

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH RAY GLEATON,

APPELLANT

APPELLATE CASE NO. 2019-002072

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT’S EXHIBITS #4, #7, #8, #9, #10 and #11 (COLOR PHOTOS), STATE’S EXHIBITS #46, #47, #48, #49, #50, #51 (BLACK AND WHITE PHOTOS), STATE’S EXHIBIT #111 (ROY BRASLEY VIDEO), STATE’S EXHIBIT #119 (PHOTO OF VICTIM AMANDA PEELE) and STATE’S EXHIBITS #136, #137, #138, #139, #140, #141 (AUTOPSY PHOTOS)

1 game?

2 A. I had the - the kids, they got the headset. They
3 got the headset to play the gym with. I had the headset
4 on.

5 Q. Why did you have that on?

6 A. Because you can hear the game better.

7 Q. So what is your first indication that something has
8 gone wrong?

9 A. I heard a -- While I was playing the game, I heard a
10 gunshot that wasn't in the game. It was a gunshot separate
11 than everything else that was going on. It wasn't in the
12 game.

13 Q. So like -- I mean, like what kind -- I can kind of
14 guess -- but what kind of game is that?

15 A. It's a shooting game.

16 Q. And so what kind of sounds do you have in your
17 headphones when you're playing this?

18 A. Explosions, screaming, shooting. Explosions,
19 screaming, more shooting. It kind of draws on if you have
20 been playing it for hours so...

21 Q. What was different about what you heard?

22 A. It was real.

23 Q. How could you tell?

24 A. It was outside of - the headphones put their sound
25 in your head, but it was outside. It was somewhere else. It

1 wasn't here. It was somewhere else.

2 Q. So tell the jury what you did?

3 A. I got up and went outside and looked around. I
4 ain't know what was going on at the time because my senses
5 were blocked all the while I was playing the game so literally
6 anything could have been happening around me for a couple
7 hours, but I went outside first to look around to see if I
8 could see anybody outside and see something going on. I
9 didn't see nothing going on so my common sense told me, oh, it
10 was in the house. There's only three people in the house.
11 It's me, Amanda and Kenneth we were the only three people in
12 the house. Nobody else came in, but I can tell nobody else
13 came in because I'm sitting by the front door so the front
14 door is right here so if somebody would have came in, they
15 would have walked right in front of me so it was just us three
16 so the gunshot had to come inside the house. So I'm thinking
17 either Amanda shot Kenneth or Kenneth shot Amanda, one of the
18 two. It has to be. Or shooting a wall. This is the
19 questions that was going on in my mind and while I'm outside
20 thinking about it. So I go back in and I go, okay, I got to
21 check on them. I got to go back in and see what happened.
22 Yeah. That's what I did. I went in and seen what happened.
23 Went to the back and that's when I seen Kenneth and Amanda
24 back there.

25 Q. I'm gonna stop you right there. Now, tell the jury

1 like how long were you outside and what did you do out there
2 again? Tell the jury.

3 A. I wasn't really outside long. I walked to the stop
4 sign and I looked around to see if maybe the gunshot could
5 have come from anywhere else other than inside the house.
6 Uhm, I thought about it for a second and went back in the
7 house to check on them.

8 Q. And when you were outside, did you go like all the
9 way out?

10 A. I went to the stop line.

11 MS. JURICK: Leading.

12 THE COURT: Leading. Leading. What did he do.
13 Where did he go. Don't testify for him.

14 BY THE WITNESS:

15 A. I went to the stop sign. The stop sign is located,
16 it's not all the way at the end of the street but maybe a
17 little further past the house.

18 MR. EATON: Mr. Dukes -- May the witness step down,
19 Your Honor.

20 THE COURT: Yes. Step down.

21 BY MR. EATON:

22 Q. Step on down, Mr. Dukes.

23 A. (Witness complies.)

24 MR. EATON: I believe this is State's 19. This is
25 the floor plan I think.

1 BY MR. EATON:

2 Q. Mr. Dukes, this is State's Exhibit 19. Now, when
3 you use this pointer, try not to touch the screen because it's
4 a touch screen. Do you recognize this? Have you seen this
5 before? What is this?

6 A. This would be a layout of their house.

7 Q. A layout of who -- You've got to speak up for the
8 court reporter.

9 A. A layout of Amanda's house it looks like. Looks
10 like Amanda's because this is the extra space going over
11 there. This is where they store their stuff at. This is the
12 deck, the back where we came through, came into the dining
13 area. This is where they was talking at. This is where I
14 went to go into the kitchen to get food and I came back out
15 here.

16 THE COURT: I'm sorry. Can you all hear members of
17 the jury?

18 (The jury affirmatively responds.)

19 THE COURT: Okay.

20 BY MR. EATON:

21 Q. Okay. So you're oriented on this diagram, or are
22 you?

23 A. Mm-hmm.

24 Q. Now, I'm gonna zoom back out just a little bit.

25 A. I didn't mean to touch it.

1 Q. That's okay. All right. Where is the front door?

2 A. Here.

3 Q. Okay. Where are you playing video games?

4 A. Right there.

5 Q. This room?

6 A. Mm-hmm. Like in the middle of this. In the middle
7 of -- The TV was in the middle of this wall. I was a little
8 further off from it. Well, I sat kind of close to it. I
9 can't see. Right there.

10 Q. I'm sorry to keep saying this. You've got to speak
11 up.

12 A. Right there. The TV was in the middle of the wall,
13 but I was a little further off from the wall. I can't see. I
14 had to be close to the TV so I was like right there. I was
15 close to it.

16 Q. And where is the kitchen where they were initially
17 talking?

18 A. No. They was talking in the dining room area. They
19 had a table right there right by the back door. Right by the
20 back door they had a table right there where they were talking
21 at. They weren't in the kitchen.

22 Q. Okay. And so when you said they had gone back to
23 the bedroom, which bedroom?

24 A. Back here.

25 Q. Whose bedroom was that?

1 A. That's Amanda's bedroom or Amanda and K.G. bedroom.
2 That's their bedroom.

3 Q. And so when you testified that you hear the shot
4 that's not from the game, where did you go?

5 A. I came out here. I came out the front door and went
6 this way. The stop sign was that way. I looked down the
7 whole street.

8 Q. And then what did you do?

9 A. I went back in the house. I went back in the house.
10 Uhm, he might have called to me from the back, but it's like a
11 halfway remember, that half though. It's been a while. He
12 might have called me from the back and got my attention. I
13 was headed to the back anyway. Uhm, I went to the back. I
14 tried to open the door. Their door is wedged on their room.
15 It doesn't open right away. I had to put my shoulder it.

16 Q. Tell the jury why you went back there?

17 A. I had to check on them because the gunshot happened
18 in the room, something had to happen. I don't know what it
19 was. My curiosity got the best of me really in going back
20 there to check on them. I might have should have left. I
21 don't know what I should have did in this scenario but I went
22 back there to check on them to see what happened. That's why
23 I was going back there. That was my intention. I just wanted
24 to know what happened. What the gunshot - what - what -
25 what's going on. I didn't know what was going on at the time

1 so I went back there to check on them and when I opened the
2 door, uhm, he killed Amanda. There was blood everywhere in
3 the room. There was blood everywhere. He had his foot on her
4 head. He was choking her with a belt. She was dead. She was
5 already dead when I opened the door.

6 Q. How do you know?

7 A. I have never seen a dead person, but it wasn't no
8 life in her though. There wasn't no life in her. It wasn't a
9 - it wasn't a save situation. It wasn't a save situation.
10 Like she was gone. She was dead. There was too much blood
11 everywhere. There was blood everywhere. There was blood on
12 the back wall. There was blood on the back wall. There blood
13 on the bed, blood on the floor. There was just blood
14 everywhere and her head, it looked like her head - her neck
15 was broken or something the way she was laying. It just
16 looked bad so immediately --

17 Q. What did he say?

18 A. I done fucked up or something. He said something of
19 that nature, or he had screwed up, but when I went into the
20 room, he didn't say anything to me. I didn't give him a
21 chance to say anything to me. When I went into the room, I
22 hurried up and took control of the situation and told him I
23 was gonna get some bags so he could clean up.

24 Q. Why did you say that?

25 A. To hurry up and catch his attention, to keep him

1 distracted so just keeping his attention. You just killed
2 somebody. Just hurry up and keep his mind where I wanted it
3 to be so I could hurry up and leave because that's all that I
4 wanted. I just wanted to keep his attention not on doing
5 nothing else. I'm about to go do something for you. I'll be
6 right back, before he can figure out whether I'm gonna do that
7 or not, I left. I left real quick.

8 Q. How did he react when you said that?

9 A. I don't know because I left real fast. I left.

10 Q. So you didn't even wait for --

11 A. I didn't give him a chance. I didn't give him a
12 chance to respond or give me an answer to what I said or
13 nothing. I just left immediately. Like left. He probably
14 didn't catch on to the fact that I was running until I got to
15 the front door because that's when I heard steps behind me. I
16 never seen him coming behind me. I ain't never see him. I
17 just heard steps. I'm gone. I'm gone.

18 Q. Mr. Dukes, I'll ask you take the stand one more
19 time.

20 A. (Witness complies.)

21 Q. Are you nervous today?

22 A. A little bit.

23 Q. Is talking to police or prosecutors a thing you
24 normally do?

25 A. No.

1 Q. Why did you come today?

2 A. Because K.G. killed Amanda and I was the only person
3 in the house and people need to know that K.G. killed
4 Amanda.

5 Q. So you leave the house. Where do you go?

6 A. I ran. I ran. I thought somebody was chasing me.
7 I thought he was chasing me. I never seen him chasing me. I
8 just thought he was chasing me because I heard footsteps in
9 the house coming behind me so I ran, ran through the woods to
10 the loop around Pine Lakes neighborhood. I then go on the
11 main walk on the road because I thought I had somebody behind
12 me. I went through the woods. I came out the woods by Circle
13 K gas station at the corner are of Trotter road and Leesburg.
14 I used their WiFi to call a friend of mine.

15 Q. What do you mean you used WiFi to call somebody?

16 A. I had a device in my pocket, but I didn't have any
17 service so I couldn't make a phone call with it. I just had
18 the phone in my pocket because I play chess on the WiFi.
19 That's the only reason I got it in my pocket. But there's a
20 app I can use if I've got WiFi to contact people so I wanted
21 to leave the area and get away so I called my friend Toya.

22 Q. Who is Toya?

23 A. Toya is a good friend of mine. I've known her for a
24 long time.

25 Q. What's her full name?

1 A. Latoya Riley.

2 Q. Around what time do you think it was then?

3 A. Might have been almost 11 or 12:00 then I was
4 thinking in my mind because I was playing video games for
5 hours. It might have been late then. It was later than any
6 time I ever called her.

7 Q. How were you feeling around this time?

8 A. Jumpy, antsy, nervous, scared. Uhm, yeah. Mind all
9 over the place.

10 Q. Did you send Latoya any messages with your phone?

11 A. I did.

12 Q. How would y'all communicate?

13 A. Through Facebook Messenger.

14 Q. What's Facebook Messenger? Talk into the mic.

15 A. Facebook Messenger is, uhm, I'm confused. It's like
16 a app that Facebook have that you can talk to people, you can
17 send messages.

18 Q. When you called her, did she answer?

19 A. Yep. Yes, sir.

20 Q. So why did you also send messages to her?

21 A. Hmm?

22 Q. I'm saying, did you talk to her?

23 A. No. I didn't physically talk to her. I didn't
24 physically talk to her.

25 Q. So she did not answer?

1 A. In my mind talking is the messenger. I spoke with
2 her messenger.

3 Q. Okay. I'm just trying to understand. So you're
4 saying you called. She didn't answer?

5 A. I didn't make a phone call. I sent a message
6 through messenger. That's my phone call.

7 MR. EATON: I'll approach with State's 145 for
8 identification. The defense has seen this, Your Honor.

9 BY MR. EATON:

10 Q. Mr. Dukes do you recognize this?

11 A. Yes.

12 Q. What is this?

13 A. That's the messenger screen.

14 Q. And what -- These messenger screens, what do they
15 show?

16 A. These are my messages.

17 Q. Between who?

18 A. Me and Toya.

19 Q. And when were they from?

20 A. I don't understand the question what you mean.

21 Q. Are these the same messages that you were just
22 talking about?

23 A. Yep. Those are the messages. Yeah.

24 MR. EATON: Okay. At this time I would offer
25 State's 145 into evidence, Your Honor.

1 MS. JURICK: And, Your Honor, I object to its
2 admissibility and hearsay, authentication.

3 THE COURT: All right. I think we took this up
4 earlier. Your objection is overruled.

5 MS. JURICK: Thank you, Your Honor.

6 THE COURT: So admitted.

7 BY MR. EATON:

8 Q. So, Mr. Dukes, you said you thought it was around
9 11. Is it possible that it was earlier than that?

10 A. It could have been.

11 Q. So when is your first message to Latoya?

12 A. At 9:45.

13 Q. And what do you say to her?

14 A. Latoya, I need you, exclamation points. Please come
15 and get me now. Okay. I'll come. Hey, lady.

16 Q. What's that?

17 A. That's a waving fox.

18 Q. Why did you send that?

19 A. It looks cute.

20 Q. And is that the same?

21 A. That's the same page. Yeah.

22 Q. And then what does she say?

23 A. What's wrong? Can't say. Can you take me to
24 Country House.

25 Q. What's country --

1 A. Country is her brother.

2 Q. Oh, that's a person?

3 A. That's a person.

4 Q. And what does she say?

5 A. Right now? I really need to leave this side.

6 Q. That's you?

7 A. Yep.

8 Q. And she goes?

9 A. Where you want to go?

10 Q. And you say?

11 A. I don't know. I need to figure this out. I'm in

12 big trouble, lady.

13 Q. What did you mean by that?

14 A. Uhm, trouble in my mind is anything problematic or

15 bad. Anything problematic or bad. It could be me stubbing my

16 toe. It could be me getting fired. I was playing a video

17 game where somebody died. I'm in trouble. I'm in trouble.

18 This is bad. I'm in trouble.

19 Q. Did you mean you had done something?

20 A. No. Uh-uh. But I'm in trouble, problematic

21 situation. Some crazy stuff can happen. I don't know what to

22 do. Take me to somebody house I trust or where I feel safe at

23 so I can calm down.

24 Q. And what does she say to you?

25 A. On my way. OMW is what it says.

1 Q. And what does that mean?

2 A. On my way.

3 Q. And then what do you say?

4 A. Oh, man. I'm so scared right now.

5 Q. Around what time is that?

6 A. That's 11:15. 11:18.

7 Q. And then she says?

8 A. Please tell me what's going on. I say I can't. And
9 she asked me if I was, asking me about was I at one of my
10 sleeping spots.

11 Q. Meaning what?

12 A. One of my sleeping spots. I'm homeless. We have
13 specific spots that we go to sleep.

14 Q. And so did y'all both know what she meant by that?

15 A. Mm-hmm.

16 Q. And what do you respond with?

17 A. Yes.

18 Q. Yes or --

19 A. Yes. That's a thumbs up. That's a yes.

20 Q. And then what do y'all's messages show right here?

21 A. I called -- No. She called me. She called me at
22 2:53 p.m., November 3rd for 47 seconds.

23 Q. Is that November 3rd, 1969 the correct date?

24 A. Oh, wow. No, it can't be. October 10th, 2017 at
25 4:07 a.m.

1 Q. Is that probably right?

2 A. That's probably right because the investigator
3 dropped me off that morning real early. I was in the gas
4 station over there.

5 Q. So can you make calls with Facebook Messenger?

6 A. Yep. I don't think it's the same type of call.
7 You're like calling their messenger or something.

8 Q. And so --

9 A. I don't think that number would do it.

10 Q. So these are the next day and then after talking
11 with her a bit that day, what do you say a little later
12 here?

13 A. I found one of her bloody bags in the woods and I'm
14 keeping these shirts.

15 Q. Whose bloody bags?

16 A. Probably Amanda's or K.G. One the two. Theirs.

17 Q. And how did this come about?

18 A. Uhm, one of my sleeping spots is on the other side
19 of the lake where me and K.G. done fished at. I'm thinking
20 sometime in the middle of the night he had to go over there
21 and leave the bags there, uhm, because I went there the next
22 day when the sun came up to go back around. I didn't want to
23 go around there at nighttime because it was a place that I
24 took K.G. to and I didn't want to go nowhere where I took him
25 to already.

1 Q. Why?

2 A. Uhm, because he had just killed somebody and I
3 didn't know what his mind state was at. I didn't know what he
4 had going on. I didn't know what was going on. I know he had
5 just killed somebody. I really don't want to be nowhere near
6 there.

7 Q. And so when you talk about this bag with the shirts,
8 what does she say?

9 A. What shirts?

10 Q. And you say?

11 A. It's shirts in the bag but no gun. I found another
12 bag but no gun.

13 Q. And then what does she say?

14 A. Mens shirts in the bags?

15 Q. And what is your response?

16 A. I should have been got the gun from him.

17 Q. I should have been got the gun from him. What do
18 you mean by that?

19 A. Uhm - uhm, when I first went to the room, I kind of
20 panicked. I panicked when I first went into the room and I
21 seen all the blood and seen what was going on. I had no
22 thought about trying to get the gun from him. Doing nothing.
23 Just, the only thing I thought about was running and I do feel
24 bad about that. I do feel kind of bad about that. There's a
25 part of me that feels bad about that, like there was something

1 I could have did, but I keep forgetting the fact that she was
2 dead when I went through the door. It's like a mental thing
3 afterwards. It's a mental thing afterwards. What should you
4 have done.

5 Q. So when you say I should have been got the gun from
6 him, you mean there at the time that you --

7 THE COURT: No. The question is what do you mean?

8 BY MR. EATON:

9 Q. What do you mean?

10 THE COURT: Don't lead.

11 BY THE WITNESS:

12 A. I mean maybe, yes. At the time maybe I should have
13 got the gun from him then and do something. I don't know.
14 Some of my friends was asking me why I ain't do anything when
15 I was in the house when Amanda died. That was one of the
16 questions I'll be asking myself.

17 BY MR. EATON:

18 Q. And so then what does Latoya say?

19 A. Don't keep that stuff. It should be evidence plus
20 after what happened no telling what kind of spirits are
21 lingering on that stuff.

22 Q. And then what do you say?

23 A. Oops. Did I say I was keeping it? Uhm, I meant to
24 say turning it in.

25 Q. And what does she say?

1 A. That's an emoji thing. Kind of stupid. You need a
2 pack of shirts? She's offering to buy me some shirts instead
3 of me keeping these shirts.

4 Q. And you say?

5 A. My response. I laugh. Messing with her right
6 now.

7 Q. And the you say?

8 A. I say, yeah. I do need some shirts. Well, I didn't
9 say I do need. I just say, yeah, but I was thinking in my
10 mind, yeah, I do need some shirts though.

11 Q. And then what does she say?

12 A. Okay. What size?

13 Q. And then?

14 A. Since I wouldn't dream of keeping this stuff, not
15 me. What size you need? I said, 2X. Okay. We'll get you
16 some today. Was Ole' Boy calling you from her phone?

17 Q. Say that a little more clearly.

18 A. Was Ole' Boy calling you from her phone?

19 Q. Who is Ole' Boy?

20 A. Ole' Boy right there would be Kenneth.

21 Q. And you say?

22 A. I say, yes. Uhm, shaking my head. He real dumb
23 'cuz as long as he has her phone, they can track him
24 especially since he's making calls and sending out messages.

25 Q. Who said that?

1 A. Uhm, Toya.

2 Q. And you say?

3 A. I said, word.

4 Q. And then the next message, what time of day is
5 that?

6 A. October 10th, 2017 at 12:37 p.m. that afternoon
7 lunchtime.

8 Q. And what does she say?

9 A. Come up here to Crestmore. The investigators want
10 to talk to you.

11 Q. Had you already been there once?

12 A. Yeah. A couple times.

13 Q. And what do you say?

14 A. Man, let them know I'm watching porn.

15 Q. And she says?

16 A. You're not in trouble and they said dude isn't on
17 this side.

18 Q. What does that mean?

19 A. Uhm, Kenneth isn't on this side.

20 Q. Side of what?

21 A. Side of town that I'm on.

22 Q. And then she says?

23 A. G says he can give you money for your phone. He -
24 he is what she meant. She corrected it. It must have been
25 like a capital G. Yeah. I was confused about that.

1 Q. And then you say?

2 A. Man, I'm coming.

3 Q. So, Mr. Dukes, you have described messaging with
4 Latoya. And where were you when you were sending those
5 messages?

6 A. The ones the next morning?

7 Q. And I'm sorry. I'm going back to that night.

8 A. I was -- Oh, that night when I was sending her
9 messages?

10 Q. Yes, sri. Going back to the night after you've left
11 and you message Latoya, where are you?

12 A. Circle K. I'm at Circle K. I'm not really at
13 Circle K. I'm across the street from Circle K at the
14 laundromat. I can get WiFi between the buildings right there.
15 I'm really right there for all intents and purposes at Circle
16 K.

17 Q. When you left the house, was it on fire?

18 A. No. I didn't know anything about the fire until,
19 uhm, later. Toya brought me back there. No. She was
20 bringing the - the roommate. That's what it was. She wanted
21 to take her back there. They wanted to go back there. I
22 ain't want to go back. I never wanted to go back to the house
23 at all. Uhm, we went to Waffle House to tell Jessica what
24 happened and Jessica wanted to go back there.

25 Q. We'll get there. So where does Latoya pick you up

1 from?

2 A. Circle K. Well, across the street from Circle K.

3 Q. And where do y'all go?

4 A. Waffle House.

5 Q. Why do you go to Waffle House?

6 A. So, uhm, we can tell Jessica what happened. She
7 reminded me that, uhm, I needed to tell Jessica what happened
8 because I forgot about Jessica really. In that whole scenario
9 I forgot about her. I was gonna leave but after telling -
10 after talking to Latoya I remembered that, oh, they did have a
11 roommate that don't know what's going on. I didn't know the
12 house was on fire. I didn't know. I thought maybe she would
13 get off work and come home and he'll be in there or something
14 so that's the only reason I wanted to go tell her because your
15 roommate just went homicidal. You might not want to go home.
16 I'm leaving.

17 Q. What happened when you got to Waffle House?

18 A. I told, uhm, I told Jessica what happened to Amanda
19 and she was upset about it. She called Amanda's phone and
20 K.G. picked up the phone to kind of verify what I just told
21 her. She wasn't -- She -- It's like she believed me when I
22 said, when I told her, but she was in a state of disbelief.
23 She had to call Amanda and when she called Amanda, K.G. picked
24 the phone up.

25 Q. How long were y'all at Waffle House?

1 A. Maybe 15, 20 minutes maybe. It wasn't long.

2 Q. And where did y'all go from there?

3 A. We went to, back to Amanda's house. We went to
4 Amanda's house.

5 Q. And why did y'all go back there?

6 A. Because Jessica wanted to go back there.

7 Q. Who all went?

8 A. Me, Toya and Jessica. Oh, and Toya told me that,
9 uhm, I needed to speak to the police and tell them what went
10 on, what happened. Yeah. Yeah. That was the other reason.
11 But it was mainly Jessica. Jessica wanted to go back to the
12 house.

13 Q. And did you agree?

14 A. Yeah.

15 Q. Did you want to?

16 A. Not really. Not really. I just wanted to run and
17 get away from it altogether and just leave and act like I was
18 never there.

19 Q. If you had killed Amanda, would you have ever agreed
20 to go back?

21 A. No. No I would have left.

22 Q. Where would you be right now?

23 A. Ain't no telling. I don't know. Ain't no
24 telling.

25 Q. Would you be in this courtroom?

1 A. No. No.

2 Q. So when you get back to the scene, what do you find
3 there?

4 A. The house is on fire and the whole street was
5 covered with, uhm, fire trucks. There was fire trucks
6 everywhere, flashing lights, some of the neighbors were
7 outside watching.

8 Q. And what did you do when you got there?

9 A. Uhm, I spoke to an investigator when I got there.
10 They did a gun test. Like a test on your hands to see if your
11 hands have gun powder on them. I did a gun test when I first
12 got there. Uhm, I let the people know that I was just in the
13 house. I needed to speak to the police about what just
14 happened. Uhm, oh, one of my friend's a firefighter. He's a
15 firefighter. He knows me. He's the one that took me over to
16 the police and I left with the investigator.

17 Q. Did you -- How did they go about taking the gunshot
18 thing from you? How did that happen?

19 A. I can't remember how the test went. I can't
20 remember how the test went, but they did something with my
21 hands. I just can't remember how the test went.

22 Q. Between the time of leaving the house initially and
23 getting back, had you washed your hands?

24 A. No.

25 Q. Were you okay with giving them the sample?

1 A. Mm-hmm.

2 Q. Did you tell them on the scene that night what had
3 happened?

4 A. Yes. Not on the scene. No. Not on the scene. I
5 just told them I was in the house. I knew what happened in
6 the house. I told the investigator when the investigator
7 picked me up.

8 Q. And when was that that the investigator picked you
9 up?

10 A. Right when he got there. Uhm, I don't think it was
11 the investigator that did the test, but he came while I was
12 over there and I just left with him.

13 Q. So you're saying you talked to him that night?

14 A. I talked to him that night.

15 Q. And who did you talk to?

16 A. I can't remember his name. He was an
17 investigator.

18 Q. Do you remember what he looked like?

19 A. A short bald headed guy.

20 Q. Does he happen to be in the courtroom today?

21 A. Right over there behind that lady.

22 Q. And did you want to talk to him?

23 A. At that point in time, yeah, because I was already
24 in it now. Like I'm in it now. There's no getting away. I
25 might as well tell the people what happened. I had no problem

1 talking to him by the time I got to him.

2 Q. And did you tell him the same thing then that you
3 said today?

4 A. Pretty much.

5 Q. Is it possible that there's some detail here or
6 there that you have gotten different?

7 A. Over time I don't remember certain stuff over time.
8 Like it's been a while.

9 Q. After talking to police, where did you go?

10 A. Everywhere. You talking about after I spoke to the
11 investigator and gave him my last statement, right?

12 Q. Right.

13 A. Next job, next place.

14 Q. I mean that night?

15 A. Oh, I went back to Hickory Ridge that morning. It
16 wasn't nighttime no more. It was early in the morning, real
17 early in the morning.

18 Q. And when did you find the bag?

19 A. Same time, maybe 6:30, sevenish. The spot that I
20 sleep in in that area, I went to go check it because I already
21 wanted to leave the area but I had stuff in my spot I needed
22 and that's when I seen the bags so I knew at some point in
23 time nighttime he had to be there because those bags aren't
24 mine and nobody else comes over here but me.

25 Q. Did you hear from K.G.?

1 A. I did that morning. I did. I heard from him that
2 morning.

3 Q. How did you hear from him?

4 A. Uhm, this place where I was sleeping at, I had
5 access to the WiFi and, uhm, I might have had a call app on
6 the phone or something. It was like an app where you can, you
7 got a number, you got a phone number, but unless you do like a
8 whole bunch of promotional videos or something, you don't have
9 any what's called credits. They give you credits on the app
10 so you can use it. I believe he called my phone that way
11 because I had WiFi where I was sleeping at.

12 Q. Did you answer when he called?

13 A. I did.

14 Q. And what did y'all talk about?

15 A. We didn't talk about anything. I just - I answered
16 the phone to see if it was him on the other end and once I
17 heard his voice, it was like (indicating) oh, my God,
18 (indicating) I hung the phone up.

19 Q. Do you know whose phone he called you from?

20 A. Amanda's phone and the phone I had at the time her
21 number was programmed as Amanda. It will show her name.

22 Q. Do you remember your number back then?

23 A. No.

24 Q. Would it refresh your memory to look at some phone
25 records?

1 A. Probably.

2 Q. If I can approach with State's 118.

3 THE COURT: Have you seen this?

4 MS. JURICK: Yes, Your Honor.

5 THE COURT: Any objections?

6 MS. JURICK: No objection.

7 MR. EATON: And this is already in, Your Honor.

8 BY MR. EATON:

9 Q. Does your number show up on these records right
10 here?

11 A. That's it.

12 Q. It's small. Can you read that?

13 A. 386-0333.

14 Q. Did you receive any another messages from him?

15 A. Not that I can remember. No.

16 Q. Did you talk to police again?

17 A. Yep.

18 Q. When did you talk to them?

19 A. The same day. The same day. Uhm, the same day he
20 contacted me I spoke to police. The first -- I spoke to more
21 than one investigator, but the first investigator I spoke to I
22 had his card and I don't know, I might have contacted him or
23 had Toya contact him. I don't know how I contacted him. I
24 can't remember that, but I spoke to him at a gas station up
25 the street and told him about it.

1 Q. How many times total would you say you talked to
2 police?

3 A. About this situation here?

4 Q. Yes, sir.

5 A. Maybe, I don't know 10, 11.

6 Q. Did you know Roy?

7 A. No. I know that that's K.G.'s friend but I never
8 met him or I never had no conversations with him. He used to
9 talk to him on the phone sometimes.

10 Q. Now, in your mind when you say talk to the police,
11 do you mean us, too?

12 A. Yep.

13 Q. So have you talked to us?

14 A. Uhm, you mean just speaking with you or speaking to
15 the investigator?

16 Q. Well, me, any of the other prosecutors?

17 A. Maybe two or three times. I don't think it's been
18 that many times I spoke to y'all.

19 Q. So why did you not call 911 that night?

20 A. I wasn't able to. Uhm, as soon as it happened, as
21 soon as it happened I didn't even have the ability to call
22 911, but honestly, uhm, I was just thinking about getting
23 away. I probably wouldn't have even thought about it but I
24 had the phone in my pocket. I would have just ran.

25 Q. Why did you need to get away?

1 A. Because I didn't know what he was gonna do next. I
2 had no idea.

3 Q. What do you mean by that?

4 A. Uhm, well, when I opened the door and seen that he
5 had killed someone already, he might just be in the mood to
6 kill people now. I don't know. Uhm, I thought the safest
7 thing for me was just go ahead and leave her, leave, and
8 leave. Just leave.

9 Q. Did you kill Amanda?

10 A. No. Mmm-mmm. (Witness shaking head.)

11 Q. Did you help K.G. kill Amanda?

12 A. Nope. Mmm-mmm. (Witness shaking head.)

13 Q. Did you help him dispose of her, hide any
14 evidence?

15 A. No. No. Mmm-mmm.

16 Q. Why should the jury believe you?

17 A. It's true.

18 Q. Why are you here today?

19 A. To testify, to let people know that, uhm, K.G.
20 killed Amanda. Yeah. Just tell people what happened.

21 Q. Did you in any way ever want to get with Amanda?

22 A. No. Mmm-mmm. Never even gave Amanda a hug.

23 Q. What was the nature of your relationship with
24 Amanda?

25 A. Platonic mean no sex, right? Very platonic. You

1 know, she was a good lady. She was all right. Uhm, I have
2 worked for a lot of different people. No matter who you are
3 or what walk of life they from, she seemed all right. She
4 seemed like a nice lady, you know. No sort or type of
5 romantic anything ever. No.

6 Q. Now, let me -- How do you -- When you do your work,
7 whatever the work is, how do you - how are you getting your
8 money?

9 A. Oh, hard work. Hard work. Stone, concrete.
10 Whatever. It don't matter.

11 Q. And what kind of work?

12 A. Labor. For the most part labor.

13 Q. And so, I mean, with that in mind, what else was
14 your relationship with Amanda about to you?

15 A. Like in grass? Uhm, money. Nice piece of change,
16 too, because every now and then I be needing those little side
17 jobs to keep me going so anybody that give me work, they good
18 people, you know. She was a good person. She was all right.
19 Never nothing else.

20 Q. Would it make sense to skill someone who hired
21 you?

22 A. No. No. Can't keep getting work like that.

23 MR. EATON: Thank you, Mr. Dukes. No further
24 questions.

25 THE WITNESS: All right.

1 THE COURT: Ms. Jurick.

2 CROSS EXAMINATION

3 BY MS. JURICK:

4 Q. Hey, Mr. Dukes.

5 A. Hello.

6 Q. We never talked before, right?

7 A. No.

8 Q. And you have talked to them several times. I think
9 you said you talked to the investigators nine to 10 times?

10 A. Yes, ma'am.

11 Q. And you talked to the prosecutors maybe two or three
12 times?

13 A. Two or three.

14 Q. Do you know that I have been trying to talk to
15 you?

16 A. No, ma'am.

17 Q. My investigator gave you a phone call. You were
18 supposed to call back.

19 A. I spoke to him?

20 Q. Somebody was supposed to call back.

21 A. I don't know, ma'am. I'm homeless. You got to
22 catch me when you can catch me, ma'am.

23 Q. And we talked to your mom?

24 A. You did?

25 Q. We did about talking with you.

- 1 A. Me and my mother don't have a relationship.
- 2 Q. And your boss?
- 3 A. My boss?
- 4 Q. At any rate, we've never talked before?
- 5 A. No.
- 6 Q. And you have talked to them. So you know Kenny?
- 7 A. Yes, ma'am.
- 8 Q. K.G., right over there?
- 9 A. Yes, ma'am.
- 10 Q. You were calling him Kenneth before?
- 11 A. Yes.
- 12 Q. And you know Amanda obviously. We've heard that you
- 13 spent a lot of time at their house?
- 14 A. Yeah.
- 15 Q. You knew the grandparents. You used to work for
- 16 them?
- 17 A. Yes, ma'am.
- 18 Q. We heard all of these things. You went fishing, you
- 19 played video games?
- 20 A. (Witness nodding head.)
- 21 Q. You have to say yes --
- 22 A. Yes, ma'am.
- 23 Q. -- for the reporter.
- 24 A. Yep.
- 25 Q. And you had a headset?

1 A. Mm-hmm.

2 Q. Did y'all ever play online video games?

3 A. I play online video games but it didn't have online
4 access at the time so I wasn't playing, uhm, regular people.
5 I was playing the AI box.

6 Q. And you ate there --

7 A. Every now and then. Yes, ma'am.

8 Q. -- at the house. And you liked Kenneth?

9 A. He was okay guy.

10 Q. And you like Amanda?

11 A. Mm-hmm.

12 Q. She was good to you?

13 A. Yes. She was.

14 Q. And sometimes you were there when just Amanda was
15 there?

16 A. Never just me and Amanda. No. I was never there
17 when it was just me and her. It was always Jessica around or
18 K.G. around. If I get there and she is just there by herself,
19 I would just leave. I don't have a reason to be over there.

20 Q. I thought you worked for her?

21 A. Yeah, but I'm not doing -- She's already in a
22 relationship. There ain't no need for me to be sitting around
23 with you by yourself unless you paying me to do something.

24 Q. And you didn't know that Kenneth had a gun?

25 A. No, ma'am.

1 Q. Never heard him talk about a gun?

2 A. (Witness shaking head.)

3 Q. Didn't know anything about it before that night?

4 A. No, ma'am.

5 Q. And so before the incident Kenneth and Amanda both
6 lived there at the house?

7 A. Yes.

8 Q. And you said they were starting to have problems?

9 A. I think so. I wasn't sure.

10 Q. He told you about them. You thought that they were
11 breaking up?

12 A. (Witness nodding head.)

13 Q. You have to say yes for the record.

14 A. Yes, ma'am.

15 Q. But they were arguing a lot?

16 A. I don't know about the arguments. I don't be around
17 people arguing and stuff. That's personal situations. I
18 don't do those. If he spoke to me about his personal
19 situation, I swear to God I wasn't listening, but it don't
20 take a genius to know when a man and a woman are having
21 problems. You can make assumptions, but there's nothing that
22 I had hard concrete knowledge about.

23 Q. Do you remember saying that night that they sounded
24 calm?

25 A. The house was real quiet.

1 Q. And that they were in the bedroom?

2 A. Yes, ma'am. They went to the bedroom.

3 Q. And you told the prosecutors that they were acting
4 like they were in a relationship that day?

5 A. Yeah. They were getting along. They was getting
6 along that day.

7 Q. So let's go into the incident. You said you were
8 deep into the video game?

9 A. Yes, ma'am.

10 Q. You're in the living room. You claim you hear a
11 gunshot?

12 A. Yes, ma'am.

13 Q. You go outside?

14 A. Yes, ma'am.

15 Q. You walk around?

16 A. Yes, ma'am.

17 Q. Come back inside?

18 A. Yes, ma'am.

19 Q. Go into the bedroom?

20 A. Yes, ma'am.

21 Q. Where you see Amanda is already dead?

22 A. Yes, ma'am.

23 Q. You go back outside?

24 A. Yes, ma'am.

25 Q. You said that you went into the room because your

1 curiosity got the best of you?

2 A. Yes, ma'am.

3 Q. And that it happened around maybe nine or ten p.m.
4 It was dark. You don't remember what time exactly?

5 A. It's about nine, nineish, 10:00, somewhere around
6 there.

7 Q. Okay. Do you remember -- Well, all right. But you
8 don't call 911?

9 A. No, ma'am.

10 Q. You go to the gas station?

11 A. Yes, ma'am.

12 Q. I believe you said you take the long way to the gas
13 station?

14 A. Long way. Went through the woods around the
15 neighborhood.

16 Q. And when you get there, you contact Latoya?

17 A. Yes, ma'am.

18 Q. And you actually send her a picture of a waving fox
19 like this (indicating)?

20 A. Yes, ma'am.

21 Q. Okay. And you tell her I'm in big trouble?

22 A. Yes, ma'am.

23 Q. You don't tell anyone at the gas station what you
24 saw?

25 A. No, ma'am.

1 Q. You don't call 911 from the gas station, nothing
2 like that?

3 A. No, ma'am.

4 Q. It's actually Latoya that later calls 911?

5 A. Yes.

6 Q. And she calls 911 at 12:07 I believe from the Waffle
7 House?

8 A. Yes, ma'am.

9 Q. So she picks you up. You still haven't reported
10 this?

11 A. Yes, ma'am.

12 Q. And you go to the Waffle House to tell Jessica?

13 A. (Witness nodding head.)

14 Q. And I believe you said today that you never wanted
15 to go back to the house at all?

16 A. At all. No, ma'am.

17 Q. But Latoya wanted you to?

18 A. Yes, ma'am.

19 Q. She said you needed to talk to the investigators?

20 A. Yes, ma'am.

21 Q. And her and Jessica and you go back to the house?

22 A. Yes, ma'am.

23 Q. When you got there, the fire had already started?

24 A. Yes, ma'am.

25 Q. And that's when you found out that it was on fire?

1 A. That's when I learned that the house was on fire.

2 Q. And when you first talked to the investigators, you
3 tell them that you think it happened, I believe you start out
4 with 11 and then you change it to 9:15. Do you remember your
5 statement to them at all?

6 A. Uhm, it's a little hazy, but my mind, I was gone in
7 the video game for a little while. I might have thought it
8 was later than it actually was.

9 Q. And when Latoya calls 911, you said it was at
10 11:15?

11 A. Yes, ma'am.

12 Q. And the coroner says 10:30. You said that it was at
13 10:30?

14 A. Yes, ma'am.

15 Q. And the next morning when you're talking to Latoya,
16 you say I found one of her bloody bags in the woods?

17 A. Yes.

18 Q. Oops. Did I say I was keeping it? I meant to say
19 turn it in?

20 A. Yes.

21 Q. But, in fact, you never did turn it in?

22 A. I never kept it.

23 Q. You never kept it?

24 A. No, ma'am.

25 Q. You told - you didn't tell the investigators

1 anything about it being bloody?

2 A. I think I did. I remember saying there was blood on
3 that bag.

4 Q. You never brought it to them?

5 A. No. I ain't pick it up. I ain't move it. No. I
6 left it right there.

7 Q. Well, y'all joked about keeping it and keeping the
8 things in it?

9 A. Mm-hmm.

10 Q. Okay. Oops. Did I say I was keeping it? I meant
11 to say turning it in were actually your words?

12 A. Yes, ma'am.

13 Q. And then Latoya tells you that investigators want to
14 talk with you?

15 A. Mm-hmm. Yes.

16 Q. And you say, man, just tell them I'm watching
17 porn?

18 A. Yes, ma'am.

19 Q. You do go and talk to them?

20 A. Mm-hmm.

21 Q. And they say we're trying to get in touch with
22 Kenneth, or K.G.?

23 A. Yes, ma'am.

24 Q. They put minutes on your phone so that you would be
25 able to call him?

1 A. Did he? I don't remember that.

2 Q. Okay. But you do talk to him and say that you're
3 going to reach out to K.G.?

4 A. Yes, ma'am. I said if he reaches out to me, I'm
5 gonna inform the investigator. I kept his card.

6 Q. And he did reach out to you?

7 A. Yes, ma'am.

8 Q. And you did not tell the investigator?

9 A. I did tell the investigator that morning when he
10 reached out to me. They set me down at Circle K because they
11 were trying to stage a call so they can -- They haven't called
12 him yet by that time. He was still out.

13 Q. Do you remember talking to him at 2:33 that
14 afternoon?

15 A. No, ma'am.

16 Q. For three minutes?

17 A. I don't remember.

18 Q. And texting Latoya, Ole' Boy trying to talk to me?

19 A. Maybe. I don't remember.

20 Q. And you don't remember --

21 A. Not specifically.

22 Q. -- telling the investigators about that?

23 A. What?

24 Q. You wouldn't remember telling the investigators
25 about that then?

1 A. Maybe not.

2 Q. And you have a history. We have already discussed
3 that.

4 A. Yes, ma'am.

5 Q. You have a history of lying to the police?

6 A. A time or two.

7 Q. From time to time. You've been in trouble. This is
8 actually, I have your record right here. You have been to
9 jail before?

10 A. Yes, ma'am.

11 Q. You've been --

12 MR. EATON: Objection.

13 THE COURT: Will you all approach please?

14 (Side bar off the record.)

15 BY MS. JURICK:

16 Q. So you have been convicted of lying to the police,
17 giving false information?

18 A. Yes, ma'am.

19 Q. And giving false information to the DMV?

20 A. Yes, ma'am.

21 Q. And not returning rented objects?

22 A. Yes, ma'am.

23 Q. And grand larceny?

24 A. Yes, ma'am.

25 Q. And they have actually told you here that you're not

1 charged. Well, you haven't been charged?

2 A. I haven't been charged on anything that I know of,
3 no, ma'am.

4 Q. And you have spoken to the Solicitor several times
5 and they told you that you will not be charged with this?

6 A. I have never been told that.

7 Q. You've never been told that they don't think you've
8 done anything wrong?

9 A. I have heard that, but to my knowledge I might be
10 charged with negligence or something else. It's all very
11 possible. I mean, I just don't care.

12 Q. And you're here because you're under subpoena?

13 A. Uhm, they did give me a subpoena that I was supposed
14 to show my boss man so I don't get fired.

15 Q. So you had to be here today?

16 A. I would have came anyway.

17 Q. You had to be here today?

18 A. Yes, ma'am.

19 Q. You talk about a firefighter that you know that was
20 there?

21 A. Yes, ma'am.

22 Q. Who was that?

23 A. Marcus Bostick.

24 Q. And how do you know him?

25 A. We went to school together.

1 Q. And he took you to the investigator initially?

2 A. He walked me over to the police that were on the
3 scene. Yeah.

4 Q. So is your phone had no minutes on it, correct?

5 A. No, ma'am.

6 Q. But then later that day it was making phone calls
7 with K.G.?

8 A. Uhm, I had the app on the phone. The phone wasn't
9 connected to no sort of type of service. Couldn't make no
10 phone calls, but there's an app on it that I downloaded, had a
11 WiFi spot that allows me to make calls if I'm somewhere close
12 to a WiFi location.

13 Q. So a T-Mobile phone record shouldn't have your name
14 going through with any calls?

15 A. Shouldn't. No.

16 Q. And law enforcement never asked for your DNA?

17 A. I don't believe so. No.

18 Q. And they never asked for access to your phone?

19 A. Uhm, I gave them access to my phone that night.

20 Q. And they have never collected your phone?

21 A. No. They never took it. They didn't take it.

22 Q. They have never taken it. And they didn't do
23 anything besides take you to headquarters, make a statement,
24 and do the gunshot residue?

25 A. Gunshot residue. They took pictures of my phone.

1 MS. JURICK: All right. I have no further
2 questions.

3 THE COURT: Anything on redirect, Mr. Eaton?

4 MR. EATON: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. EATON:

7 Q. Mr. Dukes, you said that when you left Crestmore,
8 you took the long way to the gas station?

9 A. Yes, sir.

10 Q. Why?

11 A. Uhm, I thought somebody was behind me. I wanted to
12 cover where I was going.

13 Q. And then from the Waffle House, why did you not want
14 to go back to Crestmore?

15 A. Because danger, trouble. I don't need to go back
16 over there. Somebody died over there. I might die over
17 there. I don't need to go back over there.

18 Q. When you initially left the house, would you have
19 preferred at that time --

20 MS. JURICK: Your Honor, leading.

21 THE COURT: Wait until he finishes the question. I
22 don't know what he's gonna ask. Go ahead.

23 BY MR. EATON:

24 Q. Would you have preferred to just move on with your
25 life?

1 A. Yes.

2 Q. Were you wearing a watch that night?

3 A. I don't remember. I don't think -- I don't ever
4 wear a watch though.

5 Q. Should you have joked about keeping the shirts from
6 the bag?

7 A. No. It was, uhm -- No.

8 Q. Did you actually need clothes?

9 A. Yes. I need clothes now.

10 Q. Now, I know you said that you needed a subpoena for
11 work?

12 A. I needed proof that I was gonna be here.

13 Q. Would you have come here without one?

14 A. Y'all would have to find me. Y'all would have to
15 find me because I needed the money so I wouldn't know if would
16 have came.

17 Q. But you have cooperated throughout, right?

18 A. Yeah.

19 MR. EATON: Thank you. Nothing further.

20 MS. JURICK: Your Honor, I just have one question.

21 RECROSS EXAMINATION

22 BY MS. JURICK:

23 Q. You told the investigator that you sold those
24 clothes for money?

25 A. Yes, ma'am.

1 MS. JURICK: That's all. Thank you.

2 THE COURT: Anything further of this witness?

3 MR. EATON: No, Your Honor.

4 THE COURT: You may step down, sir. We'll take a
5 short break. The food is supposed to be here at 12:30.
6 Mr. Gordon, will you see if it's here already.

7 DEPUTY: It's here, Your Honor.

8 THE COURT: It's here. Okay. So, y'all ready to
9 eat lunch? Okay. That's what we'll do now, members of
10 the jury. 12:30. Let's say an hour. Is that good
11 enough? 1:30. Once again, I thank you on behalf of
12 everyone involved here, your courtesy and patience and
13 just don't talk about the case. Enjoy your sandwich and
14 we'll resume about 1:30. Thank you all so very much.

15 (Whereupon, the jury entered the jury room for lunch
16 break at 12:25.)

17 THE COURT: Anything further?

18 MS. JURICK: Your Honor, for the record I want to
19 object and make a record --

20 THE COURT: What now?

21 MS. JURICK: What I was trying to ask regarding the
22 jail, I think it goes to bias and motive, that he's
23 testifying because he's trying to stay out of jail and to
24 be able to do some type of comparative analysis of that
25 would have been appropriate.

1 THE COURT: All right. And, what's -- I don't --
2 What's your motion? What's your --

3 MS. JURICK: That I was not allowed to ask that and
4 I should have been able.

5 THE COURT: Ask what?

6 MS. JURICK: About being in jail. How he's been in
7 jail before.

8 THE COURT: All right. Fine.

9 MS. JURICK: And that's he's testifying to stay out
10 of jail.

11 THE COURT: Okay. You can ask about his record,
12 ma'am. The rule is very simple. The way I understand
13 it, were you convicted of such and such on such and such
14 date 2017. You don't go, were you in jail? How long did
15 you stay? If they don't object, you can, but I think
16 they objected, did you not?

17 MR. EATON: Yes, sir.

18 THE COURT: Anything further?

19 MS. JURICK: Respectfully it goes to bias and
20 motive. That's all.

21 THE COURT: You made your record.

22 MS. JURICK: Thank you, Your Honor.

23 THE COURT: My decision remains the same. See y'all
24 at 1:30.

25 (Lunch break.)

1 THE COURT: All right. Is everybody ready? All
2 right. I like talking to myself.

3 MS. JURICK: Yes.

4 THE COURT: I'll repeat that. Is everybody ready?

5 MS. SAMPSON: Yes, Your Honor.

6 THE COURT: Anything we need to take up before we
7 bring the jury in?

8 MS. JURICK: Yes, Your Honor.

9 THE COURT: Go ahead.

10 MS. JURICK: Very briefly, with regards to having no
11 deal made.

12 THE COURT: Wait. Slow down. Go ahead. With
13 regard to what?

14 MS. JURICK: Having no deal made with Mr. Dukes, I
15 feel like it was stated fairly clearly here that he was
16 not being charged with anything and that the jury may
17 have been left with the impression that he had been
18 charged with negligence based on what he said.

19 THE COURT: Wait. Stop. Is this a motion?

20 MS. JURICK: Yes.

21 THE COURT: What are you asking me to do?

22 MS. JURICK: I'm asking you to clarify to the jury
23 that he has not been charged with anything --

24 THE COURT: You want me to do what?

25 MS. JURICK: -- rather than calling a witness or

1 just making some type of --

2 THE COURT: Ma'am, I really don't understand your
3 request. What are you asking me to do?

4 MS. JURICK: I'm asking for it to be clarified that
5 he has not been charged with anything.

6 THE COURT: I think he testified to that. I'm not
7 -- I can't go over testimony. I think that came out of
8 his own mouth, did it not? I don't remember. I really
9 don't understand your request.

10 MS. JURICK: He said that he may be charged with
11 negligence so we are asking --

12 THE COURT: Your request is denied. Anything
13 further? Bring the jury in.

14 THE BAILIFF: Yes, Your Honor.

15 THE COURT: That becomes a factual issue to be
16 resolved by the 12 members of the jury. I don't get
17 involved in talking about the facts or how to interpret
18 them or anything else. The record is what it is. You
19 may argue based on what you believe the record may
20 indicate, but I can't go back and clarify a factual issue
21 for the jury. Anything further from anybody?

22 MS. JURICK: No, sir.

23 MR. EATON: Not from the State.

24 THE COURT: All right.

25 (Whereupon, the jury entered the courtroom at 1:45

1 p.m.)

2 THE COURT: Welcome back, Mr. Foreman, members of
3 the jury. This is the second time Jimmy Johns sandwich
4 y'all had this week. All right. Once again, thank you
5 for your patience and attention and courtesies. You may
6 call your next witness, Ms. Sampson.

7 MS. SAMPSON: Thank you, Your Honor. May it please
8 the Court. The State calls Megan Fletcher.

9 Thereupon,

10 MEGAN FLETCHER

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat in the witness stand
13 and state your full name for the record.

14 THE WITNESS: My name is Megan Fletcher.

15 DIRECT EXAMINATION

16 BY MS. SAMPSON:

17 Q. Good afternoon, Ms. Fletcher.

18 A. Good afternoon.

19 Q. Where do you work?

20 A. I work at the South Carolina Law Enforcement
21 Division in the Forensics Services Laboratory in the Trace
22 Evidence Department.

23 Q. And how long have you been there?

24 A. 12 years.

25 Q. And what did you do there?

1 A. I perform various analyses for the trace evidence
2 department including fire debris, fibers, paint, glass,
3 explosives, duct tape and gunshot primer residue.

4 Q. And can you tell the jury a little bit about your
5 educational background?

6 A. I have my bachelor's degree from Chatham College in
7 biochemistry and English. I also have my master's of forensic
8 science from Marshall University emphasizing in computer
9 forensics and forensic chemistry.

10 Q. And in order to work in the trace evidence
11 department, do you get any training?

12 A. Yes, ma'am. In every discipline in which I am
13 deemed competent or proficient to perform an analysis, I
14 undergo inhouse training which is composed of written and
15 practical and oral examinations. That includes inhouse
16 training as well as some external training.

17 Q. And is this something you have to do every year or
18 do you do it just the once and then never do it again?

19 A. The initial training phase is, it is a one time
20 thing, however, I do do continuing education through webinars
21 and reading current articles, et cetera.

22 Q. And are you certified in anything or do you need to
23 be certified in anything?

24 A. I am not currently certified in anything, but I am
25 deemed competent by SLED to perform various analyses.

1 Q. And have you ever been qualified as an expert?

2 A. Yes, ma'am. I have.

3 Q. How many times?

4 A. I have been qualified 28 times.

5 Q. And have you ever been qualified as an expert in
6 gunshot residue analysis?

7 A. Yes, ma'am. I have.

8 MS. SAMPSON: At this time, Your Honor, I'm gonna
9 ask that Ms. Fletcher be qualified as an expert in the
10 field of gunshot residue analysis.

11 THE COURT: In the field of what?

12 MS. SAMPSON: Gunshot residue analysis.

13 THE COURT: Gunshot residue.

14 MS. JURICK: No objection.

15 THE COURT: Without objection.

16 BY MS. SAMPSON:

17 Q. So can you tell the jury a little bit of what
18 gunshot residue is?

19 A. Gunshot residue is everything that comes out of a
20 gun when it's fired, that includes smoke, the fire, fragments
21 of the bullet as well as something called gunshot primer
22 residue and that's the residue that comes from the cartridge
23 from the projectile and that's actually what we're analyzing
24 for so I'm looking for components that are characteristic of
25 this gunshot primer residue and those components are round or

1 molten particles that contain the elements lead, barium and
2 antimony.

3 Q. And do you find lead, barium and antimony round
4 particles like that in other things or just in gsr?

5 A. The combination of lead, barium and antimony in a
6 molten particle is characteristic of gunshot primer residue.
7 That means that there has been no other source that contains
8 just those elements.

9 Q. And how do you receive the items that you analyze?

10 A. The evidence is submitted to the SLED laboratory in
11 the evidence control department by an outside agency or
12 sometimes SLED and then the evidence control department will
13 turn over the evidence to somebody within the trace evidence
14 laboratory and then I take custody of it from there.

15 Q. And is it sealed when you get it?

16 A. Yes, ma'am. It is.

17 Q. What would you do if it wasn't sealed when you
18 received it?

19 A. If the evidence wasn't sealed, it would be
20 documented and the extent to which it was unsealed would be
21 determined. So if it was to the point where contamination
22 would have been possible, I would not have performed any
23 analysis.

24 Q. And did you perform any analysis in this case?

25 A. Yes, ma'am. I have.

1 Q. And I'm gonna show you what's been marked for
2 evidence as State's Exhibit 112 and ask if you recognize it?

3 A. Yes, ma'am. State's Exhibit 112 is a manila
4 envelope which is SLED label L1717393 item number 1 and I
5 recognize it based on my initials.

6 Q. And has it been changed in any way other than being
7 opened and sealed by you?

8 A. No, ma'am. And, in fact, my seals appear to be
9 intact.

10 MS. SAMPSON: At this time, Your Honor, we would ask
11 to introduce State's Exhibit number 112 into evidence.

12 MS. JURICK: No objection.

13 THE COURT: Without objection.

14 BY MS. SAMPSON:

15 Q. So what did you do with this item once you received
16 it?

17 A. So this item would have been inventoried which means
18 that we would have checked to make sure that all of the
19 components are present and that the gsr information sheet was
20 filled out, then a information form would have been filled out
21 by either myself or a technician and then it could be analyzed
22 using scanning electron microscopy with energy dispersive
23 x-ray detector which is a really long word for a powerful
24 microscope. So this microscope is similar to the one that
25 you've probably used in biology class or something like that

1 except that it uses electrons instead of light and because it
2 uses electrons, I can see super small particles. So to give
3 you an idea of what size particle I would be looking for, on
4 the particle lift itself if it were the size of two football
5 fields side by side, I'm looking for a particle the size of a
6 pee.

7 Q. And I'm gonna show you what was inside of 112. This
8 is what you received?

9 A. Yes, ma'am. I can identify this using the lab
10 number of L1717393 item number 1 with my initials and my seal
11 is still intact.

12 Q. I'm gonna open it so the jury can see. So inside of
13 this are these little vials. Can you explain to the jury what
14 these are?

15 A. This is what we call a particle lift. As you can
16 see it looks like a stamp except for instead of a rubber
17 surface it has a sticky surface and each of these vials is
18 used to collect any material from the hands of someone who has
19 been suspected to be in the vicinity to a shooting. So I
20 don't know if you can see but each one of them are labeled
21 with left back which would be collected from the left back of
22 somebody's hand, the left palm which would be collected from
23 the left palm of somebody's hand, the right palm and the right
24 back again from somebody's hands and these particle lifts
25 collect any debris that's present on somebody's hands, and

1 then I can analyze those to determine whether any particles
2 characteristic of gunshot primer residue are present.

3 Q. And in this case whose gunshot residue kit did you
4 analyze?

5 A. The kit was collected from a Roderick Dukes.

6 Q. And after your analysis, what was your conclusion?

7 A. May I refer to my notes please?

8 Q. You may. Will they help refresh your memory as to
9 what your analysis is?

10 A. Yes, ma'am.

11 Q. All right.

12 A. My results for the gsr kit collected from Roderick
13 Dukes were that no particles characteristic of gunshot primer
14 residue were detected.

15 Q. So in other words, he did not, or that kit did not
16 collect gsr off of his hands?

17 A. In the samples that were present in the kit I did
18 not find any particles characteristic of gunshot primer
19 residue.

20 Q. And let's be clear. Just because someone shot a
21 gun, will they always have gunshot residue on their hands when
22 it's tested?

23 A. No. They will not.

24 Q. Okay. What would - what could change whether
25 there's gunshot residue on their hands?

1 A. Gunshot residue is a really fragile type of evidence
2 so it's very easily removed. You can remove it most simply by
3 washing your hands, but as time goes on and you wipe your
4 hands on your pants or put your hands in your pocket or touch
5 other objects, you have the ability to transfer those
6 particles and so over time specifically between four and six
7 hours after a shooting incident much of that gunshot primer
8 residue that was initially there is dissipated.

9 Q. So let's say someone doesn't do anything that you
10 just said. Doesn't wash their hands, doesn't touch anything,
11 just stands around like this for eight hours, would they still
12 have gsr on their hands?

13 A. I have never actually done any studies out to eight
14 hours. Our policy in the SLED lab is out to six hours and I
15 have personally seen through studies that I have done in the
16 laboratory that between the hours of four and six the numbers
17 are greatly reduced if there are any left at all.

18 Q. So would it be fair to say four to six hours is the
19 primary window or shorter than four hours?

20 A. Shorter than four hours would be the primary
21 window.

22 Q. But in this case what you tested did not come up
23 with any gsr?

24 A. Correct. There was no gsr found on the particle
25 lifts collected in this case.

1 Q. Okay. Since you're an expert I have a question for
2 you that's kind of a hypothetical. If you received a kit from
3 someone who had fired a gun, been near a gun and that kit was
4 taken 12 hours after they would have done that, would that be
5 something you would want to test?

6 A. We would actually not test that kit. At six hours
7 we would no longer test the gunshot residue kit.

8 Q. So if you're given a kit, you want to know the time
9 frame of when the person would have touched the gun or been
10 near the gun when it was shot?

11 A. Yes, ma'am. We need to know the incident time and
12 the collection time.

13 Q. Were you given that in this case?

14 A. That was information that was filled out on the gsr
15 information sheet which was included in the collection kit.

16 Q. And what were you given at the time?

17 A. May I refer to my notes?

18 Q. You may.

19 A. According to the information form the date and the
20 time the shooting occurred was 10/10/17 at midnight and the
21 date and time of collection was 10/10/17 at 1:26 a.m.

22 Q. So based on your analysis, what you just said, the
23 time period you would have wanted to tested that -- Let me see
24 how to phrase this. The person you would have wanted to have
25 shot the gun somewhere after five but before 1:16 because

1 there's a six hour window or -- My math is terrible so tell me
2 the math on that. If the gun - if the kit was done at 1:26,
3 what's the earliest the person, you would have wanted the
4 person to have shot the gun I guess?

5 A. Uhm, at 7:26 p.m. on 10/9/17 would have been six
6 hours and in between those time periods the kit would still be
7 analyzed.

8 Q. You got what I -- Thank you. So nine, 10:00 would
9 have still been in the window if it was 10/9/17?

10 A. Yes, ma'am. It would have.

11 MS. SAMPSON: No further questions.

12 THE COURT: Ms. Jurick.

13 MS. JURICK: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. JURICK:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. You said that there are no particles characteristic
19 of gunshot residue?

20 A. Yes, ma'am.

21 Q. But it would be true to say there were particles
22 consistent with gunshot residue?

23 A. I did not analyze it for that so I'm not able to
24 tell you whether there were or not.

25 Q. Referring to your report, there were some - to my

1 understanding is that you did find lead, correct?

2 A. So how the analysis works is that I set up the
3 instrument for an automated analysis of these particle lifts
4 and the instrument goes through the particle, or the particle
5 lift in an organized fashion and it detects any particles that
6 reach a certain brightness threshold. It then is able to
7 detect certain elements present, however, this is just a
8 preliminary identification and without confirmation I cannot
9 say that there were particles that were consistent with
10 gunshot primer residue.

11 Q. But you submitted a report that has all of the
12 findings of the different graphs that the microscope printed
13 out, correct?

14 A. That's correct. That's from the automated analysis.
15 That is not a confirmation.

16 Q. Okay. From the automated analysis it found lead?

17 A. There were particles that the instrument stated that
18 lead was present but I did not confirm that.

19 Q. Okay. And there were particles that said antimony
20 was present?

21 A. That is correct.

22 Q. And barium?

23 A. That's correct.

24 Q. And two of them antimony and barium combined?

25 A. Yes, ma'am.

1 Q. And particles with antimony and lead combined?

2 A. Yes, ma'am.

3 Q. And lead and barium combined?

4 A. I would have to check my notes but, yes, those are
5 all usually found.

6 Q. And so a particle that has two of any of those is
7 considered to be consistent with gunshot residue?

8 A. According to one of the documents that is used in
9 gunshot primer residue, those particles can be considered
10 consistent with gunshot residue and the difference between
11 consistent and characteristic is that the particles consistent
12 with do have other sources of where they could have come from.
13 For instance, fireworks.

14 Q. So on both hands there were elements of all three of
15 those on the hands? All three, lead, antimony and barium were
16 on the left hand and all three of those were also found on the
17 right hand?

18 A. In individual particles they were - they were
19 detected by the instrument, however, they were not found in
20 combination with one another.

21 Q. They were found in combinations of two but not --

22 A. But not in all three.

23 Q. Yes. And as you were just saying, you don't
24 visually go back and look at them if you don't find anything
25 characteristic of?

1 A. No. The only thing that we look for in our
2 department are the ones that are characteristic because they
3 don't have the other sources so it's the most precise way to
4 report on gunshot primer residue.

5 Q. Right. So on those particle where you found two but
6 not three, you never went back and visually inspected to see
7 if there was the third?

8 A. That's correct.

9 Q. Okay. But had you found three, you would have gone
10 back to visually inspect to make sure there was not just
11 two?

12 A. Correct.

13 Q. And SLED used to go back and inspect when there were
14 only two I believe you said?

15 A. Yes. In the past we had analyzed for the single
16 component as well as the two component particles, however,
17 moving along with the community of gunshot primer residue we
18 are now only analyzing for the characteristic.

19 Q. And I know that there are other things that are
20 facts that go along with gunshot residue that was around or
21 exists. Actually on -- Do you recognize this paper?

22 A. Can I see it please?

23 Q. Yeah (proffering.)

24 A. This appears to be the copy, a copy of the report
25 that I produced for this case.

1 Q. All right. And so it says the absence of primer
2 residue on hands is consistent with but not limited to the
3 following. So these are things that could affect why you
4 would not find gunshot residue on the hands. The individual
5 having not discharged a firearm?

6 A. That is correct.

7 Q. Or four to six hours passing between the firing and
8 the sample?

9 A. Yes, ma'am.

10 Q. Normal physical activity between firing and
11 sampling?

12 A. Yes, ma'am.

13 Q. The individual washing hands, wiping hands or
14 sweating profusely?

15 A. Yes.

16 Q. The individual wearing gloves during the discharge
17 of a firearm?

18 A. Yes.

19 Q. Excessive blood or debris on hands?

20 A. Yes.

21 Q. Environmental factors including wind and rain?

22 A. Yes.

23 Q. The ammunition discharged has different types of
24 ammunition basically not producing particles characteristic of
25 the conventional gunshot primer residue?

1 A. Yes.

2 Q. And a firearm not producing residue on hands from
3 discharge?

4 A. Yes, ma'am.

5 Q. So you would agree there's a lot of different
6 factors that can affect whether it's still present?

7 A. Yes, ma'am. There are.

8 Q. And one of which is certainly time?

9 A. Yes, ma'am.

10 Q. And in the elements that were found on his hands, I
11 believe flint cesium was also listed?

12 A. Yes, ma'am.

13 Q. On both hands?

14 A. I would have to refer to my notes.

15 Q. It wouldn't surprise you if it was?

16 A. When the instrument detects something called flint
17 cesium, uhm, many times those are the main components of
18 something like a BIC cigarette lighter, however, that's not
19 something that we look at in our department so that's not
20 something that I would be able to go back and say yes, those
21 particles definitely came from a lighter.

22 Q. I understand, but it would be consistent with a
23 lighter?

24 A. From my understanding, yes, ma'am.

25 MS. JURICK: Thank you. That's all my questions.

1 THE COURT: Ms. Sampson.

2 MS. SAMPSON: Thank you, Your Honor. Just a couple
3 questions.

4 REDIRECT EXAMINATION

5 BY MS. SAMPSON:

6 Q. Ms. Jurick just asked you about combinations of the
7 elements as you called them that, you could find lead in
8 combination with, or barium in combination and it have nothing
9 to do with gunshot residue, correct?

10 A. Yes, ma'am. There are other sources for either two
11 component or single component particles.

12 Q. And you stated that the - initially what found it
13 was the equipment, but you have to go back and follow up on
14 what the equipment says, correct?

15 A. Yes, ma'am. I will look at every single particle
16 that it detected with any one of the three elements and I will
17 determine whether those three elements are present in
18 combination with one another.

19 Q. And they also have to be the molten round
20 characteristics, correct?

21 A. Yes. I will relocate to a particle using the
22 instrumentation and actually get an image of the particle to
23 make sure that it is molten.

24 Q. And the way I have seen it explained sometimes is
25 like we all know that water is H₂O, but if you have an H or an

1 O, that's doesn't mean you have water; is that correct?

2 A. That would be fair to say.

3 Q. So in this case you did not find what was necessary
4 to say it was gunshot residue?

5 A. I did not find what was necessary to say that it's
6 characteristic of gunshot residue.

7 MS. SAMPSON: That's it, Your Honor. Thank you.

8 RECROSS EXAMINATION

9 BY MS. JURICK:

10 Q. But you did find consistent with what would be
11 considered consistent with gunshot residue?

12 A. I cannot say that they were consistent based on the
13 fact that I never went back and saw the morphology associated
14 with them so I cannot say that.

15 Q. But you did not go back and visually check. The
16 scan said something that would suggest consistent with?

17 A. The scan suggested that the elements were present,
18 but that doesn't necessarily mean that it's consistent with.

19 Q. And you did not go and visually check?

20 A. No. That's not part of our policy.

21 MS. JURICK: Thank you.

22 THE COURT: Anything further of this witness?

23 MS. SAMPSON: No, sir.

24 THE COURT: Anything further of this witness?

25 MS. SAMPSON: No, sir. No, sir.

1 THE COURT: All right. You may step down, ma'am.

2 MS. SAMPSON: May this witness be excused, Your
3 Honor?

4 MS. JURICK: No objection.

5 THE COURT: Yes. Thank you, ma'am. Call your next
6 witness.

7 MR. EATON: Jessica Gantt. I'm sorry. Latoya
8 Riley.

9 MS. TAYLOR: The State calls Latoya Riley.
10 Thereupon,

11 LATOYA RILEY
12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat on the witness stand
14 and state your full name for the record.

15 THE WITNESS: My name is Latoya Riley.

16 DIRECT EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good afternoon, Ms. Riley. How old are you?

19 A. I'm 32.

20 Q. And are you in school?

21 A. Yes.

22 Q. What are you in school for?

23 A. I'm majoring in exercise science at Columbia
24 College.

25 Q. And are you from Columbia?

1 A. I'm from Pennsylvania, Harrisburg, Pennsylvania, but
2 I was raised here.

3 Q. What part of Columbia were you raised in?

4 A. Richland County.

5 Q. What area?

6 A. Well, I came to Leff Road first and then Garners
7 Ferry Road and went to high school at Lower Richland High
8 School.

9 Q. And do you know anyone involved in this case?

10 A. Uhm, Roderick.

11 Q. How do you know him?

12 A. We went to Hopkins Middle School together and Lower
13 Richland High School together.

14 Q. Are you still friends with him?

15 A. Yes.

16 Q. And what name do you refer to him as?

17 A. I call him Mike.

18 Q. So how long would you estimate you have known him
19 for, how many years?

20 A. Probably 15 years maybe or more.

21 Q. Let's turn to the night of October 9th, 2017. Were
22 you contacted by anyone?

23 A. Yes. Mike.

24 Q. And how did he contact you?

25 A. Through Facebook Messenger.

1 Q. Why does he -- How does he typically get in contact
2 with you?

3 A. That's usually how he gets in contact with me.

4 Q. And why is that?

5 A. He doesn't have a phone.

6 Q. To the best of your knowledge, uhm, what time of day
7 did he contact you around?

8 A. Around nine, 9:30.

9 Q. And what were you doing around that time?

10 A. Well, I was at home putting my baby in the bathtub
11 at the time I got the message from him.

12 Q. And when he contacted you, did you respond back to
13 him immediately?

14 A. No. Not immediately.

15 Q. And why not?

16 A. Well, I had to finish with my baby first, put her in
17 the tub and then feed her and when once I got her to bed,
18 that's when I responded.

19 Q. And when you received those messages from him, what
20 was going through your mind?

21 A. Uhm, well, he just said help and usually that's what
22 he says when he needs something to eat or it's cold outside or
23 he wants somewhere to go so when he said help, that's what I
24 thought, maybe he wanted something to eat or he needed
25 something, like that.

1 Q. And does he typically contact you at that time of
2 night?

3 A. No. I thought it was unusual.

4 Q. And what made it unusual?

5 A. Because he doesn't usually contact me at that time
6 at night.

7 Q. So after you received those messages and you had
8 those thoughts about him contacting you that late being
9 unusual, what did you do?

10 A. I'm sorry. Can you repeat that?

11 Q. After, uhm, you received his messages and you had
12 the thought of him contacting you that late was unusual, what
13 did you then do?

14 A. I responded back and I asked him was everything
15 okay. Is there something wrong?

16 Q. And after you had that conversation with him on
17 Facebook Messenger, then what happened?

18 A. Uhm, I went to Garners Ferry Road and I picked him
19 up from a gas station that I usually pick him up from or meet
20 him at.

21 Q. And, uhm, where did you go after you picked him up
22 from the gas station?

23 A. Uhm, we went down Leesburg Road and I proceeded to
24 ask him what was going on, but we went down Leesburg Road
25 after that.

1 Q. And where did y'all end up going?

2 A. To the Waffle House where Jessica works.

3 Q. Uhm, why did y'all go to the Waffle House where
4 Jessica works?

5 A. Uhm, well, on the way down Leesburg Road I was
6 asking him what happened and then that's when he informed me
7 of what, uhm, K.G. did, just did to Amanda and that he was
8 scared for his safety and he needed to get out of the area.
9 And so I told him that - he told me about the roommate
10 Jessica. I didn't know any of these people before that night,
11 only Roderick, uhm, but he told me that she had a roommate and
12 I said, well, we need to go tell her because he could be at
13 the house waiting for her when she gets home from work so we
14 went to the Waffle House.

15 Q. And during your discussion with him, did he mention
16 anything about a fire?

17 A. No.

18 Q. Did he mention anything about Kenneth Gleaton and a
19 fire?

20 A. No.

21 Q. And describe his demeanor during the car ride. What
22 was he acting like?

23 A. Uhm, he was in shock. He was acting dazed. He was
24 kind of fidgety, and he just kept saying he doesn't know - he
25 doesn't know why he did that or what to do next.

1 Q. And when you say "he", you're referring to?

2 A. Kenneth.

3 Q. During this time that he was explaining about what
4 happened, describe his willingness to want to go to the police
5 right then and tell them what happened?

6 A. Uhm, he was not very willing to go to the police.
7 He was scared first and foremost. Uhm, his past experiences
8 with the police haven't been exactly positive so his first
9 reaction was not to call the police. It was to run from
10 Kenneth because he knew that he had a gun.

11 Q. And during your car ride with him, were you in the
12 driver's seat?

13 A. Yes.

14 Q. And he was in the passenger seat?

15 A. Yes.

16 Q. What, if anything, did you notice about the way he
17 smelled?

18 A. I didn't notice anything different about how he
19 smelled.

20 Q. Did he smell like he had just been in a fire?

21 A. No.

22 MS. YOUNG: Objection, Your Honor. Leading.

23 THE COURT: All right.

24 MS. TAYLOR: I'll move on.

25 THE COURT: Oh, by the way, that is sustained. It

1 was leading so ask her a different question.

2 MS. TAYLOR: Yes, sir.

3 BY MS. TAYLOR:

4 Q. Uhm, you said you went to the Waffle House. What
5 actions, uhm, did you do when you were at the Waffle House,
6 did you specifically do?

7 A. Uhm, I walked up -- I got out of the car and I
8 walked to the front door. I didn't go inside because it's all
9 glass. You can see through. But I just stood inside and I
10 watched Mike trying to get Jessica from behind the counter.

11 Q. Okay. And around what time, uhm, were you at the
12 Waffle House?

13 A. Uhm, 11, 11:30.

14 Q. Uhm, when you were at the Waffle House what, if any,
15 phone calls did you make?

16 A. I called the police.

17 Q. And why did you call the police?

18 A. To report what I just heard happened.

19 Q. And at the Waffle house did you actually see Mike
20 talking to Jessica?

21 A. Yes.

22 Q. And after you saw them talking, what did you see or
23 hear Jessica do?

24 A. Uhm, she tried to call Amanda's phone. She pulled
25 her phone out to call Amanda's phone.

1 Q. And was she actually on the phone?

2 A. Yes.

3 Q. And describe - don't tell me what she said -
4 describe her actions that you saw and heard from Jessica while
5 she was on the phone?

6 A. Uhm, she was yelling. She was highly upset.
7 Cursing.

8 Q. And did you go anywhere else after the Waffle
9 House?

10 A. Yes.

11 Q. Where did you go?

12 A. Uhm, we stopped across the street at the gas station
13 and then we went back to their house.

14 Q. And who all was with you?

15 A. Uhm, Mike and Jessica was with me.

16 Q. And on the drive back to the house, what did you see
17 or hear on the roads going towards the house?

18 A. Uhm, I heard fire trucks. It didn't - it didn't
19 never dawn on me that that's what it was for but I heard fire
20 trucks. I didn't see any ambulance or fire trucks, but I did
21 hear sirens.

22 Q. When you got on the scene who, if anyone, did you
23 tuck to?

24 A. Uhm, I was talking to Jessica mostly. I didn't talk
25 to any officials at first and then somebody approached me, but

1 I don't remember their name.

2 Q. Did you eventually talk to anyone, any law
3 enforcement on the scene?

4 A. Yes.

5 Q. And what did you tell them?

6 A. Uhm, I just told them when we pulled up and saw in
7 that Mike would know what happened because he was already
8 here.

9 Q. And who, if anyone, did you see or hear Mike talking
10 to on the scene?

11 A. I saw him talking to Jessica. I saw him talking to
12 law enforcement. Uhm, when he went up to law enforcement, he
13 walked up to them like this (indicating.) I didn't hear what
14 he said, but I did see him talking to him.

15 Q. And you went like this (indicating.) Can you show
16 the jury what you were doing?

17 A. He walked up (indicating.)

18 Q. That's how Mike walked up to the police?

19 A. Mm-hmm.

20 Q. And, uhm, earlier you said initially when you first
21 picked him up, Mike was hesitant about calling the police.
22 How would you describe Mike's willingness to talk to the
23 police on the scene?

24 A. Uhm, he was very willing. He approached them.

25 Q. Who, if anyone, did you see or hear Jessica talk to

1 on the scene?

2 A. Uhm, she was on the phone with someone and she also
3 spoke to, uhm, a law enforcement officer that was out there.

4 Q. And how well did you know the defendant Kenneth
5 Gleaton in this case?

6 A. I didn't know him at all.

7 Q. And how well did you knew the victim Amanda Peele in
8 this case?

9 A. I didn't know her either.

10 MS. TAYLOR: No further questions.

11 THE COURT: Ms. Young.

12 CROSS EXAMINATION

13 BY MS. YOUNG:

14 Q. Good afternoon, Ms. Riley. How are you?

15 A. Well, thank you.

16 Q. Did you meet with the police any other time other
17 than that night?

18 A. Before that night?

19 Q. No. After?

20 A. Yes.

21 Q. Okay. How many times do you think you have spoken
22 to the police?

23 A. Two or three times.

24 Q. And have you met with anybody sitting at the
25 prosecutor's table?

1 A. Yes.

2 Q. Okay. And when you met with them recently, that's
3 when you showed them your phone with the Facebook messages?

4 A. Yes.

5 Q. Okay. And those Facebook messages were between you
6 and you call him Mike, right?

7 A. Yes.

8 Q. Between you and Mike the night that Amanda died?

9 A. Yes.

10 Q. And you said you've known Mike for 15 years?

11 A. Yes.

12 Q. Do you recall ever saying that you've known him
13 since you were kids?

14 A. Yeah.

15 Q. Okay. I guess it depends on what you consider a
16 child?

17 A. 10, 11 years old.

18 Q. Okay. And he grew up in the Hickory Ridge area?

19 A. Yes.

20 Q. That's where his parents lived?

21 A. Yes.

22 Q. And that's very close to where Amanda lived as
23 well?

24 A. Yes.

25 Q. And he's very familiar with that area?

1 A. Yes.

2 Q. That's where his sleep spots are?

3 A. If he's on that side of town. Yes.

4 Q. And you have remained friends since you were
5 children, young, 10, 11 years old?

6 A. Yes.

7 Q. But you didn't know Amanda?

8 A. No.

9 Q. And you didn't know Kenny?

10 A. No.

11 Q. And you had never been to Amanda's house before that
12 night on October 9th?

13 A. No.

14 Q. But you knew that Mike had been to her house?

15 A. Yes.

16 Q. You knew that he slept there?

17 A. I did not know that until after, until this night
18 when he was telling me what happened.

19 Q. Did he tell you he would eat there?

20 A. Yes.

21 Q. And he told you that it was a place that he could
22 hang out when he needed somewhere to go?

23 A. No. He didn't tell me that.

24 Q. I'm going to take you to that night. You said you
25 received a Facebook message from him at 9:45 p.m.?

1 A. Yes, ma'am.

2 Q. And it was abnormal for him to text you that late?

3 A. Yes.

4 Q. And you remember that it was that late because you
5 were putting your kids to bed and he asked you - he said he
6 needed you to come get him?

7 A. (Witness nodding head.)

8 Q. I'm sorry. You have to answer out loud.

9 A. I'm sorry. He said, help, and then after I said
10 what's wrong, he asked me to come get him.

11 Q. Okay. And you thought something might be wrong?

12 A. Yes.

13 Q. Because it's abnormal, right --

14 A. Right.

15 Q. -- for him to reach out to you that late?

16 A. Right.

17 Q. And he wanted you to take him to a person called
18 Country's house?

19 A. Yes.

20 Q. Because he needed to leave that side of town?

21 A. Yes.

22 Q. And he told you he was in big trouble?

23 A. Yes.

24 Q. And he was frantic for you to come pick him up?

25 A. Yes.

1 Q. And you did?

2 A. Yes.

3 Q. At Hickory Ridge Drive?

4 A. At the Circle K.

5 Q. Okay. Around 11:45 p.m.?

6 A. Give or take. Yeah.

7 Q. And that's less than half a mile from Amanda's
8 house?

9 A. Right.

10 Q. He asked you to go around the corner and pick up a
11 bag that was behind a house?

12 A. No.

13 Q. Do you remember meeting with an investigator named
14 David Anatra?

15 A. Yes.

16 Q. You don't recall telling him that Mike asked you to
17 go pick up a bag from around the house?

18 A. No. I didn't - he didn't ask me to pick up a bag.
19 He told me he found a bag but he didn't ask me to go pick up
20 anything.

21 Q. Okay. After picking him up, the two of you went to
22 the Waffle House?

23 A. Yes.

24 Q. And on the way Mike tells you about what has
25 happened that night?

1 A. Yes.

2 Q. And you told him he needed to call the police?

3 A. Yes.

4 Q. But he didn't want to do that.

5 A. Right.

6 Q. And when you arrived at the Waffle house, you spoke
7 to Jessica Gantt or you didn't, Mike spoke to Jessica Gantt?

8 A. Yes.

9 Q. Did he speak with her inside the Waffle House?

10 A. About what happened? No.

11 Q. She came outside?

12 A. Yes.

13 Q. So Dukes relayed this story to her?

14 A. Mm-hmm.

15 Q. And the you're the one that called 911?

16 A. Yes.

17 Q. And you told them that there was a man that had
18 heard a gunshot?

19 A. No. I told them that someone just got murdered and
20 I told them the address and that was it.

21 Q. And you told them that was about 45 minutes prior to
22 you calling them?

23 A. I didn't tell them what time.

24 Q. All right. Then the three of you returned back to
25 Amanda's house together?

1 A. Yes.

2 Q. You spoke to police officers while you were there?

3 A. Yes.

4 Q. You told them that Mike Dukes had been at the house
5 when Amanda was killed?

6 A. Yes.

7 Q. And then you encouraged Mike to go and talk to
8 them?

9 A. I didn't have to encourage. He just walked up to
10 them by himself.

11 Q. Mike contacted you again the next morning?

12 A. Yes.

13 Q. Around 4:00 a.m.?

14 A. Yes.

15 Q. And you asked him if he was okay?

16 A. Yes.

17 Q. And he said yes?

18 A. Mm-hmm.

19 Q. And you guys made plans to meet up later that day?

20 A. Yes.

21 Q. And he talked to you about the clothing he had
22 found?

23 A. That was in the messages.

24 Q. He told you that he had found some bloody clothes?

25 A. Mm-hmm.

1 Q. And that he was gonna keep them?

2 A. Yes.

3 Q. And you told him not to?

4 A. Correct.

5 Q. You told him it might be evidence?

6 A. Yes.

7 Q. And you told him he should give it to the police?

8 A. Yes.

9 Q. But he never did that?

10 A. I don't know that part.

11 Q. Around 12:30 that day you sent Mike Dukes a
12 message?

13 A. Yes.

14 Q. And you said you need to come back over here to
15 Crestmore Drive?

16 A. Right.

17 Q. Because the police want to talk to you?

18 A. Yes.

19 Q. And he said tell them I'm watching porn?

20 A. Okay.

21 Q. Is that a yes?

22 A. Yes. He did say that.

23 MS. YOUNG: No more questions.

24 THE COURT: No further questions.

25 THE COURT: Anything further?

1 REDIRECT EXAMINATION

2 BY MS. TAYLOR:

3 Q. So about the bag that she was referring to, did he
4 say he found the bag the night of the murder or was it another
5 time?

6 A. He didn't say when. I think he found it that
7 morning. He didn't -- I just gathered from the message that
8 he said he was walking through the woods and he found the bag.
9 He didn't say last night or this morning so I'm not sure about
10 that.

11 Q. And when you said that you told him the
12 investigators are looking for him the second time, did he
13 eventually go and talk to the investigators?

14 A. He did.

15 Q. While you were in the car what, if anything, did he
16 say about this bag?

17 A. The next morning?

18 Q. Or a bag? No. In the car when you picked him up
19 from Circle K?

20 A. He didn't say anything about a bag.

21 MS. SAMPSON: No further questions.

22 THE COURT: Anything further of this witness?

23 MS. YOUNG: No, Your Honor.

24 THE COURT: You may step down, ma'am. You may call
25 your next witness after we take a break. Just don't talk

1 about the case, ladies and gentlemen. I try to keep them
2 within an hour or so. You all look okay so go refresh
3 yourselves. Don't talk about the case. Thank you.

4 (Whereupon, the jury entered the jury room at 2:20
5 p.m.)

6 THE COURT: Any exceptions or additions at this
7 point in time?

8 MR. EATON: Not from the State, Your Honor.

9 MS. JURICK: No, Your Honor.

10 (Short break.)

11 BAILIFF: All rise.

12 THE COURT: Anything we need to take up before the
13 jury comes in?

14 MR. EATON: Nothing from the State, Your Honor.

15 THE COURT: And that question is directed at
16 everybody participating in this trial. Anything from
17 y'all?

18 MS. JURICK: No, Your Honor.

19 THE COURT: I have to ask this. Okay. Bring the
20 jury in.

21 (Whereupon the jury entered the courtroom at 2:50
22 p.m.)

23 BAILIFF: The jury is present, Your Honor.

24 THE COURT: Welcome back, Mr. Foreman and members of
25 the jury. Mr. Eaton, you may call your next witness.

1 MR. EATON: The State calls Jessica Gantt.

2 Thereupon,

3 JESSICA ROBIN GANTT

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat on the witness stand
6 and state your full name for the record.

7 THE WITNESS: Jessica Robin Gantt.

8 MR. EATON: Please the Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. EATON:

12 Q. Good afternoon, Ms. Gantt. Ms. Gantt, where are you
13 from?

14 A. Greenville.

15 Q. Where do you live now?

16 A. I live here in Columbia.

17 Q. How long have you lived here?

18 A. Since 2012.

19 Q. And what do you do job wise?

20 A. I cook at Waffle House.

21 Q. How long have you been working there?

22 A. At that one?

23 Q. Yes, ma'am.

24 A. At that one since 2015.

25 Q. And then before that it sounds like you were cooking

1 somewhere else?

2 A. Yes.

3 Q. Where was that?

4 A. Two Notch Road.

5 Q. And did you know Amanda?

6 A. Yes, sir.

7 Q. How did you know her?

8 A. She came to work there probably either the end of
9 July or the first week of August 2017.

10 Q. And how long had you already been working there when
11 she came?

12 A. I was there since July of 2015.

13 Q. What was the nature of your relationship with Amanda
14 when she came to work there?

15 A. She waited tables and I worked with her a few times
16 and we just hit it off right away. We just became friends
17 automatically.

18 Q. And at some point did you move in with Amanda?

19 A. Yes. I did. Yes. I did.

20 Q. How long were you all co-workers or, and friends
21 before you moved in?

22 A. About a little over a month. About a month and a
23 week.

24 Q. Why did you move in?

25 A. Because I was staying in a hotel at the time and it

1 costing me just about everything on my paycheck and I couldn't
2 afford to do it anymore and Amanda just opened up her home to
3 me and told me I could stay there, save me a little money and
4 help her out, too.

5 Q. And so where were you staying in the house?

6 A. I was staying in the basement. They fixed up the
7 basement.

8 Q. Was it a two level house?

9 A. No. It was a one story house with a basement.

10 Q. So when you moved in, who all was living there?

11 A. It was Amanda and Kenny and Amanda's grandparents
12 and her two sons Ashton and Dillon.

13 Q. And how long were you there before the grandparents
14 moved out?

15 A. I had been there about one week when everything
16 happened and then I would say they moved out probably, they
17 got to rest of their stuff a few days before she died, they
18 came back and got the rest of their stuff.

19 Q. I just want to let the jury see the picture where
20 you were in the house.

21 THE COURT: You need to speak up, sir.

22 MR. EATON: Yes, Your Honor.

23 BY MR. EATON:

24 Q. So real quick, Ms. Gantt, could you just step down
25 and show, or allow me to show on State's 19 where you lived in

1 this house.

2 A. Okay. (Indicating.)

3 Q. So the garage is over here. Where was the
4 basement?

5 A. It was connected to --

6 COURT REPORTER: I can't hear her.

7 BY MR. EATON:

8 Q. Speak up. Go ahead and speak up.

9 THE COURT: All right. Speak up. Switch positions
10 so she can talk back toward the court reporter.

11 BY MR. EATON:

12 Q. Come over here, Ms. Gantt, and just kind of describe
13 the layout of the house, if you can, where your room was.

14 A. Well, these are the steps leading down into where
15 the basement area was because the washer and dryer was right
16 in here, too, and that was the garage area over here. There
17 was a little doorway going in there.

18 Q. Okay. Thank you. You can retake the witness stand.

19 A. (Witness complies.)

20 Q. So you mentioned something about when everything
21 went down. What were you referring to?

22 A. When Amanda put her grandparents out.

23 Q. And were you privy to what that was about?

24 A. Yes. I was.

25 Q. What was that about?

1 A. She thought they called DSS and had the children
2 removed from the home.

3 Q. Was this - do you remember around what day that was
4 that they moved out?

5 A. I don't remember the exact date that they actually
6 left the premises, but I remember what date DSS came and she
7 was so upset, she wanted them out right then.

8 Q. Why did DSS come?

9 A. There had been an incident September the 8th.

10 Q. Ms. Gantt, at some point did your friendship with
11 Amanda have a possibility of being something more than a
12 friendship?

13 A. Yes.

14 Q. How do you know that? What went on between the two
15 of you?

16 A. We were just really good friends and then one night
17 I was at work and we were texting each other and it came up.

18 Q. What came up?

19 A. She wanted to know if I wanted to be more than
20 friends.

21 Q. Did your relationship ever actually become
22 romantic?

23 A. No.

24 Q. So you mentioned a prior incident?

25 A. Yes.

1 Q. What day was that?

2 A. September the 8th.

3 Q. What were you doing that day?

4 A. I was getting ready for work.

5 Q. Where?

6 A. I was down in the basement getting ready for work.

7 Q. And did you here - were Amanda and Gleaton home?

8 A. Yes.

9 Q. Where were they?

10 A. They had been outside for a while. I guess
11 they were having problem you could say. They came back
12 inside. Their voices were loud, but I really couldn't hear
13 everything they were saying because they were playing music in
14 the kitchen so I couldn't hear the exact words they said, but
15 I was downstairs getting ready for work and then she took me
16 to work.

17 Q. And tell the jury what happened next?

18 MS. OSTEEN: Objection, Your Honor. I'm renewing
19 our previously stated objection.

20 THE COURT: Thank you. Go ahead, ma'am.

21 BY THE WITNESS:

22 A. She took me to work and she parked in front of the
23 Waffle House and normally she would pull around the back and
24 let me out right there, but she parked right in front. Kenny
25 was with us. She got out of the car and ran inside real fast.

1 I thought maybe she had to use the restroom or something, but
2 some time went on and she didn't come back out and so I was
3 like, you know, let me go check on her and see what's going on
4 so I went inside and I looked all through there and I didn't
5 see her anywhere. I checked out the back door, everywhere.
6 My manager was there. I asked her, I said have you seen her?
7 She said no. You know, she was in the commissary anyway so I
8 don't know where she was hiding at because I did not
9 know where she went. The next thing I know a lot of police
10 cars pulled into the parking lot and I was around back by this
11 point smoking a cigarette getting ready to start my shift
12 which started at nine and, uhm, Kenny all of a sudden came
13 running in that direction and the police were chasing him and
14 I didn't know. I had no idea what was going on at that time.
15 He was running by and he said something to me. He said, you
16 tell - tell her when you see her or talk to her again she's
17 dead. I'll kill her. And he took off running. The police
18 were chasing him. It's not until later on that I found out
19 what happened.

20 Q. When is the next time you saw Gleaton?

21 A. I saw him the next day.

22 Q. Where?

23 A. He came back to the house the next day.

24 Q. And did you talk to him?

25 A. Yes. I did.

1 Q. Who was there?

2 A. Just me and him at that point. Amanda had gone to
3 work.

4 Q. Where were y'all in the house?

5 A. At the kitchen table.

6 Q. And describe that conversation to the jury.

7 A. Okay. Well, when Amanda called me that night -- So
8 I'm gonna back. When Amanda called me that night and told me
9 what happened --

10 MS. OSTEEN: Objection, Your Honor.

11 BY MR. EATON:

12 Q. Let's skip that.

13 THE COURT: She called and said what happened.
14 What's your objection? What's your objection?

15 MS. OSTEEN: I believe the witness was going to go
16 into hearsay.

17 THE COURT: No, ma'am. What is your objection? Not
18 what you believe she might say.

19 MS. OSTEEN: Hearsay.

20 THE COURT: It's premature. You're premature. Go
21 ahead.

22 BY MR. EATON:

23 Q. Now, Ms. Gantt, if you would, describe the
24 conversation with Mr. Gleaton in the kitchen the day that you
25 are describing.

1 A. Oh, okay. Well, it's about three in the afternoon
2 when he came back and he sat down and he shook his head. He
3 said, I've had a long night. I said, I bet you have. And he
4 asked me, did Amanda tell you anything? I said, yes. She
5 did. And he asked me, well, what did she say? And I said,
6 well, she told me that you --

7 MS. OSTEEEN: Objection, Your Honor.

8 THE COURT: Basis.

9 MS. OSTEEEN: Hearsay. She said --

10 THE COURT: I disagree. I disagree, ma'am.

11 MS. OSTEEEN: She said she told me.

12 THE COURT: Overruled. Sit down. Continue. This
13 is a conversation with the defendant; am I correct?

14 MR. EATON: Yes, Your Honor.

15 THE COURT: All right.

16 MS. OSTEEEN: Your Honor, she stated she told me
17 based on a conversation with Amanda Peele. That is
18 hearsay. She is not here.

19 THE COURT: Thank you. Continue.

20 MR. EATON: It's a statement of which he has adopted
21 the truth, Your Honor.

22 THE COURT: All right.

23 BY MR. EATON:

24 Q. Please go on to describe that conversation.

25 A. I asked him if he, you know, did what she said he

1 did and he just nodded his head yes and dropped his head down
2 like this (indicating.)

3 Q. Back up. When you told him what she said he did,
4 did he agree to what was it that he did?

5 A. He pulled a gun on her.

6 Q. When is the next time that you saw Gleaton after
7 that, after that conversation?

8 A. That conversation? Well, he was back at the house
9 at that point.

10 Q. For how long?

11 A. He was there until October.

12 Q. And at some point was he kicked out?

13 A. Yes.

14 Q. When was he kicked out?

15 A. The week before Amanda was killed.

16 Q. So let me take you to that night. What were you
17 doing that day?

18 A. The night she was killed?

19 Q. October 9th.

20 A. She and I had some errands to run. We had to go pay
21 some bills and things like that that morning. It was a
22 Monday. I had to work that night so we were just taking care
23 of a few things. She had been sick over the weekend so she
24 missed some work so I was trying to help her out getting some
25 bills paid, you know, plus I made a car payment. That was the

1 main thing and we just took off, you know, one afternoon, you
2 know, just hanging out. Got some food from Rush's, you know,
3 went back to the house. We was just hanging out, you know. I
4 believe we read from the Bible a little bit, you know, and had
5 conversation. Then I started getting ready for work and Kenny
6 came back to the house probably about 4:30 that afternoon.
7 Around 4:30 is when he came back in.

8 Q. And when did you go to work?

9 A. She took me to work around 7:00 because it started
10 getting darker earlier that day, you know. Around this time
11 of year it starts getting dark really early and she doesn't
12 like to drive at night so she went ahead and took me on to
13 work about seven that night. My shift started at nine.

14 Q. And how long had you been at work before you heard
15 anything had gone badly?

16 A. I found out about 11:45 p.m.

17 Q. And how did you find out?

18 A. Mike and Latoya came and told me.

19 Q. What was Mike's demeanor when he showed up?

20 A. He was in shock, in grief. Real shock. I mean, he
21 was in shock.

22 Q. What did he smell like?

23 A. Just normal.

24 Q. Anything in particular?

25 A. No.

1 Q. Did Mike say anything about the fire?

2 A. No. He did not.

3 Q. Ms. Gantt, what was your phone number back then?

4 A. Area code 864-551-8219.

5 Q. When you learned what happened, what was the first
6 thing that you did?

7 A. I called her phone because I didn't believe it. I
8 couldn't believe it.

9 Q. You called whose known?

10 A. I called Amanda's phone.

11 Q. If I can approach with State's 118. Do you see your
12 phone number coming up on these phone records?

13 A. Yes.

14 Q. Can you read your phone number off of those records?
15 (Indicating.) You can't see it?

16 A. No.

17 Q. That's okay.

18 A. The print's too small. I can't see it.

19 Q. I guess just state your number one more time.

20 A. 864-551-8219.

21 THE COURT: The members of the jury need to hear
22 you. Please speak up.

23 BY THE WITNESS:

24 A. 864-551-8219.

25 BY MR. EATON:

1 Q. Can you see that right there?

2 A. Yes. That's my number.

3 Q. Okay. Thank you. So when you called Amanda's
4 phone, who answered?

5 A. Kenny did.

6 Q. And how did that conversation go?

7 A. I asked could I speak to Amanda. And he said, she's
8 taken some pills and fallen asleep. And I said, well, that's
9 not what I just heard. I heard you killed her. I said, did
10 ya? And then all of a sudden his voice got like, it changed.
11 It went from confident stuff to high pitched. He stammered a
12 lot and like, no, no, no, no. I didn't kill her. Who told
13 you that? How did you find that out? Who told you that? I
14 said, well, don't worry about it. Never mind. And I hung up
15 the phone and I was like take me over there. That's when I
16 knew.

17 Q. And where did y'all go?

18 A. We went first to the convenient store. I think
19 Latoya might have needed gas for the car and then we went
20 straight over to the house.

21 Q. Did you get anything at the store?

22 A. I did get a beer. I was a little upset. I left
23 work.

24 Q. Did you see Kenny again after that?

25 A. No, sir. I didn't.

1 Q. Do you see him here today?

2 A. Yes. I do.

3 Q. Would you point him out for the record please?

4 A. (Indicating.) He's right over there.

5 Q. Had you ever seen Gleaton with a gun?

6 A. Yes.

7 Q. When?

8 A. The day after I moved in.

9 Q. I'm sorry.

10 A. The day after I moved in.

11 Q. So approximately when would that be?

12 A. Thursday, September 7th.

13 Q. And describe seeing him with a gun to the jury.

14 A. Okay. He pulled everything out of his pockets that
15 afternoon and put it in a little boot because there had been
16 an altercation between two of the older teenagers in the
17 neighborhood and he was gonna go help resolve it so he took
18 everything out of his pockets first in case the police were
19 there and one of the things I saw was a pistol. It was about
20 that long (indicating) silver in color and he stuck that down
21 in his boot.

22 Q. Did he say anything about the pistol?

23 A. I just looked at him and looked at him and he goes
24 shhh, like that. I had just moved in the day before so I
25 really didn't think anything of it at the time.

1 Q. How was Mike on the scene -- Let me back up. You
2 knew Mike?

3 A. Yes.

4 Q. How long had you known Mike?

5 A. I met him pretty soon after I moved in. He was at
6 the house a lot. He was a friend to Katie and Amanda.

7 Q. Did you ever perceive there being anything between
8 Mike and Amanda?

9 A. No.

10 Q. How was Mike after y'all got back to Crestmore from
11 Waffle House, how was Mike? What was his demeanor? How was
12 he acting there?

13 A. The night of the murder?

14 Q. The night of the murder.

15 A. He was still in shock, but he went to talk to some
16 police and I was just, I was in shock, too. We were all just,
17 you know -- He went to go talk to the police.

18 Q. I mean, from what you could tell at least was he
19 cooperating with them?

20 A. Yes. He was.

21 MR. EATON: Thank you, Ms. Gantt. No further
22 questions.

23 THE COURT: Go to the jury room, ladies and
24 gentlemen. Please don't talk about this case. I'll
25 bring you back out shortly.

1 (Whereupon, the jury entered the jury room at 3:10
2 p.m.)

3 THE COURT: Ms. Osteen.

4 MS. OSTEEN: Yes, Your Honor.

5 THE COURT: One more outburst from you like I just
6 witnessed and you're gonna regret it. Do you understand?

7 MS. OSTEEN: Yes, Your Honor.

8 THE COURT: Thank you. Take a short break.

9 (Short break.)

10 BAILIFF: All rise.

11 THE COURT: Keep your seats. Bring the jury in
12 please.

13 BAILIFF: Yes, Your Honor.

14 (Whereupon, the jury entered the courtroom at 3:20
15 p.m.)

16 THE COURT: Welcome back, Mr. Foreman, members of
17 the jury. You may cross examine.

18 MS. OSTEEN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. OSTEEN:

21 Q. Hi, Ms. Gantt.

22 A. Hello.

23 Q. First I want to talk a little bit about that
24 statement from the night of September 8th, 2017. You said
25 that you and Kenny and Amanda went to the Waffle House?

1 A. Yes, ma'am.

2 Q. Because you were working?

3 A. Yes, ma'am.

4 Q. And you told the investigators previously that you
5 and Amanda walked in together?

6 A. No.

7 Q. So only --

8 A. Amanda went in.

9 Q. Only Amanda went in?

10 A. At first, yes.

11 Q. And you were going for your shift?

12 A. Yes, ma'am.

13 Q. So Amanda went into Waffle House and you stayed
14 outside for your shift?

15 A. I stayed outside because it was 8:15.

16 Q. Okay. And then when you were at the Waffle House,
17 there were other people working?

18 A. Yes. There was.

19 Q. And you said it was a Friday night so it was a busy
20 night?

21 A. It was busy but it gets busy later.

22 Q. Okay.

23 A. Second shift is always slow.

24 Q. About 9:00 it gets busy?

25 A. It gets busy after nine. Yes, ma'am.

1 Q. Okay. And that's when your shift started was
2 nine?

3 A. Yes, ma'am.

4 Q. And you said that the police had just arrived.

5 A. Yes, ma'am.

6 Q. And that is when Kenny started running away.

7 A. Yes, ma'am.

8 Q. And ran past you.

9 A. Yes, ma'am.

10 Q. And made this statement over his shoulder kind of
11 yelling it back at you?

12 A. Yes. As he was running. Yes.

13 Q. Okay. And you said that statement was made on
14 September 8th, 2017?

15 A. Yes, ma'am.

16 Q. And you didn't tell anybody working with you at the
17 Waffle House that night?

18 A. No. I didn't.

19 Q. You didn't tell your managers at the Waffle House
20 that night?

21 A. No.

22 Q. No one at the Waffle House heard those statements?

23 A. No.

24 Q. You didn't tell the police officers that were there
25 that night?

1 A. No. They were chasing him. They didn't stop and
2 ask me anything.

3 Q. I thought previously you said that they asked you
4 where he went?

5 A. They did, but I pointed and they ran.

6 Q. Okay.

7 A. Everybody was in pursuit.

8 Q. Then you have talked to investigators about this
9 case, right?

10 A. Yes, ma'am.

11 Q. And you didn't tell any of them until speaking to
12 the Solicitor?

13 A. When I -- When they interviewed me, yes. That's
14 when I told them.

15 Q. So you didn't tell them in September of 2017 when
16 this happened?

17 A. No.

18 Q. You didn't tell them in October of 2017. You waited
19 until you spoke to the Solicitors in this case in September of
20 2019 to tell them that?

21 A. That's when they first approached me. Yes.

22 Q. You had an opportunity to speak to law enforcement
23 on October 10th as well, right?

24 A. I spoke to a fire marshal and got some assistance
25 from Red Cross because my stuff was destroyed by fire and

1 water damage.

2 Q. I'm talking about the night of October 10th. You
3 spoke to a deputy, Deputy Marum?

4 A. Yes.

5 Q. And you spoke to the coroner?

6 A. Yes. I did. Mm-hmm.

7 Q. Okay. You also -- You know how to look up the non
8 emergency number for the police department?

9 A. Yes.

10 Q. And you know 911?

11 A. Yes.

12 Q. Now, going back to that September 9th, you said that
13 Kenny was back the next day?

14 A. Yes. She told him he could come back the next
15 day.

16 Q. Okay. And you were all living there then on
17 September 9th, 10th timeline?

18 A. Yes, ma'am. We were.

19 Q. And then y'all's power got shut off on September
20 13th?

21 A. Yes, ma'am.

22 Q. Now, going forward in time to October 10th, 2017
23 when Mr. Dukes came to the Waffle House. Do you remember
24 that?

25 A. Yes, ma'am. I do.

1 Q. And he came to tell you his story; is that right?

2 A. He came to tell me what happened. Yes, ma'am.

3 Q. And that was about 12:00?

4 A. It was before then, but yes. It was around that
5 time.

6 Q. 11:50 something?

7 A. Yes.

8 Q. And you called Kenny at about 12:06?

9 A. I called Amanda's phone and he answered.

10 Q. Okay. Yeah. And he told you that he didn't do
11 anything?

12 A. Yes.

13 Q. And that she took sleeping pills?

14 A. And fell asleep.

15 Q. And she went to bed. Now, you also previously --
16 And then the three of you, Latoya, Dukes and you went to
17 Crestmore?

18 A. Yes, ma'am.

19 Q. And then you spoke to police at the scene there?

20 A. Yes, ma'am.

21 Q. And you told law enforcement or the Solicitor's
22 Office that you also sent a text message to Amanda that
23 night?

24 A. (Witness nodding head.)

25 Q. Yes?

1 A. I did. I texted her. We were texting earlier.

2 Q. And you said that you sent that text message at
3 11?

4 A. She sent me one at 11 and I texted her back and I
5 never heard back from her.

6 Q. She texted you back at 11?

7 A. No. She texted me first and she said he's gone and
8 I texted her back, to where? question mark.

9 Q. And that happened at 11?

10 A. 11:02 p.m. Yes, ma'am.

11 Q. Okay. Now, you worked with Amanda?

12 A. Yes.

13 Q. You lived with Amanda?

14 A. Yes.

15 Q. Is it safe to say that you cared about each other?

16 A. Yes. We did.

17 Q. And you loved each other very much?

18 A. Very much so.

19 Q. I know that you spoke on direct about how you all
20 were talking about taking it to the next level essentially?

21 A. That happened on October 5th.

22 Q. On October 5th. But you told folks that you were
23 dating?

24 A. We were technically. Yes.

25 Q. Okay. And you told the coroner that night that you

1 were dating?

2 A. Yes.

3 Q. Now, I know that you had a beer on the night of -
4 not asking you about that - but it's safe to say that you
5 drink pretty often?

6 A. Not anymore.

7 Q. Not anymore?

8 A. She helped me get sober.

9 Q. And in 2017 you were drinking?

10 A. Yes.

11 Q. Pretty heavily?

12 A. Yes. I was.

13 Q. Okay. Ms. Gantt, I want to be very clear about the
14 timeline of when you moved in. So you said on direct that you
15 moved in in July or August. Can you narrow that down?

16 A. September 6th.

17 Q. Oh, you moved in on September 6th?

18 A. Yes, ma'am.

19 Q. Okay. And then you said that Amanda's grandparents
20 moved out when?

21 A. It was the following week after DSS had come and
22 took the kids. She put them out. She wanted them gone that
23 day. I think they did leave that day, but they had to come
24 back later and get their belongings. Yes.

25 Q. Okay. And you were living there until October

1 10th?

2 A. Yes.

3 MS. OSTEEEN: No further questions.

4 THE COURT: Redirect?

5 MR. EATON: Very briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. EATON:

8 Q. Regarding the prior incident and what he said to you
9 on September 8th as he ran from Waffle House --

10 A. Yes.

11 Q. -- before the Solicitor's Office asked you about
12 that, had anyone asked you what happened?

13 A. No. They did not.

14 Q. Now, there was a text that you just talked about the
15 night of the murder around 11 something that said he's gone
16 that appeared to come from Amanda, right?

17 A. Yes, sir.

18 Q. But then who answered the phone around midnight when
19 you called her phone?

20 A. Kenny answered the phone at midnight.

21 Q. Do you know if Kenny knew anything about the
22 potential for anything romantic between you and Amanda?

23 MS. OSTEEEN: Objection. Speculation.

24 THE COURT: Overruled.

25 BY THE WITNESS:

1 A. I don't know if he did. It was only like four days
2 so I don't know if he found out.

3 MR. EATON: Okay. Thank you. No further questions.

4 THE COURT: Anything further of this witness?

5 MS. OSTEN: No.

6 THE COURT: You may step down. Call your next
7 witness.

8 MR. EATON: The State calls Ronnie Hinson.

9 Thereupon,

10 RONNIE HINSON

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat in the witness stand
13 and state your full name for the record.

14 THE WITNESS: Ronnie Hinson.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. EATON:

18 Q. Investigator Hinson, where do you work?

19 A. Richland County Sheriff's Department.

20 Q. What's your title there?

21 A. Senior investigator.

22 Q. And are you in a particular division?

23 A. Yes. I'm in major crimes with emphasis on
24 assault.

25 Q. What does major crimes include at Richland County?

1 A. Major crimes includes robberies, assaults,
2 murders.

3 Q. How long have you been in major crimes?

4 A. About a year and a half. I'm sorry. Two years.

5 Q. How long have you been at Richland County?

6 A. I have a total of 22 years of law enforcement
7 experience, 10 years with Richland County, 12 years with SLED,
8 South Carolina Law Enforcement Division.

9 Q. And just briefly what are some of the law
10 enforcement positions you have held over that period.

11 A. I was a K-9 handler at one point. Narcotics
12 investigator for about seven or eight years at SLED. Patrol
13 deputy and Richland County, and I have been in investigations
14 for approximately three and a half years at Richland County.

15 Q. So, Investigator Hinson, how did you initially get
16 involved with this case?

17 A. During that week or the night of I was the on call
18 homicide investigator on investigative on-call team. I was
19 notified by Sergeant Clarke who was the sergeant over our team
20 at that time of this incident, of a body being found at 109
21 Crestmore during a fire call.

22 Q. What does it mean to be on-call investigator?

23 A. We have teams of approximately five or six
24 investigators that are on-call every six weeks. On those
25 teams there are, like I said, five or six investigators. One

1 of the investigators on that team is the primary homicide
2 investigator which I am one of. There are six of us. During
3 that week of on-call, if we have a homicide or any suspicious
4 death, we respond to that and take that investigation.

5 Q. So when you got notified of this, what was the first
6 things you did?

7 A. The first thing I did is I responded to the scene at
8 109 Crestmore Drive to begin my investigation, to speak with
9 the deputies on scene about the incident and to at that time
10 interview any witnesses or anybody on the scene.

11 Q. And was it your intention to work this case alone?

12 A. Yes.

13 Q. Would other investigators help though?

14 A. Yes. We do have other investigators that help.
15 Normally we do have two that work homicides primary which I am
16 and then we also, we select secondary on homicide
17 investigations. This investigation with the apprehension the
18 next day was pretty quick and I worked the primary part on my
19 own but I did assist, get assistance from other investigators
20 on certain aspects of the case.

21 Q. So who all did you talk to -- Let me back up. What
22 did you find at 109 Crestmore when you got there?

23 A. When I arrived on the scene, I had to park on an
24 adjacent street. The road on Crestmore was packed with fire
25 vehicles, EMS and deputies. I walked to the scene and fire

1 was actively battling a blaze at the location in the process
2 of putting out a fire at the house. Uhm, I walked up to the
3 scene and started talking to, there was a crime scene already
4 established. Our deputies had crime scene tape up. I talked
5 to the deputy with the crime scene log and signed myself in
6 and briefly spoke with them about what we had at the scene at
7 that time. Sergeant Clarke arrived there. I don't remember
8 if he was there right before me or right after. We discussed
9 our plan and our plan of action with the investigation.

10 Q. And what other steps did you take on the scene, on
11 the scene at 109 Crestmore? Did you talk to people?

12 A. Yes. I was notified by one of the deputies and also
13 Sergeant Clarke that there was a gentleman on the scene that
14 was an eyewitness to the murder. I then walked over to the
15 other side of the street. He was standing directly across the
16 street. It was Roderick Dukes who identified himself as
17 Roderick Dukes. He was standing across the street from the
18 incident location, from 109 Crestmore and I began to talk with
19 him about what he had seen and what had transpired earlier in
20 the night.

21 Q. And did you talk to anyone else on scene?

22 A. I spoke to, obviously after that, I spoke to - we
23 had crime scene Investigator Woods was on scene. I asked
24 Mr. Dukes for permission to take gunshot residue testing from
25 his hands. He agreed. I took him to Investigator Woods with

1 crime scene who then did the gunshot residue test on
2 Mr. Dukes.

3 Q. What was Mr. Dukes demeanor on scene?

4 A. Mr. Dukes was obviously in shock at what he had
5 seen. He looked nervous, apprehensive and he looked scared of
6 what he had just seen a couple of hours ago.

7 Q. After talking to Mr. Dukes, what did you do next?

8 A. I briefly spoke to Mr. Dukes about what he had seen
9 and what had transpired. At that time I asked him if he would
10 ride with me to our Pineview office which is not far from the
11 area to conduct a interview with him type statement which he
12 agreed to. We went to our Pineview office. We went over
13 again what he told me on the scene about what happened. I
14 typed the question/answer format out with Mr. Dukes about
15 everything he saw and what he witnessed in that house. I then
16 - he then agreed. I let him read it, made sure everything was
17 correct and it was everything he said. He then signed his
18 statement. I signed the statement and then I took Mr. Dukes
19 back to the general area and let him out.

20 Q. What was his demeanor throughout all of this? Was
21 he cooperating with you?

22 A. Oh, he was - Dukes was totally cooperative during
23 the whole entire investigation. He elaborated very well on
24 what had happened. Obviously he was upset, nervous about what
25 he saw, what he saw Mr. Gleaton do. He was scared, afraid for

1 his safety, afraid that - Gleaton was not arrested at the
2 time, afraid that what Gleaton may do to him because he saw
3 what Gleaton did and he was very, I would say nervous.

4 Q. After talking to Dukes, what did you do next?

5 A. After talking to Dukes, I did take him back to the
6 area. Dukes is homeless and lives, he sleeps in different
7 places. I did drop him off. I stopped back - I think I - I
8 stopped back at the scene at that time. We then secured - I
9 had one of the investigators that was on-call with me secure
10 warrants on Kenneth Gleaton for murder and arson. He was put
11 into what's called NCIC as a wanted felon for those two
12 charges and then started further investigation into trying to
13 find Gleaton.

14 Q. And how was that conducted?

15 A. We notified our fugitive apprehension unit, fugitive
16 task force, advised them of the warrants, gave them copies of
17 the warrants, advised them of phone numbers that we had,
18 possible locations for Gleaton, anything that could assist
19 them in the apprehension of Gleaton. We also typed up, I had
20 one of the other investigators type up what we call a BOLO,
21 B-O-L-O which is be on the lookout with Gleaton's picture on
22 it and a brief summary of the incident. That BOLO was put out
23 to all of our investigators, all of Richland County and also
24 surrounding municipalities.

25 Q. And around what time was that, which day?

1 A. That would have been in the early morning hours well
2 after midnight of October 10th.

3 Q. What steps were you taking while they looked for
4 Gleaton? What were you doing?

5 A. We can start in the morning of October the 10th
6 after daylight. We were attempting to get back in touch with
7 Roderick Dukes who had obviously had some contact with
8 Gleaton. That morning on October the 10th around 9:47 a.m.
9 Robert Dukes did call me and stated that Gleaton had called
10 him at around 9:24 a.m. that same morning, but he didn't
11 answer. Gleaton then would text Roderick Dukes the question,
12 what's good? But Roderick did not answer or reply to his text.
13 Roderick was scared to reply. I would make contact with
14 Roderick later. I'm sorry. Roderick Dukes later. Roderick
15 didn't have any cell service on his cell phone. He could only
16 use WiFi so if he was near a WiFi spot, we could make contact.
17 I went back to the scene after that around 10 a.m. or so in
18 the morning. I did secure a search warrant for the residence.
19 The prior investigators and our crime scene went back out to
20 the scene. I took the search warrant to the scene 109
21 Crestmore and then I met with Latoya. She was there in the
22 area and I asked her if she could get in touch with Roderick
23 because I needed to meet with him.

24 Later about a little bit before one p.m. on October
25 the 10th I was able to meet up with Roderick at the Circle K

1 at Trotter and Leesburg Road. That's where Roderick had WiFi
2 service and he could use his cell phone. At that time I
3 enlisted Roderick and asked him if he could possibly reach out
4 to Gleaton. Gleaton had been using Amanda Peele's cell phone
5 trying to contact Roderick Dukes. So Roderick got in my
6 vehicle with me and we tried to call Gleaton. This was in an
7 attempt to find Gleaton's location so our fugitive unit could
8 apprehend him. We did send a text message around one p.m.
9 from Roderick Dukes' phone to Amanda Peele's phone who Gleaton
10 was in possession of it at the time asking him, just sending
11 him a text asking him, we basically said it's crazy over here,
12 Bro. You good? Just to try to get Gleaton to respond to us
13 so we could possibly pick up a location for our fugitive unit.
14 He never responded at that time. At that time I left Roderick
15 there and proceeded to assist with the fugitive unit.

16 Q. Were you on the scene at the river when they
17 arrested him?

18 A. Yes. I was there. I showed up. After we found out
19 that he was at that location, I showed up shortly after he was
20 taken into custody on the river. At that time I asked
21 Investigator Taylor and Investigator Clay Short if they would
22 transport Mr. Gleaton to our headquarters for an interview. I
23 then -- Gleaton did have some property on him at the time. It
24 was handed over to me at the scene.

25 Q. Are you familiar with that property?

1 A. Yes.

2 MR. EATON: If I could approach with State's 146 for
3 identification. The defense has seen this, Your Honor.

4 BY MR. EATON:

5 Q. Are these the items, his personal effects?

6 A. Yes.

7 MS. SAMPSON: I would offer State's 146 into
8 evidence.

9 THE COURT: Any objection?

10 MS. JURICK: No, Your Honor.

11 THE COURT: Without objection.

12 BY MR. EATON:

13 Q. So, Investigator Hinson, there was testimony about a
14 SIM card previously in this trial.

15 A. Yes.

16 Q. Is this the wallet that it was in?

17 A. Yes.

18 Q. After he is arrested at the river, what do y'all do
19 then?

20 A. After he's arrested at the river, Investigator Short
21 and Investigator Taylor take him back to our headquarters. I
22 respond to our headquarters. Mr. Gleaton is then, we then
23 start an interview process with Mr. Gleaton.

24 Q. If I could stop you there, investigator, and
25 approach with what's already in State's 114, 115 and 116. The

1 jury has heard this a little bit but explain quickly what this
2 is. What State's 114 is.

3 A. 114 is the Richland County Sheriff's Department
4 interrogation advise of rights form. Basically at the top
5 Kenneth Gleaton's name is written up there, the place where
6 he's going to be interviewed or read his rights is our
7 address, 5623 Two Notch Road, the officers that were
8 interviewing him were Sergeant Carwell and myself,
9 Investigator Hinson and the date and the time of the
10 interview. Below that is his rights, his Miranda Rights. I
11 would read his Miranda Rights out to him, make sure he
12 understood those rights. I would ask Mr. Gleaton to initial
13 by each, dot each sentence on his Miranda Rights stating that
14 he understood those rights and at the bottom he would sign
15 that he understood his rights and myself and Sergeant Carwell
16 would also sign witnessing that he signed his rights. At the
17 bottom is the waiver of rights. I would read that to him also
18 and Kenneth Gleaton would initial by that dot, by that waiver
19 and then he would sign saying that he waived his rights and he
20 was ready to talk to us and then myself and Sergeant Carwell
21 would sign as witnesses.

22 Q. During that process of reading his rights, was he
23 paying attention to you?

24 A. Yes.

25 Q. Had you taken steps to make him comfortable?

1 A. Yes. He was - before I got there, Sergeant Carwell
2 had him in one of our interview rooms. He was cold in that
3 room so we took him to Sergeant Carwell's office which is
4 right next door to the interview room. He had also stated he
5 was hungry. Investigator Short went to McDonald's and got him
6 some food and brought it back to him and he was allowed to eat
7 on his food while we talked to him and spoke to him.

8 Q. Did he have any questions about his rights?

9 A. No.

10 Q. Did you threaten him in any way --

11 A. No.

12 Q. -- to get him to talk?

13 A. No.

14 Q. What did Gleaton proceed to -- Strike that question.
15 What did he smell like?

16 A. He smelled like smoke.

17 Q. Like what kind of smoke?

18 A. Like smoke from camp fire, wood burning, debris
19 burning smoke.

20 Q. Was that subtle or distinct?

21 A. Distinct.

22 Q. What was his demeanor as you began to ask him
23 questions?

24 A. He really was -- Mr. Gleaton didn't have - he had no
25 emotion. He had no remorse. He basically sat there. He

1 would answer the questions when we asked him, but he would
2 never volunteer anything. We would talk to him. He was
3 pretty quiet and he just - we would ask him questions and he
4 would answer them but he would answer them to a point and say
5 nothing further.

6 Q. Would you describe him as forthcoming?

7 A. He was really not forthcoming. He spoke distinctly
8 about the question we asked him and that was it. We didn't
9 carry a whole lot of conversation on. Other than that he
10 didn't want to talk as much as we would ask him a question and
11 he would answer it and that would be it.

12 Q. I'm gonna approach with State's 115. So what is
13 this?

14 A. 115 is the statement of Kenneth Gleaton. It gives
15 the date 10/10/2017, 16:57 hours which is 4:57 p.m. when we
16 started the interview or when we interviewed Mr. Gleaton. At
17 the top is Mr. Gleaton's name. And then you want me to read
18 through what it says? Basically says he understands that I
19 have the right to remain silent. Anything I say can be used
20 against me in court. I have the right to talk to a lawyer for
21 advice before you ask me any questions. I can have a lawyer
22 with me during any questioning. If I wish, I can't afford a
23 lawyer, one will be appointed for me before any questioning.
24 If I wish to decide to answer questions now without a lawyer
25 present, I still have the right to stop answering any time. I

1 also have the right to stop answering at any time until I talk
2 to a lawyer. That's basically the Miranda over again so we
3 read it to him again and then we go into the actual question
4 and answer session where we ask Mr. Gleaton specific questions
5 and we type his specific answer that he tells us under that
6 question.

7 Q. And how long were you interviewing him overall
8 total?

9 A. I would say it's maybe three hours or so.

10 Q. When did you do this State's 116 written question
11 and answer format?

12 A. Uhm, it was near the end. It says 4:57 p.m., uhm,
13 but we did talk, uhm, before that. Normally in our
14 investigative techniques or interview techniques we use we do
15 talk. We talk about - we try to talk about things. We talk
16 about - at the beginning what we do is we like to have small
17 talk and just talk about life in general, experiences and
18 stuff and then we may go into, we'll go into the incident at
19 hand and we'll talk about that and then later we rehash what
20 we talked about in a question/answer format and we put it on
21 paper so everything we have talked about and anything that's
22 new that we bring up goes on this piece of paper in a
23 question/answer format that's legible.

24 Q. And the jury's gonna have this, but on the first
25 page of this statement when you ask him about the chain of

1 events, what is his answer about that?

2 A. His answer is I was there with Amanda and she was
3 talking about wanting me to leave so I packed my stuff up and
4 left with her phone.

5 Q. And on the second page there when you ask about why
6 she wanted him to leave, what is his response?

7 A. His response is because she wanted to get her kids
8 back. She didn't want to take any chances with her kids.

9 Q. And then what does he say about this -- He mentions
10 these pills. Tell the jury about that. Strike that question.
11 Go ahead and read this question and answer to the jury please.

12 A. Could you tell me what -- Oh, the whole question and
13 answer?

14 Q. Yes, sir.

15 A. The whole statement?

16 Q. Yes, sir.

17 A. Okay. The questions were asked by myself and
18 Sergeant Carwell and answers were given by Kenneth Gleaton.
19 The first question was what is the last grade you completed?
20 His answer was 11th, but I have my GED. The next question is,
21 can you read and write? He says, yes, I can read and write.
22 The next question is, can you explain the chain of events that
23 took place at 109 Crestmore Drive on 10/9/17? I was there
24 with Amanda and she was talking about wanting me to leave so I
25 packed my stuff up and left with her phone. The next question

1 is, why did Amanda want you to leave? Because she wanted to
2 get her kids back. She didn't want to take any chances with
3 her kids. How long had you been with Amanda? Since May of
4 2016. Where are you working? I was working at Columbia Farms
5 until a month or a month and a half ago. Who else was there
6 with you at 109 Crestmore Drive? Mike. I don't know his full
7 name. I don't even know if Mike is his real name.

8 Q. Investigator Hinson, let me stop you right there.
9 So does he say to you that Mike did anything?

10 A. No.

11 Q. Is that the extent of what he said about Mike?

12 A. That's it.

13 Q. And ultimately through this statement would he go on
14 to admit to anything?

15 A. No. He did not admit to anything.

16 Q. About that night at least?

17 A. About the night. No.

18 Q. But the circumstances leading up to it, I mean, what
19 were some of the circumstances leading up to that night that
20 stood out to you in terms of his relationship with Amanda?

21 A. I knew at the time that there was a prior incident
22 between him and Amanda, that there was an ongoing
23 investigation between, with our agency in reference to an
24 assault, that Gleaton assaulted Amanda at some point and then
25 I knew about, he did mention in his statement that they did

1 have an argument the night of the incident prior to.

2 Q. What did he say about the prior incident?

3 A. I'm not sure if that's in his statement, is it?

4 Okay. Yeah. I did ask him -- You want me to read the
5 question and answer verbatim?

6 Q. No. Just --

7 A. Okay. I did ask him if he had an incident where he
8 ran from the police recently at the Waffle House and, uhm, he
9 said I ran from the Waffle House. He said there was no police
10 around. They were looking for me though. Uhm, someone said
11 they were looking for me so I figured they would come by my
12 house and talk to me that same night. This was the night she
13 called the police on me.

14 Q. So he admits to running from Waffle House?

15 A. Yes.

16 Q. What was the last thing that Gleaton said to you in
17 the interview?

18 A. After, uhm, when the interview was completed, uhm,
19 he did state that we had what we needed and there was nothing
20 else he could say to make the situation better for him.

21 Q. What did you do after interviewing Kenneth
22 Gleaton?

23 A. After the interview, I did contact Investigator
24 Beeler with our crime scene unit to have him, uhm, take photos
25 of Mr. Gleaton and take his clothes for evidence. Mr. Gleaton

1 was then transported to Alvin S. Glenn and booked into the
2 detention center.

3 Q. And what additional steps did you take in this
4 case?

5 A. Uhm, I met with another key witness in this case,
6 obtained some information from that witness.

7 Q. Who was that?

8 A. Roy Brasley.

9 Q. Did you do anything else?

10 A. I did secure search warrants for the phones that
11 were recovered. We recovered Amanda Peele's phone from the
12 river where we arrested Gleaton. It was in the water. We
13 also recovered Kenneth Gleaton's cell phone from a bag that
14 was located in the woods near the incident location. Search
15 warrants were obtained for both of those.

16 Q. Anything else?

17 A. That's it. And then got with the other
18 investigators on the fire aspect, CFD and our arson
19 investigators, corroborated with them on the actual fire, the
20 arson part and just did my follow up on the investigation.

21 Q. Are you familiar -- As you know, Mr. Gleaton is
22 charged with possession of a weapon by a person convicted of a
23 violent felony. Are you aware of him having such a
24 conviction?

25 A. Yes.

1 Q. Without telling us what it's for, where and when did
2 that conviction take place?

3 A. Mr. Gleaton, he was convicted of a violent crime in
4 October -- I'm sorry -- In Orangeburg in 1996.

5 Q. Was Mr. Gleaton wearing the same clothes when you
6 interviewed him that he was during the incident?

7 A. Yes. He had the same clothes on other than a pair
8 of shorts which he stated that, he did state that his shorts
9 that he had on had blood on them so when he met Roy Brasley,
10 he got another pair of shorts from Roy Brasley and he threw
11 those shorts that he had on in a trash can at Roy Brasley's
12 house, so the only thing different that he had on were the
13 shorts. The shirt, the shoes were the same.

14 MR. EATON: Thank you. No further questions.

15 THE COURT: Cross examine.

16 MS. JURICK: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. JURICK:

19 Q. Investigator Hinson, you're the lead investigator in
20 this case, correct?

21 A. Yes.

22 Q. And that means that you were out there on the scene
23 that night?

24 A. Yes.

25 Q. And you were involved in every step the next day?

1 A. Yes.

2 Q. The next few days. And you're in charge of the
3 decision making that takes place?

4 A. Yes. Somewhat.

5 Q. And you have reviewed the entire case file?

6 A. Yes.

7 Q. And you helped to decide what to collect and what
8 not to collect?

9 A. Correct.

10 Q. You submit things to SLED or at least oversee what's
11 being submitted?

12 A. I submit things to our evidence and then the
13 perspective division it goes to takes it to SLED, whatever
14 needs to be done.

15 Q. You're the decision maker, I guess, is what I'm
16 getting at?

17 A. One of them. I have supervisors.

18 Q. Have you reviewed everything in this entire case
19 file?

20 A. Yes.

21 Q. And that would include the pictures?

22 A. I don't think I have reviewed all - I haven't
23 reviewed all of the pictures.

24 Q. You have not?

25 A. No.

1 Q. Well, let me try this with you. Have you reviewed
2 these pictures (proffering)?

3 A. Yes. I have seen these pictures. The middle two.
4 I haven't seen the...

5 Q. Can you describe what they're of? Do you have
6 familiarity of what they are of?

7 A. This is the back looks like a red Cadillac. This --

8 THE COURT: Have these been admitted?

9 MS. JURICK: I'm asking to have them admitted in a
10 second.

11 THE COURT: What now?

12 MS. JURICK: I would like to --

13 THE COURT: They have not been admitted?

14 MS. JURICK: They have not yet been admitted.

15 THE COURT: That's all right. We just need some way
16 to be able to identify what particular photo he just
17 spoke of so we can mark them for ID before you can admit
18 them, right? The record needs to reflect.

19 MS. JURICK: I understand.

20 THE COURT: You understand what I'm saying.

21 BY MS. JURICK:

22 Q. Are you familiar with the photographs?

23 MS. JURICK: We would ask to have them admitted into
24 evidence.

25 BY THE WITNESS:

1 A. I'm familiar with two of the four photographs.

2 THE COURT: Mark the ones for ID that he's familiar
3 with, okay? Just mark them for ID and then we can move
4 --

5 MS. JURICK: Then it's been marked as Defense
6 Exhibit 1 and 4 are the two he's identified.

7 THE COURT: Did you mark them?

8 BY THE WITNESS:

9 A. I'm familiar with these two.

10 MS. JURICK: Oh, my apologies. 2 and 3 are the ones
11 he's familiar with and we have moved to have those
12 admitted into evidence.

13 MR. EATON: No objection, Your Honor.

14 THE COURT: All right. Admitted.

15 MS. JURICK: Permission to publish?

16 THE COURT: Yeah. If they're admitted, you may
17 publish them. Yes.

18 BY MS. JURICK:

19 Q. So if you could just show the jury, what is that a
20 picture of?

21 A. This is a picture of the door of a vehicle, looks
22 like the passenger side door possibly with the passenger
23 seat.

24 Q. Was that vehicle in the driveway?

25 A. I can't recall if it was in the driveway, whether

1 the vehicle was in the driveway.

2 Q. Would referring to State's Exhibit 21 --

3 A. Yes. That's the vehicle in this picture.

4 Q. That's the same vehicle and it's in the driveway of
5 the house?

6 A. Of 109 Crestmore. Correct.

7 Q. Okay. And in that picture do you see any blood
8 marking or anything in that car?

9 A. It appears to possibly be what could possibly be
10 blood on the interior of the door --

11 Q. What about water?

12 A. -- near the lock. Yes. Water is on the edge of the
13 door. Yes.

14 Q. Same with the other --

15 A. Yes.

16 Q. Tell us what the other photograph as well?

17 A. It's the same. It just looks like a closer in shot
18 of the door, same picture with the possibility of blood.

19 Q. And to the best of your knowledge was any of this
20 collected or tested?

21 A. No.

22 Q. Thank you. And you have the ability to get search
23 warrants?

24 A. Yes.

25 Q. And arrest warrants?

1 A. Correct.

2 Q. And do additional follow up interviews?

3 A. Correct.

4 Q. You can request DNA, phones, that sort of thing?

5 A. Yes.

6 Q. So that night when you arrived, the fire was still
7 going?

8 A. I believe it was still going. They were still in
9 the process of putting it out.

10 Q. And I believe you showed up at 12:54?

11 A. Let me see. I'm sorry. Around that. I've got it
12 on my notes 12:58 so around that area of time.

13 Q. But the fire was still going and someone notified
14 you about Dukes?

15 A. Yes.

16 Q. Someone else had already spoken with him?

17 A. Yes. I think maybe one of the responding deputies
18 had spoken with him briefly.

19 Q. And he came over and talked with you and told you
20 what had happened?

21 A. Correct.

22 Q. That it was at 9:15 he witnessed the murder?

23 A. Correct.

24 Q. And I believe you said he was nervous, apprehensive
25 and scared?

1 A. Yes.

2 Q. But he did come with you to the station?

3 A. Yes. He did.

4 Q. And you talked to him and heard his whole, took his
5 whole statement?

6 A. Correct.

7 Q. And based off of that you got the warrants for Kenny
8 that night?

9 A. Yes. Based off his eye witnesses statement,
10 account.

11 Q. But at that point no other investigation had been
12 done. You got the warrants solely based off of what he was
13 saying?

14 A. Correct.

15 Q. That's correct. And you talked about Dukes being
16 cooperative.

17 A. Yes.

18 Q. But the statement here with Mr. Gleaton you said he
19 wasn't entirely forthcoming but he did answer your questions
20 --

21 A. Yes.

22 Q. -- is that fair? And he admitted to you that he
23 left with her phone?

24 A. Right.

25 Q. And that Amanda wanted him to leave because she

1 wanted to get her kids back?

2 A. Correct.

3 Q. And he said he didn't know when he left the house.
4 Maybe eight?

5 A. Correct.

6 Q. And that he went to Roy's house?

7 A. Yes.

8 Q. That he put the phone in the river because it wasn't
9 any use to him?

10 A. Yes.

11 Q. That the play station was in the woods?

12 A. Yes.

13 Q. He showed you where it was?

14 A. Correct.

15 Q. He said that he walked to the house?

16 A. To Roy's house?

17 Q. He walked to Roy's house?

18 A. Yes.

19 Q. Yes. He told you that he had changed his shorts and
20 that they had blood on them?

21 A. Yes.

22 Q. And that it had to do with fishing and that he had
23 thrown the shorts out?

24 A. Yes.

25 Q. That there was an argument between him and Amanda

1 and Mike was there?

2 A. Yes.

3 Q. There was a prior incident that the police were
4 called for?

5 A. Yes.

6 Q. That he hadn't talked to the police about it?

7 A. That he hadn't?

8 Q. Yes.

9 A. That's correct.

10 Q. He said he hadn't talked to the police about it?

11 A. Yes.

12 Q. He ran from the Waffle House?

13 A. Correct.

14 Q. And that DSS had taken the kids?

15 A. Yes.

16 Q. So those are all fairly forthcoming answers?

17 A. Yes.

18 Q. And did Dukes reach out to you that morning or was
19 it Latoya?

20 A. Dukes reached out to me first.

21 Q. And then Latoya helped you get back in touch with
22 him?

23 A. Yes. When I went to the scene to deliver the search
24 warrant for the house, I met with Latoya and asked her to get
25 in touch with Dukes.

1 Q. And when you met up with, Dukes did you put money on
2 his phone?

3 A. No.

4 Q. And he was supposed to tell you though if Kenny
5 contacted him?

6 A. Yes.

7 Q. And he did not tell you that Kenny contacted him
8 that afternoon?

9 A. No. There was a -- Like I already stated, Dukes
10 could only, he could only use his phone whenever he was near
11 WiFi and he was - it was hard to get in touch with each other
12 so no, he did not contact me at that time.

13 Q. All right. So he did not tell you that he talked to
14 Kenny around 2:30 for three minutes?

15 A. No.

16 Q. And he didn't tell you about the bloody clothes?

17 A. No.

18 Q. Or at least not about the blood?

19 A. No.

20 Q. And he never turned those over?

21 A. No.

22 Q. And y'all didn't get his phone?

23 A. No.

24 Q. Or his Facebook messages?

25 A. No.

1 Q. Or take DNA from him?

2 A. No.

3 Q. Or question him why it took him three hours to call
4 911 past him just saying he was scared?

5 A. No.

6 MS. JURICK: All right. That's all the questions I
7 have.

8 THE COURT: Redirect.

9 MR. EATON: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. EATON:

12 Q. Investigator Hinson, do you have any idea what's on
13 that Cadillac, that brown stain?

14 A. No.

15 Q. Was there any indication in this case that anything
16 whatsoever happened in that Cadillac?

17 A. No.

18 Q. Is it fair to say that fire destroys evidence?

19 A. Yes.

20 Q. What is unique, I guess, about an arson case?

21 A. An arson case, a fire destroys everything. I mean,
22 fire burns, it burns hot and destroys things and it covers up
23 evidence.

24 Q. When you talked to Dukes, did you notice any cuts,
25 scratches, dishevelment, anything that would suggest that he

1 had been in some physical fight, altercation, anything like
2 that?

3 A. Nothing.

4 Q. Who had Amanda's phone?

5 A. Kenneth Gleaton.

6 Q. Not Dukes?

7 A. Not Dukes.

8 MR. EATON: Thank you.

9 THE COURT: Anything further of this witness?

10 MS. JURICK: No, Your Honor.

11 THE COURT: You may step down, sir. Can I see you
12 all for a minute.

13 (Side bar off the record.)

14 THE COURT Members of the jury, that's all the
15 evidence we will receive today. I think we'll have a
16 couple witnesses tomorrow maybe. I'm not sure.
17 Shouldn't be that many. Hopefully we'll be able to wrap
18 the testimony up in the morning maybe so we'll see how it
19 goes. I don't try to predict anything, but we're close
20 to the end is what I'm trying to say. And once again, I
21 need to ask you not to talk about this case in any way,
22 shape or form. Get a good night's sleep and say 9:30 in
23 the morning? Is that good enough? All right. Thank you
24 all so very much once again for your patience and
25 attentiveness, ladies and gentlemen.

1 (Whereupon, the jury was released for the evening at
2 4:10 p.m.)

3 THE COURT: Anything further?

4 MR. EATON: Not from the State, Your Honor.

5 THE COURT: And the gentleman that is supposed to
6 get back is this afternoon, right?

7 MR. EATON: No, sir. Arrive --

8 THE COURT: How many other witnesses do you have for
9 tomorrow?

10 MR. EATON: Just him and then one officer who will
11 be very short.

12 THE COURT: Yeah, that's what they all say. Now,
13 y'all don't have to do anything. I know you all
14 mentioned earlier you might call two or three witnesses.
15 It doesn't matter to me whether you call them or not.
16 But do y'all think you might call someone?

17 MS. JURICK: I think we're planning on calling
18 somebody.

19 THE COURT: Okay. That's fine. That's fine. All
20 right. Get a good night's sleep. I --

21 MS. YOUNG: Your Honor, Your Honor, sorry. Very
22 briefly, I have a --

23 THE COURT: What?

24 MS. YOUNG: I have a matter I would like to put on
25 the record.

1 THE COURT: Go ahead.

2 MS. YOUNG: I am moving for a mistrial on two bases.
3 I believe that Your Honor's demeanor and volume and tone
4 when ruling on defense objections has impugned the
5 credibility with the jury and --

6 THE COURT: Well, there's a case on point. I think
7 it's my case. Go ahead.

8 MS. YOUNG: -- diminishing our credibility in the
9 eyes of the jury. You have rolled your eyes. You've
10 stood up. You've spoken loudly to your law clerk --

11 THE COURT: All right.

12 MS. YOUNG: -- and you have been unhappy with things
13 that we have done.

14 THE COURT: Okay.

15 MS. YOUNG: It seems to be only on one side of the
16 courtroom directed only towards the defense table.

17 THE COURT: All right.

18 MS. YOUNG: We also have a second bases for that.

19 THE COURT: A what?

20 MS. YOUNG: A second bases for that is that Your
21 Honor threatened Ms. Osteen --

22 THE COURT: I didn't threaten -- Ma'am, let me help
23 you out. She started yelling back at me after I had
24 already ruled on an objection.

25 MS. YOUNG: Your Honor --

1 THE COURT: Can I finish please, ma'am. I'll let
2 you finish. I sent the jury out and I simply said
3 another outburst like that and you're gonna regret it,
4 okay? You continue. Make your record.

5 MS. YOUNG: Okay. Thank you, Your Honor. Ms.
6 Osteen stood up and said objection and prior to being
7 allowed to state her basis, you got loud, you cut her
8 off. When she tried to say it was hearsay, you said no.
9 It was the statement of the defendant which was not
10 accurate. She was eliciting testimony from the victim.

11 THE COURT: If I recall, the witness was talking to
12 the defendant about a conversation that the victim had
13 said and they were verifying that. It might be hearsay,
14 but there are exceptions to the hearsay rule and even
15 there are exceptions to double hearsay, ma'am, but go
16 ahead.

17 MS. YOUNG: No. Yeah. That's absolutely true, Your
18 Honor. It was - but to say that what Ms. Osteen did was
19 an outburst and then to say that the next time that she
20 does that she'll regret it had a chilling effect on our
21 advocacy. It makes the attorneys not want to stand up.

22 THE COURT: Okay. Okay. I have a choice. I have a
23 choice. I'm trying to be courteous to everybody. Y'all
24 have exhibited some behavior that I think is unwarranted
25 and I don't know what you expect me to do. Let you all

1 run the court or me run the court. Now, what's your
2 final point, ma'am?

3 MS. YOUNG: That's it, Your Honor --

4 THE COURT: Okay. All right.

5 MS. YOUNG: -- motion for mistrial.

6 THE COURT: And your motion for a mistrial is
7 respectfully denied.

8 MS. YOUNG: Thank you, Your Honor.

9 THE COURT: Anything further? Of course, Solicitor,
10 I guess I should give you the opportunity to respond to
11 this request for a mistrial. Go ahead.

12 MR. EATON: Well, Your Honor, I think that the
13 objections that have been made have been properly ruled
14 upon and specifically as to that hearsay objection, I
15 believe that that was a statement in which the defendant
16 adopted the truthfulness which as a statement by party
17 opponent that would fall under that as not hearsay so I
18 would ask that you deny the motion, Your Honor.

19 THE COURT: All right. Thank you all.

20 MS. YOUNG: Your Honor, may I briefly respond? I
21 just want to make it abundantly clear that we were not
22 objecting to the rulings themselves that you are making,
23 but the tone and the demeanor --

24 THE COURT: That's fine, ma'am.

25 MS. YOUNG: -- and volume, that's all.

1 THE COURT: You've made your record. Your request
2 for mistrial is respectfully denied.

3 MS. YOUNG: Thank you.

4 THE COURT: See y'all in the morning at 9:30.

5 (Whereupon, court was adjourned for the day at 4:15
6 p.m.)

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2 (Whereupon, Defendant's Exhibit #1 through #8 marked
3 for identification.)

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: Please take your seats. I have been
6 informed that, Ms. Young, you have a motion that we need
7 to take up.

8 MS. YOUNG: No, Your Honor. I believe it's Ms.
9 Osteen has a motion to take up.

10 THE COURT: Yes, ma'am.

11 MS. OSTEEEN: Yes, Your Honor. It's my understanding
12 that the first witness is going to be the video witness
13 so I wanted to take up the issue of the video.

14 THE COURT: Okay. That's fine.

15 MS. OSTEEEN: Great. Thank you.

16 THE COURT: Is he here? Did he get back?

17 MR. EATON: Yes, sir.

18 MS. OSTEEEN: He's here.

19 THE COURT: Go ahead, Ms. Osteen.

20 MS. OSTEEEN: Thank you, Your Honor. Your Honor, we
21 are challenging the video in two regards and for the
22 first issue I would like to proffer testimony from Chris
23 Watkins.

24 THE COURT: This is your expert?

25 MS. OSTEEEN: Yes, Your Honor.

1 THE COURT: Sure.

2 MS. OSTEEEN: Thank you, Your Honor.

3 THE COURT: Do you y'all know about this?

4 MR. EATON: I mean, as to this specific issue --

5 THE COURT: Well, we'll proffer it. Yeah. Call
6 him.

7 MS. OSTEEEN: Thank you, Your Honor.

8 Thereupon,

9 CHRISTOPHER JAMES WATKINS

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat In the witness stand
12 and state your full name for the record.

13 THE COURT: Yes, ma'am.

14 MS. OSTEEEN: Thank you, Your Honor.

15 DIRECT EXAMINATION (Proffered)

16 BY MS. OSTEEEN:

17 Q. Would you please introduce yourself for the record.

18 A. Christopher James Watkins.

19 Q. And what is your training and experience in
20 forensics?

21 A. I am a certified forensic computer examiner and a
22 SLED licensed private investigator.

23 Q. And were you able to examine the results of
24 Investigator Johnson' extraction in this case?

25 A. Yes. I did.

1 Q. And that belonged, that extraction came from the
2 iPhone of Roy Brasley?

3 A. That's correct.

4 Q. What did you learn during the examination of
5 Investigator Johnson's results from that extraction?

6 A. So having received a copy of the report containing
7 the results --

8 THE COURT: Will you help me out a little bit. Give
9 me his background and education and how is he certified.
10 You haven't done that yet.

11 MS. OSTEEEN: Sorry, Your Honor.

12 THE COURT: Well, let's do that first.

13 MS. OSTEEEN: Absolutely.

14 THE COURT: I assume you want to qualify him as an
15 expert; is that correct?

16 MS. OSTEEEN: Yes, Your Honor.

17 THE COURT: Well, give me the foundation.

18 MS. OSTEEEN: Yes, Your Honor.

19 BY MS. OSTEEEN:

20 Q. So backing up, would you please tell us about your
21 education and experience?

22 A. Sure. So I studied at Midlands Technical College
23 back in 2003 to 2005. I have continued education in the field
24 of Internet technology and computer science, uhm, following -
25 that was the purpose for my study at Midlands Tech and

1 continued education there following. I took courses, uhm,
2 pursuant to studying digital forensic science and I became
3 involved in that field in 2010 which is also when I got my
4 license as a private investigator.

5 Q. You got your license in 2010?

6 A. I did.

7 Q. Okay. And so do you have any current
8 certifications?

9 A. I do. I have a CFCE which is a certified forensic
10 computer examiner certification through IACIS which is the
11 International Association of Computer Investigative
12 Specialists.

13 Q. Is that an accredited organization?

14 A. Yes. They're accredited through the Forensic
15 Specialties Accreditation Board, which is a - they're a board
16 that accredits individuals in the field of forensic science.
17 All fields, not just digital forensics.

18 Q. Okay. And are you -- And you said that you are a
19 member of that organization in your field?

20 A. I'm a member - I'm an associate member of IACIS and
21 I'm also a member of the American Society of Digital Forensic
22 and E-discovery.

23 Q. Just to give us a little bit of a foundation, what
24 is digital forensics?

25 A. Digital forensics is the area of forensic science

1 that consists of discovering, authenticating and securing
2 evidence, digital evidence from devices such as computers and
3 cell phones for the purpose of for use in litigation.

4 Q. And could you estimate or talk about how many cases
5 you have worked on with digital forensic science?

6 A. I don't know the exact number. I've been doing this
7 since 2010 and on average having founded a company that
8 focuses primarily in computer forensics in this field, we
9 average about 150 digital forensic cases per year.

10 Q. And have you ever been qualified as an expert in
11 this area?

12 A. Yes. I've been qualified as an expert in digital
13 forensic science 17 times and the United States Federal Court,
14 South Carolina General Sessions, Common Pleas and Family
15 Court.

16 MS. OSTEEEN: Your Honor, at this time I would move
17 to have Mr. Watkins --

18 THE COURT: Well, did you have any voir dire,
19 Solicitor?

20 MR. EATON: No, Your Honor.

21 THE COURT: Okay. Do you have any objection?

22 MR. EATON: Well, I would like to hear what --

23 THE COURT: Okay.

24 MR. EATON: -- the expertise is that she proposes.

25 THE COURT: All right. I'm not gonna admit him yet,

1 but I'll let him testify. We'll see. Go ahead.

2 MS. OSTEEEN: Okay. Thank you, Your Honor.

3 BY MS. OSTEEEN:

4 Q. So going back to this case in specific, you had the
5 opportunity to review the extraction, extracted file, I guess
6 would be --

7 A. Yes. Well, the report of the extracted file.

8 Q. So the report of the extracted file. And can you
9 tell us, can you distinguish between the report and the
10 extracted file?

11 A. Yes. And this is gonna come with some understanding
12 of the - how things carry out through the digital forensic
13 process. So what we've got is a report. We've got a report
14 of work that's been completed. We don't have the actual
15 evidence. We never received a copy of the evidence in this
16 case following that work and in a matter that is comprised of
17 extracting data from the cell phone, the steps necessary to
18 take, you take the phone, you connect it to a forensic work
19 station and I understand that Investigator Johnson in this
20 matter connected this to the Cellebrite software. You then
21 perform your extraction procedure using that software.
22 Investigator Johnson implemented the advanced logical method
23 one extraction which is essentially just an iTunes backup of
24 the iPhone device. Once that's completed, the extracted data
25 is packed into an evidence container file and from that

1 evidence you would then do your examination, your analyses and
2 in this matter one video file was extracted from this evidence
3 container. However, the actual container file was not
4 preserved and this is to give an analogy so it's understood,
5 this would be like collecting a bloody sweater, collecting DNA
6 samples from that sweater, testing those samples, and then
7 providing the results of those samples but then destroying the
8 sweater and the samples so that the in this case the defense
9 wouldn't have the ability to test the evidence and challenge
10 it.

11 Q. So you're comparing the extracted file and that's
12 called the TAR?

13 A. In this case there was a TAR file produced. Yes.

14 Q. So that extracted file is where you would be able to
15 draw conclusions?

16 A. The report contains the conclusions based on the
17 Cellebrite program generated by Investigator Johnson. What I
18 would like to do as an expert in this matter would be to
19 examine that TAR file to verify and authenticate that video
20 file mentioned in that report did, in fact, come from that TAR
21 file, that that would be the only way to authenticate that.
22 Just having access to the file itself doesn't - I can't do
23 anything with that. There's no way I can show looking at this
24 file that it came from the phone that is listed in this report
25 and there's no way to verify that the metadata associated with

1 this file has not been changed since then.

2 Q. So did you have the opportunity to speak to
3 Investigator Johnson in this case?

4 A. Briefly.

5 Q. And what did you learn from that conversation?

6 A. It was my understanding that when he performed the
7 extraction, there was some contention about the individual Mr.
8 Brasley not wanting his personal private data accessed by law
9 enforcement so he, Investigator Johnson indicated that he
10 would extract the data, just pull this video file and, you
11 know, release everything else and I took that - my
12 understanding of that was that he purged the actual evidence
13 file, the evidence container file, and that's what I learned
14 from Investigator Johnson.

15 THE COURT: I'm sorry. You said your understanding
16 was what, sir?

17 THE WITNESS: Purged. Deleted.

18 THE COURT: Somebody - your understanding is that it
19 was purged or is that conclusion?

20 THE WITNESS: Yes, sir. That was based on what
21 Investigator Johnson told me. Yes.

22 THE COURT: All right. I'm sorry. Go ahead.

23 BY MS. OSTEEEN:

24 Q. And on direct examination he said that it was not so
25 much that it was deleted, but that it was written over. Can

1 you talk about what that means to have something written
2 over?

3 A. In order for it to be written over it would have to
4 be deleted in the first place.

5 Q. Okay. Now, is that a scientifically accepted
6 standard as far as the purging the forensically extracted
7 data?

8 A. No. Absolutely not. When -- The first priority of
9 digital forensic science doing anything in this field is to
10 preserve and secure your evidence. The evidence in this
11 case is the data from that cell phone. What could have been
12 done to preserve the data that was offered in this report,
13 this video file, Investigator Johnson could have performed
14 what's called a redacted forensic backup or a cleansed backup.
15 Now, of course, if that had happened and there was not proper
16 documentation to justify this redaction, I would be making an
17 issue of that here today, because there has to be
18 justification for such a redaction especially in a criminal
19 investigation, but in this case that was not done either.

20 Q. So it would be possible to preserve that specific
21 file and redact everything else --

22 A. Yes.

23 Q. -- that's protecting the privacy?

24 A. Yes.

25 Q. Okay. And that was not happened? That did not

1 happen here?

2 A. No.

3 Q. Okay. Can you just explain the importance of that
4 metadata one more time because we've heard that term a lot and
5 I just --

6 A. Okay. So metadata is a term that basically means
7 data about data. It's the information about a piece of data.
8 In this case we're dealing with a video file so metadata on
9 this file would be, for examples of such would be time and
10 date stamps of when it was created, access, modified, metadata
11 associated with the creating, the creator or author or camera
12 make and model. These are all examples of metadata. Now,
13 metadata can easily be changed and altered whether
14 intentionally or unintentionally and that is why it is
15 important to have a copy of the forensic backup file so that
16 that can be authenticated so it can be verified.

17 Q. And let me stop you. So Investigator Johnson said
18 that the reason that we should all know that the conclusions
19 he drew from the file he looked at were the same was because
20 the metadata was the same.

21 A. Well, he said --

22 Q. What does that mean?

23 A. He said that the hash would be the same. If I were
24 to take that file, run a hash, a hash match against the - from
25 that file to what's indicated in the report, they would match

1 up. Well, I could certainly agree with that, but that's not
2 enough I'm afraid. That video file came from what in this
3 report reported to have come from this forensic evidence file,
4 but I have nothing to measure this against. I can't measure
5 this video file against the forensic backup because it doesn't
6 exist anymore. So what's being offered in this report, how do
7 I know that's true and correct? I'm basically going at the
8 word of this software or at this report or Investigator
9 Johnson.

10 Q. So there's no way without that forensically
11 extracted file for you to confirm that what we are seeing in a
12 video is what was actually existing on the phone?

13 A. Right. There's a huge authentication issue here.

14 MS. OSTEEEN: I have no further questions.

15 THE COURT: Voir dire or cross?

16 CROSS EXAMINATION

17 BY MR. EATON:

18 Q. Good morning, Mr. Watkins.

19 A. Good morning.

20 Q. So you've testified before?

21 A. I have. Yes.

22 Q. And you mentioned authentication just now, right?

23 A. I did.

24 Q. You have some idea of what authentication means then
25 in court?

1 A. Absolutely.

2 Q. And you're aware, of course, that testimony, the
3 stuff that comes out of people's mouths on that stand is
4 evidence?

5 A. Yes.

6 Q. So often in court we present pictures of things,
7 right?

8 A. Yes.

9 Q. And, I mean, often the things in the pictures
10 depicted there are not physically in the courtroom, right?

11 A. I agree.

12 Q. And then that person on the stand says I recognize
13 that. I have been there. I seen that car, that tree,
14 whatever, uhm, and then without whatever that thing is that
15 picture is authenticated, right?

16 A. I would agree with that. Yes.

17 Q. So if the person who took a video is able to sit on
18 that stand and say I took that video at this time and this
19 place, I recognize it, I recognize myself in it, I hear my
20 voice, that would go towards the authentication of that video,
21 right?

22 A. It would. Then my question would be what was the
23 point of doing a forensic extraction in the first place.

24 Q. Uhm, would -- And I'll, respectfully I'll ask the
25 questions. Would a copy of a video ever be able to be

1 presented in court if no one ever made a copy of it?

2 A. If that is what this was about, I wouldn't be
3 arguing about this forensic evidence file.

4 Q. Well, and can we agree then, I think your point is
5 not that the video cannot be authenticated, but that you could
6 authenticate it technically forensically if you had the
7 original evidence is your point, right?

8 A. That is my point.

9 MR. EATON: Nothing further, Your Honor.

10 THE COURT: Let me ask you a question.

11 EXAMINATION

12 BY THE COURT:

13 Q. So what's on this cell phone video, is it truthful
14 or not truthful? Is there something wrong of what is said or
15 shown? What's the problem with what - what's the problem with
16 what's actually - what's the problem with the evidence that's
17 actually on the phone?

18 A. The way it's being presented.

19 Q. What do you mean?

20 A. Well, is the evidence is --

21 Q. Let me ask you this: We have a phone. A gentleman
22 took a recording of the defendant's voice. It's on the phone.
23 It's in the video. What's wrong with that?

24 A. Well, nothing. If they wanted to get that video in
25 through that witness, you know, that would be one way to do

1 it. I would imagine that you would authenticate that or --

2 Q. All right. Let me ask you this question: Is your
3 opinion that this video should not be admitted into evidence
4 because you did not have an opportunity to verify something?

5 A. No. I think the contention is that it shouldn't be
6 offered into evidence through Investigator Johnson because in
7 my opinion that would be improper.

8 THE COURT: Okay. All right. Anything further?

9 You may step down, sir. Yes, Ms. Osteen.

10 MS. OSTEEEN: Thank you, Your Honor. Uhm, so that is
11 one portion of it is that we have not been able to
12 forensically --

13 THE COURT: That's fine.

14 MS. OSTEEEN: -- examine it.

15 THE COURT: Does this make the video bad evidence?

16 MS. OSTEEEN: Sorry, Your Honor.

17 THE COURT: Does his testimony make the video that
18 was recorded by this witness bad evidence?

19 MS. OSTEEEN: Your Honor --

20 THE COURT: Let me help you out. That requires a
21 yes or no answer. You can explain it. Does it make it
22 bad evidence, yes or no?

23 MS. OSTEEEN: Not necessarily.

24 THE COURT: Well, that's not a yes or no.

25 MS. OSTEEEN: I just can't give --

1 THE COURT: You can't answer it yes or no?

2 MS. OSTEEN: -- you a yes or no. I can't give you a
3 yes or no without that confirmation.

4 THE COURT: Okay. Well, that's okay. You can't
5 answer it yes or no. What's your next point?

6 MS. OSTEEN: So, Your Honor, we are looking at it as
7 an authentication issue as was mentioned and that was
8 what was being caught up on there --

9 THE COURT: All right.

10 MS. OSTEEN: But we've also in or brief cited Rule 5
11 and Brady for the idea that because we aren't able to
12 examine that extracted file, we don't know what was has
13 been taken off, we don't know what has been added, we
14 don't know what's been manipulated and in this day and
15 age with --

16 THE COURT: That's fine. But does that make it bad
17 evidence that should not be admitted in a court on law
18 under standards that we recognize?

19 MS. OSTEEN: Yes, Your Honor.

20 THE COURT: I disagree.

21 MS. OSTEEN: Okay. Yes, Your Honor.

22 THE COURT: All right.

23 MS. OSTEEN: So moving on to the second argument
24 that we have about why the video itself shouldn't be
25 admitted into evidence --

1 THE COURT: Go ahead.

2 MS. OSTEN: -- is because kind of under a Rule 106,
3 the rule of completeness argument and its undue influence
4 and emphasis on that specific portion of the
5 conversation, after talking to Mr. Brasley who is the
6 witness who they seek to introduce the video through, he
7 said this conversation lasted longer, he said that there
8 was more context to it. He is going to be here to
9 testify about the conversation and I absolutely, you
10 know, statements by party opponent, I recognize that they
11 overcome that hearsay objection. It's not hearsay, in
12 fact, but Mr. Brasley is here to talk about the entirety
13 of that conversation. The video itself by highlighting
14 one specific area, that adds undue emphasis that will
15 prejudice the jury and focus on one specific part of the
16 conversation that is not reflective of the conversation
17 entirety.

18 THE COURT: Okay. Anything further?

19 MS. OSTEN: No, Your Honor.

20 THE COURT: Anything?

21 MR. EATON: As to the rule of completeness, Your
22 Honor, I think that would be implicated if we wanted to
23 play only say 30 seconds of a three minute video. I
24 think they fully have the right to cross Mr. Brasley
25 about the whole conversation including what's not

1 captured on video. That in and of itself I don't think
2 means that the video should not come in, Your Honor.

3 THE COURT: All right. Anything further?

4 MS. OSTEEN: No, Your Honor.

5 THE COURT: You're argument maybe goes to the weight
6 but not the admissibility of that video and your motion
7 is respectfully denied. It will come in through the
8 witness. You have an opportunity to cross examine him.
9 The idea of completeness is when you only show a portion
10 of what you have. Apparently what he has is all he has
11 so apparently, and I haven't seen the video, I have no
12 idea what's on it, whatever is on it he will show the
13 complete video. It's like somebody goes in and robs a
14 bank. They're not captured going into the bank, but
15 they're captured at the counter with the gun. Because
16 you don't have a video of them entering the bank, that
17 means that you can't show the portion of the video with
18 him sticking the gun in the teller's face? That's a
19 rough analogy but it sort of makes sense to me. Anything
20 further on this? It's gonna come in over your objection.
21 I think you've made your record. You've filed your
22 briefs under Rule 6 of completeness. I'm not sure
23 whether Judge Benjamin heard this argument or not back on
24 August 22nd. Was it raised then?

25 MS. OSTEEN: No, Your Honor.

1 THE COURT: Okay. That's all right. But at any
2 rate, you do the best you can. It's a good argument but
3 it comes in for the reasons I have so stated.
4 Completeness, I think my analogy about entering a bank,
5 you don't have that part but you have the part where he's
6 sticking the gun out, I think that still comes in also.
7 So with that in mind, let's take a short break. Well,
8 first of all, is there anything else that we need to talk
9 about?

10 MS. OSTEEN: No.

11 THE COURT: Okay. That's all right. Anything else
12 you need to talk about?

13 MR. EATON: Not from the State, Your Honor.

14 THE COURT: Okay. Well, let's take a little short
15 break. Let me check on my jury. How many witnesses?
16 You've got this gentleman and who else?

17 MR. EATON: One more, Your Honor.

18 THE COURT: And --

19 MR. EATON: He will be very short. His name is
20 actually Short.

21 THE COURT: We'll see. I don't care if it takes the
22 next two years. It's fine with me. When you say it's
23 short, that's fine. Y'all gonna offer any witnesses?

24 MS. OSTEEN: Yes, Your Honor. We are gonna offer --

25 THE COURT: Okay. That's fine. All right. Just

1 thought I would double check. I'll be right back. Thank
2 you all.

3 (Short break.)

4 THE COURT: I simply told the jury we got started
5 late, evidentiary, taking up things with y'all, and one
6 juror asked me what type of car I drove, I don't know
7 why, and I reluctantly admitted what kind and there was a
8 conversation, but they seem to be in a pleasant good mood
9 so I think we're in a good spot, ready to go. Anything
10 further before I bring in the jury?

11 MR. EATON: Not from the State.

12 THE COURT: Anything?

13 MS. JURICK: No, Your Honor.

14 THE COURT: All right. Bring the jury in.

15 BAILIFF: Yes, Your Honor.

16 (Whereupon, the jury entered the courtroom at 10:15
17 a.m.)

18 THE COURT: Welcome back, Mr. Foreman and members of
19 the jury. I was just explaining to the lawyers that I
20 told y'all we had a delay because I was taking up
21 evidentiary matters with them and then one of the jurors
22 asked me what kind of car I drove and I reluctantly told
23 them, a 2001 Mercedes, 158,000 miles on it. So once
24 again, on behalf of everybody, I thank you for your
25 patience, attention, courtesy during this trial and we

1 will resume with Mr. Eaton calling their next witness on
2 behalf of the prosecution. Or I'm sorry. Ms. Sampson is
3 calling the next witness on behalf of the State. Ms.
4 Sampson.

5 MS. SAMPSON: The State calls Roy Brasley.
6 Thereupon,

7 CYRIL ROGER BRASLEY, JUNIOR
8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat in the witness stand
10 and state your full name for the record and please spell
11 your last name.

12 THE WITNESS: Cyril Roger Brasley, Junior,
13 B-r-a-s-l-e-y.

14 DIRECT EXAMINATION

15 BY MS. SAMPSON:

16 Q. And, Mr. Brasley, what do you go by, first name?

17 A. Roger or Roy. Mostly Roy though.

18 Q. Roy. And how old are you?

19 A. How old?

20 Q. Yes.

21 A. 39.

22 Q. And where are you from?

23 A. Columbia.

24 Q. You've lived here your whole life?

25 A. Whole life.

1 Q. All right. And, in fact, we know each other from
2 way back?

3 A. Yeah.

4 Q. How do we know each other?

5 A. I used to do your hair.

6 Q. All right. So what do you do for a living?

7 A. I have a salon downtown Columbia.

8 Q. So you're a hairdresser?

9 A. Yeah. Celebrity hair stylist.

10 Q. Not that I'm a celebrity.

11 A. No.

12 Q. So you travel?

13 A. Yes. A lot.

14 Q. And, in fact, did you have to take time out to be
15 here today?

16 A. Yes. I did.

17 Q. Did you come here under subpoena?

18 A. Yes.

19 Q. Not a place you wanted to be, fair to say?

20 A. No.

21 Q. And so who do you know in reference to this case?

22 A. Kenny.

23 Q. And how do you -- Sorry. Can you point Mr. Gleaton
24 out for the jury?

25 A. (Indicating.)

1 Q. I need you to say what he's got on.

2 A. I'm sorry. Black coat, white shirt.

3 THE COURT: Can y'all approach for one second.

4 (Side bar off the record.)

5 BY MS. SAMPSON:

6 Q. So you know Mr. Gleaton?

7 A. Yes.

8 Q. And are you guys friends?

9 A. Yes.

10 Q. Did you know Amanda Peele?

11 A. No.

12 Q. Do you know a Roderick Dukes?

13 A. No.

14 Q. I'm gonna take you back to October of 2017. Were
15 and Mr. Gleaton friends at that time?

16 A. Yes.

17 Q. How often would you see him?

18 A. Uhm, a lot. Uhm, maybe once a week maybe or I would
19 talk to him a lot.

20 Q. Talk to him on the phone or whatever?

21 A. Yes. Phone. Facebook.

22 Q. Okay. Did he know where your house was?

23 A. Yes.

24 Q. Had he been to your house before?

25 A. Yes.

1 Q. What about your shop?

2 A. Yes.

3 Q. So did he know where that was?

4 A. Yes.

5 Q. So on October 9th of 2017, did you work that day?

6 A. Yes. Is this the day of the --

7 Q. Not the day he came to you, but the day before. The
8 night.

9 A. What day of the week was that?

10 Q. Okay. Let me do this. How did you come to find out
11 anything had happened with Mr. Gleaton?

12 A. I came to find out when the police came to my home.
13 My cousin called me at the salon and then they came to my
14 salon.

15 Q. And did they come early in the morning?

16 A. Yes.

17 Q. What time?

18 A. I want to say I was at the salon about nine a.m.,
19 9:30 and I got a call that they were at my home and then they
20 came to the salon.

21 Q. Okay. And had you spoken to Mr. Gleaton at that
22 point?

23 A. That day?

24 Q. Correct.

25 A. Yes.

1 Q. And what had he told you when you spoke with him?

2 A. He didn't tell me anything. He was just ready to
3 leave town or he stayed at my house that night.

4 Q. Okay. So I'm gonna start with you there. That's
5 what I was trying to get at. I know you didn't know the date.

6 A. Yeah.

7 Q. What time did he show up at your house?

8 A. It may have been about 11 or 12, I think. I'm not
9 sure of the time.

10 Q. Was it early morning hours fair to say?

11 A. I want to say it was before midnight.

12 Q. Okay. And when he came to your home, what did he
13 tell you?

14 A. Nothing. He was just like -- I think he said they
15 had an argument and he just wanted to lay down. He wanted to
16 chill which is what he usually does.

17 Q. Did he ask for any clothing?

18 A. Yes.

19 Q. What did he ask for?

20 A. I gave him a pair of shorts I believe.

21 Q. Did he tell you why he needed shorts?

22 A. No.

23 Q. Did he change anything else?

24 A. I'm not sure.

25 Q. Did he go with you to the -- Did he get up with you

1 the next morning?

2 A. Yes.

3 Q. And what happened then?

4 A. He went -- I think that morning I got up. He was
5 still laying on the couch. I told him I was going to work. I
6 gave him some money to get something to eat, uhm, and we
7 discussed Texas, uhm, and then I told him I was going to the
8 shop and I'd see him later.

9 Q. What did you discuss about Texas?

10 A. Him going to Texas to work.

11 Q. And had you ever heard him talk about Texas
12 before?

13 A. Yeah. We discussed it several times. I actually
14 mentioned it to him, suggested it to him weeks prior because
15 he explained what was going on and he needed to just get
16 away.

17 Q. Okay. And when you say what was going on, what did
18 he explain to you?

19 A. Just the arguing and the discrepancies between him
20 and his girlfriend.

21 Q. And that's Amanda Peele?

22 A. I guess.

23 Q. Okay. You didn't know her name?

24 A. No.

25 Q. So that morning you go to work or what happened

1 after you give him money to go get something to eat?

2 A. I just went to work and then the police showed up.

3 Q. Did you leave him at your house or did he leave with
4 you?

5 A. Uhm, I think I left, might have left him on the
6 porch or in -- I'm not sure.

7 Q. Okay. And you go to your shop?

8 A. Yes.

9 Q. What was happens when you get there?

10 A. I get a phone call that the police have my house
11 surrounded and they're in my house.

12 Q. Okay. And what do you do?

13 A. I didn't know what to do. I kind of panicked
14 because I didn't know why they were there and then my cousin
15 said that they were on the way to the shop to see me.

16 Q. And did they -- What happened when they got to the
17 shop?

18 A. They just - they came in and they -- Well, they
19 didn't explain what was going on. They were kind of leaving
20 tidbits of information like someone was killed or someone was
21 dead and, uhm, that there was a fire. They never told me what
22 happened so they was just like I need to see Kenny. Where is
23 he? It was very forcefully, but I still didn't know verbatim
24 what had happened.

25 Q. Did they tell you why they needed to speak to him?

1 A. I - they - he didn't. No. The guy said they needed
2 to question him or talk to him, uhm, and they needed to see
3 him like immediately. Like get him to come back. If you talk
4 to him, call as soon as he comes back. Blah, blah, blah. So
5 I don't...

6 Q. So what did you do?

7 A. What do you mean?

8 Q. After that conversation with the police, did you do
9 anything?

10 A. After that conversation, I called my cousin back
11 because he was frantic how they came in the house and I just
12 went on back to work.

13 Q. Okay. What, if any, conversation did you have with
14 Mr. Gleaton after that?

15 A. After when?

16 Q. After the police left.

17 A. After the police left, I wasn't - it wasn't until,
18 because I told him once he ate that morning, once he got some
19 breakfast just to come by the shop and I was going to give him
20 money to get a bus ticket to Texas. Uhm, so he came after
21 they left. It might have been an hour after the police left
22 the salon. He came in. We started talking outside and, uhm,
23 we just had a conversation and he told me what had happened.

24 Q. What was his demeanor like at that time?

25 A. He was nervous and just ready to go.

1 Q. And did you do anything with your phone?

2 A. Yes.

3 Q. What did you do?

4 A. I -- Well, after about seven or eight minutes of us
5 talking, something just clicked in my mind to record the
6 conversation.

7 Q. Why?

8 A. I recorded it because I was frantic. I was scared.
9 I didn't know what went on with the police showing up the way
10 they did and telling me that someone had died and Kenny, me
11 knowing Kenny and just knowing that that wasn't the Kenny that
12 I knew so I didn't know what was going on. So I was like,
13 Lord, something happened. Somebody have an attraction to
14 what's happening to me, that something was happening to me
15 because I really didn't know what was about to take place.

16 Q. So what did you do?

17 A. I just recorded the conversation.

18 Q. And earlier this morning I showed you a video,
19 correct?

20 A. Mm-hmm.

21 Q. And the video that I showed you, was that a fair and
22 accurate depiction of the video that you took?

23 A. I would say it is. I hadn't seen the video since I
24 took it.

25 Q. Right. This morning what I showed you, is that what

1 you remember happening?

2 A. Yeah. I remember me holding the phone and I saw my
3 shorts and him talking so yeah.

4 Q. And that was you on the video?

5 A. Yes.

6 Q. And who else was on the video?

7 A. Kenny. And someone else walked -- I forget who it
8 was. Somebody else walked in.

9 MS. SAMPSON: All right. At this time, Your Honor,
10 I ask to introduce State's Exhibit 111 into evidence.

11 THE COURT: All right.

12 MS. OSTEEEN: We renew our previous objection.

13 THE COURT: Over your objection it's so admitted.

14 MS. SAMPSON: Thank you, Your Honor.

15 BY MS. SAMPSON:

16 Q. I'll pull it -- Can you see it?

17 A. Yes.

18 Q. Is this the video that you shot?

19 A. Yes.

20 (Playing State's Exhibit #111.)

21 THE COURT: I'm sorry. Can you turn up the volume
22 if possible.

23 (Playing State's Exhibit #111.)

24 THE COURT: I'm sorry. Do you want to start back
25 from the beginning with the volume up?

1 (Jury responds affirmatively)

2 THE COURT: Start it over and turn the volume up.

3 MS. SAMPSON: Sorry about that. All right.

4 (Playing State's Exhibit #111.)

5 BY MS. SAMPSON:

6 Q. So, Mr. Brasley, is that the extent of the video?

7 A. Yeah.

8 Q. And did you have any further communication with Mr.

9 Gleaton after this?

10 A. No.

11 Q. Did he ever show back up at the shop as you told him

12 to?

13 A. After this?

14 Q. Yes, sir.

15 A. No.

16 Q. And were you ever contacted again by police after

17 the video was made?

18 A. Yeah.

19 Q. What happened when you were contacted again?

20 A. They -- You mean -- They came back by the salon and
21 let me know that they had caught him, uhm, that day. That was
22 on, I think that was - I heard from them that day and then the
23 days to come they were back and forth.

24 Q. And did you provide them this video?

25 A. I did.

1 Q. Having problems providing them the video?

2 A. Yes. A lot.

3 Q. But you did?

4 A. Yeah.

5 Q. So just to be clear, on the video Mr. Gleaton is
6 asking you for money?

7 A. Yes.

8 Q. Did you give him any money after that?

9 A. After when? After the video?

10 Q. Yes.

11 A. No.

12 Q. And the money, I think you said earlier the only
13 money you gave him was the money you gave him to go get
14 food?

15 A. That morning.

16 Q. That morning.

17 A. Yes.

18 Q. And that was prior to you knowing anything had
19 happened?

20 A. Yes.

21 Q. How much did you give him?

22 A. I think \$20.00.

23 Q. \$20.00?

24 A. Mm-hmm. I think. I'm not sure.

25 Q. And in that video he told you he set the house on

1 fire?

2 A. Yes. I just heard that.

3 Q. What did you think when you heard that the first
4 time?

5 A. I don't -- Well, we had talked about it because the
6 police, they told me the house had been -- Me and him had
7 discussed and had conversation before the video started.

8 Q. Right.

9 A. So we had discussed that point, that there was a
10 fire because I said to him, like I didn't know, that's why I
11 kept asking what did, uhm, Mike, what did he do?

12 Q. Did he ever tell you that Mike set the house on
13 fire?

14 A. He told me Mike was there and Mike was a part of it.
15 Mike -- I want -- I did not -- I cannot clearly recall the
16 conversation, but when, uhm, I'm trying to figure out when did
17 they - when did I find out that she was shot. I want to say,
18 uhm, the second time the police came to the shop because the
19 first they came, they didn't really tell me anything, but they
20 came back again before he came to me.

21 Q. So they came twice before him?

22 A. Yes.

23 Q. And you believe that's when they told you that she
24 was shot or you don't remember?

25 A. No. That she was shot?

1 Q. That she was shot.

2 A. Yeah. Yes. Yes. So that's what made me question
3 him as to what happened and like what's going on. Why is this
4 - why did this happen and so forth so that's where that came
5 from.

6 Q. Did he tell you that Mike shot her?

7 A. He said Mike -- I don't remember if he said that he
8 did, but Mike was a part of it because Mike was there.

9 Q. He said Mike was there?

10 A. Yes.

11 Q. Did he tell you that Mike strangled her with a
12 belt?

13 A. Uhm, we didn't get into those details.

14 Q. Did he tell you that Mike set the house on fire?

15 A. I don't recall.

16 Q. But in the video portion he said that he set the
17 house on fire?

18 A. He did.

19 Q. And do you remember talking to police and giving
20 them a written statement?

21 A. Uhm, I don't know.

22 Q. You don't know?

23 A. I don't remember.

24 THE COURT: Stop. Any objection?

25 MS. SAMPSON: I'm not entering it, Your Honor.

1 THE COURT: What?

2 MS. SAMPSON: I'm not entering it into evidence.

3 THE COURT: Okay. Sorry. Go ahead.

4 MS. SAMPSON: Thank you, Your Honor.

5 BY MS. SAMPSON:

6 Q. I'm gonna show you something and ask you if you
7 recognize this (proffering)?

8 A. Yes.

9 Q. Is that your written statement?

10 A. Yes.

11 Q. And does seeing that -- I want you to look at it.
12 Does seeing that help, would it help refresh your memory and
13 what you told police to look at it?

14 A. It does.

15 Q. Because that was two years ago, right?

16 A. It was.

17 Q. And in that statement did you tell police that Roy
18 asked for shorts because his shorts had blood on them?

19 A. That's what it says. I don't remember saying
20 that.

21 Q. Are you -- But you did say it? Or are you --

22 A. I don't remember saying it, but I guess I have if
23 it's in here.

24 Q. And that's your signature at the bottom, right?

25 A. Yes.

1 Q. And you gave him shorts?

2 A. Yes.

3 Q. And do you remember that he told you he threw his -
4 your shorts - his shorts away in your trash?

5 A. No. He never told me that. They just asked me
6 about were they in my trash. I was like -- Honestly, when
7 that morning, when that morning happened, I don't remember
8 what -- I just know he asked me for a change of clothes and it
9 happened before so I just gave it to him because I've done it
10 before. So they told me that they needed to go in my trash
11 can and the trash was just emptied. Like when I was walking
12 out the door, I think I passed the trash truck on the way to
13 my house.

14 Q. So when you say the trash was empty, who do you
15 mean?

16 A. The dump, they dumped it.

17 Q. Not like --

18 A. The city came and took it.

19 MS. SAMPSON: Thank you, Roy. No further
20 questions.

21 THE COURT: Ms. Osteen.

22 MS. OSTEEN: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. OSTEEN:

25 Q. Good morning, Mr. Brasley.

1 A. Good morning.

2 Q. So we heard a little bit about this on direct, but
3 you are a accomplished businessman in the community?

4 A. Yes.

5 Q. And you're a stylist?

6 A. Yes.

7 Q. And you have been named the community business of
8 the week?

9 A. Yeah.

10 Q. And also America's next celebrity stylist?

11 A. Mm-hmm.

12 Q. And that kind of led you to creating a foundation?

13 A. Yes.

14 Q. And that's the Sally R. Brasley Foundation?

15 A. Yes.

16 Q. And who is that named after?

17 A. My grandmother.

18 Q. Why did you name it after her?

19 A. Uhm, I just wanted to pay homage to my grandmother.
20 Uhm, she always taught me to help others and be kind and
21 courteous to people, uhm, so I decided to do something for my
22 alma mater which is Eau Claire High School, uhm, giving
23 scholarships every year so I needed to find something to name
24 it so why not pay homage to her because she taught me to, you
25 know, operate in that manner.

1 Q. And at some point it kind of went from a scholarship
2 foundation to a crisis intervention foundation?

3 A. Yes.

4 Q. And now the primary mission of the foundation is the
5 crisis intervention?

6 A. Yes.

7 Q. And you will help in the way the flood damaged
8 places?

9 A. Yes.

10 Q. And that happened in 2015 in South Carolina and
11 that's where it - that kind of shift where it happened?

12 A. Yeah. Mm-hmm.

13 Q. And so you helped connect the people who need it
14 with the items that are being discarded or donate?

15 A. Yeah. A lot. Mm-hmm.

16 Q. And that is how you met Kenny?

17 A. Yes.

18 Q. He worked for you for that flood?

19 A. Yes. He helped my foundation for quite a while.

20 Q. Uhm, and now I kind of want to fast forward in time
21 to the night of October 9th, 2017.

22 A. Mm-hmm.

23 Q. Uhm, you received a phone call from Kenny?

24 A. Yes.

25 Q. At about 9:30 that night?

1 A. Yes.

2 Q. And he was using Amanda's phone?

3 A. I don't know who phone he was using. I didn't
4 know.

5 Q. It was just an unknown number?

6 A. Mm-hmm.

7 Q. Okay. Uhm, that call, he asked you about the relief
8 work in Texas at that point?

9 A. Yes. We talked about it again.

10 Q. And he told you that he needed to --

11 A. Yeah. To go.

12 Q. The relationship was over?

13 A. (Witness nodding head.)

14 Q. Okay. Uhm, did he seem strange on the phone?

15 A. Not - not any, than any other time. No.

16 Q. Okay. Uhm, and he asked if you would still help him
17 get to Texas?

18 A. Yes.

19 Q. Uhm, and so then Kenny got to your house later that
20 night?

21 A. Mm-hmm.

22 Q. He walked there?

23 A. I don't know how he got there.

24 Q. Okay. Uhm, and that was like you would say the
25 really early morning hours of October 10th or the late hours

1 of October 9th?

2 A. I want to say it was late hours.

3 Q. Okay.

4 A. Yes, ma'am.

5 Q. Uhm, and he asked if he could stay over?

6 A. Mm-hmm.

7 Q. And you let him crash on your couch?

8 A. Mm-hmm.

9 Q. And that was not uncommon?

10 A. Mmm-mmm. (Witness shaking head.)

11 Q. You gave him a pair of shorts?

12 A. Yes.

13 Q. And that was also not uncommon?

14 A. No.

15 Q. Uhm, you didn't notice anything particular about the
16 way he smelled?

17 A. No, ma'am.

18 Q. Now, on -- Okay. Now, on direct they asked you
19 about saying that he threw the shorts away in the dumpster?

20 A. Mm-hmm.

21 Q. You were saying that that's where, if they were
22 thrown away, they could look for them?

23 A. No. They asked - they asked me about what was he --
24 I think that all came into play when they were asking me what
25 was he wearing and then I told them that I gave him a pair of

1 shorts and I'm gonna say now that I remember that
2 conversation. That's clearly where that came from. They was
3 asking me what did he have on so they can find him and I told
4 them that he had changed. I gave him clothes and then they
5 asked what did he do with them and I don't know.

6 Q. So they were just kind of --

7 A. So I think they concluded to go look through the
8 trash cans.

9 Q. Okay. So it was just kind of guessing about --

10 A. Yeah.

11 Q. -- what could have happened?

12 A. Mm-hmm.

13 Q. Okay. So then in the morning y'all got up and you
14 gave him some money for breakfast?

15 A. Yeah.

16 Q. And you talked about him going to Texas again?

17 A. Mm-hmm. Quickly as I was on my way out the door.

18 Q. Quickly?

19 A. Mm-hmm.

20 Q. Uhm, and the idea of him going to Texas was to help
21 with the Houston flood?

22 A. The relief, yeah, because I just came back.

23 Q. Okay. That makes sense. Uhm, and you told him that
24 you would help him with money and bus fair?

25 A. Yes.

1 Q. And you planned on meeting him later to give him the
2 money?

3 A. Yes.

4 Q. So after you go to the salon, that's when Derrick
5 calls you?

6 A. Yes.

7 Q. And Derrick is your cousin?

8 A. Yes.

9 Q. Who also lives at your house?

10 A. Yes, ma'am.

11 Q. And he calls kind of freaking out?

12 A. Yeah.

13 Q. And he said that there were at least eight officers
14 at the house?

15 A. Yeah. I think it was more than that.

16 Q. That they came in the house?

17 A. Yes.

18 Q. That they had guns?

19 A. (Witness nodding head.)

20 Q. And he told you that they had a lot of questions?

21 A. Yeah. He and Carlos. Derrick wasn't the only one
22 there.

23 Q. Derrick and Carlos were there?

24 A. Yes.

25 Q. Okay. And so then after that, then they came to the

1 salon?

2 A. Yes.

3 Q. And at the salon there is again a number of police
4 officers?

5 A. Yes.

6 Q. And they asked you a lot of questions about Kenny?

7 A. Yes.

8 Q. And they told you that Kenny was involved in a
9 murder?

10 A. They didn't say Kenny was involved in a murder.
11 They said a murder had taken place and where was he.

12 Q. Okay. So they were asking questions about --

13 A. Yeah. They leading to -- They didn't tell me
14 verbatim what had happened. They were just like someone is
15 dead or whatever and we need to find him now.

16 Q. Okay. And they told you that the house had been set
17 on fire?

18 A. Yes. The second time they came back, not the
19 first.

20 Q. Okay. And they told you, uhm, that if you talk to
21 Kenny, to give them a call?

22 A. Yes.

23 Q. And they told you to keep him talking?

24 A. Yeah. See what he knows. Get him to talk. Ask him
25 questions. It was like - it was very -- I don't know. I was

1 just nervous as hell. I was very scared. It was a lot going
2 on.

3 Q. Yeah. And that caused you to be kind of afraid that
4 you were being implicated?

5 A. Yes. All of that because he was at my house and you
6 at my house and I didn't know what was going on and they
7 wouldn't give me any clear detail answers to my questions so I
8 was like I don't want to be involved in this. I don't know
9 what's going on. Get it away from me.

10 Q. And you didn't want to be brought into the
11 situation?

12 A. None of it.

13 Q. Right. Uhm, so then later after the police left the
14 second time, Kenny came back by the salon?

15 A. Yes.

16 Q. And he was kind of out of sorts?

17 A. Yeah.

18 Q. Then you say that it almost seemed like he was under
19 the influence or something was up?

20 A. He was very much more shook than he was like when he
21 got in my house the night before.

22 Q. Okay. And you asked him about his involvement with
23 what happened to Amanda?

24 A. Mm-hmm.

25 Q. And you asked him what happened?

1 A. Yes. I did.

2 Q. And you asked him about the fire?

3 A. Yes.

4 Q. And you talked for a little while, seven or eight
5 minutes I think you said on direct?

6 A. Mm-hmm.

7 Q. And that's when you started recording?

8 A. Yeah.

9 Q. Prior to the recording, Kenny said he wasn't
10 involved?

11 A. He said he - he said it wasn't me. I didn't - I
12 didn't hurt her. I didn't do something. And then that's when
13 he started talking about Mike's involvement in it and that's
14 what prompted me to like get my phone out. I didn't even
15 realize I had my phone in my apron so I kind of just slid it
16 out of my pocket and hit the button to be honest with you.

17 Q. Okay.

18 A. I wasn't planned on being recorded, but I just - I
19 was nervous. I didn't know what was going on.

20 Q. Okay. So he started talking about Mike and that's
21 when you started recording?

22 A. Yeah. Well, a little after he talked about Mike,
23 then I hit the record button and that's what made me ask him
24 what did he do.

25 Q. Okay. And then he said that - then he asked again

1 for money?

2 A. Yes.

3 Q. And that's when he said he would come back later?

4 A. Yeah.

5 Q. Okay. Now, you've known Kenny for a long time?

6 A. Mm-hmm.

7 Q. You've known about Amanda?

8 A. About her. Yes.

9 Q. Yeah. And you've known about Michael Dukes,
10 Roderick Dukes?

11 A. Is that -- Okay. So is that Mike's name?

12 Q. Mike. Yes.

13 A. Oh, okay. I'm sorry. Because I think I was asked
14 earlier did I know Roderick Dukes but I said no.

15 Q. Kenny calls him Mike.

16 A. Got it.

17 Q. Yeah. Do you know Mike?

18 A. Yes.

19 Q. Okay. And you knew that Mike was spending a lot of
20 time at Amanda's house without Kenny?

21 A. Yes.

22 Q. Now, earlier, I want to go back a little bit,
23 earlier you said that you were afraid and just to be clear you
24 were not afraid of Kenny?

25 A. No.

1 Q. You were afraid of the situation?

2 A. Yes.

3 Q. And being implicated in the situation?

4 A. Yes.

5 Q. Okay. Just briefly, do you know if Kenny had a
6 car?

7 A. No. He didn't.

8 Q. He did not have a car?

9 A. No.

10 Q. And he commonly walked?

11 A. Walked, bus or car rides. You mean to come to me?

12 Q. Yeah.

13 A. Yeah.

14 Q. Walk, bus or car rides?

15 A. Mm-hmm.

16 Q. Okay. And are you afraid of Kenny now?

17 A. No.

18 MS. OSTEEN: Thank you. No further questions.

19 THE COURT: Ms. Sampson.

20 MS. SAMPSON: Beg the Court's indulgence. Your
21 Honor, may we approach?

22 THE COURT: Yes, ma'am.

23 (Side bar off the record.)

24 REDIRECT EXAMINATION

25 BY MS. SAMPSON:

1 Q. Roy, on cross examination she asked you did you meet
2 Kenny through work with your foundation. You met him
3 somewhere else, correct?

4 A. Yes.

5 Q. Okay. And do you remember talking in preparation
6 you talked to our office? You talked to Mr. Eaton and Ms.
7 Taylor and you actually talked to the investigator, correct?

8 A. Mm-hmm.

9 Q. Yes?

10 A. Yes. Yes.

11 Q. And do you remember telling us that what prompted
12 you to record the conversation with the defendant is that you
13 were afraid he would do something to you?

14 A. No. I didn't say I was afraid.

15 MS. OSTEN: Objection. Leading.

16 BY THE WITNESS:

17 A. He was just talking to me. What I said --

18 THE COURT: Stop. It is leading, but I think the
19 answer is no. He wasn't afraid --

20 MS. SAMPSON: Thank you, Your Honor.

21 THE COURT: -- of Kenny, right?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 BY MS. SAMPSON:

25 Q. So you don't remember --

1 A. What I said was I didn't want - I didn't get - if
2 something happened to me, I wanted someone to know what
3 happened. That's what I said. I didn't say it was Kenny
4 because like I said, I didn't know what was going on. I
5 didn't know if this was something gang related or this was
6 some retaliation or this was Mike mad because they were both
7 with her. I don't know what was going on so for my safety I
8 recorded the video. That's what I said.

9 Q. Okay. And did you see Mike that day?

10 A. No. Mmm-mmm. (Witness shaking head.)

11 Q. Did you normally see Mike?

12 A. I might have saw him once or twice, but no.
13 Mmm-mmm. (Witness shaking head.)

14 Q. Had you ever had any problems with Mike?

15 A. No.

16 Q. Who are you friends with, Kenneth Gleaton or Mike?

17 A. I'm friends with K.G. Excuse me. Kenny.

18 Q. And you've known him how long?

19 A. Since -- I don't even remember. He came -- I met
20 him to work for the foundation. That's how I met him.

21 Q. How long have you known him?

22 A. It was 2016, 2015. I don't even remember to be
23 honest with you. When we started right after the, when the
24 flood happened October 4, 2015, uhm, he was one of the guys
25 that started helping us so it was right after that.

1 Q. Okay. So a couple years before this happened?

2 A. Yes. Mm-hmm.

3 MS. SAMPSON: Nothing further, Your Honor.

4 THE COURT: Anything further? Does the State rest?
5 You finished?

6 MS. SAMPSON: I'm sorry. Nothing further, Your
7 Honor. I said -- I'm sorry. Nothing further.

8 THE COURT: It's all right. I didn't quite hear
9 you. You were walking away.

10 MS. SAMPSON: Sorry.

11 THE COURT: Anything further?

12 MS. OSTEN: No recross.

13 THE COURT: You may step down, sir.

14 MS. SAMPSON: May he be released, Your Honor?

15 THE COURT: Sure. Let him go. Call your next
16 witness.

17 MR. EATON: The State calls Clay Short, Your Honor.
18 Thereupon,

19 CLAY SHORT

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat on the witness stand
22 and state your full name for the record.

23 THE WITNESS: Clay Short.

24 MR. EATON: Please the Court, Your Honor.

25 THE COURT: Yes.

1 REDIRECT EXAMINATION

2 BY MR. EATON:

3 Q. Investigator Short, now, you have already testified
4 to this jury, but when you did testify, you were talking about
5 Mr. Gleaton's statement?

6 A. Correct.

7 Q. Uhm, at that time the jury had not seen a video.
8 Can you describe how the end of the interview of Mr. Gleaton
9 went now?

10 A. Yes. So after we kind of got through --

11 THE COURT: Please speak into the microphone.

12 BY THE WITNESS:

13 A. Yes, sir. After we kind of got to the tend of Mr.
14 Gleaton's statement, we decided to confront him with the video
15 to show it to him and to see if he wanted to explain the video
16 or maybe change what he had told us and --

17 BY MR. EATON:

18 Q. Investigator Short, I'm sorry to cut you off. Can
19 you remind the jury the time frame of him getting to the
20 headquarters and you getting the video?

21 A. So he was caught just before or around 3:00 that
22 afternoon. About 5:15 I went to Mr. Brasley's house and got
23 the video and then brought it back so it was after that so
24 still in the late afternoon.

25 Q. So you're saying he was in the interview room while

1 you went to get the video?

2 A. Yes. He was speaking with Investigator Hinson and
3 Sergeant Carwell at the time.

4 Q. Okay. Go ahead.

5 A. And we showed him the video and he kind of sits
6 there for a few minutes and then, uhm, his response and using
7 some language, but he says, I'm fucked either way. I know
8 what y'all want me to say, but I'm not gonna say it right
9 now.

10 Q. I don't think you were asked this earlier, yesterday
11 or the day before. What did he smell like to you?

12 A. Kind of like a camp fire.

13 MR. EATON: Thank you. No further questions.

14 THE COURT: Anything of this witness?

15 MS. OSTEEN: Briefly, Your Honor.

16 THE COURT: All right.

17 RECROSS EXAMINATION

18 BY MS. OSTEEN:

19 Q. I believe when you were on the stand earlier you
20 said that you got a tip from an informant --

21 A. In reference to what?

22 Q. -- about where his location was?

23 A. Whose location?

24 Q. About Mr. Gleaton's.

25 A. No. I got a call from Investigator Hinson to come

1 help circulate an area so we could try to find him.

2 Q. Okay. And you are aware that he was apprehended by
3 the river?

4 A. Yes.

5 Q. And there are a lot of people that hang out by the
6 river?

7 A. Yes.

8 Q. Including I think y'all had another person that you
9 spoke to about Mr. Gleaton being there?

10 A. If you're referring to the couple that was there
11 that he asked about the SIM card, yes, ma'am.

12 Q. So there were a number of people out at the river?

13 A. I think at that point there was just the two people.
14 Those were the only two people we talked to at that point.

15 MS. OSTEEN: Thank you.

16 THE COURT: Anything further of this witness?

17 MR. EATON: Nothing further, Your Honor.

18 THE COURT: You may step down.

19 MR. EATON: Your Honor, the State rests.

20 THE COURT: All right. Members of the jury, the
21 State has rested. That puts it at a point in this trial
22 where I need to hear some legal arguments and once again
23 I can only do that in your absence so please go to the
24 jury room. Don't discuss this case and I'll bring you
25 back out shortly.

1 (Whereupon, the jury entered the jury room at 11:00
2 a.m.)

3 THE COURT: Motions.

4 MS. JURICK: Yes, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. JURICK: At this point we're asking for a
7 directed verdict. The State has seen evidence in the
8 light most favorable to the State. They failed to
9 present evidence beyond a reasonable doubt that he's
10 guilty of these charges. Specifically they have not
11 shown that Mr. Gleaton was there.

12 THE COURT: What now?

13 MS. JURICK: They have not shown that he was the one
14 that was there present at the time that it happened or
15 that he is the one that committed these crimes. Also,
16 we're renewing all of our previous objections and I have
17 a list to read to you.

18 We're renewing, there was a motion to exclude prior
19 bad acts, Lyle 404(B) and 403, motion to - exclusion of
20 the motion to reveal the deal and the motion to clarify
21 Dukes not being charged to the jury, motion to suppress
22 the video clip for authentication reasons, Brady 403,
23 Rule of Completeness, motion to bifurcate a felon in
24 possession of a weapon charge under 403, and all of those
25 are expanded upon in Court's Exhibits.

1 Additionally, motion to exclude the autopsy photos
2 including their display on the large screen, motion to
3 exclude photos of the decedent. I believe those are
4 State's Exhibits 136 through 143 and 46 through 51,
5 denial of the ability to cross examine Dr. Durso about
6 the decedent's toxicology results that corroborate our
7 client's statement, and State's witness Tyler Isenhower -
8 Skyler Isenhower's statement as well. She also discussed
9 her mom taking sleeping pills, a request for a mistrial,
10 motion to exclude Facebook Messenger conversation for
11 authentication and hearsay reasons, I believe that's
12 State's Exhibit 145, the Internet photo of the gun that
13 is not the gun in the case, that's exhibit 106, State's
14 Exhibit, denial of cross examination of Dukes about
15 experience with jails which goes to bias and motive to
16 lie, motion to exclude photographs with the decedent's
17 children's names and photograph of the decedent as a
18 State's Exhibit under 403, or under 403, State's Exhibit
19 105 and 119, and all other prior objections.

20 THE COURT: Anything further?

21 MS. JURICK: We just ask that the Court revisit its
22 previous rulings, reverse them and grant the directed
23 verdict.

24 THE COURT: Thank you, ma'am. State.

25 MR. EATON: Just very briefly, Your Honor. Of

1 course, the standard for a directed verdict is if there
2 is any direct evidence or substantial circumstantial
3 evidence and here we have direct evidence. Of course, we
4 have an eyewitness to the murder, Your Honor. That
5 creates a jury issue. It should go to the jury. I don't
6 intend to address every single one of her motions. I did
7 want to clear the record up on one thing which is the
8 pretrial 404 proffer that we did just to make sure that
9 there are findings on the record that I know that the
10 Court made a clear and convincing finding. I would just
11 ask to make sure that the Court also found that that
12 prior incident goes to intent, identity, motive or res
13 gestae. But otherwise I believe all the rulings of the
14 Court is appropriate.

15 THE COURT: Let me stop you and say parenthetically
16 I think I might have test some of that, but that's a good
17 way to put it and the only observation I have is there
18 was a motion to suppress the prior incident I do believe
19 that came in through the statement that the defendant
20 gave to the police so I was asked to suppress something
21 that came in through the defendant I do believe. That
22 make sense?

23 MR. EATON: Yes, sir. That's right, through what he
24 said to Jessica Gantt on multiple occasions, through what
25 the son saw, some other circumstantial evidence that

1 supported that, but under 404 it did go to those
2 permissible reasons that the State may use a prior bad
3 act. So, I mean, unless the Court wants to hear from me
4 on the other motions.

5 THE COURT: No. I think she stated her objections
6 and motions I think clearly for the record. I think
7 there's a jury issue that needs to be resolved by 12
8 citizens of Richland County, and additionally -- You need
9 another motion? Go ahead.

10 MS. JURICK: Your Honor, it's the same motion. We
11 just want to extend that we would have objected to it
12 being in his statement if you hadn't already made --

13 THE COURT: What now?

14 MS. JURICK: -- a ruling on Lyle.

15 THE COURT: I'm sorry.

16 MS. JURICK: We would have objected to it being in
17 his statement being presented to them and we did --

18 THE COURT: But you waived the Jackson versus Denno
19 Hearing, did you not? Very good.

20 MS. JURICK: Your Honor, we did, but you had already
21 made the ruling about the prior incident being discussed.

22 THE COURT: All right.

23 MS. JURICK: And the cop's testimony also was not
24 proffered. My understanding of the ruling initially was
25 simply that Jessica Gantt could talk to what the

1 defendant had told her.

2 THE COURT: All right. You know, when there's
3 prior difficulties involved with the same two people, one
4 ends up dead, I think that it's probative and not
5 prejudicial and it should come in. Anything further?

6 MR. EATON: Well, just that I'm -- Sorry, Judge.
7 Not to put too fine a point on this, but did the Court
8 find that it did go --

9 THE COURT: Yes. It was clear and convincing
10 evidence.

11 MR. EATON: -- to his identity or motive or intent.

12 THE COURT: Under Lyle.

13 MR. EATON: Yes, sir.

14 THE COURT: That good enough?

15 MR. EATON: Yes, sir.

16 THE COURT: Okay. Let's take, it's been a long case
17 for everybody, a long week, let's take a little break,
18 then y'all can decide what, if anything, you want to put
19 up and I can question Mr. Gleaton about whether or not
20 he's going to testify when I come back. You okay with
21 that?

22 MS. OSTEEEN: Yes, Your Honor. Thank you, Your
23 Honor.

24 MS. YOUNG: How long of a break, Your Honor?

25 THE COURT: Well, how long do you all want?

1 MS. YOUNG: I just wanted to know when to be back,
2 that's all.

3 THE COURT: Ten minutes. Go do what you need to do
4 and if you're not back, I won't start without you.

5 MS. YOUNG: All right. Thank you, Your Honor.

6 THE COURT: If I have go look for you, I'll come
7 look for you. All right. Thank you.

8 (Short break.)

9 BAILIFF: All rise please.

10 THE COURT: Thank you very much. Is everybody
11 ready? Is everybody ready?

12 MS. SAMPSON: Yes, sir.

13 THE COURT: All right. Y'all planning on calling
14 Mr. Gleaton?

15 MS. OSTEEEN: We do not plan on calling Mr.
16 Gleaton.

17 THE COURT: Okay. Well, let me go through the
18 soliloquy with him.

19 MS. OSTEEEN: Yes. Absolutely.

20 Thereupon,

21 KENNETH RAY GLEATON

22 after having been first duly sworn, testified as follows,

23 THE COURT: Mr. Gleaton, at this time I'm going to
24 explain to you certain of your rights. You do not - if
25 you do not understand anything I say, please let me know.

1 If you want me to explain anything in more detail, please
2 let me know. Do you understand so far?

3 KENNETH GLEATON: Yes, sir.

4 THE COURT: We have now reached the stage in this
5 trial where you may present your defense. You have the
6 right to claim the protections given to you by the Fifth
7 Amendment to the Constitution of the United States. This
8 amendment states in part that no person shall be
9 compelled in any criminal case to be a witness against
10 themselves. This means that you cannot be required to
11 testify in this case. You have the right to testify on
12 your own behalf, however, no one can make you testify.
13 This is a personal right and no one can waive this right
14 except for you. If you decide to testify, you will be
15 subject to the same rules that govern other witnesses and
16 you may be examined and cross examined on any relevant
17 issue in this case.

18 In addition, if you have any convictions involving
19 dishonesty or false statements or for crimes punishable
20 by imprisonment for more than one year and this Court
21 determines that the probative value of admitting the
22 evidence outweighs the prejudicial effect to you, the
23 Solicitor will be able to introduce your record to attack
24 your credibility. Do you understand?

25 KENNETH GLEATON: Yes, sir.

1 THE COURT: If you decide to testify, this decision
2 on your part must be freely, voluntarily and
3 intelligently made with knowledge of protections given to
4 you by the Fifth Amendment and the consequences of your
5 decision to testify. If you decide not to testify, I
6 will instruct the jurors that they cannot give the fact
7 that you did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you
9 because you did not testify. It is left entirely up to
10 you whether or not to testify or not. You may talk with
11 your attorneys, your family and friends or anyone else,
12 but the final decision will be left entirely up to you,
13 Mr. Gleaton. Do you understand what I have explained to
14 you, sir?

15 KENNETH GLEATON: Yes, sir.

16 THE COURT: All right. Do you have any questions
17 about what I have explained to you?

18 KENNETH GLEATON: No, sir.

19 THE COURT: Have you discussed with your lawyers
20 whether you should or should not testify?

21 KENNETH GLEATON: Yes, sir.

22 THE COURT: Do you wish to talk to your lawyers
23 anymore about this at this time?

24 KENNETH GLEATON: No, sir.

25 THE COURT: Do you wish to testify?

1 KENNETH GLEATON: No, sir.

2 THE COURT: All right. Thank you, Mr. Gleaton.
3 Anything further along these lines?

4 MS. JURICK: No, sir.

5 THE COURT: That pretty much covers it. Everybody
6 ready?

7 MR. EATON: The State's ready, Your Honor. Well, no
8 we're not, Your Honor.

9 MS. SAMPSON: Well, Your Honor, I'm not sure what
10 they plan on introducing so I haven't --

11 THE COURT: What now?

12 MS. SAMPSON: I'm not sure what evidence they plan
13 on introducing. There is some evidence that they handed
14 us today, Your Honor, that I'm understanding they plan on
15 using in their case in chief and I would have an
16 objection to that.

17 MS. YOUNG: I'm not sure exactly what Ms. Sampson is
18 referring to. I believe what she is referring to is
19 demonstrative exhibits. We're not intending to admit
20 them into evidence.

21 THE COURT: Well, if y'all don't know, I have no
22 clue so what is it?

23 MS. SAMPSON: They handed -- Today they handed us 25
24 pages of a report created by, I believe it was their
25 investigator Mr. Watkins who you heard from earlier.

1 THE COURT: Yeah.

2 MS. SAMPSON: And I don't know if they plan on
3 submitting this into evidence or not and that's my
4 question.

5 MS. YOUNG: Your Honor, I can't say for sure at this
6 point, but that's not the intent of it. It's to aid his
7 testimony.

8 MS. SAMPSON: And if it's just to aid his testimony,
9 that's one thing.

10 THE COURT: Okay.

11 MS. SAMPSON: If they plan on introducing it into
12 evidence, that's an entirely different --

13 THE COURT: And if it is, then you have the right to
14 get an expert to come and challenge that I think is your
15 point.

16 MS. SAMPSON: Well, and that we just got it today so
17 I would --

18 THE COURT: I understand. If they want to introduce
19 that, then you have the right to get an expert to examine
20 it and get his opinion, the opinion that you ask for. I
21 think roughly that's how it works. So if you want to try
22 to introduce it, I will have to delay the trial, give
23 them a chance to get an expert so he can go -- Y'all
24 understand how it works.

25 MS. YOUNG: Yes.

1 THE COURT: So it's for purposes to aid him in his
2 testimony, not to be introduced as an exhibit into the
3 record.

4 MS. YOUNG: That's correct.

5 THE COURT: All right.

6 MS. SAMPSON: Thank you, Your Honor.

7 THE COURT: Anything further?

8 MS. SAMPSON: Not from the State.

9 THE COURT: Yes, ma'am.

10 MS. YOUNG: Very briefly, Your Honor, I wanted to
11 clarify something that occurred yesterday. It's my
12 understanding that you denied the defense the opportunity
13 to question Dr. Durso, the pathologist, about the
14 victim's toxicology screen due to the fact that it wasn't
15 relevant to cause of death. We do intend to call a
16 toxicologist and have her testify and admit her report
17 into evidence. I was unclear about the ruling being
18 overall we can't talk about the tox screen and if that's
19 the case, we might want to go ahead and proffer her
20 testimony prior to bringing the jury back in.

21 THE COURT: Ms. Sampson.

22 MS. SAMPSON: Your Honor --

23 THE COURT: I think in the autopsy there was some
24 drug I think that was slightly found in her system. I
25 don't remember exactly.

1 MS. SAMPSON: They found oxycodone --

2 THE COURT: Oxycodone.

3 MS. SAMPSON: -- in her system in therapeutic levels
4 that had nothing to do with her death, not the cause of
5 death, didn't contribute to it in any way and the State's
6 position is even with the toxicologist that it would be
7 prejudicial, more prejudicial than probative of anything
8 the jury hearing that she's got drugs in her system not
9 really understanding what that means so it would be the
10 State's position that it's irrelevant testimony that
11 should not be admitted.

12 THE COURT: All right. That's your position. Yes,
13 ma'am.

14 MS. YOUNG: Uhm, well, Your Honor, first of all, I
15 believe and I --

16 THE COURT: That's all right. Go ahead.

17 MS. YOUNG: I believe that Mr. Eaton referenced it
18 in his opening, two of their witnesses testified about it
19 yesterday and it's consistent --

20 THE COURT: Look, it can come in. It can come in,
21 okay?

22 MS. YOUNG: Thank you, Your Honor.

23 THE COURT: Anything further? If y'all didn't make
24 a -- Never mind. I don't think it's -- Well, I think
25 it's sort of in between. It's not prejudicial. I don't

1 think it's harmful. I don't think it's going to affect
2 the merits of this case one way or the other. I don't
3 know what probative value it has, but I think it's kind
4 of innocuous.

5 MS. SAMPSON: Thank you, Your Honor.

6 THE COURT: If you want it, that's fine. Anything
7 else?

8 MS. SAMPSON: No, sir.

9 THE COURT: All right. Bring the jury in. I do
10 agree that I don't see how that contributed to her death,
11 but if that's what they want to raise, I won't stop them.
12 And besides, everybody should remember just because
13 something is in evidence, it's how it's viewed. The jury
14 can take it however they see it. I wouldn't worry about
15 it that much one way or the other.

16 (Whereupon, the jury entered the courtroom at 11:25
17 a.m.)

18 THE COURT: Welcome back, Mr. Foreman, members of
19 the jury. We'll allow the presentation of evidence on
20 behalf of Mr. Gleaton. Ms. Jurick, you may call your
21 first witness.

22 MS. JURICK: Yes, Your Honor. The defense calls
23 Robert White.

24 Thereupon,

25 ROBERT WHITE

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat on the witness stand
3 and state your full name for the record.

4 THE WITNESS: Robert S. White.

5 THE COURT: Yes, ma'am. Go ahead.

6 DIRECT EXAMINATION

7 BY MS. JURICK:

8 Q. Good morning, Mr. White.

9 A. Good morning.

10 Q. Can you tell me about your education?

11 A. I have a bachelor's of science degree in chemistry
12 from the State College of West Virginia and taught chemistry
13 in high school for two years, then I worked with the West
14 Virginia State Police for 30 years at which time I was in the
15 laboratory, forensic laboratory the whole time except six
16 months at the State Police Academy. I was a uniformed officer
17 and eventually became a lieutenant. While I was in the
18 laboratory I eventually did all of the testing in the
19 chemistry section of the forensic laboratory. In the early
20 '70s I trained with the North Carolina investigation on
21 gunshot residue on an instrument called atomic absorption, AA.
22 That's the way it was done, everywhere in the country did it
23 and I started that testing in the early '70s until about 1986,
24 '87 I specialized in gunshot residue with the scanning
25 electron microscope and as our laboratory actually purchased

1 the first automatic gunshot residue system in the world, I
2 taught all the police officers in the State how to collect the
3 evidence. I made the kits. I testified in court in all the
4 cases and I retired in 1992, December, and I have been working
5 since then privately doing gunshot residue and other work
6 involving forensics since then.

7 Q. And do you have any publications in the field?

8 A. Yes. I have published several items about nine of
9 them I think in the American Academy of Forensic Science,
10 Southern Association of Forensic Sciences, Electron Microscopy
11 Society, several different agencies of the gunshot residue
12 people in the last several years. I have actually had a lot
13 of them relating to gunshot residue.

14 Q. Is it normal for you to come to court and testify?

15 A. Yes.

16 Q. How many times have you been qualified as an
17 expert?

18 A. Well, I kept track of it while I was with the State.
19 I testified about 1100 times with the State and since then I
20 don't know. Several times a year, probably maybe 12 to 1400
21 now.

22 Q. And you've testified, just to be clear, for both the
23 defense and the prosecution, you have experience with both?

24 A. When I was working for the State it was almost all
25 testifying for the State. Since I'm retired it's mainly for

1 the defense.

2 MS. JURICK: At this point we would like to qualify
3 Mr. White as an expert in gunshot residue analysis.

4 THE COURT: Any voir dire?

5 MS. SAMPSON: No, sir.

6 THE COURT: All right. Without objection.

7 MS. SAMPSON: Without objections.

8 THE COURT: All right.

9 BY MS. JURICK:

10 Q. Mr. White, can you tell the jury generally what
11 gunshot residue is.

12 A. Gunshot residue is what comes out of a gun when it's
13 discharged. There are three powders inside that primer, lead
14 barium and antimony, and when the gun discharges, it escapes
15 from that gun anywhere there's an opening or a leaky area and
16 it comes out with a lot of high temperature, a lot of pressure
17 into the air, and as soon as it hits the cold air, it
18 condenses in the spheres or some other type of particle, and
19 sometimes it comes out and only one particle ends up on your
20 hand and sometimes two of them combine, sometimes all three of
21 them combine and when a person, an analyst finds all three
22 elements in the same particle, they consider that to be
23 characteristic of gunshot residue.

24 Q. What happens if they find less than all three?

25 A. Most of the time when a gun is discharged you find

1 all three and you find two component particles and a lot of
2 single component particles. Those are all usually found and
3 if you find the two component particles, those are consistent
4 with gunshot residue what it's called now.

5 Q. And if you find the one component particle?

6 A. One component particle is commonly associated with
7 gunshot residue.

8 Q. And did you have a chance to review the reports in
9 this case?

10 A. Yes.

11 Q. What did you review?

12 A. I reviewed the material that was sent to me
13 regarding the gunshot residue testing in this case from a
14 Roderick Dukes. It was the documents that the State had, the
15 worksheets and all the x-ray data, or some of the x-ray data
16 and summaries of all the particles that they found.

17 Q. And what did you find?

18 A. Well, I found that there were six two component
19 particles, four of them were barium an antimony and there were
20 35 single component particles of either lead or barium or
21 antimony.

22 Q. Were all three of those present, lead, barium and
23 antimony?

24 A. In single component particles, yes.

25 Q. Okay. And you told me before that barium and

1 antimony, two component particles specifically stand out to
2 you. Tell us about that.

3 A. Yes. For many years when I found, and the computer
4 analyzes these samples and then, but they looked at a particle
5 for about three seconds and then it tries to identify what it
6 is and it prints it out and it gives you coordinates on how to
7 fine it so when you go back and call that particle up and look
8 at it, then you can acquire x-rays a longer period of time
9 than the three seconds so you get bigger peaks and it's been
10 my experience that many times I had particles of that it
11 called barium and antimony, just two component particles, but
12 when I went back and looked at them a little bit longer, I
13 almost always found lead also.

14 Q. And is there any place naturally occurring that
15 barium and antimony would be together? How else would you get
16 a barium and antimony component together?

17 A. Well, all these elements exist in nature and I can't
18 remember where barium and antimony might be found right now
19 but, for instance, lead and antimony is fairly common with
20 batteries, car batteries or wheel weights or fishing sinkers,
21 something like that. Barium and antimony isn't very common.

22 Q. So isn't very common. Is there -- Did you -- What
23 do you mean by isn't very common?

24 A. Well, I can't remember where it might be found right
25 now.

1 Q. You can't remember?

2 A. Yeah.

3 Q. So it's not common?

4 A. No.

5 Q. And you mentioned going back and visually inspecting
6 it. Do you know if that happened in this case?

7 A. Well, I don't have any personal knowledge whether or
8 not the analyst went back and looked at any of the particles
9 because she didn't report any of these particles. She just
10 reported no gunshot residue found.

11 Q. And can you explain, I guess, a little but about the
12 computer analysis versus going back and visually inspecting
13 it, what that might help you find?

14 A. Well, the automatic gunshot residue system has a
15 motor on it that drives the electron beam across the sample
16 and looks at one little area and if it finds any particles, it
17 opens up a bin there so x-rays hit it and tries to tell you
18 what it is and then it goes onto the next screen, and then the
19 next one and the next one until it goes all the way across the
20 sample and then it goes down the next line, the same time
21 thing until it's finished and when it's finished, the computer
22 has a printout that tells you what it found and where they're
23 at so if it finds all three component particles, it tells you
24 where those are and then the analyst will recall that particle
25 and look at it manually, make sure it does have lead and

1 barium and antimony, all three in it, and if it does, it calls
2 it gunshot residue or characteristic of gunshot residue. If
3 it doesn't have all three in it, she doesn't call it any
4 gunshot residue present.

5 Q. And when you've gone back personally and visually
6 inspected ones that had two particles that were consistent
7 with, have you found the third?

8 A. I haven't looked at lead barium and lead antimony
9 that much and the ones I did, I don't think I found very much,
10 but in the barium and antimony particles I found pretty
11 commonly I found lead also.

12 Q. And why is that?

13 A. Well, I think -- Well, these were actually gunshot
14 residue particles and lead wasn't strong enough to be found
15 with the computer.

16 Q. And to be clear, there was barium and antimony found
17 in this case?

18 A. Yes. Four particles.

19 Q. Four particles. What's the, if you can remember,
20 what's the highest element on all that big sheet of printout
21 that was found on his hands?

22 A. Would you repeat that?

23 Q. There is an element, there's a list of elements in
24 this, is that correct, that it tests for?

25 A. Yes.

1 Q. Do you remember what the highest thing that was
2 found on his hands is, the highest element?

3 A. The largest number of particles?

4 Q. Yes.

5 A. Cerium.

6 Q. What is it? You can refer to it. Would that help?

7 A. I'm looking at the right palm right now and the
8 right palm only had one particle of barium antimony. It had
9 345 flint, cerium flint.

10 Q. And what would that be indicative of?

11 A. Cerium is common from using a cigarette lighter like
12 a BIC lighter or a Zippo lighter. When you hit that wheel to
13 light, the cerium gets on your hands.

14 Q. I believe that the report has more elements of
15 gunshot, consistent with gunshot residue on hand than the
16 other?

17 A. Yes.

18 Q. Does that possibly tell you something?

19 A. Well, on the left back, I think it was, the left
20 back only has one barium antimony particle and no cerium
21 particles. The left palm didn't have anything. All these
22 other particle were found on the right hand.

23 Q. What might that tell you?

24 A. Well, it could tell you several things, but it's
25 consistent with a person discharged the gun probably

1 discharged with the right hand and the left hand wasn't near
2 the gun when it went off.

3 Q. And there's different ways obviously that we've
4 discussed that gunshot residue goes away in nature naturally.
5 Can you tell us what some of those are?

6 A. Would repeat that?

7 Q. Like is time a factor? Washing hands. What types
8 of things could help diminish the amount?

9 A. If you wash your hands good with soap and water, all
10 the residue will be removed. I just run my hands through the
11 running water and dried them and still find residue. It
12 depends on what a person does with his hands after he shoots a
13 gun. If he's asleep or dead, just lying there doing nothing,
14 that residue stays there. But by rubbing your hands together,
15 your hands in your pockets or anything you do can start
16 removing the residue.

17 Q. In those natural ways to remove, would you expect it
18 to come off the hands somewhat equally?

19 A. Yeah. If they're using their hands together it
20 should be equal.

21 Q. And when you're looking through the report, is there
22 anything that you noticed that the other analyst did not find,
23 any additional particles?

24 A. Well, as I mentioned, there were 35 single component
25 particles and six double component particles that she found

1 them, that the instrument found them but she didn't mention
2 them.

3 Q. She didn't mention them. And why would something
4 consistent with gsr not necessarily be flagged by the
5 machine?

6 A. Not necessarily be flagged by the machine?

7 Q. Yeah. You were talking about how when you go back
8 and visually inspect, sometimes you find additional particles.
9 Do you know the reason for that? Talking about three
10 seconds?

11 A. As I mentioned, when the instrument is scanning
12 across the sample and it stops and looks at the particle, it
13 only spends about three seconds to collect x-rays. The x-rays
14 are characteristic of what elements are there. Sometimes
15 that's not enough to actually identify. When you recall that
16 particle manually, you might look at it for 20 or 30 seconds
17 there and those peaks get bigger and bigger and you can find
18 out if there's actually more stuff in it than what the
19 computer says.

20 Q. So the computer is saying that there is no three
21 component particles. Does that tell you that there is
22 actually no three component particles?

23 A. Well, it tells you it didn't find any and the only
24 way to do it any differently is to look at the things
25 manually.

1 Q. Right. And I understand that in this report there's
2 no three component particles listed so they're saying it's not
3 characteristic of gunshot residue, but what would you classify
4 it as?

5 A. Well, I would classify all these particles that were
6 found though is consistent with gunshot residue.

7 MS. OSTEEN: Okay. All right. Thank you. Please
8 answer any questions that the State might have.

9 CROSS EXAMINATION

10 BY MS. SAMPSON:

11 Q. Good morning, Mr. White.

12 A. Good morning.

13 Q. So just to be clear, we've talked about, there's
14 three particles, lead, barium and antimony in gunshot residue,
15 correct?

16 A. Yes, ma'am.

17 Q. And you talked about what things mean. There are
18 three different categories for gunshot residue or things like
19 that. There's associated, characteristic and --

20 A. Consistent.

21 Q. -- consistent. Right. So associated would be the
22 lowest level, correct?

23 A. Yes.

24 Q. And that's when you just find one?

25 A. Yes.

1 Q. And you said the second one is?

2 A. Consistent with.

3 Q. Consistent with is when there's two?

4 A. Yes.

5 Q. And characteristic is when you find all three?

6 A. That's correct.

7 Q. And for you to say that something is characteristic
8 of gunshot residue you need all three?

9 A. Yes.

10 Q. And in this case that didn't happen, correct?

11 A. That's correct according to the analyst's report.

12 Q. And even when you did it, you didn't find three that
13 would make it characteristic, correct?

14 A. There wasn't any way for me to look at it. I hadn't
15 been at the laboratory and looked at the samples live.

16 Q. That's right because it's better to look at it
17 yourself than to just rely on what the computer told you?

18 A. Yes. And the computer doesn't print out anything to
19 look at.

20 Q. And this science does rely on what you as an expert
21 and you as the person looking at it and examining it do and
22 your knowledge, correct?

23 A. Please repeat that.

24 Q. You have to -- It relies on your knowledge and you
25 looking at the evidence to make a determination?

1 A. Yes.

2 Q. All right. So you could look at something using
3 your knowledge and your expertise and think one thing and
4 someone else could look at it and think another?

5 A. If anyone looked at the gunshot particle live and
6 acquired samples long enough for the elements to show up, if
7 they knew what they were doing, they would all find it.

8 Q. Right. And that's looking at it live?

9 A. Yes.

10 Q. You only looked at it through reports?

11 A. That's all I saw was the report from the analyst.

12 Q. So you would agree that the person looking at it
13 live has a better ability to look at it than someone just
14 looking at reports?

15 A. Certainly.

16 Q. And she talked about finding more on one hand than
17 the other, correct?

18 A. Yes.

19 Q. And you said that the way you use your hands could
20 make something come off, whether you put your hands in your
21 pocket, wringing your hands, anything of that like makes the
22 residue come off?

23 A. To eliminate the residue by rubbing your hands or
24 whatever, usually you're rubbing them together it would
25 probably go off both of them.

1 Q. Would you agree with me if you just stuck one hand
2 in your pocket, that hand might have less than the one hand
3 that you didn't stick in your pocket?

4 A. Yes.

5 Q. And gunshot residue is transferable, correct?

6 A. It is.

7 Q. And you mentioned that you might have more on your
8 right hand if the gun discharged onto your right hand,
9 correct?

10 A. Yeah. If you fired your gun with your right hand
11 and the left hand was in your pocket or somewhere else, you
12 would probably have it on the right hand and less on the left
13 hand. Maybe not.

14 Q. And you can get gunshot residue on your hand if you
15 didn't shoot a gun?

16 A. Yes.

17 Q. You can get it from being near a gun that's shot?

18 A. That's right.

19 Q. You can get it from touching something that had
20 gunshot residue on it?

21 A. That's right.

22 Q. So what you're telling us is from what you found on
23 the report you would say there's something consistent with
24 gunshot residue on his hand?

25 A. Just based on the report, yes.

1 Q. Just based on the report, but she was correct in
2 saying that based on the report that were there no
3 characteristics, the best highest quality that you can get to
4 on his hand, correct?

5 A. She found no three component particles so that was
6 her answer.

7 Q. And what you found doesn't show that it was
8 characteristic even using that report?

9 A. Using that report that's correct.

10 Q. And again, the person who has the best chance of
11 making that decision is the person looking at it live, the
12 analyst?

13 If they go back and look at them live, yes.

14 MS. SAMPSON: Thank you. Nothing further.

15 MS. JURICK: Your Honor.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MS. JURICK:

19 Q. Maybe we were unclear. Did she go back and look at
20 them live?

21 A. It's not my understanding that she did.

22 Q. Okay. So she also would have only relied on her
23 report --

24 A. Yes.

25 Q. -- from the information you have?

1 A. She just saw the computer and said no three
2 component particles present so she put no gunshot residue
3 present.

4 Q. And then did not review it after --

5 A. That's my understanding.

6 Q. -- to the best of your knowledge? Okay. And you
7 just heard her say live is the best way to do it?

8 A. It is.

9 Q. So you had the same information that she had to the
10 best of your knowledge?

11 A. Yes. I had the report is all and a summary of what
12 was found.

13 Q. And you had no opportunity to go back and look at
14 it?

15 A. No.

16 MS. JURICK: Thank you.

17 THE COURT: Yes, ma'am.

18 RECROSS EXAMINATION

19 BY MS. SAMPSON:

20 Q. Very briefly. She just asked you what you know
21 about whether she looked at it live. You weren't there,
22 correct?

23 A. That's correct.

24 Q. So if she looked at it live and didn't put it in the
25 report, you wouldn't know that?

1 A. That's correct.

2 MS. SAMPSON: No further questions, Your Honor.

3 THE COURT: Anything further of this witness?

4 MS. JURICK: No, Your Honor.

5 THE COURT: You may step down, sir. Call your next
6 witness.

7 MS. YOUNG: Your Honor, the defense calls Chuck
8 Wesley to the stand.

9 MS. OSTEN: And, Your Honor, can Mr. White be
10 released?

11 THE COURT: Sure. I'm sorry. Who did you call now?

12 MS. YOUNG: Chuck Wesley, Your Honor.

13 Thereupon,

14 CHARLES A. WESLEY

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat on the witness stand
17 and state your full name for the record.

18 THE WITNESS: Charles A. Wesley.

19 DIRECT EXAMINATION

20 BY MS. YOUNG:

21 Q. Good morning. Almost afternoon. Mr. Wesley, where
22 do you work?

23 A. The Richland County Coroner's Office.

24 Q. Okay. And what's your job there?

25 A. Primarily toxicology, coordination with

1 toxicology.

2 Q. I'm gonna show you what's been marked as Defendant's
3 Exhibit number 5 for identification. Do you recognize that?

4 A. I do.

5 Q. Would it help you to keep it to refer to it?

6 A. (Witness nodding head.)

7 Q. Can you tell the jury what that is?

8 A. A chain of custody form.

9 Q. Okay. And what do you use those forms for?

10 A. To keep track of the chain of custody of evidence.

11 Q. And so is it part of your job to pick up evidence
12 and take it places?

13 A. Correct.

14 Q. And did you do that in this particular case?

15 A. Yes, ma'am.

16 Q. And when you pick up evidence in this case, where
17 did you get that evidence from?

18 A. From the morgue.

19 Q. And where did you take it?

20 A. To SLED.

21 Q. And during your transportation of those items, did
22 you keep them secure?

23 A. Yes, ma'am.

24 Q. And did you alter them in any way?

25 A. No, ma'am.

1 Q. And can you just refer to that and tell us what
2 items, what item numbers are on there as far as what you
3 picked up from the morgue and took to SLED?

4 A. Yes, ma'am. You want one in specific or general?

5 Q. The specific item numbers.

6 A. Okay. Item 1 was blood, item 2 was blood, item 11
7 was urine, item 3 was brain, 4, liver, 5, kidney, 6,
8 vitreous.

9 Q. And can you tell me the date and time that you took
10 those, that you picked them up from the morgue and took them
11 to SLED?

12 A. October 10th of 2017. They were logged in at SLED
13 at 1:58 p.m.

14 Q. Okay. And do you know -- Can you tell by looking at
15 that who at SLED took possession of those items.

16 A. Yes, ma'am. Ms. Yarbrough, Doris Yarbrough.

17 MS. YOUNG: Thank you. I have no further
18 questions.

19 THE COURT: Mr. Eaton.

20 MR. EATON: No cross, Your Honor.

21 THE COURT: You may step down, sir. Call your next
22 witness.

23 MS. YOUNG: The defense calls Jennifer Brown to the
24 stand.

25 Thereupon,

1 JENNIFER BROWN

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please have a seat on the witness stand
4 and state your full name for the record.

5 THE WITNESS: My name is Jennifer Michelle Gard
6 Brown.

7 DIRECT EXAMINATION

8 BY MS. YOUNG:

9 Q. Good morning, Ms. Brown. Can you tell the jury
10 where you work?

11 A. I work at the South Carolina Law Enforcement
12 Division commonly known as SLED.

13 Q. And how long have you worked there?

14 A. 13 years in January.

15 Q. And what's your job?

16 A. I am a forensic toxicologist.

17 Q. And do you have any specialized training or
18 education to be a forensic toxicologist?

19 A. Yes. I have my bachelor of science in chemistry
20 through the University of South Carolina, but also we do
21 extensive in-house training at SLED for about a year and then
22 we try to continue our education and training through
23 different training and conferences.

24 Q. Okay. Are you a member of any professional
25 organizations?

1 A. Not currently.

2 Q. Have you ever been qualified as an expert?

3 A. Yes.

4 Q. And in what field?

5 A. In forensic toxicology.

6 MS. YOUNG: Your Honor, at this time we ask that she
7 be qualified as an expert in forensic toxicology.

8 MR. EATON: No objection, Your Honor.

9 THE COURT: Without objection.

10 BY MS. YOUNG:

11 Q. Uhm, I'm gonna hand you what's been marked for
12 identification as Defendant's Exhibit number 6.

13 MR. EATON: And I'm gonna go ahead and ask that we
14 approach real quick, Your Honor.

15 (Side bar off the record.)

16 BY MS. YOUNG:

17 Q. Do you recognize that?

18 A. The whole packet or just the four pages?

19 Q. I'm sorry. Can you tell the jury what that is?

20 A. Yes. This is my, or a copy of my report minus the
21 sticker that's on here.

22 Q. Thank you. And does that reflect testing that you
23 did in this case?

24 A. Yes. It reflects the testing that was done in this
25 case.

1 Q. And you were asked to test the items that were
2 associated with the victim Amanda Peele in this case?

3 A. Correct.

4 Q. And what did you find?

5 A. We found that the blood alcohol was negative for
6 volatiles like ethanol so the drinking alcohol. It was
7 positive for carboxyhemoglobin at 11 percent. It was positive
8 for oxycodone at 80 nanograms per mill.

9 Q. Let me stop you real quick. Is oxycodone a
10 narcotic?

11 A. Yes.

12 Q. And are narcotics used as sleep aid?

13 A. Generally oxycodone is prescribed for pain, but it
14 can cause drowsiness or somnolence, so it can cause you to
15 sleep.

16 MS. YOUNG: I don't have any further questions.

17 THE COURT: Mr. Eaton.

18 CROSS EXAMINATION

19 BY MR. EATON:

20 Q. Good morning, Ms. Brown.

21 A. Good morning.

22 Q. So as a toxicologist in addition to identifying
23 chemicals that come from body, biological matter, you would
24 also make conclusions about the pharmacological effect of
25 substances on the body; is that right?

1 A. Correct.

2 Q. And what does that mean in basic terms?

3 A. Yeah. It's a way of interpreting how the different
4 drugs affect your body, side effects of the drugs which are
5 generally considered the adverse type of things or what the
6 drug that's indicated generally for and then how that affects
7 the person.

8 Q. And so for you then to talk about the interplay of
9 some drug and a person in their body, what are some things
10 that you look at in doing that?

11 A. We look at the different levels. What that means,
12 if it's therapeutic, toxic or lethal and then just the
13 combination of different drugs in circumstances.

14 Q. And so can you by looking at a level of a drug in a
15 person's biological matter, can you determine or make an
16 expert opinion on how much of that they have ingested of that
17 drug?

18 A. By what's on the report or are you saying in the
19 sense of like they took a pill, they took a -- Because I can't
20 honestly tell you if they took a pill, two pills or three
21 pills but I can tell you quantitatively concentration wise how
22 much was taken.

23 Q. And those concentrations, what do they then tell you
24 about what the person took?

25 A. If it was a therapeutic, toxic or lethal level and

1 then interpreting, you know, depending on what type of drug it
2 is.

3 Q. So therapeutic, toxic or lethal?

4 A. Mm-hmm.

5 Q. Okay. In looking at Amanda's samples here what drug
6 did you find evidence of?

7 A. The first thing we reported as positive was
8 carboxyhemoglobin and the oxycodone.

9 Q. And I'm sorry. We'll start with that. What is
10 that?

11 A. Uhm, when you - when there's a fire or something of
12 that nature, uhm, you can find carboxyhemoglobin and it kind
13 of tells you is it the cause of, could it have caused death.
14 So if you have a level that's greater than 50 percent, it's
15 indicative of dying from a fire. Uhm, and then if it's less
16 than that, uhm, not. So, uhm, like a percentage around like
17 10 percent is usually, uhm, indicative of someone smoking.
18 Uhm, lower levels can be, uhm, someone that's in a room with
19 non smokers.

20 Q. So what was the level here?

21 A. 11 percent.

22 Q. And what would that say to you?

23 A. It would say to me that this person didn't die of a
24 fire related incident, uhm, and that it could be indicative of
25 being a smoker.

1 Q. So she could have been a smoker?

2 A. Yes.

3 Q. And then you were going onto the next substance.
4 What was that?

5 A. Uhm, oxycodone commonly known as oxycontin or
6 Percodan, uhm, and then the result of that was 80 nanograms
7 per mill and then we have 11 carboxy --

8 Q. That's okay. Yeah. So stopping right there, what
9 is that 80 was it nanograms?

10 A. Mm-hmm.

11 Q. Per mill?

12 A. Milliliter.

13 Q. Milliliter?

14 A. Yes.

15 Q. So what does the 80 nanograms per milliliter tell
16 you about, and I know you can't say it was one pill or two
17 pills, whatever, what does that tell you though in those
18 categories about her consumption?

19 A. Right. That would be a therapeutic use of taking
20 the drugs so generally like I said, used for pain. Uhm, it
21 can cause some somnolence which would be like sleeping or
22 drowsiness but similar to the effects of alcohol.

23 Q. But is it a sleeping pill?

24 A. Uhm, not technically. It's like I said generally
25 used for pain.

1 Q. Okay. And so your levels were therapeutic, toxic
2 and lethal. This was 80. What would be the levels that you
3 would look for in those categories?

4 A. Uhm, generally up to a hundred nanograms per mill is
5 the therapeutic cutoff. Anything over that can be toxic or
6 lethal level.

7 Q. And what's toxic and what's lethal?

8 A. I would have to look that up. I don't know right
9 off the top of my head.

10 Q. But suffice it to say, Amanda did not have a lethal
11 amount in her body; right?

12 A. Correct.

13 Q. She didn't even have a toxic amount in her body?

14 A. Mm-hmm.

15 Q. She only had a therapeutic amount in her body?

16 A. Correct.

17 Q. So that's consistent with having a prescription for
18 something and taking a pill?

19 A. Correct.

20 MR. EATON: Nothing further. Thank you.

21 THE COURT: Anything further of this witness?

22 MS. YOUNG: No, Your Honor.

23 THE COURT: You may step down. Call your next
24 witness.

25 MS. OSTEN: The defense calls Guy Hewitt.

1 Thereupon,

2 GUY EARL HEWITT, JUNIOR

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat on the witness stand
5 and state your full name for the record.

6 THE WITNESS: My name is Guy Earl Hewitt, Junior.

7 DIRECT EXAMINATION

8 BY MS. OSTEEN:

9 Q. Hi, Mr. Hewitt. How are you doing?

10 A. I'm doing well. Thank you.

11 Q. Good to hear. Would you please introduce yourself
12 to the jury with your title?

13 A. I am the Chief Fire Investigator for the Richland
14 County Fire Marshal's Office. We're a division of emergency
15 services fire enforcement.

16 Q. And what do you generally do in that position?

17 A. Fire investigations.

18 Q. And you are Jerry Nisky's supervisor?

19 A. Yes. I am.

20 Q. And when you do fire investigations, what does that
21 entail?

22 A. We go in and try to determine origin and cause of a
23 fire, how it started, where it started.

24 Q. And how long have you been doing this kind of
25 work?

1 A. I have been with the Fire Marshal's Office, it will
2 be 22 years in February.

3 Q. And what type of specific certifications do you have
4 in this area?

5 A. I am a certified fire inspector, fire investigator.
6 I have numerous certifications as per my curriculum vitae.

7 Q. The list is long.

8 A. I'm also a certified firefighter.

9 Q. And are you involved in any professional
10 organizations?

11 A. Yes. I am.

12 Q. Can you name a few of those?

13 A. I'm involved with the South Carolina International
14 Association of Arson Investigators, and the International
15 Chapter International Investigators. International
16 Association of Arson Investigators.

17 Q. And have you ever been qualified as an expert before
18 in trial?

19 A. No.

20 Q. No?

21 A. No.

22 Q. Then you are Jerry Nisky's supervisor?

23 A. Yes. For fires.

24 MS. OSTEEEN: Your Honor, at this time I would ask to
25 qualify Chief Fire Investigator Guy Hewitt as an expert

1 in fire investigation.

2 MR. EATON: No objection, Your Honor.

3 THE COURT: All right. Without objection.

4 MS. OSTEEEN: Thank you, Your Honor.

5 BY MS. OSTEEEN:

6 Q. You were involved in this case at 109 Crestmore?

7 A. Yes. I was.

8 Q. And you attended the scene with Investigator
9 Nisky?

10 A. Yes. I did.

11 Q. And Mr. -- Is he also an investigator, Toby
12 Taylor?

13 A. Toby Taylor is also an investigator, yes, ma'am.

14 Q. And, uhm, you went to the scene to investigate?

15 A. I did. I went to the scene to assist them.

16 Q. And you reviewed all the other documents that they
17 had as well?

18 A. Yes. I did.

19 Q. And we've heard a lot about the concept of -- I kind
20 of wanted to break down a few concepts and one of those
21 concepts was high fuel load. Can you just talk about what
22 that is?

23 A. Basically a high fuel load, it can be numerous
24 things, but it's materials that will cause a hot and heavy
25 fire, a large fire.

1 Q. And that would - that would burn a large fire?

2 A. Yes.

3 Q. Uhm, and can you give me some examples of what those
4 might be?

5 A. Ordinary combustibles could be clothing, paperwork,
6 furniture. Anything like that.

7 Q. And a bed could be?

8 A. A bed can be. Yes.

9 Q. And we also heard about the term mass fuel
10 consumption?

11 A. Yes.

12 Q. Can you tell us a little bit about that?

13 A. Mass consumption, it goes back to what the amount
14 of, say, construction, framework, lumber, what's consumed.
15 What's consumed within the structure.

16 Q. And when we are saying consumed, you mean consumed
17 by the fire?

18 A. Consumed is the phrase we use in fire service for
19 what has been burnt.

20 Q. Okay.

21 A. Yes.

22 Q. And now, based on your investigation you looked at
23 the bedroom --

24 A. I did.

25 Q. -- where the two points of origin were identified --

1 A. I did.

2 Q. -- by you. And in that bedroom you noticed that
3 there was a window that had been cracked and broken?

4 A. Yes.

5 Q. Can you tell us a little bit about what would have
6 caused that?

7 A. A fire when it burns on glass especially single pane
8 glass like in a bedroom or in any rooms like that, it can
9 cause the glass to shatter and break and fall out and once
10 that glass breaks, it allows super heated gases and smoke to
11 go out the top area and the bottom half will allow clean fresh
12 air to come in to feed the fire.

13 Q. So the added oxygen feeds the fire?

14 A. Yes.

15 Q. Now, your take on this fire was that it burned
16 hot?

17 A. Yes.

18 Q. And that it burned quickly?

19 A. It was a fast burning fire. Yes.

20 Q. A fast burning fire. And you determined that the
21 fire did not burn for an extended period of time?

22 A. No, ma'am. It did not.

23 Q. And you believe that fire burned for less than an
24 hour?

25 A. Once it really got going, once it took off, yes, I

1 believe it burned for less than an hour.

2 Q. And can you tell us why?

3 A. If it had been a slow burning fire like a smoldering
4 fire, taken a long time to build, the glass throughout the
5 structure on the inside would have a coating on it. It would
6 have a layer of soot which it did not. Also we go by what we
7 call line of demarcation. If you have a fire that's
8 smoldering and there's no air going to it to allow it to burn
9 faster, you'll have a layer of smoke that will drop down and
10 where that layer of smoke stops, the soot trail stops and
11 clean wall, clean Sheetrock, that's there. That's what we
12 call a line of demarcation and there was not much here so it
13 indicated that the fire burned hot and burned fast and it was
14 vented.

15 Q. And it was vented?

16 A. Yes.

17 Q. Now, there was a fire in the garage area in the
18 point of origin four?

19 A. Yes.

20 Q. That fire you determined to be a fire that self
21 extinguished?

22 A. It appears to be self extinguished, yes.

23 Q. And so that means that within a specific time frame
24 it --

25 A. Burned itself out.

1 Q. -- burned itself out?

2 A. Yes.

3 MS. OSTEEN: I think that's all for my questions,
4 Your Honor. If you would please answer any questions the
5 State may have.

6 THE COURT: Mr. Eaton.

7 MR. EATON: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. EATON:

10 Q. Good morning, Investigator Hewitt.

11 A. Good morning, sir.

12 Q. So you're essentially -- The jury met Jerry Nisky
13 the other day. You're like his boss, right?

14 A. I supervise him over fires. Yes.

15 Q. And you were on the scene?

16 A. Yes, sir.

17 Q. You're familiar with it?

18 A. Yes.

19 Q. So you said on direct that it may have burned less
20 than an hour once it got going?

21 A. Yes.

22 Q. And so in this case being that it was an open flame
23 to readily combustible materials --

24 A. Yes, sir.

25 Q. -- is it possible or even likely that it took quite

1 a while for the fire to get going?

2 A. I really don't think so.

3 Q. I mean, not once it was going, but like on the way
4 to getting to that point that it's really going?

5 A. It's going. Yes.

6 Q. Right. So leading up to that point it could take a
7 while for the flames to grow, right?

8 A. It could take a little bit, yes, depending on the
9 materials that were ignited.

10 Q. And there's even materials in clothing and bedding
11 materials and stuff like that that have like retardants that
12 make them, that are designed to keep them from setting on
13 fire, right?

14 A. Yes.

15 Q. So a lot of things in the house might because of the
16 way they're designed chemically could take a long time to get
17 going as you say?

18 A. Yes. Some can. Right.

19 Q. So really the hour that this fire is really burning
20 is not at all the maximum of time that the fire was set?

21 A. No. If --

22 Q. Is there -- Go ahead.

23 A. May I clarify?

24 Q. Yes, sir.

25 A. It all depends like I said upon the products that

1 were ignited, the type materials. Certain materials, certain
2 clothing will burn faster than others.

3 Q. Right. And so is there really any good scientific
4 way to say we know exactly when this fire was initially set?

5 A. No.

6 Q. And with the fire that was in the garage, you said
7 it self extinguished meaning it just went out by itself,
8 right?

9 A. Yes.

10 Q. So it's very possible then that the person who had
11 set that fire could have been long gone and it had gone out in
12 the meantime?

13 A. It's possible. Yes.

14 MR. EATON: Nothing else. Thank you very much.

15 THE COURT: Anything further of this witness?

16 MS. OSTEEN: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. OSTEEN:

19 Q. Uhm, so you were just talking about how if it
20 starts, it's kind of a slow burning fire I think is the
21 concept that he's getting at?

22 A. Yes.

23 Q. If that were the case, there would be ash present,
24 correct?

25 A. Any time something burns there will be ash

1 present.

2 Q. And particularly if it's a lingering fire?

3 A. It can depending on the material and how well it's
4 consumed. Some materials will consume down to almost
5 nothing.

6 Q. And in this case the bed would have been a high fuel
7 load?

8 A. Once again, I'm not sure of the composition of the
9 bed or the mattress, just what it was made of and just what
10 the flammability rating is of the product.

11 Q. And going to the idea of that it had burnt for less
12 than an hour, you saw no indication of delayed ignition of
13 these fires?

14 A. I did not.

15 Q. You think that the fire was set and it burned until
16 it was put out?

17 A. Yes.

18 Q. When fire got on scene and at point number 4, that
19 smoldering fire, that was still smoking?

20 A. I do not know. I did not meet with the guys who
21 were on the fire truck. I did not come in until the following
22 morning.

23 Q. Okay. And your arson investigation determined that
24 these were open flame source to highly combustibile material?

25 A. Ordinary combustibile material.

1 Q. Ordinary?

2 A. Yes.

3 Q. And readily combustible?

4 A. Readily available combustibles.

5 Q. Okay. And just to be clear about that, that could
6 be --

7 A. It could be paper, clothes, magazines.

8 Q. Something where a fire starts?

9 A. Anything that is combustible. Yes.

10 MS. OSTEEEN: Okay. Thank you. No further
11 questions.

12 MR. EATON: Nothing else, Your Honor.

13 THE COURT: You may step down, sir.

14 MS. OSTEEEN: We would ask that he be released from
15 his subpoena at this time, Your Honor.

16 MR. EATON: No objection.

17 THE COURT: Thank you, sir. Call your next
18 witness.

19 MS. JURICK: Your Honor, may we approach?

20 THE COURT: Sure.

21 (Side bar off the record.)

22 THE COURT: The discussion involved maybe calling a
23 short witness or playing something, I can't remember,
24 short, but the food is here. We might as well leave, if
25 that's okay with y'all. Okay. Once again, I need to

1 remind you don't talk about this case, members of the
2 jury. I hope you enjoy Jason's. I think that's what it
3 is. Don't talk about the case. Enjoy your lunch. We'll
4 come back at 1:30. That's good for everybody. 1:30.
5 Y'all can go out. I think it's a nicer day today. Take
6 a walk around. Just don't talk about the case, ladies
7 and gentlemen. Thank you.

8 (Whereupon, the jury entered the jury room for lunch
9 break at 12:20 p.m.)

10 THE COURT: Anything further.

11 MR. EATON: Not from the State, Your Honor.

12 MS. JURICK: No, Your Honor.

13 THE COURT: Just one more witness?

14 MS. JURICK: It turns out it's three. One is the
15 911 call so it should be --

16 THE COURT: All right. Three witnesses or three --

17 MS. OSTEEEN: Yes, Your Honor.

18 THE COURT: Okay. That's fine. All right. See
19 y'all at 1:30. Thank you.

20 (Lunch break.)

21 BAILIFF: All rise.

22 THE COURT: Take your seats please. So everybody's
23 ready?

24 MR. EATON: The State's ready, Your Honor.

25 MS. OSTEEEN: We're ready, Your Honor.

1 THE COURT: Bring the jury in please, Mr. Nitsche.

2 BAILIFF: Yes, Your Honor.

3 (Whereupon, the jury entered the courtroom at 1:40
4 p.m.)

5 THE COURT: Welcome back members of the jury. Hope
6 y'all enjoyed your lunch. This case will continue with
7 Ms. Osteen calling the next witness on behalf of Mr.
8 Gleaton.

9 MS. OSTEEN: Yes, Your Honor. The defense calls
10 Brian Durig.

11 THE COURT: You said Jurick?

12 MS. OSTEEN: Durig, D-u-r-i-g.

13 Thereupon,

14 BRIAN ROBERT DURIG

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat in the witness stand
17 and state your full name for the record.

18 THE WITNESS: Brian Robert Durig, D-u-r-i-g.

19 DIRECT EXAMINATION

20 BY MS. JURICK:

21 Q. Mr. During, would you please tell the jury a little
22 bit about what you do?

23 A. Uhm, I'm basically a forensic engineer. I have a
24 background in, B.S. in medicine and a Ph.D. in mechanical
25 engineering and we basically look at accidents and fires and

1 investigate what's happened, why it happened and basically
2 who is responsible if there is some type of --

3 THE COURT: I'm sorry, sir. Speak into the
4 microphone and I will ask you to speak up a little
5 louder.

6 BY THE WITNESS:

7 A. Okay. We basically look at different types of
8 accidents to figure out what happened and why and who may be
9 responsible.

10 BY MS. OSTEEN:

11 Q. And do you have a business?

12 A. Yes. I do.

13 Q. Can you tell us a little bit about that?

14 A. I work at Summit Engineering. I started in the
15 forensic business on June 1, 1991, so going on 28 and a half
16 years. I went over to Summit Engineering in January 1994 and
17 have been there the last 25 years.

18 Q. And focusing on the fire investigation portion of
19 y'all's work, what do you do in fire investigation?

20 A. We do what's called origin cause to figure out where
21 the fire started and why and then as an engineer we will go in
22 and help other origin experts that say that that fire is in
23 the kitchen, come in and look at the electrical, look at the
24 appliances and tell us why it started here so we'll do both
25 origin as well as the specific cause of the fire.

1 Q. And are you a member of any professional
2 organizations?

3 A. Yes. I'm a member of the IAAI, International
4 Association of Arson Investigators, the National Association
5 of Fire Investigators. There's a number of other
6 organizations.

7 Q. And have you had any publications in the field?

8 A. Not publications. We stay too busy doing
9 investigations so I work pretty much six days a week so it's
10 not a lot of free time.

11 Q. Right. And about -- Can you give a number about how
12 many investigations you're a part of yearly?

13 A. Uh, yearly, between 200 and 250 fires or 250
14 investigations. Of those I couldn't tell you how many fires.
15 35, 40, 50 percent. Over the years what we used to be able to
16 do in a day now takes three, four, five days so you can't do
17 as many fires because it takes a whole lot longer to do and
18 multiple days where before you could go in and figure it out
19 pretty quick so you do fewer fires and spend more days on
20 it.

21 Q. Have you ever testified before?

22 A. Yes.

23 Q. And have you ever been qualified as an expert before
24 in fire investigation?

25 A. Yes, ma'am.

1 MS. OSTEEN: Your Honor, at this time I would ask
2 for Mr. Durig to be qualified as an expert in fire
3 investigation.

4 THE COURT: Any voir dire?

5 MR. EATON: Very briefly, Your Honor.

6 VOIR DIRE EXAMINATION

7 BY MR. EATON:

8 Q. This sounds like primarily your experience relates
9 to private industry; is that correct?

10 A. As far as private investigation. I mean,
11 investigations for the private side. Yes.

12 Q. Yes, sir. And so it would predominantly be on
13 behalf of say insurance companies; is that correct?

14 A. Insurance companies, individuals, corporations.

15 Q. And you said that of your work that relates to
16 arson, it may be less than 50 percent of what you do?

17 A. Well, yeah. Arsons, yeah, because there's not very
18 many that are arson. But as far as fire investigations, you
19 got to do the fire first before you can determine it's arson,
20 but you still look at every case as it may be an arson so 50
21 percent, what's that, 80 fires a year. It's a good bit.

22 MR. EATON: Thank you.

23 THE COURT: Any objection to his expertise?

24 MR. EATON: No objection.

25 THE COURT: What?

1 MR. EATON: No objection to his expertise.

2 THE COURT: Okay. Thank you.

3 MS. OSTEEEN: Thank you, Your Honor.

4 DIRECT EXAMINATION CONTINUED

5 BY MS. OSTEEEN:

6 Q. And you were brought in on this case to look at this
7 case?

8 A. Yes, ma'am.

9 Q. And what did you do in your, when you were reviewing
10 it?

11 A. Initially went out to the site a couple months after
12 the fire some time ago during 2017. Looked at photographs
13 that the fire department and the fire investigators had taken
14 for the county and subsequently looked at their reports.
15 Looked at the timing issues and basically somewhat agreed with
16 them on what they found, not specifically on every point but
17 in general I agree with them.

18 MS. OSTEEEN: And I'm gonna show the witness what is
19 already marked into evidence as photographs or State's
20 Exhibit 41, State's exhibit 26, 25, 22, 21 and 20.

21 THE COURT: Without --

22 MR. EATON: They're already in, Your Honor.

23 THE COURT: Yeah.

24 MR. EATON: They're our exhibits.

25 BY MS. OSTEEEN:

1 Q. Would you take a look at those?

2 A. (Witness complies.)

3 Q. Do those look familiar to you?

4 A. Yes, ma'am.

5 Q. And those are some of the photos that you looked at
6 in the course of your investigation?

7 A. Yes, ma'am.

8 MS. OSTEEN: Your Honor, I'm now approaching the
9 witness with what has been marked as Defense Exhibit 6
10 and 7.

11 THE COURT: Are they already in evidence?

12 MS. OSTEEN: These are not.

13 THE COURT: Any objections?

14 MR. EATON: No objection, Your Honor.

15 THE COURT: All right.

16 BY MS. OSTEEN:

17 Q. Are those two pictures that you looked at in the
18 course of your investigation?

19 A. Yes. Those photographs were taken the day of the
20 fire.

21 MS. OSTEEN: Okay. And, Your Honor, I would ask
22 that those be moved into evidence.

23 THE COURT: Without objection.

24 MS. OSTEEN: Thank you, Your Honor.

25 BY MS. OSTEEN:

1 Q. So after you investigated it, the first thing I want
2 to talk about is the point of origin determination that the
3 fire investigators made. They determined that points one and
4 two were in that bedroom?

5 A. Yes.

6 Q. And can you just tell me about what your take of the
7 determination of there being two points of origin in the
8 bedroom?

9 A. Yes. Being an engineer a point to me is a very
10 specific spot.

11 THE COURT: Once again, sir, please talk into the
12 mic.

13 BY THE WITNESS:

14 A. As an engineer when I talk about a point, I talk
15 about a very specific - a lot of times it's referred to point
16 of origin but really it's an area of origin because you can't
17 tell exactly where everything came together, the heat, the
18 fuel source and oxygen so I would probably refer to it as an
19 area of origin instead of a specific point of origin. But in
20 the bedroom in the back right CD corner back right corner of
21 --

22 BY MS. OSTEEN:

23 Q. Let me slow you down there. When you say the CD
24 corner, that would be - what does that mean to you?

25 A. A is front, B is left, C is back, and D is right, so

1 CD would be the back right hand corner of the bedroom. So
2 when you look at the CD corner of the bedroom, we have a
3 closet on the left side of it if I'm standing at the hallway
4 door looking in and then we have a bed that's more to the
5 right. Those two areas are basically what we call
6 communicating. If I have a fire in the closet, it's gonna be
7 affecting the room in the bedroom and the end of the bed that
8 would be closest to the closet.

9 Q. Mr. Durig, I'm handing Mr. Durig what has been
10 marked State's Exhibit 19, that map. Do you recognize that?

11 A. Yes.

12 Q. Can you just point to the jury where you're talking
13 about just so they're located to that?

14 A. This would be the front of the house, this would be
15 the CD corner so this is the bedroom and this is the closet
16 here and there's a 1 on the bed and a 2 in the closet.

17 Q. So the two points of origin that are in bedroom
18 number 1?

19 A. They're listed as two points of origin.

20 Q. Okay. So keep telling us about what you found with
21 those two points.

22 A. Well, when you look at the fire damage in the
23 closet, it's rather extensive, it's burned through a number of
24 the joists or the studs, the Sheetrock is missing. Above it
25 has burned the ceiling out. It's burned the roof out and so

1 we had a big fuel load in that closet that burned vertically
2 up. But then when you look at the bedroom, exhibit 22 and
3 defense 7, you will see that the end of the bed that's closest
4 to the closet is the heaviest fire damage on the bed but you
5 kind of expect that because that had the heaviest fuel load
6 burning in the closet several feet away.

7 Q. Can you point that out on this picture?

8 A. This will be the closet on this side and then we
9 have the end of the bed, the piece of furniture then moved
10 away from the wall. But when you look at exhibit 6 and the
11 bed is turned up on its end, you can see the load damage on
12 the bed is on the left hand side of this photograph which is
13 in close proximity and basically open to what's burning in the
14 closet. So the if closet is burning here and I'm standing
15 four or five feet away, I'm gonna feel that heat. So
16 basically the heat flux from the closet and the fuel load then
17 burned the end of that bed off and that's why we have fire
18 damage all the way down to the floor only on that end of the
19 bed, not all the way around the bed. It didn't consume the
20 bed. It only burned on the floor level on the side closest to
21 the closet.

22 Q. And so what would that tell you as far as
23 identifying two separate points of origin?

24 A. I could not separate the two to say that they are
25 not communicating. This fire can't cause this fire. So to

1 conclude that both those were ignited separately, I don't know
2 how you can do that because the fire in the closet which is
3 more fuel damage, more fire in there can't cause a fire five
4 feet away. I can't do that scientifically. No.

5 Q. And, Mr. During, moving on, when - do you know when
6 the fire department was called in this case?

7 A. 11:53.

8 Q. Okay. Did the fire report indicate anything about
9 when the fire was cleared?

10 A. It indicates that at 11:53 there was an alarm. At
11 11:53:29 there was an alarm. At 00:01:26 the first engine and
12 the first fire department personnel arrived so we've got an
13 eight minute delay from the time of alarm until the first fire
14 personnel arrived. Then you got a couple minutes while
15 they're setting up their equipment and setting up the hoses
16 before they start putting water on the fire. Two to five
17 minutes. Two to four minutes. The next line is typically
18 when the fire is controlled. They will say it took us X
19 amount of time to control. That's blank.

20 Q. Mr. Durig, when you say fire control, what does that
21 mean?

22 A. That the fire is no longer burning. That they have
23 it under control and they're putting it out and it's out.

24 Q. And that part is not indicated?

25 A. That part is not in there. We do know from the time

1 stamps on the photographs that the first one that was taken of
2 the front of the house was taken at 1:38 a.m. so we know
3 within an hour and a half they were already done and started
4 taking photographs inside.

5 Q. Okay. What can you tell us based on your
6 investigation and the review of the pictures about the time of
7 this fire?

8 A. Uhm, like I say, it was called at 11:53. Typically
9 heavy fuel load like say in a bedroom or a family room, we
10 could burn out of the house in less than five minutes so
11 busting out the windows you're burning up on the outside of
12 the house so it doesn't take but a few minutes for that to
13 occur. In this case we have a bigger fuel load in the
14 closet. We burn a little bit longer in the closet than we
15 did in the bedroom. We don't have soot banked all the way
16 down to the floor in the bedroom. There's areas that are
17 protected meaning that we didn't fill the master bedroom up
18 with smoke during the fire. It's more in the closet burning
19 up through which is what the fire department saw when they got
20 there, fire coming up from the middle of the house.

21 Q. And when you said that it wasn't filled with smoke,
22 can you tell me what that means to you and being filled with
23 smoke?

24 A. Uhm, that the smoke has somewhere to go, either a
25 hole in the roof or the ceiling in the closet so the

1 combustible products in that bedroom were not stuck in that
2 bedroom so they've got a place to escape so escaping out of
3 the closet, the hole into the attic space out of the house so
4 those two didn't burn at the same time because otherwise the
5 master bedroom would be full of smoke all the way to the
6 floor.

7 Q. And you said that the line of demarcation in this
8 room. Can you point that out to the jury?

9 A. You can see it right around the edge the bed and
10 then the other photograph, 41, you can see on the door that's
11 there that, you know, we're not banked all the way down to the
12 floor. And then when you look at the door coming in from the
13 hallway, you can see there's still paint on the bottom half of
14 the door. It's burnt one way or paint off at the top of the
15 door, but it's not filled the room where we've got black soot
16 coming out at the base of the floor.

17 Q. And so if the paint isn't burnt off the walls, what
18 does that tell you as an investigator?

19 A. Well, that that room didn't fill with smoke, that we
20 had a fire somewhere else that allowed it to escape. It goes
21 out the window. It will go up and get the soffit. If we can
22 look at the photographs from the back of the house that showed
23 the window and there's just a small amount of fire coming out
24 of that master bedroom window so the most of the fire got in
25 the attic through the closet so that would be the primary fuel

1 load in that room.

2 Q. And I know that you can't put a specific time on a
3 fire, but what kind of indicators can you tell us about the
4 timing of this fire?

5 A. Uhm, like I say, typically five minutes I can get a
6 fire out of the bedroom so if a fire is burning in the
7 bedroom, it's gonna take it up and burn out the windows.
8 We've got Sheetrock that's typically 20 minutes of protection.
9 We still have all that Sheetrock in the bedroom. We don't
10 have it in the closet. We have a lot more fuel load and a
11 longer burn time in the closet, but we also know that once
12 the fire department was called, there's 8, 10, 12 minutes of
13 free burn before they're able to put water on the fire. So
14 when you take a look at a room like a closet, you know, 15, 20
15 minutes you're gonna burn into the attic and then you're gonna
16 take the attic and burn up into the ceiling so 20, 30 minutes
17 maybe of burning in the closet up through the roof and then
18 less than that in the master bedroom.

19 Q. And so are you saying that prior to the fire
20 department being called, when would the fire have started?

21 A. Probably in the neighborhood of 20 minutes because
22 it's gonna get out where people can see it, maybe 25 minutes
23 when it starts burning through and being able to see it.

24 Q. And people have talked a little bit about delayed
25 ignition. What does that mean?

1 A. Delayed ignition is where you ignite something or
2 have some device that is set to go off and delay the time
3 between the device being initiated and actually starting a
4 fire. So you may set a timer on an oven to come at 4:00 and
5 put stuff in the oven so it would catch on fire at 4:00 when
6 you weren't there.

7 Q. Is there any indication based on your investigation
8 that that happened in this case?

9 A. No. I have not seen any evidence of any delayed
10 ignition source. We do know in the garage that when the fire
11 department arrived that they observed some smoldering at a
12 basket that had been ignited near an HVAC unit so it was still
13 smoldering. It's putting off smoke. You can see where the
14 fire was. Something like that is five minutes. It's not
15 gonna continue to burn.

16 Q. And when you say five minutes, what do you mean by
17 that? Five minutes from the time it's lit to going out or
18 what does the five minutes mean?

19 A. Yeah. Just a small little fuel load in a little
20 basket with paper in it is gonna burn five to ten minutes and
21 then it's gonna go out or if it's gonna catch on fire, then
22 it's gonna continue to burn but that didn't happen in that
23 location. So, I mean, you're talking, you know, about a very
24 short period of time from the time that that basket was
25 ignited in the garage until the fire department got there.

1 Q. And how confident do you feel in that timeline of 20
2 to 30 minutes before the fire department being called?

3 A. Very confident. We run tests at different
4 locations. Burn houses. It's part of training and again, in
5 five minutes I can get a fire from nothing to blowing out a
6 room and burning an attic up. So to give it in a closet when
7 there's not a separate window with Sheetrock, again, 20
8 minutes maximum, but that assumes you don't have fire going
9 through the light fixtures and getting into the attic so even
10 with that, you know, 20 minutes. But then you've got to add
11 in, even if you give it 30 minutes and take 10 minutes off for
12 the fire department once they get there, again, you're talking
13 20 minutes before the alarm decision.

14 MS. OSTEEEN: Thank you, Your Honor. No further
15 questions. Mr. Durig, please answer any questions that
16 the State might have.

17 THE COURT: Yes, sir.

18 MR. EATON: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. EATON:

21 Q. Mr., is it Durig?

22 A. Durig. Yes, sir.

23 Q. Mr. Durig, good afternoon.

24 A. Good afternoon.

25 Q. Now, when you testify, Mr. Durig, do you charge a

1 fee to testify?

2 A. Yes.

3 Q. Did you charge a fee in this case?

4 A. Yes.

5 Q. Will you please tel us what that fee was, sir?

6 A. It's two thirty-five an hour for my work.

7 Q. Now, when did you go to the scene of this fire?

8 A. It was November 7th, I think, 2017.

9 Q. And did you take pictures yourself there?

10 A. No. I did not. There had been some that had been
11 moved around and I wanted the fire department's photographs.

12 Q. Did you go inside?

13 A. Yes.

14 Q. So, Mr. Durig, are you saying that you can determine
15 with a degree of scientific certainty exactly when a fire like
16 this was set? Is that your testimony?

17 A. No. I didn't say exactly when it was set. I can
18 tell you it was a short burn time because we didn't consume
19 the room. From testing that we have done I know I can burn a
20 room up in five minutes and we don't have the master bedroom
21 burned where we went to flashover or full room involvement
22 which is, you know, five, eight minutes so we don't have that
23 much free burning in the master bedroom. We do have it in the
24 closet where we burned up through the ceiling and the
25 Sheetrock which is 20 minutes. From experience doing fire

1 investigations for 29 years an hour long fire in an attic
2 there's nothing left to the roof or attic itself. It's
3 completely consumed because it's so open and there's so much
4 fuel load up there and so much oxygen an attic burns as fast
5 as any room.

6 Q. And so are you saying it's impossible for an open
7 source fire to readily combustible materials from the time
8 that the flame is put to those materials to the time that
9 there's a -- What did you call it when it turns over?

10 A. Flashover or full room involvement.

11 Q. -- flashover, is it possible that that could be much
12 longer in some cases?

13 A. Much longer than what, for five minutes?

14 Q. Yes, sir.

15 A. It depends on what you're burning, but a typical
16 room that's got enough fuel to burn it up and to burn out of
17 it, no, it's typically five, 10 minutes max.

18 Q. But you agree this is an incendiary fire, right?

19 A. There are indications that there, in my opinion
20 there were three areas of origin, yes, which typically, if you
21 can assume that they are occurring at the same time, then you
22 can classify that as incendiary.

23 Q. So you disagree with the defense's other expert who
24 said that this fire could have gone for an hour or more?

25 A. For an hour or more? Well, if it's considering the

1 amount of time the fire department is putting the fire out --

2 THE COURT: Stop, sir. This is cross examination.

3 You've got to answer his question yes or no, and then you
4 can explain your answer, okay? But on cross examination
5 people are entitled to a yes or no answer. It's phrased
6 that way and you can explain your answer.

7 BY THE WITNESS:

8 A. All right. I'm not sure there's a yes or no answer.
9 I'll say no.

10 THE COURT: No. I'm sorry. That's the way it
11 works. That's what the rules say. Go ahead. Ask the
12 question again.

13 BY THE WITNESS:

14 A. Did I agree with him?

15 BY MR. EATON:

16 Q. Do you agree with him?

17 A. Yes. If you consider the time that the fire
18 department wasn't there, before they got there and the time
19 that they're fighting the fire which is another 10, 20
20 minutes, that's 30 minutes to that would give you 30 minutes
21 or less from the time the fire started until it got called in.

22 Q. But in your opinion not before they started fighting
23 it going backwards more than an hour?

24 A. Correct. I would not expect it to be more than an
25 hour. No, sir.

1 Q. Now, are you familiar about who was at the house
2 that day?

3 A. No, sir.

4 Q. Do you know who Roger Dukes is?

5 A. No, sir.

6 Q. Do you know anything about Mr. Gleaton's cell phone
7 records?

8 A. No, sir.

9 Q. So would it surprise you if Mr. Gleaton's last call
10 in a that area was right before 10:00 p.m.?

11 A. I have not addressed any of that issue so I don't
12 know if it was supplied to me or not.

13 MS. OSTEEEN: Objection.

14 THE COURT: Basis.

15 MS. OSTEEEN: Outside of the scope.

16 THE COURT: It's cross examination. I disagree.

17 He's an expert. You may ask that question. He's given
18 an opinion. The Solicitor can ask him.

19 BY MR. EATON:

20 Q. And so, I mean, in that same vein, would it surprise
21 you if Mr. Dukes was in the area at least 20 minutes away at
22 9:45? Are you familiar with that --

23 A. No, sir.

24 Q. -- in your investigation?

25 A. No, sir.

1 Q. So if two people are leaving an area roughly around
2 the same time, does that tell you anything about which one of
3 them would have set a fire?

4 A. No. It tells you zero.

5 Q. And in investigating a fire, if someone says I set
6 that fire, is that of evidentiary value to you?

7 A. I would consider it. Yes.

8 Q. You would consider it?

9 A. Yes.

10 Q. So it is of evidentiary value?

11 A. Yes, sir.

12 MR. EATON: Okay. Thank you. No further
13 questions.

14 THE COURT: Anything on redirect?

15 MS. OSTEEN: Thank you, Judge. Very briefly.

16 REDIRECT EXAMINATION

17 BY MS. OSTEEN:

18 Q. Mr. Durig, you spoke to Investigator Nisky in this
19 case. Did you speak to him?

20 A. Yes. While we were outside earlier. Yes.

21 Q. And when you were talking about the investigation of
22 the fire what, what did y'all include in the timeline?

23 A. I told him I included the time it took from the time
24 that the alarm was called until the fire department arrived
25 and started putting water on the fire.

1 Q. And so when you say the time of the fire, that is
2 from the start of the fire being set to the time the fire is
3 being put out?

4 A. Correct. That's the total amount of time that the
5 combustion is actually going on or actually burning and
6 consuming wood so if you look at how much consumption is in
7 the building materials, you've got to consider the time after
8 the alarm until it was fully extinguished.

9 Q. And that would put you to about 20 or 30 minutes
10 before a fire being called after it was started?

11 A. Correct.

12 MS. OSTEEN: Thank you. No further redirect.

13 THE COURT: Anything further?

14 MR. EATON: Nothing further, Your Honor.

15 THE COURT: You may step down, sir. Call your next
16 witness.

17 MS. JURICK: Your Honor, we call Heather Collins.

18 THE COURT: Who? Heather Collins?

19 MS. JURICK: Heather Collins.

20 Thereupon,

21 HEATHER COLLINS

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat on the witness stand
24 and state your full name for the record.

25 THE WITNESS: Heather Collins.

1 DIRECT EXAMINATION

2 BY MS. JURICK:

3 Q. Hi, Ms. Collins. Welcome back.

4 A. Thank you.

5 Q. Where do you work again?

6 A. Columbia Richland 911.

7 Q. And what is your job there?

8 A. I'm custodian of records.

9 Q. So my understanding is that you take in calls and
10 then you transfer them to the police? Maybe not you
11 specifically, but that's what happens?

12 A. It can happen that way. Yes, ma'am.

13 Q. And how are the records -- You're aware of how the
14 records are kept?

15 A. Yes.

16 Q. And I have asked you to find a report regarding a
17 call at 12:07 on October 10th, 2017?

18 A. Yes.

19 Q. Have you reviewed that report?

20 A. I have.

21 Q. Is that a fair and accurate representation of that
22 report?

23 A. Yes. It is. I have an identical copy.

24 MS. JURICK: Your Honor, I move to put this into
25 evidence.

1 THE COURT: Well, show it to them. They need to see
2 it first.

3 MS. JURICK: (Proffering.)

4 MR. EATON: No objection, Your Honor.

5 THE COURT: Okay.

6 MS. JURICK: We move to enter Defendant's Exhibit 7.

7 THE COURT: Without objection, ma'am.

8 MS. JURICK: And similarly --

9 THE COURT: What?

10 MS. JURICK: 8. Entering Defense Exhibit 8.

11 THE COURT: All right.

12 BY MS. JURICK:

13 Q. And similarly you reviewed the audio radio traffic
14 in this case?

15 A. Yes.

16 Q. For the same incident?

17 A. (Witness nodding head.)

18 MS. JURICK: And you've reviewed that recording.
19 So, Judge, I would ask to play a portion of that
20 recording into the record.

21 THE COURT: That's fine with me. Any objections?

22 MR. EATON: No objection.

23 THE COURT: All right.

24 MR. EATON: No. I would ask that she play the whole
25 thing. I'm sorry. I missed that.

1 MS. JURICK: I'm happy to play the whole thing.

2 THE COURT: Beg your pardon.

3 MS. JURICK I'm happy to play the whole thing, Your
4 Honor.

5 THE COURT: All right. All right.

6 MS. JURICK: Just trying to save time.

7 THE COURT: I think that goes to the doctrine of
8 completeness or something. Somebody raised that.

9 MS. JURICK: Sure. No problem.

10 (Playing Defendant's Exhibit number 8.)

11 BY MS. JURICK:

12 Q. Are you able to explain what the radio traffic is?

13 A. Yes.

14 Q. Explain for us real quick what we listened to just
15 generally.

16 A. Okay. It's communication between the dispatcher and
17 the responding unit. Uhm, without going line by line they
18 basically said that there was a victim, uhm, and then came
19 back later and stated that the individual was no longer alive
20 and that it would require law enforcement to come out to do an
21 incident report and that was them discussing that. Following
22 that, uhm, the way our computer system works when there is an
23 incident on location, we have the capability to go back in and
24 see if there are prior incidents at that location so that we
25 can see if there are previous incidents that, you know, to

1 protect our responders as well as to know what we're getting
2 into and that was the communication between the dispatcher and
3 the officer regarding the other things that had taken place on
4 those previous dates.

5 MS. JURICK: All right. Thank you. No further
6 questions.

7 MR. EATON: I would actually offer as State's 147
8 the actual phone call that was just played.

9 THE COURT: All right.

10 MR. EATON: I believe we only entered the record; is
11 that correct?

12 THE COURT: You would like to play this now with
13 this witness?

14 MR. EATON: I would like it to be an exhibit that's
15 in evidence. I think only the documents were submitted,
16 not the call. So I'm offering the call itself as an
17 exhibit.

18 THE COURT: Okay. Any objection?

19 MS. JURICK: No objection.

20 THE COURT: All right. Without objection. That
21 will be State's number?

22 MR. EATON: 147.

23 THE COURT: 147. All right, sir.

24 CROSS EXAMINATION

25 BY MR. EATON:

1 Q. So when there's a specific incident that has
2 multiple calls -- Let me back up. Do y'all save the audio of
3 every single call every single time forever?

4 A. No, sir. We do not.

5 Q. And so does someone have to request for a call to be
6 saved for it to be saved?

7 A. That is exactly correct. The State law requires 60
8 days. Our agency actually holds our for 90 but after that
9 time if we don't receive a request, this information gets
10 removed.

11 Q. And so on a scene of a call that has all kinds of
12 first responders, multiple units of every type, is it possible
13 that you would get multiple calls for a big scene?

14 A. Oh, definitely.

15 Q. And if someone didn't request every single call be
16 restrained, is it possible that they would not all be
17 retrained?

18 A. That is possible. Yes, sir.

19 Q. Okay. So do you know if every call was retained in
20 this case?

21 A. I did not hear this call here.

22 Q. Okay. So you don't know if every call was
23 retained?

24 A. No.

25 Q. Now, what's a ten seventy?

1 A. A fire.

2 Q. So when they were referencing a call for shots fired
3 that came out at the same time as the ten seventy, that means
4 at the same time as the fire call?

5 A. Correct.

6 Q. So right around the same time. So if someone had
7 called from a totally different location to report that there
8 had been a murder at that house, it would have been put under
9 the same incident, right?

10 A. (Witness nodding head.)

11 Q. And that could have been the call that they were
12 referring to?

13 A. Yes.

14 Q. What is a ten eighty-two?

15 A. That is a domestic incident.

16 Q. So when the dispatcher is talking about ten
17 eighty-twos, what do they mean there?

18 A. Typically domestic disputes between partners or
19 family.

20 Q. And where was she talking about them happening?

21 A. It was showing at that prior address.

22 Q. So the same place they were responding to the fire
23 about?

24 A. Yes.

25 MR. EATON: Nothing further. Thank you.

1 THE COURT: Nothing further?

2 MR. EATON: No, Your Honor.

3 THE COURT: Anything further?

4 MS. JURICK: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. JURICK:

7 Q. In that domestic dispute y'all were just talking
8 about, it says in there that it was called in as between two
9 males?

10 A. No. That was a ten forty-nine and a ten forty-nine
11 is a civil disturbance between two males evidently and I
12 believe she said that it pertained to an argument over
13 belongings.

14 Q. And it also said shots fired at 11. Do you remember
15 that part?

16 A. Shots fired?

17 Q. Not related to that. A different part of the call
18 said shots fired at call at 11.

19 A. Shots fired at 11?

20 Q. Yes. Just that that is included in there?

21 A. In the audio?

22 Q. Yes.

23 A. The officer asked was their shots fired earlier at,
24 yeah, 23:00, 11:00 and she went in and said, yes, there was a
25 call received simultaneously with the fire.

1 MS. JURICK: I have no further questions. Thank
2 you.

3 THE COURT: Anything further of this witness?

4 MR. EATON: No, Your Honor.

5 THE COURT: You may step down, Ms. Collins. You're
6 excused. Any objection?

7 MS. SAMPSON: No objection, Your Honor.

8 THE COURT: All right. Call your next witness.

9 MS. YOUNG: Your Honor, we call Chris Watkins to the
10 stand.

11 THE COURT: Let me give a short break. It's been 45
12 minutes or so after lunch, so everybody don't talk about
13 the case. We'll bring you back out shortly.

14 (Whereupon, the jury entered the jury room at 2:20
15 p.m.)

16 (Short break.)

17 BAILIFF: All rise.

18 THE COURT: Please take your seats. Everybody
19 ready?

20 MR. EATON: The State's ready.

21 MS. YOUNG: The defense is ready, Your Honor.

22 THE COURT: Bring the jury in please.

23 (Whereupon, the jury entered the courtroom at 2:35
24 p.m.)

25 THE COURT: Welcome back members of the jury. Ms.

1 Young is going to call the next witness on behalf of Mr.
2 Gleaton.

3 MS. YOUNG: The defense calls Christopher Watkins to
4 the stand.

5 Thereupon,

6 CHRISTOPHER JAMES WATKINS
7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat on the witness stand
9 and state your full name for the record.

10 THE WITNESS: Christopher James Watkins.

11 DIRECT EXAMINATION

12 BY MS. YOUNG:

13 Q. Good afternoon, Mr. Watkins. What is your
14 occupation?

15 A. I am a certified forensic computer examiner and a
16 SLED licenses private investigator.

17 Q. And where are you employed?

18 A. I'm employed with --

19 THE COURT: I'm sorry. I've said this many times.
20 Pull up the microphone, talk directly into it so we can
21 hear you better, sir.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 BY THE WITNESS:

25 A. I'm employed with Certified Computer Forensics.

1 BY MS. YOUNG:

2 Q. And how long have you been licensed and working as a
3 private investigator?

4 A. Since February 2010.

5 Q. And can you tell us a little bit about background?

6 A. Yes. My background is in information technology and
7 computer science. I studied at Midlands Technical College
8 from 2003 to 2005 after which I took independent courses
9 pursuant to those fields and also began --

10 THE COURT: I apologize, sir. But please take the
11 microphone, bring it closer to you so I can hear you
12 better. I have difficulty hearing. Move it over. Pull
13 it closer to you.

14 THE WITNESS: How's this?

15 THE COURT: All right.

16 BY THE WITNESS:

17 A. Is that good? Okay. I'll start the answer over.
18 My background is in information technology and computer
19 science. I studied at Midlands Technical College between 2003
20 to 2005 after which I took independent studies pursuant to
21 those fields and in about 2007 I began studying in the field
22 of digital forensic science, and in 2010 I became licensed as
23 a private investigator and began working professionally as a
24 digital forensic examiner. I earned a certification, the
25 computer forensic -- I'm sorry. Certified forensic computer

1 examiner through IACIS, which is the International
2 Associations of Computer Investigative Specialists and they
3 are accredited through the Forensic Specialties Accreditation
4 Board.

5 BY MS. YOUNG:

6 Q. What is the Forensic Specialties Accreditation
7 Board?

8 A. So they are an independent board designed to
9 accredit professional entities who are involved in all types
10 of forensic science, not just digital forensics.

11 Q. Okay. And are you a member of any organizations in
12 your field?

13 A. Yes. I'm an associate member of IACIS and a member
14 of the American Society of Digital Forensics and eDiscovery.

15 Q. And what is digital forensics?

16 A. Digital forensics is the area of forensic science
17 that is comprised of discovery, securing, preserving,
18 authenticating and collecting digital data or digital evidence
19 from devices such as computers and cell phones for the use
20 generally for litigation.

21 Q. And in your experience how many cases involving
22 digital forensics have you been involved with?

23 A. I don't know the exact amount, however, having
24 created my own digital forensics company on average per year
25 we take about 150 cases.

1 Q. And does part of your work as a private investigator
2 and digital forensics expert involve reviewing cell phone
3 records and tower logs?

4 A. Yes.

5 Q. And have you ever testified and been qualified as an
6 expert?

7 A. Yes. I've been qualified as an expert in digital
8 forensic science 17 times in United States Federal Court,
9 South Carolina Circuit Court, General Sessions, Common Pleas
10 and Family Court.

11 Q. And you indicated that as a private investigator and
12 expert in the field you've testified. Has that always been
13 for the defense?

14 A. No. I've also testified for the State.

15 MS. YOUNG: Your Honor, at this time we'd ask that
16 he be qualified as an expert in the field of digital
17 forensics and cell tower analytics.

18 MR. EATON: And I have no problem with digital
19 forensics. I didn't hear any testimony about expertise
20 in cell phone towers, Your Honor.

21 THE COURT: Neither did I.

22 BY MS. YOUNG:

23 Q. Okay. Do you have any training in cell phone
24 records and tower, cell tower analytics?

25 A. Yes. My training is through Hawk Analytics.

1 They're the developers of CellHawk which is a cell tower
2 analysis software.

3 Q. Okay. What does that training entail?

4 A. Uhm, understanding the records, uhm, theoretical
5 location data, how to interpret those records and report on
6 them.

7 MS. YOUNG: Your Honor at this time I would move to

8 --

9 MR. EATON: May I voir dire on that point, Your
10 Honor?

11 THE COURT: Yeah. Voir dire, sir.

12 VOIR DIRE EXAMINATION

13 BY MR. EATON:

14 Q. So the -- I'm sorry. That was CellHawk; is that
15 correct?

16 A. Yes, sir.

17 Q. And that's a software?

18 A. It is.

19 Q. And you said you're training is through them?

20 A. Through Hawk Analytics which is the developer of
21 this software.

22 Q. And so is that essentially kind of teaching you how
23 to use their software?

24 A. Not just that because we have to also understand how
25 the records are put together through every carrier where we

1 may get records from. That way we can, when we process the
2 records, we can detect any errors with the software, any
3 things like that.

4 Q. But outside of a software, have you gone to
5 trainings with AT&T or Verizon or other companies like that?

6 A. No. I have not.

7 THE COURT: Could I see y'all for a moment?

8 (Side bar off the record.)

9 THE COURT: Members of the jury, please go out for a
10 moment. Please don't discuss the case, all right? Thank
11 you.

12 (Whereupon, the jury entered the jury room at 2:45
13 p.m.)

14 THE COURT: Now, let's back up a little bit. This
15 morning you proffered his testimony regarding the ability
16 - the inability to go back and see something that was not
17 observed on the record about Mr. Roy's cell phone, but
18 when you asked to qualify him as an expert a moment ago,
19 you said in cell tower technology also.

20 MS. YOUNG: Cell tower - cell phone records and cell
21 tower. I think I just said cell tower analytics.

22 THE COURT: Well, when he was proffered this
23 morning, we didn't get into that point.

24 MS. YOUNG: Your Honor, we didn't address the cell
25 phone this morning.

1 THE COURT: Ma'am.

2 MS. YOUNG: We didn't address the cell phone this
3 morning.

4 THE COURT: Okay. Just relax. Relax. I'm just
5 trying to make a record. And his voir dire questions --
6 I might have some myself.

7 EXAMINATION

8 BY THE COURT:

9 Q. What training and experience do you have in
10 connection with cell phone tower technology, sir?

11 A. Yes, sir. I --

12 Q. I mean, have you been to classes? Have you written
13 any papers or anything?

14 A. I have not made any publications.

15 Q. What classes or seminars have you been to in
16 connection with cell phone tower technology?

17 A. The seminars are offered through Hawk Analytics.

18 Q. What now?

19 A. Through the company Hawk Analytics.

20 Q. When?

21 A. Uhm, they've --

22 Q. Have you testified before as an expert in terms of
23 cell phone tower technology?

24 A. Yes, sir.

25 Q. When? Have you been qualified as an expert in cell

1 phone -- I need to ask these questions.

2 A. Understood.

3 Q. Have you --

4 A. No, Your Honor. I have testified regarding cell
5 tower records.

6 Q. All right. Then let me back up. You have never
7 been qualified as an expert to testify about cell phone tower
8 technology; is that correct?

9 A. I have not.

10 THE COURT: Okay. I can't admit him then under
11 those circumstances. If he's not received any training
12 regarding cell phone tower technology he can't be
13 admitted as an expert. Now, we can back up a little bit.
14 So you can't be admitted as an expert regarding that
15 particular cell phone tower technology. We understand
16 that, right?

17 MS. YOUNG: Yes.

18 THE COURT: Now you want to qualify him as an expert
19 in what other areas?

20 MS. YOUNG: Yes, Your Honor. Just for the record, I
21 would like to say that we do believe that he is
22 qualified.

23 THE COURT: Well, he said he's not received any
24 training.

25 MS. YOUNG: He said that he did, in fact, receive

1 training from the Hawk Analytics.

2 BY THE COURT:

3 Q. Okay. But you've never been qualified as an expert
4 before?

5 A. Your Honor --

6 Q. Go ahead.

7 A. -- in cases that I have been asked to do forensic
8 analyses, generally there's also cell tower records involved
9 in cases, cases like this one and there's been occasions where
10 I have testified regarding both sides, both digital forensics
11 and cell tower records and --

12 Q. My question to you, sir, is this: Have you been
13 qualified as an expert to testify about cell phone tower
14 technology?

15 A. No, Your Honor.

16 THE COURT: Okay. All right. Continue with your
17 questions and you can try to qualify him and I'll give
18 you a chance to voir dire.

19 BY THE COURT:

20 Q. But that's a simple question. And you've never been
21 qualified as an expert before. I would assume that means
22 you've never testified as an expert before in terms of cell
23 phone tower technology; is that correct?

24 A. Well, I think the issue in the past --

25 Q. No. No. No. The issue is my question to you, sir.

1 And I'll repeat it again. Have you been qualified as an
2 expert to testify about cell phone tower technology? The
3 answer is no?

4 A. The answer is no.

5 Q. All right. So this is the first occasion where
6 you've been offered as an expert to testify in something
7 you've not been qualified to testify as an expert before?

8 A. Yes.

9 THE COURT: Okay. You may continue.

10 MS. YOUNG: Your Honor --

11 THE COURT: Well, I'm not gonna let him testify
12 in regards to cell phone tower technology as an expert.
13 That's my decision and for obvious reasons. Go ahead.

14 MS. YOUNG: Are we bringing --

15 THE COURT: You can qualify him in other areas that
16 he may be qualified as an expert.

17 MS. YOUNG: I believe Mr. Eaton indicated he had no
18 issue with him being qualified as an expert in digital
19 forensic evidence.

20 THE COURT: Is that true? Cell phone tower
21 technology.

22 MR. EATON: Well, as to digital forensics I was fine
23 with that. I think he has lots of expertise obviously in
24 that. I just heard about the cell stuff that he had
25 basically just done like on line seminars to use the

1 software and that was my challenge to that aspect.

2 Digital forensics, I've got no problem with that.

3 THE COURT: Okay. I'm just trying to get us all in
4 the same place so... Go ahead.

5 MS. YOUNG: It would be helpful, and I'm not trying
6 to be difficult, it would be helpful if you would let Mr.
7 Watkins explain why he has not been qualified as an
8 expert --

9 THE COURT: Sure. Go ahead.

10 MS. YOUNG: -- in cell tower analytics which I
11 believe is what he was trying to do. Just for the
12 record, Your Honor, I would like to do that.

13 THE COURT: Go ahead.

14 MS. YOUNG: I understand your ruling.

15 THE COURT: Well, if there's no objection, I don't
16 care one way or the other. I think I'm responsible as
17 the Judge to ask this question. Go ahead, Ms. Young.

18 MS. YOUNG: Sure.

19 DIRECT EXAMINATION CONTINUED

20 BY MS. YOUNG:

21 Q. Can you please tell the Court why it is that you
22 have not been qualified as a cell tower analytics expert
23 before?

24 A. In the past I have gotten cases like this one where
25 there's not just digital forensic - or digital evidence that

1 was due to an extraction of a cell phone or a computer or what
2 have you, but also cell tower records and in testimony in
3 court the attorney responsible for that case did not bring
4 that up as cell tower expert as an individual science, but
5 combined that with digital forensic science and so I've made a
6 point to educate these attorneys here that the proper way to
7 do it would not be under digital forensics because it is not
8 the same. It's not a digital forensic science. Cell tower
9 analytics is not, does not fall under digital forensics so
10 that's why I made that point.

11 THE COURT: All right. Any objection, Mr. Eaton?

12 MR. EATON: Not to the digital forensics --

13 THE COURT: Okay.

14 MR. EATON: -- Your Honor. Just to the tower stuff.
15 If we're done with voir dire on that, then that's my
16 objection.

17 THE COURT: What do you offer -- What do you -- Or
18 what are you trying to solicit from this witness about
19 cell phone technology and how it applies in this case?

20 MS. YOUNG: Well, Your Honor, he reviewed the cell
21 records and reviewed the cell tower logs and did --

22 THE COURT: Well, is he gonna testify, for example,
23 like when the call was made, he was at the bridge down on
24 Gervais Street or he was five miles away? What sort of
25 --

1 MS. YOUNG: Your Honor, I don't think anyone can
2 testify to that, but yes, he will be testifying that he
3 was pinging off certain towers at certain times.

4 THE COURT: Mr. Eaton, go ahead. Folks, first of
5 all, I don't have a dog in this fight. I don't really
6 care one way or the other, but my job as the Judge is to
7 make sure that what comes in should come in and so that's
8 why we give both sides an opportunity to make their case.
9 What's your position, Mr. Eaton?

10 MR. EATON: Your Honor, I mean, Your Honor has heard
11 his training on cell towers. It's totally in your
12 discretion, Your Honor. I think that having one, what I
13 heard was basically one class that's on the software.

14 THE COURT: On the Internet.

15 MR. EATON: I think so. So to me that's not enough
16 and it's totally in Your Honor's discretion.

17 THE COURT: Is the captain here, your cell phone
18 expert?

19 MR. EATON: Yes, Your Honor.

20 THE COURT: All right. I think it goes to the
21 weight and not admissibility. I will allow it for that
22 reason, but you have an expert here that you can recall
23 and clean it up a little bit. I'll admit him for the
24 first time. Anything further?

25 MS. YOUNG: No, Your Honor.

1 THE COURT: All right. Bring the jury back in. And
2 did the voir dire go to his training and was that
3 question asked in front of the jury yet? Did you ask
4 that question on voir dire?

5 MR. EATON: I think I started to, Your Honor.

6 THE COURT: Okay. I'll give you an opportunity to
7 ask that question, what's your training. Let him answer
8 it. Then I'm gonna admit him for the weight.

9 MR. EATON: Yes, sir.

10 THE COURT: I'm getting tired. Do you understand,
11 sir?

12 THE WITNESS: Yes, sir.

13 (Whereupon, the jury entered the courtroom at 2:50
14 p.m.)

15 THE COURT: I think we were at the point where you
16 were on voir dire with Mr. Watkins; is that correct?

17 MR. EATON: Very briefly.

18 THE COURT: All right.

19 VOIR DIRE EXAMINATION CONTINUED

20 BY MR. EATON:

21 Q. Mr. Watkins, you were testifying that you had some
22 training on cell phone towers?

23 A. Yes. Through Hawk Analytics.

24 Q. And what is Hawk Analytics?

25 A. Hawk Analytics is the manufacturer of the CellHawk

1 cellular, cell tower analysis software.

2 Q. And what's that training consist of?

3 A. It consist of interpreting the records from local
4 carriers, how these records are mapped, understanding
5 theoretical locations and, yes, and also how to use the
6 software and then reporting findings.

7 Q. And I guess when I said what does it consist of, I
8 mean like did you go to some conferences on this and take some
9 courses from some instructors?

10 A. No. It's not necessary. The information is
11 available online. They have got seminars set up. I believe
12 they're every two months. I could be wrong. It could be
13 every three months.

14 Q. And how many of those have you done?

15 A. About five.

16 Q. So you've done five online seminars from the
17 software company to gain your expertise in cell phone
18 towers?

19 A. Yes, sir.

20 MR. EATON: Thank you. No further voir dire.

21 THE COURT: Beg your pardon?

22 MR. EATON: No further voir dire, Your Honor. As I
23 said, I have no problem with the digital forensic
24 expertise. I would argue it's not --

25 THE COURT: I will let him testify about cell phone

1 based on his training and experience. He might add
2 something for the jury. So admitted.

3 MS. YOUNG: Thank you, Your Honor.

4 DIRECT EXAMINATION CONTINUED

5 BY MS. YOUNG:

6 Q. Were you asked to review any digital forensic
7 evidence in this case.

8 A. Yes. I was.

9 Q. How did you get involved with this case?

10 A. Your office contacted me and gave me a copy of the
11 file. We were looking specifically at a cell phone extraction
12 specifically and there were other extractions as well.

13 Q. Okay. And you own your own company?

14 A. I do.

15 Q. And you're paid to be here today?

16 A. Yes.

17 Q. We asked you specifically to look at video that was
18 provided?

19 A. Yes. You did.

20 Q. And can you tell us what you learned from looking at
21 that video?

22 A. So upon reviewing the discovery in this case I
23 learned that there was a video file that was recorded on an
24 Apple iPhone by a witness in this matter by the name of Cyril
25 Brasley. Law enforcement met with Mr. Brasley and my

1 understanding is that that video file was AirDropped from his
2 iPhone to the investigator's phone and that is one of the
3 copies of that video that I received. I also reviewed a
4 forensic extraction report created by Investigator Johnson and
5 in this report he indicated that he had done a forensic
6 extraction of the Apple iPhone and from that extraction he
7 extracted data, he pulled the video in question.

8 Now, what was interesting about this is that the
9 metadata associated with the video from the forensic
10 extraction did not match what was in the AirDropped video file
11 that I received and this brought serious concerns as to the
12 authenticity of the video so I requested getting access to the
13 forensically extracted data which is essentially the raw data
14 from that cell phone so that I could authenticate the video
15 and so that I could - authentication goes to determine that
16 this video file was, in fact, from this forensic extraction
17 and that this forensic extraction was, in fact, from this
18 particular Apple iPhone.

19 Q. And what did you learn about that forensic extracted
20 evidence?

21 A. I learned that the forensic extraction had been
22 purged. It no longer exists and that is not the standard
23 practice of digital forensics. The first priority in digital
24 forensics is to preserve your data or preserve your evidence.
25 That forensic evidence file is the evidence and anything

1 stemming from that forensic evidence file is a product of that
2 and without the forensic evidence file, there's no way for me
3 to verify anything about this video.

4 Q. Okay. And aside from looking at that video and the
5 extraction from the cell phone or finding out that the
6 extraction didn't exist, were you also provided anything else
7 to do in this case or asked to do anything else in this
8 case?

9 A. Yes. I was.

10 Q. Okay. I'm gonna show you what's been marked as
11 States Exhibit 63 that's already in evidence. Can you
12 identify that for us?

13 A. Yes. These are the T-Mobile records for cell phone
14 number 803-201-5645.

15 Q. And did you come to learn whose cell phone that
16 was?

17 A. I did.

18 Q. And whose cell phone was that?

19 A. Amanda Peele.

20 Q. And did you, in preparation for your testimony
21 today, did you prepare anything to aid you in your
22 testimony?

23 A. Yes. I did.

24 Q. Okay. I'm gonna hand this up to you. Can you tell
25 the jury what that is?

1 A. These records here are the original T-Mobile records
2 that came from T-Mobile.

3 Q. Without publishing that to the jury can you tell
4 them.

5 A. My apologies. What I did with these records is I
6 researched the numbers that were transacting between this
7 particular cell phone number to determine the likely
8 subscriber or person that was being communicated with during
9 each record. I adjusted the records. I made a copy of those
10 records to indicate these changes. I also corrected it for
11 time to show local time, and I also did an interpretation of
12 the service code which would just give us a little more
13 information about what's going on with this call during the
14 call transaction.

15 Q. Did you prepare anything else in preparation for
16 your testimony today?

17 A. Yes. I also provided a slide show that will detail
18 the location of the cell towers that this particular device
19 was communicating with between the dates of October 8th, 2017
20 to October 10th, 2017. I take that back. Actually I took the
21 date range and shortened it. I put it between October 9th,
22 2017 around the 7:00 p.m. hour through the end of the records
23 to the end of the 10th.

24 Q. Okay. You can't see that, can you?

25 A. No.

1 Q. Can you see it now?

2 A. Yes. Thank you.

3 Q. I'm gonna attempt to work technology. So before we
4 get started, can you just tell us what you did. How you put
5 this together.

6 A. Yes. So using a cell tower analytical soft we are
7 called CellHawk I imported the records from T-Mobile into that
8 software and what the software does is it maps the cell towers
9 and it gives us a directional face of where the cell phone is
10 connected when in connection with this tower, with each tower.
11 This slide show is going to show a record by record mapping of
12 each cell tower ping and also in this presentation there's
13 also, I researched again using Google Maps just showing the
14 walking distance from point to point and when we get there,
15 I'll explain that a little better.

16 Q. Looking at the first slide, can you tell us what
17 we're looking at here?

18 A. Unfortunately I can't see the time from here.

19 MS. YOUNG: Permission to have the witness step
20 down, Your Honor.

21 THE COURT: Sure.

22 BY MS. YOUNG:

23 Q. Just make sure you keep your voice loud enough,
24 okay, so the court reporter can take it down.

25 A. Yes. All right. So the first record that I have

1 mapped here is on October 9th, 2017 at 7:57 p.m. The map
2 here, I've got the incident location, 109 Crestmore Drive
3 mapped here. I've also got the Circle K that's mapped here
4 and this angular icon that you see here is the representation
5 of where that cell tower is. So the center point of where
6 these two lines meet is the actual location of that cell
7 tower. These lines represent the direction that the
8 connecting device is located. A cell tower will have three
9 faces. They are broken down into 120 degrees per sector, and
10 on this particular, in this particular one we've got the cell
11 tower facing in a northeast direction.

12 Q. What about here?

13 A. So this is same date, October 9th, 2017 at 8:08
14 p.m., same tower, same direction, same sector.

15 Q. All right. Move to the next one.

16 A. Okay. This is October 9th, 2017, 8:20 p.m., same
17 tower, same sector. Next is the same date at 8:38 p.m., same
18 tower, same sector. 9:32 p.m., connecting to the same tower,
19 same sector. 9:33 p.m., same tower, same sector. 9:33 p.m.,
20 same tower, same sector. Again, another hit at 9:33, same
21 tower, same sector. 9:35 and it's gonna connect to the same
22 tower up until 9:50 which would be the last one before we
23 transition to another tower.

24 Q. Okay. Let's move ahead.

25 A. Okay. Let's go ahead and go to the next one please.

1 All right. So this is just a Google map just showing the
2 walking distance and travel time from the incident location to
3 Leesburg ROAD about where that cell tower would be. All
4 right. This is 11 p.m., same date. We are now connecting to
5 another cell tower that's a little bit further down Leesburg
6 Road, the sector - the directional on this is still in the
7 northeast position.

8 Q. Okay. And this is the first time we see it hit a
9 different tower?

10 A. It is. All right. This is another map, Google Map.
11 Now, when I tried to map this, it didn't like doing a walking
12 route here so it actually did a driving route so the - I input
13 manually what the walking distance would be calculating by
14 Google's calculations. Google will calculate a walking speed
15 by the average human speed which is three miles per hour so
16 this just shows the distance from about where that last tower
17 was to about where the next tower is about a 38 minute walk.

18 All right. This is the same tower, same time. All
19 right. Now we are connecting to a difference tower. This is
20 further - this is actually on Devine Street at 11:53 p.m. You
21 will notice the direction is facing south. This map here
22 shows the distance, the walking distance between the area of
23 that last tower previously on Leesburg Road to this new tower
24 of Devine Street and it shows a walking time would be about 56
25 minutes. 11:59 p.m. We're connecting to the same tower, but

1 we're connected to a different sector. The directional is
2 facing northeast. 12:00 a.m. on October 10th, same tower,
3 same direction. This is 12:05 a.m. on October 10th. We're on
4 the same tower and we're connecting to the Northwest sector.

5 We have moved once again to a new tower at 1:09 a.m.
6 This is I believe at the corner of Devine and Harden. This is
7 a map showing the walking distance per Google's estimations
8 between the tower that we just looked at on Devine Street to
9 the new one updating at Devine and Harden. It's about a 54
10 minute walk. That's indicating the same tower. All right.
11 This is at 1:22 a.m. We're connecting to a tower that I
12 believe is located off of Bull Street, or actually Taylor
13 Street. I'm sorry. So this is a walking distance showing the
14 walking time it would take to get from the previous tower to
15 the new tower 31 minutes.

16 Q. The walking time that you're estimating, how did you
17 determine what to put in there.

18 A. So I'm just -- So I was given information from the
19 defendant as to the route that was taken. Using that and
20 considering that, I took the walking route --

21 MR. EATON: I would object to that on hearsay, Your
22 Honor.

23 THE COURT: Beg your pardon?

24 MR. EATON: Objection as to hearsay.

25 THE COURT: What was the question? What was the

1 answer?

2 MS. YOUNG: He indicated that the defendant told him

3 --

4 THE COURT: Sustained.

5 MS. YOUNG: Your Honor, I would like to make a
6 record on that.

7 THE COURT: Sure. Go to the jury room, ladies and
8 gentlemen. Don't discuss this case.

9 (Whereupon, the jury entered the jury room at 3:10
10 p.m.)

11 THE COURT: Yes, ma'am.

12 MS. YOUNG: Just very briefly, Your Honor, experts
13 are allowed to rely on hearsay when making their, when
14 coming to their opinions and conclusions.

15 THE COURT: Do you have case law for me?

16 MS. YOUNG: Not off the top of my head.

17 THE COURT: Okay. That's all right. What's your
18 position, Mr. Eaton? Hearsay to me --

19 MR. EATON: Well, Your Honor, I mean --

20 THE COURT: Is there an exception to the hearsay
21 rule is the question.

22 MR. EATON: My understanding to that exception was
23 that it related to the reports of other experts, but if
24 you can indulge me for just a second.

25 THE COURT: Sure. Take your time. And let's go to

1 the comments. When did he talk to the defendant? Where
2 did he talk to the defendant. What did he tell him? He
3 just said the defendant told me. The simple question to
4 you, sir, is this. The jury is out. When did you talk
5 to the defendant?

6 THE WITNESS: I stated that the information --

7 THE COURT: Wait. Stop. Listen to me carefully.
8 When did you talk to Mr. Gleaton?

9 THE WITNESS: The information was provided --

10 THE COURT: Sir?

11 THE WITNESS: -- through his attorney. I didn't
12 personally talk to Mr. Gleaton. I got the information
13 through his attorney.

14 THE COURT: All right. Wait. Let's put this in
15 context. You never talked to Mr. Gleaton.

16 THE WITNESS: Not -- No.

17 THE COURT: All right.

18 THE WITNESS: I said --

19 THE COURT: You didn't talk to Mr. Gleaton. How can
20 you testify to what he said to you if you didn't talk to
21 him?

22 THE WITNESS: I can revise my answer, Your Honor.
23 The information came from --

24 THE COURT: Let's take a break. Your objection is
25 sustained. The witness I think just said he never talked

1 to Mr. Gleaton when he said he talked to Mr. Gleaton. Is
2 that what -- Didn't you testify you talked to Mr.
3 Gleaton?

4 THE WITNESS: I said the information --

5 THE COURT: And now you say you never talk to Mr.
6 Gleaton.

7 THE WITNESS: I said the information came from Mr.
8 Gleaton.

9 THE COURT: Let's take a short break.

10 (Short break.)

11 THE COURT: Now, we might as well play out how we're
12 gonna handle this. The objection was the witness,
13 Mr. Watkins, said I talked to Mr. Gleaton. Objection.
14 Basis. Hearsay. But it's more than hearsay because we
15 come to find out he did not talk to Mr. Gleaton. What's
16 your position, ma'am?

17 MS. YOUNG: Your Honor, he said he, the information
18 --

19 THE COURT: No. No. No. No. No. I think he said
20 he talked to Mr. Gleaton. That was the -- I said -- You
21 objected. Hearsay. What was the question? What was the
22 answer? He said he talked to Mr. Gleaton. You want to
23 play that back for me as it happened as I recall. I
24 think he admitted that. And then he said, well, he
25 didn't talk to Mr. Gleaton. Am I right so far?

1 MS. YOUNG: No, Your Honor. That's not my
2 recollection of what he said.

3 THE COURT: Play it back.

4 COURT REPORTER: Can I read it back, Judge?

5 THE COURT: Yeah. Read it back. Read it back.
6 Read it back.

7 (Whereupon, the portion of the record requested was
8 read back by the court reporter.)

9 THE COURT: It was kind of confusing. I'm just -
10 I'm just trying to straighten it all out. So he said he
11 never talked to the defendant --

12 MR. EATON: He said he was given information from
13 the defendant.

14 MS. YOUNG: I can put, and just for my purposes,
15 when you were asking me what the hearsay objection was, I
16 was just trying to say that it was a defendant's
17 statement and not that he necessarily talked to him. I
18 just didn't state it right.

19 THE COURT: Well, it was my understanding that he --
20 I thought he said I talked to Mr. Gleaton. Mr. Gleaton
21 has been in jail all this time so how did he talk to him.
22 I think that's what he said to me.

23 MR. EATON: Yes, Your Honor. So what we have on
24 this screen is this map where he has mapped out a walking
25 path. He's saying that information came from Mr. Gleaton

1 through his attorney to this screen and the jury has just
2 heard him say information from the defendant about the
3 route that he took. That is not what an expert may rely
4 on in terms of hearsay in making their expert opinion
5 because that rule, there is a rule about that.

6 THE COURT: Go ahead.

7 MR. EATON: And that rule talks about evidence
8 that's of a type reasonably relied upon by experts in the
9 particular field in forming opinions or inferences upon
10 the subject. He's been qualified as an expert in cell
11 phone mapping. Cell phone mapping experts never talk
12 about where any person is. All they talk about is where
13 --

14 THE COURT: Is where the phone is.

15 MR. EATON: -- the phone is. So, Judge, I don't
16 think they can just back door his stuff in under this map
17 and say the defendant says he took this route and, I
18 mean...

19 THE COURT: How about that Ms. Young?

20 MS. YOUNG: Your Honor, that is - that is fair and I
21 will move on.

22 THE COURT: What now?

23 MS. YOUNG: I said that is fair and I will move on.
24 I can --

25 THE COURT: Go ahead. I'm sorry. Look. Stop.

1 This is a very important case. It's been a tedious case.
2 I know everybody is up on their high horse. I can
3 understand why, but let's try to simply and be fire about
4 the whole thing.

5 MR. EATON: And I don't want to stop them from
6 putting up their case, Judge.

7 THE COURT: Neither do I.

8 MR. EATON: But I just --

9 THE COURT: But this is on the fridge, the edge of
10 being inadmissible. You said you're gonna move on. Give
11 me an idea of what you want to do. We'll try to back up.

12 MS. YOUNG. We'll - we will just continue with the
13 slide.

14 THE COURT: Well, you can't say the defendant said
15 this is where he was. You want a curative instruction,
16 Mr. Eaton?

17 MR. EATON: Well, Judge, I guess I originally
18 thought when I saw this that they had just mapped the
19 house Crestmore and then mapped Roy's house.

20 THE COURT: Yeah.

21 MR. EATON: And then they just said, well, a person
22 would probably take this far to walk between those. I
23 didn't have a problem with that.

24 THE COURT: Yeah.

25 MR. EATON: I only had a problem when they said, oh,

1 and he said that this is the route he took.

2 THE COURT: I agree totally.

3 MR. EATON: I don't know what the best way --

4 THE COURT: Well, you know, that's what he said, but
5 he didn't talk to Mr. Gleaton and this is information
6 that was provided to you by his lawyers.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: You talked to the lawyers, but not Mr.
9 Gleaton?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: How much -- Go ahead.

12 MS. YOUNG: Your Honor, permission to speak to Mr.
13 Eaton?

14 THE COURT: What?

15 MS. YOUNG: Permission to speak to Mr. Eaton?

16 THE COURT: Oh, yeah. Go ahead. Go ahead. Maybe
17 y'all will work something out.

18 (Side bar off the record.)

19 THE COURT: So I think we bring them back in and let
20 her continue. Stop. We bring them back in without any
21 comment and let her continue.

22 MR. EATON: Yes, sir. I think she --

23 THE COURT: Well, put it on the record what you just
24 told me. Go ahead.

25 MS. YOUNG: Your Honor, I intend to clarify with the

1 witness that what he mapped was the most direct route
2 between where the incident occurred and Roy's house later
3 that night and he mapped the most direct route and I
4 think in our discussion may have been mislead by me so I
5 can just clarify he did not speak to the defendant and
6 that this came from the most direct route between those
7 two.

8 THE COURT: That sounds fine to you, Mr. Eaton?

9 MR. EATON: Yes, Your Honor.

10 THE COURT: Okay. All right. Bring the jury back
11 in.

12 (Whereupon, the jury entered the courtroom at 3:30
13 p.m.)

14 THE COURT: Welcome back members of the jury. I
15 have said this four or five times now. When something
16 comes up, I have to send you out. It has nothing to do
17 with the parties in this case. Don't worry about it.
18 Don't hold it against anyone. Are we good with that?

19 (Jury responds affirmatively)

20 THE COURT: All right. Ms. Young, you may continue.

21 MS. YOUNG: Thank you, Your Honor.

22 BY MS. YOUNG:

23 Q. Mr. Watkins, do you want to step back down so you
24 can see. I also want to clarify, I asked you where the
25 information - where - how you decided what walking distances

1 to map. Can you tell the jury how that came about?

2 A. Yes. I was instructed to determine the most direct
3 route from location to location so that's why these mappings
4 that we're seeing between each indication of the cell site is
5 being provided. It's showing the most direct route, walking
6 route and time from one point to the next.

7 Q. And to clear up any confusion, you never spoke to
8 the defendant in this case?

9 A. No. I have only spoken with the defendant's team.

10 Q. Okay. So I believe we left off at 2:22 a.m.; is
11 that right?

12 A. Click on the next one.

13 Q. I'm sorry.

14 A. I think we're back down to 30, slide 30.

15 Q. Sorry. 1:22 a.m.

16 A. Yes. 1:22 a.m. This was the previous tour that we
17 discussed that was off of, in the Taylor Street area. All
18 right. This is 2:09 a.m. and this is a tower that's
19 connecting off of North Main and the direction is facing
20 south. This is a map generated using Google Maps showing the
21 calculated walking distance and time between those previous
22 two points mentioned.

23 Q. And what is that time?

24 A. The shortest time span is 47 minutes and the longest
25 time would be 50 minutes showing the statement record as

1 before. This is 2:10 a.m. And I believe between 2:10 a.m.
2 and 7:51 a.m. we are connecting to the same tower on that
3 south sector.

4 Q. And all of these slides that we are looking through
5 reflect that?

6 A. Yes. That's correct. All right. Here is at 9:10
7 a.m. We're connecting to a cell tower that is located just
8 west of the Gervais Street bridge and West Columbia area.
9 Again, this is a Google Map just showing the calculated
10 walking time and distance and the shortest time reported here
11 is one hour and 7 minutes, longest is one hour and 17 minutes.
12 This is at 9:13 a.m. This is a tower just south of the
13 previous tower with a direction facing west. This is a ping
14 at 9:16 a.m. connecting to the previous tower. 10:02 a.m.
15 we're having connection between these two towers in this area.

16 At 12:18 p.m. this is a tower that's connecting off
17 of Taylor Street and facing northwest. This map shows the
18 calculated distance between the Gervais Street bridge to that
19 area where that tower is. The route showing a 38 minute walk.
20 At 2:20 p.m. there is a ping at the previous tower located
21 just west of the Gervais Street bridge again and this is a
22 repeat of the previous calculation just showing that walking
23 time again from those two towers, a 38 minute walk.

24 Q. Did you come, during the course of reviewing this
25 case, did you come to learn what time Mr. Gleaton was

1 arrested?

2 A. I don't recall the specific time, but I believe it
3 was between two and three p.m.

4 Q. This is the last time it pinged?

5 A. Yes. 2:27 p.m. is the last time that we have any
6 cell tower connection data.

7 Q. You may sit back down, Mr. Watkins.

8 A. (Witness complies.)

9 Q. So when using cell records and cell tower analytics,
10 you can't tell like where a person is, right?

11 A. Correct. These records are indicating where or
12 which side of this tower this particular cell phone is pingging
13 from so what these, for example, what we have on the screen
14 here, this particular record would indicate that the cell
15 phone is connecting to this tower and it's connecting from the
16 northeast sector of that tower which means that the cell phone
17 has to be within that direction, we just can't - we wouldn't
18 be able to pinpoint this. It's not - there's no GPS data
19 associated with where that phone is located. It's just
20 showing what side of that tower that phone was connecting from
21 at that specific time.

22 Q. And to take you back to, I think it's slide 13, that
23 tower is located approximately where?

24 A. Take it back again please.

25 Q. (Lawyer complies.)

1 A. That tower is located on Leesburg Road.

2 Q. And that's what we have shown here?

3 A. And that's what this map shows here, yes, on slide
4 14.

5 Q. And that's approximately an 18 minute walk?

6 A. An 18 minute walk from the incident location to
7 about where that tower is.

8 Q. So can you tell anything about the location of the
9 phone over time based on the review of the records?

10 A. Yes. We can. By looking at the records we can show
11 at least in these records as you have seen that as the towers
12 are - we're seeing different towers being pinged throughout
13 Columbia, that would indicate that the cell phone is moving,
14 that it's not stationary at any particular location and that's
15 why we're connecting to different towers. Generally when a
16 cell phone connects to a tower, it's relying upon the tower's
17 strongest signal. Now, these towers, T-Mobile doesn't provide
18 information about each of these towers so we don't know what
19 its capacity is or what its range is so we're only able to
20 look at this to kind of get an idea of at least where this
21 cell phone is connecting at any given time.

22 Q. And prior to 9:50 p.m. on October 9th, 2017 it had
23 remained stationary for a couple of hours?

24 A. That's correct. It was connecting to the same cell
25 tower on the same sector for that duration of time.

1 Q. And at 10:50 we start to see that movement that we
2 went through?

3 A. It was 11 p.m., but yes.

4 Q. Very briefly, when you reviewed the cell phone
5 records, did you see any text messages on that phone between 9
6 p.m. and 12 p.m. on that night of October 9th?

7 A. No. There were none reported within these records
8 for that time period.

9 Q. And do you recall seeing a phone call on the
10 afternoon of October 10th, 2017 between that phone and
11 Mr. Michael Dukes?

12 A. Yes. That call was at 2:23 p.m.

13 Q. Was it answered?

14 A. Yes. And it was connected for a duration of three
15 minutes.

16 MS. YOUNG: No further questions.

17 THE COURT: Mr. Eaton.

18 MR. EATON: Yes, Your Honor. Thank you.

19 CROSS EXAMINATION

20 BY MR. EATON:

21 Q. Mr. Watkins, this Google Map thing right here, like
22 are you saying you plotted this to the tower itself?

23 A. No. This is actually right off of Leesburg Road
24 around where that tower is located. That tower is located,
25 this specific one that's on slide 14 is, I believe it was

1 about 600 to a thousand feet off that location, but this is
2 just showing the walking route from the incident location,
3 this specific slide from the incident location to Leesburg
4 Road about where that tower is located.

5 Q. So about where that tower is located is where you
6 plotted this point?

7 A. Yes.

8 Q. But are you trying to say that that phone was at
9 this spot at that point?

10 A. No.

11 Q. Do you have any idea in the vicinity of that tower
12 where that phone was really?

13 A. We don't. No.

14 Q. So that's a worthless point, right?

15 A. No. We can see, from the pattern of the records we
16 can see that there's towers that are connecting over time,
17 different towers, beginning at 11 p.m. and over the course of
18 time we're seeing towers moving which would indicate that the
19 cell phone is moving.

20 Q. No. I understand that. But that phone could be
21 anywhere in that sector, right?

22 A. Yes.

23 Q. Absolutely anywhere, right?

24 A. Well, we don't know the range of that tower but
25 theoretically, yes.

1 Q. Within the range of the tower that phone could be
2 anywhere within that sector, right?

3 A. Yes.

4 Q. So that's a worthless point, right, within that
5 sector?

6 A. I would say not because when you progress through
7 the slides, we see that 11 p.m. we're connecting to a new
8 tower and I'm mapping it from that point there to the next
9 point which is just near the next tower so we're showing a
10 travel pattern, a theoretical travel path. We're not saying
11 that that's specifically where any phone or individual was.
12 We're just saying that's the theoretical travel path of that
13 device.

14 Q. So you're not saying that's where the phone was?

15 A. No. I cannot tell you where that phone was at any
16 given time. I can tell you from what tower and what sector
17 the theoretical area based on that sector where that phone
18 might be.

19 Q. And so the fact that that phone is in one sector at
20 one point and another sector at another point tells you
21 nothing about where that phone is within those sectors,
22 right?

23 A. No. But when we got to the, it was around 12 a.m.

24 --

25 Q. I'm sorry. No, it does not tell you anything about

1 where the phone is, right?

2 A. Well, no. But when we got to --

3 Q. No. I'm sorry, sir. We've got to clear this up.

4 Does the fact that that phone goes from one sector to another
5 sector tell you anything about where that phone is in those
6 sectors?

7 A. Generally I would say not, but if we were to look at
8 the 12 a.m., I would have an opinion about it.

9 Q. Explain what you mean by that please.

10 A. Could you locate the 12 a.m. connection please?

11 Q. (Lawyer complies.)

12 A. Right there. Yes. So this tower here, the sector
13 is facing northeast. Please go to the next slide.

14 Q. (Lawyer complies.)

15 A. Here the tower is facing northwest and I believe the
16 time, I don't see that from here but I recall it being around
17 12:05; is that right? So we know that within a period of time
18 between 12 a.m. and 12:05 a.m. it changed sectors and for this
19 sector, for the phone to be connecting to this sector, we know
20 it's not connecting to the south or to the northeast at this
21 time so the phone has got to be located in the northwest.

22 Q. So at some point he passed by this sector or he went
23 to that side of it?

24 A. Yes.

25 Q. But that has nothing to do with what we were just

1 talking about, does it?

2 A. About?

3 Q. About whether you know anything about whether he was
4 in those sectors back here?

5 A. I can't pinpoint a location. Certainly not.

6 Q. So that point that you have on there, this walking
7 route or all of them, that point is worthless, right? It is
8 of no evidentiary value for this jury to know where that phone
9 was, correct?

10 A. I'll let the jury --

11 THE COURT: No. No, sir. Sorry. You've got to
12 answer this question yes or no. This is cross
13 examination. This is how court is run. He asked you a
14 question. The answer ought to be yes or no, and you can
15 explain it.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Ask the questions again, Mr. Eaton.

18 MS. YOUNG: Your Honor, if I may object. I think
19 he's asking the witness to testify about the ultimate
20 issue.

21 THE COURT: What's your objection?

22 MS. YOUNG: I believe that he's asking him to
23 testify --

24 THE COURT: No. No. No.

25 MR. EATON: I'll move on from this question. I'll

1 move on from this question.

2 THE COURT: All right. Thank you.

3 BY MR. EATON:

4 Q. You said that Goggle Maps told you that people walk
5 three miles an hour on average?

6 A. That's how they calculate their walking speed.
7 Yes.

8 Q. If somebody just killed somebody, do you think they
9 would walk a little faster?

10 A. Again, this is based on Google calculations. I'm
11 not making an assertion as to anybody's walking speed or
12 movement speed.

13 Q. Now, sir, let's look at -- Bear with me for one
14 moment please. I'm going to approach with State's 118. If I
15 could direct your attention --

16 THE COURT: What exhibit is that, Mr. Eaton?

17 MR. EATON: 118, Your Honor.

18 THE COURT: Thank you.

19 BY MR. EATON:

20 Q. And if I could direct your attention to right here
21 on State's 118, what time do you see there? I'm sorry. I'll
22 back you up actually to the day. What dated do you see
23 there?

24 A. For this record here?

25 Q. Yes, sir.

1 A. The date is October 10th, 2017. The time is
2 02:09.

3 Q. Looking at all these can you tell if that's military
4 time?

5 A. Yes.

6 Q. So that's two in the morning?

7 A. That's two a.m., yes.

8 Q. And what numbers are these here? Can you read
9 those? I'm sorry. I'm looking at the wrong one. Right here.
10 Let me use this to line myself up. Bear with me. There we
11 go. If you could read that line of data right there please.

12 A. For the 2:11 record?

13 Q. Yes, sir.

14 A. Okay. October 10th, 2017, 2:10 a.m.

15 Q. The phone numbers?

16 A. The phone numbers. Okay. 803-201-5645.
17 803-600-7743.

18 Q. And who does this say that record belongs to?

19 A. Roy Brasley.

20 Q. So Amanda Peele's phone is calling Roy Brasley at
21 2:11 a.m. on the 10th. Is that what it appears to be?

22 A. Yes. It appears that way. Yes.

23 Q. Do you usually call your friends if you're sleeping
24 on their couch at their house.

25 MS. YOUNG: Objection. Speculation.

1 THE COURT: Overruled. Ask the question. This is
2 cross examination.

3 BY MR. EATON:

4 Q. If you were sleeping on your friend's couch, would
5 you normally call that friend on the phone?

6 A. I guess it would depend if they lost their phone,
7 but no. Under normal circumstances I would think not.

8 Q. Mr. Watkins I want to move on from the geography
9 here. You were testifying about this video that came up on
10 Roy's phone, right?

11 A. Yes.

12 Q. Now, are you saying that that video was not taken
13 when Roy says it was taken?

14 A. I can't say that because I haven't had an
15 opportunity to review the raw data.

16 Q. But you're not saying it's not?

17 A. I can't make a determination one way or the other.

18 Q. That's a different statement than saying you're not
19 saying that it didn't come from that time. Is your statement
20 to the jury that that video was not made when Roy says it was
21 made?

22 A. Again, I don't have the raw data to do an analysis
23 of that. I cannot confirm whether it was or was not.

24 Q. So without that data you can't say that it was not
25 created then, right?

1 A. No. I can't speak one way or the other.

2 Q. And without that data you can't say that it was not
3 created where he said it was created, right?

4 A. I didn't -- I'm sorry. I wasn't here for his
5 testimony.

6 Q. I'll rephrase the question. Are you telling the
7 jury -- I'm gonna make this real simple. Are you telling the
8 jury that that video from Roy's phone was not made when and
9 where he said it was made with the people he said it was made
10 with? Is that your testimony, yes or no, and then you can
11 explain.

12 A. No. It's not my testimony. The video file that was
13 AirDropped is not consistent with the video from file that was
14 forensically extracted from the phone so we have an
15 authentication issue. We also have an issue where the
16 evidence that was collected was not preserved in a point where
17 the defense would have an opportunity to challenge and test
18 it.

19 Q. Do you know what Roy does?

20 A. I don't recall.

21 Q. Would it surprise you if I told you that Roy is a
22 hairstylist?

23 A. No. I guess not.

24 Q. Are you suggesting that Roy altered the metadata of
25 the video file?

1 A. No. No. Metadata can be changed very easily
2 intentionally or unintentionally. When I looked at the
3 metadata of the AirDropped file, I actually ran a hash check
4 on this file against the one that was reported in the
5 extraction report and hashes did not match. Now, a hash value
6 is essentially a digital fingerprint for a file and they're
7 generated by an algorithm that essentially converts the data
8 content of that file to a numeric string and they're unique.
9 So I would expect to see the AirDrop file have a hash value
10 that matches what was extracted from the phone itself during
11 the forensic extraction, but because they don't, that raises
12 concerns as to the metadata or something within the file, the
13 data content of being manipulated. Now, I'm not suggesting
14 one way or another how that might have happened. I'm just
15 saying that it did happen.

16 Q. Okay. I'll be perfectly frank with you, I don't
17 understand a lot of what you just said, but you're not saying
18 that Mr. Gleaton here did not confess to burning down Amanda's
19 house in the video? You're not saying that, are you?

20 A. I --

21 Q. Are you saying that?

22 A. I'm not saying -- No. I'm not saying that.

23 Q. Sir, respectfully this is the first time you've been
24 qualified as an expert on cell phone tower data, correct?

25 A. Yes.

1 Q. The Public Defender's Office paid you to create
2 these reports, right?

3 A. Yes.

4 Q. And they paid you to testify today?

5 A. Yes.

6 MR. EATON: Okay. Thank you. No further questions.

7 THE COURT: Anything further of this witness?

8 REDIRECT EXAMINATION

9 BY MS. YOUNG:

10 Q. This is not the first time you have testified about
11 cell phones and cell tower analytics?

12 A. No. It's not.

13 Q. How many times have you testified?

14 A. How many times have I testified total?

15 Q. Or about cell phone records and cell tower
16 analytics?

17 A. If I had to guess, I would say between 10 and 20. I
18 don't have in exact number. I know how many times I've been
19 qualified as a digital forensic expert and in some of those
20 cases cell tower records have been discussed and instead of
21 the attorney proffering me as an expert in both fields, they
22 proffered me as an expert just in digital forensics because
23 there's a misunderstanding that cell tower data is within the
24 field of digital forensic science and it's not.

25 MS. YOUNG: No further questions.

1 MR. EATON: Nothing further, Your Honor.

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

3 Call your next witness.

4 MS. OSTEEN: Your Honor, may Mr. Eaton and I
5 approach very quickly?

6 THE COURT: Sure.

7 (Side bar off the record.)

8 THE COURT: All right. Call your next witness.

9 MS. OSTEEN: We need time without the jury, Your
10 Honor.

11 THE COURT: All right. Ladies and gentlemen, don't
12 talk about this case. Thank you.

13 (Whereupon, the jury entered the jury room at 4:00
14 p.m.)

15 THE COURT: Yes, ma'am.

16 MS. OSTEEN: Your Honor, I was asking for a few
17 minutes just to talk about the potential next witness --

18 THE COURT: Okay.

19 MS. OSTEEN: -- and then also an opportunity to talk
20 to Mr. Eaton about that.

21 THE COURT: We'll be at ease.

22 MS. OSTEEN: Thank you very much, Your Honor.

23 (Short break.)

24 THE COURT: Have y'all talked?

25 MS. SAMPSON: Yes, sir.

1 THE COURT: How can I help you?

2 MS. SAMPSON: I don't need anything.

3 THE COURT: So we got two more witnesses? Three?
4 How many? That's why I took a break so I would have an
5 answer when I got back.

6 MS. OSTEEEN: Your Honor, I think that we don't have
7 anymore witnesses.

8 THE COURT: All right. So this is the issue. It
9 will probably be around 6:00 - excuse me. It will
10 probably be around 6:00 before this jury gets this case.
11 Everybody agrees with that. So I didn't ask them out of
12 politeness and courtesy. No more witnesses and maybe 20,
13 30 minutes, something like that, some argument on
14 charges, so you see what I'm getting to. Do they want to
15 stay the rest of the day until they finish. Do they want
16 to come back Monday. I need to ask them these questions.
17 They need to talk about it and let me know. Is that fair
18 enough?

19 MR. EATON: Yes, sir.

20 MS. OSTEEEN: Yes, sir.

21 THE COURT: Well, I mean, that's how we have to play
22 it. It doesn't matter to me but it might matter to them
23 and then y'all.

24 MS. OSTEEEN: Yes, Your Honor. I think our position
25 would be that we would prefer, we think that it's been a

1 long day, a long week, we would prefer that closings and
2 the jury is charged on Monday.

3 THE COURT: Or tomorrow morning.

4 MS. OSTEEEN: Or tomorrow morning.

5 THE COURT: But I'm gonna throw out the options to
6 them. I think everybody is tired. I see one of the
7 lawyers indicate they were tired. You probably will be
8 here until 6:00 between sort of deliberating and people
9 want to eat dinner. We have to go through those
10 scenarios and if they say, well, we'll come back Monday
11 or tomorrow, I don't care, but I want it to be their
12 choice.

13 MR. EATON: Judge, for the State our preference
14 would be to drive on now if the jury wants to.

15 THE COURT: That's good. And if they say drive on,
16 we drive on. And I've got to talk to them. I'll bring
17 them back out and y'all said you wanted to do this.
18 Okay.

19 MS. OSTEEEN: Thank you, Your Honor.

20 (Short break.)

21 THE COURT: They're discussing the various options.
22 I told them it needs to be their decision so they will
23 let me know. Continue, tomorrow morning, or Monday. I
24 told them it's gonna be about 6:00 before they even get
25 the case. It's their consideration.

1 (Short break.)

2 THE COURT: All right. They want to continue.
3 Here's the note. I'll make it part of the record. I was
4 tied up. They want a short break. Where is Jim? I need
5 to find Jim and we need to order them something to eat
6 probably and we'll just go on from here.

7 MS. OSTEEN: Your Honor, I would like to put an
8 objection to having it continued on tonight on the
9 record.

10 THE COURT: Go ahead.

11 MS. OSTEEN: Thank you, Your Honor. Pursuant to the
12 Fifth, Sixth, and Fourteenth Amendments and in violation
13 of due process, it has been a long week. People have
14 been needing multiple breaks for being tired. We need
15 people to be concentrating through the end and through
16 deliberation and obviously at 4:25 we have not even
17 started closings yet so I think the likelihood of it
18 getting to the jury before six, before seven even might
19 be wishful thinking and that would cause the jurors to
20 deliberate and have more fervor than actually taking the
21 time and really --

22 THE COURT: Well, it's hard to tell what a jury
23 might do. It's hard to tell what a jury might do, or
24 what they will decide, but this is their decision, not
25 mine. I put it out there. Your request or motion is

1 respectfully denied. Anything from the State?

2 MS. SAMPSON: No, sir.

3 THE COURT: And this is not unusual. We do this all
4 the time. They need to take a break. Y'all want to have
5 a quick charge conference? I've given you a copy of my
6 proposed charge and we can talk about it in chambers if
7 you want for a few minutes. Give them a break. Jim,
8 let's see what they want.

9 (Short break.)

10 THE COURT: Please keep your seats. Thank you. Is
11 everybody about ready? They used the phone. Talked to
12 everybody. We ordered them dinner. I told them 6:30 it
13 should get here. I was talking to Mr. Eaton and Ms.
14 Young and Maisie. I'm guessing, Ms. Sampson, y'all want
15 to argue 30, 40 minutes. I'm not gonna stop you.

16 MS. SAMPSON: Yes, sir.

17 THE COURT: So I was guessing and let's see, the
18 State is gonna open and only in rebuttal after they
19 argue; is that correct?

20 MS. SAMPSON: Yes, sir.

21 THE COURT: Anything else we need to talk about?

22 MS. SAMPSON: No, Your Honor.

23 THE COURT: All right. Go ahead.

24 MS. SAMPSON: May I, Your Honor, for the record I
25 plan on using the PowerPoint and the pictures that are in

1 that they have objected to. I would just ask that they
2 go ahead and object to my using them now.

3 THE COURT: You mean object to the pictures already
4 in evidence?

5 MS. SAMPSON: Yes, sir. I know they're gonna renew
6 their objections to those being used --

7 THE COURT: Okay.

8 MS. SAMPSON: -- so I just would rather that happen
9 now --

10 THE COURT: That's fine. If it's in evidence, I
11 think the rule prevents anyone to argue about it. I know
12 they object.

13 MS. JURICK: Your Honor, State v. Parvin says we
14 have to continue to object.

15 THE COURT: What?

16 MS. JURICK: State v. Parvin is the case. We have
17 to continue to object --

18 THE COURT: That's fine.

19 MS. JURICK: -- when it's -- I can't do --

20 THE COURT: You know what? I don't really care. If
21 you think you have to object to something, object.
22 That's fine.

23 MS. JURICK: I can try to do it quietly.

24 THE COURT: Huh?

25 MS. JURICK: I'll do it quietly.

1 THE COURT: How can you object to something that
2 gets into evidence? Can I see the case? She's gonna use
3 the PowerPoint to show things that have been admitted
4 into evidence.

5 MS. JURICK: I still have to object, Your Honor.

6 THE COURT: Okay. On what's the basis? How can you
7 object to something that's in evidence being argued?
8 That's my point. It's simple, basic.

9 MS. JURICK: I'm just renewing my prior objection.

10 THE COURT: About what? All right. Listen. Let's
11 do it this way. You referenced this at, it was at the
12 close of their case. It's in the record. Remember? I
13 think everybody can stipulate that those same objections
14 can be made now, same ruling applies.

15 MS. SAMPSON: Yes. That's all I was asking.

16 THE COURT: Okay. If you -- I don't see how and
17 why, but that's fine, objecting to something that's in
18 evidence.

19 MS. SAMPSON: I understand that --

20 THE COURT: The ones that you previously objected
21 to?

22 MS. SAMPSON: Yes.

23 THE COURT: Okay. All right.

24 MS. SAMPSON: I understood they would need to renew
25 those objections when they're shown. I'm just asking

1 that they go ahead and do that right now so we don't have
2 to stop every time.

3 THE COURT: You want to do it now? I think we all
4 can agree -- Are you --

5 MS. JURICK: As long as you'll say that it's your
6 final ruling.

7 THE COURT: What now?

8 MS. JURICK: We will object to it right now if we
9 get a final ruling --

10 THE COURT: Okay. Okay.

11 MS. JURICK: -- on the use of them during their
12 closing.

13 THE COURT: Every objection you made is renewed at
14 this point in time at the close of their case. For the
15 record, I think everybody can agree they're valid
16 throughout the course of their argument. Is that fair
17 enough everybody?

18 MS. SAMPSON: Yes, sir.

19 MS. JURICK: Yes, Your Honor.

20 THE COURT: All right. Bring the jury in
21 Mr. Nitsche.

22 BAILIFF: Yes, Your Honor.

23 THE COURT: And just for the record, we went over
24 the charge in chambers. There were no objections to any
25 of the charges from anybody as I understand it and if

1 something pops up and you have to object, do your job.
2 Otherwise we will do the best we can.

3 (Whereupon, the jury entered the courtroom at 5:00
4 p.m.)

5 THE COURT: Welcome back members of the jury. We've
6 done a lot this week. I want to thank you before we get
7 into closing arguments on behalf of the State and Mr.
8 Gleaton for your patience, courtesy. It is a patriotic
9 undertaking to serve your country as jurors and I wan to
10 congratulate you all for being good citizens of Richland
11 County.

12 Now, the State has the burden of proof. They must
13 prove their case beyond a reasonable doubt. I'll explain
14 that to you later on. I'll give you a definition for it.
15 The State will open, make a closing argument first
16 followed by Ms. Jurick on behalf of Mr. Gleaton and under
17 our rules the State, that is Ms. Sampson will be allowed
18 to rebut or reply to Ms. Jurick's statement on behalf of
19 Mr. Gleaton. The State, Ms. Jurick, the State has a
20 right to come back and rebut or reply to her argument.
21 That make sense to you? So, ladies and gentlemen, thank
22 you, once again. I invite your keen and close attention
23 to closing arguments on behalf of the State as well as
24 Mr. Gleaton. And, Ms. Sampson, you may proceed, ma'am.

25 MS. SAMPSON: Thank you, Your Honor. May it please

1 the Court.

2 THE COURT: You're welcome.

3 MS. SAMPSON: On October 9th, 2017 through October
4 10th of 2017 Kenneth Gleaton went from being a jilted
5 lover trying to get back with his girlfriend to a
6 murdering, cowardly, arsonist who left her beaten,
7 strangled, shot up, bullet riddled body in her own bed
8 and then set her house ablaze. That makes him guilty of
9 a lot of things.

10 My co-counsel at the beginning of the week, Vance
11 Eaton, came in front of you and told you that this case
12 was about an imbalance of power. He talked to you about
13 how Amanda Peele was getting stronger in her spirit. How
14 she wanted to get her kids back and how to do that she
15 had to get rid of Kenneth Gleaton and how he tried to
16 take that power back and in doing so killed her. If he
17 couldn't have her, nobody could. And now, after you've
18 heard from more witnesses than I can count, had hundreds
19 of pieces of evidence that includes pictures, video,
20 photographs, 911 calls, you all now know that he's guilty
21 of murder, of arson in the second degree, of desecration
22 or destruction of human remains, and possession of a
23 firearm by a person convicted of a violent felony.

24 Now, when I get done talking and Ms. Jurick gets
25 done talking, Judge Manning is gonna instruct you on the

1 will so you're about to hear a whole lot of talking. So
2 I'm not gonna talk to you a whole lot about the law, but
3 I am gonna give you some parts of it, all right?

4 Now, let's be clear. As the State we have the
5 burden of proof. We have to prove beyond a reasonable
6 doubt every element of all four of those crimes. Mr.
7 Gleaton and his attorneys could have sat there and said
8 absolutely nothing. They could have asked no questions.
9 They could have put up no witnesses, and it would still
10 be our job to convince you beyond a reasonable doubt of
11 his guilt, all right? So let's talk about how we did
12 that.

13 In South Carolina murder is defined as the unlawful
14 killing of another with malice aforethought. It's a
15 pretty simple definition. In this case it occurred when
16 Kenneth Gleaton killed Amanda Peele with no lawful
17 reason. There's no reason that woman should be dead, and
18 he did it with malice aforethought. Now, how do you know
19 that? Malice aforethought is a big old legal term that
20 nobody in real talk ever uses it except for us lawyers.
21 But basically it says you meant to do it, you had an evil
22 heart, you had a disregard for the person. I think we
23 can all agree if you shoot someone, you hit them so hard
24 in the head that they're bleeding, a pathologist can show
25 you the pool of blood, and that you shoot them twice,

1 then set their house on fire, that's malice aforethought.

2 What is arson in the second degree? Willfully and
3 maliciously. So in other words, you did it on purpose.
4 It wasn't an accident. You didn't smoke a cigarette and
5 it fell in the bed. It was on purpose. You cause an
6 explosion. We didn't have an explosion. Sets fire to.
7 You have seen all the burnt evidence. You have seen
8 pictures of the house. Burns. Causes to be burned, or
9 aids or accounts for procuring the burn. So in other
10 words, if he didn't set it on fire but let somebody else
11 do it or helped somebody else do it, that would be good
12 enough for arson in the second degree. And it has to
13 result in damage to a house or any structure designed for
14 human occupancy. All of the evidence shows that her
15 house was set on fire. It was not an accident. Even
16 their expert said it was set on fire on purpose. That's
17 the definition of arson in the second degree.

18 Destruction or desecration of human remains.
19 Damaged or destroyed the remains of a deceased human
20 being. In this case Dr. Durso -- kind of looks like a
21 soccer mom, right? -- she got up her and told you about
22 how by the time the body was burned she was dead.
23 There's no smoke inside of her. There's no proof she
24 took a breath of any smoke. She was dead when the house
25 was set on fire. Therefore, that is the definition of

1 damaging or destroying a deceased human being or it could
2 just be desecration. Either way you want to look at it
3 he committed this crime as well.

4 And lastly, possession of a firearm by a person
5 convicted of a violent crime. He had to possess a
6 firearm and had the prior violent crime. In this case
7 you heard Investigator Hinson tell you how Kenneth
8 Gleaton had the prior conviction of a violent crime from
9 1996. As you see, there's nothing in this definition
10 that says when you have to have the conviction. It just
11 says you have to have it. That's it. And he had to
12 possess the gun in order to kill her because she is shot
13 twice.

14 Now, when I get done talking, Ms. Jurick is gonna
15 get up here and try to convince you that everything I say
16 doesn't lead to why her client is guilty. That's her
17 job. I would say to you that just like her client tried
18 to cover up his crime with some smoke and some fire,
19 she's gonna use her own smoke to try to cloud your
20 judgment. So I ask that as you listen, you remember what
21 you heard from all those witnesses, what you heard from
22 me and all this evidence that you see, because now I'm
23 gonna walk you through what happened.

24 Now, I would think that they're gonna try to get you
25 to focus on just October 9th and October 10th, but this

1 didn't start then. It started back in September. You've
2 heard from several witnesses how back on September 8th,
3 2017 there was an incident. You heard Jessica Gantt tell
4 you she heard an argument between Amanda and Mr. Gleaton.
5 She saw Amanda run into the Waffle House after she took
6 her to work. Remember she talked about how she didn't
7 know what they argued about, but they got in the car and
8 they drove to the Waffle House and it was strange how
9 Amanda parked in front of the Waffle House and then just
10 jumped on in and ran. Thought she needed she had to go
11 to the bathroom and then the next thing she knows Kenneth
12 Gleaton comes running past her while she's smoking and
13 says tell Amanda the next time I see her, I'll kill her
14 as he runs from the police. A month almost to the day
15 later she's dead.

16 Deputy Carlson told you how he answered a call from
17 Amanda, a 911 call as took a report about what the
18 defendant had done and Ashton, her son, told you how he
19 saw an imprint of the gun to his mother's side. They
20 then tell you that the defendant, you have his statement,
21 he admitted that - he didn't admit it in his statement,
22 he admitted that they had an argument, but he admitted to
23 Jessica that he actually held the gun to her and what
24 happened as a result of this all, DSS gets called and her
25 kids are removed. This is where the problem starts.

1 You heard Roderick Dukes, Mike. He told you about
2 how the relationship was starting to crumble, right? He
3 talked to you about how he didn't really want to listen
4 to that. He would rather talk about football, but that
5 he knew the relationship was crumbling. Ashton talked
6 about how they got removed from the home. Skyler,
7 remember her daughter, one of the first witnesses we
8 talked to, she talked about how her mom was excited that
9 they were going to be able to go see her brothers and
10 that she wanted to get her kids back. Everybody, Jessica
11 talked to you about that. Everybody knew Amanda was
12 doing whatever it took to get her kids back and one thing
13 she had to do was to get rid of Kenneth Gleaton, and that
14 takes us on a snowball because on October 9th they get
15 into an argument.

16 You heard Dukes talk to you about that. He heard
17 them kind of arguing, but again, he didn't want to get
18 into that. This is what Amanda went into the house
19 looking like on October 9th, talking to him. Roger Dukes
20 told you he was just glad to play some video games. He
21 was homeless. He didn't have anything else to do. Got a
22 bite to eat, he sat down and got all involved in that
23 video game and when he saw Amanda go back in that room,
24 that's the last time he saw her alive. He talked to you
25 about how he hears a shot because and he's in the game,

1 he doesn't know where it came from. He went outside like
2 anybody would do. Why would you think there's a shot
3 from the inside. He didn't see anything, so he goes in
4 the back bedroom and he sees Kenneth Gleaton with his
5 knee on Amanda with a belt tightening on her neck, blood
6 everywhere and he freaks out. I don't know what I would
7 do if I saw somebody killing somebody, but he didn't know
8 what to do. He's like, I'm out. And he also heard
9 Kenneth Gleaton say I fucked up. And I'm sorry for using
10 the language, but I got to use what they tell me.
11 Kenneth Gleaton said I fucked up. And what does Roderick
12 Dukes do? He just saw a man killing a woman. He is out.
13 He runs. He thinks somebody is chasing him. He runs.
14 He goes and gets help.

15 And what happens to Amanda? She goes in her house
16 looking like that, she comes out looking like this
17 because of this man. She's in the pugilistic position as
18 the firemen told you with a belt around her neck. Malice
19 aforethought. With her eyes so swollen they couldn't
20 even see if she had petechia. Malice aforethought. Her
21 house burned significantly. They went over and over how
22 much damage was to the house, right? How the windows
23 were blown out and different things were broken. There
24 is no doubt this house was set on fire. But what I want
25 you to remember is where is Kenneth Gleaton? Did he come

1 back and say I don't know where my girlfriend is. Mike
2 did. Mike came back to the scene after he realized he
3 was safe and he told them what happened.

4 Now, the defendant is going to tell you, oh, he's
5 just making it up. He didn't even have to come back if
6 he wanted to make something up. He could have just
7 stayed gone. He's homeless. But he didn't. He did the
8 right thing came back. Before he came back he went and
9 he got his friends and he told them what had happened.
10 Told Jessica because he was scared for her. What did he
11 tell you? She lived in that house, too, and he was
12 afraid she would go back to where the murderer was. He
13 didn't know the house had been set on fire. So Jessica
14 and Latoya wanted him to go back so they do, and this is
15 what they found.

16 A neighbor had to kick in the door. The neighbor
17 had more concern than Kenneth Gleaton. The neighbor
18 tried to make sure nobody was in the house. Nobody alive
19 was in the house. The bed had the most destruction.
20 That room had the most destruction and I want you to
21 remember that. As you listen to whatever they have to
22 say, remember what their expert said and our expert.
23 Most of the flames were in that back room. Now, their
24 expert tried to tell you something about when it would
25 have started and it could only be 30 minutes and this and

1 that, but I found it real interesting that the only
2 expert that could give you a time was the one that was
3 paid \$235.00 an hour. The ones who came in here with
4 nothing in this fight told you they couldn't pinpoint.
5 They could give you an estimate. They could say it
6 probably burnt for an hour, but they couldn't tell you
7 when it started. But the one that gets paid to be here,
8 he can tell you.

9 But it's important that this is the room that is the
10 most tore up because this is the bed where Amanda died.
11 He set the place on fire that she probably loved the
12 most. The place she felt safest in her own freaking bed.
13 Blood everywhere. Remember Roderick told you that. He
14 tried to burn it up, but he couldn't because her body
15 laid there bleeding. Laid there bleeding where he left
16 her.

17 Now, they're gonna want you to believe Roderick
18 somehow is this mastermind manipulator and starts lying
19 from the beginning, but look at what time he's asking for
20 help, at 9:45. He can't make this stuff up. It's
21 Facebook Messenger and he's asking Latoya to come get him
22 and that time is important at 9:45 because I guess
23 they're gonna say his phone really did work. But what
24 did everybody tell you? He couldn't make any calls from
25 his phone. He had to be near WiFi, so he goes to the

1 place he knows has WiFi the Circle K and he tries to get
2 ahold of Latoya. At 9:45 he is far away from the house.
3 He can't be setting it on fire. Not only did our expert
4 say that, not only did the firemen tell you that, their
5 expert said that. Both the people they put on the stand
6 said at 9:45 if he's somewhere else he could not have
7 been setting the fire. Remember that.

8 And he goes on to say please take me to Country's
9 house. I really need to leave this side of town. He
10 explained that to you. They're gonna say he was trying
11 to run and get away, but unlike our Mr. Kenneth Gleaton
12 who is running to another state, running to the bus
13 depot, running from police, he just wants to go to the
14 other side of town to get away from Kenneth Gleaton.
15 And when he gets to people he knows, he goes back and
16 tells what happened. He doesn't run. He gets safe, and
17 then he tells.

18 Now, you heard today from Roy Brasley, right? New
19 technology which it never works for me. Y'all have the
20 video back there. So y'all heard from Mr. Brasley,
21 right? And he told you about this video. Now, Roy, was
22 he the most honest about everything? He didn't want to
23 be here. He told you about that. But he did make this
24 recording and you can think about why is he making this
25 recording. Why is he scared enough that he thinks there

1 needs to be a recording? And here's what he does.

2 (Playing cell phone video.)

3 MS. SAMPSON: I set the house on fire. I hit her
4 and I set the house on fire. So I guess in the middle of
5 you hitting her, then I guess Mike shot her and strangled
6 her with a belt and then you set the house on fire? Or
7 does it make more sense that he's just not gonna tell Roy
8 he committed a murder. He don't want to admit everything
9 he did. He did set the house on fire. He can't get past
10 that one. But neither of them were being the most honest
11 because Roy up here told you, oh, he stayed at my house.
12 Remember that? He stayed over and when I left, he was
13 either on the porch or sleeping. I don't know where he
14 was. You've got the phone records. They've been
15 introduced into evidence. There's two different versions
16 of them, State's 118 and State's 63, right?

17 And remember, Mr. Gleaton admits he took Amanda's
18 phone. It's found on him. He can't deny that. And we
19 all know she is dead on October 9th somewhere by the
20 morning of October 10th. So how come her phone is
21 calling Roy at 2:00, at 2:30 a.m., at 6:56 a.m., and at
22 7:00 a.m. if he's at Roy's house? Because he's not. Roy
23 said, told you that he was. But he's not. Even Mr.
24 Gleaton whose statements you also have, State's Exhibit
25 115, read it. Because what does he say? How did you get

1 to his house? I walked. What took place when you got to
2 his house and what time was it? It was about one, 1:30
3 in the morning when I called him. Phone records reflect
4 that. And he told me to hold up because he didn't have
5 any room for me to lay down. He never called me back so
6 I went to sleep under a bridge and by the river. Which
7 one of them is telling the truth? I don't know, but it
8 can't be both. Did you return to his house on the 10th?
9 I went back in the morning around 7:00. Which he does
10 call him at 7:07. That's when he gave me the shorts, he
11 gave me \$20.00 in cash to get something to eat.

12 And let's talk about the shorts. Remember why he
13 needed shorts? Why did he give you a pair of shorts?
14 They had blood on them. Covered in blood. Roderick
15 Dukes told you the place was covered in blood. Can't
16 believe everything Roy tells you, but he did make a video
17 that you can surely believe.

18 So while he's doing all that Amanda is laying on an
19 autopsy, getting autopsied by Dr. Durso. A cut so big
20 that it bled in a pool leaving this. Strangled so hard
21 that the butterfly imprint of the belt is still there is
22 still there. Set on fire. Malice aforethought. Shot
23 not once but twice. They had to do x-rays to find the
24 bullet. You've got all this. There's the projectile.

25 They may try to mention maybe she's not dead. I

1 don't know, but she talked to you about how the
2 desecration because there's nothing here, there's no
3 soot, right? She didn't take a breath of any soot and
4 here this dark purple is where she was strangled.
5 Petechia in her eye. All of this goes to show she was
6 strangled, shot, hit. Malice aforethought.

7 Now, Mr. Gleaton finally gets arrested because he
8 surely didn't turn himself in. He's at the river getting
9 rid of evidence, throwing it in the river, taking out SIM
10 cards. He's not talking to the police unless they find
11 him which they did. And lo and behold his fingers are
12 cut. Why is that important? When you beat someone, when
13 you strangle them, you probably get cut. So a cut on his
14 finger. He's got a cut on his hand. Got a cut on his
15 arm. Did Roderick Dukes have any of that? Nope.

16 So let's talk about the differences between Dukes
17 and Gleaton because I'm willing to bet that they're gonna
18 get up here and say that none of this evidence means
19 anything. That all of it goes to point that somebody did
20 it, just not their client. They may try to get rid of
21 it, put it all in a box and tell you that it doesn't
22 mother, but I'm gonna tell you that it does. But what
23 are the differences between Dukes and Gleaton? Gleaton
24 is seen with a gun more than once. There's a picture of
25 the gun that's similar to the one he was seen with.

1 Amanda's grandfather told you about it. Ashton told you
2 about it. Jessica told you about it. Did anybody tell
3 you they ever saw Roderick Dukes with a gun? No. I
4 don't know many homeless men who are walking around with
5 a gun. I would think they'd sell it but, hey, what do I
6 know.

7 Gleaton threatened to kill Amanda. You heard about
8 it from Jessica. I'm sure they're gonna say, oh, well,
9 she didn't tell police. Neither did Amanda. Perhaps she
10 didn't have time. Perhaps like many women she took him
11 back because he apologized.

12 South Carolina is number one in domestic violence
13 for a reason. Did you ever here about Mike threatening
14 Amanda? In fact, Mike told you how good of a person she
15 was. She gave him money. She fed him and gave him a
16 place to stay. He did homework with her kids. Why would
17 he kill her? They don't have any problems with their
18 relationship. The only person with a problem with their
19 relationship is that man sitting over there. And I just
20 said that. It was crumbling. They talked about he had
21 to get out. He had nowhere to go.

22 Mike told you about how he was talking about, well,
23 maybe I should get back together and Mike was, well,
24 maybe you should let it die down for a little bit. Maybe
25 you should let it go for a little while. But he didn't.

1 He continued to press on. Amanda then kicked him out.
2 Jessica told you she kicked him out. Dukes told you he
3 didn't think that they were having problems, but she
4 didn't want him in her life.

5 Gleaton ran from the police. I'm assuming they're
6 gonna say that Dukes did the same thing, but remember, he
7 didn't. He came right back. He just needed to get safe.
8 Gleaton never turned himself in. He never came to the
9 police. He got rid of evidence. He got rid of this bag.
10 Remember? Nos, I'm sure they're gonna say, oh, well,
11 Mike had a bag. Mike didn't take a bag with him. While
12 we're talking about what was taken, Gleaton wants you to
13 believe that he had a fight with Amanda and just left.
14 Did she give you her phone? Those things are pretty
15 expensive. I don't think people just give their phone
16 away. Did she give you the Play Station her kids played
17 with? Did she give you the computer? Or did you take it
18 because she's dead? It just doesn't make sense that she
19 just gave you all this stuff but nothing was going on.

20 Gleaton wanted money to get out of town. Roy told
21 you that, the video tells you that. Did you hear
22 anything like that from Jessica or Latoya about Dukes?
23 Did he like, let's go talk to the police? No. He told
24 you he hadn't had a really good dealings with police. A
25 lot of black men will tell you that. But he did go back.

1 He did talk to them. He did the right thing. When he
2 could have ran, he didn't. He didn't want any money to
3 get out of town, but Gleaton did. He admitted to hitting
4 her and setting her house on fire. He only admitted it
5 on the video. When police asked him, he's like, oh, no.
6 I didn't do anything. But in the video when he doesn't
7 know anybody is videotaping. And that's important,
8 right? Because when people are talking to him and he
9 knows that he's talking to them, he doesn't admit to
10 anything, does he?

11 But remember what Roy told you. He did it in secret
12 because he was scared. So he had no idea he was
13 videotaping. None. And that's when he admits to setting
14 the place on fire. And remember when he talked to
15 Hinson, and we had, the last witness we had was Mr. Short
16 and Deputy Short, or Investigator Short got up here and
17 he told you what Gleaton did once he saw this video? I'm
18 fucked either way. You have what you need. You have
19 what you need. Nothing else to talk about. Gleaton did
20 that because once you watch that video, he's admitted to
21 arson. And it just doesn't make -- When did she get
22 killed then? By this anonymous person or Mike or
23 whoever? Because you hit her and then set the house on
24 fire according to you. He just doesn't want to admit in
25 this video that he did what he did.

1 So what does all this mean? I'm almost done. I
2 know you're all probably glad. All of this, all of this
3 evidence leads to one conclusion, that Kenneth Gleaton is
4 guilty. He's the only one with a motive. He's the only
5 one with a gun. He's the only one in the house. He's
6 the only one that flees police. He's the only one who
7 says I'm fucked. You have what you need. Everything
8 points to Kenneth Gleaton no matter what they say about
9 all this evidence.

10 Last but not least, one of the biggest ones that
11 came up is Gleaton reeked of smoke. Now, the fire
12 marshals told you when they go home what they smell like.
13 They talked about it. And Gleaton, every officer who saw
14 him that day talked about how he smelled like smoke. One
15 said a barbecue. One said a camp fire. One said
16 charcoal. They all said smoke. Now I think the defense
17 is gonna get up here and say cigarette smoke or they're
18 making it up or I don't know, but you have his actual
19 shirt and I'll ask you to smell it because I did and it
20 still to this day smells like smoke. Not as strong as it
21 was yesterday when I first opened up that box, but it
22 still smells like smoke.

23 And what did every witness tell you about Michael
24 Dukes? Didn't smell like anything. Now, maybe you
25 think, well, why would he smell like smoke? There are

1 three to four fires set in that house, right? Takes a
2 minute to set one. Find stuff and set another one. Find
3 stuff and set another one because all of them said you
4 had to find combustible material and set it on fire so by
5 the time he leaves, he smells of the smoke from setting
6 the fire. That's why he smelled like smoke. He had to
7 get all his stuff. What does all that mean? One
8 conclusion. Kenneth Gleaton is guilty. Pretty simple.

9 Now, I'm almost finished. Ms. Jurick is gonna get
10 up here and again try to convince you that I just made
11 all this up, I guess, or that her version is better or
12 that I haven't proven this beyond a reasonable doubt.
13 But as you listen to her and as you go back in that jury
14 room I ask you to remember what all the witnesses said,
15 all the evidence you saw, because the one thing you
16 didn't do when you came in this courtroom on Monday is
17 leave your common sense at the door, right? I know when
18 y'all walked in here on Monday this was the last place
19 you wanted to be was Friday at 5:30 listening to me talk
20 about a murder, but you did and you paid attention and
21 y'all were conscientious and I thank you so much for that
22 and I just ask that you continue to do the same thing,
23 that you use your common sense and think if not Kenneth
24 Gleaton, if all this is evidence doesn't point to him, if
25 everything we have shown you doesn't prove it beyond a

1 reasonable doubt, then why are we here?

2 All of this goes to show you that Kenneth Gleaton
3 did it. He had the gun, he had the motive, he had the
4 opportunity, he told her I'll kill you, he admitted to
5 setting the place on fire, all that happened because he
6 did it. Therefore, I ask you when you go back in that
7 jury room that you come back with a verdict that speaks
8 the truth, a verdict of guilty on all four counts. Thank
9 you.

10 THE COURT: Yes, ma'am.

11 MS. JURICK: Thank you, Your Honor.

12 She was right. I do have a box and I'm going to put
13 all the irrelevant things in it and partially why I have
14 a box is because when we first started this, Ms. Osteen
15 over here told you that Dukes had packaged up the perfect
16 present, the perfect box and had fed it to the
17 investigators and we told you that it was gonna be empty
18 and it is empty. They haven't shown anything that ties
19 Mr. Gleaton to this.

20 So what happened? Well, they ran their
21 investigation like a high school prom, mean girls at a
22 high school prom. One person said one rumor to somebody
23 and then it spreads like wildfire. That's it. It takes
24 on a life of its own and in a very short amount of time
25 it's turned into truth whether it's true or not. That's

1 what happened here.

2 Mr. Dukes shows up, Latoya really encouraging him,
3 tells him you've got to say something. You've got to
4 control this narrative, right? And he tells an officer,
5 hey, I was there. I saw it and it was the boyfriend.
6 The boyfriend did it. That spreads real fast among all
7 the investigators. Pretty soon the coroner is saying it,
8 the fire chief is saying it, the crime scene investigator
9 is saying it, everybody is saying the boyfriend did it.
10 They don't have anything about the boyfriend. They don't
11 even know his name at this point, just the boyfriend did
12 it and by the time Investigator Hinson over here shows
13 up, that's what everyone is saying, and they march Dukes
14 over to him and he tells them his story and then
15 Investigator Hinson and goes and gets warrants that night
16 within a few hours with no other investigation, no other
17 corroborating evidence and he told you that yesterday
18 that that was enough. They get the warrants, but then
19 they don't continue to look into Dukes or to anyone else
20 or to his credibility.

21 So is Dukes credible? Let's ask ourselves that.
22 The biggest issue is his timeline because they have
23 really built their case on that. They need you to
24 believe that this happened at 9:15 like they're saying so
25 that the phone records won't show the truth that Mr.

1 Gleaton was way on the other side of town when this
2 happened. Well, Dukes initially tells the investigators
3 it happened at 11. He walks it back real quick. They
4 turn it into 9:15. You heard him here yesterday say nine
5 to 10. I'm not really sure when. The coroner says that
6 he told her 10:30. We have the shots fired call at 11
7 today so his timeline is all over the place. That's one
8 thing that doesn't make him particularly credible.

9 But when they settled on 9:15 they had a little bit
10 of a problem with, well, why didn't 911 get called until
11 12? Why did it take three hours to call 911. That seems
12 like a credibility issue. A three hour gap of time where
13 he's text messaging pictures of smiling foxes going like
14 this (indicating.) And when we asked him about it
15 yesterday, he said because it was cute. Sending a
16 smiling fox waving because it's cute right after you
17 witness someone you know and she says care about and good
18 to you murdered, not the best reaction. Goes to
19 credibility.

20 He also threw clothes away. That's another thing he
21 lied about and we know about it because of the Facebook
22 messages that Latoya brought in here between them. He
23 says I found her bloody bag in the woods. Then he says,
24 did I say keeping these? Oops. Or I meant turning them
25 in. You will be able to read them for yourselves, but

1 he's joking and laughing about destroying evidence and he
2 doesn't tell the investigators about it and he does not
3 turn it in. He says something about some shirts that he
4 sells for money, but he never gives them anything and he
5 never turns it in.

6 He also lies about talking to Kenny. He knows that
7 the investigators want him to get in touch with Kenny.
8 They have these arrest warrants. They're looking for him
9 and he says whatever he says. I mean, they're in
10 communication about how he's gonna help them find Kenny.
11 They have a conversation. You can see it in the phone
12 records, a three minute conversation, Dukes and Kenny
13 that he never tells the investigators. Willingness to
14 talk to police. They just stood up here and told you
15 that Dukes was more credible because he was so willing to
16 talk to police. You heard him say he wanted to run. He
17 didn't want to go back there at all. Latoya convinced
18 him to and that he wouldn't be here today if he wasn't
19 under subpoena. I think that question went a little
20 sideways. The prosecutor was trying to get him to say,
21 hey, I don't want to be here and he made some comment
22 about how you'd have to come and find me. They would
23 base an entire murder investigation off the words of one
24 man with a criminal history. Believe everything that he
25 said.

1 So how do we know that it wasn't Kenny? The
2 timeline. That's obviously the biggest and most
3 important thing. They're saying it's bad that he had Ms.
4 Peele's phone. Thank God that he did because Ms. Peele's
5 phone can be tracked and can show that he was not there
6 when the fire started. You know, he said something to
7 Roy that was different, but that's just, the phone
8 records say that he wasn't there and we know that the
9 phone was with him because Jessica Gantt called him at
10 12:07, he picked it up and she accused him of murdering
11 Amanda. That's when he found out about it at 12:07 when
12 he picked up the phone when he was on the other side of
13 town and the records clearly show that.

14 As far as time of death goes, the coroner testified,
15 I believe she had a 7:30 to 10:30 window, but she told
16 you that body actualization can't be performed in ideal
17 conditions, that that kind of influences how their
18 investigation goes because she was burned, because they
19 were outside, for a variety of reasons a lot of her
20 opinion was based off the interviews that she did and the
21 testimony that she got from people on the scene. All of
22 those came back to what Dukes had said. She said that
23 she picked 10:30 as the end of the window because he said
24 that's when he left the house, he saw her alive and it
25 wasn't on fire. Not what he said at different times but

1 that was her understanding and that is why they pick that
2 time of death.

3 The pathologist said -- That's not what she does.
4 Dr. Durso she gets the body the next day. Can't speak to
5 that. Firefighter Captain Steven Buff who came in and
6 carried the body out told you it wasn't stiff yet.
7 That's at midnight. They want you to believe that she
8 dies at nine and that the fire started at nine and that
9 it was a four hour fire. There's a lot of house left for
10 a four hour fire. Use your common sense just like Ms.
11 Sampson asked you to. And we do seem to agree, or Ms.
12 Sampson wanted you to think just now that all of the fire
13 experts are disagreeing. They weren't. They clarified
14 that the expert that she pointed out that we paid which
15 is normal, we don't have the State working for us, if we
16 want second opinions, that's a normal thing, we ask
17 people for second opinions and they can get paid for
18 that, he came in and said that he said it was a 20 minute
19 fire or so because he was saying from the time that it
20 started until the fire department got there. Hewitt who
21 is their lead investigator -- By the way, they didn't
22 call their lead fire investigator. My theory is because
23 they realized he was gonna say that the fire took under
24 an hour and he clarified as to what he meant by that. He
25 was talking about from the time the fire started until it

1 was put out so they're measuring different things, but
2 either way that's not going from midnight back to 9:00.
3 That's nowhere near that. We're around an 11:00 fire.
4 The phone very clearly, everyone's agreeing with that,
5 that he was not there around 11.

6 So realizing that they have this empty box they had
7 to fill their case with all kinds of things to enrage you
8 and distract you and confuse you and that's what they did
9 and we are gonna go through some of the filler. She was
10 right. I don't know why it took two days of fire people
11 to testify that there was a fire. We agreed on almost
12 everything in this case. We really do. The only things
13 that we don't agree about is who did it, right? We agree
14 that there was a fire. We agree that it was arson. We
15 agree that she was murdered. We agree that he was
16 arrested by the river. So I don't know why we needed all
17 of these things. It's filler. It's meant to confuse
18 you. So the things that don't matter in this case, one
19 of my favorite ones, is a picture of a gun that came off
20 the Internet that may or may not be the type of gun that
21 the grandpa had like a month before, but then grandpa saw
22 it and said, well, the handle might be different. Not
23 sure why you had to listen to that.

24 I also, since we're agreeing that there's a fire,
25 pretty much this entire stack is pictures of the burnt

1 house. I don't know why we needed that. We agree. We
2 could have just said at the beginning the house burnt
3 down, it was arson. What about the bullet? We know that
4 she was shot. The actual bullets are in here somewhere.
5 This one. We agreed that she was shot. They didn't need
6 to bring all of these people in. The stuff in the woods
7 we are apparently disagreeing. The stuff in the woods
8 was his and he was incredibly forthcoming about that in
9 his statement. They tried to say he wasn't, but when you
10 look back through the statement, he says things that if
11 he were lying, they don't benefit him, right? He tells
12 them that he was at Roy's house. That's how they find
13 out about Roy. He tells them that the phone's in the
14 river. He put it in the river. He took the phone. He
15 told them where the clothes, the Play Station and all
16 that was. He said that Roy gave him money, that there
17 was blood on the shorts. That's the whole reason they
18 know about that at all, that he tells them that Roy
19 helped him borrow shorts. The blood came from fishing.
20 That they had incidents with DSS about a month ago and
21 that he did run from the police at the Waffle House. And
22 that DSS took the kids. He told them all of those
23 things.

24 The reason they did all that is because fire is
25 terrifying, okay? It has gruesome and horrible pictures

1 that leave - I mean, all of these pictures were terrible,
2 right? We don't need pictures of an autopsy of a dead
3 woman to know that she's dead. They put those in there
4 to enrage your passions and to make you not think about
5 the actual issue. The actual issue is did he do it or
6 not. The same with all the DSS stuff. They want you to
7 think he said that he would kill her so then he did, that
8 it's that simple that those things are related. Those
9 things are not related. They had the audacity to put
10 family members, the grandma and the son of somebody who
11 was murdered - grandpa and the son of somebody who was
12 murdered up here on the stand in a murder trial to talk
13 about something with DSS that happened a month before.
14 You're not here to determine what happened with DSS. If
15 he pulled a gun on her, if he didn't, what exactly
16 happened at the Waffle House a month before, that is not
17 what you are here to find out about. That's not your job
18 at all. So we're only talking about that so that you
19 think, well, he said he would kill her. Somebody told us
20 that he said that he would kill her, so then he did.
21 That's all. None of them were there the night in
22 question. They weren't there. They don't know. They
23 don't have anything to add to this particular night.
24 That's not relevant.

25 So what are we left with that is relevant? Because

1 there are a few things certainly. One thing that's
2 relevant is the statement. I already told you that. I
3 agree that the statement is important. I think this
4 little map that shows where they locate the stuff, these
5 items that were his, he willingly says this is where the
6 stuff is. The phone records that show the call that Mike
7 Dukes lied about saying that they didn't talk that showed
8 the call to Jessica that show where he is at 11:00 that
9 night, they're relevant. These messages. These messages
10 with the waving fox talking about hiding evidence,
11 finding bloody bags, these are relevant. And the video.
12 The video is relevant.

13 We have explained to you what happened. Here is
14 what happened. Roy is the person that Kenny trusts more
15 in his entire life. Roy has looked out for him. Roy has
16 taken care of him and so when Kenny found out that his
17 girlfriend was dead, he needed somewhere to go and they
18 had previously been talking about getting out of town,
19 right? He had relief work to do in Texas. He was
20 scared. He was panicked because of all the DSS stuff,
21 that they had some situations going on, because Jessica
22 called him and said she's dead and you killed her, he
23 panicked and, yeah, he shouldn't have run, but he was
24 panicked and he turned to Roy. We were already planning
25 on going to Texas. I need you to send me to Texas and

1 Roy told you that he denied it over and over, but as he
2 wasn't getting anywhere with Roy, Roy was freaked out,
3 Roy was nervous, he said what he had to say to get the
4 money to leave and Roy said he was gonna give him the
5 money and he was gonna give him that bus ticket that
6 night. He did what he had to to try to get help because
7 he was panicked and he was making bad decisions, but that
8 does not make him guilty of murder.

9 Another thing that matters is this lighter. The
10 lighter matters because you heard that it was an open
11 flame on readily combustible materials. Open flame
12 ignition source. It started with a lighter on a bed.
13 That's it. Lighter, bed, no accelerant and that matters
14 because they all told you that that's a high fuel load
15 and it burns fast and it burns hot and that's why we know
16 this was not a four hour fire. If it had been a four
17 hour fire, there would have been smoldering, there would
18 have been ash everywhere, it would have looked different
19 and they didn't vary on that.

20 The shirt also matters. By the way, I don't think
21 it smells like smoke. Y'all are gonna smell it no matter
22 what, so smell it. I don't think it does smell like
23 smoke, but there's no blood on it. They want you,
24 they've been telling you that it's the same shirt, right?
25 Because it smells like smoke so it must be the same

1 shirt. There's no blood on it. Remember Dukes said that
2 he was on top of her and there was blood everywhere? I
3 would think there would be some blood on the shirt.

4 Her phone. Her phone obviously matters. That's the
5 most important part of all. The SIM card I think matters
6 a little bit because it showed he was trying to keep
7 pictures of her. In his panic, in his fear, in his not
8 wanting to be arrested and not wanting to be accused of
9 this, he still had lost his girlfriend and he did want
10 those pictures.

11 So let's move on to talk about the investigation
12 itself, okay? There was a quote. Investigator Carwell
13 came in and he told us that it takes multiple
14 investigators to make sure that they don't miss anything.
15 I wrote down I need other minds to get involved in case
16 I'm missing part of the investigation. They did do
17 surprisingly little and they did miss a lot. You know, a
18 couple weeks ago, two weeks ago, there was a delayed
19 disclosure rape case here and it wasn't mine, but I sat
20 in here and I watched closing and they said, you know,
21 this is real life. It's not CSI. It's not like TV.
22 It's he said, she said and that's sometimes how cases
23 work, right? Like we don't have all the DNA and the
24 fancy things and all of that. It's just he said, she
25 said. It's a rape from a long time ago and that might be

1 true in that case, that is not this case. It is this
2 case because they didn't do anything, but that should not
3 be this case.

4 They didn't find any DNA from Dukes because they
5 didn't take any DNA from Dukes. They never, they don't
6 even have a sample to compare anything to. Since we're
7 talking about DNA, they didn't talk about DNA at all,
8 about any DNA, right? What about Dukes' phone? They
9 found out, they had all these call logs. They had these
10 messages. They know there's information on Dukes' phone.
11 They never took Dukes' phone. They have the power to
12 subpoena it. They have the power to look through it.
13 They didn't. And they can track Amanda's phone
14 obviously. Amanda's phone tells us where Kenny is. They
15 could have done that same thing with Dukes. They could
16 have known where Dukes was. Nobody ever did that. What
17 about fingernail scrapings or fingerprints on the lighter
18 that I was trying to find over there. None of that.
19 They didn't test Kenny's clothes. They're right here.
20 Didn't do any GSR on him, on his clothes, anything like
21 that either. Which gets us to the gsr.

22 The only forensic stuff you even heard about was the
23 gunshot residue on Dukes' hand and they're trying to
24 confuse you by saying that because there's no three
25 component particles, that there is no gsr, right? But

1 you heard there are two component particles that's
2 consistent with gsr. It's a technical distinction that
3 they're trying to make and Ms. Sampson came up and said,
4 well, you know, you didn't look at the actual report. It
5 would be best to look at it visually with your own eyes,
6 right, if all you had is the report? But you heard their
7 gunshot residue person say, well, if it comes back and
8 there aren't any three component particles, we don't
9 visually look at it. So she didn't do that either, but
10 she's the one that had the ability to because they're
11 scared. They don't want to find any three component
12 particles. This way they can just say there's no gunshot
13 residue which is not a true statement.

14 What about the blood in the car. We have these
15 pictures over here. Right here. It's wet. There's some
16 water and some blood.

17 MS. SAMPSON: Objection, Your Honor. Introducing
18 facts not in evidence. Nobody testified to that.

19 THE COURT: What?

20 MS. SAMPSON: She's introducing facts not in
21 evidence. Nobody testified that that's blood.

22 MS. JURICK: Okay. There is a --

23 THE COURT: All right. So are we straight now?

24 MS. JURICK: I can continue.

25 THE COURT: What?

1 MS. JURICK: Yes.

2 THE COURT: Okay. All right.

3 MS. JURICK: I'll move on. You can decide for
4 yourself if that's blood or not. This is something that
5 these two pictures I took up to at least two, maybe more
6 of their crime scene investigators and said, do you
7 recognize these pictures, right? Expecting them to say
8 yes honestly to introduce them and talk to them. They
9 said no. One of them told me anything I noticed I
10 photographed. I photographed my approach to the house.
11 I don't remember if there were cars in the driveway. I
12 think the other one said that was outside of the scene.
13 Finally we did get Hinson here the lead investigator had
14 reviewed them, but nobody did anything with them.
15 There's no sample. Nothing. And I think the water does
16 suggest that it's more relevant than they're saying, but
17 we don't know.

18 And there's other sloppy things, right? The coroner
19 came in and she said that she was shot in the head. She
20 was shot in the stomach. Attention to detail. There's a
21 wallet over here that the first time anyone ever looked
22 inside and pulled the stuff out was when Ms. Osteen took
23 the ID out. Nobody knew what was inside that wallet.
24 Nobody had ever looked. And this computer right here, I
25 have no idea if anyone has ever turned it on. I've never

1 seen anything about it. It seems like we would be able
2 to tell if it was, Ms. Peele said he was taking - or if
3 there were actions of Mr. Gleaton. But no one did that.
4 That's the point.

5 Arrest warrants were taken out for Kenny without any
6 corroborating evidence and it was an open and shut case
7 where nobody did anything else. And that kind of takes
8 us to Dukes' motive. In cases like this you want to have
9 someone to blame. We want to have a clear story. They
10 created a story for why Kenny would do this, right? And
11 that's the same reason he was running. He was breaking
12 up with her. They had some issues. It must be him. We
13 don't know what Dukes' relationship was like. Nobody
14 ever asked him. Nobody did any interviews with anyone
15 else, right? We don't know as much about Dukes. We
16 don't know about Jessica. We don't know about these
17 other people that were around because they weren't
18 investigated.

19 Jessica did make some comment about them being
20 together and Roy made some implication maybe that Dukes
21 and Amanda were together, but the point is nobody looked
22 into all of that. Ms. Sampson just told you that we
23 could have ask no questions and we could have. We do
24 agree on that, that it is completely their burden. And
25 the Judge is gonna tell you that, too. We have no

1 burden. They have to prove him guilty beyond a
2 reasonable doubt and we don't. So usually we don't have
3 a case where we say, hey, he didn't do it, but this guy
4 did. But in this case it seemed so obvious. Mr. Dukes
5 did it. He shot her, he strangled her, and he set the
6 house on fire, and when that didn't work, he came up with
7 a lie that would. The fire was supposed to cover it up,
8 but instead he had to use this lie and he sold it and
9 they ate it up because it's the path of least resistance.

10 My point there was that to find Kenny -- We believe
11 that Dukes did it, but to find Kenny not guilty, you
12 don't have to believe that Dukes did it. You just have
13 to have a doubt about Kenny's guilt. So the Judge is
14 gonna tell you that to convict Kenny you have to find him
15 guilty beyond a reasonable doubt and beyond a reasonable
16 doubt is something that gives you hesitance, makes you
17 hesitant to act. A reasonable doubt is what makes you
18 hesitant to act. Something that makes you question.
19 Something that makes you pause.

20 And so I wanted to go through some of the examples
21 of a reasonable doubt in this case. If you think that
22 sending like a smiling fox emoji right after you've seen
23 someone murdered is weird, if that makes you question
24 whether that's really what happened, that's reasonable
25 doubt. If you have questions about someone who doesn't

1 call 911 for three hours, that's reasonable doubt. If
2 you have questions about finding bloody clothes, laughing
3 about it, not giving them to the police, that's
4 reasonable doubt. What about telling the prosecutor that
5 they would have to come find you and that you wanted to
6 run and not do anything? That's reasonable doubt. Going
7 along with that, when the investigator asked you the day
8 after you witnessed a murder you say, man, I'm just
9 watching porn, that's reasonable doubt. And then you
10 don't tell them when the person they're looking for
11 contacts you? Also reasonable doubt. What about no
12 blood on the shirt? No blood on the shirt if you were
13 supposedly standing on top of her and there's blood
14 everywhere. Reasonable doubt. All of these things.

15 Any question that you guys come up with back there
16 when y'all are deliberating with each other, that's also
17 reasonable doubt. Those questions that you have that
18 weren't answered that make you have a little hesitation
19 about what happened, that's reasonable doubt and that
20 means that you need to find him not guilty. That's your
21 obligation.

22 So the biggest one for me is how about the arson
23 investigator saying that it happened at 11 and the phone
24 people saying that he absolutely was not there. That is
25 more that reasonable doubt. At the very least it's

1 reasonable doubt. Use your common sense. It could not
2 have been a four hour fire so there is no way that that's
3 what happened, and find Kenny not guilty of all these
4 crimes.

5 THE COURT: Yes, ma'am.

6 MS. SAMPSON: All right. I'm almost done. Almost
7 done listening to all us lawyers talk about all this
8 stuff. So I told you she was gonna get up here and tell
9 you that I was wrong, right? She just told you that we
10 didn't need to do all of this. He asked for a trial. We
11 have to do all of this. It's part of our job. They can
12 stand up here and say, yes, the house was set on fire. I
13 still have to show you pictures of a house set on fire.
14 That's my job. As the prosecutor we have the burden of
15 proof. All three of us have to put in all of this. We
16 told you that in the beginning. We told that it was
17 going to be boring. We told you that there would be
18 times when we were just putting in a piece of evidence
19 and y'all are going why are we listening to these people.
20 We told you that because that is our job.

21 So to get up here and say we just agree to that,
22 clearly they didn't or we wouldn't be here. We have to
23 prove to you beyond a reasonable doubt that he did all of
24 that so that is why you have pictures of fire and
25 pictures of the house and all of these extra things

1 because we have to once he asked for a trial and that is
2 his right.

3 Now, she told you something and I want you to
4 understand this if you don't understand anything else
5 I've said. She says if you go back there and you have a
6 question, that's reasonable doubt. That's not correct.
7 Reasonable doubt is something that hesitates you, makes
8 you hesitate to act. It's not any question. I cannot
9 prove anything beyond all doubt. I can't prove that
10 tomorrow I'm gonna wake up. I really hope that I do, but
11 I cannot prove that beyond a reasonable doubt. I can't
12 even prove beyond a reasonable doubt that my name is
13 April and I was born on September 25th because I was a
14 baby and I don't remember. But what do I do? I look at
15 all the things that lead me to understand that. My
16 mother told me that. It says that on my birth
17 certificate. Do I have a reason to question my mother,
18 my father, the hospital and my birth certificate? No.

19 Just like in this case with all this evidence you
20 have absolutely no reason to question that Kenneth
21 Gleaton is guilty. He had motive. He had the
22 opportunity. He had the ability. She keeps talking
23 about this timeline. Did any of those witnesses tell you
24 the fire got started at 9:00? No. I don't know where
25 she's getting this stuff from. Nobody told you that.

1 She told you that there was this phone call and you heard
2 it and you'll have it back there. The call said and the
3 lady from 911 told you someone called to say shots were
4 fired. The person called at around the same time as the
5 fire. They never said when they heard shots fired.
6 That's not a question. It doesn't question whether he
7 did it. There's a question about the timeline because
8 it's a fire. Nobody saw it start. That is the purpose
9 of an arson. The purpose of an arson is to burn
10 everything down. It just didn't happen in this case
11 because the neighbors saw it and called before it could
12 burn everything.

13 Now, she just told you that Mr. Dukes' packaged all
14 this up and sent it in a bow and that they don't believe
15 them, they believe their client. Well, that's packaged
16 all up in a bow, too, and covered up with fire because
17 his version based on his statement and that video can't
18 go together. That's a package that doesn't make any
19 sense either. Why would you say you set something on
20 fire in your hidden videotape if you didn't? There's no
21 question about that.

22 Now, she tells you that Dukes just came up with this
23 story. It was a great story and everybody just believed
24 him. Well, he must be the best story teller on the
25 planet earth because who all had who believe him for this

1 to true? Let me see. It starts with Latoya had to
2 believe him. Jessica had to believe him. Law
3 enforcement had to believe him. The fire department had
4 to believe him. We had to believe him. He had to get up
5 here and swear on this Bible that he was telling the
6 truth and lie. And then let's look at that. He also had
7 to get the lie wrong. Because he told you and he told
8 everyone, he told, he gave a statement to Hinson, I heard
9 one shot. There's two. Didn't mention her getting beat,
10 did he? But she did. He didn't mention the fire because
11 he didn't know about it. If you're gonna lie and put all
12 this evidence in this nice beautiful box that she talks
13 about, get it right. But he didn't. Because he was
14 telling the truth.

15 The truth is he saw that man strangle Amanda, heard
16 him shoot her, and he ran. The truth is when he said,
17 when Kenneth Gleaton told Roy that he set that house on
18 fire, it's because he did. There's no question about
19 that. If there was more they could have done - this is
20 not TV. We're not gonna one day do something and have
21 evidence an hour later. They did a gsr kit on him. He
22 was willing. He didn't run. Could we have done DNA?
23 Sure. I'm sure we could have. Would it have come back
24 with something. Not necessarily. Just like the gsr
25 person told you, you don't always have that kind of

1 evidence. It would be great. I've been doing this a
2 long time. It would be great to have that in every
3 single case. We just don't. And in this case you did
4 get it. You had a confession. You had him saying I'm
5 fucked after he saw that video. Why would they look at
6 anybody else? Why? Motive. Opportunity. He did it.
7 There's no question.

8 They want you to believe that it's Mr. Dukes. No
9 reason to believe Mr. Dukes did anything other than be in
10 the wrong place at the wrong time playing a video game.
11 That's all he did. And then he told what happened and he
12 had to be up here. He didn't want to be here. He's
13 homeless. He's telling you he's working. That man, all
14 he does is work. He might be homeless but he works a
15 lot. But what did he tell you? I came here to tell the
16 truth that Kenneth Gleaton killed her. And that's what
17 he did. She said -- I wrote it down because it made me a
18 little upset -- that we had the audacity to put family
19 members up here. I didn't make those people witnesses.
20 That man had the audacity to kill somebody's mama and
21 make that person a witness. I didn't do it.

22 They have the audacity to point at some homeless man
23 as the person who did this when the person who did it is
24 sitting over there right next to them. Because of all
25 that, because of all the evidence, because there's

1 absolutely no reasonable doubt that this man did it, I
2 ask that you find him guilty of all four counts of
3 murder, of arson in the second degree, of possession of a
4 gun by a person convicted of a violent crime, and of
5 desecration and destruction of human remains because not
6 that I want him to, but because he is guilty. And at
7 this point I think everybody in this room knows that.
8 Thank you.

9 THE COURT: Now, members of the jury, before I
10 charge you, I'm gonna give you a short break. I need to
11 take a short break, okay? Once again, you can't talk
12 about this case and in about 10 minutes I'll bring you
13 back and charge you on the law. Thank you.

14 (Whereupon, the jury entered the jury room at 6:10
15 p.m.)

16 (Short break.)

17 THE COURT: Bring the jury in.

18 (Whereupon, the jury entered the courtroom at 6:25
19 p.m.)

20 THE COURT: Welcome back members of the jury. I
21 will now give you the charge on the law. I'll read it
22 and sometimes my eyesight is not as good as it used to be
23 so if I were to repeat something, it's because I read it
24 wrong or something. Y'all ready?

25 Now, I remind you that during this trial you and I

1 have certain duties to perform. As the trial Judge it is
2 my responsibility to preside over the trial of this case,
3 and I also have the duty to rule on the admissibility of
4 evidence offered during this trial. You are to consider
5 only the competent evidence before you. If there was any
6 testimony ordered stricken from the record in this case
7 during this trial, you must disregard that testimony.
8 You are to consider only the testimony which has been
9 presented from this witness stand, any exhibits which
10 have been made a part of the record in this case, and any
11 stipulations of counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding Judge I am the
14 sole Judge of the law in this case, and it is your duty
15 jurors to except and apply the law as I now state it to
16 you. If you already have any idea as to what the law is
17 or what the law ought to be and it does not agree with
18 what I now tell you the law is, you must abandon this
19 idea because you are sworn to accept the law and apply
20 the law exactly as I state it to you.

21 In every case tried in this Court before a jury, the
22 jury becomes the sole and exclusive judge of the facts in
23 this case. A trial Judge cannot intimate, state comment
24 on, or make any statement to a jury about the facts in a
25 case. Since you, the jury, are the sole judge of the

1 facts of this case, you are not to infer from what I have
2 said during the progress of this trial in ruling upon the
3 admissibility of evidence, or otherwise, or anything that
4 I say now during the course of this instruction to you,
5 that I have any opinion about the facts of this case.
6 The law does not allow me to have an opinion about the
7 facts of this case. This is a matter solely for you, the
8 jury, to determine.

9 As jurors, it is your duty to determine the effect,
10 value, and weight of the evidence presented during this
11 trial.

12 There are two types of evidence which are generally
13 presented during a trial: direct evidence and
14 circumstantial evidence. Direct evidence is the
15 testimony of a person who claims to have actual knowledge
16 of a fact, such as an eyewitness. It is evidence which
17 immediately establishes the main fact to be proved.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact. It is
20 evidence which immediately establishes collateral facts
21 from which the main fact may be inferred. Circumstantial
22 evidence is based on inference and not on personal
23 knowledge or observation.

24 The law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence. You should weigh all the evidence in
4 this case. After weighing the evidence, all the
5 evidence, if you are not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must find the
7 defendant not guilty.

8 Necessarily, you must determine the credibility of
9 witnesses who have testified in this case. Credibility
10 simply means believability. It becomes your duty as
11 jurors to analyze and evaluate the evidence and determine
12 which evidence convinces you of its truth.

13 In determining believability of witnesses who have
14 testified in this case, you may believe one witness over
15 several witnesses or several witnesses over one witness.
16 You may believe a part of the testimony of a witness and
17 reject the remaining part of the testimony of that same
18 witness. You may believe the testimony of a witness in
19 its entirety or reject the testimony of a witness in its
20 entirety. You may consider whether any witness has
21 exhibited to you any interest, bias, prejudice, or other
22 motive in this case. You may also consider the
23 appearance and manner of a witness while on the stand
24 testifying.

25 The Rules of Evidence ordinarily do not permit

1 witnesses to testify to opinions or conclusions. An
2 exception to this rule exists for witnesses we call
3 expert witnesses. A witness who, by education and
4 experience, has become expert in some art, science,
5 profession, or calling may state an opinion as to
6 relevant and material matters in which the witness claims
7 to be an expert and may also state the reasons for the
8 opinion. You should consider expert opinion received in
9 evidence in this case like any other evidence. Give it
10 the weight you think it deserves. If you decide that the
11 opinion of an expert witness is not based on sufficient
12 education and experience or if you conclude that the
13 reasons given in support of the opinion are not sound or
14 that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely.

16 An expert witness' testimony is to be given no
17 greater weight than that of other witnesses simply
18 because the witness is an expert. Further, you are not
19 required to accept an expert opinion even though it is
20 not contradicted.

21 Now, the indictments charge the Defendant with
22 murder, arson in the second degree, possession of a
23 firearm or ammunition by a person convicted of a violent
24 felony, and desecration of human remains. I remind you
25 that the fact the Defendant was arrested, charged and

1 indicted in this case is not evidence in this case and
2 cannot be considered by you as evidence of guilt in this
3 case. Nor does it create any presumption of inference of
4 guilt. The document is simply the formal written
5 instrument which contains the charges made against the
6 Defendant. It is a formal document by which the case is
7 brought into this Court.

8 Now, I instruct you and emphasize that the fact the
9 Defendant did not testify is not a factor to be
10 considered by you in any way in your deliberations and in
11 your consideration of the question of the guilt or
12 innocence of the Defendant. It must not be considered by
13 you in any manner whatsoever. A Defendant has the
14 constitutional right to remain silent, and the assertion
15 of this right must not be considered by you in your
16 deliberations. I repeat, under your oath, you are to
17 draw no conclusion whatsoever from the fact that the
18 Defendant in this case did not testify. The fact that
19 the Defendant did not testify should not even been
20 discussed in the jury room. The burden of proof, as I
21 have stated to you, is on the State. The Defendant is
22 not required to prove his innocence. The burden of proof
23 remains on the State to prove guilt beyond a reasonable
24 doubt.

25 Now, the defendant has pled not guilty to these

1 indictments, and that plea puts the burden on the State
2 to prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent.

5 I charge you that it is an important rule of law
6 that a Defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be presumed
8 to be innocent of the crime for which the indictment was
9 issued unless guilt has been proven by evidence
10 satisfying you of that guilt beyond a reasonable doubt.
11 This presumption of innocence does not end when you begin
12 your deliberations, but it accompanies the Defendant
13 throughout the trial until you reach a verdict of guilt
14 based on evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the Defendant
18 which remains with the Defendant until it has been
19 stripped away from the Defendant by evidence satisfying
20 you of the Defendant's guilt beyond a reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory. It is not just a legal phrase. It is a
23 substantial right to which every Defendant is entitled
24 unless you, the jury, are satisfied from the evidence of
25 the Defendant's guilt beyond a reasonable doubt.

1 What is a reasonable doubt in the law? A reasonable
2 doubt is the kind of doubt that would cause a reasonable
3 person to hesitate to act.

4 The State has the burden of proving the Defendant
5 guilty beyond a reasonable doubt.

6 Some of you may have served as jurors in civil
7 cases, where you were told that it is only necessary to
8 prove that a fact is more likely true than not true, such
9 as by the greater weight or the preponderance of the
10 evidence. In criminal cases, the State's proof must be
11 more powerful than that. It must be beyond a reasonable
12 doubt.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the Defendant's guilt. There are
15 very few things in this world that we know with absolute
16 certainty, and in criminal cases the law does not require
17 proof that overcomes every possible doubt. If, based
18 upon your consideration of the evidence, you are firmly
19 convinced that the Defendant is guilty of the crimes
20 charged, you must find the Defendant guilty. If, on the
21 other hand, you think there's a real possibility that the
22 Defendant is not guilty, you must give the Defendant the
23 benefit of the doubt and find him not guilty.

24 In order to establish criminal liability, criminal
25 intent is required. For example, the mental state

1 required to be proven by the State for a particular crime
2 might be purpose, intent, knowledge, recklessness, or
3 criminal negligence.

4 Criminal intent must be proven by the State beyond a
5 reasonable doubt. Criminal intent is always a matter
6 that must be determined by the jury from the
7 circumstances surrounding the situation. There is no way
8 to prove intent to a mathematical certainty. There is no
9 way medical science can dissect a person's brain and
10 determine what the person had in mind so the law says
11 that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you
13 make a determination of whether or not the element
14 requiring intent was present.

15 It is not necessary to establish intent by direct
16 and positive evidence, but intent may be established by
17 inference in the same way as any other fact, by taking
18 into consideration the acts of the parties and all the
19 facts and circumstances of the case.

20 Criminal intent is a mental state, a conscience
21 wrongdoing. It is up to you to determine what the
22 Defendant intended to do based on the circumstances shown
23 to have existed. Criminal intent can arise from action
24 or a failure to act. It may arise from negligence,
25 recklessness, or an indifference to duty or to

1 consequences that is considered by the law to be the
2 equivalent of criminal intent.

3 What is murder? The defendant is charged with
4 murder. The State must prove beyond a reasonable doubt
5 that the Defendant killed another person with malice
6 aforethought. Malice is a legal term implying wickedness
7 and excluding a just cause or excuse. The term malice
8 indicates a for purpose and designed to do a wrongful act
9 under the circumstances that exclude any legal right to
10 do it. It is something which springs from wickedness,
11 from depravity, from a heightened void of social duty,
12 and fatally bent on mischief. Malice may be express or
13 implied. Malice is hatred, ill will, or hostility toward
14 another person. It is the intentional wrong doing of a
15 wrongful act without just cause or excuse and with an
16 intent to inflict an injury or under circumstances that
17 the law will infer an evil intent.

18 Malice aforethought does not require that the malice
19 exists for any particular time before the act is
20 committed, but malice must exist in the mind of the
21 Defendant just before and at the time the act is
22 committed. Malice may be conceived at the very moment
23 the fatal blow is given, therefore, there must be a
24 combination of the previous evil intent and the act.

25 Malice aforethought may be express or inferred.

1 These terms express and inferred do not mean different
2 kinds of malice, but merely the manner in which malice
3 may be shown to exist. Malice is either by direct
4 evidence or by inference from the facts and circumstances
5 which are proved.

6 Express malice is shown when a person speaks words
7 which express hatred or ill will for another or when the
8 person prepared beforehand to do the act which was later
9 accomplished. For example, lying in wait for a person or
10 any other acts or of preparation going to show that the
11 deed was within the Defendant's mind would be express
12 malice. Malice may be inferred from the conduct showing
13 a total disregard for human life. Malice may be inferred
14 from the facts and circumstances surrounding the case.
15 Malice does not necessary impart ill will toward the
16 individual injured, but signifies rather a general
17 malignant recklessness of the lives and safety of others
18 or a condition of the mind which shows a heart,
19 regardless of social duty, fatally bent on mischief.

20 Arson in the second degree. Section 16-11-110(B) of
21 the South Carolina Code of Laws says that any person who,
22 A, willfully and maliciously sets fire to or burns or
23 causes to be burned or, B, aids, counsels, or procures
24 the burning of any dwelling, house, or any kitchen, shop,
25 barn, stable, or other outhouse that is partial therefor

1 or belonging to or adjoining thereto whether property of
2 himself or another shall be guilty of second degree
3 arson.

4 First, the State has to prove that the building
5 burned was a dwelling, house, or partial of a dwelling,
6 house. Under our law a dwelling, house is defined in
7 Section 16-11-110 as any house, outhouse, apartment
8 building, erection, shed, or box in which there sleeps a
9 proprietor, tenant, watchman, clerk, laborer, or a person
10 who lodges there with a view to the protection of the
11 property shall be deemed a dwelling house and of such
12 dwelling house or any other dwelling house, all houses,
13 outhouses, buildings, sheds, and erections which are
14 within two hundred yards of it are the appurtenance to it
15 or the same, establishment of which is an appurtenance
16 shall be deemed partials.

17 Second, the State has to prove that the burning was
18 done willfully and maliciously and not accidentally. For
19 bringing the willful and malicious in the law of arson it
20 simply must be done voluntarily and without excuse or
21 justification and without any bona fide claim of a right.
22 A malicious burning is an act done with a condition of
23 mind that shows a heart regardless of social duty and
24 bent on mischief, an event designed to do an intentional
25 wrong act towards another or towards the public without

1 any legal justification or excuse. This malice need not
2 be express, but must be implied.

3 Third, the State has to prove that the building was
4 set fire - was set fire to or burned. It is not
5 sufficient to constitute arson that the fire be set near,
6 against, or in a building. The building itself must be
7 to some extent burned, however, it is not necessary that
8 the building be consumed or materially injured or that
9 any part of it be wholly consumed. It is sufficient that
10 the fire is actually communicated to any part thereof
11 however small. It is not necessary that the fire
12 continue for any particular length of time or -- excuse
13 me -- however small is not necessary that the fire
14 continue for any particular length of time and the
15 offense is complete through the fire is put on or goes
16 out by itself. Any charring of the wood - charring of
17 the wood of a building whereby the fiber of the wood is
18 destroyed is sufficient. It is not necessary that the
19 wood be in a blaze. The mere fact however that a
20 building is scorched or discolored by heat without any
21 actual ignition is not sufficient.

22 Now, another indictment charges the Defendant, Mr.
23 Gleaton, with unlawful possession of a firearm by a
24 person convicted of a violent offense. It is unlawful
25 for a person who has been convicted of a violent crime to

1 possess a firearm or ammunition within this State. There
2 was a stipulation at the beginning of the trial that Mr.
3 Gleaton had been convicted of a violent crime.

4 Now, the Defendant contends that there is evidence
5 before you indicating that someone other than he may have
6 committed the crime or crimes and that the evidence
7 raises a reasonable doubt with respect to the Defendant's
8 guilt. In this regard I charge you that a Defendant in a
9 criminal case has a right to rely on any evidence
10 produced at trial that has a rational tendency to raise a
11 reasonable doubt with respect to his own guilt. I have
12 previously charged you with regard to the State's burden
13 of proof which never shifts to the Defendant. The
14 Defendant does not have to produce evidence that proves
15 the guilt of another, but may rely on evidence that
16 creates a reasonable doubt.

17 In other words, there is no requirement that the
18 evidence proves or even raises a strong probability to
19 assume other than the Defendant committing the crime.
20 You must decide whether the State has proven the
21 Defendant's guilt beyond a reasonable doubt, not whether
22 the other person or persons may have committed the crime.

23 The fourth indictment charges destruction and
24 desecration of human remains. The Defendant in this
25 case is charged with destruction and desecration of human

1 remains. Section 16-17-600(A) of the South Carolina Code
2 of Laws provides it is unlawful for a person without
3 authorization to damage or violate the human remains of
4 another. The State must prove beyond a reasonable doubt
5 that the elements of the destruction and desecration of
6 human remains, the elements are that the Defendant, one,
7 destroyed or damaged the remains of a deceased human
8 being, or, two, removed any portion of the remains of a
9 deceased human being from a burial ground or desecrate
10 human remains.

11 Members of the jury, while the Court determines the
12 admissibility of evidence, you, the jury, must determine
13 the existence, voluntariness and weight of any alleged
14 statement made by the Defendant. You make the ultimate
15 determination of whether or not the Defendant, in fact,
16 made the alleged statement. If you determine that the
17 Defendant made a statement, you must then determine
18 whether the statement was made voluntarily. Finally, you
19 will decide what weight, if any, should be given to any
20 alleged statement. You must determine whether the
21 alleged statement was a product of an essentially free
22 and unconstrained choice by the maker. The State must
23 prove the voluntariness of a statement beyond a
24 reasonable doubt.

25 If you determine beyond a reasonable doubt that a

1 statement was given freely and voluntarily, then you may
2 give the statement such further consideration as you deem
3 proper. If you determine that the alleged statement was
4 not the free and voluntary willing expression of the
5 Defendant, then you should not consider the statement as
6 evidence.

7 In determining whether a Defendant's will was
8 overcome in obtaining a statement, the law requires you
9 to consider what is known as the totality of the
10 circumstances. You should consider both the
11 characteristics of the Defendant and the circumstances
12 surrounding any questioning or interrogation. Some of
13 the factors the law says you may consider are the age of
14 the Defendant, the Defendant's educational background,
15 the Defendant's mental ability or capacity, and the
16 Defendant's background along with the other facts and
17 circumstances surrounding and making of the alleged
18 statement.

19 In determining the voluntariness of any alleged
20 statement, you should consider whether the Defendant was
21 advised of and understood his constitutional rights. The
22 law requires that before any interrogation or questioning
23 of a person in custody may begin, law enforcement must
24 advise the accused of his Miranda Rights, this being the
25 authority to advise - this means the authorities advised

1 the accused that the accused has a right to remain
2 silent, that any statement could be used against the
3 accused in a Court of law, that the accused has the right
4 to have a lawyer present, that if the accused cannot
5 afford a lawyer, then a lawyer would be appointed to
6 represent him or her without any cost, and that the
7 accused could stop making a statement at any time. Other
8 factors to be considered are the place and length of any
9 detention and the nature of the questioning.

10 You must carefully scrutinize all of the surrounding
11 circumstances before you give any weight to an alleged
12 statement. You must be satisfied beyond a reasonable
13 doubt that a statement was made by the Defendant and
14 uninfluenced by promise or reward, of threats or harm.
15 If you find beyond a reasonable doubt that any alleged
16 statement was given voluntarily, then you must decide
17 what weight, if any, should be given to the statement,
18 and if you find the statement was not voluntary, then in
19 that event you must not consider the statement as
20 evidence for any purpose.

21 Now, the law requires that a jury verdict be
22 unanimous which means all of the jurors must agree. The
23 only two forms of the verdict are guilty or not guilty.

24 Mr. Foreman, once the jury reaches a verdict of not
25 guilty or guilty, circle the verdict on the face of the

1 verdict form and sign under the verdict to signify what
2 you have circled is the verdict of all the jurors, then
3 notify us that you have reached a verdict by knocking on
4 the door. The State and the Defendant are entitled to
5 the individual opinion of each juror's on the issues of
6 the facts in this case. It is the duty of each of you to
7 consider and weigh all the evidence in this case from
8 such evidence to determine, if you can, the question of
9 guilt or innocence of the Defendant.

10 There is nothing particularly different than in the
11 way a jury should consider the evidence in a criminal
12 case from that in which all reasonable persons treat any
13 question depending upon evidence presented to them. You
14 are expected to use your good sense, consider the
15 evidence in the case for only those purposes for which it
16 has been admitted and give it a reasonable and fair
17 construction in light of your common knowledge of the
18 nature of the natural tendencies and inclinations of
19 human beings. If the accused is proved guilty beyond a
20 reasonable doubt, say so. If not proved guilty, say so.

21 Your verdict in this case will be one of two forms.
22 If, from the evidence and the law, you find that the
23 Defendant is not guilty, you will circle not guilty on
24 the verdict form I will give you and the foreman will
25 sign his name. If, on the other hand, you find the

1 Defendant is guilty based upon the evidence and the law
2 which you have heard, you will circle guilty on the
3 verdict form and the foreman will sign his name. Your
4 verdict must be unanimous, it must be guilty or not
5 guilty.

6 Now, I have four verdict forms. Desecration of
7 human remains is the first one, possession of a
8 firearm/ammunition by a person convicted of a violent
9 crime, murder, and second degree arson.

10 Now, Mr. Foreman and members of the jury, the
11 bailiffs will gather all the evidence that has been
12 introduced in this case, they will come with these
13 verdict forms along with all the evidence introduced in
14 this case. That will be your signal to begin your
15 deliberations. Until then, once again, I've got to ask
16 that you not begin any discussions until you receive the
17 verdict form along with all the other evidence that has
18 been introduced in this case, all right? So go to the
19 jury room. Don't begin any discussions until you receive
20 the verdict form and all the evidence has been sent to
21 you.

22 (Whereupon, the jury entered the jury room at 6:50
23 p.m.)

24 THE COURT: All right. Any exceptions or additions
25 from the State?

1 MR. EATON: Not from the State, Your Honor.

2 MS. JURICK: No, Your Honor.

3 THE COURT: Started early. Ms. Sampson, continue to
4 make sure what's in is in, take your time and I always
5 wait until the last minute to bring the alternate out
6 because believe it or not I've seen things happen between
7 this and that.

8 (Whereupon, the verdict form and exhibits taken into
9 the jury room and deliberations started at 7:00 p.m.)

10 (Deliberations break.)

11 (Verdict at 8:30 p.m.)

12 THE COURT: I understand we have a verdict. Is
13 everybody ready?

14 MS. OSTEN: Yes, sir, Your Honor.

15 MR. EATON: Yes, sir, Your Honor.

16 THE COURT: All right. Bring the jury in. Quite
17 please. Whatever the verdict is I have no idea. I don't
18 want any outburst by anybody on any side. Do you all
19 understand that?

20 MS. JURICK: Yes, sir.

21 MR. EATON: Yes, sir.

22 THE COURT: Thank you. Okay.

23 (Whereupon, the jury entered the courtroom at 8:40
24 a.m.)

25 THE COURT: Welcome back, Mr. Foreman, members of

1 the jury. Ms. Falcone.

2 THE CLERK: Yes, Your Honor. Mr. Foreman, has the
3 jury reached a verdict?

4 FOREMAN: Yes. We have reached a unanimous
5 verdict.

6 THE CLERK: Please hand it to the bailiff.

7 FOREMAN: (Proffering.)

8 THE COURT: Ms. Falcone, you may publish it.

9 THE CLERK: Yes, Your Honor. Indictment number
10 2019-GS-40-4079, the State of South Carolina versus
11 Kenneth Gleaton, we, the jury, by unanimous consent find
12 the Defendant, Kenneth Gleaton, on the charge of the
13 desecration of human remains guilty.

14 Indictment number 2019-GS-40-4077, the State of
15 South Carolina versus Kenneth Gleaton, we, the jury, by
16 unanimous consent find the Defendant, Kenneth Gleaton, on
17 the charge of possession of a firearm or ammunition by a
18 person convicted of a violent felony guilty.

19 Indictment number 2018-GS-40-1419, State of South
20 Carolina versus Kenneth Gleaton, we, the jury by
21 unanimous consent find the Defendant, Kenneth Gleaton, on
22 the charge of arson in the second degree guilty.

23 Indictment number 2018-GS-40-1418, the State of
24 South Carolina versus Kenneth Gleaton, we, the jury, by
25 unanimous consent find the Defendant, Kenneth Gleaton on

1 the charge of murder guilty. Signed number 179,
2 foreperson, November 1st, 2019. Mr. Foreman, were these
3 your verdicts and the verdicts of the entire jury?

4 FOREMAN: Yes.

5 THE CLERK: Yes.

6 THE COURT: All right. Is there anything further
7 from the jury on behalf of the State?

8 MR. EATON: Not from the State, Your Honor.

9 THE COURT: From the defense?

10 MS. JURICK: We ask that you poll the jury.

11 THE COURT: Beg your pardon.

12 MS. JURICK: We'd ask that you poll the jury.

13 THE COURT: Sure. That means that they have
14 requested and we are required to ask each and every one
15 of you about your verdict. Ms. Falcone, you ready?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: Go ahead.

18 THE CLERK: Mr. Foreman, number 179, were these your
19 verdicts?

20 JUROR #179: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR #179: Yes.

23 THE CLERK: Number 233, were these your verdicts.

24 JUROR #233: Yes.

25 THE CLERK: Are they still your verdicts?

1 JUROR #233: Yes.
2 THE CLERK: Number 113, were these your verdicts?
3 JUROR #113: Yes.
4 THE CLERK: Are they still your verdicts?
5 JUROR #113: Yes.
6 THE CLERK: Number 298, were these your verdicts?
7 JUROR #298: Yes.
8 THE CLERK: Are they still your verdicts?
9 JUROR #298: Yes.
10 THE CLERK: Number 2, were these your verdicts?
11 JUROR #2: Yes.
12 THE CLERK: Are they still your verdicts?
13 JUROR #2: Yes.
14 THE CLERK: Number 111, were these your verdicts?
15 JUROR #111: Yes.
16 THE CLERK: Are they still your verdicts?
17 JUROR #111: Yes.
18 THE CLERK: Number 307, were these your verdicts?
19 JUROR #307: Yes.
20 THE CLERK: Are they still your verdicts?
21 JUROR #307: Yes.
22 THE CLERK: Number 138, were these your verdicts?
23 JUROR #138: Yes.
24 THE CLERK: Are they still your verdicts?
25 JUROR #138: Yes.

1 THE CLERK: Number 142, were these your verdicts?
2 JUROR #142: Yes.
3 THE CLERK: Are they still your verdicts.
4 JUROR #142: Yes.
5 THE CLERK: Number 12, were these your verdicts.
6 JUROR #12: Yes.
7 THE CLERK: Are they still your verdicts.
8 JUROR #12: Yes.
9 THE CLERK: Number 306, were these your verdicts.
10 JUROR #306: Yes.
11 THE CLERK: Are they still your verdicts?
12 JUROR #306: Yes.
13 THE CLERK: Number 40, were these your verdicts?
14 JUROR #40: Yes.
15 THE CLERK: Are they still your verdicts.
16 JUROR #40: Yes.
17 THE CLERK: The jury has been polled, Your Honor.
18 THE COURT: Anything further?
19 MS. JURICK: Not with the jury, Your Honor.
20 THE COURT: Well, anything further? Something else
21 that doesn't include the jury, right?
22 MS. JURICK: Yes, Your Honor.
23 THE COURT: Very well. Mr. Foreman, members of the
24 jury, this is a difficult case and I told you at the very
25 beginning I thought it would take a week. My

1 observations, I thought you were very conscientious. You
2 listened carefully. You paid attention. And nobody can
3 complain about your verdicts. Sitting in judgment of
4 your fellow citizens is a difficult task. I've done that
5 a couple of times years ago. But you did your job I
6 think diligently, patriotically and I want to thank you
7 on behalf of everybody involved in this case for your
8 service. We're governed by the people and for the people
9 and we cannot exist without the people and the
10 participation of each and every one of you in this
11 patriotic process. I hope you have a greater
12 understanding and respect for our government, our system
13 of justice, and it only exists because of your
14 participation in this trial. With that I want to take
15 this opportunity to thank you for your participation. I
16 hope we meet again somewhere along the way. If we do so,
17 I hope it's under more pleasant circumstances. Thank you
18 so very much. You need to go to the jury room with
19 Mr. Nitsche and I'll be right in and I would like to
20 speak to y'all before y'all leave, okay? Thank you all
21 so very much.

22 (Whereupon, the jury was released from further
23 service at 8:45 p.m.)

24 THE COURT: Yes, ma'am.

25 MS. JURICK: Thank you, Your Honor. At this point

1 we would like to request a new trial and renew all prior
2 objections and motions, specifically mentioning that our
3 motion about Lyle with regards to the prior incident, the
4 State made it central to their theory and therefore it
5 cannot be harmless error and we would also like to renew
6 our motion for mistrial.

7 THE COURT: Your request is denied. Anything
8 further?

9 MS. JURICK: He would like to submit a written brief
10 within ten --

11 THE COURT: Denied. Bring the prisoner around.

12 MS. OSTEEEN: Your Honor, may I ask --

13 THE COURT: Sure. Go ahead.

14 MS. OSTEEEN: Would it be all right to defer
15 sentencing?

16 THE COURT: No.

17 MS. OSTEEEN: No.

18 THE COURT: Let's do it now. I want to end this
19 matter now.

20 MS. OSTEEEN: Your Honor, we do have some of his
21 family members who --

22 THE COURT: Ma'am, I have been patient this whole
23 week with everybody involved. I think I have been as
24 fair as I possibly could to both sides. This matter is
25 concluded. We tried it for a week. What additional time

1 do you think is necessary?

2 MS. OSTEEEN: Your Honor, we have been in contact --

3 THE COURT: All right. Talk to the State. I don't
4 care. What's your position?

5 MR. EATON: Well --

6 THE COURT: Beg your pardon?

7 MR. EATON: Can I speak to the --

8 THE COURT: Yeah. Yeah.

9 MR. EATON: -- family members?

10 THE COURT: Take your time. My feeling is to get it
11 over with, but I would defer to anybody. If y'all want
12 to delay it, I'll give you ten days. It doesn't matter.
13 Take your time.

14 MR. EATON: Judge, we would like to go --

15 THE COURT: Beg your pardon?

16 MR. EATON: Judge, we prefer to go now.

17 THE COURT: All right. Anything further?

18 MS. OSTEEEN: Your Honor, I just like to say that we
19 have, Kenny's mother has been in the courtroom throughout
20 the week, but she does not have a phone so we have to go
21 --

22 THE COURT: Okay. I can send the jury home. We can
23 wait until she gets here. Is that what you want me to
24 do?

25 MS. OSTEEEN: Your Honor, I would ask for it to be

1 heard on Monday. We can go --

2 THE COURT: No. No. No. I'm not gonna do that.
3 I'm gonna do it now. Anything further? Anything
4 further? Bring him around. Do you have a sentencing
5 sheet, Pat? How long has Mr. Gleaton been in jail, time
6 served?

7 MS. JURICK: Since October 10th, 2017.

8 THE COURT: Beg your pardon?

9 MS. JURICK: October 10th, 2017.

10 THE COURT: All right. Indictment 2019-4077, The
11 State versus Kenneth Ray Gleaton, this indictment is for
12 possession of a firearm by a convicted felon, the
13 sentence is five years. Indictment number 2018-1418, The
14 State versus Kenneth Ray Gleaton, this is an indictment
15 for murder, he's sentenced to life, indictment number
16 2018-40-1419, arson second degree, the sentence is 20
17 years, and finally indictment number 2019-4079, The State
18 versus Kenneth Ray Gleaton, grave destruction,
19 desecration of human remains the sentence is 10 years.
20 These sentences are concurrent with one another. Good
21 luck to everybody. Thank you all so very much. This
22 matter is concluded.

23 (Whereupon, Court's Exhibits #3, #5, #6, #12, #13,
24 #14, #15, #16, #17, #18 marked for identification.)

25 WHEREUPON, THE TRIAL WAS CONCLUDED AT 8:50 P.M.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

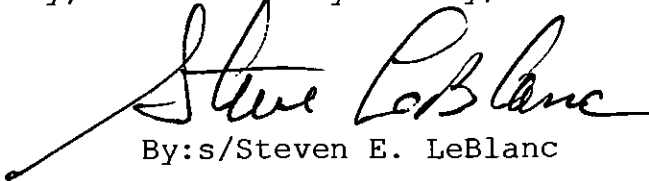
3 (COUNTY OF LEXINGTON)

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 October 28th through November 1st,
11 2019.

12 I FURTHER CERTIFY that the forgoing 965 pages
13 constitute a true and accurate record of said proceedings.

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

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 14th day of May, 2020.

18 
19 By:s/Steven E. LeBlanc

20
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

Statement of

Kenneth Gleaton
109 Crestmore Drive
Columbia, SC 29209
DOB: [REDACTED]

Made at

Columbia, South Carolina, this 10/10/17, at 1657 hrs, in the presence of
Hinson and Sgt. J. Carwell of the Richland County Sheriff's Department.

I, Kenneth Gleaton, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Questions: Inv. R. Hinson & Sgt. J. Carwell

Answers: Kenneth Gleaton

Q: What was the last grade you completed?

A: 11th, but I have my GED.

Q: Can you read and write?

A: Yeah I can read and write.

Q: Can you explain the chain of events that took place at 109 Crestmore Drive on 10/9/17?

A: I was there with Amanda and she was talking about wanting me to leave. So I picked up my stuff up and left with her phone.

I have made the foregoing statement freely and voluntarily without fear, threat, or reward or hope of reward of any kind.

Witness: [Signature]Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement of 5 pages and a true copy has been given to me this 10 day of October.

Sworn to and subscribed before me
 This 10 day of October 2017

Signed: [Signature]

[Signature]
 Notary Public for South Carolina
 My commission expires 9-23-19

PC:

Q: Why did Amanda want you to leave?

A: Because she wanted to get her kids back. She didn't want to take any chance with the kids.

Q: How long had you been with Amanda?

A: Since May of 2016.

Q: Where are you working?

A: I was working at Columbia Farms until a month or a month and a half ago.

Q: Who else was there with you at 109 Crestmore Drive?

A: Mike. I don't know his full name. I don't even know if Mike is his real name.

Q: Where did the argument between the two of you take place?

A: Bedroom.

Q: When you left the house at 109 Crestmore drive, where was Amanda?

A: In the bed.

Q: What was she doing in the bed?

A: Lying down. She was awake. She was on pain pills.

Q: When did you leave the house?

A: I don't even know. I would say 8.

Q: Where did you go when you left the house?

A: Roy house. It's right off of North Main behind the Burger King.

Q: What did you take when you left the house at 109 Crestmore Drive?

A: I took some of my clothes, PlayStation and my computer. I took Amanda's cell phone.

Q: What did you do with Amanda's cell phone?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: X Kent E. [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement of 5 pages and a true copy has been given to me this 10th day of October.

Sworn to and subscribed before me

This 10 day of October 2017

Signed: X Kent E. [Signature]

[Signature]
Notary Public for South Carolina

My commission expires 92319

Page _____

A: In the river

Q: Why did you put it in the river?

A: Wasn't any use to me.

Q: Why did you take her cell phone when you left the house?

A: To use. To call people.

Q: Where is your cell phone?

A: To tell you the truth it's in one of those bags or at the house.

Q: What did you do with the clothes and the PlayStation you took?

A: They in the woods. I dropped them off. I dropped the clothes off by a fence near Circle K. I dropped the PlayStation and the computer off in the woods by the Church on Leesburg.

Q: Who is Roy and how do you know him?

A: He is a friend of mine.

Q: How did you get to his house?

A: Walked.

Q: What took place when you got to his house and what time was it?

A: It was about 1:00 am to 1:30 am in the morning and I called him at his number 7743 and he told me to hold up because he didn't have any room for me to lay down. I never called me back so I went and slept under the bridge and by the river.

Q: Do you know Roy's full name?

A: I think Roy Breasley.

Q: Did you return to Roy's house today the 10th of October?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

Signed: 

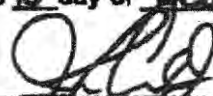
Witness: _____

This is to certify that I have read or have read to me the foregoing statement of 5 pages and a true copy has been given to me this 10 day of October.

Sworn to and subscribed before me

This 10 day of October 2017

Signed: 


Notary Public for South Carolina
My commission expires 9-23-19

Page 3

A: I went back this morning around 7:00am. That's when he gave me the shorts... me \$20.00 cash to get something to eat with.

Q: Why did he give you a pair of shorts?

A: They had my blood on them from where I cut my finger.

Q: Where did you cut your finger?

A: Fishing a couple of days ago. Sunday night, something.

Q: What did you do with the shorts that had blood on them?

A: I put them in the trash by the road.

Q: What did you do with the \$20.00?

A: I went to the Dollar General off Taylor Street. I think that is the street.

Q: Who was at the house at 109 Crestmore Drive to hear the argument between Amanda?

A: Mike was.

Q: Did you fire a gun before leaving the house at 109 Crestmore on 10/9/17?

A: No I didn't.

Q: Did you place a belt around Amanda's neck before you left her?

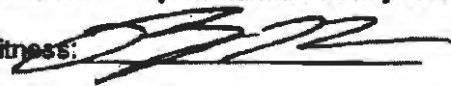
A: No I didn't.

Q: Did you set the house on fire before leaving?

A: No I did not.

Q: Did you have any prior incidents with Amanda that the police were called to?

I have made the foregoing statement freely and voluntarily without fear, threat or reward or hope of reward of any kind.

Witness: 

Signed: 

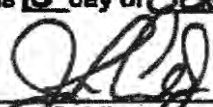
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 10 day of October 2017.

Sworn to and subscribed before me

This 10 day of October 2017

Signed: 


Notary Public for South Carolina

My commission expires 7-23-19

Page 4

A: Yep, about a month ago. She called the police. I have yet to talk to the police about that incident.

Q: Did you have an incident at the Waffle House when you ran from the police recently?

A: I ran from the waffle house. There wasn't no police there when I ran. They were looking for me. Someone said they were looking for me so I figured they were at the house and talk to me. This was the same night she called the police.

Q: Why was she not allowed to have her kids at the house?

A: Because DSS took them. Her grandparents called DSS and Ashton called DSS. Ashton told somebody at school something. I really don't know.

Q: Why did you kill Amanda?

A: I didn't.

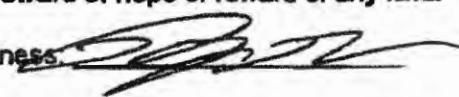
Q: Is there anything else you want to add to your statement?

A: No sir.

Q: Is this statement the truth to your knowledge?

A: Best as I know.

I have made the foregoing statement freely and voluntarily without fear, threat, or reward or hope of reward of any kind.

Witness: 

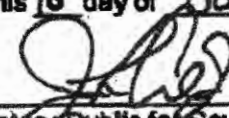
Signed: 

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 10 day of October.

Sworn to and subscribed before me
This 10 day of October 2017

Signed: 


Notary Public for South Carolina
My commission expires 7-23-19

Page 5



STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 The State of South Carolina,)
)
)
 vs.)
)
)
)
)
 Kenneth Gleaton,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Indictment Numbers: 2018GS4001418,
 2018GS4001419, 2019GS4004077,
 2019GS4004079

MOTION TO STIPULATE FELON STATUS
 OR BIFURCATE CHARGE UNDER §16-23-500
 AND EXCLUDE ANY MENTION OF
 PRIOR RECORD

Mr. Kenneth Gleaton, by and through Counsel, respectfully requests that the Court bifurcate his felon in possession of a weapon charge, or allow the parties to stipulate to his felon status and bar any discussion about it in front of the jury. Additionally, Mr. Gleaton respectfully requests that any and all mention of his prior convictions and parole status be excluded from his trial.

Mr. Gleaton is charged with murder, arson, desecration of human remains, and felon in possession of a weapon. Mr. Gleaton has prior convictions including arson 2nd degree, criminal domestic violence first offense, domestic violence of a high and aggravated nature, and possession with intent to distribute crack cocaine. He was on federal parole at the time of this incident. Mr. Gleaton is charged under § 16-23-500, Possession of Firearm or Ammunition by Person Convicted of Violent Felony, which reads "It is unlawful for a person who has been convicted of a violent crime, as defined by Section 16-1-60, that is classified as a felony offense, to possess a firearm or ammunition within this State."

Counsel does not contend that the charges do not all stem from the same incident, or that Mr. Gleaton does not have prior convictions of a qualifying felony charge. Counsel does contend that

introduction by the State of Mr. Gleaton's felony status, for the purpose of proving a necessary element of § 16-23-500 is prejudicial and unfairly taints the minds of jurors with respect to his other charges.

LEGAL ANALYSIS

Rule 403, SCRE, provides that the court may exclude evidence "if its probative value is substantially outweighed by a danger of unfair prejudice." The danger of unfair prejudice is exceedingly high when prior bad acts of a defendant are introduced to jurors. See *State v. Brooks*, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000), *State v. Cross*, 832 S.E.2d 281 (2019). South Carolina courts have adopted the language, in pertinent part, of Federal Rule of Evidence 403 that, "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." *State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991).

The term "unfair prejudice" speaks to the capacity of otherwise relevant evidence that could "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997). Thus, the court has held that when the elements of a charge are predicated on a prior felony conviction, stipulating to a felony conviction "without telling exactly why that status was imposed leaves no gap in the story of a defendant's subsequent criminal charge." *Old Chief*, at 519 U.S. 191.

In *Old Chief v. United States*, the Supreme Court considered the admissibility of a defendant's prior felony convictions when facing a charge of "felon in possession of a firearm, using or carrying a firearm during the commission of a violent crime, and assault with a dangerous weapon." 519 U.S. 172 (1997). The Court held that Rule 403 allows the defense to stipulate to prior convictions in order to

avoid unfair prejudice associated with introducing the facts of prior crimes, stating that Rule 403 prejudice is possible when “evidence of convictions for prior, unrelated crimes may lead a juror to think that since the defendant already has a criminal record, an erroneous conviction would not be quite as serious as would otherwise be the case” *Old Chief*, at 519 U.S. 182, citing 1 J. Strong, McCormick on Evidence 780 (4th ed.1992). In *Old Chief*, the Court held that the defendant’s proffered an admission of a prior conviction of a felony would satisfy the statutory requirements of a conviction of any “felon in possession of a firearm” charge without disclosing to jurors any information of that prior felony conviction. “The statutory language in which the prior-conviction requirement is couched shows no congressional concern with the specific name or nature of the prior offense beyond what is necessary to place it within the broad category of qualifying felonies.” *Old Chief*, 519 U.S. 186. Thus, where a prior conviction is for an offense likely to support conviction on some improper ground, “the only reasonable conclusion was that the risk of unfair prejudice did substantially outweigh the discounted probative value of the record of conviction.” *Old Chief*, at 191. Proving felony status without telling exactly why that status was imposed does not leave a gap in the story of a defendant’s subsequent criminal charge, and its demonstration by stipulation does not remove a chapter from a continuous sequence of conventional evidence. *Id.*

Rule 611(a), SCRE, states that the court shall exercise “reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth.” This rule requires the trial court to exercise control over the order of presenting evidence in such a way that guards against violations of Rule 403. *Cross*, 832 S.E.2d 289. The imposition of a bifurcation requirement to prevent unfair prejudice is aligned with the power of this Court to oversee the order of presentation of evidence. *Id.* at 290.

In *Cross*, a defendant had a prior conviction of Criminal Sexual Conduct in the first degree, which allowed the state to obtain an indictment for first degree CSC, otherwise the defendant would have faced a charge of second degree CSC *Id.* at 283. During a pretrial motion, the defendant moved for his trial to be bifurcated, arguing he would be unfairly prejudiced if evidence of his conviction were introduced at trial. *Id.* at 284. The trial court allowed the state to introduce evidence of the defendant's prior conviction as an element of first degree CSC at trial and the jury found Mr. Cross guilty. *Id.* at 285.

The South Carolina Supreme Court held that the trial court's failure to grant a motion to bifurcate the defendant's prior criminal conviction for first degree Criminal Sexual Conduct was an error of law. *Id.* The Court found that the probative value of the conviction at the point in the trial when the evidence was introduced was substantially outweighed by the danger of unfair prejudice, and that prejudice would have been eliminated had the trial been bifurcated. *Id.*

The court has warned against introducing prior offenses, particularly those that are similar to those of the present trial. *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006). ("[W]hen the prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission."). The practical and human limitations of the jury system do not allow jurors to ignore evidence of past bad acts when determining whether to convict in a similar case. *Cross*, at 290. Judge Learned Hand emphasized that a mere instruction to a jury to ignore an objectionable piece of testimony is the "recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody's else." *United States v. Delli Paoli*, 229 F.2d 319, 321 (2d Cir. 1956).

The probative value of the evidence of Mr. Gleaton's prior conviction is certain, as the State

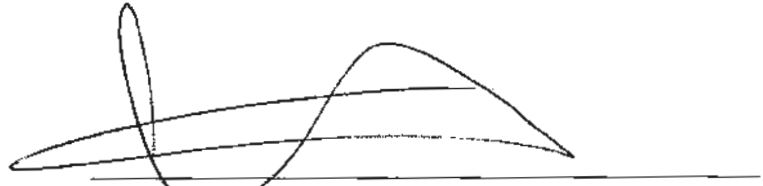
must prove the conviction as an element of the charge of Possession of a Firearm by Person Convicted of a Felony. However, evidence with such significant probative value is still subject to the application of Rule 403, and the trial court is bound by its gatekeeper duty to determine whether the probative value of this evidence is substantially outweighed by one or more of the considerations identified in Rule 403. *Cross*, at 288.

Evidence of Mr. Gleaton's prior Arson conviction is in no way probative of the threshold issue of whether Mr. Gleaton committed Murder, Arson in the First or Second Degree, or Desecration of Human Remains in the trial at hand. If bifurcated, both the integrity of Rule 403 and the State's interest in introducing evidence of its charge of Possession of a Firearm or Ammunition by Person Convicted of a Felony are salvaged by the application of Rule 611(a), SCRE, which provides: "The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth." SCRE 611(a).

Kenneth Gleaton's prior convictions are not relevant to the case at hand beyond satisfying the elements of Possession of a Firearm by a Person Convicted of a Violent Felony. To introduce information regarding Mr. Gleaton's prior convictions would carry unfair prejudice to the defendant by inflaming the passions of the jury. Because for the purposes of the Possession of a Firearm charge there is no legally cognizable difference between stipulating that Mr. Gleaton has a prior felony conviction and disclosing to the jury the details of that particular conviction, stating the conviction or any facts related to it would be unnecessary and prejudicial.

WHEREFORE, for the foregoing reasons, and any others that may appear to the Court, the Defense moves that any reference to Mr. Gleaton's status as a felon, and any mention of his

prior record, be excluded from trial.

A handwritten signature in black ink, appearing to read 'Sarah Christine Jurick', written over a horizontal line.

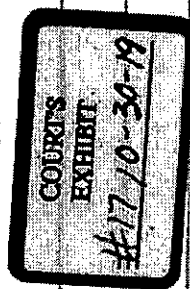
Sarah Christine Jurick
Maisie Bruce Osteen
Attorneys for Defendant

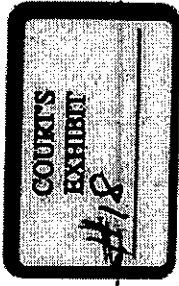
1701 Main Street
Columbia, SC 29201
p 803-765-2592, f 803-748-5018
juricks@rcgov.us

Columbia, South Carolina

This 27th day of October 2019.

179 - FOREMAN





Jury chooses to continue

TONIGHT.

Can we take a short break
to use cell phones/call family
and make arrangements?

WITNESSES

(S) Ronnie J Hinson
 – Richland County Sheriff Dept

DOCKET NO. 2018GS4001418**The State of South Carolina****County of****Richland**

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
 guilty to the within indictment or to

2017A4010203610

ARREST WARRANT NUMBER**COURT OF GENERAL SESSIONS****APRIL TERM 2018****42**

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY**TRUE BILL****Kenneth Ray Gleaton**

THE STATE
vs.

Evan E. Wager
 Foreperson of Grand Jury

Date: **APR 11 2018**

VERDICT

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
 CDR Code: 0116

Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 10, 2018, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Kenneth Ray Gleaton did in Richland County, on or about October 10, 2017, kill the victim, Amanda Peele, with malice aforethought, either express or implied, by means of strangulation and/or gunshot wound to the torso and/or blunt force trauma to the head, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

Kenneth Ray Gleaton

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

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

TO:

Murder

In violation of §

16-03-0010

of the S.C. Code of Laws, bearing CDR Code #

0116☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

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

(def.'s initials)

The plea is:

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

ATTEST:

VCJ79921

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

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

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

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDCPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Leanne W. McBride

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

18-GS-40-1418

A/W#:

2017A 4010203610

Date of Offense:

October 10, 2017

S.C. Code §:

16-03-0010

CDR Code #:

0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date

WITNESSES

(S) Ronnie J Hinson
- Richland County Sheriff Dept

DOCKET NO. 2018GS4001419

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2017A4010203611

COURT OF GENERAL SESSIONS

APRIL TERM 2018

42

Defendant

THE STATE
vs.

Kenneth Ray Gleaton

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY
TRUE BILL

Evon E. Wager

Foreperson of Grand Jury
Date: APR 11 2018

VERDICT

Indictment for
ARSON/ARSON FIRST DEGREE

SC Code: 16-11-0110 (A)
CDR Code: 3535

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 10, 2018, the
Grand Jurors of Richland County present upon their oath:

ARSON 1ST DEGREE

That Kenneth Ray Gleaton did in Richland County, South Carolina, on or about October 10, 2017, willfully and maliciously cause an explosion, or set fire to, burn or cause to be burned a building or structure, to wit: a house at 109 Crestmore Drive, which caused death or serious bodily injury to AMANDA PEELE; in violation of Section 16-11-110(A) of the South Carolina Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Ronnie J Hinson
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2017A4010203611

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUL 10 2019

VERDICT

Foreperson of Petit Jury

Date:

AM JED
DOCKET NO. 20 GS4001419

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2019

42

THE STATE
vs.

Kenneth Ray Gleaton

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for
ARSON/ARSON SECOND DEGREE

SC Code: 16-11-0110 (B)
CDR Code: 3535

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 9, 2019, the
Grand Jurors of Richland County present upon their oath:

ARSON 2nd DEGREE

That Kenneth Ray Gleaton did in Richland County, South Carolina, on or about October 10, 2017, wilfully and maliciously caused an explosion, set fire to, burned, or caused to be burned or aided, counseled, or procured a burning that resulted in damage to a dwelling house, church or place of worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, whether the property of the person or another, to wit: a house at 109 Crestmore Drive; in violation of Section 16-11-110(A) of the South Carolina Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

Kenneth Ray Gleason

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

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

TO:

Arson

In violation of §

16-11-0110B

of the S.C. Code of Laws, bearing CDR Code #

3535☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☐ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

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

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-280 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Leanne W. McBride
LeBlanc

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

18-GS-40-1419AW#: 2017A4010203611

Date of Offense:

October 10, 2017

S.C. Code §:

16-11-0110(B)

CDR Code #:

3535

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

WITNESSES

(S)

Ronnie Hinson - RCSD

DOCKET NO. 2019GS4004077**The State of South Carolina**

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

DP19116

COURT OF GENERAL SESSIONS**JUNE TERM 2019**

105

**THE STATE
vs.****Kenneth Gleaton****ACTION OF GRAND JURY****TRUE BILL**

Foreperson of Grand Jury JUN 19 2019

Date:

VERDICT**Indictment for
POSSESSION OF FIREARM OR
AMMUNITION BY PERSON CONVICTED OF
VIOLENT FELONY**SC Code: 16-23-0500 (B)
CDR Code: 3434

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 28, 2019, the
Grand Jurors of Richland County present upon their oath:

POSSESSION OF FIREARM OR AMMUNITION BY PERSON
CONVICTED OF VIOLENT FELONY

That Kenneth Gleaton did in Richland County on or about October 10, 2017, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under Section 16-1-60 that is classified as a felony offense. To wit: Arson in the Second Degree. In violation of Section 16-23-500(A), S. C. Code of Laws, 1976, as amended.

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



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

Kenneth Ray Gleanon

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

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

☒ CONVICTED OF or ☐ PLEADS

TO:

Poss. of Firearm by Person Convicted of Violent Felony

In violation of §

16-23-0500 (A)

of the S.C. Code of Laws, bearing CDR Code #

3434

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(GSC w/minor 1st or GSC w/minor 3rd)

The charge is:

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

(def.'s initials)

The plea is:

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

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso (Public Def/Probation)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

TOTAL

\$ 129.75

Clerk of Court/Deputy Clerk

Court Reporter:

Jeanette W. McBride, PF
DeBlac

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

19-GS-40-4077

AW#:

DP19116

Date of Offense:

October 10, 2017

S.C. Code §:

16-23-0500(A)

CDR Code #:

3434

SENTENCE SHEET

☐ Appointed PD or appointed other counsel,

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

Presiding Judge

Judge Code:

Sentence Date

[Signature]
11-19

WITNESSES

(S)

Ronnie Hinson – RCSD

DOCKET NO. 2019GS4004079

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

DP19117

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

JUNE TERM 2019

105

Defendant

**THE STATE
vs.**

Kenneth Gleaton

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Kenneth R. Hinson
Foreperson of Grand Jury

Date: JUN 19 2019

VERDICT

**Indictment for
GRAVES / DESTRUCTION, DESECRATION
OR REMOVAL OF HUMAN REMAINS**

SC Code: 16-17-0600(A)
CDR Code: 0471

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

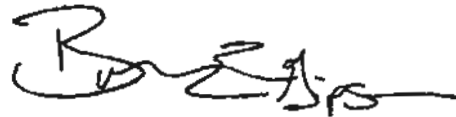
INDICTMENT

At a Court of General Sessions, convened on June 28, 2019, the
Grand Jurors of Richland County present upon their oath:

DESECRATION OF HUMAN REMAINS

That Kenneth Gleaton did in Richland County on or about October 10, 2017, willfully and knowingly and without proper legal authority, destroy and/or damage the remains of a deceased human being, and/or desecrated human remains in violation of Section 16-17-600(B), S.C. Code of Laws, 1976, as amended.

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



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

Kenneth Ray Gleaton

AKA:

Race:

W

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

* SID#

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

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

☒ CONVICTED OF or ☐ PLEADS

TO:

GRAVES / Destruction, Desecration or Removal of Human Remains

In violation of §

16-17-0600(A)

of the S.C. Code of Laws, bearing CDR Code #

0471☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-26-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

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

(def.'s initials)

The plea is:

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

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

10 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$

; provided that upon the service of

_____ days/months/years and or payment

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

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

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-55 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-6-2995 (DUI Assessment) \$12 \$ _____

\$56-1-288 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ _____

\$14-1-213 (Drug Court Surcharge) \$150 \$ _____

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2842(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL

\$ 128.75

Clark of Court/Deputy Clerk

Court Reporter:

Leannette W. McBride, PE
LeBlanc

Presiding Judge

Judge Code:

Sentence Date

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
The State of South Carolina,)

vs.)

Kenneth Gleaton,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
Indictment Numbers: 2018GS4001418,
2018GS4001419, 2019GS4004077,
2019GS4004079

MOTION FOR NEW TRIAL
- AND -
SENTENCING HEARING

2019 NOV 12 PM 3:05

RICHLAND COUNTY
FILED

Counsel respectfully moves before this Court requesting a new trial and a new sentencing hearing on behalf of Kenneth Gleaton for the above-listed charges.¹ Due to the factors outlined below, it is inconceivable that Mr. Gleaton's trial could be characterized as fair and impartial.

FACTUAL BACKGROUND

Mr. Gleaton was convicted of murder, arson 2nd degree, desecration of human remains, and possession of a weapon by a violent felon. He went to trial on these charges in front of the Honorable Casey Manning during the week of October 28, 2019 in Richland County General Sessions. The trial lasted for five days.

The actions and rulings of Judge Manning prevented Mr. Gleaton from having the fair and impartial trial he is entitled to under the United States Constitution and South Carolina Constitution. U.S. Const. amend VI; S.C. Const. art. I, § 14. Abusive and hostile treatment of defense counsel deprived Mr. Gleaton of a fair trial both by impugning the credibility of defense counsel in the eyes of the jury, and by chilling defense counsel's ability to effectively advocate. During those five days, defense counsel was berated and verbally abused, not allowed to make a record, and at one point

threatened for making a hearsay objection.² Judge Manning spoke loudly to his law clerk with mocking body language throughout defense counsel's presentation and frequently rolled his eyes when displeased with defense counsel. These actions left the jury with the impression that the defense was doing something wrong, and created an environment where defense counsel's ability to effectively advocate was stifled.

Defense counsel made several additional meritorious motions and objections that were denied throughout trial, including a motion for mistrial based off Judge Manning's demeanor. Additionally, defense counsel requested deferred sentencing and the ability to present mitigation on behalf of Mr. Gleaton. This was denied, and Mr. Gleaton was sentenced to life without a hearing.

Counsel asserts that for all of these reasons Mr. Gleaton is entitled to a new trial and a new sentencing hearing in this matter.

LEGAL ANALYSIS

I. Mr. Gleaton is entitled to a new trial based off the behavior of Judge Manning, which impugned defense counsel's credibility in front of the jury.

A judge has a duty to appear impartial, and to proceed in such a way that does not sway jurors with regard to the credibility of one party or another. Judicial Canon 3 requires that a judge "shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity..." Canon 3(B)(4) of Rule 501, SCACR.

Jurors can be improperly influenced by any indication of bias coming from the bench. The

¹ This motion was denied orally at trial, but has been briefed and submitted for further consideration in accordance with Rules 29 and 35, SCRCrimP.

² Counsel is filing a motion in tandem with this to preserve the audio recording of the trial and make it part of the record. Counsel believes this provides valuable insight as to the tone and demeanor exhibited towards the defense throughout trial. Additionally, Counsel requests the ability to supplement this motion after a transcript becomes available.

Judicial Canons seek to protect against a judge's actions from creating bias through body language and oral communication:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media, and others the appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Canon 3(B)(5), Commentary, of Rule 501, SCACR.

The South Carolina Supreme Court has a long history of taking the unbiased role of trial judge seriously. In a 1938 decision, they remanded for a new trial because of concerns over the remarks of the trial judge and the influence they may have had on the jury:

It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury. Vested as the trial judge is, with superior authority, disinterested, and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his vade, upon which to found their conclusions.

State v. Pruitt, 187 S.C. 58, 196 S.E. 371, 373 (1938). In coming to this decision, the *Pruitt* court looks to the even earlier history outlining the importance of impartiality from the bench: "...uninfluenced by any expression of the opinion by the judge, whose position would very naturally add great weight to any opinion he might express upon any question of fact arising in a case." *State v. White*, 15 S.C. 381, 392.; "[t]he jury must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammelled by any intimation from the judge as to whether a certain fact at issue has been proved or not." *State v. Howell*, 28 S.C. 250, 255, 5 S.E. 617; and

The judge must be careful to avoid expressing, or even intimating, any opinion as to the facts, and that if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury are the exclusive judges of the facts, and the true meaning and real object of the section of the Constitution above quoted is that they must be

left to form their own judgment unbiased by any expressions, or even intimations, of opinion by the judge.”

State v. James, 31 S.C. 218, 235, 9 S.E. 844.

In *State v. Davis*, the South Carolina Court of Appeals remanded because of the repeated improper comments the judge made in the presence of the jury, “it is the trial judge’s gratuitous comments directed at defense counsel that give rise to the reversal of Davis’s conviction and sentence.” No. 2006-UP-316, 2006 WL 7286742 (2006). Throughout Davis’s trial, counsel was not allowed to cross-examine with questions that should have been permissible.³ The Court stated those errors on their own would be harmless, but when combined with the commentary of the judge they were not. *Id.* at 3. The comments were primarily directed at defense counsel. Although the judge said, “I’m going to remind both sides once again about our code of ethics for treating witnesses and comments that are proper and not proper in front of a jury,” the Court of Appeals found the record reflected that the judge never challenged the prosecuting attorney’s ethics or competence. *Id.* The judge also made statements regarding his loss of patience, “stop all of this, because – as I told you all, I’ve been on a lot of cold medicine this weekend, and my patience is about to wear out with this kind of stuff.” The *Davis* court relied on the South Carolina Supreme Court’s decision in *State v. Pace*, where a new trial was granted because of the comments the trial court judge made about defense counsel, “the remarks of the court tended to impugn the credibility of counsel and to diminish him and his defense of appellant in the eyes of the jury.” *State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994), quoting *State v. Mitchell*, 261 S.C. 452, 200 S.E.2d 448 (1973) (Justices Brailsford and Bussey, dissenting). In *State v. Freeman*, petitioner argued the “interruptions,

³ “Mr. Davis, that’s not a proper area of inquiry;” and “now, I don’t know how they do things down in Moncks Corner. But up here we do try to go by the rules of evidence.” *Davis* at 1, 3.

opinions, and comments of the trial judge in the presence of the jury were so prejudicial to him as to deprive him of a fair and impartial trial.” 319 S.C. 110, 123, 459 S.E.2d 867, 875 (1995). The Court of Appeals agreed, granting him a new trial, “we find the combined effect of the numerous unsolicited comments and the limitation of cross-examination unduly prejudiced [defendant]. *Id.*

In all of these cases, the courts responded to the seriousness of potential influence on jurors by the conduct of the trial judge. Facial expressions, body language, loss of patience, potentially innocent remarks all create the potential for improper bias. Throughout Mr. Gleaton’s trial, Judge Manning demeaned and belittled defense counsel with his words and actions in front of the jurors. He cut them off constantly with an aggressive tone. His body language and overall demeanor suggested annoyance, impatience, and bestowed a lack of credibility on the defense. He rolled his eyes, made gestures when defense counsel was speaking, and made exasperated noises. Judge Manning spoke throughout the trial to his law clerk loud enough that two witnesses actually turned in response to him, thinking they were being questioned. Counsel is unclear whether the jury heard any of the commentary, but they could view the distracting interaction and critical body language.

Judge Manning also treated defense expert witnesses with a different tone and demeanor than state witnesses. He yelled at defense experts for not speaking loudly enough, and accused one of them of lying.⁴ While he did previously tell witnesses to speak up, witnesses were sequestered and had not been present for prior instructions. Counsel concedes the written record may reflect similar comments to state witnesses, but maintains the tone and hostility with which the words were spoken was not the same. The difference in treatment by the Judge can influence how credible witnesses appear to the jurors.

Defense objections were met with anger, yelling, and chastising. Often, rulings were made outside the presence of the jury, and defense counsel simply needed to renew a prior objection when the state sought to introduce the matter in question. Judge Manning responded by screaming that the issue had already been ruled on. Counsel was repeatedly unable to say the full word “objection” before being cut off by yelling. “Objection,” or really “obj - ” was met with a very loud and angry ‘sit down!,’ and ‘I have made my ruling.’ This could appear to the jury as though counsel was being obstinate or difficult, when in fact counsel was required to object to preserve the record. Whether to object or not became a strategic decision, but not in the way the law intends. Knowing that renewing an objection would result in a display of belittlement in front of the jury forced counsel to analyze and choose between objecting to preserve the record, or staying silent and attempting to save face.

Judge Manning frequently spoke with jurors off the record and outside the presence of counsel. Counsel objected to this practice early on, and was told that there was nothing relevant to the trial being said, and therefore it would not be on the record. Throughout trial it was obvious Judge Manning was speaking and forming relationships with the jurors outside of the courtroom. For example, when the jurors returned to the courtroom he was joking with them about the baseball game and knew what teams they supported. This fostering of relationship between the judge and jury off the record had the potential to create an environment where jurors placed additional value on Judge Manning’s views. As described in *Pruit*, a jury seeks to know what the judge thinks, and can be influenced by subtle biases and opinions of the judge. Additionally, Judge Manning left the option of whether to proceed with closing arguments after 4 pm on Friday or return on Saturday or Monday up to the jurors. He explained these options personally in the jury room. Counsel was

4 This accusation happened outside the presence of the jury, but his demeanor and hostility toward the witness

concerned that giving the jury these options, and having them explained by the judge, encouraged deliberation before the end of trial.

Yelling at counsel in the presence of the jury, using body language that undercut defense arguments, treating defense witnesses with more hostility than state witnesses, and not allowing defense counsel to object without causing a scene were all inappropriate displays of bias by Judge Manning that served to deprive Mr. Gleaton of a fair trial.

II. Mr. Gleaton is entitled to a new trial based off the behavior of Judge Manning, which had a chilling effect on defense counsel's advocacy.

Based off the tenets of Judicial Cannon 3, a judge cannot conduct oneself in a way that requires parties to make tactical and strategic decisions that subject themselves to sanctions or adverse actions if their arguments displease the judge. "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law"; "a judge shall hear and decide matters"; and "a judge shall be faithful to the law and maintain professional competence in it." Canon 3(B), Rule 501 SCACR. A judge may not threaten lawyers, or suggest punishment in a way that prevents them from being effective advocates and fulfilling their duties. In *State v. Simmons*, it was reversible error when the trial judge threatened to put counsel in jail during closing arguments. Upon hearing this threat, counsel stopped the argument. 267 S.C. 479, 229 S.E.2d 597 (1976).

At one point during the trial, Ms. Osteen made a proper hearsay objection. Judge Manning did not allow her to state the basis for her objection, cut her off, and said he had already ruled. His yelling and unwillingness to allow her to speak created a scene and escalated the situation. Ms.

Osteen continued attempting to explain her objection, while Judge Manning became increasingly heated. At the end of the direct examination, the jury was hastily sent out of the courtroom specifically for the purpose of Judge Manning confronting Ms. Osteen about her “outburst.” At that point, Ms. Osteen was told if she had an outburst like that again, she would “regret it.” The jury was barely out of the room when this occurred, and it is unknown what amount of this discussion was heard. Judge Manning’s actions made it clear before the jurors left that he was displeased with the defense.

In response to this threat by Judge Manning, Ms. Young made a motion for mistrial. Ms. Young stated that Judge Manning was both impugning defense counsel’s credibility with the jury, and chilling counsel’s ability to effectively advocate for Mr. Gleaton. Specifically, Ms. Young explained the Judge’s demeanor and hostility was directed only at the defense; defense counsel was being cut off before being allowed to fully make objections; Ms. Osteen was threatened; Judge Manning had been speaking loudly to his clerk; and Judge Manning’s tone and body language suggested annoyance with the defense. Ms. Young stated concerns that the jury was left with the impression that defense counsel was doing something wrong, and that Judge Manning’s actions influenced their credibility and had a chilling effect on counsel’s ability to represent Mr. Gleaton. Judge Manning denied the motion for mistrial in a patronizing tone and immediately left the bench for the end of the day.

The following morning, Kenneth Gleaton and other members of the courthouse staff informed counsel that after Judge Manning left the bench, he very loudly complained down the hall and in his office about defense counsel. Mr. Gleaton wrote an affidavit outlining what he heard,

which included Judge Manning discussing putting his lawyers in jail.⁵ When Mr. Gleaton made his way to the defense table, he promptly remarked to his lawyers, with a concerned expression, that the Judge really did not like them. Mr. Gleaton had concerns that his lawyers were doing something wrong. The destruction of client confidence, caused by the actions of Judge Manning, negatively influenced counsel's ability to advocate. Despite counsel's best efforts, Mr. Gleaton was left with valid concerns about the quality and fairness of the trial he was receiving. The lack of trust in his lawyers brought about mid-trial impacted the ability of Mr. Gleaton to assist in his own defense.

On Friday around 4:00 PM closing arguments had not started. Counsel requested that court break for the day and resume Monday morning. Judge Manning consulted with the jury and decided to continue to push forward. At around 8:30 PM, the jury returned with a verdict. After the verdict was read, Judge Manning demanded, "bring the prisoner around." Counsel requested that sentencing be deferred, stating they had family members that wished to speak in mitigation.⁶ This included Mr. Gleaton's mother, who had been in the courtroom throughout the week but was not currently present and did not have a phone. Upon denying the request, Judge Manning commented on how patient he was throughout the week, and declared the matter was going to end now. Without looking up or allowing anyone to speak, Judge Manning filled out the sentencing sheets. The only question that was asked of counsel was how many days Mr. Gleaton had been in jail. Mr. Gleaton was never asked if he wished to speak. The solicitors were never asked if they wished to speak. The victim's family was never asked if they wished to speak. The defense attorneys were never asked if they wished to speak. After announcing the sentence, Judge Manning hastily exited the room. No other

⁵See attached affidavit from Mr. Gleaton.

⁶ See attached affidavits from Mr. Gleaton's mother and grandmother for a sample of what would have been presented in mitigation.

factors were verbalized or considered. The feeling in the room was representative of the disrespect and frustration with which the trial had been run all week. Counsel believed Judge Manning's continued irritation with them prevented them from advocating for Mr. Gleaton at the sentencing phase. Counsel was afraid to speak after being verbally rebuked for requesting deferred sentencing, and after being yelled at throughout the week.

Threatening counsel, responding to objections in a manner that forced the attorneys to evaluate whether objecting was absolutely necessary,⁷ negatively impacting the attorney-client relationship, and refusing to consider any mitigation or additional information in sentencing all prevented defense counsel from being effective advocates for Mr. Gleaton.

III. Mr. Gleaton is entitled to a new trial due to the improper rulings on, but not limited to, the below motions and objections.

During trial, defense counsel made the motions and objections outlined below. Judge Manning denied each one. Counsel believes these improper rulings to be prejudicial and constitute reversible error.

Specifically, the following motions were denied:

- 1) Motion to exclude prior bad acts of domestic violence.⁸ This motion was made pursuant to SCRE 404(b), SCRE 403, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Counsel moved to exclude mention of all prior acts of domestic violence, but specifically focused on testimony regarding an incident that took place September 8-9, 2017. This incident was highly prejudicial, did not fit any exception under *Lyle*, was not proven to have taken place by clear and convincing evidence, and did not fit under *res gestae*. After a pretrial hearing where Jessica Gantt, the

⁷ This is fully discussed in the previous section.

⁸ See Court's Exhibit, "Motion to Exclude Accusations of Prior Domestic Violence," for brief on this issue.

decedent's former roommate, and the decedent's son, Ashton Coulter testified, Judge Manning allowed portions of it in under "all of exceptions." No analysis pursuant to *Lyle* took place. He also stated "the kid is sketchy" in reference to Mr. Coulter, and it was counsel's understanding that the pretrial ruling was Mr. Coulter's testimony would be severely limited, and Ms. Gantt's testimony would be limited to what Mr. Gleaton told her. As trial progressed, the amount of testimony regarding the prior incident expanded greatly, to include testimony from the responding officer that night. In closing, the state made this prior incident central to their theme, ensuring the admission of this prior incident was not harmless error.

- 2) Motion for order of disclosure by the state.⁹ A motion was made to clarify whether Roderick Dukes is or has received anything from the state or law enforcement. From Mr. Dukes' own statements, he was involved in the incident, yet he was not charged. On the record at trial, the State said they considered him a witness and they told him he would not be charged. Judge Manning determined from that there was no deal to be revealed. Judge Manning also refused defense counsel's request to advise Mr. Dukes of his right to remain silent and his right to a lawyer.
- 3) Request to stipulate/ clarify that Mr. Dukes was not being charged. Before Mr. Dukes testified, as a result of the motion to order disclosure by the state, the solicitor said on the record, while Mr. Dukes was in the room, that he was considered a witness and told him he would not be charged. However, on the stand, Mr. Dukes said he did not know whether he would be charged later. Counsel asked the Court to clarify in front of the jury that Mr. Dukes was not being charged with anything, and suggested this come by way of stipulation. This motion was denied.

- 4) Denial of ability to cross-examine Mr. Dukes regarding prior experience in jail. This goes to bias and motive to lie, as defense's theory was Mr. Dukes lied to avoid being charged.
- 5) Motion to suppress video clip.¹⁰ Counsel made a motion to suppress the video clip provided by Cyril Brasley due to issues with authentication, the state violating *Brady* by not providing the extracted file, SCRE 403, and the rule of completion.
- 6) Motion to bifurcate felon in possession of a weapon charge.¹¹ Counsel made a motion to bifurcate the felon in possession of a weapon charge from the rest of the trial, pursuant to SCRE 403 and *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644 (1997). Alternatively, counsel offered to stipulate to the fact that Mr. Gleaton had previously been convicted of a qualifying felony.
- 7) Objection to the admissibility of autopsy photographs and photographs of the decedent. Counsel objected to the State submitting photographs of the decedent. Judge Manning required the non-autopsy photographs be in black and white. Counsel argued the photographs being in black and white, while all other photographs were in color placed undue emphasis on them. Additionally, colored autopsy photographs were displayed on the large screen. This happened both during Dr. Durso's testimony and during closing arguments.
- 8) Inability to cross-examine Dr. Durso regarding decedent's toxicology results. Judge Manning ruled that the defense was not allowed to discuss the toxicology results with the pathologist. The decedent tested positive for therapeutic levels of drugs, which corroborated the

9 See Court's Exhibit, "Motion of Order Disclosure by the State" for brief on this issue.

10 See Court's Exhibit, "Motion to Suppress Video Clip" for brief on this issue.

11 See Court's Exhibit, "Motion to Stipulate Felon Status or Bifurcate Charge; and Exclude any Mention of Prior Record" for brief on this issue.

defendant's statement to investigators. Additionally, the drugs had been previously mentioned by state's witness Skylar Isenhower.

- 9) Objection to the admissibility of the facebook messenger conversation between Latoya Riley and Roderick Michael Dukes. Photographs of this conversation were erroneously admitted based off authentication and hearsay reasons.
- 10) Objection to the admissibility of the internet photograph of the gun; the photograph of the decedent a few years prior; and the decedent's ring with the children's names inscribed. The photograph of the gun had no probative value, as the type of gun was never determined in the case, and it was a photograph of a gun from the internet. The photograph and ring were also not part of the case and were used to stir up emotions. All of these were more prejudicial than probative and should have been excluded under SCORE 403.
- 11) Motion for mistrial due to behavior of Judge Manning both in front of, and outside the presence of, the jury.¹²

IV. Mr. Gleaton is entitled to a new trial pursuant to the cumulative effect doctrine.

Counsel believes these issues merit reversal individually. However, if the Court disagrees, they require that a new trial be granted under the cumulative effect doctrine. The cumulative effect doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial when viewed as a whole. *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999), referencing *Tennant v. Marion Health Care Foundation*, 194 W.Va. 97, 459 S.E.2d 374 (1995). In *Johnson*, the South Carolina Court of

¹² Discussed fully in sections II and III of this brief.

Appeals found the cumulative effect of three errors warranted reversal in the case, as the errors combined deprived the respondent of a fair trial.¹³ In *State v. Davis*, the trial judge made demeaning comments to defense counsel in the presence of the jury throughout trial. No. 2006-UP-316, 2006 WL 7286742 (2006). Finding reversible error, the South Carolina Court of Appeals said, “[i]f the trial judge had only made one improper comment, we would not find prejudice ... [u]nfortunately, the trial judge continued throughout the trial to make demeaning comments to defense counsel in the presence of the jury, while remaining on an even keel with the solicitor.” *Id.* at 2. In *State v. Freeman*, the Court of Appeals held “the cumulative effect of the lack of latitude allowed the defense in cross-examining the State’s investigating officers along with the court’s comments, unfairly prejudiced the defense and necessitates the convictions be set aside,” and “although each point of error raised alone is insufficient to warrant a new trial the cumulative effect is enough to require that relief.” 319 S.C. 110, 123, 459 S.E.2d 867, 875 (1995).

Mr. Gleaton was not afforded a fair trial for all of the reasons expounded upon above. The manner in which Judge Manning conducted himself in front of the jury created bias and undue prejudice towards the defense. Judge Manning’s behavior outside the presence of the jury made it impossible for defense counsel to properly advocate. The improper rulings misshaped the trial, confused the issues, and did not allow Mr. Gleaton a fair day in court. The cumulative effect of these injustices demands that Mr. Gleaton be given a new trial.

V. Mr. Gleaton is entitled to a sentencing hearing in which he has the opportunity to present mitigation.

¹³ The South Carolina Supreme Court found the cumulative error doctrine did not warrant reversal because only one of the errors was prejudicial, but still reversed based off the prejudice of the single error. *State v. Johnson*, 334 S.C.

The United States Supreme Court has held the Eighth and Fourteenth Amendments to the Constitution require mitigation to be considered in death penalty cases. *Lockett v. Ohio*, 438 S.C. 586, 604, 98 S.Ct. 2954, 2964 (1978). While death is different, there is an established practice of individualized sentencing demanded by public policy. *Id.* at 605, 2965. Post-conviction relief is granted routinely when mitigation is presented, but not in a complete enough fashion to satisfy the needs of individualized sentence consideration. In *Weik v. State*, the South Carolina Supreme Court remanded for a new sentencing hearing when failure to present adequate mitigation in death penalty case was deemed deficient performance. 409 S.C. 214, 761 S.E.2d 757 (2014). The Court reiterated, “[a]ny competent counsel knows the importance of thoroughly investigating and presenting mitigating evidence.” *Id.* at 234, 767, quoting *Romano v. Gibson*, 239 F.3d 1156, 1180 (10th Cir.2001). Although the federal system has sentencing guidelines, the United States Supreme Court recognized there is still case-by-case discretion, stating they should “consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall v. United States*, 552 U.S. 38, 52, 128 S.Ct. 586, 598 (2007).

There was no individualized sentence hearing in this case. Mr. Gleaton was sentenced to life in prison without consideration of any factors outside of what was presented during trial.¹⁴

While counsel did not formally object at the time to being denied a mitigation hearing, they did request deferred sentencing and verbalize that they had mitigation to present. The mood in the room was not receptive to any requests, and efforts by defense counsel would be futile. Counsel was afraid

78, 512 S.E.2d 795 (1999). However, the Supreme Court did not take issue with the explanation or existence of the cumulative effect doctrine.

¹⁴ See section II for more complete explanation of what took place after trial.

to speak after being verbally rebuked for requesting deferred sentencing, and after being yelled at all week when asking for rulings to be repeated on the record. Mr. Gleaton is entitled to the Court's consideration of mitigating factors when determining his sentence and respectfully requests a new sentencing hearing.

VI. Given the contentious atmosphere and lack of receptiveness to counsel throughout the trial, the doctrine of futility is applicable and should be relied on as a supplement for any issues not deemed properly preserved.

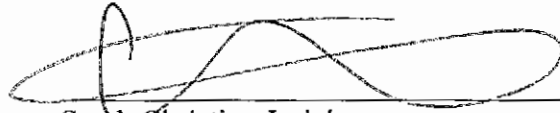
The doctrine of futility is "an established exception to the general rule of issue preservation." *State v. Davis*, No. 2006-UP-316, 2006 WL 7286742 (2006). When "the tone and tenor of the trial judge's remarks ... were such that any objection would have been futile," there is not a waiver of the issue. *Davis* quoting *State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994).

While counsel did their best to make a record and preserve all issues, Judge Manning constantly cut them off and made at times made it near impossible. Counsel relies on the doctrine of futility to supplement any objections or issues where the Court is concerned with preservation.

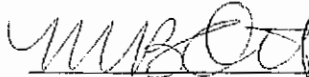
CONCLUSION

In addition to this motion, please see attached accompanying documents. Affidavits from Maisie Osteen, Laura Young, and Sarah Jurick give first-hand accounts of their experiences during trial. Affidavit from Kenneth Gleaton attests to his perceptions of Judge Manning's attitude towards his lawyers throughout his trial. Affidavits from Mr. Gleaton's mother and grandmother show a glimpse of what would have been presented in mitigation. A copy of the motion to preserve trial audio and make it part of the record was filed separately in tandem with this motion. Additionally, Counsel requests the ability to supplement this motion after the transcript has been received.

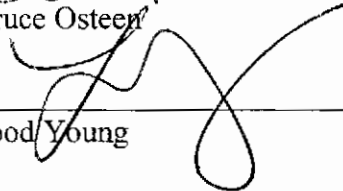
WHEREFORE, counsel respectfully requests that a new trial be granted for Mr. Gleaton, and Mr. Gleaton receive a sentencing hearing in this matter.



Sarah Christine Jurick



Maisie Bruce Osteen


Laura Wood Young

Attorneys for Defendant
1701 Main Street
Columbia, SC 29201
p 803-765-2592, f 803-748-5018

Columbia, South Carolina

This 12th day of November 2019.

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	Indictment Numbers: 2018GS4001418,
)	2018GS4001419, 2019GS4004077,
The State of South Carolina,)	2019GS4004079
)	
)	
vs.)	AFFIDAVIT OF SARAH JURICK
)	
)	
Kenneth Gleaton,)	
<u>Defendant.</u>)	

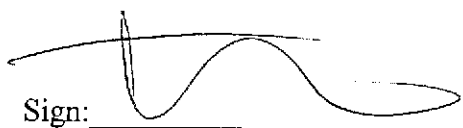
I, Sarah Christine Jurick, am an assistant public defender in Richland County. I represent Kenneth Gleaton. During the week of October 28, 2019, Mr. Gleaton went to trial on the above-listed warrants in front of the Honorable L. Casey Manning.

My impressions of the trial are as follows:

- 1) Throughout the week, Judge Manning gave the impression from his body language and demeanor that he did not want to be there. He made a lot of exasperated noises, talked about how tired he was every morning, appeared as though he was sleeping, and asked counsel to repeat things often as though he was not listening.
- 2) When my colleagues objected with confidence in trial, they were yelled at and told to sit down. I am ashamed to say this effected the number of objections I made and the manner in which I made them. My objections were meeker and more timid than usual. Sometimes I did not object at all. Aside from not wanting to be yelled at for personal reasons, I was concerned about how our being yelled at was interpreted by the jury.
- 3) Judge Manning spoke with jurors outside the courtroom several times. It was clear from the interactions between him and the jurors inside the courtroom that he had fostered positive relationships with them. I am concerned that because of this, Judge Manning's negative interactions with us had a larger impact on our credibility.
- 4) Multiple people commented throughout trial that it seemed like the defense was being disproportionally criticized by the Judge. Our client, Kenneth Gleaton, told us that he overheard Judge Manning talk about putting us in jail when deputies were walking him to the holding cell. Mr. Gleaton expressed concerns about our relationship with the Judge.
- 5) Judge Manning was impatient and irritable all week. He actually announced this several times. His impatience came to a head on Friday night after the verdict was read. Judge Manning denied deferred sentencing saying something to the effect of "I've been so patient all week, let's just get this over with," did not give us or the prosecutors an opportunity to speak, and hastily sentenced Mr. Gleaton to life. It was obvious at this

point that nothing we said would be considered.

- 6) Overall, we were not treated professionally or with any amount of respect, both in front of our client and in front of the jury. I spent over two years getting to know Mr. Gleaton and earning his trust. I believe the confidence in his lawyers and in his trial was destroyed when he saw how we were treated all week.
- 7) I do not believe Mr. Gleaton had a fair trial. Judge Manning's continued yelling at us altered our performance in front of the jury, and could very likely have influenced their opinions of us and our credibility.
- 8) I have been at the Richland County Public Defender Office for over 5 years. Prior to that, I clerked for Capital Defense and was present for multiple full-week trials. I have never witnessed lawyers being treated with this little respect throughout trial. I have never filed any complaint, or motion criticizing, a judge before today.

Sign: 
Print: Sarah Jurick
Date: Nov 12, 2019

SWORN AND SUBSCRIBED before me
this 12th day of November, 2019.

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND) The State of South Carolina,) vs.) Kenneth Gleaton,) <u>Defendant.)</u>	IN THE COURT OF GENERAL SESSIONS Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079 AFFIDAVIT OF MAISIE OSTEEN

My name is Maisie Osteen. I am an Assistant Public Defender at the Richland County Public Defender's Office in Columbia, South Carolina. I represented Kenneth Gleaton and acted as the second-chair at trial the week of October 28, 2019. These are my perceptions of the trial:

1. During the trial, Judge Manning appeared constantly displeased with defense counsel. This was evidenced by Judge Manning relentlessly yelling at us as we tried to present arguments, his response to our objections, and his incessant interrupting when we were trying to make the record or present arguments to the Court.
2. Specifically, one instance highlights the jarring demeanor from the bench. One witness, Jessica Gantt, began to talk about information that she received from the decedent. Ms. Gantt said "she told me." At that point, I objected to the hearsay statement. Judge Manning said something to the effect of "she [the witness] is saying what the Defendant said. Overruled." As Judge Manning was inaccurate with his recounting of the Witness statement, I tried to offer the Court more information about what the witness said. He got very mad and roared at me to sit down, which I immediately did.
3. At the direction of Opposing Counsel, the Witness, Jessica Gantt, continued to testify about information that she learned from the decedent. But, because of the way Judge Manning reacted I was afraid to upset him further and to have him admonish me in front of the jury so I did not object.
4. Once the direct examination of the witness was concluded, he asked the jury to leave. As soon as the door closed he turned to me and said something to the effect of "Ms. Osteen, if you have another outburst like that, you will regret it."
5. I did not know what Judge Manning meant by either "my outburst" or how I would "regret it" but it was clear that what I considered advocacy was upsetting him. His reaction forced me into a constant calculation of whether zealously advocating for my client by objecting to inadmissible testimony was beneficial in any way to Kenneth.
6. During my objection, I did not raise my voice beyond what would be a clear speaking voice. I did not lose control of my language and I, certainly, was not trying to disrespect Judge Manning or violate Rule 138, South Carolina Rules of Criminal Procedure. I was never given an opportunity to be heard.
7. Following the Judge threatening me and my co-counsel's Motion for a Mistrial, I spoke to Kenneth about what was going on. He was clearly upset at how we were treated and he said "he really doesn't like you guys." I could see that he was shutting down and afraid at the repercussions we would be facing if we continued to advocate for him.
8. Finally, once the jury returned its verdict, at 8:30 p.m. on Friday, November 1, 2019 Judge Manning requested that the inmate be "brought around for sentencing." I asked for sentencing to be deferred. Kenneth had family that wanted to be present and we had mitigation evidence that

we wanted to present through the witnesses. Judge Manning denied the request by saying "he had been patient all week." We walked with Kenneth around to stand before Judge Manning and we waited for our turn to address the Court and inform the Judge of all of the reasons leniency should be considered. That moment never came. Judge Manning read the indictment numbers and sentenced Kenneth to life. It was one of the most dehumanizing, unjust moments I have experienced in a courtroom to date.

9. I have been an assistant public defender for five years. I have been before the Court in pleas, hearings, and trials thousands of times. I have never filed an affidavit attesting to my treatment before the Court.

Sign: _____



Print: _____

Maisie Bruce Osteen

Date: _____

11.12.2019

SWORN AND SUBSCRIBED before me

this 12th day of November, 2019.

Deborah Fleming

Notary Public for South Carolina

My Commission Expires: 04.23.29.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina,

vs.

Kenneth Gleaton,

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 2018GS4001418,

2018GS4001419, 2019GS4004077, 2019GS4004079

AFFIDAVIT OF LAURA YOUNG

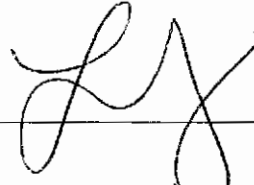
My name is Laura Young. I am the Deputy Public Defender at the Richland County Public Defender's Office in Columbia, South Carolina. I represented Kenneth Gleaton and acted as the third-chair attorney at trial the week of October 28, 2019. The information in this affidavit is within my personal knowledge and reflects my experiences at the trial:

1. The Honorable L. Casey Manning was the presiding judge at the trial. From the outset, he yelled constantly. He would ask questions and before anyone could speak, he would loudly speak over us. His attitude towards defense counsel was demeaning and sent the message that he did not want to be there.
2. His actions directly contradicted his words – for example, he would say that the record was important, but he would frequently speak over defense counsel during her efforts to preserve issues for the record. He also complained numerous times, on and off the record, that defense counsel and the solicitors were causing problems by interacting with each other in a contentious manner, which was never the case throughout the entirety of the trial. Furthermore, after yelling loudly and cutting people off, he would repeatedly tell us to calm down despite the fact that we never raised our voices or lost our tempers. At times, it seemed as though Judge Manning was not listening or paying attention during the trial. On several occasions he had to ask us what was happening in order to make rulings or determine objections. This happened on the record and at the bench. He would close his eyes and place his head in his hands. He stated several times throughout the week that he was tired and even started one morning off by telling us that he was in a very bad mood.
3. Judge Manning seemed frustrated and irritable and expressed as much through his body language and behavior. He visibly rolled his eyes during objections, stood up and leaned over his chair during defense counsel's cross-examinations, crossed his arms and angrily stared at the defense table. He moaned and sighed audibly during defense counsel's objections.
4. This was frustrating and embarrassing. I felt as though the jury believed that we were doing something wrong and perceived that the judge had a reason to be upset with us. This was particularly troubling to me because Judge Manning was friendly with the jury, joked with them and spoke to them off the record several times in the jury room, outside the presence of the lawyers. It felt like he had created a bond with them and then in court, openly broadcasted his displeasure with the defense attorneys.
5. He lacked patience and spoke loudly and negatively about defense counsel to his law clerk while the jury was present in the courtroom and witnesses were testifying. Several times witnesses paused during their testimony and turned to the judge because it was so distracting.
6. I have practiced as a criminal defense lawyer for 14 years in both Georgia and South Carolina and have never moved for a mistrial based on a judge's demeaning treatment of defense counsel. In this case, I was compelled to do so following a threat to my co-counsel after she made a valid

hearsay objection. She did not raise her voice and acted with decorum while attempting to clarify the objection when the judge mistakenly thought the testimony was something it was not.

7. The entire week was exhausting and draining due to the constant verbal attacks from the bench. I believe that I definitely made poor choices regarding potential objections or arguments due to the ongoing calculation of acting in my client's best interest while also trying not to anger the judge in front of the jury.

Sign: _____



Print: _____

Laura Young

Date: _____

November 12, 2019

SWORN AND SUBSCRIBED before me

this 12th day of November, 2019.

Deborah Fleming

Notary Public for South Carolina

My Commission Expires: 04.23.29.

AFFIDAVIT OF KENNETH GLEATON

I, Kenneth Gleaton, (DOB: [REDACTED]) attest to all of the following as my true and honest account of my trial on the week of October 28, 2019. I attest to the following:

1. On ~~Oct~~ Oct 28, 2019 I went to ^{K6}~~court~~ ^{trial} on a #4 count indictment in front of the Honorable Casey Manning.
2. As soon as the trial started Judge Manning was angry at my lawyers. He wouldn't let them speak and then he would yell at them. He was hostile.
3. At one point my lawyer stood up to object and it made Judge Manning so mad, The tone of his voice was extremely angry. Judge Manning yelled at my attorney and threatened her.
4. Judge Manning threw his robe down while he was yelling and he acted like my attorneys were doing something wrong. I thought he was acting really crazy and it made me real nervous.

K6 1/3

5. When I was being taken to holding that day, as we left the Court room, you could hear Judge Manning screaming about my lawyers. The ^{Deputy} ~~deputy~~ left me in the hall way and went and asked Judge Manning to quiet down. He sounded real angry at my lawyers.

6. The next morning he was still screaming and hollaring and saying, he should have held me young and maiz in contempt of Court. "He said they now the evidence was coming in!" He was very loud - this time his door was shut and we could still hear his carrying on.

7. Based off the way Judge Manning was yelling at my lawyers, I know I was going to get a fair trial. The jury heard him yelling at them. I know they would think I did something wrong.

8. I thought we were going to have a so called sentencing hearing after ~~the~~ the trial where my lawyers would present stories of my life and leave from my loved ones. Based on the way

KG 2/3

8 cont. Judge Manning was acting it would not matter.
I gave up hope he would listen. He didnt want
to hear it for real.

sign: Kenneth G. Gluton

print: Kenneth Gluton

date: 11-12-19

SWORN TO AND SUBSCRIBED

BEFORE ME

this 12th day of November, 2019

Sylvia B. Gluton

Notary Public for South Carolina

My Commission Expires: MARCH 8, 2026

KL 3/3

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	
)	Indictment Numbers: 2018GS4001418,
The State of South Carolina,)	2018GS4001419, 2019GS4004077, 2019GS4004079
)	
)	
vs.)	AFFIDAVIT OF LILLIE MARIE STEVENSON
)	
)	
Kenneth Gleaton,)	
<u>Defendant.</u>)	

My name is Lillie Marie Stevenson. I am 54 years old, my birthday is [REDACTED] and I live at [REDACTED] Street, Columbia, South Carolina.

I am Kenneth Gleaton's biological mother. If I were able to speak in Court this is what I would have told the Court:

1. I was raised in Orangeburg, South Carolina. I was one of twelve children of Hazel Gleaton and Larry Lee Gleaton.
2. We had a tough childhood. My father, Larry Gleaton, was a drunk. He was very abusive to my mother and the kids. He was particularly violent with one of my sisters. His violence included sexual assaults. When I was a little older, my father tried to come on to me but I was able to stop him.
3. When I was about eight-years-old one of my older brothers started messing with me sexually. He was about 16 years old. I did not want him to do that but I couldn't stop him.
4. Because my brother continued to rape me, I got pregnant with Kenny when I was thirteen. I didn't tell anyone about my brother assaulting me because everyone had a lot going on and I didn't want to make trouble.
5. When I had Kenny, I was so young and using drugs and alcohol because my brother was still raping me. It was the only way I knew to escape. So Kenny was raised by my mom and he always thought we were siblings. I learned a few years ago that he found out I was his mom after getting a copy of his birth certificate from vital records.
6. Our home life when we were children was not good. Kenny had a really rough time. Larry was mean to him and mean to our Mom and was very violent. Kenny was in the house often when he would beat my Mom and there really wasn't anything that he could do because he was little.
7. Because of the things that happened to me when I was young I turned to alcohol and drugs at an early age. I didn't receive counseling or anything for all the trauma I experienced as a kid and, therefore, the alcohol and drugs helped me dull that pain. I have been in therapy as an older adult, but I still struggle daily.

8. Kenny and I did not have a close relationship as he got older because as soon as I could I moved to Columbia to try and find a better life. I have no real relationship with anyone in my family. I am angry with them for what happened to me and the only way I know to cope is to keep my distance.
9. I struggled all of my life with both the trauma of being raped by my older brother and having a child that I couldn't take care of due to my problems with alcohol and drugs. I still live with guilt about not being a good mom – or any kind of a mom – to Kenny.

If I were able to speak at Court I would say that I love Kenny and that I am sorry that I wasn't able to be there for him.

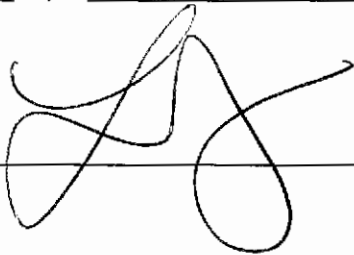
Sign: Lillie Stevenson

Print: Lillie Stevenson

Date: 11-6-19

Sworn and subscribed before me
this 6th day of November, 2019.

Notary



My commission expires: September 21, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina,)

Indictment Numbers: 2018GS4001418,
 2018GS4001419, 2019GS4004077, 2019GS4004079

vs.)

AFFIDAVIT OF HAZEL GLEATON

Kenneth Gleaton,)

Defendant.)

My name is Hazel Gleaton. I am 77 years old, my birthday [REDACTED] and I live at [REDACTED] Road, Barnwell, South Carolina.

I am Kenny's "Mama." While he is not my biological child, he is my grandchild; I raised him from a newborn baby. If I were at court for the mitigation, I would tell the Court the following:

1. As a child, he saw very tough and rough times. He saw difficulties between my husband and me. I was married at 13 to a 33 year-old man. My husband, Larry Lee Gleaton, was an alcoholic and he was very violent. He was particularly violent with me but he also assaulted the children. Kenny saw a lot of violence. Kenny is the second youngest of twelve children.
2. Kenny's father figure, Larry Gleaton, was in and out of jail and prison for property crimes, domestic violence, and other petty crimes. He passed away in jail in 1991 from complications related to alcoholism.
3. In addition, as was briefly mentioned, Kenny is actually my Grandchild. His biological mother, Lily, was my daughter. She was 13 years old when she became pregnant and she had Kenny a little before she turned 14. At the time, she was not able to raise Kenny because was messing around with drugs and alcohol, running away, and dealing with her own troubles. Kenny only knew me as his mother and Lily as his sister.
4. Kenny and Lillie were raised together. Lillie had a very difficult life and she struggled a lot. When Kenny was about 12, he watched her try to kill herself. He was in the house when Lillie came home from being out all day. She had taken something and had two big bottles of alcohol. She was taken out in an ambulance and was in the ICU for a week. Kenny visited her in the hospital.
5. When Kenny was young he idolized his brother, Gary Gleaton. Gary was about 11 years older than Kenny but any time Gary wasn't at work you would see them together. Gary took care of Kenny. Gary took Kenny under his wing – took him fishing, hung out with him, helped him. Gary died on New Year's Eve of 1989, he had just turned 21. He was the passenger in a car when there was a terrible accident. After Gary died, Kenny lost his idol and really feel in with the wrong crowd. I don't exactly know when or what was going on but he started getting in trouble.
6. When Kenny started hanging around with the wrong crowd he started getting into trouble. He did go to prison but when he was home he really started to help out as a man. When he got out the first time he stayed with me and his brother – Stephen. Kenny would cook in the kitchen and

cook-out. He would provide everything for all my family that would come to dinner. He would pay for the meals and cook out for all of us, he brought everyone together. Also, when he was home with me he would help me with all the household chores – like cleaning and yard work. He was always helpful around the house. When Kenny stayed with me he would do anything he could to help me. If I asked him for help he was always willing to help.

7. As an adult Kenny took a number of the youngins under his wing. He would give them guidance and try and make sure they didn't get in trouble. This went for both family members – like younger cousins – and just kids around the neighborhood.

If I were able to speak at Court I would say that we have not given up on Kenny. I love him and I will always love him and I will never stop loving him.

Sign: Hazel E. Eaton

Print: Hazel E. Eaton

Date: 11: 7, 19

SWORN AND SUBSCRIBED before me

this 7th day of November, 2019.

[Signature]

Notary Public for South Carolina

My Commission Expires: 4-4-28

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

The State of South Carolina,)

vs.)

Kenneth Gleaton,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 2018GS4001418,
 2018GS4001419, 2019GS4004077,
 2019GS4004079

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for a New Trial and Sentencing Hearing has been served on Assistant Solicitor Vance Eaton by hand delivering a copy to his office at 1701 Main St., Columbia, SC 29201.

This 12 day of November, 2019.


 Steven Harper
 Paralegal

RICHLAND COUNTY
 FILED
 2019 NOV 12 PM 3:06
 CLERK OF COURT
 1000 BAYVIEW BLVD
 COLUMBIA, SC 29201

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

State of South Carolina,)

vs.)

Kenneth Gleaton,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Nos.: 2018GS4001418; 19;
2019GS4004077; 79

**ORDER DENYING MOTION FOR NEW
TRIAL AND SENTENCING HEARING**

RECEIVED
DEC 19 2019
SC Court of Appeals

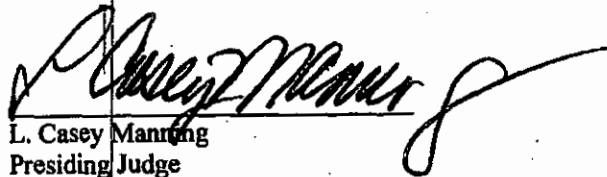
On Friday, November 1, 2019, the above named Defendant, Kenneth Gleaton, was found guilty of trial of murder, arson second degree, desecration of human remains, and possession of a weapon by a violent felon. The Defendant was sentenced to life in prison without the possibility of parole on the murder charge to run concurrently with the sentences on the other charges. The State was represented by Deputy Solicitor April Sampson and Assistant Solicitors Vance Eaton and Stephanie Taylor. The Defendant was represented by Deputy Public Defender Laura Young and Assistant Public Defenders Sarah Jurick and Maisie Osteen.

On November 12, 2019, counsel for the Defendant filed a motion for new trial and sentencing hearing. The Defendant had a fundamentally fair trial that included judicial rulings made in accordance with the law and rules of evidence and is therefore not entitled to a new trial. Much of what is raised by the Defendant is not appropriate for a new trial but rather for collateral proceedings. What the Defendant presents in the way of affidavits is new evidence. A new trial motion cannot be used to raise new arguments. *State v. Holmes*, 320 S.C. 259, 266, 464 S.E.2d 334, 338 (1995).

The Defendant is not entitled to a new trial based on his claim of a chilling effect on his attorney's advocacy. Counsel for the Defendant continued to advocate for their client by way of motions, objections and arguments, when appropriate, throughout the duration of the trial. Furthermore, the cumulative effect doctrine does not apply to this situation as the defendant has failed to show that the cumulative effect of any errors affected the outcome of the trial and, as such, failed to show that they adversely affected his right to a fair trial. *State v. Beekman*, 405 SC 225 (App 2013).

Based upon the foregoing, I conclude the Defendant is not entitled to a new trial or sentencing hearing. Therefore, the Defendant's motion is denied.

AND IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to read "L. Casey Manning", is written over a horizontal line.

L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

December 9, 2019
Columbia, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 27 2021

SC Court of Appeals



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of July, 2021.

