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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Ferrell Cothran Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID CROCKETT ROBINSON,

APPELLANT.

APPELLATE CASE NO. 2021-001039

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NOS. 1 (PHOTO OF THE DEFENDANT),
36A (CD AUDIO INTERVIEW), 36B (CD AUDIO IDENTIFICATION), AND
37 (DVD BODY CAM OF HENDERSON)**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
FOR THE 9th JUDICIAL
CIRCUIT
Case no. 2017GS1005309
2017GS1005310

STATE OF SOUTH CAROLINA,

-against-

DAVID CROCKETT ROBINSON,

Defendant.

JURY TRIAL

DATE: September 7, 2021 -

September 9, 2021

HON.: R. FERRELL COTHRAN, JR.

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THE CLERK: If I could have all the jurors stands and raise your right hand. Do you swear or affirm that you shall answer truthfully all the questions asked to you by the Court, so help you God? Please indicate by saying, "I do."

THE JURY: I do.

(Whereupon, the jury was sworn in by the Clerk.)

THE COURT: Good morning, ladies and gentlemen. My name is Ferrell Cothran, I've been assigned by the Chief Justice to hold court in Charleston this week. I'm from Clarendon County, I'm glad to be in Charleston. And I can tell by the look on your faces, you're glad to be here too.

I understand you didn't have much choice in this and you rather be in a lot of other places. We take you away from work, family, hopefully not vacation. But this is a part of being a citizen. We have to do this to keep our judicial system running. And I hope it will not be a bad experience for you. Those of you who are selected, I hope you'll learn something,

1 question by the defendant. The only use we
2 would use if for is impeachment. I think
3 it would be much more efficient to take
4 that up if and when it became an issue.

5 THE COURT: Okay.

6 MR. DAVIS: Defense agrees with
7 that. The other motion we have pretrial is
8 a Biggers Motion, on my client's
9 identification by Ms. Cox.

10 THE COURT: Okay.

11 MR. SIMPSON: And with your
12 permission the State would like to proceed,
13 Your Honor.

14 THE COURT: Yes.

15 MR. SIMPSON: The State calls
16 Jacquelyn Cox.

17 J A C Q U E L Y N C O X, a Witness called on behalf
18 of the State, having been first duly sworn by the
19 Clerk, was examined and testified as follows:

20 THE CLERK: State your full name
21 and spell your last name for the record.

22 THE WITNESS: My name is Jacquelyn
23 Cox. C-O-X is my last name.

24 DIRECT EXAMINATION BY MR. SIMPSON:

25 Q. Good afternoon. I'm going to ask

1 if you could just move that microphone a little
2 closer.

3 A Is that better?

4 Q Yes, thank you. Ms. Cox, if you
5 could just introduce you to the Court. How old are
6 you?

7 A I'm 30.

8 Q Where do you currently live?

9 A New York City.

10 Q How long have you lived in New York
11 City?

12 A About six years now.

13 Q Where are you from originally?

14 A Tennessee.

15 Q All right. What kind of work do
16 you do?

17 A I'm a contract lighting designer
18 for Broadway, theater, opera.

19 Q Sort of related to that answer,
20 what brought you to Charleston for the first time?

21 A I was a contractor for the Palmetto
22 Opera Festival, coming in to do lights.

23 Q Is that what brought you to our
24 city in May of 2017?

25 A That's correct.

1 Q Was that your first visit to
2 Charleston?

3 A That was my first time.

4 Q Tell the judge a little bit about
5 the work you were in town doing in May of 2017.

6 A. I was called to do lighting design
7 for a particular opera, for an international client.
8 And I was pretty much the liaison to get the lights up
9 and running for the show. I was there for the whole
10 month or so.

11 Q. Part of your month and your time
12 here, did you also kind of consider yourself a tourist
13 a little bit?

14 A. Absolutely.

15 Q. Well, we're glad you got to enjoy
16 the city. I'm sorry for the reason you're here today.
17 To that point, can you tell the judge a little bit
18 about your day on May 7 of 2017?

19 A Sure. I had the day off so I
20 thought it would be nice to sightsee. I went down to
21 buy some clothes at this Urban Outfitter store. I
22 took the rest of the day to go get a coffee at a
23 coffee shop on Beaufain. I saw a lake, I thought it
24 would be nice to sit down there, so I walked to this
25 lake, Colonial Lake I believe, and was out there for

1 about 45 minutes or so on the phone. Then I was
2 meeting a friend at a restaurant for lunch, Poogan's
3 Porch, so I decided to head that way and walk down.

4 Q You said head towards Poogan's so,
5 do you remember what street you were walking down?

6 A I was walking on Queen Street.

7 Q Let me just clarify, you mentioned
8 doing some shopping did you make any purchases?

9 A I did. I bought a pair of jeans
10 and a shirt that was like a jersey kind of tank top
11 shirt, from Urban Outfitters, in a pink bag with a
12 receipt.

13 Q You said you made that purchase
14 from where?

15 A Urban Outfitters.

16 Q Can you described the bag to the
17 Court?

18 A Mhm. It's like a pink reusable
19 cloth bag that they put their stuff in, the handles
20 are attached to the bag, the holes in the bag. White
21 letters on it.

22 Q What else did you have on your
23 person as you were walking down Queen Street?

24 A I had a Michael Kors tote bag with
25 my work laptop in it, my wallet with all my credit

1 cards, my identification, room key. I had a makeup
2 bag with some miscellaneous pieces in it, a scarf,
3 sunglasses, chargers, et cetera.

4 Q And that was in a Michael Kors --

5 A Michael Kors tote bag.

6 Q And I believe before I interrupted
7 you, you said that you were on the phone?

8 A Yeah. I was texting and I had my
9 phone right in my face and was texting and not paying
10 attention to my surroundings. And that's when the
11 incident happened.

12 Q Okay. And I may interrupt you from
13 time-to-time because it was a fast incident and I want
14 to make sure we're clear, but please explain to the
15 Court what is the incident that occurred and we'll go
16 step-by-step with that, if you would.

17 A Sure. I was -- I had my bag on my
18 shoulder, and I was walking texting on my phone and I
19 heard a noise over my should, I just assumed somebody
20 was walking behind me and I needed to move, so I
21 stepped over. Then I heard somebody whispering,
22 "don't scream, don't scream." And when I turned to
23 see what was going on this--

24 Q Let me stop you. I'm going to put
25 my mask back on. When you turned around,

1 approximately, is this person close to you?

2 A Mhm.

3 Q Direct to me, if you could, how
4 close. Is it even possible for me to get as close?

5 A. I mean--

6 Q Okay. Would you say we're in close
7 proximity?

8 A Yeah, very.

9 Q If I wasn't wearing a mask, would
10 you have a good view of my face?

11 A Yea.

12 Q On May the 17th, did you get a good
13 view of the person's face as he was encountering you?

14 A I did. The bottom half under the
15 nose area had a mask, like a bandanna that was
16 covering, but I saw everything here and up.

17 Q And you said part of his face was
18 obscured by a bandanna but you had a clear view of
19 everything here and up. And you made a hand motion?

20 A I'm sorry, from the nose up to the
21 head.

22 Q Nose up, okay. What occurred at
23 that point? Bringing you back, you testified he said,
24 "don't scream, don't scream." You turned--

25 A And then this object, a gun, was

1 pushed into my bag, into my rib side and then I was
2 trying to figure out what was going on then--

3 Q That was pretty quick. What was
4 pushed into your side?

5 A A gun was pushed into my side.

6 Q Are you a gun enthusiast?

7 A I'm not a gun enthusiast.

8 Q But do you know what a gun looks
9 like?

10 A I know what a gun looks like. I
11 can't tell you make and model but I do know exactly
12 what a gun looks like.

13 Q Did you look down and see the gun
14 in this case?

15 A It registered that that was
16 something that could kill me.

17 Q Okay. Once it was pushed to your
18 side, where did your attention draw?

19 A To his chest and hands and him,
20 trying to figure out what was happening. My stuff was
21 being pulled off my shoulder and I remember begging
22 him not to take my laptop, because I could get fired
23 from my job, my career was on my laptop and it wasn't
24 worth any money. And that's when he said, excuse my
25 language but he said, "I'll fucking shoot you. Give

1 me your stuff." And he took my stuff.

2 Q So, you were -- we demonstrated
3 that proximity. You had that proximity to this person
4 for enough time to exchange these phrases, this
5 bargaining over what he would take and not?

6 A I mean enough for me to say, yes,
7 please don't take my laptop.

8 Q Seems like a silly question, but
9 was this sort of an incident that -- was this a rare
10 incident in your life?

11 A I had never had this happen to me
12 in my life before.

13 Q Did you have -- were you paying
14 attention to what was going on at this point?

15 A At that point, yes, very much so.

16 Q And I think you mentioned you felt
17 your life was threatened?

18 A Yes.

19 Q Okay. Catching back up. Once you
20 say, please, let me keep my laptop, what did he say
21 again?

22 A Can I say the language?

23 Q Yes.

24 A "I will fucking shoot you."

25 Q Was that good enough for you to

1 stop--

2 A I just let my stuff go. I had my
3 iPhone in this hand, right hand, pushed against my
4 chest, like that. And that's when he took the phone
5 too.

6 Q So, he took the phone, did he take
7 the Michael Kors bag you referred to?

8 A Yes. And in that bag was the pink
9 bag with the clothes I had just bought.

10 Q What happened next?

11 A I remembered the phone was snatched
12 I said, right, you don't get to keep your phone when
13 you're being mugged. Then I thought, how am I going
14 to get help? He ran that way towards some brick
15 buildings and then I remember freaking out. I ran to
16 the middle of the street and started screaming help,
17 and I couldn't get out help. And I remember you yell
18 fire, so I started screaming fire.

19 Then this family in a golf cart0
20 came by, I told them I was mugged and the guy had a
21 gun, and they said they didn't want to stop but they
22 were going to keep driving, get their kids home and
23 call the police. Then a Mustang came by, I was still
24 screaming in the street, and they stopped, pulled me
25 over and took care of me until the cops came.

1 Q So, you were offered assistance and
2 part of that assistance was contacting the police?

3 A Two people did.

4 Q. Okay. Did the police respond?

5 A Instantly, yes. Very fast.

6 Q You would say their response was
7 prompt?

8 A Yes.

9 Q When police arrive, were you able
10 to recount for the police what you recounted for the
11 Court here today?

12 A Mhm, yes, sir.

13 Q You've reviewed some video with the
14 State?

15 A Yes, sir.

16 Q Was that a fair and accurate
17 depiction of your first encounter with the police?

18 A Yes, sir.

19 Q Were you able in that -- was a more
20 formalized interview conducted shortly thereafter?

21 A. Yes.

22 Q In those interactions with the
23 police, were you able to offer them a description of
24 the person who had assaulted you?

25 A Yes.

1 Q Did that description include --
2 we're just going to go through some items. To the
3 best of your recollection, did that description
4 include a description of the assailant's hair?

5 A Yes.

6 Q How did you describe it, do you
7 recall?

8 A I said it wasn't long, it didn't
9 have like dreads or anything, but it wasn't shaved
10 close. It had, like, hair.

11 Q So, not long dreads, not shaved
12 close, but just hair?

13 A No distinguishing hair style.

14 Q Were you able to convey to the
15 officers that were speaking to you a description of
16 the person's ethnicity?

17 A Yes.

18 Q What was that?

19 A African American, black.

20 Q Were you able to describe to the
21 officers a description of the assailant's height?

22 A Yes, I was.

23 Q Okay. And how do you -- give us
24 some context of how you conveyed that to them.

25 A Sure. The first cop that came up

1 to me that took the interview and was asking all the
2 questions, he was trying to help or was asking me, you
3 know, what did the guy look like? And he was his
4 height, the cop's height, they were the same height.

5 Q So, you used the interviewing
6 police officer as a frame of reference for the height?

7 A. Yes.

8 Q Did he ever share with you his
9 height?

10 A He said 5'10".

11 Q Were you able to include a
12 description of the assailant's clothing?

13 A Yes.

14 Q And to the best of your
15 recollection, what was that?

16 A It was a white shirt with black
17 pants.

18 Q Did you describe anything -- you've
19 described the gun, is there any other item that you
20 described the defendant having on his person at the
21 time of this assault?

22 A The bandanna and then there was
23 also the bag. He had his own bag, like a backpack or
24 a duffle bag, like athletic bag that was in his arms.

25 Q So, you had your black bag but he

1 also had his own?

2 A. Yes.

3 Q Now, we've got the height,
4 clothing, ethnicity, hair. Was there any more
5 specialized physical trait that you were able to
6 describe to the police?

7 A There was like scar, dimple, pock
8 on the cheek.

9 Q Okay. And just like today, you
10 struggled for sort of the right word, is that kind of
11 how you conveyed it to them?

12 A Yes. I couldn't tell, like,
13 texture or like pock on the cheeks.

14 Q Okay.

15 A Scarring like.

16 Q Ms. Cox, I'm showing you what's
17 been marked at this point in time for I.D. only, as
18 State's 1, obscuring a portion of it.

19 A Yeah.

20 Q Do you see the individual's cheeks
21 in this photograph?

22 A Mhm, right here.

23 Q And you say -- for the Court, when
24 you say right here, what do you mean?

25 A Like above the nose, kind of under

1 the eye, cheekbone area.

2 Q Is that what you're attempting to
3 describe to the officers on scene that day?

4 A Yeah.

5 Q We said this occurred when you're
6 walking down Queen Street?

7 A That's correct.

8 Q I'll probably sing your prases a
9 lot during this trial, but what idea did you come up,
10 with not the police, but did you come up with promptly
11 upon police responding to your scene?

12 A I knew that I had an iPhone and
13 that you could track it.

14 Q Let me stop you there because I
15 think this is kind of funny. If you know, how did you
16 know that?

17 A I misplace my phone ever so often
18 and once -- I knew that if you turn that app on you
19 can find your phone. I lost my phone on the B26 bus
20 one day and I watched it drive around Brooklyn and had
21 to chase it down. But I remember that if you have
22 that on you can track your phone because I've done it
23 before.

24 Q So, did you suggest that to the
25 police officers?

1 A I did, yes. I told them, I was
2 like, track my phone if it's not turned off you can
3 find it.

4 Q Did you assist the police officers
5 in the proper log in to the track my phone?

6 A Yeah. They gave me another iPhone,
7 I don't know whose it was, and I logged my Apple I.D.
8 into it and was able to find it.

9 Q Were you present as the officer on
10 the radio essentially tracked your phone?

11 A Yes, he was like walking and pacing
12 around me or behind me kind of.

13 Q Shortly thereafter, were you made
14 aware that a person had been detained in this case?

15 A Mhm, I was.

16 Q Were you taken to another location?

17 A I was. But not near by.

18 Q Did it take an hour to get there?

19 A No, it didn't take an hour but it
20 was like we drove.

21 Q Okay, best guess. Or if you're
22 just not comfortable -- there was a second location?

23 A There was absolutely a second
24 location and there was an interstate involved. So, it
25 wasn't like we were driving on the streets downtown.

1 Q Okay. Do you recall anything you
2 can describe about the location?

3 A Yeah, it's actually right by -- I
4 recognized from the Spoleto's where they build their
5 scenery over there. And then there is like a, I
6 guess, where we were was like a construction looking
7 place.

8 Q Did you say factory?

9 A Yes, like a factory it had like a
10 big shoot thing.

11 Q As you are being taken there, did
12 you convey to the officer visa any desires you had to
13 how that was going to go down?

14 A Yeah. They said I had to I.D. him
15 and I thought I would have to, I don't know how this
16 works, but I thought I would have to either go and be
17 in front of him and I.D. him. And I was scared and I
18 asked the officer that was with me if I didn't want to
19 get out of the car, I didn't want to be anywhere near
20 him, like where they could see me.

21 Q Is that because this was fresh in
22 time to the actual incident?

23 A Yeah.

24 Q Again, time is a funny thing but
25 was this, to the best of your recollection, pretty

1 soon after the robbery had occurred?

2 A Yes.

3 Q You were take to this factory,
4 right?

5 A Mhm.

6 Q Did he allow you to stay in the
7 car?

8 A Mhm.

9 Q At some point in time an individual
10 is shown to you, correct?

11 A That's correct.

12 Q Describe for the Court the adequacy
13 your view of this individual.

14 A I could see him.

15 Q Was this -- were you able to
16 identify that individual?

17 A I was.

18 Q And did you convey that to the
19 officer?

20 A I did.

21 MR. SIMPSON: May I approach the
22 witness, Your Honor?

23 THE COURT: Yes.

24 Q. Ms. Cox I'm showing you what's been
25 marked for I.D. only at this time. State's 36. What

1 is that?

2 A That's a CD.

3 Q And you recognize it?

4 A Yeah, it has my initials on it.

5 Q Does this contain the audio
6 recording of the identification that you just
7 described for the judge?

8 A That's correct.

9 Q And is that a fair accurate
10 representation?

11 A That's correct.

12 MR. SIMPSON: Your Honor, at this
13 point in time I would move to mark State's
14 Exhibit 36 as Court's 1, for the purpose of
15 this hearing.

16 THE COURT: Okay.

17 MR. SIMPSON: And publish it for
18 the Court.

19 THE COURT: Any objection?

20 MR. DAVIS: No, Your Honor. Just
21 the audio at the scene? Okay.

22 (Whereupon, audio recording was
23 played.)

24 Q Ms. Cox, was it your intent in that
25 exchange to convey to the officer that that was the

1 person who had robbed you?

2 A That's correct.

3 Q You and the officer use some
4 language like, that's him, like very similar, right?

5 A Mhm.

6 Q And then he asked you, "similar
7 statute and body?" And you said, "similar statute,
8 yes."

9 A Yeah.

10 Q Was it your intent to convey to him
11 that that is the same?

12 A Yes.

13 Q You had already testified that you
14 had already communicated prerecording to the cop that
15 you did not want to get out of that car.

16 A Yeah, I did not want to get out of
17 the car.

18 Q What distinctive feature had you
19 already given the police about the assailant?

20 A That there were like pock, like
21 dimple and pock or scar.

22 Q So, when you say, "I wish I could
23 see his face closer to see if there is a pock mark or
24 something on that cheek, but it looks very similar,"
25 were you asking to get out of the car and see him or

1 was that more aspirational?

2 A I wanted to but there was no way I
3 was about to get out of the car and be anywhere closer
4 than where we were, for my own safety, I didn't feel
5 comfortable.

6 Q When you described to the police
7 the irregularities in the skin, pock mark, scarring,
8 what have you were you trying to described what you
9 already I.D. was in State's 1, for I.D.?

10 A That's correct.

11 Q But you weren't close enough at the
12 I.D. to see that?

13 A I saw texture but I didn't see
14 the --

15 Q. Okay. But nevertheless, it was
16 your intent as it seems it was interpreted by the
17 officer, to convey that this is the person?

18 A Yes, that that was the person.

19 Q At my point in time on the drive
20 after, on the drive back, did you say, hey, I'm really
21 unsure about that?

22 A No.

23 Q Okay. You mentioned some objects
24 that were taken from you, one of them was your phone.
25 Was your phone returned to you that day?

1 A It was returned.

2 Q Was the pink Urban Outfitter -- was
3 the Urban Outfitter merchandise returned?

4 A That was, correct.

5 Q Did you get your -- eventually,
6 were you able to get your laptop?

7 A I got my laptop back.

8 Q And again, the phone was returned
9 the same day?

10 A No, I think the phone and the
11 belongings didn't make it back the same day, they kind
12 of staggered in.

13 Q But these were returned to you?

14 A Everything was returned.

15 Q After this?

16 A That's correct.

17 MR. SIMPSON: Court's indulgence
18 for one moment.

19 Q When you were given a view of the
20 person that they had detained, would you say that your
21 memory of the incident was still fresh?

22 A Very much so.

23 Q Was this an incident that, to the
24 best is humanly possible in a situation like this,
25 that you gave a high degree of attention to?

1 A Absolutely.

2 MR. SIMPSON: Your Honor, I have
3 nothing further of this witness.

4 THE COURT: Okay.

5 MR. DAVIS: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. DAVIS:

7 Q. You mentioned during direct
8 examination that some people dropped by to check on
9 you on the street.

10 A That's correct.

11 Q Do you remember one lady staying
12 with you to call 9-1-1, she was right nearby?

13 A Yeah, there was a lady and a man.

14 Q Do you happen to remember if her
15 name was Theresa?

16 A I don't remember their names, I'm
17 sorry.

18 Q That's okay. But do you remember
19 conveying through her to whoever she was on the phone
20 with a description, a general description?

21 A Of the -- of him?

22 Q Yes.

23 A I don't remember.

24 Q If you heard the 9-1-1 recording of
25 that, would that refresh your memory?

1 A Sorry, yes.

2 MR. SIMPSON: Your Honor, I just
3 want to make it clear because I don't
4 recall. Is this is 9-1-1 recording of her
5 own voice or another person?

6 MR. DAVIS: She is in the
7 background, Your Honor, she is relaying the
8 description.

9 MR. SIMPSON: Okay.

10 MR. DAVIS: I apologize, Your
11 Honor, there were two calls that came in,
12 I'm going to move this over to 6:48 when
13 Ms. Cox is on. This is the first call,
14 forgive me. 6 minutes 28 seconds. May I
15 approach the witness?

16 THE COURT: Okay.

17 (Whereupon, audio recording was
18 played.)

19 Q I know it's not you on the
20 phonecall, you're in the background. Were you able to
21 hear your voice in the background?

22 A A little bit.

23 Q The information, black male, that
24 would have been provided by you? I need you to speak.

25 A That's correct, I'm so sorry, yes.

1 Q That's okay. The black bandanna
2 around the face, that would have been provided by you?

3 A That's correct.

4 Q That the person said, "don't
5 scream."

6 A That's correct.

7 Q White shirt?

8 A That's correct.

9 Q Ran away with the gun?

10 A That's correct.

11 Q Now, Mr. Simpson talked about
12 interaction with law enforcement after they arrived
13 quickly. The gentleman -- I want to take about your
14 interaction with the gentleman that tracked, okay,
15 that tracked the phone.

16 A Okay.

17 Q 5'10", white guy?

18 A. That's correct.

19 Q. Bald head?

20 A That's correct.

21 Q Correct?

22 A That's correct.

23 Q Okay. You told him that the robber
24 said, "don't scream, don't scream," put a gun, ran
25 away between the buildings?

1 A Yes, that's correct.

2 Q Kinda down the sidewalk there
3 between the buildings.

4 A Yes, towards those buildings, the
5 red brick ones.

6 Q He's the one that helped you with
7 the height, that the suspect was about his height?

8 A Yeah.

9 Q Mr. Simpson already gone through
10 the individual description, I won't repeat that for
11 the Court's purposes. But what I do want to focus on
12 next that he touched on a little bit in direct
13 examination, once you gave Officer Henderson the
14 information to track your phone and put it into his
15 phone, you said, I believe he said milling about, kind
16 of pacing up and down the sidewalk?

17 A That's correct.

18 Q You're either standing or for
19 awhile there you were seated on the sidewalk, right?

20 A I sat.

21 Q Do you recall hearing what he told
22 police where the phone was hitting? Do you remember
23 that?

24 A Like the pings of where it was
25 going?

1 Q Yes?

2 A. I remember him telling them, like,
3 there's a ping, there's a ping, but yeah.

4 Q Do you also remember hearing the
5 radio traffic back through his radio that he was
6 hearing?

7 A I remember hearing chatter but I
8 don't know what they said.

9 Q Okay. Again, I'll try to help you
10 a little bit I appreciate you doing what you can in
11 remembering today. If you saw and heard the recording
12 of his body worn camera, would that assist you?

13 A Yes.

14 Q Thank you.

15 MR. SIMPSON: Your Honor, I'm going
16 to object. I think and perhaps she can
17 clarify, I don't think the foundation has
18 been layed. I think she said at the time
19 she did not hear the radio communication.
20 But now Mr. Davis is saying, well, can I
21 play them for you now? I don't know that
22 that's really relevant.

23 THE COURT: She didn't hear them at
24 the time. She said she didn't hear them.
25 You didn't ask whether or not you heard

1 them she just can't remember, right?

2 Q. We'll deal with two different
3 issues here, okay. Did you hear and I'll use the
4 word -- I like the word you used. Did you hear
5 Officer Henderson calling in places that were pinged,
6 he is saying it out loud?

7 A Yes, he's saying where those places
8 are.

9 Q Secondarily, did you hear any
10 radio, the incoming other officers, through his radio.
11 Were you able to hear that?

12 A I heard chatter, but I don't know
13 what they were saying. And I only know that because I
14 saw it on that video, the video of the body camera.

15 Q Do you think if you heard that
16 chatter you could remember whether you heard it at the
17 time or not?

18 A It's worth a shot.

19 MR. DAVIS: And, Your Honor, simply
20 I would say, you know, it's an in camera
21 hearing. If you determine that the jury
22 shouldn't hear this then they won't.

23 THE COURT: Okay.

24 MR. DAVIS: But I will be clear for
25 everyone, I am mostly concerned about

1 Henderson's calling out of locations, which
2 he already mentioned to me about the
3 pinning.

4 Let me queue it up to the location.
5 This is on what I've labeled as Henderson's
6 arrival on the scene. It's at 5:34 is when
7 I intend to start. Your Honor, I'll look
8 to direction from you and the court
9 reporter when providing this to them.

10 THE COURT: Okay.

11 MR. DAVIS: I'm not going to ask
12 you any questions about this first little
13 bit. It's him getting his phone from the
14 car, Your Honor.

15 Q. Okay. This is at 5:33 and I'll
16 move that back slightly. First of all, I got a freeze
17 frame. Do you recognize the phone?

18 A Yeah. Do I recognize the phone?

19 Q Well, do you --

20 A That is my foot and leg. And that
21 is the phone that I put my google address into.

22 Q Awesome, thank you. I'm going to
23 play it now.

24 (Whereupon, a video is played.)

25 Q I'm stopping at 8:33. EMS is

1 walking up to you.

2 A That's correct.

3 Q You didn't sustain any injuries,
4 did you?

5 A I was not injured.

6 Q You told EMS you didn't need help?

7 A. I did not need help.

8 Q But they come to talk to you?

9 A That's correct.

10 Q You're talking to them, your focus
11 is on them?

12 A That's correct.

13 Q I'm only going to focus on that
14 portion I played you.

15 A Okay.

16 Q And again, there are two different
17 things that I want the judge to understand as to the
18 call outs by Officer Henderson, who is holding your
19 phone, him saying street addresses where the phone is
20 pinning. Do you remember hearing those?

21 A I remember him saying street
22 addressed but they did not mean anything to me because
23 I'm not from here.

24 Q. Certainly, I understand. Is there
25 anything about that recording that does not match with

1 your memory of the way he called out the pinning of
2 the phone?

3 A No.

4 Q Secondly, you hear other
5 officers, other people responding back on the phone.
6 When you heard any of that today does that refresh
7 your memory of hearing any of that at the time?

8 A It doesn't, in honesty, it doesn't.
9 What I remember is people asking if I was okay. Like,
10 there was the couple that stopped and other folks, and
11 I just remember I was very upset and mad but I also
12 felt bad that everybody was stopping what they were
13 doing and helping me. I heard noises but they didn't
14 mean anything to me, I guess.

15 Q Right, fair enough. Thank you for
16 explaining that because we couldn't tell by the
17 recordings what you're able to hear. During that
18 portion I played, certainly he was pacing, but he was
19 generally near those rod iron gate and the black male
20 officer was there, that was in the vicinity of you,
21 correct?

22 A That's correct.

23 MR. DAVIS: May I approach the
24 witness again, Your Honor?

25 THE COURT: Yes.

1 Q Ms. Cox, it's a continuation of the
2 same video. And again similarly, I want to know
3 simply for the judge, whether you heard and remembered
4 this or not. I paused it at 9:51. Is that you seated
5 on the sidewalk?

6 A That's correct.

7 Q And a black male officer besides
8 you?

9 A That's correct.

10 Q I'm going to play from 9:51 just a
11 few seconds and you tell me if you recall, because
12 this is still Henderson's body camera.

13 (Whereupon, a video is played.)

14 Q I'm going to pause it there. There
15 is background chatter again, but Officer Henderson
16 said, "we got him." Do you recall hearing that?

17 A It's hard now that I've heard that.

18 THE COURT: What was your response?

19 A I said it's hard to remember now
20 that I've heard -- listening to the camera.

21 THE COURT: Okay.

22 Q If you know one way or another, let
23 us know. If you're unsure--

24 A I'm unsure. I can't recall if I'm
25 now hearing in hindsight now that I'm listening to

1 this and seeing the camera and seeing myself, but I
2 don't know.

3 Q Okay.

4 A I'm sorry.

5 Q Is it fair to say that EMS left,
6 you were not talking with anyone else, like in the
7 previous clip?

8 A Oh, I was -- yeah, I was just
9 sitting there on the ground.

10 Q Okay. Now Mr. Simpson then talked
11 to you about an officer that you sat in the car with
12 and gave a statement to. Do you recall that?

13 A That's correct, yes.

14 Q And that's when you got into some
15 more detail with him about the story, kind of like you
16 shared with the judge today. You talked about going
17 to the coffee shop first.

18 A. Mhm.

19 Q And then walking down to Colonial
20 Lake, hanging out and on your way to meet friends at
21 Poogan's Porch.

22 A. Yeah.

23 Q. During that conversation you
24 reviewed again the description of the robber, correct?

25 A That's correct.

1 Q Do you recall while talking -- and
2 that was Detective Harvill. Do you recall while
3 talking to Detective Harvill indicating that the
4 robber at one point said, "I'll talking shoot you."
5 You relayed to that him, right?

6 A To the detective?

7 Q Yes.

8 A Yes.

9 Q You told the detective that the
10 robber had a black bag, you couldn't quite distinguish
11 the gun from it.

12 A I knew there was a gun and I knew
13 there was a black bag. I think -- I thought those two
14 things I made very clear.

15 Q But you don't recall being what
16 seemed to be a little confused in talking to Detective
17 Harvill about that?

18 A Yeah, he was asking questions that
19 we're like what it was, what kind of gun was it? And
20 I couldn't tell him what kind of gun it was. But I
21 was trying to convey that I thought that the gun had
22 come out of that bag that the guy was carrying.

23 Q And just so that we all know and
24 the judge will know, you had your bag over your
25 shoulder, your left shoulder?

1 A My left shoulder.

2 Q And it's the ribs on the left side
3 where --

4 A. Yeah, where my bag is. Like if my
5 bag is on my shoulder it would be here.

6 Q So, was it underneath lower ribs?

7 A I mean, here, like my ribs.

8 Q If you could, you can stand up,
9 just show the judge where on your--

10 A Right here. My purse is behind my
11 shoulder.

12 Q Okay, thank you, ma'am. You
13 originally told Detective Harvill that the robber was
14 a little taller than you, that you looked him straight
15 in the face but a little bit up. Do you remember
16 saying that?

17 A To the detective, yes.

18 Q But then right after that you said
19 about an officer on the scene, was 5'10" and you
20 compared him to that officer's height.

21 A Yeah.

22 Q Do you remember Detective Harvill
23 suggesting 5'6" or 5'8"?

24 A Yeah, he suggested a different
25 height.

1 Q Again, race and gender were
2 correct. Black male, black guy, right?

3 A That's correct.

4 Q. When you were describing the black
5 bandanna below the nose around the face, do you
6 remember telling Detective Harvill that it's hard to
7 remember, that part is fuzzy?

8 A Yeah, I do remember saying that.

9 Q And in fact you said it might have
10 been red, referring to the mask or the bandanna?

11 A That's correct.

12 Q But then you said, "for sure white
13 t-shirt and black pants."

14 A That's is correct, I said that.

15 Q And the other thing you were pretty
16 sure about, you said, I do remember the right side of
17 his mouth had a dimple, pock, scar, again trying to
18 figure the word for it. Do you recall that?

19 A I do.

20 Q. In fact you said you stared at the
21 thing on his cheek?

22 A Yeah.

23 Q Towards the end of that interview
24 with Detective Harvill in the car, do you remember
25 telling him, "whatever was on his cheek, I don't know

1 why but that's what I stared at."

2 A I don't remember saying that but
3 that is -- whatever it is was something that just
4 stuck in my head.

5 Q Sure. That interview was recorded.
6 Would being able to hear that last part refresh your
7 memory as to that?

8 A Sure.

9 Q All right. This is an audio
10 recording of that interview and I've moved ahead to
11 17:50. It should come up in about eight seconds. So,
12 it's an audio, there is nothing to look at. But I'll
13 play this.

14 (Whereupon, audio recording was
15 played.)

16 Q Do you remember now if that was
17 your quote to him about the mark?

18 A That's my voice, yeah, that's
19 correct.

20 Q Thank you. And it's my
21 understanding that you stayed in that officer's car
22 and were driven to the location industrial location,
23 is that correct?

24 A That's correct.

25 Q I need to veer off for just one

1 second if you'll let me. If you'll recall there was
2 another little more heavyset white gentleman, very
3 thin of hair too. He at one point walked you across
4 the street near where it happened but away from some
5 folks who were milling in the area. Do you remember
6 talking to that officer?

7 A I don't.

8 Q Okay.

9 A I mean, I remember a gentleman
10 moving me and I know there is -- at some point a water
11 bottle was involved.

12 Q Correct. He didn't actually give
13 it but he was offering water to you. And he would
14 have been the officer that introduced you to Detective
15 Harvill walking from his car. Do you remember that
16 interaction?

17 A Yeah.

18 Q I'm going to ask you a few
19 questions, if you don't recall that's fine. But I'm
20 going to ask you a few questions about your
21 interaction with him.

22 Well let me ask you this. I'll try
23 to speed it up, Judge. If you saw his body worn cam
24 focused at you, would you recognize your voice, would
25 you recognize the interaction?

1 A Yeah, I'd recognize my voice.

2 Q Do you recall that this was after
3 the tracking had occurred?

4 A He was walking to the detective's
5 car and that was after the tracking had occurred.

6 MR. DAVIS: May I approach the
7 witness, Your Honor?

8 THE COURT: Yes, sir.

9 MR. DAVIS: For the Court, this
10 is -- I've labeled it Sergeant Adam's body
11 worn camera, Queen Street. I've forward
12 ahead to 4:52, it's a freeze frame.

13 Q. Do you recognize that person?

14 A That is me.

15 Q Okay. So, I believe at 5:09, so we
16 got a few seconds here, but are you standing in front
17 of the rod iron gate?

18 A I am in front of a rod iron gate,
19 yes.

20 Q And that's where on the previous
21 one Officer Henderson --

22 A Where I was sitting.

23 Q. Correct. So, here in a moment to
24 orient you to what I'm talking about. You're going to
25 walk across the street. So, I'm going to start it

1 here but what I'm concerned about it should start at
2 5:09, and so the encounter is down here.

3 (Whereupon, a video was played.)

4 Q And then you go on and describe
5 some of the items. But do you remember that officer,
6 I don't expect you to remember the name, do you
7 remember him explaining what was going on to you?

8 A I didn't until I saw that video.

9 Q Okay. But to be very clear that
10 happened?

11 A Yeah, it's me, yes.

12 Q That officer, to your recollection,
13 that officer is the one that introduced you to the
14 detective that you sat in the car with?

15 A He walked me over there.

16 Q. And we already established you're
17 in that car until you go up to the industrial area to
18 do the identification, correct?

19 A Correct.

20 Q Mr. Simpson already ran through
21 that, what was said and played a recording what was
22 said of the incident location. I appreciate you
23 letting us know there was a little bit of conversation
24 on the ride up there between you and the detective,
25 you didn't want to get out of the car, correct?

1 A That's correct, I did not want to
2 get out of the car and I told the detective.

3 Q For the Judge's purposes, did the
4 detective on that drive make any comments to you about
5 the identification that was going to happen?

6 A Not that I can recall. They said
7 that -- I do believe that they said I was going to
8 have to make an identification or they found somebody
9 and, you know, we need to look at him.

10 Q Similar to what -- was there
11 anything similar to what I just played by Sergeant
12 Adams, kind of a run down of what had happened or
13 anything like that?

14 A Not that I can recall.

15 Q Was there any explanation given
16 about what would happen if you didn't identify the
17 person?

18 A Not that I can recall. I mean, I
19 know I was -- it was a safe space for me to say yes or
20 no.

21 Q Was there any explanation given to
22 you if you did identify the person of what was going
23 to happen?

24 A Not that I can recall. I know I
25 asked questions, but I can't remember the questions I

1 was asking.

2 Q Okay. Because we don't have a
3 recording of that, was it a rather quiet ride or a
4 chatty ride?

5 A For me it was him letting me just
6 get all my nerves and my fear and my scare out,
7 really. I remember he made me laugh because I lived
8 in Brooklyn and I've been a waitress and wait tables
9 at 2:00 in the morning and I've never had any trouble
10 there, but my first time in Charleston this happens to
11 me. And he made me feel comfortable and we laughed
12 about those things as far as getting my mind off of
13 what was happening.

14 Q Mostly you talking?

15 A I would imagine so, I'm chatty when
16 I'm stressed.

17 Q Okay. I do have to ask you a
18 little bit about your comments at the industrial area.
19 You were sitting in a car kind of facing the road,
20 there were some cinder blocks that you couldn't see,
21 kind of making a wall on your left, correct?

22 A That's correct.

23 Q At some point, do you remember an
24 officer with a yellow top shirt walked out with
25 another individual, do you recall that?

1	A	Like -- yes, I do.

2 Q And the person was handcuffed?

3 A I don't know if I could say that,
4 but I didn't see like the front of the hands, I didn't
5 see them.

6 Q Oh, okay. So, the person hands
7 were behind them?

8	A	That's correct.

9 Q And in fact I mean, it was David,
10 they brought him around for you to look at, right?

11	A	That's correct.

12 Q There was an officer that had a
13 recording from the opposite view of you, kind of
14 behind the officer and David. If you saw that can you
15 tell the judge whether that's comports with what you
16 recall?

17	A	If I saw the other person's camera?

18	Q	Mhm.

19 A Okay. You're asking me, if I was
20 where I was? What is the question? I'm sorry.

21 Q Basically, I believe I'm going to
22 set the scene, show a video of the identification, but
23 it's a body worn camera from behind Officer Collins
24 and David.

25 MR. DAVIS: Your Honor, may I

1 approach?

2 THE COURT: Okay.

3 MR. DAVIS: This is show-up I.D.
4 video. It's only 55 seconds long, I'm just
5 going to play the whole video.

6 (Whereupon, a video was played.)

7 Q They're walking back to the police
8 car now, correct, where I stopped it at 50 seconds in?

9 A That is correct.

10 Q Does that look like the scene
11 that -- where you were?

12 A Mhm.

13 Q Yes?

14 A That's correct.

15 Q So, there was an officer with a
16 blue bottom, yellow top police shirt walking with
17 David, correct?

18 A In that video, that's correct.

19 Q Yes. When he was stood still is
20 when Detective Harvill would have been having the
21 conversation that Mr. Simpson played for you earlier,
22 correct?

23 A That's correct.

24 Q Your first comment was, "yeah."
25 And as Detective Harvill interrupts and asks, "is that

1 him?" You say, "that looks very similar, yes."

2 A That's correct.

3 Q Then he again interrupts and says,
4 "that's him?" And to that you respond, "I wish I could
5 see his face closer to see if there was a pock mark or
6 something on that cheek, but it looks similar."

7 A That's correct.

8 Q Okay. Describe what he's wearing,
9 you do that. He asked you about stature, you say,
10 "similar statute, yeah." Hair, "about the same,
11 yeah." And then he says "affirmative." And that was
12 about the end of it, correct?

13 A That's correct.

14 Q If they had offered to show you a
15 photograph, like Mr. Simpson did earlier, would you
16 have been amenable to that?

17 A In that moment?

18 Q At that moment or soon thereafter?

19 A Are you asking if I would have been
20 able to identify from that?

21 Q Would you have been willing to look
22 at a photograph?

23 A I would have been willing to, yes.

24 Q And do you think having a picture
25 like Mr. Simpson showed you today would have made you

1 more or less certain of your identification?

2 A If I was just shown just that, I am
3 not sure. I think I would have to see the whole
4 thing.

5 Q In addition to that. In addition
6 at the show-up at the industrial area where we just
7 played the video of, being able to -- I wish I could
8 see his face closer without getting out of the car,
9 without being brought closer to you, but if there was
10 another way they could have done that, shown you his
11 face, would that have helped you be more or less
12 certain about your identification?

13 A I mean, I was certain when I saw
14 him. But, yes, I mean I would imagine, yes, if they
15 walked up and took a picture and brought it back to
16 me, sure.

17 MR. DAVIS: May I approach the
18 witness?

19 THE COURT: Yes.

20 Q I'm going to show you what's marked
21 State's Exhibit number 1, you've already seen it. And
22 putting another page underneath the nose. Would that
23 have been roughly where the mask was, where this white
24 piece of paper is covering?

25 A If not a little under the nostril.

1 Q Okay. A little more underneath?

2 A Higher up.

3 Q Oh, a little higher up, okay. All
4 right now, can you describe to the judge what it is
5 that you see above where the mask would be?

6 A Like distinguishing features?

7 Q Yes.

8 A I see the nose, I see like dots or
9 dimples, texture, eyes, his eyebrows, forehead.

10 Q Okay. Given the shortness in time
11 between the robbery and when you're up in the
12 industrial area--

13 A Mhm.

14 Q -- and given the conversations with
15 Henderson, who calls out the pings, okay, that officer
16 while you're sitting there. And given the summary of
17 what's happened that Sergeant Adams give you, did you
18 feel confident the police had the suspect caught?

19 A Based on them taking me to go I.D.
20 somebody? I would feel confident that that would be a
21 suspect.

22 MR. DAVIS: Thank you, Ms. Cox. I
23 don't have any other questions.

24 THE WITNESS: Okay.

25 MR. SIMPSON: Your Honor, may I?

1 THE COURT: Yes.

2 REDIRECT EXAMINATION BY MR. SIMPSON:

3 Q Ms. Cox, when this armed robbery
4 occurred, did you get a good change to view the person
5 who was robbing you?

6 A I did.

7 Q Was that view in close proximity?

8 A Very close.

9 Q Were you paying attention?

10 A Yes.

11 Q Did you offer a description of that
12 person to the police?

13 A I did.

14 Q And I believe Mr. Davis questioned
15 or elicited that you had made a comment one time that
16 you were focused on the distinguishing feature on the
17 cheeks?

18 A. Yeah.

19 Q. But were you never the less still
20 able to give other descriptions of the defendant?

21 A Yeah.

22 Q And when you were taken to the
23 factory you gave a positive I.D.?

24 A I did.

25 Q You testified both on direct and

1 cross that you were confident in that I.D.?

2 A Yes.

3 Q And I believe, I'll rephrase the
4 question that Mr. Davis asked you. Were you confident
5 in that I.D. because of your clear opportunity to view
6 the person that robbed you?

7 A That is correct.

8 Q Did the chatter on the radio or any
9 other detail that was, you know, going on in the
10 background, do you feel like that influenced your
11 confident I.D.?

12 A I don't.

13 Q Did you base your I.D. on your view
14 of the person that robbed you?

15 A That is correct.

16 Q Again, whose idea was it to track
17 your phone?

18 A It was mine.

19 Q And in conveying that idea to the
20 police was it your hope that they would use that tool
21 to locate a person?

22 A Absolutely.

23 Q So, did anything stated later by
24 the police, in your mind, unduly impact your
25 identification of this defendant?

25 THE COURT: You don't get a second

1 crack at it.

2 MR. DAVIS: I should get to cross
3 on the redirect, Your Honor.

4 THE COURT: No, he goes first, you
5 go second then that's it. Under the rules
6 that I've always practiced you don't get a
7 second crack. Besides, I got a jury
8 sitting out there. Do we got any other
9 witnesses?

10 MR. SIMPSON: Your Honor, I'd like
11 to briefly call one more witness.

12 THE COURT: All right. You better
13 hurry.

14 MR. SIMPSON: I will, thank you.
15 State calls Detective Harvill.

16 J O S E P H H A R V I L L, a Witness called on
17 behalf of the State, having been first duly sworn by
18 the Clerk, was examined and testified as follows:

19 THE CLERK: Please speak loud and
20 clear into the mic and state you full name
21 and spell your last name for the record.

22 THE WITNESS: Good afternoon. I'm
23 Sergeant Joseph Harvill, H-A-R-V-I-L-L.

24 DIRECT EXAMINATION BY MR. SIMPSON:

25 Q Detective, good afternoon.

1 A How are you sir?

2 Q You understand we're here in a
3 pretrial hearing and do you understand the issue we're
4 discussing today in the pretrial hearing?

5 A Yes, sir.

6 Q What agency do you work for?

7 A City of Charleston Police
8 Department.

9 Q Did you work in that capacity in
10 May of 2017?

11 A Yes, sir, I did.

12 Q Were you, for a time, the lead
13 investigator in the case we're here for today?

14 A Yes, sir, I was.

15 Q Describe for the Court, briefly how
16 you became involved and what you did.

17 A So, that day it was a Sunday, May
18 7, about 6:30 in the afternoon. I happened to be the
19 on-call detective for weekend and night duty at that
20 time. And we received a call at [REDACTED] Queen Street for
21 an armed robbery that had taken place. Myself and the
22 oncoming detective at the time responded at that
23 location. Met with the victim, Miss Jacquelyn Cox.

24 There was already officers there on
25 scene, they were working through the details of the

1 incident but it was determined that her cellphone was
2 taken, she had a track my iPhone app. And while on
3 scene officers were relaying the information,
4 coordinating units were able to track that phone, and
5 then possible I.D. of vehicle involved. Vehicle stop
6 was conducted up off area 26, at which time a
7 passenger, in this case the defendant, exited the
8 vehicle left and was later detained.

9 Q And the location where the
10 defendant was detained, was that sort of consistent
11 with the direction of the passenger that fled the car?

12 A Yes, sir.

13 Q Was the track my iPhone app further
14 utilized in confirming that the person that fled the
15 car was located, generally speaking, at that location
16 that the defendant was detained?

17 A Yes, sir.

18 Q In your capacity as lead
19 investigator in this case, were you later made aware
20 that items of Ms. Cox were located in the vehicle that
21 the defendant fled from?

22 A Yes, sir.

23 Q And were you later made aware of
24 finger prints of the defendant's, found inside the
25 vehicle?

1 A Yes, sir.

2 Q You said you first arrived at the
3 crime scene, correct?

4 A Yes, sir.

5 Q Did you speak with Ms. Cox?

6 A I did.

7 Q Did you conduct an interview?

8 A Yes, sir, I did.

9 Q Did she convey to you a description
10 of the suspect?

11 A Yes, sir.

12 Q And what were some of the points,
13 major points of that description?

14 A Possibly a face covering or a
15 bandanna of some sort worn on the face. And just ton
16 consult my notes, it was a white shirt and black
17 pants. More specific key detail in the description
18 was, if I may I apologize for a moment consulting my
19 notes here, shorter hair, not particularly cut or
20 styled just shorter in nature and specifically upon
21 his cheeks, kind of pock marks, acne scars or
22 something of that nature.

23 MR. SIMPSON: May I approach the
24 court reporter, Your Honor?

25 THE COURT: Yes.

1 Q. Showing you what's going to be
2 Marked as Court's 2, a photograph. Do you recognize
3 that photograph?

4 A I do, yes, sir.

5 Q In your experience with law
6 enforcement, is a person that's arrested and charged
7 photographed after arrested?

8 A Yes, sir.

9 Q And who is that photograph of?

10 A That is Mr. David Crockett
11 Robinson.

12 Q. Is that a fair and accurate
13 representation of how the defendant appeared close in
14 proximity of time to his arrest on this day?

15 A Yes.

16 Q Do you notice anything that could
17 be described as pock marks or scarring on the cheeks
18 in that photograph?

19 A Yes, sir. Specifically, on his
20 left side cheek you can definitely see a prominence a
21 of some kind of scarring.

22 Q Okay, thank you.

23 MR. SIMPSON: Your Honor, again,
24 this is going to be marked Court's 2, for
25 your consideration.

1 THE COURT: Okay.

2 Q After you are given an opportunity
3 to match the victim's description with the person
4 apprehended, did you find that those were consistent?

5 A Yes, sir.

6 Q Did you find that in her story to
7 you, she got a good opportunity to view this person?

8 A Yes, sir. Very detailed, very
9 clear and concise.

10 Q Did you personally entertain any
11 doubts as to the confidence in her identification of
12 this person at the factory that day?

13 A No, sir.

14 Q Had she conveyed anything to you in
15 regard to her desire to be seen by or otherwise
16 confront this defendant?

17 A No, sir. In a sense, you know,
18 more of trying to think of the perfect way to phrase
19 it, but maintain safety and security of the victim in
20 this case to actually go out of the way to not be
21 seen, per say.

22 Q So, you wouldn't typically walk a
23 crime victim right up to the person that may have
24 just--

25 A No, no.

1 Q I want to ask you, and then we'll
2 be concluded here. Are you familiar with a photo
3 array procedural method in doing an identification?

4 A Yes, sir. A photo line up, six
5 pack.

6 Q What are some of the factors that
7 would lead you to do, you know, what we would call
8 show-up as opposed to photo array and how did that
9 play in your decision in this case, specifically?

10 A So, a show-up is more advantageous,
11 particularly when you have a fairly confident victim
12 or witness who got a fresh look at a subject with it
13 fresh on their mind, and we think here how freshly
14 committed is the crime. So, yes.

15 Q So, you -- correct me if I'm wrong,
16 I believe what you're saying is, you don't want to
17 miss that opportunity of a fresh memory?

18 A Correct. That window of
19 opportunity.

20 Q Okay.

21 A. Yes, sir.

22 MR. SIMPSON: Your Honor, I have no
23 further questions.

24 THE COURT: Okay.

25 CROSS-EXAMINATION BY MR. DAVIS:

1 Q Detective Harvill, let's get a few
2 basics out of the way. You were the lead detective in
3 this case?

4 A Yes, sir, that night in question,
5 yes.

6 Q So, you had certain
7 responsibilities as lead detective, some of the
8 miscellaneous ones were getting the car towed to the
9 CPD garage for processing.

10 A Yes, would have been at our crime
11 scene unit.

12 Q Making sure the two suspects that
13 were apprehended at the car were taken to the CPD
14 headquarters for interviewing later?

15 A Yes, sir.

16 Q You did assign Detective
17 Villeneuve, the second detective, to talk to witnesses
18 on the scene at [REDACTED] Queen?

19 A Yes, sir, and I believe, I'd have
20 to consult my report here as to witnesses name and
21 information, but he did handle a witness.

22 Q You primarily or you did solely
23 focus on Ms. Cox until the arrests were made?

24 A There on scene, yes, sir.

25 Q You and Detective Villeneuve would

1 have completed reports on this case?

2 A Yes, sir.

3 Q. You would have also reviewed
4 reports from other responding officers?

5 A At that time, at that night, no,
6 sir.

7 Q No, since then.

8 A Yes, sir.

9 Q And you would do that to fully
10 understand the situation?

11 A Yes, sir.

12 Q To be prepared to testify today?

13 A Yes, sir.

14 Q. And to make sure you're accurately
15 charging anyone that was arrested?

16 A Yes, sir.

17 Q When you met with Ms. Cox, you met
18 with her in your patrol car, which is an unmarked car,
19 on Queen Street, correct?

20 A Yes, sir.

21 Q And she described the incident that
22 happened to her?

23 A Yes, sir.

24 Q And she described the suspect,
25 including clothing?

1 A Yes, sir.

2 Q You questioned her a little bit
3 about the situation to get all that information?

4 A Yes, sir.

5 Q This was on the sidewalk right
6 beside Robert Mills Manor, correct?

7 A In the near vicinity, yes, sir.

8 Q That's government housing, low
9 income housing?

10 A From my understanding, yes, sir?

11 Q. It's primarily a minority, black?

12 A I believe so, yes.

13 Q In fact, you specifically knew that
14 you were sitting beside building 16?

15 A Yes, sir.

16 Q In addition to you taking Ms. Cox
17 up to the industrial area and doing a show-up line up
18 that we're talking about, you know Detective
19 Villeneuve attempted a second show-up line up at the
20 same location?

21 A That is correct, yes, sir.

22 Q. And that person could not
23 positively identify David?

24 A That is also correct, sir.

25 Q That is a teenager by the name of

1 Sierra Manigault?

2 A Just to consult my notes, yes, sir.

3 Q Despite the fact that generally
4 Ms. Manigault had given the same description as Ms.
5 Cox, that's why she was taken up there, correct?

6 A Yes, sir.

7 Q In fact, she saw the robber's face
8 and that's why she was taken versus for example
9 Mr. Tony Lewis who Detective Villeneuve also
10 interviewed.

11 A Yes, sir.

12 Q He wasn't taken to do a show-up,
13 Mr. Lewis?

14 A No, sir.

15 Q You say that a show-up is more of
16 advantageous because it's fresh and you don't want to
17 miss the opportunity, correct?

18 A Yes, sir.

19 Q. You are trained on doing a photo
20 array or a six pack line up, correct?

21 A Yes, sir.

22 Q You're familiar with the more
23 reliable way of a blind single photo demonstration,
24 correct.?

25 A Are you talking about specifically

1 with the photograph, sir or in person identification?

2 Q Yes, with photographs. The more
3 reliable one and the less suggestive process would be
4 to have a detective unrelated to this incident, show
5 individual photos. Isn't that the best practice?

6 A The best practice perhaps would be
7 the photo line up, but in this case it was so near to
8 the scene and happened so quickly to it, while it was
9 still fresh in their mind that was more advantageous.

10 Q Can you give Judge Cothran an idea,
11 generally, in miles between Queen Street and the forge
12 ready mix?

13 A Yes, sir. Approximately three and
14 a half miles depending on the route that you take.

15 Q By the time you went there, both
16 occupants of the car had been detained and were in
17 place custody, correct?

18 A Yes.

19 Q They were subsequent to your
20 orders, brought to the Charleston Police Department
21 headquarters downtown?

22 A Yes, sir.

23 Q The color of David's shirt matched,
24 is that right?

25 A Yes.

1 Q Color of his pants matched, is that
2 right?

3 A Yes, sir.

4 Q Did you find a bandanna either red
5 or black?

6 A No sir, I did not.

7 Q Did you find a weapon?

8 A No, sir, we did not.

9 Q In the car ride to the forge ready
10 mix, do you recall any conversation with Ms. Cox and
11 you?

12 A I don't, no, sir.

13 Q. Just to cover the basics, can you
14 tell the judge if you would have said anything to her
15 similar to the warning that you give right before the
16 identification? Did you have any conversations with
17 her in the ride up there about identifying a person or
18 not?

19 A No.

20 Q Did you ever explain to her on the
21 ride up there that if she didn't identify the person
22 what would happen next?

23 A No, sir, I don't recall.

24 Q On the other hand did you explain
25 to her if she did identify the person what type of

1 things would happen next?

2 A No.

3 Q Based on your start of recording,
4 because you're very good about this, you timestamp the
5 beginning of your recording on her interview and the
6 ending and you also timestamp the show-up, the
7 beginning and ending. It is approximately three
8 minutes but the recording is two minutes, do you have
9 a explanation for that?

10 A I would say from my best
11 recollection in all likelihood I probably took the
12 timestamp either off my cellphone, which would have
13 been based off consistent updates, so that time would
14 be accurate. Or I might have glanced at my dashboard
15 clock within my vehicle and that one could be off by a
16 minute or two.

17 Q Do you recall having to call for
18 him to be brought around twice on the radio?

19 A I don't specifically recall, but
20 there is a possibility that it did happened.

21 Q Is it possible that there was an
22 interruption of the recording without you doing the
23 normal, I'm going to turn it off at whatever time and
24 turn it back on, if it's just the brief moment from
25 them getting in from behind barricades?

1 A The only explanation I would have
2 for that is if that device got dropped and hit button,
3 otherwise I would timestamp to literally notate that
4 I'm stopping and recording temporarily to resume again
5 with a timestamp.

6 MR. DAVIS: If I could have just
7 one moment, Your Honor.

8 THE COURT: All right.

9 MR. DAVIS: Thank you, Your Honor.
10 Thank you, Detective, no other questions.

11 THE COURT: I have one. Was the
12 phone found?

13 THE WITNESS: Sir?

14 THE COURT: The telephone, was it
15 found? The iPhone?

16 THE WITNESS: That was stolen from
17 the victim? Yes, sir.

18 THE COURT: Where was it found?

19 THE WITNESS: It was located on the
20 defendant's person.

21 THE COURT: Okay, thank you.

22 MR. SIMPSON: Your Honor, the State
23 has no further witness on this issue.

24 THE COURT: Okay.

25 MR. DAVIS: Your Honor, we don't

1 have any witnesses to call based on the --
2 what we're able to get into evidence. And
3 Your Honor, for the Court, obviously if you
4 need to listen to or watch, we've got it on
5 the computer, we can make a copy for you to
6 view if you need to.

7 THE COURT: I think I heard
8 everything and saw everything.

9 MR. DAVIS: Thank you, Your Honor.

10 THE COURT: Anybody else want to
11 tell me anything?

12 MR. SIMPSON: Yeah, Your Honor.
13 Obviously the defense has made a motion so
14 it's the State's, you know -- show that the
15 identification procedures were
16 constitutionally viable. The factors that
17 you look at in any sort of identification,
18 that I think were elicited in great detail,
19 is the opportunity of the witness to view
20 the accused, the witness's degree of
21 attention, the accuracy of the witness's
22 prior description, the level of certainty
23 of the witness demonstrated at the
24 confrontation and the length of time
25 between the crime and the confrontation. I

1 think the testimony was clearly elicited on
2 all of those points that favor the State in
3 this matter.

4 Ms. Cox is a very intelligent
5 victim and gave several points of
6 descriptions to the police, all of which
7 match the defendant. Including, you know,
8 you hear a description and you're used to
9 getting height, hair color, clothing,
10 things like that. What really kind of
11 takes it past the threshold is any sort of
12 detail that would even be more specific to
13 an individual. And on that point she
14 provided sort of, you know, she struggled
15 for the language, both at the time and here
16 in court, of the pock mark, acne, skin
17 irregularity on the cheeks, which Court's
18 Exhibit 2, the booking photo from the day
19 in question, reflect that that is an
20 accurate identifier of the defendant on
21 that day.

22 The length of time between the
23 crime and the confrontation was relatively
24 quick, it was approximately an hour. State
25 versus Govan approved at 45 minutes as a

1 length of time as being a relatively small
2 length of time. What they're
3 distinguishing there is rather than the
4 photo array, doing the show-up is, just as
5 the officer said, when you've got an
6 opportunity to strike when the iron is hot
7 so to speak, and get a witness while
8 they're fresh, the law does not -- nor the
9 constitution, require you to put the
10 absolute brakes and have the risk of that
11 witness losing that fresh memory and going
12 to prepare a photo array.

13 State versus Brown describes in
14 some detail sort of the circumstances
15 where -- and I can provide a cite if it
16 will help, 356 S.C. 496, circumstances
17 where show-ups, even though suggested and
18 the law says like a show-up is goes to be
19 suggested, says that a suggested procedure
20 is okay in certain situations. And I can
21 go point by point, but essentially it's
22 just what the officer shared with you and
23 what I just shared with you, is when you've
24 got that opportunity, close in time and
25 proximity to strike when the iron is hot,

1 you should do it and not waste time and
2 then let memories fade. And certainly the
3 constitution doesn't require police to do
4 that.

5 Some of the factors in Brown that
6 are satisfied here, shortly after the
7 crime, near the scene of the crime, this is
8 the witness testified in a direct route his
9 flight from the crime, about 3.5 miles
10 away. I think that's near the scene of the
11 crime, but I would further point Your Honor
12 to the case law which states, in the
13 situation of an armed robbery that the
14 continuing offense theory, as it applies to
15 armed robberies that both the preparation,
16 the actual robbery and the direct flight
17 from an armed robbery, is still part of the
18 crime. And so, certainly where they stop
19 and they did this show-up was both close
20 3.5 miles, if you're going to consider
21 those two different locations, but it's
22 actually still at the scene of the crime,
23 when you apply the continued offense
24 theory.

25 When the memory is still fresh,

1 again, I think that's probably the most
2 important factor in Brown, and certainly
3 we've addressed that. And most importantly
4 to protect the defendant. And as the
5 victim said, she felt very safe to say no,
6 there was nothing unduly influencing her to
7 say yes. And she would have readily said
8 that's not the guy. Thus, in order to
9 expedite the release of someone who was not
10 the offender that had just robbed her. And
11 that's the main point of State versus Brown
12 is that this could be done quickly without
13 violating the constitution.

14 Now, obviously the defense is going
15 to argue that things that may or may not,
16 and I suggest that a lot of this is
17 unclear, may or may not have been overheard
18 at the time by the victim, made this
19 procedure any even more suggestive than
20 normal. But I would remind the Court, I
21 think we've pointed out, that tracking this
22 phone to this location, thus a person, was
23 her idea do begin with. You know, once she
24 says, hey, track my phone dummies, I think
25 you can find the guy that did this,

1 naturally she's understanding that they're
2 going to use that and if it comes to
3 fruition, find a person. I don't think
4 anything said after that point, overheard
5 on a radio or said to her is going to
6 unduly be anymore unduly suggestive,
7 because it was her idea to begin with.

8 I don't think we're here on a close
9 issue. I think Jaclyn's done a great job
10 in both her descriptions meeting the
11 defendant's and the Biggers factors and the
12 State v. Brown factors, which articulate
13 when show-up as opposed to a photo array is
14 proper, and thus I believe that her
15 identification of the defendant is
16 constitutionally proper and admissible in
17 this trial.

18 THE COURT: Okay. Yes, sir?

19 MR. REID: Thank you, Judge. I'm
20 not going to spend too much time on the
21 first prong, which Court's have held here
22 that the show-up I.D. has been highly
23 suggestive and conducive to
24 misrepresentation or excuse me,
25 misidentification. And here they obviously

1 did a show-up identification on Mr.
2 Robinson. And you heard Ms. Cox say, you
3 know, with everything that happened, with
4 the location pinning on the phone, that
5 they took her to the scene of the
6 identification, that she would be confident
7 that they had the guy. And that's what it
8 was. It was suggestive, and based on that
9 she was biased by all of these things.

10 Now, Judge, as far as reliability
11 on this, of course this Court sets out
12 those factors, factors that the State also
13 brought. Your Honor, to the first factor,
14 that the witness had the opportunity to
15 view at the time of the crime. Ms. Cox
16 gave a general description. Black guy,
17 white shirt, black or red bandanna, black
18 pants and a scar that she explains.
19 Clearly, from this, she had an opportunity
20 to view him but she still didn't get
21 everything right. She said at the time
22 there that it was a pock marks possibly,
23 acne marks, scars. Nothing definite at
24 that point in time.

25 Judge, to the next factor is her

1 degree of intention during this time. It's
2 a nightmare scenario. She is out of town,
3 she's in from New York, she's been here for
4 work, to relax, it's what everybody comes
5 to Charleston for. And understandably so,
6 she was scared. Shaky, kind of
7 hyperventilating, as anybody would be in a
8 situation like that. Judge, in this
9 situation, being emotional like that,
10 having that type of something happen to
11 you, especially for the first time, is
12 going to severely alter the accuracy of
13 description that you're trying to make
14 which exactly what happened here.

15 Judge, the factor after that to the
16 level of certainty during the
17 confrontation. Of course Ms. Cox was taken
18 to the show-up with Detective Harvill as
19 you heard. He was able to tell her, you
20 know, let me know if this is the right guy,
21 let me know if this is the wrong guy. Let
22 me know if you don't know. Judge, not one
23 time during the situation was she able to
24 say that this is the guy. She says, I
25 would have known for certain that that was

1 the guy. All she was able to say was,
2 similar. Similar statute, similar
3 appearance, about the same hair. But if
4 she knew for certain that was the guy then
5 she would have said, that's the guy.

6 And Judge, even to the ignoring she
7 asked to bring him closer, to she the pock
8 mark, to see the scar. We understand that
9 for safety she didn't want to be closer.
10 We understand that she was frightened at
11 the time. But, Judge, not even to ask the
12 officer who was holding him at the time,
13 even to say, does he have a scar on his
14 face? Or even just do, you know, I know
15 the situations were outlined but here could
16 have done a photo lineup, but they decided
17 against it. I guess this was the best way
18 to do it under the circumstances.

19 Also, let's look to the fact that
20 Detective Harvill told us that another
21 officer on the scene, Detective Villeneuve
22 was able to speak to another witness on the
23 scene, Sierra Manigault, teenager, and he
24 thought based on the information that he
25 gave her at the scene, same type of

1 situation, she saw the robbery occur, she
2 saw the robber pass by her. Got just as
3 much opportunity to see her -- see him, the
4 robber, as Ms. Cox did. So, from that
5 information, Detective Villeneuve was able
6 to say, okay, you know enough, took her to
7 the show-up I.D. Judge, she was unable,
8 had the exact same opportunity Ms. Cox did
9 to see this robber and she was unable to
10 make a positive I.D. Judge, she just saw a
11 robbery, as anybody would be distraught.
12 But she wasn't under the same type of
13 duress as far as being able to identify the
14 robber as Ms. Cox was. And Ms. Cox was
15 just robbed.

16 And, Judge, to the last factor
17 we're going to discuss here is length of
18 time. If it was just such a short length
19 of time between the crime that happened and
20 the confrontation, then she should have
21 been able to say, 100, you know, for
22 absolute certain that this was the person.
23 Not a similar, for whatever -- not a
24 similar statute, not a similar haircut, it
25 should have been yes. If it was such a

1 short amount of time she should have been
2 able to say, yes, that was the guy, easy.
3 But Judge, she couldn't do that. And
4 because of the suggestive lineup or excuse
5 me the show-up identification, which was
6 highly suggestive, and the unreliability
7 and contradictions of some of these
8 statements, Judge, we're going to ask that
9 this identification be suppressed.

10 THE COURT: Thank you.

11 MR. SIMPSON: Judge, if I may
12 briefly respond?

13 THE COURT: Okay.

14 MR. SIMPSON: Just one important
15 factor that has been left out and that's
16 the State versus Govan, I think it states
17 most explicitly 372 S.C. 552, which just
18 stresses that what you're protecting the
19 system from in this hearing, Your Honor, is
20 that a substantial likelihood of
21 irreparable misidentification. And in
22 making that determination, you're allowed,
23 Your Honor, to look outside of the actual
24 identification and it's procedures and look
25 at the case as a whole. And that's why I

1 felt it was important to call Detective
2 Harvill and point out to you, and even I'm
3 glad you followed up with a question of
4 your own, Your Honor, which of course
5 you're allowed to do. Which is that you
6 can look at the fact that the phone from
7 the robbery is found on it's person. You
8 can look at the fact that the items from
9 the robbery are found in the car he fled
10 from with his finger prints in it, and
11 consider those factors as well, on whether
12 or not we have here a "substantial," and
13 that's a pretty high standard, "a
14 substantial likelihood of a
15 misidentification."

16 I just wanted to point that out
17 briefly that you can go outside of the four
18 corners of the actual identification in
19 making that ruling, Your Honor, and that's
20 why we presented that sort of an extra
21 evidence to you.

22 THE COURT: Okay. Based on what's
23 before me and, you know, the witness had an
24 opportunity, even though he had a face mask
25 on, he was very close to her, she had a

1 good look at him and she described not only
2 basically his height and the fact that his
3 race, clothes, the fact that she did see
4 pock marks and scarring on his right cheek
5 and she was paying close attention to that,
6 even though I'm sure based on her testimony
7 it was a scary situation for her. She gave
8 an accurate description at the time, she
9 had a sufficient amount of time to observe
10 him at the time of the armed robbery. And
11 from the time the robbery occurred, till
12 they apprehended the defendant in this
13 case, was 45 minutes to an hour I think was
14 basically the testimony.

15 And, you know, show-ups, which is
16 correct are suggestive. The question is
17 whether they were so unduly suggestive.
18 And I can take into consideration based on
19 Govan and other case law, that totally of
20 the circumstances in this case. Because
21 the real thing for me, was the
22 identification. Even though it was
23 somewhat suggestive, relied on, and there
24 was no substantial likelihood of a
25 misidentification. And the fact that she's

1 informed the police to start pinging her
2 phone and they did that, and they tracked
3 the phone while the suspect was in the
4 automobile, tracked the phone till they
5 caught the suspect. So, that adds another
6 layer that makes this misidentification
7 very unlikely in this case. And I think it
8 satisfies the issues of State v. Brown and
9 Govan, as well as Biggers and Jones, and
10 other cases. I find that the
11 identification is admissible.

12 Okay. Now, anything we need to do
13 before I bring this jury in?

14 MR. SIMPSON: Not from the State,
15 Your Honor.

16 THE COURT: They've been sitting
17 there for an hour. We'll take a five
18 minute break, bring the jury in, and we'll
19 have to apologize.

20 (Whereupon, a brief recess was
21 taken.)

22 THE BAILIFF: The jury is complete.

23 (Whereupon, all jurors are
24 present.)

25 (Time noted: 3:34 pm.)

1 THE COURT: Thank you, sir. Ladies
2 and gentlemen, I know y'all don't think I
3 got a clock, I am sorry I kept ya'll back
4 there over an hour. We worked straight
5 through lunch, nobody has had any lunch, we
6 had some legal matters we had to dispose of
7 before we could start this case and they
8 always seems to take longer than anybody
9 anticipates and I apologize for keeping
10 ya'll back there.

11 The clerk is going to swear y'all
12 in at this point and we'll get started.

13 THE CLERK: Please tell the
14 defendant to stand. Ladies and gentlemen
15 of the jury, please stand and raise your
16 right hand. Do you swear or affirm that
17 you shall well and truly try and a true
18 deliverance make between the State of South
19 Carolina and the defendant at the bar, whom
20 you shall have been charge in a true
21 verdict render according to the evidence
22 and the law, so help you God. Please
23 indicate by saying, I do.

24 ALL JURORS: I do.

25 THE CLERK: Thank you. You may be

1 seated.

2 THE COURT: Ladies and gentlemen,
3 we're about to begin the trial of the State
4 versus Mr. David Crockett Robinson. And
5 this is just a simple introduction, I'll
6 explain to you the law that you are to
7 apply in this case.

8 Mr. Robinson has been indicted for
9 the crime of Armed Robbery and Possession
10 of a Weapon During the Commission of a
11 Violent Crime. This indictment is not
12 evidence in this case, it's simply a
13 indictment that gets us to court. Mr.
14 Robinson has entered a plea of not guilty
15 to these indictments and therefor placed
16 the burden upon the State to prove each and
17 every element of this indictment to you,
18 beyond a reasonable doubt.

19 I'll explain to you the law and the
20 elements of the crime at the end of the
21 case, now I'm going to explain to you kind
22 of what the process is and what your
23 obligations are.

24 Your job is to listen to the facts
25 in this case and determine what the facts

1 able to do that in the next hour, hour and
2 a half. But if not, we may run a little
3 late because I'm going to lose that witness
4 after today. So, if that becomes an issue,
5 if you need to call your families and tell
6 them you won't be home at 5:00 or 5:30,
7 I'll allow you to do that.

8 Now, if you'll pay close attention
9 the attorneys, they're going to make an
10 opening statement to you and we'll get
11 started.

12 MR. SIMPSON: Thank you, Your
13 Honor. Ladies and gentlemen, good
14 afternoon. I'm going to remove my mask to
15 speak with you, the judge has given me
16 permission to do that. If that makes
17 anybody uncomfortable, I differ to you. If
18 you want to subtly raise your hand, I'll
19 put my mask back on, but I plan on keeping
20 a distance.

21 My name is Benjamin Chad Simpson.
22 It's an honor of mine, professionally, to
23 represent the State of South Carolina in
24 criminal matters. I work with the 9th
25 Circuit Solicitor's Office. This is Philip

1 Abshire, he's going to be assisting me in
2 this case. It's our job to present to you
3 criminal cases and present to you evidence
4 that we believe proves the guilt of a
5 defendant, beyond a reasonable doubt, which
6 is a high standard in our law.

7 I want to start by offering my
8 personal and my office's sincere thanks to
9 you. I know I speak for the Court, the
10 clerks and the defense and everyone today,
11 that this is always in the best of times
12 jury duty is kind of a punchline, it's such
13 an inconvenience. But what an extra
14 inconvenience we're asking of you during
15 these crazy times that we are living.

16 You're going to hear the date of
17 the incident that we're trying today. I'm
18 sure some of you will think, well, gosh,
19 that's a really long time ago. And it was
20 a long time ago, and that's the backlog
21 that we're facing. While we all appreciate
22 your civic duty always when people sit as
23 jurors, please know that we all recognize
24 that it's really going a step above and
25 beyond.

1 And what is that duty? I'll talk
2 briefly about that. What is the duty of
3 the jury? Here's the good news, we bring
4 you in because you don't have any special
5 training in the law, we bring you in
6 because you are this cross section of the
7 community, because your only duty in this
8 case and every case is to apply common
9 sense. You are the living embodiment of
10 the best way I can think of defining common
11 sense. Is picking 12 strangers out of the
12 community. Different ages, different
13 genders, different backgrounds, different
14 ethnicities, and have them come together
15 and apply all of that collective knowledge
16 and experience and apply common sense to a
17 set of facts. And all we're asking you in
18 this case to do is apply common sense to an
19 occurrence that happened to a young lady
20 named Jacquelyn Cox.

21 I'm going to give you an opening
22 statement of how I'm going to present this
23 case, which is short and to the point.
24 What are we here to talk about? What am I
25 asking you this week to apply your common

1 sense to? And essentially it's this; a
2 young woman named Jacquelyn Cox, an
3 intelligent professional, works in the
4 theater business, I'll have her describe
5 it, it's a pretty interesting line of work,
6 was visiting Charleston from New York City
7 where she lives, in May of 2017. Luckily,
8 after this happened to her she would come
9 back, probably some of you may already
10 figured this out, she comes here to do some
11 of her work.

12 But she also comes here, like many
13 people do, when she's here for work she
14 likes to be a tourist. She likes to see
15 our town. We're all lucky to live in a
16 very beautiful place. And that's how she
17 was spending her day on May 7, 2017. She
18 did some shopping on King Street, she went
19 to Urban Outfitters and with a pink Urban
20 Outfitters bag, bought some jeans and a
21 shirt. She carried a large black tote bag,
22 which had her whole life in it, it had her
23 laptop, a wallet with her I.D. cards, hotel
24 keys, make up bag, some phone chargers.
25 So, she's walking around with all of these

1 things, she sits and enjoys a nice day down
2 at Colonial Lake and she's meeting a friend
3 at Poogan's Porch. Just blocks from where
4 we're sitting right now, she leaves
5 Colonial Lake and is walking down Queen
6 Street. Near Queen Street Grocery, which
7 is not far at all from where today we sit.

8 She experiences something that I
9 think would terrify any of us. She is
10 looking at her phone, walking while looking
11 at her phone, something that we all have
12 done and all do regularly. When she senses
13 someone behind her and thinks, this person
14 just needs to pass her. So, she kind of
15 scoots over. But then she hears something
16 very terrifying. She hears, in low voice,
17 "don't scream, don't scream." So she turns
18 around to see who this person is and she
19 turns around and is face to face,
20 unobstructed view on a clear day, with a
21 person taller than her, who had a bandanna
22 just under his nose. And that person
23 quickly takes -- he has a black duffle bag,
24 takes a gun and puts it to her side.
25 "Don't scream."

1 At this point, Jacquelyn does
2 something and I'm sure she doesn't mind me
3 saying this, it was probably unwise but it
4 did show a great deal of more bravery than
5 I would have shown, but she said, I'll give
6 you whatever you want but please not the
7 laptop. It's my livelihood, it's my job, I
8 could lose my job if you take that. But
9 the important part being, is she is face to
10 face with this person, long enough to
11 exchange these words and getting to look at
12 this person while this is happening.
13 Again, obscured face? Sure, but only from
14 under the nose down. There was a time
15 where we would have to imagine what that's
16 like, because we all know what that's like
17 now. But at the time, pre-Covid that was
18 the very unusual.

19 When she starts to negotiate, you
20 know, the tone of this changes. And it's
21 very clearly -- and please forgive my
22 language and please forgive hers, he says,
23 "I'll fucking shoot you." At that point,
24 she knows it's serious and she hands over
25 all of her stuff and the assailant takes

1 off. She has a moment, as I think any
2 human would, of shock and panic.

3 Luckily passersbys very quickly and
4 very promptly come to her aid, oh my God,
5 what happened? Her phone that was in her
6 hand was also taken. They call the police,
7 the police responds promptly to Queen
8 Street and there they are, like any
9 response trying to get her story, trying to
10 learn about something when an idea --
11 somebody has an idea on how this crime can
12 be solved. And that somebody is not the
13 police, its Jacquelyn. It's her idea. She
14 says, and she doesn't say it like this, but
15 wait a second, dummies, you can track my
16 phone. He took my phone. And she'll
17 explain to you, I think it's kind of
18 humorous on a previous experience on why
19 she knew that, but on the Apple iPhones you
20 can log in as yourself on a different
21 device and track your location. And, hey,
22 gays why aren't we doing that? Let's see
23 where this phone went, it just got taken
24 minutes ago.

25 So, the police log in, boom. Your

1 phone is in the area of Meeting and
2 Calhoun. Very quickly later, consistent
3 with the speed of a car downtown, it's a
4 block away. Oh wait, now, it's another
5 block away. And so, very quickly the
6 officer gets on the radio and patrol teams
7 are dispatched, as they're live tracking
8 the movement of this phone, patrol is
9 responding to try and find the vehicle
10 that's moving consistently with the pings
11 of the phone, and they do. They follow it,
12 they say, okay, here's where we are now.
13 Where the phone is coming up on this now,
14 that's where the phone is. So, a traffic
15 stop is then conducted on this vehicle.
16 It's a Hispanic male driver, black male
17 passenger.

18 I should add at this point in time
19 while that is happening live, you've got
20 more traditional law enforcement work
21 happening back on the scene, where
22 Jacquelyn provided a description of this
23 person that robbed her to the police.
24 Black male, 5'10", white shirt, black pants
25 about this height. And then notes, you

1 know, she uses quite a few words but some
2 sort of pock marks or scarring, dimples on
3 his cheek. Well, as she's giving this
4 description the traffic stop is happening
5 right on 26, pretty close as if you were
6 gonna leave town.

7 More than one officer, they're
8 behind this car, they pull it over and that
9 passenger in that car, as soon as he can do
10 so, he bolts out of the car. He runs into
11 a very thick wooded area right off of 26.
12 The car -- the driver is detained and the
13 car is, you know, obviously disengaged.
14 And meanwhile the phone tracks consistent
15 with this person. On the other side of
16 these woods is cement factory. Pretty
17 hairy place to return into if you're a law
18 enforcement officer. Pretty weird location
19 in general, but luckily, a pretty easy
20 place to set up a perimeter around. Police
21 go in, they search, they ultimately find
22 the defendant in possession of the phone
23 that they've been tracking.

24 Back at the car, where he would
25 have been sitting, the black Michael Kors

1 bag, the wallet with her driver's license
2 and her I.D., in the door panel, her hotel
3 key. In the back passenger seat where the
4 front passenger would reach back, the pink
5 Urban Outfitters bag with her receipt.
6 With the shirt, with the jeans she had
7 purchased that day. Unless you think that
8 this person was just a random person
9 wondering through a cement factory and
10 happened to be at the worse place at the
11 worse time, and happened to come across a
12 strange phone and picked it up, this poor
13 guy worse luck in the world, right before
14 the police come in. The defendant's
15 fingerprints are in the car he just exited,
16 they're on a Coke can in the center
17 console, and among other places on the bar
18 where one would pull themselves out
19 particularly if you wanted to get a good
20 running start into the woods.

21 So, we take all of that in total,
22 and that's your job as jurors, to look up
23 all of that evidence in it's totally, and
24 determine using your common sense not any
25 special legal analysis, on whether or not

1 that satisfies you. Makes you comfortable
2 with the guilt of this defendant for what
3 he's charged with, which is armed robbery.

4 During closing arguments I'll have
5 a chance to speak with you in more detail
6 exactly what the elements of armed robbery.
7 He's also charges with possession of weapon
8 during a violent crime, that's having a
9 deadly weapon and the gun certainly
10 satisfies that while committing a violent
11 crime of armed robbery.

12 Ms. Cox also, of course, was taken
13 to the location where the defendant was
14 detained, given an opportunity to view and
15 see him and was able to say, yes, in fact
16 that is the person that just robbed me.
17 And when you have a case such as this, this
18 will be my theme, I hate to overdo it, but
19 when you apply your common sense to a case,
20 where a person's not just I.D.'d, I
21 understand people have hesitancy, but when
22 you have an identification, combined with
23 live tracking, combined with stolen items
24 in the passenger seat, finger prints in the
25 center console, the flight into the woods

1 and the phone located on the person and the
2 I.D., common sense gives you a clear
3 answer, which is that Mr. Robinson is
4 guilty. I thank you so much, again, for
5 your time this week.

6 MR. REID: Ladies and gentlemen,
7 I'm going to go ahead and pull my mask down
8 as well. If you have any problem with
9 that, please, just let me know. Like the
10 State said, I'll put mine right back up.

11 Ladies and gentlemen, what we have
12 here today is a case of misidentification.
13 Plain and simple. Mr. Robinson did not rob
14 Ms. Cox. We acknowledge the facts, no
15 question, that he did have her belongings
16 in his possession, but he was not the one
17 who robbed her. The officers here jumped
18 to conclusions. They jumped to conclusions
19 without having enough evidence to do so.
20 And that jumping to conclusions and jumping
21 to judgment could cost Mr. Robinson
22 everything.

23 Our hearts go out to Ms. Cox. She
24 was just here, vacationing in Charleston,
25 doing work, relaxing, it's paradise in

1 Charleston would wouldn't want to do that?
2 Then a situation like this happens. And
3 it's a situation that's never happened to
4 her before. She must have been terrified,
5 hyperventilating, shaking and
6 understandably so. Anybody in the
7 situation would do the same. But we don't
8 blame Ms. Cox for that, we blame the
9 officers here who lead Ms. Cox to believe
10 that they had the right person and they
11 failed do so.

12 The State charged Mr. Robinson with
13 armed robbery, and they have to prove
14 beyond a reasonable doubt that he did that.
15 Of course we'll do this by providing
16 testimony, videos any other type of
17 evidence. The State believes that this
18 case is simple. Like I said simple and
19 straight to the point. But I assure you
20 that this case is not as black and white as
21 they make it seem.

22 You're going to hear from officers
23 who responded and you're going to hear what
24 they say. But pay close attention to what
25 they do say, pay attention to what they do,

1 but also pay attention to what they don't
2 say and what they don't do, that is the
3 key. The officers lead Ms. Cox to believe
4 that they had the right person. Lead her
5 to believe that her nightmare was over,
6 that she can go back to New York and live
7 her life. It was their failure and their
8 inability to be able to say for a fact that
9 it was Mr. Robinson. They mislead her.

10 You're going to hear a lot and see
11 a lot, but one thing that you're not going
12 to be able to do is hear one person at all
13 say, that without a doubt Mr. Robinson was
14 the guy. I expect that you're going to
15 hear something as far as, as close to as,
16 as similar as. Similar, you know, black
17 guy, similar stature, similar clothes,
18 about the same hair. Right? But ladies
19 and gentlemen, similar is not the same at
20 all.

21 We thank you for being here today.
22 I know it's a hard time for you all of us,
23 but please bear with us as we go through
24 this.

25 As you think, like I said before,

1 what did I hear? What did I see? And in
2 the same respect, did I not hear? What did
3 I not see? And when you do these things,
4 when you stop, I think that you're going to
5 understand that Mr. Robinson here was
6 misidentified and that he's not guilty of
7 armed robbery. Thank you.

8 THE COURT: Solicitor you may call
9 your first witness.

10 MR. SIMPSON: Thank you, Your
11 Honor. The State calls Jacquelyn Cox.

12 THE COURT: Okay, you may come
13 around.

14 J A C Q U E L Y N C O X, a Witness called on behalf
15 of the State, having been first duly sworn by the
16 Clerk, was examined and testified as follows:

17 THE CLERK: Please speak loud and
18 clear into the mic. State your full name
19 and spell your last name for the record.

20 THE WITNESS: My name is Jacquelyn
21 Cox, last name is C-O-X.

22 MR. SIMPSON: Beg the Court's
23 indulgence, I'm not even 100 percent sure
24 where I go.

25 DIRECT EXAMINATION BY MR. SIMPSON:

1 Q Good afternoon.

2 A. Good afternoon.

3 Q. I'd like to spend a couple of
4 moments just introducing you to our jury. How old are
5 you?

6 A I'm 30.

7 Q Where are you from originally?

8 A I'm originally from Tennessee and I
9 live in New York.

10 Q What part of Tennessee are you
11 from?

12 A Chattanooga.

13 Q Where did you go to school?

14 A. I went to school in
15 Birmingham-Southern in Alabama.

16 Q What area of education?

17 A There, I got my bachelors and then
18 I went to the University of Arkansas and got my
19 masters.

20 Q Following obtaining your masters at
21 the University of Arkansas, is that when you went to
22 New York?

23 A No, I ended up working in DC and
24 then I moved to New York.

25 Q You do something very interesting,

1 would you share with the jury what that is?

2 A My job?

3 Q Yes.

4 A Yeah. So, I work as a light
5 designer on and off Broadway. I assist Broadway
6 designers in the creation you lighting you would see
7 in a musical or a play. And I do paperwork and then
8 help them light it.

9 Q And in the course of that -- was it
10 the course of that employment that brought you to
11 Charleston for the first time?

12 A Yeah, I freelance. Most of my
13 income is from freelancing, waiting tables. So, I
14 would take contracts all over the country as an
15 assistant. Spoleto hired me because they have a lot
16 of international designers come in and I speak a
17 different language, so I was able to help them
18 translate and create lights.

19 Q You said you speak a second
20 language?

21 A I do.

22 Q What language is that?

23 A I speak Spanish.

24 Q. So, that's what brought you to
25 Charleston in 2017?

1 A Mhm, that's correct.

2 Q That was in May of 2017?

3 A May of 2017.

4 Q And obviously you know the incident
5 that brings you here today, right?

6 A Yes.

7 Q Why don't you tell the jury a
8 little bit about your day prior to the incident?

9 A Sure.

10 Q On May 7 of 2017?

11 A Sure. I actually had the day off
12 and I had a friends in the area in Charleston and they
13 had told me that it was worth the shopping and to walk
14 around and see, it wasn't quite miserably muggy as it
15 normally gets. So, I took the day to sightsee. And I
16 treated myself to a pair of jeans and a t-shirt, a
17 little jersey tank top from Urban Outfitters, before
18 window shopping and not be being able to afford
19 anything, decided I would go on a walk to a coffee
20 shop on Beaufain Street and I went and got coffee. I
21 was walking and you I saw at the end of the street
22 there's like a lake, so I was like, that's pretty I'll
23 walk down there. And I sat down there and talked on
24 the phone for an hour, 45 minutes or so before
25 realizing that I should make my way back forwards the

1 restaurants there. I was meeting a friend at Poogan's
2 Porch, so I started my walk back towards that
3 restaurant area.

4 Q Ms. Cox, if I may, I want to
5 backtrack you a little bit. You said you bought jeans
6 and a shirt?

7 A Yeah, I bought a part of
8 high-waisted jeans, size 31 with this little detail at
9 the bottom and a tank top that was like a jersey gray
10 in color.

11 Q And you may have mentioned this,
12 but where did you purchase these clothings?

13 A I purchased it at Urban Outfitters.

14 Q Was there anything distinctive
15 about the bag that Urban Outfitters provided?

16 A Yeah, it's one of those like
17 reusable pink bags they give you the white letters on
18 the side, instead of having handles it's got like
19 holes in the bag to hold it. And my receipt was in it
20 as well, I didn't put it in my wallet yet.

21 Q Were you carrying bag this around
22 with you as you proceeded to the coffee shop and the
23 lake?

24 A Yeah, I was. I had it with my
25 purse, my big tote bag.

1 Q Let's talk about that for a second.
2 What else were you carrying on your person that day in
3 Charleston?

4 A Pretty much everything because I
5 was going the sit down and do some plot work from my
6 other freelance gig. So, I was carrying my big black
7 tote bag, which has like a place for you laptop and
8 mine was the 2015 Macbook at the time, big and clunky,
9 with my laptop charger, wallet with all my documents
10 and I.D., my hotel room key that they were housing me
11 in, along with a makeup bag, phone chargers.

12 Q Did you bring a bag with you to
13 court here today?

14 A I did.

15 Q Is it the same bag?

16 A It's not the same bag, it's the
17 year after, a newer model.

18 Q Other than being a newer version,
19 is it substantially similar in size, shape and color?

20 A Yes, that's correct.

21 Q Could you hold that up? Okay. So
22 that's a pretty sizeable bag.

23 A Yeah.

24 Q. And the items you described, you
25 were carrying them in that bag?

1 A Yes.

2 Q And I believe before I rudely
3 interrupted you, you were describing walking back from
4 Colonial Lake.

5 A Yeah, I was walking back from
6 Colonial Lake and I had my bag in my hand, on my
7 shoulder, my left shoulder with the pink bag with it.
8 And then I had my cellphone in my right hand. And I
9 was texting, obviously not paying attention to
10 anything like we do. So, I was just sitting there
11 texting away.

12 I heard a voice behind me on my
13 left shoulder and I thought, you know, I'm a New
14 Yorker so I figured I'm walking slow and in somebody's
15 way. So I kind of stepped to the side of the sidewalk
16 to let them pass but they didn't. Then I heard
17 someone say, "don't scream, don't scream." And when I
18 turned my shoulder the gentleman was right there on my
19 shoulder. And he said, "don't scream," and I kind of
20 turned so I could ask him, you know, what? And that's
21 when he held a gun in his hand and put it in my side,
22 in my purse and was telling me to give him my stuff.

23 Q I'll stop you there. Did you see a
24 gun?

25 A I did see a gun.

1 Q Are you a gun aficionado?

2 A Absolutely not. I can't tell you a
3 make or model.

4 Q How old are you again?

5 A I'm 30.

6 Q Do you know what a gun looks like?

7 A I do.

8 Q And how are you certain, explain to
9 this jury how you're certain that this was a gun?

10 A Because of the fear it instantly
11 put into my body.

12 Q Did you lay eyes on the gun?

13 A I laid eyes on a gun. I know a gun
14 when I see one, though I don't what kind it is. I
15 can't tell you, I don't use them.

16 Q Did the person who brandishing this
17 gun have anything else on their person?

18 A They were carrying like a black
19 duffle backpack bag, like an athletic bag.

20 Q You briefly described the bag you
21 were carrying and saying separate from that the person
22 with the gun also had a black bag?

23 A That's correct.

24 Q And you said like a black duffle?

25 A Yeah, I couldn't determine if it

1 was a black duffle or backpack, but it was like an
2 athletic black bag.

3 Q Okay. Black athletic bag.

4 MR. SIMPSON: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, sir.

7 Q Just to demonstrate, tell me when
8 to stop. How close are you -- when you turn around,
9 how close are you to this person?

10 A You have to come closer.

11 Q. Okay.

12 A. That close.

13 Q Okay. So, were you able to see the
14 person?

15 A I was able to see him, yes, that's
16 correct.

17 Q And you said you turned and were
18 that close to him and you actually exchanged words
19 with this person?

20 A Yeah, they had -- under their nose
21 they had a mask, like a bandanna on, and I was having
22 the conversation with him begging him not to take my
23 laptop, they could have everything else, my wallet, my
24 keys but if you took my laptop I could get fired from
25 my job. And I remember asking, it's 2015 you're not

1 going to get any money for it. Begging and then
2 that's when he said, "I'll fucking shoot you. Give me
3 your stuff." And then he grabbed my bag.

4 Q You described a bandanna, can you
5 demonstrate -- I'm sure you figured this out but you
6 are also on two big screens here.

7 A I didn't know that.

8 Q Can you demonstrate for the jury
9 where on his face the bandanna came up to?

10 A Like here.

11 Q Am I correct in seeing you're
12 demonstrating below the nose?

13 A Yes, right under the tip of the
14 nose.

15 Q And were you able to get a good
16 view of the parts of his face that were exposed above
17 that half?

18 A That's correct, I was.

19 Q Let's let you continue with the
20 story first. When he says, "I'll fucking shoot you,"
21 at this point you just sort of--

22 A I just let go of my bag.

23 Q Okay. And did he take it?

24 A Mhm, he did.

25 Q So, not to be redundant but he took

1 the big bag you had?

2 A. Mhm, the black Michael Kors bag.

3 Q. With all of the things?

4 A. With all my stuff in it. The only
5 thing that wasn't in that bag was my phone, my
6 cellphone.

7 Q. Did he take that?

8 A. He did. I had my cellphone
9 clutched in my right hand up against my chest. Kind
10 of thinking like maybe I could shove it in my shirt
11 and he wouldn't know I have it. But that didn't
12 happen, he snatched it out of my hand and took it.

13 Q The pink Urban Outfitters bag you
14 referenced earlier, where was that?

15 A He had it at that point.

16 Q Was it also in the Michael Kors
17 bag?

18 A Mhm, yeah, it was with that bag,
19 those were together.

20 Q Okay. So, what direction did he
21 run? As best you can.

22 A Yeah, if I'm facing this way, he
23 ran diagonally that way, towards there's like um,
24 where I got my -- there was a whitish, yellowish house
25 and over here, there's like some brick buildings and

1 he ran that way between these brick buildings through
2 a courtyard.

3 Q Then what happened?

4 A I obviously was panicking and
5 started crying and was freaking out. I ran into the
6 middle of the Queen Street and I started screaming for
7 help, but I remember that you're suppose to yell fire,
8 so I started yelling fire. And this golf cart with
9 like a family in it drove by and I told them I had
10 been robbed with a gun. And they didn't stop, but
11 they said they'd call the cops because they didn't
12 want their children near.

13 So, then I just kind of stood there
14 still screaming and then this car came by with -- a
15 Mustang with two people in it. Then they stopped me
16 and asked me what happened and they were helping me
17 call the cops and getting me out of the street and
18 they stayed with me.

19 Q Did the police eventually arrive?

20 A Yeah, very fast.

21 Q So, they arrived promptly?

22 A Very much so.

23 Q What happened once the police got
24 there?

25 A I was -- basically the first

1 officer or police officer that came up to me was just
2 asking me, like, can you tell me what happened?
3 Explain the details. So, I was going through the
4 details of everything that happened, like, you know, I
5 was mugged what the description and everything.

6 Q Let me stop you there. Did you get
7 a good enough view of this assailant that you were
8 able to provide a good enough description to the
9 police officers?

10 A Yes.

11 Q There on the scene?

12 A Yes.

13 Q Do you recall were you able to
14 describe his hair?

15 A I was able to describe his hair.

16 Q How did you describe his hair?

17 A I said that it wasn't long in
18 dreads but it wasn't very short to the head, it was
19 just a little bit of hair.

20 Q Okay. Were you able to describe
21 his height?

22 A Mhm. I told them, the cop that
23 first found me, that he was the same height as that
24 cop.

25 Q And did that officer share with you

1 what height that was?

2 A Yeah, he said 5'10".

3 Q Were you able to describe the
4 clothing?

5 A Mhm, I did. White t-shirt, black
6 pants.

7 Q Did you likewise describe to
8 officers that he was himself carrying a bag?

9 A Yeah, I told them that he had a
10 backpack or a gym bag.

11 Q Did you also share with them that
12 he had a firearm?

13 A That's correct, I did.

14 Q Now, is there any other feature of
15 this person that you were able to see during the
16 robbery that would distinguish him from any other
17 individual?

18 A Yeah, I told the police officers
19 that he had like a scarring, dimple, pock marking on
20 the cheek.

21 Q And now, you just sort of searched
22 for words on sorted of how to describe it, is that
23 what you did that day as well?

24 A Yeah, I used a of couple different
25 words because I couldn't quite place what it was.

1 Q Was that part of assailant's face
2 that was close in proximity to you during the robbery?

3 A Yes, I can see the details very
4 clearly.

5 Q So, it's a detail that stood out to
6 you at the time?

7 A Very much so.

8 Q And you shared that with officers?

9 A I did.

10 Q So, as you were sharing this
11 information with officers, did you give an idea even
12 having just dealt with this on maybe a way, a lead or
13 some manner that this case could be solved?

14 A Yeah, ironically I lost my phone I
15 think everyone has. I turned on that find my iPhone
16 and find my friends thing on my phone, and I had, in
17 fact, very recently lost my phone on the B26 bus in
18 Brooklyn and I watched it drive away and tracked it
19 down. But I had the thought, I was like he hasn't
20 turned my phone off, you guys can track my phone.

21 So, the officer went into his car
22 and got an iPhone, and I logged in on that phone to my
23 Apple I.D. I was able to see my cell phone ping.

24 MR. SIMPSON: Your Honor, may I
25 approach the witness?

1 THE COURT: Yes, sir.

2 Q This exchange that you just
3 described to the jury, this exchange with this officer
4 as they first responded and you provided this
5 information, did that occur fresh after this sort of
6 exciting event?

7 A Yes, it was very close after.

8 Q Now, were you still sort of worked
9 up from that event when this was shared?

10 A Rightfully so, yes.

11 Q Did you ever later come to learn
12 that this recitation of the description what happened
13 to you was recorded by that officer?

14 A Yes.

15 Q And have you reviewed a video and
16 audio recording of that moment where officers arrived
17 and you share that information with them?

18 A I have.

19 Q I'm showing you what's been marked
20 for I.D. only as State's 37.

21 A Mhm, yup.

22 Q What is that item?

23 A It's the CD that has the recording
24 on it.

25 Q How do you know that that's the CD

1 that has that video on it?

2 A It has my initials in my
3 handwriting.

4 Q So, you can recognize that?

5 A Yeah, that's mine.

6 MR. SIMPSON: Court's indulgence.
7 At this point in time State seeks to move
8 in State's 37, the body camera described by
9 Ms. Cox.

10 THE COURT: What say the defense?

11 MR. DAVIS: Judge, one moment. No
12 objection, Your Honor.

13 THE COURT: Okay.

14 (Whereupon, State's Exhibit 37 was
15 admitted into evidence.)

16 MR. SIMPSON: Permission to publish
17 to the jury?

18 THE COURT: Yes.

19 Q Ms. Cox, can you see that video?

20 A I can.

21 (Whereupon, a video was played.)

22 Q Ms. Cox, is that a fair and
23 accurate representation of the initial response of
24 police?

25 A Yes, it is.

1 Q Did you go on to assist that
2 officer in logging in to track my iPhone app?

3 A Yeah, he gave me the phone and I
4 typed my Apple I.D. into it.

5 Q After that occurred were you in the
6 proximity of these officers as they tracked that
7 phone?

8 A I was.

9 Q. What did you hear sort of -- the
10 officer that we see grabbing his phone, what did you
11 hear them say?

12 A. I heard them telling, I guess the
13 other ones on the radio, there at this place or this
14 place, ping here ping here. Kind of like it was --
15 the dot was moving and he was trying to convey to
16 other people where that dot was.

17 Q Were people responding to that?

18 A I guess so, I heard chatter.

19 Q Were you super focused at that time
20 on what the police were saying?

21 A I was not focused on them. There
22 is actually some other folks that were there that had
23 stopped and I was kind of curious if they had seen
24 him, so, I know I was asking them.

25 Q Shortly thereafter, did the video

1 we just watch, did another officer arrive that spoke
2 with you?

3 A That's correct.

4 Q And did he identify his rank or
5 status or who he was?

6 A Yes, there was a detective.

7 Q What did that detective do with you
8 when he arrived?

9 A He asked the same questions, wanted
10 to know exactly what happened, you know, what the
11 person looked like, what was in my bag.

12 Q Would you say -- where did this
13 discussion occur?

14 A At the car, the cop car.

15 Q So, he took you out of sort of the
16 same and took you to his car?

17 A Yeah, there was another officer who
18 kindly walked me across the street, and then the
19 detective was the one who let me sit down and then was
20 asking my questions.

21 Q Okay.

22 MR. SIMPSON: May I approach the
23 witness, Your Honor?

24 THE COURT: Yes, sir.

25 Q And did he let you know at that

1 time that he was recording what you were saying?

2 A. Mhm, he did.

3 Q I'm showing you what's been marked
4 for I.D. only as State's 36, do you recognize that?

5 A I do recognize it.

6 Q Is that similar to the previous
7 exhibit I showed you?

8 A That's correct, it is.

9 Q How do you recognize that?

10 A My signature and my initials.

11 Q And does that contain two audio
12 recordings?

13 A That's correct.

14 Q Is one of those the interview that
15 you just referenced?

16 A With the detective, yes.

17 Q Is it a fair representation of the
18 detective's questions and your answers as given in his
19 car on that day?

20 A It is.

21 MR. SIMPSON: At this time the
22 State seeks to admit State's 36 and
23 publish.

24 THE COURT: What say the defense?

25 MR. SIMPSON: I would be seeking to

1 admit 36 A, the interview portion.

2 MR. DAVIS: No objection, Your
3 Honor.

4 THE COURT: Okay. It's in without
5 objection.

6 (Whereupon, State's 36A was
7 admitted into evidence.)

8 MR. SIMPSON: Permission to
9 publish, Your Honor.

10 THE COURT: Yes.

11 Q To clarify, this is an audio,
12 correct?

13 A On that CD, yes.

14 (Whereupon, an audio recording was
15 played.)

16 Q. Ms. Cox, were you given an
17 opportunity to sort of itemize your possessions at
18 that time?

19 A I did.

20 Q Does that fairly and accurately
21 wrap up that interview?

22 A It does.

23 Q Did the portion we publish
24 sufficiently cover the incident itself?

25 A That's correct.

1 MR. SIMPSON: Your Honor, I believe
2 I already did this, just to be cautious I
3 would move that exhibit into evidence.

4 THE COURT: You did. You moved it
5 in and I checked it off.

6 MR. SIMPSON: Thank you, Your
7 Honor.

8 Q So, you provided that statement to
9 Detective Harvill, what occurs next?

10 A We ended up, well, we were in the
11 car and then he said a little bit later, between there
12 and the next step we had -- he made me feel better by
13 listening to me rant and rave about my fears and me
14 being scared. And then there was, I guess, a call or
15 something where they said they needed to take me to a
16 location.

17 MR. DAVIS: Your Honor, at this
18 time I'll renew my prior objection.

19 THE COURT: Okay. Your objection
20 is noted. You may proceed, Solicitor.

21 MR. SIMPSON: Thank you, Your
22 Honor.

23 Q And so, Ms. Cox, were you taken to
24 a second location?

25 A I was taken to second location.

1 Q And did you know the purpose of
2 taking you to a second location?

3 A I'm sorry?

4 Q Did you know the purpose of you
5 being taken to a second location?

6 A Yeah, they said that she wanted me
7 to try and I.D. somebody.

8 Q Okay. Was anything said or done or
9 suggested or hinted at that made you feel obligated to
10 I.D. a person?

11 A No.

12 Q So, tell the jury a little bit
13 about how that went down and what happened.

14 A We drove to -- I couldn't tell you
15 exactly how far, but we drove, like, not downtown and
16 we went to this area, it was like a construction zone,
17 factory place.

18 Q. Sorry to interrupt you, but did you
19 convey any feelings to the detective regarding your
20 wanting to be face to face with this person?

21 A When we parked I remember I kept
22 asking, can he see me? You know, where are we going,
23 can he see me? And he said no. And then I remember
24 asking or rather begging that I didn't want to get out
25 of the car because I didn't want him to see me and

1 they said that that's okay, I can stay safe in the car
2 and keep the doors shut and everything.

3 Q Once you arrived at this factory
4 like location, were you given an opportunity to view
5 the person they had in custody?

6 A Yeah, they brought him out and had
7 him stand in front of the cop car where I was sitting.

8 Q At that time, were you able to
9 identify that person?

10 A Yeah, I was.

11 Q Did you convey to the officer that
12 that was the person who had committed the robbery?

13 A I did.

14 Q Now, what else did you convey to
15 that officer?

16 A I wanted to get closer but I was
17 too scared to get closer, because I wanted to try and
18 see if I could see that -- the thing that I had seen
19 when the altercation happened.

20 MR. SIMPSON: May I approach, Your
21 Honor?

22 THE COURT: Yes.

23 Q I'm showing you at this point in
24 time what's is marked only as State's Exhibit 1 for
25 I.D. only. You have used a few different words to

1 describe irregularity on the cheek of this person.

2 A. Yeah.

3 Q. Pock, dimple, scar, do you see in
4 what's been marked for I.D. only as State's 1, facial
5 irregularity that you were trying to describe on that
6 day?

7 A I do.

8 Q Is it clear in that picture to you
9 that that is a pock, dimple, scar that you were trying
10 to convey?

11 A Yes.

12 Q I believe I cut you off, you said
13 you expressed that you would like to get a closer look
14 but you say you had earlier said that you didn't want
15 to be face to face.

16 A Yeah.

17 Q Were you at the time or later made
18 aware that this confrontation was -- not confrontation
19 but identification was also being recorded?

20 A Yes.

21 Q Is that recording contained on the
22 same CD we just reviewed?

23 A That's correct.

24 MR. SIMPSON: At this point I'd
25 like to move in what we're referring to as

1 36 B, the second recording on the CD marked
2 36.

3 MR. DAVIS: Same objection as
4 earlier.

5 THE COURT: Okay. Court will allow
6 it over objection.

7 (Whereupon, State's Exhibit 36B was
8 admitted into evidence.)

9 (Whereupon, an audio recording was
10 played.)

11 Q Ms. Cox, I want to ask you a little
12 bit about your language, some points you use phrases
13 such as very similar. What were you meaning to convey
14 at that time to that cop?

15 A That that was the individual.

16 Q Were you being careful with your
17 language?

18 A I was.

19 Q But at any point -- let me just ask
20 you, were you at that moment certain that you were
21 looking at the person who had recently robbed you?

22 A Yes, I was.

23 Q Was this close in proximity in time
24 to when the robbery occurred?

25 A Yes.

1 Q And you did express that you'd like
2 to see this marking, correct?

3 A Yeah?

4 Q Did you mean that you wanted to get
5 out of the car and walk up to him?

6 A I didn't want to get out of the car
7 and walk up to him.

8 Q. Were you confident in your
9 identification?

10 MR. DAVIS: Objection, Your Honor.
11 Leading.

12 THE COURT: Don't lead.

13 MR. SIMPSON: Okay.

14 Q How did you feel about your
15 identification that day?

16 A Confident.

17 MR. SIMPSON: May I approach the
18 witness?

19 THE COURT: Yes.

20 Q I'm going to show you some
21 photographs that are marked for identification only.
22 I'm going to start with State's 4 and 5. Take a
23 moment, as long as you need, to look at 4 and 5.

24 A Yeah.

25 Q Do you recognize the item depicted

1 in that exhibit?

2 A Yes, that is my iPhone 7 with the
3 peeling screen and the phone case.

4 Q And is there anything distinctive
5 about the phone case that lets you know further that
6 it was yours?

7 A Yes, it's black and has a gold
8 bottom with the words Dabney Lee on it.

9 Q Had you previously shared with
10 officers about the Dabney Lee and --

11 A Yeah, I told them there was all of
12 that and the name.

13 Q Okay. I'm going to now show you
14 State's, for I.D. only, 12 through 19. I'm going to
15 ask you to take a moment in the interest of time and
16 just review all of those together, 12 through 19.

17 A Okay.

18 Q At the conclusion I'm just going to
19 have you let the jury know if you recognize any items
20 in 12 through 19.

21 A Yeah. Almost all those are my
22 personal belongings. The Michael Kors bag, the
23 wallet, the itsy bag with makeup in it, my scarf, my
24 sunglasses, my lipstick, my hairbrush, my phone
25 charger, my laptop charger, my health insurance card,

1 my credit card, my University of Arkansas I.D., my
2 room key with my room number on it, my Metro card for
3 the New York subway, my debit card, my receipt with my
4 name on it, my I.D. and my Tennessee I.D.

5 Q Just referencing State's 12, the
6 majority of these items are -- how are they pictured
7 in State's 12?

8 A They're kind of smudged at the
9 bottom of the passenger, if you were the passenger, on
10 the floorboard.

11 Q Just generally describe that car.

12 A The car is in disarray, there is an
13 athletic bag kind of on the side, on the bottom of the
14 floorboard is the purse, my wallet and stuff is out
15 and the ground.

16 Q Is the athletic bag pictured in
17 those exhibits to the best of your ability, consistent
18 with the bag possessed by the person that robbed you
19 that day?

20 A That's correct.

21 Q So, we see there in the passenger
22 side items that are definitely yours?

23 A. That's correct.

24 Q Do we see your black bag?

25 A We see my black bag.

1 Q Do we see another black back?

2 A. And we see a second black back that
3 is not my bag.

4 Q The second black bag is not yours,
5 is that correct?

6 A That's correct.

7 Q And doing the same with State's 20
8 through 24. First of all, do you know this vehicle by
9 the way?

10 A No, I just know it's a car.

11 Q Well, did you before this day have
12 any idea about this vehicle, whose it is--

13 A No, I didn't know whose car it is
14 or I don't even know what kind of car it is.

15 Q If you could take a moment and
16 review that set of photographs.

17 A Yeah.

18 Q. Where in the vehicle do those
19 photographs begin?

20 A. This is in the back seat of the
21 car, behind the driver.

22 Q Do you recognize any of the items
23 depicted in those exhibits?

24 A My laptop is there with the Urban
25 Outfitters bag on the back passenger, I mean behind

1 the driver's side, back seat.

2 Q Ms. Cox, do you feel like if you
3 were given the opportunity to view the defendant in
4 court today, would you be able to identify him or not,
5 as the person that robbed you that day?

6 A I do.

7 MR. SIMPSON: Your Honor, at this
8 point respectfully, I would ask the
9 defendant to remove his glasses and mask.

10 THE COURT: Okay.

11 Q Counting of course for the passage
12 of time, do you view the person in court today that
13 assaulted you on the day in question?

14 A I do.

15 Q Can you describe where that person
16 is?

17 A It's the gentleman standing in the
18 white shirt, purple and blue tie, khaki pants.

19 MR. SIMPSON: I have no further
20 questions of this witness at this time,
21 Your Honor.

22 THE COURT: Okay.

23 MR. DAVIS: May it please the
24 Court.

25 THE COURT: Yes.

1 MR. DAVIS: Forgive me, folks. I'm
2 not really sure where to stand. Thank you,
3 Your Honor.

4 CROSS-EXAMINATION BY MR. DAVIS:

5 Q. Ms. Cox, I think I'm going to be
6 brief because most of what you've testified about we
7 either got audio or video that we've heard some of.

8 I have do want to make a point, the
9 first officer that arrived on the scene that we saw
10 video of just a little bit ago. I need you to say yes
11 or no.

12 A Oh, yes, I'm sorry.

13 Q That's okay. We have to say
14 everything out loud for the court reporter. The first
15 officers that arrived on scene and came up to you, we
16 saw a clip of video, you recall that?

17 A Yes.

18 Q That's the same officer that you
19 said, hey, we can track my phone?

20 A Yes.

21 Q He goes to his car, grabs a phone,
22 comes back, hands it to you, you put your information
23 in so that he can track it?

24 A That's correct.

25 Q And you were either standing or

1 seated on the sidewalk while he tracked, watches the
2 tracking on your phone?

3 A That's correct.

4 Q And I know there is lot of
5 commotion going on, but he was calling out locations
6 while you were sitting there.

7 A Pinning it, yes, that's correct.

8 Q Right. When it's pinging off your
9 phone on his phone he could see where it's at and he's
10 announcing that, calling on his radio?

11 A That's correct.

12 Q You're not from here.

13 A I am not from here.

14 Q You were visiting, you've been here
15 about a month I think this trip?

16 A I hadn't quite been a month yet.

17 Q Okay. Did these locations make any
18 difference to you?

19 A They didn't mean anything to me.

20 Q But you could hear the officer
21 telling other officers where your phone is tracking?

22 A That's correct.

23 Q You testified at a previous
24 proceeding, and the recording that I'm talking about
25 I'd like to play it again, if I need to I will. But

1 do you recall that you testified you sat there when he
2 called out Calhoun between King and Meeting?

3 A I was there, yes.

4 Q He calls out between Meeting and
5 Ann.

6 A Yes, I was there.

7 Q And there's three more. Meeting
8 and Woolfe.

9 A Yes, I was there.

10 Q Meeting and Columbus.

11 A Yes, I was there.

12 Q And then Meeting and Huger?

13 A Yes, I was sitting there or
14 standing.

15 Q Thank you. You gave very similar
16 descriptions to a few people that day, correct?

17 A That's correct.

18 Q Again, you testified at a previous
19 proceeding, there was a lady that helped you, was
20 calling 9-1-1.

21 A That's correct.

22 Q You were relaying through her a
23 description of the robber.

24 A That's correct.

25 Q When Officer Henderson, in the

1 video we seen, when he arrived on scene of course you
2 give him a description, correct?

3 A That's correct.

4 Q You talked to Detective Harvill
5 sitting in the car and we heard that recording,
6 correct?

7 A That's correct.

8 Q And they played some of the
9 interview for you, do you recall at the end of that
10 interview, and we can play it if you need us to remind
11 you but I think you testified to it previously. Do
12 you remember at the end of that interview with
13 Detective Harvill, that you kind of volunteered,
14 "whatever that was on his cheek, I don't know why, but
15 that's what I stared at."

16 A That's correct.

17 Q I'm a broken record here, if you
18 need us to play this, we will, this video. You
19 testified at a previous proceeding that there was, and
20 you already testified to it with Mr. Simpson, between
21 Mr. -- Officer Kennedy and then sitting in the car
22 with Detective Harvill, there was an officer that took
23 you across the street?

24 A That's correct.

25 Q And you remember testifying in the

1 previous proceeding about him?

2 A That's correct.

3 Q He had a body worn camera on as
4 well?

5 A That's correct.

6 Q He was providing comfort to you.

7 A Yes, that's correct.

8 Q A little comic relief, even.

9 A Yeah.

10 Q Or trying to.

11 A Giving me water, yeah, making
12 sure--

13 Q Correct. I do want to get this
14 though, and I think I have it in quotes, I'm going to
15 ask you if you recall and if not we can play the
16 video. At some point he comes to you to kind of
17 summarize what's going on, this hectic scene,
18 summarize what's going on. And he relayed to you, he
19 meaning Officer Henderson tracking your phone, he was
20 relaying to other officers where he was picking up.
21 They saw a vehicle where they had a party that the
22 basic description that you gave was sitting in the
23 passenger seat. And so they started following it.
24 The vehicle tried to flee from them, the parties
25 bailed out, they caught the driver and were looking

MR. DAVIS: Your Honor, if I may

1 have just a moment?

2 THE COURT: Yes, sir.

3 MR. DAVIS: Your Honor, may I
4 approach the witness?

5 THE COURT: Yes, sir.

6 Q. I've confirmed with the State and
7 it's Sergeant Adam's body worn camera at Queen Street,
8 previously dealt with. And I'm going to -- you would
9 recognize yourself in that video I just talked about?

10 A Yes, I would.

11 Q I'm at the five minute mark and I
12 believe this will be when you -- when he walked you
13 across the street, and then it goes into what you just
14 testified to.

15 MR. SIMPSON: Without objection.

16 THE COURT: Okay. Are you asking
17 her a question or you going to show her
18 something?

19 MR. DAVIS: Both, Your Honor, if I
20 can get this to work. Forgive me, Your
21 Honor.

22 (Whereupon, a video is played.)

23 Q Now, and in an abundance of
24 caution, having played that for you, again, that is
25 what I just asked you a question about. That long

1 kind of summary that he had provided to you.

2 A That's correct.

3 MR. DAVIS: Ms. Cox, thank you for
4 your time, thank you for your patience. No
5 other questions.

6 THE COURT: You got redirect?

7 MR. SIMPSON: Thank you, Your
8 Honor.

9 REDIRECT EXAMINATION BY MR. SIMPSON:

10 Q Ms. Cox, when you were shown this
11 individual at the factory, you previously testified
12 that you were confident in the identification?

13 A That's correct.

14 Q Were you confident because you got
15 a good look at the person or were you confident
16 because of something you overheard on the radio?

17 A Confident because I saw them.

18 Q Were you confident because
19 something an officer who was trying to console you
20 told you or were you confident because you got a good
21 look at the person?

22 A I was confident because I got a
23 good look at the person and there were two people
24 apparently in this car, I guess.

25 Q Okay. Was anything done or said

1 that made you feel any pressure to say yes that this
2 is the person?

3 A No.

4 Q What were you basing your
5 identification of this individual on?

6 A The fact that they robbed me at
7 gunpoint and were beside me.

8 Q And how close again were they to
9 you when this incident occurred?

10 A Not less than a foot away from my
11 left side.

12 Q Is this identification taken
13 relatively shortly after that incident occurred?

14 A Yes.

15 Q Some reference was made by Mr.
16 Davis to your testimony previously at a hearing on
17 this matter.

18 A Yes.

19 Q Do you remember ever using the term
20 "safe space," and what context did you use it and
21 could you repeat that the jury?

22 A Yes. I felt safe that if it wasn't
23 or was, that I could say either way. I didn't feel
24 like I was in a position where I was going to let
25 anybody down or it was wrong. I was brought to a

1 place where I felt safe and comfortable and was
2 protected in the car. I could make -- if it was or
3 wasn't them, I could say that.

4 Q Would you have been comfortable
5 saying, sorry, that does not look like the person that
6 robbed me?

7 A Absolutely.

8 Q And would you have said that, if it
9 did not look like the person?

10 A Absolutely.

11 Q Were you at that time or presently
12 today here with some sort of axe to grind, other than
13 seeking justice for what occurred to you?

14 A Right, I just want this to be done
15 and over. Yes, I want the right person to go.

16 Q Was anything said or suggested that
17 you feel influenced your identification of the jury
18 back in May of 2017 and during this trial?

19 A Absolutely not.

20 MR. SIMPSON: I have no further
21 questions, thank you, Your Honor.

22 THE COURT: Thank you. You can
23 step down.

24 (Whereupon, the witness was
25 excused.)

1 THE BAILIFF: Your Honor, the jury
2 is seated.

3 THE COURT: Thank you, sir. Thank
4 you ladies and gentlemen, I'm so glad all
5 of you made it back. Hopefully today I
6 won't keep you locked up and it will run a
7 lot smoother today.

8 Solicitor, you may call your next
9 witness.

10 MR. SIMPSON: Thank you, Your
11 Honor. State calls Lieutenant Brian
12 Salkeld with the City of Charleston Police
13 Department.

14 THE COURT: Okay.

15 B R I A N S A L K E L D, a Witness called on behalf
16 of the State, having been first duly sworn by the
17 Clerk, was examined and testified as follows:

18 THE CLERK: Please take a seat.
19 Speak loud and clear into the mic. State
20 your full name and spell your last name for
21 the record.

22 THE WITNESS: Brian Salkeld,
23 S-A-L-K-E-L-D.

24 DIRECT EXAMINATION BY MR. SIMPSON:

25 Q It's Lieutenant Salkeld, correct?

1 A Yes.

2 Q Lieutenant, the judge has allowed,
3 if you so choose, you can remove your mask.

4 A Thank you.

5 Q So, we already established you're a
6 lieutenant. What agency do you work for?

7 A City of Charleston Police
8 Department.

9 Q If you could just kind of recount
10 for the jury sort of your employment history.

11 A Started as a reserve officer in
12 1998. Started full time in 2000. I became a sergeant
13 2010, I was a sergeant at the time of this incident.
14 And became a lieutenant last year, about almost year
15 ago.

16 Q And sergeant and lieutenant, those
17 are leadership positions?

18 A Yes, sir.

19 Q And you already alluded to this,
20 but were you so employed in May of 2017?

21 A Yes, sir.

22 Q Did you have occasion through that
23 course of employment to become involved in an
24 investigation on May 7, 2017?

25 A Yes, sir.

1 Q Could you please describe for the
2 jury sort of the nature of that involvement?
3 Actually, pause real quick.

4 A Okay.

5 Q You're currently employed with the
6 CPD, correct?

7 A Yes.

8 Q And what's your work hours? I'd
9 like the jury to know what was your work hours last
10 night?

11 A I'm one of the two CEO's, so CEO's
12 work the overnight shift as the representatives to the
13 command staffing department. So, I worked last night
14 from 8:00 p.m. until 6:00 p.m.

15 Q And we agreed to do you first this
16 morning, it was a little bit out of order.

17 A Yeah, that is much appreciated.

18 Q You're welcome, sir and thank you.
19 Back to May of 2017, if you could tell the jury how
20 you become involved in this case.

21 A Sure. At the time I was the flex
22 shift sergeant in team one.

23 Q Sorry to interrupt.

24 A Sure.

25 Q Just explain a little bit, what is

1 a flex team and what is team one?

2 A Okay. So, team one is one of the
3 two downtown districts. Team one in particular is
4 Calhoun Street and north all the way up to the North
5 Charleston line, it's Pittsburgh Avenue.

6 At the time I, again, was a flex
7 shift supervisor that we work a permanent evening
8 shift. We rotated with the regular squads, we rotated
9 every month and we were basically a proactive patrol
10 squad.

11 Q What does a patrol squad do?

12 A Well, a normal patrol squad enters
13 everything you can think of, from the most mundane
14 calls for larcenies and 9-1-1, all the way up to
15 shootings, homicides, stabbings, domestic violence and
16 all of those things.

17 Q So, is it fair to say it's your job
18 to be ready to respond to anything on that shift?

19 A Yes, sir.

20 Q And so back to this specific
21 incident, to the best of your recollection, how did
22 you become involved in this incident?

23 A Again, I was working that evening
24 shift when we received radio traffic that a robbery
25 had occurred in team two, which again is south of

1 Calhoun Street, down to the Battery. We were being
2 provided information of what occurred number one, and
3 number two of some information that was being provided
4 about tracking a cellphone that was involved in the
5 incident, that started to track to our district, team
6 one district. And we obviously at that point we were
7 moving kind of trying to track it and trying to move
8 personnel as the phone was moving.

9 Q Okay. And through that process did
10 you become aware that a vehicle had been identified, a
11 suspect vehicle?

12 A Yes. If I recall correctly, it was
13 a silver sedan, small silver sedan that was involved
14 that was possibly involved with a gun.

15 Q Okay. And what occurred, you know,
16 what occurred from your point of view from that point
17 forward?

18 A Well, from my perspective, what I
19 was trying to do was again kind of coordinate where we
20 were moving personnel as we were being updated by one
21 of the officers that was on scene with the victim.
22 Again, the hope was that we could try to find the
23 person who was in possession of the phone. And if
24 need be, you know, setting up a perimeter, any of
25 those kinds of things if we were able to track the

1 phone.

2 Q Did you come to set up a perimeter?

3 A We did. Or I did, I assisted with
4 that. I was, again, the supervisor that working at
5 that time, so I was coordinating moving the personnel.
6 A traffic stop was initiated on the suspect vehicle
7 and a person bailed from that vehicle, and then I
8 assisted with coordinating the area that the person
9 ran into.

10 Q Where was that area?

11 A It was off of King Street
12 extension, near the forge ready mix concrete plant.

13 Q Were you personally a part of that
14 perimeter?

15 A I was, I was.

16 Q What occurred from there forward?

17 A So, again, you know, we're getting
18 information from the team two officers and then the
19 traffic stop was initiated, person bailed from the
20 vehicle. And then we started setting up a perimeter
21 and I personally was on an outside perimeter position
22 toward the front side of the ready mix company, on
23 their property not in the roadway, but towards the
24 front side of it. It's sort of -- they have a -- it's
25 a very large lot and they have the concrete mixing

1 machines and all that. They have trucks everywhere
2 and they also have large, I almost call them
3 mountains, but large mounds of gravel and other
4 materials that they utilized for making the concrete.
5 So, I was short of the front end of all of those piles
6 of material, and I was just stationed at that position
7 while we started bringing some other people in, south
8 of us and north of us.

9 Q During this process are you
10 communicating with other members of your team on the
11 radio?

12 A I am, I tried. I was communicating
13 using the radio to make sure that we had enough people
14 in position so that if this person popped back out of
15 a little wooded area that was just south of the ready
16 mix, then we would be able to affect an arrest and
17 detain the person.

18 Q Were you and your team eventually
19 able to affect that arrest?

20 A We were. So, I was, again, the
21 position that I was in I was just slightly north of
22 the wood line, again sort of in that area where the
23 gravel piles and whatnot were. And I was actually the
24 person who actually saw a person and in the woods, and
25 I put it out on the radio that I saw somebody in

1 there. But unfortunately where my position was I was
2 too far to be able to try and get into any kind of a
3 foot chase, so I actually sent a couple of officers
4 around to the back side in an attempt to detain the
5 person. And there was at short foot pursuit and the
6 person was detained.

7 Q Okay. Were you present at the
8 scene of that detainment promptly following?

9 A Yes, I was. I also did kind of
10 give a chase, long story I fell in mud ironically.

11 Q I wasn't going to make you say
12 that.

13 A That's all right, I did. I fell in
14 some mud on the back side of the property. And I did
15 eventually kind of catch up to him and two officers
16 had him detained at that point and were beginning to
17 pat him down for weapons and other contraband.

18 Q Were you present, did you perceive
19 with your own senses the officers removing any items
20 from the person at that was detained?

21 A Yeah, in particular the one thing I
22 do remember was that he was in possession of a
23 cellphone. It was handed to another officer that was
24 standing to my right, again, I don't remember who that
25 officer was. But they were -- it was Officer Wilen

1 and Officer Collins, I'm sorry, who were patting him
2 down and taking the property off of his person.

3 Q And you were present and you
4 witnessed the phone being taken from his person?

5 A Yes, sir, I was.

6 Q And your involvement with that
7 phone didn't end there, did it?

8 A No. After he was detained and the
9 property was removed, again, I don't know who the
10 phone was handed off to initially. And then the --
11 once we had everything resolved, the property that was
12 in his possession was put actually in the trunk of my
13 cruiser. We requested crime scene our essential
14 detectives and all those kinds of things. And the
15 crime scene person actually processed those personal
16 items there on scene so that we could return those
17 items, in particular the phone, to the victim.

18 Q Because the phones become a pretty
19 important part of peoples lives?

20 A Sure, absolutely.

21 Q Was the phone returned?

22 A Yeah. Once everything was settled
23 and all of the things were done with our detective
24 division, later that night I actually physically
25 returned, we knew the victim through the time we

1 realized of course that the victim was from out of
2 state and I actually, I physically returned the phone
3 to her at the hotel in Mount Pleasant.

4 Q And upon that return of the phone
5 did she confirm that was hers?

6 A She did, yeah.

7 MR. DAVIS: Objection, Your Honor,
8 hearsay.

9 MR. SIMPSON: Oh, withdrawn.

10 THE COURT: Okay.

11 MR. SIMPSON: May I approach the
12 witness, Your Honor?

13 THE COURT: Yes, sir.

14 Q Officer, I'm showing you what's
15 been marked for I.D. only as State's 4 and 5. Can you
16 take a moment and look at that? Those are two
17 photographs, correct?

18 A Yes, sir, yes.

19 Q Do you recognize the item
20 photographed in those exhibits?

21 A It's a cellphone yes, sir.

22 Q Do you recognize anything specific
23 about it?

24 A Yeah, the back of the cellphone
25 case has a unique sort of piece of metal and some

1 writing on it. It says Dabney Lee on it.

2 Q Is that the phone that you returned
3 to the victim we just discussed?

4 A I believe so, yes, sir. It's been
5 over four years, but I believe so, yes, sir. The one
6 that was on the back of my cruiser, that's the back of
7 my cruiser there.

8 Q You alluded to this without being
9 prompted, but I want to go back to sort of the nature
10 of that area where the person was detained.

11 A Mhm.

12 Q You said lots of trucks?

13 A Mhm.

14 Q I believe you said mountains of
15 material, can you elaborate on that a little bit?

16 A Sure. Again, the lot I don't know
17 what the exact size of it is, but it's relatively flat
18 lot, there's a large mixing machine and all that where
19 the trucks come in and get concrete material in the
20 mornings and all of that. And the rear of it, again,
21 was large piles of gravel and sand and other materials
22 that were probably thirty feet high probably, would be
23 my guess. And then immediately south of that was a
24 pretty heavily wooded area. Again, a relatively small
25 lot but, you know, maybe an acre of land, something to

1 that effect. It was heavily wooded and there was a
2 creek that kind of ran through it as well.

3 Q And you say heavily wooded, was
4 this fairly dense?

5 A Yeah, it was dense.

6 Q You mentioned you slipping and
7 falling, but was this difficult terrain to even move
8 through?

9 A It was. And again, the northern
10 end of that wooded area was sort of where that wet
11 marshy area was kind of lead towards a little bit of a
12 creek area. So, that particular side where we were or
13 where I was, was difficult to enter into that wooded
14 area.

15 MR. SIMPSON: Court's indulgence.
16 Lieutenant, thank you so much, particularly
17 having worked all night. I appreciate you
18 coming and being here this morning. I
19 don't have any more questions.

20 MR. DAVIS: Lieutenant, thank you
21 so much, I'll let you get back to work or
22 to sleep. No other questions, Your Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Yes, thank you.

25 (Whereupon, the witness was

1 excused.)

2 MR. SIMPSON: Would you like me to
3 call my next witness?

4 THE COURT: Yes, sorry.

5 MR. SIMPSON: State calls Officer
6 Ed Henderson, former officer.

7 E D H E N D E R S O N, a Witness called on behalf of
8 the State , having been first duly sworn by the Clerk,
9 was examined and testified as follows:

10 THE CLERK: Please speak loud and
11 clear in the mic. State your full name and
12 spell your last name for the record.

13 THE WITNESS: Edward Christian
14 Henderson, H-E-N-D-E-R-S-O-N.

15 DIRECT EXAMINATION BY MR. SIMPSON:

16 Q Good morning, Mr. Henderson.

17 A Good morning, sir.

18 Q If I could just spend a few minutes
19 introducing you to the jury. What do you do now?

20 A I am currently employed with PEX
21 Card, which is a prepaid card for businesses as an
22 on-boarding analyst in our appliance department. And
23 we also handle anti-money laundering investigation as
24 well.

25 Q So, there's still a law enforcement

1 component to what you do, correct?

2 A Correct, yes.

3 Q Do you have employment educational
4 history in law enforcement?

5 A I do, yes.

6 Q Could you maybe just go back to how
7 that began so we can recount that history for the
8 jury?

9 A So, I graduated from Mercy North
10 Carolina, in Asheville with a degree in psychology.
11 After I graduated I joined the Charleston Police
12 Department in 2012. I was employed with the
13 Charleston Police Department as a patrol officer until
14 2018, May 2018.

15 Q And what did you do after 2018?

16 A So, after 2018 I actually left the
17 department to go to Arizona flight school.
18 Unfortunately, that did not work out. At that point I
19 was recruited by American Express to join their
20 anti-money laundering team as well, and did that a
21 couple years before moving back to Charolette with
22 company PEX.

23 Q Did you travel here for the
24 purposes of your testimony here today from Charolette?

25 A That is correct, yes, sir.

1 Q Thank you, we do appreciate that.
2 You mentioned that you were a patrol officer for CPD
3 until 2018, correct?

4 A Correct.

5 Q So, you were so employed in May of
6 2017?

7 A That is correct.

8 Q Through the course of that
9 employment did you become involved in an incident on
10 May 7, 2017?

11 A That is correct.

12 Q If you could describe to the jury
13 how become involved in that incident.

14 A So, myself and my training officer
15 were actually -- or myself the officer I training,
16 excuse me, were in route to a different call, I don't
17 remember the nature of that call, when I looked at our
18 CAD unit on our computer and noticed that there was an
19 armed robbery.

20 Q Sorry, can you pause. You said a
21 CAD unit.

22 A That is our computer aided dispatch
23 system for our mobile computers inside of our cars.
24 We're able to receive information on calls and then
25 also see any pending calls that are coming and they're

1 kind of displayed on the screen for us.

2 Q So, you saw, fair to say, on the
3 CAD unit, a call out to a more pressing matter than
4 the one you were responding to?

5 A Correct, yes.

6 Q What was that?

7 A It was listed as a robbery with a
8 firearm at Queen Street. I don't remember if they had
9 an exact address at that, but I remember the cross was
10 Queen and Logan.

11 Q Did you respond to that location?

12 A I did.

13 Q Was that location within the City
14 of Charleston?

15 A Yes, sir, it was within City of
16 Charleston.

17 Q Within the County of Charleston?

18 A Correct.

19 Q What did you locate, what did you
20 find, how did you proceed?

21 A Upon arrival on the scene I was
22 looking for victims or suspects or anything like that,
23 and I noticed the victim flagged us down as we were
24 driving by. We did drive initially a little bit past
25 and I told my officer that I was training to stop. At

1 that point I got out of the vehicle and made contact
2 with the victim and asked her to tell me what occurred
3 and give me a description and a direction of flight.

4 Q And did it appear to you at that
5 time you were the first to arrive, the first to
6 respond?

7 A I was.

8 Q Was she able to give you the
9 information you were requesting?

10 A Yes, she described the suspect as
11 an African American male, with a black mask on, white
12 shirt, black pants and a scar on his face and that he
13 fled north through the Robin Hill Manor, the housing
14 complex behind the city jail. And that was as far as
15 she had seen he had gone.

16 Q You mentioned the city jail, that's
17 not an active jail.

18 A It is not. It's the historical
19 city jail on Logan Street -- I'm sorry, Franklin
20 Street. You can still do tours there but it's not
21 used as a holding facility.

22 Q It's kind of historical--

23 A Yes.

24 Q Okay. Were you wearing a body cam
25 that day?

1 A I was.

2 Q Did you initiate that camera?

3 A I did.

4 Q How did your investigation proceed
5 from there?

6 A So, after making the initial
7 contact, I was talking to the victim asking what had
8 been taken, she let me know that she had a bag with, I
9 believe, laptop in it and her cellphone which she
10 stated was an iPhone and could be tracked. So, I
11 asked her if she had her log in information, at which
12 time she said she did. So, I ran back to my cruiser,
13 grabbed any iPhone, gave it to her to put her
14 information in to the track her iPhone app, at which
15 point the phone did pop up and I was able to begin
16 tracking the location of the phone.

17 Q Now, so at this point things are
18 getting pretty exciting, I guess.

19 A Right.

20 Q What do you do? Describe in a
21 little more detail, you're looking at the phone, what
22 are you doing visa the other people on your team?

23 A So, I'm also at the same time while
24 this was going on a K9 showed up and I gave him the
25 information of where exactly the robbery occurred.

1 So, they can begin track. And then that's when I
2 started looking at the phone and it shows basically,
3 you know, a Google Maps satellite overlay of the area,
4 and there on the phone has the location updates, it
5 will have little, you know, dot right where the phone
6 is. And when I initially started tracking the phone
7 it was on Calhoun Street between Meeting and King
8 Street.

9 Q Now, stupid question, are you
10 outfitted with a radio?

11 A I am, correct. And once I realized
12 or one I got the tracking location I put out on the
13 radio for other responding officers to hear so they
14 could respond to that area and attempt to make
15 contact.

16 Q Did this process -- just to back up
17 a second. You said the first location you see when it
18 pops up?

19 A Calhoun Street between Meeting and
20 King.

21 Q Okay. Did you communicate that to
22 other officers?

23 A I did.

24 Q Does this process kind of continue
25 of you updating officers as to the location of the

1 phone?

2 A It does. I was -- on the map you
3 can I hit refresh several times or as many times as
4 you need to and it will refresh with the updated
5 locations. So, every time I got a new location I put
6 it out on the radio.

7 Q Do you recall some of these
8 locations that you're calling out?

9 A I do. So, Meeting and -- or after
10 being on Meeting between Calhoun, the next location
11 was Meeting and Ann, location after that Meeting and
12 Woolfe.

13 Q Let me ask you this, you're still
14 pretty familiar with the Downtown Charleston area?

15 A Yes.

16 Q Are these locations, for lack of a
17 better phrase, making sense of a vehicle traveling?

18 A They do, yes.

19 Q So, they're not just pinging all
20 over the place?

21 A Exactly. It was pretty consistent
22 with going northbound on Meeting Street.

23 Q Calhoun and Meeting, Meeting and
24 Ann, Meeting and Woolfe. Do you recall the next
25 location?

1 A Meeting and Columbus.

2 Q Okay. And the next?

3 A Meeting and Huger.

4 Q Okay. And again are these
5 locations consistent with a car traveling north bound
6 on Meeting Street?

7 A They are.

8 Q If you keep traveling northbound on
9 Meeting Street what's major there that you are
10 eventually going to get to?

11 A Interstate 26.

12 Q How did tracking of the phone
13 continue?

14 A At that point it was appearing to
15 be on Interstate 26.

16 Q Now, if a car is traveling north on
17 26, can you still -- are there still cross streets
18 that go under 26?

19 A There are.

20 Q Did that allow you to still
21 maintain sort of frames of reference for location?

22 A Yes.

23 Q In what way did you do that?

24 A That the next location was I-26 and
25 Cypress and then I'm not exactly sure what happened in

1 the interim, but the vehicle was stopped.

2 Q Just to make it clear, you weren't
3 there at that--

4 A I was not, no. I was still down at
5 the scene at [REDACTED] Queen Street which is where we ended
6 up listing the actual incident location. I never left
7 the scene, I was with the victim the entire time.

8 Q Nevertheless, were you made aware
9 at some point that a traffic stop had been conducted?

10 A Yes. So, officers had spotted a
11 vehicle that they believe was possibly involved, based
12 on my locations that I was giving out and the
13 description of the suspect that was given at the time,
14 and they were in the process of attempting to stop.

15 Q Were you ever asked, you know,
16 after being informed of the traffic stop, were you
17 ever asked what is the phone doing now?

18 A I was. At that point the phone was
19 pretty stationary in the woods, between Monrovia and
20 Transworld. And after that point, as far as I could
21 tell, the phone did not move again.

22 MR. SIMPSON: May I approach the
23 witness, Your Honor?

24 THE COURT: Yes, sir.

25 Q Mr. Henderson, I have what's been

1 marked for I.D. only at this point as State's 2 and 3.

2 A Okay.

3 Q Do you recognize that photo?

4 A I do. It appears to be a map of
5 the City of Charleston.

6 Q And does it comport with your
7 experience of our town here as a patrol officer, does
8 it appear to fairly and accurately reflect your old
9 jurisdiction?

10 A It does.

11 Q Okay. Are there some markings on
12 that map?

13 A There are.

14 Q And are there some markings of a --
15 sort of a phone icon?

16 A Yes.

17 Q More than one?

18 A Correct.

19 Q Are there markings consistent with
20 locations that you just informed this jury about? And
21 you can take a moment.

22 A Sure, yeah. They do appear to be
23 consistent, yes.

24 Q You testified previously Calhoun,
25 between King and Meeting.

1 A Correct.

2 Q Meeting and Ann?

3 A Correct.

4 Q Do you see an icon that corresponds
5 with that?

6 A Yes.

7 Q Meeting and Woolfe?

8 A Yes.

9 Q Meeting and Columbus.

10 A Correct.

11 Q Meeting and Huger?

12 A Yes.

13 Q The interstate and Cypress Street?

14 A Correct.

15 Q And the woods described in your
16 testimony?

17 A Yes.

18 Q Moving on to, for I.D. only,
19 State's 2. What is that?

20 A This is a second image. It depicts
21 the Interstate or at least I believe, where the
22 traffic stop occurred.

23 Q And is the location of the traffic
24 stop on State's two, to the best of your ability, is
25 that a closer up map?

1 A Yes.

2 Q Does that appear to be consistent
3 with the same marker, I mean -- forgive me, State's 3,
4 does that appear to be consistent with the same marker
5 from a farther away distance on State's 2?

6 A It does, yes.

7 Q And you stated that the phone
8 tracked into the woods around Monrovia and Transworld
9 Street?

10 A That's correct, yes.

11 Q Were you later made aware that a
12 person had be detained in that area?

13 A I was, yes.

14 MR. SIMPSON: Officer Henderson,
15 thank you for being here. I don't have any
16 furthered questions.

17 THE WITNESS: Thank you.

18 CROSS-EXAMINATION BY MR. REID:

19 Q How are you doing today, Officer?

20 A I'm well. How about yourself?

21 Q Doing well. So, you said you were
22 first on the scene to [REDACTED] Queen Street?

23 A Yes, sir.

24 Q And you got there it was about
25 18:33:51?

1 A Yes, sir.

2 Q And the location itself, is that
3 Robert Mills Manor, around that area?

4 A It is around that area, yes, sir.

5 Q And that's the projects?

6 A Public housing, yes, sir.

7 Q Is it mostly black tenants?

8 A From what I remember, yes.

9 Q So, you say that you gave her your
10 phone, she put in her information and you started
11 tracking that phone at about 18:38:55?

12 A Correct.

13 Q So, from the time that it was
14 called in to the time that you responded, to the time
15 of, I guess, the phone started tracking at that time,
16 is about seven and a half minutes?

17 A That would probably be a fair
18 assessment, yes.

19 Q Okay. And it took you about maybe
20 two minutes to get to the scene after it was called
21 in?

22 A That I'm not sure of. Like I said,
23 I noticed the call popped up on the CAD system in our
24 car. We were on King Street and Broad when I -- I
25 believe King and Broad, when I noticed the call pop

1 up. So, we went straight down Broad and up Logan.
2 So, it was probably about that time, yes.

3 MR. REID: Court's indulgence.

4 THE COURT: Yes.

5 MR. REID: No further questions,
6 Your Honor, thank you, Officer.

7 THE WITNESS: Thank you.

8 THE COURT: Anything further from
9 the State?

10 MR. SIMPSON: No, Your Honor. Not
11 of this witness.

12 THE COURT: Okay. You can step
13 down thank you, sir.

14 THE WITNESS: Thank you, sir.

15 (Whereupon, the witness was
16 excused.)

17 MR. SIMPSON: Your Honor, if I
18 could just have 30 seconds to confer?

19 THE COURT: Sure.

20 MR. SIMPSON: We're ready to
21 proceed, Your Honor, if you are.

22 THE COURT: Okay.

23 MR. ABSHIRE: Your Honor, we call
24 Investigator Tyler Karges, City of
25 Charleston Police Department.

1 THE COURT: Okay.

2 MR. DAVIS: What was that name
3 again?

4 MR. ABSHIRE: Tyler Karges,
5 Investigator Karges.

6 T Y L E R K A R G E S, a Witness called on behalf of
7 the State, having been first duly sworn by the Clerk,
8 was examined and testified as follows:

9 THE CLERK: Please speak loud and
10 clear into the mic. State your full name
11 and spell your last name for the record.

12 THE WITNESS: Tyler Karges. Last
13 name K-A-R-G-E-S.

14 DIRECT EXAMINATION BY MR. ABSHIRE:

15 Q Good morning, investigator.

16 A Good morning.

17 Q Just by way of introducing yourself
18 to everybody. Could you please let us know where you
19 work.

20 A I'm an investigator with the City
21 of Charleston Police Department.

22 Q How long have you been doing that?

23 A Just under eight years.

24 Q Were you always an investigator?

25 A No, I was a patrol officer prior to

1 this. I've been an investigator for about a year,
2 little over a year.

3 Q What did you do beforehand?

4 A I was a patrol officer.

5 Q Were you a patrol officer in May of
6 2017?

7 A I was.

8 Q What were some of your duties
9 during that time?

10 A I responded to calls for service.
11 Assist in traffic enforcement, keeping the peace,
12 things of that nature.

13 Q Were you a patrol officer in May of
14 2017?

15 A I was.

16 Q Were you aware of the incident why
17 we're here today?

18 A I am.

19 Q Could you kind of walk us through
20 your experience with that incident?

21 A Back in May of 2017 I was advised
22 over the radio response to calls for service for an
23 armed robbery in the area of Queen Street, which is in
24 team two downtown Charleston. At the time I was at
25 the intersection of Meeting and Romney Street. I

1 responded to the call where I received information
2 that a victim was robbed of a phone, a purse and
3 laptop and I believe some other items, that they were
4 currently tracking the phone. So, I assisted in
5 locating the phone and the suspect.

6 Q You mentioned you were on Romney
7 Street, were you moving, were you stationary?

8 A I was in my patrol vehicle so I was
9 patrolling southbound of Meeting Street at this time.

10 Q So, you were coming down Meeting
11 Street from Romney?

12 A Correct.

13 Q And you mentioned that you were
14 able to identify a suspect. Could you tell me where
15 exactly that identification was?

16 A Yes. So, the victim's phone was
17 tracking northbound on Meeting Street from the
18 incident location. Specifically, Meeting and Calhoun
19 and I was provided updates over the radio, so the
20 phone was tracking Meeting and Calhoun. Then Meeting
21 and Columbus Street. Meeting and Ann Street, then
22 Meeting and Woolfe Street.

23 At that point I was heading
24 southbound on Meeting Street from Romney Street, in
25 the middle there Meeting and Woolfe where I

1 observed -- or, I was provided information over the
2 radio that a Kia Sedan was involved in the robbery.
3 At that point I observed that vehicle at Meeting and
4 Woolfe Street, in that area. So, I turned around and
5 pursued the vehicle, now heading south on Meeting
6 Street. The vehicle proceeding northbound on Meeting
7 street and the vehicle proceeded onto the Interstate
8 I-26 west, where the vehicle eventually pulled off--

9 Q Investigator, I'm going to stop you
10 real quick. As you're progressing down Meeting
11 Street, are you receiving progress reports of where
12 the location is?

13 A I am.

14 Q Was that consistent with your
15 driving down Meeting Street?

16 A Correct. So, I was heading
17 southbound when I was receiving updates where the
18 phone was tracking and the phone was tracking
19 northbound, so we would have crossed paths.

20 Q I apologize for interrupting you,
21 but you turned around and then you're heading
22 northbound on Meeting Street, where did you head next?

23 A So, we were northbound, Meeting
24 Street, I was behind the suspect vehicle and we got on
25 to I-26 west.

1 Q Did that vehicle eventually stop?

2 A It did. It stopped in the
3 emergency lane near the on ramp from Harriet Street on
4 I-26 west.

5 Q What did you observe when the
6 vehicle stop?

7 A I observed two occupants in a
8 vehicle, a driver and a passenger. Passenger, front
9 seat passenger being a black male, fled from the
10 vehicle on foot towards the wood line. And then the
11 driver stayed in the vehicle where I assisted in
12 detaining the driver.

13 Q Were you able to identify what the
14 passenger that ran was wearing?

15 A I believe it was a black shirt,
16 maybe a black bandanna. That's all I remember right
17 now.

18 Q Could you walk us through your
19 responsibilities once the vehicle had stopped?

20 A So, the vehicle stopped, black male
21 got out front seat passenger and fled from the vehicle
22 on foot. I then assisted officers in detaining the
23 driver, who was a Hispanic male. After the driver was
24 detained I conducted a Terry frisk of the vehicle for
25 weapons, as I was advised there were weapons involved

1 in the incident. Then I located a black purse and a
2 laptop, which I believe was reported stolen from the
3 victim, inside the vehicle.

4 Q We'll talk about what you found in
5 the vehicle. But coming back to the driver, was he
6 the one that took off running?

7 A The driver did not take off
8 running. The front seat passenger did.

9 Q Did you come into close contact
10 with him?

11 A The driver, yes.

12 Q If you saw a picture of him would
13 you recognize him?

14 A I would.

15 MR. ABSHIRE: Permission to
16 approach, Your Honor?

17 THE COURT: Yes.

18 Q Showing you what's marked for
19 identification as State's Exhibit 38.

20 A This was the driver.

21 Q Does he appear the way he did when
22 you came into contact with him?

23 A Yes, sir.

24 Q To the best of your recollection,
25 did he resemble the passenger?

1 A This is not the passenger. This is
2 the driver of the vehicle.

3 MR. ABSHIRE: Your Honor, the State
4 would move to enter into evidence what has
5 been marked as State's Exhibit 38.

6 THE COURT: Okay. What say you,
7 defense?

8 MR. DAVIS: No objection, Your
9 Honor.

10 THE COURT: Okay, it is in without
11 objection.

12 (Whereupon, States Exhibit 38 was
13 admitted into evidence.)

14 MR. ABSHIRE: Your Honor, we also
15 move to publish at this time.

16 THE COURT: Say that again, I'm
17 sorry.

18 MR. ABSHIRE: We'd like to publish
19 the exhibit.

20 THE COURT: Oh, sure.

21 (Whereupon, State's Exhibit 38 was
22 published for the jury.)

23 Q Now, Investigator Karges, you told
24 us that this was the individual that was driving.
25 Would you describe him as African American?

1 A I would not.

2 Q You told us that you were provided
3 a description, would you say this individual matches
4 the description that you were given?

5 A Of the suspect?

6 Q Correct.

7 A No, it did not match the
8 description of the suspect.

9 Q Investigator Karges, moving forward
10 into what you found in the vehicle. You told us a
11 little bit how you did a Terry frisk, can you explain
12 what that is?

13 A A Terry frisk is for weapons. It
14 is not a search but it's for weapons. While
15 conducting that Terry frisk, as I was advised there
16 was weapons involved in the incident, I located a
17 black purse and laptop, which appeared to be
18 consistent with property that was reported stolen from
19 the victim.

20 Q Why would y'all be conducting a
21 Terry frisk?

22 A A Terry frisk of a vehicle, due to
23 the suspect individual of black male running from the
24 front passenger seat of the vehicle, matching the
25 description of the suspect from the armed robbery, I

1 conducted a Terry frisk for weapons, and confirm there
2 was no other passengers inside the vehicle and no
3 other weapons inside the vehicle.

4 Q So, coming back to the individual
5 that ran from the vehicle. Were you familiar with the
6 area that the vehicle had stopped?

7 A I was, I am.

8 Q Again, could you tell us where that
9 was?

10 A 26 west. If you're getting off
11 Harriet Street, right where Harriet Street meets 26
12 west, on the on ramp.

13 Q Could you kind of describe the
14 surrounding areas?

15 A Obviously you have the three lanes
16 going 26 west, you have eastbound, there is heavy wood
17 line on the right side. And then an on ramp right in
18 between the three lanes of interstate and wood line.

19 Q If I showed you a picture of it
20 would you be able to recognize it?

21 A I would.

22 MR. ABSHIRE: Permission to
23 approach, Your Honor?

24 THE COURT: Yes, sir.

25 Q Handing you what's been identified

1 as State's Exhibit 3.

2 A This is the location where the
3 vehicle stopped.

4 Q And could you -- are you aware of
5 any other streets that are around the wooded area?

6 A Yes, so the area where the black
7 male fled from the vehicle was near the dead end of
8 Monrovia Street, which is a dead end street off of the
9 King Street extension.

10 Q Once he left the vehicle, did you
11 see where he headed?

12 A Yes, sir. He ran towards the wood
13 line, which would have been the dead end, right next
14 to the dead end that would have been Monrovia.

15 MR. ABSHIRE: I have nothing
16 further, Your Honor.

17 THE COURT: Okay.

18 MR. DAVIS: Your Honor, if I could
19 have just one moment?

20 THE COURT: Sure.

21 CROSS-EXAMINATION BY MR. DAVIS:

22 Q So, it's Investigator Karges now?

23 A Correct.

24 Q I'm going to keep my distance, but
25 take off my mask. Back then it would have been patrol

1 officer?

2 A Correct.

3 Q In 2017 you were driving your
4 patrol unit it was not equipped with a dash camera?

5 A It was not.

6 Q You would have been equipped with
7 body worn camera?

8 A Yes.

9 Q We've received you did not turn in
10 a body worn camera in this case.

11 A Okay.

12 Q You would have been one of the
13 officers in multiple patrol units that are arrived on
14 26 and surrounded the Kia, correct?

15 A Correct.

16 Q You would have been on either the
17 driver's side or the rear of the Kia when you
18 responded?

19 A The rear.

20 Q Okay, to the rear. Fair to say
21 you're to the rear driver side?

22 A I believe so.

23 Q You didn't come up the ramp?

24 A I did not come up the ramp.

25 Q Okay. And the car was facing, I

1 guess it's westbound, a bit north on 26.

2 A 26 west is the car direction.

3 Q So, let's focus on David. He ran
4 from the passenger side of the vehicle, right?

5 A Correct.

6 Q Okay. Your duty as a police
7 officer either now as an investigator or previously as
8 a patrol officer is after the incident is completed,
9 one of your duties is to go back to the station or it
10 may be equipped in the car and do a report of the
11 incident, correct?

12 A Correct.

13 Q So, that describes the part that --
14 the role that you played in the incident, correct?

15 A To do a report, is what you're
16 asking?

17 Q Correct.

18 A Correct, I would have had to have
19 done a report.

20 Q And that explains your role in this
21 incident?

22 A Yes, yes.

23 Q And you do it pretty soon after the
24 incident?

25 A Pretty much immediately after.

1 Q Because it's fresh in your mind?

2 A Fresh, correct.

3 Q And you want to record important
4 details for yourself and for, now investigators like
5 you are, correct?

6 A Correct.

7 Q It's important to be very detailed
8 in that, correct?

9 A Yes.

10 Q Especially, when we're dealing with
11 the identification of a suspect, correct?

12 A Yes.

13 Q And you're trained in that,
14 correct?

15 A I am.

16 Q Report writing.

17 A Yes, sir.

18 Q You go to classes, you go to school
19 for that?

20 A School, no. This is something
21 that's obtained over my patrol duties, I learned how
22 to write reports.

23 Q You're not trained at the academy
24 how to write reports?

25 A We are trained on how to do traffic

1 collisions, to better assist and do better report
2 writing. So, yes, I did receive some training in the
3 academy.

4 Q And you prepared a report in this
5 case?

6 A I did.

7 MR. DAVIS: May I approach, Your
8 Honor?

9 THE COURT: Yes.

10 MR. DAVIS: May I approach the
11 witness, Your Honor?

12 THE COURT: Yes.

13 Q Investigator Karges, I'm going to
14 show you what's marked as State's Exhibit number 4 for
15 identification purposes. I want you to take a second
16 and see if you recognize this document.

17 A This is my supplemental report for
18 this incident.

19 Q Does that appear to be a complete
20 and accurate report that you filed back in May of
21 2017?

22 A It does.

23 Q I want you to take as much time as
24 you need and I want you to tell this jury wherein that
25 report you mentioned that David ran away from the car,

1 wearing a black mask.

2 A Repeat the question for me again.

3 Q Sure. Take as much time as you
4 need and you indicate where in your report you had
5 indicated that David ran away from that car wearing a
6 black mask, as you just testified to a moment ago.

7 A It does not say he was wearing a
8 black mask.

9 Q Well, you agree that your memory of
10 the events are much clearer at the time of writing
11 that report than they are four years and four months
12 later?

13 A It would have been.

14 MR. DAVIS: If I can have just a
15 moment, Your Honor. Thank you,
16 Investigator, no other questions.

17 REDIRECT EXAMINATION BY MR. ABSHIRE:

18 Q Investigator Karges, we appreciate
19 Mr. Davis pointing this out, but is there a
20 possibility that you have misspoken after four years?

21 A Yes.

22 Q Is there a possibility that after
23 this passage of time you could have misspoken right
24 now?

25 A I could have, yes.

1 Q Touching on your body cam, is that
2 something you have to initiate?

3 A Yes, it is. You have to press the
4 button and initiate starting a recording.

5 Q Are there instances where you don't
6 have time because the situation calls for you to act?

7 A Yes, fairly often.

8 Q In this situation, was your focus
9 on the driver?

10 A It was.

11 Q Did you stay with the driver?

12 A I did.

13 MR. ABSHIRE: Nothing further, Your
14 Honor.

15 THE COURT: You can step down,
16 thank you.

17 (Whereupon, the witness was
18 excused.)

19 THE COURT: We'll take a five
20 minute break, well, probably 15 minutes.

21 (Whereupon, the jury was excused.)

22 (Whereupon, a brief recess was
23 taken.)

24 (Whereupon, all parties are
25 present. Proceedings resume.)

1 THE COURT: Is everybody ready?

2 MR. SIMPSON: The State is ready to
3 proceed, Your honor.

4 THE COURT: All right. Bring me
5 the jury.

6 THE BAILIFF: The jury is seated.

7 (Whereupon, all juror are present.)

8 THE COURT: Thank you, sir.

9 Solicitor you may call your next witness.

10 MR. SIMPSON: State calls Holly
11 Saunders.

12 H O L L Y S A U N D E R S, a Witness called on
13 behalf of the State, having been first duly sworn by
14 the Clerk, was examined and testified as follows:

15 THE CLERK: Speak loud and clear
16 into the mic. State your full name and
17 spell your last name for the record.

18 THE WITNESS: Holly Saunders
19 SAUNDERS.

20 DIRECT EXAMINATION BY MR. SIMPSON:

21 Q Good morning, Ms. Saunders.

22 A Hi.

23 Q Could you tell the jury what it is
24 you do for a living?

25 A I'm a crime scene investigator?

1 Q For what agency?

2 A City of Charleston Police
3 Department.

4 Q How long have you been so employed?

5 A About five years.

6 Q Can you explain to the jury a
7 little bit about your educational background and any
8 sort of specialized training you received?

9 A Sure, yeah. I have a bachelors in
10 cellular molecular biology, and I have a masters
11 degree in forensic science. Some training I've
12 received is basic photography training, post blast
13 investigation training. A lot of crime scene relevant
14 things.

15 Q So, specific classes specialized
16 area of crime scene investigation?

17 A Yes.

18 Q I think I'm repeating myself, but
19 you've been employed for five years in that capacity?

20 A Yes.

21 Q Were you so employed in May of
22 2017?

23 A Yes.

24 Q Did you have occasion in that
25 employment to become involved in the investigation of

1 this case?

2 A Yes.

3 Q Could you describe a little bit for
4 the jury -- let's start kind of generally. What does
5 a crime scene investigator do at a locate that they're
6 called to?

7 A So, we show up, we photograph the
8 scene, collect any evidence that's there, package the
9 evidence, transport the evidence.

10 Q Does that include marking of the
11 evidence in a manner that would allow you to recognize
12 it later?

13 A Yes, with evidence markers.

14 Q So, in this case, how did your
15 investigation proceed for you?

16 A So, I was originally sent to [REDACTED]
17 Queen Street where the incident occurred, just to
18 photograph that area for documentation.

19 Q Okay. And again, that was pretty
20 limited to just documenting--

21 A Just photos for that.

22 Q Did you then move to a second
23 location?

24 A Yes, I was then sent to the I-26
25 westbound entrance where a wallet was located next to

1 the on ramp.

2 Q So, this is a pretty typical ramp
3 going to 26?

4 A Yes.

5 Q And where were you directed to the
6 wallet, where was the wallet?

7 A There was a grassy area next to the
8 on ramp, it was in the grassy area.

9 Q Now, when a crime scene
10 investigator arrives at a place such as this, what is
11 your first priority?

12 A Photographing the evidence.

13 Q Is that to document things
14 accurately as you find them?

15 A Yes.

16 Q Why is that important for a crime
17 scene investigation?

18 A It helps show the location of the
19 items and how they're found.

20 Q After you -- you referred to a
21 wallet?

22 A Yes.

23 Q After your work on the case, in
24 this particular incident, did we share with you -- did
25 you watch some body cam video relevant to that wallet?

1 A Yes.

2 Q What does that body cam video
3 depict?

4 MR. DAVIS: Objection, Your Honor.
5 Hearsay.

6 THE COURT: What's going to be
7 hearsay?

8 MR. DAVIS: They watched a body cam
9 video. Any statements or any--

10 THE COURT: He didn't ask anything
11 about statements. Watching video is not
12 hearsay. It may be a video with no sound
13 in it.

14 MR. DAVIS: He asked a question
15 about the video that they watched.

16 MR. SIMPSON: I understand the
17 objection. We will not elicited any sort
18 of statements made.

19 THE COURT: Okay.

20 Q Ms. Saunders, do you understand the
21 ruling?

22 A No.

23 Q Okay. Please do not comment upon
24 any statement that may or may not have been heard in
25 this video.

1 A Okay.

2 Q So, backing up, did you have an
3 opportunity after your work was done in this case to
4 view some body cam footage relevant to that wallet?

5 A Yes.

6 Q What did that body cam footage
7 depict?

8 A They picked up the wallet, opened
9 it to look at the drivers's license and that was it.

10 Q Let's be straight up, you know, is
11 that best practice --

12 A No.

13 Q -- from the point of view of a
14 crime scene investigator.

15 A No.

16 Q Would you certainly, in your
17 professional opinion, prefer that the item be left
18 untouched?

19 A Yes.

20 Q But you have viewed that and in
21 this situation it was not?

22 A Right.

23 Q Okay. Did the body cam footage of
24 the person looking at the wallet, appear to the best
25 of your ability, to have taken place at the same place

1 the wallet was located when you arrived?

2 A Yes.

3 Q So, what did you do when you got
4 there and saw the wallet?

5 A I photographed it, I then picked it
6 up and looked at it.

7 Q And again, because the -- after
8 documenting where it is, the picking it up and
9 analyzing it, that's your purpose.

10 A Yes.

11 MR. SIMPSON: Beg the Court's
12 indulgence. May I approach the witness?

13 THE COURT: Yes, sir.

14 Q I'm showing you what's been marked
15 for I.D. only as State's 6 and 7. Can you take a
16 moment and review those exhibits. And are those
17 photographs?

18 A Yes.

19 Q What do they depict?

20 A The wallet in the grassy area.

21 Q Let's start with 6. What does 6
22 show?

23 A 6 shows an overview of the whole
24 grassy area.

25 Q Okay. Is the wallet really clear

1 in State's 6 for I.D.?

2 A Not really.

3 Q But does it show the area that
4 you're later sort of getting closer in on?

5 A Yes.

6 Q And then the next exhibit.

7 A 7 is showing a closer view of the
8 wallet in that area.

9 Q Does that fairly and accurately
10 depict that wallet as it appeared when you arrived and
11 photographed it?

12 A Yes.

13 MR. SIMPSON: Your Honor, at this
14 point in time the State seeks to admit 6
15 and 7.

16 THE COURT: What say the defense?

17 MR. DAVIS: No objection, Your
18 Honor.

19 THE COURT: Okay. In without
20 objection.

21 (Whereupon, State's Exhibits 6 and
22 7 were admitted into evidence.)

23 MR. SIMPSON: Permission to
24 publish, Your Honor?

25 THE COURT: Yes, sir.

1 (Whereupon, State's Exhibit 6 was
2 published for the jury.)

3 Q Publishing State's 6. Can you
4 describe for me what you we're viewing here in State's
5 6?

6 A Yes, this is just an overview of
7 the grassy area where I was directed to photograph the
8 wallet.

9 (Whereupon, State's Exhibit 7 was
10 published for the jury.)

11 Q And State's 7?

12 A This is just an upclose view of the
13 wallet in the same area.

14 Q So, when we see the wallet here,
15 this area is enclosed in State's 6?

16 A Yes.

17 Q Okay. So, this is just sort of a
18 closing in on that?

19 A Mhm.

20 Q As part of your work on this case,
21 did you later have an opportunity to document and
22 photograph the contents of that wallet?

23 A Yes.

24 Q I'm showing you what's been marked
25 I.D. only as State's 8, 9 and 10. Please take a

1 moment to review those generally. Do you recognize
2 those?

3 A Yes.

4 Q Do they fairly and accurately
5 reflect the contents of the wallet, once it was
6 collected and the in contents were reviewed?

7 A Yes.

8 MR. SIMPSON: Your Honor, at this
9 point in time the State would seek to admit
10 8, 9 and 10 into evidence.

11 THE COURT: Okay.

12 MR. DAVIS: Without objection, Your
13 Honor.

14 THE COURT: 8, 9 and 10 are in
15 without objection.

16 (Whereupon, State's Exhibits 8, 9
17 and 10 were admitted into evidence.)

18 (Whereupon, State's Exhibit 8 was
19 published to the jury.)

20 Q Ms. Saunders, can we just review
21 some of the contents of the wallet you collected on
22 the scene?

23 A Sure. Yeah, everything was removed
24 from the wallet and it's all layed out here to include
25 money and cards that were inside of it.

1 Q State's 8. Now moving on to
2 State's 9.

3 (Whereupon, State's Exhibit 9 was
4 published to the jury.)

5 Q What is this?

6 A This is close up of a bank card
7 with the name David C. Robinson on it.

8 Q And State's 10?

9 (Whereupon, State's Exhibit 10 was
10 published to the jury.)

11 A That's a close up of a driver's
12 license for David Robinson.

13 Q Again, we had analyzed a picture of
14 sort of where that was located, that's right next to
15 the interstate?

16 A Yes.

17 Q Specifically, a ramp going on to
18 the interstate?

19 A Yes.

20 Q Any other items that you were asked
21 to analyze or photograph at that scene?

22 A Yes. After that I was directed to
23 go to [REDACTED] King Street extension, where I photographed
24 a cellphone that was recovered.

25 Q Let's talk about that location a

1 little bit. Was that close to the first location or
2 where was it?

3 A I don't think it was close. I
4 think it was a little bit far away, I'm not actually
5 sure.

6 Q Did you photograph -- what did you
7 photograph at that location?

8 A A cellphone.

9 MR. SIMPSON: My apologies to the
10 Court and jury, I seemed to have misplaced
11 something.

12 Q Ms. Saunders, I'm handing what's
13 been marked for I.D. only as State's 4 and 5. My
14 sincere thanks to opposing counsel.

15 MR. DAVIS: Clerk of court.

16 MR. SIMPSON: Clerk of court, thank
17 you.

18 Q Do you recognize those exhibits?

19 A Yes.

20 Q What do they depict?

21 A A cellphone with a black and silver
22 case on it.

23 Q Any distinctive markings, brand
24 names on the cellphone?

25 A Yes, the case says Dabney Lee.

1 MR. SIMPSON: At this point in time
2 the State seeks to admit 4 and 5 into
3 evidence.

4 THE COURT: Any objection?

5 MR. DAVIS: May I approach, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. DAVIS: No objection.

9 THE COURT: Okay, 4 and 5 are in
10 without objection.

11 (Whereupon, State's Exhibit 4 and 5
12 were admitted into evidence.)

13 MR. SIMPSON: Your Honor, I have no
14 further questions of this witness.

15 MR. DAVIS: If I could have a
16 moment, Your Honor.

17 THE COURT: Sure.

18 CROSS-EXAMINATION BY MR. DAVIS:

19 Q Is it Officer Saunders?

20 A Nope, just crime scene tech, I
21 guess.

22 Q Crime Scene Tech Saunders, you have
23 a patrol unit that's assigned to you?

24 A A car.

25 Q Yes?

1 A Yes.

2 Q The instruments you would use at
3 crime scenes are kept in that car?

4 A Yes.

5 Q When you responded to the first
6 incident location, which was on Queen Street, you
7 responded in your vehicle?

8 A Yes.

9 Q And one of the major things in that
10 vehicle would have been your camera?

11 A Mhm.

12 Q And you just testified that you
13 responded down on Queen, took some photos of the area.

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q Would that have been under the
18 direction of the lead investigator, Harvill, Detective
19 Harvill?

20 A Um, that was under Sergeant Adams,
21 I believe.

22 Q Okay, Sergeant Adams on scene
23 requested that. Would it have been the lead detective
24 Harvill that then sent you to the second location?

25 A Um, I believe Sergeant Adams, per

1 him, sent me to the second location.

2 Q So, Harvill to Adams to you?

3 A I believe so.

4 Q It's kind of a chain.

5 A Yes.

6 Q When you arrived at the second
7 location which you just testified about, the wooded
8 area?

9 A Mhm.

10 Q You had a camera with you and took
11 some photographs?

12 A Yes.

13 MR. DAVIS: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes, sir.

16 Q I'm showing you what's been marked
17 as State's Exhibit number 3. I don't know if you've
18 seen this photograph before, so take a second and tell
19 me if you can orient what's in this photo and if it's
20 familiar to you.

21 A Yes, this is the highway.

22 Q It's familiar to you?

23 A Yes.

24 Q And I think you just said it's the
25 highway, that's the -- on I-26 near where you went?

1 A Yes.

2 Q In the top left corner of that
3 picture, do you recall meeting Sergeant Salkeld?

4 A Yes.

5 Q Do you remember meeting Sergeant
6 Salkeld in the back of his patrol unit to photograph
7 the phone?

8 A Yes.

9 Q Does that area at the top left, the
10 gravel area, the industrial area on the other side of
11 the woods, does that match where you met him?

12 A It looks similar, yes.

13 Q Did Sergeant Salkeld or any other
14 officer ask you to photograph anything else at that
15 location?

16 A No.

17 MR. DAVIS: Thank you Crime Scene
18 Tech Saunders. No other questions, Your
19 Honor.

20 THE COURT: Any redirect?

21 MR. SIMPSON: No redirect, Your
22 Honor, thank you.

23 THE COURT: Okay, thank you ma'am.
24 You can step down.

25 (Whereupon, the witness was

1 excused.)

2 MR. SIMPSON: State calls Crime
3 Scene Tech Ashley Wojslawowicz.

4 A S H L E Y W O J S L A W O W I C Z, a Witness
5 called on behalf of the State, having been first duly
6 sworn by the Clerk, was examined and testified as
7 follows:

8 THE COURT: Please speak loud and
9 clear into the mic. State your full name
10 and spell your last name for the record.

11 THE WITNESS: Good morning my name
12 is Ashley Wojslawowicz,
13 W-O-J-S-L-A-W-O-W-I-C-Z.

14 DIRECT EXAMINATION BY MR. SIMPSON:

15 Q Ms. Wojslawowicz, good morning?

16 A Good morning.

17 Q How are you so employed, Ms.
18 Wojslawowicz?

19 A I am a master crime scene
20 investigator for the Charleston Police Department.

21 Q How long have you -- if you could,
22 I know you progressed through the ranks. Can you
23 account for this jury your employment history with the
24 Charleston Police Department?

25 A Yes. I've been employed with CPD

1 in the Crime Scene Unit since January 2011, and I was
2 promoted to master crime scene investigator about a
3 year ago.

4 Q What sort of education or
5 specialized training does one require to do the job
6 that you do?

7 A Well for me, I possess a bachelors
8 of science in criminal justice, a masters of science
9 in criminal justice, I'm a doctoral candidate
10 currently. I also have certifications through the
11 International Association for Identification, I'm also
12 a certified senior crime scene analyst. Also, an
13 active member of the International Association for
14 Identification, the State Chapter of the International
15 Association for Identification. And an active member
16 of the International Association for Blood Stain
17 Pattern Analysts. In addition to the on scene
18 training and formal classroom experience and
19 professional development.

20 Q Okay. Well, congrats on the
21 doctorate and good luck on that.

22 A Thank you.

23 Q I should have mentioned, the judge
24 has given his permission, if you're comfortable with
25 it, you may remove your mask.

1 A Awesome, I'm comfortable.

2 Q So, through that history you
3 recounted, were you employed by the Charleston Crime
4 Scene Unit in May of 2017?

5 A Yes, I was.

6 Q What sort of services does the
7 Crime Scene Unit provide, generally?

8 A We respond to various scenes that
9 require forensic processing. Anything from basic
10 property crimes all the way through violent crimes.
11 Our job is to document, locate, collect and in some
12 cases analyze items for forensic value. And so that
13 would be the role that I would hold or am holding at
14 the time of the response.

15 Q Does that analysis of a crime scene
16 always take place at the location or does it sometimes
17 take place at your office?

18 A It depends on the circumstances,
19 but yes, we could have multiple location.

20 Q If a vehicle is determined to have
21 some relevance to a crime, how might your unit
22 proceed?

23 A Most often we're notified by
24 investigating detectives that a vehicle has been
25 located that maybe of interest in the investigation.

1 And pending a search warrant for that vehicle, it
2 would then be towed to our secure location where we
3 would wait until we receive that search warrant and we
4 would begin processing the vehicle as required.

5 Q How did your work -- you know what
6 incident we're here today to discuss, correct?

7 A Yes.

8 Q How did your work in this case
9 proceed?

10 A I assisted in the execution of the
11 search warrant for a vehicle that had been towed to
12 our office.

13 MR. SIMPSON: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes, sir.

16 Q Showing you what's been marked I.D.
17 only as State's 39. Take as long as you need to
18 review that document.

19 A Yeah, this is the search warrant I
20 received for the vehicle that had been towed to our
21 office. It's for a 2009 gray Kia Optima.

22 Q How would your unit go about
23 documenting and processing a vehicle pursuant to the
24 search warrant?

25 A We would begin by conducting

1 overall photographs. So how the vehicle was observed
2 at the time of us approaching the vehicle with the
3 signed search warrant, after documenting the
4 photographs we would conduct a systematic search of
5 the items inside the vehicle. Followed by
6 fingerprinting of the vehicle and any items within it.
7 And then if anything specific was mentioned in the
8 search warrant we would proceed to accomplish that as
9 well.

10 Q So, you began by saying you would
11 photograph the vehicle and is that as you found it, as
12 it arrives?

13 A Yes.

14 MR. SIMPSON: May I approach, Your
15 Honor?

16 THE COURT: Yes, sir.

17 Q Showing you what's been marked for
18 I.D. only as State's 12 through 19. Take a moment to
19 review those, generally.

20 A These are photographs of the
21 vehicle and items that were located inside of it.

22 MR. SIMPSON: Your Honor, at this
23 point the State would seek to admit 12
24 through 19.

25 MR. DAVIS: No objection, Your

1 Honor.

2 THE COURT: Okay. They're in
3 without objection. That's 12 through 19?

4 MR. SIMPSON: Yes, Your Honor.

5 (Whereupon, State's Exhibits 12
6 through 19 were admitted into evidence.)

7 Q Ms. Wojslawowicz, you just said
8 that you had first photographed how you find things
9 then document the consents sort of individually?

10 A Yes. Its a progression of
11 photographs as the search is taking place.

12 Q I'm going to show you the
13 photographs you just reviewed and have you describe
14 what we're looking at for the jury, if that's okay.

15 A Sure.

16 Q Starting with State's 12.

17 (Whereupon, State's Exhibit 12 was
18 published for the jury.)

19 A All right. This is a photograph of
20 that vehicle, the Kia Optima. And this is looking
21 into the front passenger seat and floorboard area.

22 Q And you see several items, we're
23 going to get a better view of these?

24 A Yes.

25 Q State's 13?

1 (Whereupon, State's Exhibit 13 was
2 published for the jury.)

3 A This is a close up photograph of
4 those items in the same area to include items in the
5 front passenger seat and floorboard area.

6 Q Drawing your attention to some
7 specific items, what do we have here?

8 A An open canned of Coca-Cola.

9 Q And do you see sort of a black
10 athletic bag in that photograph?

11 A Yes.

12 Q What about a woman's tote bag or
13 black purse?

14 A Yes, in the front passenger
15 floorboard there was a black in color purse.

16 Q Moving on to State's 14.

17 (Whereupon, State's Exhibit 14 was
18 published for the jury.)

19 A This is a photograph of that same
20 purse and it appeared that several items underneath
21 the purse had been emptied out from the purse, because
22 the purse was on top of those items.

23 Q Now, once documenting as they're
24 found, do you then sort of remove and document each
25 item individually?

1 A Yes.

2 Q Moving on to State's 15.

3 (Whereupon, State's Exhibit 15 was
4 published for the jury.)

5 A So, this a photograph of those
6 items in the front passenger floorboard area, laid out
7 to better visualize those items.

8 Q All the items you see in State's
9 15, those were located sort of in that pile of items?

10 A Yes. In the same area of the front
11 passenger floorboard.

12 Q Do you use note cards to document
13 that, just to double confirm that?

14 A Yes, yes, I do.

15 Q Do you see a note card in this
16 image?

17 A Yes, in the top left corner. It's
18 front passenger floorboard.

19 Q State's 16.

20 (Whereupon, State's Exhibit 16 was
21 published for the jury.)

22 A These are items that were located
23 in the front passenger door pocket.

24 Q State's 17.

25 (Whereupon, State's Exhibit 17 was

1 published for the jury.)

2 A This is a more close up picture of
3 one of those items. It appears to be a hotel card key
4 marked for room 202.

5 Q State's 18.

6 (Whereupon, State's Exhibit 18 was
7 published for the jury.)

8 A This is the wallet that was found
9 in the front passenger floorboard. I opened it up to
10 photograph the contents of it.

11 Q State's 19.

12 (Whereupon, State's Exhibit 19 was
13 published for the jury.)

14 A This is an I.D. that was found
15 inside of that wallet.

16 Q And does that I.D. contain a name?

17 A Yes, the name is Jacquelyn Ryan
18 Cox.

19 MR. SIMPSON: With the Court's
20 permission, I'm going to approach again.

21 THE COURT: Okay.

22 Q Showing you what's been marked for
23 I.D. only as State's 20 through 24. Can you take a
24 moment to review those exhibits?

25 A Okay. These are additional

1 photographs I took of the vehicle.

2 Q Do these depict a different area of
3 the vehicle?

4 A Yes. This is the -- these
5 photographs depict the rear passenger side seat area.

6 MR. SIMPSON: At this point in time
7 State seeks to admit into evidence State's
8 20 through 24.

9 MR. DAVIS: No objection, Your
10 Honor.

11 THE COURT: Okay. State's Exhibit
12 20 through 24, in without objection.

13 (Whereupon, State's Exhibits 20
14 through 24 are admitted into evidence.)

15 Q State's 20.

16 (Whereupon, State's Exhibit 20 was
17 published for the jury.)

18 A This is a photograph of the rear
19 passenger seat area. This photo is focusing on the
20 rear driver side passenger seat.

21 Q 21.

22 (Whereupon, State's Exhibit 21 was
23 published for the jury.)

24 A These are a few of the items that
25 were moved from the rear driver side passenger seat.

1 One was a pink in color Urban Outfitters shopping bag
2 and then a silver laptop.

3 Q 22.

4 (Whereupon, State's Exhibit 22 was
5 published for the jury.)

6 A Upon opening the silver laptop I
7 observed a lock screen with the name Jacquelyn Cox.

8 Q 23.

9 (Whereupon, State's Exhibit 23 was
10 published for the jury.)

11 A These are the contents of that pink
12 shopping bag. Some clothing and a receipt.

13 Q And 24.

14 (Whereupon, State's Exhibit 24 was
15 published for the jury.)

16 A This is a close up of that receipt
17 noting the date and time of transaction.

18 Q So, after you've -- you mentioned
19 this before, but after you made these efforts to
20 document and photograph the car as it seems, as it is
21 when it arrives and the contents, you mentioned
22 perhaps doing some further processing of that vehicle.
23 Could you describe that for the jury?

24 A Yes. One of the additional
25 measures that we take is fingerprint processing. So,

1 we will conduct a search for latent fingerprints.

2 Q Let me pause you there. Perhaps
3 some of the jury aren't not familiar with this, what
4 is a latent print?

5 A A latent fingerprint is a print
6 that is not visible to the naked eye. It needs some
7 sort of enhancement in order to see and document
8 appropriately.

9 So, in this case I utilized black
10 fingerprint powder which when you utilize the surface
11 of certain objects, helps develop that fingerprint to
12 where you can easily see it and then document and
13 collect it as appropriate.

14 Q And if you see a fingerprint, how
15 is this collected?

16 A First, the general area of where
17 it's located is photographed. And then after that is
18 completed, we use fingerprint lifting tape and we'll
19 put that over the print, lift the tape and then adhere
20 it to a fingerprint card and we'll fill out the card
21 with the necessary information.

22 Q And is that information to allow
23 you to look at that card and match it to the location
24 that it was found later?

25 A Yes, yes.

cards?

Yes, I did.

but you photograph the location before it's located?

Correct, yes.

fingerprint collection?

Yes.

I.D. only as State's 25 through 31.

areas of those fingerprints.

any areas of latent prints on this vehicle?

Yes.

Do you recall how many?

I collected nine in total.

just some of those.

Sure.

in time would seek to admit State's 25

1 through 30.

2 THE COURT: What say the defense?

3 MR. DAVIS: Without objection.

4 THE COURT: All right, they're in
5 without objection.

6 (Whereupon, State's Exhibits 25
7 through 30 were admitted without evidence.)

8 Q Beginning with State's 25.

9 (Whereupon, State's Exhibit 25 was
10 published for the jury.)

11 A This is a photograph of a latent
12 fingerprint that was developed on the hood of the
13 vehicle near the driver's side.

14 Q Earlier you referenced markers, can
15 we see that here?

16 A Yes. So, on the center of the
17 photograph there is a white adhesive scale that we
18 will place next to the developed print to assist in
19 locating photographs.

20 Q States 26.

21 (Whereupon, State's Exhibit 26 was
22 published for the jury.)

23 A This is a close up of that same
24 area to note the number 1 that I had marked on the
25 adhesive.

1 Q So, this would fairly and
2 accurately reflect the location where print lift
3 number 1 was taken?

4 A Yes, correct.

5 Q State's 27.

6 (Whereupon, State's Exhibit 27 was
7 published for the jury.)

8 A This is a photograph of the
9 exterior rear passenger side door and on the window is
10 a similar adhesive scale.

11 Q State's 28.

12 (Whereupon, State's Exhibit 28 was
13 published for the jury.)

14 A And this is a close up of that same
15 area, noting and being identified as lift number 3.

16 Q Again, an accurate representation
17 of where label number 3 was taken?

18 A Yes.

19 Q State's 29.

20 (Whereupon, State's Exhibit 29 was
21 published for the jury.)

22 A This is a photograph of the door
23 frame area of the front passenger area documenting the
24 scales for lift number 5 and 6.

25 Q So, this would accurately reflect

1 the location of where 5 and 6 were taken?

2 A Correct.

3 Q State's 30.

4 (Whereupon, State's Exhibit 30 was
5 published for the jury.)

6 A This is a photograph of the front
7 center console and cup holder area.

8 Q And State's 31.

9 (Whereupon, State's Exhibit 31 was
10 published for the jury.)

11 A This is a photograph depicting that
12 lift number 7, derived from that open Coca-Cola can.

13 Q And State's 30, does it depicted
14 where that same Coca-Cola can was located?

15 A Yes.

16 Q Ms. Wojslawowicz, I'm handing you
17 what's been marked for I.D. only as State's 40.
18 Before opening that, what is it?

19 A This is exterior rear packaging for
20 the referenced case, these are my fingerprint lifts,
21 items 1 through 9 with my name on them, case number
22 and sealed.

23 Q Is that marked in a manner that
24 allows you to confidently identify that today?

25 A Yes.

1 Q Even this long after you processed
2 the scene?

3 A Yes.

4 Q Could you take a moment and inspect
5 the contents? I realized they're sealed.

6 A Do you want me to open them?

7 Q You don't have to, unless you need
8 to to answer this question. Do you have good enough
9 view to confirm that the contents of that package are,
10 as you said, your lifted cards from this case?

11 A Yes, yes.

12 MR. SIMPSON: Thank you. I have no
13 further questions of this witness.

14 MR. DAVIS: No questions, Your
15 Honor.

16 THE COURT: Okay, thank you.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness was
19 excused.)

20 MR. SIMPSON: Your Honor, may we
21 approach?

22 THE COURT: Yes.

23 (Whereupon, all the parties
24 approached the bench for an off-the-record
25 discussion.)

1 THE COURT: Ladies and gentlemen,
2 they tell me we need to break for lunch.
3 And the clerk's office has provided lunch
4 for y'all. So, they will bring lunch in,
5 that will give us about 1:00, 1:15.

6 MR. DAVIS: 1:15 is fine, Your
7 Honor.

8 THE COURT: 1:15, all right. We'll
9 reconvene at 1:15. Don't discuss the case
10 yet and enjoy our lunch, I hope they bring
11 you something good.

12 (Whereupon, the jury is excused.)

13 (Whereupon, a recess was taken.)

14 (Time noted: 11:52 a.m.)

15 (Whereupon, all parties are
16 present. Proceedings resume.)

17 (Time noted: 1:22 p.m.)

18 THE COURT: Are we ready for the
19 jury?

20 MR. SIMPSON: Yes, Your Honor.

21 MR. DAVIS: Yes, Your Honor.

22 THE COURT: Is the jury ready for
23 us? Whenever they're ready you can bring
24 them in.

25 THE BAILIFF: The jury is seated.

1 (Whereupon, all jurors are
2 present.)

3 THE COURT: Thank you. Solicitor,
4 you may call your next witness.

5 MR. ABSHIRE: The State would call
6 Nova Grilli.

7 N O V A G R I L L I, a Witness called on behalf of
8 the State, having been first duly sworn by the Clerk,
9 was examined and testified as follows:

10 THE CLERK: Please state your full
11 name and spell your last name for the
12 record. You can take your mask off if you
13 feel comfortable.

14 THE WITNESS: My name is Nova
15 Grilli, G-R-I-L-L-I.

16 DIRECT EXAMINATION BY MR. ABSHIRE:

17 Q Good afternoon, Ms. Grilli.

18 A Good afternoon.

19 Q Could you please tell us what you
20 do for a living?

21 A I'm a latent print supervisor for
22 Charleston PD.

23 Q Could you describe the nature of
24 that work?

25 A I do -- conduct latent print

1 examinations, from latent evidence recovered from
2 crime scenes. And I will also compare two known
3 individuals.

4 Q Do you do ridge analysis?

5 A Ridge analysis, yes.

6 Q How long have you been doing that?

7 A I've been in the field for over 14
8 years.

9 Q Could you kind of tell us a little
10 bit about your formal education, including any
11 specializations you have?

12 A I hold two bachelors degrees, one
13 in forensic science, one in criminology from the
14 University of Montana. I also hold a masters degree
15 in forensic science through National University. I am
16 certified latent print examiner through the
17 International Association for Identification, also
18 known as the IAI. I've been through multiple training
19 classes, workshops, conferences, throughout my career.

20 Q Are you a member of any
21 professional organizations for the ridge analysis?

22 A Yes. I am a member of the Parent
23 Body of the International Association for
24 Identification or the IAI. I am also a member of the
25 South Carolina Division of the IAI. I'm also a member

1 of OSAC, it stands for Organization for Scientific
2 Area Committees for forensic science. This
3 organization creates documents to publish standards
4 across the board, across the world for policies and
5 procedures through all the different disciplines in
6 forensic science.

7 Q Could you tell us how you stay up
8 on some of the current developments in your field.

9 A I read the JFI, it's published
10 through the IAI. It's bimonthly. I attend training
11 classes and conferences when I'm available through
12 OSAC. I'm able to communicate and discuss new
13 policies and procedures with my peers, and that's how
14 I stay in touch with what's going on.

15 Q Have you ever been qualified as an
16 expert in your field?

17 A Yes.

18 Q Roughly, how many fingerprint
19 comparisons have you done?

20 A Hundreds of thousands. This
21 includes from when I started training to case work, to
22 any training classes that involve comparisons and also
23 involves my yearly proficiency test that I take.

24 Q Kind of getting into the analysis
25 itself, could you just explain to us what a known

1 fingerprint is?

2 A On the planter side of your foot
3 and on the palmer side of your hand, you have what's
4 called friction ridge scan, those ridges and furrows.
5 So, think of the ridges as hills and the furrows as
6 valleys. When you can apply a thin layer of black
7 planters ink on your friction or your skin, you will
8 do an intentionally recording of that once friction
9 ridge skin, onto a tempering card.

10 Q We've learned a little bit about it
11 but could you describe to us what a latent print is?

12 A Yes. I stated before you have a
13 friction ridge skin, on the ridges you have pours,
14 these pours mixed with sweat, as well as if you're
15 touching your forehead where there's some oils, if
16 when sweat and mixture of oils on your finger, and you
17 touch a surface, you're unintentionally leaving
18 friction ridge skin. And in order to see this you
19 have to process it in order for it to be visible.

20 Q And in the area of friction ridge
21 analysis how are fingerprints that are brought to you
22 compared?

23 A I'm sorry, say that again?

24 Q How are -- in friction ridge
25 analysis, the fingerprints that are brought to you, how

1 are they compared?

2 A We use the methodology Ace-V. It
3 stands for Analysis Comparison Evaluate and
4 Verification. So, when I'm getting latent print
5 evidence, my first thing that I do is I look at what
6 is there? What is it? It is part of a fingerprint,
7 is it a joint, is it a palm? What is it? And there's
8 certain clues that can help me determine what that is.
9 The shape of the impression, if there's creases,
10 wrinkles, some type of we call anger points, to
11 determine the correct orientation.

12 Next I'm determining if there is
13 enough sufficient information in that print to do a
14 comparison down the road. So, we look at what's
15 called characteristics or minutiae. So, I'm looking
16 at the amount of detail that's in this impression, and
17 once I gather all that information up, I can do my
18 comparison, if it's suitable for comparison.

19 What happens there is I take my
20 latent on the left and the known on my right. When I
21 look at the latent, I want to find what's called
22 target group and that's specific characteristics or
23 minutiae in a group, so I memorize where those are at
24 and exactly what they are. And then I look at the
25 known and I find, hopefully find, the same similar

1 characteristics. If I do, then I go back to the
2 latent and I find another feature by counting the
3 ridges. And I do the same, and I go back and forth
4 and that's how I do my comparisons.

5 I find as much detail or I don't
6 find any detail to then make my evaluation. And I
7 have three choices, I can identify, be inconclusive or
8 I can exclude. And based on my evaluation, it then
9 goes to a second train competent examiner to verify my
10 conclusions.

11 Q If I understand correctly, you're
12 going through these points, is there a set amount of
13 points in your comparison that require to make an
14 identification?

15 A There is no set minimum number of
16 point in the United States, and there is no set number
17 that I use, it's dependent upon the quality and
18 quantity of each impression.

19 Q Could you kind of describe the
20 basic factors that you used in your friction ridge
21 analysis?

22 A It's persistence and uniqueness.
23 So, persistence is based on the stability of our
24 friction ridge skin by the generation of what's called
25 paratenon cells, that help stabilize friction ridge

1 skin through life. The only time that this changes is
2 when there is an injury to the bottom layer of the
3 skin where these cells are generated and that will
4 create a scar. Once that skin heals, that scar will
5 stay stable through life.

6 Uniqueness is based on the
7 different growth stressors and movements that each of
8 us took during field development. And this is shown
9 for identical twins, that even though they can have
10 very similar pattern types, those small details that I
11 spoke about earlier, they're different. And over
12 hundreds of years that fingerprints have been used for
13 means for identification, no two people have been
14 found to have the same fingerprint.

15 MR. ABSHIRE: Your Honor, at this
16 time the State would like to qualify
17 Ms. Grilli as an expert in field of latent
18 fingerprints.

19 THE COURT: What say the defense?

20 MR. DAVIS: Clearly she's an
21 expert, Your Honor.

22 THE COURT: Okay. Court so finds.

23 Q Ms. Grilli, we touched on a little
24 bit earlier, we defined latent, we defined known, but
25 can you kind of walk us through the difference between

1 a latent and a known print?

2 A A latent is your unintentionally
3 leaving that friction ridge detail behind. And it's
4 not visible, you have to use some type of processes to
5 enhance that friction ridge skin. A known, you're
6 intentionally purposely recording ones fingerprints on
7 a temp print card.

8 Q And I believe you touched on it
9 earlier, but no two finger prints are the same, is
10 each fingerprint unique to the individual that may
11 leave it?

12 A Yes.

13 Q Can you put a timestamp on a print?

14 A No.

15 Q In analyzing these prints are there
16 exterior fractures that can play into the quality or
17 even the existence of a fingerprint?

18 A Yes. So, there's many things that
19 can effect the quality of a fingerprint. One, a
20 surface. If you have a textured surface that can
21 effect it. If a surface is outside and you have rain,
22 that can effect it. If you have multiple people
23 touching the same surface that can also effect it.

24 Q Would there be occasions where
25 maybe somebody touches something and doesn't leave a

1 fingerprint?

2 A Correct.

3 Q This may seem like straight forward
4 question, but would you consider your examination a
5 scientific undertaking.

6 A Yes.

7 Q And conducting that scientific
8 undertaking are there certain precautions you take to
9 ensure that it's as accurate as possible?

10 A So, there are certain precautions
11 that we take through my agency. So, certain things
12 that we do, there's different reviews that we do. One
13 that's calls a tech admin review and then of course we
14 also do verifications. Depending on the cases for our
15 agency, we'll actually go a step further and we'll
16 scan all of the latent print evidence in, and we'll
17 bring up the evidence, the scanned images that were
18 shot. We will cut and format these impressions to
19 what we think they are, to the correct orientation.
20 And then we will also document our analysis further by
21 distinguishing the type of distortion that is in the
22 print, such as if we see movement, if we see heavy
23 pressure, any type of notes that's involved with our
24 analysis gets reported on this saved image that we
25 do in photoshop. And all of that is also entered on

1 our work sheets.

2 Q Could you walk us through if there
3 is a peer evaluation in the process in our office and
4 what that looks like?

5 A Yeah. So, I briefly spoke about
6 tech admin review and verification. So, all of our
7 cases go through a tech admin review, which basically
8 means our work sheets, where he keep record of our
9 analysis and any additional procedures done in this
10 case, all of that is checked to make sure it's
11 accurate. Nothing is misspelled, chain of custody is
12 looked at. For verifications, when we have an I.D. or
13 inclusive, we actually will take possession of that
14 case.

15 And something that our agency does
16 is, when the latent print evidence is first collected
17 from a crime scene, that is put in a plastic bag and
18 it's double sealed on both sides with their initials
19 to it. So, when the initial examiner gets the case,
20 they cut the top, like one side of that seal and keep
21 that seal in a plastic bag. We never throw those
22 away. Once the initial examiner is done with that
23 case, they double seal that and they cut and initial.
24 When we verify, when we get that case, we cut that
25 side and of course keep that top cut piece in a

1 plastic bag. So, after we're done verifying we also
2 double seal the bag and initial, so the evidence is
3 secure.

4 For our verifications and our
5 identification inconclusive, we keep screen shots, we
6 will have a basic screen shot of a latent on the left
7 and a known on the right. And the initial examiner
8 will have a saved image of their mark ups with their
9 conclusion. The verifier will also have their saved
10 image of their mark up and their conclusion. And
11 they work off of a blank screen shot, which is also
12 kept in the case file.

13 Once the case is done and all the
14 reviews and the verifications have been completed and
15 the bag has been sealed, that evidence goes into a
16 locked area to where only a few people have access to.

17 Q But just to be 100 percent clear,
18 you guys do this peer review process for every single
19 examine -- every time an examiner works on crimes?

20 A For verification, it's for
21 identifications and inconclusives. When you have a
22 case that has an I.D. to it and you have other
23 remaining, un-identifying latents to it, those latents
24 are also verified that they are exclusions.

25 Q Ms. Grilli, you said you've been in

1 your position for awhile so this maybe a straight
2 forward question, but were you in your position in May
3 of 2017?

4 A Yes.

5 Q During that time did you have
6 occasion to be involved with the examination in this
7 case?

8 A Yes.

9 Q And during that time, who were the
10 examiners that worked in your officer?

11 A It was Nadine Kirstein [sic] and
12 myself.

13 Q Was Ms. Kirstein the initial
14 examiner?

15 A Yes.

16 Q Coming back to the peer review
17 process, did you peer review Ms. Kirstein's work in
18 this?

19 A Yes, I was the verifier.

20 Q Ms. Grilli, is Ms. Kirstein still
21 with the Charleston Police Department?

22 A No, she is enjoying retirement now.

23 Q So, going back. You received these
24 print from Ms. Kirstein and you began your peer review
25 process, did you go through the same exact steps that

1 Ms. Kirstein did?

2 A I went through the ACE steps, the
3 analysis comparison and evaluate.

4 Q Did you reach the same conclusion
5 as Ms. Kirstein?

6 A Yes.

7 Q How many lifts did you present for
8 review in this case?

9 A Can I see the -- either the
10 evidence or the report please?

11 Q Absolutely.

12 MR. ABSHIRE: May I approach, Your
13 Honor?

14 THE COURT: Yes, sure.

15 A What was the question again?

16 Q How many prints did you review in
17 this case that -- you were able to pull -- how many
18 lifts were you able to identify in this?

19 A 16-1, 16-3, 16-6 and two
20 impressions of 16-7, so a total of five.

21 Q Can you explain to us what you mean
22 by two impressions on one lift, what would cause that?

23 A So, when we get a latent lift card,
24 you can have multiple impressions, it's dependent on
25 just what's there. Crime scene is known to take what

1 ever is there in the immediate area. So, we may have
2 multiple, multiple impressions that are suitable for
3 comparisons on one lift card.

4 Q And was that the case here with one
5 of the prints lifted?

6 A Yes.

7 Q Ms. Grilli, I am going to bring you
8 what's for I.D. as State's 40, and a pair of scissors
9 to open it. Are you familiar with this?

10 A Yes.

11 Q Could you describe what that is for
12 us?

13 A It is the envelope that contains
14 the latent print evidence from case 1707997 bag, 16.

15 Q Could you identify how many print
16 are in there?

17 A Are you wanting to know how many
18 lift cards total?

19 Q Of the ones we discussed earlier.

20 A Oh, the ones that are suitable that
21 are identified, okay.

22 Q Yes.

23 A Okay. We have 16-1, 16-3, 16-6,
24 and two impressions on 16-7. So, there are four lift
25 cards but there is five impressions.

1 MR. ABSHIRE: I'm going to mark
2 those at this time.

3 Q Thank you. I'm going to hand you
4 these back real quick. Could you identify these that
5 we just discussed for me?

6 A What do you--

7 Q As the State's Exhibit number that
8 is with it.

9 A Oh, 32, 33--

10 Q I apologize, I'm not being clear.
11 For State's Exhibit number that is on there, could you
12 identify what print--

13 A Oh, what print. So, on one, it's
14 left palm.

15 Q I apologize. Of the 1, 3, 6 and 7
16 that we've identified, could you please identify for
17 us the State's Exhibit number for that print, for the
18 lift card.

19 A The 1, 3, 6 and 7, is that what
20 you're referring to?

21 Q I apologize if I'm not clear.

22 MR. ABSHIRE: Your Honor, the State
23 would request to move these into evidence
24 as State's Exhibit 32 through 35.

25 THE COURT: What say the defense?

1 MR. DAVIS: No objection.

2 THE COURT: Okay. My understanding
3 32 is from lift card 1, 33 is from lift
4 card 3, 34 is from lift card 6 and 35 is
5 from lift card 7. Is that correct?

6 MR. ABSHIRE: Correct, Your Honor.

7 THE COURT: Okay.

8 MR. DAVIS: And Your Honor, with
9 the Ms. Grilli's testimony as to that we
10 have no objection to those four being
11 admitted.

12 THE COURT: Okay, they're in
13 without objection.

14 (Whereupon, State's Exhibits 32
15 through 35 were admitted into evidence.)

16 Q Real brief please, Ms. Grilli, I'm
17 handing you what's been identified as State's Exhibit
18 41. Could you just tell us what that is real quick?

19 A That is the report that Nadine
20 Kirstein generated fro envelope 16.

21 Q Is this the report that we've been
22 discussing?

23 A Yes.

24 Q The one you worked on?

25 A Yes.

Q Going to the print 1, 3, 6 and 7,
were you able to identify where these were lifted
from?

A Yes.

Q Could you tell us where you were able to identify lift 1 from?

A Lift 1, states driver side hood.

Q And 3?

A Says exterior rear passenger side window.

Q And 6?

A Exterior front passenger door panel.

Q And 7?

A Coca-Cola can.

Q Ms. Grilli, were you able to positively I.D. them as belonging to an individual?

A Yes, I was able to identify them.

Q Who is that individual?

A They identified to the ten print
bearing the name David Crockett Robinson.

MR. ABSHIRE: Thank you,

Ms. Grilli, I appreciate your time.

THE WITNESS: You're welcome.

MR. DAVIS: Your Honor, the defense

1 has no questions.

2 THE COURT: Okay. Thank you,
3 ma'am.

4 (Whereupon, the witness was
5 excused.)

6 MR. SIMPSON: Your Honor, the State
7 calls Detective Joseph Harvill.

8 J O S E P H H A R V I L L, a Witness called on
9 behalf of the State, having been first duly sworn by
10 the Clerk, was examined and testified as follows:

11 THE CLERK: Speak loud and clear
12 into the mic. State your full name and
13 spell your last name for the record.

14 THE WITNESS: Sergeant Joseph
15 Harvill. Last name spelled H-A-R-V-I-L-L.

16 DIRECT EXAMINATION BY MR. SIMPSON:

17 Q Sir, where you currently employed?

18 A City of Charleston Police
19 Department, sir.

20 Q What is your rank?

21 A I am sergeant.

22 Q Is that a leadership role?

23 A Yes, sir, it is.

24 Q Are you the sergeant of a
25 particular division?

1 A Yes, sir. I'm sergeant of the
2 training division. I actually act as training
3 coordinator for our new hires, all of your current
4 officers and executive staff.

5 Q How long have you been in law
6 enforcement?

7 A A little over 13 years, sir.

8 Q Was all of that experience with the
9 Charleston Police Department?

10 A Yes, sir, it was.

11 Q Could you recount for the jury sort
12 of your employment history?

13 A Yes, sir. I was employed June 2,
14 2008 after graduating from Citadel. Started out as
15 team three, operations and patrol division. And
16 eventually progressed up to power shift, which was a
17 little bit more of a flexible shift. From there,
18 eventually moved into investigations district level,
19 for James and John Island. Ultimately, I believe in
20 2015 or '16 I moved up to the Special Victims Unit for
21 the City of Charleston. Spent a couple years there.
22 Then in 2018 moved over to the FBI task force with the
23 local RA. I was promoted in, I believe 2019. Spent
24 sometime on patrol before moving over to the training
25 division.

1 Q And I think I got lost in there.
2 In may of 2017, what role did you have?

3 A Special Victims Unit detective,
4 sir.

5 Q What does a detective do on a case?

6 A Typically, day in, day out, Monday
7 through Friday case reports will be taken by patrol
8 level officers, those get filtered back to us
9 depending on the circumstances. Some handle it at a
10 district level, but for major crimes we would handle
11 those. And then for the day in question I happen to
12 be on-call rotation, which we do from time-to-time
13 about every six or seven weeks. We work seven days
14 straight, after hours and weekends.

15 Q And is that on-call position, is
16 that if a situation arises through patrol that
17 requires that the services of the detective, you're
18 the one that's called out to that scene?

19 A Yes, sir.

20 Q And in that role, did you become
21 involved in an incident that we're here for today?

22 A Yes, sir, I did, sir.

23 Q Can you describe that involvement
24 for the jury?

25 A Certainly. Time in question was

1 May 7 of '17 and I was called to the scene at [REDACTED]
2 Queen Street. We had a reported robbery by the victim
3 Ms. Jacquelyn Cox. Prior to getting on scene she had
4 spoken with a couple patrol officers that were on
5 scene at the time with her. She relayed information
6 of the suspect description, as well as the fact that
7 some of the items stolen from her, which included her
8 cellphone, she had the track my iPhone application on
9 it. And she was able to coordinate that with that
10 officer on scene to where they were able to start a
11 track of the device, which ultimately was discovered
12 to be a nearby location. And officers responded in
13 canvassing that location.

14 They ultimately located a vehicle
15 that was occupied by two occupants, a driver and a
16 second passenger in the front passenger seat.
17 Ultimately that vehicle began to leave the area. A
18 traffic stop was attempted on it and after a short
19 pursuit, I believe the ending location was somewhere
20 in the area of Harriet Street on and off ramp and I-26
21 westbound. A passenger fled the vehicle and began to
22 head to the wood line, and ultimately onto the
23 property of Forge Ready Mix, which is located on the
24 upper King Street extension. Significant amount of
25 officers responded to that location. Ultimately they

1 located a suspect there on scene, and an
2 identification process and further investigation
3 followed up with that.

4 Q So your role in the investigation
5 started at the location on Queen Street?

6 A Yes, sir, it did.

7 Q Is that in the City of Charleston?

8 A Yes, sir.

9 Q County of Charleston?

10 A Yes, sir.

11 Q You said you interacted with the
12 victim at that time?

13 A I did, yes, sir.

14 Q And you conducted an interview with
15 the victim?

16 A Yes, sir.

17 Q Did she provide for you a
18 description of the person who had robbed her?

19 A Yes, sir.

20 Q Did she describe to you the height
21 of the person?

22 A Yes, sir.

23 Q Did she describe to you, generally,
24 a hairstyle?

25 A Yes, sir. It was short in nature,

1 not particularly styled, not super short but not long
2 either.

3 Q Did she provide to you the
4 ethnicity of the person who had done this?

5 A Yes, sir.

6 Q The clothing?

7 A Yes, sir.

8 Q Did she describe to you any kind of
9 special characteristics that might further identify an
10 individual?

11 A Yes, sir, she did.

12 Q What were the nature of those?

13 A Specifically, and please give me a
14 brief moment to cite my report for the correct wording
15 of it, but essentially it was some kind of prominent
16 scarring, possible acne scarring or pock marks upon
17 cheeks of his face.

18 Q Do you recall she used quite a few
19 different words trying to describe that?

20 A Yes, sir?

21 Q Through your extensive law
22 enforcement experience, when a person is arrested and
23 charged with an offense, are they photographed?

24 A Yes, sir, they are.

25 MR. SIMPSON: May I approach the

1 court reporter?

2 THE COURT: Yes.

3 Q Officer, I'm showing you what's
4 been marked for I.D. only as State's Exhibit 1.

5 A Yes, sir.

6 Q Do you recognize that photograph?

7 A Yes, sir. That's the defendant,
8 Mr. David Crocket Robinson.

9 Q Is that -- in your role as
10 detective in this cases, is that the photograph taken
11 of Mr. Robinson in association with this case?

12 A Yes, sir, it is.

13 Q Is it a fair and accurate
14 representation of the David C. Robinson that you
15 viewed on the day of this offense?

16 A Yes, sir, it is.

17 Q And I should note that --
18 nevermind. Did you have opportunity to view Mr.
19 Robinson on the day of the offense?

20 A I did, yes.

21 Q And, again, does this accurately
22 reflect how Mr. Robinson looked at the time of this
23 offense?

24 A Yes, sir, it does.

25 MR. SIMPSON: Your Honor, at this

1 point in time the State would seek to admit
2 State's Exhibit 1 into evidence.

3 THE COURT: What says defense?

4 MR. DAVIS: Judge, I'm going to
5 object. If he didn't take the photo I'm
6 not sure that they would laid the proper
7 foundation.

8 THE COURT: Okay. My --

9 MR. DAVIS: Or the source of the
10 photo.

11 THE COURT: My recollection is that
12 he just said he saw the defendant that day,
13 that this was a fair and accurate
14 representation of him that day. So I will
15 let it in over object.

16 MR. SIMPSON: Thank you, Your
17 Honor. State's Exhibit 1 admitted.

18 (Whereupon, State's Exhibit 1 was
19 admitted into evidence.)

20 MR. SIMPSON: Permission to
21 publish, Your Honor.

22 THE COURT: Yes.

23 (Whereupon, State's Exhibit number
24 1 was published for the jury.)

25 Q Directing your attention to the

1 screen in front of you. Were you able to view Mr.
2 Robinson back in May of 2017, did you notice any sort
3 of irregularities to his cheek areas?

4 A Yes, sir. Specifically noted on
5 the photo there in front of me, its oriented to his
6 left side cheek, just below the left eye.

7 Q Now, you recounted for the jury
8 sort of the -- how this investigation overall
9 progressed, and you noted some locations, correct?

10 A Yes, sir.

11 Q And you noted that you personally
12 went to the location of the crime?

13 A Yes, sir.

14 Q And you personally went to the
15 location where the suspect was detained?

16 A Yes, sir.

17 MR. SIMPSON: May I approach the
18 witness, Your Honor?

19 THE COURT: Yes, sir.

20 Q Showing you what's been marked for
21 I.D. only as State's 2 and 3. Can you take a moment
22 and view 2 and 3?

23 A Yes, sir.

24 Q You've worked in the City of
25 Charleston for how many years?

1 A Over 13 years, sir.

2 Q Are do you consider yourself pretty
3 familiar with the geography and locations around town?

4 A Yes, sir.

5 Q Starting with two, what is that in
6 your experience?

7 A Two is you can denote, I wouldn't
8 say --

9 Q Ignore for a moment any marks that
10 were added.

11 A Sure. It's a picture of the
12 peninsula of Charleston.

13 Q Does that appear to you to be an
14 accurate depiction of Charleston?

15 A Yes, sir.

16 Q And noted on that image, is the
17 location of the crime noted?

18 A Yes, sir, it is.

19 Q And is that accurate to the
20 location you responded to that day?

21 A Yes, sir.

22 Q Is the location where the suspect
23 was detained noted on that?

24 A Yes, sir, it is.

25 Q And is that accurate?

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1 Honor.

2 THE COURT: Okay. They're in
3 without objection.

4 (Whereupon, State's Exhibit 2 and 3
5 were admitted into evidence.)

6 Q Back to the description of the
7 defendant, we've mentioned a description of his
8 height. Do you recall what Ms. Cox described his
9 height as?

10 A Yes, sir. And specifically,
11 initial description as it later relayed to me upon
12 review of the report, I believe speaking with Officer
13 Henderson, she felt strongly that he was equal in his
14 height, which was 5'10". In her statement with me,
15 between 5'6" or 5'8". However it was noted that she
16 had to look up to him, and I believe her height was
17 approximately 5'3". So it's consistent in all
18 probabiltly with 5'10".

19 Q Is that consistent with the
20 defendant's actual height?

21 A Yes, sir, it is.

22 Q Did she describe that he had a
23 weapon when this occurred?

24 A She did, yes, sir.

25 Q I want to ask you a question,

1 Officer Harvill about identification procedures. Is
2 that okay?

3 A Yes, sir.

4 Q You performed with Ms. Cox what we
5 call a show up I.D.?

6 A Yes, sir.

7 Q Is that the only way to identify or
8 show a witness or have a witness identify a suspect?

9 A No, sir, it's not. There are two
10 other types that can be utilized. There is a single
11 photograph, which typically is going to be utilized
12 for identification of people who have a known
13 familiarity with a family member or somebody close to
14 them. And then also what's called a photo array or
15 sometimes you hear the terminology known as a six pack
16 line up. It's a photo array of multiple subjects on
17 there, one of which is the subject individual, others
18 matching similar descriptions placed in front of the
19 victim or witness at that time to identify.

20 Q So, in the photo array procedure,
21 the person chooses the person out of six that they
22 think looks like--

23 A That is correct, yes, sir.

24 Q Which is preferred?

25 A Preferred, if you have--

1 Q -- in the perfect circumstance,
2 sorry.

3 A In the perfect circumstance, a
4 photo array would be.

5 Q And explain to the jury, if you
6 would, sort of the circumstances where a detective
7 might choose to instead perform the single show-up
8 identification in person.

9 A So, one of the complications with
10 the photo array is the length of time sometimes it
11 takes to obtain it. Specifically circa 2017, we sent
12 it often times up to the SLED center to be produced.
13 So, there is a time lapse involved with that. In this
14 case on May 7th, we had the defendant detained there
15 on scene.

16 Q I'm sorry to interrupt you.

17 A Sure.

18 Q So, in the six pack it's important
19 that all six people look very similar, correct?

20 A Yes, sir, it is.

21 Q So, you have to some how find other
22 individuals that match basic characteristics of the
23 suspect?

24 A Correct.

25 Q So, it isn't a matter of just

1 picking out of a newspaper five random -- there is a
2 certain science that has to be applied to a six photo
3 array?

4 A Yes, it takes a good amount of time
5 for the process, yes, sir.

6 Q And so, I'm sorry to interrupt you,
7 but you said in this case you were describing what
8 situations you would instead use this single person
9 show-up.

10 A Yes, sir. In this case we had the
11 defendant detained and this is an approximation from
12 what I really, but within an hour of the actual time
13 the crime occurred to the time where we could actually
14 show up with Ms. Cox there on scene, time is of
15 essence, particularly the fact that Ms. Cox was very
16 detailed in her description, she had a fresh
17 recollection and this is a freshly committed crime.
18 Also, to ensure that we have an obligation for due
19 process there on scene to ensure we have the right
20 person, not knowing until she showed up whether or not
21 that I.D. would be affirmed or not on the defendant.
22 We want to make sure we had the right person and we
23 were not detaining somebody longer than the process
24 should have taken.

25 Q I think it's fair to say -- well,

1 let me ask you. Is it fair to say that upon
2 detainment you had considerable evidence that this was
3 the correct person?

4 A Yes, sir, it was.

5 Q But what would that conclusion have
6 been -- would that had been complicated had Ms. Cox
7 come up and seen the person, that just does not look
8 like the person?

9 A It would have been complicated and
10 would probably necessitate a lot further
11 investigations to substantiate there on scene to
12 necessitate an on view arrest, otherwise develop a
13 suspect information and do further follow up over the
14 coming days and or weeks.

15 Q To summarize what you're saying,
16 there is -- first, you say there is an importance to
17 doing the procedure while the witness's view is fresh
18 in her mind?

19 A That's correct, yes, sir.

20 Q And secondary consideration is to
21 make sure you're not arresting the wrong person?

22 A Absolutely, that's our obligation.

23 Q And all of that would be hindered
24 at least temporarily so, for you to take the time to
25 have a proper six person photo array?

1 A Yes, sir.

2 Q Was Ms. Cox taken to view this
3 individual?

4 A Yes, sir, she was?

5 Q Did she positively I.D. him?

6 A Yes, sir.

7 Q We had some testimony earlier about
8 this but I want to ask you, what is a CAD report
9 dispatch?

10 A A CAD report is typically what we
11 would consider dispatch logs. All officers and or
12 units on scene that respond to that location, it is
13 information that the time that a call taker takes a
14 9-1-1 call for service, then turns it over to the
15 dispatcher and they gather certain information through
16 what's called Pro QA, which are essentially questions
17 and answers as to the nature of the call to get
18 information through officers that respond to the
19 scene.

20 Q Do dispatch records and reports
21 document times when certain events are occurring?

22 A Yes, sir, they do.

23 Q Do they allow a investigator such
24 as yourself to go back and note certain times and the
25 passage of time between two of those?

1 A Yes, sir, it does.

2 Q At my request, did you do so for
3 the present case?

4 A Yes, sir.

5 Q When did the first call for service
6 come in on this case?

7 A The first call for service based on
8 the CAD timing was 6:31 and 30 seconds, p.m.

9 Q Okay. And again as we forward I'm
10 comfortable if you can approximate to the minute.

11 A Sure.

12 Q When approximately did the iPhone
13 tracking begin in this case?

14 A It was fairly shortly thereafter, I
15 had it noted about 6:38 p.m.

16 Q What about the traffic stop, not
17 the detentions of the Mr. Robinson, but the traffic
18 stop?

19 A Traffic stop appears to have at
20 occurred 6:43.

21 Q And approximately what time was the
22 suspect detained in this case?

23 A 6:52.

24 Q And approximately what time did you
25 conduct the show-up?

1 A Approximately 7:30.

2 Q And again, you had the exact time
3 on the recording?

4 A I'm sorry?

5 Q You recorded the show-up, correct?

6 A I did, yes.

7 Q And if one needed they could hear
8 that exact time?

9 A Yes, sir, it was timestamped.

10 Q Okay. Again, only approximately an
11 hour between the actual event and the show-up I.D.?

12 A Yes, sir.

13 MR. SIMPSON: Court's indulgence.

14 Detective, thank you for your time today.

15 Please answer any questions Mr. Davis has.

16 THE WITNESS: Yes, sir.

17 CROSS-EXAMINATION BY MR. DAVIS:

18 Q Good afternoon.

19 A Good afternoon, sir.

20 Q Detective Harvill, actually it's
21 Lieutenant now?

22 A Sergeant.

23 Q Sergeant, I apologize I'm trying to
24 promote you.

25 A It's all right.

1 Q Sergeant, let's go back to 2017 and
2 the way things were then. You were a detective for
3 the Charleston Police Department back in May 7th of
4 2017?

5 A Yes, sir.

6 Q In this case, you were the lead
7 detective?

8 A Yes, sir.

9 Q Okay. So, as a lead detective that
10 responded to Queen Street, right around the corner
11 from us here, you had certain responsibilities that
12 day?

13 A Yes, sir.

14 Q I may not include all of them but
15 did some of your responsibilities include having the
16 vehicle that was detained towed for processing?

17 A Yes, sir.

18 Q Did you instruct or have instructed
19 to the crime scene folks, the folks that took
20 photographs or actually did the processing of the car,
21 would that have been under your direction?

22 A It would have been listed in the
23 search warrant as far as what we're looking for and as
24 far as processing, they're typically directed based
25 off of their protocol.

1 Q The suspects that were detained,
2 they were transported to headquarters to be
3 interviewed?

4 A Yes, sir.

5 Q And that was per your instructions?

6 A Yes, sir.

7 Q But to be clear for this jury, when
8 you arrived on Queen your primary focus was Ms. Cox
9 who had just been robbed?

10 A Yes, sir.

11 Q You pretty quickly asked her to
12 have a seat in your patrol car, an unmarked unit, is
13 that right?

14 A Yes, sir.

15 Q And began gathering information,
16 interviewing her about the robbery that had happened?

17 A Yes, sir.

18 Q And that's audio recorded?

19 A Yes, sir, it is.

20 Q That's where you get the
21 descriptions that you're testifying about today, she
22 gave those to you?

23 A Correct, yes, sir.

24 Q Mr. Simpson just went through some
25 times. I'd like to do that too if this seems right,

1 let me know if we need to go further, let me know.
2 But I believe it's actually your voice in the
3 recording that you begin the interview with her at
4 6:53 p.m. Does that sound about right?

5 A Approximately, without hearing the
6 audio right now it sounds approximate.

7 Q If it's in evidence, do you trust
8 the information on that is accurate?

9 A I do, yes, sir.

10 Q And so the end time is 7:13 p.m.?

11 A That's sounds approximately right,
12 sir.

13 Q I'm going to jump ahead and take
14 care of something. We did a lot of talk about the
15 reason there was a show-up.

16 A Yes, sir.

17 Q I think you testified that it was
18 an hour after the robbery?

19 A Yes, sir, approximately.

20 Q We can get exact because you note
21 when you arrive for the show-up identification, it's
22 7:33 p.m.

23 A I was just checking the catalogs.
24 Is that based off my recording, sir?

25 Q Yes, sir.

1 A Perfect.

2 Q So, again, you trust if it's in
3 evidence the jury will hear your voice stating the
4 time you started that process?

5 A I do, yes, sir.

6 Q We dealt with this with a patrol
7 officer earlier in the testimony earlier today, but
8 sergeants or detectives don't get out on the scene.
9 The part of your job is once you're done with the
10 incident to create reports about this?

11 A That's correct.

12 Q That's important, just the same as
13 doing the identification quickly, it's important
14 because it's fresh in your mind to get a report made,
15 your report.

16 A Correct.

17 Q It's important to get the details
18 down at that time.

19 A Yes, sir.

20 Q You're trained to do this, write
21 reports?

22 A Yes, sir.

23 Q And you did one in this case?

24 A Yes, sir, I did.

25 Q In addition to that, as lead

1 detective not only do you write your report but you
2 review reports of the other officers that were
3 involved?

4 A Upon approval by whomever their
5 supervisor happens to be. I don't have any process
6 till it goes to their supervisor then I can see them,
7 typically two to three days after.

8 Q And you prepare those for a variety
9 of reasons one of them would be, this case is from May
10 2017, to refresh your memory for your testimony today.

11 A Yes, sir.

12 MR. DAVIS: May I approach the
13 witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q I'm going to hand you what's been
16 marked Defense Exhibit 5 for identification purposes.
17 Forgive me, I highlighted Officer Henderson on here.

18 A It's okay.

19 Q Take a look at the report, it's
20 three pages. Take a second, see if you can identify
21 it and let me know if you can identify what that is.

22 A Yes, sir. Just for verification,
23 may I consult my copy?

24 Q Sure.

25 A Yes, sir. There is the initial

1 three-page supplemental report that I would have done
2 promptly after.

3 Q You just referred to it as
4 supplemental, but is that the major report from you
5 that's in this case file?

6 A Yes, sir.

7 Q Okay, okay. You were mentioning
8 earlier a description given to you by Ms. Cox of a
9 robber.

10 A Yes, sir.

11 Q She testified earlier, the jury
12 seen her testimony. But I want to talk to you about
13 what you just testified to earlier on direct.

14 A Yes, sir.

15 Q You agree with me that your memory
16 was better in 2017 than it is now?

17 A Yes, sir.

18 Q Tell me where it your report, take
19 as much time as you need, you tell me where in your
20 report you mention once the word acne to describe the
21 way she described the robber.

22 A So, on the second page, sir, I'll
23 call it the second paragraph, she did note that he had
24 either a scar or pock marks on the right side of his
25 face, which stood out to her.

1 Q I understand. Take as much time as
2 you need, you let me know where she says acne, because
3 that's what you testified to on direct examination. I
4 don't want you paraphrasing, so take as much time as
5 you need, please. And don't use any term other than
6 what's in your report. Tell me where it says acne in
7 your report.

8 A Yes, sir. It only states scar or
9 pock marks on my report.

10 Q Your patrol unit was parked on
11 Queen Street near [REDACTED] Queen, is that correct?

12 A From my recollection, yes.

13 Q It was parked facing Colonial Lake,
14 is that correct?

15 A I don't recall if it was or not,
16 sir.

17 Q Okay. You don't recall talking to
18 her about whether it happened on the left side or the
19 right side, and she said right side, which would be
20 the north sidewalk?

21 A Specifically, I think I would have
22 been parked in the direction. And I cannot recall if
23 it's one way or two ways in that roadway, but I think
24 it might have been one way at the time. I can't
25 affirm that one way or the other.

1 Q Again, I understand it's been
2 almost four and a half years, right?

3 A Yes, sir.

4 Q If you referenced the direction you
5 were parked in your report, you'll trust that it was
6 accurate, right?

7 A Yes, sir.

8 Q This location that you were parked
9 near, would have been right off the front passenger
10 side corner of your patrol unit, is Robert Mills
11 Manor, correct?

12 A Yes, sir.

13 Q Robert Mills Manor is a low income
14 housing, provided by the city?

15 A Yes, sir.

16 Q The projects.

17 A Low income housing.

18 Q Primarily, minority tenants?

19 A In general, yes.

20 Q You even commented while
21 interviewing Ms. Cox that you knew the first building
22 right there was building 16 of Robert Mills Manor,
23 correct?

24 A Yes, sir.

25 Q It wasn't done in this case but you

1 got asked questions on direct about it, so please let
2 me go into the various forms of identification
3 procedures by police, is that fair?

4 A Yes, sir.

5 Q You talked on direct about a six
6 pack, right?

7 A Yes, sir, a photo array.

8 Q And just so the jury will know,
9 generally what that is is an eight by eleven sheet of
10 paper, a regular copy paper, but it has two rows of
11 photos, three on top, three on bottom, generally.

12 A Yes, sir.

13 Q And the reason you already
14 testified that that's preferred, is because all six
15 photos in that six pack are very similar to each
16 other, it's designed that way, right?

17 A Yes, sir.

18 Q And when that is used it's shown to
19 a witness who may be able to identify someone and
20 they're asked, similar to you did on the recording, if
21 they can identify anyone?

22 A Yes, sir.

23 Q You you're even careful to say,
24 look, if you don't recognize anybody that's fine. But
25 if you do, that's fine. You're very cautious about

1 your words you use, right?

2 A Yes.

3 Q And so the six pack, the person
4 that you suspect is in it, you make sure of that,
5 correct?

6 A Yes, sir.

7 Q Because you either want to exclude
8 them, as you testified to, not get the wrong guy,
9 right?

10 A Yes, sir.

11 Q Or certainly if you did arrest the
12 right guy and they're in there and the person picks
13 them, then all the better for you.

14 A Yes, sir.

15 Q It's preferred for a variety of
16 reasons but one of the reasons is the person is given
17 similar samples, similar people to look at to make
18 sure they don't misidentify.

19 A Yes, sir.

20 Q Law enforcement training recently,
21 and forgive me, you've been with law enforcement--

22 A 2008.

23 Q -- 13 years. More recently they
24 suggest that the process is even more specific than
25 that. The suggested process is first of all the

1 person showing photos be a blind person, in a sense
2 not that they're blind, but they had no involvement in
3 the case. Isn't that the preferred way now?

4 A I'm not sure, I haven't done them
5 in quite a few years.

6 Q So, you're not familiar with a
7 person--

8 MR. SIMPSON: Objection, Your
9 Honor.

10 THE COURT: Yes?

11 MR. SIMPSON: He's Testifying.

12 THE COURT: Okay. I need you to
13 ask questions.

14 Q Are you familiar or not with
15 sequential photos, which is single photos, one at a
16 time given for identification. Are you familiar with
17 that process?

18 A No, sir.

19 Q So, that has evidently come up
20 after you've been out of investigation, is that fair?

21 A Apparently, yes, sir.

22 Q All right. I believe the excuse
23 that you gave -- excuses, include, it was fresh in our
24 mind we don't want to wait.

25 A Yes, sir.

1 Q It had not been very long since we
2 finished interview or since the robbery had happened,
3 correct? The person is nearby. Correct?

4 A Yes, sir.

5 Q And my gosh, we don't want to
6 misidentify the person, we don't want to arrest the
7 wrong person, right?

8 A Yes.

9 Q And boy, if we do get the right
10 person, let's get him. If we have a positive
11 identification that'd be good to know it right now.
12 Right?

13 A Yes, sir.

14 Q The show-up location is a Forged
15 Ready Mix, just off I-26 right near Monrovia Avenue,
16 is that accurate?

17 A Yes.

18 Q How far is that from Charleston
19 Police Department?

20 A Approximately, and this is very
21 approximate, sir, I'd say a mile, mile and a quarter
22 depending on the route that he took.

23 Q Do you have cameras, photographic
24 cameras at Charleston Police Department?

25 A Just to clarify, sir. For? For

1 video or--

2 Q Still pictures.

3 A We do have some available, yes,
4 sir.

5 Q You know crime scene tech Saunders?

6 A Yes, sir.

7 Q She carries a camera with her and
8 photographs crime scenes right?

9 A Yes, sir.

10 Q On your direction she photographed
11 Queen Street but she also arrived up at King Street
12 extension, Monrovia, Transworld and photographed up
13 there as well.

14 A She took photographs, of what
15 specifically, I don't recall.

16 Q You already admitted on direct that
17 there was substantial evidence of guilt based on the
18 items that were seized. Is that a general statement
19 you agree with?

20 A Yes, sir.

21 Q There is no circumstances that the
22 driver of that vehicle wasn't going down CPD,
23 Charleston Police Department?

24 A As in--

25 Q When he was detained, after things

1 calmed down, he was going downtown, you were going to
2 try and talk to him, correct?

3 A Yes, sir that's correct.

4 Q David was going downtown and you
5 were going to try and talk to him, correct?

6 A Yes, sir.

7 Q Forgive me, I'm sorry, I need one
8 other thing. Again, if it's the correct person the
9 sooner we know -- if it's an incorrect person,
10 wrongful identification, we'd rather know sooner
11 rather than later, correct?

12 A Yes, sir.

13 Q If it's the correct person we'd
14 rather know sooner than later, correct?

15 A Yes, sir.

16 Q You testified on direct because if
17 it's not then it's going to take a lot more work and a
18 lot more investigation.

19 A Potentially, dependent on what
20 factors you're presented with thus far in the
21 investigation.

22 Q You were concerned about that, not
23 about whether you got the right guy or not, weren't
24 you?

25 A No, sir.

1 Q If you weren't, then you knew about
2 the second I.D. show-up, was a non-positive show-up,
3 you'd know about that.

4 A Just for clarification. It wasn't
5 that she stated it wasn't him, she just couldn't be
6 certain.

7 Q She didn't identify him.

8 A She stated that -- if I may consult
9 my report.

10 Q Mhm. And again, my question is,
11 she did not identify him, that's the question.

12 A Correct. She stated, "I'm not
13 sure."

14 Q And what we're talking about, we're
15 talking about Detective Villeneuve, correct?

16 A Yes, sir.

17 Q And he's the secondary detective,
18 you're lead detective?

19 A Yes, sir. He was investigator at
20 the time.

21 Q I apologize, okay, investigator.
22 You assigned him on Queen Street to talk to witnesses
23 around the scene?

24 A Yeah, I would -- just to clarify, I
25 wouldn't necessarily assign him, rather we both talk

1 about what tasks need to be done, we split the work
2 load and work together on it.

3 Q You were busy with Ms. Cox, no
4 argument the most important witness, because it's the
5 victim of a robbery.

6 A Yes, sir.

7 Q So, you were dealing with her in
8 your car and you knew there were witnesses on the
9 scene, and you and Investigator Villeneuve talked
10 about it and agreed how you would handle the other
11 witnesses, correct?

12 A I can't recall exactly how it
13 panned out, but that's how it worked out, sir.

14 Q Well, let me be real blunt. He
15 talked to Tony Lewis, you didn't, right?

16 A Yes, sir.

17 Q He talked to Sierra Manigault, you
18 didn't?

19 A That's correct, yes.

20 Q He talked to Jim and Betsy Thomas,
21 you didn't?

22 A May I consult my report, sir?

23 Q Sure.

24 A Without reading specifically, sir,
25 I don't recall Jim and Betsy Thomas, but it would take

1 me a moment to just briefly breeze through.

2 Specifically there is Manigault.

3 Q Let's stay with Ms. Manigault. She
4 is the one that says--

5 MR. SIMPSON: Objection, Your
6 Honor, hearsay.

7 THE COURT: Okay.

8 MR. DAVIS: Your Honor, for this
9 investigation, similar to the State asking
10 about the CAD report, which he did not
11 create.

12 THE COURT: I know. You said, "she
13 said." You know, you may -- how is that
14 not hearsay?

15 MR. DAVIS: It is, Your Honor. But
16 it's not for the truth of the matter, it's
17 for the furtherance of the investigation.
18 I think it's State v. Green. We got called
19 you to a robbery, objection robbery. Well
20 that's why we went in with lights on, guns
21 pulled.

22 THE COURT: I don't know where
23 you're going. He just objected as soon as
24 you said, "she said." I don't know what
25 you were going to ask him.

1 MR. DAVIS: That she saw the face--

2 MR. SIMPSON: Objection, Your
3 Honor, the jury is present. I'd ask to
4 proffer this.

5 THE COURT: Okay. Y'all want to
6 talk to me up here.

7 (Whereupon, all the parties
8 approached the bench for an off-the-record
9 discussion.)

10 Q Ms. Manigault was driven to the
11 same location or similar location that you took
12 Ms. Cox?

13 A Yes, sir.

14 Q Without saying what she said there,
15 she did not positively identified David?

16 A That's correct.

17 MR. DAVIS: Thank you, I have no
18 further questions. Thank you.

19 THE WITNESS: Yes, sir.

20 MR. SIMPSON: Just briefly.

21 THE COURT: Yes.

22 REDIRECT EXAMINATION BY MR. SIMPSON:

23 Q Detective Harvill, I'm going to use
24 the same methodology as the defense. In regards to
25 Ms. Manigault, she did not negatively identify David

1 either, did she?

2 A Correct.

3 Q She was unsure?

4 A She was unsure, sir.

5 Q I think another point the defense
6 made was, a couple of words or different words have
7 been used to describe the skin irregularity on
8 defendant's face at the time.

9 A Yes, sir.

10 Q If we -- when the first officers
11 arrived on scene and interacted with Ms. Cox, do you
12 know if they had their body cams initiated?

13 A Protocol is they should have them
14 on.

15 Q Okay. So, if that body cam was
16 admitted into evidence or reviewed during this trial,
17 this jury could see every word that Ms. Cox used
18 during that interaction to describe the assailant's
19 facial features?

20 A Absolutely.

21 Q Similarly, when you conducted your
22 interview of Ms. Cox, did you record it?

23 A Yes, sir, I did.

24 Q So, if this jury -- if that were
25 introduced or played to this jury, this jury would

1 hear every word or phrase that Ms. Cox used to
2 describe this facial irregularity?

3 A Yes, sir.

4 Q So, you do of course write reports
5 to be accurate, right?

6 A Yes, sir.

7 Q But the reports are not the only
8 preservation of what is stated, correct?

9 A Correct.

10 Q In fact, in this day and age and
11 this particular trial, we have audio recordings?

12 A Yes, sir.

13 Q And video recordings?

14 A Yes, sir.

15 Q If we were struggling with how did
16 Ms. Cox describe the assailant's face, we have several
17 ways we can -- several places we can go to hear the
18 exact words and even hand gestures that she--

19 A Yes, sir.

20 Q If that were a problem we were
21 struggle with.

22 A Yes, sir.

23 Q Mr. Davis did mention briefly that
24 you would have been in charge of having the car towed
25 from the scene?

1 A Yes, sir, that's correct.

2 MR. SIMPSON: May I approach the
3 witness?

4 THE COURT: Yes, sir.

5 MR. SIMPSON: Thank you, Your
6 Honor.

7 Q Showing you what's been marked for
8 I.D. only as states 39. Can you take a moment to
9 review that?

10 A Yes.

11 Q Do you recognize that document?

12 A I do, yes, sir.

13 Q What is it?

14 A It is a search warrant for the 2009
15 gray in color Kia Optima that was towed from the scene
16 and resulted in the traffic stop.

17 Q Is that vehicle description or
18 description of the vehicle at some point described as
19 was the vehicle associated with this case?

20 A Yes, sir.

21 Q And a traffic stop was conducted
22 and stopped on the side of 26?

23 A Correct, yes, sir.

24 Q And you would have arranged to have
25 that brought to the crime scene and analyzed?

1 A Correct, yes, sir.

2 MR. SIMPSON: Thank you for your
3 time.

4 THE COURT: We'll take a 15 minute
5 break.

6 MR. SIMPSON: May I approach, Your
7 Honor?

8 THE COURT: Hold on just a second,
9 I'm sorry.

10 (Whereupon, all the parties
11 approached the bench for an off-the-record
12 discussion.)

13 THE COURT: Give me just a second,
14 okay.

15 MR. SIMPSON: Your Honor, at this
16 time the State rests.

17 THE COURT: Okay. Now you can take
18 a break, I'll see you in 15 minutes.

19 (Whereupon, the jury was excused.)

20 THE COURT: Mr. Robinson, will you
21 stand and raise your right hand. Do you
22 solemnly swear that the information you
23 will give me will be the truth, the whole
24 truth and nothing but the truth, so help
25 you God?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I will instruct the
3 jury that they can't consider that in any
4 way. They can't even discuss that in the
5 jury room.

6 MR. DAVIS: And, Judge, since the
7 State rested and we don't intend to present
8 a case then of course I'll make a motion
9 for directed verdict. I'll argue, briefly,
10 Your Honor, that what the State has
11 provided is enough evidence of speculation
12 of guilt to the charges that Mr. Robinson
13 faces. But we would argue that they have
14 not met their burden to let this go to the
15 jury and let them deliberate. And we'd ask
16 you to take it out of their hands and
17 direct verdict in our client's favor of not
18 guilty.

19 THE COURT: Okay, thank you, sir.
20 I think there is sufficient evidence in
21 this case to go to the jury. The jury can
22 give whatever weight they deem is
23 appropriate. But I think the State has met
24 his burden and I will respectfully deny
25 your motion.

1 Do y'all want to quit today and
2 start back at 9:30?

3 MR. DAVIS: Yes, please.

4 THE COURT: Okay. Bring me the
5 jury.

6 (Whereupon, all jurors are
7 present.)

8 THE BAILIFF: Your Honor, the jury
9 is seated.

10 THE COURT: Counsel?

11 MR. DAVIS: Judge, at this time
12 defense rests.

13 THE COURT: Okay. Ladies and
14 gentlemen, that means you heard all of the
15 evidence that you're going to hear in this
16 case. The next stage of this trial is
17 closing arguments of the attorneys, and
18 I'll charge you on the law. The problem
19 with that is once we do that process you
20 can't go home till you reach a verdict.
21 So, as late as it is, we'll quit for the
22 day and start back at 9:30 in the morning,
23 so I won't keep you half the night. I kept
24 you late enough last time. I ask that you
25 go home, be back at 9:30 in the morning and

1 MR. SIMPSON: Thank you, Your
2 Honor. Ladies and gentlemen, good morning.
3 I'll start how I started by addressing you
4 the first time by offering the State's
5 thanks for your service this week. I won't
6 belabor the point, we've already addressed
7 your service being an inconvenience in the
8 best of times, and how more of a service it
9 is for you this week. And we added quite
10 the nasty morning on the last day for you
11 to travel in. So, again, thank you. The
12 State truly appreciates your service,
13 particularly in this time.

14 Sort of the thing when I first met
15 you and gave an opening statement a few
16 days ago, is common sense. And how your
17 here this week to act very much as a real
18 life representation of this community's
19 common sense. That's all that we ask you
20 to apply this week. And I think when you
21 do so, I think when you apply your sense of
22 logic, you know, your intelligence, why you
23 were selected, to the evidence and the
24 facts that were presented to you this week,
25 you're left, in this case, with a rather

1 inescapable conclusion. And that is, you
2 know, without malis, without a desire to
3 help or hurt or punish anyone, just
4 applying your intelligence, you're left
5 with a pretty inescapable conclusion, that
6 David Robinson as he sits here today,
7 committed a crime that the State has
8 accused him of committing.

9 We'll talk a little bit about what
10 I have to prove to reach that conclusion
11 and why the evidence you've heard this week
12 proves that. The burden of that proof, as
13 you'll hear from the judge, is certainly on
14 us. It us, under our system of government,
15 it is the State's burden to prove, but we
16 think we've done that. Even above and
17 beyond a reasonable doubt, which is the
18 standard you are to apply this week.

19 Madam Clerk?

20 (Whereupon, a PowerPoint
21 presentation was displayed to the jury.)

22 MR. SIMPSON: My strategy kind of
23 going into this trial, for a reason we
24 already discussed, was to be straight
25 forward and as sufficient as possible. I

1 intend to apply that theory as well to my
2 closing argument. As lawyers, we are in a
3 profession sort of known for our arrogance
4 and cockiness, and we always think there is
5 something we could say to you that might
6 change your mind or persuade you. But when
7 I look at the facts in this case, I'm not
8 sure that really there is creative turn or
9 phrase that I could use that would change
10 your view of the evidence. I really
11 believe we have a case here where the
12 evidence speaks a lot of itself. So, in
13 going through I intend to do very little
14 more than reviewing that evidence,
15 explaining the law and having the State
16 allow you to do your work.

17 We're here obviously this week on
18 the State versus David C. Robinson. He
19 stands accused of two crimes, armed robbery
20 and possession of a weapon during a violent
21 crime.

22 So, we start with the location, you
23 all should be familiar with at this point,
24 on Queen Street. On May 7, 2017 Jacquelyn
25 Cox, you got to meet her, intelligent

woman, well educated, professional woman, she was here in our city for professional reasons, but on the day in question was a tourist in our town, like many. As you heard about her day show had gone and seen some sites, she had done some shopping at the Urban Outfitters where she bought some jeans and a gray t-shirt. They provided her with a pretty distinctive pink bag for her to carry with her. She carried that in a large tote which contained her laptop, that contained her life. Her makeup bag, smaller wallet, her identifications, hotel key and some other random items.

She carried that as she walked down Queen Street doing what I think all of us are guilty of at some point, looking at our phones. When something, I believe we all agree, absolutely terrified her. She felt another's presence that was combined with words, and we can imagine, "don't scream. Don't scream." She turned, and I had her use me to demonstrate for you how close she was to this person, and you heard, you know, nothing obscuring her view other than

1 some sort of mask or bandanna that was just
2 below the nose. Other than that, a clear
3 view of this person's face, a clear view of
4 his height in relation to hers, a clear
5 view of parts of the face that she could
6 see above the mask. She exchanged -- had
7 that view of that person for long enough to
8 exchange some words. She did something
9 that was probably unwise, which was
10 negotiate with that person. It's
11 particularly unwise considering that person
12 had pulled out an object, from a black
13 athletic bag that she described as some
14 sort of this thing between a duffle bag and
15 a book bag, she wasn't sure what, and
16 that's important we're going to come back
17 to that in a little. But out of that black
18 athletic bag that belonged to the robber,
19 not her, a gun was brandished.

20 Now, Jacquelyn Cox is no gun
21 expert. Neither am I. She doesn't look at
22 a gun and say, oh, that's a P-74 Mustang.
23 Actually, I'm pretty sure that's an
24 airplane. But like that, she doesn't know.
25 But as an adult person, and this is why we

1 bring you in, you're all adults, she
2 certainly knows what a gun is and what a
3 gun looks like. And that's something we'll
4 come back to later.

5 That gun wasn't pulled out for a
6 brief moment. It was pulled, she looked at
7 it and it was stuck in her side.
8 Nevertheless, she took a brief moment,
9 again, that's how long she had this view of
10 this person, to negotiation. Pretty
11 unwise. "Please, don't take my laptop.
12 It's my whole life, I'll lose my job if you
13 take my laptop." There is a response to
14 that, pardon my language, "I'll
15 fucking shoot you." So, if we're sitting
16 here today wondering what, at least what
17 that objection was that was pulled, that
18 gun that's combined with that action, is
19 also combined with the words, "I'll Fing
20 shoot you."

21 So, at that point thankfully she
22 hands everything over. The person turns
23 and leaves. She's obviously upset, she is
24 obviously flustered, but as you heard
25 rather quickly and, you know, be proud of

1 your town, eight people come to to her aid
2 and call police. And the police respond as
3 she described, very quick, very prompt.

4 When the police respond she gives a
5 description. And when people experience a
6 moment like this it's perfectly natural
7 that not every single detail, you know, let
8 me give you an example, the shoes. She's
9 asked about what shoes the guy is wearing.
10 Sorry, I don't know. But a description and
11 what a good description. You start with
12 the general facts. Height, let's see, how
13 tall is he? "How tall are you?" speaking
14 to an officer. I'm 5'10. "That's how tall
15 he was." She talked about a hairstyle, and
16 I think describing Mr. Robinson's hair that
17 day is kind of like describing my hair
18 right now. What is it? I have no idea,
19 it's just on my head. But she said what
20 it's not. Short hair, hard to describe but
21 not shaved, not long, not dreads, just sort
22 of a short hairstyle. She described the
23 clothing, white shirt, black pants. She
24 described generally the build, skinny.

25 And then, and these are important

things, details. Again, an issue was made of this at trial, I just invite you to go with the words she uses and if I use a word that she never used, ignore what I'm saying. But she does this jester, something on the cheek, pock, a dimple, a scar, I think were the three most prevalent words she used. But it was clear in using all of these words she's not 100 percent satisfied with her languages ability to describe what this was, but we know there is something on the cheek. Some sort of irregularity of the cheek that she observed and noted during this interaction.

Then of course, Jacquelyn solves her own crime. I'd love to sit here -- you know, I've work with the Charleston Police Department, I think they do good work, but it was Jacquelyn that did it here. A person who had just experienced this, that ended up doing the most important thing that solved this crime. Which is, hey, I've had this experience in my past, you know, she is a New Yorker, she left her phone on the bus once and had to log in and

1 had to sit there and watch, chase this bus
2 go around Manhattan. But that's why the
3 idea pops in her head, you can track my
4 phone. This guy took my phone. He did the
5 extra step, even though he had all my stuff
6 and my phone was clutched to my chest, he
7 took the extra step of taking my phone, and
8 that decision on his part, that would be
9 his downfall. So, the police start to
10 track the phone.

11 Let's take a moment and backtrack
12 and talk about time, because it is
13 important. And I think the defense has
14 their own take on this time, but I want to
15 offer this, and that's that this is
16 happening quickly. This is happening
17 without a whole lot of time for excuses
18 from the person who has this. 6:31 p.m. is
19 the first call to service. Now, certainly
20 there was some time between the robbery and
21 the first call, but you guys have heard the
22 store from several different perspectives,
23 it wasn't that long. And 6:31, we know
24 that this story begins or had begun,
25 shortly before 6:31.

1 Charleston Police Department began
2 to track this phone and we get our first
3 location, Calhoun between Meeting and King.
4 Again, let's focus on time. This is
5 approximately, you've heard 6:31:31, but
6 this is approximately seven minutes later,
7 there is a live track of that phone and its
8 movement. Seven minutes after the first
9 call for service, they're tracking this
10 phone. As Officer Henderson is calling out
11 locations, patrol is responding. And as he
12 told you, this phone is moving consistent
13 with the vehicle, moving north on Meeting
14 Street.

15 Location two, location three,
16 location four, location five. And
17 approximately between four and five, and
18 again, it's not my intent to mislead I
19 placed a marker here for officer contact
20 that there was, you know, this was an
21 approximation given by the officers in
22 pursuit. Some time between this ping four
23 and five, that a gray vehicle is seen that
24 appears to be moving consistently with the
25 phone that they're tracking. So, of course

1 they don't just immediately hit the blue
2 lights, they want to see if this experiment
3 that they have fits and as phone is in the
4 car and continues to move, the phone
5 locations continue to move. Onto the
6 interstate, but nevertheless crossing
7 Cypress Street.

8 Then the decision is made by the
9 ramp, traffic stop. Two individuals in the
10 car that they stopped, a Hispanic male
11 driver, you have this photograph that is in
12 evidence. It does not in any stretch of
13 the imagination meet the description
14 provided by Ms. Cox. And we're not here
15 this week to deal with any responsibility
16 of that driver, we're here talking about
17 Mr. Robinson. But as you look at that
18 photograph you can be quite confident that
19 that's not the person that had the gun that
20 robbed Ms. Cox.

21 Immediately upon that car coming to
22 a stop, the front passenger of that car
23 jumps and runs into the wood line. You've
24 heard it described we'll come back to that,
25 but runs into the thick woods. The

1 passenger. So, let's talk about that
2 vehicle -- I'm sorry, let's talk about time
3 again. Talking about the time period
4 between the robbery and the tracking of the
5 phone, this is only five minutes later
6 they've got a car pulled over and the
7 passenger flees.

8 The front passenger seat, the area
9 where this individual who ran in the woods,
10 was just seated. It contains some items
11 and you heard about them. A black athletic
12 bag, something between a book bag and a
13 duffle bag. That's not Jacquelyn Cox's,
14 that belongs to the person who had very,
15 very, recently just robbed her. So, it
16 stands for reason when we apply our sense
17 ever logic and common sense that the person
18 who had a black athletic bag, something
19 between an athletic bag and duffel bag, is
20 the same person that robbed her and the
21 same person that was just in this seat.

22 What else is in this picture? And
23 there are many photographs in evidence that
24 you'll have time to review, I'm not going
25 to sit here and waste your time, but her

1 big tote bag, you'll see in this exhibit
2 and just below it is her makeup bag and
3 wallet. Items that we just heard she had
4 in her position minutes before this traffic
5 stop. We also got images of these items
6 spread out, to give you a little better
7 look, she I.D.'d them all.

8 Again, I want to draw your
9 attention to items, like the athletic bag,
10 that did not belong to her. If a person
11 had to describe this bag, I mean what
12 better fit than a black athletic bag that
13 is something between a duffel and backpack?
14 You see it particularly as it's laid out
15 right there, I'm not sure what it is. The
16 bag belonging to the person who had just
17 robbed her.

18 Rear of the vehicle. What do we
19 see here, as if we're entertaining any
20 doubt at this point. The pink Urban
21 Outfitters bag, the laptop, the laptop when
22 you open you saw the picture of Jacquelyn
23 Cox right across the front. The items she
24 described, the items that day in the pink
25 bag, the receipt. Behind the passenger

1 seat -- behind the driver's seat, I'm
2 sorry. And where, if you're sitting in the
3 passenger seat of a car and you're just
4 going through the stuff you just stole,
5 might you stick things that you wanted to
6 kind of get out of your lap, you reach
7 behind and stick them behind the driver's
8 seat, which is where these are.

9 In the passenger door. In the
10 passenger door, think about that, in this
11 short period of time between the robbery
12 and when this traffic stop occurred, the
13 person that had robbed Ms. Cox had already
14 started going through the stuff and taking
15 out stuff and sticking it in the passenger
16 door. Certainly not with the behavior of
17 someone who just came across some items on
18 the street somewhere, right? You just had
19 a score, let's see what we got, let's sift
20 through things and see what it is exactly
21 that we got.

22 The phone, though, is not in the
23 passenger seat. The phone is not located.
24 The phone continues to ping. So, we heard
25 from Officer Henderson, yeah, it's in the

1 woods by the concrete factory. Once the --
2 the phone stopped pinging like a moving car
3 when they conducted the traffic stop of
4 this vehicle, and started pinging
5 consistently in the area of the concrete
6 factory in the woods. So, a perimeter is
7 established.

8 So for nine minutes, they want to
9 be safe, they know a gun is involved in
10 this incident, but for nine minutes the
11 defendant is unapprehended in an area. And
12 you heard about this area. Ladies and
13 gentlemen, let's do an exercise right now.
14 I don't mean to be childish with you, but
15 I'd like you all to just take one second
16 and imagine if you could, any space,
17 imagine a space if you needed to hide a gun
18 in a short amount of time and you wanted to
19 get away with that, what would the area
20 look like? And I submit to you that, short
21 of an active volcano that you could just
22 toss it in, it would be pretty good if you
23 found yourself in marshy wetland, full of
24 creek, full of dense woods that people
25 could hardly move. And to boot, right next

1 to you is a concrete factory containing
2 mountains of gravel, mountains of sand,
3 several, several trucks. Abutting this
4 dense marshy woodland. Nine minutes the
5 defendant was in this area after the flight
6 from the car. But he was, of course,
7 apprehended. And he was apprehended with
8 the phone identified as the victim's phone.
9 She described the markings Dabney Lee. The
10 phone was returned to her, it was obviously
11 her phone.

12 How foolish? At this point, all of
13 this risk that he had taken, all of this
14 effort that he had put into it, he had
15 nothing to show for it. And I offer
16 that -- I don't know how this person's mind
17 works, but I offer that as maybe an
18 explanation of why the phone stayed on his
19 person. That it was the last thing of
20 value that might make this day worth it.
21 He certainly didn't know it was being
22 tracked or it would have been discarded
23 long before.

24 So, maybe you're left with David
25 Robinson is merely the world's almost

1 unfathomably unlucky man. Maybe David
2 Robinson one day, walking from point A to
3 point B saw a phone on the ground, picked
4 it up, unimaginable degree of blind luck
5 matched his description, happened to be
6 walking through a wooded area that you can
7 hardly move through at a cement factory for
8 some unimaginable reason, and there was
9 apprehended with this phone. Well, of
10 course we know that's not the case. If
11 that were the case, the evidence shows that
12 that would be incorrect.

13 First of all, we look at David
14 Robinson himself. 5'10", skinny, very
15 difficult short haircut, like mine, to
16 describe. But it's not shaved, it's not
17 dreads, it's not long. Most importantly,
18 most specific detail given by the victim of
19 this crime, Ms. Cox, something -- a dimple,
20 a scar, pock on the cheek. A physical
21 feature, while perhaps not absolutely
22 unique, it certainly is not absolutely
23 common, that matches the person that robbed
24 her and Mr. Robinson. Phone in the pocket.
25 The description matches.

1 The person who jumped out of this
2 car ran into the woods and what is located
3 right on the wood line that the person ran
4 into but a wallet. And what does that
5 wallet contain? The driver's license, bank
6 cards and I.D. cards of David Robinson.
7 Right where this person jumped out of the
8 car. And perhaps I'm wasting your time and
9 being overly dramatic, because rather than
10 go through all of that; we have the wallet,
11 the contents. I could get right to the
12 kicker, which is along with the other
13 fingerprints, in different areas of the
14 car, of David Robinson's that were found,
15 he's sitting in the passenger seat on a
16 pile of stolen property near minutes after
17 an armed robbery by a Coke can that is
18 opened with his fingerprints on it. There
19 can't be no reasonable doubt in your mind
20 that the person who jumped from that car
21 and fled into the woods with the phone of
22 the victim, was the man seated here, David
23 Robinson.

24 Crimes have elements that I have to
25 prove to you. And it's important -- you're

1 here to do a job and be critical, and I
2 invite you to be critical of the evidence
3 presented to you, because it withstands
4 that scrutiny. But what is it precisely
5 that I have to prove to you this week that
6 I have to leave you firmly convinced of for
7 your to return the proper verdict of guilty
8 as charged? I have to prove to you this,
9 that David Robinson took and carried away
10 the property of another. Certainly, he did
11 that. That he did so with an intent to
12 deprive the person of possession. Again,
13 you use your common sense, certainly a
14 person who brandishes a gun and says,
15 "don't scream" and "I'll fucking shoot
16 you," intends to take that property from
17 the person without an intent to return it
18 later. By use of force, threats,
19 intimidation, certainly the facts that have
20 been presented to you establish that. Then
21 here we get to an interesting part of armed
22 robbery. Because traditionally, when we
23 think of armed robbery we think it happens
24 while armed with a deadly weapon, and I
25 won't waste your time, it's a long

1 definition of what a deadly weapon is, but
2 a gun certainly.

3 And so of course we present this
4 case to you this week that Jacquelyn Cox
5 was robbed by David Robinson while he was
6 armed with a deadly weapon. She is an
7 intelligent person, some of you are
8 probably gun enthusiasts and some of you
9 aren't, but I bet every single one of you
10 is thinking right now, well, I know a gun
11 when I see one. You don't have to be but
12 an expert. So, certainly, David Robinson
13 was armed with a gun and he robbed Ms. Cox,
14 you've heard that from Ms. Cox. It was
15 pressed against her side.

16 But if you sit here today as a
17 juror entertaining the idea that somehow
18 Ms. Cox doesn't know a gun when she sees
19 one, that perhaps this was a BB gun,
20 perhaps it was a stick. Perhaps it was
21 some other object that is not a gun. Mr.
22 Robinson is still guilty of armed robbery.
23 And that's because the law addresses this
24 incident really a long time ago. And
25 that's that, oh, I got it, I'll just use a

1 real looking BB gun for an armed robbery,
2 that way I'm so smart, I can get the stuff
3 but I can't be charged and convicted of
4 armed robbery. So, long ago it was added
5 to the law that either the person is armed
6 with a deadly weapon or they're in
7 possession of something, and they're acting
8 through words and actions that that
9 something is a gun. And that it is
10 reasonable for the person being robbed to
11 believe that it's a gun.

12 Anytime you hear that word
13 reasonable, that's up to you. You're not
14 going the hear it from me or the judge.
15 So, you look at it and you say was it
16 reasonable for the victim to believe that
17 David Robinson was armed that day? Folks,
18 it's pretty easy in this one, I would
19 submit to you. Because you've got the
20 action of brandishing it out of the bag
21 putting it in her side. Combined with the
22 words and there is no better evidence of
23 intent, words. What were the words?
24 "don't scream, don't scream." And, "I'll
25 fucking shoot you." I don't know that a

1 phrase more indicates to another person, I
2 have a gun and I'm going to use it if you
3 don't do what I want you to do.

4 So, because we're not running from
5 this fact. Obviously you heard an
6 abundance of items were found in this case
7 and I'm sure you're all very much aware
8 that a gun is not one of them, and that a
9 gun was never located in this case. So, if
10 you sit there asking yourselves, what about
11 this? What with this? She saw a gun, she
12 described a gun, she's an intelligent
13 person, but what if he was mistaken and
14 that was just something else? He's still
15 guilty of armed robbery, because it
16 certainly presented an object which was
17 reasonable to believe that it was a gun,
18 even if it was a toy gun, fake gun, piece
19 of metal, something different.

20 So, use the common sense we've been
21 talking about each day during this trial
22 and I think you'll come to the conclusion
23 that, one it certainly was a gun, but even
24 if there is some question there, the
25 actions of the defendant make an armed

1 robbery, combined with his words and
2 actions.

3 So, I'll conclude now. Having
4 reviewed the evidence and reviewed what Mr.
5 Robinson is charged with. I forgot to add,
6 he's also charged with an offense of
7 possession of a weapon during a violent
8 crime. That is, if you stand firmly that
9 he did have a deadly weapon that day, that
10 he did commit a violent crime. Whether or
11 not the crime is a crime of violence is
12 established by the law, and you'll hear
13 that from the judge, that armed robbery is
14 a crime of violence. It's another charge
15 that's going to be before you to decide.

16 But I'll conclude now. I have
17 another opportunity, I get to speak to you
18 again if I feel it necessary and address
19 anything that Mr. Davis raises to you. But
20 before I sit down, I'll just come back to
21 the thing we talked about a lot, which is
22 common sense. Your job this week isn't to
23 punish someone, it's not to get revenge.
24 Also, on the flip side of that, I hope
25 you're all very compassionate people, and I

welcome that. It is perfectly human and normal for you to look at Mr. Robinson and contemplate where he sits today and feel in your heart some compassion for a person in that position. We're humans. I would be alarmed if you didn't feel a little bit of that. But you've taken an oath this week, and a big part of that oath really speaks more to the logic and the common sense.

When you swore to do your job this week, what you swore to do is, I'm going to take all this emotion out of what I do this week, even though we're all humans. And so, I'm not going to be mad at Mr. Robinson because of what he's accused to do. I'm not going to come to some decision just because I want to get revenge on Mr. Robinson. I'm not asking you to do that. The flip side of that coin too is when my logic and common sense tells me that he did what he's accused of doing. I'm going to come to that conclusion if I'm firmly convinced of it, even though I may feel compassion for Mr. Robinson.

That's the job of every jury as

1 they take their oath. I think that often
2 jurors are presented with difficult factual
3 quandaries that they have to settle. You
4 know, I humbly would suggest this is not
5 one, considering the strength of the
6 evidence that we presented this week. I
7 think a just, correct, logical and sensible
8 verdict in this case is guilty as charged.
9 Because what the evidence has proven is
10 that Mr. Robinson did in fact commit an
11 armed robbery and did in fact possession a
12 weapon while committing a crime. I may
13 speak to you again in a few minutes, I may
14 not. But I appreciate your time and
15 attention this week. Thank you.

16 MR. DAVIS: Could I have just a
17 moment?

18 THE COURT: Yes.

19 MR. DAVIS: May we approach, Your
20 Honor?

21 THE COURT: Yes.

22 (Whereupon, all the parties
23 approached the bench for an off-the-record
24 discussion.)

25 MR. DAVIS: Please, allow me a

1 moment to please set up. Again, this new
2 set up is crazy for all of us.

3 This was a botched robbery
4 investigation. It was botched by the City
5 of Charleston Police Department, and that's
6 not fair to Ms. Cox. It's certainly not
7 fair to David, not fair to our community,
8 and I'm going to argue it's not fair to
9 you.

10 If you remember in opening Mr. Reid
11 addressed you all, and a couple of things I
12 want you to think about as I talk you and
13 you go back and deliberate about this
14 later, is what he said in the opening. He
15 wanted you to pay attention to what you
16 heard, what you didn't hear, to what you
17 saw and what you didn't see. Because,
18 Mr. Simpson I believe said this, what we
19 say in closing, what we said in opening is
20 not evidence. But what you've heard from
21 the witness stand and what you saw in
22 evidence, and you'll be able to take it
23 back with you, is what you must rely on.

24 I do want to talk about some of the
25 things you did and didn't hear, saw and

1 didn't see. This was Sunday, May 17 of
2 2017. Quite awhile ago. A bright Sunday
3 afternoon. About 6:30 in the evening, when
4 a CAD alert showed up on Officer
5 Henderson's patrol unit, there was a
6 robbery in progress. He responds pretty
7 quickly, we got the exact time, 6:33 and 51
8 seconds, so that's within minutes, I think
9 he said a minute or two. So I believe,
10 like Mr. Simpson, let's call it 6:30 when
11 the robbery happened. Good response time.

12 He starts tracking, through the
13 credit of Ms. Cox, at 6:38 and 55 seconds.
14 Again, that's quick, but it is about seven
15 and a half minutes. Mr. Simpson referenced
16 that briefly, I'm going to talk about that
17 more in a second. What happens next as far
18 as investigation?

19 Detective Harvill appears on the
20 scene, he interviews Ms. Cox in his patrol
21 unit and we have the recording of that, he
22 surveys the scene. He even comments, "you
23 think he might of come from Robert Mills
24 Manor?" It's the housing projects right in
25 front of the car.

1 Let's go back to the tracking. The
2 first ping is at Calhoun, between King and
3 Meeting. This courthouse complex sits on
4 Queen Street and if you probably parked in
5 the garage on Queen Street, this robbery
6 was a few blocks down from the courthouse.
7 If I began walking towards Francis Marion
8 Hotel, I would submit to you I can get
9 there in about 15 minutes walking. Imagine
10 if was running. First ping is Calhoun,
11 Meeting and King. So, what did the police
12 do? They continue to track, Mr. Simpson
13 showed you a map on that, they continued to
14 track the car, they stopped the car, David
15 flees from the car, they track him, they
16 apprehend him. They bring Ms. Cox up to
17 the location, do an identification, and
18 then they tow the car for processing and
19 process the car. We got a lot of photos, a
20 lot of evidence for that. A lot of
21 yesterday, you had midmorning and
22 afternoon, was about what they did on the
23 car to prove that David was in the car. He
24 was in the car. To prove Ms. Cox stuff was
25 in the car, he was in the car.

1 Mr. Reid told you in opening, we
2 don't know how he got the stuff, he's not
3 the robber. And that's the issue in this
4 case. They even collect and match
5 fingerprints from the Coke can. We have no
6 questions on that, there is no issue on
7 that. They spent a lot of time focusing on
8 that. I would argue a lot of time focusing
9 on that, even in closing.

10 Now, let's turn to what they did
11 not do. Mr. Simpson a couple of times, I
12 believe in opening and closing, welcomes
13 the burden, welcomes the obligation he has
14 to prove this. This is the solicitor's
15 case. They call whatever witnesses they
16 wanted to, they ask whatever questions they
17 want of them and per our rules, they get in
18 whatever evidence that want you to see.
19 Body cam footage, we know it exists, we
20 know they have body cams.

21 Pay attention to what you have and
22 what you don't have. Where is it? Where
23 is the car stop? Wouldn't you have liked
24 to seen that? Where is David running from
25 the car? Where is David's arrest? Where

1 is finding David's wallet? Where's the
2 show-up identification? Okay, well, maybe
3 the detective did not have body worn
4 camera, we know they have audio recordings.
5 Where is the audio? Where is the audio of
6 Detective Villeneuve, who did not even
7 testify and you would have not even heard
8 his name, had I not asked about it.

9 They would have never told you
10 about Detective Villeneuve and his
11 interview of witnesses on the scene. They
12 would have never told you that Detective
13 Villeneuve took a young lady to do a
14 show-up I.D. and she did not say it was
15 David. They would never have told you
16 that. Where are those witnesses? Where is
17 Ms. Manigault, Sierra Manigault? Taken to
18 the same place David was brought out. "Not
19 sure," She was being honest. Wouldn't you
20 have liked to heard from her? They didn't
21 call her because they didn't want you to
22 hear from her. Where is Tony Lewis? He's
23 on the scene, Detective Villeneuve talked
24 to him. Where is the couple on the scene
25 of this robbery?

1 Was there any follow up? Was there
2 any investigation at Robert Mills Manor?
3 It's right where it happened, knock on
4 doors. See if there is -- and I know this
5 is going to be so obvious, this is so
6 unique, see if there is a black male in
7 Robert Mills Manor. See if there is a
8 black male wearing, stay with me this is
9 very unique, a white shirt and black pants.
10 I don't fault Ms. Cox, I'm just saying that
11 is how simple, white shirt, black pants,
12 black male. There is nothing unique about
13 that. Was there any investigation at the
14 scene?

15 Photographs, where are they? Where
16 is a six pack photo array, when Ms. Cox can
17 look at six similar people? Not one that's
18 surrounded by police and at the end of a
19 chase. Give her a fair chance to get the
20 right or wrong person. That's the better
21 way to do it. But they didn't. But they
22 didn't, they could have, but they didn't.

23 I believe Mr. Reid told you in
24 opening, rush to judgment, jump to
25 conclusions. Where is a photo of David on

1 that day? It's been up there. I'm not
2 hiding from it, I just didn't do a
3 PowerPoint. No one testified that that was
4 taken that day. Detective Harvill,
5 Detective Havill said, "similar to David on
6 the day," four years ago, four and a half
7 years ago. Similar to.

8 I will go back to this in a second
9 but there is no evidence that this was
10 contemporaneous. It was just, he looked
11 like that back then. There is no evidence
12 that anybody involved in this investigation
13 took this photo. If someone had taken a
14 photo, they would have testified about it.
15 I objected, but it came in.

16 Where is the bandanna? Where is a
17 photograph of it? Where's the gun?
18 Where's a photo of the gun or where is the
19 gun? All the officers testified that they
20 wanted you to hear from. All the evidence
21 that they collected, they have admitted
22 what they wanted you to see.

23 I have to stay on that point. Mr.
24 Simpson tries to excuse it away, I
25 understand, he has to. Where is the gun?

1 Where is the gun? Now, remember. I
2 understand, she's not gun enthusiast and
3 doesn't know guns, but she described it
4 generally and I thought it was important,
5 but she described it as, bigger than a cop
6 uses. Is it a handgun? Was it more than a
7 handgun? Certainly bigger than what you
8 would see on cops bigger than that.

9 Guns don't dissolve, I'm being
10 silly, but they don't disappear, they can't
11 be eaten. No one testified, no one
12 testified that the robber ran off and threw
13 it. Nobody testified it was thrown from
14 the car on the car chase. It was pinged
15 all over, they were tracking it and no one
16 said it was thrown from the car. No one
17 said was the found in the woods, no one
18 said it was found in the cement factory and
19 no one said it was found on David. Where
20 is the gun? And again, Mr. Simpson, he has
21 to deal with this. Where is the toy gun?
22 Where is the BB gun? It applies the same
23 to fact, those are tangible objects that
24 don't disappear. But if David is the
25 robber, it had to disappear or it doesn't

1 make sense.

2 Common sense. If David is the
3 robber it has to disappear, it doesn't make
4 sense. They charged the wrong man with the
5 robbery. They brought an overcharged
6 case -- the solicitors brought an
7 overcharged case to y'all. They used a
8 questionable I.D. to call David the robber.
9 I'll talk about that a little more in just
10 a second.

11 And again, I'm not faulting Ms.
12 Cox. She's reacting in a moment after this
13 terrifying robbery, no doubt she got
14 robbed. And then they ignore a non-I.D.,
15 and they ignore other witnesses that could
16 have made this stick one way or the other.
17 We're going to tell you, they ignored
18 someone who said, this is not I.D. And
19 they had other witnesses also. It wasn't
20 David, it was not the robber.

21 Why did they do this? I think they
22 jumped to the conclusion Mr. Simpson has,
23 and he wants you to -- once they started
24 tracking the, phone we got it. The phone
25 is the robber. The phone is the phone, and

1 they did track it very well. And something
2 else that you'll recall, I hope, when on
3 the witness stand, Mr. Simpson asked the
4 lead detective, did you have considerable
5 evidence of guilt already? You had
6 considerable evidence of guilt already.
7 And what if Ms. Manigault, she didn't
8 identify him and what if they had already
9 listened to Ms. Cox and said, he looked
10 similar. Similar is not the same as Mr.
11 Reid warned you in the beginning.

12 No one said "that's the robber."
13 "He robbed me." "That's the guy that ran
14 past me." What if they hadn't said that?
15 And Sierra didn't. So, they would have ran
16 on this I.D. because if they hadn't Harvill
17 admitted, we'd have to do a lot further
18 investigation. Oh my gosh, you have to
19 work more. You have to knock on doors, you
20 have to make a six pack photo array. Gosh,
21 this is going to be a lot of time, a lot of
22 effort.

23 I'll also ask you to remember how
24 they tried to fix it. How they tried to
25 fix it. Remember an officer that testified

1 that saw David run from the car? Officer
2 Karges. They so want it to be David. They
3 wanted to be right. He ran from the car
4 with a black bandanna on his face, he
5 testified to that under oath. When I
6 questioned him about it, tell me where you
7 saw that and wrote it down in the report
8 four years ago. He didn't. And thankfully
9 the solicitor's -- you just, your memory is
10 bad, right? Yeah, must have been that. Oh
11 boy did they want it to be David.

12 What else? Detective Harvill, the
13 lead detective, this is his case. Boy he
14 wants to be right. He testified, ladies
15 and gentlemen, he had acne and Ms. Cox saw
16 acne. Show me where four years ago she
17 told you acne and you wrote it down?
18 Because she didn't. He was under oath as
19 well. Boy they're trying to make this fit,
20 they're trying to fix it.

21 We argue further, I don't fault Mr.
22 Simpson, what we say is not evidence. He
23 tried to help him. Facial irregularities,
24 is that lawyer terms or what? Skin
25 irregularities, he tries to use this

1 general term to try and help his witnesses
2 out and make it fit. He also tries to help
3 out by having Ms. Cox identify David, which
4 it is what it is. Y'all can appreciate you
5 and me, so the court reporter can hear me,
6 I don't have my mask on. But this day and
7 age this is what we do and say to each
8 other. That David is sitting here the
9 whole time with his mask on, can you
10 identify him? Please have him stand up and
11 take his glasses and his mask off. Who is
12 she going to pick today or on Tuesday? We
13 all knew who she was going to point to
14 before it even happened.

15 You can discount the in-court
16 identification, that's for show, that's
17 treater. They also try to fix it by never
18 mentioning Sierra Manigault and not calling
19 her in.

20 It's either white shirt or white
21 t-shirt, is what Ms. Cox says about the
22 robber. White shirt or white t-shirt. And
23 then when she sees David after they
24 apprehended him, she says he appears to be
25 wearing a wife-beater, tank top. That is a

1 big deal, it is. You can't go around
2 saying a t-shirt means the same thing, it
3 doesn't. It doesn't.

4 And finally in Mr. Simpson's
5 closing he's got to deal with it somehow.
6 Well, so the obvious explanation is in this
7 wetlands, which we only see an aerial
8 satellite of, and that's not evidence,
9 that's just his closing. But somewhere in
10 that wooded area, it's so wet, so swampy he
11 must have stuck it in the mud or in the
12 gravel pile. He must have stuck it in the
13 sand or the gravel, whatever. They
14 searched the area, they had K9s out there.
15 You heard testimony, there were K9s brought
16 out. If it's in there, they're going to
17 find it. They didn't find it, because
18 David wasn't armed.

19 Ms. Cox was certain there was a gun
20 when she was robbed, she gave a general
21 non-script description, except for a facial
22 mark above the mask. She wanted David to
23 be the right person. She wanted the person
24 they apprehended to be the right person,
25 she was literally tainted by the police

1 before she got there to do the
2 identification.

3 The phone tracking, it's in
4 evidence but she heard Officer Henderson
5 call out all the locations. She heard
6 that, she didn't know where those places
7 were in Charleston, but she knew they were
8 in pursuit of her phone. She also got a
9 summary of everything that's happening.
10 Including he ran, he matched the
11 description of what she gave and so they
12 apprehended him too, so they caught the
13 guy. That's what she's lead to believe by
14 Charleston Police Department.

15 Then she's taken to do an
16 identification, and God bless her because
17 she was honest when she got there. You can
18 listen to it as many times as you want.
19 Mr. Reid said this in the beginning, listen
20 for when someone says that's the guy that
21 did it. She was honest even then.
22 Similar, he looks similar, but I'd love to
23 see him closer, I'd love to see his face.
24 Whatever it was on his cheek, I don't know
25 why but that's what I stared at.

1 Judge is going to instruct you that
2 David didn't testify and you can't hold
3 that against him. Among other things here
4 today when the judge tells you what the law
5 is, but why didn't we present a case? Why
6 didn't David testify? He's presumed
7 innocent. And if you don't, in this
8 moment, look at him and still think
9 innocent, until and unless you review all
10 the evidence and talk about it for the
11 first time in deliberations in a little
12 bit, you should raise your hand and be off
13 of this jury. Because you took an oath
14 that he's presumed innocent until and
15 unless when you deliberate you're convinced
16 beyond a reasonable doubt.

17 Second of all, he has a right to be
18 silent and not testify. You have that
19 right, I have that right, David has that
20 right. David and the defense team doesn't
21 have to prove anything. We don't have to
22 solve this case, it's not our obligation.
23 As Mr. Simpson said, it's his burden to
24 prove the charges they brought. The State
25 has to prove their accusation. It's not

1 good enough that they prove another crime,
2 they have to proof what they bring before
3 you, what they accused David of.

4 They charge him with armed robbery,
5 possession of a weapon during the
6 commission of a violent crime. What we say
7 is not evidence. But we told you in the
8 beginning he had her stuff. There is a
9 crime in South Carolina law, receiving
10 stolen goods. They didn't charge him with
11 that though, if they had maybe we wouldn't
12 be here. They charged him with armed
13 robbery. That's too much, that's why we
14 had a trial. That's why David did not
15 testify.

16 The final reason is this, Mr.
17 Simpson, we approached a moment ago, and
18 through no-fault of his, he will not be
19 speaking to you again, the law doesn't
20 allow it. The law doesn't allow it. So, I
21 don't hold that against him but the law
22 doesn't allow him to speak again. I get to
23 speak last if David doesn't testify. We
24 thought that that was worthwhile for me to
25 say all these things.

1 How can that be true that he's
2 received stolen goods but he's not the
3 armed robber. That's what you should be
4 wondering, I think that's the issue in this
5 case. There's seven and a half minutes
6 unaccounted for. We don't have to solve
7 it, we don't have to prove anything, but
8 let me imagine something for you if you
9 will. This is David's license. You see
10 his residence. Imagine the guy from North
11 Charleston gets a ride downtown, he goes to
12 the projects, he's going to watch a movie,
13 but then coincidentally--

14 MR. SIMPSON: Your Honor,
15 objection.

16 THE COURT: Okay.

17 (Whereupon, all the parties
18 approached the bench for an off-the-record
19 discussion.)

20 MR. DAVIS: I want to make it
21 clear, this is not evidence, this is
22 attorneys arguing. But David is from North
23 Charleston. The State's evidence, the
24 picture that you will have in evidence, in
25 the car seats -- if someone is going to buy

1 drugs they're already intent on ignoring
2 the law, breaking the law.

3 Seven and a half minutes is
4 sufficient time for someone to get further
5 than two blocks away from Queen Street.
6 Seven and a half minutes is enough time for
7 an exchange. Why do I mention this? It is
8 reasonable doubt. Because, I do get to
9 argue the facts and any evidence and any
10 logical conclusion therefrom. They didn't
11 find a gun, they didn't find a mask or the
12 bandanna. What happened to that? The
13 robber kept them with him for the next
14 robbery. Those are tools of his trade.
15 That's why David doesn't have them. David
16 doesn't have them because he never had
17 them. But he has an easy score, the stuff.

18 The car doesn't stop because they
19 know they committed a crime, not the
20 robbery, but a crime. David runs because
21 he knows he committed a crime.

22 Now, I appreciate the State not
23 letting me -- it's not evidence what I say,
24 it's not. It's an argument. And is that
25 plausible? Is that plausible? Did it make

you think? Hmm, if it made you pause and think or should have, because that explains both. Why isn't there a mask or a bandanna or a weapon? The robber still has it. If you give that a thought, a pause, the judge will tell you that's reasonable doubt. The tiny doubt to cause someone to hesitate to act. Hesitate. Did I leave the oven on? I did, I did, I did, I definitely did. That's reasonable doubt. That's reasonable doubt.

The State overcharged this case, but now you can remedy it. They have not proven that David was the robber, by any stretch of the imagination. They just don't fit, the facts, the evidence that you have, doesn't fit that he is the robber.

Perhaps the most famous fictional detective, Sherlock Holmes said, when you remove the impossible, whatever is left, however improbable, must be the truth. It's impossible that David had the bandanna and the gun, and committed this robbery that he got rid of without anybody ever seeing those things. But they've got to

1 account for it and they can't. Well, how
2 can that be true that they can't, he
3 didn't, but he still has her stuff? David
4 is not guilty. Thank you.

5 THE COURT: Okay, ladies and
6 gentlemen. Do you need a break before I
7 charge you on the law? It's going to take
8 about 15 minutes. Okay, we'll take about a
9 10 minute break. You come back and I'll
10 charge you on the law. Don't discuss the
11 case yet. If you go to the jury room,
12 we'll come back in about 10 or 15 minutes
13 and I'll charge you on the law and then
14 give you this case to decide.

15 (Whereupon, the jury was excused.)

16 (Whereupon, a brief recess was
17 taken.)

18 THE COURT: Okay let's bring in the
19 jury.

20 THE BAILIFF: All jurors are
21 present, Your Honor.

22 THE COURT: Thank you, sir.

23 (Whereupon, all jurors are
24 present.)

25 THE COURT: Ladies and gentlemen,

1 now that you've heard all of the evidence
2 in this case and both the arguments of
3 State and the defense, I'm going to explain
4 to you the law that you are to apply in
5 this case.

6 Under our constitution and code of
7 laws, only the jury can make a finding of
8 fact in a case. I'm not permitted to
9 indicate to you how I feel about the facts.
10 So, if I said anything or done anything
11 throughout this trial that you think I have
12 an opinion about the facts, you are to
13 disregard that. Because you and only you
14 are to determine what the facts are in this
15 case.

16 That same constitution and same
17 code of law that makes you the exclusive
18 judge of the facts, makes me the exclusive
19 judge of the law. So, if you have an
20 opinion about what you think the law is or
21 what the law should be, in a difference
22 from what I now tell you the law is, under
23 your oath you are to disregard your opinion
24 and apply the law exactly as I've given it
25 to you.

1 The fact that the defendant was
2 arrested, charged and indicted in this
3 case, is not evidence in this case and
4 cannot be considered by you as evidence of
5 guilt in this case. Nor does it create any
6 presumption or inference of guilt. An
7 indictment is simply a formal written
8 instrument that contains the charges made
9 against the defendant, and it serves as a
10 formal document, which possibly carries
11 this case through the process and in the
12 court system.

13 Now, the defendant has pled not
14 guilty to this indictment. And a plea
15 casts the burden upon the State to prove
16 the defendant's guilt beyond a reasonable
17 doubt. A person charged with committing a
18 criminal offense in South Carolina is never
19 required to prove himself or herself
20 innocent. And I instruct you and emphasize
21 to you, the fact that the defendant did not
22 testify is not a factor to be considered by
23 you in any way in your deliberations, in
24 considering the question of guilt or
25 innocence of this defendant. It must not

1 be considered by you in any manner
2 whatsoever.

3 The defendant has a constitutional
4 right to remain silent and the assertion of
5 this right must not be considered by you in
6 your deliberation. I repeat, under your
7 oath you are to draw no conclusions
8 whatsoever about the defendant testifying.
9 Whether the defendant testified or did not
10 testify. In fact, you should not even
11 discuss in the jury room the fact that this
12 defendant did not testify. The State has
13 the burden of proof as I stated to you and
14 the defendant is not required to prove
15 himself or herself innocent. The burden
16 remains on the State throughout this trial.

17 It is an important rule of law in
18 this country that a defendant charged in a
19 criminal trial will always be presumed
20 innocent of the crime for which he is
21 indicted, unless and until that guilt has
22 been proven to you by evidence that
23 satisfies you of that guilt, beyond a
24 reasonable doubt.

25 The presumption of innocence is not

1 a mere legal theory. It is not just a
2 legal phrase. It is a substantial
3 constitutional right to which every
4 defendant is entitled. This presumption of
5 innocence accompanies the defendant from
6 the time he's charged, throughout the
7 trial, until you reach a verdict of guilt
8 based on evidence that satisfies you of
9 that guilt beyond a reasonable doubt.

10 A reasonable doubt is a doubt which
11 makes an honest, sincere, conscientious
12 juror in search of the truth, to hesitate
13 to act. Proof beyond a reasonable doubt
14 must therefor be proof of such a convincing
15 character, that a reasonable person would
16 not hesitate to rely and act upon it, in
17 the most important of his or her own
18 affair.

19 Proof beyond a reasonable doubt can
20 also be described as proof that leaves you
21 firmly convinced of the defendant's guilt.
22 There are very few things in this world we
23 know with absolute certainty. In a
24 criminal case the law does not require
25 proof that overcomes every possible doubt.

1 Based on your consideration of the
2 evidence, you are firmly convinced that the
3 defendant is guilty of the crime charged,
4 you must find him guilty. If on the other
5 hand you think there is a real possibility
6 he's not guilty, you must give him the
7 benefit of the doubt and find him not
8 guilty.

9 In determining what the facts are
10 in the case, you must necessarily pass upon
11 the creditability, which simply means the
12 believability of the witnesses and the
13 value and weight to be given to their
14 testimony. You alone must decide the force
15 and effect of the truth of that testimony.
16 In making these decisions, there are many
17 things that you may and should take into
18 consideration. Such as the appearance and
19 manner of the witness. Sometimes referred
20 to as the demeanor of the witness. Was the
21 witness forthright or hesitant? Was the
22 witness's testimony consistent or did it
23 contain discredits? What was the ability
24 of the witness to know the facts about
25 which he or she testified? Did the witness

1 have a cause or reason to be bias and
2 prejudice in favor of the testimony? Was
3 the testimony of the witness corroborative
4 and made strong by other testimony or
5 evidence? Or was it made weaker or
6 impeached by such other testimony in
7 evidence?

8 Now, our rules of evidence do not
9 ordinarily permit a witness to testify to
10 opinions or conclusions. An exception of
11 this rule exists for witnesses we called
12 expert witnesses. A witness who by
13 education and experience has become an
14 expert in some art, science, profession or
15 calling, may state an opinion as to
16 relevant material matters in which the
17 witness claims to be an expert. They also
18 may give a reason for that opinion. You
19 should consider an expert's opinion
20 received in evidence of this case, like any
21 other evidence. Give it the weight you
22 think it deserved. If you decide the
23 opinion of expert witness is not based on
24 sufficient education and experience or if
25 you conclude that the reasons given in

1 support of opinions are not sound or that
2 the opinion is outweighed by other
3 evidence, you may disregard the opinion in
4 its entirety. An expert witness's
5 testimony is be given no greater weight
6 than any other evidence of any other
7 witness, simply because that witness is an
8 expert. You're not required to accept an
9 expert's opinion, even though it is not
10 contradicted. As jurors, you have a right
11 to believe a small portion of the witness's
12 testimony and disregard the lawyer. Or
13 vice versa. You may believe all of the
14 witness's testimony or none. You may
15 believe the testimony of a single witness
16 against that of many or the other way
17 around.

18 Now, criminal intent is a necessary
19 element of each crime that must be proven
20 by the State beyond a reasonable doubt.
21 Criminal intent is always a manner that
22 must be determined by the jury from the
23 circumstances surrounding the situation.
24 There is no way to private intent to
25 mathematical certainty. There is no way,

1 medical science can dissect a person's
2 brain to determine what he or she had in
3 mind. So, the law states, criminal intent
4 may be inferred from the circumstances
5 shown to that existed both before and after
6 the fact. This is how you the jury make a
7 determination of whether or not the element
8 of intent was present.

9 Criminal intent is a state of mind
10 that operates jointly with an act or
11 omission in the commission of a crime.
12 Criminal intent is a mental state of
13 conscious wrongdoing. So, it is up to you
14 the jury to determine what the defendant
15 intended based on the circumstances shown
16 to that existed. And I tell you, the State
17 must prove criminal intent beyond a
18 reasonable doubt just as the State must
19 prove each and every element beyond a
20 reasonable doubt.

21 There are two types of evidence in
22 general presented in trial. Direct
23 evidence and circumstantial evidence.
24 Direct evidence directly proves existence
25 of fact and does not require deduction.

1 Circumstantial evidence is proof of a chain
2 of facts and circumstances indicating the
3 existence of a fact. Crimes may be proven
4 by circumstantial evidence and the law
5 makes no distinction between the weight or
6 value to be given to either direct or
7 circumstantial evidence. However, to the
8 extent that the State relies on
9 circumstantial evidence, all of the
10 circumstances must be consistent with each
11 other and when taken together upon
12 conclusively to the guilt of the accused
13 beyond a reasonable doubt. If these
14 circumstances merely portray the
15 defendant's behavior as suspicious, the
16 proof is failed. The State has the burden
17 of proving the defendant guilty, beyond a
18 reasonable doubt, and this burden rests
19 within the State regardless of whether the
20 State relies on direct, circumstantial
21 evidence or a combination of the both.

22 Now, the defendant is charged with
23 armed robbery. In order to prove this
24 offense the State must first prove beyond a
25 reasonable doubt that the defendant took

1 personal property from the person or
2 presence of another person. Property is in
3 the presence of a person if it is within
4 the person's reach, inspection, observation
5 or control, so the person could, if not
6 overcome with violence or prevented by fear
7 to keep possession of the property.

8 The State must also prove beyond a
9 reasonable doubt that the defendant carried
10 the property away intending to permanently
11 deprive the owner of the property and to
12 keep the property for defendant's own use.
13 The slightest removal of the property or
14 the complete possession of the property,
15 even for an instance by the defendant, is
16 sufficient to show a taking in carrying
17 away the property. The taking and carrying
18 away of the property must have been done
19 with violence or by putting the owner of
20 property in fear of violence.

21 The State may prove armed robbery
22 by establishing the commission of robbery
23 either one of two additional elements.
24 One, that the robber was armed with a
25 deadly weapon. Or two, that the robber

1 alleged that he was armed with a deadly
2 weapon, either by action or words, while
3 using representations of a deadly weapon or
4 any object, which a person present during
5 the commission of the robbery reasonably
6 believes to be a deadly weapon.

7 Now, the defendant is also charged
8 with possession of a weapon during the
9 commission or attempted commission of a
10 violents crime. The State must prove
11 beyond a reasonable doubt that the
12 defendant was in possession of a firearm or
13 visible display of what appeared to be a
14 firearm, visibly displayed a knife during
15 the commission of a violent crime.

16 A firearm means a machinegun, an
17 automatic riffle, a revolver, a pistol or
18 any weapon which will or is designed to be
19 readily converted to expel a projectile.

20 In order that the defendant be
21 found guilty of possession of a weapon
22 during the commission of a violent crime,
23 he must first determine the defendant's
24 guilt of committing the violent crime or
25 attempting to commit a violent crime. And

1 I instruct you that the crime of armed
2 robbery is a violent crime in the State of
3 South Carolina.

4 Further, the State must prove to
5 you beyond a reasonable doubt that the
6 weapon further advanced or helped the
7 commission of the crime.

8 Finally, the State must prove to
9 you beyond a reasonable doubt that the
10 defendant was armed with a deadly weapon
11 during the robbery. And I've explained,
12 while a deadly weapon is any article,
13 instrument or substance which is likely to
14 cause death or great bodily harm. Whether
15 an instrument has been used as a deadly
16 weapon, depends on the facts and
17 circumstances of each case.

18 The following are some examples of
19 a deadly weapon. A pistol, a shotgun, a
20 knife, a dirk, a dagger, a slingshot, metal
21 knuckles, a razor, gasoline, a fire, bomb,
22 a Molotov cocktail, lighter fluid. A gun
23 may be a deadly weapon, even if it is not
24 operating.

25 Now, if you find that the State has

1 failed to prove the defendant was armed
2 with a deadly weapon, you then may consider
3 whether the State has proved to you beyond
4 a doubt the crime of robbery. In the
5 offense of armed robbery, it's the lesser
6 included offense of robbery. In order to
7 prove robbery the State must prove beyond a
8 reasonable doubt that all the evidence that
9 I had just explained to you, except the
10 defendant was armed with the deadly weapon.

11 In order to prove robbery, the
12 State must prove beyond a reasonable doubt
13 that the defendant took personal property
14 from the person or the presence of another
15 person without the person's consent and
16 carrying it away. And I've explained to
17 you in the armed robbery definition what
18 property is in converting it to his own
19 use.

20 Now, ladies and gentlemen you're
21 not advocates for the State of South
22 Carolina or this defendant. You do not
23 serve as jurors to punish your enemies or
24 your friends. That system of justice must
25 not be tolerated. You've been selected by

1 both the State and this defendant to be
2 fair and impartial jurors. It's your duty
3 then by your joint deliberation to
4 determine what the facts are in this case
5 and arrive at a verdict in this case based
6 on the facts that have been presented
7 before you.

8 Now, Madam Forelady. I have a
9 verdict form here that I'm going to give to
10 you. And I basically explained it to you,
11 it's just the caption of the case. State
12 of South Carolina, County of Charleston.
13 State of South Carolina versus David
14 Crocket Robinson. Verdict one is, as to
15 the charge of armed robbery we the jury
16 unanimously find the defendant guilty or
17 not guilty.

18 As to the possession of a weapon
19 during the commission of a violent crime,
20 we the jury unanimously find the defendant
21 guilty or not guilty.

22 And as to the crime of robbery,
23 same options, guilty or not guilty.

24 Now, in order that I put these in
25 you should draw no conclusion whatsoever.

1 We just had to put them in some order. If
2 you find the defendant guilty of armed
3 robbery, you may go to number two and
4 determine whether the State proved beyond a
5 reasonable doubt the guilt of possession of
6 a weapon during a violent crime. If you
7 find that the State has not proved beyond a
8 reasonable doubt the crime of armed
9 robbery, then you may consider the lesser
10 included offense of robbery.

11 Robbery is not a violent crime in
12 this state, therefore, if you decide that
13 the defendant is guilty of robbery and not
14 armed robbery, you will not apply number
15 two, possession of a weapon during the
16 commission of a violent crime. If you find
17 the defendant -- that the State has proven
18 beyond a reasonable doubt the defendant is
19 guilty of armed robbery, you can consider
20 two, but you wouldn't go to three. Because
21 he can't be guilty of armed robbery and
22 robbery. Because robbery is the lesser
23 included offense.

24 I'm going to send you to the jury
25 room for a second, I got to talk to these

1 lawyers incase I forgotten something. I
2 may not have charged you with everything
3 and may bring you back out and charge you
4 further. If I've covered everything, then
5 I'm going to send this verdict form to the
6 jury room with you, along with all of the
7 evidence. When you get that, you will
8 begin your deliberations.

9 Now, during your deliberations, if
10 somebody has to leave and go to the
11 restroom, you've got to stop talking about
12 the case. You can only talk about the case
13 when all 12 of you are present.

14 When you reach a verdict you'll
15 sign the verdict form and date it and let
16 the bailiff know that you've reached a
17 verdict and we will bring you back out to
18 receive the verdict.

19 If you have a question, you can
20 write that question down on a piece of
21 paper, give it to the bailiff and they will
22 bring it here to me. I can tell you right
23 now, I cannot answer a question of fact.
24 If you have a factual question I can't
25 answer that. I can't reopen this case, I

1 can't give you any additional information.
2 You'd heard all you're going to hear. If
3 you have a question of law, if I have not
4 explained the law to you well enough, I can
5 bring you back out and recharge you on the
6 law. I just can't explain any question of
7 fact.

8 So, if you'll go to the jury room,
9 I'll talk to these lawyers. Once you get
10 this and the evidence you can begin your
11 deliberation. I know that something in
12 this case may be electronic is that right?

13 MR. SIMPSON: That's correct, Your
14 Honor.

15 THE COURT: Do they have capability
16 of watching that in the jury room?

17 THE CLERK: Yes, sir.

18 THE COURT: Okay. Most places I go
19 they don't, but Charleston is far more
20 sophisticated than others. Okay, if you go
21 to the jury room I'll either send this back
22 or bring you back out in a minute, okay.

23 (Whereupon, the jury was excused.)

24 THE COURT: Any additions or
25 deletions from the State?

1 MR. SIMPSON: None, Your Honor.

2 THE COURT: From defendant?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: Gentlemen, if you can
5 coordinate with the court reporter and be
6 sure you have all the evidence.

7 MR. DAVIS: Judge, we've consulted
8 and we have what's been admitted in a stack
9 here that I'm going to put on corner of the
10 table.

11 THE COURT: And here's the verdict
12 form. My bailiff can take it the jury and
13 tell them to begin deliberations. We have
14 to get alternates before you carry the
15 evidence to them. Get my alternates, thank
16 you.

17 (Whereupon, two alternate jurors
18 were present.)

19 THE COURT: I'm sorry y'all have
20 been sitting here all week, but I only
21 needed you if somebody got sick. Looks
22 like everyone is going to make it. You're
23 free to go. You can talk about the case
24 with anybody you want to or you don't have
25 to at all. And you don't have to do this

again for three years, but I appreciate you paying close attention. But I don't need you anymore. So, thank you so much.

(Whereupon, the alternates were excused.)

(Whereupon, jury deliberated.)

(Time noted: 11:22 a.m.)

(Whereupon, all parties were present. Proceedings resume.)

(Time noted: 11:58 a.m.)

THE COURT: I got a question from the jury. "May we please have a printed statement of the statutes involved in this case? Armed robbery, possession of a weapon during a violent crime and robbery." What is y'all's position on that?

MR. SIMPSON: State has no objection to the statutes being sent back. Or in the alternative, a recharge.

MR. DAVIS: We would ask for a recharge on it, Your Honor.

THE COURT: And not give them the written documents?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. All right, bring

1 in the jury -- well, let me ask. Do you
2 want me to give them the option to tell
3 them I can't give it to them in writing and
4 have to recharge them on it? Or do you
5 want me to just bring them in here? Bring
6 them in and I'll ask them that.

7 MR. SIMPSON: I've had judges send
8 the whole charge back.

9 MR. DAVIS: I have no object to
10 your charge going back, Your Honor, I just
11 don't want the actual statute. I mean, I
12 know you basically verbatim read it, but--
13 that would be our objection.

14 MR. SIMPSON: Yeah, I actually
15 think it makes more sense in the charge
16 than in the written statute.

17 MR. DAVIS: So, if they're fine
18 with your charge again, Your Honor, I have
19 no objection to that.

20 THE COURT: I will tell y'all why I
21 don't give my written charge back. When I
22 first started this job I sat with Judge
23 Macaulay. I said do you ever send the
24 charge back? He said, don't ever do that.
25 Because if you send it back there they will

1 spend all their time trying to figure out
2 what the law is and they don't pay
3 attention to the facts. He said, you send
4 the charge back there with 12 of them,
5 they'll never come up with a decision. He
6 said they argue about what the law is and
7 what it means. Their job is the finder of
8 facts, so don't send it back. And a lot of
9 old school judge s don't send it back for
10 that exact same reason, because they spend
11 all that time reading the judge's charge
12 and not determining what the facts are.

13 Some of the judges who do send it
14 back get a lot of hung juries. That's why
15 I don't send it back, because he gave me
16 that advice and I was advised, and in 15
17 something years, I think he's right.

18 THE BAILIFF: All jurors are
19 present, Your Honor.

20 (Whereupon, all jurors are
21 present.)

22 THE COURT: Thank you. Madam
23 Forelady, my understanding, I got a
24 question from y'all. You want a copy of
25 statute, the armed robbery and possession

1 of a weapon and robbery. I can't give you
2 that, but I can recharge you on it, I can
3 repeat them if you want to. Would that
4 work?

5 THE FOREPERSON: Yes, Your Honor,
6 please.

7 THE COURT: Okay. The defendant is
8 charged with armed robbery. In order to
9 prove this the State must prove beyond a
10 reasonable doubt that the defendant took
11 personal property from a person or the
12 presence of another person. The property
13 is in the presence of a person or is in a
14 person's reach, inspection, observation or
15 control, so that the person could, if not
16 overcome with violence or presented by
17 fear, keep possession of the property.

18 The State must also prove beyond a
19 reasonable doubt that the defendant carried
20 the property away intending to permanently
21 deprive the owner of the property. And to
22 keep the property for the defendant's own
23 use. The slightest removal of the property
24 from the compete possession of the
25 property, even for an instant by the

1 defendant, is sufficient to show a taking
2 and carrying away of the property.

3 The taking and carrying away of the
4 property must have been done with violence
5 or by putting the owner of the property in
6 fear of violence.

7 The State must prove armed robbery
8 by establishing the commission of a robbery
9 with either one or two elements. One, that
10 the robber was armed with a deadly weapon.
11 Or two, that the robber alleged he was
12 armed with a deadly weapon. Either by
13 action or words while using a
14 representation of a deadly weapon or any
15 object which a person present during the
16 commission of the robbery originally
17 believed to be a deadly weapon.

18 Now, the defendants also charged
19 with the possession of a weapon during the
20 commission or intended commission of a
21 violent crime. The State must prove beyond
22 a reasonable doubt, that the defendant was
23 in possession of a firearm or visibly
24 displayed what appeared to be a firearm
25 during the commission of a violent crime.

1 A firearm means any machinegun,
2 automatic riffle, revolver, pistol or any
3 other weapon which will and is designed to
4 or may be readily converted to expel and
5 projectile.

6 In order for the defendant to be
7 found guilty of possession of a weapon
8 during the commission of a violent crime,
9 you must first find the defendant guilty of
10 either committing a violent crime or
11 attempting to commit a violent crime. He
12 can't be guilty of possession of a weapon
13 during the commission of a violent crime if
14 you don't find him guilty of committing a
15 violent crime.

16 Armed robbery is a violent crime.
17 The lesser included offense of armed
18 robbery is the offense of robbery. And it
19 basically is committing a robbery without
20 using a deadly weapon. Basically, in order
21 to prove robbery the State must prove
22 beyond a reasonable doubt the elements that
23 I just explained to you but that he was not
24 armed with a deadly weapon.

25 So, if he took the property of

another person with intent to carry it away, then he would be guilty of robbery. Robbery is a lesser included offense of armed robbery. So, you can't find him guilty of both, okay?

Did that -- is that helpful?

THE FOREPERSON: Yes, Your Honor. Thank you.

THE COURT: All right. I will get you back out if there is anything else I need to explain to you, but if you'll go back and continue deliberations. If you have another question, I'll try my best to answer.

THE FOREPERSON: Thank you.

(Whereupon, the jury was excused.)

THE COURT: Any exceptions from State?

MR. SIMPSON: No, Your Honor.

THE COURT: From the defense?

MR. DAVIS: Just one moment, Your Honor. No, Your Honor, no objections.

THE COURT: Okay, all right. I guess we'll stand at ease again.

(Whereupon, jury deliberations

1 resumed.)

2 (Time noted: 12:07 p.m.)

3 (Whereupon, all parties are
4 present. Proceedings resumed.)

5 (Time noted: 1:35 p.m.)

6 THE COURT: Somebody bring me the
7 jury.

8 THE BAILIFF: All jurors are
9 present, Your Honor.

10 THE COURT: Thank you.

11 (Whereupon, all jurors are
12 present.)

13 THE COURT: Madam Foreman, I
14 understand you reached a verdict?

15 THE FOREPERSON: Yes, Your Honor.

16 THE COURT: Is it unanimous?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: If you would pass it
19 up, please.

20 THE CLERK: State of South
21 Carolina, County of Charleston, in the
22 Court of General Sessions 9th Judicial
23 Circuit, case number 2017GS1005309 and
24 2017GS1005310, the State of South Carolina
25 versus David Crocket Robinson.

As the charge of Armed Robbery, we the jury unanimously find the defendant guilty.

As to the charge of Possession of a Weapon During the Commission of a Violent Crime, we the jury unanimously find the defendant guilty.

Signed, Foreperson. 9/9/2021.

THE COURT: Anything from the State before I dismiss the jury?

MR. SIMPSON: Nothing from the State.

THE COURT: Anything from defense?

MR. DAVIS: Yes, Your Honor, we ask that you poll the jury.

THE COURT: Okay. Poll the jury.

THE CLERK: Jurors, when I call your juror number, please raise your hand, I will ask you two questions. Beginning with the foreperson.

Juror number 55, is this your verdict? Please answer by saying yes or no.

THE FOREPERSON: Yes.

THE CLERK: Is this still your

1 verdict?

2 THE FOREPERSON: Yes.

3 THE CLERK: Juror number 269, is
4 this your verdict?

5 A JUROR: Yes.

6 THE CLERK: Is this still your
7 verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror number 243, is
10 this your verdict?

11 A JUROR: Yes.

12 THE CLERK: Is this still your
13 verdict?

14 A JUROR: Yes.

15 THE CLERK: Juror number 80, is
16 this your verdict?

17 A JUROR: Yes.

18 THE CLERK: Is this still your
19 verdict?

20 A JUROR: Yes.

21 THE CLERK: Juror number 270, is
22 this your verdict?

23 A JUROR: Yes.

24 THE CLERK: Is this still your
25 verdict?

1 A JUROR: Yes.

2 THE CLERK: Juror number 122, is
3 this your verdict?

4 A JUROR: Yes.

5 THE CLERK: Is this still your
6 verdict?

7 A JUROR: Yes.

8 THE CLERK: Juror number 4, is this
9 your verdict?

10 A JUROR: Yes.

11 THE CLERK: Is this still your
12 verdict?

13 A JUROR: Yes.

14 THE CLERK: Juror number 123, is
15 this your verdict?

16 A JUROR: Yes.

17 THE CLERK: Is this still your
18 verdict?

19 A JUROR: Yes.

20 THE CLERK: Juror number 171, is
21 this your verdict?

22 A JUROR: Yes.

23 THE CLERK: Is this still your
24 verdict?

25 A JUROR: Yes.

1 THE CLERK: Juror number 53, is
2 this your verdict?

3 A JUROR: Yes.

4 THE CLERK: Is this still your
5 verdict?

6 A JUROR: Yes.

7 THE CLERK: Juror number 67, is
8 this your verdict?

9 A JUROR: Yes.

10 THE CLERK: Is this still your
11 verdict?

12 A JUROR: Yes.

13 THE CLERK: Juror number 202, is
14 this your verdict?

15 A JUROR: Yes.

16 THE CLERK: Is this still your
17 verdict?

18 A JUROR: Yes.

19 THE CLERK: Your Honor, the jury
20 has been polled and the verdict stands.

21 THE COURT: Thank you. Ladies and
22 gentlemen, I want to thank you for your
23 service this week. You paid close
24 attention throughout this trial and I
25 really appreciate it. You're free to go

1 now if you want to. I have been telling
2 you you can't talk about this case with
3 anybody, now you can talk about it to
4 anybody you want to, but don't have to.

5 If you need a work excuse the
6 Clerk's Office will give you one. And they
7 will send you a huge check, it won't even
8 be close to paying you for your services.
9 I appreciate you being here, I enjoyed
10 being with you this week. Hope you have a
11 great week. You don't have to do this
12 again for three years. Yes, sir?

13 A JUROR: So, you've made various
14 statements the last couple of days about us
15 not showing up tomorrow.

16 THE COURT: You do not have to show
17 up tomorrow. This is it.

18 A JUROR: Okay, thank you, sir.

19 THE COURT: This is last case we're
20 trying this week. You do not have to come
21 back tomorrow. They will mail you a check,
22 but if you need a work excuse they'll
23 provide one for you.

24 A JUROR: Your Honor, I have
25 evidence.

1 THE COURT: Yes, ma'am, we got to
2 have that back. One of the bailiffs will
3 take it and give it back to the court
4 reporter. Thank you. Y'all can leave now.

5 (Whereupon, the jury was excused.)

6 THE COURT: Mr. Solicitor, do you
7 have a sentencing sheet?

8 MR. SIMPSON: I do, Your Honor.

9 THE COURT: I'm glad to see you're
10 not superstitious.

11 MR. SIMPSON: I am a little. May I
12 approach, Your Honor?

13 THE COURT: Yes, sir. Does he have
14 a prior record?

15 MR. SIMPSON: Yes, Your Honor, he
16 does. Mr. Robinson was convicted in 2001
17 of receiving stolen goods and burglary in
18 the third degree. A trespassing in 2002, a
19 strong armed robbery in 2004. Some minor
20 offenses, possession of marijuana,
21 shoplifting, trespassing in 2006. In 2008,
22 assault and battery of a high and
23 aggravated nature, and that's under the
24 previous common law. A burglary in the
25 second degree, 2011, for which he received

1 a five year sentence concurrent with a
2 conviction for breach of trust from the
3 same year. In 2012 and 2013, two counts of
4 malicious injure to property and throwing
5 of bodily fluids, those were concurrent
6 sentences that actually the convictions for
7 which, postdated this offense it appears --
8 sorry, no it didn't. That was 2013, I
9 don't know where my heads at. Those are
10 the last convictions that I have, from
11 2013.

12 THE COURT: And he got five years
13 pending?

14 MR. SIMPSON: No, I don't have the
15 amount of sentence on those, but he did get
16 five years previously on the 2011 offenses
17 of burglary second degree and breach of
18 trust.

19 As, you know, the victim of this
20 offense Jacquelyn Cox had training this
21 week in Cleveland and had to leave after
22 her testimony on Monday. Our victim
23 advocate Randall Moyer is present in the
24 courtroom and Ms. Cox has conveyed to him,
25 sort of her feelings on sentencing and at

1 the appropriate time, Your Honor, he'd like
2 to convey those to you.

3 THE COURT: Okay. I'll be glad to
4 hear him.

5 VICTIM ADVOCATE: Your Honor, my
6 name is Randall Moyer and I'm an advocate
7 for victim Jacquelyn Cox. She wanted to
8 thank you again, I know that first day was
9 very, very long, she was on the stand for
10 four hours, but she got to meet the CEO the
11 next day and start her new job. She wanted
12 to thank you.

13 I did tell her that this time may
14 come, and that she could speak and I asked
15 her what her feels were towards that. She
16 had no comments regarding sentencing, she
17 wanted to let that up to you with your
18 experience, but what she did tell me, what
19 she wanted me to convey to the Court was
20 that how psychologically terrifying this
21 was for her. It wasn't just someone taking
22 her purse to get an advantage. For her, it
23 was the first thing that happened was
24 taking the purse, her first thought was my
25 laptop is in there, her life's work. She

1 was going to get fired if she didn't have
2 it. The company has told her that's
3 millions of dollars of advertising and
4 lighting and all the work that she did, if
5 she lost that laptop. And that was her
6 first thought, she was scared to death
7 because of that.

8 The next thing she said was the gun
9 being put right here. She said exactly
10 where it was. Well, she knows that her
11 heart is right here, so within three or
12 four inches is a gun pointed right at her
13 heart. So, she gave him the purse, you
14 know, don't shoot me, don't kill me.

15 And then the next thing that
16 conveyed to me was her cellphone. So, for
17 you and I, Your Honor, we're a bit older, a
18 cellphone is just more or less an
19 inconvenience now for us, something we
20 didn't grow up with. But for a 26 year old
21 girl, this was her lifeline. This she held
22 to her chest, this is what she was thinking
23 about trying to hide in her blouse. She
24 didn't want him to take that. For her,
25 this is 9-1-1, she knows how to use it, she

1 knows how to call 9-1-1 without even typing
2 in the numbers. The police aren't just
3 driving around Charleston, this is her --
4 this is the police. They can be there in
5 seconds. Her mother was sitting outside
6 when they was testifying. That was the
7 other thing. She could call her mother for
8 help, you know, come get me, the worse
9 thing happened to me.

10 So, after he took all of that and
11 took off, now mentally for her she's
12 standing in the middle of the street,
13 without her job, without her phone and she
14 was just robbed. And you saw the video,
15 she was panicked. And it would happen four
16 years ago when she was 26, she still
17 started tearing up. This is something she
18 will never forget. It wasn't just taking a
19 purse, it was something she will never
20 forget.

21 And then we walked down to the
22 lobby and we were talking a little more and
23 she looked out the window and she pointed,
24 she says, oh and the church, she says, I
25 just went in and sat for awhile and I lit a

1 candle. And she said, I hope there is not
2 another Jacquelyn Cox. She said, from the
3 way I understand it, the crimes are getting
4 worse. The next person, which she hopes
5 never happens, could actually get shot, the
6 gun could go off. And she just doesn't
7 want that to happen, thank you.

8 THE COURT: Thank you, sir.
9 Anything else from the State?

10 MR. SIMPSON: No, Your Honor.
11 Obviously you were present all week, you
12 heard the nature of the case, you've heard
13 his prior record. We're not going to make
14 any specific recommendations either, but we
15 just note that as, I'm sure you picked up
16 on it, two burglaries, AB hand [sic] and a
17 strong armed robbery.

18 THE COURT: Thank you, sir.

19 MR. DAVIS: Judge, if I may. May
20 it pleas the Court. We respect the jury's
21 verdict and we have talked about if this
22 was the outcome. I hope you understand
23 while we respect it, we still disagree with
24 it. We will file the appropriate appeals
25 and for that reason he has chosen, with our

1 discussions, that he's not going to address
2 the Court. But if I may speak on his
3 behalf.

4 THE COURT: Sure.

5 MR. DAVIS: Thank you. Judge, what
6 I can tell you is that the man I've known
7 over my representation which started in
8 July -- January of 2019, just bears no
9 resemblance, I'm not talking physically,
10 but bears no resemblance to the person that
11 is convicted of robbery. He has been kind
12 and helpful and inquisitive about his case.
13 Respectful, again, respect the jury's
14 verdict but I just can't imagine that the
15 person I've gotten to know committing this
16 crime.

17 Judge, he's 34, he did graduated
18 North Charleston High School. I'm sorry,
19 he did not graduate North Charleston High
20 School, but he got his GED afterwards. And
21 I often comment to my clients that have
22 done that, that I think it maybe more
23 impressive. If at any time during
24 undergrad or law school I started a job and
25 started making money, I'm not sure I would

1 have gone back and finished it up. So,
2 doing that of his own volition I think is
3 very impressive.

4 He's been gainfully employed at
5 several different locations around town,
6 mostly food and beverage locations. Most
7 recently when arrested he was employed at
8 Tavern and Table over here on Shem Creek.
9 I know the manager there, there's been no
10 complaints or issues with him, he was a
11 good worker for them.

12 Judge, I'll also point out that
13 he's remained in jail without making bond,
14 since this arrest. I have that as 1,500 --
15 so, 1,587 days. I can't imagine what
16 that's like and I certainly don't want to
17 do time in county jail or in the Department
18 of Corrections. But I wonder sometimes, I
19 did a lot of PCR work when I was in private
20 practice, and I've been to multiple
21 institutions around the state. None of it
22 is anywhere I want to be, but one of the
23 conditions and the opportunities there are
24 more at the county jail. You can't do any
25 type of work credit, anything like that.

1 So, he's been at the county jail for that
2 amount of time.

3 And then, Judge, certainly when you
4 add on the last year and a half of Covid,
5 his unit is in quarantine right now. We
6 were concerned on Tuesday if he had tested
7 positive, the jail was unlikely going to
8 transport him and we weren't going to have
9 this trial. That's what we live through in
10 this day and time. So, he's been going
11 through that in the jail since, you know,
12 last January, last March of 2020. So, it's
13 been a hard four years and roughly three,
14 four months.

15 Judge, we know and he knows, we've
16 talked about it, the mandatory nature of
17 the possession of a weapon during a violent
18 crime, that is a flat five year. He'll
19 have to serve more time on that. We also
20 know the mandatory nature minimum of 10 on
21 the armed robbery. Judge, we would argue
22 to you that 85 percent, which he must serve
23 before he can be released, it's a no parole
24 offense, 85 percent offense, he will have
25 to do roughly the same amount of time he's

1 just done. Eight and a half years, he's
2 done just over four years now, so four
3 years maybe a month or two additional. So,
4 he's only half way through the minimum
5 sentence, Judge.

6 Again, based on the verdict of the
7 jury and I think as I have mentioned
8 throughout this trial, certainly we
9 understand and respect what Ms. Cox went
10 through, but fortunately she was not
11 injured in any way in this incident. With
12 all of that being said, Judge, we would
13 respectfully ask you to give the minimum
14 required sentence on both. He'll have two
15 years community supervision without you
16 saying a word, by statute he has to be
17 supervised for to years by Probation Parole
18 Department Services following that 85
19 percent sentence.

20 So, Judge, we would ask for your
21 mercy on the sentencing and we would argue
22 the minimum is all that is required. I saw
23 my boss in here earlier this week talking
24 about all the different reasons for
25 punishment, this checks off all of them.

1 Certainly punishment, just pure punishment,
2 a chance rehabilitate, protecting society
3 for four and a half more years, roughly,
4 post-sentence. So, certainly all those
5 factors. So, Judge, we would ask you for
6 minimum. Thank you.

7 THE COURT: Okay, thank you. I've
8 taken into consideration the fact that he
9 did not physically hurt her in this
10 robbery, but I've also taken into
11 consideration how serious this crime is and
12 the fact that his prior record has lead him
13 up to this.

14 The sentence on armed robbery is
15 that you're committed to the State
16 Department of Corrections for a term of 27
17 years. On possession of a weapon, five
18 years to run concurrent. I'm giving credit
19 for 1,587 days. Good luck. Anything else?

20 MR. SIMPSON: No, sir.

21 THE COURT: All right, Court is
22 adjourned.

23 (Time noted: 1:58 p.m.)
24
25

C E R T I F I C A T I O N

Certified to be a true and accurate
transcript of the aforesaid proceeding.

Natalie A. Williams

BCS/0329986
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2017-07997

ARREST WARRANT NUMBER

2017A1010202691

DATE OF ARREST

05/08/2017

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

SEP 25 2017

Date:

VERDICT

Guilty

Forfeiture of Petit Jury

9/9/21

Date:

DOCKET NO. 2017-GS-10-05309

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

THE STATE

VS.

DAVID CROCKETT ROBINSON

B/M DOB: [REDACTED] 1982

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened September 2017, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about May 7, 2017, in Charleston County, South Carolina, the Defendant, David Crockett Robinson, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Jacquelyn Cox with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

BCS/0329986
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2017-07997

ARREST WARRANT NUMBER

2017A1010202692

DATE OF ARREST

05/08/2017

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

SEP 25 2017

Date:

VERDICT

Guilty

Forfeiture of Petit Jury

9/9/21

Date:

DOCKET NO. 2017-GS-10-05310

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

THE STATE

VS.

DAVID CROCKETT ROBINSON

B/M DOB: [REDACTED]-1982

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490

CDR Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened September 2017, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about May 7, 2017, the Defendant, David Crockett Robinson, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Armed Robbery; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

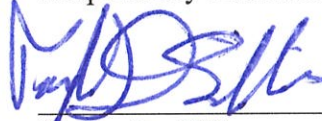
This 14th day of December, 2022.

RECEIVED

Dec 14 2022

SC Court of Appeals

Respectfully Submitted,



Taylor D. Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT