

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Oct 03 2022

SC Court of Appeals

Appeal from Georgetown County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH DICAPUA,

APPELLANT.

APPELLATE CASE NO. 2021-000570

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARK R. FARTHING
Senior Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
Post Office Drawer 1276
Conway, SC 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PRE-TRIAL HEARING TRANSCRIPT DATED NOVEMBER 30, 2020	1
<u>JACKSON V. DENNO</u> HEARING	7
INVESTIGATOR JONATHAN GRIFFITH	
Direct Examination by Ms. Richardson	7
Cross-Examination by Mr. Todd	23
Re-direct Examination by Ms. Richardson	28
DEFENSE ARGUMENT	29
STATE’S ARGUMENT	30
COURT’S RULING ALLOWING FIRST STATEMENT TO BE USED IN PART AND ALLOWING SECOND INTERVIEW INTO EVIDENCE	33
<u>NEIL V. BIGGERS</u> HEARING	36
INVESTIGATOR ROBERT SARVIS	
Direct Examination by Ms. Richardson	36
Cross-Examination by Mr. Todd	56
INVESTIGATOR JONATHAN GRIFFITH	
Direct Examination by Ms. Richardson	62
COURT’S RULING	77
TRIAL TRANSCRIPT DATED MAY 11 – 14, 2021	80
May 11, 2021	
ARRAINMENT OF JEREMIAH DICAPUA	
Colloquy	89
JURY VOIR DIRE	91

NEIL V. BIGGERS HEARING	106

TESTIMONY

JONATHAN GRIFFITH

Direct Examination by Ms. Richardson.....	106
Cross-Examination by Mr. Edgeworth	126
Re-direct Examination by Ms. Richardson.....	135
Recross-Examination by Mr. Edgeworth.....	137

ROBERT SARVIS

Direct Examination by Ms. Richardson.....	140
Cross-Examination by Mr. Edgeworth	150

STACEY STARNES

Direct Examination by Ms. Richardson.....	157
Cross-Examination by Mr. Edgeworth	
Re-direct Examination by Ms. Richardson.....	
Re-direct Examination by Ms. Richardson (continued)	

DEFENSE ARGUMENTS	182

STATE ARGUMENTS	186

COURT'S RULING TO ALLOWING IDENTIFICATION EVIDENCE	190

May 12, 2021

JURY INSTRUCTIONS.....	195

OPENING STATEMENT BY MS. SMITH	198

OPENING STATEMENT BY MR. EDGEWORTH.....	204

TESTIMONY

STACEY STARNES

Direct Examination by Ms. Richardson.....	207
Cross-Examination by Mr. Edgeworth	232
Re-direct Examination by Ms. Richardson.....	241

JASON STARNES

Direct Examination by Ms. Richardson.....	245
Cross-Examination by Mr. Edgeworth	254

ARTHUR BLACKBURN	
Direct Examination by Ms. Richardson.....	258
JAMES VARCADIPANE	
Direct Examination by Ms. Richardson.....	263
Cross-Examination by Mr. Edgeworth	275
Re-direct Examination by Ms. Richardson.....	279
SCOTTY JORDAN	
Direct Examination by Ms. Richardson.....	280
DAWUD ASWAD	
Direct Examination by Ms. Smith	288
Cross-Examination by Mr. Edgeworth	296
Re-direct Examination by Ms. Smith.....	300
KATHERINE SELBY	
Direct Examination by Ms. Smith	302
Cross-Examination by Mr. Edgeworth	311
JONATHAN GRIFFITH	
Direct Examination by Ms. Richardson.....	314
Cross-Examination by Mr. Edgeworth	346
Re-direct Examination by Ms. Richardson.....	358
Recross-Examination by Mr. Edgeworth.....	359
ROBERT SARVIS	
Direct Examination by Ms. Richardson.....	362
Cross-Examination by Mr. Edgeworth	374
Re-direct Examination by Ms. Richardson.....	379
Recross-Examination by Mr. Edgeworth.....	380
BENJAMIN WELLS	
Direct Examination by Ms. Richardson.....	381
MOTION TO EXCLUDE JAIL PHONE CALL	
RECORDINGS AS EVIDENCE.....	390
COURT’S RULING TO ALLOW JAIL PHONE CALL	
RECORDINGS AS EVIDENCE.....	393

May 13, 2021

TESTIMONY (CONTINUED)

STEPHEN BROWN

Direct Examination by Ms. Smith 398

CRAIG LEWIS

Direct Examination by Ms. Richardson.....411

Cross-Examination by Mr. Edgeworth 418

Re-direct Examination by Ms. Richardson.....421

THOMAS J. RIDER, JR.

Direct Examination by Ms. Richardson.....422

Cross-Examination by Mr. Edgeworth 428

STATE RESTS 431

MOTION FOR A DIRECTED VERDICT.....431

COURT'S RULING 435

DEFENDANT'S RIGHTS 438

DEFENSE RESTS 451

CLOSING ARGUMENT BY MS. RICHARDSON 451

CLOSING ARGUMENT BY MR. EDGEWORTH 469

CHARGE CONFERENCE.....477

May 14, 2021

CHARGE CONFERENCE (CONTINUED).....481

JURY CHARGE 483

VERDICT 503

SENTENCING 504

NOTICE OF INTENTION TO SEEK A

SENTENCE OF LIFE WITHOUT PAROLE

(WITH ATTACHMENTS) FILED JULY 19, 2019.....506

STATE'S EXHIBIT NO. 7 (ATLANTIC LIQUOR RECEIPT 6/12/2018).....	512
STATE'S EXHIBIT NO. 9 (STACEY STARNES STATEMENT 6/15/2018).....	513
ARREST WARRANT NO. 2018A2210500392	515
INDICTMENT.....	517
SENTENCE SHEET.....	519
CERTIFICATE OF COUNSEL	520

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 4 (SKETCH ARTIST COMPOSITE), STATE'S EXHIBIT NO. 5 (ATLANTIC LIQUOR'S SCREEN SHOTS (3)), STATE'S EXHIBIT NO. 6 (3 PHOTOS ATLANTIC LIQUOR), STATE'S EXHIBIT NO. 8 (PHOTO LINEUP), STATE'S EXHIBIT NO. 11 (CD 911 CALL JASON AND STACEY STARNES), STATE'S EXHIBIT NO. 13 (SKETCH ARTIST COMPOSITE), STATE'S EXHIBIT NO. 14 (PHOTO J. KELLY BODY CAMERA), STATE'S EXHIBIT NO. 15 (PHOTO VIDEO FROM 628 SOUTH WACCAMAW), STATE'S EXHIBIT NO. 16 (CD VIDEO FROM 628 SOUTH WACCAMAW), STATE'S EXHIBIT NO. 17 (CD 6/15/2018 REDACTED INTERVIEW), STATE'S EXHIBIT NO. 18 (CD 6/21/2018 REDACTED INTERVIEW), STATE'S EXHIBIT NO. 21 (PHOTO OF DICAPUA), STATE'S EXHIBIT NO. 31 (CD 6/19/2018 REDACTED JAIL CALL), STATE'S EXHIBIT NO. 33 (CD 8/13/2018 REDACTED JAIL CALL), STATE'S EXHIBIT NO. 35 (CD 8/26/2018 REDACTED JAIL CALL), STATE'S EXHIBIT NO. 37 (CD 10/24/2018 REDACTED JAIL CALL), AND STATE'S EXHIBIT NO. 38 (CD 911 CALL CRAIG LEWIS 6/11/2018).

STATE OF SOUTH CAROLINA

TRANSCRIPT OF RECORD

COUNTY OF GEORGETOWN

CASE NO. 2018-GS-22-00677

November 30, 2020

BEFORE: The Honorable Steven John

Jackson v. Denno Hearing // Neil v. Biggers Hearing

The State of South Carolina,

Plaintiff,

vs.

Jeremiah Dicapua,

Defendant.

APPEARANCES:

Alicia Richardson, Esq.
Solicitor for the State.

Ricky Todd, Esq.
Madison Harte, Esq.
Attorneys for the Defendant.

Official Court Reporter,
Cynthia D. Weaver

1	<u>I-N-D-E-X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
3	<u>JACKSON V. DENNO HEARING</u>	6
4	Investigator Jonathan Griffith	
5	Direct by Ms. Richardson	7
6	Cross by Mr. Todd	23
7	Redirect by Ms. Richardson	28
8	Arguments	
9	By Mr. Todd	29
10	By Ms. Richardson	30
11	Judge's Statements/Rulings	33
12	<u>NEIL V. BIGGERS HEARING</u>	35
13	Investigator Robert Sarvis	
14	Direct by Ms. Richardson	36
15	Cross by Mr. Todd	56
16	Investigator Jonathan Griffith	
17	Direct by Ms. Richardson	62
18	Judge's Statements/Rulings	77
19	Court Reporter Certificate	80
20		
21		
22		
23		
24		
25		

1	<u>E-X-H-I-B-I-T-S</u>			
2	<u>EXHIBITS</u>		<u>ID</u>	<u>& EV</u>
3	State's 1	1st CD Interview	14	15
4	State's 2	Miranda Form	20	21
5	State's 3	2nd CD Interview	21	22
6	State's 4	Sketch	39	39
7	State's 5	Three Screen shots	45	47
8	State's 6	Three Photos of Vehicle	45	47
9	State's 7	Receipt	45	47
10	State's 8	Photo Lineup	69	70
11	State's 9	Victim Statement	74	74
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. TODD: Judge, may we bring the defendant in?

3 THE COURT: Yes, sir. Absolutely.

4 (Defendant enters the courtroom at 2:17 p.m.)

5 THE COURT: All right. Solicitor, do you want to
6 start with the Jackson v. Denno hearing first?

7 MS. RICHARDSON: Yes, Your Honor. Can we put the
8 caption on the record?

9 THE COURT: Yes, ma'am, please.

10 MS. RICHARDSON: Your Honor, this is the State v.
11 Jeremiah Dicapua. It's 2018-GS-22-677. It's a True Bill
12 Indictment for kidnapping.

13 He is represented by Ricky Todd. I believe
14 Madison Harte is assisting in the case.

15 Present in the courtroom is the victim, Stacey
16 Starnes, her husband and mother, and several of the
17 detectives involved in the case.

18 Your Honor, we probably do have one preliminary
19 matter that we need to address.

20 THE COURT: All right.

21 MS. RICHARDSON: Mr. Todd was previously employed
22 with our office and had some involvement with the detectives
23 at the time of charging. And it's my understanding that his
24 client is waiving any sort of conflict in that regard. I
25 just wanted to clear that up and make sure that we don't

1 have an issue with that on the record.

2 THE COURT: All right. Mister -- is it -- the
3 last name pronounced Dicapua?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, sir. Please stand up.

6 You understand that Mr. Todd was formally employed
7 by the 15th Circuit Solicitor's Office?

8 THE DEFENDANT: Correct.

9 THE COURT: All right, sir. And here in
10 Georgetown County?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, sir. And in that capacity,
13 he apparently had some contact with this particular matter
14 early on.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right.

17 Now, has Mr. Todd discussed that with you fully?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. And have you been able to
20 ask him any questions that you wanted to regarding that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. And regarding his
23 representation of you in this matter, do you have any
24 objections or questions about that?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And you want Mr. Todd to represent you
2 in this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right.

5 And Mr. Todd, and you have gone over the situation
6 and explained that fully to your client, Mr. Dicapua?

7 MR. TODD: Yes, Your Honor. At our first meeting,
8 right after I came over to work with the Public Defender's
9 Office, I did meet with Mr. Dicapua at the jail. We
10 discussed the fact that I had some earlier involvement in
11 the case, that I was actually one of the people that law
12 enforcement would call when they had issues or when they
13 were dealing with cases. That was typically what my job was
14 and I did have involvement in this case. But, through our
15 conversations and everything, he is wishing to waive that
16 and have me represent him at this time.

17 THE COURT: All right. Very good. Thank you,
18 very much.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: Thank you. All right.

21 Solicitor, you may proceed in the Jackson v. Denno
22 hearing.

23 JACKSON V. DENNO HEARING

24 MS. RICHARDSON: The State calls Investigator
25 Griffith to the stand.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 THE COURT: All right. Please come around and be
2 sworn.

3 JONATHAN KYLE GRIFFITH, having been duly sworn,
4 testified as follows:

5 THE COURT: Get yourself situated and state your
6 full name for the court reporter, please.

7 THE WITNESS: Jonathan Kyle Griffith.

8 DIRECT EXAMINATION

9 BY MS. RICHARDSON:

10 Q. And could you tell us where you are employed?

11 A. The Georgetown County Sheriff's Office.

12 MS. RICHARDSON: Your Honor, can I ask about the
13 protocol for the mask? Can we take it off while we're ---

14 THE COURT: Oh, once you sit down, if you want to
15 you may remove your mask once you have sat down, yes.

16 MS. RICHARDSON: What about me?

17 THE COURT: If you would like to, Solicitor, I'm
18 fine with that. I don't have a problem.

19 MS. RICHARDSON: Thank you, Your Honor.

20 BY MS. RICHARDSON:

21 Q. Can you tell us where you're employed?

22 A. Georgetown County Sheriff's Office.

23 Q. And can you give me the background of your
24 education in law enforcement experience and training?

25 A. After attending the South Carolina Criminal

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Justice Academy, I was a patrolman with the Sheriff's
2 Office. After a patrolman, as I am now, an investigator
3 with the Sheriff's Office.

4 Q. And how long have you been in law enforcement?

5 A. About eight years.

6 Q. Okay. And all of that's been at the Sheriff's
7 Office?

8 A. Yes.

9 Q. Okay. And how long have you been an investigator?

10 A. Six years now.

11 Q. And were you the lead investigator in the
12 kidnapping case against Jeremiah Dicapua?

13 A. Yes, ma'am.

14 Q. Okay. And explain to me just your initial
15 involvement in the case, how you came to be involved.

16 A. I became to be involved in the case -- I was the
17 on-call investigator the day it happened. So I got called
18 to the scene. I was the first investigator to go on to the
19 scene.

20 Q. Okay.

21 A. So I carried it from there.

22 Q. And that was on June 10th, 2018?

23 A. Yes, ma'am.

24 Q. And where did the call initially go?

25 A. To Horry County, I believe, because they

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 couldn't -- they couldn't determine the jurisdiction at the
2 time until, I believe, the Horry County officer spoke to the
3 victim.

4 Q. Okay. And the victim called from an Horry County
5 beach house address?

6 A. I believe so.

7 Q. And so Horry County initially responded?

8 A. Correct.

9 Q. And then a Georgetown County officer responded?

10 A. Correct.

11 Q. And that was officer who?

12 A. Officer Delval, I believe, is the one with us.

13 Q. And then you were called out once they determined
14 jurisdiction?

15 A. Yes.

16 Q. As the on-call investigator?

17 A. Yes.

18 Q. And what did you do when you arrived?

19 A. When I arrived I spoke to Officer Delval to get
20 the summary of what had happened. Then I went to -- I
21 talked to the female victim. Made contact with the Horry
22 County officer that responded to get his summary of what he
23 had already done and what he had gotten information on.

24 Then I continued on until we got to the point
25 where she said she would be able to identify a sketch if I

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 could get a sketch of him.

2 Q. Okay. And did you do that?

3 A. Yes, ma'am.

4 Q. Okay. And how did you arrange that?

5 A. Since Horry County Sheriff's Office has a sketch
6 artist on hand, I contacted them to see if they would assist
7 me.

8 Q. Okay. And based on that sketch artist, how did
9 you come about identifying a suspect? How did you come
10 about arresting Mr. Dicapua?

11 A. With the sketch artist, with the sketch, camera
12 footage obtained from South Waccamaw and the liquor store,
13 we ended up developing a possible suspect, which we had a
14 photo lineup made, but due to the low quality of the photo
15 lineup, we ended up having to do a drive-by identification.

16 MS. RICHARDSON: And, Your Honor, would you prefer
17 me not to go into the identification but just do Jackson v.
18 Denno at this time?

19 THE COURT: Let's do the Jackson v. Denno.

20 MS. RICHARDSON: Okay.

21 THE COURT: And then we'll do the Neil v. Biggers.

22 BY MS. RICHARDSON:

23 Q. So you developed Mr. Dicapua as a suspect?

24 A. Yes, ma'am.

25 Q. And that was after the victim picked him out in

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 a -- when you took her by his house?

2 A. Correct.

3 Q. And you got arrest warrants at that time?

4 A. Correct.

5 Q. And when was he arrested?

6 A. I don't recall the exact date.

7 Q. Would looking at your notes reflect -- refresh
8 your recollection?

9 A. Yeah. If I could.

10 Q. Okay. Would a copy of the arrest warrant refresh
11 your recollecting on the arrest date?

12 A. I don't have a copy before me.

13 Q. Okay.

14 A. 6/15, that's right.

15 Q. June 15th, 2018?

16 A. Yes.

17 Q. And Mr. Dicapua lived in Horry County not
18 Georgetown?

19 A. Correct.

20 Q. So did you have assistance in effecting that
21 arrest?

22 A. Correct.

23 Q. Who assisted you?

24 A. Horry County.

25 Q. Horry County Police Department?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Yes, ma'am.

2 Q. Okay. And who went with you -- what other
3 officers besides Horry County went with you for this arrest?

4 A. I believe Investigator Aswad, was with me.

5 Q. Okay. And where is he now?

6 A. He is at the FBI Academy in Quantico.

7 Q. Okay. So the two of you went to -- and you went
8 to his home to arrest him?

9 A. Yes, ma'am.

10 Q. Okay. And did you have any trouble getting him?

11 A. When we initially arrived he was not at the
12 residence. They advised he had left with a neighbor to go
13 to the liquor store. So we waited until he and the neighbor
14 returned.

15 Q. Okay. And then when he returned you arrested --
16 put him in custody at that time?

17 A. Correct.

18 Q. Did you have any issues with that?

19 A. No.

20 Q. All right. And did you handcuff him?

21 A. Horry County handcuffed him and turned him over to
22 us.

23 Q. Okay. And then, once he was turned over to you,
24 what did you do?

25 A. We -- during the transport myself and Investigator

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Aswad did an initial interview after Mirandizing him and
2 then we met a transport unit to take him to the D.C.

3 Q. Okay. Was he placed in a vehicle with you?

4 A. Yes, ma'am.

5 Q. Okay. And was that a caged or marked vehicle?

6 A. No. It was a -- in an investigation it's an
7 unmarked vehicle, we don't have cages. So, Mr. Dicapua sat
8 up front with me while Investigator Aswad sat in the back.

9 Q. Okay. And then you met a transport officer?

10 A. Yes, ma'am.

11 Q. And no question he was in custody at that point?

12 A. Correct. He was in custody.

13 Q. And what was his demeanor at that time?

14 A. He was very alert, communicative, he was able to
15 talk to us. There was no -- nothing to give the impression
16 that he was unable to communicate or within reason.

17 Q. Okay. And any indication that he was under the
18 influence of any sort of substance or alcohol or an event
19 that would prevent him from being able to communicate or
20 understand what was going on?

21 A. No.

22 Q. And did you make any threats, promises, or coerce
23 him in any way to get him to talk to you?

24 A. No.

25 Q. And was he read his rights during this transport?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Correct. He was read his rights. We did not get
2 him to sign a form, a Miranda form.

3 Q. And so where did the actual interview take place?

4 A. During the -- in the vehicle during the transport.

5 Q. Okay. And was that recorded?

6 A. Correct. Yes.

7 Q. And did he waive his rights orally and indicate
8 that he wanted to talk with you?

9 A. Correct.

10 Q. Let me --

11 MS. RICHARDSON: Am I supposed to put on gloves?
12 I don't have any up here.

13 THE COURT: Well, let's see if we can get some for
14 the trial. Okay?

15 MS. RICHARDSON: Okay.

16 THE COURT: Thank you, ma'am.

17 (WHEREUPON, State's Exhibit Number 1 was marked
18 for identification.)

19 BY MS. RICHARDSON:

20 Q. All right. Let me show you what's been marked as
21 State's Exhibit Number 1. And do you recognize this?

22 A. Correct.

23 Q. Okay. And tell me what it is.

24 A. It is the initial interview of Dicapua.

25 Q. And it's a CD containing that?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Uh-huh.

2 Q. And how do you know that that CD contains it?

3 A. Because I listened to it and initialed it.

4 Q. Okay. And that's your green initials on the top?

5 A. Uh-huh.

6 THE COURT: Instead of "uh-huh," you have to say
7 "Yes" or "No."

8 THE WITNESS: Oh, yes. Yes.

9 MS. RICHARDSON: Okay. And, Your Honor, I'd offer
10 this as State's 1 for the purposes of this hearing and would
11 ask to publish it at this time.

12 THE COURT: Any objection for the hearing to be
13 introduced into evidence?

14 MR. TODD: Not for the hearing, Your Honor.

15 THE COURT: All right. It's in evidence without
16 objection.

17 (WHEREUPON, State's Exhibit Number 1 was admitted
18 into evidence.)

19 MS. RICHARDSON: Your Honor?

20 THE COURT: Yes, ma'am.

21 MS. RICHARDSON: I'm sorry. This thing has worked
22 all day until now. I'm going to have to switch out some
23 equipment real quick, Your Honor.

24 THE COURT: All right.

25 (A brief pause was held.)

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: All right. I think I have it, I
2 apologize.

3 THE COURT: All right. Go ahead.

4 MS. RICHARDSON: I did drop that disc drive
5 earlier, I must have broken it.

6 Can we turn on the video, Madam Clerk?

7 THE COURT: You need to turn it up, please.

8 (WHEREUPON, State's Exhibit Number 1, videotaped
9 interview, was played in open court. Not transcribed
10 herein. After playing, the proceedings resumed as follows.)

11 BY MS. RICHARDSON:

12 Q. So that audio recording is a little noisy. Can
13 you tell us what was going on and why there was so much
14 noise?

15 A. During the transport it was raining. So you're
16 listening to the rain hit the windshield and the rattling
17 inside the vehicle.

18 Q. And the majority of the questions were asked by
19 Investigator Aswad, but, again, you were driving and were
20 there the whole time?

21 A. Correct. Correct.

22 Q. And you chimed in a little bit and asked a few
23 questions yourself?

24 A. Correct.

25 Q. And during this transport, again, did you

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 threaten -- did you all do anything to him to force him to
2 give his statement?

3 A. No.

4 Q. And the beginning of it does -- you started
5 recording when he was put in the car?

6 A. Correct.

7 Q. Okay. So in the beginning we hear a lot of radio
8 traffic and that sort of thing?

9 A. Correct.

10 Q. And that's before you actually issued or Wu
11 read -- Investigator Aswad read him his Miranda warnings?

12 A. Correct.

13 Q. And the transport in Litchfield, tell me about
14 that.

15 A. We met the transport at the Litchfield office to
16 take Mr. Dicapua the rest of the way to the D.C.

17 Q. All right. And can you explain to the Judge where
18 in Horry County he was arrested?

19 A. As to?

20 Q. Where his residence was.

21 A. It was off of, I believe, it's business.

22 Q. Seventeen?

23 A. Yes.

24 Q. Okay. It's in the Garden City section though?

25 A. Correct.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Okay. And then did you have a subsequent
2 opportunity to participate in an interview with Mr. Dicapua?

3 A. I did.

4 Q. And tell me about that.

5 A. The interview occurred on the 21st, with myself,
6 Investigator Carrison and Investigator Wyndra from Horry
7 County Police.

8 Q. Okay. And explain to the Judge why Investigator
9 Wyndra was involved.

10 A. He was present in regards to the attempted
11 kidnapping that occurred in Horry County.

12 Q. And when was that complaint made about the ---

13 A. The same day that the complaint was made in
14 Georgetown County.

15 Q. Okay. So he was investigating that and you were
16 investigating this one and you came together to do the
17 interview?

18 A. Correct.

19 Q. And where did that interview take place?

20 A. The Georgetown County Detention Center.

21 Q. And you were present the whole time through that?

22 A. Correct.

23 Q. And all three of you participated?

24 A. Correct.

25 Q. And can you explain to me his demeanor and how he

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 appeared at that interview?

2 A. He was very alert. Communicated very well. He
3 was -- he was good.

4 Q. And were any threats or promises made to him to
5 get him to participate in that interview?

6 A. No.

7 Q. During any of these interviews did he ask for food
8 or water or breaks or anything like that?

9 A. I don't think so. I don't recall.

10 Q. Okay. Did you deprive him of food or water or
11 adequate bathroom breaks or anything like that?

12 A. No.

13 Q. And did he appear to be clearheaded and not under
14 the influence at his second interview?

15 A. Correct.

16 Q. And he had been in custody, I guess, from the 15th
17 to the 21st?

18 A. Correct.

19 Q. And let me show you -- was he advised of his
20 rights during the second interview?

21 A. Correct.

22 Q. And did he waive those rights and agree to speak
23 with you?

24 A. Yes.

25 Q. And do you recall who read him his rights?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. I believe it was Wyndra from Horry County.

2 Q. Okay. And you were present the entire time?

3 A. Yes.

4 MS. RICHARDSON: I'll mark this as the Miranda
5 Form. If we could mark this as State's 2.

6 (WHEREUPON, State's Exhibit Number 2 was marked
7 for identification.)

8 BY MS. RICHARDSON:

9 Q. And do you recognize this?

10 A. Yes.

11 Q. Okay. And what is that?

12 A. That is the Miranda Form from the Horry County
13 Police.

14 Q. Okay. And it's signed by who?

15 A. Wyndra and Investigator Carrison.

16 Q. Okay. So you didn't sign that, but did you
17 witness it being executed?

18 A. Yes.

19 Q. And did Mr. Dicapua sign that as well?

20 A. Yes.

21 MS. RICHARDSON: Your Honor, I move to enter that
22 as State's 2 for purposes of this hearing.

23 THE COURT: Any objection?

24 MR. TODD: No objection for this hearing, Your
25 Honor.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 THE COURT: All right. So State's 2 is in
2 evidence for purposes of this hearing.

3 (WHEREUPON, State's Exhibit Number 2 was admitted
4 into evidence.)

5 MS. RICHARDSON: And if I could mark this as
6 State's 3, the Second Interview.

7 MR. TODD: Is that the original?

8 MS. RICHARDSON: No. It's a copy.

9 MR. TODD: I mean as far as -- that was the
10 non-redacted?

11 MS. RICHARDSON: Non-redacted, yes.

12 (WHEREUPON, State's Exhibit Number 3 marked for
13 identification.)

14 BY MS. RICHARDSON:

15 Q. Okay. Let me show you what's been marked as
16 State's Exhibit Number 3 and do you recognize that?

17 A. Yes.

18 Q. And what is that?

19 A. That's the recording of the second interview with
20 Mr. Dicapua.

21 Q. And how do you know that's what it is?

22 A. Because I initialized it at the hearing.

23 Q. Okay. And did you make any corrections or changes
24 to either of these interviews?

25 A. No.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And they are complete and accurate as far as what
2 was provided?

3 A. Correct.

4 MS. RICHARDSON: Your Honor, at this time I'd
5 offer State's Exhibit 3 into evidence for the purposes of
6 this hearing and would ask to publish it for the Court.

7 THE COURT: Any objection?

8 MR. TODD: No objection for the purposes of this
9 hearing, Your Honor.

10 THE COURT: For the purposes of the hearing I'm
11 going to allow it into evidence.

12 (WHEREUPON, State's Exhibit Number 3 was admitted
13 into evidence and played in open court. Not transcribed
14 herein. After playing, the proceedings resumed as follows.)
15 BY MS. RICHARDSON:

16 Q. And, again, you were present the whole time?

17 A. Correct.

18 Q. And the whole conversation was recorded as part of
19 this recording?

20 A. Correct.

21 MS. RICHARDSON: I have no further questions as to
22 the Jackson v. Denno. Please answer any questions Mr. Todd
23 may have for you.

24 THE COURT: All right. Mr. Todd.

25 MR. TODD: Thank you, Your Honor.

JONATHAN GRIFFITH - CROSS BY MR. TODD

CROSS-EXAMINATION

BY MR. TODD:

Q. Now, with regards to the first interview, Investigator Griffith, what date was this?

A. The same date of the arrest.

Q. Okay. What time of day was it?

A. I believe it was -- it was still morning, before lunch, I believe.

Q. Would that be on your -- in your report?

A. Yeah. I believe so. I don't think I have the exact time in the report if that's what you're...

Q. But you remember it being in the morning?

A. Yeah. It was some time before noon.

Q. Before lunch?

A. Before lunchtime, yes.

Q. And you went to his residence, you had a warrant in hand at that point in time?

A. Yes.

Q. Okay. And he wasn't there; is that correct?

A. Correct. He wasn't there.

Q. He had been at the liquor store?

A. Correct.

Q. So when you all locked him up, did you handcuff him in the front or the back?

A. I believe Horry County cuffed him in the back and

JONATHAN GRIFFITH - CROSS BY MR. TODD

1 then when we transferred him to my vehicle we switched them
2 to the front.

3 Q. Okay. So he had his hands -- and then he rode in
4 the front of your vehicle?

5 A. Correct.

6 Q. With his hands in front?

7 A. I believe so.

8 Q. And then Investigator Wu [sic] was in the back?

9 A. Correct.

10 Q. You were driving, I take it?

11 A. Correct.

12 Q. Now, did he smell like alcohol at all?

13 A. No.

14 Q. Okay. So you don't know if he had been drinking
15 already?

16 A. I don't know.

17 Q. Okay. And he says he was on medication. Did you
18 look into that?

19 A. Not at the time of the arrest, no.

20 Q. Okay. Did you look into it afterwards?

21 A. No.

22 Q. Okay. So it's possible he was on medication?

23 A. It's possible.

24 Q. And as far as his demeanor while you were talking
25 to him, he seemed -- would it agreeable to say he seemed

JONATHAN GRIFFITH - CROSS BY MR. TODD

1 kind of surprised or shocked at what was going on?

2 A. Yeah. He was shocked and surprised, but he was
3 still lucid and he could communicate real well.

4 Q. Okay.

5 A. He understand what we were talking about.

6 Q. And it was raining really hard?

7 A. Correct.

8 Q. And that was all that extra noise?

9 A. Correct.

10 Q. Was it loud in the car while you all were driving?

11 A. At the beginning with the radio traffic, but I
12 turned that down afterwards when we began talking to him.

13 Q. Okay. And then let's jump ahead a little bit. As
14 far as the second interview, what day was that on?

15 A. The 21st.

16 Q. And what time of day would that have been?

17 A. I don't recall.

18 Q. After noon? After lunch?

19 A. I don't recall.

20 Q. Okay. And you started off and you read him his
21 rights?

22 A. I didn't read him his rights.

23 Q. But someone did read him his rights that was
24 there; correct?

25 A. Yeah.

JONATHAN GRIFFITH - CROSS BY MR. TODD

1 Q. There's no question his rights were read?

2 A. Correct.

3 Q. Did anybody ask him at that point in time if he
4 had an attorney?

5 Did anyone ask him at that point if he had an
6 attorney?

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

8 Q. Okay. Did anybody ask him at that point in time
9 if he had applied for an attorney with the Public
10 Defenders's Office?

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

12 Q. Okay. Would you be surprised to say that on the
13 21st of that same -- that same day he was appointed an
14 attorney?

15 A. No.

16 Q. Okay. Did anybody look into the fact that he had
17 applied or even ---

18 A. No.

19 Q. So no attorney was contacted prior to that
20 interview?

21 A. No. We weren't aware of any attorney.

22 Q. Okay. And you didn't ask him if he had applied?

23 A. Not at the beginning, no.

24 Q. Okay. Now, with that interview -- that was a lot
25 more extensive; correct?

JONATHAN GRIFFITH - CROSS BY MR. TODD

1 A. Correct.

2 Q. And there was a lot more questions asked about
3 multiple occurrences; is that correct?

4 A. Correct.

5 Q. Now, did he seem to be able to follow you better
6 in that interview?

7 A. I take it he's not shocked and nervous anymore,
8 so, yeah.

9 Q. Okay. So he wasn't as -- he was definitely more
10 lucid at that point in time?

11 A. You could say so, yeah.

12 Q. Okay. And just a few questions.

13 There was a lot of questions asked about another
14 person that had pointed him out in a lineup. Was that true
15 or not true?

16 A. The Horry County incident?

17 Q. Yes.

18 A. That -- that I don't know.

19 Q. Okay. So you don't know ---

20 A. With Investigator Wyndra. I don't know what he
21 had -- what she had told him.

22 Q. Do you know if he was charged in that incident?

23 A. No. I don't believe he was.

24 Q. He was not charged in that; correct?

25 A. I don't believe so, no.

JONATHAN GRIFFITH - REDIRECT BY MS. RICHARDSON

1 MR. TODD: That's all the questions I have right
2 now.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. RICHARDSON:

6 Q. No question that he was advised of his right to an
7 attorney at the beginning?

8 A. Excuse me?

9 Q. He was advised, as part of his Miranda, of his
10 right to an attorney?

11 A. Correct.

12 Q. And at the end of the interview we all heard he
13 indicated he hadn't applied.

14 A. Correct. In the initial reading of Miranda it
15 advises you whether you want an attorney or not and he
16 agreed to speak with us.

17 Q. Okay.

18 MS. RICHARDSON: I have no further questions.

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

20 Further witnesses as to the Jackson v. Denno
21 matter from the State?

22 MS. RICHARDSON: No, Your Honor.

23 THE COURT: Witnesses from the Defense as to the
24 Jackson v. Denno matter?

25 MR. TODD: No witnesses from the Defense, Your

DEFENSE ARGUMENT

1 Honor.

2 THE COURT: All right. I'll be glad to hear
3 arguments.

4 MR. TODD: You want to hear from the Defense
5 first, Your Honor?

6 THE COURT: Yes, sir.

7 MR. TODD: All right. Thank you.

8 DEFENSE ARGUMENT

9 MR. TODD: Regarding the first interview, he was
10 picked up in the morning. He says, and the officers agree,
11 he was on the way back from the liquor store. They had
12 discussed his -- his morning routine that he typically goes
13 to the liquor store every day. He has a history of drinking
14 a lot which was recognized.

15 Additionally, he says he was on medication that
16 day, that wasn't looked into. However, he does seem
17 surprised and a little off in that interview as far as
18 comparing the two of them.

19 He also seemed, during that interview -- it was a
20 little unnerving, because of the amount of noise and
21 everything going on.

22 Your Honor, I believe -- I believe he was read his
23 rights, I believe that was done properly. However, as far
24 as his faculties, I don't believe he was in complete control
25 or really aware of what was going on, just based on his

STATE ARGUMENT

1 demeanor and how he was answering questions. I think there
2 could be some issues as far as whether or not he was
3 intoxicated or under the influence of medications and just
4 his overall demeanor during the interview seemed off.

5 We would ask that that interview not be allowed to
6 be presented because of -- of his -- seemed to be under the
7 influence of something at that point in time.

8 Regarding the second interview, that one he seemed
9 very lucid. I don't disagree he was read his rights. But
10 looking back at the file and the date this happened, he had
11 applied for a public defender prior to that day. He was
12 actually appointed on the 21st. Through our office,
13 Mr. Hazzard typically does the appointments himself. So he
14 did call in, Mr. Hazzard appointed himself. He actually
15 went out a couple of days later did an interview of
16 Mr. Dicapua. It's my understanding he filled out the
17 application at the bond hearing.

18 Our own issue would be that he was represented and
19 had invoked his right to have an attorney present and we
20 should have been contacted before that day.

21 THE COURT: All right, sir.

22 THE COURT: All right, Solicitor.

23 STATE ARGUMENT

24 MS. RICHARDSON: Your Honor, obviously, in looking
25 at whether a statement should be admitted, you look to see

STATE ARGUMENT

1 whether it was free and voluntary looking at the totality of
2 the circumstances and whether his will was over borne.

3 It's obvious he was read his Miranda rights. He
4 actually had some questions about what was going on.
5 Obviously, he knew what he was charged with. He was able to
6 understand directions. He knew where Sara J's was. He was
7 able to describe where the pier was and knew what direction
8 he had been in. He also was able to give some historical
9 information about the arrest in Baltimore, which he
10 indicates was over -- was around 20 years ago. He was able
11 to discuss renting a car. He was able to discuss that it
12 had gotten towed away, to talk about his DUI arrest.

13 Your Honor, the officer -- there's been no
14 evidence that he was under the influence. The interview
15 that was put in -- at the end of the interview it indicates
16 the ending time was 4:03 on Friday, June 15th. So I believe
17 it was a mistake as far as it being in the morning. He was
18 able to give historical information about getting stopped
19 twice regarding the tag on the car.

20 Your Honor, although he may have been nervous,
21 there has been no proof that he was under the influence of
22 drugs or alcohol. He only mentioned the medication. He was
23 asked, What does that mean, by the officer, he gave no
24 explanation. His short-term memory and long-term memory
25 seemed to be intact. He was actually able to correct and

STATE ARGUMENT

1 remember some things that he had said earlier in the
2 interview.

3 Your Honor, I think under the totality of
4 circumstances there has been absolutely no evidence the
5 officers testified that he did not smell of alcohol. No
6 evidence that he was under the influence or not in control
7 of his faculties.

8 As for the second interview, Your Honor, there's
9 been no proof regarding him applying or having an attorney
10 appointed or the date that that was. My records -- and,
11 Your Honor, it's a matter of record what would be in the
12 file. And, Your Honor, could -- to check that with the
13 Court Notice, it looks like the Certificate of
14 Representation and Appointment was dated June 25th, 2018,
15 and was clocked here at the Clerk of Court's Office on
16 June 25th, 2018. He actually asked -- the attorneys -- I
17 mean, the officers actually brought it up at the end of the
18 interview about him having a public defender, he asked how
19 to apply, and they indicated they would assist with him in
20 that.

21 Your Honor, there's no indication that his right
22 to an attorney was violated. He clearly had been advised
23 that he could ask for his attorney, he did not. It was the
24 detectives who actually asked him about getting an attorney.

25 So there's been no proof to show that his rights

JUDGE'S RULING

1 to an attorney were violated or any reason that that second
2 statement should have been thrown out, Your Honor.

3 RULING

4 THE COURT: All right. Thank you.

5 All right. As to the first interview, clearly the
6 defendant was in custody, Miranda was required, and I do
7 believe Miranda was properly given to the defendant.

8 There's been no evidence presented to the Court
9 that the defendant was not in control of himself. There's
10 no evidence that he was under the influence of either
11 alcohol or drugs.

12 The defendant, from the responses he gave to the
13 questions, responded appropriately indicating that he
14 understood the questions and he answered them in way that
15 was proper and appropriate to the question that was posed or
16 asked of him.

17 We're not at the point in time whether or not
18 certain matters in the statement should be redacted, but as
19 to whether or not the statement is proper under a Jackson v.
20 Denno. I do find that the first statement can be used in
21 part from the fact that he knew and was given Miranda and he
22 did not invoke of the rights, he freely and voluntarily
23 talked to the officers and responded in an appropriate
24 manner to the questions posed.

25 As to the second interview, I do not find that

JUDGE'S RULING

1 from the evidence and the record that his rights to an
2 attorney was violated in any fashion.

3 Again, he clearly was in custody, Miranda was
4 necessary, it was properly given, he did waive his rights,
5 and did freely and voluntarily talk to the officers about
6 the situation and he responded appropriately to the
7 questions indicating a understanding of the question and an
8 understanding of the situation. I would allow it into
9 evidence.

10 Again, we're not at the issue of whether certain
11 matters need to be redacted out of that statement. Clearly,
12 there are matters in the first and second statement that
13 need to be redacted.

14 Thank you, very much.

15 MR. TODD: Thank you, Your Honor.

16 THE COURT: All right. Do you want to deal with
17 redactions now or do you want to go on to the Neil v.
18 Biggers hearing?

19 MR. TODD: Well, since we just heard them, we can
20 deal with redactions.

21 THE COURT: Do you all want to try and work that
22 out first and see if you have any problems?

23 MR. TODD: I think we can probably work that out,
24 because for the second interview, Ms. Richardson has
25 provided defense a copy of her redactions.

JUDGE'S RULING

1 THE COURT: All right.

2 MS. RICHARDSON: On both interviews. I've given
3 to the defense proposed redactions and a copy of the
4 proposed redacted statements on both interviews.

5 THE COURT: All right. So why don't you look at
6 that and listen to that, obviously, and then let me know if
7 you have any further issues as to something that the defense
8 feels needs to be redacted that was not proposed by the
9 State.

10 MR. TODD: Yes, sir. Could we have just
11 five minutes before we go into the second one?

12 THE COURT: Sure. We'll take a five-minute break.
13 Thank you.

14 (WHEREUPON, a break was held from 4:00 p.m. until
15 4:09 p.m.)

16 MADAM CLERK: All rise.

17 THE COURT: Please be seated. Thank you very
18 much.

19 All right. Solicitor, are you ready to proceed
20 with the Neil v. Biggers hearing?

21 MS. RICHARDSON: Yes, Your Honor. The State calls
22 Robbie Sarvis.

23 THE COURT: All right. Please come around and be
24 sworn.

25 ROBERT SARVIS, having been duly sworn, testified

1 as follows:

2 THE COURT: Go ahead, Solicitor.

3 NEIL V. BIGGERS HEARING

4 DIRECT EXAMINATION

5 BY MS. RICHARDSON:

6 Q. I don't know if I heard this, did you put your
7 name on the record?

8 A. It's Robert Sarvis.

9 Q. And where are you employed?

10 A. With the Georgetown County Sheriff's Office.

11 Q. And what is your position there?

12 A. I'm the supervisor over criminal investigations.

13 Q. And how long have you been with the Sheriff's
14 Office?

15 A. I've been here about 15 years.

16 Q. And how long have you been an investigator here?

17 A. All 15.

18 Q. All 15. And where did you -- did you come from
19 another law enforcement agency?

20 A. Yes, I was in Richland County, as well, for a
21 while.

22 Q. And how long were you in Richland?

23 A. About six years.

24 Q. Okay. And what positions did you hold in
25 Richland?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. I was on a drug task force, narcotics team, and
2 investigations.

3 Q. Okay. And anywhere else?

4 A. Well, I worked here -- I worked here prior to
5 going to Richland. So I was here for a couple of years. I
6 went to Richland for about six years. And now I've been
7 back here since '09.

8 Q. Okay. And now can you do the math and tell me how
9 long you've been in law enforcement?

10 A. Approximately 22 years.

11 Q. And, obviously, you've had training through the
12 Criminal Justice Academy?

13 A. Yes, ma'am.

14 Q. Any other training?

15 A. Numerous different types of training, as far as
16 investigative training, homicide trainings.

17 Q. Okay. And you said you were a supervisor over the
18 Criminal Investigations Unit?

19 A. Yes, ma'am, as well as the Narcotics Unit.

20 Q. And were you involved in the case -- the
21 kidnapping case against Jeremiah Dicapua?

22 A. Yes, ma'am, I was.

23 Q. And tell me how you got involved and when you got
24 involved.

25 A. Well, the situation -- once the

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 situation occurred, due to the pure nature of the incident
2 of what happened, it was pretty much all hands on board, or
3 anybody that I could get, as far as investigators, to try to
4 develop anything we could at that point.

5 Q. And were all of your -- were most of your
6 investigators called in to work besides just Investigator
7 Griffith?

8 A. No. The next morning we all met and went out
9 there and began canvassing the area. On the day of, I think
10 Investigator Griffith, handled the front end of it himself.

11 Q. Okay. And you were aware, obviously, there had
12 been an Horry County case as well?

13 A. Yes.

14 Q. Now, did you get involved as far as the composite
15 drawing or the sketch artist?

16 A. It had already -- Investigator Griffith had
17 already secured that, but I did get a copy of it.

18 Q. Okay.

19 A. And was able to -- in addition to getting a copy
20 of it, it was disseminated through social media places and
21 the media as well.

22 Q. So on the 10th, on the day it occurred, the victim
23 met with a sketch artist; is that right?

24 A. Yes, ma'am.

25 Q. As Investigator Griffith testified earlier?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. Uh-huh.

2 Q. And the next day you had a copy of that?

3 A. Yes, ma'am. That's correct.

4 Q. And the Sheriff's Office did a social media push?

5 A. Yes. Media and social media with the composite.

6 Q. Let me show you what's been marked as State's

7 Exhibit Number 4 for identification.

8 Do you recognize that?

9 (WHEREUPON, State's Exhibit Number 4 was marked
10 for identification.)

11 A. Yes, ma'am.

12 Q. And tell me what that is.

13 A. That's the composite sketch or copy of the
14 composite sketch that was done.

15 MS. RICHARDSON: Your Honor, I'd offer this into
16 evidence for purposes of this hearing.

17 THE COURT: Any objection?

18 MR. TODD: No objection for purposes of this
19 hearing.

20 THE COURT: All right. I'm going to allow it in
21 evidence for this hearing. Go ahead.

22 (WHEREUPON, State's Exhibit Number 4 was admitted
23 into evidence.)

24 BY MS. RICHARDSON:

25 Q. So on June 11th, the next day, tell me what you

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 and your officers did?

2 A. We went down to the South Waccamaw area and the
3 surrounding streets, the parallel streets to it, and began
4 just canvassing door to door. Trying to make contact with
5 anybody home that may have possibly been a witness to it
6 that hadn't come forward. Trying to locate any camera
7 systems that we may then be able to secure video off of to
8 help us with the investigation.

9 Q. Okay. And were you able to locate some footage?

10 A. We did. We were able to locate a couple of houses
11 that did have cameras. And several would have cameras and
12 the systems would not be working, but we did, in fact,
13 recover some video.

14 Q. And were you able -- was there a description of a
15 suspect based on what happened in Georgetown County?

16 A. Yes, there was a description from early on, from
17 the day prior, that I was made aware of and that was in the
18 report, as well.

19 Q. Okay. And do you recall the details of those --
20 that description?

21 A. Oh, about 5'8", 5'9", dark complected, white male,
22 with a tan, white male, heavier set.

23 Q. And what about a vehicle description?

24 A. I think it said a black Jeep.

25 Q. And what type of Jeep?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. SUV.

2 Q. Okay. So not like a Jeep Wrangler or anything
3 like that?

4 A. No.

5 Q. Okay. And so you all put that and the sketch out
6 on social media to get some leads?

7 A. Yes, ma'am.

8 Q. And you also were canvassing the area?

9 A. Yes, ma'am.

10 Q. And did you go to any businesses?

11 A. We did. In part of the canvassing I learned that
12 one of the residents of a house that may have had cameras
13 actually was the owner of a liquor store, I think it's
14 called Atlantic Beverages. So I went there with sketch in
15 hand and spoke with -- met with him, told him what we had,
16 you know, explained to him the situation, allowed him to
17 view the sketch and also the description of the vehicle.
18 And he said that it sounds like a customer that frequents
19 his business very often.

20 Q. Okay. And what was your -- what was your purpose
21 of going to the liquor store?

22 A. My initial purpose -- the initial reason was to
23 follow up to his camera system at the house on
24 South Waccamaw.

25 Q. Okay. And then were you also interested in the

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 business cameras as well?

2 A. Well, yeah, because it was a main exit for that
3 area. I guess you would either have to go straight or turn
4 and come up that way to get out of that area. So, if he had
5 any video that overshot and picked up Atlantic Avenue, it
6 may have given us a picture of the vehicle as well.

7 Q. Okay. And just -- and I'm sure the Judge is
8 familiar, but just to sort of lay this out -- Atlantic
9 Avenue connects 17 Business to Waccamaw Drive?

10 A. Yes.

11 Q. And Waccamaw Drive and 17 Business run parallel?

12 A. Yes, that's correct.

13 Q. And Waccamaw is basically the ocean front or the
14 ocean highway ---

15 A. Yes, ma'am.

16 Q. --- in Garden City?

17 And part of that's in Horry County and part is in
18 Georgetown County?

19 A. Yes, ma'am. That's correct.

20 Q. And when you turn off 17 and go down Atlantic
21 avenue towards the ocean, what is in that area?

22 A. I'm sorry.

23 Q. What businesses are in that area? When you go
24 down Atlantic Avenue and you come to the intersection of
25 Atlantic and Waccamaw what businesses are in that area?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. You have an arcade. You have a restaurant, Sam's
2 Corner. You have the hotel, beach shop, and a pier.

3 Q. And there's an arcade?

4 A. Yes, ma'am.

5 Q. Is there also an amusement park area?

6 A. Yeah. There's an area adjacent to that is the
7 Salt and Settle the Horizon, and things of that nature.

8 Q. And what do most people commonly refer to that
9 intersection as?

10 A. Sam's Corner.

11 Q. And that's named after one of the businesses?

12 A. Yes, ma'am.

13 Q. Okay. And so where in reference -- in relation to
14 Sam's Corner was this liquor store?

15 A. On the -- pretty much it would be on the opposite
16 end of Atlantic before you go back out to Business 17.

17 Q. Okay. Which would be one of the main -- like you
18 said, one of the main thoroughfares out of the Garden City
19 area?

20 A. Yes, ma'am. It would be the closest exit off of
21 South Waccamaw from Georgetown.

22 Q. And do you recall the individual's name that you
23 met with at the liquor store?

24 A. Yes, I do. It's Jim or James. And then his last
25 name is -- it starts with a "V," it's very hard to

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 pronounce.

2 Q. Would Varca -- Varcapaine (phonetic), something to
3 that regard?

4 A. Yes, that's correct.

5 Q. All right. And so you showed him the sketch?

6 A. Yes, ma'am.

7 Q. And tell me what he told you about the sketch.

8 A. Well, he recognized it as an individual that
9 frequented his business often.

10 Q. Okay.

11 A. And he was actually able to provide me with a
12 receipt from when he had purchased it -- purchased some
13 items recently, maybe the day prior or the morning that I
14 was there.

15 Q. Okay. And did he -- was he able to give you a
16 name of this individual?

17 A. Yes, he was. As well as the receipt had a name on
18 it as well.

19 Q. And who -- who did he tell you it looked like or
20 who did he tell the sketch was?

21 A. The defendant.

22 Q. Jeremiah Dicapua?

23 A. Yes.

24 Q. And did you get any other pictures?

25 A. He was able to provide me with still shots from a

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 security system of Mr. Dicapua in the store earlier, as well
2 as providing me with pictures of the vehicle that he arrived
3 in or that he was driving.

4 Q. Okay.

5 MS. RICHARDSON: I want to mark these as a group.

6 THE COURT: Once you start talking about them, and
7 you talk about them separately, then we're not going to know
8 which one he's talking about.

9 MS. RICHARDSON: Okay.

10 THE COURT: You're going to have to mark them
11 separately.

12 MS. RICHARDSON: I can group them as to the screen
13 shots of the vehicle, if that's suitable, Your Honor.

14 THE COURT: All right.

15 MS. RICHARDSON: Okay. So if we could mark for
16 identification as 5, as a collection of three screen shots.
17 As 6, would be three photos from a vehicle. And then 7, a
18 receipt.

19 (WHEREUPON, State's Exhibit Numbers 5, 6, and 7
20 were marked for identification.)

21 BY MS. RICHARDSON:

22 Q. Okay. So I'm showing you State's Exhibit 5, which
23 is comprised of three -- copies of three photos.

24 Do you recognize those?

25 A. Yes, I do. These were sent to me by the owner of

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 the liquor store.

2 Q. Okay. And is that actually a photo of screen
3 shot, so it's a little blurry?

4 A. Yes.

5 Q. Okay. And then Number 6, which is three photos.

6 A. It's actually a photo of the screen, the computer
7 monitor.

8 Q. Oh, you're talking about State's Number 5 were
9 actually a photo of a computer monitor that had the ---

10 A. Yes, it made it have the blur to it.

11 Q. So it had the surveillance video pulled up and
12 then somebody took a picture or he took a picture of that?

13 A. Yes, ma'am.

14 Q. Okay. And then 7?

15 A. These were the vehicle -- photographs of the
16 vehicle and then the tag that he sent to me, as well.

17 Q. And then Mr. Varcapaine, or Varcadipane, provided
18 to you?

19 A. Yes.

20 Q. And he actually took those photos or told you he
21 had taken them?

22 A. Yes. And then some via cellphone.

23 Q. Okay.

24 A. And this is the copy of the receipt.

25 Q. Okay. That you just referenced? Now, does it

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 actually have a name on it of a customer?

2 A. No, just -- just the signature.

3 Q. Okay. But that's the receipt that was given to
4 you by the liquor store owner?

5 A. Yes.

6 Q. Okay.

7 MS. RICHARDSON: Your Honor, at this time I'd
8 offer 5, 6, and 7 into evidence for the purposes of this
9 hearing.

10 THE COURT: Any objection?

11 MR. TODD: No objection for the purposes of this
12 hearing.

13 THE COURT: All right. I'm going to allow them
14 into evidence for the hearing.

15 (WHEREUPON, State's Exhibit Numbers 5, 6, and 7
16 were admitted into evidence.)

17 BY MS. RICHARDSON:

18 Q. Okay. Now, as far as the still shots and the
19 photos of the vehicle, were you able to compare that to the
20 composite and the descriptions given by the victim?

21 A. Visually looking at it, yes.

22 Q. Okay. And what did -- what was your opinion at
23 that point?

24 A. It was a fairly accurate sketch.

25 Q. And did you -- what about the vehicle?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. Oh, it was accurate.

2 Q. As far as the description that was originally
3 given?

4 A. Yes, ma'am.

5 Q. Okay. And based on that what did you do or what
6 did the Sheriff's Office do?

7 A. I think initially a lineup was obtained, a
8 photographic six-pack lineup. And it's my understanding
9 that the quality of that lineup was not good.

10 Q. Okay. Now, did you participate in that process?

11 A. I did not.

12 Q. Okay. So -- but your information is -- did -- was
13 that lineup shown to the victim?

14 A. Yes.

15 Q. And is it your information whether or not she
16 picked anybody out of that lineup?

17 A. I don't think she did. No, she did not.

18 Q. So what -- what did you decide to do at that
19 point?

20 A. At that point, we had a name and location of the
21 defendant. So we went by his house -- well, we decided to
22 do a driveby, for a lack of a better word. We met with the
23 victim, secured her in an unmarked vehicle, and myself and
24 another investigator were also in an unmarked vehicle, went
25 to the house.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Once we got to the house, the vehicle was parked
2 in the driveway with the rear of the vehicle facing the
3 roadway. We simply went up and knocked on the door and
4 asked to speak -- initially, I was the greeted by the
5 defendant's mother. We asked about the vehicle.

6 Q. And why were you asking about the vehicle?

7 A. Well, the vehicle actually had a out-of-date paper
8 tag on it.

9 Q. Okay. So in State's Number 6 it shows a picture
10 of the tag?

11 A. Yes, ma'am. That's correct.

12 Q. And the tag was expired?

13 A. Yes, it was expired at that time.

14 Q. Okay. So you went there with a -- you went to the
15 house to ask about the tag?

16 A. Well, no, I went to the house under the ruse of
17 asking about the tag in order to get mister -- the defendant
18 to step outside.

19 Q. Okay.

20 A. So then the victim would have an opportunity to
21 see him.

22 Q. And who was with you?

23 A. Investigator Carrison.

24 Q. And how were you dressed?

25 A. I don't recall specifically, but it would have

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 been either a collared blue shirt with either the sheriff's
2 embroidered badge or a shirt and tie.

3 Q. Okay. But not a full uniform?

4 A. No. It wouldn't have been the standard patrol
5 uniform, no, ma'am.

6 Q. No. And then what about the Officer Carrison,
7 that was with you, how was he dressed?

8 A. It would have been in the same manner as I.

9 Q. So neither of you would have been in a full
10 patrol?

11 A. No, ma'am.

12 Q. And what sort of vehicle did you have?

13 A. At the time, I want to say I had a dark blue
14 unmarked Dodge Charger.

15 Q. Were there any marked units there?

16 A. No, there was not.

17 Q. Okay. And did you -- did you speak with the
18 victim to arrange this?

19 A. No, ma'am, I did not.

20 Q. Okay. And what was the victim in?

21 A. I'm sorry?

22 Q. What sort of vehicle was the victim in?

23 A. I want to say it was a black pickup truck vehicle.

24 Q. So you had no -- but you didn't have any
25 conversations with the victim?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. No, but I -- and I -- and the reason I say that is
2 I'm not certain when investigator -- it was Investigator
3 Griffith's vehicle and I don't know if he's changed since
4 this occurred.

5 Q. And would it have been a marked or unmarked
6 vehicle?

7 A. No, it would definitely have been unmarked.

8 Q. Okay. And so you -- you went there and you said
9 the mother came to the door initially?

10 A. Yes, ma'am.

11 Q. Okay. And then -- then what happened?

12 A. Asked about the vehicle, she explained to me that
13 her son drives it. Asked if I could speak with him and he
14 come outside. And then, at that point, I asked him about
15 the vehicle and he knew his tag was expired. And we stepped
16 back and pointed out the expired paper tag. Meanwhile, the
17 victim was sitting across the road in the unmarked car.

18 Q. And that was the plan to get him outside?

19 A. Yes, ma'am.

20 Q. So explain to me why you didn't do a physical
21 lineup with, like, individuals? Why did you choose to do it
22 this way?

23 A. Well, several reasons. One of which is, at that
24 particular time, I mean, if I -- I couldn't have gone to him
25 and asked him to go with me to Georgetown to do a lineup,

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 which, I mean, we had no -- was -- had no warrant on him at
2 that time. So he could have denied even going with us. And
3 the other would be just simply trying to locate people
4 fitting the same physical description. And we just didn't
5 have a facility set up for that.

6 Q. Okay. So what do you mean as far as people
7 matching the description? Inmates?

8 A. Just the sheer impossible or difficulty it would
9 be, in that quick of a time frame in our area, to pull
10 together five other individuals that would be of similar
11 shape and size, complexion, to be presented with him in some
12 type of in-person stand-up ID, I guess.

13 Q. Okay. And what about -- was there any reason why
14 you wanted to do right then?

15 A. Well, obviously, we had -- between Horry County
16 and us there had been two calls on the same day of a
17 kidnapping -- attempted kidnappings on South Waccamaw.
18 We're dealing with the first of June, school's out. The
19 influx of people is tremendous that time of year, children,
20 all types of people. Foot traffic in and out of that area
21 is a lot and we had to do something. We had to move on it.
22 We couldn't -- we didn't have the luxury of a long,
23 drawn-out time.

24 Q. Because?

25 A. Of the nature of what we were dealing with. We

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 had our kidnapping and another reported attempted kidnapping
2 in a matter of -- well, in very close proximity to where
3 ours -- and shortly before ours.

4 Q. And you've already talked about Sam's Corner and
5 that area having arcades and amusement parks and the fishing
6 pier and all of that, hotels. What about when you turn
7 right on Waccamaw and go down South Waccamaw, around where
8 this happened. Explain that neighborhood and that area to
9 us.

10 A. It's a -- the roadway is paralleled by a
11 sidewalk, pretty much from one end to the other, and the
12 people use it to walk, bike, jog, and use it to get to the
13 closest beach accesses and stuff of that nature.

14 Q. Okay. So along South Waccamaw are beach accesses,
15 that's what I was asking about?

16 A. Yes, ma'am.

17 Q. Okay. And that's a beach house area?

18 A. Yes, it is. There's -- once you turn on that
19 area, I think it's primarily beach houses, there are maybe
20 one or two condo areas, but for the most part it's beach
21 houses.

22 Q. So if you're going down south -- South Waccamaw,
23 if you take a right at Sam's Corner and you're going down
24 South Waccamaw into Georgetown County, on your left is what?

25 A. I'm sorry?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. On your left, if you go to Sam's Corner and take a
2 right, what's on your left?

3 A. The pier.

4 Q. Okay. But if you're going down the road what are
5 you parallel to?

6 A. The ocean. The beach.

7 Q. The ocean. And then there are a row of beach
8 houses that are between the road and the ocean?

9 A. That's correct.

10 Q. Okay.

11 A. With the occasional beach access.

12 Q. In between the houses?

13 A. Right.

14 Q. And then what about on the other side?

15 A. Houses.

16 Q. Okay. And what is that bordered by? Is that sort
17 of cut off from the rest of the land?

18 A. Well, there -- there will be a parallel road or
19 two behind it, depending on where you're at on
20 South Waccamaw. And then past that would be the inlet.

21 Q. So is this like a peninsula?

22 A. Yes.

23 Q. Okay. And so the ocean on one side, the creek on
24 the other side, beach houses, like that?

25 A. Yes, ma'am.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. Okay. So -- and do you know if these houses are
2 mostly residential or rental?

3 A. I think the vast majority are short-term rental
4 houses.

5 Q. Okay. And so, obviously, people are traveling
6 from the beach houses that are second and third row to go
7 into the beach access?

8 A. Yes, ma'am.

9 Q. So lots of foot traffic and that sort of thing?

10 A. Oh, a tremendous amount.

11 Q. And was there any reason that you had confidence
12 that in the victim's ability to -- to identify the
13 defendant?

14 A. I'm sorry, can you repeat?

15 Q. Is there any particular reason why you felt like
16 she would be able to identify the defendant?

17 A. Well, she said that if she saw him again she would
18 definitely recognize him, as well as this was a pretty
19 fresh -- I mean, it had recently occurred.

20 Q. Okay. So this was just a few days after the crime
21 had occurred?

22 A. Yes, ma'am.

23 Q. So, obviously, we heard that it occurred on the
24 10th, and he was arrested on the 15th, so it was in that
25 window?

ROBERT SARVIS - CROSS BY MR. TODD

1 A. Yes, ma'am.

2 Q. And, again, how were you able to identify him as a
3 suspect?

4 A. Through obtaining the video and name from the
5 owner of the liquor store after him seeing the sketch.

6 Q. And that was the sketch that was done with the
7 victim?

8 A. Right.

9 Q. And that's what broke the case?

10 A. Yes, ma'am.

11 MS. RICHARDSON: I have no further questions.

12 Answer any questions that Mr. Todd may have for
13 you.

14 THE COURT: Cross-examination.

15 MR. TODD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. TODD:

18 Q. Investigator Sarvis, now, the incident had
19 occurred on the 10th; is that correct?

20 A. Yes.

21 Q. And that was a Sunday?

22 A. That's correct.

23 Q. Okay. And officers went out immediately on that
24 day to do an interview; is that correct?

25 A. Yes, that's correct.

ROBERT SARVIS - CROSS BY MR. TODD

1 Q. Okay. And the investigators came out that day, as
2 well?

3 A. They did.

4 Q. And there was a profile established, as well. Was
5 it on that same of what they were looking for?

6 A. Yes, that's correct.

7 Q. Okay. So it was a -- and refresh my memory if I'm
8 wrong, but it was a person 5'9" -- 5'8", 5'9", tan
9 complected, wearing no shirt, very tan, dark hair, black
10 shorts. Is this all correct?

11 A. To the best of my recollection, yes.

12 Q. Did she give an age bracket, would 40 to 50 sound
13 correct?

14 A. I want to say she said 50s.

15 Q. Okay. So then you had -- who had the artist come
16 out?

17 A. That would be Investigator Griffith.

18 Q. Okay. And did you ever see this or did he do
19 that, kind of, on his own?

20 A. Yeah. He did that prior to me getting involved.

21 Q. Okay. So then once that picture was put out --
22 and was that put out on social media?

23 A. Yes. I'm quite certain it was social media and
24 the media.

25 Q. Okay. Did people call in?

ROBERT SARVIS - CROSS BY MR. TODD

1 A. I don't think we got many calls on it.

2 Q. Okay. Were there other people ---

3 A. And I don't recall personally getting any --
4 fielding any from the social media side.

5 Q. Were there any other suspects derived from those
6 calls?

7 A. No.

8 Q. Okay. So there was nobody else pointed out?

9 A. Yeah. Not that I'm aware of, there was no other
10 suspects.

11 Q. Did they give any other names or say that they saw
12 anybody else?

13 A. Not that I recall, no.

14 Q. Did anybody else say that Mr. Dicapua was the
15 suspect other than the gentleman from the liquor store?

16 A. The ---

17 Q. Initially.

18 A. Okay. No. There was a video generated of a
19 vehicle, but no other people.

20 Q. Okay. So -- and let's jump in that real quick.

21 So there was video generated of the vehicle
22 itself?

23 A. Yes.

24 Q. And was it generated for that same day? As far as
25 it was on the day of the incident occurred or just ---

ROBERT SARVIS - CROSS BY MR. TODD

1 A. Yes, ma'am -- I mean, yes, sir. The day that the
2 incident occurred, just one video, that same time frame and
3 day.

4 Q. Okay. And was there a license plate on that
5 vehicle?

6 A. I don't recall seeing it. But, then again, I
7 didn't watch all the video.

8 Q. Did you ---

9 A. There was a snippet of video of the vehicle
10 exiting a -- or appeared to be exiting a crossroad on to
11 South Waccamaw and it was traveling in the opposite lane.

12 Q. Were you able to identify Dicapua's specific
13 vehicle from that video?

14 A. I was not, because I didn't -- I didn't look at it
15 that closely.

16 Q. Did anybody? Was it ---

17 A. It would have been Investigator Griffith.

18 Q. Was there any experts that came in and said, I can
19 see the license plate on this -- this car?

20 A. Not that I'm aware of.

21 Q. Were there any experts that came in and said this
22 car could not be any other vehicle?

23 A. No.

24 Q. So it was just another dark Jeep?

25 A. Yes.

ROBERT SARVIS - CROSS BY MR. TODD

1 Q. Okay. So it could have been any dark Jeep at that
2 point in time?

3 A. Again, I didn't look at it close enough in
4 comparison with the actual photographs of the Jeep that
5 we -- that was in his yard to say there were any specific
6 markings or not that would make it specific of that Jeep.

7 Q. So then let's go to the photo lineup itself. Were
8 you involved with creating the photo lineup?

9 A. I was not.

10 Q. Okay. And who does your photo lineups for the
11 Sheriff's Office?

12 A. SLED.

13 Q. And how does that work?

14 A. There's a digital request and you tell them who
15 you would like in a photo lineup and they generate it by
16 whatever means they generate it.

17 Q. And did you have anything to do with the photo
18 lineup itself as far as presenting it to the victim?

19 A. No, I did not.

20 Q. Okay. So that was also Investigator Griffith?

21 A. Yes.

22 Q. Okay. Did you ever see the lineup?

23 A. I don't recall seeing it before it was presented;
24 I've seen it since.

25 Q. Right. But not initially and not while it

ROBERT SARVIS - CROSS BY MR. TODD

1 presented?

2 A. Right. Uh-huh.

3 Q. And you were with her, though, during the show-up
4 lineup -- the show-up identification?

5 A. No. I was never with her, I was at the same
6 location, but she was in a vehicle and I was outside with
7 Investigator Carrison.

8 Q. So you and Investigator Carrison went first and
9 went to the residence itself?

10 A. Yes.

11 Q. Okay. So you never had any interaction with her
12 while she was there?

13 A. No, I don't know that I ever actually personally
14 even spoke with the victim prior to this.

15 Q. Okay. So that would have been Griffith as well
16 that was inside of that vehicle?

17 A. Yes.

18 Q. Was there anybody else in the vehicle with her?

19 A. Yeah. I want to say Investigator Aswad was in the
20 vehicle.

21 Q. Okay. Now, were there any other suspects that you
22 looked for as far as this investigation goes? Did you look
23 at anybody else or was it always kind of narrowed down on
24 Mr. Dicapua?

25 A. No. Once we -- no, mister -- the defendant was

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 the only suspect.

2 MR. TODD: I have no further questions. Thank
3 you.

4 THE COURT: Redirect?

5 MS. RICHARDSON: No, Your Honor.

6 THE COURT: You may step down. Next witness.

7 MS. RICHARDSON: The State calls Jonathan
8 Griffith.

9 THE COURT: Please come around.

10 JONATHAN GRIFFITH, having been duly sworn
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q. You've already some additional testimony about
15 your experience with law enforcement and that sort of thing;
16 is that right?

17 A. Correct.

18 Q. So -- and you've already indicated that you were
19 the on-call investigator that responded to this case on June
20 10th?

21 A. Yes, ma'am.

22 Q. And how did you -- and we already talked about how
23 Horry County was the initial one to get the reported 911
24 call?

25 A. Correct.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And so how did you get the description of the
2 suspect and the vehicle?

3 A. Are you talking about how the schedule was?

4 Q. No. Just, in general, when you got there who told
5 you what happened?

6 A. Well, initially I spoke with Deputy Duval to
7 get -- of what happened and then I spoke with the victim.

8 Q. Okay. And were you able to get a general
9 description?

10 A. Yeah. For the most part. That's when I called
11 the sketch artist.

12 Q. And what -- and who did you get the description
13 from?

14 A. The victim.

15 Q. Okay. And tell me -- can you, if you recall, how
16 she described what had occurred?

17 A. She says she was jogging up South Waccamaw, a
18 white male matching the description of the defendant
19 attempted to -- well, he did grab her, but she was able to
20 get away from him and flee the scene.

21 Q. Okay. And did she give you a physical
22 description?

23 A. Yeah, I mean, I don't recall the exact words she
24 described him as, but, yeah, she gave me a physical
25 description.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Okay. Race?

2 A. White.

3 Q. Height?

4 A. I don't recall the exact height. I don't
5 remember.

6 Q. Okay. And was she able to kind of generally tell
7 you his ---

8 A. Yes.

9 Q. Okay. What else did she say?

10 A. The description of the vehicle, a black midsize
11 SUV.

12 Q. Okay. And was she able to describe his stature?
13 Fat, thin, skinny?

14 A. Not fat, but a husky-built male.

15 Q. Okay. And tell me why you just -- so you made the
16 decision to get the sketch artist?

17 A. Yeah. After she said -- I explained to her if I
18 was able to have a sketch made of the suspect would you be
19 able to describe the suspect to a sketch artist to have him
20 do a sketch, and she said, Yes.

21 Q. Okay. And so how did you arrange -- who do you
22 usually do -- get that from?

23 A. Well, you can -- we usually go through SLED, but
24 with the knowledge that Horry County Sheriff's Office had,
25 an individual who had been certified as a sketch artist, I

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 contacted them, due to the time frame. Because if we
2 contacted SLED we would have been waiting three to
3 four hours.

4 Q. Okay. And so you contacted Horry County because
5 you wanted it faster?

6 A. Correct. With what we were dealing with, you
7 know, it being summer time there's a lot of vacationers. We
8 had already one incident report in Horry County. So at the
9 time I'm not sure if they're related, but we may have
10 someone attempting to, you know, harass or kidnap women
11 jogging. I don't know at the time. So I'm trying to move
12 as fast as I can.

13 Q. Okay. And you also -- and it's already been
14 marked or entered as State's 4, is that the sketch that was
15 done?

16 A. Yes.

17 Q. Okay. And did you also assist in the canvassing
18 of video?

19 A. Yes, I did.

20 Q. And was video located?

21 A. Yes. Of the vehicle.

22 Q. And what about of Mrs. Starnes, the victim?

23 A. Yes.

24 Q. Did the video show her as well?

25 A. Yes, it did depict her walking past the residence

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 we obtained video from.

2 Q. Okay. And what else were you able to see on that
3 video?

4 A. We were able to see a vehicle matching the
5 description of the one operated by the defendant.

6 Q. And where did that description come from?

7 A. The victim.

8 Q. The victim. Okay. And what did you see on the
9 video?

10 A. Initially, watching the video, you observe the
11 victim walk by. At the time we didn't know it wasn't the
12 vehicle we were looking for. It went by before the victim
13 goes by the residence, but after the victim goes by, you see
14 a vehicle matching the defendant's description headed
15 northbound in the wrong lane.

16 So, being that it was in the wrong lane, we were
17 actually able to capture more on video of the vehicle. Then
18 we went back and watched the video again, we noticed that
19 even though we could only see from the rims of the vehicle
20 to the, I guess, maybe midway up the door, we were able
21 to -- it's beyond a reasonable doubt that that's the same
22 vehicle going southbound before the victim passes the house.

23 Q. Okay. So the vehicle -- and where was this house?
24 Which county was this house in?

25 A. Georgetown.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Okay. So you saw on the video -- this is from
2 another beach house?

3 A. Correct.

4 Q. Okay. So you see a vehicle going south like into
5 Georgetown?

6 A. Correct. Well, initially watching the video, I
7 didn't know that was the vehicle that we were looking for.

8 Q. Okay.

9 A. But after we see the victim walk past the house
10 you see ---

11 Q. And what direction is the victim going?

12 A. She's going south.

13 Q. Okay.

14 A. On South Waccamaw.

15 Q. Like further into Georgetown?

16 A. Correct. After she passes the house you observe a
17 vehicle that you can clearly see matches the description of
18 the defendant going back northbound in the wrong lane.
19 Which, being that we could identify better in that version,
20 is because he was in the wrong lane and more of the vehicle
21 got caught on camera.

22 Q. Okay. And what -- what sort of things were you
23 noticing about that vehicle?

24 A. The rims, the shape of the vehicle, the color,
25 some of the, I guess, designs in the body that matched up

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 with the defendant's vehicle.

2 Q. Okay. And this is early -- this is before the
3 arrest?

4 A. Correct.

5 Q. When you're developing the suspect?

6 A. Correct.

7 Q. Okay. And was that description also put out on
8 social media of a vehicle?

9 A. Yeah. If I remember right, a description of the
10 vehicle was put out. I'm not sure what type of -- I don't
11 think we could verify what type of vehicle it was at the
12 time.

13 Q. Okay. Now, did you go to the liquor store with
14 detective -- or Investigator Sarvis?

15 A. No.

16 Q. No, you didn't?

17 A. I didn't go to the liquor store.

18 Q. Okay. But you -- did you get the information
19 about who the potential suspect was?

20 A. Correct.

21 Q. And what did you do at that point?

22 A. With the description we -- taken that information,
23 we were able to develop a suspect's name and where he lived
24 at.

25 Q. Okay.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Which we learned was within the area, close by.

2 Q. Okay. But in Horry County?

3 A. Correct.

4 Q. Okay. And what did you do once you had developed
5 his name or had his name?

6 A. Had a photo lineup made through SLED.

7 Q. Okay.

8 A. Which I sent out the defendant's information, they
9 emailed me back a photo lineup to print out.

10 Q. Okay. And can you tell me what this is that's
11 been marked as State's 8?

12 (WHEREUPON, State's Exhibit Number 8 was marked
13 for identification.)

14 A. That's the SLED-produced photo lineup.

15 Q. Okay. And the case number on the bottom, did you
16 write that?

17 A. Correct.

18 Q. Okay. And that's this case?

19 A. Correct.

20 Q. And is that an accurate representation of the
21 lineup that was developed by SLED? I know this is a copy.

22 A. Yes.

23 MS. RICHARDSON: Your Honor, at this time I'd
24 offer State's 8 into evidence for purposes of this hearing.

25 THE COURT: Any objection?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 MR. TODD: No, Your Honor.

2 THE COURT: It's into evidence.

3 (WHEREUPON, State's Exhibit Number 8 was admitted
4 into evidence.)

5 BY MS. RICHARDSON:

6 Q. Okay. And once you got the lineup, what did you
7 do at that point?

8 A. After I got the lineup, I printed the lineup out,
9 then took it to the victim, I believe it was me and
10 Investigator Carrison, we arrived at the victim's residence
11 to show her the lineup.

12 Q. Okay. And this was a vacation for the victim,
13 that wasn't her permanent residence; is that right?

14 A. Correct. Correct.

15 Q. Okay. And so it was you -- who was present for
16 this lineup?

17 A. If I recall, myself, Investigator Carrison, the
18 victim, and her husband.

19 Q. Okay. And did you give any instructions at that
20 point?

21 A. Yes. I explained to them what a photo lineup is.
22 And I explained to them what they have to do, if you see
23 someone -- if you see the suspect in the photo lineup, what
24 to do, which is to circle, initial. And then I let them
25 view the photo lineup.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And did you tell them that the suspect was in the
2 video?

3 A. No.

4 Q. What did you -- what did you tell them?

5 A. Exactly what I just said. I don't suggest
6 anything to them. I just say, If you see the suspect in the
7 photo lineup, what to do.

8 Q. Okay. And what was her demeanor at that time?

9 A. She -- she wasn't able to pick anyone out of the
10 photo lineup.

11 Q. Okay.

12 A. She didn't recognize any of the six individuals in
13 the lineup as being the one who she described as in the
14 incident.

15 Q. Okay. And did you what -- what were your feelings
16 about the photo lineup?

17 A. I believe that the photo lineup produced was of
18 very poor quality. The photo depicted of the defendant in
19 the lineup was a younger photo of him, which he did not look
20 like that at the present time of the lineup. I just -- I
21 think it was a little -- maybe if we had more updated photo
22 of him, I would have been more pleased with it. But when I
23 got it back from SLED I wasn't pleased with the quality of
24 it.

25 Q. Okay. So you -- and did you, at that point,

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 decide to do an in-person identification?

2 A. Yes. After -- after the -- after she couldn't
3 identify anybody through the photo -- SLED-produced photo
4 lineup, I referred with the Solicitor's Office on what
5 actions could we take next, which we came up with the
6 drive-by identification.

7 Q. Okay. And that was not with me, though; is that
8 correct? You didn't meet with me?

9 A. No. No.

10 THE COURT: Who did you meet with?

11 BY MS. RICHARDSON:

12 Q. Who did you meet with?

13 A. At the time it was Solicitor Todd.

14 Q. And so you heard Detective Sarvis talk about the
15 circumstances of this identification. Were you in the
16 vehicle with the victim?

17 A. Correct. Myself and I believe it was Investigator
18 Aswad.

19 Q. Okay. And did she have anybody with her?

20 A. No.

21 Q. Was her husband?

22 A. I don't recall if anybody was with her.

23 Q. Okay. And what did you tell her about what you
24 were going to do?

25 A. I told her that we -- a possible suspect has been

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 identified through all the evidence gathered in the case.
2 And what we were going to do is drive you by that person,
3 and if you recognize him, you know, let us know.

4 So we drove her by the house while Investigator
5 Carrison and Investigator Sarvis were out talking to him.
6 And as soon as she -- as soon as we pulled up in front of
7 the house she instantly had a reaction to the vehicle and
8 the defendant.

9 Q. Okay. So when you got there was the defendant
10 outside?

11 A. Correct.

12 Q. Okay. And so what was her reaction when she saw
13 the vehicle?

14 A. You could tell that it caused her to be very
15 upset. She started to panic a little bit as to, I guess,
16 reliving what had happened.

17 Q. Okay. And what did she do when the defendant came
18 out?

19 A. What?

20 Q. When the defendant came out, what did she do?

21 A. He was already standing out there.

22 Q. Okay.

23 A. Yeah.

24 Q. And what was her reaction to him?

25 A. She became very emotional and upset. Saying

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 that's -- that's the vehicle and that's him.

2 Q. Okay. And did she give you a level of certainty
3 in that regard?

4 A. Yes. She -- she was 100 percent that that was him
5 and the vehicle.

6 Q. Okay. And did you get a statement from her
7 regarding that identification?

8 A. Yes, I did.

9 Q. Let me show you what's been marked now as State's
10 9, and can you tell me what that is?

11 (WHEREUPON, State's Exhibit Number 9 was marked
12 for Identification.)

13 A. That is the victim's statement.

14 Q. Okay. And that was from the identification?

15 A. Correct.

16 MS. RICHARDSON: Your Honor, at this time I'd
17 offer State's Number 9 into evidence for purposes of this
18 hearing only.

19 THE COURT: Any objection to that?

20 MR. TODD: No objection, Your Honor.

21 THE COURT: All right. I'm going to allow it into
22 evidence for the hearing.

23 (WHEREUPON, State's Exhibit Number 9 was entered
24 into evidence.)

25

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 BY MS. RICHARDSON:

2 Q. And if you would just read that statement for us,
3 please.

4 A. On Sunday June 10th, I was out for a run/walk on
5 South Waccamaw. There was a man that pulled up to a stop
6 sign at Cedar Avenue and opened his car door. He was trying
7 to say something to me and I continued to walk. By the time
8 I got to the Moonfish Road area, he pulled over and was
9 waiting on me. He attempted three times to grab me. On the
10 third time, he got my arm, and I jerked away and yelled, No.
11 I sprinted as fast as I could until I saw a house with lots
12 of cars and got behind.

13 On Thursday, June 14th, Inspector Griffith took me
14 by his house along with other investigators and got the man
15 out of the house while waiting on him to come out I noticed
16 the car and immediately knew it was the car. As soon as the
17 door opened he walks out and I saw his face. It took me
18 back to that Sunday morning and I knew it was the man who
19 tried to kidnap me. It literally took my breath away. I
20 immediately related to Inspector Griffith that that is the
21 man without a doubt.

22 Q. Now, prior to taking her there, did you -- did you
23 tell her any of the evidence that you had gathered or
24 anything like that?

25 A. No. I don't -- I don't believe I did, no.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: All right. I have no further
2 questions. Answer any questions that Mr. Todd may have for
3 you.

4 THE COURT: Before you do that, Mr. Todd.

5 So the six pack or the six pictures, just to be
6 clear, the representation of the defendant was in those six
7 pictures?

8 THE WITNESS: Correct.

9 THE COURT: All right. But you did not indicate
10 that to the victim?

11 THE WITNESS: No.

12 THE COURT: All right. When she could not pick
13 out the defendant from that six pack of photographs, did you
14 communicate with SLED to have them redo the six pack?

15 THE WITNESS: No, Your Honor.

16 THE COURT: You talked to then Solicitor Todd as
17 to what to do?

18 THE WITNESS: Correct.

19 THE COURT: And he gave you advice as to what to
20 do?

21 THE WITNESS: Correct.

22 THE COURT: And was that to do a in-person or a
23 one-person showing?

24 THE WITNESS: Correct.

25 THE COURT: Can you recall any of the discussions?

1 THE WITNESS: I advised what the -- what had
2 occurred with the showing of the six pack, or photo lineup,
3 and asked what were our further options that we could do.
4 We didn't have a better photo to supply SLED of the
5 defendant.

6 THE COURT: Okay. The photographs from the liquor
7 store were not available to you?

8 THE WITNESS: They were not. They were of poor
9 quality, Your Honor.

10 THE COURT: Okay. All right. Solicitor and
11 Mr. Todd, you all need to come talk to me, please.

12 MR. TODD: Yes, sir.

13 THE COURT: Thank you.

14 (A brief pause was held from 5:05 p.m. until 5:10
15 p.m.)

16 THE BAILIFF: All rise.

17 RULING

18 THE COURT: Thank you very much, you may be
19 seated. Thank you all. Thank you all. All right.

20 It has become clear to the Court, based upon the
21 testimony of the investigator that then Solicitor Richard
22 Todd, and now with the Public Defender's Office and
23 representing the defendant, is now a witness as to what
24 occurred regarding this one-person showing.

25 And in that capacity, obviously, Mr. Todd can no

1 longer, even with the defendant's consent, continue to
2 represent the defendant in this matter. That's just not
3 possible. It would be a clear violation of the ethics code
4 for Mr. Todd to represent the defendant under these
5 circumstances.

6 So there's no choice at this point in time but to
7 continue this matter to a later date. The Public Defender's
8 Office will have to secure other representation of the
9 defendant that does not include Mr. Todd.

10 Mr. Todd, please do not have any further
11 conversations with the defendant from this time forward
12 about the case.

13 Mr. Harte, you've been present, you may discuss
14 the situation with him as a member of the Public Defender's
15 Office to explain to the defendant the situation, but
16 someone else will have to take over the representation of
17 the defendant. And I'm hereby relieving Mr. Todd of
18 responsibility and duty to represent the defendant.

19 And, again -- and I know you won't, but just for
20 the record to be clear -- Mr. Todd, do not discuss the
21 matter further with the defendant. Do not answer any of his
22 questions. Leave that to Mr. Harte to do.

23 This matter then is continued to a later date.

24 Thank you, very much.

25 MR. TODD: Thank you, Your Honor.

1 MR. HARTE: Thank you, Your Honor.

2 MS. RICHARDSON: Your Honor, would you like for me
3 to prepare a Form 4 in that regard?

4 THE COURT: Yes, ma'am. You're going to need to
5 do that and let Mr. Harte look at the form and then give it
6 to the Court for my signature. But, set forth the
7 situation, you might need to go into some detail. Not just
8 the Court's relieving Mr. Todd. I think it probably calls
9 for a little bit more detail than we might normally put in a
10 Form 4. All right. And if you want to wait until tomorrow
11 to give that to me, that's fine.

12 So I'll let you all sort things out for a minute.
13 And then on the docket, not on this case, on the docket,
14 then I want to talk to you, Solicitor, and you, Mr. Todd, as
15 to the docket. All right. Thank you, very much.

16 END OF REQUESTED PROCEEDINGS
17
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 CASE NO. 2018-GS-22-00677
3 COUNTY OF GEORGETOWN) TRANSCRIPT OF RECORD
4 -----
5 May 11 - 14, 2021
6 Georgetown, South Carolina
7 BEFORE: The Honorable Steven John, Judge; and a jury
8 -----
9 STATE OF SOUTH CAROLINA,
10 Plaintiff,
11 -vs-
12 JEREMIAH DICAPUA,
13 Defendant.
14 -----
15 APPEARANCES:
16
17 Alicia Richardson, Esq.
18 Elizabeth Smith, Esq.
19 Solicitors for the State
20
21 William Edgeworth, Esq.
22 Attorney for the Defendant
23
24 Official Court Reporter,
25 Cynthia D. Weaver

1	<u>I N D E X</u>	
2	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
3	(MAY 11, 2021)	
4	Jeremiah Dicapua Arraignment.....	9
5	Jury Voir Dire.....	11
6	Jury Seated.....	26
7	Jury Challenges.....	34
8	<u>Neil v. Biggers</u> Hearing.....	52
9	JONATHAN GRIFFITH	
10	Direct by Ms. Richardson.....	53
11	Cross by Mr. Edgeworth.....	73
12	Redirect by Ms. Richardson.....	82
13	Recross by Mr. Edgeworth.....	84
14	ROBERT SARVIS	
15	Direct by Ms. Richardson.....	87
16	Cross by Mr. Edgeworth.....	97
17	STACEY STARNES	
18	Direct by Ms. Richardson.....	104
19	Cross by Mr. Edgeworth.....	117
20	Redirect by Ms. Richardson.....	126
21	Further Redirect by Ms. Richardson.....	128
22	Defense Arguments.....	129
23	State Arguments.....	133
24	Judge Ruling.....	137
25	(CONTINUED THE NEXT PAGE)	

	I N D E X	
	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2	(MAY 12, 2021)	
3		
4	Pre-Trial Matters.....	141
5	Jury Sworn.....	152
6	Jury Instructions.....	152
7	Opening Statements	
8	Ms. Smith.....	156
9	Mr. Edgeworth.....	162
10	STACEY STARNES	
11	Direct by Ms. Richardson.....	165
12	Cross by Mr. Edgeworth.....	190
13	Redirect by Ms. Richardson.....	199
14	JASON STARNES	
15	Direct by Ms. Richardson.....	203
16	Cross by Mr. Edgeworth.....	212
17	ARTHUR BLACKBURN	
18	Direct by Ms. Richardson.....	216
19	JAMES VARCADIPANE	
20	Direct by Ms. Richardson.....	221
21	Cross by Mr. Edgeworth.....	233
22	Redirect by Ms. Richardson.....	237
23	SCOTTY JORDAN	
24	Direct by Ms. Richardson.....	238
25	(CONTINUED THE NEXT PAGE)	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
DAWUD ASWAD	
Direct by Ms. Smith.....	246
Cross by Mr. Edgeworth.....	254
Redirect by Ms. Smith.....	258
KATHERINE SELBY	
Direct by Ms. Smith.....	260
Cross by Mr. Edgeworth.....	269
JONATHAN GRIFFITH	
Direct by Ms. Richardson.....	272
Cross by Mr. Edgeworth.....	304
Redirect by Ms. Richardson.....	316
Recross by Mr. Edgeworth.....	317
ROBERT SARVIS	
Direct by Ms. Richardson.....	320
Cross by Mr. Edgeworth.....	332
Redirect by Ms. Richardson.....	337
Recross by Mr. Edgeworth.....	338
BENJAMIN WELLS	
Direct by Ms. Richardson.....	340
Motions.....	341
(CONTINUED THE NEXT PAGE)	

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER

(MAY 13, 2021)

Trial Issues.....353

STEPHEN BROWN

Direct by Ms. Smith.....356

CRAIG LEWIS

Direct by Ms. Richardson.....369

Cross by Mr. Edgeworth.....376

Redirect by Ms. Richardson.....379

THOMAS J. RIDER, JR.

Direct by Ms. Richardson.....380

Cross by Mr. Edgeworth.....386

State Rests.....389

Motions.....390

Defendant's Rights.....396

Defense Rests.....409

Closing Arguments

By Ms. Richardson for the State.....409

By Mr. Edgeworth for the Defendant.....428

Charge Conference.....435

(CONTINUED THE NEXT PAGE)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
(MAY 14, 2021	
Charge Conference.....	439
Charge on the Law.....	441
Verdict.....	461
Motions.....	465
Sentence.....	472
Jury Strike Sheet.....	474
Court Reporter Certificate.....	476

<u>E X H I B I T S</u>				
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARK</u>	<u>ADMIT</u>	
	Pre-Trial Hearing (1-9 Previously marked, admitted for the			
	Neil v. Bigger hearing and then admitted in trial.)			
S-1	CD 6/15/2018 Unredacted Interview			
S-2	Miranda Form 6/21/2018			297
S-3	CD 6/21/2018 Unredacted Interview			
S-4	Sketch Artist Composite	61		
S-5	Atlantic Liquor's Screen Shots (3)	65		228
S-6	3 Photos Atlantic Liquor	65		230
S-7	Atlantic Liquor Receipt 6/12/2018	65		230
S-8	Photo Lineup	67		289
S-9	Stacey Starnes Statement 6/15/2018	72		
Trial	(10-41 Premarked for this trial.)			
S-10	GIS Map	140		165
S-11	CD 911 Call Jason and Stacey Starnes	140		169
S-12	Fitness Tracker Map	140		179
S-13	Sketch Artist Composite	140		185
S-14	Photo J. Kelly Body Camera	140		181
S-15	Photo Video from [REDACTED] South Waccamaw	140		182
S-16	CD video from [REDACTED] South Waccamaw	140		283
S-17	CD 6/15/2018 Redacted Interview	140		249
S-18	CD 6/21/2018 Redacted Interview	140		299
S-19	CD Search Warrant Photos	140		
S-20	Black Shorts	140		302

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARK</u>	<u>ADMIT</u>
3	S-21	Photo of Dicapua	140	338
4	S-22	Documents Enterprise	140	264
5	S-23	CD Photos from Enterprise	140	267
6	S-24	Not introduced or admitted		
7	S-25	Not introduced or admitted		
8	S-26	Not introduced or admitted		
9	S-27	Not introduced or admitted		
10	S-28	Internet Searches iPhone 6	140	
11	S-29	Computer Internet Searches	140	
12	S-30	CD 6/19/2018 Unredacted Jail Call	140	
13	S-31	CD 6/19/2018 Redacted Jail Call	140	363
14	S-32	CD 8/13/2018 Unredacted Jail Call	140	
15	S-33	CD 8/13/2018 Redacted Jail Call	140	366
16	S-34	CD 8/26/2018 Unredacted Jail Call	140	
17	S-35	CD 8/26/2018 Redacted Jail Call	140	366
18	S-36	CD 10/24/2018 Unredacted Jail Call	140	
19	S-37	CD 10/24/2018 Redacted Jail Call	140	366
20	S-38	CD 911 Call Craig Lewis 6/11/2018	140	371
21	S-39	Booking Photo	140	
22	S-40	Accident Report	140	
23	S-41	CD Search Warrant Photos	140	295
24	C-1	State's Potential Witness List	140	
25	C-2	Jury Question/Answer		455

1 MAY 11, 2021

2 (WHEREUPON, the proceedings began at 10:37 a.m.)

3 THE COURT: What might the situation be with
4 Mr. Dicapua?

5 MR. EDGEWORTH: Your Honor, I did, in fact,
6 present the State's final offer to my client. He has
7 rejected and therefore if the Court will proceed with a
8 trial in this matter?

9 THE COURT: All right. Very good. All right.

10 Mr. Dicapua, what I would like to do before we
11 proceed, I do want to arraign him so that I understand the
12 situation. Tell me, regarding the charge of kidnapping,
13 does Mr. Dicapua have a prior record?

14 MS. RICHARDSON: He does, Your Honor. And the
15 State has served notice of life without parole.

16 THE COURT: All right. Very good. All right.

17 Let's arraign Mr. Dicapua then before we call the
18 jury in. So let's bring him into the courtroom, please.

19 (WHEREUPON, the defendant entered the courtroom at
20 10:37 a.m.)

21 THE COURT: Place him under oath, please.

22 THE CLERK: Mr. Dicapua, will you raise your right
23 hand?

24 THE DEFENDANT: Yes, ma'am.

25 THE CLERK: Do you solemnly swear or affirm the

1 testimony you're about to give will be truth the whole
2 truth, and nothing but the truth, so help you God?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: You want to call the case, Solicitor,
5 please?

6 MS. RICHARDSON: Yes, Your Honor. This is the
7 State of South Carolina versus the Jeremiah Dicapua. It's
8 2018-GS-22-677, that's a True Billed Indictment for
9 kidnapping.

10 THE COURT: All right. And as I understand it,
11 the State made a plea offer to the defendant; is that
12 correct?

13 MS. RICHARDSON: Yes, Your Honor. That plea offer
14 was 15 years. He has been served with notice of life
15 without parole based on a 1980 conviction for murder.

16 THE COURT: All right. Very good. All right.

17 Mr. Dicapua, the purpose of this arraignment
18 before the trial is to explain the situation to you. The
19 State has offered to you a plea bargain to plead to the
20 minimum sentence for kidnapping, 15 years. They have served
21 you with notice of life in prison.

22 What that means is -- and you're welcome to
23 exercise your Constitutional rights and have a jury trial.
24 Should you proceed to trial and you are convicted by a jury
25 of the crime of kidnapping, the only sentence that you will

1 receive is life in prison without the possibility of parole,
2 meaning, that if the jury convicts you, you will die in
3 prison. Do you understand this?

4 THE DEFENDANT: Yes, I do, sir.

5 THE COURT: Do you wish to accept the State's plea
6 bargain?

7 THE DEFENDANT: No, I do not, Your Honor.

8 THE COURT: Very good. Understanding that he is
9 rejecting the plea bargain and subjecting himself to life in
10 prison without the possibility of parole, that being the
11 only sentence that can be imposed by the Court, we will
12 proceed to trial. The jury is downstairs. We will bring a
13 panel up and we will start the trial.

14 Thank you very much.

15 THE DEFENDANT: Thank you.

16 (Whereupon, the end of the arraignment. Pause in
17 proceedings from 10:40 a.m. until 11:06 a.m. Proceedings
18 resumed.)

19 THE COURT: All right. Ladies and gentlemen, we
20 are going to pick the jury for the case of the State of
21 South Carolina versus Jeremiah Dicapua. The State of
22 South Carolina has charged the defendant with the crime of
23 kidnapping.

24 Now, this will be very short, but I'm going to
25 read to you the charge in the indictment. Before I do that,

1 I want to tell you, the indictment is merely the charging
2 document. The document which brings the matter to court.
3 It is not evidence and cannot be considered by anyone as
4 evidence in the case. The only reason I'm reading it to you
5 is to see if you happened to know anything about this
6 particular case or it brings to mind anything that you
7 believe needs to come to the Court's attention.

8 So the State of South Carolina has charged that
9 the defendant, Jeremiah DiCapua, did in Georgetown County,
10 on or about June 10th, 2018, unlawfully seize, confine,
11 inveigle, decoy, kidnap, abduct or carry away one Stacey
12 Starnes without authority of law, that being a violation of
13 the Code of Law in the State of South Carolina 1976 as
14 amended.

15 Is there any member of the jury panel that knows
16 anything about this particular case or is there anything
17 that you need to bring to the Court's attention at this
18 time?

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. What I'm going to do is
21 read to you the a list of possible or potential witnesses.
22 Just because I read these names doesn't mean that all of
23 these people are actually going to be witnesses, but the
24 possibility or the potential exists. And, after that, I
25 will ask if you happen to know any of them in any way

1 related by blood or marriage, personal friends,
2 acquaintances, work, anything.

3 Stacey Starnes.

4 Jason Starnes.

5 James Thomas Varcadipane. V-A-R-C-A-D-I-P-A-N-E.

6 Annie Locklear.

7 Arthur Blackburn.

8 Jonathan -- and these are all of the Horry County
9 Police Department -- Jonathan Kelly.

10 Sean Wyndra.

11 Zachary Reffey, Horry County Police Department.

12 Of the Horry County Sheriff's Office, Ben Wells
13 and Scotty Jordan.

14 Of the Georgetown County Sheriff's Office, Brian
15 Delval, Lee Wilson, Robbie Sarvis, Hank Carrison, Jonathan
16 Griffith.

17 Now, with South Carolina Law Enforcement Division,
18 Formally Coastal Carolina University Police, Daniel Todd.

19 Of the Fifteenth Circuit Solicitor's Office, Bill
20 Knowles, Stephen Brown.

21 Horry County GIS, Michael Martin.

22 Brittany Conner.

23 Katie Selby, works at Enterprise Rental Car.

24 Renee Hardwick, works at Horry County 911.

25 James Reed.

1 Craig Lewis.

2 Thomas Rider, Jr.

3 Joanne Clarey.

4 Joseph Williamson, Georgetown County 911.

5 Quentin Livingston, formerly with the Georgetown
6 Police Department.

7 Scott Scogins, Georgetown Police Department.

8 Dawud, D-A-W-U-D, Aswad, A-S-W-A-D, formally of
9 Georgetown County Sheriff's Department, now with the Federal
10 Bureau of Investigation.

11 Jeremiah Dicapua.

12 Marie Dicapua.

13 Karen Dicapua.

14 Is there any member of the jury panel related by
15 blood, marriage, close personal friends, acquaintances of,
16 knows any of these possible potential witnesses? If so,
17 please stand.

18 Yes, ma'am, your name and Juror Number, please,
19 ma'am?

20 JUROR: 135. Scott Scogins who is my child's
21 baseball coach.

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

25 JUROR: Yes, sir.

1 THE COURT: Thank you very much.

2 All right. Is there any member of the jury panel,
3 either you yourself, or a member of your immediate family,
4 ever had any matters handled in any way, worked on, touched,
5 by the Fifteenth Circuit Solicitor's Office that covers
6 Horry and Georgetown Counties? If so, please stand.

7 Yes, ma'am.

8 JUROR: Yes, my niece.

9 THE COURT: All right. Very good. Can you
10 give -- I'm sorry, I have to ask the qualification
11 question -- can you give the State of South Carolina and to
12 the defendant a fair and impartial trial, can you be a fair
13 and impartial juror in this case?

14 JUROR: Yes, sir.

15 THE COURT: Thank you, very much.

16 Is there any member of the jury panel that's
17 related by blood or marriage or close personal friends or
18 acquaintances of anybody employed at the Fifteenth Circuit
19 Solicitor's Office? If so, please stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. Counsel for the State, if
22 you would stand and identify yourself, please?

23 MS. RICHARDSON: My name is Alicia Richardson.

24 I'm the Deputy Solicitor here in Georgetown County and I
25 work for Jimmy Richardson, the Elected Solicitor for both

1 Horry and Georgetown Counties. And we are not related, even
2 though we have the same last name. And this is Elizabeth
3 Liz Smith and she is also employed here and prosecuting the
4 case along with me with the Georgetown County Solicitor's
5 Office.

6 THE COURT: All right. Mr. Edgeworth, if you
7 would identify yourself for the jury please, sir?

8 MR. EDGEWORTH: Thank you, Your Honor.

9 My name is Josh Edgeworth. I am a private
10 practitioner and also have an office in Pawleys Island in
11 Georgetown County and Quinby in Florence County.

12 THE COURT: Thank you. Is there any member of the
13 jury panel that's related by blood or marriage, close
14 personal friends, acquaintances of the members of the bar
15 that have identified themselves to you. And regarding
16 Mr. Edgeworth, any member of the jury panel have been
17 represented by him in the past in any capacity?

18 If any of that applies to you, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Very good. Is there any member of the
21 jury panel that you believe you have any kind of political,
22 personal, religious, philosophical belief that would prevent
23 you from being a fair and impartial juror in this case? If
24 so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Is there any member of the jury panel
2 that you yourself were a former law enforcement officer or
3 you have a current family member who is now in law
4 enforcement or was in the past in law enforcement? If any
5 of that applies, please stand.

6 All right. Yes, sir, your name and Juror Number,
7 please.

8 JUROR: Jim Smith, Juror Number 148. My
9 brother-in-law is the sheriff of Kanawah County, Charleston,
10 West Virginia. And my brother is a retired sheriff in
11 Lincoln County, Brookhaven, Mississippi.

12 THE COURT: All right. Sir, can you give to the
13 State of South Carolina and to the defendant a fair and
14 impartial trial, can you be a fair and impartial juror in
15 this case?

16 JUROR: Yes, sir.

17 THE COURT: Thank you very much.

18 All right. Name and Juror Number, please.

19 JUROR: Number 95, Michael Kuhl. My son is a
20 lieutenant for the Department of Justice in the Federal
21 System. I have two nephews that are West Virginia State
22 Troopers and a nephew that is Secret Service.

23 THE COURT: All right. Sir, can you give to the
24 State of South Carolina and to the defendant a fair and
25 impartial trial, can you be a fair and impartial juror in

1 this case?

2 JUROR: Yes.

3 THE COURT: Thank you very much.

4 Yes, ma'am, name and Juror Number, please?

5 JUROR: April Davis, Juror Number 24. My oldest
6 brother has been in law enforcement for 30 years, a deputy
7 for years and currently an investigator in Georgia.

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

12 JUROR: Yes, sir.

13 THE COURT: Thank you very much.

14 All right. Yes, sir, name and Juror Number,
15 please?

16 JUROR: Gerry Browne, Juror Number 15. My uncle
17 is Captain Haywood with the Georgetown County Police.

18 THE COURT: All right. Sir, can you give to the
19 State of South Carolina and to the defendant a fair and
20 impartial trial, can you be a fair and impartial juror in
21 this case?

22 JUROR: Yes.

23 THE COURT: Thank you very much.

24 And, yes, ma'am.

25 JUROR: Juror Number 163, Allisen Thornal. Two of

1 my cousins are police officers in Georgetown County.

2 THE COURT: All right. Ma'am, can you give to the
3 State of South Carolina and to the defendant a fair and
4 impartial trial, can you be a fair and impartial juror in
5 this case?

6 JUROR: Yes, sir.

7 THE COURT: Thank you very much.

8 All right. Is there any member of the jury panel
9 that either you yourself or a member of your immediate
10 family is a member of any kind of victim's rights or law
11 enforcement support organization?

12 I'm going to give you a couple of examples, not an
13 exhaustive list of any kind I'm just trying to give you a
14 couple of examples here: Mothers Against Drunk Driving,
15 Citizens Against Violent Crime, South Carolina Sheriff's
16 Association, South Carolina Law Enforcement Officer's
17 Association, just some kind of victim's rights or law
18 enforcement support organization yourself or family member a
19 member?

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. This next question, ladies
22 and gentlemen, I'm going to ask whether you yourself or a
23 member of your immediate family has ever been the victim of
24 a crime.

25 Now, I'm not going to ask you what occurred. I do

1 not want you to volunteer any information to me about what
2 occurred. The question will be straight forward, was it
3 yourself or family member or both, and then I'll ask the
4 qualification question. Is there any member of the jury,
5 either you yourself or a member of your immediate family has
6 ever been the victim of a crime? If so, please stand.

7 All right. Name and Juror Number, again, please,
8 sir.

9 JUROR: Tim Smith, Juror Number 148.

10 THE COURT: Yourself or family member?

11 JUROR: Both.

12 THE COURT: Can you give to the State of
13 South Carolina and to the defendant a fair and impartial
14 trial, can you be a fair and impartial juror in this case?

15 JUROR: Yes.

16 THE COURT: Thank you very much.

17 Yes, ma'am, name and Juror Number, again, please.

18 JUROR: Sherry Rufus, 135.

19 THE COURT: And yourself or family member or both?

20 JUROR: Family member.

21 THE COURT: Can you give to the State of
22 South Carolina and to the defendant a fair and impartial
23 trial, can you be a fair and impartial juror in this case?

24 JUROR: Yes, sir.

25 THE COURT: Thank you, ma'am.

1 Yes, ma'am, name and Juror Number, please.

2 JUROR: Juror Number 167, Jyana Washington.

3 THE COURT: And yourself or a family member?

4 JUROR: Both.

5 THE COURT: Can you give to the State of
6 South Carolina and to the defendant a fair and impartial
7 trial, can you be a fair and impartial juror in this case?

8 JUROR: No, sir.

9 THE COURT: All right, ma'am. Come up and talk to
10 me for just one second, please. What's the situation?

11 JUROR: There were crimes against me.

12 THE COURT: All right. And I can understand that,
13 and what I'm going to do is set you aside for this
14 particular case. You just go back and have a seat. Thank
15 you ma'am, I appreciate it very much.

16 JUROR: Thank you.

17 THE COURT: All right. Yes, ma'am, your name and
18 Jury Number, please, ma'am?

19 JUROR: Shurva Lance, Juror Number 99.

20 THE COURT: And yourself or family member?

21 JUROR: Family member.

22 THE COURT: Can you give to the State of
23 South Carolina and to the defendant a fair and impartial
24 trial, can you be a fair and impartial juror in this case?

25 JUROR: Yes.

1 THE COURT: Thank you very much.

2 Yes, ma'am, on the side, please?

3 JUROR: Juror 172, Elizabeth Williamson, a family
4 member.

5 THE COURT: Family member. All right. Can you
6 give to the State of South Carolina and to the defendant a
7 fair and impartial trial, can you be a fair and impartial
8 juror in this case?

9 JUROR: I'll certainly try, I'm not sure, sir.

10 THE COURT: Well, all right. Well, I really need
11 a --

12 JUROR: I'm not sure, sir.

13 THE COURT: Well, then why don't you come up and
14 talk to me for just one second. How about that up?

15 Counsel. You can come all the way around up here,
16 ma'am. So first let me go over with you very briefly, if
17 you're on the jury, you have to decide the case only on
18 facts that you hear. You can't let anything that happened
19 to you or anybody else, anything like that impact your
20 decision. It has to be only on what happened in this case
21 and then the law that the Court will give the jury at the
22 end. So that's the job of a juror.

23 JUROR: I understand.

24 THE COURT: So I'll ask you the qualification
25 question, but if you believe that you just don't know, you

1 don't think you can, then you'll have to say "No," because
2 "Yes," means that you absolutely can without reservation,
3 okay?

4 JUROR: Okay.

5 THE COURT: All right. So you give to the State
6 of South Carolina and to the defendant a fair and impartial
7 trial in this matter?

8 JUROR: No, sir.

9 THE COURT: All right. Thank you, ma'am. I'll
10 set you aside for this particular case. You don't have to
11 answer any more questions for this case.

12 JUROR: Thank you.

13 THE COURT: All right.

14 Yes, sir, your name and Juror Number, please.

15 JUROR: Craig Lewis, Juror Number 104.

16 THE COURT: And yourself or family member?

17 JUROR: A family member.

18 THE COURT: Can you give to the State of
19 South Carolina and to the defendant a fair and impartial
20 trial, can you be a fair and impartial juror in this matter?

21 JUROR: Yes, sir.

22 THE COURT: Thank you very much. All right.

23 Before I ask the Court's last question, any
24 further questions from the State?

25 MS. RICHARDSON: No, Your Honor.

1 THE COURT: From the defense?

2 MR. EDGEWORTH: Your Honor, I believe you covered
3 my proposed.

4 THE COURT: All right. Let me just make sure.
5 All right. Yes, I believe so. Thank you.

6 All right, ladies and gentlemen, I'm going to ask
7 you what I classify as my general or catch-all question.

8 Do you know of any reason, have any question in
9 your mind, any doubt in your mind that you believe you
10 cannot give to the State of South Carolina and to the
11 defendant a fair and impartial trial? That's for any reason
12 whatsoever you believe you can't be a fair and impartial
13 juror in this case? If so, please stand.

14 THE COURT: All right. Yes, sir.

15 JUROR: I apologize, Your Honor.

16 THE COURT: That's all right. Just hold on one
17 second.

18 First just tell me your name and Juror Number.

19 JUROR: Number 95, Michael Khul.

20 THE COURT: All right, sir. Come up here and talk
21 to me for just one second. That's fine, it's not a problem.

22 Yes, sir, what's is it.

23 JUROR: This should have come up downstairs, but
24 I'm over 65. And I want to serve but my wife has anxiety,
25 vertigo, other things. And, like today, I dopped her off at

1 my daughter's house, just for piece of mind.

2 THE COURT: I understand that. So do you think
3 based upon your wife's situation you'd rather be excused?

4 JUROR: I would.

5 THE COURT: All right, sir. Not a problem.
6 That's all right. Thank you, sir.

7 All right. So give us a second, then, we're going
8 to print out a list. The computer does this in a random
9 order so that how your names comes out aren't alphabetical
10 or by number or anything like that. And then when we get
11 that, what will happen is Madam Clerk will call out a name.

12 Now, if and when your name is called, the process
13 is you stand up, you come forward, you come to a place right
14 here in front of Madam Court Reporter, just right in front
15 of the table there, you stand and you face to the back of
16 the courtroom.

17 At that point in time the Clerk will inquire of
18 the State to present or excuse the juror. After which, the
19 clerk will inquire of the defense to seat or excuse the
20 juror. If you are excused by either the State or the
21 defense you go back and have a seat from whence you came.

22 If you're presented by the State and seated by the
23 defense then you'll go directly to the jury box and have a
24 seat as a member of the jury in this particular case.

25 So if you happen to have any kind of personal

1 see you tomorrow morning.

2 MR. EDGEWORTH: Yes, sir.

3 THE COURT: Okay. Anything else?

4 MS. RICHARDSON: If he could give specifics, too,
5 that would help as far as...

6 THE COURT: Well, that's what you all are going to
7 do this afternoon after we get done with Neil v. Biggers
8 hearing. You all will sit down and talk about it and he'll
9 tell you what problems he has, if any, regarding the
10 statements. So that should make it clear. All right. And
11 if you end up with issues after your discussion, then I'll
12 resolve it tomorrow morning. All right?

13 So, with that, then, I'll see you back at two
14 o'clock. We'll come back at two o'clock and start the Neil
15 v. Biggers hearing at that time.

16 All right. Thank you very much.

17 (WHEREUPON, there was a lunch break held from
18 12:33 p.m until 2:04 p.m.)

19 THE BAILIFF: All rise.

20 THE COURT: Thank you very much. You may be
21 seated. Thank you. All right.

22 Solicitor, are you ready to start?

23 MS. RICHARDSON: Yes, Your Honor.

24 THE COURT: So in this Neil v. Biggers hearing
25 I'll be glad for you to call your witnesses.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: The State calls Jonathan
2 Griffith.

3 THE COURT: Please come around and be sworn.

4 THE CLERK: Do you solemnly swear or affirm that
5 the testimony you're about to give will be the truth, the
6 whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Have a seat and please spell your
9 first and last name for the record.

10 THE WITNESS: My name is Jonathan Griffith,
11 J-O-N-A-T-H-A-N, G-R-I-F-F-I-T-H.

12 JONATHAN GRIFFITH, being first duly
13 sworn, testified as follows:

14 THE COURT: Go ahead, Solicitor.

15 DIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q. Investigator Griffith, where are you employed?

18 A. Georgetown County Sheriff's Office.

19 Q. And can you give me the background of your
20 education and training in law enforcement?

21 A. After graduating the Criminal Justice Academy, I
22 spent two years on the road as a patrol deputy and then
23 moving to CID where I currently am now.

24 Q. Okay. And CID is?

25 A. Criminal Investigations Division.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And so how long in total have you been in law
2 enforcement?

3 A. Almost ten years now.

4 Q. And has all that been at the Sheriff's Office in
5 Georgetown?

6 A. Yes, ma'am.

7 Q. And I know you just told me but how long have you
8 been an investigator?

9 A. Eight years.

10 Q. And were you the lead investigator in the
11 kidnapping case against Jeremiah Dicapua?

12 A. That is correct.

13 Q. And tell me how you became involved in the case
14 initially.

15 A. When the incident occurred on the 10th, I was the
16 on-call investigator and was asked to respond to the
17 residence.

18 Q. Okay. And that was June 10, 2018; is that right?

19 A. Yes, ma'am.

20 Q. And where was the residence?

21 A. The residence was actually located in Horry
22 County.

23 Q. And that was in what section of the county?

24 A. The South Waccamaw section.

25 Q. And that's near the county line?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Yes, ma'am.

2 Q. And where did the initial call go? The initial
3 911 call went where?

4 A. To Horry County, I believe.

5 Q. And so they responded before you did?

6 A. Correct.

7 Q. And then what happened?

8 A. After they responded and figured out where the
9 incident actually occurred they contacted Georgetown County.

10 Q. And did another officer respond as well?

11 A. Yes.

12 Q. And who was that?

13 A. Deputy Delval.

14 Q. All right. And so -- and he would have called you
15 to come out?

16 A. Correct.

17 Q. And so what did you do when you got there?

18 A. Upon responding I spoke with Deputy Delval to get
19 a summary of what had happened, what the victim had said.
20 After speaking with Delval I spoke with the victim.

21 Q. And just briefly what generally was the nature of
22 the call?

23 A. Attempted kidnapping.

24 Q. And when you spoke with her, what did she tell
25 you?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. She said while she was jogging along
2 South Waccamaw, the male suspect, who she encountered one
3 time already near the beginning of South Waccamaw, had --
4 she also encountered a second time when he attempted or did
5 grab her by the wrist, attempting to drag her into his
6 vehicle.

7 Q. And had there also been a similar incident called
8 in, in Horry County?

9 A. Before?

10 Q. With another female?

11 A. Yes.

12 Q. And so were you working with Horry County?

13 A. Yes, I was communicating with Horry County.

14 Q. And was she able to give you description or a
15 dispatch a description of the suspect?

16 A. My victim?

17 Q. Yes.

18 A. Yes. A male 45 to 50 years old, tan, slightly
19 heavy set, dark hair, no shirt, with shorts.

20 Q. And what about the vehicle description?

21 A. At the beginning, it was a gray-color vehicle, but
22 it ended up becoming black in color SUV.

23 Q. And was the gray description from the Horry a
24 separate incident, the other female?

25 A. I don't quite know, because it was undetermined at

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 the beginning.

2 Q. But that's the information you got from dispatch?

3 A. Correct. Correct.

4 Q. And so what did you decide to do at that point as
5 far as trying to identify a suspect?

6 A. At that point with the information at hand, I
7 thought it was best to try and use a possible sketch artist
8 to speak with the victim to develop a sketch of the suspect.

9 Q. And did you arrange that?

10 A. Yes, ma'am.

11 Q. And was that that same day?

12 A. Yes, ma'am.

13 Q. Okay. And who came out to do the sketch?

14 A. The officer from Horry County Sheriff's Office.

15 Q. And did you get a copy of that?

16 A. Yes, ma'am.

17 Q. And what did your department do with the sketch?

18 A. We posted it to the social media sites.

19 Q. And did you also do a description of the vehicle?

20 A. Yes, ma'am.

21 Q. And describe, just for the record, the area where
22 this occurred?

23 A. The area that it occurred in at the time was a
24 popular vacation site. At that time of the year it's very
25 crowded. There's a lot of people there. It's mostly made

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 up of rental houses.

2 Q. Okay. And South Waccamaw Drive, tell me -- tell
3 the Judge or the Court where that is located.

4 A. South Waccamaw Drive is located in the Garden City
5 area of Georgetown County. It's right there at the line of
6 Horry County.

7 Q. And that area of Georgetown County is sort of
8 cutoff?

9 A. Yes, ma'am. In order for us to access it we have
10 to drive through Horry County, turn down Atlantic Avenue and
11 back out to the beach and take a right. As you come to the
12 end of Atlantic Avenue, you take a right and you will be on
13 South Waccamaw.

14 Q. Okay. And describe the intersection at Atlantic
15 Avenue and South Waccamaw.

16 A. The intersection of Atlantic Avenue and
17 South Waccamaw is, again, it's kind of populated at that
18 time of the year. You've got the fishing pier, Sam's
19 Corner, and some other, like, little shopping centers and
20 stores.

21 Q. And what is Sam's Corner?

22 A. It's a restaurant.

23 Q. And is there an arcade nearby?

24 A. Yes, I believe so.

25 Q. And what about any sort of like amusement rides or

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 bungee jumping?

2 A. Yes, there are. I believe there are some
3 amusement rides there to the left.

4 Q. And can you describe the pedestrian traffic that's
5 there at Sam's Corner and on South Waccamaw in the
6 summertime?

7 A. Pedestrian traffic is very heavy.

8 Q. In both those areas?

9 A. Yes, ma'am.

10 Q. So let me -- now, this was previously admitted for
11 purposes of the hearing. I guess we'll redo this today.
12 Let me show you what was previously marked -- do you want to
13 remark them or start the just use the same numbers?

14 MR. EDGEWORTH: I have no objection with the
15 existing numbers.

16 MS. RICHARDSON: Sounds good.

17 BY MS. RICHARDSON:

18 Q. Let me show you what was marked at the previous
19 hearing as State's Exhibit Number 4. And do you recognize
20 that?

21 A. Yes, ma'am.

22 Q. And tell me what that is?

23 A. That is the sketch that was made during the
24 interview with the victim.

25 Q. And that's the same one you disseminated on social

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 media?

2 A. Correct.

3 MS. RICHARDSON: Your Honor, I'd move to have this
4 introduced for the purposes of this hearing only.

5 THE COURT: Any objection?

6 MR. EDGEWORTH: No objection.

7 THE COURT: All right. For the purposes of the
8 hearing, it's in evidence.

9 (WHEREUPON, State's Exhibit Number 4 was admitted
10 into evidence for the hearing only.)

11 BY MS. RICHARDSON:

12 Q. So after you got the sketch what did your
13 department do at that point?

14 A. After receiving the sketch, the sketch was posted,
15 like I said, to the Sheriff's Office social media site, news
16 media, along with the description of the possible vehicle.

17 Q. And what other steps did you take in your
18 investigation?

19 A. After posting that, we did an initial canvass
20 followed by the next day we did a more extensive canvass in
21 search of video footage or possible camera footage.

22 Q. And when you say "canvass," what do you mean?

23 A. Canvassing is the saturation of the area the
24 incident occurred in, in order to obtain further information
25 from witnesses that at the time maybe were unknown and to

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 gather camera footage other information.

2 Q. And were you successful in getting some additional
3 information?

4 A. That is correct.

5 Q. What did you get?

6 A. The address at [REDACTED] South Waccamaw Drive supplied
7 video footage that was pertinent to the investigation.

8 Q. And is that address in Georgetown County?

9 A. Yes, ma'am.

10 Q. And what information did they provide that was
11 pertinent to the investigation?

12 A. The video obtained from [REDACTED] South Waccamaw
13 depicted the victim walking by and also it depicted the
14 suspect vehicle.

15 Q. And what was the suspect vehicle doing?

16 A. At first it went south up South Waccamaw, then
17 right after the incident was supposed to have occurred, you
18 could see the suspect vehicle traveling back north at a high
19 rate of speed on the wrong side of the road.

20 Q. And how did you come to identify the defendant as
21 a potential suspect?

22 A. While canvassing, I believe Lieutenant Sarvis went
23 by liquor store located on Atlantic Avenue and produced the
24 sketch that you see in front of you to the owner, who
25 advised the sketch resembles a frequent customer of his,

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 which later we learned who his name is and the vehicle he
2 drives.

3 Q. Now, I'll show you what was previously marked as
4 State's Exhibits 5, 6, and 7. Do you recognize these
5 documents? We'll start with five.

6 A. Yes, ma'am.

7 Q. Okay. Tell us what those are.

8 A. This is a still photo from the video footage from
9 the Atlantic Discount Spirits, which is the liquor store in
10 question.

11 Q. Okay. And that provided by the owner of the
12 liquor store to law enforcement?

13 A. Correct.

14 Q. Okay. And what about Number 6?

15 A. Number 6 is a depiction of the alleged suspect
16 vehicle.

17 Q. Okay. And that's more than one picture?

18 A. Yes, ma'am. The second picture depicts the paper
19 tag on the suspect vehicle. And the third picture is the
20 VIN of the suspect vehicle.

21 Q. Okay. And was that also provided to you by the
22 liquor store owner?

23 A. That's correct.

24 Q. And that's an accurate representation of what he
25 provided?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Yes, ma'am.

2 Q. As well as Number 5 an accurate representation of
3 the still photos?

4 A. Yes, ma'am.

5 Q. Okay. And then what about State's Number 7?

6 A. This is a receipt from Atlantic Discount Spirits.

7 Q. Okay. And when is that dated?

8 A. 6/12/18.

9 Q. Okay. And is that actually when all or when the
10 other photos were dated, as well?

11 A. I believe so, yes, ma'am.

12 Q. And was that also provide by the liquor store
13 owner?

14 A. That's correct.

15 Q. And that's an accurate representation of what he
16 provided to you?

17 MS. RICHARDSON: At this time I'd offer 5, 6 and 7
18 into evidence for purposes of this hearing.

19 THE COURT: Any objection?

20 MR. EDGEWORTH: Well, yes, Your Honor. I object.
21 I don't think there's been a proper foundation. He's
22 testified that the Sarvis was one the one who went to the
23 liquor store and we don't know how the information was
24 captured or otherwise. He's just saying that he's reviewed
25 that as part of the file.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 THE COURT: Do you intend to have the other
2 officer testify?

3 MS. RICHARDSON: I do, Your Honor. I'm waiting
4 for him to get here, but with this being a pretrial hearing,
5 hearsay would be allowed for these purposes and as part of
6 the investigation.

7 THE COURT: Assuming the other officer verifies
8 the information, I'm going to allow it into evidence. Thank
9 you.

10 MR. EDGEWORTH: Thank you Your Honor.

11 (WHEREUPON, State's Exhibit Numbers 5, 6, and 7
12 were admitted into evidence for the hearing only.)

13 BY MS. RICHARDSON:

14 Q. I'm going to show you State's Exhibit Number 6,
15 which is pictures of the vehicles.

16 A. Yes, ma'am.

17 Q. And what type of vehicle is depicted?

18 A. It's a black in color Jeep Cherokee, I believe.

19 Q. Okay. And how does that compare with the
20 surveillance video that you took from [REDACTED] South Waccamaw?

21 A. It's very similar.

22 Q. And how does that compare with the descriptions
23 that were given by dispatch by the victim and other
24 witnesses?

25 A. It matches the description given.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Once you had identified Mr. Dicapua through the
2 liquor store owner as a possible suspect what did you do?

3 A. I sent for a photo lineup to be created by SLED
4 using the only available photo at the time of the suspect.

5 Q. And let me show you what was previously marked as
6 State's 8. Can you tell me what that is?

7 A. It's a SLED-produced photo lineup.

8 Q. And that's the one that you requested?

9 A. Correct.

10 Q. And is Mr. Dicapua in that lineup?

11 A. Yes, ma'am.

12 Q. And what number is he?

13 A. Number 4.

14 Q. Okay. And there's some writing up under his
15 picture, I believe, is that the case file number?

16 A. Yes, ma'am.

17 Q. Okay. And would that have been put on there
18 before or after you showed it to the victim?

19 A. That would have been after.

20 Q. So it would have been plain with no...

21 A. Yes, ma'am.

22 Q. Okay. And this is copy?

23 A. Yes, ma'am.

24 Q. And have you, other than writing the case file
25 number, have you made any alterations to this?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. No.

2 MS. RICHARDSON: Your Honor, I'd offer State's 8
3 for the purposes of this hearing.

4 THE COURT: Any objection?

5 MR. EDGEWORTH: No objection, Your Honor.

6 THE COURT: It's into evidence without objection.

7 (WHEREUPON, State's Exhibit Number 8 was admitted
8 into evidence for the hearing only.)

9 BY MS. RICHARDSON:

10 Q. So once you had this lineup what did you do at
11 that point?

12 A. After obtaining the lineup I responded to the
13 victim's residence to allow the victim to view the lineup.

14 Q. And do you recall what date that was?

15 A. That was on 6/12, I believe.

16 Q. Okay. And tell me the procedure that you used to
17 show her the lineup.

18 A. As with any lineup, before the lineup is shown,
19 you explain to the victim that the suspect may or may not be
20 in this lineup. That they do not have to -- if they do not
21 see the suspect, they don't have to do anything.

22 Q. Okay. And did you do anything to suggest who she
23 should pick out?

24 A. No.

25 Q. And do you recall who was with her at that time?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Her husband.

2 Q. And what was her demeanor?

3 A. Upon viewing the photo lineup she appeared to be
4 very undetermined.

5 Q. So did she choose anyone in the lineup?

6 A. No, ma'am.

7 Q. So at that point, what did you -- what did you
8 decide to do?

9 A. At that point I referred back to the Solicitor's
10 Office which was, at that time, Solicitor Todd, in reference
11 to what had happened. We came to the conclusion that a
12 driveby identification would be performed with the victim.

13 Q. Okay. And did you also run this by your
14 superiors?

15 A. Yes, ma'am.

16 Q. And who would that have been?

17 A. Lieutenant Sarvis.

18 Q. And why did you feel that an in-person
19 identification would be appropriate?

20 A. It would have been appropriate due to the fact of
21 poor quality of the photo lineup. As you can see, the
22 suspect's head had been cropped at the top. And then also
23 did not depict the current age of the suspect.

24 Q. And so when did you do the in-person
25 identification?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. 6/13.

2 Q. And tell me the plan for that and how you
3 accomplished it.

4 A. The plan that we had come up with was Lieutenant
5 Sarvis and Investigator Carrison would do a knock and talk
6 with the suspect speaking with him about the tag on his
7 vehicle.

8 Q. What was the deal with the tag on the vehicle? I
9 know that we have a picture of it, I believe it's State's
10 Exhibit 6. What was the problem with the tag?

11 A. It was a bad tag.

12 Q. What do you mean a bad tag?

13 A. From my understanding it was not supposed to be on
14 the vehicle.

15 Q. Okay. Was it -- I'll refer you to the second page
16 of that. What was the date on the tag?

17 A. 5/24/18.

18 Q. Okay. And this was on 6/13/18, right?

19 A. Yes, ma'am.

20 Q. And so while Detective Carrison and Sarvis were
21 doing the knock and talk what were you doing?

22 A. As they were speaking with the suspect outside the
23 suspect's residence, myself and Investigator Wilson pulled
24 up on the street with the victim in front of the residence,
25 so she could view the suspect.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. What sort of vehicles were both sets of officers
2 in?

3 A. At the time I was in an unmarked black in color
4 Tahoe with tinted windows.

5 Q. And what did you tell the victim about why you
6 were going there?

7 A. I explained to the victim that we would be
8 performing a driveby identification. I advised her that we
9 would attempt to get the suspect outside and while he was
10 outside we would pull up in front of the residence in order
11 for him -- her to view him.

12 Q. And so when you pulled up, was he outside?

13 A. Yes, ma'am.

14 Q. Okay. And what about the vehicle, where was it?

15 A. Outside with him.

16 Q. And what was her reaction at that point?

17 A. Upon seeing the suspect she was very anxious and
18 became very upset.

19 Q. Again, did she make an identification?

20 A. Yes, ma'am.

21 Q. And tell me what she said.

22 A. She said "That's him."

23 Q. And did she give -- let me also show you what's
24 been marked as State's Exhibit Number 9. Can you tell me
25 what that is?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. That's the victim's statement.

2 Q. That was made after the identification?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. RICHARDSON: Your Honor, at this time I'd
6 offer State's 9 into evidence and ask to publish that.

7 THE COURT: Any objection.

8 MR. EDGEWORTH: Yes, Your Honor. Objection on the
9 same basis of foundation. He has no personal
10 knowledge, it's hasn't been corroborated by the drafter.

11 MS. RICHARDSON: Let me just ask one more
12 question.

13 BY MS. RICHARDSON:

14 Q. Who took -- who was that statement given to? Do
15 you see?

16 A. To me.

17 Q. Okay. Is that an accurate representation with no
18 alterations of the statement that you received from the
19 victim?

20 A. Correct.

21 MS. RICHARDSON: Now, I'd offer it, Your Honor.

22 THE COURT: Objection?

23 MR. EDGEWORTH: No objection, Your Honor.

24 THE COURT: Into evidence without objection.

25 (WHEREUPON, State's Exhibit Number 9 was admitted

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 into evidence for the hearing only.)

2 BY MS. RICHARDSON:

3 Q. Would you read that into the record, please?

4 A. On Sunday June 10th, I was out for a run, slash,
5 walk on South Waccamaw. There was a man that pulled up to a
6 stop sign at Cedar Avenue and opened his car door. He was
7 trying to say something to me. I continued to walk. By the
8 time I got to the Moonfish Road area he pulled over and was
9 waiting on me. He attempted three times to grab me. On the
10 third time he got my arm and I jerked away and yelled "No."
11 I sprinted as fast as I could until I saw a house with lots
12 of cars to hide behind.

13 On Thursday, June 14th, Inspector Griffith took me
14 by his house along with other investigators and got the man
15 out of the house. While waiting on him to come out, I
16 noticed the car and immediately knew it was the car. As
17 soon as the door opened he walks out and I saw his face. It
18 took me back to that Sunday morning and I knew it was the
19 man who tried to kidnap me. It literally took my breath
20 away. I immediately relayed to Inspector Griffith that it's
21 the man without a doubt.

22 Q. Okay. And you said her demeanor was very anxious?

23 A. Yes, ma'am.

24 Q. Okay. And explain to me in a little more detail
25 what you mean by that?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Along with being very upset, she began to cry and
2 became very excited, very nervous, anxious, upset.

3 Q. And as far as the physical attributes of
4 Mr. Dicapua, how did that line up with the initial
5 description that she gave?

6 A. It lined up well.

7 Q. Okay. In what regard?

8 A. The description of him as being as far as the age,
9 the hair, the slightly heavy set. It matched.

10 Q. And what about his complexion?

11 A. Tan.

12 Q. And, obviously, he's been incarcerated since this
13 time, but was his complexion darker than it is now?

14 A. Yes, ma'am, at the time.

15 Q. Okay. And we've already had the hearing
16 previously on the Jackson v. Denno and the statements that
17 he gave to law enforcement. You were present and testified
18 about both of those?

19 A. Correct.

20 Q. And as far as those statements did he admit to
21 being the one who was with the victim?

22 A. Not in the first interview. In the second
23 interview he admitted to having contact with the victim.

24 Q. Okay. And what did he -- and just to remind the
25 Court, what did he say?

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 A. He -- in the second interview he attempted to
2 describe it as he thought he might have hit the victim and
3 exited the vehicle to attempt to help her.

4 Q. But in the second interview he identified himself
5 as being the one that had interaction with the victim?

6 A. Correct.

7 Q. I have no further questions. Answer any questions
8 that Mr. Edgeworth may have for you.

9 THE COURT: Cross-examination.

10 MR. EDGEWORTH: Thank you, Your Honor.

11 May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. EDGEWORTH:

14 Q. Investigator Griffith, you took the description
15 from the complainant, right?

16 A. Correct.

17 Q. Okay. And you testified that that was a male 45 to
18 50?

19 A. Correct.

20 Q. Okay. When you requested the sketch, or the
21 sketch artist to come, were you present for that?

22 A. Yes.

23 Q. Did you speak during the process?

24 A. No. I sat there while the sketch artist spoke
25 with the victim.

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 Q. During that process, when the sketch was
2 concluded, did they show it to the complainant to confirm
3 that's the picture that needs to be disseminated?

4 A. Yes.

5 Q. Did she sign off on it?

6 A. Yes.

7 Q. Okay. Is there an actual signature on the sketch?

8 A. No.

9 Q. How did they confirm that that is in fact the
10 picture that -- or of the individual that they are alleging
11 caused some type of contact?

12 A. That's the picture I obtained from the sketch
13 artist.

14 Q. Well, I'm asking you, how did they -- how did they
15 inform you or how does that complainant inform you that that
16 is indeed or in fact they're corroborating the sketch that
17 was drawn by the artist?

18 A. She viewed it.

19 Q. And so it's a verbal affirmation?

20 A. Correct.

21 Q. Okay. And at that point you decided to
22 disseminate that to the public via social media and the
23 media?

24 A. Correct.

25 Q. Okay. Now, when you send that out -- and that was

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 on June 11th; is that correct? Or June 12th?

2 A. June 10th was when the sketch was ---

3 Q. It was done on the same day as the incident?

4 A. Correct.

5 Q. Okay. And then presumably she returns back to
6 where she was staying in the Georgetown or on her vacation
7 or whatever?

8 A. Well, the sketch was taken at the residence she
9 was staying at.

10 Q. Okay. So then law enforcement leaves at that
11 point; is that correct?

12 A. Right.

13 Q. Okay. Did she retain a copy of the sketch?

14 A. No.

15 Q. Now, you've testified that in between that time
16 presumably -- I assume at that point you're waiting to see
17 if maybe you get any hits off of that particular sketch?

18 A. That, and like I explained to the Solicitor, we
19 canvassed the area.

20 Q. Okay. But part of that is to wait and see if you
21 get any hits from the public; is that correct?

22 A. Correct.

23 Q. Did you get anything of significant value from the
24 public based off of that sketch?

25 A. We did during canvassing. I can't remember if we

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 got anything exactly from the public.

2 Q. Well, when you say you got something from
3 canvassing, you're saying you're talking about the liquor
4 store situation?

5 A. Correct.

6 Q. And did you get any other information from the
7 public as a result of the sketch and your canvass?

8 A. Not that I recall.

9 Q. Okay. And so when, I guess, Lieutenant Sarvis
10 goes in to meet with the liquor store owner, he's the one
11 who had the conversation with him?

12 A. Correct.

13 Q. Okay. And, I guess, the liquor store owner was
14 the one who offered up information regarding -- that you've
15 testified to here?

16 A. Correct.

17 Q. Did Sarvis bring you that information and you do
18 anything with it?

19 A. Correct. After receiving that information is when
20 I obtained the SLED photo lineup.

21 Q. At any time did you take the still shots and show
22 those to the complainant?

23 A. No. We don't do that.

24 Q. Okay. When you sent the documentation up to SLED
25 to obtain the photo array, that was based off of the photos

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 that you got at the liquor store?

2 A. No. The photos from the liquor store we were
3 unable to use those for a photo lineup. The photo lineup
4 has to be a forward facing photo as a DMV photo or a jail
5 photo.

6 Q. Leave it to say, you send up to SLED and they
7 create it on their own, you don't really have anything to do
8 with that?

9 A. I don't have anything to do with that.

10 Q. And they're the ones who put in whatever order it
11 is on the document?

12 A. Correct.

13 Q. Okay. And you got that back?

14 A. Correct.

15 Q. And then you traveled to -- or did you travel to
16 the complainant?

17 A. Yes. I traveled to the complainant.

18 Q. When you were there, did you sit down at the
19 table?

20 A. Yes.

21 Q. Did you -- what did you do with the photo array?

22 A. The photo lineup is put in front of the victim so
23 she can view it. And beforehand we explain to them what
24 this is, it's a photo lineup. We explain to them, like I
25 told the Solicitor, the suspect may or may not be in this

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 photo lineup. You're not required to -- if you don't see
2 the suspect, you're not required to do anything.

3 Q. Okay. Well, I guess my question is: You stated
4 that you believed there to be a problem with the photo
5 lineup.

6 A. I do.

7 Q. And you took it there anyways?

8 A. Correct.

9 Q. Okay. Do you think that a regular, or layperson,
10 non-law enforcement, would assume that the person is in the
11 photo array?

12 A. I don't understand your question.

13 Q. Okay. Would there ever be a point or have you
14 ever submitted a photo lineup to a complaining witness and
15 not have the photo -- knowingly not have the photo of the
16 alleged perpetrator in it?

17 A. No.

18 Q. Okay. So throughout the history of you providing
19 photo arrays...

20 A. That's the purpose of a photo lineup.

21 Q. Is to actually have whom you believe to be
22 perpetrator in it, correct?

23 A. Right.

24 Q. Okay. So then, if you assume that, then don't you
25 think that the complaining witness would assume that the

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 person is in there?

2 A. To an extent.

3 Q. Okay. And yet she didn't pick out anybody in that
4 lineup, correct?

5 A. Correct.

6 Q. Okay. Now, as a result of failing to get what you
7 thought you would get from that investigation, you decide to
8 do the driveby?

9 A. Correct.

10 Q. Also known as a showup ID, correct?

11 A. Correct.

12 Q. Okay. When you're heading there you're telling
13 the complaining witness that you're going to show them
14 someone whom you believe to be the suspect, correct?

15 A. Correct.

16 Q. Okay. And how long was the drive, if you recall,
17 from picking the complaining witness up from their house to
18 the ---

19 A. It's not that far. It's within the Garden City
20 area.

21 Q. Enough time to have a conversation, right?

22 A. Correct.

23 Q. And one of the other components of your
24 investigation was what kind of vehicle was involved,
25 correct?

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 A. Correct.

2 Q. And you had gone through the process of
3 eliminating the fact that initially it was gray, correct?

4 A. Yeah, the initial description was -- yeah, they
5 said it was gray.

6 Q. And then it was, you know, whittled down to that
7 it was black?

8 A. Correct.

9 Q. So then when you go to the house, you had
10 acknowledged that the pretext for showing up there was a bad
11 tag, correct?

12 A. Uh-huh. Correct.

13 Q. So you knew the vehicle was there?

14 A. We assumed the vehicle was there.

15 Q. Well, you would agree with me you wouldn't have
16 been able to go to the door and not and --

17 A. Right.

18 Q. -- say, you know, "Where's the car," if the car
19 wasn't in the driveway?

20 A. Correct.

21 Q. Okay. So the car was there in driveway?

22 A. Correct.

23 Q. And so when you pull up close to the residence
24 with the complaining witness, the complaining witness is
25 able to see a black car, correct?

JONATHAN GRIFFITH -CROSS BY MR. EDGEWORTH

1 A. Correct.

2 Q. Which, in the witness's mind, could be the one of
3 the one plus one, when she comes out, correct?

4 MS. RICHARDSON: Your Honor, I object. He's
5 asking to speculate what the witness was thinking at that
6 point.

7 THE COURT: If the witness knows of his own
8 knowledge that she told him what she was thinking, or
9 something like that, you can go ahead and answer the
10 question.

11 THE WITNESS: No. I can't speculate on what she
12 was thinking.

13 BY MR. EDGEWORTH:

14 Q. Okay. That's fair enough. But at that time, had
15 you made aware to the complaining witness that other law
16 enforcement officers would be eliciting the suspect out of
17 his car -- or out of his home?

18 A. Correct.

19 Q. So now we're at almost three to four times you had
20 advised the complaining witness that the person you believe,
21 the suspect, she's getting ready to see him, right? Is that
22 correct?

23 A. The possible suspect. Correct.

24 Q. Okay. The person you believe to be the suspect?

25 A. Correct.

JONATHAN GRIFFITH - REDIRECT BY MS. RICHARDSON

1 Q. Okay. And so then the alleged perpetrator comes
2 out of the house and, according to the letter that was read
3 into the record, the car was identified first; is that
4 right?

5 A. Correct. From the statement.

6 Q. So she sees the car, sees the person, tells you
7 that's him. Is that how it worked?

8 A. Correct.

9 Q. Okay. Do you not believe that that's not
10 unnecessarily suggestive?

11 A. No.

12 MR. EDGEWORTH: No further questions for this
13 witness at this time, Your Honor.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q. We had already talked about there was another
18 similar incident that had been reported in Horry County with
19 a different female; is that right?

20 A. Correct.

21 Q. And is that where the gray van came into play?

22 A. I believe so. I believe it got construed as being
23 a gray vehicle from that incident.

24 Q. And Horry County initially responded before they
25 realized it was a Georgetown case?

JONATHAN GRIFFITH - REDIRECT BY MS. RICHARDSON

1 A. And I also spoke to the Horry County officer that
2 responded to that when I arrived on scene with the victim.

3 Q. And did you -- when you were transporting the
4 victim there, did you give her any details about your
5 investigation or the liquor store owner or anything like
6 that?

7 A. No. As was shown on the photo lineup, it was
8 merely explaining what was happening, or what would be
9 required.

10 Q. And did you say anything to say, "This is the
11 guy," or, "I believe this is the guy," or anything like
12 that?

13 A. No.

14 Q. And explain to me why -- so all of this happened
15 between June 10th -- and you've got the sketch artist that
16 day?

17 A. Correct.

18 Q. And then the liquor store owner on June 12th and
19 then this was done on June 13th. So just in a three-day
20 span?

21 A. Correct.

22 Q. Explain to me the urgency of this.

23 A. Due to the nature of the crime and the heavily
24 populated area that time of the year, we were afraid of this
25 inducing, you know, public panic. So we were -- we were

JONATHAN GRIFFITH -RECROSS BY MR. EDGEWORTH

1 attempting to work as diligent and as quick as we could to
2 resolve the situation.

3 Q. And if he had been eliminated as a suspect, what
4 would you have done?

5 A. If he had been what?

6 Q. If he had been eliminated, that's not him.

7 A. We couldn't continue the investigation.

8 MS. RICHARDSON: All right. I have no further
9 questions.

10 THE COURT: Anything on those questions?

11 MR. EDGEWORTH: Can we -- quick redirect (sic),
12 Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. EDGEWORTH:

15 Q. You just testified that if the alleged defendant,
16 or perpetrator, would have been eliminated you would have
17 stopped your investigation at that point; is that correct?

18 A. No. I would have continued the investigation.

19 Q. But no longer into that defendant?

20 A. Correct.

21 Q. Okay. Isn't it true that the complaining witness
22 did not identify the defendant in the photo array, yet you
23 still continued to try to push that defendant as the
24 perpetrator?

25 A. I believe the reason she did not identify him is

JONATHAN GRIFFITH -RECROSS BY MR. EDGEWORTH

1 due to the poor quality of the photo lineup.

2 Q. Is that your opinion?

3 A. That's what I think.

4 Q. Did you go back to SLED and say, Hey, this is not
5 very good, I need another one?

6 A. There was no other photo available.

7 Q. Do you know that for a fact?

8 A. Not at the time, it wasn't.

9 Q. At the time you didn't know that for a fact or you
10 know that for a fact there were no other photos available?

11 A. I didn't know that for a fact at the time.

12 Q. Okay.

13 MR. EDGEWORTH: No further questions.

14 THE COURT: All right. Sir, when you were driving
15 the victim to the showup, how long was that ride?

16 THE WITNESS: Approximately 10 to 15 minutes, Your
17 Honor.

18 THE COURT: All right. I want you to recall as
19 best you can everything you told her on that 10- to
20 15-minute ride.

21 THE WITNESS: The best I recall, like I advised
22 the Solicitor, I advised her of what was getting ready to
23 occur, that we would like her to view -- view someone in
24 reference to the crime. And what would happen is we would
25 pull up in front of the residence to the view the person.

JONATHAN GRIFFITH -RECROSS BY MR. EDGEWORTH

1 She would not get out of the vehicle. They would not be
2 able to see her. That's from what I recall, Your Honor.

3 THE COURT: All right. Did she ask you any
4 questions?

5 THE WITNESS: I don't recall.

6 THE COURT: Further questions from the State?

7 MS. RICHARDSON: No, Your Honor.

8 THE COURT: From the defense?

9 MR. EDGEWORTH: Nothing further, Your Honor.

10 THE COURT: You may step down.

11 Your next witness, please.

12 MS. RICHARDSON: The State calls Robert Sarvis.

13 THE COURT: Please come around and be sworn.

14 THE CLERK: Place your right hand on the Bible.

15 Do you solemnly swear or affirm the testimony
16 you're about to give will be the truth, the whole truth, and
17 nothing but the truth, so help you, God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Have a seat and please spell your
20 first and last name for the record.

21 THE WITNESS: My first name is Robert,
22 R-O-B-E-R-T. Last name is Sarvis, S-A-R-V-I-S.

23 THE COURT: Go ahead, solicitor.

24 DIRECT EXAMINATION

25

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 BY MS. RICHARDSON:

2 Q. And tell us where you're employed.

3 A. I'm sorry?

4 Q. Where are you employed?

5 A. Georgetown County Sheriff's Office.

6 Q. And what's your position there?

7 A. I'm the lieutenant over investigations and
8 narcotics.

9 Q. And that's like the supervisor?

10 A. Yes, ma'am.

11 Q. And how long have you been with the Georgetown
12 County Sheriff's Office?

13 A. Approximately 16 years.

14 Q. And how long were you an investigator?

15 A. I was -- went into investigations, and then, and
16 now when I came back, and I'm still there. And prior to
17 that I was an investigator in Richland County for
18 approximately 3 years.

19 Q. And what positions were you in, in Richland?

20 A. I was on the drug suppression team, narcotics
21 team, and investigations and patrol.

22 Q. So what's your total law enforcement experience?

23 A. Approximately 23 years.

24 Q. And what sort of training have you had?

25 A. Numerous trainings in investigations, narcotics,

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 homicides.

2 Q. And were you involved in the case against Jeremiah
3 Dicapua?

4 A. Yes, ma'am.

5 Q. And tell me how you got involved.

6 A. I was notified by Investigator Griffith of an
7 incident that had occurred on South Waccamaw, a
8 kidnapping -- attempted kidnapping -- kidnapping of a victim
9 he informed me in what happened that day. And then the
10 following day, Monday, got with him again and began
11 canvassing the area for videos and stuff of that nature.

12 Q. And were you aware of a similar incident in Horry
13 County?

14 A. Yes. I was told of one that had occurred in Horry
15 County in the northern section or just off the northern
16 section of Waccamaw Drive.

17 Q. And so, in your mind, there were two in a day?

18 A. Two within a matter of an hour or so. A very
19 close time proximity.

20 Q. And based on that, how did your department react?

21 A. We had to move on it as quickly as we could and
22 use as much resources we had.

23 Q. Okay. And why is that?

24 A. Well, it's, again, you get two complaints within a
25 short time frame of kidnapping, attempted kidnapping, in an

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 extremely highly populated tourist destination with foot
2 traffic and people everywhere coming and going, I mean, we
3 have time to not.

4 Q. And you were aware that Investigator Griffith had
5 secured a sketch artist ---

6 A. Yes, he did.

7 Q. --- a composite drawing?

8 And what did your department do with that?

9 A. It was placed on media, social media, in hopes to
10 generate leads, tips, witnesses.

11 Q. Okay. And then what else did you do?

12 A. Myself, personally?

13 Q. Yes. Your department.

14 A. The following day we gathered the news that we had
15 available to began canvassing house by house, row by row,
16 looking for, again, video, witnesses, anything we could to
17 help generate leads in the case.

18 Q. And based on your conversations with the victim,
19 did you have a general idea about where it had occurred?

20 A. Yes, we did.

21 Q. Okay. And what was that?

22 A. The Moonfish, South Waccamaw area and just -- just
23 north of that, I guess.

24 Q. And so how large of an area did you canvass?

25 A. We actually canvassed quite a large area. We

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 started there we actually went somewhat into Horry County
2 houses looking for video. We did South Waccamaw, the
3 Underwood, and the secondary roads behind it. So we
4 canvassed a pretty good area.

5 Q. So South Waccamaw runs parallel to the ocean?

6 A. Yes.

7 Q. And then there are other back streets Underwood,
8 also parallel to Waccamaw?

9 A. There's Dogwood, Underwood, there's some other
10 back roads.

11 Q. So kind of a little deeper?

12 A. Yes.

13 Q. And just to make it clear South Waccamaw is right
14 behind the beach front houses?

15 A. Yes, ma'am, that's correct.

16 Q. Okay. So on one side would be your ocean-front
17 houses and then that would be like the next row?

18 A. Yes.

19 Q. Okay. All right. And then did you have an
20 opportunity to go meet with -- besides the beach houses
21 looking for cameras, any businesses?

22 A. I did. During the beach house canvassing I
23 learned that the resident of one of the houses across from
24 the beach-front houses on South Waccamaw actually owned a
25 liquor store at the end of Atlantic.

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 Q. Okay. And what's the significance of the business
2 being at the end Of Atlantic?

3 A. Well, my initial focus with him was to see if he
4 had any video at his house. However, once I discovered that
5 he owned that business, of course, that business is located
6 at the end of Atlantic, which is one of what would only be a
7 couple of thoroughfares or main entrances to the
8 South Atlantic area. So coming back from where the incident
9 occurred it would have been the first thoroughfare into the
10 peninsula.

11 Q. So this area of Georgetown County in Garden City
12 is like a peninsula and then that's the street that connects
13 it?

14 A. Yes.

15 Q. All right. And did you have a description that
16 had been put out before the composite regarding the suspect
17 and the vehicle description?

18 A. We did.

19 Q. Okay. And what was that?

20 A. To the best of my memory it was a 50-ish year old,
21 5'8"/5'9", white male, tan -- tan complexion.

22 Q. Okay. And what about the vehicle?

23 A. Black SUV Jeep.

24 Q. Okay. And the liquor store, what was the name of
25 the liquor store?

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 A. I think it was Atlantic -- it was either Atlantic
2 Liquor Store or Atlantic Discount Spirits.

3 Q. Okay. And you actually went to that business?

4 A. I did.

5 Q. And do you recall what date that was?

6 A. I want to say -- I want to say I went twice. That
7 first day would have been on Monday. And then I went back
8 to actually meet with the owner.

9 Q. And when you met with the owner did you show him
10 the composite?

11 A. Yes, ma'am.

12 Q. And that's previously -- let me just show you
13 that, and this is a copy, and you would have been using a
14 copy anyway, right?

15 A. A digital image.

16 Q. Okay. The original would have been in evidence?

17 A. Right.

18 Q. I want to show you State's 4, is that what that
19 is?

20 A. Yes, ma'am. This is a copy of the sketch.

21 Q. Okay. And tell me, do you recall his name?

22 A. I'm sorry?

23 Q. Do you recall his name?

24 A. The liquor store owner?

25 Q. Yes.

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 A. Jim, and his last name it started with a "V,"
2 Vacardian [sic] or something of that nature.

3 Q. Okay. And what happened when you went to talk
4 with him?

5 A. He was shown that, and said to him it appeared to
6 be a frequent customer of his that had recently actually
7 been in the store.

8 Q. Okay. And did he give you that name?

9 A. He did.

10 Q. And then was -- who did he say?

11 A. It was Mr. Dicapua.

12 Q. And did he provide you with any further
13 information?

14 A. He actually provided me with a screen shot of his
15 last visit into the store and printed a couple photos of
16 that as well he then forwarded me pictures of the next time
17 that he had come of a black Jeep that he was operating.

18 Q. Okay. And let me show you what's been marked as
19 State's 5, 6 and 7, and tell me about that.

20 Well, first of all, what's Number 7?

21 A. Seven is a receipt that he also provided me from
22 the purchase that he had made on 6/12.

23 Q. And he said who had made that purchase?

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

25 Q. Okay. And what else did he provide you, what's on

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 five?

2 A. Five is the still shot or screen shot of him at
3 the time of that purchase.

4 Q. Okay. And...

5 A. Number -- well, five would be three photos, just
6 different angles.

7 Q. Okay.

8 A. Six would be a photograph of the Jeep that was
9 sent to me by the liquor store owner that Mr. Dicapua was
10 operating. Photo two of six would be the expired tag on the
11 vehicle. And the third picture of six would be the VIN
12 label sticker.

13 Q. And is this something that the liquor store owner
14 did on his own based on you showing him the composite?

15 A. Yes. This would have been when we came back in
16 afterwords.

17 Q. So he identified him on one day and then provided
18 you with that stuff?

19 A. Yes, later.

20 Q. Okay. And when you came back in on the 12th, I
21 guess?

22 A. It would have been after the 12th, yes. Yeah, the
23 12th.

24 Q. Okay. And so then you were aware of them taking
25 the photo lineup to the victim?

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 A. I wasn't present, but I knew that it occurred.

2 Q. Okay. And what is your -- do you instruct your
3 officers that you supervise on how to do that?

4 A. They're instructed -- they are -- they have had
5 instructions and training, however, on -- not on each
6 individual incident.

7 Q. Okay.

8 A. I mean, they're taught how to show lineups.

9 Q. Okay. And then you were aware that the victim did
10 not pick anyone out of the lineup?

11 A. I was advised of that, yes, ma'am.

12 Q. And then tell me what decision was made at that
13 point.

14 A. I think there was some conferring done with the
15 Solicitor's Office at the time. And then later, and myself,
16 do a driveby, walkup, showup-type lineup in which we would
17 secure the victim in one vehicle and then try to have her
18 get eyes on Mr. Dicapua.

19 Q. And did you have any conversations with her?

20 A. No, ma'am.

21 Q. Okay. And so what role did you play in this
22 in-person identification?

23 A. Myself and another investigator, Hank Carrison,
24 actually were the ones to go to the door, knock on the door,
25 and make contact with -- well, initially it was his mother,

ROBERT SARVIS - DIRECT BY MR. RICHARDSON

1 but then Mr. Dicapua came to the door.

2 Q. Okay. And what -- what did you tell the family
3 you were there for?

4 A. Made up a ruse of the tag on the vehicle being no
5 good or expired.

6 Q. And it was?

7 A. It was.

8 Q. Okay. And then she was in, as Officer Griffith
9 testified, in a different vehicle?

10 A. Yes, ma'am.

11 Q. Okay. And how were you dressed and what sort of
12 vehicle did you have at that time?

13 A. Well, I had an unmarked vehicle, I want to say at
14 that time it was a blue Dodge Charger with tinted windows.

15 As far as dress, I don't recall, it would have
16 either been a starred shirt, like a golf shirt with a
17 sheriff star on it, and slacks or a shirt and tie. It would
18 not have been a uniform.

19 Q. And did you -- did you consider doing like a
20 in-person lineup, like you see on TV, with, you know,
21 individuals standing there with numbers holding -- did you
22 consider that?

23 A. Not really. No, ma'am.

24 Q. And why not?

25 A. Well, the logistics and the ability to carry that

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 out without having any type of arrest warrant on him or
2 anything or having the resources or the ability to reach out
3 and grab five other people similar in shape, size,
4 complexion, characteristics of Mr. Dicapua was not feasible
5 at that time.

6 Q. All right. I have no further questions. Answer
7 any questions that Mr. Edgeworth may have for you.

8 THE COURT: Cross-examination.

9 MR. EDGEWORTH: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. EDGEWORTH:

12 Q. Lieutenant Sarvis, correct?

13 A. Yes.

14 Q. Is it Detective? Lieutenant?

15 A. Uh-huh.

16 Q. Just so I'm clear on the timetable here, your
17 testimony is you went to the liquor store twice after having
18 identified that one of the houses close by was owned by the
19 liquor store owner?

20 A. Yeah. I think the first day I went by, the owner
21 was not on scene, not there. And then I went back a second
22 day, the second day is when I made contact with the actual
23 owner.

24 Q. Okay. And so the first day you didn't speak to
25 him, right?

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 A. No. I think employees.

2 Q. Did you talk to the employee about why you were
3 there?

4 A. Yes.

5 Q. Did you show that employee?

6 A. I don't recall if I did or not.

7 Q. Okay. And then when you went back the second time
8 and you showed the -- the photo or, excuse me, the sketch to
9 the owner, he produced all of this information at that time?

10 A. Yes. Once I showed him the lineup, that's when he
11 said that -- he apparently he recognized him as being a
12 customer that frequented his business.

13 Q. Right. But you didn't go back to the video
14 surveillance area of the store and watch it and then crop
15 this stuff and produce it, did you?

16 A. No. I actually was -- I did -- was allowed to
17 view video in the area, I was actually looking for vehicle
18 traffic and stuff of that nature. These photographs were
19 actually sent to me by the store owner.

20 Q. Okay. But was it given to you on that day when
21 you went there and showed him the photo?

22 A. It would have been -- it was later on -- it would
23 have been transmitted digitally.

24 Q. Okay. So he went you pictures?

25 A. Yes.

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 Q. Okay. When you went in there, in other words, you
2 gave him your card and if anything comes up, let me know,
3 kind of thing, right? Is that how it worked?

4 A. And I also showed him the sketch and speaking with
5 him about it.

6 Q. Okay. Let's talk about that incident. Is it --
7 to your recollection, when you showed him that picture, or
8 the sketch, did he recognize the defendant immediately?

9 A. At the time I think he told me he looked as
10 someone he recognized as coming into the store as a frequent
11 customer.

12 Q. Okay. Did he say that person by name?

13 A. At that -- I didn't know that he gave me a name at
14 that time or if he -- that was later when he sent the
15 photographs.

16 Q. Did you talk to the owner about any of the other
17 items of interest, such as the type of car?

18 A. Yes. I mean, when I made initial contact with
19 him, I said, obviously, showed him the picture of the sketch
20 of the individual and then the vehicle description.

21 Q. Do you still have the sketch with you?

22 A. Yes. It's over here.

23 Q. And you can keep it. You've seen the sketch,
24 right?

25 A. Yes.

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 Q. You're the one that took it in there?

2 At first glance, do you think that looks like the
3 defendant? I mean, just being honest.

4 A. I think it has similarities. I also think I'm
5 looking at a sketch.

6 Q. Okay. So you can't say a hundred percent that you
7 can say that, Oh, yeah, that's him, absolutely, from the
8 sketch?

9 A. Oh, based off the sketch, a hundred percent, I
10 would agree.

11 Q. Okay. And when you showed it to the owner and,
12 you know, you took a little time, did y'all talk about --
13 did you talk to him at any time after he produced
14 information to you?

15 A. I don't recall if we had any conversations after I
16 got the information from him.

17 Q. Okay. But he had mentioned to you that that
18 resembled someone that came into the liquor store on a
19 regular basis?

20 A. Yes.

21 Q. Did you tell him to collect the information that
22 he ultimately sent to you?

23 A. I don't recall if I told him to collect it or not.
24 But, obviously, I would have been interested in who the
25 person was that had resembled that had come into the store.

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 Q. Right. Well, would it have been, Hey, if you see
2 this guy come back in, since he's told you that he comes in
3 on a regular basis, make sure you keep video and go outside
4 and take a picture of his car or whatever you need to do?

5 A. Well, I didn't. I do remember I didn't tell him
6 to take a picture of the car, because that was, I know that.
7 But as far as, you know, if he had any surveillance footage
8 of the guy, I mean, I very likely would have asked for that.

9 Q. Did you find it odd when you received these
10 digital photos how much information he had obtained on
11 y'all's behalf?

12 A. Not particularly odd.

13 Q. And you were one of the individuals that -- and
14 just -- sorry, I'm going back real quick.

15 Did you ever have a specific conversation with the
16 complaining witness? Did you talk to her as part as your
17 investigation?

18 A. I don't think we ever had a conversation.

19 Q. Okay. So when you went to the house,
20 Mr. Dicapua's house, were you aware that Investigator
21 Griffith would have told the complaining witness that you
22 guys were going over there bring him out of the house?

23 A. Was I aware that he would have told her that?

24 Q. That's right. Or were you aware that he told her
25 himself?

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 A. She would have been there, she would have been in
2 the general area.

3 Q. Right. Okay. I guess -- well, I'm asking the
4 question in a different way. There's been this question
5 like, What were you wearing? Well, obviously, you weren't
6 wearing a uniform, you know. So to go, in this particular
7 example, you weren't wearing a deputy's uniform, or
8 whatever, you weren't in some type of formal uniform, you
9 were in an informal uniform, right?

10 A. Correct.

11 Q. Okay. But you would agree with me, then, that
12 what you were wearing wouldn't really matter if the
13 complaining witness knew they were going there to see a
14 potential suspect?

15 A. I'm sorry. I'm not following your question.

16 Q. Well, the question has been asked to you by the
17 State on a couple of occasions trying to figure out what you
18 were wearing.

19 A. Okay.

20 Q. Right? Okay. Made a point to say, Well, you
21 weren't in a uniform -- a formal uniform?

22 A. Right.

23 Q. Okay. You would agree with me that the fact that
24 you weren't in a formal uniform has no bearing on what the
25 witness is going there to do, correct?

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 A. I don't know what the bearing would be.

2 Q. Okay. Fair enough. After the presumed
3 identification, did you guys do anything to Mr. Dicapua
4 about the tag?

5 A. No.

6 Q. You just let him know that he had a bad tag?

7 A. Yeah. It was bad.

8 Q. Okay. And there's been some additional
9 conversation about this other incident that took place in
10 Horry County. Mr. Dicapua hasn't been charged for that
11 alleged incident has he?

12 A. I'm not aware if he has or not.

13 Q. And, furthermore, in that particular instance,
14 that description was -- do you know what the description was
15 of the individual in that particular incident?

16 A. I've read the report in the past, but I don't
17 recall a hundred percent.

18 Q. Okay. That's fair enough.

19 MR. EDGEWORTH: No further questions, Your Honor.

20 THE COURT: Any redirect?

21 MS. RICHARDSON: No. Nothing further, Your Honor.

22 THE COURT: All right. Sir, you may step down.
23 Your next witness, please.

24 MS. RICHARDSON: The State calls Stacey Starnes.

25 THE COURT: Please come around and be sworn.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 THE CLERK: Do you solemnly swear or affirm that
2 the testimony you're about to give will be the truth, the
3 whole truth, and nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Have a seat and please spell your
6 first and last name for the record.

7 THE WITNESS: Stacey, S-T-A-C-E-Y. Starnes,
8 S-T-A-R-N-E-S.

9 STACEY STARNES, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. RICHARDSON:

13 Q. And Ms. Starnes, how old are you?

14 A. 42.

15 Q. And without telling me your street address, can
16 you just kind of tell us generally what area of the state
17 you live in?

18 A. Columbia.

19 Q. And are you married?

20 A. Yes.

21 Q. And do you have children?

22 A. Two.

23 Q. And what is your educational background?

24 A. Real estate business owner.

25 Q. And did you -- did you go to college?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. College.

2 Q. Tell me where you went college.

3 A. Well, I have a associate's degree and then I have
4 a real estate degree where I went to real estate school.

5 Q. Okay. And did you work as a realtor?

6 A. Uh-huh.

7 Q. And for how long did you work as a realtor?

8 A. I've been in real estate for 16 years.

9 Q. And have you done any other kind of work?

10 A. I did medical coding before that.

11 Q. And were you in Garden City, in George -- well, in
12 Horry County on June 10, 2018?

13 A. Yes.

14 Q. Okay. And tell me why you were there.

15 A. To celebrate my 40th birthday with friends.

16 Q. All right. And was it just your friends, your
17 children, or who was there?

18 A. Just friends. Just couples.

19 Q. And did you rent the beach house?

20 A. We did.

21 Q. And what's usually the rental period or do you
22 recall what the rental period would have been?

23 A. I think it's Saturday to Saturday.

24 Q. And so -- so you would have arrived on Saturday,
25 June 9th?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Correct.

2 Q. And tell me about the morning of Sunday,
3 June 10th.

4 A. So I got up. My husband and I went for a run. I
5 did two miles. So I went out one mile and came back and he
6 continued to go. So I turned around to go back to meet up
7 with him. And as I was walking there was a Jeep at the --
8 well, the black SUV at the stop sign and he opened the car
9 door, and I just continued to walk around the car. And I
10 walked a little bit further and I had not seen my husband
11 yet, so I called him to see where he was, because I thought
12 it was unusual that I've not got back up with him yet.

13 Q. Okay. Well, let's go -- let's go back.

14 So when you saw the SUV at the -- it was at an
15 intersection? It was at a stop sign?

16 A. Uh-huh.

17 Q. Okay. And were you -- where were you walking and
18 running? On the highway? On the sidewalk?

19 A. On the sidewalk.

20 Q. And how close were you to this vehicle?

21 A. When I was going back -- the vehicle was -- as I
22 was walking the vehicle pulled up to the stop sign, I wasn't
23 near the vehicle, and then opened the door.

24 Q. So you weren't even to the intersection yet?

25 A. Correct.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. Okay. And did you see anybody in the vehicle?

2 A. Yes.

3 Q. Okay. And who was that?

4 A. Mr. Dicapua.

5 Q. And did you see anybody else?

6 A. Uh-uh.

7 Q. And what did he do?

8 A. He opened the door and I just started to walk in
9 front of the car. I just looked over just to make sure he
10 wasn't pulling forward as I was crossing the road. I mean,
11 I could tell his mouth was moving, but I don't know what he
12 said.

13 Q. Okay. And when you went around the vehicle, how
14 close did you get to it at that point?

15 A. I mean, I walked around it before I got close,
16 like, close to it.

17 Q. Okay.

18 A. I just walk around it and continued to walk back
19 on the sidewalk.

20 Q. And then was there anybody else in the vicinity?

21 A. There was a sanitation truck, I just passed a
22 sanitation truck sitting there. I think he was getting
23 trash off the roads or something.

24 Q. Okay. And what was the relevance of that? What
25 did you think about the sanitation truck?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. I just remember him being there, because when I
2 walked by I said, Good morning, and he said, Good morning.

3 Q. All right. And then you kept on going?

4 A. Uh-huh.

5 Q. Okay. In what direction were you going?

6 A. Opposite from the pier. Sorry, I'm not familiar
7 with the...

8 Q. So away from the pier?

9 A. Away from the pier. Yes.

10 Q. And what happened next?

11 A. So I continued to walk and called my husband and
12 he had gone further this particular morning, so he and I
13 didn't meet in our normal spot, because, I mean, we've been
14 there for ten years. We've been doing this every year.

15 Q. So you go to Garden City and vacation every year?

16 A. Uh-huh.

17 Q. Do you usually stay at the same house?

18 A. Yes, ma'am.

19 Q. Every year?

20 A. Uh-huh.

21 Q. Okay.

22 A. And I continued to walk and, I don't know,
23 probably another five or so minutes. And I noticed the
24 vehicle again parked in front of a house and the back end
25 was on the sidewalk. And as I got closer, I noticed that he

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 was on the opposite side of the car, the driver's side, on
2 the back end. And as I got closer he walked around the car
3 and started coming towards me.

4 And then, at that point, I wasn't sure, because he
5 reached for me and wasn't sure what he was doing, but then
6 he reached for me again and that's when I realized he's up
7 to something. And so the next time he went after me with
8 both hands and I just jerked out of it and took off running.
9 And I just ran until I got to a house that I could go under
10 and wait on him.

11 Q. Okay. And did he actually make contact with you?

12 A. Yes.

13 Q. Physically?

14 A. Yes.

15 Q. Tell me exactly what he did.

16 A. Well, when he reached once and didn't get me, he
17 went to reach again and didn't get me, because I moved. And
18 then with both hands, he got me with one of his hands and I
19 just jerked out and yelled "No" and just sprinted.

20 Q. Okay. And did you see his face at that point?

21 A. Yes. Because he -- like, as he went after me,
22 he's -- I mean, I'll never forget the eyes, they were that
23 big as he was doing it.

24 Q. What sort of look did he have?

25 A. It was a mean look.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And did you recognize him as the same person you
2 had the previous interaction with?

3 A. Yes.

4 Q. And what time of day was this?

5 A. It was about 8:30 in the morning.

6 Q. And what was the weather?

7 A. It was a gorgeous morning. Sunny. Pretty.

8 Q. And so after that happened, what did you do?

9 A. I ran under a house that had a lot of cars and hid
10 behind a car and called my husband.

11 Q. And then, once you called your husband, what did
12 you do?

13 A. He met me at that house. As soon as I saw him I
14 came out from underneath and then we walked back to our
15 place we were staying.

16 Q. Okay. So the place you were staying was actually
17 across the county line in Horry County?

18 A. Yes.

19 Q. And so did you -- did you make any phone calls at
20 that point?

21 A. Yes. Called 911.

22 Q. And who called?

23 A. My husband called.

24 Q. And did you give out a description at that time?

25 A. Yes.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And they sent an Horry County officer?

2 A. Yes.

3 Q. And what did he do once he got there?

4 A. I'm trying to remember. He talked to me and asked
5 me exactly what happened. If I'm not mistaken, I think he
6 was the one that originally drove me down and back and forth
7 to see if I recognized any of the cars, and I didn't
8 recognize any of the cars. So he kept pointing out cars and
9 asking, Is it one like that? Is it one like that? I said,
10 No. No. No. I couldn't find the car that looked like the
11 one that I saw.

12 Q. Okay. So he actually had you look, try to
13 identify vehicles?

14 A. Uh-huh.

15 Q. And what -- how did you describe that vehicle?

16 A. It was a black SUV, it looked newer, but I'm not
17 good at like makes of cars. So all I could give was an SUV,
18 black.

19 Q. Okay. And did you all talk to anyone else or did
20 he talk to any other?

21 A. I saw the same sanitation guy, because he went
22 down further to where the arcade is, there's like a little
23 parking lot over there, and he was over there. And he
24 stopped and asked the guy if he remembered seeing any of
25 that and he did, at the first stop sign, the guy -- the

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 sanitation truck that was there.

2 Q. Okay.

3 A. He asked him if he remembered me walking by and he
4 said yes.

5 Q. And he asked about the vehicle as well?

6 A. Uh-huh.

7 Q. All right. And so then at some point did you meet
8 with Detective Griffith and him show you a lineup, a photo
9 lineup?

10 A. Yes. So it was two days later.

11 Q. Okay. And tell me how that occurred.

12 A. So it was -- it was late evening. I remember we
13 had been on the beach all day. And we had come back and I
14 think we had just finished dinner. We were sitting out on
15 the porch, on the screened-in porch, when he came up and he
16 said he had a lineup. And I remember him saying, I'm going
17 to show you a lineup, and the person may or may not be on
18 here, you know, just, let me know if you see him.

19 And I remember looking at it and, like, I thought
20 I saw who I thought it was, but I can't say a
21 hundred percent. I can't tell you, yes, that this is him,
22 because I just -- I mean, when you're looking at something
23 like this you don't want to blame somebody for something
24 they didn't do.

25 So I just remember thinking that someone looked

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 like it, but just the coloring was off. It didn't look like
2 the same hair. And I just couldn't say that's him or, you
3 know, whatever. And he says -- I don't even remember after
4 that, like, he ended up leaving, because I didn't -- I just
5 said, I can't one hundred percent say, so I'd rather not say
6 that it's him.

7 Q. So you said that you had been on the beach that
8 day?

9 A. Yes.

10 Q. And it was hot?

11 A. Uh-huh.

12 Q. And was anything else going on?

13 A. During the day?

14 Q. Yeah.

15 A. No. I mean, we just -- it was -- it was a long
16 emotional day. It was a long emotional week.

17 Q. Okay. And had you had anything to drink that day?

18 A. Yes. I had a couple of drinks that day.

19 Q. And you were still a little upset from the...

20 A. Uh-huh.

21 Q. All right. Let me show you -- so before -- well,
22 let me go back.

23 Before -- before you were shown the lineup -- and
24 I know you didn't hear it -- did they -- somebody met with
25 you to do a sketch?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Yes.

2 Q. And that was the same day as the incident?

3 A. Yes.

4 Q. Okay. And tell me kind of that process and
5 procedure.

6 A. So he came in and basically asked me -- he showed
7 me different shapes, different eyes, different hair,
8 different nose, just the different features, I guess. And
9 he kept tweaking it a little bit until, you know, I felt
10 comfortable enough to say it was close enough.

11 Q. And did anybody suggest anything to you or show
12 you any photos of a suspect or anything like that?

13 A. No, ma'am.

14 Q. Okay. And that was basically off of your own
15 recollection?

16 A. Correct.

17 Q. And about how long was that process?

18 A. An hour maybe, it was a while.

19 Q. And it's laying here, but State's Exhibit
20 Number 4, is that the lineup?

21 A. Uh-huh.

22 Q. And that's the one you did with the Horry County
23 Sheriff's Department officer?

24 THE COURT: You said "lineup," is that the sketch?
25

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 BY MS. RICHARDSON:

2 Q. I mean, I'm sorry, the sketch.

3 A. Yes.

4 Q. And that's the one that you did?

5 A. Uh-huh.

6 Q. And then you -- a couple of days later after the
7 sketch, had you -- you were -- you weren't able to pick
8 anybody out of the lineup; is that right?

9 A. Correct.

10 Q. And then tell me what happened after that.

11 A. Officer Griffith came and got husband and I and
12 said that we were going to do the driveby, basically, and
13 get the possible suspect out, but, you know, to see if I
14 recognized him or didn't recognize him.

15 And so on the way over there, we pulled up and I
16 immediately -- the car was what I saw first and I told my
17 husband, I said, That's the car. And I knew without a doubt
18 that was the car, because I had seen a million that week
19 trying to point out which one it was, and I knew that was
20 it. And as soon as he walked out the door I knew. I mean,
21 well, they talked to his mom, I guess it was his mom that
22 came out, and then he walked out and that's when I saw him.

23 Q. And how quickly did you identify him?

24 A. I knew it was him immediately.

25 Q. And explain to me the difference between seeing

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 him in person and the lineup that you saw?

2 A. Oh, when I saw the lineup, I would say it's a -- I
3 mean, I don't think anytime I see something that looks like
4 a mug shot, you can really tell, for one. It was light. It
5 was dark that night.

6 Q. The night you were shown the lineup?

7 A. Yes.

8 Q. Okay.

9 A. Yes. And then when I saw him during the day, I
10 mean, it was obviously daylight and it was just like going
11 back to that morning.

12 Q. And how sure are you?

13 A. Oh, I'm one hundred percent sure.

14 Q. And were you a hundred percent sure that day?

15 A. Uh-huh.

16 Q. And were you advised of the details of the
17 investigation or how they got him to be a suspect at that
18 point when you went?

19 A. No.

20 Q. All right. I have no further questions. Answer
21 any questions that Mr. Edgeworth may have for you.

22 THE COURT: Cross-examination?

23 MR. EDGEWORTH: Thank you, Your Honor. May it
24 please the Court.

25 CROSS-EXAMINATION

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 BY MR. EDGEWORTH:

2 Q. Ms. Starnes, on the day of the incident as you're
3 walking back and you come across the perpetrator, for lack
4 of a better description, your testimony is that the
5 individual reached for you not once, not twice, but then on
6 the third time he attempted with two hands and then actually
7 got you with one hand before you pulled away?

8 A. Uh-huh.

9 COURT REPORTER: Is that a "Yes?"

10 THE COURT: You need to say Yes or No.

11 MR. EDGEWORTH: Sorry, Your Honor.

12 THE WITNESS: Sorry.

13 BY MR. EDGEWORTH:

14 Q. How long was that incident?

15 A. How long was that incident? I mean, from the time
16 I saw him walk from around his car to me, I don't know, one
17 to two minutes. I mean, it doesn't take long from here to
18 here, so it was quick.

19 Q. Okay. Well, let's break that down, because you
20 kind of shocked me there with the two minutes. I mean,
21 we're talking about walking the length of a driveway,
22 essentially. It took one to two minutes?

23 A. I mean, timing-wise, I'd say it was pretty quick
24 not. I mean, it was quick.

25 Q. Well, I mean, there's a difference between minutes

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 and seconds. So we're just trying to make sure that we get
2 an idea of how long it took. So was it ---

3 A. Okay. Twenty seconds. I mean, it was quick.

4 Q. All right. Fair enough.

5 And you got away?

6 A. Uh-huh.

7 Q. Get down the road wait on your husband, right?

8 A. Uh-huh.

9 Q. Law enforcement comes and they take you to start
10 canvassing the area looking for the vehicle that you
11 described; is that right? And you did that for a period of
12 time?

13 A. Correct.

14 Q. And the whole time you're sitting there looking for
15 this black SUV; right? You just don't come across it; is
16 that correct?

17 A. Uh-huh.

18 THE COURT: Please remember to say "Yes" or "No."

19 BY MR. EDGEWORTH:

20 Q. I'll try to remind you, as well, it's very easy to
21 do, so don't worry about it. I'll try to remind you.

22 So, fast forward, you can't find this vehicle.

23 You go out to the beach the next day; right?

24 Sounds like you enjoyed yourself, which, no harm
25 there. They come back with -- or excuse me -- first you go

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 and do the sketch; right? You do the sketch before the
2 lineup?

3 A. Correct. That was the same day.

4 Q. Okay. So on the same day as the incident you sit
5 down with the artist and you provide them with the sketch.

6 Did they give you the opportunity to look at the
7 sketch when they were done?

8 A. Yes.

9 Q. Okay. And did you approve of the sketch?

10 A. Yes.

11 Q. And you said that was -- that was the guy?

12 A. Yes.

13 Q. Okay. Did they tell you what they were going to
14 do with the sketch?

15 A. No.

16 Q. Okay. They just let it be. You didn't take a
17 copy of it with you?

18 A. No. I did not take a copy.

19 Q. I'm just going to show you, just want to make
20 sure, is this, in fact, the sketch?

21 A. Yes.

22 Q. This is the one you approved?

23 A. Yes.

24 Q. And the sketch was done on the same day, and then
25 the next day is the day that they brought the photo lineup

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 to you?

2 A. No. It was two days later.

3 Q. So two days go by. All right.

4 On that particular day -- just to make sure, when
5 you went and did the sketch on that day, had you had
6 anything to drink?

7 A. It was 8:30 in the morning.

8 Q. Okay. Well, I didn't know what time you did the
9 sketch, because you did it on the same day. But you didn't
10 have anything to drink on that day?

11 A. No. I mean, I went back -- that afternoon I may
12 have had, but not -- no.

13 Q. Okay.

14 A. It was 8:30 in the morning. They came, I don't
15 even remember to be honest with you, it was -- I've slept a
16 lot and cried a lot.

17 Q. Absolutely. You were of clear mind when you gave
18 the sketch artist and you all did that?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. So then a few days later they want you to check
23 this lineup. Your testimony it was later in the day, you
24 had been on the beach; is that right?

25 A. I'm sorry, say that again.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. When they came back a couple of days later to show
2 you the lineup.

3 A. Yes.

4 Q. That was in the evening time or towards the end of
5 the beach day?

6 A. Yes.

7 Q. You had been out on the beach and I guess your
8 testimony was that you had a couple of drinks. Did you tell
9 the officer at the time that you don't think you should do
10 this because you might be intoxicated?

11 A. No.

12 Q. Okay. Did you feel intoxicated at that time?

13 A. No.

14 Q. Were you clear headed at that time?

15 A. Yes.

16 Q. Okay. And when he showed it to you, you couldn't
17 pick out the person; right?

18 A. Correct.

19 Q. Now, did -- I guess it would be the next day they
20 asked you to go and do the showup?

21 A. Uh-huh.

22 THE COURT: "Yes" or "no," please.

23 THE WITNESS: Yes, sir. I'm sorry.

24 THE COURT: That's okay. It's not a problem.

25

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 BY MR. EDGEWORTH:

2 Q. When they left your house the night before, and
3 you couldn't pick him out, did they say anything about he
4 was in the photo array?

5 A. No.

6 Q. Okay. But then the next day they had you do the
7 showup. And you're riding with Investigator Griffith over,
8 he testified like 10 or 15 minutes, chitchatting about what
9 you're getting ready to do; right?

10 A. Yes.

11 THE COURT: Was there an answer?

12 BY MR. EDGEWORTH:

13 Q. I apologize. And I know it's kind of difficult
14 with this glass and everything, so we'll try -- I'm trying
15 to make it as easy as I can.

16 But you're going over there and you have
17 anticipation about what's going to happen; right?

18 A. Yes.

19 Q. Because you're being told that you're going to be
20 shown someone whom law enforcement believes to be the
21 suspect; right?

22 A. Did they tell me that it was the suspect? Is that
23 what you said? I'm sorry.

24 Q. Right.

25 A. No. They did not tell me that.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. Well, your testimony earlier was that they told
2 you that there was the possible suspect?

3 A. Yeah. Possible.

4 Q. Okay. So it's possible that the person you're
5 about to see is going to be the suspect. You're aware of
6 that while you're riding over.

7 A. Yes.

8 Q. For that 10 to 15 minutes.

9 A. Yes.

10 Q. And then, likewise, going back, you have this
11 anticipation about this vehicle that no one can find, right?

12 A. I knew there was a vehicle.

13 Q. Right. You knew what that vehicle looked like,
14 you just hadn't found it yet.

15 A. Yes.

16 Q. Okay. And then you pull up and the first thing
17 you see is what?

18 A. I saw the car before I knew what house it was.

19 Q. Right.

20 A. Because there were several houses.

21 Q. You saw the car before you even got there?

22 A. When I pulled up, yes, as we were pulling up.

23 Q. And at that time your testimony was, I knew that
24 was the car.

25 A. Correct.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. So at that point, when the individual comes out,
2 you've already made your mind about whether or not that's
3 the person that did it, right?

4 A. No.

5 Q. Okay. Had the car not been in the driveway -- had
6 the car not been in the driveway, do you think you would
7 have been in a better position to know whether or not that
8 was, in fact, the person that did it?

9 A. I didn't need to see the car. I mean, if I saw
10 him and the car wasn't there, I still would have known.

11 Q. But that's not what happened thought, right?

12 A. No.

13 Q. No. You saw the car first, made your mind up that
14 that was the car, correct?

15 A. Yes.

16 Q. And then you made up your mind that that was him?

17 A. When I saw him, yes.

18 Q. Okay. And you don't think that that is suggestive
19 in any way?

20 A. No.

21 Q. Okay. One last thing, when you were in the car
22 with Investigator Griffith how far away were you from
23 Mr. Dicapua?

24 A. From where he picked me up at?

25 Q. No, ma'am. I'm sorry probably a bad question.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 You were in the car with Investigator Griffith for
2 the showup lineup, right?

3 A. Yes.

4 Q. How far were you away from his house where they
5 had him -- they said they did this ruse where he comes
6 outside -- where they had him come outside so you could take
7 a look at him?

8 A. It was basically in his front yard, but there was
9 a road, a yard, and then the car, we were parked right here.

10 THE COURT: How about using this courtroom.

11 MR. EDGEWORTH: Yeah.

12 THE COURT: Further than from you to the end of
13 the courtroom or what?

14 THE WITNESS: Yes, probably that distance to the
15 end of the courtroom.

16 BY MR. EDGEWORTH:

17 Q. And I'm assuming it's based on the testimony, if
18 you're close enough to be grabbed, right, you would be
19 within arm's length; is that right?

20 A. Correct.

21 MR. EDGEWORTH: I have no further questions, Your
22 Honor.

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 BY MS. RICHARDSON:

2 Q. The area where you saw Mr. Dicapua, where the
3 officers took you and you saw him and identified him, was
4 that -- that was a neighborhood?

5 A. Yes.

6 Q. It was sort of like a -- almost like a mobile home
7 park kind of area?

8 A. Correct.

9 Q. And there were multiple houses?

10 A. Correct.

11 Q. And it's your testimony that before you even knew
12 the house you saw the vehicle?

13 A. Correct.

14 Q. Okay. And you testified earlier as far as the
15 lineup that you didn't want to get the wrong person?

16 A. Correct.

17 Q. And how did you feel -- what was your feeling when
18 you went to view Mr. Dicapua at his house?

19 A. For the showup?

20 Q. Yes.

21 A. I mean, as soon as I saw him, I mean, it was like
22 the face of that Sunday morning.

23 Q. Okay.

24 MS. RICHARDSON: I have no further questions.

25 THE COURT: Anything on those questions?

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: No, Your Honor.

2 THE COURT: Just so I'm clear, ma'am.

3 Regarding the six person photographic array that
4 was shown to you, tell me again as far as the people you saw
5 on there, you didn't want to wrongly identify someone. Did
6 you, in fact, pick out one that you thought it would be?

7 THE WITNESS: Did I tell Officer Griffith one?
8 No.

9 THE COURT: You didn't tell him that?

10 THE WITNESS: No.

11 THE COURT: In your own mind had you picked out
12 one of those six as one you thought it was?

13 THE WITNESS: Uh-huh. In my mind, yes.

14 THE COURT: Okay. But you didn't tell the
15 officer?

16 THE WITNESS: No. Because I wasn't one
17 hundred percent sure.

18 THE COURT: Because you weren't a hundred percent
19 sure. So, if were you shown it today, could you pick out
20 the one that you thought it was at that time?

21 THE WITNESS: I mean, I don't know, I haven't seen
22 it.

23 THE COURT: Solicitor, show it to her.

24 THE WITNESS: I mean, it was different lighting,
25 it was dark.

STACEY STARNES - FURTHER BY MS. RICHARDSON

1 THE COURT: First, does that look like what you
2 were shown that day?

3 THE WITNESS: I don't remember that.

4 THE COURT: You don't remember that. All right.

5 Well, then go ahead and take it back. Thank you.

6 MS. RICHARDSON: Your Honor, I did have one more
7 question I forgot to ask her.

8 THE COURT: Go ahead.

9 FURTHER REDIRECT EXAMINATION

10 BY MS. RICHARDSON:

11 Q. When you -- on the morning that this happened, you
12 were walking in the direction of the vehicle both times that
13 you encountered it?

14 A. Correct.

15 Q. Okay. So you had some time to observe it before
16 you got right up on it?

17 A. Correct.

18 MS. RICHARDSON: That was all.

19 THE COURT: So, as far as the vehicle, when you
20 saw it, no question or doubt of any kind in your mind about
21 it being the vehicle?

22 THE WITNESS: Correct.

23 THE COURT: And when you saw the defendant on the
24 showup, any question, doubt, hesitation, in your mind that
25 he was the person that grabbed you?

1 THE WITNESS: No doubt.

2 THE COURT: Thank you.

3 Further questions from the State?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Further questions from the defense?

6 MR. EDGEWORTH: No, Your Honor.

7 THE COURT: You may step down, ma'am.

8 Further witnesses on behalf of the State?

9 MS. RICHARDSON: No, Your Honor.

10 THE COURT: Witnesses on behalf of the defense?

11 MR. EDGEWORTH: None, Your Honor.

12 THE COURT: All right. Very good. All right.

13 While it was the State's obligation to make the
14 presentation, Mr. Edgeworth, it will be your obligation to
15 argue first. Go ahead.

16 MR. EDGEWORTH: Yes, Your Honor. May it please
17 the Court.

18 As the Court is aware this is all about the
19 unnecessariness of this suggestion. And it's pretty much
20 clear from the testimony that there was, in fact,
21 suggestion. And in those factors we're talking about the
22 three subjective ones, which are: The witness certainty,
23 the quality of the view, the amount of attention paid to
24 the -- to the, air quotes, culprit.

25 And in those objective factors all the ones that

1 are close in time to the incident, none of those support the
2 fact that the defendant -- excuse me, the complaining
3 witness went and sat down in a non-intoxicated state,
4 regardless of whether there's this testimony about drinking
5 at the time of the photo lineup, and gave what they
6 believed -- or she believed to be the person.

7 And I don't think that, other than purportedly the
8 liquor store individual identifying that, they put it out to
9 the mass public, they got no hits. Randomly, the liquor
10 store owner throws out this name, because he has experience
11 with Mr. Dicapua on a regular basis. We don't have any idea
12 or any testimony at this time what kind of relationship they
13 had, but he clearly wanted to go out and obtain significant
14 documentation that he forwarded along to law enforcement.

15 But the point of that is at that particular time
16 in the close proximity of that incident, draw a sketch that
17 doesn't fit the description of Mr. Dicapua, they go and find
18 a SLED array that -- this is the first time I've heard
19 anyone complaining about the array -- and the complaining
20 witness is unable to identify Mr. Dicapua in that.

21 They make up some stuff about -- when I say "make
22 up," the reference of the testimony is that they didn't
23 believe it was a good photo array, yet they didn't try to
24 get another one, or come up with some alternative. They
25 still took it to the complaining witness who admittedly

1 could not identify Mr. Dicapua in the photo.

2 And per her testimony, regardless of whether she
3 had been drinking on the beach that day, she was of sound
4 mind and would have to have her full faculties to determine
5 whether or not Mr. Dicapua is in the photo.

6 And if Your Honor were to check those -- those
7 exhibits, which are now in evidence, it is clear that the
8 sketch has -- looks nothing like Mr. Dicapua's photo in the
9 photo array, but it's clear that it's Mr. Dicapua in the
10 photo array.

11 So what does law enforcement do next? Then, Well,
12 we're going to come up with a showup lineup. And the way
13 we're going to do it is, and talk about the most unnecessary
14 thing of all time, they spent at least 40 minutes riding
15 around looking for a car that matched the description in the
16 mind of the complaining witness. At no time did they find
17 it.

18 They went through -- and the testimony was that
19 she was absolutely certain that it was a black SUV. And
20 riding up and down the beach, I'm sure they came across
21 plenty of them, and she couldn't find the one it was. But
22 you know where she did find it, as soon as they pull into
23 the neighborhood, she sees the car and that's suggestion.
24 Law enforcement has already identified the vehicle through
25 the information obtained from the liquor store.

1 So they put it up there and they come up with the
2 ruse and her own testimony says that, As soon I saw this
3 vehicle, I knew it was the vehicle. So what else is she
4 going to say when the individual comes out. There was no
5 chance for a non-suggestive showup at that point. As soon
6 as Mr. Dicapua comes out, I'm positive it's him, he gets
7 arrested and the rest is history. And so based on the
8 factors, they're all working against a proper showup lineup.

9 The attention was paid at the time of the
10 incident. The quality of the view, apparently she was
11 within close proximity -- well, she testified twice that she
12 comes across him in close proximity earlier in the day at
13 the time of the incident. And then a few days later is when
14 they do the showup lineup from what was approximately
15 50-feet away.

16 And when you weigh the description, the next
17 factor of the witness description versus the suspect, it's
18 clear that the sketch looks nothing like Mr. Dicapua. And
19 then, of course, the length of time between the incident and
20 the confrontation. And we're talking about a period of
21 three days before -- well, after she already come up with
22 the description. And then a few days later, only due to the
23 suggestion, the excessive suggestion, of having that vehicle
24 there, are we in this place today.

25 And I'm asking the Court to exclude the lineup,

1 exclude the identification as it's unreasonable and
2 unnecessarily suggestive.

3 THE COURT: All right, sir. Solicitor?

4 MS. RICHARDSON: Your Honor, in the United States
5 Supreme Court case of Neil v. Biggers, the Court talks about
6 the process for showups. And it says that they review them
7 under the totality of the circumstances looking at several
8 factors. And that includes the opportunity to view -- to
9 view the defendant at the time of the crime, the degree of
10 intention, the accuracy of any prior description, the level
11 of certainty demonstrated at confrontation, and the length
12 of time between the crime and confrontation. And those are
13 the factors to be considered.

14 Our courts, and I will point to State v.
15 Mansfield, which is 538 SE 2nd 257, that is a Court of
16 Appeals opinion from 2000, gives a long opinion regarding
17 showups, as we're calling them. And it does say that they
18 are disfavored because they are suggestive.

19 However, suggestiveness alone does not mandate the
20 exclusion of evidence. And a showup in Mansfield may be
21 proper even if the police refer to the suspect as a suspect
22 and even though -- even if he were handcuffed in the
23 presence of police, all of that, when you look at the
24 totality and circumstance, not one of those factors
25 automatically disqualifies it.

1 In fact, in Neil v. Biggers, it was a showup done
2 seven months later. In State v. Cheeseboro, there had
3 been -- and that's 552 SE 2nd 300, that's a 2001 Supreme
4 Court case, there had been two line ups. And, again, it was
5 a months-later lineup after hypnosis, and two separate
6 composite sketches, and that identification was allowed.
7 The Court, again, looked to the particular facts of the case
8 and the attention to detail.

9 Your Honor, in this case Ms. Starnes has testified
10 about her background. She has education. She's been
11 working as a realtor for 16 years. Which, obviously, and
12 medical coding, she did that as well. Both of those
13 professions require an attention to detail. She describes
14 the time of day that this occurred, it was a Sunday morning
15 well lit. She said a gorgeous day. She had an opportunity,
16 she viewed the defendant not once, but twice that day. And
17 had an opportunity to walk a distance before she came up on
18 him and then the first time went around him.

19 She recognized him from the first encounter to the
20 second encounter. She knew it was the same person. She
21 recognized him at that point. The officers testified that
22 her description was accurate.

23 Now, I know he is a little older than his -- than
24 the age that he gave, but his build, hair color, height,
25 that he was very tan. She gave an accurate description of

1 the vehicle. And was able on that same day to sit down with
2 a sketch artist and put together a composite drawing that
3 was so accurate that a citizen identified him from that
4 sketch and was also able to identify the vehicle.

5 She rode around. She didn't just pick the first
6 black SUV that she saw. She rode around the day of the
7 crime with the officer from Horry County and eliminated
8 vehicles all that day. So it wasn't like she just picked
9 up, Well, is this it. She did have attention to detail and
10 was able to eliminate things.

11 The other thing Your Honor is, as she testified,
12 she wanted to be careful and she didn't want to get the
13 wrong person. And one of the factors is -- and obviously,
14 Your Honor, seeing somebody in person than seeing just a
15 photo. But the officers have testified that her
16 description -- her first description that she gave to law
17 enforcement was accurate and of the vehicle. And in her
18 level of certainty that she's told us today and that she
19 demonstrated to the officer and that she put in her written
20 statement was one hundred percent.

21 So she did -- you're looking at the factors for
22 Neil v. Biggers, her opportunity to view him at the time of
23 the crime was not just once, but twice. She said she looked
24 right in his face and would never forget the way that he
25 looked at her. Her degree of attention was such that she

1 could do a sketch that a citizen could recognize. That
2 accuracy of her prior description was very accurate based on
3 the physical description and the description of the vehicle
4 that she gave to the officers.

5 The level of certainty, point Number 4, that she
6 demonstrated at the time of the confrontation was one
7 hundred percent, and she stands by that today. And the
8 length of time between the crime and that confrontation was
9 from June 10th to June 13th. So in very close proximity,
10 much closer than the seven months in our sentinel case of
11 Neil v. Biggers.

12 Your Honor, I think, based on all of this, that
13 the totality of the circumstances, that even though this was
14 a showup that, you know, based on the victim's presentation
15 here today and her credibility and the totality on
16 circumstances that it was accurate identification of him
17 where she was not swayed by any sort of suggestion. And she
18 made that clear that she didn't want to get the wrong
19 person.

20 Additionally, Your Honor, if you talked about --
21 well, of course she's going to pick out this vehicle. She
22 picked out the vehicle, because it was the vehicle and the
23 defendant admitted after Miranda that it was the vehicle and
24 he's the one there. So he has -- yeah, that -- it's almost
25 like it's a moot point, because he's already admitted to all

1 of that.

2 So, Your Honor, based on the totality and the
3 circumstances I'd ask that you find the identification of
4 the victim -- by the victim of the defendant is appropriate
5 and should be allowed. She should be allowed to identify
6 him to the jury.

7 THE COURT: Thank you, ma'am.

8 All right. We'll take a short break and I'll come
9 back in and give you an answer. Thank you very much.

10 MR. EDGEWORTH: Thank you, Judge.

11 (WHEREUPON, there was a break held from 3:49 p.m.
12 until 4:05 p.m.)

13 THE BAILIFF: All rise.

14 THE COURT: Thank you very much. You may be
15 seated. Thank you. All right. Regarding this eyewitness
16 identification.

17 The case law is clear that eyewitness
18 identification that is deemed to be unreliable because of a
19 suggestive lineup is constitutionally inadmissible as a
20 matter of law. Such that a criminal defendant could be
21 deprived of due process of law by identification procured by
22 a procedure arranged by police that is unnecessarily
23 suggestive and conducive to the irreparable mistaken
24 identification.

25 The U.S. Supreme Court and South Carolina Supreme

1 Court have said, a number of times, single person showups
2 are particularly disfavored in the law. That's what we have
3 here, something that is disfavored by the law.

4 The U.S. Supreme Court in Neil v. Biggers set
5 forth a two-pronged inquiry to determine whether due process
6 requires the suppression of eyewitness identification.

7 First, obviously, the trial court has to determine
8 whether or not the identification resulted from
9 unnecessarily suggestive police procedures. Clearly, this
10 was not a proper procedure. I don't think anybody can argue
11 with that.

12 So, if the Court determines the identification did
13 not -- I'm sorry -- if it did find that the Court finds that
14 there was impermissibly suggestive identification procedure,
15 then the Court has to determine whether the identification
16 was nevertheless so reliable that no substantial likelihood
17 of misidentification existed.

18 The Court has to consider these factors: The
19 witness's opportunity to view the defendant, or as law has
20 sometimes called it, the perpetrator, at the time of the
21 crime.

22 Two, the witness's degree of attention.

23 Three, the accuracy of the witness's prior
24 description of the defendant or perpetrator.

25 Four, the level of certainly demonstrated by the

1 witness at the confrontation, the showup.

2 And, Five, the length of time between the crime
3 and the confrontation, the showup.

4 So taking these in order. The witness's
5 opportunity to view the perpetrator or defendant at the time
6 of the crime. She saw the defendant more than once. She
7 saw the vehicle more than once. She was clearly within
8 arm's length of the defendant according to her testimony.
9 She saw his face clearly. Said it was a gorgeous day.

10 Two, the witness's degree of attention. She
11 talked about his eyes. The way his face looked when he
12 grabbed her.

13 The accuracy of the witness's prior description of
14 the perpetrator. Whether or not there's an exact
15 resemblance in the sketch and the defendant, it clearly was
16 sufficient to allow a person not connected with this, the
17 liquor store owner, to give valuable information to the
18 police that helped lead to the arrest of the defendant. It
19 clearly was close such that a person not involved could
20 identify the defendant. And her description given to police
21 after the incident matched that of the defendant when she
22 saw him.

23 Four, the level of certainty demonstrated by the
24 witness at the confrontation. That's demonstrated two
25 different times. She is absolutely certain that the vehicle

1 she saw more than once was the vehicle which was in the
2 defendant's yard. And, secondly, upon viewing the
3 defendant, immediately, immediately reacted that that was
4 the defendant, both verbally and emotionally. How it
5 affected her emotionally when she saw him, besides being
6 able to identify him as the perpetrator.

7 Five, the length of time between the crime and
8 confrontation. Three days. Not long at all. Not much time
9 elapsed between the crime and the identification.

10 Based upon this, the Court does so find that,
11 despite the errors of the police, that the identification by
12 the victim in this matter was so reliable that no
13 substantial likelihood of misidentification exists.

14 I'm going to allow it.

15 Thank you very much.

16 For your information, Counsel, the jury selected
17 Juror Number 100 as the Foreperson.

18 All right. So if you all will please be here by
19 9:00 o'clock. All right? Thank you very much.

20 MS. RICHARDSON: Thank you, Your Honor.

21 (WHEREUPON, State's Exhibit Numbers 10-41 were
22 premarked for identification.)

23 (WHEREUPON the proceedings adjourned for the day
24 at 4:12 p.m.)

25 MAY 12, 2021

1 THE BAILIFF: Yes, sir.

2 THE COURT: All right. The only sacred seats are
3 the Forelady and the two alternates. The rest of you ladies
4 and gentlemen, wherever you happen to kind of fill in coming
5 back from the jury room just have a seat. We just need to
6 know where the Foreperson and the two alternates are at all
7 times.

8 All right. The very first thing is the Clerk's
9 Representative is going to administer your oath to you, so
10 if you all would please stand at this time.

11 THE CLERK: All right. Ladies and gentlemen of
12 the jury would you please raise your right hand?

13 Do you solemnly swear or affirm that you will
14 truly try the issues joined in this case and a true verdict
15 rendered in according to the law and evidence, so help you
16 God?

17 (WHEREUPON, the jury complied.)

18 THE CLERK: Okay. Thank you. And you may be
19 seated.

20 THE COURT: Is there any member of the jury that
21 did not affirmatively take the oath that was just given by
22 the Clerk's Representative? If so, please raise your hand.

23 No juror having raised their hand, I find the jury
24 properly sworn in this matter.

25 All right. Ladies and gentlemen, I know that you

1 are sitting there and probably having some question in your
2 mind, What's my role? What am I supposed to do? You are
3 going to be, collectively, the judges of the fact of this
4 case.

5 I will not indicate to you in any way what I
6 believe the facts of this case are. That's not my job and
7 responsibility. My job is to govern the conduct of the
8 trial. And then to properly give you the law, again, that
9 you will apply to the facts as you find them to be in this
10 particular case.

11 Now, in this particular matter, you have been
12 chosen by the parties to look at the case and to see whether
13 or not the State can prove the defendant guilty of the crime
14 charged beyond a reasonable doubt.

15 The defendant in this matter by law and in every
16 criminal defense case is presumed innocent. He was presumed
17 innocent at time of arrest, any time before now, and all
18 times unless and until you, the jury, collectively find, if
19 you do, that he is guilty of the crime charge beyond a
20 reasonable doubt.

21 The defendant has nothing to show to you. The
22 defendant has nothing to prove to you. It is the State's
23 responsibility to prove the case to you beyond a reasonable
24 doubt.

25 One of your jobs as judges of the facts of this

1 case will be to judge the credibility, that is the
2 believability of the witnesses that come before you and
3 testify under oath. Use your common sense. Use your common
4 sense that you use in conducting your own affairs when
5 testimony and evidence is being presented to you.

6 Now, I will go through all of the respective law
7 that you need to know at the time prior to me giving you the
8 case. I'm not going to go through the whole thing at this
9 point in time, there's no need to, until you've heard the
10 facts of the case.

11 One thing that I'm going to ask that you do though
12 is do not, as best you can, form any kind of opinions until
13 you've heard all of the evidence and you know the law to
14 apply to the facts in evidence. I know that you will
15 mentally have some impressions of the people testifying
16 before you. I understand that. But don't come to any firm
17 conclusion until you've heard all of it. You know all of
18 the evidence that's going to be presented in this case. You
19 know the law that you have to apply to the facts that you
20 find in this particular matter. And, certainly, do not
21 discuss the case in any way until I give it to you at the
22 very end for your deliberations and discussions. You'll
23 have all the time you deem necessary to talk about the case
24 to come to your unanimous conclusion.

25 Now, saying that, and I'll tell you that at the

1 beginning, that's what the Court's going to be asking you to
2 do as a result of this matter is come to a unanimous
3 conclusion. That is, all the jurors agree on a particular
4 verdict. And I'll charge about that, but that's ultimately
5 what we'll be asking you to do however that is.

6 Obviously, in that, each juror is separate. Each
7 juror has their own mind. I'm not going to ask anyone to
8 give up any firmly held belief of any kind just to go along,
9 that's not your job. Your job is independently and
10 collectively to view all of the evidence in this particular
11 matter.

12 How we'll conduct the trial. After I get done
13 with these brief comments, we'll have the opening statements
14 by the Counsel. Then we'll have the presentation of
15 witnesses. Witnesses will come before you testify under
16 oath and give you information that they have about this
17 particular matter. There may be the introduction of certain
18 documents or photographs in this particular case.

19 After that, we'll have the closing arguments of
20 the attorneys. Then I'll give you the charge on the law.
21 And then I'll give you the case for your deliberations and
22 unanimous decision.

23 Opening statements by Counsel, closing arguments
24 by Counsel, important as far as an introduction or their
25 arguments as to what has occurred, but they're not evidence.

1 You cannot base your decision on that. That's their
2 opinions. Their characterizations. Evidence come to you
3 from the witness stand and then again any documentary
4 evidence that might be introduced. That's what you're going
5 to be using to make your decision as to whether or not the
6 State has proven the defendant guilty beyond a reasonable
7 doubt.

8 We understand we have given you a task that you
9 did not volunteer for, and I understand that, but it's an
10 important part of our justice system that anyone accused of
11 a crime has the right to have a jury of their peers hear all
12 of the evidence and decide has the State proven them guilty
13 beyond a reasonable doubt. And I know you would want that
14 for anyone that you know. And we're going to be asking that
15 of you in this particular matter.

16 So with that, Solicitor.

17 MS. SMITH: May it please the Court.

18 THE COURT: Yes, ma'am.

19 MS. SMITH: Can we remove our mask?

20 THE COURT: No, ma'am. You can remove it when you
21 speak to the jury.

22 OPENING STATEMENTS ON BEHALF OF THE STATE

23 MS. SMITH: She saw him. She saw his face. She
24 saw his eyes. And she saw his demeanor. She felt his hands
25 on her arm grabbing her. That's when she knew she had to

1 get away.

2 On June 10th, 2018, Stacey Starnes came to Garden
3 City. She came here with her husband. She came here with
4 some friends. She was celebrating her fortieth birthday.

5 She's a runner. She likes to go run. Her husband
6 goes and runs with her. He's -- he's not the runner in the
7 family, but he goes. That morning she decided to leave the
8 house with her husband, the house that they always stay at
9 in Garden City, and go run a mile down on South Waccamaw and
10 a mile back to the house.

11 When she got to the mile marker, she turned
12 around. She was faster than her husband, Jason. And so,
13 when she was on her way back to the house, she passed and
14 gave him a high five and went on. She got to the house,
15 two-mile marker, turned around to go meet up with him. She
16 was going to do a cool down, walk back to the house with
17 him, then just go hang out.

18 When she turned around walking back down
19 South Waccamaw, she gets to a street. There's a stop sign.
20 There's a black car. She sees a black SUV. She approaches
21 it. The doors open. There's a male, there's a guy in
22 there. The doors open, his legs are out of the car and he's
23 trying to talk to her. She ignores it. She keeps on
24 walking. She keeps on going on her walk, going to go meet
25 up with her husband.

1 She goes about another block and she sees that
2 same black SUV, that same Jeep, parked in a driveway
3 catty-cornered, blocking the sidewalk, because she had to go
4 around the sidewalk to get around that car, she had to go in
5 the street. As she approaches that black Jeep, she sees
6 that same man who had just talking to her. Just been trying
7 to say words to her.

8 He approaches her. He comes at her. He grabs at
9 her. He misses. He grabs at her again, she snatches away.
10 And on the third time, he grabs and lunges forward with both
11 hands. He grabbed Stacey. Luckily, Stacey is a very strong
12 woman. She had just taken a self defense class with her
13 young daughter. She knew what to do when somebody grabs her
14 in that way. And she reacted. She reacted just like they
15 taught her how to do in that class. She yelled "No." Swung
16 her body. She fought and she ran. Luckily, Stacey was that
17 strong.

18 My name is Liz Smith and this is my Co-Counsel
19 Alicia Richardson. We represent the State of
20 South Carolina.

21 Now, the defendant is charged with kidnapping as
22 you all heard. So, kidnapping. Well, kidnapping isn't
23 always what we think about when we see it on TV or when we
24 just think about it in our minds. It's not the movie Taken
25 all the time. It's not -- it's not Liam Neeson's daughter

1 getting taken out of a hotel room. That's not every
2 instance. Not every time is it somebody in a van with a
3 free candy sign in a park that goes and steals a little
4 child. Okay? Kidnapping can happen in a moment's time.

5 South Carolina defines kidnapping as the unlawful
6 seizure or confinement or inveigling, carrying away or
7 abduction of a person by any means for an unlawful reason.
8 Okay? So there's no set time with this. There's no set
9 time. Kidnapping can happen in a moment. You don't have to
10 have somebody locked up in a closet for 30 minutes tied up
11 with Duct tape over their mouth for it to be kidnapping.

12 Now, the State has the burden of proving this to
13 you. You heard the Judge say we have the burden of proof.
14 And so, to meet that burden, we are going to put up several
15 witnesses. You are going to hear several people take the
16 stand and give you their testimony what they remember.

17 You are going to hear from Stacey Starnes. You
18 are going to hear from her husband, Jason Starnes. They're
19 going to tell you exactly what I just told you. You're also
20 going to hear from police officers. From the investigators
21 who investigated this case, collected the evidence. You're
22 going to hear from a sketch artist who came and met with
23 Ms. Starnes, who took a substantial amount of time to sit
24 down and talk with her to figure what this guy who grabbed
25 her looked like.

1 You're also going to hear that when this sketch
2 was shown to the owner of a liquor store, it was -- it was
3 almost instant. Oh, I know this guy. This is a guy who
4 comes into my store frequently. That's Jeremiah Dicapua. I
5 know who that is from that sketch.

6 Through the course of this trial you're also going
7 to hear some statements made by the defendant to the police.
8 Okay? These statement took place on June 15th of 2018 and
9 June 21st of 2018. On June 15th, five days after this
10 occurred, pay attention. Pay attention to what he says, I
11 don't know what I did on Sunday, June 10th, 2018. Oh, wait,
12 I went down to the liquor store at the pier. No, I didn't
13 go to the liquor store, I went down to the pier, but then I
14 just went straight home. Well, actually I went to where the
15 boats are and that was it. Didn't talk to anybody. Didn't
16 see anybody. Didn't get out of my car. Nothing.

17 Then, six days after that, he comes back, gives
18 another statement. He says, Okay, well, I did go down to
19 the prier. I did go down South Waccamaw. I saw a jogger.
20 I thought I hit her. I did get out of my car. I did talk
21 to her. Just checking her. Never touched anybody though.

22 Then you're going to hear from an eyewitness.
23 You're going to hear from a man who was renting the house
24 that was same house that the defendant pulled under where he
25 grabbed Ms. Starnes. He's going to tell you what he saw.

1 He heard a commotion. He looked down and there is this
2 black SUV, there's a man that grabbed this woman. She
3 screamed. She screamed, No, not today. And she fought and
4 she ran.

5 Now, during the course of this trial there are
6 going to be times when it gets slow. I'm just going to be
7 honest with you. A trial is not like what you see on TV,
8 okay. It's not as exciting as it always appears to be. And
9 the reason that is, is because this isn't a scripted TV
10 show. This is real. This is raw.

11 So if we're asking questions that you think don't
12 have a purpose, it probably does. And it probably does and
13 that's why we're doing it.

14 So at the end of this trial as the Judge told you,
15 my co-counsel Alicia Richardson, she's going to get up and
16 she's going to give her closing remarks. And at that point
17 in time she's going to tie everything back together. She's
18 going to show you how it all fits in, because sometimes we
19 can't fit it all in together all in one go.

20 After that, after closing arguments are done, the
21 Judge is going to instruct you on the law and you're going
22 to go back into your jury room. At that time you're going
23 to begin your deliberations. All the evidence will be into
24 evidence back there with you, you'll be able to review it.
25 And once you sit down and begin deliberating I'm very

1 confident that you will come back with a verdict of guilty.

2 Thank you.

3 THE COURT: Mr. Edgeworth.

4 MR. EDGEWORTH: Thank you, Your Honor.

5 OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

6 MR. EDGEWORTH: Ladies and gentlemen of the jury,
7 my name Josh Edgeworth and I'm here representing Mr. Dicapua
8 who sits before you and have you listen to the State's
9 evidence and decide whether or not he's guilty.

10 I'm sure, as you heard the State just now, you're
11 thinking to yourself like I did when I first got this case,
12 is, What the heck are we doing here? Right? What are we
13 doing here? Why is this such a big deal?

14 Well, the big deal was made by law enforcement,
15 because the actions and the allegations that you will hear
16 in this case, not only from the witnesses that are presented
17 before you, but the complaining witness, the person the
18 State will call the victim throughout the case. The one
19 that they're going to say was kidnapped. They'll tell you
20 how minor of an event it was.

21 When the call comes in, the complaining witness's
22 husband calls 911 and lets somebody know that this incident
23 has taken place. All hell breaks loose with law
24 enforcement. They've got Horry County in. They got
25 Georgetown County in, right. They bring in a sketch artist.

1 They put it up on the news. Over what? They want to make
2 this a big deal. And they're trying to make you think that
3 it's not a big by saying, Oh, well, it's not like the movie
4 Taken. This is still a kidnapping.

5 Then they'll want you to ignore the facts, because
6 that is how they operate the case. They want you to ignore
7 the fact that the complaining witness, Ms. Starnes, there
8 was no injury. She didn't get taken away. She didn't get
9 thrown in a car. According to her testimony an individual,
10 a person in a black car tried to reach at her not once,
11 tried to reach at her not twice, and then finally grabbed
12 her for a split second before she ran away. But the State
13 is already telling you that you had a young, fit woman, who
14 goes for a run on a regular basis, so regular that she ran
15 on her vacation and apparently had just been in a self
16 defense class. Yet they want you to believe that she's
17 getting ready to be kidnapped.

18 Think about that. All of the resources, all of
19 the law enforcement resources that you're going to see that
20 comes up here and testifies how much work they put in when
21 the individual stays at the beach, continues to hang out
22 with her friends, like you normally would on your vacation,
23 goes about their merry way.

24 Is it worth it? Is it worth your time? It is
25 going to be worth your time for my client, so that you

1 listen to what they say happened and what they know, this is
2 no kidnapping. Thank you.

3 THE COURT: All right. Solicitor, your first
4 witness, please, ma'am.

5 MS. RICHARDSON: The State calls Stacey Starnes.

6 THE COURT: Please come around and be sworn,
7 ma'am.

8 THE CLERK: Raise your right hand. Do you
9 solemnly swear or affirm the testimony you're about to give
10 will be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes.

13 THE CLERK: Have a seat. Please state your name.
14 Spell your first and last name for the record.

15 THE WITNESS: Stacey, S-T-A-C-E-Y. Starnes
16 S-T-A-R-N-E-S.

17 STACEY STARNES, being first duly sworn,
18 testified as follows:

19 MS. RICHARDSON: Your Honor, the State and defense
20 have stipulated to the admissibility of State's Exhibit
21 Number 10, which is an aerial photograph of Garden City.
22 And we'd move for that to be introduced by stipulation into
23 evidence at this time.

24 THE COURT: Any objection?

25 MR. EDGEWORTH: No objection, Your Honor.

STACEY STARNES - DIRECT BY MS. RICHARDSON

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

3 (WHEREUPON, State's Exhibit Number 10 was admitted
4 into evidence.)

5 DIRECT EXAMINATION

6 BY MS. RICHARDSON:

7 Q. Stacey, generally, where do you live?

8 A. In Columbia.

9 Q. And are you married?

10 A. Yes.

11 Q. And do you have children?

12 A. Yes.

13 Q. And are they still in school?

14 A. Yes.

15 Q. And what is your educational background?

16 A. I do real estate and medical coding.

17 Q. And did you have any school past high school?

18 A. Yes.

19 Q. I guess, if I take this off, you could hear me
20 better, I'm sorry.

21 Did you go to school after high school?

22 A. Yes. I got an associates in health science and
23 also my real estate school.

24 Q. Okay. And how long been have you been in real
25 estate?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Sixteen years.

2 Q. And do you come vacationing in Garden City on a
3 regular basis?

4 A. Up to then, yes, it was every year.

5 Q. Once a year?

6 A. Yes.

7 Q. And where did you stay?

8 A. The same house we were in that summer.

9 Q. And that house is actually in Horry County?

10 A. Correct.

11 Q. And is that 239 South Waccamaw?

12 A. Correct.

13 Q. And you've viewed this exhibit before?

14 A. Yes.

15 Q. And it's marked on the map?

16 A. Yes.

17 Q. And tell me who was on vacation with you that
18 week.

19 A. My husband and three other couples.

20 Q. And why were you down here?

21 A. To celebrate my 40th birthday.

22 Q. And was it a week?

23 A. Saturday to Saturday.

24 Q. Just the typical rental that you do?

25 A. Correct.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And what about the children?

2 A. They were at home with family.

3 Q. And is that typical?

4 A. No. That was the first time we were there without
5 them.

6 Q. And so you arrived on Saturday, June 9th?

7 A. Correct.

8 Q. And tell me about your exercising habits prior to
9 this time.

10 A. I would exercise three to five times a week, run
11 mostly.

12 Q. And so on Sunday, June 10th, what did you do?

13 A. I got up and wanted to go for a run. And so my
14 husband and I went for a run. I was only going to do two
15 miles this day. So I ran my mile out and then a mile back
16 and then turned around to walk back to meet back up with
17 him. And as I turned around I came to a stop sign and
18 noticed that there was a black SUV at the stop sign with the
19 door open and a man was in the car. And as I got closer, I
20 just wanted to make sure that he was going to pull
21 forward, so I crossed in front of him. And he was trying to
22 get my attention to talk to me, but I just kept walking
23 probably another five minutes down. And then I noticed the
24 same black SUV in front of a house parked with the back end
25 on the sidewalk. And as I got closer I noticed that he was

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 standing on the opposite side of the driver's side of the
2 vehicle. And as I got closer he walked around the back side
3 and started walking towards me. And he reached for me. And
4 I wasn't sure what was going on at the time. And then he
5 reached again and I was like, Oh, gosh, he's trying to get
6 me. And so the third time, he lunged at me with both hands,
7 got me with one of them, and I just yelled, No, and, like,
8 jerked out away. And I just sprinted as fast as I could
9 across the street. I continued to run until I saw a house
10 that had a bunch of cars underneath it and hid. That's when
11 I called my husband. And I was like, you know, Where are
12 you? Somebody just tried to get me.

13 So he comes back towards me and I came out from
14 under the house as soon as I saw him and told him what
15 happened. And then we walked back to the house and that's
16 when he called 911.

17 Q. Okay. Let me show you what's been marked as
18 State's Exhibit 11 for purposes of identification.

19 Do you recognize this?

20 A. Yes.

21 Q. And tell me what it is.

22 A. That's the 911 call.

23 Q. And how do you know that's the 911 call?

24 A. Because I listened to it.

25 Q. So these are your initials on the CD?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Correct.

2 Q. And other than some personal information, your
3 phone number and those sort of things that were removed, is
4 this an accurate reflection and copy of the call that you
5 and your husband made to 911?

6 A. Yes, ma'am.

7 MS. RICHARDSON: Your Honor, at this time I move
8 State's Exhibit Number 11 into evidence and ask to publish
9 it to the jury.

10 THE COURT: Any objection?

11 MR. EDGEWORTH: Yes, Your Honor. I don't think a
12 proper foundation has been laid. It sounds like it's a
13 recording that wasn't made Ms. Starnes.

14 THE COURT: Well, just because the recording is
15 not made by her does not in and of itself invalidate it.
16 She's testified she's listened to it, it's accurate as to
17 what occurred on that time, I'll allow it into evidence.

18 Thank you.

19 MR. EDGEWORTH: Thank you, Your Honor.

20 MS. RICHARDSON: May I publish it to the jury?

21 THE COURT: You may do so.

22 (WHEREUPON, State's Exhibit Number 11 was admitted
23 into evidence and published to the jury. Played in open
24 court, not transcribed herein. After which proceedings
25 resumed.)

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 BY MS. RICHARDSON:

2 Q. So did you and your husband run together? Tell me
3 how the run was supposed to go.

4 A. So we started off running together, which is how
5 we always do. He's not typically a runner, but he tries to
6 run with me. And so I ran the full mile and he was behind
7 me, and when I turned around I just high-fived him when I
8 passed him and kept going. And then when I was walking back
9 I called him at some point, because I was like, I figured I
10 would see you by now. And he said he went a little bit
11 further, because he wanted to get three miles in.

12 Q. Okay. So just to clear that up. So you ran one
13 mile from your beach house?

14 A. Correct.

15 Q. And in what direction did you run?

16 A. Away from the pier towards -- what is that area --
17 towards Horry County -- where -- I'm saying that wrong.
18 Horry County -- so our beach house is facing the beach this
19 way, the pier is this way, and I went this way.

20 Q. Okay.

21 A. And then turned around and come back.

22 Q. And the way -- and for those that aren't familiar
23 with it, your house was not beach front, it was the next
24 row?

25 A. Correct.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And then Waccamaw drives -- South Waccamaw divides
2 that from the front row beach houses?

3 A. Correct.

4 Q. And there -- is there a sidewalk?

5 A. There is sidewalk.

6 Q. And what side is the sidewalk on?

7 A. The side that our house is on. So across, not
8 beach side.

9 Q. So you ran 1 mile from the beach house down toward
10 Georgetown County?

11 A. Correct.

12 Q. And then came back to the house so you would have
13 two miles in?

14 A. Correct.

15 Q. And then you did what?

16 A. And then I turned around to go meet back up with
17 my husband.

18 Q. Okay.

19 A. To do a cool down.

20 MS. RICHARDSON: Your Honor, may the witness step
21 down to look at the map?

22 THE COURT: Yes, ma'am. You just need to make
23 sure -- is there going to be a microphone close to her?

24 MS. RICHARDSON: There's a microphone on the jury
25 railing.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 THE COURT: You'll just have to keep your voice
2 up, okay, so they'll hear you?

3 THE WITNESS: Okay.

4 THE COURT: All right. Thank you. You can step
5 down.

6 BY MS. RICHARDSON:

7 Q. Can everybody see this?

8 So, obviously, this is an aerial view of the
9 Garden City area, correct?

10 A. Correct.

11 Q. All right. And just for reference this is the
12 pier?

13 A. Uh-huh.

14 Q. Down here the fishing pier at Garden City?

15 A. Yes.

16 Q. And your beach house was where?

17 A. Right there.

18 Q. And show the jury which direction you were running
19 in.

20 A. I was running this way.

21 Q. All right. And then you came back and started
22 walking this way?

23 A. Correct.

24 Q. Okay. And then what happened at with that Cedar
25 Avenue mark? Tell the jury what happened here.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. So as I was walking here, right about here is when
2 I noticed that he pulled there and stopped and his door was
3 open. As I got closer, I had to go around this way, because
4 he was there at the stop sign blocking that area. And as I
5 went by I looked just to make sure he wasn't pulling forward
6 so I could cross and he was saying something to me, but I
7 just ignored it and kept going, and then continued to walk
8 that way.

9 Q. And was he pulling forward?

10 A. No. He was not pulling forward.

11 Q. Okay. And was he in or out of the vehicle?

12 A. His legs were out, he was sitting in the -- he was
13 still sitting in the car.

14 Q. Okay. So what did you think at that point?

15 A. So there was a sanitation guy, like, right here,
16 and I really thought that he was getting trash, like most
17 people to do the beach area, to give to him.

18 Q. Okay. And when did you realize it was something
19 different?

20 A. When I got further down and saw him park.

21 Q. But he did try to get your attention at that Cedar
22 Avenue?

23 A. Yes.

24 Q. And you walked around?

25 A. Correct.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And then you kept on going down this way?

2 A. Yes.

3 Q. Okay. And then tell me -- you have previously
4 seen some video from this [REDACTED] South Waccamaw?

5 A. Yes, ma'am, I did.

6 Q. And then tell me what happened in this vicinity,
7 638 South Waccamaw.

8 A. So right here is where I noticed the black SUV
9 again and it was parked there, but the back end was on the
10 sidewalk. And so I really didn't think anything of it other
11 than maybe he was just at his beach house. And so, as I got
12 closer, I saw him standing on the back end on the driver's
13 side. And he came around as I got closer and started
14 walking towards me.

15 Q. Okay.

16 A. And then he reached for me and I'm like, you know,
17 just kind of moved my arm, like, what's he doing? And then
18 he reached again. And I think at this point he is trying to
19 get me. And so I realized that at that moment. And then I
20 think he knew I realized that at that moment, so he lunged
21 at me and got a hold of my one arm. And I literally just
22 yelled, No, and, like, pulled this way as forceful as I
23 could and just sprinted across the street and kept running.

24 Q. Okay. Did he say anything to you?

25 A. He was saying something, but in the moment I have

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 no idea what he was saying.

2 Q. Okay.

3 A. I just knew I had to get away.

4 Q. Okay. And how was he positioned as far as his
5 body and yours?

6 A. I mean, like this.

7 Q. Okay.

8 A. As he went to grab me, is that what you mean?

9 Q. Yeah. And did you see his face?

10 A. Yeah.

11 Q. And tell me about that.

12 A. As he went to grab me forcefully with both hands,
13 it was like his eyes got real big and it was like, I'm going
14 to get you, kind of thing, which is how I knew this wasn't
15 good.

16 Q. Okay. And how -- how did you feel at that point?

17 A. I was scared.

18 Q. And so did you notice anybody else around?

19 A. Right here there was a few people on a balcony.

20 Q. And so what did you do once you got away?

21 A. I ran as fast as I could. Right here is where I
22 saw a bunch of cars under a house and I just ran under the
23 house and hid behind the cars and called my husband.

24 Q. And did you run on the sidewalk or what did you
25 do?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. From here I ran across and ran on this side and I
2 looked back to make sure I didn't him behind me and then I
3 crossed back over to the sidewalk and went to the house.

4 Q. Okay. And how did you determine that this is
5 where you hid?

6 A. Because my -- I have my Runkeeper app on, and it
7 showed the map on my Runkeeper showed exactly where I had
8 stopped right here. And then shows where I sprinted and
9 then where I was sitting, where I stopped.

10 Q. Okay. And if you want to have a seat back on the
11 witness stand.

12 Did you -- other than these two encounters, had
13 you ever seen this man before?

14 A. No.

15 Q. And did you have any reason that he should be
16 stopping you?

17 A. No.

18 Q. And so what was your thought? What did you think
19 was happening when you were at the beach house over in
20 Georgetown County?

21 A. When I first saw him or the second?

22 Q. The second.

23 A. I mean, I knew he was trying to get me. What he
24 was trying to get me for, I don't know, but he was
25 definitely coming after me.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And when you say, "trying to get you"?

2 A. Well, I mean, he's reaching for me. And he's
3 reaching for me again. And on that third time, like, what
4 is going to do with me? I don't know where he's taking me.
5 I got to get away.

6 Q. Did you want to go with him?

7 A. No.

8 Q. Did he grab you against your will?

9 A. Yes.

10 Q. Did you want to be grabbed?

11 A. No.

12 Q. And did you want to get away?

13 A. Yes.

14 Q. Describe how he grabbed you. What sort of touch
15 it was.

16 A. I mean, his arm got around my lower arm -- I mean
17 his hand got around my arm.

18 Q. And was it easy to get away from him or did you
19 have to use force?

20 A. I used force.

21 Q. And at that point you ran?

22 A. Yes, ma'am.

23 Q. And why did you run?

24 A. Because I was scared. I knew I needed to get away
25 from him.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And I know this seems silly, but why did you need
2 to get away from him?

3 A. Because I knew he was going to do something.

4 Q. Okay. And when you say "something," you mean?

5 A. Was he going to put me in the car with him? Was
6 he going to hurt me. I don't know what he was going to do.

7 Q. So you were afraid for your physical safety?

8 A. I was afraid, yes.

9 Q. All right. And when -- so you ran. And
10 apparently you ran actually a good distance?

11 A. Yes.

12 Q. From 638 all the way down past Moonfish to where
13 this red dot is?

14 A. Correct.

15 Q. So that's just -- I mean, that's a good distance.

16 A. Yes, ma'am.

17 Q. Let me show you what's been premarked as State's
18 Exhibit Number 12, and do you recognize that?

19 A. Yes, ma'am. That's from my Runkeeper.

20 Q. And is that an accurate representation of the
21 picture from your Runkeeper from that morning?

22 A. Yes.

23 MS. RICHARDSON: Your Honor, at this time I'd
24 offer State's 12 into evidence.

25 THE COURT: Any objection?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: No objection, Your Honor.

2 THE COURT: It's into evidence without objection.

3 (WHEREUPON, State's Exhibit Number 12 was admitted
4 into evidence.)

5 BY MS. RICHARDSON:

6 Q. And how were you able to correlate this Runkeeper
7 app to the map?

8 A. Because it shows the different colors. It shows a
9 walk, a jog, and a sprint, basically.

10 Q. Okay. And the walk would be in what color?

11 A. Green, if I remember correctly, or yellow, I can't
12 remember.

13 Q. And it also shows when you went across the road?

14 A. Correct. Yes.

15 Q. Okay. And so why -- you didn't call 911 from
16 where you were?

17 A. No.

18 Q. And tell me why.

19 A. Because my husband was right there and I wanted to
20 get to him.

21 Q. And then the two of you went back and that's when
22 you called?

23 A. Correct.

24 Q. And that's why it went into Horry County instead
25 of Georgetown County?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Correct.

2 Q. And let me show you what's been marked as State's
3 Exhibit 14. Do you recognize that?

4 A. Yes.

5 Q. Okay. Tell us what that is.

6 A. That's when the officer got to the houses after we
7 called.

8 Q. And that was from his camera?

9 A. Yes.

10 Q. That he was wearing?

11 A. Correct.

12 Q. And is that an accurate reflection of how you
13 appeared when the officer got there?

14 A. Yes.

15 Q. And that was what you were wearing?

16 A. Yes, ma'am.

17 Q. A black and white striped top?

18 A. Yes, ma'am.

19 Q. And also on your wrist is?

20 A. My watch.

21 Q. Okay. And is that an accurate reflection of your
22 demeanor at that time the officers came?

23 A. Yes.

24 MS. RICHARDSON: At this time I'd offer State's
25 Exhibit 14 into evidence.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 THE COURT: Any objection?

2 MR. EDGEWORTH: No objection, Your Honor.

3 THE COURT: It's into evidence without objection.

4 MS. RICHARDSON: May I publish it to the jury?

5 THE COURT: You may.

6 (WHEREUPON, State's Exhibit Number 14 was admitted
7 into evidence and published to the jury.)

8 BY MS. RICHARDSON:

9 Q. Let me also show you what's been marked as State's
10 Exhibit Number 15. And do you recognize that?

11 A. Yes, ma'am.

12 Q. And tell me what that is.

13 A. That is me walking back towards my husband after I
14 completed the run.

15 Q. And this is before the incident occurred; is that
16 right?

17 A. Correct.

18 Q. And do you know where that's from?

19 A. From a camera that's on a house right in that
20 area.

21 Q. And you reviewed that?

22 A. Yes, ma'am.

23 Q. And that's an accurate representation of you
24 walking at that time?

25 A. Correct.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: Your Honor, at this time I'd
2 offer State's 15 into evidence.

3 THE COURT: Any objection?

4 MR. EDGEWORTH: No objection, Your Honor.

5 THE COURT: It's into evidence without objection.

6 (WHEREUPON, State's Exhibit Number 15 was admitted
7 into evidence.)

8 BY MS. RICHARDSON:

9 Q. So when the first officer got there they were from
10 Horry County?

11 A. Yes, ma'am.

12 Q. And what did they do at that time?

13 A. He asked me to go for a ride with him to see if I
14 could point out the car that I saw.

15 Q. Okay. And did you see anyone else when you all
16 were doing the -- when you were riding with the officer?

17 A. Anyone else?

18 Q. Yes. Did you talk with anybody else about the
19 vehicle?

20 A. Yes. We did. The sanitation guy. I told the
21 officer that's the guy that was sitting there when I went by
22 the first time at the stop sign, the first stop sign.

23 Q. Okay. And you all stopped and talked to him?

24 A. Yes, ma'am.

25 Q. And did you try to find where the incident

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 occurred?

2 A. Yes, ma'am.

3 Q. And were you able to do it at that point?

4 A. No.

5 Q. And did you also try to find the beach house where
6 the gentlemen were?

7 A. Yes.

8 Q. And were you able to do that at that time?

9 A. No.

10 Q. And you were actually kind of looking more around
11 the Moonfish area?

12 A. That's correct.

13 Q. And so at some point Georgetown County was called?

14 A. Yes.

15 Q. And what did they ask you to do?

16 A. I'm trying to remember Georgetown. They took over
17 from the Horry County officer and basically asked me again
18 what happened. And I cannot remember if we went for another
19 ride at that point or not, I think we did.

20 Q. Let me show you what's been marked as State's
21 Exhibit 13. Can you tell me what that is?

22 A. That's the sketch that the sketch artist came and
23 did.

24 Q. Okay. So you were -- you sat down with a sketch
25 artist?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. Yes.

2 Q. And tell me about that process. How did that go?

3 A. So he shows me a bunch of pictures and like
4 basically shapes of the face, different shapes of the nose,
5 mouth, eyes, just all of the features, and asked me to kind
6 of tell him, that's what he used to help, I guess, a
7 composite of it all. And then, as he drew, he's like, Does
8 this look right? If I said No, he would make it to where I
9 was more comfortable with what it looked like.

10 Q. And this was on the same day?

11 A. Yes, ma'am.

12 Q. And you were doing this based on -- you didn't
13 have any video surveillance or anything at that point?

14 A. No. Did not.

15 Q. And so you were doing this based on what you saw?

16 A. Correct.

17 Q. And you felt comfortable trying to do a sketch of
18 his face?

19 A. Yes.

20 Q. And why did you feel?

21 A. Because, I mean, I saw him. I mean, the look when
22 he tried to grab me it was like instilled in my mind.

23 Q. And you approved this photo?

24 A. Yes.

25 Q. And this an accurate -- or this is the photo that

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 was done. It that the original?

2 A. Yes.

3 MS. RICHARDSON: Your Honor, at this time the
4 State would offer State's Exhibit 13 this into evidence.

5 THE COURT: Any objection?

6 MR. EDGEWORTH: No objection, Your Honor.

7 THE COURT: It's in evidence without objection.

8 (WHEREUPON, State's Exhibit Number 13 was entered
9 into evidence.)

10 BY MS. RICHARDSON:

11 Q. And tell me how you felt after this. What was
12 your demeanor that day?

13 A. I was anxious, mad, emotional, scared.

14 Q. And it was your first full day on vacation?

15 A. Correct.

16 Q. So tell me how your vacation went.

17 A. It was full of talking to officers. I was in the
18 room crying a good bit. Everybody kept coming in, all my
19 friends that were with us, Don't let this ruin your trip.
20 You need to celebrate your 40th. You need to come out, have
21 fun, enjoy. I did this best I could while I was there but,
22 you know. In and out, had to talk to different people, and
23 basically reliving that morning over and over and over. I
24 mean, that was pretty much that week.

25 Q. So you did do -- but did you do some fun things on

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 your vacation?

2 A. Yes. There were times that I was able to pull
3 myself together and get back out.

4 Q. So at some point did the police ask you to look at
5 a lineup?

6 A. Yes.

7 Q. Okay. And was that just a couple days after?

8 A. It was two days after.

9 Q. Two days after?

10 A. Uh-huh.

11 Q. All right. And explain to me that lineup process.
12 What did they say to you?

13 A. He came to me and said that we have a lineup that
14 we want you to look at. He may or may not be in the lineup,
15 so if you see him, you tell me which one it is.

16 Q. And the lineup is on paper with pictures?

17 A. Correct.

18 Q. Is that right?

19 A. Correct.

20 Q. And were you able to pick anyone out?

21 A. No.

22 Q. Okay. And what was your feelings about the
23 lineup?

24 A. So there was one that I thought possibly could be
25 it, but I wasn't a hundred percent sure. It was late at

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 night when he brought it. So, I mean, I was exhausted that
2 day, we were out on the beach. We just finished dinner. We
3 were sitting out on the porch. But looking at the lineup, I
4 mean, I feel like mug shots are always hard to see, in
5 general. But, again, I thought that maybe, but I wasn't a
6 hundred percent sure, so I couldn't say yes, this is -- this
7 is him, so I didn't.

8 Q. Okay. And did you actually point anybody out to
9 them?

10 A. No.

11 Q. And why didn't you tell them that you thought it
12 was one of the guys on the sheet?

13 A. Because I wanted to be one hundred percent. I
14 don't want to blame somebody that I'm not one hundred
15 percent about.

16 Q. Okay. All right. And then some time later did
17 the detectives contact you again?

18 A. Yes.

19 Q. And what did they -- and that was the next day?

20 A. I believe that was Thursday.

21 Q. And what did they ask you to do at that point?

22 A. They wanted me to go with them. They were going
23 to do like a driveby of a possible suspect and see if I
24 recognized anybody.

25 Q. And what did they tell you about that?

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 A. That they were -- that I was going to be in a
2 vehicle that had tinted windows and that I would -- he --
3 nobody would be able to see me, but I could see, and there
4 was going to be officers there that were going to get him
5 just to come outside so that I could see.

6 Q. Okay. And who was with you?

7 A. My husband.

8 Q. And you were in an unmarked car; is that right?

9 A. Uh-huh.

10 Q. And about how far away was that?

11 A. From our beach house to where we went?

12 Q. Yeah.

13 A. Maybe ten minutes.

14 Q. And describe what you saw, what happened when you
15 got there.

16 A. So we pulled into this neighborhood area. It was
17 mobile homes on both sides. And when we pulled in, I saw a
18 black SUV and I told my husband, I said, That's the vehicle
19 right there. And then we pulled up in front of that house
20 and we were parked like, I guess, in front of it across the
21 street. And then when I saw him come out the door I -- I
22 mean, it took my breath away, honestly, because I knew right
23 then like that's -- that's the face.

24 Q. And so you identified him at that point?

25 A. Yes, ma'am.

STACEY STARNES - DIRECT BY MS. RICHARDSON

1 Q. And who was the man?

2 A. Jeremiah Dicapua.

3 Q. And he's...

4 A. Right there.

5 Q. And how certain were you?

6 A. I was one hundred percent certain.

7 Q. And how certain are you now?

8 A. One hundred percent certain.

9 Q. Now, did you notice any differences between him on
10 the day that you saw him and the day that that this happened
11 and you did the sketch?

12 A. Yes. He definitely had a haircut.

13 Q. And are you still running?

14 A. I'm slowing getting back.

15 Q. How did this affect your running pattern?

16 A. For about two years I think I ran maybe twice for
17 the first two years.

18 Q. And tell me how you were able to get away. What
19 helped you to be able to get away?

20 A. Well, so a month or so before all this happened, I
21 did a self defense class with my daughter, it was for my
22 daughter, I was just there for her, they called it a Mommy
23 and Me. And I remember everything they said to her and I
24 used what they said to her. And that was, When they grab
25 you, you twist your whole body and turn and pull your arm

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 away and yell "No," and that's what I did.

2 Q. So it wasn't simply just snatching your hand back?

3 A. I'm sorry?

4 Q. It wasn't simply just snatching your arm away?

5 A. No. I had to jerk away for sure.

6 Q. And what did you think would happen if you didn't?

7 A. I mean, lots of things ran through my mind.

8 Q. All right. I have no further questions. Answer
9 any questions that Mr. Edgeworth might have for you.

10 THE COURT: Cross-examination?

11 MR. EDGEWORTH: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. EDGEWORTH:

14 Q. Ms. Starnes, on the day of this incident, it was
15 June 10th, 2018, correct?

16 A. Correct.

17 Q. And that was a Sunday?

18 A. Yes.

19 Q. As you finished your run and began your walk, how
20 long was it from the time that you started to walk back
21 before the first interaction that you've testified to?

22 A. A block and a half.

23 Q. Okay. And were you still cooling down at that
24 point?

25 A. Was I still cooling down?

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. From your run.

2 A. I was walking, yes.

3 Q. And you noticed the sanitation workers?

4 A. Yes. The sanitation people were right there as I
5 walked by and I said, Good morning, to him and he said, Good
6 morning, and I just kept going.

7 Q. And so, as you continue your walk, you've
8 identified that you saw the individual, I guess, put their
9 legs out the car?

10 A. He was sitting in the car with the door open, yes.

11 Q. Okay. And you see could into the vehicle?

12 A. I mean, I wasn't behind, I was in front. So I
13 didn't look into the vehicle, no. I could see him, like, at
14 the door.

15 Q. Okay. Was he outside the vehicle?

16 A. He was sitting there with his door open as I'm
17 walking.

18 Q. Walking towards the vehicle?

19 A. Correct.

20 Q. And then you -- you had to pass right in front of
21 him?

22 A. Correct.

23 Q. And I think you testified that it was a few blocks
24 down the road, another five minutes of your walk?

25 A. Yes.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. And you saw the vehicle again?

2 A. Yes.

3 Q. Now, the interaction the second time, I believe
4 your testimony is that the back of the vehicle was towards
5 the roadway; is that correct?

6 A. Correct.

7 Q. And the individual was outside of the vehicle at
8 that point?

9 A. Correct.

10 Q. Did you interact with that person in any way?

11 A. Prior to the incident happening?

12 Q. Did the individual speak to you as you approached?

13 A. No.

14 Q. And your testimony was that he was on the driver's
15 side?

16 A. Correct.

17 Q. And he came around the back of the vehicle?

18 A. Correct.

19 Q. And at that point did you see the individual's
20 face?

21 A. Yes.

22 Q. Okay. Were you alarmed at that point?

23 A. Not until he started walking towards me.

24 Q. But you didn't start running yet, right?

25 A. No.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. And when he -- when the individual, I think you
2 called it grabbed at you, he didn't actually grab you
3 thought, correct? There was no contact.

4 A. Not the first two times, no.

5 Q. Okay. And on the third time your testimony is
6 that he actually made physical contact with you?

7 A. Correct.

8 Q. Okay. And you started to run at that point?

9 A. Well, after I got out of his arm, yes.

10 Q. Okay. Well, you say, "Get Out of his arm." I
11 think your testimony was he had his hand on your forearm
12 area?

13 A. Correct.

14 Q. And you got away from that?

15 A. Correct.

16 Q. So the total length of this encounter from, let's
17 say the initial grab attempt is, what, five seconds? Does
18 that sound about right?

19 A. Sure.

20 Q. Okay. And you ran away. Did the vehicle come
21 after you?

22 A. I sprinted across the street and ran as fast as I
23 could and I turned around to make sure he was not behind and
24 then I turned back around and continued to run. And then I
25 did several ---

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. But you testified -- I apologize, I didn't mean to
2 talk over you.

3 You've testified that you never saw the vehicle
4 again, though, correct?

5 A. Correct.

6 Q. So there was no subsequent actions by this
7 individual to do anything to you; is that correct?

8 A. After I snatched away from him?

9 Q. Yeah. After you started to run away.

10 A. I was not letting him get me.

11 Q. This person didn't come after you?

12 A. Yes. Three times.

13 Q. Okay. After you started running away?

14 A. After I ran away, no. I had no more contact.

15 Q. Okay. Was there any point in time during your
16 interaction that there were was -- what -- did you -- I
17 apologize for that, I stepped on my own words there.

18 But at no time during this incident did you see a
19 weapon; isn't that true?

20 A. I was looking at his face, so I don't know what he
21 had.

22 Q. Well ---

23 A. I mean, to me his hands were weapon enough for me
24 to get away.

25 Q. Okay. Fair enough with that. But let's talk --

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 your didn't see a knife, right?

2 A. No.

3 Q. Okay. There was no gun, correct?

4 A. No.

5 Q. Okay. And despite or, besides the fact that you
6 testified it was an emotional encounter, you didn't have any
7 physical injuries, did you?

8 A. No.

9 Q. And when the police come, when Horry County shows
10 up, you spent about what 20, 30 almost 40 minutes looking
11 for a vehicle; isn't that right?

12 A. Correct.

13 Q. And you've already talked about the identification
14 or, excuse me, the sketch that was made. Were you aware
15 that law enforcement had produced that to the general
16 public?

17 A. I mean, I assumed they were going to use it for
18 that. I mean, why else would they need the sketch?

19 Q. Well, my understanding was that they were trying
20 to locate the individual by way of your sketch; isn't that
21 true?

22 A. Yes.

23 Q. Your description to the officer was a white male
24 who was tanned in his 50s; isn't that true?

25 A. Correct.

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 Q. Okay. Are you aware that Mr. Dicapua is 70 years
2 old?

3 A. I mean, he doesn't look 70.

4 Q. Okay. So you were not aware?

5 A. No.

6 Q. When you were talking to law enforcement about the
7 incident -- sorry, my apologies, I lost my note here.

8 When you were talking to law enforcement about the
9 incident, you had mentioned that he was mouthing something
10 to you, but you could not tell what that was could you?

11 A. No.

12 Q. But you do recall you saying "No" and running
13 away?

14 A. Correct.

15 Q. As law enforcement contacted you to do the driveby
16 of the possible suspect, you were in the car for, I think
17 your testimony was approximately ten minutes, and they were
18 explaining to you the process; isn't that true?

19 A. Correct.

20 Q. And they told you the fact that they would be
21 taking you by what they believed would be a possible
22 suspect?

23 A. Correct.

24 Q. And when you approached the house, you had
25 identified the vehicle that you believed to be the vehicle

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 in the incident; isn't that true?

2 A. Correct.

3 Q. And you recognized that vehicle first?

4 A. Correct.

5 Q. Before anyone came out of the house; isn't that
6 right?

7 A. Correct.

8 Q. And when you got there, there was a couple of law
9 enforcement officers who engaged Mr. Dicapua to come out of
10 his home?

11 A. Correct.

12 Q. And so was there anyone else there other than the
13 law enforcement and Mr. Dicapua?

14 A. Anyone else? I think his mom came out first.

15 Q. Okay. So he was staying with his mother?

16 A. Yes.

17 Q. And of course you didn't -- you didn't tell law
18 enforcement that was a woman who tried to take you?

19 A. No.

20 Q. The individual you identified after having seen
21 the car, you told law enforcement that Mr. Dicapua was the
22 person who you saw on the beach?

23 A. Correct.

24 Q. After those encounters, when did you become aware,
25 or did you become aware of any additional contact that law

STACEY STARNES - CROSS BY MR. EDGEWORTH

1 enforcement had made with Mr. Dicapua?

2 A. At that time, no.

3 Q. When you described this incident, and I just want
4 to make sure that we understand this correctly, as you
5 approached the vehicle in question, there was one attempt to
6 grab your arm that was not touched, correct?

7 A. Correct.

8 Q. And then there was a second attempt to touch you
9 that did not affect; correct?

10 A. Correct.

11 Q. And then the third attempt there was a grab at
12 your arm which you got out of?

13 A. Correct.

14 Q. Having taken that class with your daughter, is it
15 possible that you believed something was happening that was
16 not happening?

17 A. Absolutely not.

18 Q. Okay. Why did you take the class?

19 A. My daughter did it with all of her friends and I
20 did it with her, because you can never be safe enough. And
21 she was -- that was years ago, she was younger, her dance
22 team did it together, so that's why we did the class.

23 Q. Have you had any prior experience with some type
24 of touching like that?

25 A. Never.

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 Q. Have you ever been in an alcohol or bar
2 establishment where someone touched you and you didn't want
3 them to touch you?

4 A. No.

5 Q. That's never happened to you in your life?

6 A. No.

7 Q. If it did happen to you would you react in the
8 same way that you did on the beach?

9 MS. RICHARDSON: Your Honor, I object. That calls
10 for speculation.

11 THE COURT: I don't see the purpose of the
12 question, Mr. Edgeworth.

13 MR. EDGEWORTH: Okay. I'll withdraw the question,
14 Your Honor.

15 THE COURT: All right.

16 MR. EDGEWORTH: And, therefore, I have no further
17 questions.

18 THE COURT: All right. Thank you very much.

19 MR. EDGEWORTH: Thank you.

20 THE COURT: Redirect?

21 MS. RICHARDSON: Yes. On the things that he
22 brought up.

23 REDIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q. So you had -- and we talked about this -- this was

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 a Sunday morning?

2 A. Yes.

3 Q. And how was the weather?

4 A. It was a beautiful, gorgeous morning.

5 Q. Okay. A bright sunny day?

6 A. Bright sunny day, yes.

7 Q. And you knew that the person you saw the second
8 time in the vehicle was the same one you interacted with
9 where the sanitation worker was?

10 A. Absolutely.

11 Q. And Mr. Edgeworth asked you if you had passed in
12 front of the vehicle at that first intersection at Cedar?

13 A. Yes.

14 Q. And did you -- you walked in front of the vehicle?

15 A. Yes.

16 Q. And how close were you to the vehicle?

17 A. Very close.

18 Q. The first time? The first time on Cedar?

19 A. Uh-huh. Very close.

20 Q. And was the vehicle moving or anything like that?

21 A. No.

22 Q. And did you get hit or anything like that any
23 interaction with the vehicle?

24 A. No. None.

25 Q. And Mr. Dicapua tried to have a conversation with

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 you at that spot?

2 A. Yes.

3 Q. And what did you think at that point when he tried
4 to talk to you?

5 A. Just some man trying to talk to a girl walking.

6 Q. Okay. And you just ---

7 A. I just ignored it and kept going.

8 Q. And then -- but the vehicle was already stopped
9 before you approached?

10 A. Correct.

11 Q. And then the second time that you saw him, was the
12 vehicle moving when you approached?

13 A. No. It was parked.

14 Q. And he was out of the vehicle?

15 A. Correct.

16 Q. Any interaction with that vehicle? Did it hit
17 you? Did you touch it?

18 A. No.

19 Q. Nothing like that?

20 A. No.

21 Q. And law enforcement -- Mr. Edgeworth said they had
22 you out 20 to 30 minutes looking for a vehicle. So were you
23 looking for dark SUVs at that point?

24 A. Yes.

25 Q. And did you see anything? Did you pick out any of

STACEY STARNES - REDIRECT BY MS. RICHARDSON

1 the vehicles?

2 A. I saw lots, but not ones I would say was the car.

3 Q. And what about after law enforcement left the rest
4 of that week?

5 A. My husband continued to say, Is it that kind of
6 vehicle? Is it that kind of vehicle? Is it that kind of
7 vehicle? And I never saw the vehicle that it resembled.

8 Q. And the second time you encountered him he was
9 trying to say something to you?

10 A. Correct.

11 Q. But you didn't know what that was?

12 A. Uh-huh.

13 Q. And have you -- he asked you about your prior
14 experience with this type of thing. Have you ever called
15 the police before?

16 A. No.

17 Q. This was your first time?

18 A. Yes.

19 Q. Mr. Edgeworth asked you what was happening at that
20 second encounter. What was happening?

21 A. There was a man trying to grab me and take me. I
22 don't know what he was going to do, but he was determined to
23 get me for sure.

24 MS. RICHARDSON: I have no further questions.

25 THE COURT: Anything on those questions just

JASON STARNES - DIRECT BY MS. RICHARDSON

1 asked?

2 MR. EDGEWORTH: Nothing further, Your Honor.

3 THE COURT: You may step down, ma'am.

4 All right. Solicitor, your next witness please,
5 ma'am.

6 MS. RICHARDSON: The State calls Jason Starnes.

7 THE COURT: Please come around.

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you're about to give will be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please take a seat. Spell your first
13 and last name for the record.

14 THE WITNESS: Jason, J-A-S-O-N. Starnes,
15 S-T-A-R-N-E-S.

16 JASON STARNES, being first duly sworn
17 testified as follows:

18 THE COURT: Go ahead, Solicitor.

19 DIRECT EXAMINATION

20 BY MS. RICHARDSON:

21 Q. And Mr. Starnes, we may have heard this, but just
22 for the record, you're married to Stacey Starnes who just
23 testified?

24 A. Yes.

25 Q. And now I'm going to put you on the spot. How

JASON STARNES - DIRECT BY MS. RICHARDSON

1 long have you been married?

2 A. That's not what I was expecting.

3 Q. I know. That's why I did it.

4 A. Fifteen years.

5 Q. And, again, just to kind of to go through the
6 preliminaries. You were staying with her and some other
7 couples at the beach house that has been pointed out on
8 South Waccamaw Drive on the Horry County side?

9 A. Yes.

10 Q. And, again, on the morning of June the 10th, you
11 went for a run and walk with your wife?

12 A. Correct.

13 Q. Okay. And tell me how you got separated that
14 morning.

15 A. Yes. So as Stacey explained, we were both
16 running, and then I stopped and just started walking, and
17 she continued to run. And so as reached a mile, as I
18 remember, she turned back and we kind of high-fived and I
19 just kept walking trying to get in more exercise, because I
20 couldn't continue to run. And then later on, she called me
21 and said, Where are you? And I told her, I decided to go
22 further, I'm walking back towards you now.

23 Q. Okay. And then did you get another call from her?

24 A. I did. I started running because I could tell she
25 was ready for me to get back. So while I was running, my

JASON STARNES - DIRECT BY MS. RICHARDSON

1 phone went off while I was running. And I picked it up and
2 there was no one there. And she accidentally dialed me.
3 And so I just assumed maybe she was running or she put it in
4 her pocket and I hung up and continued to run.

5 A few moments later I received another call with
6 her frantic asking, Where was I? Someone tried to grab her.
7 And I asked her where she was and said she was underneath a
8 house. So I continued to run until I got to her.

9 Q. And describe what happened when you got to her?

10 A. She was frantic, scared, visibly shaken. And then
11 I just started asking her questions about what happened.
12 She went into this scenario where she saw a black SUV, and
13 there was a sanitation worker. And as we were walking back
14 to the beach house we were looking for cars, because I was
15 thinking at that time, maybe we could identify a car that
16 would help, but we never saw anything.

17 Q. And when you got back to the house, I know you've
18 heard the 911 call, you called 911?

19 A. I did.

20 Q. And how was her demeanor during the walk and when
21 you got back to the house?

22 A. Still just very scared and shaken, crying, you
23 know, just distraught.

24 Q. And did you also ride with the officers as they
25 were looking for vehicles ---

JASON STARNES - DIRECT BY MS. RICHARDSON

1 A. I did.

2 Q. --- at that point.

3 And how was Stacey's behavior and demeanor that
4 week while you were on vacation?

5 A. I would just say sad. And just everyone else was
6 trying to have fun and she's, I think, just reliving the
7 moment. It seemed like everyday we were talking to the
8 police and reliving it and talking about aspects of it, and
9 just kind of down that whole week.

10 Q. And let me show you what's been marked as -- or
11 already been introduced as State's Exhibit Number 12. And
12 tell me about that.

13 A. Yeah. That was the Runkeeper data from her phone
14 and watch. It tracks her run, run speed, distance.

15 Q. And why did you have that out?

16 A. I think we were trying to -- we were definitely
17 trying to pinpoint where it happened.

18 Q. Okay.

19 A. And so we were able to pull that up and determine
20 where she hid and other aspects.

21 Q. Okay. And so that's how -- so, again, that's --
22 you pinpointed the Moonfish area to law enforcement; is that
23 right?

24 A. Right.

25 Q. And was it based on that data?

JASON STARNES - DIRECT BY MS. RICHARDSON

1 A. It was.

2 Q. Okay. And that's how you came up with this area
3 for law enforcement to first start looking?

4 A. Yes.

5 Q. Okay. And how did you do it with this -- I guess
6 you pulled it up on your phone?

7 A. Yeah.

8 Q. Okay. So how did you use it to find an address
9 and to tell the location?

10 A. We pulled it up and then we started looking at
11 Google Maps. So just looking at online maps where you could
12 see houses with similar patterns, like you can see some
13 pools there and things like that. We knew the general area,
14 this is where I met up with.

15 Q. Okay. And then what about the colors of the
16 lines, and one being on one side of the road and one on the
17 other?

18 A. Yeah. The colors designate speed. So if it's
19 green, it's a walk. If it's orange, it's a faster walk or
20 run. And if it's red it's a really fast run. So that's how
21 you can see the speeds and where she was going.

22 Q. And can you tell where she had crossed the road?

23 A. You can. You can see the orange line as it
24 crosses to the other side and then as she runs under the
25 house.

JASON STARNES - DIRECT BY MS. RICHARDSON

1 Q. Okay. And that's how you were able to pinpoint
2 the house she hid under?

3 A. Correct.

4 Q. Okay. And initially did you realize she had run
5 that far after the incident?

6 A. Not initially, no. I mean, she told me she ran as
7 fast and as far as she could.

8 Q. And were you present when law enforcement brought
9 the lineup?

10 A. I was.

11 Q. And what is your recollection of the instructions
12 that they gave?

13 A. It was, you know, this could or could not be a
14 suspect and can you pick out someone from the list.

15 Q. And she didn't ask -- as we discussed with her,
16 she did not pick anybody out of that list?

17 A. She did not.

18 Q. And then, after that, did you go with her when she
19 did the driveby?

20 A. I did.

21 Q. Okay. Tell me about that process. How did that
22 go as far as what law enforcement instructed you?

23 A. Yeah. The instructions were, I would say similar
24 to the lineup, you know, there's a potential suspect that we
25 want you to see. And that's all I really remember. I don't

JASON STARNES - DIRECT BY MS. RICHARDSON

1 remember any other details other than he was a suspect.

2 Q. And what happened when you got to the house?

3 A. As we pulled up to the house she immediately got
4 emotional and she started -- she didn't say anything at
5 first, because I was watching her. She just kind of started
6 breaking down when she saw it, she said, That's the car.

7 Q. And when you say "breaking down," what was she
8 doing?

9 A. Just visibly shaking, you could tell that she was
10 upset.

11 Q. And at that point had law enforcement pointed out
12 which house?

13 A. No. It was just pulling up in the neighborhood.

14 Q. And this is kind of a mobile home area?

15 A. Correct.

16 Q. Where Mr. Dicapua was?

17 A. Correct.

18 Q. And at some point he came out of the house?

19 A. He did.

20 Q. And what happened then?

21 A. Then she started crying immediately.

22 Q. And what did she say at that point?

23 A. That's him.

24 MR. EDGEWORTH: Objection. Hearsay.

25 THE COURT: You were present at the time?

JASON STARNES - DIRECT BY MS. RICHARDSON

1 THE WITNESS: I was.

2 THE COURT: Overruled.

3 BY MS. RICHARDSON:

4 Q. Do you recall if she had on any headphones when
5 she was doing that run?

6 A. She did not.

7 Q. And tell me about your interactions with law
8 enforcement that week.

9 A. It was mainly just in support of her or
10 information on the phone, you know, if I could maybe capture
11 and send to them, you know, the call, so I could correlate
12 the time when she accidentally dialed me while she was
13 running. Those kinds of things, just in support of her.

14 Q. And what was the -- what was the significance of
15 the time that she accidentally called you.

16 A. That's when she was running away from him.

17 Q. And do you recall what time that was?

18 A. Not specifically. But it was -- I remember
19 handing it over, it was 8:20 something. I don't remember,
20 exactly.

21 Q. It was after eight?

22 A. Yeah.

23 Q. And gave that information to law enforcement?

24 A. I did.

25 Q. And then as far as the fitness tracker, did you

JASON STARNES - DIRECT BY MS. RICHARDSON

1 also give that information to law enforcement?

2 A. I did.

3 Q. And, again, you were matching up the shapes of the
4 houses and the streets?

5 A. Correct.

6 Q. To figure out where it had occurred?

7 A. Correct.

8 Q. And how has her demeanor been -- this was back in
9 2018?

10 A. Right.

11 Q. How have things been since then?

12 A. Well, she said she hasn't ran in probably
13 two years after that, just started running recently. It's
14 really -- it's definitely impacted her. She's not quite the
15 same person.

16 Q. And you live in sort of a rural area?

17 A. We do.

18 Q. And previously did she run in that area?

19 A. Yes.

20 Q. And what about that?

21 A. She won't do it now.

22 Q. Okay. I have no further questions. Answer any
23 questions Mr. Edgeworth may have.

24 THE COURT: Cross-examination.

25 MR. EDGEWORTH: Thank you, Your Honor. Briefly.

JASON STARNES - CROSS BY MR. EDGEWORTH

CROSS-EXAMINATION

BY MR. EDGEWORTH:

Q. Mr. Starnes, once law enforcement got to the place where you guys were staying in Garden City, and y'all were talking about this fitness app, is it fair to say you were helping them try to identify where these locations were by utilizing the app itself?

A. Correct.

Q. Okay. You were kind of taking the lead on that at that time?

A. Yeah. I guess so.

Q. Okay. Do you recall having identified the address at [REDACTED] South Waccamaw as being the incident location?

A. I don't recall.

Q. Okay. Do you recall that the officer who you were talking to went down to that address to speak to the person staying at [REDACTED] South Waccamaw?

A. May have been. I don't recall.

Q. Okay. Do you recall when that same officer came back to let y'all know that was not the address because he spoke to the residents there?

A. I don't recall.

Q. Okay. Assuming that is true ---

MS. RICHARDSON: Your Honor, I object. He said he doesn't recall.

JASON STARNES - CROSS BY MR. EDGEWORTH

1 THE COURT: If he doesn't have any knowledge of
2 it, then you -- we'll have to see what your question is, but
3 if he doesn't know, he doesn't know, and he can't then
4 speculate.

5 MR. EDGEWORTH: Okay. Then I will just leave it
6 at that, Your Honor. Thank you.

7 THE COURT: All right. Very good. Anything else?

8 MS. RICHARDSON: No. No further questions, Your
9 Honor.

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

11 All right. Ladies and gentlemen let's take a
12 short break about five or ten minutes or so. Go to your
13 jury room and I will call you back out and continue.

14 Remember, don't talk about the case. Thank you
15 very much.

16 (WHEREUPON, the jury exited the courtroom at 11:00
17 a.m.)

18 THE COURT: Anything, Solicitor, before we take a
19 break?

20 MS. RICHARDSON: No, Your Honor.

21 THE COURT: Mr. Edgeworth?

22 MR. EDGEWORTH: No, Your Honor.

23 THE COURT: All right. We'll take a short break
24 about five or ten minutes. Thank you very much.

25 (WHEREUPON, a break was held from 11:01 a.m. until

1 11:14 a.m.)

2 THE BAILIFF: All rise.

3 THE COURT: Thank you. Be seated.

4 All right. Is the State ready for the jury to
5 come in?

6 MS. RICHARDSON: Almost. Can we just turn that
7 off until -- until ---

8 THE COURT: Unless it takes a long time for it to
9 warm up.

10 MS. RICHARDSON: Okay. And then we'll put it back
11 on when we're ready. I'm going to use it with the second
12 witness, but I just didn't want it to be a distraction while
13 they're testifying.

14 THE COURT: All right. Is the defense ready for
15 the jury to come in?

16 MR. EDGEWORTH: Yes, Your Honor.

17 THE COURT: All right. Ask the jury to come in,
18 please.

19 (WHEREUPON, the jury entered the courtroom at
20 11:15 a.m.)

21 THE COURT: All right. Two quick things, ladies
22 and gentlemen, regarding the trial. Those exhibits, you
23 know, before COVID, we used to pass them all around and the
24 jury would look at them, all the time. Obviously, we don't
25 do that now, but you will have all the time you deem

1 necessary to look at them at the end of the case when it's
2 time for you to make your decision. They'll be in the jury
3 room with you, the ones that the Court's allowed into
4 evidence. They'll be in the jury room. You can look at
5 them until your heart's content in your jury room, okay?

6 And, just as a point, Madam Forelady, sometimes
7 this happens, we ask for you all to come out and somebody's
8 not ready to come out just yet. So Madam Forelady, if they
9 knock on the door and say come on out, if you're not ready,
10 just tell them, give us some more -- you know, another
11 minute or so, okay?

12 MADAME FORELADY: Okay.

13 THE COURT: All right. Great. All right. Next
14 witness, Solicitor.

15 MS. RICHARDSON: The State calls Arthur Blackburn.

16 THE COURT: All right. Please come around and be
17 sworn. Come around right over here. Thank you, sir.

18 THE BAILIFF: Place your hand on the Bible and
19 face her.

20 THE CLERK: Do you solemnly swear or affirm the
21 testimony you're about to give is the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please have a seat and spell your
25 first and last name for the record.

ARTHUR BLACKBURN - DIRECT BY MS. RICHARDSON

1 THE WITNESS: Arthur, A-R-T-H-U-R. Blackburn,
2 B-L-A-C-K-B-U-R-N.

3 ARTHUR BLACKBURN, being first duly
4 sworn, testified as follows:

5 THE COURT: All right. Now, Mr. Blackburn, it's
6 your choice. I'm going -- if you want to, you can. There
7 you go. Very good. Go ahead.

8 DIRECT EXAMINATION

9 BY MS. RICHARDSON:

10 Q. Mr. Blackburn, where are you employed?

11 A. Town of Surfside Beach.

12 Q. Okay. And how long have you been at Surfside?

13 A. Almost two years.

14 Q. And what do you do there?

15 A. Public Works, I run equipment.

16 Q. And prior to that where were you employed?

17 A. Horry County Public Works.

18 Q. What did you do with Horry County Public Works?

19 A. Beach services.

20 Q. And was that back in 2018?

21 A. Yes.

22 Q. You were working there in June of 2018?

23 A. Yes.

24 Q. And prior to working at Horry County, what did you
25 do?

ARTHUR BLACKBURN - DIRECT BY MS. RICHARDSON

1 A. I was in public works in a small town in
2 southwestern PA for 32 years.

3 Q. And you retired from there?

4 A. Yes.

5 Q. And decided to move here?

6 A. Yes.

7 Q. Okay. Was that your decision?

8 A. No.

9 Q. Who decided that you were moving south?

10 A. My wife.

11 Q. Okay. So you -- what were you doing -- do you
12 remember the day that we're talking about June 10, 2018? Do
13 you remember being talked to by law enforcement?

14 A. Yes.

15 Q. Okay. And that would have been back in June of
16 2018?

17 A. Yes.

18 Q. And what were you doing at the time that law
19 enforcement talked with you?

20 A. At that time I think we were probably cleaning
21 accesses, beach accesses.

22 Q. Okay.

23 A. Like blowing the sand off of them, picking up
24 trash, stuff like that.

25 Q. Okay. So you were doing like some sanitation type

ARTHUR BLACKBURN - DIRECT BY MS. RICHARDSON

1 stuff?

2 A. Yeah, if you want to call it that. Yes.

3 Q. But picking up trash and just kind of whatever
4 needed to be done down at the beach in the summer?

5 A. Correct.

6 Q. All right. And did you observe a vehicle that
7 caught your attention on that day?

8 A. Yes. Yes.

9 Q. All right. Tell me what you saw.

10 A. I saw a black kind of Jeep Cherokee come up to a
11 stop sign and instead of pulling up onto South Waccamaw, it
12 kind of stopped and just backed up in a hurry, like real
13 fast.

14 Q. Okay. And that's what caught your attention?

15 A. Yes.

16 Q. And so you would've been -- this green line is the
17 dividing line between Horry and Georgetown County?

18 A. Yes.

19 Q. And what would you described as this area right
20 here?

21 A. I can't see.

22 Q. You can't see? Let me pull it up here. This
23 screen's in the way. This would be in Horry County?

24 A. Yes.

25 Q. And do you have nicknames or anything that you

ARTHUR BLACKBURN - DIRECT BY MS. RICHARDSON

1 call these accesses?

2 A. No, just the street name.

3 Q. Just by Cedar?

4 A. Yes.

5 Q. Okay. But that would be the first access in Horry
6 County from the Georgetown County line?

7 A. Yes, ma'am.

8 Q. So that would be the first beach access; is that
9 right?

10 A. Yes. Yes.

11 Q. Right there? Okay. And in what -- is that where
12 it occurred, at the first beach access?

13 A. From what I can recall, yes.

14 Q. Okay. And so this is South Waccamaw, the first
15 street -- beach -- off the beach?

16 A. Yes.

17 Q. And in what direction did the car go?

18 A. Reversed toward Underwood Road.

19 Q. Okay. Now, when you say reverse, you mean in
20 reverse?

21 A. In reverse.

22 Q. Towards this back street Underwood?

23 A. Yes.

24 Q. And that's why you remembered it.

25 A. Yeah. That's where it caught my attention.

ARTHUR BLACKBURN - DIRECT BY MS. RICHARDSON

1 Q. Okay. And did you observe any kind of interaction
2 or anything like that?

3 A. No.

4 Q. Okay. And then that's what law enforcement came
5 to talk with you about?

6 A. Yes.

7 Q. And did you also talk with the Starnes that day?

8 A. Yes.

9 Q. And they asked you about the same thing?

10 A. Yes.

11 Q. To get the vehicle? And you were able to
12 determine the make, model, and color?

13 A. Yes.

14 Q. And did you see any accidents or anything like
15 that?

16 A. No.

17 Q. Okay. I have no further questions. Answer any
18 questions that Mrs. Edgeworth may have for you.

19 THE COURT: Cross-examination?

20 MR. EDGEWORTH: I have no questions for this
21 witness, Your Honor.

22 THE COURT: You may step down, sir. Do you wish
23 the witness to be excused?

24 MS. RICHARDSON: I do, Your Honor.

25 THE COURT: Any objections?

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: No objections.

2 THE COURT: All right, sir. You're released to go
3 back to your regular activities. Thank you.

4 MS. RICHARDSON: I think he has a plane to catch.

5 THE WITNESS: Yes.

6 THE COURT: Very good. All right. Next witness,
7 please.

8 MS. RICHARDSON: The State calls James
9 Varcadipane.

10 THE COURT: All right, sir. Please come around
11 right up here and be sworn, sir.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you're about to give will be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Please have a seat and spell your
17 first and last name for the record.

18 THE WITNESS: James, J-A-M-E-S. Varcadipane,
19 V-A-R-C-A-D-I-P-A-N-E.

20 JAMES VARCADIPANE, being first duly
21 sworn, testified as follows:

22 THE COURT: Go ahead, Solicitor.

23 DIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q. And what do you do?

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 A. I'm retired now.

2 Q. Okay. And how long have you lived in this area?

3 A. Sixteen years.

4 Q. Okay. And where do you live? I mean, just the --

5 A. In the general vicinity of the incident.

6 Q. Okay. So in the Garden City area?

7 A. Correct.

8 Q. Okay. And do you have a business?

9 A. I sold it, but at the time I had a liquor store.

10 Q. Okay. In June of 2018 you owned a liquor store?

11 A. That is correct.

12 Q. And what was the name of that store?

13 A. Atlantic Discount Spirits.

14 Q. And where is that located?

15 A. 2901 Highway 17 at the corner of Atlantic Ave.,
16 Wings and Dunkin Donuts, in that facility.

17 Q. And where does Atlantic Avenue end? Where does it
18 end?

19 A. It starts at 17 and goes to South Waccamaw.

20 Q. Okay. And is that at the pier? Is that at the
21 pier?

22 A. That's at the pier, correct.

23 Q. Yeah. Okay. So this -- I'm just going to show
24 you this State's Exhibit 10, the map of Garden City.

25 A. Okay.

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 Q. So this would be Atlantic that's marked and kind
2 of ends right there.

3 A. That is correct.

4 Q. And what else is in that area?

5 A. Sam's Corner. There's another beachwear store
6 across the street, The Red Roof, and another one on the
7 other side. And there's realtor's offices over there.

8 Q. Okay. And this is the main access to ---

9 A. It's the only access.

10 Q. --- to get here?

11 A. Correct.

12 Q. Okay. To get to this cutoff part of Georgetown
13 County?

14 A. That is correct.

15 Q. Okay. And back in June of 2018 did you have
16 interaction with law enforcement regarding a -- a kidnapping
17 case?

18 A. Yes.

19 Q. Okay. Tell me how that came about.

20 A. A detective came into my store and showed me a
21 sketch and asked me if I recognized this person.

22 Q. And were they also trying to see if you had any
23 cameras of Atlantic?

24 A. Yes. I observed the picture and I then thought I
25 recognized the picture, then the next day when Jeremiah

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 walked into my store, I said that's it.

2 Q. Okay. Let me show you ---

3 A. And then I -- I offered the footage of the video
4 of him coming in the store.

5 Q. Okay. Let me show you what's been marked as
6 State's Exhibit 13. Is that the sketch that you were shown?

7 A. That's correct.

8 Q. Okay. And so the officers came in one day and
9 showed it to you, and then the next day is when you --

10 A. (Shakes head affirmatively.)

11 Q. And tell me how you know the defendant, Jeremiah
12 Dicapua?

13 A. Jeremiah would come to my store. I can't sell
14 alcohol until nine o' clock in the morning, but he would
15 showup 15 minutes and sit in the parking lot, and wait for
16 me to open up. And when I opened up, he would buy two pints
17 of vodka, one he would put in his pocket and the other one
18 he'd put in a bag.

19 Q. And how often was that?

20 A. Every day, except Sundays, of course.

21 Q. Okay. You were closed on Sundays?

22 A. By the law, yes.

23 Q. State law. So every day and for how long?

24 A. I would say maybe two years at the most, because
25 he didn't live there until, I think he was living with his

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 mother. He lived someplace else and then he moved in with
2 his mother, I believe.

3 Q. So practically six days a week for two years?

4 A. That is correct.

5 Q. And so they came in and showed you the sketch and
6 asked about video surveillance of the parking lot; is that
7 right?

8 A. Yes, that is correct. Well, I called them back
9 once I had an interaction with Jeremiah the next day. When
10 I saw him, I said, that's the sketch.

11 Q. Okay.

12 A. So then I called the police department, the
13 detective and sent him some pictures and he said, Okay,
14 thank you.

15 Q. And how did you send those pictures?

16 A. I think it was text message. I'm not positive.

17 Q. Okay. And what sort of pictures did you send?

18 A. The video surveillance of Jeremiah in my store.

19 Q. Okay.

20 A. And then the next day or so, he showed up and I
21 took pictures of the vehicle he was driving -- and it was a
22 rental car, I believe it was Enterprise, I'm not sure -- and
23 sent them to the detective as well.

24 Q. Okay. Did they ask you to do that?

25 A. No, they did not.

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 Q. And was that rental car vehicle, the vehicle he
2 had always driven?

3 A. No.

4 Q. Was there anything --

5 A. A different SUV. I believe it was his mother's
6 vehicle. I could be mistaken about that, but I believe.

7 Q. And did you notice anything different about him?

8 A. Yes, ma'am. Monday morning, again, nine o'clock,
9 he came in, and he said he just came from getting a haircut.
10 His hair was normally like his brother's hair, which is a
11 little more full, but that day he came in with his hair the
12 way it is now.

13 Q. Okay. And because we're on the record and anybody
14 reading the record can't see that. Describe how his hair is
15 now.

16 A. Pretty much just a patch of hair above his
17 forehead.

18 Q. Okay. So all gone off the sides?

19 A. That is correct.

20 Q. But that's not the way it was before that Monday
21 morning?

22 A. That is correct.

23 Q. Okay.

24 A. I don't know any barber shops that are open on
25 Monday morning before 9:00. You know, that doesn't mean

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 much, but...

2 Q. Okay. And did you tell law enforcement about
3 that?

4 A. That's correct.

5 Q. Let me show you what's previously been marked as
6 State's Exhibit Number 5 and it's actually three pages. Can
7 you tell me what that is?

8 A. That is from my cameras in my store. It's one of
9 three or so pages.

10 Q. Well, look at all of them.

11 A. I didn't know if I could touch them or not.

12 Q. Yeah. If you're comfortable touching them. If
13 you want gloves we can give you some.

14 A. Corona virus won't live in my body, I'm too
15 rotten. Yeah, these are the pictures that I supplied the
16 officer with from my video surveillance. I think that was
17 on Tuesday or Wednesday.

18 Q. And that was a screen shot from the surveillance?

19 A. That's correct.

20 MS. RICHARDSON: And then, Your Honor, at this
21 time I offer State's 5 which is three pages into evidence.

22 THE COURT: Any objections?

23 MR. EDGEWORTH: No objection, Your Honor.

24 THE COURT: It's into evidence without objection.

25 (WHEREUPON, State's Exhibit Number 5 was entered

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 into evidence.)

2 MS. RICHARDSON: And I would like to display these
3 electronically, if you're all right with that, off of the
4 CD.

5 THE COURT: All right.

6 MS. RICHARDSON: So the jury can see them without
7 us having to pass them around.

8 THE COURT: All right. That's fine.

9 MS. RICHARDSON: But I'll wait until we do all of
10 them.

11 BY MS. RICHARDSON:

12 Q. Okay. And let me show you State's Exhibit
13 Number 6. And, again, I believe that's three pages. It
14 might be four pages. Three pages.

15 A. Three pages. No. No. No, it says three pages.

16 Q. It was thick. Okay. And tell me what those are.

17 A. Those are photographs I took from my cellphone.

18 Q. And that's of the vehicle?

19 A. That he was driving.

20 Q. And then also that's the whole vehicle?

21 A. The tag number and the number from the rental
22 company, the sticker that's on there. I believe the
23 windshield or possibly the back side.

24 Q. All right. And you took those yourself? Where
25 was he when you were taking these pictures?

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 A. Inside the store.

2 Q. And how did you get away with doing that? You
3 just went out and did it?

4 A. I just went and did it.

5 Q. All right. And this is an accurate reflection of
6 the pictures that you sent to law enforcement?

7 A. That is correct.

8 Q. And those are dated 6/12/2018; is that right?

9 A. To the best of my recollection, yes.

10 Q. And then -- well let me show you this, what's been
11 marked as State's Exhibit Number 7.

12 A. Okay. And the question is?

13 Q. Okay. What is that?

14 A. A receipt from when -- well, obviously, with his
15 signature on it that he was at my store at that time to pay
16 for a product.

17 Q. Okay. And what date was that?

18 A. 6/12/18.

19 Q. And would that have been the same day that you
20 took the other photos?

21 A. I believe so, yes.

22 Q. Okay. And did you also provide that to law
23 enforcement?

24 A. That's correct.

25 Q. Okay. And are these accurate reflections,

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 Number 6 and Number 7, of what you provided to law
2 enforcement, the photos that you took and the receipt you
3 provided?

4 A. That is correct.

5 MS. RICHARDSON: Your Honor, at this time, I think
6 we've already done Number 5. I'd offer 6 and 7 into
7 evidence.

8 THE COURT: Any objection?

9 MR. EDGEWORTH: No objection, Your Honor.

10 THE COURT: All right. Six and seven are in
11 evidence without objection.

12 (WHEREUPON, State's Exhibit Numbers 6 and 7 were
13 admitted into evidence.)

14 MS. RICHARDSON: And I'm going to publish those to
15 the jury by digital means if we can get it out.

16 THE COURT: Okay.

17 BY MS. RICHARDSON:

18 Q. So jurors on the back two rows have monitors, is
19 this close enough for the jurors on the front row? Or do I
20 need to...

21 What we're looking at now has been marked as
22 State's 6 on the paper copies. And just tell -- I know it's
23 self explanatory, but just so we can make it clear for the
24 record, what is this?

25 A. It is a picture of the vehicle that Jeremiah was

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 driving in front of my store that I had taken.

2 THE COURT: And yours is on the screen, right to
3 the left of you.

4 THE WITNESS: It's easier to see.

5 THE COURT: Okay.

6 MS. RICHARDSON: Yeah, that screen is blurry.

7 THE WITNESS: Yes, it's very blurry.

8 THE COURT: All right. Very good.

9 BY MS. RICHARDSON:

10 Q. Is that screen blurry?

11 A. Yeah, I can see better there.

12 Q. And then this?

13 A. Is a picture that I also took the same day of the
14 plate and the tag that was on the back of the vehicle?

15 Q. And that's a paper tag?

16 A. That is correct.

17 Q. And then this photo?

18 A. That was on one of the windows. I think it was
19 the windshield, I'm not positive, but it was one of the
20 pictures that I took of the vehicle. Because, if I'm not
21 mistaken, it's a rental vehicle and that's their code for
22 identifying the vehicle.

23 Q. And this is upside down, but -- or sideways ---

24 A. Sideways.

25 Q. But -- and that is what?

JAMES VARCADIPANE - DIRECT BY MS. RICHARDSON

1 A. From my video surveillance camera at my store,
2 he's at the register right now.

3 Q. And this is the haircut that you're talking about?

4 A. That is correct. Which there normally was hair
5 all the way around, normally.

6 Q. And again this photo, the second photo on State's
7 5.

8 A. Same position, same day, same thing. Again, just
9 different view, same day, same thing.

10 Q. And what sort of relationship did you have with
11 Mr. Dicapua prior to this?

12 A. Other than him being a customer coming in, you
13 know, brief, minor conversations, nothing major. I mean, I
14 don't know a whole lot about him, but just brief minor
15 conversations.

16 Q. And did you ever do anything extra for him or help
17 him out in any way?

18 A. I would help him periodically. If he was short
19 some cash or something, he would take the garbage out or
20 something to just pick up the difference or pay me a dollar
21 the next day.

22 Q. Okay. All right. I have no further questions.
23 Answer any questions that Mr. Edgeworth may have for you.

24 THE COURT: Cross-examination?

25 MR. EDGEWORTH: Thank you, Your Honor.

JAMES VARCADIPANE - CROSS BY MR. EDGEWORTH

CROSS-EXAMINATION

BY MR. EDGEWORTH:

Q. I apologize, I know I'm going to butcher your name, but fair warning.

A. Varcadipane.

Q. Varcadipane. All right. Thank you, sir.

So how long have you actually known Mr. Dicapua?

A. Like I said, probably at least two years, at least.

Q. And your testimony was that he came into the store every day you were open except for Sundays?

A. Correct.

Q. So over two years, you've seen him a lot of times?

A. Sometimes twice a day.

Q. Okay. The picture that was shown, that's a fair and accurate representation of the gentleman that comes into your store on a regular basis?

A. That is correct.

Q. And you're saying he'd buy -- he'll buy some liquor?

A. That is correct.

Q. On a regular basis?

A. That's what I sold.

Q. Okay. But he couldn't have bought it from you on Sunday, June 10, 2018; is that right?

JAMES VARCADIPANE - CROSS BY MR. EDGEWORTH

1 A. That is correct. The store is closed.

2 Q. Because you're closed on Sundays.

3 A. That is correct, state law.

4 Q. And when he comes in are you the only one that's
5 working?

6 A. In the mornings -- no, no. My employees come in
7 at 9 o'clock. So there's -- sometimes they're there,
8 sometimes they're not, depending on the day of the week.
9 Obviously, Saturdays and Fridays I have employees in the
10 morning.

11 Q. Okay. But are you ---

12 A. Monday mornings, Tuesday mornings, Wednesday
13 mornings are slow, but I normally do have two people,
14 because I have two separate stores. One is the liquor
15 store, the other considered a party shop where I sell soda,
16 beer, things like that.

17 Q. But are you there?

18 A. Every day.

19 Q. So when Mr. Dicapua would come in, you would see
20 him on each of those occasions?

21 A. Correct.

22 Q. So over two years, we're talking about 700
23 observations?

24 A. That's correct.

25 Q. Isn't it fair to say that in those 700 encounters

JAMES VARCADIPANE - CROSS BY MR. EDGEWORTH

1 that you never seen him without a shirt?

2 A. I don't understand the question.

3 Q. Have you ever seen him without a shirt?

4 A. No. No.

5 Q. In those 700 encounters have you ever seen him
6 wearing shorts?

7 A. I can't recall that. I don't normally pay
8 attention to people's attire.

9 Q. Okay. Well, you pay attention to your customers
10 that are coming in?

11 A. Absolutely.

12 Q. You knew what he was going to buy.

13 A. Say that again?

14 Q. You knew -- you testified as to what he normally
15 bought.

16 A. That's correct.

17 Q. So you knew him fairly well.

18 A. I knew my customers.

19 Q. Exactly. Okay. So on the occasion that law
20 enforcement comes in and asks you -- I believe they asked
21 you about your residence, first; is that right? Any type of
22 surveillance at your residence?

23 A. I don't recall that.

24 Q. Okay. They showed you the -- the sketch?

25 A. Correct.

JAMES VARCADIPANE - CROSS BY MR. EDGEWORTH

1 Q. But you didn't recognize that as being Mr. Dicapua
2 until the next day?

3 A. When he showed up.

4 Q. Would he not have been there the -- the day that
5 you -- that law enforcement came, if he comes every single
6 day?

7 A. Yeah.

8 Q. Okay. So, but you didn't recognize the sketch as
9 being Mr. Dicapua on the same day that law enforcement came?

10 A. I recognized it, looked familiar, but I wasn't
11 positive.

12 Q. You didn't identify it as being him?

13 A. That is correct.

14 Q. Okay. So, when law enforcement came and talked to
15 you and -- did they ask you to go and take these
16 photographs?

17 A. No, they did not.

18 Q. Did you tell Mr. Dicapua that you're going outside
19 to take photos of his car?

20 A. No, I did not.

21 Q. Okay. When you transmitted those, you sent them
22 via, you said the cellphone. Was it email?

23 A. I don't recall whether it was a text message to
24 the detective or if he gave me his email address and I sent
25 them. I don't recall that.

JAMES VARCADIPANE - REDIRECT BY MS. RICHARDSON

1 Q. Okay. And --

2 A. This was three years ago.

3 Q. Right. But law enforcement had to have given you
4 their -- their email address and/or phone number in order
5 for you to send them?

6 A. I had a business card, correct.

7 Q. Okay. And so just so we're clear, in over the 700
8 times that you may have come across Mr. Dicapua, you never
9 seen him without a shirt?

10 A. No.

11 Q. And you've never seen him in shorts?

12 A. That I can't recall.

13 MR. EDGEWORTH: Okay. No further questions.

14 THE COURT: Any re-direct?

15 REDIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q. And was your interaction with him mostly in your
18 store?

19 A. Absolutely. It was the only interaction.

20 Q. Only interaction was inside your business?

21 A. That is correct.

22 MS. RICHARDSON: Okay. No further questions and
23 I'd ask that he be excused.

24 THE COURT: Any objections?

25 MR. EDGEWORTH: No objection, Your Honor.

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 THE COURT: All right, sir. You are released from
2 your subpoena. You may go back to your regular activities.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you. All right.

5 Next witness, ma'am.

6 MS. RICHARDSON: The State calls Scotty Jordan.

7 THE COURT: All right. Sir, please come around up
8 front here and be sworn. Thank you.

9 THE CLERK: Do you solemnly swear or affirm the
10 testimony you're about to give will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please have a seat. Spell your first
14 and last name for the record.

15 THE WITNESS: Scotty Jordan, S-C-O-T-T-Y,
16 J-O-R-D-A-N.

17 SCOTTY JORDAN, being first duly sworn,
18 testified as follows:

19 THE COURT: If you feel comfortable, Mr. Jordan,
20 you can take your mask off.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Go ahead, Solicitor.

23 DIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q. Could you tell the jury where you're employed?

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 A. Horry County Sheriff's Office.

2 Q. And what is your rank there?

3 A. I'm a deputy, first class.

4 Q. Okay. And how long have you been employed with
5 the Sheriff's office?

6 A. Twentieth of this month will be 19 years.

7 Q. And what is your educational background?

8 A. I have a high school education and a partial
9 college education.

10 Q. And what sort of law enforcement training have you
11 had? I'm assuming you went to the Criminal Justice Academy.

12 A. I did. I went to Criminal Justice Academy and I
13 have 240 hours of classroom instruction for composite art.

14 Q. And how long have you been doing composite art?

15 A. Since 2013.

16 Q. And how -- explain to the jury how you become a
17 composite sketch artist. What do you have to do? What sort
18 of training?

19 A. Well, you attend a class, there's an initial
20 class, Composite Art for Law Enforcement. Then you do
21 Workshop 1, and then you have a certification class, they're
22 each 40 hours a piece.

23 Q. So 120 hours?

24 A. 120 hours to get certified and every two years you
25 recertify.

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 Q. And who do you certify with?

2 A. Stuart Parks Forensic Associates out of Coeur
3 d'Alene, Idaho.

4 Q. And that's the professional organization that
5 certifies ---

6 A. Yes, ma'am.

7 Q. --- sketch artists? And are you -- you're
8 currently certified?

9 A. I am.

10 MS. RICHARDSON: Your Honor, at this time, I ---

11 BY MS. RICHARDSON:

12 Q. Well, let me ask you this. Have you testified as
13 an expert previously?

14 A. I have not.

15 Q. Okay. Is this your first time?

16 A. First time.

17 MS. RICHARDSON: Your Honor, at this time, I'd
18 offer him as an expert in the area of composite sketch art.
19 I guess, police sketch artist.

20 THE COURT: All right. Mr. Edgeworth, do you want
21 to voir dire the witness or challenge his qualification?

22 MR. EDGEWORTH: I do not challenge his
23 qualification, Your Honor.

24 THE COURT: All right. So he is qualified to give
25 his opinion in the field of composite art in the law

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 enforcement arena. Thank you.

2 BY MS. RICHARDSON:

3 Q. Explain to the jury how you come about doing a
4 composite sketch. What is the process and procedure?

5 A. Well, the process is you initially do an interview
6 with the witness. You sit down with them, you get a
7 description of the suspect. At that time you give them
8 visual -- we have a catalog that we use that's produced by
9 the FBI, it's a facial identification catalog. And it's
10 compiled with a lot of different mugshots throughout
11 history. Each mugshot is identified with a letter and a
12 number. And to stimulate their memory, they will browse
13 this catalog, and they will look for images, individual
14 shapes, like the eyes, for example, they will scan through
15 this catalog and they will find an image in that catalog
16 that's similar to the eyes of the suspect. And they'll go
17 through the entire face and notate these images. And then
18 at that point the drawing's done. And during the -- during
19 the drawing process, you keep showing it to the witness and
20 if there's any corrections that need to be done, they'll
21 have you do the corrections at that time. Then once the
22 image is complete, then they'll let you know that.

23 Q. And do you discuss with them the opportunity they
24 had to observe the face?

25 A. Yes.

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 Q. And who does the final approval of the sketch that
2 you've created?

3 A. The witness.

4 Q. So you work on it until they're ready?

5 A. Yes. Once the witness says that's it then the
6 drawing ceases. There's no reason to add to or take from at
7 that point.

8 Q. And how did you get interested in this?

9 A. From a young age I was always into art class in
10 school and things. I would do art competitions and things
11 like that. I found out about the school, they would come
12 around, they'd actually travel the nation. And they come as
13 close to me as the Mount Pleasant Police Department, so
14 that's where I started going.

15 Q. So before this class, you were pretty good at
16 drawing, is that what you're saying?

17 A. Yes.

18 Q. Okay. And were you called to Georgetown County on
19 June 10, 2018 to do a composite sketch?

20 A. I was.

21 Q. And how were you contacted?

22 A. My lieutenant was contacted and she called me and
23 told me -- and told me the location of the witness.

24 Q. And do you recall where that was?

25 A. I don't know the numerics, but it was on Waccamaw

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 Boulevard, just south of Horry County.

2 Q. Okay. Was it at a beach house?

3 A. It was a beach house.

4 Q. And did you -- and you met with Ms. Starnes, who's
5 seated on the front row; is that right?

6 A. Yes. I believe, so, yes.

7 Q. All right. And was she able to give you details
8 and go through the book and help you with the sketch?

9 A. She was.

10 Q. And did you have any questions about her ability
11 to do that?

12 A. No, I didn't.

13 Q. And about how long was that process?

14 A. If I remember correctly, it was around
15 three hours, I'm thinking.

16 Q. And could you describe for us her attention to
17 detail in her interaction with you while you were doing this
18 sketch?

19 A. Yeah. She paid very good attention to detail. In
20 fact, she had me correct it several times, I made
21 corrections.

22 Q. And y'all spent a good bit of time trying to get
23 this?

24 A. Yes.

25 Q. And so she did approve it after you had worked on

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 it for a while?

2 A. She did.

3 Q. And let me show you what's previously been
4 introduced as State's Exhibit 13. Is that the drawing that
5 you did?

6 A. It is.

7 Q. Okay. And is that your signature on it?

8 A. It is.

9 Q. And that was approved by --

10 A. The witness.

11 Q. Ms. Starnes. Okay. And you knew that was going
12 to be disseminated to the media when you were doing it?

13 A. I did.

14 Q. I have not no further questions. Answer any
15 questions that Mr. Edgeworth may have for you.

16 THE COURT: Cross-examination?

17 MR. EDGEWORTH: No questions for this witness,
18 Your Honor.

19 THE COURT: All right, sir. Do you wish for this
20 witness to be excused, Solicitor?

21 MS. RICHARDSON: No more questions and I'd ask
22 that he'd be excused.

23 THE COURT: All right, sir. You're released to go
24 back to regular duties.

25 THE WITNESS: Thank you, sir.

SCOTTY JORDAN - DIRECT BY MS. RICHARDSON

1 THE COURT: Thank you. All right. Solicitor,
2 your next witness, please, ma'am.

3 MS. RICHARDSON: Your Honor, we're at the point
4 where we would be calling a law enforcement officer and
5 seeking to publish an audio statement. We want to see the
6 Court's wishes regarding it being right at noon?

7 THE COURT: All right. Well, let's do one more
8 witness for sure. Okay?

9 MS. RICHARDSON: And that's going to be the one
10 with the audio interview.

11 THE COURT: All right. Very good. I understand.

12 MS. SMITH: Dawud Aswad.

13 THE COURT: Please come around and be sworn, sir.

14 THE CLERK: Do you solemnly swear or affirm the
15 testimony you're about to give will be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please have a seat. Spell your first
19 and last name for the record.

20 THE WITNESS: First name's going to be D-A-W-U-D.
21 Last name, A-S-W-A-D.

22 DAWUD ASWAD, being first duly sworn
23 testified as follows:

24 DIRECT EXAMINATION

25

DAWUD ASWAD - DIRECT BY MS. SMITH

1 BY MS. SMITH:

2 Q. Special Agent Aswad, where do you currently work?

3 A. I work for the FBI Boston Division.

4 Q. And how long have you been there?

5 A. I've been there for approximately seven months.

6 Q. Where'd you work before that?

7 A. Prior to that I was with Georgetown County
8 Sheriff's Office.

9 Q. Okay. Any prior law enforcement experience other
10 than Georgetown County Sheriff's Office?

11 A. No, ma'am.

12 Q. How long were you at the Sheriff's Office?

13 A. Since 2012.

14 Q. Okay. Have you received any training, any
15 additional education in your law enforcement career?

16 A. Yes, ma'am. I graduated from the South Carolina
17 Criminal Justice Academy. I received a bachelor's degree in
18 criminal justice and also graduated from FBI Academy
19 Quantico, along with Interview/Interrogation Training,
20 Cellebrite Training for Mobile Forensics, and EMT Training,
21 certified medic.

22 Q. And were you working with the Georgetown County
23 Sheriff's Office on June 10, 2018?

24 A. Yes.

25 Q. What about June 15, 2018?

DAWUD ASWAD - DIRECT BY MS. SMITH

1 A. Yes.

2 Q. Did you happen to become involved in this case?

3 A. Yes, ma'am.

4 Q. Okay. How did you become involved?

5 A. I conducted the initial interview along with
6 Investigator Griffith.

7 Q. Okay. So you had the opportunity to speak with
8 the defendant?

9 A. Yes.

10 Q. Did you speak with the defendant -- when you spoke
11 with him, did you Mirandize him?

12 A. Yes, immediately.

13 Q. And what is Miranda? I mean, I know everybody
14 probably knows, but what is it?

15 A. That's when I advise the defendant of his rights
16 and his right to not speak with me if he wished.

17 Q. Did the defendant agree to speak with you?

18 A. Yes, they agreed -- he agreed.

19 Q. Did the defendant -- did he state that he
20 understood his rights?

21 A. Yes. I made sure that he understood his rights to
22 not speak with me and his rights to an attorney also, and he
23 agreed to speak with me after being advised.

24 Q. Did he appear to be of sound mind?

25 A. Yes. He did not appear to be under the influence

DAWUD ASWAD - DIRECT BY MS. SMITH

1 or altered in any way.

2 MS. RICHARDSON: Your Honor, if I may approach?
3 I'm going to show the defendant -- or, sorry, show Special
4 Agent what has been ---

5 THE COURT: Yes, ma'am.

6 MS. RICHARDSON: --- premarked as State's
7 Exhibit 17.

8 BY MS. SMITH:

9 Q. Special Agent Aswad, what is that that I'm showing
10 you?

11 A. That is a disc containing the interview that was
12 conducted with the defendant.

13 Q. How do you know?

14 A. I signed it and reviewed it.

15 Q. So you've watched it?

16 A. Yes.

17 Q. And other than parts that are taken out that are
18 required by the Court, is it substantially the same as the
19 day that you took that statement?

20 A. Yes, the interview is the same outside of it being
21 redacted.

22 Q. Okay. And that's your voice on there?

23 A. Yes, ma'am.

24 Q. And that's the defendant?

25 A. Yes, ma'am.

DAWUD ASWAD - DIRECT BY MS. SMITH

1 MS. SMITH: Your Honor, at this time the State
2 moves to enter State's Exhibit 17 into evidence as well as
3 publish it to the jury?

4 THE COURT: Any objection?

5 MR. EDGEWORTH: Your Honor, I'd just like to
6 reraise the objection from a previous hearing on the matter.

7 THE COURT: All right. The Court reaffirms its
8 prior rulings allowing the exhibit to be used in evidence
9 and you may publish it to the jury.

10 MR. EDGEWORTH: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. EDGEWORTH: Can I check and see the
13 signatures?

14 MS. SMITH: Oh, yeah. Absolutely. I apologize.

15 Your Honor, and for the record, along with Special
16 Agent Aswad's signature, both the State and defense have
17 signed this copy agreeing to the redactions.

18 THE COURT: Is that correct, Mr. Edgeworth?

19 MR. EDGEWORTH: That is correct, Your Honor.

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

21 (WHEREUPON, State's Exhibit Number 17 was admitted
22 into evidence and published to the jury. Played in open
23 court. Not transcribed herein. After which, proceedings
24 resumed.)

25 MS. SMITH: Your Honor, these are the redactions.

DAWUD ASWAD - DIRECT BY MS. SMITH

1 THE COURT: Yes, ma'am. You just continue on
2 until it plays.

3 (WHEREUPON, the audio continues playing.)

4 BY MS. SMITH:

5 Q. Special Agent Aswad, I should have asked you
6 before playing this, but what was the weather like on
7 June 15th when you were interviewing the defendant?

8 A. It had been overcast all day. It was raining very
9 heavily.

10 Q. And is that the noise in the background?

11 A. Correct.

12 Q. The thunder and rain?

13 A. Yes.

14 Q. Okay. Was the defendant initially able to tell
15 you where he was on Sunday, June the 10th of 2018?

16 A. As best we got, he placed himself in the area of
17 South Waccamaw.

18 Q. But when you first asked him, his first response,
19 was he able to tell you where he was on June 10, 2018?

20 A. He was not.

21 Q. Okay. And when was this interview?

22 A. This interview was conducted the Friday following.

23 Q. Would that have been June 15, 2018?

24 A. Yes.

25 Q. And is that five days later?

DAWUD ASWAD - DIRECT BY MS. SMITH

1 A. Yes.

2 Q. Let me -- was the defendant able to recall some
3 details of where he was that day?

4 A. Yes.

5 Q. Okay. What was the first detail that he recalled?

6 A. The first detail he recalled was he went to the
7 pier. He first advised that he had gone to the liquor store
8 which we had ascertained was closed being it was a Sunday.

9 Q. And are liquor stores closed on Sunday?

10 A. Yes. In the State of South Carolina.

11 Q. After he went to the pier, did he go home?

12 A. He advised that he went down to the pier to watch
13 people fish. He said that he drove down to where they keep
14 the boats. He did not have the name of that location.

15 Q. Okay.

16 A. And then he said that he -- he left the area.

17 Q. Did he ever say he got out of his car at the pier?

18 A. Initially, at the beginning he said that he was
19 walking on the pier.

20 Q. Okay. Later in the interview did he ever say that
21 he got out of his car?

22 A. He never said that he got out of his vehicle. He
23 advised he never got out of his vehicle.

24 Q. Okay. He advised he did not get out of his
25 vehicle?

DAWUD ASWAD - DIRECT BY MS. SMITH

1 A. Right. Further into the interview he advised he
2 never got out of the vehicle.

3 Q. Did the defendant advise you that he had any
4 contact -- did he talk to anybody on Sunday, that morning --
5 on that Sunday morning?

6 A. He didn't advise that he spoke with anyone.

7 Q. Okay. Did he tell you that he saw anybody other
8 than those on the pier?

9 A. He didn't say that he saw anyone. He stated that
10 he didn't see anyone when he was going down to the pier,
11 which I believe to be out of place, because normally in the
12 summer time that place is very crowded.

13 Q. What was the defendant driving? What did the
14 defendant say he was driving on June 10, 2018?

15 A. He advised that he had been driving a black Jeep
16 that belonged to Enterprise.

17 Q. And when you went to interview the defendant, was
18 that black Jeep there?

19 A. I do not recall if it was actually there during
20 the course of that interview.

21 Q. Did that black Jeep get towed away?

22 A. The black Jeep did get towed away. He advised
23 that the reason for the tow was because there was a vehicle
24 collision in the parking lot at the Food Lion and he stated
25 that he barely got the vehicle back to the address,

DAWUD ASWAD - DIRECT BY MS. SMITH

1 indicating that he drove the vehicle back to his residence
2 and it was towed from his residence.

3 Q. And did he say what date that the car was towed?

4 A. He did advise, but I do not recall the exact date.

5 Q. Would it -- and if -- the interview was on June
6 15, 2018; is that correct?

7 A. Yes.

8 Q. And if he said that the car was towed the night
9 before, what date would that be?

10 A. That would be the 17th. You said the 18th?

11 Q. The 15th.

12 A. The 15th? I'm sorry, that would be the 14th.

13 Q. Sorry, that is my fault, I apologize. I was not
14 speaking clearly. Why did you ask the defendant about his
15 haircut?

16 A. Because the information that we received is that
17 his haircut had changed and it was out of the ordinary for
18 his haircut to be cut the way it was cut. When asked, he
19 advised that he cut his hair every other day.

20 Q. Did it look freshly shaven?

21 A. It did.

22 Q. At any time in your interview did the defendant
23 state that he touched anybody?

24 A. No.

25 Q. Okay. Other than the one time on the pier, did he

DAWUD ASWAD - CROSS BY MR. EDGEWORTH

1 ever say that he got out of his car?

2 A. No.

3 Q. And what type of tags did he say were on the Jeep,
4 that black Jeep?

5 A. He advised that there were cardboard tags on the
6 vehicle.

7 MS. SMITH: No further questions.

8 THE COURT: Cross-examination?

9 MR. EDGEWORTH: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. EDGEWORTH:

12 Q. Where exactly did the interrogation take place?

13 A. Inside of a law enforcement vehicle near the
14 residence.

15 Q. And there was you and Investigator Griffith in the
16 vehicle with him?

17 A. Affirmative.

18 Q. So now, on several occasions, let's start with the
19 beginning, the conversation comes up talking about the
20 liquor store and that he bought liquor on a Sunday. You
21 knew immediately that had to be inaccurate, right?

22 A. Yes, sir.

23 Q. Did you believe that maybe he was confused about
24 the time tables you were asking questions about at that
25 point?

DAWUD ASWAD - CROSS BY MR. EDGEWORTH

1 A. No, sir.

2 Q. So did you believe that he actually thought he
3 bought liquor on a Sunday?

4 A. It was possible at the time. I couldn't confirm.

5 Q. Okay. Did you determine whether or not he was
6 under the influence of alcohol at the time that -- that you
7 interrogated him?

8 A. He did not appear to be under the influence.

9 Q. What time of day was it?

10 A. This was about 3:30, 3:00 -- it was in the
11 afternoon, late afternoon, early evening.

12 Q. And you've heard the testimony that's been
13 submitted by -- by the State that he buys alcohol on a
14 regular basis early in the morning?

15 A. Yes.

16 Q. Okay. So it's possible he had been drinking by
17 the time you talked him?

18 A. He advised that he had not.

19 Q. He told you that?

20 A. Yes.

21 Q. Okay. Now, throughout the interrogation, you --
22 you tell him -- or during the investigation you tell him
23 what you believed to have happened, correct?

24 A. Yes.

25 Q. And you also tell him that your not accusing him

DAWUD ASWAD - CROSS BY MR. EDGEWORTH

1 of anything?

2 A. Yes.

3 Q. Okay. What day was he arrested?

4 A. I do not recall the exact day he was arrested. I
5 want to say it was the same day we interviewed him, which
6 would have been the 15th.

7 Q. Following your interrogation, he was arrested;
8 isn't it true?

9 A. Yes.

10 Q. So is it fair to say then you went into that
11 interrogation actually knowing you were accusing him of the
12 crime that you were talking to him about?

13 A. No, sir. It's not fair to say that.

14 Q. Okay. Did you believe anything he told you?

15 A. I can't say -- it didn't matter what I believed,
16 sir. The information he was providing did not line up with
17 the way he was telling us and the information that we were
18 known to be true.

19 Q. Yet you arrested him anyways?

20 A. I'm sorry?

21 Q. You're saying that you're not -- you're not having
22 a comment on whether or not you believed him, yet he was
23 arrested anyways.

24 A. My personal belief has nothing to do with the
25 matter. It's based on the facts that were presented in the

DAWUD ASWAD - CROSS BY MR. EDGEWORTH

1 case.

2 Q. Well, your personal belief does matter, because
3 you said during the interrogation that, I believe this is
4 what happened.

5 A. My personal belief has nothing to do with the
6 charges.

7 Q. When you told him what you believed, were you
8 attempting to have him agree with your version of the
9 events?

10 A. I was attempting to get him to tell me what
11 happened about the events.

12 Q. Prior to the interrogation -- or, did you have
13 knowledge of the other information collected by law
14 enforcement prior to your investigation?

15 A. Yes.

16 Q. Okay. Isn't it fair to say there was no
17 conversation, or no allegation prior to your conversation,
18 about anyone attempting to put anyone in a car?

19 A. I don't understand your question.

20 Q. Okay. Did you get information from anybody who
21 was involved in the investigation to include any comments
22 from the complaining witness that there was an attempt to
23 put the individual in a car?

24 A. I don't recall.

25 MR. EDGEWORTH: No further questions.

DAWUD ASWAD - REDIRECT BY MS. SMITH

1 THE COURT: Redirect?

2 MS. SMITH: Briefly.

3 REDIRECT EXAMINATION

4 BY MS. SMITH:

5 Q. When you were interviewing the defendant on
6 June 15th, 2018, were you in close proximity to him?

7 A. Yes.

8 Q. Did this occur in a car?

9 A. Yes.

10 Q. Okay. And so you were able to observe the
11 defendant, correct?

12 A. Yes.

13 Q. Did you smell any alcohol on him?

14 A. No, ma'am.

15 MS. SMITH: That's it.

16 THE COURT: Anything on those questions?

17 MR. EDGEWORTH: None, Your Honor.

18 THE COURT: All right. Do you wish the witness to
19 be excused?

20 MS. SMITH: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. EDGEWORTH: No objection.

23 THE COURT: All right, sir. You are released from
24 your subpoena, you may go back to your regular duties.

25 THE WITNESS: Thank you.

1 THE COURT: Thank you.

2 All right. We're going to break for lunch at this
3 point in time. Ladies and gentlemen, be back at, let's say,
4 like five 'till two, so 1:55. Be back in your jury room at
5 1:55, please. Okay? Thank you very much. Remember, don't
6 talk about the case. I'll tell you that several times.

7 (WHEREUPON, the jury exited the courtroom at 12:27
8 p.m.)

9 THE COURT: Anything from the State before we
10 break for lunch?

11 MS. RICHARDSON: No, Your Honor.

12 THE COURT: From the defense?

13 MR. EDGEWORTH: No, Your Honor.

14 THE COURT: All right. I'll see you back at 1:55
15 then, please. Thank you very much.

16 (WHEREUPON, there was a break for lunch from 12:27
17 p.m. until 1:55 p.m.)

18 THE BAILIFF: All rise.

19 THE COURT: Thank you. You may be seated.

20 All right. Solicitor, is the State ready for the
21 jury?

22 MS. SMITH: Yes, Your Honor.

23 MS. RICHARDSON: Yes, Your Honor.

24 THE COURT: And the defense?

25 MR. EDGEWORTH: Yes, Your Honor.

KATHERINE SELBY- DIRECT BY MS. SMITH

1 THE COURT: All right. Ask the jury to come in,
2 please.

3 (WHEREUPON, the jury entered the courtroom at 2:00
4 p.m.)

5 THE COURT: All right.
6 Solicitor, your next witness, please.

7 MS. SMITH: Your Honor, the State calls Katie
8 Selby.

9 THE COURT: All right. Please come around and be
10 sworn.

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you're about to give will be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Have a seat. Spell your first and
16 last name for the record.

17 THE WITNESS: My full name is Katherine,
18 K-A-T-H-E-R-I-N-E. Selby, S-E-L-B-Y.

19 KATHERINE SELBY, being first duly sworn,
20 testified as follows:

21 THE COURT: Go ahead, Solicitor.

22 DIRECT EXAMINATION

23 BY MS. SMITH:

24 Q. Ms. Selby, what do you do for a living?

25 A. I'm a risk specialist with Enterprise Holdings.

KATHERINE SELBY- DIRECT BY MS. SMITH

1 Q. And how long have you done that?

2 A. I started with them October 2012.

3 Q. And what exactly is Enterprise Holdings?

4 A. Enterprise Holdings is the entity that owns
5 Enterprise National and Alamo Rental Car.

6 Q. And that's a car rental service?

7 A. Yes.

8 Q. Okay. And what is your job title?

9 A. Risk specialist.

10 Q. And what does a risk specialist entail?

11 A. I'm responsible for auditing branches for
12 compliance with company policies, helping track down stolen
13 vehicles, helping track down renters that local offices have
14 lost control over, and mitigating and analyzing claims and
15 losses.

16 Q. Does your -- do your duties as a risk specialist
17 include any responsibilities concerning the records for car
18 rentals?

19 A. Yes.

20 Q. Okay. And what type of records are created when
21 somebody rents a car?

22 A. A signed rental agreement.

23 Q. Okay. What type of information is required to
24 rent a car?

25 A. At the bare minimum two phone numbers, obviously,

KATHERINE SELBY- DIRECT BY MS. SMITH

1 a valid driver's license, employer information, if it's
2 available, and the payment has to match the renter as well.

3 Q. How is this information obtained?

4 A. By the rental agent who's writing the contract.

5 Q. And are there forms that are filled out?

6 A. Yes.

7 Q. And are these forms kept by Enterprise?

8 A. Yes.

9 Q. How are these forms kept?

10 A. Digitally in a system called OnBase.

11 Q. Okay. Do you have access to OnBase?

12 A. Yes.

13 Q. And are these kept in the normal course of your
14 business?

15 A. Yes.

16 Q. So what about any additional information that you
17 would receive from a car rental? Like any information about
18 a wreck, do you keep any of that information?

19 A. Yes.

20 Q. What about pictures?

21 A. The body shop that repairs the vehicle would
22 upload pictures into a system call ICE and those are
23 retained.

24 Q. Retained by?

25 A. Enterprise.

KATHERINE SELBY- DIRECT BY MS. SMITH

1 Q. Okay. Through y'all's system?

2 A. Yes.

3 Q. And are those kept in the regular course of your
4 business?

5 A. Yes.

6 MS. SMITH: I am going to show the witness what
7 has been premarked as State's Exhibit 22.

8 THE COURT: I'm sorry, State's what?

9 MS. SMITH: Exhibit 22.

10 THE COURT: Thank you, ma'am.

11 BY MS. SMITH:

12 Q. Ms. Selby, what are those?

13 A. This is a signed rental agreement and a copy of a
14 damage report.

15 Q. A copy of the damage report?

16 A. Yes, ma'am.

17 Q. Now, what type of car is that rental agreement
18 for?

19 A. 2019 Jeep Cherokee.

20 Q. And when was that car rented?

21 A. June 2, 2018.

22 Q. Who rented that car?

23 A. Jeremiah Dicapua.

24 Q. And what is required to rent a car?

25 A. A valid driver's license with a picture matching

KATHERINE SELBY- DIRECT BY MS. SMITH

1 the person in front of you, two phone numbers, valid
2 address, employment information and payment method that
3 matches the renter as well.

4 Q. So would the person who is renting the car have to
5 be there in person to rent one of your vehicles?

6 A. Yes.

7 Q. Has this been altered in any way, shape, or form
8 since you last saw it?

9 A. No, ma'am.

10 Q. Okay. And the claim notes that are up there with
11 you -- claim report, when was that dated?

12 A. June 14, 2018.

13 Q. Okay.

14 MS. SMITH: Your Honor, at this time the State
15 moves to enter State's Exhibit 22 into evidence.

16 THE COURT: Any objections?

17 MR. EDGEWORTH: No objections, Your Honor.

18 THE COURT: All right. State's 22 into evidence
19 without objection.

20 MS. SMITH: Thank you.

21 (WHEREUPON, State's Exhibit Number 22 was entered
22 into evidence.)

23 BY MS. SMITH:

24 Q. On the claim notes, can you tell the jury what --
25 when there was a date of injury?

KATHERINE SELBY- DIRECT BY MS. SMITH

1 A. The date of loss was June 14, 2018.

2 Q. Okay. What does it say?

3 A. Want me to read the whole thing?

4 Q. Yes, please.

5 A. Customer aware and accepts full responsibility for
6 damages to the rental vehicle. Customer called in, stated
7 that the vehicle tags were dead and that he's been pulled
8 over four times and over one encounter even told by one
9 officer that the vehicle was reported stolen. However, the
10 rental was not reported stolen. Customer stated he wanted
11 to get the vehicle removed from his property ASAP. I told
12 the customer that I would have my guys come pick the car up.
13 He then stated that the rental was damaged and was
14 non-drivable. I then asked the customer what the damage is
15 and was the insurance company. He said he did not know who
16 the insurance was -- was through and he would call me back
17 that information. I called the customer several times to
18 get the insurance information from him, but he was yet --
19 has yet to give me a straight answer. Vehicle has been
20 towed to Paramount for repairs.

21 Q. Okay. So the vehicle had been towed?

22 A. Yes.

23 Q. And what time was that report?

24 A. I believe it was 4:48 p.m.

25 Q. On what date?

KATHERINE SELBY- DIRECT BY MS. SMITH

1 A. 4:48 p.m. on June 14, 2018.

2 Q. Were there any issues with the car when it was
3 rented? Any physical issues with the 2019 black Jeep?

4 A. No.

5 Q. Okay. What about when it is returned?

6 A. Yes.

7 Q. There were -- there were ---

8 A. Damages.

9 Q. There were damages to the car?

10 A. Yes, ma'am.

11 Q. And the customer stated that it needed to be
12 towed?

13 A. Yes.

14 Q. The defendant stated that it was undriveable; is
15 that correct?

16 A. Correct.

17 Q. If I showed you those photos would you recognize
18 them?

19 A. Yes, ma'am.

20 MS. SMITH: May I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. SMITH:

23 Q. This is State's Exhibit 23. Do you know what that
24 is?

25 A. That is a disc that I signed that has pictures of

KATHERINE SELBY- DIRECT BY MS. SMITH

1 the damage from the vehicle.

2 Q. Okay. And you've reviewed this?

3 A. Yes. I signed it after I reviewed the pictures.

4 Q. Was there anything that has been altered or
5 changed since you sent us these pictures?

6 A. No, ma'am.

7 MS. RICHARDSON: Your Honor, I move to admit
8 State's Exhibit 23 into evidence and publish to the jury.

9 THE COURT: Any objection?

10 MR. EDGEWORTH: No objection, Your Honor.

11 THE COURT: Into evidence without objection.

12 (WHEREUPON, State's Exhibit Number 23 was entered
13 into evidence and published to the jury.)

14 BY MS. SMITH:

15 Q. While she puts that in, are you aware of any
16 accident report or insurance claim that was filed by the
17 defendant for this -- for this accident?

18 A. Just the claim that the branch filed when the
19 customer advised them that he wanted the vehicle moved from
20 his property and that there was damages.

21 Q. So y'all had -- Enterprise had to file a claim?

22 A. Correct.

23 Q. And if you don't mind, I'm going to stay back here
24 and question you from back here for a second.

25 A. Okay.

KATHERINE SELBY- DIRECT BY MS. SMITH

1 Q. Is this the Jeep that y'all rented to the
2 defendant?

3 A. Yes.

4 Q. In June of 2018?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. And I'm looking -- and in the picture that I am
9 circling, which is the second picture on the far right, is
10 there damage to the vehicle?

11 A. Yes.

12 Q. How many miles were on that car?

13 A. 3,314 when we picked it up on June 2nd.

14 Q. And then in the -- on the second page, the middle
15 picture to the left, is that a picture of the damage to the
16 vehicle?

17 A. Yes.

18 Q. And are these relatively the same, just showing
19 the damage to the vehicle and the VIN number?

20 A. Yes.

21 Q. Okay. So that's the same Jeep that was rented
22 Jeremiah Dicapua, correct?

23 A. Yes.

24 Q. And he called -- when did he call and state that
25 the car was wrecked?

KATHERINE SELBY - CROSS BY MR. EDGEWORTH

1 A. June 14th.

2 Q. And when was the car towed?

3 A. June 14th.

4 Q. When you rented to him on June 2, 2018 was there
5 any damage?

6 A. No.

7 Q. One second while I confer with my co-counsel.

8 MS. RICHARDSON: No further questions, Your Honor.

9 THE COURT: Cross-examination?

10 MR. EDGEWORTH: Briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. EDGEWORTH:

13 Q. It's fair to say you weren't the person that
14 rented the car to Mr. Dicapua?

15 A. Correct.

16 Q. And it's also fair to say that you weren't the one
17 that put those notes in the system?

18 A. Correct.

19 Q. You're just reading from a report that you had
20 access to?

21 A. Correct.

22 Q. You are familiar with the procedures of renting
23 the car, however?

24 A. Yes, sir.

25 Q. You listed that the only things necessary was a

KATHERINE SELBY - CROSS BY MR. EDGEWORTH

1 couple phone numbers and ID, I guess, and things like that?

2 A. Valid driver's license, payment that matches the
3 driver's license, with a valid address. No restrictions on
4 that license as well.

5 Q. So it's fair to say then Mr. Dicapua had that
6 identification and your company in turn rented him the
7 vehicle?

8 A. Yes, sir.

9 Q. Based on the list of things that you have
10 identified, is it also fair to say that Enterprise does not
11 require proof of insurance?

12 A. Correct.

13 Q. And then if that vehicle is in a -- subsequently
14 in an accident, it's fair to say that it's -- or it's
15 possible then that that vehicle would not be covered by
16 insurance since you don't require proof of insurance?

17 A. Correct.

18 Q. And then in turn, if there is a claim then it
19 would fall back on Enterprise to have the car repaired?

20 A. Yes, but the renter is responsible for all
21 damages.

22 Q. Under your contract?

23 A. Correct.

24 Q. But if they don't have insurance, then you in
25 turn, turn it over to your insurance?

KATHERINE SELBY - CROSS BY MR. EDGEWORTH

1 A. Correct.

2 MR. EDGEWORTH: Okay. No further questions.

3 THE COURT: Any redirect?

4 MS. SMITH: No, Your Honor.

5 THE COURT: Do you wish the witness to be excused?

6 MS. SMITH: I do.

7 THE COURT: Any objection?

8 MR. EDGEWORTH: No objection, Your Honor.

9 THE COURT: All right, ma'am. You're released

10 from your subpoena. You may go back to your regular duties.

11 Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Next witness, please.

14 MS. RICHARDSON: The State calls Jonathan

15 Griffith.

16 THE CLERK: Do you solemnly swear or affirm the

17 testimony you're about to give will be the truth, the whole

18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please have a seat and spell your

21 first and last name for the record.

22 THE WITNESS: First name is Jonathan,

23 J-O-N-A-T-H-A-N. Last name Griffith, G-R-I-F-F-I-T-H.

24 JONATHAN GRIFFITH, being first duly

25 sworn, testified as follows:

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 THE COURT: Go ahead, Solicitor.

2 DIRECT EXAMINATION

3 BY MS. RICHARDSON:

4 Q. Investigator Griffith, where are you employed?

5 A. Georgetown County Sheriff's Office.

6 Q. I'm sorry, I didn't ---

7 A. Georgetown County Sheriff's Office.

8 Q. Okay. And how long have you been with the
9 Sheriff's Office?

10 A. Almost ten years now.

11 Q. And can you tell us your -- is that the total of
12 your law enforcement experience?

13 A. Yes, ma'am.

14 Q. And what sort of education and training have you
15 had?

16 A. After graduating the Criminal Justice Academy,
17 it's -- I've had continuous education through classes, did
18 two years on patrol, and where I currently am now, in CID
19 Criminal Investigation Department.

20 Q. And how long have you been an investigator?

21 A. About eight years.

22 Q. And what was your involvement with the case
23 against Mr. Dicapua?

24 A. I was the lead investigator.

25 Q. And how were you contacted or notified?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. The date the incident occurred, I was the on-call
2 investigator. I was contacted by the deputy on the scene.

3 Q. And how did the call initially come in?

4 A. I believe the call initially came through Horry
5 County Dispatch Center.

6 Q. And you're familiar with the map of State's
7 Exhibit Number 10?

8 A. Correct.

9 Q. And so the beach house they were staying in was
10 actually in Horry County?

11 A. Correct.

12 Q. And then -- so Horry County initially responded?

13 A. Correct.

14 Q. And then Georgetown County was notified once it
15 was determined that it occurred in Georgetown County?

16 A. Correct.

17 Q. And who was the responding officer for Georgetown
18 County?

19 A. Deputy Delval.

20 Q. And then he contacted you?

21 A. Correct.

22 Q. And on what day did you -- when did you arrive?

23 A. What date did I arrive?

24 Q. Yes.

25 A. The 10th.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. The same day?

2 A. Yes.

3 Q. That the call came in? You arrived that day? You
4 went to the beach house?

5 A. Correct.

6 Q. Where they were staying? All right.

7 And what did you do when you go there?

8 A. Upon arriving, I spoke with Deputy Delval to get a
9 summarization of what occurred. After that I spoke with the
10 victim in which she spoke to me about what happened. Then I
11 decided that the best approach at the time would offer a
12 sketch to be done of the suspect which I contacted Horry
13 County's Sheriff's Office who sent me Mr. -- I can't recall
14 his name, I'm sorry.

15 Q. The deputy -- the sheriff's deputy that testified
16 earlier?

17 A. Yes, ma'am.

18 Q. Mr. Jordan?

19 A. Yes, ma'am.

20 Q. Okay. And where did you meet him?

21 A. At the -- her residence.

22 Q. The vacation residence she was staying in?

23 A. Correct.

24 Q. And were you present for that procedure?

25 A. Yes, ma'am.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Did you have any input in that, though?

2 A. As to?

3 Q. I mean, were you talking or participating in the
4 sketch artist process?

5 A. No, ma'am.

6 Q. Okay. And once you got the composite and let me
7 show you State's Exhibit 13. Is that the composite?

8 A. Yes, ma'am.

9 Q. Then what did you do?

10 A. After obtaining the composite, the composite was
11 put out to social media and news media sites asking for the
12 public's assistance in identifying him.

13 Q. Okay. I know we've been over this before with
14 some of the other witnesses, but -- and most of the jurors
15 may be familiar with this area, but just for the record
16 explain to us kind of the primary use of this area, Garden
17 City, and what goes on there.

18 A. This particular area of Garden City the
19 jurisdictional boundary is separated. Although,
20 technically, you would think South Waccamaw would be in
21 Horry County, it's actually in Georgetown County. In order
22 to get to South Waccamaw we have to drive through Horry
23 County, down Atlantic Avenue, take a right onto
24 South Waccamaw to go -- enter that jurisdiction.

25 Q. So State's Number 10, again. So at this end is

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 what?

2 A. Atlantic Avenue.

3 Q. Okay. And of course we see the pier sticking out
4 in the water here in the ocean?

5 A. Yes, ma'am.

6 Q. Okay. And this is the South Waccamaw area that
7 you're talking about?

8 A. Correct.

9 Q. And this is the county line, the green?

10 A. Correct.

11 Q. And -- so tell me, as far as this area, on the
12 left edge of the map that's in Horry County, the far edge,
13 tell me about -- so you have to drive through that area to
14 patrol anything in Georgetown County, right?

15 A. Correct. Atlantic Avenue comes off of 17.

16 Q. And tell us about what is in Atlantic Avenue, what
17 kind of area it is, Atlantic Avenue and South Waccamaw.

18 A. The Atlantic Avenue and South Waccamaw area is a
19 heavy -- during this time of the year this occurred, it's a
20 heavy vacationing area. It's mostly made up of rental beach
21 houses. There's a pier. There's amusement rides. There's
22 stores, restaurants. A lot of pedestrian traffic. A lot of
23 vehicle traffic. So it's a -- at this time of the year,
24 it's a crowded area.

25 Q. Okay. And what about any arcades and that sort of

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 thing, amusement park rides, that sort of thing, that are in
2 that area?

3 A. Yes, they are -- I believe they are located on the
4 left side of the road on Atlantic as you're coming up to the
5 intersection of Atlantic and South Waccamaw.

6 Q. Okay. So you said there's a lot of foot traffic
7 there, a lot of pedestrian traffic, that time of year?

8 A. Correct.

9 Q. Okay. What about the ages of that pedestrian
10 traffic? What do you usually see down there?

11 A. There's actually a variety. It depends on what
12 time of the summer it is, but at that time of the year it
13 was, you know, it could range from young people to older
14 people, just very, very heavy in pedestrian traffic.

15 Q. Of course this was in June when most of the
16 schools are out?

17 A. Correct.

18 Q. And then further down South Waccamaw, when we get
19 into Georgetown County, that area, again, is comprised of
20 beach houses, primarily?

21 A. That's correct.

22 Q. And rental property, usually?

23 A. Correct.

24 Q. And what kind of foot traffic do you have in that
25 area?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Mostly in that area, once you go further down, you
2 get out of the, you know, the businesses, the restaurants
3 and everything, you mostly have the rental beach houses.
4 And down there you'll encounter more pedestrian traffic as
5 people are crossing the road to go to the beach or they're
6 jogging or whatever they may, you know, be doing at the
7 time.

8 Q. Okay. So it looks like the beach houses go at
9 least four -- four more streets deep?

10 A. That's correct.

11 Q. And then people are going to the ocean?

12 A. In that particular section, yeah, I believe they
13 are four deep. And then narrows down to just South Waccamaw
14 at some point.

15 Q. Okay. And for that kind of area what sort of
16 landmarks are there that people generally go by?

17 A. There's a couple of landmarks in the area. As we
18 mentioned there's the pier. As soon as you come to the end
19 of Atlantic onto South Waccamaw, you have the big pier
20 there. There's also Sam's Corner which is a well-known
21 restaurant. As you go further down South Waccamaw, you'll
22 run into what is called Marlin Quay Marina. It's a big
23 marina that is frequented often there. He also had, at the
24 very end of South Waccamaw, is what we call The Point which
25 is a popular beach that people like to go to.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And that's sort of the end of the peninsula?

2 A. That's at the very end, yeah.

3 Q. All right. And so tell me based on that why you
4 felt it was necessary to try to get a sketch artist in that
5 very day.

6 A. At the time the decision was made for the sketch
7 artist. Usually, there's two options when we do sketch
8 artists. You can contact SLED, which is located in
9 Columbia, where a particular sketch artist is, they have to
10 come from Columbia. The other option is Horry County
11 Sheriff's Office offers a sketch artist.

12 Due to the time of year, the possibility of -- of
13 the danger to the public and the population of
14 South Waccamaw at the time with all the people around, I
15 felt it was urgent enough to get the sketch artist from
16 Horry County, being that he would be quicker to respond.
17 And also it would be fresher in her head. Because if I
18 contacted Columbia, I'd probably have to wait the next day.

19 Q. And once you got the sketch artist, what did you
20 or your department do? Once you got the composite sketch
21 that we just showed the jury?

22 A. We distributed it to the Sheriff's Office, social
23 media sites, along with the local news agencies.

24 Q. And that was on June 10th, the same day?

25 A. Yes, ma'am.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And then what else did you do in your
2 investigation?

3 A. After the composite was distributed to the media,
4 we did a saturation canvass of South Waccamaw, which -- and
5 what we do when we canvass, we're looking for further
6 witnesses, further information, video footage that may not
7 have been known at the time of the incident or while we were
8 dealing with incident.

9 Q. And what location initially did you determine that
10 this had likely occurred in?

11 A. In the area of -- can you hold the map up so I can
12 -- we determined the area where it happened as right here at
13 near [REDACTED] South Waccamaw. The reason for that is footage was
14 obtained from [REDACTED] South Waccamaw depicting the victim as she
15 walked by and also along with the suspect vehicle.

16 Q. Okay. But initially did you have the location of
17 Moonfish?

18 A. Yes, ma'am. I'm sorry.

19 Q. And what was that based on?

20 A. That was based on her -- the running app that she
21 had on her phone or Smartwatch.

22 Q. And where she ended up ---

23 A. Correct.

24 Q. --- when she stopped? Okay.

25 And she also indicated there may have been some

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 witnesses?

2 A. Yes, ma'am.

3 Q. Okay. And did y'all look for those as well?

4 A. We did attempt to look for the witnesses with
5 negative results.

6 Q. And what sort of witnesses were you -- what were
7 you looking for, specifically?

8 A. She had mentioned there were two, I believe two
9 gentlemen in a balcony, that she remembered seeing during
10 the -- when the incident happened.

11 Q. So a beach house with a balcony?

12 A. Yes, ma'am.

13 Q. And how many are -- of those are there down in --

14 A. That's mostly what South Waccamaw is composed of
15 is beach houses with balconies. So you can imagine the
16 difficulty in narrowing down a specific beach house with,
17 you know, a balcony. They all have -- pretty much all have
18 balconies.

19 Q. And did y'all try several?

20 A. Yes, ma'am. We did try several with no avail.

21 Q. And then after that you were talking about the
22 canvassing. Did you do that the same day or the next day or
23 both?

24 A. Initial canvassing was done the same day. The
25 following day, myself, along with other investigators did a

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 more thorough canvassing from all the way to the county
2 line.

3 Q. Where did you start?

4 A. At the end of South Waccamaw and we worked our way
5 back down to the Horry County line.

6 Q. Okay. So when you said the end of the
7 South Waccamaw, what do you mean?

8 A. Towards the -- The Point and work our way down.

9 Q. All right. And how many -- did you just go on
10 South Waccamaw or what else did you do?

11 A. We also canvassed the streets that are adjacent to
12 South Waccamaw.

13 Q. So from down in here all the way to here?

14 A. Yes.

15 Q. And going back?

16 A. Yes, ma'am.

17 Q. And you were looking for the beach house with
18 witnesses?

19 A. Along with any residents that may have available
20 camera footage.

21 Q. And did you find some available camera footage?

22 A. Yes, ma'am.

23 Q. And where was that?

24 A. Located at [REDACTED] South Waccamaw.

25 Q. Okay. And that is marked on the map?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Correct.

2 Q. All right. And you -- when did you locate that
3 footage?

4 A. That was, I believe on the second day of
5 canvassing, the day after the incident occurred.

6 Q. And let me show you what is marked State's Exhibit
7 Number 16 for identification. Do you recognize that?

8 A. Yes, ma'am. It's the video footage from
9 [REDACTED] South Waccamaw.

10 Q. And you viewed that?

11 A. Yes, ma'am.

12 Q. And is -- are those your initials on that CD?

13 A. Those are my initials.

14 Q. Okay. And is that an accurate representation of
15 the video that y'all took from [REDACTED] South Waccamaw Drive?

16 A. Correct.

17 MS. RICHARDSON: Your Honor, at this time I'd
18 offer State's 16 into evidence.

19 THE COURT: Any objection?

20 MR. EDGEWORTH: No objection, Your Honor.

21 THE COURT: All right. It's in evidence without
22 objection. You may proceed.

23 (WHEREUPON, State's Exhibit Number 16 was entered
24 into evidence.)

25 BY MS. RICHARDSON:

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. Did you locate any other footage?

2 A. No, ma'am.

3 Q. And did you go to any businesses looking for
4 footage?

5 A. Lieutenant Sarvis, while we were canvassing, made
6 contact with the people at the liquor store, Atlantic
7 Discount Spirits.

8 Q. Okay. And were you able to get any video footage
9 from there?

10 A. Yes. The owner did supply video of an individual
11 matching the description of the sketch -- that he thought
12 matched the description.

13 Q. And on what date was that?

14 A. I believe 6/12.

15 Q. And did he give your department a name? A name of
16 who matched?

17 A. Yes, ma'am.

18 Q. And who was that?

19 A. Mr. Dicapua.

20 Q. And you said he also provided -- let me show you
21 what was previously marked as State's 5 and 6. Is that the
22 information that he provided showing Mr. Dicapua and the
23 vehicle?

24 A. Yes. Yes. Those are the photos he provided.

25 MS. RICHARDSON: Your Honor, at this time I'd ask

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 to publish State's Exhibit 16.

2 THE COURT: Any objection?

3 MR. EDGEWORTH: No objection, Your Honor.

4 THE COURT: You may do so.

5 (WHEREUPON, State's Exhibit Number 16 was
6 published to the jury. Video clips played in open court.)

7 BY MS. RICHARDSON:

8 Q. There are three clips on this.

9 I'm going to start it over. We couldn't get it on
10 full screen at the time. All right. I'm going to pause
11 this first. Is there -- could you just read into record the
12 time stamp on this video?

13 A. The current time on the screen?

14 Q. Yes.

15 A. 8:34.

16 Q. And the date?

17 A. 6/10/2018.

18 Q. Okay. And where -- I'm sure we can kind of tell
19 from the picture, but where was the camera located that you
20 got footage from?

21 A. This specific camera is located at the top of the
22 stairway in front -- of the front of [REDACTED] South Waccamaw.

23 Q. And South -- and this house is not a beachfront
24 house?

25 A. No.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. It's the -- the next row?

2 A. Correct.

3 Q. And so if you're looking straight out at this
4 angle that's toward the ocean?

5 A. Correct. And the roadway you see in front of this
6 is South Waccamaw.

7 Q. And that's this area?

8 A. Yes, ma'am.

9 Q. And if you go in this direction, to the right?

10 A. You'll be going south.

11 Q. Okay. Further into Georgetown County?

12 A. Further to Georgetown County.

13 Q. And if you go left?

14 A. You'll be going into Horry County.

15 Q. Closer to the pier?

16 A. Correct.

17 Q. And I'm going to show you this first clip. And
18 from this -- this first clip, was there anything significant
19 and the reason that we took this first clip into evidence?

20 A. The suspect vehicle going by.

21 Q. Okay. And will you tell me -- I'm going to play
22 it again, when you see this vehicle.

23 A. That's it right there.

24 Q. Okay. And how did you -- of course that's from a
25 distance, how did you make that comparison?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. After -- at first, upon retrieving the video, it
2 wasn't noticed until we figured out Mr. Dicapua's vehicle,
3 the black midsize SUV.

4 Q. Okay. So when you first got it you had no idea
5 whose it was?

6 A. Correct.

7 Q. And then when you got the information from -- how
8 did you determine it or compare with his?

9 A. We -- well, as you see in the next video, you'll
10 see the victim walk by. And, of course, this house also had
11 rear cameras which showed no black SUV going on the back
12 street. So we assumed that the suspect vehicle had to have
13 gone in front of the residence down South Waccamaw.

14 Q. And did you -- you compared these photos?

15 A. We compared these photos with the photos obtained
16 from the liquor store.

17 Q. Now, I'm going to play you the second clip.

18 A. The female that just walked by is the victim.

19 Q. Okay. And what approximate time was that?

20 A. 8:36.

21 Q. I'm going to play the third and final clip that is
22 on this exhibit.

23 A. The time is 8:36 or 8:37 now. The victim has just
24 walked by. If you pay attention to the top right-hand
25 corner of the screen, you will see the same descriptive

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 vehicle coming back on the wrong side of the road at a
2 high-rate speed.

3 Q. And you'll tell me when to stop and I'll pause it.

4 A. Right there. A little bit too far.

5 Q. And that vehicle is headed north?

6 A. On the wrong side of the road.

7 Q. And did you also compare that?

8 A. Yeah. That was also compared to the pictures
9 obtained from the liquor store of Mr. Dicapua's vehicle.

10 Q. Okay. And was there anything else of -- it's
11 about halfway through playing -- was there anything else of
12 interest on that?

13 A. No.

14 Q. Okay. I'm going to stop it playing it at this
15 time. So based on what you have received from the liquor
16 store and the footage that you obtained from

17 [REDACTED] South Waccamaw, what did you do at that point?

18 A. After obtaining the video and the footage from the
19 liquor store along with Mr. Dicapua's name, I obtained a
20 SLED-produced photo lineup using an available photo of
21 Mr. Dicapua. After obtaining the photo lineup I responded
22 back to the victim's residence so that she can view said
23 lineup.

24 Q. And on what date was that?

25 A. 6/13 I believe or, no, 6/12, I'm sorry.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. And was she able to identify anybody in that
2 lineup?

3 A. No.

4 Q. And was Mr. Dicapua's photo in that lineup?

5 A. Correct.

6 Q. Let me show you what has previously been marked as
7 State's Exhibit Number 8. And this is a copy?

8 A. Correct.

9 Q. Is that a copy of the photo lineup?

10 A. Correct.

11 Q. And what number is he?

12 A. Number four.

13 Q. Now, there's some writing under his picture was
14 that on the lineup at the time?

15 A. No.

16 Q. When was that placed on there?

17 A. That was placed during the making of the case file
18 for documentation.

19 MS. RICHARDSON: Your Honor, at this time I offer
20 State's 8 into evidence.

21 THE COURT: Any objection?

22 MR. EDGEWORTH: No objection, Your Honor.

23 THE COURT: All right. State's 8 is in evidence
24 without objection.

25 (WHEREUPON, State's Exhibit Number 8 was admitted

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 into evidenced.)

2 BY MS. RICHARDSON:

3 Q. And after no one was picked out did your
4 department make a decision about what steps to take next?

5 A. After she wasn't able to pick anyone out of the
6 photo lineup due to the photo lineup was of poor quality
7 with the -- with the defendant's picture. His head had been
8 cropped out. If y'all -- if they saw a picture of that, of
9 the lineup, his head had been cropped out. It was a younger
10 photo of him, so it didn't depict his age at the time, or
11 features.

12 We presented it to, at the time it was Solicitor
13 Todd, at the Solicitor's Office on what we could do further.
14 The idea was, we came up with a drive-by identification.
15 And a driveby identification is when the victim is put in
16 the vehicle with you and she is driven by or parked near
17 where the suspect is and views the suspect out of the window
18 of the vehicle.

19 Q. And who participated in that process?

20 A. Myself, Investigator Sarvis, and Investigator
21 Carrison.

22 Q. And where -- who was the victim with?

23 A. Her husband.

24 Q. Which vehicle did she ride in?

25 A. She was in my vehicle which, at the time, was a

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 black-colored Chevy Tahoe with tinted windows.

2 Q. And what did you tell her in regard to go into in
3 this home?

4 A. Before -- or while in transit to the home before
5 going to the home, I explained to her that we were going to
6 go by and I wanted her to view a possible suspect which the
7 distance -- the travel was no more than 10 or 15 minutes.

8 Q. And who else was in your vehicle?

9 A. I believe Investigator Wilson was with me.

10 Q. And who went up to Mr. Dicapua's residence?

11 A. Investigator Sarvis and Investigator Carrison.

12 Q. And tell me ---

13 A. They made -- they made contact with him. As a
14 ruse we use the bad tag on the car to speak with him about.
15 As they were speaking to Mr. Dicapua in his driveway, myself
16 along with the victim and the rest of the other occupants in
17 my vehicle, parked in front of the residence on the main
18 road.

19 Q. And what -- what happened when you went near the
20 home?

21 A. The victim, before she even saw Dicapua, she
22 identified the vehicle in the -- in the driveway as to that
23 being the suspect vehicle. Upon seeing Mr. Dicapua, the
24 victim became very upset, very distraught, saying, That's
25 him. That's him right there. She started to cry, very

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 anxious.

2 Q. And how -- how soon after he walked out did she
3 make the identification?

4 A. It was -- it was almost instant.

5 Q. What about with the vehicle?

6 A. Yes, she positively -- she identified the vehicle
7 before him is that being the vehicle.

8 Q. And what level of certainty did she give to you?

9 A. A hundred percent.

10 Q. Okay. And, again, her demeanor when she saw him?

11 A. Very, very upset. Like I said, she was crying,
12 very anxious, nervous, even with her body language.

13 Q. In what sort of area is Mr. Dicapua's residence?

14 A. It's located in a closely dense neighborhood of
15 mostly single-level houses.

16 Q. Okay. And so after she identified him what did
17 you do at that point?

18 A. At that point after she identified him, an arrest
19 warrant was obtained for Mr. Dicapua.

20 Q. And was he taken into custody?

21 A. Yes, ma'am.

22 Q. And was it that day or a later day?

23 A. It wasn't that day, it was a later.

24 Q. Okay. And would that have been on June 15?

25 A. Yes, ma'am.

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Q. What was your involvement with taking him into
2 custody?

3 A. I was one of the arresting officers.

4 Q. And that was in Horry County?

5 A. Yes, ma'am. We had to require the assistance of
6 Horry County Police to assist us in the arrest.

7 Q. Okay. And then what about transport. How was he
8 transported?

9 A. He was transported in my vehicle along with
10 Investigator Aswad.

11 Q. And, again, that same unmarked vehicle?

12 A. Correct.

13 Q. And where were you? Were you driving?

14 A. Yes, I was operating the vehicle.

15 Q. And I know that you heard previously the interview
16 that was introduced through the other detective.

17 A. Correct. While in transit, an interview was
18 conducted with Mr. Dicapua by Investigator Aswad and myself.

19 Q. And you were in here when that was previously
20 played?

21 A. Correct.

22 Q. Okay. And in that interview he denied any contact
23 with the victim; is that right?

24 A. That's correct.

25 Q. But did admit to being in the area?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Not at first. At first, as we all heard the
2 interview, he couldn't remember a lot of things, but then
3 remembers being down there. So in that area he did place
4 himself in the area of South Waccamaw.

5 Q. And what was his demeanor at the time that he was
6 in your car?

7 A. At the time, you know, he's nervous, trying to
8 figure out what was going on.

9 Q. Was there any indication that he was under the
10 influence of anything that would have affected his ability
11 to give his statement?

12 A. No. He was very -- he could talk, communicate.
13 There were no signs that he was impaired or anything.

14 Q. And, again, we heard that his Miranda rights were
15 read and he waived those?

16 A. That's correct.

17 Q. After that, what was the next step in your
18 investigation?

19 A. After that, a second search was done of the
20 residence.

21 Q. Okay. You obtained a search warrant for that?

22 A. That's correct.

23 Q. And that would've been in Horry County?

24 A. Yes, ma'am.

25 Q. Were you assisted by another agency?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. We also require the assistance of Horry County to
2 do a search.

3 Q. All right. Let me show you what's been marked as
4 State's Exhibit Number 41.

5 A. Yes. CD of the search warrant photos.

6 Q. And that's a portion of the photos based on
7 some -- some prior rulings; is that right?

8 A. Correct.

9 Q. But other than that, is this an accurate
10 reflection of the photos that were taken?

11 A. Yes, ma'am.

12 MS. RICHARDSON: Your Honor, at this time I'd
13 offer State's 41 into evidence.

14 THE COURT: Any objection?

15 MR. EDGEWORTH: No objection, Your Honor.

16 THE COURT: It's in evidence without objection.

17 MS. RICHARDSON: I'll go ahead and publish this,
18 as well.

19 (WHEREUPON, State's Exhibit Number 41 was admitted
20 into evidence and published to the jury.)

21 BY MS. RICHARDSON:

22 Q. So these particular photos just show the outside
23 of the residence; is that right?

24 A. That's correct.

25 Q. And is this the residence that you searched?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 A. Yes, ma'am.

2 Q. This CD contains 11 photos.

3 All right. After you completed the search
4 warrant, did you have an opportunity to meet with
5 Mr. Dicapua again?

6 A. Yes, ma'am. There was also a second interview
7 conducted which I was accompanied by Investigator Carrison
8 and Investigator Wyndra from Horry County Police.

9 Q. And Investigator Carrison is with Georgetown
10 County?

11 A. Yes, ma'am.

12 Q. And where was this interview conducted?

13 A. This interview was conducted at the Detention
14 Center in Georgetown.

15 Q. And was there any indication that Mr. Dicapua was
16 under the influence of any substance at that time?

17 A. No.

18 Q. And did you or one of the officers provide him
19 with a -- with his Miranda warnings again?

20 A. That's correct.

21 Q. And did he waive those and agree to speak to you?

22 A. Yes, ma'am.

23 Q. And was that done in writing?

24 A. Yes, ma'am.

25 Q. Let me show you what's been marked as State's

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 Exhibit Number 2. Can you tell me what that is?

2 A. This is a copy of the Miranda rights that
3 Mr. Dicapua, in the interview.

4 Q. And were you present when that was signed?

5 A. Yes, ma'am.

6 Q. Can you tell who witnessed it?

7 A. I believe that's Investigator Carrison's signature
8 as a witness and Dicapua's name at the top.

9 Q. At this time I -- and this is an accurate
10 reflection of copy -- or a copy of that form?

11 A. Yes, ma'am.

12 MS. RICHARDSON: At this time I'd offer State's 2
13 into evidence.

14 THE COURT: Any objection?

15 MR. EDGEWORTH: No objection, Your Honor.

16 THE COURT: Into evidence without objection.

17 (WHEREUPON, State's Exhibit Number 2 was admitted
18 into evidence.)

19 BY MS. RICHARDSON:

20 Q. In either of the interviews, the first interview
21 in the police car, or the second interview we're talking
22 about now, did you or anybody with you, threaten him, coerce
23 him, promise him anything to get him to talk to you?

24 A. No.

25 Q. All right. Let me show you what's been marked as

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 State's Exhibit Number 18. Can you tell us that is?

2 A. That is a copy of the second interview.

3 Q. Okay. And other than the redactions that have
4 been agreed upon, based on court rulings, has there been any
5 changes or alterations to the recording?

6 A. No.

7 Q. And other than those redactions that have been
8 agreed to and are by order of the Court, is there any
9 alterations or anything to that recording?

10 A. No.

11 MS. RICHARDSON: Your Honor, at this time I'd
12 offer State's 18 into evidence and offer to -- and would
13 like to publish it to the jury.

14 THE COURT: Any objection?

15 MR. EDGEWORTH: Your Honor, defense reraises the
16 previous objection.

17 THE COURT: Right. The Court reaffirms and
18 reiterates the prior ruling of the Court and I'll allow it
19 into evidence. And you may publish it to the jury.

20 MR. EDGEWORTH: Thank you.

21 MS. RICHARDSON: Your Honor, and just for the
22 record because of the reactions, this CD has been initialed
23 both by myself and Mr. Edgeworth as far as the redacted
24 portions are concerned.

25 THE COURT: Is that correct?

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: That is correct, Your Honor.

2 THE COURT: Very good.

3 (WHEREUPON, State's Exhibit Number 18, was entered
4 into evidence and published to the jury. Played in open
5 court, not transcribed herein. After which, proceedings
6 resumed.)

7 BY MS. RICHARDSON:

8 Q. So what was the initial description that the
9 victim gave?

10 A. The initial description the victim gave was a male
11 suspect, 5'8", 5'9", 45 to 50 years of age, tan, slightly
12 heavysset, no shirt, with shorts.

13 Q. And how did that compare with Mr. Dicapua?

14 A. Very similar description.

15 Q. And what was his age at the time of arrest? There
16 was a difference in the age?

17 A. Yes, ma'am. He was 67 at the time of arrest.

18 Q. And we heard some description of items taken from
19 the house. Can you tell what items -- tell us what items
20 were taken from the house?

21 A. There were items of clothing and a laptop.

22 MR. EDGEWORTH: Objection, Your Honor, may we
23 approach?

24 THE COURT: Yes, sir.

25 (A brief sidebar held off the record.)

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 THE COURT: Go ahead, Solicitor.

2 BY MS. RICHARDSON:

3 Q. What items were found during the search warrant?

4 A. Like I said, there were items of clothing matching
5 or similar to that described by the victim, cellphones,
6 laptop.

7 Q. And do you have the specific list or know the
8 specific list of what was taken?

9 A. Yes, ma'am.

10 Q. Okay. And would it refresh your recollection to
11 look at your report?

12 A. Yes, ma'am. One South Carolina DL belonging to
13 Jeremiah Dicapua, three credit cards, two bundles of rope,
14 one HP laptop, one box cutter, three pair of black in color
15 shorts, two iPhones, one LG flip phone.

16 Q. Those items were taken into evidence?

17 A. Yes, ma'am.

18 Q. Okay. And were there other items that you did not
19 take into evidence that were observed?

20 A. Yes. We didn't take the condoms or anything like
21 that.

22 Q. Okay. And as far as the shorts, you said there
23 were three pairs of shorts?

24 A. I believe so.

25 Q. That were taken? Where -- were they found, all

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 found at the same location or where were they found?

2 A. No. They were found in different locations of the
3 room.

4 Q. Okay. And where did you find the shorts?

5 A. I don't recall the specific location, but they
6 were in the room.

7 Q. And you put -- you said two iPhones into evidence?

8 A. Yes, ma'am.

9 Q. And another phone?

10 A. An LG flip phone.

11 Q. And do you -- let me show you what has been marked
12 as State's Exhibit Number 20. Can you open that and tell me
13 what it is?

14 A. These are a pair shorts, black in color.

15 Q. Okay. And that's the black shorts that were
16 found?

17 A. Yes, ma'am.

18 MS. RICHARDSON: Your Honor, at this time I move
19 to offer State's 20 into evidence.

20 THE COURT: Any objection?

21 MR. EDGEWORTH: No objection Your Honor.

22 MS. RICHARDSON: And what size are those?

23 THE WITNESS: They are, I believe, large. Yes,
24 large.

25 THE COURT: All right. They're in evidence

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 without objection.

2 (WHEREUPON, State's Exhibit Number 20 was admitted
3 into evidence.)

4 BY MS. RICHARDSON:

5 Q. And do you recall the color of the other shorts
6 that were taken?

7 A. I believe one pair of shorts was like a grayish
8 color. And the other was, I believe, black, but it was a
9 size small.

10 Q. So the other two shorts were smaller than that?

11 A. Do what?

12 Q. The other two pair -- the gray shorts were smaller
13 than those?

14 A. Yes.

15 Q. Okay. You heard on the interview of him talking
16 about a dresser. Did you remove anything from a dresser?

17 A. They were -- I believe the gray pair of shorts and
18 the other one that you just brought over came from the
19 dresser.

20 Q. Okay. And what about these shorts that we just
21 put into evidence?

22 A. They did not come from the dresser.

23 Q. And who did y'all determine lived in the house?

24 A. Mr. Dicapua and his mother.

25 Q. And from where -- which room did you recover the

JONATHAN GRIFFITH - DIRECT BY MS. RICHARDSON

1 black in color shorts?

2 A. Mr. Dicapua's room.

3 Q. Okay. And what about the other items that were
4 taken?

5 A. The same, from his room.

6 Q. Okay. Did you take anything from the mom's room?

7 A. No.

8 Q. And she was there, he was not there, obviously,
9 but she was there?

10 A. Correct.

11 Q. When you went to the house on, I believe it was
12 June 13th to do the driveby with the victim, the Jeep
13 Cherokee was there?

14 A. Correct.

15 Q. Was it damaged at that time?

16 A. I couldn't really say because I was in my vehicle
17 on the driver's side. That would be a better question for
18 Sarvis or Carrison.

19 Q. Okay. And at this time you still thought the
20 location was more down in the Moonfish area; is that right?

21 A. Correct.

22 Q. I have no further questions. Answer any questions
23 that Mr. Edgeworth has for you.

24 THE COURT: All right. Cross-examination.

25 MR. EDGEWORTH: Thank you, Your Honor.

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

CROSS-EXAMINATION

BY MR. EDGEWORTH:

Q. All right. Investigator Griffith, let's try to unpack some of this stuff.

First and foremost, when you arrived on the scene and essentially took over for Deputy Delval, did y'all have a conversation about the findings or things that had happened so far?

A. Yes. He gave me a summarization of what the victim had relayed to him.

Q. Okay. To include the description?

A. Yes.

Q. Okay. And he informed you about Horry County's attempt to ride around with the complaining witness to try to identify or locate the vehicle?

A. I believe so, yes.

Q. Okay. And he also told you about how the complaining witness originally thought that the location was at ■ South Waccamaw?

A. Correct.

Q. And he also told you about how they went down there, knocked on the door, and the person staying at that residence didn't have any idea of what they were talking about?

A. Correct.

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 Q. And at that point you are taking over the
2 investigation?

3 A. That's correct.

4 Q. When you -- when you started identifying pieces of
5 information, to include the description of the perpetrator,
6 you were told 45 to 50?

7 A. Yes, that's correct.

8 Q. And that was a fairly consistent comment
9 throughout the investigation; is that true?

10 A. Correct.

11 Q. Also you were told that the individual had no
12 shirt on?

13 A. That's correct.

14 Q. And was wearing shorts?

15 A. Correct.

16 Q. And that was the individual that you guys were
17 presumably looking for at that time; is that correct?

18 A. That's correct.

19 Q. All right. As part of that investigation, of
20 course, you obtained the sketch that we've talked about on
21 various occasions?

22 A. Excuse me?

23 Q. You had the sketch artist come and prepare the
24 sketch with the complaining witness?

25 A. Correct.

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 Q. And you -- you -- were you the person that
2 presented that to social media and the media?

3 A. Correct.

4 Q. Now, from -- is it fair to say that from that post
5 to the media you -- you did not obtain anything as far as
6 like any tips or otherwise from submitting it to the public;
7 is that correct?

8 A. There were a few tips that had come in that were
9 followed up on, but nothing yielded any value at the time.

10 Q. Okay. Nothing that led you to Mr. Dicapua?

11 A. Not at the time.

12 Q. Not at the time or not at all?

13 A. Not, I don't believe, at all.

14 Q. So then the next thing you do then is you obtain
15 this photo array from -- from SLED. And that's something
16 that you would do in the normal course of an investigation?

17 A. That's correct.

18 Q. And when you do that you contact SLED and tell
19 them of the particular suspect that you may have so they can
20 create it?

21 A. Correct. You supply all of the available
22 information of your suspect to SLED and they generate a
23 photo lineup, which is called, more referred to as a "six
24 pack."

25 Q. And, generally speaking, is it fair to say that

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 when you present that particular -- the photo array to the
2 complaining witness, it has who you believe to be the
3 suspect in it?

4 A. That's correct.

5 Q. And on this particular occasion you went back and
6 met with the complaining witness on the evening of the next
7 day?

8 A. After we -- that's correct, the next day.

9 Q. So at that time you presented it to -- to the
10 complaining witness and then she could not identify
11 Mr. Dicapua in the photo array; is that correct?

12 A. That's correct. Upon presenting it to the victim
13 she was very undetermined at the time of selecting anyone,
14 but she did not select anyone from the photo lineup.

15 Q. This is what's been entered as State's Exhibit 8.
16 Is this, in fact, the photo array that was presented or at
17 least a true and accurate copy?

18 A. That's a true and accurate copy of the photo
19 array.

20 Q. And Mr. Dicapua is located where in that photo?

21 A. He is located at Number 4.

22 Q. Show that to the jury, Number 4.

23 And because you didn't get a good result having
24 known that your suspect was in the photo, you decide to --
25 with advice of others, of course, that you're going to do

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 this driveby or showup lineup; is that correct?

2 A. The reason for the driveby identification is the
3 poor quality of the photo lineup. As you can tell when you
4 look at it Mr. Dicapua's head was cropped out. It's also
5 a -- a younger picture of him that at the time was the only
6 one we could find. So we did consult with the Solicitor's
7 Office, which at the time of Solicitor Todd, and further
8 actions we could take. And the results were, we chose to do
9 a driveby identification.

10 Q. Well, and I appreciate your explanation, because
11 you've already testified to that. But my question is, as
12 you stated, did you identify what you believe -- what you're
13 telling the jury is the problems with that -- with the
14 lineup prior to presenting it to the complaining witness?

15 A. I'm not understanding.

16 Q. Okay. When you got the photo array back from
17 SLED, did you take a look at it?

18 A. Yes.

19 Q. Okay. Did you identify at that time the problems
20 about that photo array before you presented it to the
21 complaining witness?

22 A. That's correct. But there were no other available
23 photo of Mr. Dicapua at the time.

24 Q. Okay. So despite having knowledge that you
25 believed it not to be a good photo array you presented it

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 anyways?

2 A. That's correct.

3 Q. And then you moved forward with the showup lineup?

4 A. That's correct.

5 Q. In hopes of her identifying Mr. Dicapua as the
6 suspect?

7 A. Correct.

8 Q. Because you believed him to be the perpetrator?

9 A. With the evidence at hand and the information
10 obtained, yes, he was viable -- a viable suspect.

11 Q. Okay. But you wouldn't have gone by his house if
12 you didn't think he was the person who did it, right?

13 A. Right.

14 Q. And that's something you were telling the
15 complaining witness when you were driving over there in that
16 five or ten-minute window that it took you to take her over
17 there?

18 A. At no time was I suggestive to the victim in
19 transit to Mr. Dicapua's house. With any incident I have to
20 inform her of what's getting ready to occur and what's --
21 what we're trying to get done. Which is, we are going to
22 drive by a possible suspect's house, you will view the
23 suspect, if that is the suspect, please let us know.

24 Q. But, nonetheless, you advised her that you
25 believed as law enforcement that this was a possible

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 suspect?

2 A. I did say "a possible suspect."

3 Q. So on the way over there, she's already in the
4 frame of mind that this could be the person?

5 MS. RICHARDSON: Your Honor, the State objects to
6 him characterizing the victim's statement.

7 THE COURT: Mr. Edgeworth, your position is not to
8 testify. That's not a question. We'll strike that.

9 MR. EDGEWORTH: Thank you, Your Honor.

10 THE COURT: Thank you.

11 BY MR. EDGEWORTH:

12 Q. As part of the investigation you obtained what
13 we've already seen or shown to the jury the video from one
14 of the houses located approximately [REDACTED] South Waccamaw.

15 A. That's correct.

16 Q. Did you obtain that video?

17 A. That's correct.

18 Q. Did you take any steps to confirm the time stamp
19 in the video?

20 A. What are you -- what are you saying?

21 Q. Well, there's a time stamp that was referred to as
22 part of the testimony.

23 A. Correct.

24 Q. Being that it began approximately 6:00 -- or
25 excuse me, 8:30ish or 8:32.

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 A. Correct.

2 Q. Did you take any steps to confirm that that was an
3 accurate timestamp?

4 A. Yes. With the owner of the residence.

5 Q. And in that video you collected, obviously, you
6 must have better eyes than me, but you've identified a
7 vehicle that passes by as the vehicle in question in this
8 case; is that correct?

9 A. That's correct.

10 Q. Other than your personal observation were there
11 any steps taken to confirm that that was the actual car
12 owned by -- or rented by Mr. Dicapua?

13 A. It's a -- the description of the vehicle and the
14 video matches that of Mr. Dicapua.

15 Q. Okay. But what I'm asking is not a match, you
16 testified that it was the car. So I'm trying to confirm how
17 it is that you arose at that conclusion. Is your testimony
18 now that it matched the description or it is, in fact, the
19 car?

20 A. It matched the description of Mr. Dicapua's
21 vehicle.

22 Q. And from your investigation is it your belief that
23 was in fact the car?

24 A. It is my belief that was in fact the car.

25 Q. So in the video we see that the complaining

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 witness or the testimony is the complaining witness passes
2 by at approximately 8:34 in the morning; is that correct?

3 A. Correct.

4 Q. And at that time the complaining witness is
5 walking.

6 A. Correct.

7 Q. And the indication was that the vehicle passed and
8 I believe, based on your testimony, going in the south
9 direction at first?

10 A. That's correct.

11 Q. And then going back north the second time?

12 A. Correct.

13 Q. And I think your testimony was it was in the ---

14 A. Wrong lane.

15 Q. --- wrong lane. In the period of time between
16 that, do you recall what that was?

17 A. The time stamp?

18 Q. Well, the time between you see the car going south
19 and then the car going north?

20 A. Are you asking the time?

21 Q. I'm asking if you are aware of how long that took
22 in the video.

23 A. No. Not right now, I don't recall.

24 Q. If I told you it was a period of less than
25 two minutes would you -- would you be able to agree to?

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 MS. RICHARDSON: Your Honor, he just testified he
2 doesn't know. I object to that.

3 THE COURT: I'll allow him to answer the question
4 if he can answer it. If he can't answer it, he can't answer
5 it.

6 THE WITNESS: I can't answer that without viewing
7 the video again.

8 BY MR. EDGEWORTH:

9 Q. Okay. Well, in this particular case, instead of
10 viewing it again, do you recall the testimony of the
11 complaining witness?

12 A. Yes.

13 Q. And the testimony was that she saw the car one
14 time ---

15 A. Correct.

16 Q. --- at an intersection. Do you recall that?

17 A. Correct.

18 Q. Then the belief was that the car when some back
19 street and went further down the road approximately
20 five minutes later. Do you recall that?

21 A. Correct.

22 Q. There was also testimony that at no time did she
23 see the car pass back by her, correct?

24 A. Correct.

25 Q. And for her to believe the testimony as you

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 understand it within that period of time with the car going
2 south and then going back north ---

3 MS. RICHARDSON: Your Honor, I object to the
4 characterization of that. That's pitting the witnesses
5 against each other.

6 THE COURT: I'm allowing the question. Go ahead.

7 BY MR. EDGEWORTH:

8 Q. Your testimony was, is that the car went south and
9 then went back north, correct?

10 A. We don't know the exact direction or way the
11 vehicle traveled. There's -- like we said before, there's
12 two or three back streets that could have been cut down and
13 cut back out onto South Waccamaw. So he could have possibly
14 went around the victim without her seeing the vehicle.

15 Q. Okay. And based on that testimony, you do recall,
16 however, that the complaining witness said it was a
17 five-minute period between the time -- the first engagement
18 and the second engagement?

19 A. Yes.

20 Q. And so if the time period between the first car
21 going -- or excuse me, the car that you believe to be the
22 witness's or Mr. Dicapua's car going one direction and the
23 other was two minutes, then it couldn't have possibly been
24 the same car. You would agree with that?

25 A. No. I don't agree with it.

JONATHAN GRIFFITH - CROSS BY MR. EDGEWORTH

1 Q. Okay. Have you, in fact, identified the actual
2 location of the alleged event?

3 A. Yes.

4 Q. And when in time did you do that?

5 A. That's after viewing the video collected from
6 [REDACTED] South Waccamaw and identifying the vehicle fitting
7 Mr. Dicapua's -- the description of Mr. Dicapua's vehicle.

8 Q. Okay. I'm not sure I follow.

9 Did the event take place at [REDACTED] South Waccamaw
10 where the video was taken?

11 A. It did not take place in front of
12 [REDACTED] South Waccamaw, it was slightly past [REDACTED] South Waccamaw.
13 That information gathered with her -- the running app she
14 had, the tracking device, with all that put together we
15 determined that the incident took place not far from
16 [REDACTED] South Waccamaw.

17 Q. Well, is it your recollection that originally when
18 they used that same running information or from the tracker
19 that that's when they identified [REDACTED] South Waccamaw?

20 A. The reason they identified [REDACTED] South Waccamaw is
21 because that's where she had ran to and ducked into getting
22 away from Mr. Dicapua.

23 MR. EDGEWORTH: Court's indulgence, Your Honor.

24 No further questions, Your Honor.

25 THE COURT: Any redirect?

JONATHAN GRIFFITH - REDIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. RICHARDSON:

4 Q. Besides the residence at [REDACTED] South Waccamaw
5 looking for the witnesses, did you go to other residences?

6 A. Yes, ma'am.

7 Q. Again, you are looking for a beach house with a
8 balcony?

9 A. Correct. And as we said before, South Waccamaw is
10 heavily populated with beach houses with balconies.

11 Q. Okay. And how -- Mr. Edgeworth asked you about
12 comparing the footage from [REDACTED], the beach house footage,
13 with the pictures obtained from the liquor store owner.

14 A. Correct.

15 Q. How did you do that as far as the video is
16 concerned?

17 A. Well, we blew the video up a little bit so we
18 could see the passing vehicles. And I believe I was
19 assisted in that by Investigator Aswad. And upon comparing
20 them, like I said, the vehicle matched that of the
21 description given we have of Mr. Dicapua's vehicle.

22 Q. So you blew up to see some of the features, what
23 you could see?

24 A. Correct.

25 Q. And then compared that with the other pictures you

JONATHAN GRIFFITH - RECROSS BY MR. EDGEWORTH

1 had of the vehicle?

2 A. Correct.

3 Q. And then as far determining the actual location.
4 Did -- was there a subsequent -- subsequent witnesses that
5 were located? The men on the porch?

6 A. Correct.

7 Q. And what address were they -- were they at?

8 A. I don't quite recall what the exact address.

9 Q. Okay. But how close was it to where you had the
10 videos?

11 A. Very close.

12 Q. A couple houses down?

13 A. Yes, ma'am.

14 MS. RICHARDSON: Okay. I have no further
15 questions.

16 THE COURT: Anything on those questions,
17 Mr. Edgeworth?

18 MR. EDGEWORTH: Real quickly, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. EDGEWORTH:

21 Q. I previously asked the question how you
22 ascertained the vehicle, because my eyes -- your eyes must
23 be better than mine. Now your testimony is, is that y'all
24 had a comparison video or photograph?

25 A. The photograph obtained from the liquor store.

JONATHAN GRIFFITH - RECROSS BY MR. EDGEWORTH

1 Q. Did you blow up a still shot of the video from
2 South Waccamaw and compare it?

3 A. Nothing special. We just made it wider on the
4 screen so we can see the vehicle passing by.

5 Q. Did you create that document?

6 A. No.

7 MR. EDGEWORTH: No further questions.

8 THE COURT: All right, sir, you may step down.
9 Thank you.

10 All right. Ladies and gentlemen, we're going to
11 take a short break for about five to ten minutes. Go to the
12 jury room. Again, don't talk about the case. Thank you
13 very much.

14 (WHEREUPON, a break was held from 4:00 p.m. until
15 4:16 p.m.)

16 THE BAILIFF: All rise.

17 THE COURT: Thank you. Be seated.

18 MS. RICHARDSON: Your Honor, before we start back,
19 the clerk's office is asking about some scheduling matters
20 for tomorrow and Friday.

21 THE COURT: Obviously, we're not doing them.

22 MS. RICHARDSON: Okay. Or Friday either, the
23 statuses?

24 THE COURT: No, ma'am. The roster meeting is not
25 happening on Friday.

1 MS. RICHARDSON: Okay.

2 THE COURT: We're not doing anything until we get
3 done with this case. And the only thing we'll do is there's
4 a plea that you all have with Mr. Hilliard on some case.
5 Other than that, that's scheduled for Friday morning. We'll
6 do that plea sometime Friday. Other than that, we're not
7 doing anything else.

8 MS. RICHARDSON: I think that was on a trial
9 roster case?

10 THE COURT: Yes, ma'am. It was on a trial. It
11 was one of the cases on the trial roster. I don't know
12 which one. It was one that Mr. Hilliard had it as a defense
13 attorney.

14 MS. RICHARDSON: You Honor, given that and the
15 late hour, can I have just a minute to let my office staff
16 downstairs know this, so that we can take care of that
17 tomorrow?

18 THE COURT: Yes, ma'am.

19 MS. RICHARDSON: Thank you.

20 (WHEREUPON, there was a short pause in the
21 proceedings.)

22 MS. RICHARDSON: I'm sorry, Your Honor, I had to
23 actually go down there.

24 THE COURT: All right. Is the State ready for the
25 jury to come in?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: The defense?

3 MR. EDGEWORTH: Yes, Your Honor.

4 THE COURT: Ask the jury to come in, please.

5 (WHEREUPON, the jury entered the courtroom at 4:18
6 p.m.)

7 THE COURT: All right. Solicitor, your next
8 witness, please.

9 MS. RICHARDSON: The State calls Robert Sarvis.

10 THE COURT: Come around and be sworn, sir.

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you're about to give will be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am. I do.

15 THE CLERK: Please have a seat and spell your
16 first and last name for the record.

17 THE WITNESS: Robert, R-O-B-E-R-T. Sarvis,
18 S-A-R-V-I-S.

19 ROBERT SARVIS, being first duly sworn,
20 testified as follows:

21 THE COURT: Go ahead, Solicitor.

22 DIRECT EXAMINATION

23 BY MS. RICHARDSON:

24 Q. Where are you employed?

25 A. With the Georgetown County Sheriff's Office.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. And what is your position there?

2 A. Lieutenant in charge of and supervisor over
3 investigation -- investigation unit as well as the narcotics
4 unit.

5 Q. And how long have you been the supervisor?

6 A. I think I've been in my current position for, I
7 think this is my fourth year.

8 Q. And tell us your history with law enforcement,
9 education, and training.

10 A. I got a Bachelors of Sociology. From there I
11 obviously attended the Police Academy. I've been in law
12 enforcement for approximately 23 years. Approximately,
13 16 years here. And several details along the way, patrol,
14 narcotics, investigator. I think I was an investigator
15 here -- worked in an investigator role for approximately 14
16 to 15 of those years.

17 Q. And do you have continuing training?

18 A. Yes. Continuous training throughout as well as
19 specialized training in different areas.

20 Q. And, obviously, you were the supervisor back in
21 June of 2018 when this incident occurred?

22 A. Yes, ma'am, I was.

23 Q. And what was your involvement in the case?

24 A. Other than being the supervisor, I assisted in
25 whatever way I could as far as offering other resources.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Another body to get out and canvass areas, speak with
2 people, do whatever needed to be done.

3 Q. And you participated in the canvassing that
4 Investigator Griffith explained previously?

5 A. Yes, ma'am. On the Monday following the incident.

6 Q. And were you there when the cameras were located?

7 A. Yes, ma'am. I was there on that day.

8 Q. And did you try other multiple other locations
9 that appeared to have cameras?

10 A. Oh, we tried a tremendous number of locations up
11 and down South Waccamaw and the side roads.

12 Q. And what other kinds of problems did you run into
13 as far as obtaining any other footage?

14 A. Obviously, some locations had no cameras. Some
15 had cameras, that did have cameras possibly not working,
16 getting in touch with people at the residences when we would
17 come through, maybe someone not being home at that time.

18 Q. And did you go to Atlantic Liquors?

19 A. Yes, ma'am.

20 Q. And tell me why you went there.

21 A. During the canvass on Monday around
22 South Waccamaw, we discovered that one of the residents near
23 the incident location was actually where the owner of
24 Atlantic Liquors resided.

25 Q. And so you went there for that purpose?

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 A. Primarily to speak with him about cameras at his
2 house. And then, additionally, once I got there, you know,
3 also that Atlanta Avenue is a thoroughfare in and out of
4 where we are. So, possibly, there would have been, you
5 know, hopefully, maybe he had some video of the Atlantic
6 catching a vehicle coming in and out.

7 Q. And did you have any luck with that?

8 A. No. I don't think we did.

9 Q. And while you were there did you meet with
10 Mr. Varcadipane? I'm probably pronouncing it wrong.

11 A. Yeah, I called Jim, because I'm not going to get
12 his last name either. But, yes, the first time I went, he
13 wasn't there. When I went back, I was able to meet with him
14 and show him a digital copy of the sketch.

15 Q. Okay. And did you get any -- once you showed him
16 the sketch, did you get any additional information?

17 A. He indicated at the time that it looked familiar,
18 but at that particular time he didn't have a name or give me
19 anything right then.

20 Q. Okay. And were you eventually provided with a
21 name?

22 A. Yes. He contacted me back. I think it was either
23 later that day or the following day.

24 Q. So either the 11th or the 12th?

25 A. Yes. With the individual's name as well as some

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 photographs, screen shots from a surveillance camera system.

2 Q. And that was based off of the sketch that you had
3 shown him, the composite sketch?

4 A. Yes, ma'am.

5 Q. That the officer from Horry County Sheriff had
6 completed?

7 A. Yes, ma'am.

8 Q. And what name did he give you?

9 A. Jeremiah Dicapua.

10 Q. And then he also provided you with the screen
11 shots and the vehicle pictures?

12 A. Yes, ma'am.

13 Q. And that's State's 5, 6, and 7 -- or 5 and 6 are
14 the screen shots of Mr. Dicapua?

15 A. Yes, ma'am.

16 Q. Okay. And the receipt is Number 7?

17 A. Yes, ma'am. From 6/12 was also provided to me by
18 Jim the owner of the liquor store.

19 Q. So maybe on the 11th, but definitely by the 12th
20 you had the name of Mr. Dicapua, pictures of the vehicles
21 and pictures of him; is that right?

22 A. Yes, ma'am.

23 Q. And also on the 12th you had this surveillance
24 video from [REDACTED] South Waccamaw?

25 A. Yes. I think that's correct.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. Okay. Were you -- tell me about your
2 involvement -- did you have any involvement with the lineup
3 process?

4 A. No ma'am, I didn't.

5 Q. What about with the driveby process?

6 A. Yes, ma'am. I, along with one of the
7 investigators, were the two to go to the residence, knock on
8 the door, and approach to speak with Mr. Dicapua.

9 Q. Okay. And what did you tell him, Mr. Dicapua,
10 what was the plan or what did you tell him?

11 A. We had a ruse. The pictures provided to us showed
12 a tag, a paper tag, with an out-of-date paper -- it was an
13 out-of-date paper tag. We were going to knock on the door
14 and just explain to him -- with that -- use that as an
15 excuse to get him out of the house to allow the opportunity
16 for the victim to visually see him.

17 Q. And so you and who went up to the house?

18 A. Investigator Hank Carrison.

19 Q. And were you -- what sort of vehicles were you in?

20 A. At the time I'm pretty sure I was driving an
21 unmarked grayish-blue Dodge Charger.

22 Q. And how were you dressed or how would all of you
23 been dressed?

24 A. I don't remember a hundred percent, but we would
25 not have been in your standard uniform, your gray Sheriff's

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Office uniform. It would have either been a shirt and tie
2 or a collared polo shirt with a star badge, embroidered
3 badge on it.

4 Q. But you would have identified -- when you met with
5 him did you identify what agency you were with?

6 A. Yes, ma'am.

7 Q. And the victim was in the other vehicle?

8 A. Yes, ma'am. She was in another vehicle out on the
9 roadway, an unmarked vehicle as well with tinted windows.

10 Q. And this is a neighborhood, like a mobile home or
11 a small -- like a neighborhood?

12 A. Yeah. It's kind of like -- I would describe it as
13 like more of an upscale mobile home park.

14 Q. So the road, is it a highway with divided lines or
15 is it a --

16 A. To my memory, it's more of a -- two cars can get
17 by on the road, however, I don't think it's necessarily
18 divided with lineage and all that. I think it's just a 15
19 or 16-foot-wide roadway.

20 Q. So what you would typically see in a subdivision?

21 A. Yes, ma'am.

22 Q. Okay. And did you observe the victim at all
23 during this identification process or have any interaction
24 with her?

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

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. And did you make any advise -- or advise her in
2 any way regarding this process?

3 A. No. I don't recall even having spoken with her
4 before.

5 Q. And you did observe the black Jeep Cherokee at the
6 residence?

7 A. Yes, ma'am. It was at the residence when we
8 knocked on the door and spoke with his mother and then him.

9 Q. Okay and do you recall what date that was?

10 A. I want to say it was either the 12th or the 13th.

11 Q. And did you observe any damages to the vehicle?

12 A. I don't recall seeing any damages. No. I can't
13 say they were there or not.

14 Q. And at this time you did have the footage from
15 [REDACTED] South Waccamaw, right?

16 A. Yes, ma'am. To the best of my knowledge.

17 Q. And the initial indication was that the incident
18 had occurred where?

19 A. It's closer down near the 800 block of
20 South Waccamaw.

21 Q. And that's close to Moonfish?

22 A. Yes.

23 Q. But your investigation -- did your investigation
24 just focus on Moonfish?

25 A. Well, no. I mean, there was no -- it was wide

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 open as far as where we were looking and trying to get some
2 information from.

3 Q. So obviously you went at least as far as
4 [REDACTED] South Waccamaw?

5 A. Yes, ma'am.

6 Q. Did you go further than that?

7 A. Yes, ma'am. Both to the sides and behind.

8 Q. And was anybody real sure exactly where it had
9 occurred at that point?

10 A. Near the 800 block and the Moonfish area, the
11 house with the balcony.

12 Q. And then once you got the footage from [REDACTED], which
13 I think you said was two days later, you realized it
14 happened south of [REDACTED].

15 A. Yeah. It appeared to especially with the
16 maneuvering of the vehicle and all of that, so it would
17 indicate that.

18 Q. And we've all seen that she was walking?

19 A. Yeah.

20 Q. South from [REDACTED] South Waccamaw, right?

21 A. Yes, ma'am.

22 Q. And were you eventually able to locate the
23 witnesses that the victim had indicated were on the balcony?

24 A. Yes, ma'am. Actually sometime later I received
25 information of the two individuals having been located and

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 actually lived in North Carolina. In the Cornelius area,
2 Charlotte area of North Carolina. I was able to make
3 contact with them and set up an interview in North Carolina
4 with them.

5 Q. And had they actually contacted law enforcement
6 back in sometime in June?

7 A. Yes, they did. On the 11th at around 5:55, six
8 o'clock, one of the two called 911 to speak with a deputy in
9 regards to having seen our press release of the incident
10 that occurred the day before. Dispatch dispatched a deputy
11 to that location. That deputy has been severed from our
12 department and is no longer there. But we haven't been able
13 to speak with him. There was no report done, nothing other
14 than the CAD entry. And once that was discovered, then we
15 were able to -- then we backtracked and found these victims
16 (sic) and spoke with them?

17 Q. So initially it just wasn't linked ---

18 A. Yeah, it wasn't.

19 Q. --- for whatever reason. And it came in as just
20 an information report?

21 A. Yeah. And I don't know -- if I could refer to the
22 notes?

23 Q. Would that help you refresh your recollection?

24 A. Yes, ma'am. It appears that it was CAEd as an
25 information report on that.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. Okay. And just not linked to the other incident?

2 A. That's correct.

3 Q. But you did end up locating them and interviewing
4 both of them?

5 A. Yes, ma'am.

6 Q. And do you recall their names?

7 A. Mr. Craig Lewis and Mr. Thomas Rider, Jr.

8 Q. And you went to North Carolina to interview them?

9 A. Cornelius Police Department in North Carolina.

10 Q. And based on the 911 call and your interview with
11 them, were you able to determine the location where the
12 actual incident occurred?

13 A. Yes, ma'am. Exactly in front of
14 638 South Waccamaw, which is two houses to the right of the
15 video.

16 Q. So looking at this map that we've used repeatedly,
17 State's Exhibit Number 10, there's a dot ---

18 MS. RICHARDSON: Your Honor, can he step around?

19 THE COURT: Yes, ma'am.

20 MS. RICHARDSON: Just to make it easier.

21 BY MS. RICHARDSON:

22 Q. So this is the Georgetown County/Horry County
23 line. And this dot represents [REDACTED] South Waccamaw where you
24 got the footage, correct?

25 A. Yes, ma'am.

ROBERT SARVIS - DIRECT BY MS. RICHARDSON

1 Q. And then this dot is?

2 A. 638 South Waccamaw.

3 Q. Okay. And that's where you located the two -- or
4 where the two witnesses were staying that you located?

5 A. Yes.

6 Q. And where that second 911 call came in?

7 A. Yes, ma'am.

8 Q. That is now where you believe the incident
9 location was?

10 A. That's correct.

11 Q. And the significance of the Moonfish?

12 A. It's my understanding that had to have been where
13 she fled to based on the app and that put him -- the wife
14 and the husband getting back together afterwards.

15 Q. Okay. And so that's how far she ran?

16 A. Apparently so, yes.

17 Q. And at the location of 638 South Waccamaw, and
18 even [REDACTED] South Waccamaw, is there a side street that runs
19 perpendicular to the ocean?

20 A. Between -- I'm sorry. Repeat the question?

21 Q. In this area is there a side access street?

22 A. No. You have to go to Moonfish from there.

23 Q. So it's a very large block without back access?

24 A. Yes.

25 Q. I have no further questions. Answer any questions

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 that Mr. Edgeworth may have.

2 THE COURT: Cross-examination, please.

3 MR. EDGEWORTH: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. EDGEWORTH:

6 Q. Detective Sarvis, were you present when the liquor
7 store owner was testifying earlier today?

8 A. Yes, sir, I was.

9 Q. And do you recall his testimony?

10 A. As much as I can remember of what he said, yes.

11 Q. And you recall that he had like over 700 --
12 potentially 700 encounters with Mr. Dicapua?

13 A. Yeah. I do recall that now that you mentioned
14 that.

15 Q. Okay. And you -- he provided you with some
16 photos, correct?

17 A. Yes.

18 Q. And in those photos, or in the photo -- do you
19 still have them up there? No, here we go.

20 I'll show you what's been marked as State's
21 Exhibit 5. This is one of the photos that he provided from
22 his surveillance?

23 A. Yes, sir.

24 Q. And he is, in fact, wearing a shirt in that photo,
25 correct?

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 A. It appears to be a tank top of some sort.

2 Q. Okay. He also provided you with a photo of the
3 vehicle -- Mr. Dicapua's vehicle as he -- he indicated that
4 it was Mr. Dicapua's vehicle and sent you a picture of that.

5 A. Yes, sir. A couple of different pictures.

6 Q. And included in those photos was a picture of the,
7 kind of, temporary tag that was expired?

8 A. Yes.

9 Q. And you obtained those on approximately June 12th?

10 A. Yes.

11 Q. So you knew as of that date not only the make,
12 model, color, but also the fact that the tag was expired?

13 A. Yes.

14 Q. And do you recall the date of the showup lineup?

15 A. It was the 15th.

16 Q. If I told you it was the 13th, would that refresh
17 your recollection?

18 A. Okay.

19 Q. So at that time -- at the time that you guys
20 decided to do the showup lineup, not only were you aware
21 that the complaining witness was looking for what was
22 similar to a black SUV, you had identified, correct?

23 A. Yes.

24 Q. You've identified a black Jeep that belonged to
25 Mr. Dicapua, correct?

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 A. Yes.

2 Q. You arranged the showup lineup at Mr. Dicapua's
3 house, correct?

4 A. Yes, that's correct.

5 Q. You used the ruse of an old tag in order to engage
6 Mr. Dicapua to come out of his home, correct?

7 A. Yes. In order to speak with him.

8 Q. Right. Knowing that the complaining witness would
9 arrive at the house in order to basically get a glimpse of
10 the individual whom you believed to be the suspect; is that
11 right?

12 A. Once she had already been there, but, yes,
13 generally.

14 Q. Okay. So when you arrived at Mr. Dicapua's house,
15 you had to have known that the vehicle was there, because
16 that's what the point of the ruse was, right?

17 A. Yes, correct. That was part of it.

18 Q. Okay. And so the car was in the driveway?

19 A. Right.

20 Q. At that time did it cross anyone's mind that that
21 could be suggestive to the complaining witness if she were
22 to arrive with the car there?

23 A. With the car there? No, it didn't.

24 Q. Okay. And yet do you recall her testimony being
25 that she -- it was car that brought everything to her

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 attention before she even saw Mr. Dicapua, correct?

2 A. No, she said she saw the car first and did
3 recognize it, yes.

4 Q. As part of that investigation, the canvassing and
5 whatnot, you identified -- I apologize, not the canvassing.

6 You had mentioned that you came across some new
7 witnesses or someone that you went to speak to, I guess,
8 recently. Was it recently that you went to speak to these
9 individuals?

10 A. I think March the 8th, I spoke with them, of '21.

11 Q. Okay. March of 2021?

12 A. Yes.

13 Q. Okay. So this year. And the phone call that led
14 you to these individual came in on the day after the
15 incident?

16 A. That's correct. At approximately 5:55 p.m.

17 Q. Okay. And is it your understanding that the
18 reason why they called was because they saw the press
19 release?

20 A. That's what they told me during the interview,
21 yes.

22 Q. So is it your understanding then they did not call
23 at the time incident?

24 A. No, it's my understand they called the day after
25 about 5:55.

ROBERT SARVIS - CROSS BY MR. EDGEWORTH

1 Q. So almost a day and half later -- or excuse me,
2 yeah, essentially a day and a half later?

3 A. The following day, yes.

4 Q. Did you have the opportunity to listen to that
5 call?

6 A. Their call, the 911?

7 Q. Yes.

8 A. I have listened to it, yes.

9 Q. Do you recall in that recording that the
10 individual indicated that the person he believed to be the
11 assailant was Latino?

12 A. I don't recall. I've listened to it, but I don't
13 have it memorized.

14 Q. But you got -- but law enforcement didn't really
15 recognize this particular call until 2021?

16 A. That's correct.

17 Q. Okay.

18 A. I'm sorry, it was 2020 or 2021. And the reason I
19 say that is when it was brought to my attention, it was the
20 end -- late 2020. And then, with Covid and all that, then
21 it took time in arranging the actual interview with them.

22 Q. Okay. Well, I'll just narrow it down then. The
23 interview that you had mentioned as part of your testimony
24 occurred in March of 2021?

25 A. Correct.

ROBERT SARVIS - REDIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: I have no further questions, Your
2 Honor.

3 THE COURT: Very good. Redirect?

4 MS. RICHARDSON: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. RICHARDSON:

7 Q. Let me show what's been marked as State's
8 Exhibit 27 for identification. Do you recognize that.

9 A. Yes, ma'am. This is a photo of Mr. Dicapua that
10 was actually taken at the time of his arrest.

11 Q. Okay.

12 A. And it was actually also used as the wire press
13 release -- the Sheriff's Department press release media
14 blitz.

15 Q. After the fact?

16 A. Correct.

17 Q. And that's an accurate representation of that
18 photo?

19 A. Yes.

20 Q. And he was arrested, again, on June 15th?

21 A. Yes.

22 MS. RICHARDSON: Your Honor, I'd offer State's
23 Exhibit 21. And correct that it's 21 that I showed to
24 Investigator Sarvis, I'd offer that into evidence.

25 THE COURT: Any objection?

ROBERT SARVIS - RECROSS BY MR. EDGEWORTH

1 MR. EDGEWORTH: No objection, Your Honor.

2 THE COURT: It's in evidence without objection.

3 MS. RICHARDSON: And publish it to the jury?

4 THE COURT: You may do so.

5 (WHEREUPON, State's Exhibit Number 21 was entered
6 into evidence and published to the jury.)

7 BY MS. RICHARDSON:

8 Q. And as far as Mr. Dicapua's complexion, did it
9 match the description given by the victim?

10 A. Oh, yes. Very tan, dark tan.

11 MS. RICHARDSON: I have no further questions.

12 THE COURT: Anything on those questions asked?

13 MR. EDGEWORTH: Briefly, Your Honor.

14 THE COURT: Yes, sir.

15 RECROSS-EXAMINATION

16 BY MR. EDGEWORTH:

17 Q. Let me show you what's now been entered as State's
18 Exhibit Number 21, which you just saw.

19 A. Yes. Uh-huh.

20 Q. Mr. Dicapua has a shirt on, does he not?

21 A. It appears to be some sort of tank top.

22 Q. Okay. Tank top, shirt.

23 When you had him pulled from the house, he had a
24 shirt on then, correct?

25 A. Yes.

BENJAMIN WELLS - DIRECT BY MS. RICHARDSON

1 Q. And when he was pulled from the house you recall
2 him having pants on him?

3 A. Of some sort.

4 Q. Not shorts?

5 A. I actually don't recall what he had on.

6 MR. EDGEWORTH: Okay. No further questions.

7 THE COURT: All right, sir. You may step down.
8 Your next witness, please, ma'am.

9 MS. RICHARDSON: Your Honor, the State calls Ben
10 Wells.

11 THE COURT: Please come around and be sworn.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you're about to give will be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please have a seat and spell your
17 first and last name for the record.

18 THE WITNESS: Benjamin Wells. B-E-N-J-A-M-I-N,
19 W-E-L-L-S.

20 BENJAMIN WELLS, being first duly sworn
21 testified as follows:

22 THE COURT: Go ahead, Solicitor.

23 DIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q. Tell us where you're employed?

BENJAMIN WELLS - DIRECT BY MS. RICHARDSON

1 A. I am a lieutenant with the Horry County Sheriff's
2 Office.

3 Q. And how long have you been there?

4 A. Twenty years.

5 Q. And is that the totality of your law enforcement
6 experience?

7 A. Yes.

8 Q. And can you tell us your educational background?

9 A. I'm a lieutenant over the electronic crimes. I'm
10 a graduate of the South Carolina Criminal Justice Academy.
11 I've been to Glencoe, Georgia, at the Federal Law
12 Enforcement Training Center. I'm a graduate of Digital
13 Evidence Aquisition Specialist to seize computer evidence
14 and recover it. I'm on the United States Secret Service
15 Cyber Task Force Team. I'm on the Attorney General's
16 Internet Crimes Against Children Task Force and recognized
17 as computer and mobile forensics.

18 Q. And have you had some specialized training in
19 computer and cellphone forensics?

20 A. Yes. The Federal Law Enforcement Training Center,
21 National Computer Forensics Institute in Hoover, Alabama
22 that is sponsored by the United States Secret Service. And
23 various Cellebrite Certifications: IODA CCO, CCPA. CCO is a
24 Certified Cellebrite Operator. CCPA is a Certifed
25 Cellebrite Physical Analyst. I also have a CASA

BENJAMIN WELLS - DIRECT BY MS. RICHARDSON

1 Certification, which is an advanced certification within
2 Cellebrite. I also hold the Capstone Certification CCME,
3 which is a Cellebrite Certified Mobile Examiner.

4 Q. And what is your primary job with ---

5 MR. EDGEWORTH: Your Honor, I object to this, may
6 we approach?

7 THE COURT: Sure. Come talk to me.

8 (WHEREUPON, there was a bench conference held out
9 of the hearing of the jury, after which the proceedings
10 resumed.)

11 THE COURT: Madam Forelady, ladies and gentlemen
12 of the jury. Go to your jury room. I have to talk to the
13 attorneys about something, please. Thank you.

14 (WHEREUPON, the jury exited the courtroom at 4:51
15 p.m.)

16 THE COURT: All right. Your objection,
17 Mr. Edgeworth.

18 MR. EDGEWORTH: Your Honor, it's my understanding
19 that the State is getting ready to attempt to introduce some
20 photos that were extracted from purportedly Mr. Dicapua's
21 cellphone. In those photos, I believe there are
22 approximately four or five photos where there are just
23 random photos of either a couple ladies coming off the
24 beach, one lady taking up carts at maybe the Food Lion, and
25 then another lady leaning into her car to put maybe a child

1 away or something like that.

2 My position at this point in time is those photos
3 have zero -- almost zero probative value. They're just
4 photos that has nothing to do with alleged victim in this
5 matter. They have -- we don't even know when they were
6 extracted necessarily -- or when they were taken,
7 necessarily. I believe in one of the photos it might be
8 Mr. Dicapua's home -- a picture of his house.

9 But, that being said, the prejudicial affect that
10 would be implied from those photos as they appear that he's
11 taken them out the side of the -- well, the State contends
12 they're taken out the side of his car. I believe the
13 prejudicial affect just completely, extraordinarily
14 outweighs any probative value, just from the photos alone
15 with no context or otherwise.

16 THE COURT: All right. Have those been marked for
17 identification?

18 MS. RICHARDSON: They have, Your Honor.

19 THE COURT: Can I see them, please?

20 MS. RICHARDSON: That is what's been premarked as
21 State's 24, 25, 26, and 27.

22 THE COURT: Okay. Thank you.

23 So what is the intention of the State and why are
24 these being introduced in this particular case?

25 MS. RICHARDSON: Your Honor, these photos, first

1 of all, they show where they came from, the iPhone 6S, which
2 was extracted. Mr. Wells will be able to testify as to the
3 date they were taken, which is June 7th of 2018, just
4 three days before this incident. He'll also be able to
5 corroborate through another witness the area in which they
6 were taken which was the Garden City area.

7 As far as the cellphone itself, it was taken from
8 his bedroom, as Investigator Griffith testified.

9 Officer Wells would also be able to show other indicia of
10 ownership of that phone based on his extraction, including
11 multiple accounts registered to Mr. Dicapua, voice mails,
12 text messages, that sort of thing that indicates his
13 ownership of the phone.

14 Your Honor, in this case, the explanation that has
15 been given as far as the interaction with the victim, has
16 been basically that it was a mistaken-type of thing, that it
17 was taken out of context, or it was because he thought he
18 had hit her with the car.

19 This puts him in the same area and close proximity
20 to time. One of the photos also shows him on the wrong side
21 of the road or it appears to be kind of close to the three
22 girls in bikinis on that side of the road. It shows that he
23 is engaging females in that area, which goes to absence of
24 mistake. And it's also part of the res gestae of this
25 incident that it occurred so close in time. And shows what

1 he -- that there was an absence of mistake as far as his
2 interaction with his victim.

3 THE COURT: And if the defendant testifies in this
4 case? You know, very well be the proper cross-examination
5 of him as to his explanation. The State was the one that
6 played the interview. The defendant didn't introduce that.
7 So that evidence is in because of the State's action. You
8 can't then bootstrap your action to then get these
9 photographs in.

10 Now, if the defendant testifies and says that It
11 was a mistake and I don't engage in that kind of activity
12 and I don't talk to women and don't engage them like that.
13 Fine, good cross-examination. But there is no purpose at
14 this point in time to introduce these photographs.

15 They are, at the present time, the prejudicial
16 value outweighs any probative value. The defendant is on
17 trial for the crime of kidnapping of the victim in this
18 matter, Ms. Starnes. Not for engaging in other type of
19 activity.

20 Now, again, should he choose to testify, my ruling
21 will most likely be different. Thank you very much. At
22 this point in time I'm not allowing these photographs into
23 evidence.

24 MS. RICHARDSON: Your Honor, may I just put
25 something else on the record?

1 THE COURT: Sure.

2 MS. RICHARDSON: Your Honor, identity has also
3 been an issue in this case and it does put him in the area.

4 THE COURT: All right. Well, one of them has A
5 there's a marking on one of the buildings of 180. So is
6 that 180 Waccamaw Drive? Is that 180 Atlantic Drive?

7 MS. RICHARDSON: It's a side street off
8 North Waccamaw, past the pier, is where that occurred.

9 And, Your Honor, just for the record, our
10 legislature has designated kidnapping as a sexual crime by a
11 not registered ---

12 THE COURT: I appreciate that. But the fact of
13 the matter is -- the matter that you're trying to bootstrap
14 these photographs to is evidence you put in the case, not
15 the defendant. If he put it in that's a different story.
16 His story is in this case because you put it in, not him.

17 Again, he testifies, there's certainly going to be
18 proper cross-examination. All right.

19 MS. RICHARDSON: Thank you, Your Honor.

20 And that will be all the witnesses, I mean,
21 obviously, it's five o'clock anyway, that the State has for
22 today.

23 THE COURT: So there would be as far as Lieutenant
24 Wells, then you would not intend to ask him any further
25 questions, you would just hold him for potential reply?

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: Okay. All right. How about
3 Mr. Knowles and Mr. Brown, are they testifying anything like
4 this or not?

5 MS. RICHARDSON: No, Your Honor.

6 Mr. Brown was going to, but he also has some
7 additional information that he's going to testify to.

8 THE COURT: All right. Very good.

9 You all come and talk to me for just one second.

10 (WHEREUPON, there was a sidebar discussion held
11 off the record.)

12 THE COURT: Lieutenant, you can step down.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Madam Court Reporter, I'm going to give you these
16 photographs, okay.

17 COURT REPORTER: Thank you.

18 THE COURT: Ask the jury to come back in, please.

19 (WHEREUPON, the jury entered the courtroom at 4:55
20 p.m.)

21 THE COURT: All right. Ladies and gentlemen, we
22 are going to stop for the evening. We'll resume tomorrow
23 morning as we did this morning at 9:15. Be back to be in
24 your jury room by 9:15.

25 Now, you've heard some of the testimony of the

1 case and I've told you all not to talk about it. When you
2 go home you see your husband, wife, boyfriend, girlfriend,
3 person down the street, you can't talk about the case with
4 them either, because they'll intentionally or
5 unintentionally give you their opinion. They don't have
6 one. I've asked you all not to have one at this point in
7 time until the case is over with and I've given you the law.
8 So, after it's over with you can talk about it as much or as
9 little as you want to, but don't do it until then.

10 Covid has caused a number of problems. For a
11 significant period of time we didn't even have jury trials.
12 And didn't honestly know that we were going to resume them
13 at this point in time. And as Administrative Judge for
14 criminal court, I scheduled a matter tomorrow afternoon that
15 must be done. So we're going to work tomorrow until one
16 o'clock. And then we're going to break and we'll have to
17 come back Friday and finish this matter on Friday. All
18 right. Just so that you are aware of the process.

19 And so, with that, you are now excused see you
20 back tomorrow morning at 9:15. Thank you very much.

21 (WHEREUPON, the jury exited the courtroom at 5:00
22 p.m.)

23 THE COURT: All right. From the State is there --
24 I know Mr. Edgeworth may have something.

25 Is there anything from the State that we need to

1 cover?

2 MS. RICHARDSON: No, Your Honor.

3 THE COURT: All right. Mr. Edgeworth?

4 MR. EDGEWORTH: Thank you, Your Honor.

5 Just for purposes of making sure we knock these
6 out. It's my understanding that the State intends to
7 introduce jail calls, multiple jail calls, made by my client
8 to family members. My position on that is that I'm asking
9 the Court to exclude those phone calls on a couple of basis.

10 Number one, of course, would be that, obviously, I
11 think there some prejudicial effect of that, they're coming
12 from the jail. And at the beginning of these calls -- in
13 any call it's talking about, you know, it's not a private
14 call, it's coming from the jail from whatever security
15 system or whatever that they use out there.

16 And I believe that, in those particular instances,
17 despite the fact that Mr. Dicapua is detained at this time,
18 and the fact that there is, you know, this boilerplate
19 notice that provided that you're going to be recorded, some
20 of the content that's communicated between the family
21 members I believe should remain private and not be heard by
22 the jury.

23 I will say that should this Court find that the
24 State is allowed to introduce them, we have, in fact,
25 already gone over them and I believe -- I would like the

1 opportunity to confirm that the redacted versions are those
2 that I would agree to introduce. But we did take the time
3 to do that, we sent over some yesterday. Actually, we spent
4 a couple of hours after the end of court to go over a lot of
5 these documents.

6 THE COURT: Okay.

7 MR. EDGEWORTH: But for the purposes of this
8 trial, we're asking the Court to exclude those. It's kind
9 of duplicative in general, but that would be the basis of
10 that motion, Your Honor.

11 THE COURT: All right. The argument by the State.

12 MS. RICHARDSON: Your Honor, as far as the
13 prejudicial effect of these in jail, it has already been
14 brought before the jury without objection that the
15 interviews took place at jail and obviously that he was
16 transported to jail.

17 But, Your Honor, in these calls, the probative
18 effect of these calls is, is that the defendant admits to
19 grabbing -- to having interaction with the victim and to
20 grabbing her. And that is out of his own words. And since
21 identity has been brought into issue by the hearings that
22 we've had and the cross-examination of the witnesses by
23 Mr. Edgeworth, and identity is an issue, and, you know,
24 obviously what exactly occurred, the State believes that the
25 probative value is strong and outweighs any prejudicial

1 effect.

2 The jury already knows he was in jail, it already
3 came in as far as the interview and these calls that the
4 State is seeking to introduce, at least one of them occurred
5 before that interview that we've already put in on 6/21,
6 where it was said he was at the detention center. Two are
7 in August and one is in October. So they're all sort of in
8 close proximity to what's already before the jury.

9 THE COURT: All right. Just so that you know I've
10 heard in the past any number of recorded calls from the
11 jail. The recording at the beginning is that the standard
12 recording that the jail has been using for any number of
13 years Mr. Edgeworth, or is there something different about
14 this one?

15 MR. EDGEWORTH: No, Your Honor. I believe it's
16 the standard advisory as far as what I've heard.

17 THE COURT: Okay. Is that correct, Solicitor?

18 MS. RICHARDSON: One of them is a little different
19 than what I was used to hearing. One of them does say it's
20 intended for the called parties, but is subject to
21 recording. And also gives an admonishment to attorneys that
22 if they're being called, they need to make sure their number
23 is blocked.

24 So it's a little different than what the first
25 calls are, but one of them is just a little different. It

1 has basically a warning for attorneys, because many
2 attorneys are using cell phones.

3 THE COURT: So in addition it has that wording?

4 MS. RICHARDSON: Yeah, it has that additional
5 warning.

6 THE COURT: So besides the basic warning that the
7 Court's familiar with and Counsel is familiar with, there's
8 one that has an additional warning to attorneys that may be
9 communicating with their clients?

10 MS. RICHARDSON: Right.

11 THE COURT: All right. I appreciate the fact that
12 that will again put that issue before the jury that he was
13 in jail, Mr. Edgeworth, but clearly in the recorded
14 interview, the second one, it's clear on that interview that
15 was played to the jury that it was being done at the
16 detention center. And I think anyone listening to it, even
17 if that wasn't on there, the background noises that were
18 heard during interview would clearly indicate it's being
19 recorded at a detention facility. I don't think anyone
20 could get any other impression, just because of the
21 background announcements and the background noises that you
22 hear in the interviews clearly being done at a detention
23 center.

24 So I don't think there's any undue prejudice. If
25 you want me to give some instruction to the jury the fact

1 that these phone calls were made from the detention center,
2 that in and of itself does not -- they should not weigh that
3 or use that in any fashion against the defendant. I'll be
4 glad to do that if you want me to do something like that.

5 I'll let you think about that. And you can tell
6 me that before the calls are played to the jury.

7 MR. EDGEWORTH: Yes, Your Honor.

8 THE COURT: Okay. Think about that and talk to
9 your client about that. Okay.

10 MR. EDGEWORTH: I'll do that.

11 THE COURT: But I am going to allow them. I do
12 appreciate the fact that you all went through them and went
13 through the redaction process. Obviously, Solicitor, let's
14 make sure that Mr. Edgeworth listens to the redacted
15 versions and make sure there aren't any continuing issues,
16 okay? Just on those make sure that everything is clear on
17 those. All right?

18 So I am going to allow them into evidence.

19 MR. EDGEWORTH: Yes, Your Honor. And just for
20 court purposes, the State did provide me with the redacted
21 versions, but since the court is allowing me the opportunity
22 to talk to my client about the Court's ruling. I will make
23 sure that by the morning I'll let the State know that the
24 redactions are still good to go.

25 THE COURT: All right. Very good. Anything else

1 that you need to bring to the Court's attention?

2 MR. EDGEWORTH: Nothing at this time, Your Honor.

3 THE COURT: All right. Very good. We'll start
4 back again tomorrow at 9:15, please.

5 MS. RICHARDSON: Thank you.

6 (WHEREUPON, the trial was adjourned for the day at
7 5:08 p.m.)

8 MAY 13, 2021

9 (WHEREUPON, the proceedings resumed at 9:04 a.m.)

10 THE BAILIFF: All rise.

11 THE COURT: Thank you very much. Please be
12 seated.

13 All right. Solicitor, I understand there was
14 matters you wanted to talk to the Court about?

15 MS. RICHARDSON: Your Honor, just because of the
16 way that we ended yesterday with the witness on the stand, I
17 think there probably needs to be some explanation. I was
18 not aware that Mr. Edgeworth was going to object to those
19 photos, or else I wouldn't have -- we'd have had that issue
20 cleared up and I wouldn't have called Mr. Wells.

21 Just some sort of instruction that the rulings of
22 the Court concerning any admissibility cannot be held
23 against either party or something to that effect.

24 THE COURT: What's your position, Mr. Edgeworth?

25 MR. EDGEWORTH: Your Honor, the State -- or,

1 excuse me, the defense would request that if the Court's
2 inclined to give any type of instruction that it not mention
3 anything about the credibility and weight. It's just more
4 that the -- there's no further questions or something in the
5 Court's discretion that may be more neutral. If the Court's
6 inclined to give any instruction at all.

7 THE COURT: I'm not inclined to give any
8 instruction. I don't think it's necessary. I don't believe
9 the jury needs to know anything. All right. Thank you very
10 much. Anything else?

11 MS. RICHARDSON: No, Your Honor.

12 THE COURT: All right. Very good. Is the State
13 ready for the jury to come in?

14 MS. RICHARDSON: Yes.

15 THE COURT: And the defense?

16 MR. EDGEWORTH: Defense is ready, Your Honor.

17 THE COURT: All right. Very good. Ask the jury
18 to come in, please.

19 We don't have a Bailiff. I wonder where the
20 Bailiff is at. Where did they go?

21 THE CLERK: I think he was waiting for one more
22 Juror.

23 THE COURT: Okay. All right.

24 THE LAW CLERK: I'll see if I can find him, Judge.

25 THE COURT: All right.

1 (WHEREUPON, there was a brief pause in the
2 proceedings.)

3 THE BAILIFF: Juror 129 Reed is missing.

4 THE COURT: All right. Counsel, one of the jurors
5 has not shown up. Juror Number 129 for whatever reason.
6 That's one of the alternates. So we are going to proceed in
7 their absence. Ask the jury to come in.

8 MR. EDGEWORTH: Your Honor, Ms. Richardson's not
9 in the courtroom.

10 THE COURT: Can we find the Solicitor please?

11 All right. Ma'am, apparently Juror Number 129,
12 one of the alternates, is not present. We're going to
13 proceed in their absence. Have the jury come out.

14 MS. RICHARDSON: I think a juror just checked in,
15 Your Honor.

16 THE COURT: Well, let's find out. If not, get
17 going. Let's go.

18 (WHEREUPON, the jury entered the courtroom at 9:16
19 a.m.)

20 THE COURT: All right. Solicitor, your next
21 witness, please.

22 MS. SMITH: Yes, Your Honor. The State calls
23 Stephen Brown to the stand.

24 THE COURT: All right. Please come around to be
25 sworn.

STEPHEN BROWN - DIRECT BY MS. SMITH

1 THE CLERK: Do you solemnly swear the testimony
2 you're about to give will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Please have a seat and spell your
6 first and last name for the record.

7 THE WITNESS: Stephen Brown, S-T-E-P-H-E-N
8 B-R-O-W-N.

9 STEPHEN BROWN, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Detective Brown, where are you currently employed?

14 A. I work here at the 15th Circuit Solicitor's
15 Office.

16 Q. And how long have you worked here?

17 A. Approximately 21 years.

18 Q. What's your current role?

19 A. I'm the chief investigator with the 15th Circuit
20 Solicitor's Office.

21 Q. And prior to becoming the chief investigator what
22 did you do?

23 A. Well, I was an investigator here. I started in
24 2003 as an investigator. I've worked in Horry County, in
25 case you know, the 15th Circuit is Horry and Georgetown

STEPHEN BROWN - DIRECT BY MS. SMITH

1 County. I worked in Horry County for several years. Then I
2 was transferred to Georgetown County where I worked down
3 here for several years. I was here in 2018 when this case
4 was going on. In 2019 I was promoted to chief and now I'm
5 back in Conway in Horry County.

6 Q. What's your educational background?

7 A. I've got a bachelor's degree from Coastal
8 Carolina. I'm a graduate of the South Carolina Criminal
9 Justice Academy. I'm Board Certified Class 1 Officer. In
10 order to keep that certification, there's continued
11 education that you have to take every year and that sort of
12 stuff to keep your certification.

13 Q. So you've done continual training throughout the
14 years?

15 A. Yes.

16 Q. Are you qualified to use a system known as
17 Securus?

18 A. Yes, I am.

19 Q. Do you have a username?

20 A. I do. We have a username and a password, yes.

21 Q. Okay. What is Securus?

22 A. So Securus is a system used all over by several
23 housing institutions. Like, for instance, the Georgetown
24 County Detention Center has a Securus system. And in the
25 Securus system, it's a system where inmates are assigned PIN

STEPHEN BROWN - DIRECT BY MS. SMITH

1 numbers. People that are incarcerated are assigned PIN
2 numbers and whenever they make phone calls, they have to use
3 their PIN number, and those phone calls are recorded and
4 they're saved and can be retrieved later if need be.

5 Q. How long you been using Securus?

6 A. Ever since I can remember being in law
7 enforcement. You know, in the old days, actually back when
8 I started, our offices weren't even hardwired with the
9 Internet and we used to would have to go to detention
10 centers to listen to use the secured system in a terminal
11 they had set up. It's all web-based now. Now authorized
12 users have usernames and passwords and now you can -- you
13 can do it from anyplace.

14 Q. After a jail call is made, after a call from the
15 jail is made, is that call then stored?

16 A. It is.

17 Q. Okay. And can this system provide you a log of
18 all calls for a single individual?

19 A. Yes, it does. It stores them. All calls made are
20 stored in that individual's PIN number. Yes.

21 Q. So talk to me about this PIN number, this
22 identification number, how is that assigned?

23 A. So it's a little different in other places, you
24 know. In Georgetown County you are assigned a PIN number, I
25 believe, when you're booked in, they give you a PIN number.

STEPHEN BROWN - DIRECT BY MS. SMITH

1 And, not to give any trade secrets away, they have a system
2 where they use someone's name and Social Security number to
3 assign them a certain number.

4 It's a little different than that in Horry County.
5 Horry County has now changed that to where all we need is
6 the person's name and we can pull up the phone calls.

7 But in Georgetown County it's assigned to each
8 individual and they come in based on their Social Security
9 number and their last name.

10 Q. And were you able to find the defendant's personal
11 identification number at Georgetown County Detention Center?

12 A. Yes, I was.

13 Q. And how were you able to do that?

14 A. Well, there's two ways. I mean, one you can call.
15 You can call over to booking and ask them and, you know,
16 someone might be able to give that information to you. But
17 Securus actually has a system, when you get into Securus,
18 before you go to the main tool area where you pull up phone
19 calls, they also have an area that stores the names and the
20 account numbers.

21 So you can go there, you can pull up everyone's
22 name, you can pull up all their account numbers. Once you
23 get their account number, then you can go with their PIN
24 number, as well. Then you can go into the system, put in a
25 date range, and it will pull up the calls that they've made.

STEPHEN BROWN - DIRECT BY MS. SMITH

1 Q. So you were able to find the defendant's
2 identification number, his PIN number, through your
3 certification with Securus; is that correct?

4 A. Correct.

5 Q. Okay. Are the -- are the people at the Georgetown
6 County Detention Center, are they aware that these calls are
7 subject to recording?

8 A. Yes. Every phone call starts off with a -- with a
9 disclaimer, essentially saying, This call is being monitored
10 and recorded or could be monitored and recorded. Thank you
11 for using Securus, Evercom, whatever the system is.

12 So, yes, there's a -- there's a -- every phone
13 call begins that way. So, yes, they're aware the phone
14 calls are being recorded.

15 Q. So are those phone calls, in fact, recorded?

16 A. They are. All those calls are recorded, yes.

17 Q. Are these recordings, just in general, are they
18 routinely monitored?

19 A. Well, yes. I mean, they are routinely monitored
20 in a sense that, obviously, there's a bunch of folks in a
21 bunch of counties, making a bunch of phone calls. So
22 there's a lot of them and a few of me. So we don't listen
23 to everything. You know, the detectives will use this as an
24 investigative tool. Investigators will use this is a trial
25 preparation tool, that kind of thing. But, routinely, yes,

STEPHEN BROWN - DIRECT BY MS. SMITH

1 we look at these sort of things.

2 Q. Is that a normal practice, to monitor jail calls?

3 A. Yes, it is.

4 Q. Okay. Were you able -- would you be able to alter
5 any of the calls on the Securus system?

6 A. No. It's not set up that way. All we can do is
7 listen to the phone calls. There's no editing tool on
8 Securus that I'm aware of. Now, we can download the call,
9 which we've done in this case. And once we have downloaded
10 the call -- you know sometimes in these cases there is
11 personal information on these phone calls that perhaps a
12 judge wouldn't want everybody to know.

13 So in that situation, and in this situation, we
14 can redact those personal things out. So the only thing
15 that we can do once those call has been downloaded is make a
16 couple of redactions, but we can't alter the content of the
17 phone calls or anything like that.

18 Q. So through Securus it provides you with a
19 complete, total copy of that call from start to finish?

20 A. Yes. Yes.

21 Q. Did you specifically review a call made by the
22 defendant on -- well, excuse me, first: Were you able to
23 review calls that were made by the defendant?

24 A. Yes.

25 Q. How do you know that they were made by the

STEPHEN BROWN - DIRECT BY MS. SMITH

1 defendant?

2 A. Well, for one, you know, I started by getting the
3 defendant's PIN number. And once I put the PIN number in
4 and pulled up the calls, you know, these are all the calls
5 associated with the defendant. You know, two, after
6 reviewing the phone calls and, you know, you'll hear them
7 talking to people, they'll say, Hey, Jerry or whatever,
8 that's -- you know, you put two and two together.
9 Obviously -- obviously, yes, if that answers your question.

10 Q. So PIN number and context?

11 A. Yes.

12 Q. Okay. Were you able to review a call made by the
13 defendant on June 19, 2018?

14 A. I was.

15 MS. SMITH: May I approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. SMITH:

18 Q. I'm showing him what has been previously marked as
19 State's Exhibit 31. Is this that disc that you previously
20 reviewed?

21 A. It is.

22 Q. And is that your signature on it?

23 A. It's my initials, yes.

24 MS. SMITH: Your Honor, at this time the State
25 moves to enter State's Exhibit 31 into evidence.

STEPHEN BROWN - DIRECT BY MS. SMITH

1 THE COURT: Based upon the Court's prior ruling in
2 this matter, I'm going to allow 31 in evidence over the
3 objection of the defense.

4 MR. EDGEWORTH: Thank you, Your Honor.

5 MS. SMITH: Your Honor, at this point in time may
6 we publish to the jury?

7 THE COURT: Yes, ma'am.

8 BY MS. SMITH:

9 Q. Detective Brown ---

10 A. Again, this will be a redacted version, so there
11 may be gaps in here. It won't be a complete phone call, yes.

12 Q. That is exactly what I was going to ask.

13 MS. SMITH: Your Honor, on this phone call there
14 is a substantial amount of time, approximately five minutes,
15 which is redacted. May we ask that we skip from the point
16 of the start of that redaction until the end of that
17 redaction? Would you like to listen to the ---

18 THE COURT: Mr. Edgeworth, you have a problem with
19 skipping over the dead air?

20 MR. EDGEWORTH: I have no objection, Your Honor.

21 THE COURT: All right. Very good.

22 (WHEREUPON, State's Exhibit Number 31 was entered
23 into evidence and published to the jury, played in open
24 court. Not transcribed herein. After which, proceedings
25 resumed.)

STEPHEN BROWN - DIRECT BY MS. SMITH

1 MS. SMITH: Your Honor, that is the relevant
2 portion of this -- of this jail call.

3 THE COURT: Is there anything else, Mr. Edgeworth,
4 you want to play?

5 MR. EDGEWORTH: Well, I mean, the consented
6 portion of the unredacted thing should require that
7 everything be played that's not redacted.

8 THE COURT: All right. That's the party's --
9 that's what you all worked on, that's fine. Just play the
10 parts that aren't redacted. Thank you.

11 MS. SMITH: Yes, sir.

12 (WHEREUPON, the audio continues to play.)

13 BY MS. SMITH:

14 Q. Investigator Brown, other than this phone call,
15 were you able to review any other phone calls made by the
16 defendant?

17 A. I was. Several others.

18 Q. Okay. Were you able to review a phone call made
19 by of the defendant on 8/13/2018?

20 A. Yes.

21 Q. And if I may approach with has been previously
22 marked as State's Exhibit 13 (sic). What am I showing you?

23 A. This was the redacted -- a redacted version of the
24 jail call made on 8/13.

25 Q. And other than the -- other than the redacted

STEPHEN BROWN - DIRECT BY MS. SMITH

1 portions, is it substantially the same as when you first
2 heard it.

3 A. Yes, ma'am. I listened to it in its entirety,
4 yes.

5 Q. At this point -- now, were you also able to listen
6 to a jail call on 8/26/2018, August 26th of 2018?

7 A. Yes. Can I just refer to my notes real quick.

8 Q. Go ahead?

9 A. 8/26, yes.

10 Q. Okay. And what about October 24th, 2018?

11 A. Yes.

12 Q. I'm approaching the witness with what has
13 previously been marked as State's Exhibit 35 and 37.

14 Could you state for the record what 35 is?

15 A. 35 is a redacted version of the call made on
16 8/16/18.

17 Q. And other than those redactions is it
18 substantially the same as when you reviewed it the first
19 time?

20 A. It is.

21 Q. What is State's Exhibit 37?

22 A. 37 is the redacted version of the jail phone call
23 that was made on 10/24/18.

24 Q. And other than the redactions is that
25 substantially the same as the time when you first listened

STEPHEN BROWN - DIRECT BY MS. SMITH

1 to it?

2 A. Yes, ma'am, it is.

3 MS. SMITH: Your Honor, at this point in time the
4 State moves to enter Exhibits 35 and 37 into evidence and
5 publish to the jury -- oh, and 33, excuse me.

6 THE COURT: Okay. You said 13 earlier. Is it 33?

7 MS. SMITH: Yes, Your Honor. The phone call from
8 8/13/18 is State's Exhibit 33. The phone call from 8/26/18
9 is 35. And the 10/24/2018 is State's Exhibit 37.

10 THE COURT: All right. Again, I'm going to allow
11 those into evidence over the objection of the defense. I'm
12 going to reaffirm the prior ruling of the Court regarding
13 the phone calls and the waiver that's included in the calls.

14 MR. EDGEWORTH: Thank you, Your Honor.

15 MS. SMITH: Your Honor, we're going to begin
16 chronologically with 8/13/2018.

17 (WHEREUPON, State's Exhibit Numbers 33, 35, 37
18 were entered into evidence and published to the jury.
19 Played in open court. Not transcribed herein. After which,
20 the proceedings resumed as follows.)

21 MS. SMITH: The rest of this video has been
22 redacted, Your Honor .

23 THE COURT: All right. Thank you.

24 MS. SMITH: The State is now publishing State's
25 35, which is the jail call from the defendant made on August

STEPHEN BROWN - DIRECT BY MS. SMITH

1 the 26th, 2018.

2 (Audio published and played in open court.)

3 MS. SMITH: Your Honor, the rest of this video has
4 been redacted.

5 THE COURT: All right. Thank you, ma'am.

6 MS. SMITH: The State is now publishing what has
7 been entered into evidence as State's Exhibit 37. This is
8 the defendants phone call from the Georgetown County
9 Detention Center on October 24th, 2018.

10 (Audio published and played in open court.)

11 MS. SMITH: Your Honor, that's all for State's
12 Exhibit 37, as well.

13 THE COURT: All right. Thank you, ma'am.

14 BY MS. SMITH:

15 Q. Investigator Brown, are those calls subject to
16 charge? Are they paid for?

17 A. I believe they are, yes.

18 Q. And who are they paid for by?

19 A. Well, I believe it's going to be the receiver that
20 puts money on the bill. I think when someone first gets to
21 the detention center there are some smaller five-minute
22 calls that may be free depending on the facility. But for
23 the most part, those are pre-paid cards, but you have to put
24 money on the card to pay for those phone calls, to my
25 understanding.

STEPHEN BROWN - DIRECT BY MS. SMITH

1 Q. So the recipient of those phone calls?

2 A. We don't know who actually puts money on the card.

3 Q. Okay.

4 A. I don't know, but I believe that's the case.

5 MS. SMITH: I beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. SMITH: Thank you. Answer any questions that
8 the defense counsel may have.

9 THE COURT: Cross-examination?

10 MR. EDGEWORTH: No questions for this witness,
11 Your Honor.

12 THE COURT: All right. Thank you very much. You
13 may step down, sir.

14 THE WITNESS: Thank you, Judge.

15 THE COURT: All right. Your next witness, please,
16 ma'am.

17 MS. RICHARDSON: Your Honor, the State calls Craig
18 Lewis.

19 THE COURT: All right. Very good. Come around
20 and be sworn, sir. Come right around up here to the corner,
21 right up here, sir.

22 THE WITNESS: Thank you.

23 THE CLERK: Do you solemnly swear upon the
24 testimony you're about to give will be the truth, the whole
25 truth, and nothing but the truth, so help you God?

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 THE WITNESS: I do.

2 THE CLERK: Please have a seat. State your first
3 and last name for the record. Spell it, please.

4 THE WITNESS: My name is Craig Lewis. C-R-A-I-G,
5 L-E-W-I-S.

6 THE COURT: And if you feel comfortable doing so,
7 sir, you can remove your mask.

8 THE WITNESS: Thank you.

9 CRAIG LEWIS, being first duly sworn,
10 testified as follows:

11 THE COURT: Go ahead, Solicitor.

12 DIRECT EXAMINATION

13 BY MS. RICHARDSON:

14 Q. Mr. Lewis, where do you live?

15 A. I live in Davidson, North Carolina.

16 Q. And is that near Charlotte?

17 A. North side of Charlotte.

18 Q. And what do you do there?

19 A. So I'm a senior principal, and I co-lead the
20 planning urban design group with Stantec, an international
21 planning and engineering firm.

22 Q. And what is your educational level?

23 A. I have a master's degree.

24 Q. And are you married?

25 A. I am.

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 Q. And do you have children?

2 A. I do. Four.

3 Q. Okay. And were you in Garden City, South Carolina
4 on -- in June -- June 10 and 11, 2018?

5 A. I was.

6 Q. And what were you doing there?

7 A. We were vacationing with other families.

8 Q. And let me show you -- did you have an opportunity
9 that you ended up calling 911?

10 A. I did.

11 Q. Let me show you what's been marked as State's 38.
12 And do you recognize that?

13 A. Yes.

14 Q. And what is that?

15 A. That is the 911 call that I made providing some
16 information in reference to an article that we saw in the
17 paper.

18 Q. Were those your initials?

19 A. Those were my initials, yes.

20 Q. A little smeared, there. Okay. And other than
21 taking out some personal information, your phone number, is
22 this an accurate representation of a call that you made?

23 A. It is.

24 Q. And, again, that was on June 11, 2018?

25 A. Yes.

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 MS. RICHARDSON: Your Honor, at this time I'd
2 offer State's 38 into evidence and offer to publish it to
3 the jury.

4 THE COURT: Any objection?

5 MR. EDGEWORTH: No objection, Your Honor.

6 THE COURT: All right. It's in evidence without
7 objection. You may proceed.

8 (WHEREUPON, State's Exhibit Number 38 was entered
9 into evidence and published to the jury. Played in open
10 court. Not transcribed herein. After which, the
11 proceedings resumed as follows.)

12 BY MS. RICHARDSON:

13 Q. How many people were staying at the beach house?

14 A. Oh, gosh, I'd have to count. So, there's four
15 families and a small herd of children. I think we had 15 --
16 12 to 15 children.

17 Q. Staying in the house?

18 A. Yes.

19 Q. And did law enforcement come see you while you
20 were staying in Garden City?

21 A. They did not.

22 Q. And let me show you what's previously been marked
23 as State's Exhibit Number 10. This is Garden City and I'm
24 pointing to what's been marked as 638 South Waccamaw?

25 A. Yes.

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 Q. Is that where you are staying?

2 A. It is.

3 Q. So that is not a beachfront house? It is a house
4 on the first row, on back on Waccamaw Drive?

5 A. That's right.

6 Q. And tell me where you were when you saw this
7 incident.

8 A. We were on the front porch facing the ocean.

9 Q. And who was with you?

10 A. I remember Tom Rider was with me. I do remember
11 there being other adults, but I don't remember which of
12 those were out with us at the time.

13 Q. So you're not sure who else, but you know
14 Mr. Rider was out there with you?

15 A. Yeah, we definitely were out there, because we had
16 some conversation about, what did we just see?

17 Q. Okay. So tell me what you remember seeing.

18 A. So, it's been a while, but the information I
19 provided in the call -- provided, I guess, sort of the
20 greatest level of detail, generally speaking, we saw --
21 we're sitting out there on the porch, we're raised up,
22 because the houses are up 15 feet and we're back about 25
23 feet.

24 So kind of looking down on the incident. Not
25 paying too much attention, but then all of a sudden, see a

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 car pull up in the driveway and it pulled up parallel to the
2 street. So it's a little unusual, just to kind of pull up
3 very quickly.

4 And then, from there, I saw a woman running away
5 and a man out of the car. And at the time my perspective
6 was perhaps it was some type of domestic dispute. Woman got
7 out of the car and was running away and the car kind of went
8 off. That was our perception. We had no sense of -- I
9 didn't see where the woman had come from. I only saw where
10 she was going from the car forward.

11 Q. Okay. And what about the -- did anybody else --
12 was anybody outside the car?

13 A. Just -- there was a man who was outside the car.

14 Q. And you described him as somewhat Latino?

15 A. I did.

16 Q. Tell me what you meant by that.

17 A. More in just of kind of olive skin, darker skin
18 color, at the time. I didn't catch much other in that way,
19 so, tough to say from that distance.

20 Q. And so then you had a discussion with Mr. Rider?

21 A. Uh-huh.

22 Q. And you said, What did we just see?

23 A. What did we just see. And he -- I remember him
24 making reference to -- he wasn't sure whether he saw a knife
25 or some kind of element.

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 MR. EDGEWORTH: Objection.

2 THE COURT: All right. Let's not talk about ---

3 MR. EDGEWORTH: Move to strike.

4 THE COURT: --- what Mr. Rider said to you.

5 THE WITNESS: Okay.

6 THE COURT: But the discussion that you had with
7 him. You can talk about what you said to him.

8 THE WITNESS: Okay. So at that point I think what
9 I said was, I'm not sure what we just saw and that was it.

10 BY MS. RICHARDSON:

11 Q. And then do you recall in what direction the
12 vehicle came from?

13 A. The vehicle came from the north was facing south.

14 Q. And describe how the girl ran away. Was it slow?
15 Fast? I mean, tell me...

16 A. I would consider it to be more of a fleeting -- a
17 fleeing rather than a jogging. Clearly was trying to get
18 away from the vehicle, was our perspective, my perspective.

19 Q. And you said the vehicle had temporary tags?

20 A. Yes.

21 Q. So a paper tag? Is that what you remember?

22 A. Yes. That's what I said in the 911 call, yes.

23 Q. And then later on you were contacted by
24 Mr. Sarvis?

25 A. Yes.

CRAIG LEWIS - DIRECT BY MS. RICHARDSON

1 Q. Okay. And that was this year that you met with
2 him and gave a statement; is that right?

3 A. Yes.

4 Q. Okay. And tell me why you ended up calling -- so
5 you decided -- you didn't call 911 that day.

6 A. We did not. As I mentioned we perceived that it
7 was a domestic dispute. We were on the front porch, there
8 were a few of us on the front porch, I'm not sure if anyone
9 would have noticed us up there, just given the distance, but
10 we were there and we didn't notice anything beyond that. So
11 we didn't perceive it to be a big issue in that regard.

12 Q. So you thought it was over?

13 A. We thought it was over. It was only when we saw
14 the newspaper the following day requesting some information
15 and noting that there was something that happened, then we
16 sort of put one and one together, that perhaps our
17 perception of what happened was a little bit different than
18 what, in fact, did happen.

19 Q. Okay. And you described the vehicle as a dark
20 SUV?

21 A. Yes.

22 Q. And you believed it to be a BMW?

23 A. That's what I had reported at the time, yes.

24 Q. Are you sure about that, or ---

25 A. It could have been a -- it was -- because of --

CRAIG LEWIS - CROSS BY MR. EDGEWORTH

1 we -- I saw it from the side. I didn't see it from the
2 front or back, I didn't get an emblem. So it could have
3 been just a smaller SUV, sort of similar in body style, they
4 all kind of look the same these days.

5 Q. Okay. I have no further questions. Answer any
6 questions -- I do have one more. Do you know any of these
7 people?

8 A. I do not.

9 Q. And so you just called because you realized you
10 may have witnessed something?

11 A. Yes.

12 Q. And then you came in from Charlotte last night?

13 A. I did.

14 Q. All right. Answer any questions that
15 Mr. Edgeworth may have for you.

16 THE COURT: Cross-examination.

17 MR. EDGEWORTH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. EDGEWORTH:

20 Q. Mr. Lewis, when you were perceiving these events,
21 did you go downstairs to attempt to intervene?

22 A. We did not. It happened very quickly. By the
23 time we realized sort of what was happening, the car had
24 left and the woman was sort of out of site, out of distance.

25 Q. I think you said that you saw the car pull up and

CRAIG LEWIS - CROSS BY MR. EDGEWORTH

1 then you saw the woman ran away, it happened that quickly?

2 A. Yes. That's when we started to see what had
3 happened. It's unusual to have a car just pull into your
4 driveway, you know, and pull over, so that was --

5 Q. Did you -- sorry, didn't mean to interrupt you.

6 Did you estimate how long that took the car
7 pulling up and the person leaving?

8 A. Probably no more than five, ten seconds.

9 Q. Seconds?

10 A. Yeah.

11 Q. Now, you made this phone call to 911 at
12 approximately six o'clock in the evening the next day; is
13 that right?

14 A. Yes. That's right.

15 Q. And you made the phone call because read something
16 in the paper that suggested that it was an attempted
17 abduction; is that correct?

18 A. That is correct.

19 Q. But at the time of the incident you had no idea
20 that that was any type of allegation?

21 A. We had perceived a different scenario.

22 Q. And, in fact, you testified that you the
23 individual had jumped out the car and ran away because it
24 was a domestic incident. It happened that quickly?

25 A. We -- what I perceived was a woman running away

CRAIG LEWIS - CROSS BY MR. EDGEWORTH

1 from the car and I assumed that she had jumped out of the
2 car only because I only saw her from the car forward.

3 Q. You didn't see an individual -- individual walking
4 or walking down the road and then some type of interaction?

5 A. I did not.

6 Q. When -- did you watch any of the events transpire?
7 I think your testimony was that you saw the person run away.
8 Did the car in question follow that individual?

9 A. I did not -- they went in the same direction.

10 Q. They went in the same direction?

11 A. Yes.

12 Q. And prior to -- I think you just testified that
13 you came in last night?

14 A. I did.

15 Q. Okay. Did you have an opportunity to meet with
16 the prosecution this morning to go over your testimony?

17 A. Last night.

18 Q. Last night? Did y'all discuss the differences in
19 what you told 911 and what you testified to today?

20 A. Yes.

21 Q. Yes? In other words you mentioned that it was a
22 Latino. Did y'all discuss whether or not it actually was a
23 Latino?

24 A. We did not discuss that matter.

25 Q. You did not discuss it?

CRAIG LEWIS - REDIRECT BY MS. RICHARDSON

1 A. No.

2 Q. Did you discuss the fact that you described the
3 vehicle as a BMW and then today you're saying that, well, it
4 could have been something else?

5 A. Yes.

6 Q. Thank you. No further questions.

7 THE COURT: Any redirect?

8 MS. RICHARDSON: Yes.

9 REDIRECT EXAMINATION

10 BY MS. RICHARDSON:

11 Q. You did see a woman as you described, fleeing
12 though; is that right?

13 A. I did.

14 MS. RICHARDSON: I have no further questions. I'd
15 ask that he be excused from his subpoena.

16 THE COURT: Okay. All right. Mr. Edgeworth, any
17 questions on those just asked?

18 MR. EDGEWORTH: No, Your Honor.

19 THE COURT: All right. Very good. And you wish
20 the witness to be excused. Is there any objection?

21 MR. EDGEWORTH: I have no objection.

22 THE COURT: All right, sir. You are released to
23 go back to North Carolina.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: It's probably a good thing you're

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 flying. You might not get gas. All right. Your next
2 witness, please, ma'am.

3 MS. RICHARDSON: The State calls Thomas Rider to
4 the stand.

5 THE CLERK: Do you solemnly swear or affirm that
6 the testimony you're about to give will be the truth, the
7 whole, and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please have a seat. Spell your first
10 and last name for the record.

11 THE WITNESS: Thomas J. Rider, Jr. T-H-O-M-A-S,
12 J., R-I-D-E-R, Jr.

13 THOMAS J. RIDER, JR., being first duly
14 sworn, testified as follows:

15 THE COURT: Go ahead, Solicitor.

16 DIRECT EXAMINATION

17 BY MS. RICHARDSON:

18 Q. Mr. Rider, where do you live?

19 A. I live in Cornelius, North Carolina.

20 Q. And is that near the Charlotte area?

21 A. It is, yes.

22 Q. And what do you do there?

23 A. I'm retired currently, but I was a consultant with
24 IBM and Cognizant before that.

25 Q. And what is your educational level?

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 A. I have an MBA and an engineering degree.

2 Q. And you know Craig Lewis?

3 A. I do. He's a good friend.

4 Q. And were you with him staying in Garden City,
5 South Carolina in June of 2018?

6 A. I was, yes.

7 Q. And you were aware that he called 911 on June 11?

8 A. I was right next to him.

9 Q. You were beside him when he made that call?

10 A. Yeah.

11 Q. And did you also observe an incident that occurred
12 on June 10, 2018?

13 A. Yes, I did.

14 Q. The day before you called 911?

15 A. Correct.

16 Q. And, again, you were staying at
17 638 South Waccamaw?

18 A. Correct.

19 Q. And that's not an oceanfront house, but on the
20 street that separates?

21 A. Correct.

22 Q. Okay. And where were you when you observed this
23 incident?

24 A. I was on the porch with Craig.

25 Q. And do you recall anybody else being on the porch?

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 A. I actually don't. I just remember us seeing it
2 and talking.

3 Q. And tell me what you saw.

4 A. So what brought it to my attention was kind of a
5 commotion, right? There was something going on below us, so
6 I started looking. So I'm not a hundred percent sure if the
7 car came in from the left or the right, but it was there.
8 What I saw was the man out of his car, coming up to the
9 woman who he then grabbed. She then said, Oh, no you don't,
10 and started running away. She would -- when it happened,
11 she ran to my right, so I guess that would be south.

12 Q. And where -- how was the car parked?

13 A. In the driveway, but kind of on an angle, not
14 perfectly in the driveway. And just kind looked like he was
15 pulled in so that somebody could get out quick.

16 Q. You have -- you had other vehicles there?

17 A. We did. We had our own vehicle.

18 Q. Okay. So you didn't -- did you see the woman
19 approach?

20 A. I -- what I saw was -- it was kind of the coming
21 together. So she was coming this way, he came this way, and
22 then they met and he grabbed her and that's the commotion.

23 Q. She was -- he was already out of the car when she
24 met him, when she got to him; is that your testimony?

25 A. Yes. Yes.

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 Q. And can you describe or show us how you said he
2 grabbed her?

3 A. So again, he -- they were face to face, and best I
4 can recall, he grabbed her and she just kind of, Oh, no you
5 don't, and just started running. Actually back, I think,
6 the way she came, kind of a thing. And I just assumed that
7 it was a family argument or something. That's what we kind
8 of discussed and why we didn't make a phone call.

9 Q. And did you previously describe that as her having
10 to free herself?

11 A. Yes, I did.

12 Q. So tell me about that. I mean, did he just let
13 her go? Tell me exactly what...

14 A. All I know is that I saw him grabbing her or, you
15 know, having her. She kind of flailed, you know, to free
16 herself and so then she ran away.

17 Q. And you said what got your attention was a
18 commotion. What was the commotion?

19 A. Well, I think it was the -- a combination of the
20 car coming up and them coming together.

21 Q. But, again, he was out of the car before she came
22 to him; is that right?

23 A. Absolutely.

24 Q. Okay. And -- but you did think it was some sort
25 of dispute?

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 A. I did. We thought it was some kind of domestic
2 dispute. Mostly based on when the interaction occurred, she
3 didn't scream or look around for help or anything else like
4 that. So that -- we just kind of assumed that it was, you
5 know, a couple of some sort.

6 Q. Okay. But she did yell?

7 A. Oh, she did. She said, Oh, no you don't.

8 Q. And flailed away?

9 A. And then flailed and left.

10 Q. And did she just walk away or what did she do?

11 A. Oh no, she ran away.

12 Q. Okay. And so did you call 911 or anything at that
13 time?

14 A. We did not.

15 Q. Okay. And did you -- were you considering that?

16 A. We did. We said, you know, what did we just see?
17 What was that? And, like I said, and like Craig said, we
18 just kind of convinced ourselves that it was probably a
19 domestic thing and not strangers. It didn't, you know --
20 the way they came together and the way she ran away. I
21 mean, it just didn't -- in hindsight, maybe we should have.

22 Q. Definitely you thought something was wrong?

23 A. Oh, yeah.

24 Q. Is that fair to say?

25 A. Yeah. Well, and that's why when we had heard more

THOMAS RIDER - DIRECT BY MS. RICHARDSON

1 about it, we called the next day.

2 Q. And did you see anything else?

3 A. Yeah. Well, after the interaction it looked to me
4 like he had a small knife or short knife. But, again,
5 whether he had it out when he first had her or took it out
6 after that or whatever. When he was walking back to the car
7 I saw that.

8 Q. And you believed it to be a small knife?

9 A. Uh-huh.

10 THE COURT: Was that a "Yes" or a "No"?

11 THE WITNESS: Yes. I'm sorry.

12 THE COURT: That's all right. Not a problem.

13 THE WITNESS: I was nodding.

14 THE COURT: That's all right. Unfortunately, the
15 court reporter can't take put down.

16 THE WITNESS: The man nodded.

17 BY MS. RICHARDSON:

18 Q. And do you recall what the vehicle looked like?

19 A. Again, I saw a dark vehicle. So it's probably
20 best.

21 Q. And the vehicle, could you say whether it was a
22 car, truck, SUV?

23 A. Honestly, when I talked to Craig during the
24 conversation he said he thought it was a short, small BMW, I
25 was like, okay, an SUV kind of thing.

THOMAS RIDER - CROSS BY MR. EDGEWORTH

1 Q. Okay.

2 A. I said, Yeah, it could have been.

3 Q. But you're not real sure of the make and model or
4 anything?

5 A. No.

6 Q. And -- but you were right with him when he called
7 911?

8 A. Yeah.

9 Q. And did any officers come and talk with you after
10 that?

11 A. They did not, not until, whatever, a year later or
12 however long.

13 Q. Okay. And do you know any of these people?

14 A. No.

15 Q. All right. I have no further -- well, one more
16 question.

17 Can you -- no, I'm good.

18 I have no further questions. Answer any questions
19 Mr. Edgeworth may have for you.

20 THE COURT: All right. Cross-examination, please.

21 MR. EDGEWORTH: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. EDGEWORTH:

24 Q. Mr. Rider, just trying to get a clear
25 understanding. You witnessed the interaction, however

THOMAS RIDER - CROSS BY MR. EDGEWORTH

1 brief?

2 A. Yes.

3 Q. Were you sitting in the courtroom during

4 Mr. Lewis's testimony?

5 A. Yes.

6 Q. Did you hear him describe the incident as being
7 approximately five seconds?

8 A. I thought he said more like 15, but it doesn't
9 matter, yes, I heard his testimony.

10 Q. Okay. So a relatively brief interaction?

11 A. Sure.

12 Q. Okay. And when you discussed it, amongst
13 yourselves, both of you have described it as some type of
14 domestic -- you believed to be somewhat a domestic incident;
15 is that right?

16 A. Yes.

17 Q. But you didn't call 911 that day?

18 A. Correct.

19 Q. And it's your testimony today, even though it
20 wasn't reported to law enforcement, that you thought you may
21 have seen something that resembled a knife; is that
22 accurate?

23 A. Yes.

24 Q. Okay. And so even though you're saying today that
25 you think you might have seen a knife, you didn't call 911

THOMAS RIDER - CROSS BY MR. EDGEWORTH

1 on the day of the incident?

2 A. I saw the knife after their interactions, so I --
3 it didn't look like it was a pending issue.

4 Q. When you say "pending issue," does that mean that
5 you didn't believe that any knife was out during the
6 interaction?

7 A. No. The interaction was complete. She had ran
8 away, so.

9 Q. And whoever the individual was did not follow her,
10 correct?

11 A. I don't recall how that went about.

12 MR. EDGEWORTH: I have no further questions, Your
13 Honor.

14 THE COURT: All right. Any redirect?

15 MS. RICHARDSON: No, Your Honor. And I'd ask that
16 he be excused from his subpoena.

17 THE COURT: Any objections?

18 MR. EDGEWORTH: No objection, Your Honor.

19 THE COURT: All right, sir. You're released from
20 your subpoena. You may go back to North Carolina. Thank
21 you very much.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Solicitor, your next
24 witness, please, ma'am?

25 MS. RICHARDSON: Your Honor, if I could have just

1 a moment to confer with the Court Reporter.

2 THE COURT: Yes, ma'am. Go ahead. Not a problem.

3 (WHEREUPON, there was a brief pause in the
4 proceedings held off the record.)

5 MS. RICHARDSON: Your Honor, at this time the
6 State rests.

7 THE COURT: All right. Matters of law from the
8 defense?

9 MR. EDGEWORTH: Yes, Your Honor, there will be
10 some matters of law.

11 THE COURT: All right. Very good.

12 All right, ladies and gentlemen, at this stage of
13 the proceeding when the State has ended its presentation of
14 evidence, there are always matters of law that have to be
15 taken up outside of your presence.

16 So I'm going to ask that you go to your jury room.
17 We'll conduct that. It'll be fairly short and then I'll
18 call you back in and tell you where we are. All right?

19 (WHEREUPON, the jury exited the courtroom at 10:24
20 a.m.)

21 THE COURT: All right. Mr. Edgeworth?

22 MR. EDGEWORTH: Thank you, Your Honor. May it
23 please the Court.

24 At this time, Your Honor, the defense would move
25 for a Directed Verdict of not guilty as to the count and

1 indictment of kidnapping. The basis for this motion is as
2 follows: Number one, the testimony that's been presented
3 and the evidence that's presented in this case does not --
4 there's been no evidence whatsoever to demonstrate any
5 intent to kidnap anyone.

6 In fact, the only testimony that's been presented
7 to the Court and primarily even from the alleged victim, is
8 that there was a brief interaction. We've got times
9 anywhere from five seconds to ten seconds to even a
10 protracted duration, which I don't think reasonable for two
11 lminutes. But, in any event, in this particular incident,
12 the allegation from the complaining witness is that there
13 was an attempt to grab, not only once, but twice. And then,
14 according to the victim, a reach to the hand and then she
15 got away and ran.

16 There's no testimony whatsoever that, A, there was
17 an intent to, air quotes, kidnap. In fact, the State on
18 numerous occasions, tried to illicit the terminology kidnap
19 from the victim. The victim, herself, actually was saying
20 that she didn't even know what was going on. She had no
21 idea. She didn't think that there was going to be a
22 kidnapping.

23 The only -- the only person -- the only person
24 who's indicated the terminology kidnapping in this
25 particular matter has been the State by and through the

1 indictment. Not even law enforcement used the terminology
2 kidnapping.

3 There's no evidence to show that there was even
4 any intent. Even if there was a brief touch, or some type
5 of grab to the arm, it would appear that that would be more
6 of a battery or, at worst, maybe some type of false
7 imprisonment. But in this particular case there's no
8 evidence other than the most recent testimony that they
9 thought they might have seen a knife after the incident, so
10 not during the encounter. There's no evidence of a weapon.
11 There's no evidence of any type of physical or other pieces
12 of evidence to show that there would be an ability to carry
13 out a kidnapping.

14 Thirdly, there's zero evidence that a door was
15 open in order to move the victim away from where she's at,
16 to carry the victim away, put them in the car, to actually
17 take them away from the scene.

18 I would ask that the Court entertain this motion,
19 in all deference to the State's evidence, I don't think,
20 there's been any evidence to demonstrate, to send this case
21 to the jury, that reflects a kidnapping as indicted.

22 THE COURT: All right. Thank you.

23 Solicitor, your response?

24 MS. RICHARDSON: Yes, Your Honor. Pursuant to
25 Rule 19 and case law, in ruling on a motion for Directed

1 Verdict, Your Honor shall consider the existence or
2 non-existence of the evidence and its weight. And look at
3 any competent evidence tending to prove the elements of the
4 offense.

5 First of all, Your Honor, kidnapping is not just
6 carrying away or abducting. The statute also provides that
7 it is seizing, confining, decoy, there are other things that
8 it can be, and any one of those will constitute the crime of
9 kidnapping.

10 There has been ample evidence that the victim was
11 seized or confined. First of all, the testimony of the
12 victim herself, where she described being forcefully grabbed
13 against her will by the defendant and for no reason to the
14 point that she had to break herself free and that she was
15 frightened.

16 Also, Your Honor, that the defendant had had an
17 interaction with her several blocks ahead of that and then
18 appeared to block her in when he actually grabbed her.

19 Also, Your Honor, this evidence is corroborated by
20 Mr. Rider described her being grabbed and having to break
21 free. Also Mr. Lewis who described her freeing herself from
22 the scene.

23 And finally, Your Honor, the defendant himself
24 does admit to being a party to this interaction. And in the
25 calls to his family admitted that he grabbed her and that

1 she had to get away.

2 Based on all of that, Your Honor, there is
3 sufficient evidence that the defendant seized or confined
4 the victim against her will, which is enough, under the law,
5 to constitute the elements of kidnapping.

6 THE COURT: All right. Thank you. All right.

7 As indicated, when ruling on a motion for Directed
8 Verdict, the Court's concerned with the existence or
9 non-existence of evidence, not with its weight or
10 credibility, that's the jury's job. My job is to decide
11 does the evidence exist? Is it there?

12 A defendant would be entitled to a Directed
13 Verdict when the State fails to produce evidence of the
14 offense charged. And the Court would grant a Directed
15 Verdict when the evidence merely raises a suspicion that the
16 accused is guilty.

17 I have to view all the evidence and all the
18 reasonable inferences in the light most favorable to the
19 non-moving party. And if any direct evidence or substantial
20 circumstantial evidence reasonably tends to prove the guilt
21 of the accused, the defendant, the matter must be submitted
22 to the jury.

23 In this case we have had the testimony of
24 Ms. Starnes. Ms. Starnes clearly indicates that the
25 defendant, whom she identified on more than one occasion,

1 was the person that grabbed for her twice and actually
2 latched on to her or grabbed her on a third attempt. There
3 was a physical hold that she had to break free of.

4 Now, kidnapping is when a defendant knowingly and
5 unlawfully, seizes, confines, inveigles, decoys, kidnaps,
6 abducts, or carries away any other person by any means
7 whatsoever without authority of law.

8 Seize means to take hold suddenly or forcibly.

9 Confine means to limit or restrict for any period
10 of time.

11 There's other definitions, but -- abduct meaning
12 to carry away by force for illegal purposes.

13 Carry away means to remove.

14 And the State doesn't have to prove all of the
15 items, but the State does have to prove that defendant did
16 in a manner knowingly and unlawfully seize, confine,
17 inveigle, decoy, kidnap, abduct, or carry away without
18 authority of law. And it does not have to be for any
19 specific period of time. A momentary confining or keeping
20 someone from doing what they are doing is sufficient.

21 Clearly, there is testimony by Ms. Starnes. There
22 is corroborating evidence supplied by the two gentlemen that
23 just testified that witnessed the occasion. As well as the
24 defendants statements placing him at scene.

25 With that, the Court respectfully declines to

1 grant the motion for Directed Verdict. Further motions from
2 the defense?

3 MR. EDGEWORTH: None, Your Honor.

4 THE COURT: All right. Is your client prepared
5 for the Court to talk to him about his right to testify?

6 MR. EDGEWORTH: Your Honor, due to my delay this
7 morning in getting here, I was not able to have that
8 conversation with him -- final conversation with him. I
9 don't think that would be very long, if I could take a
10 moment?

11 THE COURT: All right. Very good. I'd be glad
12 for you to do so.

13 MR. EDGEWORTH: Thank you, Your Honor.

14 THE COURT: Take about five minutes and we'll come
15 back in and we'll go over that.

16 MR. EDGEWORTH: Yes, sir.

17 (WHEREUPON, there was a break held from 10:34 a.m.
18 until 10:45 a.m.)

19 THE CLERK: All rise.

20 THE COURT: All right. Thank you very much. You
21 may be seated.

22 All right. Mr. Edgeworth, have you had an
23 opportunity to speak to your client about whether or not he
24 wishes to testify in this matter?

25 MR. EDGEWORTH: I have, Your Honor.

1 THE COURT: And is he ready for the Court to
2 question him on that point?

3 MR. EDGEWORTH: He is, Your Honor.

4 THE COURT: All right. Very good. If you could
5 stand up please, sir. And place him under oath, ma'am.

6 THE CLERK: Raise your right hand.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give will be the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 THE DEFENDANT: Yes, I do.

11 JEREMIAH DICAPUA, being first duly
12 sworn, testified as follows:

13 THE COURT: All right. And I have been
14 pronouncing your name Dicapua the whole time. Have I been
15 doing it correctly or not?

16 THE DEFENDANT: That's correct, Your Honor.

17 THE COURT: All right. Very good.

18 So, Mr. Dicapua, I'm going to talk to you now
19 about certain of your Constitutional rights. If at any
20 point in time during this explanation or talking with you
21 that you have a question or you don't understand anything, I
22 need for you to indicate that to me. You can raise your
23 hand, you can tell your attorney, but in some way I need to
24 know that you've got a question or you didn't understand.
25 Okay? We in agreement?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Very good.

3 Now, we've reached the stage of the trial where
4 you can present a defense. You have the right to claim the
5 protection given to you under the Fifth Amendment to the
6 Constitution of the United States of America. And that
7 states in part that no person shall be compelled in any
8 criminal case to be a witness against themselves. Meaning,
9 nobody can make you testify. You can testify if you want
10 to, but nobody can make you do that.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: All right. Now, if you decide to
14 testify you're gonna be subject to the same rules you've
15 seen everybody else, as far as being asked questions by your
16 attorney, cross-examined by the Solicitor, and I believe
17 there's an issue of a prior record.

18 Is that correct, Solicitor?

19 MS. RICHARDSON: Yes, Your Honor.

20 THE COURT: And what is that as far as a prior
21 record that you would intend to ask if that is correct or
22 not?

23 MS. RICHARDSON: Your Honor, he has a prior
24 conviction for murder in 1980 out of Horry County. He also
25 has a conviction for escape, and -- I've got the

1 certificates, let me pull those -- and a drug conviction.
2 But all of those actual convictions happened over ten years
3 ago. The State did provide notice of intent to seek those.
4 But, Your Honor, he did have a violation of parole on the
5 murder and the escape and was released from actual
6 confinement, according to the records of Probation and
7 Parole, in 2015.

8 So his release from confinement or imprisonment
9 would be within the ten years and the State would seek to
10 introduce evidence if he testified regarding those charges.

11 THE COURT: All right. So it would be for murder,
12 escape, and what was the drug charge?

13 MS. RICHARDSON: The drug charge, Your Honor,
14 it -- I don't believe that -- the State would not seek ---

15 THE COURT: Introduce that one.

16 MS. RICHARDSON: --- to introduce that one.

17 THE COURT: Okay. Very good.

18 MS. RICHARDSON: I don't know that the connection
19 is -- I mean, it's not as clear as far as the dates, because
20 it was appealed, and reduced sentencing, and all that kind
21 of stuff.

22 THE COURT: All right. So it would just be the
23 murder and escape?

24 MS. RICHARDSON: Yes, Your Honor.

25 THE COURT: Okay. So, Mr. Edgeworth, what do you

1 say about that, though the crime and sentencing was
2 obviously a significant time period ago, there's been an
3 action under that within the ten years.

4 MR. EDGEWORTH: Yes, Your Honor. I mean, my
5 argument to the Court would be twofold.

6 Number one, that once you're paroled, your parole
7 is not considered confinement. So once they violated his
8 parole, and the subsequent offense, you can't bootstrap that
9 back to the murder, because all of that would have been well
10 beyond the ten years.

11 Secondly, in this particular case, obviously,
12 the gravity of that offense, I believe would be -- the
13 prejudicial effect of that would outweigh any probative
14 value for the purposes of impeachment, especially when they
15 have another offense of which presumably they can present to
16 the jury under the ten-year rule.

17 THE COURT: All right. Okay. Well -- and there's
18 been decisions of the U.S. Supreme Court and South Carolina
19 Supreme Court that says that even probation is confinement,
20 because you're limited in your activities. You are not a
21 free citizen. You have limits.

22 Clearly being on parole does, in fact, limit what
23 a person can do and he was not released from the terms and
24 conditions of the original sentence until the parole
25 expired. The parole, obviously, did not expire, it was

1 revoked and there was action on it. So the ten years does
2 not now apply, because it's within the ten years.

3 Now, the issue of whether or not ---

4 MR. EDGEWORTH: Your Honor, if I may. And I
5 apologize, because I was prepared, but my reading of State
6 v. Shands is the exact opposite of that.

7 THE COURT: Well, I'm just telling you, there are
8 decisions, and I'll go to my briefcase and pull out the
9 folder. I'll tell you the case in just a second.

10 The U.S Supreme Court and South Carolina Supreme
11 Court clearly state probation is confinement.

12 MR. EDGEWORTH: If some kind of probation, not
13 parole?

14 THE COURT: I understand that. And now, probation
15 and parole, you're under limitations. You are required to
16 do things that a normal, ordinary, free citizen is not
17 required to do. Okay?

18 MR. EDGEWORTH: Yes, sir.

19 THE COURT: And, obviously, if you violate certain
20 terms and conditions, you can go back to jail under the
21 original sentence. Not a new sentence. It's for the time
22 left on your original sentence for parole. So it does go
23 back to the original. So, clearly, the ten years doesn't
24 apply in this matter.

25 Now, the issue of whether or not I would allow the

1 State to talk about the crime of murder, I might consider
2 having the State ask a question such that you've been
3 convicted of a most serious and violent offense in the past.
4 And if he agrees then the State couldn't go any further.

5 And the escape, I would allow the State to ask
6 about that, Have you been convicted of that crime of escape?

7 So most likely if the defendant testified, I
8 probably would have the State do it in such a fashion. But
9 I am going to allow the State to bring that to the attention
10 if the defendant testifies. Hold on a second.

11 So I'm using -- I'm using Jones versus Cunningham
12 371 U.S. 236 83 Supreme Court 373, 9 Lawyer's Edition 2nd
13 285, 1963, The analogy of probation and parole. A parolee
14 is still in custody because he faces significant confinement
15 and restraint even though he is no longer within the four
16 walls of the prison. And a probationer is shackled by the
17 same restraints, his conditions of the probation.

18 So it goes back to the original matter. So
19 clearly, then, the ten years doesn't apply in this
20 particular matter.

21 So understanding the Court's ruling or do you
22 understand the Court's ruling, Mr. Dicapua?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: All right. Very good. Now -- and I
25 would find that the probative value of admitting those two

1 offenses as I fashioned them by the State outweighs any
2 prejudicial effect and it helps the jury weigh the issues of
3 credibility and believability.

4 Now, if you decide to testify that's got to be
5 your decision. You consult with your attorney, but it's
6 your decision whether or not you testify. You understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, sir. If you decide not to
10 testify, I will instruct the jury as part of the
11 instructions that they cannot give that fact any
12 consideration. They can't talk about it in the jury room,
13 they can't use it mentally to make a decision in this case.
14 It's not part of this case and I will tell them that.

15 Do you understand what we've talked about?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Do you want to -- before I
18 ask you what you want to do, you want to talk to
19 Mr. Edgeworth anymore?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you wish to testify in this case?

22 THE DEFENDANT: I will not testify, Your Honor.

23 THE COURT: Very good, sir. Thank you very much.

24 Mr. Edgeworth, will there be the presentation of
25 any other witnesses on behalf of the defendant?

1 MR. EDGEWORTH: No, Your Honor.

2 THE COURT: All right. Very good.

3 So, with that, then, where we are is I would call
4 the jury in and let them know that the evidentiary portion
5 has finished. We'll go into the closing arguments. The
6 State must give their full and complete argument, there
7 being no presentation of evidence by the defense. The
8 defense will have the last and argument in this matter. All
9 right?

10 MS. RICHARDSON: Your Honor, it's my understanding
11 we were going to do the closings tomorrow and I have a ---

12 THE COURT: Well, I didn't have to leave until one
13 o'clock. I hate to waste two hours. Okay. I mean, y'all
14 can certainly, by one o'clock, get your closing arguments
15 in, okay?

16 MS. RICHARDSON: Well, I just need -- I need some
17 time now, then if we're going to do that. I need some time
18 to...

19 THE COURT: Well, I don't have a problem doing
20 that, but certainly we have time to get the closing
21 arguments in. And then I can give the charge of the law
22 tomorrow morning to the jury.

23 Now, before we -- we need to cover the issue of
24 whether or not kidnapping alone will be presented to the
25 jury or the lesser included offense of attempted kidnapping

1 to the jury. So what's the State's position?

2 MS. RICHARDSON: Your Honor, the State is
3 requesting that Your Honor charge the offense of attempted
4 kidnapping. It would contain -- the greater offense would
5 contain all of the evidence and all of the elements of the
6 lesser offense of attempt. Our courts have previously held
7 that attempt is a lesser included of the prior -- of the
8 primary offense.

9 Your Honor, there has been evidence -- the defense
10 attorney has repeatedly pointed out the brevity of the
11 encounter through cross-examination. Also statements,
12 initial statements from the defendant and some of the
13 initial jail calls indicate that he never actually touched
14 her, which would go to the seizure or confining. So there
15 is evidence in the record that would support the lesser
16 instead of the greater.

17 THE COURT: All right. Mr. Edgeworth?

18 MR. EDGEWORTH: Your Honor, it's my understanding,
19 and please correct me if I'm wrong, but an attempted
20 kidnapping would still be considered a violent, most serious
21 offense.

22 THE COURT: No, it would not.

23 MR. EDGEWORTH: It would not?

24 THE COURT: So should the jury convict him of
25 attempted kidnapping then the notice without -- the notice

1 by the State for a life sentence without parole would not be
2 in effect.

3 MR. EDGEWORTH: And I tried to do as much research
4 on that prior to this conversation and I could not reach
5 that conclusion and that's why -- because I need to properly
6 advise my client.

7 THE COURT: I appreciate that. But I'm telling
8 you, I do not believe that attempted kidnapping would
9 qualify the defendant for life in prison without the
10 possibility of parole with his prior offense. And I would
11 not so sentence him should they convict him of attempted
12 kidnapping, the mandatory. Now, he's still subject to it.

13 MR. EDGEWORTH: Yes, Your Honor.

14 THE COURT: Okay. But, the mandatory sentence
15 would not be in affect.

16 MR. EDGEWORTH: Yes, Your Honor.

17 THE COURT: That's the Court's position.

18 MR. EDGEWORTH: Your Honor, in discussing it with
19 my client, the defense's position would be to not ask for
20 the lesser included offense. And I guess that basis for
21 that particular argument would be that it would be the
22 defense's contention that once -- once the request for
23 attempted kidnapping for the lesser included, then you --
24 then you initiate the requirement for proof of specific
25 intent. And therefore -- and I don't think there's any

1 evidence in the record that supports that particular
2 component or element of attempted kidnapping.

3 THE COURT: All right. And I appreciate the
4 argument. Now, it would be the Court's intention in the
5 charge to have a charge on intent. And I just -- it's very
6 short, I can read it to you right now.

7 In order to establish criminal liability, criminal
8 intent is required. Criminal intent must be proven by the
9 State beyond a reasonable doubt. Criminal intent is always
10 a matter that must be determined by the jury from the
11 circumstances surrounding the situation. There's no way to
12 prove intent to a mathematical certainty. You take into
13 consideration the acts of the parties and all the facts and
14 circumstances, criminal intent is a mental state, a
15 conscious wrongdoing. It's up to the jury to determine what
16 the defendant intended to do, based on circumstances shown
17 to have existed. Again, with the burden on the State to
18 prove it beyond a reasonable doubt. So that would be part
19 of the charge.

20 The Court's responsibility is to look at the
21 evidence, just as I did when we talked about directed
22 evidence. I'm looking at what evidence exists. Evidence
23 exists from the record of an attempt.

24 Now, whether or not the jury believes that or not,
25 that's their job. But there's evidence in testimony from

1 various parties that indicates attempt of kidnapping is
2 within the realm of the evidence presented. And, therefore,
3 I am required to then charge that to the jury for their
4 consideration.

5 So, I appreciate your position, Mr. Edgeworth, but
6 the Court does intend to present to the jury the lesser
7 included offense of attempted kidnapping with the charge on
8 intent as I just read to you.

9 MR. EDGEWORTH: And that being the case, Your
10 Honor, does that mean that the Court is not inclined to add
11 a charge for specific intent, since I believe that's the
12 general intent charge that you read.

13 THE COURT: I -- well, if you want to present
14 something to me, I'll be glad to look at it. That was not
15 my intention, but I'm not going to charge him until
16 tomorrow.

17 MR. EDGEWORTH: Yes, sir.

18 THE COURT: So if you want me to consider
19 something, I'll be glad for you to work on that and give it
20 to me in the morning. I'll be glad to look at it and,
21 obviously, I'll let y'all know before I charge the jury
22 whether I'm doing it or not.

23 MR. EDGEWORTH: Yes, Your Honor.

24 THE COURT: So I'm -- please present it to me.
25 Solicitor?

1 MS. RICHARDSON: Yes, Your Honor. May we
2 approach?

3 THE COURT: Please.

4 (WHEREUPON, a sidebar discussion was held off the
5 record.)

6 THE COURT: All right. With that, then -- let's
7 see. All right. We'll reconvene in 15 minutes. Thank you
8 very much.

9 (WHEREUPON, there was a break held from 11:05 a.m.
10 until 11:27 a.m.)

11 THE BAILIFF: All rise.

12 THE COURT: Thank you very much. You may be
13 seated. Thank you. All right. Counsel, what I'm going to
14 do is I'm going to call the jury out. I'll ask you,
15 Mr. Edgeworth, what's the position of the defense. You can
16 tell me the defense rests. I'll explain the situation to
17 the jury. We're going to do the closing arguments and we'll
18 recess for the day and we will resume tomorrow morning at
19 9:15 with the charge of the law. All right?

20 MR. EDGEWORTH: Yes, Your Honor.

21 THE COURT: Ask the jury to come in please.

22 (WHEREUPON, the jury entered the courtroom at
23 11:37 a.m.)

24 THE COURT: All Right. Mr. Edgeworth, what's the
25 position of the defense at this time?

1 MR. EDGEWORTH: Your Honor, the defense rests.

2 THE COURT: All right. Very good.

3 All right. Ladies and gentlemen, we have now
4 concluded the evidentiary portion of this trial. You will
5 not hear any other evidence in this matter. What remains
6 are the closing arguments of the Counsel and then the charge
7 on the law. As I told you, there's a matter I have to tend
8 this afternoon.

9 So what we're doing to do is, we will proceed to
10 the closing arguments, You will hear the closing arguments
11 of Counsel. We'll recess. Come back tomorrow morning at
12 9:15. I will charge you the law and give the case to you
13 for your deliberations and unanimous decision in this
14 particular matter.

15 So, with that, Solicitor?

16 MS. RICHARDSON: May it please the Court.

17 THE COURT: Yes, ma'am.

18 CLOSING ARGUMENT ON BEHALF OF THE STATE

19 MS. RICHARDSON: She knew she had to get away.
20 She knew. Not at first. Not at the first time he tried to
21 get her attention. Not when he stopped and she said he was
22 trying to talk to me like men talk to women when they're
23 walking. Some -- everybody knows, you see that on TV, some
24 of you may have experienced it. It happens. Cat calls,
25 that sort of thing. Wasn't too concerned then.

1 It's broad daylight. Broad daylight. We worry
2 about that kind of stuff at night. Don't walk alone. Don't
3 jog alone at night. Broad daylight. Didn't really think
4 much of that and went on down. Wasn't thinking anything
5 like that. On vacation. First full day there without the
6 kids. It's supposed to be a great week.

7 She gets down, guess who's waiting on her. From
8 here all the way to there, waiting on her. She didn't clue
9 in the first time he reached for her. She clued in the
10 second time that he went to get her and missed. And then
11 the third time, when he got her, when he grabbed her and had
12 that look on his face, she knew. She knew she had to get
13 away. She knew she was in danger and thank God she did.
14 Thank God she did. She knew she was in danger. She reacted
15 and she got away.

16 Now, the defense has said, She's not hurt. She
17 didn't even get hurt. It's not a big deal. She's fine.
18 Thank God she didn't get hurt. She went on her merry. On
19 her merry way.

20 Did she sound merry in the 911 call? Did she look
21 merry here? Was she merry when she was in the back of the
22 police car, pointing him out and was shaking and crying
23 uncontrollable? Was she merry then? Was she merry right
24 there? Was she merry here? Is she merry now that an avid
25 runner who ran multiple times a week, hadn't hardly been

1 running in two years? It was traumatic and it impacted her.
2 And it's being minimized. But thank God it isn't worse.

3 Now, the Judge is going to instruct you on the law
4 of kidnapping. Now, we all know that the law is kind of a
5 funny thing. Sometimes the words we use and the law don't
6 always match up to the words we use everyday. So there is
7 no doubt in my mind that when anybody thinks of kidnapping,
8 they think of zip ties, duct tape, rope, somebody getting
9 taken somewhere. That's what we think, but we're wrong.
10 We're wrong in the State of South Carolina.

11 And the Judge is going to tell you what the law
12 is. And it's your job to determine if these facts match the
13 law. It's not your job to determine, actually he's going to
14 tell you not to, what the law should be or anything like
15 that. He's going to tell you what the law is and then you
16 determine if it matches the law. That's your job. It's not
17 your job to make the law. It's not my job. I'm sure all of
18 us would like to sometimes. But that's his -- that's his
19 job.

20 So the law in the State of South Carolina, the
21 crime of kidnapping encompasses more than what you generally
22 think of, than what's in your mind from TV and books and
23 that sort of thing, it's more than that. And we talk about,
24 we call it elements of a crime. And it's the steps, the
25 things that you have to prove to show that, okay this --

1 this is a crime. This is the burden, these are the things
2 that you have to meet. We call them elements, just the
3 parts of it.

4 So the Judge is going to tell you what kidnapping
5 is in the State of South Carolina. If he says something a
6 little different, you go by what he says and I think some of
7 the instructions may have "carried" instead of "carrying" or
8 something like that. But he's going to read the law to you.
9 And I want you to pay close attention when he does that
10 tomorrow morning.

11 But in South Carolina, kidnapping -- these are the
12 elements, this is how you prove it: It's unlawful seizure,
13 confining, inveigling, decoying, abducting, or carrying away
14 of a person by any means without authority of law and it has
15 to be done knowingly. The Judge will talk to you about
16 intent.

17 So this first part -- and the law also says
18 kidnapping. Unlawful seizure, confining, inveigling,
19 kidnapping, decoying, abducting, or carrying away. So it
20 actually uses the same word in a different way than it's
21 used in the title. Typical lawyers, I guess. Typical
22 legislators. But that's what it is. So kidnapping in the
23 definition means something a little -- in this part means
24 different than what the whole title means. So what your job
25 is, is to determine that this occurred.

1 So, and with this, what you see with this, is it's
2 going to be a list of things. Seizures, confining,
3 inveigling, decoying, abducting -- I think it says
4 kidnapping. And then what is this word? Or. Or carrying
5 away. Not and, or. Any -- and the Judge will tell you, any
6 one of these things, any one of these things will meet
7 Number 1. Just one. Just one.

8 And he will explain to you that seizure is a
9 sudden grabbing or taking hold of someone.

10 Confining, he'll explain that to you, but we all
11 know what that is, is restricting somebody's freedom.

12 We're not saying she was carried away. We're not
13 saying she was abducted.

14 Inveigling means like tricking somebody, like, Hey
15 little girl, you wanna come see my puppy or you want a piece
16 of candy? That would be inveigling, it's tricking.

17 Or setting a decoy for somebody, come down here
18 and meet me and then somebody else is there to gets you. So
19 we're not saying that. We're not saying that. We're not
20 saying that. We're not saying that. We're not saying that.
21 Because that's not what happened here. We're not trying to
22 say something that didn't happen.

23 Here's what happened. He seized her and he
24 confined her. The Judge is going to tell you it doesn't
25 have to be for a set period of time. It does not have to be

1 for a specific period of time. It doesn't have to be an
2 hour. It doesn't have to be anything like that. Because if
3 somebody gets away after you've done it, which we hope they
4 do. We hope it don't get to that or any of this other
5 stuff. It's still against the law. It's still against the
6 law. And it's still kidnapping. He don't get the benefit
7 of the fact that she got away when it comes to that.

8 Now, what was he going to do. That's kind
9 of inspect -- what was he going to do? The car door wasn't
10 open, anything like that. She told you everything ran
11 through her mind. I don't have to prove that to you. I
12 don't have to prove that to you. That's not part of it,
13 what he has to do, what he was going to do.

14 What did he do is enough. What did he do? And of
15 course it's of a person, and it can be by any means. We
16 don't have to have zip ties or anything like that or lock
17 anybody in a cell without authority of law and it has to be
18 done knowingly. So it's got to be a wrongful act, not just,
19 you know, an accident, or something like that.

20 So one of the things we've dealt with is, Who did
21 it? There's been a lot of talk about shorts and no shirts
22 and Hispanic versus a sun tan and a SUV and all this kind of
23 stuff. Lot of talk about that. This is not a, Who done it,
24 kind of case. It's not. There's -- but I'm going to go
25 over this stuff, just cause it's been -- I know, it's going

1 to take a little while, but I'm going to go over this stuff,
2 just because it's been brought up so much.

3 But this is not a, Who done it, because he told us
4 he did it. He told the police. And he told his momma. And
5 he told his sister. Eventually, he told us he did it. So
6 this isn't a, Who done it. It's really not even a, What he
7 did? It's more this. But was it wrong? That's really what
8 it is. Honestly, that's what it is. Was it wrong?

9 So, first of all, how do we know it's him besides
10 the obvious. She gave a description. She saw him twice.
11 She saw him at two different places. She gave a description
12 of the car. She gave a description of him that was pretty
13 accurate. It was pointed out that she got the age wrong.
14 You can look at him and determine, and everybody looks, you
15 know, has a different opinion of age. But, you know, she
16 said 50s and, you know, some other people said 45, but she
17 said 50s. Okay. Good for him. Sixty-seven years old and a
18 stranger thinks he's 50. Wish people would think I was 21.

19 But, she gave a description, and then -- he didn't
20 have a shirt on. Well, then we hear, Did he have a shirt on
21 in the liquor store when you saw him 700 times? Yeah.
22 Well, good, I'm glad he wears a shirt in a store. I'm glad
23 he wears a shirt in a store. Did he have a shirt on when
24 you came to his house and sitting -- yeah, he had a shirt
25 on. I mean, so what. I never wear shorts, there's shorts

1 in his house. So what. He says he's there. So you can get
2 bogged down in these little details people call them red
3 herrings, that sort of thing. But at the end of the day,
4 none of that matters, because he says it's him. He says
5 it's him.

6 The car. You can look at the -- the video. The
7 car. You can see the rims in the top corner. I can show
8 that to you again in a few minutes. That's the video of it
9 going back and forth by the house. And the video that the
10 liquor store owner fortunately took and you can look at
11 that. But what's really interesting, too, because all of
12 this is too much to be a coincidence.

13 These guys that came down from North Carolina, who
14 didn't really get talked to for three years, for almost
15 three years. Called 911 the day after this happened. And
16 said what? Paper tag. Well, the police didn't know nothing
17 about that, because they didn't talk to him. The liquor
18 store owner sure didn't know anything about that. I mean,
19 so it all kind of lines up.

20 And then this sketch. She didn't pick anybody out
21 of a lineup. Why? She wanted to be one hundred percent
22 sure. She didn't want to get the wrong person. And she
23 didn't, because he told us he was there, or he told the
24 police. He told his momma. She didn't want to get it
25 wrong, so she didn't. She didn't pick him out.

1 Now, you know, obviously, seeing somebody in
2 person, you get to see their size, their shape, and that
3 sort of thing instead of just, you know, the close up of
4 their head. It's probably why everybody hates their drivers
5 license photos, you know, it's right up in here.

6 She made that call. She had looked at vehicles,
7 been riding up and down hadn't picked anything out, but she
8 knew. She knew when she saw it. And she reacted when she
9 saw it. Why? Because he scared her to death. He scared
10 her to death, she looked in his face, and she had to get
11 away.

12 Then she did this. I don't know how, that just
13 seems so hard to me. And this is the day they arrested him,
14 the day he gave that first statement. She did this on June
15 10th, that's when everything happened, five days later.

16 But how do we know that this was wrong? How do we
17 know that it was unlawful and it was wrong for him to grab
18 her? He had no authority. He had no reason to grab her.
19 No innocent purpose to grab her. How do we know that?

20 Well, first of all, she told you. I don't know
21 him. I haven't seen him before. I really didn't think too
22 much when he was trying to talk me and stopping in the
23 middle of the road, trying to talk to me when I'm on my run,
24 trying to get back to my husband. You know, she didn't hold
25 that against him, just kind of went on going. She didn't

1 know him. She didn't want him to touch her. She didn't
2 want to go anywhere with him. She didn't want to be held by
3 him. She told you that. She didn't want to. She didn't
4 want his hands on her. And she didn't need his hands on
5 her. She didn't need it.

6 All this business that these other jail calls you
7 heard, Oh, she was about to pass out, she was about to
8 faint -- about to fade away. I was trying to help her. I'm
9 a good Samaritan, Momma. Momma, I'm a good boy. I'm trying
10 to help this poor lady. Help her? You picked the wrong
11 one, buddy. She outruns her husband. And she sure outran
12 you. She didn't look like she needed any help. Every one
13 of them described her breaking away and running. Oh, well,
14 you know, if he was really trying to kidnap her, he wouldn't
15 have pick a fit one. Well, he didn't know. They have, you
16 know, they have statements on the radio, dumb criminal news.
17 Just cause it wasn't the best plan, doesn't mean it wasn't a
18 plan. Just because it wasn't the best plan. How many times
19 you heard about an armed robbery where the guy tries to get
20 away from the bank on a bicycle. I mean, those -- these
21 things happen. And it doesn't matter. What matters is what
22 he did.

23 She didn't want his hands on her. He had no
24 reason to put his hands on her at all. You don't put your
25 hands on people you don't know. You don't grab women and

1 stop them from going on their run after you just tried to
2 talk to them. You don't do that. And if you do, that's
3 what you've done. That's what you've done. But what else?
4 Twice. Twice. Stopped, she ignored him and went on her
5 way. He waited for her. He went down there and waited for
6 her.

7 Now, we say the sanitation worker, I want to say
8 the trash worker, he told you, he don't know any of them
9 either. He thought it was weird, you know, or unusual, it
10 caught his attention. The guy had stopped at the stop sign,
11 right here. And y'all have all heard that this place can
12 be -- he stopped right there. Right there. This place can
13 be kind of busy, he's working, he stopped right there. And
14 then what does he do after she gets past him? Backs up.
15 Puts it in reverse. Backs up. And I think -- and you
16 remember they way he said, in a hurry or radically, but it
17 was enough to catch his attention. And I'm sure he sees a
18 lot, you know, working -- working here. But backs up and
19 heads towards here. And, as you can see, there are all
20 kinds of ways.

21 At this point she's walking, he's driving. Now,
22 she's a fast walker, but she's not faster than that Jeep
23 Cherokee. And he ends up back here. You see him drive by,
24 I don't know if he caught ahead of her, which way he came
25 from, but there's all these little avenues. But we see

1 his -- we see the vehicle drive by here. Now, whether it
2 can be matched up perfectly, you know, like on My Cousin
3 Vinny, this kind of car has this or that. He puts himself
4 there. And how does the car come back? On the wrong side
5 of the road. So in a hurry here. Backing up. And in a
6 hurry here, on the wrong side of the road, because he knew
7 he was doing what he ought not be doing. And there he knew
8 he was going to try to do something else. So he knew he was
9 trying to get away to a point he was on the wrong side of
10 the road.

11 How else do we know it's not right? How else do
12 we know? Because he lied. And he lied. And he lied. We
13 call that progressive truth telling, there's theories about
14 that, or whatever. But we've probably all had experience
15 with it, either with our kids or something we did ourselves.
16 You catch your kids in the room and their both crying. I
17 didn't do anything. I didn't do anything. Everybody, I
18 didn't do anything, I don't wanna be in trouble. Momma
19 says, Why's his face red? Well, I hit him, but he hit me
20 first. Well, why isn't his face red, you know, that kind of
21 thing. And then as you catch them, or as it develops, it's
22 a little more and a little more and a little more. We
23 probably all did it and we know that's how it works. We
24 know that's how it works.

25 So how do we know he wasn't in the right? Because

1 he lied. And he lied. And he lied. And he lied. I don't
2 know if we got one straight story yet. Sure hadn't said
3 anything about being in two places, though. And the
4 sanitation worker, her, all put him there.

5 We also know that he knew he was wrong because of
6 the things he did to try to get away with it. What did his
7 sister say to him? You need to get your story straight.
8 You need to get your story straight. Guess what, he hadn't.
9 He didn't get the story straight. If I get away with this.
10 That's what he said on the jail phone, if I get away with
11 this.

12 How did he try to get away with it? First of all,
13 he left so fast he's on the wrong side of the road. And you
14 saw that video of the cars going ahead of him. Wrong side
15 of the road. She did this with full detail. He's got some
16 hair. She said, When I saw him he had changed his hair.
17 The liquor store owner told the police and told you, he'd
18 gotten a haircut. He'd gotten a haircut. This was on
19 Sunday. He comes in on Monday and his hair is cut, the next
20 day. His hair is cut. And he says, Well, you know, I cut
21 my hair every other day.

22 And I know these aren't the best quality, because
23 they're still shots from -- they're still shots from the
24 surveillance camera and then a copy at that, but y'all can
25 look these, State's 5. I'm not even going to pull them up.

1 Now, look at that tan line on that head. That hair's just
2 been cut. It hadn't been short like that every other day.
3 Altered his appearance. Altered his appearance.

4 The police came. The police came to his house to
5 do this driveby that there's been so much discussion on so
6 that she can identify him. They come to his house to talk
7 to him about his dead tag. Who comes? Georgetown County.
8 Georgetown County Sheriff's Office comes, they identify
9 themselves. Where does he live? Horry County. What did
10 Craig Lewis say? This was on the news. What did his family
11 say? This has been on the news. They did this so they
12 could do that. They were saturating the news.

13 So a Georgetown officer comes to his house. What
14 happens next day? Oh boy, that Jeep's gone. That Jeep is
15 gone. He says he wrecked it. It was some confusion, he
16 said he had wrecked it a while back, but on the calls he
17 said he wrecked -- he got side swiped in Food Lion that day
18 and couldn't drive it. Or the day before. Of course, you
19 saw the pictures, it didn't look to undriveable, but he got
20 rid of that car same day. Georgetown came to house.
21 Georgetown been putting out press releases. That car is
22 gone. When they come back the next -- or in a day or two to
23 come and get him on the 15th, the car is gone. Hiding.
24 Hiding. Trying to get away with it. Knew it was wrong.

25 But then there's all the things he said. On the

1 15th they interviewed him in the police car. The man who
2 goes to Atlantic Liquors about every day. The man who goes
3 to the pier all the time, goes down to the marina, Marlin
4 Quay, that he didn't seem to know the name of.

5 First of all, don't even know where Waccamaw Drive
6 is. Don't even know. And then it's I, you know, this kind
7 of thing, I don't do that. I don't go down there. Then I
8 do go down there. But then he says, at no time -- and this
9 isn't a month later. This is the same week. This is the
10 same week. And you know what, Sunday should stick out in
11 his mind. It's the only day he can't go to the liquor
12 store. I know it was some confusion about or not the liquor
13 store. But Sunday -- I mean, it's just a couple days later.

14 So I didn't do it, he said, and you can go back
15 and listen to this interview. But he says, I never got out
16 of the car. Of course, he says he never tried to put
17 anybody in the car. At any time, did you engage a female on
18 South Waccamaw, at any time? Trying to get her attention,
19 anything, grab her, anything? No. No. I don't do things
20 like that.

21 Now, if you say you got side swiped the night
22 before, and, you know. Then the next time they talk with
23 him it's, Well, I almost hit her. I almost hit her with my
24 car. You almost hit her with your car and you didn't
25 remember that the first time? Oh, wait that guy in the back

1 was aggravating me. He was being sarcastic. Come on. It's
2 a new story. It's a new story.

3 Because the jail call -- so on the 15th is when
4 they arrest him and when he gives that first interview. And
5 on the 19th, listen to this.

6 (WHEREUPON, an audio clip was played then stopped.
7 Not transcribed herein.)

8 The 15th, never got out the car, never grabbed,
9 never touched anybody. Didn't do anything. The 19th, get
10 your story straight. Did you help her? Then comes the
11 21st, when they go out, there's three of them, and they go
12 out to him and interview him again. Then it's, You know, I
13 remember now. I almost hit her. I almost hit her and she
14 had to get out the way and I just said, Ma'am, ma'am, you
15 all right? But I almost hit her. I was coming out the side
16 street and I almost hit her.

17 Well, the side street was here. Y'all saw her
18 walking by South Waccamaw, she was fine. He didn't say
19 nothing about, I had to go chase her down to see if she was
20 all right. There's no side street here. There's no side
21 street from here to here where all of this happened. He
22 wasn't pulling out on the side street there. He was rolled
23 up in somebody else's driveway blocking the sidewalk,
24 waiting for her to get to him. He had pretty much followed
25 her and was trying to trap his prey. Wasn't no side street

1 there.

2 Oh, but then he says -- and you can go back and
3 listen to it -- I never touched her. I never touched her,
4 Mr. Griffith, Mr. Wyndra, I never touched her. My DNA is
5 not on her. Never touched her.

6 Then, he talks to his family again.

7 (WHEREUPON, an audio clip from was played and then
8 stopped. Not transcribed herein.)

9 I did. I grabbed her. Then later on it's, No, I
10 grabbed her twice. She was about to fade away. I grabbed
11 her twice. But you know these girls these days, you know,
12 they, everybody just thinks something's going to happen to
13 them. In broad daylight? I mean...

14 He knew. He didn't want to disappoint his mom and
15 his sister. But he knew. But he goes from, I don't even
16 know where South Waccamaw is to I didn't do anything to I,
17 you know, I thought I hit her, but didn't touch her, to
18 okay, I did grab her, but she, you know, everybody just
19 thinks something's going to happen to them.

20 A lot's been made about, you know, this isn't that
21 big of a deal. It is a big deal. It is a big deal. I'm
22 glad it's no worse, but it's a big deal. Well, the police,
23 you know, they just went gangbusters. Good. Good. There's
24 an arcade down there. There's a pier. It's broad daylight.
25 You don't expect this. It shows a level of brazenness that

1 is scary. The police should have been concerned. Do we
2 want them to be like, Oh, she isn't hurt. She isn't hurt.
3 Somebody was bold enough in broad daylight with all these
4 people, you know. What did they say they were about 15 of
5 them at their house and kids walking to that beach. Walking
6 to that beach. Walking back from that beach. I mean, it's
7 constant. And then down there, arcade, there's, you know,
8 all kinds of stuff at that pier. Foot traffic all the time.
9 All through here.

10 Police shouldn't have ignored it and they didn't.
11 And thanks to her attention to detail and the sketch artist,
12 and thanks to the liquor store owner and thanks to the fact
13 that there was this paper tag and that sort of thing, they
14 got him. And even though he didn't the first time, the next
15 time he puts himself right there.

16 Now, why didn't these men call 911? And they kind
17 of talked about it. But they didn't know he had been down
18 there, and they weren't down there. But they knew something
19 was wrong. But the next day they clued in. And what did
20 Mr. Rider say? He grabbed her. He grabbed her. They knew
21 something was wrong, but, you know, she'd gotten away. And
22 she described to you how hard he grabbed her and how she had
23 to break away. She had to use a self defense maneuver. It
24 wasn't just -- it was this whole body thing. And she was
25 able to do that.

1 She knew she had to get away. And she did.
2 Because he seized her. He confined her. As the Judge will
3 say for any, any period of time. And he had no right to do
4 it. He just lied. He just changed his story, over and
5 over. She got away. She got away.

6 What did he say on the jail call? If I get away
7 with this. If I get away with all this. She got away.
8 Don't let him get away. Don't let him get away. Don't fall
9 for the red herrings of shorts and tee shirts and tank tops
10 and no shirt. He puts himself there. He puts himself
11 there. Video puts a car like his there. The two men from
12 North Carolina, who didn't know anybody. But he puts
13 himself there. They call 911 the very next day, you know,
14 the very next day on the same road.

15 She did what she had to do. Now, we're asking
16 that you do what you have to do. Find him guilty of
17 seizing, confining her, even if it was brief, because in
18 South Carolina that's what that that is. That's what that
19 is. Thank you.

20 THE COURT: Mr. Edgeworth.

21 MR. EDGEWORTH: Thank you, Your Honor.

22 May it please the Court.

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

25 MR. EDGEWORTH: Ladies and gentlemen of this jury,

1 I find it really interesting that the State presented this
2 case to you in the very beginning and they almost
3 immediately started to minimize the case. You know, they
4 told you, Well, we want you to know that this is not like
5 the movie Taken, like the Liam Neeson movie that Counsel had
6 described. So they're starting to already to chip away at
7 your idea of what you're about to hear. The evidence that
8 you should be paying attention to. What is important and
9 what's not important.

10 But they sit up here and tell you just now, you
11 know, don't be fooled by red herrings, you know, shirts,
12 shorts, cars, descriptions. If it was so easy, why did we
13 need 15, 16 witnesses to go into the witness box and
14 testify? Why did we have to take all of this evidence
15 that's been presented to you? Have to listen to all these
16 recordings, if it was so easy? It's not easy. This is not
17 an easy task.

18 The State wants you to fall in love with this
19 idea, that's a slippery slope mind you, if you touch anyone
20 when they don't want you to, it's kidnapping. It's
21 kidnapping.

22 They showed you what they call the elements of the
23 crime. And, you know, just cherry picked the ones that they
24 feel like the evidence fits into and tells you that the
25 Judge is going to tell you the law. And we believe it fits

1 this corner pocket here and therefore he's guilty. Then why
2 all this evidence? Why do we have to go through this? This
3 just could have been the story from Ms. Starnes and it's
4 over. She said it happened in this particular way and
5 therefore he's guilty. And they want you to say, Well, it
6 doesn't really matter. Everything else doesn't matter.

7 Well, why does it matter? Because if you believe
8 the State and the evidence that's been presented and you
9 come to the conclusion that there was this touching or
10 grabbing, then they just want you to check the box and move
11 on. It's over with.

12 So why is it important to hear all these other
13 things, the things that the State is calling the red
14 herring. Well, one, the complaining witness, Ms. Starnes,
15 has told you of this event. Sorry that it happened.
16 Truly -- I truly am. I'm sure she was scared. That doesn't
17 mean that what happened was a kidnapping.

18 She testified that she had never been in a bar and
19 a man come up to touch her without wanting it. Thank
20 goodness that's never happened to her. But I guarantee it's
21 happened to plenty other women. Are we calling that a
22 kidnapping? Is that what we're -- we've come to now? To
23 impute just a wrongful touching as a kidnapping? I don't
24 think so. That's why what she testified to, she thought he
25 was 50 years old, he had no shirt, he was wearing shorts,

1 all of these things are important because that was her
2 perspective. That's what she believed she saw. And mind
3 you, one of the most important things that she testified to
4 was what she didn't testify to. She did not tell you that
5 she thought she was being kidnapped. She was scared, I'm
6 sure. Startled. Ran away. We're not refuting that.
7 That's what she said happened, she ran away. Thankfully,
8 she wasn't hurt. That does not mean she was kidnapped.

9 The State wants you to look past all of the things
10 that was done by law enforcement and say, Well, that's what
11 they should have done. That doesn't make it right. Right?

12 They got the sketch artist. The sketch artist
13 presented -- it didn't -- they put it out to the public,
14 created essentially what could have been a mass hysteria.
15 They got zero hits from the public. Their hit came from the
16 liquor store guy. And they came from the liquor store
17 guy -- see, they want you to pick and choose which things
18 you believe, right? They got the hit from the liquor store
19 guy, but then they want you to ignore the fact that he also
20 testified that over 700 times he's seen this guy, never seen
21 him in shorts, never seen him without a shirt. And I'll
22 tell you, as much as the State wants you to believe that
23 there's not people that go around to the beach stores
24 without a shirt on, go back down to Myrtle Beach. No shoes,
25 no shirt, no problem. Yeah, right. Okay. You do go into

1 stores, especially if you're a normal person -- or, not
2 normal -- a regular. You do that. Your mannerisms get kind
3 of loose, right?

4 But his -- Mr. Dicapua has, as Mr. Varcadipane or
5 the liquor store guy wanted you to know, I mean, he came in
6 there every day. Saw him every day, except for Sunday. The
7 police tried to trick him on, you know, the day that this
8 event happened, you know, it was a Sunday. He told them
9 liquor and then they turned it around on him and said, Well,
10 you said you got liquor. They, of course, know that the
11 liquor store is not open on Sunday.

12 So then what do you do? They want you to say,
13 Well, you know what, he must have meant to do it because his
14 story changes. Well, I want to meet the person whose story
15 doesn't change when somebody's after you.

16 Think of all the efforts they did to get to him.
17 It wasn't some surreptitious thing. They want to, again,
18 cherry pick the things that happened. Oh, by the way, they
19 don't want you to pay attention to the no shoes and no
20 shirts, but they want you to say, Okay, well, you know, he
21 got a haircut. But then they don't want you to pay
22 attention to the part of the statement where he said he gets
23 a haircut every other day. Must be a new thing. Doesn't
24 seem to be a new thing, because according to the liquor
25 store guy, this dude's a pretty good, you know, man of

1 habit. Comes in there every day. Comes in there with a
2 shirt, pants, buys him some vodka. Nothing out of the
3 ordinary here, folks.

4 But the State wants you to think that because of
5 that, he must have meant to do something. Because there was
6 a car wreck the day after the cops came and therefore he
7 knew that they were on the trail, then he intended to get
8 into an accident, so that the car could magically disappear.

9 You heard the lady from Enterprise, it happens all
10 the time. They don't even check for insurance. I can't
11 believe that. Rent the car and then they let you pay for it
12 without proving you have insurance.

13 The encounter. The encounter was such that the
14 State brings in their last two witnesses that they found
15 two-and-a-half years later to come in and redescribe a story
16 that they couldn't even tell what was going on the same day
17 they saw it. And only decided to call 911 after they read
18 about it in the paper. And you know what it said in the
19 paper? And you know what it said in the paper? Abduction.
20 No one was abducted.

21 Putting all these ideas in your mind. They were
22 standing right there, apparently. They thought it was some
23 type of domestic violence situation. To the point where
24 he -- Mr. Lewis believed that maybe the car had come up so
25 quickly, not this -- not that the car was there and then

1 walking by and then come around the car and then grab. He
2 thought the car had pulled up, she jumped out of the car and
3 ran away. That's how quick he thought it was and he was
4 standing right there.

5 Not to mention all the other discrepancies and
6 time tables. Ms. Starnes said there was a five-minute gap
7 between when she saw Mr. Dicapua over here at this
8 intersection and then when he had parked his car down the
9 road at Mr. Lewis's rental. And then law enforcement wants
10 you to believe that, Well, you see Ms. Starnes walk past
11 this video at [REDACTED] South Waccamaw, you know, when the
12 incident took place at 639, which had to be less than a
13 block, right? And then the car passes by and comes back in
14 a two-minute time period. But they want you to believe
15 that's the car without any further evidence. Well, we
16 believe that's the car. Right?

17 They want you to overlook all these things so that
18 at the end of the day they can make it so simple. Here's
19 the list, A, B, C, D, kidnapping, let's go. Walk back in
20 there and come back out.

21 Was the car door open? No. According to
22 Ms. Starnes, didn't see a car door open. According to
23 Mr. Lewis and Mr. -- I forget the other fellow's name -- the
24 North Carolina guys, no car door was open. You'd think if
25 someone was trying to kidnap someone, they'd have the car

1 door ready, especially if as the State says, he pulls up in
2 there and is lying in wait. You better have the car door
3 open if you're going to accomplish this. Right?

4 No weapons. The last witness testified that he
5 saw something that could have been a knife. But if he did
6 see it, it was after the fact. And it was also like
7 two-and-a-half years after the fact. It wasn't so important
8 that they told 911 when they called, I know that's for sure.
9 They didn't run down the stairs and run after her to make
10 sure she was okay. They said that, well, she was running
11 away anyways. They couldn't have known that she was a great
12 runner.

13 I'm sorry that it was perceived in the manner in
14 which it was perceived. I'm sure that it was, maybe scary.
15 That doesn't make it a kidnapping. That does not make it a
16 kidnapping.

17 When you think about all of the evidence that you
18 heard, and when you think about what the State wants you to
19 believe, this kidnapping, the facts that are in the evidence
20 of this case, consider where we are now, what you've heard
21 and wonder to yourself, Is that event something that you
22 would consider a kidnapping? Thank you.

23 THE COURT: All right. Ladies and gentlemen,
24 we're going to recess for today and I'm going to excuse you.

25 Now, I told you all along not to talk about this

1 case. And I'm going to continue to tell you that, because
2 you have not yet heard the law that you have to apply to the
3 facts and evidence you've heard in this case.

4 So when you go home, you don't talk about it. You
5 come back tomorrow morning, you don't talk about it until I
6 charge you the law. I'll see back tomorrow morning at 9:15.
7 And we'll call you in, I'll give you the law and then we'll
8 give the case to you. You'll have the exhibits back there.
9 You'll have all the time you deem necessary to talk about
10 this case at that point in time and make your unanimous
11 decision.

12 So, with that, I'll see you tomorrow morning at
13 9:15. Thank you.

14 (WHEREUPON, the jury exited the courtroom at 12:32
15 p.m.)

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

18 MS. RICHARDSON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. EDGEWORTH: No, Your Honor.

21 THE COURT: All right. Mr. Edgeworth, you had
22 mentioned something about specific intent in conjunction
23 with the attempt charge that I read to you. And I'm going
24 to read this to you and y'all think about this and you tell
25 me in the morning whether you have an objection to it.

1 In general, attempt is a specific intent crime.
2 The act constituting the attempt must be done with the
3 intent to commit that particular crime. In the context of
4 an attempt crime, specific intent means the defendant
5 consciously intended the completion of the acts comprising
6 the alleged offense. In other words, the completion of such
7 act is the defendant's purpose. Attempted kidnapping would
8 require the specific intent to kidnap and conduct towards
9 that end.

10 So y'all think about that, look at that and in the
11 morning you tell, the State, defense, whether y'all object
12 to a charge such as that in conjunction with the attempt
13 description that I read to y'all earlier. All right?

14 MR. EDGEWORTH: Yes, sir.

15 THE COURT: And, obviously, if there's anything
16 else I've gone over it, but basically, just so that we're
17 clear. Talk to the jury about things we always talk about,
18 credibility, believability, direct and circumstantial
19 evidence. I will add or have in the circumstantial part of
20 it to the extent the State relies on circumstantial
21 evidence, circumstances must be consistent with each other,
22 when taken together, point conclusively to the guilt of the
23 accused beyond a reasonable doubt.

24 I will have, as I explained to Mr. Dicapua, the
25 charge about the defendant did not testify but that's not

1 part of the case, they can't talk about it.

2 Identification. Obviously, making it clear to the
3 jury that they have to be satisfied beyond a reasonable
4 doubt of the accuracy of the identification of the
5 defendant. And that's part of the State's burden to prove
6 beyond a reasonable doubt the identity of the defendant as
7 the person who committed the crime. Statement of the
8 defendant, again, leading to them to make sure that they
9 understand that it's their decision to determine whether the
10 statement was made voluntarily of his own free will, and was
11 not caused by any kind of pressure, force, fear, threats,
12 coercion, hope of leniency, or anything like that.

13 Intent, as I talked to you about the general
14 charge and then the specific charge.

15 Presumption of innocence, talk to them about that.

16 Reasonable doubt, the kind of doubt that would
17 cause a reasonable person to hesitate to act.

18 And then charge them the law of kidnapping and the
19 attempt that we already talked about as well as greater or
20 lesser offense, if you have a reasonable doubt as to whether
21 the defendant is guilty of a greater or lesser offense, you
22 must resolve that doubt in favor of the defendant. If you
23 find the State has proved the defendant guilty of that
24 lesser offense beyond a reasonable doubt. Reemphasizing
25 that it's always the State's burden to prove the defendant

1 guilty beyond a reasonable doubt.

2 And y'all have a copy of the verdict form that
3 I'll go over with them. So that's my intention. If you
4 have any additions or deletions or something you want me to
5 change or add to it, I'll be glad to hear from you in the
6 morning about that. Okay?

7 MR. EDGEWORTH: Thank you, Your Honor.

8 THE COURT: All right. So, with that, I'll see
9 y'all back -- if y'all can be here at 9:00. So if you got
10 any matters. Our law clerk has other duties, he will not be
11 here tomorrow. So you'll need to get the Bailiff's
12 attention or something if you need to talk to me about
13 something, so they can come back and let me know. Okay?

14 MR. EDGEWORTH: Thank you, Judge.

15 THE COURT: Thank you. See y'all tomorrow
16 morning.

17 MS. RICHARDSON: Thank you, Your Honor.

18 (WHEREUPON, court adjourned for the day at 12:38
19 p.m.)

20 MAY 14, 2021

21 (Whereupon, the proceedings resumed at 9:07 a.m.)

22 THE BAILIFF: All rise.

23 THE COURT: Please be seated.

24 All right. Before we get started, I understand
25 there was something Counsel wanted to address with the

1 Court, Solicitor?

2 MS. RICHARDSON: Yes, Your Honor. As far as the
3 proposed attempt charge that Your Honor gave, the State
4 would just ask that when you say "attempt to kidnap," that
5 kidnapping be defined or the statutory language be used at
6 that point, reiterated.

7 THE COURT: Okay. I'm not -- okay, my intention
8 is to charge them kidnapping and then talk to them if they
9 don't believe the State proved that beyond a reasonable
10 doubt, then there's the lesser included offense of attempted
11 kidnapping. And then go on and define "attempt" and then
12 "specific intent" so that they understand that you must have
13 intended to kidnap the person to be guilty of attempted
14 kidnapping. And then go over the -- well, the greater or
15 lesser, and then go over the verdict form with them.

16 So what else is it that you want me to do? I'm
17 not sure.

18 MS. RICHARDSON: So I'm asking that when you say
19 "attempt to kidnap," under the definition that you
20 previously gave.

21 THE COURT: You want me to read all of that from
22 kidnapping again?

23 MS. RICHARDSON: Or at least the statutory
24 language. Kidnapping being to -- the statutory language.

25 THE COURT: That the defendant knowingly and

1 unlawfully seized, confined, inveigled, decoyed, kidnapped
2 abducted or carried away another person by any means
3 whatsoever without the authority of law, that they attempted
4 to do that?

5 MS. RICHARDSON: Yes, Your Honor. And just
6 because kidnap is used in two different contexts in that
7 statute, that's why.

8 THE COURT: Okay.

9 MS. RICHARDSON: The title of the statute and then
10 kidnapping itself can be an element of kidnapping and it's
11 defined differently in the statutory kidnapping.

12 THE COURT: Okay. I can read it like that.
13 That's fine. I mean, that's not a problem.

14 All right. Mr. Edgeworth?

15 MR. EDGEWORTH: The defense has no objection as to
16 how Your Honor wants to read that instruction. And, just
17 for the record, the defense is in agreement with the
18 language proposed by Your Honor for specific intent
19 instruction.

20 THE COURT: All right. Very good.

21 All right. So, with that, are all the jurors
22 here?

23 THE BAILIFF: Yes, Your Honor.

24 THE COURT: All right. Is the State ready for the
25 jury to come in?

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: And the defense?

3 MR. EDGEWORTH: Yes, Your Honor.

4 THE COURT: All right. Ask the jury to come in,
5 please.

6 (WHEREUPON, the jury entered the courtroom at 9:13
7 a.m.)

8 THE COURT: All right. Good morning, ladies and
9 gentlemen.

10 THE JURY: Good morning.

11 CHARGE ON THE LAW

12 THE COURT: It's now my duty to give you the law
13 that you will apply to the facts and evidence you've heard
14 in this case.

15 I told you at the very beginning I would not
16 indicate to you in any way what I think the facts of the
17 case are because that's your job and your responsibility.

18 In that same vein, if you came into the courtroom
19 with any preconceived ideas of what the law is, what it
20 ought to be, should be, hope it would be, you're going to
21 disregard that. You will take the law as I now give it to
22 you and apply it to the facts and evidence you've heard in
23 this particular case.

24 I did tell you at the very beginning one of your
25 jobs, duties, and responsibilities of being the judges of

1 the facts was to assess or judge the credibility of the
2 witnesses that have come before you. The credibility and
3 believability of the witnesses that have testified.

4 In doing this you can believe one witness against
5 several, several against one, you can believe a portion of
6 what a witness says and disregard the remaining portion of
7 it. You can, in fact, disregard the entirety of the
8 testimony of a particular witness if you've got a good and
9 sound reason for doing so.

10 You look at whether or not that witness has
11 exhibited to you any kind of interest, motive, bias,
12 prejudice they might have in giving you the testimony. And,
13 obviously, you consider the opportunity for knowledge, how
14 did they come about that information that they gave to you?

15 This obviously is a mental process. There's no
16 test here to judge credibility and believability. You go
17 back to using your good common sense. Your good judgment
18 that you use in conducting your own affairs. And that's
19 what we're asking you to do in looking at the facts and
20 evidence in this particular matter.

21 Understanding your verdict can't be the result of
22 any kind of passion, prejudice, or sympathy. You don't have
23 any friends to award. You don't have enemies to punish.
24 It's an examination of the facts and evidence presented.

25 Now, generally there are types of evidence

1 presented in virtually every criminal case that's tried.
2 It's called direct and circumstantial evidence. Direct
3 evidence, that's the testimony of someone who claims to have
4 observed an incident or that they have knowledge of a fact.
5 Something they saw, heard, took place in their presence.

6 There's also circumstantial evidence. And that's
7 proof of a chain of events indicating an existence of a
8 fact. And the law doesn't make any distinction between
9 direct or circumstantial evidence except to the extent that
10 if the State relies on circumstantial evidence, all of the
11 circumstances have to be consistent with each other and when
12 taken together point conclusively to the guilt of the
13 accused beyond a reasonable doubt.

14 And I'll tell you this, more than once. I told
15 you at the very beginning. The State has the burden of
16 proof, everything we're talking about here, the State has
17 the burden of proof beyond a reasonable doubt.

18 In this particular matter the defendant did not
19 testify. That is not a fact for you to consider in any way.
20 You can't talk about it. You can't use it mentally in
21 makings a determination about this case.

22 Everyone accused of a crime has the Constitutional
23 right to remain silent. That cannot in any way be used or
24 held against them. Remembering the State has the burden of
25 proof. The State must prove it's case to you beyond a

1 reasonable doubt. I often tell juries, the defendant
2 doesn't even need to show up, because they don't have
3 anything to show to you. They don't have anything to prove
4 to you. It's all on the State to prove the defendant guilty
5 beyond a reasonable doubt.

6 Now, in this particular matter identification of
7 the defendant as the person who committed the crime has been
8 presented. Again, the State has the burden of proof to
9 prove identity beyond a reasonable doubt. You must be
10 satisfied beyond a reasonable doubt of the accuracy of the
11 identification of the defendant before you could find him
12 guilty.

13 Identification testimony is an expression of
14 belief or impression of a witness. You must determine the
15 accuracy of the identification. You consider it with
16 everything else the credibility and the believability of the
17 witness.

18 You determine whether or not the witness had an
19 adequate opportunity to observe the offender at the time of
20 the offense. This could be affected by how long or short
21 the time was. How far or close the person was. The
22 lighting conditions. Whether they knew the person in the
23 past or had a chance to see them in the past.

24 The burden of proof is again on the State of
25 South Carolina to prove every element of the crime charged

1 and that includes the burden of proving beyond a reasonable
2 doubt the identity of the defendant as the person who
3 committed the crime.

4 A statement alleged to have been made by the
5 defendant has been admitted into evidence. Now, while the
6 Court has determined that this was a matter that you should
7 hear, you make the ultimate decision in this matter.

8 One, whether or not you believe the defendant made
9 the statement. Was the statement made voluntarily, of his
10 own free will, not caused by pressure, force, fear, threats,
11 coercion, intimidation or hope or promise of leniency or
12 reward of any kind.

13 You look at in considering whether or not a
14 statement was voluntary, you consider the characteristics of
15 the defendant, the details of the questioning, you consider
16 age, education, or lack thereof, mental ability or capacity,
17 background and environment, the place and length of
18 detention, the nature of the questioning. And, of course,
19 the advice or lack thereof to the defendant of their
20 Constitutional rights, including, but not limited to, the
21 right to remain silent, any statement can be used against
22 you in a court of law. You have the right to have a lawyer
23 present. If you cannot afford one a lawyer will be
24 appointed to represent you without cost. And you can stop
25 making the statement at any time you choose.

1 Again, the State has the burden of proving beyond
2 a reasonable doubt that the alleged statement was made by
3 the defendant. It was voluntary. And if you determine
4 those, then you may give the statement any weight or
5 consideration you deem proper. That, again, is solely up to
6 you.

7 In order to establish criminal liability, criminal
8 intent is required. And, again, criminal intent must be
9 proven by the State beyond a reasonable doubt. Criminal
10 intent is always a matter that must be determined by the
11 jury from the circumstances surrounding the situation.
12 There's no formula here. There's no mathematical equation
13 we can give you. You have to take into consideration all of
14 the facts and circumstances and to decide whether or not
15 criminal intent was present.

16 Criminal intent is a mental state. A conscious
17 wrongdoing. It is up to you to determine what the defendant
18 intended to do, based on the circumstances shown to have
19 existed at the time, and, again, proven to you beyond a
20 reasonable doubt.

21 I read to you at the very beginning the indictment
22 that charged the defendant. And I told you that's not
23 evidence. To that charge the State levied or brought
24 against the defendant, he plead not guilty. So that
25 immediately put the burden of proof on the State of

1 South Carolina to prove the defendant guilty beyond a
2 reasonable doubt.

3 It's an important rule of law. It doesn't matter
4 the seriousness of the charge. A defendant is always
5 presumed innocent of the crime for which they are charged
6 unless and until a jury believes from the evidence presented
7 to it that the State has proven the guilt of that defendant
8 beyond a reasonable doubt.

9 This presumption of innocence didn't end at the
10 start of the trial, it hasn't ended now. It does not end
11 unless you collectively believe the State has proven to you
12 the guilt of the defendant beyond a reasonable doubt.

13 We liken the presumption of innocence to a robe of
14 righteousness. It's placed on the shoulders of the
15 defendant, and it stays on the shoulders of the defendant,
16 unless and until the State rips that robe of righteousness
17 from the shoulders of the defendant by evidence which
18 convinces you of the guilt of the defendant beyond a
19 reasonable doubt. It's not just some legal phrase or
20 theory. It's a substantial right to which every defendant
21 is entitled.

22 So I've said "reasonable doubt," I don't know how
23 many times. Reasonable doubt is the kind of doubt that
24 would cause an ordinary, reasonable person to hesitate to
25 act. The State has the burden of proof of proving the

1 defendant guilty beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced
3 of the defendant's guilt.

4 Now, there are very few things we can know with
5 absolute certainty and the law doesn't require the State of
6 South Carolina to give you that kind of proof. What is
7 required, though, is based upon your consideration of the
8 evidence you are firmly convinced of the guilt of the
9 defendant beyond a reasonable doubt you must find the
10 defendant guilty.

11 On the other hand, based upon your view of the
12 evidence you are not firmly convinced that the defendant is
13 guilty of the crime charged, you must give the defendant the
14 benefit of the doubt and find him not guilty.

15 So in this particular matter the defendant is
16 charged with the crime of kidnapping. The State must prove
17 to you beyond a reasonable doubt that the defendant
18 knowingly and unlawfully seized, confined, inveigled,
19 decoyed, kidnapped, abducted, or carried away any other
20 person by any means whatsoever without authority of law.

21 So that laundry list of things that I read to you,
22 you put an "or" after each one of them. Seized or confined
23 or inveigled or decoyed. So it's one of them if the State
24 has proven that to you beyond a reasonable doubt.

25 To do a thing unlawfully is to do it against the

1 law.

2 Knowingly, means with knowledge, consciously, not
3 accidentally.

4 Seize, means to take hold suddenly or forcibly.

5 Confine means to limit, restrict or enclose within
6 bounds or keep in any of those for any period of time.

7 Inveigle, means to lure or entice or lead astray.

8 Decoy, means to entice someone in some manner.

9 Kidnap is to remove a person against their will by
10 unlawful force or fraud.

11 Abduct means to carry away by force for illegal
12 purpose.

13 Carry away means to remove.

14 And, again, the State doesn't have to prove all of
15 those things. What they have to prove to you is, if they
16 can, that the defendant did one of them beyond a reasonable
17 doubt. Kidnapping does not have to be for any purpose or
18 personal or monetary gain but may be for any reason
19 whatsoever. So, again, it doesn't have to be for a personal
20 reason or monetary gain, it just could be for any reason,
21 whatsoever.

22 Now, included within the crime of kidnapping is
23 the lesser included crime of attempted kidnapping. You
24 would first consider whether or not the State has proven to
25 you beyond a reasonable doubt that the defendant is guilty

1 of the crime of kidnapping. If you find the State has not
2 done so, then you must consider the lesser included offense
3 of attempted kidnapping.

4 So, now, remembering kidnapping is that the
5 defendant knowingly and unlawfully seized or confined or
6 inveigled or decoyed or kidnapped or abducted or carried
7 away any other person by any means whatsoever without
8 authority of law.

9 So an attempt is an effort to accomplish a crime
10 which does not succeed. An attempt includes a specific
11 intent to do a particular criminal act along with an act
12 falling short of what was intended. The State has to show
13 more than mere preparation and intent. There has to be some
14 overt act committed in the effort to commit the crime.

15 Intent means intending the result which actually
16 occurs, not accidentally or involuntarily. Intent may be
17 shown by acts and conduct of the defendant or other
18 circumstances for which you may naturally and reasonably
19 infer intent.

20 In general, attempt is a specific intent crime.
21 The act constituting the attempt must be done with the
22 intent to commit that particular crime. In the context of
23 an attempt crime, specific intent means the defendant
24 consciously intended the completion of acts comprising the
25 alleged offense.

1 In other words, the completion of such acts is the
2 defendant's purpose. Attempted kidnapping would require the
3 specific intent to kidnap and conduct towards that end.

4 Again, remember as with everything, the State has
5 the burden of proof to prove that to you beyond a reasonable
6 doubt. If you have a reasonable doubt as to whether the
7 defendant is guilty of a greater or a lesser offense, you
8 must resolve that doubt in favor of the defendant. If you
9 find the State has proven to you beyond a reasonable doubt
10 that the defendant is guilty of that lesser offense.

11 That's the law. That's the law you're going to
12 apply to the facts and evidence you heard.

13 Now, to aide you in your recording your verdict,
14 the Court has prepared a verdict form you. Very straight
15 forward. It has the caption of the case, the State of
16 South Carolina versus Jeremiah Dicapua, kidnapping. On the
17 charge of kidnapping we the jury by unanimous consent find
18 the defendant -- there's two choices here, put one before
19 the other, don't assign anything to that, got to put one
20 before the other -- not guilty or guilty. If you find the
21 defendant guilty of kidnapping, you don't proceed to the
22 lesser, you'll check that box Madam Forelady, sign your
23 name, put today's date, knock on the door and let the
24 Bailiff know.

25 If you find the State hadn't proved that to you

1 beyond a reasonable doubt, then you must go to the lesser
2 included offense of attempted kidnapping.

3 Again, the caption of the case, attempted
4 kidnapping. On the charge of attempted kidnapping we the
5 juror by a unanimous consent find the defendant, again, two
6 choices, not guilty or guilty, a place for the Forelady to
7 sign, put today's date, once you've arrived at a verdict,
8 you knock on the door and let the Bailiff know that has been
9 done.

10 Now, I've said "unanimous" a couple of times at
11 the beginning and now. It means exactly what you think it
12 means. It means 12-0. It does not mean 11-1, 10-2, any
13 combination thereof.

14 Madam Forelady, whatever block you check and you
15 sign your name and put today's date on there, you are
16 telling the Court that every single member of the jury
17 agrees that's their verdict. So after the verdict is read
18 by the Clerk's representative and the Clerk's representative
19 asks the jury panel to raise their right hand to affirm that
20 is their verdict all members of the jury would be able to do
21 so.

22 So what I'm going to ask that you do, ladies and
23 gentlemen, I'm going to have the two alternates please stay
24 with us. Madam Forelady, take the remaining jurors to the
25 jury room. Do not -- do not begin your deliberations until

1 the Bailiff hands to you all of the exhibits. Once the
2 Bailiff hands to you all of the exhibits then you may begin
3 your deliberations. All right.

4 Please take the jury to the jury room.

5 The alternates stay with us, please.

6 (WHEREUPON, the jury exited the courtroom at 9:34
7 a.m.)

8 THE COURT: First, as to the alternates, is there
9 any reason that the Court should not excuse the alternates
10 at this time from the State?

11 MS. RICHARDSON: No, Your Honor.

12 THE COURT: From the defense?

13 MR. EDGEWORTH: No, Your Honor.

14 THE COURT: All right. I appreciate your service
15 in this particular case. I will tell you, it happens more
16 frequently than you might think, somebody gets sick or
17 something happens, we have to substitute in an alternate for
18 one of the regular members of the jury. It just didn't so
19 happen in this particular case, because they all seemed
20 ready, willing and able to go forward with their duties.

21 So I'm going to excuse you from your jury service.
22 You have performed a valuable service. I'll tell you, it
23 happens a lot, it just didn't happen in this case. I
24 appreciate it. With that, you are now excused.

25 Thank you, very much.

1 (WHEREUPON, the alternate jurors exited the
2 courtroom at 9:36 a.m.)

3 THE COURT: Just go with the Bailiff.

4 All right. As to the charge from the State, any
5 exceptions, deletions, additions to the charge from the
6 State?

7 MS. RICHARDSON: None from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. EDGEWORTH: None from the defense, Your Honor.

10 THE COURT: All right. Very good.

11 Counsel, one thing first, I appreciate how both
12 the State and the defense presented their matter. Both of
13 you did everything the Court expected of you to represent
14 your particular interest to present the matter properly to
15 the jury and commend both of you for doing that and I thank
16 you.

17 MR. EDGEWORTH: Thank you, Your Honor.

18 MS. RICHARDSON: Thank you.

19 THE COURT: Please come forward and make sure
20 we've got all the proper exhibits to go to the jury room,
21 please.

22 (WHEREUPON, the exhibits were collected and
23 presented to the jury to begin deliberations at 9:37 a.m.)

24 THE COURT: All right. Tell them they may begin
25 their deliberations.

1 All right. We'll be at ease until we are needed.

2 (WHEREUPON, there was a break in the proceedings
3 during deliberations. From 9:38 a.m. until 10:28 a.m.
4 After which the proceedings, resumed as follows.)

5 (WHEREUPON, the jury has a question for the Court
6 10:28 a.m.)

7 THE BAILIFF: All rise.

8 THE COURT: Thank you very much. You may be
9 seated. All right. Counsel, as I indicated to you, the
10 jury had a note to us, and as we've discussed, what I've
11 written to them, is I cannot give them a copy of the charge.
12 However, I will be more than happy to recharge both of them
13 to you in the courtroom, please let me know.

14 So I'm going to have the Court Reporter mark this
15 as a Court's Exhibit. And then the Bailiff will deliver it
16 to the Jury. And just tell them to let us know one way or
17 the other.

18 (WHEREUPON, Court's Exhibit Number 2 was marked
19 for Identification and answer was taken to the jury room.)

20 THE COURT: Did they give you an answer?

21 THE BAILIFF: They are still deliberating on it.

22 THE COURT: On the answer?

23 THE BAILIFF: Yes.

24 THE COURT: All right. Very good.

25 (WHEREUPON, there was a pause in the proceedings.)

1 THE BAILIFF: Your Honor, they would like to come
2 out and hear the law again.

3 THE COURT: All right. Then ask them to come out,
4 please.

5 (WHEREUPON, the jury entered the courtroom at
6 10:44 a.m.)

7 THE COURT: All right. Ladies and gentlemen,
8 based upon your written request, I'm just going to focus on
9 the request and what you asked. At the end, what I'll do,
10 if there's anything else you want me to cover, just let me
11 know.

12 Starting off first, understanding the bottom line
13 is the State has to prove the matter beyond a reasonable
14 doubt and that goes for everything that the Court has
15 charged and will charge you.

16 So, kidnapping. The defendant is charged with the
17 crime of kidnapping and the State has to prove to you beyond
18 a reasonable doubt that the defendant knowingly and
19 unlawfully seized or confined or inveigled or decoyed or
20 kidnapped or abducted or carried away any other person by
21 any means whatsoever without authority of law.

22 To do a thing unlawfully means to do it willfully
23 against the law.

24 Knowingly, means consciously, not accidentally.

25 Seize, means to take hold suddenly or forcibly.

1 Confined, means to limit or restrict or enclose or
2 keep in for any period of time.

3 Inveigle, means to entice or lead astray.

4 Decoy, means to lure or entice someone.

5 Kidnap is to remove a person against their will by
6 unlawful force or fraud.

7 Abduct, means to carry off by force.

8 Carry away, means to remove.

9 The State does not have to prove that the
10 defendant did all of those things in that list I read to
11 you.

12 Instead, if you find beyond a reasonable doubt
13 that the defendant did any of those things, you may find the
14 defendant guilty of kidnapping. Again, it has to be proved
15 do you beyond a reasonable doubt. And, again, kidnapping
16 does not have to be for any personal or monetary gain, but
17 it may be for any reason whatsoever.

18 Now, if you find the State has not proven to you
19 beyond a reasonable doubt that the defendant is guilty of
20 the crime of kidnapping there is included within the crime
21 of kidnapping the lesser included offense of attempted
22 kidnapping.

23 Remember, kidnapping is the defendant knowingly
24 and unlawfully seized or confined or inveigled or decoyed or
25 kidnapped or abducted or carried away another person by any

1 means without authority of law.

2 So an attempt. An attempt is an effort to
3 accomplish the crime which does not succeed. An attempt
4 includes a specific intent to do the particular criminal act
5 along with an act falling short of what was intended. The
6 State has to show more than mere preparation and intent.
7 There has to be some overt act committed in the effort to
8 commit a crime.

9 Intent means intending the result which actually
10 occurs, not accidentally or involuntarily. An intent can be
11 shown by the acts and conduct of the defendant and other
12 circumstances from which you should infer intent.

13 So, in general, attempt is a specific intent
14 crime. The act constituting the attempt must be done with
15 the intent to commit that crime.

16 In the context of an attempt crime, specific
17 intent means the defendant consciously intended to complete
18 the acts comprising the alleged offense. So in other words,
19 the completion of such acts is the defendant's purpose.
20 Attempted kidnapping would require that the specific intent
21 to kidnap and conduct towards that end.

22 If you have a reasonable doubt as to whether the
23 defendant is greater of a lesser -- guilty -- I'm sorry --
24 guilty of a greater or a lesser offense, you have to resolve
25 that doubt in favor of the defendant. If you find the State