

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

Feb 18 2026

SC Court of Appeals

THE STATE,

Petitioner,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-001439

THE STATE,

Appellant,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

**RECORD ON APPEAL
VOLUME I OF II**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD	)	INDICTMENT NOS. 2015-GS-24-1603, -1604,
	)	-1605, -1606, -1632
	)	(APPELLATE CASE NO. 2015-002464)
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Terrence O'Neil Frazier,	)	
	)	
Defendant.	)	
_____	)	

Procedural History

Terrence Frazier (Frazier) was tried for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. *State v. Frazier*, Op. No. 2019-UP-371 at 2 (S.C. Ct. App. filed November 27, 2019). Frazier was tried before the Honorable Eugene C. Griffith, Jr., and a jury, from November 16 – 19, 2015. Frazier represented himself pro se but was assisted during part of the trial by standby counsel Patricia Bolen and Elizabeth Able. Standby counsel was appointed after jury selection and pretrial motions. ROA (Record on Appeal) 74, l. 16 – 75, l. 13. Brian Moroney (Moroney) and Micah Black prosecuted the case. ROA 10; ROA 76; ROA 77, ll. 9-14.

Frazier was found guilty of leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. The jury found Frazier not guilty of carjacking, but convicted him of the lesser offense of using a vehicle without permission. ROA 563, l. 17 – 564, l. 24. The Court sentenced Frazier to concurrent terms of twelve months for leaving the scene of an accident, thirty-six months for using a vehicle without permission, sixty months for the breaking into a motor vehicle, sixty

months for grand larceny, and twenty years for trafficking methamphetamine, second offense. ROA 572, l. 25 – 573, l. 6.

Frazier directly appealed his convictions, and on November 27, 2019, the South Carolina Court of Appeals issued an opinion in which it found that the record did not demonstrate Frazier's decision to represent himself was made with an understanding of the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 (S.C. Ct. App. filed November 27, 2019). The Court of Appeals concluded that the record failed to show whether Frazier was either adequately warned of the dangers of proceeding pro se or had sufficient background to understand the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 at 6. The Court of Appeals remanded the case for an evidentiary hearing on the issue. *Id.*, at 7.

On March 3, 2023, this Court held a hearing to determine whether the defendant's waiver of his right to counsel was knowingly and intelligently made. The Court had before it the appellate court opinion remanding this case for an evidentiary hearing. The Court also had before it the transcript of the November 16 -19, 2015 trial contained in the Record on Appeal (ROA). The Court heard testimony from Brian Moroney, who prosecuted the case. The Court also heard testimony from the defendant, Terrence Frazier. During the hearing, admitted as exhibits were Frazier's arrest warrant for trafficking methamphetamine, and his indictment for the same offense. A transcript of this remand hearing was subsequently obtained (Remand Trans.).

Summary of Testimony

Assistant Solicitor's Testimony

Moroney testified that in the course of prosecuting Frazier, he met with Frazier "several times" at the local jail to hand-deliver discovery, since Frazier had filed a speedy trial motion and indicated he wished to represent himself. Remand Trans. 6, ll. 9-15. Moroney stated he explained

the plea offer of a cap of ten years which he was extending and went through a “cost/benefit analysis” of what Frazier was facing at trial versus what he would be facing if he accepted the plea offer. Remand Trans. 6, ll. 15-23. According to Moroney, he discussed the penalties that Frazier was facing, and the possibility that he could get consecutive, “double digit” sentences. Remand Trans. 15, ll. 3-17. Moroney said that his meetings with Frazier were approximately 30 minutes long. Remand Trans. 17, ll. 6-8.

Moroney stated he went through the penalty for each charge with Frazier. Moroney testified he could not recall whether he discussed the fact that Frazier was facing sentencing enhancements, but he said he would have gone over that. Remand Trans. 18, ll. 4-21. Moroney stated he discussed the fact that there were defenses to the charges. Remand Trans. 21, ll. 8-11. According to Moroney, he was “deferential” to Frazier by telling him he was a “smart guy,” and that the jury would be able to tell Frazier was a “nice guy.” Remand Trans. 19, ll. 21-25.

Moroney testified that Frazier referenced prior success at a magistrate-level trial. Moroney did not recall in which county the magistrate offense trial was held. Moroney stated he tried to explain to Frazier that this case was in a different posture from that case, that the rules of evidence were complicated, and that Frazier needed legal representation. Remand Trans. 7, ll. 4-24. Moroney stated Frazier was adamant these were “flimflam” charges and he would be able to get himself acquitted. Remand Trans. 23, ll. 4-8. Moroney said Frazier brought up issues that he saw in this case, such as “scrivener’s errors” with his arrest warrants. Remand Trans. 21, ll. 8-11.

Moroney explained that Frazier wanted a private attorney, and Moroney told him that a public defender could be appointed to him. Frazier did not want a public defender, and he declined the offer of a public defender. Moroney said he told Frazier that representing himself was a dangerous prospect because of the time he faced, and that an attorney would help him navigate the

case. Remand Trans. 8, l. 7 – 9, l. 10; Remand Trans. 20, ll. 17-19. Moroney stated that an attorney could advise Frazier about his concerns regarding “scrivener’s errors” and laboratory weights. Moroney testified that he did not recall if he mentioned the Fourth Amendment. Remand Trans. 20, l. 22 – 21, l. 17.

Moroney stated he had numerous discussions with Frazier in which Moroney cautioned Frazier about the perils of proceeding pro se. Moroney said he brought Frazier in front of Judge Edward Miller so that Judge Miller could provide Frazier with *Faretta*¹ warnings. Remand Trans. 8, l. 21 – 9, l. 25. According to Moroney, Judge Miller had a conversation with Frazier in the “small courtroom” and explained that these were serious charges, that attorneys had gone to law school and had legal training for several years, that Frazier did not have the benefit of that, and that Frazier could benefit from having someone to aid him in his defenses and assist with the case. Moroney stated Judge Miller told Frazier he would appoint counsel free of charge, but Frazier was adamant that he wanted to represent himself. Moroney believed Frazier’s appearance before Judge Miller took place a term or two before his trial.² Remand Trans. 10, l. 1 – 11, l. 20; Remand Trans. 13, ll. 17-24.

Moroney was recalled after Frazier testified at the evidentiary hearing after Frazier’s testimony “jog[ged] his memory.” Remand Trans. 49, ll. 17-22. Moroney stated he did recall telling Frazier about enhanced sentencing provisions and Frazier was advised numerous times about the perils of proceeding unrepresented. Remand Trans. 50, l. 7 – 53, l. 1. Moroney said he did mention concepts such as the Fourth Amendment and suppression, topics about which a lawyer could advise Frazier. Remand Trans. 53, l. 23 – 54, l. 1.

¹ *Faretta v. California*, 422 U.S. 806 (1975).

² A transcript of this hearing could never be located.

Defendant's testimony

Frazier testified that at the time of his trial, he was 25 years old. Frazier stated that as a child he had ADHD (Attention-Deficit/Hyperactivity Disorder) and he had been to the Beckman Mental Health Center. Frazier said it took him a long time to grow out of the ADHD and he still had trouble concentrating. Remand Trans. 26, ll. 4-19. Frazier explained that he took medication for anxiety but he did not take that medication at the time of his trial. Remand Trans. 26, l. 20 – 27, l. 4. Frazier stated that the last grade he completed in school was the eighth grade. Frazier said he did not finish the ninth grade. Remand Trans. 27, ll. 5-22. According to Frazier, he was a drug user when he was arrested on these charges. Remand Trans. 36, ll. 1-3.

Frazier stated that he had been to court previously for three or four cases, but most of his prior charges had been “basically thrown out or reduced to a lesser charge.” Frazier explained that he had never been in a general sessions trial before this case. Frazier recalled that he had been to court in magistrate’s court previously and he pled not guilty and the charge was “thrown out.” Remand Trans. 27, l. 25 – 28, l. 14. Frazier explained the charge was a “30-day charge” against “a female” and he represented himself. Frazier stated it was a “hometown” “situation,” and that he did not question witnesses. Frazier said the court heard the woman’s side of the story and his own side of the story. Frazier did not recall if a jury was present. Frazier stated he had never watched a trial the whole way through, either in person or on television. Remand Trans. 28, l. 12 – 30, l. 1.

Frazier explained he thought the charges in this case were non-violent, and that he was facing zero to ten years for the trafficking methamphetamine offense. Frazier stated he did not know he would be tried for all the offenses at once. Frazier said he thought the trafficking was non-violent because it was his “first time catching a trafficking charge” and he did not understand the nature of enhancement. Frazier testified he did not know the State was going to use a 2009

possession of cocaine convention to enhance his trafficking charge. Frazier stated he did not know he was facing trafficking, second offense, at trial. Frazier noted that neither his warrant nor his indictment said second offense. Frazier said he had no notification he faced an enhanced trafficking charge until sentencing. Remand Trans. 30, l. 2 – 33, l. 10; Remand Trans. 40, ll. 3-6.

Frazier recalled meeting with Moroney when Moroney brought him the plea offer. According to Frazier, he did not recall Moroney mentioning anything about not representing himself or representing himself. Frazier clarified that Moroney may have told him it was dangerous to represent himself and he could have a lawyer appointed in the last stages, but not when the plea offer was conveyed. Frazier stated he did not recall a conversation with Moroney about having a charge thrown out in magistrate's court. Remand Trans. 31, l. 15 – 32, l. 5; Remand Trans. 35, ll. 14-25; Remand Trans. 41, ll. 1-21; Remand Trans. 43, ll. 1-6.

Frazier testified he went to trial about a month after his mother died. Frazier stated his "mind wasn't in the right state" due to her death. Frazier said he did not want the public defender because he was trying to get his family to hire a lawyer. Frazier testified he was not trying to manipulate the courts. Remand Trans. 34, l. 20 – 35, l. 8. Remand Trans 37, ll. 6-9; Remand Trans. 38, ll. 9-12.

Frazier stated he went in front of Judge Miller and Judge Miller stated "something of the sort like . . . you don't have to represent yourself but if you decide to represent yourself, I can't force a lawyer on you or something." Remand Trans. 37, ll. 10-15. Frazier said Judge Miller did not go into details about what a lawyer could do for him. Frazier stated he told Judge Miller, "I do not waive my rights."³ Remand Trans. 43, l. 14 – 44, l. 10. Frazier testified he thought the charges

³ It appears Frazier was referring to a statement he made at his preliminary hearing in front of a municipal judge. See *State v. Frazier*, Op. No. 2019-UP-371 at 2.

were “flimflam” because he had two sets of warrants and he did not receive the warrants in a timely manner. Remand Trans. 37, l. 16 – 38, l. 8. Frazier stated he did not understand that he would have to comply with the criminal procedure rules at trial. Remand Trans. 38, ll. 18-20. Frazier said that no one had forced him to go to trial pro se or mistreated him in the case. Remand Trans. 38, l. 22 – 39, l. 2.

Applicable Law

To establish a valid waiver of the right to counsel, the accused must be advised of his right to counsel and adequately warned of the “dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open.” *Faretta v. California*, 422 U.S. 806, 835 (1975); *Bridwell v. State*, 306 S.C. 518, 519, 413 S.E.2d 30, 31 (1992). “[T]o establish waiver of the right to counsel, it is incumbent upon the state to prove an intentional relinquishment or abandonment of the right.” *State v. Cash*, 309 S.C. 40, 47, 419 S.E.2d 811, 815 (Ct. App. 1992) (citing *Brewer v. Williams*, 430 U.S. 387 (1977)).

“While a specific inquiry by the judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). In the absence of an inquiry by the judge, courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation or if he was apprised of his rights by some other source. “If the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” *Wroten*, 301 S.C. at 294-95, 391 S.E.2d at 576.

Factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation include: (1) the accused’s age, educational

background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to consider the testimony of the witnesses and arguments presented during the remand hearing, and to consider the exhibits entered at the hearing, the Opinion of the Court of Appeals, and the trial transcript. This Court has had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law.

This Court finds Frazier's testimony that he was unaware he faced enhancement for trafficking methamphetamine, second offense, to be credible. His testimony was supported by his arrest warrant and indictment, neither of which indicated that he faced enhancement. His testimony that he did not realize a possession charge could enhance a trafficking charge was credible. This Court also finds credible Moroney's testimony that he did meet with Frazier and did at some point

mention enhancements. However, Moroney's own difficulty recalling this fact indicates any discussion of enhancements was not lengthy or detailed.

This Court finds Moroney's testimony about the importance of Frazier's appearance before Judge Edward Miller for *Faretta* warnings, is overstated in the context of the entire record. For example, on the first day of trial, Moroney stated to this Court that Frazier's appearance before Judge Miller for *Faretta* warnings was brief and was not in depth, and he requested this Court do additional *Faretta* warnings. ROA 72, ll. 8-16.

In applying the *Cash* factors⁴ to determine whether Frazier had sufficient background to understand the disadvantages of self-representation, this Court finds the following:

(1) "[T]he accused's age, educational background, and physical and mental health." This factor cuts both ways. Frazier was 25 years old, with an eighth-grade education, and he had ADHD and anxiety. His anxiety was untreated at the time of his decision to represent himself. His mother died while he was in pretrial detention. However, the court observed that Frazier is intelligent.

(2) "[W]hether the accused was previously involved in criminal trials." This factor weighs in favor of the defendant, since Frazier had no prior involvement in general sessions trials, although he had once represented himself in magistrate court.

(3) "[W]hether he knew of the nature of the charge and of the possible penalties." This factor also weighs in favor of the defendant. It was undisputed Frazier was aware of most of the offenses and punishments he faced. However, Frazier was not aware that he faced trafficking methamphetamine, second offense, and its enhanced penalty.

⁴ *State v. Cash*, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992).

(4) “[W]hether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case.” This factor weighs in favor of the defendant, since Frazier was never represented by counsel during the pendency of the case.

(5) “[W]hether he was attempting to delay or manipulate the proceedings.” This factor weighs in favor of the defendant. Frazier was not attempting to delay or manipulate the proceedings.

(6) Whether the court appointed stand-by counsel. This factor weighs neutrally. Standby counsel was not appointed until after the jury selection and pretrial motions were completed.

(7) “[W]hether the accused knew he would be required to comply with the rules of procedure at trial.” This factor weighs in favor of the defendant. The Court of Appeals found the colloquy at trial was inadequate to warn Frazier of the dangers of proceeding without counsel. *State v. Frazier*, Op. No. 2019-UP-371 at 6. Moroney did not testify that there was any caution by Judge Miller about needing to comply with criminal procedure rules. Frazier also testified at the remand hearing he did not know he would be required to comply with the criminal procedure rules.

(8) “[W]hether he knew of legal challenges he could raise in defense to the charges against him. This factor does not weigh in favor of either party.” It appears Frazier was both aware and unaware of various defenses he could raise. For example, Frazier did mount a successful defense to the offense of carjacking, but he did not attempt to suppress the drugs on Fourth Amendment grounds.

(9) “[W]hether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions.” This factor cuts both ways. This Court’s exchange with the defendant at trial on his desire to proceed pro se was not merely pro forma answers and

questions. However, the colloquy may have made Frazier feel more confident that he could represent himself because the Court told Frazier he was doing a “nice job” of being organized and doing “fairly well” with pretrial motions. ROA 73, ll. 8-11. Moroney’s comments to Frazier that he was “smart” and a “nice guy,” which would “come across to the jury” were not helpful in this regard.

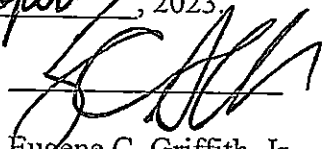
(10) “[W]hether the accused’s waiver resulted from either coercion or mistreatment.” This factor weighs in favor of the State. The waiver was not caused by coercion or mistreatment.

Based upon the weighing all of the above factors that the weight of the sufficiency of the factors for the court to consider as whether the Defendant understood his understanding of his rights, This Court finds the lack of a knowing and intelligent waiver weighs in favor of the defendant.

Conclusion

Based on the foregoing, this Court finds and concludes that the defendant’s decision to represent himself was not made with a sufficient understanding of the risks of self-representation. After considering the Court of Appeals’ Opinion and the testimony at the remand hearing, this Court concludes the defendant was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation. Therefore, the Court finds that the defendant’s waiver of his right to counsel not knowingly and intelligently made.

AND IT IS SO ORDERED this 25 day of August, 2023.


Eugene C. Griffith, Jr.
Presiding Judge
Eighth Judicial Circuit

Newberry, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD) IN GENERAL SESSIONS COURT
) 2015GS2401603, 1606, 1632

State of South Carolina,)
)
) TRANSCRIPT OF RECORD
)
vs.) March 3, 2023
)
Terrence O'Neil Frazier,) Greenwood, South Carolina
)
 DEFENDANT.)
)
)
)

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., Judge

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

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Attorney for State

JOANNA DELANEY, Esquire
Attorney for Appellant

Recorded by: DCRP

Transcribed by: MISSY BROWN
 Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Brian Moroney				
BY MR. STUMBO:	5			
BY MS. DELANEY:		17		
Terrence Frazier				
BY MS. DELANEY:	26			
BY MR. STUMBO:		39		
Brian Moroney (recall)				
BY MR. STUMBO:	50			
BY MS. DELANEY:		52		
CERTIFICATE OF REPORTER	56			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
A-1	Warrant - 1st offense trafficking	32	34
A-2	Document related to charge	32	34
A-3	Indictment	32	34

P R O C E E D I N G S

March 3, 2023

(WHEREUPON, court was in session with all parties present when the following matters were had:)

THE COURT: I've read the appellate court opinion. The Court of Appeals under their appellate case number 15-002464, in an unpublished opinion, number 19-UP-371, has remanded the case back for an evidentiary hearing to determine whether or not the issue was -- regarding the Faretta Warnings and an understanding of the waiver of the rights, but an understanding by the defendant as to the waiver of those rights. Is that y'all's understanding of the hearing we're to conduct today?

MR. STUMBO: Yes, sir, Your Honor, and ---

THE COURT: And, Ms. Delaney, same question to you?

MS. DELANEY: Yes, sir. I believe the hearing is to determine whether his waiver of counsel was knowing, voluntary, and intelligent.

THE COURT: Okay. Then that being the case, I'm going to let the State go first and, Ms. Delaney, let you go second. And we'll present and decide how we're going to weigh that evidence when we get done. All right?

MR. STUMBO: Thank you, Judge. The State -- our only witness here today will be Brian Moroney. So the

1 State calls Brian Moroney to the stand.

2 HE COURT: Does it suit y'all to testify at the
3 table or you want to come bring him up? I don't care.

4 Ms. Delaney, do you care?

5 MS. DELANEY: I don't care.

6 THE COURT: That way everybody can kind of just
7 stay put.

8 So, Madam Clerk, can you place him under oath
9 from where he's seated at counsel table?

10 MADAM CLERK: Uh-huh.

11 **BRIAN J. MORONEY,**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 DIRECT EXAMINATION BY MR. STUMBO:

14 Q. Good morning, Mr. Moroney.

15 A. Good morning.

16 Q. You're currently working in the 13th Circuit
17 Solicitor's Office?

18 A. That's correct. I'm an assistant solicitor there.

19 Q. Okay. And prior to the time you went to Greenville to
20 the 13th Circuit, you worked here in the 8th Circuit in our
21 office?

22 A. I did, as an assistant solicitor here.

23 Q. Okay. And as part of your work in the 8th Circuit,
24 did you prosecute the man sitting over here to my left,
25 Terrence Frazier?

1 A. I did.

2 Q. And what was he charged with at the time?

3 A. I may not have the exact offenses, but it was
4 trafficking methamphetamine, a few counts of grand larceny,
5 in addition to a car jacking I believe.

6 Q. Okay. And you were assigned that case by me in the
7 course of your duties here in the 8th Circuit; correct?

8 A. Yes.

9 Q. Do you recall meeting with Mr. Frazier on one occasion
10 or more than one occasion prior to the trial of this case?

11 A. I do. As I recall, Mr. Frazier had filed a speedy
12 trial motion and indicated he wanted to represent himself,
13 and requested discovery. So Mr. Frazier was in the jail,
14 incarcerated at the local jail, and I met with him several
15 times to hand-deliver discovery. I would give him letters
16 each time I would do that. And given the significant
17 penalties that he was facing, not only with the car
18 jacking, but trafficking methamphetamine, began talking
19 about the penalties associated with that. The plea offer I
20 was extending, which, if I recall correctly, was a cap of
21 ten years and reducing charges to get into that range. And
22 I was explaining to him the cost/benefit analysis of what
23 he was facing versus what he'd be facing at trial.

24 And specifically, we would then have discussions
25 about his intent to represent himself and proceed pro se.

1 It was the first time I was in this predicament of -- and
2 I've had to do it numerous times since with pro se
3 defendants -- where I had to kind of take off my prosecutor
4 hat and I broke down several times with Mr. Frazier, Mr.
5 Frazier, this is not magistrate court because he had
6 referenced to me previously that he had had success at a
7 magistrate-level trial. And then he would bring up some
8 issues that he saw in the general sessions case.

9 Q. Let me stop you there. He said he'd had success in a
10 magistrate trial. Was that in Anderson, I think?

11 A. I don't recall. I don't recall if it was Anderson or
12 Greenwood.

13 Q. But he ---

14 A. Honestly, at the time I thought it was local, in this
15 area, but -- in this circuit, but I could have been
16 mistaken.

17 Q. But he indicated to you that he had basically been
18 acquitted of a charge in which he represented himself in
19 magistrate's court?

20 A. That's right. And so I was desperately trying to
21 explain to him how different of a posture he was in now
22 with what he was facing and the jury trial and the rules of
23 evidence and how complicated that can be and that he needed
24 representation to look over this case.

25 In all of our interactions -- I would say it was

1 at least three conservatively, but I think it was more than
2 that -- very pleasant interactions with myself and Mr.
3 Frazier. It was never an adver -- you know, a tough
4 conversation. Mr. Frazier was always very polite. And I
5 remember him smiling at me and telling me that he was going
6 to proceed on his own.

7 He wanted private -- a privately retained
8 attorney. There were several issues going on. He wanted
9 to get out on bond. He wanted a private attorney. And I
10 explained to him specifically that a public defender could
11 be appointed to him, you know. He said, I don't want a
12 public defender. And I explained to him that I understand
13 that, but they can at least help you and go over, you know,
14 your defenses in this case. Go over discovery. You can
15 still represent yourself at trial, but you're going to
16 benefit from having somebody look at this case. And,
17 again, very politely, you know, it wasn't a difficult
18 conversation, he would smile and say -- he was very
19 confident that he was going to be able to handle this
20 himself.

21 So there was numerous discussions when I would
22 deliver discovery and to caution him about the perils of
23 proceeding pro se.

24 Q. Okay. So you did warn him of the dangers of
25 proceeding pro se?

1 A. Numerous times. Numerous, numerous times.

2 Q. And you indicated to him that things that a lawyer,
3 even a public defender or private -- that a public defender
4 could be appointed to make these motions for him ---

5 A. Yes.

6 Q. --- and advise him?

7 A. Yes.

8 Q. And he very firmly declined every time you offered to
9 go to the Court to get him a public defender?

10 A. He did.

11 Q. Okay.

12 A. He did.

13 Q. Ultimately, did you bring him in front of the circuit
14 court to have these kind of warnings given to him?

15 A. I did, not only in hopes to make it formal, put it on
16 the record, but so that he would maybe feel the gravity. I
17 thought maybe he didn't -- because we did have a friendly
18 relationship in these encounters when I would deliver
19 discovery and I would, you know, talk to him about the
20 case, I thought maybe putting him in front of the circuit
21 court judge, the gravity of what was on the line here --
22 because he filed this speedy trial motion, I knew we were
23 going to be setting it for trial in an upcoming term.
24 Before doing that, I thought that putting him in front of
25 Circuit Court Judge Miller would accomplish that.

1 Judge Ned Miller was visiting from the 13th
2 Circuit one term, and it was in the courtroom -- the small
3 courtroom, not the main courtroom he was brought in,
4 brought in front of Judge Miller. And I advised Judge
5 Miller essentially the posture we were in, this was going
6 to be slated for a trial. The Defendant has, you know,
7 repeatedly expressed his intention to proceed pro se;
8 however, with what he's facing, the State wants him to be
9 advised of the perils of proceeding pro se, Faretta
10 warnings.

11 Q. And did Judge Miller essentially give him the Faretta
12 warnings at that point on the record?

13 A. He did. It was not a verbatim recitation of the
14 Faretta warning. It was not a recitation from the form,
15 but Judge Miller essentially had a conversational, you
16 know, back and forth with him, getting to the crux of the
17 issue that, Do you understand that these attorneys go to
18 law school, have legal training for several years, and you
19 don't have the benefit of that, you know. And these are
20 serious charges you're facing, you know, and somebody can
21 aid you in the defenses. And I know that you're competent,
22 you know, you say that you can handle yourself, but you
23 could benefit by having somebody assist you on this case,
24 those kind of things. And that ---

25 Q. He very clearly -- I don't mean to interrupt you.

1 A. --- again ---

2 Q. But he very clearly told him that he would appoint him
3 counsel ---

4 A. Yes.

5 Q. --- free of charge, indigent counsel, if ---

6 A. Yes.

7 Q. -- he wanted?

8 A. Yes. Of course I can't remember now with the duration
9 of time the exact, you know, language that was said. But,
10 yes, that was the nature of the discussion. And
11 importantly, at the conclusion of that hearing, Mr. Frazier
12 yet again was adamant that no, I'm going to, you know,
13 represent myself.

14 Q. In the courtroom, under oath, ---

15 A. Yes, sir.

16 Q. Basically he says to the judge, I don't want a lawyer;
17 I want to represent myself?

18 A. Yes.

19 Q. Okay. Subsequent to that, you schedule it for trial?

20 A. Yes.

21 Q. Okay. And that was before His Honor, Judge Griffith?

22 A. That's correct.

23 Q. And prior to the trial, he was given stand-by counsel;
24 correct?

25 A. He was. I believe it was Patricia Bolen who sat

1 behind him and advised him to a degree. She was handling
2 ---

3 Q. And she was with the public defender's office here in
4 the 8th Circuit at the time?

5 A. That's right. And I believe maybe at times, if
6 Patricia Bolen was called away, Elizabeth Abel was
7 involved. But I can't recall specifically. But for some
8 reason, that pops in my head.

9 Q. But for the duration of the trial, the judge granted
10 him access to a lawyer who sat in the courtroom, who he had
11 access to ask questions of ---

12 A. He did.

13 Q. --- if he needed any kind of advice whatsoever;
14 correct?

15 A. He did.

16 Q. Okay.

17 A. I even -- I mean, again, because we had -- it was this
18 -- he did not have counsel with him and was insistent on
19 representing himself and proceeding forward on this trial
20 with himself, he needed clothes. So I helped procure
21 clothes for him. I helped tie his tie each morning, you
22 know, got a tie for him every morning before trial. And
23 then we would proceed and start the trial, you know. He
24 was adamant on representing himself and that's exactly what
25 he did.

1 Q. At any point during this process, Mr. Moroney, did
2 Terrence Frazier ask for a lawyer, ask for you to get him a
3 lawyer during the trial?

4 A. Absolute not. Absolutely not.

5 Q. Okay. And Judge Griffith went through a discussion
6 with him before the trial as well, Are you sure you want to
7 represent yourself and that sort of thing?

8 A. I believe I asked for Farettas warnings and there was a
9 discussion then with the defendant that followed between
10 the judge and the defendant.

11 Q. Right. There was essentially colloquy involving
12 Farettas warning?

13 A. It was not, again, a verbatim recitation ---

14 Q. Right.

15 A. --- of any form, but there was some kind of discussion
16 about it.

17 Q. In this hearing with Judge Miller -- I know we don't
18 have a transcript of it at this point -- we've asked the
19 court reporter and she apparently doesn't have it, but --
20 at the time, for the court reporter -- now that was just
21 weeks, several weeks maybe, before the trial?

22 A. That's how it feels in my mind. It would have been a
23 term or two before. So, yes, I want to feel that it was
24 weeks before.

25 Q. Okay.

1 A. It was -- the feeling was trial was going to be set or
2 we knew the term that the trial was going to be set and
3 this was looming and he was adamant about it. And really,
4 as one last ditch effort, to get through to Mr. Frazier
5 that it'd probably be in your best interest to get some
6 counsel, bring him in front of Judge Miller. That
7 advisement was given. And then he -- I can't tell you how
8 committed Mr. Frazier was to representing himself.

9 Q. So in your view his waiver of counsel was certainly
10 advised and free and voluntary?

11 A. Yes.

12 Q. Never was pressured to go forward without a lawyer?

13 A. No.

14 Q. Okay. So in your view, you yourself, and Judge
15 Miller, prior to the trial date, he was advised numerous
16 times of the dangers of self-representation?

17 A. He was. And this is also in the lens -- we need to
18 put it in the lens of what he was charged with was an
19 overwhelmingly apparent case where he was guilty of several
20 offenses. Mind you, he successfully was acquitted on one
21 at trial. But these were -- this was a case involving
22 disinterested citizens in the community who were going to
23 be pointing -- and did, in trial, point him out in court.
24 This man did this. This man did this. Stole this. And
25 then, of course, drugs, they were literally in the pocket

1 of his clothing.

2 Q. And that was trafficking-weight meth?

3 A. It was. So it was a very strong case. And those were
4 some of the discussions we had too about the weight of the
5 evidence and, importantly for me, the penalties that he was
6 facing. And what I was offering in reduction, the cap of
7 ten, where I explained to him, Look, even if you are
8 proceeding as a pro se defendant, the judge is going to
9 take that into consideration to your benefit. You know,
10 that does not mean you're going to get 10 years. You're
11 very likely -- I can't promise you anything -- but you're
12 likely going to get well below that. But if you take it to
13 trial, you are facing, you know -- you know, there's a
14 possibility you could have consecutive sentences that are
15 ---

16 Q. Right.

17 A. --- you know, double digit.

18 Q. And even after that, you telling him that, he made the
19 decision, he rejected -- freely and voluntarily rejected
20 the plea offer; correct?

21 A. He did.

22 Q. And he freely and voluntarily declined the assistance
23 of counsel; correct?

24 A. He did.

25 Q. Okay.

1 A. He did.

2 Q. Just one last thing, at the trial itself you said he
3 was acquitted of the car jacking charge; right?

4 A. He was.

5 Q. And in your view, did he do a fair job representing
6 himself at the trial?

7 A. I will give Mr. Frazier credit that, for not having
8 gone to law school, he did a good job.

9 Q. Okay. And he at least got the jury to come back with
10 a not guilty verdict on the biggest sentence charge there,
11 which was the car jacking?

12 A. He did. He better -- he made -- he honestly made the
13 argument that was to be made in a defense of that, that the
14 vehicle -- I believe the vehicle was not being operated at
15 the time because the driver had stepped out at some point.
16 The jury agreed and he was acquitted on that charge.

17 Q. Okay. And the judge, the entire trial in your view,
18 was very gracious to him in terms of giving him some
19 latitude on ---

20 A. Yes.

21 Q. --- questioning and that sort of thing?

22 A. Yes. Absolutely.

23 Q. Okay.

24 MR. STUMBO: That's all the questions I have,
25 Judge.

1 THE COURT: Ms. Delaney?

2 CROSS-EXAMINATION BY MS. DELANEY:

3 Q. You stated you met with Mr. Frazier several times.

4 That was at the jail?

5 A. Yes.

6 Q. Okay. And how long were those meetings, if you had to
7 guess?

8 A. At least 30 minutes, a couple of them. You know,
9 substantive meetings. These were not, you know -- where
10 I've had numerous meetings since with defendants for maybe
11 handing discoveries, standing up, Here you go, and there's
12 no real discussion.

13 These are sitting -- they would make room for us
14 in a meeting space. It was not near other inmates. It was
15 kind of near the office space of the jail. It had a desk
16 about this size, and Mr. Frazier would be across from me.
17 I would be across from me [sic] and I was able to go over
18 the discovery, because I'm hand-delivering, a lot of times,
19 the discovery piecemeal to him.

20 So we, at times -- I met with him numerous times.
21 And it's been years. Sometimes the meetings might have
22 been shorter, but we had substantive sit-down meetings
23 discussing all of this.

24 Q. And what was the plea offer that you extended him?

25 A. I can't remember the reduction. I think there was

1 reductions and dismissals involved in there, but I know it
2 was a cap of ten. I can look -- I'd have to look back at
3 old emails and from my notes, but a cap of ten years.

4 Q. Okay. Did you go through individually what the
5 charges were?

6 A. Yes.

7 Q. That he was facing?

8 A. Absolutely.

9 Q. Did you go through the penalty for each charge?

10 A. Absolutely.

11 Q. Did you talk about whether or not he was facing any
12 sentencing enhancements?

13 A. I can't recall that. I can't recall if he would have
14 been facing any -- if he was facing sentencing enhancements
15 at the time, I would have gone over that, because that was
16 a big part of me trying to get through to Mr. Frazier, the
17 cost benefit/analysis here. And if he didn't want to take
18 my word for it, you know, get some counsel to, you know,
19 help walk you through this as well.

20 Q. But you don't have a recollection of that?

21 A. I don't.

22 Q. Okay. What did he tell you about magistrate court?

23 A. My recollection -- again, it's been some time, -- was
24 that it was relayed that he was acquitted entirely on
25 whatever charges that would have been at the magistrate

1 level. He had mentioned that more than once to me. And as
2 I stated with Solicitor Stumbo, I appreciated that. I told
3 him I appreciated that, but that general sessions and this
4 instant case, and that was -- was when I would discuss with
5 him the overwhelming evidence in this case, how the rules
6 are a lot tighter in general sessions, and how it could
7 benefit to have a trained lawyer, you know, act on your
8 behalf. That was when we'd have those discussions.

9 Q. And you -- so you explained -- you said you explained
10 the dangers of self-representation to him, the dangers and
11 disadvantages. What did you explain to him in terms of
12 dangers and disadvantages of representing himself pro se?

13 A. First and foremost it was the time of years that he
14 was exposed to and the guilty, you know, guilty plea offer
15 that was made to him and what he was facing at trial.
16 Because technically, of course, although it would have been
17 unlikely, he could face consecutive sentences, you know.
18 So well north of ten years. But also that there are many
19 defenses. You know, the training lawyers receive, you
20 know, there's a lot of different things that they're going
21 to make arguments. And I would be deferential to Mr.
22 Frazier and I'd say, I know you had this success
23 previously. I know you're a smart guy. You know, you're a
24 nice guy. That's going to come across to the jury, you
25 know.

1 Because as an aside, frankly, we had this
2 conversation. At first glance this appeared, you know, Mr.
3 Frazier was on this rampage through Greenwood County, you
4 know, stealing all of these cars and car jacking and that
5 was what the facts pointed to, but it was largely induced
6 by him being under the influence of methamphetamine at the
7 time, you know. And when he was not under the influence of
8 methamphetamine, Mr. Frazier was a nice guy and that was
9 going to come through to the jury, you know. And so we
10 discussed that as well.

11 Q. So you explained the disadvantages of not taking the
12 plea offer. What did you explain in terms of disadvantages
13 of representing himself at trial?

14 A. That he -- that although he has represented himself in
15 a magistrate-level trial, he's not trained in the law to be
16 able to adequately represent himself like an attorney could
17 do. It is a dangerous prospect because of the time he was
18 facing. And an attorney would surely help him navigate the
19 case, because he was so focused on things that quite
20 frankly, as a trained attorney, I knew were not going to
21 garner any weight with the judge or the jury.

22 And he was focused on Scrivener's errors. He was
23 focused on the difference of a seized weight versus labbed
24 weight, and we had extensive discussions about that. And I
25 would say Frazier, Terrence, this is the kind of thing

1 right here an attorney can help you with. If you don't
2 want to believe me, because I get it, you know, I'm in this
3 -- or I had this kind of discussion with him. I said, I'm
4 in this weird posture. I'm the prosecutor who's
5 prosecuting you, but I feel obligated to try to talk some
6 sense into you. And please talk to a defense attorney,
7 because they're trained in this and they can explain it. I
8 suspect they're going to tell you the same things. This
9 focus on these Scrivener's errors and this difference in
10 lab weight, there are other defenses that a defense
11 attorney can assist you with.

12 Q. Did you mention the Fourth Amendment at all? Did you
13 mention that a lawyer could help him challenge the entry of
14 the drugs?

15 A. I'm sure there would have been -- I don't know -- I
16 don't know if I said Fourth Amendment, because it's been
17 years. I don't want to, you know.

18 Q. Right.

19 A. But, yes, there would have been issues with -- because
20 part of the case too, the drugs were located at a hospital.
21 So that was part of --- part of his issues. So, yes, we
22 would have had search and seizure discussions. And I said,
23 You bring up a good point. A defense attorney could assist
24 you with this, you know, and be able to articulate these
25 defenses better.

1 Q. You mentioned that, you know, he's a friendly, kind
2 of, easy-going person.

3 A. He is.

4 Q. And that you had helped him, you know, get dressed out
5 for Court. Given that you were in an adversarial position
6 to him, did that seem problematic to you?

7 A. It didn't. I wanted to make sure that he was not
8 sitting there in an orange jumpsuit. I wanted to make sure
9 that, you know, he was wearing the tie and slacks and
10 shirt, and because without that, it seemed he had limited
11 family presence at the time, and means. I felt that was
12 important, you know.

13 Q. It seems like what I'm hearing is he's a friendly guy.
14 The Judge is very cordial, professional with him. You're
15 friendly with him. Do you think maybe he didn't understand
16 how serious this was given how friendly everybody's being
17 with him?

18 A. No. Because I don't want to conflate that me being
19 cordial, professional, with Mr. Frazier and us not having
20 some cantankerous relationship meant that I didn't explain
21 the gravity of what he was facing.

22 Q. Do you know why he was so adamant about going to trial
23 quickly?

24 A. Well, he was adamant that he could get an acquittal on
25 all charges, first of all. He also wanted -- and he saw

1 that as his quickest way of getting out. He just wanted to
2 get out. He wanted the bond hearing. I think we had a
3 bond hearing. His mother had passed away. He wanted to
4 get out. So there -- I mean, but he was adamant that this
5 -- flimflam was the word that he used with me at times,
6 many times, these flimflam charges, -- he was adamant that
7 he would be able to get himself acquitted on all charges
8 and did not need counsel.

9 Q. And this was a really speedy trial; right? This
10 wasn't a typical -- I mean, this was within, like, I think,
11 four months of arrest?

12 A. It was put on a trial docket sooner than we typically
13 would, but it was at his request. You know, that's what he
14 wanted.

15 Q. Okay.

16 A. He filed that speedy trial motion.

17 Q. Was there a hearing on that or you just put him on the
18 docket?

19 A. I can't recall if there was a hearing on it. You
20 know, we certainly would have addressed it on the record in
21 front of Judge Miller, before trial in front of His Honor.

22 Q. Okay. And I just want to clarify. I think Mr. Stumbo
23 led you a little bit and I let him, but I want to make sure
24 that this is correct. He said that counsel was there
25 throughout the trial, but standby counsel wasn't appointed

1 until after voir dire, until after jury selection; is that
2 right?

3 A. If that's what ---

4 Q. If you remember?

5 A. I don't recall ---

6 Q. Okay.

7 A. -- the nuance of that.

8 Q. Okay.

9 MS. DELANEY: Beg the Court's indulgence, Your
10 Honor.

11 THE COURT: Mm-hmm.

12 Q. Okay. Do you remember how long of a time frame there
13 was between when you made the plea offer and when you went
14 to trial?

15 A. No. I'd have to look back at the notes.

16 Q. Okay. Was it like the day -- I mean, it wasn't like
17 the morning ---

18 A. No.

19 Q. -- of court or anything?

20 A. Not at all. Not at all.

21 Q. Did he have some disagreements with you over whether
22 you provided him discovery, like chain of custody type
23 stuff?

24 A. I don't recall that.

25 Q. Okay.

1 A. Because I bent over backwards to hand-deliver multiple
2 times, the discovery, make sure he was able to view and
3 read everything.

4 Q. Okay.

5 A. That was the main part of those meetings, those face-
6 to-face, sit down at the table meetings, was the discovery
7 and making sure that he had everything. But then it turned
8 into these discussions about the dangers of representing
9 himself ---

10 Q. Okay.

11 A. --- in those meetings.

12 MS. DELANEY: I don't have any further questions,
13 Your Honor.

14 THE COURT: Okay. Solicitor, anything else from
15 you?

16 MR. STUMBO: Nothing on redirect, Judge.

17 THE COURT: Okay.

18 MS. DELANEY: And I would call my client.

19 THE COURT: Madam clerk, place Mr. Frazier under
20 oath.

21 Good morning.

22 THE DEFENDANT: How all y'all doing?

23 THE COURT: Good.

24 (The witness was duly sworn.)

25 MS. DELANEY: You can have a seat, Mr. Frazier.

1 **Terrence O'NEIL FRAZIER,**
2 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3 DIRECT EXAMINATION BY MS. DELANEY:

4 Q. Mr. Frazier, so this trial, I believe, took place in
5 2015. How old were you at that time?

6 A. 2015, I'm 30 now, so I was 25.

7 Q. Okay. Do you have any kind of mental health history,
8 any diagnosis that you've had?

9 A. As a young kid, I was ADHD. I went to Beckman Center.
10 I'm sure they probably familiar with the Beckman Center. I
11 was naturally a hyper kid so my disorders would be
12 definitely ADHD. And that's something that I grew up as a
13 kid that I -- it took me a long time to grow out of it.

14 Q. Do you have trouble concentrating?

15 A. Yes, very, very -- a lot of times like -- I notice
16 like my attention span, if it's a lot of people around me I
17 can get nervous, jittery. It can be a distraction.
18 Noises, I have a problem with noises, stuff like that of
19 being around a crowd of people.

20 Q. Do you take any medications for mental health or
21 physical health?

22 A. Now?

23 Q. Mm-hmm.

24 A. Now I do take medicine for anxiety and stuff like that
25 as far as noises and a crowd of people, being in a crowd of

1 people, you know.

2 Q. Did you take those medications at the time of your
3 trial?

4 A. No.

5 Q. How far did you -- what was the last grade that you
6 completed in school?

7 A. Eighth grade.

8 Q. Okay. So you didn't finish ninth grade?

9 A. No, ma'am.

10 COURT MONITOR: Your Honor?

11 THE COURT: Pardon me?

12 COURT MONITOR: I didn't get the grade. I didn't
13 get the answer.

14 THE COURT: Okay. Go back and ask him again.

15 MS. DELANEY: Okay. Thank you.

16 THE COURT: Move the microphone a little closer
17 to him. I think he said ninth grade.

18 Q. How far did you -- what was the last grade you
19 completed?

20 A. The eighth grade.

21 Q. Okay. So you didn't finish the ninth grade?

22 A. No, ma'am.

23 MS. DELANEY: Are we good now?

24 COURT MONITOR: Yes, ma'am.

25 Q. So tell me about your prior record in terms of going

1 to court and stuff. What -- how many times had you been to
2 court before this trial? Like how many other cases had you
3 had?

4 A. I've probably had three to four cases that I went to
5 court for. Most of my charges, I -- basically, most of my
6 charges I have on my record was basically thrown out or
7 reduced to a lesser charge. So I never really had court
8 for all the charges.

9 Q. Did you ever go to trial in general sessions before?

10 A. No. I never been in a general sessions trial.

11 Q. Did you go to trial in magistrate court?

12 A. I think I had a case where it was like a 30-day charge
13 where they just -- it was like I pled not guilty and they
14 threw the charge out.

15 Q. Do you think you got time served or do you think it
16 got dismissed?

17 A. It was like -- I think I had went to county jail. But
18 I think it was like -- I had done like two days or
19 something in the county jail from when I got arrested for
20 the charge. But the other person who was at the situation
21 wouldn't plead guilty to it, but I had already sit in the
22 county jail for a couple of days, so they just threw it
23 out. And she was a female, so she was like I couldn't go
24 to jail. It's a 30-day charge.

25 Q. Did you represent yourself at that court date?

1 A. I just pled not guilty, and I represented myself.

2 Q. Did you question witnesses?

3 A. I mean, it wasn't really like a question witnesses
4 because it was hometown. So it was like everybody knew
5 everybody, so it was basically like a situation where I
6 just pled not guilty and basically, because she was a
7 female and I was like from there -- it wasn't a serious
8 trial because it wasn't but 30 days and I had already spent
9 time in the county jail, so...

10 Q. Did you question her, the female? Did you question
11 her on when she ---

12 A. No, I really -- I really never questioned anybody. It
13 was just like I just pled not guilty and they was like,
14 well, they let her -- heard her side of the story. They
15 heard my side of the story. And everybody said -- they
16 took their opinion and that was basically it.

17 Q. Was there a prosecutor at that court date or was it
18 just the police officer?

19 A. No, it was just like people from the hometown, the
20 judge, the sheriff, and me, her, and I think like two other
21 people from the town.

22 Q. Was there a jury there?

23 A. I don't remember if it was a jury.

24 Q. Did you ever watch a trial, like a trial on television
25 or anything, or in person, the whole way through?

1 A. No, I've never watched a trial.

2 Q. Tell me what you thought you were facing when you went
3 to court for this? What did you think you were facing?

4 A. This charge?

5 Q. Yeah.

6 A. Really, me, not understanding how much time I was
7 really facing, I thought it was going to be non-violent. I
8 thought I was facing like zero to 10 years for the
9 trafficking methamphetamine. And I knew the rest of the
10 charges, I didn't think I was going to go trial for all the
11 charges at once. So I really -- I really -- I really
12 didn't think that it was going to be a serious offense. So
13 the reason why I went to trial is because I thought it was
14 going to be non-violent. I was like, okay, I can go to a
15 Level 1. It'll be non-violent and it's not a serious
16 offense as far as the trafficking second, and violent 85.
17 Then I go to a Level 3 automatically, so...

18 Q. Why did you think it was non-violent?

19 A. Because it was my first time catching a trafficking
20 charge. And I was never -- I never understood the nature
21 of enhancement. I didn't know about that.

22 Q. Okay. And, in fact, you did get a sentencing
23 enhancement?

24 A. Yes. I did get an enhancement sentence because he
25 said that it was because of 2009 possession of cocaine, but

1 ---

2 Q. Did you -- did you know they were going to use that
3 against you?

4 A. No, I didn't know they was going to use it against me.
5 But -- because the reason why I didn't know they was going
6 to use it against me, because on my record it says
7 misdemeanor. So I didn't think he could use a misdemeanor
8 to enhance a trafficking charge. And it was -- it was like
9 -- I think it's like seven, eight years.

10 Q. And you didn't use any -- you didn't make any motions
11 about that; did you?

12 A. No, because I was never advised of it because he
13 didn't use my record against me. He didn't use my record
14 until after I was found guilty.

15 Q. Okay. Now, the prosecutor said he told you what
16 charges you were facing. What do you remember about what
17 he told you?

18 A. I remember he brought me the plea offer sheet. I
19 never really understood it at the time. Like I say, the
20 time frame between that, so the plea offer sheet that he
21 brought me, it says -- it says something about trafficking
22 methamphetamine, I think assault and battery or a strong
23 arm robbery. So the charges wasn't on the basis of -- so
24 that's why I was like the charges seemed off to me. And it
25 didn't look -- seem like the stronged arm robbery was --

1 like I said, when I looked at it, I'm like I didn't strong
2 arm rob nobody. So I was like, nah. First that's what
3 caught my attention. So I'm like, nah, that don't seem
4 like right. So I was, like, nah, I'm not going to plea to
5 that.

6 Q. Okay. Did you know you were facing trafficking second
7 at trial?

8 A. No. I didn't know I was facing trafficking second.

9 Q. What did your warrant say you were facing?

10 A. My warrant says trafficking methamphetamine. I look
11 up the statutes. It's first offense. It is zero to ten
12 years. It doesn't state anything about second offense.
13 Enhancement, it doesn't say anything about that.

14 Q. What did your indictment say you were charged with?

15 A. The indictment says trafficking first. The same
16 thing, first offense. It doesn't say anything about
17 enhancement. So I never knew anything about an enhancement
18 until ---

19 (Off-the-record discussion between counsel.)

20 MS. DELANEY: Judge, I'm going to approach and
21 have these marked just Court's Exhibits.

22 THE COURT: Okay.

23 (Respondent's Exhibit Numbers 1, 2, and 3 were marked
24 for identification purposes.)

25 Q. I'm going to hand you what have been marked as

1 Respondent's Exhibits 1, 2, and 3. Would you take a look
2 at these for me, please? What is that?

3 A. (Reviews exhibits.)

4 Q. Is that your warrant?

5 A. Yes. Yes.

6 Q. There's your name?

7 A. Yes. Yes, it's my warrant.

8 Q. Okay. And that just says first offense trafficking;
9 doesn't it?

10 A. Yes, it does. It says first offense.

11 Q. Okay. That's Respondent's Exhibit 1. Is this -- is
12 this what you remember seeing when you got arrested?

13 A. Yes. When I got arrested, I had a totally different
14 set of warrants. You notice that these right here has a
15 clock stamp on it.

16 Q. Okay. But you did see that warrant at some point?

17 A. Yeah. This was the second -- this was the second --
18 they served me two different times.

19 Q. Okay.

20 A. They came and served me and then this was the second
21 time they served me.

22 Q. Did the other warrant say trafficking first as well or
23 did it say trafficking second?

24 A. The other ones wasn't clock-stamped, but I'm sure it
25 probably said the same thing. It just was two different

1 officers.

2 Q. Did you ever see a warrant that said trafficking
3 second?

4 A. No, no. I never seen a warrant that said trafficking
5 second.

6 Q. All right. I handed you your indictment. What does
7 that say on it?

8 A. Trafficking -- trafficking in methamphetamine
9 44530375.

10 Q. That doesn't say second either; does it?

11 A. No, ma'am.

12 MS. DELANEY: And Judge these are all marked as
13 Respondent's so I would ask to admit them.

14 THE COURT: They're probably already in the
15 record from the -- well, the arrest warrant -- the arrest
16 warrant may not be.

17 MR. STUMBO: I would think they are.

18 (Appellant's exhibits numbers 1, 2, and 3, having been
19 previously marked, were admitted into evidence.)

20 Q. When did your mom die?

21 A. I was in the county jail 90 days. Probably like 50-,
22 40-something days, and they notified me that my mom died.
23 So it was like -- my mom died in like 90 days and then a
24 month later, I went to trial.

25 Q. Was your desire to go to trial related to your

1 mother's death?

2 A. It was definitely related to it because I was -- when
3 I saw I lost my mama, I felt like that was the only thing I
4 had left. So, you know, that was my backbone. That was a
5 very big part of me. So once they notified me that I lost
6 my mother, my mind wasn't in the right state and I wasn't
7 in the right state of mind. I was really grieving a lot
8 because of that. And to be honest with you, at that time,
9 my mind was like, It doesn't matter what happens to me
10 because I lost my mama. So going to trial was one of the
11 least of the things that I would be. And really being in
12 that, in the county jail and the loss of my mama, I just
13 wanted to get away from everybody, everything.

14 Q. Did -- when the prosecutor met with you and told you
15 it wasn't a good idea to represent yourself; did you
16 understand why? Do you know what he meant by that?

17 A. To be honest with you, I think he might have said
18 something of that nature during trial or at trial. But
19 before then, to be honest with you, I never meant --
20 remember him mentioning anything about not representing
21 myself or representing myself.

22 Q. Okay.

23 A. There would be any dangers or nothing that -- I
24 remember him bring the -- bringing the paper to me about a
25 plea negotiation, but that's about it.

1 Q. Okay. And you were -- were you addicted to drugs when
2 you were arrested?

3 A. I mean, I was a user.

4 Q. Okay. What -- had you ever read the Constitution
5 before you went to trial?

6 A. No. No.

7 Q. Had you ever read the court rules?

8 A. No, definitely not.

9 Q. And you wanted law library access; is that right?

10 A. Yes, I did. I definitely elaborated on that several,
11 many times to different people as far as the jail
12 discretion, as far as the staff at the County and...

13 Q. Okay. And you never got that; is that right?

14 A. (No audible response.)

15 Q. Now, Judge Griffith offered you a public defender to
16 sit with you during the trial as stand-by counsel. Did you
17 immediately accept that when he made that offer?

18 A. I was kind of hesitant because, like I say, I wasn't
19 in my right state of mind at the time because of the loss
20 of my mother, but I can admit that he did -- he did assist
21 me with trying to -- with giving me stand-by counsel to the
22 best of his ability.

23 Q. Did you think there was a fee for the public defender
24 or did you think the public defender was free?

25 A. At the county jail it's like paperwork to file for the

1 public defender. I think you have to fill out the
2 paperwork and they do say it is a fee. I'm sure they can
3 waive the fee, but at that time -- like I say, when I first
4 came to the jail, my first few days I was out of it. From
5 there on I never filled out the paperwork.

6 Q. Why didn't you want the public defender?

7 A. I mean, because -- I felt -- I was trying to get
8 representation, like I said. I was trying to get my family
9 to get out on bond and get a lawyer to represent me.

10 Q. Okay. Do you remember what Judge Miller told you when
11 you went in front of Judge Miller?

12 A. I remember Judge Miller saying something of the sort
13 like, you know, I can -- you don't have to represent
14 yourself, but if you decide to represent yourself, then I
15 can't force a lawyer on you or something.

16 Q. Okay. Why did you think these charges were flimflam?

17 A. Because, like I say, I had two different separate sets
18 of warrants. First set of warrants I had --

19 Q. Let me stop you. Do you understand that warrants
20 don't matter at trial?

21 A. Yes, I understand that.

22 Q. Did you understand ---

23 A. I mean, at the time I didn't. Now I do.

24 Q. Okay. So you thought that that might give you a
25 defense at trial?

1 A. No, it wasn't -- it wasn't -- I looked -- I didn't
2 have received the warrants until I looked at the whole from
3 the beginning, I didn't receive the warrants in a timely
4 manner and during arraignment.

5 Q. Do you understand that doesn't matter?

6 A. Yes.

7 Q. Did you ---

8 A. Now I do, but then I didn't.

9 Q. Okay. Were you trying to, you know, cause trouble or
10 manipulate, you know, the Court or anything like that?

11 A. No, I never really tried to manipulate the charge,
12 manipulate the court system. My main focus was trying to
13 get the right negotiation and go ahead and they wasn't
14 giving me the right negotiation. And as far as me
15 representing myself, getting the proper resources I needed
16 to represent myself or prepare a defense, and I was not
17 prepared.

18 Q. Did you understand you have to comply with criminal
19 procedure rules at trial?

20 A. Definitely not. I don't have a criminal -- I don't
21 have a degree in criminal justice.

22 Q. Okay. And nobody forced you to go to trial quickly or
23 mistreated you in this case?

24 A. No, no. Now I'm not going to say anybody mistreated
25 me. It's just -- it was a kind of shaky situation I was in

1 at the time, and it was kind of pressurized as far as my
2 siblings, family, and the death of my lost ones.

3 Q. Okay. Were you trying to get home for a funeral?

4 A. Yes. That's exactly why I was trying to get home to
5 go to my mother's funeral.

6 Q. And that's why you made the motion for a speedy trial?

7 A. No, that wasn't why, because my mama didn't die, as I
8 said, until after 90 days, a month before I went to trial.

9 Q. Okay.

10 A. But a month before I went to trial when I was notified
11 my mama passed, that's when I was trying to get out on
12 bond. And I tried to get out. I didn't get a bond for the
13 first three months. And then the first three months I had
14 no bond. And then I think I was notified that my mama
15 passed. And then that's when I went up for a bond hearing.

16 Q. And then your trial was after that?

17 A. And my trial was like 27 days later.

18 Q. Okay.

19 MS. DELANEY: I don't have any further questions,
20 Judge.

21 THE COURT: Mr. Stumbo.

22 MR. STUMBO: Just a couple, Judge.

23 CROSS-EXAMINATION BY MR. STUMBO:

24 Q. Well, Mr. Frazier, you said you -- you were talking
25 about the prior charge, are you trying to say that Mr.

1 Moroney never said you had a prior drug charge on your
2 record?

3 A. Nah, nah, I'm not saying that he -- as far as the
4 prior drug charge, I didn't know that he was going to use
5 the prior drug charge until he went to the judge -- we
6 approached the bench and he brought up my record. The
7 whole time during trial he never used it or notified me of
8 it. Like I say, as the paperwork said, first offense
9 indictments everything. So I was really thinking, Okay,
10 this is going to be first offense, zero to ten years.

11 Q. All right. Were you aware that in an indictment
12 putting subsequent offenses is something that we normally
13 don't do. Do you know that?

14 A. I understand that. Like I say, on my record it says
15 misdemeanor. So I'm thinking, Okay, this is a misdemeanor.
16 So I'm not -- me thinking, Okay, how can he use a
17 misdemeanor? And I don't know much about the law. How can
18 you use a misdemeanor to enhance something?

19 Q. Well, do you think a lawyer would have helped you
20 understand that better?

21 A. Oh, of course, most definitely.

22 Q. Okay. And you said you never were advised. That's
23 the exact word you just used. A lawyer advises you. You
24 acknowledge that; right?

25 A. Uh-huh.

1 Q. But you rejected the assistance of an attorney; didn't
2 you?

3 A. In the last stages.

4 Q. The last stages. So you're saying that you never had
5 any conversation with Mr. Moroney multiple times about the
6 fact you didn't want a lawyer and you wanted to represent
7 yourself?

8 A. In the -- after the preliminary hearing, like I said,
9 in the last stage. When I met with Mr. Moroney, Mr.
10 Moroney and the other times before that he brought the plea
11 offer, I don't remember him recalling anything about
12 representing yourself.

13 Q. He never one time said to you, ---

14 A. I do not recall him saying that.

15 Q. --- Mr. Frazier, you need a lawyer. It's dangerous to
16 represent yourself and you need a lawyer and we can make
17 sure the Court can appoint you one. He never said that to
18 you?

19 A. Like I said, in the last stages he might have. But
20 when he brought the plea offer, I don't recall him saying
21 anything about that.

22 Q. Were you aware that a prosecutor doesn't have any
23 legal obligation to advise you of any of these things, of
24 what you could ---

25 A. That's what I'm saying. So why would he?

1 Q. Okay. But he actually took the time and sat with you
2 at least three times to layout the evidence against you and
3 what was going to happen in court, right?

4 A. He came to see me, I'd say, a couple of times. He did
5 come see me a couple of times. I can say that, because I
6 remember him coming to see me and he brought the plea
7 offer. But his exact words was, If you don't take the
8 plea, you're going to trial.

9 Q. Correct. And he also said that you need a lawyer to
10 advise you?

11 A. I do not recall him saying that. I do not recall --
12 now, later on he might have recalled it. Now, as after the
13 plea offer, my first -- my first conversation with him as
14 far as the plea offer, he was like, You take this plea
15 offer or else you're going to trial. He was -- but after
16 that he was very helpful in trying to help me after that.

17 Q. Right. But still told you you needed a lawyer to try
18 a case.

19 A. I don't -- the first time I talked to him, as I
20 repeat, I don't recall him saying anything about a lawyer
21 or you representing yourself or the dangers of you
22 representing yourself. His first conversation was, Okay,
23 here's the plea offer. This is what it is. He said, Okay,
24 you take the plea offer. If you don't take the plea offer,
25 you're going to trial.

1 Q. And you told him too about this case where you'd been
2 in magistrate's court and got it thrown out; right? You
3 beat that charge ---

4 A. Nah, I don't remember -- I don't remember -- I don't
5 remember recalling having a conversation about -- with him
6 about that.

7 Q. Never had read the Constitution or court rules, that's
8 what you just testified to; right?

9 A. No, sir.

10 Q. Well don't you think a lawyer would help you with
11 those things? Wouldn't that have been helpful?

12 A. I mean, it depends on whether the lawyer feel like
13 they need to do that.

14 Q. Judge Miller -- you acknowledge you had a hearing with
15 Judge Ned Miller in court, here in this courthouse; right,
16 where he told you you needed to get a lawyer and he'd give
17 you one if you wanted one?

18 A. He did say -- he said, as I repeat again, he said that
19 you know, I could give you a lawyer. He said that, If you
20 don't want -- if you don't take a lawyer, I can't -- I
21 can't -- I can't force you to take a lawyer.

22 Q. And he told you that a lawyer could make the right
23 motions for you and advise you on what the Constitution
24 said and all of those things; right?

25 A. He never went into -- he never went into all the

1 details of all that.

2 Q. All right. You still thought, even after that hearing
3 and multiple conversations with Mr. Moroney, that you could
4 do a better job in trial representing yourself; correct?

5 A. The conversation at the preliminary hearing with Mr.
6 Miller, he asked me, do I waive my rights?

7 Q. And you told him yes?

8 A. No, I told him I did not waive my rights, but I'm here
9 without an attorney, so I have no choice but to represent
10 myself today.

11 Q. But he told you you could get a lawyer? I'm trying to
12 figure this out. He said you could have a lawyer and you
13 said, No, I choose to represent myself?

14 A. He said -- this is his exact words. He said,
15 Terrence, he said, I can give you a lawyer today. And he
16 said, I can't force you to take a lawyer if you decide to
17 represent yourself. He said, I can't force a lawyer on
18 you, but he said, I can give you a lawyer. But if you
19 decide to represent yourself and go forward -- and he asked
20 me do I waive my rights. And I answered him. I said no, I
21 do not waive my rights. I'm only here pro se because I do
22 not have a lawyer. And I told him about the situation with
23 my family, my mother. And I said I wanted to go -- I want
24 to try to get out and get on bond and get out and go to my
25 mother's funeral.

1 Q. And you understood it was your choice that if you
2 wanted a lawyer you would get one appointed to you by the
3 Court and you said, no, I don't want one. I want to
4 represent myself.

5 A. What I was saying to him was, I do not waive my
6 rights. I'm only here pro se because I'm already here at
7 the preliminary hearing. I don't want to -- I didn't want
8 to make it -- prolong it any longer, because that's the
9 reason of me filing for a speedy trial.

10 Q. Okay. So you did waive your right to a lawyer ---

11 A. I did not.

12 Q --- because he said you could have one?

13 A. I did not waive my right.

14 Q. All right.

15 A. I told him, I do not waive my rights.

16 MR. STUMBO: Judge, I've got no further
17 questions.

18 And, Judge, I think, you know, to make an
19 appropriate record if you -- I think if you have any input
20 on this having been the trial judge at the time, you know,
21 since this is the record that's going to go up on appeal,
22 certainly if the Court has any questions, probably now's
23 the time to make that record, Judge.

24 THE COURT: Anything else, ma'am?

25 MS. DELANEY: No, Your Honor.

1 THE COURT: Okay.

2 Mr. Frazier, I've got a question for you. You
3 and I were talking, and we've got a copy of it if you want
4 to see it, I'm looking back at that conversation, kind of
5 revisiting in my head, and you and I talked about a lawyer,
6 getting you a lawyer. And one of your concerns was if you
7 got an appointed lawyer then things would start over.

8 THE WITNESS: Yes, sir.

9 THE COURT: And you thought you were in this
10 position for a hearing and getting the case moved forward,
11 appointing a lawyer would back you up, start over.

12 THE WITNESS: Yeah, it would prolong it.

13 THE COURT: And that's kind of what you said to
14 Solicitor Stumbo ---

15 THE WITNESS: Yes, sir.

16 THE COURT: --- a moment ago was you were
17 concerned about the -- all right, we appoint a lawyer
18 everything stops and you start back over.

19 THE WITNESS: Start all the way over.

20 THE COURT: Okay. All right. This is what I
21 want to do -- I don't have any more -- further questions.
22 Does anybody else got anything else?

23 MS. DELANEY: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. DELANEY: Before you make a decision -- and I

1 don't know if you're doing that today or later -- but I did
2 want to ---

3 THE COURT: I'll tip my hand. I was going to say
4 let's get a record from the court reporter. And I'm
5 probably going to ask for proposed orders from both sides.
6 That's kind of what I was intending on doing. So go ahead
7 from there.

8 MS. DELANEY: Yes, sir. I would site to this
9 Court State v. Cash, and I can hand a copy of that up to
10 the Court if you'd like. It's 308 SC 40. That gives a
11 list of ten factors that the Court is supposed to consider
12 to determine whether a defendant who represented himself at
13 trial, whether that waiver was free and voluntary. And
14 they are the things that Mr. Stumbo and I have talked about
15 with our witnesses today. And so I would cite that case to
16 the Court.

17 And just quickly, you know, those factors are:
18 age; education; physical and mental health; previous
19 involvement in criminal trials; whether the defendant knew
20 of the charge -- the nature of the charge and possible
21 penalties; whether he was represented by a lawyer at all in
22 the case; whether this was an attempt to delay or
23 manipulate proceedings; whether standby counsel was
24 appointed; whether he knew he'd be required to comply with
25 the rules of procedure; whether he knew of legal challenges

1 he could raise in defense to the charges; whether the
2 conversation that you did have with him was merely proforma
3 answers and questions; and, whether the waiver resulted
4 from coercion or mistreatment.

5 We're obviously not alleging any kind of coercion
6 or mistreatment. I do think the conversation you had with
7 him was more than proforma answers and questions. I do not
8 think it was an attempt to manipulate the proceedings.

9 The other factors, I believe weigh in his favor.
10 You know, he's got an eighth-grade education ---

11 THE COURT: Okay. But he told me ninth grade at
12 the hearing.

13 MS. DELANEY: Well -- and he did go to the ninth
14 grade, which may be the confusion there, Your Honor.

15 THE COURT: It's not a lot of difference, but I
16 noted the difference in the answer.

17 MS. DELANEY: Well, and I noticed that as well.

18 THE COURT: I wouldn't find that a huge issue for
19 me.

20 MS. DELANEY: No.

21 THE COURT: He didn't finish high school. But as
22 far as you went in school, I found him, and again today,
23 he's very intelligent.

24 So keep going.

25 MS. DELANEY: Your Honor, you know, what this has

1 kind of come down, I think to also is just how seriously
2 did he -- did he understand the seriousness of these
3 charges.

4 And that, you know, there's certainly nothing in
5 the record -- and I've got a copy of the trial transcript
6 if you'd like me to provide that to you. And I can provide
7 that to Mr. Stumbo as well. But it's never said until
8 literally sentencing that he's charged with a second
9 offense, trafficking.

10 And, you know, he had a prior possession, you
11 know, so I think it's, you know, taking -- taking what he
12 said, you know, that he may not have understood what he was
13 -- what he was facing.

14 And so, you know, I believe that's all I have to
15 say, Your Honor.

16 THE COURT: Okay.

17 MR. STUMBO: Judge, can I -- just to make a
18 complete record here call Brian one more time.

19 THE COURT: Sure.

20 MR. STUMBO: There's something that I think he's
21 -- through the course of the hearing, it's been able to jog
22 his memory.

23 THE COURT: Okay. And he's still under oath.

24 MR. STUMBO: Yeah.

25 THE COURT: Mr. Moroney, you're still under oath.

1 **BRIAN J. MORONEY,**
2 **BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

3 DIRECT EXAMINATION BY MR. STUMBO (RECALL):

4 Q. Mr. Moroney, this discussion about Mr. Frazier having
5 a prior drug conviction ---

6 A. Right.

7 Q. -- and it being the sentencing range of a second
8 offense, ---

9 A. Right.

10 Q. --- did you discuss the fact that he was facing that
11 sentencing range?

12 A. We would have. And when she asked the question of
13 enhancements, I didn't -- it didn't strike a cord as to
14 what you were getting at because it's been such time. But
15 now I do recall he did have that prior conviction. That
16 was what I was alluding to during my testimony that I was
17 explaining to him what he'd be facing at trial and the
18 cost/benefit of the sentences. That would have been with
19 the discussion when I said at trial, this conviction comes
20 in and elevates. Now you're facing up to -- you know, I
21 don't have the red book in front of me -- 25 or whatever it
22 was at the time. That would have been when we had those
23 discussions. So absolutely. What I testified to earlier,
24 to put a point on it, there would have been discussion
25 about his prior conviction at trial, putting this in a

1 totally different posture for sentencing enhancement
2 purposes.

3 Q. Right. And your plea offer was up to ten; right?

4 A. That's right.

5 Q. So ---

6 A. It was ---

7 Q. --- the obvious implication ---

8 A. --- a benefit.

9 Q. --- that is at trial, you're facing a lot more?

10 A. That's right. And there would have been a discussion
11 about that reduction, so to speak, to be able to plead to
12 that.

13 Q. Right. And why don't we put second offense, third
14 offense, all that in our indictments, Mr. Moroney, for
15 prosecutors?

16 A. That's just commonplace. It's a sentencing
17 enhancement. It's a function for sentencing solely.

18 Q. Right. And in trial you don't want the jury looking
19 at the indictment if the Court passes it back and it
20 implicated prior offenses; right? Because that's -- we're
21 trying not to violate the court rules and bring in prior
22 bad acts.

23 A. And that was part of the discussion too was Mr.
24 Frazier saying, but that would be improper. The warrant
25 doesn't say that on there. So we would have had that

1 discussion that it was a sentencing enhancement function.

2 Q. Right.

3 A. It doesn't matter that law enforcement didn't put the
4 CDR code or statute on the warrant.

5 Q. And now that you're -- this has jogged your memory,
6 you're clear ---

7 A. Yes.

8 Q. --- that you had that conversation with him?

9 A. Yes.

10 Q. Okay. Thank you.

11 THE COURT: Anything, Ms. Delaney?

12 MS. DELANEY: Yes, Your Honor.

13 CROSS-EXAMINATION BY MS. DELANEY (RECALL):

14 Q. And just to be clear, I'm not in any way saying that
15 you did anything improper. But I do want to just clarify
16 with you, you said that's what the conversation would have
17 been?

18 A. Yeah.

19 Q. Do you have a recollection ---

20 A. I do have a recollection. Let me be clear. Mr.

21 Frazier was advised by me numerous times that he was

22 entitled to an attorney and the dangers of self-

23 representation. Furthermore, this enhancement issue, the

24 perils he was facing at going to trial and the enhanced

25 sentencing provisions, I recall that. I can't recall it

1 verbatim. Of course, I don't have a transcript of it.

2 But, yes, and I would not suggest otherwise. To be frank

3 today, this is -- I understand the position that Mr.

4 Frazier's in, in wanting to rewrite history, but there is

5 one -- there is the truth that happened and the truth is

6 what I am telling you today. He was advised numerous times

7 of the perils proceeding unrepresented. And he knew that.

8 And he elected to do that on his own accord.

9 Q. Did he seem to get the things that you were telling
10 him?

11 A. He did. But he was so driven in his desire to
12 represent himself. So, yes. I mean, I've had other pro se
13 trials since, and while we don't -- and I think, you know,
14 you have experienced this before many times yourself
15 obviously. We've talked about it before this. You can't
16 explain why people make the decisions they do, but the
17 important thing was he was advised of his right to counsel
18 and the dangers of proceeding without, and he knew that.

19 Q. And what did you tell him -- I mean, again, I don't
20 want to drag this out, but when you say you advised him of
21 the dangers, did you just tell him it's dangerous ---

22 A. No.

23 Q. --- or did you say, you know, there's a Fourth
24 Amendment. You can move -- your lawyer can move to
25 suppress things ---

1 A. Yes.

2 Q. --- you know, that you might not be able to say?

3 A. Yes. There would have been -- in these meetings,
4 these were not cursory, check-the-box, Terrence, you should
5 get an attorney, you know, they could do things for you.
6 We walked through this case step-by-step and the charges
7 that he was facing. And Mr. Frazier recalls that. We met
8 so much on this. He recalls that.

9 MS. DELANEY: I have no further questions, Your
10 Honor.

11 THE COURT: All right. Again, I'm not going to
12 rule today, but I suggest we get a record from the court
13 reporter. Y'all present proposed orders. And I don't
14 know, Solicitor, somebody needs to. But maybe the -- the
15 gentleman who's standing ---

16 MR. STUMBO: The Assistant AG will probably
17 propose something, Judge.

18 THE COURT: All right. Let's let him propose
19 something and Ms. Delaney propose something. And, Mr.
20 Frazier, we'll try to get you some answers.

21 MS. DELANEY: Your Honor, could I beg your
22 indulgence? Could he be allowed just a minute to speak to
23 his aunt and sister that are sitting back there.

24 THE COURT: If security's good with, I'm good
25 with him. I don't direct them, to not do something out of

1 order.

2 SCDC SECURITY: We can't do it. If we do it for
3 one, we've got to do it for all and we don't -- we can't do
4 it. Covid's still in the jail.

5 THE DEFENDANT: Okay. Thank you. No problem.
6 You ain't got to elaborate.

7 MS. DELANEY: Thank you.

8 (Off-the-record discussion regarding exhibits.)

9 THE COURT: Just correct it consistent with the
10 Court of Appeals order.

11 (Exhibits previously admitted remarked as Appellant's
12 exhibits.)

13 MR. STUMBO: Yeah, here's the thing.

14 MS. DELANEY: Thank you for your time, Judge.

15 THE COURT: All right.

16 MR. STUMBO: Thank you, Judge.

17 (Hearing adjourned at 10:31 a.m.)

18 ***END OF TRANSCRIPT OF RECORD***

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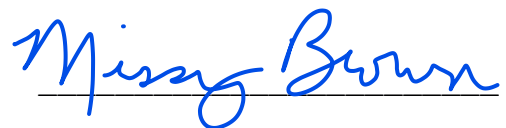
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CERTIFICATE OF REPORTER

I, the undersigned Missy Brown, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record, as recorded by DCRP and transcribed by me, of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in General Sessions Court for Greenwood County, South Carolina, on the 3rd day of March, 2023.

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

July 15, 2023



Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRENCE O'NEIL FRAZIER,

APPELLANT

APPELLATE CASE NO 2015-002464

RECORD ON APPEAL

LAURA R. BAER
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**THE FOLLOWING IS ON FILE WITH THIS COURT:
THE AUDIO RECORDING OF THE
PRELIMINARY HEARING HELD SEPTEMBER 1, 2015**

State of South Carolina)
) Court of General Sessions
 County of Greenwood)

2015-GS-24-01603, 01606
 and 01632

State of South Carolina)
) vs.) Transcript of Record
)
 Terrence O'Neil Frazier)
)
) Defendant)

October 15, 2015
 Greenwood, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Brian Moroney, Assistant Solicitor
 Attorney for the State

Terrence Frazier, Pro Se

Joy E. Holston
 Official Court Reporter

1 THE COURT: All right, Solicitor, are you ready?

2 MR. MORONEY: I am, Your Honor.

3 THE COURT: All right.

4 MR. MORONEY: Your Honor, standing before you is
5 Terrence O'Neil Thomas Frazier. He is a pro se defendant
6 here, he has requested for a bond setting in reference to
7 several charges that he has pending. Those charges are
8 carjacking, trafficking methamphetamine, grand larceny,
9 breaking and entering to an auto, leaving the scene of an
10 accident. This all occurred at the same incident. He is
11 currently out on bond from a previous offense. That was
12 set on February 17th of 2015 in the amount of \$19,000.00
13 dollars surety for theft of a controlled substance times
14 two, federal transaction card theft, use of a vehicle
15 without consent and petty larceny.

16 THE COURT: When did these offenses occur?

17 MR. MORONEY: These offenses were on July 9th of
18 2015.

19 THE COURT: In July?

20 MR. MORONEY: That's correct.

21 THE COURT: All right, Mr. Frazier?

22 MR. FRAZIER: Yes, sir.

23 THE COURT: Tell me why you deserve a bond.

24 MR. FRAZIER: Sir, I deserve a bond because I am
25 innocent of the charges. Also my mother passed just

1 recently and we are having the funeral is like tomorrow or
2 the next day and I really need to get out there with my
3 mother. And I have been in here three months. And the
4 charges is very frivolous and some ugly work. And me
5 being in the County jail, I done got my head cleared and I
6 have got a family out there. I just recently learned that
7 I have some kids that I didn't know about. And my family,
8 they miss me, I have got a little niece and I just need to
9 be out there with my family, be there for my mother and me
10 being in jail it is not, you know, it is kind of messes
11 with me.

12 THE COURT: How did you find out about these new
13 kids?

14 MR. FRAZIER: How did I find out?

15 THE COURT: Yes.

16 MR. FRAZIER: Because the girl was telling me about
17 the kids was mine but I didn't believe it but I got to
18 thinking about things. You know, how when you start
19 rewinding and your head get clear and you start thinking.
20 And you are like, man, you add up the time and my family
21 was like, I told you, we tried to tell you.

22 THE COURT: You roll the tape back in your head and
23 that is how you figured it out?

24 MR. FRAZIER: Yes. And especially with that there
25 and I think about it and I am like, man, my family is

1 like, well, we figured that. And they wanted me to be
2 out, be there for the kids.

3 THE COURT: Are they going to put the money up and
4 stand good for your good behavior?

5 MR. FRAZIER: Oh, yes sir.

6 THE COURT: Have you ever been on probation?

7 MR. FRAZIER: Yes, sir.

8 THE COURT: How did you do?

9 MR. FRAZIER: I did all right.

10 THE COURT: Did you get revoked?

11 MR. FRAZIER: No, I didn't get revoked.

12 THE COURT: I can check.

13 MR. FRAZIER: Oh yes sir, check.

14 THE COURT: I am thinking he is already out on bond
15 and when this happened, was this a car wreck?

16 MR. MORONEY: Your Honor, this is a series, it was a
17 number of incidents that happened, a cascade of events.
18 It started out, he was acting erratic at Chick-Fil-A and
19 then a struggle where he yanked a woman out of her car and
20 she was injured.

21 THE COURT: Needs to be consistent, he says his head
22 is cleared up since he has been locked up.

23 MR. FRAZIER: Your Honor.

24 THE COURT: Yes.

25 MR. FRAZIER: The incident of the scene, the woman,

1 she and I read my incident report. I have where she
2 stepped out of the car and was nobody snatched out of no
3 car.

4 MR. MORONEY: I can clarify, Your Honor.

5 MR. FRAZIER: I really do need to be out, I deserve a
6 second chance to be out there with my family for my
7 mother's funeral. I just ask you to please just give me a
8 bond and give me a chance to be out there with my family.

9 THE COURT: When did your mama pass?

10 MR. FRAZIER: She passed like two days ago. And I am
11 not no menace to society, I am really not a person, I
12 don't steal, I don't have none of these charges and the
13 charges from before prior, the woman, I had him contact
14 the victim and the woman said she does not want to press
15 it and she didn't press charges on me. And she is not
16 trying to push the issue.

17 THE COURT: With the carjacking?

18 MR. FRAZIER: No, for the use of an authorized
19 vehicle. I had permission because she gave me the bank
20 card, I had the keys to the vehicle and I had the pin
21 number to the credit card.

22 MR. MORONEY: And, Your Honor, that contradicts what
23 the victim in that case has said.

24 THE COURT: All right. You don't have a lawyer, why
25 don't you have a lawyer.

1 MR. FRAZIER: Because my family can't afford a lawyer
2 and I am trying, I look at the cases very frivolous and I
3 understand, I am not saying I am the smartest but I feel
4 like I am smart enough to get through this myself and I
5 know a little about the law to make it through.

6 THE COURT: You can represent yourself, I can't force
7 a lawyer on you. These young lawyers are smart.

8 MR. FRAZIER: Yes, sir. I was gone wait to try to
9 get out on bond and then work on trying to get an
10 attorney, pay an attorney.

11 THE COURT: If I set bond for you, how are you going
12 to afford it, you don't work, you have been in jail for
13 months. Where are you going to come up with the money.

14 MR. FRAZIER: My family, they will come up with the
15 money, that is why I am asking you. My brother, he has a
16 job and I have a friend that can help. And I am not going
17 to say they can afford a high bond but they can, you know,
18 they can come up with a little bit of money.

19 THE COURT: What was the charge on the drugs, a
20 distribution or trafficking--

21 MR. MORONEY: Trafficking methamphetamine first,
22 carries a mandatory, minimum of three to ten years, Your
23 Honor, violent and serious.

24 MR. FRAZIER: Your Honor, I was--

25 THE COURT: I don't know of any black folks that deal

1 with meth.

2 MR. FRAZIER: Yeah, I understand. I wasn't, I
3 didn't, they didn't find no drugs on me. It states they
4 searched me several times and they didn't find no drugs.
5 And all of a sudden I went to the hospital and they gave
6 me an injection and I came back from the hospital in a
7 hospital gown. And all of a sudden, two days later they
8 was bringing me a charge.

9 THE COURT: You are telling me you wear a dress?

10 MR. FRAZIER: No, sir.

11 THE COURT: Well, I do.

12 MR. FRAZIER: I understand. I ain't got a problem
13 with it. But what I was saying, I came back in a hospital
14 gown and they gave me injections. So, it is kind of crazy
15 and from what I understand they said that the warrants
16 were served and typed on the 10th but I didn't receive the
17 warrants until the 11th.

18 THE COURT: Okay. I can do that, before the ink gets
19 dry. Okay.

20 MR. FRAZIER: Yes, sir.

21 THE COURT: Okay. I am going to set bond on
22 everything, \$100,000.00 dollars. Electronic monitoring,
23 house arrest. You are already out on bond, I can't just
24 let you get out on a plain old light bond. I have got to
25 put something for your head to go in to keep, to keep you

1 tied down. I think you deserve a chance to go to your
2 mama's funeral. But considering the trafficking, that is
3 a violent offense and a serious offense and a strike. You
4 have got to be careful. Everything total, all of them
5 together, \$100,000.00 dollars, surety and electronic
6 monitoring.

7 MR. FRAZIER: Yes, sir. I was going to ask you, I
8 had filed for a speedy trial and I was wanting to go ahead
9 and get the case over with. So, it is like three months
10 left of it so I should be going to court soon.

11 THE COURT: You know, that is between you and the
12 Solicitor. If you want to go to trial and they hold court
13 here about once a month. And if you want, you get ready
14 and he has got time to call it. They can't try you back
15 to back to back. He will pick one of them or you pick one
16 of them and y'all agree on one of them and go to trial on
17 that one.

18 MR. FRAZIER: Okay.

19 MR. MORONEY: Your Honor, his docket appearance is
20 tomorrow and it is and we will handle this in a speedy
21 fashion.

22 THE COURT: Y'all work it out. All warrants,
23 \$100,000.00, electronic monitoring.

24 MR. FRAZIER: Thank you, sir.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 15th day of October, 2015.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 March 9, 2017
1920 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENWOOD) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TERRENCE O'NEIL) 2015-GS-24-1603
7 FRAZIER,) 2015-GS-24-1604
8 DEFENDANT.) 2015-GS-24-1605
9) 2015-GS-24-1606
10) 2015-GS-24-1632
11)
12) NOVEMBER 16, 2015
13) GREENWOOD, SOUTH CAROLINA

14 (VOLUME I)

15 B E F O R E:

16 THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE. ; And a
17 Jury.

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

19 BRIAN MORONEY, ASSISTANT SOLICITOR
20 MICAH BLACK, ASSISTANT SOLICITOR
21 ATTORNEYS FOR THE STATE

22 DEFENDANT APPEARING PRO SE

23 PATRICIA BOLEN, ASSISTANT PUBLIC DEFENDER
24 ELIZABETH ABLE, ASSISTANT PUBLIC DEFENDER
25 APPEARING FOR DEFENDANT AS STANDBY COUNSEL

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NOVEMBER 16, 2015)

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1 (PROCEEDINGS, NOVEMBER 16, 2015)

2 THE COURT: Is the State ready to proceed?

3 MR. MORONEY: Yes, sir.

4 THE COURT: Mr. Frazier?

5 MR. FRAZIER: Yes, sir.

6 THE COURT: Good morning.

7 MR. FRAZIER: Good morning.

8 THE COURT: You are now the first case up.

9 I have got several indictments handed to me by the
10 State.

11 Are you prepared to represent yourself?

12 MR. FRAZIER: Yes, sir.

13 THE COURT: The State tells me they made an offer
14 to you to get this case resolved. I don't know the
15 particulars, but I think it was on strong armed robbery and
16 trafficking with a cap of ten?

17 MR. MORONEY: That's correct, Your Honor.

18 THE COURT: Everything else dismissed.

19 Are you entertaining that offer, or are you
20 refusing it?

21 MR. FRAZIER: I refuse it, Your Honor.

22 THE COURT: All right. Now, have you had an
23 opportunity to speak with a lawyer of your choosing to see
24 if you wanted help and assistance in defending yourself in
25 this matter? Are you prepared to go to trial?

1 MR. FRAZIER: Yes, sir.

2 THE COURT: Are you ready to go to trial?

3 MR. FRAZIER: Yes, sir.

4 I want to put in for my motions before trial, Your
5 Honor.

6 THE COURT: And your motions are for what, in
7 general?

8 MR. FRAZIER: My motion was for change of venue to
9 transfer action.

10 Let's see, motion of dismissal, and motion for
11 dismissal on improper arraignment.

12 And I want to put in a motion for subpoena of all
13 the officers at the jail detention center, because I left
14 the -- I left -- I went to the jail. I left and then I came
15 back, so I was booked in two different times, so I want to
16 subpoena all the officers there -- all the officers for
17 trial.

18 And at the same time under the grounds of -- I put
19 in for a change of venue under tampering with evidence and
20 on the grounds of that it's a lot of ugliness in the case,
21 so on those grounds I would also actually after I read the
22 motions, then I would like to have a --

23 THE COURT: How old is this case?

24 MR. MORONEY: Your Honor, it's roughly recent,
25 from July 2015. If you recall, the defendant has filed a

1 motion for speedy trial and he was before you at the bond
2 hearing.

3 THE COURT: Oh, yeah.

4 MR. MORONEY: He brought that up at the time, so
5 we wanted to honor his request and put this on the trial
6 docket.

7 THE COURT: That's right, I remember now.
8 We talked --

9 MR. FRAZIER: Yes, sir.

10 THE COURT: -- several weeks ago.

11 All right. Here is what we are going to do. We
12 are going to go forward with jury selection, then excuse the
13 jury for lunch break. We will come back and take up some of
14 his pretrial motions.

15 So what -- is it Frazier?

16 MR. FRAZIER: Yes, sir.

17 THE COURT: And not Baker?

18 MR. MORONEY: That's a scrivener's error in front
19 of Larren, Your Honor. That's an error.

20 THE COURT: Okay. All right.

21 Bring the jury panel in. I'm going to read the
22 indictments to them and ask them if they know anything about
23 the case; ask them if they know anybody, that are related by
24 blood or marriage, close personal friends, can they be fair
25 and impartial. Then I'm going to ask after reading the list

1 of the prospective witnesses by the State --

2 Do you have a list of your potential witnesses you
3 would like to call? I mean, most of these the State
4 provided appear to be law enforcement.

5 MR. FRAZIER: Yes. Yes, sir, they are -- most of
6 them are.

7 THE COURT: They may be your witnesses too.

8 MR. FRAZIER: Yeah. Most of them are Greenwood
9 detention correction officers. And on the grounds of before
10 the -- before the trial I would like to have an evidentiary
11 hearing.

12 THE COURT: On what?

13 MR. FRAZIER: On the grounds of make sure that
14 there was probable cause -- to find probable cause at the
15 preliminary hearing for the charge to go up to General
16 Sessions.

17 THE COURT: Here is the thing. The Grand Jury has
18 already heard your case, so probable cause doesn't come in.
19 The Grand Jury has determined probable cause was present, so
20 that's all.

21 MR. FRAZIER: I understand that.

22 And on the grounds of I wanted to make sure that I
23 want to review the evidence that was supposed to be
24 collected and make sure there was no evidence that appears
25 at trial that wasn't presented to me. That's why I would

1 like to have an evidentiary hearing.

2 THE COURT: All right. We are going to proceed
3 with the jury selection. I'm going to come back and work on
4 your pretrial motions.

5 Let's bring the jury panel in.

6 MR. FRAZIER: All right.

7 THE COURT: And once I get them in here and they
8 answer the questions, you take notes.

9 Does he have a jury list?

10 MR. FRAZIER: Yes, he gave me one.

11 THE COURT: The panel?

12 MR. MORONEY: The jury list?

13 MR. FRAZIER: No, I don't have a jury list.

14 MR. MORONEY: Let me make sure we make him copies.

15 THE COURT: Yeah, let him have the jury panel
16 list.

17 You make your notes to the questions they respond
18 and then once we start they will we called up here and the
19 State will go first, please seat or please excuse, and you
20 will say the same thing, please seat or please excuse,
21 depending upon whether you want to exercise your strikes.

22 MR. FRAZIER: Yes, sir.

23 THE COURT: And I think you got five strikes.

24 MR. MORONEY: Ten, Your Honor.

25 MR. BLACK: Ten. There was a grand larceny

1 involved.

2 THE COURT: You got ten. You got ten please
3 excuse the jurors. They have got five. All right?

4 MR. FRAZIER: All right.

5 (Whereupon, the jury venire panel entered the
6 courtroom)

7 THE COURT: Welcome back.

8 Ladies and gentlemen, I would ask the State if it
9 was ready to call the second case.

10 Mr. Moroney, you have indicated that you all were
11 ready to call the second case.

12 Please stand and introduce yourself, as well as
13 your co-counsel.

14 MR. MORONEY: Yes, Your Honor.

15 Ladies and gentlemen, good morning. My name is
16 Brian Moroney. I'm an assistant solicitor from the
17 Greenwood Solicitor's Office.

18 Seated next to me is Micah Black, who is also an
19 assistant solicitor in the Greenwood County Solicitor's
20 Office.

21 THE COURT: All right. Folks, Mr. Moroney handed
22 up five indictments, which again are allegations only. They
23 have been presented to the Greenwood Grand Jury and have
24 been True Billed, which means that the Grand Jury found that
25 they are bound over for trial.

1 Now, the accused in this case is Mr. Terrence
2 O'Neil Frazier.

3 Mr. Frazier, will you stand and face the jury and
4 tell them your name.

5 MR. FRAZIER: Yes. My name is Terrence Frazier.
6 I'm twenty-five years old. I'm being charged with
7 charges --

8 THE COURT: I'll tell them that.

9 MR. FRAZIER: Okay.

10 THE COURT: I'll tell them what the charges are.

11 MR. FRAZIER: I'm twenty-five years old. I'm
12 representing myself as a pro-se defendant and --

13 THE COURT: That's good.

14 MR. FRAZIER: That's it.

15 THE COURT: Ladies and gentlemen of the jury, I'm
16 going to read a factual summary from some of the indictments
17 and I'm going to go through the same scenario we did in the
18 first selection, but Mr. Frazier is accused under Indictment
19 1603 of leaving the scene of an accident. This occurred on
20 July 9th of '15 in Greenwood County.

21 Also he's charged on that same date in Indictment
22 1604 with trafficking in methamphetamine.

23 Indictment 1632, on that same date he's charged
24 with carjacking involving a 1997 F-150 truck owned by or
25 operated by Susannah Chatos.

1 Indictment 1606, breaking into a motor vehicle,
2 and that indictment alleges that he broke into a motor
3 vehicle owned by Gwendolyn Callaham.

4 And lastly Indictment 1605 for grand larceny and
5 that indictment alleges that Mr. Frazier took personal goods
6 of Kimberly Searles valued at more than \$10,000,
7 particularly a Chrysler automobile, in violation of the
8 appropriate code sections.

9 To those allegations and those indictments Mr.
10 Frazier has pled not guilty and by that plea has denied all
11 the allegations in these indictments.

12 Now, is any member of the jury panel related by
13 blood, marriage, close personal friends to any of the
14 attorneys and/or Mr. Frazier in this case? If so, please
15 stand.

16 No one is standing.

17 Any member of the jury panel ever been represented
18 by any of the attorneys in this case? If so, please stand.

19 No one standing.

20 Any member of the jury panel read about, saw news
21 accounts, read on the Internet, heard on the street corner
22 anything about the allegations regarding Mr. Frazier and
23 these allegations and these five indictments? If so, please
24 stand.

25 No one standing.

1 Potential witnesses, and I'll read them as a group
2 and I'll ask you do you know any of them, related by blood,
3 marriage, close personal friends.

4 Mitch McAllister, Greenwood City.

5 Matthew Caughman, Greenwood City.

6 William Kay, Greenwood City.

7 Blake Moore, Greenwood City.

8 Ronnie Powell, Greenwood Sheriff.

9 Brian Penn with the Greenwood Sheriff's
10 Department.

11 Donald Trotter, Greenwood City.

12 Susannah Chatos.

13 Gwendolyn Callaham.

14 Bessie Williams.

15 Kimberly Searles.

16 Travis Rogers.

17 Brian Whitaker.

18 Mary Kate C.

19 Clarence "Ricky" Woolridge.

20 Michelle Day.

21 Kenya Griffin.

22 Gregg Allison.

23 Any member of the jury panel related by blood,
24 marriage, close personal friends to any of those potential
25 witnesses? If so, please stand.

1 We got one. Tell me -- we got two.

2 Tell me your name, please, ma'am, far right.

3 JUROR NUMBER 23: Deborah Davenport.

4 THE COURT: Ms. Davenport. Juror number?

5 JUROR NUMBER 23: 23.

6 THE COURT: 23.

7 Which witness are you related by blood or
8 marriage?

9 JUROR NUMBER 23: Not related. I used to be the
10 nurse at Ms. Chatos' place of employment.

11 THE COURT: You were the nurse employed there?

12 JUROR NUMBER 23: Yes.

13 THE COURT: And so you had a working relationship
14 with Ms. Chatos?

15 JUROR NUMBER 23: Yes.

16 THE COURT: The fact that you have had a working
17 relationship and she's a potential witness, would that
18 affect your ability to be fair and impartial in this case?

19 JUROR NUMBER 23: No, sir.

20 THE COURT: Thank you very much.

21 All right, ma'am, in the pink, tell me your name?

22 JUROR NUMBER 77: Lynn McClurkin.

23 THE COURT: McClurkin.

24 Which witness did I read?

25 JUROR NUMBER 77: Donald Trotter.

1 THE COURT: Mr. Trotter.

2 JUROR NUMBER 77: I used to work with him at South
3 Regional and his wife is a friend of mine.

4 THE COURT: The fact that you are friends with the
5 Trotters, Mr. Trotter is a potential witness, would that
6 affect your ability to be fair and impartial?

7 JUROR NUMBER 77: No, sir.

8 THE COURT: All right. Thank you, ma'am.

9 Any member of the jury panel or a member of your
10 immediate family employed in a law enforcement capacity? If
11 so, please stand. I asked this question in the first trial.
12 Mr. Frazier wasn't in here, so I have got to ask it the
13 second time for his benefit.

14 All right, sir, tell me your name.

15 JUROR NUMBER 91: John Pate, juror number 91.

16 THE COURT: And member of your family?

17 JUROR NUMBER 91: My brother-in-law is a deputy
18 sheriff with Lexington County.

19 THE COURT: Would that affect your ability to be
20 fair and impartial in this case?

21 JUROR NUMBER 91: No, sir.

22 THE COURT: All right. Ms. --

23 JUROR NUMBER 123: Temple.

24 THE COURT: Temple.

25 And your sister is employed as the victim's

1 advocate in the solicitor's office in Newberry County?

2 JUROR NUMBER 123: Yes.

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

5 JUROR NUMBER 123: No, sir.

6 THE COURT: All right. Thank you, ma'am.

7 All right, ma'am, you just stood up behind Ms.
8 Temple.

9 JUROR NUMBER 82: I'm Megan Miles, 82.

10 My dad is a retired policeman.

11 THE COURT: And would that affect your ability to
12 be fair and impartial?

13 JUROR NUMBER 82: No, sir.

14 THE COURT: All right. Thank you Ms. Miles.

15 Ma'am, standing in the black. Tell me your name.

16 JUROR NUMBER 44: Cindy Hart.

17 THE COURT: Ms. Hart.

18 JUROR NUMBER 44: I have a nephew who is a police
19 officer and a step-brother who is state officer in Missouri.

20 THE COURT: All right. You have got family in
21 Missouri?

22 JUROR NUMBER 44: Yes.

23 THE COURT: In St. Louis, Missouri, that are law
24 enforcement employees. Would that affect your ability to be
25 fair and impartial?

1 JUROR NUMBER 44: No.

2 THE COURT: Thank you, ma'am.

3 All right, sir, tell me your name.

4 JUROR NUMBER 149: Thaddaus Wright, juror 149.

5 THE COURT: All right, Mr. Wright.

6 JUROR NUMBER 149: I have a sister that works for
7 Greenwood County.

8 THE COURT: Does she work for Greenwood County
9 right now?

10 JUROR NUMBER 149: Yes.

11 THE COURT: All right. I'm going to excuse you
12 from sitting on this case as Greenwood County employees
13 could be potential witnesses, so you can be seated and stay
14 with me.

15 Mr. Wright, isn't that right?

16 THE CLERK: 149, yes.

17 THE COURT: Any member of the jury panel, a member
18 of your immediate family, a member of a victims advocacy
19 group, such as Mother's Against Drunk Driving, Citizens
20 Against Violent Crime, Students Against Drinking, Bikers
21 Against Child Abuse, any groups of those type of
22 affiliations which would have as their purpose to support
23 people involved as victims of crimes? If so, please stand.

24 No one standing.

25 Now, I asked this question, any member of the jury

1 panel do not understand that they will take an oath to
2 accept the law as instructed by the court and not as heard
3 on, seen on, read on the Internet or the television that the
4 defendant, any defendant, has no duty whatsoever to disprove
5 the case against him? He has no duty to testify. He may
6 remain silent and he may, like in this case, decide to
7 represent himself and be a self-advocate. That is his right
8 and that right cannot be used against him in any manner
9 whatsoever by the State.

10 So Mr. Frazier may decide to testify. He may
11 choose not to. If he chooses to exercise any of his rights,
12 those would be his decisions, and those decisions would not
13 be used against him by the State in any way and will not be
14 considered by you, the jury, in any way.

15 Any member of the jury panel not understand that
16 instruction of the law and have difficulty accepting that
17 under your oath as a juror, please stand.

18 (No response)

19 THE COURT: Any member of the jury panel know of
20 any reason whatsoever they can't be fair and impartial in
21 this case to both sides, please stand.

22 (No response).

23 THE COURT: All right. That's the voir dire I'm
24 going to ask.

25 Mr. Moroney, anything further?

1 MR. MORONEY: No, Your Honor.

2 THE COURT: All right. Mr. Frazier, anything
3 further?

4 MR. FRAZIER: No, sir, Your Honor.

5 THE COURT: All right. Now, since this involves
6 five different charges the State gets five and Mr. Frazier
7 gets ten.

8 So generate me a list, please, ma'am.

9 (Off the record)

10 (Back on the record)

11 THE CLERK: Number 80, Mason Menard.

12 What say the State?

13 MR. MORONEY: Please present this juror.

14 THE CLERK: What say the defense?

15 MR. FRAZIER: Strike him.

16 THE COURT: Please excuse him.

17 MR. FRAZIER: Please excuse him.

18 THE CLERK: 39, Jonah Gonce.

19 What say the State?

20 MR. MORONEY: Please present this juror.

21 THE CLERK: What say the defense?

22 MR. FRAZIER: Please excuse him.

23 THE CLERK: 35, Sharon Freeman.

24 What say the State?

25 MR. MORONEY: Please excuse Ms. Freeman.

1 THE CLERK: 44, Cindy Hart.
2 What say the State?
3 MR. MORONEY: Please present this juror.
4 THE CLERK: What say the defense?
5 MR. FRAZIER: Please excuse her.
6 THE CLERK: 23, Deborah Davenport.
7 What say the State?
8 MR. MORONEY: Please present this juror.
9 THE CLERK: What say the defense?
10 MR. FRAZIER: Please excuse her.
11 THE CLERK: 63, Bernard Jackson.
12 What say the State?
13 MR. MORONEY: Please excuse Mr. Jackson.
14 THE CLERK: 121, Jennifer Taylor.
15 What say the State?
16 MR. MORONEY: Please present this juror.
17 THE CLERK: What say the defense?
18 MR. FRAZIER: Please excuse her.
19 THE CLERK: 91, John Pate.
20 What say the State?
21 MR. MORONEY: Please present this juror.
22 THE CLERK: What say the defense?
23 MR. FRAZIER: Please excuse him.
24 THE CLERK: 98, Clyde Quarles.
25 What say the State?

1 MR. MORONEY: Please excuse Mr. Quarles.
2 THE CLERK: 123, Emily Temple.
3 What say the State?
4 MR. MORONEY: Please present Ms. Temple.
5 THE CLERK: What say the defense?
6 MR. FRAZIER: Please present.
7 THE CLERK: 56, Daci Johns.
8 What say the State?
9 MR. MORONEY: Please present Ms. Johns.
10 THE CLERK: What say the defense?
11 MR. FRAZIER: Please present.
12 THE CLERK: 72, Austin Lunsford.
13 What say the State?
14 MR. MORONEY: Please excuse Mr. Lunsford.
15 THE CLERK: 66, Andrew Lay.
16 What say the State?
17 MR. MORONEY: Please present Mr. Lay.
18 THE CLERK: What say the defense?
19 MR. FRAZIER: Please excuse him.
20 THE CLERK: 50, Angela Hollingsworth.
21 What say the State?
22 MR. MORONEY: Please present Ms. Hollingsworth.
23 THE CLERK: What say the defense?
24 MR. FRAZIER: Please excuse.
25 THE CLERK: 59, Ray Jones.

1 What say the State?
2 MR. MORONEY: Please present this juror.
3 THE CLERK: What say the defense?
4 MR. FRAZIER: Please excuse him.
5 THE COURT: Y'all each got one left.
6 THE CLERK: 106, Barry Shirley.
7 What say the State?
8 MR. MORONEY: Please present this juror.
9 THE CLERK: What say the defense?
10 MR. FRAZIER: Please excuse him.
11 THE CLERK: 141, Renea Williams.
12 What say the State?
13 MR. MORONEY: Please seat Ms. Williams.
14 THE CLERK: What say the defense?
15 MR. FRAZIER: Present.
16 THE CLERK: 37, Lisa Holloway.
17 What say the State?
18 MR. MORONEY: Please seat this juror.
19 MR. FRAZIER: Seat her.
20 THE CLERK: 139, Thomas Wiley.
21 What say the State?
22 MR. MORONEY: Please seat this juror.
23 THE CLERK: Any excuse for cause from the defense?
24 MR. FRAZIER: No.
25 THE CLERK: 77, Lynn McClurkin.

1 What say the State?

2 MR. MORONEY: Please seat Ms. McClurkin.

3 THE CLERK: Any excuse for cause from the defense?

4 MR. FRAZIER: She has family members who are
5 officers.

6 THE COURT: That's not a legal cause.

7 THE CLERK: 34, Dorian Freeman.

8 What say the State?

9 MR. MORONEY: Please seat Mr. Freeman.

10 THE CLERK: Any excuse for cause from the defense?

11 MR. FRAZIER: No.

12 THE CLERK: 46, James Hedrick.

13 What say the State?

14 MR. MORONEY: Please seat Mr. Hedrick.

15 THE CLERK: Any excuse for cause from the defense?

16 MR. FRAZIER: No.

17 THE CLERK: 27, Donna Dillashaw.

18 What say the State?

19 MR. MORONEY: Please seat Ms. Dillashaw.

20 THE CLERK: Any excuse from the defense?

21 MR. FRAZIER: No.

22 THE CLERK: 133, Jason Watts.

23 What say the State?

24 MR. MORONEY: Please seat Mr. Watts.

25 THE CLERK: Any excuse from the defense?

1 MR. FRAZIER: No.

2 THE CLERK: 134, Brett Weeks.

3 What say the State?

4 MR. MORONEY: Please seat Mr. Weeks.

5 THE CLERK: Any excuse from the defense?

6 MR. FRAZIER: No.

7 THE CLERK: 65, Mark Kornet.

8 What say the State?

9 MR. MORONEY: Please seat this juror.

10 THE CLERK: Any excuse from the defense?

11 MR. FRAZIER: No.

12 THE CLERK: 88, James Orr.

13 What say the State?

14 MR. MORONEY: Please excuse Mr. Orr.

15 THE CLERK: 84, Jessica Moore.

16 Any excuse for cause from the State?

17 MR. MORONEY: No.

18 THE COURT: You have a strike on the alternate, so

19 you can excuse her.

20 Now, I'm going to tell you this. If you use it,

21 we have only got one more juror and so whoever that is will

22 be seated, so you can keep her or take the next one. That's

23 it as far as that's on the panel.

24 MR. FRAZIER: Seat her.

25 THE COURT: Okay.

1 I want a side bar with the attorneys and Mr.
2 Frazier.

3 Y'all just sit right here. I'm going to talk to
4 them over here about my plans.

5 (Whereupon, the lawyers and the defendant
6 approached the bench for an off-the-record discussion)

7 THE COURT: I want y'all to see the jury room.
8 There it is. Y'all need to be in the jury room tomorrow
9 morning by 9:30. Okay?

10 Now, very importantly, you are not to discuss the
11 case with anybody. Don't go look up on the Internet
12 anything. If you read a news account of anything happened,
13 don't read it. Ignore it. I told the other jury panel, and
14 you may have heard me, what you need to decide this case you
15 will hear here in the courtroom, the witness stand, the
16 lawyers presenting witnesses and evidence, Mr. Frazier
17 presenting his witnesses and testimony, my instructions.
18 Anything else that's not done under the supervision of the
19 court with a court record is not relevant and not to be
20 considered, so don't let anything outside the courtroom
21 influence your decision in the courtroom. Do you
22 understand? This is important.

23 And don't put on any social media "I'm on the
24 jury." I got two juries out there and I don't want you to
25 start a conversation with somebody "well, is that the jury

1 about such and such case, the one that was started last
2 week?" There is actually another jury out there, neither
3 here nor there. Don't put anything on Facebook, My Face,
4 whatever space, Instagram. Somebody will say "what kind of
5 case is it," and then you are talking about the case on the
6 social media and everybody is reading it and somebody is
7 influencing your thinking about this case that's not in the
8 courtroom that I can observe and I can rule its fairness.
9 It's got to be in here and y'all as a group of thirteen, you
10 can hear it at the same time so you see what's said and how
11 it was said and that kind of thing.

12 So y'all are excused until in morning at 9:30. Be
13 in that jury room by then.

14 Mr. Willingham makes a good pot of coffee and we
15 have water. So you come in, you can probably have yourself
16 some coffee, if you're a coffee drinker, or water if not.

17 All right. Everybody else -- y'all can go. Y'all
18 walk around. I'm going to talk to these folks.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: Y'all call in tomorrow night after six
22 and the recording will say call back after six Wednesday
23 night, come in Wednesday morning. It may say, you know,
24 something like thank you for your service. Listen to it.
25 After six now. The girls are up here who are going to put

1 the recording on here in the courtroom with me. If you call
2 at 4:30, the girls are downstairs in the clerk's office,
3 they are going to say I don't know what's going on up there.
4 There is another courtroom across the hall doing the same
5 thing I'm doing, except not jury trials. They are moving
6 cases too, so there is another clerk over there. They know
7 what's going on. The girls downstairs don't, so calling
8 early only rings the phone unnecessarily, so wait until
9 after six and listen to the recording. Just follow the
10 instructions. And if I see you again, thank you for your
11 patience, and if I don't, thank you for your service. Call
12 all after six tomorrow.

13 All right, we are going to stand at ease until
14 2:15. Is that enough time for lunch, gentlemen? Everybody?
15 Okay.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: Mr. Moroney, are you ready to go?

19 MR. MORONEY: We are, Your Honor.

20 THE COURT: Mr. Frazier, are you ready to go?

21 MR. FRAZIER: Yes, sir, Your Honor.

22 THE COURT: All right. For the record starting
23 out we had a side-bar conference just before lunch break
24 where I talked with Mr. Frazier and both of the defense
25 attorneys regarding the selection and excuses offered to

1 excuse certain jurors. The court noted there were three
2 strikes exercised peremptory by the State: Juror number 35,
3 Ms. Freeman; juror 53, Mr. Jackson; and juror 98, Mr.
4 Quarrels. At the side bar the court inquired to the State
5 without requiring Mr. Frazier of making a Batson motion to
6 provide racially neutral reasons.

7 Each of those strikes, the State represented, that
8 each of them had prior records of more than five
9 convictions. Each one of them had, in fact, twenty-six bad
10 checks. I believe that was Ms. Freeman. Mr. Quarrels had a
11 couple of counts of CDV and a pending charge, and Mr.
12 Jackson had a conviction for assault and battery, is my
13 recollection.

14 The court told Mr. Frazier that he would place
15 that on the record, that those were valid reasons outside of
16 racially -- they were racially neutral and not cursory
17 strikes taken by the State, and so for that reason the court
18 is reciting the discussion and ruling from the side bar just
19 before lunch.

20 All right, anything from the State pretrial?

21 MR. MORONEY: Yes, Your Honor. We just wanted to
22 make a motion in limine with respect to that none of our
23 negotiations prior with offers come out in front of the
24 jury.

25 THE COURT: Okay.

1 Mr. Frazier, do you understand that? A motion in
2 limine is like a motion in anticipation of trial that the
3 State believes from testimony that wouldn't be allowed under
4 the rules may potentially come up, and what they asked is
5 that you be required to not mention any discussions y'all
6 had regarding a plea to something else, or a plea and an
7 offer of time of any amount. I don't know any offers, other
8 than what we talked about pretrial, which was a plea to two
9 and dismiss the others. Discussion or bringing up in the
10 presence of the jury any issues about any resolution by way
11 of plea by you could hurt your case and hurt the State's
12 case, so the only things that we talk about are the pending
13 charges that you are defending yourself against and not
14 about pretrial negotiations. I think that would be
15 appropriate to caution you. Don't go into what the State
16 offered you and offer to dismiss as a part of your case, if
17 you have that opportunity. Do you understand?

18 MR. FRAZIER: I -- I disagree, Your Honor.

19 THE COURT: Okay.

20 MR. FRAZIER: On the grounds of because it's a lot
21 of switching back and forth from this to that and this to
22 that and I think it would be -- I think it would be good for
23 the jury to understand that it's a lot of reconsidering.

24 THE COURT: But that's not before them.

25 What they have got to decide, not what y'all

1 talked about or what you considered pleading guilty to.
2 Now, because, if you bring it out it's going to give an
3 implication that you may are going to take some ownership of
4 some of these charges and then you are pleading not guilty
5 and you are defending yourself against them, so it could
6 kind of be painted a different way by the State if it comes
7 in and say "he was about to accept responsibility for these
8 two charges and then he's changed his mind." So the State
9 could argue that if we allow that kind of testimony to come
10 out.

11 MR. FRAZIER: I understand, Your Honor, but the
12 offer was declined.

13 THE COURT: Okay. Well, then I don't want any
14 discussion about negotiations in front of the jury.

15 MR. FRAZIER: Okay.

16 THE COURT: Because we will deal with the charges.
17 The State has got the burden of proving their case. You
18 have got the responsibility of representing yourself.

19 MR. FRAZIER: Yes, sir.

20 THE COURT: Okay. Now, any motions by you
21 pretrial?

22 MR. FRAZIER: Yes. I want to put in -- I'll put
23 in for a motion of change of venue and dismissal and
24 transfer action.

25 THE COURT: Let's argue venue first.

1 Why do you want a change of venue?

2 MR. FRAZIER: I want a change of venue on the
3 grounds of -- excuse me, let me get it right.

4 I'm uneducated. I haven't been provided with
5 access of prosecution for prior proper defense for myself,
6 but that's one of them.

7 There is not a law library as a pro-se defendant.
8 I don't have access to a law library, law books, so,
9 therefore, I cannot prepare a proper defense for myself.
10 It's like kind of rushed in on me, so -- and I was asking on
11 the change of venue and transfer action on the grounds, one,
12 that since I don't have access to a law library and a law
13 book or a law book in Greenwood County and they don't have a
14 law library or law book at none of the detention centers in
15 the Eighth Judicial Circuit, that I be transferred to a
16 place where I have access to a law library, law books to
17 prepare a proper defense for myself. And by me not having
18 that, I feel like I don't stand a chance at a fair trial, so
19 that prepares me for proper grounds of a change of venue.

20 Two, if you go to the preliminary hearing it
21 states that there were four different -- which on tampering
22 with evidence. There is four different amounts of weights
23 on the drugs that they claim that they found. It's --
24 that's why at the last bond hearing the solicitor said 23
25 grams. At the other hearing he said twenty something grams.

1 Well, you have four different weights of 23 grams,
2 21.09 grams on the incident report, and you have 20.0 grams
3 on the warrant? And the SLED analyst reads -- as it comes
4 back from SLED it read 19.92 grams. So that's four
5 different weights. The drugs are gaining and losing weight
6 at different times, multiple different times, so, therefore,
7 I feel like it's something going on between there and where
8 the weight is gaining and losing.

9 Okay. Also --

10 THE COURT: Hold on. Hold on. Let's rule on
11 these as we go.

12 Your request for venue is denied. Venue is not
13 based on the access to a law library. It's based on access
14 to a jury of a trial by your peers. The case occurred in
15 Greenwood County. The officers are all from Greenwood
16 County, Greenwood City. You have been housed in Greenwood
17 County detention facility since your date of arrest, and
18 Greenwood is the proper jurisdiction, so your venue request
19 is denied.

20 Regarding the tampering with the evidence and your
21 differing in weights, the State is not allowed to go into
22 the weight of any of those that are in the warrant or the
23 incident report. They seem to be close. You said 23 grams,
24 21, and different decimal points, but the weight per SLED,
25 the 19.92, that will be the weight the State would have to

1 offer before the jury, which I note is the lowest amount of
2 the reports that you have. And so SLED is tasked with -- or
3 the State has got to call the SLED witness to provide
4 testimony as to accurate scales not being I'm going say a
5 cheap scale. For purposes of investigation by police, they
6 may have a scale of less quality. The SLED instruments are
7 accurate. They are required to bring an expert in to
8 testify to the exact weight per to more expensive or better
9 scale. So they would not be able to go into the higher
10 weight. They would be required to testify and present to
11 the jury only what the SLED analyst said it weighed.

12 MR. FRAZIER: Well, at that point of arguing, what
13 I'm saying is from it being at a higher number on the
14 warrant, and then as in the incident report being something
15 else, and then as it goes down it's being something else.
16 And then once it's sent off to SLED it's coming back a
17 different number, so I would feel like there has -- it's got
18 something to do with the officers and the investigators
19 between there and the ones who send it off to SLED.

20 But at the same time what I was thinking is that
21 should be proper cause for a change of venue on the part
22 where you said that the change of venue don't have nothing
23 to do with the law library, isn't it -- ain't I -- as a
24 pro-se defendant ain't I automatically entitled to access to
25 a law library or law books to prepare a defense for myself

1 at trial? If the county jail doesn't have that or cannot --
2 or don't have a law library or law books that you have
3 access to, isn't that a reason for -- to get transferred to
4 somewhere where I can have a proper --

5 THE COURT: No, it's not. It certainly doesn't
6 help your case not having access to books, but the State is
7 not required to provide you books to defend yourself. You
8 get to defend yourself and you're tasked with knowing the
9 rules as they are written, but you don't get -- you don't
10 have a Constitutional Right to be transferred to a different
11 jail because they have a better library. I have never heard
12 that.

13 MR. FRAZIER: Well, can you grant me access to
14 that?

15 THE COURT: I mean, if it's not available, it's
16 not available.

17 MR. FRAZIER: That means so if I don't have access
18 to it, I'm not able to stand a fair trial in this county.

19 THE COURT: No, it means that you don't know all
20 the rules.

21 MR. FRAZIER: Okay.

22 THE COURT: It means you get a fair trial. I'm
23 going to do everything that I can to give you a fair trial.

24 MR. FRAZIER: I understand that, but as a pro-se
25 defendant I feel like I should have been entitled to access

1 to it at the county jail. It's a law that all detention
2 centers are -- they were supposed to have a law library.

3 THE COURT: I don't think that's the law.

4 MR. FRAZIER: Okay.

5 THE COURT: So respectfully I will decline that
6 request to have the venue changed because the law library is
7 inadequate or nonexistent in Greenwood County.

8 And regarding the weight of the drugs, there is
9 differing weights in the incident report, the arrest warrant
10 and the SLED report. The State is only going to be allowed
11 to testify or present testimony as to what it was weighed by
12 the SLED analyst, which is the lowest weight, okay? They
13 can't go into it weighed more in the incident report,
14 because that throws -- it casts doubt towards you and they
15 are not going to be allowed to do that. They can only put
16 in the one that they have an expert witness, a SLED analyst,
17 that can testify that on his fancy scale in a SLED
18 laboratory the drugs weighed whatever they weighed, 19 grams
19 and some odd change. They can't go into the other amounts.

20 MR. FRAZIER: So if the officer states that when
21 he found these drugs, he found such and such amount of
22 weight and then it states something different, that means --

23 THE COURT: It's kind of like this. I'm going to
24 give you an analogy. A police officer of good experience
25 can say "I made an arrest of a guy who had drugs on him. I

1 field tested the drugs. They were positive for marijuana,
2 cocaine," something along those lines. That's not proof
3 that it's marijuana or cocaine. It's still got to be sent
4 to SLED and it chemically tested, not a field test, but a
5 chemical test to prove it was the drugs they claim you had
6 possessed. So the preliminary field test, or "in my
7 experience it appeared to be cocaine," or, "it appeared to
8 be marijuana," you know, they can testify to that, but
9 that's not proof of anything. It's the SLED report that's
10 proof.

11 MR. FRAZIER: Okay. So if they said they weighed
12 it and approximately weight of 23 grams and SLED -- it come
13 back from SLED and it was 19.2, that means that it lost --
14 19.92, that means it lost a bunch of grams. I mean --

15 THE COURT: That's their problem.

16 MR. FRAZIER: Okay.

17 THE COURT: I mean, if it were going up as the
18 weighing is going substantially, I may buy your argument
19 that somebody is tampering and adding weight to it, but if
20 it's coming down, it's just getting more accurate.

21 MR. FRAZIER: Yeah.

22 THE COURT: Okay.

23 MR. FRAZIER: All right. Well, Your Honor, I want
24 to bring up this right here. One, on this -- this
25 indictment states voir dire indictment, they have the wrong

1 name Kenneth Larren Baker.

2 THE COURT: Okay. Now, they told -- I asked them
3 about that and do you remember when I asked those voir dire
4 questions to all the jurors about do you know anyone in the
5 case, related by blood or marriage to any of the witnesses?

6 MR. FRAZIER: Uh-huh.

7 THE COURT: Do you remember that I didn't ask any
8 of these questions? I didn't. I didn't ask either of these
9 questions, basically because of that mistake, so I have
10 already protected -- those questions have already been asked
11 of the whole pool and these were not asked. I asked my voir
12 dire questions, and so if you had asked ahead of time not to
13 ask the questions, I would have said you are right, I'm not
14 going to ask the questions. I didn't ask the questions, so
15 it's already taken care of. Those questions will not be
16 asked, and they were not asked.

17 MR. FRAZIER: Okay. Well, on this right here on
18 the indictment, the indictment paper, the indictment -- the
19 indictment warrant?

20 THE COURT: Yeah.

21 MR. FRAZIER: It has writing on it where it
22 says -- like it says the indictment number, and the number
23 that was beside it is written, not typed.

24 Also --

25 THE COURT: Which indictment number?

1 MR. FRAZIER: The indictment number is for --
2 indictment for breaking into a motor vehicle and grand
3 larceny. Yeah, breaking into a motor vehicle is
4 15-GS-24-1606.

5 THE COURT: And which part are you worried about?

6 MR. FRAZIER: I'm worried -- I'm worried about the
7 writing on breaking into a motor vehicle and leaving the
8 scene of an accident, which I have a blue ticket where it's
9 written on.

10 THE COURT: That won't come in. Blue tickets
11 don't come in.

12 MR. FRAZIER: Yeah, I understand that.

13 THE COURT: The indictment stands for your blue
14 ticket.

15 MR. FRAZIER: Okay. And --

16 THE COURT: Are you worried -- let me ask this.
17 Are you worried about the number 1603?

18 MR. FRAZIER: Is it typed on there?

19 THE COURT: No, this one is not.

20 MR. FRAZIER: Is it written?

21 THE COURT: Handwritten.

22 MR. FRAZIER: Okay. That -- yeah, the
23 handwritten -- yeah, the writing.

24 And on the -- what is this? The grand larceny,
25 the warrant number is wrong on it. They have the wrong

1 number for grand larceny. They have the wrong warrant
2 number for grand larceny.

3 The warrant number for grand larceny, I have it
4 right here. They have the warrant number for grand larceny
5 is 215D2400100132. The warrant number for it is
6 215A2420100541.

7 THE COURT: Did you notice that says direct
8 indictment?

9 MR. FRAZIER: Yes.

10 THE COURT: That means they didn't use that arrest
11 warrant to get it. They put direct testimony by law
12 enforcement officer in front of the presence of the Grand
13 Jury and directly indicted you on that one. It doesn't have
14 to have the same warrant number.

15 MR. FRAZIER: Okay. Well, the rest of them has
16 the same warrant number.

17 And what is the indictment that they got an
18 indictment off of for D2400100132?

19 THE COURT: What that in reference to?

20 MR. MORONEY: That's just generated every time we
21 do a direct indictment and it will be on the same
22 information with respect to the initial warrant that he's
23 referencing. It's the same facts.

24 THE COURT: I mean, here is what the Grand Jury
25 does. The police officer has got to go there and is sworn

1 to tell the truth in front of the Grand Jury and the Grand
2 Jury is listening for facts presented by the State,
3 uncontradicted, so nobody else is in there. If those
4 witnesses were believed and they were telling the truth,
5 does the Grand Jury believe it more probably than not that a
6 crime was committed? More probably than not.

7 The Grand Jury in this case is hearing the
8 testimony of the presenting officer believes a crime had
9 been committed more probably than not. That causes the
10 indictment to be True Billed, which all these have True bill
11 written, technically in the wrong spot. They are written in
12 the verdict area. They should be written above where it
13 says foreman of the Grand Jury. It should be written there,
14 but we can correct that, because I use a -- I don't send the
15 indictments back to the jury room. I send a verdict form
16 that says regarding the charge of, guilty or not guilty.
17 Regarding the next charge, guilty or not guilty. So this is
18 the -- it looks like Grand Jury foreperson should have
19 signed here in the middle and they signed below, but they
20 did write True Bill and signed their name and that should
21 have been written up here, but that's not a fatal error.
22 That's an error on the part of the foreperson and not the
23 State.

24 MR. FRAZIER: Okay.

25 THE COURT: So the direct indictment and the

1 other -- all were True Billed, which means there is no need
2 to refer it back for a preliminary hearing. So these
3 indictments all have been considered by the Grand Jury and
4 the consideration was was there a crime committed more
5 probably than not and the Grand Jury answered yes.

6 Now, that is not proof that any of these
7 allegations are true. The State now must prove the
8 allegations in the indictment, each element, beyond a
9 reasonable doubt. Okay?

10 MR. FRAZIER: Okay.

11 THE COURT: Okay.

12 MR. FRAZIER: So they are allowed to write on the
13 indictment?

14 THE COURT: Yeah.

15 MR. FRAZIER: Okay. I just wanted to make sure.
16 I just seen that. I wanted to make sure it wasn't an error.

17 THE COURT: The 1603, that's written by the Clerk
18 of Court. She has to number them sequentially from one.
19 And what the numbers are 15 means 2015. GS means Court of
20 General Sessions. The 24 means Greenwood County, the 24th
21 County in the alphabet list. And then 1603, 1604, that's
22 the 1,603rd indictment handed out in '15, and -- so there
23 may be 3,000 indictments handed out by Greenwood a year and
24 these are numbers 1603, 04, 05, like that. That's how that
25 number is generated. I mean, there is only one indictment

1 15-1603 and that is this one. The next one is 1604. So
2 each of them has got to be separately written and separately
3 numbered and they are. Okay?

4 MR. FRAZIER: Okay.

5 You said for the change of venue. Motion for
6 transfer of -- motion for evidentiary hearing.

7 THE COURT: About -- what are you -- what about
8 the evidence?

9 MR. FRAZIER: Evidence -- it's stating evidence,
10 at one point you got two different arresting officers on it
11 and one say they found -- they claim they found drugs here
12 and then another one claims they found drugs at another
13 place. Another one was claiming they found drugs on my
14 possession. Another claimed that they found drugs on my
15 possession at another place.

16 THE COURT: Okay. Yeah. Those are questions of
17 fact what you just brought up. Questions of fact are for
18 the jury to resolve. So if their officers are going to say
19 "we found these drugs on his person," and then the next
20 police officer wrote a report and says "we found them in his
21 car," that's a question of fact for you to present to the
22 jury saying "look, they got two police officers. One says
23 it was found here. One says it was found there."

24 MR. FRAZIER: I understand that. And --

25 THE COURT: But that -- you don't get an

1 evidentiary hearing ahead of time. That's for you to
2 present to the jury and point out the --

3 MR. FRAZIER: Yeah.

4 THE COURT: -- differing reports.

5 Now, the reports don't come into evidence, but the
6 officer gets up and says "I went out and investigated. I
7 made an arrest and I found drugs in his right front pocket,"
8 and you got an incident report in your hand from another
9 officer that says "I got them out of his jacket pocket."

10 MR. FRAZIER: All right.

11 THE COURT: You can ask those questions to those
12 witnesses, "didn't you testify or didn't you say in your
13 report you found them in a different pocket?" And --

14 MR. FRAZIER: Yeah, I understand.

15 THE COURT: -- he says no, then --

16 MR. FRAZIER: I'm just throwing that in there,
17 Your Honor --

18 THE COURT: That's for you to cross-examine their
19 witnesses with.

20 MR. FRAZIER: All right, but --

21 THE COURT: That's -- that is what you get to do
22 representing yourself as pointing out the discrepancies in
23 their reports, but you get to ask them live. Okay? And the
24 State would not be allowed to introduce those reports.

25 MR. FRAZIER: Okay.

1 THE COURT: But you can use them "didn't you make
2 an incident report that night? Didn't you say in your
3 report that those were drugs somewhere else?"

4 MR. FRAZIER: Yes, sir.

5 But -- all right. On grounds I want to make sure
6 that they have the drug. At the evidentiary hearing I want
7 to make sure that the drugs are brought forth. I want to
8 make sure the drugs --

9 THE COURT: Look here. That's their problem and
10 if they show up tomorrow in front of the jury and don't have
11 the drugs in the courtroom, there is no drugs to
12 introduce --

13 MR. FRAZIER: Yes, sir.

14 THE COURT: Okay. That's their problem.

15 MR. FRAZIER: And I want to make sure that there
16 is no evidence that I haven't received.

17 THE COURT: All right. He made a Rule Five. Have
18 y'all fully complied with Rule Five and Brady material he's
19 asked for?

20 MR. MORONEY: We have documented each meeting with
21 him and I have given him everything that I have.

22 THE COURT: All right.

23 MR. MORONEY: With respect -- he hasn't viewed the
24 drugs, things like that.

25 THE COURT: Okay. Now, if they come up with

1 something at trial and you don't have a copy of it, you say
2 "judge, I got a matter of law." And that means I'm going to
3 excuse the jury to the jury room. And you say "judge, do
4 you remember yesterday when I asked that Rule Five discovery
5 materials and they still hadn't giving me everything. Now
6 they are talking about a report. I don't have a copy of it
7 and I don't want them to use that in front of the jury
8 because it wasn't give to me ahead of time." That's how you
9 handle that.

10 MR. FRAZIER: Okay.

11 THE COURT: Okay. They say -- they just told me
12 they have given you everything.

13 MR. FRAZIER: Okay.

14 THE COURT: So if it comes up during trial, that's
15 how you point it out, is "judge, I have got a matter of
16 law."

17 MR. FRAZIER: Okay.

18 THE COURT: Right before he's got to ask the
19 witness about the report you say "I have got a matter of
20 law." That's a code to me that you want to talk about a
21 legal issue, meaning something that we are talking about
22 now --

23 MR. FRAZIER: Yes, sir.

24 THE COURT: -- but you don't want the jury to hear
25 it.

1 MR. FRAZIER: Yes, sir.

2 THE COURT: Okay?

3 MR. FRAZIER: All right.

4 THE COURT: Then if they don't have it and they
5 didn't give it to you and you don't have it, then they don't
6 get to use it.

7 MR. FRAZIER: Yes, sir.

8 THE COURT: That would be a proper objection on
9 your part.

10 MR. FRAZIER: Okay.

11 THE COURT: I'm trying to help you a little bit.

12 MR. FRAZIER: I understand.

13 THE COURT: This is pretrial.

14 MR. FRAZIER: I understand where you are coming
15 from.

16 THE COURT: Okay. But in front of the jury I'm
17 going to be a little more guarded and I may call you over
18 here and say "do you remember yesterday when we talked?"

19 MR. FRAZIER: Yes, sir.

20 THE COURT: "You are restricted, or you are
21 required," or that kind of thing, so I'm going to send you
22 over here.

23 MR. FRAZIER: Yes, sir.

24 THE COURT: I can't give you advice.

25 MR. FRAZIER: I understand.

1 THE COURT: I can help you with procedures.

2 MR. FRAZIER: Okay.

3 THE COURT: To that extent.

4 MR. FRAZIER: Yes, sir. Okay.

5 On the grounds of the motion for dismissal. I
6 asked for a motion for dismissal of charges on the grounds
7 that -- well, I spoke with the solicitor and he was like --
8 they gave me a video of some of the scene.

9 THE COURT: Yeah.

10 MR. FRAZIER: And in the video it does not -- it's
11 like -- he said he took his phone and recorded it. He -- so
12 basically what he said is he recorded a video of the
13 camera -- of the camera port from the scene --

14 THE COURT: Uh-huh.

15 MR. FRAZIER: -- and it doesn't show -- it just --
16 it doesn't show the whole scene of everything that happened.
17 So I feel like that that was kind of like him stepping out
18 of the field and his duty of -- because he -- he is the
19 solicitor, so he should have -- staying the solicitor he has
20 no business going and recording nothing on his phone.

21 And also --

22 THE COURT: Do y'all intend to use that video?

23 MR. MORONEY: We do, Your Honor. He has the
24 full -- background, he has the full surveillance footage
25 video, which is one of the twelve cameras at a time. And in

1 the interest of efficiency I recorded the three that we
2 intend on using, the three views that show the actual
3 incident and the car from Chick-Fil-A, but he also has the
4 full video that depicts everything else. I'll submit --

5 THE COURT: You are not going to use the three in
6 your case? You are going to use the full video, but you are
7 telling me you gave him the three videos?

8 MR. MORONEY: The three, that's correct. That's
9 correct.

10 THE COURT: Okay. They are not to use three
11 videos. They have got to use the big one. They were just
12 giving it to you out of convenience.

13 MR. FRAZIER: Okay. I was just making sure that
14 that be used because I don't -- you know, if I only got --

15 THE COURT: Right.

16 MR. FRAZIER: -- something that he recorded, it
17 would be a part that he wants to use against me and not --

18 THE COURT: Here is the part of the deal is they
19 are supposed to give you complete discovery and he said he
20 did.

21 Now, completeness and full discovery makes a
22 difference, but now parts of it that they are not going to
23 use and if he says "I'm not going to use camera 12, it may
24 be in there and there is nothing in it for you to see,
25 that's just extra evidence that he had to give you because

1 it was part of the whole recording. So he's going to use
2 the big video, but he wanted to show you the three he
3 intended to use. He's identified the three cameras that
4 he's going to focus on, but he's going to do it through the
5 twelve. So if you want to go into the other twelve -- other
6 nine cameras don't show a thing, you can.

7 MR. FRAZIER: Yes, sir.

8 THE COURT: Okay?

9 MR. FRAZIER: Also on the grounds of -- on the
10 grounds of that in my preliminary hearing -- I mean at my
11 bond hearing when I first come in, Your Honor, I was sitting
12 in front of the judge before my warrants were typed and
13 served.

14 THE COURT: Yeah.

15 MR. FRAZIER: I came -- I came in on the 9th, July
16 9th, 2015. I went in front of Judge Miller on July 10th,
17 2015. The warrants weren't signed and served to me on until
18 July 11th, 2015.

19 And the video that identified -- I mean they
20 provided me with of the preliminary hearing, he admits to
21 making errors and he admits to saying that the video of --
22 sometimes he makes a mistake and writes the wrong date on
23 the warrants, but he said -- he turned and he says it's a
24 mistake, but then he turns around and flipped it around, so
25 I was going to argue the point on dismissal on the grounds

1 of improper arraignment because I feel like they predated
2 the warrants to try to railroad me.

3 THE COURT: Here is the thing. Warrants don't
4 come before a jury.

5 MR. FRAZIER: Okay.

6 THE COURT: Warrants are not introducible. That's
7 a preliminary charging document going in front of a
8 magistrate, arrests made, bond hearings, such as that.
9 After that they have got to go to indictment. And then the
10 arrest warrants don't come in.

11 Now, if there is a discrepancy in the arrest
12 warrant, then you can point that out and say "officer, you
13 arrested me on such and such a day, but the warrant you
14 swore out in front of the magistrate stated what day?" You
15 can point that out, but that arrest warrant doesn't go in
16 front of the jury because it's not proof of anything other
17 other than a scrivener's error I'm going to call that and he
18 can explain that.

19 MR. FRAZIER: Typographical?

20 THE COURT: You can point that out when you
21 cross-examine the officer, okay, if you choose.

22 MR. FRAZIER: Okay.

23 THE COURT: Your decision.

24 So I'm going to deny your motion because you are
25 going to get an opportunity to do this --

1 MR. FRAZIER: Okay, I understand.

2 THE COURT: -- during trial. It's not something
3 that you do ahead of time.

4 MR. FRAZIER: All right. Okay.

5 I want to do a motion for subpoena on the grounds
6 of from when I came to jail, since I came to jail and I was
7 sent to the hospital. And since I came to jail I was sent
8 to the hospital and then I came back to the hospital. But
9 in between the time of me coming to the jail from leaving
10 the scene -- to coming to the jail leaving the scene -- I
11 mean leaving the jail and coming back to jail is a gap. I
12 can't -- it's a big gap there. It's that nobody really can
13 speak on, but the officers of the jail where I was searched
14 several times. And --

15 THE COURT: Did they find something on one of the
16 searches?

17 MR. FRAZIER: No, they never found nothing.

18 THE COURT: So that doesn't hurt you, okay? So
19 what are you worried about, the gap in time?

20 MR. FRAZIER: No, I want to -- I want the
21 detention officers to be able to speak on what happened that
22 I was searched such and such to when I came to jail and then
23 I left -- I was -- they said that they couldn't get a
24 response out of me, so they sent me to the hospital. Then I
25 was brought back to jail on a different shift. So I want

1 them to speak of when I left, why -- the reasons why I want
2 them to testify to say why I was sent the way this and that,
3 why I was sent to the hospital.

4 THE COURT: Why was you in the hospital? Medical
5 treatment?

6 MR. FRAZIER: No, they said that they couldn't get
7 a response out of me.

8 THE COURT: What do you mean a response?

9 MR. FRAZIER: They said that I believed I was
10 under the influence of some drugs or something.

11 MR. MORONEY: That's more in line with -- there is
12 some mischaracterization to the truth, Your Honor. He was
13 not searched at the jail and they refused to answer him
14 because they believed he was under the influence of
15 amphetamines at the time, so he was not booked in, not
16 searched, and he was returned to the hospital. The officers
17 transported him and took him to the hospital. And I think
18 he's concerned about some surveillance video with respect to
19 the booking area.

20 MR. FRAZIER: Yes.

21 MR. MORONEY: We looked into that a couple of
22 months ago and it had been overridden.

23 THE COURT: There is no video to get?

24 MR. MORONEY: There is no video.

25 THE COURT: But how long was he at the hospital

1 when they thought he was under the influence of
2 amphetamines?

3 MR. MORONEY: I'm guessing here. I'm estimating.
4 I should say about an hour and a half, you know.

5 THE COURT: What do you guess?

6 MR. FRAZIER: I -- I was shot up with Lorazipam
7 injection, so I was -- once I got to the hospital they hit
8 me with the injection. I was out of it, so I really can't
9 state how long I was at the hospital.

10 THE COURT: Okay.

11 MR. MORONEY: Based on the booking, it sounds like
12 he was booked in at 7:30, or so.

13 THE COURT: So the only booking we are going to
14 talk about is the second booking, which actually is the
15 first booking, but he's talking the second one?

16 MR. MORONEY: We will get into the fact that he
17 was refused at the jail due to his state of intoxication.

18 THE COURT: Okay. He will have a lot of --

19 MR. FRAZIER: You see, the time was 19:14. It
20 says 19:14, and -- yeah, 19:14.

21 THE COURT: You can bring that out, but there is
22 no other evidence or reports that go into any of that, is
23 that right, solicitor? There are no other reports from the
24 booking or that hour and a half he was at the hospital?

25 MR. MORONEY: The report he has is something that

1 I have, but we don't plan on delving into this detail.

2 THE COURT: You can explore it, but there is
3 nothing else out there report-wise or video-wise.

4 MR. FRAZIER: Okay.

5 THE COURT: All right.

6 MR. FRAZIER: So how would I -- like I asked them
7 over there at the jail not too long ago. I asked them how
8 would I be able to get the names that I need to subpoena
9 people to court?

10 THE COURT: So what's it going to prove? You want
11 the people at the correctional --

12 MR. FRAZIER: You see, I want them to prove
13 because this here is -- at the time I have money missing. I
14 have a wallet missing. I have some items that were took
15 from me. In between that time of from my arrestment until
16 the jail until the hospital and coming back. I came back
17 and -- I went to the hospital in clothes. I came back in --

18 THE COURT: Hospital clothes?

19 MR. FRAZIER: Yeah, and I had some items missing.
20 And everybody is saying like "oh, you didn't have this, this
21 and that. You didn't have no money." Like on the -- on the
22 jail intake and the booking report it was like it's blank.
23 Items, property, it's blank. And when I came back I checked
24 my account when I went to court three days later, I woke up
25 and I didn't have no money, no nothing. And I had money on

1 me, a wallet and all that was missing, so I'm trying to
2 figure out if they searched me. I want them to speak on
3 what happened to figure out what happened to the --

4 THE COURT: You can ask them on the search, but
5 they -- you don't get to subpoena -- you don't get to
6 subpoena those correctional officers if you weren't booked
7 in.

8 MR. FRAZIER: That's what I'm saying, I want to
9 subpoena them --

10 THE COURT: That's not relevant to the charges you
11 are defending. That's relevant to -- you said something is
12 missing from your pockets?

13 MR. FRAZIER: Yes.

14 THE COURT: But that's not before the court.
15 That's not the issue before this jury is whether you had
16 money stolen or not. It's whether you committed these
17 crimes or not.

18 MR. FRAZIER: Yeah, I understand that. I
19 understand that and that is not saying whether I'm guilty or
20 not guilty, but what I want to prove is who searched -- I
21 want to figure out who searched me and what happened and I
22 want them to state this and that, this and that, so forth
23 and so forth. That's why I want to subpoena them.

24 THE COURT: Okay. I'm not going to -- I'm not
25 going to grant your motion for subpoena on those, unless

1 they are already witnesses in here. I'm not going to bring
2 those over because that's not relevant to this case.

3 Something that you are concerned about, your
4 stuff, is not relevant to your defense on whether or not you
5 committed these crimes, because you didn't commit a crime
6 inside the jail. You are not accused of committing a crime
7 inside the jail. They are accusing you of doing something,
8 taking a car, or trying to break into a car, all that sort
9 of stuff. That's what you are defending yourself. It's not
10 about what happened as soon as you got there.

11 MR. FRAZIER: I understand that, Your Honor.

12 THE COURT: That's not relevant. Whatever
13 happened after the arrest is not relevant. It's not to your
14 defense, okay?

15 MR. FRAZIER: Okay.

16 THE COURT: So I'm not going to grant any
17 subpoenas for anything that happened after your time of
18 arrest.

19 MR. FRAZIER: Okay.

20 THE COURT: It's not to this jury.

21 MR. FRAZIER: Motion to suppress the evidence on
22 the grounds of money missing and they changed the warrants.
23 The warrants -- the original warrants that I have -- I
24 had --

25 This is what happened. I had the original

1 warrants that a different officer's name on it.

2 THE COURT: The warrants are not coming in.

3 MR. FRAZIER: Huh?

4 THE COURT: The warrants aren't coming in.

5 MR. FRAZIER: They are not coming in?

6 THE COURT: They go off the indictment at trial.

7 MR. FRAZIER: Okay. What about on the grounds of
8 the carjacking, no force -- no force is -- well, they are
9 trying --

10 THE COURT: That's their problem to prove.

11 MR. FRAZIER: Okay.

12 THE COURT: You don't have to disprove it, but if
13 you have got evidence that shows what you did or didn't do,
14 you can present that, but they have got to prove this stuff
15 at trial. You don't have to disprove it right now.

16 MR. FRAZIER: Okay. And transfer on the grounds
17 that -- not transfer actually, but the transcript. I need
18 the transcript from the hearings, my hearings, like my
19 representation hearing and my bond hearing that I could use
20 as a defense at trial.

21 THE COURT: What's it got in there?

22 MR. FRAZIER: Where -- where the solicitor stated
23 a different amount of weight on the drugs.

24 THE COURT: They can only go by the SLED amount.

25 MR. FRAZIER: I understand that, but --

1 THE COURT: If they are reading the incident
2 report to the bond officer, that's just them reading off the
3 incident report to get a bond set or denied for you. They
4 can only go by the SLED analysis.

5 MR. FRAZIER: Okay. So if it uses -- say if I
6 want the transcript to prove where somebody told a lie or
7 something, and I read the statutes that said that as a
8 pro-se defendant indigent I'm automatically entitled to a
9 copy of my transcript of hearing.

10 THE COURT: Tell me what it's got to say in there.
11 I don't understand. You think somebody is lying. I don't
12 understand. What did they say at the bond hearing?

13 MR. FRAZIER: Say, for instance, they say -- like
14 a detective said that he found drugs here. But then he
15 turned around and say something different. Or the solicitor
16 said that I used force to snatch the lady out of the car,
17 but then --

18 THE COURT: Okay. Look here. They got to prove
19 their case based upon the evidence they found and the
20 eyewitnesses they have. The arresting officer or the
21 investigating officer can't say "he snatched her out of the
22 car."

23 He can say "I was investigating a carjacking."
24 They can call the lady. She says "I was in the car and this
25 is what happened."

1 What they say at a bond hearing is not really
2 testimony. That's just kind of a summary of the facts, and
3 so he -- the arresting officer or investigating officer
4 can't say. Unless they saw it with their own eyes, all they
5 can say is "during my investigation I found out this. I
6 talked with certain witnesses." They really don't say what
7 the witnesses tell them. The witnesses got to come in and
8 say "I was a victim of the crime. I was driving the car. I
9 stopped and then this happened," and that's what has to come
10 out at trial, not what an officer summarizes to a magistrate
11 or to a circuit judge during a bond hearing. That doesn't
12 come in. Okay.

13 MR. FRAZIER: All right.

14 THE COURT: It's got to be eyewitness testimony or
15 facts that are discovered during an investigation. A police
16 officer can't come in here and say "well, the victim told me
17 that he snatched me out of the car." That's not allowed.
18 The victim has got to come in here and say "I was so scared
19 when he snatched me out of the car," if that's the fact.
20 Okay?

21 MR. FRAZIER: Okay.

22 THE COURT: The police officer can't say what the
23 victim told them.

24 MR. FRAZIER: All right.

25 THE COURT: So I understand your concern, but the

1 police officer can testify to that, so you don't need that
2 transcript.

3 Is that it?

4 MR. FRAZIER: That would be it.

5 THE COURT: All right. Good deal. We have got
6 all the pretrial matters done. We will start bright and
7 early at 9:30 in the morning.

8 MR. MORONEY: Your Honor, we wanted to do a
9 Faretta Warning about -- his rights this afternoon, to get
10 that out of the way.

11 THE COURT: Who did the Faretta Warning before?

12 MR. MORONEY: There is -- he had been admonished
13 and brought before Judge Miller. It was something that
14 probably took five minutes. I don't think it was near
15 in-depth.

16 THE COURT: All right.

17 All right, Mr. Frazier, tell me how far you went
18 to school. You told the jury that you were 25.

19 MR. FRAZIER: 9th grade, Your Honor.

20 THE COURT: What kind of work have you been doing?

21 MR. FRAZIER: Work?

22 THE COURT: Yeah.

23 MR. FRAZIER: Like cutting grass, remodeling
24 houses, stuff like that.

25 THE COURT: Who do you work with?

1 MR. FRAZIER: I worked for my cousin's father. He
2 has his own business in carpentry and I help along just
3 labor, helping him remodel his bathrooms, whatever needs
4 remodeling.

5 THE COURT: Do you understand I could appoint you
6 a public defender?

7 MR. FRAZIER: I understand that, Your Honor.

8 THE COURT: Do you want one? I mean you are doing
9 fairly well this afternoon pointing out these motions and
10 pretrial matters. You are doing a very nice job of being
11 organized.

12 MR. FRAZIER: If I get appointed a public
13 defender, it won't start my case all the way over and take
14 more time, would it?

15 THE COURT: You don't hear that very often.

16 It could, but -- now, would you like me to see if
17 I can get a lawyer to sit with you to help advise you on
18 procedural matters, like the Court Rules?

19 MR. FRAZIER: Yeah, that will work.

20 THE COURT: But you handle your case and you
21 handle the witnesses, since you are familiar with the facts.

22 MR. FRAZIER: Yes, sir, that will work.

23 Well, look, if I -- if I filled out for a public
24 defender and I put in for a bond reduction hearing, if they
25 extended my -- if they extended the time for the trial,

1 could I go up for a bond reduction?

2 THE COURT: Technically you could, but you
3 probably wouldn't get it.

4 MR. FRAZIER: Yeah. Well, I really want to get
5 this over with.

6 THE COURT: You feel comfortable representing
7 yourself?

8 MR. FRAZIER: Huh?

9 THE COURT: Do you feel comfortable representing
10 yourself?

11 MR. FRAZIER: Yeah, I feel -- I feel comfortable
12 with the facts of the evidence.

13 THE COURT: Okay.

14 MR. FRAZIER: But I would like you to allow them
15 to sit with me and --

16 THE COURT: I'm going to see if I can get a public
17 defender to sit with you to advise you procedurally.

18 Did you ever have a public defender? Who was your
19 lawyer before that was --

20 MR. FRAZIER: No, I didn't have a lawyer. I never
21 got one.

22 THE COURT: You never had one?

23 MR. FRAZIER: No.

24 THE COURT: Have you ever had the public defender
25 appointed you for any matter?

1 MR. FRAZIER: Yes, sir, I have.

2 THE COURT: Who was it?

3 MR. FRAZIER: Thomas Adducci.

4 THE COURT: Adducci.

5 All right, I'm going to see if Ms. Bolen won't sit
6 with you to advise you procedurally tomorrow.

7 MR. FRAZIER: Okay.

8 THE COURT: Let's find Patricia and see if she's
9 available and I'll ask her.

10 MR. FRAZIER: Okay.

11 THE COURT: I think she will, but she will have no
12 responsibility for defending you. She will just help you
13 with the rules.

14 MR. FRAZIER: Okay.

15 THE COURT: It may not be her. It may be one of
16 the other ones.

17 MR. FRAZIER: Okay.

18 THE COURT: All right. I'll see you in the
19 morning.

20 MR. FRAZIER: All right.

21 MR. MORONEY: Thank you, Your Honor.

22 (Whereupon, Proceedings were adjourned to November
23 17, 2015).

24

25

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENWOOD) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
 6) 2015-GS-24-1603
 7) 2015-GS-24-1604
 8) 2015-GS-24-1605
 9) 2015-GS-24-1606
 10) 2015-GS-24-1632
 11)
 12) NOVEMBER 17, 2015
 13) GREENWOOD, SOUTH CAROLINA

14 (VOLUME II)

15 B E F O R E:

16 THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE. ; And a
 17 Jury.

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

19 BRIAN MORONEY, ASSISTANT SOLICITOR
 20 MICAH BLACK, ASSISTANT SOLICITOR
 21 ATTORNEYS FOR THE STATE

22 DEFENDANT APPEARING PRO SE

23 PATRICIA BOLEN, ASSISTANT PUBLIC DEFENDER
 24 ELIZABETH ABLE, ASSISTANT PUBLIC DEFENDER
 25 APPEARING FOR DEFENDANT AS STANDBY COUNSEL

MICHAEL R. WATTS
 CIRCUIT COURT REPORTER

1 (PROCEEDINGS, NOVEMBER 17, 2015).

2 THE COURT: Mr. Frazier, I'm going to talk to you
3 while you are setting up.

4 MR. FRAZIER: Yes, sir.

5 THE COURT: Mr. Moroney is trying to get the
6 computer program set up over there for something he wants to
7 display.

8 MR. FRAZIER: Okay.

9 THE COURT: Here is the process. You have got a
10 member of the public defender's team helping you with advice
11 on procedures.

12 MR. FRAZIER: Okay.

13 THE COURT: So she's going to tell you any rules
14 that you might not know.

15 MR. FRAZIER: That I might not know.

16 THE COURT: But you get to handle the witnesses.
17 You got to cross-examine. You got to stand up when you
18 speak to the court and all those sort of things. She's only
19 giving you procedural advice. She's not going to handle a
20 single witness. She's not going to do opening statement for
21 you or nothing like that. You get to do all that.

22 MR. FRAZIER: Okay.

23 THE COURT: If somebody on the State's side says
24 objection or you say objection, that's code for everybody to
25 stop and kind of let me hear the objection, but the witness,

1 I'm going to make them stop answering the question once I
2 hear that word objection and I want to know the rule as to
3 why it's not allowed to be answered. If I say sustained
4 means that I agree with you. If I say overruled, I disagree
5 with you. So if you say objection to the State's witness,
6 they can't say that. That's not on relevant. Sustained
7 means I'm sorry, you are wrong, going forward so you can
8 answer the question.

9 MR. FRAZIER: Yes.

10 THE COURT: If I say -- sustained means they got
11 to stop.

12 Overruled --

13 MR. FRAZIER: Means that you overruled it.

14 THE COURT: Right. Do you understand?

15 MR. FRAZIER: Yeah, I understand.

16 THE COURT: Now, Ms. Bolen has some other things
17 to do today and so when she steps out, another public
18 defender is going to sit with you for a little bit, and I'm
19 going to tell the jury they are there just to help you, but
20 you are representing yourself.

21 MR. FRAZIER: Okay.

22 THE COURT: I'm going to explain that to them,
23 okay?

24 MR. FRAZIER: Yes, sir.

25 THE COURT: Now, opening statements is no time

1 limit, but most people know you don't want to go too long,
2 other than saying "my name is, evidence will show, I hope
3 you listen very carefully and fully, and I know that you
4 will do what the judge says do and give me a fair trial."
5 Maybe not quite that brief, but go on too long --

6 MR. FRAZIER: I understand what you are saying.

7 THE COURT: Just be careful with that. You know
8 how you go to church and the preacher preaches too long --

9 MR. FRAZIER: He preaches too long.

10 THE COURT: -- you quit listening.

11 MR. FRAZIER: Uh-huh.

12 THE COURT: So keep that in mind as you argue,
13 okay?

14 MR. FRAZIER: Yes, sir.

15 THE COURT: The State goes first. You go second.
16 They start calling their witnesses. You cross-examine them
17 when they get done, okay?

18 MR. FRAZIER: Yes, sir.

19 THE COURT: Okay. All right, Mr. Moroney, how are
20 you coming?

21 MR. MORONEY: I'm almost there, Your Honor.

22 THE COURT: All right.

23 MR. MORONEY: We got a couple issues, the two
24 names I mentioned yesterday, Will Johnston and Deputy Matt
25 Emery, a deputy that we would like to make sure that there

1 is no conflict with the jury.

2 THE COURT: Yeah, there were two witnesses left
3 off that were part of this and Mr. Moroney made that a --
4 right when we were walking out he mentioned that and I said
5 we should ask when we bring the jury in if anybody know
6 them, and if there is a problem with them, then we will m
7 move the alternate in, okay?

8 MR. FRAZIER: All right.

9 MR. MORONEY: And one last matter. Our motion in
10 limine with respect to the recent DEU investigation that's
11 been ongoing that has been in the paper, that no mention --
12 there is no relevance. There is no DEU member involved in
13 this investigation at all, and we would just ask that has no
14 relevance here and should not be brought up, you know.

15 THE COURT: Do you know what he's talking about?

16 MR. FRAZIER: I understand what he's talking
17 about, but I -- I don't agree with him on the grounds of it
18 still has something to do with the county, this Eighth
19 Judicial Circuit, everything. It's still law enforcement,
20 Your Honor.

21 MR. MORONEY: Your Honor, if he wants to
22 particularly get into an officer and their background,
23 that's fine, but there is no member of the DEU here.

24 THE COURT: All right. When we get -- since this
25 is a motion in limine, when we get close and he asks a

1 question that you don't think is fair, you object, and we
2 will rule it on it if it comes up, okay?

3 MR. FRAZIER: Yes, sir.

4 THE COURT: All right. Let's bring them in.

5 MS. BOLEN: Your Honor, could we have just one
6 minute, please?

7 THE COURT: Yes, you may.

8 (Off the record).

9 (Back on the record).

10 (The following takes place in the presence of the
11 jury panel).

12 THE COURT: Y'all give me a minute. Ms. Bolen and
13 Mr. Frazier are talking over there. I'm going to explain
14 how she's going to do.

15 (Off the record)

16 (Back on the record)

17 THE COURT: All right, sir, are you ready?

18 MR. FRAZIER: Yes, sir.

19 THE COURT: Very well.

20 All right, my opening instructions or comments to
21 you are to kind of give you a preview of what's going on.

22 All cases, the State has the burden of proving the
23 guilt of the defendant beyond a reasonable doubt as to each
24 and every element of each case.

25 All cases stand independently, so there's five

1 indictments here. You can have a verdict on two go one way
2 and three go the other; four one, two three, three two, it
3 doesn't matter. Anyway that y'all decide. Y'all are going
4 to be judging the facts of the case. I will be ruling on
5 the issues of law.

6 Now, Mr. Frazier is representing himself. He's
7 elected to do that. That is his right. Now, out of an
8 abundance of caution because he doesn't know all the
9 procedural rules I have asked the Office of Public Defender
10 to provide me a lawyer to sit with him to advise him on some
11 procedures. In case a procedural issue comes up, they can
12 kind of explain to him what I'm talking about, so I don't
13 have to try to explain the rules in great detail. Now, they
14 done that, but they are going to switch in and out, so I may
15 have one public defender in here for an hour or so and then
16 somebody else come in for an hour. I don't know, but the
17 persons sit at the table is not representing him. He's
18 going to do all the work representing himself. He has
19 somebody there to advise him on the procedures and I think
20 that would be helpful to him, since he's not a lawyer.

21 And that way, you know, opening statements the
22 State goes first. Defense goes second. The State calls its
23 witnesses first, things like that.

24 Now, if a legal issue comes up and I need to take
25 a side-bar conference with the lawyers, I may take them

1 right over there and talk to them very quickly and quietly
2 so I don't have to excuse y'all to the jury room. If I
3 believe a record needs to be more fully made, I may say
4 "y'all step in the jury room. Let me put this on the record
5 and hear from both side more fully and thoroughly before I
6 make my ruling." It helps me understand where they are
7 going or what they are anticipating, because I don't know
8 the witnesses. I don't know what they are going to say, and
9 it may be something that one side or the other says "I think
10 they are going to say something maybe that shouldn't come
11 in," or, "maybe that should come in." Well, until I hear it
12 I don't know -- you know, it's not like I need to tell you
13 something I'm not sure how you are going take it. You tell
14 me and let's see how it's going to go. It's kind of like
15 that. Well, if I say, "you know, that's not relevant.
16 That's got nothing to do with this case," since I'm the only
17 one that heard it and y'all didn't, it doesn't affect
18 y'all's thinking. Y'all just get to hear the relevant
19 stuff. That's kind of my job. I'm the gatekeeper. Y'all
20 consider the relevant evidence. I understand the rules of
21 evidence. So when I'm doing my job making legal rulings,
22 y'all maybe in the jury room, or it may be at lunch. We
23 worked on some things yesterday afternoon when I sent y'all
24 home getting things ready. All right.

25 When y'all start y'all's deliberations and y'all

1 start figuring out questions of fact and answering those
2 questions, y'all will be in the jury room and I won't be in
3 there to help you either. So I'll do my job without your
4 help and you will do your job without my help. We kind of
5 work together. I got a job. Y'all got a little different
6 job, but we both have jobs.

7 Now, most importantly, as I told you, the State
8 has the burden of proof. Mr. Frazier is presumed innocent.
9 He enjoys that presumption of innocence all the way through
10 the trial to the very end. Now, until we get to the very
11 end y'all are not allowed to discuss this case, the
12 witnesses as they come up. You got to take it all in first,
13 get my instructions, and then when I say, all right, begin
14 your deliberations, that's when you start talking about it.
15 Not ahead of time. You can't judge ahead of time. You
16 judge when it's proper. It's kind of like baking a cake.
17 You wouldn't taste it when up put flour in there first. You
18 got flour and you are a little bit bitter until you put
19 sugar and butter in there. But then you got to bake it and
20 ice it and color it finish the process and see what you got.
21 You wait until end before you do. Okay?

22 Now, when we take a break, may take a longer break
23 sometime mid-morning. If we do, y'all need to step outside
24 to use your cellphones, or if I got any smokers, that's
25 fine. I tell when we have an extended break. If we have a

1 shorter break, I may just keep you in the jury room, but I
2 want y'all to be comfortable. You are not to locked in the
3 jury room for extended periods of time. I'm going to try to
4 keep the case moving.

5 Now, I have got an appointment this afternoon in
6 Columbia, or Chapin. I think it's about 3:30. Now, my
7 idea, and I'm going to ask y'all, because the lawyers are
8 going to do what we agree on, would y'all like to work kind
9 of through lunch until 1:00, 1:30, then adjourn for the day,
10 or take a twelve o'clock short lunch and then work until
11 about 2:00 or 2:30, kind of have a morning and afternoon?
12 Which would y'all rather do? Y'all got any ideas? We kind
13 of worked until about 1:00, 1:30 yesterday and then y'all
14 went home for the afternoon.

15 UNKNOWN JUROR: Work through.

16 THE COURT: That's kind of my inclination. Y'all
17 good with that?

18 That way once we get to a stopping point about
19 1:30'ish. So I'm not going to feed you lunch. I did bring
20 some candy, and I do bring that for every juror. I didn't
21 do for today. I do it every time.

22 THE CLERK: Yes, sir.

23 THE COURT: Y'all enjoy. You need anything in the
24 jury room, let me know, but let's make that the plans. We
25 will go -- we will take breaks. I'm not going to work from

1 to 1:30 straight through. We will take breaks for some -- I
2 drink enough coffee I got to have a break.

3 All right, with those instructions in mind, don't
4 discuss the case at breaks. Wait until the very end. Take
5 in all the evidence. Give everybody your attention. Listen
6 carefully and let me make my rulings.

7 Now, understanding all that, y'all stand and my
8 clerk of court is going to place you under oath.

9 THE CLERK: Raise your right hand.

10 THE COURT: Let me do this first. I'm sorry.

11 Give me those names one more time.

12 I got two witnesses I forgot to ask and the
13 parties agreed.

14 MR. MORONEY: It would be Will Johnston and Matt
15 Emery.

16 THE COURT: Will Johnston and Matt Emery.

17 Anybody on the jury related by blood or marriage,
18 connected to those two potential witnesses at all? Anybody
19 know them? Everybody good on those?

20 Did that create an issue for any of y'all being
21 fair and impartial to the State and to Mr. Frazier?

22 (No response)

23 THE COURT: All right. Good enough.

24 Now.

25 THE CLERK: Do you solemnly swear or affirm that

1 you shall well and truly try the issues before the court, a
2 true deliverance make and a true verdict render according to
3 the evidence and law presented, so help you God? Do you?

4 JURY PANEL: (Collectively said I do).

5 THE CLERK: You may be seated.

6 THE COURT: All right, Mr. Moroney.

7 MR. BLACK: May it please the court?

8 THE COURT: Mr. Black?

9 MR. BLACK: Thank you, judge.

10 Thank y'all for being here.

11 Over the course of the next couple of days you are
12 going to hear from four different individuals that live in
13 this community, four different women who on July the 9th of
14 this past year their lives were turned upside down.
15 Something occurred in Greenwood that they will never forget
16 for the rest of their lives. Those women are Ms. Susan
17 Chatos, Ms. Bessie Williams, Ms. Kimberly Searles, and Ms.
18 Gwendolyn Callaham, and you are going to hear from each and
19 every one of those over the next couple of days.

20 The first incident you are going to hear about
21 occurred with Ms. Susan Chatos. Ms. Chatos had gone to the
22 doctor's office that morning or that afternoon. And after
23 the doctor's office she decided to go to Chick-fil-A here in
24 Greenwood to get a milkshake for her mother. The evidence
25 is going to show that when Ms. Chatos went to Chick-fil-A an

1 individual, the defendant in this case, Mr. Frazier --

2 MR. FRAZIER: I object, Your Honor.

3 MR. BLACK: -- approached her.

4 THE COURT: Wait. He can summarize the facts.

5 You can't object to that. He's got to prove it, okay?

6 MR. FRAZIER: Okay.

7 THE COURT: It's just opening comments, what he
8 thinks the evidence can prove. All right?

9 MR. BLACK: Thank you, judge.

10 THE COURT: Be careful.

11 MR. BLACK: Yes, sir.

12 Ms. Chatos -- Ms. Chatos is going to testify that
13 she was approached by Mr. Frazier and he had a magazine in
14 his hand. He was acting all flustered and yelling and
15 screaming. Ms. Chatos tried to push him away and go about
16 her business and order her milkshake for her mother. She
17 ultimately got up to the window, ordered the milkshake. And
18 when she did, after she ordered the milkshake, she attempted
19 to leave and Mr. Frazier was still in the parking lot and he
20 started to follow her.

21 You are going to hear testimony that as Ms. Chatos
22 was pulling out of the Chick-fil-A parking lot, Ms. Chatos
23 turned around, looked at the defendant, and he took that
24 magazine and hurled that magazine at her vehicle. Ms.
25 Chatos is going to testify that as soon as this happened she

1 through her truck, her Ford F-150 in reverse, got out of the
2 vehicle and approached the defendant, Mr. Frazier. And in a
3 split second Ms. Chatos was on the ground, Mr. Frazier was
4 in her car driving around the Chick-fil-A parking lot and
5 was gone in a split second.

6 The next victim in the case is Ms. Bessie
7 Williams. You are going to hear that Ms. Bessie Williams
8 was at Frank's Car Wash on Montague, just right down the
9 road here, about a mile and a half away. She was driving
10 her black Lincoln and she had just gotten her car washed.
11 She was attempting to enter into the intersection there.
12 She was trying to leave. And when she looked up she saw a
13 white F-150 barreling down the road directly towards her.
14 She clinched the steering wheel, tensed up, and right then
15 an impact into her black Lincoln. Thankfully it was on the
16 passenger's side. Ms. Williams was okay. So in a split
17 second Ms. Williams, her car had been totaled.

18 The next victim in the case, Ms. Kimberly Searles,
19 she was in the waiting area of Frank's Car Wash. Her car
20 had just gone through the wash. The guys out there, they
21 were drying her car off and she heard the collision. She
22 looked up and she saw Mr. Frazier get out of that white
23 F-150, head to her 2014 red Chrysler and jump into her
24 vehicle and take off down the road. Her car gone in a split
25 second.

1 The evidence is going to show that Ms. Gwendolyn
2 Callaham was driving north on Montague Avenue. She looked
3 in her rearview mirror and she saw this red Chrysler turn
4 around abruptly in the middle of the road and start to
5 follow her. She was very concerned. She pulled over into
6 the closest business, the World Finance here in town. Mr.
7 Frazier, you are going to hear, got out of his vehicle. He
8 pulled his car right up to her's. He got out of his
9 vehicle. Ms. Callaham, she jumped out of her vehicle and
10 ran inside frantically yelling and screaming asking the
11 business to lock the doors. You are going to hear testimony
12 that Mr. Frazier jumped into her vehicle and started
13 rummaging around. Fortunately the police arrived at that
14 time. Mr. Frazier was apprehended and placed under arrest.

15 The story is not over there, folks.

16 You are going to hear testimony that he was
17 ultimately taken to the hospital. And while he was at the
18 hospital, while the security guards at the hospital were
19 trying to get him under control, they searched his clothes
20 and they ultimately found a quantity of methamphetamine.

21 Now, folks, that's the testimony that you are
22 going to hear from the witnesses in this case over the next
23 couple of days. You are going to hear testimony from these
24 witnesses that are going to get up here on the stand and
25 tell you exactly what happened on that July 9th day. You

1 are going to have evidence the State is going to enter
2 through the witnesses that you are going to have. At the
3 end of the trial you are going to be able to deliberate,
4 take all that back there and look at everything and
5 ultimately come with a conclusion.

6 Now, my job and Mr. Moroney's job, we are
7 prosecutors. We represent the State of South Carolina. The
8 judge has already mentioned to you that he is the --
9 basically the legal umpire. He's the finder of the law.
10 And everybody else in this courtroom has a job as well. The
11 bailiffs, they have jobs. Court reporter, job. The clerk
12 has a job.

13 You also have a job. Your job is to be the finder
14 of the facts, what actually happened that day. And you are
15 going to determine what happened based on the evidence that
16 you have and the witnesses that get up here and testify.

17 Now, folks, the State has the burden to prove its
18 case beyond a reasonable doubt. And I want to briefly
19 mention this to you before we get started. What is beyond a
20 reasonable doubt?

21 The defendant is charged with several different
22 charges. We have to prove those beyond a reasonable doubt.
23 Beyond a reasonable doubt is not beyond all doubt. It's not
24 beyond every doubt. It's not beyond all possible, all
25 conceivable doubt. It is exactly what it says it is. It's

1 beyond a reasonable doubt. When you think of beyond a
2 reasonable doubt, think of being firmly convinced of
3 something.

4 At the close of the trial if you are convinced
5 that the defendant committed these crimes and you are firmly
6 convinced of that, you have a duty to find him guilty.

7 Folks, like I said, I want to thank you guys for
8 being here. Nobody likes sitting on a jury. Nobody likes
9 having their day taken up, but we could not do our job
10 without you and we do appreciate each and every one of y'all
11 for being here. Thank you.

12 THE COURT: All right. Mr. Frazier, your
13 opportunity.

14 MR. FRAZIER: Good evening, jury.

15 I'm not going to go into many facts about as is
16 who and what happened. I'm just going to basically ask
17 y'all to look for facts of -- facts of whether they are
18 telling the truth. Look at expressions. Look at where he
19 say this one moment and then he say something else one
20 moment. I'm not going to get into facts of whether the
21 victims or they went to the doctor. I'm just going to tell
22 y'all look for things that you would think. Listen to your
23 hearts and look for the truth. Don't look at everybody has
24 a job, but if a person tells a false statement, it's false.
25 If a person tells the truth, that's an honest person. I

1 would rather deal with an honest person than a false person.

2 I want you to look at the facts of the case where
3 a person may think that -- if a person say I think this, or
4 he say that the victims -- the victims are scared and look
5 at the emotions, the expressions where is say he did it and
6 look at what his partner say.

7 I want y'all to look at the case and really look
8 into the facts whether it's some ugly work where they are
9 trying to frame a person, or they just trying to get this
10 down on a person and make themselves look good, because I
11 look at it like this here. I know y'all -- I look at y'all.
12 I see y'all as pretty honor people. I'm pretty sure that
13 y'all got good judgment on to tell the truth.

14 Now, I want y'all to look at the facts of the case
15 and say, well, this -- do this look like a young man that
16 would do this type of stuff, or do this look like a young
17 man that they may have something that's not irrelevant to
18 the big facts of the case that they are trying to prove
19 maybe it's something else, but they are trying to put -- add
20 and soup this up like a battery on a charger. Okay. I want
21 y'all to look at whether Mr. Moroney does something wrong or
22 whether Mr. Black -- and that's your name?

23 MR. BLACK: Yes.

24 MR. FRAZIER: Mr. Black, Mr. Micah Black, the
25 solicitor, the prosecutor, or these things that's wrong with

1 the prosecutor. I want you to look into it whether they are
2 trying to frame me, or frame something to make their selves
3 look good, because right now it's a very important time
4 and -- it's a very important time. It's around election
5 time. It's -- it's a lot of important stuff that's going on
6 right now, so for them to get a conviction of something
7 under their belt would make them look real good right now.

8 I want to state that -- okay, he is saying that
9 the victims is going to say that boom, this person took off
10 my truck. I want y'all to look and see whether these facts
11 are on video or whatever they have to present whether that
12 it shows a person being pushed down or anything of anything
13 of these charges. Okay.

14 They say I'm being -- they are saying that I'm
15 being charged with carjacking, trafficking methamphetamine.
16 I want y'all to look and see whether there is reasonable
17 grounds. Like he say, without a reasonable doubt. I want
18 y'all to look and see without a reasonable doubt whether you
19 find grounds to find it's probable proper cause that it's a
20 carjacking, or it's trafficking methamphetamine, or it's any
21 other warrants that they accused me of. I want y'all to
22 look and see whether it's anything. Like say, for instance,
23 it's some -- something -- say they found drugs on me. I
24 want y'all to look and see whether the drugs was really
25 found and look at the facts of the case. And like he say, I

1 guarantee you I can prove without a reasonable doubt that
2 it's something wrong in their stories. I want you to look
3 at when he say one thing and then he turn and say another.
4 When they say well, this was here and that was there. When
5 you look at that, I want you to look and see and you will
6 see that somebody is saying something false and not being an
7 honest person. An honest person will -- would not state all
8 of these things. I want you to look and see whether a
9 person is trying to cover for another person, whether it's
10 okay. He might --

11 Their job is to convict me. My job is defend
12 myself. Okay. At the same time I haven't -- that's why I
13 have co-counsel from the Public Defender's Office as an
14 attorney, to help me present myself. I'm not well prepared
15 as they are, but in my thinking I am more prepared than they
16 are, because they have a million other cases they have to
17 face on. I have just my case, these charges. I have -- I
18 can study these. They have another one. Of course, they
19 are going to say well, he's guilty of this, because their
20 job is to prosecute me. Their job is to get a conviction.

21 Well, also I want you to look at the facts. I
22 know y'all may look at the news, or whatever. It's a lot of
23 things going on right now in this county that would prove
24 reasons that they would falsify facts, or they would make up
25 things, or they would try to put it on a person just to make

1 their self look good. Okay. I say Mr. Moroney here and Mr.
2 Micah Black, they haven't been here too long. They are --
3 they are new to the prosecution. Okay. So if you are new
4 to the prosecution, in order for you to make a name for
5 yourself, it would be to falsify facts and get a conviction.
6 It would be to blame this on a person or make it look like
7 this person did this, or even mess with some things over the
8 evidence. I want y'all to look and see if a person messed
9 with evidence. Look if they did something to the evidence
10 to make it look this way.

11 I want y'all to look at all the facts. I'm not
12 going to state, well, Ms. Susan Chatos was pushed down and
13 her truck was stolen. I'm not going to get into that. I'm
14 going to let them state that and then I'm going to prove
15 differently that it's not the way they are saying it is.
16 I'm going to do that with my own work. I'm going to let
17 them state those facts.

18 Now, I believe you are honest people. I have a
19 family at home. I have a niece. They are missing me. What
20 I want y'all to do is look deep in your heart and think
21 about it. I got a family that's missing me, just like y'all
22 got a family at home. Now, for them to take me away from my
23 family for something that I didn't do or for something that
24 is wrongfully because they souped it or made up, I believe
25 that y'all can find it, point it out in your own minds.

1 What I want y'all to do is really look at whether
2 you feel that I'm a person that did this or didn't. I'm not
3 a violent person. I'm not a bad person. I got a family. I
4 love my family, just like everybody else. I wouldn't do
5 nothing of no sorts by forcing nobody out of their car or
6 none of that. I'm not that type of person.

7 Now, what they are saying is bogus. It's false.
8 It's -- it's -- it's just ridiculous. That's how I'll put
9 it, just ridiculous. That's why I'm not going to say this
10 and that, this and that. I just want y'all to look at this
11 here and see that it is clear as what it seems to be, they
12 are trying to frame me. I want y'all to look at, okay, they
13 may say he's guilty of this, but I want y'all to look at
14 well, maybe it may not be what they are saying he's guilty
15 of. It may not be this, but it may be something over here.
16 It may be this. If they are it's this charge, they are
17 going to try make it look like it's this big bad picture.
18 They are going to try paint a picture in your head that oh,
19 he is just a bad person. He's just a menace to society and
20 dah, dah, dah, dah, dah. No, it's not like that. I want
21 you to look at the facts that they paint, the pictures.
22 Look at it. Look, listen, observe, study it, analyze it,
23 and then make your decision. That's all I'm going to say.
24 Thank you.

25 THE COURT: Call your first witness.

1 MR. MORONEY: The State calls Brian Whitaker.

2 BRIAN WHITAKER, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Could you please state your name.

5 THE WITNESS: Sure, it's Brian Whitaker.

6 DIRECT EXAMINATION BY MR. MORONEY:

7 Q. Mr. Whitaker, where are you currently employed?

8 A. Chick-fil-A.

9 Q. What's your role there?

10 A. I'm owner-operator.

11 Q. Owner-operator.

12 Were you the owner-operator of Chick-fil-A back on July
13 9th, 2015, of this year?

14 A. Yes.

15 Q. Okay. And is that address -- what is the address over
16 there at that Chick-fil-A?

17 A. It's 213 Highway 72 bypass.

18 Q. Is that in the county of Greenwood?

19 A. Yes.

20 Q. Okay. On July 9th, 2015, at approximately 4:30 p.m.,
21 does anything unusual happen that day that you recall?

22 A. Yeah. It was -- I'll tell you the story. Here is what
23 I remember. It was sort of a normal day. It was kind of
24 slow business, pretty good whether. And then I had -- I was
25 up front kind of working. I work a lot up front and I had

1 one of our team members come up and say "there is somebody
2 trying to open your car door --

3 MR. FRAZIER: I object Your Honor.

4 THE COURT: What ground?

5 MR. FRAZIER: That's hearsay.

6 THE COURT: All right. Well, rephrase the
7 question.

8 I'll sustain that.

9 Rephrase your question as to -- you can't testify
10 to what somebody said. They can tell what he did as a
11 result of that.

12 BY MR. MORONEY:

13 Q. If you could just, you know, refrain from what people
14 told you, you know, about any incidents that happened day
15 and just kind of recount what drew your attention to --

16 A. Okay, well, that --

17 Q. -- that issue.

18 A. That's when I initially came up front and so I had --
19 the defendant did come up. He came to the walk-up window at
20 first and he talked to me. I was up there and he said "hey,
21 guys, look at this. Look at the front of this magazine,"
22 and it was a magazine that was -- that had a girl on the
23 front. "This girl is coming through your drive-thru." And
24 I said "really?" And he said "yeah." And that --

25 We kept talking a little bit and he said -- he said

1 "I'll bet you a bunch of money," and I said "okay," you
2 know, and I didn't believe that the girl was obviously,
3 because she -- it's Greenwood and there are not a lot of
4 things that people do, especially in a magazine, but he
5 believed that to the point where he threw some money on the
6 ground and said it was -- it looked like about a hundred
7 bucks. It was probably four or five twenties. And he said
8 "oh, it wasn't. This money is all yours. If -- you know,
9 you won. You won it. It was her. It was her," and so I
10 said "okay, thanks." I didn't -- I didn't want to wager,
11 but -- so he walked away and I saw him -- he was kind of in
12 the parking lot for awhile. We had other customers and he
13 was just kind of wandering around at that point, sort of
14 odd, but it wasn't -- you know, I mean, he -- he looked like
15 a nice guy. He didn't look harmless, just odd behavior, so
16 I didn't think anything else.

17 Q. Okay. And do you recall that magazine, what kind of
18 magazine that was that he was waving around?

19 A. It must have been pornographic. It only had the lady's
20 head and it was still in a wrapper, so --

21 Q. Okay. But he did throw a large quantity of money on
22 the ground?

23 A. Yes.

24 Q. And did he retrieve that money? Did you see him
25 retrieve that money, or when he walked back in the parking

1 lot did he appear to leave that money on the ground?

2 A. He left it there.

3 Q. Okay. And do you see the gentleman who you had that
4 encounter with and saw at the walk-up window there in the
5 courtroom today?

6 A. Yes.

7 Q. Could you point that gentleman out and --

8 A. Sure, he's the defendant --

9 Q. -- what he's wearing?

10 A. -- in the white shirt.

11 Q. Okay. After the altercation or incident at the walk-up
12 window, did you observe any other actions by the defendant,
13 other than him pulling on the car handles in the parking lot
14 there?

15 A. He pulled on my truck handle again. It looked like he
16 was trying to get in it for some reason and so I was
17 watching that. It was kind of curious knowing there is
18 nothing in my truck, but he -- he just sort of proceeded to
19 walk around the window, but he came back up front with
20 the -- there was another lady, one of the victims in the
21 case, that was buying some food and started I wouldn't say
22 harassing her, but it was just kind of "what are you doing
23 here," you know. As a customer it's a sale for me, so I'm
24 always protective of our customers if they are okay and I
25 offered to walk her out to her car. She said she was okay

1 so --

2 Q. Did you observe any future altercation between that
3 customer and Mr. Frazier?

4 A. It must sound really bad, but, yes, so I was still
5 working running our business, but toward the end he -- I
6 didn't see -- the part I saw was he -- when he was getting
7 in her truck driving away and I was at the window at that
8 point.

9 Q. So the next thing that you saw was Mr. Frazier getting
10 into a vehicle that was -- that appeared to be operated by
11 that customer and it was driving away?

12 A. Yes.

13 Q. And where was --

14 MR. FRAZIER: Object, Your Honor.

15 THE COURT: What basis?

16 MR. FRAZIER: He is leading the witness.

17 THE COURT: All right. Don't lead.

18 BY MR. MORONEY:

19 Q. Can you just recount what you saw then with respect to
20 that truck, that vehicle?

21 A. So he had occupied her vehicle and she was on the
22 ground and he was driving off. So I immediately ran out of
23 the store. For some reason thinking I could stop a moving
24 vehicle I ran around the front of the car. I was just kind
25 of waving at him, you know, "hey, what are you doing? What

1 are you doing?" And he was moving very quickly, actually
2 bumped over our curb. It was where our grass is kind of
3 rocky right there and sped off and then I called the police.

4 Q. Okay. Mr. Whitaker, is there a surveillance camera
5 system that you have at the Chick-fil-A restaurant?

6 A. Yes, I think it's a tru-vision. It has twelve cameras.

7 Q. Okay. And was that in operation that day?

8 A. Yes.

9 Q. And did you retrieve any video that day subsequent to
10 what took place?

11 A. Yes, obviously we looked back at the video, and so we
12 had couple of cameras catch a couple different things. One
13 was -- you may see that later, I don't know, but it was --
14 it was him getting in the car -- talking with one of the
15 victims, getting in the car and driving off.

16 Q. Okay. And have you had any issues with the
17 surveillance video at times with glitches or anything that
18 are common with that system?

19 A. Yeah, unfortunately our video is not perfect and so I
20 have learned a couple of things. We never had any incidents
21 at Chick-fil-A, but it does pause sometimes, so you get some
22 pauses.

23 Q. And did you make a copy of the video that day, on July
24 9th, 2015?

25 A. Yes.

1 Q. And you handed it to -- did you hand that video to
2 anybody?

3 A. I handed it to authorities.

4 Q. Authorities?

5 A. The police.

6 Q. Okay. The police.

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

8 THE COURT: Uh-huh.

9 (DVD marked as State's Exhibit No. 1 for
10 identification)

11 BY MR. MORONEY:

12 Q. Mr. Whitaker, I'm showing you an exhibit that's marked
13 as State's Exhibit 1 for identification purposes. Do you
14 recognize this disk?

15 A. Yes.

16 Q. Can you state what it is?

17 A. It's the disk that has our video cameras on it.

18 Q. Okay. And how do you know that to be true?

19 A. Because I -- I was actually in there when the police --
20 I helped them.

21 Q. You --

22 A. Out of the system and we docked it.

23 Q. And you have had a reason to watch this exact video?

24 A. I have, yes.

25 Q. Are these your initials?

1 A. Those are my initials.

2 Q. And the date on the disk?

3 A. Yes.

4 Q. Okay.

5 MR. MORONEY: Your Honor, I would ask at this time
6 that this State's Exhibit 1 for identification be admitted
7 into evidence.

8 THE COURT: Any objection?

9 MR. FRAZIER: Objection, Your Honor.

10 Is that the disk of the clips that I have?

11 MR. MORONEY: This is the disk of the battery
12 of --

13 MR. FRAZIER: I object, Your Honor. Order in the
14 court state of law.

15 THE COURT: You have got a point of law. Fair
16 enough.

17 When he has a point of law I told him that's what
18 he had to say so I could excuse y'all. Let me step in the
19 jury room and let me hear him a little further to see the
20 basis for his objection. Y'all step in the jury room and we
21 will have you right back out here as promptly as we can.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: All right. What's your basis of your
25 objection?

1 MR. FRAZIER: I want to -- order and the court of
2 law that the evidence that's on that disk I don't have. I
3 don't have that disk. I don't have -- I have the evidence
4 that's on the disk, I need --

5 THE COURT: I thought we talked about it yesterday
6 that you had two sets. You had the one of the three and the
7 one of all of them. This is the all of them.

8 MR. FRAZIER: No, I have a disk of the three. I
9 don't have a disk of all of them.

10 MR. MORONEY: Your Honor, I have documented when
11 everything was delivered. We have it signed that I did
12 deliver not only the cell phone copy that I told you, but
13 also the full cameras, that I knew there would be an issue
14 maybe for --

15 THE COURT: Was it all on the same DVD?

16 MR. MORONEY: They should be -- I can't recall off
17 the top of my head. I believe it would be two different
18 DVD's.

19 THE COURT: Can you -- can you verify what you
20 have given him if he shows you what he has in his hand?

21 MR. MORONEY: Yes.

22 Can I just open this up then and see?

23 THE COURT: Do you mind they look on the disk and
24 see what they give you?

25 MR. FRAZIER: No, I don't mind.

1 THE COURT: Okay.

2 MR. FRAZIER: Your Honor?

3 THE COURT: Hang on.

4 MR. MORONEY: Your Honor, there was an additional
5 disk and this has the cell phone video on it. There was an
6 additional disk that has the full battery of the
7 surveillance footage on it.

8 THE COURT: I thought we talked about having the
9 two disks yesterday and he wanted to know which one that you
10 were going to use.

11 MR. MORONEY: That's right. We are going to -- to
12 clarify it, we are only going to use the three snippets of
13 video that are on this disk. However, he -- I have
14 delivered and he signed a receipt here that he received the
15 full surveillance footage.

16 THE COURT: All right. Since you --

17 MR. FRAZIER: I didn't -- I didn't receive the
18 full surveillance video. I have a video with two different
19 CD's, which means that he admitted to taking -- recording
20 with the cell phone off the original disk.

21 THE COURT: Correct.

22 MR. FRAZIER: And I guess he had recorded off with
23 his cell phone off the original disk and put it on to two
24 different blanks, two difference CD's and not one CD and I
25 don't have copies of the original disk.

1 MR. MORONEY: Let me see those.

2 MR. FRAZIER: Yeah, I don't have copies of the
3 original disk and I believe that that's him stepping out of
4 his judicial duties as a prosecutor and I believe --

5 THE COURT: All right. Here is what he -- he says
6 he gave you both of them, but he only intends to use the
7 three that you got, but not the cell phone copy. The
8 original copy, which you were given a copy of the cell phone
9 video.

10 MR. FRAZIER: I understand that, Your Honor, but I
11 think that would still be him stepping out of his duties
12 fabricating evidence on the grounds that he --

13 THE COURT: All right. Well, let me ask you this.
14 How do you fabricate it if he gave you a copy of what he's
15 got? That's not fabricating. That's just him saying --

16 MR. MORONEY: Your Honor, the full battery is on
17 this CD.

18 MR. FRAZIER: Because he didn't give me the
19 original disk. He should have -- he's not an investigator.

20 THE COURT: Hang you. He says the full battery is
21 on that one.

22 MR. FRAZIER: Okay.

23 THE COURT: All twelve are on that one, all twelve
24 cameras.

25 MR. FRAZIER: All twelve cameras?

1 THE COURT: That's what he just said.

2 MR. BLACK: And Mr. Frazier signed for it, judge.
3 I was actually with Mr. Moroney when we went over to the
4 jail and hand delivered the copies. I don't know if that
5 would --

6 THE COURT: Okay. Here the thing is. He can sign
7 that y'all gave him all that, but until he opens up and he's
8 really not in a good position to say I know what's on the CD
9 or DVD, so I understand y'all say he signed for it --

10 MR. BLACK: We actually played it to him, judge.

11 THE COURT: Okay. That's little different.

12 MR. BLACK: Yes, sir.

13 THE COURT: You know, if you hand somebody a paper
14 and they read it, they acknowledge what the paper says,
15 but --

16 MR. BLACK: We actually played the disk on okay
17 our computers for Mr. Frazier in the jail.

18 THE COURT: Okay.

19 MR. BLACK: I believe that was about a week ago.

20 THE COURT: Mr. Frazier, you have the disk with
21 all twelve and the one with the three.

22 MR. FRAZIER: I have the camera with three angles
23 and I have a camera with -- that don't have twelve.

24 THE COURT: They say it does.

25 MR. FRAZIER: It doesn't have twelve.

1 MR. BLACK: Mr. Moroney just checked on his
2 computer, judge.

3 MR. MORONEY: It's the same file I have on this
4 disk that is about to be admitted into evidence.

5 MR. FRAZIER: Okay, Your Honor. This is -- this
6 is three angles. It shows --

7 THE COURT: And they are part of the twelve.
8 That's three of twelve, correct?

9 MR. FRAZIER: Yeah, there are three.

10 THE COURT: Three of twelve.

11 MR. FRAZIER: This right here, it shows -- this
12 shows three angles of the truck pulling off, the truck
13 leaving out and taking a right.

14 THE COURT: Okay.

15 MR. FRAZIER: This only shows the truck backing
16 up, stopping, getting out, and -- the victim getting out.

17 THE COURT: All right. Tell you what. If the
18 State is representing that your copy right there is all
19 twelve, can y'all use his copy and present it?

20 MR. MORONEY: Sure.

21 THE COURT: I mean, it's the same copy.

22 MR. MORONEY: I don't know the logistics as far as
23 what I just stated with identification 1, being admitted as
24 1.

25 THE COURT: They say they have given you a copy of

1 it and that's it. You are disagreeing with them, but --

2 MR. FRAZIER: Your Honor, so -- I -- I want to
3 bring up the fact that I don't know the maintaining, the
4 hand passing on of the disk. I want to figure out what's on
5 the original disk.

6 THE COURT: He's identified that. He is the owner
7 of the Chick-fil-A, the video system, and he just testified
8 that he assisted and directed law enforcement as to how to
9 produce a copy of a video recorded that day and preserved it
10 on a CD. That is what Mr. Moroney has. He identified it
11 with his own knowledge, so it's not like he was told. He's
12 testifying first hand "this is what I did. I made a copy of
13 the disk and then I handed over a copy and I can recognize
14 it, because it has my initials on it," and he's done that,
15 so I think he's good as the first hand owner of the
16 facility, the video equipment, and assisted in recording a
17 copy of the video that was made that day. He's testified to
18 all those things.

19 MR. FRAZIER: Okay.

20 THE COURT: All right?

21 MR. FRAZIER: Well, I want to ask this. Mr.
22 Moroney, did you -- did you get a copy of the disk from the
23 officer, or did you get a copy -- or you recorded from him?

24 MR. MORONEY: Did I get a copy of the disk from
25 the officer?

1 MR. FRAZIER: Did you record --

2 MR. MORONEY: Law enforcement gives me --

3 THE COURT: Here is the thing. He testified he
4 gave a copy to the authorities, being the police. Mr.
5 Moroney wasn't involved in the case yet. The police are
6 investigating. Lawyers don't come until later. They don't
7 go out to the scene ever, meaning if --

8 Here is the thing. You can talk to your lawyer,
9 but if he can say "this is a true and accurate depiction of
10 the copy of the video on my machine," then it's going to
11 be -- if it's the right date and time, it can be played for
12 the jury, because he's identified it and then provided it to
13 somebody else. He can provide it to a hundred other people.
14 Mr. Moroney can be the hundred and first and if he can say
15 those words "I made that video. I copied it, put it on a CD
16 and now Mr. Moroney has a copy of it and I can identify it."

17 Mr. Moroney can't testify.

18 MR. FRAZIER: Your Honor, as an officer of the
19 court I assure you that that is the same file that's on this
20 disk and I would rather, since his initials are on this
21 disk, we admit this disk into evidence.

22 MS. BOLEN: Your Honor, he has a couple of
23 questions for me, if I could just have a moment to address
24 those?

25 THE COURT: Okay. It seems to me that the

1 foundation has been laid, Ms. Bolen.

2 MS. BOLEN: Okay.

3 THE COURT: This guy is first hand owner,
4 possessor, videographer, provided a copy to the State and he
5 can identify it.

6 MS. BOLEN: Okay. Thank you.

7 THE COURT: That's kind of where I'm going.

8 MS. BOLEN: Thank you, Your Honor. If I could
9 just ask him a question.

10 (Off the record)

11 (Back on the record)

12 THE COURT: Ready to go ready, Ms. Bolen -- I'm
13 sorry, Mr. Frazier?

14 MR. FRAZIER: Yes.

15 THE COURT: So according to the rules, I'm going
16 to overrule your objection. I think the foundation has been
17 laid and that the video, the pertinent portions, can be
18 published to the jury. They can see it.

19 MR. FRAZIER: Okay.

20 THE COURT: If he weren't here, the police officer
21 "I went out there and the owner gave it to me," that's
22 different. You got the owner here.

23 MR. FRAZIER: Okay.

24 THE COURT: Now, you get a chance to cross-examine
25 him.

1 MR. FRAZIER: All right.

2 THE COURT: Okay. The jury is ready.

3 Does anybody need a break right now, because we
4 can take a break real quick?

5 Yes, let's take a break.

6 (Whereupon, proceedings were recessed).

7 (Whereupon, proceedings were reconvened).

8 THE COURT: All right, Mr. Willingham.

9 MR. FRAZIER: Your Honor, I would like to take
10 make a ruling of completeness.

11 THE COURT: Okay, if you need to, I'll do that.
12 That's no problem.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: All right, folks, kind of tell you
16 where what I was listening to. This has got twelve video
17 cameras, all different angles. Two and three of them are
18 kind of the most pertinent, I'm told. There was copy made
19 of the three. There was a copy made of all twelve. Mr.
20 Frazier wanted me to make sure he could see all twelve, or
21 y'all could see all twelve, so the State can use what they
22 want. If y'all want to see all of them, you get to see all
23 of them.

24 All right, continue on.

25 MR. MORONEY: Your Honor, at this time I would

1 like to publish to the jury.

2 THE COURT: Fair enough. You may publish.

3 State's 1 is admitted subject to the objection.

4 (Whereupon, State's Exhibit No. 1 was entered into
5 the record as evidence).

6 (Whereupon, State's Exhibit No. 1 was played to
7 the jury panel)

8 BY MR. MORONEY:

9 Q. Mr. Whitaker, can you see that screen?

10 A. Yes.

11 Q. Does this depiction here appear to be your surveillance
12 footage?

13 A. That's it.

14 Q. Mr. Whitaker, I'll be pulling up channel three, camera
15 three, on this system here.

16 Can you describe what angle this camera is showing with
17 respect to the business and the restaurant?

18 A. Yeah. I don't know if y'all have eaten in Chick-fil-A,
19 but obviously that's from our -- it's about from our
20 entrance door, which is on the side of the building at an
21 angle facing backwards towards our patio and our back lot
22 and our driver's speaker. So the intent of the camera there
23 is obviously to get part of the speaker and part of the
24 patio.

25 Q. You pulled this video and stated it was given to law

1 enforcement, correct.

2 A. Correct.

3 Q. And was that because this video appears to depict the
4 incident that transpired between your customer and Mr.
5 Frazier?

6 A. Correct. Yeah, we -- that's what was shown.

7 Q. Now, as I play the video here you will notice that it
8 appears to be frozen. Can you speak to that? We touched on
9 it earlier, but can you just explain that?

10 A. Yeah. So obviously we are not proud of our camera
11 system now as we were, but it does have some flaws in it
12 sometimes, but part of that I have been told now is because
13 we have so many cameras in our system on our DVR, but it's a
14 DVR system, just like your TV at home, so you can go back a
15 period of, you know, seven to fourteen days, something like
16 that, and see videos, but there are some pauses, even if you
17 watch it. If you are watching it live obviously it's not
18 going to be internally, but if you access it remotely you
19 will see some pauses here and there and that's probably what
20 you are seeing.

21 Q. So bear with me here. This system has got a little bit
22 of a lag because it's pulling from the CE Rom here.

23 When this video starts up again, is this consistent
24 with what you have seen now, it's frozen and then it will
25 jump back into frame, so to speak?

1 A. Sure, that's common.

2 Q. Mr. Whitaker, could you briefly describe the angle
3 that -- this camera angle as shown of your restaurant?

4 A. Sure. So that's the -- we have a building in the back
5 that we have to store various items and so we just keep an
6 eye on this, as well as our dumpster, but you can certainly
7 see cars coming around it, if they are not in line.

8 Q. This video appears to be frozen here for a period.
9 Would that be the same kind of issue you have talked about
10 earlier?

11 A. Yup.

12 Q. Now I show you this last camera angle of channel 11,
13 camera 11. Can you describe this area of the restaurant?

14 A. That's our drive-thru, main drive-thru side of the
15 driver's side and parking lot.

16 Q. And with respect to the number of cameras that you
17 have, would these three camera angles that I have just shown
18 you be the camera angles that would have shown this incident
19 with respect to this white F-150?

20 A. Correct. Yeah, those are obviously the three main
21 angles.

22 You know, that first one, it looks like it's hard to
23 see. It's actually zoomed out so we can pan around and
24 obviously we didn't expect an incident like this, but you
25 could actually see it closer. I mean, when I was watching

1 from the window it looked closer and another employee was
2 standing in the window watching, so --

3 Q. Mr. Whitaker, if I may jump back briefly to -- you
4 mentioned the money issue earlier. That money was thrown on
5 the ground by Mr. Frazier, is that correct?

6 A. Correct.

7 Q. After this carjacking incident took place, did you have
8 means to retrieve that, any of that money?

9 A. Yes, we retrieved the \$20 bill that was left. I don't
10 know what happened to the other thing, but it was pretty
11 windy and it may have blown around in the parking lot. Who
12 knows.

13 Q. There was --

14 A. Yeah, there was a \$20 bill that we turned in to police.

15 Q. Okay. And you handed that over to the police?

16 A. Yes.

17 Q. That was the only money that was retrieved that day?
18 You didn't pocket any money that day?

19 A. I don't -- I don't want his money or anybody else's
20 money.

21 Q. Okay.

22 A. In fact, it was -- it was -- no offense to the
23 defendant, it was -- it's just erratic behavior. You don't
24 have anybody throw down a hundred dollars, so I wasn't going
25 to touch it. It wasn't mine.

1 Q. Okay. Thank you. Please answer any questions that Mr.
2 Frazier may have for you.

3 A. Sure.

4 CROSS EXAMINATION BY MR. FRAZIER:

5 Q. All right. Okay. And your camera system at
6 Chick-fil-A, right, do you have other angles of the -- other
7 angles at Chick-fil-A of angles that front -- any other
8 camera system set up at the front where the patio where the
9 suspect was supposed to have thrown the money down or what?

10 A. We have -- we don't actually have a walk-up camera, so
11 the money is not on tape,.

12 Q. Okay.

13 A. But we do have twelve cameras total.

14 Q. Okay. All right. Did you see where the suspect come
15 from? Did you see the suspect walk up?

16 THE COURT: Ask him one question at a time. You
17 didn't -- let him answer that first question.

18 Did you see where he came from?

19 BY MR. FRAZIER:

20 Q. Did you see where the suspect came from?

21 A. Yes, the first time I saw the suspect was in the --
22 parked at the parking lot. You know, been told he was
23 trying to get in my car, so obviously I walked up very
24 concerned, so --

25 MR. FRAZIER: Object, Your Honor. That's hearsay.

1 A. That's why I came up front. I'm just telling you.

2 THE COURT: That's what drew his attention.

3 You can ask him what he saw that day, if you would
4 like.

5 MR. FRAZIER: Okay.

6 BY MR. FRAZIER:

7 Q. Did you give a statement to Captain Penn? Did you give
8 a statement to a police officer?

9 A. I did. I give a written statement.

10 Q. Did you give a recorded statement? Did he record it?

11 A. Not that I know of, no.

12 Q. Okay. All right.

13 Okay. Did you see -- did you see -- did you see the
14 suspect push the victim or anything like that?

15 A. I did not see any pushing.

16 Q. Any --

17 A. I walked up when the suspect was hopping in the car and
18 driving away.

19 Q. Any use of force? Did you see anything of force? All
20 you seen -- did you see any force with any contact of any
21 person at Chick-fil-A?

22 A. No.

23 Q. Okay. You said the suspect threw property a hundred
24 dollars down in cash. Okay. So you said -- did you see the
25 suspect pick the money up?

1 A. No, he walked away.

2 Q. He walked away. Okay.

3 Did you see anyone else pick any money up after the
4 suspect threw it down?

5 A. No.

6 Q. Okay. Did you -- do you know if the police picked up
7 any money?

8 A. I don't know. It's likely that other customers got it.
9 We were -- it was awhile before the police showed up to our
10 place. Maybe within an hour or hour and a half, so it
11 wasn't -- it wasn't right away.

12 Q. Okay. So you are saying it took the police about an
13 hour and a half to get there?

14 A. I'm guessing. You know, I could look probably, but you
15 can see what's on the statement.

16 Q. Do you have any other -- do you have any other angles
17 that's besides the angles, the three angles, that it showed
18 just now on the camera system?

19 A. No, sir, those are -- we just have the twelve cameras.

20 Q. Okay.

21 A. That's all we have.

22 Q. So -- you said that suspect betted that it was, in
23 fact, a Jennifer Rose porno magazine in your statement?

24 A. Yeah, that was the name he used and so -- and he -- the
25 initial conversation was "hey, this Jennifer Rose is in your

1 drive-thru line." And I said "are you sure?" And -- we had
2 that conversation, I don't know if you remember, but --

3 Q. Okay. So you are saying that he threw down several --
4 several bills and you are saying that it might have been
5 possibly blowed away? It was windy that day?

6 A. I don't know what happened to the money.

7 Q. Okay. All right. Okay.

8 So you only seen the suspect getting in the vehicle and
9 pulling off?

10 A. Correct, I saw the suspect at the walk-up. We had the
11 conversation about the magazine, threw the money down, saw
12 him in the parking lot later trying to get in my truck and
13 some other cars. There were other cars, in fact. It looked
14 like he was trying to confiscate a car.

15 Q. Okay. How old you say the suspect looked?

16 A. You know, I'm not good at age. I don't -- you know,
17 obviously I can see you in front of me now, but I don't --
18 you know, I would guess -- I would guess thirty.

19 Q. Okay. Well -- all right.

20 You said the suspect -- in your statement you said the
21 suspect looked about thirty or forty years old? That's
22 about -- okay.

23 When the -- so you never seen where -- whether -- where
24 the suspect come from?

25 A. No, he was -- my first time --

1 Q. You only seen the suspect when he came to the walk-up
2 window?

3 A. In the parking lot.

4 Q. Or in the parking lot.

5 Okay. So you didn't see -- all right.

6 And what -- you said the -- what's the -- your
7 co-worker, employee of Chick-fil-A told you that the suspect
8 was trying to open the doors on your truck?

9 A. Correct.

10 Q. Okay. Do you have surveillance of the suspect first
11 coming up?

12 A. At the walk-up, no. We don't have a walk-up camera. I
13 wish we did now, but we don't.

14 Q. Okay. Can you identify whether the suspect was driving
15 or walking?

16 A. Definitely walking.

17 I do know there was some things left in my truck that
18 would suggest that he walked from the gas station across the
19 street. There was a case of beer. There was a bag of items
20 and that was put in my truck in the back bed, but that's --
21 I didn't see him walk across the street.

22 Q. So did you see the suspect put items in your truck?

23 A. No, they were just in my truck.

24 Q. Okay. Do you have that on surveillance of the suspect
25 putting items in your truck or on your truck?

1 A. I don't believe so.

2 Q. Can you -- can the surveillance see where your truck
3 was at the time?

4 A. You are welcome to look. I don't believe so. We don't
5 have -- we don't have every corner on video. We -- our
6 goal, until this incident, was just to get customers. So,
7 you know, what's our line look like? Are we doing things
8 slow. I wouldn't say Chick-fil-A is cutting edge on their
9 video system.

10 Q. Okay. Can you state where your truck was stationed at
11 the time of this crime?

12 A. I was parked -- you saw the original video we played
13 and seen three, I think camera three. It was past that. So
14 it was on the blackout section where you can't see it,
15 but it's -- it's on that side.

16 Q. So it's on the side where the incident happened?

17 A. Yeah, our entrance to the drive-thru, yeah.

18 Q. Okay. So do you know if you could see the truck in the
19 video? Do you see your truck in the video?

20 A. I did not see it, no.

21 Q. Okay. Did EMS come into Chick-fil-A and see the
22 victim?

23 A. Yes.

24 Q. Okay. Could you state where EMS came and seen the
25 victim?

1 A. I believe it was on the patio after the incident. I'm
2 not sure of the time it took them to get out there, but it
3 was just an initial check. You know, "are you okay? What's
4 going on?"

5 Q. Okay. Did they take her to the hospital or anything,
6 any EMS?

7 A. I don't believe so. I don't -- you could ask her, but
8 I don't think so.

9 Q. All right. Did you see the EMS check her out and take
10 her to the hospital? Did you see her get in the EMS and
11 leave?

12 A. I didn't -- I didn't see either way, so honestly we
13 kind of went back to work because we still had stuff to do,
14 but -- and, you know, I stayed around for my portion of it,
15 but --

16 Q. Okay.

17 A. -- those things drag out over a period of a few hours.
18 Okay, I'll go until they need me.

19 Q. Okay. How long would you say EMS stayed there?

20 A. Twenty, thirty minutes. It's a guess.

21 Q. That's a guess twenty, thirty minutes, okay.

22 Do you have -- do you -- and it's no angle, no camera
23 angle showing EMS coming in or leaving out?

24 A. I don't believe so. Like I said, that would have been
25 on the -- honestly kind of near my truck, as far as that

1 front middle portion of the patio, but to the right, kind of
2 on the passenger window side. I don't -- I didn't see
3 anything.

4 Q. Okay. Where did you see -- where did you see EMS pull
5 in at and park? Could you state where you seen EMS parked
6 at?

7 A. I don't remember. Sorry. I didn't think that was a
8 key detail. I just didn't remember. I'm sorry.

9 Q. Okay. So you did state that EMS came to Chick-fil-A
10 that day?

11 A. Uh-huh.

12 Q. You stated earlier that you seen the victim fell down.
13 Did you see the victim fall down?

14 A. No, I saw the victim on the ground. When I initially
15 looked out the window I saw the suspect getting in her truck
16 and I saw her on the ground, or it looked like she was
17 laying on the ground or bent over and then I ran out, I
18 mean, in a flash, so --

19 Q. Okay. And so was she on the ground, or was she -- did
20 you see her on the ground, or did you see her bent over?

21 A. It looked like she was on the ground. You take
22 pictures in your head kind of in the moment. She appeared
23 to be.

24 Q. Appeared to be on the ground as you think?

25 A. Yes.

1 Q. Okay. You said that you turned some money into the law
2 enforcement. How much was it?

3 A. It was \$20.

4 Q. \$20?

5 A. \$20 bill.

6 Q. And how much the suspect did you think threw down
7 several bills?

8 A. I think he threw down eighty or a hundred bucks.

9 Q. Okay. Do you see -- did you see or do you know what
10 all items that was left behind by suspect?

11 A. No. You know, I didn't want to touch anything. I
12 could see the case of beer, because it was open and there
13 was a bag, but I didn't look through the bag.

14 Q. Okay. So you did not see the suspect push the victim
15 out of the way?

16 A. No.

17 Q. Okay. Did you see victim get out of her truck and go
18 towards the suspect or charge the suspect?

19 A. No.

20 Q. You didn't.

21 Do you think suspect had intentions or his intentions
22 or he planned to take or deprive or steal?

23 MR. MORONEY: Objection.

24 THE COURT: If that's something that he
25 acknowledged. He can say what he saw. He doesn't know what

1 anybody was thinking. He doesn't know what anybody outside
2 was thinking. He can only tell you what he saw.

3 MR. FRAZIER: Okay.

4 THE COURT: You are talking about intent. That's
5 not a question that he can answer.

6 MR. FRAZIER: Okay.

7 THE COURT: So I sustain the objection as to it.

8 MR. FRAZIER: Okay.

9 THE COURT: State of mind.

10 BY MR. FRAZIER:

11 Q. Did you see victim get out of her truck?

12 MR. MORONEY: Your Honor, objection asked and
13 answered.

14 THE COURT: He's now objecting to it. It has been
15 asked and answered. You have asked that question. He said
16 he didn't see it.

17 MR. FRAZIER: Okay.

18 BY MR. FRAZIER:

19 Q. Okay. To you did it look like the victim was scared or
20 intimidated out of her truck?

21 A. I didn't see her get out of her truck. I didn't see
22 her, so couldn't --

23 Q. Okay.

24 A. So it would be hard to say. I saw the aftermath.

25 Q. Okay. Could you state what date this happened on?

1 A. I don't remember everything -- I think it was July, but
2 I don't remember the date.

3 Q. Okay. Did you see the police collect the items?

4 A. Yes, I know they collected the stuff out of my truck
5 because I knew it was back there, so I said "hey, this was
6 in my truck. It wasn't mine. Do you want to check it out?
7 And I handed him a \$20 bill that was on the patio on the
8 initial walk-ups.

9 Q. So when you picked up the \$20 bill you didn't see no
10 other money nowhere around?

11 A. I didn't see any money.

12 Q. Okay.

13 A. I mean, I grabbed it like this and, you know, "here you
14 go."

15 Q. Okay. Did you see suspect try to open the doors of
16 your truck?

17 A. Yes.

18 Q. Okay. So did the suspect try to open the doors of your
19 truck before or after the victim was on the ground?

20 A. It was before. Obviously his initial opening of the
21 truck, which I didn't see, but was told about, which is why
22 I came up front, but actually witnessed you trying to get in
23 there again and open the door and I was watching the second
24 time and then the event occurred after that.

25 Q. So the suspect tried to open the door two different

1 times?

2 A. Correct.

3 Q. Okay. And you seen him, not the first time, but you
4 seen the suspect the second time?

5 A. Correct.

6 Q. Did you give police a copy of surveillance disk?

7 A. Yes.

8 Q. And, as stated, what was on that disk was what the
9 three angles that he showed the solicitor -- the prosecutor
10 showed us just not too long ago?

11 A. Yeah. Yeah, we just took the time that we thought
12 everything happened and we cut it on the disk and handed it
13 over.

14 Q. Okay. Can you state what officer you gave the
15 surveillance disk to?

16 A. I'm not sure. I don't -- I don't know him. You know,
17 there were several around, so I can't be sure, but
18 apparently there was a guy that was in charge of evidence
19 and I know that he -- it was -- I handed it to someone who
20 said this guy is the guy to give it to, so it wasn't long,
21 but I'm not sure how that processed worked.

22 Q. Okay. So could you state about how many officers were
23 there at the scene of the crime?

24 A. It was several. If I had to guess, it could have got
25 up to six, maybe, at one point. I think maybe the event was

1 so large and it went into several different areas there were
2 several people involved, and so, you know, obviously ours
3 wasn't the only --

4 Q. Okay. So you stated it was probably approximately
5 about six officers?

6 A. Correct. Not initially, but over the period of time.

7 Q. Okay. Can you state, you know, any of the six officers
8 names?

9 A. I don't -- I don't know them.

10 Q. When you gave a statement was the six officers there?

11 A. I gave my statement to one officer, who I do not see,
12 but --

13 Q. Okay. So you don't see the officer anywhere in here?

14 A. No, I don't think so.

15 It may have been him, but I just give it to one
16 officer.

17 Q. Okay.

18 A. Everybody else was --

19 Q. Did you speak with the prosecutor, Mr. Moroney, at
20 Chick-fil-A one day?

21 A. I have never met him until today, so --

22 Q. Okay.

23 A. -- I talked to him a couple times recently of "hey, you
24 need to be in court."

25 Q. Okay. So you have spoken with him on the phone?

1 A. Correct, yeah.

2 Q. Okay.

3 A. He is telling me "hey, well, you have got my account of
4 the incident," and then he said "do you expect a
5 subpoena," and --

6 Q. So approximately how many times do you think you -- I
7 mean how many times did you speak with him on the phone?

8 A. Twice.

9 Q. Twice?

10 A. Uh-huh.

11 Q. And what all was said at the conversation?

12 A. The first time he got the statement. The second time
13 he said "what your calendar look like. Here is what we
14 expect." And I actually had a trip to Atlanta. That's our
15 corporate office. I was supposed to be off on Monday and
16 Tuesday, and he said "well, we will see if we can line up
17 where you can come Wednesday and not miss your trip."

18 Q. Okay.

19 A. But it didn't work out. I'm here.

20 Q. So you gave Mr. Moroney a statement also?

21 A. Correct. Well, I didn't -- I just kind of recounted
22 what happened, what I thought -- he probably already had my
23 statement written, but --

24 Q. Okay. So y'all had -- over the phone y'all spoke about
25 your statement or things that happened that you seen?

1 A. Correct.

2 Q. Okay. The time of the statement was -- was the time of
3 your statement at five o'clock?

4 A. I don't know.

5 Q. You don't know.

6 Your statement states that you made your statement time
7 was five o'clock. Is that correct?

8 A. If that's what it says and it looks like my
9 handwriting, it's probably correct. It's very possible. I
10 think the event on the camera looked like it was about four
11 o'clock, so about right.

12 MR. FRAZIER: May I show him his statement?

13 THE COURT: Sure.

14 BY MR. FRAZIER:

15 Q. Does this look like your statement or your handwriting?

16 A. Yup, that's me.

17 Q. So this is, in fact, your statement?

18 A. That's it, yeah.

19 Q. Okay. So are you the owner or operator of Chick-fil-A?

20 A. Correct.

21 Q. And your name is Brian Whitaker?

22 A. Uh-huh.

23 Q. So did you see suspect leave all the money on the patio
24 he threw down?

25 A. He initially walked away.

1 Now, he wandered around a lot. I mean, it wasn't -- it
2 wasn't -- it wasn't a minute. It was several, and I said
3 initially I didn't -- I didn't -- I thought he was not a
4 threat initially, because he looked like a nice guy, but a
5 little erratic behavior, but it didn't look like he -- I
6 mean, it was daylight in July and you don't expect anything
7 to happen, until after the money I was a little more
8 cautious and I said -- that's when I offered to walk the
9 customer to her car. She declined, so it was just kind
10 of --

11 Q. Okay. Was you told or coached what to say in your
12 statement by any officer or anybody?

13 A. No.

14 Q. You said -- what you said stated in your statement on
15 your own free will?

16 A. Yes.

17 Q. So you, in fact, state that the victim did not being
18 walked to her car?

19 A. Correct.

20 Q. All right. Can you state everything that was on --
21 that you -- that was on the disk that you gave to the police
22 officer?

23 A. I can state what y'all just submitted into evidence and
24 I watched that, and if y'all like I could see the car going
25 forward. I could see it coming backwards, you know,

1 reversing after something was allegedly thrown. I never saw
2 anything thrown, but that's what --

3 Q. Yeah, that's -- that's what you state was all on the
4 disk that you gave the police officer?

5 A. Correct. I never saw any of that, the forward and
6 back. All I -- when I walked up, the part I saw was the
7 defendant getting in the car and driving off.

8 Q. Okay.

9 A. Before that I wasn't watching.

10 Q. Okay. What date did you give the surveillance disk to
11 the police officer?

12 A. The same day.

13 Q. Can you state that date?

14 A. I don't remember. I heard July 9th. Is that the date
15 that's on the statement? It was in July. Whatever day that
16 was, it's the same time I gave the statement and we did the
17 video.

18 Q. Okay. Did you see the victim steal the truck?

19 A. Did I see him steal a truck?

20 Q. Yes.

21 A. You would come to that conclusion. I know it wasn't
22 his truck and he was getting in and driving off, so that's
23 what I saw.

24 Q. Okay.

25 A. Speeding off, and so that's why I ran out.

1 Q. Okay. Did Kristen Carol give a statement, the employee
2 of your job or Chick-fil-A?

3 A. I'm not sure about Kristen. You know, the only thing
4 that she -- she was the employee that said "hey, somebody is
5 trying to get in your truck," and that's about all I know
6 that she saw.

7 The other employee, Mary Kate C. , is here. I'm sure she
8 will testify later, because she's here, but she was the one
9 that was on the window of the side that everything happened,
10 so --

11 Q. Okay. So Kristen Carol did not give a statement?

12 A. I'm not sure.

13 THE COURT: He didn't know.

14 MR. FRAZIER: Okay.

15 BY MR. FRAZIER:

16 Q. Did you see officers take pictures of items or place in
17 evidence a bag or anything?

18 A. No, I didn't see anything. It doesn't mean they didn't
19 do anything. Like I said, I went back to work, so --

20 Q. Okay. What did you see the officers do with the
21 evidence?

22 THE COURT: He said he didn't see. He was back
23 working. He said that three times. He didn't pay much
24 attention because he had a store to run.

25 BY MR. FRAZIER:

1 Q. What is your vision level of reading?

2 A. I think it's 20/20, so -- I had laser surgery years
3 ago. Did a good thing by that.

4 Q. So you had laser surgery years ago on your eyes?

5 A. Correct, yeah. Now I see very well.

6 Q. Okay. So what was wrong with your eyes years ago?

7 THE COURT: That's not relevant. Don't answer
8 that question. He got them fixed.

9 BY MR. FRAZIER:

10 Q. When suspect got in the truck with the victim, where
11 was the victim standing?

12 A. Suspect got -- say that again.

13 Q. When the suspect got in the truck or the suspect was
14 leaving with the truck, where was the victim standing?

15 A. I believe she was -- what I remember was her kind of
16 laying on the ground as he was speeding off. I was more
17 focused on the speeding off and not on the victim, if that
18 makes any sense.

19 Q. Okay.

20 A. And I made a gut reaction to run outside. That was
21 really fast.

22 Q. All right. Was the victim standing like -- say, for
23 instance, if the driver's side is right here, from where the
24 camera showed the truck, the truck going this way, the
25 driver side would be on this side, was the victim standing

1 right at the door, or was the victim standing here, or was
2 she standing or the ground on the other side? Likes where
3 was she on the ground, or like right by the door, behind,
4 or --

5 THE COURT: Okay. You have asked the question.

6 A. Right near the driver's door.

7 BY MR. FRAZIER:

8 Q. Okay.

9 MR. FRAZIER: That would be it, Your Honor.

10 THE COURT: Okay. Any more redirect?

11 MR. MORONEY: Very briefly, Your Honor.

12 THE COURT: Okay.

13 REDIRECT EXAMINATION BY MR. MORONEY:

14 Q. With respect to the law enforcement arrival time, you
15 are not exactly certain. You stated maybe an hour and a
16 half, but you are not a hundred percent certain?

17 A. I have no idea, although I gave my statement at five
18 and it happened at four, must have been quicker than I
19 thought, but --

20 Q. Okay. Is it fair to say that you were concerned about
21 the victims and customers and what was going at that point?

22 A. Correct. You know, I just --

23 Q. Time line?

24 A. I spoke with the victim, obviously, so actually I had
25 never met, but I was kind of concerned about her. She was

1 okay, and then I went back to work until they wanted me,
2 so --

3 Q. And just to clarify, with this dialogue back and forth
4 between the defendant and yourself, you are referring to the
5 suspect, who are you referring to?

6 A. I'm referring to the suspect over here and the victim
7 in the red shirt over there.

8 Q. And the suspect would be Terrence Frazier, seated right
9 here here?

10 A. Correct.

11 Q. The same suspect that you identified earlier?

12 A. Correct.

13 Q. Okay. Thank you.

14 THE COURT: You may step down.

15 Call your next witness.

16 MR. MORONEY: Your Honor, the State calls

17 Mary Kate C. .

18 MR. FRAZIER: I object, Your Honor.

19 THE COURT: She hasn't testified yet.

20 Mary Kate C. , having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MR. MORONEY:

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you please state your name?

1 A. Mary Kate C.

2 Q. And Mary Kate, you currently work or are you a student?

3 A. I do. I work at Chick-fil-A. I have been there for
4 about two years now, and I am a student at Greenwood High
5 School.

6 Q. Very well.

7 What year are you?

8 A. A junior.

9 Q. A junior.

10 Okay. Did you -- were you working at the Chick-fil-A
11 on July 9th, 2015, this year?

12 A. Yes, sir.

13 Q. In the afternoon or approximately 4:30 p.m.?

14 A. Yes, sir.

15 Q. And was there anything out of the ordinary that strikes
16 you that happened that afternoon while you were working?

17 A. It was just like a normal work day, busy as always, and
18 then I heard a -- there was some disturbance. That's what
19 caught my attention, and then I went back to work until I
20 noticed something outside the window.

21 Q. Okay. When you noticed something outside the window,
22 were you inside the restaurant working?

23 A. Yeah.

24 Q. Okay. Can you describe your relationship inside the
25 restaurant to what you were seeing and where that was?

1 A. Uh-huh. At Chick-fil-A you have got two windows, one
2 on the passenger's side and one on the driver's side, and I
3 was on the passenger's side, which is on the side where the
4 incident had happened, so I was front -- right there.

5 Q. Okay. And what drew your attention? You said there
6 was some kind of commotion. What did you observe?

7 A. I saw jerking of handle, going into cars in the parking
8 lot, and then I noticed him on the curb jumping up or
9 like -- with the magazine on the curb, and then that's when
10 I saw the car come in.

11 Q. Okay. Back up just briefly.

12 Did you see any kind of description of the suspect?
13 Could you provide a description of the suspect at all from
14 what you saw pulling on the handles and all that that
15 happened first?

16 A. Just a black male.

17 Q. Okay. And after the pulling on the handles, you
18 mentioned a magazine. How does that come into what you
19 observed? Can you describe that more particularly?

20 A. I wasn't sure what kind of magazine. I just knew it
21 was something in his hand that was causing a disturbance.

22 Q. The male subject was holding a magazine?

23 A. Yes.

24 Q. Okay. And what did you observe next?

25 A. A woman had stopped in the middle of the drive-thru.

1 That's when it really concerned me, because not many people
2 just stop in the middle of the drive-thru.

3 Q. Do you recall what kind of truck -- or excuse me, what
4 kind of vehicle that would have been?

5 A. A white truck.

6 Q. Okay. Keep on going.

7 A. And she stopped and then she got out of her vehicle and
8 they started to talk. I'm not sure what they were talking
9 about because I couldn't see facial expressions or anything.
10 And then as she was talking and then it kind of escalated
11 from there. He went around and he pushed her and then
12 that's when she was struggling -- not struggling, but she
13 was fighting to get back into her car. At that point he had
14 already gotten his way into the driver's seat and drove off.

15 Q. Okay. And where were they positioned in the vehicle?
16 Were they -- this push that you mentioned, was this towards
17 the back of the vehicle, front, or can you --

18 A. Near the driver's door.

19 Q. Near the driver.

20 Would you say it was real close to the driver door, or
21 what?

22 A. Yes, sir.

23 Q. Okay. And you observed the push.

24 After that push did the female go back, did go she go
25 down?

1 A. She definitely lost her balance. I wasn't -- she
2 was -- I'm not sure she fell on the ground, but I know she
3 wasn't standing up straight like normal.

4 Q. Okay. And immediately after that push you observed the
5 suspect go around the female victim --

6 A. Yes.

7 Q. -- and enter the driver's seat?

8 A. Uh-huh, there was definitely a fight.

9 Q. Did it appear that the victim was trying to remove the
10 suspect from the vehicle?

11 A. Yes.

12 Q. And then what happened next?

13 A. He got into her car and sped around and drove off.

14 Q. Okay. And did that -- does that pretty much conclude
15 what you observed that day?

16 A. Yes.

17 Q. And when the car took off and the suspect was in it,
18 was it traveling at a slow rate of speed, high rate of
19 speed? Estimate the --

20 A. Very fast.

21 Q. Really fast?

22 A. Not like normal. You have the curve and you have to go
23 kind of go slow around it. He was definitely going faster
24 than a normal car would go.

25 Q. Thank you. Please answer any questions that Mr.

1 Frazier may have for you.

2 CROSS EXAMINATION BY MR. FRAZIER:

3 Q. Okay. I wanted to ask you, so you work at Chick-fil-A?

4 A. Yes, sir.

5 Q. All right. What makes you give a -- take this witness
6 on the stand and you didn't give a statement?

7 A. I was just a worker and I had my position to take place
8 in the day so I had to go back to work.

9 Q. Okay.

10 A. I'm not sure why I wasn't.

11 Q. And so the officer didn't take a statement from you or
12 anything?

13 A. No, sir.

14 Q. And so what -- what -- what -- what gave -- what
15 boosted you up to want to take the stand today?

16 THE COURT: She was called as a witness. She
17 didn't volunteer.

18 MR. FRAZIER: Okay.

19 BY MR. FRAZIER:

20 Q. So you were subpoenaed by the prosecutors to court.
21 Okay. I understand.

22 So you said that you seen -- you seen a push from the
23 victim -- I mean from the suspect pushed the victim?

24 A. Yes, sir.

25 Q. Okay. So did the -- did the victim fall?

1 A. She stumbled. I'm not sure if she went on the ground,
2 but I know should stumbled.

3 Q. Okay. All right.

4 So you said the victim -- did you see the victim get
5 out of her truck? And what happened after she got out of
6 the truck?

7 A. They started talking.

8 Q. Okay. Was they like talking face to face, or --

9 A. He was on the opposite side of her car and then he
10 walked around to the driver's side because she was still on
11 the driver's side.

12 Q. Okay. And what happened then after that?

13 A. They were talking on the driver's side and then the
14 incident where he pushed her forcefully and then he got his
15 way into her driver's seat.

16 Q. So when -- because let's go back.

17 You said he was on the other side, but --

18 A. Then he walked around.

19 Q. Okay. So he was on this side of the truck and she was
20 over here --

21 A. Yes, sir.

22 Q. -- basically.

23 And then he come around this way? That's what you are
24 saying?

25 A. Yes, he walked around to the driver's side.

1 Q. And when he walked around to the driver's side, what
2 happened then?

3 A. They were talking and then he pushed her -- or he
4 fought -- they fought. They had a battle. I don't know. I
5 don't know what the word is.

6 Q. Okay. You would say an altercation, a tussle?

7 A. Uh-huh, yes.

8 Q. Okay. So they had a tussle. He walked around and they
9 had a tussle and he pushed her. That's what you are saying,
10 and then the victim jumped in the truck and pulled off?

11 A. Uh-huh.

12 Q. Okay. Let's see.

13 So you said you didn't see -- you don't think the
14 victim fell. All right.

15 Did the -- did you see the victim -- did they have
16 like -- did you see the victim when she got out of the
17 truck? Were they arguing, or was it like "augh", or was it
18 like "hey, what are you doing," something like that?

19 A. I'm not sure. The window was closed so I couldn't hear
20 anything.

21 Q. Okay.

22 A. I just --

23 Q. Did you see the suspect come up?

24 A. Come up to where?

25 Q. To -- like to Chick-fil-A. Did you see when the

1 suspect first came to Chick-fil-A?

2 A. No, sir.

3 Q. So which side of the drive-in window do you work in?

4 A. If you are looking at the building, it's the right.

5 Q. On the right side. So that's where the incident
6 happened?

7 A. Yes.

8 Q. Okay. All right.

9 So you -- so did you see suspect put any items on a
10 truck or anything?

11 A. No, sir.

12 Q. But you seen suspect trying to open doors?

13 A. Yes, sir.

14 Q. Okay. So the suspect -- did you see the suspect
15 open -- try to open the doors before or after the incident?

16 A. Before.

17 Q. Okay. All right.

18 So what grade have you completed in school?

19 A. I'm currently enrolled in the 11th. I'm an 11th
20 grader.

21 Q. She's an 11th grader?

22 A. Yes.

23 Q. So how old are you?

24 A. 17.

25 Q. 17.

1 How long have you been working at Chick-fil-A?

2 A. About two years.

3 Q. About two years. Okay.

4 You -- have you ever had -- so you are in the 11th
5 grade. So anything wrong with your vision? Have you ever
6 had vision problems, glasses?

7 A. 20/20.

8 Q. Okay. 20/20, okay.

9 So the victim -- did you see -- when you seen
10 the victim -- the suspect get in the car, did -- so -- so
11 you seen the suspect -- like was -- you said they was
12 tussling, so what would you call a tussle?

13 THE COURT: That's your word. She -- you don't
14 want her to describe your word. She said it was a --

15 MR. FRAZIER: Okay.

16 BY MR. FRAZIER:

17 Q. What would you call their argument or their fight by
18 the driver door?

19 A. Not a friendly -- they were definitely using force to
20 get somebody out of the way.

21 Q. Okay. So when he ran -- when the suspect ran around
22 this way, which way would you say the suspect -- I mean,
23 which way -- when the suspect ran around this way, which way
24 would you say the victim went?

25 A. The victim stayed close to her driver's door the whole

1 time.

2 Q. Okay. All right. Well, so you would say the victim --
3 so, when she -- when you seen the victim -- the suspect -- i
4 mean the victim get out of the truck, you say she stayed at
5 her door, or did she --

6 A. She stayed on her driver's side.

7 Q. Okay. So she -- when she got out of the truck she
8 stayed on the driver's side, likes near the door, or --

9 A. Yes. And from the video you can see where she kind of
10 stepped toward -- she is still on her driver's side.

11 Q. Okay. And you say the suspect was on this side -- on
12 the other side of the truck?

13 A. At the beginning, yes.

14 Q. Okay. At the beginning, and then he ran around?

15 A. Yes, sir.

16 Q. Okay. So nobody forced you to say or take the stand
17 today, or anything like that?

18 A. No, sir.

19 Q. Okay. Thank you?

20 THE COURT: Any redirect.

21 MR. MORONEY: No, Your Honor.

22 THE COURT: All right. You may go, if you want to
23 return to school.

24 Call another witness.

25 MR. MORONEY: Your Honor, the State calls Ms.

1 Susannah Chatos.

2 SUSANNAH CHATOS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. MORONEY:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. Could you please state your name?

8 A. My name is Susannah Chatos.

9 Q. Ms. Chatos, did you have an occasion to be at the
10 Chick-fil-A in Greenwood County on July 9th, 2015?

11 A. Yes, sir.

12 Q. Afternoon?

13 A. Yes, I did.

14 Q. Okay. Approximately 4:30 p.m.?

15 A. Yes, I did.

16 Q. Were you the victim of a carjacking at that location at
17 the Chick-fil-A?

18 A. Yes, I was.

19 Q. Could you -- upon arrival at the Chick-fil-A can you
20 state, you know, what you observed?

21 A. What I observed?

22 Well, I pulled up into a handicapped spot, because I'm
23 on disability, okay? I got out to go to the window. And as
24 I was walking towards the window I seen the guy, the
25 suspect, you know, at the parking lot, you know, like he was

1 coming towards me. And then -- well, I walked on up to the
2 window and everything and he kept pointing at this porn
3 magazine saying "this girl is in the drive-thru line. This
4 girl is in the drive-thru line." You know, he kept on and
5 on and on about it, you know.

6 Q. Where is this conversation taking place between you
7 two?

8 A. It was at the walk-up window right there at
9 Chick-fil-A.

10 Q. Okay.

11 A. And he just kept on and on and he kept peeking around
12 the left side of the building saying "she's coming through
13 the line. She's coming through the line," like that right
14 there.

15 And then, you know, I was trying to order my food,
16 okay? Well, he said "I'll bet you a hundred dollars," you
17 know, or something like that, that, you know, "she's --
18 "that's her. This is her in that magazine." You know, it
19 was a sealed up porn magazine with two CD disks. Okay. And
20 I like I don't care, you know, whatever. He stuck it inside
21 the window. Brian was standing there. He stuck it inside
22 the window, the suspect did.

23 Q. When you say Brian, is that the reference to the
24 Chick-fil-A manager?

25 A. Yeah.

1 Q. Okay.

2 A. He stuck it inside the window, you know, right there in
3 front of Brian and I grabbed it and I handed it back to the
4 young man and I said "look, this is a Christian
5 establishment," you know, "we don't look at look garbage
6 around here," okay?"

7 Well, obviously I guess he took the magazine back. I
8 can't remember, but he took the magazine back. Then all the
9 sudden he started pulling out money out of his pocket. I
10 "put bet you a hundred dollars." He started throwing money
11 on the ground -- on the concrete. Yeah, this it was windy
12 that day. Yeah, the money was blowing, yeah, you know.

13 Well, I got my food and everything and Brian asked me
14 if he wanted me to walk me to the car. And I said "no, I
15 don't worry about it," you know, so I walked back to the
16 vehicle and everything. And he didn't bother me. The guy
17 didn't bother me. I put the vehicle, you know, in reverse
18 and started -- went back up, went to pull up and I kind of
19 got in behind Brian's truck, just little bit past it, and I
20 looked over there and I seen the suspect was trying to lift
21 up Brian's -- Mr. Whitaker's door handle, you know, of his
22 truck.

23 Q. How did you know it was his truck?

24 A. It had Chick-fil-A on it, and I found out it was his
25 truck and everything. It was his truck.

1 Well, anyway, he was lifting -- trying to lift it door
2 handle and the boy looked over there at me, you know. I did
3 not see the magazine being thrown at my truck, so he threw
4 something at my truck and it went thump, okay? So I
5 shouldn't have done it, but I put the truck in reverse, you
6 know, and backed up a little bit and slammed it up in park,
7 okay?

8 He comes around the truck and I said "hey, man, you
9 know, you got a problem with me?" And there was a cuss word
10 said in there, you know, and I told him, I said, you know,
11 "what is your problem, dude," you know. And we were having
12 a conversation. He kept saying "if my magazine hit that
13 truck, it would have done this or this," and about that time
14 I was fighting a losing battle. I seen it right there, so I
15 started kind of easing back up towards my door and
16 everything.

17 That's when it happened. He pushes, he jumps in my
18 truck. He looked at me. I mean, I could tell the guy was
19 on drugs bad. You know, he looked at me and I reached in
20 there and I grabbed him by the neck, okay? It was just
21 instinct, you know. I just grabbed him by the neck and I
22 was pulling on that boy so hard, he would not let go of my
23 steering wheel. Okay. He reached out and pulled the gears
24 into drive, all right. And then my hand slipped off his
25 neck, because he was real sweaty, and my hand grabbed his

1 shirt right here on the -- grabbed it this way. He was
2 sitting in my truck. I grabbed it. I grabbed -- slipped
3 off and grabbed his shirt and I ripped it, you know. And as
4 a result of all of this I ended up having to go to the
5 hospital.

6 Q. Did you -- prior to the incident -- after the incident
7 was there any pain that you were experiencing as a result of
8 this carjacking?

9 A. Yeah, the hospital only x-rayed the right side of my
10 body, because when the truck took off it was like the door
11 slammed, you know, and the truck took off. I got caught up
12 against my door. Well, they only x-rayed everything on this
13 side, so this is what was all swollen. And some of his boys
14 come out and they brought me some ice and things like that
15 to put on it because it was swollen, you know, real bad.
16 All right? And he missed up my shoulder. All right.

17 Well, the ambulance come and everything and they took
18 my blood pressure and it was high and all, and I'm on blood
19 pressure medicine and all that stuff now. They took me to
20 the -- they took me to the hospital and they only -- like I
21 said, they only x-rayed my right side. They didn't x-ray my
22 left side. Well, I went back to my doctor and I kept
23 complaining about my left side was hurting so bad. He sent
24 me for an MRI and I had a fractured rib. It was like this.

25 Q. Ma'am, in this courtroom today do you see the man who

1 hushed you and carjacked your vehicle at the Chick-fil-A?

2 A. Yes, sir.

3 MR. FRAZIER: I object, Your Honor.

4 THE COURT: She can testify to that. She's --
5 it's within her knowledge and her observation. She's
6 allowed to do that, unless you have a different objection.

7 MR. FRAZIER: I have got a different objection on
8 the solicitor using the carjacking, the legal -- it's not
9 proven yet.

10 THE COURT: All right, rephrase that. I'll let
11 him do that.

12 BY MR. MORONEY:

13 Q. Ms. Chatos --

14 MR. MORONEY: I'll rephrase the question.

15 BY MR. MORONEY:

16 Q. In this courtroom today do you see the individual who
17 was harassing you, who pushed you out of the way, got in the
18 driver's seat of your car and stole your vehicle and drove
19 off?

20 A. Yes, sir.

21 Q. And then required hospital treatment after you
22 sustained some injuries?

23 A. Yes, sir.

24 Q. Do you see him sitting in this courtroom today?

25 A. Yes.

1 Q. Would you mind pointing him out and describing what
2 they are wearing today?

3 A. That young man right there in the white shirt.

4 Q. And just for clarification purposes, this push and his
5 entry in the vehicle happened right in the doorway of your
6 driver's door?

7 A. Yes.

8 Q. Your car was still running at the time?

9 A. Yes, sir.

10 Q. It was still in operation?

11 A. Yes, sir.

12 MR. MORONEY: I beg the court's indulgence?

13 THE COURT: Yes.

14 (Off the record).

15 (Back on the record)

16 MR. FRAZIER: Your Honor --

17 THE COURT: Wait.

18 MS. BOLEN: We have a question.

19 THE COURT: Hang on a second.

20 Can you -- is she going to have to look at
21 something.

22 MS. BOLEN: Yes, Your Honor.

23 (Off the record).

24 (Back on the record).

25 (Magazine marked as State's Exhibit No. 2 for

1 identification)

2 MR. MORONEY: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. MORONEY:

6 Q. Ms. Chatos, I'm showing you an exhibit here that's been
7 marked as State's Exhibit 2 for identification purposes.

8 MR. FRAZIER: I object Your Honor.

9 THE COURT: Well, she has got to identify it
10 first.

11 MR. FRAZIER: All right.

12 THE COURT: Then I'll hear your objection.

13 BY MR. MORONEY:

14 Q. Do you recognize this item?

15 A. Yes, sir, I do.

16 Q. Can you describe what it is, from your recollection?

17 A. That's the magazine that he kept pointing at saying
18 that that porn girl was in the drive-thru.

19 THE COURT: All right, hang on a second.

20 Do we need to take up an issue about this being
21 introduced?

22 MS. BOLEN: I think he does have an objection,
23 yes, sir.

24 THE COURT: Can we do it in front of the jury?

25 MS. BOLEN: It would probably be better to do

1 outside the jury's presence.

2 THE COURT: Let's take a short break and put y'all
3 in the jury room while we take up this matter.

4 Y'all don't discuss the case.

5 Take a few minutes and we'll have you right back
6 in here.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: All right, what's your objection, Mr.
10 Frazier.

11 MR. FRAZIER: Your Honor, I object that there is
12 no proper foundation laid and no chain of custody on the
13 magazine, and there is no proof to know that that's the same
14 magazine that was from that day or to now, and that I wasn't
15 presented with the evidence of the magazine or it's not in
16 no booking or evidence that a magazine was collected and I
17 don't have no paperwork of it.

18 THE COURT: All right, first couple of questions.
19 Is it in your evidence log?

20 MR. MORONEY: I will have to confer with that,
21 Your Honor, and check and see. I don't want to speak out of
22 turn with respect to that.

23 THE COURT: Okay. Was it provided -- do you
24 intend to use a copy of the magazine in discovery? You
25 know, you didn't open it, obviously. It's still sealed in

1 the plastic bag.

2 MR. MORONEY: That's right.

3 No, Your Honor, it was not presented to the
4 defendant previously.

5 THE COURT: Not the magazine, but notice that he
6 had a copy -- you had it and intended to use it?

7 MR. MORONEY: I believe it was included in the
8 supplemental. Again, I don't want to speak out of turn. I
9 want to confirm that, but I believe it was in the
10 supplemental report that it was retrieved. We want to
11 confirm that. I should be in the discovery material.

12 MR. FRAZIER: I object to that, Your Honor,
13 because in the supplemental it does not state --

14 THE COURT: What does it say?

15 MR. FRAZIER: The supplemental states that "CID
16 investigators arrived and assisted in gathering the items
17 the man left behind and obtained the surveillance video from
18 around the business." It does not state exactly what.

19 THE COURT: Well, one more time now.

20 MR. FRAZIER: It says "CID investigators arrived
21 and assisted in gathering the items that said suspect left
22 behind." It doesn't say what items or nothing.

23 THE COURT: Okay.

24 MR. MORONEY: And, Your Honor, what we are going
25 to establish is that this magazine was found -- she didn't

1 know it was in her car -- the next day after this incident
2 had settled down. She found it and she notified law
3 enforcement.

4 THE COURT: You haven't gotten that far?

5 MR. MORONEY: We haven't gotten to that yet, but
6 we have laid the foundation that she knows this is the
7 magazine that was thrown at her car --

8 THE COURT: Let's proper testimony real quick
9 while we have the jury out. So go through how it came -- go
10 further.

11 MR. MORONEY: Okay.

12 THE COURT: She's identified it. She recognizes
13 it. Ask your next question.

14 MR. MORONEY: That's right.

15 BY MR. MORONEY:

16 Q. With respect to this magazine, this was the magazine
17 that was -- that you saw him parading in front of the
18 Chick-fil-A that day?

19 A. Yes, sir.

20 Q. And after this incident, after your vehicle had been
21 stolen and the police had responded, did you find this
22 magazine somewhere?

23 A. The next day in my pickup truck.

24 Q. And had you seen it before the -- you know, before that
25 incident had you seen it? You didn't have that magazine in

1 your truck prior to that?

2 A. No.

3 Q. Okay. And it appeared to be the same exact magazine
4 that Mr. Frazier had?

5 A. Yes, sir. I'm a Christian. I don't believe in that
6 stuff.

7 Q. And when -- when you found it, what did you do?

8 A. I called the sheriff's department. A police officer, a
9 sheriff's deputy come out there. He re-searched my truck.
10 I wanted it gone through thoroughly and he did find it and I
11 said that was left in my truck.

12 MR. FRAZIER: I object Your Honor.

13 THE COURT: Why do you object?

14 MR. FRAZIER: On the grounds that it's no reports
15 of a police officer coming and reporting of a magazine being
16 found in the truck the next day. There is nothing in the
17 supplemental or incident report of a police officer being
18 called out, or a 911 call, or of an officer going and
19 re-searching her truck.

20 THE COURT: She didn't say she called 911. She
21 said she called the sheriff.

22 MR. FRAZIER: Well, no sheriff officer or nothing
23 coming and finding the magazine.

24 THE COURT: All right, I got your.

25 MR. MORONEY: We don't plan on admitting this

1 magazine through Ms. Chatos. We have the officer who
2 ultimately was given the magazine and was going to enter it
3 into evidence. We plan on calling him.

4 THE COURT: I think she can testify as to what she
5 did and her turning it over to the sheriff's department. I
6 think she can testify to that.

7 Now, was he provided notice that that was part of
8 the investigation? Is that in the incident report or
9 something, supplemental incident report?

10 MR. MORONEY: It would be that it was an
11 instrument used, but not that -- I don't believe that this
12 whole testimony we just proffered is documented in a
13 supplemental, but we plan on eliciting that through the
14 testimony, as I stated, of the deputy who receives custody
15 of the magazine and ultimately put it into evidence.

16 MR. FRAZIER: Your Honor, I would call that under
17 Rule Five violation for presenting defendant with evidence
18 or supplemental report saying that. That's a violation of
19 Rule Five.

20 THE COURT: Tell me how y'all notified him that
21 y'all had this magazine to some degree? How did y'all tell
22 him in this Rule Five discovery that you had this magazine
23 and it had been turned over and taken into evidence. It
24 seems to be pretty key piece of evidence. How did you tell
25 him?

1 MR. MORONEY: Beg the court's indulgence, Your
2 Honor.

3 THE COURT: Okay.

4 (Off the record)

5 (Back on the record)

6 MR. MORONEY: Your Honor, can we approach?

7 THE COURT: Yes, come on up here.

8 (Whereupon, the lawyers and the defendant
9 approached the bench for an on-the-record discussion)

10 THE COURT: Do you want this on the record?

11 MR. FRAZIER: Yeah, on the record.

12 THE COURT: Put it on the record.

13 MR. MORONEY: With respect to go the magazine, we
14 just received this evidence log yesterday. You got a copy
15 of the evidence log. However, this is just a magazine. The
16 only reason it's being used is to corroborate what's been
17 documented and the arrest times in the incident report as
18 the magazine that was being paraded in front of Chick-fil-A
19 and thrown at the car. It was used during the carjacking.
20 This magazine got some weight to it. It's not a typical
21 pamphlet. It just demonstrates --

22 THE COURT: It's not a weapon.

23 MR. MORONEY: It's not a weapon, no.

24 We are demonstrating it had some weight. That's
25 why she heard it, and it's corroborating her testimony that

1 she could hear that thud on the truck.

2 MR. BLACK: The magazine is mentioned in the
3 report throughout. I don't think there is a supplemental
4 that mentions it.

5 THE COURT: How is it mentioned, just so I know,
6 in the incident report?

7 MR. BLACK: Basically that Ms. Chatos, when the
8 officers responded, she gave her statement to the officers
9 and she told them that it was a pornographic magazine that
10 he had. Basically everything that she testified to is
11 pretty much distinguished in the incident report as
12 mentioned throughout the report that it was a pornographic
13 magazine, judge.

14 MS. BOLEN: I don't think he's objecting to the
15 testimony so much as the introduction of the actual
16 physical --

17 THE COURT: I think he can -- I think he may be
18 right on that. It might not be admissible, but she can say
19 "that was found in my truck and I turned it over to the
20 police," like she had done. I think that's admissible, so
21 what she's done thus far with it. So --

22 MR. FRAZIER: I disagree on the -- I filed for a
23 Rule Five motion for discovery in and six and seven and it
24 was not provided with me or presented to me, unknown that
25 one of these sorts of facts in, like they said, just come up

1 yesterday. I understand that her statement says that it was
2 a porno magazine, but that's not still -- that's still a
3 theory. It's not completely to be true. And with her --
4 the truck being found in -- the magazine in the truck --

5 THE COURT: I mean, the pornographic magazine,
6 she's saying "that's the pornographic magazine," I think
7 that's close enough. It doesn't have to say this
8 pornographic magazine. She says "this pornographic
9 magazine."

10 MR. FRAZIER: Foundation has failed to be proven.
11 Chain of command was not entered and none of that.

12 THE COURT: I'm not going to admit it into
13 evidence, not through her, but she's identified it. It was
14 found in her car. I mean, that to me factually sound that
15 she's a first-hand witness to the magazine. She saw it.
16 She had her hands on it. She claimed she handed it back at
17 the window to someone. And then sometime later she finds it
18 in her vehicle and gives it to police.

19 MR. BLACK: I think that we -- we did meet with
20 Mr. Frazier last week and I think we explained to him that
21 there was some other items that were entered into evidence,
22 judge. There is a case of beer. There is some
23 fingerprints --

24 MR. MORONEY: That's right.

25 MR. BLACK: There is -- what else? We told him

1 all these things that were entered into evidence.

2 MR. MORONEY: The bag with the chips and all that
3 stuff. We are not going to be entering that into evidence,
4 but a bunch of junk.

5 MR. BLACK: He was made aware of this last week.
6 We talked to him at the jail and I believe that was
7 Wednesday that we went over there.

8 THE COURT: I think magazine can be referred to.
9 I'm not sure I'm going to admit it into evidence.

10 MR. MORONEY: We called -- should we hold off on
11 bringing the deputy that admitted it into evidence?

12 THE COURT: That's y'all's decision, but now I
13 think she can say that's what I did, this is what I saw,
14 this is what I had. There incident report mentions enough
15 for her to testify to that effect.

16 MR. BLACK: And Mr. Frazier is aware that it was
17 in evidence. We told him last week, judge.

18 THE COURT: Yeah. Well, I'm not going to allow it
19 in, not through her, because she surrendered it to the
20 police.

21 MR. FRAZIER: All right.

22 (Whereupon, the on-the-record bench conference was
23 concluded)

24 MS. BOLEN: May I step out?

25 THE COURT: Okay.

1 MS. BOLEN: I need to move here.

2 THE COURT: All right.

3 (Whereupon, Public Defender Elizabeth Able
4 replaced Public Defender Patricia Bolen to assist Mr.
5 Frazier).

6 THE COURT: All right, bring them in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: All right, folks, we have change out
10 in the public defender who is helping Mr. Frazier. This is
11 Ms. Able and she's going to sit with him for a little bit,
12 because Ms. Bolen had to go somewhere else, so they changed
13 out because of the necessity because there is some other
14 court going on and they have responsibilities outside of
15 this trial, and so Ms. Able is going to help him now for the
16 next little segment of the trial.

17 All right, continue on.

18 MR. MORONEY: Thank you, Your Honor.

19 BY MR. MORONEY:

20 Q. Ms. Chatos, just jumping back, this is the same
21 magazine that you saw that day in Mr. Frazier's hands?

22 A. Yes, sir.

23 Q. Now, after the incident and after law enforcement
24 responded, how did you get your vehicle back?

25 A. They took me to the hospital. And, if I'm not

1 mistaken, I think maybe my nephew drove it down to the
2 hospital, but he said it was pretty messed up.

3 Q. Did you have an opportunity to go in the interior of
4 your vehicle after this incident?

5 A. No. No, sir, I sure didn't. I went home, because they
6 had given me some pain medication. I went home, calmed
7 myself down, because, you know, like I said I got high blood
8 pressure and it was through the roof, and diabetes. And I'm
9 on disability and I just had to go home and lay down.

10 Q. An after this incident did you find anything in your
11 truck that surprised you?

12 A. Yeah, the next day I got up and went t out there to my
13 truck, because they said that there was drugs involved, you
14 know, and I'm like "oh, no." I went out there and started
15 going through my truck.

16 Q. And did you find this magazine in that truck that day?

17 A. Yes, sir, I sure did.

18 Q. And after you found that magazine what did you do?

19 A. I called the sheriff's department. I told them to get
20 a deputy sheriff up there. I wanted my truck to be gone
21 back through thoroughly.

22 Q. And did you hand this magazine over to the deputy who
23 responded?

24 A. Yes, sir.

25 Q. And that was the last you have seen it since this

1 afternoon, this morning?

2 A. Yes, sir.

3 Q. And jumping back briefly, when you were describing the
4 incident, officers did respond to the Chick-fil-A scene
5 after your car was stolen from you?

6 A. Uh-huh.

7 Q. Did they meet with you?

8 A. Yes, sir.

9 Q. Conduct an interview with you?

10 A. I believe that was that gentleman right there.

11 Q. Okay. And just to clarify, this Chick-fil-A that we
12 are speaking about is the Chick-fil-A on the bypass here in
13 Greenwood County?

14 A. Yes, sir.

15 Q. Thank you. Please answer any questions that Mr.
16 Frazier may have for you.

17 A. Okay.

18 CROSS EXAMINATION BY MR. FRAZIER:

19 Q. Ms. Chatos, okay, I'm not -- I didn't know nothing
20 about this, but this magazine you say you found it in your
21 truck. When, the next day?

22 A. Yes, sir.

23 Q. Okay. That was the day after crime was supposed to
24 have happened at Chick-fil-A?

25 A. Uh-huh.

1 Q. Okay. When did you -- so you received your truck back
2 after the crime?

3 A. Uh-huh.

4 Q. Okay. So -- and where did you find this magazine at?

5 A. It had -- like on my passenger's side, it had like I
6 guess where the suspect drove dramatically through town, or
7 whatever, through -- to Frank's Car Wash and it got slung
8 over to the right passenger's side, over -- it laid over in
9 there.

10 Q. Okay. It's on the right passenger side?

11 A. Yes.

12 Q. And about what time the next day that you noticed that
13 a magazine was in your car?

14 A. I couldn't say, sir. It was about ten. Maybe ten or
15 eleven, or so.

16 Q. Okay. When you got your truck back, how long did you
17 have it back before you noticed the magazine?

18 A. When I got my truck back?

19 Q. Yes, when -- when you received your truck back after
20 the crime, or the alleged crime happened, when did you
21 notice the magazine was in the truck?

22 A. The next day.

23 Q. Okay. So can you give me an approximate around about?

24 A. I just told you around about ten or eleven.

25 Q. Okay. All right.

1 So you didn't notice the magazine in your truck when
2 you got it back?

3 A. I did notice it when I got it back. I opened up the
4 truck door.

5 Q. Okay. So you got the truck back around ten or eleven
6 the next day?

7 A. No, my family drove the truck home, okay? All the
8 Chick-fil-A food and everything in it was throwed all over
9 the place. All right.

10 I had come home from the emergency room. I went home
11 and laid down. The next day I got up. I went outside and
12 there was -- I went through my truck and there was the porn
13 magazine.

14 Q. Okay. So you went to the hospital that day?

15 A. Yes, sir.

16 Q. And -- and your -- your family drove the truck -- your
17 family went and picked the truck up?

18 A. Yeah, they picked it up I believe it was from Frank's.

19 Q. Okay. All right.

20 They picked it from Frank's. Okay. And they drove it
21 to your house?

22 A. No, they drove it down to the hospital.

23 Q. They drove it to the hospital. Okay.

24 And you got out of the hospital and you rode home in
25 the truck?

1 A. No, my sister and them brought me home, I believe it
2 was.

3 Q. Okay. And they drove it to the hospital, and then
4 after the hospital it was drove to your house?

5 A. Yes.

6 Q. Okay. And then you woke up around ten or eleven the
7 next day that's when the magazine was found?

8 A. (Shaking head yes).

9 THE COURT: Answer out loud, ma'am.

10 A. Yeah, uh-huh.

11 BY MR. FRAZIER:

12 Q. Okay. And -- I got a bunch of questions for you. I
13 hate to hold all your time.

14 Okay. Do you say -- so do you remember what date this
15 all happened on?

16 A. July 9th.

17 Q. July 9th.

18 Okay. Did you give a statement?

19 A. Yes, I did.

20 Q. You gave a statement?

21 A. Uh-huh.

22 Q. On what day did you give a statement?

23 A. July 9th.

24 Q. Okay. Okay.

25 Okay. So the next day when you got this magazine, when

1 you figured out this magazine was in your truck, you say you
2 called a deputy sheriff?

3 A. Yes, I did.

4 Q. Do you remember what deputy sheriff it was?

5 A. No, I don't.

6 Q. Okay. And what did the deputy sheriff -- do you know
7 if he -- what he did with the magazine?

8 A. He took the magazine, and he did go back through my
9 truck to make sure no drugs or nothing was left in my truck.

10 Q. Okay. To make -- so he went back through your truck
11 the next day?

12 A. Yes, he did.

13 Q. And he -- did he find anything?

14 A. No, he did not find. I gave him the magazine that was
15 in my truck.

16 Q. Okay. All right.

17 So you said -- you are saying you grabbed the suspect.
18 All right, but did the suspect -- when the suspect pushed
19 you, did you fall? Did the suspect push you?

20 A. Yes.

21 Q. So when -- when -- when you got out of your truck --
22 and what did you do after you got out of your truck?

23 A. I got -- when I got out this truck, after the magazine
24 was thrown at my truck, I backed it up, got out of the truck
25 and I walked right past where, you know, you put the gas in,

1 about toward my back tire. Not no further than that. The
2 suspect come around the truck and I said, you know, "what's
3 wrong? You got a problem with me? You got an f'n problem
4 with me? What's your problem, man," like that right there
5 and you were -- well, the suspect was all hyped up and
6 everything, you know, did this magazine, throwing this it
7 would have done this to the truck." And so I -- like I said
8 before, I just kind of eased my way back up to my door. I
9 was fighting a losing battle. You come with me. You took
10 my truck.

11 Q. Okay. So did you fall when suspect pushed you?

12 A. I went down a little bit, but I come right back up,
13 because I work for a living. I work for everything that I
14 have and nobody is going to take it away from me, if I could
15 possibly help it.

16 Q. Okay. So you didn't fall?

17 A. Yeah, I went down. I jumped back up and I grabbed the
18 suspect around the neck. He was sweating so bad that my
19 hands slipped off your neck and I grabbed your T-shirt and
20 it ripped your shirt.

21 Q. All right. Did you see suspect throw down money?

22 A. Yes, I did.

23 Q. Can you state about how much money that you seen
24 suspect throw down?

25 A. No, I can't. You kept just pulling money out of your

1 pocket, throwing it on the ground.

2 Q. Okay. Can you state what bills that you seen suspect
3 throw down? Do you know what they --

4 A. There were some twenties in there.

5 Q. Okay. Okay.

6 So you are saying the suspect used force to take your
7 truck?

8 A. Yes, he did.

9 Q. So can you state the time around this happened? Do you
10 remember the time?

11 A. It was between 4:00 and 4:30, somewhere along in there,
12 because I just got out of my doctor's office.

13 Q. Okay. What do you go to the doctor for? What do you
14 go to the doctor for?

15 MR. MORONEY: Objection, Your Honor.

16 THE COURT: She's already testified she's on
17 disability and has diabetes and high blood pressure.

18 MR. FRAZIER: Okay.

19 THE COURT: And the injuries to the right arm,
20 broken rib. That's what her testimony was.

21 BY MR. FRAZIER:

22 Q. Okay?

23 THE COURT: She can respond to that effect.

24 BY MR. FRAZIER:

25 Q. So when you fell, that's when you injured your arm and

1 your ribs?

2 A. Yeah, uh-huh. Not -- not when I fall, no, sir. When
3 you hit the gas, the door, that was it.

4 BY MR. FRAZIER:

5 Q. And the door closed on your -- which arm?

6 A. Right arm, right shoulder.

7 Q. Okay.

8 A. This size of my body.

9 Q. All right. Which way was you faced when you tried to
10 pull the suspect out of the vehicle?

11 A. I was facing towards you. I had you around your neck.

12 Q. Which side was the driver's side on?

13 A. Which side was the driver's side on?

14 Q. Which side was the driver's side of the truck?

15 Was it on the left side or the right side?

16 A. It's on the left-hand side of the truck.

17 Q. Okay. And you was facing towards the suspect?

18 A. Yeah, in the truck. You were in my truck and I grabbed
19 you around your neck.

20 Q. Okay. And the truck door hit your right arm?

21 A. It hit my right shoulder. It slammed in here. The
22 whole arm was swollen. Like I said, the Chick-fil-A people
23 did come out and gave me ice and everything. A nurse from
24 Urgent Care just so happened pulled up. She checked my
25 blood pressure. It was through the roof.

1 Q. Okay. So did a nurse check your blood pressure? A
2 nurse -- you said a nurse checked your blood pressure?

3 A. Yeah.

4 Q. Okay.

5 A. Uh-huh.

6 Q. All right. And you are saying the door closed on your
7 right arm?

8 A. Yes.

9 Q. And hit your right arm?

10 A. It hit my right --

11 Q. And how did you injure your ribs? How did you --
12 that's from the door, when the door slammed?

13 A. Yeah.

14 Q. So -- okay. When the suspect was pulling off in the
15 truck, the door slammed and it hit your right arm and messed
16 up your ribs?

17 A. No, it hit my right arm, right shoulder, bruised me up
18 here real bad.

19 Q. Okay. From the door slamming?

20 A. From the door slamming I got a fractured rib right
21 here.

22 Q. Okay. So you were standing -- did you ever leave the
23 driver's side door when you got out of the vehicle?

24 A. Yeah.

25 Q. Okay. And -- and when the suspect was taking off in

1 the truck, was you at the driver door, or was you -- was you
2 still at the back tire, or going forward to where you walked
3 to?

4 A. You left me standing in my spot. You gunned it.

5 Q. Okay. So was you -- was you intimidated or scared at
6 the time of this?

7 A. I was intimidated. I was mad. Just like I said, I
8 work hard for what I have.

9 Q. Was you scared?

10 A. Yes, I was.

11 Q. When you got out of your truck and walked towards the
12 victim, was you mad? Did you come in the angry manner or
13 tone towards the victim?

14 A. Yeah.

15 Q. I mean towards the suspect?

16 A. Yes, I was. I just asked you why you threw something
17 at my truck.

18 Q. Did you see the suspect throw what -- or see suspect
19 throw something or what he throwed?

20 A. No, I didn't see you throwing at the truck, but you
21 were on the only one standing there.

22 Q. So you -- so when you got out of the truck you cussed
23 and attacked the victim -- I mean the suspect?

24 A. No, I didn't attack you.

25 Q. Did you cuss the suspect in an angry manner?

1 A. I couple of cuss words come out of my mouth. I thank
2 the Lord has done forgiven me for that one.

3 Q. And you are a Christian?

4 A. Yes, sir.

5 Q. The Lord, he definitely forgive you.

6 Okay. When suspect jumped in the truck, where was you
7 standing? When the suspect attempted to jump in the truck
8 or he jumped in the truck, where was you standing?

9 A. I was standing there with you trying to fight me for my
10 truck.

11 MR. MORONEY: Your Honor, asked and answered.

12 THE COURT: I agree to that. That's ben asked and
13 answered several times. She described that in great detail.

14 BY MR. FRAZIER:

15 Q. Did anybody coach you, fell you what to say in your
16 statement?

17 A. No, sir.

18 Q. Force you to say anything?

19 A. No, sir.

20 Q. Anybody forcing you to take the stand today?

21 A. No, sir.

22 Q. You say that you had the suspect around the neck and he
23 hit the gas and you was forced to let go?

24 A. I had no choice. I grabbed the shirt after you hit the
25 gas and ripped the shirt off. I didn't rip it completely

1 off. I ripped it. That's when the door and everything
2 slammed on me. And after they took me to the hospital and
3 my family took over from there.

4 Q. Did you see suspect pulling on the truck door of other
5 vehicles?

6 A. Yes, sir, you did.

7 Q. Okay.

8 A. Mr. Whitaker's truck.

9 Q. Okay. When -- so when the suspect threw something at
10 your truck that's when you got out?

11 A. Yes, sir.

12 Q. Okay. Well --

13 Okay. When you seen suspect pulling on doors of
14 vehicles, what did you do?

15 A. I only seen you pull on one door and that was Mr.
16 Whitaker's, and I looked over there and I slowed to a
17 moderate slow and I looked over there and I said what is
18 that dude doing. And about that time you looked at me and
19 you threw something. You said "thump", okay? And then you
20 come around the truck with the magazine in your hand, around
21 the truck and said this "magazine would have done that to
22 your truck, it would have done this."

23 Q. Okay. So suspect threw magazine at your truck and then
24 the suspect picked it up and came around the front of the
25 truck? Yes or no?

1 A. Yes.

2 Q. Okay. Did you go to hospital the same day that the EMS
3 come there to Chick-fil-A?

4 THE COURT: She's answered that already.

5 A. Yes, I did.

6 BY MR. FRAZIER:

7 Q. Okay. Do you have any like brain damage, or confusion,
8 short-term memory loss, or anything of that? Do you suffer
9 any mental illness of that nature?

10 A. No, sir, I don't.

11 Q. What is your vision reading, your vision level of
12 reading?

13 A. Fine. I got glasses on.

14 Q. Okay. Do they have medicine in them?

15 A. What?

16 Q. Medicine, line medicine in your glasses?

17 THE COURT: Prescription.

18 BY MR. FRAZIER:

19 Q. Prescription medicine?

20 A. They are prescription, yes, prescribed by a doctor.

21 Q. Okay. If you take a guess, what would you say your
22 reading level or vision is?

23 A. Good. Fine.

24 Q. Okay. So you didn't get out of the truck after you
25 seen suspect pulling on Mr. Whitaker's door? Did you get

1 out of the truck after Mr. -- you seen suspect pulling on
2 Mr. Whitaker's door?

3 A. No. I got out of the truck when you threw a magazine
4 and hit my truck.

5 Q. So you was angry and -- angry when you got out of the
6 truck?

7 A. Yeah, when you throwing that thing and hit my truck,
8 yeah.

9 Q. So when -- when suspect was pulling off in the truck,
10 was you drug by the truck, like dragged? Did the truck drag
11 or anything?

12 A. No, I just grabbed ahold of T-shirt and ripped it and I
13 just let it go.

14 Q. Okay. What would you say -- what grade did you finish
15 in school?

16 A. I finished the 10th grade and I went back to school and
17 got my GED.

18 Q. Did you -- was you in any kind of special classes or --
19 what would you call it, like slow learning classes?

20 A. No.

21 MR. FRAZIER: All right, Your Honor.

22 THE COURT: That's it?

23 Okay. Anything on redirect?

24 MR. MORONEY: No, Your Honor.

25 THE COURT: You may step down, ma'am.

1 All right, let's take a couple of minutes between
2 witnesses. Y'all take a break. We'll take about ten
3 minutes and have you back in here. We are going to keep our
4 pace and work on through until the late lunch and we will be
5 done. All right? We will take about ten minutes.

6 (Whereupon, proceeding were recessed).

7 (Whereupon, proceedings were reconvened)

8 THE COURT: Y'all ready?

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

10 MR. BLACK: Yes.

11 THE COURT: Bring them in.

12 (The following takes place in the presence of the
13 jury panel)

14 THE COURT: All right, call your next witness.

15 MR. BLACK: The State calls Brian Penn.

16 OFFICER BRIAN PENN, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. BLACK:

19 Q. Can you state your name for the record?

20 A. Brian Penn.

21 Q. And what's your rank at the sheriff's department?

22 A. Captain.

23 Q. How long have you been there?

24 A. Eighteen years.

25 Q. Okay. Did you work anywhere before that?

1 A. I worked at School District 50, Greenwood.

2 Q. What kind of training do you have? Did you go to the
3 academy?

4 A. Yes, I did.

5 Q. And when did you do that?

6 A. I went to the academy, it was twice, once in 1997, and
7 once in 2000.

8 Q. Do you have any special certifications that you have?

9 A. Yes, sir. Instructor. Firearms instructor. Narcotics
10 training. Management training. Several others.

11 Q. What kind of duties do you have right now at the
12 sheriff's department?

13 A. My duties now is shift supervisor. What I do is
14 supervise the shift that's out on our tour of duty,
15 currently twelve hours at a time. Handling anything from an
16 alarm call to a murder. We handle it all.

17 Q. Okay. Were you working on July 9th of this past year?

18 A. Yes, I was.

19 Q. And that was a Thursday, is that right?

20 A. Yes, sir, to my recollection.

21 Q. Did you respond to a call at the Chick-fil-A here in
22 town?

23 A. Yes, sir.

24 Q. And about what time did y'all get that call?

25 A. If I could refer to my incident report that I wrote.

1 About -- I was dispatched around 4:24.

2 Q. In the afternoon?

3 A. In the afternoon.

4 Q. And where were you located when you got that call?

5 A. When I received that call I was at the sheriff's office
6 trying to complete some paperwork for the end of the day.

7 Q. Was this right back here behind the courthouse?

8 A. Yes, sir.

9 Q. How long did it take you to get to Chick-fil-A?

10 A. About eight minutes --

11 Q. Okay.

12 A. -- to get to Chick-fil-A.

13 Q. And were the first person that was at the Chick-fil-A?

14 A. I was the first law enforcement there, yes, sir.

15 Q. All right. And now the Chick-fil-A, in Greenwood,
16 correct?

17 A. Yes, sir, Greenwood County.

18 Q. Is it in the county or the city?

19 A. The Chick-fil-A is in the county of Greenwood.

20 Q. And that's why the county responded?

21 A. That's why I did, versus the city officers, yes.

22 Q. Okay, I see.

23 And you were the first person there, correct?

24 A. Yes, sir.

25 Q. What did you find when you first arrived?

1 A. I noticed Ms. Chatos, who was up here momentarily, and
2 Mr. Whitaker. And Ms. Chatos was being attended to by Mr.
3 Whitaker and a couple other employees. They had some ice on
4 her arm.

5 Q. And where was this located at in the Chick-fil-A?

6 A. She was in the -- that patio area where the umbrellas
7 and the outside seating is.

8 Q. Okay.

9 A. On the right-hand side of the building.

10 Q. And so you had went and made contact with them?

11 A. I did.

12 Q. And what did you do when you made contact?

13 A. I spoke to her and asked her what had happened and she
14 was describing to me that a black male had presented her
15 with a magazine at the front where she was ordering. She
16 had gotten out of her vehicle.

17 MR. FRAZIER: Object, Your Honor.

18 THE COURT: What basis?

19 MR. FRAZIER: Hearsay.

20 THE COURT: All right. He can testify to what his
21 investigation shows, but not other people said to him.

22 BY MR. MORONEY:

23 Q. Officer Penn, can you describe kind of the -- Ms.
24 Chatos, her demeanor when you first arrived?

25 A. She seemed very upset, shaking.

1 Q. She was like physically shaking?

2 A. Physically shaking, upset, teary eyed, was nursing her
3 arm, holding her arm that had been hurt.

4 Q. And you spoke with Ms. Chatos, correct?

5 A. Yes, sir.

6 Q. And she described what had happened, is that correct?

7 A. Yes, sir, she did.

8 Q. Did you speak to any other people?

9 A. I spoke to Mr. Whitaker.

10 Q. And he was --

11 A. Who was the -- I believe he's the owner. He was the
12 manager on duty that day.

13 Q. And he was with Ms. Chatos?

14 A. He was with her, yes.

15 Q. Were there any other people there?

16 A. There were several people standing around. It was a
17 pretty excited crowd. Several people standing around. A
18 few employees come out with ice and other things.

19 Q. They were attending her trying to take care of her, I
20 guess?

21 A. Yes.

22 I'll assume very quickly someone called. Some
23 investigators from the sheriff's office who had met me on
24 the scene out there.

25 Q. Do you remember who those people were?

1 A. I remember seeing Matt Emery, Will Johnston --

2 Q. Some of those guys showed up?

3 A. Yes.

4 Q. But you were the first one, right?

5 A. Yes, sir.

6 Q. What was your main concern when you first showed up?

7 A. Finding out whether or not there was an injury there or
8 whether someone had been injured, number one was my first
9 concern.

10 Number two was to get statements from those people or
11 get an idea from those folks who were there what they had
12 seen when the incident occurred.

13 On my way -- I should add. On my way to Chick-fil-A
14 from the office dispatch was currently giving out updated
15 information of what was going on. I found out there was an
16 incident at Frank's Car Wash and right up the road at
17 another finance company. Frank's --

18 Q. Did you pass --

19 A. I did pass those areas --

20 Q. -- while you were heading --

21 A. -- and I slowed down --

22 Q. While you were heading to Chick-fil-A?

23 A. Yes, I slowed down at Frank's to check out what was
24 going on there. Some city officers had arrived that were
25 taking care of that, so I went from there down to

1 Chick-fil-A where I encountered the victim.

2 Q. But you did not stop at Frank's, correct?

3 A. No, I didn't stop there. I pulled up, spotted one of
4 the -- I believe it was one of the city captains and I asked
5 him if he needed my help there, but, no, we have this
6 covered, so I left.

7 Q. But it was pretty chaotic at Frank's when you drove by
8 slowly?

9 A. Absolutely. Traffic accident, what it looked like to
10 me.

11 Q. Right.

12 And when you got to Chick-fil-A, it was also chaotic as
13 well?

14 A. Yes, sir.

15 Q. And what did you learn in the course of your
16 investigation at Chick-fil-A?

17 A. I learned that several people there at Chick-fil-A --
18 Mr. Whitaker and Ms. Chatos are the people that I spoke to.

19 I learned that they had seen a black male subject come
20 to the walk-up window, create some type of disturbance
21 holding a magazine and saying the person on the magazine was
22 in the line.

23 And Ms. Chatos had told me "I agreed with whatever was
24 on the front of that magazine, told him not to bother me."
25 He threw the magazine -- or threw the money down, some

1 amount of money, and then left her area.

2 She stated that she went on back to her truck. And
3 when she was going to leave something hit the side of her
4 truck. When she saw the black male standing there she
5 stopped, got out, asked him what his problem was, and they
6 got into a pushing, shoving match at the driver's door, at
7 which point he was in the vehicle. She stated to me she
8 grabbed him around the neck and was trying to pull him out
9 and when the truck pulled off the door slammed on her arm.

10 Q. And you talked to other witnesses as well?

11 A. Yes.

12 Q. And they confirmed essentially the same story?

13 A. Yes, sir.

14 Q. Was the individual, was he there at the scene when you
15 arrived?

16 A. No, sir, he was not.

17 Q. Was the white F-150, was it at the scene when you
18 arrived?

19 A. No, sir, it was not. It had just left.

20 Q. They had all left, except Ms. Chatos?

21 A. Yes, sir, except Ms. Chatos and Mr. Whitaker.

22 Q. You mentioned a pornographic magazine. Was that at the
23 scene as well?

24 A. I did not see that magazine. Like I said before, my --
25 my whole concern was the victim, Ms. Chatos, and due to the

1 fact of having some investigators arrive on the scene very
2 quickly after that, my concern was with her and I was
3 allowing them to do the other part of the investigation,
4 collecting the evidence or speaking to any other witnesses
5 there.

6 Q. And the defendant, like you said, he was not there,
7 correct?

8 A. No, sir, he was not there.

9 Q. Okay. There was also a question about some money being
10 thrown around. Did you see any money when you first
11 arrived?

12 A. No, sir. I was told about money but I did not
13 physically see any money there.

14 Q. Okay.

15 MR. BLACK: Beg the court's indulgence.

16 (Off the record).

17 (Back on the record).

18 MR. BLACK: A couple quick questions.

19 BY MR. BLACK:

20 Q. Did you gather any evidence at the scene?

21 A. I did not gather any evidence from the scene. Like I
22 said, there was investigators that had arrived very quickly
23 after that.

24 I spoke to Ms. Chatos and spoke with Mr. Whitaker and
25 asked them -- I told them that we wanted -- one is we wanted

1 a written statement from them and other deputies assisted in
2 getting those written statements.

3 Q. Thank you, Officer Penn. Answer any questions that the
4 defendant has for you.

5 A. Yes, sir.

6 MR. FRAZIER: Your Honor, before I start speaking
7 I would like to have him sworn and make sure he swear that
8 that was the truth.

9 THE COURT: No, he's already --

10 MR. FRAZIER: He was sworn.

11 THE COURT: When he first came up, every witness
12 swears to tell the truth, and he's done that.

13 CROSS EXAMINATION BY MR. FRAZIER:

14 Q. So -- all right. You took statements from Ms. Chatos?

15 A. I stood by while statements were being taken.

16 Q. Okay. Can you state who take statements from them?

17 A. I believe Investigator Powell took those statements
18 from them. I can't -- I can't remember who else.

19 Q. At the time this incident happened you was under
20 different duties and now you are under --

21 A. No, sir, I'm under the same thing. I'm doing the same
22 thing now as I did then.

23 Q. Then?

24 A. Yes, sir.

25 Q. Okay. You are just the shift supervisor?

1 A. Yes, sir.

2 Q. Okay. Okay.

3 All right. Did -- could you -- you said other officers
4 assisted you?

5 A. Yes, sir.

6 Q. Can you -- do you remember what officers that helped
7 assisted you?

8 A. Two of the officers are in the courtroom today.
9 Investigator Emery and Deputy Will Johnston were that, that
10 I recall quite vividly.

11 Q. Okay. Was they in your incident report supplemental?

12 A. Yes, sir.

13 Q. Did anybody force you to say this today?

14 A. Absolutely not.

15 Q. All right. So you are doing this on your own free
16 will?

17 A. Yes, sir.

18 Q. Okay. You say when you got there -- what did you see
19 when you got there?

20 A. When I arrived on the scene?

21 Q. Yes.

22 A. I saw the victim, Ms. Chatos, who I met there being
23 assisted by the employees at Chick-fil-A, one of them being
24 Mr. Whitaker, a couple of females standing around. I didn't
25 catch their names. I was more concerned with Ms. Chatos.

1 Q. Okay. All right.

2 And after they -- so what you did after you -- when you
3 came to the scene, what did you immediately start taking
4 statements?

5 A. I took -- I got information about who Ms. Chatos was,
6 wrote down her personal information. The same thing for Mr.
7 Whitaker, his personal information, where I may be able to
8 contact them. In order to do an incident report you
9 document what I have done there.

10 Q. Uh-huh.

11 A. The things that I started doing in my role as a
12 uniformed patrol.

13 Q. Okay. So you was -- you just basically did the
14 incident and supplemental report?

15 A. I did the incident report. No supplemental.

16 Q. No supplemental.

17 So the supplemental somebody else added to it?

18 A. True.

19 Q. Okay. All right.

20 Did you -- you said that you didn't see no money?

21 A. No, sir, I did not see any money.

22 Q. See no money?

23 A. No, sir.

24 Q. And did -- who -- did -- you said that E -- did the EMS
25 come see Ms. Chatos?

1 A. Yes, the EMS did arrive.

2 Q. You called the EMS?

3 A. They were called or -- I cannot recall whether I'm the
4 one that actually made the call, but they were called and
5 they did arrive to assist her.

6 Q. Okay. Any other officers that you can think of that
7 had a part of any investigation that you didn't mention?

8 A. I think mentioned Captain Reader, Lieutenant Russ were
9 there. There are also with CID and they arrived on the
10 scene.

11 Q. So did you type the warrant?

12 A. No, sir.

13 Q. Did you -- do you know who typed the warrant?

14 A. No, sir, I don't.

15 Q. Okay. So you didn't see any money.

16 Did you collect any items of evidence?

17 A. No, sir.

18 Q. You didn't. Okay.

19 And you didn't -- you just only did the incident
20 report?

21 A. Yes, sir.

22 Q. Okay. Was Ms. Chatos taken away by EMS at the time of
23 the incident?

24 A. Yes, she did leave with the EMS.

25 Q. Okay. And that was -- can you state the date that this

1 all happened?

2 A. The 9th of July, 2015.

3 Q. Okay. And what time -- could you -- do you remember
4 what time that you arrived at the scene?

5 A. About -- I can refer back to my notes. It was eight
6 minutes after I received the call, which was about 4:24.

7 Q. 4:24?

8 A. Around 4:30, yes, sir.

9 Q. Okay. 4:30. 4:24, 4:30?

10 A. Yes, sir.

11 Q. So when you got there Ms. Chatos' truck was already
12 gone?

13 A. Yes, sir, it was gone.

14 Q. Okay. And you said that you stooped at Frank's Car
15 Wash before the scene?

16 A. Yes, sir.

17 Q. And what officer did you speak with?

18 A. I believe I spoke to a captain on the shift there of
19 the city.

20 Q. Of the city?

21 A. Yeah, I believe he was.

22 Q. You dont' remember who it was?

23 A. Butler.

24 Q. Butler?

25 A. Uh-huh.

1 Q. Okay. And Butler was there?

2 A. Uh-huh.

3 Q. And he was also at the Chick-fil-A?

4 A. No, he was at Frank's. I was at Chick-fil-A.

5 Q. Okay. All right.

6 Okay. You said the victim stated that she grabbed the
7 victim around -- the suspect around the throat?

8 A. She said that when the suspect jumped in the vehicle to
9 take the vehicle, she grabbed him around the neck and she
10 told me she lost her grip and the truck pulled off and the
11 door slammed on her arm --

12 Q. Okay.

13 A. -- when it was leaving.

14 Q. All right. And when EMS got there to check Ms. Chatos
15 out, did they state to you anything that was wrong with her?

16 A. They didn't state to me anything like that.

17 Q. So she was checked out at the scene?

18 A. At the scene and left with them.

19 Q. Okay.

20 A. I'm not familiar with her medical history past that.

21 Q. Okay. So -- all right.

22 So did Ms. -- do you remember who Ms. Chatos approached
23 with about any items, a magazine or anything, being found in
24 the truck?

25 A. No, sir, I wasn't involved in that.

1 Q. In the sheriff's department?

2 A. I wasn't involved in that, no, sir.

3 Q. Okay. I just wanted to know.

4 So basically -- could you tell me who did the
5 supplemental report?

6 A. I do not know.

7 Q. You do not know?

8 A. No, sir.

9 Q. Okay. So the difference between an incident report and
10 a supplemental report, can you explain that to me?

11 A. An incident report, upon receipt of a call, we gather
12 up information. The uniform patrol officer generally will
13 do an incident report --

14 Q. Okay.

15 A. -- documenting what he was told, what he saw, things of
16 that nature. What he collected, or anything.

17 A supplemental report is something that either that
18 deputy, or another deputy, or investigator may do to
19 document the things that they have done after that initial
20 time.

21 Q. Okay.

22 A. It may be later that day, maybe during that incident
23 that someone else added what they saw, what they collected,
24 who they spoke to. It may occur the next day, or a couple
25 days afterwards. It's just a supplemental to --

1 Q. The incident --

2 A. The initial incident, yes, sir.

3 Q. Okay. You said it was around 4:24, 4:30 by the time
4 you -- when you got there?

5 A. Yes, sir.

6 Q. Around what time do you say that you left?

7 A. I probably left, it was after -- I was probably there
8 thirty-five, forty minutes.

9 Q. Thirty-five --

10 A. By the time I got the report done it was close to six.

11 Q. Close to six?

12 A. By the time I actually closed everything up.

13 Q. Okay. And what time was you noticed -- notified that
14 it was a vehicle -- what you said, a vehicle -- the truck
15 was found at Frank's Car Wash?

16 A. While en route.

17 Q. En route?

18 A. From the sheriff's office where I was, where I received
19 the call. I traveled down Calhoun Avenue.

20 Q. You was on your way to Chick-fil-A?

21 A. I was on my way. They were continually updating us
22 information as people called in, or deputies radioed in what
23 they saw.

24 Q. Okay. So you basically heard it over dispatch?

25 A. Yes, sir, I received information over dispatch.

1 Q. Okay. Is it correct that your name is Officer Brian
2 Penn?

3 A. Yes, sir.

4 Q. Okay. How old are you, officer?

5 A. Forty-two.

6 Q. Forty-two?

7 A. Uh-huh.

8 Q. How long have you been working for the sheriff's
9 department?

10 A. Eighteen years.

11 Q. Eighteen years.

12 Did you -- are you certified through the academy --

13 A. Yes.

14 Q. -- to be a police officer?

15 A. Yes, sir, I am.

16 Q. So if I was to request your background of your records,
17 it would be stated that you are certified?

18 A. Yes, sir.

19 Q. Okay. How long were you in the academy?

20 A. The academy is a nine week.

21 Q. Nine week?

22 A. Initially a nine week academy. You go back for
23 continuing education, like you would in many jobs.

24 Q. Okay. What would you say your vision level reading is?

25 A. My vision is 20/15.

1 Q. 20/15?

2 A. Uh-huh.

3 Q. Okay. What grade did you complete, the highest grade
4 level that you completed in school?

5 A. B.S. Degree from Lander University in business
6 management and marketing.

7 Q. Okay. Do you have any mental illnesses?

8 A. No, sir.

9 Q. You don't go to a doctor for any --
10 Do you have short-term memory loss, long-term memory
11 loss?

12 A. No, sir.

13 Q. Anything -- anything you think that you might have
14 stated in the incident report that you ain't stating now?

15 A. You have asked me, I have answered every question that
16 you have asked.

17 Q. Thank you, sir.

18 THE COURT: Any redirect?

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

20 THE COURT: All right. I'm going to tell the jury
21 that the incident reports are normally not introduced. The
22 witness is here.

23 Statement of each of the witnesses, they take
24 statements to preserve it, but once they are called to
25 testimony, they testify, and that's why y'all haven't seen

1 the statements come in, because the testimony is better than
2 the statement. Okay? Just so y'all know, because they have
3 talked about incident report, they talked about did you give
4 a statement to each of the witnesses, and that's what --
5 they are in the written stuff, but the live testimony is
6 better for a jury to consider.

7 All right, you may step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Call your next witness.

10 MR. BLACK: The State calls Deputy Will Johnston.

11 OFFICER WILLIAM JOHNSTON, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BLACK:

14 Q. Deputy Johnston, can you state your full name for the
15 record?

16 A. William Carl Johnston.

17 Q. And where do you work?

18 A. The Greenwood County Sheriff's Office.

19 Q. And how long have you worked there?

20 A. Since I believe March of 2014.

21 Q. Okay. Did you go to the academy as well?

22 A. I did.

23 Q. And it's a nine week course?

24 A. Yes, sir.

25 Q. Are you certified in law enforcement?

1 A. Yes, sir, I am.

2 Q. Do you have any other certifications?

3 A. I do.

4 Q. What are those?

5 A. I'm a specific skills instructor. I have -- I have
6 worked at Laurens County approximately five years before I
7 came to Greenwood County.

8 Q. Okay.

9 A. Specific skills instructor. I got some other classes.
10 SFST, standardized field sobriety class, and datamaster.

11 Q. Okay. Did you work anywhere before you were in
12 Laurens, or have you always been in law enforcement?

13 A. I worked at Emerald Welding in Greenwood before I
14 worked in Laurens County Sheriff's.

15 Q. Okay. And what is your role right now at the sheriff's
16 department?

17 A. I'm a member of the Community Action Team.

18 Q. And what is that?

19 A. It's the -- it's me and two other guys are on a task
20 force. We assist investigators with narcotics guys. We
21 also answer calls in service.

22 Q. Were you working on July 9th of this year?

23 A. Yes, sir.

24 Q. Did you respond to a call at Chick-fil-A?

25 A. Yes, sir.

1 Q. About -- do you remember about what time that you
2 arrived?

3 A. I do not. It was in the afternoon. I know that.

4 Q. Do you remember who else was at that location?

5 A. I believe I was the second or third to arrive, which
6 Brian -- or Captain Penn was already on the scene, and I
7 think I was the second to arrive, and shortly after more
8 officers and investigators began to arrive.

9 Q. Can you describe to the jury what you saw when you
10 first arrived?

11 A. When I first arrived on the scene I witnesses Captain
12 Penn speaking to the victim, as well as speaking to other
13 individuals there, employees, and -- who were just out there
14 assisting Ms. Chalmers (sic).

15 Q. Chatos?

16 A. Chatos, okay.

17 And I just witnessed -- I say I witnessed Captain Penn
18 speaking with her and other people there on the scene at the
19 time.

20 Q. Did you talk to Ms. Chatos as well?

21 A. I -- I didn't.

22 Q. Did you -- how far away were you from her?

23 A. How many feet? When I say I didn't speak to her, I
24 believe she was giving a statement to Captain Penn already,
25 so I just -- I stepped back, but within feet.

1 Q. Did you observe her demeanor?

2 A. Yes, sir.

3 Q. Can you describe that for the jury?

4 A. She was visibly upset.

5 Q. Did it appear that she was injured in any way?

6 A. She was holding her shoulder. I'm not sure which one,
7 but she had her arm and was favoring it.

8 Q. And you assisted Officer Penn in the investigation, is
9 that correct?

10 A. I did.

11 Q. And what did you learn from the investigation?

12 A. I just asked him what he needed from me and he just
13 said go ahead and start trying to get some evidence and
14 stuff up and so that's what I started doing.

15 Q. Did you find any evidence at the scene?

16 A. I did.

17 Q. What did you find?

18 A. The manager actually said that there was some money
19 that was out in the parking lot that was picked up, that the
20 suspect supposedly left. He handed it to me, which at the
21 time I put it in a small plastic bag and threw it in my
22 vehicle.

23 He also said that there was some items that were placed
24 he believed in the back of his truck. He actually saw the
25 items in the back of his truck but he didn't touch them.

1 Q. And what were the items in the back of the truck?

2 A. It was a case of beer, a 24 pack of beer, and there was
3 a bag with just miscellaneous like snacks and stuff in it.

4 Q. Did you gather that?

5 A. I did.

6 Q. And what did you do with that?

7 A. I placed them in my patrol vehicle.

8 Q. And there was money as well you said?

9 A. There was.

10 Q. And what did you do with that?

11 A. Placed it in my patrol vehicle with the other items.

12 Q. Did you ultimately turn that into evidence?

13 A. It was all placed into evidence.

14 MR. BLACK: Your Honor, I beg the court's
15 indulgence.

16 THE COURT: Sure.

17 (Off the record).

18 (Back on the record)

19 MR. BLACK: May I approach the witness, Your
20 Honor?

21 THE COURT: Sure.

22 BY MR. BLACK:

23 Q. I'm going to hand this to you. Can you describe that
24 for the jury? Do you know what that is?

25 A. It's a manila folder with evidence tape on it.

1 Q. And can you describe the contents within the bag?

2 A. It's a \$20 bill with a paper clip.

3 Q. Do you recognize that?

4 A. It's a \$20 bill with the paper clip, yes.

5 Q. Did you submit that into evidence to Greenwood County
6 Sheriff's Department.

7 A. Yes, sir.

8 Q. Is that what was gathered at the Chick-fil-A?

9 A. That was what was handed to me by the manager.

10 Q. And the manager was who again?

11 A. I don't think he's here now, but he was here earlier.
12 I'm not sure of his name.

13 Q. He testified earlier?

14 A. Yes, sir, he did.

15 MR. BLACK: Your Honor, at this point the State
16 offers the \$20 bill into evidence.

17 MR. FRAZIER: Objection, Your Honor.

18 THE COURT: What's your objection.

19 MR. FRAZIER: On the Rule Five violation and
20 evidence wasn't notified to me about any --

21 THE COURT: All right, I understand.

22 We got to take something up on the record?

23 MR. FRAZIER: Yes, sir.

24 THE COURT: All right.

25 Y'all step in the jury room quick and we will get

1 you right back out here.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right, tell me about the Rule Five
5 on this one. He is saying y'all didn't provide him a copy
6 of Rule Five.

7 MR. BLACK: We did, Your Honor.

8 Like we stated earlier on the record when we met
9 over here in the side bar with you, judge, I actually went
10 with Mr. Moroney to the jail last week. It's the first time
11 that I had met Mr. Frazier. We determined that I was going
12 to be helping Mr. Moroney in this case.

13 We disclosed to Mr. Frazier, not only that there
14 was a \$20 bill in evidence, because he kept asking about the
15 money. That's the only thing that he really seemed to be
16 focusing on during the whole course of the trial "where's my
17 money? Where's my money? Where's my money?"

18 We said "Terrence, look here. They got \$20.
19 That's in evidence at the county. We are going to be using
20 that in the trial against you." So he's been made well
21 aware of that.

22 We also explained to him that the pornographic
23 magazine was also in evidence at the county as well. We
24 told him that specifically last week when we met with him,
25 so there is no Rule Five violation in that regard to either

1 of those items.

2 THE COURT: Okay.

3 MR. FRAZIER: Your Honor, what they are stating is
4 hearsay. There is no proper foundation found, no chain of
5 custody --

6 THE COURT: He received it from the manager of the
7 restaurant.

8 MR. FRAZIER: Huh?

9 THE COURT: He received it from the manager of the
10 restaurant.

11 MR. FRAZIER: I understand that, but I --

12 THE COURT: He discussed it.

13 MR. FRAZIER: I filed for a Rule Five under
14 everything, all evidence, and when they came and seen me on
15 11-12-15 they never notified me of no money.

16 They said -- they said that -- they said that they
17 have some more evidence of items. They never stated what
18 the items were.

19 MR. BLACK: And, Your Honor, as an officer of the
20 court I can swear that we identified and told him that we
21 had money, and Mr. Morning can do that as well. There is no
22 Rule Five violation here or Brady violation.

23 MR. FRAZIER: Your Honor, there is no paperwork or
24 nothing in inventory that states none of these items were
25 entered into evidence.

1 Now --

2 THE COURT: Wouldn't that be in the evidence log?
3 It's got evidence tape on it.

4 Is it on your evidence log?

5 MR. BLACK: Yes, sir, it is.

6 THE COURT: Did y'all not have it listed out that
7 y'all were going to use it?

8 MR. BLACK: And we showed him -- we also showed
9 him in this paperwork last week.

10 I think Mr. Moroney actually had it on his
11 computer and whipped it around and showed Mr. Frazier that,
12 indeed, that's what was in evidence.

13 THE COURT: Don't you give it to him?

14 MR. MORONEY: We had it in a detailed conversation
15 about this money issue.

16 THE COURT: I know, but that makes y'all
17 witnesses. Tell me what you gave him. You don't want to be
18 a witness in a trial because you said "I gave it to him."
19 He says you didn't, and -- I mean, that makes y'all
20 witnesses.

21 MR. FRAZIER: Your Honor, there was no -- I have
22 no copies of no reports.

23 THE COURT: They are saying that.

24 THE COURT: Yeah, but the \$20 bills and all
25 incidents reports.

1 MR. BLACK: The magazine.

2 THE COURT: The magazine, it's mentioned over and
3 over.

4 MR. FRAZIER: No, it's nothing stated about no
5 money in the incident report, Your Honor.

6 THE COURT: There is not? I haven't read the
7 incident report, so I got to keep asking.

8 MR. MORONEY: Let me double check, Your Honor.

9 (Off the record).

10 (Back on the record)

11 MR. FRAZIER: Your Honor, all it says in the
12 incident report is "the ID investigator arrived and assisted
13 in gathering the items the suspect left behind." It doesn't
14 state what items particularly.

15 THE COURT: Okay, I got your record. Don't say
16 any more. I want to not listen for a second. I'm letting
17 them look, okay?

18 MR. FRAZIER: Yes, sir.

19 THE COURT: So I don't want to hear anything else
20 from you right now on that.

21 (Off the record).

22 (Back on the record)

23 MR. BLACK: Judge, I don't see anything in the
24 incident report about the money from the incident report
25 that Penn wrote, the officer that just testified, but the

1 testimony that Mr. Whitaker, the owner of the Chick-fil-A,
2 did state that he got a \$20 bill and handed it off to the
3 deputy. I don't think he remembered the exact name of the
4 deputy, but Deputy Johnston is testifying that he's the one
5 that received that money.

6 THE COURT: All right. Other than y'all's
7 statement to Mr. Frazier, did y'all not tender some kind of
8 summary or list of all the evidence that you intended to use
9 at trial, including this \$20 bill that you had in evidence?
10 Obviously it was taken into evidence, put in this
11 gentleman's custody and he secured it and put it in the
12 evidence locker, but how did Mr. Frazier know you had it,
13 other than y'all telling him?

14 MR. MORONEY: Your Honor, in the confirmation of
15 delivery of discovery materials that he signed, it is not
16 specifically delineated in print the \$20 bill. It addresses
17 particularly the video surveillance footage, the victim's
18 statements, etcetera. It's not in print, this \$20 bill.

19 THE COURT: All right, I want to take a couple of
20 minutes, a minute break. I want to step back here.

21 (Whereupon, proceedings were recessed)

22 (Whereupon, proceedings were reconvened)

23 THE COURT: All right. Can I see what was handed
24 to Mr. Frazier as to the discovery, the Rule Five compliance
25 from the State. Do y'all have that in writing -- I mean

1 printed out, hard copy?

2 THE COURT: Okay. Y'all approach.

3 (Whereupon, the lawyers and Mr. Frazier approached
4 the bench for an off-the-record discussion)

5 THE COURT: All right. The money has been
6 testified to by Mr. Whitaker that the money was on the
7 ground and he retrieved a copy and turned it over to law
8 enforcement, but I don't see proof that the State told Mr.
9 Frazier that they had a \$20 bill in evidence, provided a
10 copy of it in the plastic bag.

11 I know what the magazine -- it's kind of similar.
12 They had these items in their evidence, but they did not
13 give him a list of them, items they intended to introduce,
14 the \$20 bill, the magazine, and I don't know what else.

15 I think they can testify to it, what this officer
16 had, he retrieved it, but it will not be allowed into
17 evidence because it's not -- it was not provided in the
18 discovery materials.

19 So I'm going to too sustain his objection as to
20 the admission of the \$20 bill. It's been testified to,
21 which is okay, but it's not to come into evidence.

22 All right?

23 MR. FRAZIER: Yes, sir.

24 THE COURT: We'll keep going?

25 MR. MORONEY: Yes, sir, Your Honor.

1 THE COURT: Bring them in.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right, continue on.

5 MR. BLACK: Thank you, judge.

6 BY MR. BLACK:

7 Q. So the money that we were talking about previously, who
8 did you get that from again?

9 A. The store manager.

10 Q. And he gave that to you?

11 A. Yes, sir.

12 Q. Was there any other evidence that you gathered at the
13 scene that day at the Chick-fil-A?

14 A. There was.

15 Q. Okay. And what was that?

16 A. A case of beer and a plastic-like grocery bag
17 containing miscellaneous, like snacks.

18 Q. Okay. And where were those items found again?

19 A. They were found in the back of Mr. Whitaker's truck.

20 Q. Okay. Was the defendant at the Chick-fil-A when you
21 arrived?

22 A. No.

23 Q. The white truck that Ms. Chatos owned, was that at the
24 Chick-fil-A when you arrived?

25 A. No.

1 Q. And the Chick-fil-A, is that the Chick-fil-A that's
2 here in Greenwood County in town?

3 A. It's on the bypass, yes.

4 Q. That's all questions I have now. Answer any questions
5 that Mr. Frazier might have for you.

6 THE COURT: Mr. Frazier.

7 CROSS EXAMINATION BY MR. FRAZIER:

8 Q. Okay. Could you state your name, sir?

9 A. Will Johnston.

10 Q. Will Johnston.

11 Was you -- was you -- you said that you assisted with
12 Captain Penn?

13 A. Yes, sir.

14 Q. A minor discretion I don't think he mentioned nothing
15 about you in the incident report assisting him, but you
16 assisted him?

17 A. I did.

18 Q. Okay. How long have you been working for the sheriff's
19 department?

20 A. Since March of 2014.

21 Q. Since March 2014?

22 A. Uh-huh.

23 Q. So --

24 A. Approximately.

25 Q. Approximately?

1 A. Yes.

2 Q. Have you ever had any disciplining errors --
3 disciplining matters with the sheriff's department since you
4 have been on the sheriff's department?

5 A. Define discipline matters.

6 Q. Discipline of -- well, say relieved or resigned --
7 well, not relieved like, you know, where you had to be on
8 suspension or anything?

9 A. I never been suspended, no.

10 Q. Never been suspended. Okay.

11 And you say that you approximately been working about a
12 year and a half?

13 A. Approximately, yes.

14 Q. Yeah, approximately. Okay.

15 And you was handed the money by Mr. Whitaker, which is
16 the -- well, he's not here, but you was handed the money
17 from Mr. Whitaker?

18 A. That's correct.

19 Q. And you took the money and placed it in evidence?
20 That's yourself?

21 A. Yes.

22 Q. So when you placed it in evidence, you didn't go and
23 y'all didn't put it -- y'all didn't make an inventory or
24 nothing?

25 A. We have a procedure that we have to do to put things

1 into evidence.

2 Q. Okay.

3 A. That was done, yes.

4 Q. So you did -- y'all did make an inventory of the items?

5 A. The items were placed into evidence.

6 Q. And -- and when you placed the items in evidence, you
7 have to make an inventory, right?

8 A. I mean, you place -- the things are placed into
9 evidence by hand and on computer. You put the information
10 in the computer and then you place the things into evidence.

11 Q. Could you state the chain of command y'all have to go
12 by in order to do that?

13 THE COURT: Wait a minute now. The \$20 bill is
14 not going to be introduced and you are going back through
15 the instruction requirements.

16 MR. FRAZIER: Okay.

17 BY MR. FRAZIER:

18 Q. All right, well --

19 All right. So -- and what did you see when you arrived
20 to assist Captain Penn?

21 A. I witnessed the victim. Captain Penn was already on
22 the scene, and numerous other people, Chick-fil-A employees
23 and other people there, speaking with her speaking with
24 Captain Penn.

25 Q. All right. Did you -- did you do the supplemental

1 report from the incident report?

2 A. I did not.

3 Q. Okay. Do you know of who did the incident -- the
4 supplemental report for the incident report?

5 A. I don't.

6 Q. I see.

7 And did you see -- did you see -- did you go to Frank's
8 Car Wash before?

9 A. I didn't.

10 Q. Okay. So you just basically assisted on --

11 What's the highest grade you had completed in school?

12 A. I graduated from high school and had some college
13 education.

14 Q. Okay. All right.

15 What's your vision reading?

16 A. My --

17 Q. Vision level, reading level?

18 A. Is 20/20 on the vision.

19 Q. Okay. All right.

20 Do you have any mental illness, mental defects,
21 short-term memory loss, long-term memory loss?

22 A. No.

23 Q. Okay. Do you go to the doctor for any mental illness
24 of anything?

25 A. No.

1 Q. Okay. Let's see.

2 And you didn't do --

3 Let's see, did you -- when you got the money, did you
4 immediately place it into evidence right then and there, or
5 did you do it when you got back to the sheriff's department?

6 A. Our evidence is being entered at the sheriff's
7 department.

8 Q. Okay. All right.

9 Did you witness any other items that was collected when
10 you got there?

11 A. No. I mean, the items that I collected are the ones
12 that were entered into evidence.

13 Q. Okay.

14 A. Once that I entered --

15 Q. And could you state what those items are?

16 A. What's that?

17 Q. Could you state what those items are?

18 A. The \$20 bill with the paper clip. The case of beer and
19 a grocery bag containing just numerous or miscellaneous
20 snacks --

21 Q. Okay.

22 A. -- that I recall.

23 Q. All right. So -- okay.

24 MR. FRAZIER: That's it, Your Honor.

25 THE COURT: Okay. Any redirect?

1 MR. BLACK: No, sir, Your Honor.

2 THE COURT: All right. You can step down.

3 MR. BLACK: The State would call Matt Emery.

4 OFFICER MATT EMERY, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. BLACK:

7 Q. State your full name for the record, please.

8 A. Jonathan Matthew Emery.

9 Q. And where do you work at?

10 A. The Greenwood Sheriff's Office.

11 Q. How long have you been employed there?

12 A. Eight years.

13 Q. Did you work anywhere before the sheriff's department?

14 A. I worked at for Lander University.

15 Q. In what capacity?

16 A. Police officer.

17 Q. Did you graduate from the academy?

18 A. I did.

19 Q. Do you have law enforcement certification?

20 A. I do.

21 Q. Do you have any other certifications?

22 A. Several classes with investigations.

23 Q. What's your role right now with the sheriff's
24 department?

25 A. Investigator.

1 Q. And what kind of duties do you have as an investigator?

2 A. I follow up on the crimes in our community, anything
3 that you can call 911 for.

4 Q. Were you working on July the 9th of this year?

5 A. I was.

6 Q. Did you respond to the scene at Chick-fil-A?

7 A. I responded to the end of it. I mean --

8 Q. What kind of investigation did you do?

9 A. Myself and another investigator, we went across the
10 street to the gas station and viewed video footage of the
11 suspect in the gas station.

12 Q. Okay. And who was with you when you did that?

13 A. Investigator Don Shelby.

14 Q. And what was that gas station?

15 A. It used to be a Mr. Chip, but I think it's Pavan gas
16 station now.

17 Q. And what did you learn from viewing the tape?

18 A. It showed the suspect over here walking through. He
19 had a case of beer. He got a few other items. He took it
20 to the clerk. He ended up getting a magazine from the
21 clerk.

22 At one point in time he went to walk out of the store
23 and kind of walked back up to the clerk. He was kind of --
24 kind of all over the place, you know. And it was a few
25 minutes of that before he left the store.

1 Q. Did you find anything else in your investigation?

2 A. That was it.

3 Q. Okay. Did you -- did you go back over to the
4 Chick-fil-A, once you were -- after you were done at the gas
5 station?

6 A. I went back over there and we reported what we viewed
7 from the Pavan gas station to Captain Jarvis Reeder, which
8 is my supervisor.

9 Q. Okay. And did you see the victim, Ms. Chatos, in the
10 case? Did you have any contact with her?

11 A. I didn't have any contact with her. By the time we got
12 over there the ambulance was over there. The parking lot
13 was crowded with, you know, employees of the sheriff's
14 office, along with employees of Chick-fil-A and the people
15 there just getting food.

16 Q. So it was pretty packed, pretty chaotic?

17 A. Pretty packed.

18 Q. Do you remember about what time that was?

19 A. I would say between 4:30 and five o'clock.

20 Q. And that was the Chick-fil-A that's here in Greenwood
21 County, correct?

22 A. That's correct, on the bypass.

23 Q. Did you gather any specific evidence at the Chick-fil-A
24 scene there?

25 A. I did not.

1 Q. Did you talk to any of the witnesses, or were you just
2 at the gas station?

3 A. I was just at the gas station.

4 Q. Was the defendant, was he at Chick-fil-A when you were
5 there?

6 A. He was not.

7 Q. Did you say a white F-150 at the scene?

8 A. No, sir.

9 Q. Did you respond to a call to Ms. Chatos' house the next
10 day?

11 A. I did. She called up to the sheriff's office and
12 talked to a lady in records at the sheriff's office. She
13 had her name and number and wanted me to give her a call
14 back, so I called her back and at that time she told me
15 there was a pornographic magazine left in her vehicle from
16 at the Chick-fil-A and wanted me to come out there and --

17 MR. FRAZIER: Object, Your Honor.

18 THE COURT: Sustained as to hearsay, but he can
19 testify as to what he did as a result of the call. So it's
20 sustained as to hearsay, if that's your objection.

21 MR. FRAZIER: Yeah, it's hearsay, and no -- me not
22 having no knowledge of this call and everything.

23 THE COURT: He got the call -- the message and
24 returned the call. That's his testimony. He can continue
25 from there.

1 MR. BLACK: Thank you, judge.

2 A. I continue.

3 BY MR. BLACK:

4 Q. Yes.

5 What did you do after you got that call?

6 A. Once I got the call, I went to her house. She wanted
7 me to search the vehicle again. She said there was drugs,
8 thought there was drugs might still be in the vehicle.

9 She give me the magazine when I first got there. It
10 was sealed up in plastic.

11 MR. BLACK: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. BLACK:

14 Q. This has been marked as State's No. 2, not into
15 evidence, but for identification purposes. Is that what you
16 received?

17 A. That is.

18 Q. Okay. And what did you do with this?

19 A. I collected the magazine, searched her vehicle for her.
20 I gave her my information. If she needed anything else, to
21 contact us at the sheriff's office.

22 Q. And what vehicle was that that you searched?

23 A. It was her white F-150.

24 Q. And was it beat up pretty bad?

25 A. It was.

1 Q. Did you find out anything else in the vehicle?

2 A. That was it.

3 Q. No further questions.

4 Please answer any questions this Mr. Frazier might have
5 for you.

6 CROSS EXAMINATION BY MR. FRAZIER:

7 Q. Could you state your name for me?

8 A. Matt Emery.

9 Q. Matt Emery. Okay.

10 Okay. You say that you followed up with the Pavan Food
11 Store investigation?

12 A. I did.

13 Q. Okay. All right.

14 What happened when you went to Pavan Food Store?

15 A. I spoke with the clerk. He explained for me what was
16 going on at Chick-fil-A. I asked him for a review of the
17 video of his store.

18 We had -- we had reason to believe in a you were in
19 this store prior to that due to what was left at the scene,
20 at Chick-fil-A, so through our investigation we reviewed you
21 going through the store with beer and other items and the
22 magazine as well. You have interaction with -- I guess it's
23 the clerk. I don't know if he's the owner, but it's the
24 clerk for a few minutes and then you exit the store. So
25 that's what we was there doing was we reviewing everything

1 prior.

2 Q. Okay. So did he give you footage of the surveillance?

3 A. He brought us back there and pulled all the footage up
4 and showed us everything that went down. And we had a guy,
5 another guy at the sheriff's office, that -- that's what he
6 does is, you know, collect those type videos, pulls it off
7 like DVR's and things like that and got it that way.

8 Q. Could you state who the officer was?

9 A. I believe it was Wesley Love.

10 Q. Is he here today? Do you see him in the courtroom?

11 A. (No response).

12 Q. He's not?

13 A. Uh-huh.

14 Q. All right. Okay.

15 About this truck incident, the next day -- what date
16 was it Ms. Susannah Chatos?

17 A. The incident was on the 9th of July. It must have been
18 July 10th.

19 Q. Okay. And could you -- do you remember what time it
20 was?

21 A. I really don't remember what time it was. I just
22 remember it was on July 10th. The time I'm not sure of.

23 Q. Okay. You didn't make an incident report or nothing
24 about that?

25 A. Whenever I went to -- whenever I went to that house I

1 called out -- called number to dispatch, which is records,
2 it's on record that I called out to her house. I followed
3 up with my investigation. Then I brought the magazine back
4 and placed it into evidence.

5 Q. Okay. And you didn't make an incident report? You
6 didn't do an incident report, supplemental?

7 A. I don't really recall, to tell you the truth.

8 Q. Okay. Do you know if an incident report or a
9 supplemental was did for that alleged dispatch?

10 A. That I don't remember. I don't remember. I can tell
11 you what I did.

12 Q. And you said -- who's your supervisor?

13 A. Jarvis Reeder.

14 Q. All right. All right.

15 And could you state where you found the alleged
16 magazine that was claimed found?

17 A. The victim, she had the magazine and had given it to
18 me. She said it was in like the middle console area of the
19 truck, kind of in that front seat part. It was an extended
20 cab truck. She said it was in the front seat area, and
21 there was a Chick-fil-A bag, food, stuff like that kind of,
22 you know, stuff kind of distraught.

23 Q. Okay. All right. All right.

24 And when she -- when she claimed that she had -- that
25 she had -- you said -- you said it was drugs in there and

1 she wanted her car searched for drugs?

2 A. Yes, she was -- she was concerned, because she had been
3 told that she had drugs in that vehicle and she wanted to
4 make sure, since there was so much stuff that was thrown
5 everywhere, that there was no other type of drugs in there.
6 She was -- she was very upset, very concerned, wanted me to
7 search it. I had to let her stand right there while I
8 searched the vehicle, until she was satisfied.

9 Q. Did you search the vehicle? Did you find any drugs?

10 A. There was no drugs in there.

11 Q. Okay. But you did find the magazine?

12 A. Uh-huh. She found the magazine and handed it to me.

13 Q. Okay.

14 A. I was there.

15 Q. Right. And -- all right.

16 After Ms. Chatos -- you said the car -- the truck was
17 damaged?

18 A. It was.

19 Q. All right. Could you state some of the damage that
20 happened that you seen?

21 A. It had front-end damage, if I recall correctly, like
22 scuff marks on the vehicle. I did not take any pictures of
23 the vehicle.

24 You know, you can tell it been run into something. You
25 know, it did not look like a normal vehicle. You can tell

1 it had been in an incident of some sort.

2 Q. Okay. And as the investigation and supplemental
3 report, why didn't you take pictures of --

4 A. Because that truck had already been turned over to the
5 victim. All that is done prior to the that, so you don't go
6 back and do it twice.

7 Q. Okay. I understand what you are saying.

8 How long have you been working for the sheriff's
9 department?

10 A. For eight years.

11 Q. Eight years?

12 A. Uh-huh.

13 Q. Okay. Have you ever had a suspension or anything?

14 A. No, sir.

15 Q. You are certified through the academy?

16 A. I am.

17 Q. All right. And what's your vision level?

18 A. I'm not sure. I haven't been to the eye doctor to see.
19 I mean, I could see just fine to the back of the wall.

20 Q. Okay. Okay. All right.

21 And that pretty much -- all you did was follow up with
22 the Pavan Food Store and Ms. Susan Chatos following --
23 follow up the next day?

24 A. Uh-huh.

25 Q. Okay.

1 A. That's correct.

2 Q. All right. That's it?

3 THE COURT: Any redirect?

4 MR. BLACK: No, sir, Your Honor.

5 THE COURT: You may step down.

6 9:30 in the morning sound good again?

7 MR. BLACK: Yes, sir, Your Honor.

8 THE COURT: All right. 9:30 in the morning. I
9 got to go attend to my appointment this afternoon. I told
10 y'all about 1:30? I came pretty close.

11 You can't discuss the case.

12 Y'all have a nice evening and be ready to go to
13 work at 9:30. Be back in the jury room by 9:30 and we will
14 try to start promptly, okay? Thank y'all.

15 (The following takes place outside the presence of
16 the jury panel).

17 (Whereupon, proceedings were adjourned to November
18 18, 2015)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENWOOD) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TERRENCE O'NEIL) 2015-GS-24-1603
7 FRAZIER,) 2015-GS-24-1604
8 DEFENDANT.) 2015-GS-24-1605
9) 2015-GS-24-1606
10) 2015-GS-24-1632
11) NOVEMBER 18, 2015
12) GREENWOOD, SOUTH CAROLINA

(VOLUME III)

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE. ; And a
Jury.

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

BRIAN MORONEY, ASSISTANT SOLICITOR
MICAH BLACK, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

DEFENDANT APPEARING PRO SEE

PATRICIA BOLEN, ASSISTANT PUBLIC DEFENDER
ELIZABETH ABLE, ASSISTANT PUBLIC DEFENDER
APPEARING FOR DEFENDANT AS STANDBY COUNSEL

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1 (PROCEEDINGS, NOVEMBER 18, 2015)

2 THE COURT: All right. For the record, Mike, I
3 had an off-the-record --

4 Hey, Mr. Frazier, listen to this. I'm going to
5 kind of put on the record that you and I have talked and I'm
6 going to tell for the court record what you and I talked
7 about right over there.

8 MR. FRAZIER: Okay.

9 THE COURT: Without the State's input or
10 suggestion, the court took it upon himself to discuss with
11 Mr. Frazier, since he's self-represented, that even though
12 the trial started, that if he decided he wanted to accept
13 responsibility, that the court would take into account the
14 acceptance of responsibility in passing the sentence to the
15 indictments which have been called for trial. He indicated
16 that he tried to negotiate the charges to some lesser
17 included ones. The State was not agreeable to that, and so
18 after our conversation Mr. Frazier said he would proceed on
19 with the assistance of a member of the Public Defender's
20 office advising him procedurally and so our conversation
21 ended.

22 And so, Mr. Frazier, you told me also you had a
23 matter of law that you would like to take up before the jury
24 is called in and so I will hear you on that matter.

25 MR. FRAZIER: Yes, sir.

1 Your Honor, I would like to bring up the matter of
2 law and put in a motion for -- a motion for a directed
3 verdict.

4 MS. BOLEN: Your Honor, if I could just --

5 THE COURT: Okay.

6 (Off the record).

7 (Back on the record).

8 THE COURT: That's what she's there for.

9 They are not -- they haven't said that's all we
10 got. Once they say we rest, that's when you say those
11 things.

12 MR. FRAZIER: Okay.

13 Judge, I would like to make a motion to have
14 evidence suppressed of the drugs on unlawful search and --
15 unlawful searching, that they didn't find no drugs. I was
16 searched several times and no drugs were found on me.

17 THE COURT: All right. We haven't gotten that
18 either. I mean, I will consider that motion as the issue
19 comes up, once we get to that point.

20 MS. BOLEN: Your Honor, just to clarify, since
21 normally that's the kind of motion we would make pretrial
22 and he hadn't, so he wanted to at least let Your Honor know
23 that is coming.

24 THE COURT: So when we get to the portion where
25 the officer is going to try to discuss or lay a foundation

1 for the introduction of any drug evidence, then we will
2 consider that motion outside the presence of the jury.

3 MR. FRAZIER: All right.

4 THE COURT: That would be a very appropriate time
5 to hear that.

6 MR. FRAZIER: All right.

7 THE COURT: And we will protect your rights to
8 that extent that the State has to lay a foundation as to
9 whether or not the search was conducted properly under
10 whichever portion of the law it is. Okay?

11 MR. FRAZIER: Yes, sir.

12 THE COURT: Good to go?

13 MR. FRAZIER: Yes, sir.

14 THE COURT: All right. When we call the jury in,
15 they get to call their next witness and proceed like we did
16 yesterday.

17 Bring them in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: Mr. Moroney, we are ready to call the
21 next witness.

22 All right, call your next witness.

23 MR. MORONEY: The State calls Ms. Bessie Williams.

24 BESSIE WILLIAMS, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION BY MR. MORONEY:

2 Q. Good morning, ma'am.

3 A. Good morning.

4 Q. Could you please state your name?

5 A. Bessie Edie Williams.

6 Q. Okay. And could you please state your occupation?

7 A. I'm a case manager/social worker.

8 Q. Okay. Ms. Williams, did you have the occasion to be at
9 the Frank's Car Wash on July 19th of this year?

10 A. Yes.

11 Q. And was that at approximately 4:30 in the afternoon?

12 A. Yeah, it was sometime after four o'clock.

13 Q. Okay. And what brought you into Frank's Car Wash that
14 day?

15 A. Of course, to get my car washed.

16 Q. And did anything unusual happen that day on that
17 particular visit?

18 A. Most definitely. My car was hit.

19 Q. Okay. What kind of car?

20 A. An MKZ Lincoln.

21 Q. Lincoln MKZ?

22 A. Uh-huh.

23 Q. Do you recall approximately how much you purchased that
24 vehicle for?

25 A. To be honest with you, no, I don't.

1 Q. Okay. And could you please describe what happened
2 leading up to that accident?

3 A. Okay. They had just finished with my car cleaning it,
4 you know, going through the wash and cleaning it, and I had
5 gotten in my car and that was -- that's a closed street
6 there in regards to where Frank's is and where the highway
7 actually comes out and I was trying to pull out and there
8 was so much traffic going back and forth, I said, you know,
9 let me move around to the side of the building and come out
10 straighter so I could actually see what's going on both
11 sides. And just as I was pulling to go by the side of the
12 building I heard all this screeching sound and I remember
13 actually saying to myself "oh, my goodness, somebody is
14 going to get hit. Somebody's tire is screeching." And then
15 I just caught a glimpse of something out of my peripheral
16 vision out of the right side and I turned to look and it was
17 a white truck coming directly into the passenger side, back
18 door passenger side of my car and hit my car.

19 Q. And was this a relatively low rate of speed or high
20 rate of speed?

21 A. Oh, no, it was a high rate of speed, because it just
22 pushed my car. It shoved my car and it did great damage to
23 my car.

24 Q. Okay.

25 A. In fact, my car was not repairable.

1 Q. Okay. And immediately after that impact what happened
2 next?

3 A. Okay. After the impact -- of course, I was looking
4 around when I saw the car and I just -- I remember grabbing,
5 you know, holding on tight to the steering wheel, and then I
6 saw the person -- well, I saw him get out of the truck. And
7 I was still sitting in my car and he ran behind my car,
8 because I didn't know what was going to happen next. And I
9 saw this erratic behavior of yelling and screaming.
10 Honestly I don't know what he was saying, but I know he was
11 yelling and screaming, and then he jumped in the car that
12 was behind me, which was a red -- I think it was a Chrysler
13 300, candy apple red Chrysler 300. He jumped into that car
14 and I was still sitting in my car watching all of this the
15 entire time, and then he drove the car around where he had
16 hit my car, all two cars there together, and went behind
17 Frank's.

18 Q. Okay.

19 A. Like going toward Lander.

20 Q. So he appeared that he was stealing that car?

21 A. I don't think it was his.

22 Q. And did he, between getting in that Chrysler and the
23 moment of impact of the accident, render any aid to you
24 or --

25 A. Oh, no, he said nothing to me. I don't even remember

1 him even looking in my direction.

2 As I said, when he jumped out of the truck -- and I
3 stayed in my car because, of course, the impact, and then I
4 didn't know what else he was going to do, so I just stayed
5 put, and that's -- and I watched him go around and get in
6 that car.

7 Q. And just to clarify, this is the Frank's Car Wash on
8 Calhoun Avenue?

9 A. Yes, it is, uh-huh.

10 Q. In the County of Greenwood?

11 A. Right.

12 Q. Okay. And just to clarify, ma'am, in this courtroom
13 today do you see the individual who you described who ran
14 into your black Lincoln?

15 A. Oh, yeah, most definitely. There he is.

16 Q. Can you describe what he's wearing today?

17 A. He is wearing a white shirt and necktie.

18 Q. Thank you, ma'am.

19 A. Uh-huh.

20 (Off the record).

21 (Back on the record)

22 BY MR. MORONEY:

23 Q. Just a couple more questions.

24 A. Okay.

25 Q. And after this incident that you just described, what

1 happened after that? Was there any response from law
2 enforcement, or --

3 A. Oh, yeah. I got -- after he drove off I got out of my
4 car and evidently somebody, I don't know who, had already
5 called law enforcement, and the other person, the girl who
6 was standing there whose car was taken, you know, she was
7 real upset. She was just kind of jumping up and down and
8 screaming. I said, "you know, just calm down. We are safe.
9 He's gone." You know, "thank the Lord. Let's just wait."
10 We heard the sirens, so they responded quickly, but at that
11 time I didn't know how they got there so fast, but then, of
12 course, I learned later on that they were following, or
13 trying to locate him, or whatever, because of what had
14 happened at another location. So we just -- they just
15 showed up all of the sudden kind of thing.

16 Q. And did law enforcement eventually make contact with
17 you?

18 A. Yeah, they did. They did. Took a statement. Asked me
19 questions. You know, to explain to them, you know, what was
20 I doing, what happened with my car. You know, what happened
21 after the accident, and got my contact information.

22 Q. Okay.

23 A. Yes.

24 Q. And you still own that black Lincoln?

25 A. No, I don't. That car was totaled.

1 Q. Okay.

2 A. It was going to cost over \$10,000 to repair that car,
3 and so, of course, my insurance company said, no, they
4 weren't going to do that, so they totaled that car and I
5 ended up having to purchase another vehicle.

6 Q. Okay. Well, thank you, Ms. Williams.

7 Please answer any questions that Mr. Frazier may have
8 for you.

9 A. Thank you.

10 CROSS EXAMINATION BY MR. FRAZIER:

11 Q. Could you please state your name for me?

12 A. Bessie Edie Williams.

13 Q. Okay. How are you doing today, Ms. Williams?

14 A. I'm doing fine.

15 Q. Okay. That's good.

16 Well -- all right. At the time of this incident that
17 happened you said the damage cost over \$10,000. Did your
18 insurance company pay for it, or --

19 A. It was taken care of under uninsured vehicle --

20 Q. Okay.

21 A. -- so they agreed -- they had decided not to repair my
22 car but to issue it as a total loss.

23 Q. Okay.

24 A. Yes.

25 Q. Yes, ma'am.

1 So the vehicle was uninsured?

2 A. My vehicles wasn't.

3 Q. Oh, the other vehicle was uninsured?

4 THE COURT: Wait a minute.

5 In civil cases -- this is not a civil case. In
6 civil cases the issue of insurance is never an issue for the
7 court -- it's for the court to consider who pays, did the
8 insurance having contracts that dictate the payment or
9 nonpayment for coverage.

10 Insurance coverage, insurance policies are not an
11 issue in this case and we are going to stay away from that.
12 That's just confusing. This is the Court of General
13 Sessions. It's whether or not there was leaving the scene
14 of an accident issue is the issue to be resolved, not
15 whether she had good insurance, or bad insurance, or
16 anything like that. Okay?

17 MR. FRAZIER: Yes, Your Honor.

18 THE COURT: That's not for the jury to consider.
19 That won't be an issue for y'all to resolve.

20 BY MR. FRAZIER:

21 Q. Did the officers at the scene, do you know if they took
22 any pictures of your vehicle or anything?

23 A. They worked the scene. I mean, I wasn't standing there
24 to watch everything that they did.

25 Q. Okay. So you did give an officer a statement?

1 A. Oh, yes.

2 Q. And do you remember what officer it was? Do you see
3 him in the courtroom today?

4 A. I do not.

5 Q. Do you see him in the courtroom today?

6 A. I do not remember who it was.

7 Q. Okay, yes, ma'am.

8 I mean -- and I think --

9 You said that when you -- when the vehicle struck your
10 car --

11 A. Uh-huh.

12 Q. -- you said it was from -- it hit you at the back?

13 A. Yes, just below the passenger door.

14 Q. Just like so? It was like at an angle?

15 A. Yes.

16 Q. And it was from the rear?

17 A. Not the rear. It didn't hit me from behind. From the
18 side.

19 Q. From the side?

20 A. Yes.

21 Q. Okay. At the back passenger?

22 A. Near the back passenger door, yes.

23 Q. Okay. And the damage -- so when you --

24 When the person got out of the car, you seen the
25 suspect jump in another car?

1 A. I saw you, yes.

2 Q. Okay. Well, I'm pretty much -- thank you.

3 A. You are welcome.

4 THE COURT: Any redirect?

5 MR. MORONEY: No, Your Honor.

6 THE COURT: Thank you, Ms. Williams.

7 THE WITNESS: Thank you.

8 MR. MORONEY: Your Honor, may I beg the court's
9 indulgence for just one moment --

10 THE COURT: Okay.

11 MR. MORONEY: -- to see if a witness has arrived.

12 THE COURT: Okay.

13 (Off the record).

14 (Back on the record)

15 MR. BLACK: The State calls Blake Moore to the
16 stand, Your Honor.

17 THE COURT: Mr. Moore.

18 OFFICER BLAKE MOORE, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY MR. BLACK:

21 Q. Officer Moore, can you state your name for the record,
22 please?

23 A. Blake Moore.

24 Q. And where do you work?

25 A. The Greenwood City Police Department.

1 Q. What's your rank over there?

2 A. Senior master patrolman.

3 Q. And what kind of responsibilities do you have with your
4 current job?

5 A. Investigation.

6 Q. Okay. How long have you been in law enforcement?

7 A. Five and a half years.

8 Q. Did you go to the academy?

9 A. I did.

10 Q. And where was that at?

11 A. Columbia, South Carolina.

12 Q. And how long is the courses that you took there?

13 A. At that time it was nine weeks.

14 Q. Do you have any other certifications that you have
15 received since you have been in law enforcement?

16 A. Radar and lidar. Advanced DUI, and breathalyzer.

17 Q. Have you worked anywhere else, other than the city?

18 A. I have not.

19 Q. Let's talk about July the 9th of this year. Were you
20 working that day?

21 A. I was.

22 Q. About what time was your shift that day?

23 A. 8:00 to 5:30.

24 Q. Did you respond to a call at Frank's Car Wash?

25 A. I did.

1 Q. Can you describe the nature of the scene when you
2 arrived?

3 A. When I arrived there were numerous people there; law
4 enforcement, and witnesses, and bystanders.

5 When I pulled into the parking lot it was -- if you are
6 standing in the middle of the road facing Frank's Car Wash,
7 I pulled into the right closest to the oil changing
8 building. I observed a black in color Lincoln facing
9 southbound, possibly maybe southeast direction, in the
10 parking lot on the right-hand side of the building. I
11 observed a white in color Ford F-150 still touching the
12 vehicle facing eastbound in the passenger side of that
13 vehicle.

14 Q. Did it appear that they had collided?

15 A. It did.

16 Q. And what was the damage to those vehicles?

17 A. It was severe.

18 Q. And the black Lincoln, what side of that was damaged?
19 Was it the passenger's side?

20 A. The passenger's side.

21 Q. And how about the Ford F-150?

22 A. The front.

23 Q. Were you aware of the previous incident at the
24 Chick-fil-A earlier, moments earlier?

25 A. I was.

1 Q. And how were you aware of that?

2 A. Dispatch advised of a carjacking at Chick-fil-A.

3 Chick-fil-A sits kind of right on the county, city
4 limits.

5 There was somebody behind the vehicle, behind the white
6 F-150. Dispatch was giving direction where the vehicle was
7 going.

8 We was going to assist the county -- to assist the
9 county and at that time, as I was proceeding towards the
10 direction the vehicle was traveling, they said that it had
11 just collided at Frank's Car Wash and then a subject took a
12 car from Frank's Car Wash and that he was now at the World
13 Finance.

14 As I was heading in that direction I observed numerous
15 police officers at World Finance. At that time I heard they
16 didn't need my assistance there, so I went on to Frank's Car
17 Wash to see what happened there.

18 Q. And where were you coming from when you received this
19 call?

20 A. The detective office.

21 Q. Right here behind --

22 A. Which is right across the street.

23 Q. Okay. About how long did it take you to get to
24 Frank's?

25 A. Just a few minutes.

1 Q. And Frank's is within the City of Greenwood, is that
2 correct?

3 A. It is.

4 Q. Okay. What did you do when you first arrived? I know
5 you said that you observed everything. What kind of steps
6 did you take in your investigation as to kind of clear the
7 scene?

8 A. I -- I don't remember all the officers that I talked
9 to.

10 At first I realized the scene could be kind of big and
11 there was a lot of people around. I started clearing people
12 out.

13 We put crime scene tape up just so people wouldn't be
14 walking near the vehicles, you know, where the vehicle was
15 taken.

16 And I was trying to find different witnesses, trying to
17 find the victims. I keep -- trying to keep everybody
18 separated the best way I could so I could figure out
19 everybody's story.

20 I then got permission from the owner of the business or
21 employee of Frank's Car Wash to use their lobby to interview
22 several people individually.

23 Q. And you conducted several interviews?

24 A. I did.

25 Q. And what did you learn from your investigation?

1 A. Just about everybody's story was the same. The two
2 victims, Ms. Searles and Ms. Williams, they say they were
3 there getting their car washed. They heard a loud noise.
4 They looked up, seen the vehicle crash into -- a white F-150
5 crash into Ms. Williams' vehicle. The guy jumped out
6 screaming and yelling, really couldn't understand what he
7 was saying. They said he then went over to a red in color
8 Chrysler that had just came out of the car wash. An
9 employee --

10 MR. FRAZIER: Objection, Your Honor, that's
11 hearsay.

12 THE COURT: He can testify to what -- he
13 interviews people and he can testify to as to what his
14 investigation revealed, but not what other people said.

15 MR. BLACK: Yes, sir, Your Honor.

16 THE COURT: Rephrase your question.

17 BY MR. BLACK:

18 Q. The Chrysler that some of the people described, was
19 that in the parking lot when you arrived at Frank's?

20 A. It appeared from me it was Frank's. The front of the
21 building has like a covered base. They said the Chrysler
22 was sitting in the parking lot.

23 Q. But it wasn't there when you got there?

24 A. No, it was not there when I was there.

25 Q. And the defendant in the case, was he on the scene at

1 Frank's, or was he gone?

2 A. He was gone.

3 Q. Was there any other evidence that you gathered at
4 Frank's Car Wash?

5 A. I did not. The only thing I did was just take
6 statements.

7 I did look in the F-150 on the driver's side because I
8 was told there was only one person in that vehicle. There
9 was a vehicle collision, just to see if there was any blood
10 or any kind of evidence on the driver's side of the vehicle.
11 I did not notice anything in that vehicle, other than the
12 items scattered around, thrown around in the vehicle, and I
13 did observe a Chick-fil-A bag in there.

14 Q. The Chick-fil-A was where in the white F-150?

15 A. Yes.

16 Q. That was the same vehicle, the same white F-150 that
17 was taken from Chick-fil-A moments earlier?

18 A. Correct.

19 Q. Okay. The victims in the case, were any of them
20 injured, as far as you can remember?

21 A. At that time I don't -- I don't recall EMS responding.

22 I did ask Ms. Williams, because Ms. Searles was in a
23 vehicle. She was waiting on her vehicle to be finished.
24 Ms. Williams said she was a little banged up, but she
25 believed she was okay. I don't recall if she went to the

1 hospital after the fact or not.

2 Q. And as far as -- I know you mentioned that Frank's is
3 very close to the roadway, is that correct?

4 A. Correct.

5 Q. How was the traffic? Was it backed up on Montague
6 there?

7 A. I wouldn't say it was backed up, but usually between
8 four and six o'clock Montague is -- it's usually a good bit
9 of traffic on Montague.

10 Q. Okay.

11 (Off the record)

12 (Back on the record)

13 BY MR. BLACK:

14 Q. No further questions.

15 Answer any questions that Mr. Frazier might have for
16 you.

17 THE COURT: Mr. Frazier?

18 MR. FRAZIER: Okay.

19 CROSS EXAMINATION BY MR. FRAZIER:

20 Q. Would you state your full name for me?

21 A. Blake Moore.

22 Q. And you are the investigator or detective --

23 A. Yes.

24 Q. -- on the Frank's Car Wash scene?

25 A. Yes.

1 Q. All right. So you -- when you responded to the scene,
2 you said that you -- it was several other officers there?

3 A. Yes.

4 Q. Already there.

5 Do you know who they were?

6 A. There was numerous police officers there. I don't
7 recall everybody that was there.

8 Q. Do you know who was in charge of the crime there?

9 A. I was.

10 Q. You was?

11 A. When I got there.

12 Q. When you got there you --

13 A. We all assisted together. We didn't have one person
14 calling the shots. We -- we all worked together.

15 Q. Okay. And could you state who was the first person to
16 respond to the scene?

17 A. I don't recall, because I was not the first one there.

18 Q. And -- but could you tell me who placed you as head
19 investigator or detective over the scene?

20 A. Because I was the first investigator to pull up. I was
21 the first investigator on the scene. There was no other
22 investigator there at the time when I arrived.

23 Q. Okay. So -- and you -- you can't remember or recall
24 who was first officer there?

25 A. There was probably five to ten other officers there

1 when I pulled up.

2 Q. Okay. And you said when you pulled up that you
3 observed a vehicle smashed into another vehicle?

4 A. Correct.

5 Q. And did you take pictures of the vehicles?

6 A. I did not.

7 Q. You did not.

8 As an investigator aren't you permitted to take
9 pictures of the vehicles?

10 A. I don't have to.

11 Q. You don't have to.

12 You didn't feel it was reasonable?

13 A. My job -- at that time when I was on the scene it's
14 very chaotic. I mean, it had just happened. I was trying
15 to get people separated. That is more important than taking
16 pictures at that time, and to get statements before
17 everybody leaves.

18 Q. Okay. And so nobody, you nor anybody else, took
19 pictures of the crime scene?

20 A. Not that I recall.

21 Q. You stated that you put caution tape out for the crime
22 scene?

23 A. Correct.

24 Q. And what was the reason for putting that out?

25 A. So people knew to stay behind the tape.

1 Q. And nobody would touch none of the items?

2 A. Correct.

3 Q. Or the vehicles. Okay.

4 You said that -- you stated that there wasn't nobody
5 injured or nothing at the scene?

6 A. Ms. Williams stated, you know, she was sore, banged up
7 a little, but I don't recall EMS coming and taking her to
8 the hospital. I don't know if she went after she left,
9 because if I remember, she left with a family member or a
10 friend.

11 Q. Okay.

12 A. I -- I don't know what she did after she left Frank's
13 Car Wash.

14 Q. All right. You said that you observed something inside
15 of one of the vehicles?

16 A. Yes, it was some items from Chick-fil-A.

17 Q. Okay. Did you notice anything else besides?

18 A. No. I mean, there was a lot of stuff in the vehicle.
19 I don't remember what all was in there, other than seeing
20 that Chick-fil-A -- those Chick-fil-A items.

21 Q. Did you notice a magazine in there?

22 A. I did not, but I did not do a thorough search either.

23 Q. Okay. So you did search the vehicle?

24 A. No, I just looked to see if there was blood, anything,
25 maybe identification that would come back to the suspect.

1 Q. Okay. Did you get all the tag numbers of the vehicles
2 that was in the wreck?

3 A. There was a wreck report completed, but I did not do
4 it. It would be on the officer who did the wreck.

5 Q. Okay.

6 A. And it would be on the wreck report.

7 Q. All right. All right.

8 Did you -- did you take statements --

9 A. I did.

10 Q. -- of all of them. Okay.

11 And in those statements do you remember what Ms.
12 Williams said?

13 A. I do.

14 Q. Okay. And could you state where Ms. Williams was at
15 the time that this wreck happened?

16 A. Yes, Ms. Williams stated she was in her vehicle.

17 Q. And where was the vehicle collided into, at what angle
18 and what point?

19 THE COURT: One question at a time.

20 A. Are you asking me which side?

21 BY MR. FRAZIER:

22 Q. Yeah.

23 A. On the passenger's side.

24 Q. Okay. And which way was Ms. Williams facing? She
25 stated -- which way did Ms. Williams state she was facing?

1 A. She was facing southbound in the parking lot.

2 Q. Okay. And you took statements from other peoples also?

3 A. I did.

4 Q. Okay. How long have you been working at the city
5 department?

6 A. Five and a half years.

7 Q. Five and a half years.

8 Was it a -- was there any other investigator there with
9 you that investigated this crime?

10 A. They were coming and going. I mean, there was three
11 different crime scenes; World Finance, Chick-fil-A, and
12 Frank's. I don't recall any of them there until after
13 everybody cleared up from World Finance. I don't recall any
14 other investigators.

15 Q. So you would say it wasn't no other investigators, yes
16 or no?

17 A. No.

18 Q. Okay.

19 MR. FRAZIER: Thank you.

20 THE COURT: Anything else?

21 MR. BLACK: No, Your Honor.

22 MR. MORONEY: No, Your Honor.

23 THE COURT: You may step down.

24 MR. MORONEY: Your Honor, the State calls Kimberly
25 Searles.

1 THE COURT: Ms. Searles.

2 KIMBERLY SEARLES, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. MORONEY:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. Could you please state your name?

8 A. Kimberly Searles.

9 Q. Ms. Searles, did you have occasion to be at Frank's Car
10 Wash in the City of Greenwood on July 9th, 2015?

11 A. Yes.

12 Q. Was that at approximately 4:30 in the afternoon that
13 day?

14 A. Yes.

15 Q. And what brought you to that location that day?

16 A. I came there to, just like a normal day, just get the
17 car washed.

18 Q. Okay.

19 A. Uh-huh.

20 Q. And what kind of car was that?

21 A. It's a 2014 Chrysler 300.

22 Q. Okay. And are you the registered owner of it, or --

23 A. No, I'm not. The registered owner is Bryant Talbert,
24 which is my boyfriend.

25 Q. Okay. And he had entrusted that vehicle to you?

1 A. Yes.

2 Q. And you were free to use it?

3 A. Yes.

4 Q. And used it often?

5 A. Yes.

6 Q. Do you know how much that vehicle was purchased for?

7 A. Roughly around 25, 26,000.

8 Q. Okay. Ms. Searles, did anything unusual happen that
9 day on your visit to Frank's Car Wash?

10 A. Basically it was like a normal day. I was in the
11 inside waiting on my vehicle to get ready. And while I was
12 sitting there I was actually on the phone with the owner of
13 the car and all of the sudden I just heard a loud bomb. It
14 was a vehicle that was in the center of the road that was
15 kind of going around in the center of the road. And then
16 all of the sudden I just seen at a high rate of speed a
17 white truck just coming into Frank's Car Wash and there was
18 a black car that was parked there. This vehicle hit the
19 car. He jumped out and he was jumping up and down, just
20 crazy acting, just jumping up and down saying something was
21 in the truck. So, you know, I came out of the door.

22 When I seen the commotion I was standing up in the
23 door. I came out the door and then all the sudden I seen
24 him jump in my car. The guy who was actually drying off my
25 car, he was standing in the door and the guy just came and

1 kind of jumped in my vehicle and the guy was like -- who was
2 washing the car said "you can't take this car."

3 And I came out and I said "you are in my car." I said
4 "you can't take my car" and he looked at me like -- you
5 know, like what are you talking about. And he jumped in the
6 car and speeded off in the car.

7 When he left out of Frank's -- well, when he left out
8 of the parking lot he went around the oil change place, came
9 around and then to the right. He went down the road in my
10 vehicle at a high rate of speed down by the Capital Bank, I
11 believe it was, and then went around, turned around in the
12 middle of the road, jumped the sidewalks in the car, then
13 went back down the road, then came back up the road, and I
14 guess that's when everything kind of ended I'm assuming at
15 World Finance.

16 Q. Okay.

17 A. So --

18 Q. And Ms. Searles, that individual that you described,
19 did you get a good look at him that day?

20 A. I did.

21 Q. Do you see that individual that stole your car in this
22 courtroom today?

23 A. I do.

24 Q. Could you please point him out and describe what he's
25 wearing today?

1 A. The individual with the white shirt and the necktie.

2 Q. Okay. Ma'am, do you recall approximately how many
3 miles were on your vehicle at the time this vehicle was
4 stolen?

5 A. Probably about 18,000.

6 Q. Okay.

7 MR. MORONEY: Beg the court's indulgence for a
8 moment.

9 (Off the record).

10 (Back on the record).

11 MR. MORONEY: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 BY MR. MORONEY:

15 Q. Ms. Searles, I'm handing to you what's been printed out
16 today as a Kelly Blue Book, which is the used car value?

17 A. Uh-huh.

18 Q. Can you explain what that describes there, if that's an
19 accurate description of the vehicle?

20 A. Yes. 2014 Chrysler 300. Mileage around --

21 MR. FRAZIER: I object, Your Honor.

22 THE COURT: What's your objection?

23 MR. FRAZIER: That's hearsay.

24 THE COURT: It's her car. She can testify to the
25 value of the car. It's her personal property. She can do

1 that.

2 MR. FRAZIER: Yes, she's not testifying of her
3 knowledge, Your Honor, and I would like to object to --

4 THE COURT: I'm going to allow it. This is --
5 it's her car. She's the daily driver of it. She can
6 testify as to how she came to the value of it. I mean, she
7 can walk out and look at it, so you may re-ask the question
8 and she can answer it.

9 BY MR. MORONEY:

10 Q. And the value stated on there, what does that state and
11 how does it describe that value?

12 A. Excellent condition, 19,507. Very good condition,
13 19,262. Good condition, 18,773, and fair condition 17,054.

14 Q. And the miles associated with that value?

15 A. 20,000.

16 Q. So greater than the 18,000 that you approximated on the
17 date of that collision?

18 A. That's correct.

19 MR. MORONEY: Your Honor, at this time I would ask
20 that -- take judicial notice that the value of the vehicle
21 was greater than \$10,000.

22 THE COURT: She's testified that the value was
23 more than 15, 16, \$17,000 and the jury can consider it.

24 MR. FRAZIER: Objection.

25 THE COURT: What' your objection?

1 MR. FRAZIER: I want to continue my previous
2 objection in the matter. I got a matter of law.

3 THE COURT: Okay.

4 I got to put something on the record, so y'all
5 step in the jury room and we'll get you right back out here.

6 (The following takes place outside the presence of
7 the jury panel).

8 THE COURT: What's your objection again?

9 MR. FRAZIER: I object because that's not the
10 fact -- that's not the true value of the car and --

11 THE COURT: Here is what I did. I said the car
12 was worth more than \$10,000.

13 She testified of her own knowledge. She said
14 18,000 miles. It was a 2014 Chrysler 300.

15 The court can take notice of things that are of
16 public knowledge, and the value of a car, easily discernable
17 on the Internet, by calling a used car manager of any
18 dealership, and any of those would provide -- the court is
19 very well aware of the value of cars. A Chrysler 300 is a
20 mid-sized to above average mid-sized car. It's not a
21 compact. It's not a subcompact, and it's bigger than a
22 Camry, Accord, Altima version. It's the step up from that
23 for the proof of its value being more than \$10,000, that's
24 all the State is trying to elicit testimony for. It's not
25 the exact value, but it's more than \$10,000.

1 MR. FRAZIER: I understand.

2 THE COURT: The court acknowledges they have met
3 that.

4 MR. FRAZIER: Okay. I don't think that should be
5 admitted to the jury because it's not factual proof of that
6 vehicle and the cost of that vehicle and it's not factual
7 proof as to whether it's 18000 miles on that vehicle.

8 THE COURT: You can cross-examine her on the
9 miles, but she can testify to the miles, the year model and
10 the --

11 MR. FRAZIER: And --

12 THE COURT: The lady that saw the car behind her,
13 she described the color being candy apple red. There is
14 plenty of testimony.

15 MR. FRAZIER: It could have been a used car. It
16 could have been wrecked. It could have been -- have a
17 status title, or anything --

18 THE COURT: You can cross-examine her on that, but
19 he can put up that she said the car was in good condition.
20 She was getting it washed. It was a regular habit of hers
21 to keep it up. I mean she's testified to that.

22 MR. FRAZIER: Okay. And also that she don't have
23 ownership. She's not the owner.

24 THE COURT: She is a regular user of the car. She
25 testified to that, that her boyfriend -- she has authority

1 through him to utilize the car for her own business.

2 MR. FRAZIER: Okay.

3 THE COURT: This is a weak issue for you, buddy.
4 I mean, a car is a car. It's not like a -- if it were a
5 collector, or an old Corvette, or something odd, this is a
6 Chrysler 300, one of the most common models they make.

7 They are trying to present testimony, in fact,
8 that it's worth more than \$10,000. They have well exceeded
9 that.

10 MR. FRAZIER: Your Honor, so am I entitled to the
11 fax of that car, or that particular car that was there that
12 day?

13 THE COURT: You can cross-examine her as to the
14 condition, her actual certainty or knowledge of the miles,
15 the condition of the interior, anything like that you want
16 to.

17 She's just testified to what he's elicited and I
18 think it's proper. The court can take notice that a
19 Chrysler 300 in good condition, not pristine brand new
20 condition, but of good condition is worth somewhere between
21 15 and \$18,000. That's more than ten. That's all he's
22 trying to do is more than ten.

23 MR. FRAZIER: Okay, Your Honor.

24 THE COURT: So that's where I don't understand
25 your struggle. You might -- you might win this if the car

1 is worth \$12,000 because it's in average condition. It's
2 still more than ten.

3 MR. FRAZIER: Well, if it's not worth more than
4 \$10,000.

5 THE COURT: You are your lawyer. You can
6 represent yourself. You can argue that.

7 MR. FRAZIER: Okay.

8 THE COURT: I'm not saying you are wrong with
9 cross-examining her, but what they have asked the court to
10 do I can do.

11 MR. FRAZIER: I understand.

12 THE COURT: It's -- if the car is in good
13 condition, 18,000 miles, a '14, optimal Chrysler 300 model,
14 it's worth more than \$10,000.

15 Bring them back in, if they are ready.

16 (The following takes place in the presence of the
17 jury panel)

18 THE COURT: All right. Continue on.

19 BY MR. MORONEY:

20 Q. Ms. Searles, before your car was driven off the lot
21 that day from Frank's Car Wash, did you give permission to
22 Mr. Frazier to use your car?

23 A. No, I didn't.

24 Q. Did he state anything to you to the effect of "be right
25 back"?

1 A. No, he didn't.

2 Q. After this incident happened was there a response from
3 law enforcement?

4 A. Excuse me?

5 Q. What did -- did law enforcement or police respond after
6 this incident?

7 A. Yes.

8 Q. Could you describe that response and what you recall?

9 A. Basically after all that had happened all of the sudden
10 we had -- there was numerous law enforcement that came on
11 the scene. They asked questions about what had happened and
12 at that time it was an individual who basically told me that
13 my car was -- basically they had found the car.

14 MR. FRAZIER: Objection.

15 THE COURT: You can't tell what somebody else said
16 to you, but you can testify to your first-hand knowledge.

17 THE WITNESS: Okay.

18 THE COURT: Rephrase the question so she's clear,
19 solicitor.

20 THE WITNESS: Okay.

21 BY MR. MORONEY:

22 Q. Could you just describe the police response that day?

23 A. Like I said, they was on the scene. They asked
24 questions about basically what happened.

25 Q. And did law enforcement specifically meet with you?

1 A. Yes.

2 Q. Okay. And did they conduct an interview with you?

3 A. They did. They took a statement from me, based on my
4 knowledge what happened and what I observed that day.

5 Q. Okay. Thank you, Ms. Searles.

6 Please answer any questions that Mr. Frazier may have
7 for you.

8 A. Okay.

9 CROSS EXAMINATION BY MR. FRAZIER:

10 Q. Okay, Ms. Kimberly, how are you doing today?

11 A. Good. How are you?

12 Q. I'm okay.

13 So could you state what kind of car this was?

14 A. It was a 2014 Chrysler 300, candy apple red.

15 Q. Okay. And are you owner of the vehicle?

16 A. No, I'm not.

17 Q. And could you state who was the owner of the vehicle?

18 A. Bryant Talbert.

19 Q. And his reference to you, represent to you?

20 A. He's my boyfriend.

21 Q. Okay. And you stated -- could you tell me how much the
22 car cost?

23 A. Roughly around 27, 28,000.

24 Q. Okay. She came -- okay.

25 So you said when the car was being taken, where was

1 you standing? Where was you?

2 A. In the door. I was standing in the door looking at you
3 jump into my car.

4 Q. Okay. And -- and what did you do when you seen
5 somebody jumping in your car?

6 A. I came out the door and I told you "that's my car", and
7 you looked at me like you was in your car and jumped in my
8 car and left the scene.

9 Q. Okay. So you had -- you did speak with the suspect
10 before he took your car?

11 A. No, I didn't. I yelled "that's my car."

12 Q. So you said something to the suspect?

13 A. I said something to the suspect "that's my car".

14 Q. Okay. You said that you seen the car go down the road.
15 What did you see when the person took the car?

16 A. The person went around the oil change place, came out,
17 went down the road near the bank in the center, came back up
18 the road, jumped the sidewalk in my car, went back down the
19 road, jumped more sidewalks, and went back up the road at a
20 high rate of speed.

21 Q. Okay. So would you say the suspect planned on keeping
22 your car?

23 A. I don't know whether you was planning on keeping my car
24 or not. It didn't belong to you, so --

25 Q. Okay. So -- so would you say the suspect was just

1 playing around in your car or just driving recklessly?

2 A. Yes, you was driving reckless in my car that did not
3 belong to you.

4 Q. Okay. And could you state how many miles was on the
5 car?

6 A. Roughly around 18,000.

7 Q. Okay. Do you have any pictures of the car here today?

8 A. I might have a picture in my cell phone.

9 Q. Okay. And do you have any proof of the car value
10 today?

11 A. No, not with me, I don't.

12 Q. Okay. And has the car ever been wrecked or have a
13 service title?

14 A. No.

15 Q. And how old is the car?

16 A. It's a 2014, so it's purchased brand new.

17 Q. Brand new.

18 Paid cash?

19 A. No.

20 Q. Or check?

21 A. No.

22 Q. Okay. And it was brand new and not used?

23 A. Not used.

24 Q. Do you still drive the same vehicle?

25 A. I do.

1 Q. And is your -- is the owner of the vehicle here today?

2 A. No, he's not.

3 Q. Okay. And could you provide me with proof and facts of
4 the car value?

5 A. What kind of facts do you need?

6 Q. Like the proof of the mileage and the cost and the
7 value of the car now and if it's been wrecked or anything --

8 A. No, I cannot provide you with that --

9 Q. Car fax or Blue Book value?

10 THE COURT: She provided testimony to that effect.

11 BY MR. FRAZIER:

12 Q. Okay.

13 THE COURT: You can ask her questions about that;
14 has the car ever been wrecked? Are the door seats torn?
15 You can ask her that.

16 MR. FRAZIER: That's it. That's all. I rest my
17 case.

18 THE COURT: Okay.

19 Anything on redirect?

20 MR. MORONEY: Briefly, Your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION BY MR. MORONEY:

23 Q. Was there any damage to your car as a result of this
24 incident?

25 A. Yes. The car has rims on it. Basically the rims was

1 scratched. Two of the rims were scratched. The fender --
2 the front fender on the passenger side was bulging out. And
3 when I took it to Quality Chrysler it was knocked out of
4 align, so I had to get an alignment.

5 Q. Did you receive an estimate of repairs or approximation
6 of the value of damage done?

7 A. No, I didn't.

8 Q. Okay.

9 MR. MORONEY: Thank you. Nothing further.

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

11 MR. MORONEY: Your Honor, the State calls Clarence
12 Woolridge.

13 CLARENCE WOOLRIDGE, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. MORONEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. Could you please state your name?

19 A. Clarence George Woolridge.

20 Q. And Mr. Woolridge, what's your occupation?

21 A. I work for Frank's Car Wash.

22 Q. Is that the Frank's Car Wash here in Greenwood City?

23 A. Yes.

24 Q. Is the address 432 Calhoun Avenue?

25 A. Yeah.

1 Q. Do you recall working at Frank's Car Wash on the date
2 of July 9th of this year, 2015?

3 A. Yeah.

4 Q. And were you working in the afternoon at approximately
5 4:30 p.m.?

6 A. Yes, sir.

7 Q. On that date did you experience or observe anything
8 unusual or out of the ordinary?

9 A. Yeah, I did.

10 Q. Could you please describe what you saw?

11 A. Well, I was cleaning the 300 and I heard a bunch of
12 noise in a white truck coming down from the red light, so I
13 turned around and I was just about through with the car and
14 I seen some bulb spots on it, so I took -- I keep a razor in
15 my wallet. So I laid my wallet on the hood and I was
16 scraping the window off and the car -- the truck come in --
17 or the lady jumped in the white Lincoln -- the black Lincoln
18 just had got her car cleaned. She was on the phone and he
19 come in there and run right into her. He missed about three
20 or four cars up there at the red light and he just come
21 right in there and hit her and he bounced back and hit her
22 again, and he jumped out talking about "get them off me.
23 Get them off me." And he took off, broke the glass on the
24 other side, so I tried to run around and I told the man get
25 back and then he got in the car. I thought he might have

1 had a gun, so he slammed the door and locked it and took off
2 and I was running behind him and he run around the truck by
3 where you pay at the booth. He went across a big culvert
4 about this high. That is when my wallet came off and he
5 like to hit the dude working over there at the lube shop,
6 and he went out. I don't know where he went then after
7 that.

8 Q. Okay.

9 A. I don't know what he was on. He was on something.

10 Q. Mr. Woolridge, did you get a good look at that
11 individual that day?

12 A. Yeah.

13 Q. And do you see in the courtroom this morning that
14 individual?

15 A. Yes, sir.

16 Q. Could you please point him out and describe what he's
17 wearing?

18 A. The one with the white shirt on and the black necktie.

19 Q. Were you in close proximity to the red Chrysler that
20 day when it was driven off?

21 A. Yeah, I was doing it, because I was just about through
22 with it. All I had to do is wipe itself off the windows and
23 that's when he come in there and took it.

24 Q. Did it come close to hitting you at all as it drove
25 away?

1 A. Yeah, I had to jump back, because I was in the front of
2 it.

3 Q. And did he drive away at a high rate of speed?

4 A. Yeah, he did.

5 Q. Would you characterize his manner of driving as
6 reckless?

7 A. Yeah, he was reckless driving.

8 Q. And were there other employees in the way as he was
9 driving away?

10 A. Yeah.

11 Q. Was there any danger, from your observation, of them
12 potentially getting hit or injured?

13 A. Yeah, they had to jump back because he cut across the
14 lube, by the lube shop, and whooped around out there and
15 went somewhere else, because the men that worked there, they
16 jumped back, because I think one of them followed him in the
17 Cadillac trying to find out where he was.

18 Q. And you stated that you were drying off or tending to
19 the Chrysler that day?

20 A. Yeah.

21 Q. Do you recall the condition of that car, generally?
22 Was it in bad condition?

23 A. Top shape. Top shape. I'd like to have it myself, to
24 be honest.

25 Q. And how long had you been working at Frank's or

1 detailing cars?

2 A. A little over two years.

3 Q. And from your experience that was in top shape?

4 A. Yeah, it was top shape, because I done see some 300's
5 that look pretty rough coming through there.

6 Q. After this incident took place was there any response
7 from law enforcement or did they come on the scene?

8 A. Oh, it was so many came.

9 Q. Could you describe what you saw and if they met with
10 you?

11 A. Yeah, I told them what had happened. And then there
12 was bunch of other dudes came down where he like to hit them
13 at the red light. They come down there and told them --
14 told the officers that they -- you know, they told them what
15 had happened.

16 Q. So those would have been people that almost got hit in
17 the roadway?

18 A. Yeah, coming from that red light.

19 Q. Okay. And did police come meet with you and take a
20 statement from you?

21 A. Yeah.

22 Q. Okay.

23 MR. MORONEY: Beg the court's indulgence for just
24 a minute.

25 THE COURT: All right.

1 (Off the record).

2 (Back on the record)

3 MR. MORONEY: Your Honor, I request that the
4 defendant be able to step down to describe the location to
5 what he observed?

6 THE COURT: The witness?

7 MR. MORONEY: I ask the witness, excuse me.
8 Excuse me.

9 THE COURT: All right.

10 (Witness off the witness stand).

11 MR. MORONEY: I would ask to get this marked for
12 ID purposes.

13 THE COURT: Okay.

14 (Photograph marked as State's Exhibit No. 3 for
15 identification)

16 BY MR. MORONEY:

17 Q. Mr. Woolridge, if you could just briefly describe what
18 you saw and just point in the direction that you were
19 describing and locations of this car wash.

20 A. The car wash is right here.

21 Okay. The dude was coming down -- let's make sure we
22 are right.

23 The red light is somewhere up in here. He was coming
24 down and he was whooping around cars and they was trying to
25 get out of the way of him and he just come right into here.

1 There is a car right there. He come in there with a white
2 truck. He hit it. He was wide open. He didn't let his
3 foot off the gas or nothing. He hit it. It bounced back
4 and he hit it a second time. Then he jumped out and left it
5 running. The car was into the side of the other -- the
6 truck was inside of the other car.

7 When he jumped out I was over there cleaning the window
8 off -- the stuff off the window and I said "man, you can't
9 get in the car. Get back."

10 "Get them off me. Get them off me."

11 It had me kind of scared there at first, you know, and
12 then he jumped in the car. I tried to get away from it. I
13 thought he might have had a gun, or I didn't know. He
14 closed that door and he took off. He whooped around them
15 other cars and he went on. I go by the lube shop out in
16 there.

17 Q. And where did you -- where did he proceed to leave and
18 exit the last that you saw him?

19 A. Yeah, he -- when he left he went around the guard
20 shack.

21 Q. And where is the guard shack approximately on that
22 image?

23 A. It would be right -- yeah, over here. He went around
24 the guard shack and he hit that curve up in here and then
25 he -- you know.

1 Q. Thank you, Mr. Woolridge.

2 (Witness back on the witness stand).

3 BY MR. MORONEY:

4 Q. Mr. Woolridge, please answer any questions that Mr.
5 Frazier may have for you.

6 A. All right.

7 CROSS EXAMINATION BY MR. FRAZIER:

8 Q. How are you doing today, Mr. Woolridge?

9 A. Okay. How are you?

10 Q. Well --

11 So you are an employee of Frank's Car Wash?

12 A. Yes.

13 Q. And how long have you been working at Frank's Car Wash?

14 A. A little over two years.

15 Q. A little over two years.

16 Okay. And on the day of this crime do you remember
17 what day it was?

18 A. It was on a Friday evening.

19 Q. Do you remember the date?

20 A. I don't remember the date, but I know it was on a
21 Friday evening.

22 Q. It was on a Friday evening?

23 A. Uh-huh.

24 Q. And --

25 A. Because I was trying to hurry up because I was tired.

1 I wanted to hurry up because we didn't get off until six.

2 Q. Uh-huh. And do you remember around approximately the
3 time of this?

4 A. Say that again?

5 Q. Around the time that this happened?

6 A. Yeah, it was between 4:00 and 4:30, something to 5:00.

7 Q. Okay. Between 4:30 and something to 5:00?

8 A. Uh-huh.

9 Q. Okay. And where were you standing when the vehicle was
10 taken?

11 A. Were taken?

12 Q. Yes.

13 A. I was standing on the side at first. I was in the
14 front when you jumped in it, because when you jumped out of
15 the truck --

16 Q. Yes, sir.

17 A. -- you said "get them off me. They are on me."

18 I said "what on you?"

19 And you kept looking back and you run and jumped in the
20 car. I said "you can't get in that car."

21 Q. Uh-huh.

22 A. And I thought you might have had a gun when you reached
23 to the side, and I left my wallet on the top. I just had
24 cashed my check.

25 Q. Yes, sir.

1 A. And I said "stop that car." I wasn't trying to stop
2 you. I was going to stop you, but I couldn't. My wallet
3 fell off the car when you went to cross that curb and you
4 like hit them other two boys around there on the other side
5 of the lube shop.

6 Q. Okay.

7 A. I don't know what you was on.

8 Q. Okay. And where was the owner of the vehicle standing
9 when all this was happening?

10 A. In the lobby.

11 Q. She was in the lobby?

12 A. Uh-huh.

13 Q. Okay. And when this happened did you -- what did you
14 see the victim do?

15 A. She went to crying and hollering going on.

16 Q. And -- okay.

17 Can you -- do you know -- can you -- do you know if the
18 car -- the shape it was in?

19 A. It was in top shape, man. It was a nice car.

20 Q. Do you know if the car had ever been wrecked or
21 anything like that?

22 A. I couldn't tell.

23 Q. Yeah. Okay.

24 And do you believe that a car can be repaired upon you
25 looking at it and telling that it's been wrecked?

1 A. No.

2 Q. And who's your boss man up at Frank's car?

3 A. John Cooper.

4 Q. John Cooper.

5 And -- okay.

6 Where was the truck in the incident, the two cars that
7 was collided, where was they stationed at?

8 A. Where the lady --

9 THE COURT: If it would help you to go point out
10 when you answer that.

11 BY MR. FRAZIER:

12 Q. You are welcome to do that.

13 THE COURT: You can walk over there and point out
14 those items.

15 BY MR. FRAZIER:

16 Q. You ain't got to, but you are welcome.

17 A. No, I can see.

18 Q. Yes, sir.

19 THE COURT: Whichever is easier.

20 A. It was two cars there. I was doing one and the dude
21 named Kevin was doing the black --

22 BY MR. FRAZIER:

23 Q. Lincoln?

24 A. Lincoln.

25 The lady had got through. She must have got a phone

1 call, because she pulled on the side and pulled right there
2 where you hit her at, but when you come in there all I seen
3 was her rear back and you hit her.

4 Q. Yes, sir.

5 A. And you kept your foot on the gas and it bounced back
6 and hit her again in the next door, the front door and
7 second door, and you jumped out of it.

8 Q. Okay. Do you remember whereabouts the black Lincoln
9 was wrecked or hit?

10 A. It was parked right over there by where them -- right
11 before you get to the detail thing, right there up under
12 the -- before you get to the shed she had pulled over and
13 she was on the phone.

14 Q. Okay.

15 A. And you come right in there wide open.

16 Q. Okay. And can you state where the vehicle was hit?

17 A. It was hit on the right-hand side, but it hit at the
18 front, in between the front door and fender, and the back
19 door.

20 Q. Okay.

21 A. But when it hit, it bounced back and hit it again,
22 because you never did take your feet off the gas.

23 Q. Okay. Thank you, sir.

24 A. Yes, sir.

25 THE COURT: Any redirect?

1 MR. MORONEY: No, Your Honor.

2 THE COURT: Okay. Thank you, sir.

3 All right, let's take a couple minutes break. We
4 have been going a little bit. I'm about ready for a break
5 because I didn't take one when y'all did last. We will take
6 a few minutes.

7 If anybody needs to step outside, tell Mr. Emery
8 and he'll make sure y'all get out there. We'll take a few
9 minutes and bring you back in here.

10 You can't discuss the case yet.

11 Ma'am, what's your name?

12 JUROR NUMBER 27: My name?

13 THE COURT: Yes.

14 JUROR NUMBER 27: Donna Dillashaw.

15 THE COURT: Do you mind being my foreperson?

16 JUROR NUMBER 27: I will.

17 THE COURT: Okay. You get extra candy. You just
18 got assigned something.

19 JUROR NUMBER 27: That's fine.

20 THE COURT: Ms. Dillashaw will be the foreperson.

21 Thank you for agreeing to do that.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: We will stand at ease for a few
25 minutes.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: You can bring them in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: You may continue.

7 MR. BLACK: The State calls Matt Caughman.

8 OFFICER MATT CAUGHMAN, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BLACK:

11 Q. Officer Caughman, can you state your full name for the
12 record, please?

13 A. Yes, sir. Lieutenant Matthew Caughman.

14 Q. And how long have you been employed with the city?

15 A. Since December of 2009.

16 Q. Okay. And did you have any other jobs in law
17 enforcement before that?

18 A. No, sir.

19 Q. Did you go to the academy down in Columbia?

20 A. I did.

21 Q. And you completed that course successfully?

22 A. That's correct.

23 Q. Do you have any other training or certifications since
24 have been an officer?

25 A. I do. I'm a field training officer. I have been a

1 field training officer for about three years. I'm DMT
2 certified, datamaster certified. Speed measuring device
3 certified, and I have been a lieutenant for approximately
4 six months now.

5 Q. And as your role as a lieutenant what kind of -- what
6 kind of things do you typically do on a normal day?

7 A. On a normal day I check reports. I check in with all
8 the officers on the shifts. And throughout the day I check
9 in with my supervisor, who is the captain, and just relay
10 the information that he needs throughout the day.

11 Q. Do you remember working on July 9th of this year?

12 A. I do.

13 Q. Did you respond to a call at Frank's Car Wash that
14 afternoon?

15 A. That's correct.

16 Q. And what was the nature of that call?

17 A. The initial call we received a signal four, which is a
18 stolen vehicle from the Chick-Fil-A, which is located in
19 Greenwood County. We were told that the vehicle was headed
20 towards Montague Avenue, which is the road that Frank's Car
21 Wash is on, so units began to head that way to look for the
22 truck, which was described as a white pickup truck at the
23 time.

24 While en route dispatch further advised us that the
25 vehicle had pulled in Frank's and the driver of the truck

1 had gotten into a red Chrysler 300 and was southbound. At
2 that point I was approaching Frank's Car Wash and I was
3 flagged down probably by about ten to fifteen people just
4 raising their hands erratically, so I pulled into Frank's
5 Car Wash at that point.

6 Q. Were you the first officer on the scene at Frank's Car
7 Wash?

8 A. I was.

9 Q. Okay. And what did you observe when you pulled into
10 Frank's Car Wash?

11 A. I observed ten to fifteen people yelling, screaming,
12 saying that the suspect had went southbound in a Chrysler
13 300.

14 I spoke with Ms. Searles, who was the victim whose car
15 had been taken, the Chrysler, and she stated that her -- she
16 was screaming. She was crying. She was telling me that
17 somebody had stolen her car and that he went that way, and
18 she was pointing towards the direction of southbound on
19 Montague Avenue.

20 Q. So it's accurate to say it was chaotic there?

21 A. It was chaotic.

22 Q. Did you notice a white Ford F-150 at Frank's Car Wash?

23 A. I did.

24 Q. And can you describe where that vehicle was located?

25 A. The vehicle was in the first entrance. I observed the

1 truck. The driver's side of the truck was collided with the
2 passenger side of a black Lincoln. The truck was still
3 running. The patrons were concerned about the truck
4 running, so I went up to the truck and I turned the ignition
5 off and I continued to speak with everybody on the scene.

6 Q. And you talked with other people as well you said?

7 A. I did.

8 Q. And what was the demeanor of those people?

9 A. Very upset. They were very erratic about where the
10 suspect went, his demeanor. They were saying that he was
11 acting crazy, like he was on some type of narcotics.

12 MR. FRAZIER: I object, Your Honor.

13 THE COURT: He can testify to what he saw. The
14 witnesses can testify to what they seen, so rephrase your
15 question.

16 I sustain the objection.

17 BY MR. BLACK:

18 Q. And can you describe the demeanor of the people that
19 were -- that you were talking to?

20 A. Very chaotic. As I said, Ms. Searles was crying.

21 Ms. Williams, who was the driver of the Lincoln, she
22 was very upset and at one point I thought she was going to
23 need an ambulance, due to the fact she was saying she was
24 hurting. Her back was hurting, and I questioned her several
25 times if she needed an ambulance and she stated "no, I think

1 I'm going to be okay, but I may drive myself."

2 Q. Do you remember if an ambulance was called to the scene
3 or not?

4 A. No, sir, there was not.

5 Q. The red Chrysler that you referred to, was that at
6 Frank's Car Wash when you arrived?

7 A. No, sir.

8 Q. It was gone?

9 A. That's correct.

10 Q. And the defendant, was he at Frank's Car Wash when you
11 were there?

12 A. No, sir.

13 Q. What other -- what other things did you do, as far as
14 your investigation was concerned, at Frank's Car Wash?

15 A. Well, we -- several other officers arrived on the
16 scene. I directed them to put up crime scene tape, so we
17 put up crime scene tape around Frank's Car Wash.

18 We notified the county that the truck was at Frank's
19 Car Wash. It was initially reported stolen.

20 And all the other officers on the scene began
21 questioning everybody else that was there.

22 Detective Moore arrived. He began to question
23 witnesses on the scene and victims as well.

24 Q. Your primary concern, I guess, when you arrived, is it
25 safe to say that it was to make sure everybody was okay?

1 A. That's correct.

2 Q. Okay. Did you stay at Frank's Car Wash the entire
3 time? Did you ever go anywhere else?

4 A. No, sir, I stayed there the entire time.

5 Q. Okay. And Frank's Car Wash, is that inside the city
6 limits of Greenwood?

7 A. It is.

8 Q. And about what time did you wrap up at Frank's Car
9 Wash? When did you clear the scene?

10 A. Approximately an hour to an hour and a half after the
11 initial call.

12 Q. Okay. I don't have any further questions.

13 Please answer any that Mr. Frazier might have for you.

14 THE COURT: Mr. Frazier.

15 CROSS EXAMINATION BY MR. FRAZIER:

16 Q. Okay, Mr. Caughman, could you state your full name for
17 me?

18 A. Matthew Caughman.

19 Q. Caughman?

20 A. Yes, sir.

21 Q. And what rank are you?

22 A. Lieutenant.

23 Q. Lieutenant?

24 A. Yes, sir.

25 Q. And how long have you been working for the city police

1 department?

2 A. Since December of 2009.

3 Q. Since December of 2009?

4 A. Yes, sir.

5 Q. Okay. And could you explain what you seen at the
6 arrival of the crime scene?

7 A. Yes, sir, absolutely.

8 As I said, the crowd was chaotic that were there. They
9 were waving their hands back and forth.

10 Ms. Searles was crying. Ms. Williams was upset saying
11 she was hurting. There were several other people on the
12 scene that they were adamant wanting me to leave that
13 location to respond to try to find the suspect who took the
14 Chrysler 300.

15 I observed a white truck which had collided with a
16 black Lincoln.

17 Q. Okay.

18 A. It was still running at the time. That was what I
19 initially seen when I responded.

20 Q. Okay. All right.

21 Did you do the incident report and supplemental on this
22 case?

23 A. I did the initial report. I did not do any
24 supplementals.

25 Q. So that would be --

1 A. I did the initial report.

2 Q. The incident report?

3 A. Yes.

4 Q. Okay. Could you state who did the supplemental?

5 A. I don't know who all did supplementals.

6 Q. Would this be your incident supplemental report right
7 here with your name on it?

8 A. If I could see it I could tell you whether or not I did
9 it or not.

10 Q. Down at the bottom.

11 A. Yeah, this is mine.

12 Q. Okay. So you did the supplemental report also?

13 A. No, sir, I did the initial report.

14 Q. You just admitted to this being your name on the
15 supplemental report. That's says supplemental incident
16 report.

17 A. That's the initial incident report.

18 Q. So it's no difference between the incident and
19 supplemental?

20 A. There is no -- can you rephrase the question?

21 Q. Is there any difference between an incident report and
22 a supplemental report?

23 A. There is a difference. The initial report is the
24 initial report that's taken. The supplemental would be
25 something done after the initial report.

1 Q. Okay. And if it states that it's M. Caughman on the
2 supplemental incident report, wouldn't that be you?

3 A. That's correct. If it's my name on there, that's
4 correct.

5 Q. Okay. All right. Okay.

6 Are you the arresting officer of this case?

7 A. No, sir.

8 Q. Okay. You are just the reporting officer?

9 A. That's right.

10 Q. Okay. All right.

11 And when you got to the scene, did you take any
12 pictures or anything of the crime scenes, or anything like
13 that?

14 A. No, sir.

15 Q. Did you write any tickets or anything?

16 A. No, sir.

17 Q. Do you know of who wrote any tickets for --

18 A. I do not know --

19 Q. Okay.

20 A. -- who wrote the tickets.

21 Q. Do you know of who -- who are -- of all the officers
22 that assisted you at the scene, could you state their names?

23 A. Yes, sir. Detective Moore was one. Master patrolman
24 Simmons was another. Patrolman Tinsley was another officer
25 that was there. Patrolman Garrison was the ones that I

1 remember being on the scene.

2 Q. Okay. Do you know if any of those had taken any
3 pictures or --

4 A. I do not know.

5 Q. Okay. All right.

6 You say that you spoke -- you approached -- you say
7 that you spoke with Ms. -- you made contact with Ms.
8 Callahan, Ms. Smith, and Ms. Patterson, and Ms. Day?

9 A. No, sir, I did not.

10 Q. This is -- your incident report, that's what it says.
11 Right here? Officers made contact?

12 A. Yes, officer did. I did not.

13 Q. Okay. So you stated that in your incident report, your
14 initial report?

15 A. Yes, sir.

16 Q. Okay. All right.

17 Can you tell me what officers spoke with them?

18 A. Yes, sir, the officers that I named.

19 Q. Okay.

20 A. Prior to.

21 Q. And did you notice anything odd about any of the
22 vehicles that, say, registration or anything?

23 A. No, sir, I did not.

24 Q. Okay. Did you notice anything odd about like tags or
25 anything like that?

1 A. No, sir.

2 Q. Okay. Let's say, did Ms. Williams, who advised -- did
3 Ms. Williams advise while she was pulling in the parking lot
4 that she was struck by a white Ford pickup?

5 A. To the best of my recollection, yes.

6 Q. Did she state that a driver, a black male, then exited
7 the truck and then ran over to a red Lincoln, which was
8 stationary in the car wash running and jumped inside and
9 left headed south?

10 A. No, sir, it was a Chrysler, not a Lincoln. The Lincoln
11 was struck. The Chrysler was taken.

12 Q. So that would be an error in your report?

13 A. Can I take a look?

14 Q. Black Lincoln?

15 A. She said she was pulling into the parking lot with the
16 black Lincoln. She was in a black Lincoln.

17 Q. Okay. She said --

18 A. And was struck by a white Ford pickup.

19 Q. Okay. She stated driver had black male and exited the
20 truck and ran over to a red Lincoln?

21 A. Yeah, that's -- that's an error.

22 Q. That's an error?

23 A. It is an error.

24 Q. Thank you, sir.

25 And -- okay. So was the -- was it a black Lincoln or a

1 red Lincoln, or was it a red Chrysler or a black Chrysler?

2 A. What are you referring to, which vehicle?

3 Q. The one that she is saying the suspect jumped out of
4 and got into.

5 A. She told me that the suspect jumped out of a white
6 truck and ran to a red Lincoln -- or a red Chrysler, I'm
7 sorry. A red Chrysler 300 is what the suspect ran to.

8 Q. So it was a red Chrysler 300 instead of a --

9 A. She was in a --

10 Q. Red Lincoln --

11 A. -- black Lincoln and the suspect ran from a white truck
12 to a red Chrysler 300.

13 Q. Okay. So -- okay.

14 All right. And I have got some questions here.

15 Did you do the booking report?

16 A. Yes, I did.

17 Q. Okay. And this would be the charges that you booked
18 the suspect in on?

19 A. Can you read them to me?

20 Q. It's leaving the scene of an accident; grand larceny,
21 value \$5,000 or more, 23H161330; and possession of
22 methamphetamine, 44-53-375(a)?

23 A. That's correct.

24 Q. That the booking report?

25 A. That's correct, I did.

1 Q. Okay. So these are the charges that you booked the
2 suspect in on?

3 A. I did.

4 Q. All right.

5 A. That night these are the charges booked.

6 Q. Okay. When you got to the scene, did you notice
7 anything, any drugs or items in any of the vehicles;
8 magazines, anything?

9 A. I didn't look in the vehicles.

10 Q. You didn't search them?

11 A. No, sir, I did not.

12 Q. Okay. Do you know if any other officers searched them?

13 A. I do not know.

14 Q. Okay. Was you the investigator -- you were just the
15 officer that responded to Frank's Car Wash, right?

16 A. That's right.

17 Q. Okay. Was you also at the second crime of the World
18 Finance too?

19 A. No, sir, I was never at World Finance.

20 Q. Okay. Can you explain where you observed the
21 officers -- where you observed the two cars collided, which
22 way they was collided into?

23 A. Yes, sir. The initial -- the bay in Frank's Car Wash,
24 just to the right of the bay as you are looking at the bay,
25 the Ford truck was facing toward the lube shop --

1 Q. Okay.

2 A. -- as well as the Lincoln.

3 Q. Okay.

4 A. The driver's side door of the truck --

5 Q. Okay.

6 A. -- had collided with the passenger's side of the
7 Lincoln.

8 Q. Okay. So you are not the arresting officer.

9 And you did not transport suspect to the jail?

10 A. No.

11 Q. Okay. And did you find any evidence of the victim,
12 like property of the victim or suspect, in any of the
13 vehicles?

14 A. I didn't look in the vehicles.

15 Q. Okay. All right.

16 And could you state your badge number for me?

17 A. 1416.

18 Q. Okay. And when you got there was the suspect there?

19 A. Where?

20 Q. At -- when you got to the crime scene.

21 A. Where are you talking about?

22 Q. At the crime scene at Frank's.

23 A. No.

24 Q. You was only at one crime scene, right?

25 A. I was at Frank's.

1 Q. Okay.

2 A. Yes, sir.

3 Q. And what time would you say it was when you arrived at
4 this scene?

5 A. Approximately 4:00 to 4:30.

6 Q. And in military time what time would that be?

7 A. It would be 16:30, or 16:00. Between 16:00 and 16:30.

8 Q. Okay. So you did the incident report, but -- I mean
9 you did the booking report and you wasn't the arresting
10 officer?

11 A. When you asked arresting officer, what are you
12 referring to? The actual officer that put handcuffs on the
13 suspect?

14 Q. Yes, the arresting officer that did the -- put the
15 handcuffs on.

16 A. No, I did not put handcuffs on the suspect.

17 Q. Okay.

18 A. I did complete the booking report.

19 Q. All right. So which -- and -- all right.

20 Which one is supposed to complete the booking report,
21 the arresting officer or the --

22 A. It's not -- it's not set in stone either way, as long
23 as the paperwork is completed properly.

24 Q. So anybody can complete it?

25 A. A police officer can, yes.

1 Q. Okay. So can you state of anything that was found on
2 the officer -- or on the suspect?

3 A. No, sir.

4 Q. Okay. What time would you state that the suspect was
5 booked in at the jail, or booking -- or the booking report
6 was done?

7 A. What time was the suspect taken to jail, or what time
8 did I complete the booking report?

9 Q. Yeah, or what time was the suspect taken to jail?

10 A. Approximately thirty minutes to an hour after the
11 initial call.

12 Q. Okay. All right.

13 Is it true that the time of your booking report is as
14 states right here at 16:40?

15 A. Yes, sir.

16 Q. Okay. So you didn't search the suspect and you didn't
17 arrest the suspect, but you did the booking report?

18 A. Yes, sir.

19 Q. And you did the booking report -- where did you -- how
20 were you notified of the charges to charge the suspect with
21 to book him in?

22 A. I spoke with several officers on the scene at World
23 Finance --

24 Q. Okay. Could you --

25 A. -- and they relayed the information to me.

1 Q. Okay. Could you state which officer you spoke with?

2 A. Yes, sir, Captain Butler.

3 Q. Captain Butler?

4 A. Yes, sir.

5 Q. So Captain Butler would be at World Finance?

6 A. That's correct.

7 Q. And he's the captain over the city?

8 A. Captain over the shift that was working that particular
9 day.

10 Q. So does Captain Butler work for the city or the county?

11 A. He works for the city.

12 Q. Okay. So captain -- when you spoke with Captain
13 Butler, what did he advise you?

14 A. He advised me of the situation that took place at World
15 Finance, and I advised him of what we had at Frank's Car
16 Wash.

17 Q. Okay. And when he advised you of the situation that
18 took place and what to book the suspect in on, what charges
19 did he advise you to book the suspect in?

20 A. He advised me at the time of the arrest of grand
21 larceny, possession of meth, leaving the scene of an
22 accident.

23 Q. Okay. So he did not state anything to you about
24 booking the suspect in on grand larceny, or trafficking
25 methamphetamine, or carjacking?

1 A. He did grand larceny at that particular time, yes.

2 Q. Okay. What about trafficking methamphetamine or
3 carjacking?

4 A. Not at the time, not trafficking, but possession at the
5 time.

6 Q. Okay. So -- all right.

7 And so you are the -- you did the booking report. Did
8 you type the warrant?

9 A. No, sir.

10 Q. Did you -- did Officer Garrison type a warrant up?

11 A. I do not know who typed the warrant.

12 Q. Okay. And you say that you spoke with captain who?

13 A. Butler.

14 Q. That was to advise you of the charges?

15 A. Yes, sir.

16 Q. Okay. And you didn't type up the warrant?

17 A. No, sir.

18 Q. So do you know if Captain Butler typed up the warrant?

19 A. I do not know who typed the warrant.

20 Q. Okay. Can you state what dispatch provided you -- the
21 information dispatch provided you with?

22 A. At what time?

23 Q. At any point in time when you was going to the scene
24 and the time that you found out that a vehicle was stolen?

25 A. The initial call was a truck had been stolen from

1 Chick-fil-A on the bypass --

2 Q. Okay.

3 A. -- and it was headed toward Montague Avenue.

4 Q. Uh-huh.

5 A. While we were responding -- while the city officers
6 were responding we were told then that the suspect in the
7 white truck had pulled into Frank's Car Wash and gotten in
8 in a red Chrysler 300 --

9 Q. Uh-huh.

10 A. -- and was southbound.

11 Q. Okay.

12 A. That's when I arrived at Frank's Car Wash, just minutes
13 after we were advised of that.

14 Q. Okay. So you wasn't -- you wasn't informed that it was
15 a carjacking? It was a stolen vehicle, not a carjacking?

16 A. At the time we were -- we were told that the truck was
17 stolen from Chick-Fil-A. While en route dispatch advised us
18 that the suspect had stopped at Frank's, had got into
19 another vehicle, which was a Chrysler 300, and left
20 southbound.

21 Q. Okay. So basically they advised you it was basically a
22 theft of a motor vehicle?

23 A. They didn't advise us that. They told us what I just
24 told you. That's exactly how it came out.

25 Q. If you was to put it in law terminology, a stolen

1 truck, wouldn't that be what the law quotes -- wouldn't it
2 quote theft of a motor vehicle?

3 THE COURT: He's not a lawyer. That's not a fair
4 question to ask him.

5 MR. FRAZIE: Well --

6 THE COURT: The indictments are the charging
7 documents in this case.

8 Ask another question.

9 MR. FRAZIER: Okay.

10 BY MR. FRAZIER:

11 Q. Well, from your terminology of working in the law
12 enforcement, if a person stole a truck, what would you
13 charge them with?

14 A. It depends on how much it's worth.

15 Q. Okay. If a person stole a truck from somewhere and you
16 booked them in, wouldn't it -- if a person stole a truck,
17 wouldn't it be theft of a motor vehicle?

18 A. It could be. It depends on the circumstances.

19 Q. Okay. And -- so when you was notified that a vehicle
20 was stolen, where was you?

21 A. I was at the -- back at city hall.

22 Q. Okay. And then you went to the --

23 A. I got in my patrol car and began heading north on
24 Montague Avenue.

25 Q. Okay.

1 Okay. So you were booking in the suspect on leaving
2 the scene of an accident and you didn't type the warrant?

3 THE COURT: You have just already asked and he
4 answered that.

5 MR. FRAZIER: Yeah, that's fine.

6 (Whereupon, Ms. Able substituting for Ms. Bolen at
7 this point for Public Defender's Office).

8 BY MR. FRAZIER:

9 Q. That pretty much does my -- thank you, sir.

10 THE COURT: Any redirect?

11 MR. BLACK: No, sir, Your Honor.

12 THE COURT: All right. You can step down.

13 MR. MORONEY: The State calls Ms. Gwendolyn
14 Callaham.

15 THE COURT: Ms. Callaham.

16 GWENDOLYN CALLAHAM, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. MORONEY:

19 Q. Good morning.

20 A. Good morning.

21 Q. Can you please state your name?

22 A. Gwendolyn Callaham.

23 Q. Okay. Ms. Callaham, do you recall back on July 9th,
24 2015, traveling the area of Frank's Car Wash in the City of
25 Greenwood?

1 A. Yes.

2 Q. Traveling in a car that day?

3 A. Yes.

4 Q. And what kind of car was that?

5 A. It was an '03 Saturn vehicle, red.

6 Q. And was that at approximately 4:30 in the afternoon
7 that day?

8 A. It was around 4:30.

9 Q. Okay. And do you recall anything unusual or out of the
10 ordinary that happened that particular day while traveling
11 on the road?

12 A. Yes, I was going to World Finance to pay on a bill and
13 this gentleman started chasing me. I heard the car when it
14 spinned around and he got right behind me and I went to -- I
15 said what in the world he's doing and he got right behind me
16 at World Finance, and so he pulled right up close to me
17 because I pulled in the parking lot, and he pulled right up
18 close to me, and then I jumped out and he jumped out and I
19 was asking him what was he doing, why was he doing this and
20 everything and he -- excuse me, he got out saying that "give
21 me my money. Give me my money."

22 I said "what are you talking about give you your money,
23 give you your money?"

24 He said "give me my money, give me my money."

25 And so me and him argued about five minutes and then he

1 started going back rambling in my car, and so that's when I
2 ran in World Finance and told them the call the police.

3 And then after he rambled on, I don't guess he found
4 anything, he came to the door. I told the guy in World
5 Finance to lock the door.

6 And so after that he come to the door and knocking on
7 the door, and so they had called the police and he was just
8 rambling in my car. So he went back out there and tried to
9 get in my car.

10 Q. And, ma'am, backing up briefly, do you recall a
11 description of the vehicle that was following behind you?

12 A. It was a Chrysler, red, 300.

13 Q. Okay. And the proximity of that individual, were you
14 still in your car when he approached you, or were you --

15 A. Yeah, we sort of got out at the same time, because he
16 started -- he opened the door and then I got out of my car,
17 because I didn't know what was going on because he had
18 pulled up so close in front of me. He wasn't even in the
19 car. He was like in the road that you come through at World
20 Finance. He was right up on my bumper.

21 Q. And you described his demeanor. Were you frightened by
22 his actions that day?

23 A. Yes, I did -- he did frighten me when he went to the
24 back of my car and started rambling, trying to find
25 something like and hollering about "give me my money, give

1 me my money." Yes, he did frighten me, so that's when -- I
2 had left my phone at home. That's when I went in World
3 Finance and told them to call the police.

4 Q. Okay. And did anything from his actions that day lead
5 you to believe that he may have a weapon or be armed?

6 A. Yes, because when we were standing inside he started
7 pulling up his pants, holding his shirt up and everything,
8 and I thought he might have had a gun then and he just
9 started urinating, so --

10 Q. Where was the individual urinating?

11 A. He was between that Chrysler -- the Chrysler that he
12 drove right up behind my car and my car.

13 Q. And you described that this was in the parking lot of
14 World Finance?

15 A. Yes, it was in --

16 Q. And is that the World Finance on 310 Calhoun Avenue in
17 the City of Greenwood, South Carolina?

18 A. That's correct.

19 Q. And, ma'am, this individual that you described who did
20 those acts, is he seated in the courtroom today?

21 A. Yes, he is.

22 Q. Could you please point that individual out?

23 A. Right there.

24 Q. And can you describe what he's wearing?

25 A. He's wearing a white shirt with like a blue necktie.

1 Q. Okay. And did you give any permission to Mr. Frazier
2 to go into your vehicle?

3 A. No, I did not.

4 Q. Did you think he may be retrieving items from there or
5 attempting to steal some items from you?

6 A. I thought he was, yes. I was thinking he was trying to
7 get something out of there, because he was hollering about
8 give him the money. I mean, give him the money.

9 Q. Thank you Ms. Callaham.

10 Please answer any questions Mr. Frazier may have for
11 you?

12 A. All right. Thank you.

13 CROSS EXAMINATION BY MR. FRAZIER:

14 Q. How are you doing today, Ms. Callaham?

15 A. I'm doing great. How about yourself?

16 Q. I'm doing okay.

17 A. That's good.

18 Q. You -- when you -- upon this incident that happened at
19 World Finance?

20 A. Uh-huh.

21 Q. Okay. Do you remember the officer that responded to
22 the scene?

23 A. I don't remember the officer's name. I know one of
24 them was a Pendergraff. Officer Pendergraff, I think.

25 Q. Okay. Did you give a statement to an officer?

1 A. Yes, I did.

2 Q. Was it written?

3 A. Yes, it was.

4 Q. Okay. And -- so you did give a statement to the
5 officer?

6 A. Yes, I did.

7 Q. Do you remember which officer it was?

8 A. No, I do not.

9 Q. And -- okay. At World Finance what -- could you
10 explain to me what you seen?

11 A. What do you mean what I seen?

12 Q. What you seen at the time of you pulling up and jumping
13 out of your vehicle.

14 A. I seen you get out of the car at the same time just
15 about when I got out and I was fussing, asking you what in
16 the world you were doing. You was telling me to give you
17 your money. And I was asking you what money, and we argued
18 about five minutes and then you went behind in my car and
19 opened my trunk and started looking and rambling in my car
20 and that's when I ran into World Finance and told them to
21 call the police.

22 Q. Okay. Would you say the suspect broke anything in your
23 car?

24 A. No, you didn't. You didn't break nothing, but you
25 rambled it up, like you were rambling and messed all my

1 stuff up in the back of my car.

2 Q. Okay. So the suspect just basically looked around?

3 A. You was rambling in my car.

4 Q. Okay. All right.

5 Would you say -- okay, when you -- when you tried to
6 get -- when you got out of your car -- did you get out
7 before the suspect came up, or did you get out after the
8 suspect came up?

9 A. We got out about the same time. You got out and I got
10 out, because I was wondering what was you doing that close
11 up under my car.

12 Q. Okay. And what happened when -- what happened when you
13 got -- what did you do when you got out?

14 A. I got out and asked you what was you doing in my car,
15 what was you doing.

16 Q. You got out and you asked the victim (sic) what was he
17 doing in your car -- I mean suspect?

18 A. I asked you what was you doing, because you had came so
19 close up under me in the car, in the Chrysler. You drove
20 right close up under my car and I was asking you what in the
21 world was you doing, because you had me blocked in, I
22 couldn't get out.

23 Q. And after you told the suspect what was he doing, what
24 did you do?

25 A. Nothing, but we were standing up there arguing. That's

1 when you went in my car and opened my trunk and started
2 rambling in it.

3 Q. Okay.

4 A. I went in the World Finance to call the police.

5 Q. You went in World Finance to call the police?

6 A. Yes.

7 Q. Okay. Did the suspect look in your trunk? Did he open
8 your driver's side door?

9 A. No, I had opened the driver's side door.

10 Q. And that's where you exited the vehicle?

11 A. That's where I exited the vehicle.

12 Q. When you exited the vehicle, could you state where the
13 suspect was standing?

14 A. Right beside -- right behind the back -- right at the
15 back door on the driver's side.

16 Q. At the back door on the driver's side?

17 A. Uh-huh.

18 Q. And -- of your vehicle?

19 A. Of my vehicle.

20 Q. And you exited and ran into World Finance?

21 A. Not at the present time. Me and you stood up there and
22 argued about five minutes and then you went back down and
23 started rambling in my car. And then after I seen you
24 rambling in my car, that's when I went in World Finance.

25 Q. Okay. So the suspect only opened up one door, the back

1 hatch of your car?

2 A. You opened up the back hatch of my car.

3 Q. Okay. And the suspect just started looking around in
4 there?

5 A. You started looking around in there. After I went in
6 World Finance you went out there and got in my car.

7 Q. Okay. Where -- did the suspect -- did the suspect take
8 anything out of your car?

9 A. No, you didn't.

10 Q. Did he break anything in your car?

11 A. No, he didn't. He didn't have time because the
12 policeman was there in less than a minute.

13 Q. Okay. So where did -- at the time he got in your car,
14 where did he enter your car at?

15 A. He got in the -- in the driver's side when we was in
16 World Finance.

17 Q. What would you call getting in your car?

18 A. Getting in, shutting the door, doing like you getting
19 in the car to drive.

20 Q. And what did he do then?

21 A. I was inside World Finance. I was -- all I could see
22 was you down fumbling like you was trying to hide or looking
23 for something at the bottom. I -- I really couldn't say
24 what you was doing in there.

25 Q. Okay.

1 A. I can only tell you what I seen.

2 Q. Okay. When you exited -- when you exit your car -- was
3 you -- did you lock your doors or anything?

4 A. No, I did not.

5 Q. Okay. And was -- was anything damaged on your car?

6 A. No, it was not.

7 Q. Okay. And do you believe -- do you -- did the suspect
8 take your car or anything?

9 A. No, you didn't take it, but you attempted to take it.

10 Q. Okay. So basically the suspect just got in there,
11 driver's seat, looked around, and then got out?

12 A. No, you didn't get out. The police came then. Then
13 when the police came you got out.

14 Q. And when the police came the suspect got out and what
15 did the suspect do?

16 A. They arrested you.

17 Q. Right there at your -- at your vehicle?

18 A. Yes, they did.

19 Q. You said that you seen the suspect pulling up his shirt
20 like he had a weapon or anything?

21 A. Yes, I did, when I was inside of World Finance.

22 Q. Okay. And then what happened after that?

23 A. Well, I told -- after you pulled it up, you urinated,
24 because I thought you had a gun. That's when I was telling
25 them to lock the door inside World Finance.

1 Q. Okay. Where did the suspect urinate?

2 A. You urinated between my car and the 300 -- the 3000 or
3 300 car.

4 Q. Okay. Did you see suspect urinate on a tire?

5 A. Well, it might have splashed on the tire. I was inside
6 the World Finance. I couldn't really see that far out, so
7 it might have splashed on there. You was that close to
8 them.

9 Q. Okay. Well, did the suspect urinate on the tire or in
10 between the Chrysler 300 and --

11 A. You was urinating right at the back of the tire of the
12 car. Now, I don't know if it splashed on it or what. You
13 know, I couldn't see that far. I was inside.

14 Q. And can you remember what date this was?

15 A. No, not right offhand.

16 Q. Do you remember what day it was?

17 A. No. I think it was like on a Friday. I'm not for
18 sure.

19 Q. Okay. Around what time would you think?

20 A. It was around 4:30.

21 Q. Okay. And how long was you at World Finance before the
22 police arrived?

23 A. Well, we was -- we had just drove up before the
24 incident happened. And then, like I say, you got out and --
25 I got out and you got out. I would say maybe about a few

1 minutes.

2 Q. Okay. Did you -- did you manage to get around the
3 suspect and lock your truck or your jeep with a keyless
4 entry?

5 A. No, I did not lock the door.

6 Q. That's about it. Thank you.

7 THE COURT: Okay. Anything on redirect?

8 MR. MORONEY: Nothing further, Your Honor.

9 THE COURT: Thank you, Ms. Callaham. You are free
10 to go.

11 THE WITNESS: Thank you.

12 MR. BLACK: The State calls William Kay.

13 OFFICER WILLIAM KAY, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. BLACK:

16 Q. Detective Kay, can you state your full name for the
17 record?

18 A. William Kay.

19 Q. Okay. And where do you work?

20 A. The Greenwood Police Department.

21 Q. And what is your job there?

22 A. I'm currently in investigation.

23 Q. How long have you been with the Greenwood Police
24 Department?

25 A. Since May of 2007.

1 Q. Have you worked anywhere else other than the Greenwood
2 Police Department?

3 A. No, sir, not in law enforcement.

4 Q. Okay. You went to the academy? You are certified?

5 A. Yes, sir, I did.

6 Q. Were you working on July 9th of this year?

7 A. Yes, sir, I was.

8 Q. And were you working that afternoon?

9 A. I was.

10 Q. And did you respond to a call at the World Finance?

11 A. I did.

12 Q. Do you remember about what time that you arrived?

13 A. A little bit after 4:30.

14 Q. Did you go anywhere else, or is that the only place
15 that you responded to?

16 A. Once it was all over I believe I walked to Frank's Car
17 Wash, because I rode with Detective Moore and he was up
18 there.

19 Q. Can you describe what you saw when you got to World
20 Finance?

21 A. When I arrived at World Finance Officer Trotter had the
22 suspect, walking him back to his car. The suspect was
23 jumping around, pulling -- pulling -- Officer Trotter was
24 trying to maintain control of him and get him into the back
25 seat of his car. Once he got him into the back seat of his

1 car I walked -- I continued over to where the victim's
2 vehicle was and vehicle that the suspect was driving. Once
3 I got there I noticed that there was a red Saturn SUV pulled
4 into the parking spot, as well as a red Chrysler 300 pulled
5 directly up behind it.

6 Q. About how close were the vehicles?

7 A. The Chrysler was maybe two feet from the bumper of the
8 Saturn.

9 Q. Was it blocked in? Could the Saturn leave?

10 A. The Saturn couldn't leave. It was up against the
11 building in the front and then the Chrysler 300 was directly
12 behind it.

13 Q. What else did you do when you first arrived after you
14 noticed Trotter with the defendant?

15 A. Once they got him in the car I began talking to Ms.
16 Callaham and asked her what happened.

17 Q. And where was she located?

18 A. She was standing out -- I think when I arrived -- by
19 the time I arrived there was numerous police officers there
20 and there were several other businesses in the area, so
21 there was a lot of people standing out in the parking lot,
22 so I believe she was standing out near her car.

23 Q. And you got a statement from Ms. Callaham?

24 A. I talked to her. I don't believe I got a written or
25 recorded statement, but she did tell me what happened.

1 Q. And describe her demeanor.

2 A. She was upset, you know, nervous, and just I think kind
3 of baffled that she didn't know the suspect and he kept
4 mentioning, you know, "where is my money?" And she just
5 kept saying to me "I don't even know who he is. I don't owe
6 you him any money. I don't know what he wanted."

7 Q. Did you notice the vehicle that she was driving, Ms.
8 Callahan was driving?

9 A. I did.

10 Q. Can you describe kind of what was going on with that
11 vehicle?

12 A. It was a red SUV.

13 When I arrived the back hatch of it was open, as well
14 as the front driver's side door. And it's kind of got some
15 stowed vehicle compartments in the back, some little
16 compartments that you raise up and some of them were open,
17 but there was nothing really in the back of the car, other
18 than those compartments being open.

19 Q. Was the car cluttered, or papers everywhere, or can you
20 describe what you saw inside the vehicle?

21 A. I don't remember seeing papers everywhere inside. It
22 seemed that it was -- it was fairly tidy on the inside.

23 Q. And World Finance, is that located within the city
24 limits?

25 A. It is.

1 Q. Is it 310 Calhoun Avenue, Unit E?

2 A. Yes, sir, it is.

3 Q. The gentleman that was under arrest when you arrived,
4 is he here in the courtroom today?

5 A. He is.

6 Q. Can you point him out for us?

7 A. It's Mr. Frazier with the white shirt and tie.

8 Q. Did you do anything else in your investigation when you
9 arrived at World Finance?

10 A. I went inside. I spoke with the county officer who was
11 on the scene and he told me that he had -- he had spoke with
12 two people inside and that they were going to give me a
13 statement, so I went inside World Finance and provided the
14 two employees inside a written statement to fill out.

15 Q. Did you take any pictures at the scene?

16 A. I did take pictures. I took pictures of the front of
17 World Finance and then the two cars.

18 Q. And what did you take pictures with?

19 A. I took them with my personal cell phone.

20 Q. Do you have those pictures any more?

21 A. I don't. Sometime between then and now they were
22 deleted and not attached to the case file.

23 Q. No further questions.

24 Answer any questions Mr. Frazier might have for you.

25 A. Yes, sir.

1 CROSS EXAMINATION BY MR. FRAZIER:

2 Q. Speak your full name for me, please.

3 A. William Kay.

4 Q. Is this the supplemental report of the World Finance
5 with your name on it?

6 A. Yes, sir, it is.

7 Q. Okay. Could you state what happened at World Finance
8 when you got there?

9 A. When I arrived --

10 Q. Or when you arrived?

11 A. When I arrived Officer Trotter had you in handcuffs
12 taking you to the back of his patrol car and you were moving
13 around, kind of jumping back and forth, and he was trying to
14 maintain control of you and get you into the car.

15 Once he got you into his car, I then walked over to
16 where the victim was standing and began to speak with her.
17 And once I got done speaking with her, I went inside the
18 World Finance and spoke with the two witnesses who were
19 employed there.

20 Q. All right. How long have you been working in the
21 investigation department for the city?

22 A. In investigations, I would say about two years.

23 Q. Two years?

24 A. Yes.

25 Q. Two years, or about?

1 A. I'm not sure of the exact date.

2 Q. All right. So you said when you got there investigator
3 who -- I mean officer who?

4 A. Trotter.

5 Q. Okay. Do you see him anywhere in here today?

6 A. I do. He's sitting over there.

7 Q. Okay. All right.

8 And when you arrived where was the suspect?

9 A. He was being walked from the area of the two vehicles,
10 the vehicle that you were driving and then the victim's
11 vehicle. You were being walked from that area to Officer
12 Trotter's vehicle.

13 Q. Okay. Is it true in your incident report you spoke
14 that "upon arrival suspect was already placed in
15 investigation detention"?

16 A. That's correct.

17 Q. What would you call investigative detention?

18 A. Investigative detention is more or less used just to
19 control the situation. You don't have enough to arrest the
20 suspect at that time, but for the safety of you, the
21 suspect, and everybody else you detain the suspect, put
22 handcuffs on him just to prevent anything from escalating.

23 Q. Okay. All right.

24 When you arrived at the scene what did you hear which
25 way that Mr. Gwendolyn -- when you speak with Ms. Gwendolyn

1 Callaham, which way -- what did she tell you?

2 A. She told me that she was traveling on Montague Avenue.
3 She was traveling north on Montague Avenue when she seen a
4 red Chrysler 300 doing an aggressive U-turn behind her and
5 began to follow her.

6 She said that she pulled into the parking lot of World
7 Finance and parked in a parking space in front of the
8 building and that the suspect pulled immediately behind her
9 vehicle and jumped out of the vehicle and began yelling
10 "where is my money? Where is my money?"

11 Q. Okay. Did you take a statement from Ms. Gwendolyn?

12 A. I spoke with her. I don't believe that I took a
13 written statement or a recorded statement from her.

14 Q. Okay. And could you give me a reason why you didn't
15 take a statement?

16 A. I -- no, I -- I just didn't.

17 Q. Okay. And as an investigator isn't it part of your
18 duty to investigate the scene, take statements, that sort?

19 A. A lot of times we do take statements. For whatever
20 reason, I don't know, I just -- I didn't do it. It was
21 chaotic at the time. There was -- there were people
22 everywhere. Everybody wanting to come to us to tell us what
23 they seen and I just didn't get a statement from her.

24 Q. Okay. And you didn't -- you don't feel that Ms.

25 Gwendolyn Callaham's, what she told you, advised you of was

1 needed for -- important for a conviction or proof that this
2 happened?

3 A. I believe it was, but at the time I just didn't get a
4 statement from her. She told me what she said. Had I got a
5 statement from her, she still would have had to come and
6 testify today.

7 Q. Okay. And by you feeling that it was, why didn't you
8 take a statement?

9 THE COURT: He's already said he didn't --

10 MR. FRAZIER: Okay.

11 THE COURT: -- so that's been asked and answered.

12 MR. FRAZIER: All right.

13 THE COURT: No question -- no statement taken
14 other than an oral statement.

15 BY MR. FRAZIER:

16 Q. Okay. Ms. Gwendolyn asked you -- told you that the
17 suspect said where is his money, or something? Is that what
18 she stated?

19 A. Yes, sir.

20 Q. And when you arrived at the scene, where was the cars?
21 Like how was the cars there when you arrived at the scene?

22 A. Her vehicle was pulled into one of the parking spots
23 directly in front of the World Finance and then the Chrysler
24 300 was pulled maybe two feet from her rear bumper.

25 Q. Okay. And could you explain -- so you did take

1 pictures of the --

2 A. I did. I took pictures of the building, as well as the
3 two cars.

4 Q. Okay. And when you took the pictures then and after
5 the scene was over with what did you do with the pictures?

6 A. The pictures were taken on my personal cell phone,
7 because at the time I didn't have a camera. We -- we left
8 the office -- we rushed out of the office to go assist the
9 county --

10 Q. Uh-huh.

11 A. -- and none of us took a camera with us. We were
12 all -- most of the manpower we had was on the scene and
13 nobody brought a camera with us, so I just used my cell
14 phone, and they were on my cell phone.

15 Q. Okay. And when you got back to the station why didn't
16 you put the camera -- the pictures that you took on the cell
17 phone to a computer and put it into evidence?

18 A. I should have. I just didn't at the time. I was going
19 to do it at a later time. I felt that it would be okay on
20 my cell phone and not, you know, get deleted or anything.

21 Q. Could you explain to me what you think happened to the
22 pictures of your cell phone?

23 THE COURT: He already said they got deleted.
24 They are gone.

25 MR. FRAZIER: Okay.

1 (Whereupon, Assistant Public Defender Patricia
2 Bolen and Assistant Public Defender Elizabeth Able both in
3 courtroom assisting Mr. Frazier)

4 BY MR. FRAZIER:

5 Q. Okay. Did you take any more statements at World
6 Finance?

7 A. I got the written statement from two employees who were
8 inside. I didn't really speak with them. A county officer
9 who just responded to help, he went in and initially talked
10 to them and he told me, "hey, there is two ladies in here.
11 They will give you a written statement if you have a form
12 for them to fill out," so I handed them a form and they
13 completed it and gave it back to me.

14 Q. Okay. And so you felt like the other two witnesses or
15 employees of World Finance statements was important or
16 needed, but you didn't feel like Ms. Gwendolyn Callaham's
17 statement was needed?

18 A. The other officer asked me to give them a statement
19 form, so I gave them one. I didn't -- I didn't think
20 anything about getting one from Ms. Callaham at the time.

21 Q. Okay. All right.

22 Did you speak with anyone else at the scene?

23 A. The gentleman named Charles Schultz approached me just
24 to let me know that he was traveling on Calhoun Avenue and
25 that he witnessed the red Chrysler do a U-turn and almost

1 caused several wrecks in the intersection of Calhoun and
2 Cambridge.

3 Q. Okay. Do you see that person here today?

4 A. No, he's not here today, I don't believe.

5 Q. Okay. Did you take a statement from him?

6 A. No, sir, he just walked up and told me and said "hey, I
7 just want to let you know I seen this," and I got his name
8 and date of birth and he walked away.

9 Q. Okay. So when you got to the scene, the suspect was
10 being walked to the car?

11 A. That's correct.

12 Q. Okay. Did you -- do you know if the suspect was
13 searched at the scene?

14 A. I'm not sure. I didn't see the suspect searched at the
15 scene, so I don't know.

16 Q. Okay. Was the suspect -- oh, he was being walked.

17 All right. Was -- after the suspect -- after you got
18 there -- how many police officers would you say responded to
19 the World Finance scene?

20 A. There were maybe eight at the World Finance, roughly.

21 Q. Okay. You say maybe eight?

22 A. Maybe so.

23 Q. Do you think it was more?

24 A. I -- I'm not sure. I can't say exactly how many were
25 there. I know there was several.

1 Q. Okay. Okay. When --

2 Okay. Do you know if any of the officers that were
3 there assisting you, do you know if any of them had body
4 cams or the cameras on the car of the scene, of the crime
5 scene what happened?

6 A. I'm not sure. I don't know if they did or not.

7 Q. Did you have a body cam, or --

8 A. No, sir, I didn't.

9 Q. -- any recording of crime scene what happened?

10 A. No, sir.

11 Q. Do you think that it was that in the procedure that
12 officers are supposed to have body cams or recordings
13 of the --

14 THE COURT: That's not before the court. That's a
15 new rule that just come into effect. That's not relevant.

16 MR. FRAZIER: Okay.

17 BY MR. FRAZIER:

18 Q. Okay. Is it true -- are you the officer that came to
19 my preliminary hearing?

20 A. I am.

21 Q. Okay. Can you say what happened at the preliminary
22 hearing?

23 THE COURT: That's not relevant either.

24 Ladies and gentlemen, just so y'all know, I'm
25 going to try to help Mr. Frazier.

1 The criminal process has numerous steps. There is
2 an arrest, a person is detained, they have a bond hearing.
3 After that they can ask for a preliminary hearing in front
4 of the magistrate. Testimony has to be provided to
5 determine whether there is probable cause.

6 Subsequent to that the lawyers or the solicitors
7 take over and they examine what's been gathered by
8 investigating officers. They then determine what charges
9 they think are appropriate and they present indictments for
10 a Grand Jury to consider.

11 The Grand Jury is looking for the same issue a
12 preliminary hearing does, probable cause or not. If a Grand
13 Jury, eighteen members, at least twelve of the eighteen
14 believe there is probable cause to bind a case over for
15 trial, they vote and determine No Bill or True Bill.

16 And I said early on, Mr. Frazier, when we first
17 started that there are five indictments, all True Billed on
18 the five charges, which are allegations made by the State
19 against Mr. Frazier. He's pled not guilty. Those are the
20 allegations which y'all will consider or the ones in the
21 indictments.

22 The processes prior to that or what he's talking
23 about now, those processes took place, but that's not
24 relevant to what happened. The testimony of the witnesses
25 is the best evidence for you to consider as jurors.

1 So, Mr. Frazier, I want you to consider the
2 testimony in front of this jury, not testimony that occurred
3 in front of a magistrate, which is not relevant here.

4 MR. FRAZIER: Okay. So even though he is a part
5 of that --

6 THE COURT: You can ask him anything that you
7 want, but he's your witness. You can cross-examine him as
8 to anything, but what was said at a preliminary hearing --

9 MR. FRAZIER: Okay.

10 THE COURT: -- is not relevant --

11 MR. FRAZIER: Okay.

12 THE COURT: -- to the issues here.

13 MR. FRAZIER: Okay. I understand, Your Honor.

14 BY MR. FRAZIER:

15 Q. All right. Could you state who had the suspect in
16 investigative detention?

17 THE COURT: He's already answered that. It was
18 Trotter.

19 I'm just trying to get the questions that you
20 hadn't asked.

21 MR. FRAZIER: Okay.

22 BY MR. FRAZIER:

23 Q. Are you confused or do you know what happened?

24 A. I'm sorry?

25 Q. Are you confused today?

1 A. No.

2 Q. Do you know what happened at the scene?

3 A. I know what I seen once I arrived.

4 Q. Okay. Do you know if the suspect was searched by
5 Officer Trotter?

6 A. Again, I don't know -- I didn't see the -- I didn't see
7 Officer Trotter search you, so I'm not sure.

8 Q. Okay. Do you know if Officer Trotter found any drugs
9 on the suspect there?

10 THE COURT: That's -- don't answer that question.
11 You can ask Trotter that question, okay?

12 MR. FRAZIER: All right.

13 THE COURT: He said he didn't see the search.
14 That's an improper question for him.

15 MR. FRAZIER: All right.

16 THE COURT: The best witness is the witness who
17 claimed it.

18 BY MR. FRAZIER:

19 Q. Okay. Do you think the suspect was under the influence
20 of any drugs or anything?

21 A. He appeared to be, but I can't say for sure, but he did
22 appear to be under the influence of something. He had very
23 erratic behavior.

24 Q. When you got there did you notice any -- the suspect
25 urinating on a tire, or any urination of a tire -- on a

1 tire?

2 A. I noticed that after -- after Ms. Callaham told me that
3 the -- that you urinated, I did notice a wet spot in the
4 area she said that you urinated, like a puddle of water and
5 it was running down the parking lot.

6 Q. Okay. Was it -- was it on the tire, by the tire, in
7 between the vehicles, or by her back door?

8 A. It seems like it was near -- going from memory, it
9 seems like it was near the front tire of the Chrysler, which
10 was very close to the back of her vehicle.

11 Q. Okay. Could you -- do you know if the charges that the
12 suspect was charged with or notified he was charged of?

13 A. I do.

14 Q. Could you state them?

15 A. From the city you were charged with trafficking
16 methamphetamine, leaving the scene of an accident attended,
17 grand larceny. And I believe you may have been charged with
18 auto breaking as well from the city originally.

19 Q. Okay. When you got to the scene of the crime was
20 anything broke on the car or something, or was it a window
21 broken in, or anything?

22 A. On which vehicle?

23 Q. On Ms. Gwendolyn Callaham's vehicle.

24 A. No, just the front -- the front driver's side door was
25 open, as well as the back hatch.

1 Q. So only a door was open, so nothing was broken?

2 A. That's correct.

3 Q. Was it -- did Ms. Gwendolyn Callaham state that the
4 victim attempted to break into a window, or broke a window?

5 THE COURT: She's already testified.

6 MR. FRAZIER: Okay.

7 THE COURT: Okay?

8 MR. FRAZIER: Okay.

9 THE COURT: It's hearsay to him, so you are asking
10 him to answer a hearsay question you are asking. You have
11 already attempted to ask her, and you did.

12 MR. FRAZIER: All right.

13 THE COURT: So ask him something else.

14 BY MR. FRAZIER:

15 Q. Well, was a window broken on Ms. Callaham's vehicle, or
16 anything broken, when you got there?

17 A. No, it wasn't.

18 Q. Okay. And you were not the arresting officer?

19 A. No, sir.

20 Q. Okay. And you said Officer Trotter had placed me in
21 the investigation detention to figure out whether I was
22 going to be charged or not, so I wasn't under arrest at the
23 time when you got there?

24 A. It's my understanding when I arrived, at that point you
25 were under investigative detention, as far as I know. I

1 didn't speak with you or anything. I didn't speak with
2 Officer Trotter. I just walked straight and started
3 speaking with the victim.

4 Q. Okay. So at the time I wasn't -- you got there I
5 wasn't under arrest at the time, just under investigation at
6 this time?

7 A. I don't believe that you were. I think that you were
8 under investigative detention.

9 Q. When you got there at the scene was the suspect inside
10 the car?

11 A. No, sir, he was walking you to the car.

12 Q. Okay. And you had nothing to do with the warrants?

13 A. If I remember correctly, I signed the warrants the
14 following morning and I served them on you in the county
15 jail.

16 Q. Okay. And what was the warrants that you served?

17 A. Grand larceny, leaving the scene of an accident
18 attended, auto breaking, and trafficking methamphetamine.

19 Q. Okay. Did you serve suspect a warrant for hit and run?

20 A. I did. That's the leaving the scene of an accident.

21 Q. Okay.

22 A. It's called the same thing.

23 Q. Do you have a copy of the original warrants that you
24 served?

25 A. No, sir, I don't. I would have given a copy to you and

1 then given a copy to the judge.

2 Q. Okay. And you signed the warrants?

3 A. If I recall I signed them.

4 Q. Did you type up the warrants?

5 A. I don't think I typed them up. I think somebody else
6 typed them and I signed them, since I was going to be back
7 there for the bond hearing.

8 Q. All right. Can you state -- do you know who typed up
9 the warrants?

10 A. I don't.

11 Q. And do you remember what date you served the warrants?

12 A. It would have been the following morning, which would
13 have been July the 10th.

14 Q. So you served the warrants on July the 10th?

15 A. Yes, sir, it would have been the following morning,
16 July the 10th, when I signed them.

17 Q. Okay. On these warrants right here, is this your
18 signature and date that you dated? And the date that states
19 date that was on the 11th, said the warrants was signed and
20 you serving them?

21 A. That one is not mine.

22 These three here is my signature and they are dated
23 7-11-15.

24 Q. Can you state the date that they were signed by the
25 judge?

1 A. 7-11-15.

2 Q. And what judge signed them?

3 A. It looks like Judge Miller's signature.

4 Q. And who is the officer that typed the warrants?

5 A. I stand corrected. Captain McAllister signed the
6 warrants and I just served them.

7 Q. Okay. So --

8 A. So it's a good possibility that he typed them.

9 Q. Okay. So that would be Captain McAllister?

10 A. That's correct.

11 Q. Okay. So that would be his warrants he served? He is
12 the arresting officer?

13 A. He -- he typed the warrants.

14 A lot of times on an arrest that needs a warrant, not
15 everybody has access to get in and type the warrant.

16 Q. Okay.

17 A. So sometimes another officer will type the warrant
18 because it needs a warrant signed and they have to put on a
19 blue ticket.

20 Q. Okay. Do you -- you don't know -- you stated that you
21 don't know who typed the warrants?

22 A. I don't believe so, but since they were signed by
23 Captain McAllister, he may be the one who typed them.

24 Q. Okay. All right.

25 And you wasn't notified of no charges of theft of a

1 motor vehicle?

2 A. That's what the grand larceny would be. There is not a
3 statute for theft of a motor vehicle. The statute is
4 actually grand larceny.

5 Q. Okay. This is the booking report. Doesn't it say that
6 suspect was booked in on theft of a motor vehicles?

7 THE COURT: The booking report is not the charging
8 document. It's not relevant to what the charges were
9 brought. It's not relevant.

10 BY MR. FRAZIER:

11 Q. All right.

12 THE COURT: There is synonyms for charges.

13 MR. FRAZIER: Okay.

14 BY MR. FRAZIER:

15 Q. All right. So you are fully aware of everything that
16 happened at the crime scene?

17 A. Only from the time that I got there and what people
18 told me.

19 Q. Okay.

20 MR. FRAZIER: I rest my case, Your Honor.

21 THE COURT: All right, anything else.

22 MR. BLACK: Not from the State, Your Honor.

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

24 THE WITNESS: Thank you.

25 MR. MORONEY: Your Honor, can we approach?

1 THE COURT: Yes.

2 (Whereupon, the lawyers and Mr. Frazier approached
3 the bench for an off-the-record discussion)

4 THE COURT: All right, folks, we are going to go
5 to lunch break now. They are trying to give me preparation
6 as to how long the next witness will be and he may be a
7 little longer than shorter, all things considered, so y'all
8 go to lunch and y'all be back in the jury boom by 1:30. An
9 hour and fifteen minutes? See you at 1:30.

10 Don't discuss the case.

11 (The following takes place outside the presence of
12 the jury panel)

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: We ready to go.

16 MR. MORONEY: Yes, sir.

17 THE COURT: Are you ready, Mr. Frazier?

18 MR. FRAZIER: Give me one second.

19 THE COURT: Okay.

20 (Off the record).

21 (Back on the record).

22 THE COURT: Bring the jury in.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right, call your next witness.

1 MR. MORONEY: Yes, Your Honor.

2 The State calls Officer Donald Trotter.

3 OFFICER DONALD TROTTER, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. MORONEY:

6 Q. Good afternoon, sir.

7 A. How are you doing?

8 Q. Could you please state your name?

9 A. Donald Trotter.

10 Q. Okay. And where are you employed?

11 A. The Greenwood City Police Department.

12 Q. And how long have you worked there?

13 A. Since August of 2008.

14 Q. And do you have any law enforcement certifications with
15 the state?

16 A. Yes, sir. Criminal Justice Academy.

17 Q. Okay. Is that in Columbia, South Carolina?

18 A. That's right.

19 Q. Okay. Were you employed at any other law enforcement
20 agency before the City of Greenwood?

21 A. I did work for hospital security prior to that.

22 Q. Okay. And your current assignment with the City of
23 Greenwood Police Department?

24 A. I work in the warrants division.

25 Q. Okay. Officer Trotter, do you recall working the

1 afternoon of July 9th, 2015?

2 A. Yes, sir.

3 Q. Working at approximately 4:30 in the afternoon that
4 day?

5 A. Yes, sir.

6 Q. Did you receive any call or do you recall anything
7 unusual that you responded to or assisted on that day?

8 A. Yes, sir, there was a call that come out of a stolen
9 vehicle from Chick-fil-A that was headed into the city on
10 Montague.

11 Q. And did you have the opportunity to locate that vehicle
12 or any suspect involved in that incident?

13 A. I was on -- I happened to be on Hampton and Cambridge
14 when I seen a subject standing beside the road waving and
15 pointing towards the finance place up there, and I went -- I
16 then went to that parking lot.

17 Q. And was this finance place the World Finance
18 Corporation at 310 Calhoun Avenue, Unit E, in Greenwood?

19 A. Yes, sir, it was.

20 Q. Located in the city and county of Greenwood?

21 A. City of Greenwood, yes, sir.

22 Q. And upon seeing people flag you down, what happened
23 next?

24 A. As I pulled into the parking lot of World Finance I
25 noticed a red in color Chrysler 300 parked in the driveway

1 behind another vehicle. At that time I saw the subject.

2 Once the subject saw me he run towards the car that was in
3 front of the Chrysler, that the Chrysler was parked behind
4 it, and got in that vehicle.

5 Q. Do you recall the description of that vehicle that was
6 in front of the Chrysler?

7 A. No, I do not.

8 Q. And what happened next?

9 A. When I pulled up, I got out -- like I say, I pulled up
10 and saw the subject run to the car, the car in front of the
11 Chrysler. I got out, and he had gotten into the driver's
12 side of that vehicle. I got out and over the radio there
13 was a dispatch said there was possibly -- he probably had a
14 weapon. So I -- you know, I prepared. You know, I
15 approached the vehicle and I advised the subject to let me
16 see his hands. He was moving around in the vehicle. I
17 advised him to see his hands. He did not comply at that
18 time, so I advised him again a second time and he did let me
19 see his hands through the open window of the driver's side
20 door. At that time I went and opened the door and took the
21 subject out.

22 Q. Do you see that subject here in the courtroom today?

23 A. Yes, sir, I do.

24 Q. Could you please point him out and describe what he's
25 wearing?

1 A. He's wearing a white shirt, necktie. The subject is
2 Mr. Frazier.

3 Q. Okay. And what happened next as he exited the vehicle
4 when you had him come out of the vehicle?

5 A. I took him out of the vehicle and, of course, I told
6 him, you know, put his hand on the vehicle. I done a
7 pat-down for weapons. I did not search the pockets or
8 anything, but I just did a pat-down for bulky items and the
9 waistband for a weapon. At that time he was then placed in
10 investigative detention.

11 Q. Were you able to retrieve an ID from him or anything
12 like that?

13 A. I did get an ID out of his back pocket.

14 Q. Okay. But you didn't complete a search of him?

15 A. No, I did not.

16 Q. Okay. Was your main concern at that point officer's
17 safety?

18 A. Officer's safety for weapons.

19 Q. Okay. And what happened next after he was placed in
20 the handcuffs?

21 A. Captain Butler came up and, you know, we was -- they
22 was trying to find out what was going on and what had
23 happened.

24 Then we -- after they had talked to some of the
25 witnesses, he was -- Captain Butler advised me to go ahead

1 and transport him to the detention center.

2 Q. And how would you describe Mr. Frazier's demeanor from
3 when you first made contact?

4 A. When I first saw him he was sweaty, moving around a
5 lot, couldn't stay still, talking -- just talking just off
6 the wall stuff. He did make some type of money and then --
7 you know, at that time.

8 Q. Would you classify him as compliant or noncompliant?

9 A. He was compliant as far as getting out of the vehicle.
10 He done everything that I told him to do at that time. You
11 know, he put his hands behind his back when I cuffed him,
12 but he -- he couldn't stay still. He was moving a lot.

13 Q. Did Mr. Frazier require any additional restraint at
14 some point that day?

15 A. As we had -- after I had escorted him to my vehicle and
16 put him in the back passenger's seat on the passenger's
17 side, we were -- it was -- I was about to take him to leave
18 for the detention center, Mr. Frazier had gotten up on his
19 seat and had his head bent over and he had his back end
20 sitting up on the ledge of the back seat. So at that time
21 myself and another officer did open the door and we did use
22 a hobble strap, which is a strap we put around their leg to
23 keep him down in the seat and keep him in his seat belt.

24 Q. And did Mr. Frazier appear to be under the influence of
25 anything at the time you were dealing with him?

1 A. He did appear to be on some kind of drugs or substance,
2 yes, sir.

3 Q. At this point Mr. Frazier is in custody. Did you then
4 transport him anywhere, or --

5 A. I did. At that time I transported him to Greenwood
6 County detention center.

7 Upon arrival at the detention center I did unstrap Mr.
8 Frazier's leg. He complied, as far as getting out of the
9 vehicle. He walked with me to the -- into the detention
10 center without any problems.

11 Once we got inside the detention center and the jail
12 staff started talking to Mr. Frazier, they called the jail's
13 nurse to see -- to look at Mr. Frazier to see what she --
14 how she felt about his -- how he was acting at that time.

15 Q. And did the nurse come immediately?

16 A. Yes, the nurse did come and advised that he would need
17 to be seen by a doctor at the hospital.

18 Q. And then what happened next?

19 A. At that time I carried Mr. Frazier back out, put him
20 in -- placed him back in the rear seat of my vehicle,
21 transported him to Self Regional.

22 Q. And at any point was he booked into the jail?

23 A. Not at that point he was not booked.

24 Q. He had been refused entry, so to speak?

25 A. That's right, yes.

1 Q. And had he been searched at all at the jail?

2 A. No, sir.

3 Q. And at this point now he is in the back seat of your
4 cruiser again?

5 A. Right, yes, sir.

6 Q. Without a hobble strap?

7 A. Without a hobble strap.

8 Q. And where was he transported next?

9 A. To Self Regional Health Care.

10 Q. And what happened next?

11 A. When we went into the emergency room and at that time
12 the nurses and security come in. They prepared him to be
13 examined by -- their procedure is to put the gown on, and,
14 you know, check him -- you know, check in the suspect's
15 belongings.

16 Q. Had Mr. Frazier been searched at the time that he
17 entered the hospital?

18 A. No, sir, he had not.

19 Q. In hindsight do you wish that he had been searched and
20 it was --

21 A. Yes, sir, I do.

22 Q. What's your explanation for him not being searched that
23 day?

24 A. Just because of the situation of possibly being a
25 weapon involved, you know, it just went -- it was a pat-down

1 just for safety and did not search his pockets.

2 Q. Would you classify this as a stressful situation?

3 A. Yes, sir.

4 Q. Was there a large law enforcement response to this
5 situation?

6 A. Yes, there was.

7 Q. And what happened next as he was in the evaluation
8 room?

9 A. Well, I stepped outside the room while security was
10 taking care of -- you know, getting him ready and the nurses
11 were doing their procedure and what they were starting, as
12 far as starting to check him out and the security officer
13 advised me they had found some drugs in his right front
14 pocket when they had taken his pants off.

15 Q. And did they hand those drugs over at all?

16 A. They give me -- they immediately handed them to me.

17 I contacted Captain McAllister that had possession of
18 some drugs that we had found on Mr. Frazier and because I
19 was standing by with the victim (sic) I couldn't leave.
20 Captain McAllister come down and took possession of the
21 drugs.

22 Q. Okay.

23 MR. MORONEY: Beg the court's indulgence for just
24 one moment.

25 (Drugs marked as State's Exhibit No. 4 for

1 identification)

2 MR. MORONEY: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. MORONEY:

5 Q. Officer Trotter, I hand you what's been marked as
6 State's Exhibit for identification No. 4 and ask you to take
7 a look at that.

8 A. Yes, sir.

9 Q. Can you describe what that appears to be?

10 A. It appears to be meth.

11 Q. And did that appear to be the same methamphetamine that
12 was handed to you that day by the Self security officer?

13 A. Yes, sir, it does.

14 Q. In the same packaging contained inside that sealed
15 evidence bag?

16 A. Yes, sir.

17 Q. And backtracking briefly.

18 A. Yes, sir.

19 Q. At the jail when he was refused and the nurse stated
20 that he needed to be treated --

21 A. Right.

22 Q. -- what was the reasoning for that?

23 A. That they felt like because of his -- the way he was
24 acting, a lot of moving his -- you know, his -- what he was
25 saying and that -- that -- and they felt like he was on some

1 kind of drug.

2 Q. And is it fair to say that your primary concern was the
3 defendant and him being in custody that day?

4 A. Yes, sir.

5 Q. All right. Did you participate in the investigation?

6 A. Not at all.

7 Q. Did you interview any witnesses?

8 A. No, sir.

9 Q. Did you interview any victims?

10 A. No, sir.

11 Q. Thank you, Officer Trotter.

12 Please answer any questions that Mr. Frazier may have
13 for you.

14 A. Yes, sir.

15 CROSS EXAMINATION BY MR. FRAZIER:

16 Q. How are you doing, Mr. Trotter?

17 A. All right. How are you doing?

18 Q. Can you state your full name for me?

19 A. Donald Trotter.

20 Q. Okay. All right.

21 All right. You can state to me what happened that --
22 from the beginning, as you just told the solicitor, the
23 prosecutor when you were arrived at World Finance?

24 A. What happened when I pulled into the parking lot?

25 Q. Yeah, what you seen and observed?

1 A. Yeah, when I pulled in the parking lot I observed a
2 Chrysler 300 parked behind another vehicle very close. I
3 observed you run to the vehicle in front of the Chrysler 300
4 and get in the front passenger's seat -- or the driver's
5 seat. At that time I advised you to let me see your hands.

6 Q. Uh-huh.

7 A. At that time you did not comply the first time when I
8 asked.

9 The second time I asked you "let me see your hands,"
10 you complied and stuck them out the window.

11 At that time I come to the vehicle and got you out of
12 the car.

13 Q. Okay. And what happened after that?

14 A. You were placed -- I did pat you down for a weapon and
15 you were placed in handcuffs.

16 Q. Okay. And I was placed in the handcuffs.

17 Did you -- you patted me down and you didn't search the
18 suspect?

19 A. No, sir.

20 Q. Okay. And could you state what happened after that at
21 World Finance?

22 A. After -- after you was handcuffed, probably ten minutes
23 we -- I took you to -- placed you in the back seat of my
24 patrol vehicle.

25 Q. Your patrol vehicle?

1 A. Right.

2 Q. All right. Did -- did you -- did you notice at any
3 time the suspect urinating of a tire or urinating on a tire?

4 A. I did not see you do that.

5 Q. You did not see a suspect urinate on a tire? Okay.

6 Okay. Well, I -- did you have anything -- you said
7 that you worked at -- for the warrants division, right?

8 A. I work for the warrants division.

9 Q. Okay. Did you have anything to do with the warrants of
10 this crime?

11 A. No, I did not.

12 Q. And can you remember what date this happened on?

13 A. I believe it was on the 7th.

14 Q. On the 7th?

15 A. I'm not sure.

16 Q. You are not sure?

17 A. No, I'm not sure of the date.

18 Q. Okay. So can you remember what -- what date do you
19 think it happened on?

20 THE COURT: Don't speculate.

21 You can show him -- you can show him something he
22 prepared to maybe refresh his memory, but he said he doesn't
23 remember, he doesn't remember.

24 BY MR. FRAZIER:

25 Q. Okay. Well, Mr. Officer, are you certified through the

1 academy --

2 A. Yes, I am.

3 Q. -- for the city police?

4 And how long have you been working for the city
5 department?

6 A. Since 2008 -- August of 2008?

7 Q. Since August of 2008?

8 A. Uh-huh.

9 Q. And upon all this happening at World Finance you did
10 not take any statements?

11 A. No, sir.

12 Q. Okay. You did not complete an incident report?

13 A. No, sir.

14 Q. Supplemental report?

15 A. No, sir.

16 Q. Do you feel that you needed to have completed one?

17 A. No, sir.

18 Q. Okay. Do you know of the officer who did complete the
19 supplemental report?

20 A. I don't know that all the officers done something. I
21 knowed Officer Caughman -- Lieutenant Caughman did do an
22 incident report.

23 Q. And upon -- once the -- once you patted the victim
24 down -- I mean the suspect down and -- and you patted him
25 down and placed him in the car, could you state what

1 happened after that?

2 A. I transferred him -- I was told by Captain Butler to
3 transport you to detention center. And when we got to the
4 detention center I did take you out of the car, put you --
5 took you in that detention center. The jail staff took over
6 at that time.

7 Q. Okay. And when you got to the detention center, how
8 was the suspect acting and what -- what was said? What was
9 going on then?

10 A. You were talking kind of -- all kind of crazy stuff.

11 Q. Do you remember kind of like some of the things the
12 suspect was saying?

13 A. No, I do not.

14 Q. Okay. And after that what -- do you remember who was
15 there when you got there at the jail?

16 A. No, sir, I do not.

17 Q. Okay. And was or was not the suspect searched at the
18 jail?

19 A. No, he was not.

20 Q. He was not searched.

21 And -- okay.

22 When you -- when the officers came in there, what was
23 their reasoning for sending the suspect to the hospital?

24 A. The nurse said you looked like you were on something,
25 some kind of drug, so she advised to the jail staff that you

1 needed to be seen by a doctor before the jail could take you
2 in.

3 Q. Okay. How many times have you arrested a person and
4 they have been under the influence and when you took them to
5 the jail and they were sent to the hospital?

6 A. Several times. I have no figures.

7 Q. Yes, sir.

8 Do they do that all the time? Is that a procedure that
9 you know about?

10 A. It's one of their procedures that if they feel like
11 somebody needs to be checked.

12 Q. Okay. Do you feel like the suspect was under the
13 influence of something?

14 A. I do, and I feel like you were.

15 Q. Okay. Okay. Did -- when you searched the suspect and
16 patted him down at the World Finance did you find any other
17 items?

18 A. I did not find anything.

19 Q. Okay. You did not find anything on him when you patted
20 him down at the World Finance?

21 A. No, I didn't find nothing on him.

22 Q. When you -- so after the hospital -- and they said the
23 suspect needed to be transferred to the hospital, state what
24 happened when you got to the hospital -- well, from
25 transferring the suspect from the jail to the hospital.

1 A. I returned you to my vehicle, put you back in the rear
2 seat of my vehicle. We went to -- went -- rode down to Self
3 Regional, got you out and carried you into the emergency
4 room. At that time the nursing staff take over, the nurse
5 take over and security come in. They called security to the
6 room that you was in.

7 Q. Okay. Did the suspect -- when you got to the hospital
8 and the nurse took over and you state that you left out,
9 what happened?

10 A. I stepped out of the room. I was at the door.

11 Q. Okay.

12 A. They were doing their procedures, as far as getting you
13 ready for being examined by a doctor. Security advised
14 the -- security was in there removing your clothing. Then
15 they advised me that they had found drugs on -- in your
16 right front pocket.

17 Q. Okay. So the suspect -- you said the hospital nurses,
18 they were removing the suspect clothing?

19 A. Yes, sir.

20 Q. And did you see them remove the clothing?

21 A. I was standing at the door and they were removing your
22 clothes, yes.

23 Q. And do you know of why the suspect clothes was removed
24 from him?

25 A. That's their procedure.

1 Q. And so the suspect did, in fact, go to the hospital
2 fully dressed?

3 A. Yes, sir, you did.

4 Q. Okay. And when he got to the hospital, you stepped
5 out, you said. And after you stepped out and security came
6 in, do you know who the security officer was and the nurse
7 that was there? Do you remember their names?

8 A. I do not at that time.

9 Q. Okay. What did you see the security officer do when he
10 came in and you were standing at the door?

11 A. He was taking your -- him and another officer, security
12 officer at the hospital, was taking your -- removing your
13 clothing and put in a gown, the hospital gown on you.

14 Q. Okay. Did the suspect cooperate or was he fighting?

15 A. No, you were not fighting.

16 Q. Okay. And do you know why the security guard searched
17 the suspect at the hospital?

18 A. That's their normal procedure.

19 Q. Okay. And -- and where did the security guard state he
20 found the drugs?

21 A. He stated he found them in your right front jean
22 pocket.

23 Q. Okay. You did not feel no drugs when you patted the
24 suspect down?

25 A. I did not, no.

1 Q. Okay. And --

2 Okay. The security officer stated he found drugs in
3 the right front pocket. Did you see the security officer
4 find the drugs?

5 A. No, I did not.

6 Q. Did you see the security officer reach his hand into
7 the front right pocket?

8 A. I knew it was checking your pockets, yes, I did.

9 Q. Okay. Did they find anything, other items at the
10 hospital, other than drugs --

11 A. No.

12 Q. -- on the suspect?

13 Did they manage to find the ID or wallet of the
14 suspect?

15 A. I do not know.

16 Q. Did you -- did you make any -- did you make a
17 supplemental report or incident report of things that
18 happened at the hospital at the jail or from the jail to the
19 hospital --

20 A. No, I didn't.

21 Q. -- and back?

22 Do you know if any other officer made an incident or
23 supplemental report?

24 A. I do not.

25 Q. Okay. So you didn't -- did not find no drugs on the

1 suspect?

2 A. I did not, no.

3 Q. Okay. Okay. And you are the arresting officer,
4 though?

5 A. Yes, I am.

6 Q. And what did you do after the drugs was found by the
7 security guard?

8 A. Security advised me that they had found drugs on you or
9 in your right front pocket. They then turned them over to
10 me. At that time I called Captain McAllister and he come
11 and took possession of the drugs.

12 Q. Okay. And Captain McAllister -- so you -- at the time
13 Captain McAllister came and you handed the drugs over to
14 Captain McAllister?

15 A. That's right.

16 Q. Can you state why you handed over the drugs to Captain
17 McAllister?

18 A. Because I was standing by with you and I could not
19 leave the hospital and they needed to be put into evidence.

20 Q. Okay. And you did not take no pictures or nothing of
21 the drugs?

22 A. No, I did not.

23 Q. At the point in time of the crime scene at World
24 Finance when you approached there, how many officers you
25 said think came to the scene at World Finance?

1 A. I have no idea. There were several there.

2 Q. Okay. And you said you were notified that the suspect
3 might have a weapon, or may be armed?

4 A. Dispatch advised that they thought you had a weapon.

5 Q. Okay. And upon that time -- if you took an estimate,
6 how many officers would you say was there?

7 A. I have no idea.

8 Q. Okay.

9 A. Probably ten to twelve.

10 Q. Okay. And when you stepped out the car, when y'all
11 arrested not any officer had a body cam or any recording of
12 the crime scene?

13 A. No, sir.

14 Q. Upon responding to the crime scene, or the dispatch,
15 did you and the rest of the officers get out of the car with
16 guns out on the suspect?

17 A. No, we did not.

18 Q. So nobody drew a gun on the suspect --

19 A. No.

20 Q. -- at the scene.

21 And y'all got dispatched that the suspect was armed and
22 dangerous?

23 A. No, dispatch said there was possibly a weapon involved.

24 Q. Okay. And no one drew a gun on the suspect?

25 A. No.

1 Q. All right. Okay.

2 And -- and so after that time you handed the drugs over
3 to Captain McAllister, did he take any pictures or anything
4 or place it in any evidence bag or anything?

5 A. I do not know.

6 Q. Okay. And at the time Captain McAllister came there
7 and took the drugs from you, what did you see him do?

8 A. He left the hospital.

9 Q. And you don't remember what day this was on that he
10 left?

11 A. I do not.

12 Q. Okay. Could you verify -- could you verify that
13 Captain McAllister stated right here that --

14 THE COURT: No, no, you can't -- he's not Captain
15 McAllister. You can ask him questions about what he did or
16 what he saw. What Captain McAllister did, Captain
17 McAllister has got to testify.

18 MR. FRAZIER: Okay.

19 BY MR. FRAZIER:

20 Q. And about what time do you say that the suspect -- that
21 you arrived at the crime scene?

22 A. It was probably around 4:30. Between 4:30 and
23 something to 5:00.

24 Q. And what time do you say that you arrived with the
25 suspect at the jail?

1 A. Probably five o'clock.

2 Q. Okay. And what time did you say that the suspect
3 was -- you arrived at the hospital?

4 A. Ten after five.

5 Q. And what time do you say -- how long -- approximately
6 how long do you say the suspect stayed at the hospital?

7 A. You were probably there around two hours or better.

8 Q. And what time do you say that you left?

9 A. I think we left about seven.

10 Q. Okay. All right.

11 Is it true indeed this is your jail management intake
12 report with you booking the suspect in?

13 A. No, sir, I did not book you in. It's not mine.

14 Q. Is this a -- is this true indeed the jail management
15 intake report with the booking in of the suspect with your
16 name on it?

17 A. I don't know whether it has my name on it or not.

18 Q. Right there.

19 A. Yes, sir, it is.

20 Q. Okay. Is it -- does -- is it true that this paper
21 states that the suspect was booked in on the offense of
22 leaving the scene of an accident?

23 A. Yes, sir.

24 Q. Does it say anything about any drugs or any other
25 charges stating on booking of jail intake?

1 A. No, sir.

2 Q. Okay. Do you know any nurses or the security names --

3 A. I do not.

4 Q. -- that found the drugs?

5 A. I do not.

6 Q. Okay.

7 MR. FRAZIER: That would be it, Your Honor.

8 THE COURT: Any redirect?

9 MR. MORONEY: No, Your Honor.

10 THE COURT: All right. You can step down.

11 MR. MORONEY: Your Honor, the State calls Travis
12 Rogers.

13 TRAVIS ROGERS, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. MORONEY:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Can you please state your name?

19 A. Travis Rogers.

20 Q. And where are you employed?

21 A. Self Regional.

22 Q. How long have you been employed there?

23 A. December 15th, 2014.

24 Q. Okay. And what's your job there?

25 A. Security and safety.

1 Q. Okay. As security and safety did you receive any kind
2 of training or certification?

3 A. SLED certification through the hospital.

4 Q. Okay. And briefly describe that certification process.

5 A. You go through legals and just normal on-the-job
6 activities.

7 Q. Okay. Did you have occasion to be working at Self
8 Regional on July 9th, 2015 of this year?

9 A. Yes, sir.

10 Q. Were you working that afternoon during the time of five
11 o'clock in the afternoon that day?

12 A. Yes, sir.

13 Q. Do you recall anything unusual that happened during
14 your shift that day out of the ordinary?

15 A. A normal day and later that afternoon we was called to
16 C-Pod where a guy was brung into -- under arrest for the
17 city.

18 Q. And what was your understanding he was being brought in
19 for?

20 A. At the time we don't ask that. We just go in there and
21 do what we are supposed to do by protocol.

22 Q. And do you respond to all patients that come in?

23 A. Into that area, yes.

24 Q. So you patrol over that general admission area?

25 A. We are stationed in front of the ER when you come in

1 and when -- whoever comes into that area, the nurse would
2 call us to search and remove clothing and just assist as
3 needed.

4 Q. And what did you observe that day when suspect was
5 brought into the observation room?

6 A. He was brung in, placed in C-26, and before the nurses
7 in there and we were -- before the doctor could come in we
8 removed the clothing and placed them him in a hospital gown
9 and we -- I was actually searching the clothing.

10 MR. FRAZIER: I object, Your Honor. Matter of
11 law.

12 THE COURT: Okay. Step in the jury room real
13 quick. We'll get you right back out here.

14 Don't discuss the case.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right, what you got?

18 MR. FRAZIER: On the grounds of I never was
19 provided with any info of Travis being a witness, or even
20 being intention of testifying. And I have a hospital report
21 right here that states that -- it don't speak nothing about
22 Travis being a surgeon or being even in the room. And on
23 the grounds of that my clothes was removed and it doesn't
24 state that that was removed by him or that's any kind of
25 procedure. And as them calling him as a witness, I wasn't

1 notified or even put -- he's not on the witness list.

2 THE COURT: He's on their witness list I called
3 out to the jury. Number 12.

4 MR. FRAZIER: And I want to make a Fourth
5 Amendment argument under illegal searches, because it's not
6 a procedure that the hospital do searches. It's the
7 officers procedure to search.

8 THE COURT: I think he said the procedure was to
9 remove the clothes.

10 MR. FRAZIER: Okay. That does not state that it's
11 a search.

12 MR. MORONEY: We haven't gotten into it, judge.
13 We haven't had a chance to explain the protocol that the
14 hospital that he's required to do.

15 THE COURT: I thought that's where we were saying,
16 that the protocol is remove the clothing and put him in a
17 hospital gown and that's what he did.

18 MR. MORONEY: There's a safety reason they do that
19 and I haven't gotten a chance to --

20 THE COURT: Proffer it right now so he can hear
21 it.

22 BY MR. MORONEY:

23 Q. With respect to the search that was ultimately
24 completed that day, is there a reason that you conducted
25 those searches?

1 A. We searched the patient to make sure that there is
2 nothing on them to harm the nurses or the doctors when they
3 come in to look at them.

4 Q. And is that a main part of your job duty with incoming
5 patients is to search them for the safety of the nurses and
6 doctors and staff?

7 A. Yes, sir, as a safety and security officer that's part
8 of my job, to make sure that no harm comes to the nurses or
9 the doctors.

10 Q. And was the defendant acting in an agitated state that
11 day?

12 A. It's just in that area, no matter who it is, it's from
13 minors to, you know, older people, we have to search them
14 and that's just the rules of that area.

15 Q. Okay. As part of your job duty?

16 A. Yes, sir.

17 MR. FRAZIER: Okay, Your Honor, I was never
18 provided any rules, any paperwork as to procedures of the
19 hospital or anything of that sort from the solicitor's
20 office under Rule Five or nothing, and I was never provided
21 any info or information with him being -- or searching me
22 from the hospital.

23 I have a transitional record of the nurse. It
24 says the RN is Marsha Erwin, and I have attendant medical MD
25 Richard B. Graham, and I don't know -- this is new to me

1 about him.

2 THE COURT: Did y'all put him in y'all's witness
3 list? You did on the pretrial witness list, because I read
4 it.

5 MR. MORONEY: Yes, he's on the witness list and we
6 have advised him that's how the drugs were found through
7 security.

8 MR. FRAZIER: I was never advised that that's how
9 drugs were found.

10 I was told -- I was advised in the warrant -- in
11 the supplemental report that drugs was found by Officer
12 McAllister on the warrant and drugs were found by Officer
13 Keith Trotter -- Donald Trotter at the hospital. I was
14 never advised that drugs were found by the hospital or the
15 security of the hospital and there is no paperwork to prove
16 that.

17 MR. MORONEY: That's correct, Your Honor, there is
18 no report completed by him, and he's not required to
19 complete a report. We have nothing that documents that.

20 And, furthermore, Donald Trotter did retain the
21 drugs that day, handed them to Mr. McAllister, which we will
22 get into later, as far as the chain, and it was subsequently
23 tested, 19.92 grams of meth.

24 MR. FRAZIER: Do you have any paperwork to date
25 that states that Mr. Rogers or Travis Rogers as the security

1 officer found the drugs or searched?

2 THE COURT: He just testified to it.

3 MR. FRAZIER: I understand that, but it was no
4 paperwork provided before and Rule Five or nothing.

5 MR. MORONEY: There is nothing to provide, Your
6 Honor.

7 MR. FRAZIER: He wasn't -- also, Your Honor, he's
8 not on the chain of custody form neither.

9 MR. MORONEY: He's not employed by the City of
10 Greenwood Police Department, Your Honor.

11 MR. FRAZIER: And I don't have a chain of custody
12 form for the Greenwood City Department.

13 MR. MORONEY: It's attached right here and we
14 showed him before.

15 THE COURT: Oh, he would get a copy of the chain
16 of custody, wouldn't he?

17 MR. MORONEY: We can make a copy of it for him.
18 We just received it back from Columbia.

19 THE COURT: Oh, just recently?

20 MR. MORONEY: Yes, Your Honor.

21 THE COURT: Make a copy of it and give it to him.
22 I think I heard y'all were getting that piece of
23 evidence back from SLED this morning.

24 (Off the record)

25 (Back on the record)

1 MR. FRAZIER: Your Honor, I want to make a motion
2 under the Fourth Amendment that I was unreasonably searched
3 and --

4 THE COURT: Tell me how it's unreasonable for the
5 hospital, for your safety and the safety of the employees,
6 to remove your clothing so they could treat you for medical
7 reasons? How is that unreasonable?

8 MR. FRAZIER: Because it doesn't state a reason
9 why my clothes was supposed to be removed. It doesn't state
10 a reason.

11 I don't see him nowhere in the chain of custody
12 from the SLED, or nothing. And at the same time it doesn't
13 give me a reason why my clothes were being removed, what the
14 procedure was, or any of that sort and why my clothes were
15 removed from me and what happened.

16 THE COURT: I think he's presented testimony
17 that's part of the normal hospital procedure, having a
18 patient's clothes removed for the doctor to examine him.
19 That doesn't seem to me to be an unusual procedure. It's a
20 medical procedure. It's not a criminal procedure.

21 MR. FRAZIER: And also on the grounds that I
22 wasn't provided until today during trial.

23 I feel like they should have had this way before,
24 and on the grounds that the SLED -- the SLED -- the drugs
25 were found on 7-9-15, at 18:00.

1 THE COURT: Okay.

2 MR. FRAZIER: The drugs were not entered into the
3 locker until 7-10-15, at 8:49, 08:49.

4 THE COURT: If they can't produce a witness that
5 had them in its possession those times they got a problem.

6 MR. FRAZIER: And it went through multiple
7 different hands.

8 THE COURT: That's what that chain of custody is
9 for, who touched it and when. That's why they keep that
10 log.

11 MR. FRAZIER: Okay. And I feel like I was
12 unreasonably searched because the jail is supposed to search
13 me before, or the officer.

14 THE COURT: Well, you object to that that was
15 unreasonable. They said they patted you down for weapons,
16 took you into the jail, were booking you in. The nurse saw
17 you and she thought you needed medical attention, so they
18 immediately transported you to the hospital.

19 MR. FRAZIER: Okay.

20 THE COURT: The hospital initiated your clothes
21 removal to treat you for medical reasons.

22 MR. FRAZIER: Okay. And he's not in the chain of
23 custody.

24 MR. MORONEY: Your Honor, he's not going to be in
25 that chain of custody in the City of Greenwood document.

1 He's in the chain of custody for court purposes to establish
2 and admit these drugs. However, he's not going in the chain
3 of custody for the City of Greenwood employee document.

4 MR. FRAZIER: Your Honor, there is no chain of
5 custody provided through the courts, so no paperwork.

6 THE COURT: It seems to me they have provided
7 direct testimony of the security officer employed at the
8 hospital removed your clothes. Upon doing that found the
9 drugs, immediately turned them over to Trotter, who is first
10 on the chain of custody.

11 Do we have any medical records, or do y'all even
12 get any medical records because of the --

13 MR. MORONEY: There's a sheet that's given when
14 you are discharged that he has. That's all I have, as far
15 as there is no medical records, but he has what I have
16 himself at discharge.

17 THE COURT: Ask him is there are any medical
18 records kept, as far as what they do when they do, what
19 happens like that. Proffer that.

20 MR. MORONEY: What he does?

21 THE COURT: Yeah.

22 BY MR. MORONEY:

23 Q. Do you know anything about medical records and what --

24 THE COURT: No, no, this situation. What's his
25 responsibility to prepare any type of report for the medical

1 records of the patient.

2 BY MR. MORONEY:

3 Q. Mr. Rogers, do you have any responsibility of preparing
4 any kind of report for medical records upon a patient's
5 discharge?

6 A. No, sir, we do not do any kind of report for medical
7 discharge.

8 Q. Anything with respect to medical records?

9 A. No, sir.

10 Q. Thank you.

11 THE COURT: All right. I mean, for a security
12 job, aside from the medical record, what happened? Does he
13 keep a record of it? How does he know? Did he prepare any
14 report whatsoever as a part of his job at the hospital.

15 BY MR. MORONEY:

16 Q. Did you write any report that day to document this
17 incident?

18 A. We do a shift report and, you know, just documented
19 that we were assisting in the area with the nurses. We
20 don't explain on our reports what we do, because it might,
21 you know, go against HIPAA and that kind of stuff.

22 Q. Is there any kind of report that you generate or handed
23 to me or handed to law enforcement?

24 A. No, sir.

25 Q. Okay. Thank you.

1 THE COURT: Mr. Frazier, I think they can do that
2 as part of their treatment. You don't have an expectation
3 of privacy with the hospital, other than for your medical
4 treatment, and that's what they were doing. I don't see --
5 I don't see your --

6 MR. FRAZIER: I don't see no medical records. If
7 he can't provide any medical records and what happened --
8 it's other stuff that happened at the hospital that he
9 should be able to provide medical purposes or reasons of
10 procedures for the treatment that I had. So somebody got to
11 be holding some medical records, because if it's just
12 saying --

13 THE COURT: He said he didn't prepare any medical
14 records.

15 MR. FRAZIER: I understand that.

16 THE COURT: Yeah.

17 MR. FRAZIER: And they don't have --

18 THE COURT: He's not a doctor nor a nurse. He's a
19 security officer for the hospital.

20 MR. FRAZIER: I understand that.

21 All right. I mean, it's more -- it's got to be
22 more medical records to this than this, just the
23 transitional record.

24 THE COURT: What is your medical condition at that
25 time got anything to do with the charge of having something

1 in your pocket?

2 MR. FRAZIER: I understand that.

3 THE COURT: I'm asking you.

4 MR. FRAZIER: That's what they claim.

5 What I'm saying, though, is I ain't provided with
6 no paperwork of search of his name being in the search or
7 nothing. I understand his testimony, but I feel like it
8 still should have been some paper trail somewhere stating
9 this, or can we request that the hospital send over --

10 THE COURT: There's no such record.

11 MR. FRAZIER: Okay. Well --

12 THE COURT: He's testified that he assisted in
13 removing your clothes. He found something in your right
14 front pocket and immediately handed it to Officer Trotter,
15 who was standing -- handed you into the examination room and
16 then received immediately back without departing the door
17 the item found in your pocket.

18 MR. FRAZIER: Well, Your Honor, I want to say most
19 of what different people saying that they found claiming
20 they found drugs.

21 THE COURT: Who -- I haven't heard anybody else
22 yet that said that. Tell me which witness has testified
23 prior to this witness that said anything about finding drugs
24 on you.

25 MR. FRAZIER: It's in the incident report and

1 supplemental report in the warrant.

2 THE COURT: But those aren't admissible as
3 evidence against you. None of those incident reports are
4 admissible against you.

5 MR. FRAZIER: I know.

6 THE COURT: They have not referred to a single one
7 of them. You have in cross examination.

8 MR. FRAZIER: Okay.

9 THE COURT: You keep making them read them, but
10 they have not mentioned the incident report. They have gone
11 "tell me what you did. Tell me what you --

12 MR. FRAZIER: All right, Your Honor, also the
13 drugs in the chain of custody goes -- I will explain it
14 later. I'll just --

15 THE COURT: Okay. I'm going to overrule you on
16 this. It appears to me the hospital is doing their job of
17 treating you properly happened upon what they believed was a
18 package of methamphetamine in your pants pocket; immediately
19 gave it to the police, Officer Trotter. Officer Trotter
20 stated he gave it immediately to McAllister. We haven't
21 heard from McAllister yet, but so far that's what we have
22 got, so I don't think you have any reason to challenge the
23 search of the hospital security officer.

24 MR. FRAZIER: Okay.

25 THE COURT: All right?

1 MR. FRAZIER: All right.

2 THE COURT: Does anybody need a break or keep
3 moving?

4 (No response)

5 THE COURT: All right. Bring them in, please.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Go ahead.

9 BY MR. MORONEY:

10 Q. Mr. Rogers, did you conduct a search of that individual
11 in the examining room that day?

12 A. Yes, sir.

13 Q. And what was the reason for that search? Are there any
14 policies or protocols that you have to follow as an
15 employee?

16 A. When a patient comes into the area, we immediately
17 search the patient before he's examined by the doctor for
18 the nurses and doctors safety.

19 Q. So that's primarily done for staff, doctors, nurses
20 safety?

21 A. Yes, sir.

22 Q. And was anything found from that individual's clothing,
23 a search of that individual's clothing that day?

24 A. Yes, sir.

25 Q. And what did you find?

1 A. While I was searching his pants I found a large bag of
2 what appeared to be some type of drug in his front pocket
3 and in the other pocket there was a note and some change.

4 MR. MORONEY: Your Honor, may I approach?

5 THE COURT: Uh-huh.

6 BY MR. MORONEY:

7 Q. Mr. Rogers, I'm showing you what's been pre-marked as
8 State's Exhibit 4 for identification purposes and ask you to
9 take a look at that.

10 Mr. Rogers, what does that appear to be from what you
11 are looking at?

12 A. Some type of drugs, assuming meth.

13 Q. And does that appear to be the same drugs that were
14 retrieved from that individual's pockets that day?

15 A. Yes, sir.

16 Q. And it appears to -- does it appear to be in
17 substantially the same condition as it was that day that you
18 retrieved it from the pockets of the pants?

19 A. Besides being in the evidence bag, yes.

20 Q. And Mr. Rogers, the individual whose pants were
21 searched that day, do you see the person whose pants were
22 removed from sitting in this courtroom today?

23 A. Yes, sir.

24 Q. Can you point them out and describe what they are
25 wearing?

1 A. The gentleman over here with the white shirt and tie.

2 Q. Okay. After the drugs were found, what did you do with
3 them?

4 A. When I found drugs, I immediately handed them over to
5 the city officer.

6 Q. Was that city officer Donald Trotter standing outside?

7 A. Yes, sir.

8 Q. Did anything unusual happen -- or could you describe
9 the demeanor of Mr. Frazier while being examined?

10 A. He was under the influence of something. He was very
11 talkative, very sexual towards the nursing staff.

12 Q. And by sexual, could you describe a little bit more
13 what happened?

14 A. Playing with himself. Looking at one of the nurses
15 saying that, you know, he wanted to have sex with her and
16 that type of --

17 Q. Did Mr. Frazier expose himself at all?

18 A. Yes, sir.

19 Q. And did Mr. Frazier expose his penis?

20 A. Yes, sir, he pulled himself out and was playing with it
21 while in the room.

22 MR. FRAZIER: Objection, Your Honor.

23 THE COURT: Sustained.

24 You have described the demeanor. Move on.

25 BY MR. MORONEY:

1 Q. Thank you, Mr. Rogers.

2 Please answer any questions this Mr. Frazier may have
3 for you.

4 A. Yes, sir.

5 CROSS EXAMINATION BY MR. FRAZIER:

6 Q. Could you state your full name for me, please?

7 A. Travis Rogers.

8 Q. All right. Mr. Rogers, how long have you been working
9 at the hospital?

10 A. Since December 15th, 2014.

11 Q. And you are -- what's your position at the hospital?

12 A. I'm a safety and security officer.

13 Q. Okay. State what you seen happen upon arrival of the
14 suspect.

15 A. When you was brung into the hospital, immediately the
16 nurses called security to come to the room to remove the
17 clothing, to place you in a gown so they could do their job
18 to medically see you.

19 Q. Was -- do you remember any -- do you remember any
20 procedures that they were preparing for?

21 A. They were --

22 Q. For the reason of removing the clothes?

23 A. For the reason of removing the clothes, we do that on
24 everybody that comes into the area that you was in. It's
25 actually C-Pod, and we remove the clothing for the safety of

1 the nurses and the doctors.

2 Q. So for the -- is it -- is it the procedure for the
3 safety of the nurses and doctors to search the person, or to
4 remove the clothes, or both?

5 A. The nurses or doctors don't search you. The security
6 officers search.

7 Q. For the security. Is it the procedure for the security
8 to remove the clothing of the person coming in, or to search
9 the pants or the pockets, or both?

10 A. We search, by policy, the patient that's in there to
11 remove any item that can be of harm to nurses or doctors.

12 Q. I asked you a question that's yes or no.

13 A. Yes.

14 Q. So it's both, yes.

15 Okay.

16 So every person that comes to the hospital has to have
17 their clothes removed? That's procedure?

18 A. In the area that you were in it's procedure.

19 Q. Do you remember -- could you state what procedure the
20 nurses was fixing to perform the reason why the clothes were
21 removed?

22 A. When a patient comes in, they are -- you know, we do
23 our part, searching and removing items of clothes, and they
24 prepare for the blood and urine.

25 Q. Okay. So that was the procedure that was going to be

1 prepared for the reason why the clothes were removed?

2 A. The reason the clothes was removed was for the safety
3 of the nurses.

4 Q. Okay. And everybody that comes to the hospital, they
5 have their -- they take their blood and urine as a
6 procedure?

7 A. As the patient they, you know -- to be up-to-date on
8 their medical, they have to have blood drawn and urine.

9 Q. And -- finish? Your urine? Yes?

10 A. Yes.

11 Q. All right. So, in fact, a blood test and urine was
12 going to be performed on the suspect?

13 A. Yes.

14 Q. Okay. Can't the hospital or a nurse, if you know of
15 it, can identify or get what's in a person's body off the
16 blood?

17 THE COURT: He's not a medical person. He's a
18 security officer.

19 MR. FRAZIER: All right.

20 BY MR. FRAZIER:

21 Q. Do you remember any of the nurses or staff that was
22 from the hospital that was there that day at the time of
23 these procedures being produced, the ones --

24 A. Yes, sir.

25 Q. -- that did a procedure?

1 A. Yes, sir.

2 Q. Could you state their name?

3 A. Marsha and they call her Hootie, but I don't know her
4 real name.

5 Q. And do you see Marsha or Hootie in here today?

6 A. No, sir.

7 Q. And did you see any of the nurses or staff give the
8 suspect an injection?

9 A. No, sir.

10 Q. And was you there the whole time of the procedure,
11 or --

12 A. I was there at the beginning when the search was made
13 and we was called to assist with the urine.

14 Q. Okay. And when you assist with the urine, what did you
15 do?

16 A. At the time the -- you wouldn't give them a urine test
17 specimen, so they had to put an in-and-out catheter.

18 Q. Okay. And then what happened? So what you did to get
19 the in-and-out catheter?

20 A. They --

21 Q. What happened?

22 A. They used the in-and-out catheter and took --

23 Q. How was -- how was the in-and-out catheter procedure
24 performed that time that you seen it? What happened?

25 MR. MORONEY: Your Honor, objection. He can't

1 testify to the procedure. He's security.

2 THE COURT: He can testify to the name of it, but
3 he's not a medical treating employee, like a nurse or a
4 nurses aide or physician.

5 MR. FRAZIER: He can state what he seen, though,
6 right?

7 THE COURT: Well, if you want to ask the question.

8 BY MR. FRAZIER:

9 Q. Can you state what you seen the nurses -- seen happen
10 when the nurses did the procedure while you was there?

11 A. They got a box out of another room. It was in a
12 plastic bag for sterile reasons and opened it up and it had
13 some brown stuff that they placed on the head of your
14 private, and they had gloves on and they took a cord and I
15 guess KY, or whatever it is, and slid it down the head of
16 your penis and into your bladder.

17 Q. And did you see them take blood from the suspect?

18 A. I seen blood in the room in the little vials.

19 Q. You seen it in the vial and not in the room?

20 A. No, sir.

21 Q. And did you see -- you didn't see the nurses perform an
22 injection?

23 A. No, sir.

24 Q. Okay. All right.

25 Do you know if -- well --

1 And did you make a report about any of these drugs,
2 things that you were supposed to have found in the person's
3 property or pocket?

4 A. At the time the only thing that I reported was on my
5 daily agenda -- my daily report that we assisted with the
6 nurses.

7 Q. Okay. Did you note, report, or inventory any of the
8 items --

9 A. We hadn't --

10 Q. -- that you found?

11 A. We didn't inventory any item.

12 Q. Okay. Did you state what all items that you found on
13 the victim's (sic) person -- or the suspect's person?

14 A. You had a large bag in your right front pocket with
15 what I assumed to be some kind of drugs. You had some
16 change in your left pocket and a note.

17 Q. Okay. So you did not find no dollar bills or nothing
18 in the pockets?

19 A. No, sir.

20 Q. And about how much change do you think that you found?

21 A. Maybe seventeen cents.

22 Q. Okay. So you didn't -- you didn't find approximately a
23 dollar and thirty cents?

24 A. No, sir.

25 Q. Did you -- and what did you do with the change?

1 A. I placed it in a clear bag or a clear-like salad tray
2 that we put people's belongings in and placed it into the
3 bag with the clothes.

4 Q. Okay. And where was the -- did you note on the bag --
5 write on the bag the items that was in it?

6 A. No, sir.

7 Q. Y'all don't note the items that goes in the bag?

8 A. No, sir.

9 Q. And what would you say the bag looked like that you
10 placed the clothes and the change in?

11 A. It was a clear bag with writing on it. I don't know
12 exactly what the writing says, but it's -- I believe it's
13 green writing that's on the bag.

14 Q. Does it say anything about Self Regional property, or
15 anything of that matter?

16 A. It probably -- I don't know. I couldn't tell you what
17 it says. I have never really read it.

18 Q. Okay.

19 MR. FRAZIER: All right. I rest, Your Honor.

20 THE COURT: Anything else?

21 MR. MORONEY: Briefly, Your Honor.

22 THE COURT: All right.

23 REDIRECT EXAMINATION BY MR. MORONEY:

24 Q. Mr. Rogers, just to clarify.

25 Officer Donald Trotter was outside of this room? Was

1 he just outside of the room?

2 A. In the area of the door jamb.

3 Q. And you were located inside of this room --

4 A. Yes, sir.

5 Q. -- when all this was going on?

6 A. Yes.

7 Q. And would you describe the room as being crowded?

8 A. There was myself, another Self Regional officer and the
9 nurse and the nurse tech.

10 Q. Does that explain the reason why Donald Trotter was
11 just outside the door of that room?

12 A. Yes, sir.

13 Q. Okay.

14 MR. MORONEY: Nothing further, Your Honor.

15 THE COURT: Anything else?

16 MR. FRAZIER: No, sir.

17 THE COURT: All right, you can step down.

18 MR. BLACK: The State calls Mitch McAllister.

19 OFFICER MITCH MCALLISTER, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BLACK:

22 Q. Could you state your name for the record?

23 A. Yeah, Mitchell McAllister.

24 Q. Where do you work, Mr. McAllister?

25 A. Greenwood City Police Department.

1 Q. What's your title?

2 A. The captain over the investigation division.

3 Q. How long have you been the captain?

4 A. I have been -- over investigations, or in general?

5 Q. In general.

6 A. About five and a half years.

7 Q. And how long have you worked with the city?

8 A. Just over thirteen.

9 Q. Okay. Were you employed anywhere else before that?

10 A. As a law enforcement officer?

11 Q. Yes.

12 A. No, sir.

13 Q. Did you go to the academy, Criminal Justice Academy?

14 A. I did.

15 Q. Have you got your certificate I'm assuming?

16 A. Yes.

17 Q. Do you remember July 9th of this year?

18 A. Yes, sir.

19 Q. Were you working that day?

20 A. I was.

21 Q. Do you remember an incident that happened within the
22 county at the Chick-fil-A and the city at Frank's Car Wash
23 and World Finance?

24 A. I do.

25 Q. Did you respond to any of those locations?

1 A. No, actually I didn't.

2 Q. Where did you respond?

3 A. I actually responded to Self Regional Hospital, the ER
4 room, basically.

5 Officer Trotter had called me and stated that they had
6 just found some narcotics on the suspect and asked if -- you
7 know, I asked him, I said, "well, how long are you going to
8 be there?" We never know when one goes to the hospital what
9 kind of treatment they are going to have to receive. They
10 may be there four hours, may be there thirty minutes, so I
11 said "if you are going to be there any length, let me come
12 and get those drugs and put them in the evidence locker."
13 So I immediately went straight to Self where Donnie
14 basically turned around and handed me the bag. It looked
15 like crystal-like substance.

16 MR. BLACK: Your Honor, may I approach the
17 witness?

18 THE COURT: Sure.

19 BY MR. BLACK:

20 Q. I'll show you -- Captain McAllister, I'm showing you
21 what's been marked as State's Exhibit No. 4. Do you
22 recognize that?

23 A. I do.

24 Q. Can you tell us what that is?

25 A. This is a SLED BEST pack inside of another sealed

1 envelope that contains both the crystal-like substance and a
2 plastic baggy that it was found in and the condition it was
3 given to me by Officer Trotter.

4 Q. Are those the same narcotics that you received from
5 Officer Trotter?

6 A. Yes, I believe they are.

7 Q. And what did you do with those items again?

8 A. As soon as they were given to me by Officer Trotter, I
9 went straight to -- basically straight from the ER straight
10 to city hall. I did what we call a field test kit, which is
11 a kind of a preliminary test kit for what we believe is
12 methamphetamine. I tested that. It tested positive, and I
13 took those drugs immediately and placed them in the evidence
14 locker and completed an evidence chain of custody and placed
15 those in there for security purposes. That was the extent
16 of my dealing with them for that day.

17 Q. This was on the 9th, correct?

18 A. That's correct.

19 Q. So you tested the substance on the 9th, field tested?

20 A. That's correct.

21 Q. Okay. And did you have contact with those items at
22 some other point?

23 A. I did. The next morning I was preparing -- basically
24 we were -- we overlook the case that we just made the night
25 before and we make sure the charges are proper, that there

1 are proper charges that have been brought against the
2 suspect. In doing that, so as not to tie up the rest of my
3 guys, I began preparing the warrants to charge him. And I
4 had one of my other investigators, who was not tied up at
5 that time, to go to the evidence locker to see Sergeant
6 Griffin and sign that out and bring it straight to me. He
7 was gone for approximately four minutes from the time he
8 left and time he signed out until the time he brought it to
9 me in my office. Once it arrived at my office, which is
10 across the street in the Greenwood County detention center,
11 basically, from where the police department is, I took the
12 substance that's in the bag here with the plastic bag and
13 began an evidence collection kit. Basically it's a SLED
14 drug analysis security envelope. It's a plastic envelope
15 that we do for every narcotic that we send down to SLED so
16 it can be properly tested. The field test, like I said
17 before, is just a preliminary thing to kind of give us an
18 idea, yeah, we are pretty sure what this is. Well,
19 obviously before we come to trial we are going to have it
20 tested by a chemist, which is what SLED services does. So I
21 placed this item inside this plastic bag. I don't know if
22 you can see along this top ridge here is a red line. It's
23 actually blue, basically. As soon as I received those
24 items, I placed them inside that bag, completed the
25 paperwork. I folded that bag over and sealed it so that it

1 could not be tampered with or opened and signed the front
2 and I placed that back in the envelope and then I took it
3 myself back across the street and placed it into the
4 evidence locker to return to Sergeant Griffin.

5 Q. And where is the evidence locker at, just for --

6 A. The evidence locker is just outside of the evidence
7 room, which is where Sergeant Griffin handles all the
8 evidence that's inside the Greenwood City Police Department.

9 Q. Okay. And where were you located when the drugs were
10 retrieved? Where is your office at?

11 A. My office is actually across the street where the
12 sheriff's office is. Greenwood County Law Enforcement
13 Center, you will see a sign. There is actually a jail
14 entrance and then there is an entrance to the actual
15 sheriff's department. If you walk in that door and turn to
16 the left, that's where our detective's office is across
17 the street from the police department.

18 Q. And who is the individual that went and actually
19 retrieved the drugs out of the evidence and brought them
20 back to you?

21 A. Sergeant Tony Garrett.

22 Q. And how long was he gone?

23 A. Approximately four minutes.

24 Q. And he brought them to you?

25 A. He brought them straight to me from Sergeant Griffin.

1 Q. And you were working on reports from the night before?

2 A. Yes, sir, I was working on the reports and the charges.

3 Q. And the evidence, the drugs, when you placed them into
4 evidence the night before, on July the 9th, what were they
5 in? Were they in like a bag or something?

6 A. I believe they actually -- they were laying on top of
7 this sheet right here that I would have placed into
8 evidence. Inside this bag basically laid in there just as
9 they are, basically just as I had received them. That's the
10 way they go into evidence.

11 Q. Is there another plastic bag in there?

12 A. There is the plastic bag that Self basically came in.
13 Then there is another plastic bag that had the seal across
14 it that actually has the substance in it, inside of it.

15 Q. Okay. How long were you at the hospital when you
16 retrieved the drugs?

17 A. No more than five minutes at max.

18 Q. Do you know about what time that was?

19 A. I could guess, but as to exactly what it would be -- I
20 mean, I could probably go from the date and the time of the
21 incident report, maybe around six o'clock, maybe somewhere
22 around there.

23 Q. Okay.

24 MR. BLACK: Beg the court's indulgence.

25 THE COURT: All right.

1 (Off the record).

2 (Back on the record).

3 BY MR. BLACK:

4 Q. When you were at the hospital did you ever make contact
5 with Mr. Frazier, the defendant?

6 A. No, I did not.

7 Q. You never went back in the room?

8 A. No.

9 Q. And the hospital that you responded to was Self, right
10 around the corner here?

11 A. Yes, Self Regional Medical Center.

12 Q. Okay.

13 A. And when I got there, he was standing in the door, so I
14 never went past the door.

15 Q. And as soon as you got the drugs, you took them
16 directly straight to the evidence locker?

17 A. That's correct.

18 Q. Did you tamper with them in any way?

19 A. Absolutely not.

20 Q. Okay.

21 A. Other than to test them, that's the only time I touched
22 them.

23 Q. And that's standard practice?

24 A. That is correct.

25 Q. No further questions.

1 Answer any questions Mr. Frazier might have for you.

2 A. Yes, sir.

3 CROSS EXAMINATION BY MR. FRAZIER:

4 Q. Could you state your full name for me?

5 A. Yes, sir, Donald Richard McAllister, Jr..

6 Q. Mr. McAllister, upon -- did you have something -- did
7 you type up the warrants?

8 A. Yes, I did.

9 Q. And did you -- did you do the supplemental report?

10 A. I did.

11 Q. Did you perform an incident report?

12 A. That's what the supplemental report would have been
13 that I completed.

14 Q. Is there a difference between an incident and a
15 supplemental report?

16 A. Yes.

17 Q. Okay. Could you state that for me?

18 A. Yeah, we have several different report forms.
19 Basically they are just in-house forms.

20 An incident report is the actual incident, original
21 incident.

22 A supplementary report would be if another officer did
23 something, they could complete a supplementary report to go
24 along with it.

25 Q. Okay. Could you state where you found the drugs?

1 A. I didn't find them. They were handed to me by Officer
2 Trotter.

3 Q. So you didn't find the drugs?

4 A. No, sir.

5 Q. Is this the warrant with your name on it that states
6 that you found the drugs?

7 THE COURT: Show it to him. Show him the warrant
8 and then ask him a question.

9 A. Yes.

10 BY MR. FRAZIER:

11 Q. And is it correct that the warrant states that "I
12 further state that there's probable cause to believe that
13 defendant named above did commit the crime set forth and
14 that probable cause is based on the following facts: Case
15 15013432. On 7-9-2015 Terrence O'Neil Frazier did
16 knowingly, willingly and unlawfully possess more than ten
17 grams of methamphetamines. Frazier was arrested on
18 unrelated offenses at World Finance. A search of his person
19 revealed a baggy containing the crystal-like substance which
20 field tested positive for methamphetamines and approximately
21 weight of 20 -- 20.09. 09. So 20.09 grams of
22 methamphetamine. This incident occurred within the city
23 limits of Greenwood and in violation of South Carolina Code
24 of Laws"?

25 A. Are you asking if that's -- yes, that's what's in that

1 warrant, yes.

2 Q. Okay. Did you go back at any time and change these
3 warrants?

4 A. No, sir.

5 Q. Was there any warrants before this that somebody else
6 made?

7 A. Not that I know of.

8 Q. Okay. Did you get these filed in General Sessions
9 Court?

10 A. I had nothing to do with them getting filed in General
11 Sessions Court.

12 Q. Could you state what --

13 A. That's the solicitor's office.

14 Q. That this was filed in General Sessions Court?

15 A. Can I what?

16 Q. Can you state that it was filed in General Sessions
17 Court on the 16th? Right there that's stamped on there?

18 A. I mean, I see that it's stamped on there, yeah,
19 July 16th.

20 Q. Could you read what it say?

21 A. Yeah, filed in General Sessions, Eighth Judicial
22 Circuit, Greenwood, South Carolina, 2015, July 16, 8:59
23 a.m..

24 Q. Okay. All right.

25 Had you had -- have you had sent any charges up to

1 General Sessions or warrants to General Sessions before the
2 16th?

3 A. Have I sent any before?

4 Q. Yeah, up to the solicitor's office?

5 A. Yes, sir, I sent lots of them over my career.

6 Q. Okay. So you didn't have it filed in General Sessions?

7 THE COURT: It's not a requirement that they are
8 filed in General Sessions. Charges are made. Police
9 prepare paperwork and they just hand it to the solicitor's
10 office.

11 BY MR. FRAZIER:

12 Q. Okay --

13 THE COURT: All right. So that's just the
14 process.

15 MR. FRAZIER: All right.

16 BY MR. FRAZIER:

17 Q. Now, Mr. McAllister, could you state what you did from
18 the time you obtained the drugs and where you obtained the
19 drugs?

20 A. Yes, sir. On the date in question I was called by
21 Officer Trotter. I responded to Self Regional to the room
22 where you were located. When I arrived at that room Officer
23 Trotter was standing at the doorway kind of standing like
24 this, where he could see the door and see you both at the
25 same time. I arrived. He said "look, we found some

1 narcotics on his person."

2 I said, "well, let me take them and go put them in the
3 evidence locker. I'll put them in and we'll deal with that
4 later. I don't want to stand here in the hospital with a
5 pocketful of drugs," basically.

6 So we left from there -- I left from there, I went
7 straight to city hall where I field tested the substances
8 located here. It field tested positive for
9 methamphetamines. It was then placed in a locker, a secure
10 locker only -- you know, only evidence custodians have
11 access to.

12 The next morning I sent my sergeant from investigations
13 to obtain that from the property custodian. He signed the
14 chain of custody form from the property custodian. He
15 brought that to me, at which time he signed it over to me.
16 He was gone approximately four minutes.

17 Once it arrived at my office I completed -- as I stated
18 before, I completed the SLED's drug analysis report and also
19 the SLED drug analysis security envelope, placed the drugs
20 in there and sealed it up and then it was transported back
21 and placed back into evidence.

22 Q. Okay. Could you state what number locker you placed it
23 in?

24 A. I don't remember.

25 Q. You don't remember?

1 A. I could probably look on the report there.

2 It's not there as to which locker it was.

3 Q. Okay. Okay. And did you -- on the supplemental
4 report --

5 A. Uh-huh.

6 Q. -- was you the arresting officer who arrested the
7 suspect?

8 A. No, I didn't arrest you.

9 Q. Okay. And on your supplemental report -- did you do
10 the supplemental report?

11 A. I'm not certain which one you have in your hand --

12 Q. It has your name on it.

13 A. -- but I did do a supplemental report, yes, sir.

14 Q. It has your name.

15 Could you read on there what the supplemental report
16 says?

17 THE COURT: No, no, no, no, no. You can ask him
18 questions but he can't just publish it.

19 A. That's mine. I did write it.

20 BY MR. FRAZIER:

21 Q. All right. In fact, on the supplemental report you
22 state that a crime happened on 7-9-15, and you assisted
23 Trotter at the hospital?

24 A. Okay.

25 Q. And did you -- did you put on the supplemental report

1 that Trotter transported the subject to ER and searched him
2 there finding a clear baggy containing crystal-like
3 substance in your --

4 A. I did write that in the report, that's correct.

5 Q. And does it say on your supplemental report that you
6 are the arresting officer, which says RO?

7 A. No.

8 Q. Is that -- what's RO on the supplemental report?

9 A. RO is me.

10 "RO took possession of the substance" is what it says.
11 It doesn't say anything about who the arresting office is.

12 Q. Could you state what RO stands for?

13 A. Yeah, responding officer.

14 Q. Okay.

15 A. I use that in a lot of my incident reports.

16 Q. Okay. And is it true that the drug weight on the
17 supplemental report weighed 21.09 grams on your supplemental
18 report?

19 A. According to -- yeah. According to my report here,
20 yes.

21 Q. All right. And -- and did -- you field tested positive
22 the drugs for methamphetamine?

23 A. Correct.

24 Q. Did you test it positive at the hospital or at the
25 jail?

1 A. I tested it actually at city hall, police department.

2 Q. City hall?

3 A. Yes, sir.

4 Q. And what it says it was placed into evidence then,
5 which would be on the 9th?

6 A. Yes, sir.

7 Q. And then on 7-10-2015 it was removed from evidence?

8 A. That's true.

9 Q. And placed into a SLED BEST pack?

10 A. That's correct.

11 Q. Okay. Pack number B248253?

12 A. That's correct.

13 Q. Okay. To be sent to SLED?

14 A. Correct.

15 Q. And you didn't send it to SLED?

16 A. I personally did not send it to SLED. I left it in our
17 evidence. That's part of our evidence custodian's job, who
18 is Sergeant Griffin.

19 Q. Okay. And then it was placed back into evidence?

20 A. That's correct.

21 Q. Okay. You stated warrants were signed?

22 A. Yes, sir.

23 Q. And served and bond set on 7-10 by Judge Miller?

24 A. Correct.

25 Q. Bond was denied?

1 A. According to my report, yes.

2 Q. Charges were as follows: Grand larceny, leaving the
3 scene of an accident, auto breaking, and trafficking
4 methamphetamine?

5 A. That's correct.

6 Q. You said warrants was signed and served on 7-10, right?

7 A. Correct.

8 Q. Is it true indeed that the warrants were signed on 7-11
9 and served on 7-11, according to your --

10 A. No, that's not true.

11 Q. Doesn't it state that on there?

12 A. It does state that on there, but I stand corrected.

13 Q. So that's an error?

14 A. They was served on the 10th.

15 Q. They were served on the 10th?

16 A. Yes.

17 Q. And this is an error?

18 A. Yeah, I would assume, because I know they were served
19 on the 10th.

20 Q. Yes or no?

21 A. Yes.

22 Q. Okay. Did you sign these warrants?

23 A. I did.

24 Q. Okay. Could you state to me why were drugs put -- why
25 were drugs field tested, put into evidence, took back out,

1 and put back in?

2 A. Yes, sir, I sure can.

3 Honestly the first night, because of the incident, the
4 late time of the day, due to the fact that most of our staff
5 had been tied up most of the day dealing with this incident
6 involving you, I took those drugs and took them to a place
7 where they could be secured, unhampered, and not messed
8 with. That's our evidence. That is our property. That's
9 our place that we take things to secure them so that nobody
10 can mess with those things. I did not have time at the time
11 to complete the supplemental report. I did the warrants.
12 You were placed in jail for leaving the scene of an accident
13 and we were going to complete the rest of the paperwork in
14 the morning. So what I did was field tested those drugs to
15 confirm whether or not they were indeed methamphetamines.
16 They did field test positive. I secured them in that locker
17 so they could not be messed with.

18 The next morning, the first thing in the morning we
19 retrieved those drugs to take them from that locker to place
20 them in this bag here, because SLED -- as I have stated
21 before, a field test kit is only a preliminary test. We
22 need a chemical analyst, somebody that knows what they are
23 talking about, to test to say that that's what it is. The
24 only way that we have here in the City of Greenwood to do
25 that is to send it to SLED. SLED will not take it as we

1 found it. It has to be in this envelope and it has -- the
2 paperwork has to be completed and it has to be submitted
3 according to their policy and their procedures. That's why
4 it was taken back out of the locker, placed in that BEST
5 pack. This BEST pack is sealed up and placed back into
6 evidence so it could be sent to SLED to be tested.

7 Q. Okay. All right.

8 Could you state why you got a different weight from the
9 warrant to the supplemental report? You stated on the
10 warrant it was 21.0 -- 21.09 grams -- I mean 20.09 grams on
11 the warrant and on the supplemental report it got
12 21.09 grams?

13 A. Yeah, a typographical error on my part.

14 Q. Okay. And do you know -- you received a SLED forensic
15 laboratory report, right?

16 A. Did I?

17 Q. Yes.

18 A. No, I hadn't -- I didn't personally. Our police
19 department did, though.

20 Q. And -- well, when the drugs came back from SLED, the
21 laboratory report, it was reported net weight 19.92?

22 A. Okay.

23 Q. Would you state this to be a SLED report?

24 A. It looks as though it was a SLED report.

25 Q. This here?

1 A. It looks as though it's a SLED report.

2 Q. Do you state the weight on there?

3 A. It appears to be 19.92.

4 Q. And did it test positive for methamphetamine, what it
5 says about the methamphetamine?

6 A. It says it tested positive.

7 Q. Okay. Do you know about any dates of the date this --
8 that these drugs were sent off?

9 A. I have no idea.

10 Q. Okay. You didn't do the evidence -- you booked drugs
11 into evidence?

12 A. Correct.

13 Q. And you never came back to mess with the drugs no more?

14 A. Once they were completed and put in the SLED BEST pack,
15 no, they were not messed with again, not by anyone from my
16 office.

17 Q. Okay. Is it true -- is it true that on 7-10 of the
18 evidence property report 7-10-15, at 08:54 the drugs were
19 released by Tony Garrett and received by D. McAllister to be
20 placed in BEST pack for SLED?

21 A. That's correct.

22 Q. Okay.

23 A. I am D. McAllister.

24 Q. Yeah, D. McAllister.

25 And then on 7-10 -- on 7-10 date and time two items --

1 two items at 7-10-2015, 11:20 released by D. McAllister,
2 received by locker 10?

3 A. Correct.

4 Q. Purpose and reason SLED testing?

5 A. Correct.

6 Q. So you did come back and remove the drugs after you put
7 them in the locker in evidence?

8 THE COURT: That's exactly what he's been
9 testifying to.

10 MR. FRAZIER: All right.

11 THE COURT: You are reading his report of what he
12 just told you he did.

13 BY MR. FRAZIER:

14 Q. Okay. Is it true that the evidence report states that
15 SLED received these drugs on 7-30-12 (sic)?

16 A. According to this report --

17 Q. 7-30-15 I meant.

18 They were received on 7-30-15?

19 A. Yeah, according to this report that's what it says,
20 yes.

21 Q. And they were returned from SLED on 11-16-15?

22 A. That's what it says, yes, sir.

23 Q. And the items were both times two?

24 A. Correct.

25 Q. Two items?

1 A. Correct.

2 Q. Okay. Can you state to me why you wasn't at the
3 preliminary hearing?

4 THE COURT: That's not relevant.

5 MR. FRAZIER: All right.

6 THE COURT: Ask another question.

7 BY MR. FRAZIER:

8 Q. You stated bond was denied and -- you stated the bond
9 was denied?

10 A. Yes, sir.

11 Q. So what would you -- and what would you say a denied
12 bond on the -- what would you say to deny bond means?

13 A. I would assume it meant that you didn't get a bond,
14 that you were denied a bond.

15 MR. FRAZIER: That's it.

16 THE COURT: Ms. Dillashaw and ladies and gentlemen
17 of the jury, just so y'all know, at the preliminary hearing
18 there are no findings, other than probable cause. It wasn't
19 a trial. It was a magistrate that heard testimony. It was
20 sworn. Probable cause, yes or no.

21 This is the trial on proving -- the State is
22 making its offer of proof on all those charges made.

23 What happened at the preliminary hearing is really
24 not relevant because only probable cause is found. That's
25 why I keep avoiding it. It's not something that's a secret.

1 It's just -- it's a low hurdle to determine was there
2 sufficient reason to have bound over for trial. That's it,
3 so I don't want you to think I'm trying to prevent Mr.
4 Frazier from presenting anything. It's nothing hidden.
5 It's just -- it's not relevant. Y'all got a much bigger job
6 to consider everything. Much more is being presented to
7 y'all as a group by the State and it's their responsibility
8 to prove that case. So please don't take my comments as
9 there's something hidden back there. It's not much back
10 there. It's not relevant.

11 MR. BLACK: Brief redirect, Your Honor.

12 THE COURT: All right, go ahead.

13 REDIRECT EXAMINATION BY MR. BLACK:

14 Q. Captain McAllister, when you weighed the drugs, did you
15 weight it with the bag that the drugs were in?

16 A. Yes.

17 Q. You just threw everything on the scale?

18 A. Correct.

19 Q. You also mentioned the BEST pack number. I know that
20 you read it a while ago. Can you read that again for us?

21 A. Absolutely. The control number, which is actually the
22 number that you are speaking of, it starts with the letter B
23 followed by 248253.

24 Q. Thank you.

25 MR. BLACK: No further questions.

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

2 Ladies and gentlemen of the jury, if y'all step in
3 the jury room for just a few minutes and we'll get you right
4 back out here and see if we can get a few more witnesses
5 done before we adjourn for the day. All right. We are
6 taking a break.

7 You can't be discussing the case.

8 (The following takes place outside the presence of
9 the jury panel)

10 (Whereupon, Assistant Public Defender Ms.
11 Elizabeth Able now sitting with the defendant).

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Bring the jury in.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: All right, call your next witness.

18 MR. BLACK: We call Kenya Griffin.

19 OFFICER KENYA GRIFFIN, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BLACK:

22 Q. Can you state your name for the record?

23 A. It's Kenya Griffin.

24 Q. And where do you work, Ms. Griffin?

25 A. Greenwood City Police Department.

1 Q. And how long have you been employed there?

2 A. For thirteen years.

3 Q. And what is your job responsibility with the city?

4 A. I am the crime scene and evidence technician.

5 Q. And as far as your role as the evidence technician, can
6 you explain to the jury what that involves?

7 A. That involves officers collect evidence. If they go
8 out on a call they will turn it in to either to me, or our
9 evidence locker, if not there. I will take it out, log it
10 into our inventory and secure it until it needs to be
11 presented in court.

12 Q. And how often do you go out on calls?

13 A. It just varies.

14 Q. Okay. Do you remember if you were working on July the
15 9th?

16 A. I believe I was.

17 Q. Okay. Did you get -- did you respond to any of those
18 locations?

19 A. I did not, no.

20 Q. Okay. Do you remember what time your shift was that
21 day?

22 A. From 8:30 until 5:00.

23 Q. And you left at 5:00?

24 A. Yes.

25 Q. Was there evidence entered that day to you --

1 A. There was.

2 Q. -- to the police department?

3 A. Yes, there was evidence placed in the evidence locker.

4 Q. Can you explain to the jury what the evidence locker is
5 and how it works?

6 A. It's basically a set of lockers officers put it in.
7 It's got a turn handle and a push button. They turn the
8 handle and push button and it locks it. Once it's locked
9 they don't have access to it. Only myself and an alternate
10 custodian have a key to unlock the locker.

11 Q. Who is the other person again, I'm sorry?

12 A. Sergeant Edso.

13 Q. And y'all two are the only ones that have access to it?

14 A. Correct.

15 Q. Okay.

16 MR. BLACK: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 BY MR. BLACK:

20 Q. Sergeant Griffin, can you tell the jury what this is?

21 A. This would be the BEST pack that Captain McAllister
22 placed in the evidence locker.

23 Q. And what was the date that you submitted that?

24 A. July 9th, 2015.

25 Q. And did you receive it that day?

- 1 A. I did not. I removed it the next day, July 10th, 2015.
- 2 Q. And what did you do with it?
- 3 A. It was then turned over to Sergeant Tony Garrett.
- 4 Q. And then it was eventually brought back to you as
- 5 evidence -- the evidence lockers, correct?
- 6 A. That's correct.
- 7 Q. And when was that brought back to you?
- 8 A. That was brought back on July the 10th, at about like
- 9 11:30, placed in the locker.
- 10 Q. How long was it out of the evidence?
- 11 A. Sergeant Garrett signed it out about ten minutes until
- 12 nine and it was returned at 11:30.
- 13 Q. And just so the record is clear, what I just showed you
- 14 I think we have marked at State's Exhibit No. 4, is that
- 15 correct?
- 16 A. That's correct.
- 17 Q. Okay. Thank you.
- 18 Now, items that are entered into evidence, what happens
- 19 to those items?
- 20 A. They are either stored for court purposes; or if this
- 21 is an analysis, further analysis that's needed, it's then
- 22 submitted to SLED.
- 23 Q. And this particular item, that was narcotics, correct?
- 24 A. That's correct.
- 25 Q. And so someone else had to test that, is that correct?

1 A. That's correct.

2 Q. Where are they tested at?

3 A. They were taken to the South Carolina Law Enforcement
4 Division, also known as SLED, in Columbia.

5 Q. Okay. And from y'all's department who takes it to
6 SLED?

7 A. I take it.

8 Q. Okay. Do you know when you took it down to SLED?

9 A. It looks like I took it down on July 30th, 2015.

10 Q. So about twenty days later?

11 A. Correct.

12 Q. While it's sitting in evidence, is it tampered with in
13 any way? Do you mess with it, or is it just located into
14 the evidence --

15 A. It's stored in our evidence locker room. And, of
16 course, myself and officer custodian are the only ones that
17 have access to that room.

18 Q. Do you -- how often do you go down to Columbia to take
19 things to SLED?

20 A. I usually go about twice a month.

21 Q. Okay. And when you go down there, do you also pick
22 things up and bring it back, once they have been tested?

23 A. That's correct.

24 Q. Okay. When did you receive this item back after it was
25 tested?

1 A. I went down on November 16th of this year and retrieved
2 it from SLED.

3 Q. So Monday?

4 A. That's correct.

5 Q. And what time did it get back to Greenwood?

6 A. It was probably about one o'clock, or before one
7 o'clock.

8 Q. Okay. All right.

9 And that's stored -- has that been stored in Greenwood,
10 at y'all's evidence facility here in Greenwood?

11 A. Yes, it has.

12 Q. Okay. And you brought that over here today, correct?

13 A. That's correct.

14 Q. Okay. No further questions.

15 Please answer any questions that Mr. Frazier might have
16 for you.

17 CROSS EXAMINATION BY MR. FRAZIER:

18 Q. How are you doing?

19 A. All right.

20 Q. Please state your name for me.

21 A. It's Kenya Griffin.

22 Q. And your position in the city police department?

23 A. I am the crime scene and evidence technician.

24 Q. Okay. You say these drugs were brought to you by
25 Captain McAllister?

1 A. They were put into an evidence locker.

2 Q. By Captain McAllister?

3 A. That's correct.

4 Q. And did Captain McAllister ever come back and get the
5 drugs?

6 A. He sent Sergeant Tony Garrett to come and retrieve
7 those drugs from me.

8 Q. Okay. Can you state what locker number it was put in?

9 A. Initially he didn't write a locker number on it when he
10 returned them. They were put in locker number 10.

11 Q. Okay. So do y'all have multiple different lockers, or
12 just one?

13 A. We have different lockers. There are nineteen, I
14 believe.

15 Q. Okay. And isn't he supposed to put a locker number on
16 it?

17 A. They are numbered for that purpose. A lot of times
18 they don't put a locker number on it. They just put it in a
19 locker.

20 Q. Did you receive the drugs on 7-9?

21 A. I did not, no.

22 Q. Was you at the locker at 7-9, around 18:00?

23 A. I was not, no.

24 Q. And is Captain McAllister allowed to put things in
25 lockers while you are not around?

1 A. Yes, that's the purpose of them, for them to submit
2 evidence when I'm not there.

3 Q. Okay. And -- and you got drugs -- you received the
4 drugs -- you got the drugs out of the locker on 7-10?

5 A. That's correct.

6 Q. And what did you do with the drugs?

7 A. They were released to Sergeant Tony Garrett.

8 Q. On the evidence property report it says one item on
9 7-10-15, at 8:59, released by -- it doesn't state who it was
10 released by?

11 A. I'm sorry?

12 Q. Could you read what the inventory list states on
13 7-10-15, at 8:49?

14 A. It says released by a locker, received by Griffin.

15 Q. Released by a locker?

16 A. Uh-huh.

17 Q. Isn't it supposed to have a person that it's released
18 to?

19 A. No, sir, it's released by a locker when I removed it
20 from a locker. I don't get it from a person.

21 Q. Okay. And it was received by?

22 A. Myself.

23 Q. Okay. And then what you -- once you received it, what
24 you did with it?

25 A. It was released to Sergeant Garrett.

1 Q. Okay. And once you received it, you placed it into
2 evidence on 7-10?

3 A. No, sir, I removed it from the locker. Sergeant
4 Garrett was there in my office and I turned it directly over
5 to him.

6 Q. Okay. Is that at 8:50 or 8:49? I'm talking about
7 8:49.

8 A. 8:49 I took it out of the locker. Sergeant Garret was
9 there waiting for me to remove it from the locker. He
10 signed the paperwork and I handed it to him.

11 Q. Okay. On 7-10-15, at 08:50, you released the drugs.
12 And could you state the name of the received by on that
13 date?

14 A. Tony Garrett.

15 Q. Oh, that's Tony Garrett. Okay.

16 And could you tell me what the purpose or reason is on
17 that date?

18 A. When I released them to Officer Garrett?

19 Q. Yes.

20 A. To place them in the BEST pack for SLED.

21 Q. I can't see because it's got -- it's like a blank on my
22 paper. On 7-10-15, at 8:50, 08:50?

23 A. It's for evidence.

24 Q. Okay. That's evidence?

25 A. Yes.

1 Q. And on 7-10-15, at 8:54, they were released by Tony
2 Garrett. That's the Tony Garrett?

3 A. Yes.

4 Q. And received by -- is that D. McAllister?

5 A. That's correct.

6 Q. Okay. To -- for purpose and reason to be placed in the
7 SLED BEST pack?

8 A. That's correct.

9 Q. And on 7-10-15, 11:20 two items were placed into
10 evidence?

11 A. That's correct.

12 Q. And released by -- is that D. McAllister?

13 A. Yes, sir.

14 Q. And it was received by what -- was it -- it don't state
15 a person it was received by. What is that that it said it
16 received by?

17 A. Put into evidence locker number 10.

18 Q. Okay. And the purpose was SLED testing?

19 A. That's correct.

20 Q. And on 7-12-15 two items were released by locker number
21 10?

22 A. That's correct.

23 Q. And it was received by you?

24 A. That's correct.

25 Q. For evidence?

1 A. Yes, sir.

2 Q. Okay. Could you state the date that you sent these
3 drugs off?

4 A. They were taken to SLED on 7-30-2015.

5 Q. Okay. They were taken on 7-30?

6 A. Yes, sir.

7 Q. So they weren't sent off to SLED when they was placed
8 in the BEST pack to be sent to SLED?

9 A. That's correct. I only go to SLED about twice a month.
10 I may have just gone to SLED when they submitted them, so it
11 took about two weeks before I took them down again.

12 Q. So officers are allowed to check in and check out drugs
13 without -- as long as -- by their self, or does it have to
14 be supervised?

15 A. No, they don't -- I mean, these are checked out for a
16 reason, to be put in a BEST pack. They don't come just to
17 just check them out for any reason.

18 Q. Okay. Is it true -- could you tell me why the
19 inventory evidence report -- I mean evidence report states
20 that it was -- it was checked out twice to be put in the
21 SLED BEST pack on 7-10?

22 A. It was only checked out once.

23 Q. Is it -- do you see where it was checked out -- it was
24 checked -- it was checked in twice to be put in the SLED
25 BEST pack on 7-9, and then it was on 7-10?

1 A. The purpose for him putting it into evidence was to
2 place it in the BEST pack and that's that.

3 Q. Could you tell me why it has to be put in the BEST pack
4 twice on the evidence report?

5 A. It wasn't put in a BEST pack the first time it was
6 submitted.

7 Q. Okay.

8 A. His reason for putting it in the locker was to be put
9 in a BEST pack at a later time.

10 Q. Okay. So the drugs were held in a locker until the
11 30th from the 9th?

12 A. No, sir, that's not correct. They were placed in our
13 evidence room.

14 Q. Well, in the evidence room --

15 A. Yes.

16 Q. -- from the 9th to the 30th?

17 A. That's correct.

18 Q. And your job is to send it off to SLED, right?

19 A. Correct.

20 Q. Could you tell me why McAllister on 7-10-15, at 11:20,
21 drugs were released by him and received by locker number 10
22 for SLED testing?

23 A. I'm not sure I understand your question.

24 Q. The purpose and reason on 7-10-15 and 11:20 -- at 11:20
25 hours, it says the purpose and reason for SLED testing.

1 A. Okay.

2 Q. And do y'all commit -- do y'all perform a SLED test?

3 A. No, we don't.

4 Q. Could you tell me why it states purpose and reason for
5 SLED testing on?

6 A. Because he wanted it sent to SLED.

7 Q. Okay. And that received by locker 10 means that he put
8 it in locker 10?

9 A. That's correct.

10 Q. Okay. And the drugs wasn't returned from SLED lab
11 until the 16th of 2015?

12 A. That's correct.

13 Q. That's the date that you went and picked it up?

14 A. Yes.

15 Q. Okay. Did you -- no, you didn't do this.

16 Did you do the evidence report?

17 A. No, I did not.

18 Q. So Captain McAllister did the evidence report?

19 A. Correct.

20 Q. Is Captain McAllister certified to test?

21 A. No.

22 Q. He's not?

23 A. No.

24 MR. FRAZIER: That's it.

25 THE COURT: Anything else?

1 MR. BLACK: A couple brief redirect, Your Honor.

2 REDIRECT EXAMINATION BY MR. BLACK:

3 Q. Like you mentioned earlier, the lockers, you are the
4 only one that has access to it once evidence has been
5 entered, is that correct?

6 A. That's correct, myself and an alternate.

7 Q. While the evidence was in your possession did you alter
8 or tamper with it in any way?

9 A. No, I did not.

10 Q. And I know you said you took the items down to SLED on
11 the 30th, correct?

12 A. That's correct.

13 Q. Do you remember who you gave them to at SLED?

14 A. To the SLED log-in, Jennifer Aycock I think is her
15 name.

16 Q. Thank you.

17 THE COURT: You can step down.

18 MR. MORONEY: The State calls Douglas Robinson.

19 SLED AGENT DOUGLAS ROBINSON, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. MORONEY:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Could you please state your name?

25 A. Douglas Robinson.

1 Q. And what is your occupation?

2 A. I'm a forensic chemist employed with the South Carolina
3 Law Enforcement Division, commonly known as SLED, and I'm
4 assigned to the Drug Analysis Department.

5 Q. Okay. And how long have you worked for SLED as an
6 analyst?

7 A. Just over seven and a half years.

8 Q. And could you explain some of your education or
9 training that you received?

10 A. Certainly. I received my Bachelor of Science in
11 chemistry from the University of South Carolina.

12 After graduating I spent approximately three years
13 performing chemical analysis in the environmental chemistry
14 field.

15 Upon being hired at SLED I received law and legal
16 training from the South Carolina Criminal Justice Academy,
17 as well as in-house training in the analysis of controlled
18 substances through the Drug Analysis Department.

19 I have also attended the Drug Enforcement
20 Administration forensic chemists seminar.

21 Q. And have you been qualified as an expert to testify in
22 court before?

23 A. Yes, sir.

24 Q. And how many times have you been qualified?

25 A. Twenty.

1 MR. MORONEY: Your Honor, I would like to move
2 that the witness be qualified as an expert in the field of
3 forensic drug analysis.

4 THE COURT: Mr. Frazier, you have an opportunity
5 to ask Mr. Robinson about his qualifications regarding drug
6 analyst, as being an expert in the field of drug analysis as
7 a chemist. Would you like to question him on that area?
8 Not anything other than his qualifications, okay?

9 MR. FRAZIER: Okay.

10 VOIR DIRE EXAMINATION BY MR. FRAZIER:

11 Q. How long have you been working with SLED?

12 A. Just over seven and a half years.

13 Q. Seven and a half?

14 A. Yes, sir.

15 Q. And your position at SLED?

16 A. Forensic chemist assigned to the Drug Analysis
17 Department.

18 Q. Okay.

19 MR. FRAZIER: That's it, Your Honor.

20 THE COURT: Okay. He is so qualified.

21 What that means is as an expert in the field of
22 forensic chemist and drug analysis he can testify to an
23 opinion in that field.

24 All right, go ahead.

25 MR. MORONEY: Your Honor, may I approach the

1 witness?

2 THE COURT: Sure.

3 CONT'D DIRECT EXAMINATION BY MR. MORONEY:

4 Q. Okay. Mr. Robinson, I'm handing you an item marked as
5 State's Exhibit 4 for identification purposes. Can you
6 please take a look at that, and explain, after you have
7 taken a look at it, what it appears to be?

8 A. Yes, sir, this top paperwork I'm not as familiar with.
9 It appears to be a Greenwood Police Department evidence
10 property report.

11 Underneath that is several pieces of packaging. The
12 outer packaging is what we refer to as a K-Pack. It's a
13 heat-sealed bag that we returned the evidence to, that I
14 would return the evidence to after analysis was performed.
15 This bag is sealed with my initials and the date the seal
16 was made here at the bottom. So my initials and then
17 10-7-15.

18 Inside the outer packaging we have what we refer to as
19 the BEST kit. This is short for best evidence sample
20 testing. This is a tamper-evident bag that allows officers
21 at local agencies to seal the evidence inside of this bag
22 until essentially I can do the analysis.

23 The bag has a blue strip around the top, across the
24 top, and then an actual blue swirl pattern that runs around
25 the other three sides. This is the tamper-evident portion

1 that we talked about. If anyone tried to stretch it, break
2 it, cut it, it would be readily apparent.

3 Inside of that is a ziplock bag containing a crystal
4 substance and also a plastic sandwich bag.

5 Q. Okay. And Mr. Robinson, is there a BEST pack control
6 number listed on that bag?

7 A. There is.

8 Q. If you recognize that number, could you please read it?

9 A. May I refer to my notes in this case?

10 Q. Yes.

11 A. The best control number that was submitted in this case
12 that matches the number on the report that I initialed is
13 B248253.

14 Q. Mr. Robinson, were there any tests completed by you
15 with respect to the substance associated with that BEST bag
16 control number?

17 A. Yes, sir. Once I retrieved the evidence from our
18 evidence control, our log-in area, the evidence was removed
19 from all packaging and an initial weight was taken.

20 After that a presumptive or preliminary test was
21 performed to give me an idea of the type of substance that I
22 would be dealing with in this case.

23 Based on those results a confirmatory test was
24 performed to identify the compound to the exclusion of all
25 other chemical compounds.

1 Q. And could you explain into a little bit more detail the
2 testing that goes into the substance when you perform the
3 test?

4 A. Certainly.

5 Again, the first thing that I do, once I open the BEST
6 Kit, the very first thing I do is ensure the BEST Kit is in
7 fact sealed. That is actually noted on the BEST Kit with
8 the words "seal intact" with my initials and the same date
9 that it was resealed; so 10-7-15 again. That notation is
10 also on my work sheet "evidence sealed, yes".

11 Once I establish that I remove all the evidence from
12 the BEST Kit and assign item numbers, just for bookkeeping
13 purposes and separation. Each item would be tested
14 separately. In this case there was only a single item. All
15 packaging was removed from this item and the weight was
16 taken.

17 The preliminary or presumptive test we used as a color
18 spot test called a Marquis test. It's a very general color
19 test that would give us a color reaction based upon the type
20 of compound present, the chemical structure.

21 Based on this orange Marquis response it was highly
22 probable that I had methamphetamine, so I performed an
23 extraction using methylene chloride as my extraction solvent
24 basic conditions and ran it on an instrument called a gas
25 chromatograph mass spectrometer. We refer to that as GCMS

1 for short. That gave me my conclusive results.

2 Q. And, Mr. Robinson, what were the results of the test
3 that you performed on that substance?

4 A. My results were Item 1.1, plastic sandwich bag
5 containing crystal substance methamphetamine C-2 found in
6 the sample tested. One is tested. Net weight 19.92, plus
7 or minus 0.01 grams. 307.40, plus or minus 0.15 grains.
8 Competence level for the weight is 99.7 percent.

9 Q. Can you speak to the competence level of 99.7 percent,
10 what that refers to?

11 A. Certainly. Nothing is absolute. There is always going
12 to be factors that should be factored in when you are
13 dealing with the weights, any slight fluctuations of the
14 balance. These are very, very precise instruments, but
15 everything has some uncertainty. There is also human
16 uncertainty. And all this is factored in within the
17 department to come up with an uncertainty that we apply to
18 each weight taken. So in this case for a single weight our
19 certainty, our confidence level is 99.7 percent.

20 Q. And when you weighed this substance, did you weigh it
21 with the packaging or without the packaging?

22 A. Weights are always taken out of the packaging, so the
23 weight of the packaging was not included in the results.

24 Q. And obviously you said that was fair to say you wanted
25 to explain the weight fluctuation from weight with packaging

1 versus weight without packaging?

2 A. Certainly. If you remove the plastic sandwich bag, the
3 weight would decrease.

4 Q. And could you please for clarification purposes state
5 the weight of the substance?

6 A. Certainly. Right. The net weight was 19.92, plus or
7 minus 0.01 grams. And, again, that 0.01 grams is what's
8 attached to the 99.7 percent. That's the variation that we
9 give based on that calculation, so we are quite certain that
10 the weight is between the plus or minus 0.01, if it is, in
11 fact, off the 19.92 at all.

12 (Whereupon, Assistant Public Defender Patricia
13 Bolen replaced Assistant Public Defender Elizabeth Able to
14 assist Mr. Frazier)

15 BY MR. MORONEY:

16 Q. And could you describe the process by which you
17 received these drugs?

18 A. Certainly.

19 Evidence is typically brought to SLED by a local
20 agency's evidence technician. That evidence -- or that
21 technician would go to our evidence intake or our log-in
22 department. Evidence would be submitted in person to that
23 technician. The technician would then receive the evidence,
24 create a case within our lab and at that point a bar code is
25 generated. So in this case L-15-10390 was created at the

1 time it was logged in. This bar code actually follows this
2 case throughout its time at SLED and it's a unique number.
3 This lab number will never be used again at SLED. So
4 between the B number, the BEST control number, and the SLED
5 lab L number, it has two unique tracking numbers that follow
6 it throughout the life of the case.

7 Q. And could you explain the internal chain of custody at
8 SLED with respect to these drugs?

9 A. Yes, sir. On 7-30-15 Kenya Griffin of the Greenwood
10 Police Department brought the evidence and submitted it to
11 our log-in department. Jennifer Aycock, one of our evidence
12 control technicians received the evidence.

13 On that same day it was electronically transferred to
14 our evidence room. This is a secured location within SLED.
15 Obviously the forensic building as a whole is secured, but
16 this is another layer of protection in a secured location
17 within the evidence control department, which only our
18 evidence technicians have access to. I, as the analyst,
19 don't have access to this. All of our evidence goes in and
20 out of this room through our technicians.

21 So on 7-30 that was transferred to the evidence room.

22 On 10-7-15 I requested to pick up the evidence. Amy
23 Stevens, one of our other evidence technicians retrieved the
24 evidence from the evidence room, electronically transferred
25 the evidence to her, and subsequently transferred the

1 evidence to me on 10-7-15.

2 Once the analysis was complete and I was ready to
3 return the evidence to evidence control, I returned the
4 evidence on 10-23-15 to Jackie Davis, who also is an
5 evidence technician within the department.

6 Q. And once testing is complete, what happens to the drugs
7 from that point on?

8 A. Yes, sir, so I just stated on 10-23 Jackie Davis
9 received it from me. She electronically transferred it to a
10 specific shelf within the evidence room. It's referred to
11 as drugs for return shelf, so it's actually in a very
12 specific location within this room.

13 The evidence ultimately on 11-16-15 was electronically
14 transferred back from that shelf to Jackie Davie again and
15 transferred to Kenya Griffin of the Greenwood Police
16 Department on November 16th.

17 Q. Thank you. Please answer any questions that Mr.
18 Frazier may have for you.

19 A. Yes, sir.

20 MR. FRAZIER: I don't have no questions, Your
21 Honor.

22 MR. MORONEY: Your Honor, at this time I would
23 like to move to admit this evidence -- move to admit State's
24 ID No. 4 into evidence.

25 MR. FRAZIER: I got an order of the court of law.