

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE J. FISHBURNE,

APPELLANT

APPELLATE CASE NO. 2011-20366

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	2011-GS-08-01567-01569
	01660, 01661
	2011-GS-08-01658, 01659
	01570, 01571, 01572
STATE OF SOUTH CAROLINA	)
	)
Plaintiff	)
	)
V.	)
	)
CLARENCE J. FISHBURNE, and	)
DOUGLAS M. THOMPSON,	)
Defendant.	)

November 7 - 11, 2011
Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

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Representing The Defendant Thompson

Anne Bouley Meyer, RPR
Circuit Court Reporter

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1 THE COURT: All right, ladies and gentlemen of
2 the jury panel, we are going to select the first case.
3 State please call your case.

4 MS. CORNWELL: Your Honor, State calls State
5 versus Clarence Fishburne and State versus Douglas
6 Thompson.

7 THE COURT: Counsel, does Mr. Fishburne waive
8 formal arraignment?

9 MR. SHELTON: Yes, Your Honor.

10 THE COURT: Does Mr. Thompson waive formal
11 arraignment?

12 MR. AYLOR: He does, Your Honor.

13 THE COURT: Ladies and gentlemen, the case that
14 we are about to begin is the case of the State versus
15 Clarence J. Fishburne, and the case of the State versus
16 Douglas Monray Thompson.

17 Ladies and gentlemen, Mr. Fishburne and Mr.
18 Thompson are charged through a piece of paper which is
19 an indictment. Mr. Fishburne and Mr. Thompson have
20 pled not guilty to each indictment.

21 Ladies and gentlemen, docket number
22 2001-GS-08-1567, the State versus Laurence Fishburne,
23 an indictment for armed robbery. The State alleges
24 that Clarence Fishburne, while acting in consent with
25 other did in Berkeley County, South Carolina on or

1 about August 6, 2010, while armed with a deadly weapon,
2 to wit: a handgun, take and carry away personal
3 property of Paulo Silva from or in the immediate
4 presence of Paulo Silva, with the intent to deprive
5 Paulo Silva of possession by use of force, threats or
6 intimidation in violation of section 16-11-33(A) of the
7 South Carolina code of laws, 1976 as amended.

8 Docket number 2010-GS-08-1568, State of South
9 Carolina versus Clarence Fishburne, indictment for
10 armed robbery. That Clarence Fishburne, did while
11 acting in concert with others, did in Berkeley County,
12 South Carolina, on or about August 6, 2010, while armed
13 with a deadly weapon, to wit: a handgun, take and carry
14 away personal property of Adao Olivera, from or in the
15 immediate presence of Adao Olivera, with the intent to
16 deprive him of possession by the use of force, threats
17 or intimidation, in violation of section 16-11-330(A)
18 of the South Carolina code of laws, 1976 as amended.

19 Docket number 2011-GS-08-1669, the State versus
20 Clarence Fishburne, indictment for burglary in the
21 first degree. The State alleges that Clarence
22 Fishburne did, while acting in concert with others, did
23 in Berkeley County on or about August 10th of 2010,
24 willfully, unlawfully, and feloniously enter the
25 dwelling of Paulo Silva and Adao Olivera located at

1 Harbor Lake Drive, Apartment G-1 Goose Creek, South
2 Carolina, during the nighttime hours, and/or while
3 armed with a deadly weapon, without consent, and with
4 the intent to commit a crime therein, to wit: larceny.
5 This is in violation of section 16-11-311, South
6 Carolina code of laws 1976 as amended.

7 Docket number 2011-GS-08-1660, the State versus
8 Clarence Fishburne, indictment for kidnapping. That
9 Clarence Fishburne did, while acting in concert with
10 others, in Berkeley County, on or about August 6th,
11 2010, willfully, unlawfully, knowingly and feloniously
12 seize, abduct, confine or carry away Adao Olivera
13 without the authority of law, and against Adao
14 Olivera's will and consent. This is in violation of
15 section 16-3-910 of the South Carolina code of laws
16 1976 as amended.

17 Docket number 2011-GS-08-1661, the State versus
18 Clarence Fishburne, indictment for kidnapping. That
19 Clarence Fishburne did, while acting in concert with
20 others, in Berkeley County, on or about August 6th,
21 2010, willfully, unlawfully, knowingly and feloniously
22 seize, abduct or confine, or carry away Paulo Silva,
23 without the authority of law, and against Paulo Silva's
24 will and consent. This is in violation of section
25 16-3-910 of the South Carolina code of laws 1976 as

1 amended.

2 Docket number 2011-GS-08-1570, State versus
3 Douglas Monray Thompson, indictment for armed robbery.
4 That Douglas Monray Thompson, while acting in concert
5 with others, did in Berkeley County, on or about August
6 6th, 2010, while armed with a deadly weapon, to wit: a
7 handgun, take and carry away personal property of Adao
8 Olivera, from or in the immediate presence of Adao
9 Olivera, with the intent to deprive him of possession
10 by use of force, threats or intimidation as in
11 violation of section 16-11-330, subsection A, of the
12 South Carolina code of laws 1976 as amended.

13 Docket number 2011-GS-08-1571, the state versus
14 Douglas Monray Thompson, indictment for armed robbery.
15 The state alleges that Douglas Monray Thompson, while
16 acting in concert with others, did in Berkeley County,
17 South Carolina, on or about August 6th, 2010, while
18 armed with a deadly weapon, to wit: a handgun, take and
19 carry away personal property of Paulo Silva from or in
20 the immediate presence of Paulo Silva, with the intent
21 to deprive him of possession of use by force, threats
22 or intimidation, in violation of section 16-11-300(A)
23 of the South Carolina code of laws 1976 as amended.

24 2011-GS-08-1572, state of South Carolina versus
25 Douglas Monray Thompson, indictment for burglary in the

1 first degree. The State alleges that Douglas Monray
2 Thompson, while acting in concert with others, did in
3 Berkeley County, on or about August 6th, 2010,
4 willfully, unlawfully and feloniously enter the
5 dwelling of Paulo Silva, and Adao Olivera, located at
6 Harbor Lake Drive, Apartment G-1, Goose Creek, South
7 Carolina, during the nighttime hours, and/or while
8 armed with a deadly weapon, without consent and with
9 the intent to commit a crime therein, to wit: larceny.
10 This is in violation of section 16-11-311, South
11 Carolina code of laws 1976 as amended.

12 Docket number 2011-GS-08-1658 the State versus
13 Douglas Monray Thompson, indictment for kidnapping. The
14 State alleged the Douglas Monray Thompson, while acting
15 in concert with others, did in Berkeley County on or
16 about August 6th, 2010, willfully, unlawfully and
17 feloniously seize, abduct, confine or carry away Paulo
18 Silva, without the authority of law, and against his
19 will and consent. This is in violation of section
20 16-3-910 of the South Carolina code of laws 1976 as
21 amended.

22 Docket number 2011-GS-08-1659, the State versus
23 Douglas Monray Thompson, an indictment for kidnapping.
24 The State alleges that Douglas Monray Thompson, while
25 acting in concert with other, did in Berkeley County,

1 on or about August 6th, 2010, willfully, knowingly and
2 feloniously seize, abduct, confine, or carry away Adao
3 Olivera without the authority of law, against Adao
4 Olivera's will and consent. This is in violation of
5 16-3-910 of the South Carolina code of laws 1976 as
6 amended.

7 Ladies and gentlemen, as I indicated to you,
8 these are the indictments. These are the pieces of
9 paper by which Mr. Thompson and Mr. Fishburne are
10 brought to court. There are in no way any indication
11 of the evidence contained in the indictments that I
12 just read to you.

13 Each defendant has pled not guilty to each of
14 the indictments. Ladies and gentlemen, is there any
15 member of the jury panel that knows anything about
16 these indictments or this case other than what I have
17 just read to you, if so please stand.

18 Thank you, there are none.

19 Mr. Shelton, if you will please stand, introduce
20 yourself, any persons who may be assisting you
21 throughout this trial, as well as your client.

22 MR. SHELTON: Thank you, Your Honor.

23 I'm Chad Shelton, I'm with the Berkeley County
24 Public Defender's Office. Sitting with me is David
25 Schwacke. Also in our office we have Ms. Littlejohn

1 pertaining to the jury as selected, Ms. Cornwell?

2 MS. CORNWELL: Court's indulgence.

3 THE COURT: Ms. Cornwell?

4 MS. CORNWELL: None from the State, Your Honor.

5 THE COURT: Mr. Shelton, any motions or matters?

6 MR. SHELTON: Yes, Your Honor.

7 THE COURT: Counsel approach.

8 (Whereupon, a discussion was held at the bench
9 off the record.)

10 THE COURT: Anything further before I excuse
11 this jury, counsel?

12 MS. CORNWELL: Nothing from the State, Your
13 Honor.

14 MR. SHELTON: Nothing from Mr. Fishburne, Your
15 Honor.

16 MR. AYLOR: Nothing further, Your Honor.

17 THE COURT: Ladies and gentlemen, there are a
18 few matters that I must take up outside of your
19 presence. The bailiffs are going to escort you to your
20 jury deliberation room. We will receive you back in
21 just a few moments.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: Mr. Simmons, did you resolve your
24 issues?

25 A JUROR: Sure did.

1 THE COURT: All right, thank you.

2 Ladies and gentlemen, we are now making
3 arrangement to select the next jury that will be
4 selected. Ladies and gentlemen, we attempt, and that
5 case will be tried by Judge Dennis. And those of you
6 who are not selected to go in that panel, I will give
7 you further instructions in just a few moments.

8 Ladies and gentlemen, we attempt to pick as many
9 cases as we can so that that prevents you from coming
10 back and sitting around every day until your week is
11 over. And remember, you have a short week, so this is
12 a really great week for you to be serving.

13 Ladies and gentlemen, we appreciate your
14 patience and in just a few moments we will give you
15 further instructions.

16 (Whereupon, a recess was taken.)

17 THE COURT: Ladies and gentlemen of the jury
18 panel, you were not selected so that means that you are
19 free to go for the afternoon. Ladies and gentlemen,
20 your service is for the week. And as I indicated to
21 you, Court is not in session on Friday.

22 So you will need to call back after 6:00 p.m. to
23 the jury hotline to the number that you were given to
24 receive instructions for the remainder of the week.
25 Ladies and gentlemen, we do that to avoid your

1 inconvenience, meaning avoiding you, preventing you
2 from having to come to court every day.

3 But if you do not follow the instructions on the
4 hotline, if for example if it were to say for you to
5 report tomorrow and you choose not to report, I'm going
6 to send the sheriff for you. So, ladies and gentlemen,
7 please remember you must call back after 6:00 p.m. and
8 you will receive instructions at that time.

9 Ladies and gentlemen, I appreciate your service
10 to Berkeley County. The attorneys in front of you, I
11 could not do my job, they could not do their job if you
12 had not shown up for jury service this week.

13 Thank you for your civic duty to Berkeley
14 County. I look forward to seeing some of you perhaps
15 later in the week. Good luck to you. You are excused.

16 (Whereupon, the prospective jurors exit the
17 courtroom.)

18 THE COURT: All of the jurors are out of the
19 courtroom; is that correct?

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: Thank you. We need to place your
22 challenge, Mr. McCoy.

23 MR. MCCOY: Absolutely, Your Honor. Just during
24 jury qualification there was a juror that came before
25 you, juror number 206. And just for the record, Your

1 Honor, we wanted to put on there, and she ended up
2 being struck from the jury anyway, but we wanted to put
3 on the record that we feel that maybe she should have
4 been struck for cause simply because of the reason she
5 stated for even approaching you, Your Honor, was that
6 she was the victim of a housebreaking, basically which
7 is an element that involves this crime as well, Your
8 Honor. So we feel that she should have been struck for
9 cause. But we realize she was struck by using one of
10 our strikes.

11 THE COURT: I didn't grant your request to
12 strike her for cause. I questioned her, she indicated
13 that in no way that incident would affect her ability
14 to be fair and impartial.

15 I'll note your exception for the record.

16 MR. MCCOY: Thank you, Your Honor.

17 THE COURT: Also we had, Mr. Shelton indicated
18 he wished to approach. We had an off the record at the
19 bench Batson Hearing. I will allow you to articulate
20 what you indicated at that point.

21 MR. SHELTON: Thank you, Your Honor.

22 Yeah, at that point the State had struck six
23 juror. Five of the six were African-American, and four
24 out of the five were male.

25 And so we just were approaching and making the

1 motion to determine the state's reasoning and their
2 articulation as to why they struck those.

3 THE COURT: I understand, Mr. McCoy, you were
4 joining in with that motion at the time?

5 MR. MCCOY: I was, Your Honor, at the time. But
6 I just wanted to have in front of me reasons for these
7 jurors being struck and the State provided that to us.

8 THE COURT: And the Court asked Ms. Cornwell if
9 she could provide an explanation, a race-neutral
10 explanation as to why she struck. Specifically it was
11 juror number 74 was the first strike; juror 176 was the
12 second strike; juror 149 was the third strike; juror
13 113 was the fourth strike; the fifth strike was juror
14 144, which was not in question; and then the sixth
15 strike had to do with an alternate.

16 Based upon the information and the explanation
17 that Ms. Cornwell gave to the court that I asked Mr.
18 Shelton, because it would be his burden, he indicated
19 that the explanations given were satisfactory.

20 Is that correct, Mr. Shelton?

21 MR. SHELTON: Yes, Your Honor.

22 THE COURT: So there is no further need to go
23 further with the next step of the Batson Hearing; is
24 that correct?

25 MR. SHELTON: Yes, Your Honor.

1 MR. MCCOY: That's correct on this side as well.

2 Thank you.

3 THE COURT: All right. And is there anything
4 that we needed to address? We have about 15 minutes
5 before you indicated your witnesses would be ready. Is
6 that correct, Ms. Cornwell?

7 MS. CORNWELL: Yes, Your Honor. We have one
8 witness that has called us that are on their way, may
9 be a little bit after 12:00.

10 THE COURT: And we are prepared to go forward on
11 the outstanding motions, Mr. Shelton?

12 MR. SHELTON: Your Honor, my one witness that
13 would be here for the motions is present. I would
14 request a chance to take a bathroom break.

15 THE COURT: I understand. Procedurally I'm
16 trying to clean up what I need to clean up because I'm
17 going to bring the jury in and make a determination of
18 how long they get for lunch.

19 MR. SHELTON: I have subpoenaed another witness
20 that we indicated on Friday that he needed to be here
21 at 9:00, but he is not here. That's Mr. Wright.

22 THE COURT: Mr. Aylor?

23 MR. AYLOR: Your Honor, I'm ready to go forward
24 on my motion. I believe just the individuals that the
25 state would be putting up are the ones that are

1 involved in our motion.

2 THE COURT: What motions are pending?

3 MS. CORNWELL: Your Honor, the motions are I
4 believe we have a Biggers hearing, motion to suppress
5 -- State has no motions. You may want to address that
6 with the --

7 THE COURT: No motions filed by the State.

8 MR. SHELTON: Your Honor, well to begin with,
9 and I think we discussed this with the assistant
10 solicitor about the interpreter that they had planned
11 to use that's on the State's prospective witness list,
12 Theodore Wright. We have an issue with that. I don't
13 know if that needs to be taken up first.

14 Then the other motions we have a Biggers
15 hearing, a Biggers motion for the ID; we have an
16 unlawful seizure of my client; we have an unlawful
17 search of the cell phones that were found on my client;
18 and an unlawful search of the cell phone that was found
19 on scene.

20 Beg the Court's indulgence.

21 And there was a motion in limine that the State
22 had indicated that they did not oppose, which we would
23 be joining in with Mr. Aylor.

24 THE COURT: All right. Let me ask it this way,
25 how long do you think these motions are going to take,

1 Mr. Shelton?

2 MR. SHELTON: I would -- Charlton would have
3 testify, Officer Charlton has to testify. We have the
4 911 operator, Ms. Barnett that would have to testify.
5 I believe, depending on what is said, Mr. Wright would
6 have testify. I'm not sure who else the State would
7 produce. I am guessing the victim would testify for
8 the ID.

9 THE COURT: All right. If I let the jury go
10 until in the morning, do you have pleas and matters to
11 fill up my afternoon if these motions don't take that
12 long?

13 MR. ALFARO: I believe there were some that were
14 supposed to plea off the trial docket. There may be
15 some others that we could find for the afternoon.

16 THE COURT: If we start in the morning, Ms.
17 Cornwell, do you believe that we can finish this trial
18 by Thursday?

19 MS. CORNWELL: I believe we can, Your Honor.

20 THE COURT: Do you know that we can?

21 MS. CORNWELL: The State can, Your Honor, yes.

22 MR. SHELTON: I think that's reasonable, Your
23 Honor.

24 MR. AYLOR: I think it's reasonable, Your Honor.
25 The only thing just because of lack experience is how

1 long the translator issue takes. Because obviously
2 both those individuals will be up for quite a while.

3 THE COURT: All right. Let's bring in the jury.

4 (Whereupon, the jurors enter the courtroom.)

5 THE COURT: Thank you, please be seated.

6 Mr. Goodman, I understand that you have been
7 selected as the jury's foreperson here in court. Is
8 that correct?

9 A JUROR: Yes, I am.

10 THE COURT: As such you are the jury's
11 spokesperson here in court. And you will also be
12 required to write the verdict. But I will give you
13 further instructions regarding that matter as we
14 proceed throughout the trial.

15 Ladies and gentlemen, if you need -- can't hear
16 or if you have any other concerns, if you will let your
17 foreperson know, he will let the bailiffs know and we
18 will take care of it just as quickly as we can.

19 Mr. Hampton and Ms. Williams, you are the
20 alternates in this case. And so the two of you may
21 alternate seats, but I need the two of you to always
22 remain in those two seats. Mr. Goodman, that is your
23 assigned seat as well throughout the progress of this
24 trial. The rest of you may sit wherever you chose.

25 Ladies and gentlemen, you may have also noticed

1 when you came in, out of respect for your new position
2 as judges of the facts, the attorneys, the parties
3 involved in this case, as well as members of the
4 audience were standing for you. So please come in and
5 take your seats quickly as they will remain standing
6 for you until all 14 of you are seated.

7 Ladies and gentlemen, you have also been given
8 note pads, and that indicates to the Court that you may
9 take notes. And you will be allowed to take notes. We
10 will lock your note pads up at the end of business, and
11 give those back to you in the morning.

12 Those are your notes. No juror's notes are more
13 correct or accurate than another juror's notes. And I
14 will always caution jurors, when you are writing
15 sometimes you have a tendency to look down so you may
16 not notice what is going on in front of you. But with
17 those caveats, you will be allowed to take notes
18 throughout the progress of this trial.

19 Ladies and gentlemen, there are matters
20 unrelated to this case and it's lunchtime, so we are
21 going to go ahead and break for the afternoon. Ladies
22 and gentlemen, you will need to report to your jury
23 room at 9:15 we will begin at that time.

24 Ladies and gentlemen, please be courteous and
25 respectful because we can't begin until all 14 of you

1 are here. Please respectful of each other's time.
2 Ladies and gentlemen, I will give you further
3 instructions tomorrow morning, but it is important that
4 you follow these instructions over the evening hour.

5 Ladies and gentlemen, until you have been
6 discharged from service in this case, you may not
7 perform any investigation of any kind regarding this
8 case, either individually or as a group. You may not
9 consult in dictionaries for the general meanings of
10 words or any encyclopedia for general information about
11 the subject of this trial.

12 You are not allowed to look up anything on the
13 Internet concerning this case, or any of the people
14 involved. That included the defendants, the attorneys
15 involved, any of the witnesses as well as the Judge.

16 Ladies and gentlemen, you may not go to the
17 scene where any of the events that are the subject of
18 this trial are alleged to have taken place, or use
19 Internet maps or Google Earth or any other program to
20 search for or view any place discussed during this
21 case.

22 You must not have any discussion with anyone
23 regarding this case, that includes your fellow jurors,
24 it includes face-to-face discussions, it also includes
25 any discussions or any entries on Facebook, My Space,

1 LinkedIn or any other Internet social media cite. That
2 includes any form of written, oral or electronic
3 communication.

4 Ladies and gentlemen, this is not an exhaustive
5 list, but I hope you understand there is no e-mailing
6 about this case, no blogging about this case, no
7 texting, no twittering, nothing. You may not discuss
8 this case with anyone in any form.

9 If you have any questions about that or what
10 that means, please let your foreperson know and I will
11 address that issue with you. The simple thing is, I'm
12 serving jury duty and that's all I can say.

13 Ladies and gentlemen, please understand that I
14 am giving these directions as part of my responsibility
15 to ensure fairness to all the parties here today.
16 Ladies and gentlemen, that fairness would be
17 compromised and your actions could jeopardize the
18 results of this trial if you violate my instructions.

19 Ladies and gentlemen, I will give you further
20 instructions as we progress through the trial, but
21 those instructions will remain throughout the entire
22 trial until I inform you otherwise.

23 Ladies and gentlemen, please have a wonderful
24 afternoon. I will see you back here at -- wait a
25 minute -- we will begin at 10:15 in the morning.

1 10:15. Thank you. Please rise for the jury.

2 (Whereupon, the jurors exit the courtroom.)

3 THE COURT: Thank you, be seated. We will take
4 a break, but I know that we need to wait until the jury
5 clears out then we will take a break. How long do you
6 all need?

7 MR. ALFARO: Your Honor, if I could have a few
8 extra minutes more to check on the things for the
9 afternoon, as well as make sure the interpreter is
10 present.

11 THE COURT: Mr. Aylor, have you been in touch
12 with the bondsman? Do you have information that is
13 requested?

14 MR. AYLOR: His mother is outside, I was going
15 to send someone right now to go get it signed. I have
16 got a letter that I can pass up now.

17 THE COURT: Ms. Cornwell, you have no objection
18 to allowing Mr. Thompson to remain on his current bond?

19 MS. CORNWELL: No, Your Honor.

20 THE COURT: All right. Mr. Thompson, until I
21 have that piece of paper I'm going to trust that Mr.
22 Aylor, as an officer of the Court, has indicated to me
23 that the bonds person will remain on your bond.

24 Typically what happens, Mr. Thompson, is once
25 the case is called for trial, that that absolves the

1 responsibility of the bonds person for your bond.

2 Please understand, we have selected a jury for
3 your case and we will progress with your trial whether
4 you appear or not. Do you understand? Is that a yes?

5 THE DEFENDANT THOMPSON: Yes, ma'am.

6 THE COURT: All right. And, Mr. Thompson, Quick
7 Bail Bonds is the bail bonding company; is that
8 correct?

9 THE DEFENDANT THOMPSON: Yes, ma'am.

10 THE COURT: You understand you are under the
11 same terms and conditions as you were before you walked
12 in this courthouse today. Do you understand that?

13 THE DEFENDANT THOMPSON: Yes, ma'am.

14 THE COURT: If you do not appear we will
15 continue with the progress of your case, we will try it
16 in your absence. Do you understand that, sir?

17 THE DEFENDANT THOMPSON: Yes, ma'am.

18 THE COURT: Do you understand that a bench
19 warrant will be issued for your arrest?

20 THE DEFENDANT THOMPSON: Yes, ma'am.

21 THE COURT: All right, you may have a seat.

22 Do we wish to -- do we prefer to break for lunch
23 and then come back at 1:30?

24 MR. ALFARO: That would be the State's request.

25 MR. SHELTON: Yes.

1 THE COURT: Let's do that. We will go ahead and
2 recess for lunch. We will resume at 1:30 with the
3 motions. And depending on how long, if you'll just
4 have a backup jail list. Thank you.

5 (Whereupon, a recess was taken.)

6 THE COURT: Is the State ready to proceed on
7 motions?

8 MS. CORNWELL: We are, Your Honor.

9 THE COURT: Mr. Shelton?

10 MR. SHELTON: Yes, Your Honor.

11 THE COURT: Mr. Aylor?

12 MR. AYLOR: Yes, Your Honor.

13 THE COURT: All right. Is there any particular
14 order that you wish to proceed?

15 MR. ALFARO: Your Honor, we were discussing with
16 defense counsel. We think it may be logistically
17 easier just to have all the witnesses testify because
18 all the testimony encompasses the same course of
19 actions and covers all of the individual motions.

20 I think we would like to just have all the
21 witnesses testify and then just argue after, as opposed
22 to having Deputy Charlton testify as to the
23 identification, step down, have the victims testify to
24 the ID, step back down, argue that, and put Deputy
25 Charlton back up to discuss the search and seizure

1 issue.

2 THE COURT: All right. I need to know what
3 motions we are hearing so that I know what to be
4 listening for. Mr. Shelton?

5 MR. SHELTON: Your Honor, my first motion that I
6 would make is an unlawful seizure of my client as far
7 as time and scope of the seizure.

8 And based off that could be the identification
9 that -- if Your Honor believes that it was an unlawful
10 seizure, I think that then it would suppress the cell
11 phones found on my client.

12 In addition, there is an argument that fruit of
13 the poisonous tree as far as the ID. However, if
14 that's a separate issue then we could get into the ID,
15 Biggers motion, the suggestiveness and the reliability.

16 And then there is a separate search issue with
17 the cell phone found on my client. My client, as far
18 as privacy issues, the unlawful search of the cell
19 phones, the contents of the cell phones.

20 In addition, Your Honor, there's a cell phone
21 that was found on the scene that Deputy Charlton, also
22 went through that would be an unlawful search of that
23 cell phone.

24 THE COURT: All right. So is it your client's
25 cell phone that is at issue? Is there more than one

1 cell phone?

2 MR. SHELTON: Your Honor, at this point in time,
3 until the state can prove that it's my client's cell
4 phone that was found on scene, there's two cell phones
5 taken out of my client's possession, and then there was
6 a cell phone found on scene.

7 THE COURT: All right. So there was a cell
8 phone found on the person of your client, correct?

9 MR. SHELTON: Yes. Two cell phones, yes.

10 THE COURT: Two on his person?

11 MR. SHELTON: Yes, ma'am. As far as the
12 evidence that we have gotten.

13 THE COURT: And then there was one just random
14 cell phone?

15 MR. SHELTON: Well two random cell phones.

16 THE COURT: So how many cell phones are in this
17 case total that you have an issue with?

18 MR. SHELTON: My -- this could be an issue for
19 trial issue, factual issue, but I believe there's five
20 cell phones total, one was never found. That was one
21 of the victim's that was never found.

22 THE COURT: That's not an issue for the court to
23 consider?

24 MR. SHELTON: Right.

25 THE COURT: Right.

1 MR. SHELTON: I'm just --

2 THE COURT: Okay.

3 MR. SHELTON: Two cell phone that were found on
4 my client.

5 THE COURT: All right.

6 MR. SHELTON: One cell phone that I believe the
7 officer is saying was Mr. Thompson's, but I believe was
8 also found on the ground. I'm not quite sure where
9 that cell phone was found.

10 And then a cell phone that, according to
11 Charlton's statements, the victims had told him about
12 on scene of the actual incident.

13 They were arrested about maybe a 10th, a quarter
14 of a mile from where the incident occurred.

15 THE COURT: All right. So we have some cell
16 phone issues. What else do we have? What are your
17 others motions?

18 MR. SHELTON: It would be the seizure and the
19 identification, Your Honor. In addition -- well the
20 identification of the victims and I'm not sure if the
21 state's going to try to get into identification of
22 other persons that were on the scene that never gave
23 out-of-court identification.

24 THE COURT: Identification of your client by the
25 victims? Or identification of the victims by somebody

1 else?

2 MR. SHELTON: Identification of our clients by
3 the victims. And then a motion in limine to the
4 identification, in-court identification of our clients
5 by other witnesses that were not -- that did not give
6 an out-of-court identification.

7 So there is a wife that was present that fled
8 out of the scene, according to the incident report,
9 that -- we are making a motion in limine that she can't
10 identify our clients in court because she never
11 identified them out of court.

12 And a neighbor, two neighbors possibly. So they
13 never made out-of-court identifications, so that would
14 also be a motion.

15 THE COURT: All right. Mr. Aylor?

16 MR. AYLOR: Your Honor, obviously we join in all
17 the motions that, you know, both Mr. Shelton and I
18 have.

19 And then the only other one I think that wasn't
20 mentioned is one, just to put on the record, that I
21 believe they don't oppose, which is a motion in limine
22 which is just in regards to Officer Charlton making any
23 references to race or nationality.

24 The part of one of his police reports looking at
25 Latin type of names, that sort of thing. I believe

1 that Ms. Cornwell said they don't oppose that one.

2 So otherwise, you know, that's the only other
3 one he didn't mention.

4 THE COURT: All right. You had filed a motion
5 in limine October 17th to exclude evidence of witness
6 testimony from Officer Charlton concerning the race,
7 nationality or ethnicity of some major contacts. State
8 does not challenge?

9 MS. CORNWELL: We have no objection to that,
10 Your Honor.

11 THE COURT: All right. So that motion is
12 granted by consent.

13 Okay. I thought that there was some discussion
14 about the interpreter? You object to the use of the
15 interpreter?

16 MR. AYLOR: From what I understand they have
17 another interpreter, and that might be a moot point.

18 MS. CORNWELL: We do, Your Honor. To save the
19 court's time we have had another interpreter come in
20 and we will substitute him for Mr. Wright.

21 THE COURT: All right. And before we get any
22 further, is there any objection to this interpreter?

23 MR. SHELTON: No objection.

24 MR. AYLOR: No objection.

25 THE COURT: Do you know who it is?

1 MR. SHELTON: I have talked with him and Ms.
2 Cornwell has given me his information. I have no
3 objection.

4 MR. AYLOR: No objection.

5 MR. SHELTON: He is unbiased.

6 MR. AYLOR: Mr. McCoy has talked to him as well
7 so.

8 THE COURT: All right. Thank you, counsel.

9 MS. CORNWELL: Thank you, Your Honor.

10 THE COURT: That significantly reduces the
11 motions. All right.

12 MR. SHELTON: I have one more issue, I'm sorry.

13 THE COURT: Okay.

14 MR. SHELTON: The State has indicated, and I
15 believe they indicated on Friday they were not going to
16 put in any of the statements. So for that reason we
17 haven't, and Mr. Aylor hasn't, filed any Bruton issues
18 because the statements were not going to come in.

19 But talking with the State they, depending on
20 how the ruling is in some of the motions, they might
21 try to introduce some of the statements that then could
22 bring up Bruton issues. So just the --

23 THE COURT: All right. Did you plan on
24 introducing some statements?

25 MS. CORNWELL: Your Honor, after discussing it

1 over the break I believe that we are going to keep
2 those statements out.

3 THE COURT: All right. Okay.

4 well, again that makes it a lot quicker. All
5 right. I'm happy however you want to call your
6 witnesses.

7 MS. CORNWELL: Thank you, Your Honor.

8 MR. ALFARO: State call Jason Charlton.

9 THE COURT: And are you requesting that the
10 witnesses be sequestered, State?

11 MS. CORNWELL: Yes, Your Honor.

12 MR. SHELTON: Yes, Your Honor.

13 MR. AYLOR: Yes, Your Honor.

14 THE COURT: All right. For the purposes of all
15 the hearings, or for the testimony at trial?

16 MR. SHELTON: All the hearings, Your Honor.

17 MS. CORNWELL: That's fine, Your Honor.

18 THE COURT: All right. Do you have any
19 additional witnesses in the courtroom now?

20 MS. CORNWELL: No, Your Honor.

21 THE COURT: All right.

22 MR. JASON CHARLTON,

23 after having first been duly sworn to state the truth,
24 the whole truth and nothing but the truth, testified on
25 his oath as follows:

1 DIRECT EXAMINATION

2 BY MR. ALFARO:

3 Q Deputy Charlton, could you tell the Court where
4 you currently work?

5 A Berkeley County Sheriff's Office.

6 Q How long have you been with the Sheriff's
7 Office?

8 A Give or take, right at four years.

9 Q Did you have any prior law enforcement
10 experience before coming to the Sheriff's Office?

11 A Yes, sir.

12 Q And where was that?

13 A I worked in the Charleston County Detention
14 Center for approximately five years.15 Q And were you working for the Sheriff's, Berkeley
16 County Sheriff's Office on August 6, 2010?

17 A Yes.

18 Q And that night did you have the opportunity to
19 be dispatched to a report of a home invasion at 4255
20 Harbor Lake Drive in Goose Creek?

21 A Yes.

22 Q And when that call was dispatched to you, how
23 was it -- what was it dispatched as?24 A It was dispatched as a home invasion and the
25 suspects were using a weapon in order to force their

1 way in the home.

2 Q And did you respond to that location?

3 A Yes.

4 Q And were any other deputies dispatched to that
5 location as well?

6 A I'm not sure if they were dispatched. One other
7 indicated he was en route.

8 Q Who was that?

9 A That would have been Robert Ollic.

10 Q And could you tell us where that Harbor Lake
11 Drive location is at?

12 A It's in Berkeley County on the outskirts of
13 Goose Creek, off of Red Bank Road.

14 Q And you indicated that you had been informed
15 that there was a weapon used in the commission of this
16 crime?

17 A Yes.

18 Q Did they give you any specifics as to the type
19 of weapon?

20 A I believe they advised it was a handgun.

21 Q And did they provide you any information, did
22 you have any information relating to the number of
23 suspects?

24 A It was said that there were three.

25 Q And did you have any information at that time

1 relating to what property, if any, had been taken
2 during the robbery?

3 A At some point during the transmissions leading
4 up to my arrival there, they indicated that a laptop
5 had been taken.

6 Q And that Drive, what type of
7 complex is that?

8 A It's an apartment complex.

9 Q And when you were dispatched to this call, calls
10 of this type, is it normal to go straight to the
11 incident location or do you patrol the area?

12 A A little of both. You want to get there as soon
13 as possible, but obviously you are going to pay
14 attention to what is around you while you are on your
15 way in.

16 Q And how long would you estimate it took you to
17 arrive at that apartment complex after you were
18 dispatched?

19 A A matter of minutes.

20 Q And while you were patrolling the area, did you
21 come in contact with any individuals that matched the
22 general description you had been provided?

23 A I'm sorry, say again, sir.

24 Q When you were patrolling the area, when you
25 responded to the area of the apartment complex, did you

1 come into contact with any suspects matching the
2 description that had been provided to you by dispatch?

3 A Yes.

4 Q And where did you come into contact with those
5 people?

6 A About a quarter mile from the incident location,
7 on -- walking alongside of Harbor Lake Drive.

8 Q And did you observe any of these suspects having
9 anything in their hands?

10 A One was carrying a laptop.

11 Q And did you have any information at that time
12 that a laptop had been taken during the course of the
13 robbery?

14 A Yes, sir.

15 Q And can you tell the Court what happened when
16 you saw the three suspects in that general area?

17 A I exited my vehicle and indicated I wanted to
18 speak with them. Two of the subjects started kind of
19 hiking their pants up making like they were getting
20 ready to run. One actually did flee.

21 One of the suspects -- or the persons I was
22 getting out with advised that the other two don't run,
23 there is no need. At which time the person that was
24 holding the laptop -- I'm sorry, when they were acting
25 like they were getting ready to run, the one that was

1 holding the laptop dropped the laptop and kind of hiked
2 his pants up.

3 Then the other person indicated, don't run. And
4 at which time the person that was holding the laptop
5 did not run. And the other fled down I think it was
6 Coral Reef.

7 Q So the suspect that you had seen holding the
8 laptop remained at the scene?

9 A Yes.

10 Q And did you recover that laptop?

11 A Yes, sir.

12 Q And do you know the identity of the person who
13 was -- that you stopped that night that had the laptop
14 in his hands?

15 A Yes.

16 Q Who was that?

17 A That was Douglas Thompson.

18 Q And you said that one of the suspects ran, fled
19 from the scene?

20 A Yes, sir.

21 Q And Mr. Thompson remained. Did you identify the
22 other person that stayed?

23 A Clarence Fishburne.

24 Q Now at the time that you got out with initially
25 the three individuals which ended up just being two,

1 was there anybody -- were there any other deputies in
2 the vehicle with you?

3 A No, sir.

4 Q Was there any other backup officers on the scene
5 at that time?

6 A No. No, sir.

7 Q And at that point after the one individual ran
8 from the scene, did you chase him or did you stay with
9 Fishburne and Thompson?

10 A I stayed with Mr. Fishburne and Thompson.

11 Q And at that point were they detained?

12 A Yes, sir.

13 Q And what was the reason for you detaining them
14 at that time?

15 A It's an officer safety issue. I was -- the
16 initial call indicated a weapon being used. One had
17 already fled. And it was just me and two of them, so.

18 Q And how far would you say that location where
19 you stopped them was from the victims' apartment that
20 was burglarized?

21 A I would say right at a quarter mile, give or
22 take.

23 Q They were located within a quarter mile of the
24 victims' residence when you stopped them?

25 A Yes, sir.

1 Q And at that point did you conduct any kind of
2 pat down or frisk of them?

3 A Yes, sir.

4 Q Did you locate any weapons at that time?

5 A No, sir.

6 Q Now after they were detained, what did you do at
7 that point?

8 A Well shortly after is when Deputy Ollic arrived.

9 Q And what did Deputy Ollic do when he got to the
10 scene?

11 A He assumed the detention while I went to confer
12 with the victims.

13 Q So when you say assumed the detention, does that
14 mean that he stayed at the scene with them while you
15 went to the victims' apartment?

16 A Yes, sir. I'm sorry.

17 Q And after Deputy Ollic arrived, were the
18 suspects placed in handcuffs?

19 A Yes, sir.

20 Q Were they cuffed in the front or in the back?

21 A In the back. It's our policy.

22 Q And did you go directly to the victims'
23 apartment after that?

24 A Yes, sir.

25 Q And how long did it take you to get to the

1 victims' apartment?

2 A From the scene where the people were detained?

3 Q Yes, sir.

4 A Seconds.

5 Q And were you able to meet with the victims at
6 that apartment?

7 A Yes, sir.

8 Q Do you recall who you met with?

9 A Paulo Silva, Adao -- I cannot remember how to
10 pronounce his last name -- Olivera I think it was. And
11 a Rubio Hilario or Hilario Rubio, I'm not sure which.

12 Q And of those individuals that you met with which
13 one of them -- which ones were actually the victims of
14 the robbery and burglary?

15 A Adao and Paulo.

16 Q And did either of them speak English?

17 A Very broken.

18 Q Did Mr. Hilario Rubio speak English?

19 A Yes. Very good, very fluent English.

20 Q And did you use -- given that Mr. -- or that
21 Paulo and Adao didn't speak English, did you attempt to
22 use a translator for your interaction with them?

23 A Yes.

24 Q And was that Mr. Rubio?

25 A Yes, sir.

1 Q And after meeting with them at their apartment,
2 what did you do then?

3 A Well after I got the general consensus of the,
4 how things transpired, they were taken to the scene for
5 the possibility of identifying who may or may not have
6 been there.

7 Q And the scene being where Fishburne and Thompson
8 were detained?

9 A Yes, sir.

10 Q And -- excuse me. Did you ride over there with
11 all three of those individuals?

12 A Yes, sir. For the translating purposes, Mr.
13 Hilario was.

14 Q Now prior to transporting them to that location,
15 did you tell them why you were taking them there?

16 A Yes, sir.

17 Q And what did you tell them the reason for taking
18 them there was?

19 A I told them we found two guys walking up the
20 street that may or may not have been the persons who
21 committed the act. So we would need them to tell
22 whether they were or were not.

23 Q And did you then take them directly to that
24 location?

25 A Yes, sir.

1 Q And when you arrived at that location, where
2 were the two defendants?

3 A They were there by the car.

4 Q Okay. Were they sitting in the car or were they
5 standing outside the car?

6 A I think one was sitting in the car.

7 Q And at the time of the identification, were they
8 both removed from the vehicle?

9 A Yes, sir.

10 Q And were they standing or sitting when the
11 victims were asked to identify them?

12 A Upon our arrival, they were both standing in
13 front of the vehicle.

14 Q And they were cuffed with their hands behind
15 their back?

16 A Yes, sir.

17 Q And from your vantage point, when you pulled up
18 with the victims, were you able to see the handcuffs on
19 the defendants when you pulled up?

20 A No, sir. We make it a point where they can't.

21 Q And could you describe for the court the
22 lighting in that area where you had the defendants
23 detained?

24 A The lighting is not great. I don't know exactly
25 how dark it was, but on a normal night it's fairly

1 dark.

2 Q And was it dark enough that you felt the need to
3 use some sort of artificial lighting to light up the
4 area?

5 A Yes.

6 Q And what did you do to accomplish that?

7 A I put my spotlight on -- the spotlight from the
8 windshield on the -- to light up the area.

9 Q And was that necessary in order to illuminate
10 the area sufficiently?

11 A Yes, sir.

12 Q And were there any blue lights going on at that
13 time?

14 A No, sir.

15 Q And did the victims remain in your car during
16 the identification?

17 A Yes, sir.

18 Q And how close to the defendants did you park
19 your vehicle?

20 A I would say 20, 30 feet.

21 Q And from that location with the lighting that
22 was in the area, was it sufficient enough to clearly
23 see the faces of the two defendants?

24 A Most definitely.

25 Q And at that point in time were the victims able

1 to make any identification of the two defendants?

2 A Yes, sir.

3 Q And how long did it take them to, or how quickly
4 did they make that identification?

5 A It was rather instantly.

6 Q And did they indicate that they identified them
7 through their interpreter, or how did they indicate
8 that they identified them?

9 A It was kind of all one -- one -- it happened so
10 fast, you know. But it was clear, in any language it
11 would have been clear that, you know, they were
12 indicating that those were the persons there.

13 And one spoke, like I said, very broken English
14 and he said, him, him, or something to that nature.
15 And also the interpreter indicated that they were
16 saying in Portuguese as well.

17 Q Did you have to prompt them in any way to say
18 whether they recognized the individuals or not?

19 A No, sir.

20 Q And was there any conversation with you and the
21 victims regarding them attempting to change their mind
22 about the identification, or any hesitancy on their
23 part regarding the identification?

24 A No, they were very clear.

25 Q And at that point, after the identification by

1 the victims, did both victims identify?

2 A Yes, sir.

3 Q The two suspects as being involved in the crime?

4 A Yes, sir.

5 Q And at that point were the defendants then taken
6 into custody or placed under arrest?

7 A Well after I returned the victims to their
8 residence, they were -- shortly thereafter they were
9 taken into custody and placed under arrest.

10 Q Tell us what you did after the identification
11 was made?

12 A I returned the victims to their residence and
13 then went back to where the defendants were located.
14 And they were placed under arrest.

15 Q And when you had gone to the victims' apartment,
16 did you come into possession of any other items of
17 evidence when you went to the victims' apartment?

18 A Yes, sir. When I returned -- after the two
19 defendants were detained and I returned to the victims'
20 apartment is when upon my approach of their -- they
21 were standing out front of the door.

22 One of the defendants handed me a cell phone and
23 said, here. And so I took it and kind of looked at it,
24 you know, and they advised that one of those guys left
25 this.

1 Q You said, I don't know if you misspoke or not,
2 but you said when you went back to the victims'
3 apartment one of the defendants handed you a phone?

4 A No, sir, I did misspeak. I'm sorry. One of the
5 victims at the apartment.

6 Q And they indicated to you that it had been left
7 behind by the suspect?

8 A Yes, sir.

9 Q And did they tell you where they had recovered
10 that? Where that phone has been recovered from?

11 A Living room.

12 Q And during the course of your investigation were
13 you able to determine who that phone belonged to?

14 A Yes.

15 Q And who was that?

16 MR. SHELTON: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. SHELTON: Personal knowledge -- well
19 foundation as far as his --

20 THE COURT: I'm going to allow it.

21 Q (By Mr. Alfaro) You can answer the question.

22 A Can you repeat that back to me? I lost track,
23 I'm sorry.

24 Q During the course of your investigation were you
25 able to determine who the phone belonged to?

1 A Yes, sir.

2 Q Who was that?

3 A Clarence Fishburne.

4 Q Now in the course of your contact that night
5 with the defendants and the victims, did you also have
6 the opportunity to come in contact with any other cell
7 phones?

8 A Yes, sir.

9 Q And you indicated after the identification was
10 made and after you returned the victims to their house,
11 you went back and that's when the defendants Fishburne
12 and Thompson were placed under arrest; is that correct?

13 A Yes.

14 Q And at that point in time were they Mirandized?

15 A Yes, sir.

16 Q And search incident to that arrest, did you
17 conduct any kind of search of their person?

18 A Yes, incident to arrest.

19 Q And can you tell us what, if anything, you
20 recovered during that search?

21 A Amongst some personal effects, I guess, there
22 were two cell phones. And well I think there was --
23 Mr. Thompson had one. The two cell phones that were
24 later determined to be the victims', and a sum of
25 money.

1 Q And you said that two phones were located that
2 were determined to belonged to one of the victims?

3 A Yes.

4 Q Which victim was that?

5 A Adao.

6 Q okay. Where were those two phones recovered
7 from?

8 A Out of Mr. Fishburne's pocket.

9 Q okay. And were those phones shown to the victim
10 Adao?

11 A Yes, sir.

12 Q And was he able to identify those as his phones?

13 A Instantly.

14 Q And did he give you any indication that he had
15 at any point given those phones to the defendants?

16 A No, sir. During my initial speaking with him he
17 advised that they took -- that the persons who robbed
18 him, or came in his home, did in fact take cell phones.

19 MR. ALFARO: Thank you. Please answer any
20 questions defense has for you.

21 THE COURT: Mr. Shelton.

22 CROSS-EXAMINATION

23 BY MR. SHELTON:

24 Q officer Charlton, about what time of night was
25 this?

1 A I would have to refer, it was dark. Early,
2 early on in the nighttime. I would have to look at the
3 CAD to find out what time.

4 Q Are you familiar with the CAD report?

5 A Somewhat.

6 Q Well do you have your -- do you have any
7 materials with you today?

8 A Yes, sir. I can refer to that if you'd like.

9 Q Yeah, if you don't mind. Do you have your
10 incident report?

11 A Yes, sir.

12 Q You can look at your incident report.

13 A It was 11:30.

14 Q 11:30 p.m.?

15 A Yes, roughly.

16 Q And I think you mentioned that it was fairly
17 dark out there?

18 A Yes.

19 Q Is there a Food Lion near that area?

20 A Yes, sir.

21 Q Were the lights on in the Food Lion parking lot?

22 A Yes, sir. I would assume. I don't think that
23 you could see them from where we were.

24 Q But that would be a lighted area?

25 A Under normal circumstances I would assume that

1 it would be.

2 Q Now I think your testimony was that you went,
3 you met with the victims briefly, and then you went
4 back out and saw three black males walking down the
5 road?

6 A Yes, sir.

7 Q But you also didn't see those three black males
8 as you were going to the house; is that correct?

9 A Yes, sir.

10 Q You did not see those?

11 A Yes, sir, that's correct. No, I did not see
12 them.

13 Q And one of those black males took off running?

14 A Yes, sir.

15 Q Dogs were called out that night?

16 A I think. We usually have a K-9 unit on duty.
17 And I'm fairly sure that one of the K-9 units did
18 respond.

19 Q And in fact they caught a potential suspect, a
20 Rufus Peterson?

21 A I'm not sure.

22 Q Do you remember going out and ID'ing Mr.
23 Peterson?

24 A Oh, yes, sir. Yes, sir. That was at the gas
25 station up the street I think.

1 Q Have you reviewed that incident report?

2 A No, sir.

3 Q If you don't mind, take a look at that incident
4 report.

5 What time does it say at the top of that
6 incident report?

7 A 23:47.

8 Q And at some point in time you went to go ID Mr.
9 Peterson?

10 A Yes, sir.

11 Q Would that have been prior to taking the victims
12 to go see -- do the one-on-one identification? Or
13 would you have gone to go check out Mr. Peterson after
14 that?

15 A I can't recall. And I would venture to say that
16 under a normal circumstance that would have had to have
17 taken place after, after I was finished with what I was
18 doing. But I can't tell you for sure.

19 Q Okay. As soon as you saw those three black
20 males walking down the road, they were not free to go,
21 were they?

22 A No.

23 Q For all intents and purposes they were detained
24 at the time that you placed the spotlight on them?

25 A I don't know that I placed a spotlight on them.

1 Q At the time that you saw them?

2 A Yes, sir.

3 Q Because you put the dogs out on the third person
4 that took off running?

5 A If you are indicating I did anything concerning
6 the dogs, that would be incorrect.

7 Q Well the Sheriff's Office, I'm sorry, put the
8 dogs on to get the third person?

9 A Yes.

10 Q When 911 dispatch, they give you certain
11 information as you are going out to the scene; isn't
12 that correct?

13 A Yes.

14 Q Do you remember being dispatched to -- that the
15 victims were wearing -- that the suspects were wearing
16 white and red shirts?

17 A No, sir.

18 Q Hand you a copy of the CAD.

19 A Okay.

20 Q I think if you turn to the second end of the CAD
21 report it's going to give you your number. Your number
22 was BC-154?

23 A Yes, sir.

24 Q And looks as though 11:42:40, a black male,
25 white shirt, young guy. And that's from your call

1 number, correct?

2 A Yes.

3 Q Then 11, 23:42:47, detained times two?

4 A Yes.

5 Q Okay. At 12:18:43, does it say 76 to Apartment
6 G-17?

7 A Yes, sir.

8 Q And that's your -- well, at 11:46, it's typed in
9 that you went to radio silence at 11:41, is that
10 correct, 10-33?

11 A Yes, sir. That was concerning the -- I assume
12 that was concerning the other incident that was going
13 on.

14 Q And at that point in time not only are you
15 communicating with dispatch, but you are communicating
16 with other officers on the scene through other means;
17 walkie-talkies, car to car, cell phones?

18 A We don't have them. No.

19 Q No, okay.

20 A Not that I can -- and again, I can't tell you is
21 it abnormal, are we disallowed from calling other
22 deputies with cell phones? No.

23 But on a normal situation like this where we
24 have one fleeing and we have all these things going on,
25 stopping what you are doing to call somebody on a cell

1 phone is generally not a feasible thing.

2 So I can't say that I didn't, but normally I
3 would say I wouldn't. And we don't have car-to-car
4 capabilities.

5 Q So then but then there's a log, your next log
6 after that is 76 to Apartment G-1?

7 A Yes, sir.

8 Q And that would be 12:18?

9 A That's what it says.

10 Q Okay. Then your next log is 76 to Apartment G-1
11 at 1:29?

12 A Yes, sir.

13 Q 76 means you are going back, en route to the
14 scene to G-1?

15 A 10-76 means en route no matter where you are
16 going or what you are doing.

17 Q And Apartment G-1, is that where the incident
18 took place?

19 A Yes, sir.

20 Q So it's safe to say that at that point in time
21 you were heading back to the scene?

22 A If you want a direct answer I would say no.

23 Q Okay. So when you say en route to Apartment
24 G-1, you are not heading en route to the scene?

25 A You are asking a separate question from what's

1 realty. You know, I don't know. I don't log these. I
2 don't have no indication of knowing what has been
3 logged or how it was logged.

4 Q Okay.

5 A This is probably the second, maybe third CAD
6 report that I have ever held in my hand.

7 Q Okay.

8 A So I have no idea.

9 Q It's not false as far as you know?

10 A Say again?

11 Q It's not false as far as you know?

12 A I wouldn't implicate anyone falsifying
13 documents. But, you know, I can't testify to it.

14 Q Okay. Do you see on there where you went to go
15 ID Mr. Peterson?

16 A No.

17 Q Okay.

18 A My last transmission documented on here was that
19 I went to -- well it actually showed that I cleared.
20 Showed the last transmission documented on here is that
21 I went 23 at Apartment G-1, which is arrived at scene
22 is what 10-23 means.

23 And then I went 24, which means leaving the
24 scene, but it doesn't show that I cleared the call, it
25 doesn't show that I had a report, it doesn't show

1 anything, any of the normal things that would have been
2 after that at any rate.

3 Q Right. Well you didn't take them to jail so
4 that's -- there would be the others that took them to
5 jail, right, the suspects?

6 A Right

7 Q When the suspects were placed in cuffs, you
8 didn't go through the cell phone or laptop?

9 A When they were placed in cuffs?

10 Q Yes.

11 A No.

12 Q You didn't talk to them?

13 A Talk to who?

14 Q To Mr. Fishburne or Mr. Thompson? As far as
15 asking questions prior to the ID?

16 A I mean, yeah, I spoke to them.

17 Q Okay. Prior to the ID did you?

18 A I don't understand what you are asking.

19 Q Prior to the ID?

20 A Yes, I spoke to them. But no, I didn't --

21 Q Concerning the investigation? Were you starting
22 an investigation at that point in time?

23 A Preliminary.

24 Q They gave you their ID?

25 A Right. That type stuff.

1 Q And you ran -- and you had -- you ran the ID
2 and it was clear. There were no warrants or
3 outstanding warrants or anything to place them under
4 arrest?

5 A There is nothing that I had that would indicate,
6 I don't remember what -- whether they came back clear
7 or not. But I'm sure if they hadn't come back clear I
8 would have known that they had a warrant or something
9 of that nature.

10 Q And you didn't see them committing any crimes
11 out on the road?

12 A No, sir.

13 Q Are you familiar with something called Language
14 Line?

15 A Yes, sir.

16 Q That Berkeley County employs. Does Berkeley
17 County Sheriff's Office use it also?

18 A We have been told that it's expensive.

19 Q Okay. What is your understanding of Language
20 Line?

21 A I have used it in the past.

22 Q Okay.

23 A When I was told that it's expensive, don't use
24 it unless you have to.

25 Q And that's a interpreters?

1 A Sure.

2 Q It provides a third party, independent
3 interpreter that can interpreter what people are
4 saying?

5 A Yes, sir.

6 Q That speak different languages, it has a host of
7 languages that they use?

8 A I would assume.

9 Q But that wasn't used?

10 A No, sir.

11 Q In fact you used the neighbor?

12 A Yes, sir. Which is probably 99 percent more
13 common than Language Line because it's not feasible to
14 stop what you were doing and call Language Line every
15 time you have an incident.

16 Q Where you have an incident with people that
17 speak other languages?

18 A Correct. Which is very common.

19 Q Okay. And isn't it true that when you talked to
20 the victims you told them you had two people in
21 custody?

22 A Define -- did I tell them that I have two people
23 in custody?

24 Q That you have arrested two people?

25 A No, that's not true. Because they weren't

1 arrested, so I would not have told them that.

2 Q Did they tell you about a blue shirt? One of
3 the suspects wearing a blue shirt?

4 A I'm not familiar with the clothing colors.

5 Q Okay. But you know what the two suspects at the
6 time, Mr. Thompson and Mr. Fishburne, were wearing. Do
7 you remember what they were wearing that night?

8 A No, sir.

9 Q Were they wearing a blue shirt?

10 A I just said I don't remember what they were
11 wearing.

12 Q They indicated that the -- Mr. Silva or Mr. Adao
13 indicated that they changed clothes?

14 A I'm sorry?

15 Q That one of the suspects had changed clothes?

16 A I don't recall.

17 Q When you did the ID, when you took the victims
18 out to do a one-on-one ID, were there any other
19 civilians around?

20 A Not that I recall.

21 Q So they were the only two persons not in
22 uniform?

23 A I would assume so, yes.

24 Q Were they the only African-Americans?

25 A Yeah.

1 THE COURT: Was that a yes?

2 THE WITNESS: Yes, ma'am, I'm sorry.

3 Q (By Mr. Shelton) And you are saying 20 to 30
4 feet?

5 A I would say.

6 Q With a light placed on Mr. Fishburne and Mr.
7 Thompson?

8 A Well in the general area.

9 Q Okay.

10 A Illuminating them, as well as -- I mean the
11 lights are big lights so it illuminates a lot more than
12 just a six foot person, give or take.

13 Q And the Harbor Lake Drive, when you are going
14 from the apartment complex to Food Lion, on the
15 righthand side there are trees. Is that where they
16 were --

17 A No.

18 Q -- stopped? They were on the left-hand side?

19 A They were travelling that direction. They were
20 on the sidewalk side where there is, I think, parts of
21 it have a sidewalk.

22 Q Okay. What is on that side?

23 A Houses. Well the sides of houses.

24 Q Okay. Did you check to see if there were
25 shadows or anything like that that came through to the,

1 on top of the suspects when you placed the light on
2 them?

3 A They were well illuminated. Anything in front
4 of that spotlight is not going to have shadows.

5 Q Right. But you mentioned that it wasn't right
6 in front of the spotlight, they could have been to the
7 side where it could have illuminated --

8 A No

9 Q -- parts of the houses or a fence?

10 A No. I said that it illuminated them and
11 everything around them.

12 Q Okay. Do you remember doing a preliminary
13 hearing in this case?

14 A I know I did. I don't remember it.

15 Q Do you remember when you said at the preliminary
16 hearing that the victims advised that one of the
17 suspects had possibly changed shirts?

18 A No.

19 Q At the time that you took the victims to go do
20 the one-on-one identification, the interpreter was
21 present?

22 A The neighbor interpreter, yes, sir.

23 Q And both victims were together?

24 A Yes, sir.

25 Q You didn't separate them?

1 A No, sir.

2 Q And have them give separate identifications?

3 They both gave the same identification?

4 A Yes, sir.

5 Q At that point in time Mr. Thompson and Mr.

6 Fishburne were under arrest?

7 A I'm sorry?

8 Q Once the -- were officially placed under arrest,

9 as far as given Miranda warnings, once the ID was made?

10 A Shortly after.

11 Q Okay. So the cell phones that you did a Terry

12 frisk or search incident to arrest, they weren't going

13 to be lost?

14 A I'm sorry?

15 Q They weren't going to be lost, those cell phones

16 that were found on Mr. Fishburne, they could have been

17 placed into evidence. Mr. Fishburne wasn't going to

18 take those phone back at that point in time, was he?

19 A I don't know that I understand. I'm sorry, I

20 don't mean to.

21 Q I'm getting ahead of myself. Let me rephrase.

22 All right, you placed -- you gave Mr. Thompson -- Mr.

23 Fishburne his Miranda warnings?

24 A Yes, sir.

25 Q You then searched Mr. Fishburne incident to

1 arrest?

2 A Yes, sir.

3 Q And that's when you found two cell phones?

4 A Yes, sir.

5 Q And at that point in time, Mr. Fishburne was not
6 getting those cell phones back?

7 A Right. Well it was unlikely.

8 Q Okay. You could have placed them into evidence?

9 A Yes, sir.

10 Q You did not place them into evidence?

11 A No, sir.

12 Q You gave them back to the victims?

13 A Yes, sir.

14 Q Okay. You didn't verify that they were -- that
15 those were the victims' cell phones?

16 A They were of like from what the victims had
17 described being taken from their property.

18 Q From what the victims described, not any
19 independent verification?

20 A Right.

21 Q But they could have been placed into evidence at
22 that point in time?

23 A Yeah.

24 Q Okay. You went through the cell phones?

25 A Yes.

1 Q Did you take any pictures of the cell phones?

2 A No, sir.

3 Q The laptop was placed into evidence?

4 A Yes, sir.

5 Q And that also the victims indicated it belonged
6 to them?

7 A Yes, sir.

8 Q Did you verify that? That that laptop belonged
9 to them?

10 A I can't recall.

11 Q There was no independent verification?

12 A Not that I can recall.

13 Q You didn't find a gun?

14 A No, sir.

15 Q I think you indicated on direct that your
16 investigation revealed that Clarence Fishburne was the
17 owner of that phone. Can you shed light on that
18 investigation?

19 A When the -- when the -- at some point during the
20 questioning process, I don't know, I can't tell you
21 exactly when, I asked him directly and he responded
22 that -- I asked him, how did your cell phone get into
23 their house? And he responded that, them other boys
24 must have had it.

25 Q But he didn't indicate -- you didn't show him

1 that cell phone and say, is this your cell phone?

2 A I'm sure I didn't.

3 Q You didn't check phone records, or you
4 personally didn't do that?

5 A No, sir. I had his admission, I didn't.

6 Q You said there was a sum of money that you
7 found?

8 A Yes, sir.

9 Q Okay. The victims were pretty clear on that
10 amount of money and the denominations that were taken?

11 A Upon my questioning.

12 Q okay. \$100 bills, \$2 bills?

13 A Yeah. It's a Brazilian tradition.

14 Q Okay. But you didn't find any of that, those
15 \$100 bills or \$2 bills in the sum of money that was
16 taken?

17 A I cannot remember the denominations. I would
18 assume by your questioning that, no, I didn't.

19 I know I documented it in my report. If you'd
20 like me to refer, I can.

21 Q Go ahead.

22 A I see where it was \$242. I can't see where the
23 denominations are, as to what I found. Here it is. I
24 found it.

25 No, sir, there is no \$100 bills indicated here.

1 Q And no \$2 bills?

2 A And no \$2 bills.

3 Q And Mr. Silva, we will go back a little bit.

4 But Mr. Silva mentioned that his Blackberry was taken,
5 and you didn't find a Blackberry?

6 A No, sir.

7 Q They gave you, Mr. Thompson and Mr. Fishburne
8 gave you their ID, valid ID?

9 A I'm not sure.

10 Q Okay.

11 A I can't recall how they were identified, but I
12 felt sure in their identification. I don't know if it
13 was by a valid identification card or by the name and
14 date of birth which is also very common.

15 A Okay. And so but it was run and it came back
16 Clarence Fishburne and Douglas Thompson?

17 A I'm sure.

18 Q Okay. It wasn't -- they didn't give you a fake
19 name?

20 A (Negative head shake.)

21 Q Okay. And at that point in time that you had
22 their name, their information, you could have done a
23 six-pack identification?

24 A (Affirmative head shake.)

25 Q But you chose to do the one-on-one

1 identification?

2 A Yes, sir.

3 MR. SHELTON: No further questions.

4 THE COURT: Mr. Aylor?

5 CROSS-EXAMINATION

6 BY MR. AYLOR:

7 Q Good afternoon, Officer Charlton.

8 A Good afternoon.

9 Q I'm going to try not to be too repetitive. Let
10 me start with this. This Harbor Lake Drive area that
11 you were en route until you pull into the apartments,
12 have you been around that area very often?

13 A Every night, every working night for the last
14 four years.

15 Q So I guess it's not a stretch to say that you
16 know that area fairly well?

17 A I would say.

18 Q Tell us about that area. Is that an area that
19 is high traffic?

20 A It's hit and miss. I mean sometimes it's like a
21 ghost town around there and sometimes it's like a mall.

22 Q What's it run? It runs perpendicular to Red
23 Bank Road; is that correct?

24 A Yes, sir.

25 Q Okay. And there is a lot of -- I know you said

1 something earlier about Food Lion -- but there is a lot
2 of corporate businesses, restaurants, that sort of
3 things in that area?

4 A Not the area we were. The general area, yes.

5 Q Up towards Red Bank Road?

6 A Yes, sir. Up the street.

7 Q Okay. And what would you say the, just in your
8 guesstimate, the socioeconomic level was of that area?
9 Are these, you know, multimillion dollar homes?
10 Government housing? What would be just your guess
11 after being there for four years?

12 A I wouldn't be able to say whether they were
13 government housing, but I would say the equivalent, if
14 not.

15 Q Okay. So a lot of pedestrians walking around?
16 A lot of folks who don't have cars?

17 A Generally.

18 Q Okay. And that's not just from 9:00 to 5:00,
19 right?

20 A Right.

21 Q So it could be three o'clock in the morning and
22 if you are patrolling that area and you see a man and a
23 woman or a group of four people walking down the
24 street, that wouldn't be an odd circumstance?

25 A At three o'clock in the morning it probably

1 would be.

2 Q How about?

3 Q Not odd as in, oh my gosh, I cannot believe it.
4 But odd as in less than normal.

5 Q Uh-hum. But earlier in the evenings, I mean,
6 people use that road a lot on foot as opposed to in
7 vehicles?

8 A Yes, sir.

9 Q Okay. And you stated earlier that you
10 originally were radioed to the scene and you drove down
11 Harbor Lake. Was that coming off Red Bank Road?

12 A Yes, sir.

13 Q And you did not see any individuals at all or
14 just --

15 A Nobody.

16 Q There was no one?

17 A Like I said, sometimes -- I mean, it's not
18 uncommon, sometimes there is no one anywhere.

19 Q Okay. And then once you came onto the scene,
20 the scene being obviously the actual scene of where the
21 alleged robbery occurred, you first spoke with who?

22 A Whenever you show up on a scene where somebody
23 just got their houses broke into, you speak to
24 everybody all at one time.

25 Q Okay, well, let's start there. How many is

1 everybody? How many people were in the area?

2 A I can't remember. I know that just the two, and
3 I think one of the victim's wife was wandering around.

4 Q Okay.

5 A Less than five.

6 Q Less than five people were at the actual
7 apartment?

8 A I would say.

9 Q Okay. And did you -- when you arrived there I
10 know you said that you briefly spoke with them the
11 first time; is that correct?

12 A Yeah. It was more of, there they are, they're
13 walking up the street now.

14 Q Okay. So then you turned back around?

15 A Yes, sir.

16 Q So you never got out of your car physically the
17 first time?

18 A No, sir.

19 Q Okay. So then you turned back around and went
20 back towards Red Bank Road?

21 A In the direction that the victims had indicated.

22 Q So the same direction you just came down?

23 A Yes, sir.

24 Q Okay. And that's when obviously, as you've
25 previously testified, you saw Mr. Thompson, Mr.

1 Fishburne and another individual?

2 A Yes, sir.

3 Q Let's talk about that initial stop. When the
4 third individual fled the scene, how long would you say
5 that you were able to, you know, view him?

6 A I viewed the back of him for maybe, I couldn't
7 judge really quite the distance, but maybe 50 yards.

8 Q So you saw the back of his head for 50 yards,
9 from 50 yards away?

10 A Back of his whole person.

11 Q Okay. Then he fled?

12 A Yes, sir.

13 Q Okay.

14 A Let me not misspeak. When I first pulled up, I
15 saw him. I couldn't identify him, but I saw him and
16 saw that he was a younger fellow.

17 Q You saw that he was African-American?

18 A Yes, sir.

19 Q And you don't recall if you put a spotlight on
20 them at that point or not?

21 A I'm sure I didn't.

22 Q Okay. In regards to the laptop specifically,
23 you said a call had come in that you got over dispatch
24 that referred to the laptop, that's how you were aware
25 of that potentially could be an item?

1 A Yes, sir.

2 Q Okay. And when did you receive that on
3 dispatch? I don't mean the exact time, obviously, I
4 just mean within the segments of this event?

5 A I couldn't tell you. It was en route. At one
6 point during the -- a lot of times there are several
7 short as they get more information that comes out type.

8 Q Okay. When you approached these individuals,
9 after you had briefly stopped into the apartment
10 complex and turned back around, were they walking back
11 towards the apartment complex, or towards Red Bank
12 Road?

13 A Towards Red Bank Road.

14 Q So you would have seen them from the backside?
15 Originally, before you stopped them you would have seen
16 the backs?

17 A As I was approaching, yeah.

18 Q And that was probably less than a half a minute
19 from when you actually had -- would have been going the
20 opposite direction?

21 A Well I wouldn't put a time frame on it like
22 that. But I would say a very short amount of time.

23 Q And you didn't see them, you didn't pass them
24 the first time, correct?

25 A Not that I can recall.

1 Q Okay. And you don't recall -- I know you said
2 you are not real familiar with the CAD so I won't go
3 over it -- but you don't recall ever hearing anything
4 about, whether it was over dispatch or not, related to
5 what color of clothes, red and white shirts, anything
6 like that?

7 A I don't recall.

8 Q Okay.

9 A I mean, I'm sure in normal circumstances there
10 is a clothing description put out. I just don't recall
11 what it was.

12 Q Are those sort of important when you are looking
13 for somebody, clothing descriptions?

14 A Yeah.

15 Q Okay. But you don't recall it?

16 A No, I don't.

17 Q Okay. When you returned back after the point
18 which you testified to that you had detained Mr.
19 Thompson and Mr. Fishburne and run their
20 identifications and basically held them at that point,
21 correct?

22 A Yes.

23 Q They were not under arrest but they were being
24 held, correct?

25 A Yes.

1 Q Okay. Then you returned to the apartment
2 complex, correct?

3 A Yes.

4 Q Okay. And it was at that time I believe you
5 described earlier you got a general consensus of what
6 had transpired?

7 A Right. I mean there -- all of the details
8 weren't given, but I was given the story basically.

9 Q How many people, and again it's not a specific
10 number, by the time you returned after you had detained
11 Mr. Thompson and Mr. Fishburne, Deputy Ollic had come
12 and you left the two individuals with Deputy Ollic, how
13 many people were then in the area of the apartment?

14 A Again I couldn't -- I focused on the important
15 people and don't really pay attention to.

16 Q Okay. Well let's talk about those important
17 people. You said that obviously one of them was Mr.
18 Silva, correct?

19 A Yes.

20 Q Okay. And another one was Mr. Olivera, correct?

21 A Yes, sir.

22 Q Mr. Silva's wife, was she considered an
23 important person?

24 A No.

25 Q She was not?

1 A No.

2 Q Mr. Silva had told you that his wife was in the
3 house at the time the invasion occurred, correct?

4 A Right. But she was -- I don't think that she
5 was a witness to the actual incident. I don't know,
6 but that's what I was told at the time.

7 Q Okay. So to the best of your memory, are you
8 stating that Mrs. Silva was not in the home at the time
9 that the home was invaded?

10 A I'm not really sure.

11 Q You don't know, okay.

12 Well what was your conversation like with Mrs.
13 Silva?

14 A With Mrs. Silva?

15 Q Correct.

16 A There wasn't.

17 Q So she was not estranged from Mr. Silva, she
18 lived in that residence, correct? Or do you not know?

19 A I don't know.

20 Q Okay. And she may or may not have been in the
21 house when the house was invaded?

22 A Right.

23 Q Okay.

24 A If -- I think she was in the house at some
25 point. I think, and I cannot remember whether she was

1 upstairs or they were downstairs, or vice versa, or
2 something to the nature.

3 But that the victims indicated she was there and
4 the defendants were overly concerned with where she
5 went. So it would lead me to deduce that she was there
6 at some point.

7 Q Okay. So then you assume she was in the house
8 at some point in time?

9 A Yes, sir.

10 Q You have no idea whether or not she saw any of
11 the individuals that had entered the home, correct?

12 A No.

13 Q And that's because you never spoke with her,
14 correct?

15 A Right.

16 Q And she was at the scene when you returned after
17 detaining the two individuals, correct?

18 A I think.

19 Q You think. Do you have some doubt that she was
20 not in the area of her home where it was just robbed?

21 A Yes.

22 Q You think she fled?

23 A No, I don't think she fled. But they indicated
24 to me that she left during the commission so I don't
25 know if she came back or not.

1 Q You didn't ask her?

2 A No.

3 Q Okay. What about another young lady. Was there
4 another individual who had entered the residence while
5 robbery occurred? A neighbor?

6 Do you remember the officers telling you that?
7 I mean I'm sorry, I apologize, do you remember the
8 victims telling you that?

9 A No.

10 Q You don't remember?

11 A I don't remember.

12 Q Okay.

13 A There was a lot of conversation that took place
14 in that short amount of time so.

15 Q And all this conversation was somewhat sporadic
16 with some broken English and some Portuguese?

17 A Yes. I speak a little Portuguese, they speak a
18 little English, and then the interpreter kind of filled
19 in the gaps where it needed and completely translated
20 where needed.

21 Q And if I remember correctly, you speak a little
22 Portuguese because your stepmother has two aunts that
23 are from Brazil; is that correct?

24 A No.

25 Q Why is it that you speak Portuguese?

1 A Well because I have some Portuguese speaking
2 friends. I have a stepmother and two aunts.

3 Q Okay. So a stepmother and two aunts that speak
4 Portuguese, not just stepmother's aunts.

5 A Yes.

6 Q Okay. So we have a combination of during this
7 investigation where you are getting the general
8 consensus of what happened, you discussing the event
9 with Mr. Silva, Mr. Olivera and Mr. Rubio. And that is
10 a combination of English as well as broken Portuguese
11 between all of you?

12 A Right.

13 Q Okay.

14 A Whenever -- let me clarify. Whenever it gets to
15 particulars, everything is, like I said, my Portuguese
16 is very broken and I am aware of my limitations. So
17 whenever we get into something, you know, that needs to
18 be particular, obviously I'm going to defer to the
19 translator.

20 Q And does Mr. Rubio, to your knowledge, have any
21 sort of formal training in translation?

22 A No. To my knowledge, he doesn't. I don't have
23 that knowledge, let me.

24 Q You didn't ask him?

25 A No.

1 Q And you stated earlier that you don't use
2 Language Line because it's expensive?

3 A Right.

4 Q And Language Line has over 100-and-some-odd
5 languages that you can get translated; is that correct?

6 A I don't know.

7 Q Would that sound?

8 A I would say they are called Language Line so
9 they probably have a sufficient database.

10 Q But you didn't use them during the investigation
11 of an armed robbery, kidnapping, and burglary because
12 it was expensive?

13 A No, sir. I didn't use them because I had
14 interpreters readily available.

15 Q You had multiple interpreters?

16 A Yeah. There's probably 100 Brazilian, or
17 Portuguese and Spanish speaking people in that complex.
18 I'm sure I could have found one if I needed it.

19 Q To which you knew nothing about any of them,
20 correct?

21 A Say again?

22 Q To which you knew nothing about any of them.
23 You knew nothing about their background, nothing about
24 whether they had any kind of training, correct?

25 A Correct.

1 Q But Language Line is something that is actually
2 provided by Berkeley County, correct?

3 A Correct.

4 Q Okay. Then you took one of these convenient
5 translators along with Mr. Olivera and Mr. Silva back
6 to where Mr. Ollic was holding Mr. Thompson and Mr.
7 Fishburne, correct?

8 A Yes, sir.

9 Q Okay. And you stated earlier that you don't
10 know exactly how the identifications went with Mr.
11 Silva and Mr. Olivera and Mr. Rubio because it happened
12 so fast, as far as their identifications of the two
13 individuals?

14 A I don't think I indicated that I don't know how
15 it went, I mean I was there.

16 Q Okay. Well tell us how it went?

17 A I mean it was all happened kind of fast.

18 Q I believe that's what I just said. That's what
19 you stated, it all happened kind of fast, correct?

20 A I'm sorry, I must have misheard. I thought you
21 said that I said I didn't know how it went.

22 Q Well you can't really elaborate on it because it
23 happened so fast; is that fair to say?

24 A Yeah, I guess, I guess that would.

25 Q Did you separate Mr. Silva and Mr. Olivera

1 before you did the identifications?

2 A No, sir.

3 Q So tell me, what is the actual -- did you have a
4 police cruiser, like a Crown Victoria car?

5 A Yes, sir.

6 Q Okay. Obviously you are driving. Is someone in
7 the passenger seat?

8 A No, sir.

9 Q Okay. So Mr. Olivera, Mr. Silva, and Mr Rubio,
10 I'm not going to ask you who was sitting where, were
11 all basically piled in the back?

12 A Correct.

13 Q And you took them over there. In English you
14 told them what you were looking for -- you were asking,
15 not looking for, but you were asking, were these the
16 individuals.

17 And they speak back and forth a little bit of
18 English, a little bit of just physical motions, and
19 then some Portuguese and then you determined they both
20 ID'd both those two individuals?

21 A Yes, sir.

22 Q Okay. So I understand now why it happened so
23 fast. And earlier you say that you don't recall if one
24 -- you don't currently recall if one of the individuals
25 stated that one of the subjects, and either one not

1 specified, had actually changed shirt, correct?

2 A I'm sorry, you said?

3 Q You don't recall whether or not you were told by
4 via the translator that one of the subjects had changed
5 shirts?

6 A At this time, I don't.

7 Q Okay. What if I said that, if I was to ask you
8 is there a chance you would have said that in your
9 preliminary hearing, you are not denying that may have
10 been the case?

11 A I mean if -- it's a possibility. I mean if it
12 occurred in that disclosure of time and I remembered
13 then and don't now, then.

14 Q Okay. I want step back for a second. Do you
15 recall earlier stating that when you returned, I
16 believe it was while Mr. Alfaro was asking you some
17 questions, do you recall stating that -- and I believe
18 you said it was Mr. Silva, perhaps not -- but that one
19 of the individuals who was an alleged victim handed you
20 the cell phone that was found inside his living room I
21 believe you said?

22 A Yes, sir.

23 Q Okay. And he told you he found it, correct?

24 A Yes, sir.

25 Q Okay. Through further investigation later were

1 you aware of the fact that he actually told -- he
2 actually stated to Mr. Wright that that cell phone was
3 actually found by his wife?

4 A No.

5 Q So you didn't know that?

6 A Well I don't know that -- I don't know that -- I
7 don't know which one of them gave it to me, first of
8 all. I don't remember.

9 And second of all, I don't know that he said, I
10 found this. I think it was more of a, this was here --
11 actually, I think what they said was, here, they left
12 this.

13 Q Okay. So you don't know, then you don't
14 actually know whether it was Mr. Silva or Mr. Olivera
15 or someone else that actually found the phone?

16 A Correct.

17 Q Correct. That's was just what they communicated
18 to you when they addressed it. And you don't exactly
19 know where then -- if you don't know who found it, you
20 don't know where it was found?

21 A I was told that it was found in the living room.

22 Q But you don't know that?

23 A No, I wasn't there so I don't know.

24 Q Okay. When you took Mr. Olivera, Mr. Silva and
25 Mr. Rubio back to the place where these individuals

1 were being held, Mr. Fishburne and Mr. Thompson, did
2 you block off the apartment?

3 A No, I didn't at any point.

4 Q No. Okay.

5 A The only time that I would have felt that I
6 needed to was while I was in it. There was going to be
7 no need then because I was in it.

8 Q And when was it that you were in it?

9 A I'm sorry?

10 Q When was it that you were in the apartment?

11 A At some point during the -- when I went back
12 after having detained them.

13 Actually I can't say that's for sure either. It
14 could have been after the defendants were taken to the
15 detention center.

16 Q And that's when you went back into -- or went
17 into the apartment?

18 A Yes, sir.

19 Q So it was, you went in at least at some point
20 after you had already had the phone put in your
21 possession, correct? And when I say the phone, I mean
22 the phone that was handed?

23 A Yes, sir. That phone would have been put into
24 my possession very early into the whole investigation.

25 Q And you did not put that phone into evidence,

1 correct? Initially?

2 A I don't have the evidence. I don't think so. I
3 think, yeah, actually do you mind if I refer?

4 Q Nope, please.

5 A Yes, sir. It was placed into evidence.

6 Q Uh-hum. Was it placed immediately into evidence
7 when you were handed the phone?

8 A No, sir. It was placed into my vehicle. I mean
9 I didn't stop the investigation and drive 15 miles to
10 Monks Corner to place the phone into evidence and then
11 come back.

12 Q Do you remember stating at the prelim that you
13 uneducatedly grabbed the cell phone instead of taking
14 it into evidence?

15 A Yes.

16 Q You do remember saying that, okay. So then it
17 wasn't initially placed into evidence, correct?

18 A It was taken into my custody for evidence.

19 Q And then you went through the phone, correct?

20 A Yes, sir.

21 Q And you didn't have a search warrant, correct?

22 A Yes, sir.

23 Q Okay. And at that point you didn't know whose
24 phone it was, correct?

25 A Correct.

1 Q Okay. How long would you say the period of time
2 between when you left both Mr. Fishburne and Mr.
3 Thompson with Deputy Ollic, until you returned back
4 with Mr. Silva, Mr. Olivera and the translator to do
5 the identification was?

6 A I couldn't tell you.

7 Q Would 45 minutes seem relatively normal?

8 A I would say anywhere from 15 minutes to an hour
9 would be normal.

10 Q Okay.

11 A Just depending on the circumstances.

12 Q And when you took both those gentlemen back to
13 do the identification, at that point you personally had
14 not received any information from either Mr. Silva or
15 Mr. Olivera in regards to any description they had made
16 in regards to any of the three people that had been in
17 their home that evening, correct?

18 A Just black guys, I mean.

19 Q Just black guys, okay. So they told you black
20 guys, you all went and looked at two black guys down
21 the street, correct?

22 A No.

23 Q That's not what happened?

24 A No, that's not what happened.

25 Q Okay. Did you all go look at two black guys

1 down the street?

2 A Yes, sir.

3 Q Was there any other black guys there?

4 A No, sir.

5 Q Was there any other people there in street
6 clothing?

7 A No, sir.

8 Q Was there anybody else there that was not in a
9 deputy uniform?

10 A At any point?

11 Q At that point in time when they were doing the
12 ID?

13 A No. When we were doing the ID, no.

14 Q Was there anybody else that was in handcuffs
15 other than Mr. Thompson and Mr. Fishburne during the
16 ID?

17 A No, sir.

18 Q And all you knew was they had told you black
19 guys had broken into their apartment, correct?

20 A No.

21 Q I must be confused. I believe you stated
22 earlier that the only information you personally
23 received from the victims was that black guys had
24 broken into their apartment?

25 A Yeah. But prior to that I told you that, I

1 can't remember who I told, that they came out and they
2 were going, they're walking up that way right there.

3 Q But their descriptions, the only descriptions
4 you had about them was, personally, was that they were
5 black, correct?

6 A I know that I had that description. I don't
7 know that that was the only description.

8 Q If you had any other descriptions, you did not
9 note them in your report, correct?

10 A Correct.

11 Q Okay. Why did you not attempt to have or to
12 question and gather info, excuse me -- any information
13 related to anyone else, whether it be Mrs. Silva or the
14 neighbor that allegedly had been inside the house, to
15 also identify the suspects?

16 A Because they identified them. I figured, you
17 know, that was --

18 Q Figured there was no reason to get anymore?

19 A Yeah.

20 Q Okay.

21 A Pretty sound. They were pretty adamant that
22 that was them.

23 Q Okay. Even though they may have said that
24 they've changed shirts, you don't remember, correct?

25 A Yeah.

1 Q Okay. Now, and I believe you reviewed it, the
2 report from Deputy O'Neil regarding Rufus Peterson?

3 A Say that again?

4 Q Earlier in this testimony you reviewed the
5 report by Deputy O'Neil regarding Rufus Peterson?

6 A I glanced at briefly before it was taken away
7 from me.

8 Q Okay. Would you mind -- oh, you don't have copy
9 up there? Now I'm not going to take it away. If you
10 could just take a quick glance over it, then I will ask
11 you a couple questions about that.

12 A You say a quick glance over it, you know, do I
13 need to read the contents of the narrative?

14 Q Just the highlights where you were involved.

15 A Okay.

16 Q Now after reading that, do you now recall at
17 what point during this evening, and I don't mean the
18 time I just mean within the different things that you
19 were involved in, when this occurred? When I say when,
20 I mean when you went to the gas station?

21 A No.

22 Q No. You just know at some point that night you
23 went to the gas station, correct?

24 A Yes.

25 Q And that was because Deputy O'Neil had someone

1 in custody, correct?

2 A Sgt. O'Neil.

3 Q Sgt. O'Neil, I apologize, had someone in custody
4 who may of may not have been the third individual
5 involved, correct?

6 A Correct.

7 Q And you went there to do what?

8 A To identify if it was the guy that ran from me
9 or not.

10 A Okay. And you, what did you do when you went
11 there and you ID'd him, what was your determination?

12 A According to that report, in fact nobody else
13 was arrested I would say it was negatively ID'd.

14 Q So you determined that that was not the person
15 who run from you, correct?

16 A I would assume.

17 Q And earlier you testified that you never saw the
18 face of the person and were 50 yards away from them
19 when they ran?

20 A No. I said I did see the face of him, just not
21 very well.

22 Q Okay. In the dark because your spotlight wasn't
23 on, correct?

24 A Yes.

25 Q So you determined this was not the third

1 individual, even though you saw his face briefly before
2 he ran in the dark?

3 A Right.

4 Q Did you bring Mr. Silva, Mr. Olivera, and their
5 translator to the gas station to view this person?

6 A No.

7 Q Why did you not do that?

8 A Because this guy wasn't the guy. This guy was
9 older and bigger.

10 Q That was, in your opinion, in regards to the guy
11 that ran from you, correct?

12 A Right.

13 Q You have no idea whether or not he was the third
14 individual wielding a gun in the home though, correct?

15 A No. One of the defendants was the person that
16 they indicated was wielding a gun in the home.

17 Q All right. But you have no idea if this was one
18 of the three individuals who had broken into the home
19 earlier that evening, correct?

20 A No, I don't. I know that that wasn't the guy
21 that ran from me.

22 Q Uh-hum. But you weren't in the home when it got
23 broken into, obviously?

24 A Obviously.

25 Q So and this individual, from reading that

1 report, he ran from the police, correct?

2 A Yeah.

3 Q To the point the dogs had to get him, correct?

4 A Yeah. I don't know if you are familiar with
5 where that gas station is, but there's not a lot people
6 that don't run from the police in that area.

7 Q What did you mean by that?

8 A I mean it's not uncommon for people to run from
9 the police in that area.

10 Q Okay. And he actually ended up not having any
11 warrants out, correct?

12 A Correct.

13 Q So was there any determination why he ran or
14 just because it's the gas station where people run from
15 the cops?

16 A It's not the gas station where the people run
17 from the cops, but I don't know that if you're familiar
18 with the area, but, and I don't know if you are
19 familiar with police work, but people run from the
20 police all the time that don't have warrants that just
21 don't want to talk to the police. It's not an uncommon
22 thing.

23 Q And he didn't have any warrants, correct?

24 A I think that was indicated several times
25 already.

1 Q And you have no idea whether or not he was the
2 third person that broke into Mr. Silva and Mr.
3 Olivera's home, correct?

4 A No, sir.

5 Q Okay. In regards to the laptop, once you
6 received the laptop, did you take that laptop back and
7 show it to Mr. Silva?

8 A I can't remember. I don't think so. I think
9 they saw it while -- they may have seen it while --
10 because it was still on the ground.

11 Q So the laptop that is in evidence, probably in
12 this courtroom, was laying on the ground while they
13 were doing the identification of Mr. Thompson and Mr.
14 Fishburne?

15 A Yeah.

16 THE COURT: Is that yes?

17 THE WITNESS: Yes, ma'am, I'm sorry.

18 Q (By Mr. Aylor) And at that point in time you
19 already knew that, because it came in over the
20 dispatch, that one of the items that they had said that
21 was missing was a laptop, correct?

22 A Yes, sir.

23 Q Did they ID both the individuals and then say,
24 oh, and by the way, that's our laptop too?

25 A No. There was never a reference made to the

1 laptop.

2 Q Okay. But they just could see it while they
3 were doing their identification?

4 A I don't know that. It was there.

5 Q That would have been the only time they could
6 have even confirmed it was theirs, correct?

7 A Yeah.

8 Q Okay.

9 A But they didn't.

10 Q Now in regards to the cell phone situation,
11 looking at your chain of custody sheet, and I don't
12 know if you have that.

13 A I don't.

14 Q You do not?

15 A No, I do not.

16 Q Just tell us whose name is on there as the
17 officer, and then who's the defendant, and what items
18 are on there.

19 A My name is the officer, and Clarence Fishburne
20 is the defendant. Virgin mobile cell phone, cell phone
21 charger, gray Samsung Alltel cell phone.

22 Q Okay. And if you could do the same for this
23 one? And also tell us what is marked out.

24 A My name, Douglas Thompson, the wallet with
25 cards, \$442, and a Virgin mobile cell phone and a cell

1 phone charger.

2 Q And those later two items are marked out,
3 correct?

4 A Yes, sir.

5 Q You have your report in front of you, correct?

6 A Yes, sir.

7 Q In your report, if you'll turn to my CORO '05.

8 A I'm sorry? C-O-R-O?

9 Q Starting on this page.

10 A Okay.

11 Q Okay. It states here that, at the bottom
12 starting at, the victims' positively identified the
13 subjects. See where I am at?

14 A Uh-hum.

15 Q And moving on to the next page, as the persons
16 that committed the act. And then goes on in regards to
17 -- start in the middle where it says, you were read
18 your Miranda -- Subject Thompson was searched, read his
19 Miranda rights. You see that right there?

20 A Yes, sir.

21 Q During the search I discovered in the subject's
22 pocket a wallet containing six \$50 bills, six \$20's,
23 and two \$1 bills, and a virgin mobile cell phone,
24 correct?

25 A Yes, sir.

1 Q So I guess I'm just a little bit confused to
2 this chain because per this police report it states
3 that Subject Thompson had a Virgin mobile cell phone.
4 But per the chain of custody that we just went over,
5 you have it marked off his and put on Subject
6 Fishburne's. So which one is it?

7 A I'm sorry, say that again?

8 Q Let me just hand these back up to you. Those
9 are both Mr. Thompson's and Mr. Fishburne's chain of
10 custody sheets, correct?

11 A Yes, sir.

12 Q And you filled out both of those, correct?

13 A Yes, sir.

14 Q You go back to where we were just reading the
15 statement, after it says subjects were placed under
16 arrest. Subject Thompson was searched, read his
17 Miranda rights and questioned.

18 During the search, I discovered in the subject's
19 pocket a wallet containing six \$50 bills, six \$20 bills
20 and two \$1 bills, and a Virgin mobile cell phone.

21 A Yes, sir.

22 Q Now again that's Subject Thompson?

23 A Yes, sir.

24 Q If you look at the evidence chain sheet in front
25 of you under Subject Thompson, you wrote Virgin mobile

1 cell phone,

2 A Marked it out.

3 Q And then you marked it out. And then you put
4 it, or at some point it was on, added to subject
5 Fishburne's, correct?

6 A There is a Virgin Mobile cell phone written
7 there. I don't know that he didn't have one as well.

8 Q Is there any other Virgin mobile cell phone
9 referenced in the police report?

10 A No.

11 Q No.

12 A I did indicated earlier -- well, I don't know
13 that -- I don't know that -- it's not a common practice
14 for me to list everything that I pull out of your
15 pocket. I'm only going to list the things that I pull
16 out of your pocket that are going to be pertinent to
17 the case.

18 If you have a tube of lipstick and, you know, a
19 wadded up receipt, I'm not going to list it in my
20 report. I'm not saying that he had other things in his
21 pocket, but I can't -- obviously I don't always list
22 everything that is in someone's pocket.

23 Q I understand that. You wouldn't list tic-tacs
24 in there. I understand what you are saying. But my
25 question is you listed--

1 A If he had his own personal cell phone that was
2 found to be his personal cell phone, it would not have
3 been -- I don't think that I would have listed it in my
4 report.

5 Q Where would it go?

6 A It would have went into his property at the
7 jail.

8 Q So is it -- so then you think in here -- let's
9 go back to the statement. It says, Subject Thompson
10 was searched, read his Miranda rights, questioned, it
11 goes through the money, and then a Virgin mobile cell
12 phone, most contacts in the phones had Latino type
13 names?

14 A Right.

15 Q So you thought that yet another phone that you
16 went through --

17 A No. That would have been -- I don't -- like I
18 said, I don't know. But so because it indicates there
19 that it's latino names --

20 Q Deputy Charlton, who had the Virgin mobile cell
21 phone? That is my question. Was it Subject Thompson,
22 per your police report? Or was it Subject Fishburne,
23 per your chain?

24 A It would have been Subject Thompson per my
25 police report.

1 Q So then your chain of evidence is flawed on both
2 subject Thompson and Subject Fishburne, correct?

3 A Yes, sir.

4 Q It's just wrong, correct?

5 A I don't know that it's just wrong, but there is
6 some discrepancy, yes.

7 Q Is it a discrepancy or is it wrong?

8 A I just said it was a discrepancy. I don't know
9 that it's wrong or obviously there is something.

10 Q Not right about it?

11 A Not right about it.

12 Q Not right about it. Okay.

13 Let's go to one last thing I wanted to check.
14 In regards to the money, and again still looking at
15 subject Thompson. It says that it contained six \$50
16 bills, on the same page of your police report, six \$20
17 bills and two \$1 bills, correct?

18 A Yes, sir.

19 Q That equals out \$442, correct?

20 A Yes, sir.

21 Q And then you stated earlier that when you were
22 speaking with at least the two victims you did speak
23 with, that one of the individuals, I believe, lost
24 \$600, correct?

25 A If that's what the report says, I don't

1 remember.

2 Q Here, I can show you.

3 A I can see it.

4 Q Okay. And that one there says that the victim
5 silva wallet, which he advised contained \$600, which
6 was three \$100 bills, five \$50 bills, a few \$20 bills,
7 a few \$1 bills, and two \$20 bills, correct?

8 A Yes.

9 Q And that's what one of the victims you talked to
10 stated, correct?

11 A Yes, sir.

12 Q And then soon after that same victim told you
13 that they threatened to kill his wife, correct? In
14 that police report?

15 A No.

16 Q That would be killed if victim's wife did not
17 return?

18 A Has nothing to do with killing the wife.

19 Q Oh, okay. Right, they would be killed if she
20 did not return, correct?

21 A Right.

22 Q So they had knowledge of her to some degree,
23 correct? You do know that?

24 A The persons that --

25 Q Correct, the persons that were in the home.

1 A Yes, sir.

2 Q Were you aware of the fact that one of the
3 victims stated to Ted Wright that another individual in
4 the neighborhood had told him that the police had
5 already captured two of them prior to you taking them
6 down there to ID the individuals?

7 A No. I wouldn't know. I don't know what they
8 discussed while I'm not there.

9 Q Okay. And when you say you are not aware of
10 what was discussed between the victims and neighbors,
11 correct? Because you weren't there?

12 A Right.

13 Q Were you there when Ted Wright spoke with the
14 victims?

15 A Not at all times. But I did witness, you know,
16 when I was there. But not at all times, no.

17 Q What did you witness?

18 A I'm sorry?

19 Q What did you witness? In regards to Ted Wright,
20 what did you witness, sir?

21 A I'm not sure.

22 THE COURT: You may approach.

23 MR. AYLOR: May I approach?

24 Q (By Mr. Aylor) Can you please tell me if you
25 recognize what these are and what signatures are on

1 there?

2 A Statements. Mine, Paulo Silva's and Ted
3 Wright's. And the other Adao Olivera.

4 Q And what are they all dated?

5 A 8/7.

6 Q What does it say under yours?

7 A Witness.

8 Q Do you recall signing that?

9 A Yes, sir.

10 Q Do you recall in your preliminary hearing, the
11 one that you were involved in, when you were asked if
12 written statements were given?

13 A No, I don't recall. But I am assuming that they
14 did.

15 Q Uh-hum. Let me ask you, did you write those
16 statements -- did they write, who wrote those
17 statements? Or did they write those statements rather?

18 A Did, referring to the victims?

19 Q Correct.

20 A Okay. I don't know. I don't recall any of the
21 line of questioning. So if you have the minutes or if
22 you have the transcripts?

23 Q Do you recall stating, speaking to the attorney
24 who asked you did they write those statements, they
25 being the victims, do you recall saying, from my

1 understanding, sir, and be clear, it is my
2 understanding they wrote their statement in Portuguese
3 and gave them to Mr. Ted Wright?

4 A Again, no, I don't recall.

5 Q And then you went on to say, it is my
6 understanding, sir, I cannot verify, have not verified,
7 it is my understanding that he is a federal translator?

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

9 Q Do you recall when they asked you if he showed
10 you any credentials, you said he gave you a business
11 card?

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

13 Q So you don't recall signing these statements as
14 a witness?

15 A Yes. I recall signing them.

16 Q Okay. So you recall signing these statements as
17 a witness, but you don't recall whether or not you
18 witnessed these statement being made?

19 A No. I don't recall making those statements in
20 the prelim.

21 Q Do you recall these statements being made?

22 A Yes, sir.

23 Q You recall being there when these statements
24 were being typed out and signed?

25 A No, sir.

1 Q Okay.

2 A You are asking two questions. No, I was not
3 there when they were typed out. Yes, I was there when
4 they were signed.

5 Q Okay. So you are then signing these as a
6 witness to their signature?

7 A Acknowledging that they are saying this is my
8 statement.

9 Q Are you a notary, sir?

10 A No, sir.

11 Q Where were you when you signed these statements?

12 A At the victims' residence, or out in front of
13 it.

14 Q But you weren't there when the statements were
15 taken, correct?

16 A No, sir.

17 Q So your only capacity as a witness is that you
18 witnessed the victims and then Mr. Wright sign the
19 statements?

20 A Yes, sir.

21 Q But you did not witness the statements being
22 recorded or taken?

23 MR. ALFARO: Objection.

24 THE COURT: Basis?

25 MR. ALFARO: Asked and answered.

1 THE COURT: I'm going to let it this one time.

2 MR. AYLOR: Let me rephrase the question.

3 Q (By Mr. Aylor) You were not there when Mr.

4 Wright interviewed these two individuals, correct?

5 A No, sir.

6 Q You were not there when Mr. Wright recollected

7 his notes, correct?

8 You weren't with Mr. Wright in his office while

9 he was going over his notes?

10 A No, sir.

11 Q And you weren't there when Mr. Wright typed out

12 these statements, correct?

13 A No, sir.

14 Q So the only witness role you played was a

15 signature?

16 A Yes, sir.

17 MR. AYLOR: Thank you.

18 THE COURT: Redirect?

19 MR. ALFARO: No redirect, Your Honor.

20 THE COURT: All right, you may step down. Thank

21 you.

22 THE WITNESS: Thank you.

23 THE COURT: Is the next witness ready?

24 MR. ALFARO: State calls Robert Ollic.

25 THE COURT: Is he going to be as long as this

1 one? Let's take about five minutes. Thank you.

2 (Whereupon, a recess was taken.)

3 THE COURT: Call your next witness.

4 MR. ALFARO: State calls Robert Ollic.

5 MR. ROBERT OLLIC,

6 after having been duly sworn to state the truth, the
7 whole truth and nothing but the truth, testified on his
8 oath as follows:

9 DIRECT EXAMINATION

10 BY MR. ALFARO:

11 Q Deputy Ollic, how long have you been with the
12 Berkeley County Sheriff's Office?

13 A Approximately two years, sir.

14 Q And prior to coming to the Sheriffs Office, did
15 you have any prior law enforcement experience?

16 A Yes, sir, i had 14 years with the town of St.
17 Stephens.

18 Q What is your current rank and duties at the
19 Sheriffs Office?

20 A Deputy. And I'm a patrol officer.

21 Q And were you working in that capacity on August
22 6, 2010?

23 A Yes, sir.

24 Q And did you have the opportunity to respond to
25 Drive in Goose Creek on that date?

1 A I did, sir.

2 Q And do you recall what apartment complex that
3 area is?

4 A I believe it's next to -- it's right across from
5 the Food Lion Shopping Center on Harbor Lake Drive.

6 Q Is that off Red Bank Road?

7 A It is, sir.

8 Q And what type of call were you responding to?

9 A The call we were responding to was a burglary
10 that had happened, in progress.

11 Q And did any other officers or deputies get to
12 the scene before you did?

13 A Yes, sir. Deputy Charlton.

14 Q And when you arrived, had Deputy Charlton
15 already gotten out with the defendants in this case?

16 A Yes, sir.

17 Q Did you arrive -- were you at the scene when the
18 -- how many subjects were there when you arrived at the
19 scene?

20 A Two, sir.

21 Q And were they already detained when you arrived?

22 A Yes, sir.

23 Q And what did you do when you got there?

24 A Deputy Charlton had spoken with me and stated
25 that he needed to speak with the victims in this case.

1 He left briefly and both subjects were, one was placed
2 into the rear of my patrol unit, and the other one
3 stood outside and I was standing beside him as well.

4 Q So you just kept watch over them while Deputy
5 Charlton went to the victims' house?

6 A Yes, sir.

7 Q And how long would you say Deputy Charlton was
8 gone?

9 A Probably not more than maybe five to ten minutes
10 tops.

11 Q And you said one was inside your car and one was
12 outside your car, why was that?

13 A Due to officer safety, sir, so that I could keep
14 both of them separated as well. And keep them from
15 talking as well.

16 Q And were they in handcuffs at that time?

17 A Yes, sir.

18 Q And were they cuffed in front or in back?

19 A In the rear..

20 Q And at that point in time, did you ask them any
21 questions?

22 A No, sir, I did not.

23 Q And when Deputy Charlton arrived with the
24 victims, what did you do with the defendants?

25 A Both defendants were placed behind the back of

1 my car in a standing position, and Deputy Charlton
2 illuminated the area with the patrol vehicle lights so
3 that they could be seen.

4 Q And could you describe the lighting in the area
5 before Deputy Charlton put his lights on?

6 A Street lamp lit. You know, it was fairly clear.

7 Q Would it be bright enough or light enough
8 outside to make an identification without the use of
9 the artificial lights?

10 A No, sir, it would not.

11 Q And when the defendants were standing outside of
12 the vehicle and the victims were making the
13 identification, where were you?

14 A I was standing off to the side of them, out of
15 the way of the view of the defendants, I mean the
16 victims.

17 Q And prior to the defendants, or I'm sorry, the
18 victims making the identification, did you have any
19 conversation with the victims?

20 A No, I did not.

21 Q Did you have any conversation with Deputy
22 Charlton after he arrived with the victims?

23 A No, I did not.

24 Q And were you close enough to where Charlton and
25 the victims were to hear whether an identification was

1 made?

2 A No, sir, I was not.

3 MR. ALFARO: Thank you. Please answer any
4 questions the defense has for you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Shelton?

7 MR. SHELTON: Thank you, Your Honor.

8 THE COURT: All right.

9 CROSS-EXAMINATION

10 BY MR. SHELTON:

11 Q Officer Ollic, you have, you brought an incident
12 report with you?

13 A Yes, sir.

14 Q Okay, good. You didn't actually do an incident
15 report in this case?

16 A No. I did not, sir.

17 Q Whose incident report is that, that you are?

18 A It's Deputy Charlton's incident report but it
19 refers to my name a couple times in there, sir.

20 Q Are you familiar with a CAD report, at all?

21 A Sir?

22 Q Are you familiar with a CAD report?

23 A I'm not a dispatcher, sir. I don't know what a
24 CAD report consists of other than a series of, you
25 know, numbers of times.

1 Q Have you ever reviewed a CAD report?

2 A No, sir, I haven't.

3 Q Do you remember what your call number was at the
4 time?

5 A 180.

6 Q And you, the CAD reports generated by you
7 providing dispatch a number, as far as 10-76 is en
8 route; is that correct?

9 A Uh-hum.

10 Q What does 10-23 mean?

11 A That you've arrived on scene.

12 Q What is 10-24?

13 A That means you are leaving the scene.

14 Q And 10-95?

15 A That means you have one in custody or two in
16 custody or whatever number.

17 Q Did officer Oljic indicate that someone had
18 taken off running?

19 A I never said that, sir.

20 Q No. No. Did Officer Charlton ever indicate to
21 you that night that someone had taken off running?

22 A I believe that he did.

23 Q Okay. Were you aware that someone -- that they
24 were trying find a third suspect?

25 A I was not actually aware of that because I was

1 basically with the two other gentlemen. I mean, you
2 know, there were other units in area doing so then that
3 was the other units.

4 Q And when someone, when radio silence goes, are
5 you all alerted to radio silence?

6 A What are you referring to, sir?

7 Q Are you alerted through dispatch that there is
8 radio silence?

9 A You mean where they, what we would call 10-33
10 channel for radio silence, yes, sir.

11 Q Okay. And at that point in time there's, you
12 have to check in after a certain amount of time with
13 dispatch when there's radio silence?

14 A No, you would not. I mean if there were other
15 units that were -- in other words, if they 33 a
16 channel, nobody would be talking. The only units that
17 would be talking were those actually at that scene.

18 Q Is there an alert that goes off that indicates
19 to you, in case you haven't checked in at any point in
20 time, for officer safety?

21 A The only thing that is on the radio is an
22 identifier letting other units know that there is an
23 emergency situation going on and not to talk, go to
24 another channel.

25 Q You didn't obtain any search warrants in the

1 case?

2 A I didn't obtain anything, sir.

3 Q Were you asked to obtain any search warrants?

4 A No, I was not.

5 Q Did you -- you didn't handle any evidence?

6 A No, I did not.

7 Q You didn't search anyone?

8 A No, sir.

9 MR. SHELTON: No further questions.

10 THE COURT: Mr. McCoy?

11 MR. MCCOY: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. MCCOY:

16 Q Deputy Ollic, thank you for your time and thank
17 you for being here with us today. A couple of brief
18 questions for you regarding your involvement with this
19 case.

20 Can you go over with me a little bit about the
21 description of what that neighborhood looks like?

22 A Well it's, you know, a subdivision on the
23 righthand side. There is a shopping center to the
24 left. Around the corner are several, you know,
25 apartment complexes and housing areas in that

1 particular area.

2 Q Okay. So there are some places where people
3 live, and there are some places where people can also
4 shop and do business?

5 A Sure.

6 Q Would you describe this place has an area of
7 high foot traffic?

8 A I would say yes.

9 Q Okay. And in your experience with being a
10 police officer, have you ever had the opportunity to
11 investigate or actually be in this neighbor for other
12 types of crimes?

13 A Sure.

14 Q Okay. So you are relatively familiar with it?

15 A Uh-hum.

16 Q And you testified earlier that your involvement
17 with this case is relatively simple. You showed up
18 because you were there to keep two individuals there
19 while the main officer in the case went back to the
20 location where the incident happened?

21 A Uh-hum.

22 Q And can you tell me again why you responded or
23 what the dispatch was that you went out for?

24 A Well the reason, I mean, it came in as a
25 burglary in progress so we would respond two officers

1 to something like that.

2 Q Okay. Did you have anything, when your dispatch
3 happened, to indicate that there were weapons involved
4 in this burglary?

5 A I am trying to think. I can't recall if the
6 situation with the weaponry. But, you know, I do know
7 that they stated there was a burglary in progress and
8 gave a descriptions of these certain individuals.

9 Q Okay. And in your experience in being in this
10 neighborhood, do you know exactly where this incident
11 or the burglary location was?

12 A I was not -- I mean, I didn't go to the
13 incident, no.

14 Q Okay. So you didn't go to the main incident
15 where it happened?

16 A No, sir.

17 Q So you couldn't testify today to how far away
18 the main incident was to where the actual suspects were
19 detained?

20 A It was probably within a couple of blocks
21 because it didn't take that long for Deputy Charlton to
22 get where he needed to get.

23 Q Okay. But you're not 100 percent sure of that?

24 A No.

25 Q Okay. And once you responded to the location,

1 you testified earlier that both suspects were already
2 in cuffs?

3 A Uh-hum.

4 Q And one was outside and one was inside?

5 A Right. One in the back of my unit, and the
6 other one was standing outside my unit.

7 Q Okay. When you responded there, and before the
8 other officer left, did you notice any other type
9 evidence that would have been on the scene there, where
10 they were -- the suspects were detained?

11 A Yes. There was a computer laying on the ground
12 right beside where the suspects were stopped.

13 Q Okay. In relation to where your car is parked,
14 let's say the front of the car is facing this way,
15 where was the laptop?

16 A It was behind my vehicle.

17 Q Okay. Behind the vehicle?

18 A Uh-hum.

19 Q Okay. One suspect in the car, one suspect out
20 of the car, was this car a undercover car or was it a
21 marked car?

22 A It was a marked unit.

23 Q Okay. And you testified earlier that the other
24 officer was gone maybe five to ten minutes, tops.

25 A (Affirmative head shake.)

1 Q I mean when he came back with the victims in
2 this case, how far away did he park from your car?

3 A I would say probably 10 to 15 feet.

4 Q I mean how about if we're looking from you on
5 the stand right now to me, is this a fair estimate of
6 where the car was parked?

7 A I would say close, yes.

8 Q Okay. And when he pulled up, did he pull up in a
9 manner that's perpendicular to your car, or did he pull
10 up right behind your car?

11 A He pulled up in a manner where he was basically
12 behind my vehicle.

13 Q Okay. And once this happened, you testified
14 that both suspects were then outside of the car?

15 A Exactly.

16 Q But they were handcuffed behind their backs?

17 A Uh-hum.

18 Q They were asked to stand behind your car?

19 A Uh-hum.

20 Q The suspect that was inside of the car, do you
21 remember which one that was?

22 A I believe it was the gentleman there in the
23 white shirt, I believe.

24 Q Okay. And he was handcuffed inside the car,
25 correct?

1 A Uh-hum.

2 Q Did anyone have to assist him or help him get
3 out of the car because the handcuffs were behind his
4 back?

5 A We normally assist them anyway, sir.

6 Q Okay. And so you assisted in getting him out
7 behind the car with the other suspect?

8 A Uh-hum.

9 Q And you also testified earlier on direct that
10 the light was kind of iffy there, and you had to have
11 some other form of artificial light to help make an
12 identification; is that correct?

13 A That's correct.

14 Q Can you describe to me a little bit about the
15 spotlight that was used?

16 A It was takedown lights on the light bar that
17 were used, and also the spotlight of the side of the
18 police vehicle.

19 Q Okay. And the spotlight on the side of the
20 police vehicle is basically a circular light?

21 A Uh-hum.

22 Q That can be controlled from the inside or the
23 outside with the handle?

24 A Exactly.

25 Q You also said there was another type of light?

1 A The light bar has two what we call takedown
2 lights in the center to illuminate streets or whatever
3 we need to use them for.

4 Q Okay. And that's on top of the car?

5 A Right.

6 Q Okay. Not the blue light, but it's the white
7 one?

8 A Right. Exactly.

9 Q Okay. So they're brought out of the car. We've
10 got the victims now who are on scene and they're 10 to
11 15 feet away?

12 A Uh-hum.

13 Q White lights on? Spotlight on?

14 A (Affirmative head shake.)

15 Q How long would you say, timewise, I know you
16 didn't hear anything, you testified you didn't hear
17 anything in terms of a positive ID or not?

18 A Right.

19 Q How long would you say the other officer was
20 there with the victims?

21 A I would say probably 4 or 5 minutes, maybe a
22 little bit longer.

23 Q Okay. So 4 or 5 minutes, maybe a little bit
24 longer, and then he leaves?

25 A Yes, sir.

1 MR. MCCOY: okay. Court's indulgence, Your
2 Honor.

3 THE COURT: Yes, sir.

4 Q (By Mr. McCoy) And you've testified already on
5 cross-examination with me that the laptop was on the
6 ground?

7 A Uh-hum.

8 Q Do you know relatively how close it was to your
9 car?

10 A It was off to the driver's side of my vehicle,
11 probably about maybe 5 to 7 feet.

12 Q Okay. And briefly, just going to touch on the
13 identification process again. When the suspects were
14 brought out of the car, did they do an identification
15 of one at the time, or did they have them both standing
16 right there?

17 A One was standing, then we switched out and put
18 the other gentleman behind the car.

19 Q Okay. So when the car came up, one gentleman
20 was already outside of the car?

21 A Right.

22 Q Handcuffs behind his back?

23 A Uh-hum.

24 Q They did an ID with just him standing there?

25 A Yes.

1 Q Okay. And then he was moved?

2 A Uh-hum.

3 Q Off -- was he put in car or was he placed off to
4 the side?

5 A No. He was placed off to the side standing near
6 me.

7 Q Okay. Placed off to the side near you. Were
8 you off to the driver's side or the passenger side?

9 A I would have been -- the car was facing forward
10 this way, so it would have been to the left side.

11 Q Okay. Driver's side?

12 A Well, no. The car -- the rear of my car was
13 this way.

14 Q Rear of the car was this way, okay.

15 A So the front of the car would have been towards
16 actually Red Bank Road.

17 Q Okay. It's not important, but he was taken off
18 to the side?

19 A Uh-hum, out of the way.

20 Q And then obviously the next step would be to
21 pull the person out of the car?

22 A Uh-hum.

23 Q And then do him one at a time as well, behind
24 the car?

25 A Right.

1 Q Were there any other African-American guys that
2 were in the area at the time?

3 A No, sir.

4 Q Any other Africans-American police officers
5 respond to the scene at all?

6 A No, sir.

7 Q And a lot of times police cars when they do pull
8 up and lights are activated, videos are then triggered.
9 Was there a video that was taken of this ID?

10 A No, sir.

11 MR. MCCOY: Your Honor, I don't have any other
12 questions. Thank you.

13 THE COURT: Mr. Alfaro?

14 MR. ALFARO: No questions, Your Honor.

15 THE COURT: You may step down.

16 Call your next witness.

17 MS. CORNWELL: State calls Adao Olivera.

18 Your Honor, this witness is going to require an
19 interpreter.

20 THE COURT: okay. And where is your
21 interpreter?

22 MS. CORNWELL: Mr. Wright, I am going to ask you
23 to stay outside and ask Mr. Rock to come in, please.

24 Mr. Rock, if you can come forward and stand in a
25 place where you can hear me and hear him and speak

1 loudly.

2 (Whereupon, the Clerk administers the oath to
3 the Interpreter.)

4 MR. ADAM MARCUS OLIVERA,
5 after having first been duly sworn to state the truth,
6 the whole truth and nothing but the truth, testified on
7 his oath as follows:

8 DIRECT EXAMINATION

9 BY MS. CORNWELL:

10 Q Mr. Olivera, how old are you?

11 A 32.

12 Q Where do you live?

13 A Goose Creek.

14 Q Do you live in an apartment or house?

15 A Apartment.

16 Q Who lives there with you?

17 A I don't live in the same place.

18 Q Where did you live on August 6, 2010?

19 A I lived in the same apartment.

20 Q Did you live with Paulo Silva?

21 A Yes.

22 Q And did something happen to you and Mr. Silva on
23 August 6, 2010?

24 A Yes.

25 Q What happened?

1 A Do I have to tell the whole story or not?

2 Q Yes.

3 A I was in the house. I was outside to smoke a
4 cigarette. It was around about ten o'clock. I'm not
5 quite sure. I went outside to smoke a cigarette. I
6 was sitting down there. After a little while Paulo
7 came out to chat with me.

8 We were there about five minutes. After a
9 little while these people, armed people, arrived. They
10 grabbed us. They grabbed me by the neck. The other
11 guy grabbed Paulo and aimed the gun at him.

12 He wanted money. And I didn't have any because
13 it was inside my car. The car was in front of the
14 house. He asked Paulo if Paulo had any money and Paulo
15 had his wallet in his pocket. They grabbed his money.

16 The one that was with me was becoming nervous,
17 he asked me to go inside. He was applying a lot of
18 pressure on my neck because he thought I had money
19 hidden. After a little while he said he only wanted to
20 go inside. He wanted to go in. And as soon we were
21 inside he said he wanted to go upstairs.

22 And Paulo said he couldn't go up there because
23 his wife was up there with his child, children. And I
24 went to my room. I arrived there in the room. He
25 placed us kneeling on the ground. And the guy that was

1 with me was very, very nervous. My neck still has the
2 signs of where he was pressuring me.

3 I don't know what Paulo said to him, but the
4 other guy gave him a blow to the head. Gave him a blow
5 to the face. And I was up there on my knees. He saw
6 that he was with us and was robbing us.

7 And then Paulo, the chappy left running and
8 Paulo went after him. When we were there in the room,
9 the bedroom, another chap came in by the door of the
10 front room. And Lucineia came up, she lives next door.
11 Paulino who was next door arrived and said that the
12 child, the children, then child was asleep upstairs.

13 We saw that the chappy who was at the door had a
14 gun in his hand. He went up the stairs running. And
15 he went to the room where the child was. He went to
16 the room where the child was.

17 And I, who was downstairs, saw them, the husband
18 of Lucineia, and he went up to a house of a neighbor
19 that lives in the front, directly in front, to ask for
20 assistance.

21 And when he saw we were running over there, the
22 one that was downstairs said that somebody was coming
23 and they both left running. Then a friend of mine who
24 was with some friends passed in front. And one of them
25 ran past them. The other chap called the police. The

1 police arrived. One arrived in the house and the other
2 one stayed a little distance away.

3 And the one that was had stayed a distance away
4 asked us to come and identify, he had caught somebody.
5 And the one he had caught had two telephones of mine.
6 I don't remember anymore details. Not very much, time
7 passed.

8 Q So when the police arrived they told you that
9 they had two people and they wanted you to tell them
10 whether or not these were the guys that did it or did
11 not do it?

12 THE COURT: Hold on one second. If he stands up
13 to object, I have got to answer the objection.

14 MR. SHELTON: Objection, Your Honor, leading.

15 THE COURT: I'm going to allow it.

16 You may continue.

17 Q (By Ms. Cornwell) And did the officer let you
18 know that he had two people?

19 A Yes.

20 Q And he wanted you to tell them if they were or
21 were not the people?

22 A Yes.

23 Q And how far away did you have to go to see the
24 people?

25 A About 50 feet.

1 Q And how long did it take the police to take you
2 to those defendants?

3 A Not long.

4 Q And when you arrived, where they were holding
5 the people?

6 A Yes.

7 Q Were you able to, -- did they put a light on the
8 people?

9 A Yes.

10 Q Were you able to see the people clearly?

11 THE COURT: Wait. Ms. Cornwell, you've got to
12 wait for the interpreter to respond.

13 MS. CORNWELL: I apologize, Your Honor.

14 THE COURT: Thank you.

15 A Yes.

16 Q (By Ms. Cornwell) And were you able to identify
17 the people as the people that robbed you?

18 A Yes.

19 Q Were you certain that those were the people that
20 robbed you?

21 A Yes.

22 Q Did you know instantly that those were the
23 people that robbed you? or did you need to take a few
24 minutes to look at them?

25 A They stopped the car some way away. It wasn't

1 obvious, it wasn't clear to see them directly. When he
2 came closer it was very clear to be able to see them.

3 Q So when you were driving up, you didn't
4 immediately recognize them?

5 A No.

6 Q But once the car stopped in front of them, then
7 you were able to recognize them?

8 A When we came close, yes.

9 Q And you were certain that those were the people?
10 MR. SHELTON: Objection.

11 THE COURT: Hold on one second. What's the
12 basis?

13 MR. SHELTON: Leading, Your Honor. We've been
14 kind of.

15 THE COURT: All right.

16 Ms. Cornwell, I have been giving you a little
17 bit of latitude but watch your leading questions.

18 Q (By Ms. Cornwell) Were you able to identify
19 them immediately?

20 A Yes.

21 MR. SHELTON: Objection, leading.

22 THE COURT: He's already answered. Note your
23 exception.

24 MR. SHELTON: Thank you, Your Honor.

25 MS. CORNWELL: Court's indulgence.

1 THE COURT: Yes, ma'am.

2 Q (By Ms. Cornwell) Did the police officers tell
3 you who to pick?

4 A No.

5 MS. CORNWELL: Nothing further, Your Honor.

6 THE COURT: Mr. Shelton?

7 CROSS-EXAMINATION

8 BY MR. SHELTON:

9 Q Is it all right if I call you Mr. Adao?

10 A Yes.

11 Q You gave a statement to Mr. Wright; is that
12 correct?

13 A I don't know who Mr. Wright is. Is this the
14 Pastor ortez? Reverend ortez?

15 Q The pastor that knows Paulo?

16 A Yes.

17 Q That was the day after this occurred?

18 A Yes.

19 Q Who was there when you were giving that
20 statement?

21 A It was the Pastor Wright and Paulino and myself.

22 Q No police officers?

23 A No.

24 Q And Mr. Wright had a tape recorder?

25 A Yes.

1 Q And you went second in giving your statement?
2 Paulo went first and you went second?

3 A Yes. Paulo went first.

4 Q Did Mr. Wright come back to your house with a
5 written statement in English?

6 A I wasn't at home, I was working. If he did so,
7 he did it to Paulo, delivered it to Paulo.

8 Q Did you sign a statement?

9 A No. I don't remember.

10 MR. SHELTON: May I approach, Your Honor?

11 THE COURT: You may.

12 A That's my signature.

13 Q (By Mr. Shelton) Do you remember when you
14 signed that statement?

15 A That one there?

16 Q This statement.

17 A I don't remember exactly when. I don't know
18 exactly when.

19 Q Was the officer there when you signed the
20 statement?

21 A I don't remember when I signed it. But that
22 signature is mine.

23 Q Did Mr. Wright go over everything that he wrote
24 in this statement?

25 A First of all, he recorded it.

1 Q Yes.

2 A Then afterwards he took it to his house and he
3 produced that thing there. And he read it in
4 Portuguese to me.

5 Q Did he tell you --

6 A It's a long time ago. I don't quite remember
7 all these things.

8 Q Do you remember telling Mr. Wright that one of
9 the suspects that came in your house spoke a little bit
10 of Portuguese?.

11 A No. Definitely, not. I don't know.

12 Q So if that's in this written statement, that's a
13 lie?

14 A Why?

15 Q If --

16 THE COURT: I'm sorry, sir, what was your
17 response? What was the response, to you? What was the
18 response? What was his response to that question?

19 THE INTERPRETER: He said it is not a lie.

20 THE COURT: Okay, thank you.

21 MR. SHELTON: I thought he said why.

22 THE COURT: I heard annoy.

23 THE INTERPRETER: You said that this is a lie,
24 the paper, but why?

25 Q (By Mr. Shelton) Because -- if the paper says

1 that one of the people that came into your house spoke
2 Portuguese, then that is a lie?

3 A If he spoke Portuguese? I don't remember.

4 Q So you never said that?

5 A I did not.

6 Q The person that was choking you, were they
7 behind you?

8 A Yes.

9 Q Okay. So you couldn't really see that person
10 that was behind you?

11 A When we were going up the stairs, I could see
12 him. And when he put me down on the ground, I could
13 see him also. When I kneeled, I could see him also.

14 Q Did you chase the people out of the house?

15 A I didn't.

16 Q Paulo did?

17 A Yes.

18 Q I think the State asked you that the police
19 officers, they didn't tell you who to pick, did they?

20 A No.

21 Q But there were only two people out there that
22 night?

23 A Yes.

24 Q So there was no one else to choose from?

25 A No.

1 Q Do you know what the people were wearing?

2 A I don't remember.

3 Q You don't know if it was different clothing when
4 you saw them on the side of the road?

5 A If I am not mistaken, since it a long while ago,
6 one of them had a blue T-shirt. But I don't really
7 remember a lot more because it was a long time ago.

8 Q Did you see a person wearing a blue T-shirt when
9 you ID'd them in front of the police?

10 A I don't remember when he grabbed them if he was
11 there. I remember fairly well, there was one with a
12 blue T-shirt. But I can't remember if he was there at
13 that time.

14 Q When did the police officer give you your cell
15 phones?

16 A When I was in the car.

17 Q After you ID'd them?

18 A Yes. I had the numbers and the names in
19 Portuguese.

20 Q Did he tell you that he had two cell phones that
21 belonged to you?

22 A Yes.

23 Q Before the ID?

24 I can might refresh or rephrase. When did he
25 tell you he had your cell phones?

1 A When I was in the car he had three phones with
2 him. The one was not of the house at all, it belonged
3 to somebody else, and the two were mine. I looked at
4 the numbers and I had the names of the people that I
5 live with.

6 Q And then he took you to go to the side of the
7 road?

8 A I don't understand.

9 Q Did he -- did the police officer give you the
10 phones before or after you looked at him, the suspects?

11 A It was afterwards.

12 MR. SHELTON: Nothing further.

13 THE COURT: Mr. Aylor?

14 CROSS-EXAMINATION

15 BY MR. AYLOR:

16 Q Good afternoon, Mr. Adao.

17 Mr. Adao, can you tell me prior to the invasion
18 of the home how many people were in the home and who
19 were those people?

20 A It was me, Paulo, Paulino and Carrie. Only four
21 people.

22 Q Who is Paulino?

23 A It's the wife of Paulo.

24 Q Who is Carrie?

25 A It's the daughter of Paulo.

1 Q How old is she?

2 A Three years.

3 Q When he was ordered back in the home, was

4 Paulino with him?

5 A She was, Paulino was upstairs. And she came

6 downstairs to grab some kind of cream, shampoo. And

7 when she came down she heard some noise that some

8 people were coming in and she ran out.

9 Paulo said that some people were robbing us.

10 Q Did he see Paulino while he was being choked?

11 A When I was coming in he would get the -- the

12 chap behind me was holding me firmly. And I heard the

13 noise of her coming downstairs.

14 Q Did he see her?

15 A No.

16 Q Did Paulo see her?

17 A Yes.

18 Q At that time was Paulo standing with one of the

19 individuals who broke in the home?

20 A Yes. One had a gun pointed at Paulo.

21 Q while Paulo was talking to his wife?

22 A What is that about?

23 Q I will rephrase the question.

24 Was Paulo speaking with his wife while one of

25 the gunman -- while a gun was held to his head by one

1 of the men that broke in?

2 A Paulo spoke to Paulino to leave the house, to
3 get out because we were being robbed.

4 Q My question is when he spoke with Paulo,
5 Paulino, was one of individuals who was robbing them
6 holding a gun to him?

7 A Yes.

8 Q The answer is yes?

9 A Yes.

10 Q Once he went inside the home, who also went
11 upstairs?

12 A Lucineia. And when we were inside it was only
13 me, Paulo and Lucineia who went upstairs.

14 Q Who is Lucineia?

15 A The next-door neighbor.

16 Q When did she enter the home?

17 A When we were already upstairs.

18 Q So initially who went upstairs?

19 A Paulo and the guy who was holding a gun on him.

20 Q And that's all?

21 A No, several things happened. We went upstairs
22 to the room.

23 He asked me to tell you all over again what
24 happened.

25 Q I'm asking who went upstairs originally when

1 they came into the apartment?

2 A It was myself, Paulo and the guys that were with
3 us that went upstairs. And who came afterwards to grab
4 Carrie was Lucineia.

5 Q How many individuals that were robbing him went
6 upstairs?

7 A Two.

8 Q How much individuals went into their house that
9 night?

10 A Three.

11 Q So then one did not go upstairs?

12 A Yes.

13 Q How many of the individuals that were of the
14 three did he get to see clearly while in the apartment?

15 A I don't remember.

16 Q May have just been one?

17 A Two.

18 Q Was the individual that stayed downstairs one of
19 the two that he later was shown by the police?

20 A No.

21 Q Did Lucineia see the two individuals who were
22 upstairs with him and Paulo when she came in?

23 A I don't remember, but I think not. She saw the
24 guy who was on that door with the gun. Who was at the
25 door with the gun.

1 Q So the answer is yes, she did see one of the
2 individuals upstairs?

3 A I don't know. Those were upstairs, I don't know
4 because they were inside the room. The bedroom.

5 Q Was the door closed?

6 A It was half open.

7 Q And while in the room, Paulo was struck twice in
8 the head and face?

9 A I remember one.

10 Q Does he recall earlier stating two, today?

11 A No.

12 Q Did Lucineia's husband come into the apartment
13 at some point?

14 A No.

15 Q When the individuals from upstairs ran
16 downstairs, did he go chasing after them?

17 A No. The husband of Lucineia had called a
18 neighbor.

19 Q Lucineia's husband ran after them?

20 A I don't remember. I was in the bedroom and they
21 were outside.

22 Q Why did you state in your signed statement that,
23 and I quote, we ran out after them, if you did not?

24 A I remember that I went outside, but I don't
25 remember that I said I was running after them. I was

1 the last one out of the bedroom.

2 Q Is he stating now that this statement is
3 incorrect, the one that he signed?

4 A No.

5 Q So is he stating that he did run after him as
6 the statement says here?

7 A It's a year ago, I don't remember things
8 clearly.

9 Q So I just want to make sure I'm clear.
10 Originally he said he did not run after them. Then he
11 said --

12 A I don't remember.

13 Q But he may have?

14 A If it is written on the thing then maybe yes.
15 Today I don't remember everything.

16 Q Would he have signed something that was
17 incorrect?

18 A No.

19 Q Had he been drinking any alcohol or smoking any
20 marijuana that evening?

21 A Alcohol, no.

22 Q Had he been smoking marijuana that evening?

23 A No. Only cigarettes.

24 Q At what point did he start speaking with Mr.
25 Hilario Rubio?

1 A It was after some time that I began to speak
2 with him.

3 THE INTERPRETER: I'm not sure the witness
4 understood the question.

5 Q (By Mr. Aylor) That night, when did he begin
6 speaking with Hilario Rubio?

7 A It was the time when they went up to his house,
8 knocked on his door, and then he came over to help us.

9 Q Help him what?

10 A Dennis went over there to call him. And then
11 they both came out and to call the police.

12 Q Does he recall speaking with one officer along
13 with Mr. Silva and Hilario?

14 A Yes.

15 Q Was that the same officer that they rode in the
16 car with?

17 A Yes.

18 Q When the officer spoke with him at the apartment
19 before they went and rode in his car, did he then tell
20 him that he had his two gray cell phones?

21 A Before we got into the car, no.

22 Q Did he tell him he had the phones when they got
23 in the car?

24 A No. It was after we came to where they were,
25 the suspects.

1 Q Had anyone else other than the officer told him
2 that two people were in custody before they rode in the
3 car?

4 A The police did, yes.

5 Q What did the police tell him?

6 A He said to come see whether it was them.

7 Q When did he first see his gray cell phones?

8 A I was in the car.

9 Q When he got in the car?

10 A No.

11 Q When?

12 A I was already inside the car.

13 Q Right after he got in car, they were in plain
14 view?

15 A No.

16 Q Where were they?

17 A I don't know. It was with the police.

18 Q Where did the officer retrieve the phone from
19 before he gave it to him, the phones?

20 A It was with him. I don't know where it was but
21 it was with him. He grabbed the telephone and said,
22 hey, is this telephone yours?

23 Q To both telephones?

24 A Two. The other one, I don't know.

25 Q And that was sometime when they were in the car?

1 A Yes.

2 Q Okay. When he did the lineup, did -- were there
3 two African-American men standing at the back of the
4 police car?

5 A Yes.

6 Q And then did he identify them both directly at
7 that same time to Hilario?

8 A Senior Hilario started translating for us,
9 interpreting for us.

10 Q So the answer is yes?

11 A Could you repeat the question?

12 Q Yes. Did -- when they got to the police car and
13 saw the two African-American men standing out behind
14 the car, did he then identify them both to Hilario at
15 the same time?

16 A I don't know. I didn't understand what he said.

17 Q How did he identify both of the African-American
18 men when they got out to the scene?

19 A Myself and Paulo saw them there.

20 Q And simultaneously told Hilario that?

21 A Yeah. Hilario was a little bit way in front and
22 he was right there to translate, to interpret. I think
23 Hilario saw the two fellows leave running because he
24 was in front of his house.

25 Q So Hilario saw the two individuals leaving the

1 home, or two of them?

2 A I don't know.

3 Q You think he may have?

4 A Yes, maybe.

5 Q Did Hilario identify them to the police officer
6 they arrived with as well?

7 A I don't remember.

8 Q He may have though?

9 A Maybe.

10 Q But who did he identify the two individuals to,
11 Hilario or to the police officer directly?

12 A To the police officer. The policeman asked
13 Hilario to interpret and Hilario asked -- the policeman
14 spoke a little Portuguese too.

15 Q And the policeman and Hilario asked both Paulo
16 and Mr. Adao at the same time? Were they all in a
17 group collectively? Did Hilario ask --

18 THE INTERPRETER: Hilario and who? Senior
19 Olivera?

20 Q (By Mr. Aylor) Yeah. Did Hilario ask Mr.
21 Olivera as well as Mr. Silva at the same time, were
22 these the two men?

23 A I didn't understand the question.

24 THE INTERPRETER: Can you let me repeat it?

25 A I don't remember.

1 Q But he does remember both African-Americans
2 being against the car at the same time?

3 A Yeah. They were at the point in the bend where
4 the trees are.

5 Q Did he see a laptop computer as well?

6 A With the thief?

7 Q Correct.

8 A Yes, with the thief.

9 Q At the time? Right then?

10 A No, with the thief I didn't see it, no.

11 Q Okay.

12 A The one who grabbed the computer was the one who
13 was downstairs.

14 Q So he was not at the ID, the scene?

15 A No.

16 Q So the two that he and Mr. Silva identified were
17 the two that were upstairs with him and Mr. Silva,
18 correct?

19 A Yes.

20 Q And the individual who was downstairs that stole
21 the laptop was gone, had run away and was not there,
22 correct?

23 A I don't remember clearly, but the fellow who was
24 downstairs was the guy who grabbed the laptop because
25 the other two were upstairs.

1 Q And he wasn't at the ID?

2 A No.

3 Q After the ID and the officer, officer Charlton
4 took them back to their apartment, did he ever see
5 officer Charlton after that night?

6 A No.

7 Q So he never saw him again?

8 A I saw him today, here.

9 Q Today is the first time he has seen him since the
10 night of the incident?

11 A Yes. I don't remember. Perhaps he went to the
12 house to bring some paper.

13 Q But he doesn't know? Does he -- excuse me. In
14 your professional life and personal life do you work
15 around and spend a lot of time with African-Americans?

16 A No.

17 Q Do you associate with African-Americans on a
18 regular basis?

19 A No. No, we don't.

20 Q Do you personally feel like that
21 African-Americans, African-American males have a lot of
22 similar facial features?

23 A Yes.

24 MR. AYLOR: Thank you.

25 THE COURT: Redirect?

1 MS. CORNWELL: Nothing from the State, Your
2 Honor.

3 THE COURT: Thank you. You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Do you have another witness?

6 MS. CORNWELL: One more, Your Honor.

7 The State calls Paulo Silva.

8 MR. PAULO SILVA,

9 after having been duly sworn to state the truth, the
10 whole truth, and nothing but the truth, testified on
11 his oath as follows:

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MS. CORNWELL:

15 Q Thank you. Mr. Silva, where do you live?

16 A Goose Creek.

17 Q And do you recall something happening at your
18 home on August 6th of 2010?

19 A Yes.

20 Q What happened?

21 A I was seated outside the house. Three people
22 arrived armed. One with a gun.

23 MR. AYLOR: Your Honor, I'm sorry, I'm not
24 objecting. We just can't hear him. I think he's
25 having to talk so much, the translator, we can't

1 understand him now.

2 THE TRANSLATOR: okay, I will try to speak more
3 clearly.

4 THE COURT: Would it be better for you to come
5 stand next to this microphone?

6 THE TRANSLATOR: The one over there? Okay. I
7 want to be able to hear him clearly.

8 THE COURT: All right. Now you are going to
9 have to speak loudly.

10 Q (By Ms. Cornwell) What happened on August 6th
11 at your house?

12 A I was seated outside with Adam when three people
13 arrived, one of them with a gun. They were asking for
14 money. One put his hand in my pocket and took out my
15 wallet. Another one came behind Adam and was choking
16 him.

17 THE INTERPRETER: Your Honor, I can't hear him
18 very well.

19 THE COURT: You are going to need to speak
20 loudly. Can you tell the witness to speak loudly?

21 THE INTERPRETER: Yes, I did. But I think
22 it's --

23 MS. CORNWELL: Do you want to stand by me?

24 THE INTERPRETER: Okay.

25 THE COURT: Why can't he just speak loudly?

1 Mr. Interpreter, can you just tell the witness
2 to speak loudly?

3 Q (By Ms. Cornwell) After the suspects went
4 through your pockets and the one choked Adao, what
5 happened?

6 A The one got my documents which was inside my
7 wallet. I said no, I needed to hold on to them. And
8 the other one who was choking Adam asked me to open the
9 door. And I said I would not because the children were
10 inside. And the other one started choking me stronger
11 and telling me to open the door -- choking Adam.

12 Adam was choking and so I opened door. When we
13 got inside the house, I saw my wife. And I said to her
14 to go and find help because we were being robbed. She
15 left from the room. And the one who had the gun
16 pointed at me, pointed at my head, had spoke to her.
17 He said to -- he said to her to go and sit down in the
18 room.

19 When he asked her to go as far as the room, the
20 one was behind me with the gun and the other one was
21 choking Adam. When we got into the room my wife wasn't
22 there and he asked me where she was. I said I didn't
23 know, I thought she had gone upstairs.

24 And they were speaking to me, telling me to go
25 upstairs. I went upstairs. I decided to go into

1 Adam's room because my daughter was sleeping in the
2 other room. And he was -- kept asking for money and
3 where my wife was. When we arrived within the room the
4 chap that was choking Adam forced him to his knees, and
5 gave me a blow to my head, and told me to get on my
6 knees too.

7 And the one that was forcing me with the gun to
8 my head said where was my wife because he would kill
9 me. He began to count down. When he arrived about
10 three or four I saw my next-door neighbor passing by
11 the bedroom and they left running from the room. And
12 they went flying down the stairs and they went outside.

13 Q What did you do once the suspects ran out of the
14 house?

15 A I went outside the house and there was my
16 neighbor who had already called the police. He said,
17 yes, that he had already called the police.

18 Q How long after the incident did it take for the
19 police to come?

20 A I'm not very sure about the time.

21 Q Was it a long time or a short time?

22 A A little time, a short time.

23 Q And what happened when the police arrived at the
24 house?

25 A When we were outside the house, I saw my

1 neighbor coming towards the house. I saw the police
2 car turning around in the road. And after this I could
3 see that they weren't coming closer and I went after
4 the police car to see. The policeman told me to go
5 back to the house and he would come over in a little
6 while.

7 Q And when did the police come over to speak with
8 you?

9 A A little time afterwards.

10 Q And what did the police say to you when they
11 arrived?

12 A He asked me what had happened. He asked me to
13 go over in detail what had happened. A friend of mine
14 was interpreting.

15 The policeman asked me in detail to show him and
16 point out where I was and what had happened.

17 Q At any time did the police take you anywhere?

18 A After the details he asked me to come with him
19 to know whether these were the suspects that were in
20 the house.

21 Q And how far away did he take you?

22 A About 200 yards from my house.

23 Q And when you went to where they were holding the
24 suspects, was there enough light for you to see the
25 suspects?

1 A Yeah, yes. They stopped the car in front of
2 them with the lights on.

3 Q And were you able to recognize the suspects?

4 A Yes.

5 Q And were those the suspects that had just robbed
6 you?

7 A Yes.

8 Q Were you able to recognize them immediately?

9 A One of them, yes.

10 Q Which one were you able to identify immediately?

11 A The one that was strangling Adam.

12 Q And after looking at the second suspect, were
13 you eventually able to identify him?

14 A Yes. I was able to identify that he was one of
15 them who had entered the house, but I didn't know
16 whether he was the one who had the gun, or if he was
17 the one that stayed by the door.

18 Q But you are certain that he was one of the ones
19 inside the house?

20 A Yes.

21 Q When the police arrived at your house, did you
22 give them anything --

23 MR. AYLOR: Objection.

24 THE COURT: Basis?

25 MR. AYLOR: Leading.

1 THE COURT: Let her finish the question.

2 Q (By Ms. Cornwell) Was anything left in your
3 house?

4 A Yes. Near the house they left a telephone.

5 Q Where in the house did they leave a telephone?

6 MR. AYLOR: Objection, leading. He also just
7 said near the house, not in the house.

8 THE COURT: Overruled. You may answer.

9 You need to rephrase the question, Ms. Cornwell,
10 thank you. Repeat it for him.

11 Q (By Ms. Cornwell) Where in the house?

12 A It was on the floor near the kitchen.

13 Q What did you do with that phone?

14 A I delivered to the police officer.

15 Q It was not your phone?

16 A No.

17 MS. CORNWELL: Nothing further.

18 THE COURT: Counsel, we are stopping at 5:30.

19 Plan accordingly.

20 CROSS-EXAMINATION

21 BY MR. SHELTON:

22 Q Mr. Silva, you gave a statement the next day to
23 Mr. Wright?

24 A Yes.

25 Q And that statement was recorded?

1 A Yes.

2 Q And Mr. Wright then provided a written statement
3 in English?

4 A Yes.

5 Q Did he go word for word through that written
6 statement?

7 A Yeah. He went over the statement word by word
8 together with the policeman.

9 Q And you signed this statement?

10 A Yes.

11 Q At the time that you originally gave Mr. Wright
12 the statement, you never mentioned amounts of money
13 that was taken; isn't that correct?

14 A I don't remember.

15 Q You mentioned the person that was choking Adam
16 was wearing a blue T-shirt?

17 A Yes.

18 Q And when you ID'd the two black males on the
19 side of the road, neither of them were wearing a blue
20 shirt?

21 A No.

22 Q Did you tell the police that they were wearing
23 red and white shirts?

24 A I don't remember.

25 Q Who is Markin?

1 A Adao.

2 Q Did you tell Mr. Wright that Markin, because
3 Adao was being choked, kept telling me to stay calm?

4 A Yes.

5 Q So who is Markin?

6 A Adao.

7 Q Did you tell Mr. Wright that Markin and Adao
8 were standing outside the house?

9 A Yes.

10 Q Do you remember also telling Mr. Wright that you
11 went to the manager of the apartment and you were
12 complaining because the night before this incident your
13 apartment was also broken into?

14 A No. Nobody answered the apartment. The window
15 was broken on the day before.

16 Q And then you told the manager that you saw two
17 suspects walking down the side of the road?

18 A It wasn't exactly to the manager. He went to
19 the manager's house -- I went to the manager's house
20 and she wasn't there. And there was a Brazilian lad
21 there and I spoke to him. And I spoke to him that I
22 has been robbed in my house.

23 Q And you told that person that you saw two
24 suspects walking down the road?

25 A Yes.

1 Q So you didn't see three suspects?

2 A No.

3 Q And you also told them that they were wearing
4 different clothes?

5 A Yes.

6 Q And then the police told the Brazilian guy that
7 they had already caught the guys that robbed us?

8 A I don't know.

9 Q Are you here undocumented?

10 A Without documents.

11 THE COURT: Sir, what was the answer?

12 THE INTERPRETER: Without documents.

13 Q (By Mr. Shelton) And you are going through a
14 process called the U Visa?

15 A Is this the process of whether I'm legal or
16 illegal? Or is it the process of the robbery?

17 Q The process to become a legal citizen.

18 MS. CORNWELL: Objection, Your Honor.

19 Irrelevance as to whether they are legal or illegal.

20 THE COURT: Overruled. You may answer.

21 A No.

22 Q (By Mr. Shelton) Are you going through the
23 process now to try to become legal?

24 A No.

25 Q Is Adao here undocumented?

1 A Yes.

2 Q So you haven't started the process of obtaining
3 a visa?

4 A No.

5 Q You don't have to --

6 MR. SHELTON: No further questions.

7 THE COURT: Ten minutes, Mr. Aylor.

8 CROSS-EXAMINATION

9 BY MR. AYLOR:

10 Q When the individuals came into your home, one
11 individual held a gun to your head, correct?

12 A Yes.

13 Q And he held that gun to your head the entire
14 time he was in the apartment?

15 A Yes.

16 Q Including threatening to kill you?

17 A Yes.

18 Q So his face was really close to your face?

19 A Yes.

20 Q So you got a good look at him?

21 A Only when he arrived, because after that he was
22 behind me.

23 Q So originally he got a good look at him?

24 A Yes.

25 Q When you testified earlier, correct, that when

1 you were identifying the two individuals that the
2 police had in custody, you only could recognize one of
3 them, correct?

4 A The one that was upstairs, only one of them.
5 But the ones that were in the -- together in the
6 robbery too.

7 Q And you don't know if one of the ones you
8 identified was the one that held a gun to your head for
9 an extended period of time or not?

10 A No.

11 Q You just know that he is one of the black guys
12 that robbed you?

13 A Yes.

14 Q Was the spotlight on from the police car when
15 they wrote the ID?

16 A Yes.

17 Q Were the two individuals standing on the
18 backside of the police car in front of them?

19 A They were in front of the police car and the
20 spotlight was pointed at the two of them.

21 Q Did he see a laptop out there?

22 A No.

23 Q Did he have a laptop stolen?

24 A Yes.

25 Q Was it his laptop?

1 A No. From a client.

2 Q Okay. He is computer technician?

3 A Yes.

4 Q Do you recall when after the individuals left
5 the house getting in a car with your neighbor and
6 driving around the block looking for them?

7 A Yes.

8 Q Why didn't you put that in your signed
9 statement?

10 A At the time I gave the statement my head was in
11 a whirl because I was trying to plan my daughter's
12 birthday.

13 Q Is he aware of the fact that he gave the
14 statement stating orally that he in fact did get in the
15 car and go looking for the individuals?

16 A Yes. We went around -- we went from the
17 condominium from the main road to the back part, and
18 then we came back again. It was at that time I went to
19 the apartment of the condominium manager.

20 Q How far after when he went to the apartment of
21 the condominium manager did he find out that the police
22 had arrested two of the guys that robbed him?

23 A When I went to the manager, the police hadn't
24 arrived yet.

25 Q How soon after when he was at the manager's did

1 he find out the police had arrested --

2 A I don't have a good notion of the time but I
3 think about 20 or 30 minutes.

4 Q So 20 or 30 minutes after arriving at the
5 manager's he found out that the police had arrested two
6 of the people that had robbed him?

7 A Yes.

8 Q How soon after did he go meet with the police
9 officer to go out there and see the two people that
10 robbed him?

11 A From the time I went outside my house to the
12 time I went to identify them, I reckon about an hour.

13 THE COURT: Okay, Mr. Aylor, how much longer do
14 you think you have?

15 MR. AYLOR: Depending on the answers, 15 minutes
16 maybe.

17 THE COURT: All right. We are going to recess
18 for the evening. You may step down.

19 MR. SHELTON: Your Honor, I want to make sure
20 they know not to talk about their testimony.

21 THE COURT: I'm sure that they know, and I hope
22 that I don't have to tell them what they should and
23 shouldn't do regarding the motion to sequester.

24 well, how did we get from two hours to four?

25 MS. CORNWELL: Your Honor, the State was unaware

1 of how long the defendants' questioning was going to
2 take.

3 THE COURT: All right. We will begin at 10:15
4 in the morning. We'll begin because we can't even begin our
5 openings without continuing this hearing; is that
6 correct?

7 MS. CORNWELL: Yes, Your Honor.

8 MR. SHELTON: Yes, Your Honor.

9 MR. AYLOR: Correct, Your Honor.

10 THE COURT: All right. 10:15, thank you.
11 we are at ease.

12 (Whereupon, the proceedings in this matter
13 before The Court were adjourned for the evening.)

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1 THE COURT: Mr. Silva, I need you to come
2 forward.

3 Please take your seat, thank you.

4 Sir, we have set the microphone up for you right
5 there. I hope that that is better for you, and we will
6 go ahead and get you a glass of water.

7 I know that we worked you very long yesterday,
8 so if you need additional breaks, I just need for you
9 to let me know but we're trying to get through this
10 part of the trial so that we can bring the jury in and
11 so if you'll just bear with me. All right, sir?

12 THE INTERPRETER: I appreciate it, Your Honor.

13 THE COURT: And if you'll just look at me and
14 let me know that you need a break we'll take a break.
15 Because you are working twice as hard as any of us, all
16 right?

17 All right, I need to remind you, sir, that you
18 are still under oath. You, as the interpreter, you are
19 still under oath,

20 THE INTERPRETER: Yes, Your Honor.

21 THE COURT: All right. You understand that,
22 sir?

23 THE INTERPRETER: Yes, Your Honor.

24 THE COURT: All right. I need you to remind Mr.
25 Silva that he is still under oath.

1 THE WITNESS: (Affirmative head shake.)

2 THE COURT: Mr. Silva, I saw that you shook your
3 head. It's very important, this is my court reporter,
4 she is writing down everything that I say and that you
5 say, and all the people say in the courtroom. So
6 you've got to speak out loud to your interpreter,
7 because he cannot interpret head shakes. He is not
8 allowed to do that. Do you understand.

9 THE WITNESS: Okay.

10 THE COURT: All right.

11 Now, Mr. Silva, I need to advise you, yesterday
12 one of the attorneys asked you your immigration status.

13 Do you remember that question?

14 THE WITNESS: Yes.

15 THE COURT: Sir, do you understand my
16 recollection of your testimony you responded that you
17 were here illegally. Is that correct?

18 THE WITNESS: Yes.

19 THE COURT: You understand that you do not --
20 that you have the protections given to you by the Fifth
21 Amendment of the Constitution of the United States. Do
22 you understand that?

23 THE WITNESS: Yes.

24 THE COURT: All right. Thank you.

25 We had an in-chambers conference and I

1 understand that the State is objecting to any questions
2 regarding whether or not Mr. Silva is here legally or
3 illegally. I'll address that at a later time that he
4 is on the stand.

5 Mr. Aylor, I understand you have a few more
6 questions.

7 MR. AYLOR: Thank you, Your Honor. May it
8 please the Court.

9 CONTINUED CROSS-EXAMINATION

10 BY MR. AYLOR:

11 Q Good morning, Mr. Silva.

12 Mr. Silva, which one of your neighbors tackled
13 one of the robber's when they ran outside of the house?

14 A Pedro.

15 Q Where does Pedro live in relation to your home,
16 Mr. Silva?

17 THE COURT: Mr Aylor, with all due respect, how
18 is this relevant to the issues at hand with the motions
19 you have filed?

20 MR. AYLOR: It's relevant in regards to yet
21 another person that would have been able to be a part
22 of the identification considering they physically
23 tackled one of the three individuals that was running
24 out of the home and would have been, you know,
25 literally on top of that person and could have

1 identified the person.

2 THE COURT: Move on, Mr. Aylor.

3 Q (By Mr. Aylor) Mr. Silva, is it true that the
4 night prior to when your home was invaded you had a
5 window broken and someone had attempted to break in
6 your home?

7 A Yes.

8 Q Did you have any conversations with Deputy
9 Charlton after you returned to the home from
10 identifying the two individuals on the roadside?

11 A He asked me to do a report on every thing I
12 could in writing.

13 Q Did you see him again after that?

14 A Yes.

15 Q When?

16 A The next day when he came by to pick up the
17 report.

18 Q How much did you and Mr. Adao discuss what
19 happened in court with testimony yesterday?

20 A He called me up for about 2 or 3 minutes.

21 Q And they just discussed their testimony?

22 A I asked him only if he -- they had asked me
23 about, some questions about legalization because they
24 had asked me about that.

25 Q So then the answer is yes, they did discuss

1 their testimony?

2 THE COURT: Excuse me, I'm sorry, who are you
3 referring to as they?

4 Q (By Mr. Aylor) So the answer is yes, that you
5 and Mr. Silva and Mr. Adao discussed your testimony
6 regarding at least the immigration issue, correct?

7 A Yes.

8 Q Do you think that if you would be have been
9 given the opportunity the night of the robbery to ID
10 the third individual, you would have been able to
11 identify him?

12 A No.

13 Q Do you personally have any co-workers or
14 friends, professionally or socially that are black?

15 A Two or three.

16 Q And you, Mr. Silva, you told us yesterday you
17 were made aware of the police catching two of the
18 individuals that robbed you somewhere around 30 minutes
19 after it happened, correct?

20 A Yes.

21 Q And when you identified the two individuals,
22 it's correct that you stated that one of them was one
23 of the individuals who had invaded your home, but you
24 believed they had changed clothes, correct?

25 A Yes.

1 Q Do you feel like, that a lot of black people,
2 black men look similar?

3 A Yes.

4 MR. AYLOR: No further questions, thank you.

5 THE COURT: Redirect.

6 MS. CORNWELL: Briefly, one question.

7 REDIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q Mr. Silva, the night that you were robbed and
10 kidnapped and burglarized, do you think if the third
11 person would have been present that night you would
12 have been able to identify them?

13 MR. AYLOR: Your Honor, I'm going to object.
14 And I believe that question was already asked and
15 answered by me. If the question was if you would have
16 had an opportunity that evening.

17 THE COURT: He did. But I'm going to allow her,
18 Mr. Aylor. Thank you.

19 MS. CORNWELL: Thank you, Your Honor.

20 Q (By Mr. Cornwell) You may answer.

21 A Yes.

22 MS CORNWELL: Thank you. Nothing further, Your
23 Honor.

24 THE COURT: Mr. Shelton?

25 MR. SHELTON: Nothing, Your Honor.

1 THE COURT: Mr. Aylor?

2 MR. AYLOR: Nothing further.

3 THE COURT: You may step down. Thank you.

4 MS. CORNWELL: Your Honor, the State has no
5 further witnesses.

6 THE COURT: Mr. Silva -- where are you keeping
7 the witnesses?

8 MS. CORNWELL: We are keeping them outside
9 downstairs in the solicitor's office. Rhonda is
10 assisting with that.

11 THE COURT: Mr. Silva, you are done testifying
12 at this time. But you will be required to testify
13 later. You are not permitted to discuss your testimony
14 with anyone.

15 THE WITNESS: Okay.

16 THE COURT: Do you have any questions the for
17 Court?

18 THE WITNESS: Not at this time.

19 THE COURT: All right. Thank you. You may step
20 down.

21 You have no further witnesses; is that correct?

22 MS. CORNWELL: Yes, Your Honor.

23 THE COURT: All right. Mr. Shelton.

24 MR. SHELTON: Thank you, Your Honor. Defense
25 calls Theresa Barnett.

1 MS. THERESA ANN BARNETT,
2 after having first been sworn to state the truth, the
3 whole truth and nothing but the truth, testified on her
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. SHELTON:

7 Q Ms. Barnett, what is it that you do?

8 A I'm operations supervisor at Berkeley County
9 911.

10 Q And how long have you done that?

11 A I have done it for 24 years.

12 Q Okay. And a part of your job deals with CAD
13 reports?

14 A Yes.

15 Q Okay. And can you explain how a CAD report is
16 generated?

17 A When we answer the 911 lines and we receive a
18 request for service, it's automatic. We click and put
19 in the information for whichever agency the request is
20 for.

21 Q Okay. And the information that the 911
22 operators get, where does that come from?

23 A Where does the information come from?

24 Q Yeah.

25 A The caller.

1 Q The caller? Do you also communicate with police
2 officers?

3 A Yes.

4 Q Okay. You've had an opportunity to review the
5 CAD report that's in this case?

6 A Yes.

7 Q Correct. Could you -- and you have no problems
8 reading the CAD report in this case?

9 A No.

10 Q And CAD reports are generated as regular
11 business records?

12 A Yes.

13 Q Could you take a look at this CAD report? Can
14 you tell us what time and what date the call came in?

15 A It came in on August the 6th, 2010 at 11:35 p.m.

16 Q And what was the original remark?

17 A The original remark the caller stated for five
18 minutes he was robbed at gunpoint by two black males
19 wearing striped red and white shirts. And then he
20 stated also that they were GOA, which is gone on
21 arrival; unknown what direction; stated he was held by
22 gunpoint to his head and the friend around his neck;
23 and they had a language barrier.

24 Q And when there is a language barrier, what --
25 are there resources available for 911 dispatchers?

1 A Yes, sir.

2 Q What type of resources are available?

3 A We have something that's called Language Line.

4 Q And is that -- is there a fee or anything
5 associated with that that you know about?

6 A There is a fee that we maintain in the 911
7 center.

8 Q And is it used on a regular basis?

9 A Yes.

10 Q When the police officers call in, how do you
11 know what officer is giving remarks to the dispatcher?

12 A By his call sign.

13 Q Okay. And in this incident, in this CAD report,
14 there is how many call signs?

15 A Seven.

16 Q And Officer Charlton's would be what number?

17 A BC-154.

18 Q And did they give certain statuses, a 10-76,
19 10-23. Do you know what that means?

20 A Yes.

21 Q Okay. What is that?

22 A 76 is en route to the scene, and 23 is on scene.

23 Q Could you tell us when Officer Charlton came on
24 scene?

25 A 11:39 p.m.

1 Q And then he called in at -- his next call was
2 11:42?

3 A Yes.

4 Q And then 11:42:47?

5 A Yes.

6 Q could you tell us what those were?

7 A Rabo male, white shirt, young guy, and then the
8 second one was detained times two.

9 Q And then the next correspondence on -- for
10 officer Charlton on the CAD report actually refers to
11 an earlier time?

12 A Yes.

13 Q And that's 10:33?

14 A Yes.

15 Q And that's radio silence?

16 A Yes.

17 Q What is the next from officer Charlton?

18 A At 12:18 he went en route to apartment G-1.

19 Q And then the next for Officer Charlton?

20 A On this report it actually shows at 1:29 where
21 he went en route to apartment G-1.

22 Q And to be clear, you have no idea what was going
23 on at this point in time?

24 A By this report, no, sir.

25 Q And the 911 operator, dispatcher, would have no

1 idea what's actually occurring out in the field?

2 A Correct.

3 Q They are just based off what the officer's
4 radioing into them?

5 A Yes.

6 Q And so according to the CAD report, officer
7 Charlton is en route to apartment G-1 at 12:18?

8 A Yes.

9 Q And then en route at 1:29?

10 A Yes.

11 Q There's also one for Deputy Ollic?

12 A Okay.

13 Q And his call sign, do you know what was his call
14 sign?

15 A BC-180.

16 Q Okay. Could you tell us when he was 10-23, on
17 scene?

18 A 11:45 p.m.

19 Q Okay. And then he was actually 10-24, which is
20 leaving the scene, at one point in time; isn't that
21 correct? Next page, I'm sorry.

22 A He actually left, are you talking about when he
23 was en route to the jail or?

24 Q No. The fourth page, third one down, he was
25 BC-180. What does 10-24 mean?

1 A Left the scene.

2 Q Okay. And so at what time did he leave the
3 scene?

4 A 1:29.

5 Q And then he comes -- then the next one after
6 that, what's the next one after that?

7 A He's back on scene again at 1:32.

8 Q And then what is the status for the next one for
9 ollic?

10 A 95.

11 Q And what does that mean?

12 A Prisoner in custody.

13 Q In custody. And what time was he in custody,
14 did he have the person in custody?

15 A At 23:42.

16 Q The 10-95?

17 A Uh-hum. When officer Charlton said detained
18 times two?

19 Q No, I'm sorry, officer ollic. When did he have
20 somebody in custody?

21 A Oh, I'm sorry. He -- 1:32.

22 Q At 1:32?

23 A Yes.

24 Q And when he -- when officer Charlton gave his
25 sign of detained, what was the status at that point in

1 time?

2 A That he had two subjects detained.

3 Q He didn't put down 10-95 that they were in
4 custody.

5 A No.

6 MR. SHELTON: I have no further questions.

7 THE COURT: Thank you. Mr. Aylor?

8 MR. AYLOR: No questions, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ALFARO:

11 Q Good morning, Ms. Barnett.

12 A Good morning.

13 Q I just want to ask you a couple of questions jut
14 to follow up on what Mr. Shelton asked you.

15 You said you have done this for 24 years?

16 A Yes, sir.

17 Q And you have been dispatching calls that whole
18 time?

19 A Yes, sir.

20 Q Okay. In your experience in those 24 years, do
21 officers always call out on the radio in the split
22 second they do something? For example, if somebody
23 arrests somebody, as soon as the handcuffs go on do
24 they say 10-95? Or do they -- sometimes the time is
25 going to be off a little bit?

1 A I wouldn't really know. I mean, I only know
2 when they actually say it.

3 Q So the CAD report that you refer to is only as
4 precise as when the officer calls in what they do?

5 A Yes.

6 Q So it would be fair to say if an officer did
7 something and waited a few minutes to call it in, the
8 time that is reflected on the CAD would be the time
9 that he called it in rather than the time that he did
10 something?

11 A Yes.

12 Q And so the CAD report, your review of it shows
13 that two subjects were detained approximately three
14 minutes after Deputy Charlton arrived in the area?

15 A Yes.

16 MR. ALFARO: Thank you. No further questions.

17 THE COURT: Mr. Shelton?

18 MR. SHELTON: No further questions.

19 THE COURT: All right. Just so I'm clear, when
20 did the initial call go out, 11:35?

21 THE WITNESS: We received the original call at
22 11:35. We actually dispatched at 11:38.

23 THE COURT: And Officer Charlton arrived at
24 11:39?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: And then the suspects were detained,
2 two suspects detained at 11:42?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: And then the arrests were?

5 THE WITNESS: They actually noted the arrests at
6 1:32.

7 THE COURT: And that is arrest times two? Is
8 that correct?

9 THE WITNESS: Yes. Because at 1:34 and 1:35
10 there were two different officers en route to the jail
11 with black males.

12 THE COURT: Okay. That's where I get confused.
13 Based upon my questions, do you have any questions for
14 Ms. Barnett?

15 MR. SHELTON: If I can clarify maybe a little
16 bit.

17 REDIRECT EXAMINATION

18 BY MR. SHELTON:

19 Q I didn't ask you about the other officers.
20 There's another officer on scene, call sign 119 is --
21 is who? Who is call sign 119?

22 A Officer Drennon.

23 Q Okay. And so he was also on scene?

24 A Yes, sir.

25 Q And he placed one of the two in custody,

1 arrested, 10-95, at 1:32?

2 A Yes.

3 Q Okay. And then Ollic, officer Ollic placed the
4 other one in custody at 1:32?

5 A Yes.

6 THE COURT: Mr. Aylor?

7 MR. AYLOR: Nothing, Your Honor.

8 MR. ALFARO: Nothing, Your Honor.

9 THE COURT: You may step down. Thank you.

10 Is she still under subpoena?

11 MR. SHELTON: If she could be in contact with
12 me.

13 THE COURT: But she is still under subpoena?

14 MR. SHELTON: Yes.

15 THE COURT: This is a pretrial.

16 MR. SHELTON: I'm sorry.

17 THE COURT: We haven't started trial yet, so you
18 are still under your subpoena because I anticipate that
19 you are probably going to have to come and testify for
20 the trial. But we are going to release you right now
21 and I guess you are going to go back to work.

22 THE WITNESS: Okay.

23 THE COURT: And then I need you just to be
24 available in case Mr. Shelton needs you and when he
25 needs you to testify.

1 THE WITNESS: Okay.

2 THE COURT: All right, thank you.

3 THE WITNESS: You're welcome.

4 THE COURT: But you are free to leave. And
5 please don't discuss your testimony with any of the
6 witnesses until after you have testified and I've told
7 you that you may.

8 THE WITNESS: Okay.

9 THE COURT: Thank you.

10 THE WITNESS: You're welcome.

11 MR SHELTON: No further witnesses, Your Honor.

12 THE COURT: Mr. Aylor?

13 MR. AYLOR: No witnesses, Your Honor

14 THE COURT: All right. Based upon that, State
15 have any rebuttal witnesses?

16 MS. CORNWELL: No, Your Honor.

17 THE COURT: Okay.

18 Mr. Shelton, did you want to argue first?

19 MR. SHELTON: Well, Your Honor, I think we
20 wanted to get clarification of exactly how you want to
21 do it, what you think is the easiest way to do this as
22 far as which motion you want, individual motions and
23 then a ruling, or you want all of the motions at once,
24 that type of thing.

25 Because I think there's -- Mr. McCoy and Mr.

1 Aylor are going to argue some different, the different
2 parts of the motions.

3 THE COURT: All right. Let me hear you, you
4 pick a motion.

5 MR. SHELTON: All right. Well, Your Honor,
6 first the unlawful seizure. Mr. Fishburne, according
7 to the testimony, he was detained on sight of the
8 officer seeing the individuals walking down the street.

9 they were not free to go. In addition, the
10 third party that took off running they placed a canine
11 on. So he was not free to go at the time that the
12 officer saw them walking on the side of the road.

13 So, Your Honor, the length of time is really
14 questionable. We are not quite sure how long they were
15 standing there until they gave a -- to do the
16 suggestive -- per se suggestibility lineup that they
17 did, so we are not quite sure how long they were there
18 even before that took place.

19 All the officer had at the time that he detained
20 my client was a valid ID that he gave him. He gave him
21 his valid ID, birth date or however, no warrants,
22 nothing to hold him. Admits that he didn't commit any
23 crimes at that point in time; didn't have anything
24 illegal on him at the time, Your Honor.

25 And I guess the question then is if it was

1 reasonable in scope and duration, Your Honor, the
2 testimony by the CAD -- from Ms. Barnett is that they
3 detained them at 11:42, and it wasn't until 12:18 that
4 officer Charlton went back to the apartment.

5 And Officer Charlton admitted that it could have
6 been 15 minutes to an hour before he went back and got
7 the victims. That Mr. Silva testified that it was at
8 least 20 to 30 minutes after they called 911 before he
9 was able to see the officer.

10 So I believe that that time is, with no evidence
11 whatever that Mr. Fishburne has committed any crime at
12 that point in time, in addition Mr. Thompson, all he
13 had was a laptop which is not illegal to carry a laptop
14 down the road, so that in and of itself, they hadn't
15 committed -- no one in this party has committed a crime
16 at that point in time to be detained for that long of a
17 time.

18 And investigation-wise, you are allowed to take
19 their ID and that sort the thing, but they gave them a
20 valid ID, but there is no -- that is beyond the
21 reasonable amount of time for this investigation. And
22 is, as the Court in Frazier indicated, Your Honor, and
23 I think I gave a copy, but 30 minutes was too long of a
24 time and it was --

25 THE COURT: But isn't each case fact specific

1 and don't I have to look at the reasons for the delay?

2 MR. SHELTON: Right. Yes, Your Honor. But
3 in --

4 THE COURT: So there is no standard time. The
5 Courts have held that two hours is not unreasonable
6 considering the circumstances. Correct, Mr. Shelton?

7 MR. SHELTON: Correct. And they have also held
8 that --

9 THE COURT: So we can't just pinpoint a time and
10 say that 31 minutes is unreasonable, correct?

11 MR. SHELTON: Right. Yes.

12 THE COURT: All right.

13 MR. SHELTON: But there's also been no crime
14 being committed at that point in time. And for them to
15 do a fishing expedition for this investigation, they --
16 the only reason holding him --

17 THE COURT: A crime has been reported, correct,
18 Mr. Shelton?

19 MR. SHELTON: A crime had been reported, yes
20 Your Honor. But there's nothing linking, at that point
21 in time that they're holding my client, there's nothing
22 linking him to that crime.

23 He has -- the report is also red and white
24 stripes. And there is no testimony that he was wearing
25 that clothing. The testimony later on, which we get

1 into the reliability of the identification, but the
2 testimony later on was that one of the person's was
3 wearing blue. There is no testimony saying that he was
4 wearing the blue.

5 So there's nothing linking him, other than being
6 a black male out on the scene, which was a fishing
7 expedition for them to try to link our clients to this
8 crime. They used as suggestively -- per se suggestive
9 lineup in that analysis.

10 THE COURT: Okay. So are we moving into lineup?

11 MR. SHELTON: No. It's just part of the
12 argument.

13 THE COURT: All right. We are going to try to
14 do it as efficiently and clearly as possible because we
15 have two codefendants and several motions, and I want
16 to just stay on one motion at a time.

17 Because this one does not -- assuming you have
18 no you are not going to argue as to Mr. Fishburne's
19 seizure?

20 MR. AYLOR: No, Your Honor.

21 THE COURT: Correct. Thank you.

22 MR. SHELTON: Your Honor, we just feel that it
23 was completely unreasonable in scope and in duration of
24 this for them to hold Mr. Fishburne for that period of
25 time without any other evidence that he's actually

1 committed a crime.

2 And there were a lot of different opportunities
3 -- things that they could have done since he's given a
4 valid ID. They could have allowed him to go and they
5 could have done a six photo lineup with his pictures
6 since they had his valid ID.

7 THE COURT: What is it that you're requesting
8 that the court do, Mr. Shelton?

9 MR. SHELTON: Your Honor, it's my contention
10 that the cell phones that were found on my client be
11 suppressed based off the illegal seizure.

12 In addition, the photo lineup -- lineup in and
13 of itself came about because of the illegal seizure.
14 And so I would ask that those, both of those be based
15 off the illegal seizure and be suppressed.

16 THE COURT: All right. Who's arguing?

17 MR. ALFARO: Your Honor, regarding the stop for
18 Mr. Fishburne. It's a Terry, this has clearly been
19 described as a Terry stop. The Constitution forbids
20 unreasonable searches and seizures, not any kind of
21 search and seizure.

22 It is established that they can detain for
23 investigative purposes as long as they have reasonable
24 suspicions based off articulable facts. And with
25 particularize objective basis that would lead someone

1 to believe the suspect's involved in criminal activity.

2 The balancing test in this case is obviously the
3 individual's rights versus the public interest. I
4 think it's, from the testimony that was given, clearly
5 the Rodriguez factors. This is a serious offense;
6 there was a reported 911 call from a victim, not just
7 an anonymous tip or a CI, it's a victim reporting a 911
8 call of a burglary, a home invasion involving three
9 armed suspects.

10 And for it to be characterized as a fishing
11 expedition, I think this is the exact opposite. You
12 have description -- information provided to the officer
13 responding to the scene was that three black males had
14 been involved in an armed robbery, a burglary, and then
15 one of the items that was stolen was a laptop.

16 And you have an officer that arrives on the
17 scene --

18 THE COURT: Mr. Alfaro, did they know a laptop
19 had been stolen when they came into contact with Mr.
20 Fishburne?

21 MR. ALFARO: That was Deputy Charlton's
22 testimony that he was informed on the way to the scene
23 that a laptop was among the items that were taken.

24 THE COURT: And Mr, Alfaro, there has been
25 discussion about a red striped shirt and a blue shirt.

1 Can you clarify for the court, I'm confused or perhaps
2 unclear as to who was wearing what clothing and then
3 what clothing --

4 MR. ALFARO: Well I think it -- I don't think I
5 can clear that up for Your Honor, because it is unclear
6 as to what the clothing description was. And I think
7 if you -- the laptop becomes a very important factor in
8 this scenario in that the officer knew that a laptop
9 was involved in this robbery.

10 The suspects are detained in the area less than
11 a quarter of a mile, between two blocks and a quarter
12 of a mile based on the testimony, from the site of the
13 robbery three minutes after the call's dispatched and
14 four minutes after Deputy Charlton arrives at the
15 scene.

16 And it's not just that it's three black males
17 that are walking down the road, it's three black males,
18 one of them is carrying a laptop, at, you know, 11:40
19 at night. The officer, I think that gives any officer
20 reasonable suspicion to at least stop and talk to them.

21 And then at that point when the officer gets out
22 of the car and tries to speak with them, one of the
23 three -- the subjects carrying the laptop just drops
24 the laptop. One subject runs. The other suspects,
25 based on Deputy Charlton's testimony, appear to begin

1 to take the steps to flee. They eventually stay at the
2 scene.

3 But I think it's clear that at that point the
4 officer had reasonable suspicion to stop, to do -- to
5 perform a Terry stop, to detain them long enough to
6 complete -- to preform an investigatory detention.
7 And, you know, the way that it was done is really the
8 least intrusive, seems to be the least intrusive
9 manner.

10 Mr. Shelton would suggest that the suspects, who
11 he has a reasonable suspicion and arguably probable
12 cause to arrest, should just be allowed to leave while
13 he formulates a six-pack identification and tracks them
14 down later to do an identification.

15 THE COURT: Thank you, Mr. Alfaro.

16 Do you have similar motion on Mr. Thompson?

17 MR. AYLOR: Yes, Your Honor. Just in efficiency
18 obviously I join in the specific things mentioned by
19 Mr. Shelton with regards to my client. There was a
20 couple of other things I just wanted to point out on
21 the factual basis, nothing different from the case law.

22 As far as the actual 911 call, actually from the
23 CAD report it states that the original dispatch was
24 that he was robbed at gunpoint by two black males, not
25 three. Furthermore, there was not -- there was no gun

1 found on the two individuals that were stopped.

2 As far as the laptop, as far as whether or not
3 the laptop was something that Deputy Charlton was aware
4 of prior to detaining both Mr. Fishburne and Mr.
5 Thompson, to me, while it seems that from his testimony
6 his investigation as far as what happened when is
7 extremely unclear. I don't believe that he tried to
8 mislead the Court, I simply think he just doesn't
9 remember.

10 I don't see anything within the CAD report or
11 anywhere else in the report that it states decisively
12 that he in fact was aware of the laptop prior to
13 detaining both my client and Mr. Fishburne.

14 And finally, the fact that both individuals were
15 frisked, they -- both their ID's were run, the
16 information he had gathered on both of them was made
17 available to them, they were obviously also on foot.
18 You know, I feel like at that point at a very minimum
19 there was no reason for the detainment.

20 I understand the totality of the circumstances
21 regarding the serious crimes that had been called in.
22 However, he had all the information on him present.
23 They had no weapons on them, and nothing of any sort of
24 an illegal nature at that point in time.

25 And finally, in regards to just looking at the

1 circumstances of, you know, my client as well the other
2 client, they obviously spoke with the officer at and
3 you know, did not leave from the officer, did not run
4 while a third party obviously did run. And they were
5 detained from that.

6 I feel that once that their IDs were checked and
7 their information was recorded, that there was nothing
8 more to detain them at that point in time if the
9 original stop was even valid.

10 THE COURT: Assuming the original stop was
11 valid, Mr. Aylor, is the officer required to let him go
12 once he obtains their driver's license?

13 MR. AYLOR: No. No, he's not required to let
14 them go once he retains their driver's license, but
15 under the totality of the circumstances that he stopped
16 individuals on a road that people, as per his
17 testimony, are constantly walking up and down that
18 road, where it would be different if was some sort of
19 major highway where it would be some odd circumstance
20 for people to walk down that road with groceries,
21 laptops, dogs, children, I mean, it's a pretty highly
22 pedestrian area.

23 So, therefore, the fact that, you know, it's
24 sometime in the night that these individuals were
25 walking, and the fact that it's unclear at the very

1 best whether or not he was aware of the laptop, once he
2 ran the IDs on these individuals and had their
3 information and they had nothing on them that was
4 illegal, no guns, no anything else, and that the
5 original dispatch was that it was two black males and
6 this is a situation where it's three, it was Deputy
7 Charlton's own testimony in regards to a gas station
8 that's right around the corner that people, quote,
9 unquote, run from the police all the time.

10 So I think the fact that one of these
11 individuals ran does not directly link them at all to
12 this burglary at that point in time.

13 THE COURT: All right. And what relief are you
14 seeking on behalf of Mr. Thompson?

15 MR. AYLOR: I'm seeking that any evidence
16 collected there at the scene at the time of his arrest,
17 which would obviously be the laptop that in his
18 possession, be suppressed. As well as obviously which
19 would then lead to the ID as well.

20 THE COURT: All right. We will address the ID
21 in just a moment.

22 With respect to both motions as to Mr. Fishburne
23 and Mr. Thompson, your request indicating -- or your
24 motion to suppress the evidence based upon the seizure
25 of the defendants when Officer Charlton came into

1 contact with the two individuals, a police officer may
2 stop and briefly detain and question a person for
3 investigative purposes without violating the Fourth
4 Amendment right where the officer has a reasonable
5 suspicion supported by articulable facts.

6 In the facts at hand, Deputy Charlton was
7 dispatched at 11:39 after the 911 call came in at
8 11:35. He came into contact with and detained the two
9 suspects, Mr. Thompson and Mr. Fishburne, approximately
10 three minutes after the dispatch was for a robbery,
11 came into contact with the individuals.

12 The officer had at least, and was able to
13 articulate, an objective manifestation of the criminal
14 activity involving the two individuals that he stopped.
15 There was some indication that he knew it was a home
16 invasion. Whether or not he knew that specifically, I
17 do not recall specifically the testimony whether he
18 indicated that he knew that there was a laptop, but
19 when he came into contact with the two defendants he
20 indicated he saw the laptop.

21 The officer should employ the least intrusive
22 means available, reasonably available to verify or
23 dispel his suspicion of the -- the officer's suspicion
24 in a short period of time.

25 Based upon the totality of the circumstances, I

1 do not find that either Mr. Fishburne's or Mr.
2 Thompson's Fourth Amendment rights which were related
3 to the investigative detention were violated. I'll
4 note your exception for the record.

5 We will now move on to your next motion, Mr.
6 Shelton, which I assume chronologically would be the
7 identification, just chronologically would make the
8 most sense to me. But I'll be happy to hear them in
9 whatever order you're ready.

10 MR. MCCOY: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 MR. MCCOY: And I will keep this as brief as
13 possible. I don't have a desk over here to work with.

14 THE COURT: Do you need us to move?

15 MR. MCCOY: No. I'm fine right here, if you are
16 okay with it.

17 Your Honor, when we sit down and we take a look
18 at a suggestive nature of a lineup, obviously the case
19 we are going to rely on is Neal V Biggers.

20 We're looking first of all at the substantial
21 likelihood of an irreparable misidentification in any
22 kind of showup or a lineup. And the first factor that
23 we are going to take look at, Your Honor, is going to
24 be is the ID suggestive in nature to begin with.

25 Your Honor, if we are going to look at case law

1 in this particular area, the Supreme Court has ruled
2 and our State Court has also ruled that single-person
3 showups are particularly disfavored by the law and they
4 are widely condemned. I think just that alone and
5 itself, a single person lineup shows that this was an
6 undue or suggestive lineup, Your Honor.

7 We had two officers testify yesterday during
8 this hearing. One testified that they were both taken
9 out of a car, and both put behind the car for a lineup.
10 And the other testified that they did one at a time.

11 So I think that, you know, there is a little bit
12 of confusion there. I don't know if they just don't
13 remember, but there's obviously some confusion there in
14 being how the lineup was even operated and run. But I
15 think basically just looking at the single-person
16 lineup it moves and it shows and it's suggestive by
17 nature, Your Honor.

18 And moving on to the next level of examination
19 of a Biggers hearing is the reliability of a witness,
20 Your Honor. And we had two people take the stand
21 yesterday, the two victims in the case. We are going
22 to take a look at the chance to view the suspects, the
23 degree of attention to view the suspects, the accuracy
24 of the prior description, the level of certainty, and
25 the length of time to actually view the suspects.

1 And overall we're looking at the reliability of
2 the witnesses. Your Honor, both victims took the stand
3 yesterday, and one today actually, Your Honor, and told
4 the Court and told everybody in here that they find
5 African-American males to have similar facial
6 characteristics and they all look the same to them.

7 That's what they said when they first got up
8 there. So right away that triggers my question of
9 reliability of these two witnesses who took the stand,
10 Your Honor.

11 In further examining the chance to view the
12 suspects, Your Honor, we heard testimony, there was a
13 lot of confusion as to what went on at that house that
14 night that the robbery happened.

15 First of all, you have testimony from the
16 suspects (sic) in the case. They say the only chance
17 they really got to view these defendants or these
18 suspects was right when they came in the house. Your
19 Honor, you have to take a look at the degree of shock,
20 the degree of uncertainty as to even what's going on in
21 their surroundings right now when they view these
22 people who were coming into their house.

23 Right away the chance to view them and to take a
24 look at them is going to be cut down. After that
25 there's testimony that they were put into choke holds

1 and guns were used to move them into the house and
2 eventually move them up the stairs. And both testified
3 that after that, their observation and chances to
4 actually look at the suspects went down dramatically,
5 Your Honor.

6 If we are going to look at degree of attention
7 to view the suspects. Again, this is something that is
8 happening late at night. Obviously these victims are
9 unaware or even know what's going on at the time this
10 happens.

11 The degree of attention. Initially when
12 somebody comes through a door, maybe you can check out
13 somebody's facial features right away. But you have to
14 look at what they actually told the police, Your Honor.
15 They gave no description of height. They gave no
16 description of weight. They were obviously confused as
17 to what the suspects were wearing when they came in the
18 house.

19 All they knew, not young or old, but just knew
20 that they were black males, and that's it. So
21 obviously right there I'm going to have a huge question
22 as to the degree of attention that they actually had to
23 view these suspects.

24 In looking at the accuracy of a prior
25 description, let's take this right back to where the

1 actual suspects were detained. Right there the
2 accuracy of the description of the suspects was, there
3 really wasn't one, a description of the suspects.

4 They were wrong on what on the suspects were
5 wearing. And obviously, Your Honor, there's a short
6 amount time, I think the CAD report said that the
7 officer arrived at the location at 11:39 and actually
8 detained them at 11:42. So you got three minutes to
9 change clothes.

10 There is no testimony that any clothes were
11 found on the side of the road, Your Honor. So right
12 then and there I've got to question the reliability and
13 the accuracy of their prior description.

14 As far as the level of certainly, Your Honor,
15 when both suspects or, excuse me, both victims took the
16 stand there was a lot of confusion there. There is a
17 lot confusion in the testimony. There is a lot of
18 confusion as to what actually happened that night.

19 And I know time has passed, Your Honor, but
20 nobody was really clear as to were there two people in
21 the house, were there three people in the house. The
22 CAD report says two, eventually they said there was
23 three. We have got a situation, Your Honor, where
24 somebody is actually arrested or stopped at a gas
25 station and then left go a little bit later on.

1 so the level of certainty that these suspects
2 have, or these victims have towards naming these
3 suspects, it again raises a serious suspicions in my
4 eyes.

5 And just to go over a couple of high points with
6 you, Your Honor, that did come out in a lot of the
7 testimony that we heard yesterday. Going towards the
8 suggestive nature of this lineup as well, too, is that
9 both suspects were handcuffed.

10 We also heard testimony that whether they were
11 done two at a time or one at a time, at least they had
12 to get pulled out of a car with handcuffs behind their
13 backs and be assisted in even getting behind this cop
14 car.

15 And let's also note, Your Honor, that the cop
16 car was a marked one and not an unmarked car. So these
17 two fellows were being lined up in front of a marked
18 car with handcuffs behind their backs. And also it's a
19 huge issue that there is testimony from the victims
20 yesterday that the laptop was lying on the ground
21 somewhere near the suspects. And to me, that's a huge
22 red flag of a suggestive lineup, Your Honor, to have a
23 piece of evidence.

24 THE COURT: But didn't they say they didn't see
25 the laptop, Mr. McCoy?

1 MR. MCCOY: I think it was uncertain as to what
2 the first victim said, Your Honor. I'm not -- I don't
3 remember entirely either. But I think the second one
4 said that he did not see the laptop.

5 But I thought the first one was unsure and said
6 that he saw it lying on the ground. The officer
7 testified it was lying on the ground near where the
8 suspects were actually lined up behind the car.

9 THE COURT: Well, we know at least one victim
10 didn't see the laptop.

11 MR. MCCOY: That's correct, Your Honor, that's
12 correct.

13 THE COURT: Does the effect that the individuals
14 were handcuffed and may -- that the handcuffs may have
15 been seen by the victims make the lineup inadmissible
16 in itself?

17 MR. MCCOY: Your Honor, I think those suspects
18 being handcuffed, looking at the totality of the
19 circumstances, lined up behind the car, a marked cop
20 car, and you have testimony that a spotlight was
21 actually put on them, there are no other black males in
22 the area, Your Honor.

23 We actually have somebody, this Hilario guy,
24 who's actually on the scene. Through the first suspect
25 -- or victim's testimony, it is still even unclear as

1 to whether Hilario says, hey, these are the guys that I
2 saw too, in translating it to the victims in the case.

3 So I think, Your Honor, in looking at the
4 totality of the circumstances, I don't think the lone
5 handcuffs behind the back would be enough to get rid of
6 an ID. But when you have handcuffs behind your back;
7 you've got a marked patrol car; you've got two forms of
8 lights, including one spotlight that are trained
9 directly on these two individuals; no other black males
10 in the area; zero description, prior description
11 basically except black males. I think if you look at
12 the totality of the circumstances, it creates a highly
13 suggestive lineup.

14 And, Your Honor, if I could have two seconds to
15 look at my notes.

16 THE COURT: You may. Take all the time you
17 need. Just for the record, I released the jury until
18 12:15. I indicated to them to take the time to go
19 ahead and take their lunch break and hopefully, I
20 calculated wrong yesterday, hopefully the calculations
21 will be that we can begin at 12:15.

22 MR. MCCOY: Your Honor, if I could also add to
23 the fact, you know this lineup wasn't done one victim
24 at one time, they were done together. And they were
25 done with the confusion of having an interpreter there

1 and the police officers there. And also with
2 particular alarming to me as well, is that the first
3 victim that testified says he was given his cell phone
4 sometime while he was in this cop car. To me that's
5 highly suggestive.

6 He couldn't pinpoint a time when he was given
7 those cell phones. But to say, hey, we're riding to go
8 ID these suspects. By the way, these two phones were
9 found. Here's your phones back. Did it happen before
10 or after the lineup? I'm unsure because I think he's
11 unsure when he got the phones in the car.

12 And to me to be handed a piece of evidence
13 that's yours from a case, and then say, hey, here's a
14 lineup, Your Honor, I think is definitely grounds for a
15 highly suggestive lineup in nature.

16 And, Your Honor, based on what I have argued
17 with you today, I would ask, and I think this is
18 definitely a case of where this lineup needs to be
19 suppressed, Your Honor. I think it's highly suggestive
20 in nature. And the degree of certainly that these
21 victims had toward these suspects is extremely low.
22 And I ask Your Honor to suppress the lineup.

23 THE COURT: Mr. McCoy, if I grant your request
24 to suppress the lineup, how does that affect the case?

25 MR. MCCOY: Your Honor, I think it affects the

1 case that you can't have these fellows come in, because
2 I think they're even unsure as to who these suspects
3 are too, these victims can't come in and in an open
4 court in front of a jury and testify that they
5 identified somebody out of a lineup. And I think the
6 officers shouldn't be allowed to testify to that as
7 well.

8 THE COURT: Yes, sir. Mr. Shelton.

9 MR. SHELTON: Your Honor, I join in everything
10 Mr. McCoy said. Just to reiterate the fact that this
11 is a cross-racial identification where they both
12 admitted on the stand that they can't -- all black
13 males look similar to them.

14 I think that that in and of itself will take out
15 the reliability of these suggestive lineup, Your Honor.
16 So, I echo everything else he said as far as
17 mentioning, you know, that they already had some people
18 in custody; that one is not sure if -- Mr. Silva is not
19 sure if one of the persons that he ID'd is the gunman,
20 or one of the people that went up with him or the one
21 that stayed down; the language barrier; Charlton can't
22 describe how the actual identification took place
23 because it was confusing for him and he couldn't
24 elaborate on that. So that's -- I join with everything
25 Mr. McCoy said.

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1 MS. CORNWELL: Your Honor, Mr. McCoy has done
2 great job of explaining the Biggers standards.
3 However, when you look into the standards, yes, it may
4 have been suggestive, it was not unduly suggestive.

5 But even if the Court determines it was unduly
6 suggestive, under the totality of the circumstances,
7 there is not a substantial likelihood that there was an
8 irrepatriable misidentification.

9 Under the Biggers standards, the witness's
10 opportunity to view the criminals at the time of the
11 crime was extensive. They walked up to them, one had a
12 gun pointed to him, the other was choking, they went in
13 the house, they went upstairs, they were forced to
14 their knees, they were hit in the face. That gives
15 them ample time to look at the defendants and to make a
16 reasonable identification.

17 Adao testified on the scene that he was able to
18 see both defendants when he was going up the stairs,
19 when they turned the corner, and when they were in the
20 room. Paulo was able to state that when they walked up
21 to them, he pointed the gun in his face.

22 As far as their degree of certainty and degree
23 of attention, Mr. McCoy is incorrect on that. The
24 State -- there is clear State law, particularly in
25 State v Brown, that states a person in fear of his life

1 presumably has a more acute degree of attention to his
2 surroundings than a mere passerby.

3 And in this case, I think it is obvious that
4 they were in fear for their life. They were being
5 choked, they had a gun. You look at the accuracy of
6 the witnesses prior description, well that is
7 difficult. There is a language barrier.

8 But if you move into -- and those are the
9 Biggers standards. If you then move into the Brown
10 standards which talks about the suggestibility of the
11 showup identification, there are several factors that
12 they discuss that are relevant to this matter.

13 In Brown it says that whether they show up
14 shortly after the crime. Well obviously these
15 defendants were detained within four minutes of arrival
16 and in speaking to the victims. The arrest was made
17 two hours later.

18 There was an identification done testifiably
19 somewhere between 10 and 30 minutes after the crime
20 occurred. That is very short time after the crime
21 occurred in relation to everything else.

22 It's near the scene of the crime. The officer
23 testified that he was less than a quarter of a mile.
24 Both victims stated it was within 50 to 200 yards of
25 the home.

1 The witness's memory is still fresh. It was
2 within an hour of the crime happening, so the memory
3 was obviously fresh.

4 The suspects had not had time to alter their
5 looks or dispose of evidence. The looks are, there was
6 an inaccurate description, the clothing may have been
7 different. We don't have any reason to know why that
8 may have occurred. However, they didn't have time to
9 dispose of the evidence. They still had the laptop
10 computer on them, and later discovered the cell phones
11 on them. So they had not had time to dispose of that
12 evidence.

13 When they are taken for the lineup, Officer
14 Charlton made sure to tell them, this may or may not be
15 the people, you need to decide. Their certainty was
16 100 percent. And each one of them testified that they
17 had no doubt that those were the people that did it.
18 They were able to recognize it.

19 When they were able to look at it, they got a
20 clear look at the victim. Adao stated that he couldn't
21 see them very clearly as they were driving up, but once
22 they got up close enough and he could see them, he was
23 100 percent certain that they were there.

24 As far as the cross-race identification that Mr.
25 McCoy hit on, the states have -- the courts have had

1 numerous cases where they have allowed cross-racial
2 identification. That in fact most of the case law on
3 cross-racial identification is whether or not an expert
4 can testify on whether or not a jury charge has been
5 given. And most of the time the courts have decided
6 that that is more confusing to the jury, and it's more
7 presumptive than it is probative -- I'm sorry, more
8 prejudicial than it is probative.

9 Furthermore, the identification, the weight is
10 for the jury to decide not whether -- I'm sorry, I lost
11 my train of thought. But the victims clearly stated
12 they were 100 percent certain on the identification.

13 It happened close to the crime event. It
14 happened within a reasonable time after the crime.
15 Memory was still fresh. The degree of attention was
16 acute because they were the victims of a violent crime
17 and their life was in danger.

18 I believe that all of the case law that has been
19 submitted to Your Honor, every case in this, with the
20 exception of the Moore case, the Court upheld the
21 identification. And that is in, I think Your Honor has
22 all those cases, the Brown case, the Johnson case, the
23 Domain case, the Breakaway case, all of those cases
24 upheld the identification because it was under the
25 Brown standard.

1 The only case that was not upheld was the State
2 V Moore, which they touched on. That case is factually
3 distinguishable from this case. That was merely a
4 witness who got a fleeting glance at the back of two
5 suspects. She only saw them for a couple of seconds.
6 And her identification was based purely on the
7 clothing, and not based on the identification of the
8 individuals.

9 That's clearly not the case here. And we would
10 state that while it may have been suggestive, it was
11 not unduly suggestive. Under the totality of the
12 circumstances, there is not a mere substantial
13 likelihood of irreparable misidentification.

14 And if I may have just a moment, Your Honor, to
15 make sure I have got all my forms.

16 We would simply ask that Your Honor deny the
17 state -- the defendants' motion to suppress the
18 identification and allow the jury to hear the evidence.

19 THE COURT: Ms. Cornwell, was the testimony that
20 the victims were brought at -- of course they were
21 brought at the same time, but did they do the
22 identification at the same time?

23 MS. CORNWELL: I believe the --

24 THE COURT: Do you understand my question?

25 MS. CORNWELL: I believe so, Your Honor. If I

1 answer improperly, please let me know. I think that
2 the testimony was they made the identification at the
3 same time. They both were in the vehicle at the time
4 the identification was made. And they were both able
5 to say, those were the guys, those were the guys.

6 THE COURT: Does that factor in, does it weigh
7 more to being unduly suggestive if one heard the other?

8 MS. CORNWELL: Your Honor, I believe that they
9 both testified that they were both certain of the
10 identification. As far as the suggestiveness of
11 whether they both stated something at the same time or
12 heard the other. I don't think that that was clear on
13 whether they heard the other, or they both
14 simultaneously said that they were certain that those
15 were the people.

16 But the underlying thing is that they both said
17 they were 100 percent certain that those were the two
18 individuals, two of the three individuals that had just
19 robbed them.

20 THE COURT: Thank you.

21 Mr. McCoy, you are standing up. I'm going to
22 take that as a sign that you have something else to
23 say.

24 MR. MCCOY: Briefly, Your Honor. I will keep
25 this fast. We are talking, we're going to touch on the

1 degree of attention somebody has or a victim has in an
2 opportunity to view a suspect. I recognize what Ms.
3 cornwell has said about the degree of certainty is
4 heightened when your life is actually in danger. And I
5 agree with that. I do agree with that, Your Honor.

6 But you have to look at what's the only way we
7 get inside these victims' heads? What's the only way
8 we can understand the degree of certainty they actually
9 had to view these guys? It's not based on case law
10 and them being excited and in fear of their lives. You
11 have to look at what they did in describing these
12 suspects.

13 They did not describe these suspects at all.
14 They couldn't describe the clothes. They couldn't
15 describe height. They couldn't describe weight. They
16 couldn't describe skinny or large. They couldn't do
17 any of that but just say black males. And, Your Honor,
18 that's where we have to hit on the degree of certainty.
19 They actually had to view these people.

20 And also, Your Honor, I want to touch on the
21 fact that -- and I wish I had said this in my original
22 statement to you, Your Honor -- but we heard testimony
23 yesterday and today that Mr. Silva stated that a
24 neighbor had told him before he went to the lineup,
25 hey, they have got two of the guys that robbed you down

1 the road.

2 So again, I feel like these suspects are getting
3 in a car, they're being handed phones, we don't know
4 when, they're being told the suspects are in cuffs down
5 the road. I think that is not only suggestive, but it
6 is unduly suggestive, Your Honor.

7 And I think Ms. Cornwell was wrong in her
8 interpretation of saying that these victims came up and
9 instantly identified these suspects. We have heard
10 testimony that riding up they weren't really sure what
11 was going on. And they got there and it could have
12 been several minutes before they actually identified
13 the suspects as the ones who robbed them. They did
14 identify them. But it took several minutes according
15 to the testimony that I heard yesterday, Your Honor.

16 THE COURT: All right. The identification,
17 showup identifications are generally inadmissible if
18 suggestive -- if it's suggestive out-of-court
19 identification procedure created a significantly
20 substantial likelihood of irreparable
21 misidentification.

22 I must ascertain whether the identification
23 process that was used in this particular case was
24 unduly suggestive. So it may be proper, even though
25 they are generally suggestive, if they occur shortly

1 after the alleged crime where the suspects had not had
2 time to alter his or her looks or dispose of evidence,
3 and if the showup may expedite the investigation.

4 In factually, the showup occurred approximately
5 less than hour after the alleged incident was reported,
6 near the scene of the crime, and the suspects were
7 consistent with the very limited description given by
8 the defendants and they were carrying the laptops that
9 were consistent with what the victims had indicated was
10 stolen.

11 Although the showup was suggestive, it was not
12 unduly suggestive. And as such the court must
13 determine if the ID given by the victims was so
14 reliable that no substantial likelihood of
15 misidentification existed.

16 Both victims indicated that they did have an
17 opportunity to view the suspects at the time of the
18 crime. They were indicating, both victims indicated
19 there were times when they were face to face. And
20 although indicated that he had time to view the person
21 who choked him when he was laying on the ground.

22 Both of the witnesses provided similar
23 descriptions of the males entering the home. Mr. Silva
24 indicated that he was absolutely certain and recognized
25 one of the males immediately upon arrival. There was a

1 short amount of time that had elapsed between the crime
2 and the showup. Based upon all of those factors, I am
3 denying your motion to suppress the identification as
4 to Mr. Fishburne and to Mr. Thompson. I'll note your
5 exception for the record.

6 All right, Mr. Shelton, are you done with all
7 your motions?

8 MR. SHELTON: Your Honor, as far as -- we are
9 joining with the search of the cell phones.

10 THE COURT: All right.

11 MR. SHELTON: I believe a lot of the same
12 argument that Mr. Aylor is going to make on the search
13 of the cell phones found on -- allegedly found in the
14 living room will hit on the same issues of the search
15 of the cell phones found, that allegedly were found on
16 my client.

17 THE COURT: All right.

18 MR. SHELTON: So he is going to argue.

19 THE COURT: All right. So, Mr. Aylor, you are
20 arguing a motion to suppress a cell phone; is that
21 correct?

22 MR. AYLOR: Yes, Your Honor.

23 THE COURT: And which cell phone?

24 MR. AYLOR: One cell phone. The cell phone that
25 was allegedly found at the actual apartment that was

1 handed over to Officer -- Deputy Charlton by someone in
2 the area. That cell phone specifically.

3 THE COURT: All right.

4 MR. AYLOR: And, Your Honor, if I may, I believe
5 there is one case that I'd like to hand up. I've given
6 one to the State, I thought you had it. And I'm not
7 going to -- just briefly mention it.

8 MR. MCCOY: Your Honor, may I approach?

9 THE COURT: You may. What's the case name, Mr.
10 Aylor?

11 MR. AYLOR: It's Kwan, Jeff Kwan.

12 THE COURT: Thank you.

13 MR. AYLOR: Your Honor, to keep this motion
14 brief. Obviously the cell phone in question is the
15 phone that Deputy Charlton stated in his testimony was
16 handed to him by an individual at the home that was
17 broken into that evening.

18 It was handed to him after both Mr. Fishburne
19 and Mr. Thompson had already been detained. It may
20 have been handed to him after they had already been
21 arrested, it's unclear. But either way they were in
22 handcuffs and in police custody at the point that he
23 received the cell phone.

24 THE COURT: And it was your client's cell phone?

25 MR. AYLOR: What's that?

1 THE COURT: It is your client's cell phone?

2 MR. AYLOR: That I do not know. The cell phone
3 is directly related to, you know, both clients because
4 it's not a cell phone that is -- was owned by anyone
5 that lived in the apartment.

6 THE COURT: Well don't I need to determine who
7 has the privacy interest?

8 MR. AYLOR: In regards to if he has a privacy
9 interest? You know, I can't determine whether or not
10 it was his cell phone. But obviously the cell phone in
11 general would have the interest of privacy. It's
12 directly related to him.

13 THE COURT: Cell phone is not entitled to
14 privacy is it, Mr. Aylor?

15 MR. AYLOR: No. But my client would be entitled
16 to it as well as, you know, obviously the prejudicial
17 value of that cell phone coming in.

18 THE COURT: But then everybody in this room
19 would be entitled to that same privacy interest,
20 correct, Mr. Aylor?

21 MR. AYLOR: Correct. So you would have to be
22 under -- are you asking under the assumption that it is
23 my client's cell phone?

24 THE COURT: My question to you is don't I have
25 to determine who has the privacy interest before we

1 even go any further?

2 MR. AYLOR: Correct.

3 THE COURT: All right. So then I need to know
4 if it's your client's cell phone, whether or not he has
5 standing to even raise this issue.

6 MR. AYLOR: All right. Just briefly, Your
7 Honor.

8 Your Honor, they're directly linking -- while I
9 cannot confirm that it is my client's cell phone,
10 they're directly linking the cell phone to him.

11 THE COURT: How are you planning on using --
12 what is it that you are using the cell phone for, or
13 attempting to use the cell phone for, Mr. Alfaro?

14 MR. ALFARO: Your Honor, the State anticipates
15 the testimony from a witness that would say that the
16 phone had been given to Defendant Fishburne prior to
17 this incident. That it wasn't owned by him and
18 registered to him, but it had been given to him. So we
19 wouldn't --

20 THE COURT: You would what?

21 MR. ALFARO: We are not contesting that he has a
22 standing or a privacy issue.

23 THE COURT: You believe that he does?

24 MR. ALFARO: We believe -- we don't think, not
25 Thompson, Defendant Fishburne, not Defendant Thompson,

1 I'm sorry. So we believe Defendant Fishburne would
2 have that issue, but I don't think Defendant Thompson
3 has it.

4 But realistically the State's main argument in
5 this is that it's abandoned property, that there's no
6 -- no matter who the person is, there is no reasonable
7 expectation of --

8 THE COURT: So you wish for the cell phone to be
9 admitted because to show that it was property belonging
10 to, at one point, belonging to one of the defendants.
11 Is that right?

12 MR. ALFARO: Defendant Fishburne. Yes, Your
13 Honor.

14 THE COURT: All right. So, Mr. Aylor, what I
15 understand is it's not your client's cell phone and
16 your client never had possession of that cell phone.

17 MR. AYLOR: Your Honor, I don't know if --

18 THE COURT: Why does he have standing to argue?

19 MR. AYLOR: Well, first of all, Your Honor, I
20 don't know what the State's going to argue that it was
21 his cell phone. The cell phone was --

22 THE COURT: It sounds like they have a witness
23 that says it was Mr. Fishburne's, it was given to Mr.
24 Fishburne.

25 MR. AYLOR: Right. And my client was with Mr.

1 Fishburne at the time that they were arrested. So it's
2 -- so the cell phone is directly linked to my client.

3 THE COURT: But the cell phone was at the crime
4 scene, correct?

5 MR. AYLOR: Correct. And it was told by the
6 individuals at the crime scene, told Deputy Charlton
7 this is one --

8 THE COURT: You want me to make the assumption
9 that your client was at the crime scene?

10 MR. AYLOR: No, Your Honor. I'm saying that the
11 victims stated that this cell phone was dropped by an
12 individual, through their testimony I think it will
13 come up, they're going to state, and Deputy Charlton
14 stated, that the cell phone was dropped by one of the
15 individuals that had robbed the home

16 THE COURT: All right. Mr. Aylor, I don't --
17 unless you can show me that -- because what I'm hearing
18 is that the State has information and can provide
19 testimony that it's Mr. Fishburne's, whether or not he
20 owned it, but that he was given and allowed to use the
21 cell phone.

22 I'm not hearing the same from your client. So
23 unless you can provide me some standing, you don't get
24 to argue this one.

25 MR. AYLOR: Thank you, Your Honor.

1 THE COURT: All right. Mr. Shelton?

2 MR. SHELTON: Thank you, Your Honor. Well we
3 didn't hear any testimony at this hearing as far as it
4 being Mr. Fishburne's cell phone. So at this point in
5 time, I really am not going to admit that this is my
6 client's cell phone until that comes into a 403
7 analysis that I will also argue, Your Honor, that
8 they're trying to link this cell phone to my client
9 without any foundation that this is my client's cell
10 phone. And that that's completely prejudicial, highly
11 prejudicial, suggesting --

12 THE COURT: So you would agree that if they
13 can't link it up that it's your client's cell phone
14 that you can't argue it's a violation of the Fourth
15 Amendment?

16 MR. SHELTON: Right, Your Honor. And if the
17 testimony does come in --

18 THE COURT: But if you can, then we need to have
19 this Fourth Amendment analysis, correct?

20 MR. SHELTON: Yes, Your Honor.

21 THE COURT: Right. But if you can't link it up
22 then he has no argument and the State gets to present
23 whatever's contained on that cell phone, correct?

24 MR. SHELTON: Well I mean, if they're able to --

25 THE COURT: Are you suppressing what's contained

1 on the cell phone or the cell phone itself or both?

2 MR. SHELTON: Both, Your Honor. As far as --
3 well I mean --

4 THE COURT: All right. Because I believe the
5 analyses are different, wouldn't you agree, Mr.
6 Shelton?

7 MR. SHELTON: I don't -- I wouldn't see the
8 point of putting in a cell phone that they are not able
9 to link to my client. So, I mean that's really not --

10 THE COURT: All right. At this time, Mr.
11 Shelton, do you believe this motion is premature?

12 MR. SHELTON: That's what I'm indicating, Your
13 Honor. If they are able to link this cell phone to my
14 client, then at that point in time we may need to have
15 a hearing at that point in time.

16 THE COURT: And what type of hearing do you want
17 to have?

18 MR. SHELTON: The suppression. Well at least
19 the arguments on the suppression of that evidence.

20 THE COURT: Well isn't that what we're doing
21 now? The State has indicated to me, because once they
22 lay the foundation it's out there for the jury and the
23 jury is going to wonder what happened to the cell
24 phone.

25 so wouldn't it be better to go ahead and address

1 it now? The State has indicated to me that they have a
2 witness that is going to testify that the phone was
3 given to your client.

4 MR. SHELTON: Under the assumption that they're
5 able to link this to my client, Your Honor.

6 THE COURT: All right.

7 MR. SHELTON: This cell phone is similar in my
8 mind to a computer.

9 THE COURT: I don't know that our courts have
10 bought that, Mr. Shelton.

11 MR. SHELTON: Well it's a novel issue in south
12 carolina.

13 THE COURT: I don't know that anyone has said
14 that is legally computers are, or cell phone are
15 computers. Even though they retain quite a bit of
16 information.

17 MR. SHELTON: Yes, Your Honor. A lot of private
18 information.

19 THE COURT: Correct.

20 MR. SHELTON: That at the point that this cell
21 phone was taken, there was no circumstances whatsoever
22 that they were going to lose this cell phone. There
23 was no circumstances whatsoever, exigent circumstances
24 whatsoever that they needed to go through this cell
25 phone.

1 It was a closed container, so to speak. Cell
2 phones are very easily changed, modified. Information
3 can very easily be deleted. That's why it's imperative
4 to get a search warrant once that --

5 THE COURT: Well wouldn't that give credence to
6 the argument that they needed to review what was
7 contained on the cell phone if the information can be
8 change quickly?

9 Isn't it possible that you can, because I know
10 that you can, you can remotely erase messages?

11 MR. SHELTON: There was no exigent circumstance
12 that, assuming that it's my client's cell phone, that
13 he could have changed or deleted this information. He
14 was under arrest. He was detained at that point in
15 time. So there was no circumstances --

16 THE COURT: So how did the officers know that
17 that belonged to your client, Mr. Shelton?

18 MR. SHELTON: Well the assumption, there's no --
19 and when that officer took the cell phone, there was no
20 circumstance whatever, exigent circumstance that he
21 needed to go through that cell phone. There was
22 nothing that he needed to do on scene that --

23 THE COURT: Well, Mr. Shelton, let's assume that
24 there wasn't an exigent circumstance. What was he
25 supposed to do with that phone?

1 MR. SHELTON: Place it into evidence, Your
2 Honor, and --

3 THE COURT: How? How would he place that into
4 evidence?

5 MR. SHELTON: I don't understand.

6 THE COURT: I mean he could just tag it and then
7 do what?

8 MR. SHELTON: Well then he could then get a
9 search warrant for that cell phone and for all the
10 information to get on the phone so that he could then
11 do an investigation to possibly link it to one of the
12 individuals.

13 THE COURT: All right.

14 MR. SHELTON: So I -- this -- there is no
15 specific case as far as South Carolina is concerned,
16 Your Honor. It is a novel issue as far as cell phones
17 and the ability of officers to go through cell phones.

18 whether it's persuasive or not, the California
19 Courts -- or California legislatures, along with other
20 legislatures, have worked towards requiring warrants to
21 go through cell phones. So -- beg the Court's
22 indulgence.

23 THE COURT: Yes, sir.

24 MR. SHELTON: In the Kwan case, Your Honor, the
25 defendant, as a private citizen, would have a

1 reasonable expectation of privacy concerning the
2 electronic data stored in the personal private cell
3 phone. And because of that expectation, the
4 protections of the Fourth Amendment would be triggered
5 and therefore his protection for privacy in that cell
6 phone is triggered and there are no exigent -- search
7 without a warrant is per se unreasonable unless there
8 is some type of exigent circumstance or some
9 circumstances needed to go through the cell phone, and
10 there were none indicated.

11 And they were placed under arrest. There was no
12 circumstance where they would be able to change or
13 modify the cell phone, Your Honor. There was no reason
14 for him to go through the cell phone without getting a
15 warrant from an independent magistrate prior to going
16 through the cell phone.

17 THE COURT: All right. Mr. Alfaro, the source?

18 MR. ALFARO: Yes, Your Honor. As I indicated
19 earlier, the State's position is that there is no
20 Fourth Amendment protection to a cell phone that is
21 abandoned in a victim's house during the course of a
22 burglary and armed robbery.

23 It's abandoned property, and as such it has no
24 Fourth Amendment protection. The question is whether
25 it has been discarded properly, relinquished his

1 reasonable expectation of privacy so that the seizure
2 is reasonable. And it's the state's position that he
3 has, and that there is no expectation of privacy that
4 will trigger the Fourth Amendment that would give any
5 reason why the phone or its contents should be
6 suppressed.

7 THE COURT: Mr. Alfaro, what's the analysis of
8 whether or not -- should I be concerned with whether or
9 not someone intended to leave that property there?

10 MR. ALFARO: Well I think it's a different --
11 there is -- I know there's a case, I can't remember, I
12 don't have it in front of me, where someone left a
13 phone accidentally in a bathroom of a gas station I
14 believe it was. That's factually and different than
15 dropping it during the course of committing a robbery.

16 THE COURT: How so, Mr. Alfaro?

17 MR. ALFARO: Well first of all you would have
18 the expectation of privacy that if you, in the course
19 of lawful conduct, leave your phone at a gas station
20 that if a police officer finds it he is not going to go
21 through it.

22 However, if you drop your phone on the floor of
23 an apartment during the course of committing a burglary
24 and armed robbery, there is no reasonable expectation
25 that a police officer or anybody else, any of the

1 residents are not going to go through that phone.

2 THE COURT: All right. Mr. Alfaro, I think
3 factually the distinction that needs to be made between
4 I believe that was the Moore case when the owner of the
5 phone contacted the gas station and said, or whatever
6 business it was, and indicated that they were coming
7 back for their phone. Is that the actual distinction
8 that needs to be made?

9 MR. ALFARO: That's part of that difference
10 between accidentally lawful conduct, accidentally
11 leaving the phone somewhere and taking measures to
12 recover it, as opposed to leaving it when fleeing from
13 the scene an armed robbery and a burglary.

14 THE COURT: All right. You are requesting,
15 based upon your motion to suppress, that I suppress the
16 phone that was found in the apartment and the search of
17 the phone itself, correct?

18 MR. SHELTON: Yes, Your Honor.

19 THE COURT: All right. Anything further, Mr.
20 Shelton?

21 MR. SHELTON: Your Honor, the stuff inside the
22 phone is not abandoned property. I guess that would be
23 my only addition. But, no.

24 THE COURT: Based upon the facts as presented,
25 and I don't know that I even need the analysis of

1 whether or not your client is the owner as to make this
2 determination.

3 South Carolina has recognized the doctrine of
4 abandonment as an exception to the Fourth Amendment
5 warrant requirement. Abandoned property has no
6 protection from the search and seizure provisions of
7 the Fourth Amendment.

8 I have reviewed the Moore case that has been
9 provided. I find it is factually distinguishable
10 because in that case the police were informed of the --
11 what had transpired and knew who owner was.

12 And based upon the information factually that
13 has been presented, I find this to be abandoned
14 property that is afforded no protection. Your motion
15 to suppress the cell phone and the contents of the cell
16 phone is denied.

17 MR. SHELTON: Your Honor, to hit on the 403
18 analysis, if there is not able to link my of client to
19 the phone, I believe that that information would be
20 highly prejudicial as far as Officer Charlton's
21 testimony that he made a quick statement that he also
22 -- Charlton's testimony was --

23 THE COURT: Are you asking for an in-camera
24 review of the testimony that the State plans to present
25 as to whether or not the phone is linked to your

1 client?

2 MR. SHELTON: I'm asking that at this point in
3 time that -- well, yes, on one aspect as far as opening
4 is concerned.

5 THE COURT: All right. Who do you have that is
6 going to testify to that?

7 MR. ALFARO: We have Deputy Charlton who has
8 testified yesterday regarding his investigation leading
9 to that information.

10 And also there is a Leonard Powell who is here
11 with his attorney who may or may not testify to that.
12 He's made some indications he wants to take the fifth
13 on that, but we have some issues with his ability to do
14 that so we need to address that.

15 THE COURT: All right. We will address that
16 issue, that specific issue, Mr. Shelton, prior to that
17 testimony being elicited, all right?

18 MR. SHELTON: Your Honor, as far as it being
19 indicated in the openings, I'm not sure if the
20 solicitor is going to indicate that in openings. And
21 officer Charlton's testimony at -- while they -- when
22 his testimony is going on.

23 MR. ALFARO: Your Honor.

24 THE COURT: All right. Counsel, I indicated to
25 you we would address the issue before either of those

1 two witnesses that the State has indicated may testify
2 to that. I indicated that we would address the issue
3 before. All right?

4 MR. ALFARO: Yes, ma'am. I have just one
5 question to that, Your Honor. Is there a need to link
6 it to the defendants in order for the victims to say
7 that they found the phone in their apartment?

8 THE COURT: No, sir.

9 MR. ALFARO: Okay. So it's just for the
10 contents of that phone that we need to link it to the
11 defendant?

12 THE COURT: Correct.

13 MR. ALFARO: Okay. I just wanted to clarify
14 that before opening and any questioning.

15 THE COURT: Correct. All right. We have 20
16 minutes before the jury comes in. I need to hear, are
17 there other motions? Are there other motions?

18 MR. AYLOR: None from us, Your Honor.

19 THE COURT: Mr. Shelton?

20 MR. SHELTON: I believe, okay. This quick chain
21 of custody as far as the cell phones that were found on
22 my client, they were given directly to the victims.

23 There's -- were not placed into evidence, they
24 could have been placed into evidence. And so I would
25 argue that based off that, the cell phones that the

1 solicitor has indicated are on the exhibit list so I'm
2 sure she is going to put those in.

3 THE COURT: Did you prepare a written motion on
4 that, Mr. Shelton?

5 MR. SHELTON: I mentioned chain of custody. I
6 believe there was a -- I can't remember if that was a
7 part of the email that Ms. Cornwell sent.

8 THE COURT: I'm out of, I believe I'm out of
9 motion folders. So I don't have any other motions to
10 address.

11 Mr. Shelton, let me just -- because I'd like to
12 at least give my staff a little bit of break before the
13 jury comes in. And I know everybody needs a comfort
14 break, at a minimum. Is this something we need to
15 address prior to opening?

16 MR. SHELTON: I don't think it has to be, no.

17 THE COURT: All right. We can take that up as
18 the cell phones are introduced; is that correct?

19 MR. SHELTON: Yes, Your Honor. If they're
20 attempted to be placed into evidence.

21 THE COURT: Or at an appropriate time, Mr.
22 Shelton, I will give you a chance to collect your
23 thoughts and present that argument as well.

24 Does the State have any motions?

25 MR. ALFARO: Not a separate motion, just.

1 regarding that again sort of clarification for the
2 opening. The phones that are found in his client's
3 pocket, the State's position is those will be referred
4 to during the opening.

5 THE COURT: Mr. Shelton, I'm unclear. And I
6 don't mean -- it's probably the court's fault because
7 there are so many cell phones, but I'm not quite sure
8 what you are objecting to as to chain of custody.

9 MR. SHELTON: The actual cell phones were taken
10 from -- allegedly taken from my client. They were,
11 instead of placed into evidence to preserve the
12 evidence, they were given to the victims.

13 So I guess the victims could always testify that
14 this was the same. But, Your Honor, I believe that
15 they have to complete that chain of custody, preserve
16 the evidence, to bring the evidence into court in front
17 of the jury.

18 MR. ALFARO: Your Honor, first of all the cell
19 phones are not fungible, we don't have to establish a
20 chain of custody.

21 THE COURT: That was going to be my first
22 question.

23 MR. ALFARO: We just -- the witness -- the
24 victim is going to be able to establish the relevance
25 -- the witnesses will be able to establish the

1 relevancy of it. And Charlton will be able to testify
2 that the phones were taken from the defendant. So the
3 fact that they're adding to that fact that we don't
4 have to establish the full chain of custody, there
5 really no issue of that.

6 I think it sounds, not to clarify a motion from
7 the defense, but it sounds as if it's more of a weight
8 issue for the jury if he wants to impeach the officers
9 and the strength of their investigation rather than it
10 being a chain of custody issue.

11 THE COURT: Mr. Shelton?

12 MR. SHELTON: And my objection is the -- is
13 placed on the exhibit list. I don't know if it's
14 actually being placed into evidence or not. That's one
15 -- because at this point in time --

16 THE COURT: Well that's a little different
17 consideration than I need to be concerned about. Why
18 are we putting the cell phones, are those the victims'
19 cell phones into evidence?

20 MR. ALFARO: One of the cell phones that was
21 recovered from the Defendant Fishburne. Two phones
22 were recovered, both were returned to the victim Adao
23 that night. One he maintained possession of, the other
24 one he does not have.

25 The one that was returned to him that night that

1 he had possession of will be admitted into evidence
2 through him and will be identified by him as the one
3 that was returned to him and will be admitted into
4 evidence that way.

5 THE COURT: I will hear your argument on whether
6 or not it comes into evidence. But it does not -- the
7 State doesn't need to establish a chain of custody, I
8 think going back into evidence is a different
9 consideration than the chain of custody.

10 So I will hear your argument at that time. But
11 clearly the State can indicate in their opening that
12 the victims were given the cell phones back.

13 MR. SHELTON: Yes, Your Honor. It was the
14 exhibit.

15 THE COURT: And I'm sorry I probably
16 misunderstood and put words in your mouth. All right.

17 So anything else? We got 15 minutes.

18 MS. CORNWELL: Nothing from the State, Your
19 Honor.

20 MR. SHELTON: Nothing, Your Honor.

21 THE COURT: We will take 15 minutes until the
22 jury gets here. And we will go until 4:30 today.
23 Thank you.

24 (Whereupon, a recess was taken.)

25 THE COURT: Is there anything before we bring in

1 the jury?

2 MS. CORNWELL: None from the State.

3 MR. SHELTON: Nothing, Your Honor.

4 MR. AYLOR: Nothing.

5 THE COURT: All right, let's bring in the jury.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: Thank you. Be seated.

8 Madam Clerk if you will, please swear the jury.

9 (Whereupon, The Clerk administers the oath to
10 the jurors.)

11 THE COURT: Ladies and gentlemen, the case that
12 we are about to try is the case of the State versus
13 Douglas Thompson and Clarence Fishburne. Before we
14 begin this trial I want to tell you that this trial
15 probably will be different from what you might expect.

16 Most people do not have a chance to attend
17 actual court sessions. Most people think that from
18 watching television, watching movies and reading books
19 that trials are always full of high drama, intense
20 action, and riveting circumstances.

21 While all of these things may be true at times,
22 this trial is not for your entertainment. It is a
23 fundamental part of our democracy. It is a search for
24 the truth in that effort to make sure that justice is
25 done for the parties before you here today.

1 Searching for the truth is often slow and
2 deliberate. The opposite of what you may have seen on
3 television or read in books or seen in movies.

4 Ladies and gentlemen, this courtroom is a place
5 of honor. It is dedicated to the protection and the
6 preservation of citizen's rights through what many have
7 called the greatest justice system ever created.

8 The attorneys appearing before you are advocates
9 for the parties that they represent. But first and
10 foremost, they are officers of this Court. They are
11 sworn to uphold the integrity and fairness of our
12 judicial system, and to help you in the search for the
13 truth.

14 You should expect them to be professional,
15 competent and ethical in the representation of their
16 client's interest. Remember that you have just taken
17 an oath to try this case, and you are also expected to
18 be professional, competent and ethical.

19 Thank you again for accepting this important
20 responsibility of jury service and for your
21 contribution today to our justice system.

22 What I now say is intended to serve as an
23 introduction to the trial of this case. These remarks
24 are not a charge on the law. I will instruct you on
25 the law applicable to this case at the end of the trial

1 before you retire to consider your verdict.

2 This is merely an explanation of the procedure
3 that we will follow in this trial so that you may be
4 better able to understand what is happening. As I
5 explained to you, throughout this trial you will be
6 allowed to take notes and you have been given your note
7 pads.

8 The defendants are charged by an indictment
9 filed in this court. I will explain to you the
10 elements of each charge as they are -- as we progress
11 through this trial. Please remember that the
12 indictment is simply the charge by which this case is
13 brought into this court. It is not, in any sense, to
14 be considered evidence of the allegations it contains.

15 Each defendant has pled not guilty to each
16 indictment. The state therefore has the burden of
17 proving each of the elements of each indictment beyond
18 a reasonable doubt. It will be your duty, ladies and
19 gentlemen, to decide whether the State has met that
20 burden.

21 Your purpose as jurors is to find and determine
22 the facts. You are the sole judge of the facts. If at
23 anytime I make any comment regarding the facts of this
24 case, you must disregard it. You are to determine the
25 facts from the testimony you hear and any other

1 evidence that is introduced.

2 It is up to you to determine the inferences
3 which you feel may be properly drawn from the evidence.
4 It is important that you perform your duty of
5 determining the facts diligently and conscientiously
6 because ordinarily there is no way to correct an
7 erroneous determination of the facts by a jury.

8 On the other hand, and with equal emphasis, the
9 same law that makes you the judges of the facts, makes
10 me the judge of the law. The law as given by this
11 Court is the only law that you may consider. You must
12 accept it and follow it even though you may disagree
13 with it. I cannot tell you what I think the facts are,
14 and you cannot disagree with me about what the law is,
15 or what the law should be.

16 Your job is to take the law as I give it to you,
17 apply it to the facts as you find them from the
18 testimony of the witness, and any other evidence that
19 is introduced. And after doing that, you will rendered
20 your verdict. A true and just verdict under the solemn
21 oath that you just took as jurors.

22 Until I advise you to begin your deliberations,
23 you must not discuss this case with anyone. You must
24 not decide any issue in this case.

25 These discussions include your fellow jurors,

1 your friends, your family members, and anyone else.
2 And please remember that that includes not only
3 face-to-face discussions, but any forms of electronic
4 discussion.

5 Ladies and gentlemen, it is important that you
6 keep an open mind and not decide any issue in this case
7 until all of the evidence has been presented, the
8 parties have made their closing arguments, and I have
9 instructed you on the law applicable to this case.

10 It is your solemn responsibility to determine
11 the guilt or innocence of the defendants, and your
12 verdict must be based solely on the evidence as it is
13 presented to you in this trial, and on the law as I
14 instruct you during and at the closing of the trial.

15 In just a moment the solicitor will make what is
16 called an opening statement. The solicitor will
17 explain to you the issues in this case, or at least
18 what the solicitor thinks the issues are.

19 The attorney for the defendant may also make an
20 opening statement, although he is not required to do
21 so. Please remember, what the attorneys tell you
22 during their open statements is not to be considered
23 evidence in this case. It is only their contention as
24 to what the issues will be.

25 The evidence in this case will be presented from

1 the testimony of sworn witnesses from the witness
2 stand, and any exhibits that may be introduced into
3 evidence.

4 From time to time you may hear one of the
5 attorneys say, Your Honor, we have a question of law,
6 may we approach, or I might find it necessary to either
7 call the attorneys up or excuse you from the courtroom
8 for a short period time.

9 Ladies and gentlemen, please do not guess or
10 speculate or try to read our lips or overhear us as we
11 are at the bench. We are not trying to keep anything
12 from you. But sometimes it is necessary for me to make
13 a comment on the facts of the case in order to make a
14 ruling on the law. And as I indicated to you, I cannot
15 have an opinion about the facts in this case. So I
16 will excuse you or have a bench conference so that in
17 no way anything I say influences you.

18 In determining what the true facts are, you must
19 decide whether or not the testimony of the witnesses is
20 believable. It is my responsibility, as a matter law,
21 to rule whether certain testimony is admissible at all.
22 But once the testimony is admitted, whether or not you
23 believe it is solely for you to determine.

24 In deciding whether to believe a witness, you
25 have the right to consider the interest of any witness;

1 the bias of any witness; the prejudice of any witness;
2 the opportunity for the witness to have seen the
3 matters and things about which the witness may testify;
4 as well as the way the witness acts on the witness
5 stand.

6 You have the right to consider anything in the
7 record that will help you evaluate the testimony of the
8 witnesses. That means it's your duty to pay close
9 attention to the witnesses, to observe them, to listen,
10 and to pay close attention to the attorneys and to the
11 Court.

12 Ladies and gentlemen, please do not let your
13 thoughts wander, but give strict attention to the
14 testimony. So that at the end of the testimony, after
15 the arguments of counsel and I have instructed you on
16 the law applicable to this case, you will be able to
17 determine what the true facts are, apply the law to
18 those facts and render a true and just verdict.

19 Ladies and gentlemen, please give your
20 attention.

21 Ms. Cornwell.

22 MS. CORNWELL: Thank you, Your Honor. May it
23 please the Court, Counsel.

24 August 6th started out as a normal day for Paulo
25 Silva. He got up. He went to work. He did his normal

1 duties. And then he came home and started preparing
2 for his daughter's 3rd birthday party.

3 But about 11:30 in the evening, he walked
4 outside to speak with his wife's uncle, Adao. As Paulo
5 and Adao were standing outside talking, three men
6 walked up to them. One man had a gun and he pointed it
7 in Paulo's face. The other man came up and forcefully
8 began choking Adao. There was a third man standing in
9 the back as a lookout. He had his hand in his
10 waistband and under his shirt, indicating that he also
11 had a gun.

12 Paulo had his hands in the air where the gun was
13 pointing at his face, and the gentleman holding the gun
14 started reaching in his pockets. He took his
15 Blackberry cell phone, his wallet, money and all of his
16 personal effects.

17 At that time the man forcefully choking Adao was
18 demanding his money as well. Adao, scared, was trying
19 to tell him, I don't any money, the money is in my car
20 and the car is in the front of the house. That didn't
21 satisfy these men.

22 They then forced Paulo to open the door inside
23 his house and forced him inside his house. Paulo is
24 begging, please don't go in the house. My pregnant
25 wife and my three-year-old daughter are in there.

1 These men didn't care. They began choking Adao even
2 harder causing Paulo to go inside the house.

3 Once Paulo was inside the house, his wife
4 Paulino came in the kitchen because she heard a
5 commotion. At that time Paulo was able to say to his
6 wife, go get help, we are being robbed. So she runs
7 out of the room eight months pregnant.

8 And at that time she makes a decision that no
9 mother wants to have to make. She started to run
10 upstairs to get her child who was three years old and
11 sleeping in a bedroom, but she came to the realization
12 that if she made it all the way upstairs, she wouldn't
13 be able to get back downstairs. She wouldn't be able
14 to get help. And who knows what is going to happen to
15 her, her child, her husband.

16 So she makes the decision to leave her sleeping
17 child upstairs. And she runs down the stairs and she
18 runs outside. And she goes to the neighbor's house.
19 And she tells the neighbor, we are being robbed, please
20 help us.

21 The neighbor there is a friend of hers. And
22 while the husband was calling the police, the friend
23 says, where's Carrie? where's the child? And Paulino
24 says, she's upstairs, she is sleeping, I couldn't get
25 her.

1 This woman, also being a mother, did the bravest
2 thing that anyone can do and she risked her own life as
3 she went back to the house. She ran in the house, she
4 ran up the stairs to get the sleeping daughter. And
5 thank goodness that she did because that moment she
6 startled the suspects.

7 These suspects, who had forcefully taken them
8 from outside the house and made them go inside. And as
9 they go inside they see that Paulino has run from the
10 house and they start demanding, where is your wife,
11 where is she going? Paulo is scared and he is trying
12 to buy time for his wife to get her out of the house,
13 so he says, she's in the next room.

14 So they force him in the next room and of course
15 she is not there. And while the guy is choking Adao,
16 and the other man is pointing a gun at Paulo, he is
17 saying, where is your wife, find your wife.

18 She must have gone upstairs, he says. So they
19 forced him to go upstairs and he is begging, no,
20 please, let's not go upstairs. My daughter is
21 upstairs. My daughter is upstairs, don't make me go
22 upstairs.

23 They force him upstairs anyway. And at the top
24 of the stairs there's two rooms. There's Paulo's room
25 where his daughter is sleeping, and there is Adao's

1 room. The suspects try to force Paulo into his room.
2 And Paulo thinking quickly says, no, the money is in
3 this room. So they go in the other room.

4 These two suspects force Paulo and Adao on their
5 knees. One of the suspects hits Paulo in the face.
6 They point the gun to his head and say, we're going to
7 count down from six. And if by the time we get to the
8 end of six your wife doesn't appear, we are going to
9 kill you.

10 And they start counting down from six, five,
11 four, three. By the time they get to three, the
12 neighbor has run in the house. It startles them and
13 causes them to flee the house.

14 The third suspect, meanwhile, is downstairs and
15 he is taking all sorts of property from their house.
16 He is taking a laptop computer. He is taking cell
17 phones. The suspects flee. The defendants then call
18 -- or the victims, I'm sorry, call the police.

19 The police arrived within four minutes. They
20 find three suspects down the street. Three males, one
21 carrying a laptop computer. They detain these people.
22 And the victims are taken to the scene where they
23 identify two of the guys. Why do they only identify
24 two of the three guys? Because the third guy fled the
25 scene. He has run off, nowhere to be found. They make

1 the identification, and the arrest is made.

2 You are going to hear testimony to all of that.

3 You are going to hear testimony from Paulo Silva who's
4 going to explain to you that he was held at gunpoint;
5 that all his effects were taken; that he was in fear
6 for not only for his life, but for his wife's life and
7 his child's life.

8 You are going to hear from Adao who is going to
9 tell you how he was forcibly choked. How he didn't
10 have any money on him, and how he was afraid as well.
11 You are going to hear from the wife, Paulino, who's
12 going to tell her side of the story. She is going to
13 say, you know, she had to leave her child. And the
14 reason she left her child was because she was in fear
15 for not only her child's life, but her husband's.

16 You will hear from the neighbor who is going to
17 tell you what she saw when she came in the house. That
18 when she ran in the house, the third suspect was
19 downstairs and he also had a firearm.

20 You're going to hear from the officer that did
21 the investigation and how he detained the suspects,
22 how the identification was made, and the evidence that
23 he found.

24 And at the end of this trial, after you've heard
25 all of the testimony and you've seen all of the

1 evidence, I'm quite certain that you are going to find
2 beyond a reasonable doubt that both of these
3 defendants, because these are two of the three men that
4 did this, that these defendants are guilty of armed
5 robbery, of kidnapping, and of burglary in the first
6 degree.

7 Ladies and gentlemen, as you heard yesterday my
8 name in Ashley Cornwell. And I am a representative of
9 the State of South Carolina. I want to go ahead and
10 thank you now for being here because I know nobody
11 really wants to be here.

12 I am being paid to be here, but you on the other
13 hand, although getting paid something, is not nearly
14 enough. So I want to go ahead and thank you for the
15 attention to detail that you are going to give this
16 case. Because this is not going to be an easy case.

17 There are a lot of factors in this case that are
18 going to make the difficult. The number one factor
19 being that these victims don't speak English. So we
20 will have an interpreter. And you are going to have to
21 pay special attention to that, and close attention to
22 how the questions are asked and what the responses are
23 because they are going to be a little bit confusing.

24 But at the end of day, once you hear the
25 testimony of the victims, once you hear the testimony

1 of the witnesses, and once you hear the testimony of
2 the defendants -- the victims, and once you hear the
3 testimony of the officers, I apologize, and see the
4 evidence that is going to be submitted to you, you will
5 find that they are guilty.

6 The Judge is going to direct you on the law.
7 And at the end of this I will follow up and I will
8 point out to you exactly how the State has met, beyond
9 a reasonable doubt, each element of the law as it is
10 given to you.

11 And why at the end of the day while you may have
12 -- while the defense attorneys are going to talk to you
13 about reasonable doubt, and they are really going to
14 harp on reasonable doubt. They're going to try to
15 muddy the waters, they are going to try to confuse you
16 a bit. At the end of the day, though, I think that you
17 will find beyond any reasonable doubt these two men are
18 guilty of armed robbery, kidnapping, and burglary.

19 THE COURT: Mr. Shelton.

20 MR. SHELTON: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: You are on behalf of Mr. Fishburne;
23 is that correct?

24 MR. SHELTON: Yes, Your Honor.

25 THE COURT: Thank you. Just in front of the

1 jury.

2 MR. SHELTON: May it please the Court, Ms.
3 Cornwell, Mr. Alfaro.

4 It's just not that simple. As the State eluded
5 to, it's going to be a complex case. And we hope to
6 show you that it's actually much more complex than the
7 State or Officer Charlton, who's going to come and
8 testify, wants you to believe.

9 Now as the State also eluded to, there are three
10 people that were involved in this crime. Three people.
11 You see two here today. You see two people that are on
12 trial today.

13 I represent Clarence Fishburne. I'm proud to
14 represent Clarence Fishburne. Along with David
15 Schwacte, we will present and present our case to you.

16 Why are they here? Because they did the right
17 thing. They stopped for the police. And now they're
18 here today telling you that they are not guilty and
19 asking you to find them not guilty of these crimes.

20 Now the State has to prove their case beyond all
21 reasonable doubt; it's not 50 percent, two-thirds,
22 three-fourths. It's a high, high burden. And once
23 you hear all of the evidence, once you hear through all
24 of the evidence through direct and cross-examination,
25 I'm confident that you will find them not guilty.

1 Thank you.

2 THE COURT: Mr. Aylor, on behalf of Mr.
3 Thompson?

4 I'm sorry, Mr. McCoy on behalf of Mr. Thompson.

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

7 THE COURT: Yes, sir.

8 MR. MCCOY: Ms. Cornwell, Mr. Alfaro.

9 Ladies and gentlemen, my name is Peter McCoy.
10 And I'm here today to represent Mr. Thompson, and I'm
11 proud to represent Mr. Thompson.

12 He sits here today an innocent man. You cannot
13 judge him as anything but an innocent man until you
14 have heard all the testimony and every witness has
15 taken the stand.

16 Now Ms. Cornwell told you she is being paid to
17 be here. I'm not being paid to be here. I came here
18 today to represent Mr. Thompson because I felt the
19 strong urge to be here to help represent Mr. Thompson.

20 Now I can stand up here and talk to you all day.
21 And you are going to hear a lot from me, you are going
22 to hear a lot from Mr. Aylor, and you are going to hear
23 a lot from the witnesses that take the stand.

24 The funny thing about this trial, the different
25 thing about this trial is you see a lot of people

1 sitting over here. I sit with Mr. Aylor and Mr.
2 Thompson, we both represent him. Sitting with Mr.
3 Fishburne, are his two attorneys.

4 And so they are going to get to go first, and
5 then I'm going to get to come up and ask my questions
6 of the witnesses, as well. So you are going to kind of
7 get a double dose of everybody inside this courtroom
8 today.

9 Now where your evidence comes from isn't from
10 me, it isn't from the solicitor when they stand up and
11 talk, it comes from right here on this witness stand.
12 The beautiful thing about our country and the beautiful
13 thing about our justice system is that we get to go
14 through this court process.

15 We get to have 12 people who use their common
16 sense that they have gained through life to come in
17 this courtroom and listen to everything, listen to
18 everybody, and then make a decision. That's the best
19 justice system in the entire world, no doubt about it.
20 I'm very confident in that justice system.

21 Now you are going to hear from people who get up
22 here, the officers who were on the scene, and you are
23 going to hear about the investigation that they did to
24 arrest these two gentlemen and also to investigate
25 where the third one is as well.

1 We live in a world today that I like to describe
2 as a CSI world. We live in a world where we are
3 dependant not only on witness' testimony, but we are
4 dependant, and I mean absolutely dependant on other
5 evidence that could be out there. Physical evidence
6 that links not only what witness a would say, but what
7 corroborating evidence will say such as fingerprints,
8 DNA. That's the world we live in today.

9 I ask you to pay attention and careful attention
10 to each officer that gets up here today. Pay attention
11 to what they did and what they didn't do. Pay
12 attention to the evidence they collected and what they
13 didn't collect. Pay attention to the suspects they
14 also stopped and didn't arrest.

15 That's what I ask you to do. And another
16 beautiful part of our justice system is that the State
17 has brought these charges. And their burden, that they
18 have to prove each element to you is beyond a
19 reasonable doubt.

20 I know you've heard a lot about that all ready
21 since we've been in here. Let me explain to you what
22 reasonable doubt is. Okay, you are going to get
23 instructed from the Judge. And she is right, she is
24 the authority on this, and you have to defer to her.
25 But reasonable doubt is this. If you have any doubt in

1 what you hear from testimony, from witnesses, from cops
2 on the stand, any doubt, an inkling of a doubt, you
3 have to, by the oath that you took today, find these
4 two gentlemen not guilty. You have to, that's the oath
5 that you took.

6 I'm confident that after you've heard the
7 witnesses testify, you've heard about the evidence they
8 have collected or have not collected, and you've heard
9 from the victims who also get on the stand and what
10 they remember and what they don't remember, that that
11 doubt will be there.

12 And if that doubt is there, you have to follow
13 the oath that you took and you have to find Mr.
14 Thompson and Mr. Fishburne not guilty. Thank you.

15 THE COURT: Call your first witness.

16 MS. CORNWELL: Thank you Your Honor. State
17 calls Paulo Silva.

18 (Whereupon, The Clerk administered the oath to
19 the Interpreter.)

20 THE COURT: Thank you, sir. I need for you to
21 state your full name for record please. And please
22 spell your last name.

23 THE INTERPRETER: Norman John Rock, R-O-C-K.

24 THE COURT: Thank you.

25 MR. PAULO ENRIQUE SILVA,

1 after having been duly sworn to state the truth, the
2 whole truth and nothing but the truth, testified on his
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MS. CORNWELL:

6 Q Thank you, Mr. Silva. How old are you?

7 A 28.

8 Q And what do you do for a living?

9 A I work with repairing computers.

10 Q Where do you live?

11 THE COURT: Hold on. Mr. Rock, I may need you
12 to speak very loudly. If you could speak into the
13 microphone.

14 THE INTERPRETER: Okay.

15 THE COURT: Thank you.

16 Q (By Ms. Cornwell) Where do you live?

17 A Drive.

18 Q And is that, where is that?

19 A In Goose Creek.

20 Q Who lives there with you?

21 A At this time?

22 Q At the time of the incident.

23 A Myself and my wife, my daughter, and the uncle
24 of my wife, Mr. Adao.

25 Q And did something happen to you at your home on

1 August 6th of 2010?

2 A Yes.

3 Q Please tell the jury what happened to you that
4 night.

5 A Adao was seated outside at the back porch, at
6 the back of the house and I went out to talk with him
7 when a person came up with a gun in his hand. There
8 were three of them, one with a gun.

9 He pointed a gun and was asking for money. And
10 the other was strangling Senor Adao. The guy with the
11 gun put his hand inside my pocket and pulled out my
12 wallet.

13 I remember asking if I could pull out my
14 documents and he said no.

15 MR. MCCOY: Your Honor, if I may for a second.
16 I just want to make sure everybody can hear. I'm
17 having a little bit of trouble hearing where I am.

18 THE COURT: I know the jury will alert me if
19 they are having trouble.

20 Mr Rock, you may hold that microphone in your
21 hand if that is better for you. Or you can take it and
22 take it out, whatever is more comfortable for you.

23 THE INTERPRETER: Yes, Your Honor. Thank you.

24 THE COURT: Thank you.

25 Q (By Ms. Cornwell) I'm sorry, how many people did

1 you see outside your house?

2 A Three.

3 Q And explain to me again where each person was?

4 A One had a gun pointed at my head. The other was
5 strangling Adam, Senor Adao. And the other had his
6 hand inside his Bermuda shorts which kind of said that
7 he had something there.

8 Q And I believe you had just got finished telling
9 us that you asked if you could take your documents out
10 of your wallet?

11 A Yes.

12 Q Did they let you take your documents out of your
13 wallet?

14 A No.

15 Q What happened after that?

16 A The one that was strangling Adam asked to go
17 into the house. As he was very nervous each time he
18 was pressing, strangling Adam a lot harder.

19 Q When he was strangling Adam, was he face to face
20 with Adam?

21 A No. He was behind him, strangling him.

22 Q And you could see him? Could you see him
23 strangling Adam?

24 A Yes.

25 Q I didn't mean to interrupt you, can you tell the

1 jury what happened after that?

2 A The guy that was insistent was the guy with the
3 gun to my head. I opened the door. I said -- before
4 opening the door I said to him I didn't want to open
5 the door because my wife was in there who was pregnant
6 and with my daughter.

7 But even so, they were insisting and they were
8 strangling Adam. Even though I didn't want to open the
9 door, I went in. When I went into the house, exactly
10 into the kitchen, I saw my wife and I said to her in
11 Portuguese that we were being robbed and to go and ask
12 for help and she left.

13 And the guy who was behind me with the gun asked
14 me what I had said to her. I tried to gain some time
15 by telling him that I told her to go into the front
16 room because she was pregnant. He insisted that we go
17 into the front room to see where she was, telling me to
18 walk in front. And when we arrived in the front room,
19 my wife was already no longer there.

20 So he was very insistent on knowing where she
21 was. And I tried to gain some time by saying I didn't
22 know. And after a certain time he was asking and
23 asking and he assumed that she must have gone upstairs.
24 And he asked me to go upstairs -- ordered me to go
25 upstairs.

1 As I was forced to, I went up the stairs. When
2 I arrived between the two doors of the upstairs
3 bedroom, one on one side and one on the other, I opted
4 to go into the bedroom of Adam because my daughter was
5 in the other bedroom sleeping.

6 But he asked me to go into the other room which
7 is the larger room. And I said that my daughter was in
8 there, but in the other room there was money. And then
9 he went into the other room.

10 When we were in the other room, the guy who was
11 strangling Adam gave me a blow to the head, asked me to
12 kneel down -- ordered me to kneel down, and the other
13 guy was already had Adam kneeling.

14 The other one kept asking where my wife was with
15 the gun pointed at my head. Over the time he said if
16 she didn't appear he would kill me. He began to count
17 down, six, five, four. I remember when he was about I
18 think three or two, I'm not really sure, I saw my
19 next-door neighbor passing the door of the bedroom.

20 At that time I didn't know what was going
21 through my head, I thought I was going to die. When I
22 saw her passing, I didn't know what had happened,
23 whether the chappy downstairs had shouted something up
24 the stairs, or what had happened.

25 After she passed by and she entered into the

1 bedroom where my daughter was, the first one to leave
2 was the guy who was strangling Adam. And then the guy
3 who had the gun ran after him. I went to the door and
4 I didn't get a clear picture of what was happening.

5 Q How many men, how many robbers went upstairs
6 with you?

7 A Two. The one that had the gun to my head and
8 the one that was strangling Adam.

9 Q And do you know where the third person was at
10 the time?

11 A Below, but.

12 Q When you say below, do you mean downstairs?

13 A Yes.

14 Q And before they fled, was anything taken from
15 your home?

16 A Yes.

17 Q What was taken from your home?

18 A A computer; my telephone; the telephones of
19 Adam; a computer pal unit; and a flash drive, a jump
20 drive.

21 Q What did you do once the suspects ran from the
22 house?

23 A I went out and I saw that there were my
24 neighbors outside the house. I asked if they saw
25 anybody coming out or anything. And if my neighbor had

1 called the police or anything.

2 Q Had your neighbor called the police?

3 A Yes.

4 Q Then what happened?

5 A Another neighbor of mine called Pedro said that
6 he had seen one of the guys coming out of the house.
7 And he said that he struggled with him, but he did
8 manage to hold him down. He said that he'd ran towards
9 the dumpster.

10 So Pedro asked me if I would -- wanted to go
11 with him to see if we could see anybody, to run towards
12 the dumpster before the police arrived. I went into
13 his car and we went as far as the dumpster and then we
14 turned around and came back.

15 When I returned I said that I was going to go as
16 far as the manager's apartment to ask her to call the
17 police, too. When I arrived at her apartment, she was
18 not there. There was a Brazilian there, a Brazilian
19 youth, and he asked what has happened.

20 And when I was talking with him, I saw two
21 people passing along Harbor Lake Drive. But with other
22 clothes, other clothing. I told him that -- I spoke
23 with him and I said that I thought it was the people
24 that had robbed my house. And with this, I returned to
25 my house. And the Brazilian man asked for his wife to

1 call the police.

2 Then afterwards I returned to my house. I was
3 in front and I saw the police car coming. And he
4 stopped on the corner and he said something with the
5 police.

6 And the police, instead of coming to my house,
7 turned the car around. And I went to the corner to see
8 who it was. And before reaching the corner, I met the
9 Brazilian man who had called the police. And he said
10 that he had spoken with the police and they had seen
11 the two fellows who had robbed my house, they were on
12 Harbor Lake Drive.

13 Q When did the police come to your house?

14 A At first I didn't know that they could, but I
15 spoke with a neighbor and he said that they had seen
16 the police up there and they were coming. And so
17 myself, Adao and Hilario went up to the police to see
18 what was going on.

19 Before reaching where the police were, the
20 police car had turned around and told us to go back. I
21 went back and was waiting for like five to ten minutes
22 for the police to come.

23 When the police arrived, he asked me to recount
24 everything that had happened. And my friend Hilario
25 helped me with the interpreting. And the policeman

1 asked me to show him detail by detail precisely what
2 had happened.

3 After we had finished recounting what had
4 happened detail by detail, he asked us to come with him
5 to see if we could identify the suspects that they had
6 caught.

7 MR. SHELTON: Your Honor, at this point in time
8 we object, for the record.

9 THE COURT: All right. You may continue.

10 A The police stationed the car with the headlights
11 on full and asked us if we could identify the suspects.
12 We recognized them. At that time, I recognized the one
13 who was strangling Adam. They were with other
14 clothing, but I recognized the one who had the gun.

15 After this, the police asked us if we really and
16 truly recognized them. I said yes. And after this,
17 the police backed up the car until the corner and he
18 showed us some telephones and asked us if we recognized
19 these telephones.

20 Two telephones were Adam's; one that no longer
21 worked and another that he was using. There was
22 another telephone, but we didn't recognize it as
23 belonging to us. And a wallet that was not ours
24 either.

25 And after this I asked the police if he had

1 found my telephone, my wallet, and my computer. And he
2 said only the computer.

3 Q Did you find anything in your house that didn't
4 belong to you after the robbery?

5 A Yes.

6 Q What did you find?

7 A My wife found a telephone that was not ours in
8 the room, front room.

9 Q In which room?

10 A In the front room.

11 Q And what did you do with that phone?

12 A I delivered it over to the police officer.

13 Q I'm going to show you what we are going to mark
14 as State's Exhibit 1 and 2 for identification purposes.

15 (Whereupon, State's Exhibit Nos. 1 and 2 are
16 marked for identification.)

17 Q (By Ms. Cornwell) Do you recognize this?

18 A Yes.

19 MS. CORNWELL: I apologize, Your Honor, may I
20 approach, Your Honor?

21 THE COURT: I'm sorry?

22 MS. CORNWELL: May I approach?

23 THE COURT: You may.

24 Q (By Ms. Cornwell) And what are these?

25 A The part behind my house and where I live, and

1 the back of the house, the back of the apartment block

2 Q Do these look the same as they are today?

3 A Yes.

4 Q Do they look the same as they were on the day
5 you were robbed?

6 A Yes.

7 Q Have there been any additions, deletions,
8 alterations or changes made to those?

9 A Yes.

10 Q What is different?

11 A The position of those things in the background.
12 There was a washing machine there which is not there
13 right now. And a table to put cups on, it's not there.

14 Q Structurally is the side of the house -- I'm
15 sorry, structurally is the everything the same?

16 A Yes.

17 Q Structurally have there been any changes made?

18 A No.

19 MS. CORNWELL: Your Honor, at this time the
20 state would ask to publish, to move the exhibits into
21 evidence and publish to the jury.

22 THE COURT: Exhibits 1 and 2, counsel?

23 MS. CORNWELL: 1 and 2, Your Honor.

24 THE COURT: Any objection?

25 MR. SHELTON: No objection.

1 MR. AYLOR: None, Your Honor

2 THE COURT: State's 1 and 2 into evidence
3 without objection. You may publish.

4 (Whereupon, state's Exhibit Nos. 1 and 2 are
5 admitted into evidence.)

6 Q (By Ms. Cornwell) That is State's Exhibit 1.
7 Can you tell the jury what that is?

8 A The left-hand side -- the righthand side of my
9 house.

10 Q And the picket fence there, is that still there?

11 A Yes.

12 Q Showing State's Exhibit 2. What is that a
13 picture of?

14 A The back of my house.

15 Q And if you use this top button, it puts on a
16 pointer and you can point.

17 Can you show where the defendants walked up to
18 you from?

19 A This part there.

20 Q Okay. Do you know which direction they came
21 from?

22 A I came around the side of the house, and they
23 came over there.

24 Q Were you able to see them as they were beside
25 the house?

1 A No.

2 Q When were you able to see them?

3 A When they came around the corner and they had
4 already pulled out the gun. Because I was sitting on
5 my chair right there.

6 Q Thank you. What time of day was this?

7 A Around about 11 o'clock at night.

8 Q I'm going to show you what we are going to mark
9 as State's Exhibit 3.

10 (Whereupon, State's Exhibit No. 3 is marked for
11 identification.)

12 MS. CORNWELL: Your Honor, For purposes of
13 sending the evidence back later, we are going to mark a
14 photograph if that is okay with the defense?

15 THE COURT: Any objection?

16 MR. AYLOR: No objection.

17 MR. SHELTON: No objection.

18 THE COURT: That will be 3?

19 MS. CORNWELL: 3, Your Honor, yes.

20 Q (By Ms. Cornwell) Do you recognize this?

21 A Yes.

22 Q What is this?

23 A It's the computer of a client of mine.

24 Q Who was in possession of this on August 6, 2010?

25 A It was with me. I was repairing it. It was on

1 top of the table in the front room of the house.

2 Q Was this -- is this the laptop that was taken
3 from you?

4 A Yes.

5 (Whereupon, State's Exhibit No. 4 is marked for
6 identification.)

7 Q (By Ms. Cornwell) Do you recognize this?

8 A This was that telephone they found inside my
9 house.

10 Q Are both of these items in the same condition as
11 they were the night of August 6th?

12 A Yes.

13 Q Any change, deletions or alterations made to
14 them?

15 A No.

16 MS. CORNWELL: Your Honor, at this time the
17 State would like to move Exhibits 3 and 4 into
18 evidence.

19 THE COURT: Any objections?

20 MR. SHELTON: Previous objections.

21 THE COURT: As to 4, correct?

22 MR. SHELTON: Yes, Your Honor.

23 MR. AYLOR: Previous objections to 3, which I
24 believe is the laptop. Just stating the objection.

25 THE COURT: All right. 3 and 4 into evidence

1 over your objections.

2 (Whereupon, State's Exhibit Nos. 3 and 4 are
3 admitted into evidence.)

4 Q (By Ms. Cornwell) And state's Exhibit 4 I
5 believe you said was the phone that you found in your
6 house?

7 A Yes.

8 Q Is this your phone?

9 A No.

10 Q Does this phone belong to anybody in your
11 family?

12 A No.

13 Q And in regards to State's Exhibit 3, do you know
14 -- strike that, Your Honor, I'm sorry.

15 MS. CORNWELL: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. CORNWELL: No further questions, Your Honor.

18 THE COURT: All right. Mr. Shelton?

19 MR. SHELTON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SHELTON:

22 Q How are you doing, Mr. Silva?

23 MR. SHELTON: Your Honor, may we approach.

24 THE COURT: You may approach.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 Q (By Mr. Shelton) Mr. Silva, how long have you
3 been in the United States?

4 A About six years.

5 Q Are you receiving assistance from the State
6 regarding your immigration status?

7 A No.

8 Q You indicated that you gave a detail by detail
9 statement to the officer that night?

10 A Yes.

11 Q And did he indicate, at any point in time, that
12 he wanted you to write a statement?

13 A Yes.

14 Q And you met with a Mr. Wright to write this
15 statement?

16 A Yes.

17 Q Mr. Wright recorded this statement?

18 A Yes.

19 Q And then he -- did he indicate to you that he
20 wrote word-for-word what was recorded in that
21 statement?

22 A Yes.

23 Q And then he handed you a statement in English?

24 A Yes.

25 Q He went over the statement with you?

1 A Yes.

2 Q And you signed that statement?

3 A Yes.

4 Q At what point did you tell Mr. Wright about the
5 money that was taken from you?

6 A More or less halfway through the testimony.

7 Q You told -- isn't it true you didn't tell Mr.
8 Wright about the money that was taken from you?

9 A No, I told him.

10 Q In preparing to come testify today, have you
11 been provided the written statement?

12 A No.

13 Q When there was a robber that was strangling
14 Adam, I think your testimony was he was behind Adam?

15 A Yes.

16 Q And that person, your statement indicates he was
17 wearing blue?

18 A Yes.

19 Q And there was no one that you ID'd on the side
20 of the road that was wearing blue; isn't that correct?

21 A Yes.

22 Q No one that you ID'd was wearing blue?

23 A No.

24 Q Did you tell Officer Charlton that one of the
25 robbers hit you in the head?

1 A Yes.

2 Q And he didn't take any pictures of you that
3 night?

4 A No.

5 Q Your testimony, I believe, was that you thought
6 you were going to die?

7 A Yes.

8 Q But then you chased the robbers out of the
9 house?

10 A Yes.

11 Q And at that point in time you believed they
12 still had a gun?

13 A Yes.

14 Q And then I believe it was your testimony you got
15 in the car with Pedro?

16 A Yes.

17 Q And you started looking for the robbers?

18 A Yes.

19 Q And then you went to the apartment manager's
20 home?

21 A Exactly.

22 Q And at that point in time, you told Mr. Wright
23 that you were upset because your house had been
24 attempted -- there was an attempted break in at your
25 house the day before?

1 A Yes.

2 Q And by the time the police came, it was 20 to 30
3 minutes?

4 A I think so, sir, yes.

5 Q And then you mentioned that you saw two suspects
6 walking down the road?

7 A Yes.

8 Q But they had changed clothes?

9 A Yes.

10 Q How far away was the apartment manager's home
11 from the side of the road?

12 Q About 30 or 40 yards.

13 Q And this is 11:30 or so?

14 A Yes.

15 Q And then officer Charlton came back to where you
16 and this Brazilian guy were standing?

17 A No, he came to my house.

18 Q That's when -- but when he came to your house,
19 did you talk to the Brazilian guy?

20 A No.

21 Q Well when did the Brazilian guy tell you they
22 had already caught the guys that robbed us?

23 A Before the police came.

24 Q Other than the police officers, how many persons
25 were on the side of the road when were doing the ID?

1 A Only two police officers on either side of the
2 suspects.

3 MR. SHELTON: No further questions.

4 THE COURT: Mr. Aylor.

5 CROSS-EXAMINATION

6 BY MR. AYLOR:

7 Q Good afternoon, Mr. Silva.

8 A Good afternoon.

9 Q Mr. Silva, can you please tell us how big is
10 your apartment? Square footage, how many bedrooms,
11 bathrooms do you have there?

12 A Two bedrooms; one bathroom upstairs, one
13 downstairs; front room and kitchen; a laundry room and
14 the back porch.

15 Q And originally when the robbers first came to
16 your home, it is correct that you and Mr. Adao were on
17 the back porch, correct?

18 A Yes.

19 Q So again you all were on the back deck. Can you
20 please tell us again how the lighting was outside of
21 the covered area?

22 A Only the light on the back porch was lit.

23 Q So you couldn't see the individuals' faces until
24 they got inside the porch?

25 A Yes. Before they entered, no.

1 Q When they entered and you could see them, were
2 they wearing gloves?

3 A No, they didn't have gloves.

4 Q They didn't have gloves?

5 A No.

6 Q How long would you say that you were inside the
7 residence with the robbers before your wife came
8 downstairs?

9 MR. SHELTON: Your Honor, could we approach?

10 THE COURT: You may.

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 THE COURT: Ladies and gentlemen, we are going
14 to take our mid-afternoon break. Do not begin your
15 deliberations. Do not discuss the case amongst
16 yourselves.

17 Ladies and gentlemen, we are going to take a
18 little bit of an extended break. We will take about 20
19 minutes. So if any of you want to walk outside, take a
20 smoke break, or whatever, you are allowed to do that.

21 Madam Bailiff, you do not need to escort them.
22 So if you would be back in your jury room, and we are
23 going to use that clock, so look you at watch, at 2:15,
24 we will begin at that time.

25 Ladies and gentlemen, I'm not going to have the

1 bailiff escort you so that means that must follow all
2 of my admonitions. There may be some of the attorneys
3 out in the parking lot, do not speak to them. If they
4 don't say anything to you, they're not being rude,
5 they're following my instructions.

6 Thank you. Please rise for the jury. Thank
7 you.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Thank you, be seated.

10 Mr. Rock, I could tell that you are getting
11 tired. It is important that you understand that you
12 can't change the questions and I, unfortunately, don't
13 speak Portuguese.

14 So I don't -- i have no idea what you were
15 saying back. But you must, whatever the attorney's
16 question is, you must say that word for word. And
17 then, hold on, we have got to make a record and that's
18 why this is all so difficult.

19 But you must say word-for-word the question and
20 repeat it to Mr. Silva. If he does not understand,
21 then Mr. Silva needs to say to you, I don't understand.
22 And then you need to tell the attorney, I don't
23 understand.

24 Do you have any questions about that?

25 THE INTERPRETER: No, Your Honor. I'm simply

1 trying to be as accurate as possible.

2 THE COURT: Okay. And there were a couple of
3 times, just for the clarification, because again I do
4 not speak Portuguese, when there was extra -- when
5 there was not a question before you, you were merely
6 doing what with Mr. Silva?

7 THE INTERPRETER: I'm not sure I'm following
8 you, Your Honor.

9 THE COURT: All right. You say you are trying
10 to be as clear and accurate as possible.

11 THE INTERPRETER: Yes, Your Honor.

12 THE COURT: What I am assuming what you meant by
13 that is that you were rephrasing some of the questions
14 for Mr. Silva --

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: -- or Mr. Silva's responses to the
17 attorney; is that correct?

18 THE INTERPRETER: Yes, Your Honor.

19 THE COURT: I cannot allow you to do that. So
20 we need -- if you feel that we are erring or that you
21 are erring on the side of accuracy, you are not.

22 Your purpose simply is to be the converter of
23 language. And so I understand that there may be some
24 difficulty in doing that, but you've got to let both
25 Mr. Silva know the complete question and the attorney

1 know the complete answer.

2 THE INTERPRETER: Yes, Your Honor.

3 THE COURT: All right, thank you.

4 We are going to take a break primarily to allow
5 to you rest.

6 THE INTERPRETER: Thank you, very much.

7 THE COURT: I do have a cough drop in my bag if
8 you need it, or a mint.

9 THE INTERPRETER: I appreciate that.

10 THE COURT: All right. So let me know. And I
11 know we do have about 30 minutes, so that will be --
12 and I'm sorry for the short lunch break, but we are
13 just trying, I'm trying to keep it moving so we are not
14 here on Friday and on four vacation day.

15 Thank you. You may step down.

16 Let's put the immigration issue on the -- we've
17 never really put the discussions on the record as to
18 the immigration status.

19 Mr. Shelton, you inquired and so just if you
20 would just put something on the record.

21 MR. SHELTON: There was, I guess, a conversation
22 back in chambers about the illegal immigration, illegal
23 status of the victims. And defense counsel wants to
24 explore that illegal immigration status, and I believe
25 there is an objection by the State as far as going

1 through the illegal immigration status.

2 And we believe that based off the U Visa, that U
3 visa possibility of the fact that the state has
4 indicated that their victim's advocate has told the
5 victims about how to -- all their rights and all their
6 abilities, including I would think not limited to the U
7 visa, that that would be a bias and a prejudice as far
8 as the victims are concerned.

9 And the jury should be aware of that bias and
10 prejudice based off their testifying and coming forward
11 with prosecution and continuing the prosecution of the
12 case with the state to help them possibly get that U
13 visa and to continue to stay in the country legally for
14 a period of time.

15 THE COURT: All right. And, Mr. Shelton, I
16 allowed you to ask the two questions, how long have you
17 been in the county, and are you receiving assistance to
18 which I believe the answers were six years and no
19 assistance. Noted for the record.

20 Anything further, Mr. Aylor?

21 MR. AYLOR: Your Honor, the only thing I would
22 ask is, and it's just because I want to put it on the
23 record either way, I was -- just to save a side bar --
24 I was going to see if I would be able to tell him that
25 have you been made aware of, has the state made you --

1 the prosecutor's office made you aware of, you know, or
2 informed you however you want to put it, of an
3 immigration, you know, I guess, immigration visa that
4 you could get from being involved in a violent crime.

5 Since they disclosed the information. Just
6 basically that they disclosed it, not that they were
7 working together just to let them know about it.

8 THE COURT: Mr. Alfaro.

9 MR. ALFARO: Your Honor, the State's position
10 was that any reference to the victims' immigration
11 status was not relevant. And even if it was deemed to
12 be relevant, it was more prejudicial than probative.

13 Your Honor has allowed Mr. Shelton to ask those
14 two questions that were just placed on the record. I
15 don't think that because there's two defendants and two
16 sets of attorneys, that the second attorney should get
17 to ask follow up questions in expanse of the ruling
18 that you made regarding Mr. Shelton's influence.

19 So we would ask that if there is any, that the
20 referencing -- the questioning to any of the victims
21 that have questionable immigration status be limited to
22 those two questions that Your Honor asked, and that for
23 Mr. Aylor to get up and ask the same questions would be
24 cumulative.

25 THE COURT: All right. Mr. Aylor, I'm not going

1 to allow further questioning into the immigration
2 status. And I found that the questions about whether
3 or not the State had offered assistance did go to
4 motive or bias, and that Mr. Silva indicated that he
5 was not receiving any assistance. I think any further
6 inquiry is inappropriate at this time.

7 so let's go ahead and take our break. Thank
8 you.

9 MS. CORNWELL: Your Honor, I just wanted to
10 bring to the Court's attention that there is one juror
11 that seems to be nodding off. Just wanted to let you
12 know about that.

13 THE COURT: All right. Thank you.

14 (Whereupon, a recess was taken.)

15 THE COURT: Mr. Aylor, are you prepared?

16 MR. AYLOR: Yes, Your Honor.

17 THE COURT: All right. Let's bring in the jury.

18 (Whereupon, the jurors enter the courtroom.)

19 THE COURT: Thank you. You may be seated.

20 Mr. Aylor, you may continue.

21 CROSS-EXAMINATION

22 BY MR. AYLOR:

23 Q Mr. Silva, how long were you and Mr. Adao inside
24 the home prior to your wife coming downstairs?

25 A We had just finished coming into the kitchen

1 when I saw her.

2 Q Did she see any of the robbers?

3 A I think not because they were behind me with the
4 gun.

5 Q Do you know where she went after she saw you?

6 A She left the apartment to ask for assistance.

7 Q How many individuals went upstairs with you and
8 Mr. Adao?

9 A Two.

10 Q Where was the third individual?

11 A In the downstairs.

12 Q Was the one downstairs grabbing things that
13 belonged to you, your property?

14 A Yes.

15 Q Was he going through your furniture looking for
16 money and jewelry?

17 A I think so because they took the keys to the car
18 and they were on the table next to the television.

19 Q Was his downstairs fairly messy? Or had it
20 looked like it had been tossed after the robbers had
21 left the home?

22 A Can you repeat that? I didn't understand.

23 Q Did it looked like someone had rummaged through
24 his things in the downstairs of his apartment looking
25 for things after he came back downstairs once the

1 robbers had left the home.

2 THE COURT: Is the he you are referring to Mr.
3 Silva?

4 Q (By Mr. Aylor) No. Did it look like the third,
5 the individual the robber that was stayed downstairs,
6 had searched through his property looking for things
7 like money once he came -- once Mr. Silva came back
8 downstairs after the robbers left?

9 A No. Because there was very little furniture in
10 the house.

11 Q You stated earlier that after the robbers left
12 the house, you got in the car with Pedro and went
13 looking after -- for them, correct?

14 A Yes.

15 Q Why would you go looking after someone who had a
16 gun and had just threatened to kill you?

17 A Based on the fact that he didn't have the
18 courage to shoot. If he had, he would have shot me
19 above stairs.

20 Q So you were willing to take the risk of losing
21 your life to catch him and chase him down?

22 A At the time the people were running. We went
23 after the guy that Pedro had grappled with for an
24 instant, in the same direction as he had run. We
25 didn't know whether he had a gun or not because if he

1 had, he would have fired at Pedro.

2 Q And that individual that you and Pedro went
3 after, he went towards the dumpster, correct?

4 A Yes.

5 Q Looking at this picture, can you see it from
6 there?

7 A Yeah.

8 Q This is back of your apartment, correct?

9 A Yes.

10 Q Which way is the dumpster?

11 A They passed in front of the house, towards the
12 back.

13 Q And that is one individual, the individual that
14 Pedro had tackled, correct?

15 A Yes.

16 Q Is Harbor Lake Road, the road outside of your
17 complex, is it this way or this way?

18 A To the left.

19 Q Could you ask him to point it out, please?

20 A (Whereupon, the witness indicates.)

21 Q Is there an exit going right towards the
22 dumpster to leave the neighborhood?

23 A Yes.

24 Q Soon after looking, but soon after you and Pedro
25 looked for the one individual, is it your testimony

1 that you then saw the other two going the opposite
2 direction to the street?

3 A No.

4 Q When did you see the other two individuals who
5 had changed clothes going towards the street as your
6 previous testimony stated?

7 A Five or ten minutes afterwards.

8 Q So to his recollection, to Mr. Silva's
9 recollection, did one of the individuals who invaded
10 his home go to -- right towards the dumpster, and two
11 of the individuals who invaded his home go left towards
12 Harbor Road?

13 A The one that went to the dumpster, Pedro saw him
14 going because he passed in front of the house. And the
15 other two went behind the house and nobody saw which
16 direction they went.

17 Q Mr. Silva, you saw the other two robbers that
18 didn't go toward the dumpster in the street prior to
19 going in your house?

20 A No.

21 Q Again when did you see the two robbers that had
22 not gone towards the dumpster walking in front of you
23 across the street wearing different clothes, as your
24 previous testimony has stated?

25 A When I was at the manager's house.

1 Q You previously stated that your house has been
2 broken into the night prior to these three individuals
3 coming into your home, correct? or attempted to be
4 broken into with a broken window, correct?

5 A It was an attempt. They broke the window and
6 they moved a monitor around that was inside.

7 Q And that was the night prior to these three
8 individuals that invaded your home, correct?

9 A Yes. I called the police.

10 Q And this situation on November 6th when these
11 three individuals invaded your home, they took around
12 \$600 cash?

13 A It's not November.

14 Q Let me re-ask the question. On the night that
15 the three black men invaded your home, they did take
16 around \$600 cash from you, correct?

17 A Yes.

18 Q And the night before that night, your house had
19 been broken into, correct?

20 A It was an attempt, that's correct.

21 Q Why did you have \$600 cash on you the day after
22 someone attempted to break into your home?

23 A Because the next day I had to do birthday party
24 for my daughter, and I had to get -- purchase party
25 things for the party. And buy -- purchase the food for

1 the party.

2 so I had this money because I had to buy things
3 for my daughter's birthday party. This amount of money
4 I basically have in my wallet almost every day.

5 Q so you always carry a large amount of cash on
6 you?

7 A Sometimes.

8 Q And when you went, by the time you got to the
9 identification of the two individuals on Harbor Lake
10 Drive, you had already been informed by your Brazilian
11 friend that the police had captured two of the men that
12 had done the robbery, correct?

13 A That they had two suspects under arrest,
14 correct.

15 Q Okay. Mr. Silva, in previous testimony you
16 stated that your Brazilian friend told you, informed
17 you that the police had captured the individuals who
18 had robbed you. Are you now denying that statement?

19 A No. He simply said that the police detained
20 somebody. He didn't tell me how many.

21 Q so when you stated earlier under oath that your
22 Brazilian friend had told you that the police had
23 detained two of the individuals who has robbed your
24 house, you were lying then? He actually didn't tell
25 you that?

1 A No.

2 Q So you are lying now then?

3 A No. Whatever the man is, he told me that they
4 detained two suspects.

5 Q Sir, under oath you have made two completely
6 different statements. Originally you said your
7 Brazilian friend told you that the police had captured
8 two of the men that robbed you. You said that under
9 oath.

10 You are now saying that the Brazilian friend
11 told you two suspects were captured.

12 MS. CORNWELL: Objection.

13 THE COURT: Overruled.

14 Mr. Rock, I hope you will be able to translate
15 that word-for-word.

16 MR. AYLOR: I can start over.

17 THE INTERPRETER: Could you split it up into two
18 parts?

19 MR. AYLOR: Previously under oath you stated
20 that your Brazilian friend communicated to you before
21 you met with the police that the police had captured
22 two of the individuals who robbed your home.

23 Now under oath you are stating that your
24 Brazilian friend informed you that they had captured
25 two suspects. Were you telling the truth before when

1 you stated that your Brazilian friend told you that the
2 police had captured two of the robbers? or were you
3 lying then?

4 A It's difficult to remember all the details. If
5 I were to ask you --

6 THE INTERPRETER: I'm sorry, I still didn't
7 understand him. Can you repeat it?

8 A If I were to ask you what specifically what you
9 were doing a year afterwards, would you know how to
10 answer me?

11 Q Mr. Silva, in prior testimony over the last two
12 days you stated that your Brazilian friend told you
13 that the police had arrested two of the robbers before
14 you met with the police. That has been within the last
15 24 hours, not a year ago.

16 So again I ask you, will you please tell us --

17 THE COURT: Mr. Aylor, I know it's difficult.
18 You have to get in the habit of stopping so that Mr.
19 Rock can translate.

20 A To say correctly the recording was made on the
21 day exactly after the robbery, and all that's there is
22 correct.

23 MR. AYLOR: May we approach?

24 THE COURT: You may.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: Mr. Aylor, you may continue.

3 Q (By Mr. Aylor) Mr. Silva, do you know the
4 difference between someone who is a suspect of a crime
5 and someone who has been arrested for committing a
6 crime?

7 A No.

8 Q So then is it fair to say you're not sure what
9 the Brazilian specifically said as to who the police
10 had arrested?

11 A Yes.

12 Q When you were at the ID on Harbor Lake Drive,
13 was the only information you had provided the deputy in
14 regards to description, that the two -- the three men
15 were black?

16 A How? Two people.

17 Q And the only information he provided to the
18 police for a description prior to seeing those two
19 people was that they were black men, correct?

20 A One was a little more light skinned, and two
21 were darker skinned.

22 Q But they were all black, correct?

23 A Yes.

24 Q And in prior testimony you've stated that black
25 men's faces all look the same, correct?

1 MS. CORNWELL: Objection, Your Honor.

2 THE COURT: Basis?

3 MS. CORNWELL: It's misstating the evidence.

4 THE COURT: Overruled.

5 A What you said, I didn't understand.

6 (Whereupon, the interpreter interprets the
7 question again.)

8 A Yes.

9 Q (By Mr. Aylor) Did the police tape off, block
10 off your apartment to investigate and look for
11 evidence?

12 A No.

13 Q Did the police search your apartment for
14 evidence?

15 A On the day of the robbery the police came in
16 and looked at everything and asked me to detail
17 everything.

18 Q Did the police ever fingerprint your apartment
19 after the robbery?

20 A No.

21 Q After the day after this robbery happened, you
22 met with Deputy Charlton to turn over your statement,
23 correct?

24 A Yes.

25 Q Did you ever see him after that again?

1 A Yes.

2 Q When?

3 A When he came to hand over Adam's phone.

4 Q Did he do any follow-up investigation then?

5 A No.

6 Q You lost a blackberry during the robbery,
7 correct, a blackberry phone?

8 A Yes.

9 Q Was it ever recovered?

10 A No.

11 Q Did the police ever ask you for the phone
12 records?

13 A No.

14 Q To your knowledge did the police ever find any
15 loose clothing or gun in and around your apartment?

16 MS. CORNWELL: Objection, Your Honor.

17 THE COURT: Basis?

18 MS. CORNWELL: Calls for speculation.

19 THE COURT: Overruled.

20 A No.

21 Q (By Mr. Aylor) To your knowledge did the police
22 ever find the third individual who broke into your
23 home?

24 A No.

25 Q You lost -- your laptop was stolen from your

1 home that evening, correct?

2 A The laptop was of a client of mine, the flash
3 drive was mine.

4 Q This is a client from your computer company?

5 A Yes.

6 Q What is the name of your computer company?

7 A PH Computer Repair.

8 Q Are you the sole owner of that company?

9 A Yes.

10 Q Did you ever look in that laptop to ensure that
11 it was the computer that had been in your home?

12 A No.

13 Q At the ID on Harbor Lake Road, were both black
14 men behind the car in handcuffs?

15 A Yes. In the front of the car.

16 Q Standing beside each other?

17 A No. In front.

18 Q Were the two black men that had handcuffs
19 standing beside each other when you approached the ID
20 scene?

21 A One was beside the other, and the policeman was
22 inside the car with the spotlight of the car.

23 Q Were there any other black men there that night?

24 A No.

25 Q Was there anyone other than the two black men in

1 handcuffs?

2 A No.

3 Q Was there anyone other than the two black men
4 not wearing a police officer's uniform?

5 A Inside the police car was myself, Adao and
6 Hilario who was doing the interpreting.

7 Q Were the only two individuals outside of the car
8 not wearing police uniforms the two black men?

9 A Yes.

10 Q Now in previous testimony you stated that one of
11 the two black men that you recognized quickly was the
12 individual who had been choking Mr. Adao, correct?

13 A Yes.

14 Q And you stated that the other individual that
15 you ID'd you were not sure -- I'm not finished with the
16 question.

17 Starting at not sure. You were not sure if the
18 second black individual was the individual who had a
19 gun against your head in the home, or the individual
20 that was downstairs, correct?

21 MS. CORNWELL: Objection, Your Honor. May we
22 approach?

23 THE COURT: Yes.

24 (Whereupon, a discussion was held at the bench
25 off the record.)

1 THE COURT: Rephrase your question, Mr. Aylor.

2 Q (By Mr. Aylor) At the previous hearing you
3 stated that the two individuals, the two black males
4 that you ID'd were -- that's a stopping point -- the
5 black male that choked Mr. Adao, and the other black
6 male was either the one who had a gun to your head or
7 the individual who was downstairs, correct?

8 A The one that was choking Adam, yes. The other
9 one who had the gun, I don't know whether it was him or
10 the other one that was downstairs was definitely
11 involved in the crime.

12 Q But you didn't know which was which in the ID of
13 the second black robber, correct?

14 A Yes.

15 MR. AYLOR: Thank you.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. CORNWELL:

19 Q Mr. Silva, when the robbers attacked you, were
20 you able to get a good look at them?

21 A Yes.

22 Q And when the police took you to the
23 identification site, was there any light on the
24 suspects?

25 A Yes.

1 Q Can you describe the light that it was on the
2 suspects.

3 MR. SHELTON: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. SHELTON: Beyond cross.

6 THE COURT: Overruled.

7 A Headlights of the car, plus a spotlight.

8 Q (By Ms. Cornwell) How close were you to the
9 suspects when you identified them?

10 A I don't know quite, but less than the distance
11 from here to the door.

12 Q Were you able to see them clearly when you made
13 the identification?

14 A Yes.

15 Q Are you 100 percent sure that the defendants are
16 the people that you identified?

17 A Yes.

18 Q And when you made the identification, were you
19 100 percent sure at that time that those two men were
20 two of the three men that robbed you?

21 A Yes.

22 MS. CORNWELL: Court's indulgence.

23 Q (By Ms. Cornwell) Paulo, I'm going to show you
24 what has previously been marked at State's Exhibit 3.
25 Do you recognize whether or not this is the laptop that

1 was taken from your home?

2 A Yes. I recognize my flash drive and the
3 computer also.

4 Q Have you met with me prior to your testimony
5 today?

6 A Yes.

7 Q And in any of those meetings, was that laptop in
8 the meeting?

9 A Yes.

10 Q Have you had an opportunity to look in that
11 laptop?

12 MR. AYLOR: Objection.

13 THE COURT: Basis?

14 MR. AYLOR: Asked and answered.

15 He already stated no.

16 THE COURT: Overruled. He may answer.

17 A To fire it up, no. Just from the outside.

18 MS. CORNWELL: Nothing further, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. SHELTON:

21 Q Mr. Silva, where did you get the -- where did
22 you get your thumb drives?

23 A Where I got it?

24 Q Yes.

25 A Or where I bought it?

1 Q You can buy thumb drives from many places; isn't
2 that correct?

3 A Yes.

4 Q And they could look exactly like that, correct?

5 A Yes. But they can't contain the same
6 information inside.

7 Q Let talk about the light. It was 11:30, 12
8 o'clock midnight?

9 A Around there. I don't have a great idea about
10 the time.

11 Q And this was off Harbor Lake Drive? One side
12 has trees on one side of Harbor Lake Drive, and there's
13 houses on the other side?

14 A On Harbor Lake Drive? There are apartments on
15 both sides of the road.

16 Q Now there is also a Food Lion up at the top of
17 the road near Red Bank Road?

18 A Yes.

19 Q The people that you ID'd were not at the Food
20 Lion parking lot?

21 A No. I identified them before the parking lot of
22 the Food Lion.

23 Q It was on the side of the road?

24 A Yes.

25 Q There were no other lights around?

1 A No.

2 Q And I think your testimony was you were about
3 the length of this courtroom?

4 A Less.

5 MR. SHELTON: No further questions.

6 THE COURT: Mr. Aylor?

7 RECROSS-EXAMINATION

8 BY MR. AYLOR:

9 Q Mr. Silva, from the night that you identified
10 two of the black men all the way up until today, you
11 still don't know which one of the three you have,
12 correct? ✓

13 A How do you mean, which of the three?

14 Q Which one of the two here, you don't know which
15 one it is that you ID'd?

16 A I know those I identified.

17 Q But you don't know one of them, you don't know
18 whether or not it was the gunman or the individual who
19 stayed on the bottom floor, correct?

20 A Yes.

21 Q You only know that it was a black person that
22 robbed your house, correct?

23 A Yes.

24 MR. AYLOR: Thank you.

25 THE COURT: You may step down.

1 Can you call a witness that doesn't require an
2 interpreter so that Mr. Rock can have a rest?

3 MR. ALFARO: We can. State calls Deputy
4 Charlton.

5 THE COURT: You may step down, Mr. Silva.

6 And, Mr. Rock, I'm going to give you a rest.

7 THE INTERPRETER: Thank you, Your Honor.

8 THE COURT: Thank you. Don't go far.

9 MR. MCCOY: May we approach, Your Honor, while
10 the witness is coming in?

11 THE COURT: You may.

12 (Whereupon, a discussion was held at the bench
13 off the record.)

14 THE COURT: Deputy, come forward.

15 MR. JASON CHARLTON,
16 after having first been duly sworn to state the truth,
17 the whole truth and nothing but the truth, testified on
18 his oath as follows:

19 DIRECT EXAMINATION

20 BY MR. ALFARO:

21 Q Deputy, could you please tell the jury where you
22 work?

23 A Berkeley County Sheriff's Office.

24 Q How long have you been with the sheriff's
25 office?

1 A About four years.

2 Q And could you tell us a little bit about what
3 your current rank is, or what your current duties?

4 A I'm a private first class, I'm assigned to the
5 patrol division. Basic -- if you call the police, I'm
6 the one that's going to come which is basic patrol.

7 Q Prior to joining the sheriff's office, did you
8 have any prior law enforcement experience?

9 A Yes. I worked for the Charleston County
10 sheriff's office for about five years. I worked in the
11 detention center and house division and also with the
12 transport division.

13 Q Now were you working for the Berkeley County
14 sheriff's office on the night of August 6, 2010?

15 A Yes, sir.

16 Q And what area of Berkeley County were you
17 assigned to patrol that night?

18 A I patrolled the unincorporated areas of Goose
19 Creek.

20 Q And could you tell some of us that don't know
21 what that means what the unincorporated areas of Goose
22 Creek means?

23 A It's the areas around Goose Creek that do not
24 fall within the actually incorporated city limits of
25 Goose Creek.

1 Q But all those areas are contained within
2 Berkeley County?

3 A Yes, yes.

4 Q And did you have the opportunity to respond to
5 Drive in Goose Creek area on that
6 night, August 6th?

7 A Yes, I did.

8 Q And what type of call were you sent to?

9 A Dispatched as a home invasion with the use of a
10 firearm.

11 Q And that night were you riding in the car by
12 yourself or did have another officer with you?

13 A I was by myself.

14 Q Were you one of the first officers to respond to
15 that scene?

16 A The first.

17 Q And can you tell us what type of area or what
18 type of complex Drive is?

19 A It's an apartment complex.

20 Q Do you happen to know the name of that apartment
21 complex?

22 A River Ridge Townhomes, I believe.

23 Q I'm going to show you what has been previously
24 marked as State's Exhibit 8 for demonstrative purposes.

25 MR. ALFARO: Could the deputy step down so that

1 he can show this to the jury?

2 THE COURT: He may. Deputy, I need you to speak
3 very loudly and face the jury. Thank you.

4 Q (By Mr. Alfaro) Now can you describe for the
5 jury what area is depicted on this map?

6 A This is one of the southern regions of Berkeley
7 County. This is going to be Red Bank Road here. This
8 is Henry E. Brown, or what most of the old-timers know
9 as North Rhett, or North Rhett Extension.

10 This is going to be the Food Lion in the area of
11 Red Bank and Harbor Lake. The high school is generally
12 up in this area somewhere, Goose Creek High School.

13 Q And 4255 on the map, can you show the jury where
14 that is?

15 A Yes. Right here.

16 Q And that's the apartment complex you responded
17 to?

18 A Yes.

19 Q Thank you, you can have a seat back up on the
20 witness stand.

21 Now you testified that you were dispatched to --
22 it was dispatched as a home invasion; is that correct?

23 A Yes, sir.

24 Q And when you're dispatched to a call, or sent to
25 call like that, what is your normal procedure when you

1 are responding to that type of scene?

2 A I would obviously respond directly there to
3 ensure the safety of any parties involved. But you
4 want to be aware of your surroundings as you're going
5 in.

6 Q And as part of your procedure when you are
7 driving to these scenes, do you normally kind of patrol
8 the area at the time when you respond?

9 A Yes. Yes. You definitely want to be aware of
10 what is going on around you.

11 Q Now when you -- on this evening in question,
12 first of all, do you recall about what time of night
13 that was?

14 A 11:30ish.

15 Q So is that p.m.?

16 A Yes, sir. I'm sorry.

17 Q Was it dark outside?

18 A Yes, sir.

19 Q And when you were responding to that scene, had
20 been provided any information regarding -- additional
21 information regarding the home invasion, such as
22 suspects or property taken or anything to that effect?

23 A I recall that there was -- I was advised that
24 there was a laptop taken. There were multiple suspects
25 of the African-American and they were males. And a

1 pistol had been used, a firearm had been used in the
2 commission.

3 Q And while you were responding to the scene, or
4 patrolling the area after getting there, did you come
5 into contact with any individuals matching that general
6 description?

7 A I'm sorry, were you referring to on the way in,
8 or at all?

9 Q Well tell us -- let me rephrase the question.
10 On the way to the scene, what did you do when you got
11 to the scene?

12 A I met with the victims who were standing in the
13 parking lot.

14 Q And was that in the complex by their apartment,
15 or was that -- where was that at in relation to the
16 apartment?

17 A It was kind of between their actual apartment.
18 There's one building between their apartment building
19 and the roadway. It was kind of in between their
20 apartment and the roadway.

21 Q And when you got to that location and met with
22 them, did you have a long conversation with them or how
23 long were you out with them at that time?

24 A It was brief, very brief.

25 Q And what happened after that?

1 A They instructed that the persons that committed
2 the act were walking up Red Bank Road.

3 Q Walking up Red Bank Road or Harbor?

4 A Excuse me, up Harbor Lake Road towards Red Bank.

5 Q Okay. And did you go to try to locate those
6 suspects?

7 A Yes, sir.

8 Q And where did you find those -- or did you find
9 the suspects?

10 A Yes.

11 Q And where along -- was that along Harbor Lake
12 Road?

13 A Yes, sir.

14 Q And where on Harbor Lake Road was that?

15 A If you were traveling from the apartment complex
16 towards Red Bank Road, it would have been on the
17 left-hand side of the road between -- after Coral Reef,
18 I think it's between -- I'm thinking the name of the
19 road is Lighthouse. About a quarter of a mile from the
20 apartment complex.

21 Q So about a quarter mile from the entrance to the
22 apartment complex?

23 A Yes, sir.

24 Q I'm going to show State's Exhibit 8 for
25 demonstrative purposes, again. Try to do this from a

1 different angle this time so that you don't have to
2 come back down again.

3 On this map can you show the jury approximately
4 where you encountered the suspects?

5 A I think right here. Would have been right along
6 in this area here.

7 Q So around the area where you located the
8 suspects were the woods that are on this map, is that
9 the way that it looked that night?

10 A Yes. Actually this here is moderately wooded
11 also.

12 Q Okay. All right. So it's about, you said, a
13 quarter mile away from where the entrance to the
14 apartment complex is?

15 A Roughly, yes, sir.

16 Q And can you tell us what you saw when you first
17 encountered the suspects?

18 A There were three black males walking towards Red
19 Bank Road; one of whom was younger and shorter; one of
20 whom was average size; and one of whom was a little
21 larger, not big by any means, but larger in reference
22 to the other two. And one was carrying a laptop.

23 Q So the three individuals you encountered, one of
24 them was carrying a laptop?

25 A Yes, sir.

1 Q And what happened when you saw them? What did
2 you do after you saw them?

3 A I immediately pulled to that -- to the left side
4 of the road, to their side of the road, and attempted
5 to make contact with them.

6 Q And by attempting to make contact, you mean you
7 were getting out and trying to stop and talk to them;
8 is that correct?

9 A Yes, sir.

10 Q And what happened after you got out of the car?

11 A One of them -- two of them seemed like they were
12 getting ready to run. One -- the one carrying the
13 laptop dropped the laptop, kind of hiked his pants up
14 like he was going to flee. One actually did flee.

15 One of them told the other two, don't run, don't
16 run. The one that was carrying the laptop didn't run.
17 Obviously, the one who said, don't run wasn't running.
18 And the other actually did flee.

19 Q So at that point you were left with two of those
20 three suspects?

21 A Yes, sir.

22 Q And of the two that remained at the scene, was
23 one of them the one that was carrying the laptop?

24 A Yes, sir.

25 Q And were you able to identify who those two

1 individuals were that you stopped walking on Harbor
2 Lake Drive that night?

3 A Yes.

4 Q And who were those individuals?

5 A Douglas Thompson and Clarence Fishburne..

6 Q And do you recall which one of those two
7 defendants was actually carrying the laptop when you
8 first encountered them?

9 A Mr. Thompson.

10 Q I'm going to show you what has been previously
11 marked as State's Exhibit 3-A for identification. If
12 you can take look at that exhibit.

13 Do you recognize that item?

14 A Yes, sir.

15 Q Okay. And what did you recognize that as item
16 as?

17 A It's the item that I collected from the side of
18 the roadway that was being carried by Mr. Thompson.

19 Q And at some point in your involvement in the
20 case, did you take custody of that laptop?

21 A Yes, sir.

22 Q And what did you do with that laptop after you
23 took custody of it?

24 A It was entered into evidence for prints, and
25 hold for safekeeping in evidence.

1 Q All right. So let's go back to the -- when you
2 stopped and were out with the defendants.

3 Did you conduct any type of pat down on them at
4 that point?

5 A Yes, sir. Terry frisk.

6 Q And as part of that Terry frisk, did you locate
7 any weapons?

8 A No, sir.

9 Q Were you ever able to locate that third person
10 that ran from the scene?

11 A No, sir.

12 Q So at no point were you ever able to conduct any
13 kind of pat down of him for any kind of weapons?

14 A No, sir.

15 Q At this point in your interaction with the
16 defendants, were there any other deputies with you?

17 A I'm not sure if during the actual Terry frisk if
18 Deputy Ollic had arrived or not, but it was thereabout
19 the same time. I'm fairly certain.

20 No. No. Deputy Ollic hadn't arrived yet.

21 Q So for at least part of the interaction with the
22 defendants, it was just you and those two defendants?

23 A Yes, sir.

24 Q And did you wait on any kind of -- well what did
25 you do at that point before Deputy Ollic arrived?

1 A I waited for him.

2 Q And when Deputy Ollic arrived, what happened at
3 that point?

4 A The subjects were detained for further
5 investigation.

6 Q What happened after that?

7 A I left the suspects in the custody of Deputy
8 Ollic and returned to the victims' house.

9 A And how long would you say it took you to get
10 from where you left Deputy Ollic with the defendants to
11 get back to the victims' apartments?

12 A Seconds.

13 Q Did you drive that or walk that?

14 A Drove.

15 Q And when you went, did you go directly to the
16 victims' apartment?

17 A Yes, sir.

18 Q And did you come into contact with the victims?

19 A Yes, sir.

20 Q And do you recall their names?

21 A Paulo Silva and Adao -- Adao's last name has
22 left me, sir.

23 Q Did Paulo and Adao, were you able to communicate
24 with them?

25 A Yes, sir.

1 Q How did you do that?

2 A Well the very little English they spoke, the
3 very little Portuguese I speak, and a neighbor
4 interpreter.

5 Q So you speak a little Portuguese?

6 A Very little.

7 Q All right. Was there someone, you said, was
8 there someone there that was able to translate for you?

9 A Yes, sir.

10 Q And who was that person?

11 A Rubio Hilario.

12 Q Okay. Was that another officer? Or was that
13 somebody who lived in the complex? Who was that?

14 A He was a neighbor who offered his assistance.

15 Q And did he in fact assist you with translating
16 for Paulo and Adao?

17 A Yes, sir.

18 Q And did he go with you, or did you take the
19 victims to the location where the defendants were being
20 detained?

21 A Yes, sir.

22 Q And did Mr. Rubio go with you and the victims?

23 A Yes, sir.

24 Q And what was the purpose of taking the victims
25 and Mr. Rubio to that location?

1 A To advise myself and/or Deputy Ollic whether the
2 persons that we had in our custody were or were not the
3 actual assailants.

4 Q So is it your testimony that you informed them
5 of the people that you had may or may not be the people
6 that had committed the robbery against them?

7 A Yes, sir, always.

8 Q And you testified that there was some woods
9 basically on both sides of where Deputy Ollic was with
10 the defendants. Can you describe for the jury the
11 lighting in that area, the natural lighting or the
12 street lighting in that area?

13 A Very poor.

14 Q And when you drove the victims to that location,
15 did either you or the victims or Mr. Rubio ever get out
16 of the car?

17 A No.

18 Q So the identification procedure was done with
19 them remaining in your car?

20 A Yes, sir.

21 Q And where were the defendants at this time?

22 A They were -- at the time the identification was
23 made, they were standing in front of Deputy Ollic's
24 patrol unit.

25 Q And were they handcuffed at that time?

1 A Yes.

2 Q Were they handcuffed in front? Were their hands
3 in front or were their hands in the back?

4 A In the rear.

5 Q And where did you pull your vehicle up?

6 A Face-to-face with Deputy Ollic's vehicle.

7 Q So is it fair to say that the defendants were in
8 front of your vehicle?

9 A Yes, sir.

10 Q And due to the poor lighting, did you use any
11 kind of artificial lights or flashlights or any lights
12 on your car to light up the area around the defendants?

13 A Yes, sir. My spotlight.

14 Q And was that necessary in order to provide
15 enough light for them to see the faces of the
16 defendants?

17 A Yes, sir.

18 Q And approximately how close were you, or how
19 close was your car containing the victims at the time
20 they made the identification?

21 A 20 or 30 feet.

22 Q And when you had Paulo and Adao at that
23 location, were they able to identify the defendants?

24 A Yes.

25 Q And could you describe for us how long it took

1 them to make that identification?

2 A It was almost instantly.

3 Q And given that you speak a little Portuguese and
4 they speak a little English, was that identification
5 made that way with broken identification, or was that
6 made with the translator interpreting?

7 A All of the above. It would have been obvious no
8 matter what language you spoke.

9 Q How so?

10 A They were pointing and nodding and saying in
11 their own language what I can assume was it's him. But
12 they were nodding in the affirmative. And also it was
13 spoken through the interpreter.

14 Q So you had confirmation from their pointing and
15 nodding based through the interpreter?

16 A (Affirmative head shake.)

17 Q And at any point in time when you were with the
18 victims in the car and they made the identification,
19 either through broken English or through their
20 interpreter, did they ever attempt to change their
21 identification, recant their identification?

22 A No, sir, they were clear.

23 Q Did they ever indicate there was any kind of
24 hesitancy, or maybe I'm wrong about this?

25 A No. It was evidently clear.

1 Q And after the identification was made, were the
2 defendants taken into custody?

3 A Yes, sir.

4 Q And after you arrested them, did you perform any
5 kind search incident to that arrest?

6 A Yes, sir.

7 Q And would you tell us what the result of that
8 search was?

9 A Amongst personal affects I guess, that I don't
10 remember, there was what later was to be determined as
11 the victim, Adao's, two of his cell phones; a sum of
12 money; and a wallet.

13 MR. SHELTON: Your Honor, objection for purposes
14 of the record.

15 THE COURT: Thank you. It's noted.

16 Q (By Mr. Alfaro) Now you indicated that there
17 were two phones that you determined belonged to the
18 victim Adao?

19 A Yes, sir.

20 Q How did you -- where did you find those phones?

21 A In Mr. Thompson's pocket.

22 Q Did you prepare a police report in this case?

23 A Yes, sir.

24 Q And when was that police report prepared?

25 A Shortly after the incident.

1 Q And can you tell the Court and the jury what the
2 purpose is for doing a police report that close in time
3 to the incident?

4 A Obviously to document the incident and for
5 later reference.

6 Q And would it be fair to say that the information
7 regarding the incident would have been fresher in your
8 mind at the time the report was prepared than it would
9 be today?

10 A Very much so.

11 MR. ALFARO: Court's indulgence.

12 THE COURT: Yes, sir.

13 Q (By Mr. Alfaro) Do you have a copy of your
14 report with you?

15 A Yes, sir.

16 Q And I had asked you which defendant the phones
17 that were eventually identified as the victim's --
18 asked you which defendant was in possession of those at
19 the time of your search.

20 If you could, do you have page five of your
21 report? Or, I'm sorry, yes, page five of your report.
22 Do you have that?

23 A Yes.

24 Q Okay. And if you could read -- would referring
25 back to your report refresh your recollection as to

1 which defendant was actually in possession of the
2 phones that belonged to the victim Adao?

3 A Yes.

4 Q If you could, could you read through pages five
5 and six and see if that refreshes your recollection.
6 and then once you are done reading look up at me and I
7 will ask you some more questions.

8 A I'm sorry, maybe your five and my five may be
9 different.

10 Q I think it starts on five and runs into six.
11 Top of page six starts with that.

12 A I think your five is my six.

13 Q You can look through page six of your report and
14 see if that refresh your recollection.

15 You read through page six?

16 A Yes, sir.

17 Q Does it refresh your recollection as to where
18 those phones were located?

19 A It says in Mr. Fishburne's pocket.

20 Q Now do you recall what type of phones were
21 located? What those phones looked like or what type of
22 phones those were?

23 A Two gray phones, a Motorola and a Boost.

24 Q I'm going to show you what has been marked as
25 State's Exhibit 5-A for identification. Does that

1 phone look familiar to you?

2 A Yes.

3 Q And what is that phone? What's your familiarity
4 with that phone?

5 A It would have been the Motorola phone that was
6 found in Mr. Fishburne's pocket.

7 Q And I'm going to show you what has also been
8 marked State's Exhibit 5 for identification. Can you
9 tell the Court what that's a picture -- if that's a
10 picture the Exhibit 5-A?

11 A It would be.

12 MR. ALFARO: Your Honor, at this time the State
13 would ask that State's Exhibit 5 be admitted into
14 evidence.

15 THE COURT: Any objection from Defendant
16 Fishburne?

17 MR. SHELTON: The picture? No objection to the
18 picture.

19 MR. AYLOR: No objection, Your Honor.

20 THE COURT: State's 5 into evidence without
21 objection. You may publish.

22 (Whereupon, State's Exhibit No. 5 is admitted
23 into evidence.)

24 Q (By Mr. Alfaro) Now regarding the phone that
25 you just described or just identified, what was done

1 with that phone?

2 A I believe it was taken and entered into
3 evidence.

4 Q At some point was it ever returned to the
5 victim?

6 A I'm sorry?

7 Q At some point.

8 MR. AYLOR: Objection, leading.

9 THE COURT: Rephrase your question.

10 Q (By Mr. Alfaro) After the phone, you testified
11 it was placed into evidence you believe?

12 A Yes, sir.

13 Q Is it customary that property that is found
14 belonging to another victim would be returned to that
15 person?

16 A Yes, sir.

17 Q And do you know if that was done in this case?

18 A If that was -- I'm sorry, sir, I had that one
19 mixed up with another cell phone.

20 Q Let me ask you the question again to clarify.
21 The two phones that you recovered from Defendant
22 Fishburne's pocket, what was done with those cell
23 phones?

24 A The ones that were in Defendant Fishburne's
25 pockets were returned to Adao, the victim.

1 Q And prior to returning them to the victim, was
2 he offered -- was he given the opportunity to confirm
3 that they were in fact his phones?

4 A Yes.

5 Q Only at that point would you then return those
6 phones to the victim?

7 A Yes.

8 Q Now other than the two phones that you returned
9 to the victim that night, did you take any other cell
10 phones into your possession that night?

11 A There was one other, that's why I was getting
12 confused.

13 Q And where did you come -- where did you get that
14 phone from?

15 A That phone was, I believe, taken from Mr.
16 Thompson's pocket.

17 Q And what was done with that one?

18 A That phone was entered into evidence.

19 Q Now did you take custody of any other cell
20 phones that night?

21 A I didn't take custody of any.

22 Q Now after the defendants were arrested and
23 searched, did you transport them from that location or
24 did another deputy do that for you?

25 A Actually two other deputies.

1 Q And who were they?

2 A Deputy Ollic and corporal Drennon.

3 Q And while those deputies were transporting the
4 defendants, what did you do?

5 A I went back to the victims' residence.

6 Q And what did you do at the victims' residence
7 that night?

8 A I attempted to collect written statements. They
9 were written in Portuguese, so they didn't do me any
10 good.

11 Q And did you speak with, attempt to speak with
12 the victims that night?

13 A Yes.

14 Q Okay. And did you recover any evidence from the
15 victims' apartment that night?

16 A Yes, sir. There was another cell phone.

17 Q And do you recall what type of cell phone that
18 was?

19 A No, sir. I could refer to my report I'm sure,
20 but I don't remember the brand.

21 Q And you said you recovered that cell phone.
22 Where was that phone? Did you locate that phone in the
23 apartment or did one of the people in the apartment
24 give it to you?

25 A It was handed to me by one of the victims.

1 MR. SHELTON: Your Honor, for purposes of the
2 record, I object.

3 THE COURT: It will be noted. Thank you, Mr.
4 Shelton.

5 Q (By Mr. Alfaro) And that phone that was
6 provided to you by one of the victims at their
7 apartment, did that belong to the victims?

8 A No, sir.

9 Q And was that phone taken into evidence?

10 A Yes, sir.

11 Q Now other than securing that phone, did you have
12 any other involvement with any other evidence in this
13 case?

14 A There was a sum of money.

15 Q And what was done with that?

16 A It was also entered into evidence.

17 Q Now I just want to clarify a little bit about
18 the cell phones because we have kind of gone a little
19 bit in circles about that.

20 Two phone were recovered from Defendant
21 Fishburne's pockets, right?

22 A Yes.

23 Q And what was done with those two phones?

24 A Those two phones were given back to the victims.

25 Q And the phone that was found inside the victims'

1 apartment, or given to you at the victims' apartment by
2 one of the victims, that was secured into evidence?

3 A Yes, sir.

4 Q And through the course of your investigation
5 were you able to determine who that phone was connected
6 to?

7 MR. SHELTON: Objection.

8 THE COURT: Basis?

9 MR. SHELTON: 403.

10 THE COURT: Counsel approach.

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 THE COURT: Overruled. We will put it on the
14 record outside the presence of the jury.

15 Mr. Alfaro.

16 MR. ALFARO: Thank you, Your Honor.

17 Q (By Mr. Alfaro) Deputy Charlton, when you took
18 custody of that cell phone that was recovered in the
19 victims' apartment, did you open that cell phone?

20 A Yes, sir.

21 Q Okay. And in the course of doing that, did you
22 locate any identifying information or anything else
23 inside that phone?

24 A There were some pictures.

25 Q And do you recall what, if any, of those

1 pictures -- what any of those pictures were?

2 A One of the pictures appeared to be Mr.
3 Fishburne.

4 Q And so when you opened the phone and looked at
5 that picture, this was after you had detained them and
6 gone back for the identification process?

7 A Actually I believe it was -- because I would
8 have had an opportunity to speak to Mr. Fishburne
9 afterwards -- so I believe it was during the time that
10 I was there prior to the identification.

11 Q But you had an opportunity to look at Mr.
12 Fishburne on at least one occasion by that point?

13 A Yes, sir.

14 Q And at that time was it your opinion that the
15 picture that you saw appeared to you to be Mr.
16 Fishburne?

17 A Yes, sir.

18 Q And after seeing that picture, did you then
19 determine that that phone had some evidentiary value in
20 this case?

21 A Yes.

22 Q And is that -- is it fair to say that's why you
23 took that into evidence?

24 A Yes, sir.

25 Q Thank you.

1 MR. ALFARO: Please answer any questions the
2 defense has for you.

3 THE COURT: Mr. Shelton.

4 CROSS-EXAMINATION

5 BY MR. SHELTON:

6 Q officer Charlton, you -- I think you eluded to
7 this with the solicitor -- but you complete incident
8 reports from memory to help with your memorization?

9 A Yes, sir.

10 Q In case you have to come to court and testify?

11 A Yes, sir.

12 Q Because how many people do you think you come
13 into interaction with in a day?

14 A A whole lot.

15 Q So it's really tough to remember exact details
16 of an incident?

17 A Yes, sir.

18 Q And you completed an incident report in this
19 case?

20 A Yes, sir.

21 Q There is also a report that is generated by
22 dispatch called a CAD report?

23 A Yes, sir.

24 Q You are familiar with that?

25 A I'm familiar with the fact that it exists.

1 A Okay. And what is your understanding of a CAD
2 report?

3 Is it your understanding that it documents
4 everything that is called into dispatch?

5 A Yes.

6 Q Including the person that calls 911 and officer
7 comments?

8 A Yes, sir.

9 (Whereupon, Defendant Fishburne's Exhibit No. 1
10 is marked for identification.)

11 Q (By Mr. Shelton) Prior to coming here today,
12 have you had a chance to review the CAD report?

13 A Yes, sir.

14 Q What is your understanding as to when the call
15 was dispatched?

16 MR. ALFARO: Objection, Your Honor. Can we
17 approach?

18 THE COURT: Yes.

19 (Whereupon, discussion was held at the bench off
20 the record.)

21 THE COURT: Rephrase your question, Mr. Shelton.

22 Q (By Mr. Shelton) Based on your report --

23 THE MR. SHELTON: May I approach, Your Honor?

24 THE COURT: You may.

25 Q (By Mr. Shelton) Based off your report, what is

1 your understanding as to the time that you were
2 dispatched?

3 A 23:38, which would be 11:38 p.m.

4 Q About what time did you arrive?

5 A Would be a minute thereafter.

6 Q Did the victims tell you that this incident
7 occurred 20 to 30 minutes prior to that time that you
8 arrived?

9 A No, sir.

10 Q Were you given any physical description of what
11 the suspects were wearing?

12 A I don't recall.

13 Q Would it help to see the CAD report that would
14 have the 911 call?

15 A It doesn't. That's not going to make me
16 remember.

17 Q Wouldn't help to know what was called in at 911
18 if that's what was given as your?

19 A I'm sorry?

20 Q Would it help to know what was called in to 911
21 to help refresh your memory as to what may have been
22 told to you over the radio as far as what the suspects
23 were wearing?

24 A I know what the CAD says that was called in, but
25 I don't recall being told or what they said.

1 Q Okay. Do you recall what time you arrived on
2 scene?

3 A Per my report it says at 23:39, which would have
4 been 11:39 p.m.

5 Q And you have a call number, isn't that correct?

6 A Yes, sir.

7 Q And your call number is BC-154?

8 A Or 154.

9 Q What was it? I'm sorry.

10 A For all intents and purposes, yes, 154.

11 Q And I guess the B-C refers to Berkeley County?

12 A Yes, sir. I think they have several different
13 agencies that they dispatch for.

14 Q And at 10:23, that's when you arrived on scene?

15 A Yes, sir.

16 Q Do you remember when the two persons were
17 detained?

18 Would it help to look at the CAD report?

19 A I can look at it, but, you know, I can't be
20 responsible for it. Somebody else logs it in the
21 computer.

22 Says 23:42. I could say it's a safe assumption
23 it was within that time. You have to take into
24 consideration whether I -- what time things are it's
25 relayed between people or what have you, so who knows.

1 Q So that's safe to say that that's when you
2 called into dispatch that you had two detained?

3 A That's when they documented it.

4 Q And do you remember going to the apartment at
5 12:18?

6 A No. I remember going back to the apartment a
7 couple of times, but I don't remember which time you're
8 referring to.

9 Q And do you remember going, one of those times
10 you dispatched to Apartment G-1 at 1:29?

11 A Yes, sir. This is inconclusive because there's
12 other things that would have had to have went on that
13 aren't documented between those two times.

14 Q All right. And then what's the 10-95?

15 A Subject in custody.

16 Q All right. So --

17 A Well I'm sorry, let me rephrase. 10-95 means, I
18 guess if he is detained, because 10-95 means he's under
19 arrest.

20 Q Under arrest. And do you remember what time you
21 -- they were placed under arrest?

22 A I could only confer to this. But I don't --

23 Q Do you want to confer to it? The CAD report?

24 A This says at 2:38 a.m. No, I'm sorry, that's
25 out at 95.

1 Q Would it be 1:32? You didn't actually place
2 them under arrest, it would have been Deputy Ollic and?

3 A No, that doesn't mean -- no, that doesn't mean
4 -- that's why I say this is inconclusive because that
5 would mean that they're taking custody of 10-95.

6 Q Okay. So that's when they were placed under
7 arrest?

8 A They would have been placed under arrest by me
9 prior to that.

10 Q Okay.

11 A You know, I don't know when.

12 Q And -- but it's safe to say that the --

13 A I would say that if these numbers are accurate
14 it says 95, 01:32. Yeah, because see it says 95 at
15 01:32. I would say that it's safe to say, providing
16 that's accurate, it was whatever time they went 95, I
17 would have put 95 shortly before. I'm assuming.

18 Q And 23-95 means they're at the jail?

19 A Yes, sir.

20 Q And do you remember what time that occurred?

21 A No. I was doing other things.

22 Q 1:32. By the time they were detained was 11:40,
23 that's about two hours?

24 A If you say so, I don't.

25 Q From 11:42, at the time that they were detained,

1 until about 1:32 is an hour and 50 minutes. And you
2 were dispatched to a home invasion?

3 A Yes, sir.

4 Q It's a pretty serious charge; isn't it?

5 A It depends.

6 Q Okay.

7 A We get dispatched to them all of the time.

8 Q At what point in time did you go to look at
9 Rufus Peterson?

10 A I can't recall. It was after the -- I assume it
11 was after I was done with what I was doing on Harbor
12 Lake.

13 Q After you got done with Harbor Lake?

14 A I can only assume. I really don't recall and
15 it's not documented, so I don't.

16 Q Would it refresh your memory to look at the
17 incident report regarding Rufus Peterson?

18 (Whereupon, Defendant's Exhibit No. 2 is marked
19 for identification.)

20 Q (By Mr. Shelton) Take a look at that and tell
21 me if that refreshes your memory?

22 A Yes, sir. This says it was sometime between
23 11:47 and 1:30. But again, I'm testifying to what
24 somebody else said.

25 Q Do you have any doubts that it would happen

1 between that time?

2 A I don't have any reason to doubt. I don't have
3 a reason to doubt it, but other than the fact that I
4 didn't say it and I don't remember it.

5 Q And the person that generated that report is
6 Sgt. Cook?

7 A No. Would have been O'Neil.

8 Q O'Neil. And he is -- was he your supervisor?

9 A He is one of them.

10 Q One of your supervisors. He signed off on your
11 report?

12 A Yes, sir.

13 Q You remember running Mr. Thompson's name through
14 the computer system?

15 A No.

16 Q Did you give his information?

17 A I'm sure I did.

18 Q And you were given back his information?

19 A I'm sure I was.

20 Q As far as there being no warrants and that?

21 A I'm sure there was.

22 Q Okay. And you believe that his address is 134
23 Summit Avenue?

24 A I don't.

25 Q Would it refresh your memory to look at the CAD

1 report as to what they told you his information was?

2 A I don't really know what I'm looking at. I
3 don't know much about CAD reports.

4 Q Look at page two. I see Thompson on top.

5 MR. SHELTON: May I approach, Your Honor?

6 THE COURT: Yes, you may.

7 Q (By Mr. Shelton) His address is 134 Summit
8 Avenue?

9 A I guess.

10 Q Are you aware that's less than -- about a mile
11 from the scene?

12 A I know where Summit Avenue is.

13 Q Are you aware it's about a mile from the scene?

14 A Give or take.

15 Q Now when you went to the apartment complex and
16 the victim was out there telling you some of the
17 suspects were right down the street?

18 A Yes, sir.

19 Q Okay. And the description was black males?

20 A As far as I remember.

21 Q And you came across three black males, the first
22 three black males you saw?

23 A (Affirmative head shake.)

24 Q And at that point in time they weren't free to
25 go?

- 1 A Right.
- 2 Q One took off running?
- 3 A (Affirmative head shake.)
- 4 Q And it eventually dogs were called out, K-9 was
5 called out?
- 6 A No.
- 7 Q Are you aware K-9 was called out?
- 8 A They weren't called out. He works the shift and
9 he was in the area. He responded on his own accord.
- 10 Q And everyone was looking for this third person?
- 11 A I assume.
- 12 Q And Mr. Fishburne, Mr. Thompson were not free to
13 go?
- 14 A Correct.
- 15 Q At the time that you saw them down road, they
16 were not free to go?
- 17 A Correct.
- 18 Q Are they the only black males you saw that
19 night?
- 20 A Yes, sir. No, they were not the only ones I saw
21 that night. They were the only ones there at that
22 time.
- 23 Q After you talked with the victims?
- 24 A Yes, sir.
- 25 Q And you went back after placing them in --

1 detaining them, putting handcuffs, and put in cars, you
2 then went back to the victims' residence?

3 A Yes, sir.

4 Q And you talked about what happened with the
5 incident?

6 A Yes, sir.

7 Q And at that point in time you told them that you
8 had two suspects in custody?

9 A No, sir.

10 Q Okay. Well you eventually took them to do an
11 ID?

12 A Yes, sir.

13 Q Okay. And you had two people in custody?

14 A Yes, sir. But you don't tell a victim something
15 like that.

16 Q Okay.

17 A You phrase it differently. You don't say, I got
18 two guys in custody. That implies that I got the right
19 persons.

20 Q Okay. So did you inquire as to if they
21 understood what it means, the difference between in
22 custody or two suspects to look at?

23 A I'm sorry?

24 Q Did you ask -- what did you say to them?

25 A I told them I got -- we're out with two guys up

1 the street that we need you to take a look at to see if
2 it's them.

3 Q Okay. Did you inquire what -- what they thought
4 the meant?

5 A No.

6 Q So at that point in time, you have three cell
7 phones or four cell phones?

8 A At that time I didn't have any cell phones.
9 Well, I do have one cell phone.

10 Q Okay.

11 A At that time Mr. Thompson and Mr. Fishburne
12 hadn't been searched.

13 Q Okay. So you have one cell phone?

14 A One cell phone that they handed me.

15 Q Had they gone through it?

16 A I don't know.

17 Q And then where did you go through the cell
18 phone?

19 A I can't remember.

20 Q Did you go through the cell phone in front of
21 the Mr. Silva and Mr. Adao?

22 A It's quite possible. I was -- it was there
23 about that time frame. So I'm sure I didn't send them
24 to their room while I did it.

25 Q And then you take Mr. Silva, Mr. Adao, Mr.

1 Rubio, their interpreter, to go to this ID, drive-by
2 ID.

3 At that point in time you have Mr. Fishburne's
4 and Mr. Thompson's information, correct?

5 A (Affirmative head shake.)

6 Q No warrants, nothing out for them?

7 A Correct.

8 Q And you choose to do a drive-by identification?

9 A Yes, sir.

10 Q No other person's out there, other than -- no
11 other civilians out on the side of the road other than
12 Mr. Thompson and Mr. Fishburne, correct?

13 A Yes, sir.

14 Q The only black males on the side of the road are
15 Mr. Thompson and Mr. Fishburne?

16 A And the guy that ran.

17 Q At this point in time, I'm sorry.

18 A Yes, sir. At this point in time.

19 Q At this point in time that we are doing this ID?

20 A Yes, sir.

21 Q surrounded by police officers?

22 A If you call one other police officer surrounded,
23 then I guess surrounded.

24 Q well how many cars?

25 A The one that the other police officer was in and

1 the one that I was in.

2 Q So officer Drennon wasn't on scene?

3 A I'm not sure. I'm not sure. Actually, you say
4 that, I'm not sure he was there or not. I don't know.

5 if he was, then there would have been one other
6 police car and one other police officer who would have
7 been parked behind Deputy Ollic's car.

8 Q And you're in a marked patrol car?

9 A Yes, sir.

10 Q So we have one officer standing next to both Mr.
11 Thompson and Mr. Fishburne?

12 A I don't recall exactly where he was standing,
13 but he was in the vicinity.

14 Q He is not going to allow them to take off
15 running?

16 A Right.

17 Q So he is going to stand next to them?

18 A Right.

19 Q And then you shine your light on them. And both
20 Mr. Silva and Mr. Adao are sitting in the back seat
21 with Mr. Rubio, they're all three right next to each
22 other?

23 A Right.

24 Q You didn't separate them in any way?

25 A No.

1 Q About how far were you? Twenty to thirty feet?
2 About here?

3 A Give or take. Maybe a little further, maybe a
4 little less.

5 Q Maybe first or second row?

6 And at some point in time you go out to look at
7 Mr. Peterson to see if he is the third person that took
8 off running?

9 A Yes, sir.

10 Q And you determined he is not?

11 A Correct.

12 Q And he didn't match the description that you saw
13 of the person?

14 A Correct.

15 Q You didn't take Mr. Silva out or Mr. Adao out to
16 look at Mr. Peterson?

17 A No, sir.

18 Q You made that determination?

19 A Yes, sir.

20 Q So what was the difference between Mr. Peterson
21 and this third person?

22 A Mr. Peterson appeared older to me than the guy
23 -- then the subject that ran from me. Obviously, that
24 was a close-up. And he seemed to be larger than the
25 person that ran.

1 A No.

2 Q Would it help to see a transcript of that
3 prelim?

4 A Yes.

5 Q It said regarding the picture of Mr. -- that you
6 believed to have been a picture of Mr. Fishburne in the
7 cell phone?

8 A I know the transcript says it.

9 Q Do you want to hear the recording?

10 A I'm not questioning the fact whether they're
11 true or not. You asked me if I remember, no, I don't
12 remember but.

13 Q Does that transcript help refresh your memory?

14 A If you are asking me does it make me remember
15 saying it, no, it doesn't. But, yes, do I believe that
16 I said it, yes, I do.

17 Q Okay. And you said I really don't know for sure
18 that it was him, but it appeared to be him in the cell
19 phone?

20 A Yes, sir.

21 Q Do you have any cameras in the car?

22 A No, sir.

23 Q Did you find any clothing in the car -- or
24 outside in the woods?

25 A No, sir.

1 Q Did you find a gun?

2 A No, sir.

3 Q Did you call a detective out?

4 A Yes, sir.

5 Q What detective did you call out?

6 A The on-duty detective.

7 Q And they came out there?

8 A Yes, sir.

9 Q You don't remember who it was?

10 A I'm trying to tell you his name. John, I think
11 it's Daily.

12 Q Daily?

13 A I think it's-- no, it's not Daily. Big tall
14 guy, I've never known his name. He's not very -- nice
15 guy, but he is not a socialite, he doesn't hang out or
16 whatever, I can't remember.

17 Q You don't want me guessing.

18 A He is a big, big, big, tall guy.

19 He didn't do anything.

20 Q Didn't brush for prints or anything?

21 A No.

22 Q Didn't have any of you all do anything for him?

23 A He didn't do anything. He came out and shined
24 his light on the ground, and got back in his car and
25 left. All he did say, well, it looks like you all got

1 it.

2 Q Now you took some money from Mr. Thompson. And
3 the victims gave a pretty good indication of the type
4 of money that they think were taken from them, correct?

5 A Yes.

6 Q Including \$100 bills and \$2 bills?

7 A Yes, sir.

8 Q You didn't find any \$100 bills or \$2 bills on
9 Mr. Thompson, correct?

10 A I don't -- I'd have to refer, but I don't think
11 so.

12 Q Well could you refer?

13 A Yes, sir.

14 No, sir.

15 Q Did you find Mr. Silva's wallet?

16 A I found a wallet.

17 Q But not Mr. Silva's wallet?

18 A It could have been, I don't know.

19 Q You found cell phones and you had the victims
20 look at that?

21 A Right.

22 Q Did you have anybody look at the wallet?

23 A It was empty. There was no identification, no
24 anything, no nothing.

25 Q Well you can look at a wallet and might be able

1 to tell if it's your wallet, correct?

2 A Yeah, I suppose.

3 Q You didn't find Mr. Silva's Blackberry?

4 A No, sir.

5 Q You didn't find the keys to his house or his
6 car?

7 A No, sir.

8 Q Was his car ever stolen?

9 A I didn't take a report of it. I don't know that
10 it was.

11 Q You also came back to the victims' house the
12 next day?

13 A Yes, sir.

14 Q And received a written statement?

15 A Yes, sir.

16 Q And that was translated for you by a Mr. Wright?

17 A Yes, sir.

18 Q Were you present when they did the recorded
19 statement, prior?

20 A No, sir.

21 Q Are you aware that they did a recorded statement
22 prior?

23 A I'm aware, but I don't know for a fact. I have
24 been told.

25 Q Okay. What about this, I think you testified in

1 Q And you handled all four phones at one point in
2 time?

3 A At some point.

4 Q Two were placed into evidence?

5 A No.

6 Q Okay. Two were given to the victims?

7 A Yes, sir.

8 Q So they're four phones, two given to the
9 victims, two were then what?

10 A One was placed into evidence and one was given,
11 returned to, I think Mr. Thompson in his property.

12 Q Do you remember doing a chain of custody?

13 A Yes, sir.

14 Q Do you have that in the materials that you
15 brought today?

16 A I think so. Yes, sir.

17 Q Marked under Clarence Fishburne, it has two cell
18 phones?

19 A Yes, sir.

20 Q And you fill out the chain of custody when you
21 place things into evidence?

22 A Yes, sir.

23 Q So two cell phones were taken into evidence?

24 A Yes, sir.

25 MR. SHELTON: No further questions.

1 THE COURT: All right.

2 Ladies and gentlemen, this is an appropriate
3 time for us to break for the evening. Do not begin
4 your deliberations, do not discuss this case among
5 yourselves.

6 Please be back in the jury room at 9:15. I'm
7 hoping that none of our technical difficulties from
8 this morning will continue. We will begin promptly at
9 that time. Please rise for the jury.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: Please be seated.

12 Deputy, we've reached an awkward time to break
13 for the afternoon. But you have to be back here.
14 Please be back here no later than 9:10 in morning.

15 You may not discuss your testimony with anyone.
16 Do you understand what that means?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: That means the State, either one of
19 the defense attorneys, any of the other witnesses who
20 may be called to testify. Do you understand?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Do you understand what the penalty
23 will be if you violate my order?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: All right, you may step down.

1 Anything further, Mr. Alfaro?

2 MR. ALFARO: No, Your Honor.

3 MR. SHELTON: No, Your Honor.

4 MR. AYLOR: No, Your Honor.

5 THE COURT: All right. And how many witnesses
6 do you have left, Mr. Alfaro?

7 MS. CORNWELL: We have five, Your Honor.

8 THE COURT: And I will not hold you to this, Mr.
9 Shelton. But do you anticipate having any witnesses?

10 MR. SHELTON: Your Honor, if I have one it will
11 be Ms. Barnett to testify.

12 THE COURT: And Mr. Aylor, same question to you.
13 I will not hold you to this.

14 MR. AYLOR: If I have one, I could have up to
15 three.

16 THE COURT: All right.

17 And, Mr. Aylor, you are not real good at
18 estimating time, but how long do you think that will
19 take?

20 MR. AYLOR: On those three?

21 THE COURT: Yes?

22 MR. AYLOR: Relatively short. Within an hour
23 probably from both sides.

24 THE COURT: All right.

25 Have the two of you -- I'm not going to advise

1 your clients of their rights. But have the two of you
2 had an opportunity to discuss with your clients -- the
3 four of you, I'm sorry -- had the opportunity to
4 discuss with Mr. Fishburne and Mr. Thompson their
5 rights and consequences to testify.

6 Mr. Shelton, you have?

7 MR. SHELTON: Yes, Your Honor.

8 THE COURT: Mr. Aylor, you have?

9 MR. AYLOR: Yes, Your Honor.

10 THE COURT: All right. You may want to take
11 this opportunity, we're breaking a little early and
12 just to spend some time. I'm not going to advise them
13 of their rights at this time, but then that way they
14 will know what is coming.

15 All right. Thank you.

16 Anything before we break? 9:15.

17 MS. CORNWELL: No, Your Honor.

18 MR. AYLOR: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Whereupon, the proceedings in this matter
21 before the Court were adjourned for the evening.)

22 * * * * *

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25

1 THE COURT: Anything before we bring in the
2 jury?

3 MS. CORNWELL: Nothing from the State.

4 MR. SHELTON: Your Honor, we didn't put the 403
5 analysis on the record yesterday, the objection to the
6 cell phone information that Deputy Charlton was
7 testifying to.

8 His going through the cell phone and seeing a
9 picture that appeared to Mr. Fishburne. And I objected
10 under 403 analysis based off the fact that there was a
11 preliminary hearing. I indicated that at the
12 preliminary hearing he wasn't as sure, and that this
13 was a -- it wasn't -- they were trying to link the cell
14 phone without firsthand knowledge that the cell phone
15 belonged to Mr. Fishburne.

16 And my objection was on 403, I mentioned the
17 Fourth Amendment and that prior issue that Your Honor
18 indicated you already ruled on. And I indicated that
19 it was highly prejudicial. And I believe your ruling
20 was that it was more probative than prejudicial.

21 THE COURT: Right. Do you need to put anything
22 else on the record, Mr. Shelton?

23 MR. SHELTON: Nothing else concerning that.

24 THE COURT: Mr. Aylor, do you need to place
25 anything on the record?

1 MR. AYLOR: Not that I can think of, Your Honor.

2 THE COURT: All right. Deputy Charlton, come
3 forward.

4 If I recall, Mr. Aylor, it is your turn; is that
5 correct?

6 MR. AYLOR: I believe so, Your Honor.

7 THE COURT: Deputy, I remind you that you are
8 still under oath. Come in and have a seat.

9 You understand you are still under oath?

10 THE WITNESS: Yes, ma'am

11 THE COURT: Did you abide by the Court's
12 admonition?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: All right. Counsel, do we
15 anticipate that we will be done with the testimony
16 today?

17 MS. CORNWELL: That's the State's intention,
18 Your Honor.

19 MR. SHELTON: I believe that's reasonable, Your
20 Honor.

21 MR. AYLOR: I believe so as well, Your Honor.

22 THE COURT: All right, that's my goal so that we
23 can argue and charge in the morning. That's my plan
24 for this case.

25 Please bring in the jury.

1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: Thank you, be seated.

3 Mr. Aylor.

4 CROSS-EXAMINATION

5 BY MR. AYLOR:

6 Q Good morning, Deputy Charlton.

7 A Good morning, sir.

8 Q All right, I apologize if I'm repetitive on a
9 few things from yesterday, but I will try to move
10 through those quickly.

11 You currently work for the Berkeley County
12 Sheriff's Department, correct?

13 A Yes, sir.

14 Q And you have been there for four years?

15 A Roughly.

16 Q And before that you worked at Leeds Avenue?

17 A Yes.

18 Q About just roughly here, and I won't hold you to
19 the number, how many individuals work within the
20 Berkeley County Sheriff's Department as far as actually
21 officers? I know they're on different levels and that
22 sort of thing.

23 A I couldn't begin -- I couldn't -- somewhere
24 between 100 and 200.

25 Q That's fine. So over 100 but probably less than

1 200?

2 A I really couldn't imagine. There is a lot of
3 people that I don't even know.

4 Q But not 25 and not 500, right?

5 A Right.

6 Q And currently you are a deputy, correct?

7 A Yes, sir.

8 Q Can you tell us just in general what some of
9 your daily responsibility are, what they include, what
10 you would do on an average day when you're not in
11 court?

12 A Routine patrol. Answer domestic calls. Not
13 necessarily domestic violence, but domestic issues.

14 Q And a lot of these calls that you had -- I think
15 you stated yesterday there are plenty of these type of
16 calls -- you often are one of the first ones at the
17 scene of a burglary, an armed robbery, different types
18 of violent crimes?

19 A Yes, sir.

20 Q Can you tell us, what exactly is a case agent on
21 a particular case? What would be the case agent of the
22 case?

23 A I'm not familiar with what a case agent is.

24 Q Well who leads the case? For instance, while
25 you may be the first person on the scene or one of the

1 first people, who's the actual supervisor of, you know,
2 just any type of response you all made when there's
3 been a crime committed, whether it be some sort of
4 robbery or some sort of physical violent act, who will
5 be in charge if you will?

6 A It will depend on the circumstances.

7 Q Okay. If it was a burglary, who would be in
8 charge?

9 A It would depend. It would either be the
10 responding deputy, or if it was turned over to the
11 detective division, whoever is appointed the agent for
12 that in that situation.

13 Q All right. And in this situation that we're
14 here for today which is a burglary first, armed robbery
15 and kidnapping, who was more or less in charge?

16 A Me.

17 Q Okay. And that was never turned over from
18 outside of you?

19 A No, sir.

20 Q Okay. Now again yesterday you stated that you
21 all get a lot of calls for home invasions, correct?

22 A Yes, sir. I wouldn't define a lot. But I guess
23 -- probably more often than one would think.

24 Q Do you, as an officer with Berkeley County, do
25 you consider a home invasion a burglary, do you

1 consider that a violent crime?

2 A Yeah, obviously.

3 Q How about kidnapping cases, do you consider
4 those serious?

5 A Yes, sir.

6 Q Violent? Kidnapping, a violent crime?

7 A Yes, sir.

8 Q And armed robbery obviously pretty serious,
9 violent?

10 A Yes, sir.

11 Q In this case, just to make sure that I have the
12 charges right, it's a burglary first, a kidnapping and
13 an armed robbery. All three, correct?

14 A Yes, sir.

15 Q All right. Starting from the initial time when
16 you approach the scene, I want to take a look -- I want
17 you to show us exactly what direction you were coming
18 from prior to arriving at the apartment.

19 Obviously here is Red Bank Road, here is the
20 location, and here is Harbor Lake.

21 A I was coming from Red Bank and Harbor Lake area.

22 Q Show me. If you could just point it out.

23 A Up in this area.

24 Q Okay. And then so did you -- how did you get to
25 the apartment? What route?

- 1 A I traveled down Harbor Lake.
- 2 Q So you came through here?
- 3 A Yes, sir.
- 4 Q And then entered the apartments here?
- 5 A Yes, sir.
- 6 Q Okay. so you came off of -- all right.
- 7 And I believe you earlier testified that you
- 8 patrol this area fairly often in your time here in
- 9 Berkeley?
- 10 A Yes, sir.
- 11 Q Almost daily when you are on?
- 12 A Yes, sir.
- 13 Q And it's a pretty highly traveled pedestrian
- 14 area?
- 15 A It's hit and miss.
- 16 Q More than, you know, the highway or anything
- 17 else? Is there a lot of lower income homes in that
- 18 area?
- 19 A Yes, sir.
- 20 Q And a lot of businesses within walking distance?
- 21 A Yes, sir.
- 22 Q And when you first, that initial approach, did
- 23 you see anyone walking on the road from when you
- 24 started off Red Bank down Harbor View?
- 25 A Not that I recall.

1 Q No. And then you stated earlier, correct, and I
2 just want to make sure I have it right that you went
3 into the complex briefly and talked to some witnesses,
4 and then turned back around because they told you they
5 were back on Harbor Lake?

6 A No. I spoke with the victims.

7 Q Okay. And did you get out of your car?

8 A No, sir.

9 Q Okay. And they're the ones that then told you
10 that the robbers were walking down Harbor Lake?

11 A Yes, sir.

12 Q All right. When you got to the apartment, I
13 believe it's a U, correct?

14 A Yes.

15 Q Did you just go around? Or did you do a
16 three-point turn and turn around?

17 A I don't remember.

18 Q In some way you exited out, correct?

19 A Yes, sir.

20 Q And so then you went back up this way or down
21 that way?

22 A Back towards Red Bank Road.

23 Q So you went back towards the way you originally
24 had come from?

25 A (Affirmative head shake.)

1 Q And about how far down on this map did you stop
2 before you saw the three black males? Was it all the
3 way up towards here? Was it down?

4 A It was where I got out with them.

5 Q Where was that on this map?

6 A In this area here.

7 Q So what is that about?

8 A About a quarter of a mile.

9 Q Quarter of a mile. And when you saw those
10 individuals, were they walking towards the apartment
11 complex in that direction, or back towards Red Bank
12 Road?

13 A Back towards Red Bank Road.

14 Q So you initially when approaching them, you saw
15 their back?

16 A Yes, sir.

17 Q So when you were driving up to these
18 individuals, do you recall -- what is the procedure or
19 what did you say? How do you stop them?

20 Obviously you are in a vehicle, they're on foot.
21 You wanted to detain them and speak to them, how does
22 that work exactly?

23 A It's usually you try to make it rather
24 nonchalant. Hey, come here I need to speak to you, or
25 something of that nature. You don't generally jump out

1 and say, stop police.

2 Q Right, to not startle them. And is that what
3 you did that time?

4 A I'm sure.

5 Q And then somewhere within that initial approach,
6 where did you park your car?

7 A I can't remember. I think I pulled it over to
8 their side of the road. I don't know if I actually
9 pulled on to, but over to their side of the road.

10 Q And you were in a marked car?

11 A Yes, sir.

12 Q Did you turn the lights on? The blue lights?

13 A I don't remember. But seeing as how I was
14 facing traffic it's likely that I didn't want to get
15 hit.

16 Q And you don't have a video camera in your car,
17 correct?

18 A No, sir.

19 Q Do you recall at what point, once you initially
20 approached them and made some verbal request that they
21 stop, how long after that did the third individual flee
22 the scene?

23 A It wasn't long. It wasn't instantly, but it
24 wasn't far after instantly.

25 Q How far do you think you got to him before he

1 actually left? You weren't out of your car yet,
2 correct?

3 A Right.

4 Q So how close do you think you got physically in
5 your cruiser to him before he turned the other way and
6 ran?

7 A Possibly from me to you. Maybe from me to Mr.
8 Alfaro.

9 Q And can you show us what direction he ran in?
10 You all were up here?

11 A He ran back towards -- this is -- he would have
12 ran this way and down this road.

13 Q So he ran almost back towards where you had been
14 coming from, back towards where the apartment was? In
15 that direction?

16 A Yes, sir.

17 Q Do you recall if when you spoke with the victims
18 when they told you that some of the individuals, if
19 they told you how many robbers were walking down Harbor
20 Lake Drive?

21 A No.

22 Q They just said robbers?

23 A No, they didn't say robbers. They said they.

24 Q Okay. And then soon after your testimony is
25 that Deputy Ollic came basically, he secured the two

1 individuals and you went back to the apartment,
2 correct?

3 A Yes, sir.

4 Q And then when you returned you spoke with Mr.
5 Silva and Mr. Adao and got the basic information then
6 about what exactly had occurred in regards to the
7 robbery, correct?

8 A Yes, sir.

9 Q And was all that translated through Mr. Rubio?

10 A Not all of it, but the majority.

11 Q With some broken English, but the majority Mr.
12 Rubio translating?

13 A (Affirmative head shake.)

14 Q And before Mr. Rubio got involved as the
15 translator for this violent crime investigation, did
16 you find out any information about him?

17 A No, sir.

18 Q Did you know his name?

19 A No, sir. He may or may not have introduced
20 himself by his first name, but I didn't check his
21 credentials, no.

22 Q So you had no idea whether he was a translator
23 or how much Portuguese he even knew?

24 A No, sir.

25 Q Did you determine whether or not, since he was

1 in the area, if he actually as opposed to being a
2 translator was a witness to the robbery?

3 A No, sir.

4 Q Did you ask him did he see any of the
5 individuals who robbed the house?

6 A No, sir.

7 Q So he got directly involved in your criminal
8 investigation before you determined whether or not he
9 was actually involved as either a victim or a witness?

10 A Yes, sir.

11 Q Okay. Well did you at least instruct him on how
12 important --

13 A I knew he wasn't a victim. Excuse me, I'm sorry
14 to interrupt. I knew that he wasn't a victim. I did
15 not know that he wasn't a --

16 Q Did you instruct him how important it was for
17 your investigation that he translate exactly
18 word-for-word?

19 A Yes, sir.

20 Q And obviously the reason Mr. Rubio is involved
21 is because there was a language barrier. You speak a
22 little bit of Portuguese, and they speak mostly
23 Portuguese, correct?

24 A Yes.

25 Q Why didn't you utilize Language Line?

1 A Because we generally don't.

2 Q Do you know what Language Line is?

3 A Yes, sir.

4 Q Language Line is something that Berkeley County
5 provides to translate for 911 calls and criminal
6 investigations, correct?

7 A I suppose.

8 Q Are you saying it's not?

9 A No, I mean I don't know that Berkeley County
10 provides it. You know, I'm not familiar with it. I
11 know that we have access to it.

12 Q Okay. So if you have access to it, would it be
13 probably reasonable to say that you can use it, it's
14 provided for you?

15 A Yeah, I guess.

16 Q Is it your testimony earlier that you haven't
17 used it because it's too expensive?

18 A Yes, sir, I have been told that.

19 Q Costs the department money?

20 A I guess.

21 Q Didn't think it would be worth spending the
22 money on an armed robbery, kidnapping, burglary case?

23 A Not when you have an interpreter there.

24 Q Did you have an interpreter or a neighbor that
25 spoke Portuguese?

1 A Isn't that the same thing?

2 Q No. You told us earlier that you went back to
3 the scene with Mr. Silva, Mr. Adao and now your
4 translator/interpreter Mr. Rubio. Were they all in
5 your vehicle?

6 A Yes, sir.

7 Q Were they all in the back of your vehicle?

8 A Yes, sir.

9 Q And obviously we know from prior testimony that
10 you've stated that both of the individuals, Mr. Silva
11 that is and Mr. Adao, identified through a combination
12 of broken English and Portuguese, that the two black
13 men in handcuffs were the two people they believed were
14 part of the robbery, correct?

15 A The two people were in handcuffs, but they
16 didn't know it. But they indicated that the two people
17 that I knew to be in handcuffs were.

18 Q How would they have not have known they were in
19 handcuffs?

20 A Because they are standing with their hands
21 behind their back.

22 Q Behind a police car, right?

23 A Yes, sir.

24 Q Or in front of a police car?

25 A Yes, sir.

1 Q With a police officer in full uniform beside
2 them?

3 A Yes, sir.

4 Q Were they standing like this?

5 A Yes, sir.

6 Q But you don't think that they knew that the two
7 individuals had their hands behind their back because
8 they're handcuffed?

9 MR. ALFARO: Objection.

10 THE COURT: Basis.

11 MR. ALFARO: Calls for speculation.

12 MR. AYLOR: He's speculating that they didn't
13 know.

14 THE COURT: Watch your speaking objections.
15 Overruled. You may answer if you know.

16 A Could you please say it again, sir?

17 Q (By Mr. Aylor) In your opinion, since you were
18 on the scene and have experience, when Mr. Silva and
19 Mr. Adao witnessed the two black men in front of the
20 police car with only a uniformed officer with their
21 hands behind their back like this, in your opinion you
22 don't think that they knew that their hands were
23 handcuffed?

24 A I don't know. I guess I didn't give that much
25 thought. But, no, I don't know if they thought that or

1 not. A lot of people stand with their hands behind
2 their back.

3 Q In front of police cruisers?

4 A I do.

5 Q When they gave these ID's, did you separate Mr.
6 Adao and Mr. Silva before inquiring?

7 A No, sir.

8 Q Why did you not do that?

9 A They came with me and did the ID. I mean as
10 opposed to bringing one up and then taking him back,
11 and bringing the other up and then taking him back.
12 They just rode together.

13 Q But it's only a quarterback of a mile down the
14 road, right?

15 A I understand. It's not a -- it wouldn't have
16 been a catastrophic deal, but.

17 Q Was it just more convenient for them all to be
18 piled in there together and do it that way?

19 A (Affirmative head shake.)

20 Q Okay.

21 A That's generally the way we do it.

22 Q Do you always have people that identify suspects
23 together? That's the usual process of the police
24 department?

25 A Not usual that you have more than one person

1 identifying anybody. But in the event, I would assume.

2 Q You would assume or that's what you know from
3 your training?

4 Let me rephrase the question, Deputy. And
5 through your own experience, and through your knowledge
6 and training that has been given to you from the
7 department over the four years that you have been
8 there, in a situation where you have multiple whether
9 they're victims or witnesses doing identifications of
10 suspects that have been detained, is it common practice
11 for those individuals to identify the suspects
12 together, more or less spontaneously?

13 A For me, personally, I don't know that it's ever
14 come up.

15 Q Okay. You said -- earlier you said that's
16 usually the way that's done?

17 A I'm assuming.

18 Q Couldn't you always assume that that's
19 incorrect? Do you do --

20 A I'm sorry, but if I'd assumed that it was
21 incorrect I wouldn't have done it.

22 Q You just don't know either way?

23 A That's just the way it happened.

24 Q You weren't at all concerned about the influence
25 of one individual or the other?

1 A No.

2 Q And what about Mr. Rubio, did you ask him to
3 identify the people as well?

4 A No.

5 Q You didn't know whether or not he was a witness
6 because you hadn't asked him, correct?

7 A Correct.

8 Q In retrospect though, do you think you may could
9 have handled the identification separately, maybe had
10 Mr. Silva step out of the vehicle while Mr. Rubio and
11 Mr. Adao identified the two individuals. Then have Mr.
12 Adao step out of the vehicle, have Mr. Silva step back
13 in? That wouldn't have been too inconvenient, correct?

14 A I could have.

15 Q You think you should have?

16 A I don't know.

17 Q You don't know.

18 After this unison identification, you took Mr.
19 Rubio, Mr. Silva and Mr. Adao back to the apartment,
20 correct?

21 A Yes, sir.

22 Q And at some point, and correct me if I'm wrong
23 here because I may be, either soon after then or before
24 the ID Mr. Silva had given you a cell phone that was
25 found in the home?

1 A Yes, sir.

2 Q And then you stated that -- earlier that you
3 opened the cell phone and looked inside, correct?

4 A Yes, sir.

5 Q And you saw a picture of a black man in the
6 phone, correct?

7 A Yes, sir.

8 Q And you initially believed that it was Mr.
9 Fishburne, correct?

10 A Yes.

11 Q However at a previous hearing you admitted that
12 you, and I'm quoting here, that you really don't know
13 for sure if it was him, correct?

14 A Yes, sir.

15 Q So the only thing you know for sure is that you
16 open up the phone --

17 MR. ALFARO: Objection, Your Honor, can we
18 approach?

19 THE COURT: You may.

20 (Whereupon, a discussion was held at the bench
21 off the record.)

22 THE COURT: Mr. Aylor.

23 MR. AYLOR: Thank you, Your Honor.

24 Q (By Mr. Aylor) Again going back to that prior
25 testimony, you had stated that you really didn't know

1 if it was him for sure, but you believed it was,
2 correct?

3 A Yes, sir.

4 Q One thing you do know for sure, though, is that
5 it was a black person, correct?

6 A Yes, sir.

7 Q In regards to that specific phone, did you
8 personally investigate the number that was connected to
9 it to determine or not if it was Mr. Fishburne's phone
10 or somebody else's phone?

11 A No, sir.

12 Q Do you know if anybody from the sheriff's
13 department ever personally investigated that phone's
14 number to determine whether it was Mr. Fishburne's
15 phone or someone else's phone?

16 A No, I don't know.

17 Q Being the lead agent, or the lead officer on the
18 case, do you think that would have been information
19 someone would have told you if they in fact did do
20 that?

21 A Likely.

22 Q If they didn't tell you, the lead officer on the
23 case, who would they tell?

24 A I don't know. The solicitor possibly, I'm not
25 sure.

1 Q Even though you are the lead agent?

2 A Yes, sir. Even though I'm the lead agent.

3 Q And as far as the cell phone is concerned, I
4 believe we -- you don't recognize this phone
5 particularly, correct?

6 A Particularly?

7 Q Right. You don't know exactly what phone it is
8 in regards to this incident? From 14 months ago, you
9 don't know exactly what phone this is just by looking
10 at it or seeing it, correct?

11 A I recognize what it's --

12 Q What it represents?

13 A Right.

14 Q But you don't know that phone specifically,
15 right, because it's been 14 months and a number of
16 other things have happened since then, correct?

17 A Yeah.

18 Q In regards to the phone -- so if one phone that
19 was found on the scene, which may or may not be that
20 phone it may be another phone, and then --

21 A No, that wasn't the one found on the scene.

22 Q That's not the one found on the scene, okay,
23 that's a different phone. But you don't know which
24 one?

25 A I'm sorry?

1 Q You don't know which phone that one was?

2 A I can look at my notes.

3 Q Okay, go ahead.

4 A There's a lot of different phones and a lot of
5 room for confusion.

6 Q I agree.

7 A My report indicates that that was the phone
8 found in Mr. Fishburne's pocket.

9 Q Okay. And how did you determine that?

10 A Because it says, gray Motorola phone.

11 Q All right. Going down that same path, since you
12 have your report in front of you. If you can turn with
13 me to -- it says my C-O-R-O-O 6? The page after --

14 A Can you give me the first word in the narrative
15 on that page?

16 Q Sure. It's the persons.

17 A Next word being that?

18 Q Correct.

19 A Okay.

20 Q If you read over that, do you see where you
21 stated in -- when a search of Mr. Thompson you find a
22 Virgin Mobile cell phone?

23 A Yes, sir.

24 Q Do you have your evidence chain sheet?

25 A Yes, sir.

1 Q All right. Can you turn to Mr. Thompson's?

2 A Yes, sir.

3 Q And please explain to us exactly what this chain
4 sheet is for?

5 A To determine the chain of custody.

6 Q And you stated earlier the police report is for
7 because obviously if you have to testify or refer to
8 something later, you are not going to remember 14
9 months or 3 years, whatever it may be later, correct?

10 A Right.

11 Q So you use these documents to refresh your
12 memory, correct?

13 A Yes, sir.

14 Q So in your police report it states that Mr.
15 Thompson had a Virgin Mobile cell phone on him,
16 correct?

17 A Yes, sir.

18 Q On your evidence chain sheet it does not. In
19 fact it's marked on there and then it's marked out with
20 what I believe are your initials. And it just says,
21 wallet with cards and \$442, correct?

22 A Yes, sir.

23 Q So then if we look at Mr. Fishburne's evidence
24 chain sheet, do you have that as well?

25 A Yes, sir.

1 Q It states on there that he had a Virgin Mobile
2 cell phone, a cell phone charger, and a gray Samsung
3 Alltel cell phone, correct?

4 A Yes, sir.

5 Q And so -- well first of all, before I get ahead
6 of myself, the police report says that subject Thompson
7 has the Virgin Mobile cell phone, but the chain of
8 evidence says that subject Fishburne had the Virgin
9 Mobile cell phone.

10 So who had the Virgin Mobile cell phone?

11 A I can only go with what the report says. The
12 chain of evidence form is done after the report,
13 generally. It's probably one of the last things that's
14 done.

15 And obviously I can't explain why that is the
16 way it is. I mean, I'm not infallible.

17 Q How long after, from the initial time the report
18 is done, is the evidence chain done?

19 A I mean there is no -- when you are -- it just
20 depends. When you get around to it, I guess, by the
21 end of the shift.

22 Q So up here at the top where it says 8/7/10,
23 0400?

24 A Yes, sir.

25 Q Is that August 7, 2010?

1 A I am assuming.

2 Q What time is that?

3 A 0400 would be 4 o'clock in the morning.

4 Q Okay. And you originally got this call about
5 11:30, or roughly around -- we are not going to pull
6 out the CAD -- but roughly around 11:30 on the 6th?

7 A Yes.

8 Q So you did the evidence chain five hours later?

9 A Yes, sir.

10 Q And you'd already typed up the police report?

11 A Yes, sir.

12 Q Can you refer to the police report when you type
13 up that you've typed up yourself when you do the
14 evidence chain?

15 A If I drive from Goose Creek to Moncks Corner and
16 go inside the Sheriff's Office and pull it up on the
17 mainframe. I don't -- once it's downloaded from my
18 laptop into the mainframe, I don't have access to it.
19 I do now; at that time I don't think I did.

20 Q So then it would be inconvenient for you to be
21 able to refer to your police report in order to make
22 the evidence chain?

23 A No, it wouldn't be inconvenient.

24 Q You just couldn't do it right then?

25 A I just didn't. If I'd of thought I was making a

1 mistake, then I would have. But obviously I thought I
2 had it right.

3 Q But so you made a mistake, that's
4 understandable. I guess my question is, is the
5 evidence chain pretty important?

6 A Not as I wouldn't say as important as the
7 report.

8 Q So there is different levels of police documents
9 as far as how important one is to the other?

10 A I mean by whose definition?

11 Q Yours.

12 A Yeah.

13 Q Yeah. So the police report is more important
14 than the evidence chain?

15 A I would assume.

16 Q And there is no possible way that maybe the
17 police report is wrong and the evidence chain is right?

18 A I guess anything is possible, but not likely.

19 Q Do you often have substantial conflicts between
20 police reports and evidence chains?

21 A No.

22 Q So then it couldn't be the other way around?

23 a I'm sorry?

24 Q Then it could be the other way around. It could
25 be that the evidence chain is right and the police

1 report is wrong, correct?

2 A Say that again?

3 Q It could be that the evidence chain that you
4 have in front of you is correct, and that the police
5 report is incorrect?

6 A Define could. I mean everything is possible. I
7 could be a millionaire tomorrow if I win the lottery,
8 but.

9 Q So is your answer yes?

10 Let me just rephrase that question.

11 A Is there the possibility? Yes.

12 Q How about this, you don't know whether your
13 evidence chain was right and your police report is
14 wrong, or your police report is right and your evidence
15 chain is wrong, do you?

16 A No.

17 Q Also if you'll turn back to Mr. Thompson's chain
18 of custody sheet. You see where it says wallet with
19 \$442?

20 A Yes, sir.

21 Q Did you believe that money to be his money?

22 A To be whose money?

23 Q Mr. Thompson's money?

24 A No.

25 Q Now when Mr. Silva told you that he lost I

1 believe \$596, he gave you a list of the bills, correct?

2 A Yes, sir.

3 Q Can you turn to the page that starts with

4 Thompson. Third page, I believe, of the report.

5 In the middle it says, Silva's -- victim Silva's
6 wallet, which he advised contained about \$600. Do you
7 see that?

8 A Yes, sir.

9 Q Three \$100 bills, five \$50 bills, a few \$20
10 bills, a \$1 bill, and two \$2 bills, correct?

11 A Yes, sir.

12 Q In regards to that \$442, do you have a breakdown
13 of what those bills were?

14 A Somewhere. I do.

15 Q And those were six \$50 bills, six \$20 bills, and
16 two \$1 bills, correct?

17 A Yes, sir.

18 Q So a fairly different combination than what Mr.
19 Silva described, correct?

20 A Yes, sir.

21 Q So in reality you don't know where that money
22 came from, and whether it was his own money?

23 A No, I'm not sure but it's close. A little added
24 and a little taken away. But the denominations are
25 there.

1 Q Well Mr. Silva stated that he had five \$50 bills
2 and three \$100 bills. And Mr. Thompson, per your
3 police recollection, had six \$50 bills, six \$20 bills
4 and two \$1 bills.

5 A Yes, sir.

6 Q So do you think, is it your opinion that maybe
7 part of the money was his and part of the money came
8 from the victims? Because obviously those two numbers
9 don't match.

10 Mr. Thompson has no \$100 bills. Mr. Thompson
11 has one more \$50 bill and no \$2 bills. So can you see
12 where the combinations?

13 A Right. I'm missing the \$100 bills and the \$2
14 bills and another subject.

15 Q So then it's not as simple as just a little bit
16 less or a little bit more, is it?

17 A I don't understand your --

18 Q The combination is not as simple as, it's a
19 little bit less than what was taken off Mr. Silva, is
20 it?

21 A I'm not sure I understand.

22 Q The amount of money. The fact that Mr. Silva
23 had three \$100 bills, and Mr. Thompson had no \$100
24 bills. The fact that Mr. Thompson had six \$50 bills,
25 and Mr. Silva only had five. The fact that Mr. Silva

1 had two \$2 bills, which are fairly uncommon, and Mr.
2 Thompson had none.

3 So the combination between the two sets are
4 money are not congruent in regards to the actual bill
5 denominations, correct?

6 A Correct.

7 Q Okay. Going back to the chain of custody sheets
8 on Mr. Thompson. You stated the only thing on there is
9 the wallet with the card, and he may or may not have
10 had the other thing.

11 But looking on Mr. Fishburne's you state, a gray
12 Samsung Alltel cell phone, correct?

13 A Yes, sir.

14 Q And that is a Motorola gray phone there,
15 correct?

16 A Yes, sir.

17 Q Why is that not in the report?

18 It's evidence, right?

19 A Yes, sir.

20 Q And these are chain of custody sheets for
21 evidence, right?

22 A Yes, sir.

23 Q And that gray Motorola phone that's in front of
24 us today is not on either sheet, correct?

25 A Yes, sir.

1 Q Is that just another mistake?

2 A Yes, sir.

3 Q All right. Going back to the apartment, what
4 time did you tape off the area for the crime scene?

5 A It wasn't.

6 Q Were you not concerned that the crime scene
7 would be contaminated?

8 A It had been overly contaminated.

9 Q So you at that point just let it go?

10 A Yes, sir.

11 Q And how had it been overly contaminated?

12 A By the time I got there and left and went back
13 and got out with Mr. Thompson and Mr. Fishburne and
14 came back, there were people everywhere.

15 Q People everywhere. And sometime after that you
16 got the cell phone that had the picture in it, correct?

17 A Yes, sir.

18 Q So after the scene was contaminated, you
19 received the cell phone that was allegedly found on the
20 scene, correct?

21 A Yes, sir.

22 Q Again, Deputy, was it just an error that before
23 you left the actual scene to take the individuals for
24 the identification that you didn't, through your
25 makeshift interpreter, have an announcement made to,

1 please, everyone, exit the home and stay outside of the
2 property to preserve the crime scene?

3 A No, sir. I wasn't in front of the home until
4 after I went back.

5 Q Okay. I must be a little bit confused here.
6 When you went back after the initial time that you
7 detained --

8 A Afterwards, I'm sorry. Afterwards, yes.

9 Q Okay. So once you got back -- when Deputy Ollic
10 had the two individuals detained, you came back to the
11 crime scene?

12 A Yes, sir. I misunderstood, I'm sorry.

13 Q Okay. And there was no need to make an
14 announcement to try to preserve anything that may be
15 left?

16 A They were all outside of the home at that point.
17 Nobody else went inside the home at that point.

18 Q Did you then make an announcement to make sure
19 that no one went back inside the home, if they needed
20 to use the restroom or have a glass water to get it
21 from a neighbor?

22 A I don't recall. But on a scene in that -- in a
23 like incident, you would forbid anybody to go inside
24 the home.

25 Q But you don't know if you did that?

1 A It's common practice. No, do I distinctly
2 remember doing it? No.

3 Q It's not in your report?

4 A Right.

5 Q And then ultimately, of course, by that point
6 out of your control was the fact that the scene was so
7 contaminated, correct?

8 A Yes.

9 Q All right. Once you brought Mr. Silva and Mr.
10 Adao back to the scene, which is at this point
11 contaminated, I understand that there was a language
12 barrier between yourself and at least Mr. Silva and Mr.
13 Adao, and perhaps other neighbors.

14 Did you at that point speak with any other
15 neighbors?

16 A No, sir.

17 Q Did anyone from the sheriff's department speak
18 with anyone, whether they were directly in the home or
19 next-door neighbors? This is an apartment complex,
20 correct?

21 A Yes, sir.

22 Q So it's like stacked, upstairs/downstairs, that
23 sort of thing?

24 A Well, they're all townhouses.

25 Q But they're close together?

1 A Right.

2 Q It's not a farm where they got broken into,
3 right?

4 A Yes, sir.

5 Q So do you know if anybody from the sheriff's
6 department spoke with any of the neighbors?

7 A I don't know of any.

8 Q If they did would they have told you to put in
9 your police report?

10 A Likely.

11 Q Do you know if anybody from the sheriff's
12 department spoke with the officer manager who Mr. Silva
13 had gone to contact?

14 A No, sir.

15 Q And if they would have, they would have probably
16 put that in your report as well?

17 A Yes, sir.

18 Q How about the other victims? Mr. Silva's wife
19 was apparently in the home during the initial phase of
20 the robbery. Did you speak with her?

21 A No, sir.

22 Q Why did you not speak with her?

23 A Because I didn't know that she was initially in
24 the home. There were some speak of her being there at
25 some point or what have you. I don't know whether she

1 ran out immediately or, you know, I'm not sure.

2 Q Did you not find it prudent to go speak with her
3 to find out exactly where she was and what her role was
4 in this horrible, violent crime?

5 A (Negative head shake.)

6 Q You didn't think that was important?

7 A I didn't do it, nevertheless.

8 Q In retrospect would it have probably been
9 something you should have done?

10 A Probably would have been a good idea.

11 Q Yeah, probably. Do you know if anybody else
12 spoke with her?

13 A No, I don't know if anybody else spoke with her.

14 q If they would have, do you think you would have
15 had that in your report?

16 A It's likely.

17 Q How about the neighbor that entered the home,
18 that lady that entered the home to go get the child out
19 of the home. Did you speak with her?

20 A No.

21 Q Do you know if anybody else did?

22 A No.

23 Q You have no idea if she saw any individuals
24 inside the home, like got a good glance, correct?

25 A No.

1 Q Same for Ms. Silva, correct?

2 A Correct.

3 Q That's simply based on the fact that you nor
4 anyone else from the sheriff's department, in an
5 investigation for armed robbery, burglary first and
6 kidnapping did not speak with one of the witnesses, and
7 one of the potential either witnesses or victim,
8 correct?

9 A I don't know that she was a witness, but
10 correct.

11 Q Now, Deputy, once you are back at the home, and
12 you are I guess I assume speaking with Mr. Silva, the
13 scene is contaminated, speaking with Mr. Adao, Mr.
14 Hilario is there, there is still at least one
15 individual who is at large in the community, correct?

16 A Yes, sir.

17 Q And that individual may have a gun on him,
18 correct?

19 A Yes, sir.

20 Q And per what you've have been told by Mr. Adao
21 and Mr. Silva, that individual has just committed an
22 extremely violent crime, correct?

23 A Yes, sir.

24 Q Were you concerned about where that individual
25 may be with that gun?

1 A Yes, sir.

2 Q How concerned were you?

3 A I'm sorry?

4 Q How concerned were you? What did you do about
5 that?

6 A I didn't do anything about it.

7 Q But you were concerned?

8 A Right. There were other deputies taking care of
9 it.

10 Q Like perhaps is it Sgt. O'Neil or Deputy O'Neil?

11 A Sergeant.

12 Q Sgt. O'Neil. He actually did in fact get
13 involved in the case, correct?

14 A Yes, sir.

15 Q Do you have his supplemental report?

16 A At one point I did, I don't know if I still do.
17 You must have taken it back. Whoever gave it to me
18 must have taken it back.

19 MR. MCCOY: Here you go. It's marked for ID
20 already.

21 Q (By Mr. Aylor) Now like you said, you were
22 concerned about the third party so other officers were
23 out looking for that third person with a gun, correct?

24 A Yes, sir.

25 Q And Sgt. O'Neil ended up detaining someone,

1 correct?

2 A Yes.

3 Q Can you please tell us where exactly -- and I am
4 going to show you the map -- if you look here on that
5 first page it references a black male in a white
6 colored shirt entering the Kangaroo convenience store.

7 Can you tell us, and I know that we don't have
8 it to scale where all the convenience stores are, do
9 have any idea where that Kangaroo convenience store is?

10 A It's not on the map.

11 Q Okay. Which way would it be?

12 A It would be about here.

13 Q Okay. How many miles from here do you think?

14 A About a mile.

15 Q A mile? Just up the road? Okay.

16 And then I believe that this black male in a
17 white shirt and a do-rag and black shorts ended up
18 basically running from the sergeant, correct?

19 A Yes, sir.

20 Q Then ultimately he was detained over on -- right
21 around Buchanan Circle. Are you familiar with Buchanan
22 circle?

23 A No.

24 Q Says, a short distance from around there.

25 He didn't get too far from the Kangaroo with the

1 K-9 after him, correct?

2 A I don't know.

3 Q All right. Well just tell me this: You went to
4 the scene that he was detained, correct?

5 A Yes, sir.

6 Q Where were you -- how far away was that from
7 where the apartment was robbed?

8 A About a mile.

9 Q About a mile. So relatively close to where the
10 Kangaroo was, you left the apartment and drove over
11 there to look at this individual, correct?

12 A Correct.

13 Q And ultimately you determined that it was not
14 the person that you had seen with the two other black
15 individuals that ran away, correct?

16 A Correct.

17 Q And you determined that based off the chance you
18 did have to see him quickly before he ran off?

19 A Yes.

20 Q And he was arrested for evading arrest, correct?

21 A I don't know.

22 Q If you look in the front page of the police
23 report where it's titled, incident type, evading
24 arrest. Is that a charge?

25 A Yeah, but that doesn't mean he was arrested. I

1 don't know, I wasn't there whenever that occurred. I
2 can read the report and tell you what it says.

3 Q He wasn't arrested for anything else, though,
4 right? That would be in the report?

5 A Again I don't know, I wasn't there.

6 Q If you will look back to the last page of the --
7 actually. Tell what is that a ticket for?

8 A That would mean he was arrested for evading
9 arrest.

10 Q So he was arrested for evading arrest then?

11 A Yes, sir.

12 Q In fact, now that I look, I believe it states
13 that on the last page of the police report as well; is
14 that correct? Is that your understanding?

15 A Yes, sir.

16 Q Okay. Nothing else. So there was no open
17 warrants on him, correct? Would you assume that?

18 A I don't know.

19 Q Okay.

20 A If he had open warrants and they weren't with
21 this agency, there would be no way for me to know
22 unless I was there.

23 Q Right. But what you do know is that you went
24 out there and looked at him and decided he wasn't the
25 third party that had ran from you initially on Harbor

1 Lake, correct?

2 A Correct.

3 Q Why didn't you take Mr. Adao and Mr. Silva out
4 there, throw them in the back with Mr. Hilario, and
5 ride on over there to take a look at the individual?

6 A I knew that wasn't the person that ran from me.

7 Q Right. That's not what I'm asking you, though.
8 Why didn't you take those individuals, not regard to
9 who ran from you, but in regard to the robbery?

10 A Because it wasn't him.

11 Q How do you know?

12 A Because I assumed it wasn't him because it
13 wasn't the person that ran from me who was with the two
14 persons that were indicated as part of the group.

15 Q You weren't concerned about, one, the fact that
16 you didn't have a very long chance to look at him, and
17 two that there may be multiple people involved in this
18 robbery?

19 A Right.

20 Q Was it not convenient to drive that mile with
21 Mr. Silva and Mr. Adao and Mr. Rubio to just let them
22 make sure that this individual should not be getting
23 off scott free for an armed robbery, a kidnapping, and
24 a burglary?

25 A It has nothing to do with convenience, I didn't

1 feel it was necessary.

2 Q Why is that?

3 A Because he wasn't the subject that -- I didn't
4 feel that it was necessary because he wasn't the
5 subject that ran from me.

6 Q But you don't know whether or not he was an
7 individual that was involved in the robbery, correct?

8 A No, I don't.

9 Q You don't know how many individuals ultimately
10 were involved inside and outside of the house, correct?

11 A No. All I had was the information that I was
12 provided.

13 Q And you do know that this individual ran from
14 the police, correct?

15 A Yes, sir.

16 Q And you determined that it was not the
17 individual that ran from you?

18 A Correct.

19 Q But you didn't take the time to let your two
20 victims determine whether or not it was the individual
21 who had invaded their home, correct?

22 A Correct.

23 Q In retrospect, would it may have been worth the
24 mile drive out there to let them look just to make sure
25 this person wasn't getting away?

1 For the safety of the community?

2 A There are two different answers to that
3 question. For the sake of argument here in this
4 courtroom, yes. But had I had it to do over again I
5 probably wouldn't.

6 Q But in retrospect, it would have been the right
7 thing to do?

8 A So that there wouldn't be this question now,
9 yes.

10 Q Oh, only to get out of the question and the
11 testimony?

12 A No. I didn't feel it was him.

13 Q But you don't know who robbed that house,
14 correct?

15 A No.

16 Q And you don't know how many people robbed that house,
17 correct?

18 A No.

19 Q So it absolutely could have been one of the
20 individuals that robbed that house, correct?

21 A Possibility.

22 Q It could have been an individual who was a
23 lookout for the house outside of the house, correct?

24 A Could have been.

25 Q But you don't know that?

1 A No.

2 Q But you made the determination that that
3 individual had absolutely no involvement in the
4 robbery, correct?

5 A Correct.

6 Q And you made that all on your own?

7 A Correct.

8 Q Without talking to any victims or witnesses?

9 A Correct.

10 Q And you now stand by that action?

11 A Correct.

12 Q Explain to me why?

13 A He wasn't one of the three subjects that entered
14 the house. If he were a lookout, the victims would
15 have never known if he were a lookout because they
16 would have never seen him in the first place.

17 Q What if he had evidence on him?

18 A He didn't.

19 Q How do you know that? You just said you don't
20 know what warrants he had. You don't know what he got
21 arrested for. You didn't know that.

22 A Because I do feel sure that if Sgt. O'Neil would
23 have found evidence on him, that I would have been
24 alerted to that.

25 Q What evidence? Evidence that was in the police

1 report and not in the chain of custody?

2 A No. The evidence in which you were speaking of
3 that he possibly could have had on him.

4 Q Is the gun the only thing he possibly could have
5 had?

6 A I don't know.

7 Q Because earlier you stated perhaps the reason
8 subject Thompson didn't have all the money was because
9 there was a third person who had left with no money on
10 him?

11 A Correct.

12 Q How much money did Mr. Peterson have on him?

13 A I don't know.

14 Q \$250.

15 A But Sgt. O'Neil -- I'm sorry?

16 Q \$250.

17 A No, I didn't know that.

18 Q See, you didn't know what was on him so you
19 don't know what evidence was on him?

20 A Correct.

21 Q So if he was a lookout and met up with them
22 afterwards and got some of the things that were taken
23 from the home, you wouldn't know that because you don't
24 know it today?

25 A Correct.

1 Q Correct. But you still think it was a good idea
2 not to take the victims one mile down the road to at
3 least view him for 30 seconds?

4 Is that a yes?

5 Q I didn't hear the question.

6 A You still think that procedurally speaking it
7 was the right move, with your experience in regards to
8 an armed robbery investigation, a burglary first
9 investigation and a kidnapping investigation, to not
10 take two victims one mile down the road within just
11 hours of the robbery in their home to view this
12 individual just to make sure that he was not someone
13 that they had seen?

14 A I could have.

15 Q You could have. In regards to some evidence or
16 items that were not found, Mr. Silva reported -- and I
17 believe it's in your police report, correct me if I'm
18 wrong -- that he lost a Blackberry cell phone, correct?

19 A Yes, sir.

20 Q Can you please explain to us what is -- and if
21 you don't know, that's fine -- do you know what the
22 definition of pinging, or what your understanding of
23 pinging a cell phone is?

24 A My understanding, from what I understand, and I
25 haven't been trained on it, just from what I hear, is

1 that if someone calls into 911 they can triangulate and
2 find out where it's coming from.

3 Q Is it only 911, or could it be any number?

4 A From what I understand, if they call into 911,
5 they can triangulate and find out where a phone is
6 coming from.

7 Q Have you ever heard of a -- within your time
8 with the police department -- have you ever heard of
9 someone or individuals in an investigation being able
10 to determine what area a phone is in based off the
11 signal that hit off a certain satellite? Pinged off a
12 satellite?

13 A From what I understand you have to call into
14 911. Because I have asked for that to be done and they
15 said they have to call in. That's what I have been
16 told by a dispatcher.

17 Q So in any investigation that you've either been
18 a part of personally or are familiar with, you've never
19 heard of a police agency pinging a cell phone to
20 determine where that cell phone's location is,
21 obviously in reference to trying to get the individuals
22 with it?

23 A Yes, sir. I have heard of it and asked for it
24 to be done and told it couldn't.

25 Q Okay. Was that because it was too expensive,

1 too?

2 A I don't know. I have asked for that to be done
3 they said you had to call in.

4 Q Okay. I'm sorry, call into what?

5 A You had to call 911 and I could tell where your
6 phone was at.

7 Q So that's the only way that you know of, as an
8 investigating officer in an armed robbery, kidnapping
9 and burglary first case, that you can ping a phone is
10 if they call 911? Almost like caller ID, but with the
11 location?

12 A You are asking several different questions.
13 You're asking me if I've heard of it, yes, I have heard
14 of it. And then I have asked to have it done, and I
15 was told it couldn't be done by the dispatcher.

16 I don't know which question you want me to
17 answer.

18 Q Have you ever heard of a phone being pinged that
19 wasn't calling 911?

20 A Yes.

21 Q You don't know how to do it, correct?

22 A I asked to have it done and they said it
23 couldn't.

24 Q You asked to have it done on Mr. Silva's
25 Blackberry?

1 A In another incident.

2 Q When was that?

3 A I don't know.

4 Q Okay. How about did you get Mr. Silva's phone
5 records?

6 A No, sir.

7 Q His phone was gone, stolen, correct?

8 A Yes, sir.

9 Q You believed through your investigation that you
10 had two of the men in custody, correct?

11 A Yes, sir.

12 Q And I know we have had a lot of cell phone
13 issues here.

14 A Yes, sir.

15 Q But one thing we know for sure is that the
16 Blackberry wasn't found in the contaminated scene, or
17 out on the roadside, or anywhere, correct?

18 A That's a fact.

19 Q We know the Blackberry is gone. And we know
20 that the third black man is gone?

21 A Yes, sir.

22 Q You obviously understand where I'm going with
23 this. Perhaps the third black man has the Blackberry?

24 A Yes, sir.

25 Q And perhaps he made a call off of it?

1 A Yes, sir.

2 Q Is that ever something you considered?

3 A Again, to my knowledge, unless he is calling 911
4 there is no way to have it done.

5 Q I apologize for not specifying. I will move
6 past the ping situation, I understand that's not
7 science that you are familiar with.

8 But if the third black man is not -- he hasn't
9 been caught to this day, correct, he's still at large?

10 A Correct.

11 Q As far as you are concerned you have two of them
12 here, and there is a third one that is at large,
13 correct?

14 A Correct.

15 Q If that individual, obviously he's at large at
16 this time, and the Blackberry cell phone through your
17 investigation is gone as well?

18 A Correct.

19 Q Did you consider asking Mr. Silva, or
20 subpoenaing yourself, Mr. Silva's cell phone records to
21 see not where the phone was located, but to see what
22 calls were made or what text messages were made?

23 A No, sir.

24 Q Why did you not do that?

25 Did you consider whether or not this third black

1 man may have text messaged a friend to come pick him up
2 and you'd have had that number?

3 A No, sir, I didn't consider that.

4 Q Did you consider whether that third black man
5 called a cab and had him meet him somewhere to get
6 picked up to be taken somewhere?

7 A No, sir, I did not consider that.

8 Q So as we stand here today, Mr. Silva's cell
9 phone records may contain direct evidence to someone
10 involved in that robbery, but we have no idea because
11 you never got the records, correct?

12 A Correct.

13 Q In retrospect is that something that you may
14 have should have done?

15 A Yes, sir.

16 Q As we have gone over before, you've already
17 stated that the scene was contaminated. But even
18 considering that, did you or did anyone else in the
19 department dust the house for fingerprints?

20 A No, sir.

21 Q Why did you not dust the house for fingerprints
22 when one -- at least one individual who was involved in
23 an armed robbery, burglary first, and a kidnapping was
24 at large in the community? You know that they were not
25 wearing gloves, correct?

1 A No.

2 Q You don't know that they were wearing gloves,
3 correct?

4 A Correct.

5 Q You didn't even ask the victims if they were
6 wearing gloves, did you?

7 A I can't remember.

8 Q You don't remember. So --

9 A If I'd of asked them and they would have said, I
10 don't know then it wouldn't have been documented. So I
11 don't know.

12 Q Why didn't -- did you fingerprint the house?

13 A No, sir.

14 Q Did anyone with Berkeley County fingerprint the
15 house?

16 A Not to my knowledge.

17 Q Why not?

18 A Because it was so contaminated.

19 Q So there is just impossible that there could be
20 a fingerprint in the home of someone that, you know,
21 may have been involved in the robbery?

22 A When you speak of impossibility, no. There is a
23 possibility.

24 Q But it just wasn't even worth trying because it
25 was so contaminated; is that your opinion?

1 A Not -- there is a very low probability.

2 Q And how much training do you have in
3 fingerprints?

4 A Not much at all.

5 Q So then that's just a guess you just said,
6 correct?

7 MR. ALFARO: Objection.

8 THE COURT: Basis?

9 MR. ALFARO: Argumentative.

10 THE COURT: Sustained.

11 Q (By Mr. Aylor) What determination did you make,
12 as the lead officer in this, that it was impossible
13 that any fingerprints could be in the home?

14 A say that again, sir, I'm sorry.

15 Q What was the determination that you made that it
16 was impossible that any fingerprints could be in the
17 home?

18 What was the determination? What was the
19 factors?

20 A Because it was there was people in and out of
21 the house. There were no -- generally if someone
22 breaks into a window, you fingerprint around the
23 window. If they touch a cash box, you fingerprint the
24 cash box.

25 I wouldn't know where to begin without smearing

1 dust all over these people's houses.

2 Q But your police report, I believe in the
3 statement you've given, that at least one of the
4 individuals was downstairs grabbing everything, taking
5 the laptop, taking various things, correct?

6 A Right.

7 Q So they got their hands on a lot of different
8 things downstairs, correct?

9 A Correct.

10 Q And this is probably a two bedroom/two bathroom
11 apartment, correct?

12 A Correct.

13 Q So there really wouldn't have been all that much
14 dust downstairs, would there?

15 A Yes.

16 Q Was the inconvenience of the dust --

17 A It's not a matter of inconvenience of dust, it's
18 just I wouldn't know where to begin to fingerprint.
19 And if I got a fingerprint, it would have been -- the
20 scene would have been so contaminated with other
21 fingerprints that there is just -- the reasonability
22 was not there.

23 Q And you have no training in fingerprints,
24 correct?

25 A No, that's incorrect.

1 Q You have training?

2 A Yes.

3 Q What training?

4 A The training that I received at the academy.

5 And not much field experience.

6 Q How many armed robbery, burglary first and
7 kidnapping cases have you been the lead officer on?

8 A One.

9 Q This one?

10 A Yes, sir.

11 Q None since?

12 A No, sir.

13 Q What about any DNA? What about hairs? What
14 about any type of going in the house and try to collect
15 any information related to something from the
16 individuals who had been in the home?

17 A That would have been up to crime scene
18 investigations.

19 Q Crime scene investigations. Okay, so you
20 wouldn't have made that call?

21 A Correct.

22 Q If crime scene investigations would have gotten
23 involved and tested things, it would have been in
24 either your police report or a supplemental police
25 report, correct?

1 A Yes, sir.

2 Q And to your knowledge there is no crime scene
3 investigation police report, correct?

4 A Correct. Well not concerning them responding to
5 the incident, no.

6 Q I just mean in regards to this case?

7 A Yes, there is.

8 Q There is one?

9 A Yes, sir.

10 Q What does it state?

11 A I'm sorry?

12 Q What is it in reference to?

13 A It's in reference to the latent fingerprints.

14 Q Involving the laptop, correct?

15 A Yes, sir.

16 Q And there's no fingerprints on the laptop,
17 correct?

18 A I have no idea.

19 Q Okay. You have no idea whether or not there's
20 fingerprints on the laptop in the case that you are the
21 lead investigator in?

22 MR. ALFARO: Objection.

23 THE COURT: Basis?

24 MR. ALFARO: Asked and answered.

25 THE COURT: Sustained.

1 Q (By Mr. Aylor) So to your knowledge there has
2 been no forensic DNA related investigation at the home,
3 to your knowledge?

4 A To my knowledge.

5 Q How about pictures? Did you take any pictures
6 on the scene?

7 A No, sir.

8 Q Did any other officers to your knowledge take
9 any pictures of the scene?

10 A No, sir.

11 Q How about pictures of the victim? I believe one
12 victim was said to have been choked, another victim was
13 struck in the head. Any pictures of their physical
14 ailments from these hits or choking?

15 A No, sir.

16 Q And why wouldn't you take pictures at a crime
17 scene?

18 A Well in the crime scene there was nothing to
19 take pictures of other than tables and things that I
20 could take pictures of in any house.

21 And there was no damage to any property or
22 anything to that nature.

23 Q Okay. And what about pictures of the victims
24 that had been either -- one I believe testimony is that
25 had been choked for an extended period of time, and

1 another one had been clubbed in the face and the head.
2 Did you take pictures of that?

3 A No. I didn't see any physical manifestation.

4 Q Did you ask them about it?

5 A I'm sorry?

6 Q Did you ask either of the victims about it
7 through Mr. Rubio?

8 A If they told me I wouldn't need to ask them.

9 Q So you didn't ask them whether or not they had
10 been hit?

11 A He said he had been choked. No, I didn't know
12 that one had been struck in the head.

13 Q And the one that had been choked, you determined
14 there were no marks so it wasn't worth taking pictures
15 of the his neck?

16 A Correct.

17 Q Let's talk about the victims. Now you stated
18 earlier that -- and when I say victims, I'm not taking
19 about Ms. Silva because we will just not consider her a
20 victim since you never talked to her. So just Mr. Adao
21 and Mr. Silva.

22 They were interviewed by Ted Wright, correct?

23 A Yes, sir.

24 Q Who is Ted Wright?

25 A A translator.

1 Q Okay. And please tell us what you know of that
2 process regarding Ted Wright and Mr. Silva and Mr.
3 Adao?

4 A I don't know that I understand the question.

5 Q What do you know about how that process took
6 place. Did they come down to the police station?

7 A I don't know how the process took place, no.

8 Q What do you know?

9 A I know that he took their statements and
10 converted them into English.

11 Q Okay. And I think you stated earlier you were
12 aware there was a recording, correct?

13 A Since this case began I have been made aware.

14 Q Then these statements were converted into
15 English, and then signed by Mr. Adao and also Mr.
16 Silva, correct?

17 A Correct.

18 Q And then you also signed as a witness, correct?

19 A Yes, sir.

20 Q Just saying that you witnessed the statements
21 being signed, correct?

22 A Correct.

23 Q That were in English?

24 A Correct.

25 Q What questions was Mr. Wright given to ask these

1 individuals in Portuguese for this interview?

2 A None.

3 Q None. Is that common to have no specific
4 questions for the two main witness and victims in a
5 violent, criminal act?

6 A Yes.

7 Q Just to not have any specific questions at all?

8 A I don't want to lead their remarks whatsoever.
9 I tell them to give me a detailed story of their
10 account.

11 Q You never have any follow-up questions?

12 A Because if I ask them questions I could be
13 putting words in their mouth, and I don't want that.

14 Q What about if there are things in their
15 statement that they leave out? Something that you may
16 want to know about?

17 They don't mentioned clothing. They don't
18 mention height, weight, that sort of thing.

19 If you just asked them a general question like,
20 how tall do you think this person was? Would that be
21 suggestive?

22 A No, it wouldn't be.

23 Q Because neither of the statements that were
24 derived from the interviews with Mr. Wright are very
25 detailed, are they?

1 A I'm sorry?

2 Q Neither of the statements that Mr. Wright
3 translated are very detailed, are they?

4 A I don't know.

5 Q Have you not seen them?

6 A I've seen them, I haven't read them.

7 Q You have never read the statements from your two
8 victims?

9 A No.

10 Q You're the lead officer on an armed robbery, a
11 burglary and a kidnapping, and you've never read the
12 statements from the two victims?

13 A No. I took their verbal statements.

14 Q How did you do that?

15 A The night of the incident.

16 Q Through who?

17 A Through the interpreter.

18 Q Who you don't know if he was an interpreter or
19 not. You just know he is a neighbor who spoke
20 Portuguese, right?

21 A Correct.

22 Q Were you concerned about either conflicting or
23 more information coming from the English translation
24 statement which when they had more time to reflect,
25 compared to what you got the night on the scene?

1 A I'm sorry?

2 Q Were you at all concerned that this new English
3 statement, that you signed and didn't read it, you just
4 signed that you saw them sign it, would may have more
5 information related to your investigation? Maybe
6 something that popped up, you know, how memory is sort
7 or recollected.

8 Were you concerned that there might be new
9 information to your case in those statements?

10 A No.

11 Q You thought it was going to be the exact same
12 word-for-word thing that they had told you that night?

13 A Yeah.

14 Q You just didn't know because you didn't read it,
15 correct?

16 A Correct.

17 Q So your earlier testimony was that they said it
18 was black men, you never received any more information
19 related to the description of these men, correct?

20 Because it's not in your police report and you
21 haven't read the victims' statements. So then you have
22 no more information other than, I know they ID'd them,
23 but as far as the actual description, them describing,
24 all you know is black men, correct?

25 A I don't recall.

1 Q If it's not in your report, and you haven't read
2 the victims' statements, how else would you have gotten
3 this information from them?

4 A I don't understand. If they gave it to me, and
5 I didn't document what clothing they told me that the
6 people were wearing, doesn't mean they didn't tell me
7 what clothing it was. I don't remember what clothing
8 it was, it was 14 months ago.

9 And, no, I didn't document what clothing they
10 said it was.

11 Q Isn't that what you told us this was for?
12 Because you are not going to remember. It would be
13 impossible to remember 14 months later.

14 A Correct.

15 Q And that's what the report is for, right?

16 A Right.

17 Q What a description of people that are committing
18 these acts, whether it be their clothes, their weight,
19 their height, their hair, or anything that would else
20 that would be descriptive. That would be important,
21 right? Is that not important?

22 A Yes, it's important. But the ID was more
23 important.

24 Q There we go again. So the description is less
25 important than the ID, sort of like the police report

1 is less important than the chain of custody sheet.

2 Is there a graph that you all have at Berkeley
3 County, sort of, you know, a priority list?

4 MR. ALFARO: Objection, argumentive.

5 THE COURT: Sustained.

6 Q (By Mr. Aylor) Deputy Charlton, I'm not asking
7 you whether the ID is important or not, I'm asking you
8 is the descriptions that victims or witnesses would
9 give of individuals that were alleged to be involved in
10 a crime as far as their height, their weight -- how
11 about basically anything other than the fact that
12 they're black. Is that not important to a criminal
13 investigation for violent crimes?

14 A Yes, sir.

15 Q And wouldn't you put important stuff in this?

16 A Yes, sir.

17 Q Because 14 months later, of course you are not
18 going to remember. In fact you weren't aware that the
19 apartment had gotten broken into the prior night to
20 this robbery, correct?

21 A Correct.

22 Q Because you didn't follow up on the victims' new
23 statements or the recording of those, correct?

24 A Correct.

25 Q Would that be important information?

1 A Yes.

2 Q You didn't know it?

3 A Correct.

4 Q Until this week.

5 A Correct.

6 Q All right. You stated yesterday that in regards
7 to criminal investigation division that you believed a
8 detective had come out, correct?

9 A Yes, sir.

10 Q And you said you thought his name was John, he
11 was tall. John Dailey, but it wasn't John Dailey. And
12 you really didn't know him that well because, I believe
13 your quote was, he is not a socialite, correct?

14 A Not in my -- we don't hang out.

15 Q You all don't hang out. And you don't work with
16 him that often either, correct, is what you said?

17 A Rarely.

18 Q Now his name is not listed anywhere in your
19 police report. Is that common?

20 A Yes, if he -- they were -- no.

21 Q I apologize if it is, I just didn't see it?

22 A I'm looking. It usually would be.

23 Q But it's not?

24 A It's a possibility because the detective
25 division did not become involved that it wasn't listed.

1 Q They didn't do anything, right?

2 A Right.

3 Q In fact I believe you said that John, tall John,
4 he came out there, did nothing, shined a light on the
5 roadway and said, looks like you all got this under
6 control and left?

7 A Yeah.

8 Q And the criminal investigation division those
9 are the individuals that -- first of all, tell us what
10 the criminal investigation division is within Berkeley
11 County.

12 A They investigate crimes.

13 Q Crimes against property, crimes against persons,
14 correct?

15 A Yes, sir.

16 Q Since I know John's name was not in the report,
17 and to my knowledge no one else is. But I want to ask
18 you about a couple individuals to see if they had come
19 out or not.

20 And from my research these people are in the
21 criminal investigation division. Was Captain Rick
22 Ollic ever on the scene?

23 A No.

24 Q Was Lt. Mark Mason ever on the scene?

25 A No.

1 Q Was Let. Geno Alterio ever on the scene?

2 A No.

3 Q Was Detective Rene Ramsey ever on the seen?

4 A No.

5 Q Was Detective Brian Fenton ever on the scene?

6 MR. ALFARO: Objection, Your Honor.

7 THE COURT: Basis.

8 MR. ALFARO: Asked and answered. The witness
9 has already testified that nobody from the detective
10 division came out.

11 MR. AYLOR: That's not true, he said someone by
12 the name of John came out.

13 MR. ALFARO: He said that was the only person
14 that came out.

15 THE COURT: Are you going through the list until
16 you find a John, Mr. Aylor? Is that what you are
17 trying to do?

18 MR. AYLOR: Correct, I'm just trying --

19 THE COURT: All right, continue. Overruled.

20 Q (By Mr. Aylor) Sgt. Bobby Schuler come out?

21 A No.

22 Q How about Detective James Riser?

23 A No.

24 Q Jason Potiger?

25 A No.

1 Q Ricky Courte? Detective Ricky Courte?

2 A No.

3 Q Sgt. John Peters?

4 A No.

5 Q So that's not tall John?

6 A No.

7 Q How about Detective Ken Murphy?

8 A No.

9 Q How about Detective John Reilly?

10 A John Reilly.

11 Q So John Reilly is the detective. And he's the
12 only one that came out, correct?

13 A Yes, sir. As far as I know.

14 Q As far as you know. So maybe some of these
15 other individuals came out?

16 A No, I'm not suggesting that. I'm just saying I
17 can't.

18 Q And you never, as lead officer, you never
19 received a report from John Reilly, correct?

20 A No. Had he taken the investigation, I would not
21 have been the lead officer.

22 Q So then he didn't do anything?

23 A He would have been.

24 Q Do you know if Detective Reilly or anyone else
25 from the criminal investigation division were aware of

1 the fact -- and if you don't know, you don't know --
2 were aware of the fact that at least one individual who
3 had been involved in these violent crimes was at large?

4 A Do I know if he knew?

5 Q Or anyone within the criminal investigation
6 division?

7 A I can assume that he did. It was common
8 knowledge via radio traffic. Well again he wasn't on
9 the radio, he was at home and called out. So I really
10 don't know.

11 Q Did you and him have any discussions about the
12 case when he came on scene or thereafter?

13 A Very little.

14 Q Did you tell him that we are still looking for
15 one guy?

16 A I don't know. I am assuming that I would have.
17 I can't recall, but it's not something that I would
18 have hidden from him for sure.

19 Q But either way he made the decision that they
20 weren't going to be involved?

21 A Yes, sir.

22 Q So that leaves the investigation to you, because
23 the criminal investigation decision didn't do anything,
24 so you are the one in charge, correct?

25 A Yes, sir.

1 Q If you can take a look at your supplemental
2 police report. Can you just tell me, this is -- when
3 it says down at the very bottom, looking on the
4 supplemental report it says, Officer Jason Charlton,
5 the date, August 8, 2010. Is that the date that this
6 report was complete?

7 A Yes, sir.

8 Q And if you look over to the right it says
9 follow-up investigation. And there is a box for yes,
10 and a box for no. And the box for no is blackened in,
11 correct?

12 A Yes, sir. I don't know what that is.

13 Q You don't know what that means?

14 A No. That's not a box that I check. This is
15 computer generated.

16 Q Okay. Well after August 8th, after that
17 supplemental report, what else did you do in regards to
18 your investigation with this case, considering the fact
19 that one of the three individuals at a minimum was at
20 large in the community after committing violent crimes?

21 A Nothing.

22 Q Nothing. So, Deputy Charlton, you are here to
23 tell us today that as of August 8th, which is the day
24 after you were called out to and became the lead
25 officer on an armed robbery, a kidnapping, and a

1 burglary first, where at a minimum one individual is at
2 least, maybe more, you stopped working on the case
3 within 24 hours?

4 A Yes, sir. I'm not an investigator, I'm a patrol
5 deputy. When you call the police, I come to your
6 house. I have to do that, that's my primary function.

7 Q So was this investigation over your head?

8 A Probably.

9 Q Something that shouldn't have been assigned to
10 you?

11 A No.

12 Q So you basically had to go back to your normal
13 job then?

14 A Yes, sir.

15 Q What is that process with that? Does a report
16 or the case then go to someone who this is their normal
17 job?

18 A Are you asking the normal circumstances?

19 Q Correct.

20 A Normal circumstance the investigations division
21 would take it over.

22 Q But they didn't?

23 A Correct.

24 Q And you don't know why?

25 A Correct.

1 burglary first, where at a minimum one individual is at
2 least, maybe more, you stopped working on the case
3 within 24 hours?

4 A Yes, sir. I'm not an investigator, I'm a patrol
5 deputy. When you call the police, I come to your
6 house. I have to do that, that's my primary function.

7 Q So was this investigation over your head?

8 A Probably.

9 Q Something that shouldn't have been assigned to
10 you?

11 A No.

12 Q So you basically had to go back to your normal
13 job then?

14 A Yes, sir.

15 Q What is that process with that? Does a report
16 or the case then go to someone who this is their normal
17 job?

18 A Are you asking the normal circumstances?

19 Q Correct.

20 A Normal circumstance the investigations division
21 would take it over.

22 Q But they didn't?

23 A Correct.

24 Q And you don't know why?

25 A Correct.

1 response is that you can do better?

2 A I don't understand what you want me to say.

3 Q I just want you to tell us -- I want you to
4 explain it, Deputy Charlton.

5 Explain how in a criminal investigation for an
6 armed robbery, a burglary first, and a kidnapping ends
7 in 24 hours, or does it end? You don't know. Explain
8 to me how that happens.

9 A I can't explain that to you.

10 Q You just know that it did?

11 A Yes, sir.

12 MR. AYLOR: Beg the Court's indulgence.

13 Q (By Mr. Aylor) Deputy Charlton, is it a reality
14 that you are not exactly sure how many cell phones you
15 took in that night, and how many cell phones you gave
16 back to people?

17 A No.

18 Q How many did you give out?

19 A Well, yes.

20 Q And is it also a reality that you don't really
21 at this point know where one cell phone came from and
22 where another cell phone came from, correct?

23 A I'm sorry?

24 Q You don't know specifically where one type of
25 cell phone came from as opposed to another one,

1 correct?

2 A I can only say what my report says.

3 Q And it's not in there, correct?

4 A I'm sorry?

5 Q And it's not in there, correct?

6 A What is not in there?

7 Q In regards to your report. Is the evidence
8 chain part of your report?

9 A No, sir.

10 Q Does your report tell exactly where every cell
11 phone went?

12 A It should.

13 Q It probably should, but does it?

14 A If you'd like me to read through it I'd be happy
15 to tell you.

16 Q Okay. Go ahead.

17 MR. AYLOR: I withdraw the question.

18 THE COURT: All right.

19 Q (By Mr. Aylor) How about the clothing. Did you
20 find any clothing? There was obviously various
21 description of clothing from the 911 dispatch to
22 descriptions into what Subject Thompson and Subject
23 Fishburne were wearing. Do you have any of the
24 clothing?

25 A No.

1 Q Did any of the clothing go into evidence?

2 A No.

3 Q Was any of the clothing shown to anyone to say
4 that that is or isn't what the person was wearing?
5 Anyone being the victims?

6 A The only clothes there was the clothing on them.
7 Yes, it was shown to them. It was shown to them on
8 their person.

9 Q Was there any clothing found on the scene or
10 around that area?

11 A No, sir.

12 Q No gun was found around that area?

13 A No, sir.

14 Q Was the laptop returned that night to Mr. Silva,
15 or did it go into evidence?

16 A It went into evidence.

17 Q Did Mr. Silva go through the laptop to determine
18 if it was his?

19 A No.

20 Q Did Mr. Silva ever see the laptop again that
21 night?

22 A Not that I know of.

23 MR. AYLOR: Thank you.

24 THE COURT: Redirect.

25 MR. ALFARO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. ALFARO:

Q Deputy Charlton, first off I want to talk to you a little bit about what Mr. Aylor was addressing with you regarding the third person that is not in the courtroom today.

You responded to that scene where the third person was stopped at the Kangaroo gas station I believe it was?

A I think so.

Q And I believe you showed Mr. Aylor on the map that the Kangaroo gas station, it's not on this map but it's somewhere towards where you are sitting now?

A Yes.

Q And did you also tell Mr. Aylor which direction the third person that ran from you, which direction he ran?

A Yes, sir. He ran, I guess, would be south on the map the way it stands now.

Q Fair to say he ran the opposite direction from where this Rufus Peterson person was found?

A Yes.

Q And to your knowledge did Rufus Peterson, the third person stopped at the Kangaroo, did he have a gun?

1 A No, sir.

2 Q Did he have any property belonging to the victim
3 that was taken during the course of the armed robbery
4 and the burglary?

5 A No, sir.

6 Q So was it your determination that there was
7 nothing connecting him to the burglary and the armed
8 robbery that night?

9 A Yes, sir.

10 Q Other than the fact that he was a black male
11 that was approximately a mile away from where the
12 robbery and the burglary took place?

13 A Yes, sir.

14 Q Given that information, and the lack of any
15 property on his person, would there be any reason why
16 you could connect him to the robbery and the burglary?

17 A No, sir.

18 Q And based on your training and your experience
19 which you testified to, if indeed that person or any
20 person stopped in the area had property connected to
21 the scene of the burglary and armed robbery, would
22 further investigation have been done?

23 A Most definitely.

24 Q Would a follow-up identification procedure be
25 done if you had those types of things to connect the

1 person to the burglary and armed robbery that you were
2 investigating?

3 A Absolutely.

4 Q And so is that the reason why those things that
5 Mr. Aylor asked if you could have done, is that the
6 reason why those things were not done?

7 A Yes, sir.

8 Q Now I also want to ask you a little bit about
9 the money Mr. Aylor was questioning you about. You
10 indicated that \$600 was reported stolen by the victim;
11 is that correct?

12 A Yes, sir.

13 Q And that \$422 was recovered?

14 A Yes, sir.

15 Q So my math is not that sharp, but I have that as
16 about \$178 approximately was missing from that?

17 MR. AYLOR: Objection.

18 THE COURT: Basis?

19 MR. AYLOR: Approach.

20 THE COURT: You don't get to make that
21 determination, Mr. Aylor. What is the basis?

22 MR. AYLOR: Misstatement by Mr. Alfaro regarding
23 the evidence.

24 THE COURT: Let him finish his question.

25 MR. ALFARO: Let me change that question.

1 Q (By Mr. Alfaro) \$442 apparently is what was
2 recovered?

3 A Yes, sir.

4 Q Okay. So now I have to do another one, that's
5 \$158. That \$158 was never recovered?

6 A No, sir.

7 Q And other than that portion of the money, what
8 other property stolen from the victim was not
9 recovered?

10 A The Blackberry.

11 Q And in your training and experience, when you
12 have crimes that are committed by multiple defendants,
13 multiple suspects, is it common that money and property
14 that is stolen is divided up between the suspects?

15 A In most instances.

16 Q So in your training and experience it would be
17 unusual that three people committed a crime and
18 everybody didn't get a little bit of it?

19 A Everybody gets something.

20 Q And you've never located the third suspect in
21 this case?

22 A No, sir.

23 Q And you were also asked about some of the
24 protocol within the sheriff's department as far as
25 follow-up investigations being done.

1 Practically speaking, if a road deputy such as
2 yourself investigates a case and the perpetrators are
3 caught, are those cases normally referred to and
4 followed up by the detective division?

5 A No, sir.

6 Q Why is that?

7 A Because there is generally nothing for them to
8 follow up on.

9 Q So at that point in time arrests are made, you
10 -- normally the investigator would not follow up on it?

11 A Correct.

12 Q And if you -- did you develop any further
13 information about that third suspect other than what
14 you included in your initial report?

15 A No, sir.

16 Q And I believe, do you recall what information
17 you put in your report regarding that third suspect?

18 A He was a younger fellow. I think I put in there
19 he was wearing a white shirt. And that he was known to
20 the defendants by the name of X.

21 Q And did you determine what his age range to be
22 based off what you observed?

23 A He was probably less than 25.

24 Q And do you recall if you put a bottom number on
25 that, that he was no more than 25?

1 A I put 15 to 25.

2 Q So that's the age range of the suspect that you
3 would be looking for, would be a black male somewhere
4 between 15 and 25?

5 A Yes, sir.

6 Q That's all the information you developed?

7 A Yes.

8 Q Would that be enough for you to follow up on?

9 A No, sir.

10 Q And regarding the telephones, there was some
11 testimony or some questioning by Mr. Aylor regarding
12 the phones. Do you still contend in your testimony
13 that two phones belonging to the victim were found on
14 the defendant Clarence Fishburne?

15 A Yes, sir.

16 Q And were those two phones returned to the victim
17 that night?

18 A Yes, sir.

19 Q And was that done prior to you completing the
20 evidence sheets that you completed for the remaining
21 evidence?

22 A Yes, sir.

23 Q And when you complete an evidence sheet, is that
24 for evidence, mainly for evidence that is secured into
25 evidence?

1 A Yes, sir.

2 Q And you completed those evidence sheets I
3 believe you said around 4:00 in the morning?

4 A That's what the evidence sheets says.

5 MR. ALFARO: Thank you. No further questions,
6 Your Honor.

7 THE COURT: Mr. Shelton.

8 MR. SHELTON: Just briefly, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. SHELTON:

11 Q Deputy Charlton, start with the map. We have
12 Harbor Lake Drive, and you stopped the suspects around
13 this area?

14 A Yes.

15 Q And then you say the third person took off
16 running towards the south?

17 A 'ish.

18 Q Southish. Towards Coral Reef Drive?

19 A Yes, sir.

20 Q And so up here is where Rufus Peterson was
21 stopped?

22 A Yes, sir.

23 Q Coral Reef Drive, there is another road right
24 down here, Bayshore Boulevard; is there not?

25 A Yes, sir.

1 Q And Bayshore Boulevard hits Red Bank Road?

2 A Yes, sir.

3 Q This road up near where the Kangaroo is?

4 A Yes, sir.

5 Q So it's possible for that third person to flee
6 down Coral Reef Drive and up toward Bayshore Boulevard
7 up towards the Kangaroo?

8 A The possibility is there.

9 Q Do you have a copy of the booking report?

10 A No, sir.

11 Q Are you listed as the arresting officer?

12 A Yes, sir.

13 Q Can you tell me how much money Mr. Fishburne had
14 on his person at the time that he was booked in?

15 A \$.10.

16 Q Thank you. He didn't have any \$100 bills?

17 A No, sir. I didn't complete that booking report
18 though.

19 Q You didn't find any \$100 bills on him?

20 A No, sir.

21 Q You didn't find any \$100 bills on Mr. Thompson?

22 A No, sir.

23 Q So when the deputy solicitor indicated \$158 was
24 never recovered, actually three \$100 bills were never
25 recovered, and at least two \$2 bills were never

1 recovered?

2 A Yes.

3 Q So that's at least \$302 were never recovered?

4 A Yes.

5 Q And I think the question was if the people are
6 caught then there doesn't need to be a follow-up
7 investigation, correct?

8 A Yes, sir.

9 Q But according to what you believe happened,
10 there is still one more person that hadn't been caught?

11 A Yes, sir.

12 Q And you gave two cell phones back to the victim,
13 Mr. Olivera?

14 A Yes, sir.

15 Q Do you know where you gave those back to him?

16 A I'm sorry?

17 Q Where you were present at the time that you gave
18 them back to him?

19 A At the apartment.

20 Q At the apartment. Those could have been placed
21 into evidence?

22 A Yes, sir.

23 Q And nothing was done to determine other than
24 asking him whether those were his cell phones?

25 A Correct.

1 MR. SHELTON: No further questions.

2 THE COURT: Mr. Aylor.

3 RECROSS-EXAMINATION

4 BY MR. AYLOR:

5 Q How many hours do you think you put in the
6 investigation from start to finish?

7 A I don't know.

8 Q Can you make a guess?

9 A Eight to ten.

10 Q Eight to ten?

11 A That's a guess.

12 No, more like probably 12 to 14.

13 Q So you have been in court about as long as the
14 investigation lasted, correct?

15 A Yes, sir.

16 Q Now earlier Mr. Alfaro was hitting some
17 information regarding the different directions of the
18 individuals.

19 Through your conversations with Mr. Adao and Mr.
20 Paulo at the scene, the oral conversations you had, and
21 it's actually in I believe one of the victims'
22 statements, are you aware of the fact that one -- they
23 say that one of the individuals had gone towards the
24 dumpster, which is back here, and then the other two
25 individuals had gone around the back? Were you aware

1 of that information?

2 A No, sir.

3 Q If you go back towards dumpster, is there a way
4 to get out and go, transgress that way back to Red
5 Bank?

6 A That patch of woods there is full of trails.

7 Q Okay. So if one was to run that way, they could
8 get through the woods and get back up to Red Bank?

9 A They could go anywhere, any direction through
10 there.

11 Q But you didn't know that Mr. Adao had stated, or
12 Mr. Silva rather, had stated that one of individuals
13 ran back towards the dumpster?

14 A No, sir.

15 Q And again in reference to the third individual,
16 that in your opinion is the only one left that is still
17 at large. Mr. Alfaro pointed out that you know it's a
18 young black guy. That's really all you know, correct?

19 A Yes.

20 Q And it would be pretty hard to go find the
21 person involved in any crime with the only description
22 being that it's a young black guy, right?

23 A Yes, sir.

24 Q But at the same time you'll also admit there are
25 numerous steps you could have taken to discover, or at

1 least potentially discover, a lot more information
2 other than it's a young black guy, correct?

3 A (Whereupon, the witness shrugs his shoulders.)

4 Q For instance like looking at the cell phone,
5 potentially, talking to other witnesses, that sort of
6 thing?

7 A Yes, sir.

8 Q But you didn't, correct?

9 A Yes, sir.

10 Q So the only reason we have the limited
11 information that it's a young black male is because no
12 further information was attempted to be retrieved,
13 correct?

14 A I wouldn't say that's the only reason, but that
15 contributes.

16 Q All right. In regards to the \$442 that was
17 found on Mr. Thompson, you recall having a prelim on
18 Mr. Thompson?

19 A Yes, sir.

20 Q And do you recall being shown -- I can show you
21 the reference if you need to see it, being shown a bank
22 statement?

23 A No, I don't recall.

24 Q You don't recall any information related to that
25 prelim?

1 A No.

2 Q Specifically to the money that was found on
3 Douglas Thompson?

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

5 Q Does it concern you that in your opinion at
6 least one individual who committed these horrendous
7 acts is still free in this community?

8 A Yes, sir.

9 Q If you had to do it all over again, would you
10 have made a lot of changes?

11 A I would have made changes.

12 Q Thank you.

13 THE COURT: Ladies and gentlemen, this is an
14 appropriate time for us to take our mid-morning break.
15 Do not begin your deliberations. Do not discuss the
16 case among yourselves. We will take about ten minutes.
17 Please rise for the jury.

18 (Whereupon, the jurors exit the courtroom.)

19 THE COURT: Please be seated. You may step
20 down. Ten minutes.

21 (Whereupon, a recess was taken.)

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Call your next witness.

24 MS. CORNWELL: State calls Adao Olivera.

25 THE COURT: Mr. Rock, you have been sworn. I

1 will remind you that you are still under oath.

2 We need to swear this witness in.

3 MR. ADAO MARQUEZ OLIVERA,
4 after having first been duly sworn to state the truth,
5 the whole truth and nothing but the truth, testified on
6 his oath as follows:

7 DIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q Thank you, Mr. Olivera. Mr. Olivera, how old
10 are you?

11 A 32.

12 Q Where do you live?

13 A I don't know the name of the apartment in Goose
14 Creek.

15 Q And on August 6th, 2010, who did you live with?

16 A I was living with Paulo, Paulino and Carrie, the
17 daughter.

18 Q And while you were living there on August 6th,
19 2010, did something happen to you?

20 A Yes.

21 Q What happened to you that night?

22 A I was in the house. I went outside to smoke.
23 While I was outside smoking, Paulo came outside to
24 chat. When I was smoking a cigar, 10 or 15 minutes,
25 at that time three armed people came. Two were armed,

1 one was not.

2 Q What time of night was this?

3 A Around about 9:30, 10:30, around about there.

4 Q Was it at night or during the day?

5 A At night.

6 Q I believe you just said three men came up to you
7 and two were armed; is that correct?

8 A The one of the guys, I only saw his gun when he
9 was inside. But the one came up and pointed his gun
10 directly at Paulo.

11 Q Did anybody do anything to you?

12 A Yes. One of those who wasn't armed came and
13 grabbed me around the neck.

14 Q And did he grab you around the neck
15 face-to-face, or was he behind you when he grabbed you
16 around the neck?

17 A He came in front of me to get -- come around
18 behind me and grab me from behind.

19 Q So you saw him as he came towards you?

20 A Yes.

21 Q And then when you say he choked you from behind,
22 did he put his arms around you, how did he do that?

23 A Yes.

24 Q While the man was pointing the gun at Paulo and
25 the other man was choking you; is that correct?

1 A Yes.

2 Q What did they do after they accosted you
3 outside?

4 A The one who was with me thought I had money and
5 became very nervous when he found out I didn't.

6 Q And did they keep you outside the whole time?

7 A No.

8 Q What did they do to you?

9 A He got me around the neck and demanded money and
10 I said I didn't have any. And the other one said we
11 need to go inside the house. Paulo didn't want to go
12 into the house but the other guy said -- was pushing me
13 forward.

14 He wanted us to go upstairs, and Paulo said that
15 his wife was upstairs and that she was pregnant,
16 Paulino and Carrie.

17 Q So you were outside and then they forced you to
18 go inside?

19 MR. AYLOR: Objection, leading, Your Honor.

20 MS. CORNWELL: I apologize, Your Honor.

21 THE COURT: Rephrase your question. Thank you.

22 Q (By Ms. Cornwell) Did you just testify that you
23 were outside, and then were you taken inside?

24 A Yes.

25 Q And did you testify that Paulo didn't want to go

1 inside?

2 MR. SHELTON: Objection, Your Honor, leading.

3 THE COURT: Ms. Cornwell.

4 Q (By Ms. Cornwell) I believe you just testified
5 that you went upstairs?

6 A Yes.

7 Q What happened when you went upstairs?

8 A When I was upstairs, the person who had me
9 forced me to my knees. And the guy that was with me
10 was very nervous. I think that if he had been armed he
11 would have shot one of us.

12 MR. AYLOR, objection to that statement, Your
13 Honor, speculation.

14 THE COURT: Hold on one second.

15 I'm going to allow it. Overruled, Mr. McCoy.

16 Q (By Ms. Cornwell) You may keep going.

17 A The one that was with Paulo saw that he was
18 choking me a great deal and he told him to calm down.
19 The one that was with Paulo gave a blow to Paulo. He
20 hit him. I don't know what Paulo said or whatever.

21 After a little while he said that Paulino had
22 gone outside, and Lucineia arrived to grab Carrie.
23 When Lucineia arrived, and he saw that I was inside and
24 he went running downstairs. She was -- I saw that she
25 was living the neighbor opposite.

1 And the other guy saw that more people were
2 coming and he left running too.

3 Q After the suspects fled your home, what did you
4 do?

5 A Who?

6 Q You. After the suspects fled the home, what did
7 you do?

8 A I was the last one out of the room and I went
9 outside. And Paulo had already gone to speak with the
10 manager of the apartment.

11 Q Do you know if anyone had called the police at
12 that point?

13 A The police had -- the lad that was at the
14 apartment had already called the police. And Paulo
15 came back and told his wife to call the police.

16 Q And --

17 THE INTERPRETER: Excuse me, Your Honor.

18 (Whereupon, the interpreter speaks with the
19 witness.)

20 MS. CORNWELL: Excuse me. What did you just say
21 to him?

22 THE INTERPRETER: To speak a little louder and a
23 little clearer. He was tending to mumble.)

24 MS. CORNWELL: Okay, thank you.

25 Q (By Ms. Cornwell) Did the police arrive?

1 A Yes.

2 Q Did you speak to the police when they arrived?

3 A I don't speak English, and the police spoke very
4 little. And who was speaking with him was Hilario,
5 Senor Hilario.

6 Q Were you speaking with Hilario helping translate
7 for you?

8 A Yes.

9 Q Is it my understanding that you would tell
10 Hilario what happened in Portuguese, and Hilario would
11 tell what happened in English?

12 A Yes.

13 Q And by doing that, did you tell them everything
14 that had happened that night?

15 A I don't remember more.

16 Q But you do remember talking to them and telling
17 them about the incident?

18 A Yes.

19 Q And after you spoke to the police, did you do
20 anything with them?

21 A The police arrived there and they had grabbed
22 two people there below. And he asked me to go into the
23 police car to go there and to see if it was them, the
24 suspects.

25 Q And did you do that?

1 A Yes.

2 Q Were you able to identify the suspects?

3 A Yes.

4 Q When you identified the suspects, was there any
5 light to show their faces?

6 A Yes.

7 Q What kind of light was there?

8 A Normal light of the police.

9 Q So would that be the police car lights, the
10 headlights?

11 A No. It was the spotlight outside of the car.

12 Q And that gave you enough light to see clearly?

13 A Yes.

14 Q Were you certain of your identification?

15 A Yes.

16 Q When you made the identification, did you see
17 the man that strangled you?

18 A Yes.

19 Q And you are certain that was the man that was
20 strangling you?

21 A Yes.

22 Q Was anything taken from you that night?

23 A From me myself, no. But he grabbed a telephone,
24 found it in my car. I didn't even know that he had
25 grabbed it. I only found out when we were with the

1 police if the telephone was ours.

2 Q I'm going to show you what has been previously
3 marked as State's Exhibit 5-A for identification
4 purposes. Do you recognize that?

5 A Yes.

6 Q What is that?

7 A Telephone.

8 Q Who does that telephone belong to?

9 A To me.

10 Q And is that one of the phones that was taken
11 from you that night?

12 A Yes.

13 Q And is that phone the same phone, there has been
14 no changes made to that phone?

15 A No because I didn't use it. It was out of
16 order.

17 MS. CORNWELL: Your Honor, at this time the
18 State would like to move State's Exhibit 5, which is
19 the photograph of this phone, into evidence.

20 THE COURT: It's already been.

21 MS. CORNWELL: Thank you.

22 Q (By Ms. Cornwell) Did you have another cell
23 phone taken from you that night?

24 A Yes.

25 Q And were the police able to recover that phone?

1 A Yes.

2 Q And did they give that phone back to you?

3 A Yes.

4 Q And do you still have that phone?

5 A No.

6 Q Do you know where the police got that other cell
7 phone from?

8 A It was with him.

9 Q Who is him?

10 A It was in the bedroom.

11 Q Do you know where the police got it from?

12 A With him.

13 Q And when you say him, who is him?

14 A The policeman didn't show me with whom the
15 telephone was.

16 Q But your understanding was one of the people had
17 your cell phone?

18 MR. McCOY: Objection, Your Honor, to leading.

19 THE COURT: Rephrase your question.

20 Q (By Ms. Cornwell) When the police gave of your
21 cell phone back, they gave it back to you after -- did
22 they give it back to you after you made an
23 identification?

24 A Yes.

25 Q Was there any evidence found in your house that

1 didn't belong to you?

2 A A telephone from one of them was found there.

3 Q I'm going to show you what has previously been
4 entered as State's Exhibit 4. Do you recognize that?

5 A I don't really remember. The person who spoke
6 to him was Paulo.

7 Q Okay. Is this your cell phone?

8 A No.

9 Q Is this Paulo's cell phone?

10 A No.

11 Q Is this Paulino's cell phone?

12 A It does not belong to the house.

13 MS. CORNWELL: Thank you, Mr. Adao. Those are
14 all the questions I have for you.

15 THE COURT: Mr. Shelton.

16 MR. SHELTON: Your Honor, can we approach?

17 THE COURT: Yes.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: Ladies and gentlemen, there is a
21 matter of law I must take up outside your presence. Do
22 not begin your deliberations. Do not discuss this case
23 among yourselves. Please rise for the jury.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Thank you, be seated. Mr. Shelton.

1 MR. SHELTON: Your Honor, we are going to
2 inquire about the immigration status. The same
3 questions that we asked Mr. Silva. And Mr. Silva was
4 given his Fifth Amendment rights. However, I don't
5 believe Mr. Olivera was.

6 THE COURT: All right. Thank you for bringing
7 that to my attention. I need to inquire.

8 The defense attorney, Mr. Shelton, is about to
9 ask you some questions. And I understand they are
10 going to deal with your immigration status.

11 THE WITNESS: I didn't understand.

12 THE COURT: The next attorney that is going to
13 ask you questions is going to inquire about your
14 immigration status. I need to advise you of your
15 constitutional rights.

16 Do you understand what that means?

17 THE WITNESS: Yes.

18 THE COURT: Do you understand that you have the
19 right to claim the protections of the Fifth Amendment
20 of the United States.

21 THE WITNESS: Does this mean I have to answer a
22 lot?

23 THE COURT: This means that you have the right
24 to not testify regarding responses if you may be a
25 witness against yourself.

1 Do you understand that, sir?

2 THE WITNESS: I do.

3 THE COURT: Do you need me to explain to you in
4 any further detail?

5 THE WITNESS: May I ask a question?

6 THE COURT: You may.

7 THE WITNESS: If he asks me a question and I
8 don't want to reply, can I do so?

9 THE COURT: Under the Fifth Amendment you may.

10 THE WITNESS: That's okay.

11 THE COURT: Mr. Shelton, anything further?

12 MR. SHELTON: No, Your Honor.

13 THE COURT: Mr. Aylor?

14 MR. AYLOR: No, Your Honor.

15 MR. MCCOY: I have nothing further, Your Honor.

16 MS. CORNWELL: Nothing.

17 THE COURT: All right, let's bring back in the
18 jury.

19 (Whereupon, the jurors enter the courtroom.)

20 THE COURT: Please be seated.

21 Mr. Shelton, your witness.

22 MR. SHELTON: Thank you, Your Honor. May it
23 please the Court.

24 CROSS-EXAMINATION

25 BY MR. SHELTON:

1 Q Mr. Olivera, how long have you been in the
2 United States?

3 A Seven years.

4 Q And has the State promised you, or has the State
5 promised to help with your immigration status?

6 A I didn't understand the question.

7 Q Has the State --

8 THE MR. SHELTON: May we approach, Your Honor?

9 THE COURT: You may.

10 (Whereupon, the a discussion was held at the
11 bench off the record.)

12 THE COURT: Thank you, counsel.

13 Q (By Mr. Shelton) Mr. Olivera, has this office
14 promised you or promised to help you with your
15 immigration status?

16 A I never spoke to anyone about immigration here.

17 Q Your testimony is that these three robbers were
18 asking for money?

19 A Yes.

20 Q Were they asking in English?

21 A Yes.

22 Q And you don't know how to speak English?

23 A Any person understands money in English.

24 Q None of the robbers were speaking Portuguese?

25 A No.

1 Q You remember signing a statement that Ted Wright
2 translated into English?

3 A I don't remember the day I signed, but the
4 signature is mine. Because it was very close to the
5 day in which it happened, and it's almost a year since
6 then.

7 Q And was Officer Charlton present at the time
8 that you signed the statement?

9 A I don't remember.

10 Q So the statement that -- in your statement it
11 says one of the robbers spoke a little bit of
12 Portuguese, that's false?

13 A Yes.

14 Q And so when you are outside the apartment, the
15 person that was choking you was behind you?

16 A At the beginning, yes.

17 Q At the beginning he was behind you?

18 A He came in front of me, and after that he went
19 behind me.

20 Q Do you remember if it was his left arm or right
21 arm that was behind you?

22 A I don't.

23 Q And you eventually went inside?

24 A Yes.

25 Q And at what point were your keys taken?

1 A I don't remember my keys. I didn't see them
2 grab them.

3 Q But your keys were taken?

4 A Yes.

5 Q You've never received those back?

6 A No.

7 Q Was your car stolen?

8 A No.

9 Q And you were led up the stairs?

10 A Yes.

11 Q And at that point in time that's when the -- was
12 the person still choking you as you were going
13 upstairs?

14 A On the stairs, no.

15 Q He was pushing you upstairs? Was he behind you
16 or in front of you?

17 A Behind.

18 Q And two of the robbers went upstairs with you?

19 A Yes.

20 Q And one stayed downstairs?

21 A Yes.

22 Q And then you saw your neighbor coming up the
23 stairs?

24 A I didn't, no. I had my back to the door.

25 Q But all of the sudden the robbers started

1 running out of the house?

2 A Yes.

3 Q How many people ran from the upstairs?

4 A Those that were upstairs, two.

5 Q And there were a whole bunch of other neighbors
6 around at this point in time?

7 A Yes. About four or five people came. And I
8 didn't really know because I was the last one out of
9 the bedroom.

10 Q So you didn't run after them?

11 A No.

12 Q So in your signed statement when it says that we
13 ran out after them, that would be false?

14 A I was the last one out of the bedroom. When I
15 got out, Paulo had already got into a car with another
16 neighbor.

17 Q So at what point in time did they go through
18 your car?

19 A Not to my car.

20 Q Wasn't this cell phone in your car?

21 A No, it was in my bedroom.

22 Q Did you not testify in direct that this cell
23 phone was in your car?

24 A No.

25 Q so you had the cell phone in your bedroom?

1 A Yes.

2 Q You then went and made an identification of
3 suspects?

4 A Yes.

5 Q This was on the side of the road?

6 A Yes.

7 Q Two police officers?

8 A Yes.

9 Q Two black males between?

10 A Yes.

11 Q No other black males?

12 A No.

13 Q No other persons not in uniform?

14 A I didn't understand.

15 Q How many persons were on the side of the road?

16 A Only the police and those two.

17 Q And the only other people on the side of the
18 road were the police officers?

19 A Yes, only those.

20 Q Officer Charlton eventually gave you back the
21 phone, two phones?

22 A No. It was after we left the spot.

23 Q Where were you when he gave you back the phones?

24 A Within the police car. Inside the police car.

25 Q So you were still in the police car prior to

1 going back to the apartment?

2 A Yes.

3 Q Did you go through this cell phone?

4 A I didn't.

5 Q Did you see the police officer go through the
6 cell phone?

7 A Yes.

8 Q I think your testimony was that the telephone,
9 this phone belonged to one of them?

10 A I didn't understand the question.

11 Q Did you just testify that this phone belonged to
12 one of them?

13 A Yes because it fell inside the house when one of
14 them left running. Paulino grabbed the phone.

15 Q You didn't grab the phone?

16 A No.

17 Q The next day you gave a statement that was
18 recorded by Ted Wright. And when you gave that
19 statement, you were with Mr. Silva at the time?

20 A We gave our deposition one after the other.

21 Q You weren't separated?

22 A Yes. I was in the kitchen and Paulo was in the
23 front room.

24 Q Were you there to observe what Paulo was saying?

25 A No. I was simply there.

1 Q Then you are not sure when you signed the
2 statement that Mr. Wright translated it into English?

3 A It should have been him that signed.

4 Q But officer Charlton was not there when you
5 signed the statement?

6 A It was a long time ago. I don't remember
7 anymore.

8 MR. SHELTON: No further questions.

9 THE COURT: Mr. McCoy.

10 MR. MCCOY: Thank you, Your Honor, may it please
11 the Court.

12 CROSS-EXAMINATION

13 BY MR. MCCOY:

14 Q Hello, Senor Adao. Thank you for being here
15 with us today.

16 MR. MCCOY: Your Honor, may I have the witness
17 step down.

18 THE COURT: We will try it, Mr. McCoy. I'm
19 concerned about the language. You may step down.

20 Q (By Mr. McCoy) Senor Adao, you come stand down
21 here next to me.

22 Senor Adao, could you point out to the jury
23 where you were when this robbery happened.

24 A (Whereupon, the witness indicates.)

25 Q How long had you lived there before that

1 happened?

2 A Year and a half, two years.

3 Q You testified earlier on direct that three men
4 approached you and Senor Paulo while you were outside
5 smoking, correct?

6 A Yes.

7 Q When the three men were walking towards you, did
8 you get a good look at all three of them?

9 A Yes.

10 Q How close do you think you were to them when you
11 were able to look at them?

12 A About six or eight feet.

13 Q Is this a fair distance between me and you?

14 A Yes.

15 Q And is it your testimony that one of the men
16 began to walk towards you?

17 A Yes. One came right at me.

18 Q Did he get very close to you, as in this close?

19 A Yes.

20 Q Did he grab you right after that?

21 A Yes.

22 Q Can you demonstrate on me how he grabbed you?

23 A Can I grab him?

24 Q Absolutely.

25 A I was seated in the seat.

1 Q You were seated in a seat?

2 A Yes.

3 Q And he grabbed you from behind like you just did
4 to me?

5 A Yes.

6 Q Were any of the three men wearing masks?

7 A No.

8 Q Were any of the three men wearing hats?

9 A I don't remember.

10 Q Do you remember if any of the three men were
11 wearing gloves?

12 A No.

13 Q He can sit down, thank you.

14 Senor Adao, how long did one suspect have you in
15 a choke-hold?

16 A I don't remember exactly how long, but it was
17 quite a long time.

18 Q While you were in the choke-hold, were you able
19 to get a good look at the other two men?

20 A One of them, yes.

21 Q And while you were in the choke-hold and being
22 led upstairs, how many suspects went upstairs with you?

23 A Two suspects.

24 Q Do you have any idea, to the best of your
25 knowledge, do you know what the other suspect was doing

1 downstairs?

2 A I have because Lucinea came in through the door
3 and he was there at the door watching the door.

4 Q So the third suspect was watching the door?

5 A Yes.

6 Q Was he going through things to your knowledge
7 downstairs, and trying to find things to steal?

8 A I can't say so because I wasn't there.

9 Q Where were your keys located to your car?

10 A They were on top of the television. I don't
11 know exactly where they were.

12 Q Is it safe to say you got a better look at two
13 of them as opposed to all three?

14 A Yes.

15 Q Did you have more interaction with the suspect
16 that was holding you as opposed to any of the others?

17 A I didn't understand the question.

18 Q I will move on. You've testified on direct that
19 you had an opportunity, a good opportunity, to view the
20 suspects, number one, when they were coming towards you
21 outside, and number two, when you were forced to your
22 knees upstairs, correct?

23 A I could see them a lot better when they arrived.

24 Q Senor Adao, how did you describe the suspects to
25 the police?

1 A I didn't describe them.

2 Q Did you describe their height at all?

3 A To the police? No.

4 Q Did you describe their weight at all?

5 A No.

6 Q Did you describe if they had a long hair or
7 short hair?

8 A I don't remember.

9 Q Do you remember if you described to the police
10 what kind of clothes they were wearing?

11 A I don't remember.

12 Q Do you remember what kind of clothes they were
13 wearing?

14 A One of them had a T-shirt that was white,
15 bluish-white.

16 Q Senor Adao, when you went to see the suspects on
17 the side of the road, do you remember what two suspects
18 they were?

19 A One of them, yes.

20 Q Was one of them the one that was choking you?

21 A Yes.

22 Q Which role did the other one play that you
23 recognized?

24 A I didn't understand.

25 Q The second suspect you saw, was he the one that

1 was downstairs, or is he the one that was upstairs?

2 A Above, upstairs.

3 Q So the two you recognized were the two that were
4 upstairs with you?

5 A Yes.

6 Q Why did you not tell the police any more of a
7 description of the suspects?

8 A To whom?

9 Q To the police?

10 A Because the police arrived and said that they
11 had two suspect and asked if it was them and I said
12 yes.

13 Q When you went to the suspects you were handed
14 two phones, correct?

15 A Yes.

16 Q Have you identified those two phones as yours?

17 A Yes.

18 Q Did you turn those phone on to identify them?

19 A Yes.

20 Q When you got to the scene and saw the two
21 suspect, were they in handcuffs?

22 A I don't remember.

23 Q When you got to the scene, or was there ever a
24 time when you saw a laptop?

25 A I didn't see a laptop.

1 Q When you got to the scene, how close did you get
2 to the suspects before you identified them?

3 A I don't remember.

4 Q Could you guess from me to you now?

5 A More.

6 Q More? Tell me when.

7 A Here.

8 Q Were the suspects wearing the same clothes that
9 you observed inside of the house?

10 A I don't remember anymore.

11 Q Do you remember in your statement that you have
12 given to Mr. Wright stating that you ran after the
13 suspects after they left the house?

14 A I don't remember.

15 Q If I were to show it to you, would it help with
16 your memory?

17 A Yes.

18 MR. MCCOY: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. MCCOY: Mr. Rock, I may need your assistance
21 here.

22 Q (By Mr. McCoy) Senor Adao, is this your
23 signature on this statement?

24 A It is.

25 Q Do you remember giving this statement to Mr.

1 Wright?

2 A Yes.

3 Q Is it safe to say that your memory was better at
4 this time as opposed to now?

5 A Yes.

6 Q Is the second paragraph here, Mr. Rock will have
7 to help you with this, what does this last sentence say
8 in the second paragraph?

9 THE INTERPRETER: We ran out after them.

10 A I don't remember. A long time. If I did the
11 deposition at that time, then I did it. I don't
12 remember.

13 Q (By Mr. McCoy) Mr. Adao, do you remember seeing
14 what direction anybody ran?

15 A I don't.

16 Q The suspects that is?

17 A No.

18 MR. MCCOY: Your Honor, may I have a moment?

19 THE COURT: You may.

20 MR. MCCOY: Just a few more questions, Your
21 Honor.

22 Q (By Mr. McCoy) Senor Adao, do you recall a
23 possible or attempted break-in to your apartment the
24 night before this happened?

25 A Yes.

1 Q Do you remember or recall if anything was taken
2 from your house, or rearranged in your house after that
3 night?

4 A They broke the kitchen window.

5 Q Mr. Adao, is the only description you gave the
6 police that night of the suspects of this
7 house-breaking and kidnapping and burglary, was it they
8 were just black men?

9 A The day before when they broke the window?

10 Q No, I'm talking about the current crime.

11 A I don't remember saying that.

12 Q Do you remember any description of these guys?

13 A I don't understand the question.

14 Q What other description did you give the police
15 of the suspects that came in your house besides they
16 were three black men?

17 A I don't remember, it was a long time ago.

18 Q Is it safe to say it's not in any of your
19 statements that you've given?

20 A I didn't understand the question again.

21 Q Mr. Adao, would you have put in your statements
22 a more description of the suspects?

23 A Now, or the one I had done?

24 Q I will move on.

25 Mr. Adao, do you have friends or do you

1 socialize with African-Americans?

2 A I don't know a single one.

3 Q Is it safe to say, and did you also testify
4 yesterday that you think all African-Americans have
5 similar facial features?

6 A Yes, appears so.

7 MR. MCCOY: Your Honor, I don't have any other
8 questions. Thank you.

9 THE COURT: Ms. Cornwell.

10 MS. CORNWELL: Your Honor, the State has no
11 further questions of this witness.

12 THE COURT: Ladies and gentlemen, we have
13 reached an appropriate time for us to take our lunch
14 break. Do not begin your deliberations. Do not
15 discuss this case amongst yourselves. Please be back
16 in your jury room at 1:45.

17 Please rise for the jury.

18 (Whereupon, the jurors exit the courtroom.)

19 THE COURT: Anything before we break for lunch?

20 MS. CORNWELL: Nothing from the State, Your
21 Honor.

22 MR. SHELTON: Nothing.

23 MR. AYLOR: Nothing.

24 THE COURT: You may step down.

25 Any objection?

1 MR. AYLOR: None.

2 MR. SHELTON: No objection.

3 THE COURT: And is Mr. Rock free to go?

4 MS. CORNWELL: No, Your Honor.

5 THE COURT: You have to stay with us, Mr. Rock,
6 but you are free to go.

7 THE INTERPRETER: Thank you, Your Honor.

8 THE COURT: How many more witnesses?

9 MS. CORNWELL: Your Honor, the State has three,
10 maybe four.

11 THE COURT: How many require an interpreter?

12 MS. CORNWELL: Two.

13 THE COURT: All right. Let me go ahead, while I
14 have them quickly, I'm just going to advise your
15 clients so that you can talk to them over the lunch
16 hour.

17 All right, Mr. Fishburne, Mr. Thompson, I'm
18 going to now advise of you your rights. If you would
19 please raise your right hand, I'm going to place you
20 under oath.

21 Do you swear that everything that you indicate
22 to the Court regarding this matter will be the truth
23 and the whole truth?

24 THE DEFENDANT FISHBURNE: Yes, ma'am.

25 THE DEFENDANT THOMPSON: Yes, ma'am.

1 THE COURT: All right. You may put hands down.
2 You've got to speak very loudly so that my court
3 reporter can hear you.

4 Do you understand, Mr. Fishburne?

5 THE DEFENDANT FISHBURNE: Yes, ma'am.

6 THE DEFENDANT THOMPSON: Yes, ma'am.

7 THE COURT: Okay. I'm going to do this in
8 alphabetical order. There's no significance, it's just
9 the way I'm doing it, Mr. Fishburne and then Mr.
10 Thompson. If I look to you, I need you to respond.

11 Do you understand?

12 THE DEFENDANT FISHBURNE: Yes, ma'am.

13 THE DEFENDANT THOMPSON: Yes, ma'am.

14 THE COURT: Thank you.

15 I'm going to explain to you certain of your
16 rights. If you do not understand anything that I say,
17 please let me know. If you need me to explain anything
18 in further detail, please let me know.

19 Do you understand?

20 THE DEFENDANT FISHBURNE: Yes, ma'am.

21 THE DEFENDANT THOMPSON: Yes, ma'am.

22 THE COURT: We likely will reach the part of the
23 trial, hopefully mid-afternoon, where you may present
24 your defense. You have the right to claim the
25 protections given to you by the Fifth Amendment of the

1 Constitution of the United States.

2 This amendment states in part that no person
3 shall be compelled in any criminal case to be a witness
4 against himself. This means that you cannot be
5 required to testify in this case. You do have the
6 right to testify, no one can make you testify.

7 This is a personal right, and no one can waive
8 this right expect for you. If you decide to testify,
9 you will be subject to the same rules that govern other
10 witnesses. And you may be examined and cross-examined
11 on any relevant issues.

12 If you have any convictions involving
13 dishonesty, false statements or for crimes punishable
14 by imprisonment for more than one year, and I determine
15 that the probative value of admitting this evidence
16 outweighs its prejudicial effect, the solicitor will be
17 able to introduce your record to attack your
18 credibility.

19 If you decide to testify, this decision must be
20 freely, voluntarily, and intelligently made with the
21 knowledge of the protections given to you by the Fifth
22 Amendment, and the consequences of your decision to
23 testify.

24 If you decide not to testify, I will instruct
25 the jurors that they cannot give the fact that you did

1 not testify any consideration whatsoever. And there is
2 to be absolutely no prejudice to you because you did
3 not testify.

4 It is left entirely up to you whether or not you
5 testify. You may talk with your attorneys, your
6 friends, your family members or anyone else, but the
7 final decision is left entirely up to you.

8 Do you understand what I have explained to you?

9 THE DEFENDANT FISHBURNE: Yes, ma'am.

10 THE DEFENDANT THOMSPON: Yes, ma'am

11 THE COURT: Do you have any questions about what
12 I have explained to you?

13 THE DEFENDANT FISHBURNE: No, ma'am.

14 THE DEFENDANT THOMPSON: No, ma'am.

15 THE COURT: All right. And when we reach the
16 stage of the trial, if it becomes pertinent at that
17 point, I will ask you have you decided to testify, that
18 will be my question to you. You all may have a seat.

19 We will take our lunch break until 1:45. Thank
20 you.

21 MS. CORNWELL: Thank you, Your Honor.

22 (Whereupon, a recess was taken.)

23 THE COURT: Who is your next witness?

24 MS. CORNWELL: Your Honor, Kokinda is the next
25 witness.

1 THE COURT: You can have Mr. Kokinda on the
2 front row.

3 MR. MCCOY: Your Honor, can we take up something
4 in reference to the next witness? I just want to make
5 sure for the record there is no mention by the
6 prosecution of any sort of comparison to AFIS, or
7 anything like that, indicating that my client would
8 have already been in the system of sort.

9 When I always did it, Your Honor, on the other
10 side we could say, what were the results of your
11 fingerprint analysis. And he'd say, the results of my
12 fingerprint analysis from comparing his prints to, you
13 know, whatever I've dusted he'd say, they were either
14 positive or they were negative

15 THE COURT: So what are you asking?

16 MR. MCCOY: I am asking, Your Honor, that there
17 be no mention of getting my client's fingerprints from
18 anything and comparing them to anything in AFIS.

19 THE COURT: Ms. Cornwell?

20 MS. CORNWELL: Your Honor, Mr. Kokinda is Mr.
21 Alfaro's witness. I'm sure Mr. Alfaro knows he is not
22 allowed to ask, and I will make sure he is aware of it.

23 THE COURT: It's 1:45. Where is Mr. Alfaro?

24 MS. CORNWELL: Somebody has gone to get him now,
25 Your Honor. I can call another witness if he is not up

1 here when the jury comes in.

2 MR. MCCOY: I apologize, I didn't know that was
3 Mr. Alfaro's witness.

4 THE COURT: I didn't either. There he is.

5 MR. MCCOY: I think it can be phrased the right
6 way, Your Honor, I don't have an issue with that.

7 THE COURT: Mr. Alfaro, I understand that Mr.
8 Kokinda is your witness; is that correct?

9 MR. ALFARO: Yes, Your Honor.

10 THE COURT: All right. Mr. McCoy has a request,
11 and so he objects to a question in front of the jury.
12 So, Mr. McCoy, briefly.

13 MR. MCCOY: Yes, ma'am. Ron, my only request
14 was when analyzing fingerprints, I didn't know if there
15 was going to be testimony of, hey, we compared these
16 prints in AFIS, or we did this. I just didn't want
17 there to be an indication that my client was already in
18 AFIS.

19 MR. ALFARO: He'll have to testify as to how
20 fingerprints are compared.

21 MR. MCCOY: I think that he can testify to how
22 fingerprints are compared by saying --

23 MR. ALFARO: He didn't run it through AFIS, so.

24 THE COURT: Well that solves it.

25 MR. MCCOY: Okay. Even better. Thank you.

1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: Please be seated.

3 Call your next witness.

4 MR. ALFARO: Thank you, Your Honor.

5 State calls Dean Kokinda.

6 MR. DEAN ROBERT KOKINDA,

7 after having first been duly sworn to state the truth,
8 the whole truth and nothing but the truth, testified on
9 his oath as follows:

10 DIRECT EXAMINATION

11 BY MR. ALFARO:

12 Q Could you please tell the jury where you
13 currently work.

14 A I'm employed with the Berkeley County Sheriff's
15 Office.

16 Q How long have you been with the sheriff's
17 office?

18 A Since 1989.

19 Q What is your current rank, along with your
20 duties at the sheriff's office?

21 A I'm a lieutenant and I'm in charge of the
22 forensic services division at the sheriff's office.

23 Q And of your time at the sheriff's office, how
24 long have you been working in forensics?

25 A Since 1991.

1 Q Can you describe to the jury what your duties
2 and responsibilities are as lieutenant over the
3 forensic division of the sheriff's office?

4 A Run day-to-day operations of the forensic
5 services unit. We process crime scenes and evidence as
6 directed. And I'm a latent print examiner and do
7 testing, fingerprints and drug testing, within the
8 unit.

9 Q So would it be fair to say that the majority of
10 your job involves handling and dealing with evidence?

11 A Yes, sir.

12 Q And I believe as part of your list of your
13 responsibilities you mentioned fingerprints?

14 A Yes, sir.

15 Q Could you tell us what duties you have
16 specifically related to fingerprints, fingerprint
17 analysis?

18 A Okay. I'm a latent print examiner. As the
19 latent print examiner I will take unknown fingerprints
20 and compare them against known standards.

21 Q And what type of training or education, or
22 training and education and experience have you had in
23 that field?

24 A I have had the FBI basic advance latent
25 fingerprint classes. And also a forensic ridgeology

1 class which was taught by Dave Ashbaugh of the Royal
2 Canadian Mounted Police.

3 Q And in your time at the sheriff's office, how
4 many times would you estimate you've handled or
5 analyzed fingerprints for analysis?

6 A Thousands.

7 Q And have you had the opportunity to testify in
8 court as an expert in the field of forensics, and
9 specifically fingerprint, fingerprint analysis?

10 A Several times.

11 Q And I assume that has been in court in South
12 Carolina?

13 A Yes, sir.

14 MR. ALFARO: Your Honor, at this time the State
15 would ask that Lt. Kokinda be qualified as an expert in
16 the field of fingerprint and fingerprints analysis.

17 THE COURT: Any objection?

18 MR. SHELTON: No objection.

19 MR. MCCOY: No objection, Your Honor. Sounds
20 very qualified.

21 THE COURT: Ladies and gentlemen, normally when
22 a person testifies, they must testify as to what they
23 heard or saw or sensed by smell or something of that
24 nature.

25 Typically a person cannot give opinion

1 testimony, but there is an exception when someone is
2 qualified because of their education or experience,
3 they are allowed and permitted to give their opinion in
4 certain areas if the court qualifies them in this way.

5 This witness will be qualified in the area of
6 fingerprint and fingerprint analysis to give opinion
7 testimony in that area. That does not mean that you
8 must accept the opinion. It is testimony for you to
9 use in any way that you see fit.

10 Mr. Alfaro.

11 MR. ALFARO: Thank you, Your Honor.

12 Q (By Mr. Alfaro) Lt. Kokinda, can you please tell
13 the jury how different types of evidence are processed
14 for fingerprints?

15 A Well evidence, you have to determine what type
16 of evidence you have. The surface of the evidence
17 really determines what type of process you are going to
18 use.

19 Most evidence on smooth surfaces is processed
20 with powder. The powder merely adheres to the residue
21 that is left behind from the finger.

22 Porous evidence can be processed with different
23 chemicals such as ninhydrin, which is amino acids and
24 it will turn a purple color; paper, wood, those type of
25 items.

1 You can also use what they call super glue,
2 cyanoacrylate. The fumes from heated super glue will
3 adhere to latent fingerprints that are left behind on
4 different surfaces.

5 Q And in your experience is every item that is
6 touched or handled, are you always able to recover
7 fingerprints from those items?

8 A No. But generally finding a fingerprint I
9 always say it's an accidental thing. Just merely
10 touching an object doesn't necessarily mean that you
11 are going to leave a fingerprint behind. It doesn't
12 necessarily mean you are going to leave an identifiable
13 fingerprint behind.

14 Q So is there a difference between, or can you
15 explain the difference between leaving a fingerprint
16 behind and leaving an identifiable fingerprint behind?

17 A If I touch the object of the witness stand. Now
18 if I touch it and twist it. Merely touching it, I'm
19 going to transfer the ridges very clearly.

20 If I touch it, put pressure on it and twist it,
21 those ridges that are contained within the fingerprint
22 kind of push together and basically you'll have what is
23 called a smudge.

24 Q So as you demonstrated by touching the witness
25 stand, if someone was to come in later on and try to

1 dust that area for fingerprints, would it be a
2 guarantee that they would be able to lift your
3 fingerprint from that surface?

4 A No, there is no guarantee.

5 Q And you mentioned the surface of an object
6 having an influence on whether for instance can be
7 recovered. Are there any other types of factors that
8 -- environmental factors or other things that influence
9 your ability, or a crime scene analyst's ability to
10 lift fingerprints?

11 A Certainly. The person is one factor. Some
12 people secrete oils and water through their pores in
13 their fingerprints more than other. Environmental
14 factors such as heat, humidity. And then the time
15 factor.

16 Q And did you have the opportunity to analyze any
17 fingerprint evidence in this case?

18 A Yes, I did.

19 Q And could you tell the jury what type of
20 evidence, or what you had the opportunity to analyze?

21 A Latent fingerprints cards. There were latent
22 fingerprints that were recovered using powder and put
23 on a backing card.

24 Q Do you know where those fingerprints were
25 recovered from?

1 A I don't have my report in front of me. I
2 usually list that stuff on the report. But it's
3 written on the cards.

4 Q Would it refresh your recollection if you could
5 review your report?

6 A Yes.

7 Q Showing you what has been marked State's Exhibit
8 9 for identification. Take a chance to review that.

9 A That's my fingerprint analysis report.

10 Q And was that report prepared by you?

11 A Yes, sir.

12 Q Okay. And having had the opportunity to review
13 your report, does it refresh your recollection as to
14 what type of evidence fingerprints were lifted from?

15 A Yes, sir. There was nine latent fingerprint
16 cards. They're labeled basically, come from computer.

17 Q And what method of fingerprint lifting was used
18 in those print cards?

19 A These print cards it was powder.

20 Q And can you tell the jury what, if any, your
21 findings were?

22 A Of the nine latent lift cards, eight of the
23 latent lift cards do not have sufficient quality of the
24 ridge detail to even make a comparison.

25 One latent lift card did. It contained three

1 latent lifts. I'm sorry, four latent lifts. Three of
2 which were not identified with the two known standards,
3 and one that didn't contain enough quality or quantity
4 of the ridge detail to make an identification.

5 Q Let me take a step back. Can you explain for
6 the jury what process you go through, or how you go
7 about comparing fingerprints?

8 A Certainly. If you look at your hands, and on
9 your hands and on the bottom of your feet you will see
10 that the skin is different than the rest of the skin on
11 your body. It's called friction skin. And that's your
12 body's way of giving you gripping power.

13 Kind of like treads on a tire. When you try and
14 grab a wet surface with smooth skin, you really can't
15 grip, it tries to slip out. So your body has its
16 friction skin that gives you that gripping power.

17 If you look real close at the ridges within
18 there, you'll notice that they're not smooth, they kind
19 of have a pattern. If you look at it closer, you'll
20 look and see that those ridges aren't continuous. They
21 will end, they will split, they will come together.

22 They also, the ridges will be of different
23 sizes. Some are thicker than others, they're thinner,
24 even along the same ridge.

25 And these three levels of detail, the first

1 level being your ridge flow, which is a pattern. The
2 second level would be the ridge path. You take the
3 individual path of one ridge and see if it splits, if
4 it stops. And then the actual shape of the ridge which
5 would be the third level of detail.

6 And to make an analysis and a comparison, we
7 look at all three levels of detail. The relationship
8 of this detail to the other detail within the standard
9 or the unknown. And then the relationship between
10 these individual identifying characteristics and the
11 known standard.

12 Q And when you say known standard, what does that
13 refer to?

14 A A known standard generally is what they call a
15 standardized, FBI ten-print card. Known standard is
16 the rolled fingerprints of someone that you've
17 identified, and it's in a controlled environment.

18 Q And did you have a known standard in this case
19 from the defendants in this case, Mr. Fishburne and Mr.
20 Thompson?

21 A Yes, sir, I did.

22 Q And were those known standards compared to the
23 latent print cards recovered from the laptop?

24 A Yes, sir.

25 Q And were you able to match any of those lift

1 cards to the defendants in this case?

2 A No, sir.

3 Q And based off what you were testifying about
4 earlier, in your experience, does the fact that the
5 fingerprints of the defendants were not found on the
6 laptop, does that necessarily mean that neither of them
7 every touched that laptop?

8 A No.

9 Q So is it possible that -- for someone to carry,
10 to be seen carrying a laptop and not leave a
11 fingerprint or an identifiable fingerprint?

12 A That's correct.

13 Q And did you have the opportunity to analyze any
14 other evidence, or process any other evidence in this
15 case?

16 A No, sir.

17 Q So your only involvement was with the
18 fingerprints off the laptop computer?

19 A That's correct.

20 MR. ALFARO: Thank you. Please answer any
21 questions the defense has for you.

22 CROSS-EXAMINATION

23 BY MR. SHELTON:

24 Q Lt. Kokinda, what is the date on that report?
25 When did you run the fingerprints and generate your

1 report?

2 A September 7, 2011?

3 A You don't know when the incident occurred?

4 A No, sir.

5 Q For all intents and purposes, your job kind of
6 depends on other detectives or other persons?

7 A As a latent print examiner? Generally.
8 Although I do go out and process crime scenes myself.

9 Q And as a forensic, in the forensic division,
10 it's not like CSI or NCIS where you are going out and
11 solving the crime and talking to witnesses or anything?

12 A No, sir. Not at all like CSI or NCIS.

13 Q You get called out if detectives need your help
14 to process the scene?

15 A Detectives or the patrol division, yes.

16 Q So both can call you out?

17 A That's correct.

18 Q And you weren't called out in this case?

19 A I was not, no.

20 Q You get called out for many number of different
21 types of cases?

22 A I get called out as I am needed, yeah.

23 Q Do you know if anybody in the forensic services
24 division was called out in this case?

25 A In this particular case, I think I remember

1 reading that Sharon Schuler was called out in this
2 case.

3 Q Okay. And she would have done a report?

4 A Yes.

5 Q Okay. Would you have signed off on the -- would
6 you have been her supervisor at that time?

7 A Yes, sir.

8 Q Would you have signed off on anything?

9 A Most probably.

10 Q And you are not aware of -- have you seen any of
11 those reports?

12 A I looked through a lot of reports. I can't
13 recall offhand any specific report.

14 Q Okay. So if there were no reports, then there
15 wasn't -- no forensic person that came out?

16 A Not necessarily.

17 Q Okay. You've processed houses before,
18 apartments?

19 A Yes, sir.

20 Q For fingerprints, for DNA?

21 A Yes, sir.

22 Q Many different items. And it's not hard to do
23 or inconvenient on anybody?

24 I mean it's not easy, I'm not saying that it's
25 easy. But it's something that you routinely do?

1 A Yes.

2 Q And it's not inconvenient to do it?

3 A Well I don't really fully understand the
4 question.

5 Q That's all right. It's something that is
6 routinely done?

7 A Yes.

8 Q And you didn't do anything in this case?

9 A No, sir. Other than the latent fingerprint
10 report.

11 Q And you weren't given anything else that
12 potentially could have had fingerprints on it?

13 A No, sir.

14 Q And you weren't given any other standards to
15 compare the fingerprints that were found?

16 A No, sir.

17 Q Okay. But they did not come back to Mr.
18 Fishburne or Mr. Thompson?

19 A That's correct.

20 Q Thank you.

21 THE COURT: Mr. McCoy.

22 MR. MCCOY: Thank you, Your Honor, may it please
23 the Court.

24 CROSS-EXAMINATION

25 BY MR. MCCOY:

1 Q Lieutenant, I appreciate you being here today
2 and I thank you for your time.

3 Just to kind of get right to the point. Can you
4 tell the jury typically what type of crime scenes a
5 crime scene investigator would respond to?

6 A Really it's whatever the patrol division of the
7 detectives need help with. Can range as serious as
8 homicide, to something as small as a petty larceny.
9 It's just whatever we are asked to do, is what we will
10 do.

11 Q That's right. Whenever you are asked to go out,
12 you go out?

13 A That's correct.

14 Q And who normally makes that request for a crime
15 scene investigator to respond somewhere?

16 A It could be a patrol division supervisor; the
17 sergeant that's on the scene or working that shift; it
18 could be a detective; it could be my supervisor, the
19 captain over the investigations.

20 Q Okay. So it could be somebody with rank; it
21 could be a patrol officer; it could be a detective; or
22 it could be a case agent. Really it could be anybody?

23 A Correct.

24 Q To make that call and say, let's come on out and
25 bring crime scene on out.

1 Can you tell the jury, and inform me, what it
2 means to have a secured crime scene?

3 A Well a secured crime scene is basically that
4 once the officer arrives to the crime scene, anybody
5 that has been in the crime scene is removed from the
6 crime scene. They can either use barrier tape or just
7 close the door and keep anybody from going into where
8 the crime scene is at. It's limiting any access to the
9 crime scene.

10 Q Can you tell the jury why it's important to have
11 secured crime scene?

12 A Well basically everything that we do in
13 forensics is based on the theory of transfer. And what
14 the theory of transfer is is that when you enter an
15 environment you are bringing something from your
16 environment into that environment.

17 And when you leave that environment, you are
18 taking something from the area you were at in that
19 environment with you.

20 So limiting access to the crime scene limits
21 what contamination could possibly be there.

22 Q So if I understand your testimony correct,
23 securing a crime scene is important not only to monitor
24 who comes in and who comes out, but also what items of
25 evidence may come in or may come out?

1 A Yes.

2 Q With the theory of transfer like you just
3 described to me?

4 A Correct.

5 Q When a crime scene is secure, is there a log or
6 is there a book that monitors officers who even come in
7 and out of crime scene?

8 A Generally.

9 Q And are you aware, or do you know any of the
10 facts that involved the particular case that you are
11 here for today?

12 A No, sir.

13 Q Lieutenant, would you say that you respond to a
14 good many burglaries or armed robberies, more serious
15 and violent crimes, you respond to more of those than
16 you would anything else?

17 A I think it just kind of goes across the
18 spectrum.

19 Q Okay. So it really could be any crime?

20 A Correct.

21 Q Lieutenant, can you tell the jury the importance
22 of crime scene investigation work when you compare that
23 to maybe what an eyewitness saw?

24 A Well evidence, physical evidence if you have it,
25 is better than eyewitness testimony. Because

1 eyewitnesses can sometimes if their perception of what
2 they saw may be different from what actually happened.

3 Q And, Lieutenant, narrowing it down a little bit
4 to talking about fingerprints. Can you tell the jury
5 what the difference between a latent and a patent
6 fingerprint is?

7 A Sure. Latent fingerprint is a fingerprint left
8 behind that you cannot see unless you enhance it, like
9 I said with powder or a chemical. A patent fingerprint
10 is one that is visible with the naked eye.

11 Q Okay. And you testified on direct examination
12 that basically there are some surfaces that are more
13 conducive to leaving a fingerprint, be it a latent or a
14 patent fingerprint.

15 A That's correct.

16 Q And tell me again what kind of surfaces those
17 are?

18 A Repeat that question again.

19 Q Can you tell me what kind of surfaces would be
20 more conducive to leaving a fingerprint?

21 A Well smooth surfaces are optimal. Paper is an
22 excellent surface. On paper, the latent fingerprint
23 can last for quite a long time.

24 Q Okay. And obviously paper would be a little bit
25 tougher to see a patent print.

1 A Right, you wouldn't see a patent print. But a
2 latent print that's there generally gets soaked into
3 the paper and it will set.

4 MR. MCCOY: Your Honor, may I approach the
5 witness?

6 THE COURT: You may.

7 MR. MCCOY: Thank you.

8 Q (By Mr. McCoy) Lieutenant, I'm going to show you
9 what has been marked for ID purposes by the State as
10 3-A. This is not in evidence, but photographs of this
11 are in evidence.

12 Can you take a look at that and kind of tell me
13 what that is?

14 A That's a laptop.

15 Q Is this the same laptop that you conducted your
16 fingerprint examination on?

17 A I conducted my examination on latent cards.

18 Q Oh, latent cards. I apologize. And latent
19 cards, just for clarification, would be -- latent cards
20 would be what was maybe taken off this laptop, and then
21 you did your comparison later?

22 A Right. The latent fingerprints that were on an
23 object, and then preserved on a latent card.

24 Q Okay. And in looking at this surface, aside
25 from any of the factors that you have already testified

1 to that can affect fingerprints, describe this surface
2 and how you feel this surface would be to not only a
3 latent, but a patent fingerprint?

4 A Well it's a smooth surface so it's a good
5 surface that can leave residue behind.

6 Q Okay. And obviously you've testified that a lot
7 of factors can play into whether a print is either left
8 and then smudged away, or if a print is left and then
9 just happens to just leave.

10 Like you testified earlier to humidity. You
11 testified earlier to sweat, water, any of those kind of
12 things would affect a fingerprint?

13 A That's correct.

14 Q Okay. And, Lieutenant, is there a -- for better
15 word, the only word I have for it -- is there a time
16 stamp or a life that a fingerprint can stay somewhere?

17 A No, not particularly. Again there are so many
18 different factors. Fingerprints are fairly fragile.
19 And there are so many different factors that affect it
20 that you really can't date it, or you really can't
21 determine how long it's going to last.

22 Q Okay. So there is no real way if you do find a
23 print to say, hey, this print was left by Mr. Jones
24 three days ago. There is no way for you to say that?

25 A That's correct, can't say that.

1 Q Okay. And also there is no way for you to sit
2 here and say that if I left a fingerprint in your
3 house, and I did that two months ago and nobody else
4 touched that area, or no other climate changes or
5 anything like that affected that print, that it could
6 still possibly be there?

7 A Yes, sir.

8 Q Okay. And you've already testified, Lieutenant,
9 that you had some fingerprint cards that were taken off
10 of this laptop and you compared them to two standards?

11 A That's correct.

12 Q And you also testified earlier that the
13 examination that you conducted yielded no match to
14 either defendant one or defendant two in this crime?

15 A Of the identifiable fingerprint.

16 Q Of the identifiable fingerprints. And can you
17 tell the jury how you look and you compare a card to an
18 actual -- to a fingerprint that you might have?

19 Do you do this with any sort of instrument or a
20 computer? Or is this -- what kind of examination do
21 you do?

22 A It's a visual examination. And I use a
23 computer. I scan both the known standard and the
24 latent into a computer and do a side-by-side comparison
25 enlarged.

1 Q How foolproof would you say fingerprints are if
2 you do get a match?

3 A 100 percent.

4 Q Is it true that every person in the entire
5 world, be it you, be it me, are going to leave and have
6 different sort of fingerprints?

7 A Everybody has a different fingerprint, yes, sir.
8 Even identical twins.

9 Q Okay. And even twins have different ones?

10 A Yes, sir. Models I got that are identical twins
11 will have different fingerprints, but they share the
12 same DNA.

13 Q Okay. Lieutenant, in a hypothetical situation
14 where there is a burglary in a house, and there has
15 been testimony where somebody has rummaged through a
16 downstairs area looking for items to steal, and
17 testimony that there was other suspects that have gone
18 upstairs in a house, obviously I don't know what they
19 have touched in a house, but would it be worth your
20 time or worth your expertise in this situation to at
21 least dust or at least examine for fingerprints?

22 A That's generally part of our policy, yes.

23 Q Okay. And again it's worth it because, as
24 you've already testified to, basically eyewitness
25 testimony can sometimes be flawed. And the only way to

1 really link the two together would be through crime
2 scene investigation tools?

3 A Yes, sir.

4 Q Okay. As a crime scene investigator,
5 Lieutenant, do you have the capabilities, or have you
6 been trained at all in the area of DNA?

7 A As far as what area?

8 Q As far as maybe collecting samples that maybe
9 could leave DNA?

10 A Yes, sir.

11 Q Can you tell the jury a little bit about your
12 training in that area?

13 A Basically as part of the crime scene
14 investigation unit you have little small modules of
15 collecting different things, and that's part of DNA.
16 You collect DNA if you were collecting let's say a
17 blood standard. You have dried blood, you have wet
18 blood, and you collect them a little bit differently.

19 Now with the advent of touch DNA, we are doing
20 more touch DNA collection, and that's collected
21 basically the same way as a dried blood sample would be
22 taken.

23 Q okay. And you've gone a little fast for me
24 because this is still kind of new to me as well. But
25 you've touched on something called touch DNA. Can you

1 tell the jury what that is?

2 A Touch DNA is basically DNA analysis using skin
3 cells that are left behind when somebody touches an
4 object.

5 Q Okay. And, Lieutenant, I know this is probably
6 impossible for you to really judge or say, but what --
7 how does somebody leave DNA somewhere?

8 A In different ways. Through body fluid. And
9 again now touch DNA, skin cells are left behind.

10 Q Okay. If I were to come up to you and I were to
11 put you in a choke-hold, which I won't do, and I were
12 to have rubbed up behind you, our clothes touch each
13 other, maybe my hair touches you in some form or
14 fashion, but definitely my hands do, okay, and
15 definitely I touch you in some fashion, is it possible
16 to leave some form of DNA on that person?

17 A It's possible.

18 Q It's possible. And what items would you need to
19 examine to cover your bases to say, hey, this did leave
20 DNA or this didn't leave DNA, if I were to do that
21 stranglehold to you?

22 A Well there is no presumptive test to test to see
23 if there is any touch DNA behind.

24 Q Okay. Well would it be helpful to you if you
25 were to have maybe my clothes, or maybe the clothes

1 that you were wearing to examine to see if a hair had
2 fallen off, or maybe even a piece of blood had fallen
3 off if somebody had been struck?

4 A Generally that stuff is visually examined at the
5 scene.

6 Q Okay. But would it be helpful to you in
7 analyzing, or actually ruling out DNA to actually have
8 those items with you?

9 A Generally that stuff is done at the scene.

10 Q Okay. Lieutenant, in this particular case you
11 testified that you compared prints basically on a
12 computer from samples that you had?

13 A Using the computer to magnify, yes.

14 Q Yes, sir. And you found no results on that.
15 Did you actually do, or did you have any sort of crime
16 scene investigation involving the house in this case?

17 A No, sir, I did not.

18 Q Okay. And did you or your office have any
19 examination of a car in this case?

20 A I'm not personally aware of that.

21 Q Okay. But as a supervisor officer in this
22 office, you would be made aware of that?

23 A Maybe at some point. I don't recall at this
24 time whether or not. We generally process a lot of
25 crime scenes?

1 Q Okay. As a supervisor you already testified you
2 would sign off on these normally.

3 A Yes, generally.

4 MR. MCCOY: Your Honor, may I have one moment?

5 THE COURT: You may.

6 Q (By Mr. McCoy) Lieutenant, I only have a couple
7 more questions for you. I appreciate you bearing with
8 me, sorry about the delay.

9 In comparing fingerprints, do you need to have
10 an entire fingerprint, or can you have what is called a
11 partial print?

12 A The known standards are entire fingerprint.
13 Latents can be partial.

14 Q Latents can be partial?

15 A Yes.

16 Q What does a partial print mean?

17 A Well basically a partial print is instead of
18 having a full rolled print, you might have a side or a
19 tip, or the bottom.

20 Q Were you, or did you run the prints that you
21 pulled off this computer through the standards that you
22 have through any sort of computer to have any other
23 sort of matches at all?

24 A I just did a comparison of the latent
25 fingerprints to the two known standards.

1 Q Okay. Lieutenant, I appreciate your time, and
2 thank you for answering my questions.

3 MR. ALFARO: No more questions.

4 THE COURT: Is this witness excused?

5 MR. ALFARO: That would be the State's request.

6 MR. SHELTON: No objection.

7 MR. MCCOY: No objection, Your Honor.

8 THE COURT: You may step down.

9 Call your next witness.

10 MS. CORNWELL: Thank you, Your Honor.

11 The State calls Paulino Silva.

12 MS. PAULINO SILVA,

13 after having first been duly sworn to state the truth,
14 the whole truth and nothing but the truth, testified on
15 her oath as follows:

16 MS. CORNWELL: May we approach?

17 THE COURT: You may.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: Ladies and gentlemen, there is a
21 matter of law I must take up outside your presence. Do
22 not begin your deliberations. Do not discuss this case
23 among yourselves. Please rise for the jury.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Thank you, be seated. This doesn't

1 have to be so difficult. I'm trying to minimize the
2 need to remove the jury. We knew this was coming up
3 again. Please point these things out to me before we
4 have to bring the jury in and out.

5 Get the next witness so that I can go ahead and
6 advice that witness. Who is the other witness, Ms.
7 Cornwell?

8 MS. CORNWELL: Lucineia Rodriguez.

9 THE COURT: Do you have any witnesses that I
10 need to address?

11 MR. MCCOY: Nobody else, Your Honor.

12 THE COURT: Thank you.

13 Any other potential witnesses, Ms. Cornwell?

14 MS. CORNWELL: No, Your Honor.

15 THE COURT: Please come forward.

16 Mr. Rock, I'm going to ask you just to interpret
17 for both. I'm just going to ask the same Fifth
18 Amendment questions to both. All right.

19 I will need to swear in this witness. It's Ms.
20 Rodriguez?

21 MS. CORNWELL: Yes, Your Honor.

22 MS. LUCINEIA CARMO RODRIGUEZ,
23 after having first been duly sworn to state the truth,
24 the whole truth and nothing but the truth, testified on
25 her oath as follows:

1 THE COURT: All right. Ms. Rodriguez, I just
2 have a few questions to ask you. Stand close to the
3 microphone.

4 I understand that you may be asked questions
5 concerning your immigration status.

6 Do you understand that, Ms. Rodriguez?

7 THE WITNESS: I don't understand.

8 THE COURT: Ms. Rodriguez, what don't you
9 understand?

10 THE WITNESS: There is not for me to speak to
11 before.

12 THE INTERPRETER: Can I explain to Senora
13 Rodriguez the interpreting procedure?

14 THE COURT: You are going to explain to her how
15 the procedure, how you are interpreting only, correct?

16 THE INTERPRETER: Yes, Your Honor.

17 THE COURT: You may.

18 Ms. Rodriguez, do you understand my question?

19 THE WITNESS: Yes.

20 THE COURT: Ms. Olivera, the same question to
21 you. Do you understand that you may be asked about
22 your immigration status?

23 THE WITNESS: Yes.

24 THE COURT: Do you understand that you both have
25 protections under the constitution of the United