

RECEIVED

Nov 03 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County
Honorable Diane S. Goodstein, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

JAMAQUES SALLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001320

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

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

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME I OF II

PAGES 1-500

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 8, 12-13, 2013	1
INDICTMENTS	244
SENTENCE SHEETS	248
FIRST <i>PRO SE</i> APPLICATION FOR POST-CONVICTION RELIEF FILED AUGUST 14, 2014	250
RETURN FILED JANUARY 16, 2015.....	257
AMENDED APPLICATION FOR PCR FILED MAY 16, 2016	262
UNAPPEALED POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 24-25, 2017	267
UNAPPEALED POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 14, 2017	426
STATE’S MOTION TO ADMIT CODEFENDANT’S PLEA TRANSCRIPT INTO EVIDENCE FILED MAY 7, 2019	511
PLEA TRANSCRIPT OF CARLOS D. WILLIAMS DATED AUGUST 13, 2013	515
RETURN TO STATE’S MOTION TO ADMIT TRANSCRIPT (UNFILED).....	529
REPLY TO RETURN TO STATE’S MOTION TO ADMIT CODEFENDANT’S PLEA TRANSCRIPT INTO EVIDENCE FILED JULY 8, 2019	530
NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF SENTENCE OF CARLOS D. WILLIAMS FILED AUGUST 15, 2013	534
LETTER FROM CARLOS D. WILLIAMS TO AIKEN COUNTY CLERK OF COURT FILED FEBRUARY 3, 2014.....	536
LETTER FROM AIKEN COUNTY CLERK OF COURT TO CARLOS D. WILLIAMS WITH PCR APPLICATION DATED FEBRUARY 3, 2014	537
EVIDENTIARY HEARING TRANSCRIPT DATED OCTOBER 6, 2021	538

ORDER OF DISMISSAL FROM FIRST <i>PRO SE</i> APPLICATION FOR PCR FILED DECEMBER 27, 2021.....	592
CURRENT <i>PRO SE</i> PCR APPLICATION FILED AUGUST 7, 2023	634
RETURN FILED MARCH 22, 2024.....	642
SECOND POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 16, 2024	649
CONSENT ORDER GRANTING <i>AUSTIN</i> APPEAL	667

1 State of South Carolina)

In the Court
Of General Sessions

2 County of Aiken)

3 Indictment No.: 2013-GS-02-00757
4 2013-GS-02-00758

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Jamaques D. Salley,)
Defendant.)

11
12 August 8, 12-13, 2013
Aiken, South Carolina

13
14
15 B E F O R E:

16 The Honorable Doyet A. Early III, Judge and a jury.

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

19 Kevin Malony, Assistant Solicitor
Nicholas R. McCarley, Assistant Solicitor
20 Attorneys for the State

21 Thomas D. Broadwater, Esquire
Attorney for the Defendant

22
23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

I N D E X

Page

THURSDAY, AUGUST 8, 2013

Pretrial Hearing.....	8

MONDAY, AUGUST 12, 2013

Jury Voir Dire.....	17

Jury Selection.....	26

Pretrial Motions.....	36

Opening Remarks by the Court.....	40

Opening Statements

By Mr. Malony.....	45

By Mr. Broadwater.....	49

Penny Guerrieri

Direct Examination by Mr. Malony.....	52

Cross-Examination by Mr. Broadwater.....	65

Redirect Examination by Mr. Malony.....	65

Wayne Brinegar

Direct Examination by Mr. McCarley.....	66

Cross-Examination by Mr. Broadwater.....	71

Redirect Examination by Mr. McCarley.....	72

Sheila Fulmer

Direct Examination by Mr. Malony.....	73

Cross-Examination by Mr. Broadwater.....	78

Redirect Examination by Mr. Malony.....	79

///

I N D E XPage

Kathy Holsenback

Direct Examination by Mr. McCarley..... 80

Cross-Examination by Mr. Broadwater..... 84

Carlos Williams

Direct Examination by Mr. Malony..... 89

Cross-Examination by Mr. Broadwater..... 122

Redirect Examination by Mr. Malony..... 128

Virginia Jackson

Direct Examination by Mr. McCarley..... 131

Cross-Examination by Mr. Broadwater..... 141

Jeremy Hembree

Direct Examination by Mr. Malony..... 143

Cross-Examination by Mr. Broadwater..... 156

TUESDAY, AUGUST 13, 2013

Mid-Trial Motions..... 164

Bill Barley

Direct Examination - In Camera by Mr. Broadwater. 175

Bill Barley

Direct Examination by Mr. Broadwater..... 179

Jamaques Salley

Direct Examination by Mr. Broadwater..... 183

Cross-Examination by Mr. Malony..... 194

///

I N D E X

	<u>Page</u>
Penny Guerrieri	
Direct Examination by Mr. Broadwater.....	199
Cross-Examination by Mr. Malony.....	201
David Savage	
Direct Examination by Mr. Broadwater.....	202
Cross-Examination by Mr. Malony.....	206
Questioning of Mr. Barry Thompson	
By the Court.....	210
Closing Arguments	
By Mr. Broadwater.....	214
By Mr. Malony.....	217
Jury Charge.....	227
Verdict.....	238
Sentence.....	240
Certificate of Reporter.....	243
Keyword Index.....	244

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>PAGE</u>
S-1	Photographs.....	56	57
S-2	Photograph.....	56	57
S-3	DVD.....	58	59
S-4	Photograph.....	62	63
S-5	Photograph.....	62	63
S-6	Photograph.....	62	63
S-7	Photograph.....	62	63
S-8	Photograph.....	62	63
S-9	DVD.....	62	63
S-10	Photograph.....	64	64
S-11	Photograph.....	64	64
S-12	Photograph.....	76	76
S-13	Not Entered		
S-14	Not Entered		
S-15	DVD.....	82	83
S-16	DVD.....		93
S-17	Photograph.....	93	95
S-18	Photograph.....	93	95
S-19	Photograph.....	93	95
S-20	Photograph.....	93	95
S-21	Photograph.....	93	95
S-22	Photograph.....	93	95
S-23	Cell Phone - Williams.....	116	117

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>PAGE</u>
1				
2	S-24	Photograph.....	99	100
3	S-25	DVD.....	102	103
4	S-26	Bookbag Tag.....		115
5	S-27	Text Messages - Williams.....		118
6	S-28	Hoodie - Williams.....		104
7	S-29	Photograph.....	107	108
8	S-30	Photograph.....	107	108
9	S-31	Photograph.....	107	108
10	S-32	Not Entered		
11	S-33	Photograph.....		115
12	S-34	Photograph.....		115
13	S-35	Photograph.....		115
14	S-36	Photograph.....		115
15	S-37	Photograph.....		115
16	S-38	Photograph.....		115
17	S-39	Photograph.....		115
18	S-40	Photograph.....		115
19	S-41	Photograph.....		115
20	S-42	Photograph.....		115
21	S-43	Copy of Receipt.....		140
22	S-44	Credit Card.....		149
23	S-45	Cell Phone - Salley.....		147
24	S-46	Text Messages - Salley.....		152
25	S-47	Photograph.....	107	108

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>PAGE</u>
1				
2	S-48	DVD.....		130
3	S-49	Photograph.....		130
4				
5	D-1	Photograph.....	177	180
6	D-2	Photograph.....	177	181
7	D-3	Photograph.....	177	181
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THURSDAY, AUGUST 8, 2013

2 **PRETRIAL HEARING**

3 THE COURT: Good morning everyone.

4 All right. As I understand it, we have, obviously
5 we have criminal court starting on Monday at ten o'clock.
6 I called a pre-trial conference this morning to discuss the
7 approaching cases on the trial roster and also
8 administrative issues that come up that I need to get
9 clarification on and make sure that we set some rules that
10 are to be followed.

11 The first case for Monday is what Mr. Solicitor?
12 Mr. Malony?

13 MR. MALONY: Your Honor, the first case we plan on
14 calling is Jamaques Salley; it's armed robbery, kidnapping
15 case. For the record, Your Honor, this case was called for
16 trial and we picked the jury on May 20th of this year. At
17 that time Mr. Barry Thompson represented the defendant. On
18 May 21st we were about to begin opening statements when Mr.
19 Broadwater came in and said that he had been retained to
20 represent the defendant. Your Honor set a date certain
21 trial for next week and --

22 THE COURT: Well, more transpired than just setting
23 the date. That's the case where we had the jury drawn on
24 Monday, scheduled to start the trial on Tuesday because of
25 pre-trial matters. Mr. Salley was represented by the

1 public defender, Mr. Barry Thompson. Tuesday at 9:30, ten
2 o'clock, when the jury came in or was coming in shortly
3 before that or close to that, I was informed by Mr.
4 Broadwater that he had been retained either that evening or
5 that morning or whatever; and of course, quite frankly,
6 that was troubling to me because it appeared that it was a
7 means to get the case continued.

8 I discussed in full with Mr. Broadwater on the
9 record that morning is it prepared to go. He assured me
10 that he was and that he had reviewed the entire file and
11 had had an opportunity to talk to his client. He assured
12 me he was prepared to go forward.

13 We had the opening statements. If I recall, his
14 opening statement was very brief, 45 seconds, if I
15 remember. Of course, the transcript will verify that.
16 After the first witness was called -- after you completed
17 your direct examination and I listened to the
18 cross-examination, what was supposed to be the
19 cross-examination, I called all the lawyers in chambers,
20 including Mr. Broadwater, and it was apparent to me that he
21 was not in a position to move forward with the trial
22 because quite frankly, I didn't think he was prepared nor
23 was he familiar enough with the facts to effectively
24 represent Mr. Salley.

25 We had a discussion in chambers then I came back

1 out on the record and if I recall correctly, I declared a
2 mistrial with the understanding that no one would claim any
3 double jeopardy. And I set this case for trial next week
4 at that time. Is that it?

5 MR. MALONY: That's correct, Your Honor.

6 THE COURT: All right. Now, Mr. Broadwater?

7 MR. BROADWATER: Yes, Your Honor?

8 THE COURT: As to Jamaques Salley, are you ready to
9 proceed Monday?

10 MR. BROADWATER: Your Honor, there seem to be a
11 couple of problems.

12 THE COURT: What's the problem?

13 MR. BROADWATER: One has to do with the videos.
14 When I put the videos in my computer to view them with my
15 client, there's a thing that comes up that says I have no
16 permission to open it.

17 THE COURT: When did you first do that?

18 MR. BROADWATER: And -- I did it a couple of weeks
19 ago.

20 THE COURT: Who have you notified about that?

21 MR. BROADWATER: I called the solicitor's office.

22 THE COURT: Who did you talk to?

23 MR. BROADWATER: Mr. Miller.

24 THE COURT: And?

25 MR. BROADWATER: He told me what videos I should

1 look at. And I did finally get one open and I put it in a
2 photograph expert because -- it appears to be a question of
3 the photographic images in the Roses Department Store and
4 if we can enhance those images, we may be without a trial
5 altogether because my client says it's not his picture
6 and -- and the improvement that I have seen as of
7 yesterday, it does not appear to be him.

8 THE COURT: Now, Mr. Broadwater, you've had since
9 May 21, knowing that this case was set for trial on Monday,
10 August the 12th and --

11 MR. BROADWATER: There's a good chance that the
12 person I have in Columbia working on the image improvement
13 will have it ready tomorrow. And so if that be the case,
14 we don't have a problem being ready.

15 THE COURT: Well, I'm warning you right now, you've
16 had ample time to prepare and have it reviewed, do it and
17 get anybody that you wanted to and look it. You've had
18 since May. You had the entire month of June, July, and
19 first week of August. So I will not continue this case.

20 MR. BROADWATER: All right.

21 THE COURT: What other problems do you have?

22 MR. BROADWATER: That's it.

23 THE COURT: All right. Other than that, are you
24 prepared to move forward with your case?

25 MR. BROADWATER: Yeah, we are.

1 THE COURT: Have you had ample opportunity to meet
2 with your client?

3 MR. BROADWATER: I think so.

4 THE COURT: How many times have you met with him?

5 MR. BROADWATER: No less than ten.

6 THE COURT: And you've had ample opportunity to
7 research the file and research the law and investigate the
8 facts?

9 MR. BROADWATER: I think so. You can never be
10 sure.

11 THE COURT: I understand that. But you're in a
12 position now to move forward?

13 MR. BROADWATER: Yes, I think so, yes.

14 THE COURT: Well, we will be selecting the jury
15 Monday morning and moving forward with the case immediately
16 after selection of the jury.

17 Anything else by -- Mr. Broadwater, you need to
18 bring to my attention?

19 MR. BROADWATER: I think not.

20 THE COURT: Mr. Salley, any complaints you want to
21 make or any observations, not about trial, but being ready
22 to go on Monday?

23 THE DEFENDANT: No, sir.

24 THE COURT: You satisfied with Mr. Broadwater?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You ready to go?

2 THE DEFENDANT: Yes.

3 THE COURT: Anything I can do for you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Malony, anything else?

6 MR. MALONY: Your Honor, just for scheduling
7 purposes, any pre-trial matters that we may need to take up
8 Monday --

9 THE COURT: Mr. Broadwater, have you filed any
10 pre-trial motions?

11 MR. BROADWATER: No.

12 THE COURT: Do you anticipate filing any?

13 MR. BROADWATER: Not yet.

14 THE COURT: Well, today's Thursday; the trial is
15 Monday.

16 MR. BROADWATER: I understand. There are two
17 people, two experts I'm going to talk to this afternoon and
18 I'll know after then what I need to do. I'll notify the
19 solicitor.

20 THE COURT: Well, I understand that. What time is
21 the jury coming in?

22 MR. MALONY: 9:30; we need to be ready at 10
23 Monday.

24 THE COURT: All right. If there are any pre-trial
25 motions, they have to be filed, obviously, immediately,

1 after you talk to your experts today. But I will hear all
2 pre-trial motions starting at nine o'clock Monday
3 morning --

4 MR. BROADWATER: Thank you, Your Honor.

5 THE COURT: -- while the jury is assembling in the
6 Jury Assembly Room. So if you have any pre-trial motions
7 they have to be in writing, filed with the Court, copy to
8 the solicitor, copy to me, P.O. Box 90 or at my e-mail
9 address that you have.

10 MR. BROADWATER: I have it. Thank you.

11 THE COURT: Thank you.

12 MR. MALONY: You might see if, Barry Thompson was
13 sitting with Mr. Broadwater at the last trial, I believe.
14 Just request that -- to make sure he's not sitting in this
15 go around.

16 THE COURT: Well, in the last trial, I asked Mr.
17 Thompson to sit there because obviously Mr. Broadwater had
18 been retained very late in the game. But now we've had a
19 couple of months to go, so I'm completely relieving the
20 public defender's office and specifically Mr. Thompson with
21 any obligation in the trial of this case.

22 You understand that, Mr. Salley?

23 THE DEFENDANT: Yes.

24 THE COURT: Anything else? Mr. Broadwater?

25 MR. BROADWATER: No.

1 THE COURT: Mr. Salley?

2 THE DEFENDANT: No, sir.

3 THE COURT: I'll see you Monday morning.

4 MR. MILLER: Your Honor, I need to add something
5 for clarification in response to something Mr. Broadwater
6 said. Mr. Broadwater talked to me about having a problem
7 with the videos. Those videos are not in this case. He
8 was speaking to me about the videos involving another
9 client of his named Clarence Green, who has nothing to do
10 with this case whatsoever. I gave him the information as
11 to which ones of those videos had the actual robberies
12 occurring on them, but that's a bank robbery case.

13 There's no Roses video involving Clarence Green and
14 Clarence Green has nothing to do with Jamaques Salley's
15 case. He did speak to me yesterday. He did ask me the
16 question because he had had some problems getting the
17 videos open, but they don't relate in any way, shape or
18 form to this case.

19 MR. BROADWATER: He's right.

20 THE COURT: Why didn't you tell me that?

21 MR. BROADWATER: I was -- I was confused you about
22 the -- the fact that when I tried to open the -- the video
23 tape, I mean the videos in the Green case and Salley's
24 case, in both instances I get that notation, I had no
25 permission to open it.

1 THE COURT: But you're ready to go in Salley?
2 You've got the video -- and I think they were, if I
3 remember from the other co-defendant, the video buying a
4 bag or buying something at --

5 MR. BROADWATER: Yeah, a bag.

6 THE COURT: -- a shopping center. A shopping --

7 MR. BROADWATER: A backpack.

8 THE COURT: A backpack?

9 MR. MALONY: Yes, sir, Your Honor.

10 THE COURT: How many videos were there?

11 MR. MALONY: There's a video from the Roses the
12 date of the incident; there's a video from a Walmart a
13 couple of days prior to the --

14 THE COURT: What was allegedly bought at the
15 Walmart?

16 MR. MALONY: Two BB guns.

17 THE COURT: So you've got both of those videos, Mr.
18 Broadwater?

19 MR. BROADWATER: Yes, I have.

20 THE COURT: And you've had an opportunity to give
21 them to your expert; is that correct?

22 MR. BROADWATER: They're in his hands now, Your
23 Honor.

24 THE COURT: They're in his hands now. All right.
25 If -- if those experts come up with something that they

1 need more time, I'm warning you, I will not continue the
2 case. And have those guys here Monday morning to tell me
3 what they need to do to be ready.

4 MR. BROADWATER: I'll do it, Your Honor. Thank
5 you.

6 THE COURT: Thank you. All right.

7 (WHEREUPON this case was in recess until the
8 following Monday Morning.)

9 MONDAY, AUGUST 12, 2013

10 THE COURT: All right. Solicitor, call your case.

11 MR. MALONY: State versus Jamaques Deandre Salley,
12 Indictment No. Is 2013-GS-02-0758, True-Bill Indictment for
13 Kidnapping; 2013-GS-02-0757, True-Bill Indictment for Armed
14 Robbery.

15 THE COURT: Thank you. Bring the defendant out
16 please.

17 **JURY VOIR DIRE**

18 THE COURT: All right. Ladies and gentlemen, the
19 State has called its first case for trial. It's the case
20 of the The State of South Carolina versus Jamaques Salley.
21 It's two indictments, an indictment for armed robbery and
22 one is an indictment for kidnapping. Mr. Salley has pled
23 not guilty to both of these charges. Under the
24 Constitution of the United States and our state, a person
25 who pleads not guilty is presumed to be innocent unless the

1 State of South Carolina through the solicitor's office is
2 able to prove his guilt to you beyond a reasonable doubt.
3 And I will explain to you what beyond a reasonable doubt
4 and the elements of the various offenses as we get into the
5 trial of the case.

6 The fact that he has been indicted or arrested and
7 charged, that is not evidence in the case. It's simply a
8 formal document by way this case comes to trial and to the
9 Court. It is simply allegations contained in the
10 indictment and as I said, the State has the burden of
11 proving these elements to you beyond a reasonable doubt.

12 I must ask you a couple of questions in order to
13 qualify the jury. Please listen to them. Once again, if
14 any of them apply to you, please stand, identify yourself
15 and we will deal with the question. The first question is
16 this: Do I have anybody on the jury panel who is related
17 by blood or marriage or do you now or have you the past had
18 a close personal or social relationship with the defendant,
19 Jamaques Salley?

20 Mr. Salley, would you stand and face the jury panel
21 please. Thank you, you may be seated.

22 The alleged victim in the case is Penny Guerrieri,
23 help me with this Ms. Guerrieri?

24 THE VICTIM: Guerrieri.

25 THE COURT: Would you please stand and pronounce

1 your name once again?

2 THE VICTIM: Guerrieri.

3 THE COURT: I don't know why I have trouble with
4 that. Guerrieri.

5 Is anybody on the jury panel related by blood or
6 marriage, now or in the past, or do you now or have you in
7 the past had a personal or social relationship with this
8 witness? If so, please stand.

9 The other witnesses involved in the case are as
10 follows: Wayne Brinegar; is he in the courtroom?

11 Sheila Fulmer, Kathy Holsenback, Carlos Williams,
12 Virginia Jackson, Deputy Jeremy Hembree, Lieutenant David
13 Savage, with the Aiken Department of Public Safety; and
14 Bill Barley, B-A-R-L-E-Y.

15 Anybody on the jury panel related by blood or
16 marriage, now or in the past, or do you now or have you in
17 the past had a close, personal or social relationship with
18 any of these potential witnesses? If so, please stand.

19 THE COURT: Yes, sir, your name?

20 THE JUROR: Marty Silvers, Juror No. 163, Your
21 Honor. I've known Jeremy since he was a young kid.

22 THE COURT: You know who?

23 THE JUROR: Jeremy Hembree since he was a young
24 kid.

25 THE COURT: Since he was a young kid?

1 THE JUROR: Yes, sir.

2 THE COURT: It's not unusual to know a potential
3 witness -- a potential witness in the trial of a case. The
4 fact that you know or have known Mr. Hembree since he was
5 younger than he is now, would that in any way preclude or
6 keep you from being a fair and impartial juror and being
7 able to try this case solely on what you hear in the
8 courtroom and render a decision?

9 THE JUROR: No, sir.

10 THE COURT: Thank you. You may be seated.

11 MR. MALONY: What was that number, Your Honor?

12 THE COURT: Number please?

13 THE JUROR: 163.

14 THE COURT: Thank you.

15 MR. MALONY: Your Honor, there's also a Timothy
16 Davis.

17 THE COURT: Where?

18 MR. MALONY: On the defendant's witness list, Your
19 Honor, No. 1.

20 THE COURT: I'm sorry. Also Timothy Davis is a
21 potential witness; I missed that.

22 Is he in the courtroom?

23 Any of you related by blood or marriage or have a
24 close personal or social relationship with Timothy Davis?

25 (WHEREUPON no one stood.)

1 THE COURT: Ladies and gentlemen, the State of
2 South Carolina -- the case will be prosecuted by
3 Solicitors, Nicholas McCarley and Kevin Malony. Thank you,
4 you may be seated. The defendant is being defended by
5 Thomas D. Broadwater, Sr. of the Aiken Bar. Thank you.

6 First question. Any member of the jury panel now,
7 or in the past, had legal services provided by any of the
8 lawyers? If so, please stand.

9 (WHEREUPON no one stood.)

10 THE QUESTION: Second question. Any member of the
11 jury panel related by blood or marriage, now or in the
12 past, or do you now or have you in the past had a close
13 personal or social relationship with any of the lawyers?
14 If so, please stand.

15 (WHEREUPON no one stood.)

16 THE COURT: Ladies and gentlemen, this -- these
17 facts or the substance of these indictments, allege, simply
18 allegations, they have to prove this to you beyond a
19 reasonable doubt, but it's alleged that here in Aiken
20 County on February 19 of this year, 2013, that Ms. Penny
21 Guerrieri, try it again, she was working at the Quick Cash
22 and that's located downtown in Aiken; is it not?

23 MR. MALONY: Yes, sir, Your Honor.

24 THE COURT: On Richland Avenue, she was a clerk
25 there, employed there, and it's alleged that on the morning

1 of February 19, 2013, that this defendant participated in a
2 armed robbery where it is alleged that while armed with a
3 weapon, or what appeared to be a weapon, took monies from
4 her while she was working there and on that same day, they
5 unlawfully held her allegedly against her will constituting
6 the crime of kidnapping. This case is about an alleged
7 armed robbery and kidnapping that took place on February
8 19, 2013 at Quick Cash here in Richland -- on Richland
9 Avenue here in Aiken.

10 Question, anybody know anything about this case?
11 Have you read anything in the newspaper? Heard anything on
12 the radio or TV or saw it on TV, seen anything on the
13 internet about it, know anything at all about it; please
14 stand.

15 (WHEREUPON a juror stood.)

16 THE COURT: Yes, sir. Your name?

17 THE JUROR: Juror 169, Sherod Sockwell, I'm just --
18 I just remember it being on TV, yes.

19 THE COURT: All right. Obviously we all, most of
20 us read the news or listen to the news or watch TV and hear
21 and see news. The fact that you saw it when it was
22 reported, would that in any way, sir, keep you from being
23 fair and impartial in being able to serve as a juror in
24 this case?

25 THE JUROR: No, sir.

1 THE COURT: Thank you.

2 THE CLERK: Judge Dennis is here.

3 THE COURT: Tell him to -- just step right there
4 and just let me know when he's out there.

5 Ladies and gentlemen, as the trial judge, my main
6 responsibility is to make sure that anyone who is accused
7 of a crime receives a fair trial. And in the trial of a
8 case, we have two judges. I'm the judge of the law; my
9 position makes me the judge of the law. I tell you and
10 instruct you what the law is and I rule on the
11 admissibility of evidence. The other judge in the case is
12 the judge of the facts and that's twelve jurors electively
13 acting as one. You determine what the true facts are.
14 Oftentimes in trials you will hear one witness say one
15 thing, another witness say another thing, another witness
16 say a third thing. You are required to listen to all that
17 and determine what the true facts are, apply those true
18 facts to the law as I instruct you and then you'll be in a
19 position to render a verdict.

20 Now, my question is this: Do I have any member of
21 my jury panel who is unable to perform that civic duty of
22 listening to testimony, determining what the true facts --
23 who's telling the truth -- and apply it to the law? If you
24 have any personal beliefs against that, religious beliefs,
25 political beliefs, any kind of beliefs, I need to know now,

1 please let me know.

2 Ladies and gentlemen, this is Judge Dennis from
3 Moncks Corner; one of the best judges we have in the State
4 and a good friend of mine.

5 (WHEREUPON there was a pause in the proceedings
6 while Judge Early and Judge Dennis had a discussion.)

7 JUDGE DENNIS: And you'll lie; he'll lie to you.

8 THE COURT: You have to determine who's telling the
9 truth me or Judge Dennis. Judge Dennis and I went to
10 college together.

11 So do I have anybody that can't do it; I need to
12 know now because our judicial system, I think, is the best
13 in the world. When someone is accused of a crime and they
14 plead not guilty to it, they're able to come into a
15 courtroom and get twelve citizens from the community to
16 listen to the testimony and decide what's the truth. It's
17 not done by some dictator or some elite guard or some other
18 type of situation. We let our citizens determine what the
19 true facts are. So I need to know now can anybody not
20 perform that task.

21 Anybody know of any reason whatsoever why he or she
22 should not serve as a juror in this case, particular
23 emphasis being placed on your ability to be fair to the
24 defendant and to the State of South Carolina? If so,
25 please stand.

1 (WHEREUPON no one stood.)

2 THE COURT: Any additional questions by the State?

3 MR. MALONY: Nothing from the State, Your Honor.

4 THE COURT: By Mr. Broadwater?

5 MR. BROADWATER: No, Your Honor.

6 THE COURT: Thank you.

7 All right. The way we strike a jury in criminal
8 court is this -- Madam Clerk is now, through a computer
9 program, will manually put your name in the computer or put
10 them in the computer and it will randomly print it out and
11 if your name is called, please come forward and stand right
12 here between the two tables with the lawyers and turn
13 around and face them. The State has five strikes; the
14 defendant has ten. They can strike you for most any reason
15 or no reason at all, in certain limits and certain bounds
16 that the lawyers know about. So don't get your feelings
17 hurt if you're struck.

18 We'll go through that exercise until I get twelve
19 jurors and two alternates. So if your name is called,
20 please come right up here. If you've got a pocketbook or
21 some other personal items, bring it with you so if you're
22 selected you don't have to go back and get them. Okay.

23 (WHEREUPON there was a pause while the jury strike
24 list was printed.)

25 ///

JURY SELECTION

THE CLERK: Juror No. 67, Charles Gleaton. Please come forward to the bench, turn and face the rear.

(WHEREUPON a white male approached.)

THE CLERK: What say ye for the State?

MR. MALONY: Please present this juror.

THE CLERK: What say ye for defense?

MR. BROADWATER: Like this juror be excused.

THE CLERK: Return to your seat please, sir.

Juror No. 11, Robert Bishop.

(WHEREUPON a white male approached.)

THE CLERK: What say ye for the State?

MR. MALONY: Please present Mr. Bishop.

THE CLERK: What say ye for the defense?

MR. BROADWATER: The defendant will excuse.

THE CLERK: Return to your seat, please, sir.

Juror No. 130, Alison O'Banion.

(WHEREUPON a white female approached.)

THE CLERK: What say ye for the State?

MR. MALONY: What number?

THE CLERK: 130. What say ye for the State?

MR. MALONY: Please present Ms. O'Banion.

THE CLERK: What say ye for defense?

MR. BROADWATER: Seat Ms. O'Banion.

THE CLERK: Have a seat in the jury box to your

1 left, please, ma'am.

2 Juror No. 33, Henry Cato.

3 (WHEREUPON a white male approached.)

4 THE CLERK: What say ye for the State?

5 MR. MALONY: Please present Mr. Cato.

6 THE CLERK: What say ye for defense?

7 MR. BROADWATER: Defense would excuse Mr. Cato.

8 THE CLERK: Return to your seat, please, sir.

9 Juror No. 144, Ryan Ratcliff.

10 (WHEREUPON a white male approached.)

11 THE CLERK: What say ye for the State?

12 MR. MALONY: Please present Mr. Ratcliff.

13 THE CLERK: What say ye for defense?

14 MR. BROADWATER: Swear Mr. Ratcliff.

15 THE CLERK: Have a seat in the jury box to your

16 left, please, sir.

17 Juror No. 73, Robert Grigsby.

18 (WHEREUPON a white male approached.)

19 THE CLERK: What say ye for the State?

20 MR. MALONY: Please present Mr. Grigsby.

21 THE CLERK: What say yet for defense?

22 MR. BROADWATER: Excuse Mr. Grigsby.

23 THE CLERK: Return to your seat please, sir.

24 Juror No. 18, Julyes Bradley.

25 (WHEREUPON a white male approached.)

1 THE CLERK: What say ye for the State?

2 MR. MALONY: Please excuse this juror.

3 THE CLERK: Return to your seat, please, sir.

4 Juror No. 117, Leslie McGee.

5 (WHEREUPON a white female approached.)

6 THE CLERK: What say ye for the State?

7 MR. MALONY: Please present Ms. McGee.

8 THE CLERK: What say ye for defense.

9 MR. BROADWATER: Swear Ms. McGee.

10 THE CLERK: Have a seat in the jury box to your
11 left, please, ma'am.

12 Juror No. 32, Hugo Castro.

13 (WHEREUPON a Hispanic male approached.)

14 THE CLERK: What say ye for the State?

15 MR. MALONY: Please present Mr. Castro.

16 THE CLERK: What say ye for defense?

17 MR. BROADWATER: Present and swear.

18 THE CLERK: Thank you. Have a seat in the jury box
19 to your left, please, sir.

20 Juror No. 136, Willie Peterson.

21 (WHEREUPON a black male approached.)

22 THE CLERK: What say ye for the State?

23 MR. MALONY: Please excuse Mr. Peterson.

24 THE CLERK: Return to your seat, please, sir.

25 Juror No. 200, Iris Youmans.

1 (WHEREUPON a white female approached.)

2 THE CLERK: What say ye for the State?

3 MR. MALONY: Please present this juror.

4 THE CLERK: What say ye for defense?

5 MR. BROADWATER: Swear.

6 THE CLERK: Have a seat in the jury box to your
7 left, please, ma'am.

8 Juror No. 92, Shakena Johnson.

9 (WHEREUPON a black female approached.)

10 THE CLERK: What say ye for the State?

11 MR. MALONY: Please present Ms. Johnson.

12 THE CLERK: What say ye for defense?

13 MR. BROADWATER: Swear Ms. Johnson.

14 THE CLERK: Have a seat in the jury box to your
15 left please, ma'am.

16 Juror No. 148, Santana Robinson-Philpot.

17 (WHEREUPON a black female approached.)

18 THE CLERK: What say ye for the State?

19 MR. MALONY: Please present this juror.

20 THE CLERK: What say ye for defense?

21 MR. BROADWATER: Swear him in.

22 THE CLERK: Have a seat in the jury box to your
23 left, please, ma'am.

24 Juror No. 6, James Bart -- Barr, excuse me.

25 (WHEREUPON a white male approached.)

1 THE CLERK: What say ye for the State?
2 MR. MALONY: Please present Mr. Barr.
3 THE CLERK: What say ye for defense?
4 MR. BROADWATER: Defense excuses please.
5 THE CLERK: Return to your seat, please, sir.
6 The State has used two strikes; Defense five.
7 Juror No. 154, Angela Salley.
8 (WHEREUPON a black female approached.)
9 THE CLERK: What say ye for the State?
10 MR. MALONY: Please excuse Ms. Salley.
11 THE CLERK: Return to your seat, please, ma'am.
12 Juror No. 109, Malone Fanning.
13 (WHEREUPON a white female approached.)
14 THE CLERK: What say ye for the State?
15 MR. MALONY: Please present this juror.
16 THE CLERK: What say ye for defense?
17 MR. BROADWATER: Swear her in please.
18 THE CLERK: Have a seat in the jury box, please,
19 ma'am.
20 Juror No. 51, Wayne Drown.
21 (WHEREUPON a white male approached.)
22 THE CLERK: What say ye for the State?
23 MR. MALONY: Please present Mr. Drown.
24 THE CLERK: What say ye for defense?
25 MR. BROADWATER: Defense will excuse Mr. Drown.

1 THE CLERK: Return to your seat, please, sir.

2 Juror No. 68, LaToya Glover.

3 (WHEREUPON a black female approached.)

4 THE CLERK: What say ye for the State?

5 MR. MALONY: Please present Ms. Glover.

6 THE CLERK: What say ye for defense?

7 MR. BROADWATER: Swear Ms. Glover, please.

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

9 ma'am.

10 Juror No. 188, Christopher Walker.

11 (WHEREUPON a black male approached.)

12 THE CLERK: What say ye for the State?

13 MR. MALONY: Please present Mr. Walker.

14 THE CLERK: What say ye for defense?

15 MR. BROADWATER: Swear Mr. Walker, please.

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

17 sir.

18 Juror No. 163, Marty Silvers.

19 (WHEREUPON a white male approached.)

20 THE CLERK: What say ye for the State?

21 MR. MALONY: Please present Mr. Silvers.

22 THE CLERK: What say ye for defense.

23 MR. BROADWATER: The defense will excuse Mr.

24 Silver.

25 THE CLERK: Return to your seat, please, sir.

1 Juror No. 131, Jennifer Ocak.
2 (WHEREUPON a white female approached.)
3 MR. BROADWATER: Did you say 131, ma'am?
4 THE CLERK: Yes.
5 The State has exhausted three strikes; Defense
6 seven.
7 What say ye for the State.
8 MR. MALONY: Please present this juror.
9 THE CLERK: What say ye for defense?
10 MR. BROADWATER: One minute please.
11 (WHEREUPON there was a pause in the proceedings.)
12 MR. BROADWATER: Swear her in.
13 THE CLERK: Have a seat in the jury box, please.
14 Juror No. 71, Jack Gray.
15 (WHEREUPON a white male approached.)
16 THE CLERK: What say ye for the State?
17 MR. MALONY: Please present Mr. Gray.
18 THE CLERK: What say ye for defense?
19 MR. BROADWATER: The defense will excuse.
20 THE CLERK: Return to your seat, please, sir.
21 Juror No. 43, David Culp.
22 (WHEREUPON a white male approached.)
23 THE CLERK: What say ye for the State?
24 MR. MALONY: Please present Mr. Culp.
25 THE CLERK: What say ye for defense?

1 MR. BROADWATER: Defense will excuse Mr. Culp.

2 THE CLERK: Return to your seat, please, sir.

3 MR. BROADWATER: How many strikes do I have now?

4 THE COURT: Nine. One left.

5 MR. BROADWATER: Thank you much.

6 THE COURT: You're welcome.

7 THE CLERK: Juror No. 7, Alvin Baughman.

8 (WHEREUPON a white male approached.)

9 THE CLERK: What say ye for the State?

10 MR. MALONY: Please present Mr. Baughman.

11 THE CLERK: What say ye for defense?

12 MR. BROADWATER: Defense will excuse Mr. Baughman.

13 THE CLERK: Return to your seat, please, sir.

14 Juror No. 169, Sherod Sockwell.

15 (WHEREUPON a black male approached.)

16 THE CLERK: What say ye for the State?

17 MR. MALONY: Please present Mr. Sockwell.

18 THE CLERK: What say ye for defense?

19 MR. BROADWATER: Swear Mr. Sockwell.

20 THE CLERK: Thank you. Have a seat in the jury
21 box, please.

22 THE COURT: All right. We'll have two alternates,
23 two and one.

24 THE CLERK: Yes, sir.

25 Juror No. 41, Stephanie Craig.

1 (WHEREUPON a black female approached.)

2 THE CLERK: What say ye for the State?

3 MR. MALONY: Please present Ms. Craig.

4 THE CLERK: What say ye for defense?

5 MR. BROADWATER: Please swear the juror.

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

7 ma'am.

8 Alternate No. 2; Juror No. 183, Christopher

9 Trivett.

10 (WHEREUPON a white male approached.)

11 THE CLERK: What say ye for the State?

12 MR. MALONY: Please present Mr. Trivett.

13 THE CLERK: What say ye for defense.

14 MR. BROADWATER: Please swear Mr. Trivett.

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

16 sir.

17 THE COURT: Any motions by the State with

18 connection to the selection of the jury.

19 MR. MALONY: No, sir, Your Honor.

20 THE COURT: Mr. Broadwater?

21 MR. BROADWATER: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, those

23 of you were not drawn, the bailiff will show you over to

24 Judge Dennis' courtroom. He should be in a position in

25 just a few minute to select a jury in a civil case. Those

1 who are not selected will be excused then for the balance
2 of the day with instructions to call back after six. You
3 should have the callback number on your information sheet.
4 If you do not have it, get one from the bailiff before you
5 leave. Thank you very much.

6 Everyone else remain seated. Jurors please go to
7 the courtroom promptly.

8 I've got about 30 minutes worth of other stuff I've
9 got to do before we start this case. I have a motion in
10 the case. I've got a quick conference call and I've got
11 one other little quick thing with you. So we're going to
12 start the trial of this case at 11:45; that's what 35
13 minutes?

14 If you want to step outside and get some fresh air,
15 Ms. Jimmy will show you the jury room. We'll start back at
16 quarter to eleven. What we'll -- we'll come back at
17 quarter to twelve, wouldn't that be, that would be right
18 wouldn't it? 11:45. We'll probably go to like one o'clock
19 today and then take about an hour-and-a-half for lunch. So
20 we'll plan to go to five this afternoon.

21 Is that okay with everybody? And then we'll see
22 how far we get down the road. So I'm going to let you go
23 now, but please be back ready to go in the jury room at
24 quarter to twelve and we'll plan to go to one o'clock.

25 (WHEREUPON the jury left the courtroom at 11:14

1 a.m.)

2 THE COURT: All right. I'm going to let everybody
3 take a bathroom break. I've got a brief conference call at
4 11:20 so let's come back for the plea at about 11:30 and
5 then we've got a motion to suppress; that won't take long.

6 (WHEREUPON a recess was observed in this case.)

7 PRETRIAL MOTIONS

8 THE COURT: Mr. Broadwater, I'll be glad to hear
9 from you?

10 MR. BROADWATER: Yes, Your Honor, we have two
11 motions to suppress. One dealing with the search warrant
12 at the residence of Mr. Salley on Schroeder Street in Aiken
13 County and no one at the residence signed off on the --
14 permitting the search.

15 The second one is suppression of the messages from
16 the cell phone because the information was illegally
17 obtained.

18 THE COURT: Thank you. Mr. Malony?

19 MR. MALONY: Your Honor, the State would be
20 prepared to present testimony as to the first portion of
21 the defendant's motion to suppress. However, I don't think
22 it's relevant in this case because we're not planning on
23 introducing anything at trial taken from the defendant's
24 residence.

25 THE COURT: Well if you see that it's necessary to

1 introduce that, then do not go into that in the presence of
2 the jury. Stop and we'll do a -- we'll do the motion at
3 that time.

4 MR. MALONY: Yes, sir.

5 THE COURT: If he's not gone use it, there's no
6 sense in having to waste our time, is it?

7 MR. BROADWATER: No, problem.

8 THE COURT: Thank you. How about the cell phone?

9 MR. MALONY: Your Honor, I'm really unsure as to
10 the actual basis of the -- the motion. Ultimately this
11 phone was seized from the defendant at the time of his
12 arrest.

13 THE COURT: The phone was?

14 MR. MALONY: Yes, sir. While he was being booked
15 into the detention center. At that time, it was seized as
16 evidence by Detective Hembree and placed in evidence at
17 Aiken Public Safety. Subsequent to that a search warrant
18 was issued for the phone and the information contained
19 therein, which is what we have.

20 Your Honor, I have a South Carolina Court of
21 Appeals case that State v Muquit, it's a 2009 case.

22 THE COURT: So when you were booking him, he had a
23 cell phone on him; you took that as part of his inventory,
24 then you got a search warrant to go into the cell phone?

25 MR. MALONY: That's correct, Your Honor. And in

1 this case I handed up to Your Honor, the Court made it
2 clear that -- there was a case in which there was a
3 Defendant in this case was arrested. His clothing was
4 later sought by law enforcement to use as evidence in -- in
5 the trial. The clothing was at the detention center.
6 There was issues with that search warrant. The Court
7 ultimately ruled, Your Honor, that the search warrant
8 wasn't even needed. Once the defendant is arrested, the
9 evidence taken off of his person at the time of his arrest
10 at the detention center can be taken, can be seized, and
11 searched even without a warrant. In this case it was
12 seized without a warrant. However, we did get a search
13 warrant for the cell phone and the records in the cell
14 phone, but ultimately, Your Honor, based on this case, I'm
15 not even sure that was even necessary.

16 THE COURT: Thank you. Mr. Broadwater?

17 MR. BROADWATER: I think there's -- there's a
18 difference in that when they seized the phone at the time
19 of the arrest and subsequently obtained the information and
20 a couple of weeks later they served a search warrant. I
21 think the burden of proof is already presented on the
22 plaintiff. So it needs to be taken off.

23 THE COURT: All right. I'm going to respectfully
24 disagree with you based on the case handed up to me.

25 MR. BROADWATER: Thank you.

1 THE COURT: Thank you. State v. M-u-q-u-i-t: Able
2 to seizure of a person's or a defendant who is incarcerated
3 personal effects or in his possession at the detention
4 center where he's being held is not a violation of the
5 Fourth Amendment.

6 MR. BROADWATER: All right.

7 THE COURT: I respectfully deny that. Anything
8 before we proceed?

9 MR. BROADWATER: That's it, Your Honor.

10 MR. MALONY: Nothing from the State.

11 THE COURT: Got my jury?

12 MR. BROADWATER: Your Honor, I would like to make a
13 motion to sequester -- to avoid the possibility of
14 enumerating past testimony.

15 THE COURT: As the State said, we've already tried
16 this case once and they've all been in here the whole time.
17 What's the State's position?

18 MR. MALONY: Your Honor, I don't believe it's
19 necessary in this case. There's one witness prepared to
20 identify the defendant and that's it. The first witness is
21 the victim. She didn't see either one of them's face at
22 the time of the armed robbery, kidnapping. She looked --
23 couldn't look at their face. Other than that, just normal
24 lay person testimony as to situations they saw, but nothing
25 actually ID'ing the defendant until the end -- the end of

1 the trial.

2 THE COURT: I'm going to deny the motion. This
3 case has been tried once before with all these witnesses
4 being here. I say this case has been tried; the
5 co-defendant's trial; it would be the same facts are well
6 known. And I understand the prejudice on sequestering any
7 witnesses.

8 MR. BROADWATER: Thank you, Your Honor.

9 THE COURT: All right. Bring the jury in please.

10 (WHEREUPON the jury entered the courtroom at 11:44
11 a.m.)

12 THE COURT: Ladies and gentlemen of the jury panel,
13 the first thing we have to do in order to get started is I
14 have to swear you in for this particular case. So if you
15 would please once again stand, raise your right hand and
16 the clerk will administer the oath for this case.

17 (WHEREUPON the jury was sworn.)

18 **OPENING REMARKS BY THE COURT**

19 THE COURT: Now, ladies and gentlemen of the jury,
20 let me once again please remind you that the fact that the
21 defendant, Mr. Salley, has been indicted by the Aiken
22 County Grand Jury for the offenses of armed robbery and
23 kidnapping is not evidence in this trial of this case. He
24 has pled not guilty to both of these charges and obviously
25 that puts the burden on the State to prove his guilt to you

1 beyond a reasonable doubt.

2 The indictment is simply the charge indictment by way the
3 case is formally brought into the courtroom. It is not
4 evidence. So he's brought in on this indictment, but now
5 he's pled not guilty and the Constitution presumes that he
6 is innocent unless the State is able to prove all elements
7 of the indictment of armed robbery and kidnapping to you
8 beyond a reasonable doubt.

9 Now what that means is the State has the burden of
10 proof. And in a criminal case such as this as opposed to
11 the civil case that Judge Dennis is trying, in that civil
12 case it's a lady who was driving, not driving, a horse was
13 pulling a carriage and the guy who allegedly was drunk ran
14 into her and the horse and the carriage and she's suing for
15 monetary damages. Those parties over there in Judge
16 Dennis' courtroom come in on equal footing if these were
17 the scales of justice. And for her to prevail or win her
18 case, she has to prove it by what we call the preponderance
19 or greater weight of the evidence, which simply means to
20 move the scales over so slightly in her favor.

21 In this case, a criminal case, because the
22 defendant has the constitutional inference of being
23 presumed to be innocent, he comes in with the scales tipped
24 in his favor in this matter. For the State to prove his
25 guilt, they must prove it to you beyond a reasonable doubt.

1 The burden of proof is greater in a criminal case than in a
2 civil case.

3 Now as I told you when we selected the jury, your
4 job, you are the judges of the facts in the case. Your job
5 is the most important in the courtroom because I've been
6 doing this a long time. I practiced law for 30 years and
7 I've been on the bench now going on 10 and I've tried
8 literally thousands of cases and I can tell you in just
9 about every case in the courtroom that I've ever been
10 involved in, whether as a lawyer or a Judge, it is not
11 unusual for the first witness to come in here and tell you
12 something happened in the night time and the next witness
13 say, Well no, it happened in the day time; the next witness
14 says no it happened at dawn; the next one says no, it
15 happened at dusk.

16 In other words, you going to get different sides of
17 the story. It is up to you to use your common sense to
18 judge the believability or the credibility of the witnesses
19 who testify in the case. You deal with husbands and wives,
20 boyfriends, girlfriends, employees, children; you know how
21 to judge someone when they're telling the truth or not
22 telling the truth. So your job is to listen to all the
23 evidence that comes into the trial of the case and in the
24 end, determine what's the truth. What's the truth?

25 And then you take those true facts that you find

1 them to be and apply it to the law as I give it to you at
2 the close of the case and then you'll be in a position to
3 render a true and just verdict. So that's the way the
4 system works.

5 Because the State of South Carolina has the burden
6 of proof, they will go first. They will present their case
7 first and once they have completed their evidence, then the
8 State -- strike that. Then the defendant has the
9 opportunity to present his side of the story if he chooses
10 to do so. And then sometimes the State can then put up
11 reply testimony. So the State goes first followed by the
12 defendant and then the State has the right to come back if
13 they need to. A lot of times you don't get the reply
14 testimony.

15 Receiving the testimony, you will hear me make
16 opening remarks, which I'm doing now and when I've
17 concluded my opening remarks, the State followed by the
18 defendant, they have an opportunity to make an opening
19 statement. Basically they'll tell you what they consider
20 the facts to be, what they intend to prove, sort of a
21 roadmap as to how they will present their case. Please
22 bear in mind that what the lawyers tell you in opening
23 statements is not evidence in the case; it's simply their
24 take on it. The only evidence that you can consider in
25 making your decision as to what the true facts are comes

1 from the witness stand and/or the exhibits that are
2 introduced in the trial of the case. Once the State makes
3 their opening statements, Mr. Broadwater will have an
4 opportunity to make his. Once that is done, then we'll
5 take the testimony. After the testimony, the lawyers will
6 make their closing arguments at which time then I will
7 instruct or charge you on the law and then you'll be in a
8 position to render a verdict.

9 I try to run an efficient courtroom. I try to move
10 things along. I try to start when we say we're going to
11 start and go to when we say we're going to stop, but I'm
12 not trying to run a race either. So if at any time during
13 the trial of the case while we're taking testimony or
14 whatever, if you become uncomfortable, you need a bathroom
15 break, you need something, a drink or whatever you need,
16 just need to take a break, don't get uncomfortable. Raise
17 your hand and I'll make sure that your needs are met.

18 I will tell and ask you each time you take a break
19 whether it be lunch or over the evening or whatever,
20 please, please, do not start deliberating or talking about
21 the case until all the evidence has been presented, final
22 arguments have been made and I've instructed you on the
23 law. It is not proper to start discussing the case until
24 all that is done. So you go back in the jury room and talk
25 about anything you want to, but not the case until we've

1 finished everything.

2 When we take our lunch break today, I will ask my
3 twelve regular jurors, not the two alternates, to please
4 select a foreperson. That person simply serves as the
5 spokesperson for the jury and brings to me matters that you
6 may have concerns about and you head deliberations.

7 I ask that you pay close attention. This is an
8 important trial both for the State and for the defendant.
9 This is not TV; this is the real world. You'll hear real
10 situation that's allegedly happened here in, in Aiken, City
11 of Aiken, and you're the citizens that are going to decide
12 this case. So please take that civic responsibility
13 seriously so you can render a fair and efficient verdict.
14 I look forward to working with you.

15 Any objections to my opening remarks by the State?

16 MR. MALONY: No, sir, Your Honor.

17 THE COURT: Mr. Broadwater?

18 MR. BROADWATER: None, Your Honor.

19 THE COURT: Thank you. Mr. Malony.

20 MR. MALONY: Thank you, Judge, may it please the
21 Court?

22 THE COURT: Yes, sir.

23 **OPENING STATEMENTS**

24 MR. MALONY: Ladies and gentlemen, good morning.

25 February 19th of this year, not too long ago, around 8:45

1 in the morning, Penny Guerrieri arrived at work at Quick
2 Cash on Richland Avenue here in Aiken. Just like most
3 normal Tuesday mornings, she walks in and opens up the
4 business expecting to have a day full of normal customers,
5 just putting in her time at work. Little did she know that
6 less than two hours after she arrived at work that morning
7 the defendant, Jamaques Salley, along with another
8 codefendant of his named Carlos Williams, would be running
9 out of that Quick Cash still wearing their black hoodies
10 with the hoods up, still wearing their gloves, still
11 holding a fake pistol, a BB gun. You'll hear from Penny it
12 sure didn't look like a BB gun. And the defendant holding
13 a taser; a taser that he used while stealing about \$450
14 from the register Penny was working right in front of.

15 While stealing it, he decides that's not enough, he
16 lifts Penny's shirt up and hits her in the back with the
17 stun gun, the taser. You'll see the marks on her back.
18 And while they were running off, getting away with
19 everything, she's curled up underneath this desk, still in
20 pain from the taser marks on her back, still horrified from
21 the about minute-and-a-half situation she just endured
22 based on this.

23 That's why we're here. Armed robbery and
24 kidnapping. Armed robbery based on the pistol that they
25 used. You're going to see the defendant buying the pistol.

1 You're gone see him in Walmart a couple of days prior to
2 this. You'll see him buying the pistol. He bought two
3 pistols with Carlos Williams. You'll see him buying the
4 book bag that Carlos Williams was wearing when he entered
5 the store to put the money in. You'll see him buying this
6 book bag at Roses approximately 15 minutes before the armed
7 robbery. You'll see his card being used to buy the book
8 bag.

9 You're going to see cell phone records. You're
10 going to hear testimony from Carlos Williams, who was right
11 there with him. Carlos Williams will testify and he is 100
12 percent as involved in this as the defendant is. I'm not
13 putting him up there to think y'all -- we're thinking that
14 he's okay. He's just as involved as the defendant, but
15 you'll hear from him; he'll tell you exactly what happened
16 and how it was planned. How the defendant for weeks before
17 this started planning it. You'll see the plan evolve.

18 You'll hear testimony from eyewitnesses that'll
19 kind of build the scene for you; how did this exactly go
20 down that morning. You'll hear 911 calls. You'll hear a
21 frantic 911 call, the first one Penny made as she's laying
22 underneath that counter.

23 You'll see pictures and these -- these witnesses,
24 again they're going to lay the foundation for what -- what
25 is to come. You won't hear a lot of them say they didn't

1 Jamaques Salley. You'll hear of males with hoods over
2 their heads. But the proof that it's Jamaques Salley will
3 be very evident.

4 And then as the Judge said, your job that you swore
5 to do is to take the facts, take the evidence that we're
6 going to be presenting and when you take that evidence at
7 the end of this thing and you apply the law as the Judge
8 will give it to you. And the law in this case is pretty
9 simple. It's that the defendant, along with others,
10 entered this business, this Quick Cash, armed with a deadly
11 weapon, or what appeared to be a deadly weapon, which is
12 going to be that pistol -- one of them was armed with it,
13 it doesn't matter which -- and then while doing that, they
14 stole something of value from this place, which is the
15 \$450; and that while doing the armed robbery they seized or
16 confined Penny, which is just that she wasn't free to
17 leave. With the testimony you'll hear about the gun to her
18 head. I think it'll be pretty evidence she wasn't free to
19 leave.

20 Now the Judge told y'all that the State bears the
21 burden in criminal cases and that burden is something that
22 we welcome with open arms in this case. It's just that
23 you're firmly convinced; it's not beyond some crazy doubt.
24 You're firmly convinced, using your common sense, of the
25 defendant's guilt on each charge. And when we're done with

1 this and it want last real long, but I ask that you pay
2 attention. It's important to the State. It's important to
3 the defendant. It's important to Penny. It's important to
4 everybody. It's important to this community. Pay
5 attention and at the end, I don't think you'll hesitate to
6 come back with the only verdict that the evidence is going
7 to show you and the only verdict that justice in this case
8 requires and that's a verdict of guilty as to both charges.

9 Thank you.

10 MR. BROADWATER: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. BROADWATER: Ladies and gentlemen, my name is
13 Tom Broadwater. I'm defending Mr. Salley on the charges of
14 armed robbery and kidnapping. I think we'll be able to
15 show you here today that Mr. Salley was not even
16 participating in what he's accused. There was a robbery
17 and they say the -- the clerk in the place of business
18 received some injuries. But Mr. Salley was not
19 participating with whoever was there. So what you -- there
20 are three high points in this whole situation. They're
21 going to show you the videos of the entrances to Roses.
22 Even though the witness is going to say there were three
23 people; you will only see two.

24 Now there was a reason for that, I -- I expect.
25 But you have to determine that. As judges of the facts,

1 you have to determine why they would ask Roses to take down
2 the surveillance camera pictures of three people entering
3 to buy a book bag and Roses only supplied them with two
4 images.

5 Somewhere along the way, the investigator
6 determined that the name Garvin was a brother of the
7 State's chief witness. We asked about it, his brother.
8 And the images -- but anyway, his last name is Garvin. And
9 you want to pay close attention to any testimony dealing
10 with the entrance into the store and why that third person,
11 or the first person who entered was probably 8 seconds
12 ahead of the other two. Why someone did not ask Roses to
13 back up the tape 8 minutes to see exactly where it was.

14 Now it may very well be and that's for you to
15 determine. It may very well be that they didn't want that
16 image to appear on the video because it would not represent
17 the -- it would not represent Mr. Salley, my client.
18 But -- and then it was found in the walking around videos
19 in Roses that the person who was in front had on army
20 fatigues, not khaki pants as some testimony is going on in
21 this case.

22 And all of the witnesses say that two criminals
23 that came into the loan company had on latex -- white latex
24 gloves. Well, I'm sure someone would be able to testify as
25 to how long you can have on a pair of latex gloves to cause

1 the hands to start sweating. If the hands are sweating, if
2 you can turn those gloves inside out and take DNA, then you
3 have forensic evidence of the existence of my client at the
4 location if he was wearing latex gloves. I'm sure they
5 were recovered and the State of South Carolina has all
6 kinds of laboratories and technicians to determine who
7 exactly was wearing those white latex gloves that were
8 recovered from the crime scene.

9 So once you analyze all of that -- we have one of
10 the greatest court systems in the world, where we're
11 bringing fine citizens here -- the contention between the
12 accused and the State of South Carolina -- when you took
13 the oath of office, it is not unlike the oath of office
14 that's taken by young soldiers who swears to protect the
15 United States and its people even to the point of death.
16 You're not being asked to die, but to an oath that is no
17 less important.

18 And we want you to pay attention to the entrance
19 videos, the walk around videos, the -- particular attention
20 to the white latex gloves, and most particularly the kind
21 of pants the person in the front was wearing. You can't
22 see his face. The image of his face -- the image of his
23 face is distorted, but the best photograph Roses would have
24 had is the entrance photograph, but someone for some reason
25 clipped off the first entrance into Roses, and it appears

Penny Guerrieri - Direct Examination by Mr. Malony

1 to be without controversy that the three people who went
2 into Roses had something to do with the robbery at Quick
3 Cash.

4 And I think when you hear everything here, you'll
5 return -- determine that the defendant is not guilty of the
6 charges against him.

7 Thank you.

8 THE COURT: You may call your first witness.

9 MR. MALONY: Thank you, Your Honor. The State
10 calls Penny Guerrieri.

11 THE COURT: Please come around.

12 PENNY GUERRIERI,
13 having been duly sworn, testified as follows:

14 THE CLERK: Have a seat in the witness box stating
15 your full name, spelling your last for the Court please.

16 THE WITNESS: My name is Penny Guerrieri,
17 G-U-E-R-R-I-E-R-I.

DIRECT EXAMINATION

18
19 BY MR. MALONY:

20 Q Penny, how old are you?

21 A 25.

22 Q Where did you, where did you go to school?

23 A Midland Valley.

24 Q You graduated from there?

25 A I did.

Penny Guerrieri - Direct Examination by Mr. Malony

1 Q What year did you graduate?

2 A 2006.

3 Q Do you have any children?

4 A I have two.

5 Q What are their ages?

6 A Seven and four.

7 Q Now, Penny, getting right into it. Where were you
8 working on February 19th of 2013?

9 A Quick Cash on Richland Avenue.

10 Q And is that in Aiken County?

11 A Yes.

12 Q What time does that business open?

13 A Nine.

14 Q Is that the same time it opened that day?

15 A Yes.

16 Q What time did you arrive to the business that
17 morning?

18 A Around 8:45.

19 Q Explain to the jury what you did after you got to
20 work.

21 A I checked voice mails and get out the checks so I
22 can run them through the bank to have verified funds on the
23 checks.

24 Q Speak up a little bit; I'm sorry.

25 A I verify checks. I take them out so I can run them

Penny Guerrieri - Direct Examination by Mr. Malony

1 to the bank. I check voice mails.

2 Q And did you go to the bank that morning?

3 A I did.

4 Q And who was working with you that day?

5 A Just me.

6 Q All right. Explain the first customer that came
7 into the business that day?

8 A She was there when I got back from the bank. Money
9 was withdrawn out of her account without her knowing. She
10 come in, I called my manager, we got all that settled away
11 and she was on her way.

12 Q Okay. What about the second customer that morning?

13 A He came in and he received a 550 loan.

14 Q 550 loan, is that --

15 A \$550.

16 Q All right. So once he took -- he received a \$550
17 loan, how much money is in the cash register at that time?

18 A 450. We start out the morning with a thousand in a
19 drawer.

20 Q So once the \$550 loan was given, you had \$450 cash
21 in the drawer?

22 A Yes.

23 Q Explain to the jury the third individual that
24 entered the store that morning?

25 A He was large light-skinned black male with flat

Penny Guerrieri - Direct Examination by Mr. Malony

1 braids and he was wearing a white hoodie with a red symbol
2 on his hoodie.

3 Q What did he have --

4 THE COURT: Ladies and gentlemen of the jury, would
5 y'all, would you like a notepad to take some notes or are
6 you okay; anybody want notepads?

7 (WHEREUPON there was no response from the jury.)

8 THE COURT: Go ahead.

9 BY MR. MALONY:

10 Q So what was he wearing, Penny?

11 A A white hoodie with a red symbol on the front of
12 it. He was a very large, light-skinned black male.

13 Q What did he have with him?

14 A Nothing.

15 Q Was that odd to you?

16 A Yes, it was raining that day. Normally people
17 bring in a bank statement, checkbook, light bills, just
18 random stuff not needed for the loan, but he didn't have
19 anything.

20 Q What was y'all's conversation about?

21 A How would he qualify for a loan.

22 Q Okay. And how long was he in there?

23 A Two minutes.

24 Q After those two minutes were up, where did he go?

25 A Back out the store to the sidewalk.

Penny Guerrieri - Direct Examination by Mr. Malony

1 Q What happened next?

2 A I seen my mailman, Mr. Wayne, pull up. Well, first
3 it was -- I was making my phone calls and then I noticed
4 that two black males in black hoodies were walking down
5 towards the store and when my mailman pulled up, they shot
6 down towards the hotel.

7 MR. MALONY: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 BY MR. MALONY:

10 Q Penny, I'm going show you what has been previously
11 marked for identification State's Exhibits 1 and 2.

12 MR. BROADWATER: Without objection.

13 (WHEREUPON State's Exhibits 1 and 2 were marked for
14 identification.)

15 BY MR. MALONY:

16 Q Do you recognize these?

17 A That's the Quick Cash on Richland Avenue where I
18 worked that day.

19 Q What about two?

20 A That's an aerial view.

21 Q Okay. Are these fair and accurate representations
22 of -- of the business and the overhead view of that
23 business?

24 A Yes.

25 MR. MALONY: Your Honor, at this time the State

Penny Guerrieri - Direct Examination by Mr. Malony

1 would move to introduce Exhibits 1 and 2?

2 THE COURT: Without objection.

3 (WHEREUPON State's Exhibits 1 and 2 were entered
4 into evidence.)

5 MR. MALONY: I ask that the witness be able to step
6 down to publish Exhibit 2 to the jury.

7 THE COURT: She may.

8 THE COURT REPORTER: She needs to speak up.

9 MR. MALONY: Yes, ma'am.

10 BY MR. MALONY:

11 Q As to State's Exhibit 2, will you show the jury
12 where the Quick Cash is located?

13 A The Quick Cash is located here.

14 Q Okay. And explain to the jury where you saw the
15 two black males with the hoodies walking.

16 A They were coming down this way here.

17 Q And what, if anything, made them change their path
18 at that time?

19 A My mailman pulled up here. There's glass windows
20 here and he pulled up on the side of the building.

21 Q And where did the two black males in the hoodies go
22 at that time?

23 A They walked down this path right here.

24 Q What -- what is this back here?

25 A A hotel.

Penny Guerrieri - Direct Examination by Mr. Malony

1 Q All right. Thank you. You can have a seat.

2 So the mailman enters the business at that time?

3 A Uh-huh (affirmative response).

4 Q Did you tell him what you'd seen with the two males
5 in the black hoodies?

6 A I did. I told him they were suspicious. They
7 didn't quite look right to me.

8 Q And what did he do?

9 A Gave me Public Safety's Number.

10 Q Did he leave at that time?

11 A He did.

12 Q What did you do?

13 A I called Aiken Public Safety.

14 MR. MALONY: Your Honor, may I approach?

15 THE COURT: Yes, sir.

16 (WHEREUPON State's Exhibit 3 was marked for
17 identification.)

18 BY MR. MALONY:

19 Q Penny, I'm showing you what's been marked for
20 identification as State's Exhibit 3 and ask you if you
21 recognize this.

22 A Yes.

23 Q Have you listened to it?

24 A I have.

25 Q What is it?

Penny Guerrieri - Direct Examination by Mr. Malony

1 A It's my first Public Safety call.

2 Q This is the call you made to Public Safety; the
3 first call you made to Public Safety the morning of
4 February 19th?

5 A Yes.

6 Q All right.

7 MR. MALONY: At this time, the State would move to
8 introduce Exhibit No. 3 into evidence and ask that it
9 played for the jury.

10 THE COURT: Any objection?

11 MR. BROADWATER: Without objection.

12 (WHEREUPON State's Exhibit No. 3 was entered into
13 evidence.)

14 THE COURT: What exhibit?

15 MR. MALONY: Three.

16 (WHEREUPON the audio recording was played for the
17 jury.)

18 BY MR. MALONY:

19 Q Penny, after you made that phone call, explain to
20 the jury what happened next.

21 A It was -- time I hung up the phone and looked up
22 there were two black males in the store with black hoodies,
23 sunglasses and white latex gloves. The first one had the
24 gun pointed in my face and the second one had turned off
25 the lights.

Penny Guerrieri - Direct Examination by Mr. Malony

1 Q They entered the store; did the first one say
2 anything to you or the second one? Did they say anything?

3 A I remember him saying or telling me don't do that
4 because I dropped my phone and I kicked it and he told me
5 don't do that. They asked where the money was. The -- the
6 one that come in with the gun in my face had me by the
7 shirt and he was telling me I was going to be all right. I
8 was just pleaing.

9 Q Were they able to get the drawer open themselves?

10 A No.

11 Q Who opened the drawer?

12 A I had to.

13 Q Once you opened the drawer, where did you go?

14 A He let me -- the one that had me let me go and the
15 second one pushed me back into the corner and I could hear
16 them, the guy with the gun, I could hear him rumbling
17 around with the money and --

18 Q So at this time, the second one pushes you back in
19 the corner, when you say second one, the one who turned off
20 the light switch?

21 A Right.

22 Q Not the one that entered first with the pistol?

23 A No.

24 Q Okay. This gun, did you get a good look at it?

25 A It was a gun.

Penny Guerrieri - Direct Examination by Mr. Malony

1 Q It look real to you?

2 A It looked real.

3 Q So once the money's taken, you hear the money, what
4 happened next?

5 A I can hear the guy with the gun, I can hear him
6 like move away. And then I felt the back of my shirt lift
7 and that's when he put the -- at that point, I didn't know
8 what it was, he -- now I know it's a taser. He put the
9 taser to my back and he shot me with it and he drug it
10 across my back.

11 Q What did you do?

12 A I hit the floor.

13 Q Now throughout that whole time period, were you
14 looking at these individuals in their face?

15 A No.

16 Q Did you try to look at their face?

17 A No.

18 Q What were you telling them?

19 A I had children, not to hurt me.

20 Q Once you're laying on the ground after you've been
21 tased, explain to the jury what you did next.

22 A I ran in -- after I was telling myself don't
23 breathe, don't breathe; I never heard them leave. I got up
24 off the floor, went and locked the front door and grabbed
25 the phone that's off the counter and got back under the

Penny Guerrieri - Direct Examination by Mr. Malony

1 counter. After I recalled Public Safety and I was on the
2 phone with her.

3 MR. MALONY: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 (WHEREUPON State's Exhibits 4, 5, 6, 7, 8, and 9
6 were marked for identification.)

7 BY MR. MALONY:

8 Q Penny, I'm going to show you State's Exhibits 4
9 through 8 and ask you if you recognize these?

10 A That's in front of the store.

11 Q Okay, what about 5?

12 A Inside the store.

13 THE COURT REPORTER: Speak up.

14 THE WITNESS: That's the inside of the store behind
15 the counter where I was. That was my drawer that day.
16 That's the empty cash drawer. That's my cell phone that
17 was in my lap.

18 BY MR. MALONY:

19 Q Now, are all these photographs fair and accurate
20 depictions of the way that the business and where you were
21 working and where all this went down on February 19th; are
22 they fair and accurate representations of how it looked
23 then?

24 A Yes.

25 Q I'm going to show you State's Exhibit 9 and ask if

Penny Guerrieri - Direct Examination by Mr. MaLony

1 you recognize it.

2 A That's my second 911 call.

3 Q Is this the phone call you made after the two
4 individuals left the Quick Cash that morning?

5 A Yes, I was up under the counter.

6 MR. MALONY: Your Honor, at this time I would move
7 State's 4 through 9 into evidence?

8 THE COURT: Any objection, Mr. Broadwater?

9 MR. BROADWATER: Without objection.

10 THE COURT: Thank you.

11 (WHEREUPON State's Exhibits 4, 5, 6, 7, 8, and 9
12 were entered into evidence.)

13 MR. MALONY: And ask to publish Exhibit 9 into
14 evidence.

15 THE COURT: You may.

16 MR. MALONY: I mean excuse me, to the jury.

17 (WHEREUPON the audio recording was played for the
18 jury.)

19 BY MR. MALONY:

20 Q Penny, at the end of that phone call, did law
21 enforcement arrive?

22 A Yes.

23 Q And did they take pictures of your body at that
24 time?

25 A They did.

Penny Guerrieri - Direct Examination by Mr. Malony

1 MR. MALONY: Your Honor, may I approach?

2 (WHEREUPON State's Exhibits 10 and 11 were marked
3 for identification.)

4 BY MR. MALONY:

5 Q Penny, I'm going to show you what's been marked for
6 identification as State's Exhibits 10 and 11 and ask you if
7 you recognize them?

8 A That's my, that's me.

9 Q And 11?

10 A That's my back.

11 Q Now are these fair and accurate representations of
12 how you looked right after this armed robbery and
13 kidnapping?

14 A That was the day of, yeah.

15 Q Thank you.

16 MR. MALONY: Your Honor, at this time the State
17 would move to introduce Exhibits 10 and 11.

18 THE COURT: Mr. Broadwater?

19 MR. BROADWATER: Without objection.

20 THE COURT: Thank you.

21 (WHEREUPON State's Exhibits 10 and 11 were entered
22 into evidence.)

23 MR. MALONY: Penny, answer any question Mr.
24 Broadwater has for you.

25 THE COURT: Hold on.

Penny Guerrieri - Cross-Examination by Mr. Broadwater

1 All right. Mr. Broadwater?

2 MR. BROADWATER: Thank you.

3 **CROSS-EXAMINATION**

4 BY MR. BROADWATER:

5 Q How do you pronounce your name?

6 A Guerrieri.

7 Q Guerrieri. Ms. Guerrieri, did you see my client
8 come into your place of business?

9 A No.

10 Q But the men who came in did have on white gloves?

11 A Yes.

12 Q There's no question? Do you know whether they were
13 latex or otherwise?

14 A I'm not sure, they were white gloves.

15 Q You know they were wearing white gloves?

16 A Yes.

17 Q Nothing further.

18 MR. MALONY: Briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MR. MALONY:

21 Q Penny, did you look at their faces?

22 A No, all I could see was the gun.

23 MR. MALONY: Nothing further, Your Honor.

24 THE COURT: Thank you. You may step down.

25 MR. BROADWATER: Wait one question.

Wayne Brinegar - Direct Examination by Mr. McCarley

1 THE COURT: We don't do recross, redirect.

2 MR. BROADWATER: Okay.

3 THE COURT: You may step down.

4 Next witness.

5 MR. MCCARLEY: Yes, sir, Your Honor. The State
6 calls Wayne Brinegar.

7 THE COURT: Mr. Brinegar, come around please.

8 WAYNE BRINEGAR,

9 having been duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness box stating
11 your full name spelling your last for the Court, please.

12 THE WITNESS: My name is Wayne Brinegar, last name
13 B-R-I-N-E-G-A-R.

14 **DIRECT EXAMINATION**

15 BY MR. MCCARLEY:

16 Q Mr. Brinegar, how are you doing, sir?

17 A Fine, thank you.

18 Q Where do you work?

19 A Post Office in Aiken.

20 Q And what do you do there, sir?

21 A Letter carrier.

22 Q Okay. Letter carrier, is that a mailman?

23 A Mailman, yes, sir.

24 Q What area do you cover, sir?

25 A I do Richland Avenue, West downtown, Laurens.

Wayne Brinegar - Direct Examination by Mr. McCarley

- 1 Street, all around that area.
- 2 Q Okay. Does that area include the Quick Cash
- 3 located on Richland Avenue?
- 4 A Yes, sir.
- 5 Q What is the address there, sir?
- 6 A 1114 Richland Avenue West.
- 7 Q And were you working as a mailman with the United
- 8 States Postal Service on the morning of February 19th,
- 9 2013?
- 10 A Yes, sir.
- 11 Q And did you make a delivery to the Quick Cash there
- 12 at Richland Avenue West?
- 13 A I did, yes.
- 14 Q Okay. Please tell me about driving up to that
- 15 location and how you go about it?
- 16 A Okay. The morning, like any other morning, it was
- 17 like 10:15 or so, I pulled up. I always pull right off the
- 18 road on the sidewalk almost like the very side of the
- 19 building. I walk in, it's a walk-in delivery. I walked in
- 20 that morning, saw Penny, handed her her mail and she told
- 21 me she --
- 22 Q You just said you saw Penny?
- 23 A Yes.
- 24 Q That's the lady who just testified?
- 25 A The lady that was behind the counter. She told me

Wayne Brinegar - Direct Examination by Mr. McCarley

1 she was kind of nervous and I said why; she said there's a
2 couple of guys out in the parking lot and did I see them.
3 I said no, let me take a look. I stepped out the door --
4 opened the door and looked and there was two black
5 gentlemen in dark colored hoodies walking down toward the
6 Days Inn right next to her.

7 Q What do you mean by hoodies, sir?

8 A Like the sweatshirt that's got a hood on them and
9 pulled up. It was misting that morning, but they were
10 pulled over their head. So I walked back in and I said
11 yeah, they're still kind of hanging around. I said let me
12 give you the number -- the non-emergency number for Aiken
13 PD, which I keep in my cell phone. I said call them and
14 tell them, you know, that, you know, something's just not
15 feeling right and trust your judgment and have them come
16 just do a courtesy drive-by.

17 And so I gave her the number, took it off my phone
18 and she wrote it down. I went back in my vehicle, drove to
19 the next stop, which was Days Inn, which was right next to
20 her and I saw the two gentlemen down on what's like a
21 little recreation area at the Days Inn. They were --

22 Q When you say you saw the two gentlemen, the same
23 two gentlemen you saw --

24 A They same two guys with hoodies on kind of hanging
25 around over there. There's like a reception area there.

Wayne Brinegar - Direct Examination by Mr. McCarley

1 Q Yes, sir.

2 A It's behind the fence, but I saw them. When I was
3 delivering mail to Days Inn, I turned back to Richland
4 Avenue --

5 Q After you delivered the mail there to the Days Inn,
6 did you -- were they still there?

7 A They were still kind of standing there, yeah.

8 Q Okay.

9 A Just hanging around.

10 MR. MCCARLEY: Permission to approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. MCCARLEY:

13 Q Mr. Brinegar, I'm going to hand you what's already
14 been introduced into evidence as State's Exhibit 2; do you
15 recognize that, sir?

16 A Yes, sir.

17 Q Okay.

18 MR. MCCARLEY: May he step down, Your Honor?

19 THE COURT: He may.

20 BY MR. MCCARLEY:

21 Q Mr. Brinegar, do you mind joining me down here?

22 A Sure.

23 Q Yes, sir. Mr. Brinegar, if you wouldn't mind and
24 I'll hold it for you; if you wouldn't mind pointing out to
25 the jury where Quick Cash is, how you pulled up, and then

Wayne Brinegar - Direct Examination by Mr. McCarley

1 how you went on to the Days Inn.

2 A This highway is Richland Avenue West. I pulled in
3 right off the road right in front of the building, yes,
4 sir. I park my Jeep right there and go in the front. And
5 then I come back out and re-enter my vehicle and go down.
6 The Days Inn office is right here. So when I pull down --
7 my next delivery is here and the two individuals I saw were
8 right -- there's like a little building right there and
9 they were kind of standing around there. So I delivered
10 the mail to Days Inn and then left.

11 Q All right. And which way did you come from and
12 which way did you leave?

13 A I come from East going West and I go this way and I
14 deliver this way.

15 Q Okay. You can have a seat again, sir.

16 A Thank you.

17 Q Now after you left the Days Inn, what happened
18 then?

19 A Well, I continued on West on Richland Avenue and I
20 made about three or four deliveries and then I heard sirens
21 from different directions heading up Richland Avenue and I
22 thought, well, she must have called or something happened
23 because they were heading the direction I had just left.

24 Q Okay. Now, did you talk with law enforcement that
25 day?

Wayne Brinegar - Cross-Examination by Mr. Broadwater

1 A I did. I went on, proceeded on Richland Avenue
2 making my deliveries and go as far as Gregg Avenue and turn
3 around and come back towards town, which would be heading
4 East and when I came up Richland Avenue to the daycare at
5 1205 Richland Avenue --

6 Q Now, where is that daycare in relation to Quick
7 Cash?

8 A Directly across the street from Quick Cash. There
9 were police officers. They had the yellow tape out and so
10 I pulled up there and one gentleman, detective, said, asked
11 me if I saw anything. And I explained to him what I
12 explained to you that I gave Ms. Penny the number, I saw
13 two individuals. And that's basically what it was.

14 Q Yes, sir. Now when you spoke with the police that
15 day, did you tell them everything you told the jury here
16 today?

17 A Exactly the same, the same information I've spoken
18 today.

19 Q Okay.

20 MR. MCCARLEY: Beg the Court's indulgence.

21 Mr. Brinegar, please answer any questions Mr.
22 Broadwater has.

23 **CROSS-EXAMINATION**

24 BY MR. BROADWATER:

25 Q Mr. Brinegar, do you identify my client as being

Wayne Brinegar - Redirect Examination by Mr. McCarley

1 one of the persons with the hood on that day?

2 A No, sir.

3 Q Did anybody ever show you a lineup of people who
4 were participating in that event?

5 A No, sir.

6 Q All right. Did you ask to see a lineup?

7 A No, sir.

8 Q Okay. So no one has shown you a lineup of who the
9 people could have been?

10 A No, sir, I never saw any faces, so no one asked me
11 that.

12 Q Thank you, sir.

13 THE COURT: Redirect?

14 **REDIRECT EXAMINATION**

15 BY MR. MCCARLEY:

16 Q Mr. Brinegar, why couldn't you see their faces that
17 day?

18 A Well, when I glanced and they were walking away
19 from me and these hoodie things were up so I didn't see
20 their head at all except the back of their head.

21 Q Yes, sir. Thank you.

22 THE COURT: You may step down.

23 Next witness.

24 MR. MCCARLEY: Your Honor, may Mr. Brinegar be
25 released from his subpoena? He needs to go back to work.

Sheila Fulmer - Direct Examination by Mr. Malony

1 MR. BROADWATER: No objection.

2 THE COURT: Yes, sir. Thank you, Mr. Brinegar.

3 THE WITNESS: Thank you.

4 MR. MALONY: Your Honor, the State calls Sheila
5 Fulmer.

6 SHEILA FULMER,
7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box stating
9 your full name and spelling your last for the Court,
10 please.

11 THE WITNESS: Sheila Fulmer, F-U-L-M-E-R.

12 DIRECT EXAMINATION.

13 BY MR. MALONY:

14 Q Ms. Fulmer, where are you employed?

15 A Tender Loving Daycare.

16 Q Do you have any other jobs?

17 A I do. I work at Dr. Timmerman's Office at Aiken
18 Veterinary Clinic.

19 Q When do you work at the Vet Clinic?

20 A I work part-time at the daycare and part-time at
21 Dr. Timmerman's Office. In the summer I work full-time at
22 Dr. Timmerman's Office.

23 Q On February 19th of 2013, where were you working?

24 A At the daycare.

25 Q Where is that daycare located?

Sheila Fulmer - Direct Examination by Mr. Malony

1 A 1205 Richland Avenue West.

2 Q Let's get right into your involvement in this case.
3 Tell the jury what you saw that morning that raised your
4 suspicion?

5 A Well, it was a little after 10, maybe 10:15 or so
6 and I was starting to fix lunch for the kids. So I was
7 kind of going back and forth through the dining room, the
8 kitchen, and -- and where the playroom is, and I noticed a
9 silver truck, because we're on the corner of Richland and
10 Jasper Street, and I noticed a silver truck kind of going
11 really slow towards the stop sign, towards Richland. So I
12 kind of looked out the window to see what they were doing
13 and they stopped at the stop sign at Richland and they
14 backed up real slow and then they pulled forward slow again
15 to the stop sign at Richland. And then they backed up and
16 they stopped behind my truck, which was in the driveway and
17 they stopped and I just watched them wondering what they
18 were doing, you know.

19 It looked suspicious to me. And I saw the driver
20 and the passenger and they had the window down and they
21 stopped behind my truck and stared at the back of my truck
22 for a few minute or few seconds and then they continued to
23 back into the dirt parking lot that's behind our daycare.
24 And that's where they parked and --

25 Q Is this daycare right across the street from the

Sheila Fulmer - Direct Examination by Mr. Malony

1 Quick Cash?

2 A Yeah, it's caddy cornered across the street, yeah.
3 It's caddy cornered like we're -- we're on the corner of
4 Richland and Jasper and they're kind of over here. Yes,
5 not directly across, but caddy cornered.

6 Q You said you saw the driver and the passenger --

7 A Uh-huh (affirmative response).

8 Q -- of the truck?

9 A Right.

10 Q Explain to the jury when you even knew there was a
11 third individual in the truck?

12 A When they backed up into the dirt parking lot, I
13 saw the passenger, which was the bigger heavysset guy with
14 the white pullover with the red symbol and the short
15 braids, he got out and walked across the street, like she
16 was saying and it was raining; it wasn't pouring rain, but
17 it was raining; walked across the street and went in the
18 Quick Cash. And then when he came back over that's when --
19 when he got back in the passenger seat. I left and went
20 back in to check on the kids. When I came back to look, I
21 noticed that he had gotten in the driver's seat and there
22 was two guys standing outside the vehicle all dressed in,
23 you know, hoodies on, that's when I noticed there was a
24 third person.

25 Q You didn't see that third person's face?

Sheila Fulmer - Direct Examination by Mr. Malony

1 A No.

2 Q Okay. And you testified he had his hoodie over his
3 head?

4 A Both had hoodies on, you know, hands in the
5 pockets, yeah, with heads down.

6 Q What did you see those two individuals do at that
7 time?

8 A They were standing at like the front tire bumper of
9 the driver's side when I saw them and then they turned and
10 walked across the street and went down to the Days Inn to
11 that banquet party room kind of thing.

12 Q Was that suspicious to you at that time?

13 A Yes, that's when I told my sister to call 911,
14 something was going on.

15 Q As you see them walking down, what, if anything, do
16 you notice with the truck?

17 A That the guy that originally was the passenger, he
18 had gotten in the driver's seat. Once they got across the
19 street, he pulled out of the parking lot and went to the
20 stop sign, barely stopped and made a right turn and -- and
21 went up Richland Avenue. I don't know, once he turned, I
22 don't know where he went. I couldn't see him after that.

23 MR. MALONY: Your Honor, may I approach?

24 (WHEREUPON State's Exhibit No. 12 was marked for
25 identification.)

Sheila Fulmer - Direct Examination by Mr. Malony

1 BY MR. MALONY:

2 Q I'm going to show you what's been marked for
3 identification as State's Exhibit 12 and ask if you
4 recognize this.

5 A Yes.

6 Q What is it?

7 A That is the window in the dining room that I was
8 looking out of when he pulled up to the stop sign on Jasper
9 to turn onto Richland and across the street from the Quick
10 Cash.

11 Q Is this the way it looked that day?

12 A Right.

13 MR. MALONY: Your Honor, at this time, the State
14 would move to introduce Exhibit 12 into evidence?

15 THE COURT: Any objection, Mr. Broadwater?

16 MR. BROADWATER: No objection.

17 (WHEREUPON State's Exhibit No. 12 was entered into
18 evidence.)

19 BY MR. MALONY:

20 Q Sheila, as you're looking out of this window, what,
21 if anything, did you do with regards to the truck?

22 A Tried my best to get the license plate tag.

23 Q Did you get a portion of the license plate tag for
24 the truck?

25 A I tried. I tried.

Sheila Fulmer - Cross-Examination by Mr. Broadwater

1 Q Did you tell investigators later what -- what you
2 were able to get off the back of the truck?

3 A I tried the best I could. I was trying to find
4 something to write with and -- and I did the best I could.

5 Q Thank you. Answer any question defense may have.

6 **CROSS-EXAMINATION**

7 BY MR. BROADWATER:

8 Q Ms. Fulmer?

9 A Yes, sir.

10 Q When these men approached the nursing -- nursery,
11 how close did they get to you?

12 A Very close.

13 Q Within how many feet; back of the courtroom? Or --

14 A Oh no, much closer.

15 Q How close?

16 A From me to -- to the table right there where those
17 people are sitting.

18 Q Okay. All right. Do you wear glasses?

19 A Only to read.

20 Q Did you see Mr. Salley there that day?

21 A I did not see his face, no, sir.

22 Q And did anyone show you a lineup --

23 A No, sir.

24 Q -- of possible --

25 A No, sir.

Sheila Fulmer - Redirect Examination by Mr. Malony

1 Q -- subjects?

2 Okay. Thank you, ma'am.

3 THE COURT: Anything on redirect.

4 MR. MALONY: Briefly, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. MALONY:

7 Q You told investigators you didn't see his face?

8 A Yes.

9 Q And they didn't show you a lineup?

10 A No.

11 MR. MALONY: Thank you, Your Honor.

12 THE COURT: You may step down.

13 MR. MALONY: I ask that she be released from her
14 subpoena.

15 THE COURT: Next witness, please.

16 MR. MALONY: I ask that she be released from her
17 subpoena, Your Honor?

18 THE COURT: You may.

19 MR. MCCARLEY: The State calls Kathy Holsenback.

20 KATHY HOLSENBACK,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box stating
23 your full name, spelling your last for the Court, please.

24 THE WITNESS: My name is Kathy Holsenback,

25 H-O-L-S-E-N-B-A-C-K.

Kathy Holsenback - Direct Examination by Mr. McCarley

DIRECT EXAMINATION

BY MR. MCCARLEY:

Q Ms. Kathy, where do you work?

A Tender Loving Daycare.

Q And where is that located?

A 1205 Richland Avenue West.

Q Is that across the street from the Quick Cash we've been talking about this morning?

A Yes, it is.

Q Okay. Were you working there on the morning of February 19th, 2012?

A Yes, I was.

Q Okay. And why do you remember that day, ma'am?

A Because of what happened at the Quick Cash.

Q Okay. Did your sister tell you to look out your back window? What happened there?

A She came to my room and told me to raise my blind and watch the silver truck that was parked in our parking lot because it was suspicious.

Q Okay.

A I was teaching class at that time so I did turn back and forth and at one -- at one point there was a couple of kids in front of my desk, which was right in front of the window, they were looking past me so when they look past me I knew something was going on so I turned

Kathy Holsenback - Direct Examination by Mr. McCarley

1 around.

2 Q What did you see when you looked out that back
3 window?

4 A I saw two guys in black hoodies with a backpack and
5 white gloves and standing in front of the truck. And
6 another -- the guy with the braids, getting out of the
7 passenger side coming around to the driver's side.

8 Q Did you ever move to another window?

9 A I did.

10 Q Okay. Why did you do that?

11 A I just felt like something was up. So we moved all
12 the kids into one room.

13 Q Okay.

14 A And they were in one room. And we were looking out
15 the kitchen window and the dining room window.

16 Q Okay.

17 MR. MCCARLEY: Permission to approach, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. MCCARLEY:

20 Q I'm handing you what's previously been entered as
21 State's Exhibit 12. Do you recognize that?

22 A I do.

23 Q Okay. Is that pretty much the same view you had
24 that morning of the Quick Cash?

25 A Yes, it is.

Kathy Holzenback - Direct Examination by Mr. McCarley

1 Q Okay. Ma'am, I'm now -- did you call the police
2 that morning?

3 A I did.

4 Q And why did you do that?

5 A Because I knew something was up. I just knew
6 something wasn't right.

7 MR. MCCARLEY: Permission to approach, Your Honor?

8 THE COURT: Yes, sir.

9 (WHEREUPON State's Exhibit No. 15 was marked for
10 identification.)

11 BY MR. MCCARLEY:

12 Q I'm handing you what's been marked for
13 identification as State's Exhibit 15. Do you recognize
14 that?

15 A I do.

16 Q Okay. And have you listened to this?

17 A I have.

18 Q And what is it, ma'am?

19 A It's my call to Public Safety.

20 Q Okay. And is it a -- an accurate depiction of that
21 call? It's a good recording?

22 A It is.

23 Q Has there been any changes, additions,
24 subtractions, alterations?

25 A No.

Kathy Holsenback - Direct Examination by Mr. McCarley

1 Q Okay.

2 MR. MCCARLEY: Your Honor, the State moves to
3 introduce Exhibit 15 into evidence.

4 THE COURT: Any objection, Mr. Broadwater?

5 MR. BROADWATER: None.

6 (WHEREUPON State's Exhibit No. 15 was entered into
7 evidence.)

8 MR. MCCARLEY: Your Honor, may we publish?

9 THE COURT: You may.

10 (WHEREUPON the audio recording was played for the
11 jury.)

12 BY MR. MCCARLEY:

13 Q Ms. Kathy, what did you do after you hung up with
14 Public Safety?

15 A We just kept looking out the window and when we saw
16 the officers come, we came -- when they pulled up there we
17 opened the door and were yelling they went that away.

18 Q Okay. And did you speak with the police officers
19 that day?

20 A I did.

21 Q Okay. And did you tell them everything you told us
22 here today?

23 A I did.

24 Q Now, when the police officers asked you if you
25 could identify anyone, did you tell them you'd already seen

Kathy Holsenback - Direct Examination by Mr. McCarley

1 them on the internet?

2 A Yes, I did see them.

3 Q Okay.

4 THE COURT: Mr. Broadwater, cross-examination
5 please?

6 MR. BROADWATER: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. BROADWATER:

9 Q How do you pronounce your last name?

10 A Holsenback. Holsenback.

11 Q Holsenback?

12 A Uh-huh (affirmative response).

13 Q Yes, ma'am.

14 Could you see Mr. Salley and identify him as being
15 one of the people out there that day?

16 A No.

17 Q Did anyone ever show you a photographic lineup?

18 A No.

19 Q Did they ask you to come to the department to see
20 them?

21 A No.

22 Q Thank you, ma'am.

23 THE COURT: Anything else, gentlemen?

24 MR. MCCARLEY: Nothing from the State.

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

1 Any objection to her being released from her
2 subpoena?

3 MR. BROADWATER: None.

4 THE COURT: Thank you.

5 MR. BROADWATER: Your Honor, can we take five?

6 THE COURT: We're going to take one now.

7 All right. Ladies and gentlemen of the jury, we're
8 going to break now for lunch. We'll start back at 2:30.
9 Please do not discuss the case. Do not let anyone discuss
10 it with you.

11 When you come back from lunch, break please select
12 a foreperson among the twelve of you. And I'll see you
13 back at 2:30.

14 (WHEREUPON the jury left the courtroom at 12:57
15 p.m.)

16 THE COURT: All right. We'll stand at ease until
17 2:30.

18 The defendant is in custody now.

19 (WHEREUPON a recess for lunch was observed.)

20 THE COURT: Bring the defendant in please.

21 MR. MCCARLEY: Your Honor, Court Security said they
22 seen him leave, but not seen him return.

23 THE COURT: Like leave the building?

24 MR. MCCARLEY: Yes, sir, Your Honor.

25 MR. BROADWATER: Your Honor, I looked for him and I

1 did not see him. The deputy said that he normally parks in
2 a handicapped parking space.

3 THE COURT: He was just in here wasn't he?

4 MR. MALONY: I haven't seen him after lunch.

5 THE COURT: All right. Y'all let me know when he
6 comes.

7 MR. MALONY: Yes, sir.

8 THE COURT: I thought Court was supposed to start
9 at 2:30; you're ten minutes late. What's going on?

10 MR. BROADWATER: The lady wouldn't bring me my
11 check.

12 THE COURT: What?

13 MR. BROADWATER: The lady in the restaurant
14 wouldn't bring me the check.

15 THE COURT: Well, I suggest you get up and leave
16 the next time. I came back early so I could be on time. I
17 had everybody else back here on time. I will not tolerate
18 it again.

19 Thank you.

20 MR. BROADWATER: Thank you.

21 THE COURT: All right. We have a problem with a
22 juror, Juror No. 109, Ms. Malone Fanning. When we broke
23 for lunch at 1 o'clock to be back at 2:30, she informed me
24 that she had a splitting migraine headache; she has
25 problems with migraines. I asked her to please go home and

1 rest to see if she could not have the headache abate. She
2 called me back about 2:15 and said its worse and she would
3 not be able to be back. So I've excused Juror 109, Ms.
4 Fanning.

5 Any objections by the State?

6 MR. MALONY: No, sir, Your Honor.

7 THE COURT: Mr. Broadwater?

8 MR. BROADWATER: No, Your Honor.

9 THE COURT: There are two alternates, Alternate 81,
10 which is Juror 41, Stephanie Craig; and Juror 183,
11 Christopher Trivett. I've had the Clerk put 1 and 2 on
12 here; 1 will be Craig; 2 will be Trivett.

13 Draw one out.

14 (WHEREUPON the clerk drew a number.)

15 THE COURT: And we will elevate Juror 183,
16 Christopher Trivett, to the regular jury panel.

17 Any objection by the State to the random selection
18 of the two alternates?

19 MR. MALONY: No, sir, Your Honor.

20 THE COURT: By the defendant?

21 MR. BROADWATER: No.

22 THE COURT: Thank you. All right. Bring the
23 jurors out.

24 Madam Clerk, Juror No. 130 will be our Foreperson.

25 I worked all during lunch to learn how to say

1 Guerrieri.

2 THE CLERK: Can you.

3 THE COURT: Don't make me say it again.

4 (WHEREUPON the jury entered the courtroom at 2:47
5 p.m.)

6 Mr. Trivett, I have elevated you to the regular
7 jury. I did it randomly. We had -- we lost one juror
8 because of a migraine headache, so you'll be on the regular
9 jury panel now.

10 THE JUROR: Okay.

11 THE COURT: Congratulations, you're my forelady?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: Is this the first election you've ever
14 won? Welcome to politics. Thank you for doing that.

15 All right. Sorry we're a little late getting
16 started and I'll tell you the reason for it after the
17 trial.

18 All right. Next witness please.

19 MR. MALONY: Thank you, Your Honor. The State
20 calls Carlos Williams.

21 CARLOS WILLIAMS,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box stating
24 your full name, spelling your last for the Court, please.

25 THE WITNESS: My name is Carlos Demetrius Williams.

Carlos Williams - Direct Examination by Mr. Malony

1 Last name, W-I-L-L-I-A-M-S.

2 **DIRECT EXAMINATION**

3 BY MR. MALONY:

4 Q Carlos, make sure to speak up so the jury can hear
5 you.

6 A Yes, sir.

7 Q Where are you currently housed?

8 A Aiken County Detention Center.

9 Q And you currently have charges pending?

10 A Yes, sir.

11 Q What are those charges?

12 A Armed robbery and kidnapping.

13 Q Have you been promised anything today, Carlos, for
14 your testimony?

15 A No, sir.

16 Q Any deals been made?

17 A No, sir.

18 Q Did you participate in this armed robbery and
19 kidnapping?

20 A Yes, sir.

21 Q On February 19th of this year?

22 A Yes, sir.

23 Q Did you enter the Quick Cash that day?

24 A Yes.

25 Q Did you have a gun?

Carlos Williams - Direct Examination by Mr. Malony

1 A Yes.

2 Q Did someone enter the Quick Cash with you that day?

3 A Yes, sir.

4 Q Who did?

5 A The defendant, Jamaques Salley.

6 Q Is he here today?

7 A Yes.

8 Q Can you please describe what he's wearing, what he
9 looks like?

10 A White shirt, dreads.

11 MR. MALONY: Your Honor, may the record reflect,
12 that the witness has identified the defendant.

13 BY MR. MALONY:

14 Q Now, Carlos, when did this idea to commit this
15 crime come about?

16 A Probably -- probably about a week and a half prior
17 to the day of.

18 Q And whose idea was it?

19 A The defendant's.

20 Q How did you first become aware of this plan to
21 commit this crime?

22 A He brought it to me.

23 Q How?

24 A We -- hanging out one day, he -- we was talking
25 about, you know, robbing and all of that and he said he got

Carlos Williams - Direct Examination by Mr. Malony

1 this place he's been looking at for about a year. I said
2 okay.

3 Q Was he referring to the Quick Cash?

4 A Yes.

5 Q Were you and the defendant buddies?

6 A Yes, sir.

7 Q How long had you known him?

8 A Since I was about 15 or 16.

9 Q How old are you now?

10 A 21.

11 Q Did y'all work together?

12 A We worked -- we worked at the same spot. He worked
13 second shift and I worked first.

14 Q Where was that?

15 A Carlisle Tire and Wheel.

16 Q Is that here in Aiken?

17 A Yes, sir.

18 Q Did you speak with the defendant through your cell
19 phone during the time before the crime was committed?

20 A Yes.

21 Q Was there ever a third person that became involved
22 in this armed robbery and kidnapping?

23 A Yes, sir.

24 Q What's his name?

25 A Michael Quarrels.

Carlos Williams - Direct Examination by Mr. Malony

1 Q Were you friends with Michael Quarrels?

2 A I guess you could say I was; not that close to him,
3 but I knew him as an acquaintance through the defendant.

4 Q So you met him through the defendant?

5 A Yes, sir.

6 Q Did you communicate with him prior to these crimes
7 being committed by cell phone?

8 A No, sir.

9 Q Why not?

10 A He didn't have a cell phone -- a phone for me to
11 even get in touch with him.

12 Q Carlos, you testified earlier that you entered the
13 Quick Cash with a gun?

14 A Yes.

15 Q Let's start there. Where did this gun come from?

16 A Walmart.

17 Q When did -- when did the gun -- when was it
18 purchased?

19 A Friday, it was the Friday before February 19th.

20 Q Was that -- that was a Tuesday?

21 A Yes.

22 Q February 19th? So the Friday before, explain how
23 that came about; who went to Walmart?

24 A Myself and the defendant.

25 Q And what was the purpose of going to Walmart that

Carlos Williams - Direct Examination by Mr. Malony

1 day?

2 A To purchase BB guns.

3 Q What time did y'all go?

4 A Late night. I can't really -- I don't really
5 recall the actual time we went.

6 Q Night time?

7 A Yeah, we usually go late at night when we do go
8 because --

9 Q Who actually purchased the guns that day?

10 A The defendant.

11 MR. MALONY: Your Honor, may I approach?

12 THE COURT: Yes.

13 (WHEREUPON State's Exhibits 16, 17, 18, 19, 20, 21,
14 and 22 were marked for identification.)

15 BY MR. MALONY:

16 Q Carlos, I'm showing you what's been marked
17 previously for identification as State's Exhibit 16?

18 THE COURT: 16?

19 MR. MALONY: Yes, sir, Your Honor.

20 BY MR. MALONY:

21 Q And ask you if you recognize it?

22 A Yes.

23 Q And what is this?

24 A The Walmart video.

25 Q Have you seen this video?

Carlos Williams - Direct Examination by Mr. Malony

- 1 A Yes.
- 2 Q Is this video a fair and accurate representation of
3 you and the defendant in Walmart the Friday before this
4 armed robbery and kidnapping?
- 5 A Yes.
- 6 Q I'm also going to show you what's been marked for
7 identification as Exhibit State -- State's Exhibits 17
8 through 22 and ask if you recognize these, yes or no; yes
9 to 17?
- 10 A Yes.
- 11 Q 18?
- 12 A Yes.
- 13 Q 19?
- 14 A Yes.
- 15 Q 20?
- 16 A Yes.
- 17 Q 21?
- 18 A Yes.
- 19 Q 22?
- 20 A Yes.
- 21 Q And what are these?
- 22 A Photos of myself and the defendant in Walmart.
- 23 Q These photos from the same night?
- 24 A Yes.
- 25 Q Are these photos fair and accurate depictions of

Carlos Williams - Direct Examination by Mr. Malony

1 the two of y'all in Walmart that night?

2 A Yes.

3 MR. MALONY: Your Honor, at this time, the State
4 would move to introduce Exhibits 16 through 22 into
5 evidence?

6 THE COURT: Any objections, Mr. Broadwater?

7 MR. BROADWATER: None.

8 (WHEREUPON State's Exhibits 16, 17, 18, 19, 20, 21,
9 and 22 were entered into evidence.)

10 MR. MALONY: Your Honor, we ask permission to
11 publish these to the jury?

12 THE COURT: Thank you. You may.

13 MR. MALONY: Your Honor, may I ask permission for
14 the witness to step down for a.

15 BY MR. MALONY:

16 Q Be sure to speak up so the jury and the court
17 reporter can hear you, okay? Stand right here.

18 Carlos, who is this in the black hoodie right here?

19 THE WITNESS: --

20 THE COURT REPORTER: I didn't get that.

21 THE WITNESS: The defendant.

22 THE COURT REPORTER: Okay.

23 BY MR. MALONY:

24 Q And again right here, who is this in State's 18
25 paying for the merchandise?

Carlos Williams - Direct Examination by Mr. Malony

- 1 A The defendant.
- 2 Q In State's 19, what is the clerk holding here?
- 3 A One of the BB gun's that was purchased.
- 4 Q In State's 20, what's the Clerk holding here?
- 5 A Another one of the BB guns that was purchased.
- 6 Q State's 21 -- and who is this actually purchasing
- 7 the BB guns?
- 8 A The defendant.
- 9 Q What's he carrying right there?
- 10 A Bread.
- 11 Q Who had the bag with the gun?
- 12 A I did.
- 13 Q State's 22; who is this in the white?
- 14 A Me. Myself.
- 15 Q And then in the black?
- 16 A The defendant.
- 17 Q And in that bag you're carrying is what?
- 18 A Two BB guns.
- 19 Q Thank you for that.
- 20 Carlos, after y'all purchased the two BB guns,
- 21 what, if anything, did y'all do to the BB guns?
- 22 A There was an orange tip on it. We cut them off.
- 23 Q Why did you do that?
- 24 A Made them look real.
- 25 Q After these BB guns were purchased, what, if

Carlos Williams - Direct Examination by Mr. Malony

- 1 anything else was purchased to be used in the armed
2 robbery/kidnapping?
- 3 A A taser.
- 4 Q Explain how that happened; who purchased the taser?
- 5 A The defendant.
- 6 Q When was it purchased?
- 7 A Saturday, I want to say.
- 8 Q The day after the BB guns?
- 9 A Yes.
- 10 Q Again were you communicating with the defendant?
- 11 A Yes, sir.
- 12 Q Through cell phone?
- 13 A Yes.
- 14 Q Where was the taser purchased?
- 15 A Augusta flea market; The Barnyard.
- 16 Q And who drove that day?
- 17 A I did.
- 18 Q Who was present with you?
- 19 A The defendant.
- 20 Q The taser is purchased on Saturday; did you ever
21 have to go back to Augusta for any reason?
- 22 A Yes.
- 23 Q Why?
- 24 A The taser required a key and really like a string.
25 Without that the taser wouldn't work so we had to go back

Carlos Williams - Direct Examination by Mr. Malony

- 1 and he got one. They didn't have the key so we had to go
2 back again.
- 3 Q Who got one that didn't have a key?
- 4 A The defendant.
- 5 Q How did he find out you had to go back to Augusta?
- 6 A He texted me and told me we needed to go back.
- 7 Q Did you go back?
- 8 A Yes, sir.
- 9 Q All right. So you got the guns and you got the
10 taser now. Explain to the jury the night before the armed
11 robbery, how were you communicating with the defendant?
- 12 A Through text message.
- 13 Q At that time, what was the plan supposed to be for
14 the next morning?
- 15 A At that time, the plan was just to go and look at,
16 look at the -- look out the place, if you will, just to see
17 who's working when and how many people are there at the
18 exact time.
- 19 Q What were you supposed to do the first thing
20 Tuesday morning?
- 21 A Pick up Michael Quarrels.
- 22 Q And who directed you to do that?
- 23 A The defendant.
- 24 Q So you wake up Tuesday morning the 19th, what's the
25 first thing you do?

Carlos Williams - Direct Examination by Mr. Malony

1 A I go and pick up and pick up Michael Quarrels.

2 Q Where was he living at that time?

3 A In -- I forgot. Behind Citizens Park. I forgot,
4 yeah, I'm pretty sure Citizens Park on the South Side.

5 Q In Aiken?

6 A Yes.

7 Q What were you driving that day?

8 A Dodge Ram 1500.

9 (WHEREUPON State's Exhibit No. 24 was marked for
10 identification.)

11 MR. MALONY: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MR. MALONY:

14 Q Carlos, I'm going to show you what's previously
15 marked for identification as State's Exhibit No. 24 and ask
16 if you recognize it.

17 A Yes.

18 Q And what is it?

19 A A truck, my fiance's step-dad's, which was loaned
20 to me.

21 Q Is this the truck you were driving the morning of
22 the armed robbery?

23 A Yes.

24 MR. MALONY: Your Honor, at this time the State
25 would move to introduce Exhibit 24 into evidence.

Carlos Williams - Direct Examination by Mr. Malony

1 THE COURT: Any objection?

2 MR. BROADWATER: No objection, Your Honor.

3 (WHEREUPON State's Exhibit No. 24 was entered into
4 evidence.)

5 BY MR. MALONY:

6 Q You get in the truck, you go to pick up Michael
7 Quarrels from his residence; what did you do next?

8 A I go and pick up the defendant.

9 Q Where was the defendant living at that time?

10 A Crosland Park.

11 Q Around what time was all this; do you remember?

12 A Between the time of me picking each of them up
13 or...

14 Q Is it morning time still?

15 A Yes.

16 Q When you picked the defendant up, did he come out
17 of his residence at that time?

18 A Yes.

19 Q When you pulled up, did he walk out?

20 A Yes.

21 Q Did he have the tasers -- the taser with him at
22 that time?

23 A Yes.

24 Q Did he have a BB gun with him at that time?

25 A Yes.

Carlos Williams - Direct Examination by Mr. Malony

1 Q Now, when you left with the defendant, where was he
2 sitting?

3 A In the back seat.

4 Q And who was in the front passenger?

5 A Michael Quarrels.

6 Q Where did y'all go right after you picked him up?

7 A Roses.

8 Q Where -- where is the Roses?

9 A Richland Avenue.

10 Q Why did y'all go to Roses?

11 A We didn't have a bag. We went in there to get a
12 bag.

13 Q What was the bag to be used for?

14 A To put the money in.

15 Q Who all went into Roses that day?

16 A Myself, the defendant and Michael Quarrels.

17 Q At that time, what were you wearing?

18 A My white Echo hoodie.

19 Q White Echo hoodie?

20 A Yes.

21 Q Is that the same hoodie you were wearing in the
22 Walmart video?

23 A Yes.

24 Q And what was the defendant wearing at that time?

25 A A black hoodie.

Carlos Williams - Direct Examination by Mr. Malony

1 Q Is that the same black hoodie he was wearing in the
2 Walmart video?

3 A Yes.

4 Q What was Michael Quarrels wearing at that time?

5 A A black -- he was also wearing a black hoodie.

6 Q When you get into Roses, did y'all find a book bag?

7 A Yes.

8 Q Who purchased the book bag?

9 A The defendant.

10 (WHEREUPON State's Exhibit No. 25 was marked for
11 identification.)

12 MR. MALONY: Your Honor, may I approach.

13 THE COURT: Yes, sir.

14 BY MR. MALONY:

15 Q Carlos, I show you what's been marked for
16 identification.

17 A Thank you.

18 Q -- as State's Exhibit No. 25 and ask if you
19 recognize this.

20 A Yes.

21 Q What is this?

22 A A video of us in Roses.

23 Q And State's 47, I'm asking if you recognize this.

24 A Yes. Yes, sir.

25 Q Who is depicted in State's 47?

Carlos Williams - Direct Examination by Mr. Malony

1 A Myself and the defendant.

2 Q And when was this picture -- where did this come
3 from?

4 A Walking into Roses. The entrance to Roses.

5 Q Is this a fair and accurate depiction of you and
6 the defendant in Roses?

7 A Yes.

8 Q And who's behind you in this picture?

9 A Michael Quarrels.

10 THE COURT: What number is that?

11 MR. MALONY: 47, Your Honor.

12 All right. At this time the State would move to
13 introduce Exhibit 47 and 25 into evidence and ask if we can
14 publish it to the jury.

15 THE COURT: Any objection?

16 MR. BROADWATER: None, Your Honor.

17 (WHEREUPON State's Exhibits 25 and 47 were entered
18 into evidence.)

19 BY MR. MALONY:

20 Q Carlos, can you see this from where you're at?

21 A Yes.

22 Q This is State's Exhibit 47; who is in the black
23 hoodie with the hood pulled up right here?

24 A The defendant.

25 Q Again this is?

Carlos Williams - Direct Examination by Mr. Malony

1 A Myself.

2 Q And behind you?

3 A Michael Quarrels.

4 MR. MALONY: And, Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. MALONY:

7 Q Carlos, I'm going to show you what's been marked
8 for identification, State's Exhibit No. 28 and ask you if
9 you recognize this?

10 THE COURT: 28?

11 MR. MALONY: Yes, sir.

12 THE WITNESS: I do.

13 BY MR. MALONY:

14 Q What is this?

15 A It's my Echo hoodie.

16 Q Is this the hoodie you were wearing in the video in
17 Roses and Walmart?

18 A Yes, sir.

19 MR. MALONY: Your Honor, at this time, the State
20 would move to introduce Exhibit 28 into evidence?

21 THE COURT: Any objection?

22 MR. BROADWATER: None.

23 (WHEREUPON State's Exhibit No. 28 was entered into
24 evidence.)

25 ///

Carlos Williams - Direct Examination by Mr. Malony

1 BY MR. MALONY:

2 Q Carlos, you get the book bag; defendant buys it and
3 where -- where do you go next?

4 A We ride up Richland Avenue and park at the daycare.

5 Q Who's driving at that time?

6 A I am.

7 Q Where is the defendant sitting?

8 A In the back seat.

9 Q Again in the passenger's seat; who's in the front
10 passenger seat?

11 A Michael Quarrels.

12 Q You pulled across the street at the daycare center?

13 A Yes.

14 Q And at that time, explain what happened with
15 regards to the sweatshirt?

16 A Myself and Michael Quarrels switched shirts,
17 switched sweatshirts.

18 Q Why did you do that?

19 A Because he was going to walk in and I didn't have a
20 black sweatshirt and that would be more noticeable than a
21 regular black sweatshirt.

22 Q What was Michael Quarrels supposed to do?

23 A He was supposed to go in and find the light switch
24 and find out -- and let us know who all was in there and
25 where everybody was at. He was supposed to go in there and

Carlos Williams - Direct Examination by Mr. Malony

1 try -- he was supposed to go in there and act like he was
2 getting a loan just so you know see where the light
3 switches was and see where everybody was and who was in
4 there and come back and let us know.

5 Q Did he do that?

6 A Yes.

7 Q Did he come back and let you know?

8 A Yes.

9 Q Who did he say was in the Quick Cash when he came
10 back?

11 A One person.

12 Q Did he explain it -- was it -- did he explain if it
13 was a female or male in there?

14 A Yes, he -- one white girl.

15 Q So at that time, you now have on the black hoodie
16 that he was wearing?

17 A Yes.

18 Q What's the defendant wearing?

19 A The same black hoodie that he had on in the -- in
20 Roses.

21 Q What did y'all do next, you and the defendant?

22 A At that point, we already had white gloves on. I
23 think we sat in the truck maybe another minute or two and
24 then we got out and started walking across the street.

25 Q Did you immediately enter the Quick Cash at that

Carlos Williams - Direct Examination by Mr. Malony

1 time?

2 A No, sir.

3 Q Why not?

4 A The mailman pulled up.

5 Q So where did you go?

6 A We walked down to the hotel, Days Inn Hotel, we
7 stood under a little building.

8 Q You say we, at that time, who's at the Days Inn
9 Hotel?

10 A Myself and the defendant.

11 Q What do you have on you at the time?

12 A The BB gun and the book bag.

13 Q What about the defendant?

14 A Taser.

15 Q He didn't bring his gun in with him?

16 A No, sir.

17 Q So the mailman leaves; what do y'all do?

18 A We go up the side steps and we enter Quick Cash. I
19 enter first; he enters behind me.

20 (WHEREUPON State's Exhibits 29, 30, and 31 were
21 marked for identification.)

22 MR. MALONY: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. MALONY:

25 Q Carlos, I'm going to show you what's been marked

Carlos Williams - Direct Examination by Mr. Malony

1 for identification purposes as State's Exhibit 29, 30 and
2 31 and ask if you recognize them.

3 A Yes.

4 Q Okay. As to 29, what is it?

5 A Quick Cash, the entrance to Quick Cash.

6 Q And 30?

7 A The side steps.

8 Q And 31?

9 A The area -- the view of the entire area.

10 Q Are all these fair and accurate depictions of Quick
11 Cash and the area surrounding it?

12 A Yes.

13 MR. MALONY: Your Honor, at this time, the State
14 would move to introduce Exhibits 29, 30, and 31 into
15 evidence?

16 THE COURT: Any objection?

17 MR. BROADWATER: No objections.

18 (WHEREUPON State's Exhibits 29, 30, and 31 were
19 entered into evidence.)

20 BY MR. MALONY:

21 Q You stated, Carlos, that y'all ran up the side
22 stairs; is that your testimony?

23 A Yes.

24 Q Is that what's depicted here in State's Exhibit 30?

25 A Yes.

Carlos Williams - Direct Examination by Mr. Malony

1 Q And in State's Exhibit 29, that -- those are the
2 doors y'all entered?

3 A Yes.

4 Q So you ran out of the Quick Cash at that time.
5 Where was your gun?

6 A Concealed in front under my sweatshirt.

7 Q Did you pull it out?

8 A Yes.

9 Q Did you point it at Penny Guerrieri?

10 A Yes.

11 Q What did the defendant do?

12 A As far as I know he was looking for the light
13 switch.

14 Q Did the lights go out?

15 A Yes.

16 Q And were you the one that turned them off?

17 A No, sir.

18 Q So you were there with the gun to her face; do you
19 immediately go up to her?

20 A Yes.

21 Q What do you tell her?

22 A I tell her to get up.

23 Q Does she?

24 A Yes.

25 Q What happened next?

Carlos Williams - Direct Examination by Mr. Malony

1 A I think we were standing there no more than 30
2 seconds, the lights go out, the defendant walks over, looks
3 at me and like, he nods like, you know, go ahead. I asked
4 her, you know, where's the money? She said it's in the
5 drawer. At that point he starts talking and tells her to
6 get it. She opens the drawer; I put the money in the bag.
7 After I get the money in the bag, I look at him, he asked
8 me if I have it and I, like, yeah; so we go ahead and start
9 going out the door. At that time, when I got to the door,
10 I heard the taser go off and I heard her hit the floor. By
11 the time we got out the door, I was about ready to run and
12 he was like don't run; walk down the same stairs we walked
13 up. By the time we got to the bottom, he said okay now
14 run. We took off and ran around the back of the building
15 where my truck was parked on the other side on that side
16 street. I got in the driver's seat; he got back in the
17 back seat.

18 Q All right. Hold up right there. Now this is
19 what's been entered as State's Exhibit 31; can you see it
20 okay, Carlos?

21 A Yes.

22 Q The Quick Cash is here. You stated y'all ran
23 behind the Quick Cash?

24 A Yes.

25 Q Through these?

Carlos Williams - Direct Examination by Mr. Malony

- 1 A There's a path back there.
- 2 Q Okay. And were you following the defendant or were
- 3 you leading?
- 4 A I was following him.
- 5 Q Where did you end up?
- 6 A Side -- the street that's actually right there is a
- 7 little gravel dirt area where my truck was parked.
- 8 Q So who was in your truck?
- 9 A Michael Quarrels.
- 10 Q When y'all get to the truck, where is he sitting,
- 11 Michael Quarrels?
- 12 A Passenger seat.
- 13 Q So he had driven it over and switched seats waiting
- 14 on you?
- 15 A Yes.
- 16 Q Was the truck running?
- 17 A Yes.
- 18 Q Did you have the money in the bag?
- 19 A Yes.
- 20 Q How much money did y'all get?
- 21 A Maybe 500, I doubt it was even 500.
- 22 Q Where did you sit?
- 23 A In the driver's seat.
- 24 Q Where did the defendant sit?
- 25 A Back seat.

Carlos Williams - Direct Examination by Mr. Malony

- 1 Q At that time, you're driving; where did you go?
- 2 A South Side.
- 3 Q Did you, did you exit the same road that --
- 4 A Yes.
- 5 Q And went South down Richland or went to the South
- 6 Side?
- 7 A Yes.
- 8 Q Where did you -- did you keep all the money?
- 9 A No, sir.
- 10 Q How did y'all split the money up; who got what; how
- 11 much did you get?
- 12 A Between 150 and 170.
- 13 Q And what about the defendant?
- 14 A The same.
- 15 Q What about Michael Quarrels?
- 16 A He got a hundred.
- 17 Q So once the monies divvied up, did y'all go your
- 18 separate ways?
- 19 A The money was divvied up. I was at Michael
- 20 Quarrels' house. Then I took the defendant home and let
- 21 him out.
- 22 Q Okay. Where did you go after that?
- 23 A I got gas and then I went home.
- 24 Q Well, did you leave your house that day?
- 25 A I didn't go home.

Carlos Williams - Direct Examination by Mr. Malony

1 Q Where did you go before you went home?

2 A Before I went home, I went and met my brother and
3 give him his probation papers and then I went to get a
4 haircut.

5 Q Where did you get your haircut at?

6 A Busy Bees Barber Shop.

7 Q Were you still driving that same truck?

8 A Yes.

9 Q Back up one second. What happened with the guns
10 and the taser?

11 A The defendant gave them all to Michael Quarrels.

12 Q So when you dropped him off and Michael Quarrels
13 off, he had all that with him?

14 A Yes.

15 Q How about the book bag?

16 A That too.

17 Q Okay. You're at the Busy Bee. Did anybody
18 approach you at that time?

19 A Yes, a couple of law enforcement officers.

20 Q With Aiken?

21 A Yes.

22 Q Did you speak with them?

23 A Yes.

24 Q After you speak with them; did you call the
25 defendant and give him the heads up as to what was going

Carlos Williams - Direct Examination by Mr. Malony

1 on?

2 A Yes.

3 Q Now later that day, did you speak with law
4 enforcement again about this?

5 A Yes.

6 Q You still have -- you still driving your truck at
7 that time?

8 A Yes.

9 (WHEREUPON State's Exhibits 33 and 34 was marked
10 for identification.)

11 MR. MALONY: Your Honor, may I approach.

12 THE COURT: Sure.

13 MR. MALONY: Thank you.

14 BY MR. MALONY:

15 Q Carlos, I'm going to show you what's been marked as
16 State's Exhibit 33 and ask you if you recognize this?

17 A Yes.

18 Q What is this?

19 A The receipt from Roses for the book bag that was
20 purchased.

21 Q Okay. And what about this?

22 A The tag that was on the book bag.

23 Q Okay. I show you State's Exhibit 34 and ask if you
24 recognize that.

25 A Yes.

Carlos Williams - Direct Examination by Mr. Malony

1 Q What is it?

2 A The actual receipt.

3 Q That's depicted in 33?

4 A Yes.

5 Q Okay. And I'm going to show you State's Exhibit 26
6 and ask if you recognize it?

7 A Yes.

8 Q And what is this?

9 A The tag off the book bag that was purchased.

10 Q The same tag that's in Exhibit 33?

11 A Yes.

12 MR. MALONY: Your Honor, at this time the State
13 would move to introduce Exhibits 33, 34, and 26 into
14 evidence?

15 THE COURT: Any objection?

16 MR. BROADWATER: None.

17 (WHEREUPON State's Exhibits 26, 33, and 34 were
18 entered into evidence.)

19 BY MR. MALONY:

20 Q And these were found on the back seat of your
21 truck?

22 A Yes.

23 Q Were you arrested for this crime that day?

24 A Yes.

25 Q Did you speak with members of law enforcement at

Carlos Williams - Direct Examination by Mr. Malony

1 that time?

2 A Yes.

3 Q The first time you spoke with law enforcement, were
4 you truthful about everything to them?

5 A No, sir.

6 Q Why not?

7 A Trying to act like I wasn't caught, just I guess
8 buying time basically; watched a lot of TV.

9 Q And eventually did you tell law enforcement
10 everything that happened?

11 A Yes.

12 Q Did you have a cell phone on you at the time of
13 your arrest?

14 A Yes.

15 Q Is it the same cell phone you've referenced
16 throughout this testimony as the one that you spoke to the
17 defendant on?

18 A Yes.

19 (WHEREUPON State's Exhibit No. 23 was marked for
20 identification.)

21 MR. MALONY: Your Honor, may I approach?

22 BY MR. MALONY:

23 Q Carlos, I'm going to show you what's been marked
24 for identification as State's Exhibit 23 and ask if you
25 recognize it?

Carlos Williams - Direct Examination by Mr. Malony

1 A My cell phone.

2 Q This is the cell phone you spoke with the defendant
3 with before and after the armed robbery and kidnapping on?

4 A Yes.

5 Q All right.

6 MR. MALONY: At this time the State will introduce
7 Exhibit 23 into evidence?

8 THE COURT: Any objection?

9 MR. BROADWATER: Without objection.

10 (WHEREUPON State's Exhibit No. 23 was entered into
11 evidence.)

12 BY MR. MALONY:

13 Q I'm also going to show you State's Exhibit 27 and
14 ask that you take your time and look through both pages of
15 State's Exhibit 27 and tell me again if you recognize them?

16 A Yes.

17 Q And what is it?

18 A Text messages between myself and the defendant.

19 Q Are these the text messages that you were sending
20 from State's Exhibit 23 both before and after these crimes?

21 A Yes.

22 MR. MALONY: Your Honor, at this time, the State
23 would move to introduce and publish to the jury State's
24 Exhibit No. 27?

25 THE COURT: Any objection?

Carlos Williams - Direct Examination by Mr. Malony

1 MR. BROADWATER: Without objection.

2 (WHEREUPON State's Exhibit No. 27 was entered into
3 evidence.)

4 BY MR. MALONY:

5 Q All right. Carlos, what is your nickname on this
6 signature line so when you sent the text message -- what
7 was your nickname?

8 A Choppa G.

9 Q And what about the defendant, what was his name?

10 THE COURT: What was the nickname?

11 THE WITNESS: Choppa G.

12 MR. MALONY: Choppa G.

13 THE COURT: Say it, spell it.

14 MR. MALONY: C-H-O-P-P-A G.

15 THE COURT: Choppa G.

16 MR. MALONY: Yes, sir.

17 BY MR. MALONY:

18 Q And what about the defendant, what was his
19 signature?

20 A Ace.

21 Q So looking at these records that came from your
22 cell phone starting on February 17th of 2013, could you,
23 could you step down so maybe you could see a little better?
24 The message that you received a little after midnight, who
25 did you receive this from?

Carlos Williams - Direct Examination by Mr. Malony

1 A The defendant.

2 Q And so on and so forth, every signature line here
3 that ends in Ace is sent from whom?

4 A The defendant.

5 Q And again, every signature that ends in Choppa G is
6 sent from whom?

7 A Myself.

8 Q Okay. Throughout this conversation which
9 encompasses the 17th, the early morning of the 17th, the
10 18th and you'll see the second page, but starting on the
11 17th, this is 18th and then after the -- the robbery, are
12 all these conversations between you and the defendant?

13 A Yes.

14 Q All right. Start with the first one. What did he
15 tell you on the 17th around 12:28 in the morning?

16 A We got to go to Augusta.

17 Q And what did you respond?

18 A Why. And he said flea market, we need to get a key
19 for the taser.

20 Q Is that the same taser you've been testified about?

21 A Yes.

22 Q Okay. And then it states that you were supposed to
23 be at his house at 11:30. Now what about this one; check
24 out the time yet?

25 A He wanted to check out the time Quick Cash open.

Carlos Williams - Direct Examination by Mr. Malony

- 1 Q And did you ever check out the time?
- 2 A No.
- 3 Q What about the message on 2/18, the night before
- 4 the armed robbery; what did the defendant ask you?
- 5 A Have you got your disguise.
- 6 Q And did you have a disguise at that time?
- 7 A No, sir.
- 8 Q On 2/18 at 8:12 p.m., what did you tell him?
- 9 A I never will --
- 10 Q And is that portraying without a disguise?
- 11 A Yes.
- 12 Q What did you respond? On at 8:16 p.m. and you
- 13 don't have to say the actual first word, but?
- 14 A You don't get it. Take your chances.
- 15 Q So what are you asking next?
- 16 A What do I need.
- 17 Q Tell the jury what the defendant sent you right
- 18 before the armed robbery telling you what you needed?
- 19 A At first you need to get Michael in on it and have
- 20 him look out and be ready at the time.
- 21 Q Okay. So and did you --
- 22 A I said I hit him up tonight and y'all can meet up
- 23 tomorrow. Then he said, I'll tell you what time to be over
- 24 there so you know where to meet me at. All right. Okay.
- 25 I'll call you when I get up.

Carlos Williams - Direct Examination by Mr. Malony

1 Q He says he'll be ready at 8:00 a.m., who is he
2 speaking about, speaking of?

3 A Michael Quarrels.

4 Q And is that the testimony earlier that you would
5 pick Michael Quarrels up based on the defendant's text
6 messages?

7 A Yes.

8 Q Okay. And lastly in your records, this is after
9 the armed robbery, did you ever receive this text message?

10 A No.

11 Q Why not?

12 A At the time I was already incarcerated and I didn't
13 have it with me.

14 Q Thank you. You can have a seat.

15 MR. MALONY: I beg the Court's indulgence, Your
16 Honor?

17 (WHEREUPON there was a brief pause in the
18 proceedings.)

19 MR. MALONY: Thank you, Carlos. Please answer any
20 questions Mr. Broadwater may have for you.

21 THE WITNESS: Yes, sir.

22 THE COURT: Mr. Broadwater?

23 MR. BROADWATER: Yes, Your Honor. May we take a
24 break for a second. A bathroom break.

25 THE COURT: All right. Anybody need a break?

Carlos Williams - Cross-Examination by Mr. Broadwater

1 (WHEREUPON there was no response from the jury
2 panel.)

3 THE COURT: Mr. Broadwater, you're the only one so
4 hurry up.

5 (WHEREUPON a brief recess was observed with the
6 jury in the courtroom.)

7 **CROSS-EXAMINATION**

8 BY MR. BROADWATER:

9 Q Hello, Mr. Choppa G; how are you today?

10 A All right.

11 Q Good. When you picked up Mr. Mike Quarrels on the
12 morning of the 19th, who was riding in the back seat?

13 A The defendant.

14 Q You sure about that?

15 A I'm sure about that.

16 Q When you went to Roses, who got out of the truck?

17 A Myself, the defendant and Michael Quarrels.

18 Q When you entered the stores door, who was in front?

19 A The defendant.

20 Q And what was the defendant wearing?

21 A Black hoodie, cargo pants, black shoes.

22 Q What kind of pants?

23 A Cargo. Khaki cargo.

24 Q Was that an army fatigue type pants?

25 A No, sir.

Carlos Williams - Cross-Examination by Mr. Broadwater

- 1 Q And do you have a brother?
- 2 A Yes.
- 3 Q What's his name?
- 4 A David Garvin.
- 5 Q David Garvin?
- 6 A Yes.
- 7 Q And was he with you at any time that morning?
- 8 A No, sir.
- 9 Q Did the investigative officer ask you about him?
- 10 A Yes.
- 11 Q Did he tell you why he was asking about him?
- 12 A I don't recall.
- 13 Q Have you ever seen a video surveillance of you and
- 14 the defendant and Mr. Quarrels going into Roses together?
- 15 A Yes.
- 16 Q When you walked through the door?
- 17 A Yes.
- 18 Q Who showed it to you?
- 19 A My attorney.
- 20 Q So you have seen that photograph?
- 21 A Yes.
- 22 Q Were you -- were you at any time told by the
- 23 defendant that he was not going to participate in any
- 24 robbery?
- 25 A No, sir.

Carlos Williams - Cross-Examination by Mr. Broadwater

1 Q One of the messages he sent you on the text; didn't
2 he say no, I'm not participating?

3 A No, sir.

4 Q You didn't read that text?

5 A No, I didn't get that one.

6 Q All right.

7 MR. BROADWATER: Just a minute, Your Honor.

8 (WHEREUPON there was a pause in the proceedings.)

9 MR. BROADWATER: May I approach, Your Honor.

10 THE COURT: Yes, sir.

11 BY MR. BROADWATER:

12 Q The second line down right there; start at the top?

13 MR. MALONY: I'd just like to take a look at it.

14 MR. BROADWATER: I'm sorry.

15 THE COURT: Why don't you just ask the question.

16 MR. BROADWATER: I'm sorry?

17 THE COURT: Ask the question.

18 BY MR. BROADWATER:

19 Q Could you read the first column?

20 A The first one?

21 Q Yeah?

22 A First I will get Mike in on this so we can have a
23 lookout across the street. Next you need to take him up
24 there to the check out the place for the light switches and
25 count how many people there at the time.

Carlos Williams - Cross-Examination by Mr. Broadwater

- 1 Q Now, who texted that?
- 2 A He did, the defendant.
- 3 Q All right. And what did you say?
- 4 A Okay. So not tomorrow?
- 5 Q So not tomorrow?
- 6 A Yes.
- 7 Q So you agreed with him not to do the robbery
- 8 tomorrow?
- 9 A Yes.
- 10 Q But you went on with it anyway?
- 11 A Yes.
- 12 Q And so he -- he is saying to you not to let's,
- 13 let's not do the robbery tomorrow?
- 14 A If you read the text messages, he never said not to
- 15 do it tomorrow. I said okay, so not tomorrow? I was
- 16 asking him a question.
- 17 Q Was there a search warrant conducted to your house?
- 18 A I guess; I don't know.
- 19 Q Did you, did you get rid of the gloves?
- 20 A Yes.
- 21 Q What kind of gloves were they?
- 22 A White latex gloves.
- 23 Q White latex?
- 24 A Yes.
- 25 Q And did you show the officer where the gloves were?

Carlos Williams - Cross-Examination by Mr. Broadwater

1 A I couldn't show him where they were; I throwed them
2 out riding down the road.

3 Q What road?

4 A The road headed to the South Side.

5 Q So you -- the officer asked you about those gloves
6 the same day the robbery occurred; is that correct?

7 A Yes.

8 Q And you could not show the officer where the gloves
9 were deposited?

10 A No, sir.

11 Q Did he ask you to show him?

12 A No, sir. He asked about the gloves.

13 Q He never said take a ride with me and let's go back
14 and pick up the gloves?

15 A No, sir.

16 Q Could you have found them?

17 A Probably not.

18 Q But the -- but there's no question they were white
19 latex gloves?

20 A No question.

21 Q And you told the officer the same day the robbery
22 occurred that you had deposited them beside the road
23 somewhere?

24 A I told the officer on the same day of the robbery
25 that as I was riding down the road, I threw the gloves out

Carlos Williams - Cross-Examination by Mr. Broadwater

1 the window. They could have landed in the middle of the
2 road, on the side of the road, but they landed somewhere.
3 I couldn't tell you where they landed. I couldn't tell him
4 where they landed.

5 Q All right. Do you know what road, do you know what
6 road you were on?

7 A Not really. We was either the road going by
8 Applebee's which is where we turned off when we got to the
9 South Side or it was the road down there by Odell Weeks,
10 the backside of Odell Weeks, somewhere around there.

11 Q Oh, so you didn't turn by Applebee's, you went on
12 down --

13 A Yes, we did turn by Applebee's and you take that
14 road by Applebee's, you will go down, you keep going down,
15 you'll pass the hotel, you'll also pass some apartments.

16 Q Okay.

17 A You go around that circle, there's a stop sign.

18 Q Uh-huh (affirmative response)?

19 A There's a store on the right-hand side.

20 Q Okay.

21 A You make that left; Odell Weeks is right there.

22 Q You're behind Odell Weeks?

23 A Behind Odell Weeks.

24 Q Do you know where the -- the gloves were thrown
25 from the truck before you got to the stop sign or after you

Carlos Williams - Redirect Examination by Mr. Malony

1 passed through the stop sign?

2 A I honestly don't know, I just know is I threw them.
3 I didn't have them, I did not have them with me when I got
4 home.

5 Q Who was in the truck with you at the time?

6 A Myself, the defendant and Michael Quarrels.

7 MR. BROADWATER: Nothing further.

8 THE COURT: Thank you. Redirect?

9 MR. MALONY: Briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. MALONY:

12 Q Carlos, just to verify you said that you saw the
13 Roses video that your attorney showed you. Is it the same
14 Roses video that was published to the jury?

15 A Yes.

16 MR. MALONY: And, Your Honor, may I approach?

17 BY MR. MALONY:

18 Q Carlos, I'm going to show you State's Exhibit 48
19 and 49 and ask if you recognize them.

20 A Yes.

21 Q Okay. As to 48, what is it?

22 A Roses sidewalk entrance.

23 Q Is this the entrance from outside of Roses?

24 A That's -- the picture is actually just inside of
25 Roses.

Carlos Williams - Redirect Examination by Mr. Malony

1 Q And the video itself, the picture come from the
2 video?

3 A I --

4 Q Or a video?

5 A A video, yes.

6 Q Now, as to the sidewalk entrance outside of Roses,
7 have you seen this video?

8 A That video, I'm pretty sure I have. I've seen a
9 lot of videos, but as far as I can say, yes.

10 Q Have you seen the video with you and the defendant
11 and Michael Quarrels walking in from the sidewalk?

12 A Yes. Yes, I have.

13 Q And is that video a fair and accurate
14 representation of you three walking to Roses that day?

15 A Yes.

16 Q And is this picture a fair and accurate
17 representation of you three in Roses that day?

18 A Yes.

19 THE COURT: What's that number?

20 MR. MALONY: The picture's No. 49, Judge, and the
21 sidewalk entrance is No. 48.

22 Your Honor, at this time, I would move 48 and 49
23 into evidence.

24 THE COURT: Any objection?

25 MR. BROADWATER: Without objection.

Carlos Williams - Redirect Examination by Mr. Malony

1 THE COURT: Thank you.

2 (WHEREUPON State's Exhibits 48 and 49 were entered
3 into evidence.)

4 BY MR. MALONY:

5 Q Who is your attorney?

6 A Andy Smith.

7 Q Now, these gloves, do y'all wear gloves at Carlisle
8 Tire?

9 A Yes.

10 Q When you work?

11 A Yes.

12 MR. MALONY: No further questions.

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

14 Y'all want a quick afternoon break? We're going to
15 go until about five, so let's take a quick break and
16 stretch your back on the break and we'll start back in
17 about 15 minutes. Everybody else remain seated.

18 (WHEREUPON the jury left the courtroom at 3:49
19 p.m.)

20 (WHEREUPON a brief recess was observed.)

21 THE COURT: Anything for the record by the State
22 before I bring the jury in?

23 MR. MALONY: No, sir, Your Honor.

24 THE COURT: By the defendant?

25 MR. BROADWATER: No, Your Honor.

Virginia Jackson - Direct Examination by Mr. McCarley

1 THE COURT: All right. Bring the jury in.

2 (WHEREUPON the jury entered the courtroom.)

3 THE COURT: You may call your next witness?

4 MR. MCCARLEY: Thank you, Your Honor. The State
5 calls Virginia Jackson.

6 VIRGINIA JACKSON,
7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat in our witness box stating
9 your full name, spelling your last for the Court please.

10 **DIRECT EXAMINATION**

11 BY MR. MCCARLEY:

12 Q Good afternoon, Ms. Jackson, how are you doing?

13 A Fine.

14 Q Good. I think they still need you to spell your
15 last name.

16 A My name is Virginia Jackson, J-A-C-K-S-O-N.

17 Q Where do you work, Ms. Jackson?

18 A I work at Roses, 1630 Richland Avenue.

19 Q Okay. How long have you been working there?

20 A Three years and three months.

21 Q And what is your job there, ma'am?

22 A I'm a cash register operator.

23 Q Okay. And were you working at 10:00 a.m. on the
24 morning of February 19th of this year?

25 A Yes, sir.

Virginia Jackson - Direct Examination by Mr. McCarley

1 Q Okay. And where in the store were you working?

2 A Right at the front.

3 Q Okay. And when you say at the front, is that near
4 a register?

5 A We've got four or five registers and I'm on No.

6 4 --

7 Q Okay.

8 A -- as you go in the door.

9 Q Do you remember selling a book bag to a person
10 using a credit card that morning?

11 A Yes, sir, I do.

12 Q Okay. Do you remember what that person looks like?

13 A Yes, sir.

14 Q And are they in the courtroom now?

15 A Yes, sir.

16 Q Could you please point him out for the jury; what's
17 he got on?

18 A He's got on a white shirt and black pants.

19 Q Okay.

20 MR. MCCARLEY: Your Honor, may the record reflect
21 that Ms. Jackson has identified the defendant, Jamaques
22 Salley.

23 BY MR. MCCARLEY:

24 Q Now, ma'am, you work at the register at Roses and
25 you see a lot of people; it's been six months.

Virginia Jackson - Direct Examination by Mr. McCarley

1 A Yes, sir.

2 Q How do you remember the defendant?

3 A I remember him with the goatee, you know, and the
4 hair. And also I looked really carefully at the name when
5 the name was on the credit card and on his driver's
6 license, you know how it was spelled.

7 Q Okay. And were you ever shown a lineup in this
8 case?

9 A No, sir.

10 Q Okay. Did you give a specific description of the
11 defendant to the police?

12 A Yes, sir, I did.

13 Q Okay. When did the police come talk to you about
14 this?

15 A The next day.

16 Q Okay. Now have you seen the video of the sale you
17 made that morning at Roses?

18 A Yes, I have.

19 Q Okay.

20 MR. MCCARLEY: Permission to approach, Your Honor?

21 THE COURT: All right.

22 BY MR. MCCARLEY:

23 Q Ms. Jackson, I'm handing you what's been marked
24 State's Exhibits 35 through 42 for the purposes of
25 identification at this point. Do you mind taking a second

Virginia Jackson - Direct Examination by Mr. McCarley

1 and looking at those?

2 A Okay.

3 Q Thank you, ma'am.

4 THE COURT: What were those numbers?

5 MR. MCCARLEY: 35 through 42, Your Honor.

6 THE COURT: Photos? Those are photos?

7 MR. MCCARLEY: Yes, sir. The sales she made that
8 morning.

9 BY MR. MCCARLEY:

10 Q And do you recognize all those photos?

11 A I sure do.

12 Q Okay. And what are they of?

13 A They are me -- you want me to explain it from the
14 beginning?

15 Q What -- what's going on in this picture real quick?

16 A Okay. When these three men came up to me --

17 Q I apologize. Is this you making a sale that
18 morning?

19 A Yes, sir.

20 Q Okay. And are these accurate depictions of that
21 sale?

22 A Yes, sir.

23 Q Okay.

24 MR. MCCARLEY: Your Honor, State moves to enter
25 Exhibits 35 through 42 into evidence.

Virginia Jackson - Direct Examination by Mr. McCarley

1 MR. BROADWATER: Without objection.

2 MR. MCCARLEY: I showed them -- for the record, I
3 showed them to Mr. Broadwater at the break, Your Honor.

4 (WHEREUPON State's Exhibits 35, 36, 37, 38, 39, 40,
5 41, and 42 were entered into evidence.)

6 BY MR. MCCARLEY:

7 Q All right. Ms. Jackson, do you mind stepping down
8 for just a moment?

9 A No, sir.

10 Q Referring to State's Exhibit 35. Ms. Jackson,
11 what's going on right here?

12 A I was taking my hand and feeling into the backpack
13 to make sure there's nothing else in there besides paper.

14 Q Okay. And what's the defendant doing?

15 A He's handing me his credit card, Bank America card.

16 Q Okay. Going on to 36; what's going on here?

17 A I put paper back and asked if they wanted the paper
18 to stay in or out and they said out. I took the paper on
19 the next aisle and put it there so I could fold it up.

20 Q Did you ask the defendant for his ID?

21 A Yes, I did.

22 Q Okay. Why did you do that?

23 A Because we have to when they use a credit card. We
24 have to have an ID so you can compare it, the name and the
25 picture --

Virginia Jackson - Direct Examination by Mr. McCarley

- 1 Q Okay.
- 2 A -- to the person.
- 3 Q Moving on to 37. Now what's going on here, Ms.
- 4 Jackson?
- 5 A I'm comparing it.
- 6 Q Okay.
- 7 A I look at the face and I compare the picture on the
- 8 driver's license and the name on the credit card.
- 9 Q Okay. And then do you compare them to the person
- 10 standing in front of you?
- 11 A I did.
- 12 Q Okay. You did right then?
- 13 A I did.
- 14 Q Okay. So what you're telling me is the card
- 15 matches the name on the driver's license?
- 16 A Right.
- 17 Q And the driver's license matches the person in
- 18 front of you?
- 19 A That's right.
- 20 Q And is that what happened here?
- 21 A That's what happened.
- 22 Q So you're telling me the name on that card matches
- 23 the name on the ID?
- 24 A That's right.
- 25 Q And the picture of the ID --

Virginia Jackson - Direct Examination by Mr. McCarley

1 A Yes, sir.

2 Q -- is the defendant, Jamaques Salley?

3 A Yes, sir.

4 Q Would you have made the sale that morning if all
5 that hadn't matched up?

6 A No, if they hadn't matched, I could not.

7 Q Okay. Moving on to 39, 38, I apologize. What's
8 going on here, ma'am?

9 A I am scanning the American Express Card.

10 Q Okay. Did you, okay, moving on to 39. Now what
11 are you doing here, ma'am?

12 A I am reaching for the receipt and putting on that
13 receipt is a piece of paper that you have to sign when you
14 make a sale and so I already put my pen there for him to
15 use the pen to sign his name on this little receipt.

16 Q And moving on to the next one. What's going on
17 here, ma'am?

18 A Okay. I hand him his card.

19 Q This is 40 for the record.

20 A Right.

21 Q And would normally you hand him a receipt too?

22 A I wait until he signs it.

23 Q Okay.

24 A When he signs it, I take that and give him the
25 receipt.

Virginia Jackson - Direct Examination by Mr. McCarley

- 1 Q Okay. Moving on to 41; what's going on here,
2 ma'am?
- 3 A He is signing it right there.
- 4 Q Okay.
- 5 A And there's the receipt right there and the bags
6 right there for me to put in another bag and when I come
7 back over I'll pick up that receipt and hand it to him and
8 he'll hand me that last piece of paper --
- 9 Q Okay.
- 10 A -- with the pencil.
- 11 Q And does the person using the credit card have to
12 sign it?
- 13 A Yes, sir.
- 14 Q Would you have made the sale if he hadn't of signed
15 it?
- 16 A No, sir.
- 17 Q Okay. And 42; what's going on here, ma'am?
- 18 A This one?
- 19 Q No, ma'am, it's the next one, it's No. 42?
- 20 A I was putting the book bag into a plastic bag.
- 21 Q All right. Thank you very much, ma'am. You can
22 have a seat.
- 23 A Up here?
- 24 Q Yes, ma'am.
- 25 MR. MALONY: May I approach, Your Honor?

Virginia Jackson - Direct Examination by Mr. McCarley

1 BY MR. MCCARLEY:

2 Q Ms. Jackson, what I'm handing you has been marked
3 State's Exhibit 43; do you recognize that.

4 A Yes, sir, I do.

5 Q And what is it, ma'am?

6 A That is what he signed his name at the bottom to
7 Jamaques Salley --

8 Q Okay.

9 A -- at the bottom there.

10 Q Now is that a receipt from Roses?

11 A Yes, it will go into the register.

12 Q Say that again, please, ma'am?

13 A This piece of paper goes into the bottom of the
14 register.

15 Q Okay. And does the computer save one of those as
16 well?

17 A Yes, sir.

18 Q Okay. Now does everybody that uses a credit card
19 there at Roses -- is one of those produced?

20 A Yes, sir.

21 Q So every clerk at a register gets one of those
22 every time somebody uses a credit card?

23 A Yes, sir.

24 Q Okay. Do you use that in the ordinary course of
25 business every time somebody uses a credit card?

Virginia Jackson - Direct Examination by Mr. McCarley

1 A Yes, sir, we do.

2 Q Okay. And you get one of those right there right
3 back?

4 A That's right.

5 MR. MCCARLEY: Your Honor, at this time the State
6 moves to enter Exhibit 43 into evidence as a business
7 record?

8 THE COURT: Any objection?

9 MR. BROADWATER: Without objection.

10 (WHEREUPON State's Exhibit No. 43 was entered into
11 evidence.)

12 BY MR. MCCARLEY:

13 Q Now, take a look at that if you don't mind, Ms.
14 Jackson, what day is that receipt from?

15 A February 19th, 2013.

16 Q Okay. And what time does it say that sale was
17 made?

18 A It was 4 minutes after 10.

19 Q In the morning?

20 A Uh-huh (affirmative response).

21 Q Okay. And who does it say was the cashier?

22 A Virginia.

23 Q Is that you, ma'am?

24 A Yes, sir.

25 Q All right. What does the receipt say the name of

Virginia Jackson - Cross-Examination by Mr. Broadwater

1 the person whose card that was used?

2 A Jamaques Salley.

3 Q Okay. And is the person who signed that receipt
4 here today?

5 A Yes, sir.

6 Q Is he in the courtroom?

7 A Yes, sir.

8 Q The same person you identified earlier?

9 A Yes, sir.

10 MR. MCCARLEY: I beg the Court's indulgence.

11 (WHEREUPON there was a pause in the proceedings.)

12 MR. MCCARLEY: Ms. Jackson, please answer any
13 questions Mr. Broadwater has for you, okay?

14 THE WITNESS: Okay.

15 MR. MCCARLEY: You can set that down if you need
16 to.

17 THE WITNESS: Step down.

18 THE COURT: No, ma'am.

19 MR. BROADWATER: Thank you.

20 **CROSS-EXAMINATION**

21 BY MR. BROADWATER:

22 Q Ms. Virginia --

23 A Yes.

24 Q -- when you made the transaction on the 19th, did
25 you see a driver's license?

Virginia Jackson - Cross-Examination by Mr. Broadwater

1 A Yes, sir.

2 Q Did you write the number down?

3 A Why would I write his number down; I compared it to
4 his face, the picture that's on his driver's license.

5 Q The number on the driver's license, did you write
6 that down?

7 A No, sir.

8 Q Okay. Did you see what State the driver's license
9 was from?

10 A No, sir.

11 Q And you think you were looking at the right person
12 when they made the transaction?

13 A Yes, sir.

14 Q Nothing further.

15 MR. MCCARLEY: Nothing from the State, Your Honor.

16 THE COURT: Ma'am, you may step down.

17 May she be excused?

18 MR. BROADWATER: Yes.

19 THE COURT: Next witness.

20 MR. MALONY: Your Honor, the State calls Detective
21 Jeremy Hembree.

22 JEREMY HEMBREE,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box stating
25 your full name and spelling your last for the Court,

Jeremy Hembree - Direct Examination by Mr. Malony

1 please.

2 THE WITNESS: Detective Jeremy Hembree,
3 H-E-M-B-R-E-E.

4 **DIRECT EXAMINATION**

5 BY MR. MALONY:

6 Q Detective Hembree, where are you employed?

7 A The Aiken Department of Public Safety.

8 Q How long have you been there?

9 A Since 1998.

10 Q What are your current duties with Aiken Department
11 of Public Safety?

12 A I'm a detective in the investigations division.

13 Q What duties come along with being a detective in
14 the investigation?

15 A Investigation followups on previous cases, as well
16 as investigating any crimes that take place.

17 Q Specifically, would the crime that took place that
18 we're all here for today -- explain to the jury how you
19 first became involved in this case?

20 A I was in the area when the call for the armed
21 robbery went out. We received information, or a BOLO, to
22 be on the lookout for a Silver Dodge Ram at which time
23 another officer had located one along Hampton Avenue and I
24 went in that area to assist in locating that vehicle that
25 he had observed.

Jeremy Hembree - Direct Examination by Mr. Malony

1 Q Where was it on Hampton; do you remember?

2 A The Busy Bee Hair Salon on Hampton Avenue.

3 Q Did you speak with someone that was identified as
4 the driver of that vehicle at that time?

5 A I did. I spoke with a gentleman named Carlos
6 Williams who stated he was the driver and operator of that
7 vehicle that was parked out front.

8 Q At that time was Carlos Williams arrested?

9 A No, sir.

10 Q Approximately how long after the armed robbery,
11 kidnapping did you see this vehicle at Busy Bee?

12 A Probably 30 to 45 minutes.

13 Q Now, did you speak with Carlos Williams again later
14 that day?

15 A We did.

16 Q Where was that at?

17 A That was at Mr. Williams' residences -- residence
18 on Crawford Avenue in Aiken.

19 Q Where did -- where did you go after that?

20 A In speaking with Mr. Williams, we observed the
21 inside of his vehicle through the window. We observed some
22 clothing which was consistent of the description given
23 earlier in the incident for the armed robbery and we asked
24 Mr. Williams if he would come to Aiken Public Safety
25 Headquarters on a voluntary basis to -- to provide us a

Jeremy Hembree - Direct Examination by Mr. Malony

1 statement.

2 Q I'm going to show you, Detective Hembree, what's
3 been entered as State's Exhibit 28 and ask if you recognize
4 it?

5 A I do.

6 Q And is this the clothing that you observed at that
7 time in the back of the truck?

8 A It is.

9 Q So did Carlos Williams come back to Public Safety
10 at that time?

11 A He did.

12 Q After speaking with Carlos Williams, were y'all
13 able to identify the other two suspects at the time in this
14 armed robbery and kidnapping?

15 A We were. It was identified as the defendant, Mr.
16 Salley and Michael Quarrels or Big Mike.

17 Q Where did you get Big Mike; where did you get the
18 name Michael Quarrels from?

19 A Initially in Mr. Williams' statement it was
20 revealed to us as Big Mike throughout the interview at
21 which time I was able to followup on that information that
22 we received from the interview and identified him that
23 evening, early morning the next day as Michael Quarrels.

24 Q What about with the defendant, what did y'all next
25 with regards to him?

Jeremy Hembree - Direct Examination by Mr. Malony

1 A He was identified as one of the individuals
2 involved and the arrest warrants were issued from him and
3 he was located that evening at his place of employment at
4 Carlisle Tire.

5 Q Was this still on February 19th, 2013?

6 A It was.

7 Q Was the defendant arrested at that time?

8 A It was -- he was, yes, sir.

9 Q What, if anything, did the defendant have on his
10 person at the time of his arrest or his booking at the
11 detention center?

12 A Once we placed him under arrest and transported him
13 to the detention center. Upon his arrival at the detention
14 center, we take an inventory of his property on his person,
15 which he had a wallet with some contents in it, cell phone,
16 and approximately 168 to \$169 in cash and change.

17 Q What did you do at that time with regards to his
18 cell phone?

19 A We took the cell phone into our -- seized it into
20 evidence for us because based on the testimony or the
21 interview by Mr. Williams earlier in the evening, it was
22 revealed that they had made communication about the armed
23 robbery before and after the armed robbery through text
24 messages and phone calls.

25 MR. MALONY: Your Honor, may I approach?

Jeremy Hembree - Direct Examination by Mr. Malony

1 BY MR. MALONY:

2 Q Detective Hembree, I'm going to show you what's
3 been marked for identification purposes State's Exhibit 45
4 and ask if you recognize it.

5 A I do.

6 Q And what is it?

7 A It is a T-Mobile Samsung cellular phone.

8 Q Okay. And where did this phone come from?

9 A Mr. Salley's person upon his arrest.

10 Q Thank you. All right.

11 MR. MALONY: At this time the State would move to
12 introduce Exhibits -- Exhibit 45 into evidence.

13 THE COURT: Any objection?

14 MR. BROADWATER: Yes, Your Honor, the motion I made
15 this morning.

16 THE COURT: Any other reason than what you gave at
17 that time?

18 MR. BROADWATER: No.

19 THE COURT: Overruled.

20 MR. BROADWATER: Thank you.

21 (WHEREUPON State's Exhibit No. 45 was entered into
22 evidence.)

23 BY MR. MALONY:

24 Q After collecting this cell phone the same day as
25 the defendant was arrested and the same day as this crime,

Jeremy Hembree - Direct Examination by Mr. Malony

1 did you ever retrieve anything else from the defendant's
2 property at the jail?

3 A I did. Through the course of our investigation
4 that evening and the following day pretty much the whole
5 next day we, it was determined that a book bag was
6 purchased at Roses just prior to the armed robbery to which
7 we were able to recover a receipt and then we -- I obtained
8 a search warrant and executed it at Aiken County Jail on
9 Mr. Salley's property to retrieve the credit card that was
10 inside his property.

11 MR. MALONY: Your Honor, may I approach?

12 THE COURT: Certainly.

13 BY MR. MALONY:

14 Q Detective Hembree, I'm showing you what's been
15 marked for identification as State's Exhibit 44 and ask you
16 if you recognize it?

17 A I do.

18 Q What is that?

19 A It's a Navy Federal Credit Union check card Visa
20 issued in the name of Jamaques D. Salley.

21 Q Is this the card that you just testified you
22 collected from his property at the jail?

23 A It is.

24 MR. MALONY: Your Honor, at this time, the State
25 would move to introduce Exhibit 44 into evidence?

Jeremy Hembree - Direct Examination by Mr. Malony

1 THE COURT: Objection?

2 MR. BROADWATER: No objection.

3 (WHEREUPON State's Exhibit No. 44 was entered into
4 evidence.)

5 BY MR. MALONY:

6 Q So at this time, Carlos Williams' phone -- when was
7 it collected from him?

8 A Upon his arrest at the conclusion of his interview.

9 Q And you just testified that you got the defendant's
10 phone the same day?

11 A That's correct.

12 Q What did you do, first, in regards to Carlos
13 Williams' phone?

14 A Mr. Williams owned a little bit older model phone
15 than the defendant's and we had to issue a search warrant
16 to Verizon Wireless, which is his carrier for service. We
17 served them with a search warrant for records related to
18 his account in which they send us the information either
19 via fax or e-mail or some type of electronic means.

20 Q Okay. I'm going to show what's been introduced as
21 State's Exhibit 27 and ask you to take, take your time and
22 take a look at that and tell me if you recognize it?

23 A I do.

24 Q Okay. And what is -- what is 27?

25 A It is the text message content detail that we

Jeremy Hembree - Direct Examination by Mr. Malony

1 received from Verizon Wireless related to Carlos Williams'
2 telephone.

3 Q Okay. Is this everything you received back from
4 Verizon Wireless?

5 A It is not. It is only relevant to leading up to
6 the armed robbery and afterwards.

7 Q Now explain what you did next with regards to the
8 defendant's cell phone?

9 A The defendant owned a newer Android Smart phone and
10 Aiken Department of Public Safety has a Cellebrite machine
11 that we can plug that phone into and it will download the
12 material that is inside that phone.

13 Q And did you do that in this case?

14 A We did.

15 Q And these records, do they -- can you save them?

16 A We do.

17 Q What form do they come in?

18 A It's a HTML format. I'm not sure of the exact
19 wording for the HTML, but it allows us to view it and
20 hyperlink throughout it so we don't have to try to scroll
21 through all 2 or 3,000 pages that we received.

22 Q And are those pages that you received from these
23 downloads, are these things that you keep in the ordinary
24 course of business as a criminal investigator?

25 A We do.

Jeremy Hembree - Direct Examination by Mr. Malony

1 MR. MALONY: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MR. MALONY:

4 Q Detective Hembree, I'm showing you what's been
5 marked for identification as State's Exhibit 46 and ask if
6 you will take a minute and let me know whether or not you
7 recognize it.

8 A I do and it's the -- just a small portion of the
9 couple thousand page report that we received through our
10 Cellebrite machine and it was related to a Samsung Android
11 phone with the telephone number of 803-226-8215 with an
12 e-mail account associated of jamaques@gmail.com.

13 Q So collectively is this the relevant portion of the
14 download that you just testified you did on the -- or that
15 was done on the defendant's phone?

16 A It is.

17 Q Okay. And these are true and accurate copies of
18 that download?

19 A It is.

20 MR. MALONY: Your Honor, at this time, the State
21 would move to introduce Exhibit 46 into evidence and ask
22 that we be able to publish it to the jury?

23 THE COURT: Any objection?

24 MR. BROADWATER: Yes, I don't think I have a copy.

25 THE COURT: Is that an objection?

Jeremy Hembree - Direct Examination by Mr. Malony

1 MR. BROADWATER: Yes, I think so.

2 THE COURT: Any objection, sir?

3 MR. BROADWATER: If we can get a copy, I don't
4 mind.

5 THE COURT: No objection, is that correct?

6 MR. BROADWATER: Yes.

7 THE COURT: Make a copy available to Mr. Broadwater
8 please.

9 MR. MALONY: Yes, sir.

10 (WHEREUPON State's Exhibit No. 46 was entered into
11 evidence.)

12 MR. MALONY: Your Honor, may the witness step down
13 to go through this exhibit?

14 THE COURT: Yes.

15 BY MR. MALONY:

16 Q Detective Hembree, this is State's Exhibit 46.
17 Again I'm going to ask that you speak up for the court
18 reporter. Explain to the jury what we're working with
19 here?

20 A This is -- this would be a cover sheet related to
21 the report that we received. It gives us the manufacturer
22 of the phone, the model of the phone, the detected
23 manufacturer again, the MSISDN would be the telephone
24 number associated with the phone and then e-mail accounts
25 associated or activated on that phone line.

Jeremy Hembree - Direct Examination by Mr. Malony

1 Q And again this is the cell phone that you took off
2 the defendant at the time of his arrest?

3 A That's correct.

4 Q Did you have the opportunity to compare the records
5 from Carlos Williams' phone with the download that you did
6 from the defendant's phone?

7 A I did.

8 Q Are they the same?

9 A They are.

10 Q Now, explain why the defendant's phone feed starts
11 on the 13th and the Carlos Williams was the 15th, from the
12 download, the search warrant download that came back? Can
13 you explain that to the jury?

14 A The time stamp related to the Cellebrite machine
15 gives us a variation of the dates a little bit. We're more
16 able to correlate that in time-wise with the Mr. Williams'
17 phone.

18 Q The number -- what about the nickname; what is,
19 where does that nickname come from?

20 A What's associated with how that number is stored in
21 the phone that we take the report from. So that -- that
22 would tell us that this number is associated with Los in
23 his phonebook.

24 Q And the message tied as to the defendant's cell
25 phone records are all outgoing from the defendant's phone

Jeremy Hembree - Direct Examination by Mr. Malony

1 and incoming from the defendant's phone and so on and so
2 forth?

3 A That's correct. That would show us that there's a
4 conversation going on between them at these dates and
5 times.

6 Q And again, is this the same thing, outgoing still
7 on the 13th of February this same number here?

8 A That's correct.

9 Q Okay. Have you been able to identify what, who
10 he's speaking with at this time through this cell phone?

11 A We related this text message detail with that of
12 Carlos Williams; and it is consistent.

13 Q Take the difference here on 2/19/2013, the same day
14 of the armed robbery at 6:13 p.m., is the defendant still
15 speaking with the number identified as Carlos Williams'
16 number?

17 A He is up until -- up until about 12:44 is the last
18 time he receives a message from Carlos and then you have
19 that approximately 5-hour window where there's no
20 conversation and then there's a message sent from the
21 defendant's phone to Carlos Williams' phone asking if --
22 our interpretation of are you straight.

23 Q Okay. And what about the next message on
24 Defendant's phone?

25 A All right. Approximately 6:13 p.m. he sends an

Jeremy Hembree - Direct Examination by Mr. Malony

1 outgoing message to 706-910-4633 with the nickname in his
2 phone as Callie and saying to him or her that I'm going to
3 jail with his signature line, Ace.

4 Q What about 13 minutes after that?

5 A Within just seconds of each other --

6 Q Seconds.

7 A -- within seconds of each other from 6:13 p.m. with
8 34 seconds into the minute to 47 seconds into the minute he
9 sends another message back to that same number listed as
10 Callie stating don't text back with the signature line Ace.

11 Q And lastly, less than a minute after that, what
12 about the last text message?

13 A He sends another message out to telephone number
14 803-508-2985 which is associated with Tim inside of his
15 phone book at 6:14 p.m. The message content is tell the
16 cops I've been home all day with his signature line, Ace.
17 And that's it.

18 Q Michael Quarrels, was he arrested subsequently to
19 the defendant and Carlos Williams being arrested?

20 A He was arrested at a later date.

21 Q And what's the status of his case at this point?

22 A Mr. Quarrels has already been to trial and his case
23 has been resolved.

24 Q Thank you.

25 MR. MALONY: Your Honor, I have no further

Jeremy Hembree - Cross-Examination by Mr. Broadwater

1 questions.

2 CROSS-EXAMINATION

3 BY MR. BROADWATER:

4 Q Yes, sir. You're Mr. --

5 A Hembree.

6 Q Hembree?

7 A Yes, sir.

8 Q Good afternoon.

9 A Good afternoon.

10 Q Were you the primary investigator on this matter?

11 A I assisted Lieutenant Savage during this
12 investigation.

13 Q So you issued the search warrants and --

14 A It was a cooperative agreement, yes, sir.

15 Q And -- well who made the final decision?

16 A I think based on the evidence, we all made the
17 decision as a group.

18 Q Did you keep --

19 MR. BROADWATER: May I approach, Your Honor?

20 BY MR. BROADWATER:

21 Q Do you know -- can you tell me who made this,
22 filled this out, the document here, in the investigation?

23 A I cannot. I don't recognize the handwriting.

24 Q You don't?

25 A No, sir.

Jeremy Hembree - Cross-Examination by Mr. Broadwater

1 Q Thank you much.

2 Did any conversation come up between you and the
3 other investigators about the name David Garvin?

4 A I don't recall it, no, sir.

5 Q Did anybody ask you to get a search warrant for
6 David Garvin's residence?

7 A I'm not familiar with a David Garvin.

8 Q You're not?

9 A No, sir.

10 Q Did you later find his name?

11 A Like I said, I am -- I'm not familiar with a David
12 Garvin.

13 Q Okay. Thank you much.

14 A Yes, sir.

15 Q Did you see -- did you see the surveillance footage
16 from Roses Store?

17 A I have seen the surveillance video, yes, sir.

18 Q Do you have any idea how long after the -- the
19 initial activity at Quick Cash, how long after then did you
20 request the video?

21 A Once we continued our investigation and realized
22 that the defendant and other individuals involved had went
23 to Roses, we went to Roses the next day for a followup at
24 which time we asked for a copy of their surveillance.

25 Q Did you notice the surveillance camera that was

Jeremy Hembree - Cross-Examination by Mr. Broadwater

1 picking up the entrance into the store in this particular
2 instance only picked up two out of the three?

3 A The initial video that we did receive showed the
4 two individuals coming in. We spoke with Roses Loss
5 Prevention Crew, who stated that was all they had on video
6 that they were able to retrieve based on the fact that we
7 were there at a later date to retrieve the video.

8 Q Oh, I thought you said you went the next day?

9 A Right, the following day after we went there and
10 asked for it. We asked for it and they provide their --
11 our information that we request the video from to their
12 Loss Prevention Crew that works the video surveillance and
13 then they retrieve that video for us and give it to us.

14 Q And did -- when you found it was only two of the
15 three individuals entering the store, did you request them
16 to see if they had the additional photographs?

17 A That was what they provided to us.

18 Q That's all they gave you?

19 A Yes, sir.

20 Q And you tried, but you couldn't get any more?

21 A No, that was what they had available for us.

22 Q Thank you.

23 THE COURT: Anything on redirect?

24 MR. MALONY: Nothing further from the State, Your
25 Honor.

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

2 Where do you stand, Solicitor.

3 MR. MALONY: I believe at this time the State
4 rests.

5 THE COURT: Madam Forelady, ladies and gentlemen,
6 that means the State has concluded all their testimony.
7 It's 20 minutes to 5. I don't think we're going to start
8 into the Defendant's side of the case today. I've got some
9 matters I've got to take up with the lawyers. I don't want
10 you to have to wait back there while I'm doing all that.

11 We also have another motion in another case. So
12 we're going to adjourn to 9:30 or -- we'll start at 10
13 o'clock in the morning instead of 9:30. I've got a 9:30
14 hearing; I don't want you waiting.

15 Would you like me to get you some breakfast,
16 sausage biscuits?

17 THE JURY: Yes.

18 THE COURT: Fine. Would you rather have some fruit
19 like bananas? Sausage biscuits it is.

20 All right. We'll have some hot coffee and some
21 sausage biscuits. If you want to eat that, please be here
22 before then so -- we can't bring it out in the courtroom.
23 We'll start right at 10 o'clock and if we're still going at
24 lunch tomorrow, we'll buy you lunch; fair enough?

25 Please do not discuss the case tonight with anyone.

1 Do not let anybody discuss it with you. Please don't do
2 any independent research. You've got to try the case based
3 solely on the courtroom evidence. So have a pleasant
4 evening. Report back and be ready to go at 10 and if you
5 want a sausage biscuit, it depends on how long it takes you
6 to eat a sausage biscuit.

7 (WHEREUPON the jury left the courtroom at 4:43
8 p.m.)

9 THE COURT: Are there any motions by the State?

10 MR. MALONY: No, sir, Your Honor.

11 THE COURT: By the defendant?

12 MR. BROADWATER: No, sir, Your Honor.

13 THE COURT: Mr. Broadwater, how many witnesses do
14 you anticipate calling tomorrow so I can get some idea?

15 MR. BROADWATER: Three.

16 THE COURT: Sir?

17 MR. BROADWATER: Three.

18 THE COURT: Three. Now, I notice you had a -- you
19 have an expert witness. What is this newspaper; what's he
20 going to testify about; what's the possible --

21 MR. BROADWATER: The images in Roses.

22 THE COURT: What's he going to testify to?

23 MR. BROADWATER: The photograph we want to
24 introduce.

25 THE COURT: I mean -- I just -- I mean, tell me

1 what the substance of this expert testimony opinion will
2 be.

3 MR. BROADWATER: The images are so blurred that you
4 can't distinguish -- that they don't represent his right --
5 his actual photographs.

6 THE COURT: He's going to testify that those images
7 aren't the defendant's images?

8 MR. BROADWATER: Yeah.

9 THE COURT: That -- that's an issue for the jury.
10 That's -- I can't let an expert testify to an opinion on
11 that.

12 MR. BROADWATER: Okay.

13 THE COURT: But you're welcome to bring him in the
14 morning, let him proffer his testimony so you'll be
15 protected, but I don't know of any Court that's ever
16 allowed a person to come in and tell the jury that that's
17 not John Doe's photograph. I mean they can look at them
18 and that's their -- their providence to determine whether
19 it is or it isn't.

20 MR. BROADWATER: Well, the main concern we have,
21 Your Honor, is the fact that there was a first person
22 who -- a duo that came in Roses and if that photograph had
23 been taken it would show that it's not the defendant.

24 THE COURT: I'll let you proffer anything you want
25 to proffer on it.

1 MR. BROADWATER: Very well.

2 THE COURT: I don't know of any decision that's
3 ever allowed an expert to say that that's not somebody's
4 picture. I mean that's -- you can argue that until the sun
5 comes up if you want to, but I don't know that I can allow
6 it.

7 MR. BROADWATER: I think the position we're taking
8 on that, Your Honor, is that it could have been there, but
9 they didn't ask for it.

10 THE COURT: I see. Well, I don't know how an
11 expert could say that, but anyway, we'll let you proffer it
12 tomorrow and we'll go from there.

13 MR. BROADWATER: Thank you.

14 THE COURT: Then you got, I assume, the defendant's
15 dad, I think you had?

16 MR. BROADWATER: Yes, sir.

17 THE COURT: And then what's -- he an alibi witness
18 or what?

19 MR. BROADWATER: Yes, sir.

20 THE COURT: And then your defendant is going to
21 testify?

22 MR. BROADWATER: Yes, sir.

23 THE COURT: I'll go over all that with him in the
24 morning. Since we're going to get to the jury tomorrow,
25 any particular jury charges other than my standard jury

1 charges?

2 MR. MALONY: Your Honor --

3 MR. BROADWATER: Maybe --

4 THE COURT: Sir?

5 MR. BROADWATER: I may have something.

6 THE COURT: Well, if you would, please have them
7 ready for them in the morning so I can be looking at them.

8 MR. BROADWATER: I'll do that.

9 THE COURT: Thank you very much.

10 MR. MALONY: Your Honor, with regards to the armed
11 robbery charge, you remember the Michael Quarrels trial,
12 there was some discrepancy between the older charge from
13 the charge book and the actual statute now with regards to
14 the BB gun, what appeared to be a deadly weapon. The last
15 time you just simply charged the statute when it came to
16 that portion, not from the -- from the older charge book.
17 So I would just give you a heads up on that.

18 THE COURT: I will charge the statute, right?

19 MR. MALONY: Yes, sir.

20 THE COURT: That's a change that we'll do.

21 MR. MALONY: Yes, sir.

22 THE COURT: Anything else?

23 MR. BROADWATER: I think that's it.

24 THE COURT: All right. Bright and early, please be
25 prompt and on time, Mr. Broadwater.

1 MR. BROADWATER: I won't go to that restaurant any
2 more. But I was afraid if I walked out they would have the
3 police pick me up and then I would be in trouble.

4 THE COURT: I think that's a good idea.

5 MR. BROADWATER: Yeah, I think so.

6 (WHEREUPON Court was in recess until the following
7 morning.)

8 TUESDAY, AUGUST 13, 2013

9 THE COURT: Good morning everyone.

10 All right. We need the defendant.

11 **MID-TRIAL MOTIONS**

12 THE COURT: While we're waiting on the defendant to
13 come out y'all want to give me any proposed jury charges
14 that you want me to look at?

15 I need the statute that you're talking about.

16 MR. MALONY: Yes, sir. The hand of one, hand of
17 all would need to be charged in this case.

18 THE COURT: Mr. Broadwater, you have any additional
19 jury charge you want?

20 MR. BROADWATER: The lesser -- the lesser included
21 of strong-armed robbery.

22 THE COURT: We'll talk about that in a little
23 while.

24 All right. Good morning, sir, how are you.

25 THE DEFENDANT: All right. Anything for the record

1 before we start by the State?

2 MR. MALONY: Your Honor, just I don't believe Mr.
3 Broadwater put in any directed verdict stuff on the record.

4 THE COURT: We're going to deal with that.

5 MR. MALONY: Okay.

6 THE COURT: Thank you. That's his choice.

7 MR. MALONY: Yes, sir.

8 THE COURT: Mr. Broadwater, anything for the record
9 this morning?

10 MR. BROADWATER: Two things, Your Honor. One is
11 the -- I neglected to ask you to rule on A directed verdict
12 motion for the defendant.

13 THE COURT: All right, sir.

14 MR. BROADWATER: And two, out of abundance of
15 caution, after the introduction of Ms. Virginia Jackson as
16 a witness, yesterday was the first time I thought maybe the
17 materials in the discovery, Rule 5 Discovery -- I had seen
18 the video tapes -- the videos showing the checkout at
19 Roses. I guess that I related to her being present
20 yesterday, but I hadn't seen that signed receipt from Roses
21 until yesterday. I looked through the records last night
22 and talked to my client out there at the jail and he hadn't
23 seen it either.

24 THE COURT: Was -- Mr. Malony, was he provided with
25 that?

1 MR. MALONY: Your Honor, I believe it was provided
2 to Mr. Thompson prior to Mr. Broadwater being -- coming on
3 to this case. This was a receipt that was retrieved later
4 in the investigation from Roses. We were fully prepared --
5 Mr. Thompson was in the last trial and was aware of this
6 receipt. Whether or not Mr. Broadwater saw it in discovery
7 or it made it through that transaction.

8 THE COURT: The question is did you provide the
9 receipt to the defense counsel, whether it was Mr. Thompson
10 beforehand or Mr. Broadwater?

11 MR. MALONY: We did, Your Honor.

12 THE COURT: Mr. Thompson replied yesterday and
13 stated he had turned over everything he had to Mr.
14 Broadwater as soon as he was retained; is that correct?

15 MR. MALONY: That's correct.

16 THE COURT: Anything else?

17 MR. MALONY: Your Honor, just for the record, she
18 was -- Ms. Virginia Jackson was on the witness list when
19 Mr. Broadwater became involved in the first case in May.
20 So he would have been aware that she would have been a
21 possible witness for the State the last, however long --
22 three months or so.

23 THE COURT: Well that's one of the hazards of
24 getting in the case on the moment notice on the day the
25 case is getting ready to be tried and that's one reason I

1 declared a mistrial last time.

2 Mr. Broadwater, the State says they turned it over
3 to y'all. Whether or not you've seen it or not, I can't go
4 through your file. I'm going to -- was that a motion or
5 what?

6 MR. BROADWATER: Yes, sir.

7 THE COURT: Motion for what; are you just telling
8 me or what do you want me to do?

9 MR. BROADWATER: No, I'm making a motion for a
10 mistrial.

11 THE COURT: Respectfully denied.

12 And you're making a motion for directed verdict.

13 MR. BROADWATER: Yes, sir.

14 THE COURT: Grounds?

15 MR. BROADWATER: After the State completed its
16 presentation, I would move that the Court direct a verdict
17 of not guilty for the defendant.

18 THE COURT: I respectfully deny that motion.
19 There's ample evidence if the jury believes it from Carlos
20 Williams. He testified unequivocally that your client
21 participated in the armed robbery and the detention of the
22 victim. So I respectfully -- if the jury believes that,
23 then obvious evidence for it to be -- support a verdict,
24 I'm not concerned with the weight of the evidence at this
25 time, but the existence of the evidence and that evidence

1 has been admitted, so I respectfully deny your motion for
2 directed verdict.

3 Anything else? Anything else, Mr. Broadwater?

4 MR. BROADWATER: Nothing from me. My client said
5 he wanted to ask you something.

6 THE COURT: He can ask me whatever he wants to.

7 Sir, Mr. Salley?

8 THE DEFENDANT: Your Honor, that the State said
9 they gave over that information to it, but Mr. Broadwater
10 hasn't been with me the entire six months of this; he's
11 just for the last three, but even Mr. Thompson -- we never
12 had that information. He never had that information. He
13 sat with me the week before I came to trial to see you and
14 he went over the entire discovery and he never had that
15 receipt at any point in time. As a matter of fact, when I
16 came in here and I asked you for the continuance the first
17 time, you asked me on what grounds. And I told you that I
18 haven't seen any yet and I still haven't even seen the
19 videos and that's why Mr. Thompson, I mean Broadwater
20 didn't have that --

21 THE COURT: Where's Mr. Thompson this morning; is
22 he around?

23 THE SOLICITOR: He's not in here this morning,
24 Judge.

25 THE DEFENDANT: Mr. Thompson and Ms. Alves, they

1 both came and spoke with me and we went over the discovery.

2 THE COURT: The State's telling me they turned
3 everything over to your lawyers.

4 THE DEFENDANT: Yeah, but they never gave Mr.
5 Thompson that receipt.

6 THE COURT: That's not what they're telling me.
7 They're telling me that they did. Is that correct?

8 MR. MALONY: Your Honor --

9 THE COURT: Sir? That's a simple question.

10 MR. MALONY: Yes, sir.

11 THE COURT: All right. Thank you.

12 THE DEFENDANT: That's what they gave us in Court
13 yesterday. We didn't have it personally. They handed it
14 to my lawyer in court yesterday.

15 THE COURT: Well, Mr. Salley, they said they did
16 give it to your lawyers. I have to rely on what they tell
17 me. Thank you.

18 Now, Mr. Salley.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Raise your right hand for me?

21 JAMAQUES SALLEY,

22 having been duly sworn, testified as follows:

23 THE COURT: Mr. Salley, we've reached the stage of
24 the trial now where, obviously, you can present your own
25 case. You can call witnesses, you can introduce relevant

1 exhibits and you also have the right to testify in your own
2 defense.

3 Does he have a record, Solicitor? For impeachment
4 purposes?

5 MR. MALONY: He has a 2011 assault and battery of a
6 high and aggravated nature.

7 THE COURT: If you decide to testify, you will be
8 subjected to the same rules as any other witness who
9 testifies. In other words, you'll be subjected to
10 cross-examination by the State. You'll also have a prior
11 record that can be used for you, against you for
12 impeachment, or to attack your credibility purposes and if
13 they bring that record out, I will tell the jury that's the
14 only reason that can be used.

15 You also have the constitutional right -- under the
16 United States Constitution and our State Constitution, you
17 have the right to remain silent, which simply means this:
18 That you cannot be forced to testify in this trial. If you
19 testify, you're going to obviously have to answer questions
20 about, I assume the Solicitor is going to ask you about
21 those text messages and about the receipt and about other
22 things that are pertinent to the case

23 But if you decide not to testify and exercise your
24 constitutional right to remain silent, I will tell the jury
25 when I charge them or instruct them at the close of the

1 case, I will tell them the fact that Mr. Salley did not
2 testify in this case is not to be considered by you at all
3 in determining whether or not he is not guilty or guilty
4 whether the State has met their burden of proof. And, in
5 fact, it is a subject that you're not mention in the jury
6 room, nobody's to talk about the fact that you didn't
7 testify, you have a right to remain silent and there's
8 nothing, no inferences can be derived from the fact that
9 you did not testify. It's not to be considered at all. So
10 if you don't testify, the jury will be told that you have
11 that right and you exercised that right.

12 If you do testify, then you'll be subjected to
13 cross-examination. Your prior record can be used for
14 impeachment or credibility purposes or to attack your
15 credibility. Do you understand all that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That right is your right and solely
18 your right. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you need to tell me if you intend
21 to testify.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You do?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Any questions you want to

1 discuss -- is that your dad back there?

2 THE DEFENDANT: -- your dad or your lawyer before
3 you make that decision?

4 THE DEFENDANT: No.

5 THE COURT: Thank you.

6 All right. Anything else for the record before we
7 move forward?

8 All right. For the record, ladies and gentlemen,
9 we received a phone call this morning from Juror No. 41 who
10 has become ill and unable to attend. She was our second
11 alternate, Ms. Stephanie Craig, so we're now down to
12 twelve. So I don't have to replace anybody, but she was
13 the alternate. I received that information, well I didn't,
14 it came to the clerk's office to the jury part that she was
15 unable to attend this morning because of illness.

16 Any objection by the State?

17 MR. MALONY: No, sir, Your Honor.

18 THE COURT: By the defense, Mr. Broadwater?

19 MR. BROADWATER: No.

20 THE COURT: All right. Anything else, gentlemen, I
21 can help you with?

22 MR. MALONY: Your Honor, I believe yesterday we
23 discussed proffered testimony on the expert that's
24 intending to --

25 THE COURT: That's correct. I don't know if he's

1 gone call them or not, but if he decides to call him, we'll
2 send the jury out and we'll do a small in proffer.

3 MR. BROADWATER: You want to take care of that now?

4 THE COURT: No, sir, I do not, unless you're going
5 to call him as your first witness.

6 MR. BROADWATER: I could.

7 THE COURT: Well, are you or are you not? I know
8 you could.

9 MR. BROADWATER: But I just want to introduce a
10 couple of photographs. Yes, before the jury comes in.

11 THE COURT: You want to introduce a couple of
12 photographs.

13 MR. BROADWATER: I want him to explain how he
14 transferred the videos to actual photographs.

15 THE COURT: All right. What's his name?

16 MR. BROADWATER: Bill Barley. Bill Barley.

17 THE COURT: Marley?

18 MR. BROADWATER: B-A-R-L-E-Y.

19 THE COURT: Barley. All right.

20 Come around, Mr. Barley.

21 BILL BARLEY,
22 having been duly sworn, testified as follows:

23 THE COURT: Please have a seat.

24 THE CLERK: State your full name, spelling your
25 last please.

1 THE WITNESS: Bill Barley, B-A-R-L-E-Y.

2 THE COURT: Mr. Broadwater, Mr. Barley is here for
3 the purpose of, he has -- -I think he's a photographer by
4 trade and he's prepared some photographs; is that it?

5 MR. BROADWATER: Yes, sir. And I want to introduce
6 them onto the record.

7 THE COURT: And he's not here to introduce or to
8 render any opinion; is that correct?

9 MR. BROADWATER: Yes, sir.

10 THE COURT: Just simply the introduction of some
11 photographs that he has and tell us what he did on the
12 photographs?

13 MR. BROADWATER: Right.

14 THE COURT: Let's put a proffer up real quick.

15 MR. BROADWATER: All right.

16 MR. MALONY: Your Honor, I don't see any issue with
17 two of the three. One of the photographs depicts a
18 Virginia College student ID and what appears to be a senior
19 high school portrait on the right side of the photograph
20 taken from the Roses video.

21 THE COURT: Well, I assume he's just putting the
22 photograph of the defendant, some in the past and I guess
23 for the jury --

24 MR. BROADWATER: For a comparison.

25 THE COURT: -- to compare his picture and

Bill Barley - Direct Examination - In Camera by Mr. Broadwater

1 depiction. You can cross-examine him on that. That was
2 obviously high school; people change.

3 MR. MALONY: And I guess, Your Honor, mainly it's
4 just for the jury to decide, not for him to -- an expert to
5 compare --

6 THE COURT: He's not going to render an opinion;
7 he's just going to say how he did it.

8 MR. MALONY: Yes, sir, I just wanted --

9 THE COURT: Isn't that right, Mr. Broadwater?

10 MR. BROADWATER: That's it, Your Honor.

11 THE COURT: Well, he can do that.

12 MR. MALONY: Yes, sir.

13 MR. BROADWATER: Thank you. May I approach?

14 THE COURT: Yeah, just ask him what he's --

15 **DIRECT EXAMINATION - IN CAMERA**

16 By Mr. Broadwater:

17 Q First of all, let me lay a foundation.
18 Your full name and address?

19 A Bill Barley.

20 THE COURT: We'll stipulate he's a professional
21 photographer won't we?

22 MR. MALONY: Absolutely, Your Honor.

23 THE COURT: Been doing pictures all your life, all
24 your adult life; is that right?

25 THE WITNESS: At least 50 years.

Bill Barley - Direct Examination - In Camera by Mr. Broadwater

1 THE COURT: All right. Good.

2 BY MR. BROADWATER:

3 Q I hand you those. Did I furnish you some CD's?

4 A You provided me with CD's of the video recordings
5 from the security cameras.

6 Q All right. And from those CD's you made -- you
7 were the one that altered those photographs?

8 A I went into them and took still captures from the
9 images on the CD.

10 THE COURT: He asked you did you alter them; did
11 you alter them?

12 BY MR. BROADWATER:

13 Q Did you make prints?

14 A I made the prints, making no changes from what I
15 found on the original files.

16 Q Except for the one with Virginia College and the
17 high school portrait; did you change those?

18 A We added those to the print simply for the
19 convenience of having all these photographs on one piece of
20 paper.

21 Q Okay. Answer any questions counsel might have for
22 you?

23 THE COURT: Any questions?

24 MR. MALONY: No, Your Honor.

25 THE COURT: Thank you. You may step down.

1 I'll allow that.

2 MR. BROADWATER: I move to introduce those.

3 THE COURT: Well, we will when we have the trial.

4 Do you have them marked, Mr. Broadwater.

5 MR. BROADWATER: Not yet.

6 THE COURT: Let's go ahead and mark them. That's
7 what 1, 2, 3?

8 (WHEREUPON Defendant's Exhibits 1, 2, and 3 were
9 marked for identification.

10 THE COURT: Now he's got -- you want him for the
11 jury, don't you, or you going to let him go?

12 MR. BROADWATER: Yes, sir.

13 THE COURT: Sir?

14 MR. BROADWATER: Yes, sir.

15 THE COURT: Well, I thought you were letting him
16 go.

17 No, sir, just sit tight for one second. You going
18 to call him first so he can get out of here?

19 MR. BROADWATER: Yes, sir.

20 THE COURT: All right. Anything else for the
21 record before we begin, Mr. Broadwater?

22 MR. BROADWATER: No.

23 THE COURT: State?

24 MR. MALONY: No, sir, Your Honor.

25 THE COURT: Bring the jury in please.

1 (WHEREUPON the jury entered the courtroom at 10:27
2 a.m.)

3 THE COURT: We started at 9:30 and it went just a
4 tad longer and then we had some matters in this case that I
5 had to do outside of your presence. So I apologize, but in
6 return I got to let you order your lunch.

7 What did y'all have, sausage biscuits; the other
8 jury had doughnuts. Those sausage biscuits were good?

9 THE JURY: Yes, sir.

10 THE COURT: Okay. The State has rested. They have
11 completed all of their testimony. It is now the point of
12 the trial where the defense will present their witnesses
13 and once we conclude all the testimony, I don't know if the
14 State would have anything in reply, but we should be
15 through with the testimony within about an hour. So -- and
16 then after that, we'll hear the closing arguments and I'll
17 charge you.

18 I got -- your lunch is going to be here about
19 11:30, quarter to 12:00 so you cannot have to go out to
20 lunch; you can eat lunch while you deliberate or take a
21 break and eat your lunch. However you want to do it. That
22 way you can be ready to go in just a little while.

23 Thank you very much.

24 Mr. Broadwater, you may call your first witness.

25 MR. BROADWATER: Thank you. Thank you, Your Honor.

Bill Barley - Direct Examination by Mr. Broadwater

1 We call Bill Barley.

2 THE COURT: Mr. Barley, come around please.

3 BILL BARLEY,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box stating
6 your full name, spelling your last?

7 THE WITNESS: I am Bill Barley, B-A-R-L-E-Y.

8 **DIRECT EXAMINATION**

9 BY MR. BROADWATER:

10 Q Mr. Barley, did I furnish you with some CD's from
11 Roses?

12 A You did, sir.

13 Q And as result of that, did you make some prints,
14 photograph prints?

15 A Yes, I did. I selected frames, still frames, from
16 the videos and made prints from them.

17 Q And did you -- were you the one that added these
18 two photographs of the defendant to the -- to the prints
19 that came off of the CD's?

20 A Yes, I did. I inserted those over to the side not
21 to obscure anything of the video portion of the image.

22 Q Was that for comparison purposes, for you to
23 compare the photographs and mugshots?

24 A Yes, it was.

25 Q Those photographs that you added onto the video

Bill Barley - Direct Examination by Mr. Broadwater

1 prints were in addition to what we normally print?

2 A Yes.

3 Q All right. And that's one you're holding in your
4 hand now?

5 A It is.

6 Q Okay.

7 MR. BROADWATER: Your Honor, we would move for the
8 introduction this is Plaintiff's -- Defendant's Exhibit 1.

9 THE COURT: Any objection?

10 MR. MALONY: No objection.

11 (WHEREUPON Defendant's Exhibit No. 1 was entered
12 into evidence.)

13 BY MR. BROADWATER:

14 Q And I hand you two others of the same --

15 THE COURT: What was that first one, Madam Court
16 Reporter?

17 THE COURT REPORTER: Defense 1, Your Honor.

18 THE COURT: Thank you.

19 BY MR. BROADWATER:

20 Q You're looking at Defense 2 and 3, right?

21 A Yes, sir.

22 Q And on Defense 3, I believe there are two people
23 entering Roses?

24 A Yes.

25 Q All right. And you, you made the still print of

Bill Barley - Direct Examination by Mr. Broadwater

1 that too?

2 A Yes.

3 Q Of both of those?

4 A Correct.

5 Q Okay.

6 MR. BROADWATER: Your Honor, I move the
7 introduction of Defense 2 and 3.

8 THE COURT: Any objection?

9 MR. MALONY: No, sir, Your Honor.

10 THE COURT: Thank you.

11 MR. BROADWATER: Thank you.

12 (WHEREUPON Defendant's Exhibits 2 and 3 were
13 entered into evidence.)

14 BY MR. BROADWATER:

15 Q Thank you. Answer any questions counsel may have
16 for you, please.

17 THE COURT: All right. Mr. Malony?

18 MR. MALONY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MALONY:

21 Q Good morning, Mr. Barley.

22 A Good morning.

23 Q Defense Exhibit 3 shows two individuals entering
24 Roses. Were you provided the video that showed the three
25 individuals entering Roses from the outside view?

Bill Barley - Direct Examination by Mr. Broadwater

1 A The only thing I had was a file showing this view.

2 I never saw a third person in the files that I had.

3 Q So you didn't see the outside camera of the three
4 of them walking into Roses?

5 A No, I only had that from the inside view you see
6 there.

7 Q Okay. And Defense Exhibit No. 1, where did, where
8 did the first picture here come from? On top?

9 A That was provided by Attorney Broadwater.

10 Q Okay. What about this second picture on the
11 bottom?

12 A Also provided by Mr. Broadwater.

13 Q Where were these pictures taken?

14 A I would infer that one of them is a high school
15 picture and the other one, that student card is from 2010.

16 Q And that's your inference based on, it looks like a
17 high school picture and one of them says summer of '10?

18 A Yes.

19 Q So you don't know when they were taken?

20 A No, I do not have the information on the exact
21 dates.

22 MR. MALONY: No further questions, Your Honor.

23 THE COURT: Anything on redirect, Mr. Broadwater?

24 MR. BROADWATER: Nothing from me, Your Honor.

25 THE COURT: Thank you, you may step down.

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 May he be excused?

2 MR. MALONY: Yes, sir.

3 MR. BROADWATER: Without objection.

4 THE COURT: All right. Mr. Barley, thank you for
5 coming.

6 Next witness please. Mr. Bailiff, let Mr. Thompson
7 in.

8 Next witness please.

9 MR. BROADWATER: Come around here for me.

10 JAMAQUES SALLEY,

11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat in the witness box stating
13 your full name spelling your last.

14 THE WITNESS: Jamaques Deandre Salley, S-A-L-L-E-Y.

15 **DIRECT EXAMINATION**

16 BY MR. BROADWATER:

17 Q Your address?

18 A Right now?

19 Q Yeah.

20 A Aiken County Detention Center.

21 Q Aiken County Detention -- how long you been there?

22 A Six months.

23 Q Since the 19th of February?

24 A Yes.

25 Q You know what you're charged with?

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 A Yes:

2 THE COURT REPORTER: Speak up.

3 THE WITNESS: Yes.

4 BY MR. BROADWATER:

5 Q And have you been in trouble before?

6 A Yes.

7 Q What doing?

8 A I have an assault charge on my record.

9 Q Okay. And when was that?

10 A I caught the charges in 2009.

11 Q Okay. And you heard Mr. Carlos Williams testifying
12 here yesterday?

13 A Yes.

14 Q And how long have you known him?

15 A About six or seven years maybe.

16 Q And where do you know him from?

17 A When he used to stay off of Hampton on Washington
18 Circle, he used to kick it there. I used to stay with him
19 basically.

20 Q You used to stay with him?

21 A Yeah.

22 Q And was there some controversy about you staying
23 with him?

24 A Yeah, after about a year, I got into a situation
25 about his sister and then I got kicked out basically.

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 Q How long have you worn your hair like you do?

2 A Most of my life.

3 Q And you know what you're here about today, right?

4 A Yes.

5 Q 19th of February between 9 and 11 o'clock, that's
6 about two hours.

7 A Uh-huh.

8 Q Where were you?

9 A At home.

10 Q And so what was said about you yesterday is
11 incorrect?

12 A Yes.

13 Q Why?

14 A Why?

15 Q Uh-huh (affirmative response)?

16 A Because I wasn't there.

17 Q And why wouldn't you participate in an offense at
18 Quick Cash?

19 A Why would I not?

20 Q Yeah.

21 A A lot of reasons, truthfully.

22 Q Well, give us the reasons?

23 A Okay. For one, I've had an account with them for
24 like the last five years, ever since I graduated high
25 school. So me, my mom, my auntie, all of us had an account

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 with them. And we've been in and out for the last five --
2 actually I think I have an active account with them right
3 now. I actually still owe them a loan right now. I've
4 been going in and out of there and the people that work
5 there know me. Like, they don't address me as Mr. Salley
6 when I walk in there, they say hey J, they know me.

7 So for like the reasons for the way that the
8 robbery went down or whatever -- how, they went in there
9 with no masks on and everything, for me to go in there with
10 people who knew me would just be suicide.

11 Q How do you know they went in there without masks?

12 A It was in my discovery.

13 Q Who in the discovery said that?

14 A The victim and my co-defendant.

15 Q Said they went in the Quick Cash without a mask on?

16 A Yes.

17 Q All right. Did you work with Mr. Carlos Williams?

18 A Yes.

19 Q Where?

20 A We worked together at Carlisle Tire and Wheel.

21 Q And he got laid off?

22 A Yeah, he got laid off about almost two weeks before
23 the robbery.

24 Q And were you discussing with him the possibility of
25 getting a loan from Quick Cash?

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 A Yes.

2 Q And instead of getting the loan, he decided to
3 rob -- they decided to rob the place?

4 A Yes.

5 Q Who -- why were you discussing it with them?

6 A I was discussing getting a loan with them. He had
7 just got laid off.

8 Q No, I mean discussing the fact that he's not going
9 to get a loan, but he's going to rob the place? Were there
10 discussions about that?

11 A About robbing the place?

12 Q Yeah.

13 A Yeah, two weeks before it came up when I was
14 telling him about going to get a loan because he had just
15 got laid off and I told him to go get a -- he said he
16 needed money. He basically came to me asking for money
17 because he had just got laid off, but the way we get paid
18 at Carlisle is every week. When you go to Quick Cash, I'm
19 not saying they go by, they're payday loans. They go by
20 every single time you get paid. He had, basically I was
21 telling him to take his last pay stub up there and go take
22 out that \$300 loan. They don't attack your credit history
23 so if you just change your number, you don't pay them back;
24 it's basically free money.

25 He was like well if they got money like that, then

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 you might as well just go ahead and rob the place, you know
2 what I'm saying, instead of just --

3 Q Who said that?

4 A Carlos.

5 Q And --

6 A That was the first time it ever came up.

7 Q Didn't you agree with that?

8 A No. I gave him the same reasons I gave before. I
9 was like man, I can't go in there and rob these people.

10 Q Because?

11 A Because they know me.

12 Q Is that the position you maintained throughout?

13 A Basically, yes.

14 Q And did you go into Roses with them to purchase a
15 book bag?

16 A Oh, that's -- no.

17 Q So that's not you on the video?

18 A No.

19 Q Why?

20 A Well, as you can see in those pictures, like the
21 cashier came in and she was like she recognized me
22 specifically because she remembered the chin hair and the
23 hair on my head and everything because I've had these for
24 the longest and everything. But if you can look in the
25 pictures, you can see for yourself, that man don't have no

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 type of hair and you don't even see my chin hair at all;
2 you know what I'm saying, so I don't know what she was
3 talking about. You can look right in the pictures and see
4 that for yourself with your own eyes.

5 Q All right. I hand you what is marked as Defense
6 Exhibit 2, I guess. Is that the one you're referring to?

7 A I'm sure I'm referring to any of them, but you can
8 see it in there too. You can see it in the State's
9 Exhibits too. The guy don't have no hair.

10 Q Okay.

11 A And on the day I was arrested, on my armband I have
12 the same exact hair that I had the whole time.

13 Q Okay. Now you said that Ms. -- the lady at the
14 Quick Cash had interviewed with the Sheriff's Department?

15 A Yes.

16 Q I mean the Police Department; wherein she did, did,
17 denied seeing you?

18 MR. MALONY: Your Honor, objection. This is
19 hearsay. He's testifying.

20 THE COURT: Ask the question.

21 MR. BROADWATER: Okay.

22 THE COURT: Don't answer. Ask the questions.

23 BY MR. BROADWATER:

24 Q The lady from the Quick Cash had stated on the
25 video that she did not see anybody's face; wasn't that her

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 testimony; do I have it right?

2 THE COURT: Wait a minute. You can't ask him, ask
3 whether her testimony is right; that's pitting witness.

4 That's the jury's --

5 MR. BROADWATER: Yeah, I understand.

6 THE COURT: I sustain it.

7 MR. BROADWATER: I'm trying to get to the point
8 where we can bring up the video with her testimony on it
9 talking to the investigator.

10 THE COURT: Well, he can't introduce that.

11 MR. BROADWATER: Okay.

12 BY MR. BROADWATER:

13 Q Then when -- you know nothing about the travel in
14 the truck on the 19th? We're talking about from 9 o'clock
15 in the morning to about 11 o'clock in the morning on
16 February the 19th.

17 A Uh-huh (affirmative response).

18 Q People come in and say you were involved and you
19 say you weren't involved?

20 A Yes.

21 Q Let's talk about that.

22 A Okay.

23 Q Did anyone ask you to give a DNA swab?

24 A No.

25 Q You've been in jail since the 19th of February?

Jamaques D. Salley - Direct Examination by Mr. Broadwater

- 1 A Yes.
- 2 Q And you heard them testify yesterday that whoever
- 3 went to Quick Cash had on latex gloves?
- 4 A Uh-huh (affirmative response).
- 5 Q You ever worn latex gloves?
- 6 A Not on the 19th.
- 7 Q Okay. Did -- did you see Quarrels on the 19th?
- 8 A Yes.
- 9 Q Where?
- 10 A He came to my house; him and Carlos came to my
- 11 house that morning.
- 12 Q They did come to your house?
- 13 A Yes.
- 14 Q And when they left, did you go with them?
- 15 A No.
- 16 Q Did they ask you to go with them?
- 17 A No.
- 18 Q And did you have a -- have a taser or -- or stun
- 19 gun?
- 20 A Yes, sir. I bought it the Saturday prior.
- 21 Q Bought it when?
- 22 A The Saturday prior to the robbery.
- 23 Q Did you have a key for it?
- 24 A No.
- 25 Q You never got a key?

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 A No.

2 Q So it was inoperable?

3 A Basically, yes. Like without the key it's a
4 flashlight.

5 Q And did you discuss going to the flea market in
6 Augusta to get the key?

7 A Yeah, I asked Carlos, I think it was that Sunday
8 morning if he would take me back to go get the key for it.

9 Q Why did you ask him to take you back?

10 A Why did I ask him? Because he had -- he had taken
11 me up there the first time.

12 Q Do you have transportation?

13 A No, I don't have a car.

14 Q Did you have transportation at the time?

15 A I mean I had my girl. She was with me that
16 weekend, but if she wasn't trying to move; she wasn't
17 trying to go nowhere.

18 Q And so you never went back to get the key to fix
19 the --

20 A No, she wouldn't let me go. Like she stays in
21 Augusta; I stay in Aiken. The only reason I even got into
22 Carlos -- in the car with Carlos that Saturday in the first
23 place is because she works -- and Monday through Saturday;
24 she gets off at 12 on Saturday. I needed a ride to Augusta
25 that Saturday to meet her. She didn't have the gas to come

Jamaques D. Salley - Direct Examination by Mr. Broadwater

1 see me. I called Carlos and asked him if he'd take me up
2 there, but we got there way too early and we wanted to kill
3 some time and we went to the flea market.

4 Q And that's when you bought the --

5 A That's when I bought the taser.

6 Q Okay. And you never used it because it wouldn't
7 work?

8 A Yeah.

9 Q And you never went back to buy the key?

10 A No. That was the plan, but it never happened.

11 Q Do you know Carlos' brother?

12 A Which one?

13 Q David Garvin I think it is?

14 A Yes.

15 Q Does he appear in any of those photographs?

16 A I don't know. The photographs, they're pretty
17 blurry. I can't really make out who it would be. Like I
18 can't make out if it would be him, but I haven't seen him
19 in a few years anyway, so --

20 Q Did you go in the Quick Cash with anyone at any
21 time to rob the place?

22 A No.

23 Q So all this testimony about you participating is
24 incorrect?

25 A That is.

Jamaques D. Salley - Cross-Examination by Mr. Malony

1 Q Would you answer any questions that counsel might
2 ask you please.

3 **CROSS-EXAMINATION**

4 BY MR. MALONY:

5 Q Mr. Salley, good morning.

6 A Good morning.

7 Q Your testimony to this jury is that you were on the
8 couch from 9 to 11 that morning?

9 A Yes.

10 Q At your residence?

11 A 66 Schroeder Road.

12 Q What's that?

13 A 66 Schroeder Road.

14 Q And Tim was there; is that your testimony?

15 A Yes.

16 Q And on direct examination, you'd agree with me that
17 you said that you did have a taser?

18 A Yes.

19 Q But you did go to the flea market with Carlos to
20 get the taser?

21 A Yes.

22 Q That you were having text conversations with
23 Carlos?

24 A Yes.

25 Q So State's Exhibit 45 you would agree is your cell

Jamaques D. Salley - Cross-Examination by Mr. Malony

1 phone?

2 A Exactly.

3 Q That was taken off you at the time of your arrest?

4 A Yes.

5 Q And you'd also agree that State's 44 is your credit
6 card?

7 A Yes.

8 Q You testified on direct that this couldn't have
9 been you in the armed robbery because you'd have worn a
10 mask if you'd gone in there?

11 A Yes.

12 Q And you couldn't rob the place because they knew
13 you?

14 A Yes, for the last five years.

15 Q And that you tried to counsel Carlos Williams on
16 how to steal money from Quick Cash without actually going
17 in and robbing it at first?

18 A No.

19 Q You testified that you could go and falsify some
20 things and you never have to pay them back; did you not?

21 A Oh, yeah. Oh, yeah.

22 Q Isn't that falsifying documents to steal money from
23 Quick Cash without having to rob it?

24 A Yes.

25 Q And in those pictures that you just testified, you

Jamaques D. Salley - Cross-Examination by Mr. Malony

1 can't tell who it is, you stated that you could clearly
2 tell that the guy has short hair; is that your testimony?

3 A Yeah, you can see that; you can't see facial
4 features, but you can see that the guy doesn't have what I
5 have.

6 Q You can't really see much with a hood over his
7 head, can you?

8 A True, but you can't see me. I mean you can see
9 this much, I'm not saying -- and this isn't my face. You
10 would be able to see that.

11 Q You ever pull that back some?

12 A Did I ever pull it back?

13 Q Yeah.

14 A No, I don't have anything to pull it back.

15 Q So it's just like it is right now?

16 A Yes.

17 Q Okay. So it's -- it's just like it is and State's
18 21 when you're in Walmart, right?

19 A Those are braids.

20 Q You're saying this is not you in Walmart?

21 A I'm saying those are braids.

22 THE COURT: Is that you in Walmart? That's the
23 question.

24 THE WITNESS: That is me --

25 THE COURT: Hold on a second. Is that you in

Jamaques D. Salley - Cross-Examination by Mr. Malony

1 Walmart?

2 THE WITNESS: That is me.

3 THE COURT: Thank you.

4 BY MR. MALONY:

5 Q Okay. So this is you in Walmart?

6 A Yes.

7 Q State's 18?

8 A Yes.

9 Q This is you purchasing the guns?

10 A (The witness nodded his head.)

11 THE COURT: Is that a yes or no?

12 THE WITNESS: Yes. Yes.

13 BY MR. MALONY:

14 Q You got on a black hoodie in this picture, State's
15 21?

16 A Yes.

17 Q Do you agree with me that on direct you admitted
18 that Carlos Williams and Michael Quarrels came to pick you
19 up the morning -- or came to your house the morning of
20 the --

21 A Yes, they came to my house.

22 Q What time did they come to the house?

23 A Nine something.

24 Q You were asleep at that time. Your testimony is
25 you were on the couch asleep from 9 to 11 so --

Jamaques D. Salley - Cross-Examination by Mr. Malony

1 A I didn't say I was asleep. I said I was on the
2 couch.

3 Q Did you get off the couch and go talk to them?

4 A Yes.

5 Q And at that time, you didn't have your mask, did
6 you?

7 A There was never a mask.

8 Q If there would have been, you'd have been involved
9 in this, wouldn't you?

10 A No.

11 Q Your girl, is that Callie?

12 A Yes.

13 Q And you were texting Callie --

14 A Uh-huh.

15 Q -- that day. And you told Callie you were going to
16 jail, didn't you?

17 A Yes. I was in the back of the police car and --
18 when I was texting.

19 Q Okay.

20 A I could have easily just deleted those messages
21 from me to Carlos.

22 Q What about Tim -- tell the police I've been at home
23 all day; you told him that, didn't you?

24 A Yes, I did. Not as an alibi, I was telling him
25 that the police were on the way to the house.

Penny Guerrieri - Direct Examination by Mr. Broadwater

1 Q You said you caught an assault charge in 2005?

2 A It got plead down to an assault charge.

3 Q In 2011 assault and battery of a high and
4 aggravated nature?

5 A Yes.

6 Q Not assault?

7 A No, it was -- it was criminal sexual conduct.

8 Q No further questions.

9 THE COURT: Redirect, Mr. Broadwater; any redirect?

10 MR. BROADWATER: No.

11 THE COURT: Thank you, you may step down.

12 Next witness please.

13 THE COURT: Next witness, please.

14 MR. BROADWATER: Okay. Ms. Penny Guerrieri.

15 THE COURT: Ma'am, please come back up. I remind
16 you that you're still under oath.

17 Mr. Broadwater.

18 MR. BROADWATER: Yes, Your Honor. Thank you.

19 Beg your indulgence just a minute.

20 (WHEREUPON there was a pause in the proceedings.)

21 THE COURT: Yes, sir.

22 **DIRECT EXAMINATION**

23 BY MR. BROADWATER:

24 Q Good morning.

25 A Good morning.

Penny Guerrieri - Direct Examination by Mr. Broadwater

1 Q When you testified -- I think it was yesterday --
2 you said you were didn't see any faces because you were
3 watching the guns?

4 A Right.

5 Q But you were able to identify Carlos?

6 A I can identify his goatee and his glasses.

7 Q And did you -- you say but you didn't see my -- my
8 client?

9 A Not with a gun in my face, no.

10 Q Did you see him with a taser?

11 A No.

12 Q Okay. Thank you. Just a minute.

13 THE COURT: Is that it?

14 MR. BROADWATER: Just a minute, please.

15 BY MR. BROADWATER:

16 Q When you were speaking to the -- the investigator
17 on the tape, I mean on the video, do you remember saying
18 that you could not see the face of the other defendant?

19 A Who's the other defendant?

20 Q The people that came into Quick Cash? You only
21 recognized one face, right?

22 A Two. Two faces.

23 Q Okay. And so the one of them was Quarrels and the
24 other one was Carlos?

25 A Right.

Penny Guerrieri - Cross-Examination by Mr. Malony

1 Q Okay. Thank you much.

2 MR. BROADWATER: That's it.

3 THE COURT: Any questions?

4 **CROSS-EXAMINATION**

5 BY MR. MALONY:

6 Q You didn't see the defendant with a taser, did you?

7 A No, my -- I was facing the door. My back was to
8 them.

9 Q You felt the taser though, didn't you?

10 A I felt the taser.

11 THE COURT: You may step down.

12 Next witness, Mr. Broadwater.

13 MR. BROADWATER: I call Mr. Savage.

14 THE COURT: Mister who?

15 MR. BROADWATER: David Savage.

16 THE COURT: Come around please.

17 MR. MALONY: Your Honor, may we -- may we approach.

18 THE COURT: Yeah.

19 MR. MALONY: Briefly.

20 (WHEREUPON there was a bench conference out of the
21 hearing of the jury panel and the court reporter.)

22 THE COURT: Come around please.

23 DAVID SAVAGE,

24 having been duly sworn, testified as follows:

25 THE CLERK: Have a seat in the witness box stating

David Savage - Direct Examination by Mr. Broadwater

1 your full name spelling your last?

2 THE WITNESS: David E. Savage, S-A-V-A-G-E.

3 THE COURT: Mr. Broadwater.

4 MR. BROADWATER: Yes, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. BROADWATER:

7 Q Mr. Savage?

8 A Yes, sir.

9 Q How are you this morning?

10 A Fine, thank you.

11 Q Were you chief investigator on this case?

12 A I was.

13 Q Did you do a boot print of the persons who went
14 into the Quick Cash?

15 A I did not.

16 Q Did someone on your staff do it?

17 A That's correct.

18 Q Do you know the result of that research?

19 A I do not.

20 Q Who on your staff would be able to tell us that?

21 A I believe those items are still at the State Law
22 Enforcement Division.

23 Q Still up there in Columbia?

24 A Yes, sir.

25 Q And on the search warrants that were issued for

David Savage - Direct Examination by Mr. Broadwater

1 materials from the defendant's place of residence or what
2 have you, were you able to find anything you requested?

3 A I never issued a search warrant for the defendant's
4 residence, not one search warrant was ever issued for his
5 residence.

6 Q You were not probably a team that went there to
7 search -- search the house?

8 A I was part of the team, I was.

9 Q You went to the house?

10 A I did.

11 Q And were you able to find anything that would
12 describe that the defendant had anything to do with it?

13 A I believe we got consent to search the house from
14 Mr. Davis, his step-father. And I believe I took a pair of
15 boots, a do-rag and -- without looking at my notes, there
16 was one other item I took out of the house, yes, sir. I
17 think it was a book bag.

18 Q And so you had, you had a boot -- you had a boot
19 imprint. Did it fit?

20 A I don't -- I do not know that answer.

21 Q Did you request a DNA test on the do-rag you got?

22 A I did not.

23 Q Was anyone preventing you from doing that?

24 A No, not at all.

25 Q Are there any results pending?

David Savage - Direct Examination by Mr. Broadwater

1 A From the State Law Enforcement?

2 Q Yes.

3 A I believe there is.

4 Q They haven't been received yet?

5 A Without checking today, sir, I don't know the
6 answer.

7 Q All right.

8 MR. BROADWATER: I beg your indulgence just a
9 minute.

10 THE COURT: What did you say, Mr. Broadwater?

11 MR. BROADWATER: I said I beg your indulgence.

12 (WHEREUPON there was a pause in the proceedings.)

13 THE COURT: Absolutely, yes, sir.

14 BY MR. BROADWATER:

15 Q Do you remember getting any latex gloves out of the
16 truck that was being operated on the 19th?

17 A No, sir, I do not.

18 Q Did anyone on your staff do it?

19 A If I remember correctly, Detective Owen may have.

20 Q And were those sent for DNA testing?

21 A They were not.

22 Q Do you know why not?

23 A Because at the time, sir, I didn't know if they
24 were used.

25 Q Do you have -- did you have anything to do with

David Savage - Direct Examination by Mr. Broadwater

1 interviewing the lady from Quick Cash?

2 A Yes, sir.

3 Q Did she -- did she not announce that the subjects
4 had on white latex gloves?

5 A I remember white gloves.

6 Q And how long -- how long have you been a law
7 enforcement officer?

8 A Twenty-three years.

9 Q And during that time, have you seen people wearing
10 latex gloves?

11 A We wear them every day, yes, sir.

12 Q And how long must you have the gloves on before
13 your hands begin to sweat?

14 A I really don't know, Mr. Broadwater, I've never
15 timed that.

16 Q And in your 23 years, have you ever been able to
17 obtain DNA from latex gloves?

18 A I don't recall any cases that come to mind where
19 I've sent gloves to SLED and got anything.

20 Q And in your experience as a law enforcement
21 officer, how many times have you sought to have the DNA
22 taken from an object of a suspect?

23 A What type of object are you referring to?

24 Q Any -- any object. Hat? Gloves? Jacket? Shirt?

25 A Many times on many different occasions.

David Savage - Cross-Examination by Mr. Malony

1 Q And are the results from DNA much better than
2 fingerprinting?

3 A Yes.

4 Q All right.

5 MR. BROADWATER: I beg your indulgence just a
6 minute.

7 (WHEREUPON there was a pause in the proceedings.)

8 MR. BROADWATER: Please answer any questions the
9 State has.

10 THE WITNESS: Yes, sir.

11 **CROSS-EXAMINATION**

12 BY MR. MALONY:

13 Q Lieutenant Savage, later in your investigation, you
14 were made aware that workers at Carlisle Tires wore gloves?

15 A That's correct.

16 Q White gloves?

17 A That's correct.

18 Q So the fact that those white gloves were in the
19 back of the truck, a truck, wouldn't have proved that
20 whoever was in those gloves was the actual one that
21 committed the armed robbery, would it?

22 A That is correct.

23 Q Is that the main reason they weren't sent from DNA?

24 A That is correct.

25 Q And Mr. Broadwater brought up, you went to the

David Savage - Cross-Examination by Mr. Malony

1 Defendant's home that day?

2 A I did.

3 Q The day of the armed robbery?

4 A Yes, sir. Once he was arrested at Carlisle, I had
5 Detective Hembree take him to the county jail. Myself and
6 Lieutenant Odenthall went to his residence on Schroder
7 Avenue.

8 Q Did you speak with Tim that day?

9 A I did.

10 Q After speaking with Tim, were you able to identify
11 where the defendant was?

12 A Mr. Tim -- Mr. Davis told me that I -- we told him
13 why we was there, that we had arrested his son for armed
14 robbery and he said, where at and I said the Quick Cash and
15 he said what time was that and I said around 10:30 this
16 morning. I said was he here and he said I don't know, I
17 was asleep.

18 MR. MALONY: No further questions, Your Honor.

19 MR. BROADWATER: That's it, Your Honor.

20 THE COURT: Thank you. You may step down.

21 Next witness please.

22 MR. BROADWATER: That's the defendant's case.

23 THE COURT: All right. Anything in reply by the
24 State?

25 MR. MALONY: Court's indulgence one second?

1 (WHEREUPON there was a pause in the proceedings.)

2 MR. MALONY: No, sir, Your Honor.

3 THE COURT: Madam Forelady, ladies and gentlemen,
4 that concludes all the testimony in the case. I need to
5 spend a few minute with the lawyers. Go stretch your legs
6 and we'll come back and go until your lunch gets here.

7 Don't discuss the case with anyone.

8 (WHEREUPON the jury left the courtroom at 11:06
9 a.m.)

10 THE COURT: All right. Anything from the State?

11 MR. MALONY: No, sir.

12 THE COURT: Mr. Broadwater?

13 MR. BROADWATER: No.

14 THE COURT: You want to renew your motion?

15 MR. BROADWATER: Yeah, I do.

16 THE COURT: You're renewing your motion for
17 directed verdict; is that correct?

18 MR. BROADWATER: Yes, sir.

19 THE COURT: Same grounds?

20 MR. BROADWATER: Yes, sir.

21 THE COURT: I respectfully deny it. Obviously,
22 there's evidence in the record that if the jury believes
23 would support a verdict. So there is existence of evidence
24 in the record. Denied.

25 All right. Other than the armed robbery statute,

1 Mr. Moloney, that you're gone hand up to me, is there any
2 additional charges requested? Obviously, y'all all know
3 I'll do my normal charge, the presumption of innocence,
4 burden of proof, credibility of witnesses, duty of the
5 judge and jury. I'll charge on the armed robbery statute
6 and I'll charge the kidnapping statute, I'll charge prior
7 record of the defendant for impeachment purposes only, hand
8 of one is the hand of all; anything else by the State?

9 MR. MALONY: No, sir, Your Honor.

10 THE COURT: Mr. Broadwater, any additional charges?

11 MR. BROADWATER: Yes, sir. Your Honor, I think I
12 would request to charge the lesser-included offense of
13 strong armed robbery.

14 THE COURT: Mr. Moloney?

15 MR. MALONY: Your Honor, I believe the, all the
16 evidence presented during the course of the trial is that
17 there was a BB gun that appeared real to the -- to the
18 victim in this case and the person holding that BB gun that
19 made it appear real testified that it was a BB gun. I
20 think the hand of one, hand of all charge cover both of
21 them and not warrant a strong armed robbery.

22 THE COURT: Mr. Broadwater?

23 MR. BROADWATER: But still there was no reference
24 to a mob.

25 THE COURT: There was a what?

1 MR. BROADWATER: No mob. Nothing that would hurt
2 anyone.

3 THE COURT: I respectfully disagree. I'm charging
4 the armed robbery; that's the only offense; either guilty
5 or not guilty on armed robbery. Anything else?

6 You have the statute there.

7 MR. MALONY: Yes, sir.

8 THE COURT: Hand it up to me.

9 MR. MALONY: I've got the applicable portion of it.

10 THE COURT: Let me see it, please.

11 What's the statute number please?

12 MR. MALONY: We're getting that. That's just my
13 notes I had in front of me.

14 While we're finding this for you, the defense
15 presented an alibi in this case. I think Your Honor will
16 need to charge the alibi defense.

17 THE COURT: He didn't present an alibi. He said he
18 was asleep somewhere. Nobody supported that; did they?

19 MR. MALONY: No, sir. I apologize.

20 THE COURT: All right. Before we move forward,
21 Barry Thompson, would you please come forward and be sworn.

22 BARRY THOMPSON,

23 having been duly sworn, testified as follows:

24 THE COURT: Mr. Thompson, as I understand, and my
25 record will fully reflect this -- but you were appointed to

1 represent the defendant in this matter and were prepared to
2 go to trial the last term of court, whenever the case was
3 called. You had drawn a jury on Monday morning, you came
4 in on Tuesday to start the trial of the case and at that
5 time, we were informed Mr. Broadwater had been retained to
6 represent the defendant.

7 I asked that you sit with Mr. Broadwater and
8 provide any assistance that you may. We got in the very
9 infant stages of the trial and I declared a mistrial based
10 on the finding on my own behalf, Mr. Broadwater needed
11 additional time to actively represent his client. And then
12 I relieved you of all further duties and connections with
13 the defendant.

14 And then I recall that there on the record or
15 shortly thereafter, you turned over to Mr. Broadwater your
16 entire file including all the material that had been
17 provided to you by the solicitor pursuant to the applicable
18 Rules; isn't that correct?

19 MR. THOMPSON: That is correct, Your Honor, with
20 one small addendum. In that the actual exchange of
21 information was something that happened during the course
22 of the trial before a mistrial was declared. If the Court
23 would like to remember that when Mr. Broadwater came in, he
24 didn't actually physically have any of the discovery in
25 this case. He was going to sit and try the case so at that

1 point in time, I literally took what I believed to be the
2 full contents of my file minus my personal notes and I
3 handed them to him.

4 Now in -- in reviewing my file coming over here,
5 there was one document which is the original April 2nd
6 cover letter of the CD's in this matter. This document is
7 the only one that -- that I've seen in my file that, that
8 wasn't turned over to Mr. Broadwater.

9 THE COURT: This is the cover letter for
10 transmittal?

11 MR. THOMPSON: Correct. It's a cover letter of
12 CD's or DVD's that are in Mr. Broadwater's possession. And
13 it's my understanding that that's the only piece of
14 discovery that he does not have.

15 THE COURT: In the material that was provided by
16 the State, and it's been represented by the State that they
17 gave to you, a copy of the receipt from Roses where the
18 book -- alleged book bag was purchased; is that your
19 remembrance?

20 MR. THOMPSON: It's my understanding, my
21 remembrance is that that actually came under a separate
22 cover letter. There was a different, it came after the
23 original discovery. There's a separate cover letter that
24 I -- I do remember receiving it. I, of course, can't go
25 into detail about what Mr. Salley and I discussed in terms

1 of --

2 THE COURT: My question, sir, did you receive from
3 the solicitor's office either initially or subsequent
4 thereto the receipt or copy of a receipt from the Roses in
5 connection with the book bag?

6 MR. THOMPSON: I received a photo copy of it and
7 there are pictures of it on the DVD's that Mr. Broadwater
8 was given as well.

9 THE COURT: And you gave that to Mr. Broadwater?

10 MR. THOMPSON: Yes, sir.

11 THE COURT: And have you looked at your file this
12 morning to see if maybe you didn't give it to him and it's
13 still in your file.

14 MR. THOMPSON: I have reviewed the file and the
15 only thing in the file is this cover letter that -- that I
16 spoke about earlier.

17 THE COURT: Thank you.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: All right. Mr. Malony, you going to
20 waive opening on the law?

21 MR. MALONY: Yes, sir.

22 THE COURT: Mr. Broadwater, you ready to argue?

23 MR. BROADWATER: Yes, sir.

24 THE COURT: You need a quick break?

25 MR. BROADWATER: Please.

1 THE COURT: All right. Let's take about a five
2 minute bathroom break. We'll come back with final
3 arguments and I will charge the law.

4 Gentlemen, on the verdict form will be two -- it
5 will be one on kidnapping and one on the armed robbery, we
6 find the defendant not guilty or we find him guilty.

7 MR. MCCARLEY: Your Honor, you still need the
8 statute?

9 THE COURT: I do.

10 (WHEREUPON a brief recess was observed.)

11 THE COURT: Thank you. State ready?

12 MR. MALONY: Yes, sir, Your Honor.

13 THE COURT: Mr. Broadwater, you ready?

14 MR. BROADWATER: Yes, Your Honor.

15 THE COURT: Bring the jury in please.

16 (WHEREUPON the jury entered the courtroom at 11:23
17 a.m.)

18 THE COURT: Mr. Broadwater, you may begin.

19 MR. BROADWATER: May it please the Court.

20 THE COURT: Yes, sir.

21 **CLOSING ARGUMENTS**

22 MR. BROADWATER: Thank you.

23 Ladies and gentlemen, you heard me the other day,
24 my name is Tom Broadwater representing the defendant in
25 this present action. And it's no different now than it was

1 then. The seriousness -- you are responsible to uphold a
2 constitutional value we have in the court system. My
3 client is, his name is Salley. He's saying that what
4 happened on the 19th of February of this year could have
5 been better investigated by use of DNA primarily. There
6 was clothing, there were shoes, there were hats, there were
7 do-rags, there were gloves and DNA testing is much better
8 than fingerprints. But apparently they sent it to the lab
9 in Columbia to SLED, but were not here today. And with
10 those results, I submit that you wouldn't find any DNA on
11 the part of the defendant's, Jamaques Salley.

12 There are photographs that were introduced of the
13 entrance -- surveillance photographs of the entrance of
14 Roses. There are no surveillance photographs at Quick
15 Cash. There are surveillance photographs at Walmart, but
16 no crime was being committed at Walmart, no crime being
17 committed at Roses. However, the testimony is from Roses
18 that when they left Roses they went to the Quick Cash and
19 the people at Roses that you couldn't have seen well on the
20 video -- surveillance recordings -- the main subject that
21 we need to make the decision that should be made in the
22 case of this person doing it is no one else in the world.
23 The number one person walking in the door at Roses is not
24 there. The surveillance photographs at Roses are
25 maintained for 30 day. My client has been in jail since

1 February. He was unable to do anything for himself.
2 Someone could have asked for the revealing photograph
3 revealing who that was the third person in the group
4 walking into Roses. But we don't have that. And why? I
5 can't answer that. Why? It's up to you to determine what
6 happened and the reason we do not have a, photographs; b,
7 any results from any DNA testing and forensic testing for
8 DNA is determined of late to be superior to that of using
9 fingerprints.

10 But it could have been had, it could have been
11 presented to you who has to make the decision, but it was
12 not. I submit that it's, what we need to do is find the
13 defendant not guilty and inform Aiken Public Safety
14 Department that when something like this happens and we
15 have DNA, get the results from the testing and show it to
16 us before we have to make a decision. And that's what I
17 ask you to do; find the defendant not guilty because they
18 have not presented the best evidence in terms of what this,
19 what was available and wasn't in their possession. Because
20 if it was not in their possession, they couldn't do
21 anything about it, but the Defendant Salley has been in
22 their possession since February the 19th, locked away in
23 the Aiken County Detention Center.

24 What we would submit -- if the DNA testing and the
25 gloves were available, you would see that the Defendant

1 Salley had nothing to do with this crime. And I would urge
2 you to bring back a verdict of not guilty by reasons of
3 your reasonable doubt as jurors whether he participated or
4 not. Thank you.

5 MR. MALONY: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 MR. MALONY: Mr. Broadwater.

8 MR. BROADWATER: Thank you.

9 MR. MALONY: Ladies and gentlemen, we'll go through
10 what the evidence showed. I won't be up here all day.
11 Frankly it's all there for you. You don't need me up here
12 to go through it all again, but ultimately, Mr. Broadwater,
13 I've got to address that before I start. He's doing what
14 any defense attorney does; and that's to try to look
15 everywhere but exactly what's in front of your face and the
16 evidence of what's introduced at trial.

17 The DNA -- Detective Savage -- Lieutenant Savage,
18 excuse me, testified the gloves, it wouldn't have mattered
19 whose DNA was on the gloves. The gloves that they wore at
20 work, they all worked at Carlisle, and there's nothing to
21 show who is the person that went in to that Quick Cash that
22 day to rob them. There's nothing. The photographs, we got
23 what Roses gave us. That's the testimony that came out.
24 You'll see a video of them entering Roses from the outside.
25 The defendant's own witness said that he can't identify, he

1 didn't see that video, but he said he saw the video that
2 Mr. Broadwater gave him which is the one that starts right
3 before the defendant walks in or if you go back a little
4 bit, it's in evidence, you'll see him walking down the
5 sidewalk coming out of the store. It's there. We gave
6 them what we had. That's the testimony from Detective
7 Hembree.

8 What do we have? Ladies and gentlemen, this case
9 is full of circumstantial and direct evidence. You've got
10 eyewitnesses. You've got circumstantial evidence from his
11 car, his phone, text messages, him admitting to buying the
12 guns, it's all laid out for you. I'd like to just go
13 through briefly and run through exactly the testimony you
14 heard and what you do know and what is in evidence.

15 This thing starts with buying the guns that he sat
16 right here and told you that that's what he did. He went
17 to Walmart the Friday before the armed robbery. He's
18 handing them cash right here; he's admitted that this is
19 him. He buys the two BB guns. The first one we see here
20 clearly in the picture looks like a real gun. There may be
21 an orange dot on it; according to Carlos, they cut off to
22 make it look more real. You then see him buy the second
23 one. Again, this is him right there buying the two guns at
24 Walmart on the Friday before. He admits this is him in
25 this black hoodie the Friday before buying the guns at

1 Walmart. The guns that were used, the gun that was used to
2 put right in Penny's face.

3 Then we go to the next day. The taser is the next
4 thing that's important in this case. And you look on the
5 13th of February and he's asking Carlos if he's going to be
6 busy Saturday morning, which happens to be the morning all
7 the testimony says they went to get the -- the taser.
8 Carlos says no. The defendant says we got to go to Augusta
9 to the flea market. Today so they went to August and just
10 happened to stop by the flea market. You can clearly see,
11 ladies and gentlemen, he'd been planning this since the
12 13th of February.

13 Then if you fast forward to the morning of Sunday
14 the 17th, the early morning hours around midnight, the
15 defendant tells Carlos that we've got to go back to Augusta
16 because I forgot to get the key to the thing. Carlos says
17 okay. They got -- they decide on what time he's got to
18 show up at 11:30 in the morning and they leave to go back.
19 The next day you see the defendant now trying to see if
20 Carlos is going to check out the time yet to see what time
21 the Quick Cash opens. Carlos said he hadn't done it yet
22 but this time it looks like it makes the defendant a little
23 angry. He asked, you not doing it? And they got into a
24 little feud in here and ultimately the defendant asked him
25 do you have your disguise? Carlos tells him he doesn't and

1 look at this last one, I'm not going to read it, but he's
2 getting mad at Carlos because he feels that Carlos isn't
3 ready to commit this crime that they're about to commit and
4 so he's almost calling him out. You're not really about
5 this are you? Then Carlos comes back and tells him, I
6 thought you were doing all that. Take into account this is
7 the night before the armed robbery.

8 The defendant says we're not ready so Wednesday.
9 Carlos testified that at the time the night before, they
10 weren't planning -- they were going to scope it out, but he
11 called that next morning to where they're getting the book
12 bag and everything once he picks him up. But again you
13 here they weren't ready he said. Take no chances. Take no
14 chances from the defendant's mouth. Carlos, these are all
15 text messages from a phone the defendant admits to y'all is
16 his.

17 What do I need to do asked Carlos and then you say
18 the defendant say he needs to get Mike in on this to have a
19 lookout man to go in there and count how many people are in
20 there at that time and see where the light switches are.
21 What happened? Exactly that. That morning Big Mike went
22 across the street, Michael Quarrels, counted how many
23 people, came back and he said one white girl. Then they go
24 and commit the crime and the first thing the defendant does
25 is turn off the light switch.

1 They then decide at 8 o'clock in the morning or
2 around that time that Carlos, at the direction of the
3 defendant is to go to pick up Michael Quarrels to start
4 this thing. And they do. The first thing they do is go to
5 Roses. You heard it from the testimony of Carlos Williams.
6 They go to Roses. These pictures aren't clear. This is
7 your common sense, ladies and gentlemen. You can't, you
8 can't say 100 percent that that's either one of them from
9 these pictures. But that's not the point. The point of
10 everything else is around it. It corroborates everything
11 everybody said.

12 There they are at Roses. There's the sweat shirt
13 that Carlos Williams says he's wearing in the beginning in
14 this crime before he puts on the hoodie to go into the
15 armed robbery. This card that the defendant just sat here
16 and admitted was his, there it is being used to purchase
17 the book bag. Ms. Jackson, she's comparing it. She
18 identifies him. She says that's the person who purchased
19 the book bag. The Judge will tell you it's your job to
20 weigh credibility of witnesses; and ultimately that means
21 who do you believe; who don't you believe. Who has
22 something to lose; who doesn't?

23 Virginia Jackson didn't have a dog in this fight.
24 She didn't get paid. She didn't -- Virginia Jackson sat up
25 here, sat right there and told y'all that's the man that

1 bought the book bag. I know that because I recognized him,
2 I remember him from his ID, I remember the name on the ID
3 matched the name of the card taken off the defendant and I
4 know that that's the man.

5 So we got him buying the guns. We got him going to
6 get the taser; that's his own admission, those two. And
7 now you got him buying with his credit card minutes before
8 the armed robbery at Roses, this book bag. Let's see him
9 putting it back, putting it in his wallet, and here it is
10 for y'all. Lastly he signs this receipt. You can clearly
11 see the name; check the last four digits of the account
12 number on this receipt; check the last four digits of that.
13 It's the exact same. It's the same card and he signed it.

14 Then what did they do? They go -- you heard
15 testimony from the daycare workers and I told you at the
16 beginning, they're just there to show you how law
17 enforcement became involved. They didn't identify them.
18 Everybody else has at this point; they didn't. The
19 mailman, they just kind of build it up. I told you at the
20 beginning that's how it was. They go in that trailer.
21 They see these people parked in their driveway and that was
22 odd to them. You hear the 911 calls. They didn't see
23 them, but this was odd. They weren't able to identify them
24 at that time. They didn't realize that he'd just been
25 identified by Ms. Jackson moments prior to this.

1 Well, they take off across the street into this
2 Quick Cash with Penny sitting there working like a normal
3 day. They take \$450 which is important to this case. They
4 actually take something of value. It's important too, I
5 think, that you remember, Carlos Williams stated they each
6 got between 150 and \$170. Detective Hembree testified that
7 at the time of the Defendant's arrest, he had \$168.49 on
8 him. That's a big quest or is that his cut, maybe a pack
9 of gum whatever he bought; it's a big quest along with
10 everything else or he did it because that's the money that
11 came out of that drawer.

12 They go in, the defendant admits to having this
13 taser, buying this taser and then he testified and you can
14 see clearly that she was tased with it. And funny thing
15 is, and it's not, everything but funny actually, they got
16 the money. Carlos says I have the money. We could have
17 gone right then, but that defendant over there so excited
18 about this taser that he bought. He goes back to Augusta
19 to get the key. He could have left right then and then he
20 would have still been guilty of everything that he's
21 charged with, guilty of, but he had to do it. He went
22 through all this trouble to get a taser; this is why I got
23 to use it. Why else would I do all this work for it to get
24 the taser; go back and get the key? I'm going to lift her
25 shirt up and I'm going to hit her in the back with the

1 taser. And if she hadn't been through enough, I got to use
2 my new little toy. And he used it.

3 Now how do we corroborate Carlos. Everything
4 Carlos says, ladies and gentlemen, evidence proved. He
5 says I called and I talked -- these are the defendant's
6 cell phone records again, but he says they're his. He says
7 I talked to the defendant, Carlos tells you he calls the
8 defendant after he's first approached by law enforcement
9 visited me to tell him look, they're after us. At this
10 time, a three minute and five second phone call at 12:05.
11 He didn't call him back and speak for 55 seconds until
12 about 20 minutes later. That corroborates Carlos' and it's
13 out of the defendant's own phone. Look they after us; they
14 after -- I'm not sure what's going on, but they're after
15 us.

16 The defendant says he was on his couch all day.
17 However, he admits that he talked to Carlos and Mike
18 Quarrels. They came to his house to get him. He tells
19 Callie, he says his girl, I'm going to jail; don't text me
20 back. And I think it's convenient here he tells Tim, tell
21 the cops I've been home all day. Tell the cops I've been
22 home all day. Well that would be easy for Tim to say; he
23 was home all day. The testimony is Lieutenant Savage, Tim
24 says I was asleep; I didn't see him all morning.

25 In the end, you've got everything that the State --

1 that the State's evidence shows you. And then you've got
2 the defendant telling you it was my phone, it was my
3 business, it was my taser, that's my car. I was wearing
4 this black hoodie; I bought the guns used in this. I was
5 with them that morning. It's all there, ladies and
6 gentlemen, for you.

7 Mr. Broadwater is correct, this is an important
8 case and you have a duty. Your duty is to take what's here
9 back there with you, apply the law as the judge is about to
10 give it to you, and render a verdict. That's it. Nothing
11 else comes in your mind, nothing else; it's what you have
12 and the law. And what you've got, ladies and gentlemen, is
13 an extreme amount of evidence of guilt against the
14 defendant as to two charges. The two charges are fairly
15 simple; you've got armed robbery, the judge will tell you
16 it's a person who commits robbery while alleging by actions
17 or words -- and in this case it was the gun up in her
18 face -- that they were representing a deadly weapon, an
19 item which a person during the commission of a robbery
20 reasonably believed to be a deadly weapon. You saw the
21 picture of the gun. You heard her say I thought it was a
22 deadly weapon. I thought it was a gun up in my face.
23 That's all it takes.

24 And in this case, the Judge will tell you the hand
25 of one is the hand of all. Just because Carlos had the gun

1 and the defendant had the taser, doesn't mean anything. He
2 doesn't get off scot-free because Carlos had the gun and he
3 had the taser. They went in there together; he's guilty of
4 armed robbery based on Carlos having the gun. They were
5 acting together in the commission of this crime.

6 And the kidnapping charge, during that whole about
7 minute and a half that Penny's sitting there, scared to
8 death with a gun to her face, the testimony was that at
9 some point, Carlos said he had her, actually holding her.
10 The law is fairly simple, when they unlawfully seize,
11 confine, which are really the two at this point that you'll
12 look at that fit the pattern of this case, is guilty of
13 kidnapping.

14 It's important, ladies and gentlemen, for a bunch
15 of reasons, but mainly it's because the evidence in this
16 case is -- is so abundant that there is no doubt that the
17 defendant is the one who did it and you can believe the
18 evidence presented to you from the State; you can believe
19 the defendant's own words; believe both of them because
20 they all come to the same conclusion and the burden is the
21 State must prove to you beyond a reasonable doubt that
22 you're firmly convinced is what that means. And again,
23 like I said in the beginning of this case, this is a case
24 that it's tough to be in y'all's position just to have to
25 put up all the evidence and sit here and yourselves away

1 from your jobs and your families; but the case -- this case
2 isn't tough; it's important, but it's not tough. It's all
3 there. There's plenty of evidence.

4 We ask that you come back with the only verdict
5 that everything here, that he told you suggests and proves
6 and that's guilty of armed robbery and kidnapping.

7 Thank you.

8 THE COURT: Madam Forelady, ladies and gentlemen of
9 the jury, my charge is about ten minutes. Everybody okay;
10 you need a bathroom break?

11 **JURY CHARGE**

12 THE COURT: Ladies and gentlemen, you're going to
13 be asked to decide whether or not the defendant is not
14 guilty or guilty of two charges in this case. There are
15 two indictments; one indictment for armed robbery and one
16 indictment for kidnapping, and obviously you must decide
17 each indictment separately on the evidence and the law
18 that's applied to each, uninfluenced by your decision as to
19 the other indictment. You'll be asked to find a separate
20 verdict of guilty or not guilty for each indictment. To
21 both indictments the defendant has pled not guilty and that
22 plea of not guilty puts the burden on the State of South
23 Carolina to prove this guilty to you beyond a reasonable
24 doubt.

25 A person committing a criminal offense in our State

1 is never required to prove himself innocent. I charge you
2 that it is an important rule of law, a constitutional rule
3 of law that a defendant in a criminal trial, no matter how
4 serious the charges will be, will always be presumed to be
5 innocent for which the indictments were issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt. Presumption of innocence does
8 not end when you begin your deliberations, but stays with
9 the defendant throughout the trial until you reach a
10 verdict of guilt based on evidence satisfying you of that
11 guilt beyond a reasonable doubt. The presumption of
12 innocence is not a mere legal theory it's not just a legal
13 phrase. It is a substantial constitutional right to which
14 every defendant is entitled unless you, the jury, are
15 satisfied from the evidence of the defendant's guilt beyond
16 a reasonable doubt.

17 Now what is a reasonable doubt? Our Courts,
18 Appellant Courts have defined reasonable doubt. They say
19 it's the kind of doubt that would cause a person to
20 hesitate to act. It's the kind of doubt that would cause a
21 person to hesitate to act. As I said, the State has the
22 burden of proving the defendant's guilt beyond a reasonable
23 doubt and I explained to you that in civil cases and
24 general sessions cases, in criminal cases, that proof is
25 different. A civil case is by the preponderance of the

1 evidence and a criminal case is beyond a reasonable doubt.

2 It must be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that

4 leaves you firmly convinced of the defendant's guilt.

5 There are very few things in the world that we know with

6 absolute certainty and in criminal cases the law does not

7 require proof that overcomes every possible doubt. If

8 based on your consideration of the evidence you are firmly

9 convinced that the defendant is guilty of the crimes

10 charged, then you must find him guilty. If on the other

11 hand, you think there's a real possibility that he's not

12 guilty, then you must give him the benefit of the doubt and

13 find him not guilty. So it's a -- if you're firmly

14 convinced by the evidence that he's guilty, then that's --

15 that's the burden that's on the State to prove it beyond a

16 reasonable doubt.

17 Let me remind you, ladies and gentlemen, that I've

18 told you on a number of occasions that you and I had

19 different functions to perform during the trial of the

20 case. My job was to rule on the admissibility of evidence

21 and to instruct you on the law. So please accept the law

22 as I give it to you. If you have some preconceived idea

23 about what the law is or what it should be and it does not

24 agree with what I tell you, please set aside that

25 preconceived idea and accept the law as I give it to you.

1 My position makes me the judge of the law. I instruct you
2 on what the law is.

3 But more importantly, your position is to find the
4 true facts in the case. As I told you, you would hear
5 different sides of the story. You've heard that in this
6 case. So you are the judges of the facts, the finder of
7 the facts. So if at any time during the trial of the case
8 you looked up here at me and I smiled or frowned or yawned
9 or rolled my eyes or stretched or whatever and you think I
10 have some input in the facts or have some idea about what
11 the facts should be, disregard that. The law does not
12 allow me to have any opinion about the facts. That is your
13 job and your job only.

14 You are the judges of the facts. And when I told
15 you when we started by being the judges of the facts, that
16 puts the burden on you to judge or determine the
17 credibility of the witnesses who have testified in the
18 case. Credibility simply means believability. Who did you
19 believe; what evidence do you believe. So it becomes your
20 duty as jurors to analyze and evaluate the evidence and
21 determine which evidence convinces you of its truth.

22 Now in determining the believability or credibility
23 of witnesses who have testified in the case, you have the
24 right to believe one witness over several, several over
25 one, you can disbelieve everything a witness says; you can

1 believe everything a witness says. You can believe a
2 little bit, disregard the rest. In other words, use your
3 common sense that you do on a daily basis to determine if
4 someone is telling the truth. You may consider whether any
5 witness has exhibited to you any interest, bias, or other
6 motive in the case. And also you may consider the
7 appearance and manner of the witness while on the witness
8 stand. In other words, it is your duty to determine the
9 true facts in the case and apply it to the law as I give it
10 to you. You judge the believability or who's telling the
11 truth.

12 Now, in this case, there is a proposition of law
13 that may be applicable. It's called the hand of one is the
14 hand of all. If a crime is committed by two or more people
15 who are acting together in committing the crime, the act of
16 one is the act of all. A person who joins with another to
17 accomplish a criminal act is criminally responsible to
18 everything done by the other person which occurs as a
19 natural consequence of the acts done in carrying out the
20 common plan or scheme. An example, two people may be
21 guilty of killing another person when only one had the gun
22 and only one pulled the trigger, but if they were acting
23 together, the one who pulled the trigger with the other
24 person who didn't would both be guilty of murder. The hand
25 of one is the hand of all. That is a legal principal that

1 may be applicable in this case.

2 Also you've heard the defendant testify that he had
3 a prior record. You've heard evidence that the defendant
4 was convicted of a crime other than the one which he is now
5 on trial for. He has a prior record. This evidence may be
6 considered by you if you conclude it true, only, only in
7 deciding whether the defendant's testimony is believable
8 and for no other purpose.

9 You cannot consider the defendant's prior record as
10 any evidence of the defendant's guilt of the charges we are
11 trying here today. So that prior record can only be
12 considered by you when you determine his believability or
13 the credibility of his testimony.

14 Now in this case, we're dealing with two separate
15 offenses. The defendant is charged with armed robbery. In
16 order to prove armed robbery, the State must prove to you
17 beyond a reasonable doubt that the defendant committed a
18 robbery while armed with a pistol or other deadly weapon or
19 while alleging, either by action or words, that he was
20 armed while using a representation of a deadly weapon or
21 any object which a person present during the commission of
22 the robbery reasonably believed to be a deadly weapon. So
23 if the State has proved to you beyond a reasonable doubt
24 that he committed a robbery and in this case he was armed
25 with a representation of a deadly weapon or any object a

1 person present during the commission of the robbery
2 reasonably believed to be a deadly weapon. Pretty short
3 definition of armed robbery, but that's what the law is in
4 this state.

5 The other offense charged in this case is
6 kidnapping. The State must prove beyond a reasonable doubt
7 that the defendant knowingly and unlawfully seized or
8 confine -- confined another person without authority of
9 law. The State must prove beyond a reasonable doubt that
10 the defendant knowingly and unlawfully seized or confined
11 another person without authority of law. To do a thing
12 unlawfully is to do it willfully and against the law.
13 Knowingly means with knowledge, consciously, not
14 accidentally. Seize is to take hold of suddenly or
15 forcibly; and confine means to limit someone or restrict
16 someone or enclose someone in certain bounds. Doing
17 something without authority of law is something which the
18 law does not sanction, allow, permit, or condone. And the
19 kidnapping does not have to be for any personal or monetary
20 gain or for any illegal purpose, but may be for any reason
21 whatsoever and there is no time limit on how long someone
22 has to be seized or confined.

23 Now, ladies and gentlemen, your verdict has to
24 be -- you have to consider each indictment separately and
25 apart from the other. Your verdict has to be unanimous.

1 All twelve of you must agree as to what the verdict is.

2 Madam Forelady, you will have a verdict form as to
3 the armed robbery charge and as to the kidnapping charge.
4 Once y'all make your decision then you will check the
5 appropriate decision, simply if you find the defendant not
6 guilty or we find him guilty.

7 As I said, your verdict must be unanimous. We're
8 not here to reward any friends or punish any enemies.
9 You're here to deliberately look at the evidence and decide
10 what you deem to be true, apply it to the law and render a
11 true and just verdict and once you do that, you will have
12 completed your civic duty.

13 If at any time during your deliberations you have a
14 question that you need to ask me, the protocol is that you
15 write it out on a pad the bailiffs will give you, knock on
16 the door, and they will give it to me. Sometimes I can
17 answer it; sometimes I can't, but I'll do my best.
18 Sometimes it's just something that I can't comment on and I
19 will tell you if you send me that type of a question.

20 Once you've reached a final verdict, obviously let
21 us know and you would check the appropriate box and sign
22 your name on the verdict form.

23 I suspect your lunch is back there. Either if it
24 is or it isn't, it's going to be here shortly.

25 THE BAILIFF: No, sir, it's here.

1 THE COURT: So if you want to, y'all can deliberate
2 while you eat or you can eat and then deliberate. You're
3 in charge or y'all are all in charge. So do it however you
4 want to, but once you go back there. I can't let you leave
5 once you start reviewing the case. I'm going to ask you to
6 go back to your jury room in just a second. I'm going to
7 ask you to not start deliberating quite yet. I have to ask
8 the lawyers if I've left anything out of the charge and
9 then gather up all the evidence and once we do that, we'll
10 send it back into the jury room and you may start the
11 deliberations. They'll hand you the verdict forms.
12 There are a couple of CD's. We do not have the ability to
13 send that machine back in the jury room. If you want to
14 review all or a small portion or any portion, whatever, of
15 the CD's, let us know. Let us know what part you want and
16 we'll set up and we'll bring you back out. You can't
17 comment on it while it's being played. Nobody can say
18 anything, just simply view it once again if you need to.
19 That make sense? All right.

20 I'm going to let you go back to your jury room and
21 just wait just a minute before you start deliberating,
22 start eating, however, you want to do and I'll send you
23 everything back. Let us know how you're progressing.
24 Thank you.

25 (WHEREUPON the jury left the courtroom at 12

1 o'clock p.m.)

2 THE COURT: All right. Gentlemen, any requested
3 additions, deletions, or objections to the charge as given
4 by the State?

5 MR. MALONY: Your Honor, I don't remember you
6 giving direct and circumstantial; I don't know --

7 THE COURT: I didn't. I normally don't do that.

8 MR. MALONY: Okay. Yes, sir. Other than that, no,
9 sir.

10 THE COURT: Mr. Broadwater?

11 MR. BROADWATER: Just the one that I want to renew
12 about the --

13 THE COURT: Lesser included of strong armed
14 robbery.

15 MR. BROADWATER: Yes.

16 THE COURT: All right. I respectfully -- you're
17 respectfully protected on the record and I respectfully
18 decline. There was just absolutely -- either there was
19 evidence of use of an object that appeared to be a deadly
20 weapon or there was not.

21 Anything else?

22 MR. MALONY: No, sir, Your Honor.

23 THE COURT: All right. Gentlemen, come review the
24 evidence and the verdict forms and I will send it back to
25 the jury.

1 Hold on one second before you send them out; make
2 sure we've got everything.

3 (WHEREUPON the attorneys were confirming that all
4 the evidence was ready.)

5 THE COURT: All right. Let the record reflect the
6 lawyers have reviewed, Mr. Broadwater, please pay
7 attention. The lawyers have reviewed all of the evidence
8 and the verdict forms, everything is in order. It's going
9 back to the jury room at 12:09; correct, gentlemen?

10 MR. MALONY: Yes, sir, Your Honor.

11 THE COURT: Thank you. We stand at ease.

12 (WHEREUPON Court was in recess during jury
13 deliberations.)

14 (WHEREUPON the jury began deliberations at 12:09
15 p.m.)

16 (WHEREUPON it was reported to the Court that a
17 verdict had been reached at 12:59 p.m.)

18 THE COURT: All right. The State ready to receive
19 the verdict?

20 MR. MALONY: Yes, sir.

21 THE COURT: The defendant ready to receive?

22 MR. BROADWATER: Yes, Your Honor.

23 THE COURT: Thank you. Bring the jury in please.

24 (WHEREUPON the jury entered the courtroom at 1:09
25 p.m.)

VERDICT

1
2 THE COURT: Ma'am, have y'all reached a verdict?
3 Y'all reached a verdict?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Pass it to the bailiff, please.

6 Mr. Broadwater, y'all ready to proceed? If you
7 would stand for me please.

8 THE CLERK: Your Honor, the State of South Carolina
9 versus Jamaques D. Salley, Case No. 2013-GS-02-00757, as to
10 the offense of armed robbery, We, the jury, find the
11 defendant guilty signed by Forelady Alison O'Banion.

12 Indictment No. 2013-GS-02-00758 as to the offense
13 of kidnapping, We, the jury, find the defendant guilty
14 signed by Forelady, Alison O'Banion dated August 13th,
15 2013.

16 Ladies and gentlemen of the petit jury, if this is
17 your verdict, please indicate by the raising of your right
18 hand.

19 THE COURT: Let the record reflect that all have
20 raised their right hand.

21 All right. Mr. Broadwater, anything before I
22 release the jury?

23 MR. BROADWATER: No.

24 THE COURT: Thank you. You may be seated.

25 Madam Forelady, ladies and gentlemen --

1 All right. Madam Forelady, that concludes your
2 service this week. I'm going to let them go. We've got
3 the rest of the panel coming. I'm going to give y'all a
4 little bonus. We got the rest of the panel coming back
5 tomorrow, but I'm going to release y'all. Y'all have been
6 here for two days. I'm going to excuse you for the balance
7 of the week.

8 Thank you very much. You've paid excellent
9 attention. I appreciate the job you've done. We cannot
10 have criminal court without any jurors ready, willing, and
11 able to see. And y'all have paid excellent attention and I
12 thank you. If you'll go back this way, they'll leave --
13 you can leave your badges back there and if anyone needs a
14 work excuse, the clerk's can get you one up. If not, then
15 I've enjoyed being with you and I thank you very much.
16 Y'all are welcome to stay. The sentencing will probably
17 take place in about an hour or two. Thank you. Thank you,
18 Madam Forelady.

19 (WHEREUPON the jury left the courtroom at 1:14
20 p.m.)

21 THE COURT: Okay. You got some sentencing sheets?

22 MR. MALONY: On the way up, Your Honor.

23 THE COURT: Okay. Let's just, we'll, we've got
24 something at 1:30. Why don't we sentence him about 2
25 o'clock. We've got something at 1:30. That gives us time

1 to do it.

2 MR. BROADWATER: Could we do it tomorrow?

3 THE COURT: Well, I've got a victim who's been here
4 and she's got to soon go back to work. She's been
5 inconvenienced enough. We'll do it at 2 o'clock. Thank
6 you.

7 Why you want to do it tomorrow, Mr. Broadwater, I
8 mean, tell me if there's a good enough reason.

9 MR. BROADWATER: I wanted to talk to Barry
10 Thompson.

11 THE COURT: I'll get him up here.

12 MR. BROADWATER: Sir?

13 THE COURT: I'll have Barry come up.

14 MR. BROADWATER: Thank you, Judge

15 THE COURT: Get Barry.

16 MR. BROADWATER: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Broadwater.

18 **SENTENCE**

19 THE COURT: All right. You got the sentence
20 sheets?

21 MR. MALONY: Mr. Broadwater is signing them.

22 THE COURT: All right. Mr. Malony anything else we
23 need to put on the record before we complete sentencing on
24 Mr. Salley?

25 MR. MALONY: Nothing from the State, Judge.

1 THE COURT: Mr. Broadwater?

2 MR. BROADWATER: Yes, I noticed one thing. On June
3 19 2013, we filed with the clerk's office a motion for bond
4 and preliminary hearing and that had not been had.

5 THE COURT: Anything else you want to tell me?

6 MR. BROADWATER: That's it.

7 THE COURT: You want to tell me a little bit about
8 your client?

9 MR. BROADWATER: Yes.

10 THE COURT: Thank you.

11 MR. BROADWATER: He lives here in Aiken; has family
12 here. And he finished high school went to college.

13 THE COURT: How far did he go in college?

14 MR. BROADWATER: One year. It was two year
15 college. He went one year. And he has had a couple of
16 scrapes with the law in the past, but nothing serious. And
17 we ask you to tamper justice with mercy.

18 THE COURT: Mr. Salley, anything you want to tell
19 me?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Mr. Salley, of course the
22 citizens of Bamberg County (sic), including the young lady
23 who worked at the Quick Cash, Ms. Guerrieri should be able
24 to go to work in the mornings and should be able to
25 complete their tasks without three men coming in and

1 putting guns to their face and stealing from them or
2 robbing her in her place of business. I listened to her on
3 the 911 tape and bless her heart, I think she was within
4 inches of being absolutely scared to death.

5 Not only that, having the audacity to rob her as
6 you did without any need whatsoever, to cowardly tase her
7 in the back. That's no acceptable behavior in our society.
8 The evidence was overwhelming against you. It did not take
9 the jury long to deliberate your guilt. I concur
10 wholeheartedly with their findings.

11 Therefore, as to offense of armed robbery, sentence
12 of the Court is that you be committed to the State
13 Department of Corrections for a period of 30 years. As to
14 the offense of kidnapping, sentence of the Court is that
15 you be committed to the State Department of Corrections for
16 a period of 5 years. That runs consecutive to your armed
17 robbery. Good luck to you.

18 MR. BROADWATER: Thank you Your Honor.

19 THE COURT: Thank you.

20 * * * * * END OF TRANSCRIPT * * * * *

21

22

23

24

25

1 State of South Carolina)

2 County of Aiken)

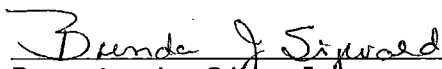
Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 the 8th and 12th through 13th days of August, 2013.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 31st day of March, 2015.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-21782

KVM

ARREST WARRANT NUMBER

FILED

2013A0220100171

May 9 2013

J. E. Godard

J. E. Godard

Charles E. Henderson

Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS0200757

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

JAMAQUES DEUNDRAY SALLEY

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That JAMAQUES DEUNDRAY SALLEY, along with others, did in Aiken County on or about February 19, 2013, while armed with a deadly weapon or while alleging either by action or words that he or another participant in the crime was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of Quick Cash, such goods or monies being described as follows: Four Hundred Forty Seven and NO/100 (\$447.00) dollars, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Alken Department Of Public Safety

David E Savage

Law Enforcement Case #:

DOCKET NO. 2013GS0200758

The State of South Carolina

County of Alken

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER 2013A0220100205

FILED May 9 2013

John H. Ford JUDGE

Charles J. Venturi CLERK

THE STATE

VS.

JAMAQUES DEUNDRAY SALLEY

ACTION OF GRAND JURY

TRUE BILL

Rennie M. Hall

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That JAMAQUES DEUNDRAY SALLEY along with others, did in Aiken County on or about February 19, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away [REDACTED] without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Jamaques Deundray Salley

AKA:

Race:

Sex: M

Age:

23

DOB:

1989

SS#:

Address:

City, State, Zip: Aiken, SC 29801-4172

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery w/Deadly Weapon

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0200757

A/W#: 2013A0220100171

Date of Offense: 2/19/2013

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

10-30

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kevin N. Molony

SC Bar# 80679

Defendant

Attorney for Defendant

SC Bar# 0896

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

0136

Aug 13, 2013

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Jamaques Deundray Salley

AKA:

Race: Sex: M Age: 23

DOB: 1989 SS# Address: City, State, Zip: Aiken, SC 29801-4172DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0200758A/W#: 2013A0220100205Date of Offense: 2/19/2013S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

0-30 years☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kevin W. MofonyBOB 79
SC Bar#Jamaques Salley
DefendantJames D. Houdwater
Attorney for Defendant0896
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 13-65-02-757☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Angel Miles

Court Reporter:

Brenda Sigwald

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

J. H. Houdwater
136
May 13, 2013

2013A0220100171
2013A0220100205

FORM 5

2014-CP-02-01848
2013-GS-02-757, 758

Filed 8-14-2014

STATE OF SOUTH CAROLINA)

County of Aiken)Jamaques Salley 345433)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

CCCP & GS - Aiken County)

Deputy Clerk: [Signature] Time: [Signature])

Trial Judge: [Signature])

Trial Atty: Thomas Bladwater)Court Reporter: Creeda Sinwald)

Sec: PCR Petitioner: [Signature] Solicitor: [Signature])

General Sessions: [Signature] Atty. Gen.: [Signature])

Appointed Atty.: [Signature])

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions
Aiken, SC
3. Name(s) of co-defendant(s) (if any) Carlos Williams
Michael Quarles
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS0200758 - kidnapping
 - (b) 2013 GS0200757 - armed robbery

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Armed robbery - Aug. 13, 2013 - 35 years.
- (b) Kidnapping - Aug. 13, 2013 - 5 years.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial lawyer failed to file my appeal.
- (b) Issues being argued are not presentable on a appeal.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel. (Failure to investigate)
 - (b) Newly discovered evidence (failure to investigate)
 - (c) Denial of direct appeal.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DNA evidence and co-def. statements and receipts and witness testimony.
 - (b) Video of all suspects together prior to robbery (enhanced video).
 - (c) Lawyer failed to file notice of appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 - (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? no
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Thomas Broadwater
PO Box 2708 Aiken, SC 29802
 ii. Barry Thompson
410 Barnwell ave., Aiken, SC 29802
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Barry Thompson - jury trial
 ii. Thomas Broadwater - jury trial, sentencing
 iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, Jamaques Salley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jamaques Salley

SWORN to and subscribed before me this 8th
day of August, 2014.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jamaques Salley, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jamaques Salley
Applicant

SWORN or affirmed to and subscribed before me this
8th day of August, 2014.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Jamaques Salley, #345433,	)	2014-CP-02-1848
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 14, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the May 2013 term of the Aiken County Grand Jury for kidnapping (2013-GS-02-00758) and armed robbery (2013-GS-02-00757). Thomas Broadwater, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III, and was found guilty as indicted. Judge Early sentenced Applicant to thirty years for armed robbery and five years for kidnapping to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf. By Order filed September 30, 2014, the South Carolina Court of Appeals granted Applicant's request to withdrawal his appeal. The Remittitur was issued on October 16, 2014.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

FILED 1-26 2015
L. J. Hadard
 C.C.C.P. & G.S.
Deputy Clerk
 8:30am

Department of Corrections, appellate records, and the transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate.
2. Newly Discovered Evidence
 - a. Video of all suspects together prior to robbery (enhanced video).
3. Failure to file Direct Appeal

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

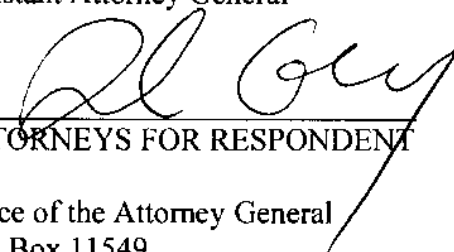
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 23, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2014-CP-02-01848
JAMAQUES SALLEY, #345433,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee Jendrzewski Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this the 23rd day of January, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

FILED 1-24-2015
 L. J. Hadard
 C.C.P. & G.S.
 Deputy Clerk 8:30am

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Jamaques Salley, #345433)
Applicant,)
-v-)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SECOND JUDICIAL CIRCUIT

2014-CP-02-01848

AMENDED APPLICATION
FOR
POST-CONVICTION RELIEF

FILED 5.16.16
Rej. Hedard
J.C.C.P. & G.S.
Anta Michelle 800
Emory Clark

COMES NOW, Applicant Jamaques Salley, by and through his undersigned attorney,
pursuant to S.C. Code Ann. § 17-27-70(a), and amends the application originally and timely filed
May 21, 2014.

1. Place of Detention: Lieber Correctional Institution.
2. Name and location of Court which imposed sentence: Aiken County General Sessions
3. Name(s) of co-defendant(s) (if any): Carlos Williams, Michael Quarles
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-02-00758-Kidnapping
 - (b) 2013-GS-02-00757-Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 13, 2013, -5 years
 - (b) August 13, 2013-30 years (consecutive to sentence listed above)
6. Check whether a finding of guilty was made:

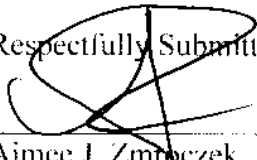
(a) After a trial

7. Did you appeal from the judgment or the imposition of sentence? yes
8. If you answered "yes" to (7) list:
 - (a) The name of each court to which you appealed: SC Court of Appeals
 - (b) Result: withdrawl/remittitur
 - (c) Order filed 9/30/14
9. If you answered "no" to (7) state your reasons for not so appealing: N/A
10. **State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (these are in addition to the previous grounds filed)**
 - (a) **Ineffective assistance of trial counsel to properly preserve appellate issues and improperly withdrawing appeal without consulting the client;**
 - (b) **Ineffective assistance of counsel for failing to decline a case the and being hired a day before trial;**
 - (c) **Ineffective assistance of counsel for failing to challenge the grand jury and subject matter jurisdiction;**
 - (d) **Ineffective assistance of counsel for failing to review discovery and prepare a defense, including an alibi defense with client;**
 - (e) **Ineffective assistance of counsel for failing to make proper objections and preserve appellate issues;**
 - (f) **Ineffective assistance of counsel for failing to object to improper impeachment**
 - (g) **Ineffective assistance of counsel for failing to prepare adequate jury charges and object to improper jury charges;**

- (h) Ineffective assistance of counsel for failure to prepare mitigation after trial including not addressing sentencing disparities amongst co-defendants;
 - (i) Prosecutorial misconduct including withholding and mischaracterizing evidence amounting to *Brady* violations;
 - (j) Ineffective assistance of counsel for failing to properly research and present an expert regarding digital images presented at trial;
 - (k) Ineffective assistance of counsel for failing to file pretrial motions and have a competent understanding of the criminal procedure and due process;
 - (l) Ineffective assistance of counsel due to cumulative error.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Proof of failure to be properly proved through introduction of trial transcripts, trial evidence, and case law.
12. Prior to this application have you filed with respect to this conviction:
- (a) Any petition in a State Court under South Carolina No
 - (b) Any petition in State or Federal Courts for habeas corpus or post-conviction relief
No
 - (c) Any petition in the United States Supreme Court for certiorari other than petitions, in any, already specified in (8) No
13. If you answers "yes" to any part of (12), list with respect to each petition, motion or application N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed: No
15. If you answered "yes" to (14) identify N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: N/A
17. Were you represented by an attorney at any time during the course of:
- (a) Your arraignment and plea? No
 - (b) your trial (if any) N/A
 - (c) your sentencing Yes
 - (d) your appeal, if any from the judgment of conviction or the imposition of sentence? No
18. If you answered "yes" to one or more parts of (17) list:
- (a) The name and address of each attorney who represented you
 - i. Barry Thompson- Aiken County Public Defender's office
 - ii. Thomas Broadwater, P.O. Box 2708 Aiken, SC 29802
 - (b) The proceedings at which each such attorney represented you:
 - i. Barry Thompson-Trial
 - ii. Thomas Broadwater-Trial/Sentencing/unperfected appeal
19. State clearly the relief you seek in filing this application: **Grant a new trial and remand to Circuit Court or in the alternative Grant application pursuant to *White v. State.***
20. Are you now under sentence from any other court that you have not challenged: No

Respectfully Submitted,

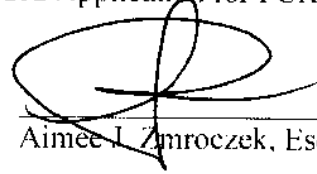

Aimee J. Zmroczek, Esq. #77193

P.O. Box 11961
Columbia, South Carolina 29211
(803) 403.1918 (telephone)
(803) 400.8005 (fax)
Attorney for Applicant

Columbia, South Carolina
May 11, 2016.

CERTIFICATE OF SERVICE

I did hereby serve a filed copy of the Amended Application for PCR on Julie Campbell via E-Mail on May 11, 2016.

A handwritten signature in black ink, appearing to be 'Aimee J. Zmroczek', written over a horizontal line.

Aimee J. Zmroczek, Esq. #77193

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No. 2014-CP-02-01848
5
6 Jamaques Salley,)
7 Plaintiff,)
8 vs.) Transcript of Record
9 State of South Carolina,)
10 Defendant.)
11
12 May 24-25, 2017
13 Aiken, South Carolina
14
15 B E F O R E:
16 The Honorable Diane S. Goodstein, Judge.
17
18 A P P E A R A N C E S:
19 Aimee Zmroczek, Esquire
20 Attorney for the Petitioner
21 Julie Coleman, Assistant Attorney General
22 Attorney for the Respondent
23
24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

1	<u>I N D E X</u>	
2		<u>Page</u>
3	<u>WEDNESDAY, MAY 24, 2017</u>	
4	Post Conviction Relief Hearing	
5	Barry Thompson	
6	Direct Examination by Ms. Zmroczek	
7	Cross-Examination by Ms. Coleman	
8	Redirect Examination by Ms. Zmroczek	
9	Recross-Examination by Ms. Coleman	
10	Timothy Davis	
11	Direct Examination by Ms. Zmroczek	
12	Cross-Examination by Ms. Coleman	
13	Redirect Examination by Ms. Zmroczek	
14	Shawneta Davis	
15	Direct Examination by Ms. Zmroczek	
16	Jamaques Salley	
17	Direct Examination by Ms. Zmroczek	
18	<u>THURSDAY, MAY 25, 2017</u>	
19	Jamaques Salley	
20	Direct Examination Continued by Ms. Zmroczek	
21	Cross-Examination by Ms. Coleman	
22	Redirect Examination by Ms. Zmroczek	
23	Recross-Examination by Ms. Coleman	
24		
25		

1 Certificate of Reporter

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>Description</u>	<u>Page</u>
3	P-1	Thompson - Voir Dire	
4	P-2	Invoice	
5	P-3	Contract	
6	P-4	Subpoena	
7	P-5	Subpoena - 5/3/2017	
8	P-6	Salley's Driver's License	
9	P-7	Defendant's Phone Information	
10	P-8A	Photograph	
11	P-8B	Photograph	
12	P-8C	Photograph	
13	P-8D	Photograph	
14	P-8E	Photograph	
15	P-13	Transcript Payment	
16	P-14	Witness List	
17	P-15	Notice of Appearance	
18	P-24	ACDC Property Report	
19			
20			
21			
22			
23			
24			
25			

POST-CONVICTION RELIEF HEARING

MS. COLEMAN: All right. May it please the Court?

THE COURT: Yes.

MS. COLEMAN: This is Jamaques Salley versus the State of South Carolina, Docket Number 2014-CP-02-1848. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true-bill indicted at the May 2013 term of the Aiken County Grand Jury for kidnapping and armed robbery. Thomas Broadwater, Esquire represents the applicant.

Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III and was found guilty as indicted. Judge Early sentenced applicant to 30 years for armed robbery and 5 years for kidnapping to run consecutively.

A timely notice of appeal was filed on applicant's behalf. By order filed September 30th, 2014, the South Carolina Court of Appeals granted applicants request to withdraw his appeal. The remittitur was issued October 16, 2014. Applicant subsequently filed a timely application for post-conviction relief on August 14, 2014 alleging that he was being held in custody unlawfully based on the following allegations: Ineffective assistance of counsel, newly discovered evidence, and failure to file a direct

Barry Thompson - Direct Examination by Ms. Zmroczek

1 appeal.

2 The State filed its return January 23rd, 2015 and
3 applicant filed an amended application on May 11, 2016,
4 which you should have a copy of in your packet. And he is
5 present today and represented by Aimee Zmroczek.

6 MS. ZMROCZEK: Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. ZMROCZEK: And, Your Honor, we do have several
9 witnesses; and I have previously provided the State with
10 their names and birth dates. And additionally what I -- I
11 was trying to make it easier, if I could hand up kind of
12 our witness list and kind of what exhibits -- I started to
13 list the exhibits, ran out of time, but I was trying to
14 make it as easy as possible on all of us.

15 THE COURT: Okay.

16 MS. ZMROCZEK: Trying to keep it straight. Your
17 Honor, the first witness we would call would be Barry
18 Thompson.

19 THE COURT: Okay.

20 BARRY THOMPSON,
21 having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat in the witness box
23 and state your full name for the record.

24 MS. COLEMAN: Barry Lane Thompson, II.

25 **DIRECT EXAMINATION**

Barry Thompson - Direct Examination by Ms. Zmroczek

1 BY MS. ZMROCZEK:

2 Q Mr. Thompson, what is your application -- what is
3 your occupation?

4 A I'm an attorney, but more specifically, I work in
5 the public defender's office in the 2nd Circuit.

6 Q In the 2nd Circuit? How long have you worked in
7 the public defender's office in the 2nd Circuit?

8 A Seven years.

9 Q All right. Did you have an occasion or were you
10 appointed to represent -- and just to make it easy, I'm
11 going to say J. Salley?

12 A Yes.

13 Q Mr. Salley. Tell the Court how you were appointed
14 to represent him?

15 A How?

16 Q Well, how did --

17 A I'm assuming you're not talking about the
18 administrative process?

19 Q No, no, no. He was assigned to you?

20 A Yes, during the normal course of the way that --
21 that clients are appointed to the public defender's office,
22 he came into our office, was screened by our office at the
23 jail and his file was assigned to me and I went to go see
24 him at the jail. And I met him on multiple occasions at
25 the Aiken County Detention Center.

Barry Thompson - Direct Examination by Ms. Zmroczek

1 Q And did this case, if you recall, proceed rather
2 rapidly?

3 A I don't remember off the top of my head the exact
4 dates and times or the flow of it, but it was during a
5 point in time, yeah, it went reasonably quickly to trial.

6 Q If I said that he was -- or this crime had occurred
7 on February 19th of 2013 and by -- you received discovery
8 in April and then May you were set to try this case, would
9 that --

10 A I have no reason to disagree with you. I will tell
11 you I do not remember off the top of my head.

12 Q And one of the reasons that -- you don't have any
13 of your file; is that correct?

14 A Correct.

15 Q Okay. Tell the Court what happened to your file?

16 A I physically handed it at the instruction of Judge
17 Early, the circuit court judge, in live court to
18 Mr. Broadwater.

19 Q Okay. So I want to talk about kind of how that
20 exchange happened. And I'm going to show you what's been
21 marked as Petitioner's Exhibit 1 and ask if you recognize
22 that.

23 A This appears to be voir dire requests that I
24 prepared in preparation for Jamaquez's trial.

25 Q Okay.

Barry Thompson - Direct Examination by Ms. Zmroczek

1 MS. ZMROCZEK: And, Your Honor, at this point we
2 would move defendant's -- Applicant's Exhibit 1 into
3 evidence.

4 MS. COLEMAN: Your Honor, the State would object
5 based on relevance. This is a document that Mr. Thompson
6 prepared, but Mr. Broadwater ended up -- representing him
7 at trial.

8 MS. ZMROCZEK: And I think the relevance will come.

9 THE COURT: All right. And what I'll do is I will
10 conditionally admit it. If you fail to tie up the
11 relevance then the objection could be sustained. So you
12 just need to do something on that.

13 (Petitioner's Exhibit Number 1 was marked for
14 identification.)

15 BY MS. ZMROCZEK:

16 Q And I'm going to show you what's been marked for
17 identification right now as Petitioner's Exhibit 1. What's
18 the date on that?

19 A It looks like May 14, 2013, and I don't have any
20 reason not to think that that was probably the date that it
21 was submitted.

22 Q Okay. And is this typically how you would do a
23 proposed voir dire?

24 A I normally sign it, but yes. That's -- that's kind
25 of --

Barry Thompson - Direct Examination by Ms. Zmroczek

1 Q This is just an unsigned copy?

2 A Yes, ma'am.

3 Q And so I want to take you to May -- I know you're
4 not great on the dates, but I want to take you to May 14th
5 of 2013, if you can remember, what happened that day? Did
6 you pick a jury?

7 A Yes. I will tell you to kind of maybe help along,
8 I -- I had met with Mr. Salley on multiple occasions. We
9 had discussed all kinds of different types of issues and
10 defenses and everything else. I don't really think that
11 I'm the subject of this PCR so I don't know that I can talk
12 about what he and I talked about, but we had discussed
13 preparing for trial. I had taken my file and had done the
14 normal regular expansion of it to get everything kind of
15 ready for trial. We had gone into court. We had picked a
16 jury. There was a jury sitting in the jury box.

17 The judge said, All right, Mr. Thompson, we'll hear
18 your opening statement and as I was going to stand and give
19 my opening statement, Mr. Broadwater came, he appeared
20 before the Court and appeared as counsel for Mr. Salley and
21 I was asked by the judge to essentially move down the table
22 and for a short period of time, I was asked to be,
23 essentially, standby counsel because I had been -- up until
24 standing up to give my opening statement, I had been
25 counsel for the defendant and Mr. Broadwater came in.

Barry Thompson - Direct Examination by Ms. Zmroczek

1 Q And this was in May of 2013, right?

2 A This would have been whenever -- the day we
3 initially -- we initially started the trial. Now, that
4 trial lasted, if memory serves me about -- less than 5
5 minutes before the judge asked to see everybody in chambers
6 and he declared a mistrial.

7 You asked me earlier about my file. When I was --
8 I had been prepared for trial. Mr. Broadwater came in and
9 sat down. When Mr. Broadwater came in and sat down, he
10 began conversing with Mr. Salley. They were trying to kind
11 of talk and kind of establish some rapport kind of stuff.
12 Mr. Broadwater was discussing the discovery material with
13 him. As the State was calling their first witness for
14 trial, I was furiously trying to write down possible
15 questions for Mr. Broadwater to ask the witness and as I
16 was trying to pass notes to Mr. Broadwater and trying to
17 kind of help bring Mr. Broadwater up to speed, at -- I do
18 not remember his exact words and the transcript will have
19 to kind of -- I had no reason to disbelieve anything that's
20 in the transcript, but Judge Early essentially told me,
21 look Mr. Thompson, this looks to be confusing. I want you
22 to hand your entire file, hand it to Mr. Broadwater and
23 step clear; and so I did that.

24 I stood up. I handed Mr. Broadwater my file and I
25 stepped clear to what's in our other courtroom, the grand

Barry Thompson - Direct Examination by Ms. Zmroczek

1 jury box and I sat in the grand jury box for a little bit.

2 I think the trial lasted maybe 2 second more after that,
3 maybe.

4 Q And then the judge declared a mistrial?

5 A And then the judge asked to see everybody in
6 chambers. To my recollection, I don't remember -- that may
7 or may not have happened. My memory is that he asked them
8 to step into chambers and talked in chambers a little bit
9 and then came out and declared a mistrial and said, okay,
10 we're going to let Mr. Salley -- he has a right to choose
11 his counsel and we're going to let him choose Mr.

12 Broadwater and Mr. Thompson, you step out of the way.

13 You've already handed the file off and we're going to reset
14 this case for trial; and there was a subsequent date set.

15 But I will tell you after -- after that I really
16 did not -- I was not involved in any of the -- the actual
17 trial. There was a motion hearing in between the -- the
18 first trial and the second trial that I was present at, but
19 I was not present at the second trial.

20 Q Okay. Let me get back to what's been marked as
21 Petitioner's Exhibit 1. Why did you -- why did you draw
22 voir dire questions? What's the purpose of this?

23 A To try to gain information about the jury pool that
24 would allow you to detect any type of prejudices that the
25 jury may have against your client so that when it comes

Barry Thompson - Direct Examination by Ms. Zmroczek

1 time to -- when it comes time to striking the jury, when it
2 comes time to pick -- who's not going to be in the jury box
3 that you would be able to have information necessary to try
4 to do that.

5 Q Okay. And then were you aware that there were
6 codefendants in this case?

7 A Yes. There -- to my knowledge I believe there were
8 two codefendants.

9 Q Okay. And in fact, I'm going to show you
10 Petitioner's Exhibit 2. Had a case gone to trial before
11 yours? Well, let me show you --

12 A I will tell you I do not remember.

13 Q Okay. Let me show you this invoice and ask if you
14 recognize that.

15 A This looks like the request -- this looks like my
16 request for a transcript, but this -- this may or may not
17 have been a trial. This could have been a guilty plea. I
18 just don't remember.

19 Q Okay. And do you have the name of who the -- it
20 was -- was it State v. Quarrels on it? A portion of the
21 State v. Quarrels?

22 A I'm going to say this looks like Carlos Williams.

23 Q Okay.

24 A But I --

25 Q Right. So testimony previously provided by Carlos

Barry Thompson - Direct Examination by Ms. Zmroczek

1 Williams?

2 A That's my understanding of what this invoice is,
3 yes, ma'am. I will tell you though, most of the time this
4 would have been something that would have been prepared by
5 my paralegal. I may not have seen this.

6 Q Okay.

7 A I probably would have seen the actual transcript,
8 but I may not have seen this invoice.

9 Q But do you recognize this as something that your
10 office did -- I mean your name's on the top of it, right?

11 A It looks like something that I -- that I ordered
12 and I seem to remember looking at the actual transcript,
13 but I don't -- I don't -- I don't remember ever seeing that
14 piece of paper. But that would not have been unusual.

15 Q Okay.

16 MS. ZMROCZEK: And, Your Honor, again, for the
17 limited purpose, which I will establish later, I would just
18 like to mark this for identification as Applicant's or
19 Petitioner's Exhibit 2.

20 THE COURT: Okay.

21 MS. COLEMAN: And, Your Honor, I object. He just
22 testified he doesn't recognize the piece of paper.

23 THE COURT: She's just marking it for
24 identification purposes.

25 MS. COLEMAN: Okay.

Barry Thompson - Direct Examination by Ms. Zmroczek

1 THE COURT: It's not coming in at this point.

2 (Petitioner's Exhibit Number 2 was marked for
3 identification.)

4 BY MS. ZMROCZEK:

5 Q And you said you recall looking at trial testimony
6 or testimony that was probably as a result of this. Why
7 would you do that? What would that be -- why would that be
8 helpful for you to have prior trial testimony of a
9 codefendant?

10 A We were concerned that some of the other
11 codefendants might be witnesses against Mr. Salley at
12 trial. And you would have wanted -- I would have wanted to
13 have seen what types of statements they may or may not have
14 made in the past in order to be able to cross-examine them
15 effectively when the time came.

16 Q Okay. I want to go back just briefly and then I'll
17 stop asking questions, but when Mr. Broadwater walked in,
18 was that -- was that something unusual that you had
19 experienced?

20 A Unusual -- specifically how do you mean? I --

21 Q Were you familiar with Mr. Broadwater?

22 A I had met Mr. Broadwater before. Mr. Broadwater
23 was at the time a -- a regular -- he was regularly
24 practicing before the bar in Aiken County. He had
25 approached different clients down at the jail. I don't

Barry Thompson - Direct Examination by Ms. Zmroczek

1 know Mr. Broadwater's mind but it appeared like he had
2 essentially kind of either been retained or volunteered to
3 try to help out a lot of different people, a lot of
4 different motions. He was somebody that was a -- a --
5 regularly appeared here in Aiken County in 2nd Circuit
6 court. He was not a stranger when he came into the room.

7 Now, that being said, I've never had anybody kind
8 of walk in on the day of trial to appear to try a case, but
9 that part was strange, but he was not a stranger to me.

10 Q And had you -- and had you previously provided --
11 prior to being ordered, had you ever turned over your
12 discovery to any other attorney?

13 A No.

14 Q Okay.

15 A You talking about in this case?

16 Q I'm sorry, yes. In this case.

17 A No, ma'am. Not in this case.

18 Q Okay. And I believe that you referred -- you
19 recalled testifying in regards to evidentiary motion in the
20 middle of the -- that was the only contact you had with
21 what we'll call the second trial?

22 A Yes, ma'am, that's correct.

23 Q Okay. And do you recall how you were --

24 A Yes, ma'am.

25 Q -- called to testify? Explain to the Court how

Barry Thompson - Direct Examination by Ms. Zmroczek

1 that happened.

2 A There -- I do not know the specific question that
3 was at issue for the motion, but there was a dis -- there
4 was a motion related to discovery before the Court, before
5 the -- before the trial in which Mr. Broadwater was the
6 attorney. Before that trial occurred there was a separate
7 -- and there should be -- so there essentially, should be
8 three different transcripts. There was a separate motion
9 hearing.

10 Q And actually, I'm going to hand you --

11 MS. ZMROCZEK: Your Honor, this is a trial
12 transcript. And I'm referring to page 210 and see if that
13 refreshes your recollection.

14 (The witness is looking at the transcript.)

15 THE WITNESS: That's correct. There was some
16 question about pieces of discovery and what had and had not
17 been provided to Mr. Broadwater and my -- I was not -- I
18 was not called into the Court -- into court to -- and I
19 wasn't present at the argument of this motion. I was
20 called into court and I was specifically asked, did you
21 give Mr. Broadwater everything in your file. And I was
22 able to say, well, Your Honor, you ordered me to do it in
23 live court. You -- I stood up in live court and handed the
24 entire thing to Mr. Broadwater. I don't have anything
25 other than what was provided to Mr. Broadwater in court in

Barry Thompson - Direct Examination by Ms. Zmroczek

1 terms of discovery.

2 Now, when I went back to the office, there are --
3 there are pieces of things that you don't need for trial
4 prep. For instance, I believe the transcript reflects
5 there's like a cover letter of -- that says, Hey, please
6 receive this discovery, here it is. And the cover letter
7 with some of the dates on it, that was not part of my trial
8 prep file. So there were -- there were some very small --
9 a letter here or there or some administrative types of --
10 like the bond paperwork for the file that was part of the
11 physical file that was not handed to be Mr. Broadwater.

12 And I talked about that with the judge. But other
13 than that, everything that was turned over in discovery, if
14 I had it, it was given to Mr. Broadwater. Obviously, he
15 essentially got everything I had.

16 Q And did you have an opportunity, if you recall to
17 do any independent investigation or preparation for this
18 case?

19 A I -- honestly, I don't remember. I mean, I know
20 that we -- I know that I and the investigator looked into
21 all the -- I mean, we reviewed all the discovery, we talked
22 to -- we talked to, I believe there's like -- I want to say
23 we called the daycare ladies from across the street.
24 There's -- some of the witnesses in the case, where there
25 was a, a daycare center or something I believe that was

Barry Thompson - Cross-Examination by Ms. Coleman

1 across the street that --

2 Q And you had turned all those notes over?

3 A Yes, ma'am, I believe -- I believe that we did
4 that, but other than that, I don't remember -- I don't
5 remember anything else.

6 Q Thank you. Please answer any questions that the
7 State has.

8 THE COURT: Yes?

9 CROSS-EXAMINATION

10 BY MS. COLEMAN:

11 Q Hi, Mr. Thompson, how are you?

12 MS. COLEMAN: Beg the Court's indulgence.

13 THE COURT: All right.

14 (There was a pause in the proceedings.)

15 BY MS. COLEMAN:

16 Q Thank you, Mr. Thompson. What did the evidence
17 against the applicant look like in this case?

18 A Are you talking about my evaluation of the evidence
19 in this case?

20 Q What evidence was the State planning to use against
21 Mr. Salley?

22 A Okay. And I'm going to have to tell you -- I'm
23 going to -- to the best of my memory I'll tell you, but I
24 -- I do not have my file, so I don't know that for a fact.

25 Q That's fine.

Barry Thompson - Cross-Examination by Ms. Coleman

1 A But there was -- the worse piece of evidence in the
2 whole thing was the -- was the victim in the case, the lady
3 who was robbed at the check cashing place. She had made
4 statements. There were -- there were statements from -- I
5 believe there was a daycare center across the street where
6 there were some ladies at the daycare center who had
7 noticed people in the area and where people -- where
8 different people stood and -- and -- and kind of
9 essentially staged for the crime.

10 I don't know if you're familiar with the
11 geographical layout of the land in this case, but I had
12 gone to the -- the shopping center that was part of -- the
13 shopping center in which the check cashing place was.

14 And they had -- they also had -- I'm going to
15 apologize, some of this stuff without reviewing notes kind
16 of runs together, but I believe that they had evidence of
17 the purchase of some of the items that were alleged to have
18 been used in the crime.

19 Q They had a record of text messages from Mr. Sally's
20 phone, correct?

21 A I believe that's correct as well.

22 Q And in your opinion were those -- was that evidence
23 damning against Mr. Salley?

24 A I'd have to look at it again to actually give you a
25 full opinion, but I would -- if memory serves me, I think

Barry Thompson - Redirect Examination by Ms. Zmroczek

1 the answer's yes.

2 Q Okay. Would you describe the evidence as strong or
3 overwhelming?

4 A Very strong.

5 Q Very strong.

6 A And we were expecting codefendants to probably
7 testify against him. I, of course, did not interview those
8 persons because they were represented by counsel at the
9 time and you can't.

10 Q Right.

11 A But we were expecting that was likely to happen.

12 Q Was -- what was in your opinion you're probability
13 of a not guilty conviction if you had gone forward on this
14 trial?

15 A Very low.

16 Q Thank you. No further questions.

17 THE COURT: All right. Yes, redirect?

18 MS. ZMROCZEK: Just very briefly.

19 **REDIRECT EXAMINATION**

20 BY MS. ZMROCZEK:

21 Q You say that you reviewed all of the evidence in
22 the case?

23 A Yes. Now, if you're going to ask me exactly what
24 all the evidence was, I'm going to tell you I don't know
25 off the top of my head, but yes --

Barry Thompson - Redirect Examination by Ms. Zmroczek

1 Q Right, right.

2 A -- preparing for trial, I would have reviewed all
3 of the evidence.

4 Q So for you saying it was overwhelming, you don't
5 have any specific memory of -- of items that were also
6 helpful and/or missing from the case jacket, do you?

7 A There was very little in this that was going to be
8 helpful to us.

9 Q All right. Do you recall if you listened to the
10 radio chatter and the 9-1-1 calls?

11 A I don't remember.

12 Q Okay.

13 A I don't remember.

14 Q So any of those specifics, any of those things
15 saying that they were -- there were video of the people at
16 the Days Inn, you wouldn't remember any of that?

17 A I -- honestly, I don't remember.

18 Q And you wouldn't remember -- you just wouldn't --
19 you wouldn't remember specifics, right?

20 A Correct. Without being able to look at more
21 documents, I would not.

22 Q And just one last question. When you prepare a
23 defense and a defendant tells you that he has an alibi or
24 that --

25 MS. COLEMAN: Objection, Your Honor. This is

Barry Thompson - Redirect Examination by Ms. Zmroczek

1 outside the scope of cross.

2 THE COURT: Outside of what now?

3 MS. COLEMAN: Outside of the scope -- I'm sorry.

4 She's outside of the scope of my cross-examination.

5 MS. ZMROCZEK: Well, she talked about overwhelming
6 evidence, so it kind of ties into the --

7 THE COURT: I don't know even know what the
8 question is. So...

9 MS. ZMROCZEK: Okay.

10 BY MS. ZMROCZEK:

11 Q The question was going to be if the defendant tells
12 you something, do you, when you investigate a case, try to
13 corroborate that to help -- to help either substantiate or
14 refute what your client's telling you?

15 A If I understand your question correctly, if you're
16 asking me do I try to look into things that my client tells
17 me, the answer to that is yes.

18 Q And that could be potential evidence that you could
19 refute the State's position of overwhelming evidence?

20 A Yes. Now, that being said, there are some things
21 that people tell me that are so ridiculous that I don't --

22 Q Right.

23 A -- completely pursue them if they're patently
24 false.

25 Q Right, right.

Barry Thompson - Recross-Examination by Ms. Coleman

1 A But, yes. Yes, part of my job is to look into what
2 clients tell me because I wasn't there and I don't know.
3 So, yes. You look into what they say.

4 Q Thank you. Those are all the questions I have.

5 MS. COLEMAN: Thank you, just briefly, Your Honor.

6 THE COURT: Uh-huh.

7 **RECROSS EXAMINATION**

8 BY MS. COLEMAN:

9 Q So you look into every issue that you believed was
10 worth investigating as far as the discovery goes?

11 A I'm going to tell you I don't specifically
12 remember. If there's something specific that y'all are
13 talking about, I don't specifically remember, but I mean,
14 that's -- that's my normal -- that's what I do. If he's
15 going -- if he would have discussed with me an alibi or
16 would have discussed with me some type of piece of evidence
17 that would support a not guilty verdict, then, yeah, I
18 would have looked into that.

19 Q And you turned over all that material to Mr.
20 Broadwater when he was retained on this case, correct?

21 A If anything was in my trial file, he got it. The
22 only things that were not in my trial file, because
23 afterwards, I had to answer this question earlier because
24 of the motion. So we went back and exhaustively looked
25 through, is there anything from this file that he didn't

Barry Thompson - Recross-Examination by Ms. Coleman

1 have and the only thing I kept was essentially the jacket
2 and some of the pieces of paper that are stapled to the
3 initial parts of the jacket that reflect like the
4 screening, some of the administrative stuff.

5 And there ended up being one cover letter that was
6 essentially floating in between my paralegal's office and
7 mine that did not get into the -- that did not make it into
8 the trial pep jacket. But it wasn't a substantive piece of
9 paper. It was just a cover letter saying that they had
10 sent thus and so. That is solicitor's office had sent
11 something to me. It was not even a substantive piece of
12 paper.

13 THE COURT: Okay. All right. Thank you. Is this
14 witness free to leave?

15 MS. ZMROCZEK: Yes.

16 THE COURT: Any objection?

17 MS. COLEMAN: No objection.

18 THE COURT: All right. Thank you.

19 Next witness.

20 MS. ZMROCZEK: Your Honor, we call Timothy Davis.

21 TIMOTHY DAVIS,

22 having been duly sworn, testified as follows:

23 THE CLERK: Please take a seat in the witness box
24 and state your full name for the Court.

25 THE WITNESS: Timothy Fitzgerald Davis.

Timothy Davis - Direct Examination by Ms. Zmroczek

1 DIRECT EXAMINATION

2 BY MS. ZMROCZEK:

3 Q Mr. Davis, how old are you?

4 A I'm 49.

5 Q And make sure you speak up, okay?

6 A 49.

7 Q How do you know the applicant in this case?

8 A I'm his stepfather.

9 Q You're his stepfather?

10 A Yes, ma'am.

11 Q Did he -- where did you live at the time?

12 A 664 Schroeder Avenue in Aiken.

13 Q Who lived with you?

14 A My wife and Jamaques, my daughter.

15 Q And this was -- and we're talking February -- in
16 February of 2013, correct?

17 A Yes, ma'am.

18 Q What do you -- what do you recall about February
19 19th, 2013?20 A Okay. When I got up that morning around 10 or
21 10:30, I went in to cook breakfast and -- because I usually
22 get up around that time because it's a show come on that I
23 like; come on every hour. So I went in there to cook
24 breakfast, I started to cook breakfast. Jamaques came into
25 the living room and we was talking and we ate breakfast.

Timothy Davis - Direct Examination by Ms. Zmroczek

1 Q And you said we, who are you talking about?

2 A Mr. Salley.

3 Q Okay. And you said it was about 10 or 10:30?

4 A Yes, ma'am.

5 Q And how did you know that it was about 10 or 10:30?

6 A Because the show I watched, Supernatural, comes on
7 around that time; so it was on when I came into the living
8 room.

9 Q Okay. And you had breakfast?

10 A Yes, ma'am.

11 Q And what did you do next?

12 A We just talked, you know, sat on the sofa and just
13 talked about a couple of things and about around 11, 11:30,
14 he went and got in the bed because he had to be at work at
15 two and I went and took a nap. And the next time I seen
16 him was at 2 o'clock. He was saying what time am I going
17 to work and that's the last time I seen him.

18 Q About what time was that?

19 A 2 o'clock -- about around 2 o'clock.

20 Q Okay. And that was on February 19th?

21 A Yes, ma'am.

22 Q And what happened -- and so he went to work around
23 2 o'clock?

24 A Yes, ma'am.

25 Q Where did he work?

Timothy Davis - Direct Examination by Ms. Zmroczek

1 A He worked at the tire company down the street.

2 Q Okay. And what happened next that you remember?

3 A Around 7 o'clock we heard banging on the door.

4 Sergeant Savage and another officer came to the door.

5 Q You said Sergeant Savage?

6 A Yes.

7 Q Okay.

8 A Lieutenant Savage or whatever.

9 Q Okay.

10 A He came to the door and he was like, could I search
11 Jamaques Sally's room. I said, Why. He said, He's been
12 arrested for robbery. I said, Well, that can't be true
13 because he was here with me. He said, Well, no, he's been
14 arrested or whatever. And he said, I wanted to look at his
15 room for some stuff.

16 I said, Well, do you have a warrant. He said, No.
17 He said, Well, we can have the police here, you know, and
18 just tear up the house if you don't let us look. And I
19 said, Well, we really don't have anything to hide. So
20 okay.

21 So when he went in the room, me and my wife stood
22 to the side. They got a pair of boots and a book bag and
23 they put it in a box and we signed a paper that they had
24 got these items and he left.

25 Q And then did you have -- and you had told Detective

Timothy Davis - Direct Examination by Ms. Zmroczek

1 or Deputy Savage --

2 A That he was there with me so I don't see how it
3 could happen unless after I went to sleep, you know what
4 I'm saying. He went in his room, I went in my room.

5 Q And about what time do you remember going to sleep?

6 A He went in his room probably about 11, 11:30.

7 So...

8 Q In the a.m., correct?

9 A Yes, ma'am.

10 Q Okay.

11 A So I probably went around about 12. And he woke me
12 up and said he was going to work at 2 o'clock. So...

13 Q Did you -- what do you remember about the first
14 trial?

15 A Okay. The first trial, when we -- me and my wife
16 obtained Broadwater, the first trial was essentially, he
17 was -- Broadwater was asking questions and he was --

18 Q He was asking you questions?

19 A I said Broadwater was representing Mr. Salley like
20 we expected him to.

21 Q Right.

22 A And it was a lot of stoppages during the trial
23 because some of the witnesses wouldn't answer some of the
24 questions that the State -- how the State wanted them to.
25 So there was a lot of, you know, recesses and stuff like

Timothy Davis - Direct Examination by Ms. Zmroczek

1 this. And so then it got to the point where I guess things
2 wasn't going the State's way or whatever, so he initially
3 called a mistrial.

4 Q He, the judge?

5 A The judge -- Judge Early.

6 Q Okay.

7 A And so -- so, therefore, then they set another date
8 then we went back to the second trial. The second trial,
9 Mr. Broadwater was nonexistent. It was just like he was
10 just to fill the chair.

11 Q Okay. Had you been -- had you been listed as a
12 witness?

13 A I had.

14 Q And what had you -- if you would have been called
15 as a witness, what would you have testified too?

16 A I would have testified to the fact that he was with
17 me during the time that I stated. But what -- what was
18 happened, Mr. Broadwater told me if you testify, they
19 planning on putting you in jail. They're planning on
20 arresting you.

21 Q They who?

22 A The State. For perjury. I said well, I didn't
23 lie. I mean that's -- he was with me. That's all I know.
24 All I can do is tell the truth.

25 And he said well, if you testify they're going to

Timothy Davis - Direct Examination by Ms. Zmroczek

1 arrest you. And I was like, well, I'm not testifying
2 because I don't want to go the jail for telling the truth.
3 Because the text message that Jamaques text me, all he was
4 saying is tell them I was with you. And I'm like, you were
5 with me. So...

6 Q So you received a text message later on that day?

7 A Right, right. That night rather.

8 Q That night?

9 A Yes, ma'am.

10 Q And that text message said what?

11 A Just tell them I was with you.

12 Q Okay. And what was your response to that?

13 A I never texted him back, but my response, you were
14 with me. I can't say you wasn't because you were with me.
15 Now, after you went in your room and after I went in my
16 room, I didn't see you until 2 o'clock, so...

17 Q Okay. And that you said was around 11?

18 A Around 11, 11:30.

19 Q 11, 11:30?

20 A Yeah.

21 Q And -- and had you -- had you been called as a
22 witness, is that what you would have testified to in front
23 of the jury?

24 A Yes, ma'am.

25 Q Okay. Please answer any questions the State has

Timothy Davis - Cross-Examination by Ms. Coleman

1 for you.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MS. COLEMAN:

5 Q You had testified that you were asleep until 10:30
6 a.m. that morning; is that right?

7 A No, I got up around 10, about 10 or 10:30.

8 Q About 10 or 10:30?

9 A Yes, ma'am.

10 Q Okay. And this crime was alleged to have happened
11 between 9 and 11 a.m., right.

12 A I have no idea.

13 Q Okay. Were you with Mr. Salley at 9 a.m.? Or were
14 you asleep at that time?

15 A I was asleep at that time.

16 Q Okay. So you have no clue if he was in the house
17 or not?

18 A I woke up at 10, 10:30 and went into the living
19 room.

20 Q So there's a chance that he could have been at the
21 Quick Cash around 9?

22 A I don't know, I have no idea.

23 Q But you don't know?

24 A I don't know.

25 Q Okay. Do you know how a backpack got into his

Timothy Davis - Redirect Examination by Ms. Zmroczek

1 room?

2 A I guess he bought one. I guess he bought it.

3 Q Okay. You were convicted in 2008 of possession of
4 less than one gram of ice or crack cocaine first degree?

5 A I was.

6 Q Okay. Thank you. Nothing further.

7 THE COURT: All right. Yes? Redirect?

8 MS. ZMROCZEK: Just a few -- a few questions.

9 **REDIRECT EXAMINATION**

10 BY MS. ZMROCZEK:

11 Q You told the officer that he was with you?

12 A Yes, ma'am.

13 Q And you told the attorney, Mr. Broadwater, that he
14 was with you?

15 A Yes, ma'am.

16 Q And you were prepared to testify to that in front
17 of the jury; if you recall?

18 A Yes, ma'am. Yes, ma'am.

19 Q Okay. No further questions.

20 THE COURT: Any recross examination?

21 MS. COLEMAN: No recross.

22 THE COURT: Thank you, you may step down.

23 MS. ZMROCZEK: Your Honor at this --

24 THE COURT: I don't know if you're under subpoena,
25 but you are free to leave if you're under subpoena at this

Shawneta Davis - Direct Examination by Ms. Zmroczek

1 point. But you're free to stay too.

2 THE WITNESS: Okay.

3 THE COURT: All right. Ms. Zmroczek. Call you're
4 next witness.

5 MS. ZMROCZEK: We'd call Shawneta Davis.

6 THE COURT: All right. We're waiting for
7 Ms. Davis.

8 SHAWNETA DAVIS,
9 having been duly sworn, testified as follows:

10 THE CLERK: Please have a seat in the witness box
11 and state your full name for the Court.

12 THE COURT: All right. And your name?

13 THE WITNESS: Shawneta Salley Davis.

14 THE COURT: And could you spell your first name?

15 THE WITNESS: S-H-A-W-N-E-T-A.

16 THE COURT: Thank you.

17 Your witness.

18 MS. ZMROCZEK: Thank you.

19 **DIRECT EXAMINATION**

20 BY MS. ZMROCZEK:

21 Q And, Ms. Davis, I apologize for slaughtering your
22 name, I am exhausted. How do you know Mr. Salley?

23 A He's my son.

24 Q Okay. Everybody has to hear you and it's recorded.

25 A Okay.

Shawneta Davis - Direct Examination by Ms. Zmroczek

1 Q Do you -- were you home on the morning of February
2 19th?

3 A No, ma'am.

4 Q Okay. Did you later learn that your son was
5 arrested?

6 A Well, when they came knocking on the door.

7 Q Okay. When they came knocking on the door?

8 A Uh-huh.

9 Q For a crime that had occurred at 10:39 or 10:45 --
10 between 10:39 and 10:45 at the Quick Cash, right?

11 A Yeah. Yes, ma'am.

12 Q And did you -- what did you do regarding getting a
13 lawyer for your son?

14 A Well -- well, I was talking to Mr. Barry and I was
15 looking around, you know, for different lawyers because I
16 didn't feel, you know, he was doing his best on his behalf.

17 Q And so did you eventually hire a lawyer?

18 A Yes, I did.

19 Q Who did you hire?

20 A Mr. Broadwater.

21 Q And why did you hire Mr. Broadwater?

22 A Because I knew he was a lawyer and some previous
23 people referred me to him that had, you know, worked with
24 him before.

25 Q And did you meet with Mr. Broadwater?

Shawneta Davis - Direct Examination by Ms. Zmroczek

1 A Yes, I did.

2 Q And did you enter into a contract with him?

3 A Yes, I did.

4 Q And I'm going to show you what's been marked as
5 Petitioner's Exhibit 3.

6 THE COURT REPORTER: Petitioner's.

7 MS. ZMROCZEK: Petitioners Exhibit 3.

8 (Petitioner's Exhibit Number 3 was marked for
9 identification.)

10 BY MS. ZMROCZEK:

11 Q And ask if you recognize this document?

12 A Yes, I do.

13 Q And what is that document?

14 A That was a document before the second trial, the
15 day before the second trial that he had me sign.

16 Q And he who?

17 A Mr. Broadwater.

18 Q Okay. So prior to the second trial, had you
19 entered into any contracts?

20 A No, ma'am.

21 Q Okay. But this is the contract that you entered
22 into prior to the second trial?

23 A Yes, ma'am.

24 MS. ZMROCZEK: Your Honor, at this time we would
25 move Petitioner's Number 3 into evidence.

Shawneta Davis - Direct Examination by Ms. Zmroczek

1 THE COURT: Any objection?

2 MS. COLEMAN: Yes, Your Honor. I object on the
3 grounds of relevance. There's no question that Mr.
4 Broadwater was retained as counsel in this case or
5 represented him at the trial. I don't think that the
6 details of how much money they paid are necessary or
7 relevant.

8 THE COURT: All right. It's corroborative though
9 of the date, I gather. I gather there's a date on there?

10 MS. ZMROCZEK: There is, Your Honor.

11 THE COURT: Very well. I concur with you with
12 regards to the amount. I mean it doesn't matter. The date
13 though is certainly relevant. So I'll admit the document.

14 MS. ZMROCZEK: Thank you.

15 BY MS. ZMROCZEK:

16 Q And just so we can read it into record, what's the
17 date that you signed that contract?

18 A August 10th, 2013.

19 Q Okay. So on August 10th of 2013, you entered into
20 hiring Mr. Broadwater. Had he previously been representing
21 your son?

22 A You mean like coming to see him and --

23 Q Right.

24 A Yes, yes, ma'am.

25 Q Okay. And did y'all discuss possible defenses for

Shawneta Davis - Direct Examination by Ms. Zmroczek

1 the case?

2 A Yes.

3 Q Did y'all -- what do you recall discussing with
4 him?

5 A Well, I was asking him, you know, did he think that
6 he could -- do he think that Jamaques had a good chance and
7 he was telling me yes and -- I'm sorry, my mind went blank
8 a little bit. It's a couple of years back.

9 Q I understand.

10 A But he think he had a good chance. And --

11 Q And based on those representations you hired Mr.
12 Broadwater?

13 A Yes, ma'am.

14 Q All right. Do you -- did you attend the entire
15 trial?

16 A Yes.

17 Q And what, if anything, do you recall -- actually,
18 strike that.

19 MS. ZMROCZEK: Those are all the questions I have
20 at this time, Your Honor.

21 THE COURT: Cross-examination?

22 MS. COLEMAN: No cross-examination.

23 THE COURT: All right. You may come down.

24 All right. May this witness be excused?

25 MS. ZMROCZEK: Your Honor, at this time I'd call

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Jamaques to the stand. And he's definitely going to have
2 to spell it for you.

3 THE COURT: And for informational purposes, it's
4 about 17 before 5. So -- we're going to stop around 5
5 o'clock.

6 MS. ZMROCZEK: Okay. Okay.

7 JAMAQUES SALLEY,
8 having been duly sworn, testified as follows:

9 THE CLERK: Please have a seat in the witness box
10 and state your full name for the Court.

11 THE WITNESS: Jamaques Andre Salley.

12 **DIRECT EXAMINATION**

13 BY MS. ZMROCZEK:

14 Q And ask you to spell your first name.

15 A J-A-M-A-Q-U-E-S.

16 Q All right. Mr. Salley?

17 A Yes.

18 Q Where are you currently residing?

19 A At Lieber Correctional.

20 Q Okay. And how did you come to reside there?

21 A I lost my trial.

22 Q You lost your trial. I want to talk to you little
23 bit about that. When you were arrested, did you speak with
24 the police?

25 A Yes. Talking about the time of my arrest?

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q Correct.

2 A Yes. They came in. They asked me who I was and
3 then he -- I can't remember, I believe it was Detective
4 Savage, he asked me if I was going to just go ahead and
5 confess or was I going to make him go through the process
6 of investigating.

7 Q Okay. And what did you do at that point?

8 A I told him that I wasn't going to confess so they
9 read me my rights, put the handcuffs on and took me to the
10 county.

11 Q Okay. And were you -- did you get a lawyer?

12 A I was appointed Mr. Thompson after about a month.

13 Q Okay. About a month after?

14 A Yes.

15 Q And did you eventually get a new lawyer?

16 A Yes, sir.

17 Q Tell the Court how that happened?

18 A Well, my mother, she was searching for lawyers for
19 me because we're very limited in Aiken County. We can't --
20 we don't really have access too much. So my mother was
21 looking for different lawyers because we -- we were -- we
22 weren't confident in Mr. Thompson at all. You had only
23 seen him once up until the point where I got the notice
24 through the mail saying that I was scheduled for trial in a
25 week. So my mother went and she looked for a different

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 lawyer and she hired Mr. Thompson.

2 Q Okay. You mean Mr. Broadwater?

3 A Yeah, Broadwater, excuse me.

4 Q Okay. Did you have conversations with
5 Mr. Broadwater?

6 A Yes.

7 Q What did you tell him about your possible defenses?

8 A I just told him that based off of what the
9 discovery that I seen, the discovery that I had seen at the
10 time that the only thing placing me in the actual robbery
11 was my codefendant's statement.

12 Q Did you tell him where you were that morning?

13 A Yes, I told him where I was.

14 Q Where did you tell him you were?

15 A I told him I was home.

16 Q You told him you were home?

17 A Yes.

18 Q And did you -- did you testify?

19 A Yes.

20 Q When you testified -- you testified --

21 MS. ZMROCZEK: And, Your Honor, I'm referring to
22 the trial transcript beginning at page 183.

23 THE COURT: Okay.

24 MS. ZMROCZEK: Thank you.

25 BY MS. ZMROCZEK:

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q Do you recall testifying as to why you wouldn't
2 rob --

3 A Yes.

4 Q -- the Quick Stop?

5 A Quick Cash. That I had been going there for years
6 and the people in there, they know me on a first name
7 basis. So for me to actually go in there as it was stated
8 in the discovery with no mask on, just bare face would get
9 me arrested immediately.

10 Q And did you -- did you actually have any open
11 accounts?

12 A Yes, yes.

13 (Petitioner's Exhibit Number 4 was marked for
14 identification.)

15 BY MS. ZMROCZEK:

16 Q Okay. I'm going to show you what's been marked as
17 Plaintiff's Exhibit 4 and ask you to flip through it --
18 Petitioner's Exhibit 4. Ask you to flip through it and see
19 -- can he -- I'll flip through it for you?

20 A Okay.

21 Q Since you're handcuffed.

22 A Okay.

23 Q Do you recognize these documents?

24 A Yes.

25 Q What are those documents?

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 A That's just copies of my open account at the Quick
2 Cash.

3 Q Okay. So -- and are those what you would have
4 given them is the paperwork that he would normally kept for
5 you?

6 A Yes.

7 MS. ZMROCZEK: Your Honor, at this time we would
8 move Petitioner's 4 into evidence.

9 MS. COLEMAN: No objection.

10 THE COURT: Very well.

11 BY MS. ZMROCZEK:

12 Q You -- tell -- what is the Quick Cash?

13 A It's basically a payday loan place. You -- you pay
14 them every -- well, they basically get your pay stuff.
15 They see how much you qualify for and they give you the
16 amount of loan that you need until your next payday.

17 Q Okay. And so in Petitioner's 4 for example they --
18 you would write them a check?

19 A Yes.

20 Q And then they would give you money?

21 A Yes.

22 Q And they wouldn't cash your check?

23 A They wouldn't cash your check. They would wait for
24 you to come in with the payment. If you didn't come in
25 that day, they would call you. If you did not answer your

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 phone, they would send the check to the bank.

2 Q Okay. And you would have to go in there to pay?

3 A Yes, physically, yes.

4 Q And how often did you do this?

5 A I've been doing it since 2008 maybe.

6 Q Okay. And actually at the time of this incident,
7 you still had at least one open account?

8 A Yes.

9 Q And do you recall when the last time you had been
10 in there?

11 A No.

12 Q Okay. But you would actually have to go in to
13 settle your account?

14 A Yes.

15 Q And you still had at least one open account?

16 A Yes.

17 Q When you went into the -- when you went into the
18 quick shop, what -- Quick Cash, what did you notice that
19 were on the walls?

20 A That were on the walls?

21 Q Did they have a surveillance?

22 A I believe that they have one big globe camera thing
23 like at the top of the building and I believe that's it. I
24 never really looked around for the cameras.

25 Q Okay. You never really looked around for the

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 cameras?

2 A No.

3 Q Okay. You had a cell phone at the time?

4 A Yes.

5 Q What was your telephone number?

6 A My number? I don't remember.

7 Q Okay. Did -- what happened to your cell phone?

8 A It was confiscated by police.

9 Q Okay. Did you ever see the full report on that?

10 A No.

11 Q Okay. At trial did they introduce portions of your
12 text messages?

13 A Yes.

14 Q Did they introduce all of your text messages?

15 A No.

16 Q Okay. When you were texting, particularly to your
17 stepfather, what was your -- why did you text him to tell
18 them I was with you?

19 A Well, initially I was texting him to tell him that
20 the police were on the way to the house because Detective
21 Savage was actually speaking to one of his officers saying
22 that they were on the way to my mother's house and that
23 they were going to come through and arrest everybody and
24 put them on the lawn and go through the house.

25 So I was really telling him that, yeah, the police

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 are on the way to the house. Just tell them I was at home,
2 because, you know, they got me locked up.

3 Q And there was other -- in addition to your
4 telephone, there were other pieces of visual evidence that
5 they were trying to introduce against you, correct?

6 A Yes.

7 Q And you recall what those were?

8 A I believe it was the -- against me personally, it
9 was just the text messages and the Roses video.

10 Q Okay. And was there -- were you also present in
11 another video?

12 A The Wal-Mart video, yes. Yes.

13 Q Okay. So there was a Wal-Mart video?

14 A Yes.

15 Q And then there was a Roses video?

16 A Yes.

17 Q And what, in particular -- let me ask you this:
18 What kind of defenses did you and Mr. Broadwater talk
19 about?

20 A We'd only really spoke about the alibi defense.
21 That's all we really spoke about. We discussed my
22 stepfather testifying to my whereabouts and we discussed
23 the Roses video.

24 Q Okay. The Roses video.

25 A Yes.

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q What did you discuss about the Roses video?

2 A Well, we noticed in the discovery that the
3 detective, when he was looking at it, he positively
4 identified my two codefendants, but he could not identify
5 me. So we eventually went into the video and looked and we
6 -- he noticed it first, he came out of his own mouth and he
7 was just like, okay, Mr. Salley, that doesn't look like
8 that.

9 Q He who?

10 A Mr. Broadwater.

11 Q Okay.

12 A Yeah, he was like, Mr. Salley that doesn't look
13 like you. I was like that's what I've been telling you the
14 whole time.

15 Q Okay. And now I want to talk a little bit -- you
16 look -- how long have you been in the Department of
17 Corrections?

18 A Three and a half years.

19 Q Okay. What's different about your appearance?

20 A I have a haircut now.

21 Q Okay. So your haircut is different?

22 A Yes.

23 Q What was your hair like on February 19th?

24 A I had dreads.

25 Q You had dreads?

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 A Yes.

2 Q When you were booked into the jail, did they take
3 your photo?

4 A Yes.

5 Q And that was on February 19th?

6 A Yes.

7 (Petitioner's Exhibit Number 5 was marked for
8 identification.)

9 BY MS. ZMROCZEK:

10 Q I'm going to show you Petitioner's Exhibit 5 and
11 ask you if you could look at the pictures and ask you if
12 you recognize those?

13 A Yes, yes.

14 Q Okay. And do those fairly and accurately represent
15 how you and your two codefendants looked when you were
16 arrested?

17 A Yes.

18 Q Okay.

19 MS. ZMROCZEK: Your Honor, at this time we would
20 move Petitioner's 5.

21 MS. COLEMAN: No objection.

22 BY MS. ZMROCZEK

23 Q And specifically on the second page, at the very
24 top, who is that?

25 A It's a sad me.

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q That's a sad you?

2 A Right.

3 Q And that's how your hair looked on the day you were
4 arrested?

5 A Yes.

6 Q And is that the same facial hair that you had --

7 A Yes.

8 Q -- on the day you were arrested?

9 A (Witness nodded head.)

10 Q And then who -- who --

11 THE COURT: And that's a yes or no? You nodded.

12 THE WITNESS: Oh, yes, yes.

13 BY MS. ZMROCZEK:

14 Q I'm sorry, she has to take it down.

15 And who is this depicted here?

16 A That's Carlos Williams.

17 Q Okay. And is he a codefendant?

18 A Yes.

19 Q And who is the bottom picture depicted?

20 A Michael Quarrels.

21 Q And is he the other codefendant?

22 A Yes.

23 Q Okay. How tall are you?

24 A 6 foot even.

25 Q 6 foot even?

Jamaques Salley - Direct Examination by Ms. Zmroczek

- 1 A Yes.
- 2 Q How much do you weigh?
- 3 A 180.
- 4 Q 198?
- 5 A 180.
- 6 Q 180?
- 7 A Yes.
- 8 Q Sorry. Where were you working in February of 2013?
- 9 A Carlisle Tire and Wheel.
- 10 Q And what kind of work were you doing?
- 11 A Basically anything they needed. I was welding. I
- 12 was inflating, basically everything.
- 13 Q Okay. What did you do on February 19th of 2013?
- 14 A Just tell you about my day?
- 15 Q Yes.
- 16 A Okay. Woke up, had breakfast with my stepfather,
- 17 went to work, got arrested.
- 18 Q Okay. Were you receiving telephone calls that
- 19 morning?
- 20 A Yes, yes, I was getting phone calls from my
- 21 codefendant Carlos Williams that morning.
- 22 Q Okay.
- 23 A He was calling, yes.
- 24 Q And were you arrested at work?
- 25 A Yes.

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q Okay. Were you aware that they had searched your
2 house?

3 A I didn't -- I mean I knew they were going to do
4 that. I didn't know if they had did it or if they had took
5 anything at the time. I was in the county.

6 Q Okay. What size shoe do you wear?

7 A 11.

8 Q You wear a size 11?

9 A Yes.

10 Q And you --

11 MS. ZMROCZEK: I'm sorry, Your Honor, my brain is
12 like -- I can't even read my handwriting.

13 BY MS. ZMROCZEK:

14 Q I want to talk about Carlos for a moment?

15 A Okay.

16 Q How do you know Carlos?

17 A I've known Carlos since he was maybe 15.

18 Q Is he older or younger than you?

19 A He's younger.

20 Q Okay. What kind of history do you have with
21 Carlos?

22 A Well, we -- at one point in time we actually lived
23 together, like, I stayed with his family when I graduated
24 from high school. And -- yeah, we just been friends.

25 Q Was there ever a time that you and Carlos weren't

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 friends?

2 A Yes.

3 Q Okay. What happened?

4 A I got into a situation about his little sister.

5 Q And what -- what year was this?

6 A This was in 2010 -- no '9, I believe.

7 Q 2009?

8 A Yes.

9 Q So prior to this incident. And you say you got
10 into an situation -- you actually got arrested --

11 A Yeah.

12 Q -- for a crime alleged to have occurred against his
13 sister, right?

14 A Yes.

15 Q What were you originally arrested for?

16 A Criminal sexual conduct.

17 Q You were originally arrested for criminal sexual
18 conduct against your codefendant's sister?

19 A Yes.

20 Q Where she was the victim?

21 A Yes.

22 Q Now what happened in that case?

23 A I was -- it got dropped down to assault and battery
24 high and aggravated and I ended up receiving a Y0A sentence
25 for it.

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 Q Okay. How did that impact your relationship with
2 Carlos from there on?

3 A Yeah, it was over with because he -- his sister had
4 been telling him that nothing happened between us and he
5 actually recorded it on his phone. And I -- he would not
6 step in on my behalf and say anything. He just -- was like
7 he knew the truth but he didn't want to upset his mother or
8 get kicked out of the house, so he just pretty much let me
9 go to prison.

10 Q And now, you knew his family fairly well?

11 A Yes.

12 Q Did he have any other siblings?

13 A Yes, he has plenty of brothers.

14 Q Okay. Did he have one brother in particular that
15 was mentioned as a potential suspect in this case?

16 A Yes. David Garvin.

17 Q How do you know him?

18 A He -- well, like I say I was living with his family
19 for a time, so there would be times when we would go down
20 to Saluda and I would meet his whole family and there would
21 be times David would come and stay with us.

22 Q How tall is David?

23 A David's around my height.

24 Q Okay. He's around your height?

25 A Yes.

Jamaques Salley - Direct Examination by Ms. Zmroczek

- 1 Q And what's his build?
- 2 A Pretty much the same build.
- 3 Q Okay. And how tall is Carlos?
- 4 A Carlos is 5'9", maybe, 5'10".
- 5 Q Okay. So a little bit shorter than you?
- 6 A Yes.
- 7 Q Okay. I want to talk about Michael Quarrels. How
- 8 do you know him?
- 9 A I met him when I came home from my YOA sentence. I
- 10 was working at Burger King and he was a cook there.
- 11 Q Okay. So you were -- when you came home from your
- 12 YOA sentence, which was when?
- 13 A In 2012, January.
- 14 Q In January 2012. And you were working at Burger
- 15 King?
- 16 A Yes.
- 17 Q Where was that Burger King located?
- 18 A On York Street and right here in Aiken, South
- 19 Carolina.
- 20 Q Okay. Just right down the road?
- 21 A Yes.
- 22 Q And how long were you -- how long did you work
- 23 there?
- 24 A Not very long maybe 3 months. I got a better job.
- 25 Q You got a better job?

Jamaques Salley - Direct Examination by Ms. Zmroczek

1 A Yes.

2 Q Okay.

3 MS. ZMROCZEK: Your Honor, the next portion is
4 going to be probably more --

5 THE COURT: Timing?

6 MS. ZMROCZEK: Yes.

7 THE COURT: Excellent. Very well. We'll stop
8 there for this evening.

9 MS. ZMROCZEK: And I -- I obviously I will not go
10 to the jail and speak my client. I'll make sure I follow
11 the rules.

12 THE COURT: Okay. Very well. All right. All
13 right. So --

14 You can come on back down towards your seat.

15 Approximately, I'm not holding you to any firm
16 number, but approximately how many witnesses will you have?
17 After Mr. Salley, but --

18 MS. ZMROCZEK: And it won't take too much longer,
19 Your Honor, there's just a few things that I'll need the
20 introduce and then I have my video forensic expert and my
21 private investigator and I believe that covers all the
22 witnesses that I listed. And so -- what may make this a
23 little easier for the Court is --

24 And I'll give it to you as well.

25 -- I have audio recordings that maybe if the Court

1 would like to listen to ahead of time it would maybe speed
2 up the trial process. They're just like one minute radio
3 calls, things like that, or we can -- or I can -- and there
4 are -- I think what's the most lengthy are there are videos
5 and -- and the audio recordings.

6 Now, none of them last longer than 5 minutes, but
7 it's just the process of playing them for the Court may
8 take a while, so I didn't know if the Court --

9 THE COURT: How would Ms. Coleman know what they
10 are? So I -- I would think it would be very difficult for
11 her to admit to them if she didn't know what they are.

12 MS. ZMROCZEK: Right.

13 THE COURT: You see what I mean.

14 That's fine. We'll just -- that's fine, so. It
15 will take -- I don't want you to be concerned about that.
16 I'm just in my head just trying to sort of figure out how
17 many more witnesses.

18 How many witnesses, approximately, Ms. Coleman, do
19 you have?

20 MS. COLEMAN: The State has one, possibly two.

21 THE COURT: Very well. Very well.

22 (There was discussion about the schedule for the
23 rest of the week.)

24 THURSDAY, MAY 25, 2017

25 THE COURT: We've had a conference.

1 And -- there she is.

2 (Ms. Zmroczek entered the courtroom.)

3 THE COURT: Y'all want to put on the record what
4 we're going to do.

5 MS. COLEMAN: Yes, Your Honor. We had a conference
6 with Your Honor this morning. We discussed some of the
7 witnesses in the case, Salley, we're continuing from
8 yesterday. There are a couple of expert witnesses that I
9 believe the applicant plans to put up, but I did not see
10 the materials until right before the hearing began, so I
11 have not had enough time on behalf of the State to review
12 the material and be fully prepared to cross-examine these
13 witnesses. So I've requested the Court for a continuance,
14 just on these witnesses.

15 So I believe we plan to continue with the testimony
16 of Mr. Salley today and hopefully Mr. Broadwater as well.
17 I've heard that he is in the courthouse.

18 THE COURT: Great.

19 MS. COLEMAN: And then we can continue the rest of
20 this at another time.

21 THE COURT: Excellent. Let me just share with you
22 just so y'all can be planning. I'm not asking you for the
23 definitive time at this moment. But I happen to just know
24 it because I had the find out for another matter. We are
25 in chambers the week of July the 3rd. Obviously, nobody's

1 going to be working on the 4th, but we are in chambers that
2 week and I don't have anything -- I may be given -- I teach
3 at the new judges school and that may be the 5th.

4 Oh, you checked on that. What was the date?

5 THE LAW CLERK: That's the 7th.

6 THE COURT: The 7th, on the 7th. I teach on the
7 7th. But --

8 THE COURT REPORTER: The court reporters will not
9 be available on the 6th. We have a meeting.

10 THE COURT: I teach on the 7th. So just know that
11 the 6th is out.

12 THE COURT REPORTER: Yeah, the 6th is out.

13 THE COURT: So you have a meeting on the 6th?

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: So I guess the 4th, the 6th, and the
16 7th are out. Well, there goes the week.

17 MS. ZMROCZEK: Well, the 3rd, Your Honor, actually,
18 sometimes my brain actually works and this can what I was
19 thinking. When I recalled that this is a PCR matter, which
20 means it's a civil matter, which means that if we take
21 depositions then we can just -- if they want to take the
22 depositions, we could just submit it and then that would --

23 MS. COLEMAN: We could. The only problem with
24 depositions is Your Honor cannot make a credibility
25 finding.

1 MS. ZMROCZEK: True.

2 MS. COLEMAN: But they're experts. I don't know if
3 you need --

4 MS. ZMROCZEK: It's just too --

5 THE COURT: And guess what, I'm leaving it to
6 y'all.

7 MS. ZMROCZEK: Okay. Okay.

8 THE COURT: That the -- and of course, what I'm
9 going to do, I'm going to look -- actually, I'm not going
10 to look so you all will know when my next week of general
11 sessions nonjury and if that -- I'm going to give you that
12 as further information and when y'all figure it out and get
13 with George and schedule it, I don't care. You've got some
14 freedom. If you decide you want to submit a deposition, I
15 don't care about that. I'm going to give that to y'all.
16 Please don't make a decision about that right now.

17 MS. ZMROCZEK: And my concern -- and so I asked for
18 permission to speak to my client this morning just to give
19 him a heads up of how this would work.

20 THE COURT: Sure.

21 MS. ZMROCZEK: And I told him that it's to protect
22 the system, which protects his right as well as the States.
23 So I explained kind of the weird formality that we're
24 mixing up, but I also just want to make sure that both to
25 attorney general and I have talked about, happens,

1 especially since we're both so busy, being a sole
2 practitioner and just doing PCR for numerous counties, it's
3 like once it's not in front of you it kind of goes away.
4 And so I told her that it's important to me that we -- and
5 I think to the system and to the victim and to everybody
6 that it gets done, hopefully, within a timely manner. You
7 know, not 6 months, we want to make sure that we work with
8 you to get it done --

9 THE COURT: Absolutely.

10 MS. ZMROCZEK: -- rather quickly.

11 THE COURT: And I don't mind -- I don't mind
12 sharing with Mr. Salley I've worked with -- I've had the
13 honor of working with both of you on a number of occasions
14 and --

15 Mr. Salley, there are lawyers who have difficulty
16 getting back around to doing something. Not these two.
17 They're much more of a (sound). And so that's --
18 generally, honestly that shouldn't be a concern. They're
19 both real busy, but they -- I don't -- obviously, they
20 don't have a life because they work all the time.

21 And your next general sessions nonjury terms for
22 your -- only for your information purposes, only for your
23 information purposes, the week of -- well, not next week,
24 that's a little quick. And then the week of October 30th.

25 MS. ZMROCZEK: And that's a little far away.

1 THE COURT: Yeah, but, you know, we've got other
2 terms. Do you know what I mean? We have other chambers
3 weeks. We've got the chamber week in July and y'all can
4 work with George and George will have, you know, usually
5 two weeks out George can tell you what weeks towards the
6 end are going to be not as busy and y'all can grab those.

7 MS. ZMROCZEK: And for clarification on that
8 chambers week, July 3rd, that Monday, could still possibly
9 work because --

10 THE COURT: And July 5th.

11 MS. ZMROCZEK: And then possibly July 5th. Okay.

12 THE COURT: Exactly.

13 MS. ZMROCZEK: Okay.

14 THE COURT: The 6th we're going to have trouble
15 having a court reporter.

16 MS. ZMROCZEK: Right.

17 THE COURT: And then the 7th I'm --

18 MS. COLEMAN: I think July 5th might be the State
19 recognized holiday for the 4th; is that right?

20 MS. ZMROCZEK: The 4th is a Tuesday.

21 MS. COLEMAN: Oh, okay.

22 THE COURT: Yeah, it's just the 4th.

23 MS. ZMROCZEK: I'm just like looking for, kind of a
24 way to --

25 THE COURT: And you don't need to do that. I'm the

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 first speaker and -- let me just tell you what I know. I
2 gave you bad information. I am not teaching on the 7th.
3 I'm teaching on the 5th. So the 6th and the 7th. The 6th
4 is out, 7th is in, so you can look in that Monday and
5 Friday.

6 MS. ZMROCZEK: Okay.

7 THE COURT: Uh-huh.

8 MS. COLEMAN: And thank you, Your Honor for being
9 flexible and working with us on that.

10 THE COURT: You know, that's the beauty of this
11 being nonjury is that we are all able to be more flexible
12 and having the information presented and presented fully is
13 -- is and ought to be the paramount matter and we're going
14 to get it all presented and everybody's going to have their
15 say and that's what we're going to do.

16 All right. Thank y'all for working together so
17 professionally.

18 MS. ZMROCZEK: And then at this time, we will
19 recall Mr. Salley to the stand.

20 THE COURT: Yes. And he's already been sworn.

21 MS. ZMROCZEK: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. ZMROCZEK: Thank you.

24 **DIRECT EXAMINATION CONTINUED**

25 BY MS. ZMROCZEK:

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 Q Mr. Salley, I just have a few more questions for
2 you, okay. So I'm going to just pick up where we kind of
3 left off yesterday. But hopefully I'm a little more
4 organized.

5 You -- you -- what you testified to under oath at
6 the trial, that was the truth?

7 A Yes.

8 Q Okay. So, I'm sure that the attorney general will
9 go through the trial transcript with you. We're not going
10 to do that. But one question that I want to ask and --

11 MS. ZMROCZEK: I don't know what number we're on.
12 I'm sorry, for exhibit numbers. I think 7?

13 THE COURT REPORTER: 6.

14 MS. ZMROCZEK: Oh 6. Okay.

15 (Petitioner's Exhibit Number 6 was marked for
16 identification.)

17 BY MS. ZMROCZEK:

18 Q I'm going to show you what's been marked as
19 Petitioner's Exhibit 6 and ask if you recognize that.

20 A Yes.

21 Q What is that?

22 A It's my license.

23 Q Okay. Did you have that in your wallet when you
24 were taken to jail?

25 A Yes.

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 Q And this is -- is this what it looked like when it
2 was in your wallet at the jail?

3 A Yes.

4 MS. ZMROCZEK: Okay. Your Honor, at this time, we
5 would move Petitioner's Exhibit 6 into evidence.

6 MS. COLEMAN: No objection.

7 THE COURT: Very well.

8 (Petitioner's Exhibit Number 6 was entered into
9 evidence.)

10 MS. ZMROCZEK: Okay.

11 BY MS. ZMROCZEK:

12 Q And is that your signature at the bottom?

13 A Of?

14 Q Of your license.

15 A Yes.

16 Q Okay. There were some questions about some of the
17 evidence in this case; is that correct?

18 A Yes.

19 Q Did you go through the evidence with Mr.
20 Broadwater?

21 A Yes.

22 Q Okay. Did you go through all of it together?

23 A Everything that we had, yes.

24 Q Okay. And -- interesting that you say that. Were
25 there things that you expected to see that weren't in

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 there?

2 A There were things that were presented at trial that
3 weren't in there, that we did not expect.

4 Q Okay. And since then, you've not seen -- you've
5 not received any new discovery, correct?

6 A No.

7 Q Okay. There were -- what were your -- did you
8 discuss a strategy with Mr. Broadwater?

9 A Yes. Basically the strategy was that there was a
10 video that came with the discovery. It was a Roses video.

11 Q Okay.

12 A And we noticed in the discovery that when the
13 detective was speaking, he was saying that everyone in the
14 video was -- he could confirm everyone's identity but
15 the --

16 Q He who? Detective Savage?

17 A Yeah. He could -- he clearly identified both my
18 codefendants, but he could not identify me in the video.
19 So me and Broadwater, he came to see me and he pulled out
20 his laptop and upon seeing the video, Mr. Broadwater looked
21 and he -- basically he just said that wasn't me that he was
22 seeing in the video. So the strategy became, okay, enhance
23 this video, get it big enough so that we can present it at
24 trial and show because the State's case was basically to
25 put me with my codefendants that morning.

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 Q Okay. And the -- just for the Court's edification,
2 the Roses video the Rose -- Roses is a store, correct?

3 A Yes.

4 Q And it's located approximately close to where all
5 of this had happened at around 10 o'clock, there is a video
6 that shows definitively -- well, your codefendant
7 identified himself and it definitively shows the two
8 codefendants, correct?

9 A Yes.

10 Q And then there was a third person?

11 A Yes.

12 Q And they were trying to say that that was you?

13 A Yes.

14 Q And -- and your -- you and your attorney discussed
15 hiring an expert?

16 A Yes.

17 Q To help remedy that?

18 A Yes.

19 Q Okay. Did you also discuss your alibi with him?

20 A Yes. We had -- my stepfather was home at the time
21 so we was -- basically we were going to ask him to testify
22 to my whereabouts that morning and that was beginning to be
23 my alibi.

24 Q And was that presented at trial?

25 A No.

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 Q Okay. Had you -- you knew that cell phone records
2 were going to be an issue, correct?

3 A Yes.

4 Q Did y'all ever discuss having somebody hire an
5 exert to go through those?

6 A No.

7 Q Okay. Do you know anything about cell phone
8 records? You knew all the things that they could find
9 and --

10 A Not really.

11 Q Okay. When Mr. Broadwater -- tell me about the
12 first time -- how did you meet Mr. Broadwater?

13 A He came to see me the weekend before my first
14 trial.

15 Q Okay. And what conversations did you have with
16 him?

17 A He --

18 Q The weekend -- that was the first time you saw him
19 was the weekend before your first trial?

20 A Yes.

21 Q Okay. Did y'all look at discovery?

22 A No, he didn't have it.

23 Q Okay.

24 A He came in and he just -- he announced who he was.

25 He told me he was -- that my mother had just hired him. He

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 wanted to ask me about what I thought my chances looked
2 like at trial. And I basically told him that I have an
3 alibi witness and the State actually can't place me on the
4 scene. So this shouldn't really be a difficult case for
5 him to try. He said okay, showed up at the trial.

6 Q Okay. So then he showed up at trial?

7 A Yes.

8 Q And then did you meet afterwards?

9 A Yes, we met plenty of times afterwards.

10 Q Okay. Because your next trial was in August?

11 A Yes.

12 Q And had you seen any enhancements from that video?

13 A No.

14 Q To your knowledge, has that ever been done --

15 A No.

16 Q -- by Mr. Broadwater?

17 A No.

18 Q Okay.

19 A He didn't -- we didn't actually -- he didn't
20 actually look at the video until maybe a week before my
21 trial.

22 Q Okay.

23 A That is why when he went into -- when we went to
24 our pretrial matters a few days before my trial, he was
25 telling the judge that he needed more time because he had

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 just looked at the video.

2 Q And he was discussing having trouble opening it or
3 something?

4 A Yes.

5 Q Okay. And did you consider that to be something
6 that you needed to help defend you?

7 A Yes.

8 Q Okay. What ultimately -- obviously, you went
9 through the trial and you were convicted?

10 A Yes.

11 Q Tell us a little bit about how you grew up. What's
12 your -- I think we went through your education yesterday,
13 or maybe not. How far did you go in school?

14 A I got to college. I was eight months away from
15 graduating.

16 Q And how many jobs have you had?

17 A A few. Maybe seven or eight.

18 Q Okay. And what kind -- what types of jobs are
19 those?

20 A Oh, man, basically anyone who would hire me. I've
21 worked at chicken farms, I worked in restaurants, I've
22 worked in supermarkets.

23 Q And what were you doing -- what were you pursuing
24 -- what type of degree were you pursuing?

25 A Surgical technology.

Jamaques Salley - Direct Examination Continued by Ms. Zmroczek

1 Q Okay. And lastly, because I'm sure this is going
2 to be an issue. Obviously, you -- did you work with
3 Mr. Williams?

4 A Yes, at Carlisle Tire and Wheel.

5 Q Okay. So he had worked there. What happened to
6 his employment at Carlisle Tire?

7 A He got laid off.

8 Q Okay. So he got laid off, but you actually were at
9 work?

10 A Yes.

11 Q And you were actually arrested at work, correct?

12 A Yes.

13 Q And what were your hours?

14 A I worked from 2 until closing time, I believe it
15 was 10 or 11.

16 Q So 2 p.m. --

17 A Yes.

18 Q -- until 10 or 11 a.m.?

19 A p.m.

20 Q I mean p.m., I'm sorry.

21 A Yes.

22 Q And obviously, you've seen portions of your text
23 messages?

24 A Yes.

25 Q You and Mr. Williams had -- he was asking you about

Jamaques Salley - Cross-Examination by Ms. Coleman

1 robbing a place, right?

2 A Yes.

3 Q And your response was?

4 A When he asked me if we were going to do it, I said
5 no.

6 Q And that's reflected in your text messages, right?

7 A Yes.

8 Q But y'all did have a conversation about it?

9 A Yes, we did have a conversation about it.

10 Q Okay. And you obviously don't deny that?

11 A No.

12 Q Okay. But as you testified at trial and as you
13 testified here today, did you have anything to do with
14 that --

15 A With the actual robbery, no.

16 Q Okay. Please answer any questions the State has.

17 **CROSS-EXAMINATION**

18 BY MS. COLEMAN:

19 Q Good morning Mr. Salley.

20 A Good morning.

21 Q How many times do you think you met with your
22 attorney, total, for the second trial?

23 A Five or six.

24 Q Five or six. And you reviewed discovery with your
25 attorney, right?

Jamaques Salley - Cross-Examination by Ms. Coleman

1 A Basic -- the paperwork, yes.

2 Q The paperwork. Did you watch the video together?

3 A Yes.

4 Q Okay.

5 A The week before my trial.

6 Q Right. Did you discuss possible defenses with your
7 attorney?

8 A No, he hung up on the one defense I told him before
9 my first trial.

10 Q Okay. But you mentioned your alibi witness, your
11 stepfather, right?

12 A Yes.

13 Q And you mentioned the -- the potential strategy
14 that I think you ended up using at trial of the Roses
15 video --

16 A We didn't discuss that until we watched the video
17 the week before.

18 Q Okay. But you discussed it the week before the
19 trial?

20 A Yes.

21 Q Okay. So you knew that you were going forward with
22 that strategy?

23 A Yes.

24 Q Okay. And your first trial ended in a mistrial,
25 right?

Jamaques Salley - Cross-Examination by Ms. Coleman

1 A Yes.

2 Q So you had until August to meet with him and
3 prepare and review all of the discovery, right?

4 A Yes.

5 Q Okay. Did you feel ready to go at the start of the
6 second trial?

7 A He assured me that the video enhancement would be
8 done by the time trial started, so I felt ready.

9 Q Okay. Did you give your attorney any leads or
10 witnesses to investigate?

11 A Yes, actually.

12 Q Okay. Did he investigate those witnesses?

13 A I honestly don't know.

14 Q Okay. How, you testified at trial, obviously. And
15 Ms. Zmroczek just discussed that with you. You told the
16 jury that you were not involved in the robbery, correct?

17 A That's correct.

18 Q You told them that you were home that day. You
19 weren't part of it at all, right?

20 A Correct.

21 Q You also told them that you had dreads at the time?

22 A Yes.

23 Q Right?

24 A Yes.

25 Q You told them that you had accounts at Quick Cash?

Jamaques Salley - Cross-Examination by Ms. Coleman

1 A Yes.

2 Q So the jury knew that you had accounts there and
3 you told them that they recognized you by name and they
4 knew your face there, right?

5 A Yes.

6 Q Okay. You told the jury about your relationship
7 with Carlos Williams, too, right?

8 A I believe so.

9 Q So they knew that you had had a dispute over his
10 little sister?

11 MS. ZMROCZEK: Objection to what the jury knew I
12 think there's a different way to ask that question.

13 MS. COLEMAN: I apologize, Your Honor, I'll
14 rephrase that.

15 BY MS. COLEMAN:

16 Q So you told the jury about the dispute with Carlos
17 Williams's younger sister, right?

18 A I don't remember it being asked me whether or not
19 we had the dispute or not.

20 Q Okay. And you told the jury about your prior
21 record as well, too, including your assault charge, right?

22 A Yes.

23 Q Okay. Your attorney also brought up the fact that
24 the victim did not see your face and could not identify
25 your face in the robbery, correct?

Jamaques Salley - Cross-Examination by Ms. Coleman

1 A Yes.

2 Q Okay.

3 MS. COLEMAN: Beg the Court's indulgence.

4 THE COURT: All right.

5 (There was a pause in the proceedings.)

6 BY MS. COLEMAN:

7 Q Okay. Let's talk about the day of the crime. And
8 you testified some yesterday, we haven't gone into it yet
9 this morning, but yesterday you testified about what you
10 did that day. Can you tell us again where you were and
11 what you did the morning of the crime?

12 A That morning, I was at home, eating breakfast and
13 watching TV with my stepfather.

14 Q What time did you wake up that day?

15 A I woke up around maybe 9 something.

16 Q 9 something. Okay. And what time did you eat
17 breakfast?

18 A 10 something.

19 Q Okay. Was your father at the house that day with
20 you?

21 A Yes.

22 Q Did you see Carlos Williams or Michael Quarrels
23 that morning?

24 A Yes.

25 Q What time?

Jamaques Salley - Cross-Examination by Ms. Coleman

- 1 A They came around 9 something.
- 2 Q 9 something. Okay.
- 3 A Yes.
- 4 Q And you did not go with them --
- 5 A No.
- 6 Q -- when they left?
- 7 A No.
- 8 Q Okay. What time did they leave?
- 9 A Had to have been around 9 something.
- 10 Q Okay.
- 11 A They didn't stay long.
- 12 Q What time did you leave to go to work that day?
- 13 A I always leave close to 1:30, 1:45. I have to be
- 14 there at 2.
- 15 Q You remember what you were doing at the house after
- 16 breakfast before work?
- 17 A Sleeping.
- 18 Q Sleeping. Okay. Were you using your cell phone
- 19 that morning?
- 20 A Yes.
- 21 Q Okay. Did you get in contact via telephone -- via
- 22 cell phone with Michael Quarrels and Carlos Williams?
- 23 A Michael Quarrels didn't have a cell phone.
- 24 Q Okay.
- 25 A So -- and Carlos called me that morning.

Jamaques Salley - Cross-Examination by Ms. Coleman

1 Q Okay. What time did he call you?

2 A It was early, it was 9 something. He was -- he
3 actually woke me up. That's what woke me up that morning.

4 Q Okay. Now, the law enforcement took your cell
5 phone when you were arrested, correct?

6 A Yes.

7 Q And they got a search warrant for your phone and
8 used that -- the information from the phone at trial,
9 correct?

10 A Yes.

11 Q And you might not know if they got a warrant or
12 not?

13 A Yeah, I don't know.

14 Q But they used the information from your cell phone
15 at the trial, correct?

16 A Yes.

17 Q Okay. So they saw the text message that you had
18 sent discussing this robbery, potential robbery with the
19 codefendants?

20 A That's how they played it out, yes.

21 Q All right. They also got the text message that you
22 testified about yesterday to your father that said, I've
23 been arrested. Tell them I've been home all day, right?

24 A Yes, they got that.

25 Q Okay. And that was presented to the jury?

Jamaques Salley - Cross-Examination by Ms. Coleman

1 A I believe so.

2 MS. COLEMAN: Beg the Court's indulgence.

3 (There was a pause in the proceedings.)

4 BY MS. COLEMAN:

5 Q What other strategies did you discuss with Mr.
6 Broadwater when you were preparing for the second trial?

7 A That was it, just those two strategies.

8 Q Okay. Did he tell you anything about the witnesses
9 he planned to use at trial?

10 A No.

11 Q Okay.

12 A I wasn't aware there were any witnesses.

13 Q You testified yesterday about Mr. Thompson who
14 originally represented you and how you were not confident
15 in his ability. Can you explain this a little more?

16 A Well, Mr. Thompson came to see me twice at the
17 detention center. He came the one time to introduce
18 himself and then he came the week before my trial with my
19 discovery and we went over it, the paperwork part. He
20 didn't have any videos with him. He went over it and he
21 told me that his best trial strategy would be to don't
22 object to anything, just let the State say what they're
23 going to say so that he could talk last. And I wasn't
24 feeling that at all.

25 Q So he told you, you weren't going to object to

Jamaques Salley - Cross-Examination by Ms. Coleman

1 anything?

2 A Yes. He told me not to testify, don't object to
3 anything and then the State -- it's a rule, the State -- if
4 you don't say anything, then the State presents their
5 closing argument first and then he can talk last.

6 Q Okay. You also testified yesterday about the Quick
7 Cash building and how you had accounts there and you had
8 been there several times before. Ms. Zmroczek had asked
9 you, I believe, if you knew if there were any cameras in
10 the room. Did you know if there were any cameras there?

11 A No, not off the top of my head. Like I said, the
12 only thing that I know -- like you see when you walk in is
13 kind of like this really big globe at the top. But I
14 wasn't actively looking for cameras.

15 Q So you don't know if there were any in there or
16 not?

17 A No, I don't.

18 Q And you wouldn't have told your attorney, I mean --

19 A I don't a need to. I wouldn't know.

20 Q Okay. Did you tell Mr. Broadwater what was on your
21 cell phone? After they took it from you?

22 A Well, we went over that. So he saw the text
23 messages.

24 Q Okay. All right. So you reviewed that with him?

25 A Yes.

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 Q I don't have anything further. Thank you.

2 THE COURT: All right. Redirect.

3 MS. ZMROCZEK: Very briefly.

4 **REDIRECT EXAMINATION**

5 BY MS. ZMROCZEK:

6 Q She asked -- the assistant attorney general asked
7 you about the text messages that were presented at trial?

8 A Yes.

9 Q And I'm going to show you Plaintiff's Exhibit 7.
10 (Petitioner's Exhibit Number 7 was marked for
11 identification.)

12 BY MS. ZMROCZEK:

13 Q I'm going to show you Plaintiff's Exhibit 7 and ask
14 you if you recognize that as being -- or if you recognize
15 that. You can flip through it -- oh, you can't flip
16 through it. I'll hold that for you. I remember that from
17 yesterday.

18 A Yeah, I --

19 Q Is this what they cross-examined you on?

20 A Not all of that, but, yeah, a portion of that.

21 Q And this is what they -- this is what they used at
22 trial, correct?

23 A Yes.

24 Q Okay.

25 MS. ZMROCZEK: Your Honor, at this time we would

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 move Petitioner's 7.

2 MS. COLEMAN: No objection.

3 THE COURT: Very well.

4 MS. ZMROCZEK: Okay.

5 (Petitioner's Exhibit Number 7 was entered into
6 evidence.)

7 BY MS. ZMROCZEK:

8 Q And so this report, you don't know what cell phone
9 reports look like, right?

10 A No.

11 Q Okay. And -- but they were asking you about
12 specific questions or, you know, what you meant by specific
13 things --

14 A Uh-huh.

15 Q Right?

16 A Yes.

17 Q And then you explained that some of the
18 conversations that you were having with Carlos Williams
19 were actually about work?

20 A Yes.

21 Q And then who's your -- are you -- did you text or
22 call your girlfriend?

23 A Yes.

24 Q And who is that?

25 A Calli Simmons.

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 Q Calli Simmons. Okay. But was any of that in your
2 phone records? Did you see any of those?

3 A No.

4 Q Okay. And then -- so her name is Calli?

5 A Yes.

6 Q Okay. And you actually -- when you -- you
7 explained when you said tell them I'm home, I didn't think
8 you explained that yesterday. Were you trying to make your
9 stepfather lie for you?

10 A No, no, no.

11 Q Okay.

12 A I was telling him -- because once again Detective
13 Savage, he was speaking to one of his officers and saying
14 that they were going to my mother's house and to basically
15 handcuff all of them and put them on the yard while they
16 searched the house. So I was giving him a heads up.

17 Q All right. And then I'm going to show you
18 Plaintiff's Exhibit 8, which is a series of photos.

19 (Petitioner's Exhibit Number 8 was marked for
20 identification.)

21 BY MS. ZMROCZEK:

22 Q You received photos in discovery, right?

23 A No.

24 Q You never saw any photos from discovery?

25 A No.

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 Q Okay. Do you recognize what these photos depict?

2 A It looks like the Quick Cash.

3 Q Okay. So you never saw any of the photos from
4 discovery?

5 A No.

6 Q Okay.

7 A I've seen the Wal-Mart video, the Roses video, and
8 just the paperwork in discovery.

9 Q Okay. So you didn't see 111 pictures?

10 A No, I didn't even -- the first time I heard the
11 9-1-1 phone call was in court.

12 Q Okay. But -- so I'm showing you Plaintiff's
13 Exhibit 8. Do you recognize what it is?

14 A Yes, I know what it is.

15 Q What is this, please.

16 A That is the Quick Cash.

17 Q These are photos of the Quick Cash?

18 A Yes.

19 Q Okay. You did not know this -- did you know about
20 any of these photos?

21 A No.

22 Q But you do recognize them?

23 A Yes.

24 Q And does that look like the Quick Cash that you go
25 to?

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 A Yes.

2 MS. ZMROCZEK: Your Honor, at this time we would
3 move Petitioner's Exhibit 8 into evidence.

4 MS. COLEMAN: Your Honor, I object to them being
5 used to prove that they were part of the discovery.
6 Obviously, they can be used to -- he recognizes the Quick
7 Cash.

8 THE COURT: Sustained.

9 MS. COLEMAN: Thank you.

10 MS. ZMROCZEK: But can we admit them for the
11 purpose of him saying that he recognized this as the Quick
12 Cash?

13 THE COURT: Is that the only purpose that you would
14 be admitting them for at this point is that he can -- he
15 can acknowledge that these are photographs of the Quick
16 Cash --

17 MS. ZMROCZEK: Right.

18 THE COURT: -- at or about the time of these
19 alleged events?

20 MS. ZMROCZEK: Correct.

21 MS. COLEMAN: No objection to that.

22 THE COURT: Very well.

23 MS. ZMROCZEK: Okay. Okay.

24 (Petitioner's Exhibit Number 8 was entered into
25 evidence.)

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 BY MS. ZMROCZEK:

2 Q What's this right here?

3 A Her desk.

4 Q All right. So when you come in, there's someone
5 working at the desk, right? And I'm showing the first page
6 of Petitioner's 8.

7 THE COURT: And I'm going to ask you to mark that
8 just as I go back and look later or the record's going to
9 be difficult. Just mark it with some sort of symbol so we
10 can put that on the record.

11 MS. ZMROCZEK: As the page number?

12 THE COURT: Or just what you were talking about.
13 What is that, just mark the that.

14 MS. ZMROCZEK: Okay. And I'll try to clear it for
15 the record too.

16 THE COURT: That's fine.

17 BY MS. ZMROCZEK:

18 Q I'm showing the first page of Petitioner's Exhibit
19 8 and I'm pointing to chairs and tables and what are those?

20 A Those -- that is the desk that's in the middle of
21 the room when you first walk in.

22 Q When you walk in?

23 A Yes.

24 Q And so what is this right here?

25 A That is a camera.

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 Q A camera facing which direction?

2 A The door.

3 Q Okay.

4 A The front door.

5 Q Okay. All right. And I believe yesterday I asked
6 you about -- you went through Petitioner's 4 and those show
7 your active accounts, right?

8 A Yes.

9 Q And so you would use the front door when you would
10 go in and go to the desk?

11 A Yes.

12 Q Okay.

13 MS. COLEMAN: Your Honor, excuse me. I don't mean
14 to interrupt. But the exhibits she just entered, is there
15 a way we can mark each of those since there are several
16 photographs? If we could mark them as --

17 THE COURT: A, B, C...

18 MS. ZMROCZEK: Yeah, because, Your Honor, what I
19 was -- what we were going to end up is 800 -- not 800, but
20 probably close to 100 exhibits if I did each photograph,
21 but I will -- we can label them -- I'll make sure to label
22 the pages 8A -- or do you want me to start with 8 and then
23 8A, 8B, 8C.

24 THE COURT: Just 8A, B, C.

25 MS. ZMROCZEK: Okay.

Jamaques Salley - Redirect Examination by Ms. Zmroczek

1 MS. COLEMAN: Thank you Your Honor.

2 THE COURT: Yeah.

3 MS. ZMROCZEK: And I'll do that and then that way
4 it will be more clear.

5 (Petitioner's Exhibit Number 8 was remarked to be
6 8A, 8B, 8C, 8D, 8E.)

7 MS. COLEMAN: And can you identify which one you
8 were just showing.

9 MS. ZMROCZEK: And so the one I was just showing to
10 you is 8A -- will be 8A.

11 THE WITNESS: Okay.

12 BY MS. ZMROCZEK:

13 Q Okay. And while we're at it. And here on 8B, it
14 depicts another angle. Is that still the same desk?

15 A Yes.

16 Q Still the same chairs?

17 A Yes.

18 Q Still the same camera?

19 A Yes.

20 Q Okay. 8C, and that's -- is that the view from when
21 you walk into the door?

22 A Yes, that's the front door.

23 Q Okay. That's right here?

24 A Yes.

25 Q The camera right here?

Jamaques Salley - Recross-Examination by Ms. Coleman

1 A Right there.

2 Q Okay. And is this the globe you were talking
3 about? And I'm on 8C.

4 A Yes, that's it.

5 Q That's the globe --

6 A Yes.

7 Q -- that you assume was a camera, but you don't
8 know?

9 A Yeah.

10 Q Okay. But you recognize as being the globe in the
11 ceiling?

12 A Yes.

13 Q Okay. And those are all the questions that I have.

14 THE COURT: Any recross?

15 MS. COLEMAN: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. COLEMAN: Thank you.

18 **RECROSS-EXAMINATION**

19 BY MS. COLEMAN:

20 Q Mr. Salley, is that how you've seen this photograph
21 that has a camera in it, you admit that the photograph has
22 a camera in it. You didn't know at the time that this was
23 a camera there?

24 A No, I -- no, I wasn't looking for it.

25 Q And you don't know if this a real camera, do you?

Jamaques Salley - Recross-Examination by Ms. Coleman

1 A No.

2 Q Okay. So there's a chance it could be a phony?

3 MS. ZMROCZEK: Objection, Your Honor, speculation.

4 THE COURT: Well, let me hear the question first.

5 MS. ZMROCZEK: Okay.

6 BY MS. COLEMAN:

7 Q Is it fair to say that there's a possibility that
8 it's a fake camera that doesn't actually take real footage?

9 A I wouldn't know why they would have a fake camera
10 if it's a place of business, but I guess it could be fake.

11 Q It could be, but you don't know one way or the
12 other?

13 A No.

14 Q Okay. Thank you. Nothing further.

15 THE COURT: All right. You can come back down to
16 your desk.

17 All right. Call your next witness.

18 MS. ZMROCZEK: Well -- and I think, Your Honor, at
19 this point what we're going to do is maybe -- if the Court
20 wants to consider rebuttal witnesses or just a break in the
21 testimony so that we can have the State present their
22 witness --

23 THE COURT: Either way. Either way.

24 MS. ZMROCZEK: I guess we'll just take -- I'll let
25 the State take their case out of order.

Thomas Broadwater - Direct Examination by Ms. Coleman

1 THE COURT: Okay.

2 MS. COLEMAN: State calls Thomas Broadwater.

3 THOMAS BROADWATER,

4 having been duly sworn, testified as follows:

5 THE CLERK: Please have a seat in the witness box
6 and state your full name for the Court.

7 THE WITNESS: Thomas B. Broadwater, Sr.

8 THE COURT: Your witness.

9 MS. COLEMAN: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 BY MS. COLEMAN:

12 Q Good morning, Mr. Broadwater, how are you?

13 A Good morning, Ms. Coleman.

14 Q How long have you been practicing law?

15 A 51 years.

16 Q And do you recall how you became involved in this
17 case with Mr. Salley?

18 A Yes. I received a call from a lady named Ms. Davis
19 and we met up and she gave me a retainer and I went to see
20 Mr. Salley in jail.

21 Q Do you remember when you went to visit him in jail
22 for the first time?

23 A No.

24 Q Okay.

25 A But all of it's on the record at the jail, the

Thomas Broadwater - Direct Examination by Ms. Coleman

1 number of times I went there. I went there more than ten
2 times.

3 Q More than ten times?

4 A Uh-huh. And several times I left after 11 o'clock
5 at night.

6 Q Do you remember how many times you spoke to his
7 mother on the phone or in person?

8 A When I first met Mr. Salley he told me that he had
9 been charged with tasing a lady at the loan company and he
10 couldn't have tased her because he didn't have a key to --
11 he had bought a taser the day before this happened at the
12 flea market in Augusta and he said that he could not have
13 tased her because he didn't have the key to the taser.

14 So his mother agreed to ride with me to Augusta to
15 show me where the flea market was and we got out and walked
16 around and we found the man selling tasers; and he said it
17 didn't need a key. All you needed was a paper clip, a
18 safety pin or a hair pin and it would work. So we
19 cancelled that.

20 So the first time I saw Mr. Salley I told him that
21 I generally defend a case based on what the obstacles are.
22 Assuming there's a highway and we need to get from point A
23 and point B and the bridge was out, we knew we couldn't get
24 a vehicle across.

25 If further up the road there was a tree across the

Thomas Broadwater - Direct Examination by Ms. Coleman

1 road, we would have to get rid of that and -- but the main
2 thing that stood out was when he told me about the fact
3 that they had taken his phone and it was illegal. They had
4 broken his phone. I said well, if they got a warrant, they
5 had a right to see it especially if you're in jail, then we
6 coming up with a situation. That's what had happened.

7 Q Did Mr. Salley cooperate with you during the course
8 of your representation?

9 A Yeah.

10 Q Yes. And were you given the discovery material
11 from Mr. Thompson when he was relieved from the case?

12 A I did.

13 Q Okay.

14 A And Mr. Salley filed a grievance with the grievance
15 committee and a lady named Ms. Montgomery asked me to send
16 her my complete file and that's where the file is.

17 Q So you -- do you have your file with you today?

18 A No.

19 Q No. Because it's with her?

20 A Yeah.

21 Q Did you review the discovery material with the
22 applicant before the trial?

23 A In detail.

24 Q In detail.

25 A And I told him that everything looked okay except

Thomas Broadwater - Direct Examination by Ms. Coleman

1 for what was on his telephone and I had nothing to do with
2 that. If you're convicted that's what's going to take you
3 down, what's on the telephone. And they played that back
4 at the trial.

5 Q Did you review the photographs in the discovery
6 with the applicant?

7 A Photographs --

8 MS. COLEMAN: If I may approach the witness, Your
9 Honor?

10 THE COURT: Okay.

11 BY MS. COLEMAN:

12 Q This is Applicant's Exhibit 7, is that --

13 MS. ZMROCZEK: 8.

14 THE COURT REPORTER: It's 8.

15 MS. COLEMAN: Okay. Perfect.

16 BY MS. COLEMAN:

17 Q Do you recognize these photographs?

18 A No, I don't.

19 Q Okay. Was that a part of the discovery that was
20 given to you by the State or from Mr. Thompson?

21 A No.

22 Q Okay. Have you seen these before at all?

23 A No.

24 Q Okay.

25 A I heard discussion about this.

Thomas Broadwater - Direct Examination by Ms. Coleman

1 Q Okay.

2 A I haven't seen these before.

3 Q Okay. Thank you.

4 Did you discuss any defenses with the applicant
5 before the trial?

6 A Any what?

7 Q Defenses? Possible defenses to use?

8 A Oh, he told me that -- from the beginning he said I
9 wasn't there. So I was looking at one of the videos and in
10 his presence and someone handed the clerk at Roses
11 Department Store a credit card. It was red in color and
12 when she handed it to the purchaser, he stuck it back in
13 his wallet and that's on the video from Roses.

14 So I asked him who purchased the knapsack, the
15 backpack, whatever it was. He says I did. I said well,
16 did you -- you use your card. He said, yeah, I used a card
17 from Navy Federal -- Navy something, Navy Credit Union.
18 But I wasn't there. He said, Well -- see I loaned my card
19 to -- I think he said Williams. The other two codefendants
20 one of them is Williams and one of them is Quarrels I
21 think. And one of them was in jail in McCormick so he and
22 I discussed what the codefendants would say. And I told
23 him that I had understood that Williams was going to be a
24 witness against him if it was any of this lying.

25 I said well, let me go talk to Mr. Quarrels who's

Thomas Broadwater - Direct Examination by Ms. Coleman

1 at McCormick. So I drove to McCormick and spent 30 minutes
2 with him and I asked him, I said if I was to call you as a
3 witness in Salley's case, the clerks swear you in to tell
4 the truth, who else was with you --

5 MS. ZMROCZEK: Objection, Your Honor. He can't
6 testify as to what the person told him. That's hearsay.

7 THE COURT: I understand.

8 You wish to be heard?

9 MS. COLEMAN: No.

10 BY MS. COLEMAN:

11 Q I guess maybe if you could present what your
12 impression was after that conversation?

13 A After that conversation, I came straight back to
14 the jail and told him that that would be a witness against
15 him too.

16 Q So -- sorry.

17 A And both cases he said they're lying. I said okay
18 and left.

19 Q So was it your understanding that both codefendants
20 could be used against him at the trial?

21 A Williams had signed up to be a witness at the
22 trial. Quarrels wasn't cooperating, but he said he would
23 -- well he would be a witness.

24 Q And Carlos Williams did testify at the trial?

25 A Yes. In detail.

Thomas Broadwater - Direct Examination by Ms. Coleman

1 Q And what did he say that Mr. Salley had done at the
2 trial?

3 A He said he planned --

4 MS. ZMROCZEK: Your Honor, I believe that it's
5 reflected in the trial transcript. I don't know that this
6 is the proper --

7 THE COURT: Best evidence is what you're -- you're
8 objecting on the basis of best evidence?

9 MS. ZMROCZEK: Exactly.

10 THE COURT: Sustained.

11 MS. COLEMAN: Thank you.

12 BY MS. COLEMAN:

13 Q But -- in some -- Mr. Williams placed Mr. Salley at
14 the scene of the crime in front of the jury at the trial,
15 correct?

16 A Yeah.

17 Q Okay.

18 A And that was one of the obstacles I informed him
19 that if we couldn't get around that obstacle we will be
20 blocked, we were in trouble. Unless we got the trees out
21 of the road but couldn't get by.

22 Q Did the State use the cell phone records for
23 Mr. Salley's phone against him at trial?

24 A They put it on the big screen.

25 Q And did those help or hurt his case?

Thomas Broadwater - Direct Examination by Ms. Coleman

1 A Oh, devastating.

2 Q Did you review those text messages with Mr. Salley
3 before the trial?

4 A (Witness nodded head.)

5 Q And could you answer that out loud please?

6 A Yes.

7 Q Thank you. For the court reporter there.

8 Did you discuss using the applicant's father as an
9 alibi witness at trial?

10 A Yes.

11 Q And why did you decide not to use him as a witness?

12 A I didn't decide that. He did. I told him -- he
13 said they would come after him on his record. I said well,
14 if you get on the stand, you expect everything in your
15 record to come out because I'm sure they know what it is.
16 So he left the courtroom.

17 Q Did you believe that if the father had testified as
18 to his alibi, did you believe that he would be a good
19 witness?

20 A I didn't see where he could help.

21 Q Did the applicant give you any potential witnesses
22 or leads to investigate beside his father, I guess?

23 A Nothing except the taser.

24 Q And did you -- you testified that you did
25 investigate the taser; is that correct?

Thomas Broadwater - Direct Examination by Ms. Coleman

1 A Ms. Davis and I went to Augusta. Went to the flea
2 market, walked around there and located a man selling
3 tasers. He said he didn't need a key. So that was out of
4 the way there then. That was -- that appeared to be a main
5 defense when I first talked to him, that he could not have
6 tased her, so she's lying. He couldn't have tased her
7 because he didn't have the key to the taser.

8 Q Now, this case was originally set for trial in May
9 but ended in a mistrial and it was continued and went
10 forward on the full trial in August; is that right?

11 A Yes.

12 Q Did you have enough time in those months before
13 August to prepare for this trial?

14 A Yes.

15 Q Did you feel like you were ready to go?

16 A I felt like I was ready to go the first day because
17 of the prosecution had put up their case first. We found
18 what it's all about. I'd rather not do it that way, but I
19 came in the case late, but...

20 Q Did you have a chance to review the discovery and
21 the file on the case before the first or second trial?

22 A Everything Mr. Thompson had he gave it to me, at
23 least he said he did.

24 Q What was your trial strategy in this case?

25 A Well, his sworn defense was I wasn't there. I

Thomas Broadwater - Direct Examination by Ms. Coleman

1 didn't tell him there was no point in cross-examining
2 Mr. Williams because it would compound the situation and he
3 said he wasn't there, Williams was saying he was.

4 Q What did you argue to the jury regarding the video
5 tapes from the Roses and the Wal-Mart?

6 A I'm not sure what that was. I don't remember that.

7 Q And that would be reflected in the transcript, of
8 course, the closing argument. Can you tell us a little bit
9 just in general about your strategy when it comes to
10 objecting and when you make objections?

11 A Yeah, I make objections when it's irrelevant.

12 Q If there was something that you thought was
13 objectionable at the time of the trial, would you have made
14 an objection?

15 A Yes.

16 Q Okay.

17 A Even if it's wrong, I make the objection.

18 Q Okay.

19 MS. COLEMAN: Beg the Court's indulgence.

20 THE COURT: Okay.

21 (There was a pause in the proceedings.)

22 MS. COLEMAN: I have no further questions. Thank
23 you.

24 THE WITNESS: I wanted to say one other thing.

25 BY MS. COLEMAN:

Thomas Broadwater - Direct Examination by Ms. Coleman

1 Q Sure.

2 A I had told him that what was on his telephone was
3 the thing that would convict him. That he had -- that's
4 why he had to get on the stand and explain what was on the
5 text message because if he could convince the jury that he
6 wasn't there in light of the text messages then he had a
7 chance, but that was his job. I wasn't there, so I
8 couldn't be a witness. It was his case and he needed to
9 deal with what's on -- what's in the text message because
10 they were going to use that and they did.

11 Q And did the State have a search warrant for his
12 phone to your knowledge?

13 A I thought I remembered seeing a search warrant.

14 Q And did Mr. Salley tell the jury on the stand that
15 he was not at the Quick Cash that day?

16 A He testified in defense, he put up testimony
17 regarding the event that he wasn't there.

18 Q Did you think Mr. Salley was a credible witness to
19 use, a good witness to put up?

20 A Well, after seeing a red card, he said that was his
21 card from the Navy Federal Credit Union and he had loaned
22 it to somebody who was buying the knapsack or the backpack.
23 Now, I -- I found that to be unusual. So in terms of
24 credibility, that didn't sound like anything I would do or
25 anything I know would do, loan their credit card to someone

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 to go buy some stuff and that's what -- sum and substance
2 that's what that was about.

3 Q Did you think that he was well spoken or would
4 present well to a jury?

5 A Yeah.

6 Q Okay. And was it his intention to testify that
7 day?

8 A Yeah. We had -- we couldn't see him not taking the
9 stand. It was a personal thing. The codefendant and he
10 was there when it happened and Mr. Salley was there. And
11 Mr. Salley said he was not there and then I thought it
12 would be a wise thing to do is to have the two witnesses,
13 one saying he was and himself saying he wasn't. That was
14 something for the jury to weigh, not me.

15 Q Is there anything else that you would like the
16 Court to know about this case?

17 A Nothing I can think of now.

18 Q Okay. Thank you. I have nothing further?

19 THE COURT: Cross-examination.

20 MS. ZMROCZEK: Thank you.

21 THE COURT: Yes.

22 **CROSS-EXAMINATION**

23 BY MS. ZMROCZEK:

24 Q Mr. Broadwater, I believe you testified that you've
25 been an attorney for 51 years?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

- 1 A Yeah.
- 2 Q And so you're familiar with the rules of evidence?
- 3 A Yes, ma'am.
- 4 Q You're familiar with the trial, court procedure?
- 5 A Some of them.
- 6 Q Some of it?
- 7 A Yeah.
- 8 Q Okay. What about with the criminal trial court?
- 9 A Some of it.
- 10 Q Okay. But you still tried cases that are felony
- 11 cases, correct?
- 12 A Yeah, that's why they say you're practicing law.
- 13 Q Right. But you also when you practice you have the
- 14 know what the rules are, correct?
- 15 A I had -- I know what the rules are.
- 16 Q Okay. So you know what the rules are?
- 17 A Yeah.
- 18 Q And you know how the rules require you to do
- 19 certain things and require the State to do certain things?
- 20 A Uh-huh.
- 21 Q Correct?
- 22 A Yes.
- 23 Q So when you receive discovery and you notice that
- 24 things are missing, you -- that would concern you right?
- 25 A How can I tell something is missing?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay. Well, let's --

2 MS. ZMROCZEK: Does he have a copy of the

3 transcript?

4 MS. COLEMAN: I'll give him mine.

5 BY MS. ZMROCZEK:

6 Q Just to make this easier --

7 A Okay.

8 Q -- I'm going to hand you a copy of the trial

9 transcript. And this is actually from the second trial?

10 A Okay.

11 Q Okay. So -- because I'm going to refer to that and

12 that might help us as we go through the evidence?

13 A Okay.

14 Q Because then, I'm certainly not trying -- I can't

15 remember what happened yesterday half the time, so...

16 But do you recall -- were you here for Mr.

17 Thompson's testimony?

18 A Yes.

19 Q And -- as he described your representation, was

20 that accurate?

21 A (Witness nodded head.)

22 Q Is that yes?

23 A Yes, ma'am.

24 Q Okay. So when you went to try that case the first

25 time you had not seen any discovery?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A No.

2 Q Okay. But still felt prepared to go forward on a
3 proper cross-examination and examination of the evidence?

4 A Right.

5 Q Okay. And it ended in the mistrial so we ended up
6 with this trial transcript, correct?

7 A That's correct.

8 Q Okay. And I'm going to direct you to page 9. And
9 so what it looks like is that on August 8th, which was a
10 few days before the trial, you actually had a pretrial
11 hearing; is that correct?

12 A I don't remember that.

13 Q Okay. If you look at the -- look at the front of
14 the transcript. Does it reflect that on August 8th there's
15 a transcript?

16 A Right.

17 Q Okay. And then there's an index, correct?

18 A Yeah. Yes.

19 Q Okay. And then we get to the pretrial hearing,
20 which --

21 MS. ZMROCZEK: Is your's marked?

22 MS. COLEMAN: I don't know.

23 BY MS. ZMROCZEK:

24 Q Let me -- so maybe I'm not confusing you with the
25 page numbers, let me make sure we have the same -- yes, we

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 do.

2 Okay. So that's the page number at the top that
3 I'll be referring to.

4 A Okay.

5 Q Okay. So page 8, it actually says pretrial hearing
6 and it says why we're here and then page 9, the judge and
7 the Court actually kind of go through the procedural
8 posture of what happened at the first trial because we
9 don't have a transcript of that first trial.

10 A There was no trial really.

11 Q There -- I'm sorry?

12 A There was no first trial really.

13 Q Oh, okay. Because there was -- it started, but
14 then there was a mistrial declared, right?

15 A Right, right.

16 Q Okay. And then on page 10, you alert to the Court
17 and this is August 8th on page 10, you alert to the Court
18 that there seems to be a problem with one of the videos not
19 being able to be opened in your computer?

20 A What line is that?

21 Q On line -- beginning at line 13.

22 A Right. I remember that.

23 Q Okay.

24 MS. ZMROCZEK: And just -- I know that these are
25 numbered out of order, which is going to make you crazy,

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 but I'll come back to the other ones that are numbered.

2 (Petitioner's Exhibit Number 10, Number 11, Number
3 12, Number 18, and Number 19 were marked for
4 identification.)

5 BY MS. ZMROCZEK:

6 Q I'm going to show you Petitioner's 10, 11, 12, 18,
7 and 19. When -- you said that you received the discover
8 from Mr. Thompson, correct?

9 A Right.

10 Q All right. I'm going to show you these items: 10,
11 and is that -- is that what you received from Mr. Thompson?

12 A It looks like it.

13 Q It looks like it because you gave everything that
14 you received from Mr. Thompson you gave then to me,
15 correct?

16 A I thought I gave it to the grievance committee.

17 Q To the -- I'm sorry. You gave it to the grievance
18 committee, you gave everything to them and we'll talk about
19 that a little bit later, but there was a grievance filed
20 against you --

21 A Right.

22 Q -- and they asked you for your complete file,
23 correct?

24 A Yeah.

25 Q And so you gave everything to them?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Right.

2 Q And --

3 MS. ZMROCZEK: I'm not going to put these in. We
4 need to talk about those.

5 BY MS. ZMROCZEK:

6 Q But -- so everything you had you gave to them, so
7 if there were photos that -- that are stamped with Barry
8 Thompson's initials and the date that you would have
9 received those from Barry Thompson and then turned them
10 over?

11 A If they were in the file that I turned over.

12 Q Then you turned it over?

13 A Yeah.

14 Q But you don't recall seeing any photos, but
15 specifically Petitioner's 8, you never saw these?

16 A Today is the first time I saw those.

17 Q Today's the first time you saw them?

18 A Yeah.

19 Q And one of the things that you do being a seasoned
20 criminal defense attorney is that you would go through all
21 of the evidence that you have, right?

22 A Right.

23 Q And for example if you saw photos that the police
24 had taken that had a video camera, you would inquire about
25 that, right?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Right.

2 Q Because that camera pointed right where the
3 incident happened would be helpful, right?

4 A I think -- I should think so.

5 Q And you would be able to cross-examine the police
6 officers to ask them if they got it, right?

7 A Right.

8 Q And you would be able to make motions or arguments
9 about spoliation and other theories of tampering or missing
10 evidence, right?

11 A Right.

12 Q Okay. And then -- you watched the videos in this
13 case. There was a Walmart video and a Roses video?

14 A Right.

15 Q Okay. And I want to talk about those and it might
16 just be easier to kind of go down the line of the
17 transcript to keep it in order. But on August 8, so four
18 days before the trial, you couldn't open one of the videos.
19 And I'm referring back to page 10 on line 13?

20 A No.

21 Q And that was a piece of evidence that you were
22 going to use to help show that he wasn't at the Roses that
23 day, right?

24 A I'm not sure the reason -- what we were going to
25 use it for.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay.

2 A But I wanted -- I wanted to look at all the videos
3 in his presence so I took my computer to the jail, my
4 laptop and we went over them together.

5 Q Okay. And in fact, on page 11, you tell the Court
6 -- and I'm at the very top. You tell the Court that you
7 want to get an expert to review these, right?

8 A Right.

9 Q Okay. And I want to talk about experts for a
10 little bit. You said that -- that the cell phone, the text
11 messages were damning, right?

12 A The text messages --

13 Q Were -- were -- were bad evidence for the case?

14 A Oh, yes. Yeah.

15 Q Correct?

16 A (Witness nodded head.)

17 Q And you're familiar with how to hire experts,
18 right?

19 A I'm not sure.

20 Q I mean you hired an expert in this case?

21 A Well, I hired a photographer.

22 Q You hired a photographer. Okay. But in your 51
23 years, you're familiar that there are experts that are way
24 more knowledgeable about certain stuff, scientific stuff
25 than we are as lawyers, correct?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A And that's why I brought him in the case.

2 Q That's why you brought the photography expert in,
3 right?

4 A Right.

5 Q Did you bring an expert or did you consider
6 bringing an expert to review or look at the cell phone
7 records?

8 A No.

9 Q Okay. Do you know all the kinds of information
10 that you can get off of cell phone records?

11 A No.

12 Q Okay. You're not familiar with those?

13 A I'm not familiar with all of it.

14 Q Okay. Are you familiar with how to -- what the
15 proper way is for the State, for example, to enter in
16 evidence?

17 A Say that again.

18 Q That may be a confusing question. You know that
19 for State to present evidence for a jury to see it needs to
20 be authenticated, correct?

21 A Well, I'm sure it was.

22 Q Okay. And it needs to be -- there needs to be a
23 foundation laid for it, right?

24 A Yeah.

25 Q Okay.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Wait a minute I still don't understand the
2 question.

3 Q So -- so for example, if I have a jury --

4 A Okay.

5 Q -- and I represent a client and the State says we
6 have these videos that we want to put in --

7 A Uh-huh.

8 Q -- the proper procedure to get those videos in
9 would be -- would require that the State, unless you waive
10 it or agree to it or stipulate to it, would have the State
11 have the chain of custody for those videos --

12 A Uh-huh.

13 Q -- who got the videos, how many times they've
14 changed hands, right?

15 A I didn't see anyone do that.

16 Q Right. You didn't see the State do that, did you?

17 A No.

18 Q And you didn't object to them putting these videos
19 in without doing that, did you?

20 A No.

21 Q Okay. And that goes the same for the cell phone
22 records. They didn't fly anyone down from Verizon to
23 authenticate these records, did they?

24 A I didn't see anyone.

25 Q Okay. And you didn't object to those records

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 coming in, did you?

2 A No, I figured the information was on the cell
3 phone.

4 Q I'm sorry?

5 A If the information was on his cell phone that was
6 one of the first issues -- excuse me -- that was raised
7 when I presented to Mr. Salley. That is they broke in my
8 phone without my permission. I said well, did they have a
9 warrant.

10 Q And did you see a warrant?

11 A I think I did.

12 Q Okay. And then you saw that they sent the search
13 warrant actually to T-Mobile?

14 A Uh-huh.

15 Q That's what the warrant said?

16 A I don't remember exactly what it said, but I
17 remember there was some authentication.

18 Q Was there any authentication at -- there was no
19 authentication at trial, though? Nobody from T-Mobile came
20 to testify, did they?

21 A I don't remember that.

22 Q Okay. And nobody from Verizon came to testify, did
23 they?

24 A I don't remember that.

25 Q Okay. In fact, the only person that testified

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 about getting that information was maybe a police officer
2 who said that he used a program, right?

3 A Right.

4 Q Now, did you ask for that police officer's
5 curriculum vitae? Did you know what kind of training he
6 had?

7 A No.

8 Q Okay. And did you ask for his CV?

9 A No.

10 Q Okay. Do you know how long he had -- you know, if
11 he was even qualified as an expert in that kind of
12 information?

13 A I don't know that.

14 Q You don't know that?

15 A I don't remember. The only thing I remember about
16 that is they put up a big screen and played everything that
17 was on the --

18 Q Right. All you remember is they'd taken this giant
19 screen and they put these Petitioner's 7, they put this up
20 on that giant screen, right? With all these text messages?

21 A Uh-huh.

22 Q And they didn't authenticate them and they didn't
23 have anyone -- an expert to testify about them, but they
24 still came in in front of the jury, right?

25 A I don't remember that.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay.

2 THE COURT: You are taking a break. You're
3 breathing.

4 MS. ZMROCZEK: Yes.

5 THE COURT: I'm so glad. That gives us an
6 opportunity to take about a 10 minute break.

7 We'll take about a 10 minute break. Let's take a
8 little comfort break; 10 minutes.

9 MS. ZMROCZEK: Thank you.

10 (A brief recess was observed.)

11 THE COURT: All right.

12 MS. ZMROCZEK: Thank you, Your Honor.

13 THE COURT: Yes, ma'am.

14 BY MS. ZMROCZEK:

15 Q Mr. Broadwater, I want to take you to page 13, line
16 9 of the trial transcript. The Court had asked you if you
17 had filed any pretrial motions.

18 A And my answer was no.

19 Q Okay. Pretrial motions are important because they
20 can kind of help flesh out these evidentiary issues,
21 correct?

22 A Correct.

23 Q And also, you know, you can make challenges to some
24 of the evidence at that time, right?

25 A Correct.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay. And also if you're missing any -- if you
2 think that you're missing anything you can alert the judge
3 that the State is -- is -- needs to provide you some more
4 stuff; is that correct?

5 A Correct.

6 Q Okay. Now, you knew that the co -- one of the
7 codefendants had actually had a trial prior to yours,
8 right?

9 A Correct.

10 Q And when Mr. Thompson gave you all of his evidence,
11 Petitioner's Exhibit 2 was one of the things that was in
12 there, right?

13 A Right.

14 MS. ZMROCZEK: And, Your Honor, I know that was
15 originally marked for ID and I would move it in now that he
16 has recognized it as well.

17 MS. COLEMAN: That's the invoice?

18 MS. ZMROCZEK: Correct.

19 MS. COLEMAN: Okay. No objection.

20 THE COURT: Very well.

21 (Petitioner's Exhibit Number 2 was entered into
22 evidence.)

23 (Petitioner's Exhibit Number 13 was marked for
24 identification.)

25 BY MS. ZMROCZEK:

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q And then I'm going to hand you Petitioner's 13 and
2 ask if you recognize that.

3 A (Witness nodded head.)

4 Q You do?

5 A I do.

6 Q Okay. Is that the invoice that you paid to get the
7 portion of the trial transcript that Mr. Thompson had
8 actually ordered?

9 A It had to be.

10 Q Okay.

11 MS. ZMROCZEK: And, Your Honor, at this time we
12 would move Petitioner's 13 in as well.

13 MS. COLEMAN: No objection.

14 THE COURT: Very well.

15 (Petitioner's Exhibit Number 13 was entered into
16 evidence.)

17 BY MS. ZMROCZEK:

18 Q And so you had, at least a portion of the trial
19 transcript, which I believe was the testimony of Carlos
20 Williams, who was now going to testify against Mr. Salley,
21 correct?

22 A I don't remember seeing that.

23 Q You don't remember seeing that?

24 A No.

25 Q Okay. But you definitely agree that you paid for

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 it, right?

2 A That's the way it looks on that paper.

3 Q Okay. And everything that you had, you turned over
4 to ODC, which then in turn gave it to me? Everything that
5 you had with the file you gave to them, right?

6 A Yes. Right.

7 (Petitioner's Exhibit Number 14 was marked for
8 identification.)

9 BY MS. ZMROCZEK:

10 Q Okay. I'm going to show you Petitioner's 14 and
11 ask if you recognize that.

12 A Yeah.

13 Q That's the witness list that you provided the State
14 for trial?

15 A Yeah.

16 Q Okay.

17 MS. ZMROCZEK: And, Your Honor, at this time, we
18 would move Petitioner's 14 into evidence.

19 MS. COLEMAN: No objection.

20 THE COURT: Very well.

21 MS. ZMROCZEK: Okay.

22 BY MS. ZMROCZEK:

23 Q And I want to ask you about it. It says on Number
24 1, it says Timothy Davis who is Jamaquez, I call him
25 Jamaquez, I know I say it wrong, Salley's stepfather who

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 will say that when I got up on the morning in question, my
2 stepson was asleep on the couch in the living room. So
3 Mr. Davis was an alibi witness, right?

4 A Yeah.

5 Q And you're familiar -- are you familiar with the
6 rules that they require you to provide at least notice to
7 the State of an alibi witness, their address and what they
8 will testify to, right?

9 A Right.

10 Q And so that's what you were doing there?

11 A Yeah.

12 Q Okay. And this was dated --

13 A I don't see a date on it.

14 Q No, no date on it. Okay. But it was in your file
15 and you definitely gave that to them, right?

16 A Right.

17 (Petitioner's Exhibit Number 15 was marked for
18 identification.)

19 BY MS. ZMROCZEK:

20 Q Okay. And then you also actually filed some other
21 items with the Court and I'm going to show you Petitioner's
22 15 and ask if those are the things that you filed with the
23 Court?

24 A Right.

25 Q And you got a stamped copy back, right?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Uh-huh. I did.

2 Q Okay.

3 MS. ZMROCZEK: Your Honor, at this time, we would
4 move Petitioner's 15 into --

5 MS. COLEMAN: No objection.

6 THE COURT: Very well.

7 (Petitioner's Exhibit Number 15 was entered into
8 evidence.)

9 BY MS. ZMROCZEK:

10 Q And so as you're flipping through that, I see that
11 you notice that there's a -- Petitioner's 15, there's a
12 defendant's motion to suppress, so you had actually moved
13 to suppress some evidence; is that correct?

14 A Right.

15 Q So you filed a motion, but you never actually
16 argued it?

17 A No, because the defendant said he wasn't there.

18 Q Because the family said what?

19 A He insisted he was not there.

20 Q Right. But the motion to suppress, if I may see it
21 again?

22 A Uh-huh.

23 Q The motion to suppress says that you wanted to
24 suppress the evidence from the cell phone, right?

25 A (Witness nodded head.)

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q And even if he wasn't there, you would still want
2 to have that suppression hearing because that was bad
3 evidence, right? Even -- regardless of whether he said --

4 A Yes, yes, it was.

5 Q So even if he was there or wasn't there, you knew
6 that that cell phone evidence was going to be bad. You
7 actually filed a motion about it?

8 A Right.

9 Q But you never did argue that, did you?

10 A I think I did on the morning of -- I remember
11 saying something about it.

12 Q Okay. So -- and on page 13 was the pretrial and
13 then beginning on page 17 is the actual trial. That's
14 actually the Monday, so you think you argued it then?

15 A I'm not sure. I think it was the morning when we
16 were getting ready for trial. Which would have been the
17 8th.

18 Q I'm sorry?

19 A Which would have been August 8th.

20 Q August 8th was the pretrial. Is that when you
21 think you would have argued it?

22 A I think that's where. Let me see what I see here.

23 Q Okay.

24 A (Reading.)

25 Q But you would agree with me that the record

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 reflects whether or not you argued it or not, right? But
2 you thought you had argued it?

3 A I thought I had.

4 Q Okay. All right. And so on Monday when they -- so
5 when the trial started -- and I'm referring to page 17 that
6 the jury was actually all sitting to be voir dired,
7 correct? The venire was in the courtroom?

8 A Right. Uh-huh.

9 Q But then Mr. Salley wasn't there and -- okay.
10 Mr. Salley was there. After they called the indictments.
11 So they called the indictment with the jury and then they
12 had to bring Mr. Salley out, correct?

13 A I don't remember that.

14 Q Okay. And I'm just -- and I'm looking at lines on
15 page 17, lines 10 through 15 or 16?

16 A Uh-huh.

17 Q And as part of your -- as part of your practice --
18 do you still practice?

19 A No.

20 Q When did you stop practicing?

21 A Last year.

22 Q Just last year?

23 A Yeah.

24 Q Okay. Prior to last year, were you keeping up with
25 the trends in the case law and how things were changing and

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 how things were being objected to?

2 A No, no.

3 Q You were not?

4 A No.

5 Q Okay. Did you think that that was important to do?

6 A Well, I got a letter from the bar association
7 saying if I had been practicing so many years, I didn't
8 have to go to the CLE's.

9 Q Right. You didn't have to go to the CLE's?

10 A But I read many of the blasts that came down.

11 Q Okay. So you do -- you were reading opinions that
12 came down?

13 A Uh-huh.

14 Q And so you're familiar that one of the issues that
15 has recently -- not even recently, in the last five or so
16 years is that there have been objections to, maybe some of
17 the -- the way that judges characterize -- his discussions
18 with the jury about true facts and -- are you familiar with
19 any of those objections?

20 A Some.

21 Q With some of them?

22 A Uh-huh.

23 Q Okay. But you would agree with me in this case at
24 least, you didn't object to any of Judge Early 's comments
25 about the true and just verdict or true facts or a burden

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 for them to -- you didn't feel any of that was burden
2 shifting?

3 A Not at the time.

4 Q Okay. And when you went to go pick the jury, had
5 you submitted any questions? And I'm going to show you
6 petitioner's one which has been marked for ID, which is Mr.
7 Thompson's voir dire. Did you have anything like that?

8 A No.

9 Q Okay. You didn't have any specific questions for
10 the jury?

11 A No.

12 Q Would you agree with me that it's important to try
13 to learn, since we don't have attorney conducted voir dire,
14 it's important to learn as much as you can from these types
15 of questions from the jurors, right?

16 A Well, I had heard them articulate what they --
17 where they were in the community and a general dialogue of
18 who they were.

19 Q Okay. Would you agree with me that if somebody had
20 been a victim of a violent crime, or a robbery or a
21 kidnapping, that that would be important to know so you
22 would know who to strike, right?

23 A Well, I go back to the fact that Mr. Salley was not
24 there.

25 Q Okay. That's -- you mean there at the crime?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A He insisted from the day one that he was not there.
2 They had the wrong person.

3 Q Right. Right.

4 A And my observation of some of the videos, it
5 appeared not to be him also.

6 Q Right. In fact, it very much so in those videos
7 appears to be Mr. Williams's brother David Garvin?

8 A I don't know his brother.

9 Q Okay. But you actually asked about that. We'll
10 talk about that a little bit later on.

11 A Yeah.

12 Q You were aware that there was another suspect?

13 A Yeah.

14 Q Okay. That was the same height as Mr. Salley?

15 A I don't know that.

16 Q Okay. You didn't do any investigation into that?

17 A No.

18 Q Okay. But regardless of Mr. Salley's position that
19 he wasn't there, as an officer of the Court, you still have
20 a responsibility to make sure that when you're picking
21 jurors that you learn as much as you can about any
22 potential biases because you wouldn't want that to
23 interfere with their ability to determine the facts in this
24 case, right?

25 A No.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay. All right. And so I think I found it on
2 page 36, you said that you think you had argued that motion
3 to suppress and so my notes reflect that on page 36 that
4 you were arguing the -- attempting to argue the motion to
5 suppress the cell phones, correct?

6 A It's at page 36? What line you talking about?

7 Q Oh, I'm sorry, it's page 36, beginning at line 10.

8 A Okay.

9 Q So you had one motion to suppress items that were
10 taken from Mr. Salley's house?

11 A Right.

12 Q And the three items that were taken from
13 Mr. Salley's house were a backpack, right?

14 A Hold on, let me see. (Reading.) Yes.

15 Q Okay. And I'm going to actually try to make it a
16 little bit easier on you. I'm going to show you
17 Petitioner's 24 and see if you recognize that.

18 (Petitioner's Exhibit Number 24 was marked for
19 identification.)

20 THE WITNESS: I don't know what this is.

21 BY MS. ZMROCZEK:

22 Q You don't know what it is?

23 A Huh-huh.

24 Q Okay.

25 A My name on that anywhere?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q No, no. Okay.

2 MS. ZMROCZEK: We'll just mark it for ID for now.

3 BY MS. ZMROCZEK:

4 Q But there were some items that were taken from
5 Mr. Salley's house, correct?

6 A I don't know that.

7 Q Okay. But you did move to suppress them on page
8 36?

9 A Okay.

10 Q And then the State said that they weren't -- that
11 was moot because they actually weren't going to introduce
12 anything that was taken from Mr. Salley's house, right? At
13 the bottom of the page. I think Mr. Maloney said that.

14 A Yeah.

15 Q Okay.

16 A That's what he said.

17 Q Okay. And then on page 37, beginning at line 8,
18 the Court asked about the cell phone motion. And then on
19 the next page, on page 38, at line 21, or line 20, you said
20 there was a difference -- the different information that
21 was seized from the phone and what was taking -- and what
22 was gathered from that because actually they -- until the
23 middle of the trial, you actually didn't have the cell
24 phone records; is that correct?

25 A No.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q They didn't give those to you ahead of time?

2 A No.

3 Q Right?

4 A No.

5 Q So you hadn't had an opportunity to even look at
6 what these text messages were going to say?

7 A No.

8 Q Okay. And another thing that you had asked for, I
9 believe, was a motion to sequester the witnesses, right?

10 A Yeah.

11 Q And the judge just denied that and said that they
12 had already testified at another trial so they could stay
13 in, but -- and we'll get to this a little bit later, but
14 you didn't file any -- the appeal wasn't perfected in this
15 case, right?

16 A No.

17 Q So any arguments about what a judge may or may not
18 have incorrectly ruled upon are gone at that point,
19 correct?

20 A I would think so.

21 Q Okay. But you actually did move to sequester, so
22 that witnesses couldn't hear what the others were
23 testifying too, right?

24 A Right, right.

25 Q Okay. And I know that you don't recall seeing any

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 portions of the transcript before, but do you think it
2 would have been helpful to know what they had testified to
3 at the first trial? That way you could cross-examine if it
4 changed between what they testified at the first trial of
5 the codefendant and what they testified at your trial?

6 A Well, I think the only person who would have done
7 that would have been Mr. Williams.

8 Q Okay. But you agree that you could order a copy of
9 the transcript so that you could use that in case they said
10 anything different at trial?

11 A Right. Correct.

12 Q Okay. But nonetheless the judge let them stay in
13 there and, in fact, I want you to look at page 45,
14 beginning at line 9.

15 MS. COLEMAN: May I object at this point? I know
16 Ms. Zmroczek is entitled to try the case however she sees
17 fit, but we seem to be going through every single possible
18 objection or motion he made or did not make. I would argue
19 that the transcript speaks for itself and maybe this would
20 be better handled in some kind of argument, a closing
21 argument or like a written proposed order from either side
22 instead of going through every page with him.

23 MS. ZMROCZEK: And, Your Honor, obviously, you know
24 my concern is that I have to develop a record, especially
25 because it's my -- in my very extensive business with the

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 attorney general's office, they have a standing requirement
2 to appeal any decision if it's unfavorable to them and --
3 or at least they've appealed every one in my case. And so
4 my concern, Your Honor, is that if that happens, then I
5 haven't fully developed the record for Court of Appeals and
6 then we go back to the whole issue, can you PCR the PCR
7 counsel; and I know that this is tedious, but -- I think
8 it's required of me.

9 MS. COLEMAN: And I would argue that the
10 requirement, of course, could come from the transcript. If
11 there's something in the transcript that reflects that a
12 motion was not made or an argument was made then that would
13 support the factual finding that something was or was not
14 done.

15 THE COURT: Yeah, I'm with you completely. The
16 record does speak for itself. The other parts of it that I
17 think are relevant is then the next question which is --
18 seems to have been why didn't you do that, why didn't you
19 do that. And the why -- and that's important for the Court
20 to know because there could be an explanation, it's part of
21 my strategy; how so; this way. And so I've got to know
22 that. So when things are not done -- sometimes they aren't
23 done for a specific reason. Typically it would be a
24 strategic reason and there's no way for me to know it other
25 than to know it because obviously that is -- but,

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Ms. Zmroczek, just to establish it's on such and such a
2 page, such and such happened, obviously, you don't have to
3 do that.

4 MS. ZMROCZEK: Okay. But what I'm worried about --

5 THE COURT: But the followup questions are
6 relevant.

7 MS. ZMROCZEK: Okay.

8 THE COURT: All right. Thanks.

9 BY MS. ZMROCZEK:

10 Q When you heard the judge making -- making
11 statements such as, you'll hear a situation that alledgedly
12 happened here in Aiken County and then he starts --

13 MS. ZMROCZEK: Actually, I'm going to withdraw that
14 question, Your Honor and I'm going to move on.

15 BY MS. ZMROCZEK:

16 Q You're familiar with what hearsay is, correct?

17 A Yes.

18 Q And how someone generally, unless they're an expert
19 is not allowed to testify as to what other people told
20 them?

21 A Right.

22 Q Or what they heard or what they learned from
23 somebody else because then that person can't cross-examine?

24 A Right.

25 Q Right?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Uh-huh.

2 Q Okay. And -- and they begin their case and they
3 start to put witnesses up, you want to be able to
4 cross-examine any witnesses, even if there are victims on
5 maybe some potential -- things that are different, things
6 that they said on the stand this time as opposed to what
7 they said in an incident report or what they had written in
8 a statement, right? Those are the things you use to
9 cross-examine someone, correct?

10 A Correct.

11 Q And did you have the discovery printed out to do
12 that with each witness? Did you have the statements of the
13 witnesses with you?

14 A I had what Mr. Thompson had given me.

15 Q Okay. And you actually had it in front of you so
16 -- for example when the first witness testifies, who is the
17 victim, the clerk in this case --

18 A Uh-huh.

19 Q -- did you have her statement with you in front of
20 you?

21 A Yeah.

22 Q Okay. And when -- when going through the
23 discovery, you learn that she had been tased and I think
24 you talked about that as being part of your defense, right?

25 A Yeah. That was one of the first things Mr. Salley

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 told me.

2 Q One of the first things --

3 A That that had to be untrue because he didn't have
4 the key.

5 Q Right. And typically when someone's tased. And,
6 in fact, in this case Ms. -- the victim actually received
7 treatment from EMS, correct?

8 A I think so. Yes.

9 Q You think so?

10 A Uh-huh.

11 Q But we didn't have any EMS records, did we?

12 A No.

13 Q Okay. And is that something that you think would
14 have helped as far as what kind of statement she could have
15 given? Let me rephrase that question.

16 When you saw that you didn't have the EMS records,
17 why didn't you ask the State, Hey, where are the EMS
18 records?

19 A We had the photograph of her injury --

20 Q Right.

21 A -- on -- on her side.

22 Q Right, right. You had the photograph?

23 A Yeah.

24 Q But you didn't have the EMS records?

25 A No.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q And did you -- why didn't you ask the State where
2 those were?

3 A There was no testimony about EMS.

4 Q Okay.

5 A It was just a photograph showing where she claimed
6 she had been burned with a taser.

7 Q Right. And then you had these two daycare workers,
8 correct?

9 A Right.

10 Q That testified?

11 A Right.

12 Q And they had been working at the daycare that was
13 next door to the Quick Cash?

14 A Across the street. I think it was across the
15 street.

16 Q Okay. They could see it from their location?

17 A That's what they said.

18 Q Okay. And they got up on this stand and they
19 testified to some things and had you listened to -- you
20 knew that they had called 9-1-1, right?

21 A Uh-huh.

22 Q Right. Because they saw what they determined to be
23 suspicious looking persons, right?

24 A And vehicle.

25 Q I'm sorry?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A And vehicle.

2 Q And the vehicle, right. Did you listen to that
3 9-1-1 call?

4 A Yeah.

5 Q Okay. And when you also -- on the CD that has the
6 9-1-1 calls, there was also -- there were 34 files. Three
7 of them were 9-1-1 calls and then the other files were the
8 radio chatter between the officers. Did you listen to all
9 of those?

10 A Yeah.

11 Q And specifically -- and there was a radio chatter
12 and it was Number 29 and --

13 MS. ZMROCZEK: Your Honor, I'll put the CD in later
14 through the expert.

15 THE COURT: Okay.

16 BY MS. ZMROCZEK:

17 Q -- but that officer said that he was at the Days
18 Inn because the daycare witnesses had said that they had
19 seen those two suspicious looking gentlemen go to the Days
20 Inn, right? You remember that?

21 A Right.

22 Q And then on Number 29, the officer is relaying back
23 to headquarters that the Days Inn manager has video, has
24 them on video, but the State didn't give you that video,
25 did they?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A No.

2 Q And did you ask them specifically why they didn't
3 give you that video?

4 A No.

5 Q It seemed to be that throughout the trial, you had
6 a problem with the way that the State handled and prepared
7 their evidence, right?

8 A I don't remember any problems.

9 Q Okay. Let's -- I want to direct you to,
10 specifically -- well, actually, I'll just try it this way.
11 One of the things when a cooperating witness or a
12 codefendant testifies to is you would like to know if
13 they've been promised anything, right? For their
14 testimony?

15 A Right.

16 Q Because that would go to their bias or their
17 prejudice as to what kind of testimony they were giving,
18 correct?

19 A Uh-huh.

20 Q But you didn't file a motion to reveal the deal.
21 Did you ever ask the State to tell you what kind of deal
22 that they were giving the codefendant?

23 A No.

24 Q Okay. So were you aware that there were any deals?

25 A No.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay. And, in fact, they -- I believe that they
2 addressed it at trial, but you had nothing to follow up
3 with on that, right?

4 A No.

5 Q Okay. And then, in fact, through Mr. Williams,
6 they put in these Walmart videos and these Roses videos and
7 they're asking Mr. Williams, the codefendant to identify
8 who is who in the video, correct?

9 A Correct.

10 Q But before we even get there, did you ever ask the
11 State to have somebody confirm the video was taken on that
12 day at this time and that there was nothing wrong with the
13 machine?

14 A No.

15 Q Okay.

16 A I don't remember.

17 Q You don't remember doing that?

18 A No.

19 Q Do you think that would have been important to
20 know?

21 A Ask the question again.

22 Q Sure. So one of the things that they relied on was
23 the video --

24 A Uh-huh.

25 Q -- that has the date and time and people walking

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 in, right? And that kind of helps establish the timeline,
2 right?

3 A Right.

4 Q But if that time -- if that video machine isn't
5 working correctly, that would be important to know because
6 that could mess up the timeline, right?

7 A It could, yeah.

8 Q And that could -- that could make the jury wonder
9 what kind of weight they should give that evidence, right?

10 A That would be correct.

11 Q Okay. But you didn't ask them to prove that
12 everything was working correctly in this case, did you?

13 A I thought I did.

14 Q You thought you might have?

15 A Uh-huh.

16 Q Okay.

17 A Especially as to the Roses.

18 Q Right.

19 A The video at Roses.

20 Q I remember you -- you had a problem with the video
21 at Roses because they only got small increments of time,
22 right?

23 A They had three people walking in.

24 Q And three people milling about the establishment.
25 And three people checking out at the same time. That's

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 where that red credit card came from?

2 A Right.

3 Q And -- and -- but I think it may be addressed later
4 on, but when you actually asked the officers is that you --
5 the video only shows two people walking in and you asked
6 the officer why didn't you get the time before that?

7 A Why didn't I get --

8 Q No, you asked the officer when he -- because the
9 video shows two people walking in?

10 A Uh-huh.

11 Q But then three people checking out. And you
12 specifically asked the officer why didn't you collect all
13 the video.

14 A Why didn't I get the third, correct?

15 Q No, no, you asked -- you, when you were
16 cross-examining the police officer, you said why didn't you
17 get all the video and he couldn't give you an explanation,
18 but you're familiar with the rules of completeness and
19 those kinds of things, right?

20 A Right.

21 Q So -- so because you didn't have all the video and
22 -- nor do we know if all the video machines were working,
23 that could have been a motion to suppress and you could
24 have kept that video out, but we didn't have that motion
25 made, did we?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A No.

2 Q Okay. Why didn't you make that motion?

3 A I'm not sure.

4 Q Okay. And, in fact, they put the Walmart video in
5 and the Walmart video also was not authenticated. There
6 was nobody from Walmart to testify about that, right?

7 A No.

8 Q And the Walmart video doesn't even have a date and
9 time stamp on the video, does it?

10 A I didn't see one.

11 Q Okay. So -- so -- so them testifying as to when
12 that took place, at least, there's no way to confirm that,
13 right?

14 A Not from that video.

15 Q Okay. So that would have been another motion that
16 you could have moved to keep that information out. Do you
17 know why you didn't make that one?

18 A No.

19 Q Okay. And there -- it seems -- and I could go
20 through and point every page out, but maybe I can just
21 globally ask the question this way: Did you have a
22 specific reason, for example, when the daycare worker was
23 testifying and she said well my sister told me and she just
24 went on testifying, did you have a specific reason for not
25 objecting to that hearsay?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Her sister said what?

2 Q Was there a reason that you didn't object to -- you
3 didn't make any hearsay objections throughout the entire
4 trial?

5 A I don't remember.

6 Q You don't remember? You don't remember there being
7 a specific reason why you didn't?

8 A No.

9 Q Okay. Do you remember why you didn't make any
10 objections about leading questions throughout the trial?

11 A Huh-huh.

12 Q You don't remember?

13 A No.

14 Q Okay.

15 A Except for the fact that Mr. Salley's whole defense
16 to this case was that he wasn't there. He wasn't there.

17 Q Right, right. And so to help --

18 A I didn't want to compound the allegations against
19 him.

20 Q I'm not sure I understand that.

21 A Well, it was like Mr. Quarrels at the McCormick
22 prison, I told Mr. Salley I wouldn't be calling him because
23 that would simply duplicate what Mr. Williams was going to
24 say.

25 Q Right. And I think that was a good trial decision

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 I think on your part.

2 A And I --

3 Q But was there a reason -- do you think that -- are
4 you saying that you objecting to improper procedure would
5 have somehow been bad for Mr. Salley?

6 A No.

7 Q Okay.

8 A That's not what I'm saying.

9 Q Okay.

10 A I'm saying that when -- when his defense is not
11 being present, I didn't want to compound the situation by
12 extending it.

13 Q Okay. And you felt like objecting to proper -- to
14 require the State to proper procedure would have been
15 extending it?

16 A Yeah, something like that.

17 Q Okay. I want to talk about Carlos Williams a
18 little bit. So obviously, you remember paying for the
19 transcript, but you don't remember seeing it that he had
20 testified in the first trial?

21 A Looked like there was something there because I --
22 I raised questions of Mr. Thompson's secretary -- I think
23 it was secretary or paralegal, as to what I was paying for.

24 Q Right. Okay. But if you -- and you handed
25 everything over to ODC and if it was in there you would

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 have -- you would agree that you handed them everything,
2 right?

3 A Everything that I had.

4 Q Okay. So what is your approach to cross-examining
5 a cooperating witness or what I like to call a snitch?

6 What are your -- what is your approach to cross-examining
7 them? Do you want to try to make them look like they're
8 not telling the truth?

9 A Well, that's what Mr. Salley had told me that both
10 Quarrels and Williams were lying.

11 Q Right.

12 A So --

13 Q So you want to help to show the jury that they're
14 lying, right?

15 A Right.

16 Q Did you listen to the two different recorded
17 interviews that Mr. Williams gave with the detectives?

18 A If they were in that packet I read it.

19 Q Okay. But do you remember listening to them?

20 A I listened to so much material.

21 Q Right.

22 A Tapes, videos.

23 Q Let me ask you this question: If there were things
24 -- and -- if there were things in those audio statements
25 that you could have used to impeach Mr. Williams on the

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 stand, is there a reason that you chose not to do that?

2 A I didn't see anything in there to impeach.

3 Q Okay. And in -- Mr. Williams had actually been
4 threatening Mr. Salley at the jail, right?

5 A I don't know that.

6 Q You didn't know that?

7 A No.

8 Q You don't remember them turning over letters from
9 -- which are called kites -- that the State gave you
10 information of Mr. Williams sending threatening letters to
11 Mr. Salley? You don't remember seeing those?

12 A No.

13 Q So you didn't have those with you at trial to
14 impeach Mr. Williams with?

15 A No. No.

16 Q Okay.

17 THE COURT: And you have stopped. It's a good time
18 for lunch. And I've got a short matter I need to hear.

19 MS. ZMROCZEK: And I'm trying to do it more
20 quickly.

21 THE COURT: I understand. We're going to start
22 back at 2:15.

23 MS. COLEMAN: Thank you, Your Honor.

24 MS. ZMROCZEK: Okay. Thank you, Your Honor.

25 (A recess for lunch was observed.)

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 THE COURT: Thank you, yes, ma'am.

2 MS. ZMROCZEK: Thank you, may it please the Court.

3 BY MS. ZMROCZEK:

4 Q Okay. So and Mr. Broadwater, are you feeling okay?
5 Do you need some water?

6 A No, I'm okay.

7 Q Okay. Good, thank you. In your course -- in your
8 -- in the course of when you're getting ready for trial and
9 when you're trying cases -- and I'm talking specifically
10 about physical evidence and I -- if you recall when the
11 investigators were up on the stand and you were asking if
12 there were any DNA that connected Mr. Salley to the case.
13 Do you remember that part of it?

14 A Yeah.

15 Q And you were making a big deal about that, right?

16 A Well, his defense was he wasn't there.

17 Q Right. And so that kind of can help prove that he
18 wasn't there, right?

19 A Well, they found nothing with his DNA. That's
20 something for the jury to consider.

21 Q Right. Or in the alternative if he says he wasn't
22 there and then they find his DNA then you and he -- you're
23 able to better advise him about that, right?

24 A Right.

25 Q That -- that would change the way that you would

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 advise him to proceed?

2 A Right.

3 Q Right. And in this case, they had told you that
4 they had sent those gloves off to SLED and that they were
5 still at SLED being tested, right?

6 A Vaguely I remember something like that.

7 Q Okay. And then they -- also that they said they
8 had sent some shoe -- foot, shoe print impressions over to
9 SLED to be tested, right?

10 A I'm not sure I remember that.

11 Q Okay. Let me ask you this: If the -- but at least
12 you remember them saying that the DNA was still being
13 tested, right? Or that something was being tested?

14 A Vaguely something was being tested.

15 Q Okay. At that point why didn't you ask the judge
16 to either require the State to produce that or to demand a
17 continuance so that you could get the results of that? Was
18 there a reason?

19 A There had to be a reason then. I don't remember
20 what it was.

21 Q You don't remember what that reason was?

22 A No.

23 Q Okay. And you would agree with me that obviously,
24 you need all of the evidence, especially if you have a case
25 going to trial, right?

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 A Right.

2 Q You would want that from the State. In fact,
3 they're required to give you that, right?

4 A I thought I had everything.

5 Q You thought? And you were basing that off of your
6 -- because you filed a discovery request with them,
7 correct?

8 A Right. Uh-huh.

9 Q Okay. They talked about items that -- did you go
10 and look at the evidence that was collected?

11 A I don't remember.

12 Q Okay. You remember on the Roses video that you can
13 -- like the one that's right over the cash register when
14 you could see the red card, that you could also see the
15 book bag that was purchased, right?

16 A Uh-huh.

17 Q And you know that they recovered a book bag from
18 Mr. Salley's house, right?

19 A I don't know that.

20 Q And you don't remember that. If you had gone to
21 look at the evidence and saw that the book bag that they
22 had in evidence did not match the one on the video, would
23 that have been something that you would put forth to the
24 jury?

25 A I would have.

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 Q Okay. And is there a reason that you did not go
2 look at the evidence?

3 A I don't remember whether I did.

4 Q You don't recall?

5 A No.

6 Q And then finishing up, when it comes to jury
7 charges, when the judge reads the charges to the jury, the
8 law for them to apply to the case, was there a reason that
9 you didn't submit any proposed charges?

10 A No.

11 Q Okay. And are you familiar with the concepts of
12 spoliation or losing evidence or missing evidence?

13 A Spoliation?

14 Q Yes.

15 A And what's the definition again?

16 Q For example, when -- if there's a video that they
17 use that could have been helpful to you, but you never got
18 to see it, that you can request a charge or even make a
19 motion at that point for the jury to consider that. Are
20 you familiar with that or not so much?

21 A Yeah, I'm familiar with that.

22 Q Okay. But is there a reason why I didn't ask for
23 that in this case?

24 A I'm not sure I didn't.

25 Q Okay. And you didn't have any post-trial motions,

Thomas Broadwater - Cross-Examination by Ms. Zmroczek

1 right?

2 A Right.

3 Q Okay.

4 A We had a new trial, a motion for a new trial.

5 Q Did you -- you did argue that one?

6 A Yeah.

7 Q Okay. And so -- then explain what happened with
8 the appeal.

9 A Say that again.

10 Q Explain to me what happened with the appeal.

11 A Oh, the contract I signed with Ms. Davis indicated
12 that if there was an appeal it was necessary to enter a new
13 contract.

14 Q Okay.

15 A And there's been no request for a new contract.

16 Q And I'm going to show you Petitioner's 3. Is that
17 the contract that was signed?

18 A Must be. It would have had my signature on it. I
19 don't see where I signed it or Ms. Salley signed it.

20 Q Only Ms. Salley signed it?

21 A I don't see where Ms. Davis signed it. I don't see
22 where I signed it.

23 Q Okay.

24 A It looks like my writing.

25 Q Okay. And did you send letters to the client to

Thomas Broadwater - Redirect Examination by Ms. Coleman

1 let him know that he needed to -- to in effect sign a new
2 contract or apply with indigent defense?

3 A I don't remember that.

4 Q Okay.

5 MS. ZMROCZEK: Your Honor, I think those are all
6 the questions I have at this time.

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

8 MS. COLEMAN: Yes.

9 **REDIRECT EXAMINATION**

10 BY MS. COLEMAN:

11 Q Mr. Broadwater, do you still have the transcript up
12 there?

13 A Yes, ma'am.

14 Q Would you please flip to page 35. I'm sorry, I'm
15 trying to find it as well.

16 A What line?

17 Q That might be the wrong page. I'm sorry. Just a
18 moment.

19 Okay. I'm sorry page 36 at line 10. And these are
20 in the pretrial motions. Did you file a motion to suppress
21 the cell phone records at a pretrial motion in this case?

22 A I don't remember.

23 Q Okay. And you're welcome to flip through the
24 transcript if you want --

25 A I think I did though.

Thomas Broadwater - Redirect Examination by Ms. Coleman

1 Q Okay. Would you agree that if it's reflected in
2 the transcript that you did?

3 A I did. Uh-huh.

4 Q Okay. Thank you. Next I'll turn to page 147,
5 1-4-7.

6 A 147?

7 Q Yes.

8 A What line?

9 Q I'm looking at line 8 here and I'll read that out
10 loud if that's all right. Question: Okay. And where did
11 this phone come from. Answer: Mr. Salley's person upon
12 his arrest.

13 And this was -- do you recall who was testifying
14 during this portion?

15 A I think one of the police officers.

16 Q Yes. It looks like Detective Jeremy Hembry; does
17 that sound right?

18 A Yeah.

19 Q Okay. So they seized the cell phone from
20 Mr. Salley when they arrested him, right?

21 A When they took his personal property.

22 Q Okay. And then on -- flipping to page 150, and
23 this is the same testimony continued. Okay. And starting
24 at line 9 there. This is Detective Hembry?

25 A Page what?

Thomas Broadwater - Redirect Examination by Ms. Coleman

- 1 Q I'm sorry 150 at line 9.
- 2 A Okay.
- 3 Q Detective Hembry is testifying about the newer
- 4 Android smart phone and about how they -- they plugged it
- 5 into a Cellebrite machine that was at the Aiken County
- 6 Department of Public Safety to download the material on
- 7 that cell phone. Do you recall that?
- 8 A No. I don't. I'm looking for it here, but I don't
- 9 see it. You said page 150, line 10?
- 10 Q Yes. And starting at line 9.
- 11 A Aiken Department of Public Safety, okay.
- 12 Q Yes, and that was -- it appears from the transcript
- 13 that this is Detective Hembry talking about the Cellebrite
- 14 machine that they use at the Department of Public Safety
- 15 there. Do you remember him testifying about this?
- 16 A Yeah.
- 17 Q Okay. And this -- and it kind of continues through
- 18 page 152 at line 10 there where it's entered into evidence.
- 19 Was this the State laying it's foundation for the cell
- 20 phone records that they pulled from that Cellebrite
- 21 machine?
- 22 A I think it was.
- 23 Q Okay. At the time did it appear that this was a
- 24 sufficient foundation for them to lay for these records?
- 25 A To me it is.

Thomas Broadwater - Redirect Examination by Ms. Coleman

1 Q Okay. And why do you think it was sufficient?

2 A Because they laid out the justification for having
3 possession of it and the things they recovered was within
4 the parameter of what they were looking for at the time.

5 Q And did they pull that information from machines
6 that they have access to and they pull that themselves?

7 A Well, that's what it says here. The Android was
8 from Samsung.

9 Q So did you see any reason to object to the
10 foundation?

11 A No.

12 Q After this testimony?

13 A No, I didn't.

14 Q Okay. Thank you.

15 I think I've got one last question. I am turning
16 to page 94 now. I'm sorry --

17 A 94?

18 Q 94, yes. And this is during the testimony of
19 Carlos Williams, the codefendant, and he is -- the State is
20 presenting the State's Exhibits 17 through 22 and he asks
21 Carlos Williams if he recognizes each of these and he says
22 he does and they are photos of Carlos Williams and
23 Mr. Salley walking through the Walmart. Did Carlos
24 Williams testify that it was Mr. Salley in these
25 photographs?

Thomas Broadwater - Recross-Examination by Ms. Zmroczek

1 A I'm sorry say that again.

2 Q Did Carlos Williams testify that Mr. Salley was
3 with him in these photographs at the Walmart?

4 A Yeah.

5 Q And did he -- did he say that these were a fair and
6 accurate depiction of the two of them in Walmart that
7 night?

8 A That's what he said.

9 Q Was he going to testify that the defendant was with
10 him in the Walmart that night regardless of whether there
11 was a video?

12 A I'm not sure about that.

13 Q Okay. But even if there had not been a video
14 entered into evidence do you believe he would have placed
15 the defendant with him at the scene of the crime and at the
16 Walmart?

17 A I think he did when he testified.

18 Q Okay. Thank you. Nothing further.

19 MS. ZMROCZEK: Just very briefly.

20 THE COURT: Yes.

21 MS. ZMROCZEK: Thank you.

22 **RECROSS EXAMINATION**

23 BY MS. ZMROCZEK:

24 Q Mr. Broadwater, again, that Walmart video didn't
25 have any date or time on it, right?

Thomas Broadwater - Recross-Examination by Ms. Zmroczek

1 A No.

2 Q And Carlos Williams didn't work for Walmart that
3 you know of?

4 A Not that I know of.

5 Q So he has no way to know if that was a fair and
6 accurate depiction of whatever it was, right? He's just
7 saying that that was him and Mr. Salley?

8 A I don't have any way of knowing.

9 Q Okay. And then on page 151, just briefly?

10 A 151 and lines 24 and 25.

11 Q So --

12 MS. COLEMAN: Objection, Your Honor. I think this
13 is outside the scope of my redirect.

14 THE COURT: All right.

15 MS. ZMROCZEK: I think she specifically asked about
16 the Cellebrite and the cell phone records.

17 THE COURT: She did.

18 MS. ZMROCZEK: Okay.

19 MS. COLEMAN: Okay. I withdraw my objection.

20 THE COURT: All right.

21 BY MS. ZMROCZEK:

22 Q So when they move to enter the Cellebrite, a
23 portion of the Cellebrite records, you actually did make an
24 objection because you didn't have a copy of that report;
25 isn't that right?

Thomas Broadwater - Recross-Examination by Ms. Zmroczek

1 A That's what I said here.

2 Q That's what you said. You'd never seen that --

3 those records. And he testified that there were thousands

4 of pages and you never got those?

5 A No.

6 Q And that's where those text messages came from?

7 A I'm not sure where they came from.

8 Q Okay.

9 A But they did play some material back on the screen

10 in the courtroom.

11 Q And then put them up there?

12 A Yeah.

13 Q And that was the first time you'd seen them?

14 A Yeah.

15 Q And on page 152, I believe, at that time the Court

16 -- you said that you wouldn't have an objection as long as

17 they provided you a copy in the middle of trial?

18 A Right.

19 Q Right?

20 A Right.

21 Q Was there a reason that you didn't want to examine

22 that to see if there was a way to keep that evidence out?

23 A Well, at the time I was thinking that since they

24 had a warrant and had already had possession of the phone,

25 on the basis of that warrant that what they were doing was

Thomas Broadwater - Recross-Examination by Ms. Zmroczek

1 correct.

2 Q Okay.

3 A I don't -- Court said make available to Mr.

4 Broadwater please. And I say here if we can get a copy.

5 I'm not sure a copy of what.

6 Q Okay. And at that point, do you know if you went
7 through when you got a copy of it? Did you go through them
8 all?

9 A Right.

10 Q And is there a reason that you didn't object to
11 them only putting in a very small portion of text messages
12 instead of putting in, for example, the entire day or an
13 entire conversation?

14 A Well, I didn't think that was necessary because if
15 they were going to establish his presence with limited
16 information, I didn't think the additional information
17 would be helpful in terms of his defense.

18 Q Okay. But if you had had an expert look at it and
19 would have been able to tell you that the phone was
20 actually being used at the time and that it was hit off of
21 a tower that wasn't at the location that could have been
22 helpful to your case, right?

23 A I'm not sure.

24 Q Okay. Thank you. I don't have any further
25 questions.

1 THE COURT: All right.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Thank you, is this witness free to
4 leave.

5 MS. ZMROCZEK: Yes.

6 MS. COLEMAN: Yes.

7 THE COURT: Any objection.

8 MS. ZMROCZEK: None.

9 THE COURT: Thank you, sir. You are free to go.
10 Now watch that step.

11 THE WITNESS: I will. Thank you.

12 THE COURT: All right. Thank you.
13 Okay.

14 MS. COLEMAN: That's all the State's witnesses for
15 today, Your Honor, and we can continue this at whatever
16 time we decide.

17 MS. ZMROCZEK: And we're going to get together on
18 that.

19 THE COURT: That will be perfect. Just let George
20 know and -- I think the State is also planning to order the
21 transcript from the hearing today and yesterday as soon as
22 possible. It might be useful before the next hearing or --
23 is there any objection to that?

24 MS. ZMROCZEK: We have none.

25 MS. COLEMAN: Okay.

1 THE COURT: All right. Then we will continue this
2 matter when you all can get together. If you all can get
3 with George we will certainly do everything we can -- when
4 y'all are ready, we'll be ready.

5 MS. ZMROCZEK: Thank you.

6 THE COURT: Thank you all so much.

7 * * * * * END OF TRANSCRIPT * * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 24th through 25th days
13 of May 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this the 12th day of September 2017.

18
19
20
21
22
23
24
25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF AIKEN) CASE NO.: 2014-CP-02-01848

JAMAQUES SALLEY,)
)
 PLAINTIFF(S),)
)
 v.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA,)
)
 DEFENDANT(S))
)
 _____)

ORIGINAL

Monday, August 14, 2017

COMMENCING AT:
Dorchester County Courthouse
St. George, South Carolina
Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

For the Plaintiff:
Aimee Jendrizejewski Zmroczek, Esquire
A.J.Z. Law Firm, LLC
POB 11961
Columbia, SC 29211

For the State:
Julie Amanda Coleman, Esquire
Assistant Attorney General
Office of the Attorney General
POST OFFICE BOX 11549
Columbia, SC 29211-1549

Heather R. Landry, CVR
Official Court Reporter

INDEX

Proceeding	3
PETITIONER'S WITNESS: Christopher Watkins	
Voir Dire Examination by Ms. Zmroczek	12
Voir Dire Examination by Ms. Coleman	24
Direct Examination by Ms. Zmroczek	29
Cross-Examination by Ms. Coleman	56
Redirect Examination by Ms. Zmroczek	65
Recross-Examination by Ms. Coleman	66
PETITIONER'S WITNESS: Robert Watkins	
Direct Examination by Ms. Zmroczek	67
<u>Closing Arguments</u>	
By Ms. Zmroczek	76
By Ms. Coleman	79
Certificate	85

PETITIONER'S EXHIBITS

No. 9	Curriculum Vitae	23
No. 10	Letter	36
No. 11, 12	Incident Reports	71
No. 17	Property Report	70
No. 19	Affidavit	54
No. 20	Receipts	55
No. 21 (A, B, C)	Videos	37
No. 22	911 Calls	43
No. 23	Walmart Video	37
No. 24	Property Report	69
No. 25 (ID Only)	Photos	75
No. 26 (ID Only)	SLED CD	75
No. 27	Video Still Shots.....	39
No. 28	Maps	53
No. 29	Reports	50
No. 30	Statement	68
No. 31	Drawing	72
No. 32 (ID Only)	Opinion	14

(No State or Court exhibits were offered or marked.)

1 (The proceeding began at 11:48 a.m.)

2 THE COURT: All right. This is Mr. Salley?

3 MS. COLEMAN: Yes, Your Honor.

4 THE COURT: Yes.

5 MS. COLEMAN: Jamaques Salley versus the State -- I'm
6 sorry. How do you pronounce your first name?

7 MR. SALLEY: Jamaques.

8 MS. COLEMAN: Jamaques. Jamaques Salley versus the
9 State of South Carolina, 2014-CP-02-1848. Again, we had our
10 first hearing back in May for Mr. Salley. And the State
11 made a motion to continue the testimony of the two expert
12 witnesses until we had more time to review these documents.
13 So we have come back today. We've got our witness --
14 Ms. Zmroczek has her witnesses today. And I believe we're
15 ready to proceed.

16 THE COURT: Very well. Great. All right.
17 Ms. Zmroczek, you're up.

18 MS. ZMROCZEK: Thank you.

19 THE COURT: Yes.

20 MS. ZMROCZEK: Your Honor, at this time, I would call
21 Christopher Watkins to the stand.

22 (Whereupon, the witness, CHRISTOPHER WATKINS, was duly
23 sworn.)

24 THE COURT: I'm going to ask you to state your full
25 name for the record and spell your last name.

1 THE WITNESS: Christopher James Watkins, W-A-T-K-I-N-S.

2 THE COURT: W-A-T-K-I-N-S.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Your witness.

5 MS. ZMROCZEK: Thank you.

6 MS. COLEMAN: And, Your Honor, I'm sorry to interrupt.

7 I have an objection to his testimony.

8 THE COURT: Okay.

9 MS. COLEMAN: I don't know if you want me to make that
10 now.

11 THE COURT: We haven't started.

12 MS. COLEMAN: I know, we haven't even started. But
13 really an objection to him testifying in general. Is this
14 the appropriate time?

15 THE COURT: Probably want to make it now.

16 MS. COLEMAN: Okay. Well, the State would object to
17 him testifying based on two grounds. Number one, all of his
18 testimony is -- well, much of his testimony is based on cell
19 phone data in this case from the applicant's cell phone. I
20 would object based on relevance because this was never
21 alleged in his PCR application. There were no allegations
22 about cell phone data or records. So this would be outside
23 the scope of his allegations.

24 Second, nothing can be authenticated today, and we
25 might get into that later. But I don't believe she has

1 anyone from the cell phone company to authenticate these
2 records to lay the ground that they are business records or
3 any kind of exception to the hearsay rule. So I would
4 object on those grounds.

5 THE COURT: All right.

6 MS. ZMROCZEK: Your Honor, so we do intend to qualify
7 him as an expert in digital forensics. This is -- it goes
8 to the overall -- the overall discussion of the failure to
9 investigate the case. There was some discussion with
10 Mr. Broadwater (ph) as you remember. There were text
11 messages that were actually admitted into evidence.
12 Everything that we have relied upon was provided to us in
13 discovery from the State. The State has had a copy of it.
14 And there were portions of it that were admitted into trial,
15 very, very small portions of it, and there were many things
16 wrong with it. They weren't done. There was no objection,
17 there was no foundation, there was no -- but they came in.
18 And, typically, lawyers can, and I do all the time,
19 stipulate, even with the federal government, we stipulate to
20 the authenticity of those records. That wasn't even brought
21 up in the trial of this matter. So the records were
22 received via fax, facsimile, the phone records were. And
23 they were certified that they were received, you know, by
24 T-Mobile and returned to the law enforcement agencies. They
25 were provided -- a copy was provided to the State. One of

1 the reasons that they anticipated this testimony coming is
2 that, you know, one of the reasons they asked for the
3 continuance was so that they could sit down, go over, go
4 through everything because it is at times daunting, this
5 digital evidence. And the way that it was not attacked or
6 even investigated is vital, I think, to this claim.

7 THE COURT: So with regards to the authenticity, run
8 that by me again. Because, as I understand, there's going
9 to be an objection with regards to this witness testifying
10 because I gather the allegation will be what he is
11 testifying to, while it may be interesting, it is not
12 authenticated. So he may be testifying to -- and I guess
13 the concern is he may be testifying as to records which have
14 been created for the purpose of this hearing.

15 MS. ZMROCZEK: Okay. And, actually, I can address
16 that.

17 THE COURT: Okay.

18 MS. ZMROCZEK: It's actually an interesting argument
19 because the records that were created, and they're already
20 actually in as Applicant's or Plaintiff's exhibit -- I think
21 Petitioner's Exhibit 7. We got those in last time at the
22 last hearing.

23 THE COURT: Okay.

24 MS. ZMROCZEK: And Petitioner's Exhibit 7 are portions
25 of text messages from Mr. Salley's phone that were presented

1 into evidence to the jury.

2 THE COURT: Okay.

3 MS. ZMROCZEK: These were taken from actual different
4 sources. Some from phone records, some from their
5 Cellebrite, Cellebrite being a program which the law
6 enforcement uses. They basically plug the phone into this
7 computer program and it extracts all this data. So all of
8 that data was actually provided in discovery.

9 THE COURT: Pursuant to Rule 5 request?

10 MS. ZMROCZEK: Certainly. Certainly. Oh, yeah. Yeah.

11 THE COURT: Okay. Okay. And would this witness be
12 testifying with regards to any information outside of what
13 was provided by the State in Rule 5.

14 MS. ZMROCZEK: None.

15 THE COURT: Okay. So what this expert has done is that
16 this expert has -- he has taken what was already provided
17 responsive to Rule 5, and that his review, his opinion, is
18 limited to that information?

19 MS. ZMROCZEK: Absolutely.

20 THE COURT: Okay. I got it. Now . . .

21 MS. COLEMAN: And I'm happy clarify my objection a
22 little more, too, Your Honor.

23 THE COURT: Okay.

24 MS. COLEMAN: Ms. Zmroczek has indicated -- some of
25 these text messages were used at trial as an exhibit. And

1 we've got -- and I think it was number 7, Applicant's
2 Exhibit Number 7.

3 THE COURT: Yeah.

4 MS. COLEMAN: It was a chart that was used at trial
5 with some of his test messages.

6 THE COURT: Yeah.

7 MS. COLEMAN: She's alleging today that there were more
8 text messages that were not included in that, and they all
9 were in the Rule 5 file. So they did come from discovery
10 from the case. And she's just trying to -- and I feel like
11 this might come in under the Rule of Completeness. She's
12 trying to complete those records. However, she does not
13 have anyone here to authenticate that the additional text
14 messages she's putting in today are really the text messages
15 that he sent from his records, from his cell phone company,
16 from wherever. We don't have any proof that says that these
17 actually were his messages.

18 THE COURT: Yeah. Well, let me -- got it. Let me ask
19 you this question: Why wouldn't, though, if the allegation
20 is a failure to investigate, if that is the allegation that
21 there is a failure to investigate, and this is what was
22 provided, why isn't it important for Ms. Zmroczek to take
23 what was provided by the State to show in support of her
24 allegation of failing to investigate? There was this body
25 of information, from this body of information, this could

1 have been gleaned, it was not gleaned, it was important? In
2 other words, on that -- in other words, if she -- I don't
3 know what the relevance would be just on the underlying
4 issue of failure to investigate.

5 Now, maybe it would have some -- maybe, arguably, it
6 could be important with regards to prejudice because -- but
7 maybe it's not important with regards -- I don't know that.
8 And I think that goes perhaps more to argument than
9 admissibility at this point. Because if what she's
10 intending to show is there was a failure to investigate, I
11 can see where she could say, all right, this is the body of
12 information provided under Rule 5, I've got this expert
13 that's been through it and he's -- I don't know what he's
14 gonna say. He's gonna say something, I guess. He's here.
15 And I guess that the allegation is that his testimony would
16 be relevant with regards to failure to investigate. Whether
17 or not the authenticity of the information is important with
18 regards to prejudice, I don't know at this point. I
19 couldn't possibly know at this point. But I think that -- I
20 think that at this point it certainly is relevant. And I
21 should ask this question: Did you believe that the
22 foundation has been laid, that the information that he has
23 was provided in Rule 5? You might not know that. You think
24 you know that?

25 MS. COLEMAN: As far as I know -- and I don't know

1 because I haven't seen the Rule 5 folder itself or the
2 original discovery folder. Ms. Zmroczek has provided me
3 with all of it. She says it comes from the original file.

4 THE COURT: Okay.

5 MS. COLEMAN: I have no reason to doubt that.

6 THE COURT: I gotcha.

7 MS. COLEMAN: I just question whether or not it really
8 -- I mean, my issue is that if Broadwater, trial counsel,
9 were to use this at trial, he would have to present it
10 through the rules of evidence properly including laying the
11 foundation through the cell phone company or whoever, and
12 that's how it should come in today as well.

13 THE COURT: You know, except for the fact that it's a
14 failure to investigate. And so, I mean, I think the place
15 for a lawyer to begin to investigate would be the Rule --
16 you know, this is what you got. Take a look at that. And
17 then where does it go beyond that? And the question is
18 could it have been more effective cross-examination if
19 you're just talking about this body of stuff? And so I
20 think with regards to the issue of failure to investigate, I
21 think that the authentication that I would be looking for
22 would be whether or not this was provided with regards to
23 Rule 5. I think that's what is important to me on the issue
24 of whether or not it would be admissible. And if failure to
25 investigate is an allegation then that's what it is, failure

1 to investigate. That's what it is. We're not to -- the
2 prejudice prong that there should've been more that was
3 requested or this information should've been admitted, I
4 think at this point it's just failure to investigate. Okay?

5 MS. COLEMAN: Thank you, Your Honor.

6 THE COURT: Yeah. Thank you. Do you -- I hope I'm
7 clear.

8 MS. COLEMAN: Yes.

9 MS. ZMROCZEK: You are. And, actually, she made an
10 interesting point, Your Honor, because I think it goes -- it
11 ties back into his overall prejudice in the case in that she
12 said, you know, had this been a trial or, you know, had he
13 wanted to introduce this information at trial, he would've
14 had to have an expert come down or -- excuse me -- a
15 representative or a stipulation come down and enter these
16 records as, you know, or identify them as authentic. And
17 that wasn't even challenged or done in this case which is
18 part of one of the many issues that we're raising about not
19 only his failure to investigate but failure to object, which
20 I believe we covered, you know, in the last . . .

21 THE COURT: Got it.

22 MS. ZMROCZEK: Okay.

23 THE COURT: Okay.

24 MS. ZMROCZEK: And, Your Honor, I believe that she'll
25 probably have some additional voir dire. So I was gonna go

1 ahead and go through his voir dire first.

2 THE COURT: Yeah, sure. Absolutely.

3 MS. ZMROCZEK: Okay.

4 VOIR DIRE EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Mr. Watkins, sorry, where do you work?

7 A. I'm the co-owner of Watkins Digital Forensics and
8 Investigations.

9 Q. Okays. She's gonna have to hear you. This is a big
10 courtroom. What is your occupation? What do you do there?

11 A. I'm a private investigator licensed through South
12 Carolina Law Enforcement Division. And our focus is in
13 criminal defense and digital forensic investigations.

14 Q. What duties do you have as a licensed investigator?

15 A. Well, generally, we do all kind of investigative -- or
16 we'll provide all kinds of investigative services.

17 Generally, our focus with criminal defense, digital
18 forensics. As far as normal duties, it would be in the
19 scope of criminal defense; it would be contacting witnesses,
20 issuing subpoenas, reviewing evidence. In the scope of
21 digital forensics it would be reviewing the evidence, acting
22 as a consultant for attorney and client, and helping to
23 point the attorney in the right direction to what to ask
24 for, what we need to review, what they should ask as far as
25 the government's expert, things of that nature.

1 Q. Is there a difference between private investigation and
2 digital forensics?

3 A. Well, not all private investigators offer digital
4 forensic services. Something that I had developed interest
5 in. I enjoy doing it. So it's something that I wanted to
6 bring to the table as a private investigator. I've been a
7 private investigator since February of 2010. And the
8 company that I worked for prior to starting my own company,
9 I introduced digital forensics as a service to that company.

10 Q. And so, you said that you're licensed as a private
11 investigator through SLED, correct?

12 A. Yes.

13 Q. Does SLED have any digital licensing for digital
14 forensics?

15 A. They do not. However, in 2007, there was an opinion by
16 the Attorney General, Henry McMaster, who -- he gave an
17 opinion on this very subject.

18 Q. On how SLED or should SLED regulate?

19 A. Yeah. Should SLED have some kind of regulation for
20 digital forensics, yes.

21 MS. COLEMAN: And, Your Honor, I have that opinion from
22 the former attorney general now current governor. And I
23 didn't know if I needed to make it an exhibit through the
24 plaintiff ---

25 THE COURT: I don't know. I'm curious. I want to see

1 it.

2 MS. ZMROCZEK: If I can make it a Court's exhibit.

3 THE COURT: Ms. Coleman is too.

4 MS. ZMROCZEK: I e-mailed it to her.

5 MS. COLEMAN: I've got it.

6 THE COURT: Great. Well, I guess we need to make it an
7 exhibit.

8 MS. ZMROCZEK: Then it will be Plaintiff's -- or
9 Applicant's 32.

10 COURT REPORTER: Is this a court exhibit or
11 Applicant's?

12 MS. ZMROCZEK: I think an Applicant's exhibit.
13 (Petitioner's No. 32, Opinion, was marked for
14 identification.)

15 (Brief pause in the proceeding.)

16 THE COURT: Okay. I read it. I think what it says is
17 that you need to be a licensed private investigator but
18 there's no additional license to be a computer forensics.

19 MS. ZMROCZEK: That's the way I read it, too.

20 THE COURT: Okay. All right. Very well.

21 BY MS. ZMROCZEK (Continuing):

22 Q. Mr. Watkins, what is your educational background?

23 A. I studied at Midlands Technical College pursuing a
24 degree in computer science. I have, through Midlands
25 Technical College, I also earned a certification, a CompTIA,

1 that's COMP, T-I-A, A+ certification. And that's just a
2 general technician, general computer technician,
3 certification.

4 Q. Do you have any sort of degree in digital forensics?

5 A. I do not, no. Since becoming a private investigator,
6 I've taken several courses, not just -- we have to have
7 annual SLED training to keep up with our license. SLED does
8 not offer their own classes or any certifications or
9 anything for digital forensics. That's something that I
10 pursued on my own. So I've attended seminars, and I've
11 taken courses in the scope of programming and things of that
12 nature because digital forensics is an applied science. So
13 the areas that I focused mostly in that could help me in
14 being able to do my job, there are places that I will pursue
15 the continuing education courses.

16 Q. Like, define applied science?

17 THE COURT: Like what? You mean like coding?

18 THE WITNESS: Like coding, yes. Programming languages,
19 yes, ma'am.

20 THE COURT: Everybody wants to be a coder.

21 Q. In fact, are there any degrees that you can graduate
22 with in digital forensics or is it more of a ---

23 A. Back when I was going to college, there were no digital
24 forensic degrees being offered. So I wasn't able to go that
25 route. There are now. But at that time, there were not.

1 So I took a different route.

2 Q. And so when you say applied sciences, do you rely more
3 on your practical, hands-on knowledge?

4 A. That's correct. Because I have a strong IT background.
5 So my knowledge in computers and technology, I can use that
6 knowledge in the field of digital forensics to aid me in the
7 things that I need to do in our investigations.

8 Q. You said you've been practicing since 2010?

9 A. Yes.

10 Q. And that's private investigation and digital forensics?

11 A. That's correct.

12 Q. Okay. You talked about the certificate that you have,
13 the CompTIA A+.

14 A. Yes.

15 Q. That's a certification that you have?

16 A. The certification that I got from Midlands Tech, yes.

17 Q. Okay. And have you attended or conducted any
18 continuing education seminars, conferences, any related
19 trainings?

20 A. I have. There are occasional conferences that involve
21 digital forensics. They'll have seminars or they'll have
22 just quick classes. They're not technically classes, but
23 they have seminars. So I've been to seminars in Myrtle
24 Beach that have -- they were hosted by, I believe,
25 AccessData which is a major digital forensics company. They

1 manufacture software and tools.

2 Q. Are you a member of any professional organizations?

3 A. Yes. I'm a member of the American Society of Digital
4 Forensics and E-Discovery.

5 Q. Have you published any articles?

6 A. I have through our -- through the company that I worked
7 with previous to starting my own company. I was publishing
8 articles through that website. They should still exist on
9 their website. And then I also started my own digital
10 forensics blog, which I haven't really kept up with, but I
11 have published articles on that.

12 Q. Are there any national accreditations for the field of
13 digital forensics?

14 A. There is not.

15 Q. Are there any -- I think we've already covered this --
16 state or there are no ---

17 A. Right. There's no state accreditations either.

18 Q. Are there any tests, something equivalent to the bar
19 exam like lawyers take?

20 A. No, there's not.

21 Q. So anybody with an interest in computers could hold
22 themselves as an expert. Is that what I hear you saying?

23 A. They could, yes.

24 Q. Okay. So how is it that you encourage parties to
25 challenge your work?

1 A. So since starting or focusing my attention in the field
2 of digital forensics, which is actually back in 2007 is when
3 I began actually practicing, not professionally, but just --
4 and I began using some of the tools that are available such
5 as autopsy. There's a tool called Autopsy Forensics and
6 Scalpel Forensics. And these are very technical tools.
7 They are command-line tools. They don't have a GUI or a --
8 that's spelled G-U-I. That's a graphical user interface.
9 So you have to have the knowledge and understanding of what
10 exactly you are looking for. Now, today the software that
11 is available is more like an easy button. You can quickly
12 run software or run a computer through or a cell phone, and
13 it's quick and easy. There's nothing technical about it.

14 Since beginning my study, I have always wanted to be a
15 step ahead. There's new technologies coming out all the
16 time. I want to be ahead of that. I want to be able to
17 answer questions based on having a fundamental understanding
18 of what exactly is going on in the background underneath
19 where you don't see if you're using the programs today that
20 you just connect a phone and click a button and you get a
21 report. So when I produced any reports, I always challenge
22 the opposing side. I challenge them to look at my work,
23 verify it, hire their own expert to reproduce what I've
24 done, verify it, authenticate. And in the seven years that
25 I've done this, I have never come up with an issue.

1 Q. And did you meet with the Assistant Attorney General in
2 this case?

3 A. Yes, I did.

4 Q. Did you provide them all your work?

5 A. I did.

6 Q. Provide them your notes?

7 A. There may have been notes included.

8 Q. Like a summary of what you did?

9 A. A summary, yes.

10 Q. Okay. And did you provide them your data?

11 A. Yes. We provided them a copy of everything.

12 Q. Okay. And you sat down and met with the Assistant
13 Attorney General as well?

14 A. I did.

15 Q. Okay. What is digital evidence, generally?

16 A. So digital evidence starts out on a digital device.
17 It's something that stores digital data, electronic data,
18 such as a phone, a computer, a CD, flash drive, hard drive.
19 Any information that you use while using a device that
20 stores data that's what we're referring to when we talk
21 about digital evidence.

22 Q. And what is digital forensics?

23 A. So digital forensics is the area of forensic science
24 that deals in the discovery, authenticating, and preserving
25 of digital data, providing analysis of that data, and

1 providing a report of that analysis.

2 Q. And what application does it have to the legal aspect
3 of a case?

4 A. So, well, digital forensics is -- sorry. Digital
5 forensics is applied to, and not just criminal defense, but
6 several different areas of the legal system. I've also
7 worked in family law cases that have involved phones and
8 computers. What we have faced in my experience is that we
9 have a knowledge gap in the legal system where generally
10 attorneys and most people, they don't understand how certain
11 devices -- how certain information is attained, how it's
12 sent/received, how it's generated, where it comes from. So
13 when I receive a case that involves a digital or digital
14 information, I help to explain that information in a way
15 that an attorney or layperson can understand.

16 Q. What type of digital experience do you have?

17 A. What kind of digital?

18 Q. Digital.

19 A. Digital experience?

20 Q. For example, with computers? Or have you built
21 computers? Have you repaired them?

22 A. Yes. In fact, that's where I started with computers.
23 I started with building them, repairing them, not just with
24 hardware but I've also written computer programs.

25 Q. And what's your experience with working with different

1 cell phones?

2 A. So when cell phone forensics came about pretty
3 strongly, I started getting into that in 2010 as well. We
4 experimented, or I experimented -- when I say "we," I'm
5 speaking for the company. I experimented with several
6 different cell phone forensic software and just finding what
7 gave the best information or what could extract the most
8 devices, what could provide the most information that we
9 needed to -- as much as we could from the phone so that we
10 can actually analyze all the data on the phone and be able
11 to make a thorough report of what we were looking at, or a
12 thorough analysis.

13 Q. Are there several different programs out there?

14 A. There are many -- many cell phone or -- I'm sorry --
15 many cellular forensic companies. We work with several of
16 them, yes.

17 Q. Are you familiar with the ones that law enforcement
18 typically ---

19 A. Yes. And we use some of the ones that law enforcement
20 uses.

21 Q. What percentage of your firm's work involves computer
22 forensics or analysis or digital analysis?

23 A. About 50 to 60 percent.

24 Q. How many cases involving digital forensics have you
25 handled?

1 A. Since I've been doing this, probably in the thousand.

2 Q. Do all of those go to trial?

3 A. They do not always go to trial, no.

4 Q. Have you conducted personal examination or testing of
5 digital evidence?

6 A. Yes, I have. Hundreds.

7 Q. Do you work primarily with certain groups or who are
8 you available to to provide your services to?

9 THE COURT: Family Court lawyers.

10 A. Well, attorneys of all types: Family court, civil
11 court, criminal defense, obviously.

12 Q. Have you ever been appointed by the Court to do an
13 independent evaluation for the Court?

14 A. Yes, I have.

15 Q. Are you retained by private clients?

16 A. Yes. We're available to the general public as well.

17 Q. Have you ever been called by the State as an expert?

18 A. Yes, on two occasions.

19 Q. Were those criminal trials?

20 A. Yes.

21 Q. Okay. Have you reviewed and examined discovery in
22 criminal cases that involved digital forensics?

23 A. Yes.

24 Q. Ever assisted lawyers in trial preparation?

25 A. I have.

1 Q. Have you been qualified as expert in digital forensics?

2 A. Yes. I've been qualified as an expert in the field of
3 digital forensics in United States Federal Court, South
4 Carolina Circuit Court, General Sessions, Common Pleas, and
5 Family Court.

6 Q. And I previously provided Petitioners' Exhibit 9 which
7 is a copy of your CV, if I may.

8 MS. ZMROCZEK: May I approach, Your Honor?

9 THE COURT: You may.

10 Q. Is this a current copy of your curriculum vitae?

11 A. Yes, it is.

12 MS. ZMROCZEK: Your Honor, at this time we would move
13 Petitioner's 9 into evidence.

14 MS. COLEMAN: No objection.

15 THE COURT: Very well.

16 (Petitioner's Exhibit No. 9, Curriculum Vitae, was
17 received into evidence.)

18 MS. ZMROCZEK: Your Honor, at this point, pursuant to
19 Rule 702, I would tender Mr. Watkins as an expert in the
20 field of digital forensics. From a practical standpoint, an
21 expert is someone who not only has technical knowledge, but
22 training and experience. And as he has indicated, he has
23 specific knowledge with regards to the different processes
24 involved in digital forensics.

25 THE COURT: All right. Yes, ma'am, voir dire?

1 MS. COLEMAN: Yes, Your Honor. Thank you.

2 VOIR DIRE EXAMINATION

3 BY MS. COLEMAN:

4 Q. Good morning, Mr. Watkins. Or it might be afternoon
5 now.

6 A. Or good after -- yes.

7 Q. Yeah, good afternoon. Now, you've testified quite a
8 bit. Ms. Zmroczek went through all of your qualifications
9 and your experience. You said you attended Midlands Tech.
10 Is that correct?

11 A. I did.

12 Q. But you don't have a degree?

13 A. I do not.

14 Q. Okay. And when you did attend, you were pursuing a
15 digital forensics?

16 A. No, for computer science.

17 Q. Computer science, okay. But you don't have a general
18 background of college education for background? That was a
19 terrible question. I'm sorry. Do you have any degrees in
20 other fields or any other education background?

21 A. No. No degrees at all.

22 Q. Okay. And you own your own business. Is that correct?

23 A. Yes, since January 12 of 2016.

24 Q. Are there any other employees in that business?

25 A. Yes. My business partner Robert Watkins who's here

1 today.

2 Q. Okay. Now, you testified that you do work with any
3 party for all types of cases, and you've testified for the
4 State before. Is that correct?

5 A. Yes.

6 Q. Do you do most of you work in defense?

7 A. Yes.

8 Q. Okay. What percentage would you say you testify for
9 criminal offense?

10 A. Percentage since 2010?

11 Q. Sure.

12 A. Maybe 70 percent.

13 Q. Okay. So most of your work ---

14 A. I mean, I'm guessing.

15 Q. Right, right. And, obviously, we don't have numbers in
16 front of us and that's fine.

17 A. Right.

18 Q. But most of your work is in criminal defense ---

19 A. Most of it is in criminal defense currently, yes.

20 Q. Okay. Is much of that work with Ms. Zmroczek?

21 A. I work a lot of cases with Ms. Zmroczek. I also work
22 with a lot of public defenders; a lot of public defenders in
23 Richland County, Lexington County, and other private
24 attorneys around the state.

25 Q. Okay. Do you have any experience with cell phone

1 towers or data transmitting or anything?

2 A. I do, yes.

3 Q. You do. Are you employed by a cell phone company?

4 A. No. Never been.

5 Q. Okay. Do you know the technical workings of cell phone
6 towers?

7 A. I understand them.

8 Q. Okay. But you've never built them or maintained them?

9 A. Correct. I've never done anything like that.

10 Q. Okay. Does your background allow you to testify as to
11 how the towers work in like the mile radius that they ---

12 A. Yes. Now, generally, in speaking of cell towers, often
13 in criminal defense cases we receive, if it's relevant to a
14 case, we may receive cell phone call detail records from the
15 company or my subpoena them myself if I see that as a
16 relevant avenue. And generally we'll ask for cell tower
17 data which is going to tell at what time a cell phone is
18 connecting to a cell phone tower on that network. And from
19 there from we can get an idea based on the location of that
20 cell tower and the azimuth of the sector where in general
21 the caller or the person utilizing that device is located on
22 a map.

23 Q. And that data just comes from the phone itself or from
24 the records provided to you. Is that right?

25 A. It comes directly from the cell phone company.

1 Q. Okay. Are you able to speak about specific cell phone
2 towers or their maintenance or any trouble that they have?

3 A. Not unless we specifically subpoena that information.
4 Generally -- and I will say this, cell phone companies
5 because their goal is to maximize coverage, to maximize
6 customers, they will generally work on their towers
7 periodically throughout the years and cell phone towers may
8 not remain the same cell phone towers over the course of
9 time. So, for example, a cell phone tower that we may see
10 in one case may no longer exist two years from now or it may
11 be given a different cell phone tower ID. So things of that
12 nature. We would have to get that information from the cell
13 phone company. We would have to know to ask for it as well.

14 Q. Okay. So without that information you just have
15 general speculative thoughts -- well, not speculative, I'm
16 sorry -- general information from what you were provided
17 based on those towers. Is that correct?

18 A. Yes.

19 Q. Okay. So you can't specifically say on this date this
20 tower was performing this way and it transmitted these
21 calls. Is that correct?

22 A. Well, you'd have to be a little more specific by what
23 you mean by that question.

24 Q. That was a bad question. I'm sorry. Can you
25 specifically say on this date at this time this cell phone

1 tower specifically was broadcasting within a range of
2 1.5 miles and it transmitted this call?

3 A. Well, we're speaking of cell phone towers, and we have
4 a phone that's connecting to the tower, we can say that that
5 specific device was connecting to that specific tower. Now,
6 we use the azimuth of that tower, or the cell sector, which
7 is going to show us a directional whether it's north, south,
8 east, or west. It will be a span of about 120 degrees from
9 that tower. And we can say based on those records a general
10 120 degree radius of where that cell phone is connecting,
11 which rules out we're able to say where that cell phone
12 could not possibly be located, meaning on the other side of
13 that tower. But if you are asking as in reference to
14 distance, then I would have to say it depends on the area.

15 Now, I can't tell you by looking at these cell phone
16 records, yes, this phone is connected within 1.2 miles. I
17 wouldn't be able to say that not based on those records.
18 But when you're working in an area that has multiple towers,
19 let's say a metropolitan area that has seven towers in let's
20 say a 6-mile radius, if a cell phone is connected to one of
21 those towers and there's a tower let's say about a mile or
22 2 miles away from that tower, we can reasonably assess from
23 the records that that cell phone is closer to the tower that
24 it's connecting on. Otherwise, as it gets closer to another
25 tower, it will switch connection to the closest tower.

1 Generally, that's how cell phones work. They're going to
2 connect to the nearest, strongest cell site.

3 Q. Thank you. You testified that you've worked out about
4 a thousand cases, not all of them went to trial. Do you
5 have a rough idea of about how many times you've been
6 qualified as an expert in court?

7 A. In federal court, twice. I believe in General
8 Sessions, less than 20. And in Circuit -- I'm sorry -- in
9 Common Pleas, I believe twice. In Family Court, probably
10 around 20.

11 MS. COLEMAN: Thank you. Nothing further. I have no
12 objection.

13 THE COURT: All right. Very well. You may proceed.

14 MS. ZMROCZEK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. What is the proper -- why is proper interpretation of
18 digital evidence so important?

19 A. Well, when we're dealing with a criminal case, for
20 example, you know, we have an individual who faces the loss
21 of freedom or possibly their life depending on the charges.
22 And having an understanding of the digital evidence can make
23 the difference between liberty and life.

24 Q. What are some things that you can help attorneys or
25 clients with? What do you do? Like, how can you help them

1 in understanding and assessing digital evidence?

2 A. So, again, there's a knowledge gap in a legal system.
3 And I can explain things in a way that attorneys can
4 understand when it deals with digital evidence. If they --
5 generally, in these cases, the government has provided some
6 extraction or records that they're relying upon to come up
7 with their interpretation or something more direct. From
8 that, I can work with that evidence and, first of all, verify
9 it, authenticate it, and determine whether the
10 interpretations are accurate. Certain types of evidence can
11 have more than one interpretation. And if the government
12 has their own expert, I can assist the attorney in what
13 types of questions to ask that expert. Anything that they
14 presented I could review that content and would be able to
15 formulate arguments against it.

16 Q. I think earlier in response to a question, you were
17 asked do you know about tower maintenance. When you get
18 involved, do you suggest things for attorneys to subpoena or
19 maybe to look for if they are missing from what you are
20 being provided?

21 A. Yes. And this has come up in a case before where we
22 had cell phone records but there was a missing tower. So we
23 weren't able to come up with GPS coordinates because we
24 didn't have a tower to associate with it. So we had to
25 subpoena the cell phone company for that information in

1 order to figure out where these coordinates were, where the
2 cell tower used to exist. So, yes, assisting attorneys and
3 determining what information is missing and what we need
4 subpoenaed is very relevant.

5 Q. Is digital forensic science easy to understand?

6 A. Well, for me, it is. But, no, generally, it is a lot
7 to swallow, so I try to ---

8 THE COURT: No would be the answer.

9 THE WITNESS: Okay. No would be the answer.

10 Q. Let me ask you it this way: If you're just
11 provided ---

12 THE COURT: Unless you're under the age of 25.

13 MS. ZMROCZEK: It makes my head spin. Trust me, Judge.

14 Q. If you're provided, for example -- and I think that you
15 have seen this, and it's already in evidence, which is
16 Petitioner's Exhibit 7. And I'll just hand a copy so I'm
17 not -- I think from memory, this is already in evidence,
18 Petitioner's Exhibit 7. Is that a complete examination
19 of -- is that what you would expect to see in a complete
20 examination?

21 A. No. This is not a -- this appears to be an exhibit and
22 not something that would come from an extraction report.

23 Q. Explain the difference.

24 A. Well, we have a copy of the extraction report.

25 Q. So you got a copy of the extraction report in this

1 case?

2 A. In this case, yes.

3 Q. Okay.

4 A. So this printout here, at least some of the pages did
5 not come from that. Some of the pages it appear that they
6 did print selectively from that. What was your question
7 again?

8 Q. Okay. Sorry. And I was confusing. What were the
9 things that you received or that you reviewed as part of the
10 discovery received by the State with regards to cell phones?
11 You keep talking about an extraction report. So what was
12 that?

13 A. So when law enforcement sees the cell phone belonging
14 to Mr. Salley, they utilize a digital forensic tool called
15 Cellebrite. And what that ---

16 THE COURT: What?

17 THE WITNESS: Cellebrite.

18 THE COURT: Cellebrite?

19 THE WITNESS: Yes, ma'am. It's C-E-L-L-E-B-R-I-T-E.

20 THE COURT: C-E-L-L?

21 THE WITNESS: E-B-R-I-T-E.

22 A. And that is law enforcement's most common tool. It's a
23 great tool utilized for extracting data from cell phones.

24 Q. When you say extracting data, what do you get? What do
25 you mean?

1 A. So the digital -- or the data that's stored on the
2 device is what we aim to extract. We want a copy -- we want
3 a complete copy of all the data, all the information, that
4 is on that device. And this tool is designed to do just
5 that.

6 Q. About how many pages was that report?

7 A. You're talking about this --

8 Q. The Cellebrite report that -- not the one that was
9 shown to the jury.

10 A. I don't recall because I believe it was -- it was an
11 HTML report or it's like you would open it up in a web
12 browser. But I believe the text messages ranged at around
13 600 pages. I'm guessing, but it's a long report and that's
14 to be expected. I mean, we're dealing with digital
15 evidence, we're usually talking about a lot of data. So
16 utilizing these types of tools and creating these reports in
17 this way is proper.

18 Q. What other types -- what other data did you receive
19 regarding Mr. Salley's cell phone?

20 A. We also received the search warrant return which was
21 from -- it was a search warrant issued to T-Mobile.
22 T-Mobile responded with those records. So we've got the
23 cell site or the call detail record showing the cell site
24 data for the voice calls and it also contains text message
25 detail, meaning it will show when, what date and time, a

1 message was sent and received.

2 Q. And did you receive any other cell phone records?

3 A. Yes. We also received Verizon records in response to
4 the search warrant.

5 Q. And that was done by law enforcement?

6 A. That was done by law enforcement. And that was for
7 Carlos Williams' cell phone records.

8 Q. And that was the testifying co-defendant in this case?

9 A. Yes.

10 Q. So you had the Cellebrite extraction form, the T-Mobile
11 return, search warrant return, and Verizon search warrant
12 return?

13 A. Yes.

14 Q. And those were all provided to the defense attorney in
15 discovery?

16 A. Yes.

17 Q. Okay. And were you provided -- and I'm gonna come back
18 to these cell phones. But stepping away from the cell
19 phones for a minute, were you provided any other examples of
20 digital evidence?

21 A. Yes. We also received video from Roses and Walmart
22 stores.

23 Q. I'm showing you Petitioner's Exhibit 10, very poorly
24 written 23 and 21 A, B, and C. Do you recognize those?

25 A. Yes.

1 Q. What are those?

2 A. So we've got -- these CDs here, that's Petitioner's
3 Exhibit 21-A, 21-B, 21-C. Those are video -- this is video
4 files from Roses store and then Plaintiff's Exhibit, it
5 looks like, 3.

6 Q. Twenty-three.

7 A. Twenty-three, okay. That's Walmart video or video from
8 Walmart store. Then Petitioner's Exhibit 10, this is a
9 letter I guess that was attached to these discs when they
10 were delivered.

11 Q. Is that outlining the discovery that was provided?

12 A. It is, yes.

13 Q. And how do you know that these were provided to the
14 attorney?

15 A. To Mr. Salley's trial attorney?

16 Q. Right.

17 A. We received them. He brought his -- he brought in his
18 trial case, his box, and these were contained in them.

19 Q. Okay. And did you stamp these Rule 5, B. Thompson, and
20 the date on them?

21 A. No, I didn't do that.

22 Q. Okay. Is that typically what you see with discovery
23 provided by the State?

24 A. Yes.

25 Q. Okay.

1 MS. ZMROCZEK: Your Honor, at this time, we would move
2 Defendant's 10, 21 A, B, and C, and 23 into evidence.

3 THE COURT: Any objection?

4 MS. COLEMAN: Yes, Your Honor. I have the same
5 objection that I made earlier. I have no reason to question
6 that it was in the discovery. I'm sure it came from the
7 Solicitor's office. But as far as the videos being
8 authenticated, I don't think that can be done here. And I
9 know some of these -- at least some of them were used at
10 trial, but I don't know exactly which portions were used at
11 trial or if all of it was used.

12 THE COURT: Okay. Okay. And just so our record is
13 clear, I think that this information is admissible because,
14 again, the question is whether or not there was ineffective
15 assistance of counsel on the failure of counsel to
16 investigate. And I'm taking that these submissions and
17 submittals, the information that was provided to the
18 applicant through his attorney, and the basis, if you will,
19 the beginning basis, of why his position is that even with
20 this information he failed to investigate.

21 MS. ZMROCZEK: Correct.

22 THE COURT: All right. So it's admissible with
23 objection, Ms. Coleman.

24 MS. COLEMAN: Thank you.

25 (Petitioner's Exhibit No. 10, Letter, was received

1 into evidence.)

2 (Petitioner's Exhibit No. 21 A,B,C, Videos, were
3 received into evidence.)

4 (Petitioner's Exhibit No. 23, Walmart Video, was
5 received into evidence.)

6 BY MS. ZMROCZEK (Continuing):

7 Q. And I want to turn to the videos for a moment. Did you
8 in addition to going through all of the discovery in this
9 case, did you read the trial transcript?

10 A. I did, yes.

11 Q. So you were aware that the trial had started and then
12 been halted by the judge?

13 A. Yes. I do recall that.

14 Q. And then a new trial started, correct?

15 A. Yes.

16 Q. And one of the reasons that Mr. Broadwater was trying
17 to try to -- he was trying to retain an expert. Is that
18 your understanding?

19 A. I believe he did ask for that, yes.

20 Q. Do you recall who he brought in to review these ---

21 MS. COLEMAN: Objection. He wasn't present at the
22 trial.

23 MS. ZMROCZEK: Certainly. And, Your Honor, it's in the
24 transcript anyway.

25 THE COURT: Okay.

1 MS. ZMROCZEK: I'll ask the question this way.

2 Q. Have you -- when you have video evidence, is there
3 anything that you can do as a digital forensic expert to
4 enhance or to help present this type of evidence?

5 A. Yes. And that's another service that our company
6 provides. We do also handle video and audio enhancements.
7 So, yes, that's something that I could've done.

8 Q. And do you use different tools and programs for that?

9 A. I do. Several.

10 Q. Did you attempt to do that in this case?

11 A. No, because instead of enhancing the video, that was
12 not necessary. Instead I did a comparison through certain
13 points in the video that were relevant.

14 Q. And did you provide any still shots to help explain how
15 trial counsel should have had some sort of expert or
16 assistance in evaluating these videos?

17 A. Yes, I did.

18 Q. And I'm going to show you what's been marked as -- some
19 of these are plaintiff's and some of these are petitioner's.
20 So I know they're all suppose to be petitioner's --
21 Petitioner's 27.

22 A. Yes. These are what I created, yes.

23 Q. And are they still shots from the video?

24 A. They are from the video, yes.

25 Q. Have you altered them in any way?

1 A. Thee only -- there's one on here that shows a
2 comparison and has a circle drawn on it. That will be the
3 only alteration.

4 Q. Did it materially change what was on it or was it you
5 highlighting?

6 A. It's basically me highlighting an area on the video, on
7 the video snapshot. There's nothing altered in the context
8 of the video itself.

9 Q. And this is something that you -- had this been a jury
10 trial, is something you would've helped prepare the attorney
11 do a pretrial motion for suppression, for example?

12 A. Absolutely.

13 Q. Okay. And I'll ask you why in a moment.

14 MS. ZMROCZEK: But at this time, we would move
15 Petitioner's 27 into evidence.

16 MS. COLEMAN: And I object for the same reasons I
17 objected to the video.

18 THE COURT: Okay. Got it. All right. Very well.

19 MS. ZMROCZEK: Thank you. So I'm gonna leave
20 Petitioner's 27 up there for a --

21 THE COURT: And I'm admitting it over the objection.
22 And, again, it's less to do with this moment with the
23 admission at trial than it does the failure to investigate.

24 MS. ZMROCZEK: And I guess -- yeah, I'm slowly getting
25 there.

1 (Petitioner's Exhibit No. 27, Video Still Shots, was
2 received into evidence.)

3 BY MS. ZMROCZEK (Continuing):

4 Q. So you are aware that portions of these videos were
5 presented and played to the jury. Is that correct?

6 A. Yes, that's correct.

7 Q. Did you ever see -- did you ever receive an original
8 copy of these videos or jus the copies that had already been
9 provided in 10, in 21 A, B, and C?

10 A. This is what we were provided, what's on the disc. I
11 would've expected a little more because we do not have a
12 full complete video from the time frame that is shown on the
13 video. So we are missing points in the video that I believe
14 would have been relevant.

15 Q. Okay. And you say we're missing points. So there was
16 a certain time frame involved.

17 A. Yes. Especially -- and I'm talking specifically the
18 Roses video.

19 Q. And did you expect to see those when you received the
20 videos?

21 A. I would expect to since the subjects that are pictured
22 on the camera, we only see two of them enter and we don't
23 see the third enter. And had we received that video, I
24 would expect to have a clear shot of that individual's face
25 and we didn't get that.

1 Q. Were you ever provided or did you ever see any
2 explanation as to what type of equipment this was using?

3 A. You mean as far as the store DVR?

4 Q. Right.

5 A. No. We've received no information about that.

6 Q. And what can you do as far as, for example,
7 authenticating time when it comes to videos? Can you
8 compare it to other evidence that's already are being
9 presented to the jury?

10 A. Yes. So one of the things I noticed was that the
11 timestamp in this video, in the Roses' video, is mismatched
12 from the time on the receipt that we received. The time of
13 the purchase is different from the time we see on the video.
14 Another thing that I would typically do had I been
15 investigating this case preparing it for trial is I would've
16 gone to that particular location either by issuing a
17 subpoena or by asking management to be able to look at that
18 DVR, have an opportunity to look at it to get an idea of
19 what the timestamp -- what the issue is with the time, find
20 out if they have a timestamp issue.

21 And in addition to that, one of the things that we
22 could've done, or that the trial attorney could've done, in
23 one of the snapshots that we see here, we see the three
24 subjects standing near the register. And there's a camera
25 angle that focuses on that particular area. I think it

1 would've been relevant to go to that establishment, take
2 measurements of where that camera is located to where the
3 location of those individuals were standing to be able to
4 make a height comparison. Because we do have video from
5 Walmart where we do -- we have Mr. Williams and Mr. Salley
6 on the video in Walmart. We could have, by measuring angles
7 and distance, we could have been able to determine the
8 height of the subjects in the Roses' video.

9 Q. I think you already testified that this does not appear
10 to be a complete copy of all of the activity that occurred
11 surrounding these individuals or these suspects. Is that
12 correct?

13 A. That's correct.

14 Q. Okay. I want to talk about some other types of digital
15 forensic evidence before we get back to the cell phone. So
16 we talked about the videos. Did you also have an
17 opportunity to review any audio from this case? I'm showing
18 you Petitioner's Exhibit 22?

19 A. Okay. Yes. Yes, I did.

20 Q. Okay. And what was that? Well, what is Petitioner's
21 22? Do you recognize that?

22 A. Yes. This is a copy of the 911 calls on the date of
23 the incident.

24 Q. And did that also include radio chatter?

25 A. Yes, it did.

1 Q. And did you listen and review those?

2 A. I did, yes.

3 Q. And is it also stamped as Rule 5 to Barry Thompson?

4 A. Yes.

5 MS. ZMROCZEK: Your Honor, at this time we would move
6 Petitioner's 22 into evidence.

7 MS. COLEMAN: No objection.

8 THE COURT: Very well.

9 (Whereupon, Petitioner's Exhibit No. 22, 911 Calls,
10 was received into evidence.)

11 BY MS. ZMROCZEK (Continuing):

12 Q. When you received the 911 calls, how does that help you
13 in creating a timeline?

14 A. Generally, the 911 calls when they began they will have
15 a date and time or the file itself will have a time of the
16 metadata that can be utilized to establish when the
17 recording was made. And the same would apply for the radio
18 chatter as well.

19 Q. After listening to that, would that help you -- would
20 it help you to, after hearing that, would you then tell a
21 trial attorney other things they should've been requesting?

22 A. Yes, absolutely.

23 MS. ZMROCZEK: And, Your Honor, we'll certainly listen
24 to it.

25 Q. But was there radio chatter regarding a hotel?

1 A. There was.

2 Q. And at least two of the individuals standing outside of
3 a hotel?

4 A. Yes.

5 Q. And were there video cameras at that hotel?

6 A. I believe they were, but I don't recall there being any
7 on the exterior of that building.

8 Q. Okay. And would any information regarding any Days Inn
9 or hotel videos provided?

10 A. No, there were not.

11 Q. Were there -- actually, I'll cover that one. Robert
12 Watkins said we don't have to worry about that. When you
13 realized that either video is not complete or altered and
14 you're at the beginning stages of the trial or an
15 investigation phase, what is it that you would do or
16 encourage the trial attorney to do to either flesh this out
17 or to keep it out?

18 THE COURT: What's the it?

19 Q. Yeah, keep it from being in front of the jury?

20 THE COURT: What's the it?

21 MS. ZMROCZEK: I'm sorry?

22 THE COURT: What is the it?

23 MS. ZMROCZEK: Oh, sorry. The incomplete digital
24 evidence.

25 THE COURT: What is that?

1 MS. ZMROCZEK: Let me -- I had a terrible question.

2 BY MS. ZMROCZEK (Continuing):

3 Q. If you receive videos, for example, like you received,
4 and you noticed that there were dates and times missing or
5 sections of the video or things that you had expected to
6 see, what would you encourage the attorney to do if you were
7 hired at the early stage of the case?

8 A. Well, in the early stage of the case, I would recommend
9 getting a copy of the original video directly from the
10 source. Now, in the event that that does occur and the
11 original source doesn't have it any longer -- because a lot
12 of these store DVRs they only keep video anywhere between
13 five days and, if we're lucky, 30 days or longer. So in the
14 event that the video is no longer there, then all we have to
15 work with is what's been provided, which isn't sufficient
16 enough because we don't have clear footage of at least one
17 of the individuals entering the building. And from what I
18 recall reading in the trial transcript, one of the
19 individuals that is pictured entering, if I recall
20 correctly, they were trying to insinuate that that was
21 Mr. Salley. And one of the comparison photos that I
22 provided shows that it cannot possibly be Mr. Salley.

23 MS. COLEMAN: Objection, Your Honor. That's
24 speculation. And he's speculating on facts that are outside
25 the realm of his expertise.

1 THE COURT: I'll sustain it, couldn't possibly be
2 Mr. Salley.

3 BY MS. ZMROCZEK (Continuing):

4 Q. Okay. And so -- yeah, I'll move on. I'll ask a
5 different question. So when -- if you see that you're
6 missing, you would obviously ask the attorney to get the
7 complete information, right?

8 A. Yes. And also in the example of the Quick Cash store,
9 we do know that there were cameras in that building and the
10 premises. And we never received any video from that
11 establishment. Nor did I see anything in the discovery that
12 showed that Mr. Broadwater made an attempt to get or
13 retrieve that video.

14 Q. I want to talk briefly -- did you issue any -- did you
15 try to get any other information that was not provided in
16 the case?

17 A. Did I try? Oh, yes, I did. I wanted to get access to
18 the cell phones, any cell phone that was in evidence, so
19 that I could make a comparison between what was provided in
20 the extraction report just to verify nothing is missing.
21 Because I have had many cases in my experience where law
22 enforcement, they'll do an extraction report and they'll
23 provide a copy of the extraction report, but the tools that
24 we utilize such as Cellebrite to make the extraction, it
25 also has a feature to create these reports. But before --

1 it's a multistep process. You connect the device, you
2 extract the data, you can then review the data, analyze, and
3 then you produce your report. A lot of times law
4 enforcement will go through and they'll select what they
5 want to show in their report and keep information that they
6 believe is irrelevant out. And for us to be able to have a
7 full understanding of what's on that device, I would prefer
8 to have the source, the cell phone itself. Because a lot of
9 times I can't rely upon just their extraction reports
10 because they may have left something out, and these reports,
11 they don't come with summaries. They don't indicate what's
12 in the report or what's not in the report. It's just what
13 you see is what you get. So my aim was to do that. And
14 when I contacted the agency, the law enforcement agency, to
15 get the phone in evidence, I was informed that they weren't
16 able to find it or it was missing or something of that
17 nature.

18 Q. So did you then form a report -- did you generate a
19 report based on the two cell phone records, Verizon and
20 T-Mobile, and with the Cellebrite?

21 A. Yes. What I did is I took all the digital evidence
22 pertaining to the cell phones that we had available to us
23 and combined them into one single report. And the reason I
24 do that is that way we're not having to look in three
25 different locations. We can look at everything right there

1 in one location. It's color coded, and it is -- there's a
2 column there that tells you from which source each record is
3 coming from.

4 Q. In addition to that, did you generate any sort of maps
5 or location areas based on that information received in Rule
6 5?

7 A. Yes. Another thing that I do when I have call detail
8 records is I utilize a software called CellHawk that will
9 analyze and parse the call detail record data and map
10 everything for me. Before this technology or this software
11 was available to me, I had to do this manually using
12 scripting and it's a very tedious process. So we use this
13 tool now to help speed up the process and that way I can
14 just dump the record straight into it. It will go ahead and
15 map it for me, and it will break it down by date. So what I
16 did is I created a few snapshots, pictures of showing these
17 records on the maps.

18 Q. And is CellHawk something that law enforcement in South
19 Carolina uses?

20 A. Yes.

21 Q. And had you been able to assist trial counsel, how
22 would this helped to have kept Petitioner's Exhibit 7 from
23 being presented the way it was presented?

24 A. Remind me what ---

25 Q. Petitioner's Exhibit 7 is their cell phone summary, I

1 suppose.

2 A. Oh. So you're speaking in regard to the combined
3 report that I made or the CellHawk?

4 Q. Both.

5 A. Both, okay. So regarding the combined report,
6 utilizing that I was able to show that this is not a
7 complete report. This is selected. They selected specific
8 text messages and phone calls to appear in this exhibit, and
9 it's not a full and complete detail of the conversations
10 that were taken place during the span of time.

11 Q. And did you generate a report to reflect those?

12 A. I did.

13 Q. And I'm gonna show you Petitioner's 29?

14 A. Yes, this is it.

15 Q. Okay. So you provided a summary as well as multiple
16 Excel spreadsheets?

17 A. Yes.

18 Q. Okay. And were these provided to the Assistant
19 Attorney General?

20 A. Yes.

21 Q. Did you go over them with the Assistant Attorney
22 General?

23 A. Yes. We did have an opportunity to do that.

24 Q. And this is all based on information that was provided
25 to you in Rule 5?

1 A. Yes.

2 Q. Okay.

3 MS. ZMROCZEK: Your Honor, at this time, we would move
4 Petitioner's 29 into evidence.

5 MS. COLEMAN: And my only objection is that these
6 charts are based on the unauthenticated information from
7 earlier.

8 THE COURT: Right. Got it.

9 (Petitioner's Exhibit No. 29, Reports, was received
10 into evidence.)

11 MS. ZMROCZEK: And, Your Honor, they're on CD form.
12 But I e-mailed them to Ms. Coleman because it's easier to
13 look at -- to print it, it's hundreds and hundreds and
14 hundreds of pages. And I asked Ms. Coleman if she would be
15 amenable to e-mailing it to you. Obviously, you'll have
16 the disc. But if you wanted to look at it now, whichever
17 you prefer. Or if you just want to listen to it ---

18 THE COURT: I don't think our computers will let us
19 play a disc anymore.

20 MS. COLEMAN: I have a disc drive too. If you'd like
21 to use a disc drive, I have ---

22 THE COURT: See, you got to have a -- you know what?
23 I've got an external disc drive at home. So, yeah. In
24 answer to you, yeah.

25 MS. ZMROCZEK: Okay. So I will e-mail them to you as

1 well.

2 THE COURT: Actually, e-mail them to Stephen.

3 MS. ZMROCZEK: I will e-mail to Stephen.

4 BY MS. ZMROCZEK (Continuing):

5 Q. And so when the Judge looks at these reports, you said
6 that they picked out certain messages. So did they provide
7 a complete examination -- so what did they provide there
8 that was different than what you saw?

9 A. Well, they did -- from what it appears, the Cellebrite
10 extraction was a complete extraction of the text messages.
11 Of course I never had the source device. I never had the
12 phone itself, so I can't say that that's completely
13 everything that's on the phone. But the conversation that's
14 in the Cellebrite report is much longer, there's much more
15 data there within the time range that they have in this
16 exhibit. So what they presented to the jury was not a
17 complete and accurate detail of communication that was
18 taking place during this time.

19 Q. Did they leave out phone calls?

20 A. The left out phone calls and text messages.

21 Q. They actually removed text messages from what they
22 presented to the jury.

23 A. You can word it that way or can word it as they just
24 cherry picked the messages that they wanted to show the
25 jury.

1 Q. What's the problem or the prejudice when law
2 enforcement is able to kind of cherry pick bits and pieces
3 of a conversation?

4 MS. COLEMAN: Objection. That's outside the scope of
5 his expertise.

6 THE COURT: Sustained.

7 Q. Okay. Let me ask it this way: When you -- do you
8 provide summaries and testimony regarding cell phones and
9 text messages in cases?

10 A. I do, yes.

11 Q. And what is one thing that you try to present to a
12 jury?

13 A. Well, when we're talking about a cell phone
14 conversation, I would prefer to show an exhibit a complete
15 conversation otherwise if some of it is left out, it could
16 can have an entirely different meaning.

17 Q. I wan to show you Petitioner's 28 and ask if you
18 recognize this?

19 A. Yes, I do.

20 Q. And what is Petitioner's 28?

21 A. These are maps that I generated from the CellHawk
22 software after importing the call detail records from
23 T-Mobile and Verizon.

24 Q. So that was something that you created from the
25 discovery that was provided to you?

1 A. Yes.

2 MS. ZMROCZEK: At this time, we would move Petitioner's
3 28 into evidence.

4 MS. COLEMAN: And I have the same objection as earlier.

5 THE COURT: All right. Very well.

6 (Whereupon, Petitioner's Exhibit No. 28, Maps, was
7 received into evidence.)

8 Q. Had you been retained, and even these cell phone
9 records came in, how would you have used your maps in
10 Petitioner's 28 to either attack or corroborate different
11 testimony that was being given at trial?

12 A. Well, the call detail records are useful for having a
13 theoretical idea of where a subjects phone is located during
14 a certain time that a call is made. So after reviewing the
15 statements of they co-defendant, Mr. Williams, and that also
16 of Mr. Salley, we were relying upon these records, we can
17 see or we can try to verify where each individual was saying
18 they were at or what's going on at that time. For example,
19 on one of the dates they traveled to, or at least one of the
20 phones travels to the flea market in Augusta. There's a
21 later statement by I believe -- I don't recall if it was
22 Williams or Salley at this point -- but one of the two says
23 that they went back to the flea market but the records do
24 not support that, that that happened.

25 Q. And you said you relied on the -- you said you relied

1 on the information that was provided through search warrants
2 by law enforcement, correct?

3 A. Yes.

4 Q. And I'll show you Petitioner's 19.

5 A. Yes.

6 Q. Do those fairly and accurately represent the search
7 warrants that were provided to you in discovery with regards
8 to law enforcement's actions in this case?

9 A. Yes.

10 MS. ZMROCZEK: Your Honor, at this time, we would move
11 Petitioner's 19 into evidence.

12 MS. COLEMAN: No objection.

13 THE COURT: Okay.

14 (Whereupon, Petitioner's Exhibit No. 19, Affidavit,
15 was received into evidence.)

16 Q. And I believe I was looking for this earlier and it was
17 attached to that. I'm showing you Petitioner's Exhibit 20
18 and ask if you recognize those?

19 A. Yes.

20 Q. Is that also pictures of evidence that was received in
21 Rule 5 and submitted to the jury?

22 A. Yes.

23 MS. ZMROCZEK: Your Honor, at this time, we would move
24 Petitioner's 20 into evidence.

25 THE COURT: I think it probably is already part of the

1 record, but sure.

2 MS. ZMROCZEK: I think it probably is, too.

3 MS. COLEMAN: No objection.

4 THE COURT: All right.

5 MS. ZMROCZEK: Thank you, Your Honor.

6 (Whereupon, Petitioner's Exhibit No. 20, Receipts,
7 were received into evidence.)

8 BY MS. ZMROCZEK (Continuing):

9 Q. Going back to what you said when you were talking to
10 the videos and how you would have challenged them. The
11 videos, obviously, there were issues with the video
12 corresponding to the receipts. Is that correct?

13 A. Yes. The time is off.

14 Q. Okay. Is that something you would've helped show or
15 argue in a pretrial motion had you been provided the
16 opportunity?

17 A. That or at least try to verify what the discrepancy is.

18 Q. So you don't know if the discrepancy was with the
19 computer or with the digital recording?

20 A. We don't know that. We don't know which one.

21 MS. ZMROCZEK: Please answer any questions that the
22 government may have.

23 THE COURT: And it is a marvelous time to take lunch,
24 1 o'clock, five minutes after one.

25 (Lunch break taken at 1:15 p.m. The proceedings

1 resumed at 2:06 p.m.)

2 THE COURT: Cross-examination.

3 MS. COLEMAN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. COLEMAN:

6 Q. Before we took our lunch break you testified about the
7 video from the Roses and the Walmart in this case. And you
8 said it was your opinion that some of the video was missing.
9 Is that correct?

10 A. Yes.

11 Q. Or appeared to be incomplete?

12 A. Not an opinion, thought. We really did not have the
13 full complete video.

14 Q. Okay. Do you have any proof that there was a full and
15 complete video that you did not have?

16 A. No. That was never investigated by the trial attorney,
17 no.

18 Q. Okay. And did you subpoena the video from the original
19 source?

20 A. Did I?

21 Q. Or did anyone?

22 A. Not from anything that I saw in the discovery. And, of
23 course, it being 2017 there would no use in trying to do
24 that. That video is long gone.

25 Q. Okay. So you don't have the full and complete video

1 today, right?

2 A. That's correct.

3 Q. Okay. And you also don't know what the missing video
4 shows. Is that right?

5 A. That's the issue at hand, yes.

6 Q. Okay. Yes. The cell phone, now we've put in -- and we
7 didn't really go over it in detail, but we've put in your
8 chart with combined cell phone records with all the calls
9 and text messages. And we've also put in the maps that you
10 have created from CellHawk from his cell phone records that
11 depict his location at the time he made phone calls,
12 correct?

13 A. That's correct.

14 Q. Okay. Were there any phone calls made during the time
15 of the crime?

16 A. From either Williams' or Salley's devices?

17 Q. From Salley's.

18 A. During the time of the incident that it was taken
19 place, I don't believe there were any calls.

20 Q. Okay. And I'm happy to show you the maps that you've
21 put together if you'd like to look at them.

22 MS. COLEMAN: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 MS. COLEMAN: Thank you.

25 Q. These are -- this is a copy of the exhibit we put in.

1 I'm glad to use the actual exhibit, too, if we need it. But
2 this should be the same. And you have prepared this,
3 correct?

4 A. Yes.

5 Q. So you know what it says. What time is the first phone
6 call on the morning of the crime, February 19, 2013?

7 A. It would be more appropriate to refer to the CDR or
8 call detail record chart rather than this.

9 Q. Okay.

10 A. This is not gonna show a complete list of those calls
11 or any communications. So I don't think I can adequately
12 answer that question without it.

13 Q. Okay. We'll get to that later then. This map shows
14 his location at the time he made those calls. Is that
15 right?

16 A. Okay, so ---

17 Q. Or generally?

18 A. There isn't a key on some of these -- or it doesn't
19 look like there's a key on any of them. But the blue
20 records or the blue colored shapes that you will see, that's
21 gonna reflect Mr. Salley's device. The red is going to
22 reflect Mr. Williams' device.

23 Q. Okay. And can you explain what the shapes mean.

24 MS. COLEMAN: We didn't do this, did we? On direct
25 examination, we didn't ---

1 MS. ZMROCZEK: No.

2 MS. COLEMAN: Okay.

3 BY MS. COLEMAN (Continuing):

4 Q. Would you explain just what the shapes mean?

5 A. Certainly. So let me pull one out to refer to.

6 Q. Sure.

7 A. Okay. So here we have -- we have indicated here four
8 different cell sites.

9 THE COURT: The only thing that concerns me -- what
10 concerns me is that Mr. Salley can't see what's going on.
11 Yeah, I need somebody to operate -- we need to work on Elmo.
12 So I need a clerk.

13 (Brief pause in the proceeding.)

14 BY MS. COLEMAN (Continuing):

15 Q. So this is one of the maps that you've put together
16 based on the extracted cell phone data from a the calls that
17 Mr. Salley made. Is that right? And Mr. Williams.

18 A. And Mr. Williams, yes.

19 Q. Okay.

20 A. So the red would indicate the Verizon records which are
21 associated with Mr. Williams. The blue indicates the
22 T-Mobile which are associated with Mr. Salley's phone. So
23 we see -- each one of these symbols that we see -- I know
24 one is a circle. I'll get to that in a second. Each one of
25 these represents at the very point, so we're talking this

1 right here. I'm trying to draw a circle around this point.
2 That would be the center of the cell tower. So this
3 reflects the azimuth of that particular sector on that cell
4 site.

5 Q. And by azimuth, does that mean the range that ---

6 A. The directional.

7 Q. Okay.

8 A. So not a range. We cannot look at this map and
9 determine a range.

10 Q. Okay.

11 A. We can only determine the direction in which a cell
12 phone can be connected to that phone.

13 Q. Okay.

14 A. So, for example, this particular site that I've drawn a
15 circle around, poorly, the angle of that connection can
16 actually go out like this. And if you can just imagine,
17 anything that is in this particular area, including the
18 sides that I've drawn there, that would be the area in which
19 a cell phone can be connected to that cell site.

20 Is there a way to erase that?

21 CLERK: I can.

22 A. Okay.

23 Q. Okay. So is this the first map in that packet?

24 A. It's not the first map, no.

25 Q. Okay.

1 A. It's just the one I picked out that had these azimuths
2 indicated on it.

3 Q. Okay. And you said the blue was Mr. Salley, the
4 applicant, in this case?

5 A. Yes.

6 Q. These are phone calls that he made at 8:44 a.m. and
7 8:56 a.m. Is that right?

8 A. Yes, on the 19th.

9 Q. Okay. And that blue figure is the cell phone tower
10 that his phone was using when he made that phone call,
11 right?

12 A. That's correct.

13 Q. Okay. What does the little green dot with his name
14 next to it indicate?

15 A. That is an indicator showing the location of his
16 residence.

17 Q. Okay. So that's where he lived?

18 A. Yes.

19 Q. So is it your opinion that his phone was located at his
20 residence during the time he made those phone calls?

21 A. By reviewing the records, a reasonable interpretation
22 could be that, yes.

23 Q. Okay. But he could be somewhere else, right?

24 A. It is possible.

25 Q. Okay.

1 A. I can't say that from these records is what I'm saying.

2 Q. Okay. So all that these records say is that the phone
3 was connecting to that tower from that direction. Is that
4 correct?

5 A. Yes. And then the circle, which I didn't mention, that
6 is what we call an omni site. So that is a site that does
7 not have an azimuth so there's no way for us to determine a
8 directional -- it just indicates that he is connected. It's
9 actually the same tower just showing it's not connected to
10 one of the sectors on the main tower.

11 Q. Okay. So at 8:44 a.m. he could have been on any
12 direction from that tower?

13 A. Yes. It's possible, yes.

14 Q. Okay. And, also, this just says -- obviously, this
15 just says that the cell phone was being used and connected
16 to that tower. It doesn't mean that he was using that cell
17 phone. Is that right?

18 A. Right. There would be no way to determine that based
19 on these records.

20 Q. Right. Okay. And then the next -- can I see the
21 packet again.

22 A. Yes.

23 Q. Thank you. I won't go through all of them, but just a
24 few.

25 Okay. So those phone calls were made at 8:44 a.m. and

1 8:56 a.m. The next map you have here is 9:23 a.m. and
2 9:30 a.m in the blue, and those are Mr. Salley's calls.
3 And, again, those show that his phone is being used at the
4 tower near his residence. Is that correct?

5 A. Yes, and Mr. Williams as well.

6 Q. Okay. And Mr. Williams as well. Now, during the time
7 of the crime, which I believe happened somewhere --
8 according to the transcript -- I think 911 was called 10:34,
9 so somewhere around 10:30 a.m. We've got this map here, and
10 these are all calls by Mr. Williams. Is that right?

11 A. Yes.

12 Q. Okay. So Salley did not -- the applicant did not make
13 any phone calls during this time according to this map. Is
14 that right?

15 A. Correct.

16 Q. Okay. Now, I don't think I have -- I don't have a
17 printout of the chart that you've compiled of all of it.
18 Wait, I do. Okay. I'll put this up now. This is a segment
19 of the chart that you made, the Excel spreadsheet you made
20 from his extracted phone calls. This is a tab at the
21 bottom, "Salley Extracted Calls."

22 A. Okay.

23 Q. And I just highlighted there -- it's got my notes on
24 it. I've just highlighted what appears to have occurred the
25 morning of the crime which was February 19th. Is it your

1 belief that from these records these are the only phone
2 calls that he made that morning according to this data?

3 THE COURT: And who is the he?

4 MS. COLEMAN: Sorry. The applicant, Mr. Salley.

5 THE COURT: Okay.

6 A. Yes, these are the only calls. It looks like there's
7 incoming and outgoing during time period.

8 Q. Okay. And did these match up with the maps that you've
9 created to as far as the times go, the times of the call?

10 A. Yes, they do.

11 Q. Okay. So he didn't make any phone calls anywhere from
12 9:30 a.m. until, what, 11:53 a.m?

13 A. Yes. However, I believe there were some text messages
14 I want to say about 11:15.

15 Q. Okay. I don't think I have a chart of the text
16 messages in front of me. And that's all on the disc, on the
17 electronic version. But as far as the text messages go, did
18 he send any text messages from, say, 10 to 11:00 a.m. that
19 morning?

20 A. I don't believe so.

21 Q. And when I looked at it, it didn't look like he sent
22 any text messages until 11:15, as you said, that morning.
23 Is that right?

24 A. I think that's correct.

25 Q. Okay. And I believe you testified earlier that from

1 this data you can't gather his location of the cell towers
2 based on text messages, only the calls, right?

3 A. That is correct, yes, only calls.

4 Q. Okay.

5 MS. COLEMAN: No further questions. Thank you.

6 THE COURT: Redirect?

7 MS. ZMROCZEK: Very, very briefly.

8 REDIRECT EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Mr. Watkins, I believe that you cleared up that the
11 text messages won't show up on the map, correct?

12 A. That's correct.

13 Q. And that she asked you about him making calls. We
14 don't know who was connected to that phone, correct?

15 A. That's correct.

16 Q. And, also, she asked you about that morning between 10
17 and 11 which is when the alleged incident took place. There
18 were no phone activity, correct?

19 A. Between 10 and 11?

20 Q. Right. On Mr. Salley's phone.

21 A. I don't think there was any communication activity.

22 Q. And you're familiar that his defense was that his
23 father actually even said he was asleep on the couch?

24 A. I do recall that.

25 Q. Okay. And that could be supported by the evidence that

1 you presented, correct?

2 A. Yes.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: Recross?

5 MS. COLEMAN: Briefly, Your Honor.

6 RE CROSS-EXAMINATION

7 BY MS. COLEMAN:

8 Q. The data shows that he made phone calls at 9:23 a.m.
9 and 9:30 a.m., correct? Or he received phone calls and
10 spoke for nine seconds and seven seconds. Is that right?

11 A. I don't have that right in front of me, but I believe
12 that's correct.

13 Q. Okay. Thank you.

14 MS. COLEMAN: Nothing further.

15 THE COURT: Okay. You can come on down.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Call your next witness.

18 MS. ZMROCZEK: Thank you. Lastly, we call Robert
19 Watkins.

20 THE COURT: Okay. Is this the last witness?

21 MS. ZMROCZEK: Last witness.

22 THE COURT: Last witness, okay.

23 (Whereupon, the witness, ROBERT WATKINS, was duly
24 sworn.)

25 THE COURT: All right. Your witness.

1 DIRECT EXAMINATION

2 BY MS. ZMROCZEK:

3 Q. Mr. Watkins, where are you employed?

4 A. Watkins Digital Forensics and Investigations.

5 Q. Now, do you focus on the digital forensics or more on
6 the investigations?

7 A. More on the investigations.

8 Q. And were you -- was your company hired to do an
9 investigation as well as investigation into digital
10 forensics?

11 A. It was.

12 Q. What did that include?

13 A. Interviewing witnesses, subpoenas, gathering evidence.

14 Q. Okay. Let's talk about interviewing witnesses. Did
15 you interview one witness in particular? Did you interview
16 the co-defendant in this case?

17 A. Yes, I did.

18 Q. The testifying co-defendant?

19 A. Yes, Carlos Williams.

20 Q. And he was no longer represented?

21 A. That's correct.

22 Q. Okay. And did you obtain a statement from him?

23 A. I did.

24 Q. And did you provide that statement to the Attorney
25 General's office?

1 A. That statement has been provided.

2 Q. And I'm showing what's been marked as Petitioner's 30.
3 Do you recognize that?

4 A. I do.

5 Q. Is that the statement that you collected from
6 Mr. Williams?

7 A. This is the statement I collected.

8 MS. ZMROCZEK: Your Honor, at this time, we would move
9 to enter Petitioner's Exhibit 30.

10 MS. COLEMAN: No objection.

11 THE COURT: All right.

12 (Whereupon, Petitioner's Exhibit No. 30, Statement,
13 was received into evidence.)

14 BY MS. ZMROCZEK (Continuing):

15 Q. And that dealt with the deals that were offered to him,
16 correct?

17 A. That's correct.

18 THE COURT: Thank you.

19 MS. ZMROCZEK: Thank you.

20 Q. He was the witness that testified against
21 Mr. Williams -- I mean Mr. Salley originally, correct?

22 A. That's correct.

23 Q. Did you also review evidence that was provided in
24 discovery?

25 A. I did.

1 MS. ZMROCZEK: And, Your Honor, as a matter of
2 clarification, one of these was already, Petitioner's 24,
3 admitted we believe. It's marked only for ID.

4 THE COURT: Okay.

5 MS. ZMROCZEK: And since it's a different court
6 reporter, we wanted to make sure that we moved it into
7 evidence.

8 THE COURT: Okay. Great. It wasn't, but now is,
9 right?

10 MS. COLEMAN: Sorry?

11 THE COURT: 21 in?

12 MS. ZMROCZEK: Or 24.

13 THE COURT: Twenty-four in?

14 MS. COLEMAN: No objection.

15 (Whereupon, Petitioner's Exhibit No. 24, Property
16 Report, was received into evidence.)

17 BY MS. ZMROCZEK (Continuing):

18 Q. And I'm gonna show you in addition to 24, 17,
19 Petitioner's 17. Are those other -- what is Petitioner's
20 17?

21 A. Well ---

22 Q. You don't have your glasses?

23 A. I'm absolutely embarrassed.

24 Q. That's okay. Did you receive property reports that
25 were provided in evidence?

1 A. Yes.

2 Q. And did you put them all together so you could have a
3 list of all the property reports?

4 A. Yes.

5 Q. And is that likely what is reflected in 17?

6 A. Yes.

7 MS. ZMROCZEK: Your Honor, at this time, we would move
8 Petitioner's 17 in.

9 MS. COLEMAN: No objection.

10 THE COURT: Very well.

11 (Whereupon, Petitioner's Exhibit No. 17, Property
12 Report, was received into evidence.)

13 BY MS. ZMROCZEK (Continuing):

14 Q. In addition to property reports there were also some
15 incidences between Mr. Williams, the testifying
16 co-defendant, and Mr. Salley at the jail, correct?

17 A. Yes.

18 Q. And was that provided in discovery as well?

19 A. Yes, it was.

20 Q. And was that documented by the Aiken County Detention
21 Center?

22 A. Yes.

23 Q. And I'm showing you Petitioner's 11 and 12.

24 A. Yes.

25 Q. Are those the two incident reports?

1 A. Yes, they are.

2 MS. ZMROCZEK: Your Honor, at this time, we would move
3 Petitioner's 11 and 12 in.

4 MS. COLEMAN: No objection.

5 THE COURT: All right.

6 (Whereupon, Petitioner's Exhibit No. 11 and 12,
7 Incident Reports, was received into evidence.)

8 BY MS. ZMROCZEK (Continuing):

9 Q. And these were available in the discover that you
10 received, correct?

11 A. That's correct.

12 Q. We already moved 24 in. Did you go to the location?

13 A. Location?

14 Q. Where the robbery took place.

15 A. Yes, the Quick Cash, I did.

16 Q. And what was your reasons for going there?

17 A. Well, one was to deliver a subpoena. And the second
18 was to observe if there were any cameras mounted on the
19 walls. And I found that there were four camera's internal,
20 two in the ceiling, one directly pointed at the front door,
21 and then one on a left wall.

22 Q. And I'm gonna show you Petitioner's 31. What is
23 Petitioner's 31?

24 A. This is my very crude drawing of those cameras. There
25 was an additional camera mounted outside.

1 Q. And those were previously admitted -- there were actual
2 photographs admitted in the prior hearing, correct?

3 A. That's correct.

4 MS. ZMROCZEK: And that was Exhibit 8, Your Honor.

5 THE COURT: Our hearing. Okay. Not the trial but our
6 hearing, yes?

7 MS. COLEMAN: And, Your Honor, at this time, we would
8 move Petitioner's 31 in?

9 THE COURT: Any objection.

10 MS. COLEMAN: No objection.

11 THE COURT: Okay. No objection.

12 (Whereupon, Petitioner's Exhibit No. 31, Drawing, was
13 received into evidence.)

14 BY MS. ZMROCZEK (Continuing):

15 Q. When you said you served subpoenas, what specifically
16 were you looking for looking? What kind of information were
17 you looking for from the Quick Carry or Cash?

18 A. From the Quick Cash?

19 Q. Yes.

20 A. I think we were also looking for to see if they had
21 saved any of the video and to see if Mr. Salley had done
22 business with them.

23 Q. And I believe that we already submitted that paperwork
24 that he had done business. What did you learn about if
25 those cameras were operational during this time period?

1 A. I learned that they were operational, that they had
2 actually -- the clerk told me, she said as far as she knows,
3 those cameras had been operational since the store has been
4 open.

5 Q. And for how long do they keep those?

6 A. She said 30 days.

7 Q. Okay. Lastly, you said that you served additional
8 subpoenas. And I'm gonna show you Petitioner's Exhibit 26.
9 Do you recognize that?

10 A. Yep, uh-huh.

11 Q. What is that?

12 A. That's a SLED -- this is about the footprints. They
13 were doing casts of footprints.

14 Q. And I'll show you Petitioner's 25. Are those pictures
15 of the cast?

16 A. Oh, absolutely, yes.

17 Q. Okay. And so what did you subpoena from SLED?

18 A. To find out what they had found. And what they found
19 was there were no matches ---

20 Q. To Mr. Salley ---

21 A. --- to Mr. Salley's shoes.

22 MS. COLEMAN: And, Your Honor, I do have an objection
23 to this exhibit and to his testimony about his exhibit. And
24 this is almost on a procedural ground. As you are aware,
25 there's no discovery in PCR without an order showing good

1 cause. There was no discovery order in the file. So the
2 subpoena should not have been issued and none of this is
3 proper for this action.

4 MS. ZMROCZEK: Any my response, Your Honor, was I know
5 that has been the, maybe, the newer policy. Prior to that
6 when Mr. Gourley -- and this is no reflection on Ms.
7 Campbell at all -- but when Mr. Gourley was doing PCRs,
8 typically we had kind of an open/share discovery policy.
9 Obviously, they've been copied on all discoveries and
10 discovery subpoenas, and they've received copies of all the
11 information as well. So that's kind of where we are right
12 now.

13 The reason it came up is -- and I think you'll recall
14 if you read the transcript -- one of the officers that
15 was -- actually, the lead investigator that was called, and
16 this is around page 202 in the transcript, he indicates that
17 even though they were in trial and had already tried another
18 co-defendant that there was still evidence remaining at
19 SLED. And so that's why we issued that subpoena and
20 provided them a copy as well.

21 THE COURT: Okay. Well, I think Ms. Coleman is
22 correct. I mean, there isn't any discovery in PCR absent an
23 order. She objects, it can't be received.

24 MS. ZMROCZEK: Okay. And may we just mark it as ---

25 THE COURT: Sure. For identification purposes.

1 MS. ZMROCZEK: Yes, for identification purposes. Thank
2 you.

3 MS. COLEMAN: Thank you, Your Honor.

4 THE COURT: All right.

5 (Whereupon, Petitioner's Exhibit No. 25, Photos, was
6 marked for identification.)

7 (Whereupon, Petitioner's Exhibit No. 26, SLED CD, was
8 marked for identification.)

9 MS. ZMROCZEK: And I believe that is all we have for
10 this witness, Your Honor.

11 THE COURT: Okay. let me be clear, though, the fact
12 that the testimonial part where there had been a trial and
13 there were still information at SLED, that's in. Do you
14 understand?

15 MS. ZMROCZEK: Yes.

16 THE COURT: That's different. Okay. All right.
17 Cross-examination?

18 MS. COLEMAN: Thank you. I have no questions for this
19 witness.

20 THE COURT: All right. Any additional witnesses?

21 MS. ZMROCZEK: Your Honor, that's all we have.

22 THE COURT: Anything from the State?

23 MS. COLEMAN: Nothing from the State, although I would
24 like to offer a brief closing argument if you would like to
25 hear it.