning and a completely new
12 subject matter says that he should have been given
13 Miranda during that second interview, so for that reason
14 we move to exclude the two portions that we watched.

15 THE COURT: Okay. And you want to go ahead and
16 address the second issue concerning the substance, I
17 assume, of the interview?

18 MR. SPANGLER: We can, Your Honor.

19 THE COURT: If you would.

20 MR. SPANGLER: And, Your Honor, we can go through
21 the specific time marks, but this interview, the one
22 with the video, the second one that we watched, is
23 just riddled with inadmissible hearsay statements from
24 officers that Detective Trojanowski admitted he learned
25 either over the phone or by speaking with those officers

1 in some other way and they're about the facts that are
2 hallmark and probative of whether the Defendant is guilty
3 or not guilty. The detective says over and over again
4 we've got you locked in, we know that your DNA's gonna be
5 there, we've got your phone records, we talked to your
6 girlfriend, we know your phone number, we went to the
7 airport and got all this information, but what he testified
8 to on the stand is that those are all things he had no
9 personal knowledge of whatsoever.

10 In addition to it being hearsay, it's a confrontation
11 clause issue because what -- by putting this interview
12 into evidence, it's allowing Detective Trojanowski to
13 relay statements by these third parties; the techs that
14 discovered the information on the phones, the folks from
15 the airport, the girlfriend, Detective Mefford, all of
16 their statements are gonna be thrown in and if the State
17 doesn't call those folks as a witness, we have no ability
18 to cross-examine those statements as to the basis for them,
19 the veracity of them or their truthfulness.

20 And we can go through the specific portions, but --
21 I mean, I have a list almost too long to count, but the
22 phone records, the airport information, stuff that the
23 girlfriend said, plus the misstatements by the officer.
24 I think one of the biggest issues in it aside from the
25 hearsay is him saying explain your way out of this,

1 convince me that you're wrong. I think it happened
2 three times in the interview. And, Judge, the only thing
3 that could do by showing that to the jury is a danger --
4 I mean, he doesn't have a burden today, but that's the
5 detective, somebody in law enforcement, who's gonna be
6 telling the jury that it's Mr. McClure's burden to disprove
7 all these allegations.

8 So we can go through the specific time marks, but
9 the interview as a whole is just riddled with all these
10 inadmissible statements and issues and I'd move that the
11 entire thing be -- be excluded.

12 THE COURT: All right. Solicitor, do you want
13 to address those points?

14 MR. GRAHAM: Yeah, I guess I just want -- for the
15 record, Your Honor, they don't have any witnesses to
16 offer in this?

17 THE COURT: No, I'm assuming they do not.

18 MR. SPANGLER: We have no witnesses, Judge.

19 THE COURT: Right. Okay.

20 MR. GRAHAM: My understanding of South Carolina
21 caselaw, Your Honor, is that once a voluntary and
22 intelligent waiver of Miranda is given that continues
23 until the Defendant invokes; whether it's a right to an
24 attorney or something showing that his will has been
25 overborne. That's gonna be State versus Rochester.

1 That's 391 Southeastern Second 244, 1990. State versus
2 Ballington, 551 Southeastern 280. That's a Court of
3 Appeals, 2001.

4 Again, new Miranda warnings are not required prior
5 to each session of interrogation if there's been a waiver,
6 and that's Wyrick, W-Y-R-I-C-K, versus Fields. That's
7 U.S. Supreme Court, 459 US 42, 1982. His rights were
8 given, he understood his rights, he waived his rights.
9 Obviously he did understand his rights because he invoked
10 later. So the second interview is just as valid as the
11 first.

12 THE COURT: All right. The second point that they
13 make about the substance of the interview -- because from
14 watching the video I never hear anything from Mr. McClure
15 other than a denial, and it's the case from 2017 that
16 concerns me the most, the one where the South Carolina
17 Supreme Court came down very hard on investigative
18 hearsay. The AG was arguing and in that interview -- and
19 I can't remember the case, but in that interview a whole
20 bunch of hearsay information concerning identification of
21 the defendant from a purported eyewitness, all sorts of
22 stuff came in in that interview, the defendant simply
23 denied it, and yet they still allowed the interview to
24 be played, the Court did, and the Supreme Court reversed
25 that finding that there is no such thing as investigative

1 hearsay.

2 How do you plan on using this video? When do you
3 plan on using it? Because he's correct that you have
4 some hearsay issues, you have confrontation clause issues
5 mixed in with that hearsay. How do you-all -- how do you
6 plan to use this in your case?

7 MR. GRAHAM: Judge, I'm not familiar with the case,
8 so after court tonight, we'll go look for it, Your Honor,
9 so we can address it specifically.

10 THE COURT: It came out in 2017, South Carolina
11 Supreme Court.

12 MR. GRAHAM: But as far as when, Your Honor, you
13 would hear from the victim who would ID him as the
14 shooter prior to it being played. You would also hear
15 from Ladondra Ellis, who will say that she talked to him
16 on that 707 number, talked to Justin Butler on a 404
17 number, that she picked Justin Butler up at the Greyhound
18 bus station in Atlanta at Mr. McClure's request from a
19 call on 707, took Mr. Butler to a different part of the
20 Atlanta airport and dropped him off. You would hear
21 before from her before it is played as well.

22 You would hear -- we plan on calling the crime scene
23 and the DNA and it would show that his DNA was not found.
24 Just like he said, it was not found at the scene. I don't
25 know --

1 THE COURT: My point is that it's not a confession.
2 He never at any point concedes anything. He doesn't
3 concede that he was even in South Carolina.

4 MR. GRAHAM: So the victim would say that he was at
5 -- in Lexington, South Carolina, so that testimony would
6 be before to that. The phone -- the 707 number that
7 you're gonna hear about is a prepaid minute phone that he
8 denied. He said he only had one number and I think it was
9 that 895 number that he said that -- he gave a partial six
10 digit phone number and said that was the only phone number
11 he had. Ladondra Ellis is going to tie him to the 707 and
12 the movement from the airplane is gonna tie him to that
13 707 number and that 707 number hits near the victim's
14 mother's house as the testimony would claim and also in
15 the area of the victim's residence in the Pelion area, as
16 well as -- in Batesburg-Leesville as well, Your Honor.

17 THE COURT: Okay. The case I'm thinking of, and I
18 haven't looked at it yet, but it looks like it might be
19 the right timeframe, State versus King, filed October,
20 2017. Yeah, that's the one involving attempted murder
21 requiring specific -- one of the holdings involved in
22 that case was that you have to have the specific intent
23 to kill for attempted murder, but the other involves
24 investigative hearsay. The case is cited at 422 South
25 Carolina 47. The part I'm referring to isn't exactly on

1 all fours here, but it has a general discussion about
2 investigative hearsay.

3 My point, Solicitor, and I may need to reflect on
4 this a little more and give you, of course, an opportunity,
5 if you wish to, to take a look at that case tonight. My
6 point is that the -- a question is not evidence obviously,
7 it's only the response to that question that constitutes
8 evidence. So even the officer, Trojanowski, asking the
9 Defendant well, we have a witness that places you at the
10 scene or we have evidence that shows you travelled from
11 South Carolina -- or from California to South Carolina,
12 if his answer is I don't know what you're talking
13 about, then it's the answer that's the evidence and
14 not necessarily the question, especially when you've
15 got the evidence of the flight records and all the other
16 stuff with the cell phone number and things of that
17 nature and presumably some motive, I guess. But that's
18 what's causing me the most hesitation in this case and
19 maybe after you look at King -- there's nothing on that
20 video which is an admission, first of all. It's more of
21 a self-serving declaration. Perhaps if the Defendant were
22 to take the stand at some future point in the trial, you
23 might be able to use it, but because everything that
24 Trojanowski is asking Mr. McClure relates to hearsay-type
25 information that he gathered from other sources, I'm a

1 little bit hesitant to permit its admission.

2 As it goes back to the first issue though, I do feel
3 like that Miranda was still in effect. We're only talking
4 about the passage of ten minutes and the fact that it's a
5 separate matter involving a different jurisdiction, I don't
6 think is dispositive. Clearly they gave Miranda rights and
7 only ten minutes transpired between the time the first
8 interview stopped and the second one began, so I would rule
9 that Miranda was given and that the statement was freely
10 and voluntarily made. The danger of the confession though
11 or the danger of the video comes from the fact that it is
12 replete with a great deal of information that Trojanowski
13 was not personally privy to.

14 But I will let you-all look at that and maybe reflect
15 on that a little bit -- a little bit further.

16 MR. GRAHAM: One second, Your Honor.

17 The purpose of us wanting to put it in, Your Honor,
18 is his fingerprints are there and he was identified by the
19 victim as being the shooter and in the interview he denies
20 being there or knowing anything about it, so it is relevant
21 to our case and we plan on using it in our case in chief.

22 THE COURT: Okay.

23 MR. GRAHAM: So knowing that, I understand your
24 concerns.

25 THE COURT: All right. Well, if we're talking about

1 just the portion where they're talking about fingerprints,
2 and assuming that you introduce -- that the fingerprints
3 come into evidence, there's testimony about the
4 fingerprints, the Court may very well allow you to play
5 that portion of the interview dealing with fingerprints
6 where he simply denies being -- he denies that those prints
7 could be his because he wasn't there essentially, so.

8 MR. GRAHAM: And I haven't read the case, so I would
9 ask that we have time to go read it. I guess I'm confused
10 because if Detective Mefford was there, he could have asked
11 the questions. There's still hearsay because Detective
12 Mefford only has what people tell him --

13 THE COURT: Sure --

14 MR. GRAHAM: -- and that would be allowed, so I'd
15 like to read the case before I finish articulating --

16 THE COURT: Take a look at the case. My concern is
17 that there's an assertion made about DNA. It is -- maybe
18 some of the confrontation clause issues are solved if prior
19 to seeking to play that interview the individuals who
20 related that information to Trojanowski were to testify,
21 that would at least take care of the confrontation clause
22 issues. Again, my reliance on King or my reference to King
23 was purely from memory, and I had not looked at it until my
24 clerk pulled it up a few minutes ago, but the Supremes came
25 down pretty hard on that kind of testimony coming in. Of

1 course, they reversed it on a completely different ground,
2 but I think they may have done it on that one if they'd
3 had the opportunity. If they didn't have to do it on the
4 mens rea necessary for attempted murder, they may have
5 done it based upon the hearsay issues.

6 What else do we need to deal with this afternoon as
7 relates to --

8 MR. SPANGLER: Judge, we have two motions in limine,
9 and those will be brief. Probably within -- both of them
10 in ten minutes.

11 THE COURT: All right. We are now at 3:35. I
12 haven't even spoken to Mr. Gillins yet. I'm gonna talk
13 to him and allow the jury to go home and report back
14 tomorrow morning because I'm assuming you-all don't want
15 to -- you-all would prefer not to open until tomorrow
16 morning and then go straight into witnesses and that way
17 maybe we can have a firm ruling on what I'm leaving in
18 and what I'm keeping out.

19 MS. FULLER: Yes, Your Honor.

20 In terms of -- or even if it's -- today is opening
21 because I had planned to mention the interview, so I just
22 wanted to know the parameters of it.

23 THE COURT: Yeah, I'm gonna get -- I'm gonna let
24 the jury go home. I'm gonna keep Mr. Gillins here.

25 Is it okay with everyone if I just -- you-all, of

1 objection is noted for the record.

2 All right. Mr. Spangler, you had a few other
3 housekeeping matters?

4 MR. SPANGLER: We do, Judge.

5 So, Judge, this is a motion in limine to keep out
6 a text message, and I've got a copy of it if I can
7 approach and give you that. May I approach, Judge?

8 THE COURT: Sure.

9 MR. SPANGLER: What I just handed up is a two-page
10 document. The front of it is a text message, the second
11 part of it is an attachment to the text message that is
12 a screen shot of a newspaper article. I believe the
13 newspaper article is from April the 28th of 2014 from
14 The State newspaper.

15 Judge, we're moving to exclude this. It was sent
16 over in discovery. The State informed us -- they sent
17 over a small batch of materials, so we believe they're
18 gonna try to enter this at some point. I can spare the
19 argument if they're not going to enter it, but I believe
20 they are.

21 THE COURT: Do you-all intend to introduce this?

22 MS. FULLER: Your Honor, of course, if we make it
23 relevant, we do have an argument for its introduction
24 at the appropriate time during the trial of this case.

25 THE COURT: Were you anticipating using it in your

1 State's case in chief?

2 MS. FULLER: Potentially, Your Honor.

3 THE COURT: Potentially. Okay.

4 All right. Let me hear your argument then.

5 MR. SPANGLER: Yes, Judge.

6 And what we anticipate is the State will attempt to
7 lay a foundation that the text message was sent from a
8 phone allegedly belonging to Mr. McClure to a different
9 number. Shortly after -- so it would be sent from
10 Mr. McClure to a different number on the 29th of April,
11 so that would be three days after the shooting in this
12 case that we're here about took place.

13 Now that newspaper article that is referenced in
14 that text message is wholly unrelated to this case. It's
15 from a different jurisdiction, it's Richland County. It
16 involves a shooting. It's just a snippet of the article
17 and it looks like something to do with a drug deal, so
18 we're moving to exclude this as it's irrelevant to this
19 case. Whether Mr. McClure sent out this message to
20 someone else, we don't anticipate the State would be able
21 to lay a foundation that it's relevant to any of the
22 allegations here today. We're not here about a Richland
23 county case, we're not here about anything alleged in
24 that specific article, so we're objecting that it's
25 irrelevant and if it does come in it could only lead

1 the jury to decide this case on an improper piece of
2 evidence and confuse the issues and violate Rule 403
3 because it's talking about a different case, different
4 facts, different scenarios from a wholly different
5 jurisdiction, so we'd ask that it be excluded under
6 Rule 401 and Rule 403.

7 THE COURT: All right. If it's a completely --
8 Solicitor, help me out. Help me understand how --

9 MS. FULLER: Thank you, Your Honor.

10 THE COURT: -- it could be relevant if it's a
11 completely different case?

12 MS. FULLER: Of course, it will be -- it would be
13 developed throughout the trial of this case, but you got
14 to hear the redacted portion of his audio interview where
15 he denied -- it almost sounded like he knew where South
16 Carolina was, much less ever being here, and on his phone
17 extraction, that's the Defendant's phone extraction, is
18 a local, State newspaper article of a shooting the day
19 prior to this happening. And, of course, it was sent
20 three days after -- two or three days after the actual
21 shooting, ten days prior to he being developed as a
22 suspect, so much less he shouldn't even care about
23 anything happening in South Carolina if he's never been
24 here. So, of course, it will be developed throughout the
25 trial I think and, of course, we'll need a ruling on the

1 statement, but even if the audio doesn't come in, I believe
2 the testimony would still be proper in terms of his
3 statement in California on May 8th and he is interested in
4 it a local South Carolina State newspaper around the time
5 this happened but he said he had never been here.

6 And, again, we don't know what their defense is
7 gonna be. We think we understand it's not self-defense
8 anymore, so I'm not sure. So if we stick with what he
9 told law enforcement back in '14, if he's never touch
10 foot in South Carolina, he shouldn't even know where
11 Richland County is, much less interested in our local
12 State newspaper across the country.

13 So I think we can make it relevant and, of course,
14 I would request rulings at the appropriate time during
15 the trial of this case if that's okay, Your Honor.

16 THE COURT: But you're not suggesting that he was
17 involved in this shooting that was --

18 MS. FULLER: We're not suggesting he's involved in
19 the case and I don't believe -- I don't believe that
20 says that. It's a newspaper article found in his phone.

21 THE COURT: All right. Well, we'll simply put a
22 pin in this issue and if, Solicitor, you feel -- and I
23 know relevancy is pretty normally -- is pretty normally
24 a fairly low bar, but it does seem strange, and I know
25 what you're getting at; there's somebody from California

1 that takes interest in a shooting that takes place in
2 South Carolina, but -- I mean, I send people articles all
3 the time on my phone of weird stuff and strange things
4 that happen. Relevancy might be a slightly higher bar
5 for the State on this one.

6 MS. FULLER: Well, he sent it.

7 THE COURT: Right, and that's what -- I mean, do you
8 know who he sent it to?

9 MS. FULLER: Himself. He sent it from one phone
10 to the next.

11 THE COURT: Okay. We'll just have to cross that
12 bridge when we come to it and see how the testimony
13 develops and how relevant potentially that -- that
14 information is.

15 MS. FULLER: Thank you, Your Honor.

16 THE COURT: That's fair enough.

17 So the other line that he sent it to, you're gonna
18 be able to establish that was a different phone number
19 that he had?

20 MS. FULLER: Yes, Your Honor.

21 THE COURT: Okay. All right. There's a pin in
22 that one. We'll deal with it later.

23 MS. FULLER: Thank you, Your Honor.

24 MR. SPANGLER: And, Judge, our second motion
25 involves -- as you probably know, this case involves

1 a lot of cell phones, cell phones that -- subpoenas have
2 been sent to different companies and records have been
3 produced, and in addition to those records cell phones
4 have been seized and actual reports have been made from
5 them. We anticipate the State is gonna offer in large
6 chunks of those records, either call logs, text message
7 logs, browsing history from those phones.

8 Specifically what we want to address in this motion
9 are statements that are made in those text messages
10 inside of those phone records. The State produced -- and
11 I can approach with this document.

12 May I approach, Judge?

13 THE COURT: Please. And you can take that back if
14 you want to.

15 MR. SPANGLER: So, Judge, that's an additional
16 two-page document that the State narrowed down for us
17 out of all the phone records. It's a listing of text
18 messages. It has who the text message was sent from, the
19 date, who it was sent to and text of the actual message
20 itself. What we're objecting to are any statements -- I
21 realize Mr. McClure's statements would fall under 801,
22 but statements by third parties in there, statements from
23 Justin Butler, there are statements from Ladondra Ellis,
24 there are also statements from -- it's identified in there
25 down at the bottom and checked with a red pen, it just

1 says Greenwood A-C-C. So the fact that they're trying
2 to put into evidence the specific language of those text
3 messages, those statements are out of court, they're
4 being offered here to prove the truth, and they're
5 hearsay. So we'd ask at least on that specific document
6 those be redacted.

7 MS. FULLER: Your Honor, do you need more or --

8 Okay. So in regards to that exhibit, of course,
9 because records would not include the context, but
10 anything the Defendant says as he appropriately stated
11 would be fair game and I think anything that the State
12 can articulate were made in furtherance of a conspiracy
13 in this case, which you would know the co-defendant who
14 has been convicted, this same document was admitted in
15 his trial. His statements to the Defendant talking about
16 what we would have, expert testimony, would be a gun,
17 before the shooting actually happened, I think would be
18 appropriate and definitely fair game and be an exception
19 to the hearsay rule because it's statements that we would
20 show throughout the trial would be in furtherance of the
21 conspiracy, as well as from Ladondra Ellis. She's gonna
22 be here to testify, but her -- him giving her directions
23 to pick him up I think will also be fair game in this case,
24 as well as who we would allege in this case, the Greenwood
25 accountholder, also discussion of a gun that would come

1 out in this case, Your Honor, I think would be relevant
2 because we would somewhat argue that he is an essentially
3 unidentified coconspirator because he is not identified
4 in this case. So I think anything relating to the
5 preplanning of carrying this out, travelling here from
6 Alabama and California would be definitely relevant and
7 would definitely be an exception to the hearsay rule.

8 THE COURT: All right. You're saying that this same
9 document came into evidence in Mr. Butler's case?

10 MS. FULLER: That's correct, Your Honor.

11 THE COURT: Was the same objection raised?

12 MS. FULLER: I didn't try that case, Your Honor.

13 THE COURT: Who was the judge on that one?

14 MR. GRAHAM: I would have to go look at the
15 transcript to answer that question, Your Honor.

16 THE COURT: Okay. Maybe you could check on that.
17 Do you want to reply?

18 MR. SPANGLER: Yes, Judge.

19 It just -- it creates a confrontation issue,
20 again, by putting in these statements. And to take them
21 individually, so statements from Justin Butler are on
22 there. We're not saying that Mr. McClure's statements
23 are not admissible, only the text messages that are sent
24 from Justin Butler. Those are statements that he made,
25 a third-party, who's not on the State's witness list so

1 we wouldn't be able to cross-examine him about those
2 statements. Statements made by Ladondra Ellis, those are
3 out of court statements that we are not gonna be able to
4 cross-examine her about if that is entered and she's not
5 called.

6 THE COURT: I think she's gonna be called though is
7 what I'm hearing from the State, so.

8 MR. SPANGLER: And, Judge, we just won't know then
9 if that record is entered before she would get on the
10 stand. And then from the Greenwood accountholder, I
11 think it's a stretch to say that he's an unnamed unknown
12 co-conspirator because all we have is a phone number
13 and a couple of text messages. It's hard to lay that
14 foundation that they are a coconspirator in this case.
15 And, further, it's just a confrontation issue. How are
16 we supposed to confront these people about what these
17 text messages mean and give McClure the due process he's
18 guaranteed by the Constitution if we're just putting in
19 the record itself.

20 So we'd ask that any of those statements, the text
21 of those text messages, be excluded on those grounds;
22 hearsay and confrontation clause issues.

23 MS. FULLER: And, Your Honor, if I can respectfully
24 request that ruling be delayed because obviously we
25 wouldn't throw this in in our first witnesses or first

1 witness. There's a lot of cell phone records in this case,
2 there's a lot of location data that will be introduced in
3 this trial, and I can tell you that by the time it's time
4 to introduce that document there will be enough foundation
5 laid and its relevancy and I think we can fairly say that
6 Justin Butler is a coconspirator in this case because he
7 is a co-defendant and I think all we have to articulate is
8 that we believe those statements were made in furtherance
9 of the conspiracy and, Your Honor, until you get to
10 actually see the entire trial and how it actually develops
11 I don't think those are gonna be relevant to you or make
12 any sense. So before we introduce it, I will give Your
13 Honor fair warning that we plan with our next witness to
14 introduce this document and we can take it up, but by the
15 time we call that witness I think a lot of this will make
16 a lot of sense.

17 THE COURT: All right. We'll put a pin on this, too,
18 then and we'll deal with it that way.

19 The highlighted portions just so that I'm
20 understanding, I'm gonna hang onto this to try to
21 decipher some of what's in the -- the highlighted -- the
22 first name, is that the call that's coming -- the person
23 whose phone it's coming from or going to?

24 MR. SPANGLER: Yes, sir. So the highlighted ones
25 are ones that were not sent by Mr. McClure.

1 THE COURT: Okay. All right. So the highlighted
2 ones were sent by the people whose name is highlighted,
3 that's their number?

4 MR. SPANGLER: Yes, sir.

5 THE COURT: Okay. And then received by -- like,
6 for example, the second one up there you've got Justin
7 Butler texting something to Terry McClure. Jona,
8 J-O-N-A?

9 MR. SPANGLER: Correct. So that one highlighted,
10 that would be from the third-party.

11 THE COURT: From the third-party. I understand now.

12 MR. SPANGLER: And, Judge we'll just make you aware
13 that that's a very narrowed down version of all the text
14 messages. We have boxes and boxes of these phone records
15 that we anticipate the State's gonna try to get into and
16 we can just address it as they're introduced by the State,
17 but it is gonna be an issue throughout most of case.

18 THE COURT: Sure.

19 Which witnesses do you plan on -- if you were to
20 go into this, which one do you think you'll do it with?

21 MS. FULLER: The -- it will be Mike Phipps toward
22 the end of the trial, but, Your Honor, just to be clear,
23 I don't know what boxes they're referring to and I know
24 he's not suggesting how to try our case, but I turned
25 over a Court exhibit that we have prepared and that's

1 what we're intending to seek introduction of.

2 So if he has additional boxes and boxes, that's --
3 that's the defense, it's not the State. I don't want
4 you to think that. We don't have thousands of pages of
5 documents.

6 MR. SPANGLER: We would just put on the record that
7 pursuant to Rule 106, if they're introducing a writing
8 or recording we can demand in the interest of fairness
9 that the entire thing be shown to the jury to consider.

10 THE COURT: I understand your position. I imagine
11 what you received was the raw download from the
12 telephones, all the information. You probably printed
13 all of that out and that's what you mean in terms of
14 reams and reams as opposed to what the State was
15 focussing on.

16 MR. SPANGLER: That's correct, Judge.

17 THE COURT: I've got it.

18 All right. Anything else we need to address this
19 afternoon?

20 MR. SPANGLER: Nothing from the defense, Your Honor.

21 MS. FULLER: Nothing from the State, Your Honor.

22 THE COURT: Can you-all be here -- I know that
23 you want to look at the King case and maybe even the
24 transcript from this to try to see if an objection was
25 made and who the judge was out of curiosity, so maybe if

1 we could reconvene around 9:15 tomorrow morning before
2 the jury gets here at 9:30, we can -- we can firm up some
3 of these question mark issues right now.

4 MR. GRAHAM: I didn't know whether Your Honor was
5 gonna rule on the State's motion in limine about
6 character evidence or whether they just have -- they can
7 do whatever they want in opening and we have to object.

8 THE COURT: Well, I do not know what their theory
9 is. We may very well learn about it tomorrow. I don't
10 know how to prejudge that kind of a thing --

11 MR. GRAHAM: I understand, Your Honor.

12 THE COURT: -- because if it turns out maybe it is
13 self-defense, maybe it's third-party guilt, we'll just
14 have to take it as it comes and if there's something you
15 find objectionable, I'm sure both sides will be more than
16 happy to let me know.

17 MR. GRAHAM: Thank you, Your Honor.

18 THE COURT: See you-all in the morning. Have a good
19 night.

20 MS. FULLER: Thank you, Judge.

21 MR. SPANGLER: Thank you, Judge.

22 MR. FLOYD: See you in the morning, Judge.

23 (Whereupon, the proceedings were concluded for
24 October 21, 2019, at 4:36 PM.)

25 (The following proceedings were held October 22,

1 2019, beginning at 9:22 AM.)

2 BAILIFF: All rise. Honorable Judge Frank Addy
3 presiding.

4 THE COURT: Thank you. Have a seat.

5 All right. Mr. Graham, are we okay to go forward?

6 MR. GRAHAM: Yes, Your Honor. The State's ready.

7 THE COURT: All right. We'll go back on the record.
8 The record, of course, will reflect the Defendant is
9 present with counsel.

10 Before we talk about the video statement given by
11 the Defendant, my clerk had told me that the defense had
12 two quick motions. Let me go ahead and hear those.

13 MR. SPANGLER: Yes, sir.

14 The first motion is to exclude any reference or
15 insinuation that gangs are involved in this case. There
16 was testimony yesterday from one of the California
17 detectives about Mr. McClure's alleged involvement with
18 a gang out in California. That has nothing to do with
19 this case, it only prejudices the jury against him,
20 violating Rule 403, so we move to exclude any reference
21 during testimony or evidence by the State about
22 involvement or anything dealing with gang insinuation
23 in this case.

24 THE COURT: All right. Is it the State's theory
25 that there is some gang relationship or that the motive

1 was gang-related or something to that effect?

2 MR. GRAHAM: We don't know, and to that extent
3 we told the officers from yesterday to not mention
4 that when they testify, so we have no intention of
5 introducing that.

6 THE COURT: All right. Fair enough.

7 MR. SPANGLER: Your Honor, the second motion deals
8 with we anticipate that the State at some point,
9 possibly their first witness, would be one of the
10 alleged victims, VonKeith Toland. Looking at his
11 testimony from a prior trial, there were statements
12 made about Mr. McClure's prior record, statements by
13 VonKeith that Mr. McClure had been incarcerated at some
14 point. We would just move to exclude any reference by
15 the witness. I know the State wouldn't try to get into
16 it, but if the witness says something on his own, we
17 just ask the Court to issue a limine instruction or
18 inform the State that that would be off limits under 404.

19 THE COURT: Okay. I assume you've already had that
20 conversations with your witnesses?

21 MS. FULLER: Yes. We'll reiterate it now, Your
22 Honor. We've discussed it.

23 THE COURT: Very good.

24 MR. SPANGLER: And, Judge, the final thing is we'd
25 move to sequester any witnesses during the trial at this

1 point.

2 THE COURT: All right.

3 I'll generally grant motions to sequester.

4 You have your chief investigator here, you have at
5 least -- you've got the victim who was shot six times.
6 That's the only family member of the victim, I assume,
7 that you intend to have testify or would his mother or
8 somebody else, a family member, testify or do you know?

9 MR. GRAHAM: The sister of the two victims who
10 would testify and also a cousin, Your Honor.

11 THE COURT: Okay. When do you anticipate the sister
12 testifying?

13 MS. FULLER: This morning.

14 THE COURT: This morning. Your first witness up, I
15 assume, is gonna be the gentleman who was shot or --

16 MR. GRAHAM: (Nods head.)

17 THE COURT: Okay. And then the sister will testify
18 after that?

19 MR. GRAHAM: (Nods head.)

20 MS. FULLER: (Nods head.)

21 THE COURT: All right. I'll simply ask the sister
22 to step outside and any other witnesses to step outside
23 until such time as the first witness testifies and then
24 the sister can come in because she'll be testifying next.

25 The officers from California I assume they'll just

1 need to find a comfortable place.

2 MR. SPANGLER: And, Judge, we do have one witness
3 on our list that is a family member that I think is
4 Yvonne Toland, the mother.

5 THE COURT: Okay. Is she in the courtroom or is
6 she outside somewhere?

7 MR. SPANGLER: I believe she's in the courtroom.

8 MS. FULLER: She's in the courtroom, Your Honor,
9 but she's the deceased victim's mom and she's entitled
10 to be here. She's not on our witness list.

11 THE COURT: Okay. Are you-all okay with her staying
12 here?

13 MR. SPANGLER: Judge, we'd ask that she be
14 sequestered as well.

15 THE COURT: Okay. Do you intend to call her to
16 testify?

17 MR. SPANGLER: We may, Judge. She's on our witness
18 list and we may need to call her.

19 THE COURT: She's the deceased victim's mother?

20 MS. FULLER: Yes, Your Honor.

21 THE COURT: I'll let her stay.

22 MS. FULLER: Thank you, Your Honor.

23 MR. SPANGLER: Thank you, Judge.

24 MS. FULLER: And I apologize, Your Honor. For
25 chain -- for our chain witness, we have Candy here, Candy

1 Kyzer, from the sheriff's department. She's with the
2 evidence in the courtroom. She's only testifying to chain
3 of custody. Is that a problem?

4 THE COURT: Do you-all have a problem?

5 MR. SPANGLER: No issue with that, Judge.

6 THE COURT: All right. She can stay.

7 All right. Back to the question of the -- the
8 video that we saw yesterday and driving last night
9 and this morning I was reflecting on it a little bit.
10 I looked at King again last night and I realized that
11 that's not really on all fours. That's probably
12 somewhat of a different sort of a situation.

13 Help me understand, Solicitor, what is it exactly
14 that the video adds to your case again?

15 MS. FULLER: Thank you, Your Honor.

16 So in terms of the Defendant's statement -- I want
17 to answer that, but I also want to be clear where we
18 are. You ruled that Miranda -- you ruled on Miranda.
19 I'm not sure if you ruled on Denno specifically, that
20 the statement was freely and voluntarily made.

21 THE COURT: Okay. Well, I believe it was because
22 clearly he's discussing this freely with the officer.
23 There's no indication of coercion, duress, promises,
24 et cetera. So, yeah, I would, of course, rule that it
25 was freely given.

1 MS. FULLER: Thank you, Your Honor.

2 And then so in terms of your question, the
3 Defendant was asked specific questions about coming to
4 South Carolina, which he denied. He was asked specific
5 questions about and is shown a photograph of the victims
6 in this case, which he denied, and just his general
7 demeanor on there, his answering questions, his
8 evasiveness. I believe that since Miranda was properly
9 given, the statements were knowingly, freely and
10 voluntarily made, any statements by the Defendant we're
11 free to use, so that's why we want the opportunity to
12 introduce it in our case in chief, so that's kind of like
13 where we are.

14 Now something that -- I know I sent this PDF to
15 your law clerk last week. I want the opportunity to
16 hand this up to you.

17 THE COURT: Sure.

18 MS. FULLER: So after listening to the audio
19 yesterday, it's basically a screen shot of the e-mail,
20 and I highlighted in stars the actual point that defense
21 counsel made. I know it was end of day yesterday and we
22 had just gotten through listening to the audio and so
23 it seemed like it was like this blanket argument of
24 everything in the audio, and I don't believe that was
25 the case.

1 So if you take each specific objection that we
2 couldn't agree on where -- starting at that first one
3 on the first page, the officer relaying hearsay from the
4 tech regarding the numbers in the phone and a statement
5 by Terry's girlfriend, our position is that's not hearsay.
6 And he argued Crawford and confrontation clause, but,
7 Your Honor, that would be dealing with testimonial
8 hearsay. We're not dealing with anything testimonial
9 in an officer's questions and in South Carolina it's
10 been held under State v. Johnson that questions are not
11 considered hearsay and so it's not an affirmative -- it's
12 not being offered for the truth of the matter asserted,
13 Your Honor, and to kind of cut those things out and just
14 being left with the Defendant's answers, the jury would
15 not have context and it's our position that we're not
16 even dealing with hearsay, so confrontation is not even
17 triggered. And we're not dealing with testimonial
18 comments.

19 On the next page where -- the next one we don't
20 agree to is the officer relating hearsay information
21 that VonKeith identified you as shooting him. Again,
22 when couched in the phrase of a question, a statement
23 somewhat, but a question, again, not hearsay, and
24 VonKeith's testifying, but it's -- it's our position
25 that it's not hearsay.

1 The next one down that we didn't agree to is he
2 saying so no way someone in South Carolina's gonna pick
3 you out, a question, not hearsay.

4 And then the next point, officers are asking Terry
5 to explain his way out of his phone record, he's arguing
6 burden shifting. Again, it's a question, so it's not
7 hearsay.

8 And then the last point that he didn't -- that he
9 indicated that should be redacted is they've got you
10 locked in, and then there's caselaw that I believe --
11 I'm not sure if it was King, but there was a case cited
12 there that even acknowledged that that phrasing was not
13 a problem.

14 So in King, even though it wasn't directly on
15 point and -- but it did give me some type of insight,
16 and I'm glad that we could address it in court before
17 even going forward with the statement, Your Honor, the
18 Court agreeing with the Court of Appeals, but disagreeing
19 with the cases they cited in that opinion, they argue
20 that we're dealing with a true hearsay analysis and
21 that's what should have been done by the Court of Appeals
22 in King. Here if we do a true hearsay analysis, nothing
23 that the officer said is being offered for the truth of
24 the matter asserted.

25 There was some mention -- not in this particular

1 e-mail, but in an argument yesterday, that phone records
2 can put you there. Crawford says business records are
3 non-testimonial, so we're not even dealing with a
4 Crawford issue there even though he's commenting on
5 something, but it's more of an interrogational
6 questioning, it's not definitive truth of the matter
7 asserted out of court declaration. That's not what we're
8 dealing with here, and so that's why we -- we want the
9 opportunity to be able to use it.

10 If there are any other specific points that they
11 would argue, we've redacted any expression of remorse,
12 we've removed any mention of the other shootings.
13 We've gone above and beyond to cut this down so it's
14 streamlined to just this case and isn't prejudicial to
15 the Defendant in any way.

16 And I hope I've answered your question, Your Honor.
17 You look kind of puzzled, so I'll stop talking now.

18 THE COURT: Well, no, I'm -- the issue of Crawford
19 and hearsay, of course, are interrelated because the
20 primary rule of hearsay -- the primary reason for the
21 hearsay rule is based in Crawford, the ability to
22 confront somebody who makes a testimonial statement
23 against you. If you're gonna call the officer who
24 relayed the information to -- the name of the California
25 officer?

1 MS. FULLER: Trojanowski.

2 THE COURT: Trojanowski. If you're gonna call
3 that officer who relayed the information to Officer
4 Trojanowski, then they'll have an opportunity to confront
5 him about what he told Trojanowski. If you're gonna call
6 the girlfriend -- that was the young lady who testified
7 yesterday or --

8 MS. FULLER: No, they're not -- she's -- my
9 understanding is they're not in a relationship. The
10 interview tactic he was using was referring to the female
11 when there was a traffic stop -- or when he arrived at
12 parole, the female that was driving was who he was living
13 with at the residence at the time in California, so that
14 was his girlfriend. That's a different person than here.

15 THE COURT: Okay.

16 MS. FULLER: So I know that first one where it
17 says -- and I don't even believe that was even a true
18 statement and it's definitely not something we're
19 offering for the truth when he says -- like he testified
20 yesterday, it was an interview tactic, it wasn't -- and
21 we're not offering it for the truth. We're not offering
22 the girlfriend's phone extraction. We don't have it.
23 Like it's not -- it's not something that is being offered
24 for the truth. We have other ways of proving his number.

25 THE COURT: And that was gonna be my next question.

1 You're gonna introduce some evidence that that number
2 links up with him?

3 MS. FULLER: That's correct, Your Honor.

4 THE COURT: Okay.

5 MS. FULLER: And, Your Honor, if we need to delay
6 ruling until later on in the trial and if you allow us
7 to publish the statement, I think a jury instruction
8 would be perfectly appropriate that the questions of the
9 officers are not being offered as evidence in the case,
10 it's just an interview tactic.

11 THE COURT: Here's how I want to handle it. At
12 the very least, the Defendant gave a statement, I found
13 that it was given pursuant to Miranda and that it was
14 freely and voluntarily given. At the very least Officer
15 Trojanowski can testify as to that statement. Whether or
16 not I permit the State to actually show the video is a
17 different matter and what I'm going to do is watch the
18 video again, the redacted version, so that I can get in
19 my head exactly what -- so I can get a better feel for
20 both the probative value from the State's perspective and
21 any potential prejudice under a 609 type of analysis.

22 So that's what I'm gonna do. I'm gonna look at it
23 again before I make a determination on whether it should
24 be admitted.

25 And I assume that that officer's gonna testify this

1 afternoon or tomorrow?

2 MS. FULLER: It will be tomorrow, Your Honor.

3 THE COURT: Okay. That will give me enough time
4 to take a second look at it. So if you want to, you
5 can certainly allude in your opening -- I assume you're
6 opening?

7 MS. FULLER: Yes, Your Honor.

8 THE COURT: Okay. You can allude subject to their
9 objection. You don't need to object when she refers
10 to it in her opening, but you can allude to Officer
11 Trojanowski's interview of the Defendant in your opening,
12 but because the question of whether the video's gonna be
13 shown is still up in the air, you may want just to stay
14 away from a direct reference to the recorded video
15 statement.

16 MS. FULLER: Yes, Your Honor. I intended to. Thank
17 you so much.

18 THE COURT: All right. That's how we can deal with
19 that. And is that -- I think it was State's 4 or --

20 MS. FULLER: Do you want a separate copy or do you
21 want --

22 THE COURT: If you want to just give me State's 4,
23 I promise not to lose it. I think that's it.

24 Okay. Anything else? I need to flip a coin and
25 figure out which alternate to substitute.

1 MR. GRAHAM: Your Honor asked yesterday at the end
2 of court for me to go check the prior transcript about
3 the admission of the tape, so I copied off the transcript
4 portion dealing with that. There was no objection.

5 THE COURT: Okay. Thank you.

6 All right. Barbara Anderson is gonna be heads and
7 Kathryn Stewart will be tails, okay, so we'll see who the
8 alternate is.

9 It's tails, so Kathryn Stewart will be substituted
10 for the juror who was dismissed yesterday, okay?

11 Let's have the jury in, please.

12 Mr. Floyd, you're gonna open on behalf of the
13 defense, I assume?

14 MR. FLOYD: Yes, sir.

15 (Whereupon, the jury enters the courtroom at
16 9:41 AM.)

17 THE COURT: All right. The record will reflect
18 that the jury is back and seated.

19 Ladies and gentlemen of the jury, thank you for
20 being here and thank you for being on time. The first
21 order of the Court is to appoint a foreperson of the
22 jury and, Ms. Oakey? Lisa Oakey? That's you? Okay.
23 You're the first juror picked, so I'm making you the --
24 the foreperson of the jury, all right?

25 I'll tell you that your primary responsibility is

1 to preside over jury deliberations. You'll be the person
2 -- kind of the point person to communicate with the Court
3 and when the verdict is rendered, you'll sign the verdict
4 form. You're basically first among equals, but your main
5 job is to make sure everybody has the chance to have
6 their fair say once deliberations begin, okay? So you
7 will be foreperson and when we resume, if you'll take
8 the seat after we take a break that's occupied by the
9 gentleman wearing the black shirt.

10 One of the jurors yesterday, the Court had to
11 relieve him from further responsibility on the case, and
12 so I'm going to appoint Kathryn Stewart.

13 Ms. Stewart, you're gonna -- who's Ms. Stewart? All
14 right. Ms. Stewart, you're gonna be a full member of the
15 jury. Ms. Anderson, you will remain an alternate, okay?

16 Now, ladies and gentlemen, I will let you know that
17 before we begin this case and before I have the clerk
18 administer your oath to you, obviously this case is gonna
19 be very different from what you've seen from watching
20 trials depicted on TV or in the movies. From what we see
21 in popular culture, we often get the impression that
22 trials are filled with a lot of drama, a lot of intense
23 emotion. Sometimes certainly that's the case, but I
24 promise you that only in the most rarest occasions is a
25 trial wrapped up in an hour like you see on TV or maybe

1 two hours in the movies. And, obviously, that's because
2 this is real life. This isn't for entertainment value or
3 for anyone's amusement. This case is very important, of
4 course, both to the State of South Carolina and to the
5 Defendant in this case.

6 I want to begin by thanking you for coming in here
7 to resolve this and the only way we can do that is to
8 put the thirteen of you in the box, let the State try its
9 case and you-all make the decision, okay? That's the
10 only way that we're gonna get this case resolved, so
11 thank you for your attention going forward and thank you
12 for your willingness to participate in this process.

13 All right. With that, I'm gonna ask that you stand
14 where you are and raise your right hands so the clerk
15 can administer your oath to you.

16 (Whereupon, the jury was duly sworn by the Clerk
17 of Court.)

18 THE CLERK: Be seated, please.

19 THE COURT: Now, ladies and gentlemen, what I am
20 going to say to you now is just an overview of the
21 procedure that we're gonna use going forward so that
22 you can better understand what to expect or understand
23 what's gonna take place. Of course, this isn't -- this
24 isn't an explanation of the law or an instruction on the
25 law.

1 Now during the course of the trial, ladies and
2 gentlemen, in my experience some jurors like to take
3 notes. That's perfectly fine if you want to take notes.
4 Just let the bailiff know at the next break and we'll
5 get some tablets to you that you can use to take notes.

6 Just a few rules about note-taking though. First,
7 please don't let the taking of notes distract you from
8 the testimony that's being presented or what's going on
9 in the courtroom. Secondly, those notes are kind of your
10 personal or your private property. They're for your eyes
11 only. Any time that we take a break, the bailiff will
12 collect those notes, we'll secure them in a place where
13 nobody else can see them and return those tablets to you
14 at the conclusion of that break. When the trial is over
15 with, any notes that you take, if you would just take
16 those home and dispose of them as you wish, all right?

17 So if you want to take notes, just let the bailiff
18 know and we get some notepads to you at the next break.

19 Now, ladies and gentlemen, as it was explained to
20 you yesterday, the Defendant in this case, Mr. McClure,
21 is charged by indictments filed in this court with the
22 offenses of murder, attempted murder, burglary first
23 degree and possession of a weapon during the commission
24 of a violent crime. Again, ladies and gentlemen, these
25 indictments are merely means by which these cases are

1 brought to court.

2 In this case, Mr. McClure has pled not guilty to
3 these charges. That plea puts the burden firmly on the
4 State to prove each and every element of these crimes
5 beyond a reasonable doubt. It will be your job to
6 determine whether the State has met that burden.

7 Now your purpose as jurors is to find and determine
8 the facts in this case. Understand that if at any time
9 I make a comment concerning the facts, you have to
10 disregard any comment that I make because you are the
11 sole judges of the facts. You determine the facts from
12 the testimony that you hear and the other evidence which
13 is introduced during the course of the trial. Understand
14 that it's up to you to determine the inferences which you
15 feel should be drawn from the evidence presented.

16 Now, ladies and gentlemen, it's especially important
17 that you perform your duty of determining the facts
18 diligently and conscientiously because ordinarily there
19 is no way to correct an erroneous determination of facts
20 by a trial jury.

21 Now the same law that makes you the judge of the
22 facts makes me the judge of the law. The law as given
23 by the Court is the only law that you can consider.
24 You'll have to accept and apply the law as I state it to
25 you, so if you already have some idea as to what the law

1 is or what the law should be and that idea disagrees
2 with what I tell you the law is, you have to abandon that
3 idea because you're sworn to accept and apply the law as
4 I state it to you.

5 Now until you begin your deliberations, again,
6 please don't discuss this case with anyone; not friends,
7 family members, of course, not even your fellow jurors.
8 Once the case is submitted to you, it can only be
9 discussed in the presence of all twelve jurors, all
10 right?

11 Now I have instructed the lawyers and the parties
12 not to have anything to do with you while the case is
13 going on, so understand that if you happen to pass by
14 or bump into one of the lawyers or somebody involved
15 with this case and they don't say hello to you or even
16 acknowledge you, it's not that they're being rude,
17 they're just following my instructions to have nothing
18 to do with you while the case is going on.

19 I'm sure you-all can understand the reason for this.
20 Obviously, if the other side were to see you conversing
21 with one of the lawyers or some of the parties, even if
22 you're innocently talking about the weather, that could
23 be -- that could be misconstrued as an effort of jury
24 tampering. So the easiest way to keep that issue from
25 coming up is just to say that jurors are off limits while

1 the case is going on.

2 Please do keep an open mind. Do not decide any
3 issue in this case until all the evidence has been
4 presented, you've heard the attorneys' closing arguments
5 and you've received my instruction on the law. Again,
6 it's your solemn responsibility to determine the guilt or
7 the innocence of Mr. McClure and your verdict has to be
8 based only on the evidence and the law as I instruct you.

9 Now in a moment the attorneys are going to make
10 opening statements to you. I'll instruct you that what
11 the lawyers say during their opening, of course, is not
12 evidence. Even though it's not evidence, you should
13 still pay attention to their opening statements because
14 usually an opening statement is kind of a road map or an
15 overview of what the attorneys will -- maintain will be
16 proven or maybe will not be proven, okay? Again, the
17 evidence will be presented during the course of the
18 trial from the testimony of the sworn witnesses, as well
19 as any exhibits which are introduced into evidence.

20 Now in most of the trials that I do, ladies and
21 gentlemen, from time to time it's necessary that we take
22 a brief break while I take up an issue of law. Sometimes
23 a lawyer will say hey, Judge, we have an issue of law that
24 we need to take up and during those times it's necessary
25 that I excuse you from the courtroom so that I can have

1 a candid conversation out here on the record about that
2 particular issue of law. The reason that I ask that you
3 leave the courtroom is that at times in ruling on an
4 issue of law it's necessary for me to comment on what
5 testimony has been presented, what witnesses have said.
6 Since you're the sole judges of the facts, I don't want
7 anything that I say in making a ruling on the issues of
8 law have any effect on what you ultimately determine the
9 true effects to be. That's why I ask that you leave the
10 courtroom so I can have a good candid conversation out
11 here on the record with my court reporter, I can allude
12 to testimony without any concern that my discussion of
13 the testimony could influence what you find those true
14 facts to be.

15 In determining what the true facts are, you must
16 decide whether or not the testimony of the witnesses is
17 believable or not. Understand that it is my job to rule
18 on whether certain testimony can be admitted. Once that
19 testimony is admitted however whether you believe it or
20 not is solely up to you. In deciding whether to believe
21 a witness, you have the right to consider the interest
22 of any witness, the witness's bias, any prejudice of the
23 witness, the opportunity for the witness to have seen the
24 things about which they testify. You can also consider
25 the way they act while on the witness stand. You can

1 consider anything that's in the record in this case which
2 will help you evaluate the testimony of the witnesses.
3 That means it is your duty to pay close attention to
4 them, listen to them, observe them. Please pay close
5 attention to the attorneys and the Court. If you keep
6 your thoughts from wandering, pay strict attention to
7 everything that's going on in the courtroom, I assure you
8 at the conclusion of the trial you'll be in as best a
9 position possible to render your verdict under the law
10 and the facts as you find them to be.

11 Now in order to preserve everyone's rights, I'll
12 give the parties a chance to object to anything I've said
13 during these opening remarks and then we'll proceed with
14 the trial.

15 Any objections from the State?

16 MS. FULLER: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. FLOYD: No, Your Honor.

19 THE COURT: We'll begin the trial.

20 Ms. Fuller, you're recognized for your opening,
21 ma'am.

22 MS. FULLER: Thank you, Your Honor. May it please
23 the Court?

24 THE COURT: Yes, ma'am.

25 MS. FULLER: Senseless. That's the type of killing

1 we have in this case. Cowardly behavior, selfishness,
2 greed. That's what the evidence will show. It will show
3 that that man, Terry McClure, was cold, intentional and
4 calculated from the moment he stepped foot on a plane in
5 California to the moment he ended up here in Lexington
6 County, raised his hand and with one shot, one gunshot to
7 the back of the head, executed Tycus Toland. Cold and
8 calculated.

9 Then his brother who was there, VonKeith Toland, that
10 man, Terry McClure, took that same gun, turned it, aimed
11 at VonKeith and shot him as he was running away. Running
12 for his life. You will hear that he was shot later on,
13 too, multiple times by that man.

14 That's what this case is about. In this case, Tycus,
15 Tycus was just in the wrong place at the wrong time. He
16 decided to ride with his brother back on April 26th of
17 2014 to show another man, that you will come to learn
18 named Justin Butler, a car that VonKeith was selling. He
19 just decided to ride with his brother that day. That one
20 decision by Tycus, no fault of his own, that man cost
21 Tycus his life.

22 Now how did we get here? We always wonder how did
23 we get here in every case. Why did this happen here in
24 Lexington county? Why did Terry McClure fly here from
25 California, commit this crime and fly back to California?

1 Why did his co-defendant, Justin Butler, the man that came
2 here with him, why did he travel here from Alabama, commit
3 this crime and go back to Alabama? Why here in Lexington
4 county?

5 What we do know, VonKeith in 2014, he was buying and
6 selling cars. That's what he does. Still does some of
7 that today. Justin Butler, someone he knew through another
8 individual that you will learn in this trial, Alonzo
9 Walker, someone he has sold cars with, too. So he'd met --
10 he'd met him before and he'd seen the Defendant before,
11 months prior to this happening. Butler reaches out to him,
12 interested in another car, a manner of course.

13 They agree to meet up on that Saturday, April 26th.
14 He comes to the Toland brothers' mother's home in North,
15 South Carolina. The family's over. No special gathering.
16 Just over, hanging out, several family members. Butler
17 and McClure arrive after flying here from California,
18 travelling from Alabama, they meet up in Atlanta, and
19 you'll have records that show this, and they come and they
20 travel here to Lexington county.

21 They stop in North at the Toland brothers' mom's
22 house. They're invited in. Terry McClure is given a seat
23 at the family's table. He plays cards with them, he plays
24 cards with VonKeith, who you'll hear from shortly because
25 fortunately he survived, so he's here to tell you exactly

1 what happened to him that day. But that man was given a
2 seat at the table knowing what evil he had in his heart,
3 what he intended to do. He didn't stay just five minutes.
4 He stayed a while. How coldhearted is that to sit at a
5 mother's table and play cards with family members knowing
6 the plan he had? They had planned to come here and rob
7 VonKeith. They end up taking way more. Selfishness.
8 Coward. Greed. Evil.

9 So after some time the Toland brothers leave. Tycus,
10 not knowing he's leaving his mother's house for the last
11 time, didn't know that last goodbye was really his last
12 goodbye. So they leave. They make one stop and they go
13 onto VonKeith's residence in Pelion, that Bushberry Road
14 address that you heard yesterday, because that's where it
15 happened, right here in Lexington county.

16 So they arrive at that house. The car is there.
17 Butler and McClure, they inspect the car, pretending
18 they're gonna buy it. They test drive it, then they get
19 back to the house. They're standing around, the hood's
20 up, they're looking, really carrying this on, pretending
21 they're gonna buy this car, and then like I told you
22 earlier, out of nowhere he raised that hand, intentional,
23 cold and calculated, one shot. One shot to the back of
24 Tycus's head is all it took. Then he turns and aims at
25 VonKeith.

1 Now after this happens they break into the house and
2 you'll get to see some evidence of that. They ransack,
3 rummaging through looking for stuff, and then when it's all
4 done, the next day Butler ends up back in Alabama, McClure
5 ends up back in California as if nothing happened. No ties
6 to Lexington. They came here to do this.

7 Through law enforcement's quick action that you will
8 hear in this trial, it is their action why we're here
9 today because Tycus couldn't speak, VonKeith you'll hear
10 was in the hospital and at some point in a coma, so law
11 enforcement had to quickly try to figure out what happened
12 with the little information they had and treat it as if
13 they had no witnesses early on in the investigation.

14 During this time period Butler, the other person
15 I mentioned, and McClure they used what we call
16 unregistered phones, burner phones, prepaid minute phones
17 to communicate, so phones not directly linked to them, but
18 law enforcement, they were able to link it to them, and
19 you'll get to hear that and see that in this trial. Those
20 same phones put them right here in Lexington county. That
21 same phone puts McClure travelling from California and
22 you'll get to see that.

23 Now after I stop talking the defense is gonna get
24 up like the judge told you and he has an opportunity to
25 address you, and I don't know what they're gonna say, but

1 what I do know is when McClure back in 2014 spoke to the
2 police in California where he's from, he denied ever coming
3 to South Carolina. He denied knowing VonKeith, he denied
4 knowing Tycus, and he denied anything to do with this, but
5 what was later discovered was McClure left his fingerprint
6 behind. Where? In that car that they test drove. Where
7 was that car found? In VonKeith's yard putting him here
8 just like VonKeith told the police.

9 Now the Defendant, you heard the judge say, he's
10 charged with murder and you'll get that full jury charge at
11 the end of this trial, but I want to just give you exactly
12 what it is just a little bit. The definition of murder in
13 South Carolina is the intentional killing of another with
14 malice aforethought. Malice, evil intent, ill will, hatred
15 towards another. Malice. Aforethought is just some period
16 of thinking. So malice aforethought can be in that second
17 right before he pulled the trigger.

18 He's also charged with attempted murder as it relates
19 to VonKeith, which after you hear what happened to him, I
20 submit to you there's no doubt that same malice as it
21 relates to murder existed.

22 He's also charged with burglary, going into someone's
23 home. It's easy, it's simple. The law is simple. It
24 may sound convoluted, but it's exactly what you think it
25 is. And then he's charged with that possession of a

1 weapon and the judge will charge you on that.

2 The judge is the judge of the law, but you-all,
3 you guys are the judges of the facts, and we'll bring
4 it all to you, and at the end of the trial you'll get
5 to deliberate. You guys get to speak what the facts are
6 in this case. No one, not the State, not the defense,
7 not the judge can tell you what the facts are. They're
8 your facts. Once we carry it to you, they're yours.
9 You-all are the sole judges of the credibility and the
10 believability of each witness that takes that stand, all
11 the evidence we submit, you-all get to speak and say what
12 it is at the end of this trial. No one else but you.

13 In South Carolina, the law requires us to prove
14 that these crimes happened, that Terry McClure, that
15 man, did it right here in Lexington county, and we have
16 to prove it to you beyond a reasonable doubt. You may
17 have heard that on TV, you may have heard it just in
18 regular life. And beyond a reasonable doubt is not
19 proof beyond all doubt. That's impossible. It's proof
20 that leaves you firmly convinced of that man's guilt.
21 Firmly convinced. And it's our position at the end of
22 this trial you would agree with the State.

23 VonKeith is gonna take the stand shortly and he's
24 gonna share with you what happened. He's gonna speak
25 for himself and what he endured and he's gonna speak for

1 Tycus, as a witness for Tycus, what Tycus endured because
2 Tycus, as I said, can't speak. And at the end of this
3 trial, once you've heard everything, we ask that you
4 return a verdict that speaks, speaks truth in this case.

5 Thank you.

6 THE COURT: Thank you, Ms. Fuller.

7 Mr. Floyd, you're recognized, sir.

8 MR. FLOYD: Thank you, Judge.

9 Ladies and gentlemen of the jury, this young man is
10 Terry McClure. He's a man you're just now meeting and
11 this week you will be deciding about him one of the most
12 important decisions you'll ever make about anybody because
13 as the State has shown you and as the judge has already
14 told you, he's charged with some of the most horrific
15 crimes in our society. He's charged with the murder of
16 another human being, the attempted murder of another human
17 being, burglary first degree, and possession of a firearm
18 in connection with a violent act.

19 And those are terrible crimes. And the story that
20 the State has tried to tell you here when we start this
21 trial off in what's called an opening statement is a
22 horrific story. It doesn't make sense. It's a terrible
23 story.

24 Now if you've never served on a human -- I mean,
25 never served on a criminal jury before, you almost have

1 to set aside human nature because, you see, because Terry
2 McClure has been arrested on these charges, because Terry
3 McClure was taken to jail on these charges, because Terry
4 McClure now sits before you to be judged on these charges,
5 you may have the thought in your heart and in your mind
6 well, Terry McClure must be guilty. And we just heard
7 what the State has told us is their theory of the case.
8 It sounds like he's guilty. But if you've got those kind
9 of thoughts in your mind, you've got to erase your mind
10 because, you see, Terry McClure has the same rights we all
11 have.

12 One of those most important rights is what we call
13 the presumption of innocence. So when you look at Terry
14 McClure sitting in this courtroom right now, you must say
15 in your heart and in your mind Terry McClure is innocent,
16 and Terry McClure remains innocent unless and until the
17 State proves his guilt to each one of your satisfaction
18 beyond a reasonable doubt.

19 Now I'm not gonna go into the facts of the case in
20 this what's called an opening statement because, you
21 see, there's no burden on the Defendant to prove to you
22 anything. The State must prove Terry McClure guilty of
23 these horrific acts beyond a reasonable doubt. All we
24 ask is that you test the State's theory of this case,
25 which they just told you about, against your common sense.

1 Listen closely to the evidence that you'll hear in this
2 case and we feel that you'll conclude at this end of this
3 case that the State has failed to convince you beyond a
4 reasonable doubt that this theory of the State is true
5 and accurate and then your obligation will be to return a
6 verdict of not guilty.

7 Now we'll get to speak to you again in what's called
8 the closing statement, whether it be me or whether it be
9 Mr. Spangler. All we ask is that you keep an open mind
10 until you hear everything. Don't make your mind up. As
11 the judge has told you, you've got to keep an open mind,
12 and we think if you'll do that you'll conclude that the
13 only fair and impartial verdict is one of not guilty.

14 Thank you very much.

15 THE COURT: Thank you, Mr. Floyd.

16 Ladies and gentlemen, what we'll do now since we're
17 about to begin the actual taking of the testimony is we'll
18 take a brief break and I'll ask the Clerk of Court to pop
19 into your jury room and distribute any tablets. I assume
20 some of you will want some tablets, I've seen head nods,
21 so adjourn to the jury room for a few moments. Don't
22 discuss the case. We'll get you some pens and some paper
23 and have you back out here ASAP.

24 (Whereupon, the jury retires to the jury room at
25 10:09 AM.)

1 THE COURT: We'll be at ease for five minutes.

2 (Recess taken at 10:09 AM.)

3 (State's Exhibit Numbers 12 through 46 were marked
4 for identification.)

5 (Back on the record at 10:18 AM.)

6 BAILIFF: All rise. Court is now back in session.

7 THE COURT: Thank you. Please take a seat.

8 Are you ready to proceed, Solicitor?

9 MS. FULLER: She has to redact out the exhibit
10 number for one of the photo lineups, so as soon as she
11 walks back in, Your Honor, just so there's no break in
12 the testimony.

13 THE COURT: Sure. No problem.

14 (Pause in proceedings.)

15 MS. FULLER: All right, Your Honor.

16 THE COURT: And we'll go back on the record. And
17 just for point of clarification, I earlier had referenced
18 Rule 609. I don't know where my mind was, but Rule 609,
19 when I made the reference, I meant to say 403. Sometimes
20 my brain gets ahead of my tongue, I guess, so I cited the
21 wrong rule earlier when we were having that discussion
22 about the video.

23 Let us have the jury, please.

24 (Whereupon, the jury returns to the courtroom at
25 10:27 AM.)

1 THE COURT: All right. The record will reflect that
2 the jury is back and seated.

3 At this point, Solicitor, if you'll call your first
4 witness.

5 MS. FULLER: Thank you, Your Honor.

6 The State calls VonKeith Toland.

7 (Whereupon, VonKeith Toland was duly sworn by the
8 Clerk of Court.)

9 THE CLERK: Once you're seated state your full
10 name, spelling your last, please.

11 THE WITNESS: My name is VonKeith Toland,
12 T-O-L-A-N-D.

13 VONKEITH TOLAND,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. FULLER:

17 Q. Good morning, Mr. Toland. How are you doing this
18 morning?

19 A. I'm fine.

20 MS. FULLER: And permission to approach the witness,
21 Your Honor?

22 THE COURT: You may need to scoot that microphone
23 just a little closer to you.

24 BY MS. FULLER:

25 Q. I'm just gonna stand over here and just ask you to

1 keep your voice up for me, okay?

2 A. All right.

3 Q. And is it okay if I call you VonKeith?

4 A. Yes, ma'am.

5 Q. VonKeith, I want you to introduce yourself a little
6 bit to the jury. How old are you now?

7 A. I'm thirty-eight. I'll be thirty-nine in November.

8 Q. Okay. And are you married?

9 A. No, ma'am. I'm engaged.

10 Q. You're engaged. So you have a fiancée. Do you have
11 children?

12 A. Yes, ma'am, I have a boy and a girl.

13 Q. And how old are your kids?

14 A. My daughter is seventeen and my son is eleven.

15 Q. Okay. And where are you originally from, VonKeith?

16 A. North, South Carolina.

17 Q. And where -- where did you reside back in 2014?

18 A. I stayed at 688 Bushberry, Pelion, South Carolina.

19 Q. And that's here in Lexington county?

20 A. Yes, ma'am.

21 Q. And who did you live there with?

22 A. Me and my fiancée and two kids.

23 Q. And that's at that Pelion address?

24 A. Yes, ma'am.

25 Q. And back in '14, what exactly did you do for a living?

1 A. I sold cars.

2 Q. And how long had you been doing that?

3 A. Roughly four, five years.

4 Q. At the time?

5 A. Yes, ma'am.

6 Q. And are you still selling cars now?

7 A. Yes, ma'am.

8 Q. So you've been doing that for about ten years now?

9 A. Yes, ma'am.

10 Q. How long had you been living at that Bushberry Road
11 address that you mentioned?

12 A. I think like a year, year and a half at the most.

13 Q. Did you own it or rent it?

14 A. Owned it.

15 Q. Can you describe the property to the jury?

16 A. It's like a three-acre property. The first two acres
17 is like a driveway. You have to actually drive down the
18 driveway to get to the property in the back and it's like
19 an acre of property that's like cleared out and it's like a
20 doublewide home and it's fenced in in the back where the
21 acre of property is at.

22 Q. Okay. So it's safe to say your property, your home,
23 is kind of landlocked in there?

24 A. Yes, it's landlocked in the back. You have to
25 actually take a driveway to get to it.

1 Q. Okay. Now who is Tycus?

2 A. Tycus is my brother.

3 Q. Was he your older or younger brother?

4 A. Younger brother.

5 Q. And how old was Tycus back in 2014; do you remember?

6 I'll ask you this. How much younger is --

7 A. He was twenty-nine.

8 Q. Twenty-nine?

9 A. (Nods head.)

10 Q. Okay. And before we go into why we're here today, I
11 just want to talk about something real quick. Back in
12 2009, you were convicted of some charges?

13 A. Yes, ma'am.

14 Q. And that's two counts of trafficking drugs?

15 A. Yes, ma'am.

16 Q. And that was ten years ago?

17 A. Yes, ma'am.

18 Q. And is that the life you're still living now?

19 A. No, ma'am. Once I was arrested and convicted of the
20 time -- charge, I was in prison for a year and four months,
21 and during the time when I was convicted I was just having
22 a newborn and it just kind of tore me up to be arrested and
23 then I couldn't spend time with him, so when I came home
24 like I vowed never to go that route again.

25 Q. I missed what you said there. I'm gonna ask you to

1 keep your voice up. I know it's difficult being here
2 today. So when you came home, you what?

3 A. When I came home, I just kind of vowed to never go
4 that route again so I would never have to leave my son
5 again.

6 Q. And that's because of that newborn you had at the
7 time?

8 A. Yes, ma'am.

9 Q. And so was that the life you were still living in '14?

10 A. No, ma'am, I was selling cars.

11 Q. Okay. You were selling cars you said?

12 A. Yes, ma'am.

13 Q. So I want to now kind of talk about why we're here,
14 okay?

15 A. (Nods head.)

16 Q. We know this happened on April 26, 2014.

17 A. Yes, ma'am.

18 Q. Take me through that week in the days prior. How did
19 you come into contact with anyone relating to this case?

20 A. Justin had called me about wanting to purchase a
21 car. On the morning he called me, he told me that he was
22 looking for a nice car, and he wanted it to be something
23 real nice, and the only car that I had that kind of fit
24 that description was an Infinity. So I had sent him a
25 picture of it and let him know that I was selling the car

1 for \$10,000 and he was like he wanted it and I told him
2 well, at the present time I was at my son's little league
3 baseball game and I could let him look at the car after
4 that. So he was like well, I could come over there if you
5 want and I was like no, I can just meet you after, so I
6 ended up meeting him later that day.

7 And they came to my mom's house and when he arrived,
8 it was him and the other guy, Terry, they both arrived at
9 the house. And they sat in the vehicle for like maybe five
10 minutes and I -- I walked to the door to let them know that
11 I was inside the house and they walked in. Once they
12 walked in, we were already playing like poker. Like it was
13 like five of us I believe at the table playing and Terry,
14 when he walked in, he was like what you-all playing, I was
15 like poker, he said I know how to play, I want to play, so
16 he got in the game, too.

17 And we started playing like maybe -- I was playing
18 like thirty minutes and then I left. I had to go and meet
19 -- I had a meet -- well, an appointment to meet a guy about
20 some property he was selling, so I left, me and my fiancée,
21 to go meet him. I met the guy and once I returned --
22 immediately returned, when I walked in the door -- they
23 was still playing, but when I walked in Terry immediately
24 stepped up like he was done playing, like he was ready,
25 like he may have been there long enough, and I kind of

1 understand because, you know, I had left and they were
2 already there while we were playing. So we --

3 Q. Okay. I'm gonna go -- you just shared quite a bit, so
4 I want to just go back and clear up some things. So you
5 said the name Justin.

6 A. Yes. Uh-huh.

7 Q. Who's Justin?

8 A. Justin was the person that actually reached out to me.
9 At the time I only knew him Jona. I never knew the guys'
10 government names.

11 Q. Okay. So at the time -- when you say their government
12 names, you mean their full legal names?

13 A. Yeah, full legal names.

14 Q. So this guy you knew at the time --

15 A. As Jona.

16 Q. -- but later you --

17 A. I found out he was Justin Butler.

18 Q. Okay. So we'll talk about that. So Jona, how long
19 had you known Jona at the time prior to them calling you?

20 A. I've known Jona about -- well, prior to the incident I
21 may have known him eight to ten months. I didn't know him
22 a year yet.

23 Q. Were you guys friends?

24 A. Well, we knew each other through a mutual friend. He
25 -- he was in the market to buy a car and the mutual friend

1 introduced me to him, like he wanted to buy a car, and that
2 was the only way I really knew him. Every time he came, he
3 came to look at a car and every time there's been a reason
4 why he didn't purchase it.

5 Q. So let's talk about this mutual friend. Who is this
6 mutual friend?

7 A. His name's Alonzo Walker.

8 Q. And did you know Alonzo Walker as Alonzo Walker?

9 A. No, I knew him as -- well, I knew him as Alonzo
10 Walker, but I called him Zo.

11 Q. You called him Zo. And when you say Justin, Jona,
12 came to look at cars in the past, did he live here in South
13 Carolina?

14 A. No, I think he was travelling from Alabama.

15 Q. So you didn't see him on a regular basis?

16 A. No, ma'am. I would only see him whenever he would
17 call me about viewing a car.

18 Q. And when he came, you said he came to look at prior
19 cars but never bought anything from you?

20 A. Yes, ma'am. He never bought anything, never. I kind
21 of -- like when April arrived it was like I always just
22 thought he would buy a car because he been there numerous
23 times. The first time he came I kind of knew that the car
24 was -- like had issues and I thought maybe if we reduced
25 the price that he would purchase it, but he didn't want it

1 for the issues. Like I could tell he was like a new car
2 buyer the way he didn't really know much about cars and so
3 I kind of felt like, you know, that any issues -- like it
4 was basically a check engine light and I told him that if
5 he took it to Advance he could find out what the problem is
6 and get it fixed, so when he didn't purchase the car that
7 day I kind of understood.

8 Q. And then he came again and attempted to purchase
9 another car?

10 A. Yes, and the second time he came -- well, the next
11 time he came with Terry to purchase the vehicle, it was a
12 BMW, and they said that the vehicle had like some vibration
13 or something like when they were driving it and they wanted
14 to know if I could get it straightened and I was like well,
15 I can look into it, but I can't make any guarantees.

16 Q. And this was well before April?

17 A. Yes, ma'am.

18 Q. Was this even in 2014?

19 A. Yeah, I believe that was in 2014, yes.

20 Q. So --

21 A. No. No, ma'am. I apologize. It was in 2013, I
22 believe.

23 Q. So the last time you had seen him wasn't even in those
24 four months of the year?

25 A. Wasn't in the four months of the year.

1 Q. So you hadn't seen him in a while and then you did
2 refer to the name Terry. Did you know the individual's
3 name at the time?

4 A. He told me a name. Like I said, it was like a letter
5 name or like a -- it was an easy name to remember, but I
6 wasn't really trying to remember because I come across a
7 lot of different people in selling vehicles and it's just
8 not something I do, try to learn everybody's name and
9 remember it.

10 Q. And so these vehicles that you're selling, you're
11 selling them basically as is?

12 A. Yes, ma'am, they're as is vehicles. They're actually
13 salvaged vehicles that was wrecked prior and we repair them
14 and resell them for cheaper than what they would actually
15 go for if they was clear title cars. So, you know, like in
16 California it would be way higher than what we would sell
17 them for here in South Carolina.

18 Q. So the times that Butler came -- Justin Butler, who
19 you knew as Jona, came to South Carolina, he travelled from
20 Alabama to look at cars?

21 A. Yes, ma'am.

22 Q. And how about the individual that you said you just
23 knew by a one letter name, but you don't remember -- you
24 didn't know his name, where was he coming from to the best
25 of your knowledge?

1 A. He was coming from California. So kind of like in
2 April I was kind of wondering why he was all the way from
3 California to look at a car, but then I kind of thought
4 that maybe he was driving the car back he was buying.

5 Q. And so we'll -- we'll talk about that. So going back
6 to your mom's house, who all was there on that April 26th
7 date?

8 A. It was my mom, my dad, some of my cousins, my sister,
9 my brother, his newborn, his son's mother. It was just
10 mostly like family.

11 Q. So when you say your brother, you're talking about
12 Tycus?

13 A. Yes, ma'am. Tycus.

14 Q. And you said his newborn?

15 A. Yeah, he had just had a son in August prior to the
16 April incident. His son would have been a year in August,
17 a few months after the accident.

18 Q. So when Jona contacted you and he arrived at your
19 mom's house that day, were you expecting to see anybody
20 else with him?

21 A. I kind of thought that maybe if he was serious about
22 purchasing the vehicle, he would have brought somebody with
23 him. I didn't expect to see no one -- you know, I didn't
24 expect to see the other guy because I knew he was from
25 California, so I figured -- like when he previously came,

1 he brought somebody that must be from Alabama where he was
2 from, so I figured he would have brought somebody to drive
3 the car back there.

4 Q. But not expecting to see the guy --

5 A. Yeah, the guy from California I wasn't expecting to
6 see.

7 Q. Let's describe Jona. What did Jona look like?

8 A. At the time he was I would say a little shorter than
9 six foot. He's a lighter complexion than me. Had he
10 dreadlocks at the time and --

11 Q. So you said -- you said lighter complexion. Was he
12 also a black male?

13 A. Yes, ma'am. He was a black male.

14 Q. And let's describe the other guy that you saw that you
15 only knew him by a one letter nickname or something.

16 A. He was roughly a little over six foot maybe. He was
17 darker than me, a darker complexion, and he had a low
18 haircut and a goatee.

19 Q. Okay. And he was also a black male?

20 A. Also a black male.

21 Q. You mentioned you saw them pull up and they sat
22 outside. Did you see what type of vehicle they came in?

23 A. I don't know the exact make of vehicle, but I know it
24 was a smaller SUV.

25 Q. A SUV?

1 A. Yes, ma'am.

2 Q. Do you remember if it was dark in color or light in
3 color?

4 A. I think it was like a grayish, blueish, if I'm not
5 mistaken. I'm not really sure, but I think.

6 Q. So let's pick up from -- you said you left to go look
7 at some property and you came back and you said the guy --
8 can I refer to him as the taller guy --

9 A. Uh-huh.

10 Q. -- with just the one letter nickname? Did you -- take
11 me -- explain to the jury what happened next.

12 A. All right. When he got up and we decided to leave, I
13 spoke to my brother and I was like do you want to ride with
14 me to the house so I can take them to look at the car, so
15 when we decided to leave I had got in the car and my
16 brother drove -- we drove two cars actually leaving my
17 mom's house and we took one of the cars and dropped it off
18 at my cousin's house and then I got in the car with my
19 brother and we drove to the Pelion address and they were
20 following us in the little truck. When we got to the
21 Pelion address, I went to the car, I lifted the hood up,
22 cranked -- well, I didn't crank it, I lifted the hood up
23 and let them check like the oil and stuff before cranking
24 the car back on to check that the fluids and stuff was okay
25 before I cranked the car so it was okay.

1 Q. Okay.

2 A. So I cranked the car and Justin, the one I knew as
3 Jona, he -- he said he wanted to test drive the car, so I
4 was like okay, we can test drive it, so Justin, Jona, got
5 in the driver's seat, Terry got in the passenger seat and I
6 got in the back seat, and we took the car up the road like
7 maybe a mile. It was still on Bushberry Road. We went up,
8 he was driving kind of like he didn't know how to drive,
9 like I could tell he wasn't used to a vehicle, but he was
10 -- he went down the road and turned around, came back in
11 the yard, and once we got back to the house he was --

12 Q. Okay. Let me stop you there. Where was Tycus?

13 A. Tycus was at the house when we went to take the test
14 drive. He actually went in the house to get something to
15 drink.

16 Q. So he didn't ride with you guys. You mentioned that
17 you stopped somewhere before going to Bushberry. Where
18 exactly did you stop and what did you do there?

19 A. When I left my mom's house, I went to my cousin's
20 house to drop off the car. It was a Challenger. I dropped
21 it off there and we left there and went after that.

22 Q. And so you left driving the Challenger?

23 A. (Nods head.)

24 Q. Were you and Tycus in that car when you left?

25 A. He was actually in the Honda Accord that followed me

1 and once we parked the Challenger, I got in the Honda
2 Accord with him.

3 Q. And then you guys went to?

4 A. And then we went from there to Bushberry.

5 Q. Okay. I just wanted to make sure we have that clear.
6 So you guys come back -- go ahead.

7 A. (Pouring water.)

8 Q. And just let me know if you need a moment. So you
9 come back to your house?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. And when we got back to the house, Justin was looking
13 under the hood of the car and pretty much examining it and
14 I guess like maybe seeing if he was really interested. So
15 my brother, me and Terry were standing like in a triangle
16 near the car, but not really by the car, and we were just
17 sitting there talking, pretty much just talking about
18 nothing, and we were smoking for a brief moment and during
19 the conversation I had mentioned a guy, the mutual friend
20 that introduced me to them purchasing a car, which was Zo,
21 and when I mentioned it Terry kind of shocked me with his
22 response to me mentioning Zo's name and it kind of made me
23 feel awkward after that.

24 Q. What -- what exactly did the individual you referred
25 to as Terry say?

1 A. It was something along the lines of oh, I don't fuck
2 with that bitch-ass nigger, and I was like huh?

3 Q. And why did that cause you concern?

4 A. The reason it caused me concern was because I really
5 didn't know them like that other than the fact that I met
6 them through Zo. So in order for them to say that -- what
7 he said, it made me feel like awkward, like what's going on
8 with you-all, like I didn't know what situation they may
9 have had going on. I just knew from his statement that it
10 wasn't one as a friendly statement.

11 Q. Okay. And after what happened next?

12 A. After that, I think he could sense that -- he could
13 sense that I was kind of -- my vibe changed because after
14 he said that I kind of got a bad vibe, it was awkward, so
15 the conversation kind of went dry.

16 Q. Okay.

17 A. And once the conversation went dry, we were -- the
18 three of us was just standing there like not saying nothing
19 for about a minute and then Terry reached out -- reached
20 out of his waist and pulled out a gun and shot my brother
21 in the head. No talking, no thinking about it, no put
22 your hands up, I'm about to rob you, no nothing. Just
23 eliminating one person so it would only be one person left
24 to deal with.

25 Q. And then what happened?

1 A. After that, I kind of shoved away from him and was
2 like what's up, what you doing, man, you just shot my
3 brother, and he was like you know what's up, give it up,
4 give it up like, and I'm like man, what you mean, I ain't
5 got nothing, what -- what you asking for. So I could tell
6 he was serious, like man, you're gonna give it up or I'm
7 gonna kill you, so I tried to dash and he shot me like --
8 he got off like three or four shots and from the bullets I
9 -- they kind of like threw me. I ain't never been shot
10 before, but I felt it that day. It was like ten people
11 pushing me, like it was like just threw my body, and when I
12 fell, I couldn't -- I tried to get up, but I fell right
13 back down, my arm was dead, like it wouldn't let me get up.
14 So I just starting dragging myself, like trying to get away
15 from him, like really trying to get to the back of the
16 house or just really trying to get away from him knowing
17 that I couldn't. So once I got to the rear of the house,
18 the property, I could no longer move, it was like my body
19 was just starting to shut down, so I turned over and by
20 this time Terry was back over me and Justin had done made
21 it from scrambling because when the shot first went off,
22 Justin was like looking at the car and when Terry first did
23 it, it was like he went into panic mode, like he wasn't
24 sure that he was gonna do it that way or he wasn't sure if
25 they was gonna still go through with it. I guess he kind

1 of left it all up to Terry to decide.

2 Q. And so you say -- you did say Justin got back. What
3 did -- what did he do?

4 A. When the shot went off, he started scrambling like
5 confused because he ran back to the truck that they was
6 driving and retrieved a gun. When he got the gun -- I
7 never saw him actually retrieve it, but I figured that's
8 what he was doing because I never seen him with it prior.
9 By the time that he's in the vehicle, I'm already going
10 around the house crawling and once he retrieves the
11 firearm, I'm on the back and he's over me with a gun, too,
12 with Terry saying that they're gonna kill me if I don't
13 give up money and drugs and I'm like I don't have no money
14 and drugs, but they keep -- keep saying -- they keep
15 saying like you're gonna give it up or we're gonna kill
16 you. So I was like all right, the money's in the house,
17 but I don't know where it's at so you-all are gonna have to
18 look for it because I don't put up. So I just told them
19 like to like buy myself some time because I could tell like
20 they was ready to finish me right there.

21 Q. Okay. Did you have a large amount of money in the
22 house?

23 A. There was nothing in the house, but I knew that that
24 was the only thing that could give me time to think of
25 something to do.

1 Q. Okay. And then what did they do next? What do you
2 recall?

3 A. The next thing that happened is they immediately --
4 Terry told me to get up and I was like man, I can't move,
5 you done shot me, I can't move, I can't get up, and he was
6 like all right, they ran to the house, and Terry kicked the
7 glass door. There was a sliding glass door like for a
8 patio and he kicked the door. He had on some wheat
9 Timberlands, I remember all of that, but he kicked it and
10 part of the glass went everywhere, and then he started to
11 kind of like clean it so he could go in and Justin followed
12 behind him, they both went inside. And I could hear them
13 ransacking the house, so during the process I dig in my
14 pocket to retrieve my phone and I've got my phone, but
15 there's so much blood over it. It's like I'm trying to
16 dial 9-1-1, but by the time I actually get 9-1-1 and about
17 to press send, he's coming back out the door like where
18 these cameras at, where's the camera box at, what you
19 doing, you got a phone, pow, pow, pow. He shot me three
20 more times and then I just dropped the phone and acted like
21 I was -- well, I didn't drop the phone, it was still in my
22 hand. I just kind of dropped like I was dead because I
23 felt like if I didn't he was gonna keep trying to finish
24 me. So once he came, he grabbed the phone out of my hand
25 and I let him -- he raised my hand up and I just dropped my

1 hand back down like I couldn't keep it up, but I could
2 have, but I just dropped my hand back down like I was
3 through. So he then went back in the house and I know that
4 the camera system was in the bedroom, the master bedroom,
5 which was on the opposite side of the house, so I can hear
6 him and Justin still tearing the house up, like trying to
7 get the cameras out, so I decided to go -- I said well, if
8 I say here, when they come out they'll probably finish me
9 off, so I'm crawling under the trailer like this and
10 praying they don't come under the trailer looking for me.
11 So I crawled under the trailer and I hid behind one of the
12 pillars almost like -- I don't know if you-all are familiar
13 with mobile homes, but they've got like some huge blocks,
14 they actually set them up and they're actually wide enough
15 where a person can like get behind them and they're not
16 visible, so. I went behind the pillars and kind of slid --
17 I crawled all the way there and kind of slid where they
18 couldn't see me. So when they came back out the door, I
19 could hear like Butler saying like where he at, because
20 Butler never came back out the door from the time -- since
21 he first initially went in with Terry. Terry was the only
22 one who came back out when he shot me the second time and
23 got the phone. So when Butler asked him that, he was like
24 I don't know, and he was kind of like looking up under the
25 house, like not really looking, he was kind of trying --

1 they was in a rush to leave, but I could see like the cords
2 dragging from the DV -- the DVR and I could see like a gun
3 still in his hand when he was leaning under the trailer
4 trying to -- like to see if I was under there, but he
5 wasn't really sure if I was under there or where I was.

6 Q. Okay. And so they left at that point?

7 A. Yeah, they ran around the font and I could tell that
8 like when they jumped in the truck that they was in a rush
9 like, like they wasn't necessarily coming back because like
10 it was -- it's all dirt there and he was leaving so fast
11 like it made a noise like if it was on concrete, like it
12 was like a scurrying noise and, you know, like dirt don't
13 necessarily make that noise.

14 Q. Okay.

15 A. So when they left, I kind of laid there for like
16 another maybe five minutes and then I kind of decided -- I
17 said well, if I go out and they come back, they'll finish
18 me and if I don't go out, then my brother might die not
19 knowing that he was already dead. I wasn't really
20 concerned with my health, it was more me concerned with the
21 fact that I knew he had got shot in his head and I was like
22 -- I just prayed he could make it, so I was trying to -- I
23 couldn't really -- when I was under the porch, I couldn't
24 -- when I was under the house, I couldn't crawl anymore, it
25 was like my body had done got to where I couldn't really

1 move, so I began to take my shorts off and my -- my shorts
2 and my shirt so I could move better because the boxers
3 wasn't that much -- it wasn't as hard for me to move with
4 just boxers as opposed to jean shorts. So after I took the
5 shorts off, I decided to crawl out the front and I made it
6 to -- I had to tear the underpinning open in order to crawl
7 through it. So I crawled through the hole and I crawled
8 maybe from here to the -- the doorway over there. I
9 crawled to the Honda that me and my brother was driving and
10 I retrieved the other phone out of the car. When I got the
11 phone, I began to dial 9-1-1 and told them that me and my
12 brother was shot and I tried to let them know that, you
13 know, in case I didn't make it like to kind of give them a
14 hint of who the guys were that did it.

15 Q. Okay. So I know we just covered quite a bit and I'm
16 just gonna go back and just try to just clear up just a few
17 things, okay?

18 A. Yes, ma'am.

19 Q. I'm gonna do that by showing you a few items, which
20 I've shown to defense already. I'm gonna show you what's
21 been premarked as State's Exhibit 14. Do you recognize
22 this?

23 A. Yes, ma'am. Yes, ma'am.

24 Q. And what do you recognize this to be?

25 A. The home that I was staying in in April of 2014.

1 Q. I'm showing you 15. Is this another angle?

2 A. Yes, another angle of the same home, the front view of
3 the porch.

4 Q. And showing you State's 16.

5 A. It's a view of the -- both the vehicles that was on
6 the property during the time of the incident, except the
7 truck -- the SUV that the guys were driving.

8 Q. You think that's what it is?

9 A. Except for the SUV that they was driving.

10 Q. And I'm showing you State's 36.

11 A. It's another picture of the Infinity with the hood
12 still up from the day that they were looking at it.

13 Q. And 37.

14 A. That's another picture of the Infinity in front of the
15 house.

16 Q. And I'm showing you 38.

17 A. It's a picture of the Infinity, once again, with the
18 hood up showing that it was left up after the incident
19 occurred.

20 Q. And I'm gonna show you 19.

21 A. 19 is a picture of the area where I was shot at the
22 second time.

23 Q. And showing you 21.

24 A. 21 is a picture of the big entryway which Terry busted
25 out the window -- the glass to enter the home.

1 Q. I'm showing you 25.

2 A. 25 is a picture of the Honda that I crawled to with
3 the door open while I was bleeding from the shots to make
4 the 9-1-1 call.

5 Q. And I'm showing you 28.

6 A. 28 is a picture of where the DVR used to be, plus the
7 wiring of where it used to be.

8 Q. Okay.

9 MS. FULLER: Do you want to see them?

10 MR. FLOYD: (No verbal response.)

11 MS. FULLER: Your Honor, at this time the State
12 seeks to introduce State's Exhibit 14, 15, 16, 36, 37,
13 38, 19, 21, 25 and 28.

14 THE COURT: Any objection?

15 MR. FLOYD: No objection, Your Honor.

16 THE COURT: All right. Without objection State's 14
17 through 16, 36 through 38, 19, 21, 25 and 28 are in
18 evidence.

19 (State's Exhibit Numbers 14, 15, 16, 19, 21,
20 25, 28, 36, 37, 38, photographs, were admitted into
21 evidence.)

22 MS. FULLER: Permission to publish?

23 THE COURT: You may.

24 MS. FULLER: Thank you, Your Honor.

25 BY MS. FULLER:

1 Q. Looking at State's 14, VonKeith, is that your
2 residence at the time?

3 A. Yes, ma'am. Yes, it was.

4 Q. And you were are describing coming out from under the
5 residence?

6 A. Yes, ma'am. The picture that's on the image next to
7 the step where the underpinning is open, that's the area
8 where I crawled out at.

9 Q. Okay. Let me go ahead and ask you to point to it, if
10 you can.

11 A. The area here -- the area here is where I crawled from
12 up under the house after the incident.

13 Q. So you were describing having to kind of force it
14 open, but you couldn't get it open completely?

15 A. Yeah, I couldn't. I just kind of turned to the side
16 right here and just squeezed out of it.

17 Q. And earlier you were testifying about the front of the
18 residence --

19 A. Yes.

20 Q. -- and is that a picture of the Honda that you said
21 you and your brother were driving?

22 A. Yes, ma'am. This is the Honda right here and if you
23 -- if you can view it, where the door is open is how I
24 actually had to go through to retrieve the phone.

25 Q. Okay. I'll show you State's 25. Is that that same

1 Honda?

2 A. Yes, ma'am, it's the Honda. It's actually my shirt, I
3 think, right here and you can see where blood's on the seat
4 from where I was retrieving the phone from the mid console
5 area right here.

6 Q. And on the door panel right here, is that the phone
7 you were talking about?

8 A. Yes, ma'am.

9 Q. Now looking at State's 38, the front of the residence,
10 is that the white Infinity?

11 A. Yes, ma'am. It shows here where the hood was left
12 open from when Justin ran away from the vehicle after the
13 shot and we was standing roughly in this area here.

14 Q. Okay. And that's where he --

15 A. When Terry shot my brother, it was in that area, and
16 when he shot me it was more in here where I was trying to
17 run away.

18 Q. Okay. I want to show you State's 19, and this is --

19 A. All right. The wood part is where I was adding onto
20 the home, but it wasn't finished during this time. When I
21 -- I actually had to crawl up under this thing right here,
22 this wood barrier, and once I crawled under there I was
23 stuck right here. This is the area where I was actually
24 at.

25 Q. So when you were testifying earlier, you actually

1 crawled in through the back and crawled out that front in
2 that first picture I showed you?

3 A. Yeah, I crawled under here and then I came up under
4 the porch in this area. I had to actually -- this wood
5 barrier here, I had to actually crawl up under that one as
6 well to get up under the trailer.

7 Q. You testified to hearing the person you were referring
8 to as Terry, I want to -- and when you were describing the
9 sliding glass door, I want to show you State's 21. Is this
10 what you were referring to?

11 A. Yes, ma'am. He -- he came to more like this side.
12 This is right where he kicked it and then he kind of pulled
13 there to get in, pushed the blinds back, but the glass --
14 the way the glass was made, it would make you think that it
15 came from the inside, but it was actually from the outside.

16 Q. I'm gonna show you State's 33 and 35 and I'm gonna ask
17 you if you recognize this content?

18 A. Yes, ma'am.

19 Q. Okay. And what do you recognize this to be?

20 A. It's the text messaging from me and Mr. Butler, from
21 Justin.

22 Q. Okay. And are there also phone calls on here?

23 A. Yes, ma'am. It has the calls where he would call me,
24 incoming calls.

25 Q. Okay. Let's talk about that for a second. When he

1 called you, do you recall what phone number he called you
2 on?

3 A. I believe it's --

4 Q. Tell me this. Do you recognize the number
5 803-221-5730?

6 A. Yes, ma'am. That was the number.

7 Q. And was that your phone number at the time?

8 A. Yes, ma'am.

9 Q. And what did you use that phone number for?

10 A. Well, it was like I had a phone for my family and
11 friends and I had one for my car lot business, so the one
12 that he actually called me from I think was --

13 Q. The one for your car lot business?

14 A. Yes. Yeah, because the other phone was in the car.
15 That's the one I had to actually call 9-1-1 on.

16 Q. So the phone that was in the car --

17 A. I think the number --

18 Q. Well, let me stop you for one second. This phone that
19 we're talking about, that's the phone you used to call
20 9-1-1?

21 A. Yes, ma'am.

22 Q. Okay. And from that phone, these call records that I
23 showed you, you have call details from Jona; is that
24 correct?

25 A. Uh-huh. Yes, ma'am.

1 Q. And then do you also see the 9-1-1 call?

2 A. Yes, ma'am.

3 Q. Okay. So from that phone that was left -- because you
4 testified you had another phone on you?

5 A. Yes, ma'am.

6 Q. And you said that phone --

7 A. Was left in the car. The guy took the other phone,
8 but one was left in the car and one was on my possession.
9 The one that was on my possession was the one that Terry
10 took.

11 Q. Correct. So the one that he took, you attempted to
12 call 9-1-1 --

13 A. But I never got through.

14 Q. -- but you never got to dial?

15 A. No, ma'am.

16 Q. And tell me if you recognize the number 803-331 --
17 318-8366.

18 A. Yes, ma'am.

19 Q. Was that the number for that phone?

20 A. For the second phone, yes, ma'am.

21 Q. So as it relates to this phone right here, that's the
22 one you actually used to call 9-1-1?

23 A. Yes, ma'am. It was actually in the cup holder area,
24 but when I was on the ground I actually just sat it back on
25 the door.

1 Q. You just left it where you could?

2 A. Yes, ma'am.

3 MS. FULLER: Your Honor, the State seeks to
4 introduce State's Exhibit 33 and I believe the defense
5 is objecting.

6 THE COURT: State's 33 only at this point?

7 MS. FULLER: 33 and 35.

8 THE COURT: Okay. Any objection?

9 MR. FLOYD: Yes, Your Honor. We have an objection
10 as to 33.

11 THE COURT: Okay. Can I see 33, please?

12 MS. FULLER: (Hanging.)

13 MR. FLOYD: Or it might be -- is 33 the phone
14 messages?

15 THE COURT: Right.

16 MR. FLOYD: Okay.

17 THE COURT: All right. State's 35 is in evidence
18 without objection.

19 MS. FULLER: And just for the record, State's 35 is
20 line four on that document.

21 (State's Exhibit Number 35, phone content/thumbnail
22 of car, was admitted into evidence.)

23 THE COURT: All right. Ladies and gentlemen, let
24 me take up an issue of law with the attorneys. This
25 shouldn't take more than five minutes. Return to the

1 back, don't discuss the case and I'll have you back out
2 here as soon as possible. You can leave your tablets in
3 your seats.

4 (Whereupon, the jury retires to the jury room at
5 11:06 AM.)

6 THE COURT: All right. The jury is out.

7 State's 33 looks to be a call log with eleven
8 different calls, the last one being the 9-1-1 call that
9 the witness just alluded to.

10 What's the objection?

11 MR. FLOYD: Your Honor, our objection is this is
12 not a complete log. They cut out a bunch of other
13 messages and other calls, including the other 9-1-1
14 calls. There were like four or five calls to 9-1-1
15 and there are calls to other people and then the ones
16 that they eliminated, they -- they erased all that during
17 this timeframe.

18 THE COURT: All right. Solicitor, do you want to
19 speak to that?

20 MS. FULLER: Thank you, Your Honor.

21 So what I'm presenting to you right there would be
22 from that phone that I was explaining that made the 9-1-1
23 call and had the contact with Mr. Butler in this case.
24 And it's just the contact, the phone calls and that one
25 picture that he testified to. I believe that's all that

1 I can get in at this time is what he's so far testified
2 to, is that he sent a picture of the car and that's the
3 picture of the car, and that he called him before coming
4 and he called 9-1-1.

5 So that's all that he testified to right now, so
6 that's all that's on that document. And that's from the
7 -- the phone records. So if the defense chooses to --
8 I don't believe the rule of completeness requires an
9 entire phone extraction be admitted into evidence and,
10 of course, there would be tons of objections to that in
11 terms of other messages, it's a complete phone dump of
12 his -- his cell phone, and I don't believe that would be
13 admissible. I mean, it's ridden with hearsay and I know
14 that's kind of been the tone of our pre-trial.

15 THE COURT: Okay. So basically it's the fourth MMS
16 message that was sent to Mr. Butler that contains the
17 JPEG image of the car that they were talking about, that's
18 the relevancy essentially, and the other contact that he
19 had had with -- with Mr. Butler, that's the purpose of
20 introducing that, to substantiate the same?

21 MS. FULLER: Yes, Your Honor.

22 THE COURT: The objection is noted and it's
23 overruled.

24 MS. FULLER: Thank you.

25 THE COURT: State's 33 will be admitted.

1 (State's Exhibit Number 33, Phone Extraction
2 Log/Text Message, was admitted into evidence.)

3 MR. FLOYD: Your Honor, how about the way that
4 they're hiding from the jury the other 9-1-1 calls?

5 THE COURT: If you want to address that or take it
6 up on cross, you're more than welcome to.

7 All right. We've been at it for about forty-five,
8 fifty minutes. Why don't we take a brief break for
9 ourselves so that we can keep rolling with this witness
10 when the jury comes back, okay?

11 MS. FULLER: Thank you, Your Honor.

12 THE COURT: Sir, if you want to step down and
13 refresh yourself, feel free, but don't talk to anybody
14 about your testimony while on break.

15 All right. We'll be at ease for about five or ten
16 minutes.

17 (Recess taken at 11:09 AM.)

18 (Back on the record at 11:18 AM.)

19 BAILIFF: All rise. Court is back in session.

20 THE COURT: Be seated, please.

21 Sir, if you will come on back up, please.

22 (Whereupon, the witness retakes the witness stand.)

23 THE COURT: Go get the jury, please.

24 (Whereupon, the jury returns to the courtroom at
25 11:20 AM.)

1 THE COURT: All right. The jury is back and seated
2 and State's 33 is in evidence subject to the Defendant's
3 objection.

4 MS. FULLER: Thank you, Your Honor.

5 You said 33 and 35?

6 THE COURT: 33 and 35.

7 MS. FULLER: Okay. I apologize.

8 THE COURT: They are both in evidence.

9 BY MS. FULLER:

10 Q. Okay, VonKeith. Looking at State's 33, you were just
11 testifying that you recognize this?

12 A. Yes, ma'am.

13 Q. And I'm gonna zoom in first to the top portion so we
14 can kind of see what's going on here. Then here we see
15 call log, incoming, and you have that number in there saved
16 and it's Zo Car Fam. Can you explain to the jury why you
17 saved that in your phone?

18 A. Well, Jona, he called me like maybe off of three
19 different phones before that phone, so like every time he'd
20 call me I would save his name and then I was just like --
21 then that day they called me -- well, he had called me
22 prior to that day, I believe.

23 Q. So this date -- let me zoom in some more -- says the
24 24th.

25 A. Yeah, the 24th.

1 Q. And so what we're talking about here is the 26th, so
2 when you testified earlier he had called before --

3 A. Before the 26th, yeah.

4 Q. Okay.

5 A. And I had saved his name as Zo Car Fam like so I would
6 remember that that's who was actually calling me on that
7 number.

8 Q. Okay. And then down here we see on April 25th and
9 then there's an MMS message and it looks like a little car
10 photo?

11 A. Yes, ma'am.

12 Q. I'm gonna show you --

13 A. That -- that was the date that I sent him a picture
14 of the vehicle that he wanted to know how it looked, the
15 one that he was interested in purchasing, so I sent him a
16 picture of it.

17 Q. And so looking at State's 35, is that that picture
18 that we -- the small thumbnail that we saw, is that that
19 enlarged picture?

20 A. Yes, ma'am. That's a picture. That was a -- that was
21 a car that I had prior to me being incarcerated and I know
22 like when he asked me for something that looked real nice
23 like, just something that was different, that was the only
24 one I could think of that I had.

25 Q. Okay. Now going back to this down here, it looks like

1 you speak again on the 25th and then, again, there and then
2 on the 26th, and these are all calls from Zo Car Fam. Can
3 you read that number that you saved this time?

4 A. It's 404-69 --

5 Q. It's probably kind of hard to read on there.

6 A. -- 5-5436.

7 Q. So that's 404-695-5436?

8 A. Yes, ma'am.

9 Q. And you saved it personally in your phone as Zo Car
10 Fam?

11 A. Yeah, it was kind of like a little reminder of who it
12 was.

13 Q. And you said Jona had called you from different
14 numbers before?

15 A. Yes, ma'am.

16 Q. And earlier when you testified, when Jona arrived, did
17 you confirm that the same Zo Car Fam number that you saved,
18 the person you spoke to that we know as Justin Butler,
19 Jona, did -- that same person was the person that showed up
20 at your mom's house?

21 A. Yes, ma'am, that was the same person that arrived.

22 Q. Same voice and everything?

23 A. Same voice, same person.

24 Q. And you had met him the year prior?

25 A. Prior to, yes, ma'am.

1 Q. Here we see on -- again, it's kind of blurry here, but
2 you see again on the 26th there --

3 A. Yes, ma'am.

4 Q. -- he called you about 1:14?

5 A. Yes, ma'am.

6 Q. And would that have been just a little prior to him
7 arriving?

8 A. Yes, ma'am, that would have been right before he
9 arrived.

10 Q. And that would be at your mom's house?

11 A. Yes, ma'am.

12 Q. And then on this same phone that you communicated with
13 him, the same phone you saw on that Honda's door, down here
14 at 4:23 do you see that outgoing call to 9-1-1?

15 A. Yes, ma'am. That was after the incident had occurred,
16 so it occurred roughly anywhere from --

17 Q. And that's okay. It was after it happened when you
18 were finally able to make it to the Honda?

19 A. Yes, ma'am.

20 Q. There were a few more exhibits that we got in earlier.
21 I don't think I published this one to the jury. This is
22 State's 28. You were testifying earlier about the cable
23 cords where the DVR was I think when I showed you the
24 photograph. Was this the photograph you were looking at?

25 A. Yes, ma'am.

1 Q. And that's where it would have -- the DVR? I
2 apologize.

3 A. Yes, ma'am. It was actually inside. It looks like
4 they kind of pulled out the wires, dragged them out of the
5 room as they were taking the box out.

6 Q. And that was --

7 A. It was in like -- it was in this area here, so when
8 they was dragging it out the wires just might have kind of
9 came along with it, but it was more in this area up here in
10 the room.

11 Q. And that DVR was gone?

12 A. Yes, ma'am, it was gone.

13 Q. And I know a few other items I introduced and just to
14 publish them briefly before we move on so the jury knows
15 what I showed you when I stood up here. This was just
16 another angle of that same white vehicle that you were
17 selling to Jona that day?

18 A. Yes, ma'am.

19 Q. And this was just another angle of it, correct?

20 A. Yes, ma'am.

21 Q. And that's State's 37 and 36.

22 Now -- now also saved in your phone, I'm gonna show
23 you State's 43 and ask you if you recognize that same
24 404-695-5436 number?

25 A. Yes, ma'am. Yes, ma'am.

1 Q. And that's --

2 A. That's Zo Car Fam, which was Jona.

3 Q. And earlier you talked about Zo --

4 A. Yes, ma'am.

5 Q. -- which was Alonzo Walker?

6 A. That was a mutual friend.

7 Q. And do you see this name saved in your phone?

8 A. Yes, ma'am. It's saved as Zobama.

9 Q. And what number did you save it as?

10 A. The number was 916-514-2961.

11 Q. And Zobama, that's Zo and that's Alonzo Walker?

12 A. Yeah, Alonzo Walker. The same person.

13 MS. FULLER: At this time the State seeks to
14 introduce State's 43.

15 THE COURT: Any objection?

16 MR. FLOYD: No objection, Your Honor.

17 THE COURT: Without objection State's 43 in
18 evidence.

19 (State's Exhibit Number 43, phone content/contacts,
20 was admitted into evidence.)

21 BY MS. FULLER:

22 Q. And just to show the jury what you just testified to
23 and what I showed you up there, is basically the contact
24 information that was saved in your phone, and right here is
25 that Zo Car Fam?

1 A. Yes, ma'am.

2 Q. And that's the number you identified as Jona?

3 A. As Jona. Yes, ma'am.

4 Q. And then Zobama is who you testified --

5 A. Alonzo Walker.

6 Q. And that's the number that you communicated with him
7 with?

8 A. Yes, ma'am.

9 Q. This might sound like a silly question, on that day
10 did you ever give Jona or the guy you're referring to as
11 Terry permission to go in your home?

12 A. Never.

13 Q. And to take anything from it?

14 A. No, ma'am. Never.

15 Q. Now when you were testifying -- I just want to make
16 sure it's clear to the jury. I asked you this earlier and
17 when you testified you said Butler came up to you and held
18 the gun and he said give it up, and I think Terry may have
19 said that, too, and stated money and drugs, right?

20 A. Yes, ma'am.

21 Q. Now you didn't have any drugs in the home?

22 A. No, ma'am. Nor money.

23 Q. And you weren't dealing in drugs?

24 A. No, ma'am, I wasn't dealing at all.

25 Q. All right. Prior to my involvement with this case,

1 did the prosecutor's office essentially offer you immunity
2 if you had been dealing drugs at that time?

3 A. Yes, ma'am. They let me know that if I was dealing
4 with any type of drugs or any type of drug activity going
5 on at the moment they would have granted me immunity and I
6 let them know that I didn't need immunity.

7 Q. And immunity, just so everybody understands it, would
8 mean if you told us you were dealing drugs when your
9 brother died and you got shot, that means you wouldn't have
10 been prosecuted for it, right?

11 A. Yes, ma'am.

12 Q. And you -- you told my office at that time that you
13 didn't need immunity because you weren't?

14 A. Yes, ma'am.

15 Q. Now the Challenger, when you were in the hospital do
16 you recall talking to law enforcement about the Challenger?

17 A. Yes, ma'am, I do.

18 Q. And whose Challenger was it?

19 A. It was actually my brother's car. At the present
20 moment when I was in the hospital, I -- like when I said
21 when I dialed the 9-1-1 call, I didn't know that he was
22 dead and --

23 Q. You were hoping for the best?

24 A. Yes, ma'am.

25 Q. Okay. And you were saying that the Challenger was

1 your brother's car?

2 A. Yeah, and, you know, he purchased the car like maybe a
3 year prior to the incident or a few months, whenever it
4 was, he purchased it and he never got the paperwork
5 straight and so I kind of told him I thought something was
6 fishy about it, so we kind of started -- we started to kind
7 of treat it like that, that there might have been something
8 with the car because the guys never reached back out to
9 give him the title or the paperwork or anything, so finally
10 after he tied his money up I just kind of told him right
11 then this car could be stolen or anything like that, you
12 don't really know, and he was like well, I don't think so
13 because the guys -- you know, the guys told me that it was
14 okay, and we come to find out it was stolen.

15 Q. Okay. And so when the police asked you about the
16 Challenger, you didn't tell them it was Tycus's car?

17 A. No, ma'am, I didn't.

18 Q. Were you trying to protect your brother at that point?

19 A. Yes, ma'am, I was.

20 Q. But you did eventually tell them once you found out
21 that Tycus had passed?

22 A. I told them. I made them aware of everything.

23 Q. That it was actually --

24 A. Yes, ma'am.

25 Q. When -- after you made it to the car and called 9-1-1,

1 is that basically where you waited until help came?

2 A. Yes, ma'am. I was just laying there on the ground
3 just trying not to -- I had already crawled all the way out
4 of the house, so I was just trying to not use too much more
5 of my energy because I wasn't -- I wasn't really sure what
6 to do. Like I was shot and I was like more scared and just
7 not -- I was just kind of confused like, just muffled.
8 Like all I knew was to just kind of call 9-1-1 and get help
9 for my brother.

10 Q. Let's just talk about your injuries, and I know that
11 might be difficult to talk about, so just let me know if
12 you need a break. Do you remember where exactly you were
13 shot versus do you know now and can you explain it to the
14 jury?

15 A. I was shot in my neck, in my back, my stomach, my
16 side, and one of the wounds came from the back to the
17 front.

18 Q. Okay. So you had what I would call like an entrance
19 and an exit wound, too?

20 A. Yes.

21 Q. And this was all from the first shots in the front?

22 A. Well, I believe that three came from the first shots
23 and three came from the second shots. Like when I got shot
24 in my neck, it was when I had the phone in my hand.

25 Q. And you vividly remember that one?

1 A. At the time I kind of couldn't really tell where the
2 bullets were at. It was just like my body was numb.

3 Q. Numb all over because of being shot?

4 A. Like I could see like -- I could feel the blood had
5 come down when I was trying to use the phone.

6 Q. So that's why you can kind of equate it to that must
7 have been when you got shot in the neck because shortly
8 after he took the phone you felt the blood coming down?

9 A. Yeah, I could feel it like draining like. I thought
10 maybe it was just coming from my head or somewhere around,
11 but later on I found out it was my neck.

12 Q. How long were you in the hospital after this happened;
13 do you remember?

14 A. I was in the hospital for thirty-three days the first
15 time and once I got out of the hospital my injuries landed
16 me back into the hospital. I had to go back and I had to
17 stay for, I think, twenty-nine days the second time.

18 Q. Okay. Can you tell me at any point -- you probably
19 wouldn't remember, but did you know that you were
20 unconscious at any point?

21 A. I was out for roughly sixteen days. I had missed my
22 brother's funeral and everything.

23 Q. Okay. So you were kind of in and out of consciousness
24 for the first couple of weeks that you were in the
25 hospital?

1 A. Yeah, after the -- I think I woke up on the fifteenth
2 day and the sixteenth day the officers came in. They
3 weren't able to talk to me that day because I had a trach
4 in my throat and they came back like maybe three or
5 four days later and I was -- I could talk a little better
6 where they could kind of understand what I was saying.

7 Q. Uh-huh. And you don't remember the exact date, but
8 you know you were -- or the exact amount, but you remember
9 being unconscious for several days, even possibly almost
10 two weeks?

11 A. Yes, ma'am.

12 Q. I'm gonna show you what's been premarked as State's 32
13 and I'm gonna ask you if you recognize State's 32?

14 A. Yes. Yes, ma'am.

15 Q. And how do you recognize it?

16 A. I -- I initialled it and dated it from the day that I
17 -- I listened to the audio off of it.

18 Q. And what is this an audio of?

19 A. Of the 9-1-1 call I made on April 26, 2014.

20 Q. And you recognized your voice on it?

21 A. Yes, ma'am.

22 Q. Okay.

23 MS. FULLER: At this time, Your Honor, the State
24 seeks to introduce the 9-1-1 call as it relates to
25 VonKeith Toland, State's Exhibit 32, into evidence.

1 THE COURT: No objection?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: All right. State's 32 is in evidence
4 and you may publish it if you wish.

5 MS. FULLER: Thank you, Your Honor.

6 (State's Exhibit Number 32, a 9-1-1 call, was
7 admitted into evidence.)

8 MS. FULLER: And for the record this 9-1-1 stream
9 would be multiple calls lasting about thirty minutes that
10 the line was still open. For the purposes of right now I
11 plan to just publish certain portions --

12 THE COURT: Okay. Go ahead then, please.

13 MS. FULLER: -- but the entire thing is in evidence.

14 BY MS. FULLER:

15 Q. While we're getting that cued up, I'll ask you a
16 couple of questions.

17 A. Yes, ma'am.

18 Q. After this happened -- I think I was starting to ask
19 you and I got sidetracked a little bit. When -- while you
20 waited for first responders to get to you and help to come,
21 did you ever go back inside the home?

22 A. No, ma'am.

23 Q. Could you even move that much to even get there?

24 A. No, it was like I could barely -- I was surprised I
25 had even made it to the car, but...

1 Q. Uh-huh. And that's that Honda?

2 A. Yes, the silver Honda Accord the phone was in.

3 Q. And that's -- in terms of where you crawled out, I'm
4 trying to find the front of the house, in State's 14 where
5 you crawled out from there to State's 16 where that Honda
6 was parked?

7 A. Yes, ma'am.

8 Q. Okay. And that's basically where you stayed until law
9 enforcement arrived?

10 A. Yes, ma'am.

11 Q. You never tried to go into the home?

12 A. No, ma'am.

13 Q. Now I'm sure you came to find out that there was a
14 firearm found in the home when law enforcement got there --

15 A. Yes, ma'am.

16 Q. -- somewhere under the bed. Did you recall that
17 firearm being in the home?

18 A. No, ma'am. I didn't recall it. I had knowledge of
19 it after I found out about it, but I didn't recall it that
20 day.

21 Q. Okay. And was that firearm ever presented or used in
22 this in any way?

23 A. No, ma'am. It was an older firearm that was purchased
24 prior to me being incarcerated --

25 Q. Okay.

1 A. -- and it was just still around.

2 Q. Okay. And you didn't even remember it being there?

3 A. Yeah, I didn't even know it was actually.

4 Q. Okay. So that 9-1-1 call you identified, I'm gonna
5 publish a few portions of it.

6 (Whereupon, a portion of Exhibit Number 32 was
7 played.)

8 THE COURT: Technical issues?

9 While she's working on that, do you have any other
10 questions you could be asking perhaps the witness?

11 MS. FULLER: Sure, Your Honor.

12 BY MS. FULLER:

13 Q. For the first portion of what we just listened to, you
14 told law -- you told the dispatcher that you know that it
15 was two guys?

16 A. Yes, ma'am.

17 Q. And you know them as -- through Zo from Cali?

18 A. Yes, ma'am.

19 Q. And not to sound like a dead horse, but I want to
20 make sure it's covered completely, you're referring to
21 California?

22 A. Yes, ma'am. I was referring to California.

23 Q. And Zo is Alonzo Walker?

24 A. It was Alonzo Walker I was referring to. Yes, ma'am.

25 Q. And so within I think it was maybe a minute and thirty

1 seconds of that call you were able to tell them?

2 A. Yeah, I was basically just trying to give them some
3 type of information like in case I wasn't able to make it
4 because I was honestly just like -- feeling like I couldn't
5 even talk like. I was just so weak I had got to the point
6 where I kept losing blood, losing air, so I just wanted --
7 I was just trying to tell them whatever I could.

8 Q. In this case you were in the hospital for several days
9 and you recall law enforcement coming at some point when
10 you woke up?

11 A. Yes, ma'am.

12 Q. And I believe you testified to that already.

13 A. Yes, ma'am.

14 Q. Did they ever come and talk to you about possibly
15 identifying the two people that did this to you?

16 A. Yes, ma'am. They spoke with me and asked me did I
17 know them and they asked me could I look at a photo lineup
18 that may or may not have the guys that may have done this
19 to me.

20 Q. Okay. And they came on two occasions to do that. Do
21 you remember that?

22 A. Yes, ma'am.

23 Q. And just so it's clear, I know you knew Jona. That's
24 all you knew was his name?

25 A. Yes, ma'am.

1 Q. And you testified at the beginning earlier this
2 morning that you didn't know his Government name?

3 A. Yes, ma'am.

4 Q. So you didn't give a -- you didn't have a name to give
5 law enforcement, right?

6 A. No, ma'am, I didn't have a name.

7 Q. And the fact that you were unconscious, you couldn't
8 give them much information when you were in the hospital;
9 is that right?

10 A. No, ma'am, I couldn't.

11 Q. I'm gonna show you what's been marked as State's 41
12 and I'm gonna ask you if you recognize this?

13 A. Yes, ma'am. It's a photo lineup.

14 Q. And do you see the date on this photo lineup?

15 A. Yes, ma'am. It says 5-8-14. May 8th.

16 Q. Okay. And on May 8th, you testified you were still in
17 the hospital, correct?

18 A. Yes, ma'am.

19 Q. And I don't want to ask this as a vague question, but
20 your state of mind like, were you on medication at that
21 point?

22 A. Yes, ma'am. I was on like some pain meds and like an
23 IV or something like and food, like stuff they were giving
24 me to keep me eating, like liquid foods.

25 Q. Uh-huh. Did you still have the trach in?

1 A. Yes, ma'am.

2 Q. And in terms of your mindset, were you alert?

3 A. Yes, ma'am. I was very alert then, yes, ma'am.

4 Q. And when they asked you if you could pick the people
5 out of a photo lineup, did you have any concern about your
6 ability to do so?

7 A. No, ma'am, not at all.

8 Q. And they were asking you to identify the two people
9 that came to your mom's house?

10 A. Yes, ma'am.

11 Q. And the two people involved in shooting your brother
12 and shooting you?

13 A. Yes, ma'am.

14 MS. FULLER: Your Honor, I'm gonna finish publishing
15 now.

16 (Whereupon, another portion of State's 32 was
17 played.)

18 BY MS. FULLER:

19 Q. And for that portion you heard the first responders
20 telling you to just try to stay with me, try to give me
21 information?

22 A. Yes, ma'am.

23 Q. And because of the acoustics in here, I don't know if
24 you could hear it clearly, but that's when you were telling
25 them about the car and you were trying to tell them about

1 the phone and all that?

2 A. Yes, ma'am.

3 Q. Okay. And you told them that on the scene and that's
4 pretty much all you could get out?

5 A. Yes, ma'am.

6 Q. I will show you -- I'd like to show you State's 41.
7 And while they're looking at that, just to circle back
8 around for a moment, a few moments ago I asked you about
9 the gun in the -- the house. Were you aware if you ever
10 shot that gun on the property or if anyone else in the home
11 had shot it previously before that day?

12 A. My fiancée had shot it before on like Happy -- I mean,
13 New Year's or something.

14 Q. Okay. So if there was a shell casing or anything that
15 matched that gun, it would have been from firing it
16 previously?

17 A. It would have been, yeah. Like it was -- it was like
18 an older one. It should have been noticeably known that it
19 was like an older one if there was one found.

20 Q. And just to look at State's 16, your yard is -- okay.
21 Looking at State's 16, your yard isn't paved, right?

22 A. No, ma'am.

23 Q. So there could be things found in there that have been
24 there for a long time?

25 A. Yeah, been there forever.

1 Q. Okay.

2 MS. FULLER: Your Honor, back to the photo lineup,
3 at this time the State seeks to introduce State's 41
4 into evidence. The State is seeking 41 to be introduced
5 into evidence.

6 THE COURT: Any objection?

7 MR. FLOYD: No objection.

8 THE COURT: With no objection State's 41 is in
9 evidence.

10 (State's Exhibit Number 41, a photographic lineup,
11 was admitted into evidence.)

12 BY MS. FULLER:

13 Q. State's 41, that photo lineup I asked you about that's
14 on that May 8th date --

15 A. Yes, ma'am.

16 Q. -- while you were still in the hospital. And was this
17 your attempt right here to write --

18 A. Yes, ma'am. I attempted to write it as best as I
19 could. I was still real weak. Even the circle I kind of
20 made it as best as I could.

21 Q. Okay. And -- but that would be what we would call
22 your signature?

23 A. My initials, yes, ma'am. My signature.

24 Q. And this photo lineup, when law enforcement showed it
25 to you, did they suggest in any way who to select in this

1 photo lineup?

2 A. No, ma'am. They just told me that it may or may not
3 be the person even on that paper. Like the person who done
4 it may not even be on there.

5 Q. And you did go ahead and make an identification in
6 this case on this document?

7 A. Yes, ma'am. I immediately circled that it was Jona.

8 Q. Okay. And when you say immediately circled, is that
9 that circle around three?

10 A. Yes, ma'am, circled around Number 3.

11 Q. And sorry that I have to -- I know it's up there.
12 I've just got to put it on the record for the court
13 reporter. And when you say Jona, that's the same person
14 you talked to on the 404 number?

15 A. Yes, ma'am, it was the same person that had arranged
16 to meet up about seeing the car and the same person that
17 was involved with the shooting.

18 Q. Okay. And the same person that was there when your
19 brother was shot?

20 A. Yes, ma'am.

21 Q. I'm gonna show you State's 1 and ask you if you
22 recognize it.

23 A. Yes, ma'am, I do.

24 Q. And do you recognize the date on it?

25 A. Yes, ma'am. It's May the 10th, two days after the

1 first one.

2 Q. And you were still in the hospital on this day?

3 A. Yes, ma'am, I was still in the hospital.

4 Q. And that's your attempt to sign a signature?

5 A. Yes, ma'am. Once again.

6 MS. FULLER: At this time the State seeks to
7 introduce State's Exhibit 1 into evidence.

8 MR. FLOYD: No objection, Your Honor.

9 THE COURT: Without objection State's 1 is in
10 evidence.

11 (State's Exhibit Number 1, a photographic lineup,
12 was admitted into evidence.)

13 BY MS. FULLER:

14 Q. In looking at State's 1 in this case --

15 THE COURT: Rather, it's subject to the prior
16 rulings.

17 Mr. Floyd, we're admitting it, but it is subject
18 to the prior rulings from our hearings yesterday.

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. FULLER: Thank you, Your Honor.

22 BY MS. FULLER:

23 Q. That's that May 10th date that you identified?

24 A. Yes, ma'am. May the 10th, 2014.

25 Q. And the same question as that first one, did law

1 enforcement in any way suggest to you who to identify in
2 this lineup?

3 A. No, ma'am, they did not. They told me that the
4 person may or may not be on there and when I looked at it,
5 I immediately knew it was McClure. I noticed someone else
6 that I knew, so that's how I kind of remembered the
7 picture. Like I was -- I kind -- that kind of left me
8 because I was still mentally challenged too, but it wasn't
9 like I didn't recognize the other person that I knew on the
10 lineup.

11 Q. And this is your signature signing this?

12 A. Yes, ma'am.

13 Q. And you wrote that number?

14 A. Yes, ma'am, and I made the circle around Number 5.

15 Q. And when law enforcement -- you said that you knew --
16 you were still in your right mind, but you were in the
17 hospital on medication, too, but you were fine?

18 A. Yes, ma'am.

19 Q. When you made this identification, you were
20 identifying the person that shot you?

21 A. Yes, I was identifying the person that shot my brother
22 in the head and shot me six times.

23 Q. And this is the same person you described as the
24 taller person that came to your mom's house?

25 A. Yes, the taller person, dark complexion with a goatee.

1 Q. Okay. The same person that you described as knowing
2 by just a one letter initial?

3 A. Yes, ma'am.

4 Q. And same person that shot your brother?

5 A. Yes, ma'am.

6 Q. The same person you played poker with?

7 A. Yes, ma'am.

8 Q. The same person that got in that car and test drove it
9 while Jona drove it?

10 A. Yes, ma'am, in the passenger side.

11 Q. Did you have any doubt in your mind who you were
12 identifying?

13 A. No, ma'am. I was immediately sure.

14 Q. I'm showing you what's been premarked as State's 34.
15 Do you recognize this?

16 A. Yes, ma'am. It's an aerial view of the property
17 adjoining to mine and my property.

18 Q. Okay. And can you identify your property on here?

19 A. Yes, ma'am. You can see it's in the back like kind of
20 isolated where you have to take the road here to travel to
21 the property itself. It's kind of enclosed in.

22 Q. What I would call landlocked?

23 A. Yeah, landlocked.

24 MS. FULLER: At this time the State seeks to
25 introduce 34 into evidence.

1 THE COURT: Without objection State's 34's in
2 evidence.

3 (State's Exhibit Number 34, an aerial photograph
4 blowup, was admitted in to evidence.)

5 BY MS. FULLER:

6 Q. Go ahead and use that laser pointer for me. Go ahead
7 and point to --

8 A. This is the actual road here, Bushberry Road, that
9 leads to the property. You get there and you would make a
10 turn here and come up the driveway and it's kind of like
11 you said, it's landlocked, the only way that you can get to
12 the property, so you would travel up this road, like maybe
13 two acres, and then you have an open acre back here.

14 Q. Okay. And this is where everything happened?

15 A. Yes, ma'am. You can see like the mobile home's here,
16 the car's still right there.

17 Q. And that's that white car you're talking about?

18 A. Yes, ma'am.

19 Q. And when you made that identification, you're
20 identifying the person who did this here on Bushberry
21 Road --

22 A. Yes, ma'am.

23 Q. -- in Lexington county?

24 A. 688 Bushberry Road.

25 Q. That person you identified in that photo lineup --

1 A. Yes, ma'am.

2 Q. -- do you still recognize him today?

3 A. Yes, ma'am. He -- his features have changed a little,
4 but he's still recognizable.

5 Q. Do you think you can identify him in this courtroom
6 for the jury?

7 A. Yes, ma'am.

8 Q. And where do you see that individual that you
9 identified in that photograph?

10 A. Sitting at the Defendant's table.

11 Q. Can you point to him?

12 A. He's over there.

13 THE COURT: The gentleman in the brown sweater?

14 THE WITNESS: Yeah, the brown sweater. The only
15 African American, too.

16 MS. FULLER: Your Honor, let the record reflect that
17 VonKeith Toland has identified the Defendant sitting at
18 the table wearing the brown cardigan.

19 THE COURT: The record shall so reflect.

20 MS. FULLER: Thank you, Your Honor. No more
21 questions at this time.

22 THE COURT: Mr. Floyd.

23 MR. FLOYD: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. FLOYD

1 Q. Mr. Tindell {sic}, did you lie to the cops about the
2 Dodge Challenger?

3 A. What was that? I'm sorry.

4 Q. Did you lie to the police about the Dodge Challenger?

5 A. Yes, sir.

6 Q. And why did you lie to the police?

7 A. To protect my brother.

8 Q. Did you lie to the police about the gun that was found
9 in your house?

10 A. No, sir.

11 Q. You didn't lie to them about that?

12 A. No, sir.

13 Q. Did you later find out there was a gun found in your
14 house?

15 A. Yes, sir.

16 Q. Did they confront you with the fact that one of the
17 shell casings they found around the house came from that
18 gun?

19 A. Yes, they told me that a shell casing was found and
20 that the gun was found under the bed with a lot of dust on
21 it with no magazine like it's been there for months.

22 Q. And after they told you about the shell casing, that's
23 when you told them about your girlfriend testing out the
24 gun, target practicing or whatever she was doing with it?

25 A. When they told me about the shell casing, I made them

1 aware that it came -- if there was a shell casing there it
2 had to come from when she made one shot from New Year's,
3 but it would not have been a fresh shell casing. You can
4 identify a fresh one from an old one.

5 Q. Now you gave testimony once before in this case back
6 in June of 2016; did you not?

7 A. Yes, sir.

8 Q. You didn't say anything about it being New Year's Eve
9 when she did that shot, did you?

10 A. I don't recall whether I did or not.

11 Q. Now you weren't supposed to have a gun in your house,
12 were you?

13 A. No, sir, I wasn't supposed to have one.

14 Q. Because you'd been convicted twice of trafficking
15 cocaine?

16 A. No, sir, I was convicted once.

17 Q. Once or twice?

18 A. Once for trafficking cocaine.

19 Q. Two counts?

20 A. Two counts at once.

21 Q. So two different times?

22 A. No, it was one time, just two different charges. One
23 was cocaine and one was crack cocaine, so they charged me
24 with two separate trafficking charges.

25 Q. And trafficking is when you have a large amount of

1 drugs; is that correct?

2 A. It just kind of depends. Not necessarily a large
3 amount. It wasn't a large amount that they found. It
4 was --

5 MS. FULLER: Objection, Your Honor.

6 THE COURT: All right. Sustained. For purposes
7 of impeachment it's sufficient that he's admitted that
8 he's been convicted of trafficking.

9 MR. FLOYD: Your Honor, we have a matter of law.
10 We think he's opened the door.

11 THE COURT: You-all come up here. You-all come
12 over to this side and talk to me just a second.

13 (Proceedings held at the bench; not reported.)

14 THE COURT: Ladies and gentlemen of the jury, we
15 need to take a brief five minute break or so. Adjourn
16 to the back, please, don't discuss the case, and I'll
17 have you back out here as soon as possible, all right?

18 Thank you.

19 (Whereupon, the jury retires to the jury room at
20 12:05 PM.)

21 THE COURT: Again, sir, you can step down. Just
22 don't discuss your case -- or your testimony rather with
23 anybody, okay?

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 THE COURT: Based upon the sidebar, Mr. Spangler,
2 I was gonna let you show Ms. Fuller the --

3 MR. SPANGLER: If we could just have a couple of
4 moments. We were planning on going into this with
5 Phipps, so we need to go through and type up the
6 specific pages to question the witness on.

7 THE COURT: Okay. All right.

8 MR. SPANGLER: If we could just have ten to
9 fifteen minutes to go through the records.

10 THE COURT: Sure. I can give you ten minutes
11 and just -- go ahead and show it. We'll go off the
12 record. Show it to Ms. Fuller and Mr. Graham and
13 then we'll reconvene, okay?

14 MR. SPANGLER: Yes, sir.

15 (Recess taken at 12:06 PM.)

16 (Back on the record at 12:17 PM.)

17 BAILIFF: All rise. Court's back in session.

18 THE COURT: Have a seat, please.

19 Let's go back on the record, please. During the
20 break I'd asked for the defense to share with the
21 State some materials that they wish to question this
22 witness about and apparently the material was gathered
23 in discovery from the State; is that correct,
24 Mr. Spangler?

25 MR. SPANGLER: It is, Judge. Yes, sir.

1 THE COURT: And I assume that material has now
2 been shared and everything?

3 MR. SPANGLER: We've identified the certain page
4 numbers from their discovery that we're gonna be
5 referencing, Your Honor.

6 MS. FULLER: Thank you, Your Honor. And so I guess
7 in response, it looks like there's three text messages
8 that they are referring to I guess for their good faith
9 basis of questioning as to drug dealings, but the
10 State's position is that those messages do not suggest
11 drug dealing.

12 THE COURT: Approach and let me take a look at what
13 you-all are talking about, please.

14 (Proceedings held at the bench; not reported.)

15 THE COURT: All right. Let's have the jury, please.

16 (Whereupon, the jury returns to the courtroom at
17 12:30 PM.)

18 THE COURT: The jury is back and seated.

19 And, Mr. Floyd, if you'll, please, continue.

20 MR. FLOYD: Thank you, Your Honor.

21 BY MR. FLOYD:

22 Q. Mr. Toland?

23 A. Yes, sir.

24 Q. Do you recall receiving a phone call on January 2,
25 2014, wanting to buy four 40 cal -- calibers at \$250.00

1 apiece?

2 MS. FULLER: Objection, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: What was it?

5 BY MR. FLOYD:

6 Q. It's highlighted here on this. Do you want to take a
7 look at it?

8 A. Yeah, I see that. I don't recollect it, but evidently
9 somebody was trying to sell me something.

10 Q. And that something was 40 calibers at \$250 apiece,
11 guns?

12 A. That's what it says, yes, sir.

13 Q. Okay. Let me show you another in January. It's
14 highlighted also.

15 A. Okay.

16 MS. FULLER: Objection, Your Honor.

17 THE COURT: You have a standing objection to those
18 three messages.

19 MS. FULLER: Well, he hasn't asked --

20 THE COURT: He's showing him -- he's showing it to
21 him.

22 MS. FULLER: He hasn't asked a question that would
23 give him -- the rule to allow him to show him anything.

24 THE COURT: All right. Do you want to ask him the
25 question first and then show it to him if he cannot

1 recall, Mr. Floyd?

2 MR. FLOYD: I can do that.

3 BY MR. FLOYD:

4 Q. Do you recall on January 12th of 2014 receiving a call
5 wanting fifty -- wanting to do \$50 a gram of loud?

6 A. Yeah, I think that was the same guy trying to push
7 those off on me and I kept denying it.

8 Q. And loud is -- what is loud? Is that marijuana?

9 A. Yes, loud is considered marijuana.

10 Q. Do you recall replying to that text message where you
11 -- you could do it for eighty to a hundred dollars a gram?

12 A. From who?

13 Q. Did you -- do you recall replying to that text message
14 saying you could do it at eighty to a hundred dollars a
15 gram?

16 A. No, that doesn't sound correct.

17 Q. Okay. I'll show you.

18 A. I don't remember that.

19 Q. Would this refresh your memory if I showed it to you?

20 A. Yes, if I could see it.

21 Q. If you look right above it.

22 A. That was a different -- that was a different
23 conversation. I was telling him that I would sell him a
24 puppy for eighty to a hundred dollars. So it's not like
25 it was the same conversation. That was a different

1 conversation.

2 Q. So you were offering to sell somebody for eighty to a
3 hundred dollars a gram?

4 A. No, not a person. A puppy for eighty to a hundred
5 dollars. He wanted to purchase a pit bull.

6 Q. A pit bull?

7 A. It doesn't -- it doesn't state anything about
8 marijuana in that text right there.

9 Q. Do you recall on January 8th of 2014 receiving an
10 instant message about wanting to get a zip of dark?

11 A. Zip of dark? I'd have to read it and see so I can
12 understand your question, what you're referring to.

13 Q. Isn't dark purple marijuana?

14 A. Not -- no, not this. Once again, this statement is me
15 text messaging someone about purchasing marijuana to smoke,
16 which I let you-all know earlier that I was smoking at the
17 time. That's what that said, that I went to purchase it
18 from someone.

19 Q. Okay. So that's you -- you going to purchase some
20 marijuana?

21 A. To smoke for recreational use. If you read it, it
22 states it clearly.

23 Q. Well, it says recreational use there?

24 A. It pretty much says that I'm on the way to purchase
25 the marijuana to smoke. Basically that's what it's saying.

1 If you look at it clearly, it doesn't say what the use is
2 for, but I'm telling you from the person that was
3 purchasing it what it was used for.

4 Q. Okay. It doesn't say that -- it doesn't say that in
5 the message, does it?

6 A. What was that, sir?

7 Q. It doesn't say that on the message, does it?

8 A. No, sir. I can only tell you that, sir. Anything
9 else would be considered hearsay like.

10 Q. Do you recall when you received the January 12th
11 message about fifty a gram of loud, do you recall replying
12 to that?

13 A. I'd have to look at it and see. I wouldn't remember
14 from then.

15 Q. I told you to go above it before, but it's go below
16 it.

17 A. Go below it. It says yeah, where the picture.

18 Q. Uh-huh.

19 A. Yeah, I see that. He continues -- he continued to
20 try to offer, can I do fifty for some loud, and I never
21 confirmed it.

22 Q. Well, you replied, didn't you?

23 A. Yeah, I never said yes or no. I just told him -- I
24 said where the picture at. Like he said he sent a picture.
25 I didn't see it.

1 Q. But you say yes, don't you?

2 A. No, I don't say yes.

3 Q. You say --

4 A. I replied yes to the purchase of it, but not a yes on
5 the person.

6 Q. But there's a yes there, isn't it?

7 A. No, it -- can I look at it again? I don't know
8 understand where you're saying yes.

9 Q. Yeah.

10 A. That was about the dog when you asked me about that
11 and then he asked me --

12 Q. Well, that's right after the fifty grams of loud,
13 right?

14 A. -- about can I could do fifty and I said -- told him,
15 I said, yeah, where is the picture of it -- of the strap,
16 too, like saying like where's the picture at that he was
17 telling me about. Because you see where he's asking me can
18 I do this for it twice; meaning that I'm not answering the
19 question that he wants me to answer. I'm overlooking that
20 and answering another question. That's the reason he asked
21 it twice, like reiterating me ignoring it.

22 Q. Then he asked you can you do fifty and a gram of loud;
23 is that correct?

24 A. The same thing. He asked twice.

25 Q. And then you say yes?

1 A. No, I --

2 Q. Or you say yeah.

3 A. I said yeah, where the picture at.

4 Q. Where the picture?

5 A. Yeah.

6 Q. Okay. So you're saying that that has nothing to do
7 with the marijuana?

8 A. That it had nothing to do with marijuana as in how?
9 He's mentioning marijuana, so it's automatically saying
10 marijuana in it.

11 Q. No question loud is marijuana; is that correct?

12 A. Yes, sir, marijuana is loud.

13 Q. Strong marijuana; is that --

14 A. Well, marijuana, yes, sir.

15 Q. And so he asked you about it and that's the same guy
16 that you said asked you about the guns?

17 A. Yeah. He know that I smoke, so it wasn't a surprise
18 to him.

19 Q. Did he know you do guns, too?

20 A. Do guns? As far as how?

21 Q. Well, you said it was the same person that asked you
22 about it before.

23 A. No, the guy asked me -- he's a guy that sells a bunch
24 of stuff, whatever he retrieves, and he tries to sell it to
25 people, so it wasn't a surprise to me he was reaching out

1 to me about purchasing some marijuana.

2 Q. So it's the same guy that offers to sell you guns and
3 marijuana?

4 A. No, he didn't offer to sell me marijuana. He tried to
5 sell me a gun. He was asking me for marijuana. He wanted
6 -- he know I smoke, so he wanted -- he smokes as well and
7 he was thinking he could get something from me to smoke.

8 Q. Now didn't the State grant you immunity for your gun,
9 the gun they found on your property?

10 A. Well, I didn't have a gun. They found -- they granted
11 me immunity for the gun that was found in the house.

12 Q. That's what I said. On your property.

13 A. Yes, on the property.

14 Q. So they granted you immunity for that and they also
15 granted you immunity for any drugs, didn't they?

16 A. They granted me immunity for if I was dealing any type
17 of drugs with those fellows that day or anything dealing
18 with drugs and I didn't. I wasn't.

19 Q. Okay. But they granted you immunity anyway, didn't
20 they?

21 A. I think they may have granted me immunity. I'm not
22 sure.

23 Q. Did they talk to you about the smell of fresh cut
24 marijuana in your house?

25 A. Yes, I had let them know that I'd been smoking in the

1 home and it would have the scent of marijuana in it.

2 Q. And that's when they offered you immunity after that?

3 A. No, sir.

4 Q. Because, of course, the way they -- they asked you
5 about the officers smelling a strong odor of fresh cut
6 marijuana, didn't they?

7 A. Did they what? Could you repeat that?

8 Q. Did they talk to you about observing a strong odor of
9 fresh cut marijuana in your house?

10 A. Yes, sir. Yes, sir.

11 Q. And it's after that that you were granted immunity?

12 A. I don't remember when I was granted immunity.

13 Q. Now did the police tell you they found a casing or a
14 shell from the gun they found in your house in your yard?

15 A. Yes, they did find a shell casing.

16 Q. And they could match it up to the gun they found in
17 your house; is that right?

18 A. Yes, sir.

19 Q. And that's -- that's when you told them about it's
20 actually your girlfriend's gun; is that correct?

21 A. It's actually -- what was that?

22 Q. Is that when you told them that it was your
23 girlfriend's gun?

24 A. No, sir. I was -- it was more in the line of it was a
25 firearm that I had prior to being imprisoned and she was --

1 she just had it after I was in prison to protect the home
2 while I was gone and I thought she had got rid of it and it
3 was still around.

4 Q. Now when -- how long ago had you gone to prison?

5 A. Like maybe -- I had returned home like maybe two years
6 prior.

7 Q. So your testimony is that shell casing would have been
8 out there for over two years?

9 A. The shell casing would have been there -- it seems
10 like I said she -- I remember her telling me that she shot
11 it around New Year's or something, so it wouldn't have been
12 there from the time I was released, it would have been
13 there after.

14 Q. What New Year's did she say she fired it?

15 A. I didn't get into all that detail.

16 Q. Now your testimony was that you never went back in the
17 house; is that correct?

18 A. Yes, sir.

19 Q. And your testimony is that you basically crawled from
20 the back of the house out to the Honda to get to your
21 phone --

22 A. Yes, sir.

23 Q. -- to make the phone call?

24 A. Yes, sir.

25 Q. Now when you first called 9-1-1, you hung up on them,

1 didn't you?

2 A. What was that, sir?

3 Q. When you first called 9-1-1, you hung up on them,
4 didn't you?

5 A. I hung up on them or was the phone disconnected?

6 Q. Well, the phone went dead for some reason.

7 A. Yeah, it had to be a disconnection. I wasn't hung up
8 on. I was thinking I was in fear of my life. I was trying
9 to make sure I spoke to them. I could barely even breathe
10 anymore, my blood was coming from everywhere.

11 Q. Well, did you call your mother also?

12 A. Yes, I thought while I was on the phone I was gonna
13 call my mother to inform her that these guys that were just
14 at her house, sitting at her table, they robbed and shot me
15 and my brother.

16 Q. Did you call your girlfriend also?

17 A. Yes, and also informed her of the same.

18 Q. And did you tell your mother that a white man shot
19 you?

20 A. No, I did not tell my mother that a white man shot
21 me. She was -- when I was on the phone with her and I
22 told her that me and my brother got shot, she was kind of
23 hysterical, like she didn't believe me. Like boy, what you
24 talking about? Shut up. What you talking about? So I was
25 like them boys shot us. Them boys that just left the house

1 shot us. They robbed and shot us. They shot both of us.
2 So I don't know if she misinterpreted by me gasping for air
3 or barely being able to talk at the time with a hole in my
4 neck trying to tell her over the phone and she might have
5 thought that I said that, but that was nowhere near the
6 truth.

7 Q. Well, she called 9-1-1, too, didn't she?

8 A. I'm not sure.

9 Q. You don't know whether she called 9-1-1 and told them
10 that you -- that a white man shot you?

11 A. No, sir, I wasn't sure of that. I -- when I made the
12 9-1-1 call, I was taken off into a helicopter. I never
13 spoke back with her until I was awakened two weeks later,
14 like fifteen days after I was in the hospital.

15 MR. FLOYD: Your Honor, excuse me just a moment.

16 BY MR. FLOYD:

17 Q. Just a couple more questions, Mr. Toland.

18 A. Yes, sir.

19 Q. Do you know what time you say they arrived at your
20 mother's house?

21 A. It was roughly after 1:00. He called me around 1:15,
22 so I know he pulled up in the yard and he called me -- or
23 he called me before he pulled in the yard, so it was
24 roughly around one to one-thirty.

25 Q. And you how long were they at your house before you

1 left?

2 A. They were there roughly forty-five minutes before I
3 left to go view the property.

4 Q. And then how long did that take you?

5 A. I'd say at least ten, maybe fifteen minutes, something
6 in there.

7 Q. Okay. So then from there did you-all leave to go to
8 your house?

9 A. Well, once I returned they immediately -- we
10 immediately left after that because Terry stand up when I
11 came in the house and we went out and we left. They
12 followed me and my brother. I dropped the one car off and
13 I got in the car with my brother and then we went straight
14 to the property.

15 Q. How long did it take you to drive from your mother's
16 house to the property?

17 A. I would -- I would say around twenty minutes maybe.

18 Q. So that would have put you at the property at around
19 2:30, 3:00? When I say that, am I calculating that right?

20 A. I would say it would have been already three. Nearly
21 three to three-thirty, somewhere in there.

22 Q. How soon after -- how soon after you-all arrived on
23 Bushberry did the shooting take place?

24 A. Well, after -- we test drove the car. We went down
25 the road, that might have took like ten minutes, and then

1 we stand around talking for probably another maybe
2 fifteen minutes or so and then it just happened.

3 Q. How much time would you say it was between the
4 shooting and your calling 9-1-1?

5 A. Honestly, I would say a good bit of time passed by
6 because -- I can't really say exactly, but like when
7 something like that's happening, it's like everything's
8 moving so fast so you -- you don't really know like. I was
9 there on the ground for a good little while and then I was
10 under the house for a good little while and then I waited a
11 while before I crawled to the car, so the time is kind of
12 -- anywhere like I would say from me being -- from the time
13 when he first initially took the first shot until the phone
14 call, I would say would be anywhere from thirty to
15 forty-five minutes.

16 Q. And one other thing I'd like to ask you about. When
17 you first talked to the police on January -- I mean, I'm
18 sorry, on May the 10th or when you could talk, May 10th of
19 2014 --

20 A. May the 8th.

21 Q. May 8, 2014?

22 A. Yes, sir.

23 Q. At that point -- now you later told these deputies
24 that Jona or Mr. Butler threatened you or -- with your
25 money or your drugs?

1 A. Yes, sir. He said -- he threatened and said give up
2 the money or the drugs -- money and the drugs.

3 Q. But you told them that -- you told the police --

4 A. There was no money and no drugs. I told both of them
5 that.

6 Q. But you told the police about that statement in
7 January of 2016, didn't you?

8 A. I did tell -- repeat that again, sir.

9 Q. You told that statement for the first time in January
10 of 2016; is that correct?

11 A. About him asking?

12 Q. About the drugs or the money.

13 A. Yeah, prior to that I don't think we had many
14 conversations other than trying to secure the fellows that
15 actually did it and then in January we began having more
16 conversations more in detail about the case itself.

17 Q. So it was about two years later that you said that
18 about -- the statement about drugs or money; is that
19 correct?

20 A. I think it was about -- something like that. It was
21 about two years maybe before we discussed it. About a year
22 and a half before we went back to discussions on the case.

23 Q. And were the police at that time concerned about a,
24 quote, motive?

25 A. A motive? A motive as in?

1 Q. Did they ask you what the motive was or why did they
2 shoot you?

3 A. Well, no, it basically was, you know, trying to --
4 after, I guess, they secured -- after they secured the guys
5 that did the crime, they -- I didn't really have much
6 contact with them except for like maybe trying to get like
7 phone stuff straight and other things like that. Nothing
8 like actually sitting down and talking about the case
9 itself.

10 Q. But in any event, it was almost two years before you
11 told them about the statements you say that Justin Butler
12 made to you; is that correct?

13 A. I would say that should have been about roughly like
14 a -- like I said, a year and a half, but that same day I
15 -- I gave them a bunch of statements, the majority of my
16 statements dealing with the case.

17 Q. That was a year and nine months later, right?

18 A. Yes, sir. I was still in recovery for like maybe
19 nine months, so they wasn't really pressing me about the
20 issue.

21 Q. Now you testified earlier today that Terry McClure
22 said something to you, did you not, about drugs or money?

23 A. Yes, sir.

24 Q. You've never said that before, have you?

25 A. What, the --

1 Q. About Terry McClure saying anything to you.

2 A. When I stated it, I said that they both said drugs or
3 money. Like they -- like that's the first thing they said
4 like of the drugs or money.

5 Q. And you said that to Officer Garrick?

6 A. To Garrick? I don't recall.

7 Q. Do you realize he had made a written statement about
8 what you told him?

9 A. He may have.

10 Q. You didn't tell him that it was both of them, did
11 you?

12 A. I don't recall if I told him that it was both of
13 them.

14 Q. In fact, you never said Terry McClure said anything
15 to you about money or drugs until this morning; is that
16 correct?

17 A. That can't be correct because I mentioned that he --
18 that he drew a gun on me. That was the first thing he
19 said. He was asking for money.

20 Q. Well, if you -- if you told them that, it would be in
21 one of their reports, wouldn't it?

22 A. I would think so.

23 Q. Okay.

24 MR. FLOYD: Thank you. No further questions.

25 MS. FULLER: Briefly, Your Honor.

1 THE COURT: Go ahead.

2 REDIRECT EXAMINATION

3 BY MS. FULLER:

4 Q. Just to clear up some things because they're technical
5 terms. The -- our office offered you immunity, correct?

6 A. Yes, ma'am.

7 Q. We didn't grant you immunity because you said you
8 didn't need it.

9 A. Yes, ma'am. That's correct.

10 Q. So currently as you testified, there was nothing that
11 you were immune from, correct?

12 A. No, ma'am. I'm not immune from any type of thing.

13 Q. So there's no evidence or anything of drug dealings in
14 this case --

15 A. No, ma'am.

16 Q. -- as it relates to you?

17 A. None at all.

18 Q. So you're not testifying under the cloak of immunity?

19 A. No, ma'am, I'm not testifying under the cloak of
20 immunity.

21 Q. And that's just technicalities, so I just wanted to
22 make sure we broke that down. Now when defense was showing
23 you some pages of your phone extraction --

24 A. Yes, ma'am.

25 Q. -- obviously stuff that you haven't seen in four or

1 five years?

2 A. Yes, ma'am.

3 Q. The dates on there were from January of '14 and you
4 didn't have the full context?

5 A. Unh-unh.

6 Q. When you were looking at the documents, they were in
7 timeline format?

8 A. (Nods head.)

9 Q. So it's not like screen shots from the messages, they
10 were pulled out of the phone?

11 A. Yes, ma'am. Extracted, yes, ma'am.

12 Q. So it took you a while to put that into context,
13 right?

14 A. Yes, ma'am. Yes, ma'am.

15 Q. Now when you -- when you were able to look at those
16 messages that they showed you --

17 A. Yes, ma'am.

18 Q. -- you testified when I was asking questions to you
19 this morning, you admitted to smoking marijuana?

20 A. Yes, ma'am.

21 Q. And of your entire phone they pull out three messages
22 to show you and two of them was you wanting to smoke
23 marijuana?

24 A. Yes, ma'am.

25 Q. And the other one was someone attempting to sell you

1 something, but that has nothing to do with you. There's no
2 confirming that you bought anything or asked him to buy?

3 A. No, ma'am. And, you know, I just tried pretty much to
4 be honest about the marijuana part, that I smoke it,
5 because, you know, I didn't want to withhold anything --

6 Q. You didn't -- you didn't want to hide it?

7 A. -- to make it seem as if I was lying or anything.

8 Q. Okay. I just wanted to make sure we put that into
9 context. Now regarding the car that was for sale, you were
10 at your mom's house earlier talking. You had to explain
11 why those random guys, strangers to her, were at her house,
12 correct?

13 A. Yes, ma'am.

14 Q. And she knew that they were there to buy a car?

15 A. Yes, ma'am.

16 Q. And it was that white car, right?

17 A. Yes, ma'am. That's the same one.

18 Q. So when you were questioned about if you may have told
19 your mom about the car or about a white man, was there ever
20 a white man involved in this case?

21 A. No, ma'am. She may have even took it that I was
22 saying the white -- the guys that came to buy -- to buy the
23 white car. I don't know.

24 Q. And you don't know. You're just speculating --

25 A. I'm just speculating.

1 Q. -- just like defense was asking you to do?

2 A. Exactly.

3 Q. But she --

4 A. That's all I'm pretty much doing.

5 Q. Sorry, Your Honor. But she told -- but you did
6 testify on cross that you told her it was the men who were
7 just at the house about the car?

8 A. That was just at the house. Yes, ma'am. I pretty
9 much told her almost the same thing I told the 9-1-1 guy;
10 that it was the guys that were just at her house like.

11 Q. Okay. And she knew why they were there?

12 A. Yes, ma'am.

13 Q. When we played the 9-1-1 call, I think I noted it was
14 less than two minutes into it you told law enforcement, the
15 dispatcher, that it was two men, correct?

16 A. Yes, ma'am. Two men.

17 Q. And you knew them from Zo from Cali?

18 A. Yes, ma'am, I knew them from Zo from California.

19 Q. Has that ever changed?

20 A. No, ma'am. My -- my story is still the same.
21 Nothing's ever changed. That day will always be a part of
22 my life.

23 Q. Because it happened?

24 A. Yes. It was horrible and I really can't forget
25 nothing about it. I may forget small pieces of time and

1 like dates, but as far as what happened, I could never
2 forget it.

3 Q. And as far as who did it?

4 A. I can never forget it.

5 Q. And earlier you said Terry McClure did it?

6 A. Yes, ma'am.

7 Q. And that's the man sitting here?

8 A. Yes, ma'am.

9 Q. Not a white man?

10 A. No, ma'am.

11 Q. And you know what a white man looks like?

12 A. Yes, ma'am, very well.

13 Q. And you know what a black man looks like?

14 A. Yes, ma'am, very well.

15 Q. And Terry McClure is a black man?

16 A. Yes, ma'am. He's a black man.

17 MS. FULLER: No further questions.

18 THE COURT: Recross.

19 MR. FLOYD: Your Honor, may we approach a moment?

20 THE COURT: I'm sorry?

21 MR. FLOYD: May we approach a moment?

22 THE COURT: Sure.

23 (Proceedings held at the bench; not reported.)

24 THE COURT: Why don't you clarify, Ms. Fuller, to
25 see as to whether or not immunity applies.

1 MS. FULLER: Okay.

2 CONTINUED REDIRECT EXAMINATION

3 BY MS. FULLER:

4 Q. Just briefly, VonKeith, just to make sure it's clear.
5 We're dealing with semantics. As it relates to potential
6 drug dealing activity, you were offered immunity and you
7 said you didn't need it, correct?

8 A. Yes, ma'am.

9 Q. And -- but the offer was extended by our office?

10 A. Yes, ma'am.

11 Q. Not myself, but our office, correct?

12 A. Yes, ma'am.

13 Q. As it relates to the gun that was found in the house,
14 you were actually given immunity for that because --

15 A. Yes, ma'am, I was given immunity for the gun.

16 Q. And you testified that you didn't even remember the
17 gun was there?

18 A. Yes, I didn't have any knowledge of it, so it was like
19 pretty much saying the immunity -- he had stated that well,
20 you didn't have knowledge of the gun, so it's like we're
21 gonna give you immunity, but it's like you don't really
22 need it. And immunity on the car, I believe, being that it
23 wasn't my car. Just like with the gun, there was immunity
24 on it, but never for drugs.

25 Q. Okay. But not for the drugs?

1 A. No, ma'am.

2 Q. And the gun was in the bedroom under the bed --

3 A. And --

4 Q. -- and you didn't remember it being there, but since
5 it was found in your home you understood that?

6 A. Yes, ma'am.

7 Q. And you were offered immunity?

8 A. Yes, ma'am.

9 Q. But as to the drugs, you're not up here testifying
10 under the cloak of immunity?

11 A. No, ma'am. Not for drugs at all.

12 MS. FULLER: I think that should clarify it.

13 MR. FLOYD: No, it didn't, Your Honor.

14 THE COURT: All right. Well, ask him a question
15 then.

16 RE CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q. Didn't you tell the solicitor's office that you knew
19 the gun was in the house?

20 A. That I knew it was in the house?

21 Q. Yeah.

22 A. I don't recall that. I don't recall that.

23 MR. FLOYD: Your Honor, I'd ask the solicitor's
24 office to clear that up.

25 THE COURT: Do you want to speak to that,

1 Mr. Graham?

2 MR. GRAHAM: Can I see what he has and what he's
3 talking about, Your Honor?

4 MR. FLOYD: (Handing.)

5 MR. GRAHAM: Can we approach, Your Honor?

6 THE COURT: Yes.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: Any additional questions, Mr. Floyd?

9 MR. FLOYD: No additional questions, Your Honor.

10 THE COURT: Thank you, sir. You may step down.

11 THE WITNESS: Thank you, sir.

12 (Witness excused.)

13 THE COURT: Ladies and gentlemen, we're about
14 ten minutes past the usual lunch break that I like to
15 take because my blood sugar is all out of whack after
16 about ten minutes after one. So we're gonna go ahead
17 and take a break now for lunch. If you would, try to
18 be back in the jury room, let's say, at a quarter after
19 two. That will give you about an hour and five minutes
20 to go grab some lunch, all right?

21 So I'll see you back about 2:15. Don't talk about
22 the case. See you then. Thanks.

23 (Whereupon, the jury was excused for lunch at
24 1:08 PM.)

25 THE COURT: The jury is out. The next witness you

1 anticipate being who?

2 MS. FULLER: It's gonna be Tyvona Toland, the
3 sister.

4 THE COURT: The sister. Okay. Good enough.
5 See you-all at around 2:15.

6 MS. FULLER: Thank you, Your Honor.

7 (Whereupon, a luncheon recess was taken at
8 1:09 PM.)

9 (Back on the record at 2:21 PM.)

10 BAILIFF: All rise. Court's now in session. The
11 Honorable Frank Addy presiding.

12 THE COURT: Thank you. Have a seat, please.

13 We'll go back on the record, if we may. Do you have
14 the next witness in the courtroom?

15 MS. FULLER: Yes, Your Honor.

16 THE COURT: Let's go ahead and have the jury,
17 please.

18 (Whereupon, the jury returns to the courtroom at
19 2:22 PM.)

20 THE COURT: All right. The jury is back and
21 seated.

22 Ladies and gentlemen, we're still involved in the
23 State's case in chief. One thing I did forget to mention
24 to you this morning during my instructions, if at any
25 time you have any difficulty hearing any of the testimony,

1 I want you to simply raise your hand, okay? Or if you
2 have trouble hearing the lawyers or the witness, just
3 raise your hand. Sometimes when the fan cuts on right
4 here, it becomes a little bit difficult at least for
5 me to hear, so I -- hopefully or not you guys are not
6 experiencing that same difficulty, but any problem
7 hearing what's being said, hand goes up, I'll tell them
8 to speak up, all right?

9 Similarly, if you need a restroom break or a comfort
10 break for any reason, just wave at me and get my attention
11 or that of my law clerk and we'll take a break, okay?

12 With that, Solicitor, if you will call your next
13 witness, please.

14 MS. FULLER: Thank you, Your Honor.

15 The State calls Tyvona Toland.

16 (Whereupon, Tyvona Toland was duly sworn by the
17 Clerk of Court.)

18 THE CLERK: If you'll have a seat over there,
19 please. If you'll state your name and spell your last
20 for the record.

21 THE WITNESS: Tyvona Toland, T-O-L-A-N-D.

22 TYVONA TOLAND,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. FULLER:

1 Q. Is it okay if I call you Tyvana -- Tyvona?

2 A. Yes.

3 Q. Just briefly introduce yourself to the jury. How are
4 you related to VonKeith?

5 A. That's my brother.

6 Q. And Tycus?

7 A. That's my brother.

8 Q. And are they your older or younger brothers?

9 A. Tycus is my younger brother, which is older than me,
10 but VonKeith is the oldest.

11 Q. VonKeith is the oldest?

12 A. Yes, ma'am.

13 Q. And I just want to talk about why we're here today and
14 so the date we're talking about is April 26, 2014. Do you
15 remember that day?

16 A. Yes, ma'am.

17 Q. And why do you remember that day?

18 A. Because that's the day my brother got taken away from
19 me.

20 Q. And when you say your brother got taken away, you're
21 talking about Tycus?

22 A. Yes, ma'am.

23 Q. And did you see Tycus that day?

24 A. Yes, ma'am.

25 MS. FULLER: Permission --

1 THE COURT: Hold on a second. If you could speak
2 up a little bit more. Project it just a little bit more.

3 MS. FULLER: Thank you, Your Honor.

4 BY MS. FULLER:

5 Q. And I think I was asking you did you see Tycus that
6 day?

7 A. Yes, ma'am.

8 Q. And do you remember where you were the last time you
9 saw him?

10 A. Yes, ma'am.

11 Q. Where were you?

12 A. At my mother's house.

13 Q. And where's your mother's house?

14 A. In North, South Carolina.

15 Q. Just go ahead and explain to the jury what you recall
16 about that day. What were you-all doing?

17 A. Well, I got off at work maybe like 12:30, got home
18 about one. We had family and friends at the house. We
19 ended up getting two visitors that my brother knew and --

20 Q. Okay. Let me -- let me ask you some questions about
21 that. So you said you got off work around 12:30?

22 A. 12:00, 12:30.

23 Q. And the home that we're talking about, you lived
24 there, too, or you were just visiting?

25 A. I lived there, too.

1 Q. You said there were -- people were home. Who else was
2 in the house?

3 A. My brother -- my two brothers, my mother, my two
4 uncles, my brother VonKeith's father, and my cousin and my
5 little nephew.

6 Q. Was there anything going on or was this a normal
7 Saturday hanging out?

8 A. Yeah, a normal Saturday. They were sitting around
9 playing poker on the porch.

10 Q. And this porch -- were they playing on a table?

11 A. Yes, ma'am.

12 Q. You started to say that two visitors I think you
13 described them came.

14 A. (Nods head.)

15 Q. Can you describe to the jury if you recall what they
16 looked like?

17 A. You had a shorter gentleman with hair on his head and
18 then you had a taller gentleman and he had a short haircut.

19 Q. Do you recall if these were black males?

20 A. Yes, ma'am.

21 Q. And so they --

22 A. They were black males.

23 Q. And you said the shorter one, is there anything else
24 you remember about him?

25 A. He had hair on his head and the clothes that he had

1 on.

2 Q. Uh-huh. And did you see when they actually arrived?

3 A. Yes, ma'am. I was on the porch.

4 Q. So did they come by vehicle?

5 A. Yes, ma'am.

6 Q. Do you recall what type of vehicle it was?

7 A. Yes, ma'am.

8 Q. And what was it?

9 A. It was like a little jeep truck with out of state
10 tags.

11 Q. So some type of jeep. You describe it as a jeep?

12 A. Like a little Kia jeep truck, a newer model truck.

13 Q. Okay. And so when you say truck, are you talking
14 about like a small SUV?

15 A. Like a SUV, a small SUV.

16 Q. So you're talking about like a pick -- a truck with a
17 pickup on it?

18 A. No, ma'am.

19 Q. When you say truck, you're talking about an enclosed
20 vehicle but not a car?

21 A. Yes, ma'am.

22 Q. And do you recall what color it was?

23 A. I think it was silver or gray.

24 Q. Okay. And you stated that it was out of state tags?

25 A. Yes, ma'am.

1 Q. How do you remember that?

2 A. Because I had to go out the door because I was getting
3 dressed actually to go out of town to a basketball game and
4 I had to go out the door.

5 Q. And you saw the tags when you did?

6 A. (Nods head.)

7 Q. And do you recall what, if anything, they did when
8 they came inside?

9 A. Well, the shorter gentleman came in and he asked could
10 he sit down. My mother told him it was okay for him to sit
11 down. He was mostly, you know, to his self on his phone.

12 Q. And what about the taller gentleman?

13 A. The taller gentleman, he asked what was we doing and
14 what kind of game we was playing, and we told him poker.
15 He wanted to play.

16 Q. And so he had a seat at the table?

17 A. Yes, ma'am.

18 Q. Were you playing or just there?

19 A. I was just there.

20 Q. Okay. And the lights were on, it was daylight at this
21 time?

22 A. Yes, ma'am.

23 Q. And you said you got off work around 12:00, 12:30. Do
24 you recall how long you had been home or around what time
25 these two visitors arrived?

1 A. I maybe was home for maybe thirty minutes to an hour,
2 if that long. When they arrived, I probably was there
3 maybe thirty minutes to an hour. They stayed maybe
4 thirty minutes to forty-five minutes to an hour.

5 Q. Okay. When you say they stayed there, did you -- were
6 you still at the house when they left or had you actually
7 gone? You said you went out the door. Did you leave the
8 residence and leave them there?

9 A. No, they left me there.

10 Q. Okay. Do you know why they were there?

11 A. To purchase a car from my brother.

12 Q. And do you recall what kind of car it was or you just
13 knew it was just to purchase a car?

14 A. It was actually an Infinity, a white Infinity, that my
15 brother was trying to sell.

16 Q. So you do remember that?

17 A. Yes, ma'am.

18 Q. And the brother that was trying to sell it, you were
19 talking about VonKeith?

20 A. Yes, ma'am.

21 Q. Just so the record is clear.

22 A. (Nods head.)

23 Q. Did you -- while the taller gentleman was playing
24 poker, did you notice anything about his demeanor or how
25 he was acting, if he did anything else besides play poker?

1 A. Well, when -- before he actually decided to sit down
2 and play poker, he asked my mother could he use the
3 restroom, so my mother told him yeah, and during that time
4 my brother Tycus called me in the house and asked me to do
5 something for him. So my room and the bathroom was right
6 beside each other, so when I went towards my room like he
7 was getting ready to come out of the bathroom. I didn't
8 hear no toilet flushing, no water running, you know,
9 nothing.

10 Q. So it was kind of weird?

11 A. Yes, ma'am.

12 Q. And that's something that stuck out to you. So you
13 actually saw him come in, you saw him sit at the -- sit at
14 the table and you saw him kind of passing in the hallway --

15 A. Yes, ma'am.

16 Q. -- going into the bathroom -- or coming out of the
17 bathroom?

18 A. Coming out the bathroom.

19 Q. Do you know -- if I say Zo from Cali, does that mean
20 anything to you?

21 A. He was a friend of my brother's. I met him through my
22 brother; he and his friends.

23 Q. And just so the record is clear, which brother are you
24 referring to?

25 A. VonKeith.

1 Q. Okay. And did you know at the time whether these two
2 visitors had any connection with Zo from Cali?

3 A. No, ma'am.

4 Q. Okay. Did you come to learn that?

5 A. Yes, ma'am.

6 Q. And were you friends on social media with this person
7 named Zo from Cali?

8 A. Yes, ma'am.

9 Q. And what did you do, if anything, in terms of
10 assisting law enforcement when it comes to that?

11 A. Well, the day the incident happened and we ended up
12 leaving the hospital that night, I got back down the road
13 and I started searching through Instagram. Once I found
14 out that, you know, it was someone that was alleged to
15 buy something from California, I started searching on
16 Instagram, searching for their pictures, and I came across
17 their pictures, so I showed my mother and it went from
18 there.

19 Q. And when you say you started looking for their
20 pictures, who was their or they?

21 A. The two guys that was at my mother's house.

22 Q. And this was on Zobama or Zo from Cali's Instagram
23 page?

24 A. Yes, ma'am.

25 Q. And were you able to find a photograph?

1 A. Yes, ma'am.

2 Q. And who was in that photograph? Do you remember which
3 one?

4 A. The shorter one.

5 Q. Okay. Was the taller one in that photograph that you
6 saw?

7 A. No, ma'am.

8 Q. You couldn't find him?

9 A. No, ma'am.

10 Q. So the shorter one that you -- you described he had
11 hair on his head. Do you know what kind of hair? Was it
12 dreads or anything?

13 A. It was dreads I think during the time.

14 Q. Okay. And you were able to find a photo on Zobama's
15 page, Zo from Cali, of the shorter guy with dreads that
16 came to your mom's house that day?

17 A. Yes, ma'am.

18 Q. And you also showed it to your mom, too?

19 A. Yes, ma'am.

20 Q. And did you point that out to law enforcement?

21 A. Yes, ma'am.

22 Q. I want to show you a couple of exhibits.

23 First I'm gonna show you what's been marked for ID as
24 State's 44, and ask if you recognize it?

25 A. Yes, ma'am.

1 Q. And what do you recognize this to be?

2 A. A chair on my mother's porch.

3 Q. And what's significant about this chair?

4 A. That's the chair that shorter gentleman was sitting
5 in.

6 Q. And that's the shorter gentleman with the dreads you
7 were talking about?

8 A. With the dreads, yes, ma'am.

9 Q. And looking at State's 45, do you recognize it?

10 A. Yes, ma'am.

11 Q. And what do you recognize this to be?

12 A. That's the table everyone was sitting at.

13 Q. And let me show you State's 40. Do you recognize
14 this?

15 A. Yes, ma'am.

16 Q. And how do you recognize this?

17 A. That's a picture I found on Instagram.

18 Q. Okay.

19 MS. FULLER: I beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. FULLER:

22 Q. And I want to ask you a couple more questions about
23 this photo, State's 40, and is this the actual photo you
24 provided to law enforcement?

25 A. Yes, ma'am.

1 Q. And on whose page was this on?

2 A. Zobama's.

3 Q. And is this a screen shot?

4 A. Actually --

5 Q. Or tell me how did you point that out to law
6 enforcement.

7 A. I actually went on that page and showed them and went
8 from there.

9 Q. And this is a fair and accurate representation of the
10 picture that you saw that day?

11 A. Yes, ma'am.

12 Q. And this was after you left the hospital?

13 A. Yes, ma'am.

14 MS. FULLER: Your Honor, at this time the State
15 seeks to introduce State's 40, 44 and 45 into evidence.

16 MR. SPANGLER: No objection, Judge.

17 THE COURT: All right. 40, 45 and -- 40, 44 and
18 45 are in evidence.

19 MS. FULLER: Thank you, Your Honor.

20 (State's Exhibit Numbers 40, 44 and 45, photographs,
21 were admitted into evidence.)

22 BY MS. FULLER:

23 Q. Looking at 44, just so the jury knows what I showed
24 you, that photograph you were just describing to me is the
25 chair that the gentleman with the shorter -- the shorter

1 gentleman with the dreads was sitting in?

2 A. Yes, ma'am.

3 Q. Did you ever learn his name that day?

4 A. No, ma'am.

5 Q. Okay. He didn't introduce himself as anything to you
6 guys?

7 A. No, ma'am.

8 Q. How about the taller gentleman, did he -- did you ever
9 know his name?

10 A. No, ma'am.

11 Q. Looking at State's 45, that's the table that you were
12 describing that you guys were sitting around playing poker
13 at?

14 A. Yes, ma'am.

15 Q. And looking at State's 40, we talked about going on
16 Instagram, Zobama, that's that name -- that's his page that
17 you were talking about that I'm pointing to?

18 A. Yes, ma'am.

19 Q. And which individual -- let me see if the laser
20 pointer is still up here. If you can press this button and
21 identify the individuals in this image.

22 A. (Indicating.)

23 Q. And who is that?

24 A. That's Justin and this is Zobama.

25 Q. Okay. And the first one you pointed to, Justin, in

1 the record that's who we know as Justin Butler, that's the
2 individual -- the shorter individual you described sitting
3 on that chair at your mom's house that came to your mom's
4 house on April 26th?

5 A. Yes, ma'am.

6 THE COURT: Just so the record is clear, she
7 identified the person wearing the hat in State's 40 --
8 or the red and black hat with the hat facing backwards.

9 MS. FULLER: Thank you, Your Honor.

10 BY MS. FULLER:

11 Q. The taller gentleman that you saw that day, and you
12 described the opportunity that you got to see him that day,
13 I know it's been some time, but do you think if you saw him
14 again you would be able to recognize him?

15 A. Yes, ma'am.

16 Q. And do you recognize him in this courtroom today?

17 A. Yes, ma'am.

18 Q. And where is he in this courtroom?

19 A. Sitting over there.

20 Q. And you're pointing to?

21 A. The black African American.

22 Q. And he's wearing that brown cardigan?

23 A. Yes, ma'am.

24 MS. FULLER: Let the record reflect that the
25 witness has identified the Defendant here in the

1 courtroom.

2 THE COURT: The record shall so reflect.

3 MS. FULLER: No further questions at this time.

4 THE COURT: Mr. Floyd. I'm sorry, Mr. Spangler.

5 MR. SPANGLER: Judge, we do have one matter of law,
6 if we could approach, but it's probably something we
7 should put on the record.

8 THE COURT: Let's come over here and let's talk
9 about it and maybe we can put it on the record later.

10 (Proceedings held at the bench; not reported.)

11 THE COURT: Just bear with us for a few moments.

12 Mr. Spangler, if you already have that record
13 pulled up, maybe you can show it to Ms. Fuller or --

14 MS. FULLER: Your Honor, may we approach?

15 (Proceedings held at the bench; not reported.)

16 THE COURT: All right. Ladies and gentlemen, I
17 was hoping not to have to do this. Go to the back,
18 don't talk about the case, and I'll have you back out
19 here as soon as possible, okay? Thanks.

20 (Whereupon, the jury retires to the jury room at
21 2:42 PM.)

22 MS. FULLER: Thank you, Your Honor.

23 THE COURT: All right. Just so that the record is
24 clear, we had a sidebar. The defense is requesting just
25 to question this witness about several charges that she

1 had pending. When did the charges arise?

2 MS. FULLER: Your Honor, the --

3 MR. SPANGLER: We have the arrest date.

4 MS. FULLER: The charges arose on January 15th of
5 2014. They were nol-prossed May -- according to the
6 public index, May 3rd of 2016. The co-defendant was
7 tried in June of 2016 and Terry McClure's warrants
8 weren't served until July of 2016. So currently as
9 she stands today, she's a witness with no prior record,
10 no pending charges and she had no pending charge at
11 the time that she first -- she gave testimony against
12 Justin Butler in June of 2016. I just don't see how
13 this comes in for any purpose.

14 MR. SPANGLER: Well, Judge, to be clear we're not
15 offering this under 609 as impeachment by evidence of a
16 criminal conviction. It's evidence of a potential bias
17 of this witness that the jury should be able to hear.
18 Now whether it was gone into in the other trial or not
19 isn't relevant to Mr. McClure's right to cross-examine
20 this witness on a potential bias she might have involving
21 those charges being dismissed just a month before the
22 other proceeding and still ahead of this proceeding by
23 this very office that's prosecuting this case.

24 THE COURT: Let's handle it this way. Let me do
25 a proffer before we go there and allow the jury to hear

1 it. So if you want to go ahead and ask her some
2 questions about that, Mr. Spangler, that's fine.

3 MR. SPANGLER: Certainly, Judge.

4 CROSS-EXAMINATION (In-Camera)

5 BY MR. SPANGLER:

6 Q. Good afternoon, Ms. Toland. I'll be brief with you
7 for the proffer. Back in January of 2014, you were
8 arrested by the Lexington sheriff's department on multiple
9 charges; is that right?

10 A. Yes, sir.

11 Q. Those charges involved trafficking cocaine; is that
12 right?

13 A. Yes, sir.

14 Q. It looks like sale or delivery of a pistol?

15 A. Yes, sir.

16 Q. Possession of a weapon during a violent crime?

17 A. Yes, sir.

18 Q. And then it looks like a manufacturing/distribution
19 of drugs?

20 A. Yes, sir.

21 Q. Okay. Now those charges ended up being dismissed?

22 A. Yes, sir.

23 Q. They were dismissed in May of 2016; is that right?

24 A. Yes, sir.

25 Q. They were dismissed by the Lexington County

1 solicitor's office?

2 A. Yes, sir.

3 Q. Now May of 2016, that was just a month before you
4 testified for the State in another proceeding relevant to
5 this case?

6 A. Yes, sir.

7 Q. All right.

8 MR. SPANGLER: Nothing further on the proffer,
9 Judge.

10 THE COURT: Do you want to ask her some questions?

11 REDIRECT EXAMINATION (In-Camera)

12 BY MS. FULLER:

13 Q. Do you know why your charges were dismissed?

14 A. No, ma'am.

15 Q. When you testified for the State, were you made any
16 promises prior to?

17 A. No, ma'am.

18 Q. Were you made any promises regarding your charges?

19 A. No, ma'am.

20 Q. Did we or a prior prosecutor on this case offer you
21 anything in exchange for your testimony?

22 A. No, ma'am.

23 Q. Your charges were just dismissed?

24 A. Yes, ma'am.

25 Q. Were you charged with anyone else?

1 A. My husband.

2 Q. Okay. And his charges were pending?

3 A. Yes, ma'am.

4 Q. And were his charges dismissed?

5 A. Yes, ma'am. Well, he received probation for it.

6 Q. He pled to the drugs?

7 A. He plead guilty to everything and he received
8 probation.

9 Q. Okay. And your charges were dismissed?

10 A. Yes, ma'am.

11 Q. Because you guys lived in the home together?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. FULLER: Your Honor, we're gonna pull the
15 dismissal sheets to see exactly what they say. I mean,
16 I don't think --

17 THE COURT: That was gonna be my next suggestion,
18 is that maybe there's some notation on the indictment
19 that was nol-prosed that -- either for lack of evidence
20 or whatever the case may be.

21 May I ask you, who represented you, ma'am, on that
22 charge?

23 THE WITNESS: A man named Justin Butler.

24 MS. FULLER: What? I'm sorry.

25 THE COURT: Jason Butler?

1 THE WITNESS: Justin Butler. Oh, I'm sorry.
2 Justin Williams.

3 THE COURT: Justin Williams. Okay. Was he --

4 MS. FULLER: Justin --

5 THE WITNESS: He was my lawyer then.

6 MS. FULLER: Was he with Moore Taylor?

7 THE WITNESS: Yeah.

8 MS. FULLER: Okay.

9 THE COURT: Say again, please.

10 MS. FULLER: He was at Moore Taylor with -- Jake
11 Moore's law firm.

12 THE COURT: Okay. Do you have somebody pulling
13 those sheets right now?

14 MS. FULLER: Yeah, she just stepped out to do so.

15 And, Your Honor, I'm just trying to look at the
16 rule that defense counsel was trying to go under. What
17 subsection? If they could provide what rule.

18 MR. SPANGLER: Judge, it's just that it's relevant
19 evidence of this witness's potential bias in this case.
20 It does not fall under Rule 609. We're not saying that
21 it does. We're saying it goes to this witness's
22 credibility.

23 MS. FULLER: Right, but what rule? There's still
24 rules of evidence.

25 MR. SPANGLER: Well, rules are actually meant to

1 exclude evidence, not to let evidence in. There's
2 nothing that excludes under Rule 402.

3 MS. FULLER: 402?

4 THE COURT: General relevant evidence.

5 MS. FULLER: I'm just troubled to see what it --
6 is he trying to articulate a bias or what exactly?
7 Because there has to be a rule for even a general
8 attack. There is a rule to attack someone's
9 credibility. I'm trying to see what subsection
10 specifically, what they're referencing, since it's not
11 609.

12 THE COURT: Basically what they are alleging,
13 Ms. Fuller, is that in return for her testimony there
14 was an understanding that the case would be dismissed
15 -- the cases against her would be dismissed. That's
16 what they are suggesting and that would go to motive
17 or bias or propensity to -- propensity to fabricate
18 her testimony if in return for a dismissal she agrees
19 to testify for the State.

20 The record would reflect though that Mr. Graham
21 did represent at the sidebar that no such arrangement
22 was made with this witness. There was no agreement
23 that she would testify in return for dismissal of her
24 charges. I just did want that noted for the record.

25 MS. FULLER: I guess, Your Honor, I'm just still

1 troubled and that's why we're trying to cite the rule
2 and trying to get to the root of this because she
3 testified already that when she left the hospital she
4 provided the Instagram photo. She already disclosed
5 to law enforcement what she knew back in 2014 and the
6 charges were pending at that time. I'm just -- I'm
7 just not sure how this would be proper. The charges
8 were dismissed prior to her testimony.

9 THE COURT: I understand.

10 MS. FULLER: And despite him citing the rule, this
11 is still going towards impeachment. That's -- that's
12 what it is. And I'm just very rule based. That's why
13 I'm trying to get there, but this is -- this would be
14 showing bias and this would be going towards impeachment
15 and I don't see how the rule even allows for that, and
16 that's -- that may be my ignorance, but I'm just not
17 seeing it.

18 THE COURT: I appreciate your position. They're
19 resting their hats on 401 and 402.

20 How long does it take to pull those dismissal
21 sheets? Are they on file in the clerk's office or are
22 they in your office?

23 MR. GRAHAM: They would be down in the clerk's
24 office, Your Honor.

25 THE COURT: Okay.

1 MR. GRAHAM: I don't know if -- can you pull it up
2 on -- dismissals?

3 THE CLERK: This is Hope's computer, so I don't know
4 if I can do anything.

5 THE COURT: While we're waiting on the arrival those
6 sheets, counsel may want to take a look at State v.
7 Aleksey, A-L-E-S-K-E-Y -- A-L-E-K-S-E-Y, I think I
8 misspelled that the first time, at 343 SC 20. It's
9 the case that primari -- it was first case that stood
10 for the proposition that it's improper for the Court to
11 instruct the jury to search for the truth, but there's
12 a third issue that was addressed in that case that seems
13 to be on point perhaps in this case depending on what the
14 dismissal sheets say.

15 So while we're waiting on that, you-all may want to
16 take a look at that case, Aleksey.

17 MS. FULLER: I see it, Your Honor.

18 THE COURT: Okay. We'll be at ease. Just somebody
19 shout at me when we get those pieces of paper up here.

20 You can step down, if you want, ma'am. Just don't
21 talk about your testimony, okay?

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 (Recess taken at 2:59 PM.)

25 (Back on the record at 3:07 PM.)

1 BAILIFF: Court is now in session. Please remain
2 seated.

3 THE COURT: While the individuals are coming into
4 the courtroom, we will go ahead and go back on the
5 record. I did receive -- my clerk handed me the
6 disposition sheet for Ms. Toland and it states reason
7 for dismissal, quote, agent terminated, co-defendant
8 pled, lack of evidence to implicate Toland.

9 Lester Bell, is that the name of the solicitor?

10 MS. FULLER: That would be Gil Bell.

11 THE COURT: Oh, Gil Bell. Okay.

12 So the Court will make this a Court's exhibit.

13 (Court's Exhibit Number 7 was marked for
14 identification.)

15 MS. FULLER: Your Honor, are you taking any more
16 argument or have you made up your mind?

17 THE COURT: I've sort of made up my mind.

18 Reviewing Aleksey, A-L-E-K-S-E-Y, and in light of
19 the disposition sheet, it would appear to the Court that
20 one of the reasons that perhaps, A, Ms. Toland's husband
21 got such a good deal from a trafficking becoming a
22 possession would be that the agent presumably in charge
23 of the case was -- was fired. And, B, of course, her
24 husband took the hit for the drugs that were found at
25 their residence, and then, of course, C, most importantly,

1 I can see in the prior case involving Mr. Butler where
2 perhaps this might have been more germane.

3 I agree with the defense that the timing of this
4 is certainly -- I'm not gonna say suspect, but I'll
5 characterize it as being curious that her charges are
6 dismissed roughly a month before she needs to testify
7 in Mr. Butler's case. Because obviously the State
8 would prefer for her to be able to testify without
9 anything hanging over her head against Mr. Butler or
10 for her to testify without any prior conviction for
11 an offense that carried more than a year, but that
12 relates primarily to Mr. Butler and certainly not to
13 Mr. McClure.

14 And so what I'm saying is essentially that maybe
15 that dismissal would have been more relevant in
16 Mr. Butler's case than it would have been in this case,
17 and, of course, D, her charges have not been resurrected
18 or anything to that effect in the interim. The State
19 dismissed it, apparently did not seek to reindict it or
20 bring the charges back after the fact.

21 This is a discretionary call with the -- with
22 the Court and, of course, the case that the Court
23 cited was pretty clear that narcotic offenses are not
24 necessarily proof -- or proof of evidence of truthfulness
25 or untruthfulness, generally speaking, and that's

1 particularly true when those charges are, in fact,
2 dismissed. Of course, the Court has also considered
3 the representations of Mr. Graham that there was no
4 quid pro quo and that sort of a situation.

5 So I'm not gonna let you go into that, but your
6 objection to the Court's failure to let you inquire of
7 this witness about that is noted and you do not need to
8 do anything further to renew it.

9 Let's have the witness back up and bring the jury
10 back in, please.

11 (Whereupon, the witness retakes the witness stand.)

12 MS. FULLER: Your Honor, did you make this a
13 Court's exhibit?

14 THE COURT: Yes.

15 MS. FULLER: Okay.

16 THE COURT REPORTER: Court's 7.

17 THE COURT: Another ground for keeping that out,
18 while the jury's coming in, of course, is the fact that
19 this witness is testifying as to events that occurred
20 prior to any sort of dismissal, so.

21 BAILIFF: Are you ready, Your Honor?

22 THE COURT: I am.

23 (Whereupon, the jury returns to the courtroom at
24 3:12 PM.)

25 THE COURT: Ladies and gentlemen, sorry for the

1 delay. Sorry for causing you-all so much exercise
2 today.

3 Mr. Spangler, you're recognized for your
4 examination, sir.

5 MR. SPANGLER: All right. Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. SPANGLER:

8 Q. Good afternoon, Ms. Toland. Let's start with -- I
9 think you went through it with Ms. Fuller, but you said
10 you got to the house -- your mom's house somewhere between
11 12:00 and 12:30; is that right?

12 A. Yes, sir.

13 Q. And when you got to the house, was that vehicle, I
14 think you called it a jeep or some sort of gray SUV, was
15 that vehicle already there?

16 A. No, sir.

17 Q. It wasn't there?

18 A. No, sir.

19 Q. At about what time did that vehicle arrive?

20 A. I don't remember exactly time, but it was somewhere
21 between 1:30 and 2:30.

22 Q. Okay. That's a pretty big range. Sometime between
23 1:30 and 2:30?

24 A. Well, between an hour. It wasn't even an hour.

25 Q. Okay. So it was there -- I just want to make sure we

1 have it clear for the record. So it was there within an
2 hour of you arriving home?

3 A. Yes, sir.

4 Q. Okay. So it arrived sometime between 12:30 and 1:30?

5 A. Somewhere up in there. Well, from the time of me
6 getting home and me leaving.

7 Q. Okay. I got you. And you say that you saw two men,
8 two black males, get out of that car and they actually came
9 into your mom's house?

10 A. Yes, sir.

11 Q. And you went through it -- I just want to make sure we
12 have this right. So Tycus and VonKeith were at the house
13 then?

14 A. Yes, sir.

15 Q. So that's two people. Your two uncles, they were at
16 the house?

17 A. Yes, sir.

18 Q. What were their names, your two uncles?

19 A. John and Timothy.

20 Q. Last name Toland?

21 A. Toland and Darby. John Toland and Timothy Darby.

22 Q. Okay. So that's four people total we're at. You said
23 VonKeith's father was there?

24 A. Yes, sir.

25 Q. One cousin or two cousins in addition to the father?

1 A. One cousin.

2 Q. And then your mother, Yvonne Toland, was there?

3 A. Yes, sir.

4 Q. And then you said a nephew was there as well?

5 A. My brother Tycus's baby.

6 Q. Okay. So that would be five, six -- so eight people
7 of your family, not including you?

8 A. Yes, sir.

9 Q. Okay. So including you, we've got nine family members
10 there at the mom's house?

11 A. Yes, sir.

12 Q. Okay. And you said that they sat down and you said
13 played poker for a while?

14 A. Yes, sir.

15 Q. Okay. Where was VonKeith during this entire period?

16 A. He was there for a little while.

17 Q. All right. He was there for a little while, but
18 didn't there come a point that VonKeith actually left and
19 left these two guys in the house with you-all?

20 A. Yes, sir.

21 Q. Okay. VonKeith went -- do you know where he went?

22 A. No, sir.

23 Q. Okay. Do you know who he went with?

24 A. I think it was his girlfriend.

25 Q. Okay. Who was his girlfriend at the time?

1 A. Lakeisha Pugh.

2 Q. Okay. So you think they left -- and by leave, we mean
3 actually got in the car and left that property?

4 A. Yes, sir.

5 Q. Okay. So at that point you-all were alone with who
6 you said is Justin Butler and Terry McClure, right?

7 A. Yes, sir.

8 Q. Okay. And when you-all are alone with them, nothing
9 aggressive or scary happened in the house, did it?

10 A. No, they was just acting weird.

11 Q. Okay. Acting weird. You said they went to the
12 bathroom and you didn't hear any water; is that right?

13 A. Uh-huh. Also one of them, I think it was Terry,
14 asked my uncle Timothy could he go to the store or could
15 someone go to the store, so he asked my uncle Timothy to
16 go for them.

17 Q. Okay. Tell me about that. What -- do you recall what
18 was needed at the store?

19 A. Water.

20 Q. Okay. So a bottle of water?

21 A. Yes, sir.

22 Q. Okay. So that would be one additional person leaving
23 the house. So Mr. Darby actually left the house, too?

24 A. And went to the store.

25 Q. Okay. And when Timothy Darby leaves the house, again,

1 Justin Butler and Terry McClure are there with your family
2 alone?

3 A. Yes, sir.

4 Q. Okay. Other than asking him to go to the store and
5 asking -- or you hearing the water not go on in the
6 bathroom, they didn't make any aggressive movements toward
7 you-all, did they?

8 A. No, sir, not towards us.

9 Q. Okay. They didn't try to take anything from the
10 house, did they?

11 A. No, sir.

12 Q. What was Terry wearing; do you recall?

13 A. It's like a button-down shirt and it was blue and I
14 want to say white and I want to say I think it had orange
15 or maybe yellow in the shirt, but it was a button-down
16 shirt.

17 Q. Okay. Just causal clothes?

18 A. Causal wear.

19 Q. Okay. You never saw a gun on his waistband, did you?

20 A. No, sir.

21 Q. Okay. You never saw a gun on the waistband of Justin
22 Butler, did you?

23 A. No, sir.

24 Q. Okay. Now you weren't actually at 688 Bushberry
25 when the alleged shooting in this case took place, were

1 you?

2 A. No, sir.

3 Q. Okay. You can't tell us who was actually present at
4 688 Bushberry when that happened?

5 A. No, sir.

6 Q. Okay. When did you first learn about what had
7 happened that day? Did you get a call from somebody or
8 was it law enforcement?

9 A. I got a call.

10 Q. Okay. Who gave you a call?

11 A. My mother.

12 Q. Okay. What time was that?

13 A. I don't recall the time. I just know I was on the
14 road going out of town.

15 Q. Okay. Are we thinking that afternoon, that evening or
16 the next day?

17 A. That -- maybe like an hour and a half after I left her
18 house. Not even that long.

19 Q. Okay. What time did you leave your mom's house?

20 A. I can't recall the time.

21 Q. Okay. Sometime in the afternoon?

22 A. It was afternoon.

23 Q. Okay. And your mom called and then you went to, I'm
24 presuming, the hospital?

25 A. No, sir. I -- I turned around and actually went to

1 Pelion where the situation happened at.

2 Q. Okay. What do you see when you arrive in Pelion at --
3 I'm guessing at 688 Bushberry is where you go?

4 A. Over twenty or more police.

5 Q. Okay. And then at that point did you go to the
6 hospital?

7 A. Yes, sir.

8 Q. Okay. Did you speak with any of the police on the
9 scene?

10 A. No, sir.

11 Q. Okay. How about when you got to the hospital? Did
12 you talk to any of the police?

13 A. There was a lady going around, you know, just asking
14 regular questions, but I can't remember exactly who that
15 was.

16 Q. Okay. When you say regular questions, what kind of
17 questions were you being asked?

18 A. Like what's your name, what's your phone number, how
19 are you related to them, different questions like that.

20 Q. Okay. No specific things about what had happened?

21 A. No, sir.

22 Q. Okay. Now this photograph, this is State's 40, I just
23 want to be clear for the record the person on the left with
24 the backwards hat, that's Justin Butler?

25 A. Yes, sir.

1 Q. Now the person who was blowing some sort of smoke out
2 of their mouth with sunglasses, that's not Terry McClure,
3 is it?

4 A. No, sir.

5 Q. This is a person who you know from California named
6 Alonzo?

7 A. Yes, sir.

8 Q. Okay. Now how many times had you met Alonzo in
9 person?

10 A. Maybe once.

11 Q. Okay. He had come out here from California?

12 A. Yes, sir.

13 Q. How many times before the date of the shooting had you
14 met Mr. McClure?

15 A. Never.

16 Q. You had never seen him before?

17 A. Never.

18 Q. Okay. How about Justin Butler?

19 A. Never.

20 Q. Okay. So it's your testimony here in court today you
21 had never met either of them before?

22 A. No, sir.

23 Q. But you had met Alonzo Walker?

24 A. Yes, sir.

25 Q. And it's your testimony you met him one time?

1 A. Yes, sir.

2 Q. Okay.

3 MR. SPANGLER: All right. Nothing further, Judge.

4 THE COURT: Ma'am, thank you.

5 MR. SPANGLER: I'm sorry, Judge. Just one second.

6 THE COURT: Hold on. Don't get up.

7 BY MR. SPANGLER:

8 Q. Do you remember -- I'm sorry, Judge. Do you remember
9 what kind of shoes Terry McClure had on?

10 A. Terry?

11 Q. Terry.

12 A. No, I can't remember Terry's shoes. Maybe some --
13 I'm not for sure, but maybe some Tims. I think it was
14 Tims.

15 MR. SPANGLER: Okay. Thank you, Judge. Nothing
16 further.

17 THE COURT: Ma'am, thank you. You can step down.
18 (Witness excused.)

19 THE COURT: Call your next witness, please.

20 MR. GRAHAM: The State calls Ishi Toland.

21 MS. FULLER: Your Honor, she can stay in the
22 courtroom now?

23 THE COURT: Yes.

24 (Whereupon, Ishland Toland was duly sworn by the
25 Clerk of Court.)

1 THE CLERK: If you'll have a seat over there,
2 please. If you'll state your name and spell your last
3 for the record.

4 THE WITNESS: Ishland Toland, T-O-L-A-N-D.

5 ISHLAND TOLAND,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q. Ishi, how old are you?

10 A. Forty.

11 Q. What do you do for a living?

12 A. I'm a barber.

13 Q. How long have you been a barber?

14 A. Over twenty years. Twenty years plus.

15 Q. Where is your store at?

16 A. Excuse me?

17 Q. Where's your barber shop at?

18 A. In North, South Carolina.

19 Q. How are you related to Tycus and VonKeith?

20 A. Those are my first cousins.

21 Q. Did you grow up with them?

22 A. Yes, sir. Like brothers.

23 Q. Let me take you back to April 26th of 2014. Do you
24 remember that date?

25 A. Yes, sir.

1 Q. Did you see Tycus and VonKeith that day?

2 A. Yes, sir.

3 Q. Where at?

4 A. At their mother's house, which is my aunt. I came by
5 probably -- you know, I'd just got off work and I stopped
6 by the house.

7 Q. Do you remember what time it was that you got over to
8 the house?

9 A. Around twelve maybe, a little after 12:00, 12:30,
10 somewhere along in there.

11 Q. Do you remember who all was there at the house at that
12 time?

13 A. Yeah, me -- well, Tyvona, my uncle, my aunt, Trell --

14 Q. When you say Trell, who's Trell?

15 A. VonKeith. I'm sorry. VonKeith, Tycus, Tyvana. There
16 was a host of family members there.

17 Q. And what were you-all doing? What were your -- what
18 were your plans that day?

19 A. Oh, we were getting ready to go to a basketball game
20 and I stopped buy to let Tyvana know that I was off work
21 and what time we should all meet to, you know, go to the
22 game.

23 Q. How long did you spend over at her house?

24 A. Forty-five minutes roughly to an hour. Somewhere
25 along in there.

1 Q. When you pulled up to her house, did you notice any
2 unusual cars?

3 A. When I first pulled up?

4 Q. Yes.

5 A. No, not what I first pulled up.

6 Q. Okay. While you were there, did people you didn't
7 know, hadn't met before, did they show up?

8 A. Yes.

9 Q. Okay. Tell me about that.

10 A. We was on the porch and my aunt went to the door and
11 was like somebody's out in a truck, somebody pulled up, so
12 my aunt went to the door and was like, you know, you-all
13 come in, and two guys came in who I'd never seen before.

14 Q. Can you describe them?

15 A. Yeah, one was a shorter guy with dreadlocks, kind of
16 light-skinned. The other one was a taller, brown-skinned
17 guy, kind of muscular, kind of a big guy.

18 Q. When they came in, what did the two of them do?

19 A. They spoke with VonKeith. One went in and used the
20 restroom, the shorter guy, and the other guy stood there --
21 the taller guy stood there for a minute and then he came
22 around behind me to get in the card game right on the table
23 that we was sitting at.

24 Q. And did he actually play cards with you?

25 A. Yeah.

1 Q. How close to you was he sitting?

2 A. Real close. I mean, reach out and touch close like
3 because, you know, we was at a table, so.

4 Q. So what time of the day was this you said?

5 A. Around when they got there I'm thinking maybe -- maybe
6 12:30, 1:00-ish, you know, somewhere along in there, you
7 know.

8 Q. And the taller fellow who sat next to you, you played
9 cards with him?

10 A. Yes.

11 Q. And the shorter fellow, what did the shorter fellow
12 do?

13 A. He sat by the door. There was a chair by my aunt's
14 door that go into the house and he was sitting there. And
15 that was like on the side of me also because the way I was
16 sitting, you know, there was a window behind me and the
17 door was that way, and he came around me.

18 Q. How long did you -- how long did the taller fellow
19 play cards with you?

20 A. We played a while. I'd say ten, twenty minutes, maybe
21 a little longer than that. No more than, say, thirty
22 minutes or so, something like that.

23 Q. So did they leave first or did you leave first?

24 A. I left first.

25 Q. And where were you going?

1 A. I was going home to get ready so I could go to the
2 basketball game.

3 Q. And then later did you hear about what happened?

4 A. Yeah. I don't even think I even made it home because
5 roughly from my aunt's house for me to get home it took me
6 a little while. I hadn't got home yet.

7 Q. Looking back on it, did you notice anything unusual
8 about the behavior of either one of those two men?

9 A. Yeah. Yeah, the taller guy that came around, he went
10 to get a card and I noticed his hand was shaking and I was
11 like I wonder why his hand was shaking, you know, but I'd
12 seen stuff like. I was just wondering why. And after all
13 that played back in my mind, I was like why was he like --
14 he went to reach for the card and he was like shaking a
15 little bit or something.

16 Q. Let me show you two photographs; State's 44 and 45.
17 Do you recognize those?

18 A. Yes, that's the table we was at and that's the chair
19 that was by the door.

20 Q. So when we're talking about the chair, State's 44, so
21 who -- who used that chair?

22 A. The shorter guy with the dreadlocks. The
23 light-skinned shorter guy with the dreadlocks.

24 Q. State's 45, you said that's the table you-all played
25 cards at?

1 A. Yes, sir.

2 Q. There's a laser pointer right there in front of you.
3 Can you take that and point to the jury which chair you
4 were in?

5 A. I was right here.

6 Q. And the taller fellow that played cards with you,
7 where was he at?

8 A. He came around and he was right up here.

9 Q. Okay.

10 THE COURT: Let -- the record will reflect that the
11 witness indicated that the taller gentleman would have
12 been sitting to his right at the table, his immediate
13 right.

14 MR. GRAHAM: Thank you, Your Honor. I apologize.

15 THE COURT: No, that's okay. Go ahead.

16 BY MR. GRAHAM:

17 Q. When you left, did you notice a vehicle that wasn't
18 there when you got there?

19 A. Yes, it was an SUV, I'd never seen it before, and the
20 way that I had parked in my aunt's yard, I was backing out
21 and it was, you know, by me. So when I backed out, you
22 know, I seen it and then it had like this colored license
23 tag. You know, me being in South Carolina I'd never seen
24 that. I was like wow, that's a colorful tag, you know.

25 Q. Do you remember the color of the vehicle?

1 A. Bluish, grayish. Something like that.

2 Q. When you said the tag, what was it about the tag that
3 caught your attention?

4 A. The colors. I mean, you know, just --

5 Q. So was it -- was it a South Carolina tag?

6 A. No, no, no.

7 Q. So when you say the colors, what does that mean?

8 A. It was an out of state vehicle.

9 Q. Okay. At some point did law enforcement show you a
10 photo lineup?

11 A. Yes, sir.

12 Q. And when they did, did they tell you that somebody may
13 or may not be in there and just to take a look and see what
14 you could find?

15 A. Yes, sir.

16 Q. Let me show you State's 42 and I'm gonna ask if you
17 recognize that?

18 A. Yes, sir.

19 Q. And is that the lineup that you were shown by law
20 enforcement?

21 A. Yes, sir.

22 Q. And were you able to pick somebody out?

23 A. Yes, sir.

24 Q. And now this is for the smaller fellow, correct?

25 A. Yes, sir. With the dreads, yeah.

1 Q. When you -- did law enforcement tell you who to pick
2 out?

3 A. No, sir, they didn't.

4 Q. Did you pick out that person based on the time that
5 you spent with them at the house on the 26th?

6 A. Yes, sir. Immediately.

7 MR. GRAHAM: Your Honor, the State would move this
8 into evidence at this time.

9 THE COURT: Without objection?

10 MR. SPANGLER: Judge, could we approach briefly?

11 THE COURT: Sure.

12 (Proceedings held at the bench; not reported.)

13 THE COURT: Without objection State's 42's in
14 evidence.

15 (State's Exhibit Number 42, a photographic lineup,
16 was admitted into evidence.)

17 MR. GRAHAM: Permission to publish, Your Honor?

18 THE COURT: You can.

19 BY MR. GRAHAM:

20 Q. State's 42 on the overhead now, that's what law
21 enforcement showed you?

22 A. Yes, sir, it is.

23 Q. And it looks like you circled a number, correct?

24 A. Yes.

25 Q. What number did you circle?

1 A. Five.

2 Q. And when you circled five, what is it you're saying
3 about Number 5?

4 A. That that's the guy at my aunt's house.

5 Q. The shorter or the taller?

6 A. That's actually the shorter guy.

7 Q. The one who was in the chair?

8 A. Yes, sir.

9 Q. And you're sure?

10 A. Positive.

11 Q. After this happened and after Mr. McClure was arrested
12 for these charges, did you go out on the Internet and
13 search?

14 A. I didn't search at the time when he was captured, you
15 know, it was online and we was at the hospital and I looked
16 at that point.

17 Q. Did you see a picture of somebody with the name Terry
18 McClure?

19 A. Did I see it? Yeah, when they was saying they were
20 captured. Yes, I did.

21 Q. Not thinking about what you saw on the computer, but
22 with the taller person who was in the house with you and
23 your family that day, if you saw that person again would
24 you recognize him?

25 A. Yes, without a doubt.

1 Q. Do you see that person in the courtroom today?

2 A. Yes.

3 Q. Point him out.

4 A. (Indicating.)

5 Q. Can you describe what he's wearing?

6 A. A brown top with a white shirt.

7 THE COURT: The record will reflect that the
8 witness has identified the Defendant.

9 MR. GRAHAM: Thank you, Mr. Toland.

10 CROSS-EXAMINATION

11 BY MR. SPANGLER:

12 Q. Good afternoon, Mr. Toland.

13 A. Afternoon.

14 Q. Do you remember, I guess, giving a statement to the
15 police the night that this shooting happened, April the
16 26th?

17 A. Yes.

18 Q. Okay. It's actually -- you wrote something out; is
19 that right?

20 A. Yes, at the hospital.

21 Q. Okay. Now in that statement you gave, you never
22 mentioned somebody's hand shaking at the table, did you?

23 A. I'm pretty sure I probably did because, I mean, when
24 I went to thinking about it, I mean --

25 Q. Okay. Do you recall if -- what you put in that

1 statement?

2 A. Do I recall every word that I put in the statement?

3 Q. That's right.

4 A. About 95 percent of it I do.

5 Q. Okay. I'm only asking, Mr. Toland, because I have a
6 copy of it if you'd like to see it to refresh your memory
7 on what was put in it if it would help you. I won't show
8 it to you if it won't help you.

9 A. But --

10 Q. Would you like to see a copy?

11 A. Yeah, that would be fine.

12 MR. SPANGLER: May I approach the witness, Judge?

13 THE COURT: You may.

14 BY MR. SPANGLER;

15 Q. And this is the statement that you wrote out that
16 night; is it not?

17 A. Did I write this?

18 Q. Well, it has your name at the top and I think your
19 signature at the end; is that right?

20 A. Yes.

21 Q. Okay. Is it your handwriting in the statement
22 portion?

23 A. Yes, sir.

24 Q. Okay. So that is something that you handwrote out
25 yourself?

1 A. Yes.

2 Q. Or did the detective write it out for you?

3 A. No, this is my handwriting. There's some portions
4 that they may have -- like he asked me a question and then
5 I answered it.

6 Q. Okay.

7 A. It's my handwriting, but you can see where it says a
8 question and then --

9 Q. Okay. So that's the report that you gave the night
10 that this alleged shooting happened; is that right?

11 A. Yes.

12 Q. And you were telling the truth when you gave that
13 statement; is that right?

14 A. Yes, sir, I was.

15 Q. Okay. Can you show me where in that statement you
16 talk about noticing somebody's hand shaking at the table?

17 A. No, I don't see it on there.

18 Q. All right. And, Mr. Toland, you'd agree with me that
19 your memory of this incident would have been better back
20 the night that it happened than here five and a half years
21 later, correct?

22 A. Say again now.

23 Q. Your memory that -- that night when you filled out
24 that statement would have been clearer than it is today
25 five and a half years later?

1 A. Yeah, it would have been better, but five years, five
2 seconds or five miles, sir, it's the same thing.

3 Q. I agree with you on that, but your memory of what
4 happened that day, including the hand shaking, would have
5 been clearer the night that you're actually writing out
6 that statement than it is here in court today?

7 A. (Nods head.)

8 Q. And just for the record is that a yes?

9 A. Yes.

10 THE COURT: He nodded yes.

11 MR. SPANGLER: Yes, Judge.

12 BY MR. SPANGLER:

13 Q. And just to be clear, you weren't at 688 Bushberry
14 when the alleged shooting took place?

15 A. No, I was not.

16 Q. You can't tell us who was there when that shooting
17 took place, can you?

18 A. I was not there. Not at Bushberry.

19 MR. SPANGLER: Thank you, Judge. Nothing further.

20 If I may approach and just retrieve that statement?

21 THE COURT: Please.

22 Sir, thank you very much. You're free to step
23 down.

24 (Witness excused.)

25 THE COURT: You're welcome to stay in the

1 courtroom if you wish to or can you leave, whatever
2 your choice.

3 Call your next witness, please.

4 MR. GRAHAM: The State calls Roger Gilland.

5 (Whereupon, Roger was duly sworn by the Clerk of
6 Court.)

7 THE CLERK: If you'll have seat, please. And state
8 your name and spell your last for the record.

9 Roger Gilland, G-I-L-L-A-N-D.

10 ROGER GILLAND,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. Mr. Gilland, where are you currently employed? What
15 do you do?

16 A. I work with Lindler's Construction driving a dump
17 truck.

18 Q. And how long have you been in that position?

19 A. About a year and a half.

20 Q. And prior to that, what did you do?

21 A. Over-the-road truck driver.

22 Q. How long did you do that?

23 A. About two years.

24 Q. Prior to that, what did you do?

25 A. Law enforcement.

1 Q. How long were you in law enforcement?

2 A. About twelve or thirteen years.

3 Q. What did you do on your -- what did you do in law
4 enforcement?

5 A. I was a patrol officer, patrol deputy, training
6 officer, crime scene investigator. There were several
7 different things I did in law enforcement.

8 Q. When you say a crime scene investigator, what is that?

9 A. You get called to go out to a crime scene and process
10 the crime scene for evidence, document it, secure the
11 evidence, log the evidence in.

12 Q. Back in April of 2014, were you working crime scenes
13 then?

14 A. Yes.

15 Q. And, in fact, did you respond to 688 Bushberry Road
16 for this case?

17 A. I did.

18 Q. Do you remember what time you arrived on-scene?

19 A. I'd have to double-check with my notes, but I believe
20 I arrived on-scene about -- somewhere between 4:30 and 5:00
21 in the afternoon, then I actually went on-scene at 5:15

22 Q. So when we're talking about being there and arriving
23 on-scene, we're talking about where police tape was put
24 around and you crossing into the area?

25 A. Yes, sir.

1 Q. Okay. That address of 688 Bushberry Road, that's in
2 Lexington county, isn't it?

3 A. It is.

4 Q. Okay. So what was your purpose -- what was your
5 purpose there as a crime scene technician or investigator
6 for that scene that day?

7 A. To locate and document and preserve evidence.

8 Q. And how do you do that in general terms?

9 A. In general terms, go in and take an overall look at
10 the scene, see what you're dealing with, confer with the
11 officers and investigators, try to get a little bit of
12 information to know what you're looking for, then you
13 photograph the overall scene before you start any kind of
14 work on it. Most -- in most cases, you have to get a
15 search warrant to actually go in and mess with things in a
16 scene. Once the search warrant's done, you go in and
17 document the scene with photos, place placards down and
18 take photographic evidence. You take generally three
19 different photographs; an overall photograph showing where
20 in a scene -- in relation to the scene a piece of evidence
21 is, a midrange photograph, which is basically photographing
22 evidence and the numbered placard, and then a close-up
23 photograph, which is basically a photo of the evidence with
24 a ruler of some type in it.

25 Q. In general terms, would you describe to the jury what

1 you saw when you first arrived on-scene?

2 A. When I first arrived on-scene, it was daylight and a
3 decent temperature. There were several dogs in the yard.
4 There was two vehicles at the front of the house. It was a
5 long driveway down to the house with a privacy fence all
6 the way around the residence. In front of the house, there
7 were two vehicles. There was a white Infinity and, I
8 believe, a silver Honda. Beside the Honda was a -- for
9 lack of a better term, a pile of trash where EMS had -- it
10 appeared EMS had been working on the victim and left the
11 stuff behind from that. Kind of across from where that
12 area was in front of the white Infinity was a deceased
13 victim. There was one shell casing that I immediately saw
14 by the Infinity. And then around the back of the house
15 there was a structure. It looked like they -- they were
16 either building or adding onto the house or maybe a deck
17 or something like that and there was kind of a string of
18 shell casings either leading toward the house or away from
19 the house, either way. There was a door that looked like
20 it had been either kicked out or pulled out. It was a
21 sliding glass door. There were several areas that had
22 reddish-brown stains that appeared to be blood on the back
23 of the house where the door was and there was a hole kind
24 of going up underneath the house where it looked like
25 someone went up under the house and on the front side it

1 looked like someone came out the front side of the house,
2 the under part, the underpinning of it. There was also a
3 reddish-brown stain on the handrail going up the steps to
4 the front door and then the inside of the house had been
5 ransacked.

6 Q. Let me show you several exhibits and ask if you
7 recognize these as being either items you prepared or
8 photographs that you took.

9 A. Yes, they do look like copies of the photos I've
10 taken.

11 Q. Do they fairly and accurately depict what you saw that
12 day?

13 A. Yes.

14 MR. GRAHAM: Your Honor, the State would move these
15 photographs and the chart into evidence -- or diagram.

16 THE COURT: No objection, Mr. Spangler?

17 MR. SPANGLER: No objection, Your Honor.

18 THE COURT: All right. Which exhibits are those?
19 Give me the numbers if you would, please.

20 MR. GRAHAM: Unfortunately, they're scattered
21 because of the other ones, Your Honor.

22 THE COURT: That's fine.

23 MR. GRAHAM: That would be 12, 13, 17, 18, 20,
24 22, 23, 24, 26, 27, 29, 30, 31, 39.

25 THE COURT: All right. State's 12, 13, 17, 18,

1 20, 22 through 24, 26, 27, 29, 30, 31, and 39 are in
2 evidence without objection.

3 MR. GRAHAM: Thank you, Your Honor.

4 (State's Exhibit Number 12, a diagram, and State's
5 Exhibit Numbers 13, 17, 18, 20, 22, 23, 24, 26, 27 29, 30,
6 31 and 39, photographs, were admitted into evidence.)

7 BY MR. GRAHAM:

8 Q. Mr. Gilland, let me show you several other exhibits
9 that are already in evidence and ask if you recognize those
10 as also being photographs that you took.

11 A. Yeah, with exception of those.

12 Q. All the ones that I have left in my hand?

13 A. Correct.

14 Q. All right. State's Number 12, the diagram --

15 A. Correct.

16 Q. -- and that's a diagram you drew of the location. I
17 think that's a laser pointer. What's the purpose of
18 drawing a diagram?

19 A. To depict and represent the crime scene as it was when
20 I arrived there and as I worked the crime scene.

21 Q. Can you orient the jurors to the -- to your diagram?

22 A. This is the driveway. This is -- it's a rather long
23 driveway that actually extends out past here, but this is
24 the driveway at the location. There's kind of a privacy
25 fence, which is what this line here represents. This is a

1 well with a tree beside of it. This is one of the dogs.
2 This is the Honda. This is the Infinity. This is the pile
3 of clothes next to the Honda. This is the victim that was
4 deceased. And there was several dogs in this area and
5 there was at least two dogs in the back area. This here is
6 the structure that I mentioned where it looked like someone
7 had been building an addition or possibly a deck on the
8 back. And this is the house right here and this is the
9 front door, the back siding door and another back door.

10 Q. State's 13, what do we see there?

11 A. That's a view from pretty far back in the driveway. I
12 was trying to capture the house and that's about as far
13 back in the driveway as I could get to be able to capture
14 the house and the fence and everything and still have it in
15 focus.

16 Q. State's 14?

17 A. That's the front door of the house with the address
18 numbers on the side.

19 Q. Now you had testified earlier I think about stains.

20 A. Yeah.

21 Q. Where would that be?

22 A. If I remember correctly, they're right in this area
23 here. I'd have to look at my other photographs to confirm
24 that, but I believe that is correct.

25 Q. The next one is State's 15?

1 A. Yes, that's correct.

2 Q. And what did that appear to be to you?

3 A. It appeared to be -- it was a reddish-brown stain. It
4 appeared to be a bloodstain to me. I swabbed it so it
5 could be confirmed or not.

6 Q. State's 16?

7 A. This would be the well covered by this structure here
8 and you've got the white Infinity here and the gold or
9 silver Honda here.

10 Q. 17?

11 A. Again, this is the white Infinity and this would be
12 the victim that was deceased on the scene.

13 Q. 18?

14 A. This is the engine compartment of the white Honda
15 [sic] this is the battery on the passenger -- I believe it
16 was the passenger front side. On top of the battery was a
17 set of keys.

18 Q. 19?

19 A. This is the back of the house and this is the wooden
20 structure that I was talking about that appeared as if
21 someone was either building a deck or an addition to the
22 house.

23 Q. 20?

24 A. This is the front -- back of the house from a
25 different angle and this is the other back door of the

1 house.

2 Q. 21?

3 A. This is the sliding door that I mentioned that had
4 been broken. It looks like it was either kicked out from
5 the inside or pulled from the outside.

6 Q. 22?

7 A. In this photograph, this is, again, the back of the
8 house and this letter here represents an area that had a
9 reddish-brown stain that appeared to be blood to me, as
10 well as the B. Number 19, initially I thought it was a
11 bullet hole inside the house, but when I took that area
12 apart it turned out it was not a bullet hole.

13 Q. 23?

14 A. This is the silver Honda.

15 Q. 24?

16 A. The passenger side of the silver Honda.

17 Q. 25?

18 A. A closer up view of the open door on the passenger
19 side of the silver Honda and as you can see right here is a
20 cell phone that I'd located and it appeared that there was
21 some bloodstaining on the seat -- reddish-brown stains that
22 appeared to be blood on the front seat.

23 Q. Moving inside, 26?

24 A. That would be the kitchen area of the house.

25 Q. And that's how you found it?

1 A. That's exactly the way I found it.

2 Q. In general terms, can you explain when officers arrive
3 what happens to the house prior to you going in?

4 A. Generally, they would do a safety sweep or precursory
5 sweep just to make sure there's no other victims or any
6 other threats in the residence or on-scene. Once that's
7 completed, they back out and secure the area until we get
8 there.

9 Q. And then you get a search warrant and then you go in?

10 A. Correct.

11 Q. So this is how you found the house?

12 A. That's exactly how I found the house.

13 Q. 27?

14 A. That is the -- in the other photograph that would be
15 the right-hand side of that photograph and the top cabinets
16 of that photograph -- or of that kitchen.

17 Q. 28?

18 A. That's the door leading into the master bedroom.

19 Q. 29?

20 A. That's another picture going into the doorway of the
21 master bedroom depicting that the drawers and everything
22 had been pulled out in that bedroom.

23 Q. 30?

24 A. Another picture of the same bedroom.

25 Q. And that's how you found it?

1 A. That's exactly the way I found it.

2 Q. Going back outside just for a minute, 36?

3 A. That would be a photograph of the -- kind of an
4 angled shot of the back and the driver's side of the -- the
5 Infinity.

6 Q. 37?

7 A. That would be a shot from the side of the Infinity,
8 the driver's side.

9 Q. 38?

10 A. That would be a shot from the front of the Infinity.

11 Q. And 39?

12 A. And a shot from the passenger side of the Infinity.

13 Q. In addition to taking photographs, do you also collect
14 evidence?

15 A. Correct.

16 Q. You had testified earlier talking about you saw a
17 shell casing near the Infinity. That's one of the first
18 things you said you saw when you got on-scene and you saw
19 the deceased, right?

20 A. Yes.

21 Q. So did you collect that item?

22 A. It was collected.

23 Q. And what was it?

24 A. I'll have to refer to my notes. I'm pretty sure it
25 was a 40 caliber, but let me confirm that. What item

1 number was that?

2 Q. I guess that's what I'm asking you.

3 A. Okay. It was a 40 cal Smith & Wesson shell casing
4 located in the front yard near the white car, the Infinity.

5 Q. Let me show you -- and you said that's item number
6 what from your crime scene?

7 A. Here we go. It should be Item Number 3.

8 Q. And just Item Number 3, your Crime Scene Number 3, and
9 you said what kind of a shell casing was it?

10 A. It's a Federal 40 caliber Smith & Wesson.

11 Q. So when we talk about a shell casing, what's the
12 difference between a shell casing and a bullet?

13 A. The casing is what's basically left over in the gun or
14 ejected from the gun after the bullet is sent through the
15 barrel.

16 Q. Let me show you -- and I do not believe these have
17 been marked yet. Let me show you an item and ask if you
18 recognize that?

19 A. Yes, this is the Item Number 3, the 40 cal Smith &
20 Wesson shell casing.

21 Q. The one that you found near the Infinity?

22 A. Yes, sir.

23 Q. Do you remember where -- what was the description of
24 where you found it?

25 A. It was kind of midways between the front door and the

1 back door. In the drawing, it's this little speck right
2 here.

3 MR. GRAHAM: Your Honor, the State would move the
4 shell casing into evidence.

5 THE COURT: It's exhibit what?

6 MR. GRAHAM: It has not been numbered yet.

7 THE COURT REPORTER: 47.

8 THE COURT: State's 47 without objection.

9 MR. GRAHAM: Your Honor, if I could approach?

10 (Proceedings held at the bench; not reported.)

11 THE COURT: No objection, right?

12 MR. SPANGLER: No objection.

13 THE COURT: Without objection State's 47 is in
14 evidence.

15 (State's Exhibit Number 47, a shell casing, was
16 marked and admitted into evidence.)

17 MR. GRAHAM: Permission to publish, Your Honor?

18 THE COURT: Please.

19 BY MR. GRAHAM:

20 Q. So when you talk about a shell casing, we're talking
21 about this right here, correct?

22 A. Correct.

23 Q. And you described it as a Federal. What does Federal
24 mean?

25 A. That's the name of the company, the brand of it.

1 Q. Okay. And you described it as a 40 caliber. What
2 does that mean?

3 A. That's the caliber of round, what type of gun it takes
4 to shoot it.

5 Q. And I think you described it as a Smith & Wesson?

6 A. Yes, it was stamped with S&W, for Smith & Wesson.

7 Q. So what does that mean?

8 A. That's also the manufacturer.

9 Q. And you got all that information --

10 A. From the head of it, the back end of the shell casing.

11 Q. I'm gonna call it a headstamp; is that right?

12 A. Correct.

13 Q. So -- I don't know if I can show that, but we're
14 talking right at about that part of it, right?

15 A. Yes.

16 Q. That's where you gathered that information?

17 A. That's correct.

18 Q. Okay. Did you also find other shell casings?

19 A. I did. I found, let me see, four more shell casings
20 on the back side of the house here.

21 Q. I'm sorry, can you point again to where you're
22 talking?

23 A. Three of them are indicated by these three dots. The
24 other one I was unable to measure and photograph due to an
25 issue with one of the dogs.

1 Q. Let me show you what I'm marking now as State's 51 and
2 ask if you recognize that item?

3 A. Yes, this is one the shell casings I collected. It's
4 an R&P 40 caliber Smith & Wesson shell casing and I located
5 that from the right back side of the residence.

6 Q. And approximately on your diagram where would that
7 have been?

8 A. That would have been approximately right there.

9 Q. Now is this the item we're talking about? And it's
10 labeled -- there's handwriting on the envelope. It says
11 four RP 40's SW. Is that your handwriting?

12 A. That's my item number. It's not my handwriting, but
13 it's what I dictated to have wrote on there.

14 Q. Okay.

15 A. And, yes, that is the item.

16 MR. GRAHAM: Your Honor, the State would move 51
17 into evidence.

18 MR. SPANGLER: No objection, Judge.

19 THE COURT: 51's in evidence.

20 (State's Exhibit Number 51, a shell casing, was
21 marked and admitted into evidence.)

22 BY MR. GRAHAM:

23 Q. Now this is a different manufacturer?

24 A. Yes. Well, it's a Smith & Wesson, but it's a
25 different model or brand I guess you'd call it. It still

1 says Smith & Wesson on it, but it's probably a different
2 manufacturer that's using the Smith & Wesson logo.

3 Q. This one is an R dash P; is that correct?

4 A. That's correct.

5 Q. And it's also a 40 caliber?

6 A. Yes.

7 Q. And it's a Smith & Wesson round, but the manufacturer
8 is R & P; is that correct?

9 A. Correct.

10 Q. Let me show you what I'm marking as State's 52 and ask
11 you if you recognize that.

12 A. Yeah, this is labeled as Number 5, my Number 5, and
13 it's a Speer 40 caliber Smith & Wesson shell casing and it
14 was collected from the back side of the residence just
15 inside the framing of the structural addition.

16 Q. So on your diagram where would that have been?

17 A. That would have been about right there.

18 MR. GRAHAM: Your Honor, the State would offer
19 52 into evidence.

20 MR. SPANGLER: No objection, Judge.

21 THE COURT: Without objection 52's in evidence.

22 (State's Exhibit Number 52, a shell casing, was
23 marked and admitted into evidence.)

24 BY MR. GRAHAM:

25 Q. So this time it's a -- Speer is a different

1 manufacturer, different from R&P, different from Federal?

2 A. Correct.

3 Q. But this also is a 40 caliber?

4 A. It is.

5 Q. And when we talk about caliber, that's -- what does
6 that mean?

7 A. That's what type of ammunition must be used in a
8 certain gun.

9 Q. Let me show you another item that I'm marking as 53
10 and ask if recognize that as being a casing you found on
11 the scene there?

12 A. Yes, this is labeled Item Number 7, which is a
13 Winchester 40 caliber Smith & Wesson shell casing, and that
14 was collected from the back side of the residence inside
15 the framing of the structure and it was kind of closer to
16 the house as well.

17 That one is not marked on the diagram, but it was
18 located about in this area here. And the reason it's
19 not located on the diagram is because I was unable to
20 photograph it or measure it due to one of the dogs taking
21 the evidence marker, running off with it and coming back
22 toward the area where the shell casing was, so I had to go
23 ahead and collect that before the dog messed with it any
24 further.

25 Q. The dogs didn't move the evidence, they moved the

1 markers?

2 A. Correct. It was the one --

3 Q. Just that one marker?

4 A. That one marker and then the clothing and the stuff up
5 here by this car, he had hung onto the marker for it as
6 well.

7 MR. GRAHAM: Your Honor, the State -- I don't know
8 whether I put 53 in evidence or not.

9 THE COURT: You have not moved 53 in.

10 MR. GRAHAM: I would move 53 into evidence at this
11 point.

12 THE COURT: Without objection?

13 MR. SPANGLER: No objection.

14 THE COURT: 53's in evidence.

15 (State's Exhibit Number 53, a shell casing, was
16 marked and admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. Now this was Number 7 on your collections.

19 A. That's correct.

20 Q. This is a Winchester brand --

21 A. That's correct.

22 Q. -- 40 caliber Smith & Wesson casing?

23 A. Yes.

24 Q. Let me show you what I'm marking as State's 54 and ask
25 if you recognize that?

1 A. Yes, this is labeled as Item Number 6 and it's an
2 R&P 40 caliber Smith & Wesson shell casing and that was
3 collected from the back side of the residence inside the
4 structural frame -- the framing of the structural addition
5 as well.

6 MR. GRAHAM: Your Honor, the State would offer 54
7 into evidence.

8 MR. SPANGLER: No objection, Judge.

9 THE COURT: Without objection 54's in evidence.

10 (State's Exhibit Number 54, a shell casing, was
11 marked and admitted into evidence.)

12 BY MR. GRAHAM:

13 Q. Mr. Gilland, looking at your diagram and your Item 6,
14 the R&P that we just discussed, where was that one?

15 A. That one was located at approximately this location
16 here, I believe.

17 Q. So in total you found five shell casings?

18 A. Correct.

19 Q. One --

20 A. One by the Infinity and four on the back side of the
21 residence.

22 Q. Now when you went inside the house, did you find a
23 gun?

24 A. Yes, I did.

25 Q. Tell me about that.

1 A. During the search of the master bedroom, a 40 cal
2 Smith & Wesson -- I mean, not Smith & Wesson -- a Glock
3 pistol was located and it was located underneath the bed
4 back in about the middle area of the headboard underneath
5 and underneath a bunch of other stuff as well.

6 Q. So looking back at State's 29, is that the master
7 bedroom?

8 A. That is the master bedroom.

9 Q. Where's the bed in relation? Are you able to see it?

10 A. It's hard to see in this photograph, but the bed would
11 be about in this area right here.

12 Q. On the far wall when you come in?

13 A. Well, it's kind of in the middle of the bedroom and up
14 against the far wall.

15 Q. And you said you found the gun where?

16 A. It was about the middle area of the bed, but
17 underneath it and back toward the wall by the headboard.

18 Q. And so how did you -- to find it, how did you see it?

19 A. Through the search we lifted the bed up off the frame
20 and moved stuff around underneath the bed and located it
21 underneath a few boxes and other things.

22 Q. State's 31, is that the gun that you're talking about?

23 A. Yes.

24 Q. So where in relation -- do you remember the size of
25 the bed? Was it a king or a queen?

1 A. I believe it was a queen.

2 Q. Where at in relation -- it's underneath the bed.

3 Where in relation to the bed or the headboard or the sides
4 or the foot?

5 A. Kind of right in the middle toward the back of the
6 headboard underneath.

7 Q. Was it clean or dusty?

8 A. It looked like it had been there for a while.

9 Q. Did it have a clip in it?

10 A. It did not have a magazine in it.

11 Q. What kind of gun was it?

12 A. It was a Glock, a 40 cal. I believe it was a
13 Model 22. I'd have to double-check with my notes. Yes,
14 it's a Glock pistol, Model 22, 40 cal.

15 Q. So is that a semiautomatic or is that a revolver?

16 A. It's a semiautomatic.

17 Q. What's the difference between semiautomatic and a
18 revolver?

19 A. The basic difference with a semiautomatic you have a
20 magazine that you put in the bottom of the gun that holds
21 several rounds. It's depends on the manufacturer how many
22 rounds -- clip size or magazine size how many rounds that
23 holds. Basically the slide will slide back and it fires
24 every time you pull the trigger. With a revolver, you
25 don't have a magazine, you have a spindle that holds the

1 rounds. Normally they're six-shot revolvers and in order
2 to reload that you have to open up the revolver, dump the
3 rounds and load each individual chamber.

4 Q. So when I asked you if there was a magazine in the
5 Glock 22 you found you said no?

6 A. No, there was no magazine in it or around it.

7 Q. So there was no rounds in it either? No rounds in the
8 chamber --

9 A. No round in the chamber, the magazine, in or around
10 that weapon.

11 Q. Do you have an opinion as to whether it had been
12 recently fired?

13 A. I did what you would call a smell test. It didn't
14 smell like it had been fired, didn't smell like it had been
15 cleaned recently.

16 Q. Let me show you what I'm marking as State's 50.

17 A. Can I open it up?

18 Q. Yes.

19 MR. GRAHAM: Your Honor, for the record this is
20 a firearm. It has no ammunition with it, it has no
21 magazine with it, and there's a safety cable through it
22 to render it inoperative.

23 THE COURT: Very good.

24 BY MR. GRAHAM:

25 Q. Do you recognize that?

1 A. I do. That was the gun located under the bed.

2 Q. And you were looking for a serial number? Is that
3 what you were checking?

4 A. Yes, I was verifying the serial number.

5 MR. GRAHAM: Your Honor, the State would offer this
6 into evidence.

7 MR. SPANGLER: No objection, Judge.

8 THE COURT: Without objection State's 50 is in
9 evidence.

10 MR. SPANGLER: Judge, we'd just ask that it be
11 marked like the other ones were, the stickers.

12 THE COURT: Yes, I think that's been taken care of.

13 (State's Exhibit Number 50, a Glock handgun, was
14 marked
15 and admitted into evidence.)

16 (State's Exhibit Number 48 and 49 were marked for
17 identification.)

18 BY MR. GRAHAM:

19 Q. Let me show you what's been marked as State's 48 and
20 49 and ask if you recognize each of those?

21 A. Yes, this is, I believe, swabs that I took. Yeah,
22 this is a swab kit that I collected.

23 Q. So when you said it's a swab kit you collected, what
24 does that mean?

25 A. So basically this happened to come from, I believe, it

1 was the rear sliding door. Yeah, this is from the door
2 frame of that shattered rear sliding door. So basically
3 there was a reddish-brown stain that was located right here
4 and there's a kit that you use to collect or swab that area
5 to collect a sample of the reddish-brown stain.

6 Q. So explain how you do that. You have a sterile swab.
7 You start with something in a package --

8 A. Yes.

9 Q. -- that's not contaminated?

10 A. You've got a sterile swab and you've got a fresh set
11 of gloves. It's also got sterile water with it as well if
12 you need to rehydrate an area because if it was dry you
13 can't just wipe it off, you have to to rewet the surface
14 and the swab itself, and you basically move the swab around
15 in a circular motion until you see that you've collected
16 some of the sample with the swab and then you place the
17 swab into the -- it's kind of like a tube that protects it
18 from any kind of cross-contamination or any contamination
19 from anything else.

20 Q. And that was Swab C, I guess, to go with the C marker?

21 A. Yes, from the area right there.

22 MR. GRAHAM: Your Honor, the State would offer 48
23 into evidence.

24 MR. SPANGLER: No objection, Judge.

25 THE COURT: All right. 48 is in evidence.

1 (State's Exhibit Number 48, swab from door, was
2 admitted into evidence.)

3 BY MR. GRAHAM:

4 Q. And, Mr. Gilland, if you'd look at State's 49.

5 A. Yes, this is another swab sample that I collected and
6 this is from the left hand railing that's leading to the
7 front door of the residence in this location here.

8 Q. That's the handrail on State's Exhibit 15?

9 A. Yes.

10 Q. And you collected that why?

11 A. Because there was a reddish-brown stain there that
12 appeared to be blood as well and I collected a sample of
13 that.

14 MR. GRAHAM: Your Honor, the State would move 49
15 into evidence.

16 THE COURT: No objection?

17 MR. SPANGLER: No objection, Judge.

18 THE COURT: 49 is in.

19 (State's Exhibit Number 49, swab from handrail,
20 was admitted into evidence.)

21 BY MR. GRAHAM:

22 Q. Mr. Gilland, after you collected all these items,
23 the items we're talking about are the shell casings, the
24 two swabs that we talked about, and the gun itself, you
25 packaged those up and then what do you do with them?

1 A. They're packaged into an envelope or a regular bag
2 or, with the gun, in a box, then it was sealed with
3 tamper-evident tape and initialled across the seal. The
4 tamper-evident tape is usually placed in areas where it
5 would be conspicuous if they were opened.

6 Q. So, for instance, I'm looking at State's 49, the
7 Swab E in the photographs, when you're talking about
8 sealing it, what do you mean?

9 A. Basically this wouldn't have been cut open, this would
10 have been a --

11 Q. A regular envelope with a folding flap?

12 A. Yes. And once you place the evidence into this, you
13 would fold this over and this evidence tape would go across
14 here. Because the evidence tape is very brittle, so if
15 there's any attempt to open it you would see that the tape
16 is clearly ripped.

17 Q. So this red tape that I'm seeing on here, is that the
18 tape that you put on this one?

19 A. It is. And then you also initial across here so that
20 you can see that there had been no break in the seal.

21 Q. So the handwriting that I see right there?

22 A. That is my initials as well as the date.

23 Q. And is it like that for each one of those items that
24 we just put into evidence, the five shell casings, the two
25 swabs and the gun?

1 A. That's correct.

2 Q. So you seal them up, you put evidence tape on them and
3 then you turn them over to?

4 A. While you're at the scene, we basically -- the boxes
5 on our crime scene vehicles, they lock, so they're locked
6 and secured. As we collect the evidence, the evidence is
7 placed into one of these locked boxes and locked and
8 secured until everything at the scene was done. Once
9 everything at the scene was done, it's then transported to
10 headquarters. Sometimes there's further processing that
11 has to be done in the lab and sometimes you might have
12 clothes that are wet with blood or other substances that
13 have to be hung into a drying cabinet to dry. Once
14 everything has dried, you package everything up and turn
15 it over to the evidence custodians for storage.

16 Q. So there isn't -- these items were in your possession
17 in a secure place, sealed up until you turned them over to
18 an evidence custodian with the sheriff's department?

19 A. Correct.

20 Q. While you were in the house or on this crime scene,
21 did you find -- well, let me ask this. Did you smell
22 marijuana?

23 A. No, I did not. The only marijuana that I found or
24 smelled was underneath the house within a pair of shorts
25 that was located underneath the house.

1 Q. And how much marijuana was that?

2 A. A very small amount. I guess the common street term
3 would be a quarter bag. It was just a personal use amount.

4 Q. But as far as in the residence, did you smell --

5 A. No, I did not smell an odor of marijuana inside the
6 house, nor did I find any inside the house.

7 Q. How long were you there?

8 A. I got on the scene at 5:00 and it was -- 5:00 in the
9 afternoon and it was 7:00, 7:30, maybe 8:00 the next
10 morning before I left.

11 Q. When you were going inside the house, you talked about
12 what you thought were bloodstains on the handrail, which
13 was E that you collected, and bloodstains on the back
14 sliding door that you thought might be blood, right?

15 A. (Nods head.)

16 Q. When you were in the house, did you see any blood
17 drops or bloodstains?

18 A. I did not. Let me double-check just to make sure I
19 didn't take any swabs in there because if I would have
20 found some, I would have swabbed it, but I believe
21 everything was outside that I had located and collected.
22 Yeah, all the -- all the blood that I located was outside
23 the house.

24 MR. GRAHAM: Thank you, Mr. Gilland. Please
25 answer any questions the defense has for you.

1 THE COURT: Mr. Spangler.

2 CROSS-EXAMINATION

3 BY MR. SPANGLER:

4 Q. All right. Good afternoon, Mr. Gilland.

5 A. Hello.

6 Q. Let's start with the scene itself. You alluded to
7 it a little bit when you were talking with the solicitor,
8 but there were dogs running around the property there; is
9 that right?

10 A. There was one dog that was running around. The other
11 dogs were on chains, but, yes, there were several -- I
12 believe there were five dogs on that property.

13 Q. Let me see if I can find the diagram so we can -- do
14 you have the diagram? There we go. Underneath the gun.

15 Okay. So this is the property that we're talking
16 about?

17 A. Correct.

18 Q. And let's, I guess, start with this outer edge. There
19 was a big fence around this property; is that right?

20 A. Yes, about a six-foot tall privacy fence that went
21 around the whole property.

22 Q. Okay. So a fence that you couldn't see over, the
23 average person, it's keeping people from looking?

24 A. Correct. Yeah.

25 Q. And that ran the entire perimeter of the property?

1 A. It did.

2 Q. And the property itself is down a very long driveway
3 in the back of the woods?

4 A. I would describe it as what I believe they call a
5 flagstone property; where it actually comes through someone
6 else's property and this is in the back of it.

7 Q. Got you. So you can't see this property from the
8 road?

9 A. No.

10 Q. Okay. You actually can't even see the fence from the
11 road because of the woods; is that right?

12 A. It's difficult to see from the road, yes.

13 Q. So inside -- well, this fence, it actually had a big
14 gate on it; is that right?

15 A. It did.

16 Q. The gate was actually six foot tall as well?

17 A. Yes.

18 Q. Now when you open up the gate, you see the trailer
19 that you took some pictures of, right?

20 A. Yeah.

21 Q. And running around that trailer -- how many dogs were
22 there? Five?

23 A. Yeah, I believe there was five. This dog here is a
24 Rottweiler. I believe there was a Pit-Rottweiler mix or
25 some kind of mix here as well that was chained up to a

1 doghouse, and this dog here was on a chain that kind of
2 reached around this corner area here, and then there was a
3 -- I believe that was either a Rottweiler or a Doberman
4 Pinscher-type dog that was in that area, and there was a
5 Pit Bull puppy that was running loose.

6 Q. And the reason that -- we don't have to talk about the
7 dogs that much, but they actually picked up some of your
8 evidence markers; is that right?

9 A. Yes, I believe the dog did pick up a couple of the
10 evidence markers.

11 Q. Okay. And from your report, do you remember which
12 evidence markers? I know when you were talking with the
13 State, you said the one for the -- the shell casing, but is
14 that what's reflected in your report?

15 A. It was Evidence Marker Number 7, as well as the
16 evidence marker and the evidence where marker number -- I
17 believe it was Marker Number 15. There was a whole pile
18 of clothing there that had a marker there. They took the
19 marker, that, and the clothing was strown across the yard.
20 And then the marker for the shell casing at the back of the
21 house was Number 7. They grabbed it and dragged it
22 underneath the house.

23 Q. Okay. Did they pick up the actual shell casing or
24 just the marker?

25 A. No, just the marker.

1 Q. Just the marker. Now let's start on the outside of
2 the residence. The silver Honda Accord.

3 A. Uh-huh.

4 Q. So you processed the silver Honda Accord for evidence,
5 right?

6 A. Yes.

7 Q. Okay. Inside the silver Honda Accord, you found two
8 cell phones?

9 A. Yes, I believe there were two cell phones. I believe
10 there was one on the front door handle and another one -- I
11 believe -- I believe it was in the back seat. I'd have to
12 double-check to be certain.

13 Q. Yeah, you can take your time.

14 A. Okay. There was one on the interior door handle of
15 the passenger side and there was also another cell phone
16 that was in the driver's rear floorboard.

17 Q. Okay. So the one that's in the passenger side
18 interior door, that was an iPhone?

19 A. Yes.

20 Q. Okay. The one that is -- based on the report,
21 driver's rear floorboard, that was a Samsung Galaxy Mega;
22 is that right?

23 A. Correct.

24 Q. And you collected both of those phones?

25 A. Yes.

1 Q. And sent them off to whoever in Lexington deals with
2 cell phones, right? That's not what you do?

3 A. No, we do do a Cellebrite method that's a cursory
4 extraction if it's requested. So we do do cell phone
5 extractions, yes.

6 Q. Okay. In this case were you in charge of handling
7 that?

8 A. No, I was not.

9 Q. Okay. So you sent -- maybe that's what I'm getting
10 at. You sent these off to the person who was actually
11 performing those analyses for this case?

12 A. Correct.

13 Q. Okay. That guy's name --

14 A. Well, I didn't send them off. I turned them into
15 evidence and the investigator sent them off.

16 Q. Okay. So you sent them off to Michael Phipps; is that
17 right?

18 A. No, I did not sent them off. I put them into evidence
19 and then the investigator on the case would make the
20 decision on whether that phone would be further examined
21 and then the investigator would make the request for the
22 phone to be extracted.

23 Q. Okay. But those phones were, I guess, to use the
24 right word, collected, and you passed them onto the
25 investigator?

1 A. They were not passed onto the investigator. They were
2 turned into evidence and then the investigator would make
3 the request and then whoever received the request, for
4 example, Investigator Phipps if he received the request,
5 he would go to the evidence and extract the phone from
6 evidence and then perform the technique on it.

7 Q. Okay. So you -- and I'm just maybe not using the
8 right words. You submitted them into evidence?

9 A. Correct.

10 Q. Okay. Got that. So two phones in the car; one iPhone
11 and one Samsung Galaxy Mega?

12 A. Yes.

13 Q. Okay. And let's talk a little bit about -- I guess we
14 can start with this one, State's Exhibit 15. You said you
15 put an evidence marker there and swabbed it because you
16 identified blood on the handle of the trailer, right?

17 A. Well, I identified what appeared to be blood. I mean,
18 I'm not an expert to be able to tell you that it's blood,
19 but to me it looked like blood, so I did swab it and
20 collected a sample of it.

21 Q. Okay. And we have a picture of it, but it was on a
22 handrail, I guess, where somebody would be putting their
23 hand to climb those stairs, right?

24 A. Possibly, yes.

25 Q. Okay.

1 A. That's one scenario where it could get there,
2 certainly.

3 Q. And it's tough with just the picture, but is that
4 entire dark stain what you're saying you thought was blood?

5 A. I don't believe so. I think there's a better picture
6 of it in the daylight, but that one's just got the marker
7 on it.

8 Q. Okay. So somewhere, I guess, in that dark area, but
9 we don't see the dark area on the other handle, do we?

10 A. No.

11 Q. Okay. So some sort of something is on that --

12 A. Yeah, it may be the -- that entire dark stain. I'd
13 have to see a better photograph to be able to tell you for
14 certain, but it was in this area, correct.

15 Q. Okay. But that's the area you thought was blood?

16 A. Yes.

17 Q. And that's the front handrail leading up to the front
18 door of the trailer?

19 A. That's correct.

20 Q. Okay. That you swabbed and sent to be tested -- or
21 you submitted into evidence?

22 A. Submitted it into evidence and they would send it off.

23 Q. Okay. And you're not in charge of testing for DNA or
24 anything like that?

25 A. No.

1 Q. Okay. I think this is the picture I was looking for.
2 This is the daylight picture that you were referring to,
3 right?

4 A. Yes.

5 Q. Okay. So that dark stain, that's the area you
6 identified as what? What you thought was blood?

7 A. What I thought was blood. It appeared to be blood to
8 me.

9 Q. Now you mentioned that inside the house -- I think
10 Solicitor Graham said you didn't see -- or he asked you if
11 you saw any blood droplets, anything like that, right?

12 A. I did not locate any or see anything that appeared to
13 be blood inside the house.

14 Q. Okay. And that was just based on your visual test?

15 A. Yes.

16 Q. Okay. Are you familiar with a compound or a material
17 called BLUESTAR?

18 A. I am.

19 Q. Okay. Tell the jury what BLUESTAR is.

20 A. BLUESTAR is a -- it's basically a chemical reaction.
21 When you spray it and use a UV light, it excites the
22 particles in the chemical and causes protein molecules to
23 glow like a blue. That's why it's called BLUESTAR.

24 Q. And that's -- if you spray something with BLUESTAR,
25 even if there was blood that had been cleaned up, those

1 protein chemicals might still be there and it would light
2 up?

3 A. And that's generally when you would use BLUESTAR is if
4 you suspected the blood had been cleaned up or if someone
5 attempted to clean blood up.

6 Q. But in this case you didn't use BLUESTAR to see if it
7 reacted to anything in the house?

8 A. I did not. It did not appear that there was any area
9 within the house that had been cleaned or sanitized in any
10 way. The interior of the house just looked like someone
11 had ransacked it and left. And when someone tries to clean
12 an area up, they're not a hundred percent at cleaning it
13 up. You can usually find a spot of what appears to be
14 blood or if you suspected something happened, you would use
15 BLUESTAR to excite those materials and see if you could
16 locate anything.

17 Q. Well, Mr. Gilland, those are kind of just guesses,
18 right? If somebody's not a hundred percent at cleaning up,
19 you might be able to see it, but you don't know if that's
20 what happened in this case, do you?

21 A. It did not appear that there was any cleanup done.

22 Q. You didn't run the BLUESTAR test to even rule that out
23 as a possibility?

24 A. No, I did not. I did not see a need for it.

25 Q. And that was a decision that you made, not to go the

1 extra mile with that test?

2 A. Well, that's not an extra mile. That's a -- that
3 would be something that you use to identify something if
4 you perceive that there's a reason to use it. In this
5 case, there was no perceived reason to use that. There was
6 no areas that appeared to be cleaned, there was no smell of
7 bleach or any other cleaners.

8 Q. Well, there are cleaners other than bleach that
9 wouldn't leave a strong, corrosive smell, right?

10 A. Not that would take blood out and you not be able to
11 see any staining of it.

12 Q. So it's your testimony --

13 A. I'm not a -- I'm not aware of any that you could use
14 that you couldn't smell.

15 Q. Okay. But to be clear, you didn't do any sort of
16 testing like that in this case?

17 A. I did not.

18 Q. Okay. Let's move onto the weapon you found in the
19 house. We have a picture of that one. Okay. This is
20 State's 31. This is the photograph you took of the Glock
21 firearm?

22 A. That is correct.

23 Q. Okay. That firearm, when you looked at it, did it
24 have any dust on it?

25 A. If I remember correctly, it did have a little bit of

1 dust, but it -- it was underneath bed protected by boxes,
2 so it was kind of covered, it wouldn't have had dust on it
3 anyway.

4 Q. Okay. Now, Mr. Gilland, you'd agree with me that
5 being accurate in your investigation is important, right?

6 A. It is.

7 Q. Being accurate in the reports that you produce are
8 important, right?

9 A. It is.

10 Q. Because people rely on these for their truth, right?

11 A. That's correct.

12 Q. In this report, can you show me where it says there
13 was dust on that Glock?

14 A. It's not listed in the report because it was not seen.

15 Q. Okay. Because it was not seen?

16 A. Yeah, I did not see dust on it. I said there could
17 have been dust on it, I didn't see it, and it was
18 underneath stuff, protected by boxes and everything else
19 where you probably wouldn't have had dust on it to begin
20 with.

21 Q. Okay. And I'm not trying to give you a hard time
22 about this, but it's important.

23 A. And I'm trying to be as clear with my answers as I
24 can.

25 Q. Okay. If it had had dust on it, would you have put

1 that in your report?

2 A. Yes, I would have.

3 Q. Okay. You did not put that in your report in this
4 case?

5 A. That is correct.

6 Q. Okay. This firearm you say was underneath a bunch of
7 boxes, but this picture just shows it's just kind of laying
8 on the carpet, right?

9 A. That's because we had to move the boxes to actually
10 locate the firearm.

11 Q. Okay. You had to move the boxes to find the gun?

12 A. Correct.

13 Q. Okay. So were you searching for something underneath
14 the bed?

15 A. We were searching for anything inside the entire
16 house, anything that could be evidence.

17 Q. Okay. So you lifted up the mattress in the bedroom to
18 see if there was evidence underneath?

19 A. Correct. Yes.

20 Q. Okay. Well, let's go back just a little bit. The
21 kitchen cabinets. What you told the solicitor is when you
22 got in this is exactly how it looked. You didn't open
23 them.

24 A. That is exactly how it was.

25 Q. Okay. So those cabinets you did not open?

1 A. No, they were already opened.

2 Q. Okay. But the bed in the master bedroom what you're
3 telling us is this is not what it looked like, you actually
4 flipped up the mattress?

5 A. We actually picked the mattress up, yes.

6 Q. Okay. Did you flip up any other mattresses throughout
7 the house?

8 A. We did. We lifted every mattress in the house, as
9 well as the couches and the chairs.

10 Q. Okay. Did you take photographs of all those things?

11 A. Only if we found something.

12 Q. Okay. So you flip up every mattress in the entire
13 house, right?

14 A. That's correct.

15 Q. You don't take pictures of what you find?

16 A. If we find something, we do take pictures. If we
17 find something that we determine is evidence or relevant to
18 the scene, we'll process it. If we took photographs of
19 everything that we moved or touched, I would still be there
20 photographing and lifting up evidence.

21 Q. I got you on that. But to be clear, you didn't
22 take pictures of any of those other things except for
23 State's 31?

24 A. Correct. The only thing I took pictures of is
25 something that I felt was of relevance or importance to the

1 scene or the crime that was committed.

2 Q. Okay. What were you searching for underneath the
3 beds?

4 A. Anything that could be evidence; guns, ammunition,
5 anything.

6 Q. Okay. And you actually found a gun in this case?

7 A. We did.

8 Q. Okay. There was a little bit of back and forth about
9 calibers and whatnot, but this is a Glock Model 22; is that
10 right?

11 A. It is.

12 Q. If it's chambered, that means the bullet that it fires
13 is a caliber 40 Smith & Wesson. That's what that's called?

14 A. It's a caliber 40, yes, sir.

15 Q. Okay. And I want to make sure we get this right
16 because it is confusing that it's called a 40 Smith &
17 Wesson, but the history of that, and correct me if I'm
18 wrong, Smith & Wesson developed the 40 caliber. Nowadays
19 it's called the 40 Smith & Wesson. That's just the type of
20 bullet?

21 A. I would assume that that's the reason. Again, I'm not
22 an expert on ballistics or bullets, but I would say that's
23 a pretty good representation.

24 Q. So this gun that you find under the bed, a 40 Smith &
25 Wesson, right?

1 A. Yes.

2 Q. Even though it's a Glock firearm?

3 A. Well, it's not a 40 Smith & Wesson, it's a Glock
4 Model 22, 40 caliber. It doesn't say Smith & Wesson
5 anywhere as far as the firearm itself.

6 Q. But it can fire 40 Smith & Wesson bullets, right?

7 A. It could, yes.

8 Q. Okay. Now let's talk a little bit about the shell
9 casings that you found. All the shell casings that you
10 found were 40 Smith & Wesson, right?

11 A. I believe so. Yes, they had the Smith & Wesson
12 identification with them, but they were different
13 manufacturers.

14 Q. Different brands of that caliber?

15 A. Yes.

16 Q. All of those bullets that you found could have been
17 fired by that gun?

18 A. They could have.

19 Q. They could have?

20 A. That gun would definitely be possible firing those
21 bullets.

22 Q. Okay. And you said that the gun didn't appear to
23 recently have been fired. Is that what your testimony was?

24 A. That's correct.

25 Q. Okay. Did you swab the gun for gunshot residue?

1 A. I did not.

2 Q. Okay. Do you know what gunshot residue is?

3 A. I do.

4 Q. Tell the jury what gunshot residue is.

5 A. Gunshot residue is different particles that's mixed in
6 with gunpowder and when it burns it leaves residue behind
7 on -- in the barrel of the gun, around the firing chamber
8 of the gun. It expels out the muzzle of the gun, out the
9 breach of the gun, can actually blow back on yourself. It
10 basically expels it everywhere.

11 Q. When you say expels it everywhere, we're talking about
12 a dust that's so tiny you can't see it with the naked eye?

13 A. That's correct.

14 Q. And it can end up on somebody's hands, right?

15 A. It can.

16 Q. It can also end up on the gun itself, right?

17 A. Yes.

18 Q. But in this case you did not swab that gun for gunshot
19 residue?

20 A. I did not. I turned it into evidence. If that test
21 needed to be done, it could be conducted at another time.

22 Q. All right.

23 A. Gunshot residue isn't something that just goes away.

24 Q. Can you tell the jury the last time that firearm was
25 used?

1 A. I cannot.

2 Q. Okay. There was discussion that the magazine of that
3 firearm is removed. Is that how you found it?

4 A. Yeah, there was no magazine in the gun or around the
5 gun itself.

6 Q. And the magazine goes in the butt of the gun and has
7 the bullets in it, right?

8 A. In the handgrip of the gun, that's correct.

9 Q. Magazines don't just fall out of guns, right?

10 A. No.

11 Q. Somebody has to actually make an effort to pull it
12 out, either through a magazine release or pulling it out
13 the bottom?

14 A. You'd have to do a magazine release.

15 Q. Okay. It can't accidentally get lost out of the gun
16 in normal use?

17 A. No, that's correct.

18 Q. But no magazine found with that one?

19 A. There was no magazine found with that one.

20 Q. Did you find the magazine somewhere else in the house?

21 A. No, I did not. I did not locate a magazine anywhere
22 inside the house or outside of the house.

23 Q. How about out in the woods on the other side of the
24 fence? Did you look back there?

25 A. We did not find anything back there. We did do a

1 walk-around through there. I mean, we didn't go turning
2 over every leaf in the woods, but we did do a cursory walk
3 and we did not find any magazine or any other evidence in
4 that area.

5 Q. Now magazines are made of metal, right?

6 A. On a Glock they're plastic with a metal spring.

7 Q. Part of it is metal?

8 A. It does have a metal spring, yes, sir.

9 Q. Did you use a metal detector when you were around in
10 the woods looking for this stuff?

11 A. Yes.

12 Q. But you still didn't find it?

13 A. No.

14 Q. Okay. Did you go around the interior, inside the
15 fence, with a metal detector?

16 A. We did not go around the interior of the fence with
17 a metal detector, but we did walk the area and there was
18 no signs of anything laying on the ground or a recent
19 disturbance of dirt where maybe someone had buried it or
20 something like that.

21 Q. Okay. So it's your testimony that you only used the
22 metal detector outside of the fence?

23 A. Correct.

24 Q. Okay. Let's talk about the dirt a little bit. So
25 this -- this area of Pelion would be on sandy soil, right?

1 A. Yeah, it's sandy.

2 Q. Okay. It's firmly packed down, but that sand's easy
3 to kick up with your foot, right?

4 A. It is.

5 Q. Okay. Now the shell casing that you found -- I
6 believe you have it as Number 7, the Winchester shell
7 casing?

8 A. Yes.

9 Q. The Winchester shell casing, where did you find that?

10 A. That was found on the back side of the residence.
11 The back side of the residence inside the framing of the
12 structural addition and kind of closer to the house --

13 Q. Okay. So it's your testimony that --

14 A. -- closer to where -- where the hole in the
15 underpinning was. It was closer to that area.

16 Q. Okay. So it's your testimony today that that was
17 found on the back side of the residence?

18 A. Yes, sir.

19 Q. Okay. Do you remember preparing diagrams in this
20 case?

21 A. I do.

22 Q. Okay. Would you recognize one of those diagrams if I
23 showed it to you?

24 A. I would.

25 MR. SPANGLER: May I approach the witness, Judge?

1 THE COURT: (Nods head.)

2 BY MR. SPANGLER:

3 Q. All right. Mr. Gilland, do you recognize that
4 document?

5 A. Yes, I do.

6 Q. Is that one of the diagrams that you prepared in this
7 case?

8 A. It is.

9 Q. And I know it's faint, the copies we got were not the
10 best, but there are handwritten annotations out to the
11 side. Do you see those?

12 A. Well, those are typed. They're not handwritten.

13 Q. So they're -- they're typed. Did you type those?

14 A. Yes, in a -- it's basically a CAD program that we use
15 to make this.

16 Q. Okay. And you go through and you put the evidence
17 number with a big arrow. I think we can put up the blank
18 diagram. You put the number out to the side with an arrow
19 to where on the diagram that piece of evidence was found?

20 A. That's correct.

21 Q. Okay.

22 A. And generally the only evidence that goes on these
23 diagrams is evidence that we can tell where it was by a
24 triangulation of movements and this is a diagram based on
25 measurement to tell exactly where it was so that if you

1 need to go back and recreate the scene at a later date, you
2 can.

3 Q. Okay. The piece of evidence, Number 7, that
4 Winchester shell casing, that is noted on that diagram,
5 right?

6 A. The Number 7 is noted on the diagram along with the
7 description of it.

8 Q. And you have an arrow pointing to where it was found
9 on the scene, right?

10 A. That is correct.

11 Q. Show us with the laser pointer where on that diagram
12 you have Item Number 7.

13 A. Well, on this diagram it is stating that it is in this
14 area along with this pile of clothing; however, that is a
15 typo and a mistake.

16 Q. Okay.

17 A. That is backed -- that is also backed up with my
18 notes and my crime scene report that was done long before
19 the diagram was done.

20 Q. Okay. So that diagram about the location is
21 inaccurate?

22 A. It is -- it does have an error on it.

23 Q. Okay. So it's your testimony today, five and a half
24 years later, that that diagram you created during this case
25 is not accurate?

1 A. This one does contain an error with Item Number 7.

2 That is correct.

3 Q. Okay. Let's talk a little bit more about other things
4 that you found. You'd agree with me the State, they
5 didn't give you every picture that you took from the scene,
6 right?

7 A. That is correct.

8 Q. Okay. This is a small sampling of the pictures you
9 took?

10 A. A very small, yes.

11 Q. Okay. How many pictures do you think you took
12 altogether?

13 A. I couldn't even tell you. I couldn't tell you the
14 number.

15 Q. More than a hundred?

16 A. Yes.

17 Q. Okay. More than five hundred?

18 A. I'm not even sure.

19 Q. Okay.

20 A. I wouldn't even want to get into that.

21 Q. I got you. I got you on that. And you're taking
22 pictures of things. You said you take the picture -- we
23 went through it with the bed. You take pictures of stuff
24 you think is important to the case you're investigating?

25 A. Correct.

1 Q. Okay. Clothes that you found at the scene. You have
2 in your report a pair of gray Levis 569 shorts with black
3 Louis Vuitton belt.

4 A. Yes.

5 Q. Do you remember finding those shorts?

6 A. Yes, they were underneath house.

7 Q. Underneath the house. Related to this case, right?

8 A. Correct.

9 Q. Okay. Now you actually went in the pockets, didn't
10 you?

11 A. Right.

12 Q. Tell us what you found in the pockets of those shorts.

13 A. In the right rear pocket, there was a bundle of money
14 that totalled \$141, another bundle of money was also found
15 in that right rear pocket that totalled \$355, and in the
16 right rear pocket there was also a small plastic baggy with
17 green-brown leafy plant material that I believed to be
18 marijuana. There was a key to the Infinity vehicle in
19 there. In the left rear pocket was a bundle of money
20 totalling \$330 and another bundle of money totalling \$380.
21 In the left rear pocket, there was also a set of keys. In
22 the left front pocket, there were two Bic lighters, a red
23 one and a green one. In the left front pocket, there was
24 also two pennies, and in the left front pocket was also a
25 set of keys to a Honda vehicle.

1 Q. All right. So that's what you found in these shorts
2 that you said were underneath of the trailer?

3 A. Correct.

4 Q. \$141 in one pocket. I just want to make sure we've
5 got the numbers right here.

6 A. That's correct.

7 Q. 355 in the other pocket?

8 A. That's correct.

9 Q. 330 in another one?

10 A. Correct.

11 Q. 380 in another pocket?

12 A. Correct.

13 Q. Okay. And you also found a -- you said a small baggy,
14 but in your report you don't say small baggy, right, of
15 marijuana?

16 A. I believe it is listed as a small baggy, but it's --
17 in my report it says one plastic baggy, green and brown
18 leafy plant material.

19 Q. So a plastic baggy of what you believe to be
20 marijuana?

21 A. Yes.

22 Q. Okay. Those things were left at the scene because you
23 found them, right?

24 A. Yes, they were -- they were left in the pants.

25 Q. If I'm not mistaken, that's over a thousand dollars in

1 cash you found?

2 A. That sounds about right.

3 Q. Okay. You also found the keys to the Infinity
4 vehicle. Those weren't taken.

5 A. I never checked the keys to see if they fit the
6 Infinity vehicle or the Honda vehicle, but there was a set
7 of keys for an Infinity vehicle and a set of keys for a
8 Honda vehicle, that is correct.

9 Q. Okay. So a set of keys with an Infinity logo and a
10 set of keys with a Honda logo?

11 A. That's correct.

12 Q. Those weren't taken?

13 A. No.

14 Q. The two vehicles, they were left there as well. When
15 you got there, the Infinity's still parked there in front
16 and the Honda is still parked there as well?

17 A. That's correct.

18 Q. Okay. I think we -- we missed this. We touched on it
19 a little bit, but the Winchester shell casing, all right,
20 that is one -- there was back and forth whether it's in the
21 right or the wrong place, but you found it at the scene,
22 right?

23 A. I know exactly where it was. I mean, there's no back
24 and forth for me. I know where I located it at. It's
25 located in my notes, as well as in my report.

1 Q. Okay. In your report and the diagram, they're
2 separate things, but it's your testimony today you found it
3 in the back?

4 A. That's correct.

5 Q. Okay. That Winchester shell casing was a 40 Smith &
6 Wesson. We've been through that?

7 A. Yes.

8 Q. You actually found a box of Winchester ammunition in
9 the house, didn't you?

10 A. Yes.

11 Q. That Winchester ammunition was chambered in 40 Smith &
12 Wesson; is that right?

13 A. That is correct.

14 Q. If I can find the picture. We can see it up in the
15 corner of State's 27?

16 A. Yes, it's right there.

17 Q. Okay. Now the State didn't show you a picture of it,
18 but you actually opened up that box and took a picture,
19 right?

20 A. Yes.

21 Q. It wasn't completely full, was it?

22 A. No, it wasn't.

23 Q. There were bullets missing from that box, weren't
24 there?

25 A. Yes, sir.

1 Q. There was about seven full casings left in there?

2 A. I would have to look at the photo, but, yeah, I would
3 guess that's right.

4 Q. The box was mostly empty, right?

5 A. Yes.

6 Q. You can't tell us if that Winchester shell casing that
7 you recovered at the scene that was shot came from that
8 box, can you?

9 A. I cannot.

10 Q. But it's the same brand?

11 A. It is.

12 Q. The same caliber?

13 A. It is.

14 Q. Which could have been fired by that Glock?

15 A. It very well could have. That Glock would be capable
16 of firing that ammunition, which is why that box of
17 ammunition was photographed and collected.

18 Q. Now when we're dealing with the Winchester shell
19 casing, you say you found it in the back. Tell us how did
20 you come upon it. Was it just laying there on the top?

21 A. Yes.

22 Q. Okay. It hadn't been covered over by sand?

23 A. No.

24 Q. Okay. Did it look like it had been laying there for a
25 year?

1 A. It didn't look like it had been laying there very
2 long.

3 Q. Okay. It looked fresh. That's what we're trying to
4 get at?

5 A. Yes.

6 Q. Okay. It certainly didn't look like it had been
7 exposed to the elements, right?

8 A. Right.

9 Q. By elements, we're talking about wind, rain, anything
10 like that?

11 A. Sand, abrasion.

12 Q. Anything that could have scratched the outside?

13 A. What?

14 Q. It could have scratched the outside of it, right, the
15 sand?

16 A. There could have been a number of things that would
17 happen to it out in the elements.

18 Q. Okay. You didn't have to use the metal detector to
19 find it? It was there.

20 A. It was readily visible.

21 Q. Okay. You can't tell us that was fired in this
22 incident or another incident, can you?

23 A. No, I can't.

24 Q. Let me ask you this. Did you find any evidence while
25 you were on the scene that people had been doing target

1 practice with firearms in that backyard?

2 A. I did not see anything that would lead me to that
3 conclusion.

4 Q. Okay. And by target practice, I mean did you find
5 anything like a dirt backstop, papers with targets on them,
6 anything like that?

7 A. There was a wooden fence back there. That was the
8 only thing I saw.

9 Q. Did that fence have any bullet holes in it like
10 somebody had put a target up to it?

11 A. Not that I'd seen.

12 Q. Okay. Did you find other than these five shell
13 casings any other shell casings?

14 A. No, that was it. Just the five shell casings.

15 Q. Okay. And the Winchester one, if I understand you
16 right, when you're saying you found it in the back you
17 found it right up beside the home, right?

18 A. Yes, it would have been found right in this area
19 here.

20 Q. We're talking a foot from the house, two feet from
21 the house? I know you didn't get a chance to measure it,
22 but...

23 A. It -- it really depends on what the -- how that
24 firearm that fired it would eject it because when you fire
25 a firearm, it doesn't just spit the bullet out the side, it

1 actually throws it up in the air and generally away from
2 you in either a left or a right direction, and I couldn't
3 tell you exactly where someone would have been standing
4 when they fired that firearm.

5 Q. And maybe I should rephrase the question. Where was
6 the shell casing found? A foot from the house, two feet
7 from the house?

8 A. It was right next to the house area here around -- it
9 kind of it looked like to me the shell casings were fired
10 in succession and that shell casing was found like right in
11 this area. The underpinning here was missing and it looked
12 like someone had crawled up underneath the house, but the
13 shell casing was found in this area here.

14 Q. Okay. So close to the house? That's what we're
15 getting at?

16 A. Yes.

17 Q. Okay. Now when you're looking at the scene, were
18 there any blood trails that you found?

19 A. No, not on the outside in the sand. It's very hard
20 to find blood in sand. It's one of those things that --
21 sand is naturally dry and whenever it hits sand, the sand
22 immediately soaks it up, and any -- any type of wind or
23 something can move that sand around. If you have enough of
24 it, then you can see it, but it does -- small amounts are
25 very hard to find.

1 Q. Okay. Let me ask you this. If someone has been shot
2 six times, do you think they're producing a lot of blood?

3 A. They could be.

4 Q. Okay. How about if they're crawling along the ground,
5 do you think you'll find blood on the ground?

6 A. You could. It all depends on what clothing they're
7 wearing, where they were shot, how much blood loss they
8 have. That would be something for a medical person to
9 answer.

10 Q. I got you on that. You said it depends sometimes on
11 clothing. What if someone had stripped down to only their
12 boxer shorts and is crawling on the ground, do you think
13 you're gonna find blood on that sand?

14 A. It's possible. It's possible, but you could not, too.

15 Q. Okay. But you didn't find anything like that in this
16 case?

17 A. No, I didn't find any -- any large areas of blood.

18 Q. Okay. And you got out at what time, 4:30?

19 A. It was about -- between 4:30 and 5:00 when I first got
20 there. I didn't actually enter the scene until 5:15
21 because we had some issues with some family members trying
22 to get into the scene as they were reasonably upset.

23 Q. I got you, but you got out there at 5:15, right, and
24 you're not seeing any blood trails on the ground?

25 A. Correct.

1 Q. Because if you saw things like that, you would have
2 put them in your report?

3 A. And they would have been photographed as well.

4 Q. Okay.

5 MR. SPANGLER: Just a brief moment, Your Honor.

6 BY MR. SPANGLER:

7 Q. And how about this. We just talked about blood trails
8 on the ground. How about crawl marks in the sand?

9 Someone's at the beach, they're going through, you see
10 their footprints. Did you see anything like that here?

11 A. Up underneath the house there were some. You could
12 see where someone had been laying there, taking clothes
13 off. I mean, the area was -- the dirt was disturbed
14 there. In the back of the house, there -- there was some
15 disturbance of the dirt, but you couldn't tell what it
16 was. I mean, it's sand. It doesn't hold its shape.

17 Q. Okay. But the sand in the front yard, let's say if
18 somebody was crawling on the ground from the trailer to the
19 Honda, did you see any crawl marks there?

20 A. I did not.

21 Q. Okay. No blood marks, no crawl marks?

22 A. No.

23 Q. Okay. Let's talk a little bit about fingerprints.
24 Are fingerprints something that you usually look into when
25 you're at a scene?

1 A. Yes.

2 Q. Okay. And you did that in this case?

3 A. Yes.

4 Q. Okay. And correct me if I'm wrong on this, but they
5 call it actually taking a lift from a piece of evidence
6 when you're looking for a fingerprint?

7 A. Yes. You dust it and lift the print, yes.

8 Q. Okay. What items did you look for fingerprints on in
9 this case?

10 A. The only ones that I actually myself did was the
11 interior of the house; door frames, areas that -- that
12 would be common for someone to touch. The vehicles, I
13 directed Investigator Sprinkle to process those, the two
14 vehicles outside.

15 Q. Okay. In your report, do you document where you took
16 fingerprint lifts from inside the house?

17 A. There were no fingerprint lifts inside the house. All
18 of the fingerprints that were found inside the house were
19 overlaps and smudges. There wasn't nothing of a comparable
20 quality.

21 Q. Okay. Let's back up just a little bit. Maybe I'm
22 not understanding. So did you dust inside the house for
23 fingerprints?

24 A. Yes, I did dust inside the house for fingerprints.

25 Q. Okay. Did you actually take a lift from any of those

1 dustings that you did?

2 A. No, I did not find any fingerprints that were of a
3 comparable quality within the house. Everything was
4 overlaps and smudges that you couldn't separate in order to
5 make a fingerprint identification from.

6 Q. Okay. And when we talking about overlaps and smudges,
7 that's just, I guess, normal wear and tear inside a house,
8 fingerprints get smudged?

9 A. Yes, it's basically when you touch something and touch
10 it again and touch it again, you've got a bunch of overlaps
11 and you can't tell one fingerprint from another one.

12 Q. Okay. It's not like you found no fingerprints inside
13 the house, right?

14 A. No, there -- there were plenty of fingerprints. There
15 was just nothing distinguishable or comparable that was of
16 any quality there.

17 Q. Okay. Did you swab those handles in the kitchen or
18 dust the handles of those cabinets?

19 A. No, not on those. The handles in the kitchen are wood
20 grain and wood grain does not hold a fingerprint very well
21 and just dusting it you're not gonna be able to find a
22 fingerprint that's of a comparable quality because of the
23 grain of the wood.

24 Q. Okay. So the handles on them are wood grain?

25 A. Yeah, I believe so.

1 Q. How about -- how about the cabinets themselves? Those
2 look like solid wood. Did you dust those?

3 A. No. Again, that's wood grain. You're not gonna
4 develop a useable fingerprint off those with dusting.

5 Q. Okay. How about the -- did you dust the firearm for
6 prints, the Glock that you found?

7 A. Again, I didn't process anything with the firearm
8 other than taking photographs and collecting it and then it
9 was turned into evidence. I did no further processing of
10 that firearm. That would have been up to the investigator
11 to have that firearm taken for further testing.

12 Q. And is that the same thing with the shell casings that
13 you found? Fingerprint-wise did you dust these or is
14 that for someone else?

15 A. Again, I would have placed those into evidence and
16 those would -- there's a certain technique that you have
17 to use on those in order to even be able to get a
18 fingerprint and sometimes that don't even work because
19 when a round is fired there's a tremendous amount of heat
20 that's generated and a fingerprint is basically made from
21 oils and liquids and that heat burns and melts those off.

22 Q. Okay. So it's fair to say you did not find in your
23 investigation any fingerprints from Mr. McClure?

24 A. I did not, no.

25 Q. Okay. Are you familiar with touch DNA?

1 A. I am.

2 Q. Okay. Touch DNA are oils or DNA that's left on
3 something just by rubbing your hand over it; is that right?

4 A. Yes.

5 Q. Okay. My touch DNA would probably be on this podium
6 just from standing behind it with my hands on it, right?

7 A. It could be.

8 Q. It could be?

9 A. (Nods head.)

10 Q. Did you swab the gun for touch DNA?

11 A. Again, I did no further processing of the gun other
12 than collecting it and photographing it.

13 Q. Okay. Any touch DNA? Did you test the house for any?

14 A. No, I had no idea where someone would have touched to
15 do touch DNA. And you can't just take a swab and swab the
16 whole house and turn it in. You have to have a specific
17 area that you want to try to get the touch DNA from.

18 Q. Well, the kitchen cabinets you said were all open.
19 You didn't want to swab those for touch DNA?

20 A. Again, so many people grab the kitchen -- the handle
21 of a kitchen cabinet and open it that there's gonna be --
22 it's hard to tell how many people's DNA's on that. So it
23 could be contaminated and it's not a very good source
24 because of how often it's touched and used.

25 Q. But that's something you didn't do in this case,

1 correct, no touch DNA testing?

2 A. Correct. I did no touch DNA inside the house.

3 Q. Okay.

4 MR. SPANGLER: All right. Nothing further,
5 Mr. Gilland. I appreciate it.

6 THE COURT: Nothing on redirect?

7 MR. GRAHAM: No, Your Honor.

8 THE COURT: Thank you, sir. You can step down.
9 You are free to go.

10 (Witness excused.)

11 THE COURT: You-all approach real quick up here
12 with regard to scheduling, okay?

13 (Proceedings held at the bench; not reported.)

14 THE COURT: Ladies and gentlemen, it's been a long
15 day for me and probably for you, so we're gonna go ahead
16 and take a break for the evening. Please report back,
17 if you would, at 9:15 tomorrow morning. We'll resume at
18 that point in time and I assure you that everyone here
19 is working to try and keep things moving as quickly as
20 possible.

21 I was tempted to go later tonight, but I imagine
22 that you guys have lives and obligations outside of this
23 courtroom and so I don't want to want to impose upon you.
24 And some of you seem a little fatigued.

25 So we'll go ahead and take a break. Don't discuss

1 the case tonight. Please be back in the jury room
2 tomorrow morning at 9:15.

3 Have we established whether they're getting
4 doughnuts or not? Do we have that figured out?
5 Somebody can get you doughnuts.

6 Have a great night, sleep tight, see you in the
7 morning at 9:15.

8 Thank you.

9 (Whereupon, the jury was excused for the day at
10 5:03 PM.)

11 THE COURT: Before we go off the record, I just
12 want to note that I believe, correct me if I'm wrong,
13 but State's 47 and 50 through 54, were items that were
14 introduced in the previous trial involving Mr. Butler
15 and they had different exhibit numbers.

16 I think, Solicitor, you indicated that someone
17 had photographed those items before we put the new
18 stickers above the old stickers and that's all
19 documented and we've got that square?

20 MR. GRAHAM: Yes, Your Honor. I spoke with the
21 clerk earlier today and she told me that had already
22 been done.

23 THE COURT: Okay. All right. Good enough. So
24 we know that we can match the items back up with the
25 originals numbers for purposes of PCR with Mr. Butler

1 is what I was wanting to make sure of.

2 MS. FULLER: Yes, Your Honor. Did you call out
3 eight numbers? Did you say eight? There should be
4 eight items.

5 THE COURT: Was 48 and 49, were they also part of
6 that?

7 MR. GRAHAM: (Nods head.)

8 THE COURT: Okay. Mr. Graham's nodding.

9 MS. FULLER: Yes.

10 THE COURT: So 48 and 49 were also part of that
11 group where we put the stickers over the old stickers.

12 MS. FULLER: That's right, Your Honor. It looks
13 like 47 through 54.

14 THE COURT: I know we're running a little bit
15 behind. If the parties can perhaps contemplate
16 whatever stipulations. Mr. Floyd, I suggested one to
17 him that might eliminate a witness, but you-all think
18 about that overnight so we can see to the extent that
19 we might be able to expedite some of this --

20 MR. FLOYD: All right, Your Honor.

21 THE COURT: -- and kind of cut to the chase as much
22 as possible.

23 All right. You-all have a lovely night, okay? See
24 you in the morning.

25 MS. FULLER: Thank you, Your Honor.

1 (Whereupon, the proceedings were concluded for
2 October 22, 2019, at 5:05 PM.)

3 (The following proceedings were held October 23,
4 2019, beginning at 9:45 AM.)

5 (State's Exhibit Numbers 55 through 63 were marked
6 for identification.)

7 BAILIFF: All rise. Court's now in session. The
8 Honorable Frank Addy presiding.

9 THE COURT: Thank you. Have a seat.

10 Everyone, I sincerely apologize for the delay in
11 coming out here. My secretary was out yesterday and we
12 had a meeting scheduled this morning on the Northcutt
13 case and the lawyers were here and if I didn't do it this
14 morning, I -- it just slipped my mind and that's -- that's
15 what happened and that's the reason that I'm late getting
16 out here. They wanted it held during a term of court in
17 the event that they wanted to put something on the record,
18 so they don't need to put anything on the record and we can
19 move forward with this case.

20 The record, of course, will reflect that Mr. McClure
21 is present with counsel. I did have an opportunity to
22 review the video again last night. We'll discuss that
23 later since the jury is waiting for us.

24 Do you have your next witness in the courtroom?

25 MS. FULLER: Yes, Your Honor.

1 THE COURT: Let us have the jury, please.

2 BAILIFF: Are you ready, Your Honor?

3 THE COURT: Please.

4 (Whereupon, the jury enter the courtroom at
5 9:47 AM.)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, thank you for being here. Thank you for being on
8 time. And just so that you are aware of why I kept you
9 waiting, I was also here. My secretary was out yesterday.
10 She had scheduled a meeting involving six lawyers on a
11 case that was assigned to me years ago by the Chief
12 Justice that we've been trying to get scheduled and she
13 had scheduled that meeting for 9:30 this morning here
14 in Lexington, and it was more rushed, but I had to go
15 ahead and take the opportunity to meet with those folks.
16 And because my secretary was out yesterday I didn't
17 remember that it was this morning because she typically
18 handles my calendar and reminds me of that sort of thing,
19 so that's why I kept you waiting. I had to do that
20 meeting because this is an old case that I've got to get
21 resolved and that's why I kept you waiting. It wasn't
22 the parties. Blame me, okay? Blame me for keeping you
23 waiting. It was not any of the parties who are involved
24 with this case.

25 We are, of course, still involved in the State

1 versus Mr. McClure and we're still in the State's case
2 in chief.

3 So, Solicitor, if you would, call your next witness,
4 please.

5 MS. FULLER: Thank you, Your Honor. The State
6 calls Keith Sprinkle.

7 (Whereupon, Keith Sprinkle was duly sworn by the
8 Clerk of Court.)

9 THE CLERK: Have a seat, please, sir. Once
10 you're seated state your full name, spelling your last,
11 please.

12 THE WITNESS: Keith Sprinkle, S-P-R-I-N-K-L-E.

13 KEITH SPRINKLE,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. FULLER:

17 Q. Thank you. Can I say Officer Sprinkle? Is that
18 appropriate?

19 A. Yes.

20 Q. Can you just introduce yourself to the jury. What is
21 your background?

22 A. My name is Keith Sprinkle. I'm from Lexington, South
23 Carolina, born and raised. I went to USC and got a
24 criminal justice degree and started my career, my law
25 enforcement career, in the City of Columbia Police

1 Department, transferred over to Lexington County Sheriff's
2 Department where I did right over eight years there. I
3 did several different positions while I was there and
4 then recently last year I got a position over at the
5 U.S. Probation Office in Columbia.

6 Q. So you're no longer with the sheriff's department?

7 A. No. No, I'm not.

8 Q. And can you tell the jury whether or not you've ever
9 been a crime scene investigator?

10 A. Yes, I was for three years at the sheriff's
11 department.

12 Q. As it relates to this case, do your recall back on
13 April 26, 2014, responding to 688 Bushberry Road?

14 A. I do.

15 Q. And what was your -- what were your responsibilities
16 that day?

17 A. That day, responding to that scene specifically, I was
18 a backup CSI. We had two other CSI more experienced than I
19 at that time and my duties were to really assist them. And
20 I had some more experience in latent prints, processing for
21 latent prints, so I assisted them however they requested or
22 needed, and I also processed the two vehicles on that scene
23 and on the residence for latent prints specifically.

24 Q. I'm gonna show you what's in evidence as State's
25 Exhibit 36 -- 36 through 39 and ask you if you recognize

1 this vehicle?

2 A. I do.

3 Q. And how do you recognize it?

4 A. That is the white Infinity vehicle that was located
5 on-scene at that incident on that date. There's two
6 vehicles on the -- on the property and that's the one
7 closest to the residence.

8 Q. And you were talking about latent lifts. That was one
9 of your responsibilities that day on the scene?

10 A. Yes, it was.

11 Q. And did you collect lifts from this vehicle?

12 A. Yes, I did.

13 Q. Can you explain to the jury -- it might be common
14 sense, I'm not sure, can you explain to the jury what are
15 exactly latent prints?

16 A. Sure. Latent prints are either fingerprints or it can
17 be footprints as well, but it's ridges from your -- I'd say
18 in this situation where I am processing for fingerprints,
19 latent prints are the transfer of ridge detail from your
20 -- from your fingers onto a surface, and what that is, is
21 it's either oils or water from your -- from your skin
22 transferring the latent, your fingerprint, onto a surface.

23 Q. And in this case as it relates to this particular
24 vehicle, this white Infinity, what was your procedure and
25 if it's -- can you tell the jury if that's generally your

1 procedure in processing vehicles?

2 A. Sure. Typically you can see -- visually see a latent
3 with the bare eye, so visually inspecting your major areas
4 on a vehicle that you would typically see where someone
5 would touch on a -- on the vehicle, so you try and visually
6 examine the areas of a vehicle -- in this case the vehicle
7 trying to see if you can visually observe a latent and then
8 you, with the equipment that we have, which is a wand with
9 kind of like a duster, a feather duster, you take that and
10 with the fingerprint powder, it's a black powder, an
11 extremely fine powder, we use specifically to process for
12 latent prints. We -- we use that wand -- what we call a
13 wand and we dust the area that we're looking for a latent
14 to be able to adhere that powder to that latent, that
15 fingerprint, and then we, using a specific type of tape for
16 latent prints, collect that -- collect that latent once
17 it's observed and found.

18 Q. So when you're referring to specifically the Infinity
19 in this case, what surfaces or what areas of the vehicle
20 were you looking for to -- in order to try to get a lift?

21 A. In a case like this, that's really processing anywhere
22 that would be pretty common for someone to touch the
23 vehicle. Anywhere along the doors, the door frame, the
24 handles, the window, the hood, the trunk, and right over on
25 the roof part -- the rooftop right over the door frame as

1 well.

2 Q. And on the inside of the vehicle as well?

3 A. Yeah, the inside of the vehicle, it's very common for
4 people to put their hands on the inside of the windows
5 and if -- determining on what kind of surface material the
6 door is made of, probably the processing -- it's common to
7 process the -- the door panel itself as well.

8 Q. Is it common for -- I guess let me ask you this. How
9 many vehicles or objects or surfaces have you processed in
10 an effort to obtain latent lifts?

11 A. On this case or prior?

12 Q. In general.

13 A. I can't count.

14 Q. This wasn't your -- was this your first time?

15 A. No.

16 Q. Okay. And are you always successful in finding enough
17 detail to collect a latent lift?

18 A. No.

19 Q. As it relates to this case, were you successful in
20 identifying enough details to actually collect a lift?

21 A. Yes, I was.

22 Q. And explain to the jury where did you look on this
23 particular vehicle and where were you successful.

24 A. On this -- on this vehicle, I know that there were
25 multiple latent prints that were observed and located on

1 the vehicle; however, the ones that were with enough
2 detail, what we call quality prints, was on the interior
3 window of the front right passenger door, so -- just a
4 second. So this door right here, the inside of this
5 window, I located and collected a latent print there, and
6 I believe the second one -- without referring to the latent
7 prints, I believe it was on the trunk -- on the hood.

8 Q. I'll hand you what's been premarked as State's 55 and
9 if ask you if you recognize it?

10 A. I do.

11 Q. And how do you recognize it?

12 A. These are latent prints with my -- my handwriting with
13 the identification of this case number and what's in it is
14 latent prints from the white Infinity, two lifts.

15 MS. FULLER: At this time, Your Honor, the State
16 seeks to introduce State's 55 into evidence.

17 THE COURT: Any objection?

18 MR. SPANGLER: No objection, Judge.

19 THE COURT: All right. 55 is in.

20 (State's Exhibit Number 55, latent lift cards, was
21 admitted into evidence.)

22 BY MS. FULLER:

23 Q. Can you point out to the jury what information you
24 were showing me as it relates to this case that you could
25 identify?

1 A. Yes. So the inside of the package is the latent lift
2 cards themselves. I have the case number and -- which
3 identifies to this case. I have two, two lifts, which I'm
4 referring to, two latent lifts collected from the white
5 Infinity, and that's my name right there.

6 Q. You were talking about the lifts that you collected
7 from the inside passenger -- and this is where you were
8 talking about, from this window?

9 A. Yes, that's correct.

10 Q. And what about that lift -- can you describe the
11 actual print that was left behind?

12 A. Yes. So this -- this specific print -- latent lift
13 that -- or latent print that I was able to lift from that
14 vehicle, it was multiple fingers, I believe. I didn't --
15 I wasn't the one to actually identify the latent itself,
16 but either the right or left hand and several fingers on
17 the inside of that window, and they appeared to be I'd
18 say fresh or they appeared to be recent due to the -- the
19 quality of the latent, how much material was located on
20 the -- on the window.

21 Q. And that's because earlier you testified it will be
22 that oil --

23 A. Uh-huh.

24 Q. -- that's there and it appeared to be recent or fresh
25 on that window?

1 A. Yes, due to the quality of the print that was there
2 on-scene.

3 Q. And generally acknowledging there's no way to actually
4 date, for example, when I touch this surface, and this
5 might not be a good surface to collect a lift from, you
6 can't necessarily date it, but the details of observing it
7 suggested to you that it was a fresh and recent print?

8 A. Correct. In this case it would suggest that to me.
9 However, you're correct, that there's no way of actually
10 dating a latent print.

11 Q. And earlier you were -- just so the jury can actually
12 see the lift cards, am I referring to it correctly? These
13 are the lift cards?

14 A. Yes, that's correct.

15 Q. So first dealing with -- can you explain to the jury
16 the information on this card?

17 A. Yes. So starting from the top left, you have the case
18 number that's referenced, the date and time that it was
19 actually collected, the type of offense, which was a
20 homicide, it was collected at this location, the physical
21 address, we have the victim's information, and the print's
22 lifted from, and I put the interior side of the front
23 passenger window. I have a diagram, a quick sketch, that
24 I drew on-scene. As I'm processing the vehicle, I'm
25 collecting multiple types of latent prints and drawing

1 rough hand real quick of where I found and collected the
2 latent print. This is a hand drawn sketch of the inside
3 of that window of that vehicle and that X is where I --
4 where I located and collected that latent print.

5 Q. And then just flipping it over, would you -- do you
6 want to go ahead and explain? Turn it the other way?

7 A. Yes, if you don't mind turning it that way where the
8 arrow is actually pointing up.

9 Q. Okay.

10 A. So if you notice on this card, I put an arrow
11 identifying the -- the direction or the orientation of the
12 latent, how I found it. So this right here would be the
13 edge, the right edge of the window of the glass, and then
14 this is how I would find -- if, say, that arrow is pointing
15 north, it's pointing actually up, that's how I found it on
16 the -- on the vehicle. So that's the inside of the window.
17 Like I said, you have multiple latents, fingers, right
18 there.

19 Q. And then just to do the same thing for -- I believe
20 for the record that would be Lift Number 2 in Exhibit 55.
21 And now we're looking at Lift 1 in Exhibit 55.

22 A. Okay. Again, the case number, it's the same. I've
23 got the date and time that I actually collected that
24 latent, the offense, the location, the physical address of
25 where it was found, the victim's information, and the print

1 was lifted from the top of trunk. So, again, a rough
2 sketch referencing the Infinity. This is the trunk, that's
3 your tag and on top of the trunk was -- where that X is
4 located is where I collected that latent print.

5 Q. I think I'm gonna do this one right this time. The
6 arrow facing up?

7 A. Yes.

8 Q. Okay.

9 A. So the arrow facing up. It's gonna be toward the
10 front of the vehicle and then you have a partial palm print
11 there.

12 Q. And just so it's completely clear, you processed this
13 entire vehicle and you testified that there were tons of --
14 several other prints around it, but in terms of --

15 A. Uh-huh.

16 Q. -- what appeared recent and enough detail to actually
17 collect, these were the two lifts you were able to obtain
18 from this vehicle?

19 A. Yes. Correct. During the processing of vehicles on
20 the scene, there were -- there were more latent prints
21 that were observed, however, the quality of the prints,
22 if it's not of quality, meaning we don't see fine ridge
23 detail in that print, then it's no good, we cannot use it
24 for identification. So after processing the vehicle,
25 collecting several latents and observing them, we found two

1 latents that were of quality that we actually collected as
2 evidence in the end.

3 Q. Also as it relates to this case, I'll ask you if you
4 recognize this. It's been premarked as State's 59.

5 A. I do identify this, yes.

6 Q. Okay. And that's your handwriting?

7 A. Yes, it is.

8 Q. And what exactly are these?

9 A. So this -- this package right here is -- it contains
10 swabs for touch DNA that I collected from a Glock 22 that
11 was located on the scene.

12 Q. Okay.

13 MS. FULLER: Your Honor, I didn't ask any
14 foundational questions, but I believe the defense is
15 stipulating to State's 59, so I move it into evidence
16 at this time.

17 THE COURT: No objection?

18 MR. SPANGLER: Judge, we're stipulating to the
19 chain on that one.

20 THE COURT: All right. Very good. State's 59
21 is in evidence.

22 (State's Exhibit Number 59, swab from a handgun,
23 was admitted into evidence.)

24 BY MS. FULLER:

25 Q. And in looking at the package, and if you need to open

1 it, the date you actually turned this into evidence when
2 you collected the swabs from the gun?

3 A. I'm trying to get a date here.

4 Q. And you can refer to your notes if you need to.

5 A. It should have been December -- let's see if it's on
6 here. It should -- I know that I processed that firearm
7 and submitted it to our Lexington County Sheriff's
8 Department evidence custodian on December 16, 2015.

9 Q. December 16th?

10 A. December 16th of 2015, yes, ma'am.

11 MS. FULLER: Thank you, officer. No further
12 questions.

13 THE COURT: Mr. Spangler.

14 MR. SPANGLER: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SPANGLER:

17 Q. Good morning. Is it Agent Sprinkle?

18 A. U.S. probation officer.

19 Q. Probation officer. I wanted to make sure I got it
20 right. So let's go back, I guess, to the beginning here.
21 You said you were one of -- were there three CSIs on the
22 scene that day?

23 A. Including myself, yes.

24 Q. Including yourself. Okay. What time did you actually
25 get to the scene?

1 A. I arrived -- I was notified of the scene at 4:58 PM
2 and I arrived at 5:52 PM.

3 Q. Okay. Who was already on the scene CSI-wise? Was
4 Investigator Gilland there?

5 A. Yes, CSI Gilland was already on-scene whenever I
6 arrived, he was the lead CSI, and after I arrived, shortly
7 after, CSI David -- David Day arrived as well shortly after
8 I arrived.

9 Q. Okay. And as a -- CSI is a crime scene investigator,
10 right?

11 A. Uh-huh.

12 Q. You're walking around first doing a visual inspection
13 looking for evidence, right?

14 A. Correct.

15 Q. And that's what you did in this case. When you get
16 there, you're looking around seeing what you need to
17 process?

18 A. Correct.

19 Q. I want to talk about a couple of things. When we're
20 dealing with the yard, this is the front yard of 688
21 Bushberry; is that right?

22 A. That's correct.

23 Q. Okay. When you arrived on-scene and are looking in
24 the front yard there, did you see any blood in the front
25 yard on the ground?

1 A. I did not recall seeing any trails of -- of blood or
2 anything -- anything like that. We did have obvious blood
3 where the -- where the victim was located.

4 Q. All right. And maybe I can narrow that down a little
5 bit. Did you see any, I guess, blood trails on the ground
6 leading from the trailer to the car?

7 A. I do not recall seeing any kind of trails of blood,
8 no.

9 Q. Okay. You say you don't recall. That would be
10 something that if you did see it you would photograph it
11 and put it in your report, right?

12 A. Correct.

13 Q. Okay. Do you remember seeing any marks on the ground
14 that looked like someone had crawled on the sand there?

15 A. I did not observe that or notate anything like that,
16 no.

17 Q. Okay. No evidence of that that you can recall?

18 A. No.

19 Q. Okay. Now let's talk about things that you did see.
20 And we went through this with Investigator Gilland, but
21 cell phone-wise, do you remember recovering cell phones
22 from that scene?

23 A. I do not off the top of my head because, like I said,
24 I was there to assist as far as the collection of -- of the
25 items or identification of the items that would have been

1 made by CSI Gilland. I was there assisting wherever I
2 could, so I don't recall a cell phone collected.

3 Q. Okay. You don't recall any cell phones being found?

4 A. I don't recall a cell phone being collected on that
5 scene, no.

6 Q. Do you remember seeing any cell phones there?

7 A. No, I do not.

8 Q. Okay. Now when we're talking about the white
9 Infinity, were there any blood droplets on the white
10 Infinity?

11 A. I do not recall any blood -- I do not recall any blood
12 on the Infinity, no.

13 Q. Okay. Any -- and I've heard the word different ways,
14 blood spatter or splatter, any of that on the side of the
15 Infinity that you could have seen?

16 A. I didn't observe any blood spatter on the -- on the
17 Infinity, no.

18 Q. Okay. And those are things, again, that would be
19 important to your investigation?

20 A. Yes. In any kind of a shooting incident, obviously
21 blood spatter is one thing that we do look for, yes.

22 Q. Okay. But didn't find any in this case on that white
23 Infinity?

24 A. No, not on -- not on the Infinity, no.

25 Q. Okay. Do you recall the shell casings being

1 collected? Is that something you were involved with?

2 A. Yes.

3 Q. Okay. How many shell casings do you remember
4 collecting?

5 A. To be honest, I do not recall.

6 Q. Okay. Do you recall where those shell casings were
7 located?

8 A. We had shell casings that were in the -- in the yard
9 right -- right in that area.

10 Q. Okay. So it's your recollection that there were
11 multiple shell casings in the front there?

12 A. Yes.

13 Q. Okay. How about in the back, shell casings? Do you
14 recall a single shell casing or multiples in the back?

15 A. I do not recall.

16 Q. Okay. But you do remember at least based on your
17 memory that there were multiple shell casings in the front
18 yard?

19 A. Yes.

20 Q. Okay. Do you recall the brand or anything like that
21 of those shell casings?

22 A. I do not.

23 Q. Okay. And that would have been because Investigator
24 Gilland was the one who actually picked those up?

25 A. Correct.

1 Q. Okay. Now let's talk a little bit about the inside of
2 the house. Did you go inside of the house?

3 A. I did.

4 Q. Okay. Do you recall smelling a strong odor of
5 marijuana inside the house?

6 A. I -- I do not recall that, no.

7 Q. Okay.

8 A. I don't remember that.

9 Q. That's not something that sticks out in your memory
10 that you would have put in your report, the strong odor of
11 fresh cut marijuana?

12 A. No, I didn't put that in my report.

13 Q. Okay. So it's your testimony today that you don't
14 recall smelling any marijuana in that house?

15 A. I don't recall that.

16 Q. Now you did find the firearm in the house; is that
17 right?

18 A. Yes.

19 Q. Okay. Where was the firearm located?

20 A. It was located in the left bedroom underneath the bed.

21 Q. Underneath the bed. And we went through it a little
22 bit yesterday, but where under the bed do you recall that
23 firearm being found? Are we talking deep under the bed,
24 like in the middle, on the edge, towards the headboard,
25 based on your memory?

1 A. Based on my memory, we lifted up the mattress and the
2 box springs and I believe it was on the floor underneath
3 toward the -- toward the headboard area of the -- on the
4 ground.

5 Q. Okay. So based on your recollection, you-all lift up
6 the mattress and you look down and you can see the gun
7 there?

8 A. Yes.

9 Q. It's not buried under anything?

10 A. No.

11 Q. Okay. Do you remember seeing any dust on that gun?

12 A. I don't recall that, no.

13 Q. Okay. Because, again, as a CSI that would be
14 something you would put in your report, right?

15 A. Yes.

16 Q. Okay. That gun you recall did not have a magazine in
17 it, right?

18 A. No.

19 Q. Okay. And you're familiar with a Glock semiautomatic
20 pistol, right?

21 A. Yes.

22 Q. They're usually found, if it's been used, it has a
23 magazine in it, right?

24 A. It depends on how the -- the person that held the --
25 used and held the -- the firearm, what they did with it, so

1 that's -- if it was -- if a firearm was just shot and is
2 still in the hands of the individual that just fired the
3 firearm, then, yes, it should have a magazine or at least
4 have a fired -- a bullet in the chamber, but besides that I
5 cannot say what the individual does immediately after the
6 fire -- after discharging the firearm.

7 Q. Okay. I got you on that and maybe this is the better
8 question to ask. Magazines, they don't just fall out of
9 the bottom of guns, do they?

10 A. If they're seated correctly, then no.

11 Q. Somebody actually has to either, on a Glock, hit the
12 magazine release or somehow release the magazine so it
13 drops out?

14 A. Correct.

15 Q. Okay. Do you recall finding a magazine for that Glock
16 anywhere on the scene?

17 A. I don't recall that.

18 Q. Did you-all look for it?

19 A. Absolutely we did.

20 Q. Okay. And there was discussion that -- that every
21 bedroom in the house you-all lifted up the mattress; is
22 that right?

23 A. Yes.

24 Q. Is that typically what you do in a victim's house, you
25 go in and lift up all their mattresses?

1 A. Yes, it is very common whenever we conduct a proper --
2 I'd say conduct a search warrant of a residence involving a
3 case or a scene like this. We base our search off of
4 what information we're given and whenever we're given
5 information that there -- in this case that there was an
6 altercation inside the residence, we're gonna do a thorough
7 search of the whole residence. That means opening drawers,
8 going through items, underneath the -- the couch cushions,
9 underneath the beds. Yes, that's -- that's very common.

10 Q. Okay. And are those things you did in this case?

11 A. Yes.

12 Q. Okay. Opening up cabinets and things like that?

13 A. Yes.

14 Q. Okay.

15 MR. SPANGLER: Judge, just a moment. I need to
16 retrieve one exhibit here.

17 BY MR. SPANGLER:

18 Q. All right. State's 26, do you recognize this
19 photograph?

20 A. I do.

21 Q. This is the kitchen of that residence?

22 A. That's correct.

23 Q. And you said that during you-all's investigation
24 you're hunting around looking for things that might be
25 involved?

1 A. That's correct.

2 Q. And that involved opening up all these cabinets,
3 right?

4 A. That's correct.

5 Q. Okay. And that was something you-all did during the
6 investigation just like flipping the mattresses, you opened
7 up all those cabinets, right?

8 A. Yes.

9 Q. Okay. Now most of what the State talked with you
10 about is fingerprints. This is State's 23. This is the
11 other vehicle that was found there, right? That's a Honda
12 Accord?

13 A. Yes, that's correct.

14 Q. Did you process that vehicle for fingerprints?

15 A. I did.

16 Q. Okay. You actually found fingerprints in that Honda
17 Accord?

18 A. Yes, I found latent prints on that -- on that vehicle
19 as well.

20 Q. And those were good enough to submit for testing?

21 A. Yes.

22 Q. Okay. But the State, they didn't talk with you about
23 those prints when they were just up here, did they?

24 A. No.

25 Q. Okay. They only talked with you about the ones found

1 on the white Infinity, right?

2 A. Yes.

3 Q. Okay. But those are in evidence, those prints you
4 took off of this vehicle?

5 A. Yes, that's correct.

6 Q. Okay. How about prints inside of the house? Did you
7 dust and lift any prints from inside the residence?

8 A. Attempted, yes. Again, visually inspecting and
9 processing, but no latents of value were observed or
10 collected inside the residence.

11 Q. Okay. So you didn't take any lifts from inside,
12 right?

13 A. Processed, but no latents of value were found to
14 collect inside the residence, no.

15 Q. Okay. But it's -- there were prints inside -- correct
16 me if I'm wrong, there were prints inside, but they were
17 smudged, they weren't quality for your latent prints to be
18 taken at least?

19 A. Correct.

20 Q. Okay. It's not like people were wearing gloves and
21 there were no prints?

22 A. There were latent prints found inside the residence.

23 Q. Okay. I'll just finish up here. Just a couple of
24 questions for you. Would it be typical if somebody test
25 drives a vehicle to find their fingerprints in it?

1 A. Yes, that's possible.

2 Q. Okay. Nothing criminal about taking a vehicle on a
3 test drive, is it?

4 A. No.

5 Q. Okay. Is there any way to tell -- I think Ms. Fuller
6 was asking you this -- any way to tell what time those
7 prints got in that white Infinity?

8 A. Unh-unh. No, there's no latent -- there's no way of
9 telling exactly, say, a timestamp for a latent; however,
10 due to the -- the quality of the latent that you observe
11 on the scene that it's possible to tell if it's a, quote
12 unquote, fresh -- fairly recent, fairly fresh latent versus
13 one that's weeks or months or years old.

14 Q. I got you on that. So we're talking -- the one that
15 you found inside the white Infinity you described as a
16 fresh latent print?

17 A. Yes.

18 Q. Okay. Can you tell us if it was left there at 2:00
19 that day, the 26th?

20 A. Unh-unh, I can't tell you exactly what time.

21 Q. Okay. You can't tell us if it was there at 2:00 or
22 4:00, can you?

23 A. No.

24 Q. All we know is that it looked fresh to you?

25 A. Yes.

1 Q. Okay. And you swabbed the gun for DNA. I think you
2 said that.

3 A. Yes.

4 Q. For touch DNA?

5 A. Touch DNA.

6 Q. Okay. Touch DNA is if you touch something, oils, skin
7 particles, whatever, is gonna get on it and you can test
8 for that?

9 A. Correct.

10 Q. And that's something you sent to be tested by the lab,
11 right?

12 A. That's correct.

13 Q. Did you swab anywhere else in the house for touch DNA?

14 A. No.

15 MR. SPANGLER: Just a moment, Your Honor.

16 THE COURT: Yes, sir.

17 MR. SPANGLER: Nothing further, Judge.

18 MS. FULLER: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. FULLER:

21 Q. Now, Officer Sprinkle, you weren't primary CSI on the
22 scene, correct?

23 A. No, I was not.

24 Q. And you weren't first on the scene, correct?

25 A. No, I was not.

1 Q. So are you familiar with the crime scene log in this
2 case?

3 A. I know what the crime scene log is and signed it.

4 Q. Well, what exactly is a crime scene log?

5 A. A crime scene log is once a deputy -- first responding
6 deputy arrives on-scene and establishes a crime scene, a
7 crime has been committed on a scene, on a location, that
8 they establish -- that they may secure it with crime scene
9 tape or secure it by visual or however way a scene is
10 secured, meaning that they control who comes in and out of
11 that location, and they document it through a crime scene
12 log. It's a piece of paper with names, signatures and
13 timestamps showing who enters and leaves that crime scene.

14 Q. So once on -- now when you -- when 9-1-1 is called and
15 law enforcement arrives on-scene, is it in every situation
16 a crime scene log is started?

17 A. No, not -- not every time. No, unh-unh.

18 Q. So when a crime scene log is created, that means there
19 needs to be -- that something's gonna be investigated?

20 A. Absolutely.

21 Q. So once the crime scene log is created, would that
22 suggest to you that the scene is now secured by law
23 enforcement?

24 A. Yes.

25 Q. And so once the scene is secured by law enforcement,

1 no one's coming and going outside of first responders and
2 law enforcement personnel?

3 A. Correct, unless it's something that the lead
4 investigator, they determine, or CSI determines who enters
5 and leaves the crime scene, yes.

6 Q. And so the crime scene log is something that would be
7 part of the case file, something that you would have access
8 to review?

9 A. Yes.

10 Q. Looking at this crime scene log, was the first person
11 logged on-scene at 16:29 or would it be --

12 A. You have --

13 Q. Or what time would be the first person?

14 A. 16:29 is gonna be the earliest time of someone
15 actually establishing that crime scene.

16 Q. Okay. And so once the crime scene's established,
17 you said no one else would come in but first responders
18 and necessary personnel?

19 A. Correct.

20 Q. And so if I told you that there were over -- about
21 thirty people on this crime scene log, that would mean
22 there would be thirty -- approximately thirty law
23 enforcement, fire, EMS people on-scene?

24 A. Correct.

25 Q. But those -- and they would be walking around the

1 crime scene potentially, but Gilland was primary CSI, so he
2 would have controlled the actual processing of the crime
3 scene?

4 A. Yes.

5 Q. The -- from that point, from 16:29, so that means no
6 one would have gone into this vehicle -- so when you talk
7 about recency in seeing it, this vehicle would have been
8 in that position the entire time the crime scene was
9 maintained. Is that a correct statement?

10 A. I'm sorry, can you repeat that?

11 Q. The entire time the crime scene, once it was created
12 and maintained, this vehicle would have been in that
13 position?

14 A. Yes, that's correct.

15 Q. No one would be processing it but CSI?

16 A. That's correct.

17 Q. Is that an accurate statement?

18 A. No one should be -- it's possible. I'd say that
19 vehicle had not been moved and typically the only person
20 that's going to be collecting, moving a piece of evidence
21 or potential evidence, would be CSI unless sometimes they
22 do have the major crimes investigators assist them in their
23 -- in their presence, say, opening a door or looking
24 through obviously with gloves on to preserve evidence,
25 potential evidence, or -- so I can't say if -- in this case

1 if CSI Gilland had an investigator assisting him, but he
2 had us assisting him. It was CSI processing the crime
3 scene.

4 Q. But just -- and it would be no one but people allowed
5 to be on the crime scene, correct?

6 A. Absolutely. Correct.

7 Q. And law enforcement and other people know how
8 important it is to secure a crime scene and not tamper with
9 any evidence, correct?

10 A. Absolutely.

11 Q. So that's -- from that 4:29 time the crime scene log
12 was established, the crime scene would have been secured?

13 A. Yes.

14 Q. Now quite a few things he got into and I just want to
15 make sure we clear up those things, when in your experience
16 -- how long have you been a CSI or your experience as a
17 crime scene investigator?

18 A. At this time or total?

19 Q. Total in your career.

20 A. Three years.

21 Q. And when you arrive on a crime scene and you know a
22 crime scene is established, when it comes to photographing,
23 what is the procedure for photographing the crime scene?

24 A. Photographing the crime scene starts with your far
25 away photos and work your way towards -- typically you're

1 gonna take your photographs far away from the scene, work
2 your way in, outside, 360 around the premises in this case,
3 exterior of the residence and of those vehicles before ever
4 going inside the residence or inside the vehicles and
5 taking further photographs. Once an item of evidence is
6 identified, before collecting you take photographs of those
7 items in their natural unmanipulated positions identifying
8 with a latent print -- I mean, with an ID card and then
9 photographing that before collecting it.

10 Q. So you described the outside and once you go inside
11 the residence, is it also -- is everything in the residence
12 photographed in place how it is when you arrive?

13 A. Correct.

14 Q. So if the first photograph of inside the residence
15 before any evidence markers are put down to collect an
16 item, before you do the zoom out, like the far away photo,
17 then you go into it and then you seize the item, you're
18 taking photos of that stuff --

19 A. Yes.

20 Q. -- if the first photo contains drawers pulled out and
21 cabinet doors open, would that suggest that's how it was
22 when you entered the residence?

23 A. Yes, that's correct.

24 Q. Okay. So in this case -- your report that you wrote
25 in this case was only as it relates to your assigned task,

1 correct --

2 A. Correct.

3 Q. -- because you were assisting. And if I'm looking at
4 the crime scene log correctly, you would have arrived --
5 what time would Gilland have arrived on-scene?

6 A. Okay. He arrived at 17:15, which is 5:15 PM.

7 Q. And what time would you have arrived?

8 A. I have 17:57, which is 5:57 PM.

9 Q. So you would have arrived thirty -- some forty minutes
10 after him?

11 A. Yes.

12 Q. So if he was first on-scene photographing the inside
13 of the residence how it was, if he said that's how it was,
14 that's how -- his recollection and his report would be more
15 accurate in terms of the condition of the inside of the
16 residence?

17 A. Absolutely. I'm referencing that -- that photograph.
18 I'm not saying that that's -- whether that was -- I was
19 not there present at the scene during the -- the initial
20 walkthrough of the residence. By the time I arrived
21 on-scene CSI Gilland had already taken the initial
22 photographs of the interior and exterior of the residence.

23 Q. Okay. I just wanted to clear that up because it
24 wasn't quite clear when defense was questioning you on
25 that. So you were saying in that photograph if you had had

1 to open the cabinets, there would be pictures of the
2 cabinets closed first and then you'd go in and seize that
3 item and you're starting an -- I don't want to call it an
4 aerial view, but a full angle and then you kind of -- I'm
5 zooming in by stepping, and then you would zoom in on the
6 item with your camera?

7 A. Correct.

8 Q. Okay. You also in answering his question you gave
9 a -- I want to say it's an example, and this would be
10 an opportunity to clear that up, but if you received
11 information that there was an altercation in the residence,
12 you were just speaking generally, not specific to this
13 case, in terms of the process of examining the crime scene,
14 it was -- it was in this case, even looking at Gilland's
15 photographs, the house was ransacked, so it would have been
16 necessary to search the residence; is that correct?

17 A. Absolutely. Yes.

18 Q. And it would just be looking for any items relevant to
19 the case. And you've been -- your crime scene experience
20 is three years, in law enforcement even longer, so the
21 process of executing a search warrant is pretty standard,
22 correct?

23 A. Yes.

24 Q. And generally speaking is what you were explaining to
25 defense --

1 A. Correct.

2 Q. -- and not about this case?

3 A. Correct.

4 Q. Because your -- to your knowledge you didn't any have
5 information that there was an altercation in the residence?

6 A. During -- during the processing of the scene --
7 because as you look at the time log, we were there for
8 quite a while. Obviously the case is being investigated
9 by the detectives and they're feeding us information as
10 they obtain any kind of information. So, yes, I do recall
11 that through our investigation, through our time on-scene,
12 that we were told that -- that some sort of an altercation
13 did occur through the residence.

14 Q. So you were told that there was some type of -- what
15 is an altercation?

16 A. Well, I say altercation. Between, say, two or
17 more individuals, whether it be a disagreement or an
18 assault-type situation, something occurred through --
19 through the residence.

20 Q. But you weren't told that the suspects in this case
21 and the victims had anything going on inside the residence?

22 A. No.

23 MR. SPANGLER: Objection. Leading.

24 THE COURT: Sustained.

25 THE WITNESS: And may I clarify something?

1 BY MS. FULLER:

2 Q. Yes, please.

3 A. That we were told that there was potentially.

4 Q. Okay.

5 A. I'm not saying that there was. I'm saying that there
6 was potentially.

7 Q. There wasn't any report from the victims?

8 A. No.

9 Q. Thank you. In looking at -- we got into this
10 yesterday, State's Exhibit 21, there's clearly signs of
11 some type of entry and glass on the ground here?

12 A. Correct.

13 Q. Okay. The -- he also asked you about blood and blood
14 spatter. You've responded to several crime scenes. How
15 many homicides have you responded to in your career? I
16 know this is on the fly, but just roughly. Five, ten?

17 A. No, that I've responded to and either -- probably
18 about twenty to thirty.

19 Q. Okay. And would you agree that every homicide is
20 different when you arrive on-scene?

21 A. Yes.

22 Q. And in terms of the amount of blood found is also
23 different as well?

24 A. Yes. Absolutely.

25 Q. And would you agree that there's different variables

1 that would explain whether or not there's blood or blood
2 spatter found at a scene?

3 A. Yes.

4 Q. And can you tell me whether or not it could be
5 impacted on how someone was shot?

6 A. Yes.

7 Q. Could it be impacted on how far they were away when
8 they were shot?

9 A. Yes.

10 Q. And could it be impacted by how heavy -- the size
11 of the individual, as well as -- in terms of whether or
12 not there's actually gonna be blood spatter? Does the
13 characteristics of the individual being shot impact that?

14 A. Yes. I would say yes. Uh-huh.

15 Q. As well as the caliber of the gun?

16 A. Absolutely. Yes.

17 Q. So there's several different variables that would
18 account for blood spatter, correct?

19 A. Yes, that's correct.

20 Q. And there isn't blood spatter at every crime scene?

21 A. No.

22 Q. Okay. So the absence of blood splatter in this case
23 if someone was shot outside and not in close quarters, not
24 a close range shot where they're pressed against a wall
25 inside a building, the absence of that in this case does

1 not mean that they weren't shot at the residence outside?

2 A. That's correct.

3 MS. FULLER: I beg the Court's indulgence.

4 BY MS. FULLER:

5 Q. Also if you can look at your report. I think the
6 question -- one of the questions you were asked is if you
7 recall collecting shell casings at the scene. Who actually
8 collected the shell casings?

9 A. It should have been CSI Gilland.

10 Q. So if he -- if he in his report notated where each
11 shell casing was recovered, would that be more accurate
12 than your recollection here today?

13 A. Yes, absolutely because that's not something that I --
14 again, as you asked me, my tasks on-scene were not of the
15 collection of the -- of the shell casings, but to assist
16 how I could and also primarily to process these vehicles.

17 Q. So if -- you're familiar with when items are
18 collected, particularly shell casings, when a diagram is
19 created or notes are taken, raw notes at the scene, if it
20 says collected a shell casing at the back of the residence
21 in the report, would that be standard protocol if you were
22 collecting?

23 A. Yes. Absolutely.

24 Q. And you would rely on your notes if you came to court?

25 A. Correct.

1 Q. Because they would be more accurate because they're
2 your notes?

3 A. Yes.

4 Q. So if he testified to finding shell casings at the
5 back of the residence from his notes, would that be more
6 accurate than your recollection here today?

7 MR. SPANGLER: Objection. Leading.

8 THE COURT: All right. Sustained.

9 MS. FULLER: Thank you.

10 BY MS. FULLER:

11 Q. Can you tell me whether or not that would be more
12 accurate than your recollection here today?

13 MR. SPANGLER: Objection. It's the same question,
14 Your Honor.

15 THE COURT: I think we've covered this road. Do
16 you have any other questions of this gentleman? I
17 mean --

18 MS. FULLER: I just want to clear up the shell
19 casings, Your Honor. I'm not sure --

20 THE COURT: The objection's sustained. Let's move
21 on, please.

22 MS. FULLER: Can I clear up the shell casings?

23 THE COURT: I think it's crystal clear. Please
24 move on.

25 MS. FULLER: Okay. All right. If it is, then it

1 is.

2 Thank you, Your Honor. No further questions.

3 THE COURT: Anything?

4 MR. SPANGLER: Just a brief recross, Your Honor.

5 THE COURT: Go ahead.

6 RE CROSS EXAMINATION

7 BY MR. SPANGLER:

8 Q. Mr. Sprinkle, I think you went through a lot of things
9 that we had talked about and Ms. Fuller just came up and
10 talked with you about them again. Now your testimony on
11 cross-examination was that you located -- or you saw
12 multiple shell casings in the front yard; is that right?

13 A. From what I recall. I believe that I saw. I recall
14 seeing shell casings in the front yard.

15 Q. Okay. Shell casings. That would indicate multiple
16 shell casings?

17 A. I -- I know of one, I believe, that there -- from what
18 I recall, there were. Again, it is not something that I
19 took notes on-scene, it's not something that I have in my
20 report, in my CSI report, because, again, that's not what
21 my duty was on the scene.

22 Q. Okay. And I'm not trying to beat you up or give you a
23 hard time on it, but your testimony on cross-examination
24 was that you observed multiple shell casings in the front
25 yard. Did I understand that right?

1 A. From what I recall.

2 Q. From what you recall. Okay. Now you-all got into
3 blood spatter a little bit. Are you familiar with blood
4 spatter?

5 A. Yes.

6 Q. Okay. If someone is shot close range in the back of
7 the head, typically will you find blood spatter?

8 A. It all depends on the environment, the situation.
9 There's a lot of factors. If you want to -- I'd need more
10 details than that to say yes or no if there's gonna be
11 blood spatter.

12 Q. Okay. But you could find it?

13 A. Yes. That's possible.

14 Q. Okay. And blood spatter, those are droplets of blood
15 flying out from the side of the -- wherever a person is
16 shot?

17 A. Yes, you have blow back, which is blood that is --
18 comes back from the entrance and you have blood spatter
19 from the exit wound if there's an exit wound.

20 Q. Okay. Now you-all talked about the cabinets a little
21 bit inside the house. If I understand your testimony on
22 cross-examination right, you were there when they were
23 flipping the mattresses?

24 A. Yes.

25 Q. Okay. So you were inside the house when that was

1 taking place?

2 A. Correct.

3 Q. And your testimony on cross-examination was that you
4 were there when they opened up the cabinets?

5 A. I know that we were searching through the residence.
6 I didn't -- I did not open any cabinets. I know that.
7 What I'm saying is I know that during -- during the search
8 of the house and -- we opened up cabinets. I know that I
9 opened cabinets in, say, the bathroom. I was not in the
10 kitchen whenever they were searching through the kitchen.

11 Q. Okay. But you were there when the house was being, I
12 guess, inventoried? Is that the right word for it?

13 A. Yes.

14 Q. Okay.

15 A. I wouldn't quite call it an inventory because we
16 didn't take note of every item or possession in the
17 residence, but we were searching the residence for
18 potential evidence.

19 Q. Okay. And, lastly, when you were talking about an
20 altercation inside the house, is that what you said,
21 there was an altercation that you learned of inside the
22 residence?

23 A. That -- I said that there was a -- what we were
24 discussing as a CSI and what information that CSI Gilland
25 had when we were discussing on-scene is that whether there

1 was a possible altercation that -- in the residence or not
2 because of what we were observing on-scene.

3 Q. Okay. Let's look at State's 21. They showed this
4 to you on redirect examination. That is a kicked or a
5 shattered glass door; is that right?

6 A. Yes. I'd say it's a broken glass door that's
7 shattered, yes.

8 Q. Okay. Did you locate any blood droplets around this
9 door?

10 A. I do not recall.

11 Q. Okay. You would agree with me that if someone smashes
12 through a door sometimes they can get a cut on them?

13 A. Yes. Absolutely.

14 Q. Okay. But you don't recall finding any sort of blood
15 in that area?

16 A. Actually I believe that there was -- again, I would
17 have to reference the -- the primary CSI's report. From
18 my recollection I believe that there was right on one of
19 the -- the window panels there or the curtain panels,
20 that there was a possible reddish-brown stain from my
21 recollection.

22 Q. Okay. And if you don't recall, that's fine. You
23 can just tell me you don't recall, but -- so it is your
24 recollection here today that there was blood in the back
25 of the residence, too?

1 A. Inside the residence?

2 Q. On the back -- you're talking about on State's 21,
3 this rear door, is it your testimony that there was a
4 reddish stain you believed was blood back there?

5 A. No.

6 MS. FULLER: Objection, Your Honor.

7 THE COURT: All right. What's your objection?

8 MS. FULLER: One, asked and answered. And, two,
9 he's not an expert. He can't say whether there was blood
10 anywhere.

11 THE COURT: I understand. I think we've gotten a
12 little bit off track. This witness's primary purpose in
13 being called was about the prints and I think we've really
14 gotten pretty far off track, so can we please move along?
15 I'm trying to keep this case moving, all right?

16 MR. SPANGLER: We certainly can, Judge.

17 THE COURT: Thanks.

18 MR. SPANGLER: No further questions at this time.

19 THE COURT: Thank you, sir. You can step down.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Call your next witness, please.

23 MS. FULLER: Thank you, Your Honor. The State
24 calls Sammy Haftoglou.

25 (Whereupon, Seraphim Haftoglou was duly sworn by

1 the Clerk of Court.)

2 THE CLERK: Once you're seated state your full
3 name, spelling your last.

4 THE WITNESS: My name is Seraphim Haftoglou,
5 H-A-F-T-O-G-L-O-U.

6 SERAPHIM HAFTOGLOU,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. FULLER:

10 Q. Is it okay if I call you Sammy?

11 A. Yeah.

12 Q. Okay. How do you pronounce your last name?

13 A. It's Haf-to-glou.

14 Q. Haftoglou. And where are you currently employed?

15 A. I work for the South Carolina Law Enforcement
16 Division, also known as SLED.

17 Q. And what exactly do you do there?

18 A. I am the supervisor of our Automated Fingerprint
19 Identification System, also known as AFIS.

20 Q. Can you explain to the jury what exactly is that?

21 A. Yes. So our system stores all criminal and applicant
22 prints that. Our applicant prints has a state statute that
23 allows us to store the prints into our system. The
24 criminal side creates a criminal record in the state system
25 to identify.

1 Q. And are there also civil prints stored in there?

2 A. Yes, we do have civil prints as long as there's a
3 state statute that allows us to store them.

4 Q. So is it safe to say AFIS stores the automated
5 fingerprint -- the AFIS system stores fingerprints for the
6 state of South Carolina?

7 A. Yes.

8 Q. And what exactly are your job responsibilities?

9 A. To maintain the system. We go through updates
10 whenever we need to get a better system. We have to update
11 ever so often when our memory and RAM's going down to make
12 sure that when agencies are connected to us we have the
13 most --

14 MR. FLOYD: Judge, may we -- may we approach a
15 moment?

16 (Proceedings held at the bench; not reported.)

17 THE COURT: Please continue, Solicitor.

18 MS. FULLER: Thank you.

19 BY MS. FULLER:

20 Q. And how long have you been in this position?

21 A. I've been the supervisor seven years now.

22 Q. And as supervisor, would you be someone who is charged
23 with the care and custody of prints in the state of South
24 Carolina?

25 A. Yes, as the supervisor I'm the keeper of the records.

1 Q. Okay. And can you explain to the jury -- I know it
2 was new when I first started, but can you explain to the
3 jury how exactly are prints entered into the system? Are
4 they -- what I'm saying, are they physical prints or are
5 they scanned into a computer system?

6 A. The majority of our prints are done at a machine
7 offsite at the detention center or at a -- or a vendor for
8 applicant purposes, there's a Live Scan machine that's set
9 up there. They electronically take the print -- images
10 from prints and submit them to us and we store them as they
11 submit it to us based on if it's criminal or applicant and
12 we process them certain ways.

13 Q. Okay. And how exactly is the system maintained?

14 A. Well, maintained -- we have a security team -- or a
15 security system at SLED, like an IT department, that they
16 handle the security part. We maintain the prints and make
17 sure everything's up to date.

18 Q. And so are -- and then also are these prints, the way
19 they're maintained, they're submitted by Live Scan, but how
20 they're maintained are they also authorized by statute?

21 A. So, yes. So when you're arrested, it's based on state
22 statute why you're being arrested. If it's an applicant
23 print, there must be a state statute --

24 MR. FLOYD: Your Honor, please note our continuing
25 objection.

1 THE COURT: All right. Your objection's sustained.
2 I think that we've covered enough of this. If you want
3 to get to perhaps the meat of what this witness is gonna
4 testify to, please.

5 MS. FULLER: Yes, Your Honor.

6 BY MS. FULLER:

7 Q. I'm gonna hand you what's been marked as State's 60,
8 and ask if you recognize this?

9 A. Yes, I do.

10 Q. And how do you recognize it?

11 A. It's a fingerprint card from our system.

12 Q. Okay. And is this fingerprint card stored in the
13 normal course of business?

14 A. Yes, it was a card that was submitted electronically
15 to us.

16 Q. And so is this an original copy so to speak?

17 A. Yes.

18 MS. FULLER: Your Honor, at this time the State
19 seeks to introduce State's 60 into evidence.

20 THE COURT: State's 60 --

21 MR. FLOYD: Your Honor, may we approach?

22 THE COURT: Sure.

23 (Proceedings held at the bench; not reported.)

24 MR. FLOYD: No objection, Your Honor.

25 THE COURT: All right. Without objection,

1 State's 60 is in evidence.

2 (State's Exhibit Number 60, a fingerprint card,
3 was admitted into evidence.)

4 BY MS. FULLER:

5 Q. Mr. Haftoglou, looking at -- and I apologize for
6 messing this up -- looking at State's 60, can you tell when
7 this Live Scan was actually taken?

8 A. It was taken on July 25, 2016.

9 Q. And do you know where?

10 A. It came from Lexington County.

11 Q. And can you tell whether or not it was collected as it
12 relates to this case?

13 A. I believe it is.

14 Q. And just so the jury can see it, looking at
15 State's 60, these would be the Live Scans taken as it
16 relates to this case that were stored in the AFIS system?

17 A. Yes.

18 Q. Okay. And who do these prints belong to?

19 A. Can I see the card so I can read it better?

20 Q. (Handing.)

21 A. They belong to a Terry Renee McClure.

22 Q. Okay.

23 MS. FULLER: Thank you. No further questions.

24 THE COURT: Cross? Anything?

25 MR. FLOYD: No questions, Your Honor.

1 THE COURT: Mr. Haftoglou, thank you for coming.
2 Take care.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: Call your next witness, please.

6 MS. FULLER: Thank you, Your Honor.

7 The State calls James Hickman.

8 (Whereupon, James L. Hickman was duly sworn by the
9 Clerk of Court.)

10 THE CLERK: Have a seat, please. Once you're
11 seated state your name, spelling your last.

12 THE WITNESS: It's James L. Hickman, H-I-C-K-M-A-N.

13 JAMES L. HICKMAN,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. FULLER:

17 Q. Thank you, Mr. Hickman. Where are you currently
18 employed?

19 A. Lexington County Sheriff's Department.

20 Q. And what exactly is your position there?

21 A. I'm a latent print examiner.

22 Q. And how long have you been in that position?

23 A. I've been in that position for the last seven years.

24 Q. Okay. And how long have you examined latent prints?

25 A. Somewhere close to forty-two years I believe it is.

1 Q. Can you go ahead and explain to the jury your
2 educational training and your background as it relates to
3 latent prints?

4 A. Yes, ma'am. I received my basic law enforcement at
5 the academy. That's just basic law enforcement class. I
6 graduated from Midlands Tech with a degree in institute --
7 I mean, an associate's degree in police administration. I
8 completed a fingerprint identification course with the
9 South Carolina Law Enforcement Academy. I completed a
10 basic latent print comparison class with the academy. I've
11 completed an advanced latent print comparison with the
12 academy. I've also completed an advanced administration
13 latent print examination course with the FBI at Quantico,
14 Virginia. I also graduated from the Institute of Applied
15 Science with a criminology degree. I'm a certified AFIS
16 operator through SLED. I teach the -- at the sheriff's
17 department, I teach all the employees there how to lift
18 latent prints there when they come into work. I also
19 teach latent prints with the Citizens Academy and I'm also
20 in the process of teaching our crime scene officers how to
21 identify latent prints. And I've testified probably nine
22 times in court as a latent examiner.

23 Q. Thank you.

24 MS. FULLER: Your Honor, at this time the State
25 would like to offer James Hickman as an expert in latent

1 examination.

2 MR. SPANGLER: No objection, Judge.

3 THE COURT: All right.

4 Ladies and gentlemen, in this case the parties
5 agree that Mr. Hickman is an expert in the field of
6 latent print examination. Normally when witnesses
7 testify, they have to testify about something that they
8 observed with their senses and they can't give opinion
9 testimony. An exception to this rule though exists for
10 experts in some science or field. They can give opinion
11 testimony in that area that you can use as you deem
12 appropriate. So Mr. Hickman may give expert opinion
13 testimony in that -- in the field of latent prints.

14 Ms. Fuller, continue, please.

15 MS. FULLER: Thank you, Your Honor.

16 BY MS. FULLER:

17 Q. Can you explain to the jury -- they've heard it a
18 little bit, but can you explain to them what exactly are
19 latent prints?

20 A. Latent prints -- we have ridges on our fingertips. If
21 you've seen your kids and you as kid had put muddy and
22 dirty prints everywhere and mom's always hollered at you,
23 if you look at those, you'll see a ridge formation on
24 there. This is where our sweat pores come out and you
25 sweat out of those. When you touch something, it depends

1 on how much sweat and oil you've got on your hands, you'll
2 leave an image there. This image is a latent print and
3 that's what we lift up.

4 Q. And also explain to them how you -- how do you go
5 about your examination? What is a latent print
6 examination?

7 A. Okay. When I get a latent print out of evidence or if
8 somebody gives it to me, I'll look at that latent print. I
9 will analyze that latent print to determine if it's a good
10 quality or, you know, if there's anything there. I look at
11 it, identify it and then if I have a suspect or they give
12 me reason or someone to compare it to, I will set them down
13 side by side and look at them and then analyze them. I use
14 the ACE-V system, which is I will analyze it, compare it,
15 evaluate it and bring it on in that way.

16 Q. And is that what you do in each and every case?

17 A. Yes, ma'am.

18 Q. Why is fingerprint evidence significant?

19 A. Fingerprint evidence has been around a long time. It
20 is the most -- whenever someone's at a crime scene or
21 anywhere and they leave a print, it's definite proof that
22 they were there. There's no way to say that you weren't
23 there. You had to be there, you know, and touch that
24 object that the fingerprint was on. It's the most dynamic
25 piece of evidence that I know.

1 Q. Is it reliable?

2 A. Yes, ma'am.

3 Q. Can more than one person have the same fingerprint?

4 A. No, ma'am.

5 Q. And as that compares to DNA, for example, would you --
6 I know you've been doing this for forty years so you might
7 be biased, but would you say fingerprint evidence is
8 stronger than DNA evidence?

9 A. Yes, ma'am. You can take, for example, identical
10 twins. Identical twins have the same DNA. They do not
11 have the same fingerprints.

12 Q. So in your experience if you examine a case and
13 identify someone's fingerprint, you would be a hundred
14 percent positive that that fingerprint from the scene
15 belonged to that individual if you made an identification?

16 A. Yes, ma'am.

17 Q. That there's no one else it could be?

18 A. No, ma'am.

19 Q. So I want to show you what's been entered into
20 evidence as State's Exhibit 60 and ask you if you recognize
21 it?

22 A. Yes, ma'am, I do.

23 Q. And how do you recognize it?

24 A. The envelope itself carries some writing that I put on
25 there. I recognize my handwriting. The two cards on the

1 inside has my initials and the date that I received it.

2 Each one of them.

3 Q. Okay. So in this case you received this item and --
4 and did a latent print examination on it?

5 A. Yes, ma'am.

6 Q. In this particular case, did you return as it relates
7 to these lifts any positive results or were you able to
8 make an identification?

9 A. Yes, ma'am.

10 Q. Which item were you able to make an identification on?

11 A. Item Number 2.

12 Q. Were you able to make one at all on Item Number 1?

13 A. No, ma'am.

14 Q. And what factors played into that?

15 A. On Number 1?

16 Q. Yes.

17 A. Number 1, the rolled or the known prints that I
18 received wasn't of good quality for me to make an
19 identification.

20 Q. What goes into the quality of a print? Like what are
21 you looking for in terms of the quality for it to be enough
22 for you to make an identification?

23 A. I'm basically looking at the formation, the ridges,
24 and taking -- the ridges, what I'm referring to, is if you
25 look at your fingers, you'll see the raised portion,

1 they're ridges on your fingers, and then the portion in
2 between the ridges are the furrows. So the raised portions
3 leave a pattern where you'll be able to see it. The
4 quality of these prints, can I see them, are they good and
5 sharp, are they dull or bright, do they flow in the same
6 direction, in a direction that I can see, can I determine
7 that, and in fingerprints we classify them as three
8 different classifications and can I identify those
9 classifications at all.

10 Q. As it relates to this case, I know back in 2016 you
11 made an identification?

12 A. Yes, ma'am.

13 Q. And in preparing for this case, for this trial now in
14 2019, did you process it again?

15 A. Yes, ma'am.

16 Q. And were you able to make the same identification?

17 A. Yes, ma'am.

18 Q. So we'll just refer to the September 13, 2019. That
19 was the date of your report?

20 A. Yes, ma'am.

21 Q. And regarding Lift Number 2, that's the same one you
22 made an identification on back in 2016 as well?

23 A. Yes, ma'am.

24 Q. We had some testimony about the other side of this
25 card. When you receive it, what is your process in terms

1 of using that card to make a comparison? How do you work
2 with that lift?

3 A. Okay. When I receive the card, the first thing I do
4 is put my initials and the date I received it on the back
5 or in some place on it and then I'll turn it over and, like
6 I said, I'll analyze it and determine if it's good quality
7 and then I'll take the known print and through a loop I
8 will set it down and compare it to the known print. There
9 will be a side by side comparison.

10 Q. For the purposes of court here today, did you prepare
11 a PowerPoint to show the jury?

12 A. Yes, ma'am.

13 Q. Okay. We're gonna go ahead and connect that and
14 you'll be able to explain to the jury how you made the one
15 to one comparison in this case.

16 A. Yes, ma'am.

17 Q. If you could explain to the jury how you made a
18 comparison in this case.

19 A. Okay. I'll start off with this slide. The first
20 slide is just my name and -- and what I've done with it,
21 and let's see if I can -- no, not that one.

22 Q. It's the top button.

23 A. That one. Okay. Excuse me. And then I -- I take a
24 photograph of each one, the known print and the unknown
25 print, and this -- well, the one on the left says known.

1 That is the known print that I look at and then I put
2 the unknown on the other side and then we'll start -- we
3 identify them in what they call now minutia points, which
4 would be --

5 Q. I apologize. Are you trying to hit the laser?

6 A. Yes, ma'am.

7 Q. On this one it's --

8 A. I don't think you can see it.

9 Q. It's the top button.

10 Okay. This one works. There you go.

11 A. Okay.

12 Q. I apologize. Thank you.

13 So you were saying minutia?

14 A. Yes, ma'am. Minutia points are what we call
15 bifurcations or where the ridge is forked, ridge endings,
16 little islands and things like these, these are identified
17 points of interest to me.

18 We'll start here on the known print. You'll see I've
19 got it labeled Number 1 and if you look real close, you
20 can come over and you will find -- see, there is a ridge
21 bifurcation there. This is known, so I know there's a
22 bifurcation there. Then if you go over to the latent
23 print, the unknown, you'll see that there's a bifurcation
24 in the same location.

25 Now we'll go ahead and go to Number 2 and if you'll

1 count five ridges down from Number 1, you'll see a ridge
2 ending. Now the same thing on the latent print. If you
3 go down -- five ridges down, you'll find the same ridge
4 ending.

5 Now Number 3 you'll come across and you'll count
6 six ridges to the right and you'll find a bifurcation or a
7 forking of the ridges where they fork. On the unknown, you
8 go in the same location six ridges down and to the right is
9 a bifurcation.

10 Now Point Number 4 is a ridge ending. You'll come
11 down four ridges to the left and down to the ridge ending.
12 You go over to the latent print, you'll see the same thing.
13 You count the ridges down, four ridges to the left and down
14 to the ridge ending.

15 Now Identification Point Number 5, you'll go ten
16 ridges down and to the right and you'll find another ridge
17 ending. If you look over on the unknown and it's in the
18 same location. Ten ridges down from Number 4 and to the
19 right you'll find a ridge ending.

20 Now Point Number 6, you'll go five ridges up to the
21 ridge ending. You count five ridges up and you'll find a
22 ridge ending. Now the latent print, the same thing. You
23 count five ridges up and there's a ridge ending there.

24 And Number 7 is one ridge to the left and up to a
25 bifurcation. You go one up and it's a bifurcation there.

1 Number 7 on the latent print is the same thing.

2 Number 8 is a bifurcation. You'll count one ridge to
3 the left and up and you'll see the bifurcation and on the
4 latent print you'll go one ridge up and to the left and
5 you'll see it again. And that makes the identification.

6 Q. So in looking at this, the latent on the right would
7 be the Item 2 that we just looked at on the overhead
8 projector, and that known print on the left, who does that
9 belong to?

10 A. That belong to Terry Renee McClure. I believe I
11 pronounced that correctly.

12 Q. Terry Renee McClure?

13 A. Yes, ma'am.

14 Q. So I'm gonna show you State's 60 and ask you do you
15 recognize that?

16 A. Yes, ma'am.

17 Q. And would this be the fingerprint card that you used
18 to obtain the known print?

19 A. Yes, ma'am.

20 Q. And in looking at the fingerprint card -- looking at
21 the fingerprint card, which finger did you make the
22 identification on?

23 A. It was the left middle finger.

24 Q. And can you point to it?

25 A. So it would be --

1 Q. Can you use the laser printer and point to it?

2 A. It would be Finger Number 8, which is this finger
3 here.

4 Q. So from Terry McClure's fingerprint card, Lift
5 Number 8, looking at the lift, what latent did you use to
6 compare?

7 A. This one.

8 Q. So what position -- we had testimony that the lift,
9 this is up, that that's where it was collected. I see
10 that there's other lifts on there. Were you able to make
11 an identifications on those?

12 A. No, ma'am. Those were of no quality.

13 Q. And what position can you tell his hand -- this would
14 have been his left hand -- would have been in on the
15 surface? We know that this was lifted from -- collected
16 from the interior passenger front door.

17 A. If you would take the card, see this looks like a gap
18 there where there's nothing, this would be the first crease
19 on your finger. If it was right up under your finger, it
20 would be the first crease here. So if you turn this
21 towards this area here, in other words, rotate it up, it
22 would be in the same relative position as this one.

23 Q. Is that what you mean?

24 A. Yes, ma'am. You'll see the -- the crease here, this
25 is that same crease across here, and this would be the

1 tip of the finger here as versus this is the tip on the
2 fingerprint card. This would be the tip on the latent
3 print card.

4 Q. Do you have any doubt in your mind as to your expert
5 opinion here today?

6 A. No, ma'am.

7 Q. So this lift right here belongs to Terry McClure?

8 A. Yes, ma'am.

9 MS. FULLER: No further questions at this time.

10 THE COURT: Cross?

11 MR. SPANGLER: Yes, Judge.

12 CROSS-EXAMINATION

13 BY MR. SPANGLER:

14 Q. Good morning, Mr. Hickman. This is the -- what you
15 were testifying, these are from Terry McClure; is that
16 right?

17 A. Yes, sir.

18 Q. Okay. And that's all the State talked with you about
19 during its direct examination is this test you did on these
20 prints as it relates to Terry McClure, right?

21 A. Yes, sir.

22 Q. Okay. That was two sets of prints that they talked
23 with you about; one from the trunk of the car, one from the
24 interior window of the car?

25 A. I don't know. I can't answer your question unless I

1 look at the back of the card itself. I don't know where
2 they came from.

3 Q. Could I -- so let's look at the cards then. These are
4 the two that the State was talking with you about. One is
5 from window of the car; is that right?

6 A. Yes, sir.

7 Q. And then the top one is from the trunk of the car,
8 right?

9 A. Yes, sir.

10 Q. Okay. These are two latent prints?

11 A. Yes, sir.

12 Q. Two lifts that were done at the scene?

13 A. Two lifts, yes, sir.

14 Q. Okay. But you looked at a lot more than two prints
15 that were found, right?

16 A. Yes, sir.

17 Q. Actually the State gave you ten fingerprint lifts to
18 look at.

19 A. On the first case, yes, sir.

20 Q. Okay. Here in court today they only showed you those
21 two prints, right?

22 A. Yes, sir.

23 Q. Okay. Now let's talk about the eight other
24 fingerprints that you looked at. You didn't identify any
25 of those as belonging to Terry McClure, did you?

1 A. No, sir.

2 Q. In fact, you identified those prints as belonging
3 to --

4 MS. FULLER: Objection, Your Honor.

5 THE COURT: What's the objection?

6 MS. FULLER: Can we approach?

7 THE COURT: Sure.

8 (Proceedings held at the bench; not reported.)

9 THE COURT: Continue.

10 MR. SPANGLER: All right. Thank you, Judge.

11 BY MR. SPANGLER:

12 Q. All right. So I think, Mr. Hickman, where we stopped
13 off was there were eight other fingerprints that you
14 tested; was that right?

15 A. Yes, sir.

16 Q. Okay. Some of those fingerprints came back to people
17 that were not Terry McClure; is that right?

18 A. Yes, sir.

19 Q. Okay. One of those people went by the name of
20 Dominique Duckson, right?

21 A. Yes, sir.

22 Q. Okay. That print was found at the scene and that's
23 why you processed and tested it for this case?

24 A. Yes, sir.

25 Q. Okay. Another fingerprint you found belonged to

1 someone named Rashawn Gatson?

2 A. Yes, sir.

3 Q. Okay. Again, that was found at the scene, 688

4 Bushberry, and tested in relation to this case?

5 A. Now where it was found at, I'm not sure, but, yes,
6 sir, that's one I tested.

7 Q. As a part of this case?

8 A. As a part of this case. Yes, sir.

9 Q. And that one belonged to Rashawn Gatson?

10 A. Yes, sir.

11 Q. Okay. Now the other one that you found came back to,
12 again, somebody not Terry McClure, somebody named Travarius
13 Pugh?

14 A. Yes, sir.

15 Q. Okay. Now the State, they didn't talk with you about
16 those fingerprints during your direct examination, did
17 they?

18 A. No, sir.

19 Q. They didn't show you the latent print cards that you
20 had to do those comparisons, right?

21 A. No, sir.

22 Q. And they certainly didn't ask you to do a PowerPoint
23 for those prints?

24 A. No, sir.

25 MR. SPANGLER: Thank you. Nothing further, Judge.

1 THE COURT: Redirect?

2 MS. FULLER: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. FULLER:

5 Q. Looking at -- it's a little misleading what they're
6 asking you.

7 MR. FLOYD: Objection, Your Honor.

8 THE COURT: Sustained. Please -- ladies and
9 gentlemen, please disregard that characterization of
10 counsel --

11 MS. FULLER: I apologize.

12 THE COURT: -- as far as being misleading, okay?
13 That's inappropriate. Ask him a question, please.

14 MS. FULLER: I apologize, Your Honor.

15 BY MS. FULLER:

16 Q. Looking at State's Exhibit 55, that's what you were --
17 what we were asking about on direct, correct?

18 A. Yes, ma'am.

19 Q. And these lifts were from the white Infinity?

20 A. Yes, ma'am.

21 Q. In your notes, and I'll direct you there, looking at
22 the other list in this case, were any of the other ones
23 from the white Infinity?

24 A. No, ma'am. Just Lifts 1 and 2.

25 Q. So as it relates to the white Infinity, you didn't

1 examine any other prints?

2 A. No, ma'am.

3 Q. As relates to the white Infinity.

4 A. Just Lifts 1 and 2 was the only ones.

5 Q. Those other prints that you examined were from -- do
6 you know where exactly at the residence they were from?

7 From your notes.

8 A. They were from another car. I don't --

9 Q. Okay. Do you know whether or not they were from the
10 Honda that was parked there from your notes?

11 A. I think so, yes, ma'am.

12 Q. Okay. And as it pertains to the other report that you
13 did in terms of that vehicle, is there any way to date or
14 age the print at all?

15 A. No, ma'am.

16 Q. And we know the same for this, for the white Infinity,
17 right? There's no way to actually date or age it, but you
18 were able to make a comparison as it relates to the white
19 Infinity?

20 A. Yes, ma'am.

21 Q. And then just for identification purposes, I'll show
22 you State's 62 and ask you do you recognize that?

23 A. Yes, ma'am, I do.

24 Q. And on the evidence envelope, do you see specifically
25 the vehicle that these were collected from?

1 A. Yes, ma'am.

2 Q. And where was it?

3 A. A silver Honda.

4 Q. Okay. So it wasn't inside the residence or at the
5 residence, it was in a vehicle?

6 A. Yes, ma'am.

7 Q. As it relates to this case and not the white Infinity?

8 A. Yes, ma'am.

9 MS. FULLER: No further questions.

10 THE COURT: Any recross?

11 MR. SPANGLER: No recross, Judge.

12 THE COURT: Thank you, sir. Thank you very much
13 for coming. You're free to go.

14 THE WITNESS: Yes, sir.

15 (Witness excused.)

16 THE COURT: Ladies and gentlemen, we're gonna go
17 ahead and take the midmorning break. I may in an effort
18 to keep us from having to waste time consult with the
19 clerk about possibly letting you-all order lunch here
20 today and have it delivered here.

21 It's usually Jimmy Johns is what we get?

22 THE CLERK: Yes, sir.

23 THE COURT: Delicious. Adjourn to the back for a
24 moment and we'll see if that works out. Don't discuss
25 the case yet. Make yourselves comfortable. We'll be

1 at ease for about fifteen minutes, okay? Thank you.

2 (Whereupon, the jury retires to the jury room at
3 11:20 AM.)

4 THE COURT: All right. Before we go off the
5 record, the record will reflect that during the
6 testimony of Mr. Haftoglou, one of the sidebars that
7 we had, Mr. Floyd brought up the potential for -- or
8 mentioned that he would move for a mistrial because the
9 witness was explaining the manner in which prints are
10 gathered and logged and cataloged down at SLED. At the
11 sidebar I asked the solicitor to simply, you know, show
12 the card that was taken at the time of the Defendant's
13 arrest to the witness and deal with it that way so that
14 there was no implication that the matching of the prints
15 was done based on some prior arrest record of Mr. McClure.

16 I think that's been clarified. The witness, I
17 believe, was generally speaking about the manner in
18 which they collect prints as opposed to suggesting that
19 the Defendant in this case his prints were compared
20 from a prior arrest against the prints that were found
21 at this scene.

22 Did you still desire to move for a mistrial?

23 MR. FLOYD: Yes, Your Honor. There's no reason
24 for the SLED guy to even take the stand. The card was
25 collected by Lexington County, the card was analyzed by

1 Lexington County, so the only real reason to have the
2 SLED guy on the stand was for him to testify that the
3 cards are kept for criminals, which would imply that
4 Mr. McClure was a criminal. And, in fact, the card
5 they actually used was when he was just a suspect.

6 THE COURT: Okay. Well, I think that the only
7 testimony that's been introduced, and I understand
8 your point, but at the same time I think it's probably
9 general knowledge that SLED would maintain records of
10 this nature when they're collected at least inside this
11 state. And, again, the only testimony that I heard
12 relates to the fingerprint card taken from Mr. McClure
13 at his arrest as opposed to some other prior arrest.

14 Did you want to speak to that, Mr. Graham?

15 MR. GRAHAM: I can speak to whatever Your Honor
16 wants me to.

17 THE COURT: Well, you stood. I figured you wanted
18 to chime in or Ms. Fuller maybe or whatever.

19 MR. GRAHAM: My understanding was that they weren't
20 gonna stipulate to anything, so that was a necessary
21 witness. It was scanned in at Lexington County, it was
22 not stored at Lexington County.

23 THE COURT: Oh, I see.

24 MR. GRAHAM: The only person in the state of South
25 Carolina that can put that card in was Sammy.

1 THE COURT: I see.

2 MR. GRAHAM: If we would have used another card,
3 it would have been from a prior arrest and we would have
4 had to bring people from California for that card and
5 they wouldn't stipulate to it. We do -- for both myself
6 and my co-counsel, I resent the insinuation or the
7 accusation that the only reason we put him up was to get
8 the fact that he's a criminal out. We didn't do that.

9 THE COURT: All right. Fair enough.

10 I think his motion for a mistrial was maybe out of
11 concern that we were about to get into testimony about
12 the Defendant's prior fingerprint cards coming out of
13 California or something to that effect. Either way, a
14 mistrial is obviously not warranted under these
15 circumstances.

16 MR. FLOYD: Thank you, Your Honor.

17 THE COURT: We'll be at ease for about ten,
18 fifteen minutes or so.

19 MS. FULLER: May I put something on the record?
20 I do need to recall Mr. Hickman. I forgot to move in
21 the exhibit.

22 THE COURT: Which one?

23 MS. FULLER: The -- because it's a PowerPoint, I
24 needed to actually move this in, and I didn't.

25 THE COURT: Any objection to that just coming in

1 without necessarily recalling that witness?

2 MR. SPANGLER: No, Judge. We'll stipulate to that.

3 THE COURT: Okay. Which one is that then and I'll
4 mark that in?

5 MS. FULLER: State's 61.

6 THE COURT: 61?

7 MS. FULLER: Yes. Thank you.

8 THE COURT: State's 61 is in evidence.

9 (State's Exhibit Number 61, a PowerPoint
10 presentation, was admitted into evidence.)

11 THE COURT: We'll be at ease.

12 (Recess taken at 11:425 AM.)

13 (Back on the record at 11:41 AM.)

14 BAILIFF: All rise. Court's back in session.

15 THE COURT: Thank you. Please have a seat.

16 Go ahead and get the jury.

17 BAILIFF: Are you ready, Your Honor?

18 THE COURT: Yes. Bring them on in, please.

19 (Whereupon, the jury returns to the courtroom at
20 11:43 AM.)

21 THE COURT: All right. The jury is back and
22 seated.

23 Solicitor, if you'll call your next witness,
24 please.

25 MR. GRAHAM: Thank you, Your Honor.

1 The State calls Lilly Gallman to the stand.

2 (Whereupon, Lilly Smalls Gallman was duly sworn
3 by the Clerk of Court.)

4 THE CLERK: Have a seat, ma'am. Once you're
5 seated state your name, spelling your last, please.

6 THE WITNESS: My name is Lilly Smalls Gallman,
7 G-A-L-L-M-A-N.

8 LILLY SMALLS GALLMAN,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GRAHAM:

12 Q. Ms. Gallman, you are currently retired; is that
13 correct?

14 A. Yes, I am.

15 Q. Congratulations.

16 A. Thank you.

17 Q. Prior to being retired, what did you do?

18 A. Prior to being retired, I worked for South Carolina
19 Law Enforcement Division as a forensic DNA analyst.

20 Q. When you say a forensic DNA analyst, what does that
21 mean?

22 A. Forensic means that we are able to utilize scientific
23 techniques to possibly solve a crime, so as a forensic DNA
24 analyst I receive evidence and known standards to do
25 comparisons and develop a DNA profile from them.

1 Q. When we talk about DNA, what is DNA?

2 A. DNA stands for deoxyribonucleic acid. It's considered
3 to be the blueprint of the body, so everyone's DNA is
4 different except for identical twins, and we're able to
5 take a known standard from an individual and compare it
6 to evidence that's collected at crime scenes.

7 Q. Can you say -- can you tell the jury a little bit
8 about your background and education and how long you have
9 been a DNA analyst?

10 A. Okay. I have a degree in biology from the University
11 of South Carolina. Once I received my degree, I continued
12 working in the area of molecular genetics. I began to work
13 with the South Carolina Law Enforcement Division in January
14 of 1990. I was hired as a DNA analyst, so then I had to be
15 trained in the area of forensics because I was in academia.
16 I attended the FBI DNA typing schools, I've taken advanced
17 genetic courses, and I was certified as a police officer in
18 the state of South Carolina.

19 Q. How many times -- or have you ever been qualified as
20 an expert in the field of DNA analysis and interpretation?

21 A. Yes. Prior to being -- prior to retiring, it was at
22 least -- between sixty and seventy times.

23 MR. GRAHAM: Your Honor, at this time the State
24 would offer Ms. Lilly Gallman as an expert in the filed
25 of DNA analysis and interpretation.

1 THE COURT: Any objection?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: Again, ladies and gentlemen, the
4 parties agree that Ms. Gallman is an expert in the field
5 of DNA analysis and interpretation so she can give
6 opinion testimony in that area that you can use as you
7 deem appropriate.

8 Mr. Graham.

9 MR. GRAHAM: Thank you, Your Honor.

10 BY MR. GRAHAM:

11 Q. Ms. Gallman, did you do some DNA analysis on this
12 case?

13 A. Yes, I did.

14 Q. And let me show you some items that are already in
15 evidence and ask you if you recognize these two items.
16 This would be State's 48.

17 A. Yes, my initials are on here as being SLED Item
18 Number 14.

19 Q. So items are numbered differently by different
20 agencies at different times, correct?

21 A. Yes. Uh-huh.

22 Q. So for the purposes of your analysis and your testing,
23 it was Item 14?

24 A. That's correct.

25 Q. What's the description given for Item 14?

1 A. Item 14 is the swab from the metal frame of rear
2 sliding glass door.

3 Q. And let me show you State's 49 and ask if you
4 recognize that?

5 A. Yes. This is SLED Item Number 15 and it's listed as
6 swab from handrail of steps leading into the front of the
7 residence.

8 MR. GRAHAM: Your Honor, it's my understanding
9 that defense counsel has already stipulated or will
10 stipulate at this point to any chain of custody related
11 to the collection of these two swabs from the residence
12 at 688 Bushberry Road.

13 MR. FLOYD: That's correct, Your Honor.

14 THE COURT: Per our discussion yesterday, those
15 are State's what and what?

16 MR. GRAHAM: Those are 48 and 49 already in
17 evidence.

18 THE COURT: 48 and 49. Very good.

19 BY MR. GRAHAM:

20 Q. In addition to those two items already in evidence,
21 let me show you some other items, Ms. Gallman. What's
22 currently marked as State's 56, do you recognize that item?

23 A. This is SLED Item Number 16, which is swab from table.

24 MR. GRAHAM: Your Honor, again, this was -- through
25 stipulation we're actually avoiding calling crime scene

1 investigator Glenn Ross. State's 56 is a swab from a
2 table that was at the mother's house, and I should have
3 pulled the photographs and did not, the photograph of
4 the table inside the house.

5 THE COURT: All right. No objection to 56,
6 correct?

7 MR. FLOYD: That's correct, Your Honor.

8 THE COURT: 56 is in evidence.

9 (State's Exhibit Number 56, swab from table, was
10 admitted into evidence.)

11 BY MR. GRAHAM:

12 Q. State's 57, Ms. Gallman, do you recognize that?

13 A. This is SLED Item Number 17, which is swab from chair.

14 MR. GRAHAM: And, Your Honor, the same stipulation
15 on this. This would be the swab from a chair from the
16 mother's house that the defense has agreed to allow in
17 evidence without testimony and stipulate to the chain of
18 custody.

19 MR. FLOYD: That's correct, Your Honor.

20 THE COURT: Very good. 57 is now in evidence as
21 well.

22 (State's Exhibit Number 57, swab from wicker chair,
23 was admitted into evidence.)

24 BY MR. GRAHAM:

25 Q. And finally, Ms. Gallman, let me show you what's been

1 marked as State's 63.

2 A. This is SLED Item Number 20, which is the buccal swab
3 from VonKeith Toland.

4 Q. What is a buccal swab?

5 A. It's when you take just like a Q-tip and it's used to
6 swab the inside of your mouth and when you do that, you're
7 able to pick up cells from that person, and I use that
8 particular swab to do a DNA extraction to use as a known
9 standard from Mr. Toland.

10 Q. Okay.

11 MR. GRAHAM: Your Honor, the State would move 63
12 into evidence.

13 THE COURT: Without objection?

14 MR. FLOYD: No objection, Your Honor.

15 THE COURT: 63 is in evidence.

16 MR. GRAHAM: And for the record, Your Honor, this
17 was a -- stipulated to that it's a buccal swab, a known
18 swab, taken from the victim in the case -- or alleged
19 victim, VonKeith Toland.

20 THE COURT: Very good. Thank you.

21 (State's Exhibit Number 63, buccal swab, was
22 admitted into evidence.)

23 BY MR. GRAHAM:

24 Q. So in general terms, can you tell the jury, once you
25 get all that evidence, what do you do?

1 A. Once I get the evidence, which is all -- this is
2 evidence, this is a known standard from Mr. Toland, I
3 perform a DNA extraction on these items first and develop
4 a DNA profile from them and then I go back and do a --
5 develop a DNA profile from the buccal swab from Mr. Toland
6 and then there's a comparison done between the evidence and
7 the known standard.

8 Q. And I neglected to show you one other item, Ms. Lilly,
9 State's Number 59, which is already in evidence.

10 A. This is SLED Item Number 19, which is swab from the
11 Glock 22.

12 Q. And you recognize that as being one of the items you
13 analyzed as well?

14 A. Yes, it is.

15 MR. GRAHAM: Your Honor, this is already in
16 evidence, but it's my understanding the defense is
17 stipulating to the chain of custody from its collection
18 by former investigator Sprinkle to Ms. Gallman.

19 MR. FLOYD: That's correct, Your Honor.

20 THE COURT: Very good. Thank you.

21 BY MS. GALLMAN:

22 Q. So, Ms. Lilly, looking at all these items, so the
23 buccal swab of VonKeith Toland, which was SLED Item 20 --

24 A. Yes.

25 Q. -- which is now in evidence as State's Number 63,

1 what, if anything, were you able to do with that?

2 A. I developed a DNA profile from it and compared it to
3 all of the evidence that was submitted to me.

4 Q. Let me interrupt you for a second. When you say a DNA
5 profile of a known standard, what does that mean?

6 A. That means that we were able at the time to look at
7 sixteen different areas on the DNA chromosome and we used
8 that to compare to the evidence.

9 Q. Were you able to develop a full profile?

10 A. Yes.

11 Q. Which means that you had a reading in each one of
12 those sixteen fields?

13 A. Yes.

14 Q. Okay. Let's talk about the swab from the wicker
15 chair, which was SLED 17, State's 57. The swab taken from
16 wicker chair at the mother's house, what, if anything, were
17 you able to develop on that?

18 A. Okay. Well, I'm reading from my report and the
19 DNA obtained from Item 17 is a mixture of at least two
20 individuals, but due to the inability to calculate a
21 statistic no comparison will be offered.

22 Q. So is it fair to say that you found some DNA, it's a
23 mixture of two or more people, but because of the amount
24 of DNA you're not able to do any kind of analysis with it?

25 A. No, I was not able to use it to say whether it belongs

1 to Mr. Toland or anyone else.

2 Q. SLED 16, which is State's 56, the swab from the table
3 at the mother's house, what were the results on that?

4 A. Along with Item Number 13 and 16, there are possible
5 mixtures of at least two individuals, but due to low levels
6 of DNA these profiles are not suitable for interpretation.

7 Q. So, again, as to the swab from the table, you weren't
8 able to do anything with it?

9 A. That's correct.

10 Q. The swab from the Glock 22, which would be SLED
11 Item 19, Model 22, and State's 59 --

12 A. Yes.

13 Q. -- let's talk about that. What did you find when you
14 did that?

15 A. It was a mixture, but I had a major contributor, but
16 the contributor was nonprobative; meaning that it was not
17 one of the standards given to me in this particular case,
18 but it belonged to an analyst in the department at SLED.

19 Q. So did you find out that the DNA that you found -- I
20 think you called it a nonprobative source; is that right?

21 A. Yes.

22 Q. It came from SLED employee Jamie Green?

23 A. Yes. At SLED what we do, in the forensic department
24 we have DNA profiles from everyone that could possibly
25 touch the evidence, and so when we develop a DNA profile

1 that profile is checked against those standards to see if
2 it belonged to anyone in-house first before we say whether
3 it's from someone we don't know who it is.

4 Q. And Jamie Green works in the firearms department or
5 did at that time?

6 A. Yes.

7 Q. So other than Jamie Green's DNA, did you find anybody
8 else's DNA on that?

9 A. Yes, it was a partial. Sorry. A partial DNA profile
10 was developed on the minor contributor, but that was not
11 suitable for comparison.

12 Q. So, again, you found at least two DNAs, one being
13 Jamie Green and one somebody else?

14 A. Yes.

15 Q. But it was, again, too small for you to do anything
16 with?

17 A. It was not enough to do a comparison.

18 Q. Swab C, which is your 14, which is described as a swab
19 from the metal frame of the rear sliding glass door.

20 A. Yes.

21 Q. What, if anything, did you find in your DNA analysis
22 of that item, which is State's 48?

23 A. No DNA profile was developed from Item Number 14.

24 Q. So no DNA, meaning you didn't find any human DNA at
25 all, not even a small amount?

1 A. That's correct.

2 Q. And then finally, I guess, that would be SLED 15?

3 A. Yes.

4 Q. Which is State's 49, which is the swab from the
5 handrail of the steps leading to the front of the
6 residence. What, if anything, did you find out?

7 A. Okay. The DNA developed from Item 15 matches the DNA
8 profile of VonKeith Toland and when we determined that we
9 have a match we are required to add a frequency of that
10 particular event and so my report reads that the
11 probability of randomly selecting an unrelated individual
12 having a DNA profile that matches this item is
13 approximately one in 780 quadrillion.

14 Q. So you called it a match?

15 A. Yes.

16 Q. So that means in your opinion that that's VonKeith
17 Toland's DNA?

18 A. Yes.

19 MR. GRAHAM: Thank you, Ms. Gallman. Please
20 answer any questions the defense has for you.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: Thank you, Your Honor. Just a couple
23 of questions.

24 CROSS-EXAMINATION

25 BY MR. FLOYD:

1 Q. Ms. Gallman, you did have a buccal swab from Terry
2 McClure also, didn't you?

3 A. Yes, I did.

4 Q. And you compared his DNA with all these items; did you
5 not?

6 A. Yes.

7 Q. And did you find anything from Terry McClure?

8 A. No, I did not.

9 Q. Thank you. You did find an item though from VonKeith
10 Toland, didn't you?

11 A. Yes.

12 Q. And that was the handrail leading up to the steps --
13 the front door; is that correct?

14 A. Item Number 15, yes. SLED's Item Number 15, yes.

15 Q. Okay. And you say the odds are one to 780
16 quadrillion?

17 A. Yes.

18 Q. How many zeros would that be?

19 A. That would be fifteen.

20 Q. Fifteen zeros?

21 A. Yes.

22 Q. So that's a pretty solid match then; would you agree?

23 A. Yes, more money than I'll ever have.

24 MR. FLOYD: Okay. Thank you.

25 MR. GRAHAM: Just one second, Your Honor.

1 THE COURT: Any additional questions, Mr. Floyd?

2 MR. FLOYD: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. GRAHAM: Very quickly, Your Honor.

5 THE COURT: Go ahead, please.

6 REDIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. The defense asked you about Mr. McClure.

9 A. That's correct.

10 Q. And you did actually have a sample from him and you
11 developed a profile?

12 A. Yes.

13 Q. From the items that we discussed, you can't either
14 include or exclude him because the amounts of the DNA you
15 found on those other items were too small to do anything
16 with; is that correct?

17 A. That's correct.

18 Q. So you don't have any DNA evidence that says he was
19 there or that he wasn't there?

20 A. No, I do not.

21 MR. GRAHAM: Thank you, ma'am.

22 THE COURT: Ma'am, thank you very much for coming.
23 You may leave.

24 (Witness excused.)

25 THE COURT: Solicitor, if you will call your next

1 witness, please.

2 MR. GRAHAM: The State calls Jamie Green.

3 THE COURT REPORTER: Judge, Hope --

4 THE COURT: Yes, the clerk left.

5 Hand me the Bible.

6 THE COURT REPORTER: (Handing.)

7 (Whereupon, James Green was duly sworn by the
8 Court.)

9 THE COURT: Have a seat, please, and, if you would,
10 state your name.

11 THE WITNESS: James Green.

12 JAMES GREEN,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q. Mr. Green, where are you employed, sir?

17 A. I'm employed by the South Carolina Law Enforcement
18 Division, commonly referred to as SLED.

19 Q. And what do you do for SLED?

20 A. I'm a forensic firearms examiner in the forensic
21 services laboratory.

22 Q. So what is a forensic firearms examiner?

23 A. What we do is we look at firearm components of
24 fired bullets or fired cartridge cases to see if they come
25 from a common origin, if they are fired by the same gun

1 or not, and if a firearm is submitted we look at them
2 microscopically to determine if those ammunition components
3 were fired by the firearm that was submitted or a different
4 firearm.

5 Q. What education, background, work experience, training
6 do you have in the field of firearms?

7 A. I have a bachelor of arts from Charleston Southern
8 University. I also have a masters in criminal justice from
9 Charleston Southern. When I was hired at SLED in June of
10 2005, I started the SLED firearm and toolmark course of
11 instruction. It's about a three to three and a half year
12 course instruction studying in an apprentice-type fashion
13 under court-qualified firearms examiners learning to do
14 what I do now.

15 Q. And how many times -- let me ask you this. Have you
16 been qualified as an expert in the field of firearms
17 examination before?

18 A. Yes, sir.

19 Q. How many times?

20 A. Eighty-one. Seventy-nine times in state courts and
21 twice in Federal courts.

22 MR. GRAHAM: Your Honor, at this time the State
23 would offer Jamie Green as an expert in the field of
24 firearms examination.

25 MR. SPANGLER: No objection, Judge.

1 THE COURT: Again, Mr. Green has been stipulated
2 to be an expert in the field of firearms and toolmark
3 identification and can give opinion testimony in that
4 area that you can use as you deem appropriate.

5 Mr. Graham.

6 MR. GRAHAM: Thank you, Your Honor.

7 BY MR. GRAHAM:

8 Q. Is it Agent Green or Mr. Green?

9 A. I get called a lot of things. Agent most of them.

10 Q. Agent Green, did you have an opportunity to work on
11 items of evidence in this case?

12 A. Yes, sir.

13 Q. Specifically with shell casings, a firearm and
14 projectile; is that correct?

15 A. Yes, sir. I had some cartridge cases, a pistol and
16 then a projectile that was in a couple of different pieces.

17 Q. Let me show you State's 50 and ask you if you
18 recognize that item?

19 A. Yes, sir. State's Exhibit 50 is the pistol I examined
20 in this case. It's unloaded, so it's just a paperweight,
21 so I'll try not to point it at anybody. When we get
22 evidence in the SLED laboratory, particularly the firearms
23 department, we mark it with an electric pencil so when we
24 come to court we can look at it and say that we recognize
25 it. So if you see me rotating the evidence around, that's

1 what I'm doing. I'm looking for my markings. This pistol
2 does have my markings, my initials, the lab number and the
3 item number from the SLED item number that was given to me.

4 Q. In addition to that item, let me show you State's 47
5 and ask if you recognize that?

6 A. Yes, sir. State's Exhibit 47 is one of the cartridge
7 cases I examined in this case.

8 Q. And which cartridge case was it?

9 A. It is a fired 40 Smith & Wesson caliber -- or S & W
10 caliber cartridge case that was submitted to SLED as
11 Item 7.

12 Q. What was the brand?

13 A. It is a Federal brand.

14 Q. Okay. You called it an S&W caliber, I think. Can you
15 explain how Smith & Wesson gets involved when we have all
16 these different manufacturers?

17 A. Yes, sir. Back in the early nineties, the Federal
18 government, particularly the FBI, wanted a new caliber
19 because 10 millimeter auto was a little -- had a little
20 bit too much recoil for some people and the gun was too
21 big for smaller grips, so they got together with Smith &
22 Wesson and they developed what they called a 10 millimeter
23 light. Well, they didn't like that name, so they called it
24 a 40 S&W. If you make something, you get to name it, so
25 with the help of the FBI Smith & Wesson developed the

1 40 S&W caliber and now various manufacturers make firearms
2 that fire 40 S&W, Smith & Wesson, caliber cartridges.

3 Q. So State's 47 that I showed you that you recognized,
4 that's -- on the packaging of that it says -- there's a
5 Number 3, which is a crime scene number, correct? You're
6 not aware what that is?

7 A. It says Number 3, but I don't know what that means.

8 Q. It was like that when you got it?

9 A. Yes, sir.

10 Q. Okay. Is that -- that cartridge is made out of what?

11 A. It's actually nickel-plated brass.

12 Q. So the color of it --

13 A. Is a shiny silver color.

14 Q. And how does nickel and brass and the components of
15 shell casings hold up to the weather and the outside?

16 A. It's not really my area of expertise. If a cartridge
17 case, whether it's made out of nickel, brass or steel, has
18 been exposed to the elements for any amount of time in my
19 experience you can usually see some type of discoloration
20 on it from the weather, but sometimes that doesn't happen.

21 Q. Do you -- are you familiar with the different -- which
22 one is more resistant, whether nickel is more resistant
23 than brass?

24 A. No, sir. I know they make nickel-plated cartridge
25 cases because according to the manufacture of the cartridge

1 cases, they say it feeds in firearms easier.

2 Q. Okay. State's 51. Do you recognize that?

3 A. Yes, sir. State's Exhibit 51 is another fired 40 S&W
4 caliber cartridge case that was submitted to SLED as
5 Item 8.

6 Q. And that is a -- what kind of a shell casing?

7 A. That is a -- I can't read it. The light's hitting it
8 just the wrong way. Let me look at my notes because I
9 can't read it through the bag. Item 8 is a Remington brand
10 cartridge case.

11 Q. And, again, that's a 40 caliber as well?

12 A. Yes, sir.

13 Q. State's 52, Crime Scene Number 5, do you recognize
14 that item?

15 A. Yes, sir. State's Exhibit 52 is another fired 40 S&W
16 caliber cartridge case that I examined. It's SLED Item 9.

17 Q. And the brand of that one?

18 A. The brand of this one is Speer. S-P-E-E-R.

19 Q. State's 54, Crime Scene Number 6?

20 A. This is another 40 S&W caliber cartridge case that I
21 examined as Item 10.

22 Q. And the brand of that one?

23 A. It's a Remington as well.

24 Q. Is that also -- it's an R&P, is that the Remington
25 brand?

1 A. Yes, sir. Remington-Peters.

2 Q. State's 53, which is Crime Scene Number 7, do you
3 recognize that one?

4 A. Yes, sir. State's Exhibit 53 is another 40 caliber
5 -- 40 S&W caliber cartridge casing, which I examined as
6 State's Item 11, that is a Winchester brand.

7 Q. In addition to the gun and those five casings, did you
8 also have a projectile and fragments?

9 A. Yes, sir.

10 Q. So when I say a projectile and casing and bullet, can
11 you describe to the jury what all those terms mean?

12 A. Yes, sir. I'll talk you about my dad for a second.
13 My dad, he goes to Wal-Mart to buy bullets. Well, he's
14 actually going to buy cartridges, but no matter how many
15 times I correct him, I'm just his son and he never listens
16 to me, so he goes to buy bullets, but he's actually buying
17 cartridges. That's a complete unfired piece of ammunition.
18 That's made up of the cartridge case, the cartridge case
19 holds the powder inside of it and also has the primer, and
20 the bullet is seated down inside the cartridge case. So
21 when the cartridge is fired, the cartridge case and the
22 bullet separate. In a semiautomatic pistol like State's
23 Exhibit 50, the cartridge case is ejected and extracted
24 from the gun and the bullet goes down the barrel, so you
25 have two different pieces when you fire a handgun like

1 this; you have the bullet and the cartridge case.

2 Q. Let me show you State's 58, which is not in evidence
3 currently, and ask if you recognize that?

4 A. Yes, sir. This is the projectile and fragments I
5 examined in this case.

6 MR. GRAHAM: Your Honor, again, I think this is
7 the last item we need to do this with, but State's 58,
8 the defense is stipulating that these projectile fragments
9 were taken from the skull of Tycus Toland during his
10 autopsy and they're stipulating to that fact and the chain
11 of custody all the way to Mr. Green.

12 THE COURT: No issues with State's Exhibit 58?

13 MR. SPANGLER: No issues, Judge.

14 THE COURT: All right. State's 58 is in evidence.

15 (State's Exhibit Number 58, projectile fragments,
16 was admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. In general terms, can you describe what you do as a
19 firearms examiner when you receive evidence like this?

20 A. Okay. I'll walk you through what I did in this case.
21 After I receive the evidence, I make you sure all the
22 evidence tape seals were intact. They were, but if
23 something were not intact, I would contact the submitting
24 agency and ask them, you know, I got this envelope, it's
25 open, how much stuff is supposed to be in there, and go

1 from there. However, everything was sealed in this
2 instance. So I document photographically how it was
3 packaged so I know what little inside envelope goes with an
4 outside envelope when I'm gonna package everything for
5 return. Once I get done with that, I look at the fired
6 ammunition components, the bullets and the cartridge cases.
7 Our main tool that we use is a comparison microscope. It's
8 two microscopes connected by a single optical bridge that
9 lets us look at two objects simultaneously.

10 So I looked at all the cartridge cases that were
11 submitted to me in this case and what I'm trying to do is
12 look at the markings left on them when the firearm was
13 produced. Each firearm is manufactured consecutively and
14 the marks on those firearms are unique from one to the
15 other to the other. You can see some similarities in
16 consecutively made firearms, but if you're trained to know
17 what to look for you can differentiate between one to the
18 next and the next. So I looked at the five cartridge cases
19 that were submitted in this case and tried to determine if
20 they were fired by one gun, two guns, three guns, four
21 guns, and I concluded that four cartridge cases were fired
22 by one gun. The fifth cartridge case was fired by a second
23 gun.

24 So when that question was answered, I test fired the
25 State's Exhibit 50 pistol. So the reason why we test fire

1 firearms is to get examples that were fired by that firearm
2 because we know they were because we do them ourselves and
3 there's no way to mix things up. So I test fired State's
4 Exhibit 50 and then compared the test specimens that I
5 fired from State's Exhibit 50 to the two different groups
6 of firearms -- excuse me -- the two different groups of
7 cartridge cases I had in this case to come to my
8 conclusion.

9 Q. You talked about different firearms leaving different
10 marks. What kind of marks are you looking for on the
11 cartridge cases or projectiles?

12 A. Okay. When the working surfaces of firearms are
13 produced, you've got metal contacting metal. So you've
14 got a harder metal -- we consider a firearm a tool, okay,
15 so when the firearm, the tool, marks the cartridge cases
16 or the bullets the markings left on the firearm by
17 manufacturers get imparted on the cartridge cases or the
18 bullets. On cartridge cases what we're looking for is
19 the firing pin impressions where the firing pin comes
20 through and hits the primer and causes the detonation or
21 the flame in the cartridge case that has the powder and
22 the breechface markings. The firing pin, you can't see
23 it, but the breechface is this wall right here. It's a
24 vertical wall that the firing pin protrudes through. So
25 when the cartridge case -- or when the cartridge is

1 fired, the cartridge case is slammed back up against the
2 breechface and it takes on the markings left there by the
3 manufacturer. State's Exhibit 50 also has a drop in
4 barrel, so when the slider moves the barrel slightly tilts.
5 And there's also not only static impressions, but there's
6 also dynamic impressions left from where the cartridge case
7 is brought down on the breechface. That's kind of really
8 technical, but we're looking for breechface and firing pin
9 impressions mostly.

10 Q. Now State's 50 that you were just holding when you
11 were explaining that to the jury, you actually test fired
12 that weapon; is that correct?

13 A. Yes, sir.

14 Q. Do you remember when you did that?

15 A. I don't remember the exact date, but I can tell you it
16 was -- let's see. I opened it on or about July 27th of
17 2015 and I sealed it on August 3rd of 2015, so it would
18 have been sometime in between those two dates.

19 Q. When you test fired that gun, do you wear guns or do
20 not wear gloves?

21 A. The only time I wear guns when handling a firearm is
22 when I get it and whoever processed it for latent prints,
23 that's what I call shake and bake, dump fingerprint powder
24 all in it, and I'll wear the gloves until I get the
25 fingerprint powder off of it or if we get firearms and

1 they're really bloody, used in suicides or homicides
2 where somebody falls on top of it and bleeds out onto the
3 gun, which happens a lot, I'll wear them until it's
4 decontaminated. Once it's cleaned to my satisfaction,
5 I don't wear gloves anymore because some of these
6 striations or grooves on the slides of pistols when you
7 have to manipulate them, if you're wearing rubber gloves
8 you can't get purchase and if you can't get purchase you
9 run the risk of unsafe practices, a slam fire or something
10 like that. I like my fingers. I don't want to lose them
11 by a gun malfunction. So once I'm happy that the gun is
12 clean, it's not gonna get any contamination back and forth,
13 we don't wear gloves.

14 Q. When you say purchase, you're talking about your
15 ability to hold and grip the firearm?

16 A. Yes, sir.

17 Q. In this case, you did not wear gloves; is that
18 correct?

19 A. Yes, sir.

20 Q. Which from your testimony just a moment ago means that
21 you did not -- it wasn't covered with fingerprint dust?

22 A. Correct.

23 Q. And also you didn't see any obvious blood on
24 inspection?

25 A. Correct.

1 Q. You later learned that it was swabbed for DNA after
2 your touching and handling the gun, correct?

3 A. Yes, sir.

4 Q. And that your DNA was actually found on that swab?

5 A. Yes, sir.

6 Q. The gun itself, Item 50, Glock Model 22, was it in
7 working condition?

8 A. When I had it, yes, sir.

9 Q. Did it have a clip with it when you received it?

10 A. No, sir, it did not.

11 Q. Did it have any rounds that were -- any full intact
12 rounds transported with it?

13 A. No, sir. When I received State's Exhibit 50 or SLED
14 Item 12 that came in, it was just a pistol. No fired --
15 unfired cartridges, no magazine, it was just a pistol.

16 Q. Your findings as to your Item 7, 8, 9 and 10, which
17 is State's 47, Crime Scene 3, Federal 40 caliber Smith &
18 Wesson, your Crime Scene 8 -- excuse me, your 8, State's
19 51, Crime Scene Number 4, R&P 40 Smith & Wesson, State's
20 52, which was your Number 9, which was Crime Scene 5, a
21 Speer 40 S&W, and your Number 10, State's 54, another R&P
22 40 Smith and Wesson, which was Crime Scene Number 6, as to
23 those four cartridge casings what, if any, conclusions did
24 you reach?

25 A. All four of those cartridge cases were fired by the

1 same firearm, but they were not fired by State's
2 Exhibit 50.

3 Q. So they were all fired by the same weapon and you
4 were never provided the weapon?

5 A. Correct.

6 Q. State's 53, which is Crime Scene Number 7, a
7 Winchester 40 S&W that is your Number 11, what, if
8 anything, did you determine as to this shell casing and
9 State's 50, the Glock Model 22?

10 A. That cartridge case was fired by State's Exhibit 50.

11 Q. So Crime Scene Number 9, the Winchester 40 S&W, was
12 fired by that gun?

13 A. Yes, sir.

14 Q. You cannot date when things are fired, can you?

15 A. No, sir.

16 Q. But State's 53, Number 7, was not fired -- we have
17 two different guns, correct?

18 A. Yes, sir. One gun fired these four and State's
19 Exhibit 50 fired that one.

20 Q. Are you able from looking at the cartridge cases
21 to know -- other than it was a 40 Smith & Wesson round,
22 do you know anything about the characteristics of the
23 projectile?

24 A. No, sir.

25 Q. What are the different types of projectiles?

1 A. The major common ones we see, we see jacketed hollow
2 points and we see what they call full metal jackets or
3 total metal jacketed bullets.

4 Q. Looking at State's Number 58, which was the projectile
5 fragments taken from Tycus Toland's skull, were you able to
6 do an analysis on that item?

7 A. Yes, sir.

8 Q. What, if anything, were you able to determine?

9 A. State's Exhibit 58 was made up a couple of different
10 components. The way I like to describe bullets are -- a
11 lot of people like M&M's. I do. When you think of M&M's,
12 you've got the nice chocolate core and you've got the
13 candy coating, so we're gonna use that when we talk about
14 bullets. The lead core of a bullet is like the chocolate,
15 you know, inside of like an M&M and the candy coating of
16 the M&M is jacket of the bullet. So what they do is they
17 get a lead core and they just get a piece of copper or
18 steel or whatever the jacket is made out of and they form
19 it around the core. State's Exhibit 58 I said was a couple
20 of pieces. It was a bullet jacket, a core, a bullet jacket
21 fragment and a piece of lead. Just like if you take an M&M
22 and throw it on the ground, it's gonna come in pieces.
23 Sometimes when bullets hit objects, they come in pieces as
24 well, so it's the same kind of analysis. The M&M hits
25 something hard, it comes apart. When a bullet hits

1 something hard, sometimes it will come apart as well. The
2 State's Exhibit 58 bullet jacket was most consistent with
3 being a 40 S&W or a 10 millimeter auto caliber bullet
4 jacket that was once part of a hollow point bullet. The
5 core -- the bullet core and the bullet jacket fragment,
6 they were too damaged and/or too small for me to tell what
7 caliber they were and the piece of lead was of unknown
8 origin. I can't tell you what it was. It didn't have any
9 characteristics of being a lead core. It very well could
10 have been of a lead core, but I can't say that. I just
11 don't know where it came from. And State's Exhibit 58, the
12 bullet jacket and the bullet jacket fragment, both had
13 polygonal rifling impressions on it, which is common in
14 firearms like State's Exhibit 50. And there's a lot of
15 Glocks out there and there are also different manufacturers
16 out there, so what I did was I microscopically compared
17 test bullets I fired by State's Exhibit 50 with State's
18 Exhibit 58 to come to my conclusions.

19 Q. So 58, some of the components have meaning and some
20 did not; is that right?

21 A. Yes, sir.

22 Q. Are you able to tell whether it was a solid ball or a
23 hollow point?

24 A. The jacket fragment -- or, excuse me, the jacket from
25 State's Exhibit 58 was from a hollow point bullet.

1 Q. What is a hollow point bullet?

2 A. It is a bullet that has a hollow cavity in the nose
3 carried by law enforcement. I hunt with hollow points
4 and what it does is when a hollow point hits the fluid or
5 whatever it hits makes the bullet expand and it takes a
6 bullet diameter like this, like a 40 caliber bullet, and
7 it makes it a larger diameter, the nose opens up and what
8 we call mushrooms.

9 Q. And the purpose of that is to do more damage, correct?

10 A. Yes, sir.

11 Q. So with State's 58, were you able to determine whether
12 State's 58 came from 50, the Glock 22?

13 A. No, sir. Due to the damage, their size and just not
14 very many markings and the markings that were there weren't
15 of sufficient quality or quantity to say one way or the
16 other, my results were inconclusive. So State's Exhibit 58
17 could have been fired by State's Exhibit 50 or it could
18 have been fired by another firearm or firearms.

19 Q. And as far as State's 58, the projectile fragments,
20 were you able to determine if they came from one of the
21 five shell casings?

22 A. No, sir, that's not an examination we do.

23 MR. GRAHAM: Thank you, Mr. Green. Please answer
24 any questions the defense has.

25 THE COURT: Cross?

1 MR. SPANGLER: Yes, Judge.

2 May I approach the witness, Judge --

3 THE COURT: Please.

4 MR. SPANGLER: -- and collect a couple of these
5 things?

6 CROSS-EXAMINATION

7 BY MR. SPANGLER:

8 Q. All right. Is it Agent Green or --

9 A. That's fine. Yes, sir.

10 Q. Agent Green. All right. Let's start with the shell
11 casings that you found. So I just want to make sure we've
12 got this point crystal clear. Four of the shell casings
13 that you found came from one gun; is that right?

14 A. Well, I didn't find them, first of all, but, yes, four
15 cartridge cases were fired by one firearm and one was fired
16 by State's Exhibit 50.

17 Q. Okay. And to make sure we get the numbers here right,
18 so the ones fired by -- one that was Number 7, Number 8,
19 Number 9 and Number 6?

20 A. No, sir. They're SLED items 7 through 10.

21 Q. SLED items 7 through 10. So that would have been the
22 Remington, the Federal, another Remington and the Speer?

23 A. Yes, sir. One Federal, one Speer and two Remingtons.

24 Q. Okay. So these shell casings -- these four shell
25 casings we've got up there, those all came from one

1 firearm?

2 A. Yes, sir.

3 Q. They were all fired by one firearm?

4 A. Yes, sir.

5 Q. Okay. You can't tell us what kind of firearm that was
6 though?

7 A. No, sir. There were some specifics. The firing pin
8 impression and the firing pin aperture characterizations
9 that I saw are only on two makes of firearms that we know
10 of and that's early Smith & Wesson Sigma pistols or Glock's.

11 Q. Okay. But those were not fired by the Glock that you
12 tested in this case?

13 A. Correct.

14 Q. Okay. You've never determined what gun specifically
15 these were fired by?

16 A. Correct. No firearm was ever submitted to me for --
17 right. No firearm has been submitted that I compared those
18 to and said yes, they were fired by this firearm.

19 Q. Okay. So these we're not sure where they came from
20 other than being recovered from the scene?

21 A. Correct.

22 Q. Okay. Now the one you were able to determine where it
23 came from, that was the Winchester?

24 A. Yes, sir.

25 Q. That was a 40 caliber Smith & Wesson Winchester we

1 have as State's Number 53?

2 A. Yes, sir.

3 Q. Okay. And this one, do you know where it was
4 recovered from or they just send them to you? Do you know
5 the address?

6 A. No, sir. Sometimes they list it, where they came
7 from, on the evidence submission forms, sometimes they
8 don't. So all I know is what was on the submission forms
9 and what was written on the evidence, on the outside
10 packaging. I don't have any personal knowledge of it.

11 Q. Okay. But this is the Winchester bullet that you
12 tested? The only Winchester bullet you tested for this
13 case?

14 A. Cartridge case, yes, sir.

15 Q. Cartridge case. I'm sorry. We'll keep it right.
16 This is the only Winchester cartridge case you tested in
17 this case?

18 A. Yes, sir.

19 Q. Okay. And you actually were able to find out which
20 gun fired that, right?

21 A. Correct. State's Exhibit 50.

22 Q. And that was this firearm?

23 A. Yes, sir.

24 Q. Okay. So this bullet -- or, I'm sorry, this cartridge
25 case goes along with this Glock?

1 A. Yes, sir.

2 Q. Okay. That cartridge case, you didn't notice any
3 differences between it and the other ones that you looked
4 at, they all looked relatively the same age-wise?

5 A. Yes.

6 Q. Okay. None of them looked like they had been out
7 there for months and months?

8 A. No, sir. Nothing was tarnished or dull or anything.
9 Well, when you fire a cartridge, the cartridge case gets a
10 little dull by the burnt powder, but nothing uncommon or
11 unusual that I noted when I was looking at those evidence
12 pieces.

13 Q. Okay. And it looked like the other bullets or the
14 other cartridge cases that you found there?

15 A. Yes, sir.

16 Q. Okay. Nothing stood out to you about the Winchester
17 cartridge as opposed to the other ones?

18 A. Correct.

19 Q. Okay. Now this Glock you actually test fired it,
20 right?

21 A. Yes, sir.

22 Q. And you went through this a little bit on the direct
23 examination, but bullets when go they go through -- and
24 you're gonna probably correct me on this, but when it goes
25 down the barrel if the bullet stays intact it can have

1 certain impressions on the bullet itself, the thing that
2 comes out?

3 A. Yes, sir.

4 Q. Okay. And that's what you're looking at when you're
5 looking at the bullet portion of it are those markings on
6 the bullet?

7 A. Yes, sir.

8 Q. Okay. And in this case you had a bullet to look at?

9 A. Well, a jacket and a fragment. Yes, sir.

10 Q. Okay. Pieces of a bullet?

11 A. Yes, but there were markings to look at.

12 Q. Okay. And this State's 58, in this bag are those
13 bullet fragments?

14 A. Yes, sir.

15 Q. Okay. Those bullet fragments you determined were from
16 a 40 caliber Smith & Wesson?

17 A. Yes, sir.

18 Q. Okay. You determined that they were from a jacketed
19 hollow point bullet?

20 A. Well, the larger jacket, yes, sir.

21 Q. Okay. Let me make sure we get this clear. Are there
22 contents of this bag that you relate goes to a jacketed
23 hollow point bullet?

24 A. One of them I was able to, yes.

25 Q. Okay. Do we know if all the pieces in here are part

1 of one bullet or could it be multiple bullets?

2 A. They could be multiples. Sometimes we can do fracture
3 matches like if you have a nice fracture line and you get a
4 fragment, you can look at it and say oh, that fits there,
5 but I could not on this, no.

6 Q. Okay. But at least a portion of this came out of a
7 jacketed hollow point?

8 A. Yes, sir.

9 Q. Okay. And you compared these bullet fragments to
10 those that you obtained after testing that Glock, right?

11 A. Yes, sir.

12 Q. Okay. And you could not reach a determination as to
13 whether those bullet fragments were fired by that gun,
14 could you?

15 A. No, sir. My answer was inconclusive, which is a fancy
16 way of saying I don't know. I cannot exclude State's
17 Exhibit 50 as being the source of that bullet and bullet
18 fragment and conversely I cannot say yes, this was fired by
19 this gun.

20 Q. All right. So I just want to make sure we have this
21 right. You cannot rule out that those bullet fragments --
22 they could have been fired by this gun, we just don't know?

23 A. Yes, sir.

24 Q. Those bullet fragments, you don't know what brand of
25 cartridge it came from, do you?

1 A. No, sir, I do not.

2 Q. Those bullet fragments could be the bullet that came
3 out of this Winchester cartridge?

4 A. Yes, sir, it could be.

5 Q. The Winchester cartridge that was fired by this Glock?

6 A. Yes, sir.

7 Q. And, lastly, you said you didn't have to worry about
8 fingerprint powder on the gun; is that right? When you got
9 it, it wasn't covered in that fingerprint powder?

10 A. Correct. If it had been processed, there wasn't
11 enough there for me to see it and tell you it had been
12 processed.

13 Q. Okay. So nothing to your naked eye that leads you to
14 believe it was processed for fingerprints?

15 A. Well, I looked at, you know, with my naked eye and
16 also used my stereoscope. Sometimes people do a good job
17 of when they actually do process it that they clean it off
18 for us, but I did not see anything that jumped out and said
19 hey, this was done.

20 Q. Okay.

21 MR. SPANGLER: All right. Nothing further, Judge.

22 THE COURT: Any redirect?

23 MR. GRAHAM: No, Your Honor. Thank you.

24 THE COURT: Sir, thank you very much for coming.

25 You can step down and you are free to go.

1 (Witness excused.)

2 MR. GRAHAM: If we can approach?

3 THE COURT: Please.

4 (Proceedings held at the bench; not reported.)

5 THE COURT: Ladies and gentlemen of the jury, we're
6 gonna go ahead and take our lunch break. The sandwiches
7 should be here in about ten minutes if what they say is
8 true, so we're gonna be at ease probably for roughly
9 forty-five minutes and hopefully reconvene around 1:15
10 or thereabouts.

11 Please don't discuss the case. Do enjoy your lunch.
12 I'm told by the State that we're close to getting back on
13 track in terms of the progress of this trial. The next
14 witness should be a fairly long witness, so enjoy your
15 lunch, don't talk about the case, and I'll have you back
16 out here as soon as we can get everything square, okay?

17 Thank you.

18 (Whereupon, the jury was excused for lunch at
19 12:34 PM.)

20 THE COURT: Just real quick before they go, you've
21 still got eleven witnesses to go ball park; do you think?

22 MR. GRAHAM: That's what we were just trying to
23 figure out and what we're gonna do for the rest of the
24 day and tomorrow.

25 THE COURT: Okay. When is the doctor coming up from

1 Charleston?

2 MS. FULLER: At 8:00.

3 THE COURT: Okay. She's coming tomorrow morning.

4 MR. GRAHAM: She's scheduled to be tomorrow, so
5 hopefully it will be tomorrow.

6 THE COURT: All right. Very good. See you-all
7 in a bit.

8 (Whereupon, a luncheon recess was taken at 12:35 PM.)

9 (Back on the record at 2:05 PM.)

10 (State's Exhibit Numbers 64 through 78 were marked
11 for identification.)

12 BAILIFF: All rise. Court's now in session.

13 THE COURT: Are we good to go, Mr. Graham?

14 MR. GRAHAM: Yes, Your Honor.

15 THE COURT: Bring the jury, please.

16 (Whereupon, the jury returns to the courtroom
17 at 2:07 PM.)

18 THE COURT: All right. The jury is back and seated.

19 Ladies and gentlemen of the jury, sorry about that.
20 It was my intention to try and save time and get this
21 case moving along. I love a Jimmy Johns sandwich as much
22 as anybody else, but their advertising slogan that they're
23 fresh and fast, I think they maybe only got half that
24 right, so I apologize to you. They swore it would be here
25 at a quarter -- a quarter till and it wasn't here until

1 about thirty minutes ago, so thanks for eating quickly.

2 We're still in the State's case in chief, of course.

3 So, Mr Graham, if you want to call your next witness, sir.

4 MR. GRAHAM: Thank you, Your Honor.

5 The State calls Roy Mefford.

6 (Whereupon, Roy Mefford was duly sworn by the Clerk
7 of Court.)

8 THE CLERK: Once you're seated state your full name,
9 spelling your last.

10 THE WITNESS: It's Roy Mefford, M-E-F-F-O-R-D.

11 ROY MEFFORD,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q. Mr. Mefford, where are you employed currently?

16 A. I'm currently -- excuse me. I'm currently the
17 director of Lexington County Animal Services.

18 Q. And how long have you been with Lexington County
19 Animal Services?

20 A. I've been there since May of 2017.

21 Q. And what do you do there?

22 A. I'm the director. I run the animal shelter, adoption
23 and rescue programs, and I'm also over the animal control
24 officers.

25 Q. Prior to taking that job, what did you do?

1 A. I was with the Lexington County Sheriff's Department
2 for nineteen years and prior to that I was a military
3 police officer for five years. I'm in my twenty-seventh
4 year of law enforcement.

5 Q. Back in 2016 --

6 A. Yes, sir.

7 Q. -- in this case --

8 A. Yes, sir.

9 Q. -- what were you doing for the sheriff's department at
10 that time?

11 A. In 2014?

12 Q. I'm sorry. Yeah, 2014.

13 A. 2014 I was a sergeant in the major crimes unit.

14 Q. April of 2014, you were a sergeant. What does a
15 sergeant in major crimes do?

16 A. A sergeant in the major crimes unit -- major crimes is
17 the unit that handles all violent crimes, crimes against
18 persons, and as the supervisor I did administrative duties,
19 also supervised a team of investigators and had overview of
20 cases.

21 Q. This case in particular, 688 Bushberry Road, on
22 April 26, 2014, what was your involvement?

23 A. I was the on-call supervisor for that weekend and I
24 was notified of an incident at 688 Bushberry Road in
25 Pelion.

1 Q. And did you respond?

2 A. I did.

3 Q. And as you responded, what did you do as a sergeant in
4 major crimes?

5 A. As a sergeant, especially on a call-in a situation
6 like this, I'm in charge of gathering resources and
7 responding. I have a team of investigators that are with
8 me on-call and at that time I gathered as much information
9 as I could from whatever sources, radio and things like
10 that. I was actually called by another detective who was
11 out on the scene and she advised me of the call and at that
12 time I immediately started to think about the resources.
13 You start thinking about where the victims are and
14 everything, so I sent one detective to the hospital once I
15 found out where the victim, VonKeith Toland, was being
16 taken and then I had other investigators meet me at the
17 scene and then from there I began getting a brief summary
18 of what occurred and what the deputies who first responded
19 observed and then I started to go from there with search
20 warrants -- preparing search warrants to search the
21 residence and, again, getting resources like crime scene,
22 which I knew crime scene would be available, victim
23 assistance, things like that, anything needed to further
24 the investigation. And one of the first things that I like
25 to do is establish who the primary investigator was gonna

1 be, which at this time I directed Todd Garrick that he was
2 gonna be the investigator.

3 Q. When you -- and you went to the scene; is that
4 correct?

5 A. I did.

6 Q. And that's 688 Bushberry Road in Lexington?

7 A. Yes. The Pelion area of Lexington county, yes, sir.

8 Q. When you got there, what was going on and what did you
9 observe?

10 A. The initial -- the initial crime scene was being
11 secured and I made contact with the responding deputies
12 just to find out where everybody was victim-wise and I
13 found out there was one deceased victim at the scene and
14 that some family members were headed to the hospital from
15 what we understood and then once I -- I realized that more
16 family members were gonna be at the hospital than one
17 detective could handle and I sent an additional detective
18 to the hospital to assist with witness statements and
19 things of that nature.

20 Q. When you talked about the scene being secured, what
21 do you mean?

22 A. When deputies respond to the scene and there's a
23 major incident, they will limit access to law enforcement,
24 EMS, emergency services personnel, and then they will --
25 once the scene is secure as far as safe, they will lock it

1 down until we are able to send in crime scene or whatever
2 resources are needed to process it.

3 Q. In this case you're aware that there was a long road
4 coming from Bushberry to access the property in the back,
5 correct?

6 A. Yes, the property had a driveway that went to the back
7 and it was determined anything past a certain distance of
8 that driveway would be considered the crime scene with
9 limited access just to control the travel in and out of the
10 area.

11 Q. So was the crime scene perimeter the fence around the
12 property?

13 A. Roughly. It would have been a little bit past the
14 fence where an officer could set up, but the natural
15 barrier would be the fence, but then the driveway to a
16 certain point the deputy would block that off.

17 Q. So then was the driveway blocked off inside the fence
18 line or outside the fence line?

19 A. It would have been outside the fence line.

20 Q. So then you and everybody else had to park outside the
21 fence line and walk in?

22 A. Yes, and walk in.

23 Q. What did you observe when you walked in? How many
24 officers were there? How many EMS personnel were there?
25 Had they already come and gone?

1 A. EMS had cleared, the majority of EMS. There may have
2 been some outside the perimeter, but from what I remember
3 the -- most of the EMS had cleared and it was now deputies
4 out there just to secure the area and it was very few --
5 very little foot traffic in and out at that point because
6 we'd started our investigation.

7 Q. When you showed up, there was one deceased on-site,
8 correct?

9 A. Yes. Later identified as Tycus Toland, yes, sir.

10 Q. And then another individual who had been shot who had
11 been transported, right?

12 A. Yes, VonKeith was transported emergent to Palmetto
13 Richland. That's where I sent Detective Barr to begin to
14 see if she could get any information on the victim.

15 Q. And he was actually life-flighted; is that correct?

16 A. He was.

17 Q. What does that mean?

18 A. That means that they don't have time for an ambulance
19 to transport and so they got Life Reach out and they have
20 trauma personnel on that helicopter to try to initiate
21 initial trauma support to that victim until they get to the
22 hospital.

23 Q. And so you arrive on-scene. Had a search begun? Has
24 a search warrant been obtained to go in the house while you
25 were there?

1 A. Not -- not for a little while. The search warrant --
2 I called another detective that was on call and had him
3 begin to -- I got enough information for the search warrant
4 and had that individual -- relayed that information to that
5 individual to get a search warrant. We didn't go inside
6 any vehicles or inside the residence until the search
7 warrant was signed and at that point we just were observing
8 what we could see on the outside of the residence.

9 Q. And what did you see on the outside or from the
10 outside?

11 A. From an initial cursory walk around without -- prior
12 to any evidence being gathered, there were initial
13 photographs taken, but I did observe what looked like
14 obviously the deceased by the vehicle and then around the
15 back there were some shell casings and there was an area in
16 a structure that looked like it was being built, some sort
17 of addition, and it appeared that there was an area of
18 disturbance with some blood and it appeared someone -- to
19 me that someone had crawled underneath the structure that
20 was a little bit away from the house but low and from what
21 I could see there appeared to be blood underneath the wood
22 of that structure as if somebody had crawled underneath
23 there towards the front of the house and then I also
24 noticed the back door was completely shattered and looked
25 like it had been pulled out of the frame and then around

1 the front it looked like somebody had came out of the
2 underpinning to the right of the front steps. And then
3 also there was a large amount of blood around a vehicle
4 with a door open and there appeared to be where somebody
5 was treated by EMS at that point and at that point since
6 we only had two victims, one was still on the scene, I
7 determined that that must have been where VonKeith was --
8 initially made contact with the deputies or EMS and was
9 transported and treated from that point.

10 Q. The vehicle with the door open, that was the Honda?

11 A. Yes, sir. The gray or silver Honda. And then in
12 walking around just at initial, I saw that -- it appeared
13 that a vehicle left at a high rate of speed just from the
14 tire impressions and the throwing up of dirt near the
15 residences.

16 Q. So once the search warrant comes, then the house is
17 processed?

18 A. Yes. Once the search warrant arrived, the CSI
19 was provided a copy of the search warrant and confirmed
20 that it was signed by a magistrate, and they began to
21 process the inside of the residence and at that time the --
22 pretty much CSI goes into the residence and handles all of
23 the initial photographs and any processing that they do.
24 At some point later in the evening once it was -- once they
25 had done enough to where they felt comfortable with people

1 coming -- with myself and another investigator, which was
2 Todd Garrick, coming in, I did a cursory walk through the
3 residence, which would have been later in the evening.

4 Q. What, if anything, did you observe inside the
5 residence?

6 A. The residence appeared to have been ransacked or gone
7 through. Somebody hastily pulled out drawers, opened
8 cabinets, and there appeared to be some wires that looked
9 like they belonged to some sort of device that had been
10 hastily pulled out in the hallway kind of in the master
11 bedroom.

12 Q. Were you able -- do you remember seeing whether there
13 were cameras outside the house or not?

14 A. Yes, there were cameras outside the house, which
15 indicated that the lines that ran into the house from those
16 cameras were hooked up to some sort of recording device.

17 Q. Did you find a recording device?

18 A. No, sir.

19 Q. But you found the cables that had been attached to it?

20 A. Yes, it looked like they had been pulled out.

21 Q. Did you see any blood in the house?

22 A. I did not.

23 Q. Did you see anything broken inside the house?

24 A. There were things in disarray. The back door was
25 obviously broken, but I just saw mainly things that had

1 been disturbed. I've worked burglaries and things. Most
2 of my law enforcement career was investigations, some of
3 which were property crimes, burglaries, and it looked like
4 a burglary where someone had come in and were hastily
5 looking for something.

6 Q. So when you left the scene and your officers left the
7 scene at 688 Bushberry Road, did you have any idea of who
8 the perpetrator could have been?

9 A. At that -- at that time, no. What we did was we met
10 back up at the sheriff's department. Once everybody went
11 out, the detectives were doing interviews at the hospital
12 with family members, and I was mainly at the scene just
13 kind of coordinating what was going on at the scene, and at
14 that time in a case like this you want to meet everybody
15 together and kind of compile information and we did that
16 back at the sheriff's department sometime before midnight.
17 After I had done the cursory walkthrough, we met back up,
18 the detectives that were with me, and we started just going
19 over kind of talking about what information we knew at that
20 point.

21 Q. At sometime during that meeting, did one of the
22 officers bring up some information about the CAD report?

23 A. Yes.

24 Q. What is a CAD report?

25 A. A CAD report is a computer-aided dispatch, that's what

1 it stands for, and what that is, is any time there's a call
2 response done by communications, it's -- everything is
3 recorded on audio that comes in through a landline or
4 radio, but a CAD printout would have information that's
5 typed directly in from the dispatcher receiving that
6 information and the sources could come from radio traffic,
7 telephone conversations or direct knowledge. It's just
8 kind of a brief summary of information that's put on the
9 screen so the officers in the field can look at it and it
10 can be referred to later on.

11 Q. After you had an opportunity to review that, what, if
12 anything, did you direct another officer to do?

13 A. After reviewing that, I noticed information that was
14 in there that was pertinent to the case and I had one of
15 the detectives, Detective Crouch, I had him go to the 9-1-1
16 center, which is offsite from the sheriff's department,
17 it's over on Ball Park Road, and I had him obtain an audio
18 recording of the 9-1-1 calls that were related to this
19 incident.

20 Q. You were in court when VonKeith Toland testified and
21 his portion of the 9-1-1 calls were entered into evidence,
22 correct?

23 A. Yes, sir.

24 Q. Is that what you're saying you listened to?

25 A. Yes, sir.

1 Q. What was it -- what, if anything did you hear on there
2 that gave you an investigative lead?

3 A. The information he provided was that the two
4 individuals responsible that he knew them through his
5 homeboy, Zo from Cali.

6 Q. And then what, if anything, did you or your
7 investigator do with that information?

8 A. We took that information and began to talk to the
9 family about any information they could provide us about a
10 Zo from Cali.

11 Q. Let me show you State's Number 40 in evidence and ask
12 if you recognize that?

13 A. I do.

14 Q. And was that information provided to you from the
15 family in response to your request about Zo from Cali?

16 A. It was.

17 MR. GRAHAM: Your Honor, for the record State's 40
18 was the Instagram photo testified to earlier.

19 BY MR. GRAHAM:

20 Q. Once you received this, what, if anything, did you do
21 with it?

22 A. At that time once I received this photograph, I
23 eventually -- one of the things that we also did, I'll back
24 up a little bit, once we received the photo and we got some
25 more information on -- possible information on Zo from

1 Cali, we attempted to find his -- his full name from an
2 individual who had sold him a vehicle and once we had his
3 full name, I was able to do some background check through
4 our criminal intelligence division and I found that -- that
5 it was Alonzo Walker and he was heavily associated with the
6 Fairfield area in California. So what I did was I reached
7 out -- with this photograph I reached out to the Fairfield
8 Police Department and provided -- asked to speak to
9 somebody in their criminal investigations unit and I
10 provided one of their detectives with this photograph in
11 an attempt to identify Zo from Cali, who ended up being
12 Alonzo Walker.

13 Q. In addition to Fairfield county identifying -- and
14 that would be the individual who's blowing smoke out is
15 Alonzo Walker to your understanding?

16 A. Yes.

17 Q. In addition to that, you also had information about
18 the other individual in that photo, correct?

19 A. Correct. The family member, when they -- when we
20 asked for information on Zo from Cali, they started to
21 research that information and they were actually able to
22 find a photo of the individual they knew as Zo from Cali
23 and they also in doing so found a photograph with the
24 individual that they say came to their house prior to this
25 incident.

1 Q. And that's that person?

2 A. Yes.

3 Q. Was Fairfield Police Department able to give you a
4 name for that person?

5 A. They were. My intent was to send the photograph. I
6 knew that the individual had been described by the family
7 as being at the residence prior to the shooting and leaving
8 with VonKeith and Tycus and at that time I wanted to
9 identify -- my purpose was to identify Zo from Cali so we
10 could try to find out who the other individual was with him
11 and the detective was able to identify the primary suspect
12 as -- in that photo as Justin Butler.

13 Q. So now you had the name Justin Butler?

14 A. Yes, sir.

15 Q. At the same time that's going on, what, if anything,
16 did you do with VonKeith Toland's phone that he used to
17 call 9-1-1?

18 A. While all this is going on, everything's kind of
19 moving at the same time, based on the information that we
20 had gathered at that point also from the family is that --
21 and from the 9-1-1 calls is that individuals that were
22 responsible for this were meeting with VonKeith to purchase
23 a vehicle and that he communicated with them on his
24 telephone and at that time I obtained a -- what's called
25 an exigent circumstance request through the phone company

1 to get the victim's cell phone records on exigent
2 circumstances to identify people he communicated with
3 leading up to these individuals coming to the house because
4 that's the information we had received and we also had
5 information that the vehicle at the residence had an out
6 of state tag on it, so those were things that we were
7 looking for on these phone records.

8 Q. So have you visited VonKeith in the hospital yet at
9 this point in your investigation?

10 A. No, sir, he was -- he was at the hospital. We had not
11 visited him.

12 Q. What was your understanding of his condition?

13 A. His -- my understanding was that his condition was
14 dire and in situations like this -- unfortunately, I've
15 worked several homicides in my career, and many times you
16 don't have a victim that's able to talk to you about what
17 happened afterwards, so at this point in my mind I
18 proceeded as if we did not have a victim moving forward, we
19 would have two deceased individuals, and that's where my
20 mindset was at that point and I began to step back in the
21 investigation as far as any kind of interviews and I began
22 to focus on identifying the two individuals that came to
23 the residence of VonKeith's mother and Tycus's mother prior
24 to this incident in the anticipation that we wouldn't be
25 able to get any information from VonKeith directly.

1 Q. Once you got the search warrant for VonKeith's phone,
2 it was you understanding he had talked to the people who
3 wanted to buy the car, correct?

4 A. Yes, sir.

5 Q. And once you had that, what on there caught your
6 attention?

7 A. Once we looked at VonKeith's number, the information
8 that we had was the out of state -- out of town plates was
9 one thing that stuck out to me and when I began to review
10 the records leading up to these individuals showing up at
11 his mother's house, there was a number on there that was
12 from an Atlanta area code, and at that point I began to
13 focus on that number, which is 404-695-5436.

14 Q. And is that the number where you saw that VonKeith's
15 phone had texted a photograph of the Infinity to?

16 A. Eventually, yes, but at that -- I didn't have that at
17 that point, but eventually we were able to retrieve that
18 information from the phone.

19 Q. All right. Let me -- and once you identified that
20 number -- and that was 404-695-5436; is that correct?

21 A. Yes, sir.

22 Q. What did you do once you identified that number as a
23 number of interest?

24 A. Once I identified that number, I obtained a search
25 warrant for that number and I began to research any data

1 that I could find on that number.

2 Q. Okay. And, in fact, you received phone records from,
3 I believe, Sprint for that phone; is that correct?

4 A. Was it Sprint or Verizon? I'd have to look at the --

5 Q. You were correct. It's Verizon.

6 A. Thank you. Verizon.

7 Q. And State's 64 for identification is a copy of what
8 you got back in response to that search warrant, correct?

9 A. Yes.

10 Q. In addition to receiving their phone records -- so
11 what would be on those phone records?

12 A. Typically records would have -- phone records, it
13 would depend on how soon you got it. There's a certain
14 amount of text information that would be preserved
15 depending on the phone company and sometimes you get lucky
16 and do have a couple of days' worth of text messages and
17 other information would be cell phone tower location based
18 on either data searches, when they used data to search
19 something on the Internet it would show those tower
20 locations, or telephone communication would show their
21 location also.

22 Q. So it would have a list of incoming and outgoing
23 calls?

24 A. Yes, sir.

25 Q. It could have cell tower location, meaning identifying

1 the actual cell tower that the call went through --

2 A. Yes.

3 Q. -- or was received on? Evidence of texting in and
4 out?

5 A. Yes.

6 Q. And in this case, the 404, there are actually texted
7 content, correct?

8 A. Yes, there was some text content that we were able to
9 retrieve around the time of the incident.

10 Q. When you started looking through all of that
11 information, what caught your eye and why?

12 A. When looking through that information, there was a
13 phone call that -- on a lot of these phones, especially
14 this one in particular, there was no call subscriber
15 information, the phone wasn't registered to an address or
16 an individual, it appeared based on the information that we
17 got that it was a prepaid or burner phone that was not
18 associated with anybody on a contract or anything, and at
19 that point you have to marry that phone up with somebody
20 based on either location or their -- who they talk to, and
21 one number that stood out was a star 67 number, which I
22 figured it was obviously somebody he didn't want to have
23 his phone number, and I began to look into that number
24 because the phone call was made at four something in the
25 morning and it was around twenty minutes, so you would

1 think just by looking at it that that individual would know
2 who they talked to at four something in the morning for
3 twenty minutes from this phone.

4 Q. Let me stop you right there. Let me show you a
5 document that I have not marked yet. Do you recognize that
6 as being the subscriber information as contained on 64 for
7 ID; that that is the subscriber information from Verizon
8 that was provided to you as a result of the first search
9 warrant?

10 A. I do.

11 MR. GRAHAM: Your Honor, the State would offer
12 this into evidence.

13 MR. SPANGLER: Judge, if we could just take a look
14 at the document.

15 THE COURT: Please.

16 MR. SPANGLER: No objection to this specific
17 subscriber information.

18 MR. GRAHAM: That would be State's 79.

19 THE COURT: 79 in evidence.

20 (State's Exhibit Number 79, subscriber information
21 5436, was marked and admitted into evidence.)

22 BY MR. GRAHAM:

23 Q. So as to State's 79, which is the subscriber
24 information that was provided in response to the first
25 search warrant for 404-695-5436, what did you find?

1 A. That there was no subscriber information and that the
2 only information was where it looks like it was sold from
3 or the phone originated from. The shipment date location
4 is what it appears.

5 Q. So there's no name associated with it; first, last or
6 middle?

7 A. No, sir.

8 Q. No business name?

9 A. No, sir.

10 Q. No real address?

11 A. No, sir.

12 Q. And the city and state is what?

13 A. Folsom, California.

14 Q. You had said that there was a number that caught your
15 attention because of the star 67?

16 A. Yes, sir.

17 Q. And star 67, that means what?

18 A. It means that the individual making the call attempted
19 to block their phone number.

20 Q. And why did that pique your attention?

21 A. It piqued -- if I could back up a little bit, this
22 phone continued to hold my attention because once we got
23 the phone records back for that phone we were able to track
24 that individual from Alabama to Atlanta to the closest cell
25 phone tower around the residence of the victim's mother and

1 then to Pelion, South Carolina, so that's what piqued my
2 interest in this phone to further look into the -- to try
3 to identify who was in the phone.

4 Q. And how do you -- how do you track where a phone was?
5 How did you do that?

6 A. What I did was I -- whenever phone records come in,
7 you also receive from each individual subscriber or each
8 individual phone company has certain towers that they use
9 and certain addresses. Some are physical addresses, some
10 are points of reference on a map and from grid coordinates,
11 and the cell phone, when it's used -- and the technical
12 stuff, the technical things, are beyond me as far as being
13 able to tell and say why, but the -- I'm able to go in on a
14 limited basis and look at the calls and show the location
15 where the call was made from and match that tower up with
16 the location and then show the travel of that individual.
17 There's different things as far as the triangulation and
18 things like that, but I simply go in and find out where
19 that phone was when that call was made and where that tower
20 is, the closest tower.

21 Q. So you can look on a certain call on a particular date
22 and particular time and a call that's made that uses a cell
23 tower and then you can find out the address or GPS of the
24 cell tower?

25 A. Yes, sir.

1 Q. And then you plot it?

2 A. Yes, sir.

3 Q. And in doing that and plotting the particular phone
4 calls of that 404-695-3654, the phone that communicated
5 with VonKeith Toland, what did you find?

6 A. I found that that vehicle in the days prior to this
7 incident was communicating with VonKeith Toland and had
8 actually travelled from Muscle Shoals, Alabama, to
9 Greenwood and then to North, South Carolina to where they
10 met with VonKeith at his mother's house, then in the area
11 of Pelion where this incident occurred, and then travelled
12 back -- immediately following this incident travelled back
13 to Atlanta and then to the Alabama area.

14 Q. Before we move on with things that you did with the
15 records you found and following up on that, did you
16 actually --

17 A. Let me back up.

18 Q. Sure.

19 A. On the path back, it stopped in Batesburg. It made a
20 stop in Batesburg, so there was other information that we
21 followed up on the travel back to Alabama.

22 Q. Did you send a second search warrant to Verizon to try
23 to find where that phone itself, the 404-695-5436, that
24 phone was actually purchased?

25 A. I did.

1 Q. And did you get a response from that?

2 A. I did.

3 Q. Let me show you what's marked as State's 69 and ask if
4 you recognize that document?

5 A. I do. This is the response to the request for that
6 information of where the phone was purchased.

7 MR. GRAHAM: Your Honor, the State would move 69
8 into evidence.

9 MR. SPANGLER: No objection to 69.

10 THE COURT: State's 69 is in evidence.

11 (State's Exhibit Number 69, Verizon purchase
12 information 5436, was admitted into evidence.)

13 BY MR. GRAHAM:

14 Q. So looking at State's 69, the response from Verizon,
15 where did you determine that that phone that belonged to
16 the number 404-695-5436 was purchased?

17 A. It was purchased at a Wal-Mart in Muscle Shoals,
18 Alabama.

19 Q. Do you have a date that it was activated?

20 A. It looks like March 15th of 2014.

21 Q. And were you able to determine whether it was a phone
22 under contract or whether it was a minute phone?

23 A. No, it's a prepaid Samsung phone.

24 Q. So what does it mean when it says that it's prepaid?

25 A. That means there's no subscriber information and that

1 the phone is not traced back to a particular person or
2 address and what we refer to as a burner phone, a phone
3 that somebody can dispose of quickly or it can be without
4 any kind of trace to them.

5 Q. So how do you put minutes on those phones?

6 A. You prepay either through -- well, you can buy cards.
7 They sell -- sometimes they sell cards or you can use a
8 debit card and just put it on. You call a number and put
9 minutes on that phone.

10 Q. You can go to a Wal-Mart or a gas station and pay cash
11 or --

12 A. Yes, or buy the prepaid cards.

13 Q. So as to this phone, the first phone we're talking
14 about, the one that communicated with VonKeith about the
15 car --

16 A. Yes.

17 Q. -- at that point you don't know who the phone belongs
18 to?

19 A. No, we do not.

20 Q. What you do know is the phone was purchased from a
21 Verizon store at a Wal-Mart in Muscle Shoals, Alabama --

22 A. Yes, sir.

23 Q. -- on March 15th of 2014?

24 A. Yes.

25 Q. What did you do to try to figure out who that phone

1 belongs to next?

2 A. We -- we look at the telephone calls and sometimes we
3 just simply call people and say hey, who were you talking
4 to on this phone, and then we back that up with the data
5 that we receive from the location areas to confirm that,
6 and also if we're lucky enough sometimes we get text
7 messages to identify somebody.

8 Q. Well, one of -- what you talked about a few minutes
9 ago was the star 67 caught your interest. So what did you
10 do about the star 67 number?

11 A. In reference to the star 67 number, which was a 707
12 number out of California, 707-689-3587, I simply called
13 that individual and asked if they had -- who they had spoke
14 to on a certain date at a certain time.

15 Q. And through conversations with the person on the star
16 67 number, were you able to get another phone number and
17 name?

18 MR. SPANGLER: Objection. Hearsay.

19 MR. GRAHAM: I didn't ask what he got. I asked if
20 he got information.

21 THE COURT: All right. Yes -- you can answer yes
22 or no, but don't go further than that, please.

23 THE WITNESS: Not during that conversation. Not
24 during the initial conversation I didn't get that
25 information.

1 BY MR. GRAHAM:

2 Q. At some point --

3 A. Yes.

4 Q. -- talking to the person on the star 67, did you get a
5 name and another telephone number?

6 A. Yes, sir.

7 Q. And what were the questions that were asked that the
8 name was provided for and the number was provided for?

9 A. We asked if that individual knew this person -- or
10 what the answers were?

11 THE COURT: No.

12 BY MR. GRAHAM:

13 Q. Well, I'm assuming that the questions were do you know
14 who the 404 number belongs to.

15 A. Correct. At that point we asked do you know who the
16 404 number belonged to and we also had a name to ask that
17 person about.

18 Q. Okay. So after going through the star 67 and talking
19 to that number -- was that a male or female?

20 A. Female.

21 Q. After talking to that female, you had another phone
22 number and a name?

23 A. We had the name when we called, they just confirmed
24 that information, and then we ended up with a phone number.

25 Q. How did you have the name?

1 A. From -- we received that information from the
2 photograph I sent to California.

3 Q. So you already had the name Justin Butler from --

4 A. Yes.

5 MR. SPANGLER: Judge, we're gonna object to hearsay
6 on that as well if he learned it from the folks out in
7 California that specific name.

8 THE COURT: All right. He already said he had
9 the name Justin Butler already, so I'm not interpreting
10 this as being associated with the phone call.

11 Am I wrong or am I right?

12 MR. GRAHAM: They're tracking down the identity
13 of the phone number now.

14 MR. SPANGLER: Judge, the witness's statement was
15 he -- from talking with folks in California he had the
16 name Justin Butler insinuating that the only reason he
17 knew it was because -- based on that conversation.

18 THE COURT: Is it because those -- are those the
19 individuals who are gonna testify later?

20 MR. GRAHAM: Yes.

21 THE COURT: Okay. Overruled. You can cross them
22 then, confront them then.

23 BY MR. GRAHAM:

24 Q. After speaking with that female, you had a new number?

25 A. Yes.

1 Q. Did you or somebody working for you dial that number?

2 A. Yes, Detective Garrick dialed that number in my
3 presence.

4 Q. What was the number that was dialed?

5 A. I'll have to refer to my notes on that. I apologize.
6 It's -- the phone number received was 510-875-0391.

7 Q. And did you call that number or did Detective Garrick
8 call that number in your presence?

9 A. He did. He called that number in my presence.

10 Q. All right. And did a male or female answer?

11 A. A male.

12 Q. Did a conversation ensue between Detective Garrick and
13 that individual that you heard?

14 A. Yes.

15 Q. Later on did you have a chance to hear Justin Butler
16 speak?

17 A. Yes.

18 Q. Is the voice that you heard on the -- the male voice
19 that you heard answering 510-875-0391, was it or was it not
20 Justin Butler?

21 A. It was.

22 Q. And that's based on the voice that you heard --

23 A. Yes.

24 Q. -- during the call and when you talked with Mr. Butler
25 afterwards?

1 A. Yes.

2 Q. Did you get a search warrant for 510-875-0391?

3 A. I did.

4 MR. GRAHAM: State's 66 for identification is the
5 result of that search warrant, Your Honor.

6 BY MR. GRAHAM:

7 Q. Let me show you a document again that, I apologize, is
8 not marked yet, and ask if you recognize that as being the
9 subscriber information for 510-875-0391 that was on -- on
10 this disk that's a result of the search warrant you sent
11 for the number?

12 A. It is.

13 MR. GRAHAM: Your Honor, the State would offer
14 this into evidence.

15 MR. SPANGLER: If we could just take a look at it
16 again.

17 THE COURT: Sure. Please.

18 MR. SPANGLER: No objection.

19 THE COURT: That's State's what?

20 MR. GRAHAM: 80.

21 THE COURT: State's 80 is in evidence without
22 objection.

23 (State's Exhibit Number 80, subscriber information
24 0391, was marked and admitted into evidence.)

25 BY MR. GRAHAM:

1 Q. State's Number 80 is subscriber information from
2 Sprint on 510-875-0391, the number where you heard the
3 voice that you've identified as Justin Butler on?

4 A. Yes.

5 Q. As far as the subscriber information, what does it say
6 about that phone?

7 A. It comes back to John McCoy at P.O. Box 54988 in
8 Irvine, California.

9 Q. Do you know whether that's a real address or a default
10 address?

11 A. That is a default address for Sprint.

12 Q. So the name on this account is John McCoy?

13 A. Yes.

14 Q. And are you able to tell when that phone was
15 activated?

16 A. Yes, it looks like October 25, 2011.

17 Q. So now you have phone records for that phone as well?

18 A. Yes, sir.

19 Q. Cell towers for that phone as well?

20 A. Yes, sir.

21 Q. What, if anything, can you say about the 404 number
22 that we talked about travelling from Alabama to South
23 Carolina and back in comparison to the 510 number and its
24 travels during the same time period?

25 A. Yes, once I plotted the -- the travel habits of the

1 individual from the 24th to after the incident, the pattern
2 was the exact same; coming to South Carolina from Muscle
3 Shoals, Alabama, to Atlanta and Greenwood and North,
4 Pelion, and then this phone -- the other phone stopped in
5 Batesburg-Leesville, this phone continued to travel back to
6 Muscle Shoals, Alabama, where that phone was primarily used
7 before and after the incident.

8 Q. What, if anything, did you do -- because now you have
9 John McCoy on the 510 number and you have the name Justin
10 Butler from the identification?

11 A. Yes.

12 Q. What did you do to try to match those two up?

13 A. I looked -- I started looking at social media and I
14 actually found where the name Jona -- or let me back up.
15 There was a Jona mentioned in one of the phone records or
16 one of the text messages.

17 MR. SPANGLER: Objection, Judge. Can we approach?

18 THE COURT: Sure. You-all come on up.

19 (Proceedings held at the bench; not reported.)

20 THE COURT: Your objection is noted and overruled.

21 Proceed, please.

22 We'll put the nature of the objection on the record
23 at a later point of time.

24 MR. GRAHAM: Thank you, Your Honor.

25 BY MR. GRAHAM:

1 Q. You were talking about text messages. You're talking
2 about text messages that you saw on the 404 number?

3 A. Yes. All of this is going on at the same time I'm
4 getting -- I'm trying to match up information we got from
5 one phone to another to try to cross-reference them and to
6 identify the individuals through messaging or telephone
7 patterns or locations.

8 Q. Okay. One of the -- one of the messages that you saw
9 on the 404 number when you were looking at texts actually
10 matched up with text content that you saw on VonKeith
11 Toland's phone that he called 9-1-1 on, correct?

12 A. Yes.

13 Q. And that would have been the 803-221-5730 number?

14 A. Yes.

15 Q. And it actually gave an address from VonKeith Toland
16 to Justin Butler?

17 A. Correct.

18 Q. And the address that was given was what?

19 A. 3835 Savannah Highway, North, South Carolina, which is
20 the address of VonKeith's mother.

21 Q. So you found that on the 404 records?

22 A. Yes.

23 Q. And you also saw it on VonKeith's records as well?

24 A. Yes.

25 Q. Additionally, as you were looking through the 404