

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2009GS2302385,
	)	2009GS2302386,
State of South Carolina,	)	2009GS2302388,
	)	2009GS2302389
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
David Stephenson Boyd, II	)	
	)	
Defendant.	)	
	)	

July 11-13, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE G. EDWARD WELMAKER, Judge.

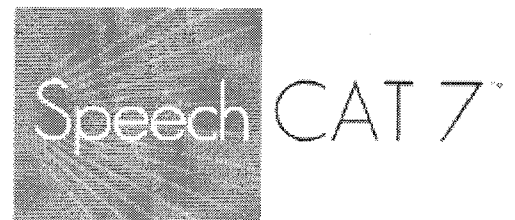
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COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 through 28 are premarked for identification purposes.)

(WHEREUPON, State's Exhibits 30 through 32 are premarked for identification purposes.)

(WHEREUPON, State's Exhibits 34 through 63 are premarked for identification purposes.)

(WHEREUPON, State's Exhibits 68 through 90 are premarked for identification purposes.)

(WHEREUPON, State's Exhibits 93 thru 108 are premarked for identification purposes.)

(WHEREUPON, the proceedings begin on the 11th day of July, 2011 at approximately 11:36 a.m.)

THE COURT: All right. Let the record reflect that, uh, I talked with counsel briefly in chambers about the witness list. We have handouts for them. At the appropriate time when I ask about, uh, witnesses that are known, rather than calling out the names of, uh, all the witnesses that potentially may be called to testify, I'll just let the jurors -- give them a brief time to review them. We'll collect them all back up. I'll ask the appropriate questions about their, uh, knowledge of any of the witnesses. Are there any, uh, specific voir dire questions that either of you

1 would have other than what I would normally tell
2 during voir dire?

3 **MR. JOHNSON:** Yes, sir, Your Honor. The
4 defense has some. I'll pass it up.

5 **THE COURT:** We also discussed about, uh,
6 getting two alternate jurors.

7 **MR. JOHNSON:** Yes, Your Honor.

8 **THE COURT:** The strikes would be, uh, five
9 and ten and one and two on each of the alternates.

10 **MR. FRETWELL:** That's correct, Judge.

11 **THE COURT:** All right. Mr. Fretwell, you
12 looked over the voir dire questions?

13 **MR. FRETWELL:** I have, Your Honor. The
14 State has no objections to, uh, proposed voir dire
15 questions 1 and 4. The State does object to 2 and
16 3.

17 **THE COURT:** One and, uh, -- I think I
18 adequately cover 3 in my opening remarks to them.
19 The burden of proof is on the State to prove the
20 case beyond a reasonable doubt. I think I covered
21 both of those. I certainly covered 4. Number 2,
22 I'll ask in a more generic way. There might be
23 experts, police officers and others around. Any
24 juror who feels that they will be inclined to
25 believe any witness over any other witness because

1 of the position that person's in, doctor, lawyer,
2 uh, or whatever it may be, I want to give them a
3 chance to stand. I won't specify police officer.
4 I'll specify any uniform or professional or expert
5 or anything of that nature.

6 **MR. JOHNSON:** Your Honor, I'm sorry. Did
7 you rule on the first one?

8 **THE COURT:** The first one, uh, I generally
9 cover that.

10 **MR. JOHNSON:** Okay.

11 **THE COURT:** Yeah. Certainly about their
12 prior knowledge of it.

13 **MR. FRETWELL:** Judge, with respect to number
14 2, is the Court inclined to just basically tell or
15 ask the jury, either instruct them or ask them, uh,
16 whether or not they would not give a particular
17 belief or a higher belief to someone because of a
18 job that he or she may possess.

19 **THE COURT:** I'll ask.

20 **MR. FRETWELL:** Specific examples -- if we
21 leave out an example of someone who comes into the
22 court or something like that. I would be as
23 generic as I could be without singling out any
24 particular issues.

25 **THE COURT:** I'm not going to name a police

1 officer or anyone else just because of the
2 position. Each witness is to be considered on its
3 on.

4 **MR. FRETWELL:** The only thing in addition to
5 what Mr. Johnson has submitted -- and I've just
6 talked with Mr. Johnson about this -- is perhaps a
7 question that deals with the potential length of
8 the case. We didn't cover it downstairs in jury
9 qualification, but I didn't know if it would be
10 appropriate for this panel to discuss it, if
11 there's any unique issues that might prevent some
12 jurors from serving maybe even this weekend or this
13 week.

14 **THE COURT:** That's a good point. I'll
15 address that.

16 **MR. FRETWELL:** Thank you.

17 **THE COURT:** Is there any other -- are there
18 any other matters from either of you?

19 **MR. FRETWELL:** Not with respect to the jury,
20 Your Honor.

21 **MR. JOHNSON:** Yeah, not with respect to the
22 jury.

23 **THE COURT:** All right. Uh, the indictments
24 -- I have four indictments. Is the State
25 proceeding on all four of the indictments? I need

1 to notify the jury on what the charges are exactly.

2 **MR. FRETWELL:** All four indictments and one
3 indictment has two counts, Judge. All five
4 charges.

5 **MR. JOHNSON:** Your Honor, of course, there's
6 an issue of one of the indictments. It states
7 Possession of a Weapon during the Commission of a
8 Violent Crime. The defense would move to amend
9 that for undue prejudice.

10 **THE COURT:** To amend the indictment to -- I
11 don't know if it can be amended. Mr. Johnson, you
12 are saying prejudicial effect?

13 **MR. JOHNSON:** Prejudicial effect considering
14 he's being charged with a violent crime today. I
15 fear that the jury may base their decision based
16 upon that statement in the indictment.

17 **THE COURT:** What's the State's position?

18 **MR. FRETWELL:** Your Honor, I'll be happy to
19 be heard on that. I think that, uh, -- I told your
20 law clerk of given him the cites for these cases.
21 State versus Benton, which 338 S.C. 151, and also
22 the Supreme Court case Old Chief versus United
23 States. Your Honor, in these two cases, the Benton
24 case, in South Carolina, of course, dealt with the
25 charge of Burglary 1st. In the charge of Burglary

1 1st, where the elements of the crime are, uh, that
2 the defendant has been previously convicted of
3 either burglary or housebreaking, the court found
4 it was appropriate to place those -- that
5 information before the jury because it was an
6 element that the State must prove.

7 Judge, with respect to Old Chief, the case,
8 uh, the Supreme Court case, the court basically
9 dealt with the issue of the federal statute,
10 possession of a weapon by someone who had been
11 convicted of a felony. Your Honor, that case, the
12 Court narrowly tailored what could be referenced to
13 the jury so that it satisfied the statutory
14 framework. In that case, the defense offered a
15 stipulation to stipulate with the fact the
16 defendant had been convicted of a felony. The
17 government refused. The government wanted to
18 approve the individual conviction by name. It
19 involved an assault. The Court took the position
20 that that was improper in that case.

21 That was not the case with the case at bar,
22 Your Honor. In fact, one or maybe both of those
23 cases deal with the fact that certainly the
24 information about a prior conviction is prejudicial
25 to the defendant. It is. That's not the standard

1 of 403. The standard of 403 is whether or not that
2 potential prejudice to the defendant is
3 substantially outweighed by the danger of unfair
4 prejudice. Your Honor, the defendant has been duly
5 convicted of a crime of violence in this state for
6 burglary.

7 **THE COURT:** How long ago was that?

8 **MR. FRETWELL:** Your Honor, that was, I
9 believe, '95. (Pause.)

10 Your Honor, I'll get that.

11 **THE COURT:** Well, that's all right.

12 **MR. FRETWELL:** I will remind the court as
13 far as the 10-year limitation --

14 **THE COURT:** We're not talking -- I
15 understand that. I'm just curious.

16 **MR. FRETWELL:** Absolutely.

17 **THE COURT:** But the fact of whether or not
18 that conviction or that information substantially
19 outweighs, uh, the prejudicial effect or the danger
20 of unfair prejudice, uh, is -- substantially
21 outweighs any probative value. Obviously, Your
22 Honor, the probative value of the ele -- of an
23 element or evidence that proves an element of a
24 case or of the charge that the defendant's been
25 charged with is high. The statute is duly

1 authorized. It's titled possession of -- Illegal
2 Possession of a Handgun by a Person Convicted of a
3 Crime of Violence.

4 **MR. FRETWELL:** Your Honor, unless the State
5 proves that it is a crime of violence, then the
6 State has failed to meet its burden of proof under
7 the statute. Now, certainly, Mister, uh, Johnson
8 could request a stipulation -- stipulation that
9 said the defendant has been convicted of a crime of
10 violence in that instance. I believe because the
11 nature of the burglary is not relevant to the fact
12 that it satisfies the crime of -- prior crime of
13 violence, then the State would be compelled to
14 accept that stipulation. But that's the choice the
15 defense has to make. Either they permit the State
16 to prove the case by putting in the prior burglary,
17 identifying it as a crime of violence, or they
18 stipulate to the fact that the defendant has
19 already been convicted of a crime of violence.

20 **THE COURT:** Mr. Johnson?

21 **MR. JOHNSON:** Your Honor, my main issue is,
22 uh, has to do with the fact being the charge itself
23 being read to the jury, the indictment itself. If
24 that stipulation would also insure that that's not
25 done, I believe the prejudice comes from the fact

1 -- not from the fact that, uh, it has to be proven,
2 but rather the fact that it's even brought up. I
3 would agree to stipulate to that if, if Your Honor
4 does not state that to the jury when reading the
5 indictments.

6 **MR. FRETWELL:** Your Honor, that's exactly
7 what the Benton case dealt with. That was a case
8 actually going back to Old Chief. There has never
9 been a stipulation where the stipulation has
10 prevented the jury from having information relating
11 to the elements of the charge that they are finders
12 of fact to be able to determine whether or not the
13 State has met its burden of proof.

14 It's been whether or not that stipulation is
15 restricted to the category necessary to satisfy the
16 element under the indictment or whether or not the
17 specific conviction comes in with its name, uh, to
18 prove that the, uh, the burden of proof has been
19 met. The cases say that if the -- if the name of
20 the -- if the crime itself is not necessary to
21 satisfy the general category of what's required
22 under the statute, then that information can be
23 taken care of in the form of a -- really, what
24 amounts to a mandatory stipulation by the defense.
25 But never do we have a situation, Your Honor, where

1 that information is kept from the jury.

2 This is a lawful charge with which this
3 defendant has been charged. The jury will be
4 charged and is charged with the responsibility of
5 determining whether the State meets the elements
6 under the statute of proving that this defendant
7 has been previously convicted of a crime of
8 violence and that he was in possession of a weapon
9 that day.

10 **MR. JOHNSON:** Your Honor, if you feel so
11 inclined to, uh, include that information as Mr.
12 Fretwell suggests, I think it might be proper to
13 conclude that he have to sever that trial separate
14 from these.

15 **THE COURT:** Why shouldn't it be separate,
16 Mr. Fretwell?

17 **MR. FRETWELL:** Your Honor, it is part and
18 parcel of this -- of this set of facts that we're
19 dealing with. He possessed the weapon on that day
20 when he had been previously convicted of a crime of
21 violence. That's the statute, Judge.

22 **THE COURT:** Well --

23 **MR. FRETWELL:** The statute is what it is.
24 Certainly, the legislature understands when they
25 put the requirements on the State, both the

1 Burglary first charge and in this charge, that
2 there are elements that are going to be somewhat
3 less fortunate for the defendant who has those
4 previous convictions where there's elements for the
5 charge.

6 **THE COURT:** I have to determine whether the
7 misfortune meets the standard of Rule 403.

8 **MR. FRETWELL:** Yes, sir.

9 **THE COURT:** The problem I have, Mr.
10 Fretwell, is the James and the Benton case, as I
11 understand it, I understand the analogy you are
12 going under. Each of those cases, as I believe
13 involved one particular offense, not multiple
14 offenses. You were talking about burglaries.
15 Because the legislature said of all the burglaries,
16 it makes it a burglary first, then seven was two
17 many. Two was alright, I guess, is ultimately what
18 they said. You can talk about two but not about
19 seven.

20 What we have in this case is we have two
21 weapons charges basically. Same gun, but two
22 charges. He's charged with Possession of a Weapon
23 during the Commission of a Violent Crime and
24 Possession of a Weapon, the same weapon because he
25 had committed a violent crime.

1 **MR. FRETWELL:** Crime of violence, but yes,
2 sir.

3 **THE COURT:** Violent crime or crime of
4 violence. Either way. He had committed a violent
5 crime in the past and he should not have a weapon.
6 He's committing a violent crime now with a weapon,
7 same weapon.

8 **MR. FRETWELL:** Same weapon, Your Honor, but
9 I believe the statute treats those crimes
10 differently.

11 **THE COURT:** Well, obviously, they are
12 different crimes.

13 **MR. FRETWELL:** Yes, sir.

14 **THE COURT:** I don't think there's any
15 question that they are different crimes. Whether
16 or not it's multiplicitous without a severance
17 though. And the other concern I have is that in
18 this courtroom, you lawyers, you know about violent
19 crimes. How's the jury going to -- do they
20 understand the definition of violent crime that you
21 understand, Mr. Fretwell?

22 **MR. FRETWELL:** They may not, Judge.

23 **THE COURT:** Is that going to create more of
24 a charge that I'm going to have to explain to them
25 that a violent crime might not necessarily be

1 violent, may be a drug charge, may be voyeurism.
2 Those are violent crimes. But for the benefit of
3 the defendant, when they hear violent crime, I
4 think most lay people are going to say there was
5 some attack on a person.

6 **MR. FRETWELL:** Certainly, if the Court
7 determines that's what's necessary to cure any
8 perceived prejudice against the defendant, I
9 understand that. Judge, the way the statutes are
10 separated, they have categories of violent crimes.
11 Then they have a specific statute under which the
12 defendant is charged today that deals with crimes
13 of violence. Burglary is a crime of violence.

14 Your Honor, to refer you back to the Benton
15 case, on page -- in the copy that I -- I don't know
16 -- I'll look for a place to show you. After 155,
17 if you're looking at the South Carolina reporter,
18 that paragraph there maybe middle of the way down,
19 the Court says, furthermore, in responding to a due
20 process argument, which is basically what the
21 defense is talking about, a prejudicial effect, due
22 process argument. Furthermore, due process has not
23 barred the admission of prior crimes simply because
24 there is an accompanying prejudicial effect.

25 It cites Spencer versus Texas, which is a

1 Supreme Court decision. It says, in pulling from
2 Spencer versus Texas, quote, in the face of the
3 legitimate state purpose and the longstanding and
4 widespread use that attend the procedure under
5 attack here, we find it impossible to say that
6 because of the possibility of some collateral
7 prejudice, the state procedure is rendered
8 unconstitutional under the due process clause as it
9 has been interpreted and applied in our past cases.

10 Your Honor, that very issue is being dealt
11 with by our courts. Our court is recognizing that
12 the legislature does things. The legislature's
13 independent wisdom created this statute. They
14 created a statute that references as an element a
15 previous conviction. That's been upheld
16 specifically in the Benton case in cases like a
17 burglary charge.

18 **THE COURT:** Do you believe this statute,
19 when it says crimes of violence, does the word
20 "violence" have the same meaning in that statute
21 that it means in the Title 16 with all the crimes
22 of violence?

23 **MR. FRETWELL:** I think that there are two
24 separate categories. The legislature has denoted
25 some crimes, including armed robbery, as -- and

1 ABWIK, which the defendant is charged with, as
2 violent crimes. Burglary is on a list of crimes of
3 violence. Now, there is a Burglary violent. That
4 would also be a violent crime. He does not have to
5 have been convicted of a Burglary violent. But
6 there is no statute in South Carolina that says
7 someone that has been previously convicted of a
8 violent crime can not carry a gun. It specifically
9 categorizes it as crimes of violence. That's the
10 specific nomenclature used by the --

11 **THE COURT:** So you're saying that if, uh, a
12 person has committed an armed robbery and is
13 carrying a weapon, you would not meet the statute.

14 **MR. FRETWELL:** No, Your Honor, because armed
15 robbery, in addition to being labeled as a violent
16 crime is also included in the list of crimes of
17 violence.

18 **THE COURT:** It's got to meet the list there?

19 **MR. FRETWELL:** Yes, sir. It's a list.

20 **THE COURT:** Is the list in that statute?

21 **MR. FRETWELL:** 16-23-30 makes reference, I
22 believe, to the crimes of violence. It made
23 reference to that statute number. I can get you
24 that statute number that talks about crimes of
25 violence. I apologize for not having it.

1 But, Your Honor, that category, crimes of
2 violence, is exactly what Old Chief dealt with in
3 terms of a felony except our state has chosen not
4 to criminalize the possession of a weapon by
5 anybody who's previously carried a -- been
6 convicted of a felony, I guess, until recently.
7 They chose -- at that time, the laws that were in
8 effect only criminalized possession of a weapon by
9 someone who had been previously convicted of a
10 crime of violence. And Judge, if I could find
11 that --

12 **MR. JOHNSON:** Your Honor, I will say that
13 under any circumstances, I will object to him
14 mentioning a crime of violence. I think Your Honor
15 touched upon distinguishing between the two with
16 regards to my motion. I think justice would be
17 proper in this situation where it's just not --
18 we're not talking about just one thing, especially
19 where there's a duplicative, uh, -- essentially the
20 same charge that's related to this case.

21 **MR. FRETWELL:** Judge, I can locate that. I
22 brought my rules book. I was trying to find the
23 statute. Your Honor, certainly, if the Court is
24 considering severance, the State would also point
25 out the significant factor of judicial economy.

1 We're talking about -- we submitted to the Court a
2 witness list of 48 names.

3 **THE COURT:** I don't believe those will all
4 need to be called for the second trial.

5 **MR. FRETWELL:** Your Honor, a significant
6 portion of them would because what it deals with is
7 the evidence from all different areas that go to
8 show the defendant was in possession of a gun that
9 day. So I would submit that a good majority, if
10 not all, of those witnesses would have to be called
11 in the subsequent case.

12 **MR. JOHNSON:** Your Honor, a lot of these
13 witnesses have to do with, uh, setting up
14 perimeters, some have to do with -- a lot of these
15 people specifically have nothing to do with a gun
16 issue or a weapon. I disagree with the Solicitor
17 that he would have to call the majority of these
18 witnesses. I don't see how he -- I think -- I
19 don't see how his other trial takes more than a
20 day, even if that long.

21 **MR. FRETWELL:** Your Honor, with due respect
22 to Mr. Johnson, the State is the one that sets the
23 -- that has the burden of proof beyond a reasonable
24 doubt. I can tell the Court, as an officer of the
25 court, in a trial for this case in a severed trial

1 that most, if not all, of those same witnesses
2 would need to be called. It goes back to the
3 fundamental element of the defendant being in
4 possession of that weapon on that day. If you --
5 if -- if it's of concern enough that you want to
6 inquire as to what the witnesses will say, we can
7 go through all that, Judge.

8 **MR. JOHNSON:** Your Honor, I also don't see
9 how judicial economy compares to my client's right
10 to a fair trial.

11 **MR. FRETWELL:** And to be clear, Your Honor,
12 that's not the only issue here. That is a huge
13 issue here, but it's not the only issue here. The
14 fact of the matter is these incidences were all
15 enmeshed together. They all rise out of the same
16 factual circumstance, that the charges are
17 legitimate and authorized by statute by the
18 legislature and signed by the governor. The
19 State's entitled to prove its case.

20 Now, I admit, Your Honor, I am in a position
21 of either accepting a stipulation -- I believe I'm
22 required to accept a stipulation by the defense
23 that says his client has already been convicted of
24 a crime of violence. I would be compelled to
25 accept that stipulation. Could not put in

1 extrinsic evidence. Could not put in the nature of
2 the crime he has been convicted of. Otherwise, I'm
3 entitled to do that. It's an element of the
4 offense.

5 **THE COURT:** Where they instruct -- have
6 instruction to the jury of what is a crime -- that
7 a crime of violence has many facets. Burglary is
8 one of those that the legislature has said wasn't a
9 crime of violence. Did that not meet your need,
10 Mr. Johnson?

11 **MR. JOHNSON:** Well, no, sir, Your Honor. I
12 don't believe it does. I think most people
13 associate burglary as a crime of violence. Some
14 people don't differentiate between burglary and
15 robbery. People interchange the two words very
16 frequently. I still have the same concerns.
17 Again, Your Honor, if the State wants to pursue
18 this charge, I think a severance would be proper.
19 If at that point in time, the Solicitor wants to
20 discuss the stipulation with the defense, then I
21 think at that point in time, it would be proper.
22 But for this trial, I think it's unduly prejudicial
23 under any circumstance if we're going to mention a
24 crime of violence.

25 Your Honor, I certainly can foresee an

1 explanation that includes saying that crimes of
2 violence are a category that the legislature has
3 set up that includes crimes that the legislature
4 has designated as crimes of violence that may not
5 be ones that someone might typically associate with
6 violent behavior. Something even to that degree,
7 Your Honor, would be appropriate to alleviate any
8 concern the defendant is somehow unfairly being
9 prejudiced. A charge along those lines would
10 certainly allow the State to prove the elements of
11 the charge with which the defendant has been
12 charged in conjunction with this particular case.

13 **MR. JOHNSON:** Your Honor, I'm beginning to
14 believe that the Solicitor does intend to introduce
15 this evidence as proof that he conformed with this
16 crime here as well. These, uh, -- the assistance
17 among the mentioning of crimes of violence is
18 essentially trying to ensure that the jury hears
19 that specific language. If we can avoid the crimes
20 of violence language or we can't sever this trial,
21 then the damage will be done. I don't think
22 there's any way to prevent that and protect the
23 rights of the defendant here.

24 **MR. FRETWELL:** Your Honor, in response to
25 three things.

1 **THE COURT:** Yes.

2 **MR. FRETWELL:** First of all, of course, I'm
3 going to insist on that language. It's the element
4 that I'm required to prove under the charge.
5 Number two, I am just as insistent about this as
6 Mr. Johnson is opposed to this. He knows that I
7 can't prove that charge without that language.
8 Finally, Your Honor, I would point to the Benton
9 case with the specific language that I read into
10 the record that specifically addresses that some
11 collateral but prejudicial effect does not negate
12 the State's ability to either accept the
13 stipulation, if that's what the defense wants to do
14 or to actually prove the element of the charge in
15 that charge.

16 **MR. JOHNSON:** But Your Honor, Benton isn't
17 necessarily on point. Benton talks about, and I
18 believe you made the distinction talking about
19 burglary where if you have more than one burglary,
20 the next burglary is violent and et cetera. This
21 addresses something totally different. This is a
22 -- we're talking about his crime that's identified
23 as violent as being a burglary and now he's charged
24 with armed robbery and ABWIK which is certainly a
25 violent crime. As he put -- there are certain

1 charges that are classified as crimes of violence
2 and other ones that are violent crimes. These are
3 violent crimes. I'm worried that the parallel may
4 be made in this case as well, Your Honor.

5 **MR. FRETWELL:** If he's concerned about that,
6 Your Honor, he could let the state put in the
7 burglary. The jury will fully understand it's not
8 a prior armed robbery. It's not a prior ABWIK,
9 which is what he's been charged with today. That's
10 his choice. But, Your Honor, the State can't be
11 procluded from proving the elements of a legitimate
12 and authorized charge with which this defendant has
13 been charged.

14 **MR. JOHNSON:** And I agree. That's why we
15 should sever the case if the Solicitor wishes to do
16 that.

17 **MR. FRETWELL:** Your Honor, the prejudicial
18 effect of that in any other case would not be any
19 less than it is in this case if you look at the
20 charge itself. It wouldn't be any less.

21 **THE COURT:** All right. Thank you,
22 gentlemen. I'm sure you've read the cases more
23 thoroughly than I. But the brief review of both
24 Benton and James, I think there can be a
25 distinction in that here we have multiple charges.

1 Whereas there, they were trying to work out whether
2 the prior counts or the prior offenses for the same
3 burglary had the prejudicial effect. I think Judge
4 Pleicones and Judge Floyd, who I have great respect
5 for their judicial, uh, insights on the bench, uh
6 -- I just think this is a different case because of
7 the four charge -- the five charges that we have.

8 I think the instruction by the Court on the
9 statutory definitions of crimes of violence, uh,
10 could be confusing to the jury even though
11 certainly the State has the right to bring the
12 cases that it sees fit. I have to weigh this in
13 the light of 403 and the case law. I'm concerned
14 about confusion to the jury with the, uh, the two
15 weapons charges both being charged to him talking
16 about violence. One with the effect of the weapon
17 there and another crime of violence as far as the
18 other charge that's there. Obviously, there's
19 going to be a prejudicial effect.

20 Mr. Fretwell, as you well pointed out, that's
21 not the criteria at all by itself. There's also
22 prejudicial evidence that the defendant wants to
23 keep out. I'm concerned about the confusion. I'm
24 concerned about the similarity of the two charges
25 here. I think, uh, 403 compels me to grant the

1 motion for the severance. And I believe that the
2 outcome of the trial on the four charges we have
3 would certainly give some insight into any problems
4 with judicial economy.

5 I'm well aware of the backlog that we have and
6 the juries that serve here in such a professional
7 manner. We certainly don't want to jeopardize
8 them. We don't want to jeopardize the lawyers
9 who've spent lots of times and certainly all the
10 witnesses that would be called. Even though, uh,
11 Mr. Fretwell, you indicate the majority of them
12 would have to be called back.

13 My job as the gatekeeper is going to be to
14 grant the motion under Rule 403 for the prejudicial
15 effect as well as confusion to the jury as far as
16 the charges in this case. I'll grant the motion to
17 sever the charge of the weapon.

18 **MR. FRETWELL:** Your Honor, I certainly
19 understand --

20 **THE COURT:** Certainly, the State, you know,
21 I can certainly give you time now if you want to --
22 certainly, there are appellate options if you want
23 to take any.

24 **MR. FRETWELL:** That was the other issue I
25 was going to bring up, Judge. I think because of

1 the factors we have to call all those witnesses --

2 **THE COURT:** That's, uh, -- that's certainly
3 reasonable. There's case law to back it up.
4 That's just, uh, --

5 **MR. FRETWELL:** Yes, sir.

6 **THE COURT:** -- what I think, uh, based on
7 the weighing of everything and the nature of the
8 charges and the penalties for the charges,
9 everything that I've seen, that's the proper
10 decision. I obviously err frequently. That's why
11 it's great that we have an appellate court to hear
12 those matters. The State has every right to appeal
13 this ruling.

14 Hopefully, I've analyzed -- I want the
15 appellate record to be clear as to why I did what I
16 did. Hopefully, I've set forth my ruling as far as
17 -- pursuant to the cases that I've read, the rule
18 403 and the statute with the confusion of violence
19 and crimes of violence. We're going to have
20 technically two different violent standards on the
21 two charges. I just think one trial with the jury
22 finding out what a, uh, you know, violent crime is
23 and a crime of violence and weapon charge here, a
24 weapon charge there. It's not just the prejudicial
25 effect to the defendant, but the confusion to the

1 jury and perhaps the judge. I don't know.

2 We'll take a break now. I don't know if you
3 want to consult or if you know what you want to do
4 now, Mr. Fretwell, I'll certainly give you an
5 opportunity to make a decision.

6 **MR. FRETWELL:** I just want to make sure that
7 I -- it's not for lack of fully -- as the Court's
8 familiar or as stated on the record, maybe the
9 court isn't -- hasn't read through the cases. I
10 would ask, first of all, for the court to
11 reconsider its ruling. We have just maybe a few
12 minutes for the court to look through these cases.
13 I'll just point out one other thing. I'm not
14 arguing with your ruling, Judge. I understand it
15 fully.

16 But if the concern is, as you've articulated
17 in your ruling, that the prior crime of violence
18 might have some effect on the current violent
19 charge and there might be some overwhelming
20 prejudicial effect there, that's why I brought to
21 the court a case that I believe is on point with
22 this Benton case. With the fact that the previous
23 crimes were burglaries and the charge at trial is a
24 burglary, that is -- that is beyond just the
25 suggestion that you might have a crime of violence

1 and now you have a violent crime. It's saying he
2 committed a burglary in the past.

3 **THE COURT:** Right.

4 **MR. FRETWELL:** In that scenario -- faced
5 with that scenario, Your Honor, our Supreme Court
6 has said that it's appropriate for the state, as an
7 element of the offense, to bring in the evidence of
8 those prior convictions. It's appropriate under
9 the case. If the court -- if the court puts -- I'd
10 like to have the Court look at these cases and look
11 at them under that mind set. I'd also like to
12 reserve the, uh, ability to perhaps even fashion
13 some other remedy to make us be able to move
14 forward. What I don't want to do is have to try
15 two cases of the magnitude of this case, Judge.
16 That's the concern that I have.

17 **THE COURT:** I'm concerned about that too.

18 **MR. FRETWELL:** Yes, sir.

19 **THE COURT:** We've got a lot of other cases
20 to try. Again, the distinction I'm making with
21 Benton is that it's a single crime. I know under
22 Lyle, it's the similarity and all those things.
23 But here, we've got two separate crimes that
24 interlock so much in the weapon, the violence, the
25 crime of violence, uh, -- I just believe that not

1 only is it prejudice, but I think the confusion for
2 a jury to weigh all that with some 50 witnesses and
3 all these multiple offenses, I think that justice
4 could best be served by the severance. The
5 appellant court -- I'll be glad to read the cases
6 again. Maybe I'll see it differently. But I'm
7 familiar with James and somewhat familiar with
8 Benton.

9 **MR. FRETWELL:** Your Honor, the other thing I
10 would offer is a solution that comes from maybe the
11 Old Chief cases. That is in the stipulations --
12 one of the stipulations the defendant, a pro se
13 defendant offered was to stipulate to the fact that
14 this statute is satisfied would somehow make the,
15 as Mr. Johnson suggests, we have the burglary come
16 in. We don't call it a crime of violence. What we
17 have is the defense stipulate that he's been
18 convicted of a previous crime that would meet the
19 statutory requirements of this charge so that the
20 charge could go forward.

21 **THE COURT:** Well, Mr. Johnson, if the State
22 were to proceed with the four offenses and if the
23 jury were to convict your client of possession of a
24 weapon during a violent crime, would your client be
25 willing to stipulate that he would then enter a

1 plea to the other charge that wasn't before the
2 court now. You follow what I'm saying?

3 **MR. JOHNSON:** Enter a plea?

4 **THE COURT:** I'm not speaking on behalf of
5 the state now. I'm just trying to think out loud.
6 If the -- if he is convicted for possession of a
7 violent -- of a weapon during the commission of a
8 violent crime that he is in possession of a weapon.

9 **MR. JOHNSON:** Well, Your Honor, I'll say
10 this in fairness. Of course, I respect your
11 initial ruling.

12 **THE COURT:** Well, I know you do.

13 **MR. JOHNSON:** Your Honor, you read all the
14 cases. You considered them. I fear that -- I know
15 what the Solicitor thinks about judicial economy.
16 But I think at this point in time, with your
17 ruling, we should just move on from this issue.

18 **THE COURT:** Well, they have a right to
19 appeal my ruling.

20 **MR. JOHNSON:** So does my client.

21 **THE COURT:** Well, not til -- they have a
22 right to appeal it now.

23 **MR. JOHNSON:** I know you speak of
24 stipulations with regards to, uh, --

25 **THE COURT:** Let me explain it again.

1 **MR. JOHNSON:** Yes, sir, Your Honor.

2 **THE COURT:** If the State agrees to proceed
3 with the trial now, not appeal that issue, if there
4 were to be a conviction -- I don't know how the
5 jury will turn out -- but if the conviction is
6 possession of a weapon during the commission of a
7 violent crime, is your client not guilty of
8 possessing that weapon if there is -- if there is
9 an agreement that he does have a crime that meets
10 the statute?

11 **MR. JOHNSON:** Your Honor, in this case, I
12 think you'll hear evidence that there is no weapon.

13 **THE COURT:** Okay. He might not be
14 convicted. I'm just saying if he is convicted.

15 **MR. JOHNSON:** Uh, can I consult with --

16 **THE COURT:** Let's have a break. Let's take
17 a break.

18 **MR. JOHNSON:** All right.

19 **THE COURT:** I'll read some more law. I'm
20 going to ask the jury to be back at two o'clock.
21 Okay. I'll have them back at two o'clock.

22 **MR. FRETWELL:** Just can I weigh in on the
23 Court's --

24 **THE COURT:** Yes, sir.

25 **MR. FRETWELL:** Judge, I have serious

1 concerns from a prospective, number one, that
2 wasn't what I was suggesting to the Court. I
3 understand that there's a distinction. But to
4 somehow leverage a defendant's ability to enter a
5 plea on the State giving up some right just
6 smacks --

7 **THE COURT:** That's, uh, -- that was
8 misspoken. That shouldn't be a factor. You don't
9 need to -- I was just trying to think ahead for the
10 second trial.

11 **MR. FRETWELL:** Yes, sir.

12 **THE COURT:** What really is going to be the
13 defense if that one is upheld on appeal. I'm not
14 saying that he would then enter his plea to that
15 immediately. I'm just thinking to -- judicial
16 economy on the second trial, are we really going to
17 have a trial? He certainly is entitled to a trial.
18 But if he does have a -- is upheld on appeal prior
19 to conviction of having that weapon and there is a
20 record of a burglary, -- I'm thinking ahead to the
21 second trial. I think I'm preferencing on judicial
22 economy as to whether or not there really would --
23 that was part of the factor I had that if the state
24 loses this case, they might not want to try the
25 next case. They have a right to do that. They

1 have a right to call all their witnesses again.

2 But if they prevail on the case, then the
3 second trial, uh, despite what Mr. Fretwell says as
4 far as -- he knows this case better than I do --
5 I'm just not so sure that there would be as many
6 witnesses as there need to be. In no way is your
7 client, you know, if that was misinterpreted -- I'm
8 talking about the second trial, not this trial at
9 all -- whether or not there would be some kind of
10 understanding of, uh, how much proof would be
11 required and the State's need for witnesses at that
12 time. Let's take a short, uh, --

13 **MR. FRETWELL:** I was just going to say that
14 the solution that I propose dealt with not having
15 to have two trials. Giving the defense certainly
16 what they want to eliminate the words of crime of
17 violence simply have the statute be something -- if
18 we could fashion a stipulation where the defense
19 agrees that the defendant has been convicted of a
20 prior crime and meets maybe the statutory language
21 of particular statute number if he is thereafter
22 found in possession of a weapon. That means we can
23 have all the charges today. There is no second
24 trial. There's not the prejudicial effect of
25 talking about crimes of violence and violent

1 crimes. But I offer that as a suggestion to the
2 court as a remedy.

3 **THE COURT:** The remedy that you are talking
4 about is proceeding today ---

5 **MR. FRETWELL:** Yes, sir.

6 **THE COURT:** --- with the other charges?

7 **MR. FRETWELL:** Yes, sir. But not calling
8 it --

9 **THE COURT:** Just state --

10 **MR. FRETWELL:** Leaving out the language --

11 **THE COURT:** I think that's something, Mr.
12 Johnson, you reviewed already or thought about
13 yourself?

14 **MR. JOHNSON:** Yes, sir.

15 **THE COURT:** After I read the case, that
16 might be the remedy that we need today is to just
17 do that. I might very well find Mr. Fretwell is
18 right on the Benton case.

19 **MR. JOHNSON:** Your Honor, just to reiterate.
20 I think your reasoning was sound on your original
21 decision. I just ask you to please --

22 **THE COURT:** If we can proceed with the
23 trial, we need to do that. Your client needs to --
24 we all need to have this case disposed of. We
25 don't need to have it delayed another year. If

1 there's a way that we can do that, we need to do
2 it. Wouldn't you agree?

3 **MR. JOHNSON:** I would. But, Your Honor,
4 with the charges we have before us, I don't know
5 offhand how much time they carry. But if we're
6 talking about judicial economy, I think this trial
7 should speak for itself and we shouldn't allow the
8 crime, the statute or the charge or the indictment
9 that he's speaking about affect this one. We're
10 talking about judicial economy. We're talking
11 about another trial a year from now. I suggest
12 that it also should be directed at the State that
13 it's not necessary for them to continue to
14 prosecute.

15 **THE COURT:** They have a right to prosecute
16 the case as they see fit. That's their public
17 charge. And, uh, again, I just want to make sure
18 everybody understands what I said earlier. I was
19 talking about another trial, not this trial.
20 Stipulations to the outcome of this one that would
21 be for a future date. Certainly, not this trial.
22 Let's take a, uh, -- let's take a -- y'all need a
23 lunch hour?

24 **MR. FRETWELL:** Judge, if we could deal with
25 any other issues that might require testimony,

1 uh, --

2 **THE COURT:** If we're not going to proceed
3 with the trial, we probably don't need to do that.

4 **MR. FRETWELL:** Yes, sir. That will be fine.

5 **THE COURT:** Why don't we -- y'all be back at
6 12:15 or so. If we're going to proceed -- if we're
7 not going to proceed, we can, uh, let the jury know
8 to be back tomorrow.

9 **MR. FRETWELL:** That depends in great part, I
10 believe, Your Honor, on your review of the cases
11 and whether or not the solution that I believe
12 actually Mr. Johnson came up with initially.

13 **THE COURT:** Right. You and Mr. Johnson can
14 talk about that. I'll read the cases. If y'all
15 come up with something. If not, then we'll call it
16 off for today or we will go ahead and get our jury
17 picked at two o'clock. If we're going to proceed
18 and there are some preliminary matters we need to
19 take care of, that will give us from 12:15 or
20 12:30, excuse me, 1:30.

21 **MR. FRETWELL:** Yes, sir.

22 **THE COURT:** That will give us 30 minutes to
23 take care if we are going to proceed at trial.

24 **MR. FRETWELL:** Yes, sir.

25 **THE COURT:** All right. We'll be at ease for

1 an hour.

2 **MR. JOHNSON:** Thank you, Your Honor.

3 **(WHEREUPON,** a lunch recess is taken from
4 approximately 12:26 p.m. to 1:31 p.m.)

5 **THE COURT:** All right. Are there any
6 matters we need to take care of before we call the
7 jury up or otherwise?

8 **MR. FRETWELL:** Regardless of what the ruling
9 of the Court will be, the State is going to
10 proceed.

11 **THE COURT:** All right. I, uh, had a chance
12 to review the Benton case again. Right or wrong, I
13 stand on my previous position. Again, I just think
14 it's too much 403 problems to allow the State to
15 proceed on both charges. I'm just going to grant
16 the motion to sever. I think the limited leeway
17 that, uh, is given under Benton is not met here. I
18 think there's a distinction between what we have in
19 this case and what the Benton case was talking
20 about and certainly I'm -- I'm certainly concerned
21 about the State's requirement perhaps of having to
22 try the case again. I certainly hope judicial
23 economy is not something that comes back to haunt
24 my ruling.

25 As I said before, and perhaps misunderstood

1 about talking about this case, I was talking about
2 the next case where perhaps this case can be
3 dispositive of the other case one way or the other
4 based on the facts and the findings of the jury on
5 the weapons charge. I stand by my prior ruling.

6 I understood that we may have some issues as
7 far as, uh, -- again, this was just raised in
8 chambers by the attorneys, just statements in
9 general about a possible need for a Jackson v.
10 Deno hearing and also a possible need for a ruling
11 on, uh, statements by witnesses as far as their
12 qualifications to identify hand markings or
13 whatever. Are those the only issues that either of
14 you gentlemen foresee that we need to take care of
15 before the jury comes back?

16 **MR. JOHNSON:** Your Honor, depending on how
17 you want us to handle it, there's also an issue of
18 the bandana.

19 **THE COURT:** What was that issue exactly?
20 Chain of custody? Is that it?

21 **MR. JOHNSON:** Uh, essentially chain of
22 custody, the potential for contamination,
23 unreliable -- really not the bandana itself.
24 Actually, the substance found on the bandana is
25 what I essentially would contest.

1 **THE COURT:** Mr. Fretwell, at what point in
2 the trial -- I understand we're going to have a
3 fairly lengthy trial -- the introduction of the
4 bandana come into play. We can certainly do it now
5 if the witnesses are available. I don't want to
6 put you in a bind with having to find witnesses
7 that may not be available today. We can certainly
8 address this during the course of the trial when it
9 comes up. I don't mind taking care of it now if
10 everybody is available.

11 **MR. FRETWELL:** Your Honor, I was just trying
12 to find my case law on this point. We have
13 witnesses available. We also, as I mentioned in
14 chambers, Your Honor, uh, the way that the bandana
15 -- certainly, the Court could hear testimony to
16 this effect. The bandana, when located by dog, uh,
17 was marked in a way in the sense that when the K-9
18 officer attempted to pull the bandana out of the K-
19 9's mouth, the bandana ripped. At that point, it
20 became non-fungible. That officer can --
21 identifies and recognizes the bandana by the rips.

22 The officer -- Investigator Weiner that placed
23 it into evidence can identify it by the rips. It
24 was tagged when it got to SLED by the evidence
25 processor who removed the DNA swab or swabbed it

1 for DNA. She wrote on it as well.

2 This is not a -- this is not a fungible item
3 to which the State is required to prove a chain of
4 custody per say. From that premise, I would quote
5 to the Court the State versus Rogers, 361 S.C. 178
6 under headnote 9. Initially, we note that because
7 the purse in that case is a non-fungible piece of
8 evidence. Chain of custody is not required.

9 **MR. JOHNSON:** Your Honor, would you like
10 motions now?

11 **THE COURT:** Yes, sir.

12 **MR. JOHNSON:** I think you'll hear testimony
13 that obviously the item is not now in the same
14 condition as when it was found. I think Solicitor
15 intentionally alluded to that. I think the item
16 was also, uh, left for a period of time without
17 anyone having sight of it. It was also -- the item
18 was turned in by the, uh, -- item was actually
19 turned in by the one who shot my client. The issue
20 -- the ultimate issue is the DNA testing, any
21 potential for the item to have been contaminated or
22 otherwise, any reason for me to question whether
23 the DNA got there by someone else, any potential
24 for contamination from touching and it transpiring
25 to another.

1 **THE COURT:** So the DNA was positive for it?

2 **MR. JOHNSON:** Yes, sir, Your Honor.

3 **THE COURT:** That's going to be an issue.

4 You think the case you cite, Mr. Fretwell, as far
5 as the non-fungibility, that relate to DNA testing
6 or just the item itself, the purse. Was there DNA
7 testing on the purse?

8 **MR. FRETWELL:** Well, there was an issue
9 where there was a piece of paper, Your Honor, in
10 that purse that contained a fingerprint. The Court
11 talked about specifically the purse itself being
12 non-fungible. Therefore, it came into evidence
13 without, uh, chain of custody having to be
14 established. Your Honor, I point out in that case
15 that the purse was sent home with someone for a
16 period of time and, you know, to the extent that
17 the testimony was that the person who took it home
18 hadn't moved it. It was in the same place when she
19 retrieved it to give it back to --

20 **THE COURT:** Did the purse go home with her
21 too?

22 **MR. FRETWELL:** Yes, sir.

23 **THE COURT:** That had the fingerprint on it?

24 **MR. FRETWELL:** Yes, sir.

25 **THE COURT:** What's the name of that case?

1 **MR. FRETWELL:** Your Honor, that is, uh,
2 State versus Rogers. I have a copy for the court.

3 **THE COURT:** All right. Thank you.

4 **MR. FRETWELL:** On the copy that I gave the
5 Court, Your Honor, it's page 8 of 23. Westlaw has
6 two different page numbers.

7 **THE COURT:** Headnote 8?

8 **MR. FRETWELL:** Page 8 of 23.

9 **THE COURT:** Headnote 8?

10 **MR. FRETWELL:** Headnote 9, Your Honor.

11 **THE COURT:** Oh, 9. Okay.

12 **MR. FRETWELL:** But yeah, it begins at
13 headnote 8. The language I quoted was at headnote
14 9.

15 **THE COURT:** The State's position there does
16 not need to be any chain of custody as far as the
17 person who's going to -- by whom you're going to
18 introduce it, do they have any knowledge at all
19 about --

20 **MR. FRETWELL:** Yes, Your Honor. Certainly,
21 we would put up evidence of the individual who came
22 in contact with the bandana, the K-9 officer and
23 how that K-9 officer recognizes that bandana.
24 Thereafter, how the investigator came upon that
25 bandana being directed by another K-9 officer to

1 that location and can testify that it's the same
2 bandana based on the holes that are made in the
3 bandana, Judge. If this were a bandana without
4 holes, we would have a fungible item that would
5 have to require a chain of custody.

6 **THE COURT:** The DNA testing is -- I'm
7 probably going to have to hear the testimony. I
8 don't know if I can hear it in advance. You just
9 make your objections as you feel you need to, Mr.
10 Johnson. If we need to send the jury out, we can
11 handle that in time. I think the flow of the case
12 would give me better insight that -- how to rule
13 upon that.

14 **MR. JOHNSON:** Yes, sir, Your Honor.

15 **MR. FRETWELL:** The only issue there, Judge,
16 of course, is that, of course, when I'm telling the
17 jury the roadmap or the opening of what they are
18 going to hear on the case, I've got to tell them
19 that the defendant's DNA was located on the bandana
20 that was found in the woods.

21 **THE COURT:** Mr. Fretwell, you tried a lot of
22 cases. I can't tell you now what my ruling is
23 going to be, but you use your discretion as to
24 whether you keep your credibility with the jury in
25 your opening statement.

1 **MR. FRETWELL:** Yes, sir.

2 **THE COURT:** I can't control that. All
3 right. Any other matters from the defense?

4 **MR. JOHNSON:** Uh, the defense -- there was a
5 matter of the Solicitor intending to mention bank
6 dye in his opening statement stating specifically
7 -- excuse me -- stating specifically that they saw
8 bank dye. I would like to -- to be honest with the
9 court, that observation -- he doesn't have the
10 training to identify bank dye. Plus, I believe the
11 information he gained was hearsay.

12 **THE COURT:** Mr. Fretwell?

13 **MR. FRETWELL:** First of all, it's not bank
14 dye. That's not what the officer will testify to.
15 He will testify that he saw dye on the defendant's
16 hands. Both officers will testify to that. They
17 don't mention bank dye, at least they haven't to
18 me. In the sense of understanding that, we can
19 certainly give a condition or caution to the
20 doctors about that or that could be covered on
21 cross-examination. But certainly my opening and
22 what I present to the jury is that the doctors saw
23 dye on his hands.

24 **THE COURT:** They are testifying to the
25 visibility of dye in their capacity as a doctor?

1 **MR. FRETWELL:** No, they are testifying in
2 their capacity as a fact witness in seeing what
3 they believe -- now, certainly, the fact that they
4 are doctors has something to do with it to the
5 extent that they might know the difference between
6 blood and dye.

7 **THE COURT:** All right.

8 **MR. FRETWELL:** But no, not to the extent
9 that they are an expert on bank dye or they knew it
10 to be bank dye. I can't imagine they would say
11 that or they would suffer the cross-examination by
12 the defense.

13 **MR. JOHNSON:** Your Honor, if I may, I think
14 maybe I should pinpoint this issue. I believe also
15 there's hearsay. From my understanding -- I talked
16 to one of the doctors. From my understanding, he
17 didn't have any knowledge that it was dye, making
18 it hearsay.

19 **MR. FRETWELL:** And --

20 **THE COURT:** Well, again, if, uh, -- you'll
21 have the right to cross-examine him. If you need
22 to strike any evidence that is, uh, -- if we need
23 to take a -- again, Mister -- I don't think -- at
24 this stage, Mr. Fretwell knows the dangers of
25 overstating his case to a jury. I'm not going to

1 -- if the testimony develops that it needs to be
2 addressed, then we could do it. But, uh, he knows
3 that as well as you would know that if you don't
4 prove what you say you're going to prove, then the
5 jury might hold that against you. He can, uh, --
6 he'll be able to handle that. I'm not going to
7 limit him on his opening statement.

8 **MR. JOHNSON:** Yes, sir, Your Honor.

9 **THE COURT:** All right. Then I understand we
10 had a statement that, uh, may need -- does the
11 State intend to introduce any kind of statement
12 against the defendant as far as mirandized or non-
13 mirandized or whether or not it's admissible? Is
14 there going to be an issue on any statement or any
15 identification under Biggers that we need to
16 address?

17 **MR. FRETWELL:** No identification under
18 Biggers, Your Honor. But we do have, uh, as I said
19 in chambers, two separate statements. One
20 statement that was -- that consists of basically
21 two phrases, but the other statement that was given
22 under Miranda, the State does not seek to admit it
23 in the case-in-chief unless the defendant decides
24 to testify. Of course, at that time, we would seek
25 to introduce that in the form of impeachment.

1 **THE COURT:** The other statement is not, uh,
2 -- is it the State's position that it's a custodial
3 interrogation or not? The other statement that you
4 intend?

5 **MR. FRETWELL:** No, sir. There's no question
6 that he was being held at gunpoint, that he had
7 been shot.

8 **THE COURT:** It was custodial.

9 **MR. FRETWELL:** It was custodial. There was
10 no interrogation, Your Honor. The only thing that
11 I believe Investigator Weiner may have told him is
12 show me your hands. There was questions about --
13 anything other than that was a spontaneous
14 utterance by the defendant which the testimony will
15 be.

16 **THE COURT:** The defense is opposed to this
17 statement coming out?

18 **MR. JOHNSON:** Yes, sir, Your Honor.

19 **THE COURT:** What's the basis of it?

20 **MR. JOHNSON:** Uh, the voluntariness of the
21 statement. I believe, based on the circumstances,
22 he was intimidated.

23 **THE COURT:** All right. We probably ought to
24 have a brief hearing on that. Let me hear from the
25 officers so that I can make a proper ruling under

1 Jackson v. Deno if the State intends to introduce
2 it.

3 Yes, sir, Mr. Johnson?

4 **MR. JOHNSON:** I'm sorry, Your Honor. I have
5 one other concern. Uh, there was a -- I don't know
6 if the Solicitor intends to do this or not. There
7 -- he may intend on introducing evidence that could
8 be a result or fruit of the poisonous tree but with
9 regards to statements at the hospital. I don't
10 know if it's something that we need to discuss here
11 today. But they had information that may have lead
12 to other information that may potentially
13 incriminate my client. I don't know if the
14 discussion intends to go down that road. I thought
15 I should make the court aware that I will be on the
16 lookout for that. I will make the proper
17 objections.

18 **THE COURT:** All right. So there's another
19 statement from the hospital you're saying?

20 **MR. JOHNSON:** Well, the statements that he's
21 talking about from the hospital, they use it as a
22 basis of their investigation in order, uh, to gain
23 other evidence. I think that's fruit of the
24 poisonous tree.

25 **THE COURT:** Well, you make your objections

1 at the appropriate time. I guess we'll have to
2 cross those when they come about.

3 **MR. JOHNSON:** Yes, sir, Your Honor.

4 **THE COURT:** As far as this hearing or this
5 statement given to the officer, I'll be glad to
6 hear from Officer Weiner. Is he the only one? You
7 call him and I'll be glad to hear the background of
8 this statement.

9 **MR. FRETWELL:** You want to do that now?

10 **THE COURT:** Yes, sir.

11 **MR. FRETWELL:** Your Honor, the State calls
12 Investigator David Weiner to the stand.

13 **THE CLERK:** Sir, if you'll please place your
14 left hand on the Bible and raise your right hand.

15 **DAVID WEINER**
16 having first been sworn, testifies as follows:

17 **THE CLERK:** Thank you. Please be seated.
18 Please state your full name for the record.

19 **THE WITNESS:** David Weiner.

20 **DIRECT EXAMINATION**

21 **BY MR. FRETWELL:**

22 **Q** Investigator Weiner, did you come in contact
23 with this defendant, David Boyd, on the afternoon of
24 December 10th, 2011?

25 **A** Yes, sir.

1 **Q** And as a result of coming in contact with this
2 defendant, did you fire your weapon at this defendant?

3 **A** Yes, sir.

4 **Q** Would you please tell the Court about the
5 specific instance of firing your weapon at the defendant
6 and any statements that he may have made after that time?

7 **A** Yes, sir. I had exited my vehicle. The
8 defendant was fleeing on foot. I challenged him with my
9 weapon drawn. And initially he stopped, showed me his
10 hands. I thought he was going to give up. At which
11 point, I holstered my weapon. He was on the other side
12 of a maybe three or four-foot fence. I jumped the fence.
13 As I did that, he turned and ran again. And again drew
14 my weapon. He jumped another fence.

15 When he hit the ground, he kind of landed kind
16 of sitting like a frog with his butt almost touching his
17 feet. His back was towards me and his hands were in
18 front of him. I couldn't tell what he was doing. He was
19 looking over his shoulder to see where I was, but he
20 wasn't moving from that position. I made the judgement
21 then that he was going to make his last stand, that he
22 was going to turn and shoot at me.

23 As he started to stand, he turned towards me.
24 I fired three rounds. He fell to the ground. I yelled
25 at him to show me his hands cause he still wasn't showing

1 his hands. He made a statement to me. He asked me to
2 just kill him. He said look me in the eyes and just kill
3 me, just get this over with.

4 **THE COURT:** Any other questions from the
5 State?

6 **MR. FRETWELL:** Your Honor, just a couple.

7 **BY MR. FRETWELL:**

8 **Q** Investigator Weiner, other than telling him to
9 show -- other than telling the defendant to show you his
10 hands, did you make any other statements to him prior to
11 this utterance?

12 **A** I was yelling that I was with the sheriff's
13 office, stop running, show me your hands, those things.

14 **Q** Approximately how far away were you from the
15 defendant when this interchange took place?

16 **A** We were separated by fence, just three or four
17 feet.

18 **Q** Did you come into contact with him physically
19 at that time?

20 **A** No.

21 **Q** And the specific statements that he made were
22 look me in the eyes, just kill me and the statement just
23 get this over with?

24 **A** Yes, sir.

25 **MR. FRETWELL:** No questions, Your Honor.

1 **THE COURT:** Mr. Johnson?

2 **MR. JOHNSON:** Yes, sir, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. JOHNSON:**

5 **Q** So Detective Weiner, let's talk about what we
6 agree on. We agree that you shot him?

7 **A** Yes, sir.

8 **Q** We agree that when the alleged statements were
9 made, you had your gun held on him?

10 **A** Correct.

11 **Q** Uh, we agree that he was, uh, in pain?

12 **A** Yes, sir.

13 **Q** Uh, do we agree that you chased him with your
14 car?

15 **A** Yes, sir.

16 **Q** Do agree that he was not armed?

17 **A** Not that I'm aware of, no, sir.

18 **Q** Did you find a gun?

19 **A** I didn't search him, sir.

20 **Q** Do you know if a gun was found?

21 **A** No, not that I'm aware of.

22 **Q** All right. So no gun was found?

23 **A** Correct.

24 **Q** Uh, did anyone else hear this statement?

25 **A** I don't know if Investigator Fortner had come

1 up beside me at that time yet or not.

2 Q Investigator Fortner came up behind you at some
3 point?

4 A Yes, sir.

5 Q And he was riding with you in the car
6 initially?

7 A Correct.

8 Q At some point, he was behind you and you were
9 in front?

10 A Correct.

11 Q All right. And then that's when the shooting
12 took place?

13 A Yes, sir.

14 Q And that's when the alleged statements were
15 made?

16 A Yes, sir.

17 Q Now, Investigator Weiner, you sure that you
18 heard the proper context of the situation?

19 MR. FRETWELL: Objection, Your Honor. I
20 don't understand the question.

21 MR. JOHNSON: For the limited purpose of --

22 THE COURT: Rephrase your question ---

23 MR. JOHNSON: All right.

24 THE COURT: --- as far as the, uh, --

25 BY MR. JOHNSON:

1 Q Was there any emotion in my client's voice when
2 he made the alleged statement to you?

3 A Other than what you already discussed, it
4 sounded like he was in pain.

5 Q Sounded like he was in pain?

6 A Yes, sir.

7 Q Did he scream?

8 A No, sir.

9 Q Did he, uh, say it with a low voice, did he say
10 it with a high voice?

11 A Almost like you and I are talking except he was
12 kind of moaning about it.

13 Q So he kind of moaned and said this?

14 A Uh-huh.

15 Q Uh, after he made the alleged statements, what
16 did you say to him?

17 A I said I don't do that.

18 Q You don't do what?

19 A It's not part of my job to kill him. I didn't
20 say I'm not going to kill you. I just told him that's
21 not part of my job.

22 Q When he stated for you to actually kill him, do
23 you believe he was serious?

24 A Do I think he was serious?

25 MR. FRETWELL: Objection, Your Honor. This

1 goes beyond the scope of the Jackson v. Deno.

2 THE COURT: I'll allow it for the purpose of
3 this hearing only.

4 THE WITNESS: Do I think he was serious about
5 it at that time?

6 BY MR. JOHNSON:

7 Q Do you think he was serious?

8 A Probably, yeah.

9 Q Why do you think he was serious?

10 A Just the way he was saying it.

11 Q The way he was saying it. I know I've asked
12 that question, but I've got to go back. How -- you say
13 the way he said it. How was it that he said that made
14 you --

15 A Like I said, it just sounded like he was in
16 pain while he was saying it.

17 Q So he was in pain when he was saying it?

18 A Uh-huh.

19 Q Okay. So he may not have said this if he were
20 not in pain.

21 MR. FRETWELL: Objection, Your Honor. Calls
22 for speculation.

23 THE COURT: I agree. Sustained.

24 BY MR. JOHNSON:

25 Q But you admit he was in pain -- he was in pain

1 when he made the alleged statement?

2 **MR. FRETWELL:** Objection, Your Honor. Asked
3 and answered.

4 **THE COURT:** Overruled for the purpose of this
5 hearing.

6 **THE WITNESS:** Yeah, I would assume he was in
7 pain based on the fact that he had been shot. Yes,
8 sir.

9 **BY MR. JOHNSON:**

10 **Q** Now, let me ask you, you -- the car that you
11 were driving, when you chased him into the car, he was
12 arrested at a fence, right?

13 **A** Yes, sir.

14 **Q** Do you have an in-car camera?

15 **A** No, sir.

16 **Q** Your police car, is it a marked car?

17 **A** No, sir.

18 **Q** It's not a marked police car?

19 **A** No, sir.

20 **Q** What sort of uniform did you have on?

21 **A** It was a SWAT uniform so it's all green with
22 like a badge stitched on it, my name.

23 **Q** Does it look like those uniforms, say for
24 instance, these officers have on?

25 **A** No, solid green color.

1 **MR. JOHNSON:** Okay. At this point, I have
2 nothing further for this witness.

3 **THE COURT:** Any redirect?

4 **MR. FRETWELL:** No, Your Honor.

5 **THE COURT:** All right. Thank you.

6 **THE WITNESS:** Yes, sir. Thank you.

7 **THE COURT:** You may step down. Any other
8 witnesses from the State?

9 **MR. FRETWELL:** No, Your Honor. Anything from
10 the defense as far as witnesses?

11 **MR. JOHNSON:** I would like to call, uh, David
12 Boyd for the limited purpose of this hearing.

13 **THE COURT:** All right. Mr. Boyd, come around
14 and be sworn.

15 **THE CLERK:** Sir, if you would, please place
16 your left hand on the Bible and raise your right
17 hand.

18 **DAVID BOYD**
19 having first been sworn, testifies as follows:

20 **THE CLERK:** Thank you. Please be seated.
21 Please state your full name for the record.

22 **THE WITNESS:** David Stephenson Boyd, II.

23 **DIRECT EXAMINATION**

24 **BY MR. JOHNSON:**

25 **Q** Now, David, you understand what we're doing

1 here right now?

2 A Yes, sir.

3 Q Okay. I'm going to ask you about some of the
4 things the police officer just testified to. I would
5 like you to give your version of fit -- version of events
6 as you recall them, okay?

7 A Okay.

8 Q All right. Do you remember when the officer
9 shot you?

10 A Yes, sir.

11 Q Could you please portray that image to the
12 court?

13 A He was telling me to stop, show me your hands.
14 I didn't have an opportunity. I didn't have an
15 opportunity.

16 Q Uh, can you be more clear? You state that he
17 didn't give you an opportunity?

18 A He didn't give me an opportunity.

19 Q Are you stating that he didn't give you an
20 opportunity? Did he shoot you before he gave you the
21 opportunity?

22 A My back was turned.

23 Q Your back was turned?

24 A Yeah. That's what I was saying.

25 Q When you were on the ground, he states that you

1 told him just kill me, just look in my eyes and finish
2 this. Is that what you said?

3 **A** No, sir.

4 **Q** Can you portray to the court what you told him?

5 **A** I wasn't necessarily being sarcastic, but being
6 shot is something that, you know, I don't think nobody
7 should endure. I wasn't like -- further on in the
8 statement, he wrote that I asked for a soda. You see
9 what I'm saying. I was conscious. I asked him, "What?
10 Are you going to kill me?" You see what I'm saying? I
11 don't know if he interpreted that wrong or what. But
12 being shot, I was like, "What? You going kill me?" He
13 replied no, he can't do that. I said can you give me a
14 soda and an ambulance.

15 **Q** So let's put that together. You kind of jumped
16 around. So can you tell me what it is you said and what
17 you followed that up with. Can you tell me one more
18 time?

19 **A** I asked David Weiner was he going to kill me.

20 **Q** You asked him was he going to kill you, why?

21 **A** Cause he shot me.

22 **Q** And then you said for a soda and an ambulance.
23 Can you elaborate on that?

24 **A** I thought I was going to die. He told me he
25 couldn't kill me. I thought I was going to die. I asked

1 for a soda and an ambulance. I mean, you know.

2 Q You were saying get me help.

3 A Basically.

4 MR. JOHNSON: Your Honor, I have nothing
5 further for this witness.

6 MR. FRETWELL: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. FRETWELL:

10 Q Mr. Boyd, you don't have any difficulty
11 recalling what you said that day, do you?

12 A No, sir.

13 Q Your mind was clear and you were thinking
14 correctly?

15 A I was conscious.

16 Q Okay. You had no feelings that you were
17 compelled to say something in particular?

18 A Compelled?

19 Q You didn't feel forced to say something in
20 particular?

21 A At what point?

22 Q At the point you were lying on the ground. You
23 didn't feel forced to say something particular?

24 A Not necessarily. I felt like I had to say
25 whatever to get an ambulance.

1 **Q** Say --

2 **A** I felt like I had to say whatever to get an
3 ambulance. I didn't know if I was going to die.

4 **Q** So you told -- your testimony is that
5 Investigator Weiner told you to show him your hands and
6 then shot you before you had a chance to comply?

7 **A** Yes.

8 **Q** What he's saying about giving you an
9 opportunity to stop and you refused to stop is a lie, is
10 that correct?

11 **A** Say that again.

12 **Q** Your testimony is that what he said in saying
13 he asked you to stop and you refused to stop is not true?

14 **A** I never really got the opportunity, you see
15 what I'm saying. When I was down, I attempted to stand.
16 The entry wounds are with my back turned. How do I have
17 an opportunity to, you know, surrender?

18 **Q** You're got to answer my question ---

19 **A** Okay. Repeat.

20 **Q** --- not with a question.

21 **MR. JOHNSON:** Your Honor, he answered his
22 question.

23 **THE COURT:** All right. I'll allow him to ask
24 the question again.

25 **BY MR. FRETWELL:**

1 **Q** Is what Investigator Weiner said about asking
2 you to stop or commanding you to stop and you refused, is
3 that true or false?

4 **A** That's true.

5 **Q** It's true. So he did ask you to stop and you
6 refused to stop?

7 **A** Yeah.

8 **Q** All right. And it's your testimony that, uh,
9 you said "what, you're going to kill me", like you were
10 asking him?

11 **A** Basically.

12 **Q** All right. But there's no issue you have with
13 whether or not you understood what he was saying to you?

14 **A** Say that again?

15 **Q** There's no -- you have no issue understanding
16 that he wanted you to stop?

17 **A** No.

18 **Q** You had no issue -- you have to answer audibly
19 so the Court Reporter can take your response down.

20 **A** No.

21 **Q** No?

22 **A** No.

23 **Q** You had no issue understanding that he wanted
24 you to show him your hands, is that right?

25 **A** Yeah.

1 **Q** Is that right?

2 **A** Yeah.

3 **Q** And you refused to show him your hands, didn't
4 you?

5 **A** I never had the opportunity.

6 **Q** Never had the opportunity. No further
7 questions.

8 **THE COURT:** Any redirect?

9 **REDIRECT EXAMINATION**

10 **BY MR. JOHNSON:**

11 **Q** David, when you stated that, uh, -- the
12 Solicitor asked you if when he asked you to stop, did you
13 continue running.

14 **A** Say that again.

15 **Q** The Solicitor asked you when he asked you to
16 stop, did you continue running. Do you remember what
17 your answer was?

18 **A** I really don't. I really don't. It's a touchy
19 situation. Real touchy.

20 **Q** So you're trying to say you don't --

21 **MR. FRETWELL:** Objection. He's going to
22 phrase it for his witness. He's going to put it in
23 the form of --

24 **THE COURT:** No leading questions.

25 **BY MR. JOHNSON:**

1 **Q** What was your mindset when this was taking
2 place?

3 **A** He was going to kill me. Why did he drive
4 through a fence? He was going to kill me. Point blank.

5 **Q** Is that why you were running?

6 **A** Yeah.

7 **MR. JOHNSON:** I have nothing further, Your
8 Honor.

9 **THE COURT:** All right. Thank you, sir. You
10 may step down, Mr. Boyd.

11 Any other witnesses from the defense?

12 **MR. JOHNSON:** No, sir, Your Honor.

13 **THE COURT:** Well, obviously, this occurred
14 without any Miranda warnings at the particular time.
15 The question for the court is whether or not it's a
16 custodial interrogation. From the evidence that
17 I've heard, I find it was not an interrogation.
18 Therefore, by the preponderance of the evidence, I
19 believe the, uh, matter is a proper statement
20 without any violation of the Jackson v. Deno.

21 I will allow the statement to be presented to
22 the jury. They can decide the voluntariness of it
23 themselves as far as the standard that I give them
24 for the case. I will allow the statement in if the
25 State wishes to put it in based on the totality of

1 the circumstances that I've reviewed and the factors
2 under Jackson versus Deno. Any other matters we
3 need to take care of before our jury comes in?

4 **MR. FRETWELL:** Your Honor, the only other
5 matter, and I should have -- I don't know if the
6 defense has an objection to this. If so, we can
7 recall Investigator Weiner for this testimony. But
8 I intended to use a map of the area in my opening
9 statement unless there is an objection.

10 **THE COURT:** You seen the map?

11 **MR. JOHNSON:** No, sir.

12 (WHEREUPON, there is a pause.)

13 **THE COURT:** Any objections?

14 **MR. JOHNSON:** No, sir, Your Honor.

15 **THE COURT:** All right. Any other matters?

16 **MR. FRETWELL:** No, Your Honor.

17 **THE COURT:** All right. Let's have our jury
18 come up. Y'all can get your witnesses. We have a
19 small courtroom. We're going to probably need all
20 the room for our jurors.

21 (WHEREUPON, the jury panel enters at approximately
22 2:15 p.m.)

23 **THE COURT:** Thank you very much, Ladies and
24 Gentlemen, for your patience with us. We're now
25 ready to start the trial of this case. We need your

1 assistance to be the judges of the facts. This is a
2 case brought by the State of South Carolina. This
3 is a case which I been presented indictments. Uh,
4 these indictments that have been presented charge
5 Mr. David Stevenson Boyd, II, with certain criminal
6 offenses. I'm going to read those indictments to
7 you.

8 They basically say that here in Greenville on
9 or about December the 10th, 2008, that Mr. Boyd was
10 armed with a deadly weapon. Uh, while so armed, uh,
11 represented it to be a deadly weapon, such that a
12 reasonable person would have felt it to be a weapon,
13 that object presented during the commission of a
14 robbery take by means of force or intimidation some
15 U.S. Currency belonging to the Bank of Travelers
16 Rest. That constituted the offense of armed
17 robbery.

18 Also as part of the indictment, Mr. Boyd is
19 also charged on that same date of possessing or
20 visibly displaying a handgun during the commission
21 of a violent crime, that being the armed robbery.
22 Also, that same day, here in Greenville County, Mr.
23 Stephenson is charged with willfully and unlawfully
24 and with malice aforethought, either expressed or
25 implied, committing an assault and battery upon, uh,

1 David Dill, that constituting the offense of Assault
2 and Battery with Intent to Kill.

3 And the final indictment I have says that on
4 that same day, here in Greenville County, that Mr.
5 Boyd willfully and unlawfully received or had in his
6 possession certain stolen goods, that property
7 belonging to Veronica Zepeda, that being a 1995 Ford
8 Windstar van and Mr. Boyd knew or had reason to
9 believe that that property was stolen.

10 Now, to each of these charges, Ladies and
11 Gentlemen, Mr. Boyd has entered a plea of not
12 guilty. By entering that plea of not guilty, the
13 State of South Carolina has the burden of proof.
14 That burden is beyond a reasonable doubt. Every
15 citizen and every person accused of any criminal
16 offense in South Carolina is presumed innocent until
17 the State meets that burden of proof by evidence
18 convincing a jury of guilt beyond a reasonable doubt
19 then, of course, that presumption of innocence
20 stays.

21 I'm going to be the judge of the law in this
22 case. I'm going to rule upon legal matters. We
23 need to find 12 fair and impartial jurors to be
24 judges of the facts to decide what the facts are, to
25 listen to the evidence and make a determination of

1 just what the facts are. You've been qualified,
2 Ladies and Gentlemen, to serve as jurors this week.
3 I now need to ask you some additional questions to
4 determine your eligibility to serve on this
5 particular case.

6 First of all, is there any member of the jury
7 panel have any prior knowledge about this particular
8 incident that's alleged in these indictments that
9 happened in 2008, either that you happened upon the
10 scene or you heard about it at the coffee shop, you
11 read something in the newspaper or media or saw
12 something on television, whatever means that you
13 have any prior knowledge whatsoever about this case,
14 I'd ask if you would please stand now if you do have
15 prior knowledge from any source. (No response.)

16 Thank you. There is no response.

17 Is there any member of the jury panel related
18 by blood or marriage to Mr. David Stephenson Boyd,
19 II? If you are related by blood or marriage to the
20 defendant in this case, would you please stand?

21 (No response.)

22 Is there any member of the jury panel who has a
23 close business or social or personal relationship
24 with Mr. Boyd? If so, would you please stand.

25 (No response.)

1 Thank you. There is no response.

2 Is there any member of the jury panel who has
3 expressed or formed an opinion in any way about the
4 facts in this case? If so, would you please stand.
5 (No response.)

6 Is there any member of the jury panel aware of
7 any bias or prejudice that would interfere with your
8 ability to be a fair juror if you were selected in
9 this case? If so, would you please stand.
10 (No response.)

11 Thank you. There's no response.

12 Is there any member of the jury panel who is a
13 contributing member of any organization whose
14 primary concern is the promotion of law enforcement
15 or victim's rights such as MADD or SADD, PAR, CAV, a
16 member of the sheriff's association? If you are a
17 contributing member of any such organization, would
18 you please stand.

19 All right. Yes, sir. Your name please.

20 **THE JUROR:** Steve Guthrie.

21 **THE COURT:** And which organization do you
22 contribute to?

23 **THE JUROR:** Uh, Mothers Against Drunk
24 Driving.

25 **THE COURT:** All right. The fact that you are

1 a contributing member to this organization, you make
2 a financial contribution to them, if you are
3 selected to serve as a juror in this case, would
4 that affiliation with that organization affect your
5 ability to be a fair juror? In other words, the
6 State of South Carolina and the defendant in this
7 case, they desire to have fair and impartial people
8 to hear this, to make a decision on the evidence
9 that you hear in this courtroom, the law that I give
10 you and that alone. Would that affiliation affect
11 your ability to be a fair juror in this case?

12 **THE JUROR:** Well, was he drunk or drinking?

13 **THE COURT:** I don't know the facts of the
14 case. If he were, that would affect your ability if
15 there was intoxication in any way involved?

16 **THE JUROR:** It would.

17 **THE COURT:** Short of that, would that
18 affiliation affect your ability to be a fair juror?

19 **THE JUROR:** No, sir.

20 **THE COURT:** You could be fair to both sides
21 if drunkenness was not involved in this case?

22 **THE JUROR:** Yes, sir.

23 **THE COURT:** Thank you very much. Your name
24 again please, sir.

25 **THE JUROR:** Steve Guthrie.

1 **THE COURT:** All right. Thank you, sir.

2 Is there any member of the jury panel of the
3 jury panel who is or a member of your immediate
4 family who's been a victim of a crime of violence?
5 There's ever been a crime committed against you or a
6 member of your immediate family that involve
7 violence of any kind. Would you please stand at
8 this time? (No response.)

9 Thank you. There is no response.

10 Is there any member of the jury panel or any
11 member of your immediate family who is -- works now
12 or in the past has worked in law enforcement? Have
13 you or a member of your immediate family worked now
14 or in the past in law enforcement? Would you please
15 stand.

16 Yes, ma'am. Your name please.

17 **THE JUROR:** Angela Frengel. My mom's late in
18 marriage -- late in life marriage, she was married
19 to a sheriff in Florida. County sheriff.

20 **THE COURT:** In Florida. All right. And is
21 he still alive?

22 **THE JUROR:** Oh, yeah.

23 **THE COURT:** All right. The fact that you now
24 have a stepfather, I guess, who is in law
25 enforcement in Florida, would that affect your

1 ability to be a fair juror?

2 **THE JUROR:** Retired.

3 **THE COURT:** Retired or not, would that affect
4 your ability to be a fair juror?

5 **THE JUROR:** No.

6 **THE COURT:** Do you have any hesitancy at all?
7 In other words, we're going to hear testimony from
8 witnesses, various witnesses who will testimony.
9 Some will be law enforcement, I'm confident. Would
10 the fact that you hear this testimony and the fact
11 that you have this relationship now with the
12 stepfather, would that interfere with your ability
13 to be fair to both sides?

14 **THE JUROR:** No, sir.

15 **THE COURT:** You confident of that? You could
16 be fair to the State of South Carolina? You could
17 be fair to Mr. Boyd? I just need you to verbally
18 respond.

19 **THE JUROR:** Yes, sir.

20 **THE COURT:** Thank you very much. You may be
21 seated.

22 Yes, ma'am.

23 **THE JUROR:** Emmie Bass. My husband is Frank
24 Bass. He used to work for the detention center.

25 **THE COURT:** So he's retired now?

1 **THE JUROR:** No, he's got another job.

2 **THE COURT:** So he's no longer working at the
3 detention center. The fact that he used to work at
4 the detention center, would that interfere with your
5 ability to be a fair juror?

6 **THE JUROR:** Not at all.

7 **THE COURT:** You could listen to the evidence
8 and decide the facts on that evidence and the
9 testimony that you hear without any regard to the
10 formal work that your husband did?

11 **THE JUROR:** Yes, I can.

12 **THE COURT:** Thank you, ma'am. You may be
13 seated.

14 Ladies and Gentlemen, there's going to be
15 several here to testimony. Some of them may be
16 police officers. Some may be of other professions.
17 The fact that we have various witnesses testify,
18 you're going to be -- if you are selected, you're
19 going to be judging the credibility of all those
20 witnesses. I don't know what type of witnesses may
21 come. There may be experts in one field or may be
22 other witnesses who testify. Is there any member of
23 the jury panel who believes that because of a
24 particular profession or particular calling that a
25 witness is more believable than any other witness?

1 If you have any feelings towards one particular kind
2 of witness that is more believable just because of
3 that profession or that calling, would you please
4 stand. (No response.)

5 Thank you. There is no response.

6 Several witnesses may be called upon in this
7 case. Rather than me calling out the names of all
8 those witnesses, not all of these witnesses may be
9 called upon. I'm going to ask the bailiffs now if
10 they would pass out these names. These are
11 potential witnesses. As I say, some of the
12 witnesses may testify. Some may not testify. I
13 want to give you a moment please to just look over
14 that list. Then I will need to ask you some
15 questions about those lists.

16 **(WHEREUPON, the witness list is passed out to the**
17 jury panel.)

18 **THE COURT:** Once you've have a chance to look
19 at those, if you would, just pass them to the center
20 aisle and have the bailiffs collect those sheets.
21 Take whatever time you need to review them.

22 **(WHEREUPON, there is a pause.)**

23 **THE COURT:** All right. Ladies and Gentlemen,
24 you've had a chance to look over the potential
25 witnesses who may be called upon to testify. Is

1 there anyone on the jury panel related by blood or
2 marriage to any of these potential witnesses? If
3 so, would you please stand. (No response.)

4 Is there any member of the jury panel who has a
5 close business, social or personal relationship with
6 any of these potential witnesses? If so, would you
7 please stand.

8 Yes, sir. Your name please.

9 **THE JUROR:** My name is Richard Blackwell.

10 **THE COURT:** All right. Which witness is it
11 that you have familiarity with?

12 **THE JUROR:** Number 45, Donna Smith. It
13 depends on which Donna Smith you're talking about.

14 **THE COURT:** Donna Smith. You know a Donna
15 Smith?

16 **THE JUROR:** Yes, sir.

17 **THE COURT:** If the Donna Smith you know is
18 the one who testifies in this case, would that
19 affect your ability to be a fair juror in this case?
20 Would you believe her testimony more than any other
21 witness here or would you put extra credibility on
22 her testimony because of your knowing her? Is this
23 a longtime friendship with this particular person?

24 **THE JUROR:** It wouldn't affect my judgement.

25 **THE COURT:** It would not in any way if she is

1 called upon to testify?

2 **THE JUROR:** Correct.

3 **THE COURT:** You can be fair to the state and
4 to the defendant?

5 **THE JUROR:** Yes, sir.

6 **THE COURT:** All right. Thank you, sir. You
7 may be seated.

8 Yes, ma'am. Your name please.

9 **THE JUROR:** I also know a -- my name is
10 Marcia Edmonds. I also know a Donna Smith. I don't
11 know if it's the same one.

12 **THE COURT:** If it's the same one and she
13 comes up here and she's sworn in and testifies,
14 would that affect your ability?

15 **THE JUROR:** I think it would. She's a very --

16 **THE COURT:** You have a lot of confidence in
17 the Donna Smith that you know?

18 **THE JUROR:** I have a lot of confidence in the
19 Donna Smith I know, yes.

20 **THE COURT:** All right. Do the parties have
21 an address for this Donna Smith?

22 **MR. FRETWELL:** She's in the hall.

23 **THE COURT:** She's in the hall? You want to
24 have her just come in and see if that will help both
25 of us.

1 **MR. FRETWELL:** Judge, if you could just tell
2 her she's not in trouble.

3 **THE COURT:** Thank you, ma'am, for coming in
4 for just for this moment. Okay.

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** You can go back out at this time.
7 Thank you very much.

8 All right. Both jurors have had a chance to
9 view this Donna Smith, is that the one you know?

10 **THE JUROR:** It's not the one I know.

11 **THE COURT:** And?

12 **THE JUROR:** No, sir.

13 **THE COURT:** All right. Very well. Thank you
14 for bringing that to our attention.

15 Ladies and Gentlemen, uh, you've seen the list
16 of witnesses. Again, I would not anticipate. I
17 don't know anything about the case and all the
18 witnesses. By the number of witnesses, the case may
19 take all of the week. In the event that the case
20 were to go over a day into next week, are there any
21 of you that have any particular conflicts for next
22 week that you can not stay to serve with us on
23 Monday if they were to go that far if we --
24 hopefully, we're going to be able to finish it this
25 week. But if you would, stand if you have any

1 problems with, uh, moving into next week for a day
2 or two.

3 Okay. We've got five. If you would, state
4 your name please sir.

5 **THE JUROR:** Jeff Wilkes, Your Honor. I am
6 supposed to be on a flight to Montana on Monday
7 morning.

8 **THE COURT:** All right. All right.
9 Your name please, sir.

10 **THE JUROR:** Steve Guthrie.

11 **THE COURT:** Okay. You have conflicts for
12 next week?

13 **THE JUROR:** I do.

14 **THE COURT:** All right. Your name please,
15 sir.

16 **THE JUROR:** My name is Rob Defoor. I

17 **THE COURT:** All right. Thank you.

18 Your name again please, ma'am.

19 **THE JUROR:** Angela Frengel. Family vacation
20 to New Jersey next week.

21 **THE COURT:** All right. And your name please.

22 **THE JUROR:** I'm Marcia Edmonds. I have
23 childcare issues. I have my sister-in-law in town
24 from Knoxville babysitting for me right now.

25 **THE COURT:** She'll be gone.

1 **THE JUROR:** Uh-huh.

2 **THE COURT:** All right. At this time, I'm
3 going to ask the attorneys, if you would, please
4 stand and introduce yourselves to the jury.

5 Mr. Fretwell?

6 **MR. FRETWELL:** May it please the Court, Your
7 Honor.

8 **MR. FRETWELL:** Ladies and Gentlemen, good
9 afternoon. My name is Allen Fretwell. I'm an
10 Assistant Solicitor or prosecutor here in Greenville
11 County. This is Linda Crouch. She's my paralegal.

12 **THE COURT:** Mr. Johnson.

13 **MR. JOHNSON:** Yes, sir, Your Honor. My name
14 is Brian Johnson. I represent the defendant in this
15 case, David Boyd. Here with me also is my co-
16 counsel Thomas Hoskinson.

17 **THE COURT:** Thank you, gentlemen.

18 Is there any member of the jury panel related
19 by blood or marriage to any of these attorneys or
20 their staff? If so, would you please stand.

21 (No response.)

22 Any member of the jury panel who has a close
23 business, social or personal relationship with any
24 of these attorneys or staff? If so, would you
25 please stand. (No response.)

1 Thank you. There's no response.

2 Ladies and Gentlemen, as I stated to you, the
3 State of South Carolina, the defendant, Mr. Boyd in
4 this case, they desire to have fair jurors to hear
5 this matter, to make a decision on the law that I
6 give you, the facts that you hear, the evidence
7 that's presented and that alone. They not only
8 desire that, they deserve to have fair jurors. Any
9 member of the jury panel aware of any reason
10 whatsoever that you could not be fair to both the
11 State of South Carolina and the defendant in this
12 case and render a verdict that would speak the truth
13 based upon the law and the evidence? If so, would
14 you please stand. If for any reason you could not
15 be a fair juror. (No response.)

16 Thank you. There's no response.

17 Any other questions from the State?

18 **MR. FRETWELL:** No, Your Honor.

19 **THE COURT:** From the defense?

20 **MR. JOHNSON:** No further questions, Your
21 Honor.

22 **THE COURT:** Can I see the attorneys just for
23 a moment please?

24 **(WHEREUPON, a bench conference is held off the**
25 **record.)**

1 **THE COURT:** All right. I've consulted with
2 the attorneys here. We don't know how long the case
3 will take, but out of precautionary measures, those
4 who have conflicts next week, I'm going to ask the
5 clerk to excuse them for cause. I don't want to
6 jeopardize anyone by having to rush to a decision
7 because of having those plans made.

8 We may be through Wednesday. I don't know how
9 long the case may take. But whatever it is, I think
10 after consulting with the attorneys that that will
11 probably be in the best interest of this particular
12 case to just excuse those because of the potential
13 length of the case. Those that didn't have --
14 those, uh, -- those five jurors that did express
15 conflicts for next week.

16 With that, we're now ready to empanel a jury.
17 Ladies and Gentlemen, I'm going to ask you, if you
18 would just stand in place when your name is called.
19 You'll see the protocol that we'll follow. The
20 attorneys will have an opportunity to either, uh,
21 accept the jury or strike the jury.

22 Madam Clerk.

23 **THE CLERK:** Thank you. As I call your name,
24 again please stand in place and await for further
25 instructions.

1 Juror 195, Dominick Summa.

2 What says the State?

3 **MR. FRETWELL:** Present Mr. Summa.

4 **THE CLERK:** What says the Defendant?

5 **MR. JOHNSON:** Please seat the juror.

6 **THE CLERK:** Mr. Summa, please bring your
7 things. Have a seat in the juror box.

8 Juror 143, Timothy Murphy.

9 What says the State?

10 **MR. FRETWELL:** Present Mr. Murphy.

11 **THE CLERK:** What says the Defendant?

12 **MR. JOHNSON:** Please seat the juror.

13 **THE CLERK:** Sir, please have a seat in the
14 juror box.

15 Juror 90, Sonja Heyward.

16 What says the State?

17 **MR. FRETWELL:** Present Ms. Heyward.

18 **THE CLERK:** What says the Defendant?

19 **MR. JOHNSON:** Please seat the juror.

20 **THE CLERK:** Ma'am, please come have a seat in
21 the juror box.

22 Juror 152, Kathy Parke.

23 What says the State?

24 **MR. FRETWELL:** Present Ms. Parke.

25 **THE CLERK:** What says the Defendant?

1 **MR. JOHNSON:** Please excuse this juror.

2 **THE CLERK:** You may be seated. You have been
3 excused from this case.

4 Juror 43, Daniel Davenport.

5 What says the State?

6 **MR. FRETWELL:** Present Mr. Davenport.

7 **THE CLERK:** What says the Defendant?

8 **MR. JOHNSON:** Please excuse this juror.

9 **THE CLERK:** Sir, you may be seated. You have
10 been excused from this case.

11 Juror 8, Deborah Bartlett.

12 What says the State?

13 **MR. FRETWELL:** Present Ms. Bartlett.

14 **THE CLERK:** What says the Defendant?

15 **MR. JOHNSON:** Please excuse the juror.

16 **THE CLERK:** You may be seated. You have been
17 excused from this case.

18 Juror 18, Richard Blackwell.

19 What says the State?

20 **MR. FRETWELL:** Present Mr. Blackwell.

21 **THE CLERK:** What says the Defendant?

22 **MR. JOHNSON:** Please seat the juror.

23 **THE CLERK:** Mr. Blackwell, please come have a
24 seat in the juror box.

25 Juror 202, Mohammad Uddin.

1 What says the State?

2 **MR. FRETWELL:** Present Mr. Uddin.

3 **THE CLERK:** What says the Defendant?

4 **MR. JOHNSON:** Please excuse the juror.

5 **THE CLERK:** You may be seated. You have been
6 excused from this case.

7 Juror 161, Katherine Rawson.

8 What says the State?

9 **MR. FRETWELL:** Present Ms. Rawson.

10 **THE CLERK:** What says the Defendant?

11 **MR. JOHNSON:** Please excuse the juror.

12 **THE CLERK:** You may be seated. You have been
13 excused from this case.

14 Juror 85, Osric Harris.

15 What says the State?

16 **MR. FRETWELL:** Present Mr. Harris.

17 **THE CLERK:** What says the Defendant?

18 **MR. JOHNSON:** Please seat the juror.

19 **THE CLERK:** Mr. Harris, please come have a
20 seat in the juror box.

21 Juror 192, Donna Streets.

22 What says the State?

23 **MR. FRETWELL:** Present Ms. Streets.

24 **THE CLERK:** What says the Defendant?

25 **MR. JOHNSON:** I'm sorry. What number again?

1 **THE CLERK:** 192.

2 **MR. JOHNSON:** Please excuse the juror.

3 **THE CLERK:** You may be seated. You have been
4 excused from this case.

5 Juror 142, Teresa Mull.

6 What says the State?

7 **MR. FRETWELL:** Present Ms. Mull.

8 **THE CLERK:** What says the Defendant?

9 **MR. JOHNSON:** Please excuse the juror.

10 **THE CLERK:** You may be seated. You have been
11 excused from this case.

12 Juror 226, Derek Kilgore.

13 What says the State?

14 **MR. FRETWELL:** Please excuse Mr. Kilgore from
15 the trial of this case.

16 **THE CLERK:** You may be seated. You have been
17 excused from this case.

18 Juror 7, Donald Barney.

19 What says the State?

20 **MR. FRETWELL:** Present Mr. Barney.

21 **THE CLERK:** What says the Defendant?

22 **MR. JOHNSON:** Please seat the juror.

23 **THE CLERK:** Sir, please come have a seat in
24 the jury box.

25 Juror 32, Ashley Chandarana.

1 What says the State?

2 **MR. FRETWELL:** Present Ms. Chandarana.

3 **THE CLERK:** What says the Defendant?

4 **MR. JOHNSON:** Please excuse the juror.

5 **THE CLERK:** You may be seated. You have been
6 excused from this case.

7 Juror 190, Benjamin Stone.

8 What says the State?

9 **MR. FRETWELL:** Present Mr. Stone.

10 **THE CLERK:** What says the Defendant?

11 **MR. JOHNSON:** Please excuse the juror.

12 **THE CLERK:** You may be seated. You have been
13 excused from this case.

14 Juror 123, David Lesser.

15 What says the State?

16 **MR. FRETWELL:** Please excuse Mr. Lesser from
17 the trial of this case.

18 **THE CLERK:** All right. Mr. Lesser, you have
19 been excused from this case.

20 Juror 154, Vernon Peace.

21 What says the State?

22 **MR. FRETWELL:** Present Mr. Peace.

23 **THE CLERK:** What says the Defendant?

24 **MR. JOHNSON:** Please seat the juror.

25 **THE CLERK:** Mr. Peace, please have a seat in

1 the juror box.

2 Juror 188, John Stillwell.

3 What says the State?

4 **MR. FRETWELL:** Present Mr. Stillwell.

5 **THE CLERK:** What says the Defendant?

6 **MR. JOHNSON:** Please seat the juror.

7 **THE CLERK:** Mr. Stillwell, please be seated
8 in the juror box.

9 Juror 13, Robert Berndt.

10 What says the State?

11 **MR. FRETWELL:** Please excuse Mr. Berndt from
12 the trial of this case.

13 **THE CLERK:** All right. Sir, you may be
14 seated. You have been excused from this case.

15 Juror 10, Emmie Bass.

16 What says the State?

17 **MR. FRETWELL:** Present Ms. Bass.

18 **THE CLERK:** What says the Defendant?

19 **MR. JOHNSON:** Please seat the juror.

20 **THE CLERK:** Ms. Bass, please come have a seat
21 in the jury box.

22 Juror 81, Joyce Hammond.

23 What says the State?

24 **MR. FRETWELL:** Please excuse Ms. Hammond.

25 **THE CLERK:** Ms. Hammond, you may be seated.

1 You have been excused from this case.

2 Juror 80, Terry Hall.

3 What says the State?

4 **MR. FRETWELL:** Present Ms. Hall.

5 **THE CLERK:** What says the Defendant?

6 **MR. JOHNSON:** Please seat the juror.

7 **THE CLERK:** Ms. Hall, please have a seat in
8 the jury box.

9 Juror 189, Janet Stokely.

10 What says the State?

11 **MR. FRETWELL:** Present Ms. Stokely.

12 **THE CLERK:** What says the Defendant?

13 **MR. JOHNSON:** Please seat the juror.

14 **THE CLERK:** Ms. Stokely, please have a seat
15 in the jury box.

16 Juror 29, Steven Campbell.

17 What says the State?

18 **MR. FRETWELL:** Present Mr. Campbell.

19 **THE CLERK:** What says the Defendant?

20 **MR. JOHNSON:** Please excuse the juror.

21 **THE CLERK:** You may be seated, sir. You have
22 been excused from this case.

23 Juror 55, Kevin Edwards.

24 What says the State?

25 **MR. FRETWELL:** Present Mr. Edwards.

1 **THE CLERK:** What says the Defendant?

2 **MR. JOHNSON:** Please seat the juror.

3 **THE CLERK:** Please, sir, have a seat in the
4 jury box.

5 All right. For the first alternate, Juror 139,
6 Coy Moore.

7 What says the State?

8 **MR. FRETWELL:** Present Mr. Moore.

9 **MR. JOHNSON:** I'm sorry?

10 **THE CLERK:** 139.

11 **MR. JOHNSON:** Please excuse the juror.

12 **THE CLERK:** Sir, you may be seated. You have
13 been excused from this case.

14 Juror 170, Jon Runzel.

15 What says the State?

16 **MR. FRETWELL:** Present Mr. Runzel.

17 **THE CLERK:** What says the Defendant?

18 **MR. JOHNSON:** Please seat the juror.

19 **THE CLERK:** I beg your pardon?

20 **MR. JOHNSON:** Please seat the juror.

21 **THE CLERK:** Thank you.

22 Sir, please come have a seat in the juror box.

23 For alternate two, Juror 222, Kenneth Woodard.

24 What says the State?

25 **MR. FRETWELL:** Present Dr. Woodard.

1 **THE CLERK:** What says the Defendant?

2 **MR. JOHNSON:** Please seat the juror.

3 **THE CLERK:** Sir, please come have a seat in
4 the juror box.

5 **THE COURT:** Any matters as far as selection
6 of the jury in this case? Anything from the State?

7 **MR. FRETWELL:** None, Your Honor.

8 **THE COURT:** From the defense?

9 **MR. JOHNSON:** No, sir, Your Honor.

10 **THE COURT:** Ladies and Gentlemen who were not
11 selected, thank you very much for your patience with
12 us. I can excuse you for the rest of the day.
13 Please call back tonight after six o'clock. There
14 will be a message on the answering machine as to
15 when you need to report back or call back in. Thank
16 you very much for your services today. You are
17 excused at this time.

18 If everyone else will remain seated please.

19 **(WHEREUPON,** the jury panel exits at approximately

20 **THE COURT:** Ladies and Gentlemen, let me just
21 briefly address you. We'll take a short break.
22 You've seen the process by which you were selected
23 for the trial of this case. Hang on just a minute
24 until everybody gets in. (Pause.)

25 Ladies and Gentlemen, as I was saying to you,

1 let me give you a brief overview of what we'll be
2 doing here this week. This is not an instruction on
3 the law. I'll instruct you on the law when the case
4 is concluded.

5 But I'm honored to be working with you. You've
6 seen the process by which you were selected. Each
7 of these sides chose you to be the lawyer or the
8 judges of the facts that they wanted to hear this
9 case. They've placed a lot of confidence in you. I
10 have confidence in you too that you will do the
11 things that the law requires of you in hearing this
12 case. I'm honored to be working with you to have
13 this opportunity.

14 I know you're here. It's a great sacrifice to
15 yourselves, but I've given you the title of judge,
16 as judges of the facts. You may have some high
17 apprehension about this title I've given you. When
18 Monday morning started out, you got a jury summons.
19 You knew you were supposed to be here. You go to
20 the assembly room. Now, all of a sudden, you find
21 yourself sitting in a jury box thinking to yourself
22 why in the world am I here and how did this happen
23 to me. I've just been given the title judge. I'm
24 not capable of doing that. I haven't been to law
25 school. I haven't even had a business law class in

1 middle school. I don't have any capability
2 whatsoever to be a judge in this case.

3 But I assure you, Ladies and Gentlemen, you
4 bring into this courtroom every skill you are going
5 to need to be the judge of the facts. Into this
6 courtroom, you have brought the every day
7 experiences that you enjoy in the home and the work
8 force, in your social activities and other
9 organizations that you might be a member of. You
10 bring into this courtroom the good common sense with
11 which you've been blessed. That's what you're going
12 to need to utilize. You've made a commitment to be
13 fair to both sides and be impartial to both sides.
14 But you're going to need to utilize those skills
15 that you have to decide this case on the facts.

16 I'm going to be the judge of the law. Part of
17 my job is to conduct the trial of the case. Cases
18 take place in sequences or steps. Part of my job is
19 to rule on admissibility of evidence. Part of my
20 job is to decide when we take breaks and so forth.
21 As I stated to you downstairs, normally, we'll go an
22 hour or an hour and a half sometimes and take a
23 break. I've told you how important it is for you to
24 be a good listener. You're going to need to listen
25 to what evidence is presented or testimony that's

1 been, uh, testified to. You're going to need to
2 observe what's taking place in the courtroom and the
3 demeanor of the witnesses and so forth.

4 If you're not comfortable in any way in being
5 able to be a good listener, then that's going to
6 jeopardize your ability. So if I haven't called for
7 a break and you need a break, please let us know.
8 Get my attention. You have these, uh, fine bailiffs
9 here, Mr. Anderson in the back and Mr. Jenkinson up
10 here to your right. Get their attention. They'll
11 certainly get my attention. If we need a break, if
12 I haven't called for one -- I want to try to keep my
13 finger on the pulse to see when we all need to take
14 breaks as the case develops, but please let one of
15 us know.

16 We have other staff here. Teresa Johnson is
17 the young lady seated directly in front of me.
18 She's taking down everything that's said. She's the
19 court reporter. She's going to keep up with, uh,
20 perhaps any documents that are introduced, to make
21 sure the exhibit has a sticker and to make sure that
22 she keeps a record of the proceeding of everything I
23 say and all the questions and answers that are
24 given.

25 Mrs. Troop, who called your names earlier, from

1 the clerk's office. She's certainly here to assist
2 you in any way that she can.

3 The young man seated to my right is Mr. Lindsey
4 Builder. He's a recent law school graduate admitted
5 to the bar. He'll be, uh, assisting me. You may
6 see him coming and going during the course of the
7 trial or checking on some matters back at the office
8 or otherwise. He's a valuable asset as well.

9 Any of these folks, if you can't get my
10 attention while you're in the jury box, please get
11 one of those. We'll certainly take a break as you
12 need it.

13 In order to -- in addition to conducting the
14 trial, my job also is to rule on the evidence, the
15 admissibility of the evidence. We have rules that
16 the attorneys are trained to follow, rules of
17 procedure and rules of evidence, other rules that,
18 uh, -- laws that I need to apply to this case. I'll
19 tell you what the law that you'll need at the end of
20 the case so that you can apply that law to the facts
21 that you've determined, the evidence that you heard.

22 Sometimes an objection is made in the course of
23 the trial. There are certain times that I need to
24 rule on legal matters. If there's an objection
25 made, frequently, I can rule from here and I can say

1 "sustained" or "overruled" and we can go on to the
2 next question as you've already seen in this
3 process. Sometimes I'll ask the lawyers to come up
4 here. We can whisper and huddle up and hopefully
5 get a matter resolved.

6 It's not infrequent that in the course of a
7 trial there might be a legal matter that comes up
8 that I might have to have you excused from the
9 courtroom. Sometimes I have to hear evidence that
10 wouldn't even be properly presented to a jury.
11 There might be some testimony. It might be some
12 legal books that I need to review and hear their
13 arguments about that would not concern you
14 whatsoever. Sometimes you may be back in your jury
15 room and wondering what's happening out here. I can
16 assure you that we'll be working diligently on the
17 matters that I need to take care of.

18 You are a judge and I'm a judge, but we have
19 different roles, of course. As the fact finder,
20 you're going to be deciding the facts. I'm going to
21 be deciding the law and any legal matters that come
22 up during the course. I hope you can appreciate that
23 I want to make the best decision I possibly can on
24 the legal matters. Sometimes it just necessitates
25 that I hear things that would not be properly

1 presented to a trial jury. So when you're back
2 there, I hope you'll understand that.

3 It's very similar. You're going to ultimately
4 decide the facts in this case when all the evidence
5 is in and I've instructed you on the law. I'm not
6 going to be back in the room with you. I'm a judge
7 like you are. I'm not the judge of the facts. I
8 won't be back there giving you any input. The law
9 prohibits me from even having an opinion about the
10 facts. That's totally exclusively up to a jury to
11 make those determinations. I'll take care of my
12 role. You take care of your role. Then we'll see
13 that justice is rendered in this case.

14 Cases, uh, take place in stages, as I've said.
15 There will be opening statements from the attorneys.
16 There will be examination of witnesses. There will
17 be closing statements. And then after all the
18 evidence is in and the attorneys have addressed you,
19 then and only then will I instruct you on the law.

20 Sometimes as we come and go -- normally, we'll
21 try to start about nine o'clock in the morning.
22 Sometimes if there's some matters that we need to
23 take care of, it might be a little later or either
24 we can start a little earlier. We'll normally go
25 for an hour or an hour and a half. We'll take a

1 morning break. Normally, we'll try to break for
2 lunch at one o'clock or so. Sometimes it may be a
3 little earlier depending on how witnesses are coming
4 and how long the witnesses are and what schedules
5 we'll have to meet. I'll try to balance all that
6 and certainly not waste your time. That's certainly
7 my goal.

8 We'll take a lunch break and then start in the
9 afternoon. Hopefully finish by 5:00. Sometimes it
10 may go 5:30 or 6:00. I'll try to give you ample
11 warning. I don't know if you -- some of you have
12 particular needs about picking up folks or whatever.
13 We will certainly try to accommodate that.
14 Sometimes we may run a little late in the afternoon.
15 If it does, we'll certainly try to work with you on
16 those matters.

17 As we come and go at lunch time or at mornings
18 and in the afternoons, you may see these attorneys
19 or members of their staff in the hallway. They may
20 seem to be a little unfriendly towards you. If they
21 see to high hat you in some way and walk the other
22 way and don't talk to you and you just want to talk
23 about the All-Star game or the weather or the other
24 innocuous matters, they want to make sure there's no
25 appearance of any impropriety. If someone sees a

1 lawyer talking to a jury even though it may be
2 innocent conversation, it can look wrong and can
3 look bad. They may want to try to avoid you and not
4 get on the elevator with you or whatever.

5 Don't hold that against them. They are fine
6 lawyers, fine gentlemen. They are in no way trying
7 to, uh, look down upon you. That's their training.
8 They want to avoid anything like that that could be
9 an appearance of any impropriety.

10 Your commitment to these parties -- you'll take
11 an oath in a few moments. That oath says you're
12 going to well and truly try this case. And you are
13 going to make a decision on this case from what
14 happens in this courtroom and not anywhere else.
15 I'll explain a little more in detail to you about,
16 uh, other influences that may come your way. It
17 makes me proud that you've accepted this
18 responsibility that you've committed to these
19 parties that you're going to be the fair jurors, the
20 impartial jurors that they requested.

21 Before we start with the opening statements, I
22 want to give you a short break and let you
23 familiarize yourself with your jury room where
24 you'll be, uh, holding out for a little bit during
25 the course of this trial this week. We'll take

1 about a 15-minute break. We'll be ready then for
2 the opening statements. That will give you time to
3 familiarize yourself with each other and learn your
4 surroundings there a little bit. We'll be then
5 ready to begin the case in just a few moments.

6 Let me remind you. When you are back in your
7 jury room and otherwise, you shouldn't be discussing
8 the case. You shouldn't be speculating on what this
9 is all about and what you think is going to happen.
10 Even as you hear testimony, you should not be
11 discussing that testimony until all the evidence is
12 in. You should not be, uh, discussing about the law
13 or anything else. There's things for you to talk
14 about one with another, but during the course of the
15 trial is not the time to be talking about this
16 particular case. I'll expand upon that later at the
17 end of the day. But keep that in mind while you're
18 back in your jury room.

19 At this time, we'll take a short break. If
20 you'll go back with Mr. Jenkinson, we'll call you
21 back in about 15 minutes and be ready to start with
22 the opening statements.

23 **(WHEREUPON,** the jury exits at approximately
24 3:14 p.m.)

25 **THE COURT:** All right. Let's take a short

1 break and we'll be ready to start with the opening
2 statements and swearing in of the jury.

3 (WHEREUPON, a short recess is taken.)

4 (WHEREUPON, the jury enters at approximately
5 3:36 p.m.)

6 THE COURT: Ladies and Gentlemen, uh, the
7 bailiff has instructed me that some of you have
8 asked about the propriety of taking notes. I'll
9 allow you to take notes. Let me, uh, uh, just tell
10 you a little bit about the notetaking. He's
11 provided you with, uh, a pad and pencil. I will
12 allow you to take notes, but remember some of you
13 are better notetakers than others. The notes of a
14 juror should never be given greater priority than
15 the actual testimony that's given or has no greater
16 priority or value than the independent recollection
17 of all you jurors. That's just as reliable as any
18 notes.

19 As we all know, sometimes when we take notes,
20 they can be in error. Other danger of taking notes
21 is you miss the trial. You are so busy taking notes
22 that you don't observe what's taking place, the
23 demeanor of the witnesses, the, uh, actions that are
24 taking place between the attorneys and the others.

25 Notetaking is just to aid your memory. It's

1 not to take precedent over your independent
2 recollection. Can be used only to refresh your own
3 memory from your notes. Your notes certainly are
4 not evidence. Everything is being recorded. We
5 have a transcript -- or have a record of everything,
6 not a transcript. A record of everything that's
7 taking place here. While you're allowed to take
8 notes, please understand that's certainly no
9 evidence for you.

10 Also, I want to let you know that whatever
11 notes you take -- if you decide to take notes. You
12 are certainly not required to even though your
13 fellow jurors are -- those are to be collected each
14 evening. Those are just for your personal use. The
15 bailiff will keep them in a locker. You just need
16 to write your name on the pad. Then, at the end of
17 the day or at breaks, they'll collect them for you
18 at lunchtime and so forth and distribute them back
19 to you as you are ready to take more notes. Then,
20 of course, you'll have them to, uh, use during your
21 deliberations if you need to or any refreshment of
22 your memory.

23 At this time, I'm going to ask the clerk to
24 administer an oath to you. I hope you'll listen
25 carefully as this oath is given to you. It's a time

1 honored oath that has been in existence well before
2 the establishment of our country. It's an oath
3 that's been taken by jurors throughout at least a
4 couple of centuries, if not, well, several
5 centuries. Listen carefully to the oath.

6 After the oath is given to you, we'll then have
7 our opening statements from the attorneys. The
8 attorneys are going to address you. They are going
9 to give you an overview of what each of them feels
10 is important as the case develops to sort of give
11 you a roadmap to look at.

12 Please understand that you're going to hear
13 evidence, and that evidence is going to be testimony
14 under oath. It's going to be any exhibits that may
15 be introduced. This is not evidence what these
16 attorneys have to say to you. While it's not
17 evidence, I still urge you to listen carefully. I'm
18 confident that each of them can give you some
19 valuable insights to help you as the case develops.

20 Mrs. Troupe, you may swear the jury at this
21 time.

22 **THE CLERK:** Please stand and raise your right
23 hand for the oath. The proper response is "I will".
24 You shall well and truly try the case 2009-GS-23-
25 1985, the State versus David Stevenson Boyd, II,

1 indicted for possession or receiving stolen goods;
2 9988 for Armed Robbery and Possession of Weapon
3 During the Commission of a Violent Crime; 9989 for
4 Assault and Battery with Intent to Kill and a true
5 verdict render according to the law and the evidence
6 so help you God. I will?

7 (WHEREUPON, each juror responds.)

8 THE CLERK: Thank you. Please be seated.

9 THE COURT: Solicitor, you may address the
10 jury in your opening statements.

11 MR. FRETWELL: May it please the Court, Your
12 Honor.

13 Mr. Johnson.

14 Good afternoon, Ladies and Gentlemen. On
15 December 10th, 2008, Adrian Correa was working as a
16 teller at the Bank of Travelers Rest on White Horse
17 Road alongside fellow tellers, Audrey Samec and
18 Yolanda McCord. Shortly before noon, a man entered
19 the bank with a dark blue bandana across his face
20 wearing a dark hoodie and jeans that were
21 embroidered with brightly colored feathers along the
22 waist. He was wearing gloves. He was armed with a
23 dark colored handgun that he pointed at all three
24 tellers demanding money. Adrian, Audrey and Yolanda
25 placed over \$19,000 in cash along with two dye packs

1 into a white plastic bag handed to them by the
2 robber, which he snatched and fled from the bank.

3 Although not all the tellers were sure at the
4 time, the tellers believed the gunman to be an
5 African-American male. Adrian describes the gunman
6 as nearly six feet tall and appropriate 160 to 180
7 pounds. Portions of this incident were captured on
8 the bank's time lapse photo surveillance system.

9 Teller Audrey Samec called 911 and advised that
10 the suspect had fled the bank in a white Windstar
11 minivan, a vehicle that had been stolen earlier that
12 same morning. As the suspect started to back up and
13 pull out of the bank parking lot, the dye packs
14 activated releasing CS tear gas and red smoke inside
15 the minivan. The suspect put down the driver's
16 window, which made the red smoke visible to David
17 Dill, who was waiting on his fiancé in the parking
18 lot of the Applebee's next door.

19 As the minivan drove past him, Dill pulled
20 through the parking lot and began to follow the
21 minivan. Dill contacted 911 and began to relay the
22 minivan's direction of travel. Dill followed the
23 minivan out of the bank parking lot, around the
24 Applebee's and to West Marion Road. He then
25 followed the minivan down West Marion Road until it

1 took a right on Emile Street. The minivan
2 eventually pulled off to the side of the road as the
3 driver, wearing a dark hoodie and dark bandana
4 across his face was hanging his head out of the
5 window.

6 In order to let 911 know what street they were
7 on, Dill drove past the minivan to the next
8 intersection and turned around so he could continue
9 to monitor the man's activities. Dill observed the
10 driver of the vehicle exit the minivan, raise his
11 arm in Dill's direction and he saw multiple puffs of
12 smoke. One of the bullets from the suspect's gun
13 pierced Dill's windshield, went through his hand,
14 causing him to drop the phone and the bullet finally
15 lodged in his neck next to his spine. Despite his
16 injuries, Dill managed to retrieve his phone and
17 continue to talk to 911. He was also able to
18 reposition his vehicle and eventually observe the
19 driver enter the nearby woods, information that he
20 was later able to relate to police.

21 Another witness, Shawn Rafferty, who happened
22 upon the scene while the shooting was occurring also
23 observed the man enter the woods right across the
24 road from the stolen minivan that he had abandoned
25 with the dye stained currency still inside. Since

1 the police K-9 tracking team was training nearby,
2 they arrived on the scene within minutes. Despite
3 the cold and rainy weather conditions, the first K-9
4 on scene was able to immediately identify a trail of
5 fresh human scent at the point where the suspect was
6 observed entering the woods.

7 Police vehicles were dispersed and quickly
8 surrounded the wooded area forming what was part of
9 a search perimeter that would be in effect for
10 several hours. The first K-9 was relieved by a
11 second K-9 who picked up the same trail and tracked
12 the fresh human scent directly to a blue bandana
13 identical to the one depicted in the bank video.
14 The bandana was located about an hour or so after
15 the manhunt began. A third K-9 picked up the same
16 trail and continued to follow the scent trail to a
17 creek within the wooded area and then entered the
18 creek. That K-9 tracked the trail down the creek
19 until he became tired and was unable to continue.
20 Attempts to continue the track were unsuccessful as
21 the creek ran in different directions towards
22 Highway 253 or West Blue Ridge Drive and also Agnew
23 Road. The perimeter was eventually called off
24 around 4:00 to 4:15 that afternoon.

25 And soon thereafter, WYFF reporter Shawn

1 Muserallo and his cameraman were traveling along
2 Agnew Road headed back to Highway 253 or West Blue
3 Ridge Drive. They got to the point in Agnew Road
4 where there was sort of a dip in the road. The
5 creek ran underneath Agnew. Shawn Muserallo looked
6 to his right and he saw a black male coming up out
7 of the creek soaked up to his chest and exhausted.
8 The two made eye contact. The man came up out of
9 the creek and onto Agnew Road as the news vehicle
10 slowed and then stopped. They made eye contact
11 again before the man crossed Agnew and entered
12 another wooded area in the direction of Crane
13 Avenue.

14 As police were responding and begin to drive
15 down Crane Avenue from West Blue Ridge Road or
16 Highway 253, off to the left, they saw the
17 defendant, David Stephenson Boyd coming out of the
18 woods. He looked exhausted. He was muddy. He was
19 covered with leaves. He was wearing feather
20 embroidered jeans as depicted on the bank
21 surveillance video and a gray shirt. The defendant
22 appeared to be exhausted as he crossed Crane Avenue
23 in front of the unmarked police car and then scaled
24 a padlocked gate of a nearby residence.

25 Investigator David Weiner and his partner, Mike

1 Fortner, followed the defendant as he scaled two
2 other fences despite repeated commands by police to
3 stop and surrender. As the defendant scaled the
4 last fence, Investigator Weiner observed the
5 defendant crouched down, looked back over his
6 shoulder and began to turn in Weiner's direction.
7 Fearing that the defendant was still armed and
8 knowing a civilian witness had already been shot,
9 Investigator Weiner fired three times striking the
10 defendant twice in the leg and once in his arm.
11 After being shot, the defendant told Weiner just
12 kill me and get this over with.

13 Reporter Shawn Muserallo arrived on the scene
14 and will testify that the person the police took
15 into custody was the same man he had seen coming out
16 of the creek and heading towards Crane Avenue a few
17 minutes earlier. In addition to the witnesses to the
18 events I just described, you will also hear from two
19 medical doctors who observed dye on the defendant's
20 hands while he was in the hospital.

21 You will see the jeans worn by the defendant
22 when he was caught. You, Ladies and Gentlemen, will
23 be able to compare the distinctive designs
24 embroidered on these jeans with the images from the
25 bank surveillance video. You will also see the

1 bandana found by the K-9 officers on the trail of
2 fresh human scent that began at the point at which
3 the robber/shooter first entered the wooded area.
4 You will hear from the DNA expert who analyzed the
5 DNA sample on this bandana and determined that it
6 matches the DNA profile of the defendant, David
7 Stephenson Boyd.

8 Ladies and Gentlemen, this case is about
9 personal responsibility for one's own decisions.
10 The decision to rob a bank. The decision to carry a
11 loaded gun. The decision to wear gloves. The
12 decision to wear a bandana. The decision to enter a
13 bank. The decision to point a loaded gun at three
14 different tellers and demand money. The decision to
15 take that money. The decision to flee from the
16 bank. The decision to fire that loaded gun several
17 times at a civilian witness. The decision to flee
18 into the woods. The decision to hide into those
19 woods. And the decision to continue to run when
20 being ordered by police to stop and surrender. All
21 of these decisions have consequences, Ladies and
22 Gentlemen.

23 The evidence will show on December 10th, 2008
24 that the defendant set in motion a chain of events
25 that would include the theft of a minivan, the armed

1 robbery of three tellers inside a federally
2 chartered financial institution and the shooting of
3 a civilian witness that would leave that civilian
4 witness fighting for his life. This is an important
5 day for the defendant, but it is also an important
6 day for the citizens of Greenville County and the
7 people of this state.

8 Although the testimony at times may be lengthy,
9 please pay careful attention to all of the evidence.
10 At the conclusion of the case, I will ask you to
11 find this defendant, David Boyd, guilty of Armed
12 Robbery, guilty of the Possession of a Weapon During
13 the Commission of a Violent Crime, guilty of
14 receiving or having in possession stolen goods and
15 guilty of Assault and Battery with Intent to Kill.
16 Thank you for your careful attention.

17 **THE COURT:** Mr. Johnson, you may address the
18 jury in your opening statement.

19 **MR. JOHNSON:** Thank you, Your Honor. May it
20 please the Court.

21 Ladies and Gentlemen of the jury, I think
22 you'll find that this case comes down to something
23 that's pretty simple. I think you'll find that it
24 comes down to the fact that once the experts
25 testify, you'll see that the evidence tends to

1 support a not guilty verdict for my client because
2 he's not guilty. Now, I'm not talking about a lack
3 of evidence here. There's plenty of evidence.
4 There are fingerprints that have been taken. You've
5 heard previously from the Solicitor about a bank dye
6 pack. Talking about gunshot residue tests. We're
7 talking about DNA tests. I think when this case is
8 over, you will find that this evidence supports a
9 not guilty verdict on your behalf.

10 Now, the Solicitor, I believe, will try to
11 suggest that you shouldn't pay attention to these
12 tests, that for some odd reason, they are
13 unreliable. I think that you'll find that that
14 argument simply will not hold water. This will be a
15 relatively long trial as you've heard. There's no
16 need for me to get on the soapbox here. But I think
17 you'll see that the evidence, when it comes
18 together, tends to exonerate my client. We're
19 talking about direct evidence. For example, you
20 heard previously from the Solicitor about a van.
21 Well, ask yourselves, did they find my client's DNA
22 in that van? If they didn't, whose DNA did they
23 find?

24 I told you -- once again, there was a van. Did
25 they find my client's fingerprints in that van? If

1 not, whose fingerprints did they find? We talked
2 about a dye pack. We talked about the dye pack
3 going off in the van and Mr. Dill seeing that.
4 Actually, Mr. Dill observed coming up out the
5 windows. I think you'll also hear evidence that
6 they found dye stains in the van. Ask yourselves,
7 did they find any dye on my client? The dye is
8 something that would identify him as being in the
9 van. It puts him at the scene. So would the
10 prints. So would the DNA in the van. Ask yourself
11 do you have that.

12 I think you'll also find that a gunshot residue
13 test was taken. What they do is test and see if
14 someone fired a gun. Ask yourself do we have the
15 results of those tests or do we not? Ask yourselves
16 did they test in another fashion? I think all the
17 answers to these questions I'm presenting to you
18 today would be indicative to whether my client is
19 guilty or not. Not anything I'm saying. Not
20 anything the Solicitor's saying. Obviously, some of
21 his versions of the facts are something that we
22 disagree with.

23 Now, at the end of the case, I'll get a chance
24 to argue those facts -- I'll get a chance to argue
25 against those things he suggests. But all I want

1 you to do is something you've already taken an oath
2 to do, that's to base your decision on the facts and
3 the evidence and the law. Put those things
4 together. Come to your decision.

5 I feel confident that at the end of this trial,
6 you will see that my client is not guilty of armed
7 robbery. He's not guilty of possession of a stolen
8 van. He's not guilty of Possession of a Weapon
9 during the Commission of a Violent Crime. He's not
10 guilty of Assault and Battery with Intent to Kill.
11 Let's rely upon the evidence. Let's base our
12 decision on that. That way, I believe you all can go
13 home with a clear conscience. Thank you.

14 **THE COURT:** The State may call its first
15 witness.

16 **MR. FRETWELL:** Your Honor, the State would
17 call Adrian Correa.

18 **THE CLERK:** Ma'am, if you will, pause at the
19 end of the bench. Please place your left hand on
20 the Bible and raise your right hand.

21 **ADRIAN CORREA**
22 having first been sworn, testifies as follows:

23 **THE CLERK:** Thank you. Please be seated.
24 Please state your full name for the record.

25 **THE WITNESS:** Adrian Correa.

DIRECT EXAMINATION

BY MR. FRETWELL:

Q Good afternoon, Ms. Correa. Get this out of your way. Ms. Correa, how old are you?

A 22.

Q And do you live in Greenville county?

A Uh, yes, I do.

Q Are you married?

A No.

Q How far did you go in school?

A Uh, second year of college.

Q Where are you currently employed?

A Uh, the attorney's office of Thomas Gagne.

Q And where have you worked previously?

A Just there and Ulta.

Q All right. Have you ever worked at the Bank of Travelers Rest?

A I did.

Q Okay. How long did you work for the Bank of Travelers Rest?

A Uh, 11 months, almost a year.

Q Did you work for the Bank of Travelers Rest during December of 2008?

A Yes, I did.

Q And what were your duties and responsibilities

1 of the Bank of Travelers Rest?

2 **A** Just a teller.

3 **Q** You were a teller?

4 **A** Uh-huh.

5 **Q** Let me take you to the late morning hours of
6 Wednesday, December 10th, 2008. Were you working at the
7 Bank of Travelers Rest that particular day?

8 **A** Yes, I was.

9 **Q** At which branch were you working?

10 **A** The White Horse Road Branch.

11 **Q** Okay. Let me show you what has previously been
12 marked as State's 1 through 6. Would you mind looking
13 through these exhibits please and tell me if you could
14 recognize what is depicted in those exhibits?

15 **A** The White Horse Road branch the day of the
16 robbery.

17 **Q** Do these pictures accurately reflect what they
18 did -- what they show in each of the pictures?

19 **A** Yes.

20 **MR. FRETWELL:** Your Honor, at this time, the
21 State would move State's 1 through 6 into evidence.

22 **THE COURT:** Any objection?

23 **MR. JOHNSON:** No objection, Your Honor.

24 **THE COURT:** Without objection, State's
25 Exhibits 1 through 6 are into evidence and may be

1 published to the jury.

2 **MR. FRETWELL:** Thank you, Your Honor.

3 Mr. Jenkinson. Thank you, sir.

4 **THE BAILIFF:** Yes, sir.

5 **(WHEREUPON, State's Exhibits 1 through 6 are**
6 **admitted into the record.)**

7 **BY MR. FRETWELL:**

8 **Q** Ms. Correa, what is depicted in this particular
9 exhibit, State's 1?

10 **A** Uh, that is the front end of the bank.

11 **Q** Okay. I'm going to give you a little laser
12 pointer. If you push that button right there, it will
13 make a red dot. If you could, just show everyone where
14 the main entrance of the bank is.

15 **A** Right here.

16 **Q** Which direction from the front here is White
17 Horse Road?

18 **A** It's on the side.

19 **Q** So are we basically standing on White Horse
20 Road?

21 **A** Yes, we're standing on White Horse Road,
22 correct.

23 **Q** And what is off to, let's say, our right of the
24 bank?

25 **A** Uh, Applebee's is to the right.

1 **Q** All right. Let me show you what's been -- let
2 me show you State's Exhibit 2 and ask you what are we
3 seeing there?

4 **A** The side entrance.

5 **Q** Is that on the Applebee's side?

6 **A** Yes.

7 **Q** Okay. And State's 3?

8 **A** The left entrance.

9 **Q** Okay. And what do you recall, Ms. Correa about
10 the weather conditions that particular day?

11 **A** It was rainy that day. It was pretty cloudy.

12 **Q** Very cloudy and rainy?

13 **A** Yes.

14 **Q** What about the temperature?

15 **A** It was cold.

16 **Q** Okay. I'm going to show you State's Exhibit 4.
17 What are we seeing in State's Exhibit 4? If you could
18 orient us to where that is in relation to the other
19 pictures we've seen.

20 **A** This is the back end of the bank. It's the
21 drive through. Then you'll see Applebee's on the back
22 side.

23 **Q** Okay. And State's number 5, what is this a
24 picture of?

25 **A** Our lobby from the front door from the main

1 entrance.

2 Q Okay. And can you point out with that laser
3 pointer where the teller windows would be?

4 A All these right here.

5 Q Okay. And can you tell me, tell the members of
6 the jury how many tellers were working that particular
7 day?

8 A Currently, there were five of us that day. But
9 at the time of the accident, there were only three of us,
10 which was right here and right here and right here.

11 Q Okay. And which teller window would yours be?

12 A I was at the second teller window.

13 Q And let me ask you what we're seeing in this
14 picture.

15 A It's a side view from one of our side cameras
16 on the front door.

17 Q Let's talk about cameras. Was the Bank of
18 Travelers Rest equipped with, uh, cameras?

19 A Yes, lots of them.

20 Q All right. Let me show you what has previously
21 been marked State's Exhibit 9. I'll ask if you recognize
22 this item.

23 A I do.

24 Q And what is that item?

25 A It's a copy of the CD of the bank robbery.

1 **Q** Okay. Have you reviewed that item?

2 **A** I have.

3 **Q** Does it accurately reflect the incidents that
4 happened on December 10th, 2008?

5 **A** Yes, it does.

6 **Q** And furthermore, is there anything that's on
7 this disk that you recognize?

8 **A** Yes.

9 **Q** What is it?

10 **A** Bank robbery.

11 **Q** What --

12 **A** And my signature on it.

13 **Q** Okay. All right. And is this your signature
14 right here?

15 **A** Yes, it is.

16 **MR. FRETWELL:** All right. At this time, Your
17 Honor, the State would ask that State's 9 be entered
18 into evidence.

19 **THE COURT:** Any objection?

20 **MR. JOHNSON:** No objection, Your Honor.

21 **THE COURT:** Without objection State's Exhibit
22 number 9 is admitted into evidence and may be
23 published.

24 **(WHEREUPON, State's Exhibit 9 is admitted into the**
25 **record.)**

1 **MR. FRETWELL:** I'm not going to publish it
2 right now, Mr. Jenkinson. Thank you.

3 **THE BAILIFF:** All right.

4 **BY MR. FRETWELL:**

5 **Q** Do you recall at that point, at some point
6 during the morning, a man entering the bank?

7 **A** Yes.

8 **Q** At that time, uh, how many tellers were in the
9 bank still working?

10 **A** Three.

11 **Q** Three. All right. Where were the other
12 tellers or the other employees of the bank?

13 **A** The other employees were either at lunch or in
14 our break room in the back.

15 **Q** Okay. Did -- did anything unusual, speaking,
16 of course, about someone entering the bank happen while
17 those tellers were at lunch?

18 **A** It was like normal business hours. Then he
19 came in almost like a normal client coming in after a
20 rainy day except he came rushing in and didn't take off
21 his hoodie and came at us that morning.

22 **Q** Can you describe the person you saw?

23 **A** It was a man about six-foot tall. He was
24 covered in a black hoodie, had a hat underneath that
25 hoodie and had a bandana across his face, which all I

1 could see was probably this much. He had some dark blue
2 jeans on. They were kind of washed out in the front and
3 the back. He had black gloves on. In his left hand, he
4 had a black gun. In his right hand, he had a white
5 plastic bag.

6 **Q** You may have already mentioned this. Did you
7 tell us about how tall he was or how much he weighed?

8 **A** Uh, he was six-foot tall and approximately 160
9 to 180 pounds.

10 **Q** All right. And you remember approximately when
11 he entered the bank?

12 **A** Uh, it was between 11:00 and 11:30. In between
13 there. During lunch time.

14 **Q** Is there a time stamp on your video?

15 **A** Yeah, but I think our video lapsed so I don't
16 think it's the correct time on our video.

17 **Q** Okay. Well, it wouldn't be a rolling video.
18 You know if the time stamps are correct as far as the
19 time is concerned?

20 **A** Uh-huh. Yes.

21 **Q** What did the individual do when you say he
22 rushed into the bank?

23 **A** As soon as he came in, he ran to my teller
24 window first and was screaming really loud saying, uh,
25 give me all your money and don't do anything stupid. He

1 pointed the gun at me and at my other two coworkers which
2 is Yolanda and Audrey. At that moment, he gave me the
3 bag. I put my money into the bag. Yolanda handed me her
4 money and so did Audrey.

5 Q And what -- describe this bag.

6 A It's just like a grocery bag. Just white.
7 White plastic grocery bag. No writing on it.

8 Q And who provided this bag?

9 A He did.

10 Q Okay. Did -- was the gun just pointed at you
11 or did the --

12 A He walked between my teller station, Yolanda's
13 and Audrey's and back to mine.

14 Q And did he point the gun at anybody other than
15 you?

16 A He pointed at both, at all three of us.

17 Q Did he demand money from anybody other than
18 you?

19 A All three of us.

20 Q In addition to the money, did you or anyone
21 else put anything else into the bag?

22 A I did and Audrey did. We put a dye pack in the
23 bag.

24 Q And did Yolanda also put money into the bag?

25 A She did.

1 **Q** Everyone put money into the bag?

2 **A** Everyone, all three of us.

3 **Q** What did the dye pack look like? Do you know?

4 **A** It looks like money on top of it. Some of it's
5 real. The rest of it's fake. The dye pack is in between
6 so you can't see it. It just looks like a bundle of
7 money.

8 **Q** Let me show you what's been marked as State's
9 7 and 8. Do you recognize 7 and 8?

10 **A** Yes.

11 **Q** What's 7?

12 **A** 7 is the dye pack. 8 is my teller station.

13 **Q** That's your teller station?

14 **A** Yeah.

15 **MR. FRETWELL:** Okay. At this time, Your
16 Honor, we would move State's 7 and 8 into evidence.

17 **THE COURT:** Without objection?

18 **MR. JOHNSON:** Without objection.

19 **THE COURT:** Without objection, 7 and 8 are
20 into evidence and may be published.

21 **MR. FRETWELL:** Thank you, Your Honor.

22 Mr. Jenkinson?

23 **(WHEREUPON, State's Exhibit 7 and 8 are admitted**
24 **into the record.)**

25 **BY MR. FRETWELL:**

1 Q First, 7 and now 8. Adrian, how do you know
2 that this is your teller window?

3 A By the little picture I have right in front of
4 the computer.

5 Q Okay. Would you point to that with your
6 little --

7 A Sorry. Right there.

8 Q So this is your teller station?

9 A Yes, it is.

10 Q Thank you. With respect to that dye pack, is
11 there anything that that dye pack rests on?

12 A On a plate in our teller station.

13 Q You know the purpose of that metal plate?

14 A Uh, it's just to keep it in tact there. And
15 then once it's taken off and -- once you walk through the
16 front door with it, then it sets it off.

17 Q Okay. So it has something to do with the
18 activation.

19 A Yes.

20 Q Okay. By the way, how did you know anything
21 about how these dye pack packs worked at the time?

22 A Uh, we had a meeting on it of emergency
23 procedures right before the accident happened, like maybe
24 a week before.

25 Q Okay. And could you tell me what happened when

1 you pushed the bag of money and the dye packs through the
2 teller window, what happened at that point?

3 **A** He just ran out. Didn't say anything and ran
4 out.

5 **MR. FRETWELL:** Your Honor, at this time, the
6 State wishes to publish State's number 9.

7 **THE COURT:** All right. You may do so.

8 **(WHEREUPON, State's Exhibit 9 is played.)**

9 **BY MR. FRETWELL:**

10 **Q** Before we begin showing this Adrian, can you
11 orient us to what we're seeing in this?

12 **A** This is our front door and this is Audrey at
13 her teller's station.

14 **Q** All right. We'll just advance the time lapse
15 video. (Pause.)

16 Is that your station?

17 **A** Yes, it is.

18 **Q** Who is that individual that's shown in the
19 back?

20 **A** Our branch manager.

21 **Q** Do you know if Mister -- you say his name is
22 Bud Fant?

23 **A** Yes, sir.

24 **Q** Was Mr. Fant -- was he in the lobby when the
25 robbery occurred?

1 **A** No, he was not.

2 **Q** Were there any other customers in the lobby
3 when the robbery occurred?

4 **A** No, there wasn't.

5 **Q** Where had Mr. Fant gone?

6 **A** He had gone back to the back room towards the
7 break room.

8 **Q** What are you doing at this point, Adrian?

9 **A** Putting the money in the bag.

10 **Q** On the date of the incident, were you able to
11 determine anything else about the robber's clothing?

12 **A** Uh, I did notice that he had a gray shirt
13 underneath his hoodie.

14 **Q** And anything about what he was wearing for
15 shoes?

16 **A** Black shoes, black tennis shoes.

17 **Q** Did you provide this physical and clothing
18 description to police and/or FBI?

19 **A** Yes, I did.

20 **Q** How long had you been working at the bank
21 before you were robbed, Adrian?

22 **A** Three months.

23 **Q** And had you ever experienced a robbery before?

24 **A** Never.

25 **Q** Based on the video, do you know how long the

1 robber was in the bank?

2 **A** Less than three minutes.

3 **Q** How long did it feel like he was in the bank?

4 **A** Eternity.

5 **MR. JOHNSON:** Objection, Your Honor.

6 **THE COURT:** What's your objection?

7 **MR. JOHNSON:** He's asking a question based
8 upon emotion.

9 **THE COURT:** I'll allow the question.
10 Overruled.

11 **MR. FRETWELL:** Thank you, Judge.

12 **BY MR. FRETWELL:**

13 **Q** How long did it feel like the robber was in the
14 bank?

15 **A** Eternity.

16 **Q** Do you recall how you felt during and
17 immediately after the robbery?

18 **A** . I did. I was scared.

19 **Q** Do you -- do you, Yolanda or Audrey, any of you
20 still work at the bank?

21 **A** No.

22 **Q** Have you had any recent contact with Yolanda?

23 **A** No, I haven't.

24 **Q** Please answer any questions that Mr. Johnson
25 has for you.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Okay. Just a couple of questions. First of all, as I understand it, due to the mask on his face and hat and hoodie, you could not identify -- you couldn't see a face when you were robbed?

A I could not.

Q Okay. You also stated when he robbed -- when he robbed the bank, whoever was robbing you had a white plastic bag, is that right?

A That's correct.

Q Used that to put the money in?

A That's correct.

Q There was no writing on this bag?

A No.

Q Okay.

MR. JOHNSON: Your Honor, at this time, I have nothing further.

THE COURT: Redirect?

MR. FRETWELL: Very quickly.

REDIRECT EXAMINATION

BY MR. FRETWELL:

Q Ms. Correa, do you know whether there was any writing on the bag or did you just not see anything?

A I didn't see anything.

1 **MR. FRETWELL:** No other questions, Judge.

2 **THE COURT:** Thank you, ma'am. You may step
3 down.

4 **MR. FRETWELL:** Your Honor, at this time, the
5 State would call Rene Beauford.

6 **THE CLERK:** Ms. Beauford, please place your
7 left hand on the Bible and raise your right hand.

8 **RENE BEAUFORD**

9 having first been sworn, testifies as follows:

10 **THE CLERK:** Thank you. Please be seated.

11 **DIRECT EXAMINATION**

12 **BY MR. FRETWELL:**

13 **Q** Ms. Beauford, by whom are you employed?

14 **A** Uh, Greenville County Sheriff's Office.

15 **Q** And what is your position with Greenville
16 County Sheriff's Office?

17 **A** I work for -- in communications doing 911
18 research and quality assurance.

19 **Q** And specifically, in 911 research and quality
20 assurance, what are your duties and responsibilities?

21 **A** To process any type of request to research our
22 CAD or our recordings phone and radio recordings for any
23 type of incoming calls or any type of incidents that
24 occurred.

25 **Q** And what did you mean by CAD?

1 **A** CAD, I'm sorry, is our Computer-aided Dispatch
2 System that when the calls are received by our
3 dispatches, they enter the call into the computer which
4 is call the CAD system. It displays up for the
5 dispatchers to dispatch it out to the officers in the
6 field.

7 **Q** Ms. Beauford, what happens when someone dials
8 911?

9 **A** Uh, if someone dials 911, the phone system
10 immediately captures the call and begins recording
11 whether or not a dispatcher or call taker has picked up
12 on that line. Once that call is received or picked up by
13 that dispatcher call taker, information is obtained as
14 far as the incident occurring, the location and we then
15 transfer it out to the proper agency if it's not ours.
16 If it is Greenville County Sheriff's Office, then we
17 gather the information and put a call in for dispatch.

18 **Q** Are all calls coming into 911 and the dispatch,
19 are they recorded?

20 **A** Yes.

21 **Q** How are calls coming into 911 and dispatch
22 radio traffic recorded?

23 **A** Uh, they are recorded simultaneously
24 automatically by digital recording system.

25 **Q** Are these recordings made and stored in the

1 regular course of business?

2 **A** Yes, they are.

3 **Q** And was this procedure in place on December
4 10th, 2008?

5 **A** Yes, they were.

6 **Q** In the regular course of your duties, are you
7 routinely asked to retrieve 911 recordings?

8 **A** Yes, I am.

9 **Q** Let me show you what's been marked as State's
10 Exhibit 10 and ask you if you recognize that exhibit?

11 **A** Yes, I do.

12 **Q** How do you recognize it?

13 **A** Uh, it is the Greenville County Sheriff's
14 Office case number, coded 01 the sheriff's office and our
15 records system and then my initials are listed placed on
16 the CD.

17 **Q** Have you listened to this recording?

18 **A** Yes, I have.

19 **Q** Does this recording accurately reflect 911
20 calls that occurred on December 10th, 2008?

21 **A** Yes, it does.

22 **MR. FRETWELL:** Your Honor, at this time, the
23 State would move State's 10 into evidence.

24 **THE COURT:** Any objection to Exhibit 10?

25 **MR. JOHNSON:** No objection.

1 **THE COURT:** Without objection ---

2 **MR. FRETWELL:** Thank you, Your Honor.

3 **THE COURT:** --- Exhibit 10 is admitted.

4 **(WHEREUPON,** State's Exhibit 10 is admitted into the
5 record.)

6 **MR. FRETWELL:** No further questions for Ms.
7 Beauford.

8 **THE COURT:** Cross-examination?

9 **CROSS-EXAMINATION**

10 **BY MR. JOHNSON:**

11 **Q** Ms. Beauford, are you responsible for incident
12 recall as well?

13 **A** Yes, I am.

14 **Q** So you received any calls that come in to 911
15 concerning, uh, -- specifically concerning this incident,
16 you received something?

17 **A** Yes, I did.

18 **Q** Did you do a report for that? Have you seen a
19 copy of the incident recall report?

20 **A** I have seen a copy of the incident recall
21 report.

22 **Q** Isn't it true that you received, uh, reports of
23 multiple suspicious persons on this date?

24 **A** Yes, it was.

25 **Q** How many do you think you got, that you

1 received?

2 **A** Uh, there was multiple calls coming in with
3 different addresses that, you know, I would say probably
4 maybe about four or five.

5 **Q** Four or five different places, different areas?

6 **A** Correct.

7 **MR. JOHNSON:** Okay. Thank you.

8 **MR. FRETWELL:** Briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MR. FRETWELL:**

11 **Q** Is having multiple calls to the 911 during
12 basically a manhunt or anything like that, is that
13 unusual?

14 **A** No, it's not.

15 **Q** In fact, uh, what does 911 sometimes do with
16 respect to people in targeted areas to alert them that
17 danger might be in the area?

18 **A** Uh, we have what we call reverse 911 that we
19 can go in and map it out by, uh, on the map by an area or
20 by zip code. We can put out a message, a recorded
21 message back out the public. Anyone that has an actual
22 landline phone or have registered their cell phone will
23 receive this message back from the communications at the
24 sheriff's office.

25 **Q** And in those reverse 911 calls, are citizens

1 asked to call, contact 911 if they see anything
2 suspicious?

3 **A** Yes, they are.

4 **Q** So they are solicited?

5 **A** Yes, they are.

6 **MR. FRETWELL:** No further questions, Judge.

7 **THE COURT:** Thank you, ma'am. You may step
8 down.

9 **MR. FRETWELL:** May it please the Court, Your
10 Honor.

11 **THE COURT:** You can call your next witness.

12 **MR. FRETWELL:** At this time, the State would
13 call Audrey Samec.

14 **THE CLERK:** Ms. Samec, please place your left
15 hand on the Bible and raise your right hand.

16 **AUDREY SAMEC**

17 having first been sworn, testifies as follows:

18 **THE CLERK:** Thank you. Please be seated.

19 Please state your full name for the record.

20 **THE WITNESS:** Audrey Louise Samec.

21 **DIRECT EXAMINATION**

22 **BY MR. FRETWELL:**

23 **Q** Ms. Samec, were you also working as a teller at
24 the Bank of Travelers Rest on December 10th, 2008?

25 **A** Yes.

1 Q How long had you been working in the teller
2 capacity at that point?

3 A Approximately 8 years at Bank of Travelers
4 Rest.

5 Q Okay. And how long after this incident did you
6 continue to work as a teller at Bank of Travelers Rest?

7 A About a year.

8 Q About a year. Do you recall what time you
9 arrived at work that morning?

10 A Uh, around 7:45.

11 Q Uh, what, if anything, happened shortly before
12 noon that day?

13 A Shortly before noon, uh, we had no teller -- we
14 had no customers at the bank at the time. And some of
15 our tellers were at lunch. A gentleman entered the bank.
16 When he entered the bank, I could see that his face was
17 covered and so I immediately thought that we were going
18 to be robbed. He came to Adrian's teller station first
19 and demanded money. Then he also demanded money from the
20 other two tellers.

21 Q That include you?

22 A Yes, and Yolanda.

23 Q And did you provide that robber with money?

24 A Yes.

25 Q Were there any customers in the bank when the

1 robber came in?

2 **A** No.

3 **Q** Did you contact 911?

4 **A** Yes.

5 **MR. FRETWELL:** Your Honor, at this time, the
6 State wishes to publish track number 1 on State's
7 Exhibit 9.

8 **THE COURT:** All right. That's already
9 admitted into evidence as Exhibit 9. You may show
10 this for the benefit of the witness.

11 **(WHEREUPON, there is a pause.)**

12 **MR. FRETWELL:** Your Honor, I apologize.

13 **THE COURT:** All right.

14 **MR. FRETWELL:** Can we take just a brief
15 moment to find out what seems to have been the
16 problem? (Pause.)

17 Your Honor, we may need to test this if you
18 want to give the jurors a quick break.

19 **THE COURT:** It's the Exhibit that was played
20 earlier?

21 **MR. FRETWELL:** No, sir. It's a new exhibit.

22 **THE COURT:** It's a new exhibit?

23 **MR. FRETWELL:** Yes, sir.

24 **THE COURT:** Number 9?

25 **MR. FRETWELL:** Yes, sir. It wasn't played

1 earlier. It was entered into evidence.

2 **THE COURT:** Okay. All right. Ladies and
3 Gentlemen, let me let you take a short break. Just
4 go back to your jury room. Take a stretch break at
5 least. Let me remind you not to discuss the case.
6 We'll see if we can get the technology working and
7 call you right back. You may retire to your jury
8 room.

9 **(WHEREUPON, the jury exits at approximately**
10 **4:27 p.m.)**

11 **THE COURT:** You may step down, ma'am. Don't
12 discuss your testimony with anyone while we're on
13 break.

14 **(WHEREUPON, a short recess is taken.)**

15 **THE COURT:** Whenever the jury is ready, you
16 could have them come back. If they need a little
17 more time, we're ready for them whenever they're
18 ready.

19 **THE BAILIFF:** Yes, sir.

20 **(WHEREUPON, the jury enters at approximately**
21 **4:31 p.m.)**

22 **THE COURT:** I remind you you are still under
23 oath.

24 You may continue your examination of the
25 witness, Mr. Fretwell.

1 **MR. FRETWELL:** Thank you, Your Honor. At
2 this time, we would like to publish track 1 on
3 State's 10, Judge.

4 **THE COURT:** All right. Without objection,
5 you may do so.

6 **(WHEREUPON, track 1 on State's Exhibit 10 is**
7 **played.)**

8 **BY MR. FRETWELL:**

9 **Q** Ms. Samec, have you ever been robbed before?

10 **A** No.

11 **Q** Have you had any contact with Yolanda?

12 **A** No.

13 **Q** Please answer any questions that Mr. Johnson
14 has.

15 **CROSS-EXAMINATION**

16 **BY MR. JOHNSON:**

17 **Q** I'm sorry. You pronounce your last name Samec?

18 **A** Samec.

19 **Q** Okay. Apologies.

20 **A** That's okay.

21 **Q** First of all, I have to ask, uh, you stated
22 that he had on black hoodie, bandana, hat. You couldn't
23 see his face?

24 **A** Correct.

25 **Q** So you wouldn't be able to identify what he or

1 she looked like?

2 **A** Correct.

3 **Q** All right. I have nothing further at this
4 time.

5 **MR. FRETWELL:** Nothing, Your Honor.

6 **THE COURT:** Yes, sir.

7 **MR. FRETWELL:** Nothing.

8 **THE COURT:** You may step down, Ms. Samec.

9 **MR. FRETWELL:** Your Honor, the State calls
10 David Lee Dill.

11 **THE CLERK:** Mr. Dill, please place your left
12 hand on the Bible and raise your right hand.

13 **DAVID DILL**

14 having first been sworn, testifies as follows:

15 **THE CLERK:** Thank you. Please be seated.
16 Please state your full name for the record.

17 **THE WITNESS:** My name is David Lee Dill.

18 **DIRECT EXAMINATION**

19 **BY MR. FRETWELL:**

20 **Q** Good afternoon, Mr. Dill.

21 **A** Good afternoon.

22 **Q** Mr. Dill, how old are you?

23 **A** I am 40 years old.

24 **Q** Mr. Dill, I'm going to need you to pull that
25 microphone over to your mouth.

1 **A** Okay.

2 **Q** And speak up as loudly as you can so everybody
3 can hear you.

4 **A** Okay. I am 40 years old.

5 **Q** Do you live in Greenville?

6 **A** Yes, I do.

7 **Q** How long have you lived in the Greenville area?

8 **A** I've lived here my whole life.

9 **Q** How far did you go in school?

10 **A** Bachelors.

11 **Q** And where did you get your Bachelors?

12 **A** USC.

13 **Q** Where are you currently employed?

14 **A** I'm employed at Century Three industrial
15 contractors.

16 **Q** And what kind of company is Century Three?

17 **A** It's an industrial contractor that moves
18 equipment, old mill equipment from place to place,
19 refurbishes it.

20 **Q** How long have you worked there?

21 **A** Right at two years.

22 **Q** What do your specific job responsibilities
23 entail?

24 **A** I am the electrical project manager. I manage
25 right at 50 people, electricians. I keep them busy. I

1 layout jobs, estimate jobs, billing.

2 Q You also responsible for the projects
3 themselves?

4 A Yes, sir.

5 Q Okay. Are you married?

6 A Yes, sir.

7 Q Okay. Do you have any children?

8 A Yes, sir. I have an eight-year-old daughter.

9 Q Let me take you to the late morning hours of
10 Wednesday, December 10th, 2008. Do you recall what you
11 were doing for lunch that day?

12 A Yes, sir. I -- at that time, I was working at
13 Furman University for a company called Hayes and
14 Lunsford. I usually leave early for lunch to go to
15 Applebee's. I had left Furman, parked in the parking lot
16 facing the Bank of Travelers Rest at Applebee's and
17 called Tammy, my fiancé at the time, to ask her what she
18 would like for dinner.

19 Q Particular reason you went to Applebee's?

20 A She has a certain route. There's only a very
21 few restaurants that she could eat at. That was one that
22 was on her route. She's a postal carrier, delivers mail.
23 She only has 30 minutes for lunch. Basically I got there
24 to get her order so I could go in and order it so she
25 could be back to work on time.

1 **Q** And do you recall about what time you arrived
2 at the Applebee's and parked that particular morning?

3 **A** Yes, sir. I got there right around 11:30. She
4 usually arrives about 15 til 12:00.

5 **Q** Is that a precise time or is that -- that's --

6 **A** It's changed now. During that time, that's the
7 time that she had for lunch.

8 **Q** Sometimes she get there at 11:45, sometimes
9 before, sometimes after, was it precise?

10 **A** It's within 5 to 10 minutes.

11 **Q** Let me show you what's been marked as State's
12 11 through 14.

13 **A** (Reviewing.)

14 **Q** I ask you to flip through those pictures. Tell
15 me if you recognize what's depicted in those pictures.

16 **A** Yes, sir. This is the Applebee's that I meet
17 Tammy at and the Bank of Travelers Rest right on White
18 Horse Road. This looks like the scene right after the
19 robbery had occurred.

20 **Q** Do you recognize all of the pictures there?

21 **A** Yes, sir. I do.

22 **Q** Do they accurately reflect the, uh, locations
23 that are depicted in those pictures on December 10th,
24 2008?

25 **A** Yes, they do.

1 **MR. FRETWELL:** Your Honor, at this time, the
2 State moves State's 11 through 14 into evidence.

3 **THE COURT:** Any objection?

4 **MR. JOHNSON:** No objection.

5 **THE COURT:** Without objection, Exhibits 11
6 through 14 are admitted into evidence and may be
7 published.

8 **(WHEREUPON, State's Exhibits 11 through 14 are**
9 **admitted into the record.)**

10 **BY MR. FRETWELL:**

11 **Q** Mr. Dill, I'll give you this little laser
12 pointer. It's got a little button that you can push that
13 makes a red dot if you want to point out things
14 specifically. Can you orient the jury as to, uh, what
15 they are seeing in this particular picture?

16 **A** Yes, sir. Right here is White Horse Road.
17 Here's the Applebee's and Bank of Travelers Rest.

18 **Q** Okay. And do you recall what the weather was
19 like that day?

20 **A** The weather was rainy and cold.

21 **Q** Okay. Was it raining just at times or was it
22 raining all day?

23 **A** During the whole time I was there, it was
24 raining.

25 **Q** Let me show you State's Exhibit 12. Can you

1 orient us as to what we're looking at and, in particular,
2 can you point out where you were parked or the proximity?

3 **A** Yes, sir. Again, right here is White Horse
4 Road. The road that comes off the side road to the bank
5 is right here. I was at Applebee's in the third or
6 fourth spot right beside this bush.

7 **Q** And State's 13, what are we looking at here?

8 **A** This is the teller lanes. Here is the road in
9 between Applebee's and the bank. Basically, right here
10 where this car is is the position my truck was at.

11 **Q** Okay. All right.

12 Thank you, Mr. Jenkins.

13 As you were sitting there in the parking lot,
14 what did you -- what do you recall happened?

15 **A** What I recall happening, after I hung up, I was
16 looking up facing the front of the bank, I saw a white
17 van backing up. I saw red smoke coming out of the van.
18 And the van had came around the front road, directly in
19 front of me.

20 **Q** What was it specifically that attracted your
21 attention to the white van?

22 **A** It was the red smoke coming out of the driver's
23 side window.

24 **Q** And what did you see at any point thereafter?

25 **A** What I saw then was -- when he came around in

1 front of me, I backed up myself and went out parallel
2 with the road. I saw him go to the stop sign beside the
3 Wal-Mart. I had followed up behind him. When I saw him
4 turn left, he had his head sticking out the window and
5 was swerving.

6 Q Let me show you what's been marked as State'
7 15. Do you recognize this area of detail?

8 A I do.

9 Q Could you step down for just a moment and come
10 around here and show the jury where you were sitting and
11 what you observed during that time period.

12 A I was sitting right here at this bush. I
13 observed, uh, the van backing out, back straight out from
14 the front of the bank. He had taken a right and taken a
15 left right in front of me. At that time, when I saw the
16 smoke coming up, I had backed out and turned right to go
17 here. Time I got here, he was almost to the stop sign,
18 which is right here. So I came out. He hesitated for a
19 minute to take a left. Once he had turned left, the
20 smoke was coming out of the van pretty heavy. When he
21 made that left turn, his head was sticking out so he was
22 able to see to drive.

23 Q Okay. And did you -- why did you decide to
24 follow the van?

25 A Just basic instinct. I was basically going to

1 follow him so I could let 911 know that I had thought
2 that the bank had been robbed because I saw smoke and I
3 was going to let them know which way the vehicle was
4 going and where it was at.

5 Q And did you alert authorities? Did you call
6 911?

7 A I did.

8 Q Uh, what generally did you tell 911?

9 A Basically, generally, I just told them that I
10 was behind a van with smoke coming out of it. I had
11 thought that the bank had been robbed. I wasn't sure.
12 They was asking me questions about the vehicle, the tag
13 and the street names. I didn't know it at the time.

14 Q Did you see any of the -- when the van drove by
15 you, were you able to see the driver's side or the
16 passenger's side?

17 A When the van drove by me, I saw the passenger's
18 side.

19 Q Was there any smoke coming out of any windows
20 on the passenger's side?

21 A The only window I saw open was the driver's
22 side.

23 Q Okay. All right. Now, let me show you just on
24 the flip side of this -- and I believe this exhibit is
25 already into evidence, State's 17.

1 **MR. FRETWELL:** I don't believe there's an
2 objection if it's not, Judge.

3 **MR. JOHNSON:** No objection, Your Honor.

4 **THE COURT:** All right. Without objection, is
5 this 15 and 17?

6 **MR. FRETWELL:** This is 15 and 16.

7 **THE COURT:** 15 and 16 without objection are
8 admitted into evidence.

9 **(WHEREUPON,** State's Exhibit 15 and 16 are admitted
10 into the record.)

11 **BY MR. FRETWELL:**

12 **Q** All right. Mr. Dill, if you'll come around
13 here and make sure that you keep your voice loud so that
14 the Court Reporter can hear you. If you'll show us where
15 that bank is and the route that the individual took.

16 **A** Right here is the Bank of Travelers Rest.
17 Here's the Applebee's. Again, this guy had backed out
18 and taken a right and taken this immediate left. Went
19 around the curve. Came to the stop sign at this point
20 and then took a left. I was following behind him. At
21 this point, the driver was swerving back and forth down
22 the road -- I assume because of the smoke -- and then
23 went up and took a right onto the street here. This is
24 when I was on the phone with 911 about this point here.
25 We made a turn. I didn't see the name of the road when

1 they asked me the name of the road.

2 Q And if you will -- take this down for just
3 second. You mention that when he came out of the bank --
4 you can stand here just a second. I want to show you
5 another map in just a minute.

6 Mr. Jenkinson, if you'll get the lights.

7 Just looking up here. On State's Exhibit 14,
8 will you show where the vehicle came out of the bank and
9 how you followed it?

10 A The vehicle came out here and took this
11 immediate left and went down -- this is a curve in the
12 road here at this point -- went around the curve and went
13 to the stop sign.

14 Q You're not saying if he took any kind of a
15 right when he came out of bank parking lot?

16 A No.

17 Q Okay. He went that way?

18 A Correct.

19 Q Okay. Thank you. Let me show you State's
20 Exhibit 17. Do you recognize this area?

21 A Uh-huh.

22 MR. FRETWELL: Okay. Your Honor, the State
23 would move State's Exhibit 17 into evidence.

24 THE COURT: Without objection, Exhibit 17 is
25 admitted into evidence.

1 **(WHEREUPON, State's Exhibit 17 is admitted into the**
2 **record.)**

3 **BY MR. FRETWELL:**

4 **Q** Okay. Mr. Dill, tell us about what happened
5 once you got on this particular stretch of road.

6 **A** Once we got onto Emile, I was following pretty
7 close. He came up here basically to this point in here
8 where there's a telephone pole. He had pulled off to the
9 side. Again, he was -- the driver was swerving back and
10 forth at this point. Then finally had to pull over to
11 the side. Smoke was building, but out of the window
12 basically. I had came behind him to go around him at a
13 pretty slow pace. When I drove by, the person had his
14 head sticking out. I could see a black hoodie and a
15 black hat.

16 **Q** As you drove by?

17 **A** As I drove by.

18 **Q** And what was the purpose of driving by?

19 **A** The purpose of driving by, I was on with 911.
20 Like I said before, when we turned, I did not see the
21 name of the street. I had came on down to this point and
22 came over here into the parking lot, came back after this
23 stop sign at a 45-degree still facing the vehicle and
24 seeing the person in the middle of the road. Told 911 --
25 I was trying to tell them at the time the name of the

1 road and the intersection.

2 Q Okay. When you drove past the mini van, were
3 you able to see the driver?

4 A Correct.

5 Q What area of his face or whatever, if any, were
6 you able to see?

7 A I could see around his eyes. He had his
8 bandana pulled up to his mouth. I could see that it was
9 black or something.

10 Q And once you got down into this location where
11 you said you were at kind of a 45-degree angle on the
12 intersection, were you looking back at the area where the
13 van was?

14 A Yes, sir. I was looking directly at the van
15 and the person was in the middle of the road.

16 Q Other than when you turned around right here,
17 was the van within your sights at all times?

18 A Uh-huh. Yes, sir.

19 Q Tell the jury. What did you see in the road
20 when you looked back in that direction?

21 A When I was looking back in that direction, I
22 saw a person raise their right hand. I saw puffs of
23 smoke come out. All of a sudden, about the third or
24 fourth puff of smoke, I heard a bang. It hit my -- it
25 came through the windshield. It hit my phone. Went

1 through my hand.

2 Q You can take your seat back at the witness
3 stand.

4 A (Retakes witness stand.)

5 Q Mr. Dill, I want to show you another set of
6 photographs. They are State's 18 through 24.

7 A (Reviewing.)

8 Q I will also ask you to look through these
9 photographs and tell me whether you recognize what are
10 depicted in those photographs.

11 A Yes, this is the van that I was following at
12 the time and the area that it pulled off on the side of
13 the road. These other pictures are where the bullet came
14 through the window where they were shot. Again, you can
15 see where the van was from where I was parked.

16 Q Do these pictures accurately reflect the areas
17 that they show on December 10th, 2008 when you were in
18 that area?

19 A They do.

20 MR. FRETWELL: At this time, Your Honor, the
21 State would move State's 18 through 24 into
22 evidence.

23 THE COURT: Any objection?

24 MR. JOHNSON: No objection, Your Honor.

25 THE COURT: Without objection, Exhibits 18

1 through 24 are admitted into evidence and may be
2 published.

3 (WHEREUPON, State's Exhibits 18 through 24 are
4 admitted into the record.)

5 BY MR. FRETWELL:

6 Q Let's start -- starting with State's 18, what
7 do we see here?

8 A This is the van that I was following down the
9 road from the bank.

10 Q Is this the location where it stopped?

11 A Correct.

12 Q State's 19.

13 A This is the area that was at a 45. This is the
14 area where my truck ended up at.

15 Q Okay. And let me ask you, what is this road
16 that has the mail truck on it.

17 A Looking down this road here, this is where the,
18 uh, van was parked and pulled to the side and the person
19 was in the middle of the road.

20 Q And that is State's 20, is that correct?

21 A Yes, sir.

22 Q Whose mail truck is that?

23 A This is my wife now. This is her mail truck.

24 Q She showed up on the scene?

25 A Yes, sir.

1 **Q** Let me show you State's 21.

2 **A** This is the bullethole that went through the
3 windshield of my truck.

4 **Q** Which direction were you looking when you were
5 monitoring the activities of the individual?

6 **A** This is the passenger side of the truck. That
7 was looking to the right.

8 **Q** Let me show you State's 22. What is this
9 showing?

10 **A** This is showing the inside of the driver's seat
11 of my truck. This is where the blood came off of my hand
12 and got onto the seat.

13 **Q** If I could have the lights for just a second.
14 Once you felt -- can you describe to the jury what you
15 felt and how you felt?

16 **A** Yeah, what I felt was a sting at the time. It
17 didn't really hurt. It was just a sting. I had looked
18 down because I had dropped the phone in the truck. I
19 looked and my hand was bleeding where the bullet went
20 through. I looked up into the mirror and saw that I had
21 a hole in my neck at that time. So, I was scared.

22 **Q** What did you do at that moment?

23 **A** At that moment, I picked the phone back up and
24 explained to 911 what happened. I hung up with them
25 after I was able to give them the name of the street. I

1 tried to explain the name of the street. I don't think
2 they was able to understand it. I wasn't able to talk.
3 So, uh, --

4 **Q** While this was going on, what were you doing
5 with the vehicle itself?

6 **A** While this is going on, I had, uh, put the
7 vehicle in drive. I had went straight across. I went to
8 the second house on the left. I turned around in the
9 driveway still looking basically at the vehicle because
10 it was wintertime and everything was open. I turned
11 around and came back to the stop sign keeping my eye on
12 the person in the middle of the road.

13 **Q** Did you know when you felt that sting that you
14 had been shot?

15 **A** I did not know that until I looked at my hand
16 and looked up in the mirror at the hole in my neck.

17 **Q** Okay. And you said you were on 911 or you were
18 calling 911?

19 **A** I was calling -- I was on 911 at the time.
20 When I got hit, the phone dropped into the floor. I had
21 reached down to pick the phone up to try to give them the
22 address of the road.

23 **Q** Let me show you the last two pictures here,
24 State's 23. What are we looking at here?

25 **A** Again was where I was at a 45 looking to the

1 right down the street. I came across this road here.
2 Turned into the second driveway on the left. Backed out
3 and came back to the stop sign.

4 Q And State's 24.

5 A This is the truck parked at the stop sign
6 looking at the left. I was looking at the person in the
7 middle of the road at the time.

8 Q What did the person in the road do?

9 A When I saw -- when I was pulling back to the
10 stop sign, I assumed that the person had saw me pull back
11 here. The person had ran towards the woods at the time.

12 MR. FRETWELL: Your Honor, at this time, the
13 State wishes to publish track 2 of State's 10.

14 THE COURT: You may do so at this time.

15 (WHEREUPON, track 2 of State's 10 is played.)

16 BY MR. FRETWELL:

17 Q Mr. Dill, do you know why you told the 911
18 operator that you did not know where the guy had gone?

19 A I had no idea. At that moment, I was
20 hysterical from being shot.

21 Q Were you able after that point to get back to
22 the intersection?

23 A Yes, I was.

24 Q When did you see the man run into the woods?

25 A When I had came back into the intersection to

1 stop, I had called my fiancé at the time, Tammy. He was
2 still in the middle of the road. That is when I saw him
3 go to the right.

4 Q How quickly are these events going on?

5 A I mean, it's instantaneously. It seemed like
6 less than a minute to me the whole thing happened.

7 Q You called your fiancé, Tammy?

8 A Yeah, I called her because that is her route
9 that she delivers the mail. She couldn't understand me,
10 so I was trying to explain what happened where I was at
11 and not to come in that area, stay out of that area cause
12 somebody was over there shooting a gun. At that moment
13 in time, I basically fell out of the van onto the road
14 and dropped the phone. I remember looking down there to
15 see if the guy was still there. The lady behind me --
16 there was a car behind me that pulled up at that time.
17 She got the phone.

18 Q You said the man ran into the woods, did he run
19 into -- on the side of the road that was the same as the
20 van or the opposite side?

21 A The opposite side.

22 Q What is on that opposite side of the road?

23 A It's just a lot of brush, a lot of dead brush.

24 Q What about the side that he ran into? What's
25 over there?

1 **A** It's the same thing. A lot of dead brush.

2 **Q** Do you remember the trip to the hospital or the
3 ambulance showing up, Mr. Dill?

4 **A** I remember parts of it. It just seems like I
5 was in and out. Basically, the only thing I remember
6 when I got to the hospital is that I saw the bright
7 lights before they put me out. I remember somebody from
8 the sheriff's department or the FBI or somebody coming to
9 ask me a couple of questions. But when he asked, I
10 couldn't remember anything. I was just so hysterical. I
11 have real bad diabetes. My sugar was high. They was
12 trying to treat me for a lot of things at one time. I
13 wasn't able to answer any questions.

14 **Q** How long were you in the hospital, Mr. Dill?

15 **A** I was in there for seven days.

16 **Q** During the time that you were in the hospital,
17 were there parts of that time where you were awake and
18 parts of that time when you were --

19 **A** I was in a coma for three days. Then they
20 started bringing me out of the induced coma. They took
21 me out of ICU on the seventh day.

22 **Q** What injuries did you sustain to your hand as a
23 result of the shooting?

24 **A** My pinkie finger, the bones inside of the
25 pinkie finger is shattered. They put it together the

1 best they could. I didn't really want any pins or
2 anything. So they just put it together the best they
3 could at the time. I lost my vocal cord. And I lost my
4 vagus nerve which is in the same shoot beside the neck
5 which the vagus nerve affects my heart rate and my
6 stomach, which I will be on permanent medication for the
7 rest of my life.

8 Q And are you right or left handed?

9 A Right-handed.

10 Q Do you have any type of permanent injury to
11 that hand?

12 A Yes, sir. The pinkie finger. It'll just never
13 be straight.

14 Q When did you eventually give a written
15 statement to the investigator?

16 A It was almost exactly a year later.

17 Q And what was going on during that year's time?

18 A I was -- after the injuries had happened for a
19 couple of months, I tried to go back to work for -- I was
20 unable to work hardly any time. For the next six to
21 eight months, I was in the bed.

22 Q During the time that you were working, was it
23 part of your responsibilities to drive truck?

24 A Yes, sir.

25 Q During that particular time period, did

1 something happen? Did you get arrested?

2 **A** Yes, sir, I did.

3 **Q** Tell the jury about that.

4 **A** It was a breach of peace -- a breach of trust
5 is actually what it was. It came out. The company that
6 I was working for. That was in April, the end of April.
7 I tried to settle all that without going to court. They
8 didn't want to. We went to court. After the court date,
9 everything was paid in restitution and probation and
10 everything was taken care of.

11 **Q** Did you plead guilty to that charge?

12 **A** Yes, sir.

13 **Q** Did you -- have you made full restitution in
14 that case?

15 **A** Yes, sir. I have.

16 **Q** When did your probation end?

17 **A** December.

18 **Q** Did you indicate in your statement whether you
19 could still remember what happened to you over a year
20 later?

21 **A** Yes, sir. I can remember it. Seem like
22 vividly because I was getting counseling from where I got
23 on my wife's policy and just going through some rehab
24 trying to get my life straight.

25 **Q** Why specifically were you getting counseling?

1 **A** I was having tremendous nightmares. I couldn't
2 drive a truck during the rain. I was having multiple
3 problems.

4 **Q** Are you currently undergoing counseling?

5 **A** Yes, sir.

6 **Q** Does it seem to be helping?

7 **A** A little at a time. It's helping. I was
8 diagnosed with PTSD, so they are saying it could go away
9 in a year or it could last your whole life. It seems to
10 be getting better.

11 **Q** What is PTSD?

12 **A** Posttraumatic syndrome.

13 **Q** And Tammy still your fiancé?

14 **A** She's my wife now.

15 **Q** How long have y'all been married?

16 **A** Almost two years.

17 **Q** Please answer any questions Mr. Johnson may
18 have Mr. Dill.

19 **A** Okay.

20 **Q** Thank you.

21 **A** Uh-huh.

22 **MR. JOHNSON:** You may cross-examine the
23 witness, Mr. Johnson.

24 **MR. JOHNSON:** Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 **BY MR. JOHNSON:**

2 **Q** Mr. Dill, I know the Solicitor just mentioned a
3 breach of trust guilty plea. But you are telling the
4 truth here today, aren't you?

5 **A** Yes, sir.

6 **Q** Okay. I'm going to go back over some of your
7 testimony and just ask you a couple of questions, okay?

8 **A** That's fine.

9 **Q** You stated -- first, I want to go to some of
10 the events you recall when you were on the intersection
11 of Emile and Leone.

12 **A** Yes, sir.

13 **Q** And that's the area where you were shot.

14 **A** Yes, sir.

15 **Q** When you were there, you stated that when you
16 saw the suspect get out of the van, you came to the
17 middle of the road?

18 **A** He did.

19 **Q** Still, he had a hat on?

20 **A** Yes, sir. Well, it was a hoodie basically.

21 **Q** A hoodie?

22 **A** Yeah.

23 **Q** You said maybe a baseball cap too?

24 **A** No, I didn't say a baseball cap.

25 **Q** You never said that before?

1 **A** I might have in my statement, but I have to
2 look back at the statement.

3 **Q** Okay. So you may have said it before, but
4 you're not sure now?

5 **A** Correct. I just remember the hoodie and the
6 bandana.

7 **Q** Your, uh, -- your official testimony today
8 you're saying -- you're basically saying you saw a hoodie
9 and no baseball cap?

10 **A** Correct.

11 **Q** Okay. Now, I want to talk about, uh,
12 basically, uh, what you said in your previous statements.
13 You remember talking about -- on December 19th of 2008,
14 you remember talking to a FBI agent?

15 **A** On December 10th?

16 **Q** December 19th.

17 **A** 19th?

18 **Q** Uh-huh.

19 **A** Yes.

20 **Q** You remember talking to --

21 **A** Yes.

22 **Q** At that point in time, you didn't give a
23 written statement, but you kind of gave him a verbal
24 rendition of what happened?

25 **A** At that point, I was under so much medication,

1 like I told them in there, I couldn't remember anything
2 hardly at the time.

3 **Q** But you did speak with him?

4 **A** Yeah, I spoke with him.

5 **Q** Okay. Do you remember if you indicated that
6 you knew the race of the person who shot you?

7 **A** I don't remember if I did or not.

8 **Q** Do you, uh, -- would you believe me if I told
9 you that you said you couldn't tell?

10 **MR. FRETWELL:** Objection, Your Honor.
11 Improper impeachment.

12 **THE COURT:** I'll -- rephrase your question.
13 I'll allow him to explore that.

14 **BY MR. JOHNSON:**

15 **Q** Do you remember telling the investigator that
16 you couldn't tell the race of the person?

17 **A** No, I do not.

18 **MR. FRETWELL:** I object. He's asked and
19 answered.

20 **THE COURT:** I sustain the -- I overrule your
21 objection. I'll allow him to ask.

22 **MR. JOHNSON:** I'm sorry.

23 **THE COURT:** You may move on to your next
24 question.

25 **MR. JOHNSON:** Yes, sir, Your Honor. Okay.

1 BY MR. JOHNSON:

2 Q Now, I want to go back to where you first saw
3 the van and you were sitting at Applebee's. Okay. You
4 stated that when you saw the van from the Applebee's from
5 your prospective, the, uh, red smoke started coming out
6 of the driver's side window, is that right?

7 A Correct.

8 Q So it started in the parking lot at Applebee's?

9 A It's started in the parking lot of Bank of
10 Travelers Rest.

11 Q Bank of Travelers Rest, excuse me. And you
12 also noted that the passenger side window was closed?

13 A Correct.

14 Q And then you also stated that the car pulled
15 out of the Bank of Travelers Rest kind of hesitated for a
16 moment?

17 A Hesitated at the stop sign.

18 Q Hesitated at the stop sign and then took a
19 left.

20 A Correct.

21 Q And you were, uh, -- you were fast in pulling
22 behind him. You never lost sight of the van.

23 A Correct.

24 Q And during this time, red smoke was still
25 coming out of the window?

1 **A** Yes.

2 **Q** And at one point, the red smoke intensified,
3 didn't it?

4 **A** Uh, once we turned right onto Emile, yes.

5 **Q** Yes, so there was more red smoke?

6 **A** Correct.

7 **Q** And you think that was the dye pack?

8 **A** I'm just assuming.

9 **Q** You don't know?

10 **A** I don't know.

11 **Q** As far as you're concerned, that could be what
12 it was?

13 **A** Correct.

14 **MR. JOHNSON:** Uh, one second please, Your
15 Honor. (Pause.)

16 **THE COURT:** Yes, sir.

17 **BY MR. JOHNSON:**

18 **Q** Now, of course, I asked you before did you
19 talked to the FBI agent on December of 2008. You
20 confirmed that, right?

21 **A** Correct.

22 **Q** And then you gave a statement roughly a year
23 later in 2009.

24 **A** Correct.

25 **Q** And through all that, you still remember this

1 vividly?

2 **A** Correct. That year. That year.

3 **Q** It's just as vivid today as that red smoke
4 coming out of that van?

5 **A** Correct.

6 **Q** And there's no doubt in your mind that that's
7 what you saw?

8 **A** I dreamed it everyday.

9 **Q** And there's no doubt that you saw the driver's
10 head hanging out the window?

11 **A** Correct.

12 **MR. JOHNSON:** Nothing further at this time.

13 **MR. FRETWELL:** Your Honor, briefly, Your
14 Honor.

15 **THE COURT:** Yes, sir.

16 **REDIRECT EXAMINATION**

17 **BY MR. FRETWELL:**

18 **Q** Just to clarify, Mr. Dill, when you talk about
19 hesitation at a stop sign, is that coming out of the bank
20 parking lot is that at Marion Road?

21 **A** That's at Marion Road.

22 **Q** All right. So no hesitation coming out of the
23 bank itself?

24 **A** No hesitation at all.

25 **Q** With respect to Mr. Johnson asking you about a

1 baseball cap, that statement that you gave in December of
2 2009, is that the statement? About two-thirds of the way
3 down. If you saw anything that resembled a baseball cap?

4 **A** (Reviewing.) It just says basically I remember
5 seeing something gray, maybe the bill of a baseball cap.

6 **Q** That's what you said in 2009?

7 **A** Uh-huh.

8 **MR. FRETWELL:** No further questions, Your
9 Honor.

10 **THE COURT:** All right. Thank you, Mr. Dill.
11 You may step down.

12 This is a very good time, Ladies and Gentlemen,
13 for us to break for the day. You've had a busy day
14 for a Monday. We'll be ready to start back at nine
15 o'clock tomorrow. If you'll be in your jury room
16 then, we'll be ready to proceed.

17 Let me give you a few reminders as you, uh,
18 leave this evening. First of all, you shouldn't be
19 discussing this case. As you get back in your jury
20 room tomorrow before everyone gets in, you shouldn't
21 be discussing the case. You're obviously going to
22 have curious family members, loved ones, business
23 associates if they know you had jury service this
24 week. They'll want to know did you get picked, what
25 it's about and let me tell you what I know about

1 that.

2 Ladies and Gentlemen, it would be improper for
3 you to talk with anyone or let anyone talk with you.
4 That's against your oath in this case. You've made
5 a high commitment. You've sworn to both of these --
6 to the court and the parties both the State and Mr.
7 Boyd that you're going to try the case on the
8 evidence. The evidence only takes place in this
9 courtroom. If someone wants to share some
10 experiences with you and ask you some questions or
11 otherwise, let them know you've made that commitment
12 and I've instructed you not to talk about the case.
13 You're going to have plenty of time when this case
14 is over to discuss this case, but while the case is
15 going on is not the time to do this.

16 Obviously, there may be some news articles,
17 television, radio newspaper, news reports. Don't
18 listen to any reports. Your loved ones can clip any
19 articles you just feel you've got to see but that
20 needs be after the case is over and done with.
21 We're a highly technological age. As you see, we
22 used technology in the courtroom today and getting
23 it to work.

24 I give you this instruction not to tempt you
25 but because of the importance of it. It's

1 instruction from the Chief Justice of South Carolina
2 that all trial judges are to give jurors who have
3 been selected to try a case. Not only are you not
4 to discuss the case or read any reports, you're not
5 to do any independent research. We're curious by
6 nature. You might want to ride by the scene and
7 check it out or go to the library or do some
8 checking on archives or historical data, that would
9 be improper for you to do that.

10 These fine attorneys are going to give you all
11 the information you need to make a good sound
12 decision on this case. And your commitment is that
13 you are going to decide it based on what you're
14 given out of this courtroom. Your instruction is
15 you are not to do any independent research or check
16 on any recordings about this case. Like I say,
17 after the case, you can do any research you want to
18 but not while the case is going on. You can't do
19 any research directly or telephonically or any of
20 the media or social networking or otherwise that we
21 have.

22 This is your day to be the jury in this case
23 and this case alone. We have 12 people to do that
24 along with our two alternates. We don't know how
25 long this case may take place. We don't know of

1 what unforeseen occurrences. We certainly hope an
2 emergency doesn't take place. We need all of you
3 here. We need you to fulfill the commitment that
4 you have taken. With that in mind, have a nice
5 evening, Ladies and Gentlemen. We'll see you back at
6 nine o'clock tomorrow.

7 **(WHEREUPON, the jury exits at approximately**
8 5:20 p.m.)

9 **THE COURT:** All right. We'll be at ease
10 until nine o'clock in the morning. If there's
11 anything you know of that we need to address before
12 the jury starts, let me know.

13 **MR. FRETWELL:** Yes, sir. Nine o'clock?

14 **MR. JOHNSON:** 9:00.

15 **(WHEREUPON, the Court adjourns for the day at**
16 approximately 5:21 p.m.)

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 12th day of July, 2011 at approximately 9:15 a.m.)

THE COURT: The State ready to proceed?

MR. FRETWELL: Yes, we are, Your Honor.

THE COURT: The defense ready? Mr. Johnson, you ready?

MR. JOHNSON: Yes, sir, Your Honor.

THE COURT: Let's have our jury come in if they are here now. Some of them were running a little late today.

THE BAILIFF: Ready, Your Honor?

THE COURT: Yes, sir.

(WHEREUPON, the jury enters at approximately 9:16 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. We're now ready to proceed with the trial of the case. Solicitor, you may call your next witness.

MR. FRETWELL: May it please the Court, Your Honor. The State calls Shawn Peter Rafferty.

THE CLERK: Mr. Rafferty, if you'll, pause at the end of the bench. Please place your left hand on the Bible and raise your right hand.

SHAWN RAFFERTY

1 having first been sworn, testifies as follows:

2 **THE CLERK:** Thank you. Please be seated.

3 Please state your full name for the record.

4 **THE WITNESS:** Shawn Peter Rafferty.

5 **DIRECT EXAMINATION**

6 **BY MR. FRETWELL:**

7 **Q** Good morning, Mr. Rafferty.

8 **A** Good morning, sir.

9 **Q** Mr. Rafferty, how old are you?

10 **A** 66.

11 **Q** Do you live in Greenville?

12 **A** Yes, sir.

13 **Q** How long have you lived in the Greenville area?

14 **A** Most of my life.

15 **Q** How far did you go in school?

16 **A** I completed the 12th grade.

17 **Q** Where are you currently employed?

18 **A** At the Mutual Home Stores in west Greenville.

19 **Q** What kind of work do you do for the Mutual Home
20 Stores?

21 **A** Credit manager.

22 **Q** What does that mean?

23 **A** Uh, I have domain over the account to try to
24 keep folks paying. And in rare cases when they forget
25 their way into the store, I encourage them to come back

1 to us.

2 Q And how long have you been working with Mutual
3 Home Stores?

4 A I'm in my 26th year.

5 Q Are you married?

6 A Yes, sir.

7 Q How long you been married?

8 A 43 years.

9 Q Do you and your wife have any children?

10 A Two children.

11 Q Let me take you to the late morning hours of
12 Wednesday, December 10th, 2008. Were you working that
13 particular day, Mr. Rafferty?

14 A No, sir.

15 Q Were you in the vicinity of Emile and Leone
16 Street that morning?

17 A Yes, sir.

18 Q For what purpose?

19 A I was going to Walmart.

20 Q What time did you arrive in the area of Emile
21 Street that particular day?

22 A Before noon.

23 Q Okay. Let me show you what's been marked as
24 State's Exhibit 25 through 27. Do you recognize the area
25 that's depicted in those photographs?

1 **A** Yes, I do.

2 **Q** Take a look at all three of them if you would
3 for me please, sir.

4 **A** Yes, sir. I do.

5 **Q** Do they accurately reflect what they depict in
6 those particular photographs?

7 **A** Yes, sir. They do.

8 **MR. FRETWELL:** Your Honor, at this time, I
9 would move State's Exhibit 25 through 27 into
10 evidence.

11 **THE COURT:** Any objection?

12 **MR. JOHNSON:** Without objection.

13 **THE COURT:** Exhibits 25, 26, and 27 are
14 admitted into evidence and may be published to the
15 jury.

16 **(WHEREUPON, State's Exhibits 25, 26 and 27 are**
17 **admitted into the record.)**

18 **BY MR. FRETWELL:**

19 **Q** Mr. Rafferty, what route did you take to get to
20 Walmart that particular day?

21 **A** I turned off of 253 and was coming down Emile
22 across the little Leone crossroad. That's where I was
23 and going out Leone or intended towards West Marion Road
24 to go to Walmart.

25 **Q** Okay. And what happened when you approached

1 the intersection of Leone and Emile Street?

2 **A** It was raining. As I pulled up, I could
3 observe a white pickup truck sitting catacornered at the
4 intersection. My immediate thought was that he was out
5 of state perhaps by being only a block of White Horse
6 Road. I thought perhaps he was lost as we all may have
7 become when you're out of town perhaps.

8 **Q** All right.

9 **A** And I stopped at this point.

10 **Q** All right.

11 **A** To allow him to, if he was lost, to go where he
12 needed to go.

13 **Q** And when you stopped, uh, were you behind him,
14 beside him? How were you positioned in relation to this
15 vehicle that was in the intersection?

16 **A** At first, I was behind him. I was in the road
17 giving him plenty of space to do whatever he -- I thought
18 he may need to do.

19 **Q** Okay. And what happened at that point?

20 **A** After a few seconds, I saw that he was just
21 sitting there. I said, well, I'm going to go on. That's
22 when I pulled up beside him to pass him. I was on the
23 left side. He was to my right.

24 **Q** Okay. What happened at that point?

25 **A** At that time, I heard a pop. And I looked, as

1 we would do, as a reflex to my right. It was a wisp of
2 smoke going up from the white pickup truck in the
3 windshield wiper area.

4 Q Okay. Did you think anything of that at the
5 time?

6 A Not -- not -- not at the moment, no. It was
7 odd but I didn't associate it at the point at that very
8 instant with what was going to be revealed.

9 Q And then tell us what happened after you saw
10 that on the windshield area.

11 A I begin to -- I just lift my foot off the
12 brake. I was rolling towards -- going down Emile Street.
13 Then I saw a gentleman there in the road, uh, white van,
14 window down. He was in the road. He motioned for me
15 with his left hand, like to come ahead. But I didn't. I
16 stopped. In that fleeting second when I stopped, then he
17 took a more erect stance and pointed straight at me with
18 a straight arm. I sensed that this was not where I
19 needed to be. I immediately put the pickup truck in
20 reverse and backed up to get myself out of that
21 situation.

22 Q Could you describe the individual that you saw?

23 A He was an African-American gentleman. Had on a
24 hoodie, jeans. Uh, that was about the most noticeable
25 thing.

1 Q Okay. How could you tell he was African-
2 American?

3 A I could see the hand when he motioned for me
4 this way obviously. It was just with all respect at a
5 distance that you could discern one's race, but just by
6 observation, I guess, would be the best way to put it.

7 Q All right. Did he have any gloves on his hand
8 or anything across his face?

9 A There was no glove on the hand at that time.

10 Q Okay.

11 A That I saw and no bandana that I saw over his
12 face that would make me.

13 Q Okay. Now, once you saw that individual, you
14 said you backed up?

15 A I backed up.

16 Q Could you turn around and back up? Tell the
17 jury how you backed up.

18 A I just showered down on that pedal and backed
19 straight up to the intersection. I turned to my left.
20 Then I went down back in that little street and got in
21 the middle of 253 and called 911.

22 Q Mr. Rafferty, when you backed up, was the white
23 pick up truck still in the intersection like it had been
24 before?

25 A No.

1 Q Where was the white pickup truck or did you see
2 the white pickup truck?

3 A I saw the white pickup truck.

4 Q Tell us where you saw the white pickup.

5 A He had evidently turned around in the driveway
6 from that crossroad and was coming back to the
7 intersection to stop as pictured in the picture that we
8 just looked at.

9 Q When you backed up at that intersection, were
10 you able to still see that individual in the roadway?

11 A I saw him leap off into the woods to his left.

12 Q Is that on the same side of the street as the
13 van or the opposite --

14 A The opposite side.

15 Q Okay. All right. Let me show -- let me
16 publish State's Exhibit 25. Mr. Rafferty, you have a
17 little pointer up there on the -- if you can orient the
18 jury as to where we are seeing right now, where you came
19 down, where you saw different things that you just
20 described.

21 A This is the intersection of Emile and Leone. I
22 was coming this way. When I first got there, the white
23 pickup was sitting catacornered here. I stopped right
24 here to allow him a moment to get his thoughts. I come
25 around to the left side at that point to past him.

1 Q On Emile?

2 A On Emile.

3 Q Okay. When you backed up, how far back did you
4 drive backwards?

5 A Just far enough to get here to come this way
6 here. I went around the block to 253.

7 Q Okay. Let me show you State's Exhibit 26.
8 What do you recognize in that photograph?

9 A This is a van, the white van. When the
10 gentleman departed, he was standing here in the road.
11 When he bolted, he went straight across into these woods.

12 Q And then finally, State's 27. First of all, is
13 that the truck that you saw in the intersection?

14 A Yes, sir.

15 Q Tell the jury which way you left when you left
16 the area.

17 A I went out Leone. It takes a curve and runs
18 parallel with Emile and empties into 253.

19 Q Can you show on this picture with your little
20 dot which direction we're traveling?

21 A At this point, he's stopped. I went back this
22 way.

23 Q Thank you, sir. All right. At this point, I'm
24 going to ask you to step down from the witness chair. Do
25 you recognize this area of detail?

1 **A** Yes, sir.

2 **Q** Okay. And just be sure that all the jurors can
3 see what you're doing and speaking loudly enough for the
4 Court Reporter to hear you.

5 **A** Sure.

6 **Q** Can you show on that map how you approached the
7 intersection, what you saw and then how you left?

8 **A** I come down this way. This plant is closed. I
9 come down this way to the intersection. That's where the
10 white truck was sitting catacorner. I went just a little
11 further on when I realized that it was time to exit. I
12 backed up through here and went this way and come around
13 253.

14 **Q** All right. Thank you, sir. If you could, take
15 your seat back on the witness stand please.

16 **A** (Witness complies.)

17 **Q** Mr. Rafferty, even though you could tell that
18 the individual was African-American, were you close
19 enough to be able to identify him in any manner?

20 **A** No, sir.

21 **Q** Did you see a gun?

22 **A** No, sir.

23 **Q** What was the specific reason that you threw the
24 car in reverse and drove backwards?

25 **A** After seeing the smoke and seeing his stance

1 when he pointed at me, I felt then this might be a gun
2 and I was afraid. Scared. I needed to leave.

3 Q You said when you arrived on Highway 253, is
4 that also known as Blue Ridge?

5 A Yes, sir.

6 Q Okay.

7 A West Blue Ridge Drive.

8 Q That you contacted 911?

9 A I pulled out of the side street onto the
10 median, stopped and called 911 immediately.

11 MR. FRETWELL: Your Honor, at this time, the
12 State wishes to publish tracks 3 and 4 of State's
13 10.

14 THE COURT: Without objection, you may
15 publish.

16 (WHEREUPON, tracks 3 and 4 of State's Exhibit 10 are
17 played.)

18 BY MR. FRETWELL:

19 Q Mr. Rafferty, did you return to the scene as
20 the 911 operator requested?

21 A Yes, I did.

22 Q And did you meet with any deputies there?

23 A Yes, I did.

24 Q Did you tell them the things that you had told
25 the 911 operator?

1 **A** Yes, I did.

2 **Q** Did you also tell them about the direction that
3 you had seen the individual flee?

4 **A** Yes, I did.

5 **Q** What did you do after you -- did you leave that
6 area for any reason?

7 **A** After I had spoke with the deputies, they asked
8 me to come to the law enforcement center and give a
9 statement and I did that.

10 **Q** You did that. At some point, did you come back
11 to the area?

12 **A** After I give my statement, they asked me to
13 come back to the scene.

14 **Q** What occurred at that point?

15 **A** When I got back, then I walked down to the area
16 where the van was. They were asking, you know, about
17 where did he jump off into the woods. I pointed to the
18 best of ability this is where he went into the woods.
19 There's coins in the ground where he evidently exited the
20 area.

21 **Q** Did you ever leave that roadway when you went
22 back? Did you go off into the woods?

23 **A** No, no, no, no.

24 **Q** All right. Please answer any questions that
25 Mr. Johnson has for you.

1 **A** Sure.

2 **CROSS-EXAMINATION**

3 **BY MR. JOHNSON:**

4 **Q** Mr. Rafferty, I'd just like to go over just a
5 small part of your testimony.

6 **A** Certainly.

7 **Q** Yes, sir. You stated, uh, what you noticed was
8 that the suspect had on a hoodie?

9 **A** Yes.

10 **Q** Could you describe the hoodie? Was the hoodie
11 black, gray?

12 **A** I think -- and what I told the officer, I told
13 him that it was gray. That's what's recorded or what's
14 on the paper.

15 **Q** Yes, sir. Was it big? Was it baggy or was it
16 thin?

17 **A** It was just a traditional Walmart hoodie. He
18 had the hood up. What I had seen depicted looked
19 correct.

20 **Q** So with the hood up, you mean like over his
21 head?

22 **A** Yes.

23 **Q** Okay.

24 **A** Like you would in the rain.

25 **Q** Yes, sir. Describing a traditional hoodie, it

1 would be baggier than say my jacket. Would this -- would
2 it describe this one?

3 **A** It would -- I'm, you know, assuming it fit him.
4 It didn't look unusual as if it was oversized or
5 anything. No.

6 **Q** So it was just a regular --

7 **A** It would be what anyone in this room would
8 select when they went to Walmart to get it.

9 **Q** Yes, sir. And you also said you, uh, noticed
10 that he had on jeans?

11 **A** Yes.

12 **Q** And he had, uh, as far as you can tell no
13 gloves and that's how you could tell his race?

14 **A** Yes, that's correct.

15 **Q** And as far as you could tell, no bandana?

16 **A** That is correct.

17 **Q** Uh, let's see. I'm showing you what's been
18 previously marked as State's Exhibit 19.

19 **A** Yes, sir.

20 **Q** Now, I'm going to point your attention to the
21 wooded area.

22 **A** All right, sir.

23 **Q** Basically, what I'm going to do is draw a
24 comparison as to what it looks like today during the
25 summer as to what it looks like back then. In that

1 picture there, is there a lot of vegetation alive? Is
2 there a lot of leaves and stuff on the trees at this
3 point?

4 **A** Now?

5 **Q** At this point in the picture.

6 **A** In the picture, no.

7 **Q** No, sir. Why do you think that is?

8 **A** We know it's wintertime.

9 **Q** Wintertime?

10 **A** Obviously.

11 **Q** Okay. You also stated, uh, when the, uh,
12 suspect was in the middle of the road.

13 **A** Yes, sir.

14 **Q** That's when you first noticed him?

15 **A** Yes, sir.

16 **Q** And you noticed a puff of smoke?

17 **A** I saw the puff of smoke after the pop sound.

18 **Q** So you heard a popping sound, then the puff of
19 smoke.

20 **A** Can I say simultaneously?

21 **Q** Yes, sir. Of course. And at this point, he
22 was standing in the middle of the road?

23 **A** He was in the road.

24 **Q** Did he ever go -- did the suspect ever go back
25 to the van?

1 **A** No, he did not.

2 **Q** So you heard a popping sound and a puff of
3 smoke and that's what you believed to be a gunshot?

4 **A** At first when this took place, I saw the --
5 heard the noise, saw the smoke and then was moving on.

6 **Q** After you heard that, uh, -- moving on, you
7 mean he moved on to the --

8 **A** I began to go towards the suspect.

9 **Q** And then he moved towards the wooded area?

10 **A** That's when he pointed at me.

11 **Q** That's when he pointed at you.

12 **A** He motioned for me to come forward. I had
13 stopped. He motioned for me to come forward. I didn't.
14 Then he took the stance and pointed then what I believed
15 to be the gun.

16 **Q** After that point in time is when you started to
17 back up?

18 **A** I backed up immediately.

19 **Q** When you were backing out, is that when he ran
20 into the woods?

21 **A** Yes, sir.

22 **Q** And didn't return to the van?

23 **A** He did not return to the van.

24 **Q** Okay. Thank you.

25 **REDIRECT EXAMINATION**

1 **BY MR. FRETWELL:**

2 **Q** Mr. Rafferty, how quickly did all this occur?

3 **A** In a matter -- if you mean pulling up to the
4 intersection included, you know, a minute and a half at
5 the most.

6 **Q** Once you moved past that van and started
7 down --

8 **A** Pickup.

9 **Q** Pickup and started down the road, stopped and
10 then backed up, what kind of time frame are we talking
11 about?

12 **A** 15 seconds.

13 **Q** Very quickly?

14 **A** Very quickly.

15 **Q** And as you said before, when you backed up to
16 the area of that intersection, the man is still in the
17 woods, is that correct?

18 **A** He jumped over the ditch into the woods.

19 **Q** He was headed -- okay. Now, you said in
20 response to a question by Mr. Johnson, I think he made
21 reference to the fact that you might have been able to
22 see his race from his hands. You had also seen his face,
23 is that correct?

24 **A** Yes. There was no covering on the face.

25 **Q** And then Mr. Johnson asked you something about

1 the wintertime and those pictures. Those pictures
2 accurately display what that looked like at that time,
3 did they not?

4 **A** Without question. Without question.

5 **Q** Okay. Once that individual went into the
6 woods, could you see him anymore?

7 **A** No.

8 **MR. FRETWELL:** No further questions, Your
9 Honor.

10 **THE COURT:** All right. Thank you, sir. You
11 may step down, Mr. Rafferty.

12 **MR. FRETWELL:** May it please the Court. Your
13 Honor, the State would call Ramon Rivera.

14 **THE CLERK:** Sir, please place your left hand
15 on the Bible and raise your right hand.

16 **RAMON RIVERA**
17 having first been sworn, testifies as follows:

18 **THE CLERK:** Thank you. Please be seated.
19 Please state your full name for the record.

20 **THE WITNESS:** Ramon Rivera.

21 **THE CLERK:** Thank you.

22 **DIRECT EXAMINATION**

23 **BY MR. FRETWELL:**

24 **Q** Morning, Deputy.

25 **A** Morning.

1 **Q** How long have you worked for the Greenville
2 County Sheriff's Office?

3 **A** Since 2002.

4 **Q** About --

5 **A** Nine years. Almost 10.

6 **Q** All right. And to what unit are you currently
7 assigned?

8 **A** Currently assigned to the K-9 unit.

9 **Q** Okay. And Deputy Rivera, if you will, try to
10 move that microphone just a little bit closer to you.
11 Make sure you speak nice and loudly so everyone can hear
12 you.

13 **A** All right.

14 **Q** All right. When you say you're assigned to the
15 K-9 unit, tell me what that means?

16 **A** Basically, I'm a dog handler. I handle a dog
17 which is trained to work with human odor and drug odor.

18 **Q** How long have you been a K-9 handler?

19 **A** I've been a K-9 handler for four and some
20 change years, since 2007. March 5th, 2007 is when I
21 first got that dog.

22 **Q** Do you have any prior military experience?

23 **A** Yes, sir. I was in the Marine Corps as an
24 engineer for four years, from 1998 to 2002.

25 **Q** And have you received any accommodations as a

1 deputy sheriff?

2 **A** I actually received several. I don't have them
3 listed here, but several accommodations from lieutenants
4 and sergeants in different cases.

5 **Q** All right, sir. What is the name of your K-9
6 partner?

7 **A** His name is Smeris.

8 **Q** How old is Smeris?

9 **A** Smeris is seven and a half almost.

10 **Q** And how long has Smeris been in service?

11 **A** Smeris has worked for the sheriff's office for
12 five years, four of which were with me.

13 **Q** What law enforcement functions does Smeris
14 perform?

15 **A** Smeris is a dual purpose K-9, which means that
16 he works with human odor and drug odor.

17 **Q** When you say he works with human odor, can you
18 break that down and tell me specifically what that means?

19 **A** More specifically, the human odor part is
20 finding people in areas, finding people in buildings,
21 tracking, finding articles that have human scent on them
22 as well as the part of arresting or apprehending suspects
23 that are fleeing or something to that nature, through the
24 use of his mouth obviously.

25 **Q** Was Smeris deployed on a human track on

1 December 10th, 2008?

2 **A** Yes, sir. He was.

3 **Q** Had he performed human odor detection prior to
4 that day?

5 **A** Yes, sir. He had.

6 **Q** Had he demonstrated reliable?

7 **A** Yes, sir. He has.

8 **Q** What kind of training -- what kind of training
9 had Smeris received as of December the 10th, 2008?

10 **A** With me, as a team, we had gone through a 600-
11 hour course. This course covers training methodology,
12 canine breeds, canine anatomy, canine drive behaviors
13 that the dog displays, practical application with a dog,
14 meaning you actually work the dog under supervision as
15 well as case law that governs the use of canines.

16 **Q** How many tracks had he performed prior to
17 December 10th, 2008?

18 **A** Prior to that date, we had been deployed on the
19 road 295 times, 42 of them were tracks. In addition to
20 that, we had had 648 hours of training, 63 training
21 tracks.

22 **Q** What kind of training had you received as of
23 December the 10th, 2008?

24 **A** As of December, because we're a team, basically
25 it's considered that we both do this thing at the same

1 time. I also received 648 hours of training. In
2 addition to that, the initial 600-hour training course
3 when you first get your dog, since then, we had done
4 several certifications, which basically just put you to
5 the test as well as the master trainers that come down to
6 certify us. Give you tips and stuff for what you can do
7 to change certain behaviors and make them better.

8 Q You mentioned certification. Have you or
9 Smeris been certified by any organizations?

10 A Yes, sir. We've done certification twice
11 through the North American Police Work Dog Association.
12 They are basically a national association that comes in
13 and they serve to certify you as a third party, meaning
14 they have no interest in you so they observe you
15 objectively to see if you meet the qualifications or not.

16 Q Do they do accreditation for other law
17 enforcement agencies because the Greenville --

18 A Yes. All over the United States they hold
19 seminars. They hold national certifications as well as
20 like we do. We do a small certification for all the
21 Greenville county K-9 handlers, as well as Greenville
22 City, Travelers Rest, sometimes Greer, some Pickens and
23 some Anderson.

24 Q Before they certify you, do they require
25 anything in particular?

1 **A** You have to be a member. So you have to get
2 your paperwork filled out for them. The first thing that
3 you have to pass is obedience. If you don't pass basic
4 obedience, you can not move on to the rest of the
5 articles.

6 **Q** What is in-house proficiency?

7 **A** An in-house proficiency is a test. It's kind
8 of like the NAPWDA certification, but not quite as
9 detailed. Basically, once you get done with your 600-
10 hour course, you're still a new handler. In order for
11 the sheriff's office to be certain that you can do the
12 job that you set out to do, we bring trainers from
13 different locations. My certification or in-house
14 proficiency, we brought one in from Travelers Rest and
15 one from Spartanburg County. These two separate handlers
16 will evaluate you doing those same tasks. In turn,
17 they'll provide a third-party opinion of whether you're
18 ready or not to move on to solo handler on the road.

19 **Q** Did you pass the in-house proficiency?

20 **A** Yes, sir, I did. On June 26, 2007, I passed
21 that proficiency.

22 **Q** With Smeris?

23 **A** Yes, sir.

24 **Q** How often are you certified with the National
25 American work -- Police Work Dog Association?

1 **A** That's just called NAPWDA for simplicity. We
2 do it yearly.

3 **Q** Okay.

4 **A** I did one in November 29th of '07 and December
5 5th of '08.

6 **Q** Okay. Does Smeris go through additional
7 training?

8 **A** Smeris and all the other dogs go through a
9 mandatory weekly, it's called maintenance training. On
10 that maintenance training, we address any issues that may
11 have come up as well as practice and improve on the
12 issues or the tasks that he already does.

13 **Q** What breed of dog is Smeris?

14 **A** Smeris is a Belgian Mallinois.

15 **Q** Is this a breed that is commonly used for human
16 tracking?

17 **A** Yes, sir. It is.

18 **Q** Is this a breed known for its acute power for
19 scent?

20 **A** Yes, sir. It is.

21 **Q** Do you keep up with literature and updates in
22 the field of dog handling?

23 **A** Yes, sir. I do.

24 **Q** And how long have you been using K-9s in a law
25 enforcement capacity?

1 **A** I have personally used a K-9 since March 5th of
2 2007.

3 **MR. FRETWELL:** Your Honor, at this time, the
4 State would ask to move -- to qualify this witness
5 as an expert in canine human odor detection.

6 **THE COURT:** Any voir dire? Any objection?

7 **MR. JOHNSON:** No objection, Your Honor.

8 **THE COURT:** All right. Without objection,
9 this witness will be qualified as an expert in
10 canine human odor detection.

11 Ladies and Gentlemen, let me explain just
12 briefly to you about an expert witness. Normally, a
13 person can't give an opinion when they are called
14 upon to testify. They can testify to what they have
15 seen or heard or experienced in some way. There is
16 an exception, however, when a person is qualified
17 because of education and experience and they are
18 permitted to give opinions and the basis of that
19 opinion once they are qualified based on that
20 expertise. Therefore, this witness will be able to
21 give an opinion in that area of expertise. This
22 doesn't mean that you must accept that opinion.
23 It's evidence for you to consider as you see fit and
24 use in any way that you think appropriate.

25 All right, Solicitor. You may continue your

1 examination.

2 **MR. FRETWELL:** May it please the Court, Your
3 Honor.

4 **BY MR. FRETWELL:**

5 **Q** Deputy Rivera, let me take you to Wednesday,
6 December 10th, 2008. Were you working that day?

7 **A** Yes, sir. I was.

8 **Q** Uh, what day of the week was that? Do you
9 recall?

10 **A** This was our mandatory Wednesday of training.

11 **Q** And where specifically was the training -- or
12 tracking team training that particular day?

13 **A** The training site for that day was Parker
14 Middle or Parker Academy off of Woodside Avenue.

15 **Q** Okay. Did you respond to the area of Emile and
16 Leone Streets that day?

17 **A** Yes, I did.

18 **Q** For what purpose?

19 **A** We had heard the tones on the radio, basically
20 some special tones that are designated only for armed
21 robberies. Upon hearing the tones, I got in my car and
22 started heading to the bank.

23 **Q** Did you receive any updates on the way to
24 the --

25 **A** Yes, sir. On the way to the bank, we received

1 updates that the suspect had possibly been spotted on
2 Emile Road. Someone had been injured as a result and the
3 subject had gone into the woods in an unknown direction.

4 **Q** Okay. When you say an unknown direction --
5 once you arrived on the scene -- tell the jury what you
6 mean by unknown direction.

7 **A** Okay. If you could imagine that the woods is
8 just a big wall. Once you go into those woods, if you go
9 into a right direction, you'll come back out on the road.
10 If you go more or less straight and to the right, you'll
11 come at the field. If you go left, you just kind of go
12 in the middle of more woods. So it was unknown if he had
13 actually gone towards the park or gone towards the road
14 or gone towards just the woods.

15 **Q** Did you have basically a location of initial
16 entry?

17 **A** Yes, sir. We had location of initial entry.

18 **Q** Okay. Now, once -- were you the first K-9
19 officer to arrive on the scene?

20 **A** Yes, sir.

21 **Q** Okay. Did anyone else arrive with you or close
22 behind?

23 **A** Shortly after or right behind were Deputy
24 Cannon and Deputy Hal Harris.

25 **Q** Okay. Are they regular deputies or are they

1 members of the K-9?

2 **A** At that time, they were. One still is and one
3 isn't. They were dog handlers which also serve as cover
4 members for other handlers when they are doing --

5 **Q** All right. What did you do once you arrived on
6 Emile Street?

7 **A** Upon arrival, the first thing I did was -- I
8 knew they were close behind. I let them gather
9 information while I got my dog ready. What that means is
10 I have to get my dog out of the car, go to the back of
11 the car, get a tracking harness. Instead of the dog
12 tracking with a collar, which would restrict his
13 breathing, we put a harness that puts the weight on his
14 chest, that way he can last longer. While I was getting
15 him, uh, saddled up with that, the other deputies went
16 and grabbed the information necessary.

17 **Q** And were you all given a description of the
18 suspect?

19 **A** Yes, sir.

20 **Q** Were you shown the location of this white van?

21 **A** Yes, sir.

22 **Q** Were you given a specific area of entry into
23 the woods?

24 **A** Yes, sir. We were told to the driver's side of
25 the van across the street into those woods.

1 **Q** Talk to the jury about deploying Smeris. What
2 happens when you deploy an animal?

3 **A** First thing you have to do when you deploy an
4 animal is get him ready with the appropriate equipment.
5 In the case of tracking, we put a tracking harness.
6 Given the information we were given, which was that he
7 fled from a van in a straight line into the woods, I want
8 to put him in the best possible location to succeed.
9 Generally, if we can, we'll take him to the place where
10 the suspect was last confidently sighted. In that case,
11 would have been inside the van. What we'd normally do is
12 put him in the van and let him smell that odor and then
13 start him on a track.

14 **Q** Did you do that in this case?

15 **A** In this case, we could not do that.

16 **Q** Tell us why.

17 **A** When I got close to the van to start doing
18 that, it was obvious that some kind of an irritant, which
19 I thought was pepper spray or something like that, had
20 been sprayed in the car. That would just serve to
21 irritate the dog's nose and just take him longer to
22 acquire it. We just decided to skip that altogether.

23 **Q** Okay. So tell the jury what you did to deploy
24 your dog further.

25 **A** Absent of having that last 100 percent absolute

1 sighting where he would be standing to get an odor, what
2 I did was I started him about a car-length in front of
3 the van. This way, when I told him to sniff out, the
4 exact command is "snuift". The dogs are trained in Dutch
5 to avoid any confusion. I told him his tracking command.
6 I started him in such a way where eventually he would
7 cross where the suspect was last seen running. When he
8 got to that point, he would pick up the odor and follow
9 in the proper direction.

10 Q All right. Before we would talk about what he
11 specifically did, you mentioned earlier cover officers.

12 A Yes.

13 Q Could you explain what a cover officer is and
14 who was serving in this capacity?

15 A Okay. Cover officers are people who are there
16 to help you more or less. In this case, the two cover
17 officers were the ones that got there right after me,
18 which were Deputy Hal Harris and Deputy Cannon. Their
19 duty is to protect you.

20 If you have a dog in one hand and whatever else
21 you need, whether you are pushing trees or you are
22 picking something up, you don't have the availability to
23 immediately, should you need to, draw tools from your
24 belt and use them or in this case, draw your gun to
25 protect yourself. These two deputies run along you or to

1 the right or left of you so that if needed they can
2 protect you. Another reason is let's say that we start
3 tracking and encounter a compliant person, not a suspect,
4 but just a person. He say, hey, I'm okay, hey. Well,
5 because you have this dog and this dog is focused on a
6 task of finding and biting someone, in order to not
7 expose myself to liability and not expose that purpose to
8 the danger of being bitten, these cover officers will go
9 up and say, hey, man, you know what's going on or other
10 situation.

11 Same thing if you meet a suspect who is
12 compliant. This is the guy. This is the suspect. He's
13 complying with our commands. I would simply, from that
14 point, transition to being cover once again to avoid
15 biting a man who doesn't need to be bitten. The cover
16 officer would take him into custody.

17 **Q** And both of these cover officers are trained
18 dog handlers?

19 **A** They are certified trained dog handlers.

20 **Q** Okay. All right. Do the cover officers know
21 how to stand and how to make sure they don't interfere
22 with the track?

23 **A** Yes, sir. Because they are experienced, they
24 know what the dogs are likely going to do once they begin
25 tracking. So as a common practice, we have them about 15

1 feet to our right and 15 feet to our left. Sometimes a
2 little back, but generally within 15 feet to your right
3 and to your left.

4 The reason we do that is, one, in case the dog
5 gets close, his odor won't interfere and, two, that way,
6 if I'm in the middle, they are to my right and my left
7 and something happens, they can effectively view the
8 entire area without me interfering in their line of
9 vision.

10 Q When you trained during these weekly
11 maintenance trainings, does your dog come in contact with
12 other K-9 handlers such as Deputy Cannon and Deputy
13 Harris?

14 A Yes, sir.

15 Q So he's familiar with their scent?

16 A Yes, sir.

17 Q Tell the jury what is the purpose of a cover
18 officer when you have to change dogs?

19 A Okay. Let's say with track -- let's just do a
20 nice number of 100 yards. Well, I know that I had the
21 track up to that 100 yards and, for whatever reason, it's
22 time to switch. Instead of everyone coming out and then
23 trying to find the track, one cover officer will stay
24 there to watch the scene. One will come with me. We'll
25 walk out. We'll secure.

1 The next handler will meet this cover member
2 and he will take them back to the location that he's got
3 to start his locator. That serves a couple of reasons.
4 One, you're not over contaminating the area. If I'm
5 going in that direction and I know that I had it up to
6 that door and I know that nobody's gone beyond that door,
7 necessarily, that odor will follow that same path. In
8 order for that to not be contaminated, the cover simply
9 stops there, does not let anyone else past that point. A
10 handler can come just past that decoy -- just past that
11 cover member and say here's the odor, this is where you
12 have to start your dog.

13 **Q** Okay.

14 **A** So it's kind of like a gate if you would.

15 **Q** All right. Let me show you a couple of
16 exhibits that have already been entered into evidence.
17 Put this up on the screen. Deputy Rivera, do you see the
18 little pen that's sitting on the --

19 **A** Yes, sir.

20 **Q** That's a pointer where you can use the little
21 red dot to show us. Based on this picture, which is for
22 the record State's Exhibit 20, can you show us what you
23 did when you arrived and started to deploy Smeris?

24 **A** Yes, sir. I basically stop right here around
25 where this truck is close to the intersection. When I

1 got him ready, he walked up along the road. Once we got
2 within a car length or so, I could smell the pepper spray
3 or whatever was in there. I informed my cover deputies,
4 hey, we can't scent him off the car. We're going to
5 start right here. At that point, because the suspect had
6 gone straight into the woods, we started here. We
7 started along the road so that he would run across that.

8 Q Let me show you what's been marked as State's
9 Exhibit 26. Do you recognize that picture?

10 A Yes, sir. That's the van the suspect had
11 supposedly come out of.

12 Q Does it accurately reflect what it shows on
13 that particular day?

14 A Yes, sir. It does.

15 MR. FRETWELL: Your Honor, the State moves
16 State's 26 into evidence.

17 THE COURT: I thought Exhibit 26 was already
18 into evidence?

19 MR. FRETWELL: I apologize, Judge.

20 THE COURT: 25, 26 and 27 are into evidence.

21 MR. FRETWELL: I didn't see it on my list. I
22 apologize.

23 BY MR. FRETWELL:

24 Q Let me put this -- All right. Looking at
25 State's Exhibit 26, can you show the jury specifically

1 how you started and then how -- what happened when you
2 got beside the van on the other side of the road.

3 **A** Okay. It's hard to see here. Let's say that
4 this is about a car length around the front of this car.
5 That's where I started. I went along between the woods
6 and the road. When he got within this area here parallel
7 to the road, he actually went into the woods.

8 **Q** Tell the jury about how he went into the woods
9 and what does that mean.

10 **A** Okay. He went into the woods. Basically, when
11 the dog finds the odor that we're looking for -- in this
12 case, the only odor out there because it was raining.
13 The dog's job as a track and trailing dog is to go ahead
14 and follow that odor to see what's at the end. He knows
15 that, at the end, he'll be locating his reward. Whether
16 that reward's a man or a toy, whether it's training or
17 real, the reward will be at the end. Because they know
18 that, their ultimate goal is to find that track, follow
19 it until they get to the end of it.

20 **Q** All right. Thank you. How are you able to
21 determine that your K-9 has an active scent trail?

22 **A** He displays distinct behaviors that are
23 different from when he's not tracking. An example would
24 be when he's not tracking and we're just looking for the
25 track, he's just kind of walking along with his head

1 down, he's sniffing, but not sniffing hard. Just normal.
2 (Demonstrating.) Like that.

3 When he finds the track, his behavior changes.
4 He goes from that normal look to an intense look. His
5 tail begins to wag. Noticeably, his breathing comes into
6 short puffs. He'll be like (demonstrating). And then in
7 an effort to get more air, he'll exhale. He'll basically
8 do that the entire time he's tracking. More importantly,
9 he insists on going the direction that track went where
10 before he's tracking, I could say, hey, come on and
11 search over this way. Once he's gone on that correct
12 scent, it's hard to get him off of it. It's not easy to
13 say, hey, come search something else. He insists on
14 going the direction that odor's going.

15 Q And along the side of Emile Street, did Smeris
16 exhibit those behavioral changes you just described?

17 A Not the distinct behavior changes. Not until
18 we got parallel to the car on the other side of the road
19 and into the woods. That's when his behaviors change.
20 That's when he went into the actual woodline.

21 Q And he started into the woods?

22 A Correct. He went down the road and cut into
23 the woods.

24 Q All right. What was the weather like that day?

25 A The weather was cold and rainy.

1 **Q** And what effect does rain and cold have on a
2 human scent trail?

3 **A** Odor is -- let's go ahead and say that for the
4 purpose of this testimony. Odor and scent are the same
5 thing. If I say human odor or human scent, that's the
6 same thing. Odor is made up of dead skin, sweat and
7 bacteria. Odor is like talcum powder. Cold has the
8 effect of slowing down the growth of the bacteria and
9 making that odor last longer. Rain has the opposite
10 effect. Not that it kills it. Not that it does anything
11 to it other than carry it away. So if I'm laying odor
12 from here to that door and it's raining hard enough to
13 where it's going to pull up around that barrier, the odor
14 will actually be carried off by rushing water.

15 Just to illustrate that. If you have talcum
16 powder and you are walking down, let's say, a creek. If
17 you puff it, it's not a big deal. Once you get to the
18 creek, that talcum will fall and be carried by the water.
19 The same thing happens in heavy rain when it actually
20 forms a stream somewhere.

21 **Q** When you say carried away, how far are we
22 talking does that scent trail move from it's original
23 location?

24 **A** With the water?

25 **Q** Yes, sir.

1 **A** As far as the water can carry it.

2 **Q** Okay. On that particular day, did, uh, -- you
3 had the effect of the rain and the cold. Is that
4 correct? Let me ask you this. Do dogs prefer one type
5 of odor over another?

6 **A** Yes, sir. They do.

7 **Q** Tell us about that.

8 **A** Previously, I stated that the odor was made of
9 dead skin, bacteria and sweat. In some cases, it's made
10 of bacteria, dead skin, sweat and adrenalin. If any of
11 y'all have gone into a roller coaster, it's scary, but
12 it's exciting. Your hearts get pumping and you just
13 ready to go. You get shaky maybe a little bit. That's
14 called the fight or flight syndrome. That's your body's
15 way of preparing you for either a fight or for fleeing.
16 It does that by secreting adrenalin into your system
17 which causes all those effects upon your body.

18 If you can imagine that we've not always been
19 and still are really not at the top of the food chain.
20 As you've seen people get trampled by elephant or tiger,
21 stuff like that, through evolution or whatever the case
22 may have been, we've been given this system to get away
23 or to fight through it. Dogs, more specifically wolves,
24 have never been anywhere other than the top of the food
25 chain. Nothing actively hunts dogs. These dogs

1 primarily were trained or were predisposed to follow this
2 adrenalin odor because that told them this thing is on
3 the run, this thing is scared and I can catch it. It's
4 no different than human.

5 The dog and the wolf are the same thing just
6 minus the slight differences. The dog smells that
7 adrenalin. His instincts kick in and he begins to follow
8 it like he's actually hunting something. The effects of
9 that on the dog are the dog becomes more focused. He's
10 more driven. He's faster. He's more concentrated.
11 Basically, same behaviors times ten in intensity.

12 Q Does your dog, Smeris, behave differently when
13 tracking fear or excitement-based odor?

14 A Yes, sir. He does.

15 Q And is that what occurred in this case?

16 A Yes, sir.

17 MR. HOSKINSON: Excuse me, Judge. There's no
18 way to -- they are calling for speculation on what
19 the dog's intent is at the time of the track.

20 THE COURT: I, uh, --

21 MR. FRETWELL: May I respond, Your Honor?

22 THE COURT: Yes, sir.

23 MR. FRETWELL: Your Honor, the officer's
24 testified that he's trained with this dog. He knows
25 the difference in when the dog behaves differently.

1 He's described that there's a much more --

2 **THE COURT:** All right. I'll allow the
3 question.

4 **MR. FRETWELL:** Thank you, Judge.

5 **BY MR. FRETWELL:**

6 **Q** Is that what occurred in this case?

7 **A** Yes, sir. It is.

8 **Q** Once your dog indicates by his behavior that
9 he's picked up a scent trail, what does he specifically
10 do? Please step down, if you will, and show the members
11 of the jury what your dog does.

12 **A** Well, the behaviors change obviously. The
13 breathing gets faster. He becomes more focused. Some
14 dogs naturally take to different styles of tracking.
15 Some dogs track you foot for foot. If you walk this
16 line, the dog will walk this line. My dog, for some
17 reason, learns to track by what is and is not there. So
18 just to illustrate it, if the odor is in a straight line
19 from here to that door, my dog tracks. I smell it. I
20 don't smell it. I have to come back. I smell it. I
21 don't smell it. I have to come back. So effectively,
22 it's a serpentine. Through the middle is where the trail
23 lies. We've seen this in training and real life tracks
24 where trails -- somebody saw him specifically from here
25 to there and the dog is seen doing that serpentine

1 pattern all the way there.

2 **Q** Deputy Rivera, if you said it was raining that
3 particular day and the rain can wash scent as far as it
4 will carry it, how did you know you had a reliable scent
5 trail from your dog?

6 **A** We were fortunate enough to have the trees as
7 cover. The trees are able to shield some of the water.
8 Because of soft ground, it tends not to go into a stream.
9 Rather, it falls and goes onto the ground.

10 **Q** What kind of terrain did you cover that
11 particular day?

12 **A** My particular part of the track or my specific
13 part of the track was wooded. Then it come out onto some
14 grassy muddy areas. Before I got to that part where I
15 changed out dogs, it was all woods.

16 **Q** Was there anything unique in your section of
17 the track that you came across that was different than
18 maybe just a straight trail?

19 **A** You mean the terrain?

20 **Q** Yes, sir.

21 **A** Well, the terrain was particularly -- I guess
22 it was hard to get rhythm in there. It goes from flat to
23 very dense vegetation, briars, bushes, to piles of brush,
24 back to grass. It was very uneven terrain with a lot of
25 natural barriers in there.

1 **Q** Tell the jury about what it is to use a
2 tracking dog with piles of brush.

3 **A** Okay. If you can imagine like I said earlier
4 that the odor was in a straight line and this is a
5 perfect word, something like this or like grass, the dog
6 can effectively follow it quickly because it has nowhere
7 else to go. If you have piles of brush -- and let's
8 illustrate that this is a pile of brush. What happens is
9 if somebody goes over it, the odor, as it falls down when
10 I walk, falls in between those twigs and those bushes or
11 whatever is there.

12 Now, the odor is not only going over it by
13 going under it and out of the sights. Because we train
14 our dogs to find people who are concealed particularly in
15 things like that, the dog knows when I get to this and I
16 smell it here and I smell it here. He checks in there to
17 make sure that the person that he's looking for is not
18 hidden. The effect this has is although it's more
19 thorough and protects us from an ambush, it slows him
20 down. Now, he's having to check a whole lot more than
21 just a straight-line track.

22 **Q** Did you have to go through or check a lot of
23 those brush piles that day?

24 **A** Yes, sir. Several of them.

25 **Q** All right. Let me let you look at -- let's

1 see. (Pause.) State's Exhibit 28.

2 **MR. FRETWELL:** I don't believe this is in
3 evidence, is that correct, Judge?

4 **THE COURT:** 28 is not in evidence I don't
5 believe.

6 **BY MR. FRETWELL:**

7 **Q** You recognize this area that's exhibited in
8 State's Exhibit 28?

9 **A** Yes, sir. I do.

10 **Q** Okay. I'll ask you to get that laser pointer
11 again. If you can basically just orient, uh, the jury as
12 to where these locations that you already mentioned
13 are ---

14 **A** Okay.

15 **Q** --- on the map.

16 **A** If y'all live on the west side, this right here
17 is west side park. There's the back field. The van was
18 right around in here somewhere. I parked right around
19 here. The suspect was reported to have gone into those
20 woods right there.

21 **Q** Okay. And once you started your track, can you
22 tell us where you encountered a lot -- and again, show us
23 where this wooded area that's been described is and how
24 big it is.

25 **A** This entire -- well, actually -- it actually

1 goes all the way to this road. There's no road between
2 here and here except for some access trails. This entire
3 area was our search area at the time.

4 Q So there's like power easements or something?

5 A There's cut out -- just cut out roads like
6 trails where cars had gone. It's not paved or anything
7 like that.

8 Q Okay.

9 A It's just dirt roads.

10 Q Okay. And, uh, the area where you traveled
11 initially into the woods, can you describe the density of
12 that wooded area?

13 A It's so dense that you, at times, have to kick
14 over kudzu and kick over briars just to get through it.
15 They were that thick.

16 Q Uh, what is it about the human scent that is
17 helpful to allow the dog to track? What is it about how
18 long it's been there? What degree does freshness have?

19 A Freshness, it's pretty good when it's cold.
20 It's not working against the heat that's trying to kill
21 the bacteria. It's actually pretty good. As far as the
22 rain, because it was raining heavier at times, obviously,
23 the more it rains, that's not under cover, the quicker it
24 will wash away.

25 Q And the trees there, were they providing cover?

1 **A** They provide cover. Instead of all the water
2 hidden and piling up, the trees kind of routed towards
3 the roots and more or less gets absorbed instead of
4 forming a washout effect.

5 **Q** I don't know how specific you could be with
6 exact locations in this. But can you show the jury the
7 general area or any kind of markers that you were able to
8 recall from your track that day and whether or not you
9 have a transition --

10 **A** I can tell you where I ended.

11 **Q** Okay.

12 **A** I ended -- these right here are all the access
13 roads that I was talking about. They go in and out of
14 there.

15 **Q** Okay.

16 **A** I ended just short of the field. I remember
17 there was a driveway or just an open area in there. I
18 actually changed my dog out when it got flat and grassy
19 right around there.

20 **Q** Okay. And do you -- okay. Is there anything
21 significant about that particular area that caused you to
22 want to trade out dogs at that point?

23 **A** Yes, sir. That area, because it was less
24 wooded, more or less flat, much as this ground is, the
25 potential for the odor to have washed out or to have been

1 blown by the wind was less. And the potential for it to
2 have gone into brush piles and things that I described
3 was less. So, once I determined that the terrain would
4 be more favorable for that right there because my dog was
5 getting tired already, I went ahead and stopped right
6 there.

7 If my dog was tracking and we're coming out of
8 the woods, let's say, these are the woods, like, here, I
9 know for a fact you do a serpentine. Serpentine here,
10 here. That's the middle. Stop. That way, when the next
11 handler came up, I can say I stopped him right there.
12 Anything forward of that would be clear, that's where you
13 want to start your dog.

14 **Q** Do you recall or do you have any information
15 that would say about how long you tracked with Smeris
16 that day?

17 **A** I would say it was shorter than normal. I
18 would say it was about 150 yards maybe.

19 **Q** What about time? How long?

20 **A** Maybe 10, 10 minutes.

21 **Q** Would your report assist you in remembering?

22 **A** Yeah, it actually would. We have the time in
23 here. We write them down as we go.

24 **Q** And you can retake the stand.

25 **A** All right. From the time we got started to the

1 time we ended was 17 minutes. That would be from the
2 time we started in front of the car to the time that I
3 said, stop, get the next handler in right there at that
4 cutout. 17 minutes.

5 Q Okay. Did you redeploy Smeris at any point?

6 A Yes, sir. I passed off my track to another
7 handler.

8 Q Let's cover that. Which handler did you pass
9 it off to?

10 A Passed it off to Doug Wannemacher.

11 Q Okay. And what's the name of his K-9?

12 A At the time -- he's got a new one now. At the
13 time, it was Rosco.

14 Q Okay. So once you had turned over the track to
15 another K-9 handler, what did you do?

16 A I went ahead and went around the perimeter. We
17 had a direction of travel, what the common practice is is
18 to go to the opposite end, turn on your lights and kind
19 of make a pretty strong presence. Hopefully, the person
20 that's fleeing will lay down trying to avoid you. And
21 eventually the tracking people will catch up to you.

22 Q So you were on the perimeter?

23 A Yes, sir.

24 Q And you are saying that you redeployed Smeris
25 at some point?

1 **A** Yes, sir.

2 **Q** Okay. Tell us about, uh, why and how you
3 redeployed Smeris.

4 **A** Well, Deputy Wannemacher tracked for a while
5 and passed that off to Deputy Fuller.

6 **Q** Okay.

7 **A** And then Deputy Fuller came up on a creek.
8 Because the creek was going pretty swift, rather than him
9 trying to cross that creek and trying to determine a
10 direction, if, in fact, it was there on the other side,
11 he asked me to go to the other side since I was in my car
12 and see if I could determine whether anyone who had gone
13 in the creek had come out of the other side.

14 **Q** Did you check the other side of the creek?

15 **A** Yes, sir. I did. I actually went to the point
16 where I could see him across the creek. I actually
17 couldn't see them. But I could hear them across the
18 creek. From there, I cut 300 feet or 100 yards past it
19 and then back the way I came. And nothing -- no human
20 odor was leaving that area.

21 **Q** Okay. Do these K-9s like to get in water?

22 **A** I only know of one. Most of them don't.

23 **Q** Okay. Does your K-9 like to get in water?

24 **A** Not particularly.

25 **Q** Okay. All right. Was there any other purpose

1 for you being on the other side of that creek while those
2 -- let me ask you this. Did the officers, the K-9
3 officers eventually go into the creek?

4 **A** Yes, sir. They did.

5 **Q** Was there any purpose other than checking to
6 see if there was a trail on the other side of that creek,
7 is there any purpose for your dog to be on that side of
8 the creek? The opposite side of the creek?

9 **A** The primary purpose was to check and see if
10 anybody had gone by. That way, they could just stop and
11 not cross the creek and I could start up right there.
12 Other than that, just as part of the perimeter, just to
13 kind of see if somebody was ducked down in there. But it
14 was so dense and so thick and nasty that nobody was in
15 there.

16 **Q** Are there any concerns for you as K-9 handlers
17 when you enter a creek? Is that something that is
18 dangerous?

19 **A** It is dangerous. While we can stand up and be
20 five feet above the water -- I'm sorry -- from the ground
21 and four or five feet and be above the water. The dogs
22 from their front legs to their shoulders are about just
23 like that. They actually have to swim where we can walk.
24 Not to mention because the heavy rain, that creek was
25 flowing pretty swiftly.

1 **Q** Any concerns about people hiding out or
2 anything like that?

3 **A** Certainly. If you had the opportunity to go
4 down the creek and maybe find a place to climb out and
5 you were, in fact, armed, you could get up there, wait
6 til they float by and just shoot them as they go by.

7 **Q** Is that some of the purpose that you were
8 serving on the other side of the creek?

9 **A** Correct. That was part of the purpose was to
10 make sure that the track hadn't crossed and to make sure
11 that nobody was hiding on the other side when they
12 decided to go in.

13 **Q** In that side, on the opposite side of the
14 creek, did you find any indications along that side where
15 the other tracking team members entered right there that
16 he had left the creek?

17 **A** No, sir. Not from there to 100 yards left or
18 100 yards downstream.

19 **Q** Could you describe the terrain around the
20 creek?

21 **A** The creek has a cliff on the left side. The
22 side that I checked, it has a pretty steep cliff. So you
23 might get down there by jumping down, but you're likely
24 not going to come back up. At the time, we didn't know
25 that all the way. All the way down, the left of where I

1 went, it would be hard for someone to get up there
2 without a robe or something like that.

3 **Q** Was it easy or hard for you to navigate through
4 that area?

5 **A** It was hard. It took me a while. Most of the
6 track, you have to kick over stuff, go over briars, try
7 to get around the best you could. At the same time, it
8 takes you longer because your dog is also getting caught
9 up on the briars with the extra stuff he has.

10 **Q** What about kudzu and other --

11 **A** Kudzu, briars, thick trees. I mean, you name
12 it, it was there. The hardest part is there's holes.
13 You don't know they're there. So you end up falling into
14 a hole and having to climb back out to go around it.

15 **Q** Okay. At any point during your initial track,
16 roaming or your track along the creek that's provided
17 cover and determining whether that suspect had gotten out
18 on the other side, did you come in contact with anyone?

19 **A** I did not come in contact with anyone that
20 wasn't a deputy.

21 **Q** And the location that we're talking about on
22 Emile Street and the Bank of Travelers Rest. You are
23 familiar with the Bank of Travelers Rest?

24 **A** Yes, sir.

25 **Q** This area, is that within Greenville County?

1 **A** Yes, sir. It is.

2 **Q** Okay. Please answer any questions that Mr.
3 Johnson may have for you. Sorry, Mr. Hoskinson may have.

4 **MR. HOSKINSON:** Please the Court?

5 **THE COURT:** Yes, sir, Mr. Hoskinson. You may
6 cross-examine him.

7 **MR. HOSKINSON:** Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. HOSKINSON:**

10 **Q** With your dog, what is the motivator you give
11 him? Is it the toy?

12 **A** The -- you talking about the reward at the end?

13 **Q** Yeah.

14 **A** The reward at the end changes. Sometimes it is
15 a toy, which I don't have one to give you right now. But
16 it's a piece of 300 psi nonmetallic hydraulic hose.
17 Sometimes we have that at the end. Sometimes we actually
18 have a man at the end with either a hidden sleeve, an
19 outer sleeve or in the bite suit. Then every now and
20 again, we have a guy at the end with nothing and we
21 simply stop the dog before he get there in order to avoid
22 injuries.

23 **Q** And that motivator is what keeps the dog doing
24 his job for you?

25 **A** A combination of motivators and instincts.

1 Q Okay. In this particular instance, you put him
2 on a tracking harness, but he's also on a 15-foot --

3 A Correct. It's a tracking harness and then it
4 attaches -- I'm sorry.

5 Q To a leash?

6 A The leash attaches to the back side of the
7 harness. There's a 15-foot long leash.

8 Q And you are holding that in one of your hands?

9 A Yes, sir. You generally hold it in your left
10 hand so that if you need to the best you can get to your
11 gun, get to your spray, get to whatever you need with
12 your right.

13 Q Okay. And in doing these pursuits or this
14 training, generally speaking, you don't want to be
15 guiding or assisting the dog in the process?

16 A Correct. He pulls you along.

17 Q So as a training mechanism, it's disfavored to
18 help or assist a dog during a tracking exercise via
19 training or in practice?

20 A Are you talking about -- explain that again.

21 Q Well, if you came up to a corner, would you
22 tell your dog to turn the corner?

23 A No.

24 Q You would let your dog guide you?

25 A Correct. Your dog will work it out.

1 Q In this particular instance, in the 17 minutes
2 you said you covered maybe about 100 to 150 feet?

3 A Whatever it is from that clearing to where we
4 started. I'm not exactly sure.

5 Q Okay.

6 A I know that it was very slow.

7 Q Now, I'd like to ask you a couple of questions
8 about the map.

9 A Certainly.

10 Q I might place it right here. You might not
11 have to get up.

12 A Okay.

13 Q Well, maybe you do.

14 A I have to get up.

15 Q The, uh, area you indicated as terminating your
16 exercise, was it right about right here?

17 A Right here. You see this driveway right here?

18 Q Yeah.

19 A You can actually drive up in here and access
20 some of these roads. I remember that I did it at the
21 every end of the driveway which must have been around
22 here.

23 Q Have you been to this area before that day?

24 A Not that day.

25 Q But you been through the area at the westside

1 park?

2 **A** We've trained at westside park in past
3 occasions.

4 **Q** Okay. So where would you do your training at
5 westside park?

6 **A** We normally use the bottom two fields here.

7 **Q** Uh-huh.

8 **A** And every now and again before this got torn
9 down, we would do some stuff in here.

10 **Q** That's the 50-meter swimming pool?

11 **A** Yes, sir. That's the swimming pool.

12 **Q** This is a ballfield?

13 **A** Yes, sir.

14 **Q** This is right next to the trail where you
15 stopped your search?

16 **A** Correct. Yeah. I stopped it here.

17 **Q** And then adjacent to that field is a parking
18 lot? That's part of the park?

19 **A** Yes, sir.

20 **Q** And is this another trail leading out of the
21 parking lot going into the woods?

22 **A** No, I think that is one of those covered things
23 where you could have the barbeque in. That's just the
24 little walkway that goes to that driveway.

25 **Q** These are more of the ballfields as part of the

1 park?

2 **A** Yes, sir.

3 **Q** And there are some other access logging trails
4 that are coming out of this parking lot as well?

5 **A** I think there are some that go into here. This
6 is like a maintenance shack. There's one that goes there
7 and one that comes around to the other parking lot.

8 **Q** So there's a trail that goes this way?

9 **A** Correct. It's like a driveway.

10 **Q** Okay. This -- this might have been before they
11 rebuilt the area, am I right?

12 **A** I'm pretty sure it was. This thing now looks
13 like it's much larger and that's no longer there.

14 **Q** Okay. Now, this trail here, where does this
15 trail go eventually?

16 **A** It dead-ends right where I came out it. If you
17 go out, actually it's real winding back there, but it
18 comes out on Marion somewhere before this creek. Where
19 you'll see where it comes out.

20 **Q** So there's a trail going through this woods up
21 this way?

22 **A** Yeah, there's a couple of driveways through
23 there.

24 **Q** And this is where people have cut down the
25 trees and branches to make it passable for people?

1 **A** They are not walking trails. It looks like
2 it's just a vehicle access road like somebody would go
3 and maybe check on a water line or something like that.

4 **Q** They would drive an ATV?

5 **A** No, no. You could fit a whole car through
6 there.

7 **Q** Okay. Up through this way?

8 **A** Uh-huh.

9 **Q** Okay. The reason we don't see that is because
10 of the winter branches?

11 **A** I'm guessing it's just the cover. It looks
12 like it was a summer map.

13 **Q** Okay. Let's -- thank you.

14 **A** Sit down?

15 **Q** Uh, yeah. Thank you. You were talking about
16 obstacles?

17 **A** Not obstacles per say. Just vegetation that
18 you have to --

19 **Q** The brushes that you had to slow down around?

20 **A** Correct. Correct.

21 **Q** And that -- those were impassable?

22 **A** No, no. You could go over them.

23 **Q** Okay.

24 **A** There's just --

25 **Q** The dogs would go over them?

1 **A** The dog at times would go over them and figure
2 out, hey, there's odor in here. He would come down to
3 the side and check them. Then he would move on.

4 **Q** Okay. And he was guiding you along in a basic
5 straight line?

6 **A** I mean, in the direction --

7 **Q** He does the serpentine?

8 **A** Correct. He does the serpentine and imagine
9 these piles. Let's say this Bible is a pile. He may, at
10 times, come here and check this out and check this out
11 and decide nothing's there and then continue on. It's
12 not a straight line per say like you would think down the
13 road. But it's in a steady direction.

14 **Q** Okay. What happens when the dog gets tired?

15 **A** Well, that's what the handler has to be looking
16 out for. If you imagine, the dog sniffs through his
17 nose. The dog cools off through its mouth, so it pants.
18 There comes a time when the panting out does the nose
19 breathing. At that point, your dog is smelling less.
20 He's still smelling because they could do at the same
21 time nose and mouth.

22 But at that point, it's not practical that if
23 we have 10 more dogs out there for me to continue.
24 That's what happened at this location. Basically, my dog
25 was showing signs of wear or, you know, signs of fatigue.

1 I found a good location, stopped there and got the next
2 dog in.

3 Q Now, the second half of your operation that day
4 in the field involved a riverbank?

5 A Correct.

6 Q And with that, you were on the opposite side of
7 the riverbank while some of your K-9, I don't know what
8 you call it, team?

9 A Yeah, other K-9 team.

10 Q K-9 team members, they were going downstream?

11 A Well, when I first checked it, they came right
12 up on it. Before they made the decision to go
13 downstream, then they had me check the opposite side.

14 Q And the opposite side, you recognized a lot of
15 branches and kudzus and wires?

16 A Correct.

17 Q The, uh, -- you covered what, about 3000 feet
18 along the stream?

19 A No, 300 feet.

20 Q You have your -- you have your report with you,
21 right?

22 A Yeah.

23 Q Okay. And that's something you typed up and
24 submitted December 10th?

25 A Down here at the bottom? That's supposed to be

1 300 feet.

2 Q In your report, you wrote 3000 feet.

3 A Correct. I meant 300, not 3000.

4 Q And you were searching up and down that creek
5 bank?

6 A Uh-huh.

7 Q Didn't find any indications that somebody had
8 left?

9 A Right. Didn't find any indication from that
10 300 feet that anyone had exited within that 100 yards.

11 Q And you were searching that whole area?

12 A I -- basically, I can show you on the map even
13 easier if you would like to do that. Basically, there's
14 the creek right there. They said they crossed right here
15 because there's no landmark.

16 THE COURT: I don't think the jury can see.

17 THE WITNESS: Okay.

18 THE COURT: Make sure the jury can see.

19 THE WITNESS: You want to stand it up so we
20 can do it that way?

21 BY MR. HOSKINSON:

22 Q Well, what I'm getting at is on the other side
23 of the riverbank when you are looking at along that 300
24 area --

25 A I can do it just that quick on that thing and

1 just show it to you. That way, we don't have to rely on
2 trying to figure out where it's at. There's no landmarks
3 obviously. I know for a fact that I came off Richards.
4 I went just a little way down. From here, I could hear
5 them saying yeah, check right there. Right here, which
6 I'm guessing is more like right here. There's all the
7 thick vegetation. I checked 100 yards, came back in a
8 big moon. I came back.

9 The reason for the moon is if you start right
10 here and I cut a moon around that area, you would have to
11 have gone somewhere in that moon in order to have made it
12 across. If not, you would have had to have gone down the
13 ditch.

14 Q Thank you, officer. No further questions.

15 MR. FRETWELL: Brief redirect, Your Honor.

16 THE COURT: Yes, sir.

17 **REDIRECT EXAMINATION**

18 **BY MR. FRETWELL:**

19 Q Uh, Deputy Rivera, you indicated in response to
20 a question by Mr. Hoskinson about the harness being
21 connected to the leash which you were holding. Tell the
22 jury what influence at all you're having on that dog once
23 that dog has acquired that scent.

24 A Once he's acquired the scent, you're not really
25 having any influence other than keeping him from getting

1 away from you. At times, he may try to get faster than
2 you. And number two, like I said earlier, instead of it
3 being attached to a collar where I'm pulling on its neck
4 and causing restriction of his breathing, I'm pulling on
5 his chest. And all this does is basically it does not
6 disrupt any way that he smells or that he breathes or any
7 way wearing him down as a result of air restriction.

8 Q Once Smeris gets a hold of that scent and, in
9 particular, the scent you described that day that the
10 heightened scent or scent of perhaps adrenalin, is it
11 easy to get that dog off that trail?

12 A He will insist to go that way. Could I
13 physically remove him? I probably could. It wouldn't be
14 by any means, hey, come on this way. It wouldn't be
15 that. It would be you having to pull him off that scent.

16 Q Okay. Let me have you step down. We'll show
17 this so the jury can see it. I'm going to ask you about
18 a couple of things. First of all, that day you were out
19 there, by the time you were in there tracking, were other
20 officers that were not members of the K-9 unit already
21 participating in a perimeter?

22 A Yes, sir. There were blue lights all over the
23 place.

24 Q And when you came down in this direction, the
25 area of Leone and Alma Street, were there already

1 perimeter cars along this road?

2 **A** Yes, sir. I specifically remember seeing one
3 here, right here at the corner which is how I was able to
4 guide the next dog. I said, yeah, when you get to the
5 curve and you see that blue car, just come in the
6 driveway.

7 **Q** Do you see that car in State's Exhibit 19?

8 **A** I mean, there was a car there. But I know if
9 forensic took this, they would have been an hour or two
10 probably later. It may be a different car, but that's
11 about where that car was.

12 **Q** Okay.

13 **A** About there in the corner.

14 **Q** So about where you see it on State's Exhibit
15 19?

16 **A** Yes, sir. Yes, sir.

17 **Q** All right. Can you just kind of start here and
18 walk down the front and point to that police car that you
19 are referring to?

20 **A** Certainly. If we came in on this side, you
21 could see the car just in the corner. Go past that car.

22 **Q** Deputy Rivera, if you're going to talk, you
23 need to speak very loudly ---

24 **A** Oh, okay.

25 **Q** --- so that she could ---

1 **A** All right. I'm sorry.

2 **Q** --- hear you.

3 **A** I'm sorry. If you see the car there, if you
4 were to go past that car, you would come down that curve.
5 Basically the car is right here. If you look to the
6 right of that car, you would be going down this Alma
7 Street right here. It's very small. But you could see
8 the car just right there. If the lights were on, you
9 would really be able to see it.

10 **Q** And let's go back to the map for just a second.

11 **A** All right.

12 **Q** These roads that you described in here, are
13 those maintained roads?

14 **A** No, it appears to be where they got a real nice
15 big truck and just drove in through there and they just
16 kind of knocked it down. As the cars kept driving
17 through, stuff just died.

18 **Q** And we're talking -- are there power lines in
19 there?

20 **A** Power lines?

21 **Q** Power stations.

22 **A** I think there are some poles in there. You
23 could see them. Obviously, the easement is clear on
24 those.

25 **Q** When you were in that area either on this side

1 of the creek or this side, I've asked you about whether
2 or not you saw any individuals in this area that were not
3 police officers. Did you see any other kind of vehicle
4 or anything else in this entire area?

5 **A** No, sir.

6 **Q** While you were in there that day?

7 **A** No, sir.

8 **Q** All right. When you talked about clearing that
9 creek on the other side ---

10 **A** Uh-huh.

11 **Q** --- and I think you described some sort of half
12 moon over here where the other deputies -- again, do you
13 know precisely where it is along here? Was it just along
14 that creek?

15 **A** No, sir. I know that it's right here.

16 **Q** Deputy Rivera, I'm going to ask you to step
17 back ---

18 **A** Oh, I'm sorry.

19 **Q** --- so the jurors can see you.

20 **A** I know that it was right around in here for the
21 simple reason that I parked right at the curve.

22 **Q** Okay.

23 **A** There was also a deputy here with lights. So I
24 just parked where he was, walked down a good bit. I
25 would say about right there. Once I could get within

1 hearing of the deputies who were there, I determined that
2 that's who they were. From there, I went about another
3 100 yards, checked the half moon. Nobody came out or the
4 dog didn't give an indication. At that point, I left.

5 Q So you didn't search all the way down to the
6 edge?

7 A No, sir.

8 Q What is the terrain like in this area?

9 A They had a point where you could barely see
10 through there.

11 Q Okay.

12 A So, I mean, it would have taken me quite some
13 time to get all the way to the bottom. It was so thick.

14 Q And is -- show me where on this creek are you
15 talking about that wall that shear drop on your side.

16 A The sheer drop was in that hundred yards that I
17 searched is where you could look over and you could see
18 where it goes pretty far down in there.

19 Q Okay. All right. And you don't know what it
20 was like further on down?

21 A I could see far enough to figure out what it
22 was.

23 Q There were K-9 handlers that went in the creek,
24 is that right?

25 A Correct.

1 **Q** Please take your seat on the witness stand.

2 **MR. FRETWELL:** No further questions, Your
3 Honor.

4 **THE COURT:** All right. Thank you, sir. You
5 may be ---

6 **THE WITNESS:** Thank you.

7 **THE COURT:** --- excused at this time.

8 **MR. FRETWELL:** Shall we proceed, Your Honor?

9 **THE COURT:** Ladies and Gentlemen, at this
10 time, I think it might be a good time to take a
11 short break for the morning. I'll ask that you go
12 back to your jury room. I will remind you again
13 don't discuss the case. While you are back in your
14 jury room, I am going to ask you to select a
15 foreperson from among the first 12 of you.

16 Most of the exhibits have been shown on the
17 board. There might be exhibits that will be passed
18 around to you. One of the lawyers may have, uh, a
19 need to, uh, let the jury -- jurors handle
20 something. If that's the case, we need to have a
21 foreperson.

22 The foreperson on the jury will occupy the
23 front row seat, the one closest to the witness chair
24 here. The alternates have their designated seats.
25 Sometimes when you're back in your jury room, you

1 may have a need. The temperature needs adjusting or
2 whatever the case may be, a cup of coffee. The
3 foreperson will be the spokesperson for you, will be
4 the individual who will let the bailiffs know that
5 you have a need and you have a question for me or a
6 question for the clerk's office of what might need
7 to be done about the temperature or snacks or
8 whatever the case may be. The bailiffs will get it
9 to the appropriate person. One of you needs to make
10 a call for a family member, that foreperson will be
11 the communicator, if you will, the presiding officer
12 to communicate to the Court and with the clerk's
13 office if there's some physical need that you have.

14 What the foreperson ultimately will do, of
15 course, is when you have heard all the evidence and
16 I've instructed you on the law, that will be the
17 individual who will help facilitate the discussion
18 and make sure everyone has their say to the evidence
19 and to reach a verdict. Then, the foreperson, on
20 behalf of all the jurors, sign that verdict form
21 that will be explained to you. If you would, from
22 among the first 12 of you, select a foreperson.

23 When you come back, the foreperson will occupy
24 that seat throughout the trial. The alternates will
25 have their seat. The others of you may want to sit

1 on the front row, may want to sit on the back row,
2 one end or the other. It's up to you. Those will
3 be designated seats for the alternate and the
4 foreperson. If you would, once you select a
5 foreperson, just write that name down and give it to
6 the bailiffs. When you come back out, the
7 foreperson will have that seat.

8 We'll take about a 15-minute break for you to
9 do that. Let's take a short break. Then we'll be
10 ready to start with more testimony. You may be
11 excused at this time.

12 **(WHEREUPON,** the jury exits at approximately
13 10:44 a.m.)

14 **THE COURT:** I wanted to just make sure that
15 Exhibit 28 -- I know it was shown to the jury. I
16 believe it was offered into evidence, is that right?
17 I'm just keeping up with my notes.

18 **MR. FRETWELL:** I believe that it was. I have
19 to check with the Court Reporter to make certain.
20 If it's not, I'll certainly move that it place
21 into --

22 **THE COURT:** Any objection to 28 being
23 admitted?

24 **MR. HOSKINSON:** Without objection.

25 **THE COURT:** Without objection. I just want

1 to make sure that our record shows that 28 was in
2 evidence. I didn't think it had been formerly. But
3 it was shown and examined and cross-examined with.
4 I felt it was without objection.

5 (WHEREUPON, State's Exhibit 28 is admitted into the
6 record.)

7 MR. FRETWELL: Judge, I apologize if I failed
8 to put that into evidence.

9 THE COURT: It's in now.

10 MR. FRETWELL: Yes, sir. May we approach
11 before the break?

12 THE COURT: Yes, sir.

13 (WHEREUPON, a bench conference is held off the
14 record.)

15 (WHEREUPON, a recess is taken.)

16 THE COURT: If the jury is ready, you can
17 have them come in, Mr. Jenkinson, if the jury is
18 ready.

19 (WHEREUPON, the jury enters at approximately
20 11:05 a.m.)

21 THE COURT: Solicitor, you may call your next
22 witness.

23 MR. FRETWELL: May it please the Court, Your
24 Honor. The State would call Master Deputy Doug
25 Wannemacher.

1 **THE CLERK:** Sir, please place your left hand
2 on the Bible and raise your right hand.

3 **DOUG WANNEMACHER**
4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. Please be seated.
6 State your full name for the record.

7 **THE WITNESS:** Douglas James Wannemacher.

8 **DIRECT EXAMINATION**

9 **BY MR. FRETWELL:**

10 **Q** Master Deputy Wannemacher, how long have you
11 worked for the Greenville County Sheriff's Office?

12 **A** Approximately 12 years.

13 **Q** And to what unit are you currently assigned?

14 **A** K-9 services.

15 **Q** How long have you been in a K-9 handler?

16 **A** Eight and a half years.

17 **Q** What is your currently position within the K-9
18 unit?

19 **A** Uh, currently the Master Deputy and I am the
20 trainer for the sheriff's office.

21 **Q** How long have you been a K-9 trainer?

22 **A** Approximately in 2006, Sheriff Loftis requested
23 I become a trainer. So five years.

24 **Q** Five years? What is the name of your K-9
25 partner?

1 **A** I currently have two. I have Rosco and I also
2 have Oz.

3 **Q** Okay. What K-9 partner did you have and did
4 you use in December of 2008?

5 **A** Rosco.

6 **Q** All right. How old is Rosco right now?

7 **A** Rosco is 12 years old.

8 **Q** How long has Rosco been in service?

9 **A** Rosco's been in service since 2003.

10 **Q** Okay. Was he certified in 2003?

11 **A** Uh, yes. We went through a 400-hour school.
12 Then we got certified through North America Police Work
13 Dog Association and another organization.

14 **Q** And what trainer has Rosco worked with since
15 2003?

16 **A** He's been doing weekly training with me. The
17 initial training was done by John Gardner.

18 **Q** What law enforcement functions does Rosco
19 perform?

20 **A** Rosco is a dual purpose K-9. He locates
21 narcotics and also area search, building search,
22 tracking, article search and aggression control.

23 **Q** Was he trained in the same manner that Smeris
24 was trained?

25 **A** Yes.

1 Q Who performs the weekly maintenance training at
2 your, uh, weekly meetings with the sheriff's office?

3 A Weekly training is conducted for each handler.
4 Each handler brings their canine for 10 hours. I
5 supervise it making sure the certain criteria is getting
6 matched and completed. For example, if an issue comes --
7 each dog handler is their own trainer of their dog. They
8 do it through a school. They learn how to train their
9 dog, are the experts of their dog. If they have an issue
10 that they can not solve, I'm there to give them insight.

11 Q Did you participate in any way in the training
12 of Smeris?

13 A Uh, yes.

14 Q Was Rosco deployed on December 10th, 2008?

15 A Yes, he was.

16 Q Okay. Had he performed human odor detection
17 prior to that day?

18 A Uh, yes, he has. He was certified seven times
19 through various organizations. Most of those
20 certifications through the North America Police Work Dog
21 Association. He was deployed 1,156 times at that time.
22 Out of those, 115 of those were tracks, 9 were area
23 searches, 97 of those were article and evidence searches.

24 Q And during those deployments, has he been
25 demonstrated to be reliable?

1 **A** Uh, yes, he has.

2 **Q** What kind of training had you received as of
3 December 10th, 2008?

4 **A** Going through there, I had over 3800 hours of
5 K-9 training and law enforcement training with K-9s.
6 They first started when I went through a 400-hour basic
7 narcotic K-9 handler course myself. Since then, I went
8 through a 400-hour trainer instructor course down in
9 Miami-Dade, Florida, under the tutelage of Tony Guzman.
10 Several North America Police Work Dog Association sites.
11 And also currently in June, I became a North America
12 associated, accredited trainer.

13 **Q** How many hours have you logged in K-9 training
14 to date?

15 **A** With Rosco, during that date, it was over 2000.
16 Currently, I have over 3800 with myself and Rosco and Oz.

17 **Q** Have you or Rosco been certified by NAPWDA?

18 **A** Yes, we have.

19 **Q** Okay. And again, how often is that done?

20 **A** It's done yearly.

21 **Q** And does Rosco go through the similar
22 additional training every week that Deputy Rivera dose?

23 **A** Yes, at that point from 2003 to 2008, yes, he
24 was going through weekly maintenance training and
25 required to certify yearly.

1 **Q** What breed is Rosco?

2 **A** Rosco is a German Shepard.

3 **Q** Is this a breed commonly used for human
4 tracking?

5 **A** Yes, it is.

6 **Q** Is this a breed known for its acute power of
7 scent?

8 **A** Yes, it is.

9 **Q** Do you keep up with literature and updates in
10 the field of dog handling?

11 **A** Yes, I do.

12 **Q** How long have you been using K-9s in a law
13 enforcement capacity?

14 **A** Over eight and a half years.

15 **Q** What duties do you have in addition to regular
16 dog handling?

17 **A** The other duties I have are maintaining and
18 keeping up with current case law also current training
19 techniques and also maintaining weekly maintenance
20 training and records as well as conducting all new
21 handler courses. Since 2006, I have administered three
22 600-hour courses for numerous handlers through
23 Greenville, Spartanburg, Travelers Rest. I conduct that
24 type of training too.

25 **Q** Have you been certified as an expert witness in

1 the courts of this state?

2 **A** Yes, I have.

3 **Q** In what area --

4 **A** Three times --

5 **Q** Sorry.

6 **A** Sorry about that.

7 **Q** In what area have you been certified?

8 **A** I've been certified in -- let me just go to my
9 resume. Been qualified as an expert witness in narcotic
10 deployments and article search and narcotic deployments.
11 Three times as an expert witness.

12 **Q** Did any of these deployments deal with human
13 odor?

14 **A** Uh, yes, the one with article search.

15 **Q** How many times -- I'm sorry. Has any court
16 declined to qualify you as an expert?

17 **A** No.

18 **MR. FRETWELL:** Your Honor, at this time, the
19 State would move to qualify Master Deputy
20 Wannemacher as an expert in K-9 human odor detection
21 and K-9 training.

22 **THE COURT:** Any voir dire or any objection?

23 **MR. HOSKINSON:** Judge, we need to approach
24 just briefly.

25 **THE COURT:** Yes, sir.

1 **(WHEREUPON,** a bench conference is held off the
2 record.)

3 **THE COURT:** Ladies and Gentlemen, uh, I told
4 you when we began the case that sometimes there's
5 legal matters that I have to take care of. This is
6 one now that's come up that I might just take care
7 of out of your presence. I need to check some laws
8 and so forth. I'll ask you, if you would, go back
9 to your jury room. Don't discuss the case. We'll
10 call you back in just a few moments.

11 **(WHEREUPON,** the jury exits at approximately
12 11:11 a.m.)

13 **THE COURT:** All right. I believe you had
14 some voir dire of this witness as far as his
15 expertise. Is that right, Mr. Hoskinson?

16 **MR. HOSKINSON:** Yes, Your Honor.

17 **THE COURT:** It needed to be done outside the
18 presence of our jury based upon our bench
19 conference?

20 **MR. HOSKINSON:** Yes, sir.

21 **THE COURT:** All right, sir. I'll allow you
22 to voir dire the witness.

23 **VOIR DIRE EXAMINATION**

24 **BY Mr. HOSKINSON:**

25 **Q** Deputy Wannemacher, when you took over the

1 trail, you were relieving a different officer that
2 stopped somewhere in the woods. Isn't that correct?

3 A Yes, sir.

4 Q And your dog, Rosco, begin a human scent track
5 from that spot which led to a logging trail?

6 A Yes, sir.

7 Q Do you remember where that logging trail is on
8 the map?

9 A Roughly.

10 Q Can I show you the map briefly?

11 A Yes, sir.

12 Q Indicate -- is this the right map?

13 A Uh, yes.

14 Q Okay.

15 A If I could show you where we originally
16 started --

17 Q Okay.

18 A Where we had to track that it took over from
19 Deputy Ramon, where we knew nobody had been and he
20 established a track right around here and come up. We
21 come to a logging road. We go down to the left area.

22 Q Okay. This logging road is leading from
23 this --

24 A No, no. We're up here in the area where I
25 start the initial track where there is no -- this is all

1 uncontaminated prior to cover handlers.

2 Q Okay.

3 A I cut Rosco in, knowing which location. That's
4 why we keep the cover with them.

5 Q Okay.

6 A As he goes in, we get and continue to track.
7 We're no less than five feet where Ramon stopped. We go
8 through the woods, come out through a logging road and
9 make a left and start heading back that way.

10 Q Okay. Can you point to where that logging road
11 begins and ends?

12 A I can't. I can not see it so I won't be able
13 to do that. It goes in. It's clearly distinct when
14 we're out there. Because of the foliage, I can't do
15 that.

16 Q And the logging road allows access to outside
17 roads?

18 A Yes.

19 Q It allows access to these paved roads?

20 A I would assume so. Yes.

21 Q And it continues up this way somewhere and
22 provided access to other points of interest?

23 A I assume so.

24 Q And how wide is this logging road?

25 A Enough for a pickup truck to get through.

1 **Q** Was it easy for you to walk through?

2 **A** When I first got in, the woods were really
3 thick. It was kind of really hard to get over the brush
4 piles. Once we hit the logging road, it was a nice
5 relief not climbing through sticks and briars.

6 **Q** Okay. At that point in time, the dog is being,
7 uh, -- the dog's duty that time is human scent to track?

8 **A** Yes.

9 **Q** Not any particular odor sample or scent article
10 tracking?

11 **A** Well, when he picks up on a scent picture, and
12 if you understand what a scent picture is, he picks up on
13 the scent picture of the human that he has located and
14 acquired the trail. At that point, he'll be looking for
15 that human odor that is coming from that scent picture.
16 So Rosco can go from tracking to an article search by
17 having the same scent picture that was on the track,
18 which was left on the article which is indicative to the
19 way that the Greenville County Sheriff's Office trains
20 with the use of a toy and the man at the end of a trail.

21 **Q** Okay. How long were you going up this logging
22 road?

23 **A** Going up the logging road, it took us a while
24 to get through the woods because of the heavy brush, as
25 Deputy Rivera testified to, due to the fact that we had

1 to be careful walking when you have an 85-pound Shepard
2 pulling you through the woods. You have to be careful so
3 I don't hurt myself. It took a while to get to the
4 logging road. When we made it to the logging road, I
5 made the left and we continued down. Can't be 100
6 percent sure how far I tracked. That's where I
7 discovered the article, the bandana.

8 Q Okay. Not sure how long it was?

9 A No. I can tell you the time frame that I was
10 deployed from. It was about 55 minutes from the
11 beginning to end.

12 Q Okay.

13 MR. JOHNSON: Your Honor, permission to
14 approach briefly?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference is held off the
17 record.)

18 THE COURT: All right. Do you object to this
19 witness being qualified as an expert?

20 MR. HOSKINSON: What I object to, Judge, is
21 it's not so much that he has a lot of training. The
22 issue is the elements of State v. White, which is
23 382 S.C. 265. It's for the testimony considering
24 dog tracking. Particular, there's six elements.
25 The first few regard the training --

1 **THE COURT:** You talking about five and six?

2 **MR. HOSKINSON:** Yes. Yes, Your Honor. What
3 happened here is -- primarily number six as well is
4 that this is a road that they understand to be a
5 road that's been traveled in the past. Up until
6 that point, they've been going through the woods in
7 an area that they would arguably contend is
8 somewhere where nobody else had been. It was a trail
9 where they believe the suspect had gone from. When
10 they went off the road into the woods, it was a
11 trail that the suspect had gone onto. As we get to
12 this point in the testimony, we get into an area
13 where that trail now has -- is now co-mingled with a
14 logging road, uh, which others had been there
15 before. It's wide enough for a truck. They believe
16 it goes off to a major thoroughfare, goes off to
17 some other point of interest.

18 Now, it's contaminated by the presence of
19 humans in the past and how it's now become a
20 contaminated trail. And failing that element that
21 this now unreliable --

22 **THE COURT:** So, number six, are you
23 contesting that it was within a reasonable time?

24 **MR. HOSKINSON:** Uh, well, from a perspective
25 of reasonable or unreasonable, Judge, uh, once they

1 enter that environment -- I'm more focused about
2 number six, Judge.

3 **THE COURT:** All right. Mr. Fretwell, any
4 comments?

5 **MR. FRETWELL:** Yes, sir. I just don't think
6 we've had enough testimony yet. Not enough
7 foundation has been laid by this witness to
8 demonstrate the answer to that question. I think a
9 useful predicate has been formed by Deputy Rivera in
10 his testimony, but in order for the State to respond
11 fully, I have to ask the witness more questions.

12 **THE COURT:** All right. You may do so now.
13 Let's get this clarified now so we don't have to
14 send the jury out again.

15 **MR. FRETWELL:** Thank you, Judge.

16 **THE COURT:** Ask the questions.

17 **BY MR. FRETWELL:**

18 **Q** Deputy Wannemacher, what kind of weather was
19 like -- what was it like that day?

20 **A** It was raining on and off and it was cold.

21 **Q** Okay. And, uh, at the time that, uh, Deputy
22 Rivera was in the woods tracking, what were you and the
23 other K-9 officers doing while he was doing that?

24 **A** We were roaming the perimeter making sure an
25 appropriate perimeter was set up.

1 **Q** Let's talk about that perimeter. Did that
2 perimeter surround an entire wooded area?

3 **A** Absolutely. It was one of the best perimeters
4 I've seen in the Sheriff's Office since I've been on the
5 tracking team. You could literally see -- it was almost
6 line of sight to every perimeter unit. Nobody was
7 getting in or out of that area.

8 **Q** When you have a perimeter like that, are police
9 channels dedicated to communication among those officers
10 that are dealing with a particular manhunt like this?

11 **A** Yes, we would have held radio traffic on one
12 channel relative to the whole track and manhunt issue.

13 **Q** And, uh, we've heard testimony that Deputy
14 Rivera was in the woods 17, 20 minutes or something like
15 that. Do you recall how long you were in the woods
16 before you came upon the logging, what you describe as a
17 logging road in your testimony?

18 **A** The majority of my time. Where I started,
19 Deputy Ramon did an excellent job stopping in the area
20 where we knew it wouldn't be contaminated. We weren't
21 even near the logging road yet. We were basically coming
22 into the woods. We have an easy access point to get our
23 dogs in. So where I deployed Rosco to initially continue
24 the track that Deputy Rivera started wasn't contaminated.
25 The only contamination it would have had were -- would

1 have been Deputy Ramon, his dog, the two cover officers.

2 However, because of our protocol, the way we
3 establish, we bring a dog in, we allow him to get
4 acclimated to the area. For example, when we are there,
5 I'm asking the cover officers which direction did you
6 come from. Where did you go? Did you go over here?
7 That is not only time for me to gather information but it
8 allows my dog's olfactory system to get used to all the
9 scents that are there. At that point, I'm more reliable.

10 As the dog can scent discriminate, and my dog
11 is trained to scent discriminate, he will pick up on the
12 odor of the one man that's not there. It's called the
13 missing man theory. As all those people are there, he
14 will target and go to the one area, which, in this case,
15 he continued to track through the woods for several
16 minutes working those hard brush piles, getting through,
17 pulling me, until we came out to the logging road.

18 In my opinion, there was no way nobody was
19 there. I didn't see anybody during my deployment at that
20 point. The only people I saw were deputies and, at some
21 points when I was walking out, all I saw were deputies on
22 the outskirts in blue lights.

23 Q This transfer when you and Deputy Rivera
24 changed in or out, is that the transfer that was
25 described within basically the eyesight of that police

1 vehicle on Alma Street?

2 **A** That's where Deputy Ramon came out. I would
3 have walked several feet into it. That's what
4 everybody's trying to say we were close to this field.
5 When we went in, I was kind of on top of a wooded area
6 with a whole bunch of brush that I remember. And one of
7 our cover officers stayed there so they could actually
8 describe the same way we come in with our cover officers.

9 **Q** During the time that you were roaming the
10 perimeter, were you aware -- did you come in contact with
11 anybody either coming into or coming out of that
12 perimeter area?

13 **A** No.

14 **Q** When you were roving the perimeter, were you
15 able to determine whether or how secure that perimeter
16 was around that wooded area?

17 **A** Uh, we locked down pretty much anywhere those
18 logging roads were coming in or out with deputies. I
19 mean, we locked those down because we were going to use
20 those as our point of access if we needed to get in for
21 an emergency situation.

22 **Q** And I think you already testified you didn't
23 see anybody when you were in the woods, nobody besides
24 the cover officers that were there with you once you
25 started?

1 **A** The only people that were there were my cover
2 officers once I went back in.

3 **Q** Now, tell the Court about -- when a dog picks
4 up a scent trail, what is it about that scent trail with
5 respect to how new or how old that scent trail is that
6 matters to that dog?

7 **A** When the dog picks up a scent trail or acquires
8 trail, you're going to hear it more commonly termed, they
9 get a scent picture. That scent picture doesn't change
10 from time to time. We're certified through North America
11 Police Work Dog Association with a cross track and our
12 trail to show that our dog can scent discriminate. We're
13 trained that way.

14 Once they get that acquired trail and they are
15 on that, it's very hard to get them off once they have
16 acquired the appropriate track, i.e., number one, it
17 being sterile would be one thing. But two, where we
18 were, it would be very unreasonable for a person to be
19 there just walking down a path. We weren't in a path at
20 that point. So acquiring that trail at that point,
21 coming out to the path is me, my acquired trail that I've
22 acquired and that I have the scent picture that's needed
23 for my dog to work.

24 **Q** And once you came out to the logging trail, did
25 Rosco deviate from that trail at all?

1 **A** Uh, absolutely not. At that point, he actually
2 came a little quicker. There was nothing to block him
3 and get out of the way.

4 **Q** Any -- anything in your experience with dealing
5 with Rosco that day and your training and knowing his
6 behavior that would give you any reason to believe that
7 from the time he acquired the trial to the time he
8 located the bandana that it was anything other than one
9 scent trail?

10 **A** No. When he went down and went all the way
11 through it and what makes it even more desirable is he
12 actually picked up the article. In training, he will not
13 pick up generic items on the ground that does not have
14 that specific scent odor or as we can put it, the target
15 odor or scent discrimination. The person that touched
16 that bandana had to be the person that I was tracking at
17 that point because he's not going to pick up on regular
18 trash on the side of the road.

19 **MR. FRETWELL:** No further questions, Judge.

20 **THE COURT:** Any examination of this witness?

21 **MR. HOSKINSON:** Nothing further, Your Honor.

22 **THE COURT:** Are we going to have the same
23 issue on Officer Fuller?

24 **MR. FRETWELL:** Uh, Officer Fuller, Your
25 Honor, is on that logging role -- road for a period

1 of time. He then tracks to the creek and enters the
2 creek. He did -- and Deputy Fuller will testify
3 that he scented his dog off of the bandana, that he
4 reacquired the track and he tracked to the creek.

5 **THE COURT:** Is there going to be an issue
6 with Officer Fuller's testimony? The reason I ask
7 is I'd like to resolve it now too rather than have
8 the jury come back in. I don't want to -- certainly
9 if you need to do it later, we'll do it later. I
10 didn't know if you knew now, Mr. Hoskinson, at this
11 point that there would be an issue there. We can
12 take care of it. If not, we'll take care of it when
13 it comes up if it does.

14 **MR. HOSKINSON:** Just one second.

15 **THE COURT:** Okay.

16 (WHEREUPON, there is a pause.)

17 **MR. HOSKINSON:** I don't think we have
18 anything further.

19 **THE COURT:** All right. Uh, I gather the
20 objection is to this witness being qualified as an
21 expert because of White as I understand, Mr.
22 Hoskinson, particularly the trail not being
23 otherwise contaminated. Based on the evidence I've
24 heard, I find that the witness is qualified as an
25 expert not only in training, but I find the

1 testimony reliable, that there was a reasonable time
2 at which the dog was placed on the trail where the
3 suspect supposedly had been. I think based on the
4 testimony I've heard from Officer Wannemacher, that
5 there was not a contamination. As I understood his
6 testimony, the dog got the scent before the logging
7 trail. He was in the brush area where the folks
8 went through the brush to get to the logging trail.
9 But the scent was there and was followed through the
10 logging trail. I also find it reliable based upon
11 the fact that the perimeter was, uh, radio to radio
12 and sight to sight around the area that they were
13 searching.

14 I believe the factors under State v. White and
15 also rely on Watson v. Ford Motor for decisions that
16 this witness is qualified as an expert and will
17 allow his testimony. Any other matters we need to
18 take care of outside the jury's presence?

19 **MR. JOHNSON:** Your Honor, at this point, our
20 objections are preserved.

21 **THE COURT:** Your objection to this witness
22 being an expert are preserved.

23 **MR. JOHNSON:** Yes, sir. Thank you, Your
24 Honor.

25 **THE COURT:** If the jury's ready, we'll have

1 them come back in.

2 **(WHEREUPON,** the jury enters at approximately
3 11:34 a.m.)

4 **THE COURT:** All right. Thank you very much,
5 Ladies and Gentlemen. Uh, based upon, uh, the legal
6 research I have done, I've found this witness to be
7 qualified as an expert. We'll, over objection,
8 allow him to testify as an expert witness. Again,
9 I've explained to you about expert witnesses being
10 allowed to give opinions, but that just the evidence
11 you are to consider with all other evidence. Give
12 it the weight that you think it deserves. Just
13 because a person is qualified as an expert, that's
14 just evidence as other evidence for you.

15 Solicitor, you may begin your examination of
16 the witness.

17 **MR. FRETWELL:** May it please the Court.

18 **BY MR. FRETWELL:**

19 **Q** Master Deputy Wannemacher, let me take you to
20 Wednesday, December 10th, 2008. Were you working that
21 day?

22 **A** Yes, I was.

23 **Q** In fact, what were you doing that day?

24 **A** We were training at Woodside.

25 **Q** Okay.

1 **A** It was my duty day. It was weekly training.
2 We were all -- all the K-9 units were out. We were at
3 Woodside old school.

4 **Q** Okay. When you say Woodside, are you talking
5 -- what school are you --

6 **A** The old Woodside High School.

7 **Q** Okay. Is it on Woodside Avenue?

8 **A** Yes, it is. Yeah.

9 **Q** You know if it's the old Parker School.

10 **A** The old Parker School. Sorry about that.
11 Yeah.

12 **Q** Okay. Uh, how routinely at that time would you
13 train on Wednesdays?

14 **A** Uh, every Wednesday we train. It's still our
15 policy that we train weekly for, uh, 10 hours.

16 **Q** Okay. Uh, any particular reason that you were
17 training at the high school that day?

18 **A** Uh, it was cold and wet. So we had a building,
19 we had awning so we could easily get out dogs in and out
20 without getting them wet.

21 **Q** And did you respond to the area of Emile, Alma
22 and Leone Streets that day?

23 **A** Yes, I did.

24 **Q** Can you tell the jury how far away was the old
25 Parker High School from the location of Emile, Alma and

1 Leone?

2 **A** Less than five minutes away.

3 **Q** So you were able to arrive very quickly?

4 **A** Yes.

5 **Q** What purpose did you arrive at that location on
6 Emile?

7 **A** Uh, when I responded, I actually responded to
8 the perimeter. The K-9 officers had already arrived on
9 the scene. One of the tasks that K-9 officers do, we
10 stand on the perimeter, number one, to see how tight the
11 perimeter is, to see where we need more units. But also,
12 we want to make sure that we have dogs on every side of
13 the perimeter so if we have somebody run.

14 **Q** Okay. Do you know, uh, Sergeant Chris Cooper
15 in the corner over there?

16 **A** Yes, I do.

17 **Q** Was he the westside supervisor that day?

18 **A** Yes, he was.

19 **Q** Okay. While you were roving the perimeter, can
20 you tell the jury how the -- how the communications --
21 and again, I know you were not charged with the
22 perimeter. But how did the communications occur between
23 deputies there on this perimeter?

24 **A** We actually hold traffic which means it's --
25 only essential traffic is on that channel. And at that

1 point, we have the road supervisor that handles the
2 containment, which is the perimeter. And he's started
3 dictating and figuring out where units are needed. Then
4 we also, at the same time that's going on, have our
5 officers that are inside that are tracking. They are
6 communicating, updating their location so we can modify
7 our perimeter if needed.

8 Q And what makes a good perimeter versus a bad
9 perimeter?

10 A What makes a good perimeter versus a bad
11 perimeter? Well, on this location on this call, we had
12 an excellent perimeter because we had roads that
13 contained the area. So we had line of sight. It was
14 close. It has roads around them.

15 Bad perimeter would be something similar to
16 Caesar Head. No roads nowhere. How do we contain that?
17 We -- it's very hard to. In this geological area, we had
18 roads that were blocked. It was an excellent perimeter.
19 We had an excellent response time with all the road
20 officers.

21 Q And during the approximate 20 minutes that
22 Deputy Rivera was in tracking, was this perimeter being
23 set up?

24 A It was pretty much -- yeah, when we arrived, it
25 was already being set up. It was already there. It was

1 established. I would say it took us -- let's see. 11:52
2 is when I had the call. I was on scene by 11:58. The
3 perimeter was already being established. You're looking
4 at a six-minute perimeter.

5 Q And when you roved the perimeter, did you find
6 it, again, to be an excellent perimeter?

7 A Yeah, one of the best that I've seen at the
8 sheriff's office since being on the tracking team.

9 Q During the course of roving, did you know of
10 any communication or come into contact with anybody
11 coming either in or out of the perimeter?

12 A Uh, no. There was no one coming in or out.

13 Q At what point did you enter the woods to start
14 your track?

15 A Once Deputy Ramon requested relief for his K-9
16 partner, I responded to that area.

17 Q Let me stop you for a second. You said Deputy
18 Ramon?

19 A Yes.

20 Q What is Deputy --

21 A Deputy Ramon and his K-9 partner Smeris.

22 Q Okay. What's --

23 A I'm sorry. Deputy Rivera. Sorry about that.

24 Q Ramon is his first name?

25 A Yes.

1 Q Are there more than one Deputy Rivera in the --

2 A Yes, there are. There's one that's in traffic
3 and there's one that's in K-9 services.

4 Q So you refer to him as Deputy Ramon?

5 A Sometimes.

6 Q Okay. All right. But he's the K-9 officer
7 that just testified a few minutes ago?

8 A Yes, he is.

9 Q So he called for relief?

10 A Yes.

11 Q And then, uh, how often are K-9s relieved in
12 the course of a track?

13 A We relieve them for several reasons. The first
14 reason is when the handler starts seeing his dog being
15 fatigued, we want to make sure we have a fresh K-9
16 handler. Number two, it's like a chess game. We want to
17 make sure we have when we're at a position where we can
18 switch out easily. Even if we have a very fresh dog, we
19 may switch a dog out because we don't know where the
20 track's going to go. So those are the reasons we switch
21 out, when we have a tired dog or when we're in a position
22 where this track may go for a long time but we know where
23 we're at, we'll switch out.

24 Q Were any of those factors present when you
25 changed your dog for Deputy Rivera's dog?

1 **A** Yes. When we ended up switching out dogs,
2 could we have pushed -- could Deputy Rivera push his K-9
3 partner a little bit more? Yeah, but why when we can put
4 a fresh dog into a location where we know we had the
5 track going, where we know no one was at. We made sure
6 we changed the location at that playing into the game --
7 playing that chest game in a smart way.

8 **Q** And before that time, were you familiar with
9 that area back in there? Did you know where those roads
10 went and whether or not you would be able to change the
11 dog at a later point?

12 **A** No, not at that point.

13 **Q** Okay. All right. And where precisely -- and
14 maybe we need to go ahead and have you step down and look
15 at State's 28. To the best approximation of where you
16 can, do you recognize this area?

17 **A** Yes, I do.

18 **Q** Okay. And just make sure that you stand so
19 that all the jurors can see what you're pointing to and
20 use that pointer. Keep your voice up so the Court
21 Reporter can hear you.

22 **THE COURT:** For the record, you're referring
23 to Exhibit 28?

24 **MR. FRETWELL:** Yes, sir. I apologize.

25 **THE COURT:** So the record would reflect what

1 he's describing.

2 **THE WITNESS:** Okay. The day we switched out
3 K-9s, this is the westside park. Alma Street's
4 right here. Right in this area approximately,
5 there's a road that goes up where -- I was informed
6 to come out to that location. I actually met Deputy
7 Rivera. He actually communicated to me where he
8 went and where I needed to go. I went back into
9 this area roughly. I can't give you a description
10 because it's so dense and popu -- it's very hard to
11 actually -- when we got back there, it was easy to
12 get in and out.

13 Where I actually deployed Rosco, it was in an
14 area where it wouldn't be easily accessible for
15 somebody just walking around. When we got there, we
16 actually had our cover officers there. I had Deputy
17 Cannon and Deputy Harris. During that time, I'm
18 talking to them, putting my dog in a down position
19 so he could be acclimated to human scent that's
20 already there. At that point, I'm asking where did
21 you come from, where did you go so I know where to
22 actually deploy Rosco so I can have the best
23 opportunity to locate the trail. Being told which
24 direction the cut was going in, I cutted once again
25 as we're trained, perpendicular to that location.

1 **BY MR. FRETWELL:**

2 **Q** Wait a minute. Let me say, cutted, ---

3 **A** Yes, sir.

4 **Q** --- I don't know that everybody knows what that
5 means. Can you please explain that to the jury?

6 **A** When I say cutted, I'm actually commanding my
7 dog to actually look for human scent on the ground. Why
8 I'm doing it parallel is I'm deploying him so that if he
9 gets odor, if he goes back towards cover officers, I know
10 I have it and if he makes that turn, I know I also have
11 it from that location. I'm no further than say three to
12 five feet. They're right there. My dog has been
13 acclimated to their scent. He knows that scent's there.

14 He can scent discriminate. He can actually
15 tell which location, what people are there, every person
16 has a unique smell. Scents make a difference. You're --
17 what you ate, your cologne. You have all those secondary
18 reinforces that are already there. Rosco's going to pick
19 up, oh, I need to find this one.

20 Also, the one thing is you have an adrenalin
21 rush that we've been chasing a person that just committed
22 all these crimes. We have to go -- that adrenalin is a
23 lot easier for my dog. It's very distinguished when my
24 dog hits it.

25 **Q** Before you continue, let me ask you what is the

1 purpose of the role of the cover officers when you switch
2 K-9s?

3 **A** The role of the K-9 is number one, to protect
4 me, but really for giving me information. Where did they
5 go? So if I'm here and Rosco starts tracking backwards,
6 we know, hey, we've already been here. You're
7 backtracking. One of the reasons we use them is they
8 help us determine where the other K-9 handler went. So
9 we have the availability to know where we went and where
10 we didn't go, what is uncontaminated and what is
11 contaminated. Where we actually switched out, it was
12 uncontaminated. We knew it wasn't. That's why we took
13 that point to do the switch out at that point.

14 **Q** As a dog handler when you're tracking, is there
15 anything about the terrain or the things that are living
16 there that give clues to you that your dog's going in the
17 right direction?

18 **A** At this point when we're going through the
19 thick area that we went through, we came out and we
20 started going through real thick brush again. It's not
21 normal. Somebody had to go through there first to go
22 through that way. We're talking about going through as
23 Deputy Rivera quoted earlier that he was traveling over
24 branches. Just picture trying to start a fire and
25 building all that kindling wood up. That's the kind of

1 stuff we're stepping over. It was real tedious for us to
2 get over, for me. My dog had no problem running over it.
3 The problem is without me getting hurt and taking us
4 slowly through, that's what took us so long to get out to
5 the next area that we came to.

6 Q And how do you know when your dog picks up a
7 scent?

8 A My dog -- well, my dog, Rosco, it's specific.
9 His tail becomes rigid. His hackles will start coming up
10 on human odor and adrenalin.

11 Q Deputy Wannemacher, what's a hackle?

12 A A hackle. I'm sorry about that. Hackles are
13 the hair on my dog's rear end.

14 Q Okay.

15 A That come up. If you ever seen a dog be real
16 aggressive towards you and he puffs up, that's what the
17 hackles are. That's what tells me my dog is in that
18 human odor. It's real distinct. It puts my hair up on
19 my head. The coolest thing about having a K-9 partner
20 because he communicates with you not with words, but his
21 body language.

22 Q And did Rosco demonstrate to you that he picked
23 up a fresh human scent odor that day?

24 A Yes. When he started, he starts breathing
25 differently. He starts breathing intense. I mean

1 pulling to the point where -- I mean, he is pulling me --
2 I only weigh 150 pounds. He can pull me anywhere he
3 wants when he wants to go. It's a workout.

4 Q Which way did the track take you?

5 A We start right here. We actually come in -- he
6 actually starts going left towards Emile Street again.
7 We come out to a logging road. We actually cut back
8 towards -- I would say more towards Marion Street, kind
9 of paralleling Emile Street.

10 Q Okay. Are you able to see specifically where
11 the trail was that day?

12 A No, I am not.

13 Q Okay. At any time, you had the same cover
14 officers that Deputy Rivera had, is that correct?

15 A Yes.

16 Q Okay. And are -- what would they have done if
17 you had started to go back over the trail you just came
18 from?

19 A They are there to inform me, uh, if I'm
20 backtracking. We went over there. You're possibly
21 tracking us. That's one of the reasons why they are
22 there. When we started the track, I mean, I can still
23 today remember coming in and going -- continuing the
24 track where Deputy Ramon thought it went. It continued
25 until we came out the --

1 **Q** So where the initial track seemed to be going
2 toward the park, your track took you back in the other
3 direction?

4 **A** Yes. It went away towards West Marion Street.

5 **Q** Okay. Can you describe for the jury what was
6 the terrain like for the first part of that track?

7 **A** The first part of the track, we started in an
8 open area. Then it came into thick brushy wood briars.
9 At that point, you couldn't really see through it. I
10 just remember that I'm pretty short so a lot of the stuff
11 was a lot higher than me getting through, getting pulled
12 through it.

13 Rosco being able to go a lot quicker than I am,
14 I had to slow him down to be able to get where he was
15 going. Staying right behind him, but at the same time,
16 having to switch hands because we're going through
17 thick, thick, thick brush. A lot of its briars. If you
18 ever been in a briar patch, your shoulders hit that, your
19 arms hit that, your face hit that. You start getting
20 cuts and you start slowing down the dog.

21 **Q** Now, when -- did you have any hills that you
22 had to go up on?

23 **A** Yes, that area is actually like a plateau.
24 It's kind of weird. You can actually get to one point.
25 You can actually see. At that point, I remember being up

1 there going, wow, we really do have a good perimeter
2 because you can see all the blue lights. It wasn't a
3 bright sunny day. Those blue lights were traveling
4 enough that we could actually see well into it.

5 **Q** And how does the dog track a hill like that?
6 Can you explain to the jury how does a dog clear that
7 hill and know which direction a person went from, let's
8 say, being on that hill?

9 **A** When he's working the hill, he's going to go --
10 Rosco is trained to track. He's going to find that human
11 odor. He's going to keep his nose to the ground. He's
12 going to work foot to foot and a few feet off. It was
13 raining. It was cold. All that human odor coming off is
14 going to start coming to the ground. Five or six feet
15 either way, he's going back and forth on.

16 **Q** And once you cleared that area, where did you
17 go after that? Describe the continuing terrain.

18 **A** When I finally get out and I get through the
19 thick area, I finally get to a logging road. From the
20 logging road, I make a left and I start going down the
21 logging road.

22 **Q** Left as in towards Marion Road?

23 **A** Yeah, we're going to be going towards back a
24 way. I would say it's Emile Street and West Marion Road.

25 **Q** When you came across that road, did you track

1 on that road?

2 **A** Absolutely. As soon as we came to a clearing,
3 he made that left and we started to go. To me, that's
4 real indicative of he's on the right. He's acquired the
5 right track when we got there. We've hit this road and
6 now it's gotten easier to track because there's nothing
7 in our way. We start to pick up our pace at that point.

8 **Q** And talk a little bit about the concept. I
9 think you mentioned earlier about scent discrimination.
10 What does that mean? How does it factor into a track
11 like this?

12 **A** When our dogs -- our dogs are trained. It's
13 one of the senses that they use. Dogs smell 44 times
14 greater than I do and they scent discriminate. That's
15 real unique. Getting down to it, just think about
16 walking into a low country boil. That's what we
17 associate the shrimp, the corn, the onions. Well, the
18 dog's scent picture, he pictures all that. He
19 immediately don't say low country boil. He says, wow,
20 there's crab in there. There's shrimp in there. There's
21 corn. There's onion.

22 That's what he's doing with human odor. He
23 actually has a scent picture that he sees. He smells
24 everything. He's picking that one thing that he's
25 following and that's what he ended up doing when he

1 established and acquired the trail. He finds the human
2 odor that Deputy Rivera and Smeris were tracking. Once
3 he acquires that odor and continues, I know he's onto
4 something and that's what he's doing. He's continuously
5 evaluating the environment locating that scent picture.

6 **Q** How do you train your dog to scent
7 discriminate? How does that process work when you're
8 working or training?

9 **A** When we started, we originally start in very
10 sterile environments where they learn how to track. Once
11 we know they are tracking humans, we start throwing in.
12 In a sterile environment once again, we bring in a cross
13 track. We actually bring a dog past a track where
14 somebody else has walked. We'll have a track laid. It
15 will be laid for anywhere between 20 to 30 minutes.
16 Right as the track is getting started, we'll put another
17 person to walk perpendicular to it to make sure the dog's
18 staying on the track. We call it track sure. That's
19 what we're making sure they do.

20 **Q** And is that part of their ongoing maintenance
21 training?

22 **A** Absolutely. It's ongoing maintenance as well
23 as we have to get certified yearly with the North America
24 Work Dog Association.

25 **Q** Okay. And what, if anything, did Rosco come

1 across on the trail?

2 **A** Uh, when we came down the logging road, we
3 located -- well, Rosco located a blue bandana.

4 **Q** Okay. When you say located it, can you tell
5 the jury what happened?

6 **A** When Rosco locates articles that have human
7 scent on it, once again, he's had the scent picture of
8 this person we had been tracking. He can go past
9 basically trash or anything else that's on a trail. He
10 won't pay attention to that. He actually picked up a
11 blue bandana in his mouth indicating to me, cause that's
12 what he does when found an article, that there's fresh
13 human odor that he's recognized the smell.

14 **Q** And any, uh, correlation between that bandana
15 and the trail that he's been tracking?

16 **A** Yeah. Normally, uh, in training and in real
17 life deployments, there are articles all over. You walk
18 down the street and you see trash. He doesn't pay
19 attention to that. But he picked his article up off the
20 ground and into his mouth indicating to me that is the
21 same scent we're training -- uh, the same scent we were
22 trailing.

23 In training, we'll put out -- as Deputy Rivera
24 stated earlier that we train with a toy at the end or
25 people at the end, that human odor is in that toy. The

1 dog is trained to pick up that toy. From the same time,
2 there's that human odor from that person that we're
3 tracking.

4 Q Is there anything about a dog's mouth that
5 deals with the scent?

6 A Uh, yes. There's actually -- when it comes
7 down to it, that is part -- that is connected to the
8 olfactory system. You actually have the gland that's
9 under the roof of their mouth that has its own nerve
10 receptors or olfactory cells that are directly, uh,
11 linked to the olfactory lobe of the canine. It's another
12 aspect to actually get more reinforcement for the odor.

13 Q Okay. The bandana is like a piece of cloth?

14 A Yes.

15 Q Do you train with cloth?

16 A Yes, we do. That's one of the articles that we
17 train for. The big thing about cloth is you have to
18 remember everything in this world has an absorption rate.
19 When I talk about that, just picture you have cloth that
20 has a stain on it versus wood that has a stain on it.
21 Which one holds the stain or the odor more? The cloth.
22 Vice versa, you have a piece of plastic that you can
23 easily wipe off. There's a lot more odor concentration
24 on a cloth.

25 Q And how did you get the bandana away from

1 Rosco?

2 **A** At first, I asked him to give it to me and let
3 go. He didn't. I actually went to it and had to hold
4 it. He pulled away. Eventually, when I gave him his
5 command, he released the item.

6 **Q** Did his teeth or mouth do anything to the
7 bandana?

8 **A** Yeah. He put some holes in it.

9 **Q** Okay. Please take your seat back on the
10 witness stand.

11 **MR. FRETWELL:** Your Honor, I would like to
12 have this item marked as State's Exhibit 29.

13 **(WHEREUPON, State's Exhibit 29 is marked for**
14 **identification purposes.)**

15 **BY MR. FRETWELL:**

16 **Q** Master Deputy Wannemacher, I want to show you
17 what's been marked as State's Exhibit 29. This item is
18 not into evidence. I'm going to ask you to pull this
19 item out, in your lap, out of view of the jury. Tell me
20 whether or not you recognize the article that's in that
21 package.

22 **A** (Reviewing.) Yes, I do.

23 **Q** First of all, what is it?

24 **A** It is a blue bandana.

25 **Q** Okay. And how do you recognize the item?

1 **A** Uh, I recognize it specifically from the ripped
2 corners.

3 **Q** Deputy Wannemacher, can you sit it up --

4 **A** I'm sorry about that. That doesn't look good.
5 Yeah. I apologize.

6 **Q** Can you reiterate how you recognize the
7 bandana?

8 **A** The bandana has marks on it that are very
9 familiar to the ones that Rosco would have placed.

10 **Q** Did you observe those rip marks that particular
11 day?

12 **A** Yes, I did.

13 **Q** On the bandana?

14 **A** Yes.

15 **Q** What did you do with that item? Let me just
16 ask you, is that the same bandana that you located on --
17 or that your dog, Rosco, located on the trail that
18 particular day on December 10th, 2008?

19 **A** Yes.

20 **Q** What did you do with the bandana once you got
21 it away from your dog?

22 **A** Once I got it away from my dog knowing that it
23 could be used as a scent article, I placed it in my cargo
24 pocket. We wear different uniforms when we're, uh,
25 utilizing being deployed on the street. I placed it in

1 my pocket and continued to track a little bit.

2 **Q** Okay. If you could fold that item back up
3 without exposing it to the jury and place it in the
4 container that it was in, we'll continue with the
5 questions. (Pause.)

6 Did you call for relief for Rosco at some
7 point?

8 **A** Yes, I did.

9 **Q** Why?

10 **A** Due to the fact that now I knew I was on a
11 logging road and Rosco had been tracking for about 55
12 minutes, it was a good tactical time to switch out and
13 get another fresh dog to come in and allow a new handler
14 to come in with their dog.

15 **Q** Did you employ the same kind of measures that
16 were employed when you switched out your dog for Smeris
17 in trading in the new dog?

18 **A** Yes.

19 **Q** What did you do with the bandana?

20 **A** The bandana was turned over to Deputy Fuller so
21 he could utilize it as a scent article so he could
22 acquire a track off of it.

23 **Q** Is it common practice to use found articles of
24 clothing for scent?

25 **A** Yes, it is.

1 **Q** And after Rosco, uh, located this bandana, did
2 he continue to follow that trail for some period of time?

3 **A** Yes, he did.

4 **Q** Okay. How long were you and Rosco -- let me
5 ask you this, did you see your dog pick up the scent
6 article?

7 **A** When he went down, yes, I saw him pick up the
8 article.

9 **Q** We heard Deputy Rivera talk about his dog goes
10 back and forth on a serpentine motion, how does Rosco
11 track?

12 **A** Rosco is a little bit more direct. He's pretty
13 much almost line of sight. He doesn't -- he doesn't
14 serpentine. He's going to basically stay almost foot to
15 foot.

16 **Q** When he was tracking that scent article, did he
17 have to go off from one side or the other?

18 **A** It was directly in the path that we were
19 tracking.

20 **Q** How long were you and Rosco on the trail total?

21 **A** Uh, when we were working total from deployment
22 to end was about 55 minutes.

23 **Q** Could you say how much area, actual area you
24 covered during that time period?

25 **A** It would be really hard to estimate.

1 **Q** Okay.

2 **A** Due to the fact of just scenery looks like
3 scenery. At the beginning, it was very slow due to the
4 fact that we had to go through that -- when we went back
5 into dense brush, it took a while to get through. I
6 remember crawling at some points.

7 **Q** And not talking about any kind of trash or
8 anything like that, did you locate any other articles
9 that day?

10 **A** No, I did not.

11 **Q** Did Rosco locate anything?

12 **A** No, he did not.

13 **Q** Did you and Rosco search other areas?

14 **A** Yes, we did. I actually -- at one point, we
15 actually had a call that there was an abandoned house, I
16 believe it was on 10 Calhoun Avenue where Sergeant Black
17 and I cleared that to make sure nobody was inside there.

18 **Q** Nobody was in there?

19 **A** Nobody was in there.

20 **Q** Anywhere else?

21 **A** I also cleared the drainage ditches that are
22 located on 253 where the creeks run off. And nothing was
23 located. Rosco did not give any interest. There was no
24 footprints that were obvious to me inside the tunnels.

25 **Q** At any point, did you return to the wooded area

1 near Emile Street after this day?

2 **A** No, I did not.

3 **Q** The fol -- did you return the following day?

4 **A** Oh, yes. Actually, yes. To do an article
5 search for a, uh, -- to try to locate the gun. But you
6 didn't go back into the search area with your dog that
7 day?

8 **A** No. The day of the actual incident on the
9 10th, I did not.

10 **Q** So during this article search the following
11 day, your dog did what?

12 **A** On that day, uh, which would have been the
13 11th ---

14 **Q** Yes, sir.

15 **A** --- I went back. I was requested to do an
16 article search to see if we could locate a gun. On Emile
17 Street, on the sides of the road, I ended up doing an
18 article search. Didn't locate any guns or any other
19 evidence.

20 **Q** Was that in the location of that minivan?

21 **A** Yes, it was.

22 **Q** Can you tell the jury what is the terrain like
23 on the other side of that minivan there.

24 **A** The terrain is a steep embankment that cuts
25 down. It is full of briars. It was very difficult to

1 work. It would almost be impossible to even locate
2 something that fell -- anything fell down into the
3 briars, especially with the dog. The dog's not -- with
4 self-preservation, a dog's not going to dig down and
5 locate something when he's getting injured. My dog is
6 trained to actually grab or retrieve the article. He's
7 not there to give it down or a passive response.

8 Q Let's go back -- step back a day to the day of
9 the incident.

10 A Uh-huh.

11 Q During that day when you were roving, when you
12 were in the woods doing these other searches, any -- did
13 you come in contact with anybody?

14 A No.

15 Q Cars or individuals on feet?

16 A No one inside the perimeter, no.

17 Q Anybody coming in and out?

18 A Only deputies.

19 Q Please answer any questions that Mr. Johnson or
20 Mr. Hoskinson may have for you.

21 **CROSS-EXAMINATION**

22 **BY MR. HOSKINSON:**

23 Q You left the article with your relief officer,
24 Fuller?

25 A Yeah. I handed it over to Deputy Fuller.

1 Q And at that point, you exited that road?

2 A Yes.

3 Q You remember which way you went out?

4 A Uh, when going to it, followed the log road up
5 and made a right.

6 Q You went down to where it accesses near the
7 baseball fields?

8 A I can't remember, can't recall.

9 Q Remember on the map if I showed you?

10 A Uh, I wouldn't be able to see it on the map
11 because I can't see the roads on the map.

12 Q You remember where you exited off the logging
13 road when you were done walking down the logging road?

14 A I know I got back to my car.

15 Q Okay. And the car was parked on the paved
16 road?

17 A Yeah.

18 Q And you were able to walk from where you
19 relieved Officer Fuller on the logging road all the way
20 to your car?

21 A Yeah. I did that without seeing anyone.

22 Q And that parking spot would have been next to
23 one of the ball fields at Westside park?

24 A No. If you want me to show you on the map,
25 I'll show you. I parked originally right here. That's

1 where I walked back.

2 Q And this is maybe a softball field or baseball
3 field?

4 A I didn't go anywhere near that area during my
5 tracking.

6 Q So the car was parked right at this part right
7 here.

8 A That house right there.

9 Q Okay.

10 A Pretty much right about there.

11 Q And where does the logging road come out onto
12 Alma Street?

13 A I couldn't tell you if it comes out on the
14 logging road. All I did was, basically when I went
15 through, I came back. I knew I was in the logging road,
16 went up and made a right turn relative to my bearings. I
17 just came through that track. Then came back to my car.

18 Q And this logging road, the logging road is wide
19 enough for a vehicle to drive?

20 A Yes. It's a -- I would say a Duke Power truck
21 would fit on it.

22 Q When handing off the article to Deputy Fuller,
23 did you backtrack at all?

24 A I don't understand the question.

25 Q Did you stay in place waiting for him or did

1 you move back to another location?

2 **A** When he came in, he came in to me. I handed
3 him the article and then I left.

4 **Q** Did you relocate while waiting for him?

5 **A** No, I stayed on the track that I was on.

6 **Q** Okay. You did your track with a 15-foot lead?

7 **A** Yes.

8 **Q** When doing the track the following day, this is
9 when you went to the road where they said the van was,
10 that's where you did an article search?

11 **A** Yeah, I did an article search on the 11th.

12 **Q** On that day, you deployed Rosco off leash?

13 **A** Yes.

14 **Q** And Rosco searched alongside the road?

15 **A** Yes.

16 **Q** And found nothing?

17 **A** And found nothing.

18 **Q** Thank you, officer.

19 **MR. FRETWELL:** Briefly, Your Honor.

20 **THE COURT:** Yes, sir.

21 **REDIRECT EXAMINATION**

22 **BY MR. FRETWELL:**

23 **Q** Just so we're clear, if you can see from there,
24 that's fine. When you're in that area coming in and out
25 to get to your car on Alma Street, are there perimeter

1 vehicles along that street?

2 A Yes.

3 Q You have a perimeter unit pretty much right in
4 here, perimeter unit here.

5 A It's -- you have a perimeter all the way
6 around. I mean, it was the nicest perimeter I've seen at
7 the sheriff's office. We were lucky because of the
8 location of incident.

9 Q Do you know if there's some fencing along this,
10 uh, ballfield?

11 A I'm not aware. I would assume that that
12 property is probably divided.

13 Q There were units -- let me ask you this,
14 looking on State's 19 which I think Deputy Rivera alluded
15 to earlier or referred to earlier, do you see one of
16 those perimeter units on that picture?

17 A Yes, I do.

18 Q It's right there in the back?

19 A It's actually right back there.

20 Q During the course of going through that on the
21 track or roving the perimeter any vehicles, any person
22 whatsoever in that search perimeter area that the
23 deputies came across?

24 A The only people I came into contact with while
25 I was searching -- I didn't come into contact while I was

1 searching, but even while I was walking out, no one. The
2 only people entering in and out would have been tracking
3 personnel.

4 **MR. FRETWELL:** All right. No questions,
5 Judge.

6 **THE COURT:** All right. Thank you, sir. You
7 may step down.

8 **MR. FRETWELL:** Your Honor, the State calls
9 Deputy Tim Fuller.

10 **THE CLERK:** Sir, please place your left hand
11 on the Bible and raise your right hand.

12 **TIM FULLER**
13 having first been sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please be seated.
15 Please state your full name for the record.

16 **THE WITNESS:** Timothy Fuller.

17 **DIRECT EXAMINATION**

18 **BY MR. FRETWELL:**

19 **Q** Good afternoon, Deputy Fuller.

20 **A** Hey.

21 **Q** How long have you worked for the Greenville
22 County Sheriff's Office?

23 **A** A little over eight years.

24 **Q** To what unit are you currently assigned?

25 **A** K-9 services.

1 **Q** How long have you been a K-9 handler?

2 **A** Five years.

3 **Q** What is the name of your K-9 partner?

4 **A** His name is Croc.

5 **Q** Is that the same K-9 partner that you had in
6 December of 2008?

7 **A** Yes, it was.

8 **Q** How old is Croc?

9 **A** Croc is six and a half.

10 **Q** And how long has Croc been in service?

11 **A** Five years.

12 **Q** During that time period, what trainer has he
13 worked with?

14 **A** He's worked with in his initial 500-hour
15 course, John Gardner, uh, Master Deputy Doug Wannemacher
16 and John Bennick.

17 **Q** Okay. And who has been his primary trainer?

18 **A** His primary trainer is myself.

19 **Q** Okay. What law enforcement functions does Croc
20 perform?

21 **A** Just as, uh, Deputy Rivera and Wannemacher have
22 testified. The same things. Aggression control,
23 building searches, area searches, human odor detection,
24 tracking as well as, uh, detection of illegal drugs.

25 **Q** Okay. And Deputy Fuller, I'm having a little

1 bit of difficulty hearing you. So if you can pull that
2 microphone a little closer to your mouth and speak up
3 just a little bit louder so that we can hear everything
4 that you're saying.

5 **A** Sure.

6 **Q** Uh, with respect to human odor, what
7 specifically has your dog been involved with?

8 **A** He does tracking, as we're discussing now,
9 tracks human odor, he locates human odor on articles. He
10 locates, uh, -- he does building searches, which would be
11 locating human odor, hiding in a building, area searches
12 for human odor, which would be similar to a building
13 search, but in an open area.

14 **Q** Okay. And was Croc deployed on December 10th,
15 2008?

16 **A** Yes.

17 **Q** Had he performed human odor detection prior to
18 December 2008?

19 **A** Yes.

20 **Q** Has he been demonstrated reliable?

21 **A** Yes.

22 **Q** What kind of training had Croc received as of
23 December 10th, 2008?

24 **A** At that point, he had been through the 500-hour
25 initial course, as well as 1000 hours of continuous

1 maintenance training.

2 **Q** Okay. And what kind of -- had you also
3 received that same training?

4 **A** Yes. That would be us together.

5 **Q** Okay. Have you or Croc been certified by any
6 organizations?

7 **A** Yes, we initially certified an in-house
8 certification. A short time later, the North American
9 Police Work Dog Association, certified through that on
10 November 16th of '06, November 29th of '07 and December
11 5th of '08.

12 **Q** So that certification occurs annually?

13 **A** Correct.

14 **Q** And does Croc go through additional training?

15 **A** He does maintenance training. We do
16 maintenance training 10 hours a week.

17 **Q** Is that every week?

18 **A** That's correct.

19 **Q** Okay. What breed of dog is Croc?

20 **A** He's a German Shepard.

21 **Q** And is this a breed commonly used for human
22 tracking?

23 **A** Yes.

24 **Q** Is this a breed known for its acute power of
25 scent?

1 **A** Yes.

2 **Q** Do you keep up with the literature and updates
3 in the field of dog handling?

4 **A** Yes.

5 **Q** How long had you been using K-9s in a law
6 enforcement capacity?

7 **A** Five years.

8 **MR. FRETWELL:** Your Honor, at this time, we
9 would move qualify Deputy Tim Fuller as an expert in
10 K-9 human odor detection.

11 **THE COURT:** Any voir dire or any objection to
12 this witness' expertise?

13 **MR. JOHNSON:** No objection.

14 **THE COURT:** Without objection, this witness
15 will be considered as an expert in the field.

16 **MR. FRETWELL:** May it please the Court, Your
17 Honor?

18 **THE COURT:** You may continue.

19 **BY MR. FRETWELL:**

20 **Q** Let me take you to Wednesday, December 10th,
21 2008, Deputy Fuller. Did you participate in a manhunt
22 that day?

23 **A** Yes.

24 **Q** What was your purpose -- what was your role in
25 that manhunt that day?

1 **A** I relieved Master Deputy Wannemacher and his K-
2 9 on the track. I took over for the track at that point.

3 **Q** Do you recall where you entered the woods?

4 **A** I do not.

5 **Q** Do you know how that entry would have
6 corresponded to how Deputy Wannemacher came out of the
7 woods?

8 **A** Uh, --

9 **Q** In other words, did you go in the same way he
10 came out or do you not know?

11 **A** It's likely. Typically, what we would do is a
12 cover team member would come out to a location that he
13 could communicate to myself to meet with me and bring me
14 back in to that location. Typically, in an area that
15 they had already covered. So as, one, not to further
16 contaminate an area, but we're not prepared to encounter
17 the suspect at that time. We want to go through an area
18 that's already been cleared as well.

19 **Q** What was the weather like that day?

20 **A** It was raining.

21 **Q** What about the temperature? Was it cold, hot?

22 **A** It was cold.

23 **Q** And this is in December of the year?

24 **A** Yes.

25 **Q** Was Croc able to pick up a scent trail?

1 **A** Yes.

2 **Q** Did you receive anything from Deputy
3 Wannemacher before you deployed your dog?

4 **A** Yes. Deputy Wannemacher handed me a bandana.

5 **Q** Take a look at what's been marked as State's 29
6 and please take a look at it outside the presence of the
7 jury and tell me whether or not you recognize that item
8 as being consistent with the item that was given to you
9 by Deputy Wannemacher that day.

10 **A** Yes. That is consistent with the item given to
11 me by Deputy Wannemacher.

12 **Q** Did Deputy Wannemacher hand you any more than
13 one bandana?

14 **A** No.

15 **Q** Any other articles?

16 **A** No.

17 **Q** What did you do with that item or that bandana
18 when Deputy Wannemacher handed it to you and how did you
19 use that in deploying your dog?

20 **A** I used it as a scent article. It's a way of
21 giving the dog a scent picture before actually deploying
22 him to start the track. It, uh, makes it a little easier
23 for the dog to have that scent picture beforehand and
24 also it's encouragement to you that when you're starting,
25 you're starting on this scent that you started the dog

1 on. So I put it on the ground. That's the way I start
2 my dog with a scent article.

3 I harness my dog. I down him on the article so
4 his nose is on the article. Typically, he will intensely
5 start sniffing this item. Oftentimes, depending on the
6 item, put it in his mouth to get a little more of that
7 scent. I'll give him the command to start tracking.

8 Q When you send a dog off of an article, what
9 does that tell you about the track that your dog takes
10 with respect to that scent article?

11 A It tells me that the scent picture that's on
12 the article is the scent picture that he's tracking.

13 Q And did your dog continue to track after
14 finding -- after you scented him on the article?

15 A Yes.

16 Q Okay. And, uh, what was -- where basically --
17 describe the train of what you tracked or where Croc
18 tracked in that wooded area.

19 A There were some various roadbeds with fallen
20 trees and stuff on them, some brush, this and that that
21 we went through. We were going somewhat downhill. We
22 came out to a road that runs along the creek. At that
23 point, we turn to the right along the roadbed along the
24 creek for approximately 100 yards. At which point, Croc
25 became, uh, -- gave me behavior indicating that the track

1 went into the creek.

2 **Q** Let me stop you right there. I don't know that
3 I mentioned this. Does your dog, just like Rosco and
4 Smeris, does he display behavioral changes when he
5 acquires that track?

6 **A** He does display distinct behavior changes.

7 **Q** Did he display those behavioral changes that
8 day when you started that track?

9 **A** Yes.

10 **Q** So take us to the point where, uh, you said
11 your dog was displaying some behavioral, uh, changes or
12 something near the creek.

13 **A** Yes, behavior indicating to me that this track
14 actually went into the creek, which is not ideal, but
15 that's the behavior he was giving me.

16 **Q** Is Croc a dog that likes to go in the water?

17 **A** No.

18 **Q** What did you do at that point in the track?

19 **A** At that point, I initially cut him, which I
20 deployed him in areas around that to see if the track
21 left that area. In my mind, I'm thinking maybe the
22 suspect could have gone into the edge of the creek right
23 there -- and to give you a picture, this is very thick
24 brush along the edge of the creek. Most spots, you can't
25 even see the creek. You can hear it. It's -- with all

1 the rain, it's higher that day. It's swift water. But
2 -- so I'm thinking maybe he cut in the brush right there
3 and looked and decided that wasn't a good idea. Maybe
4 came back out. That's kind of what I was hoping for to
5 start with.

6 I cut him attempting to find the trail leaving
7 that area in case that's what he had done first which
8 basically, I would have done like a half circle. Cut
9 along, done a half circle to see if the track left that
10 area. I was not able to locate the track leaving that
11 area which pretty much noted down into him going in at
12 that point.

13 Q Did you contact Deputy Rivera?

14 A Yes.

15 Q For what purpose and tell the jury about that?

16 A Well, the possibility also exists that he went,
17 uh, in right there and went out on the other side. In
18 order to avoid going into that creek right there, just
19 because it's tactically a bad idea, not only are going to
20 be soaking wet, uh, that's the least of my worries.

21 Uh, like I said, it was so grown up, so thick,
22 it's kind of like opening the door into a hallway that
23 you can see as far as you can on either side. Somebody
24 could be just waiting there. We're looking for a guy
25 that just shot somebody. You don't really want to stick

1 your head in there.

2 So in order to avoid that initially, Deputy
3 Rivera did come on the other side of the creek and
4 attempt to cut a trail. And if he located a trail on the
5 other side of where we were, obviously, we would realize
6 that he crossed over right there. He could continue
7 without essentially having to get down into the creek.

8 Q Let's just cut to it Deputy Fuller, did you
9 want to get in that creek?

10 A Absolutely not.

11 Q How cold was it that day?

12 A I couldn't give you a temperature. I could
13 tell you that I was very cold.

14 Q Did you want to get in that cold water?

15 A No.

16 Q Did you eventually get in the cold water?

17 A I was up to my neck in that cold water.

18 Q Was it cold?

19 A Yes.

20 Q Was it comfortable?

21 A No.

22 Q Okay. All right. Tell us how you got into the
23 creek and why you did that?

24 A After, uh, orienting Deputy Ramon to our
25 position, like he testified earlier, he couldn't

1 necessarily see us. It was more of a voice, here I am,
2 here I am. Then he worked the other side based on our
3 location. He doesn't come up with anything. Air support
4 is not an option.

5 Q Why is it not an option?

6 A Well, the weather was bad, for one. But the
7 overgrowth, it was so grown up around it. It was so
8 thick. The size of it, like he said, it's kind of like a
9 cliff on the sides. Someone could hide under it. You
10 wouldn't be able to see that from overhead anyway. So
11 that wasn't an option. Our only option at that point was
12 to get into the creek.

13 Q And, uh, the rainfall that day, how did that
14 affect the flow or the depth of that creek?

15 A It was deeper and it was running faster.

16 Q Once you got, uh, into the creek, tell me how
17 -- how does Croc track through a creek?

18 A Well, uh, number one, he stays in it. In
19 training, when I've done tracks in water such as going
20 down a creek, uh, he'll work -- you have to understand a
21 little bit what the odor does in a creek to start with.
22 You're dealing with a lot of airborne scent, skin rafts.

23 Q What did you say?

24 A Skin rafts.

25 Q Rafts?

1 **A** Yeah. Dead skin that come off you that Deputy
2 Rivera was just talking about. It's constantly falling
3 off of your body. It's going airborne, as he talked
4 about the talcum powder. It's going to land. Some of
5 it's going to land in that creek. It's going to run.
6 It's going to go with the water. Some of it's going to
7 land on the side on the vegetable beside you. In that
8 particular creek, it wasn't going to escape. As I said
9 earlier, it's kind of like a tunnel the way the
10 overgrowth was. It's all kind of centered in there.

11 So Croc's behavior to me in the creek is,
12 number one, like I said, staying in it. He'll work a
13 little bit side to side. An attempt to get out of the
14 creek would be an indication to me, a negative indication
15 that it's not continuing down the creek. He continued to
16 work side to side as we got into the creek.

17 **Q** While you're in the creek with the dog, the dog
18 is continuing to track scents?

19 **A** Yes. It's trailing. I would call it trailing.

20 **Q** Okay.

21 **A** The scent at that point.

22 **Q** Once you're in that creek, explain to the
23 jurors -- they weren't there. You were. What's it like
24 being in that tunnel as you described it? How difficult
25 would it be to get out of it?

1 **A** Most of the parts it would have been very
2 difficult for somebody to actually climb out of there.
3 The sides, as Deputy Rivera said, were very steep.
4 Almost angled up, if you will. It's not like you can
5 climb straight out. You have to climb up and grab a hold
6 of something to be able to swing yourself up. The water
7 -- the water was very tall at times depending on, at some
8 points, it would be below the waste. Most of the time,
9 it was above the waste.

10 **Q** Were you able to touch the creek bed at all
11 times?

12 **A** Yes. If I was standing up -- at some points,
13 you weren't able to stand up. You would be swept off of
14 your feet. That happened several times. You learned of
15 stuff that's in the creek that would obviously knock you
16 over or take your feet out from under you.

17 **Q** Now, let me stop you for a second. Have you
18 ever been back to this creek after this incident?

19 **A** Yes.

20 **Q** Is the water any where near that high, deep or
21 fast moving?

22 **A** I have not seen it like that since.

23 **Q** Okay. So you talked about how difficult it is
24 to get out of the creek, how did you get out of the
25 creek?

1 **A** Well, Croc continued that behavior. We went
2 all the way down a long ways until we almost got to
3 Highway 253, Blue Ridge Drive. There's an area that it
4 opens up. There's a pipe that comes across. Croc was
5 tired at that point. I knew that that would be a point
6 that I could get him out.

7 **Q** Any indication prior to the time you got to the
8 pipe that the track had left the creek?

9 **A** No, no indication.

10 **Q** All right. Let me show you what's been marked
11 as State's Exhibit 30. Well, before I show you 30, let
12 me get you down and have you look at State's 28. If you
13 could, bring that -- yeah, that little pointer. Can you
14 show us the creek that you entered and traveled through?

15 **THE COURT:** Officer Fuller, you don't have a
16 mic. Be sure you project your voice so the Court
17 Reporter can hear what you have to say and the jury.

18 **THE WITNESS:** Yes, sir. Show you the creek
19 area. Right around in here is my guess of where I
20 entered.

21 **BY MR. FRETWELL:**

22 **Q** Okay. And what direction to the left or to the
23 right did you travel?

24 **A** It would be to my right down towards 253.

25 **Q** And is this the area that you're describing as

1 being like a tunnel and difficult to get out of?

2 **A** That is correct.

3 **Q** And you say you got out somewhere near Blue
4 Ridge Road?

5 **A** Yes, it's almost down right in there.

6 **Q** Okay. And did the creek -- are other creeks
7 coming in and out of that creek down there toward the
8 end?

9 **A** That's correct. When I got out, I had to cross
10 over another small one before coming up to the roadway
11 there.

12 **Q** Is there also a creek that travels up towards
13 Agnew road?

14 **A** Yes, that's correct.

15 **Q** Do you know what direction that water comes?
16 Does it come towards 253 from Agnew or does it go toward
17 Agnew?

18 **A** I couldn't tell you that.

19 **Q** Okay. Let me show you this. Do you recognize
20 what's depicted in this map?

21 **A** Yes.

22 **MR. FRETWELL:** Okay. Your Honor, at this
23 time, the State would move State's 30 into evidence.

24 **THE COURT:** Any objection to Exhibit 30?
25 Without objection, Exhibit 30 is into evidence.

1 **(WHEREUPON, State's Exhibit 30 is admitted into the**
2 record.)

3 **MR. FRETWELL:** May I publish, Your Honor?

4 **THE COURT:** You may do so.

5 **BY MR. FRETWELL:**

6 **Q** All right. Can you show the jury what we're
7 looking at right here? Anything in particular about
8 this, uh, this, uh, -- what this map shows that you
9 recall from that day?

10 **A** All right. As it's labeled, that's Agnew Road
11 and West Blue Ridge Drive. Westside park would be in
12 this area. This is the creek slash river that I was in
13 that day. This is -- this appears to be the pipe where
14 it clears out where I can actually get out of it and
15 cross over that, uh, 253.

16 **Q** And you say once you got to that point, uh,
17 Croc was tired?

18 **A** Yes, it was obvious to me that he was tired.

19 **Q** Did any -- once you got out of the creek at
20 that point, was there any attempt by the K-9 unit to
21 continue the track?

22 **A** I'm not aware of what steps were taken next. I
23 just basically was attending to my dog. I was soaking
24 wet and freezing cold.

25 **Q** Were you aware of any other tracks that led

1 from this area in any other direction?

2 **A** I don't know of any.

3 **Q** Okay. When you were coming down this way,
4 could you see up to Blue Ridge Road and Agnew Road?

5 **A** When I was down there?

6 **Q** When you got to the point where you could get
7 out on that pipe, could you see up to these roads?

8 **A** No.

9 **Q** Do you know if you could see any of the blue
10 lights from any of the police vehicles on this road?

11 **A** Probably could see a little bit of blue lights.

12 **Q** But not the individual --

13 **A** No clear visibility.

14 **Q** Okay. All right. Once you got out at this
15 point, did you go this way or did you go this way?

16 **A** I went that way.

17 **Q** This is the creek?

18 **A** Correct.

19 **Q** This wasn't much -- was it much of a creek that
20 day?

21 **A** Much more so than it is today.

22 **Q** Okay. And you got out on Blue Ridge Drive?

23 **A** Correct.

24 **Q** Did Croc locate any articles at all during the
25 track?

1 **A** No.

2 **Q** Did you come in contact with anyone during your
3 track?

4 **A** No.

5 **Q** Other than obviously --

6 **A** There were deputies, there was at least one
7 deputy at the pipe as I came out.

8 **Q** To help you out?

9 **A** Yes.

10 **Q** Okay. Do you know if any of these -- if any of
11 the K-9 officers arrived at this location?

12 **A** I believe that the underpass would have cleared
13 some areas right in there.

14 **Q** Okay. All right. But you didn't come in
15 contact with anyone during your track?

16 **A** No.

17 **Q** Okay. Have a seat.

18 No further questions, Your Honor.

19 Please answer any questions that either Mr.
20 Hoskinson or Mr. Johnson may ask you.

21 **THE COURT:** Mr. Hoskinson?

22 **MR. HOSKINSON:** May it please the Court.

23 **CROSS-EXAMINATION**

24 **BY MR. HOSKINSON:**

25 **Q** You recall the name of the deputy that met you

1 at the drainage pipe when you got out?

2 **A** I believe that it was my sergeant, Sergeant
3 Kelly.

4 **Q** Is he the one that was providing you cover or
5 that --

6 **A** No. No. That was Cannon and Harris.

7 **Q** They followed you down the river?

8 **A** Yes.

9 **Q** All right. Did you say earlier you don't
10 recall how it is -- how you got to the location where you
11 traded off the prior deputy?

12 **A** Yeah. I don't know exactly which route.

13 **Q** You and all officers when you're working on the
14 case following your activities, you will type up a report
15 about it?

16 **A** Correct.

17 **Q** That's a common practice for all officers?

18 **A** Correct.

19 **Q** And when you're typing up a report, you're
20 typing up what you saw, what you did, the things that you
21 thought were important?

22 **A** Correct.

23 **Q** And finishing that report, you looked it over
24 to make sure everything's correct and accurate?

25 **A** Yes.

1 Q Is it turned in then to a sergeant or some
2 other superior officer?

3 A Typically, yes.

4 Q Then they review it to give it approval?

5 A That's the way I understand it.

6 Q Okay. If they find something wrong, do they
7 send it back to you with questions or ---

8 A Sure. Sure.

9 Q --- suggestions? And you did one of those for
10 this report -- uh, this case, is that right?

11 A Yes.

12 Q The other officers did too?

13 A I would assume.

14 Q This particular course, you ran for about an
15 hour, is that how long you were working with Croc?

16 A That's correct.

17 Q 1:15 to 2:20?

18 A Correct. A lot of that time was standing on
19 the side of the creek waiting for the other side to be
20 cleared.

21 Q That would have been when Rivera showed up?

22 A That's correct.

23 Q Did you spend much time waiting at the drainage
24 pipe at all?

25 A Waiting? No.

1 Q That officer was there waiting for you?

2 A Yes, I believe so.

3 Q You know how that officer got there?

4 A Probably cause we told them we were coming up
5 on the drainage pipe.

6 Q So you had radio contact this whole while?

7 A Yes.

8 Q The, uh, article that you obtained from Deputy
9 Wannemacher, uh, you put that on the ground so that Croc
10 could do a -- you downed him so he could smell the
11 article?

12 A Yes.

13 Q And at that point, left the article there while
14 you proceeded forward?

15 A Yes.

16 Q You kept going and that article was still
17 behind you?

18 A Yes.

19 Q You were taken into the woods and then you get
20 to the river?

21 A Yes.

22 Q You called for Rivera?

23 A Yes.

24 Q You know how he got there?

25 A No, other than what I just heard him testify

1 to.

2 Q How long did you wait for him?

3 A Couldn't tell you.

4 Q That's not in your report?

5 A I'm not worried about looking at my watch. I'm
6 worried about getting shot.

7 Q I understand, yeah. But you would describe it
8 as being longer than you want?

9 A No. Time is on our side. We have him blocked
10 into a perimeter hopefully. We're not getting in a rush.
11 We're trying to do things in order to be efficient.

12 Q And you had Cannon and Harris with you at that
13 time?

14 A That's correct.

15 Q He takes the other side of the creek?

16 A He?

17 Q Rivera, I'm sorry.

18 A That's correct.

19 Q And then the two of you proceed down
20 simultaneously?

21 A No.

22 Q Then what?

23 A I stayed. I was getting behavior indicating
24 that the track went into the creek while Deputy Rivera
25 checked the other side to see if he located a trail

1 coming away from the creek on the other side as if he had
2 crossed the creek.

3 Q Okay. And the point that you thought was the
4 cross point was not actually something that you went
5 through. You didn't go through the bushes and the briars
6 and the shrubs that were at that point on the creek?

7 A Did I go through there?

8 Q You did not.

9 A At that point, only my dog had gone through
10 there. I stayed on top holding on to the leash.

11 Q The point where you were, uh, looking -- well,
12 the point where you thought the entry was made into the
13 creek, you couldn't get a visual of the creek because of
14 the brush and trees that were on that edge?

15 A Correct.

16 Q You then had -- you went upstream or downstream
17 distance so that you could gain access to the water?

18 A No, I actually did that in case he was hiding
19 close right there.

20 Q Okay.

21 A I went upstream and to confirm the direction of
22 the track as well.

23 Q Uh-huh.

24 A I went upstream and put him in the water then
25 came down. He confirmed that it was going in that

1 direction.

2 Q You take Croc with you when you do something
3 like that? You don't leave Croc alone. You have him on
4 your leash and you go back up.

5 A To confirm a track, yes. He's the only one
6 that can do that. I can't do that. He and I as a team,
7 yes.

8 Q Uh, articles are items, uh, not a person.
9 You're looking for items when you say articles?

10 A An article is an item.

11 Q In this instance, you did not find any
12 articles?

13 A I did not.

14 MR. HOSKINSON: No further questions, Judge.

15 MR. FRETWELL: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. FRETWELL:

18 Q So Deputy Fuller, so you left the bandana where
19 you downed your dog initially on what we call the logging
20 road and then you continued on with your track?

21 A That is correct.

22 Q Uh, your cover officers, Al Cannon and Hal
23 Harris, did they get in the creek too?

24 A Yes.

25 Q Okay. And did they exit at the same point you

1 exited?

2 **A** Yes.

3 **MR. FRETWELL:** Okay. No other questions,
4 Judge.

5 **THE COURT:** All right. Thank you, sir. You
6 may step down.

7 **MR. FRETWELL:** Your Honor, the State calls
8 Deputy Al Cannon.

9 **THE CLERK:** Sir, please place your left hand
10 on the Bible and raise your right hand.

11 **AL CANNON**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. Please be seated.
14 Please state your full name for the record.

15 **THE WITNESS:** James Alton Cannon, III.

16 **DIRECT EXAMINATION**

17 **BY MR. FRETWELL:**

18 **Q** All right. Deputy Cannon, how do people know
19 you? What name do you go by?

20 **A** I go by Al.

21 **Q** By Al. And how long have you worked for the
22 Greenville County Sheriff's Office?

23 **A** 11 years.

24 **Q** And to what unit are you currently assigned?

25 **A** Currently assigned to the K-9 services unit.

1 Q And how long have you been a K-9 handler?

2 A For six years.

3 Q Were you also working on Wednesday, December
4 10th, 2008?

5 A Yes, I was.

6 Q And were you working in the capacity as a cover
7 officer for these other K-9 officers who have testified?

8 A Yes, I was.

9 Q And, uh, which way did the track proceed?
10 Well, first of all, let me ask you this. Were you
11 basically on this track from beginning to end?

12 A From beginning to end, that's correct.

13 Q And what basic way did this track progress
14 through this wooded area?

15 A We started, as Deputy Rivera testified to,
16 there at the scene of the white van and proceeded into
17 the woodline. The woods across from the white van.
18 Proceeded into the woods where we eventually relieved
19 Deputy Rivera's K-9 Smeris with Master Deputy Wannemacher
20 and his partner, K-9 Rosco. He then began to take over
21 the track and begin tracking, uh, through the thick woods
22 out to the logging road at which point, we took a left as
23 he testified. During that track alone, the logging road,
24 his K-9 partner located a bandana, as he testified to.

25 Q Were you present when this K-9 -- when this

1 bandana was located?

2 **A** Yes, I was.

3 **Q** And then, were you also present when Deputy
4 Fuller came in with Croc and substituted?

5 **A** I was.

6 **Q** Okay. And were you aware of the bandana being
7 given from or by Deputy Wannemacher to Deputy Fuller?

8 **A** Yes.

9 **Q** Okay. So from that point on, where did you go
10 with Deputy Fuller?

11 **A** I continued my capacity as a cover officer
12 throughout the track.

13 **Q** So you got in the creek?

14 **A** Yes, I did.

15 **Q** And you went all the way down the creek?

16 **A** Yes.

17 **Q** And you came out at the pole?

18 **A** That's correct.

19 **Q** All right. Once you came out at the pole, do
20 you know what effects, if any, were made by the K-9 unit
21 to continue that track?

22 **A** Uh, once we got out of the track, I know that
23 it, uh, -- Deputy Fuller and his K-9 went out at which
24 point we -- once I got out of the creek there at that
25 pipe, I was able to see the junction of Agnew and 253,

1 uh, numerous vehicles, perimeter units, uh, located there
2 with their blue lights. People standing outside their
3 cars.

4 Q You could see that from the pole?

5 A Yes.

6 Q From that area?

7 A Yes, I could.

8 Q And these are the units up on what roads?

9 A That would be Agnew and 253 right there at the
10 junction. There were numerous vehicles that I could see.
11 Very tight perimeter.

12 Q And what, if anything, like you said, was done
13 to see if that track could continue? Were you able to
14 locate a continuation of that track?

15 A We were not.

16 Q And do you recall that creek that I showed to
17 Deputy Fuller that comes from -- that goes between Agnew
18 Road and the creek that you all got out of? Do you know
19 which way it flows?

20 A Actually, yes.

21 Q If you do, just hold on one second.

22 A Sure.

23 Q Let me ask you to look at State's Exhibit 28.
24 Step down for me, if you will. All right. Show me about
25 the location where you guys -- you're going to have to

1 step back.

2 **A** Sure.

3 **Q** You're going to have to use that pointer and
4 make sure you speak up nice and clearly for the Court
5 Reporter. Can you show us approximately where you think
6 you got out on that map?

7 **A** Well, we, uh, -- right about right in here.

8 **Q** If I ask you specifically about this creek that
9 goes from the one you exited between these two areas, do
10 you know if it flows this way or does it flow that way?

11 **A** Uh, I don't know about this creek here, but the
12 creek that we entered, this creek here was flowing
13 towards Blue Ridge Drive.

14 **Q** Okay.

15 **A** At a pretty rapid pace.

16 **Q** And do you know if this creek was also flowing
17 in that direction or do you know if it was flowing --

18 **A** No, it was flowing the same direction as, uh,--

19 **Q** So these creeks are flowing all in the same
20 direction?

21 **A** That's correct.

22 **Q** Okay. So let me ask you this, is it easier or
23 harder to track someone up a creek than it is down a
24 creek?

25 **A** It is, uh, -- it is a lot harder to track up a

1 creek.

2 Q Where is the scent going?

3 A It's going downward. It's going to follow the
4 flow of the water.

5 Q And this is the point or location right in this
6 area where you could see these perimeter units?

7 A That's correct. Perimeter units were heavily
8 concentrated line of sight down Agnew Road here as well
9 as 253.

10 Q All right. Once you got out in there -- what
11 did you do for the rest of the -- let's see. That's,
12 what, two and a half hours or so into this manhunt. What
13 did you do at that point in participating in the manhunt?

14 A Due to the fact that we were unable to, at that
15 point, do anything else in regards to the track, we all
16 teamed up at a church parking lot kind of very close to
17 where we ended. We all grouped up. We were going to sit
18 there, kind of weigh things out. Hopefully, this
19 gentleman would pop up. We started kind of discussing
20 some other avenues that we could take in regards to
21 locating this individual.

22 Q Now, is that practice of pulling the K-9 team
23 out of the area, is that something that's common or a
24 tool that you all use?

25 A Absolutely, and it's been successful in the

1 past.

2 Q How?

3 A Well, once we back out and call off some of the
4 perimeter units, that individual, if he's contained
5 within that perimeter, he obviously sees everybody
6 leaving. At that point, he thinks maybe he could make a
7 run for it and get out of that area that he embedded down
8 in. We usually apprehend people that way.

9 Q Once you collected over at the church, did you
10 stay there for a while?

11 A Yeah, we kind of talked things out. At which
12 point, made a decision that I, along with some members of
13 the SWAT team, would go to another location. We were
14 trying to hit everything out there and make sure we
15 covered every inch of the area out there so we can find
16 this gentleman. Went and checked a certain area off of,
17 uh, I believe it was Clackston Drive. We got out and
18 checked that portion of the creek down this way with
19 negative results. Got out, walked around, kind of
20 looked. At that point, we then traveled back to West
21 Marion Road here with -- Deputy Weiner was there with me.

22 Q Deputy Weiner, is he a road deputy like you?
23 What was his capacity?

24 A He was an investigator.

25 Q So you and Investigator Weiner, what did you

1 all specifically do once you got to West Marion Road?

2 **A** Well, when we got to West Marion, we started
3 talking about some of the other things that we could do.
4 I also briefed him on the bandana that was located.

5 **Q** Once you briefed him on that bandana, what did
6 he want to do?

7 **A** As an investigator, he wanted to collect that
8 item.

9 **Q** Okay.

10 **A** At that point, me being a cover officer
11 observing where it was located by K-9 Rosco during the
12 track, I then brought Investigator Weiner back to that
13 exact location. Pointed out where it was from where it
14 was left by K-9 Croc after he used it as a scent article.
15 It never moved. Brought David Weiner back --
16 Investigator Weiner back to that area. It was right
17 where we had left it.

18 **Q** Aside from the fact that the dogs had tracked
19 right to that article, did that article, that bandana
20 have any other significance with your general
21 understanding of the events of that day?

22 **A** Absolutely. It was -- that particular bandana
23 was given out as the description of piece of clothing
24 worn by the suspect with whom we were tracking.

25 **Q** Okay. If you will, uh, retake your seat.

1 **A** (Witness complies.)

2 **Q** In fact, take that item up there that's sitting
3 on the ledge, take it out of view of the jury. I'm going
4 to ask you if you can -- if you recognize State's Exhibit
5 29 as being consistent with the article that you saw the
6 dogs handle and then you brought Investigator Weiner to
7 recover.

8 **A** (Reviewing.) Yes, it is.

9 **Q** Okay. At some point, let me ask you this.
10 When you took Investigator Weiner to go and locate that
11 item, was the search perimeter still in effect?

12 **A** No, it was not. They still had some areas in
13 the perimeters on scene.

14 **Q** I'm not talking about your K-9 track. I'm
15 talking about the search perimeter that was set up that
16 was in effect.

17 **A** Yes.

18 **Q** Had that been called off yet?

19 **A** No.

20 **Q** Okay. So when you arrived on, uh, -- when you
21 arrived initially in the area of that pipe, you could see
22 the cars up there. Then later on when you did your
23 checks over there, you say on Clackston Road and over on
24 West Marion, perimeter is still in effect?

25 **A** That's correct.

1 Q Still vehicles lined up around?

2 A Yes.

3 Q Was the K-9 unit in -- do you recall if the K-9
4 unit was still in the search area?

5 A No.

6 Q It had pulled off?

7 A That's correct.

8 Q Do you know how -- about how long after you
9 took Investigator Weiner in -- do you know how long after
10 that the perimeter was called off?

11 A Uh, it was a while later.

12 Q And what did you do during that time period, do
13 you know?

14 A After I already --

15 Q After you took Weiner in and you showed him the
16 bandana, what else did you do that day?

17 A I roved around.

18 Q Okay. Did you come into contact with anybody
19 at all during the entire time that you were on cover or
20 that you were roving the perimeter, you were checking out
21 any of these areas that you were sent to check, did you
22 come in contact with anybody?

23 A Nobody.

24 Q Were you aware of anybody coming in or out of
25 that perimeter that day?

1 **A** No.

2 **Q** Other, obviously, than deputy sheriffs?

3 **A** Correct.

4 **Q** Did you -- let's ask this. Did you take your
5 dog into that perimeter when you were acting as a cover
6 officer or did you not use your dog?

7 **A** No. As a cover officer, our primary duty is to
8 provide protection to the dog handler. All I have is my
9 duty belt and a long rifle to provide protection.

10 **Q** But when you are roaming the perimeter, you are
11 searching these other areas, are you using your dog?

12 **A** No.

13 **Q** Okay. So you're just searching as a --

14 **A** Correct. I'm driving along.

15 **Q** All right. Did you -- the following day, so
16 this is the next day.

17 **A** Uh-huh.

18 **Q** Did you return to this area?

19 **A** I did.

20 **Q** For what purpose?

21 **A** I was with Deputy Harris as well as Sergeant
22 Kellett, or Sergeant, in an attempt to try to conduct an
23 article search to locate a pistol.

24 **Q** Okay. Where did you search for the pistol?

25 **A** Uh, we searched, uh, back behind a -- it's a

1 business there with a fence that kind of separates Crane
2 Avenue, uh, to Agnew Road and, uh, back into the area
3 that we had searched the day prior.

4 Q Did you also search along Emile Street or any
5 of those areas?

6 A I personally did not.

7 Q And did you locate any items?

8 A No, not that I was advised by the handler who
9 used his dog.

10 Q Okay. Given the terrain and the brush that's
11 out there, did you expect to find any articles -- items?

12 A No, very thick brush there at the ground level.

13 Q Okay.

14 A Very thick.

15 Q All right. Please answer any questions that
16 either of the defense counsel have for you.

17 A Okay.

18 THE COURT: Mr. Johnson, you may cross-
19 examine.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q Deputy Cannon, I guess I'll start, uh, from
23 where you left off. Okay?

24 A Sure.

25 Q I want to talk about, uh, you said you did an

1 article search the next day.

2 **A** I didn't.

3 **Q** You didn't do the article search. You didn't
4 go with them for the article search?

5 **A** I did go with them.

6 **Q** All right. So you were along with the track --
7 you were a cover officer again?

8 **A** Sure.

9 **Q** Okay. And along that -- you tried to
10 essentially -- what you wanted to do was you wanted to
11 backtrack and see if you could find any articles along
12 the path that you believe the suspect would have taken?

13 **A** We were looking specifically for a pistol.

14 **Q** Specifically for a pistol. But say, for
15 instance, if you would have encountered another item, you
16 would have likely investigated and collected that item?

17 **A** That's up to the handler who was using his dog.

18 **Q** Well, let me ask you a question. If the suspect
19 was said to have on a sweatshirt, is that a small item?

20 **A** A small item?

21 **Q** Yeah. Is it small? Is it bigger than my
22 jacket? Same size? How big?

23 **A** A little smaller than your jacket.

24 **Q** A little smaller than my jacket?

25 **A** Sure.

1 Q Okay. And is that item -- is it smaller or
2 bigger than a gun?

3 A It would be larger than a gun.

4 Q Larger than a gun?

5 A That's correct.

6 Q But you followed along the areas that you
7 believed the suspect was to have traveled, isn't that
8 right?

9 A I was following the handler who utilized his K-
10 9.

11 Q When I say you, I'm speaking of you as a group.
12 You were following along with the handler so I'm just
13 trying to cut to the chase.

14 A Sure. Sure.

15 Q So you followed along the area where you
16 believed the suspect to have traveled. You backtracked?

17 A That's correct. I followed the handler.

18 Q All right. And when you backtracked, you
19 didn't find a gun?

20 A No.

21 Q You didn't find a sweatshirt?

22 A No.

23 Q Did you find a hat?

24 A No.

25 Q Now, I know you noted that, uh, -- you noted

1 that, uh, -- I believe it was stated that you did hear
2 the testimony of the other officers, the K-9 officers
3 today?

4 A Correct.

5 Q You were in the courtroom, sir?

6 A Yes.

7 Q They stated the numerous obstacles that they
8 had to go through. One was the creek that was now like a
9 river, right?

10 A Correct.

11 Q The other was thick briars and thick, uh, --
12 thick briars and just thick woods and all this stuff,
13 right?

14 A Yes.

15 Q Uh, and it was cold?

16 A Yes, it was.

17 Q And it was rainy?

18 A It was.

19 Q Wouldn't it be true that if the suspect
20 traveled along these areas, he would also be subject to
21 these various obstacles that you were subjected to? If
22 you were on the right track, he would have been subjected
23 to the same thing.

24 A That's correct.

25 Q So say for instance the dog -- you were with

1 Deputy Fuller when his dog tracked through the creek?

2 A Correct.

3 Q And then the dog kind of went towards the creek
4 but Deputy Fuller couldn't get to the creek?

5 A Couldn't get to the creek?

6 Q Well, he didn't go through the brush to get to
7 the creek. He thought that was unreasonable.

8 A We ended up into the creek.

9 MR. FRETWELL: Objection, Your Honor. Is he
10 testifying for someone else? Can he frame that in
11 the form of a question.

12 MR. JOHNSON: Cross-examination, Your Honor.

13 THE COURT: Yes, sir. Just rephrase -- make
14 it into a question. Ask him a question.

15 BY MR. JOHNSON:

16 Q Isn't it true that while the dog tracked up to
17 the creek, Deputy Fuller did not go -- follow him into
18 the creek at that point?

19 A When he initially tracked to the creek?

20 Q When he initially tracked to the creek.

21 A We, uh, stood by there.

22 Q You stood by there. Isn't it true that you
23 actually went around and found another area to enter the
24 creek?

25 A The, uh, particular area which the K-9 tracked

1 to, we held our ground there at that point due to the
2 creek and the sides. There could have been an armed
3 gunman hiding up underneath there where it came up like
4 this. We couldn't see the other side. That's why, uh,
5 Deputy Fuller notified Deputy Rivera. That's one of the
6 reasons why, to check the other side, because we couldn't
7 see if there was an individual standing up underneath us
8 where we were standing there at the creek.

9 Q Did they find an individual -- did they find an
10 armed gunman standing up underneath?

11 A No.

12 Q Did you find an armed gunman?

13 A No.

14 Q Okay. Now, I'd like to go back to my original
15 question. Again, Deputy Fuller's K-9 was going to the
16 creek. Okay. This is where we are. Now, at this point
17 in time, Deputy Fuller and yourself and who else was with
18 you on the track?

19 A Deputy Harris.

20 Q Deputy Harris. At this point in time, you did
21 not enter the creek?

22 A Not at that point.

23 Q Not at that point. You actually found a better
24 area to enter the creek, isn't that right?

25 A I don't necessarily remember, I mean, where

1 exactly we went into the creek.

2 Q But you did enter the creek at that point,
3 right?

4 A When we initially tracked up to the creek --

5 MR. FRETWELL: Your Honor, I want to object
6 here.

7 MR. JOHNSON: Judge, this --

8 THE COURT: What's your objection?

9 MR. FRETWELL: Is he saying point as in
10 location or point as in time? I think there could
11 be some confusion. Clarify the question.

12 THE COURT: Your objection is overruled.

13 You may ask your question, Mr. Johnson.

14 MR. JOHNSON: Thank you, Your Honor.

15 BY MR. JOHNSON:

16 Q Again, uh, I guess I need to be clear. At the
17 point, I'm talking about point as in location, where K-9
18 -- where Deputy Fuller's K-9 tracked and entered the
19 creek, did you then follow him into the creek right
20 there?

21 A That's where we ended up going into the creek.

22 Q So you're telling me that what Deputy Fuller
23 said is not true? You didn't --

24 MR. FRETWELL: Objection, Your Honor.

25 Pitting the witness.

1 **THE COURT:** All right. Rephrase your
2 question.

3 **BY MR. JOHNSON:**

4 **Q** So you are saying that you did enter the creek
5 where Deputy Fuller's K-9 initially alerted that the
6 suspect had entered into the creek?

7 **A** All I remember is going into the creek.

8 **Q** So you don't remember is the answer?

9 **A** Where -- I mean, I entered the creek and
10 followed the handler.

11 **Q** Okay. Previously, the Solicitor asked you to,
12 uh, identify the bandana you found, isn't that right? He
13 asked you to take a look at it right down there?

14 **A** That's correct.

15 **Q** Can you take a look at it again for me like you
16 did previously?

17 **A** Sure. (Reviewing.) Okay.

18 **Q** Now, what color is it?

19 **A** Blue.

20 **Q** Isn't it true that in the police report, you
21 noted that it was black?

22 **A** That's correct.

23 **Q** And these are the same police reports. Once
24 again, you were in the room when the previous officers
25 were cross-examined and testified for Mr. Fretwell as

1 well.

2 **A** That's correct.

3 **Q** And isn't it true that you write this police
4 report so that you can remember things because you may
5 have a trial. Say for instance in this instance, you
6 have an incident that happened on December 10th, 2008,
7 you have a trial in 2011, so you can remember things
8 properly?

9 **A** Sure.

10 **Q** Now, when you, uh, when you were tracking, do
11 you have that uniform on?

12 **A** No.

13 **Q** What type of uniform do you have?

14 **A** A BDU style uniform.

15 **Q** Can you explain what that is?

16 **A** A BDU style uniform?

17 **Q** Yes, sir.

18 **A** Sure. It's a long sleeve shirt. It's got
19 pockets here. It's a little more durable than your
20 polyester type material. The pants have pockets on each
21 side.

22 **Q** Basically, it's more suitable for maybe
23 conditions such as these?

24 **A** Sure.

25 **MR. JOHNSON:** I have nothing further at this

1 time.

2 **MR. FRETWELL:** May it please, Your Honor?

3 **THE COURT:** Yes, sir.

4 **REDIRECT EXAMINATION**

5 **BY MR. FRETWELL:**

6 **Q** Mr. Johnson asked you what color the bandana
7 is. I'll ask you what shade. How -- is the blue light
8 or dark?

9 **A** It's dark.

10 **Q** How dark?

11 **A** Very dark.

12 **Q** On the day, December 10th, 2008, was it
13 raining?

14 **A** It was raining.

15 **Q** Was the bandana wet?

16 **A** Yes.

17 **Q** Okay. And what color did it appear that day?

18 **A** It appeared to be black.

19 **Q** When you look at it right now, is it dry or is
20 it wet?

21 **A** It's dry.

22 **Q** And what color does it appear to be?

23 **A** Dark blue.

24 **Q** Would you call it a navy blue?

25 **A** Sure.

1 **Q** Okay. How many dark blue bandanas did you and
2 the other members of the K-9 team come across that day?

3 **A** One.

4 **Q** Does that appear to be exactly the bandana that
5 you saw that day?

6 **A** Yes.

7 **Q** Let me take you to some of the questions Mr.
8 Johnson asked you earlier about this search perimeter
9 area. How big of an area is this? We see it on the map.
10 But just tell us how big is this area.

11 **A** It's a pretty big area.

12 **Q** If somebody walked along and threw something
13 into the woods, would you be able to find it?

14 **MR. JOHNSON:** Judge, speculation.

15 **MR. FRETWELL:** Your Honor, he's asked these
16 questions.

17 **THE COURT:** I --

18 **MR. FRETWELL:** Sorry.

19 **THE COURT:** Let me rule on the objection.

20 **MR. FRETWELL:** Yes, sir.

21 **THE COURT:** I overrule the objection.

22 **BY MR. FRETWELL:**

23 **Q** So if somebody tossed an item in these woods,
24 would you have any hope as a dog tracker, human scent
25 article search professional, would you have any hopes of

1 finding that thing?

2 **A** Be very hard. Very hard.

3 **Q** When you went back for these article searches,
4 did you basically track the way that you had come the day
5 before?

6 **A** Yes.

7 **Q** Now, an item was located. You recall locating
8 Deputy Rivera's pen that he dropped? You recall one of
9 the dogs locating that pen?

10 **A** I did hear about that. I wasn't there, but
11 yes.

12 **Q** Okay. Was that some of the other people that
13 were doing the article searches?

14 **A** Yes.

15 **Q** Okay. The following day?

16 **A** Correct.

17 **Q** Now, what about Mr. Johnson asked you about a
18 hoodie and whether that was bigger than a gun. You were
19 in that creek, weren't you?

20 **A** Yes.

21 **Q** If you took off an article of clothing in that
22 creek, where would it go?

23 **A** It would follow the stream.

24 **Q** How fast was that creek moving?

25 **A** Very fast.

1 Q Do you know where that creek ends up?

2 A Down right there at 253.

3 Q Does it go past that?

4 A Yes.

5 Q How far down?

6 A I mean, it keeps going.

7 Q Did anybody go and search all that area where
8 that creek would eventually go?

9 A No.

10 Q Did it rain the rest of that day?

11 A Yes.

12 MR. FRETWELL: No questions.

13 MR. JOHNSON: Your Honor, can I briefly?

14 THE COURT: Yes, briefly.

15 **RECROSS-EXAMINATION**

16 **BY MR. JOHNSON:**

17 Q Solicitor asked on redirect if you located the
18 pen the next day. You did locate a pen?

19 A I did not.

20 Q But the search dog located a pen?

21 A I believe so.

22 Q Was the pen -- we're talking about this type of
23 pen?

24 A Somewhat similar. I didn't see it, but that's
25 a pen.

1 Q It's a pen. I mean I guess it's safe to assume
2 that the pen is probably about this size. Yes, sir?

3 A Sure.

4 Q A pen is smaller than a gun, isn't it?

5 A I'm sorry?

6 Q Is this pen smaller than a gun? Is it smaller
7 than your gun?

8 A Smaller than my gun?

9 Q Yes, sir.

10 A Yeah, that would be a little bit smaller.

11 Q A little bit smaller than your gun?

12 A Sure.

13 Q What about a sweatshirt? Is a sweatshirt a
14 heavy thing? Is it a light thing? What do you
15 understand about a sweatshirt?

16 A It could be heavy.

17 Q It could be heavy, what, if it was drenched
18 with water?

19 A Uh-huh.

20 Q Could you throw it further than a ball?

21 A A sweatshirt?

22 Q Yeah.

23 A If it's wet?

24 Q If it's wet.

25 A Yeah.

1 **Q** So you could throw it -- dense brush. I guess
2 it's dense brush. You could just throw it through a
3 wall.

4 **A** Through a wall?

5 **Q** You can throw it through a --

6 **MR. FRETWELL:** Objection, Your Honor, to the
7 form of the question. It's argumentative.

8 **THE COURT:** I sustain the objection.

9 **MR. JOHNSON:** I have nothing further.

10 **MR. FRETWELL:** No questions, Judge.

11 **THE COURT:** Thank you. You may step down.

12 **THE WITNESS:** Thank you, Judge.

13 **THE COURT:** Ladies and Gentlemen, at this
14 time, we're going to take a lunch break. Let me
15 remind you again not to discuss the case with
16 anyone. Don't let anyone discuss the case with you.
17 Don't discuss it with each other. You certainly
18 haven't heard all the evidence in the case. If
19 you'll be back at 2:15, we'll be ready to start back
20 with testimony at that time. Have a good lunch.

21 Everyone else, please remain seated while the
22 jury departs.

23 **(WHEREUPON, the jury exits at approximately**
24 1:03 p.m.)

25 **THE COURT:** All right. We'll be at ease

1 until 2:15.

2 **MR. FRETWELL:** 2:15, Your Honor?

3 **THE COURT:** 2:15.

4 **MR. FRETWELL:** Thank you.

5 **(WHEREUPON, a lunch recess is taken from**
6 **approximately 1:04 p.m. to 2:20 p.m.)**

7 **THE COURT:** Ready to proceed, Gentlemen?

8 **MR. FRETWELL:** Judge, could we approach?

9 **THE COURT:** Yes.

10 **(WHEREUPON, a bench conference is held off the**
11 **record.)**

12 **(WHEREUPON, the jury enters at approximately**
13 **2:29 p.m.)**

14 **THE COURT:** Solicitor, you may call your next
15 witness.

16 **MR. FRETWELL:** Thank you, Your Honor. May it
17 please the Court. The State calls Sergeant Chris
18 Cooper.

19 **THE CLERK:** Sir, please place your left hand
20 on the Bible and raise your right hand.

21 **CHRIS COOPER**
22 having first been sworn, testifies as follows:

23 **THE CLERK:** Thank you. Please be seated.
24 Please state your full name for the record.

25 **THE WITNESS:** Chris Cooper.

DIRECT EXAMINATION

BY MR. FRETWELL:

Q Good afternoon, Sergeant Cooper.

A How are you, sir.

Q Sergeant Cooper, how long have you worked for the Greenville County Sheriff's Office?

A Uh, 26 and a half years.

Q To what unit are you currently assigned?

A Currently, I'm assigned as a Supervisor in the Armed Robbery Division.

Q And what are your duties and responsibilities as a Supervisor of Armed Robbery?

A I oversee the cases, case assignment, investigators that work in that unit and assign those cases out and perform inspections and that type of thing.

Q Have you supervised any other divisions in the Greenville County Sheriff's Office?

A Yes, I have. I was Supervisor in Uniform Patrol.

Q Let me take you to Wednesday, December 10th, 2008. What responsibilities did you have?

A On that day, I was Supervisor on Bravo platoon and uniform patrol. We were working 7:00 in the morning til 7:00 in night shift.

Q Would you have been the Westside supervisor for

1 that particular day?

2 **A** Yes, sir. I was assigned to the west side of
3 town.

4 **Q** What does that mean when you are the Westside
5 supervisor?

6 **A** That means we -- we divide the county up into
7 sections with each of them being assigned a number and we
8 have west side, east side and south end as we generally
9 call it. I have a certain number of deputies that I'm
10 responsible for that patrol on the west side of town that
11 correspond with numbers that are assigned to just that
12 side of town, the Berea area, Cedar Lane Road up unto
13 around Furman area.

14 **Q** And did you supervise a manhunt perimeter in
15 the area of Emile Street that day?

16 **A** Yes, sir. I did.

17 **Q** Is that area within Greenville County?

18 **A** Yes, sir. It is.

19 **Q** Is the Bank of Travelers Rest that's on White
20 Horse Road also within Greenville County?

21 **A** Yes, sir.

22 **Q** Is that area of the bank, Emile and the
23 surrounding areas, is that in what is considered the
24 westside of the sheriff's office?

25 **A** Yes, sir. It's actually -- and more

1 specifically, it's considered Area 8.

2 Q That's still within the area you were
3 supervising?

4 A Yes, sir.

5 Q What information did you initially receive
6 about a bank robbery?

7 A Uh, we had the general broadcast, otherwise
8 known as a BOLO, be on the lookout. A general broadcast
9 came out about a bank robbery that just occurred at the
10 Bank of Travelers Rest. We had deputies responding. As
11 the westside supervisor, with that being a major call, I
12 was responding to supervise at the scene.

13 Q So you were headed to the bank?

14 A I was.

15 Q Did you receive any updates from dispatch on
16 the way to the bank?

17 A We did. There was -- as I'm traveling, we get
18 information that there was a witness possibly following
19 or that was following the possible suspect. The suspect
20 had fled the area in a white van. We had -- they had
21 phone communications with the subject who was following
22 the suspect. They were broadcasting that information to
23 us.

24 Q Okay. Did that give you any additional
25 information or any new location?

1 **A** Yeah, they -- the information was that, uh, the
2 car -- the van had gone down Marion and then had turned
3 onto the area of Emile or has been referred -- it's been
4 pronounced different ways. Emile or Emile. I'll
5 probably refer to it as Emile because that's how I've
6 always known it. But the van had turned onto Emile.
7 Then we got information that there were shots fired and
8 that our witness had been shot.

9 **Q** At that point, did you continue to the bank or
10 did you change your destination?

11 **A** No. At that point, I decided since it -- the
12 area they were talking about would have been right on my
13 route to the bank, I stopped. We had two crime scenes
14 now. The shooting victim and the bank. I was closer to
15 the shooting victim. I diverted and went to that
16 location.

17 **Q** Were you able to get to the scene fairly
18 quickly?

19 **A** I was really close, uh, -- I was -- had been
20 coming up Marion from the Crane Avenue area, the West
21 Parker area. I was coming up Marion and just turned left
22 onto Emile Street and saw the van parked on the side of
23 the road. I passed the van to where we had the gunshot
24 victim lying in the roadway at Leone and Emile.

25 **Q** Did other unit soon begin to arrive?

1 **A** There were already several units on the scene
2 including -- there were -- of course, due to radio
3 traffic, there were K-9 units on the way. We had other
4 area deputies that were responding as well. When I got
5 there, there were several K-9 units already on the scene.

6 **Q** And what were the K-9 units starting to do?

7 **A** They were starting to get prepared to do a
8 track. When I passed them, they were at the van -- just
9 across from where the van was parked on Emile Street and
10 they were preparing to track?

11 **Q** While they were preparing to do that, what were
12 you doing as the westside supervisor?

13 **A** I started establishing a perimeter for the
14 area. Having worked the west side of town for probably
15 14 of the 26 years that I been with the sheriff's office,
16 I was relatively familiar with the area that we had to
17 search based on where I was told that the suspect had
18 fled into the woods.

19 **Q** When you're starting to set up a perimeter,
20 what's your goal as the person who's setting up
21 perimeter?

22 **A** Well, my goal is to establish a type perimeter
23 so we can get containment to keep the suspect confined to
24 a particular area. So I had -- at this point, I had
25 access to quite a number of units, including the K-9

1 units. I was on the phone with our traffic sergeant. I
2 had traffic units responding. We had -- the eastside
3 sergeant had called me because this area kind of was
4 close to bordering with one of the eastside areas. We
5 had a couple of eastside deputies that were available
6 that were responding over.

7 I was establishing the perimeter as tightly as
8 I possibly could based on what I had envisioned in my
9 mind. I hadn't even got my map book out yet, but I was
10 pretty much familiar with the area and the main arteries
11 there that we needed to cover.

12 Q What considerations do you evaluate when you
13 establish a perimeter?

14 A The terrain, the access to the area, the
15 visibility, the weather conditions, the number of
16 deputies that I have available. In this particular case,
17 it was ideal conditions in my mind because I immediately
18 could imagine where I was at on Emile Street being, let's
19 say, the topic for looking at this map, this pull down
20 screen, for instance, across the top, in my mind was
21 Emile Street. I've got 253 to my right. I had Marion to
22 the left and not a whole lot of other streets to cover
23 until we get down to Agnew. In my mind, I had formed
24 just a large square that I needed to cover.

25 Q Since you are referencing the map, let me just

1 pull one out.

2 State's 16 for the record, Your Honor.

3 First of all, I'll ask you to step down and
4 bring that with you. Are you familiar with what's
5 depicted in that area?

6 **A** Yes.

7 **Q** Can you locate Emile or Emile?

8 **A** Yes.

9 **Q** You can locate Agnew?

10 **A** Yes.

11 **Q** Okay. Now, if you would, tell the jury what
12 you mean by this square or this area that you are --

13 **A** My location was right here, just -- I was in
14 between our victim who had been shot and the van that had
15 been abandoned. As I passed that van originally, it was
16 -- had a window down. The front window was down. There
17 was still the residue, the smoke from the dye coming from
18 the vehicle. That's just how quickly we were there. I
19 was right here.

20 Like I said, being familiar with the area, I
21 knew that the suspect had reportedly come into this area.
22 So I knew we didn't have a lot of side streets to cover.
23 We had a large area that's going to be fields and woods.
24 And just my immediate coverage area was down to Agnew
25 Road up 253. We had deputies at 253 and Agnew. I put

1 deputies at Arch Street and Arch Street Extension. I had
2 deputies up here on Alma Street. We were all within -- I
3 had them -- established them where they could see one
4 another.

5 Q Why is that important?

6 A It's important because it's basically like
7 building a fence. You want to be able to -- you don't
8 want to have any holes in the fence. And in this
9 particular perimeter, the way these roads were and just
10 the sheer fact that we didn't have a crossroads, a lot of
11 neighborhoods, a lot of residential area. It was pretty
12 easy to get deputies to where they could see one another.

13 I had a lot of units available to me. We had
14 traffic out. I had extra K-9 units and I had the units
15 that were already assigned to the west side. I had a few
16 east side units. When I get them to establish a
17 perimeter, what my primary concern is, as I said, is to
18 form a containment area. We do this by turning our blue
19 lights on and getting outside the vehicles.

20 Q When you talk about a containment area, what
21 kind of -- are deputies trained in how to, uh, be a
22 perimeter unit?

23 A Yes, sir.

24 Q And what are they charged with doing while they
25 are working on a perimeter?

1 **A** They are charged with, number one, being out of
2 their vehicle and having their blue lights on. They want
3 to be seen. We want them to be seen in this case. It's
4 not an apprehension. It's a containment assignment that
5 they have. They are assigned to be stationary and they
6 are assigned to be out of the vehicles and making
7 observations so that they can see -- hopefully, they can
8 see the next deputy on the perimeter. It's not always
9 the case. In this case, it was established that way
10 pretty early.

11 **Q** And what factor does communication play in a
12 perimeter?

13 **A** Communication is everything. We were all on
14 one channel. We were monitoring each other. Everybody
15 -- I was asking the deputy to go to a certain area. That
16 deputy would respond to that area and tell me generally
17 if there were any other units already in the area that
18 hadn't spoken up on the radio that -- we're talking with
19 one another. We even -- after we establish this
20 perimeter from Agnew cross over to Marion and back up to
21 Emile and then down 253, I also had other units going up
22 to Crane Avenue. We had just a few side streets off of
23 Crane like this Newberry here. Down here off of Calhoun.
24 We had some units. I have perimeter units that we got
25 there immediately. Then I had some other auxiliary units

1 that were on some of the other side streets although,
2 basically, we had one big square.

3 Q Can you give a ballpark of how many deputies
4 you had out there that day?

5 A I'm guessing -- I was on the phone with
6 traffic. I had the K-9s. We had -- I had some
7 investigators coming down from northern command that were
8 plain clothes units. I'm guessing I had access to
9 probably 30 or more deputies.

10 Q And then let's continue to talk about the
11 deputies of the perimeter personnel. If somebody on the
12 perimeter were to see something happen, tell us what
13 their duties would be.

14 A Their duty is to broadcast it over the radio if
15 they see something that's suspicious or if there is a car
16 that tries to get either in or out of the perimeter or an
17 individual on foot tries to get in and out of perimeter,
18 they broadcast it. They try to form a -- they try to
19 give commands if they would be close enough. We also
20 have units that were assigned to check out anybody that
21 was seen within the perimeter.

22 Q So they are not supposed to go and --

23 A No. No, their position -- their responsibility
24 is to maintain their perimeter and stay on their post.

25 Q Now, you talked about access in and out. What

1 factor does that play in a perimeter?

2 **A** It plays the most important thing. The
3 perimeter is only as good as the people that are doing
4 the containment. You don't let anybody in and you don't
5 let anybody out. That's not the case always. Naturally,
6 if this were a perimeter in a subdivision, you might have
7 people coming in and out and you'd have to stop them and
8 check them and you perform searches and that type of
9 thing. In this case, we did not have a lot of civilian
10 traffic or vehicle traffic that we were dealing with
11 trying to get to homes or anything else. In this case,
12 it was an ideal perimeter, ideal conditions for me as a
13 supervisor to set up a perimeter.

14 **Q** Now, on Agnew Road right here, did you have
15 units stationed along Agnew Road?

16 **A** I did, sir.

17 **Q** Other than police traffic or official traffic,
18 would those units have let anybody else come down Agnew
19 Road?

20 **A** No, sir.

21 **Q** All right. Uh, what about other areas like
22 westside park? Were those areas patrolled or searched?

23 **A** Those areas -- there were groups of individual
24 deputies that had the assignments of searching those
25 areas. Usually, it was a K-9 with cover or a -- if I

1 recall, there were deputies that, that, uh, may have been
2 on the SWAT team that have been -- would be working and
3 have specialized training, but would also have been
4 working the road. They were assigned to go in and check
5 the concession areas, any of the picnic areas and that
6 type area inside the park. All that was cleared by
7 deputies on foot that were not assigned to perimeter
8 locations.

9 Q Did you play a part in the perimeter? Did you
10 rove or what did you do?

11 A I was on the perimeter for a while until I had
12 a deputy come and relieve me. I was probably on the
13 perimeter myself at this location for over an hour or an
14 hour and a half or so. Then I became a roving unit just
15 to -- and just roved the perimeter to maintain -- to make
16 sure that the perimeter had been secure. I mean,
17 deputies are like anybody else. You stand out beside
18 your car for two or three hours. Sometimes, you know,
19 you just want to -- you might need to go to the bathroom
20 or other type of thing. So if a deputy had to leave a
21 perimeter, uh, I was making sure that we had that spot
22 covered and that we could replace anybody that needed to
23 be replaced. But at all times, the perimeter was from a
24 very early point in this incident. The perimeter was
25 pretty secure.

1 **Q** And did you also -- at any point during this
2 process, did you get calls or specific action by the
3 sheriff's officer?

4 **A** Yes, sir. If I recall correctly, there were a
5 few phone calls that turned out to be nothing we
6 investigated where neighbors who had seen -- you see four
7 or five deputies standing within two or three hundred
8 yards of each other. You know something is up. By this
9 time, it had hit the news. We were over there. We did
10 receive a few phone calls from some residents in the
11 Calhoun Avenue area, to the best of my recollection.
12 Panarth Avenue. I don't know if it was marked. It's
13 right over in here somewhere. There were a few calls to
14 investigate people hearing noises. Their dog's barking
15 loud. They might be somebody in their back yard. We had
16 deputies respond to those and check those out. We didn't
17 locate anybody.

18 **Q** Were you also in contact with either the K-9
19 units that were inside or their commander?

20 **A** I was in contact with Sergeant Kellett who was
21 over the K-9 unit. I was in contact with him both via
22 the radio and over the phone. He was letting me know
23 what his people were doing, what areas they were going in
24 to search, where they had located items. That type of
25 thing.

1 Q And if any -- at some point, were you aware
2 that the K-9 units had pulled out of the area?

3 A Yes, after quite a while. They had done all
4 they could do and had reached a dead end.

5 Q Okay. And so during that process of the K-9s
6 being in there, you're in contact with the perimeter
7 units, did you have any instances of anybody reporting
8 anybody going in or out of the perimeter search area?

9 A No, sir.

10 Q When -- was the perimeter eventually called
11 off?

12 A Yes, sir. This incident occurred shortly
13 before lunchtime if I recall correctly. The perimeter
14 was ultimately called off some time after 4:00.

15 Q Okay. All right. And then, uh, after the
16 perimeter is called off, does that mean everybody leaves
17 and goes home or what happens?

18 A No. No, sir. Generally what happens is we
19 been out there. You've got deputies where it's their job
20 to catch somebody.

21 Q Yes, sir.

22 A We've had deputies that have been stationary on
23 a perimeter for several hours. Their natural inclination
24 and just a natural inclination is to patrol the area that
25 you were just guarding. It's a slow process. It's not

1 like, poof, and the perimeter's gone. These duties are
2 slow moving in the area and are just becoming mobile
3 after having been stationary for so long. So there's
4 still plenty of units in the area.

5 **Q** In your experience in setting up perimeters and
6 that kind of thing, have you had any experience with
7 success once you removed the perimeter?

8 **A** Yes, I have.

9 **Q** Why?

10 **A** We have that simply because what our job is to
11 do is to contain. A lot times, we will have suspects who
12 lay down, who hide and who aren't trying to move because
13 they can see us. We might not be able to see them.
14 There's a lot of times when you pull a perimeter shortly
15 after the deputies that were -- that were on their post
16 leave, the suspect might see this as an opportunity and
17 will try to advance their position or change their
18 position to get to a better location for themselves or to
19 basically escape. A lot of times, when you are clearing
20 a perimeter, you'll get a call about suspicious people
21 moving or something else and the suspect will move.

22 **Q** You actually expected some movement?

23 **A** I did. I expected that -- simply because this
24 perimeter was set up so quickly by so many deputies and
25 it was such a -- it was an ideal perimeter. There was no

1 way in my mind that the person may have fled into those
2 woods had gotten by us. So I expected that there might
3 be some movement after we called it off.

4 Q So the perimeter is called off. What happened
5 after the perimeter was called off?

6 A Shortly after it was called off and we had
7 deputies leaving the area, we get a call about suspicious
8 person seen somewhere around the Agnew Road, 253 area.
9 We get a call of a person seen over here. Dogs barking.
10 That type of thing. Nobody actually seeing, but the dog
11 barking and that type of thing over here on Crane Avenue
12 near Nancy drive. We had deputies responding to
13 investigate those calls.

14 Q Were you aware of a call made by Deputy Weiner?

15 A Yes.

16 Q I was aware -- I had two Bravo platoon deputies
17 who I was supervising, westside deputies. We were
18 responding to check out suspicious activity, the dogs
19 barking and going crazy right around the Nancy Drive,
20 Crane Avenue area. I wasn't too far off myself. I was
21 headed that way just to see what was going on. As we're
22 going, Deputy Weiner broadcasted on the radio that he
23 sees a suspect running and he's behind him on Crane
24 Avenue.

25 Q Did you eventually respond to Crane Avenue?

1 **A** I did, sir.

2 **Q** Okay. And did you come in contact with an
3 individual who was, uh, in police custody?

4 **A** Yes, sir. I don't recall the number on Crane
5 Avenue. I don't know if you can see it here. There's a
6 business. There's a church right here. Then there's a
7 business. Somewhere right around in this curve here is
8 where there was a suspect in custody. He was in between
9 two yards. He was kind of right near a fence area. He
10 was faced down. We had deputies that were handcuffing
11 him.

12 **Q** How would you describe this individual that we
13 saw?

14 **A** He was a black male subject. He was soaking
15 wet. He looked exhausted to me. My first thought when I
16 saw him and I came up to make sure, first of all, that
17 all the deputies was okay and that he was okay. My first
18 thought was, man, he looks like he's glad this thing is
19 over as we are.

20 **Q** All right. Were you there and present when EMS
21 arrived?

22 **A** Yes, sir.

23 **Q** And, uh, what happened at that point?

24 **A** Naturally, I saw that -- I was informed when I
25 got there that this individual had been shot and that he

1 had some injuries that needed attending to. We were
2 making sure that EMS did get there. He was cuffed
3 because naturally, he's still a suspect in this case. We
4 believed him to be armed. We got him EMS assistance. He
5 was loaded into an ambulance. I assigned the deputy to
6 arrive with him to the hospital.

7 Q Do you recall what kind of clothing the
8 individual had?

9 A I recall it being dark clothing. Specific
10 clothing, no, I don't recall. I just know that he was
11 soaking wet and appeared to be just exhausted.

12 Q What was your focus at that point as a westside
13 commander?

14 A My focus was the safety of the deputies
15 involved and also the safety, the treatment of the
16 suspect that was in custody.

17 Q Did you direct any deputies to accompany the
18 suspect?

19 A Yes, sir. Bobby Duncan was on the scene and,
20 uh, although he wasn't specifically assigned to me, I
21 assigned him to ride in the ambulance with the suspect to
22 the hospital.

23 Q Thank you, Sergeant. You can take your seat on
24 the witness stand. Please answer any questions the
25 defense counsel may have of you, sir.

1 **A** Yes, sir.

2 **CROSS-EXAMINATION**

3 **BY MR. JOHNSON:**

4 **Q** Sergeant Cooper, excuse me if I'm
5 mischaracterizing this. You say you were in charge of
6 setting up the perimeter?

7 **A** Yes, sir.

8 **Q** Were you under or over Lieutenant Griffin? How
9 did that work?

10 **A** My rank is below Lieutenant Griffin. He was
11 the shift commander. I was the westside sergeant. He's
12 over everybody on the shift.

13 **Q** So -- but he delegated to you the perimeter?

14 **A** No, sir.

15 **Q** Sorry.

16 **A** I was on phone contact -- I was on phone
17 contact with Lieutenant Griffin. I was actually doing
18 the assignments over the radio. I was on the phone
19 contact with Sergeant Bolt who had traffic and Lieutenant
20 Griffin who was my shift commander. We were discussing
21 the perimeter. But he didn't delegate it. I was on the
22 scene. I knew the deputies available and I was the one
23 that established the perimeter.

24 **Q** Okay. So when you got there, you took control
25 of it.

1 **A** Yes, sir.

2 **Q** That was the way it was?

3 **A** Yes, sir.

4 **Q** You told people to go, say for instance, on
5 Agnew Road?

6 **A** Yes, sir.

7 **Q** You told people to go on West Marion and West
8 Blue Ridge Road?

9 **A** Yes, sir.

10 **Q** All the different areas of the perimeter?

11 **A** Yes, sir.

12 **Q** So you had a pretty intimate knowledge of where
13 people were and what their line of sights were, you know,
14 just detailed as possible as far as how the perimeter was
15 and how it worked?

16 **A** Yes, sir.

17 **Q** Okay. Now, you stated earlier that you got a
18 call towards the end on Agnew Road and that was after the
19 perimeter started to break down?

20 **A** The perimeter had been called off.

21 **Q** It had been called off?

22 **A** We had informed all the deputies on the
23 perimeter that it was okay for them to leave their posts
24 at that point in time, that all the search that we were
25 going to do with the contained area had been completed

1 and that the deputies could leave their posts. Yes, sir.

2 Q Was this the first call that you got as far as
3 someone spotting the suspected robber?

4 A No, sir. And actually they didn't -- the call
5 that I recall the deputies went to on Crane Avenue was
6 put out as a barking dog. The dog didn't normally act
7 this way. It was acting -- sounded like it was agitated
8 a great deal and that it was barking towards a wooded
9 area. No one -- the call wasn't actually that anybody
10 had been seen. We had investigated several calls similar
11 to that during the time that the perimeter was set.

12 MR. JOHNSON: State's Exhibit 16 into
13 evidence?

14 MR. FRETWELL: Yes.

15 BY MR. JOHNSON:

16 Q You mind stepping down?

17 A Sure.

18 Q You know what -- is it true that you got a call
19 to investigate something on Highland Avenue? Do you
20 recall that?

21 A I don't recall.

22 Q You don't recall?

23 A The only ones I recall specifically, sir, were
24 Crane at the end, the very last one. I recall one on
25 Panarth, which Panarth, I don't know exactly where it is.

1 It's over in this area somewhere, which was outside of
2 the perimeter. I recall one on the Calhoun Avenue area.
3 If there were more, I don't recall. Those are the three
4 that I specifically recall.

5 Q Considering you don't have intimate knowledge
6 of it, would you believe me if I told you there was a
7 call on Delray Circle?

8 A I have no reason not to believe you.

9 MR. FRETWELL: Your Honor, that's an improper
10 question. If the witness knows, he'll say.

11 THE COURT: Overrule your objection.

12 BY MR. JOHNSON:

13 Q Would you believe me if I told you there was a
14 call on Delray Circle?

15 A If you tell me to believe you, I believe you.
16 Yes, sir.

17 Q Thank you. Would you believe me if I told you
18 there was a call on --

19 MR. FRETWELL: Your Honor, I object to these
20 kinds of questions. If there's some information
21 that Mr. Johnson wants to put in, he can do that.
22 Otherwise, he has to ask the witness what he needs.

23 THE COURT: How many locations are you going
24 to ask him about?

25 MR. JOHNSON: Two more, Judge. Two more.

1 **THE COURT:** If he doesn't know -- he stated
2 what he knows, I think.

3 **MR. JOHNSON:** I know. I asked him the
4 question, but he's not letting him answer the
5 question.

6 **THE COURT:** Well, he said that was the only
7 ones he knew. There were three, I think. Let's
8 move on to the other --

9 **BY MR. JOHNSON:**

10 **Q** All right. We'll move on. You can have a seat.
11 In any case, I'll just ask you there were multiple calls
12 about possible sightings of the suspect, right?

13 **A** Yes, sir.

14 **Q** Not just one?

15 **A** That's correct.

16 **Q** All right. All right.

17 **A** But those calls, sir, were basically calls to
18 investigate barking dogs. It's possible that there were
19 some -- that dogs were barking for a reason. There was
20 no calls that I recall where an individual was seen.

21 **Q** Now, I mention there was a call on Highland
22 Avenue --

23 **MR. JOHNSON:** I know Your Honor restricted me
24 on this, but -- permission to approach?

25 **(WHEREUPON, a bench conference is held off the**

1 record.)

2 **BY MR. JOHNSON:**

3 **Q** Just to confirm, Sergeant Cooper, were you
4 aware of anyone else reporting a sighting of an
5 individual?

6 **A** No, sir.

7 **Q** That doesn't mean that it didn't happen, right?

8 **A** I guess so.

9 **Q** Now, you stated you also responded to Crane
10 Avenue after my client was shot?

11 **A** Yes, sir.

12 **Q** I'm just going based upon your report, but you
13 stated when you got there --

14 **MR. FRETWELL:** Objection, Your Honor.
15 Improper impeachment. He can ask him if he stated,
16 but he can't read from his report.

17 **THE COURT:** Ask him the question -- let him
18 review his report if he needs to.

19 **BY MR. JOHNSON:**

20 **Q** You got one?

21 **A** I don't have a copy of it, sir.

22 **Q** Would you take a look at it for me please.

23 **THE COURT:** Let him refresh himself, then you
24 can ask him about his statement.

25 **BY MR. JOHNSON:**

1 Q Just let me know when you've had time.

2 A (Reviewing.) All right, sir.

3 Q In this report, did you indicate that you --
4 when you got there that my client had his hands behind
5 his back? He was handcuffed?

6 A Yes, sir. I indicated he was handcuffed, yes,
7 sir.

8 Q You observed -- you saw the handcuffs on his
9 hands?

10 A Yes, sir.

11 Q Did you also help him onto a backboard and a
12 stretcher?

13 A Yes, sir. I did.

14 Q And you actually took his left arm and secured
15 it to that backboard?

16 A Yes, sir.

17 Q You also, as previously testified with the
18 Solicitor, you directed someone to ride in the ambulance
19 with you?

20 A Yes, sir.

21 Q So they stayed with him the whole time on the
22 way to the hospital?

23 A Yes, sir.

24 Q Never lost sight of him?

25 A I don't know if he lost sight of him or not. I

1 directed him to ride in the ambulance, but I can't
2 testify to what he saw.

3 Q Did you observe him get into the ambulance with
4 the suspect?

5 A Yes, sir.

6 Q Now, Sergeant Cooper, the, uh, suspect who
7 robbed the bank, do you know if he used a gun or not to
8 rob the bank?

9 A The report was -- from what I could recall was
10 that there was a gun involved, yes, sir.

11 Q So as you understand, when you set up
12 perimeter, you were taught to look for -- you told people
13 to look for the suspect could be armed, may be armed.
14 Are you expecting him to be armed?

15 A Yes, sir.

16 Q Okay. Now, when you got to Crane Avenue when
17 you saw my client in handcuffs, do you know if there was
18 a gun found?

19 A There wasn't one found while I was there. I
20 don't believe there was one found, sir.

21 Q So they didn't find a gun on my client?

22 A No, sir.

23 Q They didn't find a gun in the yard?

24 A No, sir.

25 Q Sergeant Cooper, did you take any further

1 action in this case?

2 **A** I directed -- with this being an officer
3 involved shooting, sir, and I'm a former IA investigator,
4 I directed two of my deputies were there at the scene to
5 cooperate with Internal Affairs and to write a valid
6 report.

7 **Q** Why would Internal Affairs be involved?

8 **A** This was an officer involved shooting.

9 **Q** And that's something they would have to
10 investigate?

11 **A** Yes, sir.

12 **Q** To see whether the shooting was justified or
13 not?

14 **A** Their responsibility is to be sure that all
15 protocol was followed and to make sure and to report the
16 facts to the sheriff.

17 **Q** And this happened in this incident?

18 **A** Yes, sir.

19 **MR. JOHNSON:** Okay. I have nothing further
20 at this time.

21 **MR. FRETWELL:** May I, Your Honor?

22 **THE COURT:** Yes, sir.

23 **REDIRECT EXAMINATION**

24 **BY MR. FRETWELL:**

25 **Q** Sergeant Cooper, when you were loading or you

1 were assisting loading the suspect into the, uh,
2 ambulance, did you recall seeing blood?

3 **A** I recall seeing some blood on his leg. I can't
4 recall which leg. Thinking back in memory, I would have
5 to say it was probably the right leg, but I can't be
6 certain.

7 **Q** Uh, did you get a really good look at his
8 actual hands?

9 **A** Not particularly. He was handcuffed when I got
10 there. When EMS came to treat him, I was just concerned
11 that -- we want to give him treatment, but I also have to
12 treat him as an armed suspect. So I didn't really --
13 wasn't really just paying any attention to his hands. I
14 was just watching his overall movements and trying to
15 make sure that he was accessible to be treated.

16 **Q** With respect to the calls that were coming in,
17 was it uncommon to receive large amounts of calls during
18 manhunts like this?

19 **A** No, it's not. Especially this -- you've got to
20 take into consideration that there weren't a whole lot of
21 people out and about. I wouldn't assume. This was a
22 miserable day. It was raining. It was cold. We had
23 been out for probably four or five hours on this
24 perimeter. It was such a good perimeter, like I said,
25 that we had deputies everywhere. It's not uncommon for

1 people to get nervous. They are sitting in their house
2 for three or four hours. Every little sound is
3 amplified. We get a lot of calls about noises and they
4 are afraid. And it's possible that it's something that
5 could be what we're looking for. So we get calls like
6 that sometimes.

7 Q Finally, with respect to the, you mentioned
8 Internal Affairs. Your sheriff's office refers to that
9 as what?

10 A The Office of Professional Standards.

11 Q And they did an investigation in this case?

12 A Yes, sir.

13 Q Is that procedure?

14 A Yes, sir. For officer involved shootings, it
15 is.

16 Q In addition to the sheriff, do you know who
17 else is involved in officer-involved shootings?

18 A Yes. SLED would perform -- SLED actually does
19 -- with SLED being a law enforcement agency, SLED
20 conducts a criminal investigation. OPS does an internal
21 investigation.

22 Q Does that happen in just a few cases or every
23 officer-involved?

24 A It happens in every case.

25 Q No matter what the circumstances?

1 **A** No matter what the circumstance. OPS people --
2 sometimes you see it in the news where officers have to
3 shoot a dog. Even if it is an officer that euthanizes a
4 deer on the side of the road, if it's an officer-involved
5 shooting, OPS is going to investigate it.

6 **Q** They would have been investigating Investigator
7 Weiner, is that true?

8 **A** That's correct.

9 **Q** Any criminal charges filed against Investigator
10 Weiner?

11 **A** No.

12 **Q** Thank you. No questions.

13 **MR. JOHNSON:** Your Honor, brief recross?

14 **THE COURT:** Yes, sir. Briefly.

15 **RECROSS-EXAMINATION**

16 **BY MR. JOHNSON:**

17 **Q** I'd like to address something -- a question you
18 just recently answered. No charges were filed on
19 Investigator Weiner, is that right?

20 **A** To the best of my knowledge, yes, sir, that's
21 right.

22 **Q** Do you know what the official finding was?

23 **A** No, sir. I wasn't part of OPS. That's not
24 published.

25 **Q** So you don't have personal knowledge of what

1 the outcome was?

2 **A** No, sir.

3 **Q** I have nothing further at this time.

4 **THE COURT:** Thank you, sir. You may step
5 down.

6 **MR. FRETWELL:** Your Honor, the State calls
7 Shawn Muserallo.

8 **THE CLERK:** Sir, if you would, please pause
9 at the end of the bench, place your left hand on the
10 Bible and raise your right hand.

11 **SHAWN MUSERALLO**
12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. Please be seated.
14 Please state your full name for the record.

15 **THE WITNESS:** Shawn Muserallo.

16 **DIRECT EXAMINATION**

17 **BY MR. FRETWELL:**

18 **Q** Good afternoon, Mr. Muserallo.

19 **A** Good afternoon.

20 **Q** By whom are you employed?

21 **A** WYFF News 4.

22 **Q** What does your job entail?

23 **A** I'm a reporter. I go out and I report the news
24 and bring it back and get it on air.

25 **Q** And were you working on Wednesday, December

1 10th, 2008?

2 **A** Yes, I was.

3 **Q** What were you doing that particular day as far
4 as your job was concerned?

5 **A** Well, at that time, I was a nightside reporter.
6 I would have gotten it at 2:30 in the afternoon. Now, I
7 work mornings. So I get up at 3:00, really early. But
8 then, I got up at 2:30. I got the assignment and I went
9 out and reported it.

10 **Q** What was the assignment?

11 **A** Well, there had been a bank robbery. A
12 reporter and a photographer had already been assigned to
13 the actual scene. I was charged with going out and
14 finding the sidebar story. So I was going out and going
15 to look for the -- cover the manhunt.

16 **Q** Okay. So you actually went to the manhunt area
17 in the area of Emile and Agnew and all that?

18 **A** Yeah.

19 **Q** Okay. Approximately what time, if you can
20 recall, did you arrive in the area?

21 **A** I know it was sometime after I got in to work
22 obviously. It was later in the afternoon. The bank
23 robbery had happened for a while, a while ago.

24 **Q** You say you came in to work at 2:30?

25 **A** Yes.

1 **Q** Okay. At some point, after arriving in the
2 search area, were you on Agnew Road?

3 **A** Yes.

4 **Q** Why were you on Agnew Road?

5 **A** Well, we were trying to find deputies to look
6 for the suspect. So Agnew Road, we had heard that there
7 was a perimeter set up. So at one point, we didn't think
8 we were going to be able to get down the road. But when
9 we got to the road, there were no deputies. So we were
10 driving through the neighborhoods trying to maybe find
11 neighbors who were tucked in their homes, scared or
12 whatnot. We were driving around actually looking for
13 people to talk to and also deputies, getting video of
14 deputies doing their job.

15 **Q** So when you were on Agnew Road, what direction
16 were you traveling?

17 **A** I was headed towards West Blue Ridge.

18 **Q** Okay. Uh, if you can, if you don't mind, step
19 down and let me show you State's Exhibit 31. Mr.
20 Muserallo, can you look at this map and tell me if you
21 recognize that area that's depicted on the map?

22 **A** Yeah, that's Agnew Road, what I said and then
23 Blue Ridge.

24 **MR. FRETWELL:** Your Honor, at this time, the
25 State moves State's Exhibit 31 into evidence.

1 **THE COURT:** Any objection?

2 **MR. JOHNSON:** No objection.

3 **THE COURT:** Without objection, Exhibit 31 is
4 into evidence and may be published to the jury.

5 **BY MR. FRETWELL:**

6 **Q** Mr. Muserallo, if you would, grab that laser
7 pointer right there. It's very simple to work. Just
8 being mindful for all the jurors. Can see you -- can you
9 use that laser pointer or that laser pointer to show us
10 where on Agnew Road you were traveling?

11 **A** I was down here at this end of Agnew Road. And
12 then there's West Blue Ridge. We were coming this way,
13 right down here.

14 **Q** As you were traveling along Agnew Road, Mr.
15 Muserallo, did anything unusual occur?

16 **A** Yeah. Definitely. We were coming down Agnew.
17 Right here where this blue line is is the creek. There's
18 -- it looks like a ditch. There's like -- you can
19 obviously tell there's a creek and there's almost like a
20 little -- it's not so much a bridge, but I just remember
21 it was like -- there was obviously a creek there. Then
22 there's some like culverts and stuff. Right around
23 there, as we were approaching that area, a man popped up
24 out of the creek.

25 **Q** Okay. Are you driving or is your cameraman

1 driving?

2 **A** My cameraman was driving.

3 **Q** So you are sitting in the passenger's seat?

4 **A** So I would have been on this side of the car.

5 **Q** Is that the side of the car where the man
6 popped up?

7 **A** Yes.

8 **Q** And you say out of the creek?

9 **A** Yeah. It's like a creek area and it's got the
10 concrete. It looks like somebody climbed over or gotten
11 over that part of the creek and come out right there. He
12 was standing up on the road.

13 **Q** Did you actually see him in the water?

14 **A** No. No. At that point, he had popped out. I
15 would have had to look over, peer over to see him in
16 there. I actually saw him when he was standing on the
17 side of the road.

18 **Q** Can you describe him?

19 **A** Yeah. He was an African-American man. He had
20 darker clothes on, like bluish-gray. He was wet
21 obviously. I don't remember the exact colors. I
22 remember seeing some jeans. That was it. I just saw him
23 quickly.

24 **Q** So when you say he was wet, how much of him was
25 wet?

1 **A** It was like here down.

2 **Q** Sure.

3 **A** I remember thinking he looks wet and looked
4 really tired. He looked exasperated.

5 **Q** Was he wearing anything on his head or ---

6 **A** No.

7 **Q** --- anything across his face?

8 **A** No, I saw his face. Saw all of that.

9 **Q** Gloves or anything like that?

10 **A** I don't recall gloves.

11 **Q** Okay. How far away was the man when you saw
12 him?

13 **A** Uh, closer than you and I are.

14 **Q** Okay.

15 **A** Probably where that projector is. I remember
16 driving past him thinking -- I remember thinking he was
17 that close.

18 **Q** And what did you -- you're not driving the
19 vehicle?

20 **A** No.

21 **Q** Did you tell the cameraman?

22 **A** I did. He wouldn't have gotten a good look at
23 him, so I said, Chad, I think that was the guy that
24 they're looking for. We just kept going down here. He
25 stopped -- when I said that, he kind of slowed down.

1 Then I saw the man run across the creek and into this
2 area. He ran straight across the street. We turned
3 around and looked at him. He was running across the
4 street. He kept going.

5 Q Were you able, at any time, to make eye contact
6 with the individual?

7 A When he was standing right there.

8 Q Okay. Did you report what you had seen?

9 A I did. I mean, after we did that, I mean,
10 cause there was no perimeters up. We just decided it
11 would be best since we saw that to just get out of the
12 way. As we were doing that, I said I really ought to
13 call the sheriff's office spokesperson and tell her what
14 I saw. Her name is Melissa. I called Melissa cause
15 that's who we deal with on a daily basis in the news. I
16 felt comfortable telling her what I saw. She -- I recall
17 speaking to her dispatch. She connected me internally
18 through to the dispatcher. I told the dispatcher where I
19 was and what I had seen.

20 Q Show specifically on that map to the extent
21 that you can, in what direction of travel you saw the
22 individual go?

23 A He came out here and he ran this way. He ran
24 across the creek.

25 Q And in case it's not clear on this map, what

1 kind of area is this right here?

2 **A** It's wooded.

3 **Q** Pretty thickly wooded?

4 **A** Yeah.

5 **Q** Okay. Uh, at some point, uh, did you have
6 information that led you to go to Crane Avenue?

7 **A** Yeah, after we saw him and I called the
8 authorities, we went down here to West Blue Ridge.
9 There's a church over here to the left. I forget the
10 name of it. But there's a church up there, rather large
11 one. We hung out and waited. I was notified somehow
12 that they had spotted him on Crane Avenue which was not
13 very far away.

14 Once they did that, we drove over there because
15 we heard that they were taking the suspect into custody.
16 We drove over there, got as close as we could. At that
17 point, the cop cars are back out. We can't go any
18 further. We hung out and got video of that.

19 **Q** Were you able to see the individual who had
20 been taken into police custody?

21 **A** Through my -- through my cameraman's
22 viewfinder, yes. We were kept back, but not far enough
23 to where you couldn't see what was going on with him
24 zoomed in. There's a little side panel where you could
25 see what he's shooting video of while he's shooting

1 video. That's what I did. I remember saying to Chad at
2 the time that was the guy that we saw pop out of the
3 creek.

4 Q What was it about the guy that you saw through
5 the viewfinder that made you recognize it to be the guy
6 that came out of the creek?

7 A Just the clothes, that they were wet, he was
8 wet, the face. I just remember at that moment looking at
9 him and saying that was the guy unequivocally.

10 Q But his face stood out to you?

11 A I remember seeing his face and that matched the
12 clothing that I had seen.

13 Q Approximately how much time passed from the
14 time that you saw the black male emerge from the creek to
15 when you saw him in police custody, if you could
16 estimate?

17 A It was two and a half years ago but, I mean, I
18 remember not being very long at all. It was very quickly
19 that we were notified that he was caught. We went back
20 over there to get the final video.

21 Q And finally, do you recognize the man that you
22 saw in police custody and come out of the creek in the
23 courtroom today?

24 A Yes.

25 Q Can you identify him for the jury?

1 **A** Yeah. He's sitting over there.

2 **Q** Any doubt in your mind?

3 **A** No. No.

4 **Q** Okay. Please answer any questions that Mr.
5 Johnson or Mr. Hoskinson may have for you. Thank you.

6 **CROSS-EXAMINATION**

7 **BY MR. JOHNSON:**

8 **Q** Shawn, uh, I just want to be clear on
9 something. Uh, you stated when you saw my client, was he
10 on the side of the road or was he coming up out of the
11 creek?

12 **A** At that point, he had been -- I saw him rise
13 out and then he was there. Like, by the time we rolled
14 by him, he was standing on the side of the road.

15 **Q** He was standing on the side of the road. You
16 said you were driving by. Did you make eye contact with
17 him?

18 **A** Yeah.

19 **Q** Did my client shoot at you?

20 **A** No.

21 **Q** Did he, uh, move angrily towards you or
22 anything?

23 **A** No. It was like he sighed. He was so
24 exasperated. I remember thinking that that guy looks
25 tired. He had gotten out and he let out a big sigh. We

1 kept going.

2 Q Now, it was cold and wet?

3 A Yeah, I remem -- from what I recall, in
4 December, it was cold.

5 Q It was cold.

6 A And it was raining.

7 Q Now, do you have any, uh, personal firsthand
8 knowledge that would connect my client to the bank
9 robbery or the shooting?

10 A All I knew was that deputies were looking for a
11 suspect, an African-American suspect. And they might
12 have had a better description back then, but I don't
13 recall getting all that information. I just remember
14 that they were looking for a suspect.

15 Q Just answer yes or no. It's kind of a yes or
16 no question.

17 A Go ahead again.

18 Q Do you have any personal knowledge that
19 connects my client to the bank robbery or the shooting?

20 A Any personal knowledge?

21 Q Yes, sir.

22 A No.

23 THE COURT: Redirect?

24 MR. FRETWELL: Yes, sir.

25 REDIRECT EXAMINATION

1 **BY MR. FRETWELL:**

2 **Q** Just one thing. Your camera or your news
3 vehicle that you were in ---

4 **A** Yes.

5 **Q** Is that marked on the outside so you can tell
6 that it's a news van?

7 **A** Yes.

8 **MR. FRETWELL:** Okay. No other questions,
9 Judge.

10 **THE COURT:** Thank you, sir. You can step
11 down.

12 **MR. FRETWELL:** May this witness be excused,
13 Your Honor?

14 **MR. JOHNSON:** Any objection?

15 **MR. JOHNSON:** Permission to approach?

16 **THE COURT:** Yes, sir.

17 You can have a seat, sir.

18 **THE WITNESS:** Thank you.

19 **(WHEREUPON, a bench conference is held off the**
20 **record.)**

21 **THE COURT:** Mr. Muserallo, you are excused at
22 this time. If you need to leave, you need to be
23 available. Make sure that are you in the area.
24 You're not going be on vacation or anything the rest
25 of the week?

1 **THE WITNESS:** No, sir.

2 **THE COURT:** In case you are needed, then
3 you'll be available. But you are free to come and
4 go as you please now.

5 **THE WITNESS:** Thank you, Your Honor.

6 **THE COURT:** Thank you, sir.

7 All right. You can call your next witness.

8 **MR. FRETWELL:** Your Honor, the State calls
9 Mike Fortner.

10 **THE CLERK:** Sir, please place your left hand
11 on the Bible and raise your right hand.

12 **MIKE FORTNER**

13 having first been sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please be seated.
15 Please state your full name for the record.

16 **THE WITNESS:** Michael Eugene Fortner.

17 **DIRECT EXAMINATION**

18 **BY MR. FRETWELL:**

19 **Q** Investigator Fortner, how long have you worked
20 for the Greenville County Sheriff's Office?

21 **A** This September will be 18 years.

22 **Q** And to what unit are you currently assigned?

23 **A** I'm currently assigned to the Armed Robbery
24 unit.

25 **Q** And let me take you back to Wednesday, December

1 10th, 2008. Were you working on that day?

2 **A** Yes, I was.

3 **Q** What were you doing that particular morning?

4 **A** That morning, myself and Investigator Weiner,
5 we were out investigating some cases that we had assigned
6 to us by Sergeant Cooper or actually at that time,
7 Sergeant Jones. And we were out investigating the cases.
8 It was getting close to noon. We decided to stop and get
9 something to eat. So we stopped at Taco Bell there at
10 the intersection of White Horse Road and 253, West Blue
11 Ridge Drive.

12 **Q** And were you in separate vehicles, the same
13 vehicle?

14 **A** We're riding together. He's driving. I'm on
15 the passenger front seat.

16 **Q** Who's driving?

17 **A** Investigator Weiner.

18 **Q** Okay. And what happened as you pulled into the
19 Taco Bell?

20 **A** As we pulled into the Taco Bell, tones came out
21 over the radio. Tones are put out by dispatch for
22 certain types of calls to include in this case, armed
23 robberies. Uh, the call was for a bank robbery that just
24 occurred at the Bank of Travelers Rest there on White
25 Horse Road which is right near the intersection of West

1 Blue Ridge Drive where we were sitting at. I mean, we
2 could literally look down White Horse Road and see the
3 bank from where we were at.

4 Q And so what happened?

5 A At that time, we immediately pulled out of the,
6 uh, Taco Bell parking lot out onto West Blue Ridge, took
7 a left up towards White Horse Road. At this time, no
8 kind of description had been given out. We were kind of
9 antsy, for one, because we were right there. In case
10 there was some kind of vehicle or something to be looking
11 for, we wanted to know what to look for. As we pulled up
12 to the intersection of 253 and White Horse Road, dispatch
13 finally gave out a description of a white van. Shortly
14 after that, they came back out with some information that
15 made it sound like somebody was actually following this
16 van and it ended up on Emile Drive or Emile Street.

17 Q What was the weather like that day,
18 Investigator?

19 A It was raining off and on. Heavy at times and
20 kind of cold. I would say probably high 40s, maybe low
21 50s.

22 Q Did you have any information once the vehicle
23 had been at Emile or Emile or whatever street that is
24 about any kind of additional activity on Emile?

25 A Yes, uh, the information came out that a

1 witness was following it and that this witness could see
2 some red smoke coming out of the vehicle. We started
3 heading that way. Investigator Weiner activated his blue
4 lights and siren. We were heading down White Horse Road.

5 Shortly after that, information came out that
6 there was a gunshot victim at the corner of Emile and
7 Leone Avenue, which was right there, that general area.
8 So as we turned down Emile, we're coming up Emile and we
9 spotted a white van sitting on the side of the road just
10 kind of parked, kind of diagonally off the road, not
11 parallel with the road. It's like somebody just turned
12 the wheel real hard to the right off the road and noticed
13 the driver's side window was down. Investigator Weiner
14 dropped me off there at the van. He headed on up to
15 Leone Avenue to attend to the gunshot victim. I cleared
16 the van to make sure that there were no suspects hiding
17 in the van at that time.

18 **Q** What, if anything, did you notice or observe
19 about the van itself?

20 **A** While clearing the van, I noticed, uh, a good
21 bit of cash laying on the backseat area of the van behind
22 the driver's seat and front passenger seat is located at.

23 **Q** And what did you say Investigator Weiner was
24 doing?

25 **A** At this time, he had already left where I was

1 at. He went up the road a little bit to Leone Avenue
2 where our gunshot victim was at.

3 Q Did you eventually go up to where Investigator
4 Weiner was?

5 A Yes, I did.

6 Q And what did you observe when you arrived at
7 Investigator Weiner's location?

8 A Once I got to where he was at, Investigator
9 Weiner was attending to the gunshot victim. He was using
10 part of the victim's jacket and putting it to his neck
11 where he had been shot at the neck kind of trying to
12 control the bleeding. We were waiting on EMS to get
13 there.

14 Q Do you know how quickly EMS was able to arrive?

15 A It took a few minutes. I would say it seemed
16 like forever but, I don't know, probably 10 minutes or
17 so.

18 Q What did you do -- what did you and
19 Investigator Weiner do once EMS arrived?

20 A Once EMS arrived, we turned the victim over to
21 EMS. Deputy Weiner is on the SWAT team. They had
22 activated the SWAT team at that time to help out on the
23 search on the perimeter and with the K-9 teams. He left
24 to go do that. I stayed with his car. I stayed on the
25 -- I was one of the units on the perimeter.

1 Q And where was your location on the perimeter?

2 A I was set up right there at Leone Avenue and
3 Emile Road where I was already at.

4 Q Okay. And what were your responsibilities and
5 what did you do while that perimeter was in place?

6 A My responsibility at that time was just to
7 maintain that spot on the perimeter and make sure nobody
8 got in or out on the perimeter there in that area.

9 Q In the time during -- or during the time you
10 were on the perimeter, did anybody go in or out?

11 A No, they didn't.

12 Q Were you in a position to be able to see the
13 other cars on the perimeter?

14 A Yes, I can remember looking down Emile back
15 towards where the van was at and seeing a couple of units
16 down that way. I could also look up -- it was actually
17 Alma Street, at that point, I believe, across from Leone.
18 I could see a unit up that way as well.

19 Q Okay. Do you know if the perimeter was
20 eventually dismissed?

21 A Yes, it was.

22 Q Do you know what time it was dismissed?

23 A It was right about four o'clock in the
24 afternoon.

25 Q What did you do at that point?

1 **A** At that point, Investigator Weiner was over on
2 West Marion Street, Richard Street area. That's where I
3 ended up at while doing the search with the dogs and
4 everything. He had called me on the phone, asked me to
5 drive his car over there and pick him up, which I did. I
6 drove over there and got back in the passenger's side and
7 let him drive from that point on.

8 **Q** And where were you all headed?

9 **A** At that point in time, we started to head back
10 towards the Law Enforcement Center?

11 **Q** What, if anything, happened as you headed back
12 to the Law Enforcement Center?

13 **A** We were traveling on West Blue Ridge Drive
14 heading back towards the Law Enforcement Center. A call
15 came out of a sighting of a possible suspect in this case
16 near Crane Avenue. We were practically right there at
17 Crane Avenue at that time. We made a lefthand turn down
18 onto Crane Avenue. Very shortly after turning onto Crane
19 Avenue, we observed a black male suspect come running up
20 out of a field near a small business and ran up across
21 Crane Avenue, right in front of where we were at. We
22 were looking at him. He was looking at us. I'm sure he
23 was trying to figure out whether or not we were law
24 enforcement or not.

25 **Q** What kind of vehicle were you in?

1 **A** We were just in a white Ford Taurus.

2 **Q** Was it marked?

3 **A** No, not marked at all. Very inconspicuous.

4 **Q** What do you recall, if anything, about the
5 clothing the individual, the black man was wearing?

6 **A** He had all dark clothing on. It was very
7 obvious it was very wet clothing. Muddy. Leaves stuck
8 to his clothes. It was very obvious that he was
9 extremely tired. He was almost staggering across the
10 road when he ran across in front of us as he was looking
11 back at us.

12 **Q** And what happened after you saw him?

13 **A** He could see us looking at him, just like we
14 could see him looking back at us. He went across Crane
15 Avenue in front of us. He came up to a fence at number
16 18 Crane Avenue. He jumped over this fence. It was
17 actually a gate to a driveway, a double gate blocking a
18 driveway. He jumped over that fence. Investigator
19 Weiner and I were like that's got to be our guy.

20 We pulled up. Investigator Weiner literally
21 went through the gate with a car. The subject took off
22 running across the yard. We were following after him in
23 the car. We got back to a fence that separated number 18
24 from number 20. The subject jumped over the fence. At
25 that time, Investigator Weiner and I both got out of the

1 vehicle, drew our weapons, pointed them at the, uh,
2 subject and ordered him down on the ground.

3 Q All right. Let me show you what I think's been
4 previously entered into evidence as State's Exhibit 31
5 and ask you to step down.

6 A (Witness complies.)

7 Q And to use this laser pointer, do you recognize
8 that area of, uh, Crane and Agnew? Just push that little
9 button down. Yes, sir.

10 A This is Crane Avenue right here. This is West
11 Blue Ridge.

12 Q Tell us what way you were coming when you
13 pulled onto Crane Avenue.

14 A We were heading this way and this is Blue Ridge
15 right here heading -- I guess it would probably be north
16 of West Blue Ridge. We were probably right about in this
17 area here when the call came up about the subject being
18 on Crane Avenue. So we come up here. We make a lefthand
19 turn onto Crane Avenue. And we were probably right
20 around in -- somewhere right along in here when the
21 subject came up through this area right here and ran
22 across the roadway right here in front of where we're at.
23 I'm guessing -- I'm not sure which one of these houses
24 would be number 18. Probably this one here would be my
25 guess.

1 **Q** What happened once you got into the back yard
2 of one of those residences right here?

3 **A** All right. Once we got around the back yard,
4 we had the subject at gunpoint. He was on one side of a
5 chainlink fence. We were on the other side. We ordered
6 him down on the ground.

7 **Q** All right. So stop me -- let me stop you for
8 just a second. He had gone over another chainlink? He
9 jumped the initial fence?

10 **A** Right. He jumped the initial fence, the gate
11 by the roadway.

12 **Q** Then he went over another fence?

13 **A** Then he goes over another fence. So he's
14 actually standing in the back yard of number 20 Crane
15 Avenue.

16 **Q** Okay.

17 **A** And we're standing in the back yard of number
18 18 Crane Avenue.

19 **Q** And your guns are drawn?

20 **A** Guns are drawn.

21 **Q** Tell us about that.

22 **A** Uh, we've got our guns drawn on him. Ordering
23 him down to the ground. It's a bank robbery suspect.
24 Already shot one person. We're ordering him down on the
25 ground. He was refusing to get down on the ground. At

1 one point, he started to act like he was going to comply
2 and get down on the ground. At that time, I turned and
3 went back to the car to get on the radio and let
4 everybody know where we were at. They knew we were
5 following a guy but didn't know exactly where at at the
6 time. About the time we got halfway back to the car, the
7 subject took off running again. Investigator Weiner
8 jumped over the fence. He was ahead of me. I then
9 jumped over the fence.

10 As I was going over the fence, I could hear, I
11 think it was, three gunshots. Of course, my concern was
12 Investigator Weiner. Once I started coming up to where
13 Investigator Weiner was, uh, I could hear him giving
14 commands to the subject. So I knew he was okay. When I
15 got up there, the subject was on the ground complaining
16 of having been shot. He was complaining of pain in his
17 arm and, I think, one of his legs.

18 Q And during this time, you were out of the car?

19 A Yes.

20 Q And pursuing the suspect. Are you telling him
21 to stop?

22 A Yes.

23 Q Is that just once or are you telling him --

24 A Numerous times especially when we had him at
25 gunpoint on the other side of the fence. Numerous. He

1 went from here to that little projector right there.

2 Just that close to each other.

3 **Q** And when he took off running when you started
4 back to the car, uh, did you hear anything more from
5 Investigator Weiner about commands for him to stop?

6 **A** At that time, the guy took off running when I
7 went back to the car. So I don't recall whether or not
8 he gave any more commands at that time. Like I said, I
9 jumped over the fence by the time I heard some gunshots.

10 **Q** Do you recall warning the suspect about whether
11 he was going to be shot?

12 **A** Yeah, actually, I did. Yes. I told the
13 subject if he didn't comply, he was going to end up
14 getting shot.

15 **Q** Okay. Did any other deputies -- let me back up
16 a little bit. Did you eventually get over to where the
17 suspect was?

18 **A** He had actually jumped over another fence at
19 that time. So he's actually now in the back yard of
20 number 22 Crane Avenue.

21 **Q** And where is Investigator Weiner?

22 **A** He's actually in the back yard of number 20
23 Crane Avenue there at the fence.

24 **Q** Okay.

25 **A** Right after I get up through Investigator

1 Weiner and checked on him and made sure he's okay, that's
2 about the time that Deputy Bobby Duncan, I believe it
3 was, got there. He jumped over the fence, that fence and
4 ended up handcuffing the subject for us.

5 Q And Investigator Weiner, what did he do at that
6 point, do you recall?

7 A Uh, I don't recall. I know with being involved
8 in a shooting and everything, I know he had to deal with
9 that issue.

10 Q Is that pretty immediate once a shooting
11 occurred?

12 A Yes.

13 Q Did you talk to the suspect?

14 A Just a little bit. Just told him that, you
15 know, EMS was on the way and that kind of thing. I
16 remember him mentioning to me that he wanted a Coke to
17 drink. Probably because he was tired and thirsty from
18 being out there all day.

19 Q Did he identify himself to you?

20 A He said his name was Steve. That's all he
21 would tell us at that time.

22 Q Do you, uh, -- you recognize the suspect that
23 you saw in the back of 22 Crane Avenue and that you saw
24 come across Crane Avenue that day?

25 A Yes, I did.

1 Q Can you identify him for the jury?

2 A Yes, he's the man sitting there in the kind of
3 gray dress shirt.

4 Q Okay. Where was the defendant taken after he
5 was arrested? Do you know?

6 A I know EMS transported him. I guess it would
7 be to Greenville Memorial Hospital.

8 Q But you didn't go?

9 A I did not go.

10 Q Thank you.

11 A Yes, sir.

12 Q Please return to the witness stand and answer
13 any questions defense counsel may have.

14 **CROSS-EXAMINATION**

15 **BY MR. JOHNSON:**

16 Q Now, just to go over something. You stated
17 when you received your call, where were you? Were you
18 coming up Blue Ridge?

19 A Yes, sir. We were coming up Blue Ridge heading
20 in the direction of Cedar Lane Road.

21 Q Can you point out on the map the approximate
22 location of 18 Crane?

23 A 18 Crane Avenue would have to be -- it would
24 either have to be this house or this one here. This is
25 one house here. I'm not sure. One of these two houses

1 right in here would have to be 18.

2 Q Then you turned off of West Blue Ridge and you
3 took a left onto Crane, is that right?

4 A Yes, sir.

5 Q Did you immediately see my client or did you
6 have to drive a little ways?

7 A Not immediately. We had to drive up. It was
8 probably somewhere right along in this area here when we
9 first seen him come up towards the roadway.

10 Q So you saw him come up. What kind of car were
11 you in?

12 A We were in a white Ford Taurus.

13 Q Does it have any police markings on it?

14 A No, it has no lines, no star, no visible blue
15 lights or anything like that.

16 Q No lights or anything. Is it equipped with a
17 horn?

18 A Like a?

19 Q Police horn or --

20 A Siren?

21 Q Uh, siren.

22 A It's equipped with siren and it's equipped with
23 blue lights. They're just inside the vehicle.

24 Q Inside the vehicle. Do you have -- I know some
25 of them have speakers where you can yell out and it will

1 project loudly outside. Do you have one of those?

2 **A** I don't know. A lot of the investigators' car
3 that the mount, the PA system's actually mounted in the
4 trunk of the car because we are not uniform patrol. So
5 it's not a big need for us. They just mount the radio
6 usually and the siren itself. But I don't recall in his
7 car if the P.A. was inside or not.

8 **Q** Okay. Anyhow, you say you saw him start to
9 cross the road and you guys made eye contact with him?

10 **A** Yes.

11 **Q** So you stopped?

12 **A** On Crane Avenue, yes, sir.

13 **Q** And once again, it's not readily apparent that
14 you are a police car?

15 **A** No.

16 **Q** Okay. So he's going across the road and you
17 say he start to jump a fence?

18 **A** Yes.

19 **Q** He starts to jump fence. Did you guys then
20 accelerate towards him?

21 **A** Yeah. As he's running across the yard at
22 number 18, we then went through the gate of the fence,
23 yes, sir.

24 **Q** And did you stop and open the gate or did you
25 run through the gate?

1 **A** We ran through the gate.

2 **Q** Did you run through it at a high rate of speed?

3 **A** It wasn't a real high rate of speed. I just
4 pulled up to it and went right through it.

5 **Q** So you were chasing him into the yard with your
6 car?

7 **A** Correct.

8 **Q** So you chased him off the road, into the yard
9 with your car into the other fence?

10 **A** Correct.

11 **Q** Okay. You can have a seat. I'm sorry.

12 **A** (Witness complies.)

13 **Q** Now, Mike, you say you didn't see the shooting?

14 **A** I didn't see what?

15 **Q** You didn't see the shooting? You didn't see
16 Investigator Weiner shoot --

17 **A** Oh, the actual shooting itself take place, no,
18 I did not.

19 **Q** You didn't see it. You stated that you started
20 to walk back towards -- you turned your back and walked
21 back towards the car.

22 **A** Right. I turned back to go back to the car and
23 get on the radio to let everybody know where we were at.
24 For a moment there, it looked like the subject was going
25 to comply with us and get down on the ground.

1 **Q** How did he look like he was going to comply?
2 Was he like this?

3 **A** Not quite that far. But he was on his way to
4 get down. He just looked like he was ready to give up at
5 that time.

6 **Q** So your testimony today is you turned your back
7 on someone you thought was armed and just like this. He
8 wasn't all the way on the ground?

9 **A** Investigator Weiner still had him covered at
10 that time.

11 **Q** So Investigator Weiner has his gun on him?

12 **A** Yes, sir.

13 **Q** And him in this position, could he shoot back?

14 **A** I guess he could. Sure. He could reach for a
15 gun.

16 **Q** He sure could. Okay. In any occasion, you
17 didn't see the shooting because you had turned to go back
18 to the car and you were going to notify dispatch?

19 **A** Right. I was going to notify dispatch of our
20 whereabouts.

21 **Q** Okay. Uh, you said at some point he started
22 running again. How did you -- when did you figure out he
23 had started running?

24 **A** Cause when I went back to the car, I could hear
25 Investigator Weiner yelling at him to stop, I guess.

1 That's when I turned back around. I could see him
2 running across the yard.

3 Q Could you hear everything Investigator Weiner
4 was saying?

5 A No, I could not.

6 Q So he wasn't always yelling. Sometimes he said
7 things that weren't so audible?

8 A Correct. I mean, at points, I couldn't hear
9 him. Sure. I couldn't hear him the whole time up to the
10 shooting. The only thing I know is when I went back to
11 the car, he took off running. Investigator Weiner at
12 that time was already in the process of going over the
13 fence, chasing after him across the back yard of what
14 would have been number 20 at that time. I then jumped
15 the fence and was coming up behind them. Gunshots went
16 off. Then I could hear Investigator Weiner giving him
17 verbal commands of some sort.

18 Q So you running after -- you were running, not
19 after Investigator Weiner, but you were -- when, uh,
20 Investigator Weiner was pursuing the subject, you were
21 running too at that point in time before shot?

22 A Running like towards him?

23 Q Running towards what their location was?

24 A Yes, sir.

25 Q So after the shooting, how long do you think it

1 took before you ran up on Investigator Weiner?

2 **A** Thirty seconds maybe.

3 **Q** Thirty seconds? How far did you think you were
4 away initially?

5 **A** About the length of a typical back yard.

6 **Q** Typical back yard?

7 **A** Yeah.

8 **Q** It took you 30 seconds to get from that point
9 to where Weiner was?

10 **A** Roughly, sure.

11 **Q** Okay. Now, when, uh, -- after my client was
12 shot, you ran up on him. Did Duncan arrive at the same
13 time or did he arrive before or after you? How did that
14 work?

15 **A** He arrived after me. Very shortly, within a
16 minute for sure.

17 **Q** And when you ran up, did you hold your gun on
18 my client?

19 **A** I did not, no. I was --

20 **Q** You ran up and just --

21 **A** I saw him laying there on the ground. It was
22 obvious he was somewhat incapacitated at that time.
23 Deputy, like I said, Bobby Duncan got there right after
24 we did. He jumped over the fence and got the gun
25 handcuffed.

1 Q Got the guy handcuffed. Did you ever come in
2 contact with my client?

3 A Not after that, no, sir.

4 Q You talk to him?

5 A Just a little bit there at the scene. Just
6 telling him EMS was on the way because he was complaining
7 of being in pain. He was telling me that he wanted a
8 Coke. I told him I didn't have one with us.

9 Q Now, Investigator Weiner, you said he was ahead
10 of you. What did he have on? Did he have on a uniform
11 like that officer there?

12 A No, Investigator Weiner was wearing his SWAT
13 uniform at the time which is kind of like a -- I believe
14 at that time anyways was like an olive green BDU type
15 uniform.

16 Q Olive green?

17 A Like an olive green color, yes, sir.

18 Q Okay. Okay. At this point, I have nothing
19 further.

20 MR. FRETWELL: Redirect, Your Honor?

21 THE COURT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. FRETWELL:

24 Q Mr. Johnson asked you at some point whether you
25 chased the suspect off the road, chased the defendant off

1 the road. Where was the defendant when you and
2 Investigator Weiner went through that padlocked gate?
3 Was he on the road or did he already jump the fence?

4 **A** He had already jumped the fence at that time,
5 that, actually, double gate, and was in the process of
6 running through the front yard into the back yard of that
7 house when we went through that gate.

8 **Q** So you didn't chase him off the road. You
9 chased him once he was beyond that padlocked gate?

10 **A** Correct. Yes, sir.

11 **Q** Okay. And the -- when you got out of the car
12 in the back yard of 18 Crane and began the chase, where
13 were the radios?

14 **A** The radios are in the car. Being
15 investigators, we don't carry our radios on us like
16 uniform patrol does. We don't have a utility belt with
17 us. That makes it handy to carry a radio on your waist.
18 Our radios are permanently mounted in the cars. Once we
19 get out of the cars, we don't have a radio with us.

20 **Q** Is it basically a choice between a radio and a
21 gun?

22 **A** It can be, yes, sir.

23 **Q** You had a gun -- you had your gun out when you
24 were out of the vehicle and chasing the defendant, is
25 that correct?

1 **A** We drew our guns on him once we got him at the
2 fence, yes.

3 **Q** Okay. And I believe Mr. Johnson asked you some
4 questions. Once you turned around and you went back to
5 the car to get the radio, the car wasn't far?

6 **A** No. The car was right there at the fence where
7 we were at.

8 **Q** Just on the other side of the fence?

9 **A** Just the other side of the fence, yes, sir.

10 **Q** And you said after that point, you still heard
11 Investigator Weiner telling this defendant to stop?

12 **A** There at the fence?

13 **Q** After you turned around and you were headed
14 back just a few minutes ago, you told Mr. Johnson that
15 you continued to hear Investigator Weiner tell the
16 defendant to stop?

17 **A** Correct. Yes, sir.

18 **Q** In between where you were when you realized
19 they had continued to run, it wasn't very far, but wasn't
20 there a fence in between?

21 **A** Yes, there was.

22 **Q** So you had to climb another fence to get to
23 where Investigator Weiner and the defendant were?

24 **A** That's correct. Yes, sir.

25 **Q** Okay. This uniform that Investigator Weiner

1 was wearing is green. Is that right? Is that what you
2 testified?

3 **A** Yes, sir. It is.

4 **Q** But does it also have all of the emblems like
5 the patch and the badge and other markings on it?

6 **A** Right. They are like in black color, like a
7 dark color as opposed to like the gold and yellow that
8 you see on that uniform over there, but yes, they are
9 marked.

10 **Q** What does it have on the back of it?

11 **A** I want to say it says, uh, maybe Sheriff's
12 Office across the back of it.

13 **Q** Okay.

14 **A** It's got some kind of insignia on the back of
15 it as well as the badge patch on the front.

16 **Q** All right. Thank you.

17 **MR. FRETWELL:** No other questions, Judge.

18 **THE COURT:** Thank you, sir. You may step
19 down from the witness stand.

20 Mr. Foreman, Ladies and Gentlemen, this might
21 be a good time to take a short break. I'll ask you
22 to go back to your jury room again. I will remind
23 you not to discuss the case. We'll call you back in
24 about 10 minutes.

25 Everyone else, please remain seated while the

1 jury departs.

2 **THE BAILIFF:** Court is still in session.

3 (WHEREUPON, the jury exits at approximately
4 3:46 p.m.)

5 **THE COURT:** All right. Let's take a short
6 break.

7 (WHEREUPON, a short recess is taken.)

8 **THE COURT:** Okay. If our jury is ready, you
9 can have them come in, Mr. Jenkinson.

10 (WHEREUPON, the jury enters at approximately
11 4:07 p.m.)

12 **THE COURT:** All right. Solicitor, you can
13 call your first -- your next witness.

14 **MR. FRETWELL:** Thank you, Your Honor. May it
15 please the Court. The State calls Investigator
16 David Weiner.

17 **THE CLERK:** Sir, please place your left hand
18 on the Bible and raise your right.

19 **DAVID WEINER**
20 having first been sworn, testifies as follows:

21 **THE CLERK:** Thank you. Please be seated.
22 Please state your full name for the record.

23 **THE WITNESS:** David Weiner.

24 **DIRECT EXAMINATION**

25 **BY MR. FRETWELL:**

1 Q Investigator Weiner, how long have you worked
2 for the Greenville County Sheriff's Office?

3 A Eleven years this year.

4 Q And to what unit are you currently assigned?

5 A Currently, I'm assigned to Armed Robbery.

6 Q Are you a part of any special teams within the
7 Sheriff's Office?

8 A I am. I'm assigned also to the SWAT team.

9 Q What is the SWAT team?

10 A Special Weapons and Tactics. Uh, we always
11 kind of say when the police need help, we're the ones
12 that come. For Greenville County, it's a part-time
13 thing. We don't have the volume or the necessity for us
14 to be full time. So my full-time job is as an
15 investigator. Then we train, several days, a month. In
16 fact, right now is a training day for us. Then, when
17 needed, they'll call us out.

18 Q And what is the acronym SWAT actually stand
19 for?

20 A Special Weapons and Tactics.

21 Q So do you receive training on the use of
22 firearms?

23 A Yes, sir.

24 Q And how to shoot them?

25 A Yes, sir.

1 Q In various conditions?

2 A Yes, sir.

3 Q Okay. To what other units have you been
4 assigned?

5 A Uh, I worked uniform patrol, worked the road.
6 In fact, where all this happened was my bread and butter
7 for seven years. I worked over in the area of Crane
8 Avenue, 253, White Horse Road for seven years. I did a
9 short stint in white collar crimes.

10 Q Did any other units within the sheriff's
11 office?

12 A No, sir.

13 Q Did you work at all in the OPS or Internal
14 Affairs?

15 A I did do basically what we call cross-training.
16 What that is at the sheriff's office is kind of furthers
17 your knowledge and helps you to be a better, say, deputy
18 or investigator. I did just recently, last year,
19 finished up 60 days working with our Office of
20 Professional Standards.

21 Q Let me take you back to Wednesday, December
22 10th, 2008. You hadn't done any cross-training with
23 Internal Affairs at that point?

24 A No, sir.

25 Q In fact, at that time, what was your job

1 responsibility?

2 **A** Armed robbery. My Sergeant at the time,
3 Sergeant Jones, would happily lay cases on my desk every
4 morning. It was my job to work them.

5 **Q** Okay. And you were working that particular
6 day?

7 **A** Yes, sir.

8 **Q** What do you recall that you were doing that
9 morning?

10 **A** Just doing follow-ups. Most of the time,
11 myself and Investigator Fortner were kind of attached at
12 the hip. We do everything together during the day when
13 we were working.

14 **Q** Okay. When you were doing those followup
15 investigations at the point when you can to decide to go
16 to lunch, what did you do at that point?

17 **A** We were on Blue Ridge. We discussed not
18 wanting to spend a whole lot of money. We don't make a
19 whole lot. And we picked Taco Bell.

20 **Q** And tell me where the Taco Bell is located.

21 **A** Directly at the corner of West Blue Ridge and
22 White Horse. If you are coming north on White Horse,
23 it's right on your right before you actually get to Blue
24 Ridge. It's right on the corner.

25 **Q** And what happened as you pulled into the

1 parking lot at Taco Bell?

2 **A** Turned into the parking lot. The alert tones
3 go out. Of course, it's like I wanted to eat lunch. I
4 knew that wasn't going to happen. The alert tones that
5 go out for violent crimes, real serious crimes, some kind
6 of shooting in progress, a robbery in progress.
7 Something of that nature. And robberies are a little
8 more common than shootings. So I made the assumption
9 it's probably going to be a robbery, which it turned out
10 to be.

11 **Q** Okay. And what information were you provided
12 or were you provided any information after the alert
13 tones?

14 **A** Bank robbery just occurred. Bank of Travelers
15 Rest, White Horse Road and, of course, it's got to be my
16 lucky day. We are just a couple of hundred yards down
17 the street.

18 **Q** And what information on the -- what suspect
19 information or descriptions had you received at that
20 point?

21 **A** Initially, not a whole lot. As I pulled out of
22 Taco Bell parking lot, they are updating it now with
23 suspect escaped in a white minivan.

24 **Q** Did you have a description of the suspect?

25 **A** Uh, I don't recall if there's one or not.

1 Q Would looking at the report refresh your
2 recollection?

3 A I've got a copy up here with me, sir. I'll
4 take a look.

5 Q You mind reviewing that report and telling me
6 whether or not you had information on the general
7 description of the suspect at that point?

8 A I've got nothing documented here other than it
9 was an individual that left in a white minivan and that I
10 had actually requested more information from dispatch
11 telling them that I'm right on top of it. They didn't
12 come back with anything.

13 Q All right. Once you received that information,
14 what did you do?

15 A Once they said he's leaving in a minivan, now
16 I'm kind of -- really just kind of really going slow down
17 White Horse Road. I figure White Horse Road is a real
18 good way to go. And if he's coming towards us, I'm
19 looking at the cars going the opposite direction really
20 hard just trying to make a mental image. White truck,
21 black car, red car. I'm trying to think to myself, all
22 right, if they come out red car, I know I got to turn
23 around. If not, I'm heading north.

24 As we get closer to the bank, they're saying --
25 they are starting to give out radio traffic of the van is

1 traveling down West Marion Road. There's red smoke
2 coming out of the van. I'm sitting here thinking to
3 myself somebody's following it. They hadn't quite come
4 out and said that, but it's clear that somebody was.

5 Q All right. And so what did you do at that
6 point?

7 A Blue lights and siren. We get up to West
8 Marion Road, turn right on West Marion. We're following
9 right behind them. They say they turn right on Emile
10 Street. I'm turning right on Emile Street right behind
11 them. Right about the time we make that turn on Emile is
12 when we're getting notification that there may be a
13 gunshot victim.

14 Q Okay. Tell the jury about what the weather was
15 like that day and the traffic on White Horse Road and
16 surrounding areas.

17 A Uh, White Horse Road, not quite like Woodruff
18 Road. Maybe more like Laurens Road. It can get pretty
19 sticky sometimes. It's lunchtime, so there's a little
20 more cars out than normal. Of course, there's Walmart
21 there. Everybody loves Walmart. It was pretty heavy in
22 that right lane particularly. West Marion wasn't too
23 bad. It was December. It was chilly. I just remember
24 it was raining. Pretty good too.

25 Q You mentioned that you had some information

1 once you approached Emile, or Emile as you are calling
2 it, about a gunshot or potential gunshot victim.

3 A Right.

4 Q Tell the jury about --

5 A Just that the person that had been following
6 the vehicle had been shot.

7 Q Okay.

8 A And of course, now the hairs on the back of my
9 neck are really standing up. Something's going to
10 happen. This is not good.

11 Q What did you observe once you pulled onto Emile
12 Street?

13 A Uh, coming down Emile Street, the white van off
14 to my right. Maybe hard to say, a quarter of a mile up
15 on my right. I can actually see the smoke, the red smoke
16 still coming out of the window, just kind of whispering
17 out of the window.

18 Q So the window is down?

19 A The window is down.

20 Q Which window?

21 A The driver's side window.

22 Q Okay.

23 A The front window.

24 Q Is it raining at this time?

25 A I think right at this moment, if it was, it was

1 very little. I don't remember any initial rain. I
2 remember a couple of minutes into it, it started really
3 raining.

4 Q Okay. And what did you do once you approached
5 this white van?

6 A I don't remember any tint on the van or
7 anything. You could see in it pretty well. I decided
8 I'm stopping. Investigator Fortner got out just to kind
9 of stay with the van more than anything and for him to
10 clear it and make sure the suspect wasn't still around.
11 As we kind of stopped at the van, I look up and I could
12 see a pickup truck. We're on Leone, which is off to my
13 right another, say, quarter mile of the road, a couple of
14 hundred feet. I saw the door open and I saw somebody
15 fall out of the truck.

16 Q So at this point, what did you do and what did
17 Investigator Fortner do?

18 A Investigator Fortner stayed at the van. I got
19 up there to the victim as quick as I could.

20 Q Uh, what did you see as you arrived at this
21 intersection of Emile?

22 A The victim's truck, again, was to my right.
23 The nose of it was right there as if he was going to go
24 straight across onto Alma. He was kind of half in the
25 truck, half out of the truck. I could see blood coming

1 down his neck onto his -- he had kind of -- I remember it
2 was a blue sweater and a collared shirt underneath it. I
3 could see the blood coming out of his neck. I got him to
4 kind of lay down on the ground. I'm trying to assess him
5 for any other injuries that are obvious of course. I
6 could see he's bleeding. I took out my pocket knife and
7 carved out a big piece of his sweater. I just crammed it
8 on his neck and held pressure to it to stop the bleeding.

9 Q Were you able to get information from the
10 individual as to who he was and what he had seen?

11 A I did. Of course, you know, we all get first
12 aid training. Kind of basic. I wanted to make sure he
13 wouldn't go into shock. I just wanted to talk to him,
14 reassure him, let him know who I am. He's going to be
15 okay. I asked him his name. He told me his name was
16 David. Of course, being an investigator, where did this
17 guy go. What happened. And he told me he had been shot
18 and the man had run into the woods. I said, which way.
19 I said, towards Walmart, which would be the side of the
20 road the van was on, or away from Walmart, which was the
21 opposite side of the road of the van. He said away from
22 Walmart.

23 Q Okay. How did the search for the suspect
24 begin?

25 A Uh, of course, I'm letting out radio traffic.

1 Somehow, a, uh, environmental crew, which is like, uh, --
2 they are civilian employees, but they still work for the
3 sheriff's office. They are in charge of road litter.
4 Like, if you get a ticket and you get community service
5 for it, that's where you'll go. Somehow they were in the
6 area. They got there. One of the first people there.
7 One of them got out. I got them to actually get some
8 gauze from a first aid kit and started treating the wound
9 that way.

10 As I'm relaying this, radio traffic within -- I
11 mean, it was quickest response I ever seen for a K-9
12 other than the K-9 initiating the call. The whole K-9
13 team came rolling up the road. They kind of stopped at
14 me for a second. I think it was Deputy Cannon. I just
15 yelled go down the road to the van. He ran across the
16 street from the van.

17 **Q** What did you do at this point once the K-9
18 unit --

19 **A** Environmental crew started to tend to them.
20 Honestly, I was getting a little upset. It seemed like
21 it was -- I guess it could have been the situation but it
22 just seemed like it was taking EMS forever. I don't know
23 if they had a truck tied up somewhere else than the one
24 that was assigned to this area. I kept asking dispatch
25 where is EMS. They're asking me where he's shot. Shot

1 in the neck. Where's EMS? It took several minutes til
2 EMS arrived.

3 Q In fairness to EMS, had there been reports of
4 gunshots on that street?

5 A Absolutely, which is generally something
6 they're going to shy from. It's my understanding their
7 policy is unless it's an injured deputy, they are going
8 to stay out of the scene until we can declare it secure.
9 That probably was a little bit of communication issue
10 going on was is it secure. We hadn't quite declared that
11 yet because we didn't know.

12 Q And so once that was going on, did you ever go
13 down to the van?

14 A I did. I walked down to the minivan. The
15 victim's getting tended to properly. Now, I'm an
16 investigator. I'm going to take charge of what's going
17 on out here. Uniform patrol deputies arrived. You heard
18 Sergeant Cooper arrived. He's a sergeant. He's higher
19 ranking than me. But he maintains a perimeter. It's our
20 directive that if an investigator is there, they are in
21 charge of the crime scene. So that's what I did.

22 I walked down to the van. I kind of looked in
23 the van a little bit. I remember the irritant actually
24 bothered me. I coughed a little bit. Choked me up a
25 little bit. Working bank robberies prior, I knew that

1 these dye packs contained an irritant in them, some types
2 of CS gas or some type of basically mace. I went to the
3 back of the van and relayed the tag on the van to
4 dispatch.

5 Q What did you learn about the tag on the van?

6 A It had been stolen that morning. Somewhere on
7 Augusta Road, I think it was north of State Drive that
8 had been stolen earlier that morning.

9 Q You recall the victim's name or the owner of
10 the van?

11 A I think it was Zepeda, Zepada, something to
12 that effect.

13 Q Were you able to determine what the value of
14 the van was?

15 A Dispatch records all that. They reported that
16 it was \$1600.

17 Q Okay. Did the irritant in the -- were you able
18 to detect any irritant in the van itself?

19 A Right. Yeah. I kind of stuck my head in. The
20 window was down. I didn't touch anything. I just kind
21 of looked in. It had like, if I remember, like Captain's
22 chairs basically in the front. I don't recall a console
23 being there. Behind the driver's seat, like if I reach
24 behind me, that's where the bundle of money was. So when
25 it went off, it was right there. You could see dye all

1 over the back of the seat, kind of a little bit to the
2 side of the seat, but it was all kind of contained behind
3 the seat.

4 Q You say when you reached behind you, you didn't
5 get in the van?

6 A No, no. I stuck my head in it basically
7 through the open window.

8 Q So you are saying if you were sitting in the
9 driver's seat.

10 A Right. It was behind me. If this was the
11 driver's seat and I reached behind, that's where the
12 money was.

13 Q But you didn't go into the van.

14 A No.

15 Q Did the irritant have any kind of affect on
16 you?

17 A It made me cough a little bit. It kind of
18 surprised me. I thought it had worn off by then.

19 Q Uh, did you relay all this information about
20 the gunshot victim and the van to dispatch as well?

21 A Yes, sir.

22 Q Did you notice anything unusual about the
23 victim's truck?

24 A Yeah, when I got to looking at it, I noticed
25 that there was a bullet hole or what appeared to be a

1 bullet hole in the right front corner, passenger front
2 corner of the truck.

3 I'm at a lost. If his truck's on Leone facing
4 towards Alma, if he got shot, it came from the left
5 side. Yet, his injury's on his right. And I also
6 noticed he was bleeding pretty good from the hand. He
7 had some, like, torn up flesh right here on the meaty
8 part of his hand close to the wrist. I couldn't figure
9 out how did he get shot on the right if that's where he's
10 sitting on the road. It just didn't make a whole lot of
11 sense to me at the time.

12 As the investigation continued, Mr. Rafferty
13 actually -- they told me he had witnessed it. I asked
14 them, hey, bring him back, let him show us this. I'm not
15 understanding it. He actually came back to the scene and
16 showed me that the victim had actually been on Alma
17 Street across the four-way intersection facing towards
18 where we were. That explained if the shot came from the
19 van, it went right in the right side and hit him in the
20 right neck. Then, he drove across the street, turned in
21 the driveway, turned around and that's where he stopped.
22 That cleared that up for us.

23 Q And at the point you were talking to Mr.
24 Rafferty, had EMS arrived for Mr. Dill?

25 A When I talked to Mr. Rafferty, he had already

1 been to the LEC, the Law Enforcement Center and come
2 back. Mr. Dill was gone. He was at the hospital.

3 Q Okay. What measures had the Greenville County
4 Sheriff's Office taken at that point to locate a suspect?

5 A Obviously, the K-9 unit was preparing for their
6 track. I had talked briefly with Sergeant Cooper. I
7 knew the perimeter was getting set up. I could hear it
8 on the radio. And again, being my bread and butter area,
9 I knew that was a pretty good area for it to be. It was
10 a nice place to cordon off.

11 Q Did you have any information -- well, let me
12 ask you this first. Who was the investigator in charge
13 of the shooting scene on Emile?

14 A I was.

15 Q Okay. Did you receive any information about
16 the K-9 team or the tracking team and whether they had,
17 uh, located anything?

18 A Yes, sir. At some point while forensic was
19 there processing it and all, I did hear over the radio
20 that they had located a bandana.

21 Q Okay. Uh, had other investigators responded to
22 the Bank of TR at this point?

23 A Yes, sir.

24 Q What happened to the stolen minivan and the
25 gunshot victim's truck?

1 **A** Uh, spoke with forensics. The decision was
2 made not to process them out there. Obviously, it's
3 uncomfortable for them and it's just not proper for us to
4 process a vehicle in the rain. We have locations at
5 forensics as well as our service center for vehicles. It
6 could be covered. It could be dried and then be
7 processed. So the van was taken to, I believe, our
8 service center. And Mr. Dill's truck was taken to
9 forensics and may have been reversed. I'm not sure.

10 **Q** A forensics officer would --

11 **A** He directed which one he wanted to process
12 where. I think it was Sergeant Shaw.

13 **Q** Okay. What, if any, type of evidence did you
14 look for or attempt to find on Emile Street itself?

15 **A** Well, we spent some time looking for the shell
16 casings. According to the witnesses, Mr. Dill and Mr.
17 Rafferty, the shooting happened outside the car. We knew
18 from the bank surveillance that it was a semiautomatic
19 pistol. We spent some time looking for some shell
20 casings out there before they towed the car, after they
21 towed the car. Never found any.

22 **Q** And you had driven through that area, is that
23 correct?

24 **A** Yes. I had driven over it. A couple of K-9
25 cars had gone through a little bit of that area.

1 Deputies had come up the other way. There had been some
2 vehicle traffic on that road.

3 Q And how difficult -- on that side of the road
4 where the van is, how difficult is it to find anything in
5 that area?

6 A It was not easy. It was cleared a little bit
7 where the van was, almost like the van -- it was a
8 parking spot for the van. After that, it was pretty well
9 weeds and woods that you wouldn't drive into. But right
10 where the van was was a little pull off spot. That's
11 where it stopped.

12 Q What were your priorities on Emile Street that
13 particular day?

14 A Uh, immediately is the safety of the victim.
15 Then I'm going to go into preservation of that crime
16 scene, uh, in locating a suspect.

17 Q And before -- did you eventually participate in
18 the search for the suspect?

19 A I did. It's not uncommon for the SWAT team to
20 get paged out to subsidized or to help out the dog team
21 -- we train with them regularly -- especially in
22 manhunts. It's something that we do a lot.

23 Q So prior to leaving Emile to go and do that ---

24 A Right. Once -- I'm sorry.

25 Q --- did you receive any other additional

1 information from any of the investigators at the bank
2 about the robbery itself?

3 **A** I did. An investigator had been out at the
4 bank and brought by a couple of pictures, some still
5 photos, I guess, that were printed off at the bank. She
6 showed them to me.

7 **(WHEREUPON, State's Exhibits 118 and 119 are marked**
8 **for identification purposes.)**

9 **BY MR. FRETWELL:**

10 **Q** I want to show you what's been marked as
11 State's Exhibit 118 and 119 and ask if you recognize what
12 those are.

13 **A** Yes, sir.

14 **Q** What are those items?

15 **A** These are two images that were shown to me by
16 Investigator Fields. I was told that it was bank
17 surveillance from the actual robbery incident.

18 **Q** Okay. Do they accurately depict what you were
19 shown that particular day?

20 **A** Yes, sir.

21 **MR. FRETWELL:** All right. At this time, Your
22 Honor, the State would move 118 and 119 into
23 evidence.

24 **THE COURT:** Any objection?

25 **MR. JOHNSON:** No objection.

1 **THE COURT:** Without objection, uh, Exhibits
2 118 and 119 are admitted into evidence and may be
3 published to the jury.

4 **(WHEREUPON,** State's Exhibit 118 and 119 are admitted
5 into the record.)

6 **BY MR. FRETWELL:**

7 **Q** Can you -- looking at these exhibits, can you
8 tell the members of the jury one or two things of
9 particular note you determined from looking at these
10 photographs and, uh, what you did with respect to your
11 search for the suspect?

12 **A** Uh, really, he's covered up. In these
13 photographs, you can see nothing except obviously black
14 hoodie, ball cap, blue bandana and jeans. But what
15 caught my eye was these jeans. They have -- I thought
16 they were like knife blades on them, like an embroidered
17 pattern. It looks like it goes all the way around on the
18 left and the right. To me, that's right -- I could only
19 see the top of it down to about halfway. It looked to me
20 like it was like knife blades. That's what I thought of.

21 **MR. FRETWELL:** Okay. Your Honor, may I
22 publish at this time?

23 **THE COURT:** You may do so.

24 **BY MR. FRETWELL:**

25 **Q** I'm going to show you first State's 118. Can

1 you describe for the jury what you were talking about
2 with respect to --

3 **A** Yes, sir. Right here.

4 **Q** Okay.

5 **A** Cause when I looked at it, I saw like a real
6 thin line right here and I think there's one right here.
7 I just thought of like daggers or something. That, to
8 me, is what it looked like. It looked like the blade of
9 a knife. Of course, what's right here, I can't see.
10 That's like a bar up to the window. Then I couldn't see
11 the bottom part. It reminded me of knives.

12 **Q** Show us the bandana you referred to.

13 **A** Right up here. Even from this view, you can
14 see gloves. I've worked pushing 800 armed robberies.
15 This guy is covered up. Usually, we'll see something.
16 But in this case, it completely covered him.

17 **Q** Okay. Let me now show you State's 119.

18 **A** Does that brighten up at all?

19 **Q** Okay.

20 **A** It's kind of hard to see. This is, again, the
21 brim of the hat, the hoodie, the bandana, the white
22 plastic bag. Here's that pattern again. This is on the
23 right side. You can see more of it. I didn't pay so
24 much attention to this picture at the time to the pattern
25 here, but what was on the left side when he walked right

1 by the window is what I saw and what I really keyed in
2 on.

3 Q Okay. Mr. Jenkinson, Thank you.

4 How did you assist in the search of the
5 suspect?

6 A Again, SWAT team there. It's a subsidized dog
7 team. The tracking team had basically decided to do --
8 if they were going to do tracking with the dog, their
9 folks are going to take care of it. We were kind of an
10 auxiliary to assist any other suspicious persons calls
11 that came out or if they actually requested it.

12 Right there on the side of the road, changed
13 into my SWAT uniform and we wore big heavy vests, carried
14 large guns. We met up at a church on West Blue Ridge to
15 determine what was going to be our next course of action.
16 By this time, the crime scene had cleared up. The
17 perimeter was still in effect. And the dogs had tracked
18 to the corner of Blue Ridge and, uh, Agnew, Agnew Road,
19 and they kind of stopped there. So we were like, let's
20 gather up. What are we going to do? Let's figure this
21 out because he's in this perimeter. We got it set up
22 quick enough. We know he's in there. How are we going
23 to flush him out?

24 Q And did you actually go with any of the K-9
25 units back into the perimeter?

1 **A** I did. Let me back up. Prior to going to the
2 church, I left straight for my car walking and walked
3 right down Alma. And as it curved around the bin, it
4 brought me to Westside Aquatic Park. And we cleared
5 those baseball fields. I remember looking at trash cans,
6 under picnic tables, somewhere where somebody might hide
7 but found nothing. We all went down there. Spread out.
8 Didn't find anything. We spread out and didn't find
9 anything. Several of us went through there.

10 **Q** All right. So take us through --

11 **A** Okay. We were at the church. There was -- we
12 discovered basically there's this large culvert that goes
13 underneath West Blue Ridge Drive. I mean, I couldn't
14 stand up in it but I could hunch over and fit in it. I
15 followed Master Deputy Wannemacher and his dog through
16 that culvert just to clear it to make sure. It came out
17 on the other side of West Blue Ridge. After that, again
18 back at the church, I remember one call off Clackston
19 Drive we checked. Somebody thought they saw a suspicious
20 person jumping a fence. We all kind of piled in the back
21 of one of the pickup trucks there. Rode over there.
22 Discovered nothing.

23 **Q** Did you ever enter any search area with Deputy
24 Cannon?

25 **A** I did.

1 **Q** Tell us about that.

2 **A** Once we cleared Clackston Drive, I knew the
3 bandana had been found. My sergeant, Sergeant Jones, was
4 there. He's also on the SWAT team. And we're discussing
5 where's the bandana. While we used it as a scent
6 article, it remains where we left it. Take me to it. We
7 got close to West Marion. I'm not sure of the name of
8 the street there at the corner. There's a little, I
9 think it's Marion's Wrecker, I think, might be right
10 there and a little pub. There's actually almost like an
11 entranceway. It's like a gate to one of these logging
12 roads there. We walked in through there.

13 He knew where he was going. Walked straight to
14 the bandana and pointed it out to me. I collected it.
15 Then he walked me about 50 feet further up the trail and
16 said this is where the bandana was originally found.
17 There was a large puddle there. He said it was half in
18 the puddle, half out of the puddle. He said the dog bit
19 it. I apologize for that. He ripped it a little bit.
20 Then we used it as a scent article and left it here.

21 **Q** Could you see the holes in the bandana?

22 **A** Yes, sir.

23 **Q** Was the perimeter still in effect at that
24 point?

25 **A** Yes, sir.

1 Q Will you take State's 29 which is up there on
2 the ledge to your left and out of the view of the jury
3 take a look at that item and see if, uh, you can identify
4 that item.

5 A (Reviewing.) Yes, sir. That's the bandana I
6 collected.

7 Q How do you recognize it?

8 A Uh, of course, the holes being torn in it and
9 plus I know that's the bandana I collected and placed
10 into Property and Evidence.

11 Q Okay. In addition to the other things you
12 described, what other activities did you take part in
13 that particular day with respect to the search of the
14 suspect?

15 A The dog team basically decided we're not going
16 back through. The SWAT team members there that were
17 present, we decided we'll go back through. We kind of
18 just formed a line maybe 25 to 30 feet between us. We
19 just walked straight through that drain. It was not very
20 fun. It was not very easy. Our hopes were to basically
21 flush them out and see if we could get him to run.

22 Q And when you walked through that area, did you
23 encounter anybody?

24 A Nobody.

25 Q And just so we know what you're talking about,

1 let's pull out State's Exhibit 28. I'll ask you to step
2 down with your pointer. Show the members of the jury
3 what you're talking about by this straight bush.

4 **A** Sure. I was talking earlier about the wrecker.
5 This is where we entered to get the bandana right here.
6 This is Richards. That's where we were. That's the
7 wrecker yard right here. There's like a little pub or
8 something here.

9 **THE COURT:** Officer Weiner, you need to
10 project your voice. The Court Reporter -- I want
11 the jury to hear what you have to say.

12 **THE WITNESS:** Right.

13 **THE COURT:** The Court Reporter needs to also.

14 **THE WITNESS:** I had spoken earlier that when
15 we entered the woods off West Marion Road to collect
16 the bandana, I couldn't recall the street. It was
17 here at Richards Avenue. On the other side of this
18 creek is some kind of access to where you can get
19 into this logging road here. That's how we entered
20 to get the bandana.

21 As far as us pushing through the woods, we
22 started basically where the suspect had started on
23 Emile Street and fanned out in a line. We just
24 walked straight his way. The terrain and all just
25 the way it was, I ended up kind of getting pushed

1 over into this corner. I ended up here on this
2 logging road. You can see it here. I think this
3 actually might be a power right of way here. I
4 remember the power lines. I just walked out here.
5 I came out here.

6 **BY MR. FRETWELL:**

7 **Q** Did you -- did you get into this creek?

8 **A** No.

9 **Q** So you just pushed it to the creek?

10 **A** Correct.

11 **Q** All right. Did you locate anybody in that
12 area?

13 **A** Not a thing.

14 **Q** Any reports of movement or anything from around
15 the perimeter?

16 **A** No.

17 **Q** All right. Once the perimeter was called off,
18 where did you end up?

19 **A** Right here, West Marion and Richards Avenue.

20 **Q** And what did you do?

21 **A** Called Investigator Fortner. Once we declared
22 we were done, they called off the perimeter. I called
23 Investigator Fortner and said I need a ride. He was all
24 the way over here.

25 **Q** Okay. And did he arrive?

1 **A** He did.

2 **Q** What happened at that point?

3 **A** I take all my kit off, big heavy vest, stored
4 the big long gun I carry and put all that in the trunk of
5 my car. I got in the driver's seat and we were going to
6 go back to work.

7 **Q** Okay. So you were headed back to work at your
8 office?

9 **A** Towards the Law Enforcement Center, yes, sir.

10 **Q** What happened on the way to the office?

11 **A** We got down here. I think we went up Richards
12 to Agnew and came down to Blue Ridge. About then, the
13 call comes out for a suspicious person on -- not a
14 suspicious person. A dog barking -- I remember a dog
15 barking. The dog had broken its chain and run into the
16 woods. That's the way I remember it coming out. And it
17 was near Nancy and Crane up here. So I said let's go
18 check. I've been doing this 11 years. I see it all the
19 time. You release the perimeter and then the person pops
20 up. So we went up West Blue Ridge, turned left on Crane.

21 **Q** Let me stop you there just for a second.

22 **A** Yes, sir.

23 **Q** Any more information about the direction of
24 travel for that dog? Do you recall?

25 **A** I actually remember into the woods.

1 Q Okay.

2 A That's all I remember.

3 Q And in this area, the Crane and the Nancy area,
4 where are the closest woods to that area?

5 A Right here.

6 Q Okay. All right. Make sure you keep your
7 voice up so the Court Reporter ---

8 A Yes, sir.

9 Q --- can hear you. Tell us what happened once
10 you -- I can actually pull another map. Let me change
11 that map with State's 31 so you can see all of West Blue
12 Ridge.

13 A Okay.

14 Q Viewing State's 31, can you show us where you
15 were going and what happened?

16 A Right. We turned onto Crane Avenue here and
17 took the turn. Basically, once the car kind of got
18 straight, I could see a black male running across the
19 street right about in here. I knew from working -- and
20 in fact, on the road, I think I had at least two foot
21 pursuits. Right here is a Piedmont Skill Center. It's a
22 big blue building. Can't miss it if you ride down West
23 Blue Ridge. And right here is a nice long trail that
24 goes all the way up here. It comes out here. I
25 personally have been in two foot pursuits back there.

1 And we encountered him. He was standing here. Our car
2 basically just straightened out.

3 Q Could you describe the individual you saw?

4 A Black male, dark clothing. I remember thinking
5 to myself if I ran a marathon and I was a 1.25 mile,
6 that's what I'd look like cause this guy was just
7 dragging. I seen like a Gatorade commercial before when
8 they show a guy and like his legs are all locked up.
9 He's kind of falling across the finish line --

10 MR. JOHNSON: Judge -- Judge --

11 THE COURT: What's your objection?

12 MR. JOHNSON: He's not testifying to anything
13 to his experience.

14 THE COURT: I overrule your objection.

15 MR. JOHNSON: Yes, sir, Your Honor.

16 THE WITNESS: I seen a Gatorade commercial
17 where somebody was crossing the finish line. I
18 think Gatorade is trying to say you have to stay
19 hydrated because your muscles lock up. That's what
20 this guy looked like. He was just barely getting
21 across the street.

22 BY MR. FRETWELL:

23 Q Were you able to tell how tall he was and what
24 his build was?

25 A Just average height. Average build. I didn't

1 think anything of his height or build obviously.

2 Q What was he wearing?

3 A All dark clothes soaking wet to the bone. I
4 remember I had done this track. I had been out in this
5 all day. Initially, I had a raincoat on and got soaked
6 through the raincoat wearing my normal clothes. When I
7 did the track, it rained. I was wet here on top of my
8 shoulders and like around my ankles from walking through
9 the woods. This guy was wet everywhere. I could see the
10 shirt sticking to him. He was soaking wet.

11 Q Anything distinctive about his clothing?

12 A I saw the pants. I could see those little
13 symbols on his pants as he crossing the street. I knew
14 then that this was our guy.

15 Q So once he crossed the road, what did you do?
16 Are you driving the vehicle?

17 A Driving the car.

18 Q Tell us what you did.

19 A I looked over at Fortner and said that's him.
20 And I drove up the road to get closer to him. This
21 should be it right here. I think this was it. He jumps
22 a gate right here. I'm pretty sure that's the house. I
23 mean, he's looking at us. We're looking at him. I made
24 up my mind that this was him. He knew we were the
25 police. That's why he's running from us. As he gets

1 over the gate, he's now about halfway down the driveway.
2 I just made the decision that I'm going through the gate.
3 So I drove through the gate.

4 Q Did you do anything with your emergency
5 equipment before you did that?

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

7 Q All right. So he's on the other side of the
8 gate?

9 A Right.

10 Q And that's when you made the decision to go
11 through?

12 A Yes, sir.

13 Q What was he doing at that point?

14 A Running.

15 Q Okay.

16 A He gets to the back yard. I follow in the back
17 yard. There's a fence right here.

18 Q And he jumps that fence. I stop the car at
19 that point and get out and challenge him. You could just
20 tell this guy is exhausted. I draw my firearm.

21 Investigator Fortner's on the other side. Again, driving
22 through all this great back yard, my microphone has a
23 little equipment that it sits in and it bounces out. I
24 have no idea where it went.

25 Q This is the microphone you use?

1 **A** Microphone to my radio to communicate to
2 dispatch. I communicated to them that I spotted the
3 suspect on Crane Avenue, but after that, that was it.
4 I'm challenging him at the fence. I mean I'm yelling as
5 loud as I can. I remember the next day I was hoarse. I
6 could barely talk I had been yelling so much. Yelling at
7 him. Identifying I'm the sheriff's office. Get on the
8 ground. Show me your hands. Everything I could to get
9 this guy to comply.

10 He actually kind of -- he stops. He turns
11 around a little bit. Kind of shows me his hands and he
12 starts to get down. Okay. He's done. He's done
13 running. He's tired. He's going to give up. I'm going
14 to go ahead and make the apprehension here. So I holster
15 my weapon. In no way, shape or form do you jump a fence
16 with your gun out. It's going to go off. You're going
17 to drop it. There's no telling what's going to happen.
18 I holster my weapon. I jump the fence. When I hit that
19 fence, he's off again.

20 **Q** How important at this point is it to you to
21 catch the suspect?

22 **A** I've got to do everything I can. He's robbed a
23 bank. He's shot somebody in the neck that just was doing
24 a duty as a citizen to try and help law enforcement.
25 Just trying to do the right thing. The response to that

1 is I'll shoot you. So I'm going to catch this guy no
2 matter what.

3 He gets through over this fence into this back
4 yard. I'm chasing him on foot maybe 20 feet behind him,
5 25 feet. He helps the next fence here. I think it's
6 closer right here. You know what? I'm going to have to
7 apologize. I saw this and thought it was a swimming
8 pool. This is a trampoline. If I could back up for a
9 minute --

10 Q Sure.

11 A The gate is right here. I drove into this back
12 yard. Here's the fence that he jumped. Where I stopped
13 my car was right in here. He runs across this yard and
14 jumps the next fence here.

15 Q Okay.

16 A This is a huge above ground swimming pool. The
17 biggest one I've ever seen. You can see the deck here
18 for it. He got on the other side of this fence right
19 about in here. He squatted down like his butt touching
20 his heels. And he wasn't turning around.

21 I hadn't stopped yet. I'm still running. I'm
22 yelling at him to stop running. Show me your hands. Get
23 on the ground. And he looks over his shoulder at me, his
24 left shoulder. I remember this. I knew then, I said he's
25 going to make his stand. He shot one, he's going to

1 shoot me.

2 I had already taken my vest off. I'm exposed.
3 Action is faster than reaction. I'm not going to give
4 this guy the chance to shoot me. As he starts to turn
5 up, he starts to face me. I still haven't seen his hands.
6 He starts to stand up and I fired three rounds.

7 Q What were you doing while you were firing?

8 A Running. I was still running towards him. It
9 was just that quick. As he started, looked over his
10 shoulder, stood up to turn and face me, I knew then he
11 was going to shoot me, so I shot him first. Three rounds
12 fired, he falls back, backwards on his back. He's
13 moaning. He was clearly in pain.

14 Of course, I can see him closer now. He's
15 still on the opposite side of the fence. Maybe from me
16 to this front row right here. I'm still yelling at him.
17 Show me your hands. Show me your hands. One of them was
18 behind him. I'm pretty upset now. I don't like having
19 to shoot my gun, especially at somebody. He just looks
20 at me and he says --

21 MR. JOHNSON: Your Honor, over prior
22 objection.

23 THE COURT: Yes, sir. Your objection is
24 noted.

25 BY MR. FRETWELL:

1 **Q** He looks at you?

2 **A** He looks at me and he says just kill me. He
3 says look me in the eyes and just shoot me. Just get
4 this over with. I told him that's not part of my job.
5 Investigator Fortner kind of came up behind me not long
6 after that. He kind of asked are you okay. I told him I
7 was okay. I actually shot the rounds. He was concerned
8 the guy was shooting at me.

9 Very quickly, it was kind of like, hey, you
10 might want to go to the road to flag down a uniform
11 patrol car. I didn't know if we had gotten out on the
12 radio or anything. Almost about as fast as I said that,
13 Deputy Duncan came up and handcuffed the suspect. And
14 then I walked away.

15 **Q** At any time, did you go over that fence while
16 the suspect was --

17 **A** No, sir. No, sir.

18 **Q** Did you get close enough to touch him or be
19 near him?

20 **A** No, sir.

21 **Q** Okay. Do you recognize the defendant in this
22 case?

23 **A** Yes, sir.

24 **Q** Who is the defendant in this case?

25 **A** He is seated over there in the gray button down

1 shirt.

2 Q Where did you see him before?

3 A That's the one I saw crossing Crane Avenue and
4 then subsequently shot him.

5 Q What -- you can take your seat back in the
6 witness stand. What happened after the shooting?

7 A I was pretty worked up about it. It still
8 bothers me today. Walk out front. Obviously, the
9 calvary arrives, you know, 15 to 20 cars. The sergeants,
10 the lieutenants, the captains, the Chief of Police starts
11 showing up. Our Internal Affairs or what we call OPS,
12 Office of Professional Standards, start showing up.

13 It's pretty nerve-wrecking for me. The first
14 thing they're going to do is take my gun, which they do.
15 They give me another one back. They wait til everybody
16 kind of gets there. I give them a briefing on what had
17 happened. I went to the Law Enforcement Center after
18 that.

19 Q All right. And what did you do with the blue
20 and white bandana?

21 A When the shooting happened, it was in my car.
22 I collected it. I put it in Property and Evidence that
23 night.

24 Q All right. Let me show you --

25 (WHEREUPON, State's Exhibit 33 is marked for

1 identification purposes.)

2 **BY MR. FRETWELL:**

3 **Q** Let me show you what's been marked as State's
4 33. Do you recognize what that document is?

5 **A** These are Property and Evidence sheets.

6 **Q** What relationship does State's 33 have to this
7 document?

8 **A** It's a photocopy.

9 **Q** Okay. So we're going to refer to State's 33.

10 **A** Okay.

11 **Q** But this other item, is this a -- first of all,
12 is that an exact copy? Can you check to make sure if
13 that is?

14 **A** Yes, sir.

15 **Q** All right.

16 **A** I see nothing different.

17 **Q** What is this document, this Property and
18 Evidence sheet? What did you do with it and how does it
19 relate to, uh, --

20 **A** Hold on just a second.

21 **MR. FRETWELL:** Your Honor, I need just a
22 brief moment. (Pause.)

23 **BY MR. FRETWELL:**

24 **Q** Let me show you what's been marked as State's
25 32. (Pause.)

1 Let me show you what's been marked as State's
2 32. You recognize that?

3 **A** Yes, sir. That's the fence. Uh, I was on one
4 side. Mr. Boyd was on the other. I can see that
5 swimming pool in the background.

6 **Q** Other than it being -- is that a different time
7 of day than when you were --

8 **A** It's darker than when I was there.

9 **Q** Other than that, does it accurately reflect at
10 least the fence and the swimming pool and the other
11 items?

12 **A** Uh, it looks like there's some plastic bags and
13 stuff out here that I don't recall being there. I don't
14 know if those were left behind by EMS.

15 **Q** Right. With the exception of that?

16 **A** Everything else is the same.

17 **MR. FRETWELL:** All right. Your Honor, at
18 this time, I would move State's 32 into evidence.

19 **THE COURT:** Any objection?

20 **MR. JOHNSON:** No objection.

21 **THE COURT:** Without objection, Exhibit 32 is
22 into evidence and may be published.

23 **BY MR. FRETWELL:**

24 **Q** Again, other than it being the time of -- it
25 being later than when you were there. What is this

1 showing right here?

2 **A** This is basically where he stopped and what I
3 determined to be his last stand. He was right about here
4 near this tree from what I remember. I was on this side
5 of the fence.

6 **Q** You didn't go over to the other side of the
7 fence until he was gone?

8 **A** No, sir. I don't think I ever been on the
9 other side of that fence. I'll be honest with you.

10 **Q** Okay. All right. Thank you, Mr. Jenkinson.

11 **(WHEREUPON, State's Exhibit 67 is marked for**
12 **identification purposes.)**

13 **BY MR. FRETWELL:**

14 **Q** When you took the -- when you took the bandana
15 to Property and Evidence, are you required to fill out
16 any kind of forms in conjunction with putting that piece
17 of property into evidence?

18 **A** Yes, sir.

19 **Q** What do you fill out?

20 **A** Uh, what we call a Property and Evidence sheet.
21 What it is, where it was found, when it was found, what
22 kind of case it is. Obviously, the sheriff's office case
23 number and there's all kinds of things you can do with
24 it. You can dispose of it. You can keep it forever.
25 You can release it to somebody. It's all on that sheet.

1 **Q** Can you put a piece of evidence into Property
2 and Evidence without filling one of these forms out?

3 **A** No.

4 **Q** At least when these forms were still being used
5 by Property and Evidence, is that right?

6 **A** Right.

7 **Q** They've changed the system now?

8 **A** They've gone to like a paperless system. It's
9 all done on computer. That's just in the past couple of
10 months.

11 **Q** I'm going to show you an item and then what's
12 been marked as State's 67 for identification. Will you
13 tell me if that's a copy of the P&E sheet that you filled
14 out in this case?

15 **A** Yes, sir. It appears to be the same exact
16 thing.

17 **Q** Okay. And referring, is it an identical
18 copy ---

19 **A** Yes, sir.

20 **Q** --- of the P&E sheet that you filled out? All
21 right. Tell us what do you fill out on that P&E sheet
22 when you place something in P&E.

23 **A** I indicate whether or not -- our Property and
24 Evidence services the sheriff's office, the police
25 Department of Greenville and the detention center. And

1 they can also do other ones at request. Let's say -- I'm
2 sure P&E could explain this better, but another
3 jurisdiction need something tested that they don't have
4 the ability to test but our labs do. They'll bring it
5 and put it in our P&E so that our labs can get it. I'll
6 mark what agency it's with, what type of evidence it is,
7 whether it be General Sessions, Circuit Court, whether
8 it's magistrate level or even if it is just found or
9 seized property. I'll put the case number down, the date
10 and time that it was taken or impounded and what kind of
11 case it is and where it was recovered and, of course, the
12 description of what it is and how I've labeled it.

13 Q And what -- and what -- how did you turn it
14 over to the custody of Property and Evidence?

15 A At this time, it was, uh, 6:30 at night. Our
16 Property and Evidence goes home about 5:00. We have
17 basically a drop box. It's like a slot that opens up.
18 You package everything. You put the sheet with it. You
19 drop it in the slot and it disappears. Property and
20 Evidence will get it the next business day in the
21 morning.

22 Q You have any further access to it after you put
23 it in that slot?

24 A Once it's in there, it's gone. Got to make
25 sure you do everything right on that.

1 **Q** Okay. When did you place this item into
2 Property and Evidence?

3 **A** According to this Property and Evidence sheet,
4 it was placed in there December 10th, 2008 at 6:30 p.m.

5 **Q** And who would have filled that information in?

6 **A** Me.

7 **Q** Is this referring to the item that you
8 previously identified and marked for the court as State's
9 Exhibit 29, the blue bandana?

10 **A** Yes, sir.

11 **Q** Thank you, Investigator Weiner. Please answer
12 any questions that the defense counsel may have.

13 **CROSS-EXAMINATION**

14 **BY MR. JOHNSON:**

15 **Q** Detective Weiner, did you bring with you up
16 there a copy of your police reports?

17 **A** Yes, sir.

18 **Q** Do you have both of them?

19 **A** Yes, sir.

20 **Q** Okay. All right. Let's, uh, -- the easiest
21 way is your chronology of how your involvement all
22 started. Later on in the day, away from the shooting.
23 Okay?

24 **A** Okay.

25 **Q** One of the first things you say you did when

1 you arrived on the scene was you looked inside the van?

2 **A** No, that was well after -- that was after EMS
3 arrived. Let me rephrase. As I drove down the road, I
4 could see inside the van. Yes, sir.

5 **Q** Okay. Okay. Maybe I need to rephrase. I'm
6 sorry. I don't want to pin you down too hard.

7 **A** Right.

8 **Q** But at some point after the shooting with Mr.
9 Dill, you looked inside the van?

10 **A** Yes, sir.

11 **Q** You didn't touch anything in that van?

12 **A** No, sir.

13 **Q** You looked inside just trying to get a feel for
14 what happened and how everything went down.

15 **A** Yes, sir.

16 **Q** At that point in time, you were affected by
17 some of the tear gas from the dye pack?

18 **A** Yes, sir.

19 **Q** Uh, let's see. Excuse me a moment while I find
20 the exhibit. (Pause.)

21 All right. I'm showing you what has been
22 previously marked as State's Exhibit, I believe, 118 is
23 what it says?

24 **A** Yes, sir.

25 **Q** That's what we just recently put into evidence

1 with Mr. Fretwell?

2 **A** Yes, sir.

3 **Q** And what color are these gloves as far as you
4 can tell?

5 **A** Dark. My guess would be black, dark blue or
6 black would be my guess.

7 **Q** Dark blue or black?

8 **A** Yes, sir.

9 **Q** Okay. Now, I'm going to get into a search.
10 This is after you looked inside the van. At some point,
11 you do join the search, right?

12 **A** Yes, sir.

13 **Q** One of the things that you did was you searched
14 Westside park?

15 **A** Yes, sir.

16 **Q** In your opinion, the suspect may be hiding
17 there.

18 **A** Although it's a pretty open area, it was -- and
19 the dogs had not tracked there, we did not want to leave
20 any stone unturned. We wanted to look everywhere we
21 could.

22 **Q** Understood. But you checked Westside park.
23 That wasn't something the dogs indicated you should
24 search?

25 **A** No, sir.

1 Q Uh, you also searched under a culvert at West
2 Blue Ridge?

3 A Yes, sir.

4 Q You went there with the dog?

5 A Yes, sir. I followed behind the K-9.

6 Q You searched down there. Did you find
7 anything?

8 A Water going through it.

9 Q Just water?

10 A Yes, sir.

11 Q You said you also searched, uh, -- you had a
12 suspicious person call, right?

13 A Yes, sir. There was one I went to off of
14 Clackston Drive.

15 Q Off Clackston Drive.

16 A Yes, sir.

17 Q You went to that area. You went there in
18 response to someone saying that they may have spotted a
19 suspect?

20 A Yes, sir.

21 Q Okay. Now, let's go now to the -- let me, uh,
22 -- Detective Weiner, would you step down for me?

23 A Yes, sir.

24 Q Might I ask also to bring your police report.
25 Bring that with you. You testified today about right

1 when you turned is when you spotted the suspect?

2 **A** Right.

3 **Q** Where was the suspect?

4 **A** I'm sorry.

5 **Q** Where --

6 **A** Where was he? He came out somewhere about in
7 this area here.

8 **Q** Is that -- was it right there? That's the
9 large swimming pool.

10 **A** This is where the swimming pool was. This is
11 the gate he jumped. If you followed this trail, I'm
12 pretty sure he came out in this area.

13 **Q** Right in that area?

14 **A** Yes, sir. Somewhere close to there.

15 **Q** When you turned, you said you saw him?

16 **A** Right about the time the car straightened out,
17 yes, sir. I could see him. It's actually up a hill a
18 little bit.

19 **Q** Now, did you increase the speed?

20 **A** Just driving normal. I was kind of almost in
21 shock just trying to get a closer look. It wasn't
22 ridiculous driving?

23 **Q** So your testimony today is you saw the suspect
24 crossing the street.

25 **A** Uh-huh.

1 Q And you just kept casually driving along.

2 A Not casually. I mean, I'm driving to go see
3 who it is. I'm not -- my foot's not to the floor. I'm
4 not going crazy.

5 Q Now, did you mention that you recognized the
6 symbols in your police reports?

7 A Uh, in my police report talks about the
8 markings on his pants and that I recognized the same
9 markings as the suspect was crossing the road.

10 Q I'll tell you what we'll do here. You said you
11 have a copy, right? You have a copy of your report?

12 A Correct.

13 Q I have a copy of both of your reports. What
14 I'll do is have you look at both of them. I'll have you
15 have a seat if you want.

16 A Okay.

17 Q I'm sorry. Let's see here.

18 **MR. FRETWELL:** Your Honor, may I see the
19 document? May I see it? (Pause.)

20 I'm sorry. I apologize, Your Honor.

21 **THE COURT:** All right.

22 **BY MR. JOHNSON:**

23 Q Detective Weiner, I have two reports and you
24 have two reports too, right?

25 A Uh-huh.

1 Q One of them down below says Approving Officer,
2 Sergeant Jones. You see that one?

3 A Yes, sir.

4 Q Can you go to the point -- now, I don't want
5 you to read anything. I want you to go to the point, I
6 believe it's the second to the last paragraph. There's a
7 sentence at the end. Second to the last paragraph. Can
8 you see that?

9 A The second to last paragraph, the last sentence
10 where I wrote I knew it was the robber?

11 Q Right here. I'm here.

12 A Yeah, the last sentence is I knew it was the
13 robber.

14 Q Now, I'm going to take you up -- in that
15 paragraph, I'm going to take you above, okay?

16 A Okay.

17 Q I'm going to read this. I want you to tell me
18 if I read it correctly. Okay.

19 A Yes, sir.

20 Q All right. It says as I turned onto Crane
21 Avenue, I could see a black male in dark clothing running
22 across Crane Avenue. Did I read that properly?

23 A Correct.

24 Q All right. Go to the other report please.

25 A Okay.

1 Q All right. I'm going to have to find it
2 myself. This will be -- I'm not sure which page. It's
3 on the last page. I'm talking about the fourth
4 paragraph.

5 A Okay.

6 Q Do you see it? Now, I'm going to read the
7 excerpt again where you saw him crossing the street. You
8 tell me if I read it properly.

9 A Okay.

10 Q It says as we got closer, I could see he was
11 wearing a long sleeve black shirt, dark jeans and black
12 shoes.

13 A Okay.

14 Q Did I read that properly?

15 A Yes, sir.

16 Q All right. All right. Now, we're at the point
17 where you saw him crossing the street. You say he
18 started to jump a fence?

19 A He jumped the gate to the driveway at 18 Crane.

20 Q At some point, you say that he kind of looked
21 into your car ---

22 A Right.

23 Q --- to try to see who you were?

24 A That's what it looked like to me. He was
25 trying to identify us.

1 Q Your car -- was your car a marked police car?

2 A No, it was a white -- I think it was a 2001
3 Ford Taurus.

4 Q And any lights on top?

5 A No.

6 Q As I understand it, you have a siren, right?

7 A Correct.

8 Q Was the siren operating?

9 A It operates, yes, sir.

10 Q Did you turn it on?

11 A Not that I recall. No, sir.

12 Q Now, we're at this point again where you say
13 he's at the gate. Then you say he starts to jump the
14 gate and you accelerate after him?

15 A Not really accelerating. It's a short
16 distance. We're going up a hill. He jumps the gate.
17 He's in the driveway. I just turned the wheel and kept
18 through the gate.

19 Q You said earlier you were driving at a
20 relatively swift speed.

21 A I said I wasn't doing anything crazy. I didn't
22 have my foot to the floor.

23 Q How fast would you say you were going?

24 A 25 miles an hour tops, maybe 20.

25 Q So you go 20 to 25 miles per hour into the

1 yard?

2 **A** Correct. Into the driveway.

3 **Q** Isn't it true that you stated in your report
4 that your car actually bottomed out?

5 **A** Yeah. As I go around like the back of the
6 house, there was like a concrete patio. The house almost
7 is like an L-shape. In the neck of that L was a concrete
8 patio. I don't know. He went that way. I went that
9 way. It was when I went over that concrete patio, the
10 car hit that concrete patio pretty hard.

11 **Q** Okay. But you bottomed out?

12 **A** Sure. The frame rails, I think, dragged on the
13 concrete.

14 **Q** You chased him through the yard with your car?

15 **A** Correct.

16 **Q** And you chased him up and towards the fence?

17 **A** Uh-huh.

18 **Q** You stated at some point you jumped out of your
19 car and Fortner did too, right?

20 **A** Yes, sir.

21 **Q** And you climbed the fence?

22 **A** I mean, after some yelling at him, yes, sir.

23 **Q** But you did -- you climbed the fence.

24 **A** I did climb the fence.

25 **Q** I'm sorry. Maybe I'm moving ahead too quickly,

1 but you climbed the fence?

2 **A** We identified and yelled at him and pointed
3 guns at him.

4 **Q** Now, you say you identified and yelled at him.
5 This is still the same car. No sirens or anything.

6 **A** Right.

7 **Q** And you're in your SWAT suit?

8 **A** Correct.

9 **Q** And SWAT suits are not like that suit?

10 **A** No, sir.

11 **Q** And then you pull your gun?

12 **A** Yes, sir.

13 **Q** So you've got your gun. You've got two people.
14 You've got your guns held on him?

15 **A** Yes, sir.

16 **Q** You in an unmarked car?

17 **A** Yes, sir.

18 **Q** You in a SWAT suit that doesn't look like a
19 police suit?

20 **A** To me, it does. It's what I wear several days
21 out of the month. It's marked up with patches, a badge,
22 my name. It says Sheriff's Office in two-and-a-half-inch
23 tall letters across the back. I consider it a uniform.

24 **Q** Are you stating that you didn't chase him with
25 the car into the yard?

1 **A** I did that, yes, sir.

2 **Q** And you pulled your gun?

3 **A** You asked if it was -- I think you asked if it
4 was uniform basically. I consider it a uniform, sir.

5 **Q** No, I'm talking about those uniforms.

6 **A** No, it's not -- the patches aren't bright
7 yellow like that. It's the same exact patch. It's just
8 black and green.

9 **Q** But does it look like those uniforms is what
10 I'm asking?

11 **A** No, sir.

12 **Q** All right. It doesn't look like one of those
13 uniforms?

14 **A** No, sir.

15 **Q** You chasing him into the yard. You've got your
16 gun pulled. You stated at some point he started -- at
17 some point, he turned around. You saw his hands?

18 **A** He was starting to give up. That's the way it
19 looked to me. He was ready to give up.

20 **Q** So you saw his hands?

21 **A** Yes, sir.

22 **Q** You have a gun in those hands?

23 **A** No, sir.

24 **Q** Then you said you holstered your gun?

25 **A** Yes, sir.

1 Q Jumped the fence?

2 A Yes, sir.

3 Q You stated he took off running from you again?

4 A Yes, sir.

5 Q You stated he jumped the other fence, that's

6 when you knew -- he crouched down. Was it like this?

7 A His butt was touching his feet. He was all the

8 way on the ground.

9 Q His butt was like this?

10 A Yes, sir.

11 Q He stated -- that's when you knew he was going

12 to make his last stand?

13 A Not when he hit the ground. But when he looked

14 over his shoulder at me to see where I was, to me, he was

15 sizing up when to make his move.

16 Q Did he look over and it was like this?

17 A Yes, sir.

18 Q Okay. You knew he was going to make his last

19 stand?

20 A Yes, sir.

21 Q All right. When he got up, did he shoot you?

22 A No, sir.

23 Q Did he get a chance to get all the way up or

24 was he shot first?

25 A Probably not even half way.

1 Q Did he look like -- did he grab a stick and
2 throw it at you?

3 A Like I said, he was just beginning to stand up.
4 Action to me, is faster than reaction. I wasn't going to
5 let him shoot me so I shot him first.

6 Q Well, I'm just trying to figure out if he had a
7 weapon within his grasp. After you shot him, did you
8 find a gun?

9 A I did not search him, sir.

10 Q Was there a gun in the -- you telling me you
11 shot him. You didn't run up on him and check him for a
12 gun?

13 A Did not touch him.

14 Q Okay. In any case, did he get up? Did he try
15 to take his shoe off and throw it at you?

16 A He laid on the ground, sir.

17 Q He laid on the ground?

18 A Yes, sir.

19 Q But it's your testimony today that he was going
20 to make his last stand right there?

21 A That's what it looked like to me, yes, sir.

22 Q Now, following this, they did a -- they did an
23 investigation of an officer shooting. That's protocol,
24 right?

25 A Yes, sir.

1 **Q** All right. But in any case, they did an
2 investigation?

3 **A** Yes, sir.

4 **Q** And when they do an investigation, they have
5 results, right? What were the results of this
6 investigation?

7 **A** The shooting was deemed justified. It gets
8 sent through our department. The sheriff will place me
9 on administrative leave. They hold a shooting board,
10 usually all within the matter of five business days. I
11 was cleared as far as the sheriff's office was concerned
12 to go back to full duty within maybe three or four days.

13 Then, about six months later, maybe, SLED also
14 investigates it because it's an officer involved
15 shooting. The sheriff's office wants to make sure that
16 it's fairly investigated. Not just by us, but by an
17 outside law enforcement agency. SLED investigates it.
18 Turns everything over to the State Attorney General's
19 office. They all said it was a justified shooting.

20 **Q** Detective Weiner, I'm approaching you with a
21 document.

22 **MR. FRETWELL:** Your Honor, may I see the
23 document?

24 **MR. JOHNSON:** Of course.

25 **(WHEREUPON, there is a pause.)**

1 **BY MR. JOHNSON:**

2 **Q** I have in my hand a letter from the Attorney
3 General's office. Do you recognize it?

4 **A** I was never shown this letter that I'm aware
5 of.

6 **Q** No one ever showed you this letter?

7 **A** The sheriff called me and just told me that
8 they had come back.

9 **Q** Now, I'll tell you what, you have a copy in
10 front of you. I want you to read it.

11 **MR. FRETWELL:** Objection, Your Honor. I
12 don't have any objection if Mr. Johnson wants to
13 place it into evidence. But you can't read from
14 something that's not in evidence and he didn't offer
15 it.

16 **THE COURT:** He didn't know anything about
17 this, I understand. What's the basis of you
18 offering this into evidence through this witness?

19 **MR. JOHNSON:** He previously testified that it
20 was deemed a justified shooting.

21 **THE COURT:** Right.

22 **MR. JOHNSON:** And I think this piece of
23 evidence contradicts that.

24 **THE COURT:** But he didn't know anything about
25 that letter, I think, is what he said. I thought he

1 said he had never seen that letter before.

2 **MR. JOHNSON:** He never seen this letter?

3 **THE COURT:** I thought I heard him say that.
4 Maybe I misunderstood.

5 **MR. FRETWELL:** Your Honor, just to be clear.
6 I'm not objecting to the letter or the letter coming
7 in. But Mr. Johnson needs to place it into evidence
8 if he wants this witness to read from it. I have no
9 objection to it coming in.

10 **MR. JOHNSON:** Your Honor, am I permitted to
11 cross-examine him on the information provided within
12 this?

13 **THE COURT:** You certainly are able to cross-
14 examine him. I thought I understood. Maybe I
15 misunderstood his testimony. He had never seen the
16 letter. He just talked to -- the sheriff talked to
17 him about it.

18 **MR. FRETWELL:** Your Honor, I would have an
19 additional objection. If he wants to cross-examine
20 him without putting the letter into evidence, then
21 has to know something about it. He's indicated in
22 his testimony that he doesn't know anything about
23 it.

24 **THE COURT:** Certainly cross-examine him on
25 the investigation.

1 BY MR. JOHNSON:

2 Q It's your understanding that -- from the
3 investigation that the shooting was deemed justified?

4 A Yes, sir.

5 Q Okay. One second please.

6 THE COURT: Yes, sir.

7 (WHEREUPON, there is a pause.)

8 BY MR. JOHNSON:

9 Q All right. Detective Weiner, I'm going to go
10 off of that. As I understand, you don't know the
11 contents of the letter.

12 A Yes, sir.

13 Q So after the shooting, that's when you go to
14 the Law Enforcement Center, right?

15 A Yes, sir.

16 Q This is after you were briefed by SLED agents?

17 A Well, no. I mean, I briefed them.

18 Q You briefed them?

19 A Yes, sir.

20 Q I'm sorry. I'm not quite sure I --

21 A We wait til everybody shows up on scene so that
22 I don't have to repeat over and over. Once SLED is
23 there, OPS is there, our criminal investigations is
24 there, I'll run them through what happened to me.

25 Q Now, I want to go back a little bit. This is

1 back when, uh, I believe Sergeant Cooper shows you the
2 bandana.

3 **A** No.

4 **Q** I want to go back --

5 **A** Deputy Cannon.

6 **Q** Deputy Cannon showed you the bandana?

7 **A** Yes, sir.

8 **Q** You collected that piece of evidence?

9 **A** Yes, sir.

10 **Q** Now, did you turn it in to Property and
11 Evidence before or after the shooting?

12 **A** After.

13 **Q** After the shooting?

14 **A** Yes, sir.

15 **Q** Okay. Did they take a GSR or gunshot residue
16 test on you?

17 **A** Yes, sir.

18 **Q** And what were the -- do you know the results of
19 that test?

20 **A** No, sir. I would assume it was positive. I
21 fired my weapon.

22 **MR. JOHNSON:** Your Honor, I have nothing
23 further of this witness.

24 **THE COURT:** Redirect?

25 **MR. FRETWELL:** Yes, sir.

REDIRECT EXAMINATION

BY MR. FRETWELL:

Q With respect to the GSR test or the gunshot residue test that he just described, how soon after you had fired the weapon was the GSR collected from you approximately?

A Honestly, I don't remember. If I was putting that in P&E at 6:30, the shooting happened probably about 4:15. Within a half an hour, 45 minutes would be my best guess.

Q The forensics officer that collected it, would she know when she collected it?

A I think so. I think they time stamp all that stuff.

Q Okay. And, uh, as Mr. Johnson indicated, you didn't see the defendant fire a weapon?

A No, sir.

Q When you shot him, he didn't have a weapon in his possession or anything like that?

A Correct.

Q Okay. Uh, what information did you have or were you aware of at the time you were at that fence looking at the defendant crouched on the other side? What information did you have that related to his being harmed and/or dangerous?

1 **A** Robbed a bank. Shot a witness. There he was
2 standing in front of me, you know, crouched down.

3 **Q** And Mr. Johnson asked you about two reports
4 that you offered in this case. Why did you offer two
5 reports?

6 **A** I been kind of on the side of one of these
7 officer involved shootings. Basically, uh, they do not
8 like -- I'm not real sure of the reason. They don't like
9 for you to put the actual shooting event attached to the
10 original report of the arrest. They just have me put in
11 a line that says for further information on the arrest of
12 the suspect, see additional, you know, officer-involved
13 shooting. Officer-involved shooting is done under a
14 separate case number. Then I write a supplement to that
15 which goes into greater detail of the actual shooting.

16 **Q** So Mr. Johnson asked you about one that was
17 approved by Sergeant Jones. That was your armed robbery?

18 **A** Right. That dealt with everything from the
19 minute the call went out until pretty much I was on Crane
20 Avenue.

21 **Q** Who signed as the approving officer on your
22 other report that that was more detail about the actual
23 shooting itself?

24 **A** Lieutenant Sigler who is the head of the Office
25 of Professional Standards.

1 **Q** Is that Internal Affairs?

2 **A** That's Internal Affairs, yes, sir.

3 **Q** And finally, uh, Mr. Johnson asked you earlier
4 on about a suspicious person call on Clackston Avenue.

5 **A** Yes, sir.

6 **Q** And you said you responded to that.

7 **A** Yes, sir.

8 **Q** What did you do to investigate that suspicious
9 call or suspicious person call and what information did
10 you learn?

11 **A** From what I remember, just about 10 of us went
12 up there and we saturated the area. It was not wooded.
13 It was a neighborhood. You know, fenced in yards, but
14 jumped a couple of fences. We looked everywhere we
15 could. And we found nothing. Nobody out. Nobody
16 walking. It was cold. It was wet. There was nobody
17 out.

18 **Q** Was anybody willing to meet with you and --

19 **A** I didn't handle that part of it.

20 **Q** Okay.

21 **A** If that was done, it was done outside of my
22 presence.

23 **MR. FRETWELL:** All right. No other
24 questions, Judge.

25 **THE COURT:** Thank you, sir. You may step

1 down.

2 **THE WITNESS:** Thank you, Judge.

3 **MR. FRETWELL:** May it please the Court?

4 **THE COURT:** Let me see the attorneys here
5 just for a moment as far as other witnesses.

6 **MR. FRETWELL:** Yes, sir.

7 (WHEREUPON, a bench conference is held off the
8 record.)

9 **MR. FRETWELL:** Your Honor, the State calls
10 Bobby Duncan.

11 **THE COURT:** All right. Come around and be
12 sworn please.

13 **THE CLERK:** Please place your left hand on
14 the Bible and raise your right hand.

15 **BOBBY DUNCAN**
16 having first been sworn, testifies as follows:

17 **THE CLERK:** Thank you. Please be seated.
18 Please state your full name for the record.

19 **THE WITNESS:** Bobby Duncan.

20 **DIRECT EXAMINATION**

21 **BY MR. FRETWELL:**

22 **Q** Detective Duncan, uh, you work for the
23 sheriff's office?

24 **A** Yes, sir. I do.

25 **Q** How long have you worked with the Sheriff's

1 Office?

2 **A** Almost six years now.

3 **Q** And I see you're a Master Deputy?

4 **A** Yes, sir.

5 **Q** How long have you been a Master Deputy?

6 **A** Almost a year now.

7 **Q** Okay. Uh, you working on December the 10th of
8 2008?

9 **A** Yes, sir. I was.

10 **Q** What shift were you assigned?

11 **A** I was assigned to, uh, -- I worked with Adam
12 Platoon in uniform patrol. I'd actually come in early
13 and work some overtime. I was with Echo for the 10th.

14 **Q** Make sure you speak very loudly. I'm having a
15 little bit of difficulty hearing you. What time was your
16 shift scheduled to start that day?

17 **A** I believe Echo platoon transitioned. It was a
18 swing shift. They used to come in around 2:00 p.m. I
19 can't believe if they'd made the transition to 4:00 p.m.
20 at that time frame. So I was either in at 2:00 or 4:00
21 p.m.

22 **Q** You said you came in early a little bit?

23 **A** Yes, sir. I was working some overtime.

24 **Q** Okay. Uh, was the manhunt still in progress?

25 **A** Uh, yes. It was under way. We had been

1 briefed and roll called about it. I was not a part of it
2 when I left for roll call that day.

3 Q So what were you doing while other officers
4 were participating in the manhunt?

5 A I was operating on a separate channel, separate
6 radio channel in that area answering the other calls that
7 weren't related. Calls in the area.

8 Q Okay. Around 4:30, did you head to Crane
9 Avenue?

10 A Yes, sir. I did.

11 Q Why?

12 A Uh, the perimeter had been lifted. Everybody
13 was back on the same channel. There was a lot of radio
14 traffic about calls that were holding. People were going
15 here and there. In the middle of that traffic, I heard
16 Investigator Weiner call out that he was behind the
17 suspect on Crane Avenue pursuing him.

18 Q Where were you at the time?

19 A I was on White Horse Road south from West Blue
20 Ridge Drive.

21 Q So you were in the immediate area?

22 A I was close. They had lifted the perimeter. I
23 went ahead over there to see if I could get involved too.

24 Q What did you observe as you arrived on Crane
25 Avenue?

1 **A** When I was proceeding to Crane, the radio
2 traffic, I didn't have an exact address. All he got out
3 was Crane Avenue and there was radio traffic after that,
4 so we didn't know exactly where he was at. Threw my
5 lights and sirens on. Headed down Blue Ridge. Turned
6 left onto Crane Avenue. I was immediately looking for a
7 patrol car, any signs of the officers pursuing the
8 subject through yards. Something like that. About that
9 time, I observed Investigator Fortner. He was coming out
10 towards the drive flagging me down. I threw my car into
11 park, got out of the car as quickly as I could. Ran to
12 Fortner. He said Dave's in the back, uh -- Investigator
13 Weiner is in the back with the subject. I then proceeded
14 to Investigator Weiner.

15 **Q** What happened when you got to the back yard of
16 20?

17 **A** Uh, as I approached the back yard, I could see
18 Investigator Weiner. He was standing on one side of a
19 chainlink fence. He had his weapon drawn. He was
20 covering an individual who was laying on the ground.

21 **Q** Was he yelling anything?

22 **A** Yes, it was constantly giving him verbal
23 commands, telling him to keep his hands or get his hands
24 were he could see them and to not get up or make any
25 sudden movements.

1 **Q** What did you do when you approached that
2 particular area?

3 **A** As I approached Investigator Weiner, first of
4 all, I let him know that I as coming up behind him. The
5 suspect was on the other side of the fence. Investigator
6 Weiner was holding him at gunpoint. It would have been
7 tactically a bad idea for him to holster up and jump this
8 fence and take this guy into custody. Just because he's
9 been shot doesn't mean he's out of the fight. So he was
10 maintaining his cover on him.

11 I let him know I was coming up behind him, at
12 which point, I walked around behind him, not in front of
13 him because I didn't want to, uh, cross over his line of
14 fire in case the suspect did attempt a sudden move or
15 something. I approached the fence. I noticed the
16 individual was laying on the ground. He had his right
17 arm still underneath him towards his waistband.

18 At this point, you know, I'm thinking this guy
19 may still be armed. It's, you know, -- he's robbed a
20 bank. All info we have says he's possibly armed. He's
21 shot an individual. I'm going to be as cautious about
22 this as I can.

23 Investigator Weiner maintains cover while I
24 jump the fence. At that point, he's got his left arm
25 out. So my target is that right arm. Move in. I grab

1 that wrist with both hands in case he does have a weapon.
2 I want to have all my weight on that weapon so I can
3 control it. I remove it from underneath him and I'm able
4 to secure him in handcuffs. At which point, I did
5 conduct a search of his person for weapons or contraband
6 or means of escape.

7 Q Was there any blood on him?

8 A Uh, yeah. He was covered in blood. That
9 wasn't my concern at the time.

10 Q Yes, sir.

11 A I wanted to get him cuffed. A little bit of
12 blood on me, I'll deal with that.

13 Q And what condition were his clothes and what
14 condition was he in?

15 A Uh, soaking wet. His clothes were filthy.
16 They were just drenched. There was mud, leaves, little
17 bits of briar. He was perspiring. Just seemed beat.
18 Really, really out of it.

19 Q Do you recognize the individual that you placed
20 into custody at that time?

21 A Sure do. Sitting right there in the gray
22 shirt.

23 Q Did EMS arrive eventually?

24 A Uh, yes, they did.

25 Q Once they arrived, what did they do with the

1 suspect?

2 **A** They begin administering medical attention to
3 the individual. I stood back, you know, kept an eye on
4 him, of course. Even though he's secure, you want to
5 maintain a visual of him. Other officers started showing
6 up. At one point, Investigator Weiner, we were talking.
7 And he made a statement to me, "Bobby, notice the pants.
8 Did you see the pants?" Drawing my attention to his
9 pants and the design.

10 EMS, they begin cutting his clothes off. They
11 brought a stretcher out. And he was placed on the
12 stretcher for transport. When we placed him on the
13 stretcher, he was secured to the stretcher by handcuff.
14 I believe it was Sergeant Cooper who secured the handcuff
15 to the stretcher.

16 **Q** Did you remain with the subject, with the
17 defendant?

18 **A** Yes, sir. I did. I left briefly for one
19 point. At one point, there were other officers with him.
20 It was to go back and secure my vehicle and to pass off a
21 key because I was informed that I would be riding with
22 him to Greenville Memorial Hospital during the transport.

23 **Q** And did you ride with him?

24 **A** Yes, sir. I did.

25 **Q** You assisted in the back of the ambulance at

1 all?

2 **A** Yes. I assisted with pushing the stretcher up
3 to the ambulance. In fact, my mother called me that
4 night and said she saw me on the news. At that point,
5 got in the back of the ambulance and we were off for GMH.
6 And it was a rough ride.

7 **Q** And where was the defendant taken when he got
8 to Memorial Hospital? Greenville Memorial Hospital?

9 **A** He was taken to the emergency room, I believe
10 to the critical care unit.

11 **Q** Okay. Did you stay in the general area of the
12 defendant while he was there?

13 **A** Yes, I stayed out of the way of the medical
14 personnel but I was no more than 10 or 15 feet away from
15 him. Actually, less than 15 feet away from him. I
16 always had my eyes on him.

17 **Q** All right. Let's show you what's been marked
18 as State's 34 and 35. Do you recognize both of those
19 pictures?

20 **A** Yes, sir. I do.

21 **Q** What is that showing?

22 **A** This is the back yard. Here's the separation
23 fence. This is the side of the fence that the subject
24 was on when I took him into custody. And these are his
25 clothing. His shoes. These are the pants he was

1 wearing. There is the gray shirt.

2 **Q** All right. And do these accurately reflect the
3 clothing and the back yard of 22, other than the time of
4 day perhaps, do they accurately reflect what you saw
5 there that day?

6 **A** Yes, sir. They do.

7 **MR. FRETWELL:** At this time, Your Honor, the
8 State would move State's 34 and 35 into evidence.

9 **THE COURT:** Any objection?

10 **MR. JOHNSON:** No objection.

11 **THE COURT:** 34 and 35 are into evidence
12 without objection and may be published.

13 **MR. FRETWELL:** May I publish? Thank you.

14 **(WHEREUPON, State's Exhibits 34 and 35 are admitted**
15 **into the record.)**

16 **BY MR. FRETWELL:**

17 **Q** All right, sir. First of all, 34. Could you
18 just explain what you were talking about a few minutes
19 ago where the jury could hear you? Use that to just
20 cover what you were saying when the jury couldn't see the
21 picture.

22 **A** Right here is the chainlink fence. This is the
23 area that the suspect was laying in. This is the fence I
24 hopped over to take him into custody. Investigator
25 Weiner was on this side of the fence at all times. These

1 are his clothing which was removed by the EMS personnel
2 when they were treating him, giving him medical
3 attention. His shoes. These are his pants. This is the
4 shirt. That right there is where forensics is out and
5 they are marking all the evidence. That's one of their
6 markers.

7 Q And just to be clear, other than that -- that
8 grayish blue shirt up there and those jeans and the
9 shoes, was he wearing anything else?

10 A No, sir.

11 Q Just that?

12 A Just that.

13 Q All right. And let me show you State's 35.

14 A These are the pants he was wearing that were
15 cut off. You see they are saturated with blood. They
16 were also soaking wet, filthy. Here are the distinctive
17 designs and the shoes.

18 Q All right. Thank you, Mr. Jenkinson.

19 And finally, how tall is the defendant?

20 A Uh, 5'10 to 5'11.

21 Q And at the time of his arrest, approximately
22 how much did he weigh?

23 A I was say 180, 185, I believe detention booked
24 him in as -- or on a prior offense, he was booked in at
25 175.

1 **MR. JOHNSON:** Objection, Your Honor.

2 **THE WITNESS:** Oh.

3 **MR. JOHNSON:** We need, uh, --

4 **THE COURT:** I sustain the objection.

5 **MR. FRETWELL:** Your Honor, can we approach?

6 **MR. JOHNSON:** Your Honor, permission to
7 approach?

8 **THE COURT:** Yes, sir.

9 **(WHEREUPON, a bench conference is held off the**
10 **record.)**

11 **THE COURT:** Ladies and Gentlemen, this, uh,
12 may be a good time for us to, uh, -- I'll ask you if
13 you would, just go back to your jury room just
14 briefly. We'll call you back. Don't discuss the
15 case.

16 **(WHEREUPON, the jury exits at approximately**
17 **5:34 p.m.)**

18 **THE COURT:** All right, Mr. Johnson.

19 **MR. JOHNSON:** Your Honor, at this point in
20 time, I really have no choice but to request a
21 mistrial. This officer has testified about my
22 client's prior record without my client testifying,
23 without it being admitted prior to a hearing. This
24 is -- I believe this is something that a curative
25 instruction will not cure. I believe that they may

1 now believe that my client acted in accordance with
2 his criminal history and also committed these
3 crimes. I believe this is unduly prejudicial and
4 can not be rectified by a curative instruction.

5 **THE COURT:** Solicitor, be glad to hear from
6 you.

7 **MR. FRETWELL:** Your Honor, I would point you
8 to the Court that the statement that was made first
9 of all was not solicited by the State. And
10 secondly, the fact that it was said in a way that
11 even when we approached the bench, Your Honor didn't
12 hear fully what the witness said. I don't believe
13 that it would have such a prejudicial effect on the
14 defendant that a mistrial will be warranted in this
15 case.

16 Now, whether or not the defense wants to
17 request a curative instruction, certainly that's
18 something we could discuss whether that would bring
19 more attention to something that I believe may have
20 gone, uh, very unnoticed by the jury. I don't know.
21 But the fact of the matter is, at this point, a
22 mistrial is just not warranted based on what
23 evidence has come in. We don't -- all we basically
24 know is that he was booked in on something prior.
25 That's it.

1 **MR. JOHNSON:** Your Honor, it seems improper
2 for me to try to guess what the jury heard or did
3 not hear based upon what Your Honor or the Solicitor
4 heard. The point of the matter is it was said. It
5 was said. I believe this is not something -- I'm
6 not requesting a curative instruction. I'm
7 requesting a mistrial. I don't believe at this
8 point forward that my client can get a fair trial.
9 I also don't think it matters to whether he asked
10 the question or not. The point is the comment was
11 made by a State's witness.

12 **THE COURT:** This is probably a good time for
13 us to break for the evening. I'll look at the
14 transcript. We're not going to get the cross-
15 examination in today anyhow. I'm just going to
16 bring the jury out and tell them they are excused
17 for the evening and be back at nine o'clock in the
18 morning. That will give me a chance to hear the
19 testimony again. I am concerned. I want to hear it
20 in full, the question and the answer. This witness
21 will be back in the morning.

22 Let me remind you, Officer Duncan, you are not
23 to discuss your testimony with anyone during the
24 break.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** If the jury is ready, have them
2 come back in.

3 **(WHEREUPON,** the jury enters at approximately
4 5:38 p.m.)

5 **THE COURT:** Mr. Foreman, Ladies and
6 Gentlemen, sometimes, as I've told you before, I
7 have legal matters that I need to take care of.
8 This one may take a little longer. I don't want to
9 keep you here beyond, uh, -- obviously, we'd like to
10 finish with the testimony of this witness, but we're
11 breaking now and continuing with the witness
12 tomorrow. I'm going to excuse you for the evening.
13 Be back at nine o'clock in the morning. We'll be
14 ready to continue then.

15 I'll remind you again that -- not to be
16 discussing the case with anyone. Don't let anyone
17 discuss the case with you. I'll remind you what I
18 said to you yesterday about not doing any kind of
19 individual research. Don't listen to any media
20 reports or read any news reports. You're going to
21 decide this case on this trial and this courtroom,
22 what the lawyers present, what the evidence is given
23 and the testimony that's presented, not anything
24 else. Keep that in mind. I'll see you back at nine
25 o'clock in the morning. Have a good evening.

1 Everyone else, please keep your seats while the
2 jury is dismissed for the evening.

3 **(WHEREUPON,** the jury exits at approximately
4 5:40 p.m.)

5 **THE COURT:** All right. We'll be at ease
6 until nine o'clock in the morning.

7 **(WHEREUPON,** the Court recesses for the day at
8 approximately 5:41 p.m.)

P R O C E E D I N G S

(WHEREUPON, Court resumes on the 13th day of July, 2011 at approximately 9:20 a.m.)

THE COURT: Be seated. All right.

Gentlemen, when we left last evening, I think we had pending a motion for mistrial by the defense. I'll be glad to hear from you any more on that, Mr. Johnson or Mr. Hoskinson, if you desire to, and certainly be glad to hear from the Solicitor of my ruling on that.

MR. FRETWELL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. FRETWELL: Were you going to put on the record the specific language that is in question? I think that is something that we discussed last night that you were going to look at the transcript and see.

THE COURT: Well, I did have a chance to review the transcript. The specific language was answering the question as to what the weight was. I believe, uh, detention booked him on a prior offense at, uh, 175. Words to that effect. I listened to it last night. Prior offense. Booked for a prior offense and a certain weight.

1 **MR. FRETWELL:** Thank you.

2 **THE COURT:** All right. Mr. Johnson.

3 **MR. JOHNSON:** Yes, sir, Your Honor. Your
4 Honor, as I understand it, it's your discretion
5 whether or not to grant this motion. But I don't
6 think there's any question that it's prejudicial.
7 Again, I don't believe a curative instruction will
8 remedy the error. I do -- I did receive the cases
9 that, uh, Mr. Fretwell intends to present. One of
10 them, I believe, being State versus Creech. Kind of
11 one of the things I want to do is I just read the
12 cases.

13 I actually want to, uh, add to my motion of the
14 other misconduct that we heard about, the Solicitor
15 speaking with the witness in question here while he
16 was still under oath. I believe that actually adds
17 to the strength of my motion at this time.

18 As I understand it from State versus Creech,
19 you are to consider the character of the testimony,
20 circumstances under which it was offered, the nature
21 of the case and the other testimony in the case. I
22 think the character of the testimony is prejudicial.
23 We're talking about a guy that's being accused of
24 bank robbery and shooting a witness.

25 It was not in response to any cross-examining

1 question that I asked but the response to opening
2 the door to any sort of testimony or essentially
3 asking for it if you want to put it in terms. Like
4 I said, the nature of the case is pretty serious.
5 If my client was to be convicted, it would be over
6 60 years of time.

7 I know another thing one of the cases mentioned
8 was, uh, it said, uh, overwhelming evidence of
9 guilt. I don't believe we're any more close to
10 that. I don't think we're there at all. In any
11 case, Your Honor, I would like to respond --

12 **THE COURT:** First of all, we need to -- the
13 secondary issue that you're bringing up, that was
14 discussed briefly in chambers with a view toward
15 putting it on the open record. I will certainly
16 give Mr. Fretwell an opportunity now to stay, uh,
17 that issue. I'll be glad to hear from you on the
18 law, Mr. Fretwell.

19 **MR. FRETWELL:** Thank you, Your Honor. May it
20 please the Court. Your Honor, I informed defense
21 counsel and Your Honor in chambers when I arrived
22 for work this morning, actually when I came to the
23 courtroom, I saw Deputy Duncan, the witness who had
24 testified at the end of the trial yesterday, sitting
25 in an empty room by himself. He was obviously

1 upset. He was looking at the floor.

2 As an impulse, Judge, I stepped into the room.
3 And I started to speak with him and told him that he
4 should not blame himself, that ultimately during the
5 course of a trial, the attorneys are the ones
6 ultimately that are responsible and that I knew --
7 and in my mind, Judge, I know that Deputy Duncan
8 used to be a detention officer. I had informed him
9 that I knew he was testifying truthfully as to how
10 he came about the facts that I had asked him about.

11 At that point, Judge, I realized and remembered
12 that he was still under oath. My mind was focused
13 on the motion for mistrial. I realize that if the
14 court should decline to grant a mistrial in this
15 case that he would be subject to cross-examination.
16 I certainly had been practicing long enough to know
17 that I can not speak to a witness about his
18 testimony while he's under oath. I immediately told
19 him I could not speak to him and withdrew myself
20 from the room.

21 Judge, I obviously am -- I don't have any
22 explanation other than what my mind was focused on
23 this morning as to why I did that. I certainly
24 wanted to bring that up to defense counsel and to
25 the court because that's something that I'm required

Motion for Mistrial

1 by my ethical responsibilities to do. I certainly
2 would tell the court that if I had been thinking
3 clearly about the fact that he was still under oath,
4 I would not have even spoken to him no matter what
5 impulse I might have had to make him feel better
6 about what must have been a very miserable night for
7 Deputy Duncan.

8 **THE COURT:** All right. I'll be glad to hear
9 you on the law as far as the mistrial motion.

10 **MR. FRETWELL:** Yes, sir, Your Honor. And
11 Your Honor, I'll just start by saying that yesterday
12 when this occurred, quite frankly, I didn't know the
13 standard for granting of a mistrial. I practiced in
14 this circuit for -- this is my 12th year, Judge.
15 Although I've had motions for mistrials before, it
16 been quite a time since that's happened as has
17 happened to a lot of my colleagues in the course
18 of their trial. So I did some research to determine
19 exactly how a motion for mistrial should -- how the
20 Court should be guided in making that decision,
21 Judge.

22 And as I listened to the testimony yesterday
23 certainly, it wasn't something that I wanted to
24 in. It wasn't something that I wish we were talking
25 about. But I did not feel it was severely

1 egregious. So I went and looked at the examples
2 given in the case law. And Judge, what I could find
3 from the cases that I've submitted to the Court and
4 defense counsel, in starting with a decision by the
5 Court of Appeals, State versus Spears that had not
6 been published yet but serves as a good summary,
7 Your Honor, of the law in this case.

8 The Court of Appeals quotes in that case from
9 other case, State versus Stanley and talks about how
10 a mistrial should only be granted when absolutely
11 necessary and a defendant must show both error and
12 resulting prejudice in order to be entitled to a
13 mistrial. Your Honor, the Court, uh, goes on to
14 talk about a quotation from State versus Goodwin.
15 The granting of a motion for a mistrial is an
16 extreme measure which should be taken only where an
17 incident is so grievous that prejudicial effect
18 could be removed in no other way.

19 Right in accordance with that, Your Honor, the
20 Court goes on to talk about quoting from State
21 versus Simpson an instruction to disregard
22 incompetent evidence which is exactly what this
23 evidence is, Your Honor. It's incompetent evidence.
24 Usually, it's deemed to have cured the error and its
25 admission unless it is probable that notwithstanding

1 such instruction or withdrawal the accused was
2 prejudiced. So it talks about the cure being the
3 curative instruction to the jury and then goes on to
4 say the error is harmless when it could not have
5 reasonably affected the result of the trial.

6 Your Honor, the factual scenario on this case
7 of State versus Spears is where we have a similarly
8 charged defendant, a defendant charged with Armed
9 Robbery. He's also charged with Kidnaping. In our
10 case, he's charged with ABWIK and Possession of a
11 Weapon during the Commission of a Violent Crime. In
12 that case, Your Honor, pretrial, the officers were
13 instructed that they should make no mention of the
14 bullets, the drugs and the shotgun that were
15 recovered during the search of the defendant's home.
16 In the process of enumerating the items that were,
17 uh, located at the defendant's home, the officer
18 indeed, contrary to the instructions of the Court,
19 mentions the bullets, the drugs, the shotgun. Of
20 course, defense counsel -- this was a co-defendant
21 case -- immediately objects and requests a mistrial
22 after this officer testifies.

23 The State concedes, Your Honor, in that case,
24 that the officer's testimony regarding the
25 inadmissible items including the drugs were

1 inadmissible. The trial court agreed the items
2 should not have been mentioned but declined in that
3 instance the defense motion for a mistrial. The
4 Court offers to give a curative instruction.
5 Defense counsel declines and goes on to say --
6 arguing that the instruction would only bring more
7 attention to the prejudicial testimony and that a
8 mistrial was the only remedy. The Court of Appeals
9 indicates that they affirm the trial court's denial
10 of Spears first mistrial motion as the testimony was
11 harmless in light of the overwhelming evidence of
12 guilt presented at trial.

13 Your Honor, I know that's a point that Mr.
14 Johnson has made about this case. Certainly, I want
15 to be able to explain to the Court that I believe
16 that so far there has been overwhelming evidence of
17 the defendant's guilt. Your Honor, you've heard
18 testimony and the jury has heard testimony through
19 these witnesses of a bank robbery. They've heard
20 testimony that that robber was seen leaving the
21 bank. The vehicle he was leaving in was described
22 in detail.

23 A witness saw him as he left the bank parking
24 lot. Followed him to the location of Emile Street
25 seeing the evidence of the bank robbery, the red

1 smoke coming out of the van itself. Once he got to
2 Emile Street, that he kept this driver, robber, in
3 his sights. He was shocked by this particular
4 individual. The individual then went into the
5 woods. Both him and another witness, Your Honor,
6 pinpointed for police exactly the point which, uh,
7 this individual entered the woods.

8 Shortly thereafter, Your Honor, the testimony
9 was within minutes of the K-9 team arriving on
10 scene, they cut in a track and immediately were able
11 to detect a fresh human scent trail. They tracked
12 this trail, not just with one dog, Your Honor, but
13 with two dogs after the other dog left off. So two
14 different dogs following the same trail and tracked
15 it to a bandana, Your Honor.

16 This bandana is identical the pictures the jury
17 has already seen of the bandana that was used in the
18 robbery that Your Honor is aware of and that we've
19 discussed in pretrial motions. The DNA expert will
20 identify a major contributor of DNA on this bandana
21 belongs to this defendant.

22 Your Honor, the K-9 officers indicate that they
23 continue to track this trail down to a creek. That
24 it entered the creek. The dog didn't want to go in
25 the creek but he did because that's where the trail

1 took it. They then tracked it to about the edge of
2 Highway 253 or Blue Ridge and Agnew Road.

3 Thereafter, at some point around 4:00 or 4:15, the
4 perimeter is called off. The officer, Sergeant
5 Cooper, testified that he expected some movement
6 after that time.

7 You heard from reporter, Shawn Muserallo.
8 Shawn Muserallo was coming down Agnew Road after the
9 perimeter was called off because he couldn't have
10 traveled on that road beforehand. He saw this
11 defendant. He identified this defendant as the one
12 that came up out of the creek area onto the road
13 soaked up to his chest. They made eye contact. And
14 this individual, in an unusual way, goes back into
15 the wooded area in the direction of Crane Avenue.

16 Not long there after, Your Honor, there's
17 reports of suspicious activity on Crane Avenue.
18 Officers are responding. They come in contact with
19 this defendant. He's wet. He's tired. He's muddy.
20 He's wearing clothes, Your Honor.

21 If you'll recall, Adrian Correa said at the
22 very beginning that he was wearing a gray t-shirt
23 underneath the black hoodie that he was wearing.
24 Wasn't wearing the black hoodie at this point, but
25 he's still got on a gray t-shirt. He had jeans that

1 were uniquely embroidered, Your Honor, with feathers
2 and with knives in the back. That is what Deputy
3 Weiner saw before he saw the defendant, recognized
4 the defendant on the basis of these pictures that he
5 had been shown. Immediately pursued him. In fact,
6 his actions eventually led to the custody of the
7 defendant.

8 The clothes were collected, Your Honor. Those
9 clothes could be compared to the pictures in the
10 video. The testimony of the forensics officers this
11 morning, uh, of pictures that were taken from that
12 video that will be submitted into evidence that will
13 allow the jury to conclusively see that these jeans
14 are the jeans that were used in the robbery. Not
15 only that, this defendant was in the search area at
16 the time. His DNA was on the bandana. I believe,
17 Your Honor, the State has proven and will continue
18 to prove with overwhelming evidence that the
19 defendant is guilty of this crime.

20 Your Honor, continuing with the cases, uh, and
21 now we're referring to State versus Wilson, 389 S.C.
22 579, this decision, Your Honor, is about a CDV case.
23 It's a CDV High and Aggravated where the victim is
24 instructed not to make any mention of the previous
25 bad acts of the defendant. Obviously, Judge, if the

1 defendant is on trial for CDVHAN, evidence of prior
2 bad acts or mistreatment of the victim are evidence
3 that the defense properly asked to be excused. The
4 State agreed that should be excluded because they
5 are entered with the danger under 403 of actions
6 that the jury could find the defendant guilty in
7 conformity with these prior similar actions.

8 In that case, Your Honor, under headnotes 6, 7,
9 7 and 9 of the last page, after a request for
10 mistrial when the victim mentioned these previous
11 assaults. The Court says the decision to grant or
12 deny a mistrial is within, as Mr. Johnson indicated,
13 the sound discretion of the trial court and the
14 trial court's decision will not be overturned on
15 appeal absent abuse of discretion to an error of
16 law. A mistrial should only be granted when
17 absolutely necessary and a defendant must show both
18 error and prejudice in order to be entitled to a
19 mistrial. Insubstantial errors that do not impact
20 the result of the case does not warrant a mistrial
21 when guilt is conclusively proven by competent
22 evidence.

23 Your Honor, again, with the evidence that I've
24 just described, I believe the State has proven -- is
25 proving and has proven and will continue to prove

1 the defendant's guilt by -- conclusively by
2 competent evidence. Your Honor, the Court is
3 instructed in that case that the determination of
4 prejudice must be based on the entire record. The
5 result will generally turn on the facts of each
6 case. The appellate court looked at this exact
7 scenario, Judge, and said down here, even assuming
8 for the sake of argument that the testimony was
9 error, we find no indication of prejudice in the
10 record, Your Honor.

11 Moving also to the Creech case, which Mr.
12 Johnson referenced, which is, uh, cited in the
13 Southeastern Reporter as 441 S.E. 2d. 635. Judge,
14 this is the case, uh, where not only is reference
15 made about the defendant's maybe in the case at bar,
16 of course, we have reference to booking in on a
17 prior offense, not a conviction, not anything that
18 the jury would believe or could believe was an
19 actual offense that the defendant's guilt was proven
20 beyond a reasonable doubt or that he pled guilty to
21 it, but simply a prior offense.

22 In this case, Your Honor, in the Creech case,
23 there's reference to talking to the defendant's
24 probation officer. So we not only have the idea
25 that the defendant's been arrested before, that he's

1 been booked before, but he's been convicted or he
2 pled guilty and has been sentenced and is currently
3 on probation.

4 Judge, in that case, the Court -- and it has
5 the colloquy between the State and the, uh, officer
6 where he says, Sunday morning, I called the
7 probation officer. The State immediately says we
8 don't need to talk about that. Then Creech's
9 counsel, Creech being the defendant in the case,
10 indicated to the judge that he wanted to make a
11 motion outside the jury's presence and the jury was
12 removed from the courtroom. Counsel moved for a
13 mistrial on the ground that Officer Bell's reference
14 to calling the probation officer conveys unerringly
15 the impression that this man had a prior record and
16 places him in the posture of guilt before the jury,
17 before the case is even deliberated. The trial
18 judge asked counsel if he wanted a curative
19 instruction for the jury to disregard the statement.
20 Counsel responded that is entirely up to the court
21 but my motion is for a mistrial. This impression,
22 that being that Creech had a prior record, that is
23 already conveyed is not retractable.

24 The trial judge asked counsel several times if
25 he wanted to have a curative instruction.

1 Ultimately, the defense counsel said out of
2 abundance of precaution, counsel requested the
3 instruction although maintaining his position that
4 the judge should grant a mistrial.

5 This is the instruction, Your Honor, from this
6 case. Please disregard any statement by the witness
7 about his calling the probation officer. That has
8 no bearing on the issues for trial in this case. So
9 please disregard that statement. Disabuse your mind
10 thereof.

11 The Court then goes into the law of the case.
12 It talks about the granting of a mistrial is again
13 within the discretion of the Court. It says the
14 power to grant a mistrial should be used with the
15 greatest of caution under urgent circumstances and
16 for very plain and obvious cases. The Supreme Court
17 favors the exercise of wide discretion of the trial
18 judge in determining the merits of a mistrial motion
19 in each individual case.

20 Your Honor, then it enumerates, as I think Mr.
21 Johnson may have referenced, the four factors the
22 court should consider. Among those factors to be
23 considered are the character of the testimony, the
24 circumstances under which it was offered, the nature
25 of the case and the other testimony in the case.

1 Your Honor, this court goes on to reference and
2 to actually analogize -- the appellate court
3 analogizes the curative instruction in the Creech
4 case to a curative instruction that was used in
5 State versus Howard and actually says, in Howard,
6 the State presented evidence indicating the
7 defendant committed a separate homicide from the one
8 for which he was on trial. The trial judge denied a
9 mistrial in that case. Judge, reference to a prior
10 crime that was exactly like the crime upon which the
11 defendant was being tried. The trial court denied a
12 mistrial motion in that case but, at counsel's
13 request, instructed the jury to disregard what the
14 witness had said and admonished the jury with a
15 statement.

16 Had nothing to do with this trial. Judge, that
17 is a case where the conduct or the evidence that was
18 in is arguably so much more egregious than it is in
19 this particular case. It is a crime of the exact
20 nature for which the defendant was on trial. The
21 court declined to exercise that most rare and most
22 extreme measure, what the Court calls only in
23 situations of manifest necessity of granting a
24 mistrial.

25 And finally, Your Honor, I bring you to State

1 versus Wasson which is a 299 S.C. 508. This is a
2 case, Your Honor, specifically Justice Harwell
3 indicates that the issue on appeal is whether the
4 trial judge abused his discretion in denying
5 appellate's motion for a mistrial based upon the
6 fact that during the course of jury service, two
7 jurors, Your Honor, two jurors read a newspaper
8 article discussing the appellate's involvement in
9 other criminal activity. The article discuss,
10 according to the opinion, Your Honor, Wasson's or
11 the defendant's alleged and strenuous criminal
12 activity including information that additional
13 burglary charges for similar crimes were pending
14 against Wasson and that police suspected Wasson's
15 involvement in a theft ring and in a number of other
16 cases across the county.

17 Your Honor, the Court goes on to say how the
18 judge asked and determined that three jurors stated
19 they had seen the articles but only two jurors
20 indicated that they had read the newspaper articles.
21 Both jurors admitted that they had discussed the
22 newspaper article with their fellow jurors after
23 they had voted on the issue of Wasson's guilt or
24 innocence. Wasson's counsel makes a motion for
25 mistrial on the ground that because two of the

1 jurors read the newspaper article, Wasson was
2 irreparably prejudiced in his ability to receive a
3 fair trial. Trial judge denied this motion, Your
4 Honor, and stated he was satisfied with the
5 assurances of the two jurors who had read the
6 newspaper article, that it did not affect their
7 decision.

8 Your Honor, the Court, again, goes through the
9 different stages of saying this within the Court's
10 discretion the burden on the motion for mistrial is
11 on -- the burden on motion for mistrial because of
12 anything occurring during trial is upon movement to
13 show not only error but resulting prejudice.

14 Your Honor, down here at quotes from State
15 versus Stone, the goal of corrective measures is to
16 ensure the defendant's right to a fair trial has not
17 been compromised. The determination of what
18 curative measures are appropriate in a given case
19 rests in the sound discretion of the trial judge.
20 He should exhaust other methods to cure the
21 prejudice before aborting a trial, Your Honor,
22 buttressing the concept that the decision to grant a
23 mistrial is one that should be taken with much care,
24 great caution and only as an extreme or as a last
25 result when all other measures have been exhausted

1 and in cases where the conduct or the evidence is so
2 egregious that there is no other choice other than
3 mistrial. Your Honor, it goes on to say in the
4 appellate decision that the trial just clearly
5 satisfied that he did do that to ensure the
6 impartiality of the jury.

7 Your Honor, that's the, uh, -- those are the
8 arguments on behalf of the State. Certainly, uh,
9 ask you to take whatever time is necessary -- and
10 I'm sure you're familiar with some of these cases --
11 but to fully consider all of the cases the State has
12 brought in the arguments. Thank you.

13 **THE COURT:** All right. Thank you.

14 Anything in reply, Mr. Johnson?

15 **MR. JOHNSON:** Yes, sir, Your Honor. I don't
16 think -- I think what Fretwell's case is on point
17 about is your discretion but I believe that's
18 something you also already knew. With regards to
19 Spears, they actually didn't address this mistrial
20 concerning an unrelated thing. They said it wasn't
21 preserved. They also said that it was, uh, harmless
22 in light of overwhelming evidence of guilt.

23 I know Mr. Fretwell went on about a witness
24 following the guy in the van, but the witness
25 following the guy in the van didn't say David Boyd

1 was the one I was following. The witness who said I
2 was shot by the suspect didn't say David Boyd was
3 the one who shot me. The police and the police dogs
4 went searching in the woods and did not find my
5 client.

6 When my client was actually encountered, he was
7 not doing anything that they charged as criminal. I
8 don't think, uh, -- I don't think at this point
9 there's anywhere close to any overwhelming evidence
10 of guilt.

11 Another case with Wasson is in the Wasson case,
12 they also said essentially the case wasn't preserved
13 for review. They made a backdoor agreement to
14 exclude the evidence so the appeals court couldn't
15 properly consider the case. Once again, it talks
16 about your discretion, but the point on appeal here
17 was that the trial -- the attorney said the trial
18 court goaded him into asking for a curative
19 instruction. That doesn't apply here as I'm not
20 asking for a curative instruction.

21 It also say to look at each individual case.
22 That's another thing we have to consider. Once
23 again, with regards to your discretion, I hate to be
24 arguing this to you because I think that's something
25 you already knew. It talks about the four factors.

1 I'd like to, uh, take the time here to once
2 again remind the Court of what Mr. Fretwell
3 addressed here first today about speaking with the
4 witness. I think that's something that all should
5 be applied to this situation. I think it enhances
6 emotion at this point in time.

7 I think the prejudice certainly was not
8 harmless. There certainly was error as Your Honor
9 read of it last night in the transcript or heard it
10 on the audio. There most certainly is prejudice.
11 I'm saying now that that prejudice is enhanced by
12 what has happened this morning with the witness who
13 hasn't even finished his testimony.

14 Finally, in the Wasson case, the judge acted on
15 his own motion. The judge took it upon himself to
16 motion the jurors and question themselves. At that
17 point in time, the judge was satisfied that the
18 verdict had not been reached from any outside
19 sources. That was -- I think all of these cases he
20 mentioned are not on point here.

21 I think this is a situation that is different.
22 We definitely have an error. We definitely have
23 prejudice. I think the prejudice is enhanced by the
24 new piece of information that we heard today about
25 him speaking to the witness. Once again, I renew my

1 motion for a mistrial.

2 **THE COURT:** All right. Thank you, Mr.
3 Johnson.

4 **MR. JOHNSON:** Thank you, Your Honor.

5 (WHEREUPON, there is a pause.)

6 **THE COURT:** Mr. Fretwell, I've read your
7 cases and, of course, I've read other cases last
8 night -- you may be seated. I was addressing you
9 because you presented the cases to me -- cases 50,
10 60 years old. As Mr. Johnson says and as everybody
11 acknowledges, this is a discretionary matter. It is
12 an extreme measure as you so capably pointed out,
13 Mr. Fretwell. It must be manifest necessity in
14 order to grant this motion.

15 While all the cases you gave me are pertinent,
16 I think each of them are distinguishable. First of
17 all, the unpublished opinion that just came out this
18 year, uh, I think it is important to know that the
19 Court -- timing is everything as to when the
20 mistrial motion occurs. I guess relatively
21 speaking, we're now early in the trial based on the
22 number of witnesses who were going to be called. A
23 day of testimony plus an hour on Monday. But in
24 that case, the witnesses did positively identify the
25 guy with 100 percent accuracy as to who the gunman

1 was. I think -- well, these are fact-specific
2 inquiries that were made. I think those facts are
3 distinguishable.

4 The same with the Wasson case. That case
5 almost, as I read it yesterday, seems to issue
6 preservation matter. I really I know that the
7 language you cited. The appeal was properly
8 perfected. They go into the lack of a record, the
9 sparsity of the transcript to really not be able to
10 make a decision otherwise because of the appellate
11 record. In that case, I again think that that's a
12 distinguishable case.

13 Wasson, of course, the fourth case you
14 mentioned, the facts are similar but the timing was
15 different too. That happened after a verdict.
16 Knowledge came before the Court. There had been
17 some reading material and so forth. The judge made
18 the inquiry after the verdict to satisfy himself
19 that the jurors had not acted inappropriately.

20 Creech, always felt that was the case that, uh
21 -- lawyers to make some hard decisions during the
22 course of a trial. That is a difficult point to
23 make as to whether or not you're going to ask for a
24 mistrial and a curative instruction. Only for the
25 mistrial, not knowing what the judge is going to do.

1 Unlike in the Creech case, Mr. Johnson has not asked
2 for a curative instruction. He specifically said he
3 only wanted a mistrial motion. I think the, uh, --
4 that case really hinges on the fact that the
5 curative instruction was asked for. They reversed
6 it on the other error made by the trial judge and
7 upheld it on that, I think basically because the
8 curative instruction.

9 All the cases add some information for the
10 benefit of the Court. I'm grateful to have had
11 those. But ultimately, uh, I'm going to have to
12 make a decision as to whether or not the
13 unresponsive answer is such that in this particular
14 case, weighing those factors, the character of the
15 evidence, the circumstances, the nature of the case
16 and the other testimony in the case, whether or not
17 there was such an error that it can not be allowed
18 for the case to continue. Obviously, Mr. Johnson's
19 requirement is to show not only the error, I think
20 everybody acknowledges the error, the nonresponsive
21 answer that was given to your question, Solicitor,
22 would have resulted prejudice.

23 I was impressed by the Ravencraft case from
24 1952. Had two mistrials and finally had the third
25 trial. Of course, there was a different issue over

1 the same sort of information that came out.

2 In this case, I believe there was certainly no
3 intentional comment by the officer. I don't believe
4 that it was. Listening to the tape several times, I
5 thought I even noticed a gasp in his voice. I
6 believe it was an accidental comment, not in any way
7 misconduct. Likewise, I believe the, uh,
8 conversation that, uh, the Solicitor had with the
9 witness, the consolation this morning was accidental
10 and not in any way intended to create a mistrial.
11 It was rather just an honest mistake that was made.
12 I don't think it, frankly, despite Mr. Johnson's
13 argument, is to weigh into this decision whatsoever.
14 The answer to the question had, uh, many
15 opportunities to, uh, be a responsive answer.
16 Unfortunately, the officer went on to say about
17 prior offenses or a prior offense.

18 I've tried to find a way that that can be
19 softened in some way, but I couldn't. Our court has
20 said, and I think we all recognize, we, as human
21 beings, err. There can't be a perfect trial.
22 Justice often has inconveniences along the way from
23 both sides.

24 I think this is such a case that, uh, I'm
25 required to grant the motion. I grant that motion

1 for the mistrial. Again, I'm making a finding today
2 that it was no prosecutorial misconduct in any way.
3 It would be an issue, uh, or revisit any issue of
4 jeopardy in the matter.

5 All right. Thank you very much for your work,
6 gentlemen. We'll proceed with other matters. Take
7 a brief recess. I'm going to dismiss the jury in a
8 few moments.

9 **MR. JOHNSON:** Thank you, Your Honor.

10 **MR. FRETWELL:** Thank you, Your Honor.

11 **(WHEREUPON,** a recess is taken from approximately
12 10:02 a.m. to 10:19 a.m.)

13 **THE COURT:** I'm going to be dismissing the
14 jurors in this case. The lawyers are here. All but
15 Mr. Hoskinson is here. I think for the purpose of
16 this, we won't need your client. So I'm not going
17 to have him brought back up. I understand he might
18 be in the process of -- he's changed and
19 transporting him. I'm going to dismiss the jury. I
20 note that your client is not present. We can do
21 this without his presence. I've already declared a
22 mistrial.

23 **MR. JOHNSON:** Yes, sir, Your Honor.

24 **THE COURT:** The case is over for him. We're
25 just doing administrative work for the jury now. So

1 hopefully, he'll understand.

2 All right. If the jury's ready, we'll have
3 them all come in.

4 **(WHEREUPON,** the jury enters at approximately
5 10:22 a.m.)

6 **THE COURT:** Mr. Foreman, Ladies and
7 Gentlemen, thank you very much for bearing with us.
8 I told you all along when I have legal matters to
9 take care of, you're going to be the factual finders
10 in cases that you have. As a legal matter, I have
11 dismissed this case for this week. We won't need
12 your services on this particular matter anymore
13 because of a legal matter that I took under
14 advisement and ruled upon.

15 That doesn't mean that you're free to go. I
16 understand that we're about to start another trial.
17 I need you go to back downstairs to the assembly
18 room. There will be opportunity there for you to
19 get on another panel. Judge Pyle is going to be
20 selecting a jury and then I'll be selecting a jury
21 on the next case fairly soon thereafter.

22 I'm sure Ms. Olson down there can tell you
23 where our status is, whether you are entitled to a
24 short break or not. I just don't know when we'll be
25 ready to proceed. But real soon, we will. So if

1 you will, just go with the bailiffs back to the, uh,
2 uh, your room. And then they'll escort you down and
3 tell you when to go to the assembly room. Thank you
4 very much, Ladies and Gentlemen.

5 **(WHEREUPON,** the jury exits at approximately
6 10:24 a.m.)

7 **THE COURT:** All right. We'll be at ease
8 until we're ready to select our next panel.

9 **(WHEREUPON,** the hearing concludes at approximately
10 10:25 a.m.)

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CERTIFICATE

526

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 31st day of May, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Circuit Court Reporter