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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari from Richland County
DeAndrea G. Benjamin, Trial Judge
Michael S. Holt, Post-Conviction Relief Judge

Appellate Case No. 2023-001269

EMMANUEL B. ELLEBY, #275057,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

**ORIGINAL
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MAR 08 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EMMANUEL BASHAN ELLEBY,

APPELLANT

APPELLATE CASE NO 2015-002620

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) 2015-GS-40-002620

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
 EMMANUEL ELLEBY)

SEPTEMBER 1, 2015
 COLUMBIA, South Carolina

BEFORE THE HONORABLE PERRY GRAVELY

APPEARANCES:

APRIL SAMPSON, ASSISTANT SOLICITOR
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ATTORNEY FOR THE STATE

ADAM RUFFIN, ASSISTANT PUBLIC DEFENDER
 COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

NO EXHIBITS

1 MS. SAMPSON - State calls Emmanuel Elleby. Your
2 Honor, for the record this is Emmanuel Elleby with his
3 Attorney, Adam Ruffin, of the public defender's office.
4 Mr. Elleby's here to -- for two things -- not for a plea,
5 so that's why you don't have any paperwork. He's here,
6 first of all, to -- I've already given a copy of his
7 indictment to his attorney, but he's being served with his
8 direct presentment indictment for kidnapping. He was
9 originally charged with armed robbery. We have since
10 directed presented to the jury a kidnapping that goes along
11 with that. I ask that he be given a PR in the same amount
12 of sixty thousand dollars. The reason being is according
13 to his bond company, if he were to be given a new bond,
14 he'd have to bond again, and I don't think that would be
15 appropriate, so he's still going to have to go in and get
16 booked, but I want him to have a PR bond on that charge,
17 Your honor.

18 THE COURT - All right, ---

19 Mr. RUFFING - And this -- I'm sorry. If I could
20 just add, this case is set for trial in two weeks, so ---

21 MS. SAMPSON - I'll get to that part.

22 THE COURT - Well, if y'all are fine with that,
23 I'll go along with that.

1 MS. SAMPSON - And then the other thing, Your
2 Honor, is we're also handing him a copy -- his attorney and
3 him a copy of serving -- the State's intention to seek like
4 without the possibility of parole upon conviction. Mr.
5 Elleby is noticed for trial the week of September 14th of
6 this year, Your Honor. His prior record has an armed
7 robbery from May 8th of 2001 here in Richland County. So
8 I've properly served him at this point.

9 THE COURT - Okay. All right, anything else from
10 ---

11 MR. RUFFIN - No, Judge.

12 THE COURT - All right, Mr. Elleby, do you
13 understand -- I'll go along with the recommendation on the
14 bond so that you don't have to go through all that again,
15 but you will have to go ahead and get booked in for this
16 new additional charge, and you've been -- your attorney and
17 you have received notice about the life without parole, so
18 -- good luck to you.

19 MR. ELLEBY - Yes, sir.

20 MS. SAMPSON - Thank you, Your Honor.

21 MR. RUFFIN - Thank you, Judge.

22 (End of transcript)

23

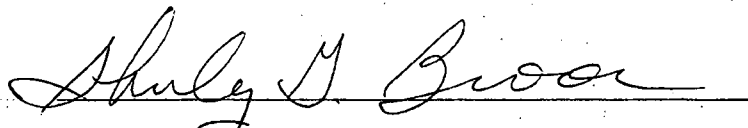
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 5 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Emmanuel Elleby, as taken by me in the Court of General Sessions for the Fifth Judicial Circuit on September 1, 2015 and provided by me this the 30th day of January, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 3 2014-GS-40-07355
 4 2014-GS-40-07364

4 State of South Carolina,)
 5)
 6 Plaintiff,)
 7 vs.) TRANSCRIPT OF RECORD
 8 Emmanuel Elleby,)
 9 Defendant.)

10 September 14-17, 2015
 11 Columbia, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
 15
 16

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

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20 ADAM S. RUFFIN, ASSISTANT PUBLIC DEFENDER
 21 MEGAN A. EIGENBROT, ASSISTANT PUBLIC DEFENDER
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 24 DEBORAH M. McCURDY, RPR
 25 Official Court Reporter

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1 SEPTEMBER 14, 2015

2 (WHEREUPON, the proceedings began at
3 2:54 p.m.)

4 THE COURT: Yes, ma'am?

5 MS. SAMPSON: Good afternoon. The State would
6 be calling the case of Emmanuel Elleby. However --
7 he is charged with armed robbery and kidnapping.
8 He is on the trial docket for today. He was here
9 today. We had discussed a negotiated plea of 20
10 years, and my understanding is the Defense was
11 talking to him about that, signing him up. And he
12 literally fell out, perhaps had a seizure. The
13 ambulance had to be called. And so he is currently
14 at Baptist getting seen. So clearly we can't call
15 the case today. And we need guidance from Your
16 Honor.

17 THE COURT: Tomorrow?

18 MS. SAMPSON: I'm fine with tomorrow.

19 THE COURT: Is that okay?

20 MR. RUFFIN: That is what I thought, Judge.
21 We'll just see. And if he is out tomorrow and
22 comes, then we'll just go from there. If he is not
23 okay and is not discharged from the hospital, I
24 guess we'll --

25 MS. SAMPSON: Deal with the issue at that

1 point.

2 MR. RUFFIN: Yes. Just come back to it.

3 THE COURT: Okay.

4 MR. RUFFIN: But in terms of today, I thought
5 we would just wait until tomorrow morning and see
6 how he does this afternoon.

7 MS. SAMPSON: I mean, I can say -- I mean, I
8 saw them and I saw the ambulance. I didn't realize
9 it was him when I saw all that going on.

10 THE COURT: Okay. So the jury -- Mr. Truitt
11 is sitting over there anxiously waiting as to what
12 to tell them. You pulled a panel to come back?

13 THE CLERK: Yes, Your Honor. We should have a
14 panel of 45 down there waiting right now. We can
15 tell them to be back in the morning.

16 THE COURT: Do you want them to come back in
17 the morning? My only concern -- maybe we could
18 have them call.

19 MS. SAMPSON: We can start -- if Your Honor is
20 okay with it, if for some reason he wasn't going to
21 plead but he is here, we could start -- we could do
22 pretrial and all that, and not have the jury --
23 pick the jury until the afternoon. That would give
24 them time to call in. If we can't go, we'll know
25 by 9:30.

1 THE COURT: So you want Mr. Truitt to have
2 them call in in the morning and then we can tell
3 them -- maybe have them call around 10:00? That
4 way he'll have some idea as to what is going on.

5 MS. SAMPSON: That's fine with us.

6 THE COURT: Maybe if you all just meet me
7 around -- oh, you know what, I have an eye doctor
8 appointment, so I wouldn't be able to start until
9 11:00 anyway.

10 MS. SAMPSON: It is my understanding that if
11 we go to trial it will be in front of Newman?

12 THE COURT: Well, Judge Newman can't -- he is
13 only here through Wednesday. So what I would have
14 to do is dismiss my law clerk for y'all.

15 MR. RUFFIN: Yes, Judge.

16 THE COURT: She is married to Justin.

17 MR. RUFFIN: Right.

18 THE COURT: And I don't know if Justin knows
19 much about the case.

20 MS. SAMPSON: He is my second seat in the
21 case. I have specifically told him not to talk to
22 her. And I don't even think he told her he was
23 maybe in trial this week.

24 THE COURT: He didn't know anything when she
25 called him. But out of an abundance of caution,

1 she'll have to sit in the office and write orders
2 this afternoon and not work on the case.

3 Yes, because Judge Newman can't do it.

4 MS. SAMPSON: Okay.

5 THE COURT: He could do it if it was going to
6 start today, but he cannot do it -- he is out of
7 here on Wednesday.

8 MS. SAMPSON: Okay.

9 THE COURT: So we will have the jurors call --

10 MS. SAMPSON: Okay.

11 THE COURT: -- at 10:00? Well, let me ask you
12 this. Do you have a problem just letting her know?

13 MS. SAMPSON: No, I don't have a problem.

14 THE COURT: So she can let Jim know if your
15 guy is still in the hospital or not.

16 MR. RUFFIN: That's fine. That is fine with
17 us, Judge. You mean not tell the jury -- dismiss
18 the jury, but don't tell them to call in at a
19 particular time until we have talked -- until we
20 figure out if he is going to be here?

21 THE COURT: We will have them call at 10:00,
22 and then if it is a go we'll tell them to be here
23 tomorrow at 1:00. And we will do pretrial in the
24 morning as soon as I get done with the eye doctor.

25 MS. SAMPSON: Because we don't really have

1 that much pretrial.

2 MR. RUFFIN: Right.

3 MS. SAMPSON: But we will have enough to get
4 us through the morning.

5 THE COURT: And then if it is not a go, when
6 they call at 10:00, if he's still in the hospital,
7 then we'll just go ahead and continue the case.
8 But if you can just let Jerrell or Stacy know in
9 the morning.

10 MR. RUFFIN: Right. We'll do that.

11 THE COURT: They can let Jim know.

12 MS. SAMPSON: Okay.

13 MR. RUFFIN: As soon as we know, we'll be in
14 touch.

15 THE COURT: Yes. Because you probably won't
16 know -- I would say have them call at 6:00, but it
17 is 3:00 o'clock now, and I'm sure if he has been
18 admitted to the hospital you won't know anything by
19 5:00 o'clock.

20 MR. RUFFIN: Right. This just happened about
21 1:00 o'clock.

22 THE COURT: By 5:00 o'clock you won't know
23 anything.

24 MR. RUFFIN: Right. Probably not.

25 THE COURT: Yes. Okay.

1 MS. SAMPSON: Okay.

2 THE COURT: And so just -- I should be here --
3 my appointment is at 9:00 or 9:30. I should be
4 here by 11:00.

5 MS. SAMPSON: We should know something by
6 then.

7 MR. RUFFIN: Yes, definitely.

8 THE COURT: If it is a go, we will start doing
9 pretrial then.

10 MS. SAMPSON: Okay.

11 THE COURT: All right.

12 MS. SAMPSON: Thank you, Your Honor.

13 MS. EIGENBROT: Thank you, Your Honor.

14 MR. RUFFIN: Thank you, Your Honor.

15 (WHEREUPON, the proceedings were
16 concluded at 2:59 p.m.)

17 **SEPTEMBER 15, 2015**

18 (WHEREUPON, the proceedings began at
19 11:26 a.m.)

20 THE COURT: All right. So the next case is
21 Emmanuel Elleby.

22 MR. RUFFIN: Your Honor, I have just been
23 informed that he is on the way to court now. As of
24 yesterday -- I haven't had a chance to tell the
25 Prosecutor this yet because I just found this out

1 right before you took the bench. So I think what I
2 would ask -- I know that Ms. Sampson has relayed to
3 me that there has been a plea offer of a negotiated
4 20, this is a mandatory life without parole case,
5 if it goes to trial and he's convicted.

6 Ms. Sampson had relayed to me that if we pick a
7 jury she was going to -- her intention was to
8 revoke the negotiated 20 offer and it would be life
9 whether it be pled or went to trial and was
10 convicted.

11 For that reason, since I have just been
12 informed that he is on the way, I'd ask if we could
13 have until 2:00 o'clock this afternoon to get him
14 signed up for a plea.

15 Yesterday, before he was hospitalized, his
16 intention verbally to me was that he wanted to
17 plead guilty to the offer. If he is on the way
18 now, I can get him signed up, but, you know,
19 between the time he gets here and 2:00 o'clock.
20 Hopefully we will just have a plea at 2:00.

21 THE COURT: All right. The jurors are
22 scheduled to be here at 2:00. So he needs to --
23 and I don't want to make them wait long -- so he
24 needs to be here and signed up ready to go at 2:00
25 o'clock if he is going to plead. If not, we will

1 just bring the jurors up and go ahead and proceed.

2 MS. SAMPSON: And I will just clarify
3 something for the record, because I think I need
4 to. I didn't say that. What I said was, at the
5 time we didn't know whether he was pleading or
6 going to trial, so I said he had until 12:30
7 yesterday to tell me, because at that point we were
8 going to have to tell Your Honor if we needed to
9 pick a jury, or whatever, and once that process
10 started -- but I gave him until 12:30 and said the
11 offer would be revoked at 12:30. He called me at
12 like 12:20, or e-mailed and told me at that time he
13 was accepting the offer and he needed time to sign
14 him up. And it was while he was doing that that
15 the Defendant became ill.

16 I just wanted to make it clear, it wasn't that
17 -- I think it kind of sounded like I was
18 threatening to serve LWOP and then put it back on
19 the table the minute we pick a jury. It is the
20 State's position that once a jury is picked, the
21 trial has started, the offer is revoked at that
22 point.

23 THE COURT: Well, the jurors will be here --
24 we have a panel all ready for this case -- at 2:00
25 o'clock. And so they'll be here at 2:00 o'clock.

1 If he gets here and -- what is it, 11:30 now? I
2 think that is enough time for you all to talk to
3 him again, since he went to the hospital yesterday,
4 or he passed out, or whatever, and then get him
5 signed up. And we'll do that first, and then I
6 will release the jurors if he pleads. If he
7 doesn't, we will go ahead and get started.

8 MS. SAMPSON: And just for scheduling
9 purposes, I understand that Mr. Elleby originally
10 stated that he wanted to plead, but in case somehow
11 he changed his mind and walks in here and wants a
12 trial at 2:00 o'clock, can we at least agree to
13 pick the jury at 2:00 and then -- because we have
14 pretrial -- or do you want to do pretrial -- I am
15 just trying to figure out if we need to have our
16 witnesses here or not at 2:00 o'clock.

17 THE COURT: What do you have?

18 MS. SAMPSON: Denno at least. And the
19 Defendant was on electronic monitoring and being
20 supervised from Probation, Pardon and Parole. I'm
21 assuming there is going to be some argument about
22 that. I don't know how much we will get into in
23 terms of that. It is crucial --

24 THE COURT: Are you all getting into his
25 supervision?

1 MS. SAMPSON: Because that is how they located
2 him. He had an ankle bracelet on, and it was
3 actually putting him in the Dollar General at the
4 time this happened. It is also how Investigator
5 Carwell went to find him and speak with him because
6 they located him through the bracelet. There was a
7 tip that the person who committed the crime was on
8 probation for an armed robbery. They checked with
9 probation, got -- and they gave the address. They
10 checked and found out that there was three people
11 in the house on probation -- or on probation. And
12 Elleby actually had an ankle bracelet on. So there
13 is some information that I don't see how we avoid.
14 And also his Co-Defendant met him at probation.
15 They both admit that is how they met each other.
16 So I understand that there may be some limitations,
17 but I think --

18 THE COURT: I don't know if you can -- and
19 I'll just think about that. I don't think -- I
20 definitely know you can't get into the fact that he
21 is on probation for armed robbery.

22 MS. SAMPSON: I wasn't going to say armed
23 robbery. I just tell the Court what we had told
24 witnesses at this point is to say that he was under
25 the supervision of Probation, Pardon and Parole,

1 and not mention any priors or why he is under the
2 supervision of Probation, Pardon and Parole. But
3 I'm just putting that out there for Your Honor. I
4 understand there is some pretrial we need to get
5 into.

6 THE COURT: Okay. I appreciate that, so I can
7 think about it over the next hour and a half.

8 MR. RUFFIN: And my guess is that our pretrial
9 would probably take most of the afternoon.

10 MS. SAMPSON: I think it will take at least an
11 hour, hour and a half. The Denno shouldn't take
12 that long, it is just a statement, but, you know.

13 THE COURT: And how long is the trial going to
14 take, not including the pretrial? If we the pick
15 jurors today and we also do pretrial today, that is
16 going to take up most of today. I mean, I can go a
17 little bit late today if you think you can get
18 started.

19 MS. SAMPSON: I think that we would
20 potentially be able to finish, depending on if they
21 put up anything, Thursday morning.

22 THE COURT: Your case?

23 MS. SAMPSON: No, I mean *the* case.

24 MR. RUFFIN: It is extremely unlikely that
25 we'll put up anything, Your Honor. I don't

1 anticipate putting anything up.

2 MS. SAMPSON: I think we have ten witnesses.

3 It is not complicated.

4 THE COURT: So the Denno issue, the issue with
5 the probation, and the monitoring?

6 MS. SAMPSON: And I think that is -- I don't
7 know of any other pretrial.

8 MR. RUFFIN: We have a pretrial motion we'll
9 hand over in a second, but it is pretty short. It
10 is with the probation, the search issue. I don't
11 think it will take long.

12 THE COURT: Yes, if you can get that to me,
13 since I kicked my law clerk off of this case, I'll
14 be doing it myself, so it will be nice to have
15 something so I can do a little research.

16 MR. RUFFIN: Okay.

17 THE COURT: I am not as fast as you all in
18 doing Westlaw.

19 MS. SAMPSON: And that's why I wanted to bring
20 it up now. For scheduling purposes, I just needed
21 to know whether to have witnesses here prepared for
22 the case or pretrial.

23 THE COURT: Yes, we'll do pretrial.

24 MS. SAMPSON: Okay.

25 THE COURT: And maybe your first witness.

1 MS. SAMPSON: Okay.

2 THE COURT: If your pretrial doesn't take all
3 afternoon.

4 MR. RUFFIN: Can I approach, Judge.

5 THE COURT: Yes, sir.

6 (Complies.)

7 MR. RUFFIN: So now I will go and try to get
8 him signed up, Judge.

9 THE COURT: All right. Thank you.

10 MS. SAMPSON: Thank you.

11 MR. RUFFIN: Thank you, Judge.

12 THE COURT: So I'll see you all at 2:00.

13 MS. SAMPSON: Okay. Thank you, Your Honor.

14 (WHEREUPON, a break was taken at 11:34
15 a.m.)

16 (WHEREUPON, the proceedings resumed at
17 2:05 p.m.)

18 THE COURT: All right. My understanding from
19 the e-mail from Mr. Ruffin is that Mr. Elleby has
20 decided not to join us this afternoon.

21 I believe that Mr. Ruffin has a motion?

22 MR. RUFFIN: Yes, Judge. I think -- I was
23 going to move to recuse you. I withdraw that
24 because I have been informed by the Solicitor they
25 have replaced Mr. Williams with Ms. Moser, so I

1 think that issue is moot.

2 THE COURT: All right. Let me just put on the
3 record, because the issue was brought up, I did do
4 a search on the canons. And, interestingly enough,
5 I guess because South Carolina is such a small
6 place, there are several judicial opinions that are
7 very much on point as to -- there are several
8 judicial -- there are advisory committee opinions
9 that are online as to the issue of judge's law
10 clerks. And specifically the opinion that I'm
11 referring to are Opinion Numbers 10-2015, Opinion
12 10-2014, and Opinion 10-2011, in which they
13 specifically address the issue of law clerks and
14 their relationship.

15 In one case, I guess the most recent one this
16 year, the circuit court judge had expressed an
17 interest in hiring a law clerk for 2016-2017. The
18 potential law clerk's father was an attorney who
19 frequently appears in the judge's court in both
20 civil and criminal cases, as does the father's law
21 partner.

22 The judge inquired as to whether the judge
23 could preside on matters in which the law clerk's
24 father or his partner appeared. And it says that
25 the Court does not have to automatically disqualify

1 him or herself from the proceedings in which the
2 attorney is appearing before the judge who is the
3 father of the judge's law clerk. It goes on to
4 read that the law clerk must be disqualified from
5 participating in the trial. I believe all three
6 opinions state that.

7 And one specifically goes on to speak of Canon
8 3(e), which requires -- Canon 3, which would
9 require the disqualification if I in fact was
10 married to Mr. Williams, but because I am not, the
11 proper way to -- according to these opinions -- to
12 secure that issue is to remove the law clerk, which
13 I have done.

14 Furthermore, it appears that Mr. Williams has
15 been removed from the case. He was the second seat
16 in the case. This is actually Ms. Sampson's case.
17 He was second-seating her. But they have made the
18 decision, I guess, to make sure there is no
19 question, I guess, of impropriety to remove him
20 from the case also.

21 MS. SAMPSON: And for the record, simply
22 because this happened over and over again, I did it
23 out of an abundance of caution in this particular
24 case, even though it will be a detriment to the
25 State, as I have prepared this case with

1 Mr. Williams the entire time, Ms. Moser graciously
2 agreed to step in like an hour ago in order to do
3 that. But we had case law to give to Your Honor
4 and to the other side in terms of that we believe
5 it is proper for you to stay on the case.

6 I will hand it up just for the record. It is
7 Dixon v. Simpson, 377 S.C. 519. But in particular
8 in this case, the judge's husband worked with one
9 of the parties -- was the partner of one of the
10 parties. And the Court said that that was okay,
11 that it would be required that whoever was
12 objecting to show actual prejudice, not the chance
13 that there might be prejudice. So it is our
14 opinion that you could. But to be clean, because
15 of the seriousness of this case and the allegation,
16 we just felt it was cleaner to remove Mr. Williams.

17 THE COURT: And my law clerk, even though you
18 are removing him, she will stay in the office and
19 do research on all of my non-jury matters that I
20 have under advisement. So there will be no work by
21 her on this case at all.

22 All right. So he is not here. The jurors are
23 downstairs. We have a panel; is that correct?

24 THE CLERK: Yes, ma'am.

25 THE COURT: Any other motions before I bring

1 the jurors up?

2 MR. RUFFIN: Yes, Judge. I mean, I would

3 object to Mr. Elleby being tried in his absence.

4 The reason, you know, because I guess starting with

5 a couple of weeks ago when he was served with life

6 without parole notice and the kidnapping

7 indictment, he was booked into the jail on a PR

8 bond. And my hope was to discuss a plea and trial

9 in the days after that so that we could make sure,

10 because my understanding was that this was going to

11 be a plea. And I have not been able to get in

12 touch with him, so I had no contact with Mr. Elleby

13 until yesterday when he showed up for his trial

14 date.

15 Yesterday he verbally stated to me his

16 intention was to plead guilty, that he wanted to

17 accept the State's offer, which was a negotiated 20

18 years.

19 Obviously, after he gave -- you know,

20 verbalized his intention to me, he was hospitalized

21 for, I suppose, having a panic attack or a seizure

22 or some issue.

23 This morning he was not here, so we

24 actually -- I know that I said earlier today that

25 he was on his way. So I want to clarify exactly

1 what information I had at that time when I said
2 that, which was when he didn't show up this
3 morning, we sent our investigator, our in-house, at
4 the Public Defender's Office, our investigator, to
5 his house. He spoke to Mr. Elleby's uncle, who
6 apparently also resides at the same house.

7 The uncle stated to our investigator: I have
8 not seen Emmanuel this morning, but the TV is on in
9 his bedroom, and I will let him know that you are
10 looking for him and that he is supposed to be in
11 court. And I will tell him to get to court if I
12 see him.

13 Our investigator said, you know: Well, I'll
14 hang out around this area. If he shows up I will
15 give him a ride to court if necessary.

16 So he stayed around the area. And I think he
17 went back to Mr. Elleby's house about 30 or 40
18 minutes later. And at that time the uncle informed
19 him: Mr. Elleby was here. I told him what you
20 said. And he told me that he was going to go up to
21 court.

22 So he supposedly took the bus to go up to
23 court.

24 And he is not here, obviously.

25 My concern, Judge, is that Mr. Elleby has

1 verbally accepted the plea offer to me. I
2 understand it is really not official, obviously,
3 until a judge accepts the plea when he stands in
4 front of the Court, but because this is a mandatory
5 life without parole case, I think it just, from a
6 fundamental fairness perspective, that the most
7 appropriate thing to do here, instead of try him in
8 his absence, is to issue a bench warrant. I mean,
9 for all I know they could find him later this
10 afternoon and serve the bench warrant and get him
11 in jail and, you know, we could have him in court
12 pleading or a trial as soon as possible and he'll
13 sit in jail until that happens.

14 I think to go forward on a TIA when, I mean,
15 again, for all I know he may come walking in the
16 door at 4:00 o'clock this afternoon saying that he
17 wants to plead, and I'm supposed to tell him as his
18 attorney, you know: Sorry, you are two hours too
19 late. Now you are looking at mandatory life
20 without parole.

21 The plea offer, I'm certain, will be off the
22 table once we pick a jury and once we start
23 pretrial. There is really no going back after that
24 once the jury is sworn. So my fear is that the
25 prejudice that Mr. Elleby will suffer is extreme.

1 I mean, the difference between a 20-year sentence
2 and life without parole is abundantly clear. That
3 is a huge difference.

4 And the State I don't think suffers any real
5 prejudice if they just issue a bench -- if you
6 issue a bench warrant and they maybe have to --
7 they may pick him up over the weekend or next week
8 or later today and the case gets tried a couple of
9 weeks from now or is a plea a couple of weeks from
10 now. I don't see how the State is prejudiced by
11 that. Whereas, once we swear a jury in this case,
12 and if Emmanuel is convicted, that can't be undone.
13 He has now got a mandatory life sentence that
14 cannot be changed. He now has no opportunity to
15 take the 20-year plea, even though he has already
16 said he wants that.

17 So I just feel like that from a fundamental
18 fairness perspective that it makes more sense to
19 issue a bench warrant for his arrest, and if he
20 comes walking in the door two hours from now and he
21 can be taken into custody right then and taken to
22 the jail. And, you know, a bench warrant can be
23 served on him right there. And I certainly, you
24 know, I feel like I don't have any real argument
25 against that, but as far as this issue right this

1 second if he shows up later today he can be taken
2 into custody, that's fine. But to start a trial
3 and basically force him into a LWOP situation I
4 think is inappropriate.

5 THE COURT: All right. He was aware that he
6 was on the trial docket for this week?

7 MR. RUFFIN: Yes.

8 THE COURT: And when was he served notice of
9 the LWOP?

10 MR. RUFFIN: September 1st.

11 MS. SAMPSON: September 1st.

12 THE COURT: So it is within the time period?

13 MS. SAMPSON: Yes, ma'am. This is a copy. I
14 made three originals at the time he was served, so
15 that is actually an original of his notice, which
16 was done on September 1st.

17 It just states within ten days he will be
18 tried and upon conviction will get life-- seek life
19 without the possibility of parole.

20 At that time I put him on notice verbally and
21 stated on the record that we would be calling this
22 case the week of September 14th. It is on his bond
23 form. It states that we can go to trial without
24 his presence.

25 Also, I need to correct something Mr. Ruffin

1 stated. He stated that the Defendant had a PR
2 bond. He had a bond, a regular surety bond, on his
3 armed robbery case. That has been in place since
4 the arrest.

5 When I served him with the life notice, I also
6 served on him the DP indictment for kidnapping. We
7 directly presented a kidnapping charge at the same
8 time we presented the armed robbery charge to the
9 Grand Jury, and he was true-billed on it, but I had
10 never served him in person with that kidnapping.
11 So he did get a PR bond on the kidnapping, but that
12 was because he was served with the kidnapping. It
13 was on the same charge. So I don't think it is
14 correct to say he was out on a PR bond. He was out
15 on a \$60,000, I believe, was the amount of the
16 surety bond, as well as a PR bond on the kidnapping
17 charge.

18 I would hand to the Court case law, State v.
19 Ravenel and State v. Moore. State v. Moore, the
20 cite is 308 S.C. 349 and for State v. Ravenel it is
21 387-449. Both of these cases state it is within
22 the sole discretion of the judge to proceed so long
23 as there has been proper notice given to the
24 Defendant of his trial date, as well as that the
25 trial could go. I believe both of those have been

1 done with Mr. Elleby.

2 Yesterday he was here speaking to his
3 attorneys, told that we would go forward. He did
4 not -- clearly he got ill, whatever happened. He
5 is not here today. They even sent someone to go
6 tell him he needed to be at court today, and he is
7 still not here today.

8 As you are well aware, I said the offer was
9 only good through 2:00 o'clock because we all had
10 to be here to start the trial. We said that
11 yesterday that it was only good through 12:30
12 yesterday. The offer is now -- we are here at
13 trial. The offer is gone. We are at trial. We
14 told him of the intention to seek life without
15 possibility of parole two weeks ago.

16 It is the State's position that he has been
17 properly notified. It is within your judge's
18 discretion to do what you want. I don't believe --
19 the prejudice he got is his own fault.

20 THE COURT: Let me ask you this. So your
21 position is that you are -- that the offer has
22 expired at 2:00 o'clock, regardless of whether or
23 not he comes in or not?

24 MS. SAMPSON: Correct. The policy of our
25 office has always been -- and they knew this

1 yesterday -- that once you start a trial there are
2 no offers.

3 THE COURT: Let me ask you this. If he comes
4 in during the trial and decides -- of course, you
5 have withdrawn your offer -- he wants to plead --
6 this is what I'm -- and he wants to plead
7 straight-up --

8 MS. SAMPSON: I would have to go get
9 permission from the Solicitor in order to withdraw
10 my service of intention to seek life without
11 possibility of parole at that point.

12 THE COURT: The offer is off the table, but
13 you would have to --

14 MS. SAMPSON: Correct. If he walked in here
15 two hours from now, that scenario, and stated he
16 now wanted to accept the offer, I would have to go
17 get permission from the Solicitor in order to
18 withdraw that.

19 Furthermore, Your Honor, I understand --
20 again, the prejudice -- this is prejudice that he
21 brought onto himself.

22 THE COURT: Well, I understand. I mean, the
23 reason he is not here is because of himself and no
24 reason else has been articulated to the Court.

25 And I think as far as fundamental fairness, he

1 had a panic attack, or whatever it is he had
2 yesterday, and I gave him until this afternoon to
3 show up.

4 I don't know how much fairer you can be to
5 someone who knows that they are on the trial docket
6 and someone who knows they have been served life
7 without parole and someone who was told that the
8 offer would expire on yesterday, and has now
9 somehow been pushed to 2:00 o'clock. I don't know
10 how much fairer I can be in allowing him to try to
11 circumvent the process, the judicial process, and
12 his not being here today. And I have even given
13 him the option of providing us with a doctor's
14 excuse to say he cannot be here, and he is still
15 not here.

16 So once the State establishes, as they should
17 establish that proper notice has been given to him,
18 you'll need to make that a part of the record and
19 that he has been put on notice that he could be
20 tried in his absence. Once that is established, I
21 am going to allow that. I am not going to -- if he
22 does show up, he is more than welcome to plead
23 straight-up in front of me. And then we'll have to
24 discuss the issue regarding the LWOP if, you know,
25 he shows up here and decides he wants to take

1 responsibility during the course of the trial. I
2 will be glad to take the plea straight-up and ask
3 the Solicitor at that point in time if they will
4 withdraw the life without parole. But, of course,
5 that is going to be -- the final decision will
6 be -- I don't think I have the authority to dismiss
7 it. But I'll look -- I have researched it before,
8 but I don't know if I have the authority to dismiss
9 the life without parole unless there is something
10 wrong with the service or the notice.

11 MS. SAMPSON: And I will put on the record, if
12 he were to show up, I will -- whenever we get done
13 this afternoon -- clearly I cannot be in two places
14 at one time, but once we are done and I have the
15 opportunity, I will speak with the Solicitor and
16 ask in the situation -- this is the first time I
17 had this situation come up -- if he is willing to
18 withdraw the notice if necessary.

19 THE COURT: So you all can withdraw it. I
20 just don't know if I can --

21 MS. SAMPSON: I am not in a position as the
22 Assistant Solicitor to make that call, so I will
23 check with him.

24 THE COURT: My problem is there is a jury
25 downstairs.

1 MS. SAMPSON: Right.

2 THE COURT: And I think we've been more than
3 fair in giving him time to get here. It is 2:00
4 o'clock. And it is 2:22 now for the record. And
5 this case has been on the trial docket. And
6 everyone else is here prepared to go forward. And
7 it appears that Mr. Elleby, for whatever reason, is
8 trying to avoid court. I'm not sure if he got sick
9 on yesterday or not. But there has been some
10 hesitation apparently from him regarding his coming
11 to court.

12 So I am going to respectfully deny the motion
13 to continue the matter based on -- he has been
14 placed on notice. Of course, the State has to be
15 able to establish that he has been placed on notice
16 and that he was placed on notice that he would be
17 tried in his absence. That is something that you
18 need to enter into the record.

19 MS. SAMPSON: And, for the record, I just had
20 the clerk go get it. I didn't bring my copy of the
21 bond form that shows that, but I will present it as
22 soon as I have it, bring it to Your Honor and make
23 it part of the record.

24 MR. RUFFIN: Judge, if I could just add, since
25 you brought up the medical issue yesterday, part of

1 the problem I'm having with this -- I understand
2 that you already ruled. I need to put this on the
3 record, though -- part of the issue that -- one of
4 the problems that I have with this is that, you
5 know, we don't know where he is. I mean, I don't
6 know that -- if he is in a hospital or not. We
7 haven't been able to verify that he is not in a
8 hospital. You know, the information that I got,
9 like I said, was something relayed to me from my
10 boss, which was relayed to her from our
11 investigator, which was relayed to him from
12 Emmanuel's uncle.

13 THE COURT: Who said he told him he needed to
14 get to court; right?

15 MR. RUFFIN: Right, he said that.

16 THE COURT: But the problem is he knew
17 yesterday that he was supposed to be in court. He
18 knew yesterday -- he did not contact his attorney
19 at all this morning. I'm sure you told him -- I
20 think you represented to the Court yesterday that
21 he was supposed to call you soon as he was released
22 or yesterday evening. He has not done that. So I
23 don't know how -- I mean, everyone else has done
24 what they are supposed to do. It appears that your
25 office has done a little bit more in sending the

1 investigator to his house. Everyone has done what
2 they are supposed to do except for him.

3 And so that is the reason why -- and I have
4 given him additional time today to get here even to
5 this afternoon as opposed to calling the case this
6 morning or earlier this morning to give him some
7 time and give you some time to speak with him, and
8 he still is not here.

9 Also, is he on a monitor or something?

10 MS. SAMPSON: Not anymore.

11 MR. RUFFIN: No, he is not. And with all due
12 respect, Judge, you asked what could we do to be
13 more fair. I mean, I think that issuing a bench
14 warrant is absolutely more fair than trying
15 somebody in their absence when they are facing a
16 mandatory life sentence. He can't get less than
17 life if he is convicted at trial. If he is bench
18 warranted -- I mean, these deputies could go find
19 him probably within a couple of hours and pick him
20 up and put him in jail. And then we could try him
21 with him being present. So I think that that is
22 more fair than trying someone in their absence for
23 a mandatory life case.

24 MS. EIGENBROT: And, Your Honor, if I may
25 state, when Mr. Elleby left the office yesterday,

1 he was non-responsive. We have no idea what time
2 he was released, what the circumstances are when he
3 was allegedly released. We don't know if he
4 checked himself back in on the way over here. It
5 seems that these issues are caused by -- his health
6 issues are caused by extreme bouts of stress.

7 I would contend that being in trial or facing
8 20 years in prison or life in prison at the end of
9 this causes him severe stress. He may have been on
10 his way over here and then had to go back to the
11 hospital. We just don't know at this point, which
12 is why we believe at this point it is better to
13 issue a bench warrant in attempt to find him as he
14 is facing life without parole.

15 THE COURT: Well, see, what I think what you
16 all are missing is the Solicitor is saying that her
17 offer has expired. Regardless of whether or not I
18 start the trial or not, she is saying her offer has
19 expired.

20 MS. EIGENBROT: And, Your Honor, we understand
21 that. However, as they stated, this trial should
22 not be very long. It could be over and he could be
23 convicted in a day and a half.

24 THE COURT: Well, but if -- but in a day and a
25 half you cannot tell me that he cannot get in touch

1 with his attorney. And you are saying in a day and
2 a half. Since yesterday afternoon when he passed
3 out, or whatever it was, that by Thursday if he has
4 not responded, that -- I don't understand -- and I
5 have already made the offer that he can plead
6 straight-up. The Solicitor has already made the
7 offer that if I will accept the plea straight-up
8 she will go and ask the Solicitor if she can
9 withdraw the life without parole. I don't know how
10 much fairer I can be to somebody who is not
11 responding to the Court.

12 MS. EIGENBROT: Your Honor, I just want to
13 place on the record that at this point we don't
14 know what his medical state is. And that is part
15 of the reason we are requesting it.

16 THE COURT: And if he comes and he is in the
17 hospital we will deal with that at that point.
18 But he is not giving us anything. And based on
19 what your investigator said, his uncle told you
20 that he talked to him earlier today and told him to
21 come to court. I mean, I don't know what else -- I
22 mean, I don't know how much fairer you can be to
23 somebody. But we are going to -- I'm going to deny
24 the motion, and we'll go ahead and proceed with the
25 trial.

1 MS. EIGENBROT: Thank you, Your Honor.

2 MS. SAMPSON: For the record, Your Honor, I
3 had my clerk go pull his bond form on the armed
4 robbery. I'm sure -- I guess we will make it a
5 Court Exhibit. But he signed the back of it on
6 August I believe the 26th of last year. And it
7 states that he will be tried in his absence at the
8 top, the first paragraph, I believe is what it
9 said. He signed that on August 14th. He didn't
10 make bond until I believe it says April of 2015.
11 But he was notified way back then that we would
12 proceed without him. And we told him again on the
13 record on September 1st.

14 THE COURT: All right. It says:
15 I understand and I have been informed
16 that I have a right and an obligation to
17 be present at trial. Should I fail to
18 attend the trial will proceed in my
19 absence. It has been explained if I
20 fail to appear before the court as
21 required, a warrant for my arrest will
22 be issued.

23 And it is signed by him on August 26th, 2014.
24 We'll make this a part of the record. We'll make
25 this Court Exhibit Number 1.

1 (WHEREUPON, Court Exhibit No. 1 was
2 marked for identification only.)

3 THE COURT: And what about his bonding
4 company? Has anybody spoken with his bonding
5 company?

6 MR. RUFFIN: I have not, Judge, but he does
7 have a bonding company. I didn't mean to say -- he
8 had a PR bond initially.

9 THE COURT: That's fine. And he is not on a
10 monitor?

11 MS. SAMPSON: No. He was on a monitor for
12 community supervision. That supervision ran out.
13 He was on for two years. This happened about 18
14 months after he was placed on community
15 supervision, so in that time period between
16 supervision finished and they took the bracelet
17 off, so, no, he is not on a monitor now.

18 THE COURT: All right. So what we are going
19 to do is we are going to pick the jury. And I
20 think you all have some pretrial?

21 MS. SAMPSON: Can I just -- I hate to
22 interrupt. I have one matter that I believe was a
23 scrivener's error and I wasn't sure if I needed to
24 bring it to the Court's attention. It is on the
25 indictment.

1 His armed robbery indictment has the correct
2 date of August 22nd, 2014. His kidnapping does
3 not, a different date, but it is for the same
4 crime. We would allege it is a scrivener's error
5 for the kidnapping. I don't know what their
6 position is going to be. It has never been brought
7 up by them before. We would ask to amend it on the
8 record today.

9 THE COURT: It has October 28?

10 MS. SAMPSON: Correct. The armed robbery has
11 been corrected of August 22nd.

12 THE COURT: Any objection? They are making a
13 motion to amend it on the record.

14 MR. RUFFIN: No. Judge, I mean, that is
15 right. August 22nd is the correct date on armed
16 robbery.

17 THE COURT: All right. Anything -- any voir
18 dire? What I am thinking we will do is pick the
19 jurors and then send them -- it is 2:30. By the
20 time we get them picked -- and the strikes are
21 going to be ten and five.

22 MS. SAMPSON: I'm sorry, Your Honor. Here is
23 the State's proposed voir dire, or voir dire,
24 whatever.

25 MR. RUFFIN: This is the Defendant's.

1 THE COURT: Just from a procedural -- so what
2 we'll do is we will pick the jury, hear pretrial
3 motions. I will not swear the jury.

4 MR. RUFFIN: Okay.

5 THE COURT: To be even more fair to the
6 Defendant. So you can go ahead and get your people
7 to continue to look for him. The jury will not be
8 sworn until tomorrow morning.

9 MR. RUFFIN: Certainly appreciate that.

10 THE COURT: I understand the position that
11 y'all are in. But if you can tell your people that
12 they need to try to find him between now and
13 tomorrow morning. The jurors will not be sworn
14 until tomorrow morning. We will just pick the jury
15 and then we'll do pretrial this afternoon.

16 MS. SAMPSON: And the only other thing, we
17 gave you our proposed -- and I think Mr. Ruffin is
18 saying there is some overlap, but I don't have any
19 objection to their questions. I think they have
20 additional questions that are not normally in there
21 about whether he worked for retail sales. I don't
22 have a problem with that. But I think otherwise we
23 may have almost the exact same questions.

24 MR. RUFFIN: We certainly don't have any
25 objection to their proposed voir dire.

1 THE COURT: You don't have any?

2 MR. RUFFIN: No.

3 THE COURT: And you don't have any objection
4 to his?

5 MS. SAMPSON: No, ma'am.

6 THE COURT: All right. And we have the strike
7 sheet. And I have the indictment.

8 You can go ahead and give them the strike
9 sheet. I know other people don't, but it doesn't
10 bother me.

11 All right, let me just go over the witness
12 list just to make sure I have all the names. All
13 of them are pretty straightforward except,
14 Trobathian?

15 MS. SAMPSON: I don't know how to say it
16 either. Can we just say Deputy Johnson?

17 THE COURT: Trobothian, Officer Johnson, and
18 is it Mariola Woods?

19 MS. SAMPSON: I don't know how to say that
20 either, I just say Deputy Woods.

21 MS. EIGENBROT: I think it is Mariola, Your
22 Honor.

23 THE COURT: Mariola? Okay. And Trobathian?
24 Do y'all have any other potential witnesses?

25 MS. EIGENBROT: No, Your Honor.

1 THE COURT: Are we ready to bring the jurors
2 up?

3 MS. SAMPSON: Yes, ma'am, the State is, Your
4 Honor.

5 THE COURT: All right. You can bring them in.
6 (Pause.)

7 THE CLERK: We are missing some jurors. I'll
8 use the numbers to the left of the name. Number 4
9 isn't here. Number 5 is not here. Number 23 is
10 not here. 26 is not here. 27 is not here. 28 is
11 not here. 31 is not here. 37 and 45.

12 THE COURT: How many does that leave?

13 THE CLERK: We will have total of 36.

14 THE COURT: How many do we need? The strikes
15 are 10 and 5.

16 MS. SAMPSON: We need 27 jurors.

17 THE COURT: 27?

18 MS. SAMPSON: If everybody used all their
19 strikes. And that is without alternates. So if we
20 pick two alternates, 29.

21 THE COURT: So we have more than enough. Are
22 they on the way?

23 THE CLERK: Yes, ma'am.

24 (WHEREUPON, the jury panel came into
25 open court at 2:44 p.m.)

1 THE BAILIFF: The jury panel is present, Your
2 Honor.

3 THE COURT: All right, thank you.

4 All right. Good afternoon, ladies and
5 gentlemen of the jury. I will introduce myself to
6 you, since I believe Judge Newman qualified you on
7 yesterday.

8 My name is DeAndrea Benjamin. And I am a
9 resident judge here in Richland County. I have
10 been -- we are circuit court judges, so we travel
11 all over the state, so this is my first week back
12 in Richland County in some time. It is always a
13 pleasure to be with you here in Richland County.

14 Before we get started, there is a series of
15 questions that I need to ask of you to determine if
16 you can be fair and impartial jurors in this case.

17 Madam Clerk, have they already been sworn?

18 THE CLERK: They were sworn yesterday morning.

19 THE COURT: I will remind you that you are
20 still under the oath that you took yesterday
21 morning in response to any of those questions.

22 Ladies and gentlemen, once again, there is a
23 series of questions that I would ask of you to
24 determine if you can be fair and impartial in this
25 trial.

1 As you did on yesterday, if there is a
2 question that you answer in the affirmative, I will
3 ask you to stand up, state your name and juror
4 number, and then we will ask you the next question.

5 Ladies and gentlemen of the jury, we are about
6 to begin the trial of the case of the State of
7 South Carolina against Emmanuel Elleby.

8 Mr. Elleby is charged in these indictments --
9 and I'll go ahead and tell you that he is charged
10 in these indictments with -- the first indictment
11 is Indictment Number 2014-GS-40-7355, he is charged
12 with armed robbery.

13 The indictment reads that: Emmanuel Bashan
14 Elleby did, in Richland County, on or about
15 August 22, 2014, commit robbery by feloniously
16 taking from the person or presence of Kenneth C.
17 Gardner, by means of force or intimidation, goods
18 or monies of Dollar General and/or Kenneth C.
19 Gardner, such as goods or monies, being described
20 as U.S. currency, in the amount of \$387, and five
21 packs of cigarettes, and/or a cell phone, with the
22 intent to deprive the owner permanently of such
23 property, while armed with a pistol, dirk,
24 slingshot, metal knuckles, razor, or other deadly
25 weapon, or while alleging either by actions or

1 words that he was armed while using a
2 representation of a deadly weapon or an object
3 which a person present during the commission of the
4 robbery reasonably believed to be a deadly weapon,
5 all in violation of South Carolina Code of Laws
6 Section 16-11-330(a).

7 The second indictment alleges that: On
8 August 22nd of 2014 that Emmanuel Elleby did, in
9 Richland County, unlawfully seize, confine,
10 inveigle, decoy, kidnap, abduct, or carry away one
11 Kenneth C. Gardner without authority of law in
12 violation of Section 16-3-910, South Carolina Code
13 of Laws, 1976, as amended. This is an indictment
14 for kidnapping, Indictment Number 2014-GS-40-7364.

15 Ladies and gentlemen of the jury, I will tell
16 you that these indictments are simply the charge by
17 which the case is brought into court and it is not
18 in any sense any evidence against the Defendant in
19 this case. These are allegations that are brought
20 by the court. The Defendant in this case has pled
21 not guilty to these indictments and the State has
22 the burden of proving to you beyond a reasonable
23 doubt that the Defendant is guilty beyond a
24 reasonable doubt of these indictments. These are
25 the charging papers that contain the allegations by

1 the State.

2 The first question -- and I will tell you all,
3 the victim in this case is not present right now
4 and neither is the Defendant present right now.
5 That is not for your consideration. I will give
6 you as much information as far as spelling of names
7 of any potential witnesses to make sure you do not
8 have a relationship or not, you know any of the
9 witnesses.

10 So my first question, is anyone related by
11 blood or marriage to the Defendant? And I believe
12 his full name is Emmanuel Bashan Elleby, spelled
13 E-L-L-E-B-Y. And the victim in this case is a
14 Kenneth C. Gardner. Is there any member of the
15 jury panel who is related by blood or marriage to
16 either Kenneth C. Gardner or Emmanuel Bashan
17 Elleby?

18 (WHEREUPON, there was no response.)

19 THE COURT: All right. Does anyone have a
20 close personal, business, or social relationship
21 with either Mr. Gardner or Mr. Elleby? If so,
22 please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: And I will ask, because
25 Mr. Gardner I believe is working at the Dollar

1 General, does anyone have a business relationship
2 with the Dollar General stores? If so, please
3 stand.

4 Yes, sir, your juror number?

5 THE JUROR: 66.

6 THE COURT: All right. And what is your
7 business relationship with the Dollar General?

8 THE JUROR: We provide security systems for
9 Dollar General as a subcontractor.

10 THE COURT: All right. And would that affect
11 your ability to be fair and impartial in this
12 trial?

13 THE JUROR: I don't think so.

14 THE COURT: All right. And the answer is
15 either yes or no. Let me see the lawyers one
16 second.

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury but out of
19 the hearing of the jury.)

20 THE COURT: All right. Thank you. You may
21 have a seat.

22 (Complies.)

23 THE COURT: All right. Yes, sir?

24 THE JUROR: 29.

25 THE COURT: Yes, sir?

1 THE JUROR: And I was thinking that man looked
2 familiar. When you said Dollar General, I knew
3 exactly who it was, because I am --

4 THE COURT: Hold on one second. Do you work
5 for --

6 THE JUROR: I do subcontract work for Dollar
7 General. But I know this particular person,
8 Mr. Gardner.

9 THE COURT: You know Mr. Gardner?

10 THE JUROR: Right. Because I did some work
11 over there.

12 THE COURT: And would that affect your ability
13 to be fair and impartial in this trial?

14 THE JUROR: No.

15 THE COURT: Now, how do you know Mr. Gardner?

16 THE JUROR: He worked at Dollar General.

17 THE COURT: Okay. Hold on one second. I am
18 going to ask the question. So you know him from
19 working at Dollar General?

20 THE JUROR: That's correct.

21 THE COURT: And would that affect your ability
22 to be fair and impartial in this trial?

23 THE JUROR: No.

24 THE COURT: All right. Thank you.

25 THE COURT: And you are Juror Number 29?

1 THE JUROR: Yes, ma'am.

2 THE COURT: All right. The next is a list of
3 witnesses that may testify in this case. I will
4 call their names. And then if you know any of
5 these witnesses, if you have a close personal,
6 social, or if you are related by blood or marriage,
7 or if you have a business relationship with any of
8 these witnesses I will ask you to please stand.

9 And I have already named Kenneth C. Gardner.

10 The next is Investigator John Carwell. Is he
11 here? Let me have you stand up. And if any of my
12 witnesses are in the courtroom, they can stand up.

13 (Stands.)

14 THE COURT: All right, thank you.

15 (Seated.)

16 THE COURT: The witnesses that I name.
17 Investigator Ronald Truluck. And they are
18 with the Sheriff's Department?

19 MS. SAMPSON: Correct.

20 THE COURT: All right. They are with the
21 Richland County Sheriff's Department.

22 Elizabeth Coleman. Who is she with?

23 MS. SAMPSON: She is with Dollar General.

24 THE COURT: Dollar General.

25 Investigator Greene, with Probation, Pardon

1 and Parole.
2 Lieutenant Wyatt, Richland County Sheriff's
3 Department.
4 Kenneth Bracey.
5 Breanna Hampton.
6 Sheila Ashley.
7 Brittany Nicole Elleby-Lewis.
8 Devin Boler.
9 Sergeant Don Robinson.
10 Inez Davis.
11 Investigator Beeler, with the Sheriff's
12 Department.

13 And I will spell this one. I think it is
14 Trobathian Johnson -- T-R-O-B-A-T-H-I-A-N -- with
15 the Richland County Sheriff's Department.

16 Mariola Woods, with the Richland County
17 Sheriff's Department.

18 Is there any member of the jury panel who is
19 related by blood or marriage to any of the people
20 that I just listed or anyone who has a close
21 personal, social, or business relationship with any
22 of these people? If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. All right, the
25 attorneys in this case, for the State is Ms. April

1 Sampson and Ms. Sandra Moser.

2 (Stand.)

3 THE COURT: And for the Defendant, the
4 attorneys are Adam Ruffin and Megan Eigenbrot.

5 (Stand.)

6 THE COURT: Thank you.

7 (All seated.)

8 THE COURT: And Ms. Moser and Ms. Sampson are
9 with the Richland County Solicitor's Office, and
10 Mr. Ruffin and Ms. Eigenbrot are with the Richland
11 County Public Defender's Office.

12 Has any member of the jury panel been
13 represented by any of the attorneys involved in
14 this case or anyone in their office? If so, please
15 stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Has anyone ever been related by
18 blood or marriage to or has a close personal or
19 social relationship with any of the attorneys
20 involved or anyone in their office? If so, please
21 stand. Does anyone have a close relationship to
22 anyone in the Solicitor's Office or the Public
23 Defender's Office?

24 All right, yes, ma'am?

25 THE JUROR: I'm Juror Number 135. And I'm a

1 friend of one of the Solicitor's Office employees.

2 THE COURT: All right. And which friend? And
3 who is that?

4 THE JUROR: Yvette Miller.

5 THE COURT: All right. And I don't believe
6 she is involved in this case. But the fact that
7 you are friends with Yvette Miller, who works in
8 Solicitor's Office, would that affect your ability
9 to be fair and impartial in this case?

10 THE JUROR: No.

11 THE COURT: All right, thank you.
12 Anyone -- oh, yes, sir?

13 THE JUROR: Eric Martin, Juror 169. Dan
14 Johnson and I were roommates in law school.

15 THE COURT: In law school. Okay. And the
16 fact that you and Dan Johnson were roommates and he
17 is the Solicitor in this case, would that affect
18 your ability to be fair and impartial in this
19 trial?

20 THE JUROR: No.

21 THE COURT: Thank you.

22 Anyone else?

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Is there any member of
25 the jury panel who has formed or expressed an

1 opinion about any issue or matter involved in this
2 case? If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Is there any member of the jury
5 panel aware of any bias or prejudice towards either
6 the State or the Defendant in this case? If so,
7 please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Is there any member of the jury
10 panel that was a member of the Grand Jury which
11 issued the indictments in this case? If so, please
12 stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Is there any member of the jury
15 panel or a member of a potential juror's family
16 that is or has been in the past employed by any
17 local, state, or federal law enforcement agency,
18 including, but not limited to; the City of Columbia
19 Police Department, the Richland County Sheriff's
20 Department, the State Law Enforcement Division, or
21 the Federal Bureau of Investigation, which is the
22 FBI?

23 All right?

24 THE JUROR: I'm Juror Number 65. And my
25 brother-in-law is a federal police officer.

1 THE COURT: From where?

2 THE JUROR: Washington, D.C.

3 THE COURT: Okay. And would that affect your
4 ability to be fair and impartial in this trial?

5 THE JUROR: No.

6 THE COURT: All right, thank you.

7 Yes, ma'am?

8 THE JUROR: I'm Juror 46. I used to be
9 employed as a deputy sheriff in Brevard County,
10 Florida.

11 THE COURT: And, ma'am, would that affect your
12 ability to be fair and impartial in this trial?

13 THE JUROR: No.

14 THE COURT: All right, thank you.

15 Is there anyone else?

16 (WHEREUPON, there was no response.)

17 THE COURT: Is there any member of the jury
18 panel or any member of the potential juror's family
19 that is a member of, contributor to, or employee of
20 any group which its primary concern with the
21 promotion of law enforcement, such as, but not
22 limited to, DARE, CAVE -- which is Citizens Against
23 Violent Crime -- CADRE -- I don't know what that
24 one stands for, but it is a victim's rights
25 group -- MADD -- Mothers Against Drunk Driving --

1 and SADD -- Students Against Drunk Driving? Is
2 there any member of the jury panel or a potential
3 juror's family that is a member, contributor, or
4 employee of any of these groups? Please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Is there any member of the jury
7 panel or any member of the potential juror's family
8 that is a member or contributor to or employee of
9 any group which has its primary concern with victim
10 support or victim advocacy, such as, but not
11 limited to, Sister Care, or an organization similar
12 to that? If so, please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Has any member of the jury panel
15 or any member of a potential juror's family ever
16 been a victim of a violent crime? This would
17 include, but is not limited to, assault and
18 battery, domestic violence, and robbery. If so,
19 please stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. And let me also say
22 this to you. I didn't say this to you earlier, but
23 if there is any question that you do not feel
24 comfortable answering in front of the panel, I will
25 give you an opportunity to speak with me at the end

1 privately, me and the attorneys privately at the
2 end.

3 All right. Yes, ma'am? Juror Number?

4 THE JUROR: 65.

5 THE COURT: All right. Yes, ma'am?

6 THE JUROR: When I was in college I was
7 robbed.

8 THE COURT: All right. And, ma'am, do you
9 remember what year that was?

10 THE JUROR: In the 80s.

11 THE COURT: Okay. And, ma'am, would that
12 affect your ability to be fair and impartial in
13 this trial?

14 THE JUROR: No.

15 THE COURT: All right, thank you.

16 Yes, ma'am?

17 THE JUROR: Juror Number 54, Jennifer Cogan.
18 Back in the early 2000s, I was the victim of
19 domestic violence.

20 THE COURT: And, ma'am, would that affect your
21 ability to be fair and impartial in this trial?

22 THE JUROR: No.

23 THE COURT: All right, thank you.

24 Yes, ma'am?

25 THE JUROR: Juror Number 135. I had three

1 uncles that were murdered.

2 THE COURT: All right. And would that affect
3 your ability to be fair and impartial in this
4 trial?

5 THE JUROR: No.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 THE JUROR: 220. Jeanne Reynolds. I was
9 robbed at gunpoint during a vacation in Mexico
10 about 30 years ago.

11 THE COURT: And, ma'am, would that affect your
12 ability to be fair and impartial in this trial?

13 THE JUROR: No.

14 THE COURT: All right, thank you.

15 And right behind you. Yes, sir?

16 THE JUROR: Juror 29. 1996 I was robbed and
17 hospitalized.

18 THE COURT: In '96? Sir, would that affect
19 your ability to be fair and impartial in this
20 trial?

21 THE JUROR: No.

22 THE COURT: All right.

23 And, yes, sir?

24 THE JUROR: Juror Number 217. Last year my
25 wife's grandmother had a man force his way into her

1 home and he tied her to the bed and robbed her
2 house.

3 THE COURT: All right. And, sir, would that
4 affect your ability to be fair and impartial in
5 this trial?

6 THE JUROR: No.

7 THE COURT: All right, thank you.

8 Is there any member of the jury panel related
9 by blood or marriage to or a friend or acquaintance
10 of a member of any law enforcement agency?

11 Yes, ma'am?

12 THE JUROR: My brother-in-law was a Richland
13 County sheriff.

14 THE COURT: Your who?

15 THE JUROR: My brother-in-law. But he now
16 works for I guess domestic violence, some kind of
17 thing, at Fort Jackson.

18 THE COURT: All right. And what is your
19 number, ma'am?

20 THE WITNESS: 194.

21 THE COURT: And, ma'am, the fact that your
22 brother-in-law works with law enforcement, would
23 that affect your ability to be fair and impartial
24 in this trial?

25 THE JUROR: No.

1 THE COURT: Thank you.

2 Yes, ma'am?

3 THE JUROR: My uncle is the director of the
4 federal probation and parole.

5 THE COURT: All right. And juror number
6 again?

7 THE JUROR: 135.

8 THE COURT: And would that affect your ability
9 to be fair and impartial in this trial?

10 THE JUROR: No.

11 THE COURT: Thank you.

12 Yes, ma'am?

13 THE JUROR: I'm Juror Number 313. I don't
14 know if the Department of Corrections would count
15 for this.

16 THE COURT: Go ahead and tell us, yes, ma'am.

17 THE JUROR: I actually worked for the
18 Department of Corrections. My husband is a retired
19 DJJ Officer and Department of Corrections officer.

20 THE COURT: All right. And, ma'am, would that
21 affect your ability to be fair and impartial in
22 this trial?

23 THE JUROR: No.

24 THE COURT: You are 313?

25 THE JUROR: Uh-huh.

1 THE COURT: All right. Thank you.

2 Yes, ma'am?

3 THE JUROR: 282. Nicole Vaughn. I know a
4 couple of people that work at the Lexington
5 Sheriff's Department.

6 THE COURT: All right. And would that affect
7 your ability to be fair and impartial in this
8 trial?

9 THE JUROR: No.

10 THE COURT: Thank you.

11 Yes, sir?

12 THE JUROR: Juror 217. I have a number of
13 friends that work for the Richland County Sheriff's
14 Department. And our company, the company I work
15 for, works pretty closely with them in a lot of
16 their physical fitness training programs and stuff.

17 THE COURT: All right. And what company do
18 you work for?

19 THE JUROR: Sore Nights Exercise Program.

20 THE COURT: Okay. And would that affect your
21 ability to be fair and impartial in this trial?

22 THE JUROR: No, ma'am.

23 THE COURT: All right. Yes, sir?

24 THE JUROR: Juror Number 66.

25 THE COURT: Yes, sir?

1 THE JUROR: I have lots of friends in Richland
2 and the City of Columbia Police Department.

3 THE COURT: Would that affect your ability to
4 be fair and impartial in this trial?

5 THE JUROR: No.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 THE JUROR: Juror 46. My uncle is at Brevard
9 County Sheriff's Department, motorcycle cop in
10 Florida.

11 THE COURT: All right. And, ma'am, would that
12 affect --

13 THE JUROR: No.

14 THE COURT: -- your ability to be fair and
15 impartial?

16 THE JUROR: No.

17 THE COURT: Thank you.

18 I think I asked this, but I'll ask it again.

19 Is any member of the jury panel related by blood or
20 marriage to or a friend or acquaintance of anyone
21 employed by the Attorney General's Office, Fifth
22 Circuit Solicitor's Office, U.S. Attorney's Office,
23 or any prosecuting attorney's office? If so,
24 please stand.

25 Yes, ma'am?

1 THE JUROR: I have friends in some of those
2 offices.

3 THE COURT: Which ones?

4 THE JUROR: Attorney General's Office and -- I
5 forgot all you listed.

6 THE COURT: U.S. Attorney?

7 THE JUROR: Probably. I'm a lawyer and I have
8 friends in some of those offices.

9 THE COURT: You are what?

10 THE JUROR: I'm a lawyer. I have friends that
11 are lawyers in some of those offices.

12 THE COURT: And would that affect your ability
13 to be fair and impartial --

14 THE JUROR: No.

15 THE COURT: -- in this trial? Thank you.
16 Yes, ma'am?

17 THE JUROR: Juror Number 111. My best friend
18 is a lawyer in Spartanburg, South Carolina.

19 THE COURT: Okay. And, ma'am, would that
20 affect your ability to be fair and impartial in
21 this trial?

22 THE JUROR: No.

23 THE COURT: All right, thank you.

24 And the last young lady, what was your number
25 again?

1 THE JUROR: 65.

2 THE COURT: 65?

3 All right. And is there any member of the
4 jury panel that has ever been employed by a
5 civilian or military law enforcement agency? If
6 so, please stand.

7 Yes, ma'am?

8 THE JUROR: Juror 46. The Brevard County
9 Sheriff's Department.

10 THE COURT: I think you answered that, but
11 I'll ask again, can you be fair and impartial in
12 this trial?

13 THE JUROR: Yes.

14 THE COURT: Thank you.

15 Is there any member of the jury panel employed
16 by or related by blood or marriage to or a friend
17 or acquaintance of any prospective witness in this
18 case? I think I asked that one also, but I'll ask
19 it again.

20 (WHEREUPON, there was no response.)

21 THE COURT: Has any member of the jury panel
22 read or heard anything about this case today before
23 today?

24 (WHEREUPON, there was no response.)

25 THE COURT: Is there any member of the jury

1 panel who is a regular patron of the Dollar General
2 located at 1905 Bluff Road in Columbia, South
3 Carolina?

4 (WHEREUPON, there was no response.)

5 THE COURT: Is there any member of the jury
6 panel or member of the juror's family who is
7 currently or formerly employed by Dollar General?
8 If so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Is there any member of the jury
11 panel or a member of your family who is currently
12 employed in retail sales? If so, please stand.

13 All right. Start on the front row. Yes,
14 ma'am?

15 THE JUROR: Juror Number 135. I have a cousin
16 employed with Kmart.

17 THE COURT: And would that affect your ability
18 to be fair and impartial in this trial?

19 THE JUROR: No.

20 THE COURT: Thank you.

21 Yes, sir?

22 THE JUROR: 244. I currently work as a
23 commercial department manager at Tefloid.

24 THE COURT: At where now?

25 THE JUROR: Tefloid on Decker Boulevard.

1 THE COURT: Would that affect your ability to
2 be fair and impartial in this trial?

3 THE JUROR: No.

4 THE COURT: Yes, sir?

5 THE JUROR: 217. My father-in-law owns and
6 manages a number of convenience stores around
7 Columbia.

8 THE COURT: Would that affect your ability to
9 be fair and impartial in this trial?

10 THE JUROR: No.

11 THE COURT: All right. Yes, ma'am?

12 THE JUROR: Juror Number 2. I work for
13 Wal-Mart and my husband works for Sam's.

14 THE COURT: You said Juror Number 2?

15 THE JUROR: Yes, ma'am.

16 THE COURT: And would that affect your ability
17 to be fair and impartial in this trial?

18 THE JUROR: No, ma'am.

19 THE COURT: All right, thank you.

20 THE JUROR: Juror Number 302, James
21 Williamson. And, I'm sorry, Your Honor, I need to
22 go back a second. I just realized my sister is an
23 employee of the Lexington County Sheriff's
24 Department. She was once an assistant to James
25 Metts.

1 THE COURT: All right. And, sir, the fact
2 that your sister -- and that's fine if you think of
3 something, just let us -- stand up. We would
4 rather know than not know. Would that affect your
5 ability to be fair and impartial in this trial, the
6 fact that she works for the Lexington County
7 Sheriff's Department?

8 THE JUROR: No, ma'am.

9 THE COURT: Thank you.
10 Yes, ma'am?

11 THE JUROR: Juror Number 95. And I work at
12 VFW.

13 THE COURT: Okay. And the fact you work at
14 VFW, would that affect your ability to be fair and
15 impartial in this trial?

16 THE JUROR: No, ma'am.

17 THE COURT: All right, thank you.

18 Oh, I'm sorry. Yes, ma'am?

19 THE JUROR: My brother-in-law was employed by
20 Orangeburg as a deputy sheriff.

21 THE COURT: Okay. Your number again?

22 THE JUROR: 111. It was before --

23 THE COURT: Would that affect your ability to
24 be fair and impartial in this trial?

25 THE JUROR: No, ma'am.

1 THE COURT: All right, thank you.

2 Has any member of the jury panel discussed
3 this case or heard anyone else discuss this case or
4 a similar case today or prior to today? If so,
5 please stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Is there anything in the nature of
8 the allegations in this case which would cause any
9 member of the jury panel any problem in sitting as
10 an impartial juror and fair juror in this case? If
11 so, please stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Has any member of the jury panel
14 or any member of their family ever been a victim of
15 a crime of kidnapping or armed robbery? If so,
16 please stand. Did I ask that one?

17 TWO JURORS: Yes, ma'am.

18 THE COURT: And I think you two answered
19 earlier. So it is the same response?

20 TWO JURORS: Yes, ma'am.

21 THE COURT: Okay, thank you.

22 Has any member of the jury panel or any member
23 of their family ever been accused of kidnapping or
24 armed robbery? If so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: And I asked about the Public
2 Defender's Office.

3 Is there any member of the jury panel or any
4 member of your immediate family who belongs to or
5 contributes to any organization that supports
6 prisoner's rights; for example, the Innocence
7 Project?

8 (WHEREUPON, there was no response.)

9 THE COURT: Does any member of the jury panel
10 or any member of their immediate family have a
11 negative opinion of law enforcement, prosecutors,
12 or the criminal justice system? If so, please
13 stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: And I asked this, but I'll ask
16 again. Is any member of the jury panel or any
17 member of their immediate family related by blood
18 or marriage or close personal friend or
19 acquaintance of the Defendant in this case, the
20 alleged victim in this case, and any of the
21 witnesses that I have named? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Is there any member of the jury
24 panel who knows of any reason whatsoever why he or
25 she should not serve as a juror in this case, with

1 particular emphasis being placed on your ability to
2 be fair and impartial to both the State and the
3 Defendant in this case? Please stand.

4 Yes?

5 THE JUROR: I really do not feel comfortable
6 passing judgment on anybody, whether or not they --

7 THE COURT: Okay, hold on one second. What is
8 your juror number?

9 THE JUROR: 95.

10 THE COURT: All right. And you don't feel
11 comfortable passing judgment?

12 THE JUROR: At all.

13 THE COURT: What is your Juror Number, 95?

14 THE JUROR: Yes, ma'am.

15 THE COURT: All right, thank you.

16 All right. Anything else from the State?

17 MS. SAMPSON: No, ma'am.

18 THE COURT: Anything from the Defense?

19 MS. EIGENBROT: Your Honor, may we approach
20 just briefly?

21 THE COURT: And one other question. I told
22 you earlier if anyone wanted to speak with me
23 privately that I would give you an opportunity to
24 do so.

25 Is there anyone that needs to speak with me

1 privately regarding any of the questions I asked?

2 All right, come on down.

3 What is your Juror Number, ma'am?

4 THE JUROR: 176.

5 THE COURT: 176.

6 (WHEREUPON, the bench conference was
7 held out of the hearing of the court
8 reporter and the jury panel.)

9 THE COURT REPORTER: Judge, do you want these
10 on the record?

11 (WHEREUPON, the following was held at
12 the reporter's desk but out of the
13 hearing of the jury panel.)

14 THE COURT: Charles Graham, Juror 100.

15 THE JUROR: My brother's girlfriend. And he
16 had charges against him from the Solicitor's Office
17 and dealt with Dan Johnson. And for five years we
18 went through hell. And now they dropped all
19 charges against him when they had a video of him
20 not doing the crime that they said he did.

21 THE COURT: Can you be fair and impartial in
22 the trial?

23 THE JUROR: I don't think so.

24 THE COURT: All right, thank you. What is
25 your number again?

1 THE JUROR: 100.

2 (WHEREUPON, the following was heard in
3 open court.)

4 THE COURT: The last lady that stepped up, let
5 me have you come right back up. What is your juror
6 number?

7 THE JUROR: 176.

8 THE COURT: 176. I need to see the lawyers
9 one more time. We'll put it in the record later.

10 (WHEREUPON, the bench conference was
11 held out of the hearing of the court
12 reporter and the jury panel.)

13 (WHEREUPON, the following was heard in
14 open court.)

15 THE COURT: All right, anything else from the
16 State?

17 MS. SAMPSON: No, ma'am.

18 THE COURT: Anything from the Defense?

19 MS. EIGENBROT: No, Your Honor.

20 THE COURT: All right. At this time, ladies
21 and gentlemen of the jury, we will begin with the
22 selection of the jury for this trial.

23 The clerk -- it is always hard for the first
24 person. The clerk will call -- or I shouldn't say
25 hard, but a little confusing -- will call your name

1 and your juror number. You'll come up to the
2 microphone, face the audience. You are to state
3 where you work and, if you are married, where your
4 spouse works.

5 The State at that point will say, Please seat
6 the juror, or, Please strike the juror. If they
7 say, Please strike the juror, you will return to
8 the audience. If they say, Please seat the juror,
9 then we will turn to the Defense and they will say,
10 Please seat the juror. If they seat the juror, you
11 will go in the jury box. If they say, Strike the
12 juror, you'll go back into the audience.

13 All right. And there is nothing to be nervous
14 about, we'll walk you through it.

15 All right. Yes, ma'am, Madam Clerk?

16 THE CLERK: Ladies and gentlemen of the jury
17 panel, as I call your name and number, make sure
18 you bring all your belongings down here with you,
19 okay?

20 Number 238, Shannon Salter.

21 (Juror approaches.)

22 THE JUROR: Shannon Salter. I work for
23 Columbia Nephrology. My husband is in IT technical
24 support.

25 THE CLERK: What says the State?

1 MS. SAMPSON: Please seat the juror.

2 THE CLERK: What says the Defense?

3 MS. EIGENBROT: Please seat the juror.

4 THE CLERK: Have a seat in the jury box,
5 please.

6 (Juror 238, a black female, was seated
7 on the jury.)

8 THE CLERK: Number 46, Barbara Campeggio.
9 (Juror approaches.)

10 THE JUROR: Barbara Campeggio. And I'm a
11 homemaker. My husband is retired.

12 THE CLERK: What says the State?

13 MS. SAMPSON: Please present the juror.

14 THE CLERK: What says the Defense?

15 MS. EIGENBROT: Please excuse the juror.

16 THE CLERK: Have a seat in the back of the
17 courtroom, please.

18 (Juror 46, a white female, was excused
19 by the Defense.)

20 THE CLERK: Number 270, Latoya Thomas-Gibson.
21 (Juror approaches.)

22 THE JUROR: Hello. My name is Latoya
23 Thomas-Dixon. I work at Edward Via Osteopathic
24 Medical College. And I am a widower.

25 THE CLERK: What says the State?

1 MS. SAMPSON: Please accept the juror.

2 THE CLERK: What says the Defense?

3 MS. EIGENBROT: Please seat this juror.

4 THE CLERK: Have a seat in the jury box,
5 please.

6 (Juror 270, a black female, was seated
7 on the jury.)

8 THE CLERK: Number 2, Henrietta Albert.
9 (Juror approaches.)

10 THE JUROR: Hi. My name is Henrietta Albert.
11 I work for Wal-Mart, and my husband works for
12 Sam's.

13 THE CLERK: What says the State?

14 MS. SAMPSON: Please accept the juror.

15 THE CLERK: What says the Defense?

16 MS. EIGENBROT: Please excuse this juror.

17 THE CLERK: Have a seat in the back of the
18 courtroom, please.

19 (Juror 2, a black female, was excused by
20 the Defense.)

21 THE CLERK: Number 217, Phillip Provence.
22 (Juror approaches.)

23 THE JUROR: My name is Phillip Provence. I
24 work for Sore Nights Exercise equipment, and my
25 wife is CPA at Lexington Medical Center.

1 THE CLERK: What says the State?

2 MS. SAMPSON: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. EIGENBROT: Please excuse the juror.

5 THE CLERK: Have a seat in the back of the
6 courtroom, please.

7 (Juror 217, a white male, was excused by
8 the Defense.)

9 THE CLERK: Number 65, Shawn Dejames.
10 (Juror approaches.)

11 THE JUROR: My name is Shawn Dejames. And I
12 work for the South Carolina Department of
13 Administration, and my husband works for A&B
14 Environmental Services.

15 THE CLERK: What says the State?

16 MS. SAMPSON: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. EIGENBROT: Please excuse this juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom, please.

21 (Juror 65, a white female, was excused
22 by the Defense.)

23 THE CLERK: Number 287, Carrie Walker.

24 THE COURT: Carrie Walker?

25 THE JUROR: Excuse me, ma'am. I picked up the

1 wrong number. I've got the right one now. I was
2 286. It was the wrong number that I picked up.
3 earlier. So that person is not here.

4 THE COURT: So what is your juror number?

5 THE JUROR: I'm sorry, ma'am?

6 THE COURT: What is your number?

7 THE JUROR: My number is 287.

8 THE BAILIFF: He had the wrong badge.

9 MS. SAMPSON: We marked him off as not being
10 here.

11 THE COURT: Okay. Well, he is here. So 286
12 is not here. So we need to strike through 286.

13 All right. We have got you here, 287. And
14 you were here the whole time, I believe?

15 THE JUROR: I have been here the entire time.

16 THE COURT: Okay, great. Thank you.

17 THE JUROR: Do I need to come down?

18 THE COURT: No, no, no.

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Number 288, Beulah Ware.

21 (Juror approaches.)

22 THE JUROR: Hello. I am a DOD civilian
23 employee out at Fort Jackson. I am an assistant
24 manager. And my husband is U.S. Army retired.

25 THE CLERK: What says the State?

1 MS. SAMPSON: Please present the juror.

2 THE CLERK: What says the Defense?

3 MS. EIGENBROT: Please excuse this juror.

4 THE CLERK: Have a seat in the back of the
5 courtroom, please.

6 (Juror 288, a black female, was excused
7 by the Defense.)

8 THE CLERK: Number 36, Xavier Brown.

9 (Juror approaches.)

10 THE JUROR: I'm Xavier Brown. I work for
11 Washington Inventory Services.

12 THE CLERK: What says the State?

13 MS. SAMPSON: Please excuse the juror.

14 THE CLERK: Have a seat in the back of the
15 courtroom, please.

16 (Juror 36, a black male, was excused by
17 the State.)

18 THE CLERK: Number 302, James Williamson.

19 THE JUROR: Hi. I'm James Williamson. I own
20 and operate Broom Heating and Air Conditioning.
21 And I am divorced.

22 THE CLERK: What says the State?

23 MS. SAMPSON: Please present the juror.

24 THE CLERK: What says the Defense?

25 MS. EIGENBROT: Please seat this juror.

1 THE CLERK: Have seat in the jury box, please.

2 (Juror 302, a white male, was seated on
3 the jury.)

4 THE CLERK: Number 201, Wendy Frenn.

5 (Juror approaches.)

6 THE JUROR: My name is Wendy Frenn. I am a
7 rehabilitation technician at Health South.

8 THE CLERK: What says the State?

9 MS. SAMPSON: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. EIGENBROT: Please seat this juror.

12 THE CLERK: Have a seat in the jury box,
13 please.

14 (Juror 201, a white female, was seated
15 on the jury.)

16 THE CLERK: Number 220, Jeanne Reynolds.

17 (Juror approaches.)

18 THE JUROR: My names Jeanne Reynolds. I work
19 for Colonial Life and Accident Insurance Company.

20 My husband works at Farm Bureau Insurance Company.

21 THE CLERK: What says the State?

22 MS. SAMPSON: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. EIGENBROT: Please excuse this juror.

25 THE CLERK: Have a seat in the back of the

1 courtroom, please.

2 (Juror 220, a white female, was excused
3 by the Defense.)

4 THE CLERK: Number 54, Jennifer Cogan.

5 THE JUROR: 54, Jennifer Cogan. I work at the
6 South Carolina State Housing Finance and
7 Development Authority. And I'm not married.

8 THE CLERK: What says the State?

9 MS. SAMPSON: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. EIGENBROT: Please excuse this juror.

12 THE CLERK: Have a seat in the back of the
13 courtroom, please.

14 (Juror 54, a white female, was excused
15 by the Defense.)

16 THE CLERK: Number 111, Natalie Hare.

17 (Juror approaches.)

18 THE JUROR: My name is Natalie Hare. I do
19 accounting at Safe Credit Union. And my husband is
20 an English teacher at a high school.

21 THE CLERK: What says the State?

22 MS. SAMPSON: Please excuse the juror.

23 THE CLERK: Have a seat in the back of the
24 courtroom, please.

25 (Juror 111, a black female, was excused

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by the State.)

THE CLERK: Number 99, Sara Graber.

(Juror approaches.)

THE JUROR: My name is Sara Graber. And I am
a project manager for BC Freeman Company.

THE CLERK: What says the State?

MS. SAMPSON: Please present the juror.

THE CLERK: What says the Defense?

MS. EIGENBROT: Please seat this juror.

THE CLERK: Have a seat in the jury box,
please.

(Juror 99, a white female, was seated on
the jury.)

THE CLERK: Number 244, Derek Scott.

(Juror approaches.)

THE JUROR: My name is Derek Scott. I work
for Palmetto Financial Services. And my wife works
for a banking corporation in marketing.

THE CLERK: What says the State?

MS. SAMPSON: Please present the juror.

THE CLERK: What says the Defense?

MS. EIGENBROT: Please seat this juror.

THE CLERK: Have a seat in the jury box,
please.

(Juror 244, a black male, was seated on

1 the jury.)

2 THE CLERK: Number 161, Chudney Lee.

3 (Juror approaches.)

4 THE JUROR: My name is Chudney Lee. I work
5 for the South Carolina Department of Revenue. And
6 I'm unmarried.

7 THE CLERK: What says the State?

8 MS. SAMPSON: Please present the juror.

9 THE CLERK: What says the Defense?

10 MS. EIGENBROT: Please seat this juror.

11 THE CLERK: Have a seat in the jury box.

12 (Juror 161, a black female, was seated

13 on the jury.)

14 THE CLERK: Number 194, Latoya Myers.

15 (Juror approaches.)

16 THE JUROR: My name is Latoya Myers. And I am
17 a package car driver for UPS, and my husband works
18 for ITM.

19 THE CLERK: What says the State?

20 MS. SAMPSON: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom.

23 (Juror 194, a black female, was excused

24 by the State.)

25 THE CLERK: Number 136, Caleb Jones.

1 THE JUROR: My name is Caleb Jones. I work at
2 Circuit City.

3 THE CLERK: What says the State?

4 MS. SAMPSON: Please present the juror.

5 THE CLERK: What says the Defense?

6 MS. EIGENBROT: Please seat this juror.

7 THE CLERK: Have a seat in the jury box,
8 please.

9 (Juror 136, a black male, was seated on
10 the jury.)

11 THE CLERK: Number 29, Carl Boyles.
12 (Juror approaches.)

13 THE JUROR: My name is Carl Boyles. I'm
14 unmarried. I'm Juror 29.

15 THE CLERK: What says the State?

16 MS. SAMPSON: Please seat the juror.

17 THE CLERK: What says the Defense?

18 MS. EIGENBROT: Please excuse this juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom, please.

21 (Juror 29, a black male, was excused by
22 the Defense.)

23 THE CLERK: Counsel, let me review your
24 strikes. For the State I have three, for the
25 Defense I have eight.

1 Number 135, Deborah Johnson.

2 (Juror approaches.)

3 THE JUROR: I work for the Department of
4 Defense.

5 THE CLERK: What says the State?

6 MS. SAMPSON: Please present the juror.

7 THE CLERK: What says the Defense?

8 MS. EIGENBROT: Please excuse this juror.

9 THE CLERK: Have a seat in the back of the
10 courtroom, please.

11 (Juror 135, a black female, was excused
12 by the Defense.)

13 THE CLERK: Number 26, Deborah Boddie.
14 (Juror approaches.)

15 THE JUROR: My name is Debbie Boddie. And I
16 work for Palmetto Citizens Federal Credit Union as
17 an accountant.

18 THE CLERK: What says the State?

19 MS. SAMPSON: Please present the juror.

20 THE CLERK: What says the Defense?

21 MS. EIGENBROT: Please seat this juror.

22 THE JUROR: Have a seat in the jury box,
23 please.

24 (Juror 26, a white female, was seated on
25 the jury.)

1 THE CLERK: 207, Brian Pasco.

2 (Juror approaches.)

3 THE JUROR: My name is Brian Pasco. I am an
4 engineer with Westinghouse. My wife works at
5 Richland County. She is a school teacher.

6 THE CLERK: What says the State?

7 MS. SAMPSON: Please present the juror.

8 THE CLERK: What says the Defense?

9 MS. EIGENBROT: Please seat this juror.

10 THE CLERK: Have a seat in the jury box,
11 please.

12 (Juror 207, a white male, was seated on
13 the jury.)

14 THE CLERK: Number 20, Fred Bieber.

15 (Juror approaches.)

16 THE JUROR: My name is Fred Bieber. I am an
17 independent business consultant. My wife works
18 payroll for a local firm.

19 THE CLERK: What says the State?

20 MS. SAMPSON: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. EIGENBROT: Please seat this juror.

23 THE CLERK: Have a seat in the jury box.

24 (Juror 20, a white male, was seated on
25 the jury.)

1 THE CLERK: Number 49, Deborah Champion.

2 (Juror approaches.)

3 THE JUROR: I'm Deborah Champion. I am a

4 registered nurse at Lexington Medical Center as a

5 RAP specialist. And my husband is a truck driver.

6 THE CLERK: What says the State?

7 MS. SAMPSON: Please present the juror.

8 THE CLERK: What says the Defense?

9 MS. EIGENBROT: Please seat this juror.

10 THE CLERK: Have a seat in the jury box,
11 please.

12 (Juror 49, a white female, was seated on
13 the jury.)

14 THE CLERK: Number 282, Nicole Vaughn.

15 (Juror approaches.)

16 THE JUROR: My name is Nicole Vaughn. I am a

17 manager of human resources at the University of

18 South Carolina. And I'm divorced.

19 THE CLERK: What says the State?

20 MS. SAMPSON: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. EIGENBROT: Please seat this juror.

23 THE CLERK: Have a seat in the jury box,
24 please.

25 (Juror 282, a white female, was seated

1 on the jury.)

2 THE JUROR: Number 169, Eric Martin. I'm
3 sorry, Number 287. Is it Preston Wannamaker?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: All right.

6 (Juror approaches.)

7 THE JUROR: I'm Preston Wannamaker. I'm an
8 instructor at Midlands Technical College. And I'm
9 divorced.

10 THE CLERK: What says the State?

11 MS. SAMPSON: Please present the juror.

12 THE CLERK: What says the Defense?

13 MS. EIGENBROT: Please seat this juror.

14 THE CLERK: Have a seat in the jury box,
15 please.

16 (Juror 287, a white male, was seated on
17 the jury.)

18 THE COURT: All right. Anything else for the
19 remaining members of the jury panel before I
20 release them back to the jury assembly room?

21 MS. SAMPSON: Nothing from the State, Your
22 Honor.

23 THE COURT: Anything from the Defense?

24 MS. EIGENBROT: Nothing from the Defense, Your
25 Honor.

1 THE COURT: All right. So those of you who
2 are not selected for this jury, I am going to send
3 you all back downstairs to the jury room for
4 further instructions.

5 I would like to say thank you all for being
6 here this week and for your service here this week.
7 And you will get further instructions downstairs.

8 Thank you.

9 (WHEREUPON, the remaining jury panel was
10 released at 3:39 p.m.)

11 THE COURT: All right. For those of you who
12 were selected on the jury, I have a couple of
13 instructions for you before I release you for the
14 afternoon.

15 You have been selected as jurors. And
16 Mr. Wannamaker and Ms. Vaughn, you have been
17 selected as alternates for this jury.

18 Mr. Wannamaker will have to -- he can either sit in
19 a chair right here, or if he wants to sit up where
20 the alternates normally sit. That is up to him.

21 Sir, whichever one works for you best, okay?

22 MR. WANNAMAKER: I'll sit back there.

23 THE COURT: Okay, great.

24 I want to first of all say thank you all to
25 you for your service here. We have some -- I guess

1 several pretrial matters that I need to take up
2 outside of your presence before we start the trial.
3 So instead of having you all sit back in the jury
4 room while we do that, I think it is going to take
5 some time, I'd rather let you go about your way for
6 the afternoon and not inconvenience you. So -- but
7 before I let you go, there is a couple of things
8 that I do need to discuss with you.

9 You have not received any evidence in this
10 case. You have only heard me read the allegations
11 from the indictment. But you are not to do any
12 independent research, you are not to do any social
13 networking or do any social media regarding your
14 service on the jury here. You cannot discuss this
15 case with anyone.

16 And I am going to beg and plead that you not
17 discuss it with each other. We have had, for
18 whatever reasons, issues in the last several months
19 with jurors talking about the case, talking to each
20 other about the case. And if that happens, then
21 that disrupts the process.

22 You will have an opportunity to talk about the
23 case when you deliberate. But until you receive
24 instructions to deliberate, I beg you not to
25 discuss the case.

1 If anyone around you is discussing the case,
2 if you can let me know. And you do not -- or one
3 of the bailiffs know -- and you do not have to
4 identify yourself, just let them know that someone
5 is discussing -- you witnessed someone discussing
6 the case, and then I will handle it from there.

7 But, once again, I ask you all, do not discuss
8 the case, do not do any independent research, do
9 not Tweet or Instagram anything about what is going
10 on here at 1701 Main Street. You may go on your
11 Instagram account, Facebook, and talk about how
12 pretty the weather is outside, or anything else,
13 but nothing about this case. You may go on your
14 computer and do research for your job, but no
15 research regarding anything regarding this case or
16 any issue that may come up in this case.

17 Once again, I am going to release you all
18 until tomorrow morning at 9:30. We will start at
19 9:30 in the morning. The bailiff will have a
20 couple of instructions for you as to where you are
21 to report on tomorrow.

22 Those badges that you have on, please wear
23 those while you are in the courthouse or in the
24 area of the courthouse. Lawyers are also walking
25 and talking, and we don't want anyone to

1 accidentally say anything about the case in front
2 of you. If you see any of the lawyers, they will
3 not speak to you or say anything to you. It is not
4 because they are rude people, because they are not.
5 It is just that I have instructed them that they
6 are not to speak or have any interaction with any
7 of the jurors in this case.

8 So I am going to send you all back in the jury
9 room. We will see you at 9:30 in the morning.

10 Also, if you can give -- just because
11 sometimes it is easier, if you have a cell phone --
12 if you do not, if there is something that comes up
13 in the case where we can contact you, because I
14 know they don't always get your cell phone number,
15 if you can give that to the bailiff she will keep
16 it, or the clerk, or I myself will keep it. It
17 will be one of the three of us that will have the
18 numbers. It will not be given to anyone else. But
19 that is just in case something comes up or if
20 something comes up with you in the morning we can
21 reach you on your cell phone, if you have a cell
22 phone, or I think we have everyone's house numbers.

23 All right. Thank you. Have a great evening.

24 (WHEREUPON, the jury is excused for the
25 day at 3:44 p.m.)

1 THE COURT: All right. Pretrial motions. Do
2 y'all need to take a break about five minutes? The
3 A.G.'s Office has a plea. How long is it going to
4 take?

5 ATTORNEY GENERAL: Five minutes.

6 (WHEREUPON, a break was taken at 3:46
7 p.m.)

8 (WHEREUPON, the proceedings resumed at
9 4:16 p.m.)

10 THE COURT: All right. Back on the record in
11 State of South Carolina v. Emmanuel Bashan Elleby.
12 And I have the Defense pretrial motions. We can
13 start with the State, and then I'll come to you
14 all.

15 MS. SAMPSON: Your Honor, actually we just
16 thought it would probably be easier to start with
17 the Defense just because mine has to put up a
18 witness, so I figured it would be easier to call
19 theirs first.

20 THE COURT: Okay. Whichever way you want to
21 do it.

22 MR. RUFFIN: Your Honor, just to put on the
23 record, obviously we are going to renew our Rule 5
24 motion for discovery. Also, pursuant to Riddle v.
25 State, just to address the State's continuing

1 discovery obligations. We would also request -- I
2 don't think we were given any rap sheet, any
3 criminal records of any of the State's witnesses,
4 so I'm assuming that they don't have them or that
5 they don't have criminal records.

6 MS. SAMPSON: For the record, Your Honor,
7 because this sort of popped up as being a trial, my
8 paralegal right now is -- we did not have the birth
9 dates of the lay witnesses. There are particularly
10 three I can think of off the top of my head:
11 Kenneth Gardner, Elizabeth Coleman, and Kenneth
12 Bracey would be the three lay witnesses that aren't
13 employed by the Sheriff's Department that we intend
14 on calling at this point. And we are running rap
15 sheets now. I will have them available this
16 afternoon or first thing in the morning, but
17 definitely before any of them testify. We may have
18 to revisit the issue if any of them end up with
19 records. To my knowledge they don't have any, but
20 I don't have the rap sheets.

21 MR. RUFFIN: And that is fine, Judge. The
22 other one, we would request that the lay witnesses
23 obviously, and law enforcement, for that matter,
24 with the exception of the victim, Mr. Gardner, and
25 Investigator Carwell, we would request that all the

1 other witnesses be sequestered during the trial
2 just as a matter of -- I think that is just typical
3 procedure. I mean, I don't think this trial is
4 going to take very long.

5 THE COURT: Any position from the State? I'll
6 the motion to sequester. The investigator and the
7 witness can stay.

8 MS. SAMPSON: That's fine. All our witnesses
9 don't want to be here anyway, so I don't think that
10 will be a problem.

11 THE COURT: Okay.

12 MR. RUFFIN: Okay. That will bring me to our
13 first substantive motion, Judge. And I'll try to
14 give you a little bit of background. You know,
15 obviously you may have questions.

16 Factually this case sort of arose from --
17 there is an armed robbery that occurs at a Dollar
18 General. The best -- my understanding, at least --
19 is that Richland County gets a tip the following
20 day that a guy named Phatz did it. And I think a
21 couple of days later Investigator Carwell, I
22 believe, gets another tip or additional information
23 that the guy named Phatz lives at a particular
24 address, which is [REDACTED] Barnes Street, and that he is
25 currently on probation or that he was recently

1 released from prison or doing a significant amount
2 of time on a different armed robbery.

3 From there I believe that someone from the
4 Sheriff's Department, I think Investigator Carwell
5 or possibly Investigator Greene, gets in touch with
6 probation and they say, Yes, we are supervising a
7 guy named Emmanuel Elleby who lives at this
8 address, [REDACTED] Barnes Street.

9 With that information -- and I think after
10 they get that information they go view the video
11 from the Dollar General. And then from there it is
12 my understanding that they go to [REDACTED] Barnes Street
13 to try to find Mr. Elleby. They knock on the door.
14 He is not there. So a couple of the investigators
15 leave to go get a search warrant for the house. A
16 couple of the investigators stay at the house. And
17 the investigators who stay at the house apparently
18 come into contact with Mr. Elleby, who is in the
19 bushes outside of the house.

20 They call Investigator Carwell and the other
21 investigator who left and said, Hey, he is here, we
22 got him, come back, and we'll go ahead and search
23 the house.

24 They do not get a search warrant. They go
25 back to the house and search it.

1 It is my understanding that they search it, I
2 believe, because he is on probation. I would just
3 contend that this is admittedly a warrantless
4 search of a home, which there is lots of case law
5 on that a warrantless search of a home is per se
6 unreasonable under the Fourth Amendment unless the
7 State can show that it falls within some exception.
8 I don't believe it falls within an exception, so I
9 would move to exclude the items that were found in
10 the house.

11 Specifically, there is five things, Judge.
12 There was loose change that was found. There is
13 four packs of Newport cigarettes. There is a black
14 bag that has a white Number 38 written on it.
15 There were some white Converse tennis shoes. And a
16 blue shirt, I think that is described as a blue
17 hospital shirt. Those five things I would contend
18 are the, you know, fruit of an illegal search
19 pursuant to a warrantless search of a residence.

20 And for that reason, I would ask that those
21 not be admitted as evidence.

22 THE COURT: All right. Yes, ma'am?

23 MS. SAMPSON: Your Honor, thank you. May it
24 please the Court? The only -- I think his
25 recitation of the facts would be correct. However,

1 I would hand to the Court -- and we can make it a
2 Court Exhibit if we want to--- Mr. Elleby consented
3 to the search of his house. Not only did they have
4 the probation paperwork that allows them to search
5 the house without any warning or any warrant, they
6 asked him for consent.

7 I think the exception to a warrantless search
8 is if they are provided consent by the homeowner or
9 the person living within the home.

10 I can put Investigator Carwell up to testify
11 to that Mr. Elleby actually signed this and that he
12 was the person who gave consent, but based on the
13 fact that they had consent to search, they don't
14 need a warrant.

15 THE COURT: All right. We probably need to
16 put him up to testify.

17 MR. RUFFIN: I think so.

18 MS. SAMPSON: That's fine, Your Honor. The
19 State would call Investigator Carwell.

20 MR. RUFFIN: Well, I mean, real quick. I know
21 that he is going to have to testify for the Denno
22 too. I don't know if you want to do this so that
23 he doesn't have to testify and then testify again.

24 THE COURT: That's fine. You can ask him all
25 of that.

1 MS. SAMPSON: I can do it all? Just for the
2 record then, to make it clear, the Defendant did
3 give a statement on the same day of August 25th,
4 2014, to Investigator Carwell. Based on that, we
5 want to introduce the statement. Based on case
6 law, I believe that we have to prove that the
7 statement was given voluntarily, knowingly, and
8 intelligently with the Advice of Rights. So in
9 order to do that, we would put up Investigator
10 Carwell.

11 (Witness approaches.)

12 THE CLERK: Do you swear or affirm the
13 testimony you are about to give in this case will
14 be the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Have a seat in the
18 witness stand, please.

19 (Witness complies.)

20 THE JUROR: State your name for the record.

21 THE WITNESS: It is John Carwell.

22 JOHN CARWELL,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. SAMPSON:

1 Q. Will you spell your last name for the record?

2 A. C-A-R-W-E-L-L.

3 Q. And where are you employed?

4 A The Richland County Sheriff's Department.

5 Q. And in what capacity are you employed?

6 A I am the sergeant over the burglary unit at this
7 time.

8 Q. Okay. And were you in that position back in August
9 of 2014?

10 A At that time I was a senior investigator working
11 the major crimes unit, robbery.

12 Q. In robbery?

13 A Yes, ma'am.

14 Q. And can you tell us how you became involved in this
15 case?

16 A I was on call August 22nd of last year, which means
17 I worked the late afternoon hours until the
18 evening.

19 I was notified that Friday the 22nd there was
20 an armed robbery at the Dollar General. And I
21 would go on that weekend and work and receive phone
22 calls with additional information related to this
23 robbery.

24 Q And I know you did some things on site, so I want
25 to skip to the information that we have already

1 kind of discussed. Were you provided any
2 information in reference to a Phatz or Emmanuel
3 Elleby being involved in this crime?

4 A Yes, I did.

5 Q What was that information?

6 A I received information from another officer that he
7 received a phone call that an individual that had
8 been recently released from prison was involved
9 with this armed robbery, and he went by the name of
10 Phatz possibly, and he lived close to the Dollar
11 General on Barnes Street. And I would eventually
12 receive the numerics of [REDACTED].

13 Q. Okay. And based on that information, what did you
14 do?

15 A I then looked on Facebook, after also contacting
16 Investigator Greene, who is the liaison between the
17 Sheriff's Department and Probation and Parole. She
18 was able to give me information that actually three
19 individuals that lived at that address were on
20 probation. And she went on to provide that
21 Emmanuel Elleby was on probation and was fitted
22 with the ankle monitor and had previously been
23 charged and convicted for an armed robbery. Then I
24 would go onto Facebook and see that he also went by
25 the name of Phatz. He spelled it P-H-A-T-Z. So

1 that went along with the tip I was receiving from
2 that weekend.

3 Q And based on that information, what did you do?

4 A That Monday morning I went to the Dollar General,
5 the incident location, to view the video.

6 Investigator Greene provided me with screenshots of
7 where the ankle monitor was, and I wanted to make
8 sure that he wasn't in there just shopping.

9 Q I am going to interrupt you just because I know the
10 Defense has a motion about this, so I am going to
11 just ask you about it while you are up there.

12 MS. SAMPSON: I'd like to get this marked.

13 (Pause.)

14 MS. SAMPSON: For the record, I had the court
15 reporter mark State's Exhibits 1 through 4, but I
16 realize 4 is a duplicate of 2, so I will remove
17 that one.

18 (WHEREUPON, State's Pretrial Exhibit

19 Nos. 1 - 3 were marked for
20 identification only.)

21 BY MS. SAMPSON:

22 Q. All right, I am going to show you what is marked as
23 State's Exhibit 1 through 3 and ask if you
24 recognize those?

25 A I do.

1 Q. And can you tell us what those are?

2 A These are screenshots of locations that are taken
3 from the ankle monitor of Emmanuel Elleby.

4 Q And I interrupted you. Are those the screenshots
5 that were provided to you?

6 A Yes, they are.

7 Q And what do they show?

8 A They show the date and time, longitude and
9 latitude, and the client's name, which is Emmanuel
10 Elleby.

11 Q And can you tell us, what is 1? What does 1 show?

12 A I'm sorry, 1 shows the date of August 22nd of 2014
13 at 11:30 a.m. The client is Emmanuel Elleby. And
14 then the latitude -- do you need that? -- 33.96.
15 And the longitude is negative 81.00.

16 Q What is that location?

17 A That is 1905 Bluff Road, the Dollar General.

18 Q And what is State's Exhibit Number 2?

19 A It is a similar screenshot. It also shows the same
20 date. And then two minutes later, which was 11:52,
21 the same client's name. And then it also shows for
22 1905 Bluff Road, which is the Dollar General.

23 Q Okay. And State's Exhibit Number 3?

24 A Can I go back? The first one shows the longitude
25 and latitude to actually be a dot on top of the

1 store, which would show that he is inside the
2 business.

3 The second one shows him -- actually they are
4 out of order -- but the third one shows him in the
5 parking lot right in front of the front door, the
6 dot.

7 And then the third one, or the second one,
8 shows him back at his address on Barnes Street,
9 [REDACTED], which is right around the corner.

10 Q And then the dots, what color are those dots? Are
11 they red?

12 A Red. Those are red, yes.

13 Q All right. And that is the information that was
14 provided by Investigator Greene; correct?

15 A That's correct.

16 Q Okay. And based on that information, what did you
17 do?

18 A Like I said, I watched the video just to make sure
19 he wasn't in there shopping. I was there also just
20 to take statements, just start the initial
21 investigation like I would normally do with an
22 armed robbery.

23 Q Okay. And I believe you stated this already, but
24 probation provided you an address?

25 A Yes, they did.

1 Q And what was that address?

2 A [REDACTED] Street.

3 Q Okay. And were you provided any other information
4 from probation in reference to being able to search
5 the home?

6 A Yes. I was advised that he had signed a form, a
7 warrantless search for his residence.

8 Q And have you ever heard of that before?

9 A I have.

10 (Pause.)

11 (WHEREUPON, State's Pretrial Exhibit No.
12 4 was marked for identification only.)

13 BY MS. SAMPSON:

14 Q Was she able to provide you with a copy of that?

15 A She did.

16 Q I am going to show you what is marked as State's
17 Exhibit Number 4 and ask you if you recognize that?

18 A I do.

19 Q And what is it?

20 A It is a community supervision program certificate
21 for Emmanuel Elleby.

22 Q And does it provide the ability to search the home?

23 A Yes.

24 Q What does -- can you read it to the Court?

25 A Publish the entire thing?

1 Q No, just the part that has to do with searching the
2 home, if you can find it.

3 A Bear with me. (Pause.) I apologize. (Pause.)

4 It just goes into:

5 I shall not change my address or
6 residence or employment without consent
7 of my agent. I shall allow my agent to
8 visit me in my home and my place of
9 employment or elsewhere at any time.

10 Q Okay. And he signed this?

11 A Yes.

12 Q So what did you do after receiving this information
13 from Investigator Greene?

14 A Continued the investigation. I would call
15 Investigator Truluck to meet with me and I would
16 call Investigator Greene and Lieutenant Freida
17 Wyatt to join me at [REDACTED] Barnes Street in attempt to
18 find Mr. Elleby.

19 Q Okay. And when you arrived at this home, what
20 happened?

21 A Ms. Greene would tell me that before she left her
22 office she was able to look at a monitor and show
23 that he was at that residence at the time.

24 She had time to travel to that location, so
25 she was pretty sure that he was still there. It is

1 a short distance. So we were all standing there.

2 We knocked on the door. And at that point we

3 didn't receive an answer.

4 Q So based on that, what did you do?

5 A Myself and Investigator Truluck decided that we

6 were going to go get a search warrant to force

7 entry. So we left the location. That is when we

8 did receive a phone call from them stating that

9 eventually they would hear from the wood line his

10 ankle monitor with an audio saying: Contact your

11 agent. They could hear it. Then he came from the

12 woods. And that is when they detained him.

13 Q Okay. And did you return to the home?

14 A I did.

15 Q And what did you do upon your return?

16 A I would speak to Emmanuel Elleby. I would get a

17 consent to search form for his bedroom.

18 Q I believe you may have that?

19 A I do. It is right here.

20 (Pause.)

21 (WHEREUPON, State's Pretrial Exhibit No.

22 5 was marked for identification only.)

23 BY MS. SAMPSON:

24 Q I am going to show you what is marked as State's

25 Exhibit Number 5 and ask you to identify it.

1 A It is a Richland County Sheriff's Department

2 Consent to Search form.

3 Q And who is written as the person giving consent?

4 A Emmanuel Elleby.

5 Q And did you watch him do that?

6 A I did.

7 Q Okay. And could you just read for the what it

8 says?

9 A It has the date of August 25th, which was three
10 days after the incident location. It would have
11 his name, Emmanuel Elleby, do hereby consent to the
12 search of my premises without a search warrant by
13 myself, Investigator Carwell, and Investigator
14 Truluck, officers of the Richland County Sheriff's
15 Department. These officers are authorized by me to
16 take from my premises or automobile letters,
17 papers, materials, or other property which they
18 desire.

19 Actually wrote down the description of the
20 house, [REDACTED] Barnes Street, which we only searched
21 his bedroom, we did not go through the whole house.
22 I listed the items that we took. He agreed. The
23 loose change on his bed. The four packs of Newport
24 cigarettes, which were labeled on the incident
25 report. A black bag with a Number 38 in white,

1 which you can see from the video which he used to
2 put the money in from the register. The white
3 Converse Chuck Taylors, I believe described by the
4 witnesses, and also seen on the video. And a blue
5 hospital shirt, scrub type, that matched the pants
6 that he had on that you can see in the video.

7 Q And did you give him the rights that you -- what
8 you read about his consent, did you read that to
9 him, or how was that process?

10 A Yes, it is read to him and he signs it at the
11 bottom right. And I also signed it.

12 Q Did that happen in this case?

13 A Yes.

14 Q And so you read already what you took. Was he
15 there while you searched the home?

16 A Yes, he was.

17 Q So he provided consent?

18 A Yes.

19 Q What happened after the search?

20 A I would then put him in my truck that was also
21 there. I would then advise him of his Advice of
22 Rights so we could talk on the way from his
23 residence back to my office at headquarters on Two
24 Notch Road.

25 Q Hold on a second.

1 (Pause.)

2 (WHEREUPON, State's Pretrial Exhibit No.
3 6 was marked for identification only.)

4 BY MS. SAMPSON:

5 Q. I am going to show you what has been marked as
6 State's Exhibit Number 6 and ask you if you
7 recognize that?

8 A I do.

9 Q And can you tell us what the first page is?

10 A The first page is the Advice of Rights form for
11 Richland County. It has the Defendant's name,
12 Emmanuel Elleby. It actually has [REDACTED] Barnes Street
13 on it, which my truck was parked in front of that
14 address next-door to him, so I used that address.
15 Then the officer's name was mine, Carwell. The
16 date, August 25th of 2014. And it was at 1308,
17 which is 1:08 p.m.

18 The first portion says:

19 Your Rights. Before we ask you any
20 questions you must understand your
21 rights.

22 I asked him if he understood that line, and I
23 would check it stating that he did understand.

24 I would go to the second line: You have
25 the right to remain silent.

1 And again I would ask him if he understood
2 that, and checked that line as well.
3 I go to the third line: Anything you
4 say can be used against you in court.
5 Again I asked him if he understood it, and I
6 would check that line as well that he did.
7 You have the right to talk to a lawyer
8 for advice before we ask you any
9 questions and to have a lawyer with you
10 during any questioning.
11 Again I would ask him if he understood it, and
12 I would check that line as well that he did.
13 If you cannot afford a lawyer, one will
14 be appointed for you before any
15 questions if you wish.
16 Again, we would check that line saying that he
17 understood it.
18 If you decide to answer questions now
19 without a lawyer present, you still have
20 a right to stop answering at any time.
21 You also have the right to stop
22 answering at any time until you talk to
23 a lawyer.
24 Again, we checked that line stating he
25 understood it.

1 He would then sign that portion. I would
2 witness it.

3 Q Okay. Let me stop you for just a second. So just
4 to be clear, each one of those rights, six, each
5 one you went over with him individually?

6 A That's correct.

7 Q And then would he agree and checked?

8 A That's correct.

9 Q And when he said agree, he is agreeing that he
10 understands?

11 A Correct.

12 Q Okay. And then you had him sign it?

13 A That's correct.

14 Q And you signed it as well?

15 A I did.

16 Q So go to the next rights that you gave him.

17 A The next portion is the Waiver of Rights.

18 I have read this Statement of My Rights.

19 I understand what my rights are. I am

20 willing to talk and answer questions. I

21 understand and know what I am doing. No

22 promises have been made to me and no

23 pressure or coercion of any kind has

24 been used against me.

25 And I normally explain what coercion is, that

1 I'm not forcing you to provide me with a statement
2 or talk to me about this case.

3 Again, we would check that line stating that
4 he understood it, and then he would sign it stating
5 that he understood that portion as well.

6 Q And did you do that in this case?

7 A I did.

8 Q And so he indicated to you that he understood?

9 A He did.

10 Q And he signed it?

11 A He did.

12 Q Okay. And did you pressure him at all to sign any
13 of this?

14 A No, I did not.

15 Q Did you pressure him at all in saying that he
16 agreed to any of this?

17 A I did not pressure him at all.

18 Q Okay. And so I believe you then -- did you do the
19 Advice of Rights at the house? I believe you said
20 that?

21 A Yes, we were sitting in my truck next-door, in
22 front of the house next-door to his house, when we
23 did the Advice of Rights.

24 Q And when did you actually speak with him?

25 A We spoke from that point until my office, and then

1 we would talk again in my office, and then reduce
2 what we spoke about as I typed out a statement and
3 he would then read that and agree that that was his
4 statement and also sign that statement as well.

5 Q I am going to ask you to look at the next few pages
6 of State's Exhibit Number 6; is that right?

7 A Yes.

8 Q Okay. So Page -- it is numbered for his statement
9 Pages 1 through 3 -- 1 through 4; correct?

10 A Yes.

11 Q Okay. And is this what you are saying when you
12 said you took what you said and put it into
13 writing?

14 A That's correct.

15 Q And what do you do when you do that with the
16 suspect? Do you read it to them, or how does that
17 work?

18 A At this point I read it to him. Made sure that is
19 what he wanted in the statement. I leave the
20 statement up on my computer while I read it, then I
21 offer him if he wants to read it again before he
22 signs it. And I always tell them that, Hey, it is
23 up on my computer, and if you want to make any
24 changes, we can still do so, as I still have it up.

25 Q Now I'm going to ask you, at the beginning of this

- 1 statement it has Rights at the end. Did you read
2 those to him again?
- 3 A Yes.
- 4 Q Can you tell the Court what you read to him at that
5 time?
- 6 A Yes. Again, it says:
- 7 I, Emmanuel Elleby, understand that I
8 have a right to remain silent. Anything
9 I say can be used against me in court.
10 I have the right to talk to a lawyer for
11 advice before we ask you any questions
12 and to have a lawyer with me during any
13 questions. If I cannot afford a lawyer,
14 one will be appointed for me before any
15 questions if I wish. If I decide to
16 answer questions now without a lawyer
17 present, I still have the right to stop
18 answering at any time. I also have the
19 right to stop answering at any time
20 until I talk to a lawyer.
- 21 Q Did he indicate whether he understood that?
- 22 A He again understood that.
- 23 Q Okay. And then he freely spoke with you?
- 24 A Yes.
- 25 Q Okay. And I know that you had stated that you had

1 asked some of this already; is that right?

2 A That's correct.

3 Q So when you are typing it all up and once it is
4 done, did you read to him again or let him read it,
5 or how does that work?

6 A Well, as we are doing it, I'm reading the questions
7 and he is answering, making sure as I'm typing that
8 is what he wants. It is his words, not mine. And
9 then again, once we print it out, he reads it again
10 and signs it. If he wants any changes, we do that
11 as well.

12 Q And in this, did he sign every page?

13 A He did.

14 Q Did he ever at any point ask to speak to a lawyer?

15 A He did not.

16 Q Did he ever ask to not speak with you?

17 A No.

18 Q Did he ever ask to go to the bathroom or do
19 anything else?

20 A It was offered. It was offered.

21 Q And did he need to?

22 A No.

23 Q Okay. And did he seem to understand your
24 questions?

25 A Yes.

1 Q And was he able to answer them appropriately?

2 A Yes.

3 Q And once you completed the interview, then what did
4 you do?

5 A That day we actually agreed -- he agreed to call
6 his Co-Defendant to set up another robbery, as he
7 wanted to show that it was the Co-Defendant that
8 was the main person involved and it wasn't him.

9 Q So even after he gave the statement he continued to
10 speak with you all?

11 A Yes. He actually rode with me.

12 Q He rode with you? Where did you go?

13 A He would call his Co-Defendant, Devin Boler, and
14 set up a location to meet. I would then find other
15 investigators to assist me. We would go to the
16 general area where he wanted to meet. And we
17 identified him walking down the street. I would
18 then call out on the radio, and the investigators
19 that were assisting me would then detain Devin
20 Boler, take him to headquarters, and we would
21 return to headquarters so I could interview
22 Mr. Boler.

23 MS. SAMPSON: Beg the Court's indulgence.

24 (Pause.)

25 BY MS. SAMPSON:

1 Q. That's all the questions I have at this point.

2 Please answer anything that Mr. Ruffin has.

3 MR. RUFFIN: May it please the Court, Judge?

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. RUFFIN:

7 Q Investigator Carwell. I have been calling you

8 Investigator Caldwell. I'm so sorry.

9 A. I get that all the time.

10 Q Carwell; is that right?

11 A Yes, sir.

12 Q First, I want to ask you a few questions before I
13 forget. The GPS. What kind of knowledge do you
14 have of the accuracy of the GPS? Do you work
15 with -- do you deal with the GPS, or is that
16 somebody else?

17 A Investigator Greene, works for the Sheriff's
18 Department, she was an investigator at the time,
19 and, like I said, she is a liaison. She deals with
20 it.

21 Q So you are not aware of what the accuracy is or if
22 there is margin of error, or anything like that?

23 A. No.

24 Q Okay. All right. I want to clarify a couple of
25 things real quick about the timeline of events. So

- 1 what you are saying is that it was the morning of
2 the 25th that you detained -- y'all detained
3 Emmanuel Elleby at his house; correct?
- 4 A That's correct.
- 5 Q So fast-forward to y'all actually being at his
6 house.
- 7 A We detained him at his house.
- 8 Q You detained him at his house?
- 9 A Yes.
- 10 Q Okay. And it was at that point -- your testimony
11 right now on direct is that at that time you got
12 him to sign that consent form?
- 13 A Yes.
- 14 Q Okay. And after that you searched the house;
15 correct?
- 16 A Yes. He was there. He was there with us.
- 17 Q Right. And you took possession of the things;
18 right?
- 19 A Yes, sir.
- 20 Q And then did you fill in the consent? So he had
21 already signed the consent form just to consent to
22 the search of his house, then you searched his
23 house, collected the items and added the items to
24 the form after he had signed it? Is that how that
25 worked?

1 A. Yes. He went along with it, his mother in between
2 us. He was there with me. All the property was
3 with both of us.

4 Q So you are saying that you had the consent form
5 basically in your hand while y'all were searching
6 the house?

7 A It was signed there at the location.

8 Q But it was signed before you took possession of the
9 items?

10 A It was signed in my truck.

11 Q Before you searched his house?

12 A Yes.

13 Q Okay. So what I'm asking -- so he signs it in your
14 truck before you go into his house. And then you
15 take possession of a bunch of items? You seize
16 some stuff in his house; right?

17 A Right. Excuse me, I'm sorry. We do this during
18 the Advise of Rights form. When he signs that, we
19 also do the consent form, that he was consenting to
20 us taking the items that we found in his room.

21 Q Okay. So you are saying that you got him to sign
22 the consent form to search at the same time that
23 you advised him of his rights?

24 A. Yes.

25 Q Okay. If you look at -- do you have the Advice of

- 1 Rights form in front of you? What is the timestamp
2 at the top of it?
- 3 A 1308.
- 4 Q Okay. What is the timestamp of the actual
5 statement?
- 6 A The actual statement is 1359.
- 7 Q Okay. And that is because you advise him of his
8 rights at 1308?
- 9 A. Uh-huh.
- 10 Q And then you drove him to headquarters while you
11 interview him on the way?
- 12 A Yes. We talked.
- 13 Q So that time lapse; right?
- 14 A. Uh-huh.
- 15 Q. And when you got there is when you actually
16 wrote -- or you typed the statement while he
17 answered your questions?
- 18 A That's correct.
- 19 Q So I guess my question is, when did you write down
20 the items that were taken onto that consent form?
- 21 A With Mr. Elleby.
- 22 Q Before you took possession of the items?
- 23 A No. Like I said, we went over each item.
- 24 Q. Right. Prior to taking them?
- 25 A They weren't taken by any other investigator, they

1 were with me.

2 Q Right.

3 A And we went over each item, because it was clear,
4 I just watched the video, I knew what I was looking
5 for. I went to his room, he agreed that I would
6 take those items, and he signed.

7 Q But it sounds like you are saying that he signed
8 this in the truck before you went inside; right?

9 A Not before.

10 Q He did not sign --

11 A Right.

12 Q -- before?

13 A Right.

14 Q Okay. So you actually went into the house to
15 search prior to Mr. Elleby signing that form?

16 A With Investigator Greene, who was with probation,
17 the liaison with probation.

18 Q Okay. So let's be clear, though. The consent that
19 Mr. Elleby gave to search his house was actually
20 given after you searched his house; right?

21 A Right.

22 Q Okay. All right. So let's talk about the
23 probation. Have you got the contract in front of
24 you?

25 A No, I don't anymore.

1 THE COURT: Have you marked it? Do you have a
2 copy?

3 MR. RUFFIN: It is S-4.

4 MS. SAMPSON: That is a copy.

5 THE COURT REPORTER: I don't have my stickers
6 in here, but I am going to do it later.

7 MR. RUFFIN: It is handwritten, Your Honor.

8 THE COURT: Oh. Okay. So S-4?

9 MR. RUFFIN: Right.

10 THE COURT: State's 4. And this is State's 5.
11 I don't want to take any.

12 BY MR. RUFFIN:

13 Q. And I think that is what you read earlier was
14 Number 2. Do you have it?

15 A Yes, I have it.

16 Q Could you read Number 2 again? That is the form
17 Mr. Elleby signed when he got onto community
18 supervision?

19 A. Right.

20 Q. And that is a standard form. If you can just read
21 Number 2 out loud.

22 A It says:

23 I shall not change my residence or
24 employment without consent of my agent.

25 Further, I shall allow my agent to visit

1 me in my home, at my place of
2 employment, or elsewhere at any time.

3 Q Okay. Are you his agent?

4 A I'm not.

5 Q Is Investigator Greene his agent?

6 A She is with Probation and Parole.

7 Q Well, she actually works for the Richland County
8 Sheriff's Department, doesn't she?

9 A Yes.

10 Q And she is the liaison?

11 A Right.

12 Q Between the Richland County Sheriff's Department
13 and --

14 A She has an office at probation.

15 Q Is she Mr. Elleby's agent?

16 A I can't tell you that.

17 Q Okay. Read Number 11 on the form, please.

18 A 11? Number 11:

19 Unless I was convicted of or pled guilty
20 or nolo contendere to a Class C
21 misdemeanor or an unclassified
22 misdemeanor that carries a term of
23 imprisonment of not more than one year I
24 shall be subject to search or seizure
25 without a search warrant with or without

1 cause of my person, any vehicle I own or
2 am driving, and any of my possessions by
3 any probation agent employed by the
4 department or any law enforcement
5 officer.

6 Q And you would be a law enforcement?

7 A Yes.

8 Q Where in Number 11 does it say that you can do a
9 warrantless search of Mr. Elleby's house?

10 A I would consider that Investigator Greene worked --
11 has an agreement with probation to act as an agent,
12 that would allow me to go to the house with her.
13 She was present during that time.

14 Q Okay. So let me rephrase the question here. In
15 Number 11, which is this form that Mr. Elleby
16 signed, it says that he consents to a warrantless
17 search of his person; right?

18 A That's correct.

19 Q His car; right?

20 A Right.

21 Q And his possessions; right?

22 A Right.

23 Q It doesn't say house?

24 A Right.

25 Q Okay.

1 MR. RUFFIN: That's all the questions I have,
2 Judge.

3 MS. SAMPSON: Just briefly, Your Honor, if I
4 can clarify something.

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MS. SAMPSON:

8 Q Just to be clear, before you searched his home, you
9 spoke with Mr. Elleby; correct?

10 A Yes. His mother was there, the owner of the house.
11 Everybody was there.

12 Q And he gave you verbal consent to search his house?

13 A As well as his mother, to come into the house.

14 Q And then you went and actually searched the house;
15 is that correct?

16 A That's correct.

17 Q And then you went to the truck and had him sign the
18 form?

19 A That's correct.

20 Q Did you have his consent when you searched the
21 house?

22 A Yes, I did.

23 Q Now, he asked you about Number 11. It does say,
24 You can search my possessions; correct?

25 A Yes.

1 Q Would your room be your possessions?

2 A That is the only room.

3 MR. RUFFIN: Objection, Your Honor.

4 A. That is the only room.

5 THE COURT: What is the objection?

6 MR. RUFFIN: That asks for a legal conclusion,
7 what is the legal definition of possession.

8 MS. SAMPSON: I asked for his definition.

9 MR. RUFFIN: I think that is a term --

10 THE COURT: I'll let him answer the question.
11 The objection will be overruled.

12 BY MS. SAMPSON:

13 Q When it says "my possessions," would you include a
14 room?

15 A I would.

16 Q Why would you?

17 A I only -- we only searched his room. There was
18 other bedrooms, living room, kitchen, buildings.
19 All we did was search his bedroom.

20 MS. SAMPSON: That's it, Your Honor.

21 MR. RUFFIN: Your Honor, if I may?

22 THE COURT: Yes, sir.

23 MR. RUFFIN: Just one second, please.

24 THE COURT: Okay. Take your time.

25 (Pause.)

RECROSS-EXAMINATION

BY MR. RUFFIN:

Q. - Investigator Carwell, you are the investigator for this case; correct?

A That's correct.

Q You have the details, basically everything that you did during the course of the investigation?

A Uh-huh.

Q Do you have it in front of you?

A I do.

Q On Page Number 2 -- actually it is Page Number 1 at the bottom -- you kind of write the dates and times of stuff in your investigative report; right?

A. Uh-huh.

Q To kind of have a record of when you did certain things?

A Right.

Q Okay. At the bottom of Page 1, the date down there is 8/25/14; right?

A Yes, it is.

Q And it says morning hours, and then there is, you know, a lot of stuff that follows that; right?

A Right.

Q And in that same section, if you flip over to Page 2, all right -- and I just want to clarify before I

1 ask you this, but your testimony is you had oral
2 consent prior to entering the house, but not
3 written consent?

4 A Yes.

5 Q Okay. Look with me at Page 2 about the third
6 paragraph. I want you to tell me if I read this
7 correctly. Let me make sure I'm at the right
8 place. You say:

9 We left to obtain a search warrant to
10 force entry, which was never obtained,
11 as Emmanuel Elleby showed up after he
12 was hiding in the bushes close-by. We
13 would return back to his residence to
14 search it and take custody of him.
15 Right?

16 A That's correct.

17 Q You didn't mention consent, did you?

18 A Not at that time.

19 Q Not at that time. Okay. So let's fast-forward
20 here. The very next thing is you have 8/25/14, the
21 same day, but there is a timestamp on there, 12:04.
22 So I'm assuming that is right after noon; right?

23 A (Nods affirmatively.)

24 Q Where you interviewed Breanna Hampton?

25 A. (Nods affirmatively.)

1 Q And then at 12:18 you have a note where you
2 interviewed Sheila Ashley; right?

3 A (Nods affirmatively.)

4 Q At 12:33 you have a note that says Sheila Ashley
5 identified Phatz in a photo line-up as Emmanuel
6 Elleby; right?

7 A That's correct.

8 Q And Breanna Hampton also picked Emmanuel Elleby out
9 of a line-up at that point?

10 A That's correct.

11 Q Now, let's go to where you have 8/25/14.

12 A Can I explain that?

13 Q Well, let me just ask the question. 8/25/14 at
14 1308 hours; right?

15 A Right.

16 Q You say: I advised Emmanuel Elleby of his Advice
17 of Rights, which he waived, as he sat on my truck
18 in front of his residence.

19 Is that correct?

20 A That's correct.

21 Q Okay. And 1308 is the timestamp on his Advice of
22 Rights?

23 A That's right.

24 Q Now you are saying that he signed a consent form at
25 the same time that you advised him of his rights.

1 Okay.

2 And go with me to Page 4, the fourth line
3 down, and you wrote: Emmanuel Elleby also provided
4 written consent listing the items -- listing the
5 items -- that were taken from his bedroom. Right?

6 A That's correct.

7 Q So the items were already taken when he signed
8 this; right?

9 A Yes.

10 Q Which you already testified to that earlier.

11 Now, help me understand here, because at the
12 bottom of Page 4 -- because you also searched Devin
13 Boler's house; right?

14 A His grandmother's house.

15 Q Grandmother's house. So the second line from the
16 bottom of Page 4 this is what you wrote: Devin
17 Boler provided written consent to search [REDACTED]
18 Bonner Avenue.

19 Correct?

20 A That's correct.

21 Q Okay. So it is worded a little bit differently;
22 right? When you write it with Devin Boler, it is
23 worded differently than the way you said it with
24 Elleby?

25 A Different.

1 Q Right. Because you had already searched

2 Mr. Elleby's house?

3 A Huh-uh.

4 Q When he signed the form?

5 A No.

6 Q When he signed the consent form?

7 A I wrote it for Mr. Boler after he was already in my
8 office.

9 Q Mr. Boler was already in your office?

10 A Yes. When he signed the consent form --

11 Q Right.

12 A -- he was already being arrested for the armed
13 robbery. I would have him sign a consent form
14 knowing that I would go back to his grandmother's
15 house and ask to get her to sign it too.

16 Q Okay.

17 A I wanted to be careful and have both of them sign.

18 And that is why the wording is different.

19 Q So you also got the grandmother to sign?

20 A I did.

21 Q. Okay.

22 MR. RUFFIN: One second.

23 (Pause.)

24 MR. RUFFIN: That's all I have. Thank you.

25 MS. SAMPSON: Nothing further from the State.

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

2 THE WITNESS: Thank you, Your Honor.

3 (Witness steps down.)

4 MR. RUFFIN: Judge, would you like me to go
5 ahead and start? I'd like to -- first I would like
6 to start with the search issue, if that is all
7 right.

8 THE COURT: Yes, sir.

9 MR. RUFFIN: Okay. The consent, I think it is
10 sort of boggles the mind a little bit, that the
11 testimony on my cross was he searched it without
12 consent, that he searched it before getting
13 consent, which makes sense if you read his
14 investigative report and if you look at the actual
15 consent form which lists the items that were
16 already taken because they had already searched his
17 house. So they searched his house and then a
18 couple of hours later -- what it seems like based
19 on his report -- a couple of hours later he then
20 advises him of his rights and gets him to sign this
21 consent form. There is not a single mention ever
22 in any of this where it talks about oral consent.
23 So, quite frankly, I just don't believe it. So the
24 consent that they have that was obtained was
25 obtained after the search was already done.

1 As far as the probation, Mr. Elleby is on
2 community supervision at the time this happened.
3 And I am going to read you straight out of the
4 statute.

5 THE COURT: Can I have a copy of the contract,
6 State's 4?

7 (Complies.)

8 THE COURT: You are going to read from the
9 contract?

10 MR. RUFFIN: Well, I was actually going to
11 read from the statute. It is the same as the
12 contract, though.

13 THE COURT: Okay.

14 MR. RUFFIN: I will flip to the contract
15 first, Judge.

16 First of all, when they reference Number 2 on
17 that list, if you can see that, where it says, I
18 shall not change my residence or employment without
19 the consent of my agent; further, I shall allow my
20 agent to visit me -- to visit me -- at my house and
21 my place of employment or elsewhere at any time.
22 It doesn't say anything about search, period. It
23 doesn't say anything about seizing any items that
24 belong to you, period.

25 And Investigator Carwell's testimony, he is

1 not Emmanuel Elleby's agent, and neither was
2 Investigator Greene.

3 Down to Number 11, it says -- I am going to
4 skip ahead where it says -- the second sentence
5 there. I shall -- I'm sorry, not the second
6 sentence, the second line.

7 I shall be subject to search or seizure
8 without a search warrant with or without
9 cause of my person, any vehicle I own or
10 am driving, and any of my possessions by
11 the probation agent or law enforcement
12 officer.

13 It doesn't say house. I think it is an
14 extreme stretch of the -- you know, I think that is
15 sort of legal gymnastics in a way to say that
16 possessions equals house.

17 The fact that the legislature -- and at this
18 point, let me read you the statute, Judge, which is
19 24-21-560(b), which is where that language comes
20 from. And what it says is basically exactly what
21 the contract says. It says:

22 The conditions of participation -- and
23 they are talking about participation in
24 community supervision -- the conditions
25 of participation must include the

1 requirement that the offender must
2 permit the search or seizure without a
3 search warrant with or without cause of
4 the offender's person, any vehicle the
5 offender owns or is driving, and any of
6 the offender's possessions.

7 The house is not in there. You know, I would
8 submit that if the legislature intended that you be
9 subject to a warrantless search of your house, they
10 would say house. I mean, if possessions -- if the
11 word possessions includes your home or your
12 bedroom, why does it not include your car or the
13 car that you were driving? I mean, they
14 specifically said in there, Your vehicle that you
15 own or your vehicle that you are driving. Why put
16 that in the statute and not house? That makes no
17 sense. Possessions does not include house. It
18 would include maybe a backpack or a briefcase where
19 you have items in it.

20 So, for that reason, I definitely do not think
21 that this includes a warrantless search of his
22 house, which I concede it is or was a warrantless
23 search of his house, period.

24 THE COURT: All right. Yes, ma'am?

25 MS. SAMPSON: I will respond to both, I guess.

1 First of all, Your Honor, they had consent.

2 There has been absolutely no evidence presented
3 that they didn't have consent.

4 The officer who got the consent told us more
5 than once that he spoke with Mr. Elleby, he gave
6 him consent, then he had him sign the form. He had
7 him sign the form after he received all the
8 information and gotten all the items because he had
9 to put them on the form. But he told us more than
10 once that he got consent to search the house.

11 And, in fact, Mr. Elleby was with him when he
12 searched the one particular room and when he got
13 the items. And then he okayed him taking those
14 items. That is the definition of consent. He then
15 had him sign the form once he had all the
16 information to put on the form. There has been
17 absolutely no presentation of any other evidence to
18 say otherwise.

19 Secondly, Your Honor, as to the need -- the
20 probation and the Number 11. The only thing taken
21 were the Defendant's possessions. The only thing
22 looked at were the Defendant's possessions. They
23 went to his room, got his possessions: The bag
24 with the Number 38 on it, his pants, his shirt, and
25 his shoes. If they had taken other people's

1 possessions, perhaps that would be an issue. If
2 they had searched the kitchen, if they had searched
3 his grandmother's room, if they had searched other
4 rooms, but they didn't. The only place they looked
5 was the one place he said he lived, which is his
6 bedroom. And they only took his possessions with
7 the exception of, I believe, I guess we could say
8 maybe the money took was not theoretically able to
9 prove was his and the Newport cigarettes, although,
10 again, they are in his room.

11 So I do think it was well within the
12 warrant -- within the words and the language of
13 taking his possessions without a warrant would be
14 allowable. But either way, they had consent. That
15 is the quintessential definition with the Defendant
16 standing there saying, You can search my room.
17 They don't need a warrant. They didn't need Number
18 11 on that particular form when the Defendant said,
19 You can search my room.

20 So, therefore, I think that there is no
21 warrantless search that violates the Fourth
22 Amendment. I think it was consent to search, which
23 is well within any case law or any constitutional
24 limit that we have, both federal and state.

25 THE COURT: Thank you. All right. Reviewing,

1 I guess that is State's Number 4, I tend to agree
2 with Mr. Ruffin regarding Number 2, regarding the
3 agent. Investigator Greene, I think based on the
4 testimony, is not an agent of the Department of
5 Probation, Pardon and Parole. There has not been
6 any documentation provided of any agreement of her
7 being a -- and I know that you all do that
8 sometimes with SLED and the federal government, but
9 there has not been any evidence of that.

10 And Number 11 is interesting because I think
11 Mr. Ruffin makes a good point that the legislature
12 and also in the contract they -- for them to list
13 "my person, my vehicle, and my possessions," but
14 not specifically say "my home or my property, real
15 property" is somewhat unclear.

16 But I do find that based on the testimony that
17 the witness has testified that verbal consent was
18 given when they searched the house. That also his
19 mother was there and consented. Also that he was
20 there in the room when they did the search.

21 In reviewing the form, it says it is a consent
22 to search form, but it just -- it addresses that,
23 but also in this case it appears to be them almost
24 like a return on the search warrant where he is
25 putting down everything that he found in the house

1 and then Mr. Elleby signs it.

2 But based on the testimony, it appears that
3 there was verbal consent given, according to the
4 testimony. And for that reason, I am going to deny
5 the motion to suppress or exclude the items based
6 on the Fourth Amendment and violation. Although I
7 tend to agree with Mr. Ruffin regarding the second
8 part of his motion, I think that the verbal consent
9 by the Defendant is sufficient for purposes of the
10 search. And also there is some case law out there
11 that talks about consent after the Fourth Amendment
12 violation and causal connection. But in this case
13 I don't think that is necessarily -- that even
14 arises because the officer testified that he has
15 given -- he gave him consent. And his mother gave
16 consent prior to them searching. And that he went
17 along with them into his room and -- I don't want
18 to say assisted in the search, but was present for
19 the search.

20 So I am going to respectfully deny that
21 motion, the motion as to the Fourth Amendment
22 violation.

23 All right. So the next one would be the
24 Denno; right?

25 MR. RUFFIN: Yes. And, Judge, if I can just

1 clarify one thing. I think -- and I understand you
2 have ruled. I just want for the record to be clear
3 that at least my understanding -- Ms. Sampson can
4 correct me if I'm mistaken -- I think the mother,
5 the testimony about the mother being present was
6 regarding the Co-Defendant, Devin Boler, not --

7 THE COURT: That was his grandmother, I
8 thought.

9 MS. SAMPSON: That was his grandmother.

10 MR. RUFFIN: Sorry.

11 THE COURT: He testified, because I wrote it
12 down.

13 MR. RUFFIN: I just want to make sure.

14 THE COURT: And you can correct me if I'm
15 wrong, but I thought he said that the mom and he
16 both consented.

17 MS. SAMPSON: That's correct. And then on the
18 other one it is Boler's grandmother who was there.
19 That's it.

20 THE COURT: All right. And then the next
21 issue, I will be glad to hear from you all
22 regarding the Denno issue.

23 MR. RUFFIN: Yes. We really don't have any
24 objection to the admission of Mr. Elleby's
25 statement with a couple of exceptions that we would

1 like to have redacted. And my co-counsel will
2 address those more specifically and the reason --
3 the questions regarding probation, which is on Page
4 2, third question.

5 Who is Devo?

6 Answer: It is the dude I met at the probation
7 office two months ago.

8 We ask for that to be redacted.

9 Then the six and seventh question is:

10 Why are you wearing an ankle monitor?

11 Answer: Because of a misunderstanding with my
12 girlfriend.

13 What else have you been arrested for?

14 I was arrested a long time ago for armed
15 robbery.

16 We would ask that those be redacted.

17 And other than that, no problem with the
18 statement.

19 THE COURT: Yes, ma'am?

20 MS. SAMPSON: Your Honor --

21 THE COURT: And I don't have the statement.

22 MS. SAMPSON: I will give you an unmarked
23 copy. That is not State's Exhibit anything.

24 (Complies.)

25 MS. SAMPSON: To make sure we are on the same

1 page, we are talking about Page Number 2, which is

2 Question 3:

3 Who is Devo?

4 The dude I met at the probation office two
5 months ago.

6 I don't think there is any prejudice in that
7 statement. He doesn't say, While I was on
8 probation. He could have been there with somebody
9 else at probation. I mean, it just says, The dude
10 I met at the probation office.

11 So I don't think there is any prejudice in
12 that particular one. I don't think there is a real
13 need to redact that.

14 As to, Why are you wearing an ankle bracelet?

15 Because of a misunderstanding with my
16 girlfriend.

17 I believe we're going to get into the fact
18 that he has an ankle bracelet on. I don't --
19 again, I don't see any prejudice in it. If he
20 said, Because I robbed somebody, then I might have
21 to agree it is prejudicial, but it says, Because of
22 a misunderstanding with my girlfriend.

23 THE COURT: Is that why he had it? I thought
24 he had an ankle bracelet on because he was on
25 community supervision.

1 MS. EIGENBROT: He was on community
2 supervision. He was charged with a criminal
3 domestic violence offense. And based on that
4 arrest, probation then placed him on the ankle
5 monitor.

6 MS. SAMPSON: That is the first I have heard
7 of that. I had no idea. I knew he was on
8 electronic monitoring. I did not know that was the
9 reason why he was on it.

10 MS. EIGENBROT: That was part of the reason
11 his community supervision had lapsed and he was no
12 longer on the monitor.

13 MS. SAMPSON: Still, I don't see how that
14 prejudices him, other than having an ankle
15 bracelet. We are going to have to get into that,
16 is the State's position. So I don't think because
17 of a misunderstanding with his girlfriend is
18 prejudicial in any manner.

19 And then the last one, I would agree to that:

20 What have you been arrested for?

21 I was arrested a long time ago for armed
22 robbery.

23 I would agree that that needs to be redacted,
24 unless he testifies -- well, since he is not here.

25 THE COURT: Let me ask you this. Why is it

1 relevant or why is it that we need to -- I mean --
2 and I know that is their next objection regarding
3 the ankle monitoring, and I'm not quite sure how to
4 get around it, considering --

5 MS. EIGENBROT: Your Honor, if I may go ahead
6 and argue my motion on the ankle monitor situation?
7 And we can address the statement along with that
8 part of it.

9 MS. SAMPSON: If we can go ahead and get a
10 ruling that the statement has been voluntarily,
11 knowingly, intelligently given with the Advice of
12 Rights, and then I think --

13 THE COURT: And then we can talk about
14 redaction of the other part. All right. I think
15 based on the preponderance of the evidence, the
16 testimony presented to the Court, I find that the
17 Defendant's statement was freely -- and considering
18 the totality of the circumstances, the forms that
19 were signed and entered into evidence, the
20 testimony given by the investigator, I find that
21 the Defendant's statement was freely and
22 voluntarily given -- of course, ultimately it will
23 be up for the jury to decide -- beyond a reasonable
24 doubt freely and voluntarily.

25 All right. Now let's talk about the ankle

1 monitor.

2 MS. EIGENBROT: Thank you very much, Your
3 Honor. May it please the Court?

4 Your Honor, it is our contention that any
5 mention of the GPS and ankle monitor would be
6 extremely prejudicial to our client and ask such be
7 excluded under Rule 403.

8 Your Honor, admittedly, the GPS data placing
9 Mr. Elleby at the Dollar General at the time of the
10 armed robbery does have some probative value.
11 There is no denying that. However, based on the
12 circumstances of why an individual was placed on an
13 ankle monitor we believe it unduly prejudices
14 Mr. Elleby in this trial.

15 First and foremost, Your Honor, one is only
16 fitted with an ankle monitor if you are a
17 registered sex offender, if you are on bond for a
18 violent offense, or you are on some type of
19 supervision for a violent offense, as Your Honor
20 was under the assumption that because he was on
21 community supervision he was on a monitor at the
22 time.

23 Your Honor, so a jury hearing an individual
24 was placed on an ankle monitor automatically
25 prejudices him. He is either charged with a

1 violent crime, been convicted of a violent crime,
2 or is a sex offender. Any jury making assumptions
3 would be prejudiced against Mr. Elleby at this
4 point in time.

5 And, most importantly, Your Honor, very
6 recently there has been a lot of media attention to
7 the ankle monitor situation. I have an article
8 here -- unfortunately, I don't have extra copies,
9 but it is recently as April, there is probably more
10 out there, I haven't searched recently, where
11 Solicitor Dan Johnson makes a big deal about the
12 ankle monitor and how individuals could be placed
13 on it and he couldn't understand why the City of
14 Columbia is not placing individuals coming through
15 that courtroom on the ankle monitor.

16 Your Honor, this is a direct -- very recently
17 one of my other cases where the Defendant was found
18 shot at the scene wearing an ankle monitor, in that
19 case the judge ruled that any mention of the ankle
20 monitor, any mention of any community supervision,
21 as he was as well, would be unduly prejudicial.
22 And as such, ruled that those terms could not be
23 used during the course of trial. They were only
24 allowed to refer to the data itself as GPS data.
25 It was his contention at the time that because cell

1 phones or other types of devices could produce the
2 same data as an ankle monitor, so the jury could
3 make that assumption, and ruled at that point in
4 time it wouldn't be admissible and it was
5 prejudicial.

6 So, Your Honor, we would object to any mention
7 of ankle monitor. We would object to any mention
8 of him being supervised. Again, as supervision
9 would again be making an assumption to the jury, or
10 the jury could make the assumption that the
11 individual was being supervised for committing a
12 crime, for being on probation, and basically being
13 supervised for a reason.

14 I think all of that unduly prejudices our
15 client, and actually kind of back-doors in his
16 prior criminal record. There is no way to address
17 it without an individual -- there is not an
18 individual being supervised on probation or parole
19 or under community supervision that hasn't been
20 convicted of a crime of some sort.

21 And as of this time, he will not be
22 testifying. So to allow the State to back-door in
23 this conviction, they may not hear armed robbery,
24 but they will know he was convicted of some sort of
25 crime.

1 As such, we would object to the mention of an
2 ankle monitor and him being on any type of
3 supervision.

4 I think we could tailor a lot of the testimony
5 to allow them to draw the lines in their case that
6 allow them to make assumptions they have made
7 without mentioning supervision, without mentioning
8 probation, without mentioning an ankle monitor.

9 THE COURT: All right. Yes, ma'am?

10 MS. SAMPSON: Thank you, Your Honor. There is
11 a couple of things I want to address.

12 First of all, although it may be prejudicial
13 in this case, it is highly probative. And as Your
14 Honor knows, the weight has to be more prejudicial
15 than probative.

16 In this case, you have already heard -- and I
17 am going to try to list the facts as I can remember
18 them and as have already been presented to the
19 Court.

20 There is a tip that states he is currently on
21 and just been released from an armed robbery,
22 actually, and that he lives at a particular
23 address. Again, we are probably going to have to
24 address that, but that is one factor that we know
25 we have got to address. But that makes it

1 probative, the fact that he has got it.

2 Next, the reason they confined him is that he
3 is on probation. He is on supervision. They have
4 to talk to Probation, Pardon and Parole to get his
5 address and to know he lives at the house. That is
6 probative of how they get to Mr. Elleby. It is not
7 just that he has an ankle bracelet on, it is that
8 he is being supervised and therefore they have an
9 address.

10 Secondly, as you have already heard, they
11 actually are able to track his location not only at
12 the Dollar General during the time of the crime,
13 but being back home at some other point.

14 Again, it is probative of this particular
15 crime that he lived within a certain amount of feet
16 and that he is there within the time of the crime
17 and he is at the Dollar General and subsequently
18 afterwards is at home.

19 As you have already heard from Investigator
20 Carwell, and you will actually hear more from
21 Investigator Greene, it also is how they find him
22 is that they go there because his ankle bracelet
23 was putting him at home. They then get there and
24 he is not there, but his ankle bracelet is still
25 putting him at the house. So the two of them

1 remain while the other goes to get a search warrant
2 because they don't want to break down the door.
3 And it is beeping in the woods.

4 They then -- he comes out of the woods because
5 his ankle monitor was making noise. They then find
6 him. And that is how they lead to what we have
7 already been through about the warrantless search
8 with consent.

9 What you haven't heard -- well, you kind of
10 heard because of the statement -- he met Devin
11 Boler at probation. There, again, it is more
12 probative of how he even knows his Co-Defendant,
13 who is going to testify at trial, who again is
14 going to say, I met him at the probation office.

15 I can probably instruct him to not say because
16 he was there for armed robbery or the he was even
17 being supervised by probation, but the fact is he
18 was there meeting him at probation.

19 This case is different than the case that
20 Ms. Eigenbrot brought up when the judge said that
21 it was only -- that you could say that he was found
22 through GPS. And in that case that is all they
23 were talking about is finding the Defendant based
24 on his ankle monitor. We have got all these other
25 factors that have to do with him being on

1 probation, why Investigator Greene is involved, how
2 they eventually find him at his home, how it is
3 going off, that he is hiding.

4 And, again, if the State is allowed to talk
5 about evidence of flight or evidence of hiding in
6 terms of guilt, we would be limited and not allowed
7 to do that because we are not even allowed to talk
8 about the fact that he has an ankle bracelet that
9 is going off while they are looking for him.

10 For all of those reasons, Your Honor, I think
11 that we're allow to say that -- we understand we
12 are going to have to limit it, and we are not
13 about to say that he is on probation because of an
14 armed robbery or that he is on community
15 supervision due to an armed robbery. I concede
16 that we cannot get into that and that would be too
17 prejudicial and would outweigh the probative value.

18 However, under a 404 or 403 argument, when you
19 weigh the totality of the circumstances, it is more
20 probative than prejudicial. And I think we can
21 fashion it to say that he is under the supervision
22 of Probation, Pardon and Parole, and therefore has
23 a monitor. Or we can fashion it in some other way
24 to state that he has an ankle bracelet. You are
25 placed on ankle bracelets often because of a

1 pending charge. She just told you that is why he
2 has an ankle bracelet. I didn't know that until
3 this minute. We are making assumptions that the
4 jury even knows why a person has an ankle bracelet
5 on. Unless somebody in this courtroom tells them
6 that is why he has an ankle bracelet on, they are
7 to come in here and only take the facts that we
8 give them. We are not about to give them any facts
9 as to why he has an ankle bracelet on. We are here
10 to tell them that he does have one and it is
11 probative of this particular case.

12 Based on res gestae and the totality of the
13 circumstances and not to impede our ability to put
14 up the case that we have to, I believe that we
15 should be able to get into it. And we can fashion
16 it however you want us to get into it in terms of
17 restricting it to not prejudice the client -- the
18 Defendant -- any more than we have to.

19 MS. EIGENBROT: And, Your Honor, may I
20 respond?

21 THE COURT: Yes.

22 MS. EIGENBROT: Your Honor, I think the
23 probative value is diminished, distinctly on the
24 fact that in Mr. Elleby's statement he does
25 eventually admit, albeit he denies being there at

1 the time of the armed robbery, that he is present
2 for some point in time, that he is -- and on top of
3 that, Your Honor, as Ms. Sampson stated, the
4 Co-Defendant will testify that Mr. Elleby was the
5 individual with him during the armed robbery and
6 the one committing the armed robbery with him. I
7 think based on that evidence that they will
8 present, the probative value of him being on a
9 monitor and being supervised with probation is
10 diminished.

11 Your Honor, further, all the things
12 Ms. Sampson has indicated are things that we can --
13 that an individual can testify to and explain their
14 investigation without continuing to say, He was
15 being supervised, he was on probation. The fact
16 that this actually -- actually what led them
17 initially to his address was the initial tip they
18 received. The initial tip actually gives the
19 actual address of his residence. This is the
20 residence he lived in. They confirm that address
21 through Investigator Greene, who is the liaison
22 between probation and Richland County. The tip
23 itself gives the address. All they had to do was
24 go to the address. They didn't actually have to
25 receive permission from probation or receive

1 confirmation through probation.

2 Further, Your Honor, I think as we have
3 indicated, he was also hiding in the woods and was
4 found with the ankle monitor. They can indicate
5 that there was a noise. They don't have to say the
6 ankle monitor was the thing beeping. They can
7 still make their case without continuing to say it
8 was an ankle monitor.

9 And I do believe the jury will make
10 assumptions based on the fact that he is being
11 supervised and on an ankle monitor.

12 THE COURT: All right. I want to see -- I
13 briefly did a search. I don't think there is
14 anything out there, but you all are more than
15 welcome to look at it overnight and see what you
16 can find. But based on my limited search and my
17 abilities on Westlaw, it will take me a little bit
18 longer, I will look over it tonight, to see if we
19 will allow -- I do think this one is a little bit
20 different from the ones -- because it is just a lot
21 more involved with the ankle monitor, but I will
22 try to see what I can find in the case law, and I
23 would invite you all to do the same.

24 MS. EIGENBROT: Your Honor, in the
25 alternative, you know, admitting the GPS data, I

1 understand that would likely be admitted, even
2 though it is very probative. They have to prove he
3 is there at a certain time. However, again, I
4 would just ask that they be refrained from
5 referring to it as GPS data coming from an ankle
6 monitor and refer to it as GPS data.

7 THE COURT: All right. Like I said, I invite
8 you all to see if you can find any case law on it.
9 I don't know if there is anything out there.
10 Again, it is such a -- there probably should be
11 something out there. We'll see. Maybe I can get
12 Judge Manning's law clerk to do some research for
13 me.

14 MR. RUFFIN: Judge, since they changed out
15 lawyers over here, obviously we have no problem
16 with your clerk working on the case now. We are
17 completely fine with that, because, obviously,
18 whatever conflict that would have existed is
19 totally gone.

20 THE COURT: She doesn't know anything about
21 the case. I still have to catch her up.

22 MR. RUFFIN: I just want you to know that we
23 are not objecting to her.

24 THE COURT: Okay. All right. And then there
25 is another motion?

1 MS. EIGENBROT: Yes, Your Honor. We would
2 just move that the State refrain from referencing
3 statements made by the Co-Defendant, Mr. Boler,
4 during opening statements or any time prior until
5 he actually gets on the stand to testify.

6 THE COURT: Any position?

7 MS. SAMPSON: I think we would be allowed to
8 say in opening that they have a Co-Defendant who
9 has made statements implicating the Defendant. I
10 mean, in opening statement. I have no intentions
11 of -- or Ms. Ms. Moser, or whoever does opening
12 statement -- have any intention of introducing his
13 statement in opening. But I think we are allowed,
14 unless they can show me case law otherwise, to say
15 that there is a Co-Defendant who makes a statement
16 implicating the Defendant as doing this crime with
17 him.

18 MS. EIGENBROT: Your Honor, our biggest
19 concern is that Mr. Boler can change his mind to,
20 one, testify or in fact plead the Fifth when he
21 does come to testify, and therefore eliminating any
22 statement, and the fact it has already been
23 referenced by the State in opening or prior to him
24 actually getting on the stand saying these things
25 would prejudice Mr. Elleby in this case.

1 MS. SAMPSON: And there is instructions and
2 case law and cures to that. If we state that we
3 are going to present evidence and then we don't,
4 they are allowed to talk about that in their
5 closing and also ask for instruction.

6 THE COURT: I think what she wants is that you
7 are not -- she doesn't want you to reference the
8 statement. And I think you are saying that you are
9 going to just reference that there is a
10 Co-Defendant who plans on testifying.

11 MS. SAMPSON: And that he implicates the
12 Defendant as doing the crime with him.

13 THE COURT: And if he doesn't testify, then
14 they are going to look bad, I assume.

15 MS. SAMPSON: Exactly. And there is case law
16 on point.

17 THE COURT: But she doesn't want you to get
18 into the statements he gave the officer.

19 MS. SAMPSON: I have no intentions on getting
20 into the specifics other than what I just said,
21 which is that he implicates --

22 THE COURT: That he is going to testify and
23 implicate -- and then you all would have to make
24 sure you produce that for your case.

25 MS. EIGENBROT: Thank you, Your Honor.

1 MS. SAMPSON: I need an official ruling.

2 THE COURT: On that?

3 MS. SAMPSON: For the record.

4 THE COURT: So you can, in opening statements,
5 you can reference, like you always do, that you
6 have a victim who is going to testify, you have a
7 video, you have the Co-Defendant who is going to
8 testify implicating him.

9 MS. SAMPSON: Thank you.

10 THE COURT: But not any implications that
11 he -- or confession that he gave to the police.

12 MS. SAMPSON: We will not get into the
13 substance of his confession, simply the line that I
14 said, which is that there is a Co-Defendant who
15 implicates the Defendant as committing the crime
16 with him.

17 THE COURT: All right. Is that --

18 MS. EIGENBROT: I think that is sufficient.
19 Thank you.

20 THE COURT: All right. Anything else?

21 MS. SAMPSON: I need to put on the record, I
22 believe that we still have -- the State has an
23 objection to the GPS. I don't think we can do that
24 today. And I will take that on whatever, because I
25 didn't know -- as we all know, we did not know we

1 would be here. Investigator Greene would be the
2 person that I would need to put up in terms of the
3 GPS tracking and whether it is admissible. Not the
4 fact that he is on monitoring, but the actual
5 tracking itself. I don't believe Investigator
6 Carwell is the proper one to testify about that,
7 but I don't have Investigator Greene here. I can
8 do it first thing in the morning.

9 THE COURT: 9:00 o'clock?

10 MS. SAMPSON: Or we can do it before she
11 testifies, however you would like us to do it.

12 THE COURT: Because I was going to have you
13 all back here at 9:00 so we can -- we need to
14 address the issue regarding GPS, the motion we just
15 dealt with. And you all need to settle the record
16 for your witnesses.

17 MS. SAMPSON: I have them already. Actually
18 while we were talking they brought me the record.
19 I believe the only one is -- I haven't looked at
20 them, Ms. Moser looked at them for me. She tells
21 me that one witness has a prior in 2000 -- this
22 year.

23 THE COURT: I'm assuming Mr. Boler has a prior
24 since he was at probation.

25 MS. SAMPSON: Mr. Boler has a burglary second

1 degree that would be admissible. I think they have
2 his record as part of the initial discovery.

3 THE COURT: Yes.

4 MR. RUFFIN: That's correct.

5 MS. SAMPSON: And Kenneth Gardner has -- the
6 only thing I think would be admissible is a 2015
7 use of vehicle without permission if the Court felt
8 that that was appropriate. He has a 1982 leaving
9 the scene, but I think that is too far away. And
10 Kenneth Bracey has a 1979 disorderly conduct.
11 Again, we would argue that is too remote to get
12 into those.

13 THE COURT: Well, the disorderly conduct is
14 probably too -- who is Bracey?

15 MS. SAMPSON: Kenneth Bracey is one of the
16 witnesses at the scene. There were two people in
17 the store shopping when this happened. He is one
18 of those two people.

19 MR. RUFFIN: And pursuant to our Rule 5
20 motion, Kenneth Bracey did not give a statement
21 originally. One of the things that we had
22 requested, obviously, since the State has a
23 continuing obligation to disclose if they interview
24 witnesses or anything like that, so if they have
25 spoken to Kenneth Bracey, we would like to know the

1 substance of that conversation.

2 MS. SAMPSON: And I will state I am a little
3 hamstrung because Justin Williams is the one who
4 actually talked to Mr. Bracey, but in my
5 conversation with Mr. Williams, my understanding is
6 the only thing Mr. Bracey said is, Yes, I was
7 there, and, Yes, the place was robbed by two black
8 men. Nothing different than anybody else has said.
9 He has not been spoken to by any investigator from
10 the Richland County Sheriff's Department, nor was
11 he spoken to by any of our investigators. It was
12 literally a phone call from our office to state
13 that he was still available. And the only thing he
14 said was, Yes, I was there when it was robbed, two
15 black guys came in and robbed it.

16 MR. RUFFIN: Okay.

17 THE COURT: All right. Okay. So for my
18 purposes tonight, I need the 403 question. And
19 what else? That's it.

20 MS. SAMPSON: And the thing I started to put
21 on the record and forgot. We spoke during the
22 break that the Defense, there is some items that we
23 have all now discussed were taken from his home. I
24 had asked if you denied their motion to suppress
25 that evidence, just the items that were taken, that

1 they would stipulate to chain so that I don't have
2 to bring the officer that actually checked the
3 items into evidence and checked them back out to
4 Investigator Carwell.

5 It my understanding that they stated they
6 would consent so I don't have to call that chain
7 person.

8 MR. RUFFIN: That's correct, Judge.

9 THE COURT: All right.

10 MS. SAMPSON: There is no DNA or anything like
11 that. We are specifically talking about the items
12 we just all discussed were taken from his home.
13 And Devin Boler's home.

14 MR. RUFFIN: Right. That's correct. I don't
15 think we have standing to challenge. But, yes, we
16 are okay with consenting to the chain of custody.

17 THE COURT: Okay.

18 MR. RUFFIN: Of those particular items.

19 THE COURT: All right. And Mr. Elleby, y'all
20 are going to, in the midst of trying to --

21 MR. RUFFIN: We are looking for him, Judge.

22 THE COURT: If you will try to search for him
23 tonight.

24 MS. SAMPSON: I was -- during the break I did
25 ask -- I am not sure what the correct -- I know

1 they requested a bench warrant. None was issued.
2 And we began doing pretrial and picking the jury.
3 I believe if you issue a bench warrant, I can then
4 ask the fugitive team to also go look for him, but
5 I can't do that without the issuance of a bench
6 warrant. But I'm not telling anybody what to do,
7 I'm just saying.

8 THE COURT: Well, I was going to issue a bench
9 warrant. I mean, I think the way the bond form is
10 written I can do both, try him in his absence and
11 issue a bench warrant, so I was going to issue a
12 bench warrant for him at this point anyway if he
13 did not show up this afternoon.

14 MS. SAMPSON: Do I need to -- I guess I need
15 to type one up?

16 THE COURT: Yes, if you will do that. It is
17 5:35. And then if you find him --

18 THE WITNESS: Do you want me to make a phone
19 call?

20 MS. SAMPSON: We have to do the bench warrant.
21 I don't think you can start looking until we
22 actually have the bench warrant. But once we do, I
23 will have the fugitive team --

24 THE COURT: And if they pick him up, tell them
25 to go ahead and put him on the jail list so he will

1 be transported in the morning.

2 MR. RUFFIN: Please do that, yes.

3 THE COURT: So he can get down to see him
4 first thing in the morning.

5 MR. RUFFIN: I will keep an eye on the jail
6 list.

7 THE COURT: And the jury has not been sworn.
8 I don't know what the State's position is on that,
9 but --

10 MS. SAMPSON: The jury has not been sworn.

11 THE COURT: But if you can, please talk to
12 your superiors.

13 MS. SAMPSON: I did.

14 THE COURT: Okay.

15 MS. SAMPSON: I spoke with -- Solicitor
16 Johnson is not here, so I spoke -- he is
17 physically in the building -- I spoke with Deputy
18 Solicitor Edwards and I was given permission to, he
19 can plead before we swear the jury if he is here.
20 The minute they are sworn, I don't care if shows up
21 ten minutes after they are sworn, the offer is
22 gone.

23 MR. RUFFIN: And if I could ask, just to make
24 sure, just in case he gets picked up tonight and I
25 have a chance to go talk to him, just so I know

1 what I am telling him is correct, the offer would
2 be the negotiated 20 or straight-up?

3 MS. SAMPSON: Negotiated 20.

4 MR. RUFFIN: Okay.

5 THE COURT: She is saying the offer is
6 extended until the jury is sworn.

7 MR. RUFFIN: Perfect. Okay.

8 THE COURT: All right.

9 MR. RUFFIN: Thank you, Judge.

10 THE COURT: All right.

11 (WHEREUPON, the proceedings were
12 concluded at 5:37 p.m.)

13 SEPTEMBER 16, 2015

14 (WHEREUPON, the proceedings began at
15 9:35 a.m.)

16 THE COURT: All right. Looking at the issue
17 of 403 and 404, and I'm trying to figure out a
18 way -- the best way to handle the issue of the
19 ankle monitor.

20 I guess let me hear from you all regarding the
21 presence of your --

22 MR. RUFFIN: I'll address that first. He's
23 not here. We haven't been able to find him. So I
24 just wanted to renew my objections to this being a
25 TIA before we get started. And I wanted to add to

1 that something I don't think I mentioned yesterday,
2 that another -- in the motion to suppress
3 yesterday, Investigator Carwell said that he
4 obtained verbal consent from Mr. Elleby.

5 I know that from my conversations with my
6 client previous to the trial starting he denies
7 ever giving verbal consent. Had he been here, I
8 would have put him on the stand so that he could
9 say that.

10 So that is another additional reason -- I just
11 wanted to add that for the record, another
12 additional reason why he is prejudiced by his
13 absence.

14 And, again, we have been unable to verify
15 where he is. And he is obviously not here. I just
16 want to put that on the record, Judge.

17 THE COURT: Thank you. And a bench warrant
18 was issued for his arrest. And I'm assuming that
19 that they were unsuccessful in locating him?

20 MS. SAMPSON: Well, what I can tell the Court
21 is because of the lateness of the day we were able
22 to at least fax it to the warrant division. There
23 are processes that are supposed to happen through
24 the Clerk's Office and everybody else once the
25 bench warrant has been issued. That part could not

1 be done until this morning. But we did contact the
2 warrant division to let them know there was an
3 arrest warrant for him. I cannot tell you what
4 they did with that information. But they do have
5 it now and they do have the information that they
6 needed, whatever it is, from the Clerk's Office in
7 terms of there is paperwork and they needed the
8 original warrant. They have all that at this
9 minute. But I can't --

10 THE COURT: All right. And I'll just say
11 this. And I will continue to look at it and invite
12 you all to do the same. I haven't found anything
13 thus far as far as any case law regarding the LWOP,
14 but of course I think it is -- I find that it is
15 proper. He has been placed on notice that he will
16 be tried in his absence. His not being here and
17 not being able to testify is not because of anyone
18 here at the courthouse that is keeping him from
19 being here, it is because of him.

20 The issue on the life without parole, we
21 will -- I will continue to look at that and invite
22 you all to see if there is any case law that you
23 all can find regarding trial in the absence.

24 MS. SAMPSON: I will state for the record, I
25 had it, but I didn't bring it in here today because

1 we argued that issue yesterday, but there is case
2 law that talks about a person has the right to not
3 be at trial if they choose to not be there.

4 THE COURT: Yes.

5 MS. SAMPSON: And so for me --

6 THE COURT: And of course I have to give an
7 instruction to that effect. Do you want me to give
8 that instruction this morning or would you
9 rather --

10 MR. RUFFIN: That he has a right to not be
11 here?

12 THE COURT: Yes. There is an actual
13 instruction. I can read it to you.

14 MR. RUFFIN: I prefer -- I mean, I don't know
15 -- I guess -- I haven't been able to verify -- I
16 can't say for certain that he is not here by his
17 own choice, given his medical issues. I mean, I
18 just don't know, Judge. Maybe he is -- he may be
19 on the run or maybe he is not on the run and he's
20 not here because of something out of his control.
21 That is part of the issue I have.

22 THE COURT: Well, the issue with that is, I
23 think he has been given -- I mean, you last saw him
24 Monday at noon. And I think he has been given
25 ample time for him to get in touch with your

1 office. I mean, you all have been looking for him.
2 It is not that he has -- that we have just all just
3 been -- this is Monday afternoon and that he got
4 sick at 12:00 and we decide to try him at 2:00
5 o'clock.

6 So I think he has been given definitely the
7 benefit of the doubt in getting here. I guess my
8 question is, there is -- let's see if I can find
9 it, considering I think my table of contents here
10 is not on point with my -- there is an actual
11 charge, the same charge that we give for failure of
12 the Defendant to testify. There is a charge for
13 failure of the Defendant to testify. There is also
14 a charge that basically says that the Defendant
15 does not have to be here and that the burden is on
16 the State and that they cannot hold that against
17 him, the fact that he is not here for the entire
18 trial or part of the trial, but that they -- and
19 that they cannot even discuss that in their
20 deliberations.

21 I just want to know, do you want me to go
22 ahead and give them that this morning? I mean, I'm
23 fine doing it if --

24 MR. RUFFIN: Judge, yes, I would.

25 THE COURT: Okay. Because they are going to

1 look over here and see that he is not here.

2 MR. RUFFIN: Right. I would like that charge,
3 but I think for the record and for appeal purposes,
4 I think I have to say that, you know, we would
5 object to -- I mean, the only reason I'm agreeing
6 to it is because you are ruling against me on the
7 TIA issue, you know, so I don't want --

8 THE COURT: And I guess my other question is,
9 do you have any case law that says --

10 MR. RUFFIN: I have not -- the LWOP issue?

11 THE COURT: Yes.

12 MR. RUFFIN: No, I have not been able to find
13 case law on that either because I don't know of a
14 TIA on an LWOP case that has ever happened before.

15 THE COURT: Well, I know there has been some
16 on armed robbery. And the Court has said that the
17 armed robbery -- that conviction, I believe, was
18 upheld in that situation.

19 MS. SAMPSON: Yes. And I want to say there is
20 also -- for the record, there is one -- clearly we
21 don't have it right now -- where he was convicted
22 of a burglary first degree. That charge itself
23 carries up to life. And the Court stated that that
24 was okay that they did it today even with life
25 being an option for the judge to have given at

1 trial.

2 THE COURT: What is the --

3 MS. SAMPSON: But I would need to go upstairs
4 and get the case law.

5 THE COURT: Can you get that to me?

6 MS. SAMPSON: Yes.

7 MR. RUFFIN: And just to distinguish,
8 obviously, that this -- you know, burglary first
9 also carries a minimum of 15, so the judge could
10 give him 15 or the judge could give him life or
11 anything in between.

12 If Emmanuel is convicted in this trial, you
13 cannot sentence him to anything but life. You
14 can't give him less than life even if you wanted
15 to. So it is totally out of the judge's discretion
16 by statute.

17 And another thing about TIA, you know, once he
18 is sentenced, the sentence is supposed to be
19 sealed.

20 THE COURT: Well, I don't necessarily have to
21 sentence him after he is convicted. You can always
22 bring him back for sentencing purposes.

23 MR. RUFFIN: Right. I guess my -- with TIAs,
24 I think what the general procedure is that after a
25 conviction the judge would go ahead and sentence

1 him.

2 THE COURT: Yes, that is usually what happens.

3 MR. RUFFIN: And seal it. I guess for
4 purposes so that no one knows what the sentence is
5 until the Defendant is found.

6 Well, in this case everyone knows what the
7 sentence is because it can only be one thing. It
8 can't be like a regular armed robbery, which is 10
9 to 30. It could be 10, it could be 20, it could be
10 30. In this case it can't be anything other than
11 life. So I think that is a little different.

12 MS. SAMPSON: And I will add, Your Honor,
13 because I think that some of those things that he
14 is objecting to or putting on the record in terms
15 of being problematic are answered by if his
16 client -- his client is either voluntarily not been
17 here or if he is afraid that he is involuntarily
18 not here based on being ill or being in a car
19 wreck, or whatever, there is a safeguard for that
20 and the sentence won't be done until he is found.
21 If it comes up that he has not -- he did not
22 voluntarily have himself abscond or not be here,
23 they can move for a new trial on that basis, and
24 that basis alone, and they would get one. So that
25 problem is in and of itself gone. They have ten

1 days to appeal a new trial when the case is over.

2 The case won't conclude until he is found.

3 MR. RUFFIN: I tend to agree with that. I
4 just think that -- I mean, we can avoid all of that
5 by just issuing -- the bench warrant has already
6 been issued. I mean, by continuing the case until
7 he is picked up on a bench warrant and go forward
8 then, that would avoid the need for additional what
9 I think would be unnecessary litigation that could
10 be avoided if we just continued the trial until we
11 found him. I would just say that.

12 MS. SAMPSON: I hate to keep on. If I could
13 put on the record why it would be prejudicial to
14 not be able to go forward. We have witnesses who
15 we might not be able to find two years from now or
16 whenever he gets picked up on the bench warrant.
17 We also have his Co-Defendant who is sitting in the
18 Detention Center waiting for this case to be over
19 and would have to continue to sit because I can't
20 dispose of his case until this case is disposed of.
21 So there are prejudices to the State that would
22 occur if the trial did not go forward today, not
23 just the fact that, Oh, we can do it later.

24 THE COURT: Whenever he decides to show up.

25 MS. SAMPSON: Correct.

1 THE COURT: And I do agree. I think we all
2 agree that there is a safeguard in place if he is
3 convicted and you come back and you would have the
4 right to make motions at that time if there is
5 some -- if he comes up with some legitimate reason
6 for his absence.

7 And I do think that the Court, even if he is
8 convicted, that the Court does not have to impose
9 the sentence following the conviction.

10 And I understand your position regarding the
11 discretion, but I think that if there is issues
12 with the life without parole notice that I still
13 think that the Court has some discretion there, but
14 I am going to continue to look into that. All
15 right. And I would invite you all to do the same.

16 MR. RUFFIN: Thank you.

17 THE COURT: But for the reasons that were
18 stated also, that there is a Co-Defendant prepared
19 to testify today that also is being held related to
20 this case, witnesses not being available, I think
21 the Court is being more than fair and reasonable in
22 allowing him to make an appearance and he has
23 decided not to appear. So we will continue with
24 the case.

25 As to the issue of the GPS, ordinarily under

1 403 and 404 would not allow a conviction to come
2 in. It would be considered character evidence.
3 And I think the way that the State has attempted to
4 present it, it would probably not be allowed in.

5 Of course, in this situation the ankle monitor
6 is the way that the State puts him in the location
7 back at his house.

8 What I -- my concern is testimony that he is
9 on probation.

10 MS. SAMPSON: And, Your Honor, I --

11 THE COURT: Or even under the supervision --
12 if you say supervision of Probation, Parole and
13 Pardon Services, that means that he is on
14 probation, parole, or, as far as they know, some
15 pardon situation.

16 MS. SAMPSON: I think what we had talked
17 about, I went through and got case law to support
18 our argument under 404(b) and 403 for identity
19 through Lyle. We're not getting into a bad act,
20 but I think it tends to getting into a prior bad
21 act and that it could come in for identity
22 purposes. And in our case, there is not -- the
23 people who actually got robbed, the robbers were
24 wearing masks, so they can't identify. So identity
25 is crucial. But what I would say is, we have

1 talked about that perhaps instead of saying "under
2 the supervision of Probation, Pardon and Parole,"
3 they can say "wearing an ankle monitor through a
4 state agency."

5 THE COURT: What I have considered is -- and
6 then I will let you all weigh in on this -- is
7 having the probation -- she works for the county;
8 right?

9 MS. SAMPSON: She works for Richland County.
10 She is their liaison between Richland County -- at
11 the time she was the liaison between Probation,
12 Pardon and Parole and the Sheriff's Department, but
13 she works for the Sheriff's Department.

14 THE COURT: All right. So she can testify
15 that she works for the Sheriff's Department, that
16 they were aware that he had a GPS tracking device.
17 She doesn't need to testify that it was an ankle
18 monitor.

19 MS. SAMPSON: Okay.

20 THE COURT: She can testify how they located
21 him through the GPS monitor.

22 MS. SAMPSON: We have -- I told her to just
23 say she was informed, because she actually got the
24 information from a different department. I asked
25 her to just say she was informed that he had -- I

1 said ankle bracelet, we can say a monitor, however
2 you want to say it.

3 THE COURT: She participated in an
4 investigation of locating him in this investigation
5 under her duties at the Sheriff's Department. She
6 doesn't even have to mention Probation, Pardon and
7 Parole Services. That he had a GPS tracker --
8 based on information, he had a GPS tracker, and
9 that is how they located him.

10 Now, my concern was, you all are going to have
11 to be very careful not to open the door when she
12 takes the stand, because the State has a right to
13 present those -- what are those?

14 MS. SAMPSON: The screenshots.

15 THE COURT: The screenshots. But you all need
16 to be very careful in how you -- because normally
17 I'm guessing she would testify that, I know that
18 this monitor is assigned to him, This is Monitor
19 Number Such-and-Such and Such-and-Such.

20 MS. SAMPSON: Well, we don't have to call it
21 an ankle bracelet, we can say a monitor.

22 MS. EIGENBROT: Well, Your Honor, if Your
23 Honor is inclined to allow the screenshots in, I
24 have no problem with us referring to it as GPS data
25 that would apply to Mr. Elleby. I still think it

1 would be prejudicial to apply it to a particular
2 device. We are not objecting to the fact that --
3 we don't object to the fact that he had a device on
4 his ankle, that the device places him at the Dollar
5 General. We just don't want the term "ankle
6 monitor."

7 THE COURT: And I agree with you. No
8 terminology regarding the "ankle monitor." That he
9 had a GPS monitor. That the monitor puts him at --
10 but I am just saying you all need to be careful in
11 asking her on cross-examination anything that would
12 open the door as to how she identified his actual
13 monitor that would require her to answer that
14 because it was issued through Probation, Pardon and
15 Parole.

16 MS. EIGENBROT: And we are not disputing that
17 it was a different device.

18 THE COURT: Okay.

19 MS. SAMPSON: And I just need to clarify,
20 because I'll be asking her questions, and I don't
21 want to screw up, can I ask her -- and I will lead
22 her just so we are all clear: Do you know that
23 that information was provided by the tracking
24 device that belonged to Emmanuel Elleby? Without
25 saying it has got a number and it has got this and

1 it has got that, and that is how we know it was on
2 Emmanuel Elleby's leg.

3 THE COURT: Not on his leg. On his person.

4 MS. SAMPSON: On his person. Because
5 otherwise the argument could be made it was
6 anybody's tracker. It has a number. It had all
7 that information.

8 MS. EIGENBROT: Can we ask, Your Honor, to
9 refer to it as a GPS device?

10 MS. SAMPSON: And we can do the rest of it,
11 that it had a number, that it has--

12 MS. EIGENBROT: I have no problem with them
13 indicating that whatever device they are relying on
14 is definitely related to Mr. Elleby.

15 MS. SAMPSON: Okay.

16 THE COURT: All right.

17 MS. EIGENBROT: We don't have an objection.

18 THE COURT: All right. And then there is
19 testimony that the monitor went off in the woods
20 and said, Call your agent. I think they can
21 testify -- I'm thinking out loud -- that they heard
22 the monitor -- they heard the device in the woods.

23 MS. EIGENBROT: Your Honor, I was going to ask
24 that they just be allowed to testify that there was
25 a sound they heard indicating that he was hiding in

1 the woods close-by.

2 MS. SAMPSON: But that could be rustling in
3 the woods. I mean, I think it is more specific
4 than that.

5 THE COURT: I think you can testify that the
6 device -- they cannot testify that it said, Call
7 your agent.

8 MS. SAMPSON: Okay.

9 THE COURT: That they heard -- or if it was a
10 beeping sound. I don't know if it was a beeping
11 sound. If it is a beeping sound -- was it a
12 beeping sound?

13 MS. SAMPSON: No, it spoke. It said, Call
14 your agent.

15 MS. EIGENBROT: The device would actually
16 say --

17 MS. SAMPSON: It would say, Call your agent.
18 If that is the signal you tell it to do, it will do
19 that. That way they can't say they didn't know to
20 call their agent. It literally said, Call your
21 agent.

22 MS. EIGENBROT: Your Honor, it legitimately
23 says out loud, Call your agent.

24 THE COURT: But I think that that, of course,
25 once again, would take us back to --

1 MS. SAMPSON: We are fine with saying that it
2 indicated noise. We won't say, Call your agent.

3 THE COURT: Okay.

4 MS. SAMPSON: The device made a noise and they
5 were able to find him.

6 THE COURT: All right. And as to -- was there
7 anything else?

8 MS. SAMPSON: The only other thing I can think
9 of having to do with what we can say is, we need to
10 advise Devin Boler and also the part that he says
11 in terms of his statement.

12 THE COURT: That is what I was going to ask.
13 Because he had objections to what came in under the
14 statement. And I think the first one is, Who is
15 Devo? The dude I met at the probation office.
16 That is really not relevant, where he met him.

17 MS. EIGENBROT: And we would not dispute that
18 they met two months ago. We have no problem with
19 either them introducing that they met two months
20 ago through Devin and through Mr. Elleby's
21 statement. We just don't want probation mentioned.

22 THE COURT: Yes.

23 MS. SAMPSON: If you are going to make that
24 ruling, and I'm okay with that, then I would like
25 to be able to ask to lead Mr. Boler, because I know

1 good and well -- I'm afraid that he is not
2 sophisticated enough to not say where he met him if
3 I don't say, You met Devin Boler -- I mean, you met
4 Emmanuel Elleby two months prior...

5 MS. EIGENBROT: I won't object to that.

6 THE COURT: The second objection was, Why are
7 you wearing an ankle monitor? Obviously that is
8 not going to -- I am not going to allow that in.

9 And the third one was, What else have you been
10 arrested for?

11 MS. SAMPSON: We agreed to that.

12 THE COURT: Everybody agreed that that armed
13 robbery part wasn't coming in. Was there anything
14 else in there? Can you tell me why the ankle
15 monitor you are wearing shows you at 1905 Bluff
16 Road?

17 MS. EIGENBROT: Your Honor, I understand why
18 they would want to mention that question. I would
19 be fine with them just referring to it as, The GPS
20 data placing you there.

21 MS. SAMPSON: The problem -- and I'm not --
22 the problem with that is redacting the statement,
23 we would literally be redacting two words out of a
24 sentence. The sentence would come in, but two
25 words of it would not.

1 MS. EIGENBROT: He can say --

2 MS. SAMPSON: Because the statement comes in
3 under the ruling. So we're sending them in to the
4 jury as evidence a redacted statement. I'm fine
5 with that, but it will just have two words redacted
6 out of it.

7 THE COURT: Well, you can always say, Can you
8 tell me why the monitor shows you at Bluff Road?

9 MS. SAMPSON: So cross out the "ankle"?
10 Because the statement is going in. I'm not worried
11 about what Carwell says on the stand.

12 THE COURT: You have to cross out "ankle" and
13 "you are wearing." You can say, Can you tell me
14 why the monitor shows you at 1905 Bluff Road, the
15 Dollar General at 11:52 a.m.?

16 MS. SAMPSON: All right. I'm fine with that.

17 THE COURT: He says, I don't know.

18 MS. SAMPSON: I think it is already in
19 evidence. If so, we will redact the ones we used
20 yesterday.

21 THE COURT: And we will do all of that.

22 MS. SAMPSON: We will have time. I don't
23 anticipate putting Mr. Carwell up until the
24 afternoon.

25 THE COURT: Anything else from here that you

1 all see?

2 MS. SAMPSON: Not on the statement, Your
3 Honor.

4 THE COURT: So the last thing was just Devo,
5 or whatever his name is.

6 MS. SAMPSON: I mean, his statement, I don't
7 even remember what his statement says, but we
8 wouldn't be putting in his statement unless he, I
9 don't know --

10 MS. EIGENBROT: The only thing that I would be
11 concerned about would be him saying, I met him at
12 probation.

13 MS. SAMPSON: Which I am going to lead him and
14 I am not putting his statement unless -- I think we
15 may have to address that when he testifies --
16 unless he says something like, I never, ever said
17 anything like on a written statement, I may then
18 have to, you know, introduce it.

19 THE COURT: Well, before he testifies I will
20 instruct him that he cannot discuss anything
21 regarding probation.

22 MS. SAMPSON: Well, and I agree with that.
23 What I'm saying, I guess, and I will make myself
24 clear, I don't plan on introducing his statement
25 into evidence itself, the written statement. The

1 only way I feel like that would even be proper is
2 if he got up there and, I don't know, denied making
3 it, denied signing it, some reason I would have to
4 introduce it into evidence, then I think we may
5 have to revisit and redact portions of his written
6 statement. As of right now I don't think we have
7 to do anything with the statement other than to
8 advise him, Don't talk about probation. And I will
9 lead him through that part so we don't have a
10 problem.

11 THE COURT: All right. And then there is
12 another portion here that will have to be redacted.
13 Can you explain to me why the GPS monitor -- he
14 asked him the same question again -- ankle monitor
15 shows that you were in the Dollar General during
16 the robbery. And he said, I wasn't there.

17 MS. SAMPSON: And we will just take out
18 whatever -- the same thing you asked us to take out
19 the first time. I don't remember.

20 THE COURT: All right. Anything else?

21 MS. EIGENBROT: No, Your Honor.

22 MS. SAMPSON: I just think you ruled, so the
23 screenshots can come in?

24 THE COURT: The screenshots can come in, but
25 they are not --

1 MS. SAMPSON: No, no, I understand how they
2 are coming in. I think the State had initially
3 wanted me to bring in Investigator Greene to
4 discuss the monitor, so I had her here in case we
5 needed anything for pretrial. But I think you
6 ruled.

7 THE COURT: My concern is you don't want her
8 discussing too much about the monitor.

9 MS. EIGENBROT: Yes, Your Honor. I would
10 object on the GPS just because it is extremely
11 prejudicial no matter what. And no matter what,
12 the jury is going to hear that they can place him
13 through GPS. They are going to make their own
14 assumptions. And I understand that. I would admit
15 there is some probative value to the screenshots
16 themselves where there were these dots that are
17 showing up. And so for that I understand why they
18 could potentially be admitted as evidence.
19 However, I want to be clear that we would object to
20 all of it as a whole as being prejudicial.

21 THE COURT: All right. As to the screenshots,
22 I think -- as to the screenshots I find that the
23 probative value of identifying him outweighs the
24 prejudicial effect in this case. And also the fact
25 that the Court has instructed and ruled as to -- or

1 modified the testimony as to what the witness can
2 testify regarding him being on probation, under
3 anybody's supervision, and anything regarding an
4 ankle monitor. I think that that also, in terms of
5 looking at the totality of the circumstances, that
6 that deals with the issue to decrease or eliminate
7 any prejudice against the Defendant regarding his
8 being on probation or having a conviction.

9 All right. Anything else?

10 MS. SAMPSON: Before the jury comes, I don't
11 think so. The only thing I would ask, Your Honor,
12 Investigator Greene is outside. Before she
13 testifies I will need to take a break. We brought
14 the equipment to play the 9-1-1 call, but we didn't
15 bring the projector. So I'll need like ten minutes
16 time to get all that. There is going to be like
17 three witnesses before her, so I think it will just
18 be our morning break.

19 THE COURT: And the charge that I give the
20 jurors just says: When a Defendant is tried in his
21 absence, the trial court should instruct the jury
22 that the Defendant's failure to appear cannot be
23 construed as an admission of guilt.

24 I usually go on even further and tell them
25 that they can't even discuss the fact that he is

1 not here and he does not have to be here. The
2 burden is on the State to prove him guilty beyond a
3 reasonable doubt. And he does not have to do
4 anything.

5 MR. RUFFIN: The only thing about that, Judge,
6 I know this is sort of nitpicky, but I would ask
7 you not use the words "failure to appear."

8 THE COURT: No, no, that is the way it is
9 written in here. I am just going to tell them that
10 the Defendant is not here and may be here for part
11 and may not be. I don't know.

12 MR. RUFFIN: Okay.

13 THE COURT: Because he may show up.

14 MR. RUFFIN: Right.

15 THE COURT: He may be or may not be here for
16 part of the trial, and that they cannot discuss --
17 that he does not have to be here and they cannot
18 discuss that and take that into their
19 consideration.

20 MR. RUFFIN: That sounds perfect, Judge.

21 MS. SAMPSON: The only other thing I would ask
22 Your Honor, and I think this would be out of an
23 abundance of caution for both sides, we did it
24 yesterday, can we just ask that every time they
25 take a break that they are told please don't

1 discuss the case?

2 THE COURT: Oh, I will.

3 MS. SAMPSON: We have had --

4 THE COURT: Because apparently it has become
5 an apparent issue across the state and so there has
6 been much talk about it. That is why I told them
7 basically -- been telling each other, I guess is
8 what I told them -- if you see someone talking
9 about it, please let the bailiffs know, and I will
10 remind them again.

11 MS. SAMPSON: Thank you.

12 THE COURT: It is a serious problem.

13 MS. SAMPSON: I will say we don't anticipate
14 this taking longer than today and tomorrow morning
15 for closing, so I hope they can keep their mouth
16 together for that long, but still out of abundance
17 of caution.

18 THE COURT: All right. So we'll bring them
19 in, we'll swear them.

20 Oh, they have a note: Are we allowed to take
21 notes?

22 All right. Are you ready to bring them in?
23 You can bring them in.

24 MS. SAMPSON: Yes, Your Honor.

25 THE COURT: You can bring them in.

1 (WHEREUPON, the jury came into open
2 court at 10:06 a.m.)

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

4 THE COURT: Good morning, ladies and gentlemen
5 of the jury. I hope that you had a restful
6 evening.

7 At this time we will begin the trial in the
8 case of the State of South Carolina v. Emmanuel
9 Elleby.

10 I am going to ask Juror Number 244, Mr. Derek
11 Scott, to be our foreman. So they'll need to
12 switch seats. Ma'am, you will have to switch
13 seats.

14 THE JUROR: Oh, I'm sorry.

15 THE COURT: You wouldn't know.

16 (Complies.)

17 THE COURT: And then our alternates are, as I
18 stated on yesterday, Juror 282, Ms. Vaughn, and
19 Juror 287, Mr. Wannamaker; is that correct? And
20 you all will sit there.

21 The rest of you can sit wherever you choose to
22 sit throughout the trial. Those are the only
23 assigned seats that we have.

24 All right. Madam Clerk, I am going to ask you
25 to swear the jurors.

1 THE CLERK: Yes, Your Honor.

2 Ladies and gentlemen, Mr. Foreman, would you
3 please stand and raise your right hand.

4 (Comply.)

5 THE CLERK: Do you swear or affirm that you
6 shall well and truly try and true deliverance make
7 between the State of South Carolina and the
8 Defendant at bar, whom you shall have in charge,
9 and a true verdict give according to the law and
10 evidence, so help you God? If so, please say, I
11 do.

12 ALL: I do.

13 THE COURT: Thank you.

14 All right, ladies and gentlemen of the jury,
15 before we actually hear opening statements from the
16 attorneys in this case, I am going to give you some
17 opening instructions.

18 First of all, I will let you, as you all
19 probably have noticed, Mr. Elleby is not here right
20 now. And I just want to let you all know that he
21 does not have to be here. The law does not require
22 him to be here. The burden is on the State to
23 prove him guilty beyond a reasonable doubt. He
24 does not have to present any evidence, he does not
25 have to testify, he does not have to do anything.

1 He does not have to be here. And you all cannot
2 hold that against him, the fact that he is not here
3 for all or part of the trial. So that is not even
4 to come up in your discussion. All right?

5 All right, ladies and gentlemen of the jury,
6 what I will now say is intended to serve as an
7 introduction to the trial of this case. These
8 remarks are not a charge on the law in this case.
9 I will instruct you on the law applicable to this
10 case at the end of the trial before you retire to
11 consider your verdict.

12 This is merely an explanation of the procedure
13 that we will follow in the trial of this case so
14 that you may better understand what may be
15 happening.

16 And we received a note from one of the jurors
17 earlier as to taking notes. And I will go ahead
18 and tell you that you are not allowed to take any
19 notes during this trial.

20 As I stated to you on yesterday, the Defendant
21 in this case is charged by indictments filed in
22 this Court with armed robbery and kidnapping, the
23 elements of which will be explained to you later.

24 As I told you on yesterday, the indictment is
25 simply the charge by which the case is brought into

1 court and it is not in any sense any evidence of
2 any of the allegations it contains.

3 The Defendant in this case has pled not guilty
4 to these indictments. The State therefore has the
5 burden of proof and the burden of proving beyond a
6 reasonable doubt each and every element of this
7 case, and it will be your duty, ladies and
8 gentlemen of the jury, to decide whether the State
9 has met that burden of proof beyond a reasonable
10 doubt.

11 Your purpose as jurors is to find and
12 determine the facts. You are the sole judges of
13 the facts. If at any time I make any comment
14 regarding the facts, you must disregard it. You
15 are to determine the facts from the testimony you
16 hear and the other evidence introduced in court.
17 It is up to you to determine the emphasis that you
18 feel may properly be drawn from the evidence.

19 It is especially important that you perform
20 your duty of determining the facts diligently and
21 conscientiously, because ordinarily there is no way
22 to correct an erroneous determination of the facts
23 by a jury.

24 On the other hand, and with equal emphasis,
25 the same law that makes you the judges of the facts

1 makes me the judge of the law. The law as given by
2 the Court is the only law you may consider. You
3 must accept and follow it even though you may
4 disagree with it.

5 I cannot tell you what the facts are, and you
6 cannot disagree with me about what the law is or
7 what the law should be. Your job is to take the
8 law as I give it to you and apply it to the facts
9 as you find them from the testimony of the
10 witnesses and any other evidence that is
11 introduced.

12 After doing that, you will render your
13 verdict, a verdict under the solemn oath that you
14 have just taken as jurors.

15 Until I tell you that you may begin your
16 deliberations, you must not discuss this case with
17 anyone. That includes your fellow jurors, friends,
18 family members, and anyone involved in the case.

19 The attorneys and the parties in this case
20 have been advised that they are not to talk to you
21 at all, so if you see anyone involved in the case
22 and they do not even say hello, they are not being
23 unfriendly, they are just following my
24 instructions.

25 You must decide this case based solely on the

1 evidence presented here in the courtroom. This
2 means that during the trial you must not conduct
3 any independent research about this case, the facts
4 of this case, the evidence presented in this case,
5 or the people or organizations involved in any way
6 in this case.

7 Please do not try to find out information from
8 any source outside this courtroom. In other words,
9 you must not look at dictionaries or other
10 reference materials, search the internet, website,
11 or blogs, or use any electronic tool to get
12 information about this case or to help you decide
13 the case.

14 You may not use computers, telephones, cell
15 phones, smart phones, tablets, the internet, or
16 other tools of technology with communication
17 capability at any time while you are in the
18 courtroom or during your deliberations.

19 During your break for meals or overnight, if
20 necessary you may use these devices; however, you
21 must not use these devices to communicate with
22 anyone about the case until the case is over. This
23 means you must not use phone calls, e-mails, text
24 messages, instant messages, Twitter, or any blog,
25 chat room or website, including Facebook,

1 GooglePlus, MySpace, LinkedIn, YouTube, or any
2 social media website to send or receive information
3 about this case. This includes information about a
4 party, a witness, an attorney, or a court officer,
5 news accounts about the case, research on any topic
6 raised, any topics you may think would be helpful
7 in deciding the case, or any testimony presented by
8 any witness.

9 I think I covered most of them, but I'm sure
10 there is something that I did not. I don't think I
11 said Instagram, but I think you all get the point.
12 No social media networking regarding the case. No
13 discussing the case at all. No discussing it
14 amongst yourselves in the jury room, walking down
15 the hall. No discussing it at all. That creates
16 serious issues in the case. And I am begging you
17 all not to discuss the case with each other or
18 anyone else.

19 During the trial do not read, listen to, or
20 watch any reports about this case. This includes
21 anything that may be in newspapers or on the
22 internet, radio, or television. You must not
23 consider anything you may have read or heard about
24 the case outside the courtroom, whether before or
25 during the trial. Information on television,

1 radio, the internet, or from other sources might be
2 wrong or incomplete.

3 In our judicial system it is important that
4 you are not influenced by anything or anyone
5 outside the courtroom. If you become aware of
6 another juror's violation of these instructions,
7 please inform me immediately. You may speak with
8 me, you may speak with one of the bailiffs, or one
9 of the court officers, or the clerk.

10 It is important that you keep an open mind and
11 not decide any issue in the case until all of the
12 evidence has been presented, the parties have made
13 their closing arguments, and I have instructed you
14 on the law in this case.

15 It is your solemn responsibility to determine
16 the guilt or innocence of the Defendant, and your
17 verdict must be based on the evidence as it is
18 presented to you in this trial and on the law as I
19 instruct you during and at the close of the trial.

20 In just a moment the Solicitor will make what
21 is called an opening statement, in which the
22 Solicitor will explain to you the issues in this
23 case, or at least what the Solicitor thinks the
24 issues are in this case.

25 The attorney for the Defendant may also make

1 an opening statement, although he or she is not
2 required to do so. Remember, I told you earlier
3 that the burden is on the State to prove the
4 Defendant guilty beyond a reasonable doubt, but
5 there is no burden on the Defendant.

6 What the attorneys tell you during their
7 opening statements is not evidence in this case, it
8 is only their contention as to what the issues are.

9 The evidence in this case will be presented to
10 you by the testimony of sworn witnesses from the
11 witness stand and/or by exhibits that may be
12 introduced into evidence.

13 From time to time during the trial you may
14 hear one of the lawyers say something like, Your
15 Honor, I believe we have a question of law or a
16 matter of law to discuss with you, or, Your Honor,
17 may we approach the bench. Or sometimes I myself
18 might find it necessary to excuse you from the
19 courtroom for a short while so the attorneys and I
20 can discuss a matter of law.

21 The reason for this is because you are the
22 judges of the facts in this case, and sometimes
23 when I am discussing matters of law with the
24 attorneys it may be necessary for me to make a
25 comment as to the facts in connection with ruling

1 on whether or not a particular law applies. I am
2 not supposed to tell you what I think the facts
3 are, so I will excuse you from the courtroom while
4 these discussions take place so that it will in no
5 way influence you, you will not be influenced by
6 anything that I may say or do in connection with
7 the facts.

8 In determining what the true facts are in this
9 case, you must decide whether or not the testimony
10 of the witnesses is believable. It will be my
11 responsibility to rule as a matter of law as to
12 whether certain testimony is admissible at all or
13 not, but once the testimony is admitted, whether or
14 not you believe it is solely for you to determine.

15 In deciding whether to believe a witness, you
16 have the right to consider the interest of any
17 witness, the bias of any witness, the prejudice of
18 any witness, the opportunity for the witness to
19 have seen the matters and things about which the
20 witness may testify, and the way the witness acts
21 on the witness stand.

22 You have the right to consider anything that
23 is in record that will help you evaluate the
24 testimony of the witnesses. That means that it is
25 your duty to pay close attention to these

1 witnesses, to observe the witnesses, to listen to
2 the witnesses, and to pay close attention to the
3 attorneys and the Court. Do not let your thoughts
4 wander, but give strict attention to the testimony
5 in this case so that at the end of all the
6 testimony, after the arguments of counsel, and the
7 charge on the law by the Court, you will then be in
8 a position to determine what the true facts are and
9 to apply the law to those facts and thus render a
10 verdict.

11 Mr. Foreman, it is your added duty to preside
12 in the jury room and be the jury spokesperson here
13 in court. It will also be your duty to write the
14 verdict on the verdict form, but I will give you
15 further instructions about that at the conclusion
16 of the case.

17 In order to preserve everyone's rights, I will
18 give each party an opportunity to object to
19 anything I have said.

20 Any objections or exceptions from the State?

21 MS. SAMPSON: No, ma'am.

22 THE COURT: Any objections or exceptions from
23 the Defense?

24 MR. RUFFIN: No, Judge.

25 THE COURT: All right, thank you.

1 Ladies and gentlemen, we will now begin the
2 trial. At this point you will hear an opening
3 statement from Ms. Moser, who is an Assistant
4 Solicitor in this case. And then you will hear
5 opening statements from Ms. Eigenbrot, who is
6 representing Mr. Elleby.

7 Yes, ma'am?

8 MS. MOSER: May it please the Court?

9 THE COURT: Yes.

10 MS. MOSER: Thank you, Your Honor.

11 OPENING STATEMENT

12 MS. MOSER: Good morning.

13 THE JURY: Good morning.

14 MS. MOSER: Dollar General. The place where
15 you go to pick up a last minute birthday card or
16 the place you go to try and snag a good deal. It
17 is not a place you go and expect to see two armed
18 gunmen walking into the store, their faces covered
19 with masks, demanding money, and then pointing a
20 gun -- what appeared to be a gun -- at employees.

21 But that is exactly what happened on
22 August 22nd, 2014, at the Dollar General on Bluff
23 Road.

24 This was a crime of greed. And this was a
25 brazen act. You will learn that these Defendants

1 walked in in broad daylight, their faces covered
2 with T-shirts to obscure their image. They walked
3 in. They had guns, or what appeared to be guns.
4 They hopped over the counter and demanded money.
5 And money is what they got. They were successful.

6 They managed to get a cell phone from one of
7 the employees, they managed to get hundreds of
8 dollars cash. And they were able after this
9 happened to walk right out in broad daylight.

10 Thankfully, no one at the store was injured.
11 It could have gone very differently. No one was
12 hurt. But those employees who were there to do
13 their jobs, who expected to feel safe in their
14 place of employment, could not have expected this.

15 Ladies and gentlemen, my name is Sandra Moser.
16 And along with my co-counsel, April Sampson, we
17 represent the State of South Carolina for the Fifth
18 Judicial Circuit. It is our job to prosecute
19 crimes and we are here today because the Defendant,
20 Mr. Emmanuel Elleby, was charged with armed robbery
21 and kidnapping.

22 Now, armed robbery is probably exactly what
23 you think it is. There is a technical definition,
24 and you will learn that from the judge, but
25 essentially it is the taking away, the carrying

1 away of someone else's items, without their
2 consent, to deprive that person of those objects by
3 the force, threat, or intimidation while armed with
4 a deadly weapon, or something that appears to be a
5 deadly weapon.

6 And the law is clear on this subject. The law
7 is clear that they do not have to have a gun. They
8 do not have to have a gun on them at the time of
9 the robbery. What they do have to have is the
10 appearance of a deadly weapon.

11 This Defendant is also charged with
12 kidnapping. And the law is also very clear on
13 kidnapping. But it is probably a little bit
14 different than what you are picturing.

15 Kidnapping, according to the laws of South
16 Carolina, is holding -- essentially holding anyone
17 against their will.

18 Now, what you are probably picturing is
19 someone being grabbed, someone being tied up,
20 thrown in the back of a car, taken across county
21 lines. That is what I picture when I think of a
22 kidnapping. But under the laws of this state we
23 don't need to show that. All we need to prove is
24 that a person was held against their will. And we
25 will prove that in this case.

1 Your job today is to listen to the testimony.
2 And I know when you came in here this morning no
3 one gave you any instructions on how to be a juror,
4 but that is because each and every one of you
5 already have everything it takes to be a juror.
6 And what I mean by that is on a daily basis you
7 judge people based on their credibility.
8 Credibility is believability. So on a daily basis
9 you know how to do that, you know how to listen to
10 what someone testifies to and you can determine
11 whether or not they are telling the truth.

12 You can give their testimony as much weight as
13 you would like or as little weight as you would
14 like. And I would ask you simply to use your
15 common sense. When you are listening to people
16 coming up here and taking this witness stand,
17 listen to what they are saying, but also think
18 about, Why are they here? Why are they taking time
19 out of their day to come up here before you and
20 testify? And that is just something I want you to
21 keep in mind while you are listening to that
22 testimony today.

23 Now, you are going to hear from several
24 different witnesses throughout this trial. You are
25 going to hear from employees of the Dollar General,

1 such as Elizabeth Coleman. She was working as a
2 cashier that day, on August 22nd. She was there
3 when these two individuals came into the Dollar
4 General. They demanded that she turn over money.
5 When she wasn't able to open the cash register they
6 actually escorted her to the cigarette machine and
7 made her give them cigarettes.

8 She was also the one who called 9-1-1. You
9 are going to get a chance to listen to that 9-1-1
10 call. You are also going to get a chance to listen
11 to the assistant manager, Mr. Kenneth Gardner. He
12 was also present at the scene. He was also
13 victimized in this case. He witnessed the
14 Defendants come into his store. And they demanded
15 money. They had what appeared to be a gun in their
16 arms. And demanded cigarettes and actually took
17 his own cell phone.

18 Now, you will hear two different types of
19 evidence. You are going to hear direct evidence
20 and circumstantial evidence.

21 Now, the witnesses I just told you about, they
22 will be able to provide direct evidence. They were
23 actually there at the scene, so they have
24 first-hand knowledge of what happened.

25 Circumstantial evidence is any other evidence

1 that would lead you to a conclusion. And you are
2 going to hear some of that as well. You are going
3 to hear from law enforcement officers who weren't
4 at the scene at the time, but they got there as
5 fast as they could and they investigated the case.

6 You are going to hear first from Deputy
7 Johnson, who was the responding officer, who was
8 the first person on the scene that day. He is
9 going to tell you what he heard, what he saw, who
10 he spoke to. You are going to learn that K-9 was
11 brought out so they could see if they could track
12 the Defendant who fled the scene. And you are also
13 going to hear from a Co-Defendant, a Mr. Devin
14 Boler, who is going to come in here, he is going to
15 testify. He was there at the scene with the
16 Defendant and he implicated this Defendant as being
17 the one who did the robbery with him.

18 Finally, you are going to hear from our lead
19 investigator, Investigator Carwell, who will detail
20 his investigation from beginning to end. He is
21 going to take you through the process. He is going
22 to explain to you exactly what he did when he got
23 this case on his desk and when he started
24 investigating it.

25 He is going to tell you about receiving not

1 one, but two anonymous tips regarding this
2 Defendant. He is going to tell you how he learned
3 of this Defendant's nickname, Phatz. He is also
4 going to tell you how he worked with other law
5 enforcement to be able to identify this Defendant
6 and to be actually able to place this Defendant at
7 the scene of the crime at the time it occurred with
8 the help of GPS monitoring.

9 You'll also learn where the Defendant was
10 living. And that is actually where he was caught
11 and where he was arrested.

12 At that location, you are going to hear about
13 evidence that was found from the scene. We're
14 talking about clothing that was worn during the
15 incident, a bag that was used to carry all the cash
16 that was stolen, cigarettes and other items from
17 the Dollar General that were actually found in the
18 Defendant's home.

19 Now, as the State, we carry the burden of
20 proving this case beyond a reasonable doubt. And
21 what that is is we don't have to prove the case
22 beyond any and all doubt, but it has got to be
23 beyond a reasonable amount of doubt, which means we
24 need to leave you firmly convinced of the
25 Defendant's guilt in this case.

1 And this is the same burden that has been used
2 in any criminal case where any Defendant has ever
3 been found guilty of a crime. It is the same
4 burden. And we welcome that burden.

5 Now, the facts in this case are fairly
6 straightforward, but this is not necessarily going
7 to be easy. And it is going to be a fairly quick
8 trial, but you still need to pay attention to
9 everything that is said on that witness stand.

10 This case is important to us, it is important
11 to the State, it is important to the victim, it is
12 important to the Defense attorneys, it is important
13 to the State of South Carolina.

14 Ultimately it is your job to make a decision,
15 to decide who you are going to believe. When we
16 have our witnesses take the stand, you are going to
17 have to listen to them and determine, use your
18 common sense, Why are they here? Make a decision
19 about what actually happened in this case. That is
20 your job. You are the finders of the facts.

21 And at the end of this trial, we will come
22 back before you and we will ask you to hold the
23 Defendant guilty. We are going to ask you to find
24 him responsible for his brazen act of greed. We
25 are going to ask you to find him guilty of armed

1 robbery and kidnapping.

2 Thank you.

3 THE COURT: Yes, ma'am?

4 MS. EIGENBROT: Thank you, Your Honor. May it
5 please the Court?

6 THE COURT: Yes.

7 OPENING STATEMENT

8 MS. EIGENBROT: Good morning, members of the
9 jury.

10 THE JURY: Good morning.

11 MS. EIGENBROT: My name is Megan Eigenbrot.
12 And I, along with my co-counsel, Mr. Adam Ruffin,
13 represent Mr. Emmanuel Bashan Elleby in this case.

14 Now, Mr. Elleby is a 34-year-old gentleman, a
15 lifelong resident of Columbia. He is also a
16 father, two children, with one on the way. And he
17 has worked construction most of his life.

18 Now, you have just heard from the State. They
19 just told you a little bit about what the facts are
20 in this case and that they believe that our client
21 is the one that committed this crime. We are here
22 to tell you today that he was not the individual
23 they think he is. We are not disputing what
24 happened to these individuals at the Dollar
25 General.

1 And we are also here to tell you a little bit
2 about Mr. Elleby as well. Now, you have heard a
3 little bit from Ms. Moser about what they are going
4 to show you today, who you will hear from.

5 I want you to pay close attention to things
6 you don't hear about. For instance, at the scene,
7 once the crime occurred, they called in CSI. And
8 CSI did their own investigation. They brushed for
9 fingerprints using their little powders. They took
10 DNA swabs to see if they could find touch DNA
11 located at the scene. And they also had shoe
12 impressions from the counter. They described the
13 individual jumping over the counter.

14 What you will not hear, though, is that the
15 DNA collected -- there were swabs collected -- that
16 both the suspects in this case, Mr. Boler and Mr.
17 Elleby, provided with consent their samples of
18 their DNA for comparison. But what you won't hear
19 is that they didn't test any of those DNA samples.
20 They had the samples, but they were never tested.

21 You will also hear that one of individuals was
22 not wearing gloves. He is one of the individuals
23 accused of -- he is the individual that carries
24 what appears to be a weapon. You see him touching
25 items in the store, you see him jumping over the

1 counter. But his fingerprints were not found at
2 the scene.

3 There is also shoe impressions from when they
4 jumped over the counter. They did take that shoe
5 impression; however, there was not enough detail to
6 match either Mr. Elleby or the Co-Defendant.

7 So those are some of the things you will not
8 hear.

9 Ms. Moser also referenced some items that were
10 located during the search of the residence. One of
11 things we will not find that was stolen from the
12 scene is a cell phone. The victim, Mr. Gardner,
13 will state to you that he had his cell phone stolen
14 during the course of this robbery.

15 Now, cell phones are pretty identifiable
16 things, identifiable items. You would know if your
17 cell phone was found somewhere. There is something
18 in that cell phone that identifies you it as being
19 yours that we would for sure be able to connect an
20 individual to that crime if that cell phone was
21 found in their residence later on. You won't find
22 that here. His cell phone was never recovered.
23 But the cell phones that were recovered were
24 Mr. Elleby's and Mr. Boler's, both of which
25 voluntarily surrendered their cell phones and

1 signed consent to search it. Again, that is
2 something we will not hear about is that their cell
3 phones were actually searched. They are in
4 evidence. They have consent to search them, but
5 they did not search them. We don't have any phone
6 calls, text messages that could possibly link to
7 the two of them. You won't hear about that in this
8 trial.

9 And as Ms. Moser told you, they have the
10 burden to prove to you beyond a reasonable doubt
11 that Mr. Elleby is the one guilty of these crimes.
12 I want you to take all the things you will not
13 hear, the missing items, things that could have
14 been done that were not done, and think about the
15 questions that that leaves you with.

16 And with those questions you have reasonable
17 doubt. Reasonable doubt is not beyond all doubt;
18 however, if there is an iota of doubt in your mind
19 that Mr. Elleby is the one guilty of this crime,
20 you must find him not guilty.

21 And at the end of this trial, my co-counsel,
22 Mr. Ruffin, will come back before you and explain
23 to you why those questions are important and why
24 that creates reasonable doubt and why you all
25 should not find -- you should find Mr. Elleby not

1 guilty at the end of this trial.

2 And we appreciate your service here today.

3 Thank you.

4 THE COURT: Thank you.

5 All right, call your first witness.

6 MS. MOSER: The State calls Deputy Johnson.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the

9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you are about to give in this case will
13 be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 THE WITNESS: I affirm.

16 THE CLERK: Thank you. Have a seat in the
17 witness stand, please.

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Deputy Trobathian Johnson.

21 MS. MOSER: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. MOSER: Thank you, Your Honor.

24 TROBATHIAN JOHNSON,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MS. MOSER:

Q Hey, Deputy Johnson. How are you doing?

A I'm well, thank you.

Q Good. Deputy Johnson, can you tell us where you work?

A I work with the Richland County Sheriff's Department.

Q Okay. And how long have you worked there?

A Eight plus years.

Q Eight years? Okay. And what do you do for them?

A I'm a road deputy.

Q Okay. Can you tell us a little bit about what a road deputy does?

A Well, I work in the Uniform Parole Division, and we respond to 9-1-1 calls for service, do traffic enforcement, and do community-oriented policing.

Q Okay. Did you have an occasion to be involved in a case back in August, August 22nd, of last year?

A Yes.

Q Okay. Did you receive a 9-1-1 call about that?

A Yes.

Q Can you tell me what that case was about?

A It was actually an armed robbery at 1905 Bluff Road, where I was dispatched to 1905 Bluff Road in

1 reference to the armed robbery in progress. And
2 when I arrived, I made contact with the employee,
3 Mr. Kenneth C. Gardner.

4 Q Let me stop you right there.

5 A Uh-huh.

6 Q That location, the Bluff Road location, is that in
7 Richland County?

8 A It is in Richland County.

9 Q Okay. And what is at that location?

10 A The Dollar General.

11 Q Okay. The Dollar General store?

12 A It is.

13 Q Okay. So -- and you can continue on. So you met
14 with a witness?

15 A Yes, Mr. Kenneth C. Gardner.

16 Q Okay.

17 A Who stated that --

18 MS. EIGENBROT: Objection.

19 A Well, I met with Kenneth --

20 THE COURT: Hold on one second.

21 THE WITNESS: Yes. I'm sorry.

22 THE COURT: Sustained.

23 BY MS. MOSER:

24 Q Can you tell me what you learned --

25 A Yes.

1 Q -- from the witness?

2 A I made contact with Mr. Gardner who -- at which
3 time I learned -- I learned that two black males
4 had just robbed the store at gunpoint. And also
5 that Mr. Gardner's cell phone was stolen. And then
6 I also made contact with Elizabeth D. Coleman, who
7 was also an employee of the store. And I learned a
8 description of the two subjects at that point. One
9 black male wore a black top, black shorts, white
10 socks, and black shoes. And then there was also a
11 second black male who wore blue sweatpants, a black
12 T-shirt with a white T-shirt underneath, which was
13 a long-sleeved T-shirt, or a shirt, and also
14 gloves.

15 A perimeter was then established and K-9
16 initiated a track with negative results.

17 Q Okay. Let me stop you right there. Can you tell
18 me a little bit about what you mean by perimeter?

19 A Well, when we set up a perimeter, we try to set it
20 up maybe a half mile radius around an incident
21 location where we have deputies basically
22 surrounding an incident location to basically
23 box-in the location so that K-9 can start their
24 track.

25 Q Okay. And you said K-9. What exactly are the K-9s

1 doing?

2 A The K-9 handler and their partner, because they are
3 dogs, they actually track the suspect/suspects.

4 Q Okay. Do you know if that was successful, that
5 track?

6 A It was not, no.

7 Q I'm going to go back to the witnesses that you
8 spoke to. You mentioned that they were able to
9 give some descriptions?

10 A Yes.

11 Q Can you tell me in a little bit more detail what
12 the individuals were wearing as far as anything on
13 their heads?

14 A There was one black male -- let me refer to my
15 notes here. (Pause.) It doesn't say that they
16 were wearing anything on their heads in my report.

17 Q Okay. Did you gather any description of their
18 faces from those witnesses?

19 A Not from the witnesses, no.

20 Q Okay. What about -- you mentioned gloves?

21 A Uh-huh.

22 Q Okay. So was one of them wearing gloves?

23 A Yes, absolutely.

24 Q All right. And then shoes. Is there any
25 description about the shoes?

- 1 A It says that the first one that was described was
2 wearing black shoes.
- 3 Q Okay. Do you happen to know if there was any
4 surveillance, video surveillance, in the Dollar
5 General?
- 6 A The witness did state that there was video
7 surveillance in the Dollar General, as well as
8 surrounding businesses.
- 9 Q Okay. Were you able to collect that surveillance?
- 10 A No, not me personally.
- 11 Q Okay. Do you know who did?
- 12 A There was an investigator who actually should have
13 collected that.
- 14 Q Okay. And can you tell me -- you said there was
15 some cash stolen. Can you tell me how much?
- 16 A \$387 in cash.
- 17 Q You also mentioned -- what else was stolen?
- 18 A Five packs of Newport cigarettes, and also a blue
19 in color Samsung Galaxy S3 cell phone.
- 20 MS. MOSER: Beg the Court's indulgence.
- 21 (Pause.)
- 22 MS. MOSER: No further questions.
- 23 BY MS. MOSER:
- 24 Q Just answer any questions the Defense has.
- 25 A Okay.

1 THE COURT: Yes, ma'am?

2 MS. EIGENBROT: Thank you, Your Honor. May it
3 please the Court?

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. EIGENBROT:

7 Q Good morning, Deputy Johnson.

8 A Good morning.

9 Q All right. So you have your report with you;
10 correct?

11 A I do.

12 Q And you generate an incident report when you
13 receive a call; correct?

14 A That's correct.

15 Q And that is to take the notes to remember things
16 for trial later on; right?

17 A That is correct.

18 Q According to your report, you received a dispatch
19 call at 11:36; is that correct?

20 A I did notice that this was a discrepancy in the
21 report and that it is incorrect. I did have a
22 trainee dictating at the time. So this is an
23 incorrect discrepancy in the report.

24 Q Okay. Do you recall what time you were dispatched?

25 A I don't want to give an incorrect time, but those

- 1 can be obtained through dispatch logs.
- 2 Q All right. Well, approximately how long did it
- 3 take you to arrive once you were dispatched, to
- 4 your recollection?
- 5 A Let's see. To my recollection, it didn't take that
- 6 long at all. Maybe around -- between 8 and 15
- 7 minutes, close in that area.
- 8 Q And once you arrived on the scene, part of your job
- 9 is to secure the scene?
- 10 A That is correct.
- 11 Q Make sure everyone is safe?
- 12 A Uh-huh.
- 13 Q Make sure nobody else is there to potentially harm
- 14 anyone?
- 15 A That is correct.
- 16 Q Make sure the suspects were no longer on scene?
- 17 A Yes.
- 18 Q At that point in time you speak to these two
- 19 individuals working at the store; correct?
- 20 A Yes.
- 21 Q And that was Mr. Gardner and Ms. Coleman?
- 22 A Yes.
- 23 Q Now, there were other individuals in the store,
- 24 correct, when this occurred?
- 25 A To my recollection, I remember speaking with those

1 two. I can't quite remember if there were anyone
2 else. I'm quite sure there may have been maybe
3 customers or someone, some others in the store.

4 Q But when you arrived on scene, those were the only
5 two individuals you remember?

6 A Those were the persons I spoke with.

7 Q And once you receive these descriptions and once
8 you had spoken to the victims, approximately how
9 long do you believe it takes you, to your
10 recollection, to I guess notify K-9 and set up the
11 perimeter?

12 A Well, usually that is immediate. As soon as we get
13 there we speak to the witnesses. And as soon as we
14 get a description, we first give the description
15 out to other responding officers. And then we'll
16 notify K-9. So maybe about five minutes, maybe.

17 Q Okay. Perfect. And you gave -- you just indicated
18 there were some descriptions given to you about ID
19 by the victims; correct?

20 A Correct.

21 Q And you were not present at the store when the
22 armed robbery occurred?

23 A Absolutely not.

24 Q So you did not see these two individuals?

25 A No.

1 Q You did not see -- you cannot corroborate what was
2 told to you, you simply were given those
3 descriptions; correct?

4 A That's correct.

5 MS. EIGENBROT: Beg the Court's indulgence.

6 (Pause.)

7 BY MS. EIGENBROT:

8 Q I have no further questions. Thank you, Deputy
9 Johnson.

10 A Okay.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Any objection to this witness
14 being excused?

15 (WHEREUPON, there was no response.)

16 THE COURT: All right, sir, you are free to
17 leave.

18 (Witness steps down and is excused.)

19 THE COURT: Call your next witness.

20 MS. MOSER: The State calls Kenneth Gardner.

21 (Witness approaches.)

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

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat in the witness stand,
6 please.

7 (Witness complies.)

8 THE CLERK: State your name for the record.

9 THE WITNESS: I'm Kenneth Gardner.

10 KENNETH GARDNER,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MOSER:

14 Q Hi, Mr. Gardner. How are you?

15 A Good. How are you?

16 Q I'm doing well. Mr. Gardner, where do you work?

17 A Dollar General.

18 Q Okay. And how long have you worked there?

19 A November will be four years.

20 Q November will be four years?

21 A Uh-huh.

22 Q And what do you do there?

23 A I'm an assistant manager.

24 Q Okay. Can you tell me a little bit about your job
25 description, what you do on a day-to-day basis?

- 1 A I open the store, I close the store, work stock, do
2 all the paperwork, that kind of stuff.
- 3 Q Okay. Did you open the store this morning?
- 4 A I was supposed to.
- 5 Q Okay. All right. Mr. Gardner, I'm going to take
6 you back to the incident that happened on
7 August 22nd of last year. Do you recall that date?
- 8 A Yes, ma'am.
- 9 Q Okay. Can you tell me what you remember from that
10 date, what happened?
- 11 A I was working in the store. And I had just come
12 from the back of the store to come up front to do
13 something, and these two guys came in. And one of
14 them looked like he was waving a gun, and said, You
15 know -- and all I can remember is he said, You know
16 the deal.
- 17 Q You know the deal. Do you remember what they
18 looked like?
- 19 A They had T-shirts or bandannas or something over
20 their faces, so I couldn't --
- 21 Q Okay. Were they black gentlemen or white --
- 22 A Yes, ma'am.
- 23 Q And two black men?
- 24 A Yes, ma'am.
- 25 Q Okay. Do you remember anything else about what

1 they were wearing?

2 A One of them had on sweatpants, I believe, and the
3 other one had on some basketball shorts.

4 Q Okay. All right. And when they came into the
5 store, can you explain where they went exactly?

6 A They just came through the door. And one of them
7 went behind counter and the other one jumped over
8 the counter.

9 Q Okay. Were you -- you said you came from the back
10 of the store?

11 A Uh-huh.

12 Q So where did -- when did you actually see them
13 coming in?

14 A As they were coming in the door.

15 Q Okay. Was there anyone else working with you?

16 A Yes, ma'am, I had a cashier there.

17 Q Okay. What is her name?

18 A Elizabeth Coleman.

19 Q Okay. And what about any other employees?

20 A The manager was there, but he had just left to go
21 to the bank.

22 Q Okay. So the manager was gone?

23 A Right.

24 Q Okay. And can you tell me what was taken?

25 A They took the money out of the registers. They

1 took a few packs of cigarettes. And my cell phone.

2 Q And did they -- do you recall them making any other

3 statements besides the one that you just said, You

4 know the deal?

5 A Not right offhand. All I can remember is right

6 before they left they said, Give me your cell

7 phone.

8 Q Okay. All right. What did you do after they left?

9 A I had Elizabeth call 9-1-1.

10 Q Okay. So she was the one that called. And then

11 were you there when police responded?

12 A Yes, ma'am.

13 Q Okay. Did you talk with anyone?

14 A Yes.

15 Q Any police officers?

16 A Yes, ma'am.

17 Q Okay. Did you give a written statement?

18 A Yes, ma'am.

19 Q Okay. When this happened, what was going through

20 your head? What were you feeling?

21 A I was scared.

22 Q Okay. I know you said you saw them carrying a gun.

23 How close-up were you to them?

24 A I never really got that close until I got behind

25 the register with them.

1 Q Okay.

2 A And I had to open the registers up while they were
3 taking the -- one guy was taking the money out
4 while the other one was standing there watching me.

5 Q Okay. Do you remember how much money was stolen
6 from the business?

7 A It was like \$387 and some change.

8 Q Okay. And this ordeal, do you remember roughly
9 what time it happened?

10 A It was right before noon.

11 Q Okay. So it was in the middle of the day?

12 A Right.

13 Q Now, is the Dollar General that you are still
14 working at or is this a different one?

15 A This is a different one. I work at Decker
16 Boulevard now.

17 Q Okay. When did you make the change?

18 A It was either April or May of this year.

19 Q Okay. And the Dollar General where this occurred,
20 can you tell me which street it is on?

21 A 1905 Bluff Road.

22 Q Okay.

23 MS. MOSER: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 BY MS. MOSER:

2 Q Just one more question, Mr. Gardner. You mentioned
3 the gun. Did you believe in that moment that the
4 Defendant had a gun?

5 A Yes, ma'am.

6 MS. MOSER: Nothing further, Judge.

7 THE COURT: Thank you. Please answer any
8 questions that the Defense may have.

9 MR. RUFFIN: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. RUFFIN:

13 Q Hey, Mr. Gardner. How are you?

14 A Good. How are you?

15 Q I'm good, thank you. Your cell phone was taken;
16 right?

17 A Yes, sir.

18 Q Did you ever get it back?

19 A No, sir.

20 Q Do you remember what kind of cell phone you had?

21 A It was a Samsung Galaxy S3.

22 Q You mean like a smart phone?

23 A Uh-huh.

24 Q Do you remember the phone number?

25 A Yes.

1 Q You do remember it?

2 A Yes, sir.

3 Q Do remember if you gave your phone number to the
4 investigator or law enforcement that you talked to?

5 A I'm sure I did.

6 Q And what was your cell phone plan through? Do you
7 remember the company?

8 A Page Plus.

9 Q Page Plus?

10 A Uh-huh.

11 Q Okay. Do you still have the same phone number now?

12 A No.

13 Q You have a different number?

14 A Right.

15 Q That's all I have. Thank you.

16 MS. MOSER: Nothing further.

17 THE COURT: All right. You may step down,
18 sir.

19 Any objection to this witness being excused?

20 MR. RUFFIN: No.

21 (Witness steps down and is excused.)

22 THE COURT: Call your next witness.

23 MS. MOSER: The State calls Ashley Coleman --
24 Elizabeth Coleman, sorry.

25 (Witness approaches.)

1 THE BAILIFF: Place your left hand on the
2 Bible, and raise your right hand, please:

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you are about to give in this case will
6 be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Have a seat in the witness stand,
10 please.

11 (Witness complies.)

12 THE CLERK: And state your name for the
13 record.

14 THE WITNESS: Elizabeth Coleman.

15 ELIZABETH COLEMAN,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MOSER:

19 Q Hey, Elizabeth.

20 A Hey.

21 Q How are you?

22 A Good.

23 Q Good. Elizabeth, what do you do for a living?

24 A Stay-at-home mom.

25 Q You are a stay-at-home mom. Okay. And at one

1 point did you work for the Dollar General?

2 A Yes, ma'am.

3 Q Okay. When was that?

4 A August of last year I started.

5 Q August of last year? Okay. I'm going to take you
6 back to August 22nd of last year. Do you remember
7 that date?

8 A Yes, ma'am.

9 Q Okay. What do you remember from that date?

10 A Going to work and then coming --

11 THE COURT REPORTER: I'm sorry, I can't hear
12 you.

13 Q Can you speak up a little bit?

14 A I'm sorry. Going to work and then coming -- I
15 mean, the people came in and robbed us, two black
16 men.

17 Q Okay. So you went in to work that day at the
18 Dollar General?

19 A Yes, ma'am.

20 Q Is that the one on Bluff Road?

21 A Yes, ma'am.

22 Q Okay. And do you remember what time you went in to
23 work that morning?

24 A 9:00.

25 Q 9:00 o'clock. Is that normal?

- 1 A Yes, ma'am.
- 2 Q Okay. And then you said two black men came in?
- 3 A Yes.
- 4 Q Do remember what time that was?
- 5 A Around 11:30, 12:00.
- 6 Q 11:30 or 12:00?
- 7 A (Nods affirmatively.)
- 8 Q Okay. And what do you remember then? What
- 9 happened when they came in?
- 10 A They jumped over the counters.
- 11 Q They jumped over the counter where you were
- 12 standing?
- 13 A The one that was beside me, yes, ma'am.
- 14 Q Okay. So when you were working there, what -- were
- 15 you working as a cashier?
- 16 A Yes, ma'am.
- 17 Q Okay. They jumped over the counter. And then what
- 18 happened?
- 19 A They told me to give them the money. I told them I
- 20 couldn't open the drawer.
- 21 Q Why couldn't you?
- 22 A Because I wasn't a manager.
- 23 Q Okay. So you weren't able to open up -- you are
- 24 talking about the drawer with all the money in it?
- 25 A Yes.

1 Q The register. Okay. And then what happened next?

2 A They told me to open up the cigarette counter, and
3 I did. And then the manager came. And they
4 pointed the object at him and told him to open up
5 the drawer.

6 Q Okay. And who was the assistant manager?

7 A Kenneth Gardner.

8 Q Okay. Was there anyone else working that day?

9 A Just me and him.

10 Q Okay. It was just the two of you?

11 A Yes.

12 Q Do you happen to recall how many cigarettes you got
13 out of the machine?

14 A Well, we count them every morning, and I didn't put
15 them in there, so it wasn't but like maybe seven or
16 eight of them.

17 Q Okay. Seven or eight packs?

18 A Yes, ma'am.

19 Q Okay. And then what about out of the drawer? How
20 much money do you remember them taking?

21 A We only keep 200 in there, so I assume a little
22 over 200.

23 Q Over 200?

24 A (Nods affirmatively.)

25 Q A couple of hundred dollars. But you said you

1 didn't have the right to actually go in there, the
2 assistant manager had to do that?

3 A Yes.

4 Q Okay. Do you remember what these gentlemen looked
5 like?

6 A One had on long sweatpants with something over
7 their face. And they both had on sweatshirts. One
8 had on basketball shorts. The one with the long
9 sweatpants had on I believe black Converse or
10 white Converse. And the one with the shorts had
11 on Nike shoes.

12 Q Did they have anything on their hands?

13 A They had gloves on.

14 Q They had gloves on. And were you able to see their
15 faces?

16 A No, ma'am.

17 Q After they came in, what did you do?

18 A I slipped back.

19 Q Slipped back. How were you feeling?

20 A Scared.

21 Q Scared. And you said you remember seeing a gun?

22 A It was a figure in a bag. I don't know guns that
23 well.

24 Q Okay.

25 A So I didn't know if it was, you know, an actual gun

1 or not. But the other customers told me that it
2 was a gun.

3 Q You said customers informed you of that?

4 A Yes, ma'am.

5 Q Okay. So there were other people in the store at
6 the time?

7 A There were customers, yes, ma'am.

8 Q Okay. Do you remember how many?

9 A About three or four.

10 Q And after they got what they came for, what
11 happened next?

12 A One of the guys told him, Come on, Little Bro, and
13 then they jumped back over the counter and walked
14 out and ran towards the apartments behind the
15 Dollar General.

16 Q Okay. And what did you do at that point?

17 A I called 9-1-1.

18 Q You called 9-1-1. Have you listened to that call
19 since? That 9-1-1 call?

20 A Yes.

21 Q You have?

22 A They played it.

23 MS. MOSER: May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25

1 (WHEREUPON, State's Exhibit No. 1 was
2 marked for identification only.)

3 BY MS. MOSER:

4 Q I am going to show you what has been marked State's
5 Exhibit 1, that 9-1-1 call. Do you remember
6 listening to that call?

7 A Yes, ma'am.

8 Q This morning? Okay.

9 MS. SAMPSON: Your Honor, may we approach just
10 briefly?

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

14 BY MS. MOSER:

15 Q Elizabeth, you said you listened to the call this
16 morning; correct?

17 A Yes.

18 Q It is your voice?

19 A Yes, ma'am.

20 MS. MOSER: Your Honor, at this time I move
21 State's Exhibit 1 into evidence.

22 THE COURT: Any objection?

23 MR. RUFFIN: No, Your Honor.

24 THE COURT: All right. It will be entered
25 without objection.

1 (WHEREUPON, State's Exhibit No. 1 was
2 admitted into evidence.)

3 MS. MOSER: Thank you, Your Honor. And I
4 would ask to publish that to the jury.

5 THE COURT: Yes, ma'am.

6 (State's Exhibit 1 played in open court.)

7 BY MS. MOSER:

8 Q I'll pause right there. Is that your voice?

9 A Yes, ma'am.

10 Q This is the call you made on August 22nd?

11 A Yes, ma'am.

12 (State's Exhibit 1 continues.)

13 BY MS. MOSER:

14 Q And just to clarify, it sounds like you are talking
15 to other people while you are on the phone; is that
16 true?

17 A Yes, ma'am.

18 Q Okay. And what information were you getting from
19 the other witnesses?

20 A They were the guy customers in the store and they
21 were telling me that it was a gun. But I don't
22 know what guns -- I don't -- I am not a gun person,
23 so I don't know.

24 (State's Exhibit 1 continues.)

25 BY MS. MOSER:

- 1 Q Elizabeth, I'm just going to ask you, you don't
2 sound that nervous in this call. Were you nervous?
- 3 A I was nervous, but --
- 4 Q Were you scared?
- 5 A Yes.
- 6 Q Did you meet with law enforcement after that?
- 7 A Yes, ma'am.
- 8 Q So when they arrived, you sat down and talked to
9 law enforcement?
- 10 A Yes, ma'am.
- 11 Q Did you make a statement to them, a written
12 statement?
- 13 A Yes.
- 14 Q Okay. And did you happen to know if Dollar General
15 had any video surveillance?
- 16 A I believe we did.
- 17 Q Okay. You believe so. Were you able to see that?
- 18 A Yes, ma'am.
- 19 Q Okay.
- 20 MS. MOSER: Beg the Court's indulgence.
- 21 (Pause.)
- 22 BY MS. MOSER:
- 23 Q So you were able to watch that video? In that
24 video do you look a little different?
- 25 A Yes, ma'am.

1 Q Okay. Can you tell me why?

2 A I was pregnant.

3 Q You were pregnant? And your hair is a little
4 different too?

5 A Yes, ma'am.

6 Q Okay. What was your hair color at the time?

7 A It was a brownish-blondish color.

8 Q Okay. So it was a little lighter than what it is
9 now?

10 A (Nods affirmatively.)

11 Q Okay. And you said you were pregnant. How
12 pregnant were you?

13 A A little over a month pregnant, about a month and a
14 half, I believe.

15 Q Okay. No further questions. Please answer any
16 questions they have.

17 THE COURT: Yes, sir?

18 MR. RUFFIN: May it please the Court?

19 CROSS-EXAMINATION

20 BY MR. RUFFIN:

21 Q Hey, Ms. Coleman.

22 A Hey.

23 Q It sounds like on the 9-1-1 you are saying, They
24 had a gun; right?

25 A Yes, sir.

1 Q Did both of them have guns or just one of them? Do
2 you remember?

3 A Just the one I believe with the sweatpants had it.

4 Q You think the one with the sweatpants?

5 A That is what I believe, yes, sir.

6 Q Do you remember giving a statement in this case,
7 like a written statement to an investigator?

8 A Yes, sir.

9 Q Have you had a chance to look over it?

10 A Yes, sir.

11 MR. RUFFIN: One second, please, Judge.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. RUFFIN: May I approach, Judge?

15 THE COURT: Yes, sir.

16 (Complies.)

17 BY MR. RUFFIN:

18 Q Is this your statement right here? Is it -- you
19 can look at it. You can look through it. Is that
20 your signature on there?

21 A Yes, sir.

22 Q Okay. Look to the second page for me. And tell
23 me -- can you tell me -- I'm going to read this
24 right here, and you just tell me if I'm reading it
25 correctly.

1 The question was: Can you tell me which of
2 the two appeared to be in charge of the robbery?

3 And you said: The one with the shorts on.

4 Is that right?

5 A Yes, sir.

6 Q But you don't think he was the one with the gun?

7 A No, sir.

8 Q Okay. The other question I have is -- I think you
9 said that one of them made a comment about Little
10 Bro, or, I'm coming, Bro. Do you remember which
11 one said it?

12 A Yes. I believe the one with the pants on.

13 Q You believe the one with the pants on. I'm going
14 to bring your attention to your statement again,
15 because I just want to make sure that I'm reading
16 this correctly.

17 At the very top of Page 2, your answer -- you
18 are telling the investigator about what happened.

19 And tell me if I'm reading this correctly.

20 You said: I heard the one with the shorts on
21 say, I'm coming, Little Bro. And they left the
22 store walking towards the back.

23 A (Nods affirmatively.)

24 Q Is that correct?

25 A Yes. I could be wrong now.

1 Q I know it has been a long time, and I know it is a
2 little bit stressful being up here. So it could
3 have been the guy with the shorts who said it?

4 A Yes, sir.

5 Q That is what you said at the time; right?

6 A Yes, sir.

7 Q Okay. And so for sure, though, one thing you do
8 remember is only one of the guys had what you
9 thought was a gun?

10 A Yes, sir.

11 Q What other people might have thought was a gun?

12 A Yes, sir.

13 Q Okay. Thank you. That's all the questions I have.

14 THE COURT: Yes, ma'am?

15 MS. MOSER: Just a couple on redirect, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 BY MS. MOSER:

20 Q Elizabeth, it has been a little while since this
21 incident; correct?

22 A Yes, ma'am.

23 Q Okay. You said that one of the two had a gun; is
24 that correct?

25 A Yes, ma'am.

1 Q Okay. Were both of them involved in the robbery?

2 A Yes, ma'am.

3 Q Okay. How do you know that?

4 A Because one was grabbing the money and one was
5 grabbing cigarettes.

6 MS. MOSER: No further questions, Your Honor.

7 THE COURT: Thank you.

8 Anything else?

9 MR. RUFFIN: No, Your Honor.

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

12 Is there any objection to this witness being
13 excused?

14 MR. RUFFIN: Not from us.

15 THE COURT: All right, ma'am, you are free to
16 leave.

17 (Witness steps down and is excused.)

18 MS. SAMPSON: Your Honor, we need to bring the
19 equipment in.

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, at this time there is I believe some
22 equipment that has to be set up, so we are going to
23 take our morning break now. We'll take about a ten
24 minute break.

25 All right. Remember, do not discuss the case.

1 Do not talk about anything besides the weather or
2 anything else.

3 All right. Thank you.

4 (WHEREUPON, the jury retires to the jury
5 room at 11:10 a.m.)

6 THE COURT: So we'll take about a ten minute
7 break. It is 11:11 now.

8 MS. SAMPSON: As soon as we get it, we're good
9 to go.

10 (Colloquy held off record.)

11 THE COURT: Do you have any objection? You
12 have already covered everything on that?

13 MS. EIGENBROT: I would renew my objection.
14 It would all be prejudicial. Other than that, no.

15 THE COURT: All right, thank you. So we will
16 take about ten minutes.

17 MS. SAMPSON: Thank you.

18 (WHEREUPON, a break was taken at 11:12
19 a.m.)

20 (WHEREUPON, the proceedings resumed at
21 11:25 a.m.)

22 THE COURT: All right, thank you.

23 MS. SAMPSON: Your Honor, I think we are
24 ready. The only thing we will need to do is -- I
25 didn't want the screen up if you had to talk to the

1 jury or anything. Once you get done, we will pull
2 the screen back.

3 THE COURT: All right. Well, you can pull it
4 down.

5 MS. SAMPSON: Okay.

6 THE COURT: And everyone is clear on what we
7 are not saying?

8 MS. SAMPSON: We just went over it again. And
9 I probably will lead her just a little bit to keep
10 it cleaner.

11 THE COURT: All right, we can bring them on
12 in.

13 (WHEREUPON, the jury came into open
14 court at 11:28 a.m.)

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

16 THE COURT: All right. Ladies and gentlemen
17 of the jury, at this time I am going to ask the
18 State to call their next witness.

19 MS. SAMPSON: The State calls Investigator
20 Greene.

21 (Witness approaches.)

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

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you are about to give in this case will
2 be the truth, the whole truth, and nothing but the
3 truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat in the
6 witness stand, please.

7 (Witness complies.)

8 THE CLERK: State your name for the record.

9 THE WITNESS: Edwina Greene.

10 EDWINA GREENE,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SAMPSON:

14 Q. Can you spell your last name for the record?

15 A. G-R-E-E-N-E.

16 Q. And where do you work?

17 A. For the Richland County Sheriff's Department.

18 Q. Okay. And how long have you worked there?

19 A. Since January of 2009, so six years, or a little
20 over six years.

21 Q. So back in August of 2014 you were working at the
22 Sheriff's Department?

23 A. Yes.

24 Q. And at that time you were contacted to gather some
25 information about an individual; correct?

- 1 A. Correct.
- 2 Q. Okay. Who did you speak to about this case?
- 3 A. Investigator Carwell.
- 4 Q. Okay. And what -- did he ask you to get some
- 5 information?
- 6 A. Yes.
- 7 Q. Okay. He asked you to determine if anyone lived at
- 8 629 Barnes Street?
- 9 A. Yes.
- 10 Q. Were you able to do that?
- 11 A. Yes, I was.
- 12 Q. Okay. And were you able to determine that Emmanuel
- 13 Elleby lived there?
- 14 A. Yes, I was.
- 15 Q. Okay. And then you were able to determine that he
- 16 wore -- or that he had, excuse me -- an electronic
- 17 device that did GPS; correct?
- 18 A. Yes.
- 19 Q. Based on that, were you able to get any other
- 20 information?
- 21 A. Yes, I was.
- 22 Q. What information were you able to get?
- 23 A. I was able to obtain his location during the time
- 24 in question.
- 25 Q. And you mean -- when you say the time in question,

1 what do you mean?

2 A. During the date and time of the robbery of the
3 Dollar General.

4 Q. And I am going to show you what has been marked as
5 State's Exhibits 2, 3, and 4, and ask you if you
6 recognize these?

7 A. Yes.

8 Q. And what are those?

9 A. These are his GPS locations during the date and
10 time of the robbery.

11 Q. And I am going to ask you, do those fairly and
12 accurately depict what you were able to obtain back
13 in August of 2014?

14 A. Yes.

15 Q. Have they been altered in any way?

16 A. No.

17 MS. SAMPSON: At this time I would ask that
18 the exhibits be introduced as State's Exhibits 2,
19 3, and 4.

20 THE COURT: Any objection?

21 MS. EIGENBROT: Your Honor, I would renew my
22 objection.

23 THE COURT: All right. Those will be entered
24 over the objection of the Defense.

25 MS. SAMPSON: All right. Thank you.

1 (WHEREUPON, State's Exhibit Nos. 2 - 4
2 were marked for identification and
3 received into evidence.)

4 BY MS. SAMPSON:

5 Q. Now, I am going to ask you -- and you can come
6 down. I am going to go over these individually
7 with you.

8 (Witness steps down.)

9 Q. I am going to first show you -- this is State's
10 Exhibit Number 2. Can you tell us, what does that
11 show?

12 A. It shows the subject on the GPS device --

13 Q. I need you to speak up really loudly so everybody
14 can hear you.

15 A. This shows the subject on the GPS device as
16 Emmanuel Elleby. It shows the date and time of
17 these particular green points. These green points
18 show his location during that date and time.

19 Q. And I see it says, Gives nearest address. What
20 does that mean?

21 A. That means that the device is searching for the
22 nearest physical address to list on the report.

23 Q. And each of those brings out -- this dot -- make
24 sure I'm understanding -- show where he is at?

25 A. Yes, to the -- as accurate as the device can

- 1 determine.
- 2 Q. And what location is that?
- 3 A. That is the Dollar General on the corner of Bluff
- 4 and Blair.
- 5 Q. And at the top it has the address. Is that the
- 6 correct address?
- 7 A. Yes.
- 8 Q. And what address is that?
- 9 A. 1905 Bluff Road, Columbia, South Carolina.
- 10 Q. And that shows him being there at 11:30?
- 11 A. Correct.
- 12 Q. I want to show you what is marked as State's
- 13 Exhibit Number 4. Now, that is a similar picture?
- 14 A. Yes.
- 15 Q. Okay. And what does it show?
- 16 A. It shows him being at that address as well.
- 17 Q. At what time?
- 18 A. 11:52 a.m.
- 19 Q. Okay. Now, I notice on some of them it is on the
- 20 outside of the store and some is on the inside of
- 21 the store. I am going to refer you to the diagram.
- 22 Can you explain why that would be different?
- 23 A. Basically, the device has some small margin where
- 24 we call it drifting points where he may be in the
- 25 building but the device might register right there

1 in the parking lot.

2 Q. Okay. So just to be fair, it is not going to say
3 you are on Main Street if you are on Bluff Road?

4 A. Correct. It is just a small amount of margin.

5 Q. And I am now going to show you what has been marked
6 as State's Exhibit Number 3. And can you tell me
7 what this shows?

8 A. This shows Mr. Elleby at 11:58 a.m. back at his
9 residence. It also depicts he was here and
10 traveled down this way to his residence.

11 Q. So from 11:30 on the first one to 11:52 he is at
12 the Dollar General at 1905 Bluff Road?

13 A. Yes.

14 Q. And by 11:58 he is where?

15 A. At his residence. Home mark.

16 Q. And those dots at the corner?

17 A. The orange dot, yes.

18 MS. SAMPSON: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. SAMPSON:

21 Q. All right, you can go ahead and have a seat. I'm
22 done.

23 (Witness returns to witness stand.)

24 BY MS. SAMPSON:

25 Q. All right, so was that your only involvement in

- 1 this case?
- 2 A. No.
- 3 Q. Okay. It is my understanding that at some point
- 4 you were able to provide information as to where
- 5 Mr. Elleby lived?
- 6 A. Yes.
- 7 Q. And that was 629 Barnes Street?
- 8 A. Yes.
- 9 Q. Did you at any point go to 629 Barnes Street?
- 10 A. Yes.
- 11 Q. When did you do that?
- 12 A. I don't remember the exact day.
- 13 Q. Let me ask, do you remember who you were with?
- 14 A. Yes. I was with other members of my department I
- 15 was in at the time, the Fugitive Team.
- 16 Q. And were you with Investigator Carwell?
- 17 A. Yes. He came after I arrived.
- 18 Q. And why were you all -- were you there to try to
- 19 talk to the Defendant?
- 20 A. Yes.
- 21 Q. Emmanuel Elleby?
- 22 A. Yes.
- 23 Q. Any doubt in your mind that you were there to talk
- 24 to Emmanuel Elleby?
- 25 A. No.

1 Q. Okay. And was he -- what was his device indicating
2 his location at that time?

3 A. His device indicated he was home. When we got
4 there, he wasn't home, he was across the street in
5 a wooded area.

6 Q. And how did you find that out?

7 A. I had the device -- it is called paging him. You
8 send a message to the device and it makes a loud --

9 MS. EIGENBROT: Objection, Your Honor. May we
10 approach?

11 THE COURT: Yes.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 THE COURT: All right, the objection is
16 sustained. Please rephrase the question. Please
17 disregard the last answer. And please rephrase the
18 question.

19 MS. SAMPSON: Thank you.

20 BY MS. SAMPSON:

21 Q. So you were able -- did the device make a noise?

22 A. Yes.

23 Q. Indicating his location?

24 A. Yes.

25 Q. And you followed that noise?

1 A. Yes.

2 Q. And you were able to find him at that point?

3 A. Correct. Yes.

4 Q. Okay. And was that your involvement at that point?

5 A. No.

6 Q. And how did the -- this found -- located him?

7 A. Yes.

8 MS. SAMPSON: Beg the Court's indulgence.

9 (Pause.)

10 BY MS. SAMPSON:

11 Q. Based on this -- is there any -- that device that
12 we spoke of that placed him in the Dollar General,
13 that is a device that goes with Emmanuel Elleby?

14 A. Yes.

15 Q. It would be no one else?

16 A. Correct.

17 MS. SAMPSON: No further questions, Your
18 Honor.

19 THE COURT: All right. Yes, ma'am?

20 MS. EIGENBROT: Thank you, Your Honor. May it
21 please the Court?

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 BY MS. EIGENBROT:

25 Q. Hey, Investigator Greene.

1 A. Hi.

2 Q. I just have a couple of questions. So you obtained
3 the GPS data; correct?

4 A. Yes.

5 Q. And that data placed Mr. Elleby at the Dollar
6 General; correct?

7 A. Yes.

8 Q. Now, when that information is generated, do you
9 have any knowledge as to how a GPS device will
10 place somebody there? Like how it registers?

11 A. A signal is sent to that device and it pings back
12 through satellite positioning and then to your
13 computer to give you the information.

14 Q. Now, you mentioned satellite?

15 A. Uh-huh.

16 Q. When determining -- you also mentioned some margin
17 of error and drift points; correct?

18 A. Yes.

19 Q. Okay. And with that margin of error and drift
20 points, that is due to the satellite; correct?

21 A. I'm not exactly sure if that is the reason.

22 Q. Okay. But you are aware that at times the
23 satellites are moving? Satellites move; correct?

24 A. Yes.

25 Q. And that at certain times there may not be as many

1 satellites connecting to a device as there would be
2 at other times?

3 A. I'm not sure if that is a true statement or not.

4 Q. Okay. Well, when you generate this information,
5 the information generated includes a number of
6 satellites connected to the device; correct?

7 A. If it does, I am not aware of that part of the
8 device.

9 Q. Okay. But you received some of these reports, and
10 stuff like that; correct?

11 A. Yes.

12 Q. But you don't just receive the screenshots that we
13 saw earlier?

14 A. Correct. You can get additional, more detailed
15 reports with their latitude and longitude, things
16 of that nature.

17 Q. Would you recognize some of the reports that were
18 generated in this case if I showed them to you?

19 A. Yes.

20 MS. EIGENBROT: Can I have this marked as
21 Defense Exhibit 1?

22 (WHEREUPON, Defendant's Exhibit No. 1
23 was marked for identification only.)

24 BY MS. EIGENBROT:

25 Q. Investigator, let me show you what is Defense

1 Exhibit 1.

2 A. Yes.

3 Q. Do you recognize that?

4 A. Yes.

5 Q. And is that a report that would be generated when
6 this data is being collected?

7 A. Yes.

8 Q. Okay. And can you look over here in the second to
9 last column?

10 A. Yes.

11 Q. And that indicates number of satellites?

12 A. Okay.

13 Q. Correct?

14 A. Yes.

15 Q. And if you could turn to the second page for me.
16 At 11 -- between 11:50 and 11:55 -- do you see
17 those times?

18 A. Yes.

19 Q. And at those times, the amount of satellites
20 pinging to that device is changing; correct?

21 A. Yes.

22 Q. And the number goes all the way from only three
23 satellites up to ten satellites; correct?

24 A. Yes.

25 Q. Okay. Thank you. And, again, at 11:52, as we saw

1 earlier on the screenshots, at some point when
2 there potentially could have been less satellites
3 connected to the device, it shows the dot outside
4 of the store; correct?

5 A. Correct.

6 Q. And generally using this type of data and these
7 type of devices, you cannot exactly pinpoint a
8 location? Like you can't say, Ms. Eigenbrot, I
9 know you were standing directly in that spot
10 directly at that second; correct?

11 A. Correct.

12 Q. And, as a matter of fact, if I am standing still in
13 one spot, and because of the shifting satellites,
14 or, to your knowledge, at the very least, if I am
15 standing in one spot for a period of time, I can
16 have dots pinging all around me; correct?

17 A. Yes.

18 Q. And when you are using this information, a lot of
19 times it puts you in the general area of finding an
20 individual; correct?

21 A. Yes.

22 Q. Not the exact location?

23 A. Correct.

24 MS. EIGENBROT: Beg the Court's indulgence.

25 (Pause.)

1 BY MS. EIGENBROT:

2 Q. I have no further questions. Thank you,
3 Investigator Greene.

4 THE COURT: Yes, ma'am?

5 REDIRECT EXAMINATION

6 BY MS. SAMPSON:

7 Q. All right. The Defense asked you if you referenced
8 a log sheet. This is generated due to the device?

9 A. Yes.

10 Q. Okay. And she asked you about several -- it goes
11 minute to minute; correct?

12 A. I believe -- yes, it does.

13 Q. Okay. And I would ask you to look at the minutes
14 for 11:30.

15 A. Okay.

16 (Pause.)

17 A. All right.

18 Q. And does it have -- and I will ask you to look at
19 State's Exhibit Number 2. Do you see the same
20 coordinates on State's Exhibit Number 2 also on
21 Defense Exhibit Number 1?

22 A. Yes.

23 Q. Okay. And what time is that?

24 A. 11:30.

25 Q. So they match?

1 A. Yes.

2 Q. Okay. Can you do the same for State's Exhibit
3 Number 4 at 11:52?

4 A. Yes.

5 Q. All right. Do they match?

6 A. Yes.

7 Q. Can you do the same for State's Exhibit Number 3 at
8 11:58?

9 A. Yes.

10 Q. Okay. So everything matches?

11 A. Yes.

12 Q. And to understand, the locations that it is giving
13 you at 11:30, at 11:58, and at -- excuse me, 11:52
14 and 11:58 -- at 11:30 and 11:52, all of those
15 latitude and longitude coordinates are putting Mr.
16 Elleby in the area of 1905 Bluff Road; correct?

17 A. Yes.

18 Q. And at the 11:58 the coordinates are placing him at
19 his home?

20 A. Yes.

21 Q. Any doubt in your mind about that?

22 A. No.

23 MS. SAMPSON: No further questions.

24 THE COURT: All right. Anything follow-up?

25 MS. EIGENBROT: Nothing further.

1 THE COURT: All right, you may step down.

2 (Witness steps down.)

3 THE COURT: Any objection to this witness
4 being excused?

5 MS. EIGENBROT: No objection.

6 THE COURT: All right, ma'am, you are free to
7 leave.

8 (Witness excused.)

9 MS. SAMPSON: May we approach, Your Honor?

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

13 THE COURT: All right, ladies and gentlemen of
14 the jury, at this time it is about 12:00 o'clock,
15 and just trying to forecast the rest of the
16 afternoon, I think now would be a good time to take
17 our lunch break. And then there are some matters
18 that we are going to -- we will probably come back
19 a little bit earlier. But I am going to allow you
20 to take a break until 2:00 o'clock. It is 12:00
21 o'clock. If you will be back at 2:00 into the
22 room. I know the bailiffs usually want you back 15
23 minutes early, so that will be about 1:45. And we
24 will be ready to start at that time.

25 Remember, do not discuss this case with

1 anyone. Remember to keep the badge that you have
2 on at all times so that if you are in the vicinity
3 and someone is speaking they will know that you are
4 on the jury and will not speak in front of you.
5 Remember not to do any independent research, any
6 social networking regarding your service on the
7 jury here today. And do not talk to each other or
8 any family members. Tell them that you will tell
9 them all about it this weekend when you are done
10 with jury duty.

11 All right, thank you. Have a good lunch. I
12 will see you back at 2:00 o'clock.

13 (WHEREUPON, the jury was excused for
14 lunch at 12:00 p.m.)

15 THE COURT: All right.

16 (Colloquy held off record.)

17 MR. RUFFIN: Judge, before we break for lunch,
18 I just wanted to clarify one thing.

19 THE COURT: Oh, let's put her objection on the
20 record too.

21 MS. EIGENBROT: Oh, yes, I'm sorry.

22 Your Honor, I objected on the prior rulings on
23 the pretrial matters. I brought to Your Honor's
24 attention, the investigator was beginning to
25 testify as to, I guess -- basically, Your Honor, my

1 objection was based on what she was about to state.
2 I believe it would be prejudicial for our client.
3 It would indicate that the device we were
4 discussing was a state device that she was allowed
5 to ping it and make it respond. That is our
6 objection, Your Honor.

7 THE COURT: All right. And the objection was
8 sustained and I at that point directed the State to
9 rephrase the question.

10 MS. SAMPSON: And the only other thing, I
11 think that I asked that I be allowed to lead her so
12 that we wouldn't have that problem and the Defense
13 would did object to my leading most of that
14 testimony just to get around that problem.

15 THE COURT: All right. And you are going to
16 have to do the same thing with the Co-Defendant.

17 MS. SAMPSON: Well, I am going to go talk to
18 Elnora, but, yes, I will definitely have to.

19 THE COURT: And of course you can object at
20 any time, but you need to talk to him and make sure
21 he doesn't.

22 MS. EIGENBROT: I think the only thing in the
23 Co-Defendant's statement where he said, We met at
24 probation.

25 MS. SAMPSON: And I am not going to ask him

1 where they met. But will going to lead him and say
2 you met two months prior to this incident. That
3 should get us to where we need to be.

4 THE COURT: All right. Yes, sir?

5 MR. RUFFIN: We marked Defense Exhibit 1. I
6 just want to be clear, that was not introduced into
7 evidence?

8 THE COURT: I didn't enter it into evidence.
9 It was just -- it is marked for identification, I
10 guess.

11 MR. RUFFIN: Yes. We did not intend to
12 introduce it into evidence. So I just wanted to
13 make sure.

14 THE COURT: Well, I didn't enter it in, so --

15 MR. RUFFIN: Right. I just wanted to make
16 sure.

17 THE COURT: Are we right?

18 THE COURT REPORTER: It is not in.

19 THE COURT: It is not in, per the court
20 reporter.

21 All right.

22 (WHEREUPON, a lunch break was taken at
23 12:10 p.m.)

24 (WHEREUPON, the proceedings began at
25 2:14 p.m.)

1 MS. SAMPSON: At this point we have shown the
2 Defense the redacted version of Elleby's statement.
3 I think we got approval that we all agreed that it
4 is redacted in terms of what was redacted. I
5 believe they were all okay with that?

6 MR. RUFFIN: That's right.

7 THE COURT: Okay.

8 MS. SAMPSON: I didn't want to do anything
9 without Debbie, the court reporter. You had
10 already marked it, I believe, as 7?

11 THE COURT REPORTER: Yes.

12 MS. SAMPSON: So we just need to replace the
13 bottom. I can leave it together, I just didn't
14 want to take anything apart.

15 THE COURT: She can mark it as 7A or
16 something. What do you think?

17 MS. SAMPSON: However you want me to do it.

18 THE COURT REPORTER: Well, it hasn't gone to
19 the jury yet.

20 MS. SAMPSON: No. We haven't done anything
21 with it. I was just going to take the front cover
22 off. Since we can't put the original in
23 evidence --

24 THE COURT: We will mark it as a Court
25 Exhibit.

1 MS. SAMPSON: We will do a regular copy under
2 a different number for a Court Exhibit.

3 MR. RUFFIN: As long as the original doesn't
4 go to the jury, I'm fine.

5 THE COURT REPORTER: Court Exhibit 2.

6 THE COURT: It will be marked with a different
7 sticker.

8 MR. RUFFIN: Right.

9 THE COURT: Court Exhibit 2. Just for any
10 purposes of appeal.

11 THE COURT REPORTER: What do you want me to
12 mark?

13 MS. SAMPSON: I am going to bring it to you.
14 I actually don't have it right now. Oh, here it
15 is. Long day.

16 (WHEREUPON, Court's Exhibit No. 2 was
17 marked for identification only.)

18 MS. SAMPSON: Housekeeping matters. I have
19 instructed -- Elnora Dean is here. I did not speak
20 with Mr. Boler. For obvious reasons, I had Ms.
21 Dean speak with him. He has been instructed not to
22 mention probation, not to mention Elleby having a
23 prior armed robbery, and I am going to lead him in
24 hopes of that not happening.

25 THE COURT: All right.

1 MS. SAMPSON: But he has been instructed not
2 to bring up the issues about --

3 THE COURT: And y'all have settled his record?

4 MS. SAMPSON: Yes. He has a burglary second
5 degree from.

6 I wanted to -- I actually -- my internet is
7 down. I was trying to check over lunch. I thought
8 that he had three convictions. I thought that he
9 had two burglaries and a conspiracy. I don't know,
10 I could be wrong about that, but my understanding
11 was that he got a YOA on a burg second, and then I
12 think later on he got convicted of another burg
13 second and a conspiracy which he got four years.
14 That's what I thought from when I looked at the
15 central index a few days ago.

16 MS. SAMPSON: I have a May 13, 2009,
17 disposition for burglary second degree. And he got
18 incarcerated in the Department of Corrections by
19 the 19th of that same year. And then charged with
20 criminal conspiracy. He did get two years. That's
21 it.

22 MR. RUFFIN: And where I am getting this
23 information from is not from his rap sheet, but
24 from the actual central index, the records kept
25 with the Richland County Clerk of Court's office.

1 THE COURT: Ms. Dean, do you have anything any
2 different?

3 MS. DEAN: I just have a prior record of
4 burglary second and criminal conspiracy. I don't
5 have two burglaries.

6 MR. RUFFIN: But I could be wrong about that.
7 We will say it is one burglary and one conspiracy.
8 Is that fair?

9 MS. SAMPSON: I'm fine with that.
10 And then beg the Court's indulgence for one
11 moment.

12 (Pause.)

13 MS. SAMPSON: The only other thing I would
14 have at this point, Your Honor, is it would be our
15 contention that at this point we are concerned that
16 the Defense has opened the door about the ankle
17 bracelet, being an adequate ankle bracelet. They
18 started talking about the accuracy and inaccuracy
19 of how it works. Our witness could not testify
20 about that because she didn't put the bracelet on,
21 nor is she from the company that makes the monitor,
22 so she could not explain how you could be in one
23 place and the location change. She could just say
24 that it is. They questioned that not only in their
25 opening, but they have since questioned it again

1 with her up here. Even if I put Investigator
2 Carwell up there, things about the monitor he can't
3 explain because he did not make the monitor, nor
4 does he currently supervise the monitor. We do
5 have someone that we can bring in here to do that.
6 However, even if he had on an ankle monitor -- and
7 they may be an employee of Probation, Pardon and
8 Parole, I don't know. We are trying to get someone
9 who is not with Probation, Pardon and Parole who is
10 with the ankle bracelet company. But I think that
11 they opened that door when they start talking about
12 the inaccuracy in their opening saying that, We
13 won't be able to pinpoint. They actually could,
14 but I can't call the people who could do that
15 because they have asked us not to bring up that it
16 is through Probation, Pardon and Parole.

17 MS. EIGENBROT: And, Your Honor, their own
18 witness testified that they couldn't pinpoint it,
19 there are drift points. I don't think we opened
20 the door in any way, shape, or form that allows
21 them to call another witness to tell people that he
22 has got an ankle monitor and then describe the
23 inaccuracies. In fact, they can't -- I mean, as
24 Investigator Greene testified to, they use it to do
25 general locations. They don't use GPS to pinpoint

1 exactly where somebody is. I don't think we have
2 opened the door in way, shape, or form that allows
3 them to bring somebody else in here and describe
4 the device itself and how it works.

5 MS. SAMPSON: Well, we do have somebody who
6 could. She is making some suppositions that I
7 actually could clear up with the person in talking
8 about the drift points and talking about all that.
9 The monitoring company, the person who makes the
10 bracelet, who can come in here and tell us how it
11 works, could come in here and do that. But I can't
12 do that because I'm not allowed to say that it is
13 an ankle monitor, nor am I allowed to talk about
14 that it is through Probation, Pardon and Parole.
15 But they opened that door by bringing that up. She
16 couldn't talk about it because she doesn't have
17 that knowledge. And she is suppositioning about
18 the drift points, and this or that. She says
19 specifically, I don't know, on some of them.

20 THE COURT: She did say, I don't know, on
21 several of them. All right. Is that something we
22 need to deal with now?

23 MS. SAMPSON: I think we can talk about it at
24 another point. I just wanted to bring that to the
25 Court's attention. I don't know what else I am

1 going to have.

2 THE COURT: Just be careful about asking
3 about --

4 MS. EIGENBROT: Your Honor, I don't believe in
5 any way, shape, or form I opened the door to allow
6 them to bring in another witness that would
7 describe how the ankle monitor itself works.

8 THE COURT: But you did to an extent challenge
9 the accuracy of the --

10 MS. EIGENBROT: I asked Ms. Sampson on her
11 direct by offering the fact that the point itself
12 is located outside the building and asked her
13 witness why that would be. And her witness was
14 able to give an answer.

15 MS. SAMPSON: But whether that is accurate or
16 not, she questioned, I didn't. And that is the
17 difference.

18 I said, This is what it is? And she said,
19 Yes.

20 She questioned the accuracy of my witness's
21 statement, and my witness couldn't answer that
22 because she does not know.

23 THE COURT: All right. Well, let me think
24 about it. I may have to go back and look at the
25 transcript.

1 MS. EIGENBROT: And, Your Honor, I would also
2 like to point out that that could be any GPS data.
3 It does not necessarily mean an ankle monitor. It
4 could be my cell phone pinging to different
5 locations. It could be the ankle monitor. It
6 could also be several other items. I don't believe
7 that necessarily means that they get to bring
8 somebody in here to testify specifically how an
9 ankle monitor device works.

10 MS. SAMPSON: And the fact that she just said
11 that shows the problem, that it could be several
12 different things so they could get up there and say
13 that, and I can't fix it because the person I would
14 call to fix that is from Probation, Pardon and
15 Parole.

16 THE COURT: What about the person from the
17 company?

18 MS. SAMPSON: Unless you limit them from not
19 saying -- I guess we have to limit it to not saying
20 ankle monitor and how that works.

21 MS. EIGENBROT: Well, Your Honor, that is the
22 idea of not mentioning the ankle monitor. We are
23 alluding to a GPS device. No one has indicated
24 what type of GPS device it is. And there are
25 several devices that allow GPS. It does not have

1 to be about the ankle monitor.

2 THE COURT: But I guess what I'm trying to say
3 is if we make the questions regarding the
4 accuracy -- for example, on a cell phone, the cases
5 that I have had, you have an expert come in from
6 SLED. The people -- and that is kind of what I was
7 talking about yesterday. You have the experts that
8 come in from SLED and they can tell you based on
9 the program and what they do with the experts from
10 Verizon or AT&T as to the accuracy of the pinpoint
11 of where the person is.

12 What she is saying is, it is not the issue of
13 whether or not she says this, but the issue of you
14 challenging the accuracy of her pinpoint.

15 Let me think about it, because, I mean -- and
16 then, of course, I mean, she has to still -- she
17 does have to defend the case, so --

18 MS. SAMPSON: They can't have it both ways.
19 They can't question the accuracy of our information
20 and leave it out there that -- in opening they
21 said, Well, we don't know the accuracy. They said
22 that. And then they start questioning my witness
23 about the accuracy and drift points, and those
24 things that she cannot testify to because she does
25 not have that knowledge. She just doesn't.

1 And I don't know in closing if they are going
2 to say, Well, maybe he didn't have this GPS device.
3 I don't know what they are going to say. But I
4 know good and well I could prove those things. And
5 I believe that they have opened the door to that by
6 questioning.

7 MR. RUFFIN: I think that -- if I can jump in
8 here for a second. An example to me of opening the
9 door to something like this would be if we were to
10 suggest that it was a cell phone, that the GPS data
11 is coming from a cell phone as opposed to an ankle
12 monitor. Just -- I mean, we're not talking -- we
13 are not even going into what the GPS data or what
14 the GPS device is, just that it is there and that
15 there are certain inaccuracies which was testified
16 to. I mean, and she said what she knew about it
17 and what she doesn't know.

18 THE COURT: She said two or three times she
19 didn't know.

20 MR. RUFFIN: Sure. And if they want to call
21 somebody to testify about the accuracy of the GPS
22 device itself, fine, they can do that. But they
23 can't call it an ankle monitor. I mean, somebody
24 can get on the stand and testify about how accurate
25 GPS data is on the phone. That doesn't mean they

1 have to call it a phone. You know, we haven't
2 opened the door to it being referred to as an ankle
3 monitor. We absolutely have challenged the
4 accuracy of it. And if they want to bring another
5 witness who can say, This is how accurate it is,
6 this particular GPS device, fine, go ahead and do
7 that. But they can't call it an ankle monitor. I
8 don't think we opened the door to that.

9 MS. SAMPSON: And my concern is at this point,
10 I don't know if we can bring in the person with the
11 ankle bracelet monitoring that created it. We are
12 trying to keep away from the probation. But right
13 now the only expert I have works for Probation,
14 Pardon and Parole.

15 MS. EIGENBROT: And, Your Honor, I have dealt
16 with the individual we are talking about in my last
17 case. And, again, all he would do is get up there
18 and exactly say what I said to her on cross. That
19 is what he would testify to. I have dealt with him
20 on several occasions.

21 THE COURT: All he would say is what?

22 MS. EIGENBROT: The way the satellite
23 positionings are. That was the exact questions I
24 was asking her, how they would affect sometimes the
25 accuracy and why sometimes there are such things as

1 drift points. And that is what she would say. He
2 would tell you that inaccuracies can be between 10
3 and 15 meters, which I didn't even bring up.

4 THE COURT: Well, could you bring him in --
5 did he work on this case?

6 MS. SAMPSON: To be honest, I do not know,
7 because I am in here.

8 MS. EIGENBROT: I believe the individual we
9 are discussing, I think his name is Mitch Tucker.
10 He works for the Department of Probation, Pardon
11 and Parole. His job is to sit there and monitor
12 the ankle monitor devices and their GPS
13 coordinates.

14 MS. SAMPSON: We were trying to do two
15 different things because we are limited to not
16 talking to anybody from Probation, Pardon and
17 Parole. Right now the easiest one for us to get is
18 somebody from Probation, Pardon and Parole. We are
19 also trying to get someone from the actual
20 manufacturer of the monitor, because I think they
21 can come in and talk about it. Then it clears up
22 from someone saying they work at Probation, Pardon
23 and Parole.

24 THE COURT: Well, she is saying that they
25 don't have, I guess, have a problem with Mitch.

1 MS. EIGENBROT: I would still object. I would
2 still object to him coming to testify. Again, I
3 don't think that the door was open exactly. Again,
4 I think he would reiterate things that I asked on
5 cross. I don't think he would add anything to
6 this. I think he would be an unnecessary witness
7 at this point in time. I didn't challenge the
8 accuracy to the point where the jury would fully a
9 hundred percent believe that Mr. Elleby was on the
10 other side of town. I never challenged the
11 accuracy to that degree.

12 MS. SAMPSON: But I have to prove it beyond a
13 reasonable doubt, is my problem.

14 THE COURT: All right. Why don't you see if
15 you can get the other person down here. If not,
16 we'll have to get him here and proffer his
17 testimony and see what he says and see if there is
18 anything different than what she testified to.

19 MS. SAMPSON: Okay.

20 THE COURT: At this point. That is about --
21 how we get around the fact that -- I was trying to
22 think if there is a way to bring him in and say,
23 Are you familiar with GPS? And he'll say, Yes.
24 Did you have anything to do with this case? He
25 says, No. And --

1 MS. SAMPSON: We just have a lot of --

2 THE COURT: But then y'all are bringing him in
3 as an expert. I don't know.

4 MS. SAMPSON: Our concern is already up in the
5 air about what this GPS device is. For all I know,
6 the jury is thinking it is a phone and knowing
7 about the inaccuracies that happen with the phone,
8 but we know it is different from an ankle bracelet.
9 But I don't know what they are thinking.

10 MR. RUFFIN: I guess just to throw this out
11 there. I'm not sure if this is where your thinking
12 was. If the witness that they are talking about
13 who is employed by probation came and testified
14 about GPS devices in general, or even -- I think he
15 can say this particular GPS device without saying
16 that he is employed by probation maybe.

17 THE COURT: But if he is not connected to the
18 case, how am I getting him to testify unless -- if
19 he is giving an opinion, if I'm not qualifying him
20 as an expert. In order to qualify him as an expert
21 he has got to be able to tell me why and how he
22 knows -- because basically y'all are asking him to
23 provide information to the jurors that is outside
24 the general or common knowledge of the jurors. And
25 that is the problem.

1 And so I don't know how to get around it. I
2 am going to think about it while we -- and
3 hopefully -- now, if she can find the people from
4 the company, then they may be able to just come
5 talk about GPS tracking and, you know, have them
6 qualified. But I'm just not sure how to get around
7 the --

8 MS. SAMPSON: Yes. And I --

9 THE COURT: Because you don't want him to
10 testify as a fact witness. So then he would have
11 to be an expert witness to even give an opinion as
12 to anything.

13 MR. RUFFIN: Yes. That's right. If he is
14 going to give an opinion about the accuracy of
15 anybody that they call, if he is going give an
16 opinion he will have to be qualified as an expert.

17 THE COURT: Yes. Because you don't want him
18 as a fact because then he would have to -- yes.

19 MR. RUFFIN: I mean, we also feel that
20 somebody from the company --

21 THE COURT: They would have to be an expert,
22 but at least they can come in and not say that they
23 work for probation.

24 MS. SAMPSON: Well, I am going to have to show
25 them the stuff and make sure they have the

1 different printouts and the scans. I don't even
2 know at this point, because then --

3 MR. RUFFIN: If it helps, I'm not intending to
4 argue that in my closing at least, or on cross, for
5 that matter, we are not intending to insinuate or
6 argue that Mr. Elleby was any significant distance
7 away from the Dollar General at all. I mean, quite
8 frankly, I am not sure that I will even touch the
9 issue at all.

10 So I understand Ms. Sampson's concern that I
11 could argue that it is a cell phone or that -- I
12 mean, I'm not really sure --

13 MS. SAMPSON: About the accuracy is what
14 I'm --

15 THE COURT: Well, he is not going to suggest
16 that it is a cell phone. I see what you are
17 saying.

18 MR. RUFFIN: And I am not going to suggest
19 that he could have been on the other side of
20 Columbia either, because the GPS is so inaccurate.
21 I am not going to suggest that either.

22 MS. SAMPSON: All I know is they started
23 talking about inaccuracies. I was not able to
24 clear that up because that witness doesn't know. I
25 don't know what they are going to do with that, but

1 that is my concern. And I believe they may have
2 opened the door to letting us confirm the accuracy
3 if they are going to be bringing it up.

4 MR. RUFFIN: I tend to agree that they have an
5 absolute right to present witnesses who could
6 testify to the accuracy of the GPS. I agree with
7 that. That doesn't mean they can call it an ankle
8 monitor or say that it is probation who is
9 monitoring it.

10 THE COURT: Well, the problem is -- she
11 doesn't want to call it an ankle monitor, she is
12 just saying if she brings -- I have also directed
13 him not to in any way indicate that he was on
14 probation. That is the bigger issue. Not so much
15 that there is an ankle monitor, but saying he is on
16 probation and there is a conviction for something.

17 MR. RUFFIN: Right.

18 THE COURT: And so that is my concern is if
19 she is bringing somebody in here from probation how
20 do we get that in without that person saying they
21 are from probation.

22 MR. RUFFIN: We will just have to not say that
23 they are from probation.

24 MS. SAMPSON: But we can't qualify them as an
25 expert without talking about how they got their

1 training and how they did their training, and that
2 is through Probation, Pardon and Parole. And
3 logically that would be somebody from Probation,
4 Pardon and Parole. We are trying to get someone
5 from the ankle bracelet company, but, again, they
6 are not familiar with this case and this monitor
7 and this information. That was given to Probation,
8 Pardon and Parole.

9 THE COURT: We could qualify him outside the
10 presence of the jury and just let him know he has
11 been qualified. But, still, I think even if he is
12 testifying as an expert he has got to give some
13 background.

14 MS. SAMPSON: We may be able to do it that
15 way.

16 THE COURT: Some background as to his dealing
17 with GPS.

18 THE CLERK: Quite frankly, Judge, in my
19 opinion, it is something they should have thought
20 about. I mean, they knew that they were going to
21 be relying heavily on GPS data, whether they call
22 it a an ankle monitor or not. They have relied
23 and will continue to rely heavily on that GPS data.
24 If they were worried about the accuracy being
25 challenged, which they well should have been

1 prepared to respond to challenge the accuracy, they
2 should have somebody lined up already to deal with
3 this issue.

4 MS. SAMPSON: My problem is the person is from
5 Probation; Pardon and Parole, and until this
6 morning I did not know that I could not use
7 Probation, Pardon and Parole.

8 THE COURT: All right, see if you can get
9 someone from the company. If not, we'll bring the
10 guy from PPP in and proffer the testimony and try
11 to see. I mean, just a really -- because they have
12 a right to present their case and you all have of
13 course the right to defend yours. But the facts of
14 the case of course creates all kind of issues
15 because of him being on supervision and going into
16 the store and the way they identify him. They have
17 to be able to show how they identified him. I
18 mean, that is an element of one of the things they
19 have to prove. So I can't change the facts
20 completely from what the facts are, which was one
21 of my concerns yesterday when she threw out the
22 issue of the cell phone. It could be a cell phone,
23 it could be -- because if it is a cell phone, you
24 have to go through bringing in usually the experts
25 from SLED, the people from the phone company, and

1 it is very -- it is a lot more involved than just
2 saying, We tracked somebody on their phone. It
3 is -- I mean, you have got towers and everything as
4 to how they track the cell phones, so it is a
5 little bit different than I think the way the GPS
6 tracking -- although it might be all the same type
7 technology, but there is different ways of tracking
8 people on cell phones probably than tracking them
9 on an actual monitor.

10 MS. SAMPSON: That's correct.

11 THE COURT: All right. Let's bring them in.

12 MS. SAMPSON: Thank you.

13 THE COURT: Y'all keep working. Try to see if
14 y'all --

15 MS. SAMPSON: We have Justin working on that.

16 THE COURT: All right.

17 (WHEREUPON, the jury came into open
18 court at 2:34 p.m.)

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

20 THE COURT: All right. Ladies and gentlemen,
21 I apologize for the delay. There were some matters
22 we were trying to resolve before we brought in the
23 next witnesses. And instead of having you all up
24 and down, up and down, we were trying to resolve
25 all of those before you came in. So I apologize

1 for the delay.

2 At this time I am going to ask the State to
3 call their next witness.

4 MS. SAMPSON: The State would call
5 Investigator Beeler.

6 (Witness approaches.)

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

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm the
11 testimony you are about to give in this case will
12 be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: I do, ma'am.

15 THE CLERK: Thank you. Have a seat in the
16 witness stand, please.

17 (Witness complies.)

18 THE CLERK: State your name for the record.

19 THE WITNESS: Michael Beeler, B-E-E-L-E-R.

20 MICHAEL BEELER,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SAMPSON:

24 Q Good afternoon, Investigator Beeler.

25 A Good evening, ma'am.

- 1 Q Where do you currently work?
- 2 A The Richland County Sheriff's Department on the
- 3 Crime Scene Unit.
- 4 Q And what do you do in the Crime Scene Unit?
- 5 A We are responsible for responding to various types
- 6 of crime in Richland County. That includes:
- 7 Documentation, photography, writing reports,
- 8 collecting and processing evidence, and submission
- 9 of evidence to the property section.
- 10 Q And how long have you worked in that unit?
- 11 A I have been with Crime Scene six and a half years.
- 12 Q And as part of that unit, do you receive training?
- 13 A Yes, ma'am, I do.
- 14 Q What kind of training do you receive?
- 15 A I received -- along with the Criminal Justice
- 16 Academy certifications, I have attended various
- 17 training classes in advanced blood stain pattern
- 18 analysis, blood stain pattern analysis, crime scene
- 19 reconstruction, shooting reconstruction scene,
- 20 questioning homicide death scene, forensic
- 21 anthropology or archeology, expert witness
- 22 testimony, footwear and tire track development,
- 23 crime scene photography, blood stain pattern
- 24 analysis, things like that.
- 25 Q Okay. And when did you start receiving training?

1 A Whenever I -- I went to the academy in 1997, but
2 since 2006. I'm sorry, 2008, when I started with
3 the Crime Scene Unit, I started receiving the
4 internal and external training.

5 Q And the internal and external training, is it
6 ongoing or did you just go once and never go again?

7 A No, ma'am, it is ongoing, trying to adapt to learn
8 more things as the criminal justice term for crime
9 scene expands. So it is constantly going,
10 studying, testing, things like that.

11 Q And I'm just going to go ahead and ask you about
12 this particular scene. Were you called to
13 investigate on October[sic] 22nd of 2014?

14 A Yes, ma'am, I was.

15 Q And what do you do when you get to a scene?

16 A The first thing we do is to make sure the scene is
17 secure. If the business is -- if the scene is at a
18 business, we make sure that the business isn't
19 still trying to run a business with people coming
20 in and out. We make sure that the deputies secure
21 the scene. And then we start documenting,
22 photographing, before we do anything as far as
23 collection or processing of evidence.

24 Q All right. And so when you arrive on a scene, are
25 you called there, or how do you know where to go?

1 A Typically we are called by phone. If I'm in an
2 area and I hear something go out, usually I'll go,
3 but usually I'll be in the office doing paperwork,
4 processing evidence. So in this case I was called
5 by phone to go to the scene.

6 Q And did you go?

7 A Yes, ma'am, I did.

8 Q Okay. And what happened upon your arrival?

9 A Actually in this case Investigator Oates, the
10 morning shift crime scene investigator, had
11 received a call and advised me of the information.
12 I responded to the Bluff Road -- pardon me.

13 Q And what are you looking at?

14 A My report and my --

15 Q Does looking at your report help refresh your
16 memory as to what happened?

17 A Yes, ma'am.

18 Q Go ahead.

19 A Several little notes that we make as far as what
20 specific areas. And it is Dollar General, a dollar
21 store. So it was a Dollar General store.

22 Q And it is out on Bluff Road, I think?

23 A Yes, ma'am.

24 Q Is that in Richland County?

25 A Yes, ma'am, it is.

1 Q And what did you do upon your arrival?

2 A I met with the deputies that were on scene in
3 reference to the armed robbery. And I started
4 photographing and documenting the scene.

5 Q And do you -- how do you decide what to take
6 photographs of?

7 A Typically we'll -- the deputies or investigators
8 will be -- will get on scene and will give us some
9 sort of direction. We still have an open mind to,
10 you know, areas that logically someone would have
11 come. If they say the person came in the front
12 door and exited the front door, we are not going to
13 go to the back door. And deputies usually, when
14 they are securing a scene, they will look, you
15 know, to see if there is any items that were
16 dropped, if it is a robbery, or something like
17 that. But we check the whole area, and then we
18 start focusing on areas that we get information
19 that may have been interacted by the suspect.

20 Q And in this case were you given any information?

21 A I was told that the counter areas is where the
22 suspect had interacted with the employees.

23 Q I am going to show you what has been marked as
24 State's --

25 MS. SAMPSON: Beg the Court's indulgence.

1 (WHEREUPON, State's Exhibit Nos. 8 - 26
2 were marked for identification only.)

3 BY MS. SAMPSON:

4 Q All right. I am going to show you what is marked 8
5 through 25, and ask you to look at them first.

6 A Yes, ma'am.

7 (Pause.)

8 (WHEREUPON, State's Exhibit No. 26 was
9 marked for identification only.)

10 BY MS. SAMPSON:

11 Q Actually, it is State's Exhibit 8 through 26. Did
12 you look at all those?

13 A Yes, ma'am.

14 Q And do all of those fairly and accurately depict
15 what you saw on August 12th of 2014 -- 22nd, I'm
16 sorry?

17 A Yes, ma'am.

18 Q And were those the photos that you took?

19 A Yes, ma'am.

20 Q Any alterations or changes made to them to the best
21 of your knowledge?

22 A No, ma'am.

23 MS. SAMPSON: At this time we would ask that
24 State's Exhibit 8 through 25 be entered into
25 evidence-- 26, I'm sorry.

1 THE COURT: State's 8 through 26. Any
2 objection?

3 MS. EIGENBROT: No objection.

4 THE COURT: All right. They will be entered
5 without objection.

6 (WHEREUPON, State's Exhibit Nos. 8 - 25
7 were admitted into evidence.)

8 (WHEREUPON, State's Exhibit No. 26 was
9 admitted into evidence.)

10 BY MS. SAMPSON:

11 Q All right, Deputy, I am going to go through these
12 one by one. And if you can just tell me what they
13 are.

14 A Yes, ma'am.

15 Q Okay. And what is this a photo of?

16 A That is just a general picture of the front of the
17 business showing the name and the front door.

18 Q Okay. Is that your -- whose car is that in front?
19 Do you know?

20 A That is mine, ma'am.

21 Q And State's Exhibit 9.

22 MS. SAMPSON: That was State's Exhibit 8 for
23 the record.

24 BY MS. SAMPSON:

25 Q State's Exhibit 9?

- 1 A This is just a closer-up photo showing the street
2 numerics for the Dollar General on Bluff Road.
- 3 Q Would that address be 1905?
- 4 A Yes, ma'am.
- 5 Q State's Exhibit 10?
- 6 A That would just be the front door of the business,
7 automatic opening and closing so nobody would have
8 had to touch any -- or interacted with the door.
- 9 Q Okay. So no one interacted with the door, or
10 needed to rather?
- 11 A Yes, ma'am.
- 12 Q State's Exhibit 12 -- 11, I'm sorry?
- 13 A This is the inside of the front door from inside
14 the business.
- 15 Q And just to be clear, these were taken all when you
16 arrived after receiving the call to come to the
17 Dollar General?
- 18 A Yes, ma'am.
- 19 Q So the date of the incident?
- 20 A Yes, ma'am.
- 21 Q State's Exhibit 12?
- 22 A This is just a photo from the front door starting
23 to go into looking into the business.
- 24 Q Okay. And is the counter to the right?
- 25 A The counter would be to the right, ma'am.

1 Q And State's Exhibit 13?

2 A This would be the close-up of Register Number 3,
3 the counter area.

4 Q And I'm going to ask you, this -- what is this?

5 A That is one of our markers we use, letter or number
6 tent markers to show -- be able to locate certain
7 areas on a crime scene. We will take a picture
8 before and then pretty much take the same picture
9 after, close-up, mid-range -- I'm sorry, overall,
10 mid-range, and then close-up, and then take roughly
11 the same ones again with our tent markers. That is
12 why some of these pictures may seem repetitive
13 because we have to take them with and without
14 markers.

15 Q And who places the markers?

16 A I do, ma'am.

17 Q And so you placed that B marker?

18 A Yes, ma'am.

19 Q Do you remember what B indicated?

20 A B was for mainly the counter, but there was also a
21 poor quality footwear impression.

22 Q Okay. And we'll get back to that, but footwear
23 impression on that counter?

24 A Yes, ma'am. Poor quality.

25 Q And State's Exhibit 14?

- 1 A That would be a mid-range that we just talked
2 about, a farther back view of the counter with the
3 marker 4B.
- 4 Q And I am going to go a little bit out of order just
5 to show exactly what you said. So State's Exhibit
6 16 is what?
- 7 A Marker A is the plastic bag holder carousel for
8 Register Number 2. There was a footwear impression
9 with no detail there.
- 10 Q Footwear impression was on A, but there was no
11 detail; is that what you said?
- 12 A Correct.
- 13 Q And correct me if I'm wrong, is 17 just a wider
14 shot of the same thing?
- 15 A Yes, ma'am.
- 16 Q And that is a cigarette case behind it?
- 17 A Yes, ma'am.
- 18 Q Then State's Exhibit 15, what is that?
- 19 A This would be a close-up view of the area that I
20 put the marker down. Footwear impression with no
21 detail.
- 22 Q Okay. So this -- just so I'm clear, where these
23 little chips are, that is not what you are talking
24 about, or is it?
- 25 A No, ma'am.

1 Q State's Exhibit 18?

2 A This would be back to that register that had Marker
3 B. It was just a picture without the marker.

4 Q State's Exhibit 19?

5 A This would be a further back view of Register
6 Number 3, which would have had Marker B on it.

7 Q And I think -- and like you said, sometimes these
8 are a little redundant, so I'm sorry.

9 A Yes, ma'am.

10 Q State's Exhibit 20?

11 A This would be back where that Marker A was,
12 Register Number 2, just kind of an overall without
13 the marker there.

14 Q And then State's Exhibit 21?

15 A This would be a photograph of behind the counter
16 where the clerk would have been.

17 Q And you've been saying Counters 1, 2. Do you see
18 numbers at the top that go with those counters?

19 A Yes, ma'am.

20 Q And those are the numbers when you say Counter 2,
21 Counter 3, is that what you are talking about?

22 A Yes, ma'am.

23 Q So in State's Exhibit Number 22 where it has the 3
24 at the top, that is just another shot of Counter 3?

25 A Yes, ma'am.

- 1 Q And State's Exhibit 23 would be another example of
2 Counter 2, just further away? Is that fair to say?
- 3 A Yes, ma'am, and that bag carousel where that Marker
4 A would have been later.
- 5 Q The same is said of State's Exhibit 24?
- 6 A Yes, ma'am. That is more of the counter area of
7 Register Number 2.
- 8 Q Okay. And, now, State's Exhibit Number 25 shows
9 that Counter 1?
- 10 A Yes, ma'am. This is from the front of the store
11 versus that other picture that showed the inverse
12 from behind the counter. So this is -- the front
13 door would have been on the right-hand side. So as
14 you come in, Register 1, 2, 3 would have been
15 proceeding further into the store.
- 16 Q Okay. And then this last one, State's Exhibit 26,
17 that is the cigarette case?
- 18 A Yes, ma'am.
- 19 Q So all these pictures are what the Dollar General
20 looked like on the date in question when you
21 arrived; correct?
- 22 A Yes, ma'am.
- 23 Q Didn't make any changes or anything?
- 24 A No, ma'am, I did not.
- 25 Q So during the time of me showing you the pictures

1 you talked about foot impression?

2 A Yes, ma'am.

3 Q You talked about two different kinds. Can you
4 explain what the two different kinds of shoe
5 impressions you found?

6 A Yes, ma'am. Typically with a footwear impression
7 we use terms, No detail, Poor detail. Using a
8 flashlight at an angle we are able to -- we
9 typically have poor detail. We can tell a foot
10 made contact with it, but there is no detail as far
11 as tire tracks -- I mean, tread wear. There is no
12 complete footwear mark where you are able to say,
13 okay, it was this size shoe on the outside.

14 Q Let me interrupt you for a second.

15 A Uh-huh.

16 Q Just to make sure we all understand. Something
17 that has poor detail, what you are saying, it
18 doesn't have -- you can tell it is a footprint, but
19 that is about it? There is no detail provided to
20 you?

21 A Correct, ma'am.

22 Q So what would be the next -- I interrupted you.

23 A Yes, ma'am. And then a footwear impression with
24 poor detail, we might be able to see, yes, this
25 might be the side of the shoe. There typically

1 isn't any kind of identifying marks where you are
2 able to identify the class characteristic or find
3 specific characteristics. And that goes into where
4 you would be able to say, okay -- if the footwear
5 impression had been better, we might be able to
6 say, okay, this is a Nike Air Force 1 and you would
7 be able to get a class characteristic saying, okay,
8 yes, this is consistent with a Nike Air Force 1, in
9 which you get into more detail sometimes on some
10 scenes. On some surfaces we will be able -- if we
11 find the shoe, we will actually be able to look at
12 it and say, okay, this has a gouge from a rock or
13 something that is specific to this other footwear
14 impression that we have a photograph of that is not
15 typical of your normal Nike shoe. Like our boots
16 that we wear, the deputies in here, they walk
17 around on carpet most days, so they won't have a
18 lot of typically rough gouges versus one of our
19 Drug Suppression Team or K-9 guys, where all they
20 do is chase people down rocky dirt roads and stuff
21 like that, that is going to have all kind of
22 specific marks where we might be able to say, okay,
23 this is very specific to this shoe.

24 Q I am going to interrupt you a minute.

25 A Uh-huh.

1 Q All right. So in this case there was at least one
2 footprint that was poor quality?

3 A Yes.

4 Q Poor detail, I believe you said?

5 A Uh-huh.

6 Q You were not -- would not be able to match that to
7 anything?

8 A No, ma'am.

9 Q Did you take a lift of that form?

10 A Yes, ma'am, I took a gel lift of it.

11 Q Can you explain to the jury how you do a gel lift?

12 A A gel lift is basically -- it is a piece of
13 material that has like a black rubbery -- we also
14 have white -- but a rubbery type material that we
15 are able to lay down that will pick up marks and --
16 almost like a fingerprint type card, but you are
17 going for dust and, you know -- it is kind of hard
18 to explain easily. But basically the marks on the
19 shoe might leave a clean spot and a dirty spot.
20 The gel lift will lift that up.

21 Q So what did you have in this case?

22 A This was a poor quality. And typically with a poor
23 quality, there may be something that will be able
24 to be identified later. But we have to have the
25 other shoe.

1 Q Okay.

2 A So there may be a few marks, but it is not pretty.

3 Q Okay.

4 (Pause.)

5 (WHEREUPON, State's Exhibit No. 27 was
6 marked for identification only.)

7 BY MS. SAMPSON:

8 Q I want to show you what has been marked as State's
9 Exhibit 27 and ask do you recognize the package?

10 A Yes, ma'am. This was the gel lift or the footwear
11 impression on the counter of where I put my Marker
12 B.

13 Q And is it in the -- at least wrapped up as it is --
14 how does that get wrapped up in that particular
15 manner? How does that happen with the tape on it?

16 A I make a box to be able to secure it. And then we
17 put down tape. And then we put our initials and
18 the date. So we're able to say, yes, this is --
19 this was sealed by me and -- it looks like it was
20 actually opened by one of the other investigators,
21 but I don't know if they did any kind of evaluation
22 with it.

23 Q But you sealed it initially?

24 A Yes, ma'am.

25 Q And you are the one that lifted that gel print?

1 A Correct.

2 Q Okay. And it has your initials that you were the
3 person who put it into evidence?

4 A Yes, ma'am.

5 MS. SAMPSON: At this time question we would
6 ask to introduce State's Exhibit 27 into evidence.

7 MS. EIGENBROT: No objection, Your Honor.

8 THE COURT: All right. 27 will be entered.

9 (WHEREUPON, State's Exhibit No. 27 was
10 admitted into evidence.)

11 BY MS. SAMPSON:

12 Q I am going to ask if you will go ahead and open it.

13 A I don't have means to seal it back.

14 Q Oh, that's okay, you don't have to.

15 (Complies.)

16 Q Okay. And so I am going to lift it up. It is kind
17 of heavy. So this is what you are talking about?

18 A Yes, ma'am.

19 Q And so can you kind of explain to us what this is?
20 Am I holding it right? Or you can hold it.

21 A Well, it depends on the orientation. On the back
22 we will typically make little marks saying, okay,
23 this is the counter. Show it to the Defense. This
24 is the counter, credit card reader, this is the
25 employee side, this is the store side. So this

1 would have been the side where a typical customer
2 would have come up. This would have been where the
3 employees are. This would have been inversed on
4 most of the pictures that you saw of where we were
5 taking pictures from the other side.

6 On this one, usually --

7 Q When you are using your flashlight, what are you
8 doing?

9 A We use the flashlight at an oblique angle, which is
10 not straight on, so we're able to look and see if
11 there is any kind of identifying marks.

12 Q So you are telling me that -- because I looked at
13 it -- when you look at something like that -- I
14 have -- it doesn't have anything as far as I know;
15 correct?

16 A Pretty much, ma'am.

17 Q You need to have that flashlight or know what you
18 are doing in order to know what that is?

19 A Yes, ma'am, usually.

20 Q Okay. So go ahead and tell me what it has.

21 A There is a protective cover that we put on. I'll
22 go ahead and peel it off. With this -- we hold it
23 at an oblique angle because if we shine it straight
24 on we are going to get the light to bounce back at
25 us.

1 With this one we hold it at a rough angle.
2 And there is very few marks in there. If the
3 investigators had been able to -- and I don't know
4 anything else about the case that the investigators
5 did. If they are able to find a shoe, they may be
6 able to say, okay, this little mark over here might
7 be consistent with it. But typically -- it is a
8 poor quality. It is not a full impression.

9 Q Would you expect to be able to get a match with
10 that kind of quality?

11 A This might fall under -- I'm not a footwear
12 impression analyst. I have done some of the
13 testing, and stuff like that. But you'd be able to
14 say it was a shoe.

15 THE COURT REPORTER: I'm sorry, I didn't hear
16 you.

17 A You would be able to say that it was a footwear
18 impression, just poor quality.

19 Q I'll move on to what else you did. You dusted the
20 area for fingerprints?

21 A Yes, ma'am.

22 Q Where would you dust -- or where did you dust?

23 A On this I dusted the counter of the area where
24 Number 3, the cash register drawer of Register
25 Number 3, and Register Number 2 -- or, I'm sorry --

1 the drawers of Register Number 1 and Number 2.

2 Q And did you find any fingerprints?

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

4 Q And if you could, briefly explain to the jury how
5 you dust for fingerprints.

6 A We use a black volcanic powder, which is kind of
7 similar to copy toner, ink of a copier. It gets
8 everywhere. And it will adhere to fingerprints,
9 the oils created from fingers typically. If it is
10 very humid, it will stick to everything. A lot of
11 times we -- getting to your next question -- if we
12 find fingerprints everything --

13 Q Do you always find fingerprints when you dust for
14 fingerprints?

15 A No, ma'am. It is not like on TV, because your
16 fingers are very -- a very complex surface. It is
17 pliable. It moves. When you grab something, you
18 twist. If you put it down -- if I were to hop over
19 this counter and put my hand down, it would
20 probably twist.

21 A lot of people, they watch a lot of TV, so we
22 will find burglaries where people do like a cat
23 claw where they will pull their fingers back and
24 push up a window. We still can get fingerprints
25 from the palm prints. People put socks over their

1 hand. People wear gloves.

2 Q I was going to ask, if somebody wears gloves, would
3 you expect there to be fingerprints?

4 A Fingerprints, no. But then we follow up with DNA.

5 Q I am going to get to DNA in a minute, but for right
6 now just stay on fingerprints.

7 A Uh-huh.

8 Q You mentioned if you were to put your hand down
9 and, say, jump over a counter, the twisting. How
10 does twisting when you put your hand or finger down
11 mess up a fingerprint? Or interfere with the
12 ability?

13 A It will move, which would typically smear. And a
14 lot of factors can affect a fingerprint as far as
15 how hot it is, how cold it is, how much you are
16 sweating, how much oils you produce. A lot of
17 people, they can't -- they'll touch something like
18 this surface, you think of it as smooth, but when
19 you feel it there is ridges and valleys. And it
20 has been here for forever, so you put something wet
21 on it, it is going to suck up all the oil. So a
22 surface like this I would not really expect to get
23 anything off of. Sometimes a smooth surface -- the
24 counter could have been a good surface, but
25 stainless steel is kind of oily. It all depends on

1 when the last time it has been wiped down, what
2 type of cleaners were used.

3 Q Okay. So did you find any fingerprints?

4 A I did not.

5 Q Did that surprise you at all?

6 A No, ma'am.

7 Q Now we are going to talk about -- you brought up
8 DNA. Did you take any swabs?

9 A Yes, ma'am, I did.

10 Q What did you swab?

11 A I took a -- a DNA swab is basically a Q-tip, but it
12 is not the brand name, it is a cotton swab on a
13 stick. And you use distilled water. And on this
14 particular scene I swabbed the cigarette racks
15 where someone might have interacted. I swabbed the
16 counter of Register Number 3 where the poor quality
17 footwear impression was. I swabbed the register
18 drawers of Registers 1 and 2 and the register of
19 Number 3.

20 Q And when you do a swab, do you always get DNA just
21 because you did a swab?

22 A That is actually up to DNA -- that would be a
23 question for the DNA analyst. I very rarely hear
24 back if we get a match. And a lot of times they
25 don't even run them until a suspect is identified.

1 So, it is not something like you would see on
2 TV where you swipe it and it turns blue, Oh, this
3 is the swab, it is going to identify somebody.

4 So a lot of times we don't know. But we still
5 go back because with gloves sometimes, you know,
6 people think their fingerprints are protected, but
7 they'll scratch, they'll wipe, they will do
8 whatever, you know.

9 Q And so would it be fair to say that finding DNA --
10 your job is to try to collect evidence?

11 A Correct.

12 Q Your job is not to necessarily test it?

13 A No, ma'am.

14 Q Like on TV it seems to always be one person's job
15 to do everything?

16 A And they will wrap it up in 42 minutes with
17 commercials. No, ma'am. There is -- we each have
18 a specific set of disciplines. There is people
19 that are great at fingerprint analysis. We have
20 people with doctorates that run the DNA machines
21 and the mass spectrometers that will determine, you
22 know, if DNA comes back. But in this case I
23 collect it and send it into evidence.

24 Q What you said was you dusted the place. If you had
25 found a fingerprint, you would have sent that on to

1 someone else who would have tested it?

2 A Yes, ma'am. We would have used -- we have tape
3 that is -- it is tape that is adhesive on one side
4 and not so much the other. And you put it down and
5 you try to lift it up. And it would be like the
6 gel lift where you lift up the powder. In this
7 case I didn't locate fingerprints. And I don't
8 know about the DNA.

9 Q Okay.

10 MS. SAMPSON: Beg the Court's indulgence.

11 (Pause.)

12 MS. SAMPSON: I have no further questions,
13 Your Honor.

14 THE COURT: All right. Thank you.

15 MS. EIGENBROT: May it please the Court?

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. EIGENBROT:

19 Q Good afternoon, Investigator Beeler.

20 A Howdy, ma'am.

21 Q I have some questions for you.

22 A Uh-huh.

23 Q On this day you were called to the scene to process
24 it; correct?

25 A Yes, ma'am.

1 Q And when you were processing the scene, it is to
2 potentially collect evidence; correct?

3 A We try.

4 Q When you are called out there, you have no idea
5 what is going to be there at the scene when you
6 arrive?

7 A Correct.

8 Q No idea if somebody is going to be bleeding or
9 fingerprints are left, any of that information?

10 A No, ma'am, not unless somebody advises me.

11 Q And in this case you were able to at least pull
12 some footprint type detail? It is not -- a poor --

13 A Footwear impression.

14 Q -- impression; correct? But it was available to
15 the investigators in this case; right?

16 A Yes, ma'am.

17 Q And I think you gave some testimony about how --
18 why fingerprints may not always show up at a crime
19 scene; correct?

20 A Yes, ma'am.

21 Q But the fact of the matter is when there is no
22 fingerprints, you can't connect anybody through a
23 fingerprint; correct?

24 A Correct.

25 Q And the idea of swabbing for the DNA to go back to

1 where there may be other potential evidence;
2 correct?

3 A Typically where someone would have touched.

4 Q So you swab for the potential of DNA being
5 available; correct?

6 A Yes, ma'am.

7 Q And if there is a suspect at some point and they
8 receive a sample, they can test those samples;
9 correct?

10 A Or if the person is already in the system, ma'am.

11 Q And to your knowledge -- I don't know if you can
12 answer this or not -- but none of the stuff that
13 you collected at the scene came back to my client,
14 Mr. Emmanuel Elleby?

15 A I don't have any information about your client.

16 Q Thank you. That's all I have for you.

17 A Yes, ma'am.

18 MS. SAMPSON: No further questions, Your
19 Honor.

20 THE COURT: All right. You may step down.
21 Any objection to this witness being excused?

22 (WHEREUPON, there was no response.)

23 THE COURT: All right, sir, you are free to
24 leave.

25 THE WITNESS: Thank you.

1 (Witness steps down and is excused.)

2 THE COURT: Ladies and gentlemen of the jury,
3 it will just be one second. The next witness is on
4 the way up.

5 (Pause.)

6 THE COURT: If you need to take an afternoon
7 stretch after lunch.

8 (Pause.)

9 (WHEREUPON, State's Exhibit No. 28 was
10 marked for identification only.)

11 MS. SAMPSON: The State calls Devin Boler.
12 (Witness approaches.)

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

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 testimony you are about to give in this case will
18 be the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Thank you. Have a seat in the
22 witness stand, please.

23 (Witness complies.)

24 THE CLERK: State your name for the record.

25 THE WITNESS: Devin Boler.

Q And you are here testifying even though you are

1 facing those charges?

2 A Yes, ma'am.

3 Q I have never met you, have I?

4 A I don't think so.

5 Q Okay. And Ms. Moser sitting over there at my
6 table, she has never talked to you?

7 A (Nods negatively.)

8 Q I need you to say yes or no.

9 A Oh, no, ma'am.

10 Q Now, you have spoken with Investigator Carwell?

11 A Yes, sir -- yes, ma'am.

12 Q Have myself, Ms. Moser, or Investigator Carwell
13 promised you anything to make you come testify
14 today?

15 A No, ma'am.

16 Q Have we promised that you are going to get a less
17 sentence?

18 A No, ma'am.

19 Q You are hoping for that, though, aren't you?

20 A Yes, ma'am.

21 Q We haven't promised you that we are going to reduce
22 any charges, have we?

23 A No, ma'am.

24 Q But you would like that to happen?

25 A Yes, ma'am.

- 1 Q We haven't dismissed any charges?
- 2 A No, ma'am.
- 3 Q We haven't promised we are going to do that, have
- 4 we?
- 5 A No, ma'am.
- 6 Q But you'd like that?
- 7 A Yes, ma'am.
- 8 Q But you have come in here today to testify; right?
- 9 A Yes, ma'am.
- 10 Q You haven't pled guilty at this point?
- 11 A No, ma'am.
- 12 Q And you are aware that whatever you say today I can
- 13 use against you later if I want to?
- 14 A Yes, ma'am.
- 15 Q And you are still willing to testify?
- 16 A Yes, ma'am.
- 17 Q Okay. So I'm going to ask you about this
- 18 particular case. On August 22nd of 2014, do you
- 19 remember who you were with that day?
- 20 A Yes, ma'am.
- 21 Q Who were you with?
- 22 A Elleby.
- 23 Q And you knew him as what?
- 24 A Phatz.
- 25 Q You know him by the nickname of Phatz?

- 1 A Yes, ma'am.
- 2 Q And you had known Phatz for about three weeks?
- 3 A Yes, ma'am.
- 4 Q Okay. So that day, what did you and Phatz decide
- 5 to do?
- 6 A I mean, he called my phone and say he have a
- 7 situation that came up and he need my assistance.
- 8 Q He needed your assistance?
- 9 A Yes, ma'am.
- 10 Q And so what did you do?
- 11 A He told me to meet him in Five Points. And he
- 12 picked me up and took me to his house.
- 13 Q Do you remember where he lived?
- 14 A Not really.
- 15 Q Okay. Do remember what side of town it was on?
- 16 A Like towards the fairground.
- 17 Q Near the fairground?
- 18 A Yes, ma'am.
- 19 Q Near Bluff Road?
- 20 A Yes, ma'am.
- 21 Q So where did you go? You go to his house. What
- 22 were y'all supposed to do?
- 23 A He went in the bathroom and he came back. He came
- 24 back with a little brown bag -- a little black bag.
- 25 And he told me -- he told me, this right here -- he

- 1 showed me where we was going at.
- 2 Q He showed you where you were going at?
- 3 A Yes, ma'am.
- 4 Q And where were you going?
- 5 A To the Dollar General.
- 6 Q And why were you going to the Dollar General?
- 7 A He say he want to step in for a minute to get some
- 8 money.
- 9 Q And get some money. What did you take that to
- 10 mean?
- 11 A Rob the place.
- 12 Q Okay. Did you go with him?
- 13 A Yes, ma'am.
- 14 Q Did you go inside with him?
- 15 A Yes, ma'am.
- 16 Q What did -- do you remember what you had on that
- 17 day?
- 18 A Can't remember.
- 19 Q Do you remember what he had on?
- 20 A Can't remember.
- 21 Q Did you guys wear anything to cover your face?
- 22 A Yes, ma'am.
- 23 Q What did you wear?
- 24 A A mask.
- 25 Q What kind?

- 1 A Like a black, like, shirt.
- 2 Q Like a shirt?
- 3 A (Nods affirmatively.)
- 4 Q And did you tie it around your head, or do you
- 5 remember?
- 6 A Can't remember.
- 7 Q What happened when you get in there? Do you
- 8 remember who went in first?
- 9 A Yes, ma'am.
- 10 Q Who went in first?
- 11 A Elleby.
- 12 Q And what did he do?
- 13 A He jumped over the counter and demand money.
- 14 Q Did he show them anything?
- 15 A No. No, ma'am. He had a bag.
- 16 Q Did he hold it in any manner?
- 17 A No, ma'am. I can't remember. I couldn't remember.
- 18 Q What did you do?
- 19 A Standing there.
- 20 Q Did you go behind the counter?
- 21 A No, ma'am.
- 22 Q You didn't go behind the counter?
- 23 A No, ma'am.
- 24 Q Are you sure about that?
- 25 A I was there.

- 1 Q Okay. You were there?
- 2 A Yes, ma'am.
- 3 Q Who did the robbery?
- 4 A Elleby demand money from the clerk.
- 5 Q Did the clerk give him money?
- 6 A Yes, ma'am.
- 7 Q Okay. What else did he get?
- 8 A I think -- I think cigarettes, I think.
- 9 Q Do you remember how many people were behind the
- 10 counter besides Elleby?
- 11 A I can't remember.
- 12 Q And what happened after he got the money and the
- 13 cigarettes?
- 14 A He jumped back over counter and took off and then I
- 15 followed him.
- 16 Q You followed him. Did you ever leave the store
- 17 while the robbery was going on?
- 18 A No, ma'am.
- 19 Q So where did y'all go after you left the store?
- 20 A Back to his house.
- 21 Q Okay. Did y'all have anything that looked like a
- 22 weapon?
- 23 A A brown -- a brown -- a black paper bag.
- 24 Q Did he point it at anybody?
- 25 A No, ma'am.

- 1 Q But he did have something that could look like a
2 weapon?
- 3 A Yes, ma'am.
- 4 Q And so y'all go back to his house?
- 5 A Yes, ma'am.
- 6 Q What happens? When you get back to his house does
7 he give you any of the money?
- 8 A Yes, ma'am.
- 9 Q How much did you get?
- 10 A I can't recall.
- 11 Q But you got some money?
- 12 A Yes, ma'am.
- 13 Q And it was the money from the robbery?
- 14 A Yes, ma'am.
- 15 Q And then did you leave?
- 16 A Yes, ma'am.
- 17 Q Did you ever talk in between times with Boler about
18 what had happened -- I'm sorry, with Elleby? Did
19 you ever talk to Mr. Elleby after it happened on
20 the phone?
- 21 A No, ma'am.
- 22 Q Okay. Did a couple of days later did you receive a
23 phone call from him?
- 24 A Yes, ma'am.
- 25 Q And what did he tell you in that phone call?

- 1 A He had another lick.
- 2 Q What does a lick mean?
- 3 A Another armed robbery, I guess.
- 4 Q So he called you to come do another armed robbery?
- 5 A Yes, ma'am.
- 6 Q And did you agree to go do so?
- 7 A No, ma'am.
- 8 Q You didn't?
- 9 A No, ma'am.
- 10 Q Did you go meet -- go to a particular area that he
- 11 said to go to?
- 12 A No, ma'am.
- 13 Q Did Investigator Carwell and other officers pick
- 14 you up?
- 15 A They been -- it been -- I think it was him and some
- 16 lady.
- 17 Q And a lady. And they picked you up?
- 18 A (Nods affirmatively.)
- 19 Q How did they find you, do you know?
- 20 A Walking.
- 21 Q You were just walking?
- 22 A (Nods affirmatively.)
- 23 Q You weren't going anywhere in particular?
- 24 A I was walking to the store.
- 25 Q Okay. And they just pull up and stop you?

1 A Yes, ma'am.

2 Q Okay. And you talked to Investigator Carwell?

3 A Yes, ma'am.

4 Q Did he make you talk to him?

5 A No, ma'am.

6 Q You voluntarily talked to him?

7 A Yes, ma'am.

8 Q And what did you tell him?

9 A He asked me what happened, and I told him.

10 Q Okay. And did he tell you that you had the right

11 to an attorney?

12 A Yes, ma'am.

13 Q Did he tell you that you didn't have to talk to

14 him?

15 A Yes, ma'am.

16 Q Did he tell you that you could ask for a lawyer?

17 A Yes, ma'am.

18 Q Did he tell you that he would stop talking to you

19 if you asked for a lawyer?

20 A Yes, ma'am.

21 Q Okay. Did you ever ask for one?

22 A No, ma'am.

23 Q And did he give you -- I'm going to show you

24 something and see if you recognize this. Hold on

25 one second. I'm sorry, you have got to say out

1 loud if you recognize it.

2 A Yes, ma'am.

3 Q Now, is that your signature right here?

4 A Yes, ma'am.

5 Q And that is you signing your Advice of Rights?

6 A Yes, ma'am.

7 Q And you waived those and talked to Investigator

8 Carwell?

9 A Yes, ma'am.

10 Q And then you also spoke with him; right?

11 A Yes, ma'am.

12 Q I want to show you something else. Do you

13 recognize this?

14 A Yes, ma'am.

15 Q What is that?

16 A Statement.

17 Q That is your statement?

18 A Yes, ma'am.

19 Q Now, it is typed. Did he type that up or you type

20 that up?

21 A He did.

22 Q Okay. And then did you sign it?

23 A Yes, ma'am.

24 Q And you signed each page?

25 A Yes, ma'am.

- 1 Q So the information in here is what you told him?
- 2 A Yes, ma'am.
- 3 Q Did he give you a chance to look at it before -- or
- 4 tell you what was in there before you signed it?
- 5 A No, ma'am.
- 6 Q Did he tell you?
- 7 A No, ma'am.
- 8 Q You just signed it without knowing what you were
- 9 signing?
- 10 A Yes, ma'am.
- 11 Q But what you told him was the truth?
- 12 A Yes, ma'am.
- 13 Q And it was accurate as best you could see?
- 14 A Yes, ma'am.
- 15 Q And you told him that you committed the robbery
- 16 with Emmanuel Elleby, didn't you?
- 17 A Yes, ma'am.
- 18 Q And that you had gotten money from the robbery? Do
- 19 you remember telling him that?
- 20 A Yes, ma'am.
- 21 Q And he also showed you some pictures and asked you
- 22 did you recognize anybody; right?
- 23 A Yes, ma'am.
- 24 Q I want to show you what has been marked as State's
- 25 Exhibit 28 and ask you if you recognize that?

- 1 A Yes, ma'am.
- 2 Q What is it?
- 3 A A picture of Elleby.
- 4 Q Okay. And it has got six people in it?
- 5 A Yes, ma'am.
- 6 Q Is this what he showed you?
- 7 A Yes, ma'am.
- 8 Q And is that your signature on the bottom?
- 9 A Yes, ma'am.
- 10 Q As best you know, is this a fair and accurate copy
- 11 of what you saw that day?
- 12 A Yes, ma'am.
- 13 MS. SAMPSON: I would ask that State's Exhibit
- 14 Number 28 be introduced into evidence.
- 15 THE COURT: Any objection?
- 16 MR. RUFFIN: No objection.
- 17 THE COURT: All right. It will be entered
- 18 without objection.
- 19 (WHEREUPON, State's Exhibit No. 28 was
- 20 admitted into evidence.)
- 21 BY MS. SAMPSON:
- 22 Q I wan to turn it this way so the jury can kind of
- 23 see it. This is six photographs; correct?
- 24 A Yes, ma'am.
- 25 Q And this one is circled. Who is that?

1 A Elleby.

2 Q That is Emmanuel Elleby?

3 A Yes, ma'am.

4 Q Any doubt in your mind that is who that is?

5 A That's him.

6 Q Okay. And you circled it and put your initials
7 there; correct?

8 A Yes, ma'am.

9 Q And why did you circle that?

10 A Because that is him.

11 Q That is who?

12 A Elleby.

13 Q And what did you do with him?

14 A Robbed the Dollar General.

15 THE COURT REPORTER: I'm sorry, I didn't hear
16 you.

17 A Robbed the Dollar General.

18 Q You robbed the Dollar General with Elleby?

19 A Yes, ma'am.

20 Q Any doubt in your mind that this is the man that
21 you robbed the store with?

22 A No, ma'am.

23 MS. SAMPSON: No further questions, Your
24 Honor. Oh, wait, I'm sorry, yes, there is.

25 BY MS. SAMPSON:

1 Q Just to be clear. You also have a prior record; is
2 that correct?

3 A Yes, ma'am.

4 Q You were convicted of burglary second degree and a
5 conspiracy charge back in 2008 or 2009; correct?

6 A Yes, ma'am.

7 MS. SAMPSON: No further questions, Your
8 Honor.

9 THE COURT: All right. Please answer any
10 questions that the Defense may have.

11 MR. RUFFIN: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. RUFFIN:

14 Q Hey, Mr. Boler. Are you doing all right?

15 A Yes, sir.

16 Q Correct me if I'm wrong, but it sounded like maybe
17 you said you never jumped over the counter at the
18 Dollar General? Is that what you said?

19 A Yes, sir.

20 Q So you did not jump over the counter? That is what
21 you said?

22 A Yes, sir.

23 Q Okay. And you said that the weapon or the thing
24 that y'all had that would have appeared to be a
25 weapon was a black bag; right?

- 1 A Yes, sir.
- 2 Q And did you have that or did Emmanuel have that?
- 3 A I had it in my hand.
- 4 Q You had in your hand?
- 5 A (Nods affirmatively.)
- 6 Q And you pointed it at people; right?
- 7 A No. No, sir.
- 8 Q You said that you didn't point it at people?
- 9 A (Nods negatively.)
- 10 Q Okay. And so you are only 25; right?
- 11 A Yes, sir.
- 12 Q And you -- as Ms. Sampson just pointed out, you
- 13 have been in trouble before?
- 14 A Yes, sir.
- 15 Q Did you have to go to prison?
- 16 A Yes, sir.
- 17 Q You did a YOA for the burglary; right?
- 18 A Yes, sir.
- 19 Q So you were in prison for what, about 10 months, 12
- 20 months?
- 21 A Yes, sir.
- 22 Q You want to go back?
- 23 A No, sir.
- 24 Q What is it like? Where did you stay? Were you in
- 25 Turbeville?

- 1 A (Nods affirmatively.)
- 2 Q Did you like it?
- 3 A No, sir.
- 4 Q How is the food?
- 5 A (Nods negatively.)
- 6 Q Disgusting; right?
- 7 A (Nods affirmatively.)
- 8 Q Did you have share a cell with other guys?
- 9 A Uh-huh.
- 10 Q How many?
- 11 A Two.
- 12 Q So it was you and two other men?
- 13 A Yes, sir.
- 14 MS. SAMPSON: Your Honor, at this point I am
- 15 going to object to relevancy. He is starting to
- 16 go --
- 17 MR. RUFFIN: Judge, can we approach?
- 18 THE COURT: Yes.
- 19 (WHEREUPON, a bench conference was held
- 20 in the presence of the jury but out of
- 21 the hearing of the jury.)
- 22 THE COURT: All right. The objection is
- 23 overruled.
- 24 BY MR. RUFFIN:
- 25 Q Sorry about that, Mr. Boler. So the last time you

1 did 10 months; right?

2 A Yes, sir.

3 Q This time your armed robbery, what you are facing
4 has a minimum of 10 years?

5 A Yes.

6 Q And it has a maximum of 30 years?

7 A Yes.

8 Q So -- and let me ask you this. Do you know that
9 armed robbery is a violent offense, classified as a
10 violent offense in South Carolina? And you know
11 that it is a strike on your record?

12 A Yes, sir.

13 Q Right? So if you get convicted of armed robbery,
14 that is a strike on your record?

15 A Yes, sir.

16 Q And do you know that what that means is that if you
17 get another strike on your record, another violent
18 strike, you can be subject to life in prison? Do
19 you know that?

20 A Yes, sir.

21 Q Okay. Do you also know that armed robbery and
22 kidnapping are served at 85 percent?

23 A Yes, sir.

24 Q You know about that; right?

25 A Yes, sir.

- 1 Q So if you get 10 years, you have got to do 8 and a
2 half; right?
- 3 A Yes, sir.
- 4 Q You know that you can't get any less than that for
5 good time credit or work release, or anything like
6 that? You know that?
- 7 A Yes, sir.
- 8 Q Okay. You don't want to do 10 years; right?
- 9 A No, sir.
- 10 Q So let me ask you this. You have already been made
11 a plea offer in this case; right?
- 12 A Yes, sir.
- 13 Q Tell the jury what your plea offer is right now.
- 14 A Ten years.
- 15 Q Ten years. So what you are saying is that
16 Ms. Sampson has already agreed that if you come in
17 court and plead guilty to armed robbery that she'll
18 agree for you to be sentenced to the minimum of 10
19 years?
- 20 A Yes, sir.
- 21 Q But you don't want to do that? You don't want to
22 do 10 years; right?
- 23 A No, sir.
- 24 Q You'd rather be convicted of something that doesn't
25 have a 10-year minimum?

1 A Yes, sir.

2 Q Would it be fair to say that you would rather be
3 convicted of strong arm robbery?

4 A Yes, sir.

5 Q Do you know what strong arm robbery is?

6 A What it carries?

7 Q Do you know what it carries?

8 A Zero to 15?

9 Q Zero to 15. And do you know that that is a
10 non-violent offense?

11 MS. SAMPSON: Your Honor, I am going to object
12 at this point. We don't even have strong arm
13 robbery as a charge in this case.

14 THE COURT: All right. The objection is
15 sustained.

16 BY MR. RUFFIN:

17 Q You are hoping to not plead guilty to armed
18 robbery; right?

19 A Yes, sir.

20 Q You want to plead guilty to something less than
21 that?

22 A Yes, sir.

23 Q And you, sir, are hoping that after today the State
24 is going to give you a better offer; right?

25 A Yes, sir.

1 Q When you talked to Investigator Carwell about this,
2 you consented to your DNA; right?

3 A (Nods affirmatively.)

4 Q Being taken?

5 A Yes, sir.

6 Q And you consented to your phone being searched?

7 A Yes, sir.

8 Q Do you know if they looked in your phone?

9 A No, sir.

10 Q You don't know?

11 A (Nods negatively.)

12 Q That's all I have. Thank you, Mr. Boler.

13 THE COURT: All right. Yes, ma'am?

14 MS. SAMPSON: Just very quickly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. SAMPSON:

17 Q Mr. Ruffin just talked to you a little bit about
18 when you talked with Investigator Carwell. Now,
19 today you are testifying in court?

20 A Yes, ma'am.

21 Q Right? You already have given a statement about
22 what had happened prior to ever meeting me;
23 correct?

24 A Yes, ma'am.

25 Q That happened back on August 25th of 2014?

- 1 A Yes, ma'am.
- 2 Q And back then you talked to Investigator Carwell?
- 3 A Yes, ma'am.
- 4 Q In fact, then you told him that you committed this
- 5 crime with Emmanuel Elleby?
- 6 A Yes, ma'am.
- 7 Q You didn't have any offers on the table back then,
- 8 did you?
- 9 A No, ma'am.
- 10 Q And back then you told him that y'all used a black
- 11 trash bag wrapped in pliers?
- 12 A Yes, ma'am.
- 13 Q When you did the robbery?
- 14 A Yes, ma'am.
- 15 Q Did you have an offer back then when you said that?
- 16 A No, ma'am.
- 17 Q Was that true?
- 18 A Yes, ma'am.
- 19 Q And when you went in -- when you told him that you
- 20 went in there and stole money, you didn't have any
- 21 deals on the table then, did you?
- 22 A No, ma'am.
- 23 Q And was that true?
- 24 A Yes, ma'am.
- 25 Q And when you did that photo line-up picking

1 Emmanuel Elleby as the person who did this with
2 you, did you have a deal on the table?

3 A No, ma'am.

4 Q Didn't know what you were going to get, did you?

5 A No, ma'am.

6 Q And you told the truth then?

7 A Yes, ma'am.

8 Q You are telling the truth now?

9 A Yes, ma'am.

10 MS. SAMPSON: No further questions, Your
11 Honor.

12 THE COURT: Anything else?

13 MR. RUFFIN: Yes, please, Judge.

14 RECROSS-EXAMINATION

15 BY MR. RUFFIN:

16 Q When you were getting interviewed by Investigator
17 Carwell, did he tell you what armed robbery
18 carries?

19 A No.

20 Q You didn't know what it carried?

21 A No, sir.

22 Q Okay. That's all I have.

23 THE COURT: All right. All right, sir, you
24 may step down.

25 (Witness steps down.)

1 MS. SAMPSON: At this time the State would
2 call Investigator Carwell.

3 (Witness approaches.)

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

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness stand,
13 please.

14 (Witness complies.)

15 THE CLERK: State your name for the record.

16 THE WITNESS: It is John Carwell.

17 JOHN CARWELL,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SAMPSON:

21 Q Good afternoon, Investigator Carwell.

22 A Good afternoon. How are you doing?

23 Q Good. How are you?

24 A All right.

25 Q All right. Clearly you work for the Richland

- 1 County Sheriff's Department?
- 2 A I do.
- 3 Q All right. And in what capacity do you work there?
- 4 A Currently I'm the sergeant over the burglary unit.
- 5 Q And what do you do as sergeant over the burglary
- 6 unit?
- 7 A I supervise seven other investigators that work
- 8 burglaries throughout Richland County.
- 9 Q And as a supervisor, what does that entail?
- 10 A I watch to see if any trends are developed, staying
- 11 on top of trends. I look at their paperwork. I
- 12 look at forensic requests for cases they have,
- 13 possible DNA, fingerprints, so forth, that need to
- 14 be tested. And I get those approved and sent off
- 15 to the lab.
- 16 Q And how long have you been a supervisor?
- 17 A About three months.
- 18 Q And how long have you been with the Sheriff's
- 19 Department?
- 20 A October will be 12 years.
- 21 Q Okay. And so as a deputy or even an investigator
- 22 with the Sheriff's Department, do you receive
- 23 training?
- 24 A Yes.
- 25 Q And how often do you receive training?

1 A Every year we have to do a week-long training.
2 Also, at the time of this case, I was also a
3 homicide investigator, a lead detective. So yearly
4 I would try to go to a homicide class to keep up on
5 new techniques.

6 Q And so are you all trained on how to interview?

7 A Yes.

8 Q Okay. And you are trained on -- what other kind of
9 things are you trained on?

10 A Like you said, interviewing, interrogation,
11 collection of evidence, stuff like that.

12 Q Okay. So I want to bring you to this case. Back
13 in August of 2014, what was your title at that
14 time?

15 A At that time I was a senior investigator assigned
16 to the Robbery Unit, Major Crimes.

17 Q And so how do you get a case as investigator, into
18 that position back then?

19 A Actually at the time I was on call that Friday,
20 which means I was working the afternoon hours into
21 the evening and the weekend, that weekend too.
22 While everybody else is at home, there is always
23 somebody on call. And that just so happened to be
24 my weekend.

25 So I was notified that Friday, which was the

1 22nd, that there was a robbery at the Dollar
2 General at 1905 Bluff Road and that two individuals
3 had gone in with a weapon and demanded money.
4 Their faces were covered. Deputies were also able
5 to watch the video at the time and were able to see
6 a bag that was used by one of the suspects. It had
7 a 38 on it. And from being from Columbia I knew
8 that 38 probably meant George Rogers. It was a
9 Carolina bag.

10 They told me that the Defendants or the
11 suspects were not detained at the time, so I knew
12 that Monday I would get assigned the case. That is
13 how normally they are assigned, early in the
14 morning you get your cases and you start making
15 your phone calls and working the case.

16 Q So from Friday to Monday you didn't do anything
17 because --

18 A I did. Actually on this case I did do something.
19 I was -- like I said, I was on call that weekend.
20 And that Saturday I got a call from Lieutenant
21 Curtis Wilson, who is our public information
22 officer at the time, he gave me information that he
23 had received a phone call, I wasn't able to get the
24 young lady's name at the time, but she provided an
25 a/k/a of one of the suspects that did this by the

1 name of Phatz.

2 MR. RUFFIN: Objection. Hearsay.

3 MS. SAMPSON: Your Honor, I'm not providing it
4 for the truth of the matter asserted. Part of his
5 investigation is that he was given the name of
6 Phatz as a suspect.

7 THE COURT: Let me see you all one second.

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: Overruled.

12 BY MS. SAMPSON:

13 Q So you were provided information that the suspect
14 went by the name of Phatz?

15 A That's correct.

16 Q And you also received a second tip; correct?

17 A Yes, I did.

18 Q And in that tip you were told that the suspect
19 Phatz lived at 629 Barnes Street?

20 A That's correct.

21 Q Okay. Based on that information, you contacted
22 Investigator Greene?

23 A I did.

24 Q And she provided you information that Emmanuel
25 Elleby lived at 629 Barnes Street?

- 1 A I did.
- 2 Q Okay. And what did you do knowing that Emmanuel
- 3 Elleby lived at 629 Barnes Street?
- 4 A Well --
- 5 Q Looked on Facebook?
- 6 A Additionally I looked on Facebook for Emmanuel
- 7 Elleby, and I did find him. On his cover photo he
- 8 went by the name of Phatz, spelled P-H-A-T-Z.
- 9 Q So based on that information, were you provided --
- 10 you were provided information that Emmanuel Elleby
- 11 had a GPS device; correct?
- 12 A I was.
- 13 Q And she also -- we have already introduced it into
- 14 evidence, but she provided you those screenshots
- 15 showing that based on the GPS device at the time of
- 16 the incident he was at the Dollar General?
- 17 A He was.
- 18 Q Have you ever dealt with that type of information?
- 19 A No.
- 20 Q Okay. So you relied on the screenshot that she
- 21 provided you to say that he was at the -- that is
- 22 the information I'm talking about, the GPS device
- 23 information.
- 24 A Yes.
- 25 Q Have you ever dealt with GPS device information?

1 A Yes.

2 Q That's what I was asking. I'm sorry.

3 A Yes.

4 Q Have you found it to be accurate?

5 A Yes.

6 Q So based on that, what did you do? Or maybe not
7 even based on that. What was your next step?

8 A Monday morning I would first go to the actual
9 incident location to see if the employees that were
10 there during the robbery were still working. Also
11 to view the video. Having the screenshots, I
12 wanted to watch the video just to make sure he
13 wasn't in there shopping before the incident or
14 after the incident or during the incident.

15 Q Were you able to watch the video?

16 A I was able to watch it at that time.

17 Q Did it show anyone shopping that fit the
18 description of Emmanuel Elleby?

19 A Did not.

20 Q And you have seen the video?

21 A I have.

22 (Pause.)

23 (WHEREUPON, State's Exhibit No. 29 was
24 marked for identification only.)

25 BY MS. SAMPSON:

1 Q I needed it to be open. I am going to show you --
2 it was in this bag, but State's Exhibit 29. And
3 you can look at the bag and the case. What is all
4 that?

5 A It is an evidence bag labeled DVD Plus R with the
6 video from the robbery, 1905 Bluff Road, the Dollar
7 General.

8 Q You obtained that?

9 A Yes, I did.

10 Q And is what is on there a fair and accurate copy of
11 what you saw when you went to the Dollar General
12 and watched the video?

13 A Yes.

14 Q Anything changed about it?

15 A No.

16 Q Anything different about it?

17 A No.

18 Q And it is in the same condition as the way you saw
19 it?

20 A It is.

21 MS. SAMPSON: At this time I would ask to
22 introduce State's Exhibit 29 into evidence.

23 THE COURT: Any objection?

24 MR. RUFFIN: No objection.

25 THE COURT: It is entered without objection.

1 (WHEREUPON, State's Exhibit No. 29 was
2 admitted into evidence.)

3 BY MS. SAMPSON:

4 Q You were here earlier. I have already put this in
5 the computer; correct?

6 A Yes.

7 Q Now, can you explain to the jury, how many
8 screenshots, or how many shots were there --
9 cameras were there in the store?

10 A There was three camera angles you'll see.

11 Q So there are three different videos basically?

12 A Right.

13 Q Is this the video?

14 A Yes, it is.

15 Q Can you explain what everything is? You can come
16 down if you need to.

17 A I can -- the top left is the front door.

18 Q Right here?

19 A That's correct. And obviously that is behind the
20 cashier. That is Ms. Coleman behind the counter.
21 It is a little different hair color from the video.
22 But that is Register Number 2.

23 Q Okay. I am going to let it play.

24 (State's Exhibit 29 played in open court.)

25 Q Now, I see a gentleman right here stretching. Were

1 you ever able to determine who that gentleman is?

2 A He was an employee's father.

3 Q It wasn't Emmanuel Elleby, though?

4 A No.

5 Q Now, what is that? I stopped it. Do you want me

6 to go backwards?

7 A I'm sorry?

8 Q We'll go back. What is that?

9 A That is the first suspect entering.

10 Q And I know I stopped it, but what does it appear to

11 you to be -- you have seen it at full motion -- in

12 his hand?

13 A It appears to be a gun to me. His face is covered.

14 Q What do you see or what did you see -- I know you

15 have done stills, so I'm doing the same thing.

16 This is one of the suspects?

17 A That is one of the suspects jumping the counter

18 with what appears to be a gun in his right hand.

19 Q Now, there is a person walking in the back. Is

20 that Mr. Emmanuel Elleby?

21 A No.

22 Q That other person walking, is that Emmanuel Elleby?

23 A No. That is him --

24 MR. RUFFIN: Objection. I would just ask that

25 she stop leading, Judge.

1 BY MS. SAMPSON:

2 Q Who is that person with the white cap on?

3 THE COURT: Hold on one second.

4 MS. SAMPSON: I'm sorry.

5 THE COURT: And I'm behind the screen, but
6 your objection is?

7 MS. SAMPSON: That I was leading.

8 MR. RUFFIN: Leading.

9 THE COURT: All right. Sustained. Please
10 rephrase the question.

11 BY MS. SAMPSON:

12 Q Who is that person right there with the white cap
13 on?

14 A That was an employee's father again.

15 Q Is that Emmanuel Elleby?

16 A It is not.

17 Q Now, I am going to stop again. Who is this?

18 A It is the assistant manager that testified earlier.

19 Q Mr. ?

20 A Mr. Gardner.

21 Q And can you tell what that person is doing there
22 with the gun? And when I say that person, I
23 mean --

24 A Appears to be going through the cash register
25 getting the money out.

- 1 The first one has left already, and the second
2 one is leaving now.
- 3 Q Is there anything else on this video showing the
4 suspects or the robbery at all on this particular
5 angle?
- 6 A Not this angle.
- 7 Q I will move on to the next one.
8 (Complies.)
- 9 Q And this is from --
- 10 A This is Register Number 3 obviously. This is the
11 end of the counter. You come in, the front door is
12 to the left of the three. You would walk in front
13 of the counter. And then this is a way you can get
14 around the counter without having to jump it.
- 15 Q So would it be fair to say that what we just saw
16 was right here?
- 17 A That's correct.
- 18 Q And what is this?
- 19 A That is Mr. Gardner. He is walking with his hands
20 up.
- 21 Q What do you see on that bag?
- 22 A The Numbers 38 -- or the Number 38.
- 23 Q And, again, what do the suspects appear to be
24 doing?
- 25 A Getting the money out of the register drawer. Both

1 of them. And loose change.

2 Clearly it appears to be a gun in his right
3 hand.

4 Q Where are you talking about, in this hand or --

5 A The right -- his right hand.

6 Q That right there is where you are talking about?

7 A That's correct.

8 Making sure he got all the money.

9 Q And I think you just said that -- and I will stop
10 you -- you said when the suspect was on the counter
11 he said something after he jumped off?

12 A Well, he went to jump down but he did a second look
13 into the register that is open to make sure he got
14 all the money.

15 Q And is there anything else on this camera angle in
16 terms of --

17 A Not on this camera angle.

18 Q Lastly.

19 A That is the front entrance. The front doors,
20 automatic doors. The registers are to the left.
21 That is Register Number 1. That is Mr. --

22 Q I just want to ask, there is this gentleman right
23 here with the white shirt and the white cap. Were
24 you able to tell if he stays in the store or left
25 the store?

1 A I believe he leaves the store. That is
2 Mr. Gardner. And, again, the employee's father in
3 the blue shirt.

4 Q Which one is -- right here?

5 A Yes.

6 Q Can you -- with the white hat?

7 A That's correct.

8 There they are entering. You see there is a
9 gun. Their faces are covered.

10 MR. RUFFIN: Objection, Judge. I would ask
11 that Investigator Carwell just respond to the
12 questions instead of just narrating.

13 MS. SAMPSON: And I have no problem with that.

14 THE COURT: All right. The objection is
15 sustained. Please -- next question.

16 BY MS. SAMPSON:

17 Q What is going on at this time?

18 A The two suspects are entering the business with
19 their faces covered to hide their identity. The
20 first one has his right arm extended out with what
21 appears to be a gun.

22 Q Now, during this -- from this camera angle can you
23 actually see the robbery itself?

24 A Not from this one.

25 Q Now, there is a particular person -- were you able

1 to tell who that person was?

2 A No.

3 Q Were you able to ever determine his name?

4 A No.

5 Q Could you describe him for the record?

6 A Appears to be an older white male with blue jeans
7 and a T-shirt.

8 Q What race is Emmanuel Elleby?

9 A He is a black male.

10 Q And while this is playing, were you able to
11 determine if anyone else was in the store besides
12 this white gentleman, Mr. Bracey, the two clerks,
13 and the suspects?

14 A No. I think there was one other gentleman that
15 walked in just before, but --

16 Q That was it?

17 A That's it.

18 Q In your opinion -- what does it look like these two
19 gentlemen are doing at this time?

20 A Finishing up shopping and preparing to check out.

21 The two suspects are leaving now. The first
22 one.

23 Q Now, was this case timestamped or anything like
24 that when you received it?

25 A Yes.

- 1 Q What time did it have stamped?
- 2 A The time of the robbery?
- 3 Q Yes.
- 4 A 11:52 a.m.
- 5 Q And I am going to stop this right here. Again, who
- 6 is this?
- 7 A That is Mr. Gardner, the assistant manager.
- 8 Q And there are two people. Were you ever able to
- 9 determine who those two were?
- 10 A These aren't suspects. I do not know their name.
- 11 Q So those two were not participating in the robbery?
- 12 A No.
- 13 Q To the best of your knowledge, were they in the
- 14 store when the robbery occurred?
- 15 A No.
- 16 Q And what color clothing do they have on?
- 17 A Lighter color clothing.
- 18 Q And what is the description of the clothing the
- 19 suspects had on?
- 20 A Dark colors.
- 21 Q And does this show any more of the robbery?
- 22 A No, it doesn't.
- 23 Q And, by the way, what race are those two gentlemen
- 24 walking around?
- 25 A Appear to be two white males.

1 MS. SAMPSON: That would be all. You can pull
2 it down. Thank you.

3 (Complies.)

4 BY MS. SAMPSON:

5 Q Okay. In the video -- and I believe they have
6 already heard the testimony -- you were able to
7 speak with Elizabeth Coleman and Kenneth Gardner?

8 A I was.

9 Q Did they give you written statements?

10 A They did.

11 Q And were they able to give you a description of the
12 suspects?

13 A Yes.

14 Q And we have already heard from them. Did their
15 descriptions -- what, if anything, about their
16 descriptions was different than what you saw on the
17 video?

18 A They were able to describe the race and their
19 clothing, kind of their build. One was skinnier
20 than the other.

21 Q And you were able to corroborate that with the
22 video?

23 A Yes.

24 Q So what did you do at that point?

25 A I --

1 Q Let me ask the question. You -- sorry -- you at
2 some point again spoke with Investigator Greene?
3 A I did.
4 Q And she provided you information based on the GPS
5 device that Mr. Elleby was currently at his home?
6 A She did.
7 Q And that would be on August 25th when you are doing
8 your investigation?
9 A That's correct. That Monday.
10 Q Okay. So what -- so then you go to his home?
11 A I do.
12 Q Did you attempt to talk to him?
13 A We attempt to knock on the door and talk to him.
14 Q Did he answer the door?
15 A He did not.
16 Q So did you stay or leave or --
17 A Myself and another investigator left at that time.
18 But they remained there, Investigator --
19 Q They who?
20 A Investigator Greene and Lieutenant Freida Wyatt.
21 Q And at some point they contact you and tell you
22 that they located him?
23 A They did.
24 Q Where was he located?
25 A He was located in the wood line that is across the

1 street from 629 Barnes.

2 Q So right near his home?

3 A Yes.

4 Q And did you -- what did you do at that point?

5 A I responded back to his house to speak with him and
6 to further search his house. We talked to other
7 people that were at his house, his family members.

8 Q What happened when you arrived back at his house?

9 A There is a little unfinished porch on the right
10 side of the house where you enter. His mother was
11 there, his sister was there, he was there, myself,
12 three other investigators. We spoke to him. We
13 were able to go into his house into his bedroom.

14 Q Okay. I want to stop you there.

15 MR. RUFFIN: Objection. I renew my previous
16 objection, Judge, to the search.

17 THE COURT: All right. The objection is
18 overruled based on a previous ruling.

19 BY MS. SAMPSON:

20 Q You stated you went -- and I believe I interrupted
21 you again -- you went to the house. Did you ask
22 could you go in the house first?

23 A Yes. His mother was cooperative. She was very
24 helpful. She gave us verbal consent as well as --

25 MR. RUFFIN: Objection.

1 A -- Mr. Elleby.

2 MR. RUFFIN: Hearsay. To what the mother
3 said.

4 MS. SAMPSON: He specifically said all she
5 said was verbal consent. That is not hearsay.

6 THE COURT: The objection is overruled.

7 BY MS. SAMPSON:

8 Q So she allowed you to enter the home?

9 A Yes.

10 Q Were you shown the -- what if any room were you
11 shown?

12 A Just Emmanuel Elleby's room.

13 Q You went in there?

14 A We did.

15 Q Was he -- where was Mr. Elleby when you went in his
16 room?

17 A He went back with us at one point, but then
18 returned back out to that unfinished porch where he
19 sat.

20 Q Okay. What did you locate in his room?

21 A In his room we found empty packages of the Newport
22 cigarettes, which were listed on the report. They
23 were 100s listed on the report, which are the
24 longer ones, and that is what we found in the room
25 were the boxes to those. We found loose change in

1 a pile on his bed. We were able to find the bag,
2 the black and I think it is garnet-trimmed bag with
3 the Number 38 in between the bed and the night
4 stand, kind of in between the mattresses. We were
5 also able to locate Chuck Taylor white Converse
6 that were described by one of the employees as them
7 wearing them during the robbery. We located them.
8 As well as a shirt, blue shirt, that matches the
9 scrub type pants that he had on during the robbery.
10 And those were all written down and collected and
11 turned into the evidence.

12 Q Okay.

13 MS. SAMPSON: Beg the Court's indulgence.
14 (WHEREUPON, State's Exhibit Nos. 30 - 33
15 were marked for identification only.)

16 BY MS. SAMPSON:

17 Q I am going to show you what has been marked as
18 State's Exhibit 30 through 33 and ask if you
19 recognize those?

20 A I do.

21 Q And what are those?

22 A The pictures that we took inside Emmanuel Elleby's
23 bedroom.

24 Q And do they fairly and accurately depict what you
25 saw that day?

1 A Yes.

2 Q Have they been altered in any way?

3 A They have not.

4 MS. SAMPSON: At this time I would ask to
5 introduce State's Exhibit 30 through 33 into
6 evidence.

7 THE COURT: Any objection?

8 MR. RUFFIN: Yes, Judge. I renew our previous
9 objection.

10 THE COURT: All right. The objection is
11 overruled.

12 (WHEREUPON, State's Exhibit Nos. 30 - 33
13 were admitted into evidence.)

14 MS. SAMPSON: I am not going to pull all that
15 up again.

16 BY MS. SAMPSON:

17 Q All right. So you talked about it already. What
18 does State's Exhibit Number 33 show?

19 A That is the bag with the 38. It has a drawstring
20 up here where you can pull it closed.

21 Q And why was this significant to you?

22 A You can clearly see that in the video of the
23 robbery.

24 Q State's Exhibit Number 31?

25 A It is loose change. As you saw on those camera

1 angles, one of the suspects was grabbing the loose
2 change out of the register drawer.

3 Q And State's Exhibit 30?

4 A That is a cell phone on the floor. It is actually
5 wood. That is the floor, but there is no carpet
6 there.

7 Q And what is State Exhibit 32?

8 A That is the area between the night stand and the
9 bed. The bag is right there stuffed in the
10 mattress.

11 Q Okay. You said you also collected that evidence?

12 A Yes.

13 (WHEREUPON, State's Exhibit No. 34 was
14 marked for identification only.)

15 BY MS. SAMPSON:

16 Q All right. I am going to show you what is marked
17 as State's Exhibit 34 and ask if you recognize
18 that?

19 A I do.

20 Q What is it?

21 A It is the blue scrub shirt, the empty box of
22 Newport cigarettes, a card with Emmanuel Elleby,
23 white Chuck Taylor Converse shoes, and the black
24 bag with the Number 38 on it.

25 Q And you are reading something. What is listed on

1 here? What were you looking at and reading? What
2 is that?

3 A That is the evidence label form.

4 Q Who puts that on there?

5 A I did that one.

6 Q So you did that?

7 A Yes.

8 Q And it is sealed with tape?

9 A That's correct.

10 Q Who did that?

11 A I did that as well.

12 Q So it hasn't been tampered with in any way?

13 A No.

14 Q And is this in the manner in which you turned it in
15 to evidence?

16 A It is.

17 Q And who got it out of evidence?

18 A I did.

19 Q And is this in the same -- everything the same as
20 it was when you put it into evidence?

21 A Yes.

22 MS. SAMPSON: At this time we ask that State's
23 Exhibit Number 34 be introduced into evidence.

24 THE COURT: Any objection?

25 MR. RUFFIN: I renew my objection.

1 THE COURT: The objection is overruled.

2 (WHEREUPON, State's Exhibit No. 34 was

3 admitted into evidence.)

4 BY MS. SAMPSON:

5 Q I am going to ask you -- no, I am not cutting that.

6 I would ask you to open it.

7 A (Witness complies.)

8 Q Now, is this the first time this has been opened

9 since August 25th of 2014?

10 A Yes. It has my initial and the date right here,

11 August 25th, 2014.

12 If I was to open it, I would have to reseal it

13 and tape it and put the next date on it that I

14 opened it.

15 Q But none of that has been done?

16 A None of that has happened.

17 Q You can go ahead.

18 A (Witness complies.)

19 Q Can you take out each item and tell the jury what

20 each one of them is?

21 A These are the white Chuck Taylor Converse tennis

22 shoes that were found.

23 Q Why were those significant to you?

24 A One of the employees actually described white

25 Converse Chuck Taylors.

- 1 Q Go ahead.
- 2 A This is the black bag with the 38 on it. As you
3 can hear, the loose change in there too.
- 4 Q So you put it in the bag before you put it in
5 there?
- 6 A Yes.
- 7 Q Or was it found that way?
- 8 A No, it was put in there.
- 9 Q Okay.
- 10 A These are the three empty boxes of Newports, which
11 were also labeled in the incident report as being
12 stolen.
- 13 And this is the blue scrub shirt that kind of
14 matches the description of the scrub pants that one
15 of the suspects had on during the video of the
16 robbery.
- 17 Q Let's be clear. The suspects, did they wear a blue
18 scrub shirt?
- 19 A No.
- 20 Q You believe -- I think you just said it, but did
21 they have blue scrub pants on?
- 22 A Yes.
- 23 Q That matched?
- 24 A Yes.
- 25 Q You can put it all back.

- 1 A (Witness complies.)
- 2 Q And all of that was taken out of Mr. Elleby's room?
- 3 A Yes.
- 4 Q When -- I believe you stated you got consent to
- 5 search that room?
- 6 A Yes.
- 7 Q Did he or anyone else deny that that was his room?
- 8 A No, nobody denied it.
- 9 Q Any indication given that it was not his room?
- 10 A No.
- 11 MR. RUFFIN: Objection. Leading.
- 12 THE COURT: Sustained.
- 13 BY MS. SAMPSON:
- 14 Q What if any indication was given that it was not
- 15 his room?
- 16 A None was given that it wasn't his room.
- 17 Q I'm going to show you what has been marked as
- 18 State's Exhibit Number 6. I'm going to show you
- 19 what has been marked as State's Exhibit Number 6
- 20 and ask if you recognize it?
- 21 A I do.
- 22 Q What is it?
- 23 A It is a Richland County Sheriff's Department
- 24 Consent to Search form.
- 25 Q And what date does it have on it?

- 1 A August 25th of 2014.
- 2 Q And what time -- or does it have a time?
- 3 A It does not have a time.
- 4 Q Okay. And who is listed as being the person giving
5 consent?
- 6 A Emmanuel Elleby.
- 7 Q Okay. And who signs that?
- 8 A Emmanuel Elleby.
- 9 Q And what is listed as being removed?
- 10 A It listed the address of 629 Barnes Street, which
11 is his. He then identified a bedroom. Loose
12 change on the bed; packs of Newports, boxes empty;
13 black bag with 38 in white; and white Converse
14 Chuck Taylors; and a blue hospital shirt.
- 15 Q And is that a fair and accurate copy of the consent
16 form you used that day?
- 17 A It is.
- 18 Q Actually, isn't it the original?
- 19 A That is the original.
- 20 Q How do you know it is the original?
- 21 A This one actually has blue ink. I never use blue
22 ink, but that shows you that it is original because
23 of the color.
- 24 MS. SAMPSON: At this time we would ask to
25 introduce State's Exhibit Number 6 into evidence

1 over the objection, I think.

2 MR. RUFFIN: I just renew my objection again,
3 Judge.

4 THE COURT: All right. The objection is
5 overruled.

6 (WHEREUPON, State's Exhibit No. 6 was
7 marked for identification only.)

8 BY MS. SAMPSON:

9 Q And Mr. Elleby gave you his consent to search?

10 A Yes, he did.

11 Q And I want to just go through that process. You
12 spoke with him initially?

13 A Yes.

14 Q And he gave you consent?

15 A Yes.

16 Q And then you filled out this form?

17 A Yes. And he was aware of the items that were taken
18 from his room. When he was transported back to my
19 office, those items that we took were actually with
20 us. He saw all the items that were removed.

21 Q Any question -- I'm sorry.

22 A Yes.

23 Q Any question in your mind that he gave you consent
24 prior to --

25 MR. RUFFIN: Objection again, Judge. Leading.

1 BY MS. SAMPSON:

2 Q What if any question --

3 THE COURT: Sustained.

4 BY MS. SAMPSON:

5 Q What if any question do you have in your mind that
6 he gave you consent prior to searching his room?

7 A He walked back there with us.

8 Q Any doubt in your mind?

9 A No.

10 Q Okay. How did Mr. Elleby appear when he was on his
11 porch?

12 A He was upset. He was sweating. He was vomiting.
13 His sinuses were coming out of his nose. That is
14 the reason he signed with a blue pen, because he
15 wasn't using mine because of those reasons.

16 Q Okay. And did he agree to go back to headquarters?

17 A Yes, he did.

18 Q Okay. And when -- and I probably should ask you
19 this. Did you ever advise him of his rights?

20 A Also, when we got in my truck, he would also be
21 advised of his rights and he would sign that too so
22 we could talk from his residence to -- during the
23 ride back to my office on Two Notch Road.

24 Q Did you have him sign anything at that time?

25 A Yes. He signed with that same blue pen in my

1 truck.

2 Q Okay. I'm going to show you what has been marked
3 as State's Exhibit Number 7 and ask you if you
4 recognize that?

5 A I do.

6 Q Okay. What is the first page of State's Exhibit
7 Number 7?

8 A That is the Advice of Rights form.

9 Q Okay. And what are the rest of the pages?

10 A That would be the statement that I took from
11 Emmanuel Elleby on 8/25 of 2014.

12 Q Okay. Is this a fair and accurate copy of the
13 Advice of Rights and the statement that you took
14 from Emmanuel Elleby?

15 A It is.

16 Q Okay. I am going to go over what is on the paper
17 before I do anything else. On this piece of paper
18 you have each -- you have the rights listed out --
19 or do you? What do you have listed out?

20 A Yes, the rights are listed out.

21 Q And how do you tell -- how do you do this with a
22 person when you are talking to them?

23 A I first explain to them before we talk I need to
24 advise him of his rights. I want to hear his story
25 or I want to be able to talk to him during the ride

1 so it is not quiet, we are not wasting time. So I
2 first write his name down, Emmanuel Elleby.

3 Q Don't show it to the jury yet.

4 A The place where we were. It was actually 625
5 Barnes. My truck was parked in front of his
6 neighbor's house, so I used that address. It has
7 my name on it, Carwell. The date was 8 -- or
8 August 25th of 2014. The time was 1308, which is
9 1:08 in the afternoon.

10 The first portion states: Your Rights.

11 The first line reads: Before we ask you any
12 questions, you must understand your rights.

13 And then I look at him and make sure he
14 understands that line. When he acknowledges to me
15 that he does, I check that line acknowledging that
16 he understands it.

17 I went to the second line and did the same
18 thing. You have the right to remain silent. I
19 make sure he understands that. I check that line
20 as well stating that he does.

21 The third line: Anything you say can be used
22 against you in court. Again, I check that line
23 once he states he understands what that means.

24 The fourth line is: You have the right to
25 talk to a lawyer for advice before we ask you any

1 questions and to have a lawyer with you during any
2 questioning. Again, we check that line stating
3 that he understood it.

4 I went to the next line: If you cannot afford
5 a lawyer, one will be appointed for you before any
6 questions if you wish. Again, I check the line
7 stating that he understood it.

8 If you decide to answer questions now without
9 a lawyer present, you still have the right to stop
10 answering at any time. You also have the right to
11 stop answering at any time until you talk to a
12 lawyer. Again, we check that line.

13 He has the option to sign after that portion.
14 And Mr. Elleby did sign that portion. And I
15 witnessed it.

16 Then we go on to the next part of this form.
17 It is the Waiver of Rights. And it reads: I have
18 read this statement of my rights and understand
19 what my rights are. I am willing to talk and
20 answer questions. I understand and know what I am
21 doing. No promises have been made to me, and no
22 pressure or coercion of any kind has been used
23 against me. And I always explain what coercion is:
24 I didn't force you to give me a statement. I'm not
25 forcing you to talk to me. And we check that as

1 well. And he signed that portion as well. There
2 is two places you can sign on this form, and he
3 signed both of them.

4 Q Okay. So you did all of that with him?

5 A Yes.

6 Q And it was while you were sitting in your truck?

7 A That's correct.

8 Q And then when you go back to headquarters you
9 filled out a written statement?

10 A I did.

11 Q Okay. Was he again advised of his rights?

12 A He was.

13 Q Or what if anything did you do in terms of his
14 rights?

15 A Again, we -- when we get back to my office, I
16 actually type out his statement and use his words.
17 And we read them back over and make sure that is
18 what he wants to put on it. We first start the
19 statement with his name, his address, his date of
20 birth. Again, the date, the time. The time at
21 this time is 1359, which is 1:59 when we start the
22 actual written statement. It has my name again on
23 it.

24 And then the first paragraph is: I, Emmanuel
25 Elleby, understand that I have a right to remain

1 silent. This goes through the rights again on this
2 form.

3 Then we start with basically a question and
4 answer form. My name is listed for the questions
5 and his name is for the answers.

6 Q Okay. Let me stop you there. Did he do this with
7 you?

8 A Yes.

9 Q And what if anything did he do at the bottom to
10 acknowledge that he was doing this with you?

11 A He signed that it was a free and voluntary
12 statement. And also there is a second portion you
13 can sign stating that he was offered a copy of the
14 statement. So he signed that portion too.

15 Q Okay. And did he do that on each page?

16 A He did.

17 Q And, again, is the statement a fair and accurate
18 copy of what you gave to him that day?

19 A It is.

20 MS. SAMPSON: At this time I would ask to
21 introduce State's Exhibit Number 7 into evidence.

22 MR. RUFFIN: Okay. Judge, no objection.

23 THE COURT: Number 7 will be entered without
24 objection.

25 (WHEREUPON, State's Exhibit No. 7 was

1 marked for identification and received
2 into evidence.)

3 BY MS. SAMPSON:

4 Q All right. Now, I'm going to talk to you a little
5 bit about the statement. What if any force did you
6 use to make him talk to you?

7 A None.

8 Q Okay. What if any punishment did you tell him he
9 was going to have if he didn't talk to you?

10 A None.

11 Q Did you deny him water or going to the bathroom?

12 A I did not.

13 Q In your mind did he freely talk to you?

14 A He did.

15 Q What if anything did he tell you about committing
16 the robbery?

17 A He said at the time of the robbery he was actually
18 at his neighbor's house at first. And he denied --

19 Q Let me stop you. At first he tells you he is at
20 his neighbor's house. Did you give him the time or
21 how did he know what time the robbery occurred?

22 A I gave him the time.

23 Q Okay. And at that time I think you just said he
24 told you he was at his neighbor's house?

25 A Right.

1 Q What time did you give him?

2 A 11:52.

3 Q Okay. So he told you what, he told you that at

4 11:52 --

5 A No, that was before --

6 Q You don't have to go in order. I'm just asking you

7 in general.

8 A Okay. Yes.

9 Q So you asked him where he was at 11:52; is that

10 correct?

11 A That's correct.

12 Q And what was his response initially?

13 A Initially he said he was at the neighbor's house.

14 Q Okay. What if any changes did he make to that

15 response?

16 A Then he would say he didn't know where he was.

17 Q So first he said, I'm at my neighbor's; second he

18 says, I don't know.

19 A That's correct.

20 Q At one point you do ask him why his GPS device is

21 showing he is in the Dollar General at 11:52?

22 A That's correct.

23 Q And what was his response to that?

24 A That's when he tells me he didn't know why. I

25 don't know, is his exact words, I don't know.

1 Q And at some point you do ask him was he at the
2 Dollar General?
3 A I did.
4 Q And what was his response to that?
5 A I wasn't there.
6 Q Did he ever tell you that he had gone into the
7 Dollar General that day?
8 A He did say he went in the Dollar General that day.
9 Q When did he tell you he went in the Dollar General?
10 A He didn't know the exact time, but it wasn't during
11 the robbery.
12 Q Did he give you any date, any times in response to
13 that?
14 A He did not give me a time. He couldn't provide a
15 time.
16 Q You've got my only copy.
17 (Pause.)
18 Q I'm going to ask you to -- I am going to refer you
19 to Page 4 of his statement.
20 A Uh-huh.
21 Q Did you ever ask him about buying cigarettes?
22 A I did.
23 Q And what did he tell you?
24 A I asked him if he ever bought cigarettes from the
25 Dollar General that day. He said he bought

1 cigarettes, Newports.

2 Q Okay. Did he tell you what time that was?

3 A He said it was before 11:00 o'clock.

4 Q So that is the only time he gave you in reference
5 to being at the Dollar General?

6 A Yes.

7 Q Was 11:00, around 11:00 o'clock?

8 A Yes.

9 Q And at some point you asked him -- he provided you
10 information about a Devo?

11 A Yes.

12 Q Okay. And it is your understanding he was saying
13 that Devo committed this crime?

14 A That's correct.

15 MR. RUFFIN: Objection. Leading.

16 MS. SAMPSON: Yes, it is.

17 THE COURT: Can I see you all?

18 (WHEREUPON, a bench conference was held
19 in the presence of the jury but out of
20 the hearing of the jury.)

21 THE COURT: Objection sustained. Please
22 rephrase the question.

23 BY MS. SAMPSON:

24 Q Who if anyone did he indicate to you had committed
25 this crime?

- 1 A I'm sorry, say it one more time?
- 2 Q Who if anyone did Mr. Elleby indicate to you had
3 committed this crime?
- 4 A Devo.
- 5 Q Did he have Devo's phone number?
- 6 A He did. He said he had it saved in his cell phone.
- 7 Q Were you able to check that?
- 8 A Yes, he gave me consent to look through his cell
9 phone to get the number out.
- 10 Q And did you to that?
- 11 A I did.
- 12 Q And so what did you have him do based on that?
- 13 A Mr. Elleby volunteered to set up another robbery
14 with Devo. While we were sitting in my office he
15 would make the phone call from his phone and put it
16 on speaker phone. He called the number that was
17 saved in his phone for Devo. And he set up the
18 location where he would pick up Mr. Boler, or Devo.
- 19 Q So he -- just to recap what you just said, he set
20 up a location, a meeting place?
- 21 A That's correct.
- 22 Q Okay. And what exact words did he use when
23 speaking with Mr. -- with Devo?
- 24 A They had a lick that they wanted to do, which you
25 heard was a robbery, on Devo's side of town, which

1 is around the Beltline area, Taste of Jamaica. I
2 don't know if you are familiar. I don't know the
3 cross street right there. But it is in the
4 South -- or not South Beltline, just Beltline.

5 Q And I'm just making sure, did he say a lick or
6 another lick? What exactly did he say?

7 A Another lick.

8 Q Say it again?

9 A Another lick.

10 Q Another lick. That is what Mr. Elleby said?

11 A That's correct.

12 Q And did Mr. Boler respond -- or did Devo respond?

13 A He agreed to do it.

14 Q So what did you do based on that?

15 A It was kind of late in the afternoon so I grabbed
16 whoever I could as far as investigators. I believe
17 there was four of us, four additional. And I would
18 put Mr. Elleby in my truck. We would drive to that
19 area, basically see if we could see Devo walking
20 down the road to the meeting spot, which was the
21 gas station. And we did. And I would get on the
22 radios and I would describe his clothing and where
23 he was walking. And the four investigators would
24 stop him and get out and detain him. And then he
25 would eventually be transported back to my office

- 1 at headquarters to be interviewed.
- 2 Q And did you interview him?
- 3 A I did.
- 4 Q And we have already heard him, but what if any
- 5 rights did you give to him?
- 6 A I gave him the same rights that I read to Mr.
- 7 Elleby.
- 8 Q And did you give him the same opportunity -- or
- 9 what if any opportunity did you give him to use the
- 10 restroom?
- 11 A I didn't deny him anything.
- 12 Q Did you -- again, what if any force did you use to
- 13 make him speak to you?
- 14 A None.
- 15 Q And at that time, who did he indicate had done the
- 16 crime with him? And when I say him, I mean who did
- 17 Mr. Boler indicate had done the crime with him?
- 18 A Mr. Elleby.
- 19 Q And what did you do to make sure he knew who
- 20 Mr. Elleby was?
- 21 A I showed him a photo line-up.
- 22 Q Did you tell him who to pick?
- 23 A No, I did not.
- 24 Q Did you indicate at all in any way, shape, or form
- 25 how -- who was in those six photos?

1 A No, I did not.

2 Q And what did he do when you showed him that, what
3 has been introduced as State's Exhibit Number 28?

4 A He circled the top left photo as Emmanuel Elleby.
5 Then at the bottom he signed it that that is the
6 person he knew as Emmanuel Elleby and also
7 committed the armed robbery at 1905 Bluff Road on
8 August 22nd, 2014.

9 Q Did he -- what if any hesitation did he have when
10 making that selection from the six-pack?

11 A None.

12 MS. SAMPSON: Beg the Court's indulgence.

13 (Pause.)

14 BY MS. SAMPSON:

15 Q All right. And I want to go back a little bit. I
16 believe you -- and you may have stated this at this
17 point, or somebody else may have said it -- did you
18 try to get any other video from any other
19 businesses in that area of the Dollar General?

20 A I did. Across the street there is a business
21 called Consolidated Pipe. They had video, but the
22 person that knew how to operate it wasn't there
23 when I went by. And then when I sent our IT guy,
24 or guy that collects our videos, it was the fifth
25 day, and it erases on the fifth day, so I wasn't

1 able to get that.

2 Behind the Dollar General is an apartment
3 complex, college housing, called The Retreat. They
4 also did not have video that was able to be
5 collected. But I did try.

6 Q And there has been some -- we have already
7 discussed a DNA swab was taken from Mr. Boler?

8 A Yes.

9 Q Was a DNA swab taken from Mr. Elleby?

10 A Yes.

11 Q And he gave you -- what if any permission did he
12 give you?

13 A He gave me written consent. Both of them did.

14 Q What happened to those swabs?

15 A They were placed in evidence.

16 Q What if any testing was done on those swabs?

17 A They are entered into our local database, Richland
18 County. We have our own DNA lab. So we do enter
19 their buccal swabs into our database.

20 Q Were their buccal swabs ran against the DNA swabs
21 that were taken from the Dollar General?

22 A They were not.

23 Q Why not?

24 A One of them had gloves on. The other one appeared
25 to have a gun in his hand that he never dropped.

1 Did not appear to touch anything.

2 As you have heard testified to the evidence,
3 sometimes it is cost effective not to run
4 everything unless we absolutely need to. In case
5 my case is depending on physical evidence, then we
6 would rush it, test it, but in this case and
7 this -- the amount of evidence, I didn't feel that
8 I needed to run it at this time.

9 Q But it could have been done?

10 A Yes, it could have been done.

11 (WHEREUPON, State's Exhibit No. 35 was
12 marked for identification only.)

13 BY MS. SAMPSON:

14 Q I want to show you what has been marked as State's
15 Exhibit Number 35. Do you recognize this?

16 A Yes.

17 Q What is that?

18 A That is Emmanuel Elleby.

19 Q How do you know it is Emmanuel Elleby?

20 A Because I spoke to him. He was sitting in my
21 office.

22 Q Does that picture fairly and accurately depict the
23 person that you saw and interviewed back on
24 August 25th of 2015?

25 A Yes, it does.

1 MS. SAMPSON: At this time we would ask to
2 introduce State's Exhibit Number 35 into evidence.

3 THE COURT: Any objection?

4 MR. RUFFIN: No objection.

5 THE COURT: All right. Number 35 will be
6 entered without objection.

7 (WHEREUPON, State's Exhibit No. 35 was
8 admitted into evidence.)

9 BY MS. SAMPSON:

10 Q This is the man that you saw?

11 A That's correct.

12 Q Were you able to get any identification as far as
13 height, weight, any of that on Mr. Elleby?

14 A Yes.

15 Q What -- do you have it?

16 A Somewhere I do.

17 Q Do you have his arrest report?

18 A Yes.

19 Q Would looking at his arrest report help refresh
20 your memory of his height and weight?

21 A It would. It is 5'6", 200 pounds.

22 Q Okay. Did he seem to be 5'6" and 200 pounds to
23 you?

24 A He might have been a little less weight, but it was
25 close.

1 MS. SAMPSON: Beg the Court's indulgence.

2 (Pause.)

3 BY MS. SAMPSON:

4 Q Do you have the arrest report for Devin Boler?

5 A I do.

6 Q Does it have the height and weight on it?

7 A Yes.

8 Q What is listed as -- would that help refresh your
9 memory as to his height and weight?

10 A Yes.

11 Q What does it say was his height and weight?

12 A He is 5'6", 150.

13 Q So they are roughly the same height?

14 A Yes.

15 MS. SAMPSON: No further questions, Your
16 Honor.

17 THE COURT: Thank you. Please answer any
18 questions from the Defense.

19 MR. RUFFIN: Thank you, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. RUFFIN:

24 Q Investigator Carwell -- I'm sorry, I keep calling
25 you Caldwell.

- 1 A It is all right.
- 2 Q First I want to ask you just a couple of questions
3 about the statement that you took from Mr. Elleby.
4 Who wrote -- who actually wrote the statement?
- 5 A It is not written, it is typed.
- 6 Q Or typed?
- 7 A It is typed at my desk by me.
- 8 Q Okay. And is there an audio recording of your
9 conversation with Mr. Elleby?
- 10 A There is not.
- 11 Q Why not?
- 12 A It is a Richland County policy that we don't record
13 or video our statements.
- 14 Q So it is not that y'all don't have the ability to
15 do it? And you could? You are capable; right?
16 You have a phone, you know, you can take your phone
17 out and record your conversation; right? It is
18 just against policy?
- 19 A There is reasons for that. The phones might mess
20 up or not available. If we do it one time we would
21 have to do it all the time. We might not have
22 those capabilities. So at this time the Richland
23 County policy is not to video or audio any of our
24 statements.
- 25 Q Okay. And you are familiar -- I think you answered

1 this question during the video portion of your
2 direct -- you are familiar with the term
3 corroboration; right?

4 A Yes.

5 Q And that means -- explain corroboration to us. You
6 know, what does that when something is
7 corroborated, one piece of evidence is
8 corroborated?

9 A It matches the evidence.

10 Q And you actually -- like in the video, for example,
11 when you saw the video, you said that the video
12 corroborated the victim's description of the
13 people; right?

14 A Yes.

15 Q Of the subjects?

16 A Yes.

17 Q Which is good; right? You want corroboration;
18 right? I mean, the more corroboration you have the
19 better; fair?

20 A Yes, but it may be altered a little bit.

21 Q What may be altered?

22 A I mean, there may be some inconsistencies from what
23 the video shows. The video is going to show you
24 what you need.

25 Q So the video showed -- what the video showed was

1 consistent with what Mr. Gardner said; right?

2 A Yes.

3 Q Okay. So you like that? As an investigator you
4 like to see things that match up?

5 A Correct.

6 Q And you don't want to see things -- I mean, if you
7 are seeing things that are inconsistent you are
8 thinking maybe, you know, something is wrong here;
9 fair?

10 A That's correct.

11 Q So you like to have more evidence in a case than
12 less evidence, generally speaking; right?

13 A Yes.

14 Q And one of the reasons for that is because you
15 might end up in front of a jury one day; right?

16 A That's correct.

17 Q I mean, a lot of your cases result in guilty pleas,
18 I guess; right?

19 A Not all the time.

20 Q Obviously not all the time, but most of the time?

21 A (Nodding.) Sometimes.

22 Q But you document everything just because, you know,
23 you never know which one is going to go in front of
24 a jury so you want to have a good paper trail of,
25 you know, what you have done on the case; right?

1 A Right.

2 Q Is that fair? Okay. So I'm going to move -- I'm
3 going to skip or move past the statement. Or,
4 actually, let me back up. When you were
5 interviewing Mr. Elleby, he made a phone call to
6 Devin Boler; right?

7 A Yes.

8 Q In front of you?

9 A Right.

10 Q He actually called; correct?

11 A Uh-huh.

12 Q And put it on speaker phone?

13 A That's correct.

14 Q So he spoke with Devin in front of you?

15 A Yes.

16 Q And he consented to search his phone; right?

17 A Yes.

18 Q Did you search his phone?

19 A We searched it for the Devo phone number so we
20 could identify the Co-Defendant.

21 Q When you say you searched it, I mean, what you said
22 was that Mr. Elleby pulled the number up on the
23 phone and called him; right?

24 A Well, he first tells me that Devo's -- he doesn't
25 know Devo's phone number off the top of his head,

- 1 it is saved in his phone under Devo. So that is
2 when he gives us consent and lets us get the phone
3 number for Devo.
- 4 Q Right. And he pulls it up and made the phone call?
- 5 A Correct.
- 6 Q Did you give a request for cell phone records from
7 that cell phone?
- 8 A No.
- 9 Q Do you know who the cell phone company was through,
10 the service provider?
- 11 A No.
- 12 Q Okay. You also got Mr. Boler's phone too; right?
- 13 A Yes.
- 14 Q You collected his phone too; right?
- 15 A I did.
- 16 Q And he consented for you to search it; right?
- 17 A Yes.
- 18 Q Did you search it?
- 19 A No.
- 20 Q Did you request cell phone records for his phone?
- 21 A No.
- 22 Q Okay. We just heard a little bit about DNA, or you
23 were just talking about the DNA. DNA was never
24 actually tested; right?
- 25 A Correct.

1 Q And you said maybe there was financial reasons, I
2 think, it is not cost effective always to, you
3 know, submit DNA for actual testing?

4 A Yes. Each case is different.

5 Q Okay. So sometimes, in some cases, you actually
6 choose to have less evidence because you don't
7 think that additional evidence is necessary?

8 A No. It is always available.

9 Q Yes. It is available now; right?

10 A Yes, it is always --

11 Q Y'all still have the DNA; right?

12 A Yes.

13 Q You still have Mr. Elleby's DNA?

14 A Yes.

15 Q You still have Mr. Boler's DNA?

16 A Yes.

17 Q You still have the swabs that were collected from
18 the scene?

19 A Yes.

20 Q So, really, you could submit them for testing
21 tomorrow but for the fact that we're in a jury
22 trial right now. You said they were always
23 available; right?

24 A That's correct.

25 Q So you could still have them tested?

- 1 A Yes.
- 2 Q You chose not to?
- 3 A Correct.
- 4 Q Okay. Kenneth Gardner's phone was taken from him;
- 5 right?
- 6 A Yes, it was.
- 7 Q And did you request cell phone records for that?
- 8 A I spoke to him. He actually had an app. He said
- 9 that the last GPS coordinates I believe were on 77,
- 10 basically the county line, Richland-Lexington
- 11 county line, the river crosses, or goes under 77.
- 12 And --
- 13 Q So Mr. Gardner -- Sorry about that. Go ahead.
- 14 A That's it.
- 15 Q So Mr. Gardner told you that he was able to pull up
- 16 an app where he could look at his phone?
- 17 A I'm not sure what app it was or what he was using,
- 18 but he did tell me that.
- 19 Q Do you have your investigative report in front of
- 20 you?
- 21 A Yes.
- 22 Q And just to be clear, I mean, you write an
- 23 investigative report in every case you that do?
- 24 A Yes, I do.
- 25 Q Basically. And that details what witnesses say to

1 you, you say what the subjects say to you, what
2 evidence is collected, what evidence isn't
3 collected, what things are submitted, what things
4 aren't submitted; fair?

5 A Fair.

6 Q And that is important because a lot of times from
7 the time you investigate the case to the time we're
8 in front of a jury it has been a while; right?

9 A (Nods affirmatively.)

10 Q It has been over a year in this case; right?

11 A Yes.

12 Q So you want to make sure you put everything in
13 there, don't you? I mean, that is important for
14 you; right?

15 A Right.

16 Q Okay. So show me in your investigative report
17 where it says that Kenneth Gardner told you about
18 this GPS app?

19 A It is not in my follow-up. It is not in the
20 statement either. We took his statement at work,
21 actually when he was working, so it was kind of
22 quick. It was handwritten. It was in his office.
23 So we had just talked about that portion of his
24 phone.

25 Q And you didn't put it in the statement?

- 1 A That's correct.
- 2 Q Even though you asked him about it?
- 3 A We had conversated about it. I don't know if it
- 4 was during the actual time that I was taking the
- 5 statement or if it was a phone call afterwards, but
- 6 he did relay that information to me.
- 7 Q Because the statement was taken quickly?
- 8 A While he was working.
- 9 Q What about your investigative report? Is that done
- 10 quickly?
- 11 A No.
- 12 Q Okay. So you couldn't have -- you know, when you
- 13 were writing the investigative report you didn't
- 14 seem to include, Kenneth Gardner stated to me that,
- 15 you know, he had this app on his phone and he
- 16 checked the GPS, and it was on I-77 at the county
- 17 line. I mean, none of that is in your report;
- 18 right?
- 19 A No, it is not.
- 20 Q But you could have put it in there, though; right?
- 21 A I could have.
- 22 Q So are you just now remembering that?
- 23 A No. Because he didn't talk about it.
- 24 Q So you actually have -- you remember that from over
- 25 a year ago, that statement, even though you didn't

1 write it down?

2 A That's correct.

3 Q How many cases have you worked on in the last year?

4 A I don't know the exact number, but it is quite a
5 few.

6 Q More than 100?

7 A Yes.

8 Q And now your current position is to actually
9 oversee other officers; right?

10 A Yes.

11 Q Supervise -- you are a supervisor?

12 A That's correct.

13 Q And you sort of check their work, I guess, and make
14 sure they are doing the right thing?

15 A I do.

16 MR. RUFFIN: One second, Judge.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. RUFFIN: No further questions, Judge.

20 Thank you.

21 THE COURT: All right. Yes, ma'am?

22 MS. SAMPSON: Very briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. SAMPSON:

25 Q Mr. Ruffin asked about what you remember and what

1 is in your report. Is every single thing that you
2 did in this investigation in your report?

3 A Not every single thing.

4 Q For example, does it say in your report how you
5 arrived at the home of Emmanuel Elleby?

6 A No.

7 Q Do you remember how you got there?

8 A Yes.

9 Q How did you get there?

10 A I drove there.

11 Q Did you just remember that today?

12 A No.

13 MR. RUFFIN: Objection. Leading.

14 THE COURT: Sustained.

15 BY MS. SAMPSON:

16 Q What if anything do you remember about how you got
17 there?

18 A I drove there.

19 Q In what?

20 A My issued patrol vehicle.

21 Q Where is that in your report?

22 A It is not.

23 Q How do you remember?

24 A It is what I recall.

25 Q Okay. As far as what you did not get -- he asked

1 you about getting cell phone records.

2 A Yes.

3 Q You did not get them?

4 A I did not.

5 Q How, if at all, does it change that Mr. Boler told
6 you he did this crime with Emmanuel Elleby?

7 A It doesn't.

8 Q You didn't get the DNA ran?

9 A No, I didn't.

10 Q How did that change, if at all, that you found that
11 bag with the 38 on it in Emmanuel Elleby's room?

12 A It doesn't.

13 Q Doesn't?

14 A It doesn't.

15 Q The fact that you didn't run Emmanuel Elleby's DNA,
16 does that change that you found the Newports in his
17 room at all?

18 A No.

19 Q The fact that you didn't put in your report that
20 Mr. Gardner told you about a phone, how if at all
21 does it change the fact that Devin Boler told you
22 he committed the crime with Emmanuel Elleby?

23 A It doesn't.

24 Q The fact that you didn't do the record and you
25 didn't do the DNA, how if at all does that change

1 the fact that the GPS device places Mr. Elleby in
2 the Dollar General at 11:52 on August 22nd of 2014?

3 A It doesn't.

4 MS. SAMPSON: No further questions, Your
5 Honor.

6 MR. RUFFIN: Briefly.

7 THE COURT: Yes, sir.

8 RECROSS-EXAMINATION

9 BY MR. RUFFIN:

10 Q You have been doing this 12 years, right?

11 A October will be.

12 Q Okay. You have interviewed a lot of people; right?

13 A That's correct.

14 Q And in your experience do witnesses, at least
15 occasionally, if not sometimes often, lie to you?

16 A You said witnesses?

17 Q Or anybody? People -- suspects, witnesses, people
18 who are -- people who you interview as you are
19 investigating a crime, in your experience, is it at
20 least a regular occurrence that you are lied to and
21 a lot of times you are able to find out that it was
22 a lie later?

23 A I mean, I do get lied to.

24 Q Which is why you like to corroborate what people
25 say with other independent evidence, not just their

1 word; right?

2 A I believe we did.

3 MR. RUFFIN: No further questions.

4 THE COURT: Anything else from the State?

5 MS. SAMPSON: No, ma'am.

6 THE COURT: All right, sir, you may step down.

7 THE WITNESS: Thank you.

8 (Witness steps down.)

9 MS. SAMPSON: May we approach?

10 THE COURT: Yes.

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

14 THE COURT: All right, ladies and gentlemen of
15 the jury, I will send you back for about five
16 minutes. We are figuring out scheduling for the
17 rest of the evening and tomorrow morning. So I'll
18 let you all take a break. You probably need a
19 break right about now. About five or ten minutes.

20 Remember not to discuss the case.

21 (WHEREUPON, the jury retires to the jury
22 room at 4:44 p.m.)

23 THE COURT: All right.

24 MS. SAMPSON: For the record, we are trying to
25 confer with Mr. Williams in terms of what -- who if

1 any people would be available to come testify about
2 the accuracy of the device.

3 It is my understanding -- as you saw, I think
4 I talked to him like two seconds ago -- that there
5 is no one from the manufacturer of the ankle
6 bracelet available readily to come. However, we
7 could get Rebecca Rabon, who is from Probation,
8 Pardon and Parole. She could not be here until
9 tomorrow.

10 My understanding is probably that she would
11 give -- she is in the same position as Mitch --
12 whatever his last name is -- and so she would give
13 the same information in terms of the accuracy of
14 the ankle monitor, or whatever we call it, the GPS
15 device.

16 I think the concern would be -- what my
17 concern was when I brought it up -- unless we get
18 her qualified or discuss where she works prior to
19 the jury sitting down and then we just say she has
20 been qualified or she can talk about it, or however
21 you want to do it, without mentioning that she
22 works for Probation, Pardon and Parole, that is the
23 only way I can think of to not bring that up, but
24 for her to still be able to testify to their
25 accuracy, whatever her testimony is going to be

1 about the accuracy. I clearly have not asked her
2 because I have been in here.

3 THE COURT: All right. I will be glad to hear
4 from you. Yes, sir?

5 MR. RUFFIN: I just wanted to say,
6 Investigator Carwell I think just testified when
7 asked by Ms. Sampson, Have you dealt with GPS in
8 your experience? Do you know it to be accurate?
9 He testified, Yes, I know it to be accurate.

10 I did not challenge him on that. I know that
11 the accuracy was briefly questioned with
12 Investigator Greene, I think. And my recollection
13 was that all we got into was if you are standing in
14 one place for a period of time is it possible that
15 the dots could be, you know, around you and maybe
16 not necessarily right, you know, on top of you, I
17 guess.

18 You know, I would submit that the additional
19 testimony is probably cumulative. If they want
20 to -- if the State really wants to put somebody up,
21 we just ask that they be proffered, her testimony
22 be proffered. And if it is different than -- I
23 think it would be -- I guess if it was different
24 and had something to add, then I don't think that
25 we would have a problem with it as long as they are

1 not mentioning the fact that they are on probation
2 or not mentioning the fact that this was an ankle
3 monitor.

4 Other than that, I guess that the State has a
5 right to present their case and they have a right
6 to present witnesses who can talk about the
7 accuracy.

8 I think that they have already testified about
9 the accuracy, though. And just to get into
10 probation, to get into the ankle monitor, I think
11 Your Honor has already ruled on that about it is
12 not admissible because of the prejudicial value of
13 it is significant. And I just think to put that in
14 at this point is still inappropriate.

15 MS. SAMPSON: And if I can just clarify. And
16 this may clear it up, I don't know. My concern is
17 that I don't have a clue what they are going to do
18 with the information that they have. What I don't
19 want to have happen is in closing they say, because
20 we're the State and this has happened a million
21 times, They have the power to call whatever
22 witnesses they want to. They could have brought in
23 somebody to talk to you about this GPS and the
24 accuracy, but they didn't. And that they could
25 have had somebody come in here and tell us exactly

1 how many feet and how this works, but they didn't.

2 I can do that. But if I do that, it causes
3 all other kinds of concerns. I don't know that you
4 can limit them at all, but if I know that they are
5 not going to get up there and say that this GPS put
6 him -- because it is inaccurate he could be across
7 town or even next-door, then I'm okay. But what we
8 were left with is that she didn't know how all of
9 that kind of worked and that it was not necessarily
10 accurate, and therefore I don't know what they are
11 going to do with that information.

12 So to prepare for that, that is why we would
13 be putting somebody up. If they are going to tell
14 me they are not going to do that, fine.

15 MR. RUFFIN: Well, I happen to believe the GPS
16 is extremely accurate actually, so --

17 THE COURT: You said what?

18 MR. RUFFIN: I happen to believe that the GPS
19 is very accurate. So I was not intending to
20 challenge the accuracy.

21 Frankly -- and I haven't written out my whole
22 closing or anything yet, but I don't think -- I
23 don't anticipate even addressing GPS in my closing,
24 if that helps clear it up. I mean, I might --
25 other than mentioning the fact that the GPS puts

1 him there, which we concede -- I mean, the GPS puts
2 him there. We are not trying to say -- I'm
3 certainly not going to argue that he wasn't there.
4 I'm not going to argue that.

5 MS. SAMPSON: And if that is all they are
6 going to do, and I will say as an officer of the
7 court, if he says something else, I am going to
8 jump up and down and scream, but I don't even know
9 what recourse I would have at that point, but if he
10 is as an officer of the court is stating he is not
11 going to get up there and say the thing is
12 inaccurate or he is across town, or anything
13 implying something about the GPS, then there is no
14 need for me to put up an expert on anything. But I
15 just -- I have had that happen before when we don't
16 call someone. And in this case I'm not calling
17 them not out of choice.

18 THE COURT: And of course that would have to
19 be a stipulation between the parties, because I
20 can't limit him on his closing argument.

21 MR. RUFFIN: I can say as an officer of the
22 court I do not intend -- I mean, it is not a
23 stipulation to be read to the jury.

24 THE COURT: No, not to the jury.

25 MR. RUFFIN: I do not intend to talk about the

1 accuracy of the GPS in my closing argument.

2 MS. SAMPSON: And are you also -- and I'm
3 asking -- willing to not talk about the fact that I
4 did not bring an expert in here to talk about the
5 GPS and its accuracy?

6 MR. RUFFIN: I think that that is a pretty
7 good deal if we can make that exchange.

8 MS. SAMPSON: Why would I --

9 MR. RUFFIN: If they don't call an expert to
10 talk about GPS monitoring or the accuracy of it,
11 then I'm not going to argue that it is inaccurate
12 in my closing.

13 THE COURT: Do y'all have it worked out? I'm
14 not going to --

15 MS. SAMPSON: We can put it in writing if that
16 makes the Court more comfortable, but I think we
17 both are agreeing it is not --

18 THE COURT: No, y'all don't have to put it in
19 writing, y'all just have to agree to whatever it is
20 that y'all are going to agree to. But I'm not
21 going to get involved in the agreement because I
22 can't limit him on his closing argument.

23 MR. RUFFIN: And essentially everything I say
24 to Your Honor is under oath.

25 THE COURT: I understand.

1 MR. RUFFIN: So I guess I would be perjuring
2 myself if I stood up and argued that tomorrow. So
3 I don't intend to do that.

4 THE COURT: All right.

5 MS. SAMPSON: Then I will withdraw my request
6 to call someone based on the fact that they are
7 telling me they will not go into that issue.

8 THE COURT: Yes. All right.

9 MS. SAMPSON: But I will need to rest in front
10 of the jury. I can do that now or in the morning,
11 however you want to do it.

12 THE COURT: You can do it now. Let me ask you
13 this. And I don't know if you need time to think
14 about it overnight. She is going to -- I'm just
15 trying, for scheduling points. And if you are not
16 sure, just tell me you are not sure and then we'll
17 figure it out in the morning. She is going to
18 rest. I'm not sure -- earlier I think you said you
19 did not anticipate calling anyone. I don't know if
20 you do at this point. But I'm not trying to hold
21 you to that. But I guess we could hear motions
22 this afternoon and then we come back to you in the
23 morning and if you were going to put up any
24 evidence.

25 MR. RUFFIN: I think if you hear my motion

1 talking about a directed verdict, I don't think I
2 can make that until the State has rested.

3 THE COURT: Yes, I know. She is going to
4 rest.

5 MR. RUFFIN: You are going to bring --okay.

6 THE COURT: I am going to bring them back in.

7 MR. RUFFIN: I'm sorry.

8 THE COURT: I was just trying to --

9 MR. RUFFIN: I'm sorry.

10 THE COURT: Instead of bringing them back
11 in --

12 MR. RUFFIN: In the morning to rest, go ahead
13 and do it now.

14 THE COURT: She is going to rest now, and then
15 I'll send the jurors home.

16 MR. RUFFIN: Sure.

17 THE COURT: And then we can hear motions.

18 MR. RUFFIN: Right.

19 THE COURT: And then in the morning if you
20 decide to call someone, we will do that first thing
21 in the morning, or you can rest first thing in the
22 morning.

23 MR. RUFFIN: And go straight to closing.

24 THE COURT: But I think tonight we can talk
25 about the jury charges. And I have some that I

1 have been up here working on for you all to look
2 at. Maybe we can talk about those in the morning
3 after you look at them. I just want things to flow
4 in the morning and have the clerk order lunch for
5 the jurors, and all that stuff, because it is
6 probably going to end up in their hands, if it goes
7 as it appears that it may, around lunchtime. So
8 I'm just trying for scheduling purposes --

9 MR. RUFFIN: That sounds good. I don't plan
10 on calling any.

11 THE COURT: Okay. And still if something
12 comes up tomorrow and you think you want to, I am
13 not going to hold you to that.

14 MR. RUFFIN: Okay.

15 THE COURT: All right. You can bring them in.

16 (WHEREUPON, the jury came into open
17 court at 4:56 p.m.)

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

19 THE COURT: All right, thank you.

20 All right, ladies and gentlemen of the jury, I
21 am going to ask the State to call their next
22 witness.

23 MS. SAMPSON: At this time the State rests.

24 THE COURT: All right, thank you.

25 All right, ladies and gentlemen, as you just

1 heard, the State has rested its case, which means
2 they have no additional witnesses to call.

3 So it is about 5:00 o'clock, 4:57, so this
4 would probably be a very good time for us to take
5 our evening break.

6 Once again, I would just like to remind you
7 not to discuss this case with anyone, not even your
8 fellow jurors, not even your family members. You
9 are not to do any research on this matter. It
10 would also be improper for you to form any opinion
11 in your mind as to the innocence or guilt of the
12 Defendant until you have all of the evidence in
13 this case, the arguments of the parties, and the
14 charge on the law from the Court.

15 So I will instruct you at this point to not
16 discuss the case. Go home. Don't think about the
17 case. Do whatever it is that you do on a normal
18 afternoon. And have a restful evening.

19 Remember, don't do any research -- independent
20 research, social networking regarding any of the
21 issues that you have heard about today.

22 All right, thank you. And we will see you at
23 9:30.

24 (WHEREUPON, the jury is excused for the
25 evening at 4:58 p.m.)

1 THE COURT: All right. So I will be glad to
2 entertain any motions at this time.

3 MR. RUFFIN: Judge, we move for a directed
4 verdict. The only argument I have is that we
5 believe the State has not met the burden when the
6 evidence is viewed in the light most favorable to
7 them.

8 THE COURT: All right. Yes, ma'am?

9 MS. SAMPSON: Your Honor, I believe that
10 viewing the evidence in the light most favorable to
11 the State there is plenty of evidence to give this
12 case the jury. They heard from Mr. Boler, who
13 admitted he committed the crime, and that he did it
14 with Emmanuel Elleby. They also have the evidence
15 that was taken from his home that matches the
16 video. They have the video. They have been
17 given -- and they have the witnesses that state
18 that a robbery had occurred.

19 Based on that, I think that evidence alone is
20 enough to give the case to the jury and get past a
21 directed verdict.

22 MR. RUFFIN: Judge, if I could add one thing?

23 THE COURT: Yes, sir.

24 MR. RUFFIN: I don't remember hearing
25 Investigator Carwell testify that the man in the

1 picture up there is the same person that he
2 arrested and actually charged with armed robbery.
3 I think that he testified that that was the guy he
4 interviewed, but I don't think there was testimony
5 that he actually arrested Emmanuel Elleby and took
6 him into custody at the truck. Obviously he missed
7 the element of Emmanuel Elleby's identification.

8 THE COURT: All right.

9 MS. SAMPSON: Your Honor, I believe that I
10 did. And normally the person would be sitting over
11 there, but I was very concerned about saying that
12 he is the -- that tie-in because of that. But we
13 did -- yes, we did, because of the arrest report.
14 And that was Emmanuel Elleby's arrest report. And
15 he went over that. If nothing else he said they
16 had -- he talked about the fact that he was on his
17 arrest report, that was the same person he talked
18 to.

19 MR. CARWELL: That I interviewed.

20 MR. RUFFIN: That may be true, Judge. I don't
21 remember exactly.

22 THE COURT: All right. I believe there was --
23 and as far as identification, the Co-Defendant I
24 think identified him. The officer identified, he
25 said he was taken into custody. I believe there

1 was some testimony regarding the arrest report. I
2 can have Debbie look it up.

3 MS. SAMPSON: Actually I will tell you
4 distinctly what he said, that he advised him of his
5 rights and that he arrested him. I did ask him was
6 that the same person that he spoke to and advised
7 of his rights. And I showed him the picture of
8 Emmanuel Elleby that we had available. And I also
9 did the arrest report.

10 THE COURT: All right. Well, based on the
11 evidence that has been presented and in the light
12 most favorable to the non-moving party, there are
13 genuine issues of fact to be decided by the jury in
14 the case.

15 And, for that reason, I am going to
16 respectfully deny the Defendant's motion for
17 directed verdict.

18 Also, just to put on the record, the Defendant
19 objected to State's 30 to 33, 34, and Number 6.
20 I'm guessing you are renewing the objections to
21 the ---

22 MR. RUFFIN: Search of the house.

23 THE COURT: Yes. And I just overruled those.
24 We didn't get into it. But it was the same
25 objection that was dealt with pretrial.

1 MR. RUFFIN: Right. And if I could -- you
2 have ruled on my directed verdict?

3 THE COURT: Yes, I have.

4 MR. RUFFIN: I would just like to renew all of
5 our previous objections. Also -- or especially to
6 your ruling that this case proceed in Mr. Elleby's
7 absence, despite it being a mandatory life without
8 parole case. We would object to that.

9 I would also renew the objections to the
10 search, which I think I just did. You know, the
11 same reasons I gave pretrial.

12 THE COURT: All right. And the rulings will
13 remain the same.

14 As to -- and I said we will deal with it after
15 we see what the jury does, but there are two cases
16 that I was able to find that are on -- that are not
17 on point as to a life without parole charge, but
18 the case I think that Ms. Sampson referenced
19 earlier would be State v. Ravenel, which is a case
20 that was a 2010 case where the person was
21 looking -- was charged with armed robbery and
22 burglary first degree and appealed it based on
23 having a trial in his absence.

24 And in that case the Court said that there was
25 no error in trying him in his absence as long as it

1 was determined that he was put on notice of the
2 hearing and on notice that he would be tried in his
3 absence should he fail to appear.

4 And I also think it is important to note, as I
5 believe the State did earlier, is that the burglary
6 first degree would also carry up to a life
7 sentence.

8 Furthermore, in considering the prejudice to
9 the State, I also have to consider the -- I think
10 the Co-Defendant was in jail until he testified and
11 prejudices -- under the totality of the
12 circumstances, the Co-Defendant is detained in jail
13 at this time, and I assume being held until he
14 testified here today.

15 MS. SAMPSON: That's correct.

16 THE COURT: So for that reason, I will deny
17 the Defendant's motion. Of course, if Mr. Elleby
18 shows up tomorrow, we will see what happens.

19 And I think I told you all earlier that I
20 probably would not -- depending on what they do, if
21 they were to convict him, I probably would not
22 sentence him just to see if he is able to provide
23 some reasonable sufficient reason as to his
24 absence. And then we can --

25 MS. SAMPSON: I think that is proper, Your

1 Honor.

2 MS. EIGENBROT: Your Honor, my only concern
3 is -- this was brought to my attention a little bit
4 after lunch -- the LWOP statute requires that life
5 is a mandatory sentence once the conviction is
6 heard. So if the jury does come back convicting
7 him, I don't think we can go back and say, I'm not
8 going to serve -- or we can't withdraw LWOP at that
9 point in time. That then becomes my concern.

10 MS. SAMPSON: And I would agree. But what I'm
11 saying is if she does not impose the actual life
12 sentence at this point, the case is not concluded.
13 So the ten days for him to file an appeal or ask
14 for a new trial does not run until she actually
15 takes the sentence. And so, therefore, if you are
16 able to determine that he was not voluntarily
17 missing court, that he was involuntarily somewhere
18 else, then he would still be able to file for a new
19 trial based on the fact that he was not here and
20 the prejudice that happened when that was not his
21 fault. If we do it and take the sentence, then it
22 is the case and his ten days starts from tomorrow.

23 MS. EIGENBROT: I think that is still going to
24 apply even if Your Honor were to sentence him and
25 seal the sentence as a TIA requires, and then once

1 it is unsealed is when his ten days starts. I
2 don't know if there is really that much of a
3 difference.

4 MS. SAMPSON: Even with an LWOP, though, until
5 she takes the sentence and actually puts it on the
6 record, the case is not concluded, and so
7 therefore --

8 THE COURT: And I was just -- clearly you
9 can't -- the problem is, we can't -- I mean,
10 everyone is here to try the case. We cannot -- he
11 was here on Monday, and apparently decided not to
12 join us, not to speak with his attorney as to his
13 whereabouts. You know, we can't hold a case out
14 there for two or three years until he decides he
15 wants to appear, because he is charged -- because
16 they have served him with a notice of life without
17 parole. But maybe he will show up.

18 MS. EIGENBROT: Your Honor, I just wanted our
19 concerns noted for the record.

20 THE COURT: Yes. But I have thought about it
21 and considered it. And with the added
22 consideration of the fact that there is a
23 Co-Defendant that is being detained and has been
24 detained for the last year, apparently unable to
25 make bond, Mr. Elleby was able to make bond and has

1 violated that bond by not being in court at the
2 call of his trial.

3 So in taking all of that into consideration, I
4 think it is proper to go forward with the trial and
5 deny the motion for the continuance.

6 But maybe he will show up in the morning
7 before we -- or sometime tomorrow. Y'all will have
8 to keep looking for him.

9 All right. Anything else on the motions at
10 this time?

11 MS. SAMPSON: Not from the State, Your Honor.

12 THE COURT: All right. On the jury charge --
13 anything -- and I did this myself. Out of an
14 abundance of caution, my law clerk, I just left her
15 in the office doing something else, because -- I
16 just left her in the office doing something else
17 just out of an abundance of caution. And just
18 under the rules which state the appearance of any
19 impropriety. So I understand that you all did not
20 object on yesterday, but I still have to
21 consider -- even though she did not discuss it,
22 probably doesn't know anything much about it other
23 than what was discussed on Monday or yesterday, but
24 just out of an abundance of caution and to give any
25 appearance at any point of impropriety, she is not

1 working on the case. So I have done the jury
2 charges myself.

3 I say all that to say that, I don't know how
4 they look. So this is a rough draft for you all to
5 take a look at. I made a copy for both of you. If
6 there is something in there, that does not mean
7 that I am wedded to charging it or not charging it
8 if it is not in there, it is just that I have done
9 this as I sat up here and tried to listen to
10 everything as to the charge. So that is for you
11 all to look at. And I was thinking we could start
12 at 9:00 in the morning again. And if you could
13 just let me know of anything we need to add. And I
14 have a verdict form that I started working on. But
15 I will print that off and bring it in the morning.

16 MS. SAMPSON: Okay.

17 THE COURT: All right. If not, we will be
18 done. I'll see you all at 9:00 in the morning.

19 MS. EIGENBROT: Thank you, Your Honor.

20 MR. RUFFIN: Thank you, Judge.

21 MS. SAMPSON: Thank you, Your Honor.

22 (WHEREUPON, the proceedings were
23 concluded at 5:10 p.m.)

24 SEPTEMBER 17, 2015

25 (WHEREUPON, the proceedings began at

1 9:07 a.m.)

2 THE COURT: I assume, from looking at the
3 empty chair, that no one was able to find Mr.
4 Elleby?

5 MR. RUFFIN: That's correct, Judge.

6 THE COURT: So he is officially probably done
7 with us on this case.

8 All right. So I will put that on the record,
9 that today is Thursday. The trial started on
10 Monday. Or he was here on Monday, and he still is
11 not here. There have been efforts by the Public
12 Defender's Office and there have been efforts by
13 the Sheriff's Department, I think the Fugitive
14 Division, on the warrant that I issued Tuesday
15 night to locate him, and he has not been able to be
16 here.

17 MS. SAMPSON: No, ma'am.

18 THE COURT: When y'all do the Fugitive
19 Division, do you check the hospitals and all of
20 that? The jails? I know you check the jails.

21 INVESTIGATOR CARWELL: I have given it to
22 Justin Britt and he does his -- I don't believe he
23 has gone by the hospitals.

24 THE COURT: You might want to try that so when
25 he comes in, if he is at the hospital we'll know.