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Nov 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
General Sessions Court
DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2017-GS-40-07158
Case No. 2017-GS-40-07162
Case No. 2017-GS-40-07165
Case No. 2017-GS-40-07166
Appellate Case No. 2019-001981

The State,

Respondent,

v.

Charles Barham,

Appellant.

RECORD ON APPEAL
VOLUME I OF II

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ATTORNEYS FOR APPELLANT

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WITNESSES

(S) Kevin E Reese
- Columbia Police Department

DOCKET NO. 2017GS4007158

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

ARREST WARRANT NUMBER

2017AA021601416

COURT OF GENERAL SESSIONS
DECEMBER TERM 2017
105

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

Charles Barham

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury DEC 07 2017
Date:

VERDICT

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
CDR Code: 0116

Foreperson of Petit Jury
Date:

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Charles Barham did in Richland County, on or about September 6, 2015, kill the victim, Charles Kusko, with malice aforethought, either express or implied, by means of two gunshot wounds 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

WITNESSES

(S) Kevin E Reese

- Columbia Police Department

DOCKET NO. 2017GS4007162

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

105

ARREST WARRANT NUMBER

2017A4022601417

THE STATE

vs.

Charles Barham

**ACTION OF GRAND JURY
TRUE BILL**

Foreperson of Grand Jury *David St* **DEC 07 2017**
Date:

VERDICT

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
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE**

SC Code: 16-11-0311
CDR Code: 0079

Foreperson of Petit Jury
Date:

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Charles Barham did in Richland County on or about September 6, 2015, enter the dwelling of Charles Kusko located at 1701 Budon Court, Columbia, SC 29204, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, and/ or the defendant the entering or remaining occurred during the nighttime, the defendant was armed with a deadly weapon, and/ or he caused physical injury to a non-participant in the crime, and/ or he used a dangerous instrument, and displayed a firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 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) Kevin E Reese

- Columbia Police Department

DOCKET NO. 2017GS4007165

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

ARREST WARRANT NUMBER

2017A4021601418

COURT OF GENERAL SESSIONS
DECEMBER TERM 2017
105

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

Charles Barham

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 07 2017

VERDICT

Indictment for
CONSPIRACY / CRIMINAL CONSPIRACY,
COMMON LAW CONSPIRACY DEFINED

SC Code: 16-17-0410
CDR Code: 0049

Foreperson of Petit Jury
Date:

COANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

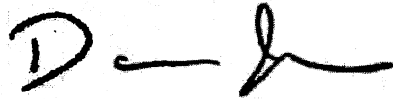
INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

CRIMINAL CONSPIRACY

That Charles Barham did in Richland County on or about September 6, 2015,
combine with Floyd Owen, and/or with other persons, for the purpose of
accomplishing a criminal or unlawful object or an object that is neither criminal
nor unlawful through criminal or unlawful means, to wit: murder, and / or
burglary in the first degree, and / or possession of a weapon during the
commission of a crime of violence, in violation of Section 16-17-410, 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

WITNESSES

(s) Kevin E Reese

- Columbia Police Department

DOCKET NO. 2017GS4007166

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2017

105

ARREST WARRANT NUMBER

2017A4021601419

THE STATE

vs.

Charles Barham

**ACTION OF GRAND JURY
TRUE BILL**

Foreperson of Grand Jury
Date:

DEC 07 2017

VERDICT

**Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH**

SC Code: 16-23-0490
CDR Code: 0549

Foreperson of Petit Jury
Date:

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.

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 6, 2017,
the Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Charles Barham did in Richland County, on or about September 6, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, 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 VS.
Charles Barham

AKA:

Race: WHITE Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 116 Muirfield Ct WCity, State, Zip: Blythewood, SC 29016DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007158A/W#: 2017A4021601416Date of Offense: 9/6/2015S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin 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. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 79921

Defendant

Attorney for Defendant

SC Bar# 71118WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 40 days/months/years ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 the SCDOP.☐ The Defendant is to be placed on the 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*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 \$

Clerk of Court/ Deputy Clerk Jeanette McBride BCourt Reporter: NEVERS

SCCA/217 (04/2018)

PTUP

 days/hours Public Service EmploymentObtain 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:

☐ 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 W/BJudge Code: 2161Sentence Date: 11-18-19

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Charles Barham

AKA:

Race: WHITE Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 116 Muirfield Ct WCity, State, Zip: Blythewood, SC 29016DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007162A/W#: 2017A4021601417Date of Offense: 9/6/2015S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ 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. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant71114
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 the SCDOC.☐ The Defendant is to be placed on the 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: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*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

\$

Clerk of Court/ Deputy Clerk Jeanette McBrideCourt Reporter: Nevers

SCCA/217 (04/2018)

 days/hours Public Service EmploymentObtain 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: ☐ 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 [Signature]Judge Code: 216Sentence Date: 11-18-19

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Charles Barham

AKA: _____

Race: WHITE Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 116 Muirfield Ct WCity, State, Zip: Blvthewood, SC 29016DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007165A/W#: 2017A4021601418Date of Offense: 9/6/2015S.C. Code § : 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ 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. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Solicitor79921
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant7/1/0
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 the SCDOC.☐ The Defendant is to be placed on the 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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*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 \$ _____

Clerk of Court/ Deputy Clerk Jeannette McBride BCourt Reporter: News

SCCA/217 (04/2018)

PTUP

_____ days/hours Public Service Employment

Obtain 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: _____

☐ 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 [Signature]Judge Code: 2161Sentence Date: 11-18-19

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Charles Barham

AKA:

Race: WHITE Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 116 Muirfield Ct WCity, State, Zip: Blythewood, SC 29016DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor79921
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant71118
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 yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 the SCDOC.☐ The Defendant is to be placed on the 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: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*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

Clerk of Court/ Deputy Clerk Jeanette McBrideCourt Reporter: Nevers

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4007166A/W#: 2017A4021601419Date of Offense: 9/6/2015S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3 2017-GS-40-07158
4 2017-GS-40-07162
5 2017-GS-40-07165
6 2017-GS-40-07166

5 State of South Carolina,)
6 Plaintiff,)
7 vs.) TRANSCRIPT OF RECORD
8 Charles Brandon Barham,)
9 Defendant.)

10 August 26-30, 2019
11 Columbia, South Carolina
12

13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
15 jury.
16

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

18 R. VANCE EATON, ASSISTANT SOLICITOR
19 JOHN B. CONRAD, ASSISTANT SOLICITOR
20 PETER T. O'REILLY, ASSISTANT SOLICITOR
Attorneys for the Plaintiff

21 STANLEY L. MYERS, ESQ.
22 LESTER MCGILL BELL, JR, ESQ.
Attorneys for the Defendant
23
24
25

DEBORAH M. McCURDY, RPR
Official Court Reporter

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1	Photograph of Blazer	338	471
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AUGUST 26, 2019

(WHEREUPON, the proceedings began at
11:35 a.m.)

THE COURT: Solicitor, do you wish to call the
case?

MR. EATON: May it please the Court? Vance
Eaton, for the State. The State calls Charles
Brandon Barham on Indictment 2017-GS-40-7158, one
count of murder; 7162, which is burglary in the
first degree; 7165, which is common law conspiracy;
and 7166, possession of a weapon during the
commission of a violent crime, Your Honor.

THE COURT: All right. Can you give me a copy
of the indictments?

MR. EATON: I've got copies.

THE COURT: All right. Anything we need to
put on the record pretrial? Mr. Truitt has pulled
our panel first. I think they're taking a break,
the jury is taking a break, then we'll be ready to
move forward with picking a jury this morning.

MR. EATON: So there's not very much at this
point, Your Honor. I think we've whittled it down
to almost nothing.

The first thing I do want to put on the record
is that the State has offered Mr. Barham to plead

1 guilty to a range of 10 to 20 violent. Mr. Myers
2 communicated to me over the weekend that Mr. Barham
3 rejected that offer, but I just wanted it on the
4 record so that we all know that he knows and has
5 been advised and does, in fact, reject the State's
6 offer, Your Honor.

7 THE COURT: Is that correct, Mr. Myers?

8 MR. MYERS: Yes. Yes, ma'am, Your Honor. May
9 it please the Court? We've been dealing with this
10 case for several years prior to receiving that
11 offer for Mr. Barham, and I have had a number of
12 discussions -- one Mr. Eaton formally put that in
13 writing to me, I did discuss it with Mr. Barham,
14 and we kindly rejected the State's offer.

15 THE COURT: And I'll have Mr. Barham stand.

16 And if I can have the clerk put him under
17 oath.

18 THE CLERK: Raise your right hand, please.

19 (Defendant complies.)

20 THE CLERK: State your full name, please.

21 THE DEFENDANT: Charles Brandon Barham.

22 THE CLERK: Do you solemnly swear to tell the
23 truth, the whole truth, and nothing but the truth,
24 so help you God?

25 THE DEFENDANT: I do.

1 THE CLERK: Thank you.

2 THE COURT: All right, Mr. Barham, let me have
3 you stand up.

4 (Witness complies.)

5 THE COURT: You have heard the State place the
6 offer on the record?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And you have spoken with your
9 attorney regarding that? It is my understanding as
10 late as this weekend, is that correct, Mr. Myers?

11 MR. MYERS: Yes, ma'am.

12 THE COURT: All right. And he has indicated
13 that you have rejected that offer, is that correct?

14 THE DEFENDANT: Correct.

15 THE COURT: And you have a full understanding
16 as to what the offer is and what each of these
17 charges carry?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do I need to go over that with him
20 or you've gone over all that with him?

21 MR. MYERS: I'm comfortable. The only
22 exception I'll have is the verbiage of the e-mail
23 was that the number of years do not enunciate the
24 actual charges, but, as I understand it, it would
25 entail violent offenses. So the e-mail itself did

1 not contain the exact charges and years.

2 THE COURT: I'm assuming on the burglary and
3 the murder it would have to be reduced in order for
4 him --

5 MR. EATON: That's right, Your Honor. And
6 that is what it says. I said, you know, we can
7 further discussed the exact charges. I had a
8 feeling it might have been a non-starter to begin
9 with, so, you know -- right, we certainly could
10 have discussed further about any specific charges.
11 But that was how I wrote it, 10 to 15 violent.

12 THE COURT: All right. And I just, as a
13 practice, like to put it on the record because that
14 way we are all on the same page.

15 Knowing all of that, Mr. Barham, is it still
16 your desire to reject the offer?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Thank you, sir. You
19 may be seated.

20 (Defendant seated.)

21 THE COURT: All right. Anything else from the
22 State?

23 MR. EATON: Your Honor, we had some specific
24 topics we've already sort of addressed. I don't
25 think we need to bring them up at this point.

1 Appeals Opinion Number 5648. It came out in May of
2 this year.

3 THE COURT: One more time?

4 MR. BELL: 5648, May of 2019, Your Honor.

5 Your Honor, the essential content of that
6 motion -- I discussed it briefly with Mr. Eaton --
7 would be to have the State certify any and all
8 deals, promises, and inferences they may have made
9 to testifying witnesses who have current criminal
10 charges or imprisoned on criminal charges. And
11 under the new case, that would include if they
12 intend to show up at a later sentencing and
13 indicate that the testifying Co-Defendant
14 cooperated in the prosecution of them.

15 THE COURT: All right. Yes, sir?

16 MR. EATON: I mean, I think we're on the same
17 page about it. I talked to Mr. Bell early this
18 morning about the only two witnesses that I think
19 this could apply to. I mean, we can go ahead and
20 talk about it now.

21 Floyd Owen, Your Honor took his guilty plea
22 last week, and then Jenny Baker. You know, as to
23 Floyd Owen, I promised him nothing.

24 THE COURT: He pled -- didn't he plead
25 straight up to murder?

1 MR. EATON: Yes, Your Honor. Yes, Your Honor,
2 that's right.

3 Now, as far as under Dean, whether I intend at
4 the sentencing to say anything, I mean, I guess it
5 would be -- I mean, I guess it would be kind of
6 strange, I guess, if I didn't acknowledge his --
7 that he cooperated with the State at sentencing,
8 so, I mean, I'm not hiding any balls here. Sure,
9 that's true. But I also want it to be very clear
10 that Floyd Owen talking to me, talking to his
11 lawyer, talking to law enforcement, like, no one
12 has ever promised him anything whatsoever. You
13 know, again, I think the best he could say is he
14 hoped it's going to help him.

15 The other witness this could potentially apply
16 to would be Jenny Baker. Again, I promised
17 Ms. Baker nothing. She's serving 20 years in
18 federal prison. In fact, talking to her, I told
19 her that this has nothing to do with her federal
20 charges. I had talked to her state attorney -- or
21 the attorney who represented her on sort of
22 parallel state charges back when she was prosecuted
23 ultimately federally, really only to inform him
24 that I was using his former client as a witness.
25 He said he doesn't represent her anymore, if she

1 wants to talk to him, she can call him and pay him
2 some money.

3 I then last week remembered that she also had
4 a Federal Public Defender. I went back and looked
5 and that attorney -- and I'm drawing a blank on his
6 name at the moment, Your Honor, but he did write me
7 an e-mail a long time ago asking me to write a
8 letter for her. I did not do that. And I called
9 him last week in reference to the e-mail that I
10 found that he sent me that I never responded to,
11 and I said, I found this e-mail. I think I called
12 you back then and told you that I wasn't going to
13 do that.

14 And he said, Yes, to the best of my memory,
15 that's what happened.

16 So I do not have any intention of going to
17 federal court with Jenny Baker after she testifies.
18 So I promised her nothing. I promised -- made it
19 clear to both of her previous criminal attorneys
20 that I'm giving her nothing. I promised her
21 nothing helping her in any way.

22 THE COURT: All right.

23 MR. BELL: Brief response, Your Honor. As it
24 relates to Floyd Owen, I'm okay with what he stated
25 to the Court with the exception of our

1 understanding is at the guilty plea, one,
2 sentencing was deferred, obviously in anticipation
3 of him testifying in this trial. And, two, they
4 dismissed a separate unrelated armed robbery charge
5 and I believe a possession of a weapon during a
6 violent crime. So those also would be considered
7 in consideration of his testimony today and should
8 be able to be used by us for impeachment purposes.

9 As to Ms. Jenny Baker, of course, under Dean,
10 we just want to make perfectly clear on the record
11 that we understand he's saying his intention right
12 now is to not write a letter or show up in federal
13 court for her. However, under Dean, if we find out
14 later on that that's exactly what the State has
15 done to try to help her with federal downward
16 departure, that would be considered
17 after-discovered evidence and, under Dean, the
18 State ordered a new trial, and that was affirmed by
19 the Court of Appeals.

20 MR. EATON: That's understood, Your Honor.
21 Let me clarify one thing, the armed robbery and the
22 associated charges are still pending against Floyd
23 Owen.

24 We communicated something about that. I think
25 in my e-mail to Defense, I just said he's got these

1 other charges. I really honestly forgot about
2 them. I never talked to him about them in any way.
3 I'm pretty sure that's all I said. But they're
4 still pending.

5 MR. BELL: Nothing. We're good.

6 THE COURT: All right.

7 MR. MYERS: Judge, the only other issue is we
8 got the State's list and we also submitted a
9 witness list. And at the appropriate time, we ask
10 for all witnesses for the call of this case be
11 sequestered.

12 MR. EATON: And that actually raises one thing
13 that I just thought of as well.

14 The first thing is that my Number 13, Clarissa
15 Dubard, that's the DMV records custodian, she is
16 actually unavailable and we're going to need to
17 call a James Dixon instead, Your Honor.

18 THE COURT: Okay, hold on one second. Which
19 one is that again?

20 MR. EATON: Number 13, Your Honor.

21 THE COURT: And that's going to be who?

22 MR. EATON: James Dixon.

23 THE COURT: With the Department of Motors
24 Vehicles?

25 MR. EATON: Yes, ma'am.

1 In order to preserve everyone's rights, I will
2 give the parties an opportunity to object to
3 anything that I said.

4 Any objections or exceptions from the State?

5 MR. EATON: No, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. MYERS: No, ma'am.

8 THE COURT: All right. Thank you.

9 All right, ladies and gentlemen of the jury,
10 as I stated earlier, we will go straight into
11 opening statements. First you will hear from
12 Mr. O'Reilly, on behalf of the State, and then you
13 will hear from Mr. Myers, on behalf of the
14 Defendant.

15 MR. O'REILLY: Thank you, Your Honor.

16 OPENING STATEMENT

17 MR. O'REILLY: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. O'REILLY: On September 6th, 2015, Floyd
20 Owen and that man sitting right there executed
21 Charles Kusko while he slept in his bed.

22 Floyd Owen entered a house on Budon Court. He
23 walked in the house through -- he got entry into
24 the house through a window and walked inside. He
25 snuck right up to Mr. Kusko's bed and pulled the

1 trigger blowing two holes in the back of his skull.
2 The bullets left that gun at such force and
3 velocity that the two holes went in the back of his
4 skull and ripped through his brain and actually
5 came out his face.

6 Mr. Kusko died alone in his bed, his
7 blood-soaked mattress. Mr. Kusko was not
8 discovered for over three days. And what happens
9 to a body when it's left for three days in about
10 75 degrees is horrific. He was unrecognizable, and
11 it was terrible.

12 His two daughters are present in the courtroom
13 today. They'll be sitting right up there the whole
14 time. And as shocking as all these facts may be,
15 Brandon Barham, we are 100 percent certain he did
16 not physically pull the trigger that night. Floyd
17 Owen did. We are here -- and Floyd Owen, he pled
18 guilty to murder, burglary, conspiracy, and
19 possession of a weapon during a violent crime in
20 this very courtroom just last week in front of
21 Judge Benjamin. We're here for Brandon Barham and
22 the actions he had in killing his uncle.

23 Brandon Barham in this case provided a gun to
24 Floyd Owen, drove him to Charles Kusko's house,
25 concocted this plan to execute his uncle, remained

1 the lookout, actually got out of his vehicle and
2 walked around the neighborhood to make sure no one
3 was there. He waited outside for Floyd Owen to
4 commit the murder, and he left.

5 Ladies and gentlemen, what Charles Barham,
6 also known as Brandon Barham, did, that is murder
7 here in South Carolina. That is murder, that is
8 burglary first degree, that's conspiracy, that is
9 possession of a weapon during a violent crime. I'm
10 not just saying that and I'm not arguing the law
11 for y'all, but under the theory of hand of one,
12 hand of all, that is when two people act together
13 and assist each other in a crime, they are both
14 guilty of the principal offense.

15 Simply put, when you think of a bank robbery,
16 someone goes in to rob a bank and someone is the
17 get-away driving. At the end of the day, both
18 people committed the bank robbery.

19 My name is Peter O'Reilly, and I represent --
20 I work at the Fifth Circuit Solicitor's Office.
21 And along with my co-counsel, Vance Eaton and John
22 Conrad, it is our job this week to prove to you
23 beyond a reasonable doubt that Brandon Barham
24 helped execute his uncle for a certain reason.

25 And over the course of this week, we're going

1 to kind of lay out a little path of who you should
2 expect to see and hear from. I want you to keep
3 this in mind. When someone gets up on that
4 stand -- the Defense is going to say there is no
5 evidence. When someone sits up there and actually
6 talks to you, their testimony is evidence. I just
7 want you guys to think about that.

8 But you're first going to hear from the First
9 Responders that arrived on the scene after no one
10 heard from Charles Kusko. You're going to hear
11 about the smell of decomposition. You're going to
12 see -- you're going to hear about his dog that was
13 starving to death. You're going to hear from CSI.
14 You're going to hear about how they swabbed the
15 doors, and did all sorts of things. You're
16 actually going to hear that a DNA hit came back to
17 Floyd Owen on the inside of that doorknob.

18 You're going to hear from the pathologist who
19 will explain how Mr. Kusko died. And she's going
20 to tell you exactly what I did. He died from two
21 bullets to the back of the head.

22 You're going to see a lot of electronic
23 evidence in this case. You're going to hear that
24 Floyd Owen and Brandon Parham, their phone records
25 are consistent with both of them turning off their

1 phone. There were no calls made during those
2 nighttime hours. You're also going to see video of
3 Brandon's truck near the house at the time of the
4 murder. And we'll show you that.

5 What you'll also hear from is a long-time
6 acquaintance of Floyd and Brandon who will tell you
7 that both of them have talked in front of her about
8 killing Charles Kusko.

9 But, at the very end, you're going to hear
10 from Floyd Owen himself who will tell you what
11 happened that night. Floyd is going to tell you
12 that he walked into that house by breaking a window
13 and he walked up to the bed about three feet away.
14 He pulled that trigger and executed him. But he's
15 also going to tell you -- and he's told us from the
16 start before he was even arrested that Brandon
17 Barham was with him, they were together all night,
18 doing drugs, staying up. And that Brandon gave him
19 a gun and was the lookout.

20 In the end, both of these men had different
21 reasons for killing Charles. And this is the point
22 where I will be blunt with you. Charles was no
23 angel. Charles was threatening Floyd. He was
24 threatening to call DSS so Floyd couldn't see his
25 kids. You will also hear that Charles ripped off

1 Brandon and he owed Brandon money. Charles also
2 kind of ripped off Brandon's mother. But all that
3 aside, no matter what type of man Charles Kusko
4 was, no one deserves to die the way he did. No
5 one.

6 I'm confident at the end of this trial after
7 this week, the 12 of you and whoever the alternates
8 are, depending if you get a say in this, but the 12
9 of you I believe will take action. The 12 of you
10 will seek a verdict that speaks the truth.

11 And that truth is that Brandon Barham
12 committed conspiracy to kill his uncle. He was the
13 hand that drove Floyd Owen over to that house to
14 commit burglary, murder, and possession of a weapon
15 during a violent crime.

16 Thank you.

17 THE COURT: Thank you.

18 OPENING STATEMENT

19 MR. MYERS: Good afternoon. While I was
20 listening to Mr. O'Reilly's opening statement, I'm
21 reminded of something my grandmother used to tell
22 me and the rest of my cousins. That no matter how
23 thin a pancake you cook, a pancake always has two
24 sides. One thing for sure, that we are
25 diametrically opposed on our positions. That at

1 the end of this case, there will be absolutely no
2 evidence that you will see to convict Charles
3 Brandon Barham.

4 Here we are in this courtroom on this day at
5 this time. I would love to be able to tell you
6 that this is Hollywood and this trial is going to
7 be over in 60 minutes. Unfortunately, it ain't.
8 We're going to be here a while. We're going to be
9 here for a couple of days. And we're going to try
10 and do everything that we can to expedite this
11 matter, not delay it, so that you good folks can go
12 home to your families.

13 This is an opening statement, so I'm supposed
14 to try and tell you what we believe this case is
15 about. We lawyers spend a lot of time trying to
16 come up with themes and theories on what cases are
17 all about. And in coming up with a theme or
18 theory, I was reminded of something my little boy
19 asked me. I've got two children, a 10-year-old and
20 an 8-year-old. And just like those of you with
21 children or grandchildren, I think he's a brilliant
22 little kid, right?

23 So he asked me a question the other day. He
24 said, Dad, if you had to go back into history and
25 meet some influential individuals, who would it be?

1 And I struggled with that. And I still
2 haven't even answered it, quite honestly, because
3 there are so many historical figures that have
4 influenced our way of life in so many different
5 ways. The good ones, the bad ones, but regardless
6 of who they are, they've given some type of
7 influence.

8 Perhaps the one, though, I guess I'll have to
9 tell him the one that I would really, really like
10 to meet is a gentleman by the name of Winston
11 Churchill. Do y'all know who Winston Churchill is?
12 Got a few nods and a few shakes. Winston Churchill
13 was the Prime Minister of Great Britain during
14 World War II. And, as you recall, we were the
15 allies trying to defeat the German forces. And one
16 of the things that the allies did was that they did
17 subterfuge, meaning trickery. They made the
18 Germans think that we were going to attack here,
19 but, instead, we attacked another location and that
20 ultimately won the Great World War.

21 Winston Churchill had one of the greatest
22 quotes that I've ever heard, and that is that the
23 truth is so important that it must protected with
24 the bodyguard of lies.

25 Why is that important in this case? There is

1 only one truth that Mr. O'Reilly and I will agree
2 on. And that is that Floyd Owen, in cold,
3 calculated fashion, put two bullets in the back of
4 Charles Kusko's head. The rest of that will all be
5 lies based on what Floyd Owen will tell you and
6 what this lady, Jenny Baker, will tell you. That
7 their lies are basically going to be coming from
8 this stand to try and convict an innocent man.

9 When you look at the facts of this case -- and
10 I want to kind of stop right now. You know, this
11 case is about a lot of different things. This case
12 is about snitches, it is about individuals trying
13 to testify to curry favor for their own selves.
14 It's about something called confirmation bias.

15 For those of you who are unfamiliar with the
16 term, the best way for me to summarize it is from a
17 Greek philosopher. I'm just full of all kind of
18 quotes, but they're not mine. You know, you've got
19 a Greek philosopher by way of one of our greatest
20 chief justices of the South Carolina Supreme Court,
21 Costa Pleicones. He says that, For what a person
22 wishes to be true, he then believes it to be true.

23 You see, what happened in this case is that
24 Charles Kusko and Floyd Owen were on-again,
25 off-again lovers. Brandon Barham, it is true, was

1 Charles Kusko's nephew. He had several other
2 uncles. The problem is that how they all came
3 about is that through Charles and Floyd's
4 relationship, Brandon then met Floyd just because
5 Floyd was always hanging around the family.

6 Charles' mother -- I'm sorry, Brandon's mom,
7 Charles' sister, had a horrible car accident years
8 before in 2015, and it left her with traumatic
9 brain injury. As a result of that, several
10 individuals, several of her siblings had to become
11 her power of attorney.

12 We believe that the evidence will show that
13 the first power of attorney was her sister,
14 Christine. The second one was Brandon. The third
15 one was Frankie. Charles Kusko was the fourth
16 power of attorney. And now, the individual that is
17 her current power of attorney is her other brother,
18 Andrew Kusko, who you will also hear about
19 throughout this case.

20 At some point, Floyd and Charles broke up.
21 They still kept in contact with each other. And
22 Mr. O'Reilly is right, Floyd Owen thought that
23 Charles Kusko was going to make threats against him
24 and turn him in to DSS. Because at the time, Floyd
25 Owen was married, going through a divorce, had two

1 children. He and Floyd Owen had smoked dope
2 together, they bought drugs together. And all of a
3 sudden, Charles Kusko started telling Floyd, Hey,
4 I'm going to turn you in to DSS, you will never get
5 your kids again.

6 That's when that seed started planting.
7 That's when the seed got planted for Floyd Owen to
8 then kill Charles Kusko.

9 So September 6th, 2015, the evidence will show
10 that Floyd Owen, alone, went into Charles Kusko's
11 house in the cover of darkness and put two bullets
12 into the back of his head. That is not going to be
13 disputed.

14 At the time of that shooting, Mr. Kusko's body
15 goes cold for some time. Nobody is able to find
16 out where he is. Finally, during a wellness check,
17 someone comes in, finds a broken window. They
18 contact law enforcement. Law enforcement goes in,
19 smells the decomposing body, and then they start
20 this investigation.

21 They start investigating several individuals.
22 They investigated Floyd Owen, they investigated
23 Andrew Kusko, and they investigated Jenny Baker.

24 Floyd Owen, despite what they tell you now,
25 gave a whole different story than he later did.

1 Jenny Baker, when she was initially talked to in
2 2015, gave a completely different story. Denied
3 having any involvement, denied knowing anything
4 about Charles Kusko's death. So, as a result, the
5 case goes cold.

6 Investigator Reese then gets on. And that's
7 Mr. Reese right there. He gets involved in this
8 case. He starts going back through evidence. And
9 when he gets involved, he realizes that Floyd Owen
10 is then wanted for an armed robbery. Floyd Owen is
11 picked up, taken to the Alvin S. Glenn Detention
12 Center.

13 At that time, Mr. Reese gets a phone call from
14 a lawyer, Jenny Baker's lawyer. She wasn't charged
15 in 2015, but in 2017, she's looking at a bunch of
16 dope charges that's going to land her in jail for a
17 long time. She's going to come in in prison garb.
18 Floyd Owen is going to come in in prison garb.

19 The reason that Jenny Baker starts talking at
20 that point, that's going to be up to you. It's up
21 to you to tell us whether or not Jenny Baker is an
22 unbiased witness. But, nevertheless, she then
23 starts to tell Investigator Reese that, Yeah, Floyd
24 Owen and Brandon Barham admitted to killing Charles
25 Kusko. They did it.

1 So, all of a sudden, that confirmation bias,
2 what he wished to be true, he believed it to be
3 true. He ignored all other evidence, all other
4 forensic evidence, all other independent
5 third-party evidence and zeroed in on Floyd Owen,
6 who he got a warrant for. And then while Floyd
7 Owen is sitting there, and he knew he had to strike
8 a deal, he knew he had to do something, what does
9 he do? He won't even be a man about it. He then
10 brings Brandon Barham in and said, Hey, it wasn't
11 just me, it was Brandon Barham.

12 You listen to why Floyd said it and you listen
13 to the circumstances upon which Floyd said it. And
14 then it's going be up to you as to whether or not
15 you believe that testimony.

16 That's all the State has. They just got two
17 individuals that have everything to gain by talking
18 to law enforcement to basically say that Brandon
19 Barham did it.

20 Now, Brandon stands innocent. He doesn't have
21 to do or say anything. It's his constitutional
22 right to sit there quiet as a church mouse and not
23 testify. If he does, the judge is going to tell
24 you that you can't hold it against him. But you
25 certainly are going to hear from myself and

1 Mr. Bell. It's our job to try to represent Charles
2 Barham to the best of our ability.

3 All I ask is that on that one side of the
4 pancake when the witness is sitting there all
5 comfortable, drinking water, telling their story,
6 that you don't tune us out when we get up and start
7 asking him questions on cross-examination, because
8 that's where some other evidence will come.

9 Throughout this, and sure as I'm standing
10 here, Gill or I may do something or say something
11 to offend you. All I ask is that you hold that
12 against us and not against Brandon. We've got a
13 job to do. It's a tough job. I wish that this was
14 going to be going on for 60 minutes because it
15 certainly would lessen my stress level. But at the
16 end of the day, we've got a job to do and we
17 hope -- we're going to do the very best that we can
18 not to offend you.

19 The judge is going to talk to you about the
20 law. The judge is going to tell you about
21 reasonable doubt. She is going to talk to you
22 about the burden of proof. I'm not going to do
23 into full detail here because I'll spend some more
24 time with you the last time I get an opportunity to
25 talk to you, but I want to tell you this, that this

1 concept of burden of proof is real. Brandon Barham
2 does not have to prove anything. The State has the
3 burden of proof. And it's not an unfair burden,
4 because you can't go around just charging
5 individuals and asking 12 people to put them in
6 jail for the rest of their lives unless they meet
7 their burden. So before you go to bed at night,
8 the State needs to firmly convince you that there
9 is overwhelming guilt against Brandon Barham.

10 And, folks, at the end of the day, it's not
11 going to happen. You're not going to have any
12 scientific forensic evidence. You're just going to
13 have some liars, some dope dealers, and an
14 investigator with a whole lot of confirmation bias
15 used to convict Brandon Barham.

16 You took an oath. As a military officer in
17 the guard, I've taken an oath, so I understand how
18 serious they are. Some of you were military and
19 retired military. All I can tell you is that this
20 concept of reasonable doubt, you give Brandon all
21 the benefit of the doubt. That he, as a person who
22 is charged, is entitled to be given all the doubt,
23 because while it's Brandon Barham today, what
24 you're standing on, what our soldiers are over in
25 Iraq and Afghanistan dying for is the fact that,

1 Hey, if I say I didn't do something, give me an
2 opportunity to hear all the facts of the case.

3 Give him a fair trial. We're not asking for a
4 perfect trial. We're asking for a fair trial. We
5 picked you because we believe that in all of your
6 collectively wisdom, you can do exactly that.

7 And at the end of the day, there's only one
8 verdict to be rendered in this courtroom, and that
9 is that Brandon Barham is not guilty of all
10 charges.

11 Thank you.

12 THE COURT: Thank you.

13 I ask the State to call your first witness.

14 MR. CONRAD: Thank you, Your Honor. The State
15 calls James Jones.

16 (Witness approaches.)

17 THE BAILIFF: Place your left hand on the
18 Bible, raise your right, please.

19 (Witness complies.)

20 THE CLERK: State your full name, please?

21 THE WITNESS: James Jones.

22 THE CLERK: Do you solemnly swear to tell the
23 truth, the whole truth and nothing but the truth,
24 so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. You can have a seat.

2 THE WITNESS: All right.

3 (Witness seated.)

4 THE COURT: Yes, sir?

5 MR. CONRAD: Thank you, Your Honor. May it
6 please the Court?

7 JAMES JONES,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CONRAD:

11 Q Mr. Jones, good afternoon.

12 A Good afternoon.

13 Q Mr. Jones, are you currently employed, sir?

14 A No, I'm not.

15 Q All right. And are you currently retired?

16 A I'm retired, yes.

17 Q What occupations have you retired from?

18 A I'm a retired investigator, private investigator,
19 I'm a retired City of Columbia police officer, and
20 military.

21 Q Okay. And I'll take you back to 2015. Were you
22 employed?

23 A Yes, I was.

24 Q And where were you employed?

25 A With the Lourie Law Firm.

1 Q And what exactly were your duties with Lourie Law
2 Firm?

3 A I was an investigator for the firm. I was also his
4 driver.

5 Q Okay. The victim in this case is a gentleman by
6 the name of Charles Kusko. Did you know Mr. Kusko?

7 A Yes, I did.

8 Q How long had you known Mr. Kusko?

9 A Well over 20 years.

10 Q Okay. And just briefly describe for the jury the
11 nature of you guys' relationship.

12 A Charles worked as a maintenance man, handyman
13 around the office. He did work for Neal Lourie,
14 which is the attorney at the Lourie Law Firm. Also
15 he did work for me at my home. He was just a handy
16 guy. Very nice young man.

17 Q Okay. So Mr. Lourie worked at -- or, excuse me,
18 Mr. Kusko did work for the Lourie Law Firm?

19 A Yes.

20 Q Doing handyman work?

21 A Handyman work, anything that Neal needed done from
22 his house, to the office, you know, driving.
23 Anything that we needed, Charles was always
24 available.

25 Q Okay. And he had done some personal work for you

1 as well?

2 A Yes.

3 Q Where was that work done?

4 A At my home. He did some lights, like floodlights
5 on my house. Charles donated me my desk for my
6 office. So, yes.

7 Q Okay. I'm going to direct your attention to Labor
8 Day weekend of 2015. During that weekend, or right
9 before the weekend, did you have any opportunity to
10 have any contact with Mr. Kusko?

11 A I did.

12 Q When did you actually talk to Mr. Kusko?

13 A The last time I spoke to Mr. Kusko was on that
14 Friday. The office closed like 2:00 o'clock on
15 Friday. And I had a conversation with him on that
16 Friday.

17 Q Okay. And that would have been September 4th,
18 Friday, 2015?

19 A Yes, sir.

20 Q Okay. And the Saturday, September 5th or
21 September 6th or September 7th, which is Saturday,
22 Sunday, and Monday, did you have any contact with
23 Mr. Kusko?

24 A No.

25 Q That you recall?

1 A No, I don't recall.

2 Q Okay. And that was Labor Day weekend. So did you
3 work on that Monday, September 7th?

4 A We didn't work on Monday. We worked on Tuesday.
5 The office was closed that Monday.

6 Q Okay. So you came to work at the Lourie Law Firm
7 on Tuesday, September 8th?

8 A Right.

9 Q And did you come in contact with Mr. Neal Lourie
10 that morning?

11 A Yes. I was taking Neal to court that day.

12 Q You took Neal to -- Mr. Lourie to court. Not to
13 get into the contents of any conversation
14 Mr. Lourie had said, did the topic of Mr. Kusko
15 come up during that car ride?

16 A It did.

17 Q And during that car ride, did Mr. Lourie take any
18 actions in regards to Mr. Kusko?

19 A He called him.

20 Q Okay. And did Mr. Kusko answer?

21 A He did not.

22 Q At that point, between you and Mr. Lourie, was
23 there a concern about Mr. Kusko's whereabouts?

24 A Yes.

25 Q Why was there concern?

1 A Charles has always been a prompt guy. He would
2 call back -- if he missed a call, he would call you
3 back. And so we were kind of concerned that he
4 wasn't answering his phone, and he didn't show up.

5 Q Was Mr. -- to the best of your recollection, was
6 Mr. Kusko supposed to show up that Tuesday morning?

7 A I don't recall if he was supposed to show up that
8 Tuesday morning. Per our conversation, he was
9 supposed to meet with Neal sometime during the
10 weekend, and he didn't show.

11 Q Okay. So after this phone call that didn't make --
12 there was no answer, again, not going into the
13 contents of the conversations, did you take any
14 actions in regard to Mr. Kusko?

15 A Neal wanted me to go do a welfare check. He said,
16 Hey, when we get back from court, go check on
17 Charles. And that's what I did.

18 Q Okay. And when you went to check on Charles, where
19 did you go?

20 A I went to his residence at 1710 Budon Court.

21 Q Budon Court. And that is -- just so the jury
22 knows, can you just give a general idea where
23 that's located?

24 A If you're familiar with Forest Drive and the
25 Zesto's and Harrison Road area, it's like -- I

1 think that would be eastbound on Forest Drive to
2 Harrison Road.

3 Q So there's a Zesto's right in that area?

4 A Yes.

5 Q That's on Forest Drive?

6 A Yes.

7 Q When you drove up to 1710 Budon Court, what did you
8 observe? What did you do?

9 A When I drove up, I observed Charles' truck being in
10 the driveway. His window was down on the truck.
11 Porch light was on. And I feared -- by being a
12 retired cop, I noticed that the window was broken
13 or screen broken, or something like that. So,
14 yeah.

15 Q And this window that you said you saw was broken,
16 where in the house was it?

17 A I just know it was up front. I noticed that the
18 screen and the window was up or broke or something
19 was -- didn't look right.

20 Q And you said that you worked with Columbia Police
21 Department prior to this, right?

22 A Right, 11 years.

23 Q Eleven years. And your experience from working as
24 a police officer, this broken window, did that
25 raise any concerns?

1 A It did.

2 Q And was there anything else that you observed or
3 noticed that caused you concerns other than the
4 window?

5 A Yes, the smell. I was very concerned about the
6 smell that I smelled. And after the smell, I
7 immediately dialed 9-1-1.

8 Q Okay. And this smell, again, drawing on your
9 experience as a police officer, what did it smell
10 like to you?

11 A Something dead.

12 Q And when you smelled that and you observed the
13 broken window -- you just said you called 9-1-1,
14 but did you approach the house or did you go -- did
15 you approach the house at all?

16 A I did not, nope.

17 Q Did you go on the porch?

18 A Nope.

19 Q Did you go inside?

20 A Nope.

21 Q Okay. So you stayed -- where were you standing
22 when you called 9-1-1, to the best of your
23 recollection?

24 A On the roadway. Right on the roadway.

25 Q And you expressed your concern to dispatch?

1 A I did.

2 Q What did you ask them to do?

3 A I told them they needed a unit to come respond
4 quickly because something is not right here at this
5 residence. And they informed me that they were
6 extremely busy. I said, I don't care. Call
7 someone from another district or call Richland
8 County, because Budon Court is in Richland County
9 as well.

10 Q And what did you do after you placed that phone
11 call?

12 A I called Neal and told him I didn't like the smell
13 over here.

14 Q And did you stay at the location, or what action
15 did you take?

16 A I stayed until the first officer from the City of
17 Columbia arrived.

18 Q And did you talk to the officer and relay what your
19 concerns were?

20 A Yes.

21 Q Okay. Do you recall, maybe you don't, how long you
22 stayed on the scene after that first officer
23 arrived?

24 A Probably about an hour. I probably stayed an hour
25 doing the statement, something like that.

1 Q And at any point during that time, did you go
2 inside?

3 A Never.

4 MR. CONRAD: Beg the Court's indulgence.

5 (Pause.)

6 MR. CONRAD: No further questions.

7 THE COURT: Yes, sir?

8 CROSS-EXAMINATION

9 BY MS. MYERS:

10 Q How you doing, Mr. Jones?

11 A How you doing, Mr. Myers?

12 Q I'm good. We've known each other some time?

13 A Yes.

14 Q I think I met you when I first started practicing
15 law when you worked for Neal, right?

16 A Right.

17 Q Now, Mr. Jones, this is the first time that we've
18 had an opportunity to talk about this case. But I
19 know you've talked to the Solicitor's office
20 throughout the pendency of this ordeal, right?

21 A Little bit.

22 Q Before your testimony today, you talked to them,
23 right?

24 A Sure.

25 Q Talked with them about what you were going to

1 testify to?

2 A Yes.

3 Q Essentially, they prepped you for your testimony?

4 A No.

5 Q Well, they wanted to know what you were going to
6 say, right?

7 A They had my statement.

8 Q Yeah. And they asked you -- they told you what
9 they were going to ask you on the stand, right?

10 A Basically, just general questions. Nothing
11 pertaining other than my name and where I lived at.

12 Q Sure. They were preparing you for today, right?

13 A Right.

14 Q You're under their subpoena?

15 A Yes.

16 Q All right. Now, I want to go back to 2015.

17 A Okay.

18 Q You testified that you knew Charles Kusko.

19 A I did.

20 Q You knew the fact that he was the power of attorney
21 for his sister Karin, right?

22 A Sure.

23 Q And because he was the power of attorney because
24 Karin had suffered that traumatic brain injury
25 years ago, so he ultimately ended up being the

1 power of attorney, right?

2 A I don't recall who -- I know it was a back and
3 forth with this power of attorney thing. I can't
4 sit here and tell you who had it at that time, but
5 I know it was a back and forth thing between he and
6 his brothers.

7 Q All right. And he lived at 1710 Budon Court, which
8 is actually a home that was owned by your former
9 boss, Neal Lourie, right?

10 A That's correct.

11 Q So they had worked out terms or an agreement where
12 he rented that house or was buying that house from
13 Mr. Lourie, right?

14 A I don't know any terms or conditions. I don't know
15 what their agreement was, but I do know that he
16 rented from Neal.

17 Q Sure. I mean, in fact, that's how the relationship
18 kind of was between the two of you because you
19 would go over there because Neal would send you
20 over there from time to time, right?

21 A No.

22 Q Okay. That's not true?

23 A That's not true.

24 Q So throughout the course of knowing Charles Kusko,
25 you got to know some of the other individuals in

1 Mr. Kusko's life, right?

2 A Sure.

3 Q You knew Andrew?

4 A Yes.

5 Q Andrew Kusko was Charles Kusko's brother, right?

6 A Right.

7 Q The reason you went over there -- well, let's back
8 up. Before you went there for that wellness check,
9 I believe that was September 8th, 2015, right?

10 A Yes.

11 Q You had previously gone over there that Friday
12 before, right?

13 A I don't recall going over there the Friday before.

14 Q A couple of days before?

15 A No. I don't -- no.

16 Q You talked to him?

17 A I talked to him a couple of days before.

18 Q You never went over there?

19 A Right.

20 Q You talked to him over the telephone a couple of
21 days before?

22 A I talked to him on that Friday prior to us leaving
23 for the holiday.

24 Q And one of the things that you wanted to talk to
25 him about on that Friday was whether or not he

1 could actually come and do some work, right?

2 A Right.

3 Q He was supposed to do some work, but he didn't show
4 up, right?

5 A Absolutely.

6 Q Which prompted the phone call from you to him,
7 right? Or actually from him to you?

8 A I don't recall that.

9 Q Either way, y'all ended up talking?

10 A No. I don't recall us having a conversation after
11 that Friday.

12 Q No, no, I'm talking that Friday.

13 A Oh, yes. Yes. Yes.

14 Q And he told you that one of the reasons he couldn't
15 come over was because he was upset with his brother
16 Andrew, right?

17 A Absolutely.

18 Q In fact, he described it as saying that, I was
19 upset with my brother --

20 MR. CONRAD: Your Honor, the State is going to
21 object.

22 THE COURT: What's the objection?

23 MR. CONNELL: Your Honor, this is leading into
24 that third-party guilt that we discussed prior to
25 trial. I don't know if you want us to approach.

1 THE COURT: All right, let me see you all one
2 second.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: Objection overruled.

7 BY MR. MYERS:

8 Q Mr. Jones, at the time you talked to Charles Kusko
9 and he told you that he did not think that he would
10 be able to come over to work, he told you about his
11 feud or animosity towards his brother Andrew,
12 right?

13 A Yes.

14 Q In fact, he said that he was very upset with his
15 brother and his brother was upset with him?

16 A Yes.

17 Q In fact, he told you that they had been fighting,
18 right?

19 A Yes.

20 Q Did he also tell you that Andrew Kusko had come
21 over to his house that day?

22 A Yes.

23 Q And he actually had to call the law on Andrew
24 Kusko?

25 A Yes.

1 Q They were not on good terms, were they?

2 A They were not.

3 Q Now, did you talk to Andrew Kusko on this day?

4 A No.

5 Q You didn't even see him that day?

6 A No.

7 Q Now, did you tell law enforcement that when you
8 showed up at your wellness check?

9 A Tell them what?

10 Q Did you give them any names of individuals that
11 they might want to talk to about what had happened
12 to Charles Kusko?

13 A Yes.

14 Q You specifically told them, Look, man, all I know
15 is Charles told me that his brother -- he and his
16 brother Andrew had fought that Friday before and
17 they were upset with each other?

18 A Right.

19 Q He never told you or gave you any indication about
20 Brandon being upset with him?

21 A That's not true.

22 Q So on that Friday he told you that Brandon Barham
23 was upset with him?

24 A Give me one second, if you don't mind. Let me look
25 at these notes here. I stand corrected. You're

1 right, he never mentioned Andrew.

2 Q He never mentioned Brandon?

3 A Brandon. He never mentioned Brandon.

4 Q He never said anything about Charles being upset
5 with Brandon, right?

6 A Right.

7 Q Only Andrew Kusko?

8 A Yes.

9 Q Now, you testified that you had some experience
10 working for the City of Columbia, right?

11 A Yes, sir.

12 Q And one of the reasons you felt something was
13 strange was because the window was broken, right?

14 A Yes.

15 Q Now, did you go around the house --

16 A No.

17 Q -- at all? You just -- basically you just showed
18 up at the front and you saw that broken window,
19 right?

20 A Right.

21 Q Now, as a former investigator, you are very
22 familiar with the concept of forensic evidence,
23 right?

24 A Sure.

25 Q And scientific evidence, right?

1 A Right.

2 Q In fact, you know it's so important that it leads
3 to whether or not a person is telling the truth
4 about their involvement in a case, right?

5 A True.

6 Q Now, sometimes, I'm pretty sure as an investigator,
7 you've had people just come to you and just make
8 stuff up all the time, right?

9 A Absolutely.

10 Q You don't trust criminals, right?

11 A Yes.

12 Q They're people that make things up, right?

13 A Yes.

14 Q I mean, there's nothing to stop a person from just
15 saying, Hey, Mr. Jones hit me, and you were no more
16 than 15 feet from me, but I can still say it,
17 right?

18 A Yes.

19 Q But the reason forensic and scientific evidence is
20 important is because it can prove or disprove
21 whether or not that happened, right?

22 A I would say so.

23 Q Third-party witnesses are all --

24 MR. CONRAD: Objection, Your Honor. He's
25 calling for this witness to speculate about the

1 effect of evidence. I think that's outside of his
2 expertise and knowledge.

3 MR. MYERS: Judge, I know that they called him
4 as a fact witness, but he went into testimony that
5 he had worked for the City of Columbia. And he's
6 basically saying that he's familiar with it, so if
7 he's familiar with it, I think it's fair game.

8 THE COURT: What was the last question you
9 objected to? He asked and answered that. What was
10 the last question?

11 MR. MYERS: Madam Court Reporter, can I get it
12 read back?

13 (Court reporter read back testimony.)

14 THE COURT: Let me hear the next question, and
15 then I can rule.

16 BY MR. MYERS:

17 Q Third-party witnesses, in addition to forensic
18 evidence and scientific evidence, third-party
19 witnesses are also important to corroborate or
20 disprove a story, right?

21 A Yes.

22 THE COURT: You have an objection to that?

23 MR. CONRAD: Just general relevance, Your
24 Honor. This witness is not an investigator in this
25 case. And he has testified as to what he's seen

1 and heard. The Defense is asking him to give
2 opinions on what effect evidence has, and other
3 things. I think it's outside the scope of this
4 witness.

5 MR. MYERS: I'll move on.

6 THE COURT: The objection will be overruled,
7 but we will move on. Because you all got into it
8 on direct regarding him being an officer, and I
9 believe he testified that there was some sense of
10 him not -- I don't want to get into exactly what he
11 said, but I will allow him to continue. The
12 objection is overruled.

13 MR. MYERS: Thank you, Your Honor.

14 BY MR. MYERS:

15 Q Mr. Jones, moving on, you said that the only thing
16 that you saw which prompted you to call law
17 enforcement was a broken window, right?

18 A That's the only thing that I saw, but what I also
19 smelled was the smell of a body.

20 Q Yes, sir. But that broken window, it didn't tell
21 you whether or not it was caused by one person or
22 two?

23 A I didn't -- that wasn't my decision. All I knew is
24 that it didn't seem right, and I called.

25 Q So is the answer to my question yes or no? From a

1 broken window, could you make any determination as
2 to whether or not it was caused by one or two
3 persons?

4 A No, I don't know that.

5 Q Did you ever see Charles Kusko's body?

6 A No.

7 Q You never went on the inside of the house?

8 A No.

9 Q At any time around this time, did you ever see
10 Andrew Kusko?

11 A Around what time?

12 Q Around September 6th, 2015?

13 A No.

14 Q When was the last time that you had seen Andrew
15 Kusko before you called that wellness check?

16 A Probably a month prior.

17 Q Was he wearing a neck brace?

18 A Not that I can recall.

19 Q You know what I mean by a neck brace? One of
20 those -- you know, somebody says, Hey, I couldn't
21 move my neck, I have one of those neck braces that
22 says I can't move, I'm under a doctor's care?

23 A I don't recall.

24 Q It is something that would stand out to you,
25 wouldn't it?

1 A Yes, if someone had one on.

2 Q He was getting around pretty good?

3 A I'm not sure.

4 Q Was he able to talk to you?

5 A Last time I saw him, yes.

6 Q Communicate with you?

7 A Yes.

8 Q You didn't walk away saying, Man, Andrew looked
9 messed up?

10 A No.

11 MR. MYERS: Thank you. No further questions.

12 MR. CONRAD: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. CONRAD:

15 Q Mr. Jones, you said something about a fight between
16 Andrew or fighting between Andrew and Charles on
17 that Friday, the 4th, is that correct?

18 A Right.

19 Q You used the word fighting -- you weren't present
20 during that, right?

21 A No.

22 Q And so when you used the word fighting, did you
23 specifically mean physical altercation?

24 A I mean altercation.

25 Q To your knowledge, was it a physical altercation,

1 was it a verbal altercation?

2 A Verbal, from what I understand. What I comprehend
3 that -- what Charles was telling me was an
4 altercation, a verbal altercation.

5 MR. CONRAD: All right. Thank you.

6 Beg the Court's indulgence.

7 (Pause.)

8 BY MR. CONRAD:

9 Q And just to clear one thing up. Mr. Myers referred
10 to you as an investigator. Were you an
11 investigator when you worked at Columbia Police
12 Department?

13 A No, I was not.

14 Q Okay. So you were specifically a private
15 investigator?

16 A Yes.

17 Q At any point did you work as an investigator for
18 any law enforcement agency?

19 A No.

20 MR. CONRAD: Nothing further.

21 MR. MYERS: No recross, Your Honor.

22 THE COURT: You may step down, sir.

23 THE WITNESS: Thank you, Your Honor.

24 MR. CONRAD: Your Honor, the State requests
25 this witness be excused.

1 THE COURT: Any objection?

2 MR. MYERS: No objection.

3 THE COURT: You're free to leave.

4 THE WITNESS: Thank you.

5 (Witness steps down and is excused.)

6 THE COURT: Call your next witness, please.

7 MR. O'REILLY: Thank you, Your Honor. The
8 State calls Officer Richard Corley.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: State your full name, please.

14 THE WITNESS: Richard Corley.

15 THE CLERK: Do you solemnly swear to tell the
16 truth, the whole truth, and nothing but the truth,
17 so help you God?

18 THE WITNESS: I do, ma'am.

19 THE CLERK: Thank you. Please have a seat.

20 (Witness seated.)

21 RICHARD CORLEY,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. O'REILLY:

25 Q Mr. Corley, how are you doing?

1 A Good. Yourself?

2 Q So back in 2015, what's your role in this case?

3 A I was a Class 1 certified police officer for the

4 City of Columbia Police Department. Metro region,

5 patrol division, uniform patrol division. I was

6 dispatched to the house as the first responding

7 officer on scene for an unsecured premise.

8 Q So at this time you were employed with the City of

9 Columbia?

10 A Yes, sir, I was.

11 Q The Police Department?

12 A Yes, sir.

13 Q Where do you work now?

14 A I work for Johnstone Supply here in Columbia, the

15 Ware Group Division.

16 Q You didn't leave law enforcement for any bad blood?

17 You weren't fired, were you?

18 A No. I left voluntarily.

19 Q So, as you were going in, what level law

20 enforcement were you?

21 A At the time or when I left?

22 Q At the time?

23 A At the time, I was a patrolman.

24 Q And, I guess, what was your rank when you left?

25 A I was a patrolman, but I was a K-9 handler when I

1 left.

2 Q And I'm going to bring you to -- back to 2015. Can
3 you explain what was going on that day?

4 A Yes. I was dispatched to the incident location,
5 which was 1710 Budon Court, which is within the
6 City of Columbia, County of Richland.

7 And upon arrival, I met with Mr. Jones, who
8 was the complainant who had called us. And he
9 stated that there was a broken window at the house,
10 which I did look -- did see the front door was
11 broken.

12 But prior to arriving at the house, I actually
13 could smell a pretty potent smell, which I,
14 unfortunately, at the time was pretty familiar
15 with.

16 MR. O'REILLY: Your Honor, I would like the
17 record to reflect that Richard Corley has
18 identified the incident location to 1710 Budon
19 Court in Richland County.

20 THE COURT: All right. So noted.

21 BY MR. O'REILLY:

22 Q Mr. Corley, so when you got this call, you said you
23 could smell --

24 A Yes, sir.

25 Q How far away?

1 A I was about a block and a half to two blocks away
2 whenever I could smell the smell of what I would
3 say smelled like someone or something that had been
4 deceased for a little bit of time.

5 Q Can you remember seeing the house, what it looked
6 like?

7 A Yes.

8 Q All that stuff?

9 A Yes, I do remember it.

10 MR. BELL: No objection, Your Honor.

11 MR. O'REILLY: Your Honor, for the record, I'm
12 handing Richard Corley State's Exhibits 1 through
13 9.

14 BY MR. O'REILLY:

15 Q Take a moment to look at these if you need to.

16 A (Witness complies.)

17 Q What have I handed you up there?

18 A You handed me pictures of 1710 Budon Court, the
19 pictures of the outside of the home, screened
20 porch, and the broken window by the front door.

21 Q Do those images fairly and accurately represent the
22 screen as you arrived at?

23 A Absolutely.

24 MR. O'REILLY: Your Honor, at this point, the
25 State would like to admit State's Exhibits 1

1 through 9 into evidence.

2 THE COURT: Is there any objection?

3 MR. BELL: None, Your Honor.

4 THE COURT: All right. State's 1 through 9
5 will be entered without objection.

6 (WHEREUPON, State's Exhibit Nos. 1-9
7 were marked for identification and
8 received into evidence.)

9 MR. O'REILLY: Your Honor, I'd like to publish
10 this to the jury.

11 THE COURT: Yes, sir.

12 BY MR. O'REILLY:

13 Q So Officer -- well, I guess just Richard now.

14 THE COURT: If you're going to publish them,
15 you have to give them a chance to look at them.

16 MR. O'REILLY: Oh.

17 (Pause.)

18 BY MR. O'REILLY:

19 Q Mr. Corley, when you arrived on scene and saw the
20 house, you said you saw a broken window?

21 A Yes, sir.

22 Q What did you do next?

23 A Turned and looked around through the window that
24 was open to see if I could see anything, hear
25 anything that would be out of the ordinary. I also

1 at the point of a broken window called for a backup
2 officer at that time because I knew that we would
3 need to perform a security sweep of the home.

4 While looking through the window and waiting
5 on my backup officer, I did check the door handle
6 to the front door, which was unlocked.

7 I also heard -- at first, I could hear it,
8 then I got to be able to see it, but there was a
9 small dog. I believe it was a beagle or a beagle
10 mix of some sort inside the home. It seemed to be
11 very friendly from the window. But knowing that
12 there was a dog there, we did go ahead and call for
13 Animal Control to come to the scene strictly
14 because none of us wanted to get bit, even if it's
15 a little dog.

16 So once the second officer got there on scene,
17 we performed a security sweep. When we did open
18 the front door to start a security sweep, the small
19 dog took what I would take as in my experience and
20 training as what I would call a fighting stance.
21 He was a -- he became protective, tail stiff,
22 growling, snarling, showing his teeth for a second.
23 At which point, Animal Control did come in and go
24 ahead and take the dog. And then we performed a
25 security sweep on the home.

1 Q And when you did the security sweep, you actually
2 went inside and went through and through?

3 A Yes, sir, we did.

4 Q Is there anything you noticed that was off?

5 A The house did not appear to have been rummaged
6 through, which for a broken window was odd to me.
7 The house was in -- was relatively clean. I mean,
8 there was a -- I want to say, if I can remember
9 correctly, it was a pair of pants and a shirt and
10 maybe even some shoes underneath the stool. I
11 think they were underneath the stool that were
12 nicely placed there. You could tell somebody took
13 their time to put them there versus just throwing
14 them on there.

15 With that being there and not looking like it
16 had been rummaged through, or any of that, it just
17 didn't -- at first, did not look like a burglary,
18 from my experience.

19 Q So you saw valuables and things around, like TVs?

20 A Oh, yes, sir, there were TVs, for sure.

21 Q And what was the -- can you tell me about when you
22 went back in the bedroom?

23 A Soon as we went back to the bedroom, I saw the
24 victim lying there on the bed completely
25 unresponsive. I continued to move through the room

1 because, at which point, we do have to completely
2 secure the home. At which time, I could definitely
3 see that there was no signs of life from the
4 victim.

5 At that point, soon as we finished clearing
6 the residence, at that point, we did go ahead and
7 notify my chain of command, EMS, Richland County
8 Coroner's Office, and our investigations.

9 Q I'll leave you at this. Could you describe what
10 your initial -- maybe describe the victim a little,
11 what he looked like?

12 A Definitely started to decompose as far as he had
13 black skin, looked a little bit of what I would
14 classify as bloated. And the room, the bedroom did
15 not match the rest of the house, which was the
16 other odd thing that stood out to me. It was
17 pillows strewn about. He was wrapped up, looked
18 like he had been wrapped up almost. That would
19 have been the other odd entity for me.

20 Q Thank you.

21 A You're welcome.

22 THE COURT: Yes, sir?

23 MR. BELL: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BELL:

1 Q Mr. Corley, how long did you say you were with law
2 enforcement before parting ways?

3 A I was there for almost 5 years, sir.

4 Q Five years. Is that the totality of your law
5 enforcement experience?

6 A Nuclear security and worked with their law
7 enforcement, the nuclear side of law enforcement
8 hand-in-hand doing security testing on different
9 facilities. But other than that, yes, sir.

10 Q Now, what sounds like an absolute nightmare to most
11 people, unfortunately, can sort of be almost a
12 day-to-day thing when you're in law enforcement,
13 right?

14 A Can be, yes, sir.

15 Q In your five years, had you responded to other
16 scenes where there were deceased individuals?

17 A Yes, sir.

18 Q So this wasn't your first time?

19 A Absolutely not.

20 Q So it's not something that necessarily would have
21 put you in shock based on your experience?

22 A Wouldn't say it would have put me in shock, no,
23 sir.

24 Q Now, when working a scene, especially a scene where
25 there's an individual that may be deceased or is

1 deceased, it's extraordinarily important to try to
2 preserve the surroundings and the interior of that
3 home, right?

4 A Yes, sir.

5 Q And actually I commend you, because your report
6 dictates that you actually even put on gloves just
7 to check to see if the door was unlocked, correct?

8 A I'm pretty sure that I did. I always did whenever
9 I -- any time I cleared a definite burglary.

10 Q And the purpose of doing that is to try to preserve
11 any forensic evidence that may be on the scene,
12 right?

13 A Yes, sir.

14 Q Including -- in that particular example, you were
15 trying to preserve DNA that may have been on that
16 door handle?

17 A Sure.

18 Q Now, did you actually take part in any of the
19 forensic collections that took place --

20 A No, sir.

21 Q -- later on?

22 A No, sir.

23 Q Your job, essentially, was to respond to the
24 complaint and then it turned into insuring the
25 proper team was there to work a homicide?

1 A My job was to respond to the initial call as the
2 responding officer, figure out what was going on
3 scene once I -- or going on at the scene -- once I
4 arrived, and as soon as I arrived and figured that
5 out was to notify my chain of command.

6 Q Now, you testified that the interior of the home
7 seemed relatively normal, not rummaged through,
8 right?

9 A Yes, sir.

10 Q And with the exception of the room where the
11 deceased was found, otherwise it appeared to be a
12 normal household?

13 A Other than the broken window and where the victim
14 was found at, yes, sir.

15 Q So moving to the exterior, aside from that broken
16 window that was on the porch, did anything else
17 seem to be sort of overtly out of place that stood
18 out to you?

19 A Not that I can recall.

20 Q And as far as the window itself that was broken, in
21 the picture there's some glass on the window sill,
22 right?

23 A Yes, sir.

24 Q Was there glass also inside of the home?

25 A I do not 100 percent recall that. I believe there

1 was, but I also do not 100 percent recall that.

2 Q Now, during your sweep of the home, did anything
3 stand out to you that insinuated or implied that a
4 struggle took place?

5 A I wouldn't say that it stood out to me, no, sir.
6 I'm not an investigator, though, so that's not --

7 Q And did anything stand out to you that made you
8 feel like this was two or more individuals that
9 broke into this home?

10 A I can't answer that. Again --

11 Q Sure.

12 A At the time -- let me say this. At the time, I had
13 been a police officer with the city for about two,
14 little over two years. So, I mean, I had responded
15 to a lot of burglaries. I had responded to a lot
16 of different types of calls. I have never been an
17 investigator, so I can't answer a question like
18 what you're asking there.

19 Q Sure. And they are not trick questions. If you
20 don't know, you don't know.

21 A Yes.

22 Q Now, on the porch, did you notice footprints or
23 tire tracks leading up to the porch?

24 A I don't know that I did, no, sir.

25 Q Did you examine the rear of the property at all?

1 A I did not. I know other officers did. I did not.

2 Q Okay. Now, while on scene, you actually initially
3 made contact with the complainant, Mr. Jones,
4 right?

5 A Yes, sir.

6 Q And you were sort of advised of why you were
7 responding to that location?

8 A Yes, sir.

9 Q And that included, essentially, that a window was
10 broken and that was very unusual for this
11 particular residence?

12 A He said that he -- Mr. Jones stated that he was, I
13 believe, a co-worker -- yes, a co-worker with the
14 victim and had not heard from him. And they were
15 apparently supposed have a meeting that Mr. Kusko
16 did not respond to. That was pretty much my -- and
17 he said when he arrived on scene, the window was
18 broken.

19 Q Okay. And as a result of your conversation, I
20 don't want you to necessarily say, you know, what
21 he told you, but as a result of that conversation,
22 did you have any suspect that you relayed to your
23 chain?

24 A No, sir.

25 Q Were you advised of any other altercations that had

1 taken place at that particular address?

2 A I had been advised that officers had been to that
3 address previously.

4 Q And did you actually go through dispatch records to
5 confirm that?

6 A One of the officers who originally went to the
7 scene that night had come across the radio and let
8 me know.

9 Q And your record actually reflects that, doesn't it?
10 Your report?

11 A Yes, sir, it does. It does. And according to my
12 report, for me to state in my report that it was, I
13 would have gone through dispatch to confirm the
14 date of the call.

15 Q So you did personally confirm that there was an
16 altercation at that address?

17 A I didn't confirm altercation. Officers had
18 responded to that scene previously, yes, sir.

19 Q And does your report reflect that that date was on
20 September 4th?

21 A Yes, sir, it does.

22 Q And are you aware of who was present when that
23 altercation took place or when that dispatch took
24 place?

25 A No, sir, I am not. I have that an information

1 report had been taken by the officers from the
2 night before.

3 Q You generated two different incident reports to
4 reflect your activity on the premises, right?

5 A No, sir, it would have been one incident report.

6 MR. BELL: Beg the Court's indulgence.

7 (Pause.)

8 BY MR. BELL:

9 Q Now, having not been in law enforcement myself, I
10 may be confusing the verbiage. One incident
11 report, but did you also do a statement form?

12 A I have no idea. I cannot recall that. I know that
13 I did an incident report and an additional
14 narrative.

15 MR. BELL: Permission to approach the witness,
16 Judge?

17 THE COURT: Yes, sir.

18 BY MR. BELL:

19 Q I'm handing you two sets of documents. Would you
20 take a second to review those and let me know when
21 you've had a moment?

22 A (Witness complies.)

23 Q Are you familiar with those documents?

24 A Sounds like what I would have wrote. So -- and
25 it's got my signature on it, so, yes, sir.

1 Q So that's an incident report and then a statement
2 that you wrote?

3 A Yes, sir, this would be a statement form and this
4 would be -- it says supplemental, but it's actually
5 the same thing as an additional narrative. It's
6 just a change in the actual format.

7 Q Okay. And in your report, you indicate that a
8 suspect is an A. Kusko, right?

9 A I do not see that in the report, sir.

10 Q Mr. Corley, I want to approach you --

11 A Yeah, that's fine. I'm just looking for where
12 you're talking about because I'm not seeing it.

13 Oh, I see it now. Thank you. I'm sorry.

14 Q What does that portion of your report reflect?

15 A That Mr. Jones had told me that our victim had
16 stated to him prior to that date and time that he
17 was afraid for his life because the listed A. Kusko
18 or brother of our victim had been in a civil
19 dispute over property.

20 Q Okay. Okay. As a result of that, you actually
21 went and looked up those dispatch reports that we
22 spoke about a moment ago, right?

23 A Yes, sir.

24 Q And you're aware that Andrew Kusko was involved in
25 that 9/4 dispatch report?

1 A I guess so, yes, sir. I know that I went to
2 confirm that officers had been out there. I never
3 actually looked at the report to my knowledge.

4 Q Ultimately, you really had nothing further to do
5 with the investigation, right?

6 A Correct.

7 Q But your report does reflect that nearly 29
8 individuals or authorities responded out to that
9 address, that scene? Just ballpark, right?

10 A That would be close to right, yes, sir. It was a
11 major crime scene.

12 Q You mentioned that the house did not appear to be
13 rummaged through, which seemed odd to you in a
14 burglary, right?

15 A Yes, sir.

16 Q So did it appear that whoever broke into that house
17 had any worry about money or trying to gain money
18 from that break-in?

19 A I can't honestly answer that question. Again, not
20 an investigator, so I don't know people's motives.

21 Q But you did identify items that you call valuables
22 --

23 A Yes, sir.

24 Q -- when the State questioned you?

25 A Yes, sir.

1 Q That had not been taken?

2 A That had not been taken, correct.

3 MR. BELL: Thank you, Mr. Corley.

4 MR. O'REILLY: Nothing from the State.

5 THE COURT: You may step down.

6 Any objection to this witness being excused?

7 MR. MYERS: None from the Defense.

8 (Witness steps down and is excused.)

9 THE COURT: Call your next witness, please.

10 MR. O'REILLY: The State calls CSI George
11 Wise.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible and raise your right and face the clerk.

15 (Witness complies.)

16 THE CLERK: State your full name, please.

17 THE WITNESS: George Calvin Wise.

18 THE CLERK: Do you solemnly swear to tell the
19 truth, the whole truth and nothing but the truth,
20 so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Please be seated.

23 (Witness seated.)

24 GEORGE WISE,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. O'REILLY:

Q Investigator Wise, thank you for being here today.
Can you introduce yourself to the Court and tell
them where were you work?

A Yes, my name is George Wise. I'm with the Columbia
Police Department Crime Scene Unit. I've been with
Columbia now 25 years, and I've been with the Crime
Scene Unit about nine years.

Q And what kind of training do you have, like, where
did you go to school, things like that?

A Some of it's been on-the-job training, some I've
been to FLETC, Federal Law Enforcement Training
Facility, in Georgia, and through two classes of
crime scene investigation through that. I've been
through a 2-day class of crime scene photographing.

Q So, when you go to a crime scene, such as a
burglary or a murder such as this, what do you
typically do?

A The first thing I like to do is try to get some
information from the officer in reference to the
case itself.

Then I like to do what we call basically a
walk-through examination to see what course of
action I need to do, what photographs I need to

1 take or what kind of evidence I need to collect.

2 Once I do my examination, then I go back and
3 do photographing and collecting evidence.

4 Q And you said you've been with the City of Columbia
5 Police Department 25 years?

6 A Yes.

7 Q How many years have you been with CSI?

8 A Like I said, about nine years now.

9 Q Can you gauge how many crimes scenes you maybe go
10 to in a year, or does it range?

11 A It ranges. I would probably say maybe 20 to 25
12 crime scenes per month, so twelve times that. And
13 that could range from anything from a burglary to a
14 car break-in to a shooting.

15 Q You've been to numerous murder scenes?

16 A Yes. I can't give you an actual number.

17 Q Now, I want to bring you back to 2015. Do you
18 remember receiving a call to respond to Budon
19 Court?

20 A Yes.

21 Q Can you tell me a little bit about that?

22 A At the time, I was actually training Officer CSI
23 Sutton. And we received a call of a individual
24 they found deceased in a bed in a house. We
25 responded over there. I came in contact with

1 reporting officers and some other officers,
2 supervisors on the scene to try to get more
3 information on what was actually taking place. You
4 know, did a walk-through examination. Waited for
5 the Coroner's Office to come because we also work
6 alongside the Coroner's Office. Then we went
7 inside, did an examination, and began photographing
8 the scene.

9 Q Was the scene in Richland County?

10 A Yes.

11 Q The city limits of Columbia?

12 A Yes.

13 Q When you came to the scene, did you start taking
14 photos or was that your -- I guess, your training?

15 A I'm sorry?

16 Q When you arrived on the scene, did your start
17 taking photographs?

18 A Not right off the bat. Like I said, once I got
19 there, I began asking questions about the scene
20 through officers. We did the walk-through
21 examination. Then once we did that, then we
22 started taking photographs.

23 MR. O'REILLY: Your Honor, the State is
24 handing the witness State's Exhibit 10 through 54.

25 BY MR. O'REILLY:

1 Q Thank you, Investigator. Do you recognize those
2 photos?

3 A Yes.

4 Q What are they?

5 A Photos of our crime scene there at Budon Court.

6 Q Do they fairly and accurately represent the crime
7 scene?

8 A Yes.

9 MR. O'REILLY: Your Honor, I'd like to admit
10 State's Exhibit 10 through 54 into evidence.

11 THE COURT: Any objection?

12 MR. MYERS: No objection, Your Honor.

13 THE COURT: State's Exhibits 10 through 54
14 will be entered without objection.

15 (WHEREUPON, State's Exhibit Nos. 10-54
16 were marked for identification and
17 received into evidence.)

18 MR. O'REILLY: I'm not going to hand those to
19 the jury as I will use the board to show everybody
20 those.

21 THE COURT: And you all will have them in your
22 deliberations.

23 MR. O'REILLY: And, Your Honor, just to get it
24 out of the way, the State is going to approach the
25 witness again with more photos.

1 MR. MYERS: No objection, Your Honor.

2 THE COURT: What number is that?

3 MR. O'REILLY: Your Honor, it is going to be
4 State's Exhibit 55 through 92.

5 THE COURT: No objection?

6 MR. MYERS: Without objection, Your Honor.

7 THE COURT: All right, 55 through 92 will be
8 entered without objection.

9 (WHEREUPON, State's Exhibit Nos. 55-92
10 were marked for identification and
11 received into evidence.)

12 MR. O'REILLY: And while we're at it, the
13 State is also going to be handing up State's
14 Exhibit 93 through 96, State's Exhibit 97 through
15 105, and State's Exhibit 106 through 112.

16 THE COURT: Is there any objection to any of
17 those?

18 MR. MYERS: No, ma'am, Your Honor.

19 BY MR. O'REILLY:

20 Q Investigator Wise, I'm handing you up some photos
21 right now. Did you have the opportunity to look at
22 these photos before you came in here?

23 A Yes.

24 Q And they all represent photos of the crime scene?

25 A Yes.

1 MR. O'REILLY: Your Honor, I'd like to admit
2 all the exhibits that I just told you into
3 evidence. And I can't say those numbers again.

4 THE COURT: State's 93 to 96 and 97 to 105 and
5 106 to 112?

6 MR. O'REILLY: Yes, Your Honor.

7 THE COURT: Will be entered without objection.

8 MR. O'REILLY: Thank you.

9 (WHEREUPON, State's Exhibit Nos. 93-112
10 were marked for identification and
11 received into evidence.)

12 BY MR. O'REILLY:

13 Q So when you are in the crime scene and taking
14 photos, what are some of the things you do during
15 your investigation actually going around the scene?

16 A Basically, I just look at different sections of the
17 crime scene inside the house, see if there's
18 anything disturbed, anything pushed over. Like I
19 said, we did find a broken window pane to the
20 window, and all, that was actually to the window
21 latch. The window was pushed up. So we look for
22 things out of the ordinary inside of a crime scene.
23 And that's why we do kind of like do a walk-through
24 examination.

25 Q I want to make sure everyone can -- can you see

1 this?

2 A Yes, sir.

3 Q If you need to come down, feel free.

4 A Would it be okay?

5 Q Yes.

6 MR. O'REILLY: Your Honor, may the witness
7 step down?

8 THE COURT: Yes.

9 (Witness steps down.)

10 BY MR. O'REILLY:

11 Q Investigator Wise, what are we looking at here?

12 A This is the window right here that was found to be
13 pushed up --

14 THE COURT REPORTER: I'm sorry, I need the
15 witness to stand on the other side and face me.

16 A This right here was actually the window that was
17 found pushed up. It was actually the left side of
18 the doorway. This would be the entry point into
19 the house. As you can see, some of the broken
20 glass here.

21 Q And I guess this is the --

22 A This is actually looking from the inside of the
23 house looking outward through the pushed-up window.
24 Some of the broken glass from the window.

25 Q What is this?

1 A This is to the front door. We're trying to show
2 what -- if it was actually forced entry to the
3 front door, anything like that. Looking for any
4 damages or anything to the front door. That's why
5 we take photos of the lock and the handle.

6 Q Do you do anything else with the doorknobs?

7 A Yes. Sometimes -- normally, what we do is we will
8 dust it for prints. If we don't see any type of
9 ridge detail or prints, we'll go ahead and swab it
10 for possible DNA touch.

11 Q Skip around a little bit. What is this?

12 A We're actually going inside the house now, we're
13 starting to take photographs of kind of like each
14 section of the house from like corner to corner to
15 corner.

16 Q What's this?

17 A This is actually a photograph of standing in the
18 hallway going towards the back bedroom where the
19 victim was located at.

20 Q What is that?

21 A That is the foot of the victim in the bedroom
22 there.

23 Q What do we have here?

24 A This is -- as soon as we walk into the bedroom
25 area, this is where the victim was located in the

1 bed. More photographs of the victim.

2 Q Is there anything you notice, being CSI, when you
3 walk in, specifically?

4 A Not at this time. Not at this time. Just
5 basically, more photographs. Basically, took a
6 photograph of the victim --

7 Q I'm sorry. Can you describe what you see here? I
8 have to make sure I ask you a question.

9 A Basically, just taking a photograph of the
10 condition of the victim the way he was found.

11 Q Could you tell there was obviously some
12 decomposition?

13 A Yes.

14 Q Now, on this -- you could also tell there was
15 decomposition. Were there also flies?

16 A Yes.

17 Q All right. We kind of already touched on this,
18 but, again, this is -- what are we looking at?

19 A Right here, we're looking at a book shelf.
20 Basically, it's right beside the window that was
21 pushed up, which we believe possibly could be an
22 entry point of the suspects coming into the house.
23 This right here --

24 Q What are we looking at?

25 A This right here is a photograph of the broken

1 glass, again, it's the window pane right here with
2 broken glass. As you can see the location it was
3 broken at, you can actually reach in and unlatch
4 the window latch.

5 Q Were you present when they started to move the
6 body?

7 A Yes. This photograph here, like I said, we're
8 starting to move stuff off of the victim's body,
9 the comforter, the sheets and all and working
10 alongside the Coroner's Office. A lot of times, we
11 just want to check the body out as we start moving
12 stuff away from it and take photographs of it.

13 A lot of times we like to take a photograph --
14 once the body has been removed, we'll go back and
15 take another photograph of what it looked like
16 after the body is removed from the scene.

17 Q All these photos were admitted into evidence. What
18 are we looking at here?

19 A Right here, we're actually looking at a pillow with
20 some type of burnt mark. During the time we were
21 moving the body -- we have a company that comes out
22 and moves the body and takes it to the hospital for
23 us. When he began moving the body from the bed, we
24 located this pillow with a -- some type of burn
25 mark in it.

1 Q You'd recognize this pillow if we were to show it
2 to you today?

3 A Yes.

4 MR. O'REILLY: Your Honor, the State is
5 approaching the witness with State's Exhibit 113.

6 BY MR. O'REILLY:

7 Q What are we looking at here?

8 A This right here is the pillow here that we located
9 on the bed with the burn mark.

10 Q And this writing on here?

11 A This writing right here should probably have been
12 done by SLED during their examination.

13 Q Does this fairly and accurately represent what you
14 saw that day?

15 A Yes.

16 MR. O'REILLY: Your Honor, at this point the
17 State would like to admit Exhibit 113 into
18 evidence.

19 THE COURT: Any objection?

20 MR. MYERS: No, ma'am, Your Honor.

21 (WHEREUPON, State's Exhibit No. 113 was
22 marked for identification and received
23 into evidence.)

24 BY MR. O'REILLY:

25 Q At this point, Investigator Wise, when you were

1 looking at the pillow at SLED or wherever you were,
2 was there anything that you noticed that you had
3 found on the pillow or in the pillow?

4 A Once we was able to examine the pillow and only
5 found it actually being a burn mark, but also it
6 was like a hole inside the pillow.

7 Q What are we looking at here?

8 A This right here is an X-ray of a pillow in which a
9 projectile was found in it.

10 Q Is this the projectile?

11 A Yes.

12 Q If I were to show you projectiles, would you
13 recognize them?

14 A Yes, sir.

15 MR. O'REILLY: Your Honor, the State is
16 approaching the witness with State's 114.

17 BY MR. O'REILLY:

18 Q Do you recognize those?

19 A Yes.

20 Q What are they?

21 A Projectiles that were removed from the pillow and
22 the one we found that was underneath the victim's
23 head.

24 MR. MYERS: No objection.

25 MR. O'REILLY: Your Honor, at this point the

1 State would like to admit projectiles as State's
2 Exhibit 114 into evidence.

3 THE COURT: Any objection?

4 MR. MYERS: No, ma'am, Your Honor.

5 (WHEREUPON, State's Exhibit No. 114 was
6 marked for identification and received
7 into evidence.)

8 BY MR. O'REILLY:

9 Q Investigator Wise, you can take the stand.

10 (Witness returns to witness stand.)

11 Q Investigator Wise, earlier you said you took DNA
12 swabs of certain objects in the house?

13 A Yes.

14 Q Was one of those a doorknob?

15 A Yes. Should be the interior doorknob of the front
16 door.

17 MR. O'REILLY: Your Honor, the State is
18 approaching the witness and handing him State's
19 115.

20 BY MR. O'REILLY:

21 Q What did I just hand you?

22 A You just handed me an envelope with several DNA
23 swabs in it, which the actual first one would be
24 the interior doorknob front door.

25 MR. O'REILLY: Your Honor, at this point the

1 State would like to admit State's Exhibit 115, the
2 DNA swabs, into evidence.

3 MR. MYERS: No objection.

4 THE COURT: All right. 115 is entered without
5 objection.

6 (WHEREUPON, State's Exhibit No. 115 was
7 marked for identification and received
8 into evidence.)

9 BY MR. O'REILLY:

10 Q Investigator Wise, just to kind of end with this,
11 you were present for the moving of body and the
12 autopsy?

13 A Yes.

14 Q And the body was in bad shape?

15 A Yes.

16 Q It had been there for a while?

17 A Yes.

18 MR. O'REILLY: No further questions.

19 THE COURT: All right. Yes, sir. Anything?

20 CROSS-EXAMINATION

21 BY MR. MYERS:

22 Q Good afternoon, Investigator Wise.

23 A Yes, sir.

24 Q How are you?

25 A Fine, sir.

1 Q Now, Investigator Wise, you testified earlier that
2 you had been with the CSI Unit for nine years?

3 A Yes, sir.

4 Q And just so that this jury, just so we can kind of
5 educate this jury a little bit on CSI, criminal
6 scene investigation, right?

7 A Crime --

8 Q Crime scene investigation.

9 A Crime scene investigation, yes, sir.

10 Q Now, crime scene investigation is very important
11 because you guys are what is known as the First
12 Responders, right?

13 A Yes, sir.

14 Q Based on being a First Responder, it's important
15 for you to preserve and collect the evidence,
16 right?

17 A Yes, sir.

18 Q It's important to do that because you later don't
19 want any of that evidence to be tainted or
20 something that could confuse SLED whenever they
21 look at it in the laboratory, right?

22 A Yes, sir.

23 Q Which is why y'all go to the scene, wear gloves,
24 y'all rope everything off, tape everything off,
25 right?

1 A Yes, sir.

2 Q Cordon everything off so nobody is likely to get
3 into the area, right?

4 A Yes, sir.

5 Q Now, at the time you got there, you were not the
6 initial individual there, right?

7 A That's correct, sir. I wasn't the first one.

8 Q Right. When you got there, several other people
9 were there, and you talked to those individuals and
10 learned what they had found while you were actually
11 there, right?

12 A Yes.

13 Q And what you found, of course, what you said was
14 the broken window, right?

15 A Yes, sir.

16 Q And then you went in and saw the body, right?

17 A Yes, sir.

18 Q Now, from looking at the body, and based on your
19 training, education, and your experience, you
20 couldn't tell whether or not there was a struggle
21 at all, could you?

22 A No, sir, I could not.

23 Q You couldn't tell whether or not that body had been
24 harmed by one individual or two, right?

25 A Yes, sir.

1 Q Your job was basically just to get there and
2 collect the evidence, right?

3 A And take pictures, yes, sir.

4 Q You used the department's camera and you also used
5 your own cell phone, right?

6 A No, sir, I don't use my cell phone, sir.

7 Q You did not use your cell phone to take a
8 photograph?

9 A I do not use a cell phone to take photographs.

10 Q Okay. Now, you did a report in this case, right?

11 A Yes, sir.

12 Q Now, I would assume that you went to the academy
13 where they taught you how to do a report, right?

14 A Yes, sir.

15 Q A report is important because it memorializes
16 everything that you say you found at that time?

17 A Yes, sir.

18 Q Right? And all of that is important because you
19 may later have to come and testify about it, right?

20 A Yes.

21 Q So you want to make sure that it's accurate, right?

22 A Yes, sir.

23 Q You want to make sure that it's truthful, right?

24 A Yes, sir.

25 Q And even after you do that report, your

1 supervisors, they actually look it over to
2 determine whether or not it makes sense, right?

3 A Yes, sir.

4 Q And if there's anything that you need to change
5 from the time you do that report up until your
6 testimony, you can actually do a supplemental
7 report, right?

8 A Yes, sir.

9 Q Now, in your report, you never made mention that
10 there were any sort of swabs or anything that would
11 denote that there was two individuals involved in
12 this, right?

13 A I'm sorry, say that one more time?

14 Q In your report, you never came to any conclusion
15 that there was anybody but one person that
16 committed this offense, right?

17 A Yes, sir.

18 Q So the fact --

19 MR. O'REILLY: Objection, Your Honor. He's
20 asking the witness to speculate on the DNA swabs.
21 He's just a crime scene investigator. He's asking
22 him to speculate on how many people were involved
23 when he's just swabbing the scene. And that calls
24 for speculation. There's no way he could know how
25 many people are involved by just swabbing.

1 MR. MYERS: If I may approach, Your Honor?

2 Well, I think I can clarify that.

3 THE COURT: Well, I think the question was in
4 your report.

5 BY MR. MYERS:

6 Q Your report was conclusive that there was only one
7 individual that had committed this offense?

8 THE COURT: Hold on one second. So the
9 objection is that -- let me see you all one second.

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury, but outside
12 the hearing of the jury.)

13 THE COURT: The objection is sustained. I'll
14 ask Mr. Myers to rephrase the question.

15 MR. MYERS: Thank you, Your Honor.

16 BY MR. MYERS:

17 Q Investigator Wise, you went through a list of the
18 photographs of the home, the inside of the home,
19 right?

20 A Yes, sir.

21 Q But with regards to the world of criminal crime
22 scene investigations, it wasn't just limited to the
23 home, was it?

24 A No, sir.

25 Q You go around back?

1 A Yes, sir, went around to all the sides, the front,
2 the sides of the house.

3 Q Sure. Was there anything that you saw from going
4 around the back, the side, to the front that told
5 you that more than one individual was at that scene
6 when Mr. Kusko was killed?

7 A Like I said, I just take photographs. I don't know
8 how many suspects were involved in this case.

9 Q Okay. You testified about the concept of touch
10 DNA, right?

11 A Yes.

12 Q That would be fingerprints, right?

13 A Not fingerprints, basically skin cells, something
14 left behind.

15 Q Basically, if I were to touch a glass or something,
16 my skin is going to leave something there for you
17 to trace?

18 A It should, yes, sir.

19 Q Should. And so when you go and do this touch DNA,
20 you're trying to make a determination as to whether
21 or not a human may have touched that surface,
22 right?

23 A Yes, sir.

24 Q We know that there was a broken window, right?

25 A Yes, sir.

1 Q We know that there was a doorknob because whoever
2 came first, they testified that the door was open.
3 Do you recall that?

4 A I don't recall that, sir, as far as the door -- the
5 front door being open, sir?

6 Q Yes, sir.

7 A I don't recall that part, sir.

8 Q But you were responsible for doing the touch DNA
9 sample, right?

10 A Yes.

11 Q Based on that, you still couldn't determine on the
12 touch DNA whether or not one person or two persons
13 entered that home?

14 A That's correct, sir. I don't have the actual
15 number of suspects, like I said.

16 Q Around the side or around the back, you never saw
17 any torn article of clothing?

18 A No.

19 Q You never saw anything other than the one footprint
20 that you testified to?

21 A Yes, sir.

22 Q So there were no footprints other than the one
23 footprint you saw that was on the front porch,
24 right?

25 A Yes, sir.

1 Q And one footprint would denote that there was just
2 one individual, right?

3 A That's correct.

4 Q You couldn't tell when you saw Mr. Kusko's body
5 whether or not there had been a violent struggle,
6 right?

7 A That's correct, yes, sir.

8 Q Could you tell from your analysis whether or not he
9 was awake at the time he was shot or whether he was
10 asleep?

11 A No, sir.

12 Q Now, when the jury saw these photographs, we saw
13 different variations of how Mr. Kusko's body was
14 turned. What was the exact position of Mr. Kusko's
15 body when the First Responder went in?

16 A There's one photo where it looked like he was
17 laying on his right side, that one photo I had
18 completely where he was laying on his right side,
19 if I recall, with his partial body showing and him
20 wrapped up in the comforter would be the one
21 that -- I would assume that would be his position
22 found.

23 Q You assume?

24 A Yes, sir.

25 Q You do understand that we don't convict people on

1 assumptions in this country?

2 A Yes, sir.

3 Q So what did the facts tell you as far as how his
4 body was positioned?

5 A That photo, sir, basically him laying on his right
6 side partially wrapped up in his comforter.

7 Q So according to your testimony, according to your
8 investigation, he was on his right side when he was
9 shot and killed?

10 A I can only assume that, again.

11 Q Now, you mentioned projectiles. I just want to
12 make sure I'm clear. A bullet has different parts.
13 You have a projectile, you also have the casing,
14 correct?

15 A Yes, sir. That is correct.

16 Q Now, what you found at the autopsy was just a
17 projectile, right?

18 A Yes, sir.

19 Q Commonly referred to as the tip of the bullet,
20 right?

21 A Yes, sir, that's correct.

22 Q The shell casing is the actual casing that is
23 ejected from whatever weapon that's fired, right?

24 A Yes, sir.

25 Q Were there any shell casings located at the scene?

1 A No, no shell casings were located at the scene.

2 Q And as you sit here, you cannot testify at all as
3 to who killed Charles Kusko, you're just here to
4 say what the crime scene evidence showed?

5 A That's correct, sir.

6 Q And your preservation of the crime scene evidence?

7 A That's correct, sir.

8 Q Having gone through all that, your testimony again
9 is you did not use any of your cameras or no one
10 used cameras to actually photograph anything at
11 that scene?

12 A I used my issued police department camera.

13 Q All right. No cell phone or anything like that?

14 A I did not use a cell phone, sir, no, sir.

15 MR. MYERS: Thank you. No further questions.

16 MR. O'REILLY: Brief redirect, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. O'REILLY:

19 Q Investigator Wise, I want to clear up a couple of
20 things. When he's asking did anyone else, took
21 photos with anything other than a State-issued
22 camera, you're testifying to you, you didn't take
23 anything?

24 A Yes, sir, I did not. I used my issued camera and
25 took photos with the police department issued

1 camera.

2 Q I want to touch on one thing -- a couple of things
3 Mr. Myers brought up. Does finding a footprint or
4 some evidence mean two people are not involved in
5 this case?

6 MR. MYERS: Objection. I think that's
7 outside -- based on what he objected to with me, I
8 think what's good for the goose is good for the
9 gander. Either he knows or he doesn't know.

10 MR. O'REILLY: Your Honor, I think Mr. Myers
11 went into that and he started asking whether -- how
12 many people were involved, and things of that
13 nature.

14 THE COURT: All right. I'm going to allow you
15 to ask the question in response to what he asked,
16 but you need to rephrase. So the objection is
17 sustained, but if you can rephrase.

18 BY MR. O'REILLY:

19 Q Did your investigation ever rule out that more than
20 one person was involved?

21 A No, sir.

22 Q Did your CSI investigation ever rule out that Mr.
23 Barham right there gave Floyd Owen a gun?

24 A No, sir.

25 Q Did your investigation rule out that Brandon Barham

1 drove Floyd Owen to the incident location?

2 A No, sir.

3 Q Does your investigation show anything showing that
4 Mr. Barham was not the lookout?

5 A Not to my knowledge, no, sir.

6 MR. O'REILLY: Thank you, Investigator.

7 MR. MYERS: Just real quick.

8 CROSS-EXAMINATION

9 BY MR. MYERS:

10 Q I'm not asking you to draw any conclusions, I just
11 want you to look at your report. Here on Page 1 of
12 your report, with regards to the number of
13 suspects, is that plural or is that singular?

14 A Singular. It says it appeared that the unknown
15 subject climbed into the screened-in porch area --

16 THE COURT REPORTER: I'm sorry, could you
17 speak up, please?

18 A It appeared that the unknown subject climbed into
19 the screened-in porch area by pulling the screen
20 from the wood and climbing over it to gain access.

21 Q And, again, you have testified that that subject is
22 singular, right?

23 A That is correct, sir.

24 Q Meaning, so you made -- at the time you did that
25 report, you had concluded that there was one

1 individual?

2 A Yes, sir, my --

3 Q Go ahead.

4 A No, the reason why -- I guess I would say unknown
5 subject because I'm looking at only one footprint.

6 Q Sure. But you just testified earlier that you
7 could amend your report, right?

8 A Yes, I could.

9 Q You could supplement your report?

10 A Yes, sir.

11 Q Since the time of that report, you never did
12 anything to amend it from subject to subjects, did
13 you?

14 A No, sir.

15 MR. MYERS: Thank you.

16 MR. O'REILLY: Brief redirect redirect.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. O'REILLY:

19 Q By saying subject versus subjects?

20 A Yes, sir.

21 Q Were you trying to make any conclusion of how many
22 people were involved in this?

23 A No, sir.

24 MR. O'REILLY: Thank you.

25 THE COURT: All right. You may step down.

1 -- it's State v. Holmes. It was appealed to the
2 South Carolina Supreme Court, I mean, the U.S.
3 Supreme Court. Take a look at that.

4 Is that going to be an issue with this next
5 witness? Because we can talk about this after the
6 witness.

7 MR. CONRAD: I don't think it should be an
8 issue.

9 THE COURT: Because the juror needs to --
10 wants to leave around 5:30, so if we can let her
11 out of here, that would be great.

12 All right. You can bring them on in.

13 (WHEREUPON, the jury came into open
14 court at 5:17 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Yes, sir? Call your next witness.

17 MR. CONRAD: The State calls Suzann Cromer.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, and raise your right hand, please.

21 (Witness complies.)

22 THE CLERK: State your full name, please.

23 THE WITNESS: Suzann Cromer.

24 THE CLERK: Do you solemnly swear to tell the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Have a seat.

4 (Witness seated.)

5 THE COURT REPORTER: Would you spell your
6 first name?

7 THE WITNESS: S-U-Z-A-N-N.

8 THE COURT: Yes, sir?

9 MR. CONRAD: May it please the Court?

10 SUZANN CROMER,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CONRAD:

14 Q Ms. Cromer, where are you currently employed?

15 A I'm employed by the South Carolina Law Enforcement
16 Division, commonly referred to as SLED.

17 Q And what are your duties there?

18 A I am a firearm and tool mark examiner in the
19 Forensic Services Laboratory. What I do is called
20 firearm identification. We look at ammunition
21 components, bullets, cartridge cases, shotgun
22 shells to determine whether they were fired by or
23 loaded into and extracted out of a specific
24 firearm. If I do not have a firearm, I can look at
25 the ammunition component from a particular scene

1 and give the investigators an idea of what type of
2 firearms they're looking for and how many firearms
3 they're looking for.

4 Q Okay. Could you briefly review your training and
5 experience in that field?

6 A Yes. I have a bachelor's degree from Clemson
7 University. I did some graduate work at the
8 University of South Carolina in criminal justice.
9 I was hired on at SLED and completed SLED's
10 in-house training program, which is a multi-year
11 program where we study under other court-qualified
12 firearm examiners. It's more of an apprenticeship,
13 if you will. We take written tests, oral tests,
14 practical exercises. Upon completion of all of the
15 modules in our training manual, we are given a
16 comprehensive final exam, which includes essays,
17 terms, and mock case work. That is then graded by
18 your training officer and your lieutenant before
19 you are allowed to receive cases on your own.

20 I've taken classes with the Association of
21 Firearm and Tool Mark Examiners, which is the
22 international organization for our profession.
23 They meet every year for a week-long seminar to
24 discuss issues in our field. They also offer extra
25 workshops. I've been fortunate to attend numerous

1 of those week-long seminars and also take extra
2 workshops, like barrel making, machine gun
3 conversion, gunshot residue ethics.

4 I've also taken classes with the Bureau of
5 Alcohol, Tobacco, and Firearms on serial number
6 restoration, and the National Integrated Ballistics
7 Identification Network, which I'm also the -- which
8 we call NIBIN -- I am the NIBIN Program
9 Administrator for SLED, and I'm also the
10 representative for the users group in North and
11 South Carolina.

12 I've also toured numerous firearm
13 manufacturers and tool manufacturers.

14 Q Okay. And I'm not looking for an exact number, but
15 how long have you -- actually, how long have you
16 done this type of analysis for SLED?

17 A I started the training program at SLED in February
18 of 2000.

19 Q Okay. And since February of 2000, just a ballpark
20 figure, how many firearms examinations would you
21 say that you've done?

22 A Probably ten thousand to a hundred thousand.

23 Q Okay.

24 MR. CONRAD: At this time, Your Honor, the
25 State would seek to introduce Ms. Cromer as an

1 expert in firearms and projectile analysis.

2 THE COURT: Any voir dire?

3 MR. BELL: No objection, Your Honor.

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, normally a person cannot give opinion
6 testimony. Normally, when a person testifies, they
7 must testify as to what they either saw, heard, or
8 sensed by smell, or something of that nature.
9 However, there is an exception when someone is
10 qualified because of education or experience. They
11 are permitted to give their opinion in certain
12 areas if the Court qualifies them that way.

13 This witness will be qualified in the area of
14 firearm --

15 Firearm analysis?

16 MR. CONRAD: Yes, Your Honor.

17 THE COURT: To give opinion testimony in that
18 area. That does not mean that you must accept the
19 opinion, but it is evidence for you to use in any
20 way you see fit and give the weight and credibility
21 you believe is appropriate.

22 All right. Yes, ma'am, you may continue --
23 yes, sir, you may continue.

24 MR. CONRAD: Thank you. If I can approach the
25 witness?

1 BY MR. CONRAD:

2 Q Ms. Cromer, I'm going to hand to you what's been
3 marked as State's Exhibit 114. It's been
4 introduced into evidence.

5 A Okay.

6 Q Do you recognize that?

7 A Yes, I do. These were items I received in this
8 case.

9 Q Okay. And who did you receive them from?

10 A I received them from our evidence control
11 department in the SLED laboratory.

12 Q Do you know who they would have received them from?

13 A Yes, they received them -- do you mind? Mr. George
14 Wise from the Columbia Police Department submitted
15 them.

16 Q Okay. And just as a general description, what are
17 those things?

18 A These are what we call a fired bullet.

19 Q Okay. And what does that mean, in layman's terms?

20 A A fired bullet, when you have an ammunition
21 component like a cartridge or a round, usually you
22 have a cartridge case, your propellant powder, and
23 a projectile, or a bullet. When it's fired, you
24 have two separate items left over, your cartridge
25 case and your bullet.

1 Q Okay. And those are the bullets?

2 A That's correct.

3 Q And did you run any tests or do any testing on
4 those bullets?

5 A Yes, I did.

6 Q What testing did you do and what conclusions did
7 you draw?

8 A What I do when I receive a fired projectile is,
9 first, I look at it. I determine whether I need to
10 clean it first. Since these came from -- they were
11 lifted from the autopsy. I first clean those
12 bullets and then I start my examination.

13 What I do is I weigh them. I measure them to
14 determine their caliber. And then I start looking
15 at the rifling that's left on them by the firearm.
16 And when I say rifling, rifling is what's put in a
17 gun barrel by a firearm manufacturer to give that
18 bullet rotary motion. It makes it spin. Very
19 similar to a quarterback who throws a football, he
20 wants it to go into a tight spiral so it will go
21 more accurately towards its target. That's the
22 premise for rifling.

23 And rifling is made up of a series of what we
24 call lands and grooves, raised and depressed areas.
25 And you have your lands and your grooves and you

1 have your direction of twist, which way that bullet
2 is going to spin. So we look at all of those
3 items, determine the caliber, determine the
4 rifling, and then we start to do a microscopic exam
5 of them to each other.

6 Q Okay. And in terms of the type of bullet, did you
7 reach a conclusion as to what kind of bullet that
8 is?

9 A Yes. I found these most consistent with .45 auto
10 caliber.

11 Q Okay. .45 auto caliber. And when you say auto,
12 what does not mean?

13 A That's just a designation.

14 Q Designation. And what kind of designation? I
15 guess, can you explain that a little more?

16 A It's kind of like a name. Like Suzann is my name.
17 .45 auto is the name of this dimension and size of
18 bullet.

19 Q Would it be fair to say that a .45 auto bullet came
20 from a .45 auto type pistol?

21 A Not always.

22 Q Okay.

23 A There are some revolvers that do fire a .45 auto.

24 Q Okay. But, in your opinion, is there a more
25 likelihood as to the type of pistol?

1 A Typically, when you have a caliber designation as
2 auto, it was typically designed for a
3 semi-automatic pistol.

4 Q Okay. All right. And were you able to determine
5 the exact type of pistol that those were fired out
6 of?

7 A No, I could not.

8 Q Okay. And -- but they are consistent with being
9 .45 caliber auto bullets, correct?

10 A That is correct.

11 Q And the two bullets, were they fired from the same
12 gun?

13 A Yes. In my opinion, during my microscopic
14 examination, I found enough agreement in those
15 markings left by the rifling to say that I believe
16 that these two were fired by one firearm.

17 Q Okay. Were -- is some of the testing, would it be
18 possible for you if you had a firearm to compare
19 those bullets to to make a potential match?

20 A If I had a particular firearm, I might be able to
21 match these bullets to it.

22 Q Have any firearms been turned in to you in this
23 case to compare it?

24 A No, they were not.

25 Q And were any shell casings turned into you to

1 compare?

2 A No, they were not.

3 Q In fact, if you had shell casings to compare, would
4 you be able to determine where those bullets came
5 from, a particular shell casing, or is that
6 impossible?

7 A No, we do not do that type of exam.

8 Q All right.

9 MR. CONRAD: Nothing further from this
10 witness.

11 THE COURT: All right. Yes, sir?

12 MR. BELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BELL:

15 Q Ms. Cromer, I'll try to keep it brief. I feel a
16 little long in the tooth today.

17 Now, just to touch on what we just heard from
18 you, a .45 auto, you said, is ordinarily shot from
19 a semi-automatic pistol, right?

20 A Typically, yes.

21 Q But it can be shot from a revolver. In fact,
22 there's some lever action rifles, carbines, little
23 short barrel rifles, and so forth, that can also
24 shoot .45 auto, right?

25 A That is correct.

1 Q So really no true way to exactly determine what
2 kind of firearm may have expelled that projectile?

3 A That is correct.

4 Q But you just know that it's a .45 caliber?

5 A That's correct.

6 Q Okay. Now, in examining the two fired bullets, as
7 you call them, or the projectiles, are you able to
8 determine what kind of bullet it was?

9 A It is consistent with being a semi-wadcutter type
10 bullet.

11 Q Now, if I was to describe a bullet to you and say
12 that it was cut off at the tip with a hole in the
13 top, would that be a semi-wadcutter?

14 A It depends on what you're talking about. If you're
15 talking about like a hole in the cavity of the nose
16 of the bullet, that would be a different type of
17 projectile.

18 Q In fact, that would actually be called what is
19 known as a hollow point, right?

20 A That is correct.

21 Q A wadcutter is actually sort of just snubbed off
22 right across the top, right?

23 A That's correct.

24 Q And is there any doubt in your mind that what
25 you're looking at is a semi-wadcutter versus a

1 hollow point?

2 A No, sir.

3 Q Now, you talked about the grooves and twists, and
4 so forth. Ultimately, were you able to conclude
5 exactly what brand of firearm may have expelled
6 this cartridge?

7 A I gave investigators a list of potential firearms
8 that could have fired these particular projectiles.

9 Q And, to be clear, that list contains 28 that you
10 listed, right, 28 different manufacturers?

11 A That is correct.

12 Q And then there's some language right below that
13 that additionally says this isn't even all that it
14 can possibly be, right?

15 A That's correct.

16 Q The language I think your report uses is this list
17 is not all inclusive?

18 A That's correct.

19 Q So, really, it's essentially a guess, it could be
20 from these kinds of firearms based on what we know
21 about the twists of those manufacturers?

22 A It's based on what we know about the dimensions of
23 the rifling, the type of the rifling, and the
24 twists. So that's -- and these were from
25 manufacturers that submitted their specifications

1 to us.

2 Q Again, it's 29 -- or 28 that you actually listed on
3 the report itself that it could possibly be?

4 A Yes, 28 different manufacturers.

5 Q And then those manufacturers could potentially have
6 more than one .45 auto style firearm?

7 A That is correct.

8 Q So we could be talking about multiple firearms
9 under 28, plus different manufacturers?

10 A That is correct.

11 MR. BELL: Beg the Court's indulgence.

12 (Pause.)

13 MR. BELL: Thank you.

14 MR. CONRAD: Just one brief final question,
15 Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CONRAD:

18 Q Mr. Bell asked you about a hollow point, described
19 a bullet with a hole in the middle of it. You said
20 those bullets are semi-wadcutters, right?

21 A That is correct.

22 Q Mr. Bell asked you about a bullet with a hole in
23 the tip of it. You said that was a hollow point,
24 is that correct?

25 A Yes, a bullet with a hole in the nose cavity is

1 called a hollow point bullet.

2 Q Notwithstanding that hole, that cavity in the front
3 of the bullet, is it possible some hollow points
4 could be in the same similar shape as some
5 wadcutters? Is that possible?

6 A Could you ask that again?

7 Q Not taking out -- I mean, the one difference that
8 you described between a hollow point and
9 semi-wadcutter was a hole in the tip of the hole,
10 correct?

11 A That's correct.

12 Q When you look at the profile view, which wouldn't
13 necessarily include the hole in that tip, is it
14 possible for that profile view of a semi-wadcutter
15 to be similar to some hollow points?

16 A It could be, potentially.

17 Q Okay. All right.

18 MR. CONRAD: That's it from the State.

19 THE COURT: All right. Yes, sir?

20 MR. BELL: One question, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. BELL:

23 Q You said potentially could?

24 A Correct. If I'm looking at this bullet from the
25 side, it's hard for me to tell whether there's a

1 hole in the nose.

2 Q But if someone specifically said there was a hole
3 in the nose, that would not be a semi-wadcutter,
4 right?

5 A I would have to see it for myself.

6 Q It more likely would be a hollow point?

7 A That's correct.

8 MR. BELL: Thank you.

9 THE COURT: All right, ma'am, you may step
10 down.

11 Any objection to this witness being excused?

12 MR. CONRAD: No, ma'am.

13 MR. MYERS: No, ma'am, Your Honor.

14 (Witness steps down and is excused.)

15 THE COURT: All right. Ladies and gentlemen
16 of the jury, it's about 5:35. We're going to go
17 ahead -- one of the jurors, I think, needs to go
18 try to grab a car from the shop, so I'm going to go
19 ahead and let you all take a break for the evening.
20 We will start back tomorrow morning at 9:30.

21 Please do not discuss the case. Please do not
22 do any research or anything regarding the case. No
23 social media regarding anything that's going on
24 here at 1701 Main Street.

25 Have a restful evening, and we will see you

1 I'll ask the State to call their next witness.

2 MR. EATON: The State calls Lilly Gallman.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: State your full name, please.

8 THE WITNESS: Lilly Smalls Gallman.

9 THE CLERK: Would you spell your first name,
10 please?

11 THE WITNESS: L-I-L-L-Y.

12 THE CLERK: Do you solemnly swear to tell the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Have a seat.

17 (Witness seated.)

18 MR. EATON: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 LILLY GALLMAN,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. EATON:

25 Q Good morning, Ms. Gallman.

1 A Good morning.

2 Q Ms. Gallman, what do you currently do?

3 A I'm currently retired and a part-time Chaplin at
4 Newberry Hospital.

5 Q When did you retire?

6 A September 8th, 2017.

7 Q And what did you do before retirement?

8 A I was a DNA analyst at South Carolina Law
9 Enforcement Division.

10 Q And being a DNA analyst, did you go through some
11 schooling and training?

12 A Yes, I did.

13 Q Could you please tell the jury about that?

14 A I have a degree in biology from the University of
15 South Carolina. I began working at SLED in
16 January of 1990 when we first started DNA testing
17 there. So during that time, I attended the FBI DNA
18 typing schools in order to get training in the area
19 of forensic DNA. I've also taken advanced genetic
20 courses and statistics courses, all to prepare me
21 to be a DNA analyst.

22 Q And throughout your time working at SLED in DNA,
23 were you continuing your training there?

24 A Yes. We were required to do proficiency testing
25 each year to make sure that we're qualified to do

1 our job, and also attended extensive classes for
2 any new technology that was out at the time.

3 Q And around January of 2016, were you properly
4 certified in your field?

5 A Yes.

6 Q And to describe your expertise as a DNA analyst,
7 what label would you give it? Just DNA analysis?

8 A Yes.

9 MR. EATON: Your Honor, I'd ask the Court to
10 recognize Ms. Gallman as an expert in DNA analysis.

11 THE COURT: Any objection?

12 MR. BELL: None, Your Honor.

13 THE COURT: All right, ladies and gentlemen of
14 the jury, this witness will be qualified in the
15 area of DNA analysis to give opinion testimony in
16 that area. That does not mean that you must accept
17 the opinion, but it is evidence for you to use in
18 any way you see fit and give it the weight and
19 credibility you believe is appropriate.

20 Yes, sir, you may continue.

21 MR. EATON: Thank you, Your Honor.

22 BY MR. EATON:

23 Q So Ms. Gallman, are you familiar with this case?

24 Did you have a chance to look at it?

25 A Yes, I've looked at my report.

1 Q Do you have a copy of that with you up there?

2 A Yes, I do.

3 MR. EATON: First, if I may approach the
4 witness, Your Honor?

5 BY MR. EATON:

6 Q Ms. Gallman, do you know what this is?

7 A Yes, I do. These are DNA swabs that were taken for
8 DNA. They could be used for other purposes also.
9 But they were taken as evidence from the case that
10 we're involved in now. They were swabs from the
11 doorknob, underneath the window, a window latch,
12 and also wood holding the screen on the porch. And
13 I did testing on these swabs.

14 Q Thank you.

15 MR. EATON: And I should clarify for the
16 record that that's State's Exhibit 115.

17 BY MR. EATON:

18 Q So, Ms. Gallman, if you can briefly explain to the
19 jury how swabs in a case like this would end up in
20 your lab and the procedure you would use to accept
21 them and start testing them.

22 A Well, when a crime has been committed, the crime
23 scene team, as you know, would go in and collect
24 evidence for that particular case. These swabs
25 were taken in order so that we could do analysis on

1 them once they had been, you know, dried and
2 brought into SLED.

3 Q And so you said you did analysis on these swabs.
4 How do you determine if any given swab from a scene
5 has the DNA of any given person?

6 A Well, most times, you can't tell whether there's
7 blood on the swabs, or whatever, so we just carry
8 it to through the testing. So my job would be to
9 develop a DNA profile from the DNA that is found on
10 the swab. That would require me to do a DNA
11 extraction, which means that I'm removing the DNA
12 from the cotton swab, and then analyze that
13 particular DNA.

14 Q And so do you need something to compare it to?

15 A Yes. Once I develop a DNA profile from the
16 evidence, I then need standards from either victims
17 or subjects in a particular case in order to
18 determine whether I have a match or I do not have a
19 match.

20 Q And what does a standard mean?

21 A A standard means, now we use -- in the past, we had
22 to have blood, but now we use what's called a
23 buccal swab, which is where you take like a Q-tip
24 and just swab on the inside of a person's mouth and
25 you pick up their cells from within their mouth.

1 And you use that to compare against the evidence.

2 Q Did you have standards in this case?

3 A Yes, I did.

4 Q Who did you have standards for in this case?

5 A I had buccal swab standards from Charles Kusko, Jr.
6 Andrew Kusko, Floyd Gregory Owen, Jonathan Spires,
7 and Charles Barham. I hope I pronounced the names
8 right. These are the standards that I had to
9 compare to the evidence -- to this particular
10 evidence that was submitted in the case.

11 Q And did you make the comparisons between the
12 standards and the evidence collected at the scene?

13 A Yes, I did.

14 Q Could you please tell the jury what your results
15 were?

16 A Okay. I will be reading from my report that was
17 issued January 25th of 2016. And it states that
18 the partial STR DNA profile developed on Item 2,
19 which is swabs from underneath the window, matches
20 the STR DNA profile of Charles Kusko, Jr. And then
21 we are required to give a statistical value to that
22 particular match. And it was one in 650,000.

23 The next item I have listed is the partial DNA
24 profile developed from Item Number 1, which is swab
25 from the interior doorknob/front door. Matches the

1 DNA profile of Floyd G. Owen, and has been entered
2 into the state DNA in their system. And then I had
3 to apply a statistical value to that, and it was
4 one in 8,300.

5 The third item that I have listed is Item
6 Number 5, which is the swab from the book display.
7 And it states that the DNA that came from Item 5 is
8 a mixture of at least two individuals. The partial
9 DNA profile of the major contributor -- that means
10 when I developed the DNA profile off this mixture,
11 most of the DNA that I received was coming from
12 Charles Kusko, Jr. And then I also, within -- I
13 had to give a statistical value to that, and it is
14 one in 11 billion. And then also, the DNA profile
15 developed from the minor contributor is suitable
16 for comparison, but is not suitable for entry into
17 CODIS. So I had a minor contributor in this
18 mixture, but it did not match any of the standards
19 that were submitted. The standards that I -- were
20 submitted were the ones that I just mentioned.

21 Okay. Also, no DNA was developed from Item 3
22 and 4. Item 3 was a swab from the window slat, and
23 Item 4 was swabs from part of window holding the
24 screen on the porch.

25 Also, I did a YSTR DNA profile examination on

1 Item Number 2. When I say that Y DNA profile, I'm
2 looking at the male component of a DNA profile. So
3 I was looking to see if any of the standards that
4 were submitted matched the Item Number 2 on the Y
5 side. It's more sensitive and it would give me
6 more information. So that's why I attempted to get
7 a Y profile from Item Number 2.

8 Q Thank you, Ms. Gallman. That was a lot of
9 information. Can we just real quick hit the
10 highlights of exactly what matches did you find?

11 A Okay. Starting with Item Number 2, which was the
12 swab from underneath the window matching Charles
13 Kusko, that was a match.

14 And then Item Number 1, again, matched the DNA
15 profile of Floyd G. Owen, which is the swabs from
16 the interior doorknob/front door.

17 Again, there was a mixture with Item Number 5
18 from the book display. And there's a partial major
19 contributor. That also matched Charles Kusko, Jr.
20 And then the minor contributor in that, as I
21 stated, did not match any of the other standards
22 that were submitted.

23 Q And so, Ms. Gallman, you're happy in retirement
24 now?

25 A Yes, very much so.

1 Q Have you stayed up on your certifications to date?
2 I mean, are you currently certified on DNA?

3 A No. No, I'm not.

4 Q Is it possible some things have changed or some
5 science has developed since you left?

6 A Oh, yes. Things were changing right when I was
7 leaving. So it's constantly changing. Like every
8 two years, things change.

9 Q Yes, ma'am. And then when you do a report like
10 this, what's the procedure within your agency of
11 how -- sort of the life of that report? Is it
12 reviewed by people? How is it finalized?

13 A Yes, I would -- I did the analysis. I created the
14 report and all of the information that would go
15 into a case file. Then that particular information
16 is reviewed by another analyst for accuracy. And
17 then it's reviewed again for -- the report
18 definitely for clerical, whether it's matching up
19 with the information that's contained in the case
20 file.

21 Q Thank you.

22 MR. EATON: If you would indulge me one
23 moment, Your Honor.

24 (Pause.)

25 MR. EATON: Thank you, Ms. Gallman. Please

1 answer any questions the Defense has.

2 CROSS-EXAMINATION

3 BY MR. BELL:

4 Q Hi, Ms. Gallman.

5 A Good morning.

6 Q Ms. Gallman, you previously worked in a very
7 fascinating field, didn't you?

8 A Yes, I did.

9 Q And, frankly, the Chaplin is probably even more
10 fascinating, is that true?

11 A Yes.

12 Q Now, when it comes to DNA analysis, we're talking
13 about an extraordinarily scientific methodology,
14 right?

15 A Yes.

16 Q We're talking about an extraordinarily accurate
17 science, right?

18 A Yes.

19 Q In fact, some of the numbers that you were throwing
20 around were things like the probability of randomly
21 selecting an unrelated individual, approximately
22 one in 11 billion, a huge number, right?

23 A Yes.

24 Q Okay. It's not a trick question.

25 A No. Why I didn't say anything, because we're

1 getting septillions now, so.

2 Q Sure. Does that bring any doubt about the
3 conclusions of your report as it stands, though?

4 A No, it does not.

5 Q Still extreme confidence in your report?

6 A Yes.

7 Q Yet, despite this extreme technology, this extreme
8 science, extreme accuracy, did any of your analysis
9 come back to Charles Barham?

10 A No. As stated in my report, no.

11 Q The only person it comes back to is Floyd Owen?

12 A Based on the information that I have, yes.

13 MR. BELL: Thank you, Ms. Gallman. Enjoy
14 retirement.

15 THE COURT: Anything else?

16 MR. EATON: Just very brief, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. EATON:

19 Q Ms. Gallman, would you expect -- does DNA always
20 tell you everyone who was at a house ever?

21 A No.

22 Q Are there times when someone is at a place that
23 even if they touch something, but law enforcement
24 does not find touch DNA, does that happen
25 sometimes?

1 A Yes, it does.

2 Q And would it surprise you that, say, Mr. Barham
3 didn't go into the house, would it surprise you to
4 then not find his DNA in the house?

5 A No, it would not.

6 MR. EATON: Thank you. No further questions.

7 RECROSS-EXAMINATION

8 BY MR. BELL:

9 Q Do some of these standards -- excuse me, do some of
10 the swabs indicated to you actually show that there
11 were some exterior swabs done?

12 A Exterior swabs?

13 Q Yes?

14 A I only tested the swabs that are listed.

15 Q And is one listed as swabs from underneath window?

16 A Yes.

17 Q Is one listed swabs from window latch?

18 A Yes.

19 Q Is one listed swabs from part of wood holding the
20 screen on the porch?

21 A Yes.

22 Q And it's your understanding that the porch would be
23 on the outside of the house?

24 A Yes.

25 MR. BELL: Thank you, Ms. Gallman.

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

3 Any objection to this witness being excused?

4 MR. CONRAD: No objection, Your Honor.

5 MR. BELL: None from the Defendant.

6 (Witness steps down and is excused.)

7 THE COURT: Call your next witness.

8 MR. CONRAD: Thank you, Your Honor. The State
9 calls Dr. Darren Monroe.

10 (Witness approaches.)

11 THE BAILIFF: Please your left hand on the
12 Bible and raise your right.

13 (Witness complies.)

14 THE CLERK: State your full name, please.

15 THE WITNESS: Darren Joseph Monroe.

16 THE CLERK: Would you spell your first name,
17 please?

18 THE WITNESS: D-A-R-R-E-N.

19 THE CLERK: Do you solemnly swear to tell the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 THE WITNESS: Yes.

23 THE COURT: Thank you. Have a seat.

24 (Witness seated.)

25 THE COURT: Yes, sir?

1 MR. CONRAD: Thank you, Your Honor. May it
2 please the Court?

3 DARREN J. MONROE,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CONRAD:

7 Q Dr. Monroe, where are you currently employed?

8 A I'm employed by Professional Pathology Services.
9 It's a private physician group here in town.

10 Q And what are your duties there with Pathology
11 Services?

12 A Right now I am a forensic pathologist and I just
13 perform autopsies.

14 Q Okay. And how long have you been doing this?

15 A Just over five years.

16 Q And how long -- has all that entire time been with
17 Pathology Services?

18 A Yes.

19 Q Okay. Can you briefly tell the Court about your
20 training and education to perform those services?

21 A Sure. So after undergraduate and graduate school,
22 I went to medical school --

23 THE COURT REPORTER: I'm sorry, could you
24 speak up a little bit?

25 THE WITNESS: After four years of -- well, I

1 went to medical school after undergraduate and
2 graduate school and medical school is four years
3 long. And then after medical school, I did a
4 4-year residency in pathology. And after that, I
5 did another 1-year fellowship in forensic
6 pathology, and that's where I subspecialized into
7 what I do now, which is just autopsies.

8 Q And can you explain a little more about what
9 pathology is and what an autopsy is?

10 A Sure. Pathology is a field of medicine that deals
11 with diagnosing disease. Most pathology isn't
12 autopsies. It's behind the scenes in hospitals and
13 we do things like look at biopsy specimens and
14 surgical specimens, especially under a microscope,
15 and we will give the actual tissue diagnosis of
16 what disease is going on, like certain kinds of
17 cancer or other processes.

18 Then autopsy pathology, it is a very small
19 part of pathology, actually, but that is the
20 examination of the body after death in order to
21 find out the cause of death and any other
22 information that might be relevant.

23 Q Thank you.

24 MR. CONRAD: Your Honor, at this time the
25 State would seek to introduce Dr. Monroe as an

1 expert in pathology.

2 THE COURT: Forensic pathology or pathology?

3 MR. CONRAD: Forensic pathology.

4 THE COURT: Any objection?

5 MR. BELL: No objection.

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, Dr. Monroe will be qualified -- this
8 witness will be qualified in the area of forensic
9 pathology to give opinion testimony in that area.
10 That does not mean that you have to accept the
11 opinion, but it is evidence for you to consider in
12 any way you see fit and give it the weight and
13 credibility you believe is appropriate.

14 All right. Yes, sir?

15 MR. CONRAD: Thank you, Your Honor.

16 BY MR. CONRAD:

17 Q Dr. Monroe, are you familiar with the victim in
18 this case, Mr. Charles Kusko?

19 A Yes. I performed an autopsy on him.

20 Q And do you recall what day you performed an
21 autopsy?

22 A It was September 8th in 2015.

23 Q And do you remember the approximate time?

24 A It was about 2:00 in the afternoon.

25 Q Okay. Can you just give the jury a brief summation

1 of everything you accomplished during that autopsy,
2 actions you actually took?

3 A Sure. Briefly, the process of an autopsy is
4 looking at the body from the outside, describing
5 any characteristics, height, weight, hair color,
6 things like that, and look for identifying marks or
7 scars, any medical intervention. And then we'll
8 look for external evidence of injury. And then
9 after all of that's documented, then we will open
10 up the body and look at each individual organ. And
11 then basically do the same thing, examine, look for
12 anything out of the ordinary, anything that's
13 abnormal, any injuries, any natural disease, and
14 just document all of that. So that's an autopsy in
15 short.

16 Q And you performed that on Mr. Kusko on the
17 afternoon of September 8th of 2015, is that
18 correct?

19 A Yes.

20 Q And in your examination, did you notice any
21 injuries on Mr. Kusko?

22 A Yes, I did.

23 Q Can you describe those to the jury?

24 A Sure. We had four injuries. These were basically
25 two perforating gunshot wounds to the head. Two of

1 them entered about right here, and then the exits
2 were about right here.

3 Q And I'm going to approach with State's Exhibit --
4 what has been marked as State's Exhibit 117. Can
5 you tell the jury what that is?

6 A Sure. So this is a diagram from the autopsy. As
7 we are doing the autopsy, I'll make drawings, as
8 you can see here, of the findings that we make, and
9 this is just one of them. And here you can see the
10 posterior aspect of the head, and you can see the
11 two circles there labeled A and B. Those are the
12 entrance gunshot wounds.

13 Q And can you tell with certainty that those are
14 entrance wounds versus exit wounds?

15 A Yes. Those are definitely entrance wounds. I can
16 tell that because when a bullet -- or projectile,
17 rather, goes through a flat bone like your skull,
18 which is a thin bone, but what we call flat even
19 though it's curved, it will leave internal beveling
20 on the inside. And so the hole it makes going
21 through the skull bone is actually smaller on the
22 outside. And then on the inside table of the skull
23 itself, it will be a little bigger, and we call
24 that internal beveling. And that's a sign that
25 this was, indeed, the entrance from back here.

1 Q I'm going to approach with what's been marked as
2 State's Exhibit 116. And can you tell the jury
3 what that is?

4 A So this is the right aspect of the face. And the
5 markings there labeled C & D are the exit wounds
6 from the projectile. You can see one about right
7 here and one about right here.

8 Q So that's the front right of Mr. Kusko's face?

9 A That's the front right, yes.

10 Q And so, just to put it together, the bullets would
11 have entered the back left of his head, is that
12 correct?

13 A Correct.

14 Q And exited the front?

15 A That's correct.

16 MR. CONRAD: Beg the Court's indulgence.

17 (Pause.)

18 BY MR. CONRAD:

19 Q We haven't talked about this yet, but can you
20 describe the general condition of Mr. Kusko's body?
21 Was it -- had it decomposed at all?

22 A Mr. Kusko's body was in a state of moderate to
23 advanced decomposition. That's the process that
24 the body undergoes after death when the tissues
25 start breaking down and basically rotting.

1 MR. CONRAD: Beg the Court's indulgence.

2 (Pause.)

3 BY MR. CONRAD:

4 Q I'm going to show you some pictures in a moment,
5 but can you describe to the jury what kinds of
6 things -- to determine the state of decomposition,
7 what kind of things do you look for in a body to
8 help you determine what state of decomposition it's
9 in?

10 A One thing that we look for is just how advanced
11 it's progressed. There's a continuum of changes
12 that occur after death and that basically starts
13 with discoloration of the skin and it just moves
14 forward from there. The changes become more
15 pronounced. There can be slippage of the
16 epidermis, which is the top part of your skin. It
17 can just start coming off. There can be blisters,
18 fluid-filled blisters. And it's just all part of
19 the decomposition process. You know, it progresses
20 to the far end where there's no tissue left at all.
21 It's all gone away.

22 Q And I'm going to show you a picture that has
23 already been introduced in evidence as State's
24 Exhibit 74. Would you take a look at that, sir?
25 Can you tell the jury what you see there?

1 A This is a picture of his body laying on a bed in a
2 state of moderate to advanced decomposition.

3 Q And is that essentially the condition the body was
4 in when it arrived at your --

5 A Yes.

6 Q And what do you see in that picture that tells you
7 that it is a advanced decomposition?

8 A So the skin color has changed. It's become very
9 dark green, black in areas, and there is -- you can
10 make out a little bit of distortion of the facial
11 features because there's swelling. The bacteria
12 produces gas and distorts the facial features and
13 inflates your abdomen, for instance, things like
14 that.

15 Q Okay. And are you able with your training and
16 experience in the science available to determine to
17 any -- absolute certainty of when Mr. Kusko died?

18 A With absolute certainty, no.

19 Q Is the best that you can do is give a potential
20 range of when Mr. Kusko died?

21 A That is the best we can do is give a range.
22 Unfortunately, television programs are not correct
23 to life, so.

24 Q Okay. And why is that, that you can't give an
25 exact time of death?

1 A For -- especially with regard to this case, where
2 there was a degree of decomposition, you know, that
3 process takes place at a variable pace, and it's
4 completely dependent on the environment. If it's
5 hotter, it will progress a lot faster. If it's
6 really cold, it will go a lot slower. If they're
7 frozen, it will be stopped completely. So it just
8 depends on the environment.

9 Q But if Mr. Kusko had died in the early morning
10 hours of Sunday, the 6th, and his body was
11 discovered on Tuesday, the 8th, the morning of
12 Tuesday, the 8th, would that, him being -- dying
13 that early Sunday morning hours be consistent with
14 the level of decomposition that you see?

15 A That would be consistent with that time period,
16 yes.

17 Q If Mr. Kusko's body was discovered Tuesday morning,
18 the 8th, the amount of decomposition you see, would
19 it be possible in your opinion that he was killed,
20 say, that Monday night prior to him being
21 discovered?

22 A That would not be possible just due to how advanced
23 the state of decomposition was. That's just too
24 short of a time period to get that far.

25 MR. CONRAD: And before I move on, one thing I

1 forgot. Your Honor, the State would ask to seek to
2 introduce State's Exhibits 117 and 116 into
3 evidence.

4 THE COURT: You said 116?

5 MR. CONRAD: Yes, Your Honor, and 117.

6 THE COURT: Any objection?

7 MR. BELL: No objection, Judge.

8 THE COURT: Entered without objection.

9 MR. CONRAD: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibit Nos. 116-117
11 were marked for identification and
12 received into evidence.)

13 MR. CONRAD: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. CONRAD:

16 Q I'm going to give you a couple of gloves, Doctor.
17 In your autopsy, do you recall finding or
18 recovering any projectiles?

19 A Yes, we recovered -- or I recovered two projectiles
20 during the case.

21 Q And do you recall where you recovered those from?
22 Were they inside Mr. Kusko's body?

23 A They were not inside of his body. They were -- one
24 was recovered -- well, first of all, I received his
25 body, along with a lot of bedding materials

1 including a pillow and some sheets. One of the
2 projectiles was recovered from actually within one
3 of the pillows, and then one projectile was
4 recovered kind of loose on top of the pillow. So
5 outside his body, but also outside of the pillow.

6 Q I hand you what has been marked State's Exhibit
7 114. It's been introduced into evidence. Do you
8 recognize those objects, sir?

9 A Yes.

10 Q What are those?

11 A These are two projectiles. Projectile being the
12 part of bullet that's comes out of gun.

13 Q And are those, to your knowledge, the projectiles
14 that you discovered with Mr. Kusko's autopsy?

15 A Yes.

16 Q And, to your knowledge, are those the projectiles
17 that indeed went through Mr. Kusko's head to cause
18 the injuries that you saw?

19 A Yes.

20 Q I'm going to take out State's Exhibit, I believe
21 it's 113. Yes, it's 113. I believe it is
22 introduced into evidence. Do you recognize this
23 object?

24 A Yes.

25 Q What is that?

1 A That is the pillow that was received with his body
2 when we did the autopsy.

3 Q Okay. All right. And I believe it has been
4 pointed out through other witnesses, but I'm
5 pointing to what appears to be a hole. Is that
6 what that is?

7 A That is a hole.

8 Q And in your training and experience, do you have an
9 opinion of what caused that hole?

10 A That is consistent with a gunshot causing the hole.

11 Q And what would lead you to conclude that? I can
12 hand you --

13 A You can see on the edge here, around the edge,
14 there's this dark discoloration. That's soot from
15 the gun. When the gun is fired, a number of things
16 come out the end, including a projectile, but
17 there's also soot, which is just smoky stuff from
18 burning the gun powder. Also, on the inside is
19 basically more soot and searing on the pillow
20 material of the pillow.

21 Q And I believe you testified a few moments ago that
22 a bullet was recovered from, I believe -- was it
23 inside that pillow?

24 A Yes. One was recovered inside the pillow.

25 Q And was it this pillow?

1 A I believe so, yes.

2 Q So, in your opinion, this is where the -- would
3 this be where the bullet entered the pillow or
4 where it exited?

5 A That hole there is where the bullet entered the
6 pillow.

7 Q And you said bullet. Could it also be possible
8 that two bullets went through that hole?

9 A Yes.

10 Q Okay. And then the bullet was recovered in the
11 pillow itself -- a bullet was recovered in the
12 pillow itself, is that correct?

13 A Correct. Just one from within the pillow.

14 Q And do have a theory or explanation that would
15 explain how the bullet entered this pillow and then
16 was found in this pillow as well, and also
17 apparently went through Mr. Kusko's head, right?

18 A Yes. There is a hole right here that you can see.
19 Well, very small, there's a hole right here. And
20 so you can also see there's no soot around this
21 one. So it went in that hole and came out that
22 hole.

23 Q And, in between, do you believe it passed through
24 the victim's head? So it's most likely a bullet
25 that went straight through that pillow?

1 A Yes. The bullet -- the projectile went through
2 this pillow and then came out here and then struck
3 his head.

4 MR. CONRAD: Beg the Court's indulgence.

5 (Pause.)

6 MR. CONRAD: The State has nothing further
7 from this witness.

8 THE COURT: Yes, sir?

9 MR. BELL: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BELL:

12 Q Doctor, you testified that there's no such thing,
13 really, as coming up with a time stamp of death
14 when you're evaluating a deceased that is in the
15 state that this particular individual was, right?

16 A There's no way to put an exact time on it, correct.

17 Q That's largely because, as you stated, the level of
18 decomposition just makes it almost a guessing game?

19 A It's -- yes, it's very dependent on the
20 temperature. As I said, hotter, it's faster;
21 colder, it's slower.

22 Q The Solicitor asked you if the timing of the early
23 morning hours of September 6th, 2015, would have
24 been consistent with the decomposition that you
25 noted. Do you recall that?

1 A Yes.

2 Q And your answer was it would have been consistent
3 with?

4 A Correct.

5 Q That's not you saying that's exactly when it
6 happened, right?

7 A Yes. If I say consistent with, it's consistent
8 with my physical findings at the autopsy.

9 Q If it had been six hours prior to what the
10 Solicitor told you, would that still be consistent
11 with your observation of the body?

12 A If what had been?

13 Q If the timing of the death was six hours prior,
14 would that still be consistent with the physical
15 evaluation of the body?

16 A Six hours prior to what?

17 Q To the early morning hours of September 6th the
18 Solicitor asked you about?

19 A Six hours, you know, I'm not going to be able to
20 say that's still consistent with the findings.
21 It's not going to get very much further along that
22 way due to other findings in the autopsy, but
23 several hours earlier than early Sunday morning
24 wouldn't be inconsistent.

25 Q How about the other direction, if it was six hours

1 later, would that still be consistent?

2 A Six hours later being about mid-noon on that
3 Sunday, that is potentially consistent with it as
4 well, yeah.

5 Q So really no way to really narrow it down is what
6 you're testifying to, right? You can get within
7 maybe a 12-hour range?

8 A Twelve hours is pretty good, yeah.

9 Q Now, Mr. Conrad did a good job of covering a lot of
10 the issues, but one of the other very unfortunate
11 parts of your job is you sometimes have to
12 communicate with family members, is that accurate?

13 A Sometimes, yes.

14 Q In this case, did you have any communication with
15 the family about the deceased?

16 A Not to my recollection.

17 Q Aside from what you've testified here today, did
18 you have any other interaction in the investigation
19 of this case?

20 A No.

21 Q Did you take any part in the collection of evidence
22 that was submitted to law enforcement?

23 A Anything collected at autopsy, I'm responsible for,
24 so I do that. I don't go to the scenes, or
25 anything like that, no.

1 Q Does that include the projectiles, as you call
2 them, did you recover those?

3 A Yes.

4 Q And those are what were presented to you earlier?

5 A Yes.

6 MR. BELL: Beg the Court's indulgence.

7 (Pause.)

8 MR. BELL: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. CONRAD: Nothing from the State.

11 THE COURT: All right, sir, you may step down.
12 Doctor, you may step down.

13 Any objection to this witness being excused?

14 MR. CONRAD: Not from the State.

15 MR. BELL: No.

16 THE COURT: All right, sir, you're free to
17 leave.

18 (Witness steps down and is excused.)

19 THE COURT: Call your next witness.

20 MR. EATON: The State calls Neal Lourie.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: State your full name, please.

1 THE WITNESS: Neal Lourie.

2 THE CLERK: Would you spell your first name,
3 please?

4 THE WITNESS: N-E-A-L.

5 THE CLERK: Do you solemnly swear to tell the
6 truth, the whole truth, and nothing but the truth,
7 so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat.

10 (Witness seated.)

11 MR. EATON: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 NEAL LOURIE,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. EATON:

18 Q Good morning, Mr. Lourie.

19 A Good morning.

20 Q Sir, could you please introduce yourself to the
21 jury?

22 A My name is Neal Lourie. And I'm from Columbia.

23 Q Mr. Lourie, what do you do?

24 A I'm a lawyer here in Columbia.

25 Q What kind of law -- where do you practice law?

1 A I practice law at my law firm, Lourie Law Firm,
2 that my father started 60 years ago. And I do
3 personal injury, worker's comp, and criminal
4 defense.

5 Q And, Mr. Lourie, did you know Charles Kusko?

6 A I did.

7 Q How did you know Charles?

8 A I met Charles at Dent Middle School in sixth grade.
9 We were in the same class.

10 Q And did you know him, stay in touch with him since
11 then?

12 A Yes, over the years we stayed in touch.

13 Q What kind of relationship did y'all have?

14 A I would say he was a good friend. In the last
15 several years before he passed, Charles had become
16 a handyman and was really good at fixing things,
17 and stuff like that. And he would do work for my
18 law firm in that regard, and personal work for me
19 as well.

20 Q And around the time of his death, was he doing some
21 work for you?

22 A Yes, he was.

23 Q Do you know where he lived?

24 A He lived on Budon Court, which was a house that I
25 owned.

1 Q And how did it come about that he was living there?

2 A So, Charles was really good at fixing things,
3 remodeling, so we made an agreement that he could
4 live there and fix it up, and then I was going to
5 sell it to him for an extremely cheap price, and
6 then he could turn around and make money and sell
7 it.

8 Q Do you remember kind of how long he had been there?

9 A I really don't. Maybe a year.

10 Q In addition to the Budon Court house, did he work
11 on other places for you?

12 A Yes, he did work at my personal home where I lived
13 and did various tasks there, including a retaining
14 wall he was repairing, yard work, and other things
15 that we needed done around the house, and the law
16 firm.

17 Q Was some of that going on at the time of his death?

18 A Yes. Some of the work was. The retaining wall, I
19 believe, was either finished or near finished.

20 Q Did you know -- do you know Brandon Barham?

21 A Yes, I do.

22 Q How did you know him?

23 A Through Charles. Charles introduced me to him
24 because he would help Charles with some of the
25 projects.

1 Q And was Brandon helping with projects around that
2 time?

3 A Either around that time or beforehand, yes.

4 Q And were you aware of any disputes between Brandon
5 and Charles?

6 A Yes.

7 Q Could you tell the jury about that?

8 A So this all happened, roughly, Labor Day weekend
9 2015. Brandon had come by to see me either that
10 week before or the week before that and told me
11 that Charles had not paid him for the work he had
12 done on the retaining wall or at my personal
13 residence. And I told Brandon that I wanted to
14 talk to Charles about that. And if he hadn't paid
15 him, I obviously would.

16 Charles came to see me that Friday before
17 Labor Day weekend and I inquired about that. And
18 he had told me that he had, in fact, paid Brandon
19 and not -- that I shouldn't pay Brandon anything.

20 And then Brandon called me that Tuesday after
21 Labor Day because I told him if he hadn't paid, I
22 would give him a check. We're talking about \$1,000
23 or \$2,000. And I told Brandon that I had talked to
24 Charles and he said that he had paid you and I was
25 not happy. I said I wanted to meet with both of

1 them in my office.

2 Q You told that to?

3 A Brandon.

4 Q Brandon. And what day was that?

5 A That would have been the Tuesday after Labor Day.

6 So that would have been the morning prior to him
7 being discovered deceased.

8 Q So --

9 A To the best of my recollection.

10 Q When did this money dispute first come up? To the
11 best of your memory?

12 A When Brandon came to see me within either a week or
13 two prior to that about the money.

14 Q And then did you say you talked to one or both of
15 them again on the Friday before his death?

16 A Yes, the Friday before, Charles came by my office
17 and I was talking to him and I asked him, because
18 obviously I wanted -- if Brandon didn't get paid, I
19 wanted him to get paid. And Charles indicated that
20 he had, in fact, paid Brandon and that I shouldn't
21 pay him.

22 Then I talked to Brandon that Tuesday morning
23 prior to Charles being discovered, because Brandon
24 called, and I said, Charles told me that he paid
25 you. I want to meet with both of you in my office.

1 Q And when you talked to Charlie on Friday, I mean,
2 about this, like, how was he about it?

3 A He was defiant. I mean, I don't know what the word
4 is, but he was very clear that -- to me, that he
5 had made the payments to him. So I wanted -- you
6 know, I was hearing two different stories and I
7 wanted to meet with both of them in my office.

8 Q How did you and Charles handle your business?

9 A I mean, it was very -- I've known him forever. It
10 was very casual. I would write him checks. You
11 know, he would sent me texts, so, I mean, it was --
12 I don't know there was really any invoices that I'm
13 aware of, there may have been, but it was a very
14 casual relationship. I mean, I would help Charles
15 with stuff if he needed stuff done legally, and he
16 would help me. And he was living at the house at
17 the time, I believe, for rent-free at the time on
18 Budon. I believe so.

19 Q Do you remember if, up until the time of his death,
20 were you paying him?

21 A Oh, yes, absolutely.

22 Q Do you know how often?

23 A Weekly or -- weekly or biweekly. It was a steady
24 pay.

25 Q How would you usually pay him?

1 A Either check or cash.

2 MR. EATON: Beg the Court's indulgence.

3 (Pause.)

4 MR. EATON: Thank you, Mr. Lourie. Please
5 answer any questions the Defense has.

6 CROSS-EXAMINATION

7 BY MR. MYERS:

8 Q Hey, Neal.

9 A Hey. Good morning, Stanley.

10 Q How are you?

11 A I'm hanging in there.

12 Q I know you've got to get back to your office. It
13 is kind of different when -- all the work we do,
14 trial work, you have to be cross-examined, right?

15 A Yes, sir.

16 Q Neal, I want to talk a little bit about where Budon
17 Court is. There really hasn't been -- just for the
18 jury here. You and Charles Kusko both owned the
19 place, right?

20 A At the time, I owned it with the intention of
21 selling it to him.

22 Q So he was paying rent to you?

23 A Correct.

24 Q And that rent was probably going to go towards him
25 ultimately buying the location?

1 A Correct. He paid some rent, yes, and that would go
2 towards buying it. Some -- I mean, it wasn't a
3 consistent rent. We had a very casual -- I mean,
4 you know, if he didn't pay, I wasn't going to go
5 trying to collect it from him.

6 Q The location of Budon Court -- we're here at the
7 courthouse, this is Main Street. There's probably
8 other ways to get there, but just in my simple
9 mind, one way would be to take Taylor Street and
10 where Taylor Street would fork off to go to Two
11 Notch Road or you can say straight. You can stay
12 straight, right, go back towards Richland Fashion
13 Mall?

14 A Correct.

15 Q Before you get to Richland Fashion Mall, there's a
16 Zesto's, right?

17 A Correct.

18 Q You would make a left there on Zesto's?

19 A And that's Harrison, I believe.

20 Q That's Harrison. Then you would make another left
21 and that would be Budon Court, right?

22 A That's correct.

23 Q You have to go down the road of Budon and you have
24 to make a curve to get there, right?

25 A That's right.

1 Q Now, the arrangement that you had with Charles,
2 going back since you knew each other, I mean, y'all
3 were friends, right?

4 A Correct.

5 Q And you had a business relationship?

6 A Correct.

7 Q He was also your client?

8 A Correct.

9 Q So the way this thing worked was, was if things
10 needed to get fixed, you would call Charles and
11 Charles would make it happen?

12 A Correct.

13 Q One of the individuals that Charles worked closely
14 with was his nephew, Brandon Barham?

15 A Correct.

16 Q Your Budon Court and this retaining wall at your
17 house wasn't the only time the two of them worked
18 together, right?

19 A That's correct.

20 Q So just as Charles may have owed you rent, there
21 were probably times throughout the course of his
22 relationship with Brandon that he owed him money
23 throughout that, even without the retaining wall
24 and what he did on Budon Court?

25 A I don't have any knowledge, but, yes.

1 Q So nothing that an uncle and a nephew couldn't work
2 out, just maybe a course of business that, Hey, you
3 owe me some money, I need to get paid, right?

4 A Yes, I didn't -- I wasn't aware of that
5 relationship, but, I mean, it wouldn't surprise me,
6 if you're asking me that.

7 Q But you indicated that a couple -- or a week
8 before, Brandon actually came to your office,
9 right?

10 A Yes.

11 Q And he came to your office because he knew that you
12 had some ownership interest in Budon Court, right?

13 A I don't know if that's why he came or not. I know
14 he came -- and let me say, I think the work he was
15 referring to was at the retaining wall, but I'm not
16 100 percent sure.

17 Q Either way?

18 A Yes, I just want to make sure the record -- yes.

19 Q Either way, he came to your office. He didn't come
20 raising a scene or causing a scene?

21 A No, he did not.

22 Q He wasn't belligerent?

23 A No, he was not.

24 Q Wasn't upset?

25 A No.

1 Q He just told you that, Hey, I have done some work
2 and I haven't got paid, can you pay me?

3 A Correct.

4 Q Now, the amount of this, the retaining wall itself,
5 how much did you say it was?

6 A I don't remember the total amount, but the amount
7 that Brandon was claiming he was owed was, to the
8 best of my recollection, like \$2,000.

9 Q So --

10 A The retaining wall was much more, but.

11 Q Sure. But in the big scheme of things, not a whole
12 lot of money?

13 A No.

14 Q We're not talking \$20,000?

15 A No.

16 Q Two million dollars?

17 A No.

18 Q We're talking \$2,000?

19 A Correct.

20 Q And you knew that Brandon was a contractor and he
21 did some work outside of that retaining wall,
22 right?

23 A Yes.

24 Q Now, oftentimes, contractors go for a couple of
25 weeks without getting a draw or getting paid,

1 right?

2 A Yes, I assume that can happen.

3 Q So just the fact that someone didn't get paid on a
4 particular job is pretty much just par for the
5 course as a contractor?

6 A That's not my area of work, but it wouldn't
7 surprise me.

8 Q Sure. Nothing for anybody to be overly upset
9 about? Do you need some more water?

10 A I'm okay. Yeah, I mean, I don't know their
11 relationship in terms of that, but, I mean, yeah,
12 that would be -- I would assume would be normal.

13 Q Sure. And Brandon was not overly upset at all when
14 he came to you?

15 A No, he was not.

16 Q Now, Mr. Eaton asked you about the dispute
17 between -- he characterized it as a dispute between
18 Charles and Brandon. Was it a dispute?

19 A I would say it was Brandon was claiming that
20 Charles had not paid him.

21 Q Okay. But there were no allegations of any sort of
22 physical violence towards either one of them?

23 A No, there was not.

24 Q No threats made toward either one of them?

25 A No.

1 Q In fact, when Charles talked to you, you never left
2 that conversation indicating there was some sort of
3 physical violence between the two?

4 A That's correct, I did not.

5 Q Now, Mr. Eaton didn't ask you whether or not there
6 was any disputes between Charles and his brother
7 Andrew, did he?

8 A No, he did not.

9 Q Do you know Andrew Kusko?

10 A I do.

11 Q Are you aware of any disputes between the two of
12 them?

13 A Yes.

14 Q Tell the jury about that.

15 A So, that same Friday when he came to see me before
16 Labor Day weekend, Charles was agitated and upset
17 because he had some type of dispute with Andrew.
18 And he told me that he was physically afraid of
19 Andrew.

20 Q Let's break that down. He never used those words
21 when he talked about Brandon, did he?

22 A No, he did not.

23 Q He said he was agitated?

24 A Yes.

25 Q He actually came out and told you he was physically

1 afraid of Andrew Kusko?

2 A That's correct.

3 Q His brother?

4 A Correct.

5 MR. MYERS: No further questions. Thank you,
6 Neal.

7 REDIRECT EXAMINATION

8 BY MR. EATON:

9 Q Neal, Mr. Myers asked you about this dispute
10 between Andrew and Charlie. Could you go more into
11 what that was about, please?

12 A I don't know. I think it had to do with some
13 furniture, but I'm not 100 percent sure. I think
14 it had to do with some furniture that Charles had
15 that Andrew was claiming that it belonged to their
16 sister.

17 Q Who's their sister?

18 A I cannot remember her name.

19 Q How did she fit into the family?

20 A Okay, well, Charles' sister is the mother of
21 Brandon.

22 Q So we're talking about Brandon's mom?

23 A Correct.

24 Q And what do you remember about what Andrew was
25 saying Charlie did with her furniture? Was her

1 name Karin?

2 A Yes, Karin. That's right, yes. My understanding
3 is he was saying that Charles -- that Andrew was
4 saying that Charles had the furniture and it
5 belonged to Karin, was my understanding.

6 Q And was that the extent of any sort of dispute
7 between Andrew and Charlie that related to Karin?

8 A I think Andrew was also claiming that Charles had
9 used some of her money to do work on the house.

10 Q Okay. On your house?

11 A Yes. On the Budon.

12 Q On Budon?

13 A Yes.

14 Q Not the retaining wall?

15 A I don't think so.

16 Q But basically --

17 A I don't know that for sure. I mean, I don't know.
18 I know there was a dispute. I didn't get into the
19 specifics of it. But that's just sort of my memory
20 of generally what happened.

21 Q But it sounds like the gist of it, to your memory,
22 is that there was an accusation that Charles Kusko
23 had used Brandon's mom's money on your project and
24 that Charles Kusko had done something with his
25 mom's furniture?

1 A Correct.

2 Q That at least upset Andrew?

3 A Correct.

4 MR. EATON: Thank you. No further questions.

5 RECROSS-EXAMINATION

6 BY MR. MYERS:

7 Q Neal, at any time in your conversation with
8 Brandon -- now, we've got to be careful because
9 we've got Charles Kusko and we've got Charles
10 Brandon Kusko -- I'm sorry, Brandon Barham.
11 Brandon Barham. Just to be clear. At no time
12 during your conversation with Brandon, did he bring
13 up anything about the furniture?

14 A No, he did not.

15 Q Did he bring up anything about power of attorney
16 and whether or not Charles was giving up his mom's
17 furniture?

18 A No, he did not.

19 Q Who was the only individual that brought Karin
20 Kusko into this selling and giving away furniture?

21 A I believe it was Andrew.

22 Q Thank you.

23 THE COURT: All right. You may step down.

24 Any objection to this witness being excused?

25 THE WITNESS: Am I still under sequestration

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: State your full name, please.

6 THE WITNESS: Jennifer Dalmida.

7 THE CLERK: Would you spell your last name,
8 please?

9 THE WITNESS: D-A-L-M-I-D-A.

10 THE CLERK: Do you solemnly swear to tell the
11 truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE WITNESS: Yes.

14 THE CLERK: Thank you. Have a seat.

15 (Witness seated.)

16 JENNIFER DALMIDA,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. O'REILLY:

20 Q Ms. Dalmida, how are you?

21 A I am doing well.

22 Q Hopefully, we'll keep this quick so you can make
23 your flight out of here today. Can you please
24 introduce yourself to the jury and explain who you
25 work for?

1 A My name is Jennifer Dalmida. I work for Verizon
2 Wireless. I'm a senior analyst who is a custodian
3 of records for the company.

4 Q So what does that job typically entail?

5 A So, as the custodian of records, I basically
6 interpret any type of records that we produce in
7 compliance of search warrants, subpoenas, or court
8 orders. That entails any type of traffic done on
9 our network, whether it be calls, text messages, or
10 any type of data usage.

11 Q So this isn't your first time testifying in court,
12 is it?

13 A No.

14 Q About how many times do you think you've testified?

15 A We do this as a primary job, so we do this about
16 three times a week.

17 Q And, specifically, what brought you here to South
18 Carolina?

19 A We were subpoenaed for appearance for this trial.

20 Q And did you have a chance to look at phone records
21 in this case?

22 A Yes.

23 Q And how many phone records, one or two?

24 A Two.

25 MR. O'REILLY: Your Honor, I'd like to let the

1 record reflect I'm handing for identification
2 purposes State's Exhibit 118 and State's Exhibit
3 119.

4 THE COURT: Yes, sir.

5 BY MR. O'REILLY:

6 Q Do you recognize what I just handed you?

7 A Yes.

8 Q What is it?

9 A It's a copy of the CD that included all the records
10 that we provided, as well as subscriber information
11 and a call detail report for one of the subscriber
12 numbers.

13 Q And what is that phone number? Well, I guess I
14 should say, is that a true and accurate depiction
15 of the phone records?

16 A Yes.

17 MR. O'REILLY: Your Honor, at this point I'd
18 like to admit State's Exhibit 118 and 119, Brandon
19 Barham's phone records.

20 MR. BELL: Your Honor, I don't think I will
21 have an objection, I just think the foundation
22 needs to be laid as to relevance of this particular
23 record.

24 THE COURT: So are you objecting or --
25 objecting at this point or?

1 MR. BELL: I object at this point, Your Honor,
2 based on lack of foundation and relevance.

3 THE COURT: There's an objection. The
4 objection is sustained. Please lay the foundation.

5 MR. O'REILLY: Thank you, Your Honor.

6 BY MR. O'REILLY:

7 Q Can you describe what -- are those numbers -- how
8 do you know those are -- that's the Defendant's
9 phone number?

10 A Based on the records that I reviewed, we provided
11 records for a target telephone number
12 (803)767-6448.

13 Q And did you receive a subpoena in this case for
14 those phone records?

15 A Yes.

16 Q And these are a true and accurate depiction of the
17 phone records --

18 A Yes.

19 Q -- in this case? And what dates are covered in
20 those records?

21 A September 3rd, 2015, through September 15th, 2015.

22 Q And can you tell who the phone was -- or that
23 number was assigned to in this case?

24 A We have subscriber information listed as to who the
25 phone was registered to. We have it listed under a

1 business at THLC and we also have a point of
2 contact for that business listed.

3 Q And what is that point of contact?

4 A Brandon Barham.

5 MR. O'REILLY: Your Honor, at this point the
6 State believes the witness has identified the
7 records as being a true and accurate depiction, has
8 identified it to the Defendant in this case. So
9 the State at this point would like to admit that as
10 Exhibits 118 and State's Exhibit 119.

11 THE COURT: Any objection?

12 MR. BELL: No objection.

13 THE COURT: All right. Those will be entered
14 without objection.

15 MR. O'REILLY: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit Nos. 118-119
17 were marked for identification and
18 received into evidence.)

19 MR. O'REILLY: Your Honor, at this point, I'd
20 like to publish it to the jury.

21 THE COURT: Yes, sir.

22 MR. O'REILLY: May I ask the witness to step
23 down?

24 THE COURT: Yes.

25 (Witness steps down.)

1 BY MR. O'REILLY:

2 Q Stand over there and let me know if I need to move
3 any of these. Can you tell we what we're looking
4 at here?

5 A This is a copy of our call detail report.

6 Q And what does a call detail report tell you?

7 A So it would indicate any type of calls that were
8 made or received on our network for this specific
9 target telephone number.

10 Q And when you receive a subpoena, do you receive it
11 for a certain timeframe or you just send everything
12 you have?

13 A For a specific timeframe.

14 Q Do you remember in this case what the timeframe
15 was?

16 A I don't recall, but being that we provided records
17 from 9/3 to 9/15, we were pretty precise on the
18 exact timeframe.

19 Q So, I guess, just to explain to the jury, can you
20 walk me through maybe what each call entails?

21 A Absolutely. So in the first column would be a
22 network element name. So this would basically be
23 the switch that processed the call, what we refer
24 as to the brain of the network. All our cell
25 towers record up to a specific switch.

1 The next column, we have the mobile directory
2 number. This would be consistent throughout the
3 entire document. This would be the target
4 telephone number for the records in which we
5 provided.

6 The next column, we have our dialed digit
7 number. This would be the dialing pattern of our
8 subscriber on outbound calls, and on incoming calls
9 it would indicate our subscriber's telephone
10 number.

11 The next column, we have our call direction
12 column. It would also indicate the direction of
13 the call. We mainly use this to identify calls
14 that were forwarded, or forwarded to voicemail.

15 The next column we have is the seizure date
16 and time. It would indicate the date and time of
17 the call. And it's in 24-hour format.

18 The next column we have is seizure duration.
19 It would indicate the duration of the call, and
20 it's listed in seconds.

21 The next column we have is the first service
22 cell site. It would indicate the cell site number
23 that processed the call.

24 The next column we have is the first service
25 cell face. It would indicate the cell face that

1 processed the call.

2 The next column we have is the last service
3 cell site. It would indicate the cell site that
4 the call ended on.

5 The next column we have is the last service
6 cell face, which would indicate the cell face that
7 the call ended on.

8 And the final column is the calling party
9 number. It would indicate who initiated the call.

10 Q So, if we're looking at, just as an example, one of
11 these columns right here, so what phone number is
12 the call actually being made from? For example,
13 maybe this first column?

14 A So, in this example, the column party number
15 initiated the call, so (843)270-6572 placed a call
16 to our subscriber. We don't have that call as
17 being answered. It looks like it was forwarded to
18 voicemail.

19 Q And the phone number in this case, the subscriber,
20 you can tell it was Brandon Barham?

21 A Yes.

22 Q And, more specifically, you don't know much about
23 the facts of this case at all, do you?

24 A No.

25 Q You're here to simply tell us what calls are made

1 and when calls weren't being made?

2 A Correct.

3 Q Can you identify if calls were made around 9/5/2015
4 to 9/6, specifically maybe the end of the night on
5 9/5 to maybe the first call on 9/6?

6 A Well, the last call that we have would have been
7 forwarded to voicemail and that was on 9/5 at 2129.
8 The first call that we have on 9/6 would have been
9 12:30, and that's p.m.

10 Q So I'm sure you do this a little more often than we
11 do. Can you explain to the jury what time that is
12 in non-military time?

13 A It's 9:29.

14 Q So the call subscriber in this case did not receive
15 or place a call until 9/6?

16 A Correct. They received another call, which was
17 forwarded to voicemail at -- on 9/6 at 12:30 p.m.

18 Q Would this be consistent with someone turning off
19 their cell phone?

20 A It could be.

21 Q But this also would show that no calls were made
22 during this time?

23 A Correct.

24 Q In or out?

25 A Correct.

1 Q Thank you. I have a few more questions for you.
2 (Witness returns to witness stand.)

3 BY MR. O'REILLY:

4 Q And there's one more number that you received a
5 subpoena in this case, isn't that correct?

6 A Yes.

7 MR. O'REILLY: Your Honor, the State is
8 handing the witness for identification purpose
9 State's Exhibit 120.

10 THE COURT: Yes, sir.

11 BY MR. O'REILLY:

12 Q Can you explain what I just handed you?

13 A This is a copy of our text content report.

14 Q And did you have a chance to look at what's on that
15 CD?

16 A Yes.

17 Q And what's on that CD?

18 A It's actually the complete records that we provided
19 for a target telephone number (803)479-3540.

20 Q Were you able to identify who that number belongs
21 to?

22 A This one, yes.

23 Q And who is that?

24 A I don't have the sheet. It's Andrew Kusko, Kusko.

25 Q Andrew Kusko?

1 A Kusko.

2 Q And how do you know what's on that CD?

3 A I reviewed it.

4 Q Is that your signature on the front of the CD?

5 A Down below, yes.

6 Q All this information, this is a fair and accurate
7 depiction of this person's cell phone records?

8 A Yes.

9 Q And for a specific date and time, do you have?

10 A This would actually be for the same range.
11 September 3rd -- 4th, 2015, through September 8th,
12 2015. So the 4th to the 8th, 2015.

13 MR. O'REILLY: At this time the State would
14 like to admit State's Exhibit 120 into evidence.

15 MR. BELL: No objection, Your Honor.

16 THE COURT: All right, 120 without objection.

17 MR. O'REILLY: Thank you.

18 (WHEREUPON, State's Exhibit No. 120 was
19 marked for identification and received
20 into evidence.)

21 MR. O'REILLY: Nothing further.

22 THE COURT: Yes, sir?

23 MR. BELL: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BELL:

1 Q Jennifer, you were just asked to testify -- and I
2 apologize, I just didn't catch your last name.

3 A Jennifer is fine. Dalmida.

4 Q Jennifer, you just testified to two different CDRs,
5 correct?

6 A Right.

7 Q Related to two different phone numbers?

8 A Correct.

9 Q On the first number, you identified the point of
10 contact being a Brandon Barham, right?

11 A Yes.

12 Q And you went on to talk about his records on the
13 end of September 5th up through the morning of
14 September 6th, right?

15 A Correct.

16 Q The Solicitor said, Would the facts that no calls
17 were made after 9:30 p.m. be consistent with
18 somebody turning their phone off?

19 A And I said it's possible.

20 Q Would it also be consistent with someone's battery
21 dying?

22 A It's possible.

23 Q Would it also be consistent with someone just not
24 making calls or receiving calls?

25 A It's possible.

1 Q Jennifer, what time is your bedtime?

2 A My bedtime?

3 Q Yes.

4 A I try to get to bed around 9:00 o'clock.

5 Q Around 9:00 o'clock?

6 A Uh-huh.

7 Q It's a pretty ordinary bedtime, isn't it?

8 A Uh-huh.

9 Q You mute your phone, black out a little bit, and go
10 to sleep, right?

11 A I'm a hard sleeper, so.

12 Q Now, there was a second CDR that was given to you,
13 but not published to the jury, right?

14 A Yes.

15 Q And you identified that as being registered to an
16 Andrew Kusko?

17 A Yes.

18 Q Now, if someone has a family plan registered, does
19 it denote who each number belongs to by name?

20 A Some records do. Like the call records would
21 indicate -- would allow the ability to designate a
22 specific user name to a specific phone number. The
23 subscriber information specifically would only have
24 who we have as the billing responsible party for
25 that phone.

1 Q So if this Andrew Kusko was paying for that phone,
2 but it, in fact, was the phone that his wife used,
3 those records wouldn't tell this jury that, right?

4 A Correct.

5 MR. BELL: Thank you.

6 MR. O'REILLY: Nothing further.

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

9 Any objection to this witness being excused?

10 MR. BELL: None from the Defense, Your Honor.

11 MR. O'REILLY: None from the State.

12 THE COURT: You are free to leave. Thank you.
13 (Witness steps down and is excused.)

14 THE COURT: Call your next witness.

15 MR. O'REILLY: The State would call Ron Witt.
16 (Witness approaches.)

17 THE BAILIFF: Place your left hand on the
18 Bible, and raise your right.

19 (Witness complies.)

20 THE CLERK: State your full name, please.

21 THE WITNESS: Ronald Witt.

22 THE CLERK: Spell your last name, please.

23 THE WITNESS: W-I-T-T.

24 THE CLERK: Do you solemnly swear to tell the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Thank you. You can have a seat.

4 (Witness seated.)

5 RONALD WITT,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. O'REILLY:

9 Q Hey, Mr. Witt.

10 A Good afternoon.

11 Q Can you please introduce yourself to the jury and
12 explain where you work?

13 A My name is Ronald Witt, and I work for T-Mobile.

14 Q What's your position there?

15 A I am part of what's known as the law enforcement
16 relations group, and I am a testifier in that
17 group.

18 Q So it's your job to come and testify in trials just
19 like this?

20 A Yes.

21 Q How many trials do you think you've testified in?

22 A An easy guess would be 600 or so.

23 Q What kind of education do you have to do something
24 like this?

25 A Well, I'm in the middle of my 15th year with

1 T-Mobile in the same law enforcement relations
2 group. And I've been doing -- testifying in
3 production in the office for the whole 15 -- well,
4 14 and a half years.

5 Q And what brought you in with this case?

6 A Our office was requested to have a witness appear
7 for the trial at hand.

8 Q Did you receive a subpoena in this case for phone
9 records?

10 A Yes.

11 MR. O'REILLY: Your Honor, the State is
12 handing the witness for identification purposes
13 State Exhibit 121.

14 THE COURT: Yes.

15 BY MR. O'REILLY:

16 Q Mr. Witt, what did I just hand you?

17 A I'm sorry?

18 Q What did I just hand you?

19 A It's a CD that contains electronic version of
20 records that were also provided previously in
21 response to a legal demand.

22 Q Off the top of your head, do you remember what
23 dates were asked for?

24 A I remember it was September timeframe, 2015. I
25 don't remember the exact dates.

1 Q And you had -- and you reviewed that, and those
2 dates are on that CD?

3 A Yes.

4 Q And what kind of other information is on that CD?

5 A What's on the CD is we refer to it as a call detail
6 report for a specific phone number and for the date
7 range it shows on the records.

8 Q And was that phone number assigned to anybody?

9 A Yes.

10 Q Do you remember that name?

11 A No.

12 Q Would it help if I was to show you?

13 A If you --

14 Q On the board?

15 A Yes.

16 THE COURT: Have you entered it into evidence?

17 MR. O'REILLY: Not yet. I was going to show
18 him to refresh and then --

19 THE COURT: How are you going to show him?

20 MR. O'REILLY: He has to step down.

21 THE COURT: The jury can't see it until it's
22 in evidence. Do you have a hard -- yes, show him
23 the hard copy.

24 BY MR. O'REILLY:

25 Q Have you reviewed this disk?

1 A Yes.

2 Q And you verified everything on the disk to match
3 what's on the front of the disk? The subscriber
4 info?

5 A The only thing on the records were call detail
6 records. The subscriber information was not on the
7 disk.

8 Q But is it consistent with the records you have?

9 A Yes.

10 MR. O'REILLY: At this point, I'd like to
11 admit State's Exhibit 121 into evidence.

12 THE COURT: Any objection?

13 MR. BELL: Your Honor, can we approach?

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 BY MR. O'REILLY:

18 Q Are these Floyd Owen's phone records?

19 A Again, subscriber information was not on the page,
20 and I did not commit the name to memory from the
21 account.

22 Q If you were to look at the information, would that
23 help you?

24 A Yes.

25 THE COURT: Let me see you all one second.

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: Ladies and gentlemen of the jury,
5 it is my understanding that the device is having
6 some technical difficulties, so if you could bear
7 with us.

8 (Pause.)

9 THE COURT: I think you all can probably see.

10 MR. O'REILLY: Your Honor, may we approach?

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 MR. O'REILLY: Could I ask the witness to step
16 down?

17 THE COURT: Yes.

18 You may step down, sir.

19 (Witness steps down.)

20 BY MR. O'REILLY:

21 Q So do you recognize these files?

22 A Yes.

23 Q And did you receive a subpoena for these files?

24 A Yes.

25 Q And what time period?

1 A The record starts on the 4th of September, 2015, up
2 to and including the 11th of September, 2015.

3 Q And do you have a number that subpoena was for?

4 A Yes.

5 Q What is that phone number?

6 A Over here. (803)220-9024.

7 Q And you do not have the information to testify who
8 that number belongs to, though?

9 A Correct.

10 Q On this date for this phone, does this fairly and
11 accurately represent the subpoena you got for these
12 phone records?

13 A These are consistent with the records we would have
14 provided in response to the legal demands.

15 Q Are they consistent with the phone records
16 requested for Floyd Owen?

17 A Again, I'm not familiar with the specific name on
18 the account, but these are for the number ending in
19 9024.

20 MR. O'REILLY: Your Honor, at this point we'd
21 like to admit State's Exhibit 121 as the witness
22 has identified the phone records as being
23 consistent as phone records he received a subpoena
24 for in this case.

25 MR. BELL: Your Honor, we're really not trying

1 to be petulant. They have to establish relevance
2 by identifying who these records belong to. We
3 object until that's accomplished.

4 MR. O'REILLY: Your Honor, the State would ask
5 this witness to step back.

6 THE COURT: You can have a seat, sir.

7 (Witness returns to witness stand.)

8 THE COURT: You have no further questions?

9 MR. O'REILLY: No further questions, Your
10 Honor.

11 THE COURT: Anything from the Defense?

12 MR. BELL: No, Your Honor.

13 THE COURT: All right, sir, you may step down.

14 Is he remaining under his subpoena or is he
15 free to leave?

16 MR. EATON: We may need to keep him under
17 subpoena, Your Honor.

18 THE COURT: All, thank you.

19 (Witness steps down.)

20 THE COURT: Let me see you one second.

21 (WHEREUPON, a bench conference was held
22 in the presence of the jury but out of
23 the hearing of the jury.)

24 THE COURT: Call your next witness.

25 MR. EATON: The State calls Carey Shealy.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: State your full name, please.

6 THE WITNESS: Carey Shealy.

7 THE CLERK: Spell your first name, please.

8 THE WITNESS: C-A-R-E-Y.

9 THE CLERK: Do you solemnly swear to tell the
10 truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE WITNESS: Yes.

13 THE CLERK: Thank you. Have a seat.

14 (Witness seated.)

15 THE COURT: Yes, sir?

16 CAREY SHEALY,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. EATON:

20 Q Good morning, Mr. Shealy. Good afternoon, I guess.

21 A Good afternoon.

22 Q Would you please introduce yourself to the jury and
23 tell them what you do?

24 A My name is Carey Shealy. I'm with Statewide
25 Security Systems. We do surveillance cameras.

1 Q Where are your cameras located?

2 A They're in different parts of town, you know, a lot
3 of them spread out different places.

4 Q Are you familiar with the Zesto's on Forest Drive?

5 A Yes.

6 Q Do you have a camera on that Zesto's?

7 A Yes.

8 MR. EATON: If I can approach the witness?

9 These have not been numbered yet. What number
10 are we on?

11 THE COURT REPORTER: 122 and 123.

12 BY MR. EATON:

13 Q I'm going to hand you what have been marked for
14 identification as State's Exhibits 122 and 123.
15 Mr. Shealy, do you recognize those?

16 A Yes.

17 Q What are those?

18 A These are the videos, CDs.

19 Q Videos of what?

20 A From the Zesto's.

21 Q Do you know what timeframe that was from?

22 A Back in 2015.

23 Q We've got here just a map. For demonstrative
24 purposes, a map of Columbia here. I know it's kind
25 of small.

1 THE COURT: Make sure you refer to it for
2 identification purposes what number on the back.

3 MR. EATON: I'm sorry, for identification
4 purposes, this would be 124.

5 BY MR. EATON:

6 Q Are you able to point out kind of where that is on
7 this map?

8 A There's Forest Acres written here, I see that.

9 Q This may be actually easier. I'm going to approach
10 with what we have marked for identification as
11 State's 125. And this is a little zoomed in. Do
12 you recognize that more easily now?

13 A Yes. Again, I don't have my glasses, but I can see
14 that this is the Diamond Dental Center.

15 Q Do you see what road -- what road this is here?

16 A That would be Forest Drive, if I'm not mistaken.

17 Q It's little letters, I'm sorry.

18 A I can't see that, I'm sorry. I didn't bring my
19 glasses. But I know it's on the corner of Forest
20 Drive and Harrison Road.

21 Q Okay. And that's what this picture is of?

22 A I can't tell.

23 MR. EATON: I offer State's 124 and 125 into
24 evidence.

25 MR. MYERS: No objection, Your Honor.

1 THE COURT: Entered without objection.
2 (WHEREUPON, State's Exhibit No. 124-125
3 were marked for identification and
4 received into evidence.)

5 BY MR. EATON:

6 Q Are able to see that building?

7 A Zesto's, yeah, right there on the corner.

8 Q Okay. So you can show the jury that that's
9 Zesto's, right?

10 A Yes.

11 Q So these disks come from a camera on that --

12 A Right.

13 Q -- Zesto's?

14 A That's right.

15 MR. EATON: At this point I'd offer State's
16 122 and 123 into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. MYERS: No objection, Your Honor.

19 THE COURT: 122 and 123 will be entered
20 without objection.

21 (WHEREUPON, State's Exhibit Nos. 122-123
22 were marked for identification and
23 received into evidence.)

24 MR. EATON: Thank you. I have no further
25 questions of this witness.

1 THE COURT: Any cross-examination?

2 CROSS-EXAMINATION

3 BY MR. MYERS:

4 Q Good morning, Mr. Carey.

5 A How you doing?

6 Q How you doing, sir?

7 A Good.

8 Q Real briefly. How many cameras on Zesto's?

9 A On the outside, maybe three.

10 Q Three? So just to give the jury a little bit of
11 context, where are the cameras pointed and what
12 area of coverage do they provide?

13 A From memory, I know there's one on the back and I
14 think there's two on the front, if I'm not
15 mistaken.

16 Q All right. So just to make sure I'm clear. If
17 we're leaving this courthouse taking Taylor Street?

18 A Yes.

19 Q Keep Taylor Street straight, got Richland Fashion
20 Mall on the right and Zesto's on the left, right?

21 A Yes.

22 Q The front part is the one that's facing Forest
23 Drive?

24 A Right.

25 Q Right?

1 A That's right.

2 Q So how many cameras are there?

3 A I think there's two.

4 Q Two. And they --

5 A There might be one, but I think there's two.

6 Q And then the third one is where?

7 A On the back.

8 Q Very back?

9 A Uh-huh.

10 Q And all the coverage that you have that you've
11 testified to, are they from all three cameras or
12 just one or two cameras?

13 A I think it's just the one camera looking across the
14 way.

15 MR. MYERS: Thank you. No further questions.

16 Thank you, sir.

17 THE WITNESS: Thank you. Have a good day.

18 THE COURT: Anything else?

19 MR. EATON: No, Your Honor.

20 THE COURT: All right, sir, you may step down.

21 Any objection to this witness being excused?

22 THE WITNESS: Sorry about the glasses, I
23 grabbed the wrong ones.

24 THE COURT: That's all right. You're free to
25 leave.

1 THE BAILIFF: All right.

2 (WHEREUPON, the jury came into open
3 court at 2:19 p.m.)

4 THE BAILIFF: The jury is present, Your Honor.

5 THE COURT: I hope you had a good lunch.

6 The State can call your next witness.

7 MR. EATON: Investigator Andrew Richbourg.

8 (Witness approaches.)

9 THE BAILIFF: Place your left hand on the
10 Bible, and raise your right hand, please.

11 (Witness complies.)

12 THE CLERK: State your name, please.

13 THE WITNESS: Andrew Richbourg.

14 THE CLERK: Spell your last name, please.

15 THE WITNESS: R-I-C-H-B-O-U-R-G.

16 THE CLERK: Do you solemnly swear to tell the
17 truth, the whole truth, and nothing but the truth,
18 so help you God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you. Have a seat.

21 (Witness seated.)

22 THE COURT: Yes, sir?

23 ANDREW RICHBOURG,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. EATON:

2 Q Investigator Richbourg, good afternoon.

3 A Good afternoon.

4 Q Tell the jury who you are and where you currently
5 work.

6 A I currently work -- I'm chief of police at
7 Springdale Police Department, Lexington County.

8 Q When did you go to Springdale?

9 A April of 2017.

10 Q Where were you before this?

11 A City of Columbia Police Department.

12 Q What did you do?

13 A The last four years at City of Columbia, I was a
14 major crimes investigator.

15 Q I guess I should ask, how long have you been in law
16 enforcement?

17 A At Columbia, eight years. Prior to that I worked
18 at the jail.

19 Q And so around September of 2015, what was your
20 title?

21 A I was a major crimes investigator.

22 Q And what does that encompass, major crimes?

23 A It encompasses all violent crimes against persons
24 from felony assaults to -- all the way up to
25 murder.

1 THE COURT REPORTER: I'm sorry, I couldn't
2 hear you.

3 A It encompasses felony assaults all the way up to
4 murder. So any count of violent crime against a
5 person.

6 Q And how did you get involved with this case?

7 A I was assigned this case by my current supervisor
8 at the time, Sergeant McCracken.

9 Q What were your -- were the first things you do when
10 are assigned a homicide?

11 A Well, the first, in this instance, was responding
12 to the scene.

13 MR. EATON: And I'm showing opposing counsel
14 what has been marked for identification State's
15 126, 127, 128, 129, 130, and 131.

16 If I may approach, Your Honor?

17 BY MR. EATON:

18 Q Could you flip through those real quick and tell us
19 what they are, please?

20 A These are aerial shots around --

21 Q Don't show the jury quite yet, please.

22 A Okay. Aerial shots from close to the incident
23 location and on top of the incident location.

24 MR. EATON: Your Honor, I would offer State's
25 126 through 131 into evidence.

1 THE COURT: Any objection?

2 MR. MYERS: No, ma'am, Your Honor.

3 THE COURT: Those will be entered without
4 objection.

5 (WHEREUPON, State's Exhibit Nos. 126-131
6 were marked for identification and
7 received into evidence.)

8 BY MR. EATON:

9 Q So I guess before we look at these, let's go back
10 to State's 125. Can you see this map here?

11 A Yes, sir.

12 Q Can you kind of just point out the roads and orient
13 everybody, please?

14 A All right. So -- a little bit closer -- Harrison
15 Road runs off of -- right here -- it runs off
16 Forest Drive. And Budon Court runs off of
17 Harrison, connects to Harrison, which runs off of
18 Forest.

19 Q And what is kind of unique about Budon?

20 A It is a dead end road.

21 Q It is a dead end. And what would this be right
22 here?

23 A A 90 degree turn.

24 Q It makes a turn? Okay. And so if you kind of
25 zoomed out from this, you are saying Forest would

1 be down here?

2 A Yes, sir.

3 Q Down here?

4 A It runs from in front of Zesto's.

5 Q With downtown being to left?

6 A Right.

7 Q Okay. So what is State's 131? Which angle is
8 that?

9 A That is showing a photo -- that would have been
10 taken from Forest Drive down Harrison.

11 Q Can you see Budon from this picture?

12 A It turns beside that business right there.

13 Q So that is the entrance of Budon?

14 A Yes, sir.

15 Q State's 126, can you orient yourself on that one?

16 A Yes, that is Harrison. I believe that is Budon
17 here. And then Zesto's. So Forest Drive would be
18 up top.

19 Q State's 127?

20 A Harrison. Forest Drive. That is Richland Mall, if
21 you are familiar with the area. Zesto's. Budon
22 turns off of Harrison behind those businesses.

23 Q How about State's 128?

24 A There is a glare, I'm sorry. That is on top of
25 the -- this is the incident location, 1710 Budon

1 Court.

2 Q And 129?

3 A Same thing. Just out further over the road, Budon
4 Court.

5 Q And 130 is the last one of those.

6 A That is Harrison looking at Budon Court right here.

7 Q Now, we are well oriented. You were at the scene.
8 And what did you do?

9 A On scene officers had already discovered the body,
10 and we are just, as investigators, looking for any
11 type of evidence at this point, whatever happened,
12 took place, trying to figure it out.

13 Q And what did you -- what were some of the first
14 things you learned that were of significance to
15 you?

16 A The first thing we learned was there was a deceased
17 body in the back bedroom that the officers -- one
18 of the initial things they described was the smell,
19 the decaying flesh smell. And the deceased was in
20 a rear bedroom. On the front porch, when you enter
21 the house, there was a broken window.

22 Q What does State's Number 8 show?

23 A That is the front part of the house. The window
24 I'm talking about is to the left.

25 Q So State's Number 9 --

1 A That is the window --

2 Q -- is that the window?

3 A -- that was broke.

4 Q Did that stand out to you?

5 A Yes, definitely. Potentially somebody came in the
6 home.

7 Q So what did you proceed to do?

8 A Well, we helped -- after we got the initial
9 overview of the house and body removal took the
10 body, we did -- the scene was secured. We did an
11 autopsy that afternoon. Once we figured out --
12 once the coroner got there and removed the body, we
13 figured out how the deceased died. We went back
14 and with a search warrant to search the home.

15 Q And what did you collect of interest during the
16 search warrant?

17 A So, that would have been Crime Scene Officer Wise,
18 I believe is the one that came out to respond to
19 that. And so we did DNA swabs on the door.
20 Potential entry/exit points around the windows.
21 The linens, bed linens, and everything that --
22 where the deceased was found.

23 Photos of the inside and outside. It appears
24 on the front porch, it is a wooden front porch, and
25 it appears to be a partial footprint where somebody

1 entered the porch, not from the front steps, but
2 from the side. You can see, it's a partial print.

3 Q On State's Number 1, which side of the porch are
4 you talking about?

5 A The left side of that picture.

6 Q The left side?

7 A Opposite side of your thumb.

8 Q Okay.

9 A And then you could kind of -- on the right, leading
10 up to that, some debris and stuff had been
11 bothered, not necessarily you could identify
12 footprints, but you could see where the ground had
13 been disturbed. Somebody had recently walked
14 through there.

15 Q So how do you go about making some leads on a case
16 like this?

17 A On a case like this, at this point he is the only
18 one in the home that we know about. We are trying
19 to track his -- the first thing we try to do is we
20 try track his last moves of where he was at. A lot
21 of times when we don't have leads, we basically
22 start with his associates, closest associates, and
23 work out and try to eliminate people.

24 Q And did you do that in this case?

25 A We did.

1 Q Who were some of the people that you initially
2 identified?

3 A Well, we start -- once we gathered where he was and
4 what he was doing, we start talking to family and
5 witnesses. And three names did kind of pop up with
6 everybody, seemed to keep coming up, was the
7 Defendant and Floyd Owen and Andrew Kusko.

8 Q Did you happen to do a search warrant for Floyd
9 Owen's phone records?

10 A Yes.

11 MR. EATON: May I approach the witness with
12 what has been marked for identification as State's
13 121?

14 BY MR. EATON:

15 Q Do you recognize State's 121 for identification?

16 A Yes, sir.

17 Q And what is this?

18 A Floyd Owen's phone records from T-Mobile.

19 Q From T-Mobile. How do you know that? Have you
20 seen it?

21 A Yes. I saw it. That is the number he had at the
22 time.

23 Q Do you know what his number was at the time?

24 A It was a 220 number. I can't tell you all seven
25 without looking at my notes.

1 Q Would it refresh your memory to look at your notes?

2 A Yes, sir.

3 (Pause.)

4 A So his phone number at the time would be
5 (803)220-9024.

6 MR. EATON: At this time I offer State's 121
7 into evidence, Your Honor.

8 THE COURT: Any objection?

9 MR. MYERS: May we approach?

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Any objection?

14 MR. MYERS: No, ma'am, Your Honor.

15 THE COURT: All right, 121 will be entered
16 without objection.

17 (WHEREUPON, State's Exhibit No. 121 was
18 marked for identification and received
19 into evidence.)

20 BY MR. EATON:

21 Q Investigator Richbourg, you mentioned some suspects
22 that you identified. Did you talk to family
23 members?

24 A Yes, we talked to family and friends and associates
25 and interviewed a bunch of different people during

1 this time.

2 Q As your investigation started -- were there
3 services for Mr. Kusko?

4 A Say again?

5 Q Were there services for Mr. Kusko?

6 A Funeral.

7 Q Just a funeral?

8 A Yes, sir.

9 Q Did you --

10 A I believe it was the 13th of September, 2015.

11 Q Did you go to that --

12 A I did.

13 Q -- funeral? Why?

14 A I usually try to go to -- as part of my
15 investigation, I usually try to go to all my
16 victim's funerals as a means of respect, for one.
17 That is Number One. That is the reason I do this
18 job is to help people. But in a case where we
19 don't know who did it, you know, it can entail a
20 lot of who shows up or who doesn't show up. And it
21 just may give us people in question or may see
22 people at the funeral that we never saw before and
23 may need to talk to.

24 Q Of the people who were -- did you see his family
25 there?

1 A I did.

2 Q And were they all there?

3 A A majority of his siblings and his children were
4 there.

5 Q Was anyone notably absent?

6 A The Defendant was not there.

7 Q Mr. Barham?

8 A Right. And Mr. Owen was not there.

9 Q Do you know what his first name is?

10 A Charles. I believe he goes by -- I believe he goes
11 by Brandon.

12 Q Did you do anything at the funeral while you were
13 there?

14 A I just attended, and I did talk to a couple of
15 family members.

16 Q So, after that, where did your investigation lead?

17 A After that, we tried to start talking to the -- you
18 know, Brandon and Floyd -- we had already talked to
19 them once -- just forensics and phone records and
20 trying to go that route. At this point we
21 didn't -- we didn't have an idea who, you know --
22 it might have been speculation, but --

23 THE COURT REPORTER: Might have been? I'm
24 sorry?

25 A Speculation. Sorry.

1 Q Speak up in the microphone.

2 A We didn't have an idea who it was at the time, so.

3 Q Forensics and phone records, did any of that lead
4 you anywhere?

5 A No. We got a hit in 2000 and -- I think it was
6 2017 right before I left, I believe. I believe it
7 was '16 or '17. It wasn't long before I left.
8 There was a DNA hit from inside the doorknob which
9 came back to Floyd Owen. But it was a partial. It
10 wasn't a real strong hit. And it wasn't enough to
11 make an arrest off of. He was at the house
12 previous to that, so.

13 Q Did you talk to Jenny Baker?

14 A I did.

15 Q Do you know when you talked to her?

16 A Not the exact date without looking at my notes. I
17 know I had to go back multiple times. The first
18 time I tried to contact her was unable to make
19 contact. I had to go back the next day or the day
20 after. I finally talked to her. I believe it was
21 in September.

22 Q Okay. In September you talked to Jenny Baker?

23 MR. EATON: Beg the Court's indulgence.

24 (Pause.)

25

1 BY MR. EATON:

2 Q Does looking at your notes refresh your memory
3 about that?

4 A It should, yes, sir.

5 Q Take a second and see if you can find the note
6 about when you talked to Jenny Baker.

7 (Pause.)

8 A It appears that we tried initial contact on the
9 22nd of September, 2015, and unable to make
10 contact. And went back on the 23rd, the next day,
11 and did make contact.

12 Q On September 23rd?

13 A Yes, sir.

14 Q 2015?

15 A Yes, sir.

16 Q How long after the discovery of Mr. Kusko's body
17 was that?

18 A It was a couple -- it was discovered on the 8th.
19 His body was discovered on the 8th, which was a
20 Tuesday, so 15 days later.

21 Q And did you talk to Andrew Kusko?

22 A Yes.

23 Q What did you -- did you consider him a suspect?

24 A Initially. At first, he was a potential person of
25 interest to look at, but we could never deem him a

1 suspect. I mean, he was -- there was a potential
2 that he needed to look at because he was in an
3 argument with the victim.

4 Q I mean, if he was referenced at some point in some
5 report somewhere as a suspect, would that surprise
6 you?

7 A No.

8 Q Okay. But you looked into it?

9 A Right.

10 Q I'm going to direct your attention, Investigator
11 Richbourg, to State's Exhibit 123 -- I'm sorry,
12 state's Exhibit 122, which has already been
13 admitted. So did you -- the jury has heard about
14 the video from Zesto's. Did you know about that
15 video?

16 A It was outside of Zesto's on the roadway. The
17 Statewide Security cameras?

18 Q Yes, sir.

19 A Yes.

20 Q Where does that camera -- I guess, looking at
21 State's 126, can you find Zesto's on there?

22 A Up here.

23 Q And which way does that camera --

24 A The camera would have been up here --

25 Q -- point?

1 A -- towards Forest Drive. That's Zesto's, Harrison.

2 Q Which way does the camera point?

3 A It's four different directions. One is down
4 Harrison and Forest Drive.

5 Q Was there anything of interest off the Zesto's
6 camera?

7 A It showed the victim coming home.

8 Q Anything else?

9 A There was a vehicle that was -- what we -- it seems
10 to be some type of pickup lingering in the area at
11 the potential time of death.

12 Q And those -- the white -- I'm sorry, the vehicle
13 that you just mentioned and the victim's vehicle,
14 which camera angle were those from?

15 A It would have been coming down Harrison.

16 Q So from Zesto's coming back down Harrison?

17 A Yes, sir.

18 Q So referencing back to the video, have you seen the
19 video before?

20 A Yes, sir.

21 Q And so what's that right there, do you know? Do
22 you remember?

23 A It looks like the victim's pickup truck.

24 Q Which way is it going?

25 A It is turning on Budon.

1 Q So from where we are oriented on this video, where
2 is Forest Drive?

3 A Behind us.

4 Q And where is Budon Court?

5 A In front of us.

6 Q Where's the truck, like right --

7 A Right there, yes, sir.

8 Q At Budon? And what does it do?

9 A Turned left onto Budon.

10 Q Okay. And what -- so let's go back to that for one
11 second and tell the jury what time.

12 A 3:09.

13 Q Say it again.

14 A 3:09 in the morning.

15 Q In the morning.

16 A Sunday, on the 6th.

17 Q And so what time is it now?

18 A 5:00, the same day, in the morning. Approximately
19 two hours later.

20 Q And what do we see?

21 A That's a pickup truck, some type of truck. And it
22 appears to be white in color.

23 Q Where is it going?

24 A There's a road that -- off Harrison that kind of
25 crossed from Budon at an angle. I can't recall the

1 name.

2 Q That's fine. Can you see that road on State's 126?

3 A Yes, over on this side.

4 Q So that's the road the truck is currently turning
5 onto you're saying?

6 A Right. That's really -- the off roads of Harrison,
7 that's the only thing you can see in those two.

8 Q And what time is it here and what are we seeing?

9 A 5:10. It appears to be the same truck coming back
10 off that road onto Harrison.

11 Q And so did you view these videos back in 2015?

12 A Yes, sir.

13 Q Did you make anything of it?

14 A Potentially could have been Brandon's truck, but we
15 didn't know at the time. Similar truck to what he
16 had at the time.

17 Q Oh, so you -- when you say Brandon's truck, tell us
18 more what you mean by that.

19 A He had a Chevrolet, white Chevrolet work truck,
20 pickup truck.

21 MR. EATON: I beg the Court's indulgence.

22 (Pause.)

23 MR. EATON: If I can approach with what has
24 been identified as State's 132 and 133?

25 BY MR. EATON:

1 Q What are these?

2 A Still shots from the camera, the Statewide Security
3 camera system.

4 Q From this camera we just looked at?

5 A Right.

6 MR. EATON: I'd offer State's 132 and 133 into
7 evidence, Your Honor.

8 MR. MYERS: No objection.

9 THE COURT: All right. Those will be entered
10 without objection.

11 (WHEREUPON, State's Exhibit Nos. 132-133
12 were marked for identification and
13 received into evidence.)

14 BY MR. EATON:

15 Q So, is that what we were just looking at?

16 A Yes, sir.

17 MR. EATON: Beg the Court's indulgence.

18 (Pause.)

19 BY MR. EATON:

20 Q Investigator Richbourg, when did you say you left
21 CPD?

22 A March, the end of March, 2017.

23 Q And was this investigation still ongoing at that
24 time?

25 A Yes, sir. I had not developed -- I had not -- I

1 hadn't developed enough leads to make an arrest at
2 that point, when I left.

3 Q And so what happened to the case at that point?

4 A It went to -- got transferred to our Cold Case
5 Unit.

6 Q What does Cold Case mean?

7 A Cases -- I don't think there's a particular time,
8 but when we exhaust all our leads, it goes to --
9 Cold Case Unit picks it up and they start looking
10 at it, reviewing what we've done on it to see if we
11 missed anything or follow up, basically, on
12 everything that we did.

13 MR. EATON: Thank you. Please answer any
14 questions the Defense has.

15 THE WITNESS: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. MYERS:

18 Q Good afternoon.

19 A Good afternoon.

20 Q Chief?

21 A Yes, sir.

22 Q Chief, you were under a sequestration order where
23 you haven't been in the courtroom?

24 A Right.

25 Q Before your testimony, right? While or during the

1 sequestration order, have you talked to the
2 prosecutor or the investigators who have been here
3 in the courtroom?

4 A About the case?

5 Q Yes, sir?

6 A No, sir.

7 Q You've not had any discussions whatsoever?

8 A Except I saw the pictures prior to walking up here.

9 Q Yes, sir. You've had no discussion with
10 Investigator Reese about the testimony that has
11 been exhibited so far?

12 A No, sir, nothing about the testimony.

13 Q He didn't tell you about any missing pages from his
14 report?

15 A (Nods negatively.) There was -- this morning, that
16 was brought up before we came into court.

17 Q Yes, sir.

18 A Upstairs.

19 Q Yes, sir. So before that, I'm not talking about
20 just throughout, I'm just talking about today,
21 you've had conversation about testimony that came
22 out while you were outside of the courtroom?

23 A No, not about the testimony what was in the
24 courtroom. I knew about that before court started
25 this morning.

1 Q So you knew there were missing pages from his
2 report before?

3 A Just this morning when I came, when I reported
4 here.

5 Q Okay. Now, with regards to your investigation, you
6 just testified that as a result of your
7 investigation, you learned Charles Kusko had been
8 killed and you then started meeting with
9 individuals to come up with a list, right?

10 A We work in and work out.

11 Q Yes, sir.

12 A From family, friends, people that --

13 Q You basically --

14 A I didn't anticipate this being -- from previous,
15 working previous cases, I didn't anticipate this
16 being just some random act.

17 Q Yes, sir. Because we know from the coroner's
18 report it wasn't ruled a suicide?

19 A Yeah. It is kind of hard to shoot yourself twice.

20 Q Yeah. So you knew then that it was a homicide?

21 A Yes, sir.

22 Q So in the course of your investigation, you started
23 talking to family and friends to come up with a
24 suspect list?

25 A Right, yes, sir.

1 Q And of that suspect list, Mr. Eaton talked about
2 three individuals, or two individuals, Floyd Owen,
3 Charles Barham, and you didn't mention Jonathan
4 Spires. Do you remember that individual?

5 A Spires was somebody we talked to.

6 Q Yes, sir. He was, in fact, Mr. Kusko's lover at
7 the time, right?

8 A Yeah, they had met -- I'm not sure of the length of
9 time they were together. I know he had been at his
10 house, and stuff like that.

11 Q So he also came up throughout the course of this
12 investigation, right?

13 A Yeah. Well, anybody that came up, ex-boyfriends,
14 we tried to talk to all of them.

15 Q Right. And Floyd Owen's name came up because he
16 was an on-again, off-again lover, and he also was
17 an acquaintance of Charles Kusko, correct?

18 A Right. And there was some kind of disagreement
19 between him and Charles.

20 Q Right. In fact, that agreement was about Charles
21 Kusko basically threatening Floyd Owen to call DSS
22 on his children, right?

23 A That's correct.

24 Q At the time of your investigation and the time that
25 you looked over everything, you found Floyd Owen

1 was married at the time, right?

2 A Uh-huh.

3 Q He had two children?

4 A I'm pretty sure he was married. I know he had a
5 baby mama.

6 Q You knew he had two children?

7 A Right.

8 Q And baby mama was causing some trouble with him and
9 he was concerned if Charles told him about any sort
10 of bad conduct, DSS would get involved, right?

11 A Tell her, yes, sir.

12 Q And he was concerned because that bad conduct was
13 drug use between he and Mr. Kusko?

14 A Right.

15 Q And other things that he and Mr. Kusko had engaged
16 in, right?

17 A Yes, sir.

18 Q And he was concerned about that?

19 A (Nods affirmatively.)

20 Q So immediately Floyd Owen became a suspect, right?

21 A Yeah, he was definitely somebody to look at.

22 Q Now, in 2015, Floyd Owen gave you guys a statement,
23 right?

24 A Yeah, he initially interviewed with -- I didn't
25 initially interview him. I was doing other stuff

1 on the case.

2 Q I think it was Investigator McCoy who actually did
3 the investigation, right?

4 A Yeah, I think he interviewed him.

5 Q And Investigator McCoy worked underneath you,
6 right?

7 A It was side by -- well, I was considered the lead.
8 We all helped each other.

9 Q Sure. And as the lead investigator, all those guys
10 would report to you?

11 A Yes, sir.

12 Q And so he told you about the conversation and
13 interview he had with Floyd Owen, right?

14 A Right.

15 Q At that time, Floyd Owen didn't give any sort of
16 admission into what happened to Charles Kusko,
17 right?

18 A Correct.

19 Q He said he wasn't involved, said that Brandon
20 wasn't involved, said nobody was involved, right?

21 MR. EATON: Objection, Your Honor. We're
22 going to hear from Mr. Owen, so this is hearsay.

23 THE COURT: Sustained.

24 BY MR. MYERS:

25 Q After talking to Floyd Owen, you made no arrests

1 and you had no suspects after that, right?

2 A After, I didn't have enough for an arrest, right.

3 Q Based on that conversation with Floyd Owen, you
4 didn't go and arrest Brandon Barham, right?

5 A Right.

6 Q Because nothing from what Floyd Owen told you
7 incriminated Mr. Barham?

8 A That's correct.

9 Q And nothing in that interview incriminated
10 Mr. Owen, right?

11 A Correct.

12 Q Now, you also talked to Jenny Baker, right?

13 A Right.

14 Q Now, at the time that you talked to Jenny Baker,
15 you said there were a number of times when you had
16 to reach out to her a couple of times, right?

17 A Uh-huh.

18 Q Now, was she -- you had to go to her house, right?

19 A Right.

20 Q She wasn't incarcerated at the time?

21 A Right.

22 Q Now, she later did become incarcerated, right?

23 A I believe so. Yes.

24 Q Was that on your watch or was that on Investigator
25 Reese's watch?

1 A I don't know when she -- when I talked to her, I
2 talked to her at her house.

3 Q Okay. So she wasn't at the Lexington County
4 Detention Center when you talked to her?

5 A No, sir. Her house was somewhere off Broad River
6 Road.

7 Q And at the time of talking to Jenny Baker, you
8 didn't have any evidence that would implicate
9 anybody into this case, did you?

10 A No, sir.

11 Q You didn't make any arrests whatsoever, right?

12 A She didn't provide us with much information.

13 Q Now, you talked about Andrew Kusko. I want to talk
14 about him for a second just so the jury has a good
15 picture. When you were at Budon Court the day they
16 found Charles Kusko's body, you received a phone
17 call indicating that Andrew Kusko was at Columbia
18 Police Department making a report, right?

19 A Yes, sir.

20 Q That report was that he was making one against his
21 brother Charles?

22 A Right.

23 Q The victim, right? So then you went down to City
24 of Columbia at that time and you interviewed him,
25 correct?

1 A I didn't interview him.

2 Q Who interviewed him on that day?

3 A I believe it was McCoy and Montgomery.

4 Q At that time, Andrew Kusko didn't say anything
5 about how he thought his brother had died, did he?

6 MR. EATON: And, again, Your Honor --

7 MR. MYERS: Well, I'll rephrase that. That's
8 fair.

9 BY MR. MYERS:

10 Q As a result of that initial conversation with
11 Andrew Kusko, you had no one that you suspected
12 killed Charles Kusko?

13 MR. EATON: It's a back door to hearsay, Your
14 Honor.

15 THE COURT: What's the question again? One
16 more time.

17 BY MR. MYERS:

18 Q As the lead investigator, your guys underneath you
19 talked to Andrew Kusko, correct? I mean, the day
20 that Charles Kusko was found dead?

21 A Yes, sir. The 8th.

22 Q As a result of that interview, no arrests were made
23 into who killed Charles Kusko?

24 A Accurate. Correct.

25 Q So you learned nothing of value against anybody as

1 a result of talking to Andrew Kusko, right?

2 A Just the reason he was down there.

3 Q All right. Now, that wasn't the first time and the
4 only time -- well, that was the first time. That
5 wasn't the only time that you talked to Andrew
6 Kusko, is it?

7 A Well, I didn't speak to him on that time. I did
8 speak to him -- I think the first time I spoke to
9 him was, I believe it was the 14th, the day after
10 the funeral.

11 Q And, at that time, according to your notes, he
12 showed up with a lawyer, right?

13 A Yes, sir.

14 Q Which you found odd because he hadn't been charged
15 and he showed up with a lawyer, right?

16 A Yes, sir.

17 Q Now, going back to the first time, also, when
18 Mr. Kusko was told about his brother, there's
19 something else in those notes about Mr. McCoy from
20 Investigator McCoy, is it not? He says that Andrew
21 Kusko started making phone calls while he was in
22 the police department, right?

23 A I don't have those notes in front of me. Was it
24 like a statement or it was his case notes?

25 Q I will hand to you some notes here. How about read

1 that paragraph here for me?

2 A The grayed-out part?

3 Q Yes, all --

4 A Or the whole thing?

5 Q The whole thing for context.

6 A So this was on the 8th. These appear to be
7 McCoy -- I think these are McCoy's case notes.

8 Q And you're the lead investigator, McCoy worked for
9 you?

10 A Yes, sir.

11 Q You've seen that throughout the course of your
12 investigation, right?

13 A Right.

14 Q You relied on documents your subordinates gave you
15 to use in your investigation?

16 A Right.

17 Q So you've seen that report?

18 A It was at this time Andrew was brought into the
19 conference room.

20 MR. EATON: Judge, if I understand correctly,
21 this is someone else's notes that he now has the
22 investigator reading, which, again, I object to.

23 MR. MYERS: He's the lead investigator, Your
24 Honor.

25 MR. EATON: It doesn't matter if he's the lead

1 investigator.

2 MR. MYERS: At that time.

3 THE COURT: Let me see you all for a second.

4 (WHEREUPON, a bench conference was held
5 in the presence of the jury but out of
6 the hearing of the jury.)

7 THE COURT: Objection is sustained. Please
8 rephrase the question.

9 BY MR. MYERS:

10 Q Investigator Richbourg, you've had a moment to look
11 over what Investigator McCoy wrote up, right?

12 A Yes, sir.

13 Q And without asking you to read it verbatim, are you
14 familiar with the conclusions he made after talking
15 with Andrew Kusko?

16 A Right. His opinions?

17 Q Right.

18 A Yes, sir.

19 Q Kind of odd, wouldn't you say?

20 A Yes, sir.

21 Q Very odd, considering the statements and
22 considering what he says Mr. Kusko told him?

23 A Yes, sir.

24 Q Now, you talked about him -- I'm going to roll this
25 out real quick because I want to take a look at it.

1 While Mr. O'Reilly is bringing that out, the video
2 footage from Zesto's shows several vehicles in this
3 timeframe, right?

4 A Yeah. I don't remember the exact number.

5 Q Now, according to your testimony, Brandon Barham
6 was driving a Chevy truck, right?

7 A Right.

8 Q That you later found out?

9 A Right.

10 Q A white one?

11 A Right.

12 Q During the course of your investigation, you found
13 out that Andrew Kusko was driving a white Blazer,
14 correct?

15 A Right.

16 Q Now, come on down, if you don't mind, sir.

17 (Witness steps down.)

18 Q I want to first start off, I think you testified
19 that this is the white truck?

20 A Right, right, right. The timeframe, yes, sir.

21 Q I want to orient you to this. This road here, this
22 is Zesto's, right? This is Harrison?

23 A Yes, sir.

24 Q Right? Budon would be over here to the left,
25 right?

1 A Correct.

2 Q The street that you couldn't remember the name to,
3 that's actually Bagnal, is it not?

4 A Yes, kind of catty, across the street.

5 Q So then this truck turns away from Budon, right?

6 A Yes, sir.

7 Q We can keep this going, but there's nothing to
8 suggest -- did you ever see this vehicle park?

9 A You can't tell what it's doing up there. The next
10 one shows the time, I think it's 5:11 when it comes
11 out.

12 Q We'll get to that. Let's go to that one.

13 A I think it's -- 5:10, sorry. So the other one was
14 5:05. That was before they turned.

15 Q So we're talking roughly under a 5-minute ordeal?

16 A Yes, sir.

17 Q That you see this truck, not turn onto Budon, but
18 go over to Bagnal?

19 A Right.

20 Q Did any surveillance video pick up any individuals
21 walking from this area across Harrison to Budon?

22 A From here, that way, you can't really -- it's not
23 legible.

24 Q Did any witnesses during the course of your
25 investigation report that, We saw an individual or

1 individuals walking across?

2 A No, sir.

3 Q So if we play this, can you tell how many
4 individuals are occupying that vehicle?

5 A No, sir.

6 Q Can you even see the license plate?

7 A (Nods negatively.)

8 Q Other than it being a white truck, is there
9 anything else you can tell?

10 A The lights are on.

11 Q Not from what I can see.

12 A You can't tell from this distance.

13 Q At this point, just narration, do you see anybody
14 getting out of the truck?

15 A No, sir.

16 Q Do you see anybody making attempts to go over to
17 Budon?

18 A (Nods negatively.) I believe when it comes out, it
19 turns right, which would be towards Budon, back
20 behind Budon on Harrison. That goes towards Two
21 Notch Road, if you're familiar with that.

22 Q Did you ever see any brake lights engage?

23 A No, sir.

24 Q Any evidence that that vehicle stopped?

25 A Not from the last place you could see it, no, sir.

1 Q Yes, sir. So there's nothing on this video other
2 than it being a white vehicle that says that that
3 was even Brandon Barham's vehicle?

4 A Right.

5 Q Nothing to even put Brandon Barham behind the wheel
6 of that vehicle?

7 A No, sir.

8 Q Have a seat.

9 (Witness returns to witness stand.)

10 Q Now, you previously testified there were a number
11 of vehicles along Budon in that area at the time,
12 right?

13 A I'm not sure how many vehicles. I don't believe
14 those were the only two.

15 Q Right. There were several vehicles, right? And
16 you previously testified that Andrew Kusko was
17 driving a white Blazer, right?

18 A Yes, sir.

19 Q I'm going to hand to you a document --

20 MR. MYERS: First I've got to get it marked.
21 Defense Exhibit 1.

22 (WHEREUPON, Defendant's Exhibit No. 1
23 was marked for identification only.)

24 A I believe it was an older model white Blazer at the
25 time.

1 Q First, before we get started, I want to orient you.
2 This appears to be Zesto's, right?

3 A Yes.

4 Q This appears to be -- what time does that read to
5 you?

6 A 4:53.

7 Q This would have been after you say that you saw
8 Mr. Charles Kusko's vehicle go towards his house,
9 right?

10 A Uh-huh.

11 Q And this would have been before you saw the white
12 vehicle, right?

13 A Right.

14 Q Does this not appear to be a white Chevy Blazer?

15 A It's either a Chevy Blazer or an Envoy, but I
16 believe his was a old square body.

17 Q Are you sure about that?

18 A I'm not positive. I think his was older, but I'm
19 not positive.

20 Q In this photograph, this certainly could be a white
21 Chevy Blazer?

22 A Could be.

23 Q Did you know -- did you see -- have you seen this
24 video before?

25 A Uh-huh.

1 Q You didn't think anything of it?

2 A Not the -- no, sir.

3 Q So, knowing that you talked to Andrew Kusko,
4 knowing that he was identified as a suspect,
5 knowing that he had driven a white Chevy Blazer,
6 and knowing that you see one there, you've taken no
7 steps to tell this jury that, Hey, in addition to a
8 white truck, there was also a white Chevy Blazer?

9 A Yeah. I wasn't asked that, but, yes.

10 Q Thank you. Now, you talked about Brandon and you
11 talked about the funeral that happened on the 13th
12 of September, right?

13 A Yes, sir.

14 Q And you made mention about the individuals that
15 were present at the funeral and the individuals
16 that were not present at the funeral?

17 A Yes, sir.

18 Q Now, Brandon came in on September 10th and gave you
19 a statement, right?

20 A Yes, sir.

21 Q He denied any involvement, right?

22 MR. EATON: Objection.

23 THE COURT: Let me see you all. What's the
24 objection? Let me see you all.

25 (WHEREUPON, a bench conference was held

1 in the presence of the jury but outside
2 the hearing of the jury.)

3 THE COURT: Objection sustained.

4 Please disregard the last question and answer.

5 BY MR. MYERS:

6 Q Now, the funeral in this case was September 13th,
7 right?

8 A Yes, sir.

9 Q At the time Mr. Barham came in, he was arrested,
10 wasn't he?

11 A After the interview of the arrest warrant.

12 Q It had nothing to do with this case?

13 A Huh-uh.

14 Q In fact, it was from a Department of Natural
15 Resources warrant for a floatation device, he
16 didn't pay the fine?

17 A Yeah, I think it was for not wearing a life jacket.

18 Q Are you aware that he -- that it took him two days
19 to bond out as a result of that arrest?

20 A I'm not sure of the exact time, but he bonded out.

21 Q Are you aware that during your investigation that
22 Mr. Barham believed that the funeral was actually
23 on the 12th of September?

24 A A lot of people tell me a lot of things during an
25 investigation, but that's what I was told.

1 Q That's right. That's why you got to do some
2 independent investigation regardless of what people
3 tell you, right?

4 A Right.

5 Q Because people can always lie about things, right?

6 A Uh-huh.

7 Q Now, with regards to that, the fact that he didn't
8 show up at the funeral could suggest it was as a
9 result of his arrest, right?

10 A Potentially.

11 Q You never tracked him once you arrested him, did
12 you?

13 A Right.

14 Q Once you arrested him, you didn't know whether or
15 not there were any other holds or any other
16 impediments to him getting out?

17 A I think he did have a hold.

18 Q And that hold didn't allow him to immediately be
19 released?

20 A He wasn't released that day.

21 Q Right. So the fact --

22 A It was 10:00 o'clock at night, I think.

23 Q Go ahead.

24 A I think it was like 10:00 o'clock at night.

25 Q Longer than that, but -- so the fact that he didn't

1 show up at the funeral wasn't any indication that
2 he was a murderer, right?

3 A No.

4 Q It wasn't any indication that he --

5 A I had stuff that I needed to look at.

6 Q Yes. Didn't have any indication that he had
7 anything to do with his uncle's death, right?
8 Right?

9 A Right.

10 Q Now --

11 A It just raised suspicion being so close. They
12 worked together and hung out together, and stuff,
13 so.

14 Q Now, you talked about how people will lie and say
15 certain things, which is why it's important you
16 need to do independent investigation. There is no
17 forensic evidence tying Brandon Barham to Charles
18 Kusko's murder, is there?

19 A No, sir.

20 Q There is no forensic evidence tying him to the
21 murder, is there?

22 A No, sir.

23 Q There's no partial DNA prints, no fingerprints from
24 Brandon Barham, right?

25 A Right.

1 Q And as a result of your investigation, you made
2 absolutely no arrest?

3 A I did not.

4 MR. MYERS: Thank you. No further questions.

5 MR. EATON: Beg the Court's indulgence one
6 moment, please, Your Honor.

7 (Pause.)

8 REDIRECT EXAMINATION

9 BY MR. EATON:

10 Q Investigator, sir, would you say that yours was a
11 complete investigation?

12 A Up to that point.

13 Q And then, at that point, was it complete?

14 A It's not complete until we find out what happened,
15 so it wasn't complete.

16 Q So it was incomplete at that point?

17 A Right.

18 Q When you left the Columbia Police Department?

19 A Yes, sir.

20 MR. EATON: Thank you. No further questions.

21 RECROSS-EXAMINATION

22 BY MR. MYERS:

23 Q You did the best you could during this
24 investigation, did you not?

25 A I always try to do my best, sir.

1 Q You didn't halfway do it, right? So when he says
2 incomplete, everything that you did was with your
3 best foot forward?

4 A Up until I got rid of the case -- or not got rid of
5 the case, it got transferred to another
6 investigator.

7 MR. MYERS: Thank you. No further questions.

8 THE COURT: All right. You may step down,
9 Officer.

10 THE WITNESS: Thank you, Your Honor.

11 (Witness steps down.)

12 MR. CONRAD: Your Honor, may we approach prior
13 to the next witness?

14 THE COURT: Yes.

15 (WHEREUPON, a bench conference was held
16 in the presence of the jury, but out of
17 the hearing of the jury.)

18 MR. CONRAD: The State calls Andrew Kusko.

19 (Witness approaches.)

20 THE COURT: Let me see you all one second.

21 (WHEREUPON, a bench conference was held
22 in the presence of the jury but out of
23 the hearing of the jury.)

24 THE COURT: Go ahead.

25 THE CLERK: State your full name, please.

1 THE WITNESS: Andrew Kusko, II.

2 THE CLERK: Would you spell your last name,
3 please?

4 THE WITNESS: K-U-S-K-O.

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right.

7 (Witness complies.)

8 THE CLERK: Do you solemnly swear to tell the
9 truth, the whole truth, and nothing but the truth,
10 so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Have a seat.

13 (Witness seated.)

14 THE COURT: All right. Yes, sir?

15 MR. CONRAD: Thank you, Your Honor. May it
16 please the Court?

17 ANDREW KUSKO, II,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CONRAD:

21 Q Good afternoon, Mr. Kusko.

22 A Good afternoon.

23 Q Make sure you speak up into the microphone so the
24 court reporter can take down what you have to say.

25 A Yes, sir.

1 Q Mr. Kusko, are you related to the victim in this
2 case, Charles Kusko?

3 A Yes.

4 Q How are you related?

5 A He's my younger brother.

6 Q He's your younger brother. And you and Charles
7 grew up in the same household, is that correct?

8 A Yes, sir.

9 Q And the Defendant in this case, Charles Brandon
10 Barham, do you know that individual?

11 A Yes.

12 Q How do you know him?

13 A He's my nephew.

14 Q He's your what, I'm sorry?

15 A He's my nephew.

16 Q And Charles Brandon Barham's mother is who?

17 A My sister.

18 Q What's her name?

19 A Karin Jean Barham.

20 Q Mr. Kusko, where do you currently live?

21 A In Ridgeway, South Carolina.

22 Q How long have you lived there?

23 A For the last 20 years.

24 Q And are you currently married, sir?

25 A Yes, sir.

1 Q Do you have any children?

2 A A stepdaughter.

3 Q And how long have you lived in the Ridgeway or
4 Columbia area in general?

5 A Since '75.

6 Q And Charles Kusko, your brother, how long had he
7 lived in the Columbia area?

8 A Since '75, since we come back from Germany.

9 Q And, Mr. Kusko, obviously you have known your --
10 you knew brother for a long time, is that correct?

11 A Yes, sir.

12 Q And your relationship with Charles Kusko, how would
13 you describe it over the course of your two lives?

14 A A brotherly relationship, up and down, typical
15 siblings.

16 Q All right. So you've had disagreements with
17 Charles before, correct?

18 A Yes, sir.

19 Q Have you and your brother been able to settle those
20 disagreements in the past?

21 A Always.

22 Q Okay. You mentioned Brandon's mother, Karin, is
23 that correct?

24 A Yes.

25 Q Okay. And Karin, which is both you and Charles's

1 sister, does she have any disabilities or is she a
2 functioning adult? Can she take care of herself?

3 A No.

4 Q And why not?

5 A She is medically disabled.

6 Q And, because of that, does she need caregivers?

7 A She does.

8 Q And have you been a caregiver in the past?

9 A For a short brief time, yes, sir.

10 Q Has Charles Kusko been a caregiver?

11 A Yes, sir.

12 Q Has Brandon Barham been a caregiver?

13 A Yes, sir.

14 Q And as a result of this disability, did Karin
15 receive any payments or monies, or anything like
16 that?

17 A Social security.

18 Q And could she be trusted to handle that social
19 security by herself?

20 A According to social security, no.

21 Q And so she needed someone to help handle her money,
22 is that correct?

23 A Yes, that's correct.

24 Q And when we said -- when I asked you a minute ago
25 about, you know, Charles and yourself and Brandon,

1 and probably some others, who have been caregivers
2 in the past, did that include taking care of her
3 money?

4 A Yes, sir.

5 Q And, in fact, between -- other than the three we've
6 mentioned, Charles, yourself, and Brandon, who else
7 has been a caregiver for Karin in the past that you
8 know of?

9 A My oldest sister, which takes care of my father
10 right now, and my oldest brother, Frank.

11 Q Okay. Going back to Labor Day weekend of 2015, do
12 you recall that weekend?

13 A Yes.

14 Q Okay. On that Friday, to the best of your
15 knowledge, who was the caregiver for Karin that
16 day?

17 A Charles.

18 Q Charles. Okay. And you had been caregiver for her
19 sometime previous to that, is that correct?

20 A After.

21 Q After?

22 A Uh-huh.

23 Q Had you been caregiver for her any time prior to
24 September 4th?

25 A No.

1 Q And sometime prior to September 4th, 2015, did you
2 receive a call from Floyd Owen?

3 A Yes.

4 Q And was the subject of that call Karin?

5 A It was about Karin's things, yes.

6 Q And as a result of that call, did you decide to
7 take any action? I mean, did you do anything after
8 you received the call from Floyd Owen about Karin's
9 things?

10 A That night? No.

11 Q Okay. On September 4th, during the day, did you do
12 anything? September 4th, 2015, which was Friday?

13 A I rode over there to Budon Court to verify that the
14 furniture was actually sold.

15 Q Okay. So there was some furniture of Karin's that
16 you were concerned about?

17 A A couch and a chair in question.

18 Q And whose possession, to your knowledge, was it in
19 prior to September 4th, 2015, that furniture?

20 A Charles.

21 Q Charles. Okay. And you were concerned that some
22 of this furniture had been, did you say sold?

23 A Yes, sir.

24 Q All right. And who did you approach or talk to
25 when you first got to Budon Court on September 4th?

1 A There was some type of city refuge man out front,
2 and I spoke with that gentlemen. What I
3 understand, he was there to collect money from
4 Charles for removing some debris.

5 Q And I'm going to stop you there. But you conversed
6 with him. At any point, did you approach Charles's
7 house and talk to him directly?

8 A No, sir.

9 Q So you talked to, you said some sort of city
10 employee. Was there anybody else you talked to
11 directly while you were there?

12 A The police that showed up.

13 Q Did you -- do you recall telling an investigator in
14 this case that you might have talked to the
15 neighbor at some point?

16 A I did. The gentleman at the house while I was
17 there and questioned.

18 Q And, at some point, did the police show up?

19 A They did.

20 Q And did you call the police?

21 A No, sir.

22 Q To your knowledge, who called the police?

23 A Charlie.

24 Q And at any point was there any physical fight
25 between you and Charlie or anybody else that day?

1 A No.

2 Q And as a result of the police coming out, did they
3 take any action?

4 A They did.

5 Q What did they do?

6 A They put me on no trespassing notice.

7 Q Okay. Was that on their own or do you know --

8 A Actually, I had to walk up to Charlie, is what the
9 officer asked me to do, walk up to my brother, not
10 say anything, just listen to what he had to say, so
11 I did. And he put me on no trespass notice. And
12 at that point in time, the officer released me to
13 leave.

14 Q Okay. So you were put on no trespass notice by
15 your brother. And did you have any contact with
16 Charles at all over that following weekend, the
17 Saturday or Sunday or the Friday?

18 A No, sir.

19 Q After that Friday, when you were there when the
20 police responded, did you go back to Budon Court at
21 all?

22 A No, sir.

23 Q All right. I'm going to direct your attention to
24 the following Tuesday, which was September 8th. Do
25 you recall that?

1 A Yeah, that was the day after Labor Day.

2 Q Okay. So you said Labor Day was that Monday,
3 correct?

4 A Correct.

5 Q What did you do on Tuesday, September 8th?

6 A I went and got my sister, Karin.

7 Q Okay.

8 A And I took her to CPD, to the headquarters.

9 Q Okay. You took your sister, Karin, to Columbia
10 Police Department headquarters?

11 A Yes, sir.

12 Q At this point in time, you testified -- you just
13 testified you did not go back to Charlie's house
14 that entire weekend, correct?

15 A Correct.

16 Q At this point in time, what was your purpose in
17 going to police headquarters on September 8th?

18 A To make a report.

19 Q And did you know or had anybody informed you that
20 your brother Charlie was dead that Tuesday morning
21 before you arrived at Columbia Police Department?

22 A No, sir.

23 Q And you said you were going to make a report. What
24 did you intend to report to the Police Department?

25 A I intended to report that my brother was taking

1 advantage of my sister's property and her funds.

2 Q Okay. And this would involve the furniture that
3 you were concerned about on Friday?

4 A Correct. And money.

5 Q Did it involve anything else?

6 A Money.

7 Q Can you elaborate a little bit what money we're
8 talking about?

9 A \$38,000, almost \$39,000.

10 Q And to your knowledge, what happened -- was it your
11 sister Karin's money, is that correct?

12 A It was.

13 Q To your knowledge, what happened to that money?

14 A It was spent over the course of 24 days.

15 Q By who?

16 A I'm assuming Charlie, because it was all taken out
17 by him in cash.

18 Q And, according to you, I believe you testified a
19 while ago that during that timeframe Charlie was
20 responsible for taking care of Karin, is that
21 correct?

22 A Yes, he was.

23 Q So he would have had control of Karin's money?

24 A Yes.

25 Q Okay. So there was, you said, about \$38,000 that

1 was missing as a result of that?

2 A Yes, in a short period of time.

3 Q Okay. And you testified a little while ago, Karin
4 is Brandon's mother, is that right?

5 A That's correct.

6 Q And do you know whether Brandon knew about that
7 missing money?

8 A He did.

9 Q And did he suspect as you suspected, that Charlie
10 was responsible?

11 A Yes.

12 Q Okay. All right. So you get to the Police
13 Department on Tuesday, September 8th, to report
14 that. And actually -- you know, why did you --
15 this first incident occurred on September 4th, on
16 Friday. Why did you choose to go down there on
17 that particular Tuesday? Can you elaborate that,
18 why you chose Tuesday, September 8th, to go report
19 this?

20 A Well, I just came back from a doctor's appointment
21 Friday, and I had my wife actually take me by there
22 because, I mean, I wasn't feeling too good. I
23 mean, I had a plate and six screws put in my neck.

24 Q And you're talking about Budon Court on Friday,
25 correct?

1 A Yes. Yes. I came from the doctor's appointment
2 and I asked her to drive me by there.

3 Q I guess what I'm asking is, you know, why did you
4 not go, say, on Monday, the 7th, to report this?

5 A On Monday?

6 Q Correct.

7 A Because it was Labor Day. I didn't think the
8 police department was open on Monday.

9 Q Okay. And that's why you waited until
10 September 8th?

11 A Yes.

12 Q All right. And so you go in to report to the
13 police about this missing money and the issue with
14 the furniture. And what happens when you get to
15 the police department headquarters?

16 A They had me there for an unusually long time just
17 to make a report. They showed me a picture of my
18 brother, asking if that was him, and I identified
19 him. They still didn't tell me what was going on.

20 Q Did you give a full -- a statement regarding the
21 money and the furniture to the police?

22 A I did.

23 Q And that occurred before or after you found out
24 about your brother's death?

25 A That was before.

1 Q And at some point you were talking to police about
2 this? And did anyone else come to talk to you
3 while you were at police headquarters?

4 A The assistant coroner.

5 Q Okay. And what did the coroner tell you when you
6 --

7 A He told me that my brother was deceased.

8 Q Okay. And that was sometime on September 8th. And
9 that was the first time you found out, is that
10 correct?

11 A That's correct.

12 Q And did you continue to give a statement after you
13 found out your brother was dead to the police
14 department?

15 A No. I think at that point, that part of it
16 stopped. It was about, you know, what happened to
17 Charlie.

18 Q Okay. And you stayed there freely and voluntarily
19 and you continued to ask questions, is that
20 correct -- answer questions, excuse me?

21 A Yes, sir.

22 Q In fact, you've been back to the police department
23 several times to talk to the police, is that
24 correct?

25 A Yes, sir.

1 Q And each time, did you come back freely and
2 voluntarily?

3 A Yes, sir.

4 Q And why did you freely and voluntarily come back to
5 talk to the police department?

6 A Because I didn't do anything wrong.

7 Q And was there a purpose?

8 A It was.

9 Q Of why you wanted to continue to cooperate with the
10 police department?

11 A There was.

12 Q What was that purpose?

13 A I had some key information that could probably help
14 them.

15 Q I'm sorry?

16 A I had some information that could probably help
17 them in this investigation.

18 Q And that information was regarding what? We're not
19 going to get into details yet, but what was it
20 regarding?

21 A Regarding a weapon that I saw.

22 Q Okay. Was it your purpose in continuing to talk to
23 the police department that you wanted to cooperate
24 with the police department to find Charlie's
25 killer? Is that correct?

1 A Yes, sir.

2 Q And, you know, you testified about some of the --
3 you know, you had this grievance with Charlie, but
4 was that grievance enough to cause you to want to
5 actually go and do anything, take any action
6 directly, physical action against your brother?

7 A No, sir.

8 Q Okay. You said you had some information to give to
9 the police department about some things. I'm going
10 to direct your attention to about a week prior to
11 Charlie's death. Did you have a chance to come
12 into contact with the Defendant in this case,
13 Brandon Parham?

14 A I did.

15 Q Okay. Can you describe to the jury the situation
16 and what occurred when you came into contact with
17 Brandon about a week prior?

18 A He came to my house that Sunday prior to this
19 happening -- before this happening. He came to my
20 house the Sunday before this happened, so I could
21 help him put a fuel pump in his truck because he
22 was having issues with his truck.

23 Q Okay. And I am going to show you something.

24 MR. CONRAD: I beg the Court's indulgence.

25 (Pause.)

1 BY MR. CONRAD:

2 Q I am going to show you what has been marked as
3 State's Exhibit 134. What does that appear to be,
4 sir?

5 A That looks like the truck that he was driving.

6 Q All right. What kind of truck do you see in that
7 picture?

8 A It's a Chevrolet.

9 Q And what kind of truck did Brandon -- did he bring
10 over to your house to fix the fuel pump?

11 A This same model.

12 Q Okay. What model is that?

13 A It is a, looks like a 1500 series Chevy pickup
14 truck.

15 Q Okay. Does that truck in the picture have a long
16 bed or a short bed?

17 A It has got a long bed.

18 Q Does Brandon's truck that he brought to your place,
19 does it have a long bed or a short bed?

20 A I believe it had a long bed.

21 Q And was it a 1500?

22 A I believe it was.

23 Q Did it look, if not exactly similar, very similar
24 to the truck in that picture?

25 A It does, minus the dents, because there was some

1 dents in it.

2 Q So there was some cosmetic issues with Brandon's
3 truck, but otherwise it looks very similar to that
4 truck?

5 A Yes, sir.

6 Q What color was Brandon's truck?

7 A White.

8 Q What color is that truck in the picture?

9 A White.

10 Q Okay. So aside from some cosmetic issues, that
11 truck is very similar, if not identical to
12 Brandon's truck?

13 A Yes, sir.

14 Q So he was there to have you fix his fuel pump, is
15 that correct?

16 A Yes, sir.

17 Q And was that a common thing? Would he come out to
18 your place -- this was in Ridgeway?

19 A Yes, sir.

20 Q Would he come out there to get you to work on his
21 truck, is that a common occurrence?

22 A This was -- no, first time.

23 Q Okay. And so you worked on his fuel pump and got
24 that changed on Sunday. At any point during that
25 work, did you come across anything in Brandon's

1 truck or did he show anything to you that was in
2 his truck?

3 A Yes, he did.

4 Q Okay. What did he show you?

5 A He took a black folder out of his truck to show me
6 some estimates for some construction jobs that he
7 was bidding on, because I used to do that kind of
8 work and he was wanting to see if he was in line
9 with his estimates. And he laid this black zip-up
10 bag on a fish stand, a black fish stand that I had
11 in my garage. And when he opened it up, I noticed
12 there was a gun sitting there. So I reached down
13 and grabbed it. And, immediately, when I grabbed
14 it, he took it from me and he took the clip out of
15 it. He pulled the bolt back and a round flew out
16 and hit my floor. So I reached down and picked it
17 up and looked at it and asked him was it a .40
18 caliber. And he said, no, it was a .45. So he
19 handed me the clip, I put the first round back in
20 it. I handed him the clip, he handed me the gun.
21 I looked at the gun, handed it back to him. He put
22 the clip back in, put it in there, closed it up and
23 put it back in his truck. Never showed me one
24 estimate.

25 Q Okay. Now, you described this gun. I believe you

1 said he ejected the magazine out of the handle, is
2 that correct?

3 A He did.

4 Q So would it be fair to describe this gun as an
5 automatic?

6 A Yes, sir.

7 Q What color was it?

8 A Silver. Chrome.

9 Q Okay. Did you happen to get a look at the brand
10 name, or anything of that nature?

11 A I didn't.

12 Q But Brandon told you it was a .45 caliber, is that
13 correct?

14 A He did.

15 Q And did you get a look at the bullet up close at
16 all?

17 A Briefly, I did.

18 Q Briefly? Did you happen to read any markings on
19 the bullet -- on the shell?

20 A I did not. It just looked like a .40 caliber.
21 Because I've had a .40 caliber before, so, I mean,
22 the bullet looked big to me. He told me it was a
23 .45. I took his word for it.

24 Q Did you -- you didn't read anything on the
25 headstamp of that shell casing. Can you describe

1 the rest of the bullet to the best of your memory
2 at all?

3 A Yeah. It had a cut-out in the top and had some red
4 paint around the top of it.

5 Q Okay. And was it sharp? Did it come to a tip?

6 A No. It was kind of a flat top with a hole in it.

7 Q Okay. So this was the Sunday prior to Charlie's
8 murder, is that correct?

9 A That's correct.

10 Q During the rest of that week, did you have any
11 occasion to talk to Floyd Owen?

12 A I think I did a couple of times.

13 Q In person?

14 A No. Over the phone.

15 Q Over the phone, okay. Is it possible that you may
16 have talked to him on September 4th, that Friday,
17 at some point on the phone?

18 A The Friday of the weekend that this happened?

19 Q Yes.

20 A Yes, I did.

21 Q And did Floyd express to you -- let me ask you
22 this. Did the topic of Charles Kusko come up
23 during the conversation with Floyd?

24 A Yes.

25 Q Was Floyd happy with Charles Kusko?

1 A No, he was not.

2 Q And during that week, did you have -- prior to
3 September 4th, or including September 4th, did have
4 any occasion to talk to Brandon Barham?

5 A I did. I talked with Brandon a lot on and off.
6 He's my nephew.

7 Q Did he come out to your house at any point after
8 that Sunday prior to the next week before Charlie's
9 death?

10 A Not that I can recollect.

11 Q And did you and Brandon have any conversations
12 about Charles Kusko?

13 A We did that weekend.

14 Q The weekend prior to Charlie's death?

15 A Yes, and the weekend after.

16 Q What did you and -- when he was at your house to
17 get his truck fixed?

18 A Yes.

19 Q What did you and Brandon discuss about Charles?

20 A Just his ways. And Brandon said he has to find
21 somebody to beat Charlie up, that's what he was
22 telling me. It had to be somebody Charlie didn't
23 know, he said. That's what he said to me.

24 Q And did Brandon tell you why he was upset with
25 Charlie, why he might want to do that?

1 A Because Charlie owed him a bunch of money.

2 Q And we're talking about that money, Karin's money?

3 I'm sorry, so we're not talking about Karin's
4 money?

5 A No. No.

6 Q When you say Charlie owed him a bunch of money,
7 what do you mean?

8 A From working on some jobs.

9 Q So Brandon expressed to you that Charlie owed him
10 money?

11 A Yes, he did.

12 Q That would be above and beyond this money that was
13 in dispute with Karin, is that correct?

14 A That's correct.

15 Q Did he discuss an amount, or do you recall at all
16 how much Charlie owed him?

17 A To the best of my recollection, it was \$5,000.

18 Q And this conversation occurred when he was at your
19 house on Sunday prior to Charlie's death?

20 A Yes.

21 Q All right. So, I believe you said that you talked
22 to Floyd on Friday, September 4th, on the phone.
23 Do you recall Saturday, September 5th? Did you
24 have any conversation with Floyd on the phone or
25 otherwise?

1 A I might have. I might have. I talked to both of
2 them boys.

3 Q Would you disagree if I told you that you talked to
4 Floyd on the phone right at around 8:17 p.m. on
5 Saturday, September 5th?

6 A No, I wouldn't disagree.

7 Q Okay. Do you recall that conversation at all?

8 A Not really. I mean, I don't recall it.

9 Q Do you recall the length?

10 A It might have been 15 minutes.

11 Q Okay. But you don't recall the content of that
12 conversation?

13 A I don't.

14 Q Did Charlie Kusko come up at all to your best
15 recollection during that conversation?

16 A That's what it was about, basically, was Charlie.

17 Q All right. So this was about 8:17 p.m., I believe
18 I said, on September 5th, Saturday September 5th.
19 Do you recall where you were when you were on the
20 phone with Floyd during this conversations?

21 A Yes.

22 Q Where were you?

23 A I was either in my garage or walking around in
24 front of it.

25 Q Okay. And your garage, where is your garage?

1 A It's right behind my house.

2 Q Is this in Ridgeway?

3 A It's in Ridgeway.

4 Q And you talked to him, you say, for maybe 15
5 minutes, but you're not sure, right?

6 A Yes.

7 Q Okay. And then after that phone call, what did you
8 do that night?

9 A I was working on a vehicle that was in my shop.

10 Q Okay. And are you a mechanic by trade?

11 A I am. I'm a certified technician.

12 Q And you had somebody's vehicle in your shop to work
13 on?

14 A I did.

15 Q Do you recall -- so you're still working at
16 8:17 p.m., right?

17 A Yes.

18 Q How late did you work that night in your shop?

19 A I went in the house, I think it was like 2:10 or
20 2:15 that morning.

21 Q Okay. And was anybody else home with you at that
22 point?

23 A My wife and my daughter was home.

24 Q And were they still awake whenever you came in at
25 2:15?

1 A I don't know. I don't bother them when I come in
2 that late.

3 Q Okay. Andrew, what kind of vehicle were you
4 driving during this timeframe?

5 A I was driving a '98 S-10 Blazer?

6 Q '98 S-10 Blazer. What vehicles -- did your family
7 own any other vehicles? Did your wife own a
8 vehicle at that point?

9 A She did.

10 Q What kind of vehicle?

11 A A '98 Mitsubishi Eclipse.

12 Q You said your daughter lived with -- or your
13 stepdaughter lived with you at that time?

14 A She did.

15 Q Did she own a vehicle?

16 A She did.

17 Q What did she drive?

18 A It was a '92, I think, a 240SX Nissan.

19 Q And, during this time, when you had to drive
20 somewhere, what vehicle would you typically take?

21 A My Blazer.

22 Q Okay. But your testimony today is that you went to
23 bed about 2:15 a.m.?

24 A Yes, sir.

25 Q I'm going to show you what has been marked as

1 Defense Exhibit 1. Can you take a look at that,
2 sir?

3 A Uh-huh.

4 Q What do you see?

5 A It looks like a Chevy Blazer.

6 Q Is that your Chevy Blazer?

7 A It ain't my Chevy Blazer.

8 Q Okay. What time do you say on that time stamp?

9 A It's 53 -- 4:53 a.m.

10 Q And at that time -- this is September 6th, which
11 would have been that Sunday, correct?

12 A Correct.

13 Q Where were you?

14 A I was at home in bed.

15 Q So is this or is this not your Chevy Blazer?

16 A It's not my Chevy Blazer.

17 Q And can you tell with absolute certainty what kind
18 of vehicle that is? Are you 100 percent certain?

19 A I mean, it looks like a Chevy Blazer. I mean, it
20 looks like a white Chevy Blazer.

21 Q Could it be a different type of vehicle?

22 A It could be. It could be a GMC Sonoma.

23 Q Okay.

24 A Because they look alike. It's the grill that tells
25 them apart.

1 Q And do you recognize this location where this video
2 is?

3 A I'm looking.

4 Q If you don't, it's okay.

5 A I don't know -- no, I don't recognize the location.

6 Q All right. Okay. Let's talk about that Sunday
7 morning. You said you went to bed about 2:15 a.m.
8 What time did you wake up?

9 A Probably 9:00 o'clock, 9:30.

10 Q What did you do that day during Sunday, the 6th,
11 after you woke up?

12 A I had to get up and get the vehicle ready to come
13 out my garage because the people that owned it were
14 coming to pick it up.

15 Q About what time did they come pick it up?

16 A About 12:00, 12:30.

17 Q And during that day on Sunday, did Brandon Barham,
18 did you have any contact with him?

19 A I did.

20 Q And how did you come in contact with Brandon Barham
21 on September 6th?

22 A He came over.

23 Q Do you recall about what time he came over?

24 A It was about -- to the best of my recollection, it
25 was somewhere between 12:30 and 1:30.

1 Q Okay. He was there -- he got there at 12:30,
2 \$1:30, you mean, p.m.?

3 A Yes, sir, right in the afternoon.

4 Q In the afternoon? Okay. And why did he come over
5 that afternoon?

6 A I don't know. He came there to hang out for some
7 reason.

8 Q Was that a typical thing where he would come to
9 your house to hang out?

10 A No, it was not.

11 Q So did it strike you as unusual that he showed up
12 that afternoon?

13 A Not me. My wife.

14 Q But you just testified that it was not a normal
15 thing, correct?

16 A Correct.

17 MR. BELL: Objection, leading.

18 THE COURT: Sustained.

19 Q So he came to hang out, correct?

20 A Correct.

21 Q And when you say hang out, what do you mean?

22 A If Brandon comes to hang out, he's got an ulterior
23 motive as to why he's coming to hang out. It just
24 wasn't to spend time with me. He had a reason for
25 hanging out there that day. I didn't know what it

1 was at the time, but I figured it out.

2 Q Okay. Well, I mean, was he there to get his truck
3 worked on again?

4 A No.

5 Q Did he drive -- which truck did he drive? What
6 vehicle did he arrive in?

7 A That same white vehicle.

8 Q That Chevy 1500?

9 A Yes.

10 Q That you got a picture of that's very similar
11 there?

12 A Yes.

13 Q Was he there to ask your advice -- I think you said
14 he might have asked you some advice about some
15 contracting issues the week prior. Was he there to
16 do that?

17 A No.

18 Q So tell us what you and Brandon did the rest of
19 that day.

20 A Basically, he hung out with me all day. We left
21 the house, I don't know, around 7:00 o'clock that
22 night to go to Lowe's to buy some lighting to hang
23 three lights up in my shop. And he also hung a
24 flag up in my shop for me, because I asked him to
25 hang the American flag up that I had while he was

1 hanging the lights.

2 Q Okay. And I assume you and Brandon had some
3 conversations during this time?

4 A We did.

5 Q Did the topic of Charles Kusko come up?

6 A It did.

7 Q And, to your knowledge -- you had no contact with
8 Mr. Kusko from that prior Friday, right?

9 A That's correct.

10 Q What did you and Mr. Brandon talk about in regards
11 to Kusko, Charles Kusko?

12 A I don't know how we got on the subject of talking
13 about him, but Brandon was on the ladder actually
14 hanging that flag up. And he told me that somebody
15 was going to kill my brother.

16 And I said -- I looked up at him and I said,
17 Yeah, I know somebody is going to kill him.

18 And he looked at me, he looked at me hard, and
19 he said, No, somebody is going to kill your
20 brother.

21 And that ended that conversation.

22 Q Okay. How late did Brandon stay at your house?

23 A Till 2:00 o'clock that morning.

24 Q And him leaving that early hours, is that a normal
25 thing?

1 A No, it wasn't a normal thing.

2 Q And during that day, did you happen to see Floyd
3 Owen at all?

4 A No.

5 Q And do you recall talking to Floyd at all that
6 Sunday?

7 A I don't have a recollection of it, no.

8 Q Okay. So that was Sunday. The Monday, which was
9 Labor Day, can you tell us what you did on Monday,
10 September 7th, which was Labor Day, 2015?

11 A Basically same, hung out around my house. Wasn't
12 too much I could do. I was limited on what I could
13 do.

14 Q And did you come in contact with Brandon Barham
15 during that Monday?

16 A I did.

17 Q And how did you come in contact with him?

18 A He came back over to my house.

19 Q Okay. Do you recall about what time he may have
20 come over?

21 A It was probably about 1:00 o'clock.

22 Q Okay. In the afternoon?

23 A Yes, sir.

24 Q And what did you and Brandon do that afternoon?

25 A Just hang out. I mean, he just hung out with me in

1 the shop. And I don't remember exactly what we
2 did, but I know he left at 8:00 o'clock.

3 Q 8:00 p.m.?

4 A Close to 8:00 p.m., yes.

5 Q On Monday?

6 A Yes. Said something about his roommate was coming
7 home.

8 Q Okay. And did Floyd come over? Floyd come over
9 during that time?

10 A No, Floyd's never been to my house.

11 Q Then the next day is September 8th, Tuesday,
12 correct?

13 A Yes.

14 Q All right. And that's the day you went to Columbia
15 police headquarters with Karin?

16 A Yes.

17 Q And that's when you learned of Charles' death,
18 correct?

19 A Correct.

20 Q While you were learning about your brother's
21 death -- did you make any phone calls to anybody
22 right after you learned about your brother's death?

23 A No, I got a phone call.

24 Q Okay. Who did you get a phone call from?

25 A From Floyd Owen.

1 Q All right. Do you recall what Floyd might have
2 said?

3 A I do.

4 MR. BELL: Objection. Hearsay, Your Honor.

5 THE COURT: Sustained.

6 MR. CONRAD: Okay, we'll move on, Your Honor.

7 BY MR. CONRAD:

8 Q Okay. So you talked to the police that day on
9 September 8th, correct?

10 A Correct.

11 Q And you came back several times to talk to the
12 police, correct?

13 A Correct.

14 Q And you did that because you wanted to cooperate
15 with the police, correct?

16 A That's correct.

17 Q And you wanted to cooperate with police because you
18 wanted the police to help catch the correct killer?

19 MR. BELL: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. CONRAD:

22 Q After September 8th, did you start to have any
23 suspicions about who might have killed Charlie?

24 A I did.

25 Q All right. And who did you start to suspect?

1 A My nephew and Floyd.

2 Q Okay. And without getting into anything anybody
3 might have said, what factors led you to suspect
4 those two?

5 A Things that they told me.

6 Q Okay. And in terms of Brandon, what did he tell
7 you that led you to suspect him being involved in
8 the brother's murder?

9 A When he came to my house the day after I found out
10 that my brother was deceased, I asked him if I
11 could see that gun I saw the past weekend.

12 Q And before we go too far, you said the day after.
13 The day after you found out your brother was dead
14 or which day are you talking about?

15 A The day after CPD, so I think it was Wednesday or
16 Thursday he came to my house.

17 Q Brandon came to your house the Wednesday or
18 Thursday after?

19 A Wednesday or Thursday afternoon.

20 Q All right. And did you and Brandon have any
21 conversations then?

22 A We did. Right beside his truck. He was leaning up
23 against the door of his truck.

24 Q Okay.

25 A And I asked him, Let me see that gun that I saw him

1 with last Sunday.

2 And he responded to me, his exact word was he
3 didn't have that gun no more, he got rid of it in a
4 lake, and if anybody asked, he never had a gun.

5 Q Okay.

6 A That's what he told me.

7 Q Did that raise suspicion for you?

8 A It did.

9 Q And did you have any further conversations with
10 Floyd after that, Floyd Owen?

11 A I did.

12 Q And not getting into what Floyd might have said,
13 did those conversations give you any reason to
14 suspect Floyd?

15 A It did.

16 Q Okay. So let's talk for a minute about Floyd and
17 Brandon. You know, Brandon is your nephew, so
18 you've pretty much known him your whole life?

19 A Yes.

20 Q Okay. And how long have you known Floyd Owen?

21 A Since 2008, I believe.

22 Q How did you meet Floyd Owen?

23 A Through my brother.

24 Q Charles Kusko?

25 A Charles.

1 Q Okay. And you said 2008?

2 A To the best of my recollection.

3 Q And you met him through Charles?

4 A Yes.

5 Q During that 2008, did you happen to ever see Floyd
6 and Brandon together?

7 MR. BELL: Your Honor, may we approach?

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 BY MR. CONRAD:

12 Q Okay. After 2008, did you ever have occasion --
13 did you ever see Floyd and Brandon Barham together?

14 A I did.

15 Q And would you characterize them as being together
16 frequently or infrequently?

17 A Frequently.

18 Q And, to the best of your knowledge, would you call
19 them friends?

20 A Yes.

21 Q And they spent a significant amount of time
22 together?

23 A Yes.

24 Q And you said they were friends. Would you say they
25 were close friends, to your knowledge?

1 A Friends.

2 Q Okay. And, in 2015, are you aware of Floyd Owen,
3 whether he was driving a vehicle or not during that
4 timeframe?

5 A I think he was driving a Moped.

6 Q Okay. To your knowledge, did Floyd Owen own any
7 vehicles during that timeframe?

8 A Not to my knowledge.

9 Q And, to your knowledge, when Floyd Owen needed to
10 get somewhere, how would he do it if he wasn't
11 taking the Moped?

12 A He'd get somebody to give him a ride.

13 Q And, to your knowledge, would Brandon Barham
14 frequently give Floyd Owen a ride?

15 A Yes.

16 Q Now, we've talked about you coming in and talking
17 to the police multiple times, is that correct?

18 A Yes.

19 Q And each of those times, you cooperated, correct?

20 A Yes.

21 Q There were some details that you may not have
22 talked about in the first couple of times you
23 talked to police that you later talked about, is
24 that correct?

25 A That's correct.

1 Q And can you tell the jury, you know, why you may
2 have withheld some information from the police
3 during these multiple interviews?

4 A Yes, because I was not sure until I gathered more
5 information myself to be sure before I alerted the
6 police to somebody that -- unnecessarily. I wanted
7 to make sure that these boys were actually involved
8 before I gave them the information to lead them in
9 the right direction or the wrong direction.

10 Q Okay. Did you want Charles Kusko dead?

11 A No.

12 Q He was your brother, correct?

13 A Yes.

14 Q Did you love your brother?

15 A I sure do.

16 Q You characterized your relationship -- I think one
17 of the first things I asked you was it was an up
18 and down relationship, is that correct?

19 A Yes. We were brothers.

20 Q And, now, we talked about you maybe withholding
21 some information to the police. To your knowledge,
22 did you ever lie about anything to the police?

23 A No, sir.

24 Q And today you're under oath. You've been telling
25 the truth, correct?

1 A Yes, sir.

2 MR. CONRAD: Court's indulgence.

3 (Pause.)

4 BY MR. CONRAD:

5 Q Mr. Kusko, in that first interview when you came to
6 police headquarters on September 8th, Tuesday,
7 September 8th, and you found out during the course
8 of talking to the police that your brother was
9 dead, did police ask you about your whereabouts
10 that weekend during that interview?

11 A I believe they did.

12 Q Okay. And did you tell them what you told the jury
13 today of where you were that weekend?

14 A I did.

15 Q Okay. And when the police asked you about you
16 being -- and that testimony was you were at home,
17 correct?

18 A That's correct.

19 Q The night of September 5th into September 6th,
20 correct?

21 A That's correct.

22 Q Did you testify -- or, excuse me, did you talk --
23 did the police ask you for anything to verify where
24 you were during that timeframe?

25 A I believe they asked my wife.

1 Q Okay. And then was there anything else between you
2 and the police that was discussed that could help
3 prove where you were during the night of
4 September 5th in the morning?

5 A They got fingerprints, palm prints, and DNA.

6 Q You gave that up?

7 A Voluntarily.

8 Q Did they come to your house and take anything?

9 A They did.

10 Q Okay. And what did they take?

11 A They came to my house and they removed my DVR.

12 Q Okay. So you had a DVR at your house? Explain to
13 the jury what that is.

14 A It's a digital video recorder. It records
15 everything on my property from the front to the
16 back.

17 Q So there's cameras on your property?

18 A Yes, sir.

19 Q How many?

20 A Two on the back, three or four around the front,
21 but it covers the whole property.

22 Q And you voluntarily gave that to the police to
23 verify where you were?

24 A I did.

25 Q All right.

1 4:26 p.m.)

2 THE COURT: We will have Mr. Kusko back on the
3 stand.

4 (Witness returns to witness stand.)

5 THE COURT: Thank you. Ready?

6 MR. CONRAD: We are ready, Your Honor. Just
7 one hiccup -- there's always an issue. The remote
8 for this -- the battery for the remote for this DVR
9 box apparently just died. And so the skipping
10 around, which is what we had planned to do, at the
11 very moment is not possible. I think the
12 fast-forward can happen, but if we're going to go
13 from a scene at night to the next day, we'll have
14 to sit here for probably quite a while. So what my
15 plan is to authenticate the video. There's a scene
16 that we're going to show to authenticate Andrew
17 Kusko we are seeking to introduce it into evidence.
18 And then tonight we can get another battery for
19 that remote, and then if we want to play more for
20 the jury with a different witness, an investigator,
21 we might can do that tomorrow.

22 THE COURT: All right. Are you ready to bring
23 them in?

24 MR. CONRAD: I think so. One moment, Your
25 Honor.

1 (Pause.)

2 THE COURT: Are ready to bring them in?

3 MR. CONRAD: The State's ready.

4 THE COURT: All right. You can bring them in.

5 (WHEREUPON, the jury came into open
6 court at 4:30 p.m.)

7 THE BAILIFF: The jury is present, Your Honor.

8 THE COURT: All right. We will continue with
9 the State's witness.

10 MR. CONRAD: Thank you, Your Honor.

11 **DIRECT EXAMINATION CONTINUES**

12 BY MR. CONRAD:

13 Q Mr. Kusko, I believe before we took a break we were
14 discussing the fact that you had a DVR at your
15 residence, is that correct?

16 A That's correct.

17 Q And that DVR recorded video cameras on your
18 property?

19 A That's correct.

20 Q And this would be in your property in Ridgeway?

21 A That's correct.

22 Q And you mentioned a shop that you work in earlier
23 at your property in Ridgeway?

24 A Yes, sir.

25 Q And that is adjacent to your -- is that adjacent to

1 your house?

2 A It's right behind the house.

3 Q Okay. All right.

4 MR. CONRAD: If there's no objection, I'll
5 have the witness step down and take a look at this
6 box. May it please the Court?

7 (Witness steps down.)

8 BY MR. CONRAD:

9 Q Can you take a look at that object right there?

10 What is that?

11 A That's a DVR.

12 Q Do you recognize that DVR?

13 A That's my DVR.

14 Q That's your DVR?

15 A Yes, sir.

16 Q That was in your house the weekend of September --
17 Labor Day weekend of 2015?

18 A Yes, sir.

19 Q Okay. You can go back and take a seat.

20 (Witness returns to witness stand.)

21 Q Actually, one moment. Okay. So that's your DVR
22 that was in your house Labor Day weekend, is that
23 correct?

24 A Yes, sir.

25 Q And this records video around your house?

1 A Yes, sir.

2 Q I believe you testified you had some cameras at
3 your house. Do you recall how many cameras you
4 had, or have?

5 A Four to six.

6 Q Okay. Do you still have those cameras at your
7 house?

8 A I do. Waiting to get my equipment back.

9 Q All right. Okay. So do you recall when you had
10 this installed?

11 A Yeah, about a year or two years prior to this
12 happening.

13 Q 2015?

14 A Yes, sir.

15 Q And do you recall where you obtained it?

16 A Yes. I bought it.

17 Q You bought it?

18 A Yes, sir.

19 Q Do you recall where you bought it from?

20 A I think I bought it online.

21 Q Online? Okay. Did you install it yourself?

22 A I did.

23 MR. CONRAD: Your Honor, at this time the
24 State would seek to introduce this DVR into
25 evidence.

1 THE COURT: Any objection?

2 MR. BELL: No objection.

3 THE COURT: What number is it?

4 MR. CONRAD: We need to mark it. This will be
5 135, State's Exhibit 135.

6 THE COURT: All right, it will be entered
7 without objection.

8 (WHEREUPON, State's Exhibit No. 135 was
9 marked for identification and received
10 into evidence.)

11 BY MR. EATON:

12 Q I'm going to turn this around and have you look at
13 this.

14 BY MR. CONRAD:

15 Q Okay, Mr. Kusko, can you see what's on that video
16 monitor?

17 A Yes.

18 Q I'm sorry?

19 A I mean, yeah, pretty much.

20 Q Okay. Do you recognize that video?

21 A I do.

22 Q And what is that video?

23 A That's a video of my yard and my house.

24 Q Okay. All right. So I think we see four separate
25 boxes on this video. What would that represent?

1 A That would represent -- Channel 2 would be the
2 front porch.

3 Q Okay.

4 A Channel 3 would be the side porch where the gazebo
5 is. Channel 1 would be the front of the building.

6 Q Okay.

7 A And that would be the side -- actually, that would be
8 the back porch right there.

9 Q Which, Channel 3 is the back porch?

10 A No, that's the side porch.

11 Q The side porch?

12 A We've got a wrap-around porch.

13 Q Okay. And what's Channel 4?

14 A That's the back porch where the deck is, actually.

15 Q And what's Channel 2?

16 A That's the front porch.

17 Q Okay. What's Channel 1?

18 A That's the shop. That's the front door of the shop
19 right there. That little white thing you see is
20 the door.

21 Q Okay. What date do you see at the bottom of that
22 screen?

23 A 9/5 of 2015.

24 Q Okay. What time?

25 A 2138 and three seconds.

1 Q And to the best of your knowledge, when this system
2 was installed and was operating, did it always have
3 an accurate date and time stamp on it?

4 A It did when I first set it up. But the power went
5 off a few times, and I didn't really reset the time
6 on it, but the date should be right.

7 Q Okay. So the time may possibly be inaccurate, but
8 the date is correct?

9 A It should be.

10 Q Should be. Okay. All right. I'm going to direct
11 your attention down here to the lower right of
12 Channel 4. Do you say an object there?

13 A I do.

14 Q What do you see?

15 A I see a head.

16 Q A head? Okay. Can you tell right now whose head
17 that might be?

18 A It looks like my head.

19 Q Okay. And we're going to advance that video. And
20 you see an individual walking across that screen.
21 Who is that?

22 A That's me.

23 Q That's you? Okay. And so somewhere around 9:38 --
24 that says 2138, that would be 9:38 p.m., correct?

25 A Correct.

1 Q That's you walking across -- this is your back
2 porch?

3 A Yes.

4 Q And were you headed away from your house or towards
5 your house?

6 A I think I was headed to the shop.

7 Q To the shop?

8 A Yes, sir.

9 Q Okay. And your shop is located where in relation
10 to your house?

11 A It's right behind it.

12 Q Behind it. Okay. So you would be walking towards
13 your shop?

14 A Yes.

15 Q Okay. All right. Let's -- we're going to
16 fast-forward this video. And we apologize, it's
17 going to take a minute. We had some issues with
18 your remote. I think the battery may be dead. Oh,
19 I've just been informed we've gotten a new battery.
20 So we're going to fast-forward here.

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

22 (Pause.)

23 BY MR. CONRAD:

24 Q And while that's fast-forwarding, the Chevy Blazer
25 that you said you owned, would that have been

1 parked on this property during this night?

2 A Yes.

3 Q Do you recall where it would have been parked?

4 A I don't recall exactly, but more than likely it
5 would have been parked in the back somewhere.

6 Q Was it your regular habit to park the Blazer behind
7 your house?

8 A I do. I pull up in the back driveway and I pull
9 right up in front of the building.

10 Q Okay. And you testified earlier that you did not
11 leave your house at all that night, is that
12 correct?

13 A That's correct.

14 Q I think you said you were in your shop at some
15 point working on a vehicle?

16 A Yes, sir, working on a Chevy truck.

17 Q Okay. Other than that, did you leave your property
18 at all?

19 A No, sir.

20 Q The night of September 5th or the early morning
21 hours of September 6th?

22 A No, sir.

23 Q Just to describe the scene a little more, I know
24 this Channel 4, which looks back towards your shop,
25 is that correct?

1 A That actually looks at the house and the deck.

2 Q Okay.

3 A Channel 1 looks at the shop.

4 Q Okay, Channel 1 looks at the shop?

5 A Uh-huh.

6 Q I know it's hard to tell, but is back here where
7 you normally park your Blazer?

8 A Actually, the Blazer is actually on the side of it.

9 Q On the side of what?

10 A The other side of the building.

11 Q Of the shop or your house?

12 A It's on the side of the building right there. I
13 believe it's right there on the side.

14 Q Which side?

15 A Right there where your pen is at.

16 Q Where my pen is?

17 A Uh-huh.

18 Q On the right-hand side of Channel 1?

19 A Yes, sir.

20 Q It's quite blurry, but you're certain that's where
21 your Blazer is?

22 A Yeah, because it's not in front of the shop.

23 Q And when you say your shop, we see this kind of
24 light square towards the right side of Channel 1,
25 is that -- what is that?

1 A That's a walk-through door.

2 Q Okay.

3 A And then there's a roll-up door on other side.

4 Q Okay. And if you go through there, that's to your
5 shop?

6 A Yes.

7 Q Where you would have been working?

8 A That whole big thing right there is the shop.

9 Q Okay. If you would, just while we're
10 fast-forwarding -- and I apologize it's taking so
11 long, but while we're fast-forwarding it, keep an
12 eye in the area of your shop. You said your truck
13 was most likely parked here?

14 A Yes.

15 Q And we occasionally -- I see, it looks like a
16 lighter-colored blob kind of coming in and out of
17 focus.

18 A That's the light.

19 Q That's a light?

20 A Yeah, a big flood light that turns on and off.
21 It's motion.

22 Q Okay. And so we see that light coming on and off.
23 You know, we are now at 11:00 o'clock, getting
24 close to 11:30 at night. And what would that
25 indicate to you if you see the light going on and

1 off back there like that?

2 A It's just motion. It could be a bat, it could be a
3 critter flying from the center.

4 Q Okay. And while we're waiting for some of the
5 video to fast-forward, just a couple of
6 housekeeping things. I believe earlier I showed
7 you a picture of a truck, is that correct?

8 A Yes, sir.

9 Q Right here. I'll hand it back to you. State's
10 Exhibit 134. And you testified earlier that looks
11 very similar, if not identical, to Brandon's truck?

12 A Yes, sir.

13 MR. CONRAD: And at this point the State would
14 move to admit that into evidence.

15 THE COURT: And what number is that?

16 MR. CONRAD: State's 134.

17 THE COURT: Any objection?

18 MR. BELL: Your Honor, as long as they would
19 mark on that exhibit that it is a stock photo and
20 not intended to be the actual Defendant's truck, we
21 have no objection. But, as it stands, it's just a
22 piece of white paper with a truck. I want to be
23 clear that it's a stock photo.

24 THE COURT: Hold on one second. So I will
25 take that as an objection. Lay the foundation for

1 the question before entering it.

2 BY MR. CONRAD:

3 Q Take a look at that picture again, sir. What is
4 that -- what is that a picture of?

5 A A Chevrolet pickup truck.

6 Q Okay. Do you know what model number that is, to
7 your knowledge?

8 A It looks like a 1500 series.

9 Q And what color is it?

10 A White.

11 Q And the bed on that truck, is that a short bed or a
12 long bed?

13 A It appears to be a long bed.

14 Q And to your memory -- you saw -- you worked on
15 Brandon's truck?

16 A Correct.

17 Q In 2015, you testified to. Was that a Chevy 1500?

18 A Yes.

19 Q Was that a white truck?

20 A It was.

21 Q Did it have a long bed?

22 A It did.

23 Q Did it, in fact, look very similar, if not
24 identical, to the truck in that picture?

25 A It did.

1 Q I believe you testified earlier there may be some
2 cosmetic differences like some dents, and so on and
3 so forth, correct?

4 A That's correct.

5 Q Otherwise, that truck in that picture looks
6 extremely similar, if not identical, to Brandon
7 Barham's truck, is that correct?

8 A That's correct.

9 THE COURT: Ask him about that picture.

10 BY MR. CONRAD:

11 Q And is that picture of Brandon's truck, to your
12 knowledge?

13 A No.

14 Q Okay. And that's just an example truck, correct?

15 A Yes.

16 Q But it looks identical, if not similar, or surely
17 similar to Brandon's truck, is that correct?

18 A That's correct.

19 THE COURT: All right. Any objection?

20 MR. BELL: No objection.

21 THE COURT: All right, it will be entered
22 without objection.

23 MR. CONRAD: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit No. 134 was
25 marked for identification and received

1 into evidence.)

2 BY MR. CONRAD:

3 Q And we're still fast-forwarding. We're now coming
4 up on 1:00 a.m., is that correct?

5 A That's correct.

6 Q And your testimony earlier was that you went to bed
7 about 2:15 a.m.?

8 A Give or take, yeah, I mean, 30 minutes. It was
9 right around 2:00 o'clock, 2:30, somewhere right in
10 that time.

11 Q And just to review your testimony in preparation of
12 what we're going to see, the next morning, about
13 what time did you get up?

14 A 9:00 or 10:00, to the best of my recollection.

15 Q And I think you said something about the truck or
16 vehicle that you were working on in your shop. Did
17 you do anything with it the next morning?

18 A I had to get it out of the garage. I had to back
19 it out for the customer.

20 Q And your customer came to get it some point, is
21 that correct?

22 A They did, at 12:30.

23 Q And you testified you woke up around 9:00 a.m.,
24 correct, give or take?

25 A Give or take, yeah, to the best of my recollection.

1 Q And do you recall seeing your wife that morning?

2 A To the best of my recollection, yes.

3 Q She would have been home that night, correct?

4 A Well, she's got to be to work at 9:00 o'clock, so.

5 Q At 9:00 o'clock?

6 A Yes.

7 Q But, like, for instance, right now we see on the
8 video it's 1:54 a.m. You were home at this time,
9 correct?

10 A Correct.

11 Q Was your wife home?

12 A Yes.

13 Q And so she said she left for work -- she had to be
14 at work at 9:00 a.m. the next day?

15 A Yes, on Sundays.

16 Q And so at some point she would have got up and left
17 for work?

18 A That's correct.

19 Q While we're still watching this fast-forward, did
20 you ever go back and review any video of your own
21 on the DVR? Did you ever have any occasion to do
22 that?

23 A No.

24 Q Okay. Have you ever fast-forwarded a video? Do
25 you know anything that we don't know about how to

1 skip the video around if we wanted to skip a couple
2 of hours ahead?

3 A No, just the remote.

4 Q Okay. I just wanted to make sure we're not missing
5 something.

6 One other question while we're watching this,
7 which way is Channel 2 looking, again, on your
8 property?

9 A It's looking across my front porch.

10 Q Front porch. Do you have a driveway?

11 A I do. It's right there on the end of that porch.

12 Q So your driveway would be?

13 A Right there.

14 Q Is this a railing here?

15 A It is.

16 Q In the middle of Channel 2?

17 A It is. And that my wife's car on the other side.

18 Q Your wife's car is parked on the other side?

19 A Yes. You can see the roofline and the reflection
20 on it.

21 Q Where is your shop in relation to the Channel 2?

22 A Straight back.

23 Q So it would be to the right?

24 A Yes, straight back, back through the driveway.

25 Q So if somebody's driving and wants to enter into --

1 go to your shop, would they have to drive up this
2 driveway here?

3 A They can, if there's no cars there, or they can
4 come around the back.

5 Q Okay. There's a way around the back?

6 A Yes, there's another drive.

7 Q Okay. And have you been keeping your eye on this
8 video while it's fast-forwarding?

9 A Trying to.

10 Q Have you seen anybody come and go?

11 A Not yet.

12 Q I think you said about 9:38 you saw you on there,
13 correct? When we first started it, it was about
14 9:38, that was you, correct?

15 A Yes.

16 Q Have you seen anybody come and go since then?

17 A No.

18 Q Let me ask you this. Entrances into your house, to
19 get in your house, not in your shop, how many
20 entrances are there in your house?

21 A Doors?

22 Q To get inside or outside your house?

23 A It's an old Victorian-style house, it's got doors
24 everywhere on it.

25 Q Okay. So there's a front door, correct?

1 A There's two front doors.

2 Q There's two front doors. Would they both be in
3 view of this video?

4 A One of them is right there to the left of that
5 camera. One is to the right of that camera.

6 Q Okay. That's your front doors?

7 A Yes, sir.

8 Q Do you have a back door?

9 A Off the deck, yes, sir.

10 Q And would that be on this video?

11 A Yes, sir.

12 Q Are there any doors to your house -- are there any
13 side doors?

14 A There's three doors on that side. There's only --

15 Q Which side are we talking about? The side facing
16 the driveway?

17 A This side. This back side of the Camera 4.

18 Q Camera 4?

19 A Where the deck is.

20 Q Okay.

21 A There's only one of them used. The other two don't
22 have stairs on them.

23 Q Okay. So there's four doors on the back?

24 A Three.

25 Q Correct? Can you see all of them -- you can't see

1 them now because of the video, it's at night -- can
2 you see them when there's more light, excuse me?

3 A Yes.

4 Q We're going to keep fast-forwarding to about 8:30
5 in the morning. All right, we're starting to see
6 this is about -- we're starting to see more light,
7 correct?

8 A Correct.

9 Q It's about 5:50 to about 6:00 a.m., correct?

10 A Correct.

11 Q So is that sunrise?

12 A That's correct.

13 Q All right. Okay. So I believe you were describing
14 to the jury Channel 1, and that's your shop?

15 A Correct.

16 Q And you've already described the door, the
17 walk-in-and-out door?

18 A Correct.

19 Q Correct?

20 A Correct.

21 Q A there's roll door?

22 A Yes.

23 Q And now the jury can see it. What is -- what do
24 you see down?

25 A That's a 240.

1 Q This is a what?

2 A Nissan 240SX. That's my daughter's car.

3 Q All right. So let's go look at the front porch.

4 You said your driveway was over there, correct?

5 A Correct.

6 Q And your wife was parked -- her car is parked over
7 there. Is that what car you're seeing right there?
8 It's hard to make out.

9 A Yes.

10 Q Okay. All right.

11 A Actually, that's my wife's car under the carport on
12 the bottom.

13 Q Right here? Okay. And that's towards the back of
14 your house?

15 A That is the back. That's the back deck.

16 Q Okay. So just to describe the scene one more time,
17 Channel 1 is looking backwards from your house?

18 A Yes. It's looking back towards the back.

19 Q And that's your shop?

20 A Yes.

21 Q Where you were working the night before?

22 A Yes.

23 Q Okay. And you said something about -- this is your
24 front porch on Channel 2, correct?

25 A Correct.

1 Q And we see one door there. You said there was two
2 front doors?

3 A Actually, there's three front doors. There is one
4 right there in the corner of the gazebo, and then
5 you have got two -- back then, they're like half
6 doors, but they look like French doors.

7 Q Actually --

8 MR. CONRAD: Let's pause the video for a
9 second. And if I can have the witness step down so
10 we can make sure the jury understands.

11 Q Mr. Kusko, if you would step down, please.
12 (Witness steps down.)

13 Q Okay. Your three front doors, can you go ahead and
14 point them out to the jury?

15 A There's a double door right here, the French doors.
16 You open them up, they're 36 inches.

17 Q Okay.

18 A You close one door, it's half closed. That's just
19 the way they done it in the old times.

20 Q Okay. So where -- you said -- this is one door.
21 You said there was three.

22 A Right.

23 Q Where are the other two on the front?

24 A This is the front porch. This is the side of the
25 front porch. This is a wrap-around porch. This

1 would be the second double doors right here.

2 That's the screen door. And then this is a third
3 door. This is a door that we don't never use. It
4 goes right into the living room.

5 Q Okay. So that video would be if you kept walking
6 and went around the corner this way or that way?

7 A If you keep walking this way, you'll go down and
8 the corner, it just wraps around.

9 Q And those are your three front doors. And then you
10 said something about several back doors?

11 A I did.

12 Q Can you point out where those would be?

13 A The main back door is right here, the one we always
14 go in and out of. And there's one here on the
15 washroom. And there is one here in the middle of
16 the house.

17 Q So your house from Channel 4 extends out kind of
18 towards you, is that correct?

19 A Yes. Yes, sir.

20 Q Okay.

21 A The cameras are actually mounted up there on the
22 corner of the house.

23 Q You can take a seat.

24 (Witness returns to witness stand.)

25 MR. CONRAD: Continue to fast-forward.

1 BY MR. CONRAD:

2 Q Because the video wasn't very clear from the night
3 at 9:38, the night you said you saw yourself
4 walking on the video?

5 A Yes, sir.

6 Q I believe we saw you walking from right to left
7 across Channel 4, was that correct? When you saw
8 that earlier, the 9:38?

9 A Yes.

10 Q So you were walking towards your house, correct?

11 A Correct.

12 Q And we're getting close to the next stopping point.
13 And I apologize it's taking so long.

14 Okay. Pay attention, Mr. Kusko, we're getting
15 up to about 8:29. Do we see someone just then
16 entering the shed?

17 A Yes.

18 Q Who was that?

19 A It was moving real fast, but it looked like -- it
20 appeared to be my daughter.

21 Q So she's up at about -- that's 8:26, correct?

22 A Correct.

23 Q And your testimony was you woke up around 9:00-ish,
24 is that correct, this morning?

25 A Correct.

1 Q All right. We see some individuals down here it
2 looks like in your carport?

3 A That's my wife and my daughter.

4 Q Okay. So they just left your house?

5 A Well, they ain't left yet because the cars are
6 still there.

7 Q I mean, did they just walk out?

8 A Yes, sir. Yes, sir.

9 Q And who's that person you see right there?

10 A That's my wife.

11 Q And who is that?

12 A That's my daughter.

13 Q Okay. That's on Channel 4 at 8:31? And to the
14 best of your recollection, when they are exiting to
15 go outside, were you still inside your house at
16 this point?

17 A To the best of my recollection.

18 Q You haven't seen yourself exit at any point, have
19 you?

20 A No, sir.

21 Q And we saw -- I think the first car has left.
22 Whose car was that?

23 A That was my daughter's.

24 Q Your daughter. And there's still a car, it looks
25 like, parked here. Is that Channel 4?

1 A Correct. That's my wife's car.

2 Q Go back a second. Okay. We're about 8:54 a.m. We
3 just saw an individual walk across your back porch.
4 Did you catch that? Did you see that?

5 A That's Don, my next-door neighbor.

6 Q Here we go. He's coming across. 8:54. 8:57 a.m.
7 You say that's your next-door neighbor?

8 A Yes, it's Don.

9 Q Do you remember why he was on your property that
10 morning?

11 A He came to ask me if I'd look at his lawn mower.

12 Q Okay. And do you recall actually talking to him at
13 that time?

14 A I don't recall talking to him at that time, so he
15 might have knocked on the door and then left and
16 called me.

17 Q Okay. But that wasn't you coming back, correct?

18 A No. No. I don't generally wear ball caps.

19 MR. CONRAD: And let's fast-forward. We're
20 almost done, I promise. Go to about 10:43.

21 A There he was on his front porch.

22 Q What did you just say?

23 A I said there was Don on his -- on that front porch
24 just a second ago.

25 Q And that's the gentleman we saw walk across your

1 back porch?

2 A Yes, sir.

3 Q And that's what we are talking about Channel 2
4 there, right?

5 A Yes, sir.

6 Q Okay. It's now about 10:44 a.m. on September 6th
7 of 2015, which would be Sunday. We see an
8 individual on the back porch there. Who is that?

9 A That's me.

10 Q And you're leaving the house?

11 A Yes, sir.

12 Q You are walking outside of your house, correct?

13 A Yes. I think I'm going to the shop in the back.

14 Q Okay. To your recollection, since the night
15 before, you said the early morning hours of the
16 night before, is this the first time you left your
17 house from when you went to sleep?

18 A Yes.

19 Q And, again, we see you there?

20 A Uh-huh.

21 Q Is that you entering the shop in Channel 1?

22 A Yes. And that's the customer right there to pick
23 up their vehicle.

24 Q And that's the individual whose vehicle you were
25 working on the night before?

1 A Yes, sir. And you'll see that truck back out in a
2 minute.

3 Q You completed your work the night before? Did you
4 have to do any more work this morning?

5 A I completed it the night before.

6 MR. CONRAD: You can stop. I think that's it.

7 (Video stops.)

8 BY MR. CONRAD:

9 Q Okay. I'm almost done, Mr. Kusko. And I
10 appreciate your patience through this. I know that
11 was a little painful waiting on some of that video.

12 Just a couple more questions. You testified
13 that you and your brother, Charles, had an up and
14 down relationship, is that correct?

15 A That's correct.

16 Q There's been times when you've been angry at him,
17 is that correct?

18 A That's correct.

19 Q Has there been times when he was angry at you?

20 A That's correct.

21 Q And when you're angry at him, would you sometimes
22 say things about him?

23 A Yes.

24 Q About Charles?

25 A Yes.

1 Q When you're angry at Charles, did you ever make any
2 threats against him that somebody else would have
3 heard?

4 A I wouldn't call it a threat. I would call it just
5 a statement.

6 Q Okay. Well, what -- specifically, what did you say
7 that you recall?

8 A I said I'd choke him.

9 Q In reference to Charles?

10 A Yes.

11 Q Because you're angry at him?

12 A Yes.

13 Q Did you actually ever intend to choke him?

14 A No.

15 Q Did you ever actually want to actually see him
16 dead?

17 A No, sir.

18 Q Because he was your brother, correct?

19 A Correct.

20 Q Did you love him?

21 A I loved him, yes. Still do.

22 Q Okay. Do you miss your brother?

23 A I do.

24 MR. CONRAD: Nothing further from the State at
25 this time.

1 THE COURT: All right, yes, sir,
2 cross-examination?

3 MR. BELL: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BELL:

6 Q Andrew, you don't want to be here right now, do
7 you?

8 A It's a matter of opinion.

9 Q Is it a matter of opinion that when our
10 investigator tried to serve you with a subpoena
11 this morning, you physically ran away from him out
12 of the courthouse?

13 A Your investigator grabbed me. That's an unwanted
14 touch.

15 Q While trying to serve you with a subpoena, correct?

16 A I didn't know what he was trying to do.

17 Q Okay. That's your version of the story, right?

18 A Everybody has their version.

19 Q Exactly. Just like you just gave this jury your
20 version of this story, right?

21 A I told the truth.

22 Q According to you, right?

23 A I placed my hand on the Bible. According to God, I
24 told the truth.

25 Q Well, let me back off a little bit then. I think

1 that you and I can both agree that what Floyd Owen
2 did to your brother, your little brother, is a
3 monstrous thing, right?

4 A Yes.

5 Q And you got to be present just last week, maybe in
6 this very courtroom, when Floyd Owen stood before
7 the same judge and pled guilty to become a murderer
8 in the eyes of the law, didn't you?

9 A Yes.

10 Q And you got to hear that even though the State saw
11 fit to defer his sentencing until Floyd Owen
12 testified in this trial, that he did plead guilty
13 and admit to killing your brother with a
14 .45 caliber pistol, right?

15 A Yes.

16 Q Well, even though they deferred sentencing, has it
17 provided you some sense of closure?

18 A Can you rephrase that question?

19 Q Is the fact that Floyd Owen is now a murderer in
20 the eyes of the law and has pled guilty to killing
21 your brother, does that provide you some sense of
22 closure?

23 A No.

24 Q Well, I'm sorry for that, and I hope that you
25 eventually find it. But to be clear for the record

1 and so that this jury doesn't have any confusion if
2 your nickname is brought up, I mean no disrespect
3 by it, your nickname is Midget, right?

4 A Says you.

5 Q Says me?

6 A Uh-huh.

7 Q So your family and friends don't know you as
8 Midget?

9 A I don't have friends that call me Midget.

10 Q What about family?

11 A There's a couple of family members that got away
12 with calling me that.

13 Q Okay. So it's not just me, it's people call you
14 Midget, right?

15 A No. Just a couple of people.

16 Q Okay. A couple of people call you Midget?

17 A Yes.

18 Q Okay.

19 A They call me Uncle Midget, actually.

20 Q Okay, Uncle Midget?

21 A Yes.

22 Q So if there was anybody else -- is there anybody
23 else in your circle of friends or family that has
24 that nickname?

25 A No.

1 Q No. So if we hear the name Midget in any context,
2 it's referring to you as far as this case goes, is
3 that right?

4 A Can you ask the question again?

5 Q If we hear the name or nickname Midget, even though
6 it's not meant to be disrespectful, it's just a
7 nickname, but if we hear that nickname during this
8 case, it's referring to you, right?

9 A I guess, if you say so.

10 Q So if law enforcement has information that the gun
11 Floyd Owen used to kill your brother was given to
12 him by a man named Midget, that would be you,
13 wouldn't it?

14 A Not necessarily.

15 Q You know anyone else that goes by that nickname?

16 A There's a lot of Midgets in the world.

17 Q Regardless, you believe that the gun that was used
18 to kill your brother, that Floyd used to execute
19 your brother, was provided to him by Brandon,
20 right?

21 A It was.

22 Q And you saw that happen? Did you see Brandon give
23 that gun to Floyd Owen?

24 A I did not.

25 Q When it comes to that gun, you've testified already

1 that you saw it in your shop roughly the Sunday
2 prior to your brother's death, right?

3 A I did.

4 Q In fact, both on the stand and during your
5 interviews with law enforcement, you call it a .40
6 caliber almost a dozen times, isn't that right?

7 A I was under the impression that's what it was based
8 on the bullet I picked up off the floor.

9 Q That came out of the gun that you saw Brandon with,
10 according to you?

11 A Correct.

12 Q And then you went on, both on the stand and to law
13 enforcement, to describe the bullet that came out
14 of that gun, as a gun that was cut off at the tip
15 and had a hole in the top, right?

16 A That's correct.

17 Q Now, you told law enforcement that you had, I
18 think, six firearms was the number, is that
19 correct?

20 A Ask that -- say that question again?

21 Q You told law enforcement that you yourself owned
22 roughly six firearms, right?

23 A Negative.

24 Q You never told them that?

25 A I told them I owned firearms, but I never said an

1 amount.

2 Q How many do you own?

3 A What type? Guns or rifles?

4 Q How many firearms do you own?

5 A Three.

6 Q And we know that at least one of those was a .40
7 caliber because you said that's what yours looked
8 like, right?

9 A I haven't had a .40 caliber since 2002.

10 Q But you used to have one?

11 A In 2002.

12 Q And based on your experience with that firearm, you
13 swore that the bullet you picked up out of the gun
14 you say Brandon had was a .40 caliber?

15 A No, I didn't. I said it looked like a .40 caliber.

16 Q Based on your experience --

17 A Looked. Looked.

18 Q Based on your experience with .40 calibers, right?

19 A Right. I could have been wrong.

20 Q And, again, you were very specific in law
21 enforcement by saying that the bullet was cut off
22 at the tip with a hole in the top, right?

23 A They asked me to describe what the bullet looked
24 like, so I did.

25 MR. BELL: Permission to approach the witness?

1 THE COURT: Yes, sir.

2 BY MR. BELL:

3 Q All right, I'm handing you what has been marked for
4 ID purposes as Defense 3. Does that describe the
5 bullet that you saw, generally speaking, not the
6 exact bullet?

7 A General, yes.

8 Q Had a hole in the top, right?

9 A Not like that.

10 Q Not like that? What do you mean?

11 A It was a round hole.

12 Q A round hole?

13 A Yes. That's a hex hole there.

14 Q Okay. But it had a hole?

15 A That's a torch hole there.

16 Q A torts hole?

17 A Yeah, like a torch. You better go write it down.
18 That's called a torch hole.

19 Q Thanks for the education. But it had a hole in the
20 top?

21 A It did. It was a round hole.

22 Q Now, referring to Defense Number 2, is that what
23 the bullet looked like you saw?

24 A No.

25 Q Are you aware that that's called a semi-wadcutter?

1 A If that's what it's called, that's what it's
2 called.

3 Q And the first bullet in Defense 3 is called a
4 hollow point?

5 A Okay.

6 Q And you say that you saw what would be described as
7 a hollow point fall out of Brandon's gun, right?

8 A I never called it that.

9 Q But you described it as such, right?

10 A I described what I saw.

11 Q So if somebody says that the gun Brandon had was
12 loaded with something other than hollow points or a
13 bullet that had a hole in the top, they would be
14 wrong, right?

15 A Don't know if they seen it or not.

16 Q Based on the one you saw, it had a hole in it?

17 A It did.

18 Q However, regardless of that evidence, you still
19 believe that's the gun that Brandon allegedly gave
20 to Floyd Owen?

21 A I do.

22 Q Now, you told police that Brandon has actually
23 purchased a gun from you before, right?

24 A Negative.

25 Q You never told them -- you never told police that

1 Brandon purchased a .380 from you?

2 A Brandon never -- I've never sold Brandon a gun. I
3 don't do back-door dealings with firearms. I buy
4 them legally. They're registered. And that's it.
5 I never had any dealings with Brandon and a
6 firearm.

7 Q And you never went on to tell police that Floyd
8 Owen stole that .380 from Brandon?

9 A No.

10 Q So if the State were to introduce that interview,
11 you would have never told that to the police?

12 A I don't have a recollection of saying that to the
13 police, because it's untrue, I didn't say it.

14 Q You don't have a recollection, not that you didn't
15 say it, right?

16 A I don't have a recollection of saying that.

17 Q Okay. You also told law enforcement, Floyd is a
18 thief, right?

19 A I don't have a recollection of saying that.

20 Q But it would be preserved on your recording if you,
21 in fact, said it, right?

22 A It would.

23 Q Now, you're aware that Brandon used to drive a
24 Chevy 1500, I think you described it, right?

25 A Correct.

1 Q And, in fact, the State put in what I would refer
2 to as a stock photo, sort of a photo you would see
3 from the dealership of a truck that looks roughly
4 like the one that Brandon used to drive, right?

5 A Correct.

6 Q Do you recall telling law enforcement that Floyd
7 Owen on two occasions had stolen Brandon's white
8 Chevy pickup truck from him?

9 A I never told them that at all.

10 Q You don't recall telling them or you're telling
11 this jury that if they watch that interview, you
12 didn't tell them that?

13 A I don't recall saying that.

14 Q Okay. You don't recall?

15 A No.

16 Q And you're aware that a white pickup truck was seen
17 near your brother's house the morning that law
18 enforcement thinks he was killed, right?

19 A You said a white pickup truck?

20 Q Yes, sir.

21 A There's a lot of white pickup trucks.

22 Q That's exactly right, there are.

23 A Yes.

24 Q A white pickup truck is one of the most common
25 trucks in the nation, right?

1 A That's right.

2 Q However, from your conversations with law
3 enforcement, they would have you believe that if
4 you put two and two together, that truck must be
5 Brandon's, right?

6 A Assuming?

7 Q Assuming?

8 A Assuming.

9 Q However, even if we assume, to use the word that
10 you used, that that white pickup truck is somehow
11 Brandon's, assuming that, Floyd Owen could have
12 stole it like he had done two times before, right?

13 A I don't know if Floyd Owen ever stole his truck two
14 times before.

15 Q Now, you reached out to Investigator Richbourg at
16 the funeral of your brother to tell him about a
17 situation with Brandon and the gun, right?

18 A Correct.

19 Q Yet, when you were at CPD days prior, you never
20 mentioned anything to anyone about a gun, right?

21 A I didn't.

22 Q What the State called withholding information,
23 isn't that what you said?

24 A What are you getting at?

25 Q The State called it withholding information, is

1 that right?

2 A I didn't withhold any information.

3 Q But you didn't tell law enforcement about the gun
4 that you saw on Brandon?

5 A Because I wasn't sure that he was involved at the
6 time, so I didn't say anything. When I was sure
7 that he was involved, that's when I started giving
8 them information.

9 Q And you're sure because you saw him with a firearm,
10 according to you, right?

11 A I saw him with the firearm and he told me what he
12 did with the firearm, so.

13 Q Okay. According to you, right?

14 A Yes.

15 Q Now, when you showed up to meet with Investigator
16 Richbourg at CPD for your second interaction with
17 law enforcement, you showed up with a lawyer,
18 right?

19 A I think --

20 MR. CONRAD: Your Honor, the State objects.
21 Can we approach?

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

25 THE COURT: Objection overruled.

1 BY MR. BELL:

2 Q You showed up on that occasion with a lawyer,
3 right?

4 A I didn't understand the question.

5 Q You showed up on that second occasion at CPD with a
6 lawyer, right?

7 A I believe I did.

8 Q I'll give you a second to drink that water, I know
9 we've talked a lot.

10 A Thank you.

11 Q Sure. Now, besides just telling them about the gun
12 that you saw and describing the bullets that you
13 saw, you also explained some about your family
14 dynamics, right? Relationships in your family?

15 A Some of them.

16 Q And you told law enforcement about how your brother
17 had a long list of enemies?

18 A That might have came up.

19 Q In fact, you told law enforcement that nobody got
20 along with Charlie, right? Your words?

21 A That's probably correct.

22 Q Except you told law enforcement one person did get
23 along with Charlie. Do you recall who that was?

24 A I don't.

25 Q You told law enforcement Brandon is the only person

1 that gets along with your brother Charlie, didn't
2 you?

3 A I don't recall saying that.

4 Q So while Brandon was, in fact, getting along with
5 your brother, you were actually feuding with him,
6 right, as we've heard testimony about?

7 A No, sir.

8 Q You weren't feuding with your brother?

9 A No, sir.

10 Q You didn't have a dispute that resulted in law
11 enforcement arriving and putting you on a no
12 trespass notice?

13 A That's of his doing, not mine. I wasn't there to
14 see him, I was there to verify something.

15 Q And what you were verifying is that you believed he
16 was misusing or selling or stealing from your
17 disabled sister, right?

18 A Correct.

19 Q In fact, it's already been testified to some, but
20 you believed that he used power of attorney over
21 your disabled sister to steal something, and I
22 can't remember the exact number, but \$37,000 from
23 your sister, right?

24 A \$38,000 and some change.

25 Q \$38,000 and some change?

1 A Uh-huh.

2 Q And you also believe that he was selling her
3 belongings, such as furniture, unlawfully, right?

4 A Uh-huh. He was the power of attorney.

5 Q And that feud culminated in him calling police on
6 you and putting that trespass notice on you, right?

7 A That didn't have anything to do with it.

8 Q So on September 4th, 2015, you're saying that you
9 didn't show up to confront someone who had
10 purchased that furniture from your brother?

11 A I just went there to ask the people. I didn't
12 confront anybody. The gentleman was out in his
13 yard. I asked him if he bought the furniture. He
14 said, Yes. I said, Okay, I know what I need to do
15 next.

16 Q And as a result of that, law enforcement came out
17 and spoke to you, right?

18 A They did. They was called by my brother.

19 Q And you were put on no trespass notice?

20 A Yes.

21 Q Two days prior to your brother's killing?

22 A Yes.

23 Q Now, I bring up money because you had indicated to
24 law enforcement that during your second
25 interview -- or, excuse me, you indicated to law

1 enforcement during your second interview you
2 believed money was the motive and why Brandon was
3 involved in his killing, right?

4 A Correct, that could be a motive.

5 Q And this was an interview that took place nearly
6 two years after Charlie's killing, right? In 2017?

7 A Could be, yes.

8 Q That's the first time you ever told law enforcement
9 about that, right?

10 A To the best of my recollection.

11 Q And at the beginning of that interview, you
12 actually told law enforcement in September of 2017
13 that Brandon was mad over a \$500 payment. Do you
14 remember that?

15 A Brandon was mad over a \$5,000 payment.

16 Q Right. Yet, at the beginning of that interview,
17 you said \$500, right? It wasn't until the end of
18 the interview that you said \$5,000, accurate?

19 A No, I meant \$5,000. I meant --

20 Q You said \$500, but you meant \$5,000?

21 A It was \$5,000. That's what Brandon told me.

22 Q Now, I'm curious, what's more, \$5,000 or \$38,000
23 and some change?

24 A \$38,000 and some change is more.

25 Q So if someone was using money as a motive,

1 certainly \$38,000 and change would be more of a
2 motive than \$5,000, right?

3 A I have my own money. I don't need her money.

4 Q Are you aware of Brandon's financial situation?

5 A I don't care about Brandon's financial situation.

6 Q Yet, you immediately told police this \$5,000,
7 originally \$500, was his motive for killing your
8 brother, right?

9 A I believe it was.

10 Q You spent nearly two and-a-half hours talking to
11 law enforcement, right?

12 A I don't know how long. I talked to them several
13 different times.

14 Q All of which was recorded?

15 A Correct.

16 Q Now, at the end of that interview, Investigator
17 Reese actually expressed to you that he wanted you
18 to come back and meet with some SLED agents to
19 answer some additional questions, didn't he?

20 A He wanted me to come back, but he didn't say to
21 meet with SLED agents.

22 Q He wanted you to come back and answer some more
23 questions, didn't he?

24 A He did.

25 Q And you initially said you would, didn't you?

1 MR. CONRAD: Your Honor, can we approach?

2 (WHEREUPON, a bench conference was held
3 in the presence of the jury but out of
4 the hearing of the jury.)

5 BY MR. BELL:

6 Q And you initially agreed, right, to meet with law
7 enforcement again?

8 A Well, you stopped and now you are starting again.
9 Where are we at?

10 Q Sure. I apologize. So after your second interview
11 in September of 2017, law enforcement wanted to
12 meet with you and ask you some additional
13 questions, right?

14 A I guess.

15 Q And you initially agreed, right?

16 A I can't recollect if I agreed or not.

17 Q Yet, the next day, when you were supposed to show
18 up and answer those questions, you ended up calling
19 and canceling saying you don't trust law
20 enforcement, right?

21 A I have my reasons.

22 Q Now, prior to the second interview -- and there's
23 been some testimony about it -- you indicated to
24 law enforcement that your wife could vouch for you
25 on the night that law enforcement believed that

1 your brother was killed, right?

2 A That's correct.

3 Q Yet, when you showed up for your second interview,
4 you threw an absolute temper tantrum that law
5 enforcement didn't want your wife in the interview
6 room with you, didn't you?

7 A I wouldn't call it a temper tantrum. I just
8 exercised my right to be left alone.

9 Q And you made such a scene that law enforcement
10 finally acquiesced and let your wife sit in on your
11 interrogation, didn't they?

12 A I didn't make a scene, I just voiced my opinion. I
13 have rights, and I voiced my rights.

14 Q So your wife sat in during your interrogation where
15 you told law enforcement your side of the story,
16 right?

17 A Well, I told them a story, yes.

18 Q You told them what? I apologize.

19 A I said I told them -- yeah.

20 Q And she got to sit in on all two and a half hours
21 of your interview?

22 A I don't know if it was two and a half hours, but
23 she was sitting in there.

24 Q Now, again, two years after your brother was
25 killed, which would be two years after you gave

1 your first -- or had your first two interactions
2 with law enforcement, for the first time you come
3 forward and tell law enforcement about two prior
4 incidents where Brandon and Floyd made threats
5 towards the victim, right?

6 A I believe I told them from the very beginning.

7 Q That's what you recall?

8 A That's what I recall, yes. I believe --

9 Q Now, you told law enforcement in September of 2017
10 that one of these threats happened all the way back
11 in 2008, right?

12 A That's correct.

13 Q And you told police that Floyd stated that he was
14 going to beat your brother up, right?

15 A Both of them stated that.

16 Q In fact, when investigators asked you what exactly
17 did Brandon say during the conversation, you said
18 you don't remember, right?

19 A I referred to them as "they said."

20 Q But when specifically asked what did Brandon say,
21 you said you don't remember, right?

22 A I don't recollect saying that.

23 Q Well, can you remember today? What did Brandon say
24 back in 2008 to make a threat toward your brother?

25 A Don't really know.

1 Q So then what you said in that interview on
2 recording, we should trust that over what you can
3 remember today?

4 A Can you rephrase that question? I mean, what are
5 you --

6 Q If you were able to answer that question when
7 talking to law enforcement in 2017, but you're
8 saying you can't answer it now, we should just
9 trust that recording, right?

10 A Well, you got time that lapsed.

11 Q Sure.

12 A People do -- you know, their memories get a little
13 vague. That's why I said it to the best of my
14 recollection.

15 Q But the only person that you could tell law
16 enforcement specifically made a threat was Floyd,
17 right?

18 A No, Floyd and Brandon.

19 Q That's not what you told police, is it?

20 A Okay. Well, that's what I'm telling you.

21 Q That's what you're telling us now?

22 A Yes.

23 Q Four or five years later?

24 A Well, no, they made threats in the past. That's
25 why I didn't act on them when they was talking

1 about doing something.

2 Q And then the second threat you come up with two
3 years after your brother's killing, you say
4 happened just two to three weeks prior to Charlie's
5 death, right?

6 A That's correct.

7 Q And you said that, again, Floyd and Brandon making
8 a threat, right?

9 A Correct.

10 Q And you told law enforcement that Floyd said he was
11 going to hire a hoodie to hurt him in some way,
12 right?

13 A They, because they were both on the phone.

14 Q But on that recording you say Floyd, didn't you?

15 A I don't recollect just saying Floyd.

16 Q In fact, investigators doing their job specifically
17 asked you again, What did Brandon say during this
18 conversation?

19 And, again, you said, I can't remember, didn't
20 you?

21 A I don't recollect saying that.

22 Q So on both occasions, you tell law enforcement that
23 it was just Floyd that spoke threats about your
24 brother and just Brandon happened to be there,
25 according to you, right?

1 A No.

2 Q Where am I wrong?

3 A They were together. They were friends. They were
4 together.

5 Q But Brandon wasn't saying anything in either of
6 those times the threats were made, was he?

7 A Brandon doesn't never take responsibility. He
8 never says anything when he gets in trouble.

9 Q Okay. Neither do you, do you?

10 A Excuse me?

11 Q Neither do you, do you?

12 A When I cause trouble, I step up to the plate. I
13 sure do.

14 Q Based on your recollection, Floyd's the only one
15 that made threats, right?

16 A No, they both did.

17 Q So what you're saying now is different from what
18 you said to law enforcement in 2017, isn't it?

19 A Well, like I said, that was two years ago.

20 Q And you think your memory is better now than it was
21 back then?

22 A I didn't say it was. That's something that you're
23 implying.

24 Q You told law enforcement that Brandon showed you a
25 gun the week before Charlie's death, that he told

1 you he got rid of it after his death, and you
2 implied he made some threat to you. You told law
3 enforcement that Brandon owed either \$500 or \$5,000
4 to the victim. And you told law enforcement that
5 he and Floyd made two threats on two separate
6 occasions towards your brother. Right?

7 A They've made several threats on my brother over the
8 years.

9 Q How about all the other things I summarized? Are
10 all those things accurate that you told law
11 enforcement about Brandon?

12 A What all things are you talking about?

13 Q That Brandon showed you a gun the week before your
14 brother's death and told you it went missing after
15 your brother's death?

16 A Brandon didn't show me a gun voluntarily. He was
17 showing me contractor invoicing. I accidentally seen
18 the gun --

19 Q Okay.

20 A -- when he opened up his little satchel he had, his
21 little folder thing he had it in. He never showed
22 me any contractor's invoice because he was startled
23 that the gun was there.

24 Q Okay.

25 A Because I picked it up.

1 Q Well, I apologize --

2 A I was asking questions.

3 Q I apologize it's the phrasing that bothers you.

4 A Uh-huh.

5 Q So you told law enforcement that you saw Brandon
6 with a gun, correct?

7 A Correct.

8 Q Then you told law enforcement that Brandon told you
9 it went missing after your brother's death, right?

10 A No, I didn't tell them that. I told them Brandon
11 told me he threw the gun in the lake, and if
12 anybody asked, he ain't never owned that gun, he
13 ain't never had that gun.

14 Q Right. You told -- go ahead.

15 A The .380 he got, he got from his brother Eddy.

16 Q Okay.

17 A The one that you said I sold him.

18 Q Okay. And you told law enforcement that the motive
19 was either \$500 or \$5,000, right?

20 A It was \$5,000. That's what he claimed Charlie owed
21 him.

22 Q And then you told law enforcement that Brandon and
23 Floyd had made two threats towards your brother in
24 the past, right?

25 A They've made more than that.

1 Q Yet, not a single one of those things that you just
2 told this jury that you told law enforcement in
3 September of 2017 had you told them prior to
4 September of 2017, right?

5 A I don't know what you're trying to say.

6 Q You never told law enforcement any of those things
7 until two years after your brother was killed,
8 right?

9 A No, I would say that's inaccurate.

10 Q What part?

11 A Well, I told Richbourg about the gun in the
12 beginning. Actually, my oldest brother was there
13 when I told Richbourg about it. So they knew about
14 the gun.

15 Q Okay. How about the other parts, the money?

16 A Yeah, I told Richbourg about money too.

17 Q How about the threats?

18 A It's possible I could have told him about that.

19 Q Possible?

20 A Possible. I can't remember everything.

21 Q Yet, during your first interview, regardless of
22 these threats, you told law enforcement Brandon is
23 the only person in the world that gets along with
24 Charlie, right?

25 A I don't have a recollection of saying that.

1 Q Now, Charlie wasn't the only person that you were
2 feuding with at the time of his death, right?

3 A I wasn't feuding with my brother. I don't feud
4 with my family members like that.

5 Q Charlie wasn't the only person you were having an
6 altercation with before his death, was he?

7 MR. CONRAD: Your Honor, objection.
8 Relevance.

9 MR. BELL: May we approach, Your Honor?
10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Objection overruled.

14 BY MR. BELL:

15 Q Charlie wasn't the only person that you were
16 getting into arguments with leading up to Charlie's
17 death, right?

18 A I don't know what you're asking me.

19 Q You were also angry at Brandon, weren't you?

20 A Why would I be?

21 Q Well, you left him an angry voicemail three weeks
22 prior to your brother's death, didn't you?

23 A Did I?

24 Q I'm asking you.

25 A I don't have a recollection. You want to play it

1 for me?

2 Q In fact, you told law enforcement that -- you told
3 law enforcement in September of 2017 that three
4 weeks before Charlie's death, you actually called
5 Crime Stoppers trying to get Brandon arrested on a
6 floatation device ticket that he had outstanding,
7 isn't that right?

8 A Actually, that was two weeks prior to that. I
9 called Richland County because he had a weapon on
10 him, and I was concerned about it. Because I knew
11 they had bad -- not so good intentions, okay? So I
12 called Richland County to have him picked up on
13 that warrant hoping that they'd find that weapon on
14 him. They got the name mixed up. They got his
15 first name and his middle name mixed up. That's
16 why they didn't pick him up.

17 Q Did you tell law enforcement all of that?

18 A No, but there's a record of it with Richland
19 County.

20 Q So you happen to recall that, but you just didn't
21 tell law enforcement about it, but everything else
22 that you told law enforcement you can't recall,
23 right?

24 A Some things I can recall, some things I can't.

25 Q Selective memory, is that what that's called?

1 A If that's what you want to call it.

2 Q Your brother's death was the perfect opportunity
3 for you to not only divert suspicion from yourself,
4 but to get back at Brandon while you were angry at
5 him, wasn't it?

6 A No.

7 Q According to you, right?

8 A According to who?

9 Q You, right?

10 A No. I had no reason to do anything like that to my
11 brother. I loved my brother.

12 Q So you had nothing to do with influencing Floyd to
13 kill your brother?

14 A No.

15 Q Now, you told law enforcement you actually had a
16 neck brace on, that you were physically unable to
17 have anything to do with it, right?

18 A I did. I got a pin with six screws in my neck that
19 I had put in there like a couple of weeks before.
20 I've got medical records to prove it.

21 Q Do you remember exactly when?

22 A I believe it was in July, 29th.

23 Q July 29th, that would be almost a full month, if
24 not more, right?

25 A That's right.

1 Q Would it surprise you to know that James Jones said
2 he saw you a month prior and you seemed perfectly
3 fine?

4 A Who?

5 Q James Jones?

6 A Who's that?

7 Q If you don't know, that's perfectly fine. Well,
8 you certainly recall going to the Columbia Police
9 Department and not having that brace on, right?

10 A Afterwards, I had a soft brace on and I took it
11 off, yeah.

12 Q Took it off before you went to Columbia Police
13 Department?

14 A I did.

15 Q So you only wore it when it was good for you,
16 right?

17 A I only wore it when the doctor told me I had to
18 wear it.

19 Q And he said you don't have to wear it when you go
20 in the police department?

21 A No, he just said if you feel uncomfortable, you can
22 take it off, so that's what I did. It was a soft
23 brace.

24 Q So you felt uncomfortable going to the police
25 department, so you took it off?

1 A No, I took it off because I was driving, actually.

2 Q Would it surprise you to know that your own home
3 security system that we just labored over viewing
4 shows you walking around, allegedly you, without a
5 neck brace on?

6 A Is that a crime?

7 Q You're the one that indicated to law enforcement
8 that you couldn't have had anything to do with this
9 because of the neck brace, right?

10 A I didn't indicate that, my doctor did.

11 Q But you told law enforcement that, right?

12 A Actually, law enforcement told me that. Richbourg
13 told me that, me and my older brother.

14 Q Your testimony is that Investigator Richbourg said
15 you didn't have anything to do with this because
16 you had a neck brace on, is that right?

17 A No, he said my doctor said that I was physically
18 unable to do what was done to my brother. That's
19 what Richbourg told us.

20 Q And you agreed with him, didn't you?

21 A It's what they do.

22 Q What does that mean? It's what they do, what does
23 that mean?

24 A They investigate. They cleared me. That's what
25 they do. That's their job.

1 Q We spoke a moment about you being at Columbia
2 Police Department.

3 A Uh-huh.

4 Q And we've heard it testified to already that you
5 just so happened to be at the Columbia Police
6 Department almost simultaneous with your brother
7 being removed from his home, right?

8 A What do you mean being removed from his home?

9 Q That he was deceased and was being removed by law
10 enforcement?

11 A I guess he was being removed.

12 Q That's just a big coincidence, right?

13 A Yes.

14 Q Now, you say that you were actually at Columbia
15 Police Department because you were trying to have
16 Charlie arrested for exploitation of your sister,
17 right?

18 A Actually, I was trying to get an investigation
19 started. Whether they arrested him, that's up to
20 them to decide. I was just trying to start the
21 initial paperwork to recover my sister's assets.

22 Q Again, in September 2017, when interviewed by
23 Investigator Reese, you told him you were trying to
24 get him locked up, right?

25 A Trying to get who locked up?

1 Q Your brother?

2 A Well, I was trying to get him in court to answer
3 for what he was doing with her assets, yes.

4 Q But locked up was the word you used in talking to
5 law enforcement?

6 A Well, that's just a figure of speech sometimes.

7 Q And, again, you were trying to make that report
8 because of him alleging selling your sister's
9 furniture, right?

10 A He was abusing her assets. He sure was.

11 Q And the Solicitor actually asked you how you came
12 about that information, and it was from Floyd Owen,
13 right?

14 A Negative.

15 Q So you didn't testify earlier that Floyd Owen was
16 the one that called you to tell you that your
17 brother was selling your sister's furniture?

18 A He just told me that he had sold a couch and a
19 chair. I already knew my brother was doing wrong
20 from the rest of the family.

21 Q So the answer is yes, Floyd Owen called you and
22 told you your brother was selling that furniture,
23 right?

24 A He told me that he sold a chair and a couch, and
25 that's it.

1 Q And that phone call from Floyd led to that police
2 response on September 4th, correct?

3 A What was September the 4th?

4 Q Where you were put on no trespass notice by your
5 brother?

6 A Okay. Was that Friday?

7 Q Sure.

8 A Okay, yeah.

9 Q So you and Floyd are not afraid of conspiring
10 against someone, are you?

11 A I don't conspire with anybody to do anything.

12 Q Again, while you were at CPD, or Columbia Police
13 Department, you heard the news about your brother,
14 right?

15 A Yes.

16 Q You didn't say a single thing about Brandon at that
17 time, right?

18 A I didn't know. I wasn't for sure.

19 Q You didn't tell them about the threats? You knew
20 those happened, right?

21 A Yes.

22 Q You didn't tell them about the money being owed?
23 You knew that, right?

24 A Yes.

25 Q You didn't tell them about seeing him with a gun?

1 You knew that, right?

2 A I just saw him with a gun, I didn't know anything
3 else at that point in time.

4 Q You didn't tell them that until some of the
5 information came out during your second interview
6 several days later and the rest of it came out two
7 years later, right?

8 A I told them after I found out what Brandon told me.

9 Q And you told them because you needed time to come
10 up with a scapegoat, right?

11 A No.

12 Q In 2017, Investigator Reese asked you who the
13 weakest link would be between Floyd and Brandon,
14 right?

15 A I don't recall him asking me that.

16 Q And you said Floyd would talk, but Brandon
17 wouldn't. Do you remember that?

18 A That's probably right.

19 Q Because you can't talk about something you had
20 nothing to do with, can you?

21 A Brandon is always getting in trouble. His way out
22 of it is not to talk.

23 Q That's funny because, really, that's the same thing
24 you said about Floyd Owen, except how he gets out
25 of trouble is by talking, right?

1 A I don't recollect saying that.

2 Q When you were interviewed the second time by law
3 enforcement, you were actually under the impression
4 that Floyd told police you had threatened to kill
5 your brother, right?

6 A No, sir.

7 Q That's not true?

8 A No.

9 Q And you don't recall having that conversation with
10 Investigator Reese in September of 2017?

11 A Not to my recollection.

12 Q Then I'm guessing you also don't recall telling
13 Investigator Reese, and I quote, Floyd is going to
14 do anything he can to dump the blame on somebody
15 else because that is Floyd's nature. Floyd gets
16 caught doing something, Floyd doesn't want to step
17 up to the plate and be responsible, he always wants
18 to blame it on something else, end quote. That's
19 from you, isn't it?

20 A Could be.

21 Q It is, isn't it?

22 A I don't know. I mean, it could be. Could be.

23 Q Now, we talked about your DVR, which, apparently,
24 is your alibi for all of this, right?

25 A No.

1 Q It's not your alibi?

2 A No, my alibi is my wife sitting right back there.
3 I was home.

4 Q The same wife that you threw a tantrum about until
5 she got to sit in to your 2 and a half hour
6 interview with law enforcement, right?

7 A I didn't throw a tantrum about my wife.

8 Q Is Investigator Reese going to say the same thing
9 when he gets on the stand?

10 A I was exercising my rights at that time. You
11 understand that, you're an attorney.

12 Q Certainly.

13 A Okay. I have rights, and I was exercising my
14 rights to be left alone. Is there something wrong
15 with me exercising my right to be left alone? I do
16 have a right to be left alone if I ain't doing
17 anything wrong.

18 Q So your wife is your alibi, the one that sat in
19 your interview, right?

20 A Excuse me?

21 Q Your wife is your alibi, right?

22 A She -- she -- she knows I was home.

23 Q And the DVR supports that you were home, according
24 to the State, right?

25 A Correct.

1 Q Yet, you testified earlier that your DVR -- or you
2 had power outages and your DVR has lost both date
3 and time on a couple of occasions, didn't you?

4 A It could be, yes. It could be a little off.

5 Q So what we saw could have all been an absolute
6 smoke screen that had nothing to do with the date
7 of September 6th, 2015, right?

8 A Ask that again?

9 Q The date that we saw on that cumbersome video the
10 jury had to watch could have had -- could have not
11 been the actual date of September 6th, right? It
12 could have been a completely different date because
13 your power had gone out?

14 A No, I believe that's the correct date, because I
15 can bring the two in that was picking up their
16 vehicle, and they can vouch for that video too.

17 Q The State could do that, right?

18 A Yeah. I'm sure if I asked them people, they would
19 come here and they would testify to that's them and
20 that's what time it is and what day it is.

21 Q Do you issue invoices?

22 A No. Sometimes I do, sometimes I don't. It just
23 depends on --

24 Q So then how would a witness be able to take that
25 stand and state the date and time that they were at

1 your house?

2 A Because they know what time they came to my house
3 and they know how much money they paid me to get
4 their truck fixed. They have no reason to get up
5 here and lie.

6 Q Mr. Kusko, in all due respect, how tall are you?

7 A Five-six.

8 Q How tall is your wife?

9 A Five foot, I think. Four-eight, five foot, right
10 in there.

11 Q So if we see a short ghostly figure passing by a
12 terrible DVR system, can we say for sure that it's
13 you versus your wife?

14 A Yes. You can until us apart. I ain't got no hair,
15 she's got plenty.

16 Q Even on those dark cobweb-covered cameras at night?

17 A I didn't have no problem seeing me versus her or my
18 daughter.

19 Q During the day, right?

20 A There ain't nobody out there around my house at
21 night. Everybody is sleeping.

22 Q Now, you testified on direct that you had three
23 cameras on the front of your house and two in the
24 back. Do you recall that?

25 A Sounds about right.

1 Q Sounds about right? Well, we only saw four camera
2 angles on that screen, didn't we?

3 A Yeah, but if you look, there's some other cameras
4 up there.

5 Q So where are those recordings?

6 A Those are just dummy cameras. Nevertheless,
7 they're up there, so you got a camera.

8 Q So you only had four active, is what you're saying?

9 A Yes.

10 Q And that's what you're saying now that you've been
11 cross-examined on the fact there's only four on
12 that screen, right?

13 A Nobody ever asked me how many cameras I had at my
14 house. I mean, just --

15 Q Nobody ever asked you?

16 A Yes, that's all it will record is four on that.
17 That's all that's hooked up to it.

18 Q You're aware that Floyd Owen pled guilty to
19 burglary first related to breaking into your
20 brother's house, right?

21 A Yes.

22 Q So he's a thief, right?

23 A Did he steal something or did he just break in?

24 Q That's what you told law enforcement, right?

25 A I don't know if he stole something or not.

1 Q He's a burglar, right?

2 A Huh? He broke into the house, from what I
3 understand.

4 Q He's a burglar, right?

5 A If you say so.

6 Q And you also told law enforcement he will do
7 anything he can to get himself out of trouble,
8 right?

9 A I might have said that.

10 Q That makes him a coward, doesn't it?

11 A Not necessarily. I don't think he's a coward
12 because he stood up to the plate in here.

13 Q He pled guilty to murder, right?

14 A Yeah, he did.

15 Q So he's a --

16 A He's being accountable for his actions.

17 Q So he's a murderer, right?

18 A Yes.

19 Q Andrew, would you want Floyd's word, the word of a
20 thief, the word of a coward, the word of a burglar,
21 the word of a murderer to be the sole thing --

22 MR. CONRAD: Objection. The Defense is
23 pitting witnesses.

24 THE COURT: Objection overruled.

25 BY MR. BELL:

1 Q Would you want that kind of person's word to be the
2 sole thing standing between you and life
3 imprisonment?

4 A I don't understand where you're going with the
5 question.

6 Q Would you want Floyd's word to be able to put you
7 in prison?

8 A I don't think Floyd's word could put me in prison.

9 Q And it shouldn't put Brandon in prison either,
10 should it?

11 A Rephrase that question?

12 MR. BELL: Beg the Court's indulgence.

13 (Pause.)

14 MR. CONRAD: Your Honor, can we approach?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: All right, ladies and gentlemen of
20 the jury, there's a technical matter, we need to
21 get something set up. So I am going to send you
22 all out, and we'll have you back out in about five
23 minutes.

24 All right. Thank you.

25 (WHEREUPON, the jury retires to the jury

1 things, since the witness doesn't seem to recall
2 much at all, we will just wait and introduce this
3 through a later witness. So we won't proceed with
4 playing this recording for right now.

5 THE COURT: All right. Bring the jurors back
6 in.

7 (WHEREUPON, the jury came into open
8 court at 6:18 p.m.)

9 THE BAILIFF: The jury is present, Your Honor.

10 THE COURT: Ladies and gentlemen of the jury,
11 we will continue with cross-examination by
12 Mr. Bell.

13 MR. BELL: Nothing further at this time,
14 Judge.

15 MR. CONRAD: Your Honor, just a few things.

16 REDIRECT EXAMINATION

17 BY MR. CONRAD:

18 Q Mr. Kusko, the Defense questioned you extensively
19 about different threats you might have heard from
20 Brandon and from Floyd over the years, is that
21 correct?

22 A Correct.

23 Q And you were questioned extensively about threats
24 that you heard that Floyd had said, but Brandon
25 was -- was he on the phone at the same time or was

1 he present? Can you clarify that a little bit?

2 A Well, leading up to this, they was on speaker
3 phone.

4 Q Okay. And so both Floyd and Brandon were present
5 when this threat was made on speaker phone, is that
6 right?

7 A That's correct.

8 Q Okay. Now, the actual words you heard were spoke
9 by Floyd or by Brandon?

10 A By both of them, actually.

11 Q Both? But can you recall specifically what each
12 one said?

13 A They was drinking, doing drugs. I mean, I could
14 just tell by their mindset. And they was both
15 talking about finding a hoodie to --

16 Q And can you recall this particular conversation
17 about when it occurred?

18 A Two to three weeks prior to this happening to my
19 brother.

20 Q So not in 2008, 2015?

21 A Correct.

22 Q All right. Standing here before this jury today,
23 do you claim to have a perfect memory?

24 A No.

25 Q And can you recall the total number of times you

1 went down to the police station to talk to police
2 in regards to this matter?

3 A To the best of my recollection, four or five times.

4 Q When you add all those interviews together, can you
5 estimate for the jury about how long you were
6 there, if you add all the times in those
7 interviews?

8 A Just the interviews, or counting the first day that
9 I went down there that I find out?

10 Q Counting them, including all the interviews you
11 talked to the police about Charles Kusko. Just
12 estimate how much time if you add all those
13 interviews together. And you may not be able to.

14 A Time-wise, probably 48 hours, probably two days'
15 worth of time.

16 Q In terms of actually speaking to the police, would
17 it be -- would you agree with me that it was
18 probably over eight hours?

19 A Yes.

20 Q I mean, when you say 48 hours, you don't mean you
21 actually sat in the police station for 48 --

22 A Not at one time, but if you grouped all the times
23 together, three hours here -- the first day I was
24 there when I found out, I was there for almost
25 eight hours.

1 Q But you spoke to the police for multiple hours, no
2 matter which way you cut it, regarding this issue?

3 A That's correct.

4 Q And can you recall every single word you've spoken
5 to the police over those multiple hours?

6 A Not every single word, no.

7 Q And we have talked about the bullets and what
8 bullets look like.

9 MR. CONRAD: Your Honor, can we approach real
10 quick?

11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 BY MR. CONRAD:

15 Q Moving on, your testimony earlier was that when you
16 picked up that gun that was in the back of
17 Brandon's truck, you thought it was a .40 caliber
18 at first, is that correct?

19 A I didn't pick it up out the back of his truck.

20 Q Well, where did you pick it off of?

21 A Off of a fish stand that he laid it on, a black
22 fish stand that was in my shop.

23 Q My apologies. But when you picked that up, what
24 caliber did you think it was?

25 A I thought it was a .40 caliber, because that's what

1 it appeared to look like to me.

2 Q Would you consider yourself an expert in firearms?

3 A No.

4 Q And how did you learn that that pistol was, in
5 fact, a .45 caliber?

6 A Because the Defendant told me it was.

7 Q Brandon Barham told you that?

8 A Yes.

9 Q Mr. Kusko, you testified you did own a few guns
10 earlier on cross-examination, is that correct?

11 A That I own a few guns?

12 Q That you own some guns, is that correct?

13 A Yes.

14 Q Is one of those a .45 caliber pistol?

15 A No, sir.

16 Q In 2015, did you own a .45 caliber pistol?

17 A No, sir.

18 Q And, Mr. Kusko, when you went to talk to the police
19 on that Tuesday morning, September 8th, you did not
20 know your brother was dead, correct?

21 A That's correct.

22 Q If you had had anything to do with your brother's
23 death, would you have gone to the police station
24 that September -- that morning?

25 A No.

1 Q And you deny having anything to do with your
2 brother's death, is that correct?

3 A Can you --

4 Q Did you have anything to do with your brother's
5 death in any way?

6 A No, sir.

7 MR. CONRAD: Nothing further from the State.

8 THE COURT: Yes, sir?

9 RECROSS-EXAMINATION

10 BY MR. BELL:

11 Q You testified it's been over eight hours' worth of
12 interviewing with police, right?

13 A That's correct.

14 Q And you can't remember every word now, right?

15 A Not verbatim, no.

16 Q So the recordings of those interviews would be
17 extremely important for this jury so they could
18 hear exactly what you did say, right?

19 MR. CONRAD: And, Your Honor, I don't think
20 that's the Defense's place to say what a jury -- so
21 the State objects.

22 THE COURT: Objection overruled. What is the
23 objection?

24 MR. CONRAD: He's asking --

25 THE COURT: No, what is the actual objection?

1 I understand you --

2 MR. CONRAD: The objection is he's calling for
3 the witness to speculate.

4 THE COURT: Objection is overruled.

5 BY MR. BELL:

6 Q Those recordings would properly and accurately
7 reflect what you told law enforcement during those
8 interactions, right?

9 A I don't know. I didn't make the recordings.

10 Q Now, you said that you were on speaker phone the
11 last time that you heard a threat from Brandon and
12 Floyd, right?

13 A No.

14 Q You said they called you on speaker phone, didn't
15 you?

16 A They did, yes. They did.

17 Q Right. So Floyd was on that phone call, right?

18 A He was.

19 Q Brandon was on that phone call, right?

20 A He was.

21 Q And Andrew was on that phone call, wasn't he?

22 A Well, I was listening, yes.

23 MR. BELL: No further questions.

24 THE COURT: All right. Sir, you may step
25 down. Thank you.

1 and forth about whether or not I wanted to put it
2 in through Investigator Richbourg. I could put it
3 in later, I could recall him during my case, but I
4 just need to actually move this into evidence.
5 This is actually a photograph provided to us from
6 the State. All we did is just blow it up. So
7 they've had it, they know about it.

8 THE COURT: Any objection?

9 MR. CONRAD: No objection.

10 THE COURT: Defendant's 1.

11 (WHEREUPON, Defendant's Exhibit No. 1
12 was marked for identification and
13 received into evidence.)

14 THE COURT: All right.

15 (WHEREUPON, the jury came into open
16 court at 9:44 a.m.)

17 THE BAILIFF: Your Honor, the jury is present.

18 THE COURT: Good morning, ladies and gentlemen
19 of the jury. I hope you had a restful evening. At
20 this time, we will continue with the State's case.

21 I will ask the State to call their first
22 witness.

23 MR. CONRAD: Thank you, Your Honor. The State
24 calls Special Agent Lawton Bradshaw of the State
25 Law Enforcement Division.

1 (Witness approaches.)

2 THE BAILIFF: Place your left and on the
3 Bible, and raise your right.

4 (Witness complies.)

5 THE CLERK: Would you state your full name,
6 please.

7 THE WITNESS: Yes, ma'am. Frederick Lawton
8 Bradshaw, Jr.

9 THE CLERK: Would you spell your middle name,
10 please?

11 THE WITNESS: L-A-W-T-O-N.

12 THE CLERK: Do you solemnly swear to tell the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE COURT: Yes, sir?

17 MR. CONRAD: May it please the Court?

18 FREDERICK L. BRADSHAW,
19 JR.,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CONRAD:

23 Q Special Agent Bradshaw, where are you currently
24 employed, sir?

25 A At the South Carolina Law Enforcement Division.

1 Q And what are your current duties?

2 A I'm on the ESU team, which is electronic
3 surveillance unit team.

4 Q Okay. And what does that generally entail,
5 briefly?

6 A Basically, we go after fugitives or people that are
7 wanted in reference to violent crimes. We also do
8 mapping for cell phone data and cell phone towers.
9 And that's basically it.

10 Q Okay. So, about this mapping of cell phone towers
11 and cell phone data, have you received training in
12 that area?

13 A Yes, sir.

14 Q Can you tell the Court what your training has been
15 and experience has been in that area?

16 A Yes. We receive training in a system called PLX
17 and PenLink. What that does is that teaches you
18 about sectors and towers. It teaches you the
19 distance from the tower approximately if the device
20 is using text messages, voice, or data
21 transactions. We are certified in the fact that
22 you can actually testify to text message and voice
23 transactions, but you cannot testify to data
24 transactions. But these two -- we are trained, PLX
25 and PenLink, it's just a thing that you put the

1 records into, and of course it gives us that
2 information back, and we are trained to read it.

3 Q And that training that you received, the PLX and
4 the PenLink, was that through a course somewhere,
5 or where did you receive that training?

6 A They actually came to SLED and it was a week
7 training course that they taught us at SLED. It
8 was somebody out of the State of Nebraska.

9 Q Okay. And they thought you how to look at phone
10 records, is that correct?

11 A (Nods affirmatively.)

12 Q And how to look at transactions on phone records,
13 such as phone calls or text messages, correct?

14 A Yes, sir.

15 Q And what information can you derive from those?

16 A From that information, you can derive the distance
17 from a tower, the direction of the tower. You have
18 three directions on a tower. You have three
19 sectors. One kind of pointing in an upward
20 direction, another sector pointing in a down
21 direction, and then another one off to the left in
22 another upper direction.

23 Each tower, depending on how many towers are
24 in the area, they usually average about a 2-mile
25 distance before it actually switches off to another

1 tower in another direction on that tower. But in a
2 more rural area, you can go up even to about six or
3 seven miles off of a certain tower.

4 Q Okay. So you can essentially get some level of
5 location of where a phone is in relation to a
6 tower --

7 A Absolutely.

8 Q -- when a phone call is made?

9 A Yes, sir, absolutely.

10 Q Is that fair to say? Can you get precise
11 information of where that phone is?

12 A In some -- with some cell phone companies, yes, you
13 can. Others, it's a little bit -- you kind of have
14 to work with it.

15 Q Okay. All right. So sometimes it's not exact?

16 A Right, right.

17 Q But, as far as what the information tells you, is
18 it generally accurate?

19 A Yes. Yes, sir.

20 MR. CONRAD: Your Honor, at this time the
21 State would move to qualify Special Agent Bradshaw
22 as an expert in cell phone records and data -- cell
23 phone records, location information derived from
24 cell phone.

25 THE COURT: Any voir dire?

1 MR. BELL: A couple of quick questions.

2 THE COURT: Yes, sir.

3 VOIR DIRE

4 BY MR. BELL:

5 Q Special Agent, you testified that you're familiar
6 with the call detail records, CDR, is that correct?

7 A Yes, sir.

8 Q And those are the records that you rely on to plug
9 into this fancy software that outputs your mapping
10 data, is that right?

11 A Yes, sir.

12 Q But, to be specific, as it relates to the CDRs,
13 you're actually trained to interpret those as well?

14 A Yes, sir.

15 Q So you would be able to look at CDR and answer
16 questions about that particular data even before it
17 is put into a mapping system?

18 A Yes, sir. We actually go back through the CDRs
19 manually and we map those towers manually to make
20 sure that the software is accurate.

21 MR. BELL: No objection to expertise
22 qualifications.

23 THE COURT: All right. Ladies and gentlemen
24 of the jury, Agent Bradshaw will be qualified in
25 the area of cell phone location and data to give

1 opinion testimony in that area. That does not mean
2 that you must accept the opinion, but it is
3 evidence for you to consider in any way you see fit
4 and give it the weight and credibility you believe
5 is appropriate.

6 THE WITNESS: Thank you, Your Honor.

7 MR. CONRAD: Thank you, Your Honor. If I may
8 approach?

9 BY MR. CONRAD:

10 Q Agent Bradshaw, I'm going to hand you what has been
11 marked as State's Exhibit 136. Do you recognize
12 that, sir?

13 A I do.

14 Q And what is that?

15 A This is actually my mapping. This is my PDF of the
16 case that I mapped for cell phone number (803)
17 767-6448.

18 Q And in your creation of those documents of that
19 number, were you able to look at the subscriber
20 information that you were provided for whose number
21 that is?

22 A Absolutely.

23 Q And whose was that?

24 A It was Mr., I believe it's Barham.

25 Q Yes. Mr. Barham. Would that be Charles Brandon

1 Barham?

2 A (Nods affirmatively.)

3 Q Okay. So -- and when you map this data, do you
4 generate a report?

5 A I do.

6 Q And is that what you hold in your hand, sir?

7 A Yes, sir.

8 Q And, generally, what is included in that report
9 that you have there in your hand?

10 A This report includes -- it gives an explanation of
11 the actual target number that we are mapping, the
12 timeframe of that target number that they wish for
13 us to analyze. It also shows a picture of the cell
14 towers of how they are -- how you can tell which
15 sector it's coming from. It also gives you a brief
16 explanation of how you can read the actual CDRs,
17 which are the call detail records, and also
18 possibly an RTT, which is your real tower time,
19 which gives you the tower time that, of course, the
20 transaction was hit on.

21 It also has an overview of all the towers that
22 the select target numbers hit within those -- the
23 timeframe that they asked me to map. And it also
24 shows each tower and each tower with the
25 transactions that were from that tower on that

1 certain timeframe.

2 Q Okay.

3 MR. CONRAD: Your Honor, at this time the
4 State would seek to State's Exhibit 136 into
5 evidence.

6 MR. BELL: If I can just take a look at it.
7 (Pause.)

8 MR. BELL: No objection to State's 136, Your
9 Honor.

10 THE COURT: It will be entered without
11 objection.

12 MR. CONRAD: Thank you, Your Honor.
13 (WHEREUPON, State's Exhibit No. 136 was
14 marked for identification and received
15 into evidence.)

16 MR. CONRAD: At this time, the State is going
17 to publish this report and have Agent Bradshaw talk
18 specifics. We're going to utilize the board to
19 allow him to show the jury closer detail.

20 BY MR. CONRAD:

21 Q And what you see on the screen there, is that the
22 report that you have a paper copy in your hand?

23 A It is, yes, sir.

24 Q Okay.

25 MR. CONRAD: And if it please the Court, the

1 State would ask the witness to step down.

2 THE COURT: Yes, sir.

3 (Witness steps down.)

4 BY MR. CONRAD:

5 Q So this is the first page. Okay. Tell the jury
6 what is involved in this.

7 A Number One here is, of course, the background on
8 this. This is telling you the target number, of
9 course, that they asked me to analyze. It also
10 gives you the timeframe of which the --

11 THE COURT: Hold on one second.

12 Can everyone see?

13 THE WITNESS: I'm sorry.

14 MR. CONRAD: Sorry, Your Honor.

15 THE WITNESS: I'll start over. Number One
16 here is just telling you the target number that we
17 are to -- that they asked me to analyze, which you
18 can see there. Also, it also tells you the
19 timeframe of when I'm supposed to analyze it, which
20 is September 5th, 2015, from 5:00 o'clock to
21 September 6th at 10:22 hours, which is 2222 hours.
22 That was the timeframe that I was told to analyze
23 this target number.

24 Number Two here, it just tells you what the
25 target number or CDRs, how they're obtained, what

1 cell site, what the definition of a cell site is,
2 and all that good stuff. Cell site location,
3 that's just telling you the course of your towers,
4 that's your cell locations.

5 And then, of course, the conclusion. The
6 historical cell site analysis was performed on the
7 call detail records as well. Again, that's just
8 going 30 days back prior to the actual analyze
9 date. So basically you're just looking at the
10 analyze date, and that's all we did.

11 BY MR. CONRAD:

12 Q Okay. What's that?

13 A This is the sample of a tower. That is a cell
14 tower. As you can see, you can see your three
15 sectors. You can see your three sides: One, two
16 and then three. The different actual levels of
17 that tower could possibly mean that you have
18 T-Mobile tower or Verizon tower or Sprint, or so
19 forth and so on. Different vendors on different
20 towers.

21 But what you are mainly looking at is these
22 sectors here, these three different sectors which
23 forms that triangle.

24 You can have calls coming in. They come off
25 of this side of the sector -- or this side of the

1 tower, the opposite side of the tower, and then, of
2 course, the other side.

3 That's just telling you how the sectors work.
4 Again, you have Sector One, Sector Two, Sector
5 Three. You have Sector One, Sector Two, Sector
6 Three. So you have three sectors. And this is
7 just showing the three different levels of the
8 tower: Level One, Level Two, Level three. But,
9 again, your main focus is the three different
10 sectors and which directions they point off.

11 Q And when you say directions, what do you mean?

12 A Okay. So, for instance, if you had somebody that
13 was making a voice transaction in an area over
14 here, it would only hit off of this sector. Does
15 that make sense? It would only hit this sector.

16 In order for it to hit off any of these other
17 sectors, that target would have to actually move
18 into that sector. And then that gives you the
19 degrees, which is called an azimuth.

20 So basically you're dealing with a 360-degree
21 circle. And each time there's a transaction made,
22 it will hit off a sector and it will actually give
23 you the degrees off of that tower. It will give
24 130 degrees, 60 degrees, 70 degrees. That azimuth
25 is what is going to put it into one of those

1 sectors.

2 So in other words, if you're over here, it is
3 impossible for you to hit off of this sector over
4 here or this sector over here.

5 Q So, in other words, if someone is in this area and
6 they make a phone call, their cell phone records
7 are going to show that it was in this particular
8 sector, correct?

9 A Yes, sir, that would be Sector Two.

10 Q And depending on the tower, Sector Two would be the
11 delineated in terms of one azimuth to another
12 azimuth?

13 A Absolutely. It would give it to you in degrees and
14 it would also be a distance from that tower, which
15 could be in meters or miles.

16 Q And is that distance that is given, is that
17 something that can be trusted? Is that -- it can
18 be relied on?

19 A Absolutely.

20 Q Actually, going back, one more thing, just one more
21 question about this.

22 A Yes, sir.

23 Q Would cell phone information give a -- we've
24 established it can place them in the sector. Can a
25 cell phone tower give an actual azimuth to a

1 particular --

2 A Yes, sir.

3 Q -- phone?

4 A Yes, sir. Again, that was when I was talking about
5 the 360 degrees. It will actually give you a
6 degree of where it is in that sector.

7 Q Okay.

8 A For instance, of course, you know that it goes
9 around and 360 degrees is back up top. So say
10 it's -- let's say it's 30 degrees off of Sector
11 One, okay, 30 degrees would be somewhere right
12 around in here. So that's telling me the sector.
13 Even if -- the call detail records, that's how we
14 go back and manually check it because sometimes it
15 will give you a sector. I'm sorry, I apologize.
16 Sometimes it will give you a sector and you want to
17 be more specific in that sector. So then you do
18 what's called an azimuth, which is a degree, which
19 would be that 30 degrees. So, therefore, you know
20 it's at Sector One because it's at the top. But
21 when it says 30 degrees, you literally can take
22 a -- we have Google Earth Pro, of course, and you
23 can take a line and it will point it right to that
24 device.

25 Q Okay. And what is this data?

1 A This is your call detail records. This is how we
2 receive the call detail records. And as you can --
3 well, it's a little bit blurry, but these are your
4 headings at the top.

5 You have your network element name, which is,
6 of course -- that's the Verizon or that's the
7 actual vendors name for their system, whatever they
8 see used.

9 You have your mobile directory number, which
10 is -- that's your target number, that's the actual
11 number that you are getting the records for.

12 Your dial digit number, what that can be is,
13 that can be the number that either the target is
14 calling or either is calling the target.

15 The call direction, that's whether it's
16 inbound or outbound or if it's a text message or if
17 it's data.

18 Your seizure time and date, again, that's
19 self-explanatory. That's just the date and time of
20 the actual transaction.

21 Your seizure duration, of course that's just
22 going to give you the time of the text message,
23 which is usually two seconds, or the voice
24 transaction, which is however long you stay on the
25 phone.

1 And then, of course, your data transaction.

2 Q Okay.

3 A Again, that's just explaining the records. If
4 you're looking at it, it explains what could
5 possibly pop up in the records. Of course, I don't
6 think it's really used anymore, but like Star 86
7 and the voicemail retrieval. Sometimes there's
8 still some 3G and 2G phones out there that will
9 still actually use this, these codes for the --

10 Q And sorry to stop you, but you just said something
11 about 3G and 2G phones. What do you mean by that?

12 A That's just the different speeds. Of course,
13 you've got LTE now and they're fixing to come out
14 with 5G. But 2G and 3G are the older duration,
15 like flip phones, and stuff like that. And they're
16 actually probably January 1st going to be -- you
17 know, do without those. You won't be able to use
18 those anymore.

19 Q So most people are using smart phone these days?

20 A Absolutely.

21 Q Okay. What --

22 A This is the realtime tool. This is what RTT is,
23 round trip delay measurement. Basically, that's
24 how we get the distance from the tower and the
25 timeframe of the actual transaction. And that's

1 all the RTT stands for.

2 Q Okay. Now, I see in your explanation that it's not
3 derived from GPS data, correct?

4 A (Nods negatively.)

5 Q And it's based solely on what?

6 A It's based solely on that tower, the distance from
7 that tower and how far -- or which sector it is on
8 that tower.

9 Q And it says round trip to leg measurement. Do I
10 understand that to mean that what it's measuring
11 is -- is it timing the signal that goes to the
12 phone and back and it does math?

13 A Yes, sir.

14 Q It gives the distance?

15 A Absolutely, yes, sir.

16 Q And what -- can you read that number at the top?

17 A Absolutely. The target number that I was given was
18 (803)767-6448. That's the call detail records that
19 I analyzed. And, again, this is the timeframe that
20 I analyzed it. It was September 5th of 2015,
21 between 5:00 o'clock, and September the 6th between
22 10:00 o'clock.

23 Q And what did you actually analyze? What data were
24 you given to analyze?

25 A The call detail records, which were just his

1 transactions on his phone.

2 Q Okay. All right. And -- okay. And these were
3 just some locations of interest that you --

4 A I was given. Absolutely. And I just compared
5 those to his address.

6 Q Okay. One of which was 1710 Budon Court?

7 A Absolutely, yes, sir.

8 Q Okay. Explain to the jury what this is.

9 A It might be a little hard to see in the back, but
10 here is the overview. These are all of the towers
11 that that target number hit off of in that
12 timeframe of September the 5th through
13 September the 6th. The A, B, and C that you see
14 there, again, those are the addresses, the
15 locations that I compared the towers to -- or the
16 actual locations to.

17 I'm going to reach across here, back up.
18 Those are the towers. Those blue V's, those are
19 your actual towers. And as you can see up here, he
20 actually hit off two sectors of the same tower. So
21 that will give you a better explanation of -- he
22 was -- actually, he had to be moving in order to
23 hit off of those two different sectors like that.

24 Q Okay. So these are towers that Mr. -- or this
25 phone, 6448, bounced off of during the timeframe

1 that you analyzed it?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q But this is not broken down to the times at this
6 point?

7 A No, sir. This is just an overview. Again, this is
8 just all of the towers that that target number
9 utilized during that timeframe.

10 Q And just so the jury understands it, the data is
11 only collected when the phone is used for what?

12 A For a transaction, whether it's voice, text
13 message, or data. But, again, we do not map data
14 or text messages.

15 Q Okay. And the reason for that is?

16 A Because it's inaccurate.

17 Q But cell -- or the phone call --

18 A Voice call is very much accurate.

19 Q Okay. All right. And let's go on to the next one.
20 And this is all the towers that this number bounced
21 off of during this timeframe of September 5th and
22 September 6th, correct?

23 A Yes, sir.

24 Q Okay. All right. And what is this?

25 A That is your call detail records. That is all the

1 calls that he made that actually -- just in that
2 timeframe. And, of course, this is the -- these
3 are the transactions that I mapped.

4 Q And so this is the raw data that you used to map
5 those locations, is that correct?

6 A Yes, sir.

7 Q Okay. And what do you see in this slide?

8 A Okay. This slide will tell you that there is two
9 transactions on the 5th that hit off of Tower 510,
10 Sector Two. Again, we go back to the sectors:
11 Sectors One, Sector Two, Sector Three. As you can
12 see there, that is clearly Sector Two. It is
13 pointing down in a southeast direction. These are
14 the two transactions. They are voice transactions
15 that occurred. One was at 5:25 eastern standard
16 time, and one was at 6:39 eastern standard time.

17 Q Those are p.m.?

18 A Yes, those are actually p.m. Again, that's
19 military time. But that is definitely Sector Two
20 and that is Tower 510.

21 Q Okay. So this tower is located at the point of
22 that V, the tower itself?

23 A Yes, it's actually pointed right where that V comes
24 to a point.

25 Q And those two phone calls, according to the records

1 you examined, were both placed within a sector
2 between those two lines?

3 A Absolutely. If you were take these lines and go
4 down here and that one to go out here, it could be,
5 you know, anywhere in that area in those -- in that
6 sector.

7 Q Okay. Did you get -- you testified earlier that
8 sometimes you get distance measurements from the
9 cell phone records. Was there distance
10 measurements?

11 A There was no distance on these. And the reason
12 being is Verizon did not send that to me on those
13 call records.

14 Q Okay.

15 A And, plus, you have -- you're dealing with a city,
16 so you're dealing with towers within miles of one
17 another. So one would believe that that
18 transaction could possibly only be about two miles
19 from that tower.

20 Q So based off your experience and training, you
21 would estimate it was likely within two miles?

22 A Absolutely. Because if not, it would go off onto
23 another tower.

24 Q Okay. So that's Saturday -- excuse me, Saturday
25 September 5th, 2015 in the late evening -- or early

1 evening, late afternoon hours?

2 A Yes, sir.

3 Q And what do we see here?

4 A Okay. This is going to be the same tower, 510, but
5 a different sector. As you can see, that tower is
6 pointed up in a northern direction. These two
7 transactions happened at 8:14 eastern standard
8 time, and then again at 9:18 eastern standard time.
9 So one would believe he is either moving or he is
10 in this direction up here.

11 Q And you said something about moving. What would
12 lead you to believe that?

13 A Well, the reason why is because just -- I can't
14 remember what the other time was.

15 Q Those are the times.

16 A So right here, at 6:39, he was hitting off of the
17 bottom part of that tower. So, of course, he would
18 have to be moving to be able to -- go to the next
19 slide, go to next slide -- to be in that sector up
20 here.

21 Q He would have had to have moved at some point?

22 A Absolutely. At some point in time, he would have
23 had to have moved to be able to hit off of that
24 sector.

25 Q You're not necessarily -- just to be clear, you're

1 necessarily that --

2 A He's not moving --

3 Q -- he's actually moving --

4 A No, he is somewhere permanent at that point because
5 you have two transactions that are almost an hour
6 apart. So he is actually stationary, but he moved
7 at some point to be able to go to that Sector One.

8 Q And just give the jury a more general overview of
9 what we're looking at. This tower, this 510, one,
10 is that the Verizon nomenclature for tower?

11 A Actually, what it is, the tower is 510, and then
12 there is Sector One, which, again, is the same
13 tower as the slide before, but a different sector.

14 Q And actually just -- we probably should have done
15 this a minute ago, I apologize. Show -- where is
16 downtown Columbia on this map?

17 A Downtown Columbia is going to be right here.

18 Q Okay. And Highway 277, can you show that to the
19 jury?

20 A 277 is right there.

21 Q And which direction does it go?

22 A It goes north and south.

23 Q Is it this road right here?

24 A Yes, sir. Yes, sir.

25 Q And can you show Interstate 20?

1 A Interstate 20? Interstate 20 is going to be right
2 here.

3 Q Okay. All right. And --

4 A It's going to go -- it's going to go this way.

5 Q Okay. And, finally, Interstate 77?

6 A 77 comes right through here and goes on up that
7 way.

8 Q Okay. All right. And 1710 Budon Court, can you
9 show the jury where 1710 Budon Court is?

10 A It's going to be right there where that B is.

11 Q Okay. And tell the jury what is on this slide?

12 A Now, this is a totally different tower. This is
13 going to be Tower 138, Sector Three. Again, you've
14 got both -- all three sectors right there within
15 three slides, but you've got two different towers.
16 So this is Sector Three, and this sector is going
17 to be pointing down in a more south, southwest
18 direction. And these two transactions, one was on
19 the 5th at 9:29, I believe that is. Yes. 9:29
20 eastern standard time. And then the next day at
21 3:30 in the afternoon.

22 Q Okay.

23 A And that's when he hit off Tower 138, Sector Three.

24 Q All right. And that's in the --

25 A The southwest side, Sector Three.

1 Q All right. Now, we have a phone call at 9:29 p.m.
2 on September 5th, which is a Saturday,
3 September 5th, 2015. Were there any other phone
4 calls in the records that you were provided between
5 then and the afternoon of September 6th, 2015?

6 A No, sir.

7 Q At 3:30?

8 A No, sir, not that communicated with a tower.

9 Q Okay. Tell us about this slide, please.

10 A Okay. This is going to be Tower 520, Sector Three.
11 The first transaction off of this tower was on the
12 6th at 3:52 eastern standard time. The second one,
13 it was obviously a text message, because you can
14 see it's only seconds between the two -- you know,
15 the two transactions. And then, again, you have
16 another one on the 6th at the same timeframe, but
17 at 47 seconds. So you have one at 31 seconds, one
18 at 46 seconds, and one at 47 seconds of the same
19 time on the same day. And, again, that was off
20 Tower 520, Sector Three.

21 Q Okay. All right. And tell us about --

22 A Okay. Now, this tower is going to be up in the
23 Ridgeway area of South Carolina, if you're
24 familiar. This is going to be Tower 65 and Sector
25 Three. Again, it's going to be your north -- I

1 mean, I'm sorry, your south, your southwest
2 direction or, you know, your western direction.
3 Obviously, that azimuth might have been a little
4 bit more to the west than the south. But, again,
5 this transaction is going to be on the 6th of
6 September at 4:01.

7 Q So Sunday, September 6th, in the afternoon?

8 A Yes, sir.

9 Q At 4:00 p.m.?

10 A Yes, sir. 4:00 p.m.

11 Q We showed the jury -- this is a little bit
12 different map. Where is downtown Columbia on this
13 map?

14 A Downtown Columbia is going to be way -- it's
15 actually not even in the picture, but it's going to
16 be down here.

17 Q Okay. And Interstate 77, which is traveling north
18 of Columbia, can you show the jury?

19 A 77 is right there.

20 Q And it continues north?

21 A Yes, sir.

22 Q So Interstate 77 is actually within that sector for
23 where that phone call was placed?

24 A Yes, sir.

25 Q And Ridgeway is where?

1 A Ridgeway is -- well, the actual city limits is
2 somewhere right around like on this side over here.

3 Q Okay.

4 A But, you know, considering all that area up there.

5 Q All right. Tell us about this.

6 A Okay. This is Tower 39, Sector One. Again, you're
7 dealing with the northern part of I-77. And this
8 transaction happened on the 6th at approximately
9 5:29 eastern standard time. Again, that's Tower
10 39, Sector One. It's a little bit lighter than the
11 other towers, but, again, that Sector One is going
12 to be that eastern sector of that tower.

13 Q Okay. And we see I-77 again?

14 A Yes, I-77 is here and your City of Columbia would
15 be way down here off the map.

16 Q But it is a little bit closer to Columbia than
17 previous?

18 A Absolutely. Yes, sir.

19 Q Let's go back to one previous slide and ask you a
20 couple of questions about it.

21 Okay. These are all phone calls, correct?

22 A Yes, sir.

23 Q All right. And I notice some numbers. I believe
24 you said it was the serving cell site? Is that the
25 tower number?

1 A Yes, sir. The first serving cell site, which is in
2 this column here, is actually going to be your cell
3 site. That's your tower.

4 Q And this is both incoming and outgoing calls?

5 A Yes, sir.

6 Q Now, I see in the first cell site that there's some
7 numbers. I think we talked about this. 510, I
8 recognize, 138, those are the tower numbers that
9 you just talked about. I see some zeros there.

10 A Yes, sir.

11 Q What does that mean?

12 A The zeros mean that it is not communicating with a
13 tower. That does not mean that he is not utilizing
14 that phone. That could mean three things. One,
15 the phone is in airplane mode and it cannot
16 communicate with a tower. Number Two, it has been
17 a power -- he has actually powered that device off.
18 Or Number Three, he's using some type of data, like
19 an app, to place a call or text message to
20 communicate.

21 Q Okay. So it's either data?

22 A (Nods affirmatively.)

23 Q Now, you say he's powered off. Are you saying the
24 act of powering a phone off is going to register on
25 a tower like that, or what are you saying?

1 A Basically, what happens, when you turn that phone
2 off, it's going to register the last tower that
3 that phone hit when you powered that device off,
4 but in order for it to communicate with a tower,
5 again, that device would have to be on. So when it
6 is on, it would just -- of course, it would show
7 the tower and the sector. But you can't tell these
8 days with a smart phone if the phone is actually
9 powered off or actually if the battery just died on
10 that cell phone. But one would believe that the
11 battery didn't die because, of course, he had some
12 transactions, you know, within 45 minutes.

13 Q Okay. And so you can't -- obviously, can't map --
14 when you see a zero there, you can't map that, is
15 that correct?

16 A Yes, sir. Cannot map.

17 Q We know there's some phone usage during that time?

18 A Yes, sir.

19 Q We can't tell what exactly?

20 A Yes. Yes.

21 Q Okay. And we see those zeros in the evening hours.
22 So what times do you see those zeros?

23 A The first zero pops up -- okay, I'll go back and
24 kind of explain it to you. You have a transaction
25 that hits a tower on the 5th at 8:14.

1 Q P.M.?

2 A P.M.

3 Q Okay.

4 A So immediately, within 15 seconds, it doesn't
5 communicate with a tower. So, to me, the battery
6 didn't die. That's either he's communicating
7 through an app or he put that phone in airplane
8 mode or an actual hard power off. But one would
9 believe that within 15 seconds that he probably
10 didn't power that phone off because, again, you
11 have another tower come through at 7:18 p.m., which
12 is about 45 minutes after the fact.

13 Q All right. We're almost going to wrap this up.
14 You testified that there was a phone call in the
15 evening of September 5th, correct, at 9:30, about
16 9:30 p.m.?

17 A Yes, sir.

18 Q Could you point to that phone call on these
19 records?

20 A It's right -- right there.

21 Q That says 12:36.

22 A I'm sorry.

23 Q Twenty-one?

24 A 2129, I'm sorry.

25 Q 9:30 p.m. And you got good location off of that?

1 A Yes, sir.

2 Q And then the next phone call after that is when?

3 A The next one is going to be on the 6th, the next
4 day, at 12:30 in the afternoon.

5 Q And you got location data off that call?

6 A Right, yes, sir.

7 Q I think that's all for the visuals. If you'll take
8 the stand again, please.

9 (Witness returns to witness stand.)

10 MR. CONRAD: Okay. Nothing further from the
11 State. Please answer any questions the Defense
12 might ask.

13 THE COURT: Yes, sir?

14 MR. BELL: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. BELL:

17 Q Special Agent, I don't mean to demote you, but I
18 may call you agent a few times because it's a
19 little easier to say. Is that all right with you?

20 A Yes, sir, that's fine.

21 Q My understanding is you're actually a Sumter
22 fellow, right?

23 A Yes, sir.

24 Q All right. I know there's not many of us that make
25 it out of there on this case. It's good to have

1 you on the stand.

2 A I appreciate that.

3 Q Now, you talked about CDRs and the fancy software,
4 PLX and PenLink I think what you called it?

5 A Yes, sir.

6 Q And that's the software that you ran those CDRs
7 through to come up with the maps with the blue
8 lines and all that on it, correct?

9 A Yes, sir.

10 Q And the Solicitor asked you that using the CDRs and
11 this mapping software, you can get -- I think the
12 quote that he used was some level of location of a
13 cell phone, is that right?

14 A Yes, sir. Yes, sir.

15 Q Because cell phone mapping is really still in its
16 infancy, right?

17 A I don't -- yes, sir, I can't argue with that. It's
18 getting better, so anything that's getting better,
19 of course, it is still at -- you know.

20 Q It's not an exact science, right?

21 A Yes, sir.

22 Q In fact, we know that typically, if everything is
23 going ideally, if a call is placed, then, yes, it
24 will fall within one of those three sectors of a
25 cell phone tower, right?

1 A Yes, sir.

2 Q Ordinarily, the closest one to wherever that cell
3 phone is located, is that right?

4 A Yes, sir.

5 Q There are occasions, though, where a call can be
6 placed and it actually not pick up on the closest
7 cell phone tower, right?

8 A Yes, sir. Again, that would be if they were using
9 voice over IP or some sort of app.

10 Q It also could occur if, let's say you are in rush
11 hour traffic or there's an overpopulation in the
12 area and the tower is overloaded, right?

13 A Yes, sir, it can, but what will happen is that
14 tower will show the sector that it hit off of, so
15 it would actually be pointing almost in the same --
16 well, it would be pointing in a different
17 direction, but it would give you a distance, which
18 is what we get from those towers anyway, so it
19 would put it within that other sector. But because
20 that tower was overloaded, yes, it will bump it to
21 another tower.

22 Q As it relates to these Verizon records, you
23 actually testified you couldn't get a distance,
24 right, because they don't give you that
25 information?

1 A If you ask for it, you can.

2 Q But you didn't get it in this case?

3 A No, sir.

4 Q So very well, some of the cell phone mapping that
5 we may have seen on that map could have been an
6 overload relocater relay, right?

7 A Yes, sir, but it would -- the probability would --
8 it probably would have had to be within, I would
9 say, three miles of that tower, whether it was
10 overloaded or not. There's no way that it would
11 throw it to another tower unless it was in the area
12 of that tower.

13 Q And even under the theory that it may be within
14 three miles, you testified that you were looking
15 essentially at urban locations, right?

16 A Yes, sir. Most of it was actually in the City of
17 Columbia.

18 Q And can you estimate, there may be hundreds of
19 homes and businesses in a 3-mile radius in an urban
20 location?

21 A Yes, sir.

22 Q Potentially thousands?

23 A Yes, sir.

24 Q So a 3-mile radius can be an exceptionally large
25 area when we're talking about a map?

1 A In the city limits, I would say that that range
2 would diminish and would probably go down to
3 probably even a mile, because you do have so many
4 towers in the city.

5 Q And even a mile, we're talking hundreds of homes
6 and businesses, right?

7 A Yes, sir. But the sector would narrow that down.

8 Q And that sector that you're talking about is that
9 big V?

10 A Yes, sir.

11 Q And as we saw -- I don't want to pull that back
12 out --

13 A Yes, sir.

14 Q But we essentially saw you're looking at, what, 60
15 degree slices, is that what --

16 A It's three, so three divided into 36.

17 Q I'm not good at math.

18 A Yeah, I'm not either.

19 Q Ninety, something like that?

20 A Yes, sir.

21 Q But, anyway, it's a huge variation on the map,
22 right?

23 A I wouldn't say huge, but, yes, sir, it's large.

24 Q Literally, you're pointing at a third of whatever
25 the map is that you're looking at?

1 A Yes, sir.

2 Q So, again, not an exact science by any means?

3 A No, sir.

4 Q Now, you testified about (803)767-6448, right?

5 A Yes, sir.

6 Q And you identified the subscriber information to
7 that was a Brandon Barham?

8 A Yes, sir.

9 Q Were you provided any other numbers to map?

10 A Yes, sir -- for this case? Yes, sir.

11 Q And did you map those?

12 A Yes, sir, I did.

13 Q Did we talk about any of those to the jury?

14 A No, sir.

15 Q One of those was Andrew Kusko, right?

16 A Yes, sir.

17 Q And were you aware when they turned that
18 information over, that was actually his wife's
19 phone number that he gave you?

20 A No, sir.

21 Q And then the other number was a Floyd Owen, right?

22 A No, sir, I never did Mr. Owen.

23 Q What other numbers were you given?

24 A Those two were the only numbers I was given.

25 Q Okay.

1 A Would like me to state that number?

2 Q Sure.

3 A The one -- the only other number that I was given
4 was (803)348-1304. And, again, I apologize with
5 the names of these because normally we just look at
6 the target number and not the names.

7 Q You testified that you can't get location
8 information or azimuth information from data and
9 texting, is that right?

10 A You can, but we cannot testify to it.

11 Q All right. So there's nothing to look at in this
12 case?

13 A No, sir.

14 Q And when we talk about data, it is sort of an
15 abstract thing, especially for those of us not all
16 that good at technology.

17 A Yes, sir.

18 Q But data can be anything from me playing Fruit
19 Ninja on WiFi to using a Voice over IP application,
20 right?

21 A Yes, sir.

22 Q All the way to checking my e-mail?

23 A Yes, sir.

24 Q And everything in between that has to do with using
25 applications in this day and age?

1 A Yes, sir.

2 Q And then text messages, of course, you know,
3 bringing up a text app and sending a message to
4 someone, correct?

5 A Yes, sir. Yes, sir.

6 Q And those two things, you don't get any mapping
7 information from?

8 A No, sir.

9 Q Can you still tell that they occurred on a CDR?

10 A Yes, sir.

11 Q And as it relates to data usage, again, you
12 indicated that zeros that show up in the one column
13 typically indicate probably some sort of
14 application usage?

15 A It could, yes, sir.

16 Q Could?

17 A That was one of the three, yes, sir.

18 Q And were you aware that Brandon Barham actually
19 operates a business using a Google Voice account?

20 A No, sir, I was not aware of that.

21 Q Are you at all familiar based on your expertise
22 with what Google Voice is?

23 A Yes, sir, I am. I've never had any, you know,
24 transactions with Google, but normally it's like
25 with a e-mail account that we usually do the

1 location from. But, no, sir, not that applicable.

2 Q You're aware, though, it's essentially a Voice over
3 IP?

4 A Yes, sir. Yes, sir.

5 Q It's an internet phone number, basically?

6 A Yes, sir. There's several out there.

7 Q And that would utilize data?

8 A Yes, sir.

9 Q So just because someone shows zeros on their CDR
10 doesn't necessarily mean anything nefarious, right?

11 A All it means is they did not speak with a tower --
12 or communicate with a tower, I apologize.

13 Q Which could simply be from using application?

14 A Yep. Yes, sir.

15 Q So all this talk about it's because he powered his
16 phone down or potentially put it on airplane mode,
17 that is simply a possibility, right?

18 A It's one of the three possibilities.

19 Q It's not necessarily even a probability, it's just
20 a possibility, right?

21 A A possibility.

22 Q Now, you talked about, I think it was -- I think
23 you said there was a hit in Ridgeway on 9/6 of
24 2015, is that right?

25 A Yes, sir, I believe so. Yes, sir.

1 Q Roughly, in the area of Ridgeway?

2 A Yes, sir. Yes, sir.

3 Q Now, were you provided an address to plot up there?

4 A No, sir, not in Ridgeway.

5 Q Yet, you were provided other addresses, which you
6 did plot on the map, correct?

7 A Yes, sir.

8 Q But as far as that Ridgeway cell tower, all the
9 State wanted you to put on that map is just that
10 his phone pinged somewhere in the north part of
11 that area?

12 A They didn't give me a location or anything in
13 Ridgeway. Again, it was a timeframe, from the 5th
14 to the 6th.

15 Q So we don't know based on that ping how close he
16 may have been to any particular location up there?

17 A Any location in Ridgeway?

18 Q Without any point of interest to plot?

19 A No, sir, all I could say is that he was in the area
20 of Ridgeway.

21 Q Now, you were asked, again, about the time period,
22 I think was roughly 9:38 p.m. on September 5th of
23 2015. Do you recall that?

24 A Yes, sir.

25 Q And that's essentially the last communication that

1 that phone had before the following afternoon, I
2 believe?

3 A Yes, sir.

4 Q Now, the CDR also doesn't reflect anybody
5 attempting to communicate with him, right?

6 A No, sir.

7 Q So it's not just that he is not making calls or
8 using data or text, or whatever it might be, but,
9 also, no one is trying to communicate with him,
10 period, right?

11 A No, sir. Not that I saw from those -- from that
12 timeframe of those call detail records.

13 Q Because even if that phone was allegedly powered
14 off, you would still see forward signals, right,
15 that were being forwarded to his voicemail?

16 A Yes, sir. But it would not communicate with a
17 tower.

18 Q So the fact that there is no activity after 9:38
19 simply indicates there was no activity after 9:38,
20 right?

21 A Again, unless there was a data transfer or
22 transaction.

23 Q Had he had a bunch of phone calls that were
24 constantly being forwarded to voicemail, that may
25 indicate that his phone was off, right?

1 A Yes, sir, the probability would be high.

2 Q But that was not the case in the CDR you reviewed?

3 A No, sir.

4 Q Did you have any information whatsoever that the
5 telephone number that you described as belonging to
6 Brandon Barham was anywhere near 1710 Budon Court
7 in the early morning hours of September 6th, 2015?

8 A As far as his call detail records were concerned?

9 Q Correct.

10 A What was that timeframe again?

11 Q September 6th, let's say 4:00, 5:00, 6:00 a.m.?

12 A No, sir.

13 Q No information whatsoever to put that phone near
14 that location?

15 A No, sir.

16 Q One final question for you, I hope. You listed a
17 second number that you were asked to chart. And
18 you said it was (803)348-1304, is that accurate?

19 A Yes, sir.

20 Q Who were the subscriber details for that number?

21 A I don't know that I was provided that. Again, we
22 don't usually put a name with the number. Usually,
23 I just -- I analyze the target number. Usually, I
24 don't have a name that -- you know, that -- I just
25 don't have a name. They don't usually give me a

1 name. Again, we just look at numbers, we don't
2 look at names.

3 Q And you were actually provided a full CDR for that
4 number?

5 A Yes, sir.

6 Q But, again, the State didn't want you to map that
7 number?

8 A I did map it.

9 Q You did map it?

10 A Yes, sir.

11 Q But they didn't ask you to testify to it?

12 A No, sir. I mean, no one has asked me questions
13 about it other than yourself.

14 MR. BELL: Thank you. Since we're at the end,
15 I'll say it, thank you, Special Agent.

16 THE WITNESS: Yes, sir.

17 MR. CONRAD: Just brief redirect, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. CONRAD:

20 Q You know, Defense counsel was talking to you about
21 overload situations and switching towers. And
22 sometimes it doesn't go to the nearest tower,
23 correct?

24 A It would have to. It would have to go to the tower
25 that's closest to that transaction. What happens

1 is if a tower is overloaded that's closest to that
2 location, it is going to ping it to the next tower
3 that is closest to that location. So it wouldn't
4 be a tower, you know, ten miles away, it would be
5 one within that -- you know, within that range of
6 that device.

7 Q Exactly. Yes. And the reason I'm asking you the
8 question is, even though in some situations it
9 might not be going to the actual closest tower, the
10 data that you plotted is still accurate, correct?

11 A Yes, sir.

12 Q Meaning, the data, we know it bounced off the tower
13 that you plotted, is that correct?

14 A Yes, sir. Yes, sir.

15 Q It's not bouncing off some other tower, it's
16 bouncing off that particular tower?

17 A The tower that you see on that PowerPoint
18 presentation will be the tower and the sector that
19 that device hit off of at that certain time.
20 Whether it was deflected to another tower or not,
21 it's still going to show the tower that it hit off
22 of. So it would show the deflected tower if it hit
23 off of a deflected tower.

24 Q And we know, based off your training and
25 experience, with certainty, that that phone call

1 was made within that sector of the tower you
2 plotted, correct?

3 A Yes, sir.

4 Q And there's not some way -- it's not magically
5 connected to some other tower that you didn't plot,
6 is that correct?

7 A No, sir. No, sir.

8 Q Now, the range information may not be accurate, but
9 in an urban area, generally it's going to be off of
10 a closer tower, correct?

11 A Yes, sir.

12 Q So I believe you testified that on one of the City
13 of Columbia plots that you plotted, it was most
14 likely within three miles of that tower, correct?

15 A And I would even say closer than that. I was just
16 giving an approximate.

17 Q Okay. And so based off your training and
18 experience, any of the plots, at least in the urban
19 areas, were they made from -- could it be possible
20 they were made from further than three miles?

21 A Oh, in the urban areas?

22 Q Yes.

23 A Oh, yes, sir, yes, sir, it could possibly. In your
24 urban areas, your towers are spread a little bit
25 further apart. They're not as clustered.

1 Q In your urban or the --

2 A Oh, I'm sorry, urban, urban, I apologize. In the
3 urban, it's going to closer because you have towers
4 within miles of one another.

5 Q Okay.

6 A In a more rural area, they're going to be
7 separated.

8 Q Okay.

9 A Further apart.

10 Q All right.

11 A I had one thing on my mind when you were saying
12 urban.

13 Q And finally, going back to -- I'm going to pull
14 this back up one more time, I apologize. And I'm
15 going to go back to the slide in your presentation
16 where the cell phone data records are, correct?

17 A Yes, sir.

18 Q And I guess you can't -- I'll pull it a little
19 closer so everyone can see. Sorry. Okay. And we
20 talked about what are the three possibilities when
21 you see that zero on the cell site and the three
22 possibilities, right?

23 A Yes, sir.

24 Q And Defense counsel asked you about a Google Voice
25 service, correct?

1 A Yes, sir.

2 Q So these zeros in the afternoon between 26, which
3 is 8:26 p.m., and 2101, you testified those could
4 possibly be Google Voice calls, correct?

5 A Yes, sir.

6 Q And that's what those zeros -- or there could be
7 two other things, we don't know with any degree of
8 certainty. Between 2129, which is 9:29 p.m., and
9 12:30 p.m. the next day on the 6th, 9:30 on the 5th
10 and 12:30 p.m. on the 6th, do you see -- and you
11 take a minute to look on your -- what you have in
12 front of you if you want to see it closer. Do you
13 see any of those zeros which could indicate a
14 possible Google Voice call or shutdown or other
15 data used? And that's between September 5th, 2129,
16 or 9:29 p.m., and September 6th at 12:30 p.m.,
17 2015?

18 A No, sir.

19 MR. CONRAD: Okay. Nothing further from the
20 State.

21 MR. BELL: Very briefly, Your Honor.

22 RECROSS-EXAMINATION

23 BY MR. BELL:

24 Q Special Agent, the maps that we've seen, did you
25 plot for this jury every possible tower that could

1 have been in the areas?

2 A No, sir.

3 Q So you only plotted the ones that actually were
4 pinged off of?

5 A Yes, sir.

6 Q So we can't look at those maps and compare for
7 ourselves the tower that was pinged off versus
8 another tower that may have been proximate to it?

9 A No, sir, you wouldn't be able to see that, no, sir.

10 MR. BELL: Thank you.

11 THE COURT: You may step down.

12 Any objection to this witness being excused?

13 MR. CONRAD: The State might potentially
14 recall him as a witness.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness steps down.)

18 THE COURT: Call your next witness.

19 MR. EATON: The State calls Jon VanHouten.

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, and raise your right.

23 (Witness complies.)

24 THE CLERK: Would you state your full name,
25 please?

1 THE WITNESS: Jon VanHouten.

2 THE CLERK: Would you spell your first name,
3 please?

4 THE WITNESS: J-O-N.

5 THE CLERK: Do you solemnly swear to tell the
6 truth, the whole truth, and nothing but the truth,
7 so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat.

10 (Witness seated.)

11 JON VANHOUTEN,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. EATON:

15 Q Good morning, Investigator VanHouten.

16 A Good morning.

17 Q Please tell the jury what you do.

18 A I am a task force agent for the United States
19 Secret Service. I've worked in the computer
20 forensics lab for last ten years.

21 Q What do your duties consist of there?

22 A Basically, any digital device that stores
23 electronic data, cell phones, computers, tablets,
24 vehicles, cameras, GPS's, we have the ability to
25 extract and decode the data.

1 Q And I see you've had some training and education on
2 doing forensic analysis of electronic devices?

3 A Yes.

4 Q Can tell the jury some of that?

5 A I have received training from the Federal Law
6 Enforcement Training center in Glenco, Georgia, the
7 National White Collar Crime Center, and the
8 National Computer Forensic Institute in Hoover,
9 Alabama, at which I'm an assistant instructor on
10 cyber security and digital forensics.

11 Q And so do you work with mapping?

12 A Yes.

13 Q Cell phone mapping?

14 A Correct.

15 Q Have you had training on that as well?

16 A Yes.

17 Q Could you tell the jury about that, please? Or is
18 that included in what you already said?

19 A That's part of the cell phone training, receiving
20 the information, call detail records from either
21 cellular carriers or from the phone itself.

22 Q And so you testified about forensic technology and
23 cell phones and cell phone extractions and cell
24 phone mapping. Have you testified about those
25 things before?

1 A Yes.

2 Q How many times, roughly?

3 A Over the last ten years, I can guess maybe a dozen,
4 just specifically on mapping.

5 Q Have you been recognized as an expert in that
6 before?

7 A Yes.

8 Q What is your expertise?

9 A Digital forensics.

10 Q Digital forensics? Okay.

11 MR. EATON: At this time, I'd ask the Court to
12 recognize Investigator VanHouten as an expert in
13 digital forensics, Your Honor.

14 THE COURT: Any voir dire?

15 MR. BELL: Thank you, Your Honor.

16 VOIR DIRE

17 BY MR. BELL:

18 Q Investigator, you talked about your expertise as to
19 essentially any sort of digital device, is that
20 accurate?

21 A Consumer digital device. Generally, cell phones,
22 computers, entertainment centers in vehicles.
23 Pretty much anything that stores digital data.

24 Q And you've been qualified as an expert not only in
25 mapping, but also in fields related to the consumer

1 digital devices?

2 A I'm sorry, I didn't get the last part?

3 Q Have you also been qualified as an expert not only
4 in mapping, but in areas related to those consumer
5 digital devices you mentioned?

6 A Yes.

7 MR. BELL: Your Honor, we have no objection to
8 his qualification as an expert. However, we would
9 like to apply not only mapping, but consumer
10 digital devices. We don't have a problem with
11 that.

12 MR. EATON: And I guess we can expand on what
13 the areas of his expertise include. Just so I
14 understand too, I believe that Investigator
15 VanHouten is an expert on extracting data from
16 consumer devices, like cell phones.

17 THE WITNESS: Correct.

18 MR. EATON: As well as mapping of activity
19 between mobile devices and towers, much like what
20 we heard earlier. And so that when we say
21 forensic -- I'm sorry --

22 THE WITNESS: Digital forensics.

23 MR. EATON: We include all of that.

24 MR. BELL: No objection, Your Honor.

25 THE COURT: All right. So, ladies and

1 gentlemen of the jury, Officer VanHouten will be
2 qualified as an expert in digital forensics, which
3 includes mapping and consumer devices to give
4 opinion testimony in that area. That does not mean
5 that you must accept the opinion, but it is
6 evidence for you to consider in any way you see fit
7 and give it the weight and credibility you believe
8 is appropriate.

9 Thank you.

10 Yes, sir, your witness.

11 BY MR. EATON:

12 Q So, Investigator VanHouten, what did you do in this
13 case briefly, overall? And give specifics.

14 A I was submitted several pieces of artifacts and a
15 couple of computers, laptops, and various cell
16 phones to process with legal process, such as a
17 search warrant or consent. And also I was provided
18 with a call detail record for a particular phone
19 and requested to map a particular timeline on that
20 phone.

21 Q And when you said artifacts, what do you mean?

22 A The data that we retrieve off -- or the data we
23 process, we classify those as artifacts. We don't
24 identify them individually, such as photos or
25 documents. To us, they're called artifacts.

1 Q And what were those -- what did you get those off
2 of in this case?

3 A The artifacts?

4 Q Yes.

5 A Again, I processed some laptops, some computers,
6 several cell phones. That's where we received the
7 artifacts from, that I received the artifacts --
8 obtained the artifacts from. The call detail
9 records that I received, I altered -- I subtracted
10 the dates and narrowed it down to a timeline to map
11 those.

12 Q And did you in the course of pulling artifacts off
13 of the phones, did you analyze an Alcatel One Touch
14 4037T?

15 A One moment, please. Yes. I received that
16 particular device on September 9th, 2015, and I
17 began the extraction process on September 10th,
18 2015.

19 Q And how did that device come into your possession?

20 A This would have been given to me via chain of
21 custody from a submitting agent or investigator.

22 Q And so when you get something like that, what do
23 you do with it?

24 A When we get a device in, there are standard
25 protocols and steps that we take. First, we

1 identify the device, make sure there's no damage.
2 If there's damage to it, we make sure we notate it.

3 There are generally two types of extractions
4 that we can pull off a phone, a logical and a
5 physical extraction.

6 A logical extraction basically is the data
7 that you see on your device. When you see your
8 photos, when you see your call logs, your text
9 messages, that's called logical information.

10 Physical information is the data that you
11 can't see, to include deleted items that we can
12 recover and bring back. If we can, we will always
13 try to do a physical examination first to recover
14 everything. Sometimes, depending on the security
15 patch, especially if it's a newer device, we may
16 not have the ability to do the physical, so we will
17 do the logical. Logical, again, is the stuff that
18 you see, your call logs, your text messages.

19 In this particular case, I was only able to do
20 a logical.

21 Q So as to that phone that we just mentioned, the
22 Alcatel, did you have a phone number that was
23 associated with it?

24 A Yes.

25 Q What number was that?

1 A The phone number associated or what we call the
2 MSISDN number was (803)220-9024.

3 Q And do you know whose phone that was?

4 A I do not know whose -- which phone is assigned to
5 which person.

6 Q Okay.

7 MR. EATON: If I can approach the witness with
8 what has been premarked as State's 137 for
9 identification.

10 BY MR. EATON:

11 Q Do you recognize that page?

12 A Yes. This looks like an excerpt from a Cellebrite
13 forensic report that I processed.

14 Q The one we were just talking about?

15 A Yes.

16 Q That came from what phone number?

17 A (803)220-9024.

18 Q And so that's stuff, the artifact, if you will,
19 that came off of that phone number from the phone
20 dump that you did of that phone, correct?

21 A Yes.

22 Q You said you analyzed multiple electronic devices
23 in this case?

24 A Yes.

25 Q Did you also analyze a Samsung Galaxy 3 SPHL710T?

1 A Yes.

2 Q How did that come into your possession?

3 A Again, this would have been transferred either via
4 chain of custody from the submitting agent or
5 investigator or it was either recovered directly
6 from the police department's evidence vault.

7 Q Would it refresh your memory to look at a chain of
8 custody form?

9 A Yes.

10 Yes, this is a chain of custody form that I
11 filled out transferring the custody of the device
12 from Officer Wise to myself on September 9th, 2015.

13 MR. EATON: If I may approach?

14 BY MR. EATON:

15 Q What is that right there?

16 A This appears to be the Galaxy SPHL710T that I
17 originally obtained for processing.

18 MR. EATON: Your Honor, I'm going to approach
19 the witness with what's been premarked for
20 identification as State's 138.

21 BY MR. EATON:

22 Q Do you recognize that? And you can take a second
23 to flip through it.

24 A This also appears to be an excerpt from a
25 Cellebrite forensic report that I processed.

1 Q Is it an excerpt from the same phone that we're
2 talking about?

3 A The model number is the same. The only thing that
4 I cannot verify is the phone number because there
5 was no SIM card associated with this phone when I
6 processed it.

7 Q Okay, but the --

8 A But the model number appears to be the same.

9 Q Did you have another model of that type in this
10 case?

11 A Bear with me one second.

12 No, not that particular model number.

13 Q So can we deduce that that's the artifacts from the
14 phone dump of that white phone right there?

15 A From the Samsung SPHL710T, correct.

16 MR. EATON: At this point, I'd offer State's
17 138 into evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. BELL: No objection.

20 (WHEREUPON, State's Exhibit No. 138 was
21 marked for identification and received
22 into evidence.)

23 BY MR. EATON:

24 Q Investigator VanHouten, in addition to these phone
25 dumps, you also did some mapping?

1 A Yes. I was requested to map a T-Mobile Sam -- a
2 T-Mobile, correction, call detail record for the
3 phone number (803)220-9024.

4 Q And the jury has heard a lot about cell phone
5 mapping and how it works, but just very briefly
6 overview, just tell them what you do and the
7 significance as far as cell phone mapping with
8 carrier records, please.

9 A Okay. Very briefly, your cell phone carrier,
10 T-Mobile, Verizon and Sprint, soon and so forth,
11 they log your calls. They log your text messages,
12 your calls, your data. And this is specifically
13 done for billing purposes only. This is so they
14 can properly bill you for their service. This
15 information is stored. Through legal process, we
16 can obtain this information, and it comes to us in
17 Excel spreadsheet format in several thousands of
18 pages, depending on the timeframe we're looking at.

19 So we use specific software that we ingest
20 that Excel spreadsheet. And those spreadsheets
21 have the date, the time, the numbers called, the
22 number coming from, if a text was sent, what type
23 of data, the tower location, the tower name,
24 various items relating to that carrier's service.

25 And this particular software that we use is

1 able to filter all that information and I can go
2 through and navigate and filter what only I want to
3 look at.

4 I can determine, based on the call detail
5 record using this software, any calls that were
6 made on a particular date and time and what tower
7 that phone was currently hitting on when that call
8 or text message was made or received.

9 Q And so which phone record did you map in this case?

10 A This one would be the T-Mobile phone number of
11 (803)220-9024.

12 Q And do you know whose phone that was?

13 A I believe it was -- I believe last name of Floyd.

14 Q Did you have --

15 MR. EATON: If I can approach with what will
16 be marked as State's 139 for identification.

17 A Yes.

18 Q What is that?

19 A This is the affidavit that I filled out after
20 processing the tower mapping.

21 Q And the map that I just handed you, what does that
22 show? Don't show the jury yet.

23 A This is a map that was -- judging from the phone
24 records that I received, I narrowed the dates down
25 to two particular days, and this listed all tower

1 locations and communications between this
2 particular phone during those particular dates.
3 Again, it lists the tower that the phone was
4 hitting off of and it list any incoming or outgoing
5 calls.

6 Q And that hard copy image of that map, is that all
7 you got on it? I mean, do you have a thumb drive
8 that has --

9 A I do.

10 Q -- digital -- how does that -- tell us how that
11 works.

12 A The issue -- the type of software we use for the
13 mapping is for analytical purposes for a subject or
14 a person or what we call a target to find out,
15 analyze where they're going, where they spend most
16 of their time, where they like to travel to, things
17 of that nature. It's not a very good software to
18 print out and show. It's better if used on a
19 computer for animation purposes. But what this map
20 shows is the tower that this particular phone was
21 hitting off of during those two days.

22 Q And when you use it in the electronic format with
23 the more animated version like you said, is that
24 something static like this print-off?

25 A No. Between the timeframe -- let's say we use a

1 12-hour timeframe, it will animate every tower that
2 it hits off of and it will populate what's called
3 an artifact point. When you click on the artifact
4 point, it will tell you the exact date, time, tower
5 location, tower GPS, the call that was being sent
6 or received. There's a ton of information that's
7 in that point that just can't be shown, printed out
8 on a map.

9 Q And so risking the peril of failing technology, I'd
10 ask if we could plug that in and get it fired up.

11 MR. EATON: Have y'all had a chance to
12 discuss -- okay.

13 If the Court would indulge me for one moment.

14 (Pause.)

15 BY MR. EATON:

16 Q Have you got the thumb drive on you?

17 A Yes.

18 MR. EATON: I'm going to ask the witness to
19 step down if that's okay with the Court.

20 THE COURT: Yes.

21 BY MR. EATON:

22 Q I think you said it may take a second to load this
23 thing up?

24 A Yes.

25 Q There's a mouse.

1 THE COURT: Which exhibit is this, Mr. Eaton?

2 MR. EATON: 139, Your Honor, for
3 identification at this point.

4 THE COURT: This is the affidavit?

5 MR. EATON: And a map. At this point, I'd
6 offer 139 in evidence, Your Honor.

7 MR. BELL: No objection, Judge.

8 THE COURT: All right, it will be entered
9 without objection.

10 MR. BELL: For clarity of the record, Judge,
11 the State has indicated they are playing an
12 interactive version of that exhibit, and the
13 Defense has no objection to that.

14 THE COURT: Thank you.

15 (WHEREUPON, State's Exhibit No. 139 was
16 marked for identification and received
17 into evidence.)

18 THE COURT: Ladies and gentlemen of the jury,
19 they tell me that it may take about ten minutes for
20 it to load. So we're going to go ahead and take
21 our morning break, and then we'll receive you back
22 in. Hopefully by then it will have loaded and we
23 are ready to go.

24 (WHEREUPON, the jury retires to the jury
25 room at 10:59 a.m.)

1 (WHEREUPON, a break was taken.)

2 THE COURT: Let's bring them on in.

3 MR. EATON: It is up and running, Your Honor.

4 (WHEREUPON, the jury came into open
5 court at 11:21 a.m.)

6 THE BAILIFF: The jury is present, Your Honor.

7 THE COURT: Yes, sir.

8 MR. EATON: Thank you, Your Honor.

9 BY MR. EATON:

10 Q Investigator VanHouten, you were testifying from
11 State's 139, which you were saying is an affidavit
12 and sort of a -- well, obviously just a still, sort
13 of a screenshot. What is this of, this screenshot?

14 A That screenshot is of the call detail records that
15 was processed using the ZETX software to locate the
16 tower -- or a particular cell phone at a
17 particularity tower once communication was
18 established.

19 Q And so then this Exhibit 139 would relate to this
20 demonstrative exhibit that you've got here?

21 A Correct.

22 Q Tell the jury what we're looking at here.

23 A Okay. The background of the map is a software
24 called Google Earth Pro. And what it has is
25 particular area of Columbia, South Carolina,

1 broadened out to parts of Dentsville and West
2 Columbia or across the river.

3 The call detail records that were provided for
4 T-Mobile, call detail records for (803)220-9024 was
5 ingested in the ZETX software, which is the mapping
6 software we use, and it plots the tower location
7 based on the information from the call detail
8 records, such as the date, time, call made, just
9 ton of information. Everywhere you see a line,
10 there's a ton of information you just can't see,
11 but I can bring up on a monitor here.

12 Q And so what is the timeframe for?

13 A This timeframe is for September 5th, 2015 at
14 zero -- at 15 minutes after midnight to
15 September 6th, 2015, at 10:54 p.m.

16 Q And we can kind of see where we are in Columbia. I
17 think most of us probably can kind of recognize
18 that, but can you point out where we are, what
19 we're looking at?

20 A All right. So this would be pretty much downtown
21 Columbia. Here we have the river -- I'm sorry, up
22 here is the river. Dentsville, Hollywood Hills. I
23 can -- so to get your bearings, this is downtown
24 Columbia, University Hill area, to get your
25 bearings. But pretty much a general overall map of

1 most of Richland County and some of Lexington
2 County.

3 Q Okay. And so tell us what activity you see on this
4 phone at that time, please.

5 A So what this software will do, is it will take this
6 information here and it will plot it for us. It
7 will plot the tower location. The tower location
8 is assigned almost like a serial number, a name for
9 each tower, and a GPS location for each tower.

10 So bear with me one second. So it will it
11 plot -- this is each call being made, each number
12 you see here is a call being made, a text being
13 made or received. And it will give the location of
14 the tower and you will see it jump up across.
15 Again, this information is only plotted from a call
16 being sent or received or a text message sent and
17 received.

18 Q And so --

19 A And so if we -- to find out better understanding of
20 calls being placed and received, once we click on a
21 separate highlight area, it will give me the date,
22 the time, this is the number that corresponds with
23 the call detail record, (803)220-9024. This is an
24 outgoing call. This is the number that it
25 contacted. This is how long the call lasted, less

1 than a second. The tower -- the serial number for
2 this particular tower, the sector number -- towers
3 are divided into sectors -- and the time zone. So
4 there's a lot more information hidden in the
5 background you can't see. This information here as
6 it relates to each one of these pins.

7 Q Okay. So the 5th over the 6th, would you have an
8 opinion of where this person was the night of the
9 5th into the 6th?

10 A Yes. A general overview between these two days
11 would put the phone sending and receiving calls
12 within this area.

13 Q And can you tell when specifically, say, the person
14 was in this area versus this area versus this area?

15 A Yes. Again, you would have to determine the time.
16 You would have to click on a pin, expand the pin,
17 and it would tell you the date and time that the
18 call was made.

19 Q So what time was that?

20 A This would be September 6th, 2015, at 1:34 a.m.
21 It's an outgoing text message. And it's not
22 listing the number. It may not have received the
23 final text. But this is the target number. It
24 would show an outgoing text message. 1:22, it
25 didn't either complete or was an inoperable number.

1 Q But 1:30 a.m. on the 6th, and what part of town is
2 that?

3 A This is going to be the Seven Oaks, West Columbia
4 side. So I zoom in. This is the St. Andrews area.
5 St. Andrews Road. And there's the river. There's
6 126 on the West Columbia side.

7 Q So 1:30 in the morning on the 6th. Then later on
8 in the morning of the 6th, do we have activity
9 anywhere else?

10 A Yes. Is there a particular timeframe you want me
11 to look at? This is later that afternoon on the
12 6th.

13 Q Let's say wee morning hours of the 6th. What's the
14 next activity after 1:30?

15 A That's what I'm pulling up.

16 Q Okay.

17 A Okay, the first activity on the 6th occurred at 20
18 minutes after midnight.

19 Q And can you keep going forward from there?

20 A Yes. At 1:34 on September 6th, 2015, 1:34 in the
21 morning; 3:11 in the morning, same day; 3:12 in the
22 morning, same day; 3:13 in the morning, same day.
23 And then it jumps over to the Dentsville tower. So
24 between 3:13 a.m. and 11:06 a.m.

25 Q The next activity is 11:00 a.m. on the 6th?

1 A On the 6th.

2 Q In the Dentsville area?

3 A Yeah. From 3:13 is the last -- 3:13 a.m. over in
4 this West Columbia side was the last activity on
5 this tower. The next activity, it jumped to the
6 Dentsville tower at 11:06 a.m.

7 Q So what's the activity down near Budon Court, or
8 when was that?

9 A These are all, I believe, on the 5th, the date of
10 the 5th. From 9 -- September 5th, 12:30 a.m.,
11 till September 5th, 10:17 p.m., we have this much
12 activity.

13 Q Is any of the activity around Budon Court on the
14 6th?

15 A Bear with me one second.

16 Yes. There seems to be six activities hitting
17 off that tower and numerous on this tower.

18 Q Can you easily tell, like, what day, what time
19 those were?

20 A The easiest way to do it is to click on extended
21 pin.

22 Q Okay.

23 A Or identify it by the date and time on the key.

24 Q Whatever is easier. If the key is easier, just
25 give us an idea of when the Budon Court activity on

1 this phone occurred.

2 A What particular timeframe? You said the 6th, but

3 --

4 Q Well, yes, sir, I guess throughout the 6th. When
5 do you first see it on the 6th around there?

6 A It's going to take a second.

7 September 6th, 2015, around 4:07 in the
8 afternoon.

9 Q Is that the first activity on the 6th in that area?

10 A Bear with me. We're talking several hundreds of --
11 So you're looking for the first activity?
12 Timeframe.

13 Yes. For this particular tower, 134, it was
14 4:07 in the afternoon on September 6th for this
15 tower. We have an overlapping tower here. One of
16 issues with the towers, the signal strength that
17 each tower generates, it could be as little as
18 three miles, could be as much as 50 miles,
19 depending on terrain, and areas of that nature.
20 This area is generally just a 3-mile radius for
21 each tower. That's the most conservative that we
22 can get.

23 Q So to recap what we just saw, would you say that
24 this person, or at least this phone -- was over on
25 the other side of town, the Broad River area?

1 A Yes. Within this timeframe, September 6th --
2 September 5th and September 6th, yes. This device
3 or this number provided by T-Mobile illustrates
4 that, yes, this device was within these tower
5 patterns during those two days.

6 Q But then it was here into the early morning hours
7 of the 6th, right?

8 A Yes.

9 Q On that side of the river. And then the next
10 activity, I think you told us, was up in
11 Dentsville. Is that off of Two Notch?

12 A Yes. This is where most of the activity is
13 occurring for this.

14 Q Chronologically, then, we saw something down in
15 Forest Acres?

16 A So this is the order of appearance. This is the
17 order --

18 Q Yes.

19 A So let it play through.

20 Q And where are we? What timeline?

21 A Yes. Back it up. This is slow as I can get it.

22 Q That's fine.

23 A This is starting on September 4th at 10:46 p.m.
24 Now, we're into the 5th, around the early hours of
25 September 5th. So on September 5th, around 2:15,

1 the phone is no longer hitting on this tower. It
2 is now transferred over to this tower, which means
3 the phone is in the general area of this tower.

4 THE COURT: Can you do me a favor and say for
5 the purposes of the record if it's a.m. or p.m.? I
6 know you all can see it, I can't see it back here.
7 But for the record -- I mean, for purposes of the
8 record, 2:15 a.m. or p.m.?

9 THE WITNESS: I'll just start over, Your
10 Honor. We'll start at 12:40 a.m., September 5th,
11 the phone is around the Dentsville cell phone tower
12 area.

13 And around 2:02 p.m. on the same day, it's now
14 showing up at this tower location in the Forest
15 Acres area.

16 So as we progress that day, give or take,
17 6:30 p.m. on September 5th, it's now hitting off
18 the West Columbia across the river tower.

19 And now we're coming back to the Columbia side
20 of this tower, and it's the second tower that the
21 phone is now hitting off of. And this is
22 12:49 p.m. on September 6th.

23 BY MR. EATON:

24 Q So from the Dentsville/Two Notch area to the across
25 the river into the wee hours of the 6th, back to

1 Two Notch later in the morning around 11:00 on the
2 6th and eventually down to Forest Acres even later
3 on the 6th, right?

4 A Correct. That's just the early hours. Early a.m.
5 on the 6th.

6 Q Now, are you able to say whether there's a time
7 period on the night of the 5th into the -- or, I
8 guess, into the morning of the 6th where the phone
9 was off or not communicating with a tower?

10 A Right. This -- again, be aware, this will not tell
11 you -- or tell me if the phone was off or on. This
12 will only tell me if a call was being made or sent
13 or a text message was being sent or received. So I
14 believe on the 6th -- all right, so on the 6th at
15 3:13 a.m., that is the last activity. And that is
16 an incoming call from cell phone number
17 (803)234-1799. The next activity that the call
18 detail records show for the target number happens
19 at 11:06 a.m.

20 So between 3:13 a.m., it's hitting on the West
21 Columbia side. The next activity occurs at
22 11:06 a.m. over in the Dentsville side.

23 Q So what are possibilities for that lack of activity
24 during that time period?

25 A Several. Either the phone was not used at all

1 between those hours, the phone was either in
2 airplane mode, the SIM card was removed, or the
3 phone was off.

4 Q Those are all possibilities?

5 A Yes.

6 Q But, now, you also did the phone dump of this
7 phone, right?

8 A Yes.

9 Q Do you remember if you looked for power down, for
10 indications of a power down?

11 A I can't recall right off the bat, but I can tell
12 you from experience of Android phones, the powering
13 off and on generally is only three to five, four
14 stops and go right to the end. So it only keeps a
15 maximum of five logs that the phone is powered on
16 and powered off before it recycles over again.

17 Q And if I understand correctly, are you saying that
18 when you first get the phone, it may log the first
19 time you cut it off, is that what you're saying?

20 A If the phone is off when I receive the phone, when
21 I turn the phone on to do the extraction, it will
22 log my power on and it will be notated in my notes.

23 Q And after that, those first few power downs?

24 A From the time that I get it, the most it will
25 capture will be the five previous power on

1 attempts. It will not capture six months ago, ten
2 months ago. It will only do the last five power on
3 attempts.

4 MR. EATON: Thank you. Please answer any
5 questions the Defense has.

6 You want this up here?

7 MR. BELL: No, I'm good. Thank you.

8 MR. EATON: Do you want me to pull the board
9 out of the way?

10 MR. BELL: Sure.

11 (Witness returns to witness stand.)

12 CROSS-EXAMINATION

13 BY MR. BELL:

14 Q I apologize, sir. What title do you go by?

15 A Investigator.

16 Q Investigator? All right. Investigator, you talked
17 some about conducting phone dumps, is that
18 accurate?

19 A Phone extractions.

20 Q Extractions is a fancy word for just dumping off
21 all the data on a phone so you can analyze it?

22 A Correct.

23 Q And when you do a cellular extraction or phone
24 extraction, all that is doing is just pulling the
25 data from the phone. It can't necessarily

1 authenticate data on a phone, is that accurate?

2 A Well, there are steps that we do to authenticate
3 the device, the data that we receive.

4 Q And to clarify my question, if you were to pull
5 off, let's say, text messages?

6 A Uh-huh.

7 Q Is there any way of authenticating who actually
8 sent or received the text message?

9 A On the device itself?

10 Q Who actually was the user of the phone who sent
11 those text messages?

12 A As far as who the user is, I cannot testify to who
13 the user is. I can only testify to what I
14 recovered to and from the phone.

15 Q And that would apply to if you were to extract
16 Facebook messages or posts or Instagram, or
17 anything else, right?

18 A Yes.

19 Q All you know is that an account was used, you don't
20 know who may have actually used the account, is
21 that accurate?

22 A Yes, that is correct. There are certain steps that
23 we take to, I guess, mitigate who the user is.
24 Basically, if the phone requires a pin code, only a
25 user would know. If there are contacts such as mom

1 listed in the account that happens to be the actual
2 mother of the user, so on and so forth. But I
3 cannot specifically say Person A was using this
4 device.

5 Q Now, you spent the lion's share of your testimony
6 discussing (803)220-9024, right?

7 A Correct.

8 Q And that was identified belonging to a Floyd Owen?

9 A I believe.

10 Q Were you provided any other numbers to map and/or
11 extract?

12 A No -- or, I'm sorry. To map, that was the only
13 number that I was given to map. The only call
14 detail records for that specific number to map.

15 Q And that's what we just saw, was that presentation
16 you put up on that screen?

17 A Correct.

18 Q Were you provided a number to Andrew Kusko?

19 A Again, I'm not familiar with what number belongs to
20 which person because I can't definitively say which
21 person was using the device. I can only go by the
22 number for the device itself that was given to me
23 to process.

24 Q To answer -- or ask it a simpler way, is the number
25 that you testified to the only number that you

1 received to analyze?

2 A For call detail records for mapping, yes.

3 Q Okay. The Solicitor was asking you about power on
4 or off logs. Do you recall that?

5 A Yes, sir. Most devices do store a limited database
6 of powering on and powering off, whether it be an
7 Android or a cell phone -- or, I'm sorry, an
8 iPhone, an Apple device.

9 Q Did your extraction of Floyd Owen's phone reveal
10 that he had a power on that occurred sometime at
11 11:00 on September 6th, 11:00 a.m. on
12 September 6th?

13 A It is possible. I would need the actual cell phone
14 report itself. And keep in mind, some of these
15 reports that I generate are several thousands of
16 pages.

17 Q Did you turn those over to the Solicitor's Office?

18 A Yes, they should be on a CD or Blu-Ray disk.

19 Q You testified that cell phone towers, you said
20 anywhere from three all the way out to 50 miles can
21 be their potential radius, is that right?

22 A That is correct.

23 Q And then you clarified, you said, but in an urban
24 area, it's usually three miles is the most you can
25 narrow it down?

1 A Is the most conservative.

2 Q What do you mean by most conservative?

3 A The most conservative is if the minimum -- if that
4 particular tower is generating a 10-mile radius
5 signal strength, we try to be conservative and say,
6 okay, let's dissipate any obstructions or barriers
7 and let's close that 10-mile gap to a 3-mile
8 radius. So three is generally the lowest we will
9 go.

10 Q And that's based on all of your training with the
11 Secret Service Task Force and your digital forensic
12 training, and so forth?

13 A Right. The only person who can definitively
14 identify the signal strength would be the actual
15 carrier's technician.

16 Q As far as the Secret Service is concerned,
17 three miles is the most y'all are willing to say?

18 A That I'm willing -- not the least that -- yes, the
19 start at three miles, that's what I'm willing to
20 testify to.

21 Q In going through that timeline in that interaction,
22 did you see activity from Floyd Owen's phone at
23 Budon Court in the early morning hours of
24 September 6th, do you recall?

25 A I believe it was around the tower area. I'd have

1 to look at it again.

2 Q Now, you testified that you can actually examine
3 and perform extractions on all sorts of different
4 consumer devices, is that accurate?

5 A Yes.

6 Q And one of the things that you specifically
7 mentioned was cameras?

8 A Yes.

9 Q Does that extend to surveillance cameras?

10 A DVR systems, is that you are referring to, security
11 DVR systems?

12 Q Sure.

13 A Generally, we do not in our lab. That is because
14 of the time it takes to do that. As far as
15 manpower issue, we would farm that to SLED for
16 their review.

17 Q So you're saying, generally speaking, you don't,
18 but you're not saying the technology isn't there to
19 do it?

20 A Correct. The issue is -- the technology is there
21 to do it. The issue is you have dozens of
22 manufacturers that use their own proprietary
23 recording system. And, again, the amount of
24 timeframe it takes to process that information, it
25 just -- it's not feasible for our lab.

1 Q Were you provided a surveillance video from
2 Zesto's, a local restaurant in our area?

3 A I believe I was given a DVR, at which I gave back
4 to one of the lead investigators. And I think my
5 role in that was just setting it up on his
6 computer -- or his monitor so he could review it.

7 Q And are you sure that that was related to Zesto's
8 video?

9 A The case is four years old, I can't -- I don't have
10 it in my summary reports. So if I don't have it in
11 my summary report, I probably did not physically
12 review it.

13 Q If a surveillance video existed, let's say, from a
14 Zesto's restaurant, one of the things you can
15 potentially do based on your training and
16 experience is you could look at that surveillance
17 video or look at the device and you could make sure
18 that the time and date were accurate, make sure all
19 the hash data is accurate, make sure there's been
20 no tampering, right?

21 A Reviewing the actual video on the DVR system, yes,
22 the date and time is accurate. The only time
23 you're going to get a hash is once the data is
24 pulled off and verified.

25 Q Which, again, y'all have the capability to do?

1 A There is technology capability to do it, but we
2 don't -- my lab doesn't do it.

3 Q You indicated y'all farm that out to SLED?

4 A Right.

5 Q South Carolina Law Enforcement Division?

6 A Correct.

7 Q Now, to expand on that, if there was a DVR box --
8 I'm showing you what has been entered as State's
9 135?

10 A Okay.

11 Q Does that appear to be a digital video recorder, I
12 think they're called?

13 A Yes. It's -- the manufacturer is Swan and it
14 appears to be a DVR, a digital video recorder
15 security system.

16 Q Similar to the Zesto's scenario I gave you, had you
17 been provided that box, could you have attempted to
18 extract information off of it?

19 A This? No, I would not attempt to extract
20 information off of it.

21 Q Why not?

22 A Again, I don't -- we don't to it in our lab, we
23 would farm it out. There are times when I have
24 been asked to do it that I would take the DVR -- or
25 if it was in the officer's or the agent's

1 possession and set it up to a monitor or TV for
2 them to view it.

3 Q Okay.

4 A But, no, I don't get the data off it, I don't
5 examine this, I don't look at DVR systems.

6 Q But you are familiar with how those devices
7 essentially operate, right?

8 A Correct.

9 Q They're basically little computers in a box?

10 A Yes, with a hard drive.

11 Q They have a hard drive that stores all the
12 information?

13 A Correct.

14 Q And, ordinarily, those hard drives really are no
15 different than you would find in any computer,
16 right?

17 A That is correct.

18 Q They can be linked up to and examined to make sure
19 they are valid, haven't been tampered with, dates
20 and time haven't been changed, and so forth,
21 correct?

22 A Yes, sir.

23 Q But, again, you're saying you don't do it, SLED
24 would do that?

25 A Well, yes, when these come into our lab, before

1 they come in, we recommend that they submit it to
2 SLED for processing. We don't process them.

3 MR. BELL: Beg the Court's indulgence.

4 (Pause.)

5 BY MR. BELL:

6 Q Were you ever asked to send that particular DVR off
7 to SLED?

8 A No. I do not do third-party chains. If an agent
9 or an officer from a jurisdiction brings a DVR, I
10 do not take custody of it. I tell them to take it
11 directly to SLED or, I think, Lexington County does
12 some DVR systems.

13 Q Did you ever instruct or advise the State or law
14 enforcement to turn that DVR over to SLED?

15 A You're talking about Columbia PD? You said State
16 Law Enforcement.

17 Q Columbia Police Department or Fifth Circuit
18 Solicitor's Office?

19 A If CPD or Columbia Police Department presented me
20 with this, I would advise them that I wouldn't do
21 it. SLED would be the ones to process it, or they
22 can review it on a monitor themselves.

23 Q But your records, we're probably four years out
24 from the murder in this case, and to your knowledge
25 that DVR has not been examined by you or SLED?

1 A No. I can adamantly say that I did not examine
2 this DVR.

3 MR. BELL: Thank you, sir.

4 THE COURT: All right. You may step down.
5 Do you have more questions.

6 MR. EATON: If I could briefly, Your Honor.

7 THE COURT: Go ahead.

8 REDIRECT EXAMINATION

9 BY MR. EATON:

10 Q Would reviewing the phone extraction of Floyd
11 Owen's phone refresh your memory about whether
12 there was a power-down event?

13 A I'm sorry, what was the question?

14 Q Would reviewing the report of the phone extraction
15 of Floyd Owen's phone?

16 A Yes, sir.

17 Q Refresh your memory about whether you saw a
18 power-down event?

19 A Yes, I would have to see the actual forensic
20 report.

21 MR. EATON: If I can approach with the report?

22 A Bear with me one second.

23 (Pause.)

24 A There was no powering events logged for this
25 particular device. And it's possible because it

1 was only a logical obtained -- a logical extraction
2 not a physical extraction obtained.

3 BY MR. EATON:

4 Q Does that mean that it was not cut off at some
5 point in the early morning hours of the 6th?

6 A No. There's no way to verify whether it was cut
7 off or not.

8 MR. EATON: Thank you. No further questions.

9 MR. BELL: A few questions, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. BELL:

12 Q So there is zero evidence that device was
13 intentionally powered off?

14 A Yes. On this report, again, the difference between
15 a logical and physical extraction -- it's possible
16 that because it was only a logical extraction that
17 was taken, that it didn't list it and pull that
18 database directly from the phone.

19 Q But that's the only extraction that was done?

20 A Yes. That's the only extraction I did.

21 MR. BELL: Thank you.

22 THE COURT: All right, you may step down.

23 Any objection to this witness being excused?

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

25 MR. BELL: No, Your Honor.

1 THE COURT: All right, sir, you're free to
2 leave.

3 (Witness steps down and excused.)

4 THE COURT: Let me see you all one second.

5 (WHEREUPON, a bench conference was held
6 in the presence of the jury but out of
7 the hearing of the jury.)

8 THE COURT: All right. Call your next
9 witness.

10 MR. EATON: The State calls Jenny Baker.

11 (Witness enters courtroom.)

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Would you state your full name,
16 please.

17 THE WITNESS: Jenny Marie Baker.

18 THE CLERK: Would you spell your first name,
19 please.

20 THE WITNESS: J-E-N-N-Y.

21 THE CLERK: Do you solemnly swear or affirm
22 the testimony you give in this case will be the
23 truth, the whole truth, and nothing but the truth,
24 so help you God?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Thank you. Have a seat.

2 (Witness seated.)

3 THE COURT: Yes, sir?

4 MR. EATON: Thank you, Your Honor.

5 JENNY BAKER,

6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. EATON:

9 Q Good morning, Ms. Baker.

10 A Good morning.

11 Q Ms. Baker, let's start with the obvious. You're in
12 prison garb?

13 A Yes.

14 Q What are you -- why is that?

15 A I'm currently serving a sentence in SCI Tallahassee
16 Federal Correctional Institute.

17 Q What are you serving time for?

18 A Drug charges.

19 Q And how much time are you serving?

20 A Twenty years.

21 Q Have you and I met before?

22 A Yes, sir.

23 Q And did we talk about the fact that you're serving
24 time?

25 A Yes, sir.

1 Q Will you tell the jury what I told you about your
2 testimony?

3 A That there was -- you couldn't promise me anything
4 for me coming and testifying.

5 Q So the feds prosecuted you, right?

6 A Yes, sir.

7 Q Did the state court have anything to do with your
8 federal charges?

9 A No, sir.

10 Q Have you been doing other things in the federal
11 system to work on your federal charges?

12 A Yes, sir.

13 Q Like what?

14 A Well, I teach GED classes to the ladies there and I
15 take programs that help reduce time. And I tutor
16 in the evenings and I also teach re-entry programs
17 to help for when they re-enter into the community.

18 Q And so you're listing these things that you've been
19 doing. Why are you doing them?

20 A Well, to help the ladies there, and also to help me
21 better myself. And I also go to school there also.
22 I'm taking classes myself.

23 Q Now, you've already been sentenced?

24 A Yes, sir.

25 Q When and where and who sentenced you?

1 A I was sentenced here in South Carolina. It was
2 about a year ago at the -- well, the federal -- the
3 federal government at the federal courthouse.

4 Q And is it possible for your sentence to change?

5 A I mean, it's possible. I don't know that it will,
6 but, I mean, it's possible. They have new laws
7 that have passed and things like that.

8 Q Do you expect what you're doing here to change your
9 sentence?

10 A No, sir.

11 Q So, Jenny, where are you from?

12 A South Carolina.

13 Q Where did you grow up?

14 A Lexington.

15 Q Where did you go to high school?

16 A Airport.

17 Q And what was going on in your life in 2015?

18 A Well, in 2014, the end of 2014, my husband had went
19 to prison, and I had started using drugs heavily,
20 and I just had a lot -- my life was kind of going
21 downhill at that point.

22 Q What kind of drugs were you using?

23 A Different -- methamphetamines, cocaine, marijuana.

24 Q And what would you do, you know, for work?

25 A I worked for myself. I owned a few stores around

1 Columbia.

2 Q What kind of stores?

3 A I guess you would call them smoke shops.

4 Q Uh-huh. And did those -- were those stores
5 ultimately part of your charges?

6 A No, sir.

7 Q Okay.

8 A Well, let me rephrase that. I wasn't -- it wasn't
9 part of my charges, but I got an enhancement on my
10 charges due to -- it was phrased operating a store
11 front for illegal activity, I believe is how they
12 phrased it.

13 Q And so, I mean, what were you actually convicted
14 for in federal court?

15 A Conspiracy to distribute methamphetamines, over
16 500 grams.

17 Q So in 2015, were you involved with all that?

18 A Yes, sir.

19 Q And when did you meet Floyd Owen?

20 A I would say probably around 2013, sometime in 2013.

21 Q And tell the jury how you met him.

22 A He was actually a customer in my store. He came in
23 my store a lot, quite often. And that's how I
24 originally met him.

25 Q And where did it progress from there with him?

1 A Well, he came in, like I said, regularly. And then
2 he -- his girlfriend or wife, I'm not sure, I
3 believe her name is Tiffany, she was pregnant and
4 they were having some financial problems. He
5 didn't have a job. He was having a hard time
6 finding a job. And so he had asked me about hiring
7 him, and I ended up giving him a job.

8 Q Giving Floyd a job?

9 A Yes.

10 Q Where?

11 A At my store on Augusta Road.

12 Q What was he doing?

13 A Excuse me?

14 Q What was he doing for you?

15 A Oh, he was running the register, working behind the
16 counter.

17 Q And how long did he work there?

18 A I would say probably about a year.

19 Q When did you first meet -- did you ever meet
20 Brandon Barham?

21 A Yes.

22 Q Is he in the courtroom today?

23 A Yes.

24 Q Could you point him out, please, to the jury?

25 A Right there.

1 Q What's he wearing?

2 A Blue tie, gray.

3 Q So when did you first meet him?

4 A Probably, I would say, in 2014. It wasn't -- it
5 was after Floyd had started working for me, Brandon
6 would come in, and I met him in my store, just
7 because Floyd introduced me to him, he was his
8 friend.

9 Q And did you get to know him at that time?

10 A Not really, no. I mean, I would see him. He would
11 come in and out a few times, but, I mean, I didn't
12 know him, know him well.

13 Q And so timeline-wise, how did things progress?

14 Floyd worked in your store for a year. How did
15 your relationship with Floyd progress throughout
16 that year and afterwards?

17 A Well, we had -- I would have considered him a
18 friend at one time. He ended up starting renting
19 the house beside my store because they needed a
20 place to stay. And, like I said, his girlfriend,
21 wife, she was pregnant at the time. And they ended
22 up renting it and staying there for a while. And
23 he worked for me a good bit.

24 Q Okay. You said at one time you considered him a
25 friend. I mean, did things at some point start to

1 get sour with y'all?

2 A It did, eventually. I thought that he was taking
3 money from the store. I wasn't -- I couldn't prove
4 it, but I thought he was. And -- which at that
5 point in time, everybody was stealing from me, so
6 it was kind of -- honestly, it was -- I didn't know
7 who was stealing what. So he had -- I had stopped
8 him from working at the store, you know, dealing
9 with the money and stuff, but I was still letting
10 him do things, you know, like he would move
11 furniture. Because I was in the process of moving,
12 so I let him help, you know, with that type thing.
13 And I actually moved -- was moving stores also, and
14 I let him help me with that -- or, excuse me,
15 locations.

16 Q And you mentioned a wife, girlfriend, who was
17 pregnant?

18 A Yes.

19 Q Was he with her throughout that year?

20 A For the most part, yes, sir.

21 Q Was he ever with any other women that you knew?

22 A Yes. When him and Tiffany broke up, he was with
23 another girl, Jessica. She was my -- actually, she
24 worked for me. She lived with me. And he had
25 started dating her. He met her. She was a younger

1 girl.

2 Q And, I mean, I guess, are you saying that he met
3 her through --

4 A Through me, yes.

5 Q Through you, okay.

6 A Uh-huh.

7 Q And after about a year of working for you, was he
8 still with Tiffany or was he Jessica at that point?

9 A He was with Jessica. He, of course, I guess would
10 go see Tiffany and the kids, and get the kids, but
11 he was dating Jessica.

12 Q Throughout that time, how many times did you see
13 Mr. Barham?

14 A A few. I couldn't say how many. I mean, it wasn't
15 a lot. It was a few times. He came over and
16 helped move some of my stuff when I was moving. I
17 was moving from one location -- from one house to
18 another, and he had come over one night, him and
19 Floyd, and helped move my -- some of my stuff out
20 of my shed.

21 Q Which shed was that? Where was that?

22 A At Omarest.

23 Q Omarest?

24 A Yes, sir.

25 Q What part of town is Omarest?

1 A It's off Broad River Road.

2 Q If I showed you a big old map, could you -- I know
3 it's a little hard to see, but this is State's --
4 I'm sorry -- this is State's 124. Can you see
5 that, Ms. Baker?

6 A Yes.

7 Q And I'll see if you can direct me. Would that have
8 been -- is that your house?

9 A Yes.

10 Q That yellow star?

11 A Uh-huh.

12 Q Okay. And so when you say that Brandon and Floyd
13 came to move stuff for you, you're talking about
14 that Omarest address?

15 A Right. Yes.

16 Q And so I know it's been a long time, but can you
17 kind of give us a timeline of all this stuff? When
18 was moving that furniture in reference to when
19 Floyd stopped working for you?

20 A Couple of months. It wasn't long.

21 Q And what -- and, roughly -- are we talking 2015?

22 A Yes, sir.

23 Q Roughly, when in 2015? Would you know what month
24 it would have been or?

25 A I know it was -- I know it was before June.

1 Q Before June of 2015?

2 A Right.

3 Q And after -- and what did y'all do that day, just
4 move furniture?

5 A Well, they had -- they had moved furniture and
6 stuff. And then they stayed and we had dinner and
7 drank some, did some drugs. We sat in my office
8 for a while. I had paperwork to do. And we
9 were -- we sat in there and talked and joked around
10 and stuff for a while, until pretty late. And then
11 --

12 Q Now, are you talking about June or September? How
13 many times did y'all move stuff and then drink and
14 do drugs afterwards? How many times did that
15 happen?

16 A Just once.

17 Q Just once?

18 A Yes.

19 Q Okay. So what would you later find out about that
20 night? Why we're here today.

21 A That they had -- I had -- that they had -- Floyd
22 and Brandon had been taken in for questioning about
23 the murder of Brandon's uncle.

24 Q So was the murder that night you're referencing?

25 A Yes, sir.

1 Q So could it have been September?

2 A Yes, sir.

3 Q Okay. So, I guess, let's talk in more depth about
4 that evening. Actually, let me back up. Before
5 that evening, how many times had you seen the
6 Defendant?

7 A Brandon?

8 Q (Nods affirmatively.)

9 A A few. Several.

10 Q Had you ever had like an in-depth conversation with
11 him?

12 A Not a lot. I mean, we had talked about my dogs.
13 He breeds the same kind of dog I did. And, I mean,
14 nothing -- you know, nothing -- no great
15 conversations.

16 Q Did you feel like he was somebody you knew well or
17 how would you describe him?

18 A I thought he was a nice kid. He seemed to be a
19 real nice kid. He was very respectful. And, I
20 mean, I never had any problems out of him at that
21 point.

22 Q But not somebody you knew well, though?

23 A No. No. Huh-uh.

24 Q So this night of moving the furniture, do you
25 remember what time they would have come over?

1 A Well, I mean, it was daylight. They were there for
2 several hours. And they were there -- I know when
3 I went to bed, they were still there because I
4 asked them to stay and told them they could stay on
5 the couch. And when I went to bed, it was after
6 1:00 in the morning, and they were still there at
7 that point.

8 Q And so how long did they move furniture?

9 A A few hours.

10 Q And then what did y'all do?

11 A We ate dinner, then we --

12 Q What did y'all eat, do you remember?

13 A I have no idea, honestly.

14 Q Was it nighttime by then?

15 A Yes, sir.

16 Q And when did y'all start drinking?

17 A Probably before we ate dinner.

18 Q And you said y'all were doing drugs?

19 A Yes, sir.

20 Q What drugs were y'all doing?

21 A I know we were doing meth because what's what I was
22 doing at that time, and I'm sure smoking marijuana
23 also.

24 Q And how do you do meth?

25 A Smoke it.

1 Q How do you smoke it?

2 A Out of a pipe.

3 Q And were y'all all three smoking meth?

4 A Yes, sir.

5 Q Was anybody else there?

6 A My son, I think, was there part of the night. He
7 was upstairs most of the time, though.

8 Q How old is he?

9 A He's 21 now.

10 Q Did he know you were doing meth?

11 A No.

12 Q Who knew you did meth?

13 A Just the people that I got high with, nobody else.
14 My family didn't really -- didn't know that I was
15 doing drugs until I got into trouble.

16 Q Could you say how many times y'all smoked meth that
17 night?

18 A Honestly, no, huh-uh. No, sir. A few times, I'm
19 sure.

20 Q And I'm not trying to make you feel bad about
21 yourself, but, I mean, if it was a given night when
22 you are smoking meth, like, how would that look?
23 It is something you do several times maybe in a
24 night of getting messed up?

25 A Yes, sir.

1 Q Do you remember how much Brandon smoked, how much
2 meth he smoked?

3 A No, sir. I mean, I'm sure probably as much as the
4 rest -- you know, me and Floyd.

5 Q But you definitely saw him smoking meth in a pipe?

6 A Excuse me?

7 Q But you definitely saw him smoking meth out of a
8 pipe?

9 A Yes, sir.

10 Q So you said y'all ate. And then what did you do?

11 A We went in my office. I had an office on the side
12 of my house. I owned a roofing company also at
13 that time. And I had some paperwork to do. So I
14 told them they could come over there with me if
15 they wanted. And we went over and sat in there and
16 drank and, like I said, cut up and was getting high
17 and drinking.

18 Q Do you remember what y'all were drinking?

19 A Probably Crown Royal.

20 Q Is that your drink of choice?

21 A Yes, sir. And they were probably drinking beer. I
22 know Floyd and Brandon, when they drank around me,
23 they usually drank beer.

24 Q So what time did you go to bed that night?

25 A I know it was after 1:00. I went up -- I put them

1 in the den. I got them some blankets and pillows
2 because I had told them they could spend the night
3 because I didn't want them driving. And I took
4 them into the den, showed them how to use the TV,
5 because I had just got a new big TV and it was hard
6 to use. So I showed them how to work it and got
7 them settled, and then I went upstairs.

8 Q You said around 1:00?

9 A Yeah, it was a little -- I'm sure it was a little
10 after 1:00, but I know it was after 1:00.

11 Q Do you remember that night the topic of Charles
12 Kusko coming up?

13 A No.

14 Q Did you know who Charles Kusko was at that time?

15 A No, sir. I knew -- I don't know how to say this.
16 I had had a conversation with Floyd previously
17 about a gentleman, but, at that time, that's not
18 who I -- I did not know that that's who the
19 gentleman was, I guess is the best way to explain
20 it. Until later on, I didn't know that's who he
21 was talking about.

22 Q But he didn't come up that night?

23 A No, sir.

24 Q Do you remember what y'all were even talking about
25 that night? Does anything stand out?

1 A Nothing really. Just -- I think we talked a little
2 bit about Floyd and Brandon's dads, how they knew
3 each other. They grew up together, I believe. And
4 stuff like that, just nothing really serious.

5 Q So when you went to bed, did you expect they were
6 spending the night?

7 A Yes, sir.

8 Q And what's it like to smoke meth? How does it make
9 you feel?

10 A Very alert, awake, anxious. If you smoke a lot,
11 you get nervous.

12 Q Were you smoking it into the early morning hours --
13 or up until 1:00, were you smoking it?

14 A (Nods affirmatively.)

15 Q Are you able to just pass out and go to sleep?

16 A No. I had to actually take a Valium to go to
17 sleep.

18 Q Is that because you had been smoking meth?

19 A Yes, sir.

20 Q Meth is a stimulant, is that right?

21 A Yes.

22 Q So do you know when you woke up?

23 A I know it was sometime around -- between like 6:45,
24 7:15, because the guys that work for me come in. I
25 had to come let them in. So they woke me up, and I

1 had to get up and let them in.

2 Q Were Floyd and Brandon there at that point when you
3 got up?

4 A No.

5 Q When is the next time you heard from either of
6 them?

7 A It was about two days later.

8 Q Who did you hear from?

9 A Floyd.

10 Q And when is the next time you -- was that a phone
11 call?

12 A Yes, sir, it was a phone call stating that --

13 Q That's okay.

14 A Okay.

15 Q And so then when's the next time you heard or saw
16 from either of them after that phone call?

17 A It was probably about a week.

18 Q Actually, what did Floyd say to you?

19 MR. MYERS: Objection. If we can approach?

20 MR. EATON: Hold tight.

21 THE WITNESS: Okay.

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

25 THE COURT: Objection is sustained.

1 BY MR. EATON:

2 Q After that phone call, what was the next time you
3 heard from or saw either one of them?

4 A Probably five days to a week, something like that.
5 It was several days.

6 Q And what was that contact?

7 A They had come over -- or, excuse me, not they,
8 Floyd. Floyd come over to help with moving some
9 more stuff. I was -- like I say, I was in the
10 process of moving.

11 Q In the meantime, did the police talk to you?

12 A Yes.

13 Q Do you remember who it was? What they looked like?

14 A It was two officers. They were dressed in dress
15 clothes. They had dress pants on, dress shirt,
16 tie, and a badge.

17 Q White guys, black guys?

18 A I think it was a black guy and a white guy. I'm
19 pretty sure.

20 Q Do you remember their names?

21 A No, sir.

22 Q At that time -- how many days after that night did
23 they come by?

24 A Probably about six, something like that.

25 Q So almost a week after that night of y'all getting

1 messed up, the police come to you. Do you know
2 anything at that point about what they had done?

3 A No, sir.

4 Q Did you know anything at that point other than they
5 had passed out on your couch?

6 A No, sir.

7 Q Did you know where they went after that, at that
8 point?

9 A No, sir.

10 Q So could you have told the police at that point
11 whether they had anything to do with the death of
12 Charles Kusko?

13 A No, sir.

14 Q Did you even really know who Charles Kusko was at
15 that point?

16 A No, sir.

17 Q So when is the next time you talked to them after
18 that? You said something about furniture again?

19 A Yes. It was after -- I believe it was after the
20 police had came by. Like I said, it was about a
21 week when they came. Floyd was -- I think he was
22 there taking down the deck from around the pool,
23 taking it apart to try to get it moved.

24 Q What pool?

25 A At my house.

1 Q Okay. Omarest?

2 A Omarest, yes, sir.

3 Q And was it just Floyd?

4 A Yes, sir.

5 Q And did y'all talk about anything relating to
6 Charles Kusko then?

7 A Nothing other than that they had been questioned,
8 Brandon and Floyd had been taken in for
9 questioning, and that it was -- that's when I found
10 out it was Brandon's uncle, from him. And he just
11 said that they had --

12 MR. MYERS: Objection.

13 THE WITNESS: I guess, taken --

14 THE COURT: Sustained.

15 BY MR. EATON:

16 Q So after that, stuff with -- you said helping break
17 down the pool?

18 A Down the deck around the pool, yes, sir.

19 Q By that point, how long are we after that night,
20 the night of getting messed up that we are focused
21 on?

22 A A week. About a week.

23 Q So kind of right after police talked to you?

24 A Yes, sir.

25 Q When is the next time you saw or heard from Brandon

1 or Floyd?

2 A Well, Floyd was there the next few days because,
3 like I said, I was in the process of moving, and so
4 he was one of the people that was helping. So he
5 was there helping a few times -- I mean, while I
6 was moving. And at one point, Brandon came and --
7 when we were actually moving stuff to the other
8 house. Because I had a U-Haul at my house and we
9 were getting it -- you know, loading it and stuff.
10 And when we actually started moving stuff --
11 because I didn't have enough room to put
12 everything, Floyd had actually called Brandon and
13 asked him about putting some stuff in a warehouse
14 he had somewhere, to let me store a little bit
15 because I didn't -- I was moving into a much
16 smaller house than I was moving out of.

17 Q Did anything come up then about the victim?

18 A No.

19 Q Or that night?

20 A No, sir.

21 Q So when is the next time that you saw them?

22 A Floyd -- Jessica was living with me, so I saw Floyd
23 often because he would come to pick her up or come
24 to see her. I didn't see -- I mean, Brandon might
25 have come once or twice, but -- with Floyd -- but,

1 I mean, I mainly saw Floyd.

2 Q And was that -- I mean, was that all cool with,
3 like, Brandon dating Jessica -- did you say Jessica
4 living with you?

5 A Yes, sir. You mean Floyd dating Jessica?

6 Q I mean, I'm sorry, Floyd dating Jessica?

7 A Yes.

8 Q I mean, were you -- you said at one point you fired
9 Floyd?

10 A Yes.

11 Q I mean, was that okay that he was still around to
12 you? At that point?

13 A At that point, yes.

14 Q At --

15 A It was okay, yes.

16 Q So you still considered him a friend of some type
17 at that point?

18 A Yes.

19 Q Okay. So when is the next time that you saw
20 Brandon and Floyd -- or Floyd, I guess, when this
21 actually came up?

22 A One night Floyd came over.

23 Q I know it's hard, but try to -- kind of orient us
24 to timeframe.

25 A Well, it was after I had moved into my new house.

1 I had moved out of Omarest over to Whitehall. And
2 I guess I had been there -- I had been there a
3 month or so maybe, something like that, maybe a
4 months. And Jessica had been out -- was out at her
5 grandmother's or her mom's, whoever, visiting and
6 she -- Floyd came to see her, but she wasn't home
7 yet, so he was waiting on her. And he came in and
8 he had been drinking and --

9 Q Is this -- it sounds like from what you're saying,
10 this is in October?

11 A Yeah, somewhere around there. Yes, because it was
12 before Halloween.

13 Q Okay.

14 A Yes. But he had I guess been drinking a little
15 bit, he was a little flustered, but if you know
16 Floyd, it's kind of normal -- it's just kind of
17 normal for him, so I didn't really think anything
18 at the time. I was in my kitchen and he just got
19 to talking. And I had asked him -- because he
20 was -- like I said, he started seeming more
21 agitated about something. And I asked him what was
22 wrong and he said --

23 MR. MYERS: Objection. Hearsay.

24 MR. EATON: Statement against interest, Your
25 Honor.

1 lunch for the jurors, so we will continue on. We
2 will probably take about a 30-minute break, so if
3 someone wants to order lunch for you all, we'll do
4 that. And then we'll keep moving.

5 All right. Mr. Bowen, you can bring them in.
6 Bring the jury in.

7 (WHEREUPON, the jury came into open
8 court at 1:14 p.m.)

9 THE BAILIFF: The jury is all seated, Your
10 Honor.

11 THE COURT: All right. Yes, sir, you may
12 continue.

13 Ladies and gentlemen of the jury, we're trying
14 to get through this witness. We ordered lunch. As
15 soon as we finish with this witness, hopefully
16 lunch will be here around the same time so you all
17 can have lunch in the jury room.

18 All right. Thank you.

19 MR. EATON: Thank you, Your Honor.

20 **DIRECT EXAMINATION CONTINUES:**

21 BY MR. EATON:

22 Q So, Ms. Baker, you were talking about a time when
23 Floyd and Brandon came over. And describe their
24 appearance.

25 A They were disheveled like they had been in a fight,

1 you know. Looked like they had been rolling around
2 maybe, you know, in the grass or in a fight in a
3 bar or something. They just looked like they had
4 been in a fight.

5 And I had asked, well, you know, what was
6 going on because they came like a whirlwind into my
7 house.

8 And they had -- they said --

9 Q Without saying anything that Floyd said, what did
10 Brandon say about what they had been doing?

11 A Well, I said -- after Floyd answered me, I said,
12 Well, Brandon -- I said, So Brandon -- I said, So
13 y'all really killed that man? I said, Brandon,
14 what are you going following up Floyd doing
15 something like that?

16 And that's when Brandon proceeded to tell me
17 about his uncle and that he was a bad guy and what
18 he had done to his mother, how he --

19 Q Uncle who? Which uncle? The uncle that was
20 killed?

21 A Yes, sir, Brandon's uncle. And that he was a bad
22 guy. He deserved it. And what -- you know, that
23 his mother -- about his mother and what he was
24 doing to his mother and how he was treating her.
25 And --

1 Q What -- to the best of your memory, what was that
2 about?

3 A It was something to do with Brandon's mother being
4 some type of disabled maybe and she was getting
5 some type of check. And they said that -- or he
6 said that Brandon's uncle was taking her money and
7 was treating her bad -- treating her badly. And
8 that he was just a bad person.

9 Q And so when Brandon said that his uncle deserved
10 it, to be clear, what did he mean his uncle
11 deserved?

12 A Being killed.

13 Q And when you said to him, Why would you follow
14 Floyd, what exactly did that mean?

15 A Well, because I already -- I just don't know how to
16 say it. Because I had already -- because I knew
17 what they were talking about from a previous
18 conversation and I -- so I was asking him why he
19 was -- had gone along with Floyd in killing
20 someone.

21 Q And that was clear?

22 A Yes.

23 Q In what y'all were talking about?

24 A Yes, sir.

25 Q That you were potentially asking him, Why would you

1 kill your uncle with Floyd?

2 A Yes, sir.

3 Q And his response to that was for various reasons, I
4 think he deserved it?

5 A Yes, sir.

6 Q And when was all this conversation in the course of
7 things? October?

8 A October. Well, it was after -- it was after
9 Halloween. It was like maybe two days after
10 Halloween.

11 Q And was that the last time that you talked to
12 Brandon about this?

13 A Yes.

14 Q Did you ever see Brandon again?

15 A Yes.

16 Q Where did you see him?

17 A At my house.

18 Q When was that?

19 A It was probably a couple of weeks after that. He
20 had -- I was actually asleep and he come over with
21 Floyd to see Jessica. And I had had -- I was --
22 like I said, I was asleep. And when I woke up, I
23 had money missing out of my purse. And I had
24 cameras in my house and I had seen -- when I
25 rewound the tape, I had seen Brandon and Floyd both

1 in my house and in my room. And so I asked them
2 about it. And, of course, they said no, that they
3 didn't do it. But where the angle was on the
4 camera, I could tell that they had come in the
5 room, but I couldn't tell if they had actually
6 taken -- taken it.

7 Q Was that the last time you saw Brandon?

8 A Yes.

9 Q So let's talk about your discussions of this with
10 law enforcement.

11 A Okay.

12 Q We've already talked a little bit about the first
13 time when investigators came to your house and you
14 said that was on Omarest?

15 A Yes, sir.

16 Q You were still there?

17 A Yes, sir.

18 Q At that time, did you know what they had done that
19 night?

20 A No, sir.

21 Q Okay. Did anyone come talk to you immediately
22 after they -- after you discussed it with them?
23 When is the next time you had contact with law
24 enforcement after that of any type?

25 A Actually, after I was locked up.

1 Q When would that have been?

2 A It would have been in '16, 2016.

3 Q So what part of the year, do you know?

4 A I believe I was locked up, if I'm correct, it was
5 July, around July 20 -- 19th, 29th, somewhere
6 around in there. Sometime in July, I believe.

7 Q And so it had been months, right?

8 A Uh-huh.

9 Q Eight months?

10 A Yes, sir.

11 Q Why didn't you tell anybody in the meantime what he
12 told you?

13 A Honestly, I was -- I was scared of what they might
14 do to me, to my son, my family. I didn't trust the
15 police at that point. I mean, I was doing things I
16 shouldn't have done. And so I wasn't exactly on a
17 very good basis with the police.

18 Q Was calling police, like, something you were into
19 doing back then?

20 A No, not really. Not at all.

21 Q Because you were, like, trafficking or conspiring
22 to traffic methamphetamine?

23 A Yes, sir, I was doing drugs and selling drugs.
24 And, I mean, I had -- was doing things I shouldn't
25 be doing. I was breaking the law. So I -- I had

1 informed my attorney about it at one point because
2 I was real concerned about knowing this
3 information, I guess.

4 Q What do you mean by that?

5 A Because I didn't want to get in trouble. And I had
6 asked my attorney what we should -- what I should
7 do. And he told me that I could -- should talk to
8 the police. And, but right after that, I got
9 arrested.

10 Q So did you first bring it up with your attorney
11 then?

12 A Yes, sir. Uh-huh. Which I got arrested -- you
13 have to understand, it was a period of time right
14 then when I was getting arrested, like, you know,
15 bam, bam, bam. Then my son passed away and I had
16 like this little period of time when all that was
17 going on. I was going through so much about my own
18 stuff that I just -- it was just a lot. There was
19 a lot going on. And I was getting -- like I said,
20 I got arrested. I got put on an ankle monitor. My
21 son passed away the day I got arrested. And I had
22 to handle all that. I got arrested right after I
23 buried him. Just a few days later, I got arrested
24 again. I think it was like six times I got
25 arrested back to back. Not too far apart. So I

1 had -- and then the last time when I got arrested,
2 I didn't get out. And it was right after that, was
3 when I had spoke to the police where I was.

4 Q And where was that?

5 A In Lexington County.

6 Q Do you know who you talked to?

7 A Yes, sir, I spoke to Mr. Bell, another gentleman
8 that worked for SLED, and an officer that worked
9 for Lexington County.

10 Q And did you tell them everything you knew?

11 A Yes, sir.

12 Q Around when was that?

13 A It wasn't too long after I got arrested the final
14 time.

15 Q 2016?

16 A Which is in '16. So maybe in August, because it
17 was towards the end, I believe, of July when I got
18 arrested and was detained and wasn't released.

19 Q And when did you talk to law enforcement again
20 after that?

21 A I want to say it was probably -- might have been
22 close to a year. I had two officers from -- they
23 said they were from the cold cases, I think is what
24 they said, come and spoke with me and said that
25 they had found out that I had some information

1 about this case and would I be willing to talk to
2 them. And that was the next time I spoke with
3 someone.

4 Q Do you know who that was?

5 A He was one of the gentleman, and then it was one
6 more.

7 Q And did you say substantially the same thing you
8 said in Lexington?

9 A Yes. Yes, sir.

10 Q Was that in 2016 still, or are we in 2017 by now?

11 A It had to be 2017 because I had -- I had been in
12 Lexington County for almost a year and we had -- we
13 had went to try to get me a bond. And at that
14 point -- stating that I had been in a year and
15 nothing had been done at that point. And so at
16 that time they said that they thought the federal
17 government was picking up my case. And so that's
18 why they hadn't done anything. And so that's why I
19 know it had been about a year.

20 Q And so --

21 A And it was right after that. Excuse me.

22 Q Then after cold case talked to you, when did it
23 come up again?

24 A Not quite a month ago, I got a phone call at the
25 federal prison -- or I had a meeting. They said

1 they would let me know, and said that I had to come
2 for a conference call. And I believe I spoke with
3 you and several of you on a conference call in my
4 counselor's office.

5 Q And did you tell us substantially the same thing
6 you said the first two times?

7 A Yes, sir.

8 Q Is it possible that, given the passage of time,
9 there were details and dates or encounters or
10 something that you may have forgotten?

11 A I'm sure. I've been locked up since, like I said,
12 since 2016. I mean, I've been locked up a long
13 time. Sometimes it's hard for me to even remember
14 some people's names, you know, people's birthdays.
15 Once you're locked up, I mean, like that. And it's
16 been such a long time, I'm sure there's, you know,
17 things that I've forgotten, or whatever. Yeah, I
18 know there is.

19 Q So over the course -- and then, I guess -- well,
20 did you talk to me again about it?

21 A Once I got to Columbia. I think the day after I
22 got here, we all met here at the courthouse and
23 talked in the conference room.

24 Q Have you had a lawyer for any of these?

25 A No, sir.

1 Q Did I cover that with you?

2 A Yes, sir.

3 Q But throughout these different times that we've
4 talked, that's what, four or five times that you've
5 talked about this, I mean, there's going to be
6 probably some minor discrepancies maybe, right, in
7 what you said?

8 A I'm sure.

9 MR. MYERS: Objection to leading, Your Honor.

10 THE COURT: Sustained.

11 BY MR. EATON:

12 Q So, Ms. Baker, that time period from when you first
13 learned about it until you were locked up, you
14 didn't tell the police?

15 A No, sir.

16 Q Did you know Charlie Kusko ever?

17 A No. No, sir.

18 MR. MYERS: Objection. He's been over this,
19 asked and answered, gone over it. I let him do it
20 two times.

21 THE COURT: Let's move on.

22 MR. EATON: Yes, ma'am.

23 BY MR. EATON:

24 Q Did you know any others?

25 A No, sir. I didn't know anyone in the family but

1 Brandon.

2 Q Should you have come forward back then?

3 A Yes.

4 Q Are you on drugs today?

5 A No, sir.

6 Q Gosh, are there people who get drugs in prison?

7 A Excuse me?

8 Q Do people get drugs in prison?

9 A Oh, yes.

10 Q How long have you been sober?

11 A About four years now. Drugs ruined my life, two of
12 my children's lives. I have grandchildren. I had
13 to leave my son. I mean, I wish I could go back
14 and change what I've done, but I can't, so I'm just
15 trying to make the best of the situation I'm in.
16 That's all I can do.

17 Q So why should this jury believe you?

18 A I don't know. I feel really bad about not saying
19 something a long time ago, I really do. If it was
20 my dad or brother or whatever, I would be really
21 mad at me. But it's just a really bad thing for
22 somebody to have to happen -- to go through. I'm
23 sure to lose your father or your brother, or
24 whatever like that, has got to be horrible. And
25 I'm really sorry that I didn't say anything sooner.

1 Q Have you told the truth today?

2 A Yes, sir.

3 MR. EATON: Thank you. No further questions.

4 THE COURT: All right.

5 CROSS-EXAMINATION

6 BY MR. MYERS:

7 Q Good afternoon, Ms. Baker. Would you like some
8 water, Ms. Baker.

9 A I have some, thank you.

10 Q Let me know when you're ready.

11 A I'm sorry.

12 Q Are you ready?

13 A Yes, sir.

14 Q Ms. Baker, you and I have never met before?

15 A No, sir.

16 Q But I noticed with interest that you have met with
17 Mr. Eaton and his folks on a number of occasions,
18 right?

19 A Yes, sir.

20 Q Not only Mr. Eaton, but also his associates at the
21 table, correct?

22 A Yes, sir.

23 Q You have also met with Investigator Reese, right?

24 A Yes, sir.

25 Q They talked to you throughout this entire ordeal

1 when you were at the Lexington County Detention
2 Center, right?

3 A Yes, sir.

4 Q And they brought you here earlier so they could
5 talk to you about your testimony, right?

6 A Yes, sir.

7 Q But you and I, when asked, I was never able to talk
8 to you, are you aware of that?

9 A No, sir.

10 Q Now, you talked -- Mr. Eaton went over this -- the
11 fact that you're in federal prison and you have
12 pled guilty to drug trafficking, correct?

13 A Drug distribution, not trafficking. But, yes, sir.

14 Q And, also, conspiracy to distribute --

15 A (Nods affirmatively.)

16 Q -- and traffic cocaine and methamphetamine?

17 A Yes, sir.

18 Q A conspiracy means that several other individuals
19 were involved with this ordeal of selling drugs
20 throughout Lexington County and the state, right?

21 A Yes.

22 Q So your indictment in federal court basically
23 alleged that you, along with a lot of other
24 individuals, were responsible for trafficking a lot
25 of meth throughout the state and throughout the

1 country, ma'am?

2 A No, sir, there was only me and two other people on
3 my indictment.

4 Q Two other individuals at least, right?

5 A Yes, sir.

6 Q So much so that when you were initially charged in
7 state court, ATF said you're so much of a drug
8 dealer that they came and picked up the case,
9 right?

10 A No, sir.

11 Q So it wasn't that you were arrested in state court
12 and then ATF, the feds, then came and got an
13 indictment against you?

14 A Oh, okay, I'm sorry, I misunderstood what you said.
15 Yes, sir.

16 Q That allegation was because they believed and you
17 ultimately pled guilty to being a large meth
18 trafficker, right?

19 A Yes, sir.

20 Q Now, at the time that you went to jail in state
21 court, you had a lawyer?

22 A Yes, sir.

23 Q That lawyer, I believe, was Theo Williams, is that
24 right?

25 A Yes, sir.

1 Q Theo represented you on the state court charges,
2 but then he did not represent you when it went
3 federal, correct?

4 A Yes, sir.

5 Q Now, I think you had a prior relationship with
6 Theo. I mean, he represented you on all the six
7 times or seven times you had gotten arrested,
8 right?

9 A Yes, sir.

10 Q Now, Mr. Eaton asked the jury -- or told you to
11 explain to the jury that he never promised you
12 anything, right?

13 A Yes, sir.

14 Q You understand Mr. Eaton is a state prosecutor,
15 right?

16 A Yes, sir.

17 Q You understand that what you're in prison for is
18 because of the federal prosecution, right?

19 A Right.

20 Q Now, you have a federal public defender now, right?

21 A Right.

22 Q No longer Theo Williams?

23 A No.

24 Q Are you aware that your federal prosecutor sent to
25 Mr. Eaton or a request asking for a letter based on

1 your testimony?

2 A No, sir.

3 Q You're not aware of that?

4 A (Nods negatively.)

5 Q All right. But you have a federal public defender,
6 right?

7 A Yes, sir.

8 Q Now, I want to talk a little bit about what's
9 called a downward departure. Are you familiar with
10 that?

11 A Yes, sir.

12 Q It's actually called a 5K1 downward departure,
13 right?

14 A Yes, sir.

15 Q That can be done at any time while you're currently
16 serving those 20 years, right?

17 A Yes, sir.

18 Q I mean, there's no limit on it. I mean, you can
19 wait until Year 15, 16 and file that downward
20 departure, right? Right?

21 A I guess.

22 Q And the way a downward departure works in federal
23 court, unlike state court, is that the government,
24 based on substantial assistance -- it doesn't
25 matter about what you substantially assist with,

1 based on any substantial assistance, you could ask
2 the government to do that downward departure,
3 right?

4 A Yes, sir.

5 Q And so if your federal public defender were to ask
6 the government to move for a downward departure, he
7 could say it was because you testified today,
8 right?

9 A I mean, I assume. I don't know.

10 Q Yeah, because you would have assisted the
11 government in a case, right?

12 A Well, I was told that I was getting it -- that they
13 would go and once the other two people, Kayla
14 Martin and Julius Lynch, once they finished
15 their -- once Kayla finished whatever she was doing
16 in her part and Julius Lynch was sentenced, then I
17 would get my downward whatever it's called, then I
18 would do that.

19 Q And that's why your federal public defender wrote
20 to Mr. Eaton asking for a letter based on your
21 testimony today, because he wants to use your
22 testimony today to help assist with that downward
23 departure, right?

24 A I --

25 Q And if that downward departure is successful, you

1 will see some years come down off your 20 years,
2 right?

3 A Yes, sir.

4 Q And that's what you want?

5 A Of course.

6 Q Because you said drugs have destroyed your life,
7 yes?

8 A Uh-huh.

9 Q That you certainly don't want to spend the next 20
10 years in a federal correctional institution, right?

11 A No, sir.

12 Q You're just trying to do your job to make sure you
13 come out with some semblance of a life, right?

14 A Yes, sir.

15 Q Now, you testified that initially when law
16 enforcement came to you in 2015, they came to your
17 house on Omarest, right?

18 A Yes, sir.

19 Q It was two of them, you said a black guy and a
20 white guy?

21 A Yes, sir.

22 Q Now, they do what ordinary police officers do,
23 leave a card --

24 A Yes, sir.

25 Q -- with you?

1 A Uh-huh.

2 Q And they give you that card because they say, Look,
3 Ms. Baker, if you think of anything else that might
4 help us in this investigation, give us a call,
5 right?

6 A Yes, sir.

7 Q So at the time they left, you knew that if you ever
8 came in contact with any additional information,
9 all you had to do was pick up the telephone, right?

10 A Yes, sir. And like I told them, because I've been
11 asked the same question, I was in the process of
12 moving. In the process of moving, I did lose the
13 card and I had no way to contact them.

14 Q You knew what agency they were with, right?

15 A I couldn't remember. Honestly, I couldn't. I
16 didn't know if it was Richland County or who it
17 was.

18 Q Sure. But based on all the run-ins you had with
19 the law, you knew it was some law enforcement
20 agency?

21 A Yes, sir.

22 Q You knew how to reach out to law enforcement even
23 if you didn't have names, right?

24 A Yes, sir.

25 Q So at some point, you could have reached out to

1 them if you had gotten some other information,
2 right?

3 A Yes, sir.

4 Q But you didn't do that, right?

5 A No, sir.

6 Q Now, you testified that eventually Floyd Owen, he
7 started coming around because he was dating your
8 roommate, is that correct? And you knew Floyd, but
9 then he started coming to Omarest and then he came
10 to the house in Whitehall, right?

11 A Yes, sir.

12 Q Because by the time you moved to Whitehall, his
13 girlfriend was a young lady by the name of Jessica
14 James, right?

15 A Yes.

16 Q Now, you indicated he used to work for you, right?

17 A Yes, sir.

18 Q Now, at some point when you got arrested, you then
19 went to the Lexington County Detention Center,
20 right?

21 A Yes, sir.

22 Q Jenny, there's a reason lawyers tell their clients
23 don't talk to anyone in jail, isn't there?

24 A (Nods affirmatively.)

25 Q Lawyers tell their clients that because if you give

1 somebody any information about your case, an inmate
2 can pick up on that --

3 MR. EATON: He's testifying now, Your Honor.

4 THE COURT: Is there an objection? State the
5 objection.

6 MR. EATON: He's leading, he's not asking
7 questions.

8 THE COURT: Please ask in the form of a
9 question, Mr. Myers.

10 BY MR. MYERS:

11 Q You were told not to talk to anyone because if you
12 talk to someone, they could possibly use what you
13 say against you and possibly hurt your case, right?

14 A Yes, sir.

15 Q Now, people think that jail is just this place you
16 can't get any outside information, but you
17 previously testified you can get cell phones in
18 jail, right? Or you can get contraband in jail,
19 right?

20 A I'm sure, yes.

21 Q You can get drugs in jail?

22 A I'm sure, yes.

23 Q Just the fact that you're locked away doesn't mean
24 you're locked away from the outside world, right?

25 A No, sir.

1 Q Because knowing the right individuals can get you
2 contraband that you want, right?

3 A Yes, sir.

4 Q And you can get information in jail, right?

5 A Yes, sir.

6 Q Because no matter how big or small the jail is,
7 it's still operates like the streets, word of
8 mouth, right?

9 A Yes, sir.

10 Q People can tell you about your case, they can tell
11 you about other people's cases, right?

12 A Yes, sir.

13 Q You would be amazed -- or this jury probably would
14 be amazed at how much information an inmate at the
15 Lexington County Detention Center could get just
16 being at the Detention Center, right?

17 A Yes, sir.

18 Q They could get something if a fellow co-defendant
19 or fellow inmate goes to bond court, right?

20 A Uh-huh.

21 Q Listens in on the facts of the case, right?

22 A Yes, sir.

23 Q And based on that, they can come back and spin a
24 whole nother story that could ultimately hurt your
25 case, right?

1 A Yes, sir.

2 Q Now, at the time that you were not in jail and at
3 the time law enforcement came to you, you decided
4 not to tell law enforcement anything about what you
5 claim to know now, right?

6 A When they came to me, I didn't know anything.

7 Q I understand. So when you went to the Lexington
8 County Detention Center, you then started talking
9 to law enforcement, right?

10 A Yes, sir.

11 Q In fact, you were talking to them about a lot of
12 different things, about drug smuggling and how to
13 stop meth in and out of Lexington County, right?

14 A Yes.

15 Q That's what you said Mr. Bell and those other
16 individuals talked to you about, right?

17 A Yes.

18 Q Now, at some point you started talking to them
19 about what you claim to know about this Defendant?

20 A Yes, sir.

21 Q Right? But it wasn't like you just called them,
22 you were already talking to them, right?

23 A Right.

24 Q So it wasn't like you picked up the telephone to
25 Theo and said, Hey, Theo, listen, I got to get

1 something off my chest. I got to tell them. It
2 was just, hey, you're talking. Let's continue to
3 talk, right?

4 A (Nods affirmatively.)

5 Q Right?

6 A I had already spoke to Theo about talking to them,
7 but like I explained to -- earlier, when I spoke to
8 Theo about that and then I was getting arrested one
9 time right after another, that's what I was trying
10 to explain, before I ever had a chance to even talk
11 to anybody, I had so much going on. Then my son
12 passed away, and all that. No, sir, I didn't have
13 a chance. I never did.

14 Q Huh. And Theo, being the lawyer advocate for you,
15 is it your testimony that he never just went and
16 told anybody?

17 A Not that I know of.

18 Q Now, either way, the second story or the second
19 time that you talked to law enforcement, you were
20 at the Lexington County Detention Center, right?

21 A (Nods affirmatively.)

22 Q At that time, the charges were pending?

23 A (Nods affirmatively.)

24 Q Feds hadn't even picked up case yet?

25 A No, sir.

1 Q So you knew that if there was any opportunity to
2 help yourself, it would have been then?

3 A Yes, sir.

4 Q That it's better to help yourself on the front end
5 than on the back end and depend on a downward
6 departure, right?

7 A I hadn't even been picked up by the feds.

8 Q Yes, ma'am. I understand that. But the best thing
9 to do is to help yourself on the front end rather
10 than the back end, right?

11 A Yes.

12 Q Because if you plead guilty, you want your lawyer
13 be able to say that you provided some cooperation,
14 right?

15 A Yes, sir.

16 Q Whether it's true or not, your lawyer wants to be
17 able to say, Hey, she cooperated with law
18 enforcement, right?

19 A Yes.

20 Q Now, the second time, then, that you talked to law
21 enforcement, you're at the Lexington County
22 Detention Center and your story is that Floyd Owen
23 and Brandon had come to your house, right?

24 A (Nods affirmatively.)

25 Q And according to your testimony, the story that you

1 told to them was they were at your house the night
2 or the night and the morning leading up to Charles
3 Kusko's death, is that right?

4 A Yes, sir.

5 Q And you testified that you all were smoking meth?

6 A Yes, sir.

7 Q Now, I never smoked it, but I would imagine, the
8 science says it's a mind-altering substance, right?

9 A Yes, sir.

10 Q Meaning that when you hit it, I mean, you don't --
11 Mr. Eaton asked you what it does for you, but
12 basically it messes up your brain waves, right?
13 You can't think right, right?

14 A I mean, not necessarily, no.

15 Q You're in a high state?

16 A Right.

17 Q I mean, you had been smoking meth for how long at
18 this point?

19 A About a year.

20 Q So you had been high off meth -- and I just want to
21 make sure. The meth is a concoction that you have
22 actually got to use anhydrous ammonia, right, to
23 make it?

24 A I don't know. I have no idea how to make it.

25 Q You never made it?

1 A No, sir.

2 Q You just bought it?

3 A Yes, sir.

4 Q And then you smoked it?

5 A Yes, sir.

6 Q So on this night, your testimony is that you and
7 Floyd, y'all were smoking it, right?

8 A Me, Floyd, and Brandon, yes, sir.

9 Q So your testimony is that Brandon was smoking meth
10 too?

11 A Yes, sir.

12 Q And y'all were drinking?

13 A Yes, sir.

14 Q And at some point, you go upstairs to your room,
15 right?

16 A Yes, sir.

17 Q You leave them downstairs, but when you got up the
18 following morning, they were gone?

19 A Yes, sir.

20 Q Did you give them any reason that they needed to
21 stay?

22 A Well, I told them they had been drinking and
23 getting high, I mean, I didn't want them out
24 drinking and driving -- I mean, I didn't want them
25 driving.

1 Q So you don't know what time they left?

2 A No, sir.

3 Q You certainly didn't promise them, Hey, when we
4 wake up, I will make breakfast for you?

5 A No, sir.

6 Q So sitting here today, I mean, you just don't know
7 what time they left?

8 A No, sir.

9 Q You just believe that based on your best guess that
10 you went upstairs at 1:00 o'clock?

11 A Yes, sir.

12 Q At the time they left, did Brandon tell you that
13 they were going to go do anything else?

14 A No, sir.

15 Q Did he seem pissed off at anybody?

16 A No, sir. I don't know how they were when they
17 left. I was asleep.

18 Q Sure. During the time that you say y'all were
19 smoking meth, did Brandon at any time tell you,
20 Hey, I'm upset with my uncle?

21 A No, sir.

22 Q Did he appear agitated at that time?

23 A No, sir.

24 Q Did he appear upset with anybody?

25 A No, sir.

1 Q Did he tell you somebody owed him money that
2 wouldn't pay him?

3 A No, sir.

4 Q He basically just -- it was a party, right?

5 A Yes, sir.

6 Q Everybody was happy, everybody was smoking,
7 everybody was drinking, right?

8 A Yes, sir.

9 Q And at some point later on in the morning, they
10 left and you don't know what time?

11 A Yes, sir.

12 Q Now, at that point, how many times had Brandon ever
13 been to your home?

14 A Maybe -- maybe three times, two or three times.

15 Q So at the time from September 5th leading up to
16 September 6th, you're saying that Brandon was at
17 your house five or six times?

18 A No.

19 Q Or three or four times?

20 A I said maybe two or three.

21 Q Two or three times, I'm sorry, you're right. Two
22 or three times?

23 A Yes, sir.

24 Q Before that, he never worked for you?

25 A No.

1 Q You never had any occasion to enter in any sort of
2 business contract with him where he did work and
3 you paid him?

4 A No.

5 Q It was just basically a relationship that he met
6 you or you met him through Floyd, right?

7 A Yes, sir.

8 Q Now, I want to fast-forward a little bit about
9 several -- I guess, the third time you say that
10 Brandon was at your house, right?

11 A Yes, sir.

12 Q So that would have been Time Number 5 or 6 he would
13 have been at your house?

14 A Yes, sir.

15 Q So in the five or six times that he had ever met
16 you, you want this jury to believe that he --

17 A I didn't say he had ever met me. You asked had he
18 been at my house.

19 Q Well, tell me about that.

20 A I mean, I met Brandon several times. He's come to
21 my store many times with Floyd. I mean, there's a
22 difference between meeting somebody and somebody
23 coming to your house. I mean, I met him several
24 times at the store. He used to come up and hang
25 out at the store with Floyd. I mean, so -- I mean,

1 no, he wasn't at my house a bunch, but, yes, I had
2 seen him several times other than that.

3 Q So by the time you say that he admitted to killing
4 his uncle --

5 A Yes, sir.

6 Q -- how many times had you seen him?

7 A I couldn't tell you. Probably -- and over the
8 course of the time that I -- from when I first met
9 him, probably 20, 25 times.

10 Q And in that timeframe, your testimony is that he
11 admitted to killing his Uncle Charles?

12 A Yes, sir.

13 Q Now, did you ever -- you had a cell phone at the
14 time -- I'm sorry?

15 A They -- he -- I mean, he admitted that they killed
16 him. I'm sorry, I just don't -- not being able to
17 say what the other person said, I just don't know
18 exactly how to say what I'm trying to say. But
19 yes, sir, yes, he did.

20 Q Okay. Now, you had a cell phone during this time,
21 right?

22 A Yes, sir.

23 Q You are familiar with the text message system?

24 A Yes, sir.

25 Q On a cell phone?

1 A Yes.

2 Q Now, you and Floyd communicated pretty often,
3 right?

4 A Yes, sir.

5 Q You and Brandon did not communicate?

6 A No, sir.

7 Q You didn't text message with Brandon at all?

8 A I don't think so.

9 Q But you and Floyd -- and you and Floyd, y'all would
10 oftentimes go back and forth via text message,
11 right?

12 A Yes, sir.

13 Q In fact, during 2016, your relationship with Floyd
14 got pretty bad, didn't it?

15 A Yes.

16 Q Because that was when you accused him of stealing
17 from you, right?

18 A Yes.

19 Q In fact, Floyd actually told you that Brandon
20 didn't have anything to do with it because Brandon
21 was a lover, but he, on the other hand, was an
22 animal?

23 A I don't remember that, but if you say so, yes, sir.

24 Q Sure.

25 A I mean, I do remember him saying Brandon didn't

1 have anything to do with it, yes.

2 Q And he described himself, being Floyd, as an animal
3 and described Brandon as a lover, meaning that
4 Brandon wouldn't do that. Brandon wouldn't hurt
5 anybody. Right?

6 A I assume. I don't know. I don't remember that.

7 Q At the time -- I want to just go back. At the time
8 that you say you were so afraid of these
9 individuals, did you ever file any sort of incident
10 report against either Brandon or Floyd?

11 A No, sir.

12 Q Did you ever pick up the phone to law enforcement
13 --

14 A No, sir.

15 Q -- and report anything?

16 A No, sir.

17 Q This individual that you claim that they beat up,
18 do you know who that individual was?

19 A No, sir.

20 Q Do you know what he looked like?

21 A No, sir.

22 Q Do you know if it was a male or female?

23 A A male.

24 Q How do you know it was a male?

25 A Because when they referred to him, it was he or

1 him.

2 MR. MYERS: One moment, Your Honor.

3 (Pause.)

4 MR. MYERS: Thank you. No further questions.

5 THE COURT: Yes, sir?

6 MR. EATON: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. EATON:

9 Q Ms. Baker?

10 A Yes.

11 Q Mr. Myers was asking about your federal public
12 defender writing me an e-mail or something asking
13 if I would say anything for you on your behalf.

14 A (Nods affirmatively.)

15 Q If I had done that or told him that I would in any
16 way, shape, or form, don't you think you would know
17 that?

18 A Yes, sir.

19 Q When did you have a federal public defender?

20 A Well, I think he's pro bono, I don't think he's a
21 public defender. But they appointed him to me
22 after my first appearance. They appointed him at
23 the federal courthouse. They appointed him to me.

24 Q It sounds like what Mr. Myers was talking about was
25 before your sentencing apparently, right?

1 A Yes, sir.

2 Q Did anything about this come up at your sentencing?

3 A No, sir. The only thing that came up in regards to
4 me -- because the day of my sentencing, we went in,
5 and I didn't even know that's what I was getting,
6 whatever it's called, the rule -- whichever rule it
7 is. I didn't know that's what we were doing till
8 the day I went in that day. And he leaned down and
9 he said, We're going to get -- the judge is going
10 to bring your -- because the federal, they do it on
11 a guideline where they give you like levels. It's
12 like -- they do it by months, not by years like
13 they do in the state. And each level goes from
14 however many months to however many months.

15 Well, they had had me to my levels were where
16 it was like a little over 20 years, but my
17 mandatory minimums, because that is what they had
18 called them in federal, was 20 for that charge. So
19 they asked the judge if they would bring it down to
20 the mandatory minimum of 20 to start at my base
21 level, and then that they would come back at a
22 later time to do my, I guess, reduction, or
23 whatever it's called.

24 My lawyer leaned down and he told me, he said,
25 This is what we're going to do. He said, We're

1 going to -- they're agreeing to let you have the --
2 whatever rule it is, I can't remember if it is 501
3 or Rule 35, whatever it is, but they're agreeing to
4 let you have that and to come back at a later time,
5 and I think he said 14 to 16 months after I had
6 been sentenced, once Kayla Martin and Julius Lynch
7 were through with all their stuff. And he would --

8 I said, Well, do I have to come back here?

9 He said, No, I'll just file the paperwork, you
10 know, and I'll give you any letters -- because I
11 had someone from NA there for me and I had a bunch
12 of letters to go to the judge where people who had
13 wrote for me. And he said he would give all that
14 and anything I have done while I've been in prison,
15 you know, programs or anything, he would give that,
16 certificates, he would send all that in to the
17 judge at that point, and then I would get my -- so
18 that's all I know about, you know -- and that's
19 when I first heard about getting that rule or doing
20 that, that that's what we agreed to do.

21 Q Did the state stuff come up -- like, all that stuff
22 we're talking about, we're talking about federal
23 war on drugs, right?

24 A Right, yes, sir.

25 Q Did state homicide come up at all?

1 A No, sir.

2 Q Mr. Myers was asking about the time period that you
3 didn't call them back, maybe lost their card?

4 A Uh-huh.

5 Q The CPD officers who first came?

6 A Right.

7 Q Would that be in the same time, kind of like you
8 first testified, should it shock anybody in this
9 room that you were not falling over yourself to
10 reach out to police back then?

11 A No, sir.

12 Q He touched a little bit on what meth does -- and
13 we'll wrap up, I know everybody wants lunch -- what
14 meth does to you?

15 A Yes, sir.

16 Q I mean, are you just like seeing gremlins running
17 around and rainbows and stuff when you're on meth?

18 A No, sir. I will tell you, I was a very functioning
19 addict. None of my family knew that I was an
20 addict. I ran businesses. I took care of my
21 grandkids. My daughter would have never let my
22 grandkids come to my house if she knew I was doing
23 drugs.

24 Q So that night --

25 A I mean -- so, I mean, I knew what was going on. I

1 was not out of my mind.

2 Q And did it affect your ability to remember stuff
3 or would it affect your ability to --

4 A (Nods affirmatively.)

5 Q -- know what was going on around you?

6 A No, sir.

7 Q Did you ever have any hard feelings against
8 Brandon?

9 A No, I thought he was a really good kid. I really
10 did. I was really shocked by all of this.

11 Q So you weren't, I mean, mad at him back then?

12 A No.

13 Q Are you mad at him today?

14 A No.

15 Q Would you lie on him on a murder?

16 A No. God, no. Not on anyone. Definitely not.

17 There's been so many people that's stole from me
18 and done so much to me. I've never lied or tried
19 to say anybody's done anything or tried to get
20 anybody in trouble. I'm only doing it because it
21 was wrong what happened to that man. And I just
22 feel like that it should be -- they should have to
23 pay for what they did.

24 Q Did you learn about this in jail?

25 A No.

1 Q Where did you learn about it?

2 A At my home.

3 MR. EATON: Thank you. No further questions.

4 MR. MYERS: No recross.

5 THE COURT: All right, ma'am, you may step
6 down.

7 (Witness steps down.)

8 THE COURT: All right. Can I see the
9 attorneys?

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Ladies and gentlemen of the jury,
14 we'll check again, but the lunch is not here just
15 yet, and so I was trying to figure out if there was
16 another witness we could get in while we wait.
17 Does anybody need to go get a snack or something?
18 I do realize that the hour is -- the lunch hour is
19 late, it's 2:00 o'clock. But I'm told that it
20 should be here shortly.

21 Yes, sir?

22 MR. EATON: Your Honor, I think the remaining
23 few witnesses the State has will probably be
24 lengthy, but there's a brief matter we could take
25 up outside the presence of the jury.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: State your full name, please.

6 THE WITNESS: Floyd Gregory Owen.

7 THE CLERK: Do you solemnly swear to tell the
8 truth, the whole truth, and nothing but the truth,
9 so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. Have a seat right
12 there.

13 (Witness seated.)

14 THE COURT: Yes, sir?

15 MR. EATON: Thank you, Your Honor.

16 FLOYD OWEN,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. EATON:

20 Q Good afternoon, Mr. Owen. Mr. Owen, where are you
21 from?

22 A I'm originally from Illinois. I've lived here in
23 South Carolina since '98.

24 Q And when did you first meet Charles Kusko?

25 A Probably '05.

1 Q 2005?

2 A Yes, sir.

3 Q What was going on in your life in 2005?

4 A Not a whole lot of anything. Struggling to keep a
5 job, struggling to keep a place to live. Not too
6 good.

7 Q And so where did you meet Mr. Kusko?

8 A At a guy's house named John Hirshberg.

9 Q A guy named who?

10 A John Hirshberg.

11 Q And what was your initial relationship like with
12 Mr. Kusko?

13 A Normal. Friends. Partied a lot.

14 Q And at some point, did your relationship with him
15 become more than friends?

16 A Yes, sir.

17 Q When was that probably?

18 A Not too long after I met him.

19 Q And tell the jury about what that was. You were
20 sexual with him?

21 A Yes, sir.

22 Q And at that time, where were y'all living?

23 A Off of Prescott.

24 Q You were?

25 A Yes.

1 Q You want some water?

2 A No, I'm good.

3 Q And where was he living?

4 A Off of Prescott.

5 Q Were y'all living together?

6 A Yeah, he was giving me a place to stay.

7 Q How long did you stay there with him?

8 A Probably a couple of months.

9 Q And back then, did you know Brandon Barham?

10 A I hadn't met him yet.

11 Q How did you meet Brandon?

12 A Through Charles.

13 Q About what year did you meet Brandon?

14 A Probably the same year, maybe a year after.

15 Q 2005, maybe 2006?

16 A Yes, sir.

17 Q And did you become friends with Brandon?

18 A Yes, sir.

19 Q As your relationship with Brandon and Charles
20 progressed, did things over those years change in
21 your life? Were there some big events throughout
22 your life in upcoming years?

23 A Yes.

24 Q Like what?

25 A I got a trouble a few times. That's about it. It

1 was just a lot of partying.

2 Q And over the -- but you knew Charles, obviously,
3 for years then. And over those years, how was
4 y'all's relationship?

5 A Good at times, really bad at others, other times.

6 Q Elaborate on what you mean by that.

7 A Charles would flip out a lot. He didn't treat
8 people with respect really too much. Occasionally,
9 I would go from not talking to him for a little
10 while and then I'd talk to him again, start talking
11 to him again. So kind of on and off.

12 Q But you stayed friends with him?

13 A Yeah, for the most part.

14 Q And was your relationship with him always sexual?

15 A No, sir.

16 Q Just sometimes?

17 A Just sometimes.

18 Q Can you state when over the years it was? Was it
19 limited to a certain time period or?

20 A No, it was just off and on.

21 Q Off and on?

22 A (Nods affirmatively.)

23 Q Kinds of always with him?

24 A Sometimes. Not all the time.

25 Q And -- but there were also women in your life,

1 right?

2 A Uh-huh.

3 Q In fact, at some point, did you get married?

4 A Yeah, I had a girlfriend. I mean, we didn't get
5 married, but we had two kids eventually. I hadn't
6 talked to Charles for a long time. When I met her,
7 I stopped talking to Charles and a lot of other
8 people, including Brandon.

9 Q Why was that?

10 A I just -- trying to clean my life up. You know,
11 trying to get away from the same scene, the same
12 people.

13 Q For how long did you stay out of contact with
14 Charles?

15 A About seven years.

16 Q Just really no contact at all throughout that time?

17 A I talked to him one time when Brandon came over to
18 my girl's mom's house. I talked to him briefly on
19 the phone, but it wasn't nothing big.

20 Q What led to you reuniting with him?

21 A I was at work one day and I was getting ready to
22 get in my truck and his truck pulled up on the
23 other side of the fence from where I work at. And
24 the window rolled down, and it was Charles.

25 And he said he had seen me a couple of times

1 and, you know, he hadn't spoken or anything. He
2 wanted to know if I wanted to come over to his
3 house and have a couple of beers.

4 So, eventually, a couple of days later, I went
5 over there and had a few beers with him. That's
6 how I started talking to him again.

7 Q And did y'all kind of pick back up from where you
8 left off?

9 A Not really. It was more or less drinking and I did
10 a little bit of drugs with him. That was about it.

11 Q Well, I guess, in that sense, it was kind of the
12 same as it used to be then?

13 A Pretty much.

14 Q So around what time was that that you got back in
15 touch with him, you saw him when he pulled up to
16 you?

17 A Probably April or May of 2015.

18 Q And during that 7-year period leading up to then,
19 had you also not contacted Brandon at all, or were
20 y'all --

21 A Yeah, I hadn't really talked to Brandon much
22 either.

23 Q Throughout that whole time period?

24 A Right, that whole time period.

25 Q But then in April to May of 2015, did you also

1 reconnect with Brandon?

2 A Yeah, I saw Brandon at Charles' house one day.

3 Q But you had already known him from back in the day,
4 is that right?

5 A Uh-huh.

6 Q And so when you saw Brandon -- I mean, is seeing
7 him at Charles is what got y'all hanging out again?

8 A Yeah, a little bit. A little bit here and there at
9 first.

10 Q Did that progress?

11 A Yeah, it did.

12 Q And what, like, hanging out, what do you mean?

13 A Just drinking beers.

14 Q So how long was it after April or May of 2015
15 before things started to go sideways between you
16 and Charles?

17 A Probably July, August, something like that, I
18 think.

19 Q And tell me what started going down then. I'm
20 going to get the mic a little bit closer to you.
21 And what started happening around that time?

22 A As far as?

23 Q Well, at some point there was a dispute between
24 y'all, some kind of problem, right?

25 A Yeah. He was selling all of -- he had all of

1 Karin's stuff, which is Brandon's mom, stuff in the
2 garage. And he was just throwing it all away, you
3 know, blah, blah, blah, selling it, selling what he
4 could. And I ended up talking to Andrew Kusko, his
5 brother, and telling him what was going on. And
6 that's what initially started the feud between me
7 and Charles.

8 Q Okay. Was that the extent of the feud between
9 y'all, or was there anything else involved?

10 A He didn't like that I was hanging out with Brandon.

11 Q Why is that?

12 A I don't know. He just didn't. I mean, it just --
13 it just progressively kept getting worse. He was
14 messaging me all the time. I seen him drive past
15 my house several times when I was living off of
16 Daulton. At first, I was trying to stay away from
17 him again, you know.

18 Sent texts back and forth, you know, You
19 haven't changed any in the seven years I haven't
20 seen you.

21 I pretty much said the same thing to him.

22 Q And things started to get a little tense, it sounds
23 like, between y'all?

24 A It did.

25 Q Did that stop y'all from hanging out?

1 A Yeah.

2 Q Okay. And were you simultaneously hanging out
3 Brandon?

4 A Yeah.

5 Q So as we get closer to September of 2015 -- when
6 was all this dispute, I guess, between y'all that
7 you're talking about right now?

8 A August.

9 Q And how long did -- how long did that go on? Was
10 it an ongoing dispute until September?

11 A Yeah, it was pretty much an ongoing thing.

12 Q Where were you living at the time?

13 A Off of Daulton Drive.

14 Q Who were you -- were you seeing anybody then?

15 A A couple of girls.

16 Q Who?

17 A Jessica James and this other girl named Kearston.

18 Q How long had you been seeing Jessica?

19 A A couple of months.

20 Q How did you meet her?

21 A Online.

22 Q Did y'all live together?

23 A No, we didn't live together at the time.

24 Q Did you ever live together?

25 A Yeah, we eventually lived together.

- 1 Q Where?
- 2 A We lived at Jenny Baker's house together.
- 3 Q Around when?
- 4 A The last part of 2015.
- 5 Q So after this happened?
- 6 A Yeah, after this happened.
- 7 Q Did you live together before then?
- 8 A No.
- 9 Q But you were seeing Jessica before then?
- 10 A A little bit, yeah. I think I had seen her like
- 11 twice.
- 12 Q So as we get into September timeframe, you've got a
- 13 dispute with Charles?
- 14 A Uh-huh.
- 15 Q Are you seeing much of Brandon?
- 16 A A little bit.
- 17 Q What were doing around that time together?
- 18 A Drinking, you know, partying together.
- 19 Q How often would you see him?
- 20 A At that time, maybe once or twice a week.
- 21 Q Like where would y'all meet up?
- 22 A My house.
- 23 Q On Daulton?
- 24 A Uh-huh.
- 25 Q Did you drive back then?

1 A Did I drive?

2 Q Yes.

3 A Yeah.

4 Q What?

5 A My ex took my truck, but I had a Moped at the time,
6 so I was riding that back and forth to work and
7 here and there.

8 Q What about Brandon?

9 A Brandon had a white pickup truck at the time.

10 Q What kind?

11 A Chevrolet.

12 Q Do you remember what kind of Chevrolet?

13 A I think it was a 1500 small single cab truck.

14 Q So I guess before we go any further, you and I have
15 talked before, right?

16 A Uh-huh.

17 Q About how many times would you say that we've
18 talked?

19 A Once.

20 Q Just once?

21 A Yes.

22 Q Where was that?

23 A Here at the courthouse.

24 Q Was it just at the courthouse?

25 A I think so, yeah.

1 Q Did we go anywhere?

2 A Oh, yeah, we did go to a place.

3 Q The very first time -- when we first started
4 talking here at the courthouse, what were probably
5 the first words out of my mouth to you, do you
6 remember?

7 A I'm going to plead guilty to murder.

8 Q And? Let me help you out. Did I promise to do
9 anything for you?

10 A No.

11 Q Did I tell you that by pleading and testifying I
12 was going to give you any benefit?

13 A No.

14 Q I assume you know what you're facing?

15 A Life.

16 Q What to life?

17 A Thirty to life.

18 Q And where did you plead guilty?

19 A Right here in this courtroom.

20 Q Do you remember the judge it was in front of?

21 A Yeah, I believe it was her.

22 Q So at any point did anyone from law enforcement,
23 the Solicitor's Office, anyone at all promise or
24 offer you anything to testify here today?

25 A No, sir.

1 Q Some day when you're sentenced, are you going to
2 hope and beg for mercy?

3 A Yes, sir.

4 Q Mr. Owen, leading up to the night of September 5th,
5 what were you and Brandon doing that day on the
6 5th?

7 A He showed up at my house that evening and we
8 started drinking beer.

9 Q How long were y'all there?

10 A Probably about an hour, hour and a half.

11 Q How much did you drink?

12 A Not a lot at first.

13 Q What kind of beer?

14 A I think it was Bud Light.

15 Q For about how long would you say?

16 A How long did we drink?

17 Q At your house, yeah?

18 A Probably about an hour, hour and half.

19 Q And then what happened?

20 A We left and went over to Jenny Baker's house.

21 Q What prompted that?

22 A I asked Brandon if he wanted to do some coke, I
23 knew where to get some at.

24 Q Did he?

25 A Yeah.

1 Q I assume where to get some at meant Jenny Baker's?

2 A Uh-huh.

3 Q So around when did y'all go to Jenny Baker's?

4 A It wasn't quite dark yet, so.

5 Q Just guess.

6 A About 6:00 o'clock.

7 Q Okay. And when you got to Jenny's, who was there?

8 A A bunch of people. I can't recall names or
9 anything. I didn't really know any of the people
10 at the time.

11 Q And what did y'all do initially?

12 A When we first got there?

13 Q Yes.

14 A Did some coke. Drank some more beer.

15 Q Were y'all smoking meth?

16 A No. We weren't doing any meth that night.

17 Q Did you eventually do some meth?

18 A Not that I remember.

19 Q You just remember cocaine?

20 A Yeah.

21 Q So, Mr. Owen, can you -- are you oriented by
22 looking at that map? Can you see it from there?

23 A Yeah, I can kind of see it. My eyes aren't too
24 good.

25 Q What's it a map of?

1 A It looks like a map of Columbia, right?

2 Q Yes. Do you see your house marked on this map?

3 A Is it that?

4 Q Does that look like where your house was?

5 A I can't really see the map. My eyes are really
6 bad.

7 Q This is State's 124. There's a little version of
8 it.

9 A Yeah.

10 Q Does the red, the little red pin at the top right
11 look about like where your house would have been?

12 A Yeah.

13 Q Okay. And then there's a star near, it looks
14 like -- you can see it on like a -- almost on the
15 McDonald's, on the left side. Any idea what that
16 might mark?

17 A Maybe Jenny's house.

18 Q Okay. So it looks like about where Jenny's house
19 is?

20 A Yeah.

21 Q And then down here in Forest Acres, is that
22 probably Budon Court?

23 A Uh-huh.

24 Q So that day, you started drinking beer at your
25 house on Daulton?

- 1 A Uh-huh.
- 2 Q And then y'all went to Jenny's over across the
3 river?
- 4 A Uh-huh.
- 5 Q How would you have gotten there, do you think?
- 6 A I-20.
- 7 Q On I-20?
- 8 A (Nods affirmatively.)
- 9 Q And did you drive?
- 10 A I didn't drive.
- 11 Q Who drove?
- 12 A Brandon.
- 13 Q In what vehicle?
- 14 A The pickup truck.
- 15 Q I'm going to leave this right here for now. So
16 you're at Jenny's drinking and doing coke, at
17 least?
- 18 A (Nods affirmatively.)
- 19 Q How long are you there for?
- 20 A Till the wee hours of the morning.
- 21 Q And throughout that time, who all was there?
- 22 A A bunch of people are coming in and out.
- 23 Q Is everybody doing drugs and drinking?
- 24 A Pretty much.
- 25 Q What about Brandon?

1 A Pretty much the same thing everybody was doing.

2 Q Did you know at that point if Brandon had a gun?

3 A No, I did not.

4 Q Can you speak up a little more?

5 A No, I did not.

6 Q Okay. As you're hanging out at Jenny's, did
7 Charles come up between y'all?

8 A I think maybe once, because he had messaged me on
9 my phone.

10 Q About what? Saying what?

11 A I can't remember.

12 Q Something about Charles?

13 A Something about --

14 Q Did Charles come up between -- in conversation
15 between you and Brandon?

16 A Yeah.

17 Q At Jenny's?

18 A At Jenny's.

19 Q Okay. What were y'all talking about at that point
20 about Charles?

21 A I think I might have spoken about him messaging me.

22 Q Oh, that Charles had messaged you?

23 A Yeah. It really wasn't me talking about him at the
24 time.

25 Q And so y'all weren't like talking bad about him

1 necessarily at that point?

2 A Huh-uh.

3 Q Just some comment that he had messaged you?

4 A Yeah, I'm pretty sure that was it.

5 Q Okay. And were y'all pretty drunk?

6 A Yeah, I was.

7 Q Did Brandon seem to be?

8 A Yeah.

9 Q Were y'all pretty high?

10 A Yeah.

11 Q Did Brandon seem to be high?

12 A Yes, sir.

13 Q How would you know if Brandon was drunk and high?

14 A I been around him before.

15 Q Elaborate.

16 A We've partied a bunch of times before. I know
17 Brandon pretty well.

18 Q So do you remember when Jenny went to bed? How did
19 the night at Jenny's end?

20 A I can't remember if Jenny went to bed or if she
21 left.

22 Q Okay.

23 A It was one of the two. It was pretty early in the
24 morning. It was probably 3:00, 4:00 o'clock,
25 something like that.

1 Q When what?

2 A When we got ready to leave.

3 Q And when you got ready to leave, did y'all have a
4 destination in mind at that point?

5 A My house.

6 Q Did y'all go to your house?

7 A Uh-huh.

8 Q Who drove?

9 A Brandon.

10 Q When you got to your house, what did y'all do?

11 A Drank some more beer.

12 Q Where?

13 A In my back yard. Remember, we were outside.

14 Q Just sitting on some chairs?

15 A No, we were sitting in the truck.

16 Q The truck was in the back yard?

17 A Yeah.

18 Q How long did y'all sit there drinking beer?

19 A Maybe an hour, maybe less than that.

20 Q At some point, did Charles' name come up?

21 A Yeah, eventually it came up.

22 Q So tell me -- tell the jury about that
23 conversation. And speak into the mic.

24 A Yeah, we were both just talking about, you know,
25 what Charles was doing to piss us off, how he was

1 acting. Really, that was about it. You know, he
2 was voicing about, you know, him getting rid of all
3 his mom's stuff and a bunch money missing. And I
4 was venting about he had threatened to call DSS on
5 me. And then, you know, just other threats that he
6 texted over to me. You know, we were just talking
7 about all that.

8 Q How exactly did it come about that he was
9 threatening to call DSS on you? Give the jury some
10 more background about this.

11 A Well, when I initially called Andrew about him
12 throwing away all of Karin's stuff, Andrew called
13 Charles and told him who was calling and telling
14 him what, this and that, and that's what initiated
15 him to threaten to call DSS, because I did some
16 drugs with him, so he had, you know, a couple of
17 aces on me as far as something to tell DSS to try
18 to get my kids taken away.

19 Q That you did drugs?

20 A Yeah.

21 Q Did you --

22 A I kept it pretty secret. I mean, nobody at work
23 knew I did drugs. You know, my ex didn't know I
24 did drugs. She knew I did --

25 Q You are talking about Tiffany?

1 A Yeah. She knew I did drugs in the past, but
2 nothing current.

3 Q Did Jessica know?

4 A She really wasn't a big part of the picture at that
5 point.

6 Q Where were you working at the time? You mentioned
7 work.

8 A I was working at a landscaping company all
9 Lancescape.

10 Q Where is that located?

11 A Right off of Forest Drive, right at the top of
12 Charles' road, little road.

13 Q Okay. So is that why y'all bumped into each other?

14 A That's why we bumped into each other.

15 Q So you're in the truck in the back yard. And is
16 what you just went through part of what you were
17 talking to Brandon about?

18 A Yeah.

19 Q Was there more stuff that you were talking about as
20 far as your dispute with Charles?

21 A That, and him just -- you know, he was messaging
22 Tiffany on Facebook and just doing all the normal
23 stuff that he did to torment people. So.

24 Q What was he saying to Tiffany?

25 A I don't remember exactly what he was saying to her.

1 She had just mentioned that, Who's this guy that's
2 messaging me? You know, she knew about my ex --
3 Tiffany knew about my gay experiences in the past,
4 and everything, so, you know, she was somewhere on
5 the lines of, you know, Who's this weirdo messaging
6 me? This guy from your past? Why is he messaging
7 me? What's going on? And we were kind of already
8 on the brinks of splitting up at that point anyway.
9 I think we had already split up once in July and
10 she came back to the house. So, that's pretty much
11 the gist.

12 Q And what about Brandon's beef with Charlie?

13 A It was mainly the money. And I think Karin was
14 supposed to move in with Charlie at some point when
15 he finished the house. And I guess he had --

16 Q When you say finished the house, what do you mean?

17 A He was fixing up the house that he was in.

18 Q The Budon house?

19 A The Budon house.

20 Q So Karin was going to move in with him. Go on.

21 A He decided that she wasn't going to move in. And
22 that's when all this money had turned up missing.
23 It was like 30 something thousand, if I remember
24 correctly.

25 Q And so Brandon is talking about that?

1 A Yeah, he was talking about that, and just -- I
2 guess him and Charles had had words too. I can't
3 remember exactly what.

4 Q And so, I mean, was he mad out of sort of a sense
5 of protectiveness of his mom? Is that --

6 A Yeah, I think that's --

7 Q -- logical?

8 A Yeah.

9 Q Okay. And was there -- did you know of any other
10 money disputes between the victim and Brandon?

11 A Yeah, he had did some work over at this lawyer's
12 house named Neal Lourie, and he never got paid for
13 it.

14 Q Did you have a sense of how much that was?

15 A A few thousand.

16 Q So how does a conversation like that where you're
17 talking about having a beef with somebody turn to
18 the topic of killing that person? Describe to the
19 jury to the best of your memory exactly how that
20 conversation progressed, please.

21 A I think I said -- you know, not really meaning
22 anything by it at the time, Man, somebody needs to
23 beat his ass or kill him or something, you know.

24 And Brandon was like, Yeah. And that's when
25 he told me he had a gun.

1 And I said, You got a gun?

2 He said, Yeah, I got a gun in the truck. He's
3 like, Get out real quick, because I was sitting in
4 the passenger seat. And he flipped the seat
5 forward and reached behind a skill saw and pulled
6 out a .45.

7 And that's kind of how it all started.

8 Q What did it look like?

9 A It was chrome. I think it was a Ruger.

10 Q Had you seen it before?

11 A No, I had never seen it before.

12 Q What did you say?

13 A Everything just got really real all of a sudden.
14 You know, there's a gun and we're talking about
15 killing somebody.

16 Q What was -- I mean, what was going through your
17 head?

18 A I guess it kind of ignited the rage and kind of got
19 my blood pumping, you know. I don't know. It's
20 hard to describe.

21 Q Were y'all still talking? I mean, were you
22 talking -- at that point, as kind of this idea
23 became something that you were really considering
24 doing, were you and Brandon still talking about
25 doing this thing?

1 A Yes, sir.

2 Q Like, what was being said?

3 A We could do it tonight. I can take you over there.

4 You know, You can do it. He was like, you know,

5 I'll be the ride.

6 Q What did you say?

7 A Like an idiot, Yeah. I don't know what I was

8 thinking. I obviously wasn't.

9 Q And so how long do y'all -- between the time that

10 he pulls out a gun until the time that y'all leave

11 your house, how long were you there discussing it?

12 A Maybe ten minutes. It wasn't long. It wasn't long

13 we were back in the truck going to his house.

14 Q At that point, do you think you're really going to

15 do it?

16 A No, I didn't think I was really going to do it.

17 You know, I've had a lot of time to think about it

18 since it happened. As much as I can remember, I

19 really didn't think it was going to happen.

20 Q And so throughout the ride there, are y'all

21 talking?

22 A Yeah, Brandon is -- we talked a little bit more at

23 the house. We needed to leave our cell phones, so

24 we left our cell phones at the house.

25 Q Did you cut them off?

1 A Yeah, we cut them off.

2 Q When you say cut them off, what exactly did you do?

3 A Cut them off and pulled the batteries out of them.

4 Q So, like, powered down?

5 A Yeah.

6 Q And took the batteries out?

7 A (Nods affirmatively.)

8 Q Whose idea was that?

9 A Brandon's.

10 Q So, on the ride there, were y'all talking?

11 A Not very much. He was talking about the route we
12 should go, whether or not there's cameras and -- I
13 really can't remember a lot of the ride.

14 Q That's fine. Where's the gun while you're riding?

15 A It's in my hand.

16 Q Are y'all still pretty messed up at that time?

17 A Yeah.

18 Q Did you -- after you left Jenny's, did you do any
19 more drugs?

20 A No, we didn't do any more drugs. I don't think we
21 had any more.

22 Q Had you done enough to be pretty wide awake?

23 A Yeah, for the most part.

24 Q Do you think the fact that y'all were drinking and
25 doing drugs was any part of your judgment?

1 A Most definitely.

2 Q Would you have done it stone cold sober?

3 A No.

4 Q Do you think Brandon would have done it stone cold
5 sober?

6 A No.

7 Q I'm going to let the jury see the board and then --
8 is that map still there? So kind of show me on
9 this map how y'all went from your place to Budon.

10 A Where is Two Notch at? Yeah, we took Two Notch all
11 the way down.

12 Q Do you know where you would have turned off of Two
13 Notch? You might not be able to see it on that
14 map.

15 A Glenwood maybe? It runs right there next to Budon.

16 Q So from Daulton, I think one is probably Two Notch,
17 right?

18 A Yeah.

19 Q So you would have turned off of Two Notch somewhere
20 down near this area? You can kind of see like TS
21 Martin Park -- or, actually, further down is
22 Harrison?

23 A Yeah, Harrison was right. Harrison to Budon. Two
24 Notch to Harrison. Harrison --

25 Q Two Notch to Harrison?

1 A Harrison to Budon.

2 Q To Budon. And, like, what time is it at this
3 point?

4 A Probably pushing 4:00 something in the morning.

5 Q Were there many people out?

6 A No.

7 Q As you approach Budon, at some point is there any
8 more discussion?

9 A Yeah, where we should park at. I was kind of
10 giving Brandon the backdrop on the road and what's
11 around it because I work there, you know, so. I
12 remember us thinking there was like a little pet --
13 I think like a little pet clinic or something there
14 at the top of Budon that I thought maybe there was
15 cameras.

16 Q If I show you a -- I'm going to try to give you the
17 hard copy to make this less cumbersome. On State's
18 125, are you able to orient yourself on this map?

19 A Yeah.

20 Q Okay. So are you precisely sure of the exact path
21 that Brandon's truck took leading up to and after
22 the murder?

23 A Most definitely.

24 Q Okay. To the best of your memory at this point,
25 would you have come -- or do you see Harrison on

1 that map?

2 A Yeah.

3 Q Where's Harrison?

4 A Right there.

5 Q So Harrison, you're pointing here. Which way off
6 of Harrison would you have come?

7 A The opposite direction of Morganelli's, and all
8 that.

9 Q So if Morganelli's is -- you can see it written
10 right there?

11 A Yeah.

12 Q So from that way?

13 A We had came from the top.

14 Q So from the top, down Harrison. And do you
15 remember where you -- did you turn straight onto
16 Budon at that point?

17 A Yeah, we turned straight onto Budon. Yeah, we
18 turned straight onto Budon.

19 Q And where did the truck go?

20 A We parked right there at the top of Budon.

21 Q When you say top of Budon, show me here and I'll
22 show the jury.

23 A Probably up a little bit from the dentist office.

24 Q So you're saying that you parked -- you turned onto
25 Budon -- can you see the board at all from there?

1 A A little bit.

2 Q You're saying right around there is where you
3 parked?

4 A Yeah.

5 Q At that point, are y'all talking?

6 A Yeah.

7 Q What's being said?

8 A How I was going to do it.

9 Q And how was that?

10 A Initially, I was going to get him to come to the
11 door. That didn't -- that didn't pan out.

12 Q What do you mean?

13 A He --

14 Q I mean, I think I know what you mean, but elaborate
15 for the jury on what you mean and what y'all were
16 saying.

17 A When I walked up to the house, I went around back
18 and tried to get Charles to come to the back door.
19 And he didn't.

20 Q So -- and y'all talked about that in the truck?

21 A (Nods affirmatively.)

22 Q And what was the plan there?

23 A To shoot him when he came out of the door.

24 Q Out the door, okay. So -- but are you saying you
25 discussed that in the truck?

1 A Yeah.

2 Q And then did you get out of the truck?

3 A I did.

4 Q What about Brandon?

5 A He did.

6 Q Then what did y'all do?

7 A Walked to the house.

8 Q So you would have walked around this elbow on
9 Budon?

10 A Uh-huh.

11 Q And walked up to the front yard?

12 A Yeah.

13 Q I'll try to get this where you can see it. Can you
14 see that?

15 A Yeah, I can see it.

16 MR. EATON: Can the jurors see that?

17 Let's back it up some more, actually.

18 BY MR. EATON:

19 Q Do you recognize that? That's State's 4. Do you
20 recognize that?

21 A Yeah.

22 Q What is it?

23 A That is Charles' house.

24 Q And the person taking this photo, where does it
25 appear that they're standing?

1 A Out on the road.

2 Q On the road?

3 A Yeah.

4 MR. EATON: Let's actually go back to -- okay.

5 BY MR. EATON:

6 Q So looking at the front of the house, when you and
7 Brandon walk up, where do y'all initially go?

8 A I go around to the side of the house.

9 Q Which side?

10 A Where the garage is at.

11 Q Over here?

12 A Yeah.

13 Q What about Brandon?

14 A He's up at the corner.

15 Q Which corner?

16 A Go to your right. Right there.

17 Q Brandon's here?

18 A Yeah.

19 Q Then what do you do?

20 A I walk around back, to the back of the house. So.

21 Q This image from Google, is there something
22 different about the house when it was taken?

23 A Yeah, the windows and the porch is not the same.

24 Q How is it different?

25 A It's screened in now.

1 Q So when you walk around to the left, what's Brandon
2 doing here?

3 A Just standing there.

4 Q So looking at -- bear with me one second. We're
5 going to go back to the street view because I don't
6 see a good one from the top down. But from -- you
7 walk around the left side, and what do you do?

8 A Walk to the back of the house.

9 Q What do you do there?

10 A Bang on the door.

11 Q The back door?

12 A Back door.

13 Q On State's 48, what's that?

14 A It's the back of the house.

15 Q And is that the back door you're talking about?

16 A Uh-huh.

17 Q So what happened when you banged on the back door?

18 A Nothing. Nobody came to the door.

19 Q And then what did you do?

20 A Came back around to the front.

21 Q Did you check all the way around the house?

22 A Not really. I just kind of walked to the corner
23 and then walked back around the same direction I
24 came back out.

25 Q Which corner?

1 A The one on the left.

2 Q You can't point. So you're saying -- did you go as
3 far as this corner is what you're saying?

4 A Yeah.

5 Q Did you -- were you able to see Brandon from there
6 in front of the house?

7 A Yeah.

8 Q So he was still there?

9 A (Nods affirmatively.)

10 Q What was he doing?

11 A Just standing there.

12 Q Like, why was he standing there?

13 A Lookout.

14 Q Okay. And so then what did you do?

15 A Came back around to the front of the house and
16 tried to go in the screen door, but it had a little
17 latch on it. It was locked.

18 Q So what did you do then?

19 A I went around to the side, the same side I went to
20 go to the back yard, but I didn't go to the back
21 yard that time, I went in through the screen.

22 Q So facing the house, left side?

23 A Left side.

24 Q And is that the screen?

25 A Yeah.

1 Q And so what is noticeable about the screen?

2 A It's tore down.

3 Q It's tore down. Did you do that?

4 A Yeah.

5 Q Why?

6 A To gain entry to the porch.

7 Q Did you step on the rail?

8 A Probably so.

9 Q So after you got onto the porch, what did you do?

10 A I took the gun and broke the window.

11 Q Do you remember how you did that?

12 A How I broke the window?

13 Q Yeah, I mean, like, describe what you did when you
14 took the gun and broke the window.

15 A Just took it and just smashed it against the glass.

16 Q With the butt?

17 A I don't remember.

18 Q State's 55, is that the window?

19 A (Nods affirmatively.)

20 Q And so once you broke that window, then what did
21 you do?

22 A Lifted the window and went in the house.

23 Q You did what?

24 A I lifted the window and went in the house.

25 Q Through the window?

- 1 A Through the window.
- 2 Q No offense, have you gained some weight since
- 3 you've been at Alvin S. Glenn?
- 4 A I have.
- 5 Q How much?
- 6 A Eighty-one pounds.
- 7 Q Okay. So you were a little skinner?
- 8 A I'm 181 now.
- 9 Q You were 181 back then?
- 10 A Back then.
- 11 Q So once you crawled through that window, what did
- 12 you do?
- 13 A Started walking towards Charles' bedroom.
- 14 Q You've been there before, right?
- 15 A Yes, sir.
- 16 Q What's going through your mind at that point?
- 17 A I can't believe I'm actually doing it. That's
- 18 about it. I just couldn't believe I was actually
- 19 doing it.
- 20 Q And, I guess, before you went -- broke the window
- 21 and went in, did you have any more contact with
- 22 Brandon in the yard?
- 23 A Huh-uh.
- 24 Q Did you ever see Brandon approach the house?
- 25 A Huh-uh.

1 Q So he stood in the yard?

2 A Uh-huh.

3 Q Did y'all -- I mean, did you, like, let him know
4 about what happened in the back, like, Hey, that
5 plan didn't work?

6 A Huh-uh.

7 Q Did y'all have, like, any eye contact or?

8 A Not that I remember.

9 Q Was he -- when you came back around, was he, like,
10 looking at you?

11 A Yeah.

12 Q But no kind of gestures or?

13 A No, sir.

14 Q Did you still see him at that point as your
15 lookout?

16 A Yes, sir.

17 Q So tell the jury what happened next. Before you do
18 that, tell me about the gun. Did you have it
19 loaded?

20 A Yeah, I had it loaded.

21 Q Did Brandon load it?

22 A No, it was already loaded when he handed it to me.

23 Q Did he tell you that?

24 A No, I think I checked it.

25 Q How did you check it?

1 A I just pulled the slide back.

2 Q And you could see bullets?

3 A Yeah.

4 Q Did it have a safety?

5 A Not that I remember.

6 Q It didn't have any kind of safety?

7 A Not that I can remember.

8 Q So you're walking through his house. And tell the
9 jury what happens next.

10 A I get in his bedroom, and I turn the bathroom light
11 on.

12 Q Was the bathroom connected to the bedroom?

13 A Uh-huh.

14 Q Why did you do that?

15 A So I could see.

16 Q And are you wondering to yourself if he's awake?

17 A No, I could tell he was asleep.

18 Q How could you tell?

19 A He was in bed.

20 Q Well, I mean, just being in bed alone doesn't mean
21 you're asleep. Like, did you like wait a second
22 or?

23 A No, I just looked over at him.

24 Q Could you see his face?

25 A A little bit of it, one side of it.

1 Q And so then what did you do?

2 A I shot him twice.

3 Q What side of the bed were you on?

4 A The right-hand side.

5 Q On State's -- have you seen pictures of Mr. Kusko?

6 A No, I haven't.

7 Q On State's 62, can you tell what we're looking at
8 here?

9 A Yeah, his bed.

10 Q So when you said the right side, you meant that
11 side?

12 A (Nods affirmatively.)

13 Q And so would he have basically had his back to you?

14 A Yes, sir.

15 Q And did you put a pillow over him?

16 A I did.

17 Q Does that look like the pillow?

18 A Yes, sir.

19 Q Why did you put a pillow over him?

20 A To muffle the shot.

21 Q And after you shot him, what did you do?

22 A I left the house.

23 Q How did you leave?

24 A Walking.

25 Q Out the door?

- 1 A Yes, front door.
- 2 Q And when you got outside, what did you find?
- 3 A Brandon was gone.
- 4 Q What went through your mind?
- 5 A Panic.
- 6 Q Did you still have the gun?
- 7 A I still had the gun.
- 8 Q So what did you do?
- 9 A I started walking up Budon.
- 10 Q And what happened next?
- 11 A Seen the truck and jumped in.
- 12 Q Where was the truck?
- 13 A I think it was on Budon.
- 14 Q Was it in the same place where you left it?
- 15 A No.
- 16 Q So --
- 17 A It was further back.
- 18 Q So if you told us earlier you left it around here,
- 19 you're saying Brandon moved it?
- 20 A Yes.
- 21 Q And when you say further back, you mean towards
- 22 Harrison?
- 23 A Yeah, I believe so.
- 24 Q Was the truck still facing into Budon?
- 25 A Yes.

1 Q So, I mean, are you saying it looked like he had
2 just backed up?

3 A Yeah.

4 Q And were the lights on?

5 A The lights were on.

6 Q Was it running?

7 A Uh-huh.

8 Q What did you say when you got in the truck?

9 A That I did it.

10 Q What did he say?

11 A Okay.

12 Q And then what?

13 A We started to go back up Harrison.

14 Q Is it possible that you have forgotten this truck
15 going anywhere else in the area at any point?

16 MR. MYERS: Objection. Leading.

17 THE COURT: Sustained.

18 THE WITNESS: Do I think it went any other --

19 BY MR. EATON:

20 Q We're going to move on from that. Which route did
21 y'all take to get back? Where did you go?

22 A Harrison Road.

23 Q And what was the destination?

24 A My house.

25 Q Did you take the same route to go back?

- 1 A Yeah.
- 2 Q Did y'all talk?
- 3 A Not really.
- 4 Q When you got back to your house, what did you?
- 5 A I got rid of the gun before we got back to the
- 6 house.
- 7 Q Where?
- 8 A By this auto dealership on Two Notch.
- 9 Q And how did that happen?
- 10 A I got out, got rid of it.
- 11 Q Elaborate.
- 12 A Got out the truck and went and got rid of the gun.
- 13 Q Where did Brandon park? Did he stop the car?
- 14 A Yeah.
- 15 Q Where?
- 16 A In the median.
- 17 Q In the median of Two Notch?
- 18 A Uh-huh.
- 19 Q So Brandon stops in the median of Two Notch. Are
- 20 you in the passenger seat?
- 21 A Uh-huh.
- 22 Q You get out of the passenger seat?
- 23 A Uh-huh.
- 24 Q Which side of the road do you go to?
- 25 A The opposite side.

1 Q So y'all are going outbound on Two Notch, so sort
2 of north --
3 A Back towards.
4 Q -- east on Two Notch?
5 A Yeah.
6 Q Towards Daulton?
7 A Back towards my house.
8 Q He stops in the median, you go to the left side of
9 the Two Notch. What's on the left side?
10 A Open field.
11 Q An open field?
12 A (Nods affirmatively.)
13 Q Okay. And what did you do?
14 A Get rid of the gun in the field.
15 Q Do you -- how far deep in the field do you walk?
16 A Not too far.
17 Q Is it grassy?
18 A Yeah.
19 Q Some trees?
20 A (Nods affirmatively.) Yeah.
21 Q When you say you got rid of it, what do you mean?
22 A I threw it down the hill.
23 Q How long did that take? From getting out of the
24 truck to throwing it down the hill?
25 A Maybe a minute or two.

1 Q And when you got back to the street, is Brandon
2 still there?

3 A Uh-huh.

4 Q Did you get back in the truck?

5 A Uh-huh.

6 Q And where did Brandon drive?

7 A To my house.

8 Q And what did you do?

9 A I think we drank a couple of beers and then went to
10 sleep.

11 Q Did you talk about it?

12 A No, not really.

13 Q So you just acted like nothing had happened?

14 A (Nods affirmatively.)

15 Q I'm going to direct your attention to State's 122.
16 Have you seen footage before from right down the
17 street from Budon?

18 A Yeah.

19 Q You have seen it?

20 A Yeah.

21 Q When did you see it?

22 A When I came to the courthouse.

23 Q With me?

24 A Yeah, with you.

25 Q Okay. What time is it here? Can you see that?

1 A Yeah, I think it says 5:04.

2 Q Is that, to the best of your memory, around the
3 timeframe y'all would have gone there?

4 A Yeah, I was -- like I said, we were both pretty
5 messed up, so the time could be -- I could have
6 been a little off on the time, but, yeah.

7 Q And remind the jury what vehicle you're in.

8 A A white Chevy pickup truck.

9 Q Okay. Do you see that truck?

10 A I do.

11 Q Does it appear to be the truck that y'all were in?

12 A It does.

13 Q Are you able to -- looking at this video here, are
14 you able to tell where -- which road is which?

15 A Yeah. That's Harrison Road on the right.

16 Q You talking about this right here?

17 A Yeah, that's Harrison crossing over.

18 Q Where is it going now?

19 A I can't remember the name of that road. Bagnal
20 maybe?

21 Q Bagnal?

22 A Yes.

23 Q So earlier you said that y'all turned out of Budon
24 and went left on Harrison?

25 A Uh-huh.

1 Q So what's up with going down Bagnal?

2 A I don't know.

3 Q Do you remember doing that?

4 A No.

5 Q Is it possible that you forgot?

6 MR. MYERS: Objection. Leading.

7 THE COURT: Sustained.

8 BY MR. EATON:

9 Q How long was Brandon in the truck while you were
10 inside killing Mr. Kusko?

11 A Maybe five minutes. Maybe eight minutes.

12 Q What time does it show here now?

13 A 5:10.

14 Q And what do you see the white truck doing?

15 A It's coming out of Bagnal, if I remember. Is that
16 Bagnal?

17 Q Yes. Do you remember sitting at Bagnal?

18 A Not that I remember.

19 Q Where do you think you are at this point?

20 A Walking up Budon.

21 Q You think you're walking up Budon at this point?

22 A Yeah, I think so.

23 Q As you're walking up Budon, do you remember seeing
24 Brandon pulling up or was he -- the truck already
25 stopped at that point?

1 A It was stopped at that point.

2 Q But suffice it to say, when you left the truck with
3 Brandon and when you came back to the truck, it had
4 moved some?

5 A It had.

6 Q Did you ask him about that?

7 A Uh-huh.

8 Q State's Exhibit 134, now, I know that's not
9 Brandon's truck, but does that look like the truck
10 --

11 A Yeah.

12 Q -- that he had at the time?

13 A It does.

14 Q Do you see Brandon in here today?

15 A I do.

16 Q This will seem silly, but please point him out and
17 describe what he's wearing.

18 A He's the guy with the gray suit and the blue tie.

19 Q And is that the person who gave you the gun and
20 drove you to the murder?

21 A It is.

22 Q Were you -- would you have been communicating on
23 your phone some with Brandon back around this time?

24 A You talking about before?

25 Q Uh-huh.

1 A Yeah.

2 Q Right around the time of the murder?

3 A I don't think so.

4 Q Within days, you know, the days surrounding it?

5 A Yes, sir.

6 Q Do you remember your phone number back then?

7 A 201-8693.

8 MR. EATON: May I approach with what has been
9 marked for identification as State's 134?

10 BY MR. EATON:

11 Q Tell me if that looks familiar to you.

12 A Yeah, it looks familiar.

13 Q Where does that appear to come from?

14 A Like, whose phone?

15 Q Yes.

16 A Brandon's.

17 Q Is it Brandon's phone? Read it more closely.

18 A Yeah, it looks like it's from Brandon.

19 Q Let me ask you this, did you give your phone to law
20 enforcement?

21 A Oh, yeah, I did.

22 Q So whose phone do you think that came off of?

23 A I guess it came off of mine. Right?

24 MR. EATON: Your Honor, I'd offer State's 137
25 into evidence. The authenticity was earlier

1 testified to.

2 THE COURT: Any objection?

3 MR. MYERS: No objection, Your Honor.

4 (WHEREUPON, State's Exhibit No. 137 was
5 marked for identification and received
6 into evidence.)

7 BY MR. EATON:

8 Q Did you see -- look at the bullets before? I guess
9 you looked at them when you opened it, you said
10 earlier, right?

11 A Yeah.

12 Q State's Exhibit 114, do you recognize those?

13 A Uh-huh.

14 Q What do they look like?

15 A Full metal jackets.

16 Q Is that what you thought they were?

17 A Uh-huh.

18 Q Why did you think that?

19 A Because I knew there wasn't hollow points or
20 anything in the gun.

21 Q You said that there's not. How did you know that?

22 A I looked.

23 Q Because you looked? So were all the bullets the
24 same?

25 A Yes, sir.

1 Q Did you pull the mag out?

2 A I think I did at one time at my house.

3 Q Before you left?

4 A Before I left.

5 Q So you got back, drank some beer, went to sleep.

6 What did you do next? What did you do the next
7 day?

8 A Slept pretty late in the day. I think I woke up
9 twice that day.

10 Q Did you go anywhere?

11 A No. I just got up and I know I took a shower.
12 Brandon was on the couch.

13 Q Was he asleep?

14 A He was.

15 Q When did he get up?

16 A Little while after I took a shower.

17 Q Did y'all talk?

18 A Huh?

19 Q Did y'all talk?

20 A Yeah.

21 Q Did you talk about what happened?

22 A We did.

23 Q What did y'all say?

24 A That we should never talk about it again.

25 Q What else?

1 A That's about it. Brandon was real imperative that
2 we didn't talk about it anymore. I think at that
3 point I was still in shock of what I did. You
4 know, it was finally starting to hit home. That's
5 all I remember.

6 Q Did you still feel under the influence when you
7 woke up?

8 A A little bit. It was wearing off.

9 Q When did you and Brandon part ways that day?

10 A I think a little bit after lunchtime.

11 Q And how did you spend the rest of the day?

12 A I think I stayed at the house.

13 Q Do you know what Brandon did?

14 A I think he left to meet his dad or something, I
15 think.

16 Q So back before the time of the murder, leading up
17 to it, did y'all talk to other people about having
18 beefs with Charlie?

19 A No, I don't think I did. Nobody really knew him
20 but me and the circle that I was running in at the
21 time.

22 Q Did you ever talk to Andrew?

23 A Yeah, I talked to Andrew a few times.

24 Q About Charlie?

25 A About Charlie. Mainly, I think after the death.

1 Q After the death?

2 A (Nods affirmatively.)

3 Q Did you talk to Andrew before the murder?

4 A I did.

5 Q About hurting Charlie?

6 A Not that I remember. I mean, I might have said he
7 needs his ass kicked or something, but that's as
8 far as it went.

9 Q Did you talk to Andrew about killing Charlie?

10 A No, sir.

11 Q If you were talking to Andrew, say, the night
12 before you killed him, then what would y'all have
13 been talking about?

14 A Probably just asking about the stuff that Charlie
15 threw away or was giving away. I don't --

16 Q Karin's furniture?

17 A Yeah. I don't remember talking to Andrew.

18 Q Because you snitching to Andrew about the furniture
19 was why Charlie threatened to call DSS on you,
20 right?

21 A Uh-huh.

22 Q So after the murder, did you and Brandon carry on
23 in the days and weeks after that like normal?

24 A We did.

25 Q When is the first time you told somebody what you

1 had done?

2 A After I talked to -- that day I talked to Detective
3 Reese, my first interview. I think I told Jessica
4 a couple of days after that.

5 Q In your first interview, did you admit to it?

6 A No, sir.

7 Q So you lied?

8 A I did.

9 Q Why?

10 A Scared of the repercussions.

11 Q Not long after that, you tell Jessica. And then
12 when is the next time that you admit to someone
13 what you had done?

14 A When I was living with Jenny Baker.

15 Q To whom did you confess?

16 A Jenny Baker.

17 Q And did you and Brandon eventually talk about it in
18 some way in front of Jenny?

19 A I don't think we did.

20 Q Did Brandon know that Jenny knew?

21 A No, I don't think so.

22 Q Did you tell Jenny everything?

23 A I did.

24 Q And so you're going on with your life. Did what
25 you did bother you?

1 A Yeah, a lot.

2 Q How's that? How did that manifest itself?

3 A I just couldn't believe what I done. You know, I
4 kept seeing news segments. I kept seeing Laurin
5 and Kaitlin on the news.

6 Q Did you know them?

7 A I knew of them. Just feeling really bad about what
8 I did.

9 Q Like, feeling bad is like -- is that the best way
10 to describe how you felt? Feeling bad is like --

11 A No, I mean it was just --

12 Q -- told a little white lie, right?

13 A No, it was way worse than that. Carrying around
14 something like that is just almost unbearable. At
15 times, I told Jessica, you know, I'd rather just
16 turn myself in rather than try to -- it's not that
17 I was running from it. I was more or less hiding
18 from it, you know. It really didn't matter about
19 the circumstances -- the punishment behind it or
20 any of that anymore, it was just I wanted to get
21 that off my back. I just couldn't live with it.

22 Q And so when did you finally do that?

23 A I got picked up on some unrelated charges and was
24 taken to homicide. And I still was scared. I
25 denied it then. I wanted to say something, but I

1 just denied it. So I got down to the jail and
2 spent a couple of days there. And that's when
3 Detective Reese reached out to me again and asked
4 if I wanted to come down and talk, and I told him
5 yeah.

6 Q And so when you finally came clean, did you tell
7 him everything?

8 A I did.

9 Q And did you tell him the same things that you had
10 already told the people to whom you had confessed?

11 A I did.

12 Q Did you deny to them that you had told Jenny Baker?

13 A I think I did at the time.

14 Q Why?

15 A I don't know. I think at that point I just didn't
16 want to get anybody else wrapped up in this. You
17 know, Jessica was already involved. I didn't want
18 her to get in any trouble, you know, for something
19 that I did, so.

20 Q Did Andrew have anything to do with this in any
21 way?

22 A No.

23 Q Do you have some reason to protect Andrew?

24 A No, sir.

25 Q Do you hate Brandon?

1 A I do not.

2 Q When you talked to Jenny back in, what, 2015?

3 A Uh-huh.

4 Q Did you have something against Brandon then?

5 A No. Besides the fact that he was like, every time
6 I tried to talk about it, you know, he just, you
7 know, he would just basically, you know, I don't
8 want to talk about it.

9 I don't know, it just really surprised me that
10 he wasn't having any emotions towards it. I was.
11 I think maybe it was because I did it, he didn't
12 take the shots. Maybe it was that.

13 You know, at one point -- at one point he told
14 me, you know, he just didn't have any feelings like
15 that. And it surprised me. He said he didn't cry
16 at funerals, he didn't -- he just didn't have those
17 normal emotions that somebody had, and it surprised
18 me. So I knew at that point I couldn't say
19 anything to him.

20 Q I mean, you killed a man in his bed?

21 A Uh-huh.

22 Q In his home?

23 A Uh-huh.

24 Q And you're saying he doesn't have emotions. How
25 are we supposed to fit that together?

1 A I can't explain what I did that night. I've been
2 in jail for going on 27 months now. And I try to
3 think back to what I was thinking, why I would do
4 something like that. You know, I've been in
5 trouble a few times in my life and I did some bad
6 things, but I'm not that type of person. So I
7 still can't just, you know, wrap my head around why
8 I did that. The only thing I can think of is the
9 drugs and alcohol.

10 Q Now, you and Brandon have had disputes, right?

11 A (Nods affirmatively.) Uh-huh.

12 Q Many?

13 A Yes, we've gotten into a couple of fights.

14 Q Fights?

15 A Uh-huh.

16 Q Like fistfights?

17 A Yeah.

18 Q Did y'all remain friends after those?

19 A Yeah, till, I'd say, right at the end of 2017, we
20 stopped talking.

21 Q So --

22 A I seen him maybe one more time after that.

23 Q So well after you told Jenny and told Jessica?

24 A (Nods affirmatively.)

25 Q You and Brandon were still -- you say y'all were

1 still friends?

2 A (Nods affirmatively.)

3 Q Still hanging out?

4 A (Nods affirmatively.)

5 Q Still drinking beer?

6 A (Nods affirmatively.)

7 Q Doing any work together?

8 A Doing work. Doing a lot of drugs.

9 MR. EATON: Beg the Court's indulgence.

10 (Pause.)

11 BY MR. EATON:

12 Q All right, Mr. Owen, why didn't you go -- or did
13 you go to the funeral?

14 A Did not.

15 Q To Charlie's funeral? Why not?

16 A I just didn't go.

17 Q Do you know -- did you talk to Brandon about the
18 funeral?

19 A I don't remember. I don't think so. I know he
20 missed it.

21 Q Did he talk to you about it afterwards or anything?

22 A No.

23 Q So when you and Brandon left Jenny's house that
24 night, at that time did she have any idea what
25 y'all would end up doing?

1 A No, sir.

2 Q I mean, had you even brought up -- at that point,
3 had you really brought up Charlie's name to her?

4 A Not that I -- not as I can remember.

5 Q Why should this jury believe you about what
6 happened and about what Brandon's role was in it?

7 A No reason why, but, you know, I accepted my
8 responsibility. I think it's time for him to
9 accept his.

10 MR. EATON: No more questions.

11 CROSS-EXAMINATION

12 BY MR. MYERS:

13 Q Mr. Owen?

14 A Yes, sir.

15 Q I don't want to mince words and I don't want to be
16 mistaken, but you are a cold-blooded killer, right?

17 A If you want to call me that.

18 Q You are a calculated killer who went into his
19 former lover's home while he was asleep and you put
20 two bullets to the back of his head, right?

21 A I did.

22 Q And now you concocted this story to bring Brandon
23 into it, right?

24 A No.

25 Q Well, let's talk about this for a minute.

1 According to you, Brandon, apparently, has this
2 Jedi mind power that he convinced you to go in to
3 do the killing, right?

4 A If you want to word it that way.

5 Q Brandon did not go in, according to your testimony,
6 right?

7 A Right.

8 Q You were the individual who went in, didn't even
9 have the decency to wake the man up and tell him
10 that, Hey, I'm the one that's taking your life,
11 before you squeezed those rounds off, right?

12 A Sure.

13 Q And now you are hoping that this State is going to
14 give you some type of reprieve, right?

15 A If you say so.

16 Q Yes, sir. So let's talk about that. As you sit
17 here right now, you are charged with murder, right?

18 A Right.

19 Q And you and Mr. Eaton said that you are looking at
20 30 to life, right?

21 A Right.

22 Q You also are aware that murder in this state
23 carries the death penalty, right?

24 A Yes, sir.

25 Q You also were charged with burglary, right?

1 A Yes, sir.

2 MR. EATON: Objection, Your Honor. The death
3 penalty is not in this case and it's not in
4 Brandon's case, so that's totally improper for
5 Mr. Myers to bring up. The death penalty is
6 already irrelevant.

7 THE COURT: Let me see you all.

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, let me send
12 you all to the jury room.

13 (WHEREUPON, the jury retires to the jury
14 room at 5:20 p.m.)

15 THE COURT: All right. The objection for the
16 record, please?

17 MR. EATON: So, Your Honor, the penalty that
18 any crime carries is irrelevant and should not go
19 before a jury. That is the baseline rule. I'll
20 pull up the case in just a second. I doubt I'm
21 going to get much push-back on that. In a normal
22 trial, you would never say, My client is facing X,
23 Y, Z. You can't say that. They're facing the same
24 charges in this case, so I can't stop his penalties
25 from coming out. I understand that.

1 client -- but I think that can be -- through
2 questioning on redirect, you can probably clear
3 that up.

4 All right. Let's bring the jurors back in.
5 (WHEREUPON, the jury came into open
6 court at 5:31 p.m.)

7 THE BAILIFF: Your Honor, the jury is present.

8 THE COURT: Yes, sir. The objection is
9 overruled. Please continue.

10 MR. MYERS: Thank you, Your Honor.

11 **CROSS-EXAMINATION CONTINUES**

12 BY MR. MYERS:

13 Q Mr. Owen, before we took that break, I was talking
14 to you about the penalties of what you're faced
15 with. We got to murder and we talked about it
16 carries death. Do you remember that?

17 A Yes, sir.

18 Q We talked about burglary, because that is also what
19 you pled guilty to, right?

20 A Yes, sir.

21 Q That charge carries 15 to life, right?

22 A Yes, sir.

23 Q And you're charged with conspiracy, right?

24 A Yes, sir.

25 Q That's five years, right?

1 A (Nods affirmatively.)

2 Q You were also charged with possession of a firearm
3 in the commission of a violent offense, correct?

4 A Yes, sir.

5 Q And that's an additional five years, right?

6 A Yes, sir.

7 Q Now, I want to talk -- I want to make sure this
8 jury understands something. You've been around
9 this system before, you know how a guilty plea
10 works, right?

11 A Yes, sir.

12 Q You know that a guilty plea works when you go in
13 before the judge -- and in this instance, you went
14 in front of Judge Benjamin last week, right?

15 A Yes, sir.

16 Q Now, ordinarily, when you plead guilty in state
17 court, you go in, the Solicitor reads the charges
18 out, right?

19 A Sure.

20 Q The judge then comes back to you to make sure that
21 you understand your constitutional rights by
22 pleading guilty, right?

23 A Yes, sir.

24 Q It's actually about a 10- or 15-minute soliloquy
25 that takes place between you and the judge about

1 you understanding the rights that you are waiving,
2 right?

3 A Yes, sir.

4 Q Then the facts are read, right?

5 A Yes, sir.

6 Q Then the judge comes back to you and says, Do you
7 agree with those facts, right?

8 A Yes, sir.

9 Q Because she has to make sure that you're not
10 pleading guilty to something where the facts don't
11 support that guilty plea, right?

12 A Yes, sir.

13 Q Then after that, there's the sentencing phase,
14 right?

15 A Yes, sir.

16 Q Where the judge then gives you your sentence on the
17 day you plead guilty, right?

18 A Yes, sir.

19 Q Now, that didn't happen in that case -- in this
20 case, did it?

21 A No, sir.

22 Q Because what happened in your case -- so it's
23 disingenuous to say that you went through a full
24 plea in front of Judge Benjamin last week, isn't
25 it?

1 A I would think so, yes.

2 Q Yes, sir. Because what's supposed to happen is
3 that, in addition to the charges being read, a full
4 factual background is given, right?

5 A Right.

6 Q But in this case, she never heard all the facts
7 that you just testified to, all she read were the
8 indictments, right?

9 A I guess.

10 Q You didn't go into anything that happened and your
11 whole story about this concoction of Brandon taking
12 you, and all that stuff, that didn't happen last
13 week, did it?

14 A No, sir.

15 Q And then your sentence is now in abeyance, right,
16 meaning you haven't been sentenced?

17 A Right.

18 Q And that's unusual in state court, isn't it?

19 A Since --

20 MR. EATON: Objection, Your Honor.

21 THE WITNESS: Since I've been locked up, it
22 doesn't seem like it's --

23 THE COURT: Hold on. Sustained.

24 MR. MYERS: Well, I'll rephrase that.

25 THE WITNESS: I've seen other people not get

1 sentenced.

2 BY MR. MYERS:

3 Q Yes, sir. It's never happened in any other
4 sentences in which you plead guilty to?

5 A No, nothing that's ever been this serious.

6 Q Right. So --

7 A I didn't know how it was supposed to work.

8 Q Right. Now, in addition to the murder, the
9 burglary, the gun, and the conspiracy, you also
10 have another set of charges out there, right?

11 A Yes, sir.

12 Q That would be the armed robbery?

13 A Yes, sir.

14 Q That charge carries actually zero to 30 years,
15 right?

16 A I guess.

17 Q And you also have the firearm charge associated
18 with that armed robbery, right?

19 A Yeah.

20 Q That is a charge in which you could catch a
21 substantial amount of time, right?

22 A I guess, yeah.

23 Q Now, Mr. Eaton didn't talk about what happened on
24 that case. As part of this plea, you are of the
25 understanding that that charge or those set of

1 charges will be dismissed?

2 A No, sir.

3 Q Okay. Well, if they're not dismissed, then, you
4 understand that that's the kind of charge that will
5 carry life without the possibility of parole?

6 A I've been told that I was possibly going to get
7 life.

8 Q Yes, sir. So that you could possibly get life, but
9 you haven't gotten it yet, right?

10 A Yeah. I haven't gotten it.

11 Q Your sentencing date will happen sometime after
12 this trial?

13 A Yeah, I guess.

14 Q So at the point that you started talking, you
15 didn't have anything to bargain with, did you?

16 A I still don't have anything to bargain with.

17 Q You don't think so?

18 A No, sir.

19 Q Sir, isn't it true that as a result of your
20 testimony and the reason that your sentence is
21 being held in abeyance is that you want to get some
22 type of life? You hopefully want to get out while
23 some of these jurors are still alive, don't you?

24 A I mean, I would like to, but I don't think it's
25 going to happen.

1 Q Yes, sir. That's why the State worked out this
2 deal with you to hold this sentencing in abeyance
3 to see how you would testify at this trial, right?

4 A I guess.

5 Q Yeah. Because Mr. Eaton, while you might not have
6 had any conversations with him, I know your lawyer
7 is here in the background, right? Isn't that your
8 lawyer?

9 A Uh-huh.

10 Q So because you have a lawyer, Mr. Eaton wouldn't be
11 having any conversation with you. All those
12 conversations would be between Mr. Eaton and your
13 lawyer, right?

14 A Yes, sir.

15 Q So it's also kind of disingenuous when Mr. Eaton
16 talks about, Well, I didn't really talk to you, I
17 didn't really promise you anything, because those
18 promises and those conversations would have been
19 between Mr. Eaton and your lawyer, right?

20 A Yeah, but my lawyer has also told me I haven't been
21 promised anything.

22 Q So --

23 A I was told that whenever I went to plead guilty. I
24 mean, I've even found out since I've been back at
25 the jail since I pled guilty that I could get a

1 gazillion years for what I've done.

2 Q Yes, sir. But if your lawyer does not bring up
3 your testimony and your cooperation during this
4 trial, you would be pretty upset with him, wouldn't
5 you?

6 A I mean, I guess.

7 Q In fact, you want him to tell the judge that you
8 cooperated throughout this matter?

9 A He's not going to have to tell her, she's the one
10 that's doing my sentencing.

11 Q Which is even more convenient for you, right?

12 A I guess if you say so.

13 Q Because you could have pled guilty in front of
14 other judges, right?

15 A I guess.

16 Q So it's all coincidental that the judge you pled
17 guilty to is the same judge that's heard this trial
18 that's ultimately going to sentence you, right?

19 A I guess, yeah.

20 Q Now, you told this story about Brandon. I want to
21 go back to 2015. I want to go back specifically to
22 September 9th, 2015. You recall, sir, that that
23 was when you talked to investigators at the City of
24 Columbia?

25 A I do.

1 Q That was when you recall then you went and you gave
2 a statement to law enforcement at that time, right?

3 A Yes, sir.

4 Q Isn't it true that during that statement you didn't
5 tell them anything that you've told the jury today?

6 A I already spoke on that, yeah.

7 Q Yes. You told them a complete lie, is what you're
8 saying, right?

9 A Yes, sir.

10 Q So you lied to them?

11 A Yes.

12 Q You then have a habit of lying?

13 A If you say so.

14 Q Well, you didn't tell them the truth back in
15 September of 2015, right?

16 A It doesn't make it a big habit.

17 Q All right. So, well, we'll talk about that. So
18 when you talked to them in September 2015, it was
19 recorded. Did they tell you that?

20 A Yeah.

21 Q And during that time, you told them that you
22 believed that Mr. Kusko's death was drug related,
23 right?

24 A Maybe. I don't remember.

25 Q In fact, you told them that you couldn't believe

1 it, that this was all drug related because Charlie
2 was on drugs, he was dealing with some bad people,
3 right?

4 A I can't recall.

5 Q You also told them that nobody in your circle would
6 have done it at all, right? Right?

7 A Right.

8 Q In fact, your story was so convincing in 2015 that
9 you didn't even get charged, right?

10 A Right.

11 Q Nobody got charged in 2015, right?

12 A Right.

13 Q You basically had them hook, line, and sinker in
14 2015 based on the story that you told to them,
15 right?

16 A Yes, sir.

17 Q Right? And as a result of that, nobody was
18 arrested, nobody got charged, right?

19 A Right.

20 Q You didn't tell Jenny -- you also told them that
21 you never told Jenny Baker anything related to what
22 you just told them today, right?

23 A Yeah.

24 Q So you told law enforcement when they asked you
25 whether or not you told Jenny Baker the story that

1 you told this jury today, you told them you never
2 told Jenny Baker anything, right?

3 A Right.

4 Q That was a lie, right?

5 A Uh-huh.

6 Q The other thing, you just testified that y'all were
7 doing cocaine that night, right?

8 A Yes, sir.

9 Q Now, cocaine is different from meth, correct?

10 A Correct.

11 Q You ingest them differently, right?

12 A You can do them the same way.

13 Q How were y'all doing it that night?

14 A Snorting.

15 Q So if there was -- and you're sure about that?

16 A Yeah.

17 Q That the way you ingested cocaine back in 2015 was
18 that y'all snorted it?

19 A Yeah.

20 Q So if there was testimony that y'all were smoking
21 anything, that wouldn't be true?

22 A It could be. I mean, it's like I told him, could
23 be. I mean, I was messed up that night. I don't
24 remember doing any. Smoking what?

25 Q Meth.

1 A Oh. I don't remember doing any.

2 Q You don't remember doing any meth?

3 A Huh-uh.

4 Q So if someone said that, hey, you were probably
5 doing meth, that's possibly a lie?

6 A I mean, I can probably think of who said it.

7 Q Who would have said that?

8 A Jenny Baker.

9 Q She lies too, right?

10 A She does a lot of meth herself.

11 Q And she lies too, right?

12 A She does.

13 Q Now, you talked about why you were upset with
14 Charles. And I want to explore that a little bit.
15 Now, at the time, you were dating Tiffany, right?

16 A (Nods affirmatively.)

17 Q And, excuse me, I can't remember her last name. It
18 was Nelson?

19 A Nelson.

20 Q Now, Tiffany was your on again -- she wasn't your
21 wife, she was just your fiance, right?

22 A Uh-huh.

23 Q You had two children with her?

24 A Yes, sir.

25 Q Now, at the time -- and I want to go back a little

1 bit. I hate to jump around. But one of the things
2 that you told law enforcement back in September of
3 2015 was that Charles had made you nervous because
4 you were going through an issue with Tiffany and
5 the children, right?

6 A Charles had made me nervous?

7 Q Yeah. Well, he was threatening to contact DSS?

8 A Yeah.

9 Q You didn't want that to happen?

10 A Right.

11 Q Because you wanted to spend time with your
12 children, right?

13 A Right.

14 Q And if Tiffany found out that you and Charles were
15 doing drugs, that y'all were still hanging out with
16 each other, she would use that against you to take
17 those children away, right?

18 A Right.

19 Q In fact, the day you ultimately told Investigator
20 Reese this second story that you told this jury,
21 you said, Look, I just didn't want my kids taken
22 away, right?

23 A Right.

24 Q And that was important to you. So you had the
25 motive to kill Charles, right?

1 A Right.

2 Q Now, this story about Brandon, what motive did
3 Brandon ever have to kill his uncle?

4 A I think I made that pretty clear.

5 Q Well, remind me.

6 A Money.

7 Q So this money --

8 A Money. I mean, they're both really greedy. If you
9 get down to it and you really get to know Brandon
10 and Charles, they're a lot alike.

11 Q So you talked a little bit about this power of
12 attorney. Do you know how much money Charles was
13 receiving on Karin's behalf for being the power of
14 attorney?

15 A I do not.

16 Q So this number, this \$30,000 figure, where did you
17 get that from?

18 A It came from Brandon.

19 Q So Brandon told you that there was \$30,000 that was
20 out there?

21 A I mean, there was money missing.

22 Q Now, at the time, all Karin was getting was a
23 disability check, right?

24 A I don't know.

25 Q And she had been disabled for quite some time,

1 right?

2 A Quite some time.

3 Q So you're saying that there was still some \$30,000
4 that was out there?

5 A I guess.

6 Q And your testimony is that Brandon wanted to kill
7 him over \$30,000?

8 A Well, there was other jobs and stuff that they had
9 done together that he didn't get paid on. He was
10 mad about it.

11 Q If you had to tell us a story and tell us how much
12 money in addition to the \$30,000 that Brandon said
13 was owed, how much would it be?

14 A I think it was like another five or six from Neal.

15 Q So \$30,000 and five or six from Neal? Are you
16 aware -- or would it surprise you to know that it
17 was \$1,900 from Neal?

18 A I don't know.

19 Q So this number that you talk about \$5,000, that
20 would be inflated, right?

21 A No. I mean -- yeah, I guess so.

22 Q So you say it's \$5,000, right?

23 A Uh-huh.

24 Q If there was testimony that it was \$1,900, which
25 one should this jury believe?

1 A I guess the testimony, but, I mean, that doesn't
2 discredit what I was told.

3 Q Now, this Jessica?

4 A Yes, sir.

5 Q She is your girlfriend -- she was your girlfriend
6 in 2017, correct?

7 A Yes, sir.

8 Q Now, when you went in to law enforcement in 2017,
9 you ultimately told Investigator Reese one of the
10 things that was very, very important to you was to
11 keep Jessica out of this ordeal, right?

12 A Yes, sir.

13 Q In fact, because law enforcement had started
14 talking to her, that didn't sit right with you,
15 right?

16 A No.

17 Q Because you're older and she was a lot younger,
18 right?

19 A Yeah, she was younger.

20 Q You wanted to protect her, right?

21 A Uh-huh.

22 Q So you needed to get law enforcement off of her
23 back, right?

24 A Relatively, yeah. I mean --

25 Q When you gave that statement, you told them to just